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SECOND SESSION

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Tuesday, August 26, 1980*

The House met at 12 o'clock noon.

The Reverend Sigfrid Paulson, Unity Church of Christianity, Houston, Tex., offered the following prayer:

Let us take a few moments to be grateful for each other and for all who pray with us today.

Our Heavenly Father, Creator of heaven and Earth, we still our busy minds and open our hearts to Your love.

Let there be peace in our beautiful spaceship, Earth, and let it begin anew right now in us. Inspire us to remember that we are created in Your image, energized by Your love and life. Stir up Your Spirit within: Clear our vision, lift our faith, regenerate our will, expand our love into peaceful creative action.

The light of God surrounds us
The love of God enfolds us
The power of God protects us
The presence of God watches over us
Wherever we are, God is.

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate disagrees to the amendments of the House to the bill (S. 1177) entitled "An act to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, Mr. HUMPHREY, and Mr. STAFFORD to be the conferees on the part of the Senate.

THE REVEREND J. SIGFRID PAULSON

(Mr. ROSE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROSE. Mr. Speaker, the United States of America has prospered and our freedoms expanded because this is a nation that cherishes unity in diversity.

We are proud of our many denominations of spiritual belief and broad spectrum of religious faith. As Americans, we seek a higher vision under God to constantly perfect ourselves and our Nation. Accordingly, we welcome today the opening prayer offered by a minister of a denomination that is relatively few in numbers but very great in spirit.

I refer to the Reverend J. Sig Paulson, minister of the Unity Church of Christianity. Reverend Paulson has come to us from Houston, Tex., to inspire this House today with an opening prayer.

It is good and fitting that a nation that inscribes on its currency the words, "In God We Trust," reflect on the insight that America is built upon more than materialism and scientific achievements. Our Nation rests upon faith in a universal God who may be approached through the many paths to Christ consciousness.

When we finally reach that glorious city upon the hill and contemplate the view from its summit, we will look down and see that many paths led upward to the same destination.

TWO HUMAN BEINGS

(Mrs. FENWICK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. FENWICK. Mr. Speaker, I would like to bring to the attention of this House two human beings, two people. One is Raoul de Wallenberg, who was in the Swedish Embassy in Budapest in the days of the war. At great risk to himself and completely unselfishly, he rescued people. He arranged for their exit from danger and finally himself was arrested by the Soviets and taken off into the Soviet Union. Since that time no one knows what has happened to him. We have had word that he has been seen in various prisons, but Raoul de Wallenberg for all intents has disappeared. But his act has not disappeared nor has his courage and we should certainly insist on getting some account of what has happened to him.

The second person, Mr. Speaker, is somebody far less famous. It is Ivan—and I would like to make his name clear—it is Ivan Javiliak; brought to my attention by a compatriot of ours, Ihor Koszman, who lives in my district. As Mr. Koszman writes most touchingly, "this is not a famous man, not a famous dissident. He is an ordinary man who has sacrificed all for the right to live free." What he is now asking is that his wife and child should be allowed to come from the Soviet Union. They do not live in Moscow or Leningrad where they might have access to foreign correspondents. They live in a little country town, his wife and child do, a little country town where they are terribly subjected to the KGB and the harassment that would perhaps not be countenanced, although a great deal is countenanced, in Moscow or Leningrad itself.

Two human beings, one lost for many years, that we really must not forget among the heroes, and one still hoping that his wife and child can join him, according to the agreement signed not only by this Nation, but by the Soviet Union itself. The reunification of families was promised and in this case it is denied.

Mr. Speaker, I think we should speak of these things from time to time.

□ 1210

REQUEST FOR PERMISSION FOR SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF COMMITTEE ON THE JUDICIARY TO SIT TODAY DURING 5-MINUTE RULE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary be permitted to sit today while the House is reading for amendment under the 5-minute rule.

The purpose of the permission is to allow markup of H.R. 5615, the Intelligence Identities Protection Act.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I serve

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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on this subcommittee and would also like to be on the floor. I would say to my friend from California (Mr. EDWARDS) I note that every hearing has been in the afternoon. I note we have extended over the 7 days that we were allowed, and the Speaker has granted 3 additional days.

I do not really think we ought to have this rush at the last few hours. I am wondering why this is necessary and would yield to the gentleman under my reservation.

Mr. EDWARDS of California. If the gentleman will yield, the problem is that we have had no other time to mark up the bill. The hearings have just been completed. The full committee is meeting today, tomorrow, and we will not be able to work Friday or Monday, being holidays. Our time runs out on Wednesday next.

Mr. ASHBROOK. Further reserving the right to object. I will be attending at 2 o'clock, but I do want to come back here when we are under the 5-minute rule. For that reason I would be glad to meet tonight.

For that reason I would be constrained to object, Mr. Speaker.

The SPEAKER. The rules require 10 Members to object.

(Messrs. MYERS of Indiana, DEVINE, ROTH, RUDD, COLEMAN, KRAMER, RITTER, CONABLE, and BAUMAN also objected.)

The SPEAKER. A sufficient number has objected.

Objection is heard.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT DURING 5-MINUTE RULE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit for the markup of H.R. 3806, the Court of Appeals for the Federal Circuit Act.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, that request is only for that one bill and does not include the Criminal Code revision?

Mr. EDWARDS of California. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman.

Mr. EDWARDS of California. That is for only one bill. The gentleman is correct.

Mr. BAUMAN. I thank the gentleman, and withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

CONGRESSMAN WEISS INTRODUCES LEGISLATION TO DETER UNLAWFUL REMOVAL OF GOVERNMENT RECORDS

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, today I am introducing legislation I hope will close a serious gap between our ideal of openness in government and the access the public actually enjoys, as illustrated by the recent Henry Kissinger telephone transcripts case.

Mr. Kissinger removed transcripts of his conversations as Secretary of State from his office shortly before he stepped down as Secretary and deeded them to the Library of Congress. Although the Solicitor General has conceded that at least some of the transcripts qualify as official records, the Supreme Court ruled that these transcripts do not have to be returned to the Government's control and opened to the public under the Freedom of Information Act.

My proposed legislation would create a private right of action to enable citizens to compel the return of wrongfully removed public documents. Under current law, only an agency head, with the assistance of the Administrator of General Services, can initiate an action to recover records in such cases.

I believe this legislation offers the strongest useful deterrent to the unlawful removal of records at all levels of government. In the Kissinger case, Justice Brennan noted that—

> It is Congress which has the resources and responsibility to fashion a rule about document retention that comports with the objectives of the Freedom of Information Act.

I urge my colleagues to accept this charge and join me in supporting this legislation.

IS ADMINISTRATION SABOTAGING ITS OWN LEGISLATION?

(Mr. LEVITAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVITAS. Mr. Speaker, it is again with a great deal of sadness that I have to ask the question: Where is the regulatory reform bill; where is the legislative veto bill which has over 230 cosponsors? Is there somebody holding up the House of Representatives from doing its will on this legislation?

The regulatory reform bill was the centerpiece of the administration's proposal to streamline, modernize, and reform our Government. Yet I suggest to my colleagues that the administration is holding up its own bill in a committee of this House because they are afraid to let the democratic legislative process work. The time has come for these bills to be brought out to the floor. Let this House work its will and let the American people benefit and judge the results, because they are going to judge harshly if these bills are not voted on. These bills have broad, bipartisan support.

If the administration is trying to sabotage its own bill, that is not only bad legislation, that is stupid politics.

GOVERNOR REAGAN'S SOUND CHINA POLICY

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, Governor Reagan's position on continued U.S. relations with mainland China and the people of Taiwan is consistent with the intent of Congress through passage of the Taiwan Relations Act.

Governor Reagan has pledged to implement that policy of maintaining peace and promoting extensive close and friendly relations between the United States and the 17 million people on Taiwan, as well as the 1 billion people of the Chinese mainland.

A Reagan administration would not continue the current Carter administration policy of attempting to humiliate Taiwan and unilaterally abrogate trade agreements and other relations with our longtime friend and ally.

Of major importance is Governor Reagan's pledge that, as President, he would not accept the interference of any foreign power in the process of protecting American interests and carrying out the laws of our land.

This is a responsible policy, a policy of firm leadership which should gain renewed respect for the United States throughout the world.

Mr. ROTH. Mr. Speaker, President Carter and his administration have again demonstrated that they will stop at nothing in the continuing attempt to rescue their tattered and discredited foreign policy.

Using the Secretary of State as a political front man was not bad enough. This morning we find the U.S. Ambassador to the People's Republic of China making totally ridiculous, totally unfounded and totally political statements.

In truth, President Carter never wanted the Taiwan Relations Act. He has failed to enforce it. He has done everything he could to circumvent the act. The petty practices of the Carter administration defy belief:

Taiwan Government officials are not permitted to meet with U.S. officials in either United States or Taiwan Government offices.

Taiwan military officers are no longer permitted to train in the United States.

Taiwan citizens are no longer admitted to the U.S. service academies.

The Carter State Department has forced the closing of five Taiwan consular offices in direct violation of the Taiwan Relations Act.

The Carter administration recently tried to ban all imports from Taiwan labeled "Made in the Republic of China."

The Carter administration imposed a 1-year ban on arms supplies to Taiwan, even though the Taiwan Relations Act provides for continued trade in defensive arms.

The Carter administration unilaterally canceled the civil aviation agreement with Taiwan that had been in force since 1947.

United States-China relations in the past 3½ years are yet another example of the dither, blunder, bluster, and gratuitous insult that has characterized the Carter administration's foreign policy around the world.

COUNTDOWN FOR PEACE CONTINUES; 71 DAYS UNTIL NOVEMBER 4

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, the countdown for peace continues. There are 71 days until election and we say the same thing we have been saying for the past 10 days: "Mr. Carter, keep us out of war."

We have watched the China debate and it has been rather interesting because we have seen the Democratic candidates attempting to elevate their capitulation to the Chinese Communists to a virtue. We understand that. That is politics and we will put up with it.

In Poland we see the State Department giving no encouragement whatsoever to the latest freedom fighters. That is politics. We understand that.

In defense we see Secretary Brown trying to put a chestnut out before the people. Here is a project, a secret project that was started in prior administrations and they are trying to use that as a coverup to say that we do not need the B-1 bomber or a new modern bomber force. That is politics and we understand that.

We would say on our side that we will give Mr. Carter the green light in many areas for his mistakes, go ahead and make them. We would say for his foolish policies, go ahead and continue them. For wasting taxpayers' money, go ahead and waste it for the next 71 days.

But please, Mr. President, do not get us in a politically motivated war. Our patience and tolerance for your "politics as usual" will stop the moment you try to involve us in any unnecessary military adventure.

THE MISSING INGREDIENT

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, I think most of us would agree that there are numerous problems, both financial and structural, associated with the Nation's social security system.

Our constituents complain about these problems; various study groups and commissions tell us about them in voluminous reports, printed and televised news stories remind us of them frequently, and our own experiences often bear them out.

But as legislators, we have not yet faced these problems squarely. We made some major changes 3 years ago, but we still left the system with a longrange actuarial deficit equal to about 1.4 percent of taxable payroll, which can be translated into some $800 billion current dollars. We also left a great number of unanswered questions involving the treatment of women under the system, large segments of uncovered employment—mainly Federal—the balance—or lack of it—between welfare and individual equity elements, and a spiraling tax schedule.

Since the 1977 amendments, the system has encountered new financial difficulties. Our response has been to make some trust fund adjustments, postponing an impending crisis until the 97th Congress has a chance to act. Meanwhile, myriad structural problems remain and promise to become even more difficult to solve.

Responsible answers obviously will not be easy to reach. But we can reach them. Reports on key issues by a variety of study groups already are available, and more will be ready early next year. The essential ingredient for success is a congressional commitment to long term planning. So far, it has been a missing ingredient. We are going to have to find it or our national social insurance system cannot survive.

□ 1220

THE FEDERAL CROP INSURANCE CORPORATION SCANDAL

(Mr. COLEMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COLEMAN. Mr. Speaker, the Federal Crop Insurance Corporation scandal goes on. The USDA has proposed the removal of a third official of the FCIC for allegedly engaging in prohibited or irregular personnel practices.

The official is the personnel officer for the FCIC who allegedly participated in putting into practice or failed to stop a number of purported improper personnel measures by three other officials of the Corporation. Two of the officials—the Deputy Manager and the Assistant Manager—have been targeted for removal by the Department.

But administrative action against the FCIC Manager is being held up pending a ruling on his application for disability retirement. This disability retirement application came as a result of a call from the Secretary's own office advising the FCIC Manager as to how to avoid the consequences of his involvement in the FCIC scandal.

Mr. Speaker, I am again calling for hearings on this matter by the House Committee on Agriculture.

TASS OUTLINED CONCESSIONS OFFERED TO STRIKING WORKERS BY POLISH OFFICIALS DESIGNED TO END THE STRIKE

(Mr. RITTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RITTER. Mr. Speaker, in a highly unusual admission by the Kremlin, the Soviet Government's news agency Tass acknowledged that Poland's economic situation was grave and outlined concessions offered to striking workers by Polish officials designed to end the strike. Thus, the Soviets have broken their silence on the Polish situation.

It is significant that some 3 months from now the United States will join other cosignatory nations, including Poland and the U.S.S.R., in Madrid to review implementation of the Helsinki Accords. Foreign intervention in the Polish conflict would contradict the very basic principle I of the Helsinki Accords, which recognizes sovereign equality and each nation's rights to freely choose and develop its own political, social, economic, and cultural systems. Foreign intervention would directly violate principle VI which calls upon cosigners to Helsinki to abstain from the use of military force. It would also violate principle VIII, which asserts the right of a people's self-determination. Force to break the strike on the part of the Polish Government or the Soviet Union would violate the very core of the Helsinki agreements.

About 220 Members of this body, a majority of the House of Representatives, have thus far joined with me in a resolution to reaffirm our commitment to this international agreement and express our view that external intervention by foreign powers in Poland would violate fundamental human rights essential to the preservation of security and cooperation in Europe.

RESOLUTION TO REVOKE IRANIAN DEMONSTRATORS' VISAS

(Mr. DUNCAN of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DUNCAN of Tennessee. Mr. Speaker, during the recent district work period several of my constituents expressed great disappointment over the way the U.S. Government handled the recent situation when so-called Iranian students demonstrated in the streets of Washington. They found it hard to believe that such a demonstration could be allowed, and were angry because the "students" were not deported immediately. It is clear to me that the Iranians have conducted themselves in the manner they have because they were confident that the U.S. Government would probably do no more than issue a mildly denouncing statement, or threaten with no intention of taking action. They will only begin to respect us when we stand up for our rights as a sovereign nation should. Instead of asking the Iranian demonstrators if they wanted to return home, we should have with force if necessary put them on a plane for the return to Tehran. They are here as guests in our country. Whether they leave or stay is our choice, not theirs.

Accordingly, I today announce my sup-

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port for a resolution introduced by the gentleman from Minnesota (Mr. HAGEDORN) urging the Secretary of State to immediately revoke the visas of the arrested Iranian demonstrators. He has this authority by virtue of the Immigration and Nationality Act; all that is needed is the will to exercise it. America is growing impatient and wants to stop the ridiculous chain of events that began last November. This resolution is a step in the right direction for a change.

SECOND BUDGET RESOLUTION

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, as I look over the agenda for the rest of the week, I see no mention of the second budget resolution. Thus, I can only assume that the Democratic leadership is sticking with its plan to postpone consideration of next year's budget until after the election. I can understand why the leadership would want to take this tack. Just a couple of months ago, when the House passed the first budget resolution, members on the majority side of the aisle were falling all over themselves to pat themselves on the back for passing a balanced budget. They did not mention that this was to be accomplished by an enormous tax increase. Now it appears that even these additional taxes will not be enough to balance the 1981 budget, which by conservative estimates is already $30 billion in the red. I can understand the embarrassment of having to admit this on the eve of the election. Nevertheless, the American people have a right to know the truth; indeed, the law requires that we complete work on the budget by September 15. Mr. Speaker, there are still 39 days remaining until the scheduled start of the recess, and 70 days until the election. There is still plenty of time to consider next year's budget. A lameduck session is not necessary.

ONE-MINUTE SPEECHES

(Mr. PEYSER asked and was given permission to revise and extend his remarks.)

Mr. PEYSER. Mr. Speaker, last week I had made the request that perhaps both the Republican and the Democratic sides could stop the political speeches during the 1 minutes and use 1 minutes for the purpose they were designed for. But obviously that does not seem to be happening, so I would not want the day to pass, when we have heard all these wonderful things about Governor Reagan's China policy, which is now called the on-again, off-again China policy. The issue is really sounding—like a soap opera these days—is George Bush or Governor Reagon going to decide what we do with Taiwan or with China. Who knows?

Now that we have Governor Reagan introducing the question of evolution into the campaign—and that certainly is a very important issue for the country to be discussing today, as to whether the Darwinian theory has any validity. This is going to be a very interesting campaign. Obviously, from the Republican side I am sure we are going to go back to many issues that date back for the last 100 or 150 years, instead of facing the problems of today. Maybe after today we can get down to using the 1 minutes for the real purpose and not have this political oratory.

FREE ELECTIONS IN NICARAGUA—ABOUT 5 YEARS FROM NOW

(Mr. BAUMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAUMAN. Mr. Speaker, I hope I can be definitive in my remarks.

I would be remiss in not calling to your attention the fact that there will be "free elections" in Nicaragua. If you do not believe it, you can refer to the speech made 2 days ago by Daniel Ortega, one of the Sandanista rulers. He said yes, they will have free elections in Nicaragua about 5 years from now. He did not give an exact date, but Ortega thought 5 years would be a good period of time. So for those in the leadership of this House who have done so much to give American tax dollars to the Communist government of Nicaragua, perhaps you will be around to see those elections 5 years from now. If you believe they will be held, you may also believe in Santa Claus. But the way taxpayers' money has been handed out to Nicaragua, you may well believe in Santa Claus.

EARLE C. CLEMENTS JOB CORPS CENTER

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor be discharged from further consideration of the bill (H.R. 8010) to amend the Comprehensive Employment and Training Act to designate a Job Corps center as the "Earle C. Clements Job Corps Center" and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. ASHBROOK. Reserving the right to object, Mr. Speaker, I only reserve it for the purpose of stating that the minority is in 100 percent agreement with the chairman. I would ask the chairman if he, under my reservation, would like to take maybe 1 minute to explain the purpose of this bill.

Mr. PERKINS. If the gentleman will yield, this bill was reported out of the House Committee on Education and Labor unanimously. At present the Job Corps center is known as the Breckenridge Corps center in the home community of former U.S. Senator and Gov. Earle C. Clements. He has been a great leader in Kentucky, in the State senate, as Governor, and more or less an institution in the U.S. Senate. He has looked closely into the operation of this Job Corps center since it was established in 1965, and he has been more interested in the center than any man living, to my personal knowledge. I felt that it was appropriate before his birthday to name this Job Corps center for him—along with the remainder of the Kentucky delegation. We all agree. I want to thank the gentleman from Ohio for his cooperation.

Mr. ASHBROOK. I thank the gentleman from Kentucky.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the bill, as follows:

H.R. 8010

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Comprehensive Employment and Training Act (29 U.S.C. 801 et seq.) is amended by inserting after section 468 the following new section:

"EARLE C. CLEMENTS JOB CORPS CENTER

"SEC. 469. The Secretary shall designate the Job Corps facilities located in the State of Kentucky in Union County and Muhlenburg County as the 'Earle C. Clements Job Corps Center'. Any reference in law, map, regulation, document, record, or other paper of the United States to the Job Corps facilities specified in the first sentence of this section shall be held to be a reference to the 'Earle C. Clements Job Corps Center'.".

SEC. 2. The table of contents of the Comprehensive Employment and Training Act is amended by inserting after the item relating to section 468 the following new item:

"Sec. 469. Earle C. Clements Job Corps Center.".

The bill was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

□ 1230

THE VETERANS' ADMINISTRATION HEALTH-CARE AMENDMENTS OF 1980—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER. The unfinished business is the further consideration of the veto message of the President on the bill, H.R. 7102, to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes.

The question is, will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

The Chair recognizes the gentleman from Texas (Mr. ROBERTS) for 1 hour.

GENERAL LEAVE

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative

days in which to revise and extend their remarks on the legislation now under consideration.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ROBERTS. Mr. Speaker, I strongly recommend that we override the President's veto of H.R. 7102, as amended. If we do, I am sure the veto will also be overridden by the Senate and the bill will become law. Its enactment is vital to the Veterans' Administration and our Nation's veterans.

On May 19, by a vote of 406 to 1, the House passed and sent to the Senate H.R. 7102, the Veterans' Administration Health-Care Personnel Act of 1980. On June 5, the bill passed the Senate unanimously. Among other things, the bill would increase the special primary and incentive pay for certain physicians and dentists employed by the Veterans' Administration.

It would authorize the establishment of a scholarship program for physicians and nurses, a program similar to those being effectively utilized by the Department of Defense and the Department of Health and Human Services. The bill contains various pay and other incentives for nurses and other veterans health-care personnel so critically needed by the agency.

Mr. Speaker, we all know the difficulty the Department of Medicine and Surgery is having in recruiting and retaining young, highly skilled physicians. It is also experiencing extreme difficulty in recruiting and retaining skilled nurses.

The situation became so critical in the early 1970's that in 1975 Congress found it necessary to provide additional pay incentives for certain physicians. The Physicians' and Dentists' Pay Comparability Act of 1975 authorized the Administrator to pay up to $13,500 in special and incentive pay to hard-to-recruit physicians. The average payment made under current law is about $7,000. H.R. 7102, vetoed by the President, would increase the special pay for the first time since 1975, a 5-year period when the inflation rate has been staggering.

Although the President in his veto message states that he is concerned about attracting and retaining excellent VA physicians, he says the current salary and benefits are more than sufficient to accomplish this. Neither the Administrator of Veterans' Affairs, the Chief Medical Director, nor anyone within the agency agrees with the President.

When the Chief Medical Director appeared before our committee on April 16 of this year to explain his difficulty in recruiting and retaining highly qualified physicians, he stated that a large majority of those leaving employment with the Veterans' Administration are leaving because of noncompetitive salary, fringe benefits, and retirement benefit considerations.

He further stated that recruitment is becoming increasingly difficult, with periods required to recruit averaging almost 10 months, and recruitment for some medical specialists taking between 1 and 2 years in many cases. In fiscal year 1979 the agency spent about $18 million to contract with private physicians to provide certain critical services such as radiology, pathology, anesthesiology, and similar services. Hopefully, when fully implemented, this bill will save that $18 million and more.

Mr. Speaker, I will not take too much time of the House to discuss the merits of this legislation. We clearly established the need for the bill back in May.

I am frankly puzzled and at a loss to understand the action of the President. He obviously did not listen to his Administrator of Veterans' Affairs, his chief adviser on veterans' issues. Mr. Cleland knows and the President should know that several hundred beds have been closed in some VA hospitals because of a lack of nurses. In a report to the committee in July, the Chief Medical Director's office informed us that more than 400 beds had been closed because of nursing shortages. The report stated that more than 200 beds had been closed in the State of California alone. Yet the President vetoes a bill that is specifically designed to fill those vacancies and to reopen those beds.

The committee has also been advised, through a recent survey of all VA hospitals, that there are currently 723 physician vacancies and 1,051 nursing vacancies. If funds and personnel were available based on current patient demand, these hospitals could use 1,482 more physicians and 4,716 more nurses. Yet the President says the bill is not needed—that current salaries and benefits are enough. I wish he would tell that to needy sick and disabled veterans who are being turned away from VA hospitals and outpatient clinics.

The President also states that the bill is too costly. I do not know where he got his cost figures for this bill.

He says the special pay for physicians, alone, would cost $80 million during the next fiscal year. That is simply not true. According to the Congressional Budget Office, the special and incentive pay for all physicians and dentists in the bill that passed the House in May would be $40 million. The cost of the amendments worked out with the Senate, which the President vetoed, are even less.

Finally, the President failed to mention a major cost-saving provision contained in the bill. He makes no reference to an amendment supported by the Committee on the Budget that would realize projected savings of $109 million in the next fiscal year.

He does not mention that this cost-saving provision more than offsets the cost of the increase in physicians' and dentists' pay. If enacted, the bill will save more than $50 million next year.

Mr. Speaker, I do not understand where the President is coming from on veterans' issues. He has been criticized by many veterans, and some organizations, for being insensitive to veterans' needs. I am beginning to understand their feelings. Through the Office of Management and Budget he has continued to reduce health-care personnel. In the last 2 years his policies have brought about reductions of more than 6,000 positions.

Congress, by legislative mandate, forced him to add back 3,800 of those positions last year. The Appropriations Committee has added another 1,000 in the fiscal year 1981 appropriations bill to help restore the cuts that he has made. We know that more than 5,000 beds have been closed during the past 2 years, while patient demand is at an all-time high. These actions, Mr. Speaker, do not support the President's statement that during his period in office he has "worked with the VA to insure that the health care provided to our veterans is the finest in the world."

I submit there are thousands throughout our land who feel his policies have substantially reduced the agency's ability to provide adequate health care for our veterans.

It is regrettable the President has seen fit to veto this bill. We have no choice but to override his veto. Otherwise, I can assure the Members of the House that the quality and quantity of veterans' health-care and treatment will be adversely affected. Therefore, I urge that you vote "aye" on the override.

Mr. Speaker, I yield 5 minutes to the gentleman from Virginia (Mr. SATTERFIELD).

Mr. SATTERFIELD. Mr. Speaker, I rise in support of the motion to override the Presidential veto of H.R. 7102, the Veterans' Administration Health Care Personnel Act of 1980.

Frankly, I am perplexed by this veto. Both the House and Senate Committees of Veterans' Affairs worked closely with representatives of the Office of Management and Budget and the Office of Personnel Management in an effort to respond to their initial concerns about this measure. In his veto message the President states that the major reason for his action is that title I, dealing with VA physicians and dentists pay comparability would provide Veterans' Administration physicians with 30 percent more pay than physicians in the Defense Department, that it would provide a total of $80 million a year in unwarranted salary bonuses and that these funds should be targeted for veterans themselves.

Mr. Speaker, these attempts to justify the veto demand rebuttal.

First, I wish to specifically address that portion of the veto message which states "* * * midcareer VA physicians could earn 30 percent more ($76,200 to $58,700) than the maximum authorized for Armed Forces physicians." These figures are in dispute.

In order for a VA physician to receive $76,200 per year he would have to receive $48,700 base pay out of a maximum of $50,000 authorized by law plus the total of $22,500 in special pay and special incentive pay (a virtual impossibility) plus the maximum of $5,000 special pay for service in a remote area. That these levels of pay and bonus pay would com-

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bine at all, could occur only in the most rare instance.

Not only is such a pay level improbable but the comparison used in the veto message does not reflect the accepted midcareer level for members of the armed services, traditionally 12 years at the VA, traditionally the chief salary level.

Using these accepted definitions of midcareer service and applying the more realistic average pay levels, rather than maximum levels, one finds that the average midcareer pay in the armed services, based upon the latest enactment, signed into law earlier this year is $51,100 whereas the average for a midcareer VA physician is $55,000.

That slight disparity is easily reconciled when one considers the perquisites available to Armed Forces physicians, such as noncontributory retirement, nontaxable housing and subsistence allowances, commissary and exchange privileges and so forth, which are not available to VA physicians.

Second, the suggestion that the special pay provisions would cost $80 million a year appears to be faulty. The Congressional Budget Office which estimated the cost of title I in the original House bill at $40 million, placed a cost figure on the amended bill which Congress approved of only $34.7 million for fiscal year 1981. The Congressional Budget Office further estimates that the cost of title I during the following 4 years will average no more than $50.6 million per year.

Third, it is a fact that there is a pressing need for 1482 additional physicians in the Department of Medicine and Surgery. The current ceiling placed upon the number of physicians permitted, on account of budget restraints and personnel ceilings which were allocated to the VA is 759 short of what is needed. The current low pay for VA physicians has compounded that shortage and resulted in serious recruiting and retention problems which account for a current total of 723 vacancies in that Department. Clearly, enactment of H.R. 7102 will enable the VA to fill those vacancies which in turn will provide a greater capability to meet the needs of those veterans who need it most.

Let me remind my colleagues again that title I would provide the first increase in special pay for VA physicians in 5 years and it would make these pay provisions permanent for all VA health care professionals. The amounts involved are similar to the provision of H.R. 6982, the Uniformed Services Health Professionals Special Pay Act of 1980 for military doctors which was signed into law on June 28 of this year. This bill would bring VA physicians' pay into line with physicians' pay embraced by that measure.

In light of this serious deficiency which directly affects the medical care of eligible veterans in need of it, I find it impossible to agree that the provisions of title I are extravagant or unwarranted as alleged in the veto message.

I might also observe that those who advised the President regarding H.R. 7102 appear to be poorly informed indeed not to be aware of the fact that higher quality physicians will substantially improve the health care delivered in the VA hospitals and that this would result in a major direct benefit to our veterans. In short, this bill represents a significant benefit to the veterans of our Nation, not just the VA physicians. The bottom line, as my colleagues know, is that this bill in its totality will save the taxpayers at least $51 million in the first year after its enactment and much more in future years.

Mr. Speaker, I am also concerned that the veto message would suggest that H.R. 7102 will work to the disadvantage of the Department of Defense; that suggestion is predicated upon the questionable comparison of pay for Armed Forces physicians and VA physicians to which I have previously referred. Further comment is needed.

Because of the many differences, comparison of VA and DOD physician salary levels is at best a difficult task. The OMB has used an improper approach that on first glance would falsely show the VA paying much higher salaries. The tables that OMB provides include a combination of average base pay and maximum special pay under old authorities. They make no comparison of the new DOD special pay levels and the proposed VA special pay levels. They have compared pay using three parameters: First, entry level, which is a point in time; second, midcareer, which is some period of years or a particular point in time; and third, senior, which is a level of achievement. These are not homogeneous parameters. For numerous other reasons, the OMB data comparisons are invalid.

The primary and overwhelming difference between the VA and DOD is the source of recruitment. Over half of all DOD physicians are serving obligated service from the DOD health professions scholarship program (HPSP) and other government-sponsored graduate education and for a variety of other reasons. This is a noncompetitive source of recruitment which the VA does not enjoy. At the very outset, comparisons of VA and DOD pay levels can be questioned. Data contained in House Report 96–517 (DOD special pay bill) indicate that over 70 percent of the DOD work force has under 6 years' service. The noncompetitive nature of DOD pay is further borne out by the fact that only 1 in 10 DOD scholarship recipients choose to remain in DOD after the obligated service period. This same report further indicates that even with the new special pay authority, DOD projects a continuing heavy reliance on obligated service from the HPSP scholarship program and the uniformed services university graduates. This suggests a continuing noncompetitive salary structure. The VA has no such source of new physician recruits and must compete in the open market with the private sector for physician manpower.

Another fallacy in the OMB comparison is the fact that over 32 percent of all DOD physicians are in residency training and are included in figures that are compared to regular VA staff. Adding the 3,800 VA residents into statistics for the VA would substantially change the comparison, especially at the entry levels. The VA entry-level average would be reduced to the $20,000–$25,000 range. This factor alone invalidates the entry-level pay comparison. Other factors such as the noncontributory retirement system, and medical and dental benefits in DOD are not accounted for in the comparisons.

The composition of the VA and DOD work force differs widely. Clearly, the VA has the more experienced work force. Over 60 percent of the DOD work force is under 35 years old. As of January 1, 1980, 78.3 percent of the total VA work force was either board certified, 64.3 percent, or board eligible, 14 percent. By comparison, 24 percent of the total DOD physician work force is board certified. A large percentage of VA staff hold faculty appointments in affiliated medical schools and significant numbers are involved in research.

Generally speaking, the VA has a more experienced and better qualified work force of physicians. There are many other differences between the VA and DOD such as the health problems of our patients, the added complexities of the VA's research and education missions and others that we have not addressed in this paper.

Realizing all the differences between the VA and DOD we come back to the justification of the proposed VA special pay. Vacancies are increasing, recruitment periods are increasing, the quality of our new recruits is declining and we are placing an ever-increasing burden on our affiliates for salary supplementation. Certain specialists which are vital to the VA are becoming almost impossible to recruit with an ever-increasing number of physicians being contracted for at higher contract rates.

My subcommittee held extensive hearings on VA physicians' recruitment and retention problems prior to introducing H.R. 7102. The data we received indicated as I mentioned earlier that as of July 1, 1980, the VA is short 1,482 physicians. It is also short 4,716 nurses, with the result that 400 needed beds are out of service. This situation has exacerbated the acute shortage of inpatient services available to non-service-connected veterans. The VA physician recruiting and retention problems have been severe with losses of full-time physicians during the past 2 years whose numbers have exceeded gains by more than 10 percent. The ramifications of this situation are brought into focus by the realization that recruiting of a full-time physician takes a minimum of 10 months on the average and in scarce specialties more than 20 months. Due to the inflationary impact on existing special pay, this situation is growing worse.

Mr. Speaker, we should not ignore the fact that the health care personnel scholarship program provided by this bill will serve to substantially increase, in the long term, the numbers of doctors

and nurses coming into the VA medical system. The program is a logical extension of the health manpower training mission of the VA, which is affiliated with 104 of the Nation's medical schools. As the largest national health-care provider, the VA has an outstanding record of training health-care professionals for our country. Significantly, this program would serve best those areas of critical shortages in the VA such as radiologists, pathologists, anesthesiologists, and so forth, who are difficult to recruit and at the same time provide physicians and nurses in geographic areas where there is a critical shortage of such specialties.

The most important aspect of this provision is that it would reduce the practice of "contracting out" with private physicians in scarce specialties and in remote geographic areas in order to provide for needed services. In 1979, the cost of "contracting out" was approximately $18 million. That cost is estimated to exceed $21.5 million in fiscal 1980. While this program will cost $14 million during its first year, it will ultimately save the taxpayers more than $130 million during its program life.

The bill also authorizes 15 health care facilities as centers for geriatric research, education and clinical services to enhance the VA's medical treatment program for aged veterans. The number of veterans aged 65 and over is now 2½ million. Current projections indicate that their number will exceed 7 million by 1990. It is obvious, therefore, that the demand for geriatric treatment in the VA in the next decade will far exceed its present capabilities. This program is needed to meet that accelerated demand.

Finally, Mr. Speaker, I wish to point out that one of the most important provisions of H.R. 7102 would produce savings of $109 million in fiscal year 1981 and thereafter, while insuring that veterans who are over 65 years of age, who are eligible for medicaid or VA pension benefits or nonservice veterans who do not possess the financial means to provide for private medical care will continue to use VA facilities as now provided. However, under this provision the administrator may look beyond the oath which certain nonservice-connected disabled veterans must now sign prior to admission to a VA medical facility in verifying that financial need.

In summary, this bill as passed by Congress will substantially improve the capability of the VA administrator to recruit and retain health-care professionals for our veterans hospital system in order to provide the high quality medical care that the Congress desires and which this Nation's veterans deserve. In the process, it will save the taxpayers at least $51 million in the first year and more than $323 million in the next 4 years. I strongly urge my colleagues to support the motion to override the veto of this important piece of legislation.

Mr. ROBERTS. Mr. Speaker, I yield 5 minutes to the distinguished ranking minority member of the committee, the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

Mr. HAMMERSCHMIDT. Mr. Speaker, I intend to vote to override the President's veto, and I urge my colleagues to do likewise.

The President in his veto message makes light of the 3 years of effort the Veterans' Affairs Committee has spent in drawing up a permanent pay plan that will attract and retain quality health-care professionals in the Veterans' Administration. The efforts of our committee were ratified by the full House on May 20, by a vote of 406 to 1.

In his veto message, the President made a number of unsupportable statements. He claimed that "this bill would provide $80 million a year in unwarranted salary bonuses rather than target that amount on veterans themselves." Mr. Speaker, the cost of the physicians and dentists pay section of this legislation is $34.7 million, not $80 million. Furthermore, money spent on quality health care, including physicians pay, is indeed money spent on veterans, as they are the beneficiaries of the care. If money spent on physicians does not impact directly on veterans, perhaps the President might like to try an experimental program whereby veterans hospitals are staffed on a purely voluntary basis, and then see what type of care exists.

I assume, therefore, that the key word in the President's veto message is "Unwarranted," meaning that the pay increases being offered are not necessary. The President later states in his message that he is "concerned about attracting and retaining excellent VA physicians," but that "current salary and benefits are more than sufficient to do that." If this is true, Mr. Speaker, why has the ratio of part-time physicians to full timers in the VA system more than doubled in the past 10 years? Why are more than 90 percent of the doctors now being hired by the VA "part-timers," while 70 percent of those offered full-time positions refuse them? Why has the Department of Medicine and Surgery experienced a net loss of more than 200 physicians just since 1978, at a time when our veterans population continues to grow, and our World War II veterans are reaching the age where they need more extensive medical care? And why is the highest loss rate of physicians in the 25 to 34 age group, that age level where the career physicians of tomorrow are being determined? Clearly, Mr. Speaker, if the problem does not go away, the doctors will. And the alternative then becomes more part-timers and more highly expensive contract hiring, at a level up to 85-percent higher than a physician's salary, for the same work.

In his veto message, the President claims that VA physicians will receive up to 38 percent bonuses from an average salary of $55,000 a year. I do not wish to quibble, Mr. Speaker, but in 1979, the average VA physician grossed less than that amount, even with special pay added onto his salary. In fact, of the more than 6,000 VA physicians, only the 173 "Executive Level" physicians averaged more than $53,500. And Mr. Speaker, this was gross income. By comparison, the average physician in this country made $68,600 in net income in 1979, according to official American Medical Association figures. With respect to the increase, I am informed that a more realistic percentage from this bill is 20 percent. When we consider that the cost of living has increased 54 percent since the present law was enacted, while salary increases have increased only some 29 percent, I believe the figures in H.R. 7102 are more than justified.

Support for this legislation has come from every area. In addition to the loyal support from the major veterans groups, even sources as diverse as the Vietnam veterans adviser to Penthouse magazine have noted the seriousness of the VA physician drain. In its August editorial, devoted entirely to the merits of H.R. 7102, that column warned that "the evidence suggests that Carter and his 'social engineers' feel no real empathy toward veterans of all of America's wars and national emergencies, who have earned the right to medical care. The VA's medical system has been crippled and allowed to deteriorate, thereby justifying its absorption into a national health care system."

Mr. Speaker, to allow this veto to stand is simply another nail in the coffin of the VA medical system. Surely a president who has cut more than 10 thousand beds out of that system cannot be expected to understand the urgent need for quality physicians. But we in the Congress can, and I urge all of my colleagues to join me in overriding this unfortunate and untimely veto.

Mr. ROBERTS. Mr. Speaker, I yield 3 minutes to the distinguished chairman of the Subcommittee on Pensions and Compensation, the gentleman from Mississippi (Mr. MONTGOMERY).

Mr. MONTGOMERY. Mr. Speaker, I strongly urge the Members of the House to override the President's veto of the Veterans' Administration Health Care Personnel Act of 1980. I do so because, in my view, the President has been poorly advised in reference to this bill. It is imperative that we pass this legislation. The overwhelming support for the bill was reflected in the vote in May when we passed the bill by 406 to 1. This bill is the result of 2 years' hard work by the Subcommittee on Health Facilities and Benefits, chaired by the distinguished gentleman from Virginia (Mr. SATTERFIELD) and the ranking minority member of the full committee (Mr. HAMMERSCHMIDT). A great deal of effort has gone into this bill, both in the House and the Senate.

The President's ill-advised veto would deny adequate care to needy, sick, disabled, and aged veterans. The average age of the World War I veteran is now more than 80 years. In addition, there are now more than 2 million veterans of World War II who are older than 65 and over 5 million such veterans have passed the age of 60. We must have the very best physicians available to treat these

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veterans. The President's veto would deny the Veterans' Administration the resources to go into the marketplace and purchase skilled health care physicians.

Mr. Speaker, last year the VA spent more than $18 million for fee contracts with private physicians for radiology, anesthesiology, pathology, and similar services. Hopefully, the enactment of this legislation will allow the Veterans' Administration to recruit physicians who can perform these services rather than providing such services on a contract fee basis.

Last year, more than $400,000 was spent for private radiology services at the Jackson Hospital because of the hospital's inability to recruit a radiology staff. There is no ear, nose, throat staff at the Jackson VA hospital. This bill will allow us to recruit in this area. One anesthesiologist at the hospital may leave unless the special pay for physicians is increased. The Veterans' Administration is unable to recruit certain surgeons at the Jackson facility because of the pay structure. Many physicians now full time are electing to convert to part time because of inadequate pay.

A similar situation exists at the VA hospital in Biloxi, although it would appear the situation may not be as critical there as in Jackson.

The point is, Mr. Speaker, although one may not like the idea of having to pay these types of salaries to certain highly qualified physicians, if we are to continue to provide quality health care to our veterans, we have no other choice.

The President has indicated that he feels this legislation would adversely impact on the military to recruit and retain physicians. What he did not say was that the House has already taken action to increase the special and incentive pay for military physicians. In addition, what he did not say was that military physicians will be given a cost-of-living adjustment in October which is expected to be substantially more than that to be provided for VA physicians. In addition, it should be noted that 70 percent of the physicians entering military service are graduates of the Department of Defense health professions scholarship program or other Government sponsored graduate education and are participating in internship or residency training at a lower entry level of compensation.

It is true that the Veterans' Administration must pay a higher rate of pay at the entry level into the Veterans' Administration because the Veterans' Administration does not have a scholarship program whereby physicians with obligated service could come on board at a lower entry level of compensation. H.R. 7102 would authorize the Administrator of Veterans' Affairs to establish a scholarship program so that the VA can pay a lower rate of compensation for those who agree to serve an obligated period of service.

Currently, because of the marketplace, the Veterans' Administration must pay between $40,000 and $45,000 for the type of physician it wishes to serve in the Veterans' Administration. He is highly skilled and highly trained. The overwhelming majority are board certified. They are quality physicians and if we are to recruit and retain more of them, we simply must increase the pay. It is an economic factor we must recognize.

Finally, Mr. Speaker, the President did not discuss in his message a main feature of H.R. 7102, a reform provision that, if enacted, would realize savings of more than $100 million during the next fiscal year. This savings would more than offset the full implementation of H.R. 7102 which is estimated by the Congressional Budget Office to be less than $50 million in the next fiscal year. CBO has estimated that the bonus provision of the bill would cost about $34 million and the proposed scholarship program another $14 million if fully funded.

Mr. Speaker, we certainly must maintain a strong military health care program, and the military pay bill we recently passed, and which the President recently signed, will provide some assurance that this will be done.

We must also maintain a strong veterans' health-care program as well because once the individual serves his obligation, and is entitled to health care as a veteran for having served on active duty, we must not allow him to be treated by other than the very best. The quality of health care in the VA is excellent and the high standards we have established must be maintained. That can be done only if we get the highly trained physician to look after our veterans. Therefore, Mr. Speaker, I urge my colleagues to vote to override the President's veto of H.R. 7102.

I am still puzzled why the President vetoed the bill—as far as I know the President has done no work to support his position, no letters, no contacts by White House staff—it seems that the administration is playing games with an important piece of legislation.

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Mr. ROBERTS. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Massachusetts (Mrs. HECKLER).

Mrs. HECKLER. Mr. Speaker, I rise to urge my colleagues to join in the override of the President's veto of this important piece of legislation for veterans.

I must say that the veto itself confounds my imagination and shocks my conscience. Certainly the veto reveals that the President is not aware of the deplorable conditions that exist in some VA hospitals where serious vacancies of doctors and nurses are the order of the day.

There are 700 physician vacancies in VA hospitals, there are 4,700 nursing vacancies, and 37 percent of the doctors currently employed at the VA are those who have been educated in foreign institutions. Granted many of these are brilliant doctors in many cases, but there is a communication problem that the VA patient has to deal with.

The problems in the VA health system were addressed by this legislation, and consequently the veto is totally unwarranted. Also, I would like to mention title III, which deals with geriatric medicine. We all know that veterans are getting older. The veterans of World War I are in their eighties and the veterans of World War II are in their sixties. We have now almost 5 million over 60, and in 1985 we will have 9 million over 60. And what are we doing about geriatric medicine?

Today I received a telegram from Dr. Valery A. Portnoi, who is the Director of Geriatric Medicine at the George Washington University Medical Center, who stated:

> As I have stressed in the past, the establishment of demonstration centers for geriatric medical research and the training of medical personnel and clinical operations, are essential steps toward improving health care delivery systems for the elderly and ultimately improving their health status. As I have pointed out recently in the pages of the New England Journal of Medicine, all previous legislation concerning medical care for the elderly was futile in achieving the goal of improvement of the health status of the elderly. Ignorance and neglect of the health profession regarding proper care for senior citizens continues to increase. The only two forms of medical care that are readily available for the elderly are hospitalization for acute care and institutionalization. Alternatives to this dehumanizing care should be sought based on new knowledge of specific medical, psychological, and social problems of the elderly. We need a comprehensive approach to treatment provided at specialized centers. Positive changes in care for the elderly will be possible only if they are based on scientifically provided models of better socio-medical clinical practice that are headed by specially trained clinicians-geriatricians. It is unfortunate that the President decided to join those who provide "lip service" to health care problems, rather than support actions based on a genuine concern about the well being of the elderly.

Mr. Speaker, certainly there should be other alternatives. The alternatives contained in title III of this bill which was my original legislation coordinates the research capacity of the VA with clinical care and medical school curricula. A new alternative which would be developed from the knowledge of scientific, medical, sociological, and social problems of the older population, plus comprehensive treatment and care by the VA at its medical centers, provides the only answer for geriatric care. These programs will provide a change in the care of the elderly, not only for veterans but for all senior citizens everywhere, at various community hospitals and health care centers.

For this reason, not only do veterans' organizations support this legislation but certainly all senior citizens groups support it as well. We would be striking a blow for the veteran and for the senior citizen if we were to let this legislation stand as it passed the House.

Mr. Speaker, I would suggest that the President has given lipservice to defense and lipservice to the veterans and shown a total lack of concern for the care of the defenders of our country to whom we have made a commitment for medical care. His veto must—and I am confident will—be overridden.

Mr. ROBERTS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio (Mr. MOTTL).

Mr. MOTTL. Mr. Speaker, I rise to strongly support overriding the Presidential veto of H.R. 7102, as amended. The enactment of this measure is essential if the veterans of this Nation are to be provided both the quality and quantity medical care necessary to meet their needs and which this Nation has committed itself to provide for those who served their country in its Armed Forces during periods of war. Many of the individuals we are talking about are severely disabled as a result of the part they played in protecting the freedoms this Nation now enjoys. Many of their fellow servicemen gave their lives to protect these freedoms.

As the chairman of the Veterans' Affairs Committee has stated, a recent survey of all VA hospitals indicated a total of 723 physician vacancies and 1,551 nursing vacancies due to the VA's inability to recruit and retain qualified personnel. If the President had provided all of the funds necessary to meet the demands for physicians and nurses, the figure would more than double in the case of physicians and be increased fourfold in the case of nurses. I ask Members, how can the President in his veto message say that this bill is not needed and the current salaries and benefits are more than adequate to recruit and retain the qualified personnel needed to provide health-care services to veterans?

In my own district the VA medical center reports a shortage of 11 full-time and 7 part-time physicians and 32 full-time and 3 part-time nurses. Currently two 40-bed wards are closed due to shortages of professional personnel. The President states that he, too, is concerned about attracting physicians and goes on to say that the salary and benefits are more than sufficient to do that. The President is either receiving bad advice or rejecting any sound advice he is receiving—he certainly does not know the facts. He goes on to say in his veto message, and I quote:

> I would prefer that the Congress target funds more directly on improving health-care benefits and treatment for veterans.

I ask Members, where was President Carter when the VA was forced to reduce its professional staff by more than 8,000 over the last 3 years because of budgetary constraints placed on the agency by his administration? The Congress appropriated funds over and above his budgetary limitations in fiscal year 1979 to employ an additional 3,800 professional personnel and is currently adding funds for an additional 1,000 to his fiscal year 1981 budget request. Mind you, this was at the initiative of the Congress—not the Executive.

I urge Members to vote "aye" to override the Presidential veto of H.R. 7102. If this is not done, there will shortly begin the largest exodus of professional personnel from the ranks of the veterans' medical program seen since the World War II days. I would also remind Members that at the time the VA medical program consisted of little more than a "warehousing" operation.

Mr. ROBERTS. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. LEATH).

Mr. LEATH of Texas. Mr. Speaker, I join my distinguished chairman in urging my colleagues to override the President's veto of H.R. 7102. Justification for the bill has been clearly established.

First, we know the Department of Medicine and Surgery is experiencing major difficulty in recruiting and retaining certain physicians, dentists, and nurses. This was clearly laid out by Dr. Donald Custis, the VA's Chief Medical Director during oversight hearings before our committee earlier this year.

Second, because VA cannot recruit in critical specialty areas, such as radiology, pathology, and other such areas, the Agency spent more than $18 million in contract fee services last year.

Third, the special pay provisions the Congress enacted in 1975 have never been increased, notwithstanding the fact that inflation has been substantial during that 5-year period.

Fourth, according to the Chief Medical Director, more and more VA physicians are electing to convert to part-time service.

Fifth, according to a recent committee survey, more than 4,000 nurses are needed to take care of patient demand. Vacancies occur because of several reasons, one major reason being salary. H.R. 7102 would establish a scholarship program so that VA could get more nurses into the system each year. The committee survey disclosed that more than 400 beds are now closed because of a shortage in nursing staff. The survey also disclosed that more than 700 physician vacancies currently exist. In my district alone, there is a shortage of 22 full-time physicians and 43 full-time nurses who cannot be recruited due to the better salaries and other benefits available to them in the private sector.

Mr. Speaker, the President's veto message suggests that the enactment of the special pay provisions of H.R. 7102 would cost $80 million in fiscal year 1981. As the chairman of the full committee has pointed out, this is not true. The Congressional Budget Office has estimated that the bill would cost $37.5 million during the next fiscal year, which includes full implementation of the proposed scholarship program.

Mr. Speaker, the President did not mention a major reform provision of the bill that would save some $109 million next year should the bill become law. With this cost-savings provision, the next savings in Federal outlays next year would be more than $71 million. This is a very important provision of the bill which the President failed to mention.

Finally, Mr. Speaker, the President has stated that this bill would in some unexplained way adversely affect the military's ability to recruit and retain physicians. We recently passed a bill to enhance the military. The President signed that bill. I strongly supported it on the floor of the House. If I thought for a minute that this bill would in any way adversely impact on the Department of Defense, I would oppose it. But it will not. The point is we have at least done something to take care of the problems encountered by the military in their recruitment and retention efforts. We must do the same for the Veterans' Administration. At a time when some 12 million World War II veterans, whose average age is rapidly approaching 60 years, we must have the best possible trained physicians and nurses available to take care of them.

Our obligation to those who serve in defense of our country continues after the individual serves on active duty. Our commitment to care for our veterans must not diminish.

I urge my colleagues to vote "aye" and override the President's veto.

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Mr. ROBERTS. Mr. Speaker, I yield 2 minutes to the distinguished ranking minority member on the Subcommittee on Compensation, Pension, Insurance and Memorial Affairs, the gentleman from Ohio (Mr. WYLIE).

Mr. WYLIE. Mr. Speaker, the great veterans' organizations who keep a close watch on VA hospitals have been sounding the alarm over this administration's policies toward veterans. During the Veterans of Foreign Wars annual convention held this month in Chicago, the organization's national commander called the President "antiveteran" because of bed reductions and shortages of medical personnel in VA hospitals.

The national commander of AMVETS said, and I quote:

> The Carter administration is bent on a path which could ultimately destroy the VA as the Nation's sole independent provider of veterans' services.

The Disabled American Veterans' national commander criticized the administration's veterans' policy, pointing out that—

> Thousands of eligible veterans have been denied VA medical care during the past two years.

The American Legion has denounced the President's veto of H.R. 7102 in the strongest terms and called on Congress to rectify his action by overriding it.

Mr. Speaker, medical administration experts both in and out of the Veterans' Administration agree this legislation is urgently needed in the interests of providing quality care to veterans who require medical treatment. It is grounded in fact, not fiction. The message accompanying the President's veto of H.R. 7102, the Veterans' Administration Health

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Care Personnel Act of 1980, appears to be a work of fiction.

It is fiction, not fact, that the current salaries and benefits of VA physicians are more than sufficient to attract and retain excellent physicians. In 1978, a VA survey revealed that losses of its full-time physicians exceeded gains by 10 percent. More than 70 percent of all offers for full-time positions were rejected by qualified candidates. The average time required to recruit a full-time physician was almost 10 months—20 months in some scarce specialties.

Soaring inflation during the 2 years following this survey has caused the situation to deteriorate further because of the widening gap between VA physicians' pay and that of their counterparts in the private sector. We are told the VA is now short some 1,500 physicians and the equivalent of one average-size hospital of 400 beds is out of operation as a result of the loss of physicians.

The Presidential message exhorts Congress to target funds more directly to improving health care benefits to veterans. Mr. Speaker, how can sick veterans be more directly served than by providing them with qualified physicians? Health care cannot be bought by the yard in a bargain basement. I, for one, am not prepared to turn over the medical care of America's military veterans to physicians who are unable to earn a living in the private sector.

The President has stated that active duty military physicians earn far less than the physicians' salaries and bonuses proposed in the VA Health Care Personnel Act. This is another piece of fiction, Mr. Speaker. The Department of Defense does itself no credit in recommending the veto on these grounds. The Committee on Veterans' Affairs deliberated long and conscientiously on the possible impact the measure would have on DOD's recruitment of military physicians. We were convinced by the evidence it would be negligible.

The fact is that 70 percent of the physicians who enter military service have graduated from some kind of Government-paid education program and are serving a period of obligated service. The VA does not have this source for physicians and must recruit on the open market.

Another fiction noticeable in the veto message concerns the cost of H.R. 7102. Mr. Speaker, I must conclude the White House was misinformed on this matter. Rather than costing "a large sum of money" as the President states, the bill includes provisions that will save $50 million the first year and more than $300 million during the subsequent 4 years.

The fact is, Mr. Speaker, that the Veterans' Administration cannot get physicians because physicians can make more in the private sector. The situation is very serious and the veto must be overridden.

Mr. ROBERTS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania (Mr. EDGAR).

Mr. EDGAR. Mr. Speaker, I rise in support of the action of the Veterans' Affairs Committee to override the President's veto. The President, by vetoing this particular bill, asked each of us in the House and the Senate to rethink our action on this particular bill, H.R. 7102. I have taken the opportunity to go back and relook at the provisions in each of these sections of the bill, and I come back feeling as strongly as I did when we passed the bill back on May 19, 1980, that the bill is a good one, that it is workable and that it makes sense.

I do not personally fault the President for analyzing and reviewing and vetoing the bills which he has problems with, and I think we in Congress have the right to override him when we think he is in error. I believe we will overwhelmingly do that in this case.

Let me give three quick reasons why I think we should override the veto.

First, the cost savings that are in this bill. There are cost savings in the provisions to provide the opportunity of the VA to seek third-party payment in insurance cases providing almost $109 million a year. I would like to see this provision extended and broadened, but I think this is a good first step.

Second, there are cost savings which come in the fact that the VA will not have to contract out for physicians, and nursing services and this will enable the VA itself to hire qualified and capable physicians and nurses.

And, third, I think it is important to look at the needs of the veterans' hospitals. I do not believe that this bill will solve all of the problems of the Veterans' Administration hospitals. I think retaining physicians with quality salaries is important; but I think it also points up in the right direction and, hopefully, we will go on to provide adequate equipment, adequate quality of space for these physicians, and provide for the upgrading of the Veterans' Administration hospital system so that it is the best hospital system in the Nation. Mr. Speaker, I strongly urge all Members of this body to vote to override the President's veto of H.R. 7102, the Veterans' Administration Health-Care Personnel Act of 1980.

This body, by the overwhelming vote of 406 to 1, passed this measure on May 19, 1980. The bill passed the Senate unanimously on June 5, 1980. As has been indicated, the bill would increase the primary and incentive pay for certain physicians and dentists in the VA and would authorize the establishment of a scholarship program for physicians and nurses. This scholarship program, for all intents and purposes, parallels the one currently authorized by the Department of Defense and the Public Health Service of the Department of Health and Human Services. It also contains various pay and other incentives for nurses and other health care personnel so critically needed by the Veterans' Administration to provide quality health care to our Nation's veterans.

The special pay and special incentive pay for physicians and dentists provided for in H.R. 7102 would cost only $38.5 million in fiscal year 1981 and an estimated $40 million for each of the next 4 years. It does not cost $80 million as indicated in the President's veto message. One provision alone in this bill has a net savings of $109.1 million in fiscal year 1981 and a total of $627.4 million over the next 4 years. The veto message failed to mention the cost savings that are provided for in this most important bill.

Mr. Speaker, the VA has clearly demonstrated that under its current pay structure, it cannot attract and retain qualified personnel in sufficient numbers to maintain the veterans' medical program at a level to deliver quality care in the quantity needed. This bill is warranted, and I urge all Members to vote "aye" to override President Carter's veto of H.R. 7102.

Mr. ROBERTS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Indiana (Mr. HILLIS).

Mr. HILLIS. Mr. Speaker, I rise in support of the motion to override the President's veto of H.R. 7102, the Veterans Health Care Amendments of 1980, legislation which is sorely needed by the Veterans' Administration and our Nation's veterans, despite the comments contained in the President's veto message.

My colleagues who have preceded me during this discussion have more than adequately explained the urgency of this legislation. The President cannot have it both ways—he cannot profess concern for and support of our Nation's veterans while making nationally televised appearances, and then, upon returning to the confines of the White House, veto vital legislation which greatly enhances the medical services provided for our veterans.

Included within the provisions of H.R. 7102, which passed the House of Representatives by a vote of 406 yeas to 1 nay, are the provisions of H.R. 4015, the Veterans Senior Citizens Health Care Act, which unanimously passed this body by a vote of 406 yeas, zero nays. In his message, the President states that he would prefer that we target funds more directly on improving health care benefits and treatment for benefits. I submit, Mr. Speaker, that this is precisely what is to be accomplished by this legislation and I strongly urge that my colleagues support this measure and override the President's veto of this vital legislation.

The House of Representatives has already spoken on these issues—we must not retreat in the face of "Presidential" opposition. Rather than detract from the benefits earned defending our country, it is time America lived up to her commitment to all her veterans, "To care for him who shall have borne the battle and for his widow and orphan."

Mr. ROBERTS. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska (Mr. BEREUTER).

Mr. BEREUTER. Mr. Speaker, I rise in support of the override.

Mr. Speaker, the proposal we have before us today is certainly among the most appropriate and beneficial bills to come before us this session. This proposal will help provide the veterans of this country with services from medical personnel which they need and deserve. Earlier this summer I had the opportunity to visit a Veterans' Administration facility in my congressional district. Although the condition of the facility itself appeared to be excellent and capable of at least adequately meeting the needs of Nebraska's veterans, it was clear that the hospital lacked sufficient medical personnel in numerous areas.

Mr. Speaker, I am appalled that President Carter has decided to give the care of our Nation's veterans such a low priority. The men and women of this country who have served in our Armed Forces certainly deserve better. Not only do they deserve better, they deserve the best medical personnel we can reasonably provide. The sacrifices they have made have benefited each and every American. We have an obligation to keep the Nation's commitments to them.

Mr. Speaker, on May 20 of this year the House passed H.R. 7102 by an overwhelming vote of 406 to 1. I feel that we can send the President a clear message concerning congressional and American support for our veterans by overriding his veto with an overwhelming vote. I urge every member to support this override.

Mr. ROBERTS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. I want to thank my friend, the gentleman from Texas (Mr. ROBERTS), for yielding.

Mr. Speaker, I feel compelled to speak out strongly against the President's recent veto of H.R. 7102, the Veterans' Administration Health Care Personnel Act of 1980.

It is hard to understand where the President is coming from. I am afraid he is once again lost in the Rose Garden, chasing rabbits.

Never have I witnessed a clearer signal of congressional intent than was displayed on this piece of legislation. The House overwhelmingly passed this bill by the whopping vote of 406 to 1; and the Senate passed their companion measure (S. 2534) unanimously.

The President just does not have his facts straight. The President commented that the VA physicians special pay increase will cost $80 million annually. CBO estimates the increase will cost $34.7 million in fiscal year 1981 and average $51 million the next 4 years.

In addition, the bill will actually create cost savings totaling nearly $52 million annually. These cost savings will accrue from a reduction in the necessary number of contract services for specialists like radiologists and pathologists; and from greater success in keeping good, young physicians in service longer.

The President called this pay increase "unwarranted." This is the first pay increase in 5 years. The VA is finding it extremely difficult to recruit and retain qualified physicians because potential income in the private sector is considerably higher. Currently there are 723 physicians vacancies in the Veterans' Administration. I certainly do not call that an "unwarranted need."

I do not understand either how the President could, just last week, reaffirm before the national convention of the American Legion, his administration's support for Federal programs designed to care for our Nation's veteran population, and then, less than 24 hours later, veto this important piece of legislation. Shame.

America's veterans have made tremendous sacrifices for their country. They deserve the very best medical care, and the very best hospital system we can provide them. There are 30 million American veterans out there that are counting on us to override this ill-conceived Presidential veto.

● Mr. FISH. Mr. Speaker, on May 20 of this year, the House of Representatives voted 406 to 1 to approve H.R. 7102, the Veterans Administration Health Care Personnel Act of 1980. As one of that overwhelming majority, I believe the bill's increased incentives for qualified doctors and nurses is vital to improve the level of health care for our Nation's veterans.

VA hospitals presently have over 900 vacancies for full-time physicians and 4,600 vacancies for full-time nurses. VA doctors have not had a special pay increase in 5 years. The number of VA hospital beds has decreased, medical research has been stifled, and far too many veterans have had their health care entitlements reduced or denied outright.

Our VA hospital system must remain strong and viable. Any American who has served this country in a uniform has earned the right to the best care possible. H.R. 7102 would assist the VA in recruitment, retention, and training of critically needed medical specialists and nurses. We should all be proud of the efforts of the Congress in meeting the needs of our veterans.

The necessity and practicality of this legislation is clear. I am shocked and amazed that President Carter vetoed H.R. 7102 less than 24 hours after expressing his support of the armed services and veterans programs in an address to the National Convention of the American Legion. The President's claims of high costs and "unwarranted" special pay increases in his veto message have been refuted by the Congressional Budget Office, the Armed Services Committee, and an invalid comparison between VA salaries and DOD pay scales. VA physicians are recruited at a later age and receive far fewer fringe benefits than their DOD counterparts. Thus, the higher average pay for VA doctors is both warranted and necessary to provide needed services to veterans.

The Congress cannot allow this blatant denial of health care to our former servicemen. I urge a strong, unanimous vote to override this ill-advised veto.●

Mr. ROBERTS. Mr. Speaker, I have no further requests for time.

I ask my colleagues to vote aye on the override, and I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore (Mr. BROWN of California). The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be determined by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 401, nays 5, not voting 26, as follows:

[Roll No. 488]

YEAS—401

Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen

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Kelly	Myers, Ind.	Skelton
Kemp	Natcher	Smith, Iowa
Kildee	Neal	Smith, Nebr.
Kindness	Nedzi	Snowe
Kogovsek	Nelson	Snyder
Kostmayer	Nichols	Solarz
Kramer	Nolan	Solomon
LaFalce	Nowak	Spellman
Lagomarsino	O'Brien	Spence
Latta	Oakar	St Germain
Leach, Iowa	Oberstar	Stack
Leath, Tex.	Obey	Staggers
Lee	Ottinger	Stangeland
Lehman	Panetta	Stanton
Leland	Pashayan	Stark
Lent	Patten	Steed
Levitas	Patterson	Stenholm
Lewis	Paul	Stockman
Livingston	Pease	Stokes
Lloyd	Pepper	Stratton
Loeffler	Perkins	Studds
Long, La.	Petri	Stump
Long, Md.	Peyser	Swift
Lott	Pickle	Symms
Lowry	Porter	Synar
Lujan	Preyer	Tauke
Luken	Price	Tauzin
Lungren	Pritchard	Taylor
McClory	Pursell	Thomas
McCormack	Quayle	Traxler
McDade	Quillen	Trible
McDonald	Rahall	Udall
McEwen	Railsback	Ullman
McHugh	Rangel	Van Deerlin
McKay	Ratchford	Vander Jagt
McKinney	Regula	Vanik
Madigan	Reuss	Vento
Maguire	Rhodes	Volkmer
Markey	Richmond	Walgren
Marks	Rinaldo	Walker
Marlenee	Ritter	Wampler
Marriott	Roberts	Waxman
Martin	Robinson	Weaver
Matsui	Rodino	Weiss
Mattox	Roe	White
Mavroules	Rosenthal	Whitehurst
Mazzoli	Roth	Whitley
Mica	Roybal	Whittaker
Michel	Royer	Whitten
Mikulski	Rudd	Williams, Mont.
Miller, Calif.	Russo	Williams, Ohio
Miller, Ohio	Sabo	Wilson, C. H.
Mineta	Santini	Wilson, Tex.
Minish	Satterfield	Winn
Mitchell, Md.	Sawyer	Wirth
Mitchell, N.Y.	Scheuer	Wolff
Moakley	Schroeder	Wolpe
Moffett	Schulze	Wright
Montgomery	Sebelius	Wyatt
Moore	Seiberling	Wydler
Moorhead, Calif.	Sensenbrenner	Wylie
Mottl	Shannon	Yates
Murphy, Ill.	Sharp	Yatron
Murphy, Pa.	Shelby	Young, Fla.
Murtha	Shumway	Young, Mo.
Musto	Shuster	Zablocki
	Simon	Zeferetti

NAYS—5

Ashley	Bolling	Rostenkowski
Bellenson	Giaimo	

NOT VOTING—26

Abdnor	Holtzman	Myers, Pa.
Chisholm	Leach, La.	Rose
Cleveland	Lederer	Rousselot
Conyers	Lundine	Stewart
Daschle	McCloskey	Thompson
Dodd	Mathis	Watkins
Evans, Ga.	Mollohan	Wilson, Bob
Ford, Mich.	Moorhead, Pa.	Young, Alaska
Guyer	Murphy, N.Y.	

□ 1310

The Clerk announced the following pairs:

Mr. Lederer with Mr. Abdnor.

Mr. Murphy of New York with Mr. McCloskey.

Mr. Mollohan with Mr. Bob Wilson.

Mr. Thompson with Mr. Rousselot.

Mr. Rose with Mr. Young of Alaska.

Mr. Myers of Pennsylvania with Mr. Guyer.

Mrs. Chisholm with Mr. Cleveland.

Mr. Dodd with Mr. Watkins.

Mr. Daschle with Mr. Mathis.

Mr. Ford of Michigan with Mr. Evans of Georgia.

Mr. Moorhead of Pennsylvania with Mr. Conyers.

Mr. Stewart with Ms. Holtzman.

Mr. Lundine with Mr. Leach of Louisiana.

So, two-thirds having voted in favor thereof, the bill was passed, the objections of the President to the contrary notwithstanding.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The Clerk will notify the Senate of the action of the House.

PERMISSION FOR SUBCOMMITTEE ON ENERGY RESEARCH AND PRODUCTION OF COMMITTEE ON SCIENCE AND TECHNOLOGY TO SIT THIS AFTERNOON WHILE HOUSE IS IN SESSION

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent that the Subcommittee on Energy Research and Production of the Committee on Science and Technology be permitted to sit this afternoon during the time the House is in session.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

CONGRATULATING AMERICANS WHO PARTICIPATED IN SECOND OLYMPIC WINTER GAMES FOR PHYSICALLY DISABLED

Mr. HANLEY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the resolution (H. Res. 689) congratulating Americans who participated in the second Olympic winter games for the physically disabled, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the resolution, as follows:

RESOLUTION

Expressing the sense of the House that it offers its congratulations to Americans who participated in the second Olympic winter games for the physically disabled in Gielo, Norway, and to the organizations who helped to promote the event.

Whereas the second winter Olympics for the physically disabled was held January 30 through February 8 in Geilo, Norway; and

Whereas twenty-seven Americans traveled to Norway to represent the United States in competitions against more than four hundred blind, amputee, and paralyzed athletes from eighteen countries; and

Whereas those Americans did an outstanding job not only by competing but by winning six separate medals: four gold, one silver, and one bronze: Now, therefore, be it

Resolved, That it is the sense of the House that it extend its hearty congratulations to all of the members of the 1980 United States handicapped Olympic team for a job well done; and recognizes the International Federation of Sports for the Disabled, the National Handicapped Sports and Recreation Association, and the United States Association of Blind Athletes for their successful efforts in organizing and producing the second winter Olympics for the physically disabled.

The SPEAKER pro tempore. The gentleman from New York is recognized for 1 hour.

Mr. HANLEY. Mr. Speaker, House Resolution 689 expresses the sense of the House that it offer its congratulations to Americans who participated in the second Olympic winter games for the physically disabled in Gello, Norway, and to the organizations who helped to promote the event.

House Resolution 689 has been cosponsored by a majority of the Members of the House.

Mr. PEYSER. Mr. Speaker, will the gentleman yield?

Mr. HANLEY. I yield to the gentleman from New York.

Mr. PEYSER. Mr. Speaker, I thank the chairman for yielding.

Mr. Speaker, I also am most hopeful that the House will act affirmatively on this bill. I want to congratulate the chairman of the committee and the ranking minority member, the gentleman from Illinois (Mr. DERWINSKI) for allowing my bill to come to the floor at this time.

Mr. Speaker, I would like to say that the American team that participated in this particular program was made up of 27 members and these members won four gold, one silver and one bronze medal. These people deserve the same kind of credit that we gave to the members of our other Olympic team, both of these, of course, are our own American Olympic teams.

I thank the gentlemen for their action and yield back the balance of my time.

□ 1330

Mr. HANLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Speaker, I think it is most appropriate we have this strong support for this very commendable resolution. Mr. Speaker, I would like to take this opportunity to commend my colleagues for their support of H.R. 689 expressing the sense of this House in congratulating the 27 members of the U.S. team participating in the second winter Olympic games for the physically disabled in Geilo, Norway, earlier this year.

The 27-member U.S. team who entered the competition were blind, amputees and paralyzed, yet they were all highly tested racers from past competition.

The tremendous achievements of these athletes serves to illustrate not only they have overcome the limitations of their handicaps, but the potential which one can attain when handicapped individuals are given the opportunity to develop their skills.

The U.S. team truly serves as an inspiration to us all and I am pleased in joining my colleagues in congratulating those who participated in the second Olympic winter games for the physically disabled.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HANLEY. Mr. Speaker, I ask unanimously consent that all Members

may have 5 legislative days within which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

CONFERENCE REPORT ON H.R. 5892, WIND ENERGY SYSTEMS ACT OF 1980

Mr. FUQUA. Mr. Speaker, I call up the conference report on the bill (H.R. 5892) to provide for an accelerated program of wind energy research, development, and demonstration, to be carried out by the Department of Energy with the support of the National Aeronautics and Space Administration and other Federal agencies, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of August 1, 1980.)

The SPEAKER pro tempore. The gentleman from Florida (Mr. FUQUA) will be recognized for 30 minutes, and the gentleman from Pennsylvania (Mr. WALKER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. FUQUA).

Mr. FUQUA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to report to the House that the committee of conference on H.R. 5892, the Wind Energy System Act of 1980 has succeeded in resolving the major differences in the House bill and the Senate substitute. The conference agreement establishes a well-defined, aggressive, goal-oriented program for the development of this Nation's vast wind energy resource, which has been estimated to have the potential of 1.7 quads by the year 2000.

One of the most outstanding features of H.R. 5892 is the creation of well-defined objectives for the utilization of wind energy systems. These objectives include the establishment of an 8-year program to reduce the cost of wind energy systems to a level competitive with conventional energy systems, and the goal of having total capacity of 800 megawatts of wind energy systems installed by the end of fiscal year 1988 with 100 megawatts provided by small wind systems. These objectives, once established, will provide definite guidance to DOE in formulating and implementing the programs established by this bill.

The conference agreement represents the careful blending together of the strongest provision from the House bill and the Senate substitute. After much effort and deliberation, the conferees have structured a piece of legislation that will specify an accelerated program for wind energy systems, leading to their widespread use in supplementing and replacing conventional methods of generating electricity, especially those methods based on imported oil. I believe that this legislation is responsive to these needs.

I would like to compliment Congressman RICHARD OTTINGER, the chairman of the Subcommittee on Energy Development and Applications, Congressman JOHN WYDLER, ranking minority member of the Science committee, Congressman HAMILTON FISH, ranking minority member of the subcommittee as well as the other conferees, for the fine work they have done in formulating this legislation. Their aggressive leadership and sound work were instrumental in developing this piece of legislation so as to insure that we have created a successful program for wind energy systems.

Mr. Speaker, I consider H.R. 5892 to be a responsible piece of legislation which deserves our support. We must continue to develop solar energy applications that show great promise for the future as well as serve our needs today. With this legislation, we will be able to develop wind energy systems in a rational and comprehensive manner. This will insure that the taxpayers' dollars are used in as efficient and effective manner as possible. I urge my colleagues to accept the conference report on this legislation.

Mr. WALKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the wind energy conference report and hope that the Members of the House adopt it overwhelmingly. This is an instance of Congress moving ahead in the area of alternative energy sources.

This is a great opportunity for Congress to take a stand by saying that in the future we want to depend on a variety of sources of energy. The wind energy conference report gives us this opportunity to assure that in the future Americans will have the opportunity to draw upon wind energy as one of many sources of power that will provide us much needed new electrical generation.

I would like to congratulate Members on the minority side, including the gentleman from Vermont (Mr. JEFFORDS), and the gentleman from California (Mr. CLAUSEN) who have worked so hard to make certain that this bill becomes law. They were among the people who were out in the lead. I think we should note, not only the work of the committee, but the people who do not serve on the committee who worked very hard to make certain that wind energy is included in our energy mix of the future.

I do have a couple of requests for time, Mr. Speaker, and I will be asking for that time at the appropriate point in the proceedings.

Mr. FUQUA. Mr. Speaker, I yield such time as he may consume to the chairman of the subcommittee, the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I want to thank my chairman, the gentleman from Florida (Mr. FUQUA) for his great help with this legislation as well as the minority member, the gentleman from New York (Mr. FISH).

The legislation is designed to make wind applications, both small and large machines, completely commercial by the year 1990. It sets forth a progressive program for achieving those goals.

The conference report on H.R. 5892, the Wind Energy Systems Act of 1980 has greatly strengthened the provisions of this legislation that overwhelmingly passed this body last December by a vote of 382 to 23. It is the culmination of more than a year's effort since it was first introduced in April 1979 by Congressmen NORM MINETA of California, JIM JEFFORDS of Vermont, and the ranking majority member of my subcommittee, JIM BLANCHARD, of Michigan.

H.R. 5892 provides Congress an opportunity to take positive action in the development of a renewable alternative energy source which can begin contributing to this Nation's growing domestic energy requirements today. It provides a firm commitment to an 8-year program designed to bring the cost of wind energy systems down to a level competitive with conventional energy sources. It provides a package of financial assistance for potential purchasers of wind energy systems to enable wind energy to realize its vast potential.

The high potential of wind energy has now become widely recognized. The President's Domestic Policy Review on Solar Energy identified wind energy as having the largest potential of any of the solar electric technologies to provide significant amounts of electricity by the end of the century. The DPR estimated that wind energy can contribute 1.7 quads of power by the year 2000. The recently released Mitre Corp. "Analysis of National Energy Plans" estimated an even higher potential when it identified wind as potentially contributing 2.5 quads in the year 2000. If these contributions can be reached then it would mean that in 2000, wind energy would be producing more electricity than the Nation received from all sources in 1950.

The provisions in H.R. 5892 have been carefully crafted so that the program they create will enable both small and large wind energy system to begin contributing to our energy needs. I would briefly like to outline the three key programs this legislation will establish.

THE SMALL WIND PROGRAM

The small wind program as contained in H.R. 5892 is a 5-year, research, development, demonstration and Federal procurement effort with the goals of producing small wind systems that are competitive with conventional sources of energy and of installing 100 megawatts of small machines by the end of fiscal year 1988. There are two key elements of this small wind effort: First, research, development and demonstrations of limited numbers of prototype small machines; and second, Federal procurement of small wind energy systems, for their use by various Federal agencies.

Additional R. & D. and limited demonstrations of these machines is needed to improve their reliability, to reduce the cost of small machines, and to identify and understand where the true applications for small machines are, and how they actually function in the different applications. The testimony and the information DOE provided by subcommittee during its hearings last year on this legislation, indicated that the cost re-

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ductions resulting from this work, as well as the better understanding of which markets and application are best suited to small machines would greatly assist the commercialization of small machines.

The conferees agreed to delete the cost-shared grants for purchasers of small machines that was in the bill when it passed the House. In lieu of the grants for small wind machines the Secretary is to procure approximately 1,700 machines and utilize them in various Federal applications.

The conferees were concerned that the grants for small wind energy systems would possibly be counterproductive and stunt the market and industry growth that is anticipated to result from the already existing tax credits and loans that are available for the purchase of these systems. It was feared that consumers would delay using the 40-percent tax credit in the hope of receiving a 50-percent grant at some point in the future.

To assure that this small wind program receives adequate funding during its 5-year life the conferees, agreed to a requirement that at least 25 percent of the funds appropriated each year for the overall wind program go for this effort.

LARGE WIND PROGRAM

The large wind program is an 8-year research, development, demonstration, and technology applications effort with the goals of producing large wind systems that are competitive with conventional sources of electric generation and of installing 700 megawatts of large machines by the end of fiscal year 1988.

There are three key elements in the large machine program: First, research, development and demonstration of additional prototypes; second, cost shared grants for the purchase of the large machines; and third, direct loans for multiple machine windfarm projects.

Research, development, and loans to windfarm projects would be emphasized in the initial year of the program. This will allow for the development of the next generation of large machines (the MOD–5, MOD–6, and the Bureau of Reclamation's system verification unit). The administration very strongly recommended this early commitment to R. & D. while delaying the emphasis on cost shared grants until these more advanced machines are available. This is a valid recommendation since the MOD–5 machine is estimated to be 30 to 50 percent cheaper than the MOD–2 in production. The MOD–2 is presently the most advanced megawatt scale machine in DOE's program.

The cost shared grants for the first 6 years will be on the basis of a maximum of 50-percent DOE share. In years 7 and 8, this would be reduced to a maximum of 25 percent. This reduction in the final 2 years is warranted since full commercial scale production facilities for the MOD–5 and MOD–6 would come online in fiscal year 1987.

The conferees agreed to include the Senate provision providing direct loan authority for at least four multiple machine windfarm projects. The loans would be for a period of up to 20 years and would cover up to 75 percent of the total purchase and installation cost of the wind energy systems.

This loan authority will apply to any windfarm project whether the windfarm utilizes large or small wind energy systems. This authority shall be utilized to provide assistance to at least four projects involving a total combined capacity of no more than 320 megawatts, but the appropriation for a given fiscal year for a single wind farm shall not exceed 50 percent of the total wind appropriations for the wind program in that year.

WIND RESOURCE ASSESSMENT PROGRAM

The last key program contained in H.R. 5892 is a 3-year wind resource assesesment effort. This program will do three things: First, validate the existing wind resource information; second, provide instrumented towers on loan to individuals for 1 year to test their specific wind site; and third establish a wind data center (in NOAA) to collect the wind resource data and put it into a form that is useful to the public and disseminate that information. A first-year authorization of $10 million is called for to begin this effort.

We are now embarking upon a transition period in our energy future. We are moving from an era of cheap energy to one where all our alternatives for providing energy will be very expensive. We must begin to rely on our renewable resources to meet future demands. This transition period may be painful, but necessary in order to assure that our country is equipped with diversified and reliable energy sources. As we have already done in the past, we must again learn to utilize the wind at a scale and in a manner which can contribute to satisfying our energy needs. This legislation is a substantial effort to improve our technology and acceptance of this important energy resource.

The Wind Energy Systems Act has received widespread support and I urge my colleagues to agree to the conference report.

Mr. WALKER. Mr. Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. Mr. Speaker, I rise in support of this conference report.

I join with my coauthors Mr. MINETA, Mr. BLANCHARD, and subcommittee Chairman OTTINGER in endorsing the conference report on H.R. 5892, the Wind Energy Systems Act of 1980. This compromise version of the bill I originally cointroduced with Mr. MINETA and Mr. BLANCHARD last year should provide the impetus for developing the most promising renewable source of electrical energy. I am proud to have taken part in forming the proposal before us today.

The House conferees are to be commended for reaching an agreement which adopts the goals outlined in the House version of the bill, especially the goal of 100 megawatts over a 6-year period for small wind machines.

It is my strong belief that wind energy should be an important component of this Nation's energy policy. Wind provides an energy source with infinite supply security, as do a variety of other renewable energy alternatives. For this reason, wind and other renewables are attracting more and more serious attention.

The conference report before us today sets forth an aggressive research, development and demonstration program with a goal of producing 800 megawatts of electricity by the end of fiscal year 1988. This is approximately the equivalent of 6 million barrels of oil a year.

The wind program authorized by this legislation seeks to accelerate ongoing research and development activities in areas where lack of knowledge limits the widespread utilization of small and large wind energy systems. The provision for demonstration projects will facilitate the collection of data needed to achieve greater use of wind energy.

This conference report also contains the House provisions mandating a national wind resource assessment program which will make wind resource information available to Federal agencies and other prospective purchasers of wind machines. Another House provision included by the conferees requires the Department of Energy to prepare and present to Congress a detailed program management plan which will outline staffing and funding requirements to meet the goals of the wind energy program.

The conferees adopted most of the House provisions to insure to the greatest extent practicable that small business concerns will have realistic and adequate opportunities to participate in the programs under this act. A provision added by the conferees, guaranteeing that at least 25 percent of all moneys appropriated shall be expended in the implementation of small wind energy systems activities, should also facilitate the continued participation of small business in the wind energy field.

Perhaps the most valuable aspect of this legislation for the promotion of wind energy systems is the section requiring the implementation of technology application programs. One particularly significant provision establishes a loan program subsidizing up to 75 percent of the total purchase and installation costs of small or large wind energy machines obtained by a public or private entity for use in a wind energy system. This program should go far to bring about economies of scale thereby stimulating wind industry production and lowering the cost of wind energy equipment. The provisions limiting the size and number of wind energy systems eligible for loans should insure the diversification of wind energy development.

The programs authorized by this legislation will assist the development of wind energy technologies, stimulate the wind energy industry, and lower the cost of wind energy relative to conventional sources. The promising potential of wind energy in this age of dwindling resources has become more evident as nonrenewable energy costs rise. When wind energy becomes economically viable, it can supply up to 13 quads of energy, which represents 7 percent of projected U.S. demand in the year 2000.

In light of wind energy's importance to a viable national energy program, and the need for the programs established by H.R. 5892, I urge my colleagues to give the same mandate to this conference report as they did to the House bill.

Mr. FUQUA. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. MINETA), who is the chief sponsor of this legislation and has worked very hard with our committee in bringing it to us today. I want to commend him for his efforts and his leadership on behalf of this legislation.

Mr. MINETA. Mr. Speaker, I would like to commend the chairman of the Science and Technology Committee, Mr. FUQUA, and the chairman of the subcommittee, Mr. OTTINGER, and others involved in securing passage of this bill. I wish to thank my colleagues, Mr. BLANCHARD and Mr. JEFFORDS, and their staffs for their hard work in the conference with the Senate.

I rise in support of the conference report for the Wind Energy Systems Act of 1980, with the belief that there will be strong support for this timely and necesessary legislation. The Senate approved the conference report on the 6th of August, and it is my hope that the House will move expeditiously to follow suit.

The act consists of three primary projects: First, there is the small wind energy systems program, which is designed to encourage the fledgling small wind energy industry by allowing Federal procurement of small wind energy systems and their subsequent installation at appropriate sites throughout the country.

Second, the act calls for the establishment of an 8-year, large wind energy systems program with the goal of providing 700 megawatts of power by the end of 1988. Included in this program are provisions for a minimum of four "wind farms," which will account for 320 megawatts of energy, employing both small and large wind energy systems.

Third, the Wind Energy Systems Act of 1980 allocates up to $10 million for a 3-year wind resource assessment program, to determine where the ideal energy sites are located in this vast land.

We as a nation are engaged in the difficult process of altering long ingrained habits of energy consumption. You and I, as Representatives of the American people, have been entrusted with the difficult task of defining the course we must take toward energy independence. A wide range of energy capabilities is needed to complement one another, providing the diversity necessary to free us from ever again becoming dangerously dependent on one source of power. I urge every Member, on both sides of the aisle, to approve the conference report, and send this bill on to the President to become law. Together, private industry and the Federal Government can harness the inexhaustable bounty of the wind for the good of all, and thereby bring to fruition the hopes that are at the heart of the Wind Energy Systems Act of 1980.

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Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. WYDLER).

Mr. WYDLER. Mr. Speaker, I rise in support of the conference version of H.R. 5892. This legislation represents a great deal of hard work by the Members of both bodies in arriving at a bill which incorporates the strong points of two considerably different approaches to bringing wind energy into the commercial marketplace.

Major progress has been made since the National Science Foundation began a small research program in 1979 aimed at applying the major aeronautical advances of the previous 20 years to the development of advanced wind energy systems. The primitive wind systems of the 1930's have been outclassed by modern machines of a megawatt and more which can come within 30 percent of the cost of conventional power in a desirable wind resource area. Smaller wind machines are already beginning to penetrate the commercial market.

I am especially pleased that the legislation retains the strong emphasis on a near-term, well-managed research and development program to bring on a new generation of large wind energy systems. These machines should finally make large wind competitive with conventional electricity in a variety of locations. If, in contrast, we had chosen to pour money into a small wind grants program, we would have run the risk of having a choice of incentives before the public that would undoubtedly have slowed down the commercialization of these machines. We were in danger of repeating the mistakes made during 1977–78 in the energy tax section of the National Energy Act. At that time the sales of solar hot water heaters nosedived when the 20-percent tax credits for solar devices were proposed. These sales remained at a very low level for over a year during the torturous NEA Confrence.

Similarly, sales of small wind machines would have languished while taxpayers debated whether it was better to take today's 40-percent tax credit or wait for the possibility of a larger grant at some future date. Setting aside 25 percent of the funds under the legislation for small wind R. & D. and Government purchases of small wind systems as outlined in the conference report is much less likely to have an adverse effect on the private market.

It is clear that we have further to go before large wind systems can reach their potential for supplying electricity to selected grids throughout the country. However, I do believe that wind energy is the most promising source of solar electricity for the year 1990 or even 2000. I urge my colleagues to put the taxpayers' money where the near to midterm promise is and vote to accept the work of the conference.

Mr. WALKER. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, I rise in strong support of the wind energy conference report and not only to compliment Chairman FUQUA and the committee but also my colleague, the gentleman from California (Mr. MINETA) for having taken the initiative and being a prime sponsor of this legislation. Quite frankly, I am proud to be associated with these efforts.

Mr. Speaker, the Wind Energy Research, Development and Demonstration Act of 1980 has tremendous potential for giving us a major boost during the years ahead in our effort to achieve energy independence for this country.

This legislation is important for the contribution it will make toward increasing our supply of renewable energy, but it is also significant for the opportunity it presents to small firms to enter the energy field.

The nature of wind energy systems lends itself to the inventive capabilities of a great many small but innovative businesses we have throughout the country. A large number of firms with the potential to participate in this exciting new field are found in my area of northern California. We also have some of the best wind conditions, particularly in our coastal areas, of any part of the Nation. Other rural areas throughout the United States can, with this wind energy program, offer the same assets to the Nation's effort to achieve energy self-sufficiency.

Mr. Speaker, the critical nature of our energy supply demands that we utilize every conceivable alternative energy source. This legislation will help to open the door to one of the most exciting and intriguing new energy sources. I urge the adoption of the conference report.

Mr. WALKER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. FISH).

Mr. FISH. Mr. Speaker, I rise in support of the conference report on H.R. 5892, the Wind Energy Systems Act of 1980. This legislation provides for an aggressive program over the next 8 years to develop both large and small wind energy systems. This conference report molds our efforts to make wind energy systems competitive with conventional energy systems. It calls for a coordinated Federal program to meet this goal to be carried out by the Department of Energy, with the support of NASA and other Federal agencies.

We have only recently awakened to our pressing energy needs. Recent energy shortages and the dramatic increases in the price of crude oil have made us painfully aware of our energy problems. Our Nation's inability to face our energy situation head on and to take drastic action may soon come to haunt us. This legislation represents yet another step in moving forward with a vigorous solar energy research, development and demonstration program that will help us to reduce our reliance on uncertain foreign oil supplies.

The Wind Energy Systems Act of 1980 will allow us to begin a serious effort to harness a great potential by establishing a well-balanced program that will permit us to develop both large and small wind energy systems in a reliable and cost-effective manner. It calls for con-

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sideration of the extent of our wind energy resources, and development of wind systems that can best take advantage of this resource. With this program in place, we hope to reach a total capacity of at least 800 megawatts of wind energy systems.

I would like to congratulate my fellow conferees on this legislation for their extremely fine work. Through their efforts, I believe that we have structured a comprehensive and well-thought out piece of legislation that will allow us to effectively harness the potential of wind. The distinguished gentleman from Florida (Mr. FUQUA), the chairman of our committee, and the distinguished gentleman from New York (Mr. WYDLER), the ranking minority member, should be commended for their fine leadership in bringing this legislation to the floor. In addition, the distinguished chairman of our subcommittee (Mr. OTTINGER), should also be congratulated for his fine work. They have spent many long hours in structuring a national wind program that will insure the success of our efforts.

I am particularly pleased with several of the changes recommended by the conferees. First, I am heartened to see that the conferees have called for an overall study to determine the need for any additional incentives for either users or manufacturers to accelerate the use of wind energy, rather than several small independent studies. Furthermore, I am pleased to see the conferees recommend a strong technology applications program to stimulate the widespread use of wind energy systems. I would hope that the Department of Energy will press forward with this program and utilize the authority provided for Federal financial assistance to achieve the goals of this act.

Wind energy offers us a renewable energy resource that can be developed in a manner consistent with our environmental goals. The committee received many hours of testimony that utilities and communities are ready and willing to make commercial wind energy a reality now. Wind energy systems can be used for a wide range of applications, such as for residential, industrial and agricultural use, and for utility central power electric generation. These systems can also be of great potential for use in other nations where the energy demands of remote villages cannot be presently met.

Our Nation must now recognize that we must look to other sources if we are to satisfy our energy needs in the future. A strong commitment to develop renewable resources such as the Sun must be reaffirmed to assure that progress continues in developing competitive solar applications. This legislation is another tool that will help us meet the national goal of deriving 20 percent of our energy needs by the year 2000 from the Sun. It provides a clear signal that wind energy is a major component of our national energy strategy, and that the Federal Government will develop a coherent program to support it.

Mr. Speaker, our Nation anxiously awaits to see if we can meet the challenge offered in harnessing the energy of the Sun. This legislation represents part of our answer to this challenge. It is an important step in helping us on our way to becoming energy independent. I urge my colleagues to support the conference report.

Mr. WALKER. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. ROYER).

Mr. ROYER. Mr. Speaker, I strongly support the conference report on H.R. 5892, the Wind Energy Systems Act of 1980. This legislation provides for a focused, goal-oriented program that will allow us to tap the great potential offered by our wind energy resources. It requires the Department of Energy to work closely with other Federal agencies to reach the program goals.

I would like to congratulate the House and Senate conferees for their diligent efforts on this legislation. I believe that they have chosen the appropriate level of funding for our wind program to insure that our taxpayers' moneys are spent in the most effective manner possible. In particular, I would like to commend the chairman of our committee, DON FUQUA, and ranking minority member, JOHN WYDLER, for their fine leadership in bringing this legislation to the floor. We must also acknowledge the dedicated efforts of the distinguished ranking minority member of our subcommittee, HAMILTON FISH, JR.

Wind energy has been identified as one promising resource that may be able to contribute 1.7 quads of energy by the year 2000. With further reduction in costs, wind energy systems will be used for many residential, agricultural, industrial, and large-scale utility applications. The actions that we are taking today will allow us to accelerate our use of this resource and help us to further relieve our dependence on foreign oil supplies. I would urge the Department of Energy to move forward aggressively with this program so that we can reach our goal of making wind energy systems competitive with conventional energy resources by the end of fiscal year 1988.

I am especially pleased with many of the positive changes made by the conferees. The small wind program has now been structured to effectively stimulate commercial markets for these systems and to avoid any further counterproductive Federal activities, I support the small wind Federal procurement program established in this legislation.

Furthermore, while the conferees have stricken the House provisions which set aside 10 percent of large wind energy system demonstration funds for Federal agency projects, I would hope that this action is not misconstrued to mean that the Federal agencies would not work together in our national wind program. I urge the Department of Energy to continue to promote increased Federal agency coordination as we develop our Nation's wind resources and to take advantage of all existing Federal programs. This will permit the Department of Interior and other Federal agencies to play an active role in the development of both large and small wind energy systems. In this manner, DOE will be able to effectively utilize the expertise offered by these agencies and to avoid duplication.

Mr. Speaker, I believe that we must vigorously pursue the development of all of our renewable resources. Congress must assume an aggressive role in providing the necessary incentives to make alternative energy sources such as wind, an integral part of our Nation's future energy supply. This legislation incorporates the necessary ingredients to develop reliable and durable wind energy systems. I urge swift passage of this conference report.

Mr. WALKER. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut (Mr. MCKINNEY).

Mr. MCKINNEY. Mr. Speaker, I could not congratulate the committee nor the author more. With my good friend who is now U.S. Senator, the gentleman from Massachusetts, Mr. TONGAS, and the gentleman from Massachusetts, Mr. MARKEY, I have been cochairman of the New England Energy Congress. We wrote the first regional energy plan. We know there was not a macro answer, such as the nation found with the atomic bomb or with the space program. We realized that the solution to this energy problem is micro, and this is one of the most important parts of the microsolution.

I congratulate the committee and thank my good friend, the gentleman from Florida (Mr. FUQUA) who worked so hard on the synthetic fuels bill. We are just now about to add one more part to the entire puzzle of saving America and making it independent from OPEC and the foreign oil barons that are destroying our economy and endangering our national security.

Mr. FUQUA. Mr. Speaker, I want to yield at this time 3 minutes to the distinguished gentleman from Michigan (Mr. BLANCHARD), a member of the committee and one of the original sponsors of this legislation and, likewise, who spent many hours and hard work in trying to bring this legislation to us.

Mr. BLANCHARD. Mr. Speaker, I thank my dear chairman of the Committee on Science and Technology.

Mr. Speaker, about a year and a half ago several of us in the House got together with our staffs to discuss what kinds of initiatives were not going on that ought to be going on in the energy research and development field. It became clear that wind energy was probably the most promising near-term source of solar energy, and in those early days—I speak of the gentleman from California (Mr. MINETA), the gentleman from Vermont (Mr. JEFFORDS), and their staffs and my staff—we began to work on this project, along with Henry Eaton of the Science Committee, and especially Don Teague of the Department of Energy. We came up with what we thought was a very promising approach. After some refinement our work is embodied in this bill. There was also help from Lou Divone of the Department of Energy. It turned out during the course of hearings on our bill that wind energy from the expert point of view showed more promise than even we had imagined, and today's final conference report version is the culmination of our

work and the work of our very capable staff. I want to thank the staff, Don Teague, and our subcommittee chairman, DICK OTTINGER. This bill is also an example of the types of projects that under the leadership of the chairman of the Committee on Science and Technology, the gentleman from Florida (Mr. FUQUA), with a bipartisan committee and a bipartisan approach, have been enacted for the future. They may not show immediate results tomorrow or next year, but in several years, the out years, as we address the energy problem, I think we are going to be thankful for the congressional action on this and other measures.

Let me just add that most experts predict that wind energy by the year 2000 will provide the equivalent of all of the electric power that we used to have in the year 1950. I want again to commend our subcommittee and commend the staff for their help.

If I have any time left, I yield back the remainder of my time.

Mr. WALKER. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota (Mr. STANGELAND).

Mr. STANGELAND. Mr. Speaker, the importance of a diversified energy policy which provides a sufficient level of funding for alternative energy forms such as wind cannot be understated when developing national energy policy. It is absolutely essential that we reduce our energy dependence on oil, particularly unstable and costly OPEC oil. For these reasons, I rise in strong support of H.R. 5892, the wind energy conference report, and urge its speedy passage.

This legislation will provide the necessary financial incentive to accelerate the growth of a commercially viable wind energy industry by providing financial assistance in the form of loans, contracts, grants, cooperative agreements and direct Federal procurement for wind energy projects.

A primary goal of this 8 year wind energy program is to reduce the cost of electricity produced by wind energy and make it competitive with conventionally generated electricity. Although this legislation clearly is not a cure-all for our energy problems, wind energy, in conjunction with other alternatives such as gasohol, solar, geothermal, and hydro, to name a few, will make increasingly greater contributions to our goal of a stable and secure energy future for our country. Therefore, I reiterate my support for alternative energy development and urge your favorable consideration of this conference report.

Mr. WALKER. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas (Mr. WINN).

Mr. WINN. I thank the gentleman for yielding.

Mr. Speaker, I, too, rise in support of the conference report on H.R. 5892. As a conferee, I will not try to rename all of the people who deserve credit for the great job that was done on this bill, but I can say it was one of the few conferences that I have ever participated in where every one of those conferees was dedicated to furthering the provisions of this bill. This legislation will establish a solid foundation for the wind energy technology. A technology that will play an ever-increasing role in our energy future. It has been exceedingly clear to me that the solution to our energy problems does not lie in a single energy concept but in a multiplicity of concepts, concepts that can be tailored to meet the geographic and societal needs of the energy users. For example, in my home State of Kansas, many areas would lend themselves very well to the application of wind machines. However, the only way this technology can be brought to fruition in a timely fashion is with Federal assistance.

This legislation is well balanced between the demonstration of the technology with wind farms and the development of new, more advanced wind energy machines. This is very important if we expect to establish a long-term future for wind energy.

This is a small step on the road to energy independence, but it is nonetheless an important one. I support this legislation and would encourage my colleagues to do the same.

Mr. WALKER. Mr. Speaker, I have no additional requests for time.

● Mr. GOLDWATER. Mr. Speaker, in 1979, this country imported over 8 million barrels of oil per day, which cost us a yearly total of about $55 billion. In 1980, although we have practiced greater conservation measures than ever before, we still continue to import petroleum at the astounding rate of 7.3 million barrels of oil per day, and the price tag for this year's indulgence has already cost us more than last year's total tab. Furthermore, it is predicted that the total cost for our petroleum habit will run over $90 billion.

Clearly, conservation alone cannot solve our energy crisis. We need to pursue an aggressive and diversified energy "independence" policy, which includes alternative energy resources as well as conservation, to end our addiction to foreign oil sources. We have the opportunity right now, Mr. Chairman, to send OPEC a message that we are not going to continue to depend on their narcotic. H.R. 5892, the Wind Energy Systems Act of 1980, would allow this country a chance to start shrugging off OPEC's needle.

H.R. 5892 authorizes matching grants, loans, and contracts for a 5-year small wind energy systems program and an 8-year large wind energy systems program. Certain limited applications of both large and small wind energy systems are currently economically feasible, but we need to commit this Nation to a policy that would accelerate widespread utilization of wind energy. This legislation before us today would help do just that. Furthermore, a 3-year assessment program is authorized by this legislation which will validate existing known wind resources, investigate other areas of the United States where wind energy may prove feasible, establish a wind energy data collection system, and make public information available on known U.S. wind energy resources.

Wind energy is a clean, natural source of renewable energy, and it has the potential to become economically comparable to conventional energy sources. This bill should begin to address some of the problems, such as electrical storage facilities and site limitations, which have heretofore plagued widespread commercialization of wind energy.

Mr. Speaker, we consume energy faster than it can be provided for our dependent Nation. In fact, the current imbalance between supply and demand is very likely to increase in the immediate future. But if we commit ourselves to the development of alternate fuels, we may well become a satisfied exporter of energy instead of an habituated importer.●

● Mr. HEFTEL. Mr. Speaker, I am pleased to rise in strong support of the conference report on H.R. 5892, the Wind Energy Research, Development, and Demonstration Act. H.R. 5892 is designed to accelerate wind energy development in the Department of Energy by authorizing an 8-year program with the object of bringing wind energy costs down to a level where they will be competitive with conventional energy systems.

Mr. Speaker, wind energy is not some exotic, futuristic idea. It is an energy source with a solid technological base going back many years. Already, the cost of energy generated by wind power is the most nearly competitive with conventional fuels of any renewable power source, with the possible exception of the direct burning of wood. Wind electricity generating systems are projected to eventually become competitive with coal and oil-fired powerplants—and with little or no environmental impact.

Mr. Speaker, I am hopeful that my home State of Hawaii will achieve electrical energy self-sufficiency by 1990. I have long felt that Hawaii could be a national laboratory for developing renewable resources. However, this dream will be realized only if the Federal Government develops integrated research and development programs within the Department of Energy which incorporate all of the viable natural energy alternatives. As the various indigenous sources evolve from the R. & D. phase, certain ones will become obviously attractive and cost-competitive. I believe that wind energy has the potential to be one of the first alternative energy sources to prove out commercially.

In my view, H.R. 5892 contains the elements necessary to promote a viable wind program at the Department of Energy. The bill sets a specific national goal of 800 megawatts of wind energy capacity by 1988 and it provides an 8-year time frame and the necessary funding to meet that goal. In addition, the bill would enable the Government to provide financial assistance to private industry in the form of contracts, cooperative agreements, grants and loans for the development of advanced small and large wind energy conversion systems.

This provision would enable the wind industry to develop steadily over the course of the program because of the assurance that Federal funds would be available to assume some of the risks associated with technological development. Finally, and perhaps most importantly, the multiyear program envisioned by H.R. 5892 would be a clear indication of

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the Government's commitment to the utilization of wind energy in the United States.

Mr. Speaker, I would like to take this opportunity to congratulate my distinguished colleagues, Mr. MINETA, Mr. BLANCHARD, and Mr. JEFFORDS, for their outstanding work as the original authors of this legislation. I would also like to applaud my distinguished colleagues on the Science and Technology Committee, Mr. OTTINGER and Mr. FUQUA, for their leadership in bringing this legislation to the House floor. Mr. Speaker, I am confident that H.R. 5892 will accelerate the growth of a commercially viable and competitive wind energy industry in this country, and I look forward to working with my colleagues in the months ahead in fashioning a broad based energy program in which wind energy plays an increasingly significant role.●

● Mr. AKAKA. Mr. Speaker, I want to take the time to recognize the efforts of the distinguished chairman of the Committee on Science and Technology in shepherding this bill through Congress. The conference report on wind energy truly represents a laudable effort to meet our energy independence goal.

Wind energy is the most cost-effective alternative to solar energy. It is clean throughout the Nation. Turbines utilizing wind energy are now operating in Clayton, N. Mex.; Culebra, Puerto Rico; Boone, N.C.; Goodnoe Hills, Wash., and Kahuku, Hawaii. With enactment of H.R. 5892, we will be closer to the more widespread use of wind energy. This legislation takes the much needed step toward the early commercialization of wind energy systems.

I add my enthusiastic support to H.R. 5892 and encourage my colleagues to support the report.●

Mr. FUQUA. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 6974, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1981

Mr. PRICE. Mr. Speaker, I call up the conference report on the bill (H.R. 6974) to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loans, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of August 18, 1980.)

The SPEAKER pro tempore. The gentleman from Illinois (Mr. PRICE) will be recognized for 30 minutes, and the gentleman from Virginia (Mr. ROBERT W. DANIEL, JR.) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. PRICE).

Mr. PRICE. Mr. Speaker, the conference report was printed in the CONGRESSIONAL RECORD for Monday, August 18, beginning on page 21715 and, thus, has been available to all Members for the required 3 days.

Mr. Speaker, recognizing the compressed schedule that the House is facing this week and for the remainder of the session, I will attempt to highlight the major provisions of the conference agreement on H.R. 6974.

The conference committee reached agreement with the Senate after eight regular conference sessions and a number of meetings by designated panels of the conference which addressed specific items of clear disagreement.

As is usually the case with a conference on the annual defense authorization bill, there were many difficult differences which required extended initial negotiations between the two Houses. However, let me assure my colleagues that there were full discussions of all important issues and clear and frank expressions of divergent views.

The conference committee sat in closed session when required for national security purposes pursuant to the authority granted by the House on July 22, 1980.

As in past years, the committee received outstanding cooperation from the House Select Committee on Intelligence in arriving at agreements with regard to those items of joint responsibility.

I would also like to express my sincere appreciation for the conscientious efforts by those subcommittee chairmen and ranking members who represented the committee's position in the various panels which met during the conference.

By major categories, the dollar authorizations approved by the conference were as follows:

Procurement: $35.770 billion.

Research and development: $16.888 billion.

Civil defense: $120 million.

The total dollar authorization of the bill, including the above three categories and $75 million for educational incentives, is $52.853 billion. This compares with an original authorization of $53.143 billion in the House bill and $51.960 billion in the Senate amendment.

The conference this year, reflecting the concerns of both Houses, devoted a major portion of its attention to matters involving military personnel.

For example, in the military compensation area, the conference report includes over $1 billion in additional pay and benefits for the military. The major provision in that area is the inclusion of an 11.7 percent pay increase for military personnel effective October 1, 1980.

The active military strength for the Armed Forces was pegged at 2,065,356, with the strength figures for the individual services as follows:

Army: 775,300.
Navy: 537,456.
Marine Corps: 188,100.
Air Force: 564,500.

The conference experienced considerable difficulty in arriving at an agreement on the quality requirements for Active Force recruits. The Senate bill had extensive provisions on this subject. The conference report limits male Army enlistments to no more than 35 percent nonhigh school graduates in fiscal year 1981, and provides that no more than 25 percent of personnel enlisted in all services in the same fiscal year could be from those who scored below the 30th percentile on entrance tests. In following years, no more than 25 percent of personnel enlisted in each service could fall in this lower group.

Another area of difficulty was in the research and development approach to the MX missile basing formula. The Senate bill limited initial construction in the Great Basin area of Nevada and Utah to 2,300 protective shelters and directed the Department of Defense to study a split basing mode for the remaining 2,300 shelters. The House bill contained no such references.

After lengthy conference debate, the compromise bill language makes clear the intent of Congress to commit itself to a complete MX system of 200 missiles and 4,600 shelters wherever located, while directing the Defense Department to study the concept of split basing and report to the Committees on Armed Services the results of this study no later than February 1, 1981. The conference report makes clear that this split basing study should in no way delay achieving the earliest practicable IOC for the system.

You will recall that the House bill did not include funding to begin development of a new strategic airlift aircraft designated as the CX. The Senate authorized $50 million for that project. Again, after serious debate, the House receded and agreed to authorize $35 million for development of the CX, with restrictions that would require verification of the need for the aircraft and the magnitude of Defense airlift requirements.

While both House and Senate bills provided for the reactivation of the battleship *New Jersey* and the aircraft carrier *Oriskany*, the dollar figures differed and the conferees with little difficulty arrived at a compromise.

Also, among other seapower agreements, the conference authorized two nuclear attack submarines, and $285 million for the purchase and modification of eight SL-7 commercial ships for enhanced sealift.

The conference agreement would authorize 146 more aircraft than requested by the administration—80 of these are combat aircraft.

In the area of aircraft for fiscal year 1981, there was an agreement to authorize $701.6 million for 30 F-14A aircraft, $1,591.5 million for 60 F/A-18 aircraft, and $37 million for 2 C-9B aircraft for the Navy.

I should also note that the conference agreement will authorize $3.3 billion for aircraft spares and repair parts, $3 billion for aircraft modernization, and $1.8 billion for aircraft support equipment and facilities. In fact, 48 percent of all the funds authorized to be appropriated for aircraft will go for spares and repair parts, aircraft modification, and for aircraft support equipment and facilities.

For new strategic aircraft, the conferees authorized $375 million for full-scale engineering development of a multi-role bomber aircraft to achieve an initial operational capability as soon as practicable, consistent with the aircraft selected, but not later than 1987. This aircraft should have the capability of performing the missions of a conventional bomber, a cruise missile launch platform and a nuclear weapons delivery system.

The conference committee devoted considerable attention to the differences in House and Senate provisions which would require annual authorizations of appropriations for operation and maintenance accounts. The Senate provision was much more restrictive being applicable only to major repair work on certain ships. The House provision, on the other hand, was applicable to operation and maintenance items across the board.

The Senate agreed to the House provision with an amendment requiring a Defense Department report annually with reference to operation and maintenance funds for aircraft flying hours, ship steaming hours, and related training and repair work, all of which address military readiness.

As the Members are aware, the committee has been acutely concerned over readiness matters for the past several years and this oversight provision represents our initial effort to get a stronger grasp on annual funding for the personnel and materiel readiness of our forces. It is our intention to focus our operation and maintenance oversight effort on readiness areas.

I strongly urge all Members to support adoption of the conference report. I ask unanimous consent to revise and extend my remarks.

Now, let me briefly summarize the agreement on other important differences that were discussed in conference.

As indicated previously, the conference report includes over $1 billion in additional pay and benefits for military personnel. Over a dozen items are included relating to pay and benefits, and two adjustments were made to military retired pay. The major provision in this area is the specification of an 11.7 percent pay increase for military personnel.

Other military compensation changes include an increase in the maximum enlistment bonus authorized for enlisted members in critical skills from $3,000 to $5,000; the maximum reenlistment bonus was increased from $15,000 to $20,000. The standard rate of per diem for military personnel on temporary duty was increased from $35 to $50 per day, with increases from $50 to $75 per day for reimbursement in high-cost areas. A new bonus for aviators with 6 to 18 years of service was authorized.

I might point out that provisions similar to these were included in a bill (H.R. 7626) recently reported by the Committee on Armed Services.

With respect to military retired pay, the conferees agreed to defer the September 1980 cost-of-living adjustment until March 1981, at which time a full year's increase would be provided. Thereafter, semi-annual increases to military retired pay would continue to be provided unless and until such time as the civil service retirement system is changed to provide for an annual adjustment.

The Senate amendment contained a provision that would require that retired pay be based on the retiree's highest 3 years of basic pay as compared to the current method which uses the retiree's final basic pay in computing retired pay. The conferees agreed to a high-3 average—but this provision would not apply to anyone now on active duty or who initially entered active duty before the date of enactment.

The conferees agreed to authorize a 1-year test of several new educational assistance programs aimed at improving recruiting and retention. The implementation of an effective educational assistance program may well be the best approach for the Volunteer Force to attract personnel of needed quality. That program was authorized $75 million in funding.

A Department of Defense-wide ceiling of 986,000 for civilian personnel was agreed to that includes civilian employees of industrially funded activities.

The conferees also agreed to impose permanent restrictions on proposed contracting out in the Department of Defense that are similar in effect to those now contained in the law for fiscal year 1980.

The Minuteman program was awarded $5 million to start deploying additional Minuteman III missiles in Minuteman II silos and $24.7 million for the Minuteman survivable power program.

In addition to aircraft previously listed, the conference agreement would provide 88 UH-60 and 17 AH-1S combat helicopters for the Army; 42 F-15 and 6 A-7 combat aircraft for the Air Force; and 12 A-6E combat aircraft for the Navy.

Also, the report authorizes six FFG-7 guided missile frigates, long-lead funding for one mine countermeasure ship, design and development funds for a DDG-X follow-on destroyer, and additional research and development funding to permit a definitive recommendation to the Congress for a new class of aircraft carrier.

Mr. Speaker, I would like to point out the following errors in the R. & D. tables in the printed copy of the conference report (No. 96-1222):

On page 70, line item 204, high energy laser, the budget request figure should be 32,525 instead of 32,535 as shown.

On page 73, line item 350, studies and analyses, the conference report figure should be −26,461 instead of −26,410 as shown.

Also on page 73, line item 351, undistributed reduction the conference report figure should be −47,640 instead of −46,646.

In addition, on the second table appearing on page 29, the headings should read as follows:

Column 1, take— Column 2, multiply by— Column 3, add— Column 4, subtract—

Instead of—

Col 1's take— Col. 2's multiply by— Col. 3's add— Col. 4's subtract—

□ 1350

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 6974 and I urge its adoption by the House.

The gentleman from Illinois (Mr. PRICE) has done an excellent job of summarizing the major provisions of the bill as agreed to in conference with the Senate and I see no need to replow the same furrow. Instead, I would like to use my time to place this historic bill in an overall context of what it is going to mean to Americans over the coming decade.

I associate the term "historic" with this bill advisedly because I know from long experience that rhetorical embellishment is not exactly an unknown commodity in this Chamber. Still, with due regard for the dangers of exaggeration I do think this is an historic bill. It is a bold departure from the trends of the latter 1970's and it signals the end of an era of benign neglect of our defenses—the end of an era of national self-delusion.

For almost a decade, Congress has been routinely cutting defense budgets by $2 to $7 billion a year under the presumption that we were not really hurting defense, just trimming an ounce or two of fat from an overfed defense establishment. For some strange reason we developed a mindset in the seventies of dividing spending neatly into two categories: Defense, and nondefense.

We frequently found ourselves debating defense programs in terms of their social utility relative to such things as CETA jobs. And we heard constantly from liberal economists about how inflationary defense spending is compared to other forms of Government spending.

I think the events of the past year have restored some balance to our thinking. Suddenly we are reminded of a fundamental law of economics in a dangerous world—nothing is more inflationary than inadequate defense spending because ultimately it makes the currency worthless.

H.R. 6974 is a harbinger of that restored balance to our national perspective. It reverses a decade-long trend by adding, not cutting, $7 billion from defense. But it is not a knee-jerk reaction to Iran and Afghanistan. It is not a confrontation with the President. It is not a budget buster and most definitely it is not a choice for guns over butter.

Rather, it is a thoughtful, balanced response to the realities of our time—a blueprint for the eighties.

More than any defense bill in recent memory, it strikes a balance between force modernization and near term readiness, by adding not only ships, aircraft,

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tanks, and missiles, but also the spare parts and the modification funds to get maximum mileage out of the old workhorses. And it expands future authorization bills to give equal priority to day-to-day operation and maintenance funding.

This bill redresses a major deficiency by initiating development of a new multirole bomber. But the decision looks to the future. It does not chart a collision course with the President revisiting the B-1. That decision was made at a different time, in a different context and under different assumptions about the future than now prevail.

This bill looks forward with a series of initiatives to enhance our rapid deployment force capability, and to get on with designing and building new classes of warships for the future.

Though this bill represents a major step forward, I think it is important to note that it keeps one foot firmly rooted in the present. It incorporates an 11.7 percent pay increase for our military personnel, along with 15 other provisions designed to selectively improve military compensation and benefits. Taken as a whole, these initiatives will improve the quality of life of our military personnel and their families and at least slow the "brain drain" that has resulted in so many key personnel leaving the service to take higher paying jobs in the civilian sector.

Mr. Speaker, it is customary for conferees to tell the House they have brought back a compromise bill that is worthy of support although it is not all they had hoped for. In this particular case, I want to state very positively that I think the compromise is better than either the House or Senate versions of H.R. 6974. The conferees on both sides of the aisle in both Houses did their job seriously and with a great sense of urgency. And in large measure that was due to the leadership of Chairman PRICE.

I urge the adoption of the conference report.

Mr. PRICE. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. Mr. Speaker, although I am generally regarded as one of the more enthusiastic proponents in this House in support of an adequate defense, some Members may have noted that I am the only member of the conference who did not sign the report.

I refrained from signing the report because I was, on account of illness, unable to be on hand for the final 2 days of the conference, and thus was unable to participate in the discussion of one particular item in disagreement on which I had some very strong feelings. By not signing the report I wanted to leave myself free to raise this matter on the floor today, and hopefully to establish a bit of legislative history which could forestall some of the damage I fear might otherwise be caused by this particular item.

I refer to section 1006 of the conference report, "Report on Allied Commitments to Defense Spending." This section in general berates our NATO allies and Japan for not undertaking defense burdens "commensurate with their economic resources," and complains of the "continued unwillingness of those countries to increase their contributions to the common defense * * *"

It directs the Secretary of Defense to report to the Congress by March 1 of next year on whether these allies are bearing their "fair and equitable" share of the common defense burden, the extent to which these countries have met the NATO goal of a 3-percent annual increase in defense spending, and whether their contributions to the NATO long-term defense program are in fact adequate.

Mr. Speaker, I have no particular quarrel with this section in so far as it applies to NATO. We already have an annual report from NATO on which countries are or are not increasing their spending by 3 percent.

As far as the long-range NATO defense program is concerned, we do not even know what it is yet. So Secretary Brown may have some trouble reporting on what is being done to implement a nonexistent program.

I am not worried about NATO. They are used to this sort of thing. Another rap on the knuckles will not do them any harm.

What does bother me, however is that Japan is not a member of NATO. It makes no sense to apply NATO goals to a country which is not a signatory of the NATO treaty.

Japan is in fact one of our most important allies in the Pacific. Our former colleague, George Bush, said yesterday in Tokyo that Japan is a "pillar" of our policy in Asia. This is even more true today now that U.S. commitments in the Indian Ocean have drawn down heavily on U.S. military strength in the Pacific.

Moreover, as Mr. Bush also pointed out yesterday, the Japanese Government has recently begun to increase its defense expenditures; and this increased defense effort was reaffirmed just 2 days ago by the new Japanese Premier, Mr. Suzuki.

In view of these recent increases, Mr. Speaker, I am concerned that the language of section 1006, unless carefully interpreted, could have precisely the opposite effect from what the Senate amendment intended, and could discourage further Japanese defense increases rather than encourage them.

Therefore, Mr. Speaker, I would appreciate it if the distinguished chairman of the committee, Mr. PRICE, would respond to one or two questions which seek to clarify the meaning of several portions of section 1006.

In subsection C of section 1006 of the conference report, the Secretary of Defense is required to submit a report to Congress. The first part calls for "a comparison of the fair and equitable shares of the mutual defense burdens of these alliances that should be borne by the United States, by other member nations of the North Atlantic Treaty Organization, and by Japan * * *" Since there is nothing that establishes "fair and equitable shares," I am correct in assuming that it is not the intent of the conference to require the Secretary to evaluate a specific country's defense activities against some arbitrary quantitative standard?

Mr. PRICE. The gentleman is correct. A realistic evaluation of a nation's defense spending program would certainly have to take into account not only economic performance and budget outlays, but also a country's domestic political environment and legal restraints. There must also be an appreciation of how the country's defense posture fits into its international position.

Mr. STRATTON. From my reading of section 1006 it seems clear that the Secretary is expected to report on current defense programs and future plans, rather than attempting to rate past performances.

Mr. PRICE. That is correct. All of us, including the United States, need to improve our defense performances. Certainly the conference committee did not expect that anything useful to our common defense could be accomplished by trading charges of inadequate past efforts with our allies. What the conference committee wanted to do was to encourage all parties to meet increased defense requirements.

Mr. STRATTON. Subsections 3, 4, and 5 of section 1006 all relate to NATO member nations, and to agreements and plans set up specifically within the NATO framework. Since Japan is not a member of NATO, I would assume that these items could apply only to NATO members.

Mr. PRICE. Correct again. Since Japan is not a member of the NATO alliance, any specific reporting with regard to Japanese defense efforts would be done in the light of Japan's particular circumstances.

Mr. STRATTON. In recent days the press has carried stories indicating an increased interest in Japan for larger defense spending in the light of changed defense conditions in the Western Pacific. While the tenor of section 1006 appears critical of our allies, am I correct in assuming that nothing in this section is designed to forestall voluntary efforts by countries allied with us to increase their own defense spending?

Mr. PRICE. Once again the gentleman is right. Even we in the United States have not done as much as some in this Congress would like to see. Certainly we the conferees welcome and encourage increased defense activity on the part of our allies, especially when it represents the voluntary decision of these governments themselves.

□ 1400

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. PETRI).

Mr. PETRI. Mr. Speaker, I rise in support of the conference report. I wish to point out to my colleagues that this conference report contains a program of forgiveness of student loans in exchange for enlisted service in certain critical military jobs, to be selected by the Secretary of Defense.

My colleagues may recall that this proposal was overwhelmingly adopted by the House as an amendment to the Higher Education Act reauthorization last November. That bill was a logical place for it, since it offers students a way of paying for their educations without starting their careers loaded down with debt. At the same time, the DOD authorization is an equally logical home for such a program, since it provides a valuable incentive for recruiting and retaining enlisted personnel who already have some higher education.

I wish to commend the House conferees on the defense authorization bill for agreeing to include this program in their bill, and thereby in the defense budget. It will provide one more example of defense expenditures supporting valuable social purposes beyond the immediate area of defense itself.

Finally, I wish to point out that the loan forgiveness is limited to new enlistees only. Therefore, if it does not work, it will cost nothing. I wish there were more Government programs of which that could be said.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. BOB WILSON).

Mr. BOB WILSON. Mr. Speaker, I rise in support of this conference report. I just want to take a moment to congratulate our committee, particularly the chairman and the staff, who are I think coming out with a very good compromise with the Senate.

This particular conference proves the wisdom of the conference system in that we in the House are always sort of specialists in our conference, while the Senators are the generalists. They are on a lot of committees, and they do not know nearly as much about the subject matter when they get there. Our attendance this year was 100 percent most of the time on our side, and usually about 20 percent on the Senate side.

I was proud of the way the conference operated, and particularly proud of the fact that the chairman of our committee was the chairman of the conference and came out with this very good compromise on the procurement bill. I am happy to support it.

Mr. ICHORD. Mr. Speaker, will the gentleman yield?

Mr. BOB WILSON. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Speaker, I want to join with the gentleman from California and associate myself with his remarks. The conference result came about as a matter of give and take. It was strictly a compromise. There are some matters that were compromised that I personally do not agree with.

May I state to the Members of the House also that I do not think this bill adequately provides for the defense of the United States today in view of the threat that we face. In no case are the airplanes authorized in this bill being provided at the most economical rate—in many cases it is at the least economical rate. But, that certainly is not the fault of the House Armed Services Committee; it is not the fault of the Senate Armed Services Committee. It could very well be the fault of this House in not providing—and I think it is the fault of this House and of the Senate in not providing—enough of the budget to meet the threat that the United States now faces.

□ 1410

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 7 minutes to the gentleman from Pennsylvania (Mr. DOUGHERTY).

Mr. DOUGHERTY. Mr. Speaker, I rise to express some reservations and concerns about the inclusion in this conference committee report of ships that have been designated as SL-7's. These are containerships which are alleged to have a speed of 33 knots.

My concern, Mr. Speaker, is that by including these in the conference committee report we have bypassed the authorizing subcommittee. I am a member of the Subcommittee on Seapower. These ships were never considered by our subcommittee.

I personally have very strong reservations about our purchasing the SL-7's. Unfortunately, they are in the bill, and there is little we can do about it.

I think we should go on record, though, in saying, Mr. Speaker, that the SL-7's do not address what I consider to be the immediate concern, and that is the rapid deployment force and the maritime prepositioning ship concept that this administration has put such great emphasis on.

I am concerned that we have, with the SL-7, a ship of questionable value, and I wish that the subcommittee had had a chance to go into a detailed investigation of these vessels.

I do intend, when the defense appropriations bill comes up, to raise the question about the appropriateness of funding the purchase of these SL-7's.

Mr. BENNETT. Mr. Speaker, will the gentleman yield?

Mr. DOUGHERTY. I am glad to yield to the chairman of the Subcommittee on Seapower.

Mr. BENNETT. Mr. Speaker, I would like to make the following comments in regard to the acquisition of the eight SL-7's provided for in H.R. 6974:

First. As early as February of this year, the Seapower Subcommittee began hearings on the lack of strategic sealift in our Armed Forces. With the event of the rapid deployment force, this need for strategic sealift dramatically increased.

Second. At that time, in February of this year, the proposal by the Defense Department to purchase these ships was being handled by the Maritime Administration of the Department of Commerce. Deputy Secretary of Defense Claytor testified vigorously in support of these ships before my subcommittee. However, since the Maritime Administration was considering this proposal, the Seapower Subcommittee felt it was inappropriate at that time to include the authorization of these ships in this defense bill.

Third. Since the spring the Maritime Administration has stated it was unable to buy these ships and transfer them to the Department of Defense. As a result, the Senate Armed Services Committee included these ships in their bill. Both committees support fully the 100-percent immediate increase in the strategic sealift capability that these 33-knot containerships provide for the country. To build these ships new would cost anywhere from $160 to $200 million. In this bill we are efficiently purchasing these ships for $35 million a piece. In no other way could the quantity of sealift in the period of time we are talking about be made available to the Department of Defense.

Fourth. I am aware of the three ships currently under construction that are also available for acquisition by the Department of Defense. I am also in favor of acquiring them in next year's budget. They are in no way in competition with the SL-7 ships since the SL-7 ships act both as a strategic reserve for sealift and as a possible rapid deployment force ship. The three ships also under consideration could be converted to a maritime prepositioning role and be used very successfully by the rapid deployment force.

In summary, Mr. Speaker, I do not oppose the future acquisition of additional maritime prepositioning ships. We need all we can get. I must emphasize that proceeding on with the immediate acquisition of the eight containerships is necessary.

Mr. DOUGHERTY. Mr. Speaker, if I may reclaim my time, although I have a great deal of respect for my friend and colleague, the chairman of the Subcommittee on Seapower, I think the point should be made on the record that these ships are containerships.

As to the size of the containers the SL-7's carry, they are 35-foot containers. The standard DOD containers are 20-foot and 40-foot containers, and therefore, these ships have to be modified in some way to handle the 20- and 40-foot containers.

The second thing is that before the Subcommittee on Seapower the Navy testified that the SL-7's do not have a roll-on, roll-off capability to fit in with the RDF/MPS concept. To the specific question I asked as to the roll-on, roll-off capacity in the rapid deployment force, the answer was, "no," that we are looking at roll-on, roll-off ships, and the SL-7's are not designed for that purpose although they can attain the speed of 33 knots.

I have been advised of some serious questions as to whether they can actually go 33 knots because of the vibration that the ship experiences at that speed.

Finally, we should go on record as saying that if we have to take these containerships and change them to a roll-on, roll-off capability, it will cost us $82 million per ship to give them this roll-on, roll-off capability. I think if we are committed to trying to do that, to make them roll-on, roll-offs, then downstream in fiscal years 1982 and 1983 we are looking at about $600 million in expenditures to change these vessels over from containerships to roll-on, roll-off ships.

Mr. Speaker, I just wanted that on the record, and I appreciate my colleague's contribution to the debate.

Mr. TRIBLE. Mr. Speaker, will the gentleman yield?

Mr. DOUGHERTY. I yield to the gentleman from Virginia.

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Mr. TRIBLE. Mr. Speaker, I think the point that needs to be made here, although I vigorously support the acquisition of these ships for our rapid deployment force, is that we should not be procuring merchant ships out of the SCN—naval ship—building account. Those moneys should be dedicated to the acquisition of fighting ships for our Navy.

Moreover, I think it is very bad public policy for us to authorize and appropriate moneys for ships that have not yet been purchased. We are now in the negotiation process. We are trying to procure these ships at the best cost possible, and it is folly for us to compute the price of these ships prior to the completion of those negotiations.

So, Mr. Speaker, I want to join with my colleague in expressing these reservations.

Mr. DOUGHERTY. Mr. Speaker, I appreciate the comments of the gentleman from Virginia, with which I agree, and I think the point which has to be made, I say to my colleague, the gentleman from Virginia, is that the SL-7's—and this must be on the record—in their present configuration are not suitable for the rapid deployment force.

Mr. Speaker, I yield back the balance of my time.

Mr. PRICE. Mr. Speaker, I yield 5 minutes to the gentleman from Mississippi (Mr. MONTGOMERY).

Mr. MONTGOMERY. Mr. Speaker, I certainly rise in support of this conference report.

On behalf of the Committee on Veterans' Affairs, I would like to establish legislative history and ask the chairman of the Subcommittee on Military Personnel, the gentleman from Texas (Mr. WHITE), a question pertaining to two 1-year pilot programs to provide educational assistance for certain individuals. As I understand it, the House added one pilot program on educational assistance under section 901.

Mr. Speaker, title IX of the conference agreement would establish two 1-year pilot programs that would provide educational assistance for certain individuals entering or reenlisting in the service after September 30, 1980, and before October 1, 1981. Section 901 would establish one such program, and section 903 would establish another. Section 903 would be accomplished through proposed changes in the post-Vietnam veterans educational assistance program provided for under chapter 32 of title 38, United States Code. The program is administered by the Veterans' Administration.

Since section 901 appears to be almost identical to the pilot program which recently passed the House, my question is: Will this proposed test program also be administered by the Veterans' Administration? I had asked this question when the amendment was offered by the distinguished gentleman from Texas (Mr. WHITE). At the time, he assured me that it was intended that the Veterans' Administration administer the program rather than the Department of Defense.

So there can be no misunderstanding on this issue, do we have assurance that this remains our intent?

As I say, Mr. Speaker, I talked to the distinguished gentleman from Texas, and he assured me that this program would be administered by the Veterans' Administration.

Mr. WHITE. Mr. Speaker, if the gentleman will yield, that is correct. The Department of Defense does not have the structure to administer this, and it should properly be under the Veterans' Administration, so there will be no conflict there.

Mr. MONTGOMERY. Mr. Speaker, I certainly agree. This is what the Committee on Veterans' Affairs would prefer. The Senate added, under section 903, an additional educational program. That is also a pilot program.

Can the gentleman assure me that this will be administered by the Veterans' Administration?

Mr. WHITE. Yes; these two programs are not exclusive of one another. Both of the pilot programs would be administered as an attempt to offer what is the best incentive to develop the All-Volunteer Force and the reserves as well, and these would be administered by the Veterans' Administration.

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman from Texas (Mr. WHITE).

Mr. Speaker, I would like to take a few minutes more to comment about the provisions that would affect the National Guard and the Reserve forces.

Mr. Speaker, I am particularly pleased that this act provides some procurement and personnel incentive items that will assist our National Guard and other Selected Reserve forces in achieving a higher degree of combat readiness.

I hope that these and additional incentives together with better equipment for the National Guard and Reserve will improve recruiting and retention. We must, however, keep ourselves prepared to return to the draft if our strength levels and the quality of the recruits in the active forces and the Reserves do not improve.

The personnel incentive items for the Guard and Reserve include:

Doubling the educational benefits from $500 to $1,000 per year to a maximum of $4,000 during a 6-year enlistment which should improve quality of personnel.

Enlistment/reenlistment bonuses for more personnel and in particular a marked increase of incentives for the Army National Guard and Army Reserve which are the lowest in strength.

Extension of bonuses for the Selected Reserve until September 30, 1985.

Guard/Reserve affiliation bonus for critical skilled personnel coming out of the Active Forces.

A bonus of $600 for a 3-year extension in the Individual Ready Reserve (IRR).

Educational loan forgiveness for service in the Selected Reserve.

Pay increase of 11.7 percent which will not be a great amount for Guard/Reserve members, but it will help compensate for gas used going to drill.

This act, also, authorizes equipment that will help modernize our Guard/Reserve forces as follows:

Seventeen AH-1S helicopters for the ARNG which added to the 12 authorized last year will give the ARNG 52 helicopters for NATO deployment out of a requirement of 369 authorized—however, we are still significantly short of helicopters.

Six A-7K two-place combat capable fighters, when added to the 24 A-7K's authorized by the Congress the past 2 years will enable Air Guard units to better train and save energy. I might point out that if the Congress had not added on buys of 103 A-7's in past years that at least 5 Air National Guard fighter units would still be flying F-100's.

Six C-130H's. These tactical airlifters are needed to replace C-130A's that are over 20 years old and will also retain a production line that might be needed in an emergency.

An increase of 12 F-15's which hopefully will be dedicated to the air defense role.

An increase of $60 million to accelerate the KC-135 reengining which will increase operational capability, enhance safety and reduce noise levels.

Provide for a two-place, A-10 to facilitate training and save fuel in our Guard/Reserve tactical fighter units.

Provide a 30-millimeter gun pod for Guard/Reserve A-7's and F-4's to give us a tank killing capability in NATO with those fighters.

Provide advanced procurement of F-15 long lead items so that the fiscal year 1982 production rate will allow 60 more aircraft to modernize Guard/Reserve units.

If I appear pleased over the personnel incentives and hardware in this act, it is because I have seen my fellow Members realize the importance of the Selected Reserves to national defense and that this Congress is taking affirmative action to improve the quantity and quality of these cost effective Guard/Reserve forces.

Although some small gains have been made by the Ready Reserves the fact remains they are still 186,000 short of their wartime strength levels. The Army National Guard alone is over 86,000 and the Army Reserve over 70,000 short of their wartime strength levels. The Individual Ready Reserve is still over 400,000 short of the level needed to meet mobilization requirements.

One last point—this Nation cannot fight a major conflict without the National Guard and Reserves. I congratulate this body for its foresight and urge its continued support of the Selected Reserves—we still have a long way to go.

□ 1420

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. I thank the gentleman for yielding.

Mr. Speaker, I wholeheartedly endorse this conference report which provides essential procurement, research, and development authorization for the Department of Defense.

The $52.7 billion recommended by the conference agreement is almost $6 billion more than requested by President Carter.

However, both Houses have independently approved these higher levels of spending by overwhelming majorities—despite opposition from the White House.

The escalating public demands for increased defense spending appear to have quelled the White House's further opposition to these increases.

It should have been clear to the administration in January—as it is clear today—that in light of Soviet aggression, the President's defense budget was simply inadequate for the gravity of the times.

It is my hope that Congress is convinced that we must make an assessment of Soviet intentions based on stark, existing reality, not the administration's fantasy-land visions of how they wish things were.

While these new and additional aircraft and naval vessels will be costly, it should be remembered that sometimes it costs more to preserve freedom than it does to achieve it in the first place.

The additions incorporated within this conference report are moderate proposals which will accelerate desperately needed, long-range improvements in our national defense, particularly with respect to naval and air power.

Indecisive and conflicting policies have characterized the last 3½ years. The Carter administration has squandered precious time during which improvements should have been begun in our defense capabilities in response to Soviet action.

Instead, our aimless policies have given a signal of weakness to our allies and adversaries alike.

Our Nation simply cannot afford to postpone any longer the production of the additional and improved armaments on which the security of our Nation and the free world will rely in the 1980's and beyond.

I urge the adoption of the conference report.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I reserve the balance of my time.

Mr. PRICE. Mr. Speaker, I yield 3 minutes to the distinguished majority leader, the gentleman from Texas (Mr. WRIGHT).

Mr. WRIGHT. Mr. Speaker, I rise to congratulate the conferees and to speak a word in support of this conference report. It moves us forward into the new fiscal year with a strong commitment to the Nation's defenses. We shall be undertaking in fiscal 1981 the largest dollar increase in national defense that we have undertaken in any year since World War II.

Particularly am I pleased that the conference has authorized $375 million for work on a modern aircraft to replace our aging fleet of B-52's. When this bill was before the House earlier this year, I argued that the quickest and best and least wasteful way to modernize our manned bomber fleet would be by an adaptation of the FB-111 aircraft.

The conferees have included this as one of three alternate designs upon which these funds may be spent. The others would be some adaptation of the B-1 aircraft and an as yet undesigned "advanced technology" bomber. The conference report directs that the President shall make a recommendation by March of next year as to which of these three routes he finds most preferable. It directs also that the decision be one which can result in an operational aircraft not later than 1987.

This is a step long overdue. We dare not rely upon the cruise missile alone, nor upon our fleet of intercontinental ballistic missiles. The manned bomber is an essential, indispensable part of the defense triad. Along with land-based and sea-based striking power, it has provided us the deterrent which has kept the world out of a nuclear conflict for the past 35 years.

As President John F. Kennedy said:

> Only when our arms are sufficient beyond doubt can we be certain beyond doubt that they will never be employed.

This conference report moves our Nation back in the direction of military sufficiency beyond doubt, and I urge its enthusiastic support.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas (Mr. WHITE).

Mr. WHITE. Mr. Speaker, I ask unanimous consent, at the request of the gentleman from Texas (Mr. KAZEN), to introduce into the RECORD at this point his statement. Due to official duties elsewhere with the committee, he was unable to be here.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

● Mr. KAZEN. Mr. Speaker, I rise today to support the action of the conferees on the 1981 Department of Defense Authorization Act.

Section 502 of the conference report is substantially the same as a provision added at my suggestion during floor consideration in the House. This section will save the taxpayers money by requiring that decisions on whether to perform a job with private contractor employees paid by the Government or with regular direct-hire employees will be based on which can do the same job with the same specifications at a lower cost. In the past, base commanders have often been forced to use more expensive contractor employees because an arbitrarily low personnel ceiling prevented them from having enough direct-hire employees to do the job, even though they could do it for less. Section 502 will now prevent such actions.

Open competition is the bedrock of our free enterprise system. Section 502 uses competition to insure that the taxpayer is spared inflated expenses whether those expenses come from using Federal employees directly on the Government payroll or from using contract employees indirectly on the same payroll. Section 502 uses open competition to stimulate a more efficient organization of the Government's own direct work force so that high bureaucratic overhead cost will not be allowed to stand in the way of an efficient work force. Thus, this section both saves the taxpayer money and makes his Government more efficient.

Most important, however, is the fact that this section returns to the base commander a greater degree of continuity in and control over the civilian work force at his installation. It eliminates the artificial pressure of low personnel ceilings to use indirect-hire employees. As a member of the Committee on Armed Services, I know of the complaints by military commanders that they lack effective control of outside employees even though tax dollars are used to pay them. These commanders object to the reduction in quality and security that often accompanies use of indirect-hire employees.

Despite these obvious problems with using private contractors, section 502 does not prohibit their use by the Department of Defense. Instead, this section merely relies on competition to insure that tax money is wisely spent and the Government is efficiently organized. No group—whether direct Federal employees or indirect private contractors—has a God-given right to tax dollars.

I am well aware of the campaign launched by certain groups against this section. I welcome the conferees' awareness of the genuine problems which section 502 addresses as reflected in their decision to make this provision permanent law. I will, of course, continue to watch development under this section closely.●

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. Mr. Speaker, I want to direct an inquiry to our chairman, the gentleman from Illinois (Mr. PRICE).

Mr. Speaker, I am in strong support of this DOD authorization legislation. I supported it when it left the House, and I want to support it here today. But I am seriously concerned with the Senate amendment that strikes out the current twice-yearly adjustment of the cost-of-living increase for military retired pay. I realize it does make this contingent on a similar change in current law providing a semi-annual cost-of-living adjustment for Federal civilian retirees. In my area, the retired military personnel need this twice-a-year cost-of-living increase, and this seems to be one of the main concerns that they have. Retired Federal civilian employees share their concern.

They have been able to show me, particularly in southern California, where the cost of living is so high, that they cannot make ends meet if they have to wait, and not get a September cost-of-living increase. I realize in March they would receive a full year's cost-of-living increase, but it may be done on an annual basis thereafter, if the same is applied to Federal civilian retirees. This will work a continuing hardship on both groups of retirees. I would like to have some understanding as to why the committee accepted the Senate amendment, and some assurances to retirees as to their future.

Mr. PRICE. If the gentleman will yield, we accepted the Senate amendment because we were directed to by the budget resolution. There was nothing else we could do. But it is a one-time matter, and I think the committee is more in agree-

ment with the gentlemen than it is the language of the bill. But we are faced with realities.

Mr. ANDERSON of California. But if a similar provision does not then become enacted, so far as the Federal civilian retirees are concerned, am I correct in my understanding that this change will not go into effect for our military retirees?

Mr. PRICE. That is correct.

Mr. ANDERSON of California. I thank the gentleman.

Mr. PRICE. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. I thank the distinguished chairman for yielding.

Mr. Speaker, I think that the gentleman knows the questions I am going to ask. Let me simply say that, with respect to section 202(a) of the conference report, which deals with the MX missile, the language seems to go beyond either the Senate or the House bill, and it states that the purpose of this section is "to commit the Congress to the development and deployment of the MX missile system, consisting of 200 missiles and 4,600 hardened shelters, and to insure that deployment of the entire MX system is carried out as soon as practicable."

This raises some questions in my mind as to the effect on other statutes already on the books that are going to have to be followed if this project is to proceed in the normal course, and I would like to ask the distinguished chairman this question.

Is there any provision in this report which is intended to amend or which could be construed as amending the Federal Land Policy and Management Act of 1976?

Mr. PRICE. No, there is not.

Mr. SEIBERLING. I would also like to ask the chairman if there is anything in this conference report which is intended to amend or could be construed as amending the Engle Act of February 28, 1958, as that act deals with the requirement of congressional approval of any withdrawal of 5,000 acres or more of public lands for military purposes?

Mr. PRICE. That law is not amended by this bill.

Mr. SEIBERLING. Finally, I would like to ask if there is anything in this report which is intended to amend or to waive or could be construed as amending or waiving any other provision of the public land laws or the laws regarding the appropriation or disposition of public lands, waters or interests therein?

Mr. PRICE. No. There is no intent to amend or waive standing law relating to public lands. The purpose of section 202 is to limit initial deployment in the Great Basin Area of Nevada and Utah to 2,300 shelters pending a study of split basing. However, the language makes clear the congressional commitment to development and deployment of the full MX system.

□ 1430

Mr. SEIBERLING. I thank the gentleman.

Mr. PRICE. Mr. Speaker, I yield 1 minute to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Let me further, by way of explanation, point out to the gentleman, I agree with the replies of the Chair, but I was the author of this language, as chairman of the R. & D. subcommittee. We are definitely committing the Congress to 200 missiles and 4,600 shelters. That is a commitment of this Congress. Of course, we cannot bind any future Congresses. But there is no way we could also affect the jurisdiction of the committee of the gentleman.

I would hope that he does not use that jurisdiction to the detriment of the MX system, which I think this country very badly needs in order to protect its land-based missile systems.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. ICHORD. I yield to the gentleman from Ohio.

Mr. SEIBERLING. There is no assurance that this gentleman will be chairman of the Subcommittee of Public Lands in the next Congress, but I am merely trying to make it clear that the existing laws that deal with the withdrawal and disposition of public lands are not amended by this conference report.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. LLOYD).

Mr. LLOYD. Mr. Speaker, I will not consume the full 2 minutes. I would say that I am in support of this conference report. I am not totally happy with all of the things that appear in this report. On the other hand, I think that, considering the constraints placed upon us we have come up with an agreement that is fundamentally sound for the defense of this country, the conferees, the committee, have done an outstanding job.

I would ask that the Members of this body consider the following as we go down the line considering our defense weapons systems.

First of all, let us take a good look at the operation and maintenance moneys which have to be put in to maintain these systems. Do not put the system in if you do not have the ability to maintain it.

Second, let us, for goodness sakes, continue trying to retain the very qualified personnel we have in our armed services through a lot of the things that have been included in this. Money is one. Consideration, if you will, as first-class citizens of our country is another. These are very important elements.

Last, but not least, I would ask those of this body who find fault with this bill, do not cheap shot the bill. It is a good bill. We have done the best we can. We have a lot of commitments in the world. I would ask this body, please, please try to be responsible in the way we address subject areas.

Mr. Speaker, I also would like to acknowledge my chairman, the gentleman from Missouri (Mr. ICHORD), who, I think, has done a very outstanding job in the areas of research and development. His contributions in the areas of defense, frankly, are outstanding.

I want the gentleman to know that I have enjoyed working with him, and I for one will certainly miss him when he does not return next term.

Mr. PRICE. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. MINISH).

Mr. MINISH. Mr. Speaker, I rise in opposition to the conference report on H.R. 6974.

I have always been a supporter of a strong defense. No one questions that we have to spend money and a lot of it to protect ourselves and our allies. However, while I support spending money for defense, I do not think we should throw it away. And, there one section in this conference report which, if it is passed, will mean throwing a lot of money away.

Section 1005 contains a 5-year suspension of the Vinson-Trammell Act, a law which is intended to restrict excessive profits on the part of defense contracts. This suspension was added in conference. It was not part of the House bill. In fact, on this extremely important piece of legislation there has never been a markup in the House, there has never been floor consideration and there was 1 short day of hearings before the House Armed Services Committee. I might add that at these hearings, a number of witnesses, including three Members of Congress and Adm. Hyman Rickover, who knows more about procurement than anyone alive, opposed suspending Vinson-Trammell. Yet, the House conferees accepted this provision. Since the whole conference was done in 1 day, I do not think Vinson-Trammell received much discussion there either.

In suspending the Vinson-Trammell Act, the Congress is once again bending to the wishes of the defense industry. Here we are, getting ready to spend $52,774,000,000 on defense procurement and we are unwilling to keep one small law which requires some accountability on the part of defense contractors.

By suspending rather than amending Vinson-Trammell, we are sweeping 5 years of defense profiteering under the rug and we are setting the stage for a permanent abolition of checks on defense contractors. This action is irresponsible, it is cynical, it is motivated by special interests and it is in blatant disregard of our duty to the people who elected us and who pay our salaries.

As I said at the outset, I have always been a supporter of a strong defense. I do not vote against this conference report lightly. But, I cannot, in good conscience, go along with it as long as it has such a terrible provision as the Vinson-Trammell suspension.

Will anyone on either side yield me some time to respond to the gentleman from New York, my good friend (Mr. STRATTON)?

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 2 minutes to my friend, the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. My good friend from New Jersey, I think, is a little bit offbase in his interpretation of section 1005. As he knows, I conducted a detailed hearing on this matter, and in fact, the final version of this proposal, as it appears in the conference report is the version that I recommended on the basis of our hearing and which the conference unanimously accepted.

If the gentleman recalls, the original Vinson-Trammell amendment in the Senate exempted all those contracts which would be "completed" prior to October 1, 1981. But, as the gentleman knows, the "completion" of a defense contract, the precise completion date, is very hard to determine. So the language which we substituted is the language of a bill which the chairman, the gentleman from Illinois (Mr. PRICE) had introduced, which says only those contracts for which "final payment" is made before October 1 would be exempt.

And, as the gentleman from New Jersey recalls, the Assistant Secretary of Defense in those hearings of ours testified that he knew of not one single contract applicable to Vinson-Trammell section that would be paid for finally prior to October 1, 1981.

So, if the gentleman will read those lines of section 1005 closely, he will recognize that no exemption from the provisions of the Vinson-Trammell Act will apply to any contract for which final payment is made before October 1, because there are no contracts that are going to have their final payment made before the 1st of October; hence no contracts will in fact be exempt pursuant to section 1005.

In other words, the gentleman does not fully appreciate the subtle way in which the House conferees have changed the basic thrust of the original Senate amendment, and did so in a way that fully accords with the interpretation of the distinguished gentleman from New Jersey.

Moreover, let me remind the gentleman that on page 103 of the conference report is the additional commitment that the conferees made, namely, that before October 1, 1981, we are going to conduct a total review of the Vinson-Trammell Act and try to come up with a revised piece of legislation which will put a fair limitation on defense profits but not under the outmoded terms of the old Vinson-Trammell Act.

So my good friend really has no reason to be disturbed, or to vote against this great conference report.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. DICKS).

□ 1440

Mr. DICKS. Mr. Speaker, I want to rise in support of the conference report.

I would like to ask the chairman one question to make sure I understand the provision of the bill that affects the military retirees COLA. As I understand it, unless the reconciliation package is enacted, there will not be a suspension of the September cost-of-living increase for military retirees. In other words, this is contingent upon the enactment of the reconciliation bill or a separate bill being passed; is that correct?

Mr. PRICE. Mr. Speaker, if the gentleman will yield, the gentleman is correct.

Mr. DICKS. There has been a major effort in the Committee on Rules to try to protect the cost of living increase for both civilian and military retirees, which I happen to strongly support; I wanted to make sure that was the gentleman's understanding as well.

Mr. PRICE. That is my understanding and I state that the gentleman is correct.

Mr. DICKS. Again, I think the gentleman. I want to express my support for this important legislation with that reservation.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I had an earlier request from the gentleman from California. I would be pleased to yield 2 minutes to the gentleman from California (Mr. BADHAM).

Mr. BADHAM. Mr. Speaker, I rise in strong support of this conference report, because it does represent an increase to our procurement and defense spending over the past few years.

I will have to say, though, that comments have been made that this is a huge increase and this is going to fix the defense of the United States. I wish that were true. I wish that were true. I wish there were more moneys in here for more programs. Unfortunately, even though it deserves our support it still is falling short of our needs. The buys for various type of aircraft: F-18, F-15, F-16, KC10, and various types of ships: FFG, SSN, SSBN are larger than they were, but they are nowhere near big enough to make efficiency in the purchasing by the United States of America for its defense needs.

I certainly commend the work of the conferees, particularly our chairman and our minority members for the work they have done. I think and I hope that next year it will be even better. I support this conference report too, because it turns the corner. The administration has finally admitted that we are not doing as much as we should be in the area of defense. I hope that the corner having been turned that we continue in the next years to increase the proper defense budget and signal to our friends and potential adversaries that America will defend itself.

● Mr. HALL of Ohio. Mr. Speaker, I rise in support of H.R. 6974, the conference report on the Department of Defense authorization for fiscal year 1981.

I commend the conferees for their work in resolving the differences between the House and Senate versions of this military procurement legislation. The $52.8 billion authorized in this bill will contribute significantly to the improvement of our defense posture and our military preparedness.

In particular, I am pleased that this legislation emphasizes the upgrading of our conventional forces. The tactical equipment authorized in this bill, especially the inventory for the Rapid Deployment Force, should enhance our capability to respond quickly to the crisis situations that are likely to confront us in the immediate future.

I would like to take a moment to comment on an emerging area of weapons development addressed in this bill that could become the defense issue of this decade. I am referring to the directed-energy weapons programs.

I note that the conferees have accepted the Senate position to provide an additional $8.3 million for the Defense Advanced Research Projects Agency's charged particle and neutron beam technology programs. The House Armed Services Committee's increased support for these programs is encouraging.

Recent reports in the media have called attention to the growing Soviet work on directed-energy weapons, particularly those that could be used against U.S. low-orbiting satellites. Pentagon officials have been quoted saying that the Russians are spending three or four times as much as we are on particle beam and high-energy laser development.

While there are technical obstacles to early production and deployment of directed-energy weapons, it is possible that the Russians might be in a position to threaten our reconnaissance satellites within the next few years. Evidently, they are making a commitment to development of this technology.

Needless to say, the first country to develop operational directed-energy or particle beam weapons will enjoy an important strategic advantage. That country would have the first science fiction-style "death ray" that would make obsolete many of our current strategic nuclear weapons.

Based on earth, these weapons could direct powerful beams traveling at the speed of light to destroy satellites, missiles, or aircraft. Based in space, they could intercept intercontinental missiles seconds after they were launched.

The first generation of these "Star Wars" type weapons would require an almost complete reevaluation of present strategic planning. There is no question that our security would be very seriously threatened if the Russians were able to apply this kind of technology before we were.

It is my understanding that the Pentagon plans to spend about $199 million in 1981 on high-energy laser research. While this is certainly a good deal of money, I think defense expenditures of this kind have to be evaluated in terms of other defense outlays. For example, the legislation before us authorizes $1.6 billion for development of the MX missile and its multiple protective basing system. The bill also authorizes $300 million in research and development funds and $75 million long-lead procurement funding for a new manned bomber to replace the B-52. While no particular design or specific plane is designated, the new bomber is supposed to be deployed in 1987.

Theoretically, both of these weapons systems would be seriously jeopardized by an operational directed-energy weapon. Of course, since we cannot now predict when beam weapons will be available, we have to move ahead with what is currently feasible.

Nevertheless, I hope that we will not one day soon pick up the newspaper and learn that the Russians have achieved a technological breakthrough that gives them the capability to destroy our satellites or otherwise neutralize our strate-

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gic defense system. News of that kind would send shock waves around the world that have not been felt since the launching of sputnik 23 years ago.

My concern is that the administration and the Congress should make research and development of directed-energy weapons a defense priority—certainly as much of a priority as some of the other long-range projects we are authorizing today. I am not advocating massive defense spending or a new arms race. I am, however, urging an increased commitment to development of laser and particle beam technology. The additional funding approved by the conferees is a start in this direction.

I urge my colleagues to vote in favor of this conference report.●

● Mr. EDGAR. Mr. Speaker, today we vote on the 1981 defense authorization conference report. I, like most of you, will vote to accept the conferees' report. However, I do so with some misgivings. I seriously considered voting against the report knowing full well that to do so would have been a futile gesture as far as the final passage of the conference report. We operate by compromise in this body, knowing that to operate otherwise means that nothing would be passed. We accept some things that we would otherwise reject in order to see some of the things accomplished that we have set as personal goals, our sense of right and wrong tells us should be done, our sense of justice tells us must be done, and, yes, even those things that we feel we must do to be reelected.

Today, I am faced with the dilemma of voting for this measure because of the many necessary provisions it contains. Yet it is frustrating because it also contains one of the most offensive provisions possible. I have chosen to describe it as a monument to man's insanity. The term is not original; however, it is most appropriate. I am speaking of the MX missile and its proposed mobile basing system of 4,600 shelters, 23 for each 200 MX missiles. I object not to the MX missile but to the basing system. Let us go ahead and build the MX missile if we must—but let us replace some of the current land-based intercontinental ballistic missiles—ICBM's—with it—then let us choose some other alternative to the costly and environmentally unacceptable basing system that has been proposed. Yes, there are other alternatives to the MX basing system, many of which have been discussed by this body in the past.

Why should we discuss the issue again? Because it is so vitally important to the Nation. Must we embark on this insane project? The answer is "No."

Let us review how we got where we are now. First we are told that the Russians are developing their missile accuracy to the point that they have, or soon will have, hard target kill capability, meaning that they can destroy our land-based missiles, while they are still in their silos, with a first-strike.

I am sure that we are all familiar with the frequently stated assertion that the Russian missiles have much greater megatonnage in their warheads than we do, which means they have to have even less accuracy than we do to have a reasonable assurance of destroying a hardened target.

We fear allowing ourselves to get into a position where our land-based ICBM's can be destroyed in a "first strike" by the Russians. Even if our land-based missiles were destroyed in a first strike we would still have over 400 bombers and 41 nuclear missile submarines remaining with which to retaliate. Even if the bomber force were destroyed we would still have the 41 submarines which even our military tells us the Russians cannot now locate, nor do we expect them to be able to do so in the foreseeable future. These submarines, as the force is now planned, will be carrying over 600 missiles which will have over 6,000 nuclear warheads—more than enough to give the Russians cause for restraint when contemplating a strike against our country.

Our analysis should not stop here for this is not the complete story. We must also look at the reality of the Russian missile threat to us. It is frequently alleged that the Russians have recently vastly increased their defense spending.

It is said that they are spending money on defense at a much greater rate than we or our allies are. Some have even said that the Russians doubled their defense spending during this past decade. None of these assertions seem to stand up under closer analysis. The only claim that can be substantiated under close scrutiny is that the Russians are spending a greater part of their gross national product (GNP) on defense than we are. And why not? Our GNP is twice that of the Soviet Union. The net result is that we are still spending more actual money on defense by some estimates than the Russians are!

Arthur M. Cox, a former CIA official and now a writer specializing in Soviet affairs, recently had the following to say about Soviet defense spending in an article in the Washington Post on August 17, 1980, entitled "Why the Soviets 'Doubled' Arms Spending":

In 1976, the CIA made what appeared to be an astounding discovery about Soviet defense outlays. News outlets throughout the country headlined the story, "CIA Doubles Estimate of Soviet Defense Spending." The media were very poorly briefed. Nobody at CIA thought the Soviets had suddenly increased their defense spending by 100 percent. But the impression was allowed to stand and has not been clarified.

A recent study published by the U.S. Air Force and prepared by the U.S. Strategic Institute said: "Estimates prepared by the Central Intelligence Agency, as well as by U.S. academic economists, have been in error by as much as 100 percent. The CIA estimates were accepted without question until 1976, when they were acknowledged to be grossly in error and doubled. Economists have not yet recovered from the shock of that experience."

Former President Richard Nixon in his new book, "The Real War" says: "In 1976 the CIA estimates of Russian military spending for 1970–1975 were doubled overnight as errors were discovered and corrected . . . When the first concrete steps toward arms control were taken, American presidents were being supplied by the CIA with figures on Russian military spending that were only half of what the agency later decided spending had been. Thanks, in part, to this intelligence blunder, we will find ourselves looking down the nuclear barrel in the mid-1980s."

Congress recently authorized the largest U.S. defense budget in history because most members of Congress also have come to believe that the Soviet have doubled their defense spending during the decade of the 1970s.

But the facts are very different. At no time has the Soviet defense budget been increased by more than 3 percent a year.

The CIA has an admittedly difficult job estimating what the Soviets spend on defense because so much is secret. The figure which the Soviets publish in their annual budget doesn't come close to approximating Soviet defense totals. The CIA tries to estimate the dollar cost of the Soviet military by determining what it would cost the United States to duplicate the Soviet defense establishment. This is obviously subject to considerable error because there are such vast differences in the costs of U.S. and Soviet defense programs.

The most glaring difference is in military manpower. The Soviets have about 4.4 million military personnel compared to a U.S. figure of 2.1 million.

The CIA makes an estimate of the dollar cost of the 4.4 million Soviet force multiplied by U.S. military pay and allowance rates. This results in a significant distortion because U.S. military personnel are volunteers with relatively high levels of pay and allowances. The Soviet forces, on the other hand, are drafted and paid about one-fifth the U.S. rate.

When this method of costing Soviet defense began in the early 1970s, the CIA concluded that the Soviets were spending between 6 and 8 percent of their gross national product (GNP) for defense. At the time, the United States was expending about the same percentage of its GNP for defense. Today, the U.S. figure is closer to 5 percent. However, it is often forgotten that the U.S. has a GNP which is about double that of the Soviets.

During the period from 1973 to 1976, as CIA analysts refined their methodology and obtained better intelligence, they made an important breakthrough. In costing Soviet defense production they had been crediting the Soviets with efficiency which was close to that of the United States. What they discovered was the Soviet defense production, in fact, was not very efficient. Thus, the Soviet defense effort was absorbing a greater share of the GNP than previously believed.

Here is what the published 1978 CIA report said: "The new estimate of the share of defense in the Soviet GNP is almost twice as high as the 6-8 percent previously estimated. This does not mean that the impact of defense programs on the Soviet economy has increased—only that our appreciation of this impact has changed. *It also implies that Soviet defense industries are far less efficient than formerly believed.*" (Emphasis added.)

The CIA increased the percent of GNP from 6-8 to 11-13, but there had been no doubling of the rate of actual Soviet defense spending. There was merely an increase in CIA's estimate of the share of GNP expended for defense. What should have been cause for jubilation was never adequately explained to the Congress and the public. Instead, for the past four years, a misperception that there has been a great surge in Soviet defense spending has gone uncorrected.

In fact, there have been no dramatic increases in Soviet defense spending during the entire decade. Here is what the CIA paper published in January 1980 said for the 1970–79 period: "Estimated in constant dollars, Soviet defense activities increased at an average annual rate of 3 percent." In other words, the Soviets have indeed been increasing their defense budget, each year, at about

the same rate as the United States and most of its NATO partners. The U.S. defense budget for next year calls for an increase, in real terms, of about 5 percent.

From the standpoint of weighing the essential defense burden of the United States and Russia, there are several factors that should be given much greater emphasis when the executive branch is presenting the facts to Congress.

The first is the great difference between the defense contribution made by the European allies of the United States and the Warsaw Pact allies of the Soviet Union. In 1978, the European NATO members expended $75 billion for defense and France, a non-NATO ally, spent $16 billion—a total of $91 billion. The Warsaw Pact members, other than the U.S.S.R., expended $23 billion, or one-fourth of the defense spending of our European allies.

Perhaps even more important in considering the relative defense burdens is the cost shouldered by the U.S.S.R. in defending against China. The U.S. Defense Department says: "At least 22 percent of the increase in the Soviet defense budget during these 13 years [1964–1977] has been attributed to the buildup in the Far East . . . The high construction costs in Siberia suggest that the intelligence estimates may understate the cost of the Soviet buildup in the Far East substantially." In addition, according to the Defense Department, the Soviets "station as much as 25 percent of their ground forces and tactical air power on their border with China."

The Soviet burden of defense against China comes more sharply into focus when note is made of the fact that the Soviets have 44 divisions facing China and 31 divisions facing NATO. Of the 31 divisions in Central Europe, four are standing guard in Hungary and five have remained in Czechoslovakia since the invasion of that country in 1968. In other words, there are about twice as many divisions committed to the China front as to the West German front.

Furthermore, the U.S. does not have to match the Soviet forces facing China. Those forces are at the end of a long and tenuous line of communication that can be severed, in time of war, by missile strikes. These are not forces that can be readily transferred to combat in a European war. On the other hand, if it is argued that the U.S. defense budget should provide forces to counter the Soviet threat to China, then the Chinese defense budget should be included on our side—a total of $35 billion.

The combined NATO defense budgets are greater than the combined Soviet-Warsaw Pact defense budgets and if the China factor is included, the Soviet proportion of defense facing the U.S. and its allies is less than 75 percent of that of the NATO powers.

These are facts which Congress should have before it when it weighs the budget appropriation decisions in the next few weeks. The Soviets have an ample defense budget, but it still does not equal its potential adversaries. The perception of Soviet military superiority is an illusion based, in large part, on a misunderstanding of the facts.

Well, you might ask, if the Russians have not significantly increased their defense spending, why are we? Good question. Not an easy one to answer, however.

First, I am not quarreling with the need to increase our defense spending because I believe that we have allowed parts of our defense forces to deteriorate. We must act without delay to restore their operational capability. I am especially concerned with the state of our conventional forces. I am obviously not the only one because the Defense Authorization Act and conference report very clearly deal with the problem. I commend my colleagues, and especially the conferees, for their actions to restore our conventional capabilities. If I differ with my colleagues at all where it concerns our conventional forces it would be to increase the sense of urgency to do more.

My problem and concern is not with the amount of money spent on restoring our conventional capabilities. Nor is it with the much needed pay increase to our military personnel, which I fully support. I believe we have been remiss in not providing this increase sooner. We should never have allowed the status of our military families to deteriorate to the point that they qualify for the food stamp program. I do not wish to cast aspersions on anyone that finds it necessary to accept and use food stamps, nor any other welfare program, for these programs were designed and passed by the Congress to help the needy—not to lower their status or to place them in an inferior position.

We are supposed to be providing our military personnel with the necessary pay and benefits to provide an adequate standard of living. We, quite obviously, are not living up to our responsibilities if it is necessary for them to use the food stamp program to subsist. They deserve better treatment for the vital services they are providing our society. I wholeheartedly support the conferees' actions in providing for increased pay and benefits for our military personnel.

My argument is with the MX missile—more specifically with the MX missile basing system that has been proposed. A case can be made for the need to counter the increased accuracy of the Russian missiles. A case can even be made for the need to counter the Russians' periodic development of new missiles when one considers the forces driving their development.

We are all familiar with our system of building new military hardware systems. It starts with someone, either a military or civilian analyst, defining a new or previously unidentified threat to our society or allies. This is followed by a statement of need to counter the threat, and a proposal to Congress to authorize the development of a new system followed by the appropriation of funds.

It is necessary that I describe our basic system in order to draw a distinction with the Russian way of doing business. It is said that the Soviets have three separate design bureaus whose very existence depends on their designing military missile systems.

These design bureaus compete for their existence by periodically producing new missiles. Every 8 to 10 years, it is estimated, the separate design bureaus produce a series of missiles. Some of these are then put into production. We are then put into the position of designing a new missile system, or improving an old one, to counter the new Russian missile.

So, for the purpose of this argument, let us concede there is a need to counter a new Russian threat, whether it is a new missile, improved accuracy of an existing missile, or large warheads. Let us examine what our options are to counter this threat. Is it only the MX missile with its outlandish basing system? I submit that it is not.

We have been asked, and are on the verge of approving, the full-scale engineering development of the MX missile and a Multiple Protective Structure (MPS) basing mode. Moreover, we, the Congress, find that a survivable land-based ICBM system is vital to the security of the United States and to a stable strategic balance between the United States and the Soviet Union, and that timely deployment of a new basing mode is essential to the survivability of this Nation's land-based intercontinental ballistic missiles.

But is it? Have we raised the TRIAD to a sacred level? Why is it necessary that we have a survivable land-based missile force—to give the Russians something to shoot at? When we have a survivable sea-based nuclear missile force is it necessary that we also have a land-based ICBM force? Is it just to perpetuate an Air Force organization? To continue the TRIAD? Again, why?

The obvious question is: Why would not the sea-launched ballistic missile (SLBM) force suffice if it is undetectable now and in the foreseeable future? Is it a question of having enough SLBM forces? I think not because we can expand the SLBM forces more quickly and at less expense than the MX missile and the MPS basing mode can be built.

As a matter of fact the SLBM approach has many advantages over the MX missile and MPS basing mode. First, the SLBM force is relatively undetectable. Second, we expect it to remain so for the foreseeable future. Aviation Week and Space Technology quote an operational submarine commander in their June 16, 1980, issue as saying:

> People have been talking about a breakthrough in antisubmarine warfare to increase the detectability of submarines for the past 20 years, and it has not happened, and I do not see it changing in the next 10 years. I have worked with our own ASW (anti-submarine warfare) forces, which are very good, and they cannot find us, so I do not see the Soviets with any better capability in the near future. No one has a better survivability than the SSBN (submarine ballistic missile) force.

Third, it is constantly on the move, not located in a fixed shelter. Fourth, it is far less expensive (the current planned force of 14 Trident submarines plus missiles will cost $28 billion and are planned to be built even if we build the MX missile) and the Trident force can be expanded for a fraction of what the MX missile and MPS basing mode will cost. The MX missile and MPS basing mode is estimated to cost between $34 and $56 billion and, perhaps, as much as $100 billion if there is no SALT II treaty. Fifth, in the event the SALT II treaty is not ratified the Soviets acquire no advantage over the SLBM force. This is not the case with the MX missile and its MPS basing mode. Sixth, the SLBM force either has, or can be improved to have, a "hard-target-kill capability" if that is deemed necessary. This could be accomplished by the development of the Trident II missile including terminal guidance from the NAVSTAR global positioning system (GPS) or improvements to the stellar inertial system. I commend the conferees

for their wisdom and foresight in providing $65 million in research and development funds for the Trident II missile. Seventh, the current planned SLBM force will have over 6,000 warheads on their missile and this can be expanded at the rate of over 190 additional warheads with each Trident submarine that we choose to add. Last, but by no means least, the SLBM force takes up no precious real estate, requires no allocation of scarce water resources and displaces no one from their homes. If the Russians decide to shoot at it (if they can locate any part of it) they will be firing at the ocean—not our territory.

Now, let us look at the MX missile system and its MPS basing mode. First, it it is potentially vulnerable, that is, even though each missile could be located in any of 23 separate shelters the security could be compromised, or the Russians could target each of the 4,600 shelters. Second, the system is obviously detectable since the shelters can be seen from satellites which means it can be targeted with missiles with hard-target-kill capability. Third, it is a fixed system regardless of how the Department of Defense euphemistically wishes to describe the basing mode. All the opponent has to do is to break the security basing code or target all the shelters and the system is totally compromised. Fourth, the system is exorbitantly expensive, the second most expensive construction project in the history of civilization (our interstate highway system is supposed to be the most expensive), and might become the most expensive if it has to be expanded beyond the planned 4,600 protective shelters. This may be an incorrect claim since we don't know how much the Pyramids of Giza actually cost to build in "then year dollars." A bit of irony may be evident here.

If we build the MPS basing mode we may be leaving a monument to future generations who will marvel at our incredible insanity at spending so much of our resources on so needless a task. Fifth, if the SALT II treaty is not ratified or the Russians choose to violate it, they could target all 4,600 shelters and totally compromise the system. Sixth, as demonstrated earlier, the MX missile and its MPS basing mode is not needed with an adequate SLBM force. Seventh, and, perhaps, the most telling point in view of the first six, the MX missile and its MPS basing mode is an environmental disaster. It takes up thousands of acres of land. The fact that most is desert makes it no less of a disaster.

The current instructions of the conferees may force a split basing mode, that is, part in Utah and Nevada and part in another location, most likely western Texas and eastern New Mexico. In this event it will displace even more people. The MPS basing mode will require over 8,000 miles of roadways which will require a tremendous amount of concrete to support the 190,000 pound missile and its 800,000 pound transporter. Added to all of this is the requirement for the allocation of scarce water resources for construction and maintenance of the MPS system in an area that is in desperate need of all the water resources available.

In my view, the case against the MX missile, and particularly the MPS basing mode is overwhelming. Why we are proceeding is incomprehensible to me. If we are determined to spend this enormous amount of money then let us spend it more sensibly: Build additional Trident submarines and develop the Trident II missile with its improved accuracy. When we are done with that we can get on with doing more important things in our society. Let us escape from this insane position that we find ourselves in. We do not need to build this monument to our insanity.●

● Mr. DORNAN. Mr. Speaker, I would like to express my support for and thanks to the Armed Services Conference Committee for this bill. I believe that it takes a significant step in the right direction toward the goal of strengthening our defense posture. To be particularly commended are those conferees who are members of the majority party, whose leader, the President, has made clear his opposition to this bill, despite a clear and undeniable need for it.

I also want to voice my support for the committee's decision with respect to the follow-on aircraft for the B-52. The committee has directed the Secretary of Defense to report to the Armed Services committees by next March 15—beware, Soviets, the Ides of March—a status report including his recommendations for a follow-on aircraft to be chosen from among the committee's recommendations. The conference is to be congratulated for directing the Secretary to do so, so as to prohibit any further foot-dragging and the needless delays which have characterized this administration's attitude toward a B-52 successor and toward our whole defense program in general.

I hope the defense bill to come out of the Appropriations Committee will exhibit the same degree of concern for our defense capabilities as this authorization bill. Of course, if it does not, there are many of us who are fully prepared to vigorously take corrective action on the House floor.●

● Mr. LUNDINE. Mr. Speaker, I intend to vote against the conference agreement pending before us on the fiscal year 1981 Defense Department Authorization. I do so reluctantly because I do recognize that we must increase our effort in the defense area, particularly in bolstering efforts to attract and retain qualified military personnel. I do support the decision by the conferees to grant an 11.7-percent across-the-board pay raise to our military personnel in the upcoming year, and also the fair benefits package aimed at attracting and keeping needed personnel in our Armed Forces.

At the same time, these benefit changes amount to only $1 billion of a $52.8 billion authorization bill, which I believe to be too strongly biased toward spending on weapons hardware. The largest single slice of this $52.8 billion authorized by this bill will go toward spending on new weapons systems. Included in this authorization is $1.6 billion for the MX mobile missile system, which I believe is technically unproven and can only serve at this time to exacerbate the arms tension in the world thereby doing serious damage to future efforts to arrive at a SALT II agreement with the Soviet Union.

Finally, I feel disposed to oppose this authorization bill, as I did when the House passed its version of this bill, because it exceeds budget limitations included in the first budget resolution approved by this Congress. The $52.8 billion authorization included in this conference agreement is $5.5 billion above the President's revised budget request to Congress. In addition, it is $2.2 billion above the estimate included in the First Budget Resolution approved by Congress, which is an attempt to set forth the first balanced budget for this country in 12 years. I do not believe we can continue to make progress toward a balanced budget for this country if we do not exercise fiscal discipline on authorization bills, whether they be in the area of defense or any other policy matter of national concern.●

● Mr. SANTINI. Mr. Speaker, I would like to take a moment of my colleagues' time to talk about an issue which you have heard me address before—the MX missile. I hate to sound like a broken record on this subject, but until you quit playing my song, I feel compelled to remind you that Nevada has a great deal at stake when it comes to MX. H.R. 6974 authorizes $1.6 billion for the MX missile and to my knowledge makes the first congressional commitment to a land based MPS deployment.

Second, we do not yet have a congressional affirmation that long-term economic impact assistance will be forthcoming. Community aid is absolutely essential to whatever area has the dubious honor of hosting the MX missile system and all the accompanying burdens for State and local governments.

I know that my fellow House colleagues will keep Nevada and Utah in mind when the next opportunity arises to show that you are willing to assure our States that if we get the 4,600 or more missile shelters you will be there not just with exotic weaponry, but with badly needed support for such things as sewers, roads, hospitals, and other critical, if commonplace, requirements which the MX deployment will generate.

Let me add just a word here about the split basing provisions which my good friends in the Senate added to this piece of legislation. I want to note here that I applaud their support for a concept which I initiated in September 1979. I am distressed about the language of section 202 of this bill because it practically invites Congress to discard the split basing concept, for any reason whatsoever, not just military considerations. In addition, the split basing language in this bill says that after the first 2,300 missiles are deployed in the initial deployment area, the remaining 2,300 shelters may be placed in that same initial deployment area if an alternate site is rejected on the basis of a Department of Defense study.

Forgive me if I seem paranoid on this issue, but lately I find that Nevada is in the untenable position of being a finalist for all the Nation's controversial or undesirable projects. Nevada already has underground nuclear testing and low level radioactive waste. I really must urge my colleagues in the name of national fairness and reasonableness to recognize what you are asking one State to do for the entire Nation. Nevada will do its share and more. But from my initial amendment effort in 1979 I believe Congress must give its serious consideration to the split basing proposal. Such serious consideration is not in evidence in any of existing or pending legislation.●

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I have had a request from the chairman of the Committee on Armed Services for time.

Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. PRICE).

Mr. PRICE. Mr. Speaker, I thank the gentleman from Virginia.

I take this time only to inform the House that this is the last appearance on this floor in the consideration of the defense authorization bill for six members of our committee: The gentleman from Missouri, DICK ICHORD; the gentleman from Michigan, LUCIEN NEDZI; the gentleman from California, BOB WILSON; the gentleman from California, CHARLIE WILSON; the gentleman from South Carolina, MENDEL DAVIS, and the gentleman from Texas, JOE WYATT.

We want to express our best wishes to all of them and we hope they will be back in some capacity, even as visitors, to help us when we bring the annual authorization bill to the floor next year and in the years ahead. Each of them has made a contribution to the national security of the United States of which he can be deeply proud.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield myself 30 seconds, just to mirror the sentiments expressed by the chairman on the departure of these most valuable members of our committee.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GONZALEZ).

Mr. GONZALEZ. Mr. Speaker, I thank the distinguished gentleman from Virginia for his generosity.

Mr. Speaker, I rise principally in order to support the position expressed by the very able gentleman from New Jersey (Mr. MINISH).

Notwithstanding to the contrary the explanation given by the distinguished chairman of the subcommittee, the gentleman from New York (Mr. STRATTON), is correct in that the House conferees did narrow the scope of the amendment so that the Vinson-Trammell exemption only applies to those contracts where final payment occurs before October 1, 1981.

However, the exemption still exists no matter how narrowly it is drawn, and thus for the first time in 50 years we are going to remove the final tool that the American people have had to check on the profits of a number of defense contractors.

And the end result of this amendment will be that we will have set a precedent for eventually removing all protections we have in dealing with the $70 billion defense industry. I cannot believe that this action is in the best interests of the American people.

I am afraid that despite a bill that I will have to vote for because it is of such a serious nature to our vital defense, it leaves the country stripped naked of any protection from the war profiteer, which we still have amongst us. Not since Lincoln's day and the result of the passage of Lincoln's Act, you will recall Lincoln became incensed when he discovered some war profiteering going on around the Capitol here and he had cause to have the Lincoln Act passed, which was our only protection until the beginning of World War II; but since then we have had some law on the statute to guard against the out and out war profiteer.

I want my fellow Members to realize that in the passage of this bill, sneaked in and layered in as a sleeper clause, is this very tricky proviso having to do with the Vinson-Trammell Act.

Mr. STRATTON. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Speaker, the gentleman from Texas is a good friend of mine. I would not want to have the gentleman leave in the record a misunderstanding as to what the conference report has actually done on the matter of the Vinson-Trammell Act. The fact of the matter is that if there was any sneaking in the conference, it was the conferees on the part of the House who managed to insert in this section that in effect would prevent the kind of exemption that the gentleman from New Jersey has been worried about. The Senate's original provision did provide a long period of contracts that would be exempt. But the gentleman from Texas can be happy that the House conferees succeeded in amending the original version so that in fact no defense contracts will be exempt. He can really put his mind at rest on this point.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 1 minute to the gentleman from Virginia (Mr. DAN DANIEL).

Mr. DAN DANIEL. Mr. Speaker, I thank the gentleman for yielding. This conference report contains a provision which I hope and believe will add to our military readiness, both short term and sustained.

Heretofore the authorizing committees of the House and Senate have not taken an indepth look at our operations and maintenance accounts and other readiness matters. Hereafter this will be done.

We have a fine fighting force, but it is on paper. We are not ready. Hopefully the implementation of this provision will correct this deficiency.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Mr. Speaker, I rise in opposition to the DOD authorization conference report, H.R. 6974. Obviously, in any $52.8 billion measure, including the $35.8 billion procurement and $16.9 billion research authorization in this conference report, a Member of Congress can find some fault.

I think it is incumbent upon us to seek a balance of the various programs and commitments. As an example, I agree with the increased maintenance and operation commitment reflected in this measure but in the final analysis, this total measure lacks the essential balance that should exist in our major military procurement and research authorization.

Based on the analysis of a number of key procurement programs, I find serious flaws that result in commitments to unworthy programs. One of the most glaring examples is the FA-18 in which the cost projections of the program have spiraled from $6 million per plane in 1975 to $26 million in 1981. At the same time, the specifications for the FA-18 are being weakened and the program misses deadline after deadline and yet serious technical problems persist.

Congress cannot responsibly discipline spending unless we more closely analyze the impact of defense spending, especially the procurement and research aspects of defense commitments.

I regret sincerely that the only avenue today is to vote against this measure. I led a number of members, for example, unsuccessfully seeking hearings before the House authorization committee to uncover the problems with the FA-18. We were somewhat successful in testimony before the defense appropriation subcommittee.

The members of the authorization and appropriation committee have obvious problems with meeting the request for hearings over defense matters because of their scope and dimension. Clearly all Members of this House share the responsibility to engage more intensely in oversight of the defense program and its impact on our budget and ability to maintain our viability as a leader of the free world.

This measure, H.R. 6974, I believe moves us down a road in the wrong direction where we are not holding close enough accountability over a variety of programs and the performance of contractors.

Raising the dollars committed by itself in the short term will not result in the near term for the lack of proper planning and will instead result in imprudent commitments and cause the authorization of faulty initiatives and programs awash in a sea of undisciplined spending.

A "no" vote on the conference would surely send this measure back to conference where a tempered discipline of these defense procurement spending programs might yet be attained in this year.

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I have no further requests for time.

Mr. PRICE. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes apoeared to have it.

Mr. DICKS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic de-

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vice, and there were—yeas 360, nays 49, not voting 23, as follows:

[Roll No. 489]

YEAS—360

Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Boggs
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Butler
Byron
Campbell
Carney
Carter
Chappell
Cheney
Clausen
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kasen
Kelly
Kemp
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCormack
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Mitchell, N.Y.
Moakley
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Ratchford
Regula
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rostenkowski
Roth
Royer
Rudd
Russo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stratton
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Volkmer
Walgren
Walker
Wampler
Waxman
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—49

Baldus
Bedell
Bellenson
Bingham
Bonior
Brodhead
Burton, John
Burton, Phillip
Carr
Cavanaugh
Chisholm
Clay
Collins, Ill.
Dellums
Drinan
Early
Edwards, Calif.
Forsythe
Garcia
Gephardt
Gray
Johnson, Colo.
Kastenmeier
Kildee
Leland
Lundine
Maguire
Markey
Minish
Mitchell, Md.
Moffett
Nolan
Obey
Ottinger
Rangel
Reuss
Richmond
Rodino
Rosenthal
Roybal
Sabo
Seiberling
Stark
Studds
Vanik
Vento
Weaver
Weiss
Yates

NOT VOTING—23

Abdnor
Anderson, Ill.
Cleveland
Conyers
Daschle
Dodd
Evans, Ga.
Fenwick
Ford, Mich.
Holtzman
Leach, La.
Lederer
McCloskey
McDade
Mollohan
Moorhead, Pa.
Murphy, N.Y.
Myers, Pa.
Rousselot
Stokes
Thompson
Watkins
Young, Alaska

□ 1500

The Clerk announced the following pairs:

On this vote:

Mr. Thompson for, with Mr. Stokes against.
Mr. Lederer for, with Mr. Conyers against.

Until further notice:

Mr. Murphy of New York with Mr. Abdnor.
Mr. Mollohan with Mrs. Fenwick.
Mr. Moorhead of Pennsylvania with Mr. Leach of Louisiana.
Mr. Myers of Pennsylvania with Mr. McCloskey.
Mr. Dodd with Mr. McDade.
Mr. Daschle with Mr. Watkins.
Mr. Evans of Georgia with Mr. Rousselot.
Mr. Ford of Michigan with Mr. Young of Alaska.

Mr. CONTE changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PRICE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the bill, H.R. 6974, the Department of Defense Authorization Act of 1981.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 6721, AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1980

Mr. DERRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1255) on the resolution (H. Res. 769) providing for the consideration of the bill (H.R. 6721) to provide for the improvement of the Nation's airport and airway system, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 7668, INTELLIGENCE OVERSIGHT ACT OF 1980

Mr. DERRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1257) on the resolution (H. Res. 771) providing for the consideration of the bill (H.R. 7668) to strengthen the system of congressional oversight of the intelligence activities of the United States, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 6628, NUCLEAR REGULATORY COMMISSION AUTHORIZATION, FISCAL YEAR 1981

Mr. DERRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1254) on the resolution (H. Res. 768) providing for the consideration of the bill (H.R. 6628) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 6806, AMENDING INTERNAL REVENUE CODE OF 1954 REGARDING TREATMENT OF PUBLIC UTILITY PROPERTY

Mr. DERRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1256) on the resolution (H. Res. 770) providing for the consideration of the bill (H.R. 6806) to amend sections 46(f) and 167(l) of the Internal Revenue Code of 1954 regarding the treatment of public utility property and to provide a transitional rule with respect thereto, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 6417, SURFACE TRANSPORTATION ACT OF 1980

Mr. DERRICK, from the Committee on Rules, submitted a privileged report

(Rept. No. 96–1253) on the resolution (H. Res. 767) providing for the consideration of the bill (H.R. 6417) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes, which was referred to the House Calendar and ordered to be printed.

CONFERENCE REPORT ON H.R. 5168, MILITARY PERSONNEL AND COMPENSATION AMENDMENTS OF 1980

Mr. NICHOLS. Mr. Speaker, I call up the conference report on the bill (H.R. 5168) to extend certain expiring provisions of law relating to personnel management of the Armed Forces.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of August 19, 1980.)

The SPEAKER pro tempore. The gentleman from Alabama (Mr. NICHOLS) will be recognized for 30 minutes, and the gentleman from New York (Mr. MITCHELL) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama.

□ 1510

Mr. NICHOLS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased today to bring to the House the conference report on H.R. 5168—a bill originally designed to extend certain expiring personnel management authorities. The conference report includes not only these extensions but also a number of critically needed improvements to the military compensation system.

We have all become aware of the growing number of manpower problems being experienced in the Armed Forces today. These include significant year-of-service maldistributions, skill shortages, and recruiting shortfalls—in terms of quantity and, possibly, quality—in the active force and significant and pervasive shortfalls in the reserves.

I believe the solution to these problems lies in focused attempts: First, to modify compensation for those specific categories of personnel in which identifiable problem exist; and second, to remove financial irritants associated with military service that adversely affect the individual member's decision to continue on active duty.

The amendments to H.R. 5168 follow this approach.

As you know, significant problems exist in retention of pilots; the amendments would increase flight pay by 25 percent.

The Navy exhibits critical shortfalls in its mid-career petty officer force—possibly the most significant manpower problem today; many of these shortages occur in the seagoing ratings. The amendment addresses these problems by providing significant immediate increases in sea pay. I might also note that the Senate included a provision that would extend eligibility for selective reenlistment bonuses to those enlisted members in critical skills who possess 10 to 14 years of service. This provision was not included in this conference report because a broader provision encompassing this provision was included in the conference report on H.R. 6974.

These amendments would focus compensation on identified problem areas recognizing that not all services are experiencing the same problems or the same degree of problems nor are these problems extant in every career field.

The amendments would also address irritants suffered by career military personnel. For example, the current ceiling on reimbursement for mileage in conjunction with a permanent change of station move would be removed. In addition, a new allowance, a variable housing allowance would provide an additional payment to military personnel stationed in high-cost areas of the United States. These two provisions would assist the service member in meeting personal expenses incurred as a result of the military's way of doing business.

A number of other provisions are contained in the conference report that correct anomalies in current law. For example, authority would be provided for Army and Air Force reserve enlisted personnel to retire with an immediate annuity after 20 years of active duty. Current law does not provide this authority which does exist for reserve enlisted members of the Navy and Marine Corps and for Regular and Reserve officers of all services.

The variable housing allowance is the major improvement to military compensation included in the conference report. Authority to provide this allowance would be provided from October 1, 1980. Effective for fiscal year 1982 and thereafter, however, the variable housing allowance would become an entitlement with a specific formula provided in law. It is the conferees' strong desire and intent that the variable housing allowance be implemented no later than October 1980, and that the level of payments be substantially the same as it would be if the entitlement were to begin on October 1, 1980. The specific formula is not being recommended by the conferees during the first year only to permit the Secretary of Defense flexibility in addressing unforeseen problems that may arise as a result of implementation of such a new, substantial program.

Mr. Speaker, the conference report on H.R. 5168, together with other actions affecting military compensation being considered simultaneously, will, I believe, have a very substantial impact on stabilizing and reversing the manpower problems we face today. Consequently, I strongly urge the Members to support the conference report on H.R. 5168.

Mr. MITCHELL of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 5168. This will represent a great stride forward in terms of addressing some of our critical military manpower problems.

In 12 major seagoing ratings (for pay grades E–5 through E–9), the Navy has only 56 to 83 percent of required strength. The Navy needs 298,000 petty officers but only has 276,000— a shortage of 22,000. The Navy has only 9,000 pilots but needs 9,700. The Air Force will be 14 percent short of pilots by fiscal year 1982, and it is little wonder considering that the continuation rate for Air Force pilots from the 6th to the 11th year of service was only 25 percent in fiscal year 1979 compared to an objective of 59 percent. Retention of second term Air Force enlisted members dropped from 75 percent in fiscal year 1975 to 60 percent in fiscal year 1979. Retention of careerists fell from 97 to 91 percent that same period.

Although we face a range of manpower problems, the most pressing are retention problems. The amendments that were added to the original version of H.R. 5168 address the retention problem directly. Increased flight pay and sea pay will have a favorable effect on two of the most significant personnel shortages we are experiencing. These shortages will not be removed overnight, but the provisions in the conference report will surely result in substantial improvements.

Retention of individual members is also influenced by how they perceive they are being treated by the military service in terms of being "reimbursed" for expenses resulting from their employment.

The conference report removes the statutory ceiling on reimbursement for mileage in conjunction with a move—an expense incurred only because of military orders. This amendment focuses additional compensation directly to the point at which it is needed: The member who incurs the expense.

The centerpiece of the conference report is the variable housing allowance. This provision authorizes an additional allowance for members stationed in a high-cost area equal to the difference between the average cost of housing in that area and 115 percent of the member's basic allowance for quarters. This provision will be especially valuable to members assigned to areas like Washington, D.C., San Diego, Calif., and New York City.

Several conferees, I was one of them, felt we should remove the discretionary authority from OMB for the variable housing allowance—that we should make this program an entitlement immediately. However, the majority prevailed and the precise formula is not made a part of the statute the first year. But let me assert strongly that it is the unanimous intent of the conferees that this program be implemented fully in October 1980. Implementation of this program could conceivably result in some unusual circumstances that could not be foreseen at this time. The majority felt flexibility to handle these circumstances should be provided for that reason, and that reason only.

Delays in the effective date or partial implementation would be entirely inconsistent with the expressed intent of the conferees.

It took the administration a long time to recognize the necessity for, and value of, these congressional initiatives, but the President finally expressed his support when he visited the U.S.S. *Nimitz*

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on Memorial Day. It is now imperative that the Congress, and the President, follow through on the commitments made to our military personnel at that time.

Mr. Speaker, I urge all Members to support the conference report.

Mr. Speaker, I yield 3 minutes to the gentleman from Alabama (Mr. DICKINSON).

Mr. DICKINSON. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as the ranking member of the Special Subcommittee on NATO Standardization, Interoperability, and Readiness of the Committee on Armed Services, I would like to point out that the subcommittee returned recently from a visit to four different NATO countries. In England we met with the Defense Minister and other senior defense officials. One of the most important things I learned, and I think this was the case for all of us on the trip, was that the United Kingdom was having the same problems in regard to retention of military personnel. They found that the loss of highly trained personnel was one of the most expensive drain on their defense budget.

They have had our experience of recruiting personnel, spending thousands and thousands of dollars training them to do a technical job in today's technical warfare scenario where we have rockets, computers, tanks, and aircraft—providing them with desirable and rare marketable skills—only to lose them to industry. We have trained them, given them valuable skills and then after they have gained experience and we need them most as valuable members of the defense team, they leave for better pay and benefits in civilian life. Trained personnel have been leaving our services in droves just as in the case of the British.

The thing the British told us that was most impressive to our group was that within the past 3 years they have given their military a 33-percent raise. Last year they gave an 18-percent raise to their middle-career military personnel. They said they were astounded by the results—that the massive loss and outward flow of skilled personnel had modified to the point where it is no longer a great problem.

The British identified two things that were most important in retention—and that is what we are talking about here today and that is what this committee has been working on. One was self-pride, self-esteem, and on the esteem in which service personnel are held in the community.

□ 1520

How the military was regarded in the community, whether or not military people are regarded as second-class citizens or first-class citizens. Military people, like the rest of us, want to be treated like first-class citizens. The second point is just as important. They want to be able to pay their bills and provide their families a decent life. That is part of being a first-class citizen.

The SPEAKER pro tempore. The time of the gentleman from Alabama has expired.

Mr. MITCHELL of New York. Mr. Speaker, I yield 1 additional minute to the gentleman from Alabama.

Mr. DICKINSON. So, I think what the committee has proposed to do and what the committee proposes to do now, is to recognize the worth of those in uniform, and to give them adequate compensation, at least with a reasonable comparability to the civilian sector, and to stop the drain and erosion of our trained personnel. The British have done this and their personnel erosion has dropped to a trickle.

They feel that they have conquered their problem. I think this is what we are trying to do—and this legislation would be a giant step in that direction.

I certainly support the efforts of the committee whose members worked long and hard on this bill, and I would certainly ask all my colleagues to vote in support of the bill.

Mr. NICHOLS. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. DICKS), who has been a strong supporter over the years of the military.

Mr. DICKS. Mr. Speaker, I want to take this opportunity to congratulate the conferees, and in particular the gentleman from Alabama, Chairman NICHOLS and the ranking member Mr. MITCHELL, for their dedicated efforts in seeing the Nunn-Warner military compensation provisions included in this conference report enacted.

I am particularly pleased that the important variable housing allowance has been established as an entitlement beginning in October of next year. For too long we have witnessed the phenomenon of the "geographic bachelor" who must leave his family behind, because quarters allowances are not adequate to provide even modest housing for them in high cost areas. This and the other provisions of Nunn-Warner included in this report are an important first step toward addressing the serious manpower problems we face in our armed services. Its enactment will provide a clear signal that the Congress recognizes that adequate compensation, while not the only necessary ingredient in healthy recruitment and retention, is certainly a primary ingredient.

I am encouraged by the growing attention to this important aspect of our defense posture. Just last year, few either inside or outside the Congress had focused on the real implications of adverse trends in the retention of skilled career personnel. I am happy to say that the members of the Armed Services Committee were a notable exception to this lack of focus.

Now the issue is the subject of countless newspaper editorials, television specials, and has even made the cover of Time. The change of heart from the President regarding this package is particularly welcome.

Important as Nunn-Warner is, we must not fall into the trap of thinking it solves the compensation problem, and that we can go back to the old habits of cutting back benefits and placing artificial pay caps on the military in order to trim dollars from the Federal budget. The task of making the military an attractive career option once again will not be an easy one. A recent analysis by the Congressional Budget Office indicates that correction of the over 70,000 noncommissioned officer shortfall, will take several years and much additional effort.

The House Defense Appropriations Subcommittee on which I serve will be doing its part. We will be recommending, in addition to full funding for these Nunn-Warner provisions, additional funds for reenlistment bonuses and an endorsement of the average 11.7-percent pay raise.

In the longer term, we must closely examine the entire range of military compensation to determine what course will provide the greatest return in terms of improved retention of quality individuals. Two areas which I feel deserve special attention are improvements in medical benefits and in educational incentives.

I am aware that the defense authorization conference report includes the Senate enacted provision calling for a test of various educational options to determine their effectiveness. One of these options, forgiveness of student loans in exchange for service commitments, holds special promise in my judgment since it provides an incentive to remain in the service and will attract those with a higher level of education, especially among the junior college level. I intend to work to see that this test is implemented.

Literally thousands of service people are watching what we do on this issue. Those who have extended their service commitment by less than a full enlistment of 2 years has increased dramatically over the last 2 years. In the Navy alone, the number has tripled to nearly 16,000. These people are waiting to see if the new rhetoric on compensation is followed through with concrete action. The provisions of H.R. 5168 provide the foundation, and in my judgment are among the most important steps we can approve for strengthening our real defense capabilities.

I am confident that this body will approve this report and that we can proceed on toward further steps on this critical issue.

This action will provide real steps toward improving our All-Volunteer Forces.

Again, Mr. Speaker, I want to congratulate my distinguished chairman for his efforts, and commend the efforts of Mr. MITCHELL of New York, the ranking minority member, and the other members of the committee as well.

Mr. NICHOLS. Mr. Speaker, I just want to commend the gentleman from Washington State, who is an important member of the House Committee on Appropriations. We know of his strong support over the years in behalf of military compensation, and want to thank him for his statement.

Mr. MITCHELL of New York. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia (Mr. TRIBLE).

Mr. TRIBLE. Mr. Speaker, I rise to join my colleagues today in applauding the efforts of the conferees in confronting what I regard to be the most serious problem facing our national defense today, the retention of highly skilled, trained military personnel.

Nunn-Warner and the other congressional initiatives will help, but they simply will not answer the military manpower problems that we face. We must do more.

Indeed, a computer simulation of the effects of Nunn-Warner recently completed by the Department of the Navy indicated that the impact of current congressional initiatives on retention will be minimal. I repeat the word, minimal. Only a substantial increase in military pay and allowances correlates positively with personnel retention.

□ 1530

So while I welcome Nunn-Warner and the other current congressional actions, it must be emphasized that these initiatives will not solve our retention problems. These manpower problems will not go away. They are squarely before this Congress, and it is vital that we act.

I call to the attention of my colleagues legislation, the National Defense Compensation Act, which the gentleman from Florida (Mr. BENNETT) and I have introduced in this body, and Senator ARMSTRONG in the other body. This legislation would increase in real terms pay and allowances to career men and women in our armed services. The National Defense Compensation would repeal the President's authority to impose caps on military cost-of-living increases, provide catch up increases for loss of earnings to inflation because of prior year caps, and provide increases in the most critical specialty areas.

A majority of the members of the Committee on Armed Services and indeed a majority of the members of the Subcommittee on Military Compensation have cosponsored this legislation.

Our bill enjoys broad bipartisan support because our colleagues know that only a meaningful pay increase will stem the exodus of skilled and highly trained personnel from our armed services.

This is the only answer. Real increases in military pay, as expensive as they might be, as difficult as they might be for this body to enact, are the only answer.

So let me say in conclusion, Mr. Speaker, that I want to applaud the chairman of the subcommittee and the ranking Republican member for their efforts. But let this be only a first step. Military manpower problems will continue to plague us unless and until this body gathers the courage to increase military pay and allowances.

I would hope that the good gentleman from Alabama (Mr. NICHOLS) will give this matter every consideration and hold prompt hearings on legislation to increase military pay and allowances.

Mr. Speaker, I yield back the balance of my time.

Mr. MITCHELL of New York. Mr. Speaker, I yield 5 minutes to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Speaker, I, too, hope, as the gentleman from Virginia (Mr. TRIBLE) expressed, that this will be the first step in perfecting and improving the situation in our Armed Forces. This bill to increase military pay and allowances is long overdue.

Retention rates for pilots in the Navy and Air Force are lesss than half the required number.

The Navy is having serious difficulty retaining adequate numbers of submariners and surface warfare personnel, and Air Force are less than half the required numbers of engineers and navigators.

As a result of declining reenlistment rates among second and third termers, our Armed Forces currently have a shortage of more than 73,000 noncommissioned officers.

In my capacity as a member of the House Budget Committee's task force on defense and international affairs, I have visited many U.S. military installations and ships at sea over the past several years.

I can personally attest to the fact that this retention problem, this shortage of critically skilled personnel in our military services, has directly resulted from the Government's failure to provide adequate pay for military people on a par with pay earned by civilian counterparts of comparable age and education in business and industry.

I say this legislation is long overdue, because the inability of our military services to attract and keep a sufficient number of high-quality personnel to perform their worldwide mission has been known for several years.

Yet the Carter administration, until the President's recent visit to the U.S.S. *Nimitz*, where he reversed his position on this issue, had steadfastly opposed military pay increases proposed here.

There was even talk among top echelons of the administration of a Presidential veto of this bill as late as a week before the President's speech in support of the Nunn-Warner amendments aboard the *Nimitz*.

This failure of the Carter administration to recognize the needs of our military personnel, and to get behind better pay for our men and women in uniform, has had a very negative impact on service morale and the defense readiness of our Nation.

Had the President supported this measure at the outset of his administration 3½-years ago, when the all-volunteer military started to experience the serious manpower problems that have now reached such disgraceful proportions, this situation could have been avoided.

Congress cannot allow insufficient pay to continue driving high quality people out of the service.

No matter how sophisticated, weapons cannot be effectively operated and maintained without sufficient numbers of qualified people.

This legislation will help to rectify the military pay problem that has undermined our national security and will help reestablish our commitment to the preservation of a top quality career military service.

I urge adoption of the conference report.

Mr. Speaker, I would like to commend the hard work and the dedication that has been displayed by the subcommittee chairman, the gentleman from Alabama (Mr. NICHOLS), and by the ranking minority member, the gentleman from New York (Mr. MITCHELL). I thank them for their work in this regard. I applaud them, and again I do urge support for the conference report.

Mr. NICHOLS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Florida (Mr. BENNETT), the chairman of the Subcommittee on Seapower.

Mr. BENNETT. Mr. Speaker, the bill before us, represented by this conference report, is an excellent bill. It addresses specific items where needs have arisen, and they are addressed with precision and care. I congratulate the subcommittee on its fine work in bringing this bill before us. Together with the bill which has just been passed, the conference report we considered before this, the procurement bill containing a general pay raise, we have indeed made a major step forward in addressing the need for increased emoluments for the people in the armed services.

However, in all honesty, despite the very material steps forward which these two bills provide, and despite the tremendous needs of the national defense for ships, planes, missiles, tanks, and other items, there still is a very great residual need for additional benefits to the average man and woman in the armed services. Therefore, I hope the Congress will address this issue, preferably before the end of this Congress but certainly in the next Congress, which I think will probably be a more defense-minded Congress than the one that now exists.

If all Members of Congress are reelected, as they may be, it is my opinion that their constituents will demand a stronger national defense stance from the Congress as a whole.

I do sincerely hope the Congress will soon address this question further and obtain even more adequate pay to stimulate people to remain in the services, where they are desperately needed.

In saying this, Mr. Speaker, I am in no way downgrading the legislation which has been passed in this Congress, because I think it has been done very thoughtfully, very carefully, and with great precision and great ability. I congratulate the subcommittee on its work.

So, I rise in strong support of the conference report on H.R. 5168. I am very keenly aware of the manpower problems we face, particularly in the Navy. Shortages in our career petty officer force are having an adverse impact on our ability to send our ships to sea. Significant problems exist in retention of pilots and other personnel in compensation areas.

H.R. 5168, as reported for conference, in terms of both the personnel management and compensation provisions, will have a very substantial and positive impact on our military personnel.

Mr. Speaker, I urge strong support for the conference report on H.R. 5168.

Mr. NICHOLS. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. DOWNEY).

Mr. DOWNEY. Mr. Speaker, I thank the gentleman for yielding me this time.

I want to congratulate the gentleman on the work that the subcommittee has done on this bill. It was my good fortune

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for two terms to serve on the Subcommittee on Military Compensation, and I miss the work.

I think, in our rush to provide more money and improve the armed services, all of which needs to be done—we have talked at length hereabout the retention needs and the problems we have in the services, and there are a couple of problems we still need to focus on—the fact is that we have a retirement system that costs us $14 billion this year and increases by almost $900 million a year, and there is not going to be any abatement in that between now and the year 2000.

We are retiring the very people we need to retain. The average retirement age of a noncommissioned officer is age 39. He is certainly capable of fighting at that age, and I would dare say that if I were going to go into combat, I would want that sort of experience rather than losing it by retirement.

The average age of a retired officer who serves 20 years is age 43. All of this on top of the retention problem, on top of the fact that retirement costs us $14 billion.

Let us address the force structure. We have never taken a hard look or had the courage to do anything about our force structure. We have as many flag-ranked officers in our Army, Navy, and Air Force today, with 2.5 million folks under arms, as we had at the end of World War II, when we had 11.3 million men under arms.

We can go out to any Air Force base and walk on a B-52 and find a captain and a lieutenant in the cockpit and find a lieutenant colonel doing the electronic countermeasures. That is crazy. We should have the highest ranking officer flying that airplane so that there is no doubt in anybody's mind who is in charge.

Mr. Speaker, the gentleman from Alabama (Mr. NICHOLS) has done yeoman work in this regard on retirement and on other things, but let us not kid ourselves. Throwing money at this problem is not going to solve it. There are a lot of things relating to management that need to be done and done quickly.

□ 1540

Mr. NICHOLS. Let me respond, if I might, to the gentleman from New York, and say to him that we miss his expertise on the committee and the sound advice he has always provided.

I am not here to defend the number of generals or admirals that we have. I have heard it alleged, that we have as many or maybe more generals and admirals than we had in World War II. I would remind the gentleman that the military today is much more technically oriented than it was some 35 or 40 years ago. We have many more major procurement problems today. It is a more technical army. We have more research and development.

I would say to the gentleman that the figures that I have are that presently we have some 1,119 flag officers in the armed services. Under provision of the bill some 2 years ago, that figure is scheduled to drop to 1,073 by October 1981.

● Mr. WOLFF. Mr. Speaker, today, the House is scheduled to consider conference reports on two bills which are of vital importance to the defense of our Nation: The Department of Defense Authorization Act and the Military Personnel and Compensation Amendments of 1980. I support the provisions of the Authorization Act as they relate to the procurement of needed weapons and materiel—it is clear that our military must have the best tools available to accomplish its mission. At this time, however, I would emphasize my strong support for those provisions of H.R. 6974 and for H.R. 5168, the personnel and compensation amendments, which focus attention on the severe problems which face our Armed Forces in the area of recruitment and retention of highly qualified military personnel.

Initially, I would note that I opposed the legislation earlier this year to resume peacetime selective service registration. I have always opposed a draft in peacetime and I opposed draft registration because of my conviction that such a proposal would not solve the real personnel problems which face our military. Registration certainly will not even address the problems of retention of trained personnel within the services. Yet, if we are to provide adequately for the national defense, we must make the All-Volunteer Army effective and of a size necessary to respond to a national emergency.

When the move toward a Volunteer Army was made in 1970, there was confidence that our military forces could be maintained at a sufficiently high level through volunteer enlistment. Yet in 1979, for the first time since the AVF was established, none of the armed services had achieved its recruiting objective. Overall, the armed services fell short of the goal by almost 25,000. In the 7 years since the end of the draft, the number of active duty military personnel have dropped almost 16 percent from 2.3 million to about 2 million men and women.

The problems in recruitment represent only one side of the personnel difficulties in today's military. Retaining qualified individuals is the other half. Approximately 30 percent of today's male enlistees do not even complete their first term of enlistment. Moreover, the services have been losing an average of more than 75 percent of those completing their first enlistment since 1976. Within the different service branches, the story is the same or worse. More than 90 percent of all first-term personnel did not reenlist in the Marine Corps in 1979, while 80 percent did not reenlist in the Air Force during the same period. Over the past few years, the second-term retention rate in the Air Force has declined from 75 to 59 percent, in the Navy from 64 to 45 percent, and in the Marines from 47 to 45 percent. These examples attest to the seriousness of the problem and have led to critical shortages in all branches of the service of midlevel NCO's, pilots, technicians, and personnel in needed specialties. Losses of these experienced men and women are difficult to compensate for through recruitment. For every man or woman who reenlists after their third tour, the services need four fewer recruits to be trained to take their places.

Mr. Speaker, in the debate which has proceeded in the Nation and in this House on this issue in the past year, much has also been said about the relative quality and ability of the individuals currently being recruited. While I remain fully confident that the caliber of our military personnel is very high, this must be a concern in an era of the increasing complexity of arms and weapons systems. We must insure that our fighting men can utilize effectively the technology which helps us remain No. 1 in terms of our military strength. Yet it should not be too surprising that such concerns have made such headway, for the prime reason that these problems exist is that we have allowed military pay and benefits to lag far behind levels commensurate with the need to attract highly qualified men and women into the ranks of our Armed Forces.

The need for a better level of compensation for our men and women in uniform can be seen dramatically with a few examples of situations which exist for personnel who are, at this moment, on the front lines in defense of the interests of this Nation; 12 of the 13 Marines taken hostage in Iran have been paid below what the Bureau of Labor Statistics says is necessary to maintain a lower standard of living; their average salary of $8,200 is 30 percent below this lower standard, and their hourly earnings for a typical 60-hour workweek are markedly less than the $3.10 minimum wage. All 13 Marine hostages, who risked their lives in guarding the Embassy, make 40 percent less than the average foreign employee in an overseas U.S. Embassy.

A plane handler on the nuclear-powered U.S.S. *Nimitz*, a carrier recently deployed to and returned from the Indian Ocean during the Iranian crisis, normally works 16 hours a day or about 100 hours per week. At that rate, he makes less per hour than a cashier at McDonald's, lives below the poverty level and is eligible for food stamps. As a bonus, he has probably not seen his family for 6 months. A chief petty officer on that same ship with 17 years of service makes the same salary as a janitor on union scale and puts in twice as many hours.

While the real earnings of military officers have been falling, civilian workers have been enjoying steady raises. Between 1972 and 1978, real earnings jumped 12 percent for a blue-collar Federal employee and 6.3 percent for unionized labor in private industry.

In comparing the scales of military and civilian workers, one finds the following disparities: A military police sergeant with 5 years of service receives an annual stipend of $13,200 while a sergeant in a city police force often makes $20,000. A boiler technician with 10 years of military service makes $15,200, while his counterpart in the private sector receives an annual salary of $22,700. A computer programmer makes $23,000 as a private worker, $8,500 more than if he or she worked in the military. The largest difference in salary is between pilots working in the military and those in private industry. An air force pilot, a captain with 8 years of service, makes $27,800 per year. A copilot for a major airline receives an annual salary of $48,000—a hefty $20,200 or about 50 percent more than his military counterpart.

Inadequacies in pay place a particularly heavy burden on our soldiers on overseas duty—especially in Europe. The pressures and loneliness of life in a foreign land can often lead to boredom and alienation among young soldiers with few outlets for recreation or social activity that they can afford. One outlet which is often available is the flight into drug abuse—and the severity of this problem, I believe, is directly attributable to the low standard under which they must exist.

A recent study by the Select Committee on Narcotics Abuse and Control, which I chair, noted that the situation for our troops in Germany is such that "for those who do leave the military post, and seek entertainment in the German economy, the current value of deutsche marks relative to the American dollar has made it prohibitively expensive. The young recruit's dream of travel in a foreign land, fostered by recruiting advertisements, is cruelly turned into a nightmare when faced with the reality of cost." Problems of drug abuse, poor morale, and other personnel problems can be attributed to the low pay and benefits received. Such problems affect the readiness and effectiveness of our military forces and should underscore the need for action to redress this serious situation.

Given situations like these, it is not surprising that the services cannot meet recruiting quotas and that career people are leaving the armed services in record numbers. It is especially the loss of skilled personnel, midlevel officers and NCO's that is the hardest to cope with. Many of these individuals are dedicated and sincere in their desire to remain in the service, but cannot pass up opportunities in the private sector which will enable them to provide better livings for themselves and their families.

It is in this context, then, that the debate has proceeded in the Congress over the past year. I wish to commend my colleagues on the Armed Services Committee, and in the other body, who have grappled with these issues in the conference committee. The reports which they have filed, I believe, offer concrete solutions to the personnel problems which face our military. The provisions of the conference reports do not represent complete and final answers to these problems, but I trust that they will be a major step forward in meeting our peacetime military needs without recourse to the draft.

Provisions in the DOD Authorization Act include a long-needed pay increase of 11.7 percent for active duty personnel. In addition, the reports provide for increases in bonuses offered personnel upon reenlistment, and increases in per diem expenses for temporary travel duty. The report also includes important improvements in the civilian health and medical program for the uniformed services (CHAMPUS). One of the most important benefits offered to military personnel and their dependents is the provision of health care services. Yet shortages of medical personnel and inadequacies in the current CHAMPUS program too often have forced military families to resort to private medical care which they must pay for out of pocket. The provisions in the legislation to include medical exams and immunizations for young children and increases in cost sharing for handicapped dependents will help to alleviate some of the problems in this area.

The steps to address the personnel problems are significantly expanded upon by provisions contained in the conference report on the Military Personnel and Compensation Amendments of 1980. The report sets out increases in key areas that should assist in the retention of skilled personnel within the ranks. Included are a 25-percent hike in aviation career incentive pay, an increase in sea pay rates, and a 10-percent increase in the basic allowance for subsistence.

Also included are important provisions to ease burdens on military families by authorizing a variable housing allowance, effective October 1, designed to provide the difference between the average cost of housing in a high cost area in the United States and 115 percent of the members' basic allowance for quarters. This will help military personnel provide adequate housing for their families at stations where insufficient on-base housing exists.

I vigorously support these steps to address the causes of our problems with recruitment and retention of military personnel. Our action in this regard, I hope, will show our men and women in uniform that the Congress is serious in recognizing the difficulties that they must face in their service to the Nation. Yet the passage of these two measures will, as we all know, not solve the problem completely or for all time. Continued study and investigation of ways to improve our military forces must be undertaken if we are to be sincere in our concern. I will continue to be interested in needed actions to meet the personnel problems short of a peacetime draft and stand ready to support and work for legislation to adequately meet these needs.●

Mr. NICHOLS. Mr. Speaker, I have no further requests for time.

Mr. MITCHELL of New York. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. NICHOLS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 399, nays 0, not voting 33, as follows:

[Roll No. 490]

YEAS—399

Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Bogg
Boland
Boling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Chappell
Cheney
Chisholm
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCormack
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar

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Obey	Santini	Taylor
Ottinger	Satterfield	Thomas
Panetta	Sawyer	Traxler
Pashayan	Scheuer	Trible
Patten	Schroeder	Udall
Patterson	Schulze	Ullman
Paul	Sebelius	Van Deerlin
Pease	Seiberling	Vander Jagt
Pepper	Sensenbrenner	Vanik
Perkins	Sharp	Vento
Petri	Shelby	Volkmer
Peyser	Shumway	Walgren
Pickle	Shuster	Walker
Porter	Simon	Wampler
Preyer	Skelton	Waxman
Price	Smith, Iowa	Weaver
Pursell	Smith, Nebr.	Weiss
Quayle	Snowe	White
Quillen	Snyder	Whitehurst
Rahall	Solarz	Whitley
Railsback	Solomon	Whittaker
Rangel	Spellman	Whitten
Ratchford	Spence	Williams, Ohio
Regula	St Germain	Wilson, Bob
Reuss	Stack	Wilson, Tex.
Rhodes	Staggers	Winn
Richmond	Stangeland	Wirth
Rinaldo	Stanton	Wolff
Ritter	Stark	Wolpe
Robinson	Steed	Wright
Rodino	Stenholm	Wyatt
Roe	Stewart	Wydler
Rose	Stockman	Wylie
Rosenthal	Stratton	Yates
Rostenkowski	Studds	Yatron
Roth	Stump	Young, Fla.
Roybal	Swift	Young, Mo.
Royer	Symms	Zablocki
Rudd	Synar	Zeferetti
Russo	Tauke	
Sabo	Tauzin	

NOT VOTING—33

Abdnor	Hall, Tex.	Myers, Pa.
Anderson, Ill.	Holtzman	Pritchard
Cavanaugh	Leach, La.	Roberts
Cleveland	Lederer	Rousselot
Conyers	McCloskey	Shannon
Daschle	McDade	Stokes
Devine	Marriott	Thompson
Dixon	Michel	Watkins
Dodd	Mollohan	Williams, Mont.
Duncan, Tenn.	Moorhead, Pa.	Wilson, C. H.
Evans, Ga.	Murphy, N.Y.	Young, Alaska

□ 1550

The Clerk announced the following pairs:

Mr. Thompson with Mr. Abdnor.
Mr. Roberts with Mr. Marriott.
Mr. Lederer with Mr. Pritchard.
Mr. Mollohan with Mr. Young of Alaska.
Mr. Murphy of New York with Mr. Michel.
Mr. Myers of Pennsylvania with Mr. Devine.
Mr. Moorhead of Pennsylvania with Mr. Cleveland.
Mr. Stokes with Mr. McCloskey.
Mr. Cavanaugh with Mr. Rousselot.
Mr. Daschle with Mr. Duncan of Tennessee.
Mr. Dodd with Mr. McDade.
Mr. Evans of Georgia with Mr. Charles H. Wilson of California.
Mr. Hall of Texas with Mr. Williams of Montana.
Mr. Conyers with Mr. Watkins.
Ms. Holtzman with Mr. Leach of Louisiana.
Mr. Shannon with Mr. Dixon.

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1600

GENERAL LEAVE

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

CHAMPUS INPATIENT COST-SHARING RATES FOR CERTAIN SURGERY PERFORMED ON AN OUTPATIENT BASIS

Mr. WHITE. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 3351) to amend chapter 55 of title 10, United States Code, to authorize dependents of members of the uniformed services serving on active duty to use CHAMPUS inpatient cost-sharing rates for certain surgery performed on an outpatient basis.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mrs. HOLT. Mr. Speaker, reserving the right to object, I do so for the purpose of allowing my friend, the gentleman from Texas, an opportunity to explain this measure.

Mr. WHITE. Mr. Speaker, will the gentlewoman yield?

Mrs. HOLT. I would be happy to yield.

Mr. WHITE. Mr. Speaker, I thank the gentlewoman for yielding, and I will be happy to explain the bill.

This bill would authorize the use of inpatient cost-sharing rates for certain surgery performed on an outpatient basis. The enactment of this bill will result in cost-savings to the Government while not requiring CHAMPUS patients to pay any additional fees.

In the way of background, the establishment of CHAMPUS preceded the evolution of current medical techniques permitting certain kinds of ambulatory surgery to be performed on an outpatient basis. The current cost-sharing formulas under CHAMPUS encourage dependents of uniformed service active-duty members to seek inpatient care for surgical procedures which could otherwise be performed on an outpatient basis. The incentive for beneficiaries to seek inpatient care is that it will greatly reduce their out-of-pocket costs. Physicians tend to accommodate the use of inpatient care as opposed to outpatient care, since their professional fees are not significantly different in either case.

Under the present CHAMPUS payment formula, active-duty dependents receiving inpatient care are not required to pay an annual deduction, but they are liable for a fee of $25 per admission, or the prevailing rate at a military hospital, whichever is the greater amount. However, outpatient care requires dependents to pay an annual deductible of $50 ($100 family maximum), plus 20 percent of the CHAMPUS-determined allowable charge remaining after the deductible has been met. Therefore, dependents have a clear incentive to use inpatient care since, in all cases, this will result in a significantly smaller copayment by the patient.

But, because the average cost for inpatient care exceeds the average cost for outpatient care by about $367 per procedure, the Government's copayment for inpatient care is significantly higher than it is for the same medical procedure on an outpatient basis.

Thus, the present law encourages beneficiaries to seek inpatient procedures for what in reality could be outpatient care, thereby, creating a higher total cost to the Government.

In summary, the proposed legislation would authorize the use of inpatient rates for selected ambulatory procedures and thus, remove the incentive to use inpatient facilities which will result in cost savings to the Government. The Department has estimated the savings to be about $2 million over 5 years.

Mrs. HOLT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the bill as follows:

H.R. 3351

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1079(b) of title 10, United States Code, relating to contracts for medical care for spouses and children of members of the uniformed services, is amended by adding at the end thereof the following new clause:

"(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DOCUMENTATION OF VESSELS WITH COASTWISE PRIVILEGES

Mr. ASHLEY. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1442) to authorize the documentation of the vessel, *Sara*, as a vessel of the United States with coastwise privileges, as amended.

The Clerk read as follows:

S. 1442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of title 46 of the United States Code, particularly but not limited to section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. 883), or any other provision of law, the Secretary of the department in which the Coast Guard is operating shall cause the vessels Sara (vessel numbered 530082), Aurelia Four, Alice (vessel numbered 289731), Albatross (vessel numbered 299537), Hillbilly I, and Kailua (registration numbered AK-7716-B) to be documented as vessels of the United States, with the privileges of engaging in coastwise trade so long as each such vessel being so documented is owned by a citizen of the United States.

SEC. 2. The vessel Sara which was constructed in a country other than the United States, is, pursuant to section 1, granted the privilege of engaging in coastwise trade only so long as the vessel is owned by a citizen of the United States and is operated for a nonprofit purpose.

SEC. 3. Section 502 of the Merchant Marine Act, 1936, is amended by adding at the end of subsection (g) thereof two new subsections to read as follows:

"(h) The Secretary of Commerce is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Commerce is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 11(a) of the Merchant Ship Sales Act of 1946, (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936, (3) which serves as security for the guarantee of an obligation by the Secretary of Commerce under title XI of this Act, or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Commerce to install or remove such national defense features. Title to such national defense features which the Secretary of Commerce determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this title V.

"(i) The Secretary of Commerce shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Commerce.".

SEC. 4. Section 209(b) of the Merchant Marine Act of 1936, is amended by (a) deleting from clause (2) the words "and cost of national defense features"; (b) inserting after clause (2) the following new clause: "(3) cost of national defense features;"; and, (c) renumbering the remaining clauses accordingly.

SEC. 5. Notwithstanding any other provisions of law, any vessel engaged in the coastwise transportation of coal produced in the United States, from a port in the United States to another port in the United States, shall until June 30, 1987, have the priority to berth at any such ports ahead of any waiting vessels engaged in the export trade of coal produced in the United States: *Provided*, That, the Secretary of Commerce may, if he determines that it is in the national interest eliminate priority berthing, as provided herein, at any such port or ports, and to report such action to the Congress within 30 days.

The SPEAKER pro tempore. Is a second demanded?

Mr. SYNDER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. ASHLEY) will be recognized for 20 minutes, and the gentleman from Kentucky (Mr. SNYDER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. ASHLEY).

Mr. ASHLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to support S. 1442, legislation which would empower the Coast Guard to grant six vessels U.S. documentation and the right to engage in the domestic coastwise trade. The *Sara*, one of these vessels, is an historic ship built in Denmark in 1900 and presently owned by the State of Oregon. This legislation will make it possible to utilize this vessel for nonprofit educational purposes.

The remaining vessels which would be affected by S. 1442 are five U.S. built vessels which, though presently owned by U.S. citizens, have been partly or wholly owned in the past by persons who were not U.S. citizens. The 1920 Merchant Marine Act requires that vessels engaging in domestic commerce be entirely owned by U.S. citizens. Any record of full or partial ownership of a U.S. vessel by a foreign national disqualifies that vessel from engaging in the domestic trade.

This legislation would permit these five vessels to engage in the coastwise trade. Information elicited during the committee's consideration of S. 1442 indicated that the owners of these vessels, if not permitted to utilize them in the coastwise trade, would suffer substantial economic harm.

There is no indication that enactment of this legislation would be harmful to the U.S. shipbuilding base or the maritime industry; yet, House failure to approve this legislation will cause significant economic loss to the owners of these vessels.

Clearly Congress should approve legislation which will stimulate the economic climate.

S. 1442 also contains provisions related to the acquisition of national defense features for certain merchant vessels. Under this legislation, the Secretary of Commerce acting with the Secretary of the Navy will prepare specifications for national defense features to be installed on vessels of the national defense reserve fleet, vessels requisitioned, chartered or purchased by the Maritime Administration pursuant to the Merchant Marine Act, 1936, vessels which are security for Government guaranteed loans under the 1936 act, and vessels subject to an agreement between the owners of the vessel and the Secretary of Commerce. This amendment was requested by the administration as a method to acquire features deemed necessary to the national defense.

During markup of the bill an amendment was offered which would have given priority berthing to vessels carrying coal in the coastwise trade over those coal transporting vessels engaged in foreign commerce. The reason for this amendment is that electric utility generating plants have been, pursuant to our energy self-sufficiency policy, converting from oil to coal as the energy fuel source. At the same time, coal exports have begun to accelerate to the point that existing port facilities occasionally cannot cope with demand. Traditionally, vessels moving coal for domestic consumption have been given preference when loading or unloading, but port operators have recently begun to notify domestic trade carriers—and ultimate consumers—that traditional preferences were no longer to be honored since no legal basis exists for the extension of the privilege.

The amendment would provide the necessary legal basis by giving the Secretary of Commerce discretion. Since the committee had had insufficient time to consider the effect of the amendment, it was proposed that the committee offer an amendment addressing the problem following the receipt of further information, including the position of the administration. Since the committee has received comment from the administration which does not oppose the amendment, the committee offers an amendment to S. 1442 which addresses the need first advanced while protecting the legitimate interests of others who might be affected by this change.

□ 1610

Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon (Mr. AUCOIN).

Mr. AUCOIN. Mr. Speaker, I thank the gentleman for yielding. One of the provisions of S. 1442 would permit an historic sailing vessel, the *Sara*, to be exempted from the Jones Act and sail with commercial passengers on board off the Oregon coast. The *Sara* is one of only three wooden schooners in the world remaining from the turn of the century, and if exempted as provided by this bill, she could take passengers out for educational cruises. The *Sara* is owned by the Newport Maritime Historical Association. The proceeds from her cruises would go strictly to maintain this unique and glorious vessel as she continues to impart her lessons of maritime history to all visitors in the 20th century and beyond.

While traveling in Oregon last month, I visited the *Sara* and her rightfully proud stewards, Bob and Elaine Baker. The affection and humility with which the Bakers maintain their sailing companion is contagious: One cannot help but recognize that the *Sara* is the vicar of our maritime heritage. Although her era may be past, she remains to share her memories with us today. The Bakers demonstrated that to me when I toured this wooden schooner. I only hope that thousands more after me will have this opportunity—to feel the thrill of heeling an offside wind of this maritime beauty, emerging from the days of the 19th century when wooden schooners represented the hallmark of maritime design.

I urge my colleagues to recognize the educational richness that awaits all landlubbers in the future if the *Sara* is permitted to sail domestically. The Newport Maritime Historical Association awaits its many guests and is ready to welcome them to the historic opportunity of sailing aboard the *Sara*. Despite her Danish origins in 1900, she should be allowed to share her maritime prowess with Americans in 1980. I urge passage of S. 1442.

Mr. ASHLEY. Mr. Speaker, I reserve the balance of my time.

Mr. SNYDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support S. 1442, a bill to direct the Secretary of Transportation to document certain vessels as vessels of the United States so as to entitle them to engage in the coastwise trade of the United States. This legislation is neces-

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sary because 46 U.S.C., section 883, otherwise known as the Jones Act, prohibits vessels which have been documented or sold foreign, from engaging in the coastwise trade of the United States.

The subject vessels were originally addressed in six separate pieces of private legislation but due to the similiarity of all these bills, and for ease of legislative handling, the committee decided to incorporate all of these bills into one.

S. 1442 also contains a provision, proposed by the administration, that authorizes the Secretary of Commerce to acquire or dispose of national defense features intended for installation on certain vessels. This authorization would be applicable to any ship currently operating in, or being constructed for operation in the U.S.-flag merchant marine, that is suitable for use as a military auxiliary in an emergency or wartime.

Another provision in this bill confers priority berthing privileges at U.S. ports to coal carrying U.S.-flag vessels engaged in the coastwide trade. This provision is necessary due to the inordinate amount of delay which many U.S. ships must contend with while loading and unloading at U.S. ports.

The committee feels that such a provision is appropriate due to the anticipated heavy reliance which many eastern utilities will have upon the use of U.S. produced coal. This provision should expedite conversion by these utilities from oil to coal. Since this provision only addresses the domestic transportation of domestic coal, the committee believes that there will be no adverse implications toward our foreign trading partners.

The bill was unanimously supported by the committee. I urge its passage.

Thank you.

Mr. Speaker, I have no additional requests for time.

● Mr. DONNELLY. Mr. Speaker, I rise to urge the House to pass S. 1442, with the addition of section 5, relating to priority berthing for domestic-flag vessels engaged in the coastwise coal trade.

This amendment will provide substantial additional security for New England residents and residents in other areas along the east coast, as our utilities and industry make the transition from reliance on imported oil to reliance on domestic coal. It will also prevent our citizens from being burdened with excessive costs which arise from the delays currently being experienced in the coal shipping ports along the Chesapeake Bay.

The amendment is required because the loading equipment at these ports cannot yet meet the increasing demand for American coal. At the moment, ships must wait 20 to 30 days before receiving a cargo. For U.S.-flag vessels, demurrage charges for the waiting period average $10,000 to $20,000 per day. Prior to July of this year, domestic-flag ships in the coastwise coal trade were granted a priority at U.S. ports, under which they would move to the head of the line when they entered the port. Thus, after the ship currently receiving a cargo had finished, the domestic-flag ship engaged in the coastwide trade which is first in the port would receive its coal cargo, and the ships waiting for export cargoes would maintain their line positions.

In July, the port operators determined to change this policy. The purpose of the amendment offered today is to restore the previous policy as a legal requirement, subject to the power of the Secretary of Commerce to determine that it was in the national interest not to grant the priority.

Thus, under the amendment, a domestic flag vessel engaged in the coastwise trade would, upon entering the port, be assured of moving to the dock and receiving its cargo as soon as the ship then being loaded finished. Of course, if there were another domestic vessel engaged in the coastwise trade which had entered the port first and which was still awaiting its cargo, that ship would receive its cargo prior to the newly arrived ship. Export ships would continue to be served in the order of their entering the port.

The amendment will assure that domestic coal users, who depend on coal from Virginia, West Virginia, and Kentucky, which is transshipped through the Chesapeake Bay, will receive shipments in a timely and economic fashion. On the other hand, because there are currently only three ships operating in the coastwise trade capable of carrying coal, and at most eight ships which reasonably could be converted to the trade, export shippers will not experience any substantial or additional delays beyond that which they now routinely accept because of the congestion of the ports and their outmoded equipment. By its own terms, the priority will expire on June 30, 1987, when additional new equipment should have been installed.

The amendment contains a further safeguard, permitting the Secretary of Commerce to override the priority, upon a determination that the national interest requires it. In order to override the priority, the Secretary would be required to identify the specific national interest upon which his decision rests, the port or ports to which the decision applies and, of course, provide a statement of reasons detailing the relationship between the national interest and his decision to override the priority, in accordance with the usual requirements for agency determinations. This statement of reasons would be transmitted to Congress within 30 days of the decision.

It is certainly our intention that the Secretary provide appropriate notice and an opportunity for affected parties to be involved in the process leading to the decision on whether to override the priority.

In summary, under the terms of this amendment, vessels supplying domestic coal to American industry and utilities will receive their cargoes on a timely basis, thus insuring that we can continue our move from the use of oil to the use of our abundant domestic coal reserves, without incurring a substantial economic penalty.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. ASHLEY) that the House suspend the rules and pass the Senate bill, S. 1442, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

The title was amended so as to read: "An act to authorize the documentation of certain vessels as vessels of the United States, and for other purposes.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ASHLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY OF COMMITTEE ON GOVERNMENT OPERATIONS TO SIT ON WEDNESDAY, AUGUST 27, 1980, AND THURSDAY, AUGUST 28, 1980, DURING 5-MINUTE RULE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Subcommittee on Legislation and National Security of the Committee on Government Operations be permitted to sit during proceedings under the 5-minute rule on Wednesday, August 27, 1980, and Thursday, August 28, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

YOUTH ACT OF 1980

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 6711) to extend the authorization of youth training and employment programs and improve such programs, to extend the authorization of the private sector initiative program, to authorize intensive and remedial education programs for youths, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky (Mr. PERKINS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 6711, with Mr. MURTHA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Monday, June 23, 1980, all time for general debate on the bill had expired.

Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on Education and Labor, now printed in the bill, shall be considered by title as an original bill for the purpose of amendment, and each title shall be considered as having been read.

The Clerk will designate title I.

Title I reads as follows:

H.R. 6711

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Youth Act of 1980".

TITLE I—YOUTH TRAINING AND EMPLOYMENT

EXTENSION AND REVISION OF PART A OF TITLE IV

SEC. 101. (a) Title IV of the Comprehensive Employment and Training Act is amended—

(1) by striking out section 401 and 402 and inserting in lieu thereof the following:

"STATEMENT OF PURPOSE

"SEC. 401. It is the purpose of this title to provide a broad range of coordinated employment and training programs for eligible youth in order to provide effectively for comprehensive employment and training services, to improve their opportunities for future employability and increased earnings; to increase youth employability by promoting mastery of basic skills, employability skills, and employment skills; to promote a partnership among employment and training officials, educators, and private sector employers that effectively links education, training, and work experience for disadvantaged youth.";

(2) by striking out the heading of part A and section 411 and inserting in lieu thereof the following:

"PART A—YOUTH EMPLOYMENT AND TRAINING

"PURPOSE OF PART A

"SEC. 411. It is the purpose of this part to provide, through a system of basic and incentive grants, for federally funded employment experience, skill training, and remedial programs designed to improve long-term employability of disadvantaged youth and other youth with substantial difficulties in obtaining and retaining employment. These programs may include such combinations of work experience, skill training, remedial education, counseling, and supportive and followup services as may be determined to be required after assessment of the needs of the individual. The programs shall be operated to the extent feasible on the basis of collaborative arrangements between prime sponsors and the employment, training, and educational institutions serving youth at the local level and shall be administered in such a way as to make for the maximum involvement of educational agencies, community-based organizations, labor-market intermediaries, labor organizations, and private for-profit organizations, all with the end purpose of preparing eligible youth for long-term, stable, unsubsidized employment.

"ACHIEVEMENT STANDARDS AND RECORDS

"SEC. 412. (a) Each prime sponsor receiving funds under this part shall obtain recommendations from the youth council, the prime sponsor's planning council, the private industry council, educational agencies, relevant juvenile and criminal justice agencies, business, labor organizations, community-based organizations, and other community organizations in the development of achievement standards to serve as indicators, accepted in the community, of youth achievements needed to obtain and retain unsubsidized jobs in the private sector.

"(b) Each prime sponsor receiving funds under this part shall establish and maintain an individual achievement record for each participating youth as a continuing record to document that youth's needs and competencies, including skills, education, employment, and training obtained by that youth. Such record shall be maintained and periodically updated during the entire period of the youth's participation in the program, and shall, to the maximum extent feasible be coordinated with any school attended by the youth. Such record shall be confidential and information contained therein shall be available only to persons who require it as part of their responsibilities in operating, administering, or evaluating programs under this part, except that information may be shared with employers, educators, and others upon the specific authorization of the participant.

"PARTICIPANT ASSESSMENT

"SEC. 413. (a) In order to assess the appropriate mixture of training or employment services, or both, needed by each youth receiving assistance under this part, each prime sponsor receiving assistance under this part shall, in consultation with educational and other appropriate agencies, formulate, with each such youth at the time of entrance into the program, a personalized employability plan designed to lead such youth to unsubsidized employment. In establishing such plan, each prime sponsor shall take into consideration a youth's skills, interests, and career objectives, subject to the availability of services, and shall consider the barriers to employment or advancement faced by that youth in order to assist that youth to attain unsubsidized employment.

"(b) At any time a youth begins to receive education, training, or supportive services partly or wholly assisted under this part, the prime sponsor shall assess the appropriateness of such employment, training, or services. For youth that are attending high school or enrolled in a program which leads to a certificate of high school equivalency, such assessment shall be jointly made by the prime sponsor and the appropriate official of that school or educational program. The assessment shall be periodically reviewed by the prime sponsor, or jointly by the prime sponsor and the appropriate school official, as the case may be, and included in each youth's employability plan.

"ELIGIBLE PARTICIPANT

"SEC. 414. (a) Except as provided in subsection (b) or (c), for purposes of this part the term 'eligible youth' means a youth who is—

"(1) economically disadvantaged; and

"(2) (A) aged sixteen to nineteen, inclusive;

"(B) if enrolled in high school or in a program which leads to a certificate of high school equivalency, aged twenty or twenty-one; or

"(C) with respect only to counseling, occupational information, and school-to-work transition services, aged fourteen or fifteen.

"(b) Notwithstanding subsection (a), 20 percent of the funds available for subpart 1 of this part may be used for youth (as described in paragraph (2) of such subsection) who are not economically disadvantaged as required by paragraph (1) of such subsection, but who have encountered special barriers to employment, such as language barriers, physical handicap, pregnancy or maternity, alcohol or drug abuse, supervision by State or other authorities, or supervision by and jurisdiction of the juvenile or criminal justice system, or who are participants in a program authorized under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) or who are youth of migrant or seasonal farmworker families.

"(c) Notwithstanding subsection (a), any participant in any program authorized under subpart 4 of part A of title IV of the Higher Education Act of 1965 (relating to programs for students from disadvantaged backgrounds) shall be an eligible youth for purposes of this part.

"ELIGIBLE APPLICANTS

"SEC. 415. Eligible applicants for purposes of this part are prime sponsors qualified under section 101, sponsors of Native American programs qualified under section 302 (c)(1), and sponsors of migrant and seasonal farmworker programs qualified under section 303.

"SPECIAL RULES

"SEC. 416. The Secretary shall prescribe such rules and regulations to govern Native American and migrant and seasonal farmworker programs under this part as may be required to meet special circumstances in the conduct of such programs."; and

(3) by striking out subparts 1, 2, and 3 of part A of such title and inserting in lieu thereof the following:

"Subpart 1—Basic Grants for Youth Employment and Training Programs

"PURPOSE OF SUBPART 1

"SEC. 421. It is the purpose of this subpart to establish programs designed to make a significant long-term impact on the structural unemployment problems of youth, supplementary to but not replacing programs and activities available under title II of this Act, to enhance the job prospects and career opportunities of young persons, and to provide employment, community service opportunities, and such education, training, and supportive services as are necessary to enable participants to secure suitable and appropriate unsubsidized employment in the public and private sectors of the economy. To the maximum extent feasible, education, training, and employment opportunities afforded under this subpart shall be interrelated and mutually reinforcing so as to achieve the goal of enhancing the job prospects and career opportunities of youths served under this subpart.

"PROGRAMS AUTHORIZED

"SEC. 422. (a) The Secretary is authorized to provide financial assistance to eligible applicants to provide employability development opportunities and supportive and follow-up services to eligible youth to promote the transition to unsubsidized employment, including—

"(1) useful and constructive work or career employment experience opportunities, coupled to the maximum extent feasible with ancillary skill training, remedial education, counseling, services offered under subpart 4 of part A of title IV of the Higher Education Act of 1965, or other employability development or supportive services, in community improvement and conservation projects and in the provision of socially useful services, but only in accordance with the employability plan prepared under section 413;

"(2) services to prepare the youth to participate effectively in the program including—

"(A) outreach;

"(B) assessment;

"(C) orientation;

"(3) education related activities, including—

"(A) improvement of educational competencies;

"(B) remedial education;

"(C) literacy training and bilingual education;

"(D) attainment of high school equivalency certificates, or certification which, under State law, is equivalent to a high school diploma, including provision of basic skills training;

"(4) youth labor market services, including—

"(A) counseling;

"(B) providing information concerning the labor market, including information concerning occupations and the availability of training and other occupational preparation;

"(C) placement, job development, and other assistance to obtain unsubsidized employment and referral to employability development opportunities;

"(D) job sampling, including vocational exploration in the private and public sector and programs aimed at exposing students to actual work experiences through workshops and cooperative education programs;

"(E) institutional and on-the-job training, including inculcation of specific occupational

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skills and the development of good work habits and attitudes;

"(F) career counseling and programs to increase knowledge of the world of work in general and of the specifics of particular job openings and career options;

"(5) supportive services for youth, including—

"(A) child care;

"(B) transportation assistance;

"(C) followup services through cooperative arrangements between employers and the providers of the services, or, otherwise, for up to ninety days for youth placed in unsubsidized employment to assist them in retaining such employment, but the cost of providing such services shall not be included in any computation of the prime sponsor's cost per placement;

"(6) other youth services, including—

"(A) activities promoting education-to-work transition;

"(B) job restructuring to make jobs more responsive to the purpose of this subpart, including assistance to employers in developing job ladders or new job opportunities for youth, in order to improve work relationships between employers and youth;

"(C) community-based central intake and information services for youth;

"(D) programs and services to overcome stereotyping in job development, referral, and placement based on sex, ethnic group, criminal or juvenile record, or handicapped status;

"(E) programs and outreach mechanisms to increase the participation rate of minorities and women in the labor force;

"(F) promotion of the targeted job tax credit, and the Federal bonding program for those unable to obtain fidelity bonding, to help youth obtain and retain employment; and

"(G) career intern programs, jointly conducted by community-based organizations and local educational agencies, for the improvement of educational and employment opportunities for eligible youth; and

"(7) special programs in new career areas, occupational fields that are experiencing shortages, and fields in which national need is increasing, such as solar energy and other forms of energy conservation and weatherization.

"(b) In order to carry out this subpart, a Governor or an eligible applicant (1) may enter into contracts with project applicants (as defined in section 3(20)) or employers organized for profit, but payments to such employers shall not exceed the amounts permitted under section 121(1), or (2) may operate programs directly if, after consultation with community-based organizations and nonprofit groups, a Governor or eligible applicant determines that such direct operation will promote the purpose of this subpart.

"(c) The provisions of sections 102, 104, and 107 shall apply to all programs and activities authorized under this section.

"ALLOCATION OF FUNDS

"SEC. 423. (a) From the sums available for this subpart in accordance with section 441—

"(1) an amount equal to 5 percent of such sums shall be made available to Governors for special statewide youth services under subsection (c);

"(2) an amount equal to not less than 3 percent of such sums shall be made available for programs authorized under section 422 for Native American eligible youth;

"(3) an amount equal to not less than 3 percent of such sums shall be made available for programs authorized under section 422 for eligible youth in migrant and seasonal farmworker families; and

"(4) the remainder of such sums shall be made available to prime sponsors for programs authorized under section 422.

"(b)(1) Amounts available for each of the purposes set forth in paragraphs (1) and (4) of subsection (a) shall be allocated among the States in such a manner that—

"(A) 37.5 percent thereof shall be allocated in accordance with the relative number of unemployed persons within each State as compared to the total number of such unemployed persons in all States;

"(B) 37.5 percent thereof shall be allocated in accordance with the relative number of unemployed persons residing in areas of substantial unemployment (as defined in section 3(2)) within each State as compared to the total number of unemployed persons residing in all such areas in all States; and

"(C) 25 percent thereof shall be allocated in accordance with the relative number of persons in families with an annual income below the low-income level (as defined in section 3(16)) within each State as compared to the total number of such persons in all States.

"(2) In determining allocations under this subsection the Secretary shall use the best available data as determined by the Secretary.

"(3) Amounts available to prime sponsors under paragraph (4) of subsection (a) shall, out of the total amounts allocated to each State under such paragraph, be allocated by the Secretary among prime sponsors within each State in accordance with the factors set forth in paragraph (1) of this subsection.

"(c) The amount available to the Governor of each State under paragraph (1) of subsection (a) shall be used in accordance with a special statewide youth services plan, approved by the Secretary, for such purposes as—

"(1) providing financial assistance for employment and training opportunities for eligible youths who are under the supervision of the State, with consideration given those youth under the jurisdiction of juvenile or criminal justice agencies;

"(2) providing labor market and occupational information, in conjunction with the State occupational information coordinating committee (established pursuant to section 161(b) of the Vocational Education Act of 1963), to prime sponsors and local educational agencies, without reimbursement;

"(3) providing for the establishment of cooperative efforts between State and local institutions, including (A) occupational and career guidance and counseling and placement services for in-school and out-of-school youth; and (B) coordination of statewide activities carried out under the Career Education Incentive Act;

"(4) providing financial assistance for expanded and experimental programs in apprenticeship trades, or development of new apprenticeship arrangements, in concert with appropriate businesses and labor unions or State apprenticeship councils;

"(5) carrying out special model employment and training programs and related services between appropriate State agencies and prime sponsors in the State, or any combination of such prime sponsors, including subcontractors selected by prime sponsors, with particular emphasis on experimental job training within the private sector; and

"(6) carrying out cooperative efforts with institutions of postsecondary education throughout the State sponsoring projects funded under subpart 4 of part A of title IV of the Higher Education Act of 1965 (relating to special programs for students from disadvantaged backgrounds), focusing on preparing eligible youth for careers in which persons from disadvantaged backgrounds are significantly underrepresented.

"(d)(1) Subject to section 302 of the Youth Act of 1980, not less than 22 percent of the amount allocated to each prime sponsor under paragraph (4) of subsection (a) of this section may be used only for programs under this subsection.

"(2) The amount available to each prime sponsor under paragraph (1) may be used only for programs for youth carried out pursuant to agreements between prime sponsors and local educational agencies. Each such agreement shall describe in detail the appropriate education arrangements, employment opportunities, training, and supportive services which shall be provided to eligible youth who are enrolled or who agree to enroll in a program leading to a secondary school diploma or a certificate of high school equivalency, a junior or community college degree, or a technical or trade school certificate of completion. Each such agreement shall describe in detail the appropriate alternative education arrangements for those youth who require such services. Each such agreement shall contain provisions to assure that funds received pursuant to the agreement will not supplant State and local funds expended for the same purpose.

"(3) No funds under this subsection may be used until the prime sponsor has entered into an agreement with each appropriate local educational agency, as required by section 220(b) of the Youth Act of 1980, unless the Secretary waives the requirement of this paragraph on the basis of a determination that the prime sponsor has made a good faith effort to enter into such agreement or agreements.

"(e) Programs receiving assistance under paragraph (1) of subsection (a) shall give special consideration, in carrying out programs authorized under section 422, to community-based organizations (as defined in section 3(4)) which have demonstrated effectiveness in the delivery of employment and training services.

"CONDITIONS FOR RECEIPT OF FINANCIAL ASSISTANCE

"SEC. 424. (a) The Secretary shall not provide financial assistance to an eligible applicant for programs authorized under section 422 unless such eligible applicant provides adequate assurances that the standards set forth in subpart 3 will be met and unless such eligible applicant submits an application in such detail as the Secretary may prescribe. Each such application shall—

"(1) describe the programs, projects, or activities to be carried out with such assistance, together with a description of the relationship and coordination of services provided to eligible participants under this subpart with similar services offered by local educational agencies, postsecondary institutions, the public employment service, the courts of jurisdiction for status and youthful offenders, other youth programs, community-based organizations, businesses and labor organizations consistent with the requirements of sections 121 and 203, and assurances that use will be made, to be extent appropriate, of all existing programs and facilities, whether public or private, and that, to the maximum extent feasible, use will be made of any services that are available without reimbursement from the State employment service that will contribute to the achievement of the purposes of this subpart;

"(2) provide assurances that the application will be coordinated, to the maximum extent feasible, with services to youth under title II, but services to youth under that title shall not be reduced because of the availability of financial assistance under this subpart;

"(3) provide assurances that the application will be coordinated, to the maximum extent feasible, with the plans submitted for the purposes of section 483;

"(4) provide assurances that in the implementation of programs under this subpart, there will be coordination, to the extent appropriate, with local educational agencies, private sector initiatives under title VII of this Act, postsecondary institutions, special statewide school districts, community-based organizations, public assistance agencies, businesses, labor organizations, public and private job training programs, other youth programs, the apprenticeship system, the courts of jurisdiction for status and youthful offenders programs, and (with respect to the referral of prospective youth participants to the program) the public employment service system;

"(5) provide assurances that in the implementation of programs under this subpart, there will be coordination, to the extent feasible, with activities conducted under the Career Education Incentive Act;

"(6) provide assurances that employment and training services to any participant under this subpart will not duplicate services being received by that participant under title XX of the Social Security Act;

"(7) provide assurances that allowances will be paid in accordance with the provisions of section 124 and such regulations as the Secretary may prescribe for this subpart;

"(8) provide assurances that the application will be reviewed by the appropriate prime sponsor planning council in accordance with the provisions of section 109 and by the private industry council;

"(9) provide assurances that a youth council will be established under the prime sponsor planning council by such eligible applicant in accordance with subsection (b) of this section;

"(10) provide assurances that effective means will be provided through which youths participating in the projects, programs, and activities under this subpart may acquire appropriate job skills and language proficiency training appropriate to such skills and be given necessary basic education and training, and that the applicant will comply with sections 412 and 413 of this title;

"(11) provide assurances that the eligible applicant will take appropriate steps to develop new job classifications, new occupations, and restructured jobs;

"(12) provide assurances that employment and supportive services will be provided to youthful offenders;

"(13) provide that the funds available under section 423(d) shall be used for programs authorized under section 422 for eligible youth through arrangements to be carried out by a local educational agency or agencies or postsecondary educational institution or institutions; and

"(14) provide such other information and assurances as the Secretary may deem appropriate to carry out the purposes of this subpart.

"(b) Each youth council established by an eligible applicant shall be responsible for making recommendations to the prime sponsor planning council and the prime sponsor with respect to the youth plan, program operations, and the establishment and implementation of performance standards. Each such youth council's membership shall include representation from the local educational agency, local vocational education advisory council, postsecondary educational institutions, juvenile and criminal justice agencies, the private industry council, labor organizations, the public employment service, local government and nongovernment agencies and organizations which are involved in meeting the special needs of youth, the community served by such applicant, the prime sponsor, and youth themselves. Not less than one-fourth of the youth council membership shall be comprised of youth. The youth council shall be representative of the ethnicity of the community to be served. The prime sponsor shall be responsible for providing staff for professional, technical, and clerical assistance to the youth council.

"(c) No program of work experience for in-school youth supported under this subpart shall be entered into unless an agreement has been made between the prime sponsor and a local educational agency or agencies, after review by the youth council established under subsection (b). Each such agreement shall—

"(1) set forth assurances that participating youth will be provided meaningful work experience (such as cooperative vocational education), which will improve their ability to make career decisions and which will provide them with basic work skills needed for regular unsubsidized employment or self-employment;

"(2) be administered by a local educational agency or agencies or a postsecondary educational institution or institutions within the area served by the prime sponsor, and set forth assurances that the agreement has been reviewed by the youth council established under subsection (b);

"(3) set forth assurances that job information, counseling, guidance, and placement services will be made available to participating youth and that funds provided under this program will be available to, and utilized by, the local educational agency or agencies to the extent necessary to pay the cost of school-based counselors to carry out the provisions of this in-school program;

"(4) set forth assurances that jobs provided under this program will be certified by the participating educational agency or institution as relevant to the educational and career goals of the participating youths;

"(5) set forth assurances that the eligible applicant will advise participating youths of the availability of other education, employment, and training resources provided under this Act, and other resources available in the local community to assist such youths in obtaining employment or self-employment; and

"(6) set forth assurances that youth participants will be chosen from among eligible youth who need work to remain in school, and shall be selected by the appropriate educational agency or institution, based on the certification for each participating youth by the school-based guidance counselor that the work experience provided in an appropriate component of the overall educational program of such youth.

"Subpart 2—Youth Incentive Entitlement and Supplement Work Projects

"PURPOSE OF SUBPART 2

"SEC. 431. (a) It is the purpose of this subpart to provide the Secretary with authority to establish a program entitling economically disadvantaged youth in selected poverty areas to part-time employment, full-time employment, or other appropriate compensated activity, or a combination thereof, by allowing eligible applicants to use funds provided under subpart 1 to pay one-half the cost associated with such employment and appropriate compensated activity and providing the other half of such cost from funds available for this subpart.

"(b) For the purposes of this subpart, appropriate compensated activity for each youth receiving assistance under this subpart shall be determined by a school-based guidance counselor and shall consist of activities outside the youth's regular course of study, such as work sampling, vocational education, community service, alternative or remedial education, cultural activity, training any other general education, or any other activity or combination thereof determined appropriate in order to maximize the employability potential of such youth or to assist such youth in making satisfactory progress toward attaining a diploma or a certificate of high school equivalency. Such compensated activity shall be approved as part of the youth employability plan as required by section 413.

"(c) For purposes of this subpart, entitlement activity includes otherwise unavailable employment, training, or appropriate compensated activity, or any combination thereof.

"ENTITLEMENT PROGRAM AUTHORIZED

"SEC. 432. (a) The Secretary shall enter into arrangements with eligible applicants for the purpose of providing—

"(1) part-time entitlement activity during the school year for eligible youth (from selected poverty areas served by such eligible applicant) who resume or maintain attendance in secondary school for the purpose of acquiring a high school diploma or in a program which leads to a certificate of high school equivalency; and full-time entitlement activity during the summer months for such youth; and

"(2) otherwise unavailable full-time employment under section 433(3) for economically disadvantaged youth aged 16 to 21, inclusive, from such selected poverty areas who have such a diploma or certificate.

"(b) The Secretary shall, on the basis of the most recent reliable data on the amount of funds which will be available for purposes of this subpart for a fiscal year and on the basis of the number of economically disadvanaged youth, aged sixteen to twenty-one, inclusive, residing in poverty areas served by eligible applicants, make available to each eligible applicant a tentative allocation of such funds. Such notice shall be given sufficiently in advance of the date required for submission of applications under section 434(a) for such fiscal year to provide such eligible applicants with adequate guidance in formulating such applications in a manner most likely to avoid the imposition of the measures described in section 434(b)(2). Such notice shall be revised as necessary to inform eligible applicants of changes made necessary by succeeding events or alteration in the bases of the projections.

"(c) Each eligible applicant whose application for assistance under this subpart is approved by the Secertary shall provide the entitlement activity described in subsection (a) to unemployed youth described in subsection (a) who resides within the selected poverty area and who apply to the prime sponsor for entitlement activity. The Secretary shall provide to each eligible applicant, from funds available for carrying out this subpart in accordance with section 441 or made available by the Secretary from funds available for section 448, the amount which that eligible applicant is eligible to receive under subsection (d).

"(d) Each eligible applicant whose application has been approved under section 434(b) shall be eligible to receive from funds available for this subpart, for each youth who is provided entitlement activity by that eligible applicant, one-half the costs associated with providing such entitlement activity.

"(e)(1) For purposes of this section, the term 'poverty area' means any Bureau of the Census geographical division in which, on the basis of the most recent satisfactory data available to the Secretary, 20 percent or more of the residents are at or below the poverty level, computed on the basis of the criteria of poverty used by the Bureau of the Census.

"(2) For purposes of this section, the term 'selected poverty area' means any portion or all of a poverty area or aggregation of poverty areas which is selected for services under this subpart pursuant to section 434(a)(2).

"EXTENT OF ENTITLEMENT ACTIVITIES

"SEC. 433. Entitlement activities provided under this subpart shall be comprised of the following:

"(1) Part-time entitlement activities during the school year, not to exceed an average of twenty hours per week for each youth, and not to last less than six nor more than nine months, in entitlement activities provided by community-based organizations of demonstrated effectiveness which have a knowledge of the needs of disadvantaged youth; local educational agencies; institu-

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tions of higher education; special statewide school districts; nonprofit private organizations or institutions engaged in public service; nonprofit voluntary youth organizations; nonprofit private associations, such as labor organizations, educational associations, business, cultural, or other nonprofit private associations; business; units of general local government; or special purpose political subdivisions either having the power to levy taxes and spend funds or serving such special purpose in two or more units of general local government.

"(2) Full-time employment, training, or a combination thereof during the summer months, not to excede forty hours per week for each youth employed, and not to last less than eight weeks in any of the entities described in paragraph (1), and, for those participating youth who successfully obtain a high school diploma or its equivalency at the end of the regular school year, full-time employment for the next following summer.

"(3) Full-time employment for youth described in section 432(a)(2) in critical national priority projects such as solar energy and other forms of energy conservation and development, economic development, housing rehabilitation, and conservation of resources (including preservation of public infrastructure capital).

"APPLICATIONS AND SECRETARIAL REVIEW

"SEC. 434. (a) Any eligible applicant which desires to receive assistance under this subpart shall submit to the Secretary, at such time (after publication of the tentative allocation under section 432(b)) and in such manner as the Secretary may require, an application which shall provide—

"(1) a description of the procedure to be utilized by the eligible applicant to publicize, consider, approve, audit, and monitor youth entitlement activities funded by the eligible applicant under this part, including copies of proposed application materials, as well as examples of audit and client characteristics reports;

"(2) a description of the area or areas (within or congruent with the poverty area or areas or aggregation of poverty areas served by the eligible applicant) selected for purposes of programs under this subpart consistent with the tentative allocation published under section 432(b) and with paragraph (4) of this subsection;

"(3) a statement of the estimated number of youth to be served in accordance with section 432 by the eligible applicant;

"(4) assurances that the eligible applicant will provide, from funds received under subpart 1 of this part, one-half the costs associated with entitlement activities provided under this subpart;

"(5) assurances of compliance with the provisions of sections 442 and 443 (relating to wage provisions and special conditions);

"(6) assurances that the eligible applicant has, in the development of the plan, consulted with public and private nonprofit educational agencies including vocational and postsecondary education institutions, special statewide school districts, and other agencies which offer high school equivalency programs; public employers, including law enforcement and judicial agencies; State and local public assistance agencies; labor organizations; voluntary youth groups; community-based organizations; organizations of demonstrated effectiveness with a special knowledge of the needs of such disadvantaged youth; and with the private industry council; and assurances that arrangements are made with appropriate groups to assist the eligible applicant in carrying out the purposes of this subpart;

"(7) assurances that arrangements are made with the State employment security agencies to carry out the purposes of this subpart;

"(8) an agreement that funds available under title II for economically disadvantaged youth employment programs and funds available for the summer youth program under part C of this title for eligible youth will be used in support of entitlement activity authorized under this subpart;

"(9) assurances that the applicant will comply with the limitations contained in section 433, except that, in the case of an eligible youth who is determined by the prime sponsor in accordance with standards prescribed by the Secretary to be exceptionally needy, the twenty-hour limitation contained in section 433(1) may be waived;

"(10) assurances that whenever employment involves additional on-the-job institutional, or apprenticeship training provided by the employer, and if such training is not paid for in full or in part by the eligible applicant under any other program authorized under this Act, wages may be paid in accordance with the provisions of section 14(b) of the Fair Labor Standards Act of 1938, and with the balance being applied to the cost of training;

"(11) assurances that (A) arrangements have been made (i) with the appropriate local educational agency or with the institution offering a certified high school equivalency program that such youth is enrolled and meeting the minimum academic and attendance requirements of that school or education program, and (ii) with employers that such youth meet the minimum work and attendance requirements of such employment, and (B) that any entitlement activity is conditioned on such enrollment and requirements;

"(12) assurances that special efforts will be made to recruit youth from families receiving public assistance, including parents (of dependent children) who meet the age requirement of this subpart;

"(13) assurances that subsidies to encourage private employers to provide employment and training opportunities under this subpart will not exceed the net cost to the employer of the wages paid and training provided; and

"(14) assurances that the eligible applicant will make available the data necessary for the Secretary to prepare the reports required by section 127.

"(b)(1) Except as provided in paragraphs (2) and (3), the Secretary shall, in reviewing applications submitted by the prime sponsors under subsection (a), approve only those applications submitted by prime sponsors who in addition to fulfilling the requirement of subsection (a) have—

"(A) demonstrated the administrative capacity to operate an entitlement program and are willing to devote sufficient resources for this purpose;

"(B) designated, as an area for programs under this subpart, a selected poverty area of only such size and scope that funds expected to be available will be sufficient to provide entitlement activity to all youth eligible for such activity residing in such area;

"(C) developed an agreement with the appropriate local educational agency or agencies concerning—

"(i) procedures for designating and qualifying counselors for in-school youth;

"(ii) procedures for allowing for flexible school hours to accommodate the provision of entitlement activities offered under this part;

"(iii) procedures for developing an education and employability plan for each in-school youth participating in the program;

"(iv) procedures under which counselors will apply standards of bona fide participation in the program and provide for designated periods for suspension from the programs when such standards are not met;

"(v) procedures that provide more varied entitlement activities for youth who are making satisfactory progress toward their high school diploma or a certificate of high school equivalency, under objective criteria developed in consultation with the appropriate local educational agency or State educational agency, and require youth who are not making satisfactory progress under such objective criteria to participate in necessary remedial education that will lead to satisfactory progress; and

"(vi) procedures to involve the private industry council in the development of entitlement activity opportunities offered under this part.

"(2) If the Secretary determines that the amount of funds available for carrying out this subpart in accordance with section 441, together with any funds made available by the Secretary from funds available for section 448, are not sufficient to pay in full the sum of the amounts for which eligible applicants with approved applications are eligible under section 432(c) the Secretary may—

"(A) direct each eligible applicant to submit an amendment to its application reducing (by reduction of the size of the selected poverty area) the amount requested under this subpart; or

"(B) withdraw the approval of all such applications and approve only the number for which sufficient funds are available, selected on the basis of such additional criteria of merit and need as may be prescribed by the Secretary.

"(3) The Secretary shall, in approving applications submitted by prime sponsors under this part, assure that applications from prime sponsors representing rural poverty areas will receive equitable consideration in the distribution of funds.

"SPECIAL PROVISIONS

"SEC. 435. (a) Entitlement activity under this subpart shall develop the participant's role as a meaningful member of the community, and may include employment and training in such fields as environmental quality, solar energy, and other forms of energy conservation and development, health care, education, self-employment, social services, public safety, crime prevention and control, transportation, recreation, neighborhood improvement, rural development, conservation, beautification, and community improvement projects.

"(b) No funds for employment under this subpart shall be used to provide public services through a nonprofit organization, association, or institution, or a nonprofit private institution of higher education or any other applicant, which were previously provided by a political subdivision or local educational agency in the area served by the project or where the employment and training takes place, and no funds will be used under this subpart to provide such services through such an organization or institution which are customarily provided only by a political subdivision or local educational agency in the area served by such project or where the employment and training takes place.".

(b) Title IV of the Comprehensive Employment and Training Act is further amended—

(1) by redesignating subpart 4 of part A as subpart 3;

(2) by striking out section 441 and inserting in lieu thereof the following:

"ALLOCATION

"SEC. 441. Not more than 10 percent of the amount available for purposes of this part for any fiscal year in accordance with section 301 of the Youth Act of 1980 shall be available for the purpose of section 448. Of the remainder of the amount available for this part for any fiscal year in accordance with section 301 of such Act, 80 percent shall be available for purposes of subpart 1 of this part and 20 percent shall be available for purposes of subpart 2 of this part.";

(3) by striking out "SUBPARTS 2 AND 3" in the heading of section 444 and inserting in lieu thereof "SUBPART 1";

(4) by striking out "subparts 2 and 3" each place it appears in subsections (a) and (b) of such section and inserting in lieu thereof "subpart 1";

(5) by inserting after section 447 the following new section:

"SECRETARY'S DISCRETIONARY FUNDS

"SEC. 448. (a)(1) From the sums available for purposes of this section in accordance with section 441, the Secretary of Labor is authorized—

"(A) to provide supplemental funds to eligible applicants under subpart 1 and under subpart 2 for the purpose of—

"(i) promoting specially worthy programs under such subparts;

"(ii) providing recognition for increased service to youth who have encountered special barriers to employment, such as language barriers, physical handicap, pregnancy or maternity, alcohol or drug abuse, supervision by State or other authorities, or supervision by and jurisdiction of the juvenile or criminal justice system, and youth of migrant and seasonal farmworker families; and

"(iii) providing additional allocations for areas experiencing significant increases in unemployment;

"(B) either directly or by way of contract or other arrangement, with prime sponsors, public agencies, and private organizations, to carry out innovative and experimental programs to test new approaches for dealing with the unemployment problems of youth and to enable eligible participants to prepare for, enhance their prospects for, or secure employment in occupations through which they may reasonably be expected to advance to productive working lives; and

"(C) provide an outreach and public information program designed to maximize job development and job training opportunities for youthful offenders and to inform such offenders of employment, training, and educational opportunities under this title.

"(2) Programs described in paragraph (1)(B) shall include grants awarded to not less than two and not more than five selected prime sponsors (who have an approved entitlement program under subpart 2) of an amount sufficient to test the efficacy of a completion bonus program for youth who successfully obtain a high school diploma or certificate of high school equivalency. Such bonus shall be in an amount not less than the equivalent of three hundred hours of paid compensation and shall take the form of either tuition support or employment subsidies or a combination thereof. The Secretary may at his or her discretion alter the conditions of the bonus in order to test its merits.

"(3) Programs described in paragraph (1)(B) shall include, where appropriate, cooperative arrangements with educational agencies to provide special programs and services for eligible participants enrolled in secondary schools, postsecondary educational institutions, and technical and trade schools, including job experience, counseling and guidance prior to the completion of secondary or postsecondary education and making available occupational, educational, and training information through statewide career information systems.

"(b) In carrying out or supporting programs under subsection (a)(1)(B), the Secretary shall consult, as appropriate, with the Secretary of Commerce, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Director of the ACTION Agency, and the Director of the Community Services Administration.

"(c) Funds available under this section may be transferred to other Federal departments and agencies to carry out functions delegated to them pursuant to agreements with the Secretary.

"(d) The Secretary and prime sponsors, as the case may be, shall give special consideration in carrying out innovative and experimental programs assisted under this section to community-based organizations (as defined in section 3(4)) which have demonstrated effectiveness in the delivery of employment and training services and those which jointly conduct with local educational agencies career intern programs for the improvement of educational and employment opportunities for eligible youth."; and

(6) by inserting "(as defined in section 414)" immediately after "eligible youth" in section 481.

(d) The table of contents of the Comprehensive Employment and Training Act is amended by striking out the item pertaining to section 402 and by striking out all the matter pertaining to part A of title IV and inserting in lieu thereof the following:

"PART A—YOUTH EMPLOYMENT AND TRAINING

"Sec. 411. Purpose of part A.
"Sec. 412. Achievement standards and records.
"Sec. 413. Participant assessment.
"Sec. 414. Eligible participant.
"Sec. 415. Eligible applicant.

"Subpart 1—Basic Grants for Youth Employment and Training Programs

"Sec. 421. Purpose of subpart 1.
"Sec. 422 Programs authorized.
"Sec. 423. Allocation of funds.
"Sec. 424. Conditions for receipt of financial assistance.

"Subpart 2—Youth Incentive Entitlement and Supplemental Work Projects

"Sec. 431. Purpose of subpart 2.
"Sec. 432. Entitlement program authorized.
"Sec. 433. Extent of entitlement activities.
"Sec. 434. Applications and Secretarial review.
"Sec. 435. Special provisions.

"Subpart 3—General Provisions

"Sec. 441. Allocation.
"Sec. 442. Wage provisions.
"Sec. 443. Special conditions.
"Sec. 444. Special provisions for subpart 1.
"Sec. 445. Academic credit, education credit, counseling and placement services, and basic skills development.
"Sec. 446. Disregarding earnings.
"Sec. 447. Relation to other provisions.
"Sec. 448. Secretary's discretionary funds.".

EMPLOYMENT SERVICES FOR YOUTH

SEC. 102. The Act of June 3, 1933, entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes" (29 U.S.C. 49 et seq.), also known as the Wagner-Peyser Act, is amended by inserting after section 5 the following new section:

"SEC. 6. (a) Each State which desires to receive funds under this section shall submit to the Secretary of Labor a supplement to the plans submitted under section 8, in such form and containing or accompanied by such information and assurances as the Secretary may by regulation require. Such supplement shall be submitted in accordance with the procedures prescribed under sections 110, 423(c), and 433(c) of the Comprehensive Employment and Training Act and section 161(b) of the Vocational Education Act of 1963. In any State which does not submit such a supplement, the Secretary may, directly or by contract with other State or local agencies, operate programs as described in this section from the sums available in accordance with subsection (e).

"(b) Supplements submitted under subsection (a) shall provide for the establishment of general employment services for youth which shall include—

"(1) orientation for youthful job seekers to labor market conditions and requirements, including job search workshops;

"(2) referral to supportive services;

"(3) efforts to promote targeted jobs tax credit and on-the-job training opportunities in the private sector; and

"(4) placement activities.

"(c) In addition to the requirements of subsection (b), supplements submitted under subsection (a) shall provide for the establishment of inschool service to assist youths to make a successful transition from school to working life which shall include—

"(1) dissemination of labor market information;

"(2) development of job search skills;

"(3) development and operation of automated data systems to provide accurate, current information on job availability;

"(4) conducting vocational aptitude testing;

"(5) providing matching funds for services and training for school counselors, such as training workshops; and

"(6) promoting the consultation of school systems with private employers in the development of curriculums.

"(d) No payment may be made with respect to a program approved for purposes of this section in excess of 80 percent of the cost of the activities proposed in such supplement.

"(e) Funds appropriated pursuant to subsection (f) shall be allocated among the States as follows:

"(1) 50 percent of the amount appropriated pursuant to subsection (f) for any fiscal year shall be allocated on the basis of the number of individuals age sixteen to twenty-one, inclusive, residing in the State, determined on the basis of the most recent satisfactory data available to the Secretary of Labor;

"(2) 25 percent of the amount appropriated pursuant to subsection (f) shall be allocated on the basis of the average annual number of such individuals age sixteen to twenty-one, inclusive, who are unemployed and residing in such State, determined on the basis of the most recent satisfactory data available to the Secretary of Labor; and

"(3) 25 percent of the amount appropriated pursuant to subsection (f) shall be allocated on the basis of the number of such individuals age sixteen to twenty-one, inclusive, who the economically disadvantaged and residing in such State, determined on the basis of the most recent satisfactory data available to the Secretary of Labor.

"(f) There are authorized to be appropriated to carry out the provisions of this section $50,000,000 for fiscal year 1981 and such sums as may be necessary for each fiscal year thereafter.

"(g) As used in this section, the term 'economically disadvantaged' means a person who has, or is a member of a family which has, received a total annual family income which, in relation to family size, was not in excess of the higher of (1) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (2) 70 percent of the lower living standard income level, as defined in section 3(17) of the Comprehensive Employment and Training Act.".

REPORT ON ARTIFICIAL BARRIERS TO EMPLOYMENT

SEC. 103. The Secretary shall include in the annual report required by section 127 of the Comprehensive Employment and Training Act a statement of findings on the progress made in the implementation of the provisions of such Act relating to the elimination of artificial barriers to employment.

Mr. PERKINS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, a few weeks ago the committee, under the leadership of the

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gentleman from California (Mr. HAWKINS), the gentleman from Pennsylvania (Mr. GOODLING), and the gentleman from Vermont (Mr. JEFFORDS) called up H.R. 6711 and we completed general debate. At that time I was in Florida with the gentleman from Florida (Mr. STACK) conducting hearings, and was unable to be present.

Mr. Chairman, today we are calling up for consideration H.R. 6711, the Youth Act of 1980. This legislation represents a comprehensive approach for dealing with the serious youth unemployment rroblem facing this country.

Youth unemployment is one of our country's most urgent economic problems. While the overall unemployment rate for youth is high, for disadvantaged and minority youth it is intolerable. And given current economic policies aimed at reducing inflation, we can expect even higher youth unemployment rates.

I submit that it will be to the detriment of our society if we allow youth unemployment to simply run this course.

However, the response to these dire statistics cannot be in the form of piecemeal programs. Our strategy must include a broad range of opportunities for both in-school and out-of-school youth and must call for coordination of both the CETA and the education systems.

This balanced piece of legislation before us today contains all of these elements. It is based on a proposal sent to the Congress by the President early this year. Bipartisan amendments to both titles of the bill has insured that the two pieces fit together well.

Title I of H.R. 6711 amends the existing title IV, part A of CETA and focuses primarily on out-of-school youth. To guarantee program stability, these amendments to CETA do not take effect until fiscal year 1982 and are authorized through fiscal year 1985.

The amendments to CETA contained in this title will enable an additional 450,000 young people to be served. When added to current program levels, this means that title I will serve over 2.5 million youth.

Title I attempts to streamline the CETA delivery system and reduce administrative costs and delays by consolidating individual youth programs and eligibility requirements. The youth employment and training programs and the youth community conservation and improvement projects are consolidated into a single basic grant program. In addition, the bill sets one eligibility standard for title IV, part A. The bill also authorizes a modified youth incentive entitlement program as a matching grant program and requires the basic grant program to be coordinated with the summer youth program.

Title I also strengthens and extends those provisions of existing law which are successful. For example, title I distributes funds to prime sponsors according to the existing formula which takes into account levels of unemployment, concentration of unemployment, and numbers of poor families.

Title I of the bill also extends the 22 percent setaside of funds for programs carried out pursuant to joint agreements between prime sponsors and local educational agencies, with some modifications to make it more flexible.

Title II of H.R. 6711 focuses primarily on disadvantaged in-school youth who need extra help in the basic skills and adapting to a work environment before they can get good jobs. Title II creates a new program of Federal aid for school-based programs which, when fully implemented, will provide education services to approximately 1 million secondary school students.

Funds under title II would be distributed to local school districts with the highest concentration of poor children. In turn, the school districts are required to select the neediest secondary schools and area vocational schools for assistance.

Title II funds are to be used for activities to improve the basic skills, general employability skills and specific job skills of educationally deprived youth. Each school must develop a plan for use of these funds, in consultation with a broadly representative school site council.

An important provision of title II requires each local educational agency to spend at least 25 percent of its grant on vocational education. In addition, title II requires 22 percent of each school district's funds to be set aside for programs carried out pursuant to joint agreements with prime sponsors. These two set-asides can be counted against each other if joint agreements with area vocational schools are involved.

Title II is authorized for fiscal year 1981 through 1985 and will be administered by the Department of Education.

Consideration of these two titles in a single legislative package provides the Congress with an unprecedented opportunity to make a dent in the youth unemployment problem. I urge my colleagues to pass this legislation.

In closing I would like to note that President Carter considers this bill to be his most important domestic initiative this year. This bill has also been endorsed by the House Republican Conference. The bill before us today clearly must be moving in the right direction if it has such strong bipartisan support from both the Carter administration and the conference of all Republicans in the House.

Mr. Chairman, I urge that the Members resist weakening amendments and endorse the committee's bill.

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AMENDMENT OFFERED BY MR. HAWKINS

Mr. HAWKINS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HAWKINS: Page 7, line 4, strike out "subsection (a)" and insert in lieu thereof "subsection (a)(1)".

Page 75, lines 4 and 6, and page 79, lines 23 and 25, strike out "212(f)" and insert in lieu thereof "211(f)".

Mr. HAWKINS. Mr. Chairman, the purpose of my amendments, is merely to make technical changes required to correct inadvertent oversights in the committee's bill.

The committee's principal objective in adopting H.R. 6711 is to facilitate coordination between youth programs under title IV of CETA and education programs for disadvantaged students. To this end, H.R. 6711 provides that individuals participating in "Special Programs for Students From Disadvantaged Backgrounds" under subpart 4, part A of title IV of the Higher Education Act of 1965 are eligible for participating in youth programs under title IV of CETA.

The problem with that is that the individuals participating in the programs under the Education Act have an eligibility age requirement up to 27, whereas under the proposed bill before us, age 21 is the cutoff. What we simply do in this instance is to make it in conformity with the proposal before us to make sure that age 21 is the age cutoff under both programs.

My first amendment would make it clear that participation in programs under title IV of CETA is limited to those individuals who fall within the age parameters outlined in section 414(a) of this bill.

My second amendment merely corrects an improperly referenced subsection.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. HAWKINS. I yield to the gentleman from Vermont.

Mr. JEFFORDS. I thank the gentleman for yielding.

The minority has reviewed the amendment. We have no problem with the amendment. We believe it helps clarify the intent of the bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. HAWKINS).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. JEFFORDS

Mr. JEFFORDS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JEFFORDS: Page 17, line 3, insert "(A)" immediately after "provided", and on line 7, insert immediately before the period the following: ", or (B) to youth identified under section 215(b) of the Youth Act of 1980 (but use of funds for such identified youth shall not be counted as part of the funds described in section 414(b))".

Mr. JEFFORDS. Mr. Chairman, first, before I talk about the amendment, which is purely a technical one, I would like to make a few comments. First I want to commend both Chairmen HAWKINS and PERKINS in particular for the cooperation we have had on this bill. I have never worked on any bill where we have had more joint meetings between the majority and the minority and with all of the interest groups involved. We all sat down for hours to work out the differences between both the minority, the majority and the interest groups involved, because in this bill we are dealing with a very serious problem. It is a problem which we are all aware of but which we fail to give adequate attention.

That is that there are more young people right now in the unemployment market than at any other time in our history. There are more unemployed young people now than at any time in our history. We have now somewhere around 2 million young people who are without jobs. Unemployment, as serious as it is for many, is much more serious

for our teenagers with unemployment for youth ranging around 20 percent. In the 16- to 21-year-old bracket, jobs are down about 700,000 from a year ago. We are dealing with a serious youth unemployment problem.

Also, on the educational side, we have an extremely serious problem with our educational program. When school starts there will be about 2.4 million young people who ought to be in school who will not be in school; who have dropped out for one reason or another. Dropout rates in some of our cities range up to 52 percent. That is, 52 percent of the eligible students in high school are not attending. Connected with this issue is a serious crime problem. Forty percent of our serious crimes are committed by young people, and out of that, 2½ times as many crimes are created by dropouts as are created by other young people.

This is an excellent bill. It is directed at trying to deal with some of these problems. What it does, it streamlines the bureaucratic maze of youth programs that we now have. It complements rather than overlaps these programs, some of them which are at cross-purposes. It puts an emphasis on job training as an essential part of education, not just as an alternative to education. It focuses on skills in new areas to try to prepare our young people for jobs that are available. It also recognizes the needs and the differences of the problems in the rural areas. It prepares our young people for entering into the private sector.

The Youth Act is consistent with both party platform approaches to resolving our Nation's serious economic problems. As adopted in Detroit, the Republican platform calls for a series of steps to stimulate private and individual investment in a new growth of the economy with a heavy emphasis on tax reduction. But this approach depends on a skilled and productive labor force which is a key element on reducing inflation. Over the past decade, the Nation simply has not produced this kind of work force because youth have been graduating from schools without the necessary tools to make them employable. At the same time, too many youth are dropping out of school and are becoming a permanent drain on society. We believe that in this one area the Government can make a contribution by emphasizing a cooperative effort by industry, labor and our schools to make youth better prepared to participate in a strong and growing sector economy.

In short, this bill takes a rather large and historically inefficient bureaucracy, and refocuses it upon the very real problems faced by young people and the American economy today. Its passage should be a milestone in Government reform, by making the Government work for the people who need services and for the taxpayers.

Not everyone is happy with the bill, there is no question about that. Each side would like more money. The educators would like more for their share of the pie. The alternative education people would like more of the money on their side. Some would like more power on one side or another. You know you have a good bill when everybody is a little unhappy and when the interest groups recognize the value of the bill and are willing to accept something less than they would like.

Now, I will speak to my amendment.

I offer an amendment which I believe is technical in nature but might be construed as being more substantive. This amendment amends the 22-percent set-aside provision contained in title I to make the eligibility the same for the CETA 22-percent as the "education 22 percent." As currently drafted, only CETA primes can spend their funds on only CETA eligibles, whereas the school can spend it either for youth certified under 215(b) or CETA eligibles.

Unless this provision is changed, there could be no joint funding or administration of a single project, and no commingling of funds. It would mean that no school youth could participate in a program invloving CETA funds without going through the laborious process of being certified as "CETA" eligibles. In practical effect, there is little if any difference on the economic need of 215(b) and CETA youth. This amendment would simply make a joint agreement easier to develop and administer, by enabling prime sponsors to serve either CETA youth eligibles or youth designated under 215(b) without additional and cumbersome administrative expenses. The amendment also allows CETA sponsors to serve 215(b) youth without having these expenditures count against their 20-percent discretionary moneys which are available under section 414(b) for the specially needy, such as the handicapped, regardless of income.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from California.

Mr. HAWKINS. Mr. Chairman, may I say that the amendment refers to the intent of both sides. The amendment is acceptable to this side. This is an excellent amendment and we commend the gentleman for offering it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. JEFFORDS).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. JEFFORDS

Mr. JEFFORDS. Mr. Chairman, I offer two amendments, and I ask unanimous consent that the amendments be considered en bloc.

The Clerk read as follows:

Amendments offered by Mr. JEFFORDS: Page 28, line 22, insert ", subject to the limitation contained in section 122(h)(2)," immediately after "employment".

Page 24, line 13, strike out "under subpart 1" and insert in lieu thereof "under other provisions of this Act".

Page 30, beginning on line 2, strike out "under subpart 1 of this part" and insert in lieu thereof "under other provisions of this Act".

The CHAIRMAN. Is there objection to the request of the gentleman from Vermont that the amendments be considered en bloc?

There was no objection.

Mr. JEFFORDS. Mr. Chairman, I rise today to offer two amendments, en bloc, which I believe are technical in nature. Both amend the provisions of the youth incentive program as revised by title I of this bill, and clarify certain inconsistencies. The first applies the same limit on the length participation as in all CETA to the supplemental work projects which are available to certain out of school youth. The second allows prime sponsors to match their incentive moneys from the funds available under all of CETA and not just from subpart 1. This would allow much greater opportunity for primes to participate in the incentive program and is consistent with the mandate in the current law. It should be noted that prime sponsors cannot apply funds under title II of this bill to the match.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from California.

Mr. HAWKINS. Mr. Chairman, as I understand these two amendments one limits duration to 78 weeks full time and the other allows a match for entitlement to be from other provisions of the act. That is my understanding of the amendments.

Mr. JEFFORDS. The gentleman is correct.

Mr. HAWKINS. We feel the amendments are in conformity with the intent of the authors of the act. We are willing to accept the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Vermont (Mr. JEFFORDS).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. JEFFORDS

Mr. JEFFORDS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JEFFORDS: Page 12, strike lines 16 and 17 and insert in lieu thereof: "solar energy and other forms of energy conservation development."

Page 28, line 25, immediately after "and development" insert "including those described in section 448(a)(1)(D)".

Page 38, line 9, strike "and."

Page 38, line 14, strike the period and insert in lieu thereof "; and" after such line insert the following:

(D) projects jointly arranged and funded with the Secretary of Energy which will employ eligible youth, particularly those described in section 432(a)(2), in solar energy and other forms of energy conservation and development.

Mr. JEFFORDS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Vermont?

There was no objection.

Mr. JEFFORDS. Mr. Chairman, the bill before us contains language in several sections which authorizes education and training activities in new emerging employment areas such as alternative energy and conservation. This amendment would expand on those sections by authorizing projects jointly arranged and funded with the Secretary of Energy.

I think it is important to make maximum use of the resources that exist in other Federal agencies, to develop the best possible training programs in this new and expanding job field. Joint pro-

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grams may provide the most desirable vehicle for promoting the important goals of employing youth in meaningful and productive jobs, conserving energy and developing alternative energy sources.

Two of the most crucial problems facing the country today include chronic unemployment among young people and the need to develop alternative energy sources. These problems intersect in that, curiously, a major obstacle to the dissemination of small-scale alternative energy technology is a shortage of skilled technicians in both construction and installation.

Surveys have indicated that poor installation of solar devices is often a far greater problem than equipment failure. "Solar installation technicians" are too often plumbers with no solar training or experience.

This problem can impede the development of alternative energy industries by engendering public reluctance to invest in these technologies for some time to come. For example, the problems of early heat pumps in the fifties prevented their widespread use for nearly 20 years.

While the need for trained technicians may impede development of alternative energy sources, this area also offers major potential for unemployed and disadvantaged youth. A program to train young people in alternative energy and conservation would equip these individuals to enter a new, emerging employment field.

There is great potential for continued job growth in this field. In direct employment alone, alternative energy technologies and conservation measures will stimulate at least 2.5 times as many jobs nationally as would the use of an equivalent amount of oil, natural gas, and electricity, according to the Subcommittee on Energy of the Joint Economic Committee. The Department of Energy estimates that solar hot water, heating, and cooling technologies in residential applications could create up to eight times as many direct jobs as conventional sources. Furthermore, the California Public Policy Center found that California's unemployment rate could be halved in a year if solar power was sufficiently developed.

The ripple effect from the indirect employment created by alternative energy technologies would be felt throughout the economy. For example, a study prepared for the Subcommittee on Energy of the Joint Economic Committee determined that every million dollars of Federal investment in solar energy and energy conservation would result in over 33,000 jobs.

An alternative energy and conservation training program for unemployed youth makes good sense from a number of angles. It would help provide jobs for unemployed and disadvantaged youth. These would not be make-work jobs, but meaningful employment in a new productive and expanding economic sector. A solar job training program would also provide the skilled employees needed to staff an important fledgling industry. Such a program would cost relatively little, provide substantial economic returns and promote the important goal of conserving and diversifying our energy resource base.

I urge the adoption of this amendment.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from California.

Mr. HAWKINS. Mr. Chairman, is the money to fund the programs referred to—which are highly acceptable, does this money come from the discretionary fund?

Mr. JEFFORDS. That is correct.

Mr. HAWKINS. Mr. Chairman, with that understanding we accept the amendments.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont.

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title I?

Mr. MILLER of California. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take the well, first of all, to commend the chairman of the subcommittee, the gentleman from California (Mr. HAWKINS) and the chairman of the full committee, the gentleman from Kentucky (Mr. PERKINS) as well as the ranking minority members for the work they have done on title I of this legislation, which I think, in fact, will make a very real contribution to providing both jobs and training to unemployed youth in this country.

Mr. Chairman, I also take the well at this time to tell Members of the House that I will be offering an amendment later to strike title II because I believe that title II does nothing to help the plight of the millions of unemployed youth in this country and I think that this House will have to make a choice as to whether it wants to continue the mistakes of the past, whether it wants to continue with the rhetoric of the past or whether or not, in fact, it wants to deliver services.

I think it is a very important choice to make. It has been suggested that title II of this legislation is carried both in the Democratic and Republican platforms. I do not think we ought to pass title II because it is good for the Reoublican Party or because it is good for the Democratic Party, I think we ought to pass title II if and only if it is good for unemployed youth in this country. I would suggest to this Congress that that is, in fact, not the case. Title II is an effort to look like you are doing something when you do not have the guts to do what you want to do. This committee staff, the staff of the gentleman from California (Mr. HAWKINS) and the staff of the Subcommittee on Elementary and Secondary Eduction for months listened to the problems of the high schools, about high schools that fail and high schools that succeed, we listen to the problems of unemployed youth and we listen to the experts.

□ 1640

I believe that title II now goes contrary to the testimony we received. The experts told us about the need to attack the problem at a young age, at junior high school level. The bill fails to do that. Title II fails to do that.

We talked about the need to provide basic skills. Title II fails to do that. We talked about the need to concentrate resources, all the Job Corps program on individual youths. Title II in fact spreads the money school-wide, across the board.

So, I suggest that what we will have later on, when I offer my amendment to strike title II, is that we will have a choice for this Congress. We will have a choice of the continuation of the same old shell game that we have placed on the public before an election year, because this program is being heralded as a billion-dollar effort; this title is a billion-dollar effort to help the unemployed of this country achieve basic skills; and yet, it does not do that.

If anybody in this Congress really believes that this Congress is going to propose and is going to even appropriate an additional $1 or $2 billion in new moneys, I want that person to come forward and say so. But, this is a shell game on the black population, on the poor population of this country, where unemployment is of the greatest consequence, because that money is not going to come forth because the administration that has sent us this program is the same administration that recommended hundreds of millions of dollars' worth of rescissions for the current budget program, in the very heart of this program. This Congress voted to rescind those moneys in concentration grants that provide basic skills to underprivileged young people.

This is the same administration that is recommending rescissions for the next year in these same programs, but they want the minority communities, the young people of this country to believe that in fact they are really going to do something for them. We are not.

What title II will do is set us off on a 2-year planning program to design the programs that are now in place. For a long time, liberals have stood around and said, "You know, you can't just solve problems by throwing money at them." That is to defend your vote for money bills.

The conservatives have said, "You can not go on continuing to over-promise and under-deliver, because that undermines the credibility of the Government."

Today is your chance, because I am thoroughly convinced that title II completely misses the mark at which it was aimed. We will have more to say about that as we get into the amendment to strike title II, and I would hope that my colleagues will join me in my effort to defeat title II of this legislation.

AMENDMENT OFFERED BY MR. PETRI

Mr. PETRI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PETRI: Page 37, line 5, strike out "section" and insert in lieu thereof "sections"; page 40, line 7, strike out the close quotation marks and the remainder of such line and after such line insert the following:

"REGULATIONS; REQUIREMENTS AND REVIEW

"SEC. 449. Any regulations issued by the Secretary or by any other official of the Department of Labor in connection with or affecting the administration of any program authorized under this part shall meet the same requirements of, shall be subject to the same public comment and congressional review and disapproval and revision process established by, and shall take effect only in accordance with section 431 of the General Education Provisions Act.

Page 41, before line 1, strike out the close quotation marks and the following period in the item pertaining to section 448 and after such item insert the following:

"Sec. 449. Regulations; requirements and review.".

Mr. PETRI. Mr. Chairman, I offer this amendment in behalf of my colleague, the Honorable JOHN BUCHANAN of Alabama. It is similar to amendments that have been offered a number of times in connection with different legislation that has been before this House by the distinguished Member from Georgia (Mr. LEVITAS), having to do with legislative veto.

Mr. Chairman, I rise to offer an amendment to title I of H.R. 6711. My amendment would require that any regulations issued by the Secretary of Labor regarding the administration of any programs authorized under part A of title IV of the Comprehensive Employment and Training Act (CETA) must comply with the requirements of section 431 of the General Education Provisions Act (GEPA).

Section 431 of GEPA imposes certain standards on the Secretary of Education with regard to any regulations promulgated by the Department of Education concerning Federal education programs. For example, regulations must cite the particular section of the statutory law upon which the provision is based; no proposed regulation may take effect until 30 days after it is published in the Federal Register; during the 30-day period prior to the date upon which the regulation is to be effective, interested parties must be given the opportunity to comment upon the proposed regulations; and all regulations must be applied and uniformly throughout the 50 States.

Of greatest importance to the thrust of my amendment is the provision in section 431(d) which provides that any regulation of general applicability must be transmitted to the Speaker of the House of Representatives and to the President of the Senate. The final regulations will become effective in less than 45 days after the transmission to Congress unless the Congress finds, by concurrent resolution, that the final regulation is inconsistent with the Act from which it derives its authority, and thereby disapproves the final regulations.

The Comprehensive Employment and Training Act does not currently have a similar provision regarding the possibility of a legislative veto by the Congress. The scope of my amendment only applies to those CETA youth employment programs that we are authorizing here today under title IV–A of CETA. This amendment, therefore, will not effect any other program authorized by CETA.

As most of my colleagues are aware, earlier this year, the Committee on Education and Labor recommended, and the Congress adopted, resolutions of disapproval of four sets of final education regulations promulgated by the Department of Education. Congress vetoed these regulations under section 431 of GEPA because it felt that they violated the statute from which they received their authority.

The rejected sets of regulations included those regulations governing the arts in education program, the law-related education program, the Education Appeal Board, and title IV of the Elementary and Secondary Education Act relating to instructional equipment and the purchase of gymnasium equipment.

While I will not elaborate on the specific reasons for vetoeing the regulations, I think that I am justified in claiming that the Education and Labor Committee almost unanimously supported the disapproval. In a letter to Secretary Harris on June 12, 1980, 32 members of the committee noted that these regulations exceeded the authority delegated by Congress to the Department.

In spite of such widespread and bipartisian support of the congressional veto, Secretary Hufstedler on July 23, 1980, responded that she would only change one of the four regulations that were disapproved and that further changes would occur, if at all, in future years.

Obviously, the legislative veto of these regulations and the subsequent decision by the Secretary to ignore most of the vetoes may lead up to a constitutional court confrontation between the executive and legislative branches. It is my understanding that in early September the Subcommittee on Elementary, Secondary, and Vocational Education will hold a hearing on this issue. It is my hope that both Secretary Hufstedler and the Attorney General, the person upon whose opinion the Secretary decided to ignore the veto, will both be able to testify.

I believe that a discussion of the events of the past five months regarding the veto of the education regulations is necessary to set the stage for the amendment I offer here now. The Committee on Education and Labor has proposed a bill which seeks to coordinate, in many cases for the first time, youth employment programs authorized in CETA and education programs newly authorized here today. It is the committee's intent that there be significant interchange and cooperation between CETA recipients and education recipients at the local level and that, at the Federal level, there be coordination between the Department of Education and the Department of Labor. An amendment by Mr. JEFFORDS adopted in full committee makes the funding of this act a single line item in the budget, thereby forcing the strengthening of the employment/education linkage. It is even possible that some of the regulations promulgated under the Youth Act will be joint regulations.

Some members who work closely with the CETA programs may be concerned that a failure to disapprove any regulations proposed by the Department of Labor may indicate a concurrence with those regulations. This is not the case and is not my intent in offering the amendment. In section 431(D)(1) of GEPA it states that—

Failure of the Congress to adopt such a concurrent resolution with respect to any such final regulation prescribed under any such Act, shall not represent, with respect to such final regulation, an approval of finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

It should be also noted that, although regulations now must be disapproved in whole under GEPA, conferees to H.R. 5192, Education Amendments of 1980, have agreed to an amendment which would allow disapproval of regulations in part. Hopefully, this will be enacted into law within the next several weeks.

I urge my colleagues to support my amendment, so that Congress can once again exercise its constitutional right and obligation to disapprove regulations which do not comport with the authorizing statute.

Mr. HAWKINS. Mr. Chairman, will the gentleman from Wisconsin yield?

Mr. PETRI. I yield.

Mr. HAWKINS. Mr. Chairman, this side is fully aware of the amendment. Inasmuch as it makes both titles consistent and it is in conformity with previous action taken by the House, it seems to me there is no need to further debate the issue. We are perfectly willing to accept the amendment if the gentleman from Wisconsin is willing to rest on that.

Mr. PETRI. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. PETRI).

The amendment was agreed to.

Mrs. FENWICK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman. I will not take 5 minutes, but I would like to address the chairman and the ranking minority members of this important committee and subcommittee. If I understand correctly, on page 18, line 12, it speaks of private sector initiatives under title VII of this act. I would like to bring to the attention of my colleagues some excellent programs that are being worked under this particular dispensation, fine training programs conducted by reputable companies in which trainees, funded by CETA funds, will receive permanent employment in the companies that are training them.

This, to me, is one of the most hopeful developments in CETA. These are hard-core unemployed youths; they are working in the CETA program and making of it something of which we can all be proud; carefully done with the cooperation of the CETA administrator, in my particular district, with the approval of the AFL–CIO, as well as the company, the company counsel, and everyone else.

One type of program is directed to those who would like to enter private employment in the construction field. They receive their apprenticeship training, and their apprenticeship card when they finish the program. The other type of program is worked out with the com-

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munity colleges, and the companies which have agreed to employ the successful graduates of the program. They move into good starting jobs, averaging $8,000 and $10,000 a year in those companies.

This is the kind of program that really offers hope. I do not think the country at large and perhaps even my colleagues realize what good CETA is doing in these very fine programs which offer so much hope to our young people.

Mr. JEFFORDS. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Chairman, I certainly agree with everything the gentlewoman has said, and I know that both the subcommittee and committee have reported out legislation which would extend, reinforce, and improve the title VII programs. I must say that I am deeply concerned, as I know the gentlewoman is, not to see it on any list of priority legislation for this term. I would hope that the majority side would see fit to make sure that this program does get extended and improved.

Mr. PERKINS. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, I agree with the gentlewoman's statement. I have always felt that what she suggested could be done under title VII. I feel that we should deal with it in separate legislation. We can easily do it in separate legislation. I will cooperate with Mr. JEFFORDS and Mr. GOODLING, and we will do that.

Mrs. FENWICK. I thank the chairman.

AMENDMENT OFFERED BY MR. PANETTA

Mr. PANETTA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PANETTA: Page 10, line 5, insert "(i) before "occupations".

Page 10, line 6, insert before the semicolon the following: "; and (ii) service opportunities in programs established in the Domestic Volunteer Service Act of 1973 or in any other Federal, State, or local service programs, and service opportunities in private organizations involved in community improvement and conservation projects and in the provision of socially useful services".

Page 39, line 15, insert "the Secretary of Defense," after "Commerce,".

Page 42, line 10, strike out "and"; on line 11, strike out the period and insert in lieu thereof "; and"; and after such line insert the following:

"(5) provision of information concerning military and civilian volunteer service opportunities.

Page 42, after line 17, insert the following new paragraph (and redesignate the succeeding paragraphs accordingly):

"(2) dissemination of information concerning military and civilian service opportunities;

Mr. PANETTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1650

Mr. PANETTA. Mr. Chairman, the amendment before the House is really a composite of a number of minor language changes in title I designed to make sure that information on service opportunities is disseminated along with other job and career information under the programs authorized in the Youth Act. The changes I propose are not controversial in any way and will serve to coordinate our jobs programs with our efforts to attract individauls to service, whether it is in the military or in some civilian capacity. There is no excuse in our free society for failing to provide sufficient information to our young people about all service opportunities available to them.

As many of my colleagues know, I have sponsored legislation (H.R. 6868) to create a Presidential Commission on National Service. That bill has received enthusiastic support in the House from a number of my colleagues, including Representatives MCCLOSKEY, CAVANAUGH, SIMON, SPELLMAN, WOLPE, FAZIO, LLOYD, ADDABBO, LAGOMARSINO, COELHO, BONIOR, MCCORMACK, BINGHAM, MCCLORY, DOWNEY, EDGAR, LAFALCE, GRAY, BIELENSON, NEAL, FITHIAN, FROST, and HEFTEL.

The goal of creating the Commission is to raise the issue of national service in an effort to tap the creative energies of our young people in service to the country. With the issue of draft registration and a possible draft on the minds of many of our citizens, I believe it is essential that we provide the format for a constructive and far-ranging debate on the issue of national service. By the way, a counterpart proposal to mine has been sponsored by Senators TSONGAS and CRANSTON in the Senate and has made progress as an amendment to the domestic violence bill, having already passed the Labor and Human Resources Committee. That bill is awaiting floor action in the Senate. It is my hope that a House-Senate conference committee on the domestic violence bill will agree to accept the national service commission language.

The basic premise of the National Service Commission proposal is that we cannot expect our youth to serve if we do not at least ask them. In fact, we need to challenge them to serve. That same premise underlies my amendments today. The amendments provide a framework in which to inform young people about useful opportunities available to them. The objective I have in mind is to broaden the spectrum of opportunities and options available to young people, whether they happen to be "disadvantaged" or not, to gain employment and to provide volunteer service to the community and to the country.

My intent is simply to provide a framework for informing young people as to the opportunities which exist for volunteer service. My intent is to round out the laudable programs authorized by the legislation before us, to draw a complete picture of opportunities for young people. To exclude information on volunteer opportunities for young people is to continue a policy of segregation in which volunteer service is restricted to certain segments of our society when it should be encouraged and available for all.

Volunteer experience, whether it is in conservation work, in assisting the elderly, in the Peace Corps, or in national defense fields, can be of great value to developing a young person's subsequent employment and career choices and opportunities. Volunteer experience can provide useful on-the-job training, yielding much in the way of useful skills important to one's competitiveness on the job market. Volunteer service, furthermore, can provide very valuable personal rewards which help to remind those who volunteer that they can play a constructive role in society by serving others.

Thus, my amendments seek to broaden employment and career counseling programs and employment information programs to include other service opportunities. Specifically, the amendments propose four language changes or additions in title I of the reported bill. Three of the amendments are relatively minor. The major language change proposed by my amendment occurs in the section dealing with labor market services authorized by the bill (page 10). This added language would require that information concerning "service opportunities in programs established in the Domestic Volunteer Service Act of 1973 or in any other Federal, State, or local volunteer program, and service opportunities in private organizations involved in community improvement and conservation projects and in the provision of socially useful services" be included in youth labor market services.

The other language additions proposed in this amendment would, first, include the Secretary of Defense among the agency chiefs with whom the Secretary of Labor is required to consult in forming employment and career programs (page 39, line 15); and, second, add military and civilian volunteer service opportunities in the array of employment services for youth contained in the Wagner-Peyser amendments section of title I (page 42, lines 10 and 18).

Mr. Chairman, I am very proud to be joined in sponsoring this amendment by Representatives BINGHAM, PETRI, CAVANAUGH, MCCLOSKEY, and SIMON. This is a sound amendment which will help to serve the needs of our Volunteer Armed Forces and our civilian volunteer service programs. The amendment will help rekindle a spirit of service and patriotism which has been lost during the last two trying decades. I urge the support of my colleagues for this important amendment.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, there is a splendid program of service to the elderly on the edge of my district. CETA trainees go out and help elderly people and ill people who are at home, and when the trainees complete their program, every single one of them, a hundred percent, has been taken up into private jobs in the private sector because they are so well trained. It is a wonderful program.

Mr. PANETTA. Mr. Chairman, I thank the gentlewoman from New Jersey (Mrs. FENWICK).

Mr. Chairman, the basic point here is to provide that kind of broad perspective

to those who do come in under the labor services market and make available the market services that are provided in the bill so that there is a broad perspective of all the service opportunities that are available.

A number of us on the House side have discussed the possibility of a voluntary national service program that would begin to explore service opportunities that can be made available to all of our youth in the country. This, I think, would be an important step to begin to procure the kind of counseling that could be provided to our youth.

Basically, the amendments require these kinds of service opportunities be made available on a broad perspective to our youth who come into the labor market service program, and in that way I think we can broaden the perspective and the opportunities that our youth can have in this country.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I am pleased to yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Chairman, I have reviewed the amendment from the minority's perspective, and we feel it is a fine amendment and improves the bill. We appreciate the effort by the author of the amendment.

Mr. HAWKINS. Mr. Chairman, if the gentleman will yield, we agree with the view just expressed. We have seen the amendment, we think it is an excellent amendment, and we accept it.

● Mr. CAVANAUGH. Mr. Chairman, I rise in support of the Panetta amendment because I, too, believe that we in the Congress have thus far shortchanged the youth of our Nation by failing to even ask them to devote their time and energies to meeting the pressing service needs with which we are today being faced, both civilian and military. The Panetta amendment will be a small step in the right direction to rectify this failure, and I take this opportunity to bring to the attention of my colleagues the further need for the creation of a Presidential Commission in National Service.

I am pleased to have joined with the gentleman from California (Mr. PANETTA) in sponsoring legislation—H.R. 6868—to accomplish this objective, and even though we have already begun the registration of 19- and 20-year-old men for the draft, I believe it is imperative that the Congress, the President, and the people of this country make a comprehensive assessment of the fairness and adequacy of our current system of military manpower procurement and of our other goals and aspirations for the future, and then to begin the task of designing a fair and flexible program of national service which America's youth will support and in which they will participate with ambition and enthusiasm.

I have introduced legislation in this Congress to establish a public service system—H.R. 3603—to provide expanded service opportunities, both civilian and military, for our young people, and I welcome the ideas and input of my colleagues. But the debate must begin now. Building the necessary consensus upon which the success of such program ultimately depends will be a difficult and time-consuming task, but it is one which I believe we must undertake and in which we must succeed if we are to survive as a nation.

In addition to the pressing manpower needs of the armed services, our country has many needs which are equally essential to the national interest and which are becoming even more difficult to meet within current budget constraints. The care and protection of our natural resources, the health care needs of our poor and elderly, the redevelopment and revitalization of our urban areas are all areas of current commitment by our National Government, and yet the resources which we have available to meet these needs are diminishing. The concept of national service which I and others in the Congress have put forward offers an innovative and practical mechanism with which we can begin to address these needs, while at the same time providing valuable work experience to those in our society who bear a disproportionately high share of the burden of unemployment—the young.

Mr. Chairman, I urge my colleagues to support this amendment to bring within the purview of the Youth Act additional opportunities for service, and I further encourage my colleagues to support the efforts of the gentleman from California (Mr. PANETTA) and myself to establish a Presidential Commission on National Service, so that we may move forward in our efforts to meet the future manpower needs of the Nation in a fair and cost-efficient manner.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. PANETTA).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title I?

If not, the Clerk will designate II.

Title II reads as follows:

TITLE II—FINANCIAL ASSISTANCE TO MEET BASIC AND EMPLOYMENT SKILLS NEEDS OF SECONDARY SCHOOL YOUTH

FINDINGS; PURPOSE

SEC. 201. (a) FINDINGS.—The Congress finds that:

(1) High levels of youth unemployment predominantly occur among disadvantaged and minority youth, particularly those who live in poor urban and rural areas.

(2) Key factors contributing to high rates of youth unemployment are a lack of basic reading, writing and computational skills, and a lack of general employment and job-seeking skills.

(3) Secondary schools and area vocational schools can play a critical role in improving youth employment through the development of basic and employment skills by building on existing Federal and State assistance for educational services for disadvantaged students, most of which is presently channeled to elementary and postsecondary school students.

(b) PURPOSE.—The purpose of this title is to provide financial asistance—

(1) to increase youth employability by promoting mastery of basic skills and employment skills among disadvantaged youth in grades seven through twelve who are enrolled in school, and youth up to age twenty-one who left school prior to earning a certificate of graduation, through locally developed school- and community-based programs, except that grade six may also be included where it is the lowest grade at a school site which also includes any grade of seven through twelve;

(2) to target resources and services on schools with high concentrations of poor or low-achieving students; and

(3) to promote a partnership among educators, employment and training officers, and private sector employers that effectively links education, training, and work experiences for disadvantaged youth.

DURATION OF ASSISTANCE

SEC. 202. During the period beginning October 1, 1980, and ending September 30, 1985, the Secretary shall, in accordance with the provisions of this title, make payments to State educational agencies for grants made on the basis of allotments under this title.

ALLOCATION OF FUNDS

SEC. 203. From funds available to carry out this title for any fiscal year in accordance with section 301 of this Act—

(1) 2.5 percent shall be made available to carry out subpart 1 of part B;

(2) 15 percent shall be made available to carry out subpart 2 of part B;

(3) 1.5 percent shall be made available to carry out section 252;

(4) one-half of 1 percent, or $5,000,000, whichever is less, shall be made available to carry out section 254;

(5) 1 percent shall be made available to carry out section 255(1) and 1 percent shall be made available to carry out section 255(2); and

(6) the remainder of such funds shall be made available to carry out part A of this title.

PART A—PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

BASIC GRANTS—ELIGIBILITY AND AMOUNT

SEC. 211. (a) ELIGIBILITY FOR GRANTS.—(1) Subject to the provisions of subsection (c)(4) and subsection (f), each county in a State is eligible for a grant under this part for any fiscal year if—

(A) the number of youth counted under paragraph (2) of this subsection exceeds five thousand and exceeds 5 percent of the total number of youth aged five through seventeen in the county, or

(B) the number of youth counted under paragraph (2) exceeds 20 percent of the total number of youth aged five through seventeen in the county.

(2)(A) The number of youth to be counted for purposes of paragraph (1) of this subsection and subsections (b) and (c) is the aggregate of—

(i) the number of youth aged five through seventeen in the county from families below the poverty level, as determined under subparagraph (B);

(ii) the number of youth aged five through seventeen in the county from families above the poverty level, as determined under subparagraph (C); and

(iii) the number of youth aged five through seventeen in the county (I) living in institutions for neglected or delinquent youth (other than such institutions operated by the United States) but not counted pursuant to subpart 1 of part B of this title for the purposes of a grant to a State agency, or (II) being supported in foster homes with public funds, as determined under subparagraph (C).

(B) For the purposes of this subsection, the Secretary shall determine the number of youth aged five through seventeen from families below the poverty level on the basis of the most recent decennial census from which satisfactory data is available. In making this determination, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970

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decennial census, except as otherwise provided by Act of Congress.

(C) For purposes of this subsection, the Secretary shall determine the number of youth aged five through seventeen from families above the poverty level on the basis of the number of such youth from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making those determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such youth and the number of youth of such ages living in institutions for neglected or delinquent youth, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of youth described in the preceding sentence, the criteria of poverty and the form of such criteria required by that sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to the Secretary before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to the Secretary at the time of the determination.

(b) AMOUNT OF GRANT—PUERTO RICO.—(1) The amount of the grant for which the Commonwealth of Puerto Rico is eligible under this part for any fiscal year shall be an amount which bears the same ratio to the sums available for this part under section 203(6) for that year as (A) the product of the total number of youth in the Commonwealth counted in accordance with subsection (a)(2) multiplied by 32 percent of the average per pupil expenditure in the United States multiplied by the percentage described in paragraph (2) bears to (B) the aggregate of the products resulting from multiplying the total number of youth in each State counted in accordance with subsection (a)(2) by 40 percent of the amount determined under paragraph (3).

(2) The percentage referred to in paragraph (1)(A) is the percentage that results when the average per pupil expenditure of Puerto Rico is divided by the lowest average per pupil expenditure of any of the fifty States.

(3) The amount referred to in the paragraph (1)(B) is the average per pupil expenditure for the State, except that (A) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, the multilier shall be 80 percent of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure for the State is more than 120 percent of the average per pupil expenditure in the United States, the multiplier shall be 120 percent of the average per pupil expenditure in the United States.

(c) AMOUNT OF GRANT—OTHER STATES.—(1) For each county in a State other than the Commonwealth of Puerto Rico eligible to receive a grant under this section for any fiscal year, the Secretary shall determine the product of—

(A)(i) two-thirds of the number of youth in excess of five thousand counted under subsection (a)(2), or (ii) the number of youth counted under that subsection in excess of 20 percent of the total number of youth aged five through seventeen in that county, whichever is greater; and

(B) 40 percent of the amount determined under paragraph (2).

(2) The amount referred to in paragraph (1)(B) is the average per pupil expenditure in the State in which the county is located, except that (A) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, the multiplier shall be 80 percent of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure for the State is more than 120 percent of the average per pupil expenditure in the United States, the multiplier shall be 120 percent of the average per pupil expenditure in the United States.

(3) Subject to the provisions of paragraph (4) and (5), the amount of the grant for which an eligible county is eligible under this part for any fiscal year shall be an amount which bears the same ratio to the sums available for this part under section 203(6) for that year, less the amount paid to the Commonwealth of Puerto Rico under subsection (b), as the product (determined under paragraph (1)) for that county for that fiscal year bears to the sum of those products for all counties that are eligible in accordance with subsection (a) for that year.

(4) In the case of any county that satisfies the eligibility requirements for receipt of a grant contained in subsection (a), but whose grant, calculated in accordance with the provisions contained in paragraph (3) of this subsection, would amount to less than $25,000, the amount which that county would otherwise be eligible to receive under this section shall not be paid to that county and shall be retained by the State educational agency and added to the amount available to the State educational agency for the purposes of making payments in accordance with the provisions of subpart 2 of part B of this title.

(5) If the aggregate of the grants, calculated in accordance with the provisions of paragraph (3), for which eligible counties in a State are eligible, amounts to less than one-third of 1 percent of the total funds available under section 203(6) for this part for any fiscal year, then the total payment to the State under subsection (d) shall be increased to an amount equal to that percentage, and the allocations of counties in other States shall be ratably reduced to the extent necessary to bring the aggregate of those allocations within the limits of the funds available under section 203(6), except that those ratable reductions shall not operate to bring the total payment to any other State below that percentage, and the allocations of counties in other States shall be further ratably reduced as necessary to make the total payment to each State no less than that percentage. The amount by which a State's payment is increased under the first sentence of this paragraph shall be retained by the State educational agency and added to the amount available to that agency for the purpose of making payments in accordance with the provisions of subpart 2 of part B of this title.

(d) PAYMENT; USE OF FUNDS.—The Secretary shall pay to a State the total amount for which the counties in that State are eligible under this section for any fiscal year. Subject to the provisions of subsection (f), the State educational agency shall, pursuant to criteria established by the Secretary, allocate each county's allotment among the local educational agencies that are eligible in accordance with the provisions of subsection (e)(2) and whose school districts lie (in whole or in part) within that county. The allocation shall be based on the distribution in those districts of youth aged five through seventeen from low-income families, determined in a manner consistent with section 117 of the Elementary and Secondary Education Act of 1965.

(e) LOCAL PROGRAM APPLICATIONS.—(1) A local educational agency which meets the criteria under paragraph (2) and has submitted an application (or an amendment thereto) to the State educational agency is eligible for a grant under this part for each of the three fiscal years for which the application (or amendment) is made. The State educational agency shall process payments to the local educational agency within forty-five days after the date of receipt of an application that substantially meets the requirements of this title. The State educational agency shall notify the local educational agency with respect to any part of the application which does not meet the requirements of this title. The State educational agency may withhold such payment if that agency determines that the application will not provide for the use of funds in a manner consistent with the requirements of this title.

(2) A local educational agency is eligible to receive a payment from the county allotment under paragraph (1) if at least two hundred of its youth aged five through seventeen, or at least 20 percent of those youth, are from low-income families as determined by the State educational agency in a manner consistent with section 117 of the Elementary and Secondary Education Act of 1965. A local educational agency may combine with another local educational agency for the purpose of establishing eligibility for a payment under the preceding sentence and for the purpose of submitting the application under paragraph (1) and meeting the other requirements of this part.

(3) The amount paid to a local educational agency under this section, exclusive of the amount required to be reserved by that agency in accordance with section 220, shall be used for activities undertaken pursuant to the application under paragraph (1) and shall be subject to the other requirements of this part.

(f) STATE ALLOCATION TO STATE BOARD FOR VOCATIONAL EDUCATION.—(1) In any county in which there is one or more local educational agencies eligible for grants under this part and in which there is one or more area vocational schools not under the administrative control or supervision of local educational agencies, the Secretary shall pay to the State board for vocational education an amount equal to 25 percent of the total amount of the allotments of such county. The State board for vocational education shall make available, for programs which meet the requirements of this subsection, to the local educational agencies in such county and any area vocational schools in such county not under the administrative control or supervision of such agencies, an amount equal to that portion of the amount paid to such board pursuant to the preceding sentence which would, pursuant to subsections (d) and (e), have been available to such agencies in such county (but for the requirements of this subsection).

(2) The State board for vocational education shall approve an application of any local educational agency and area vocational school seeking assistance under this subsection only if such application has been submitted jointly by such agency and school pursuant to an agreement between them for the conduct of a program under this subsection and such program—

(A) meets the requirements of sections 213, 214(a)(3), 215, 216(b), 217, 218, and 219, and

(B) serves youth who are (i) identified under section 215(b) or (ii) eligible for services under part A of title IV of the Comprehensive Employment and Training Act.

(3) In any case in which an area vocational school and a local educational agency are unable to enter into an agreement for purposes of this subsection, the State board for vocational education shall establish procedures for a resolution thereof.

(4) Any plan approved under this subsection may be amended to the extent necessary to make it compatible with a joint agreement between a prime sponsor and a local educational agency which meets the requirements of section 220, and any such amendments shall not require further approval by the State board for vocational education.

SELECTION OF SCHOOLS

SEC. 212. (a) SCHOOL ELIGIBILITY.—A school shall be eligible to receive assistance under this part through a local educational agency only if—

(1) such school—

(A) provides secondary education, as determined by the State educational agency, to youth in grades seven through twelve; or

(B) is designated as an area vocational school serving youth from among ages eleven through twenty-one; and

(2)(A) the school serves a large number or percentage of youth from low-income families, determined in a manner consistent with section 122 of the Elementary and Secondary Education Act of 1965; or

(B) the school serves a large number or percentage of low achieving youth as determined by a measurment of basic skills designated for such purpose by the State educational agency, consistent with the purposes of this title.

(b) RANKING AND SELECTION OF SCHOOLS.—(1) A local educational agency shall rank all of its designated schools from highest to lowest in concentration of students from low-income families, determined in a manner consistent with section 122 of the Elementary and Secondary Education Act of 1965. Notwithstanding the preceding sentence, the agency may rank a school that is eligible under subsection (a)(2)(B) ahead of a school that (as measured under subsection (a)(2)(A)) has a significantly lower concentration of students deficient in basic skills achievement. A local educational agency may conduct separate rankings for each set of designated schools serving comparable grades or ages, but the total number of eligible schools may not exceed that produced under a single ranking.

(2) Nothing in this subsection shall be construed to prevent a local educational agency from providing assistance to all of its designated schools.

DEVELOPMENT OF SCHOOL PLANS

SEC. 213. (a) PLAN REQUIREMENT.—No school may receive funds under this title unless it develops, and submits to the local educational agency at such time as the agency may require, a three-year plan meeting the requirements of subsection (b) which describes the manner in which the school intends to use the funds, together with such amendments or revisions to the plan as may be required by the local educational agency. Such plan shall be reviewed and commented upon by the school site council prior to its submission to the local educational agency. Provision shall be made for individual council members who wish to indicate their dissent in whole or in part from the plan as submitted. Additionally, the chief administrator of the designated school shall, prior to the submission of the plan, consult with the youth council established under part A of title IV of the Comprehensive Employment and Training Act and the appropriate prime sponsor.

(b) CONTENTS OF PLAN.—The three-year plan required under subsection (a) shall contain a description of—

(1) specific short-term and long-term goals, consistent with applicable standards and additional goals prescribed under subsection (d), for improving basic skills achievement, reducing the student dropout rate, improving student attendance, improving employment skills, strengthening the transition to work, and eliminating stereotyping by race, sex, national origin, or handicapping condition, with all resources available to the school (including resources under this title);

(2) the methods by which—

(A) the school will achieve the goals set forth pursuant to paragraph (1);

(B) the school will achieve the goals set forth pursuant to paragraph (1) through the use of alternative education programs;

(C) the school staff's abilities to assist in achieving the goals set forth pursuant to paragraph (1) will be improved;

(D) the community will be involved in the implementation of the plan, including specific provisions designed to involve parents in the education of their children;

(E) the school will seek to involve the prime sponsor and the private sector to assist in the development of general work experience and cooperative vocational education programs for students in grades ten through twelve;

(F) the school will comply with any requirements imposed by the local educational agency with respect to funds made available under section 220;

(G) the school, by itself or together with other organizations, will seek to attract to a school or alternative education program those youth aged sixteen through twenty-one who left school prior to earning a certificate of graduation and youth aged sixteen through twenty-one who have completed high school but who require remedial basic skills training; and

(H) the school will comply with section 215(b).

(c) GRANTS FOR PLANNING AND INSERVICE TRAINING.—(1) Any local educational agency shall use funds it receives from amounts appropriated under section 301(a)(2) of this Act to provide assistance to designated schools to develop plans under this subsection and to carry out additional activities under paragraph (2). In providing assistance to any designated school under this subsection, a local educational agency shall provide each school with funding sufficient to ensure the development of a comprehensive school plan consistent with the purposes of this title. The local educational agency shall provide technical assistance to designated schools to assure applications of high quality, and such agency shall maintain fiscal responsibility and accountability for such funding.

(2) In addition to expenses directly related to the development of a school plan under this subsection, a designated school may use funds received under this subsection for expenses relating to inservice training designed to prepare school staff for the implementation and operation of the plan. Any inservice training supported by funds under this subsection shall be coordinated with any other inservice training conducted by the school, the local educational agency, or the State educational agency.

(3) A local educational agency may provide planning assistance to a designated school under this subsection only if it also provides such assistance to all other eligible designated schools that apply and are ranked higher under section 212(b).

(d) MINIMUM STANDARDS FOR PERFORMANCE GOALS.—The State educational agency shall establish minimum standards, based on general guidelines issued by the Secretary, with which the performance goals set by schools under subsection (b)(1) must comply. The State educational agency may establish goals in addition to those required by subsection (b)(1) which reflect that State's educational needs. Such standards and goals shall take into consideration local factors affecting the performance potential of such schools and shall be developed only after widespread consultation and hearings with practicing local educational agency representatives, and such standards shall reflect their recommendations.

ALLOCATION TO SCHOOLS

SEC. 214. (a) ALLOCATION OF FUNDS TO SCHOOLS.—Except as provided in subsection (b), a local educational agency shall determine the amount and duration of assistance to designated schools to be made available with funds under this part, exclusive of funds reserved for purposes of sections 219 and 220, in accordance with the following requirements:

(1) The local educational agency shall take into account both the need of the designated school, as indicated by its ranking under section 212(b), and the quality of the school plan as submitted in accordance with section 213(a). The Secretary shall prescribe the method by which local educational agencies shall weigh each of these factors in determining which eligible schools shall be provided assistance under this part. No school shall be given assistance, however, unless and until a majority of the members of its school site council have indicated their accord with the plan as submitted for final approval to the local educational agency. The local educational agency shall have the right to alter the school site plans as necessary to be consistent with contracts and formally adopted district wide policies of the local education agency, and such alterations shall not be subject to approval by the school site council.

(2) Subject to the availability of funds under this part and subject to section 215(d), the local educational agency shall provide assistance, for no fewer than three consecutive years, to each school selected by it under paragraph (1), so long as the local educational agency determines that the school is making substantial, documented progress toward achieving the objectives set forth in the plan submitted under section 213.

(3) Any school selected to receive assistance under paragraph (1) shall receive assistance in amounts that will enable it to conduct activities that will have a major, sustained effect on the achievement, retention, and employment opportunities of disadvantaged youth receiving assistance under this title. Subject to the availability of funds under this part, each such school shall receive a minimum award not less than the greater of the following:

(A) $15,000; or

(B) 25 percent of the product of (i) the State average per pupil expenditure as determined under section 211(c)(2), multiplied by (ii) the total number of youth who are from low-income families, determined in a manner consistent with section 122 of the Elementary and Secondary Education Act of 1965.

(4) If any school selected to receive assistance under paragraph (1) uses special State or Federal funds to provide compensatory education in the basic skills to youth in the same grades being served by the program assisted under this part, the local educational agency may take these funds into consideration in determining the amount of assistance provided to the school under this section.

(b) ALTERNATIVE ALLOCATION.—In the case of any local educational agency—

(1) in which the concentration of youth from low-income families is uniformly distributed among all schools eligible under section 212(a), or

(2) which meets the requirements of section 606(a)(1) of the Emergency School Aid Act (title VI of the Elementary and Secondary Education Act of 1965), relating to engaging in activity to desegregate elementary and secondary schools,

that agency, after consultation with the district-wide advisory council established under title I of the Elementary and Secondary Education Act of 1965, may request the State educational agency to approve an alternative proposal (consistent with sec-

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tion 220) for distributing funds under this section in lieu of the distribution required by subsection (a). The State educational agency shall approve any proposal submitted under the preceding sentence if it determines that the local educational agency's alternative would more effectively meet the needs of the lowest achieving students of that agency.

(c) RESTRICTIONS.—During any fiscal year subsequent to the first fiscal year for which appropriations are made for purposes of this title, a local educational agency may use—

(1) not more than 4 percent of the funds received by it under this part for that year (A) to assist designated schools to develop plans under section 213 for programs designed to improve the basic and employment skills of disadvantaged students, (B) to provide technical assistance to such schools, and (C) for administrative expenses; and

(2) not more than 10 percent of such funds for in-service training.

PROGRAM REQUIREMENTS

SEC. 215. (a) SCHOOL SITE COUNCIL.—Any school that receives planning assistance under this part shall establish a school site council to advise the chief administrator of that school in the development of a school plan that meets the requirements of section 213(b). In the event that the school plan is funded by the local educational agency in accordance with section 214, the school site council shall advise the chief administrator on the implementation of the plan and on the attainment and evaluation of the goals in such plan and shall also advise the local education agency on its monitoring of progress toward the attainment of these goals. The council members shall be selected in accordance with criteria of the Secretary, shall represent the school's student population, and shall have representatives from each of the following groups: (1) parents of children enrolled at that school; (2) teachers at that school; (3) local business; (4) organized labor; (5) prime sponsors; (6) students; and (7) community-based organizations. Teachers shall constitute at least one-third of the total membership of the council. The chief administrator of the school shall serve as chairman of the council. Any school-based council which meets the membership requirements of this subsection may be designated to serve as the school site council.

(b) STUDENT SELECTION.—A designated school shall use funds made available under this part for programs in which youth identified as having the greatest need for special assistance will be given priority, determined on the basis of a locally developed or selected objective evaluation of lack of basic skills achievement and of barriers to employment and education.

(c) COORDINATION; RECORDS.—(1) No program may receive assistance under this title if it does not seek to use activities presently being funded by a local prime sponsor or training facilities available from a prime sponsor, area vocational school, community-based organization, or community college.

(2) Each designated school and local educational agency shall make every effort possible to assure that the students who receive education and training with funds provided under this title in such designated schools will, to the extent necessary, also receive employment and training opportunities with funds provided under title II, part A of title IV, and title VII of the Comprehensive Employment and Training Act.

(3) For each student who will receive education and training with funds provided under this title, the school or organization providing such education and training shall develop a basic skills and employment record compatible with the record required by section 413 of the Comprehensive Employment and Training Act and that contains elements approved by the prime sponsor and the local private industry council established in accordance with section 704 of such Act.

(d) EVALUATION OF COMPLIANCE WITH PERFORMANCE GOALS.—(1) Each local educational agency shall, at the end of each school year for which funds are provided under this part, evaluate the progress of each designated school which receives such funds during such year in meeting the short-term and long-term goals set forth in that school's plan pursuant to section 213(b)(1). Any such school—

(A) which is determined by the local educational agency to have failed in any one year for which funds are provided under this part to make substantial progress toward meeting such goals, shall be given written notice of such determination and shall be provided with technical assistance for such purpose by the local educational agency; and

(B) which is determined by the local educational agency to have failed in any two consecutive years for which funds are provided under this part to make substantial progress toward meeting such goals, shall be ineligible for assistance under this title for any subsequent year.

(2) Determinations under paragraph (1) shall be made on the basis of evaluations conducted by the local educational agency and shall involve the school site council required under section 2(a). Notices issued pursuant to paragraph (1)(A) and evaluations conducted under this paragraph shall be transmitted to the State educational agency.

(3) In any case in which a school has been declared ineligible for further assistance pursuant to paragraph (1)(B), the funds for which such school would otherwise have been eligible shall be used either to increase the allocations of other schools selected for assistance or to select and fund additional designated schools.

(e) AUTHORIZED ACTIVITIES.—A designated school shall use funds provided under this part for activities which are designed to meet the special educational and training needs of the youth in that school. Priority under this part shall be given to schoolwide activities designed to improve student achievement in the basic skills, but activities funded under this part may also include—

(1) vocational exploration and instruction in employment skills, including career education and the use of advanced learning technology;

(2) the promotion of education-to-work transition;

(3) specific occupational skill training only where there has been documented evidence of local need for such training;

(4) remedial education in the basic skills, including the use of advanced learning technology;

(5) vocational training;

(6) programs to overcome stereotyping in job placement on the basis of race, sex, national origin, or handicapping condition;

(7) the provision of training to improve the abilities of school staff as indicated in the school's plan submitted pursuant to section 213(b);

(8) alternative education programs to carry out the activities described in paragraphs (1) through (6); and

(9) other necessary services, such as child care, transportation, and counseling, as indicated in the school's plan.

EXPENDITURES FOR VOCATIONAL EDUCATION

SEC. 216. (a) MINIMUM ALLOCATION FOR VOCATIONAL EDUCATION.—Each local educational agency receiving funds under this title shall use not less than 25 percent of such funds for vocational education. Such funds may be made available for vocational education offered in any designated schools (whether secondary schools or vocational education schools) or in other area vocational schools which are not designated schools. The State board for vocational education shall review and approve that portion of the application of the local educational agency respecting the use of such funds for vocational education.

(b) PROGRAM REQUIREMENTS.—The State board for vocational education shall approve that portion of the application of the local educational agency respecting the use of funds under this section if that agency's application under sections 211(e) and 213 provides assurances that—

(1) any programs of vocational education supported under this section do not duplicate any other programs in the area of the local educational agency, including those supported under the Comprehensive Employment and Training Act;

(2) services supported under this section will serve youth who are (A) identified under section 215(b), or (B) eligible for assistance under part A of title IV of such Act;

(3) reasonable efforts will be made to use vocational training facilities in the area of the local educational agency even if such facilities are not under the administrative control or supervision of such agency, and when such facilities are separately administered, the governing board or boards will be consulted in the approval of programs under this section;

(4) vocational education services will be designed, in consultation with the private industry council established under section 704 of such Act, to provide occupational skills which are documented to lead to immediate employment in the local area served;

(5) any such services will be planned as part of any agreement developed under section 220, to the maximum extent feasible, in consultation with prime sponsors which serve the area;

(6) funds will be used for purposes described in subsection (c);

(7) the training to be provided is related to realistic employment opportunities as determined through use of job demand data, especially that available through the State occupational information coordinating committee established under section 161 of the Vocational Education Act;

(8) efforts will be made to reach out-of-school youth and to provide programs to meet their needs through existing or alternative education arrangements;

(9) all training programs shall be integrated closely with remedial education in the basic skills; and

(10) all programs assisted under this section will be reported to the Vocational Education Data System, if such system is in operation in the State.

(c) USE OF FUNDS.—Vocational education services supported under this section shall include—

(1) combined programs providing basic and employment skills;

(2) preparation of the basic skills and employment records required under section 215(c)(3), or to assist the prime sponsor serving the area to meet the requirements of section 412 or 413 of the Comprehensive Employment and Training Act;

(3) provisions of cooperative vocational education; supervised work experience; on-the-job training; on-site industry specific vocational education as authorized under title VII of such Act; work experience or career exploration, linked to related in-school instruction in basic skills, under the supervision of the chief administrator of the school;

(4) provision of career guidance services, including trained individuals to assist youth participating in the program to relate services provided under this section to that youth's education and career goals; and

(5) outreach activities necessary to inform potential participants of the opportunities available under this section.

(d) FUNDS AVAILABLE UNDER SECTION 212(f).—In the case of any local educational agency which is in a county described in section 212(f) and which has a joint plan with an area vocational school approved by the State board for vocational education for the purpose of conducting programs under such section, funds received and used by such school for purposes of such plan may be deemed to be funds used by that agency as required by the first sentence of subsection (a).

LOCAL ADVISORY COUNCILS

SEC. 217. (a) EDUCATIONAL ADVISORY COUNCILS.—In conducting planning for purposes of this part, a school shall consult with any appropriate federally required local educational advisory council, including those established pursuant to title I of the Elementary and Secondary Education Act of 1965, the Vocational Education Act of 1963, the Bilingual Education Act, the Indian Education Act, and the Emergency School Aid Act, and with other appropriate representatives of the community.

(b) OTHER ADVISORY COUNCILS.—Each local educational agency that receives funds under this title shall consult with any appropriate advisory council established for that district under Federal law (such as those established under title I of the Elementary and Secondary Education Act of 1965 and the Vocational Education Act of 1963) on the implementation and operation of the programs assisted under this title.

FUNDING REQUIREMENTS

SEC. 218. (a) MAINTENANCE OF EFFORT.—A local educational agency is eligible for assistance under this title for any fiscal year only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than the combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year.

(b) RESOURCE EQUIVALENCY.—(1) A local educational agency receiving funds under this part shall ensure that the regular funds from non-Federal sources for schools receiving funds under this part be substantially equivalent, in the aggregate, to the funds provided similar schools not funded under this part.

(2) A local educational agency receiving funds under this part must ensure that these funds increase the level of resources available to schools receiving funds under this part and that Federal, State, and local supplemental funds be equitably distributed, in the aggregate, to schools receiving funds under this title in comparison with similar schools not receiving funds under this title.

PARTICIPATION OF YOUTH ENROLLED IN PRIVATE SCHOOLS

SEC. 219. (a) GENERAL REQUIREMENTS.—To the extent consistent with the number of youth in the school district of the local educational agency who are enrolled in private elementary and secondary schools but who would otherwise be identified under section 215(b), such agency shall make provision for including educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such youth can participate and which meet the requirements of section 215(e). Expenditures for educational services and arrangements pursuant to this section for such youth in private schools shall be equal (taking into account the number of youth to be served and the educational needs of such youth) to expenditures for youth enrolled in the public schools of the local educational agency.

(b) BYPASS PROVISION.—If any local educational agency is prohibited by law or has been determined by the Secretary to have substantially failed to provide for the participation required by subsection (a), the Secretary shall arrange for the provision of services to the youth described in such subsection in the same manner as is required by section 130(b) of the Elementary and Secondary Education Act of 1965 with regard to educationally deprived youth in private schools. Such arrangements shall be made in accordance with paragraph (3) of such section and the making of determinations of the need for such arrangements (and any judicial review sought by State or local educational agencies) shall be conducted in a manner consistent with paragraph (4) of such section.

MINIMUM AMOUNT REQUIRED FOR JOINT PROGRAMS

SEC. 220. (a) MINIMUM AMOUNT REQUIRED.—(1) From the sum of the amounts available to any local educational agency under this part, an amount equal to not less than the product of such sum multiplied by the number described in paragraph (2), divided by one hundred, may be used only for programs described in subsection (b).

(2) Subject to section 302 of this Act, the number described in this paragraph for any period is the percent of funds allocated to prime sponsors under section 423(a)(4) of the Comprehensive Employment and Training Act (as amended by title I of this Act) which such prime sponsors are required by section 423(d) of such Act (as so amended) to use for programs carried out pursuant to agreements between such prime sponsors and local educational agencies.

(b) REQUIREMENTS OF JOINT PROGRAMS.—(1) The amount available under subsection (a) may be used by the local educational agency only for programs carried out pursuant to agreements between local educational agencies and prime sponsors, for youth—

(A) identified under section 215(b), or

(B)(i) who are eligible for assistance under part A of title IV of the Comprehensive Employment and Training Act, and

(ii) who reside in attendance areas served by designated schools receiving assistance under this title.

(2) Each such agreement shall describe in detail the appropriate educational arrangements, employment opportunities, training, and supportive services which shall be provided to such youth who are enrolled or who agree to enroll in a program leading to a secondary school diploma or a certificate of high school equivalency, a junior or community college degree, or a technical or trade school certificate of completion. Each such agreement shall describe in detail the appropriate alternative education arrangements for those youth who require such services. Each such agreement shall contain provisions to assure that funds received pursuant to the agreement will not supplant State and local funds expended for the same purpose.

(c) FUNDS AVAILABLE UNDER SECTION 212(f).—In the case of any local educational agency which is in a county described in section 212(f) and which has a joint plan with an area vocational school approved by the State board for vocational education for the purpose of conducting programs under such section, funds received under such section and used to carry out programs described in subsection (b) may be counted toward the amount such agency is required to use for such purpose by subsection (a)(1).

PART B—PROGRAMS OPERATED BY STATE AGENCIES

Subpart 1—Programs for Special Populations

ELIGIBILITY AND AMOUNT

SEC. 221. (a) ELIGIBILITY.—A State educational agency or a combination of such agencies shall be eligible for a grant under this part for each of the three fiscal years for which an application is made, to establish or improve, either directly or through local educational agencies or other State agencies, programs for migratory youth of migratory agricultural workers or of migratory fishermen and programs for youth in institutions for neglected or delinquent youth or in adult correctional institutions which meet the requirements of section 222.

(b) AMOUNT OF GRANT.—(1) For each State eligible to receive a grant under this subpart for any fiscal year, the Secretary shall determine the product of—

(A) the number of youth in the State who are counted in accordance with the provisions of paragraph (4); and

(B) 40 percent of the amount determined under paragraph (2).

(2) The amount referred to in paragraph (1)(B) is the average per pupil expenditure in the State, except that (A) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, the multiplier shall be 80 percent of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, the multiplier shall be 120 percent of the average per pupil expenditure in the United States.

(3) The amount of the grant to a State under this subpart for a fiscal year shall be an amount which bears the same ratio to the total funds available for this subpart for that year as the product determined under paragraph (1) for that State for that fiscal year bears to the sum of the products for all States that are eligible for a grant under this subpart for that fiscal year.

(4) The number of youth to be counted for purposes of paragraph (1) is the aggregate of—

(A) the estimated number of migratory youth of migratory agricultural workers or of migratory fishermen who are aged five through seventeen entered in the Migrant Student Record Transfer System and who reside in the State full time;

(B) the full-time equivalent of the estimated number of such migratory youth who are aged five through seventeen entered in the Migrant Student Record Transfer System and who reside in the State part time, as determined by the Secretary; and

(C) the number of neglected or delinquent youth in average daily attendance, as determined by the Secretary, at schools for those youth operated or supported by a State agency and in institutions for neglected or delinquent youth or in adult correctional institutions, including schools providing education for those youth under contract or other arrangement with the State agency.

PROGRAM REQUIREMENTS

SEC. 222. (a) REQUIREMENTS FOR APPROVAL OF APPLICATION.—The Secretary may approve an application submitted under section 221 only if the Secretary determines that—

(1) payments will be used for programs at the secondary school level which are designed to improve the basic and employment skills of migratory youth of migratory agricultural workers or of migratory fishermen (and which, to the extent feasible, include alternative education programs), and to coordinate those programs with similar programs in other States, including the transmittal of pertinent information with respect to school records of those youth;

(2) in planning and carrying out programs there has been and will be appropriate coordination with State employment and training programs, and programs administered under section 303 of the Comprehensive Employment and Training Act of 1973;

(3) the programs will be administered and carried out in a manner consistent with the basic objectives of part A of this title; and

(4) payments will be used for programs at the secondary school level which are designed to improve the basic and employment skills of youth in institutions for neglected or delinquent youth or in adult correctional in-

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stitutions (and which, to the extent feasible, include alternative education programs), and these programs shall be designed to support educational services supplemental to the basic education of those youth that must be provided by the State, and shall be administered and carried out in a manner consistent with part A of this title.

(b) BYPASS PROVISION.—If the Secretary determines that a State is unable or unwilling to conduct educational programs for migratory youth of migratory agricultural workers or of migratory fishermen, or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such youth, the Secretary may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in one or more States, and for this purpose the Secretary may use all or part of the total grants available for any such State under this section.

Subpart 2—State Supplemental Programs

ELIGIBILITY AND AMOUNT

SEC. 231. (a) ELIGIBILITY.—(1) A State educational agency, upon its application for a fiscal year, shall be eligible for a grant under this subpart for each of the three fiscal years for which the application (or any amendment thereto) is made to establish or improve programs designed to develop the basic and employment skills of disadvantaged students in schools which meet the requirements of section 212(a) but are within local educational agencies which do not receive assistance under part A of this title. Funds received by a State educational agency under this subpart shall be made available to such schools through local educational agencies which have submitted applications therefor to the State educational agency in such form and at such time as such agency may require.

(2) For purposes of this subpart, an area vocational school that is not part of any local educational agency within a State and that serves youth from among ages eleven through twenty-one shall be treated as a local educational agency.

(b) AMOUNT OF GRANT.—(1) For each State eligible to receive a grant under this subpart for any fiscal year, the Secretary shall determine the product of—

(A) the number of youth in the State who are counted in accordance with section 211(a)(2); and

(B) 40 percent of the amount determined under paragraph (2).

(2) The amount referred to in paragraph (1)(B) is the average per pupil expenditure in the State, except that (A) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, the multiplier shall be 80 percent of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, the multiplier shall be 120 percent of the average per pupil expenditure in the United States.

(3) The amount of the grant which shall be made available to a State under this subpart for any fiscal year shall be an amount which bears the same ratio to the total funds available for this subpart under section 203(2) as the product determined under paragraph (1) for that State for that fiscal year bears to the sum of the products for all States that are eligible for a grant under this subpart for that fiscal year.

PROGRAM REQUIREMENTS

SEC. 232. The Secretary may approve an application submitted under section 231 (or any amendments thereto) only if the Secretary determines that—

(1) payments will be used for planning and implementing programs that are designed to improve the basic and employment skills of disadvantaged students and that, to the extent feasible, include alternative education programs;

(2) programs will be conducted at schools which meet the requirements of section 212 (a) but are within local educational agencies which do not receive assistance under part A of this title;

(3) the State will administer the programs under this subpart in a manner consistent with part A, including the requirement that not less than 25 percent of each grant shall be used for programs of vocational education in designated schools, and the requirements of section 219 to the extent consistent with the number of youth in the attendance areas of the designated schools who are enrolled in private elementary and secondary schools;

(4) the State will consult with appropriate advisory councils established at the State level pursuant to Federal education laws (such as the Vocational Education Act of 1963) and pursuant to the Comprehensive Employment and Training Act in formulating plans and administering programs under this part; and

(5) the State has established an equitable method for determining the eligibility for and amount of grants to be made to local educational agencies under this part.

PART C—GENERAL PROVISIONS

COORDINATION, TECHNICAL ASSISTANCE, DISSEMINATION OF INFORMATION, AND MONITORING

SEC. 251. (a) COORDINATION.—Each State educational agency shall carry out a comprehensive program to coordinate activities assisted under this title with employment and training activities and other relevant activities conducted in the State, and to provide technical assistance upon request to local educational agencies and State agencies which request such assistance with respect to the use of funds received under this title.

(b) TECHNICAL ASSISTANCE.—The comprehensive program required by subsection (a) shall include technical assistance for management procedures, for planning, development, implementation, and evaluation of school programs, and for preparation of applications.

(c) DISSEMINATION OF INFORMATION.—Each State educational agency shall also adopt procedures for disseminating to local educational agencies and State agencies (1) significant and relevant information derived from educational research, (2) information about successful education projects designed to improve basic and employment skills, and (3) such other information as will assist local educational agencies and State agencies in planning, developing, implementing, and evaluating programs assisted under this title, including information on occupational demand and supply for labor areas provided by the State occupational information coordinating councils established under section 161 of the Vocational Education Act of 1963.

(d) MONITORING, ENFORCEMENT, AND COMPLAINT RESOLUTION.—(1) Each State educational agency shall, in accordance with its plan under section 171 of the Elementary and Secondary Education Act of 1965 (together with any amendments submitted for purposes making such plan applicable to funds provided under this title of this Act) and in accordance with the requirements of section 172 of such Act (read as if such section referred to payments under this title of this Act), monitor compliance by local educational agencies with the provisions of this title and shall enforce the compliance of local educational agencies with the requirements of section 215(d), including the adequacy of the evaluations conducted under section 215(d)(2). In conducting the monitoring required by this paragraph and in enforcing the requirements of this title with respect to funds provided under this title, the State educational agency shall, insofar as practicable, conduct such monitoring in coordination with monitoring and enforcement activities under title I of the Elementary and Secondary Education Act of 1965.

(2)(A) With respect to monitoring compliance, resolving complaints, and conducting other enforcement activity with respect to funds provided under this title, each State educational agency shall have the same authority and responsibility with respect to local educational agencies and such funds as is provided by sections 167, 168, 169, and 170 of the Elementary and Secondary Education Act of 1965 with respect to such agencies and funds provided under title I of such Act.

(B) Each local educational agency which receives funds under this title shall, in accordance with its written procedures under section 128 of the Elementary and Secondary Education Act of 1965, resolve complaints received from the school site council required under section 215(a), advisory councils listed in section 217(a), parents, teachers, or other concerned organizations or individuals, concerning violations of this title or of applicable provisions of the General Education Provisions Act in connection with programs under this title.

(C) The Secretary of Education shall, in accordance with the written procedures under section 184 of the Elementary and Secondary Education Act of 1965, resolve appeals from final resolutions of State Educational agencies, and resolve complaints received directly from the schoolsite council established under this title, advisory councils listed in section 217(a), parents, teachers, or other concerned organizations or individuals, concerning violations of this title or of applicable provisions of the General Education Provisions Act in connection with programs under this title, and conduct independent onsite investigations of complaints if the Secretary deems necessary.

(3) In any case in which funds are withheld from a local educational agency under the authority of paragraph (2)(A), the State educational agency is authorized to enter into arrangements with alternative providers of educational services to carry out the purposes of this title with the funds so withheld.

(4) In any case in which the Secretary receives an allegation, supported by substantial evidence, that a local educational agency is failing to carry out its responsibilities under section 215(d), the Secretary shall take appropriate enforcement action in manner consistent with the provisions of part E of the General Education Provisions Act, except that the Secretary may refer the allegation to the State educational agency for a period not to exceed one hundred and twenty days for resolution pursuant to its authority under this subsection.

PAYMENTS FOR STATE ADMINISTRATION

SEC. 252. From the amounts allocated to States under this title, the Secretary is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this title, except that the total of those payments in any fiscal year shall not exceed the amount made available for purposes of this section in accordance with section 203(3). In any case in which the State educational agency is not also the State board for vocational education, the State educational agency shall make available to such board in each fiscal year at least 25 percent of funds paid to such agency under this section.

ADMINISTRATIVE PROVISION

SEC. 253. (a) DATA AND REPORTING SYSTEM.—The Secretary of Labor and the Secretary shall develop a common data and reporting system for the activities assisted under this title and under part A of title IV of the Comprehensive Employment and Training Act, and shall make full use of the National Occupational Information Coordinating Committee established under section 161 of the Vocational Education Act of 1963 in achieving this objective.

(b) REVIEW OF CENSUS DATA.—The Secretary shall, as soon as may be practicable, obtain from the Bureau of the Census data from the 1980 decennial census on the number of students aged eleven through seventeen who would be counted under sections 211(a)(2) and 221(b)(3) of this title. After reviewing such data, the Secretary shall submit to the Congress as soon as practicable an analysis of the effect of using students of such ages, rather than students aged five through seventeen, as the basis for allocating funds under this title.

PROGRAM DEVELOPMENT

SEC. 254. In order to further the purposes of this title, from funds made available to carry out this section the Secretary may make grants to State and local educational agencies, and other public and nonprofit private agencies, organizations, and institutions, including prime sponsors, to carry out development and demonstration activities the purposes of which may include linking prime sponsors and schools, training teachers, and administrators to work with youth served by this title, and encouraging local educational agencies to establish alternative school arrangements and inschool programs.

PROGRAMS IN THE TERRITORIES AND SCHOOLS OPERATED BY THE BUREAU OF INDIAN AFFAIRS

SEC. 255. From funds made available to carry out this section the Secretary shall make payments to—

(1) local educational agencies in Guam, American Samoa the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for the purpose of assisting programs designed to improve the basic and employment skills of disadvantaged students; and

(2) the Secretary of the Interior for the purpose of arranging the provision of services designed to improve the basic and employment skills of disadvantaged Indian youth.

The Secretary shall make payments under this section in amounts that are consistent with the respective needs of the recipients and according to terms that the Secretary determines will best carry out the purposes of this title.

DEFINITIONS

SEC. 256. Except as otherwise provided, for purposes of this title:

(1)(A) The terms "average daily attendance", "average per pupil expenditure", "county", "local educational agency", "parent", and State educational agency" have the meanings given in section 198 of the Elementary and Secondary Education Act of 1965.

(B) The terms "area vocational school" and "vocational education" have the meanings given in section 195 of the Vocational Education Act of 1963.

(2) The term "alternative education programs" means those education programs that—

(A) use subject matter, teaching methodology, or any combination thereof, which is not generally offered to students of the same age or grade level in traditional school settings;

(B) offer a range of educational options, including those programs of demonstrated effectiveness operated by community-based organizations (as defined in section 3(4) of the Comprehensive Employment and Training Act);

(C) include the student in the process of planning the educational program to be offered; and

(D) employ methods and materials that (i) facilitate attainment of academic, vocational, and social skills and (ii) are relevant to the educational needs and interests of the student.

(3) The term "basic skills" means the skills of reading, mathematics, and effective communication, both written and oral,

(4) The term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance, and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under this title or under title I or part B or C of title IV of the Elementary and Secondary Education Act of 1965.

(5) The term "designated school" means any school meeting the requirements contained in section 212(a).

(6) The term "employment skills" means—

(A) those skills directly related to the preparation of an individual for paid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree;

(B) skills that aid individuals in making career decisions;

(C) those qualities that are not occupation-specific that enable a person to secure and retain a job, such as the ability to complete a job application, to appreciate the importance of punctuality and job responsibility, and to respond constructively to supervision.

(7) The term "prime sponsor" means any agency, organization, unit of government or other entity designated in accordance with section 101 of the Comprehensive Employment and Training Act of 1973.

(8) The term "Secretary" means the Secretary of Education.

(9) The term "State board for vocational education" means the agency designated in accordance with section 104 of the Vocational Education Act.

(10) The term "State" means any of the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

TECHNICAL AMENDMENTS OFFERED BY MR. PERKINS

Mr. PERKINS. Mr. Chairman, I offer technical amendments in order to make technical corrections in the bill.

The Clerk read as follows:

Technical amendments offered by Mr. PERKINS: On page 54, line 11 insert the word "plan" in lieu of the word "application";

On page 54, line 13 insert the word "plan" in lieu of the word application";

On page 54, line 16 insert the word "plan" in lieu of the word "application";

On page 54, line 19 insert the word "plan" in lieu of the word "application";

On page 54, line 21 insert the word "plan" in lieu of the word "application";

On page 54, line 24 insert the word "plan" in lieu of the word "application";

On page 55, line 2 insert the word "part" in lieu of the word "title";

On page 55, line 13 insert the word "plan" in lieu of the word "application";

On page 55, line 18 insert the word "plan" in lieu of the word "application";

On page 56, line 15 insert the words "a plan" in lieu of the words "an application";

On page 56, line 17 insert the word "plan" in lieu of the word "application";

On page 72, beginning on line 3 insert the word "plan" in lieu of the word "application";

On page 72, beginning on line 7 insert the word "plan" in lieu of the word "appplication"; and

On page 72, line 9 insert the word "plan" in lieu of the word "application."

Mr. PERKINS (during the reading). Mr. Chairman, I ask unanimous consent that the technical amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. PERKINS. Mr. Chairman, the present bill states that school districts and area vocational schools must submit applications to States for vocational educational portions of their programs. That provision should read, "plan" instead of "application," and these amendments would make that correction.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Kentucky (Mr. PERKINS).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. GOODLING

Mr. GOODLING. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GOODLING: Page 46, line 10, strike out "and"; on line 14, strike out the period and insert in lieu thereof "; and"; and after line 14 insert the following new paragraph:

(4) to provide alternative and worksite education programs for students living in areas with high concentrations of poor or low-achieving students.

Page 47, line 12, strike out "and" and immediately after such line insert the following new paragraph (and redesignate the succeeding paragraph accordingly):

(6) 3 percent shall be made available to carry out subpart 3 of part B; and

Page 87, immediately after line 12, insert the following new subpart:

Subpart 3—Alternative and Worksite Education Programs

ELIGIBILITY

SEC. 241. From funds made available under this subpart, a State educational agency shall make grants to community-based organizations and to local educational agencies for the purpose of conducting programs providing alternative and worksite education which meet the requirements of section 242. In making such grants such agency shall give preference to community-based nonprofit organizations which apply and which are located within areas served by local educational agencies eligible for assistance under part A of this title.

PROGRAM REQUIREMENTS

SEC. 242. An organization desiring to receive a grant under this subpart shall submit to the State education agency an application which shall provide assurances that each program funded under this subpart will—

(1) serve students in grades seven through twelve;

(2) increase students' academic achievement and placement in full-time employment and postsecondary training or education;

(3) encourage direct relationships between the program and local employers to implement job sampling, job training, and bridge jobs for its students;

(4) provide for students served by the program a minimum of eight hours and a maximum of twenty hours of worksite training or employment per week;

(5) provide intensive academic and occupational counseling to each student served by the program, and assign overall responsibility to each enrolled student to one of the instructors employed by the program;

(6) operate classroom and worksite education programs twelve months per year;

(7) be staffed with not less than one adult paid employee or volunteer for each fifteen students served;

(8) enroll students on a voluntary basis, and not accept compulsory student referrals from public schools or criminal justice agencies;

(9) inform the local educational agency

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of the area served of the alternative education programs being provided; and

(10) develop and implement new and innovative approaches to expand outreach in order to effectively meet the needs of the target groups of students.

ALLOCATION OF FUNDS

SEC. 243. From the funds available for purposes of this subpart, the Secretary shall allocate to each State an amount which bears the same ratio to the amount so available as such State's allocation under part A of this title bears to the sum of such allocations.

Page 95, immediately after line 3, insert the following new paragraph (and redesignate the succeeding paragraphs accordingly):

(4) The term "bridge job" means a job leading to career employment following successful completion of related academic and vocational training.

Page 96, immediately atfer line 18, insert the following new paragraph:

(11) The term "worksite education" means the progressive development of skills associated with a defined set of work processes to be covered sequentially in the course of employment in an occupation, trade, or industry and which is upgrading in nature, integrated with and supplemented by classroom instruction and consistent with a career pattern of advancement.

Mr. GOODLING (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GOODLING. Mr. Chairman, I rise to offer an amendment for the gentlewoman from New York (Mrs. CHISHOLM) to provide 3-percent set-aside of funds under title II of H.R. 6711 for alternative education programs. The question was raised by the gentlewoman when this bill was before the Rules Committee as to whether there existed sufficient emphasis on alternative education programs.

At that time, I pointed out to the gentlewoman that H.R. 6711, contained many provisions for alternative education programs.

For example, under the school plan in section 213, the contents of the plan must describe "the methods by which the school, by itself, or together with other organizations, will seek to attract to a school or an alternative education program those youth aged 16–21 • • •." Additionally, the authorized activities which are enumerated in section 215(e) include a specific reference to "alternative education programs to carry out activities" under this title. Finally, and perhaps most important, is the joint agreement which directs both the local educational agency and the prime sponsor to use set-aside funds from both titles to meet the needs of youth. Those needs definitely include the need for alternative education. And there are some very effective alternative programs in operation now, especially in the larger urban areas.

As a former school administrator, I am chiefly concerned that we do not establish programs for alternative education that compete with the programs currently in operation by the local public schools. I believe there may be some cases where students are unable to learn in the traditional classroom setting, and an alternative education program may provide some relief to them in acquiring the basic skills needed to live normal and productive lives. For that reason, I support the amendment offered for the gentlewoman of New York, in acknowledgement of very unusual and exceptional needs that some students may have that may not be met by the traditional public school system. In no way am I supporting an erosion of the traditional system of education upon which this country has achieved its greatness.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the committee chairman.

Mr. PERKINS. Mr. Chairman, the gentlewoman from New York (Mrs. CHISHOLM) has been very persistent on this approach for a long period of time, and since it affects a limited amount of funds and since it will lead to better programs serving youth who might not be reached in the regular school programs, I feel that we should accept this amendment.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I am happy to yield to the subcommittee chairman.

Mr. HAWKINS. Mr. Chairman, there is one point about the amendment, it seems to me, that should be clarified.

As I understand the amendment, it sets a specific percentage amount that is to be used for alternative education purposes. Is this amount in addition to what is otherwise done under the act?

Mr. GOODLING. Mr. Chairman, the gentleman is correct, it is in addition.

Mr. HAWKINS. So that it is an additional amount over and above what is otherwise provided for alternative education under the act?

Mr. GOODLING. That is correct.

Mr. HAWKINS. Mr. Chairman, I agree, then, with the chairman of the committee.

Mr. GOODLING. Mr. Chairman, there are many different places in the bill where we talk about alternative education, and we give them every opportunity to use alternative education since certainly there have been some very effective alternative programs in operation now, particularly in the larger urban areas.

As a former school administrator, my major concern is to make sure that we do not establish programs for alternative education if we are already doing well in that area with our regular program. I am not in any way trying to erode what I consider to be a very effective and important program, public education, in this country—a system that has worked very well. I am merely saying that there are many youngsters who are being reached presently by alternative education programs and we should not forget them at this time.

Mr. Chairman, I yield at this time to my extremely able colleague, the gentlewoman from New York (Mrs. CHISHOLM), to further explain this amendment.

Mrs. CHISHOLM. Mr. Chairman, I thank the gentleman very much for yielding.

Mr. Chairman, I am happy to join my colleague and good friend, Mr. GOODLING, in offering this amendment to title II of the Youth Act.

This modest amendment merely insures that qualified nonprofit community-based organizations which offer alternative education programs can participate in the bill's stated goal of preparing disadvantaged youths for meaningful productive lives.

As my colleagues may be aware, I have had serious reservations about title II's focus on local educational agencies. While many schools have made commendable progress in reaching and teaching problem youth, many others are unable or unwilling to make the extra necessary effort. A 45-percent dropout rate from New York City's public schools is shocking evidence of the failure, for thousands of teenagers, of traditional teaching methods. How many more thousands of unskilled, unmotivated, youths can we permit to spill onto our cities' streets before we act to reverse the flow?

The success of CBO alternative education programs in meeting the educational and vocational needs of certain young people is well-documented. Urban league street academies, OIC career intern programs, and many many others have proven their effectiveness. H.R. 6711's many references to CBO's and alternative education indicates that our Education and Labor Committee recognizes the significant role nontraditional schooling can play.

The bill's references may not, however, be translated into funded programs on the local level unless we mandate, by this amendment, that at least 3 percent of the allocated funds be specifically set aside for these programs. Given a historic ignorance, suspicion or even hostility felt by public school administrators toward this kind of competition, I feel it is imperative that we not leave the decision to fund alternative education programs solely in the hands of local superintendents and principals.

In addition, existing CBO programs usually have had lower per-pupil expenditures than nearby public schools. Any Federal funds we direct to these programs would not only be likely to produce successful students but would also be very cost effective.

Mr. Chairman, this is not an anti-public-school amendment. The bulk of the bill's funds will still go to the local public schools making a new attemot to teach disaffected youths. It is, Mr. Chairman, a pro-youth amendment that expands education options for today's and tomorrow's dropouts.

I commend my colleague, Mr. GOODLING, for offering the amendment, and I strongly urge its adoption.

□ 1700

Mr. GOODLING. And may I say that it is only, also, a beginning. Title II attempts to tackle the problem that we have been dealing with for a long time, but the problem up to now has been treated by so many different groups going their own way. Finally, in title II we have a golden opportunity now to force all of these people to plan together and to show us exactly how they are going to do something about unemployed youth. And if they fail, they do not get funded the second year.

It is the first golden opportunity we have had in this House to force all people, working toward the betterment of young people, to work together. If they do not work together, they do not get funds. The beauty of this bill also is the School Site Council, which is made up of many different people representing all of the people in that particular community. And they have a great deal to say about the direction we should go in order to do better and to correct areas where we have failed in the past—and that is to provide all of the necessary tools for young people to be able to go out into the world and to get that job. Many jobs go begging today because of educationally disadvantaged youth, not only youth who do not have certain skills for that particular job.

So we finally have in title II an opportunity to make everyone work together to plan so that they can tackle this problem of unemployed youth.

(By unanimous consent, Mr. GOODLING was allowed to proceed for 1 additional minute.)

Mr. GOODLING. Mr. Chairman, I yield to my colleague, the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. Mr. Chairman, first, I just want to commend the gentlewoman from New York (Mrs. CHISHOLM). I know that the testimony she gave before our commitee was extremely helpful, as was the bill which she presented in helping us to design our own legislation. I do recognize that New York City has special problems, problems which make it inviting to ask for more and more Federal assistance in the alternative school area. I would only like to say that in my travels around the country, there are also many school systems which have not faltered or come as close to failing, as in New York City. I think that title II can be helpful to bringing schools such as these in New York up to par by requiring those schools to work together with the alternative education programs in their area. By learning from alternative education programs we can have better school systems which will make the expenditure of Federal funds less necessary.

I am very much in favor of title II. I think this amendment is an improvement. It gives more emphasis, as the gentlewoman would like, to special assistance to those areas with critical problems.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. GOODLING).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 45, beginning on line 1, strike out all of title II through line 18 on page 96, redesignate title III as title II.

Page 16, line 16, strike out "section 302" and insert in lieu thereof "section 202".

Page 17, strike out line 13 and everything that follows through line 19.

Page 36, lines 15 and 18, strike out "section 301" and insert in lieu thereof "section 201".

Page 96, strike out line 21 and everything that follows through line 15 on page 98 and insert in lieu thereof the following:

SEC. 201. There are authorized to be appropriated such sums as may be necessary to carry out part A of title IV of the Comprehensive Employment and Training Act for fiscal year 1981 and each of the four succeeding fiscal years.

Page 98, line 17, redesignate section 302 as section 202, and on line 22 strike out "and section 220 of this Act".

Page 99, line 9, redesignate section 303 as section 203, and beginning on line 11 strike out "section 301(a)(1) of this Act" and insert in lieu thereof "section 201 of this Act for fiscal year 1981".

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, it is with a great deal of personal difficulty that I take the well today to oppose title II of this legislation.

In the past 6 years that I have been in the Congress and have been a member of the Education and Labor Committee I have tried to do all that I can for young people in this country by way of my own legislation and in supporting the legislation of the chairman of the committee and others to help young people in this country with their educational goals, achievements, and to help young children in many other ways. And today I find that I have put all of those credentials on the line because, as a liberal Member of Congress, I am going to ask this Congress to strike title II of this legislation which is being held out as a unique opportunity, as a golden opportunity, as a means of dealing with unemployed youth on the educational side of the issue for the first time ever.

I will submit to this Congress that that is not in fact the case. It is with a great deal of difficulty that I find myself opposing the committee on which I sat over these years. But I think the question to be asked and the answer is far more serious than my standing with members of my own committee or my credentials as a liberal or my credentials as someone who is interested in young people in this country, because to me the question is one of the integrity, first of all, of this body, on whether or not we are prepared to deliver what we promise. The same goes for the Administration of this country, whether or not they are prepared to deliver what they promise. And, finally, our obligation to the poor, to the young, to the unemployed of this country, our obligation not to lie to them, not to suggest that we are about to engage in a bold new initiative to spend a billion dollars or in fact really 2 billion dollars of new moneys to address the problems of youth unemployment in this country.

I want to challenge that. I want to challenge that in the most serious manner that I have ever challenged a program on the floor of this Congress because I have sat here for 6 years and, as I have said earlier, many Members have said time and again here on the floor of the Congress and to their constituents in the town hall meetings, in the Rotary Clubs, in the Kiwanis Clubs, and the chambers of commerce that, you know, you cannot solve problems by just throwing money at them. And then they have said to other groups, "What you cannot do is that the Federal Government in this country cannot continue to overpromise and underdeliver."

I suggest to the Members that this legislation in title II does exactly that. It holds out the idea that we are going to make dramatic changes in how we teach basic skills in this country. It holds out the idea that there is going to be a dramatic new effort to teach vocational skills in this country within our schools. But it does not do that. The basic skills will get those moneys which are left over because the more powerful lobby, the vocational education groups, came in and creamed 25 percent of the money right off the top. They came and took that money to do what? To do exactly what they are doing today. But, mind you, they are impatient to do exactly what they are doing today because their reauthorization does not come up until next year, which is 3 or 4 months away.

We are starting oversight hearings on this portion, on the reauthorization of vocational education, next month. But they cannot wait. So come in and cream the money out of this legislation and come back next year and get some more.

I do not think that is how you write legislation. It is very clear that there is a consensus among the special interests, among the interest groups of this legislation, because they all have their finger in the pie, they all have their finger in the pie for a little something. And while they come around and say, "We agree with you on the merits, this is the only new money."

The only new money to do what? To help unemployed youth in this country to get a job, to acquire basic skills? Or to get the Federal Government to pay half of another teacher's salary? I thought the commitment was to help the unemployed youth of this country.

Now, we had hearings, we had hearings for months on this problem, and what we kept hearing was that if we could bring the basic skills program, title I, which has been our most effective effort in teaching basic skills in this country, if we could bring that program up to the junior high level, stay with these kids, keep these skills going, that that would be very helpful. And that is what the Secretary of Education asked us to do.

□ 1710

The CHAIRMAN. The time of the gentleman from California (Mr. MILLER) has expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Mr. Chairman, then if we could bring down some of the job training, some of the employability skills, filling out résumés, going through job interviews, mock job inter-

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views, if we could bring that down from the high school to the junior high level, we would help some of these young people.

Why do we come together at the junior high level? Because testimony was given to us time and again that this is where young people in this country make a decision whether or not to continue their education or to drop out. So let us deal with it there so we do not have to deal with the dropout years later. It makes sense to me. It made sense to most of the experts and to the committee. But that is not what the legislation does.

The legislation goes off in the other direction to treat the older population, people who have already completed high school rather than trying to provide a little bit of preventive care with the junior high school level. So I think it fails in that regard.

The next set of testimony we heard was, if you want to do something about youth unemployment with the hard core youth who may be unemployed for the rest of their life, if you want to do something about that, you are going to have to put considerable resources on the scope of the Job Corps, which puts almost $2,000 per individual behind it as a residential program. But if you are not prepared to make that commitment of concentrated resources on the individual, we will fail just as we have failed in the past. That is what the Congressional Budget Office told us. It made sense to me. It made sense to the experts. It made sense to the committee. That is not what this legislation does.

In effect, it takes the money and spreads it schoolwide, schoolwide projects, rather than targeting on the individual youth. Then we heard from the Vice President's task force and a lot of other independent studies that the reason these people cannot get jobs is not so much the question of whether they can do that particular job, but they simply do not have the basic skills to compute, to write, to read, in the manner in which an employer would like those individuals to have. And in fact, if they had those skills, the many employers today would prefer to train those individuals themselves rather than relying on the vocational education programs. But the youngsters do not have those basic skills.

Yet, this legislation says in this bold new initiative, we will provide those skills provided there is money left over. I do not think that is how one addresses a golden opportunity to deal with the crying-out problem of young people who cannot read or write.

Finally, let me say this: The Members have received the "Dear Colleague" letter from me, which has tried to outline the duplicative nature of this legislation where it sets out the goals of this legislation and then points out that if you are concerned about basic skills, there are at least two sections of title I that deal with that; if you are concerned about vocational education, there are six sections in the existing law that deal with that and cooperative agreements, which I will address later; there are at least two sections in existing law that do that.

The fact is this legislation really creates nothing new, but hopefully it will purchase some political good will for this Congress and for this President. But I do not think that ought to be the basis on which we pass this legislation.

We had a panel come before the committee in the hearings called High Schools that Succeed or Successful High Schools. Then we had a panel of people who run successful vocational education programs.

At the end of their discussion about what made a successful vocational educational program and job training program, the cooperation of the gentleman from Atlanta, Ga., testified how he got the labor unions, how he got the business community and the educational community, the CETA people, all together to create training and jobs and job opportunities.

Other people talked about how they worked with CETA and the educational programs. What they were telling that committee as they were saying we want you to pass this bill; what they were telling that committee was that they can do everything that they want to under existing law, that this bill really gives them nothing more than money; but it does something else. It creates additional administrative burdens.

I suspect that is why the school boards association opposes it and the school principals oppose it, because they see there is no new program. They are simply setting up dual administration. For a Congress that talks about reducing paperwork and cutting redtape that is a very strange way to address that problem.

The CHAIRMAN. The time of the gentleman from California (Mr. MILLER) has again expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 5 additional minutes.)

Mr. MILLER of California. The point is this, that it is suggested that for the first time it was said here, and the Vice President says it in his letter, that for the first time education and labor and CETA and these programs are going to work together.

This is existing law. They are doing that today, not as extensively as I would like, and not as extensively as the gentleman from Vermont (Mr. JEFFORDS) would like, who has been pushing them to work together; but they are in fact doing it. This legislation really does not broaden that at all.

I think it is very important that this body keep these points in mind. This body understands the problem which we have, because I think it is very clear. If one reads over the committee report, one reads existing law, and one will find that in fact one is playing with smoke and mirrors instead of politics because one is creating the illusion. I do not think that is what we want to do.

It is very clear that for the foreseeable future somewhere between 2 and 4 million youth will carry the brunt of our problem of unemployment in this country, and that we cannot let these lives be wasted or their dignity be diminished by the deregulation of long-term unemployment or underemployment.

This country and this Congress must make every effort to expand employment opportunities for these young people, but these efforts must be real. The efforts we make must provide real hope. The efforts we make must provide real solutions. I am sorry to say that section 2 of this legislation does not address the solutions for such a grievous problem. Rather, it creates the illusion of solutions when there are none; and it creates the illusion of a new initiative, but there are none. It creates the illusion of an expression of concern by this Congress, but there is none. This Congress cannot in good faith tell the poor and the unemployed youth of this country that we are truly concerned about their plight if this is the solution we offer them.

To pass this legislation is to repeat the failures of the past and to continue the cruel hoax of raising poor people's hopes and aspirations and then to provide none.

If this Congress passes title II of this legislation, we are engaging in a shell game, a shell game, because this is the same Congress that just a few weeks ago, with the consent of the administration, cut $100 million from identical programs to help these same unemployed youth, a shell game because this is the same administration, that is offering this title II as a solution, has recommended cuts in excess of $340 million in these identical programs that are to help these unemployed youth, $340 million from the programs that are to be the basic foundation of this highly publicized new initiative for unemployed youth.

This legislation is presented to the Congress as a proposal to attack the twin causes of youth unemployment, the lack of basic skills and the lack of job skills. And yet, the administration has recommended to this Congress and that Congress is in fact considering budget cuts in excess of $340 million in these exact programs.

We cannot in good conscience tell the poor youth of this country that we cut drastically programs today to help them, but yet offer them future expectations that will never be funded to the tune of $2 billion.

Unlike Steve Stone, this legislation is all windup and no delivery. Title II, after great fanfare, does nothing more than provide an empty promise of adequate funding for the problems of unemployed youth. This program was announced as a billion-dollar effort, but let us look at the facts regarding the funding of title II. In order for title II to be funded, we have got to raise in excess, to meet that goal, of a billion new dollars, 1 billion new dollars.

□ 1720

Now, who in this House can look into the face of a poor and an unemployed youth and tell that person that this Congress will appropriate 2 billion new dollars? Who in this House is willing to raise once again the expectations of people that the Government is going to meet their needs and then take the responsibility for the anger of those people when those needs are not met?

We must be willing to take the responsibility, because there is not a single person in this House who really believes that we will appropriate 2 billion new dollars next year and if we go ahead and vote title II with that knowledge, we are playing a very terrible trick on the poor of this country.

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 3 additional minutes.)

Mr. MILLER of California. Mr. Chairman, during the 6 years that I have been in Congress, I along with many other people have very consistently attacked the Defense Department budget. When we thought there was waste, when we thought there was mismanagement, when we thought that a particular airplane or a tank could not meet the mission, we attacked it and sought to delete it.

Now, for many of us we find out that the reverse is true. We have a program on our own committee, we have a program that stands for everything I believe in, but it will not do the mission.

I think the test of this Congress is whether or not many of us who have leveled that criticism at other Departments are going to be prepared to back up that criticism when it falls into our own backyard.

It is not enough just to simply find waste or mismanagement or poor design in one part of the budget, but never to look at your own part of the budget where your efforts are concentrated.

I can remember when the gentlewoman from New York, Ms. ELIZABETH HOLTZMAN, raised the issue of the summer feeding program. Liberals scampered all over, people involved in nutrition, and said, "How can she raise these issues? Doesn't she know this is a program that we need?"

The fact of the matter is it was filled with fraud, misuse and mismanagement.

I think we have got to become that kind of critic in this Congress when dollars are so hard to come by. As a liberal Member of this Congress, I do not want to be dedicated to decades of deficits, not at all. I want to be able to go home to my district, to other districts, and to explain every dollar I voted for; but this $50 million in title II at the beginning is $50 million you cannot explain, because it buys nothing other than a little bit of silence by the educational constituency of this country. It does not buy a solution to the problems of unemployed youth.

So I would hope we would take this challenge in the manner in which it is met in title II. I would hope that the Congress would join me in voting against it, because I do not see how we can expect to keep the faith of the minority community, the poor community, if once again we throw up a great deal of fanfare about what we would like to do, but then we do not come back and fund it. There is no realistic belief that this program, even if it was designed as I would like it to be designed, is going to be funded; so I think we ought to concentrate on our efforts on putting more money into title I. We are going to reauthorize vocational education just a few months from now. Let us make our effort there on the ongoing exemplary programs with the greatest rate of return to both the unemployed and to the taxpayer.

I would hope I could have the support of all Members to strike title II.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from California very forcefully stated his case, but if a youngster, if a teenager or a youth cannot read and write, what are we going to do about it? That is what this education title is all about. When I was in high school, I went to a settlement school. We were compelled to take courses in masonry, mechanical drawing, carpentry, all those things, go out on the job on Saturdays and spend at least 1 hour a day. At that time, the youngsters, the teenagers, could go to the mining communities and get jobs. Some of those people are the best carpenters today all over the country; but without that education, they could not have read blueprints in the first and second year of high school, which we were taught. If we just disregard the education aspects of this title, we are going to leave these youth in the cities, the urban areas of this country and the rural areas, without any capability of doing a job and they will never be employed.

Now, surveys of employers have verified that educational deficiencies are a major factor contributing to youth unemployment. I do not think any of us would deny that. Even in areas where good jobs are available, the lack of basic educational competencies prevent youth from obtaining them.

Then again, the gentleman from California referred to title I of the Elementary and Secondary Education Act. Even if we appropriated an additional $2 or $3 billion more than we are appropriating today for title I, in all likelihood it would still be spent in the elementary grades. It would never reach this type of youth that we are talking about here in junior high school and in senior high school.

In my judgment, the Carnegie Council on Policy Studies in Higher Education and other distinguished groups have estimated that perhaps as many as 20 percent of high school graduates are deficient in the basic skills.

What is wrong in requiring the schools to do this? It is voluntary on the part of the secondary schools, altogether voluntary. It they want to participate and get this money, they must coordinate and work with the prime sponsors, with all the other groups, to do something about basic education.

I think we would be derelict in our responsibility if we did not have this educational title to require the teaching of the basics. Any youngster should know how to read and write. He should know something about calculations. This is what we are doing and that is all we are doing.

Unless we authorize funds for school-based programs, we cannot bring about true coordination between the education and the CETA systems.

Under the committee bill, an equal partnership is forged by requiring both the schools and the prime sponsors to set aside portions of their funds for joint agreements. Unless the schools have a financial stake in this agreement, we will not be able to foster coordination and avoid duplication to the maximum extent.

Now, I believe the schools in the distressed sections of the cities, in the low income sections, all of them will participate. If we do not have school leadership interested enough to help educate the young, the teenagers that cannot read or write, and help them in mathematics, those principals should get out of the school system.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

(By unanimous consent, Mr. PERKINS was allowed to proceed for 3 additional minutes.)

Mr. PERKINS. Mr. Chairman, I would think that the majority of educators over this Nation wholeheartedly support the educational title in this bill, because it fits in with the labor title. If we are going to do something about the unemployed youth, we have got to have them educated in the basics. There is no other way to get around it.

Mr. Chairman, the existing educational programs do not adequately address the problem of youth unemployment. Most of the Federal education funds are targeted to elementary or post-secondary students, with only 12 percent going to secondary school students.

□ 1730

I personally feel, and I think the majority of the Members of this House feel that 22-percent set-aside in title II of the youth bill, to be used for joint agreements, gives real teeth to the possibilities of CETA education cooperation. There is no pot of money in any education program now existing that would be comparable to the 22-percent set-aside in title II of H.R. 6711.

If we have school districts that do not want to participate in this program there is nothing in the bill that compels them to participate. All we are saying is, if you want to cooperate with CETA programs, with prime sponsors and labor and with all other groups in your community, we want you to get together, work some of these educational problems out to improve youth employment, and work up a plan. I would think that all of the members of this committee should vote against the Miller amendment to strike title II. If we do not do something for the youth that cannot read and write, why are we here with this bill?

The only way to do it is through an educational title. I would ask all of my colleagues to vote against the gentleman's amendment.

Mr. GOODLING. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, we just heard an eloquent and emotional 18-minute presentation from my colleague from California which was very well presented. There is only one problem. He was not talking about title II of this bill. He could not be talking about title II of this bill because if he was, most of it was not an accurate statement he was making in relation to title II, which was the same situation relative to the "Dear Colleague" letters we received.

Let me just talk about a few of those

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areas and then some general observations.

First of all, 81 percent of all of this money in title II is distributed as we distributed ESEA title I money.

Second, our major target is those young people ages 11 to 17. That is where the major target is. We are taking care in ESEA title I, not adequately, but to some degree, the elementary youngsters, and we are targeting in this title II ages 11 through 17.

After telling us how terrible title II is and what it does not do, we were then told that $50 million does not buy us anything. What $50 million does for the first time is insist that if they want that $50 million they have to plan, they have to show how they are going to do something about unemployed youth, how they are going to do something about youngsters who are having trouble with the three R's. For the first time we are insisting that not just some people in ivory towers make this decision but that the community determine what has gone wrong and what works so that we can, in fact, tackle this problem we are trying to tackle.

I guarantee that $50 million for the first time guarantees us if they are going to spend any money beyond that they are going to have to show exactly how they are going to solve the problems that are facing us in education and in the employment world as far as youth are concerned.

Second, we heard a lot about opposition by school boards about opposition by school principals, and we were told that they are opposed to the bill because of the amount of work involved, paperwork, and so forth. Let me tell my colleagues that is not why they were opposed to it. First of all, they went over it line by line and agreed originally to it.

But then there were two things that bothered them. No. 1, there was not enough money and that is true of everything that comes before us. There is not enough money. I would say there is not enough money. But that is the best that we can do at the present time, and we must work from a starting point.

Second, they oppose it because they do not like the committee report language about the school site council. That language is there because we are trying to force them to hear what the community says has been wrong in the past so they can correct it and so we do not throw more money after bad programs. But, in fact, we then force them to coordinate their efforts. Yes; that is true of vo ed. If they want that money, one penny of this money, they must show in this plan exactly how they are going to make better use than they have ever made before. They, too, must become a part of this plan and show how we are going to deal effectively with the problem.

We have one amendment I think from the gentleman from New York that will probably tighten up that particular area. So I think we have to stop these attempts to amend the bill at the last minute since the gentleman from California did not offer these amendments during the entire proceedings, during the entire time it was in subcommittee, full committee, or while we were continuing this dialog with all of the agencies that work on these issues.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

(By unanimous consent Mr. GOODLING was allowed to proceed for 5 additional minutes.)

Mr. GOODLING. This is a starting point. We are not hoodwinking anyone. We are merely saying they have not done well in the past, statistics show they have not done well in the past, and we are saying that we are spending $15 billion a year on youth crime. Is that not foolish? Why not help these youth become productive in our society and in our system?

We are saying that for the first time, do not go out there in your own little world, whether you are CETA, whether you are vo ed, whether you are the school board, whether you are the principals, whether you are the community officials, but rather sit down and look at the situation, show why we have failed in the past, and come up with what will probably work in the future. Then we will be willing to try to fund a coordinated program and to move that program forward.

There were so many inaccuracies that I do not want to get involved in one by one indicating what they were. I merely point out that this may be our last opportunity to really make a concerted effort to force all people working with young people to work together to tackle the problems that are created when youngsters cannot read and write and when a youngster is not prepared for the jobs that are out there waiting for him, but he does have the skills.

We are trying to force them to work together for the first time, and I think it is a worthwhile effort. If we eliminate title II, forget it. We have done nothing. All we have done is reauthorized some more of the same. We have accomplished nothing.

So we must have the accompaniment of title II in order to make title I a working, worthwhile program.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Vermont.

Mr. JEFFORDS. I thank the gentleman for yielding.

I would like to point out that I do not sit on the subcommittee that wrote title II, but I sit on the one that wrote title I. I suppose there might be a feeling that if we knock out title II that more money will be available for title I. But I do not feel like that.

I have spent close to a year or a year and a half traveling around this country visiting one city after another trying to analyze in my own mind what it must be that we must do to help the young people of this country, to stop the dropouts and to help the unemployment problem. Without exception, and totally in contradiction to what the gentleman from California said, the people that are working in this area said that what we have to do is, just as the gentlemen from Pennsylvania and Kentucky were saying is get the people to sit down and find out what is going wrong with our system.

□ 1740

What is going wrong with our school system? What is going right about some of these alternative programs? Let us get them to sit down together. Let us get them to work together, and in divisive programs, they will work. In those areas where that is happening—I can name some: Berkeley out in the gentleman's area, and Baltimore—the city officials have sat down, and they have worked with the school people, and all the programs are working well. They are working well because they understand the problems. They understand that in order for a young person to be employed, he has to have basic skills that the private sector round table No. 2 suggests they have.

We cannot hire people who cannot read or write. It does not make any sense to allow your school programs to go wandering off in high school not facing the basic problems of how young people can get jobs, and to put all the money in an alternative school system and build around it. If you are going to say, To heck with the school system, forget them, sure, strike title II. Let us build a Federal high school program.

I have confidence that our school systems can come back, and that they can learn from those who have been successful, that they can develop a program by working jointly together that will give us the basic skills to make our young people employable, and give our young people a tool, because they can see when they come back to school that they are going to have a job. They will have a job and improve our society. That is what title II will do—work hand in glove with title I. Get all of these people to work together to find the answers to our young people's problems.

I listened to the very impassioned speech of the gentleman from California and many times I agree with him. This time I cannot. It is so totally contradictory to everything I have learned from my traveling around the country and from everything we heard in the committee.

Mr. GOODLING. Mr. Chairman, I would like to summarize, first of all, why I oppose the amendment and why title II is necessary in just four points:

First, as surveys of employers have verified, educational deficiencies are a major factor contributing to youth unemployment;

Second, title I of the bill alone cannot adequately address this lack of educational and employment skills;

Third, unless we authorize funds for school-based programs, we cannot bring about true coordination between the education and the CETA programs;

Fourth, existing educational programs do not adequately address the problem of youth unemployment.

Most of this Federal money at the present time is targeted to elementary or postsecondary students.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. GOODLING was allowed to proceed for 1 additional minute.)

Mr. GOODLING. Most of it is targeted to the elementary levels, with only about 12 percent going to the secondary level. I again say without title II we will lose that golden opportunity to insure that all people, all agencies, all organizations working to try to promote a better way for youth in this country; we will lose the opportunity to insure that they work together to do just that so that we cannot throw money out and hoodwink people, but that, once and for all we can force them to plan adequately and show us exactly how they are going to succeed.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MILLER of California, and by unanimous consent, Mr. GOODLING was allowed to proceed for 3 additional minutes.)

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from California.

Mr. MILLER of California. I thank the gentleman for yielding. I would just like to say that it is very interesting that we are going to spend $50 million to change the educational fraternity in this country to make them do that which they are supposed to do. Because they are failing, we are going to give them $50 million and they promise to do what the gentleman from Vermont (Mr. JEFFORDS) has said people all over the country told him they were already doing.

Mr. JEFFORDS. If the gentleman will yield, that is not what I said.

Mr. MILLER of California. The gentleman from Vermont told me he heard from people running successful programs in Baltimore and Berkeley, and we heard from the gentleman from Atlanta and up in Paterson, N.J. They are working under existing law combining employers, CETA programs, educational programs. They are doing it under existing law because we have a 22-percent set-aside.

Mr. GOODLING. Mr. Chairman, I would like to claim back my time.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. GOODLING was allowed to proceed for 2 additional minutes.)

Mr. GOODLING. First of all, we are not taking $50 million to ask anybody to do anything they are presently supposed to be doing.

Mr. MILLER of California. What are they supposed to be doing?

Mr. GOODLING. What we are saying is we want $50 million spent to insure coordination with those working on youth employment problems and those who normally made the determination as to what is best in the field of education. We are spending $50 million to coordinate the efforts of people, CETA people, alternative programs, all of these people who are working toward the good of young people, but off on their own. We are saying this is a coordinated effort that we are going to put forth. So I would hope, again, that we would not make the mistake at this particular time of doing away with that one opportunity we have, and the only one we have had since I have been here, to change the direction we are going in this battle against youth unemployment. It is our one hope and our only hope.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Vermont.

Mr. JEFFORDS. I thank the gentleman for yielding. I just want briefly to point out that what I said is 4 out of 16,000 school districts apparently are doing a good job of working in the right direction, but that gives us a little bit of room for improvement.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Alabama.

Mr. BUCHANAN. I thank the gentleman for yielding.

I would like to strongly associate myself with the remarks of the gentleman from Pennsylvania (Mr. GOODLING) and to applaud him and the gentleman from Vermont (Mr. JEFFORDS) for their leadership on this matter. We are seeking to make the most of our most precious resources—our young people. The gentleman is right, and I hope he will be supported by the committee.

Mr. WEISS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I feel sort of like the inveterate gambler who, knowing that the roulette wheel was fixed, kept going back and losing his pay check, and when he was asked why he did it, he said that crooked as it was, it was the only wheel in town.

I say that by way of preface in indicating that very reluctantly I am going to be opposing the amendment of the gentleman from California (Mr. MILLER). Additionally, I must say in doing so that I have a great deal of concern that his projections and his predictions may in fact be very, very accurate.

Although I admire and applaud the work that the Subcommittee on Elementary and Secondary Education has done, and the work of the distinguished chairman and the ranking minority member, the gentleman from Pennsylvania, knowing the past record of the educational establishment, as well as that of the Federal Government, I cannot be as optimistic as they or the subcommittee has been in projecting the tremendous success that is going to follow from the expenditure, hopefully, of something of about $1 billion in title II. I think that we spend nationally at all levels of government probably somewhere in the vicinity of $110 billion in our elementary and secondary and vocational education efforts, and it is very, very difficult to see how an additional billion dollars in expenditures is going to turn that massive establishment around and change the failure rate that currently exists.

In my own community in New York we spend somewhere in excess of $2.5 billion in elementary and secondary education programs, most of it coming from the taxpayers of the city of New York, some significant amount from the State, and some important amount from the Federal Government. Yet the dropout rate that we have in our high schools is in excess of 45 percent.

Unhappily, it is not just my community, but I have seen statistics indicating that in community after community across the country the same thing is happening. So I am going to oppose the amendment because I would like to think that perhaps because of this new focus by the Federal Government on insisting on planning and accountability, that some better things will happen. But I suspect that better things really will not start happening until the people in our home communities insist that the billions or millions or hundreds of thousands that are raised and spent at the local level be spent properly so that in fact the kids attending those schools and leave them will leave with an education. I do not know what else I can say.

I hope that I am wrong in my pessimism, and I hope that the gentleman from California (Mr. MILLER) is wrong in his. I hope that the distinguished gentleman from Pennsylvania (Mr. GOODLING) and the chairman, the gentleman from Kentucky (Mr. PERKINS), are correct. I will be voting with them, because I guess I am an eternal optimist, but I am a cautious one at the same time.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I will be pleased to yield to the gentleman from California.

Mr. MILLER of California. I thank the gentleman for yielding. Let me just say that I appreciate the gentleman's comments, but let me suggest to him and to the Congress that this is not the only game in town, because there is an original proposal which suggested there was another game in town.

□ 1750

I find it inconceivable that the chairman would say that even if we funded title I as we should, and it has taken 10 years to get to the level of funding it has now, there would not be enough money for high schools.

Mr. Chairman, I think what we are doing is, we are really covering up the inadequacy of our efforts to educate young people in this country. However, the program does work in title I. It was testified it could be brought to the junior high school level, but we turned our back on that.

Mr. Chairman, a great deal has been made here to the effect that this is the first time we can coordinate people. Yet we know we have existing in the law that the gentleman from California (Mr. HAWKINS) has written, the 22-percent set-aside in CETA which requires coordination and many school districts are, in fact, taking advantage of it and running very successful programs.

Let me say, also, that there is another game in town and it will be here 3 months from now and that is when we reauthorize the billion dollar effort by this Government in vocational education.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MILLER of California and by unanimous consent, Mr. WEISS was allowed to proceed for 3 additional minutes.)

Mr. MILLER of California. Will the gentleman continue to yield?

Mr. WEISS. I do yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, when we reauthorized that effort, mind you that this Congress told those people they must go in and help the ur-

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ban areas, the neediest students. They have done it but we are now going to give them $50 million. All of this talk about basic skills, reading, writing and arithmetic, so to speak, we cream 25 percent of the money right off the top for vocational education and almost every major study that has looked at vocational education has questioned the wisdom of it. One study went so far in fact—I think it was the Carnegie Council which our chairman mentioned—which said, "Vocational education. Change everything including the name."

In this new effort for these people who have failed, we are giving them, writing into law, 25 percent of the money to go to them. Not to basic education but 25 percent of the money. What did vocational education say about its ability to meet the needs of the neediest students? In the June 24 letter the American Vocational Association in commenting on the newest regulation said that:

> The Federal share of expenditures. National priority programs. The suggested change proposed by the Federal Government would reduce the program money for regular programs while increasing the Federal share of monies going to special populations.

They refer to the handicapped, the needy, and poor youth.

> We believe there is sufficient money for the special populations in the Vocational Education Act and in other Federal statutes.

So, there are other games. We can beef up our vocational education effort, we can beef up, and we have, the 22-percent set-aside that the gentleman from California (Mr. HAWKINS) has offered. We can beef up title I and we can require that those programs work together but what we do not have to do is throw $50 million on the table for a lot of people who have resisted the best interests of the students in this country on the promise that they will be good this time. I would hope the gentleman would reconsider whether or not he must vote for title II on the basis it is the only game in town.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I am pleased to yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Chairman, I would like to make two comments. First of all, we are not giving any money to vocational education. If vocational education cannot prove, cannot jointly plan, and cannot show the local community, the people the gentleman was talking about, that they can, in fact, do a better job, that they can, in fact, change their direction in dealing with youth, they do not get anything. So, you know, we are just not giving anything to anyone. They have to prove that, in fact, there is some way that they can earn our respect to receive that.

A second question. It was mentioned that this is not the only game in town.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. JEFFORDS and by unanimous consent, Mr. WEISS was allowed to proceed for 1 additional minute.)

Mr. JEFFORDS. Will the gentleman yield?

Mr. WEISS. I yield to the gentleman from Vermont.

Mr. JEFFORDS. The second statement was that this is not the only game in town, that there is another. I am not sure. We may have been referring to what the administration originally sent up. Now that was a disaster because there was no coordinated effort in that, and second, the Department of Education has said this is a much better project than what they originally sent up.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I will be happy to yield to the gentleman from California.

Mr. MILLER of California. The gentleman keeps reinterpreting my remarks. I suggest what the other game is is that there is reauthorization of vocational education coming, we have a title I program and, in fact, we are giving this money to these people. In fact, that is what we are doing, because we are buying some time between now and the election because we cannot produce the results. And then the billion dollars will come, I guess in the Republican administration or with President Carter's new administration. The billion dollars new money will come in the same year in which he has requested a rescission of $100 million in these existing programs. So I want to say that I do not think we ought to hold out that ray of hope to the unemployed youth of this country.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. MILLER of California. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The Chair will announce that this is a regular quorum call followed by a 5-minute vote.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 491]

Addabbo, Akaka, Albosta, Alexander, Ambro, Anderson, Calif., Andrews, N.C., Andrews, N.Dak., Annunzio, Anthony, Applegate, Ashbrook, Atkinson, AuCoin, Badham, Bafalis, Bailey, Baldus, Barnard, Barnes, Bauman, Beard, R.I., Beard, Tenn., Bedell, Bellenson, Benjamin, Bennett, Bereuter, Bethune, Bevill, Biaggi, Bingham, Blanchard, Boggs, Boland, Boner, Bonior, Bonker, Bouquard, Bowen, Brademas, Breaux, Brinkley, Brodhead, Brooks, Broomfield, Brown, Calif., Brown, Ohio, Broyhill, Buchanan, Burgener, Burlison, Burton, John, Butler, Byron, Campbell, Carney, Carr, Carter, Cavanaugh, Chappell, Cheney, Chisholm, Clausen, Clay, Clinger, Coelho, Coleman, Collins, Ill., Collins, Tex., Conable, Conte, Corcoran, Corman, Cotter, Coughlin, Courter, Crane, Daniel, Crane, Philip, D'Amours, Daniel, Dan, Daniel, R. W., Danielson, Dannemeyer, Davis, Mich., de la Garza, Deckard, Dellums, Derrick, Derwinski, Dickinson, Dicks, Dixon, Donnelly, Dornan, Dougherty, Downey, Drinan, Duncan, Tenn., Early, Eckhardt, Edgar, Edwards, Ala., Edwards, Calif., Edwards, Okla., Emery, English, Erdahl, Erlenborn, Ertel, Evans, Del., Evans, Ind., Fary, Fascell, Fazio, Fenwick, Ferraro, Findley, Fish, Fisher, Fithian, Flippo, Florio, Foley, Ford, Mich., Ford, Tenn., Forsythe, Fountain, Fowler, Frenzel, Frost, Fuqua, Garcia, Gaydos, Gephardt, Gilman, Gingrich, Ginn, Glickman, Gonzalez, Goodling, Gore, Gradison, Gramm, Grassley, Gray, Green, Grisham, Guarini, Gudger, Guyer, Hagedorn, Hall, Ohio, Hall, Tex., Hamilton, Hammer-schmidt, Hance, Hanley, Hansen, Harkin, Harris, Hawkins, Heckler, Hefner, Heftel, Hightower, Hillis, Hinson, Hollenbeck, Holt, Hopkins, Horton, Howard, Hubbard, Huckaby, Hughes, Hutchinson, Hutto, Ichord, Jacobs, Jeffords, Jeffries, Jenkins, Jenrette, Johnson, Calif., Johnson, Colo., Jones, N.C., Jones, Okla., Jones, Tenn., Kastenmeier, Kazen, Kelly, Kemp, Kildee, Kindness, Kogovsek, Kostmayer, Kramer, LaFalce, Lagomarsino, Latta, Leach, Iowa, Leach, Tex., Lee, Lehman, Leland, Lent, Levitas, Lewis, Livingston, Lloyd, Loeffler, Long, La., Long, Md., Lott, Lujan, Luken, Lundine, Lungren, McClory, McCormack, McDonald, McEwen, McHugh, McKay, McKinney, Madigan, Maguire, Markey, Marks, Marlenee, Marriott, Martin, Matsui, Mattox, Mavroules, Mazzoli, Mica, Michel, Mikulski, Miller, Calif., Miller, Ohio, Mineta, Minish, Mitchell, Md., Mitchell, N.Y., Moakley, Moffett, Montgomery, Moore, Moorhead, Calif., Mottl, Murphy, Ill., Murphy, Pa., Murtha, Musto, Myers, Ind., Natcher, Neal, Nelson, Nichols, Nolan, Nowak, O'Brien, Oakar, Oberstar, Obey, Ottinger, Panetta, Pashayan, Patten, Patterson, Paul, Pease, Pepper, Perkins, Petri, Peyser, Pickle, Porter, Preyer, Price, Pritchard, Pursell, Quayle, Quillen, Rahall, Railsback, Rangel, Ratchford, Regula, Reuss, Rhodes, Richmond, Rinaldo, Ritter, Robinson, Rodino, Roe, Rose, Rosenthal, Rostenkowski, Roybal, Rudd, Russo, Sabo, Santini, Satterfield, Sawyer, Scheuer, Schroeder, Schulze, Sebelius, Seiberling, Sensenbrenner, Shannon, Sharp, Shelby, Shumway, Shuster, Simon, Skelton, Smith, Iowa, Smith, Nebr., Snowe, Snyder, Solomon, Spellman, Spence, St Germain, Stack, Staggers, Stangeland, Stanton, Stark, Steed, Stenholm, Stewart, Stockman, Stokes, Stratton, Studds, Stump, Symms, Synar, Tauke, Tauzin, Taylor, Thomas, Traxler, Treible, Ullman, Van Deerlin, Vander Jagt, Vanik, Vento, Volkmer, Walgren, Walker, Wampler, Waxman, Weaver, Weiss, White, Whitley, Whittaker, Whitten, Williams, Mont., Williams, Ohio, Wilson, Tex., Winn, Wirth, Wolff, Wolpe, Wright, Wyatt, Wydler, Wylie, Yates, Yatron, Young, Fla., Young, Mo., Zablocki, Zeferetti

□ 1810

The CHAIRMAN. Three hundred eighty-seven Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from California (Mr. MILLER) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 60, noes 342, not voting 30, as follows:

[Roll No. 492]

AYES—60

Akaka, Anthony, Bedell, Bellenson, Bennett, Bonior, Bonker, Brown, Calif., Burton, John, Burton, Phillip, Carr, Coelho, Crane, Daniel, Crane, Philip, Davis, S.C., Dellums, Dixon, Downey, Eckhardt, Edwards, Calif., Fazio, Gephardt, Harkin, Heftel, Hightower, Holt, Hutto, Johnson, Calif., Jones, N.C., Kastenmeier, Kramer, Lehman, Leland, Lowry, McKay, McKinney, Madigan, Maguire, Miller, Calif., Miller, Ohio, Mineta, Moffett, Murphy, Pa., Nolan, Panetta, Patterson, Paul, Pease, Richmond, Rosenthal, Russo, Sensenbrenner, Staggers, Stark, Steed, Udall, Van Deerlin, Waxman, Weaver, Wirth, Yates

NOES—342

Addabbo, Albosta, Alexander, Ambro, Anderson, Calif., Anderson, Ill., Andrews, N.C., Andrews, N.Dak., Annunzio, Applegate, Archer, Ashbrook, Ashley, Aspin, Atkinson, AuCoin, Badham, Bafalis, Bailey, Baldus, Barnard, Barnes, Bauman, Beard, R.I., Beard, Tenn., Benjamin, Bereuter, Bethune, Bevill, Biaggi, Bingham, Blanchard, Boggs, Boland, Bolling, Boner, Bouquard, Bowen, Brademas, Breaux, Brinkley, Brodhead, Brooks, Broomfield, Brown, Ohio, Broyhill, Buchanan, Burgener, Burlison, Butler, Byron, Campbell, Carney, Carter, Cavanaugh, Chappell, Cheney, Chisholm, Clausen, Clay, Clinger, Coleman, Collins, Ill., Collins, Tex., Conable, Conte, Corcoran, Corman, Cotter, Coughlin, Courter, D'Amours, Daniel, Dan, Daniel, R. W., Danielson, Dannemeyer, Davis, Mich., de la Garza, Deckard, Derrick, Derwinski, Dickinson, Dicks, Donnelly, Dornan, Dougherty, Drinan, Duncan, Tenn., Early, Edgar, Edwards, Ala., Edwards, Okla., Emery, English, Erdahl, Erlenborn, Ertel, Evans, Del., Evans, Ind., Fary, Fascell, Fenwick, Ferraro, Findley, Fish, Fisher, Fithian, Flippo, Florio, Foley, Ford, Mich., Ford, Tenn., Forsythe, Fountain, Fowler, Frenzel, Frost, Fuqua, Garcia, Gaydos, Gilman, Gingrich, Ginn, Glickman, Goldwater, Gonzalez, Goodling, Gore, Gradison, Gramm, Grassley, Gray, Green, Grisham, Guarini, Gudger, Guyer, Hagedorn, Hall, Tex., Hamilton, Hammer-schmidt, Hance, Hanley, Hansen, Harris, Harsha, Hawkins, Heckler, Hefner, Heftel, Hillis, Hinson, Hollenbeck, Hopkins, Horton, Howard, Hubbard, Huckaby, Hughes, Hutchinson, Ichord, Ireland, Jacobs, Jeffords, Jeffries, Jenkins, Jenrette, Johnson, Colo., Jones, Okla., Jones, Tenn., Kazen, Kelly, Kemp, Kildee, Kindness, Kogovsek, Kostmayer, LaFalce, Lagomarsino, Latta, Leach, Iowa, Leach, Tex., Lee, Lent, Levitas, Lewis, Livingston, Lloyd, Loeffler, Long, La., Long, Md., Lott, Lujan, Luken, Lundine, Lungren, McClory, McCormack, McDonald, McEwen, McHugh, Markey, Marks, Marlenee, Marriott, Martin, Mathis, Matsui, Mattox, Mavroules, Mazzoli, Mica, Michel, Mikulski, Mitchell, Md., Mitchell, N.Y., Moakley, Montgomery, Moore, Moorhead, Calif., Mottl, Murphy, Ill., Murtha, Musto, Myers, Ind., Natcher, Neal, Nelson, Nichols, Nowak, O'Brien, Oakar, Oberstar, Obey, Ottinger, Pashayan, Patten, Patterson, Pepper, Perkins, Petri, Peyser, Pickle, Porter, Preyer, Price, Pritchard, Pursell, Quayle, Quillen, Rahall, Railsback, Rangel, Ratchford, Regula, Reuss, Rhodes, Rinaldo, Robinson, Rodino, Roe, Rose, Rostenkowski, Roybal, Rudd, Russo, Sabo, Santini, Satterfield, Sawyer, Scheuer, Schroeder, Schulze, Sebelius, Seiberling, Shannon, Sharp, Shelby, Shumway, Shuster, Simon, Skelton, Smith, Iowa, Smith, Nebr., Snowe, Snyder, Solarz, Solomon, Spellman, Spence, St Germain, Stangeland, Stanton, Stenholm, Stewart, Stockman, Stokes, Stratton, Studds, Stump, Swift, Symms, Synar, Tauke, Tauzin, Taylor, Thomas, Traxler, Treible, Ullman, Vander Jagt, Vanik, Vento, Volkmer, Walgren, Walker, Wampler, Weiss, White, Whitley, Whittaker, Whitten, Williams, Mont., Williams, Ohio, Wilson, Bob, Wilson, Tex., Winn, Wolff, Wolpe, Wright, Wyatt, Wydler, Wylie, Yatron, Young, Fla., Young, Mo., Zablocki, Zeferetti

NOT VOTING—30

Abdnor, Cleveland, Conyers, Daschle, Devine, Dingell, Dodd, Duncan, Oreg., Evans, Ga., Giaimo, Hall, Ohio, Holland, Holtzman, Hyde, Leach, La., Lederer, McCloskey, McDade, Mollohan, Moorhead, Pa., Murphy, N.Y., Myers, Pa., Nedzi, Roberts, Rousselot, Thompson, Watkins, Wilson, C. H., Whitehurst, Young, Alaska

So the amendment was rejected.

The result of the vote was announced as above recorded.

□ 1820

The CHAIRMAN. Are there additional amendments to title II?

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 45, line 14, strike out "and area vocational schools".

Page 55, beginning on line 21, strike out all of subsection (f) through line 13 on page 57.

Page 57, strike out lines 18 through 24 and insert in lieu thereof the following:

(1) such school provides secondary education, as determined by the State educational agency, to youth in grades seven through twelve; and

Page 71, beginning on line 19, strike out section 216 through line 11 on page 75 and redesignate the succeeding sections and conform cross-references thereto accordingly.

Page 79, beginning on line 23, strike out subsection (c) through line 6 on page 80.

Page 86, beginning on line 20, strike out "the requirement that not less than 25 percent of each grant shall be used for programs of vocational education in designated schools, and".

Page 91, line 15, strike out "In any case" and everything that follows through line 19.

Page 93, line 22, strike out "(A)" and on page 94, strike out lines 3 through 5.

Page 96, strike out lines 13, 14, and 15, and redesignate the succeeding paragraph accordingly.

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, the purpose of this amendment is to strike vocational education from title II where it appears. The purpose of doing this is that we already have a major program of vocational education in this country, and the reauthorization, the regular reauthorization, for this program is scheduled for next year. This committee, in fact, will commence hearings on that reauthorization next month.

The idea of including vocational education in this program is that they can serve and we will mandate that they serve low-income, needy students and those people most in need of their services to acquire job skills.

Let me say to the Members of this Committee that that is already the existing law. In fact, that law has been mandated but in fact that law has been ignored. So the situation is this: that again we come along, and we are going to lock into this time for the program vocational education for up to the theoretical tune of a quarter of a billion dollars, but next year we are going to come back under a completely separate program and ask the Members to reauthorize vocational education to the tune of $850 million or in excess of that.

I just do not think you can have it both ways. I say this because this Congress has authorized very extensive studies, the NIE study on how well is vocational education doing today. The results of that study will not be in for another couple of months, and yet we are going to go ahead and pledge and write in a mandate of 25 percent of all this money shall go to vocational education and then come along next year and ask you to write another billion dollars for vocational education. I think we ought to have the evidence in. We have had independent studies that have been done that suggest that maybe the cost effectiveness is not as great as we would like or the impact on the ability of young people to hold jobs, to improve themselves as a result of vocational education, is not what we like.

So I would hope that we would not go ahead and give away this amount of money, writing in the 25 percent mandate for vocational education before we know the results of the evidence. I think it is just simple accountability in how you want to run the Government. Do you want to give them the money first and then find out how well the program is doing? Or do you want to wait until you get the studies in and base it upon the studies that we already have to sug-

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gest that in fact we should not just hand out this money this year?

Again, I would say that the American Vocational Association, the lobby group for the vocational schools in this case, has already said that they have enough money, that there are sufficient funds already to meet the group that we desire to hit in title II. If that is the case, why are we locking them in for an additional amount of money when we have the reauthorization of the Vocational Education Act up next year?

So I would hope that we would do the prudent thing, we would wait, we would save ourselves the potential liability of a quarter of a billion dollars and, throughout the normal reauthorization program next year, we will have oversight hearings and we will report a bill back to this Congress to deal with this situation. I hope the Members will favor my amendment to strike this provision from the bill.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment.

First, let me state that the vocational schools throughout Appalachia—and I know in my district—are working well. All of the area schools have a waiting list now from a thousand to 3,000 youth who cannot attend vocational school. When they graduate, they already have a job, 99 percent of them. So I want to say to the gentleman from California that there is a shortage of vocational funds today throughout this Nation, regardless of what some of the leaders or some of the lobbyists may have told the gentleman from California. There is a tremendous shortage of vocational education funds.

I think we all know that specific job skills are as important as general employability skills in preparing youth for the labor market. That has been proven time and time again, and there is no substitute for experience on the job, a hands-on experience. We have a coordinated and an integrated approach envisioned in the bill that cannot be successful without the participation of vocational education programs. The facilities, equipment, trained personnel and experiences in working with community businesses and labor, which vocational education institutions can provide, are too valuable to ignore, Mr. Chairman, in this case.

I want to say to the gentleman from California that throughout the urban areas of this country, people who write me and whom I talk to almost every day tell me vocational training is very successful. There was a time when a lot of money was wasted on vocational education. But today, I think, in 98 percent of the cases it is job-oriented. The youth are getting the training, the best training. That is what we expect. Next year in hearings, we will want to bring out this issue, because we want job orientation. From all of the reports I get, 95 percent of the youth who are trained in the vocational schools of the country are able to get jobs when they get through those schools. So there is no throwing away of money.

This program has been helpful to the disadvantaged youth. The resources have been very limited. Currently, the Federal contribution for disadvantaged students in vocational education amounts to only $50 per student. A recent study of vocational facilities showed that while central cities contained 22.8 percent of the total population, they contain only 8.1 percent of the secondary level vocational facilities.

I want to make another observation. There has been a lot of talk around here this afternoon about duplication. In my judgment, there is no duplication.

□ 1830

Title I funds under the Elementary and Secondary Education Act are spent, in most cases, in the elementary grades, one through six mostly. This is as it should be, because of the shortage of these funds; and those funds go to practically every district of the Nation because you have disadvantaged youth in almost every area.

In this bill, the funds are targeted, and if the school districts do not elect to file the plan and take advantage of this program, they do not get any money. It is purely voluntary. If the school districts do not get any money, naturally, vocational educational institutions in that school district do not get any money.

I would ask the Members of the House to vote against the gentleman's amendment.

The amendment would do great harm to the youth program of the country, and we would virtually have no program if this amendment were passed.

Mr. PETRI. Mr. Chairman, I rise in strong opposition to the amendment offered by the gentleman from California.

Mr. Chairman, vocational educational schools should be the very heart of the program to prepare students for jobs.

Mr. Chairman, I rise in strong opposition to the gentleman from California's amendment to eliminate the role for vocational education institutions in youth employment programs.

Vocational education schools, as their name defines them, should be at the very heart of a program to prepare students for jobs.

This bill, H.R. 6711, addresses the root problems of youth unemployment—specifically the lack of coordination and cooperation between the labor market and the education system. Our education system is varied, and I believe it would be a great mistake to exclude the vocational education schools from participation in this important joint venture.

The Vice President's Task Force on Youth Employment, the group that did much of the background research on the scope of the problem we are addressing today, made reference to the contribution of vocational schools, and I quote:

> Vocational schools are good at doing many of those very things which the Task Force has identified as being central to running effective programs. They link learning with doing and they spell out their goals in ways which both students and parents can accept and understand. Vocational schools incorporate the learning of reading and writing into their training in actual job skills, so that the participants can see the connection between the ability to read and doing good work.

In my home State of Wisconsin, we have an exceptionally good vocational education system, one that offers a fine example of a program that equips people with the necessary kills to find a job, and actually trains young people for specific job opportunities that have been identified in the local labor market. In Wisconsin, 89 percent of all 1978 completers of vocational education training programs found a job. That is 89 percent.

I argue that it would be highly irresponsible to support this amendment to cut out vocational education schools from participation in this new youth employment effort. In Wisconsin, the vocational education system has proven effective in helping young people prepare for and find jobs. While Wisconsin's system is exemplary, it is by no means unique and it is clearly a suitable resource to call upon for the task of combating our high rates of unemployment among young people.

The amendment suggests that we ought to delete funding for vocational education schools under the new youth employment programs, with an eye toward reauthorizing the Vocational Education Act. But this misses the point of the programs we are authorizing, and the point of the programs authorized under the Vocational Education Act. In fiscal year 1978, Federal funds did provide services to some 2 million disadvantaged students, special vocational services offered under the Vocational Education Act. However that amounted to approximately $50 per student, and those reached were hardly even the tip of the iceberg of unemployed youth.

The programs we are authorizing today will have a distinctly different focus. They will be focusing on needy youth as the sole target group. And these programs will be required to be offered in coordination with basic skills and other training programs offered under the education component of the bill. The Vocational Education Act does not address the needs of disadvantaged youth in particular; nor does that act address the crucial facet of coordination with an array of institutions concerned with young people and their future as productive, contributing, and self-supporting members of society.

The need for this legislation has already been described. The figures for youth unemployment are staggering, and the prospects for these youth are bleak. It is imperative that we come to grips with the problems of our young people, particularly their preparation for the job market, because they are our future.

We hold the keys to a brighter future for these young people, and we should not consider the option of leaving doors locked and sealed to them.

I urge defeat of this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. MILLER of California. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred and one Members are present, a quorum.

The pending business is the demand of the gentleman from California (Mr. MILLER) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. MILLER of California: Page 56, line 4, insert ", subject to paragraph (5)," immediately after "shall" and on page 57, after line 13, insert the following new paragraph:
>
> (5)(A) The State board for vocational education shall provide assistance to an area vocational school under this subsection only if such school serves a large number or percentage of youth from low-income families, determined in a manner consistent with section 122 of the Elementary and Secondary Education Act of 1965, and shall rank such schools from highest to lowest in the concentration of students from such families.
>
> (B) The State board for vocational education shall take into account both the need of the area vocational school, as indicated by its ranking under subparagraph (A), and the quality of the school plan as submitted in accordance with section 213(a). The Secretary shall prescribe the method by which the State boards for vocational education shall weigh each of these factors in determining which eligible schools shall be provided assistance under this subsection.

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, let me say to the Members of the House it was not my idea to bring this bill up late in the afternoon, but I hope that the Members would understand that I think this is a matter of great concern and importance to the Congress and to the country. I would also hope that they understand that I believe the amendments I have are of merit, substantive, and of importance.

Mr. ANNUNZIO. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Illinois.

Mr. ANNUNZIO. The gentleman mentioned it was not his idea that the bill come up late in the afternoon. I would like for the record to show that it is 6:35 p.m. in the evening.

Mr. MILLER of California. I have been waiting so long.

We have just decided that we are going to set aside 25 percent of the money for vocational education in this bill, and I think one of the things we have to understand is that it was pointed out by the minority members of the committee that in fact this is highly targeted money for specific population of low-income, underprivileged young people who are in desperate need.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Was this printed in the RECORD?

Mr. MILLER of California. Yes.

Mr. GOODLING. What date?

Mr. MILLER of California. I will have to get that information for the gentleman.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Kentucky.

Mr. PERKINS. I did not see it in the RECORD, but I think there is an incorrect page reference maybe here.

Mr. MILLER of California. It is my understanding this was published in the June 18 group of amendments.

Mr. Chairman, as I started to point out, the purpose of this is to make sure that the area of vocational education schools come under the same targeting requirements as the rest of the schools under this program so that we can be assured that they are using the money for the purposes of addressing the same population of low-income students as the rest of the program is required to do.

Now, it has been held out that is the purpose of this act, and that is the purpose for which we are giving them the money; and that is what they are going to have to describe how they do. If they do not do that, they cannot have any money. It is the intent of this legislation, very simple, to bring one very select group of schools, area vocational education schools, into compliance with the act as it applies to the rest of the schools under this legislation.

I ask for this body's consideration, a positive vote in support of this amendment.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment.

No vocational schools get any money unless the school district submits a plan, and those plans are approved. Naturally, these school districts are in areas where we have a considerable number of disadvantaged youth who are unemployed. In those cases, the vocational educational schools within that school district will receive money.

I oppose this amendment, because it is not appropriate for many area vocational schools. These schools frequently serve very large areas, even many counties, and they draw their students from several surrounding counties.

Therefore, it is not possible to know how many students attending these schools are from low-income families unless there were to be an income survey done of the families.

I believe that most of us would try to avoid such income surveys wherever we can. This amendment also does not make sense in requiring that area vocational schools be ranked with local high schools in terms of the number of disadvantaged students they serve. An area vocational school can be serving very many disadvantaged students, but because its total student body comes from such a large area, the proportion of disadvantaged students in the school may not seem very high.

Under the Miller amendment, that school would consequently not qualify for funding even though it was serving many disadvantaged students and just as many as may be in concentrated areas.

I would ask the Members to vote against this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The amendment was rejected.

□ 1840

AMENDMENT OFFERED BY MR. FUQUA

Mr. FUQUA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. FUQUA: Page 74, line 23, strike out "and" at the end of such line, and on page 75 strike out the period at the end of line 3 and insert "; and" in lieu thereof, and after such line insert the following:
>
> (6) to the extent determined by the Secretary, provision of services for the establishment of vocational-based youth enterprises to stimulate community improvement and to serve as learning activities which will contribute to the ability of participants to secure and retain stable employment or self-employment.

Mr. FUQUA. Mr. Chairman, on behalf of my good friend and colleague, Congressman WES WATKINS of Oklahoma, who could not be here today, I offer an amendment to H.R. 6711, the Youth Act of 1980.

This amendment would encourage vocational education to make entrepreneurship a part of the vocational education experience of youth. Today's youth are encouraged to think about jobs they might seek and for whom they might work, but not how they might take the knowledge and know-how acquired through vocational education to create a job for themselves.

Some studies have indicated that about 10 percent of all vocational education graduates, after 5 to 10 years' experience, are self-employed, owning their own business. For youth in depressed communities, it seems especially important that we allow them an opportunity to experience ways of producing a product and/or providing a service that others need and are willing to purchase. This can help them grasp a dream of how they might make a job for themselves through applying the knowledge and skills acquired in vocational education.

We need to encourage American youth to dream about creating small business, because it is from America's small business that the majority of new jobs emerge in local communities.

Mr. Chairman, I fully and firmly support the action initiated by Congressman WATKINS and I urge my colleagues to adopt this significant amendment.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. FUQUA. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, several days ago the gentleman from Oklahoma (Mr. WATKINS) discussed this amendment with me. There is no objection on our side to the amendment, since it would give needed encouragement to youth to learn the skills needed to run their own businesses and thereby redevelop their own local communities.

I know of no objection to the amendment.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

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Mr. FUQUA. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, there is no objection from the minority.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FUQUA).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. JEFFORDS

Mr. JEFFORDS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JEFFORDS: Page 92, line 21, insert "(1)" immediately after "include"; on line 22, strike out "training teachers," and insert in lieu thereof "(2) training teachers", and on line 23, strike out "title, and" insert in lieu thereof the following: "title, (3) providing special professional recognition to teachers, administrators, and others who make a special contribution toward serving youth under this Act, and (4)".

Mr. JEFFORDS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Vermont?

There was no objection.

Mr. JEFFORDS. Mr. Chairman, although the amendment at the desk is a minor one in terms of the rewards of the Youth Act, it reflects what I believe is the critical element in the success or failure of any endeavor—reward to those who participate. Too often, we forget that not only those who receive the benefits of the program should be rewarded but those who often, at great sacrifice enable the program to work. We often take those who serve to carry out these policies for granted. In this respect, I believe we should clearly establish a way to recognize those educators, and employment and training specialists who will be devoting themselves to addressing the serious needs of low-income youth. I believe this recognition should come in a form that clearly will improve the standing of these individuals among their peers so that their involvement will not be a personal sacrifice, with no commensurate recognition by society.

In a bill I proposed earlier this session, most of which has been incorporated in title I, I called for establishing a National Institute for Education and Work in which those who participate in serving these young people could come together to discuss their mutual problems and successes. At the same time, the Institute would serve to recognize these individuals for their involvement. It was my feeling that such recognition would benefit these individual's personal reward that makes a hard task just a bit easier. For we all know that an individual looks for and thrives on the recognition of their peers.

A minor amendment, yes, but a significant one for encouraging a full and active participation for those who will be working in the very difficult and threshold effort. My amendment simply allows the Secretary of Education the discretion to establish a way of recognizing these individuals and does nothing more.

I am hopeful the Secretary will find means for doing so because I feel that such recognition can only serve to assure the success of the effort we are initiating.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, we accept the amendment as an amendment to the committee bill.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. JEFFORDS).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 72, line 10, strike "provides assurances that", and insert "describes how" or "provides a description of how".

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the distinguished gentleman.

Mr. PERKINS. Mr. Chairman, it is my understanding of the gentleman's amendment that it would modify the requirement that local school districts applying to State boards of vocational education must provide assurances that certain activities will be undertaken to a requirement that these applications must describe how these activities will be undertaken.

I see no objection to the amendment, since I believe that it solely makes the committee bill more precise.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, the minority has no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 47, after line 14, insert the following new section:

PROHIBITION OF USE OF FUNDS FOR MATCHING

SEC. 204. No funds provided under this title shall be used to provide the non-federal share of the cost of any programs described in sections 111 (a) or (b) of the Vocational Educational Act of 1963.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the distinguished gentleman.

Mr. PERKINS. Mr. Chairman, we see no objection to the amendment and we accept it on this side.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. Yes.

Mr. GOODLING. Mr. Chairman, we have no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WEISS

Mr. WEISS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WEISS: Page 57, after line 13, insert the following new paragraphs:

(5) No area vocational school shall be given assistance under this subsection unless and until a majority of the members of its school site council have indicated their accord with the plan as submitted for final approval to the local governing board of the area vocational school. The local governing board of the area vocational school shall have the right to alter the school site plans as necessary to be consistent with contracts and formally adopted areawide policies of the governing board of the area vocational school, and such alterations shall not be subject to approval by the school site council.

(6) Subject to the availability of funds under this subsection, the State board for vocational education shall provide assistance to an area vocational school for no fewer than three consecutive years, so long as the board determines that the school is making substantial, documented progress toward achieving the objectives set forth in the plan submitted under section 213.

Mr. WEISS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. WEISS. Mr. Chairman, I would like to offer two amendments to the section dealing with area vocational schools which are not under the administrative control or supervision of the local educational agency.

These amendments have been slightly modified at the request of some members of the education community. I believe that my objective, that is, establishing uniformity and equitable treatment in this legislation, is not only met but strengthened by these modifications.

Programs conducted by these area vocational schools are now subject to a number of the same requirements for schools and vocational schools under a local educational agency. These requirements include consultation with other local educational advisory councils, work with private industry councils, the actual formation of a school site council, and others.

However, unlike schools and vocational education schools under a local education agency, school site councils for area vocational education schools are not required to indicate their accord with the school's plan, nor are they required to demonstrate that real progress is being made toward achieving their plan's objectives.

My two amendments draw language from section 214(a) (1) and (2) and apply these requirements to area vocational education schools.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I would be pleased to yield to the distinguished gentleman.

Mr. PERKINS. Mr. Chairman, we have no objection to the amendment. We accept it.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I would be pleased to yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, we think it is a clarifying amendment and we accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. WEISS).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. WEISS

Mr. WEISS. Mr. Chairman, I offer three amendments, and ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. WEISS: Page 64, line 18, insert "or resumption of school attendance" immediately after "retention".

Page 71, after line 12 insert the following new paragraph (and redesignate the succeeding paragraphs accordingly):

(8) programs to encourage youth who left school prior to earning a certificate of graduation to return to school;

Page 92, line 23, insert "motivating youth to continue or resume school attendance," immediately after "title,".

Mr. WEISS. Mr. Chairman, I would like to offer three amendments en bloc to address the problem of the number of youths who are dropping out of school before graduation. Although services to dropouts are already encouraged in some parts of this legislation, I believe that these amendments will strengthen these provisions, and further encourage the adequate provision of services for youths who do not graduate.

Although there seems to be some difficulty in obtaining up to date information on the number of dropouts within a school district, a U.S. Department of Education survey compared the number of graduates with the ninth grade enrollment level 4 years earlier. Although not exact, this data places into perspective the magnitude of this problem. It is estimated that more than 1 out of 2 students in Chicago, St. Louis, and Detroit will not graduate. In Cleveland, Philadelphia, and Washington, 40 percent of students drop out. This high rate knows no geographic boundary; even in the Sun Belt cities, the dropout rate exceeds 30 percent, with Dallas and Houston losing 33 percent of their enrollees, and Los Angeles, 30 percent. One of three students enrolled in these schools will not receive their high school diploma. Nationwide the Department estimates that 26 youths will drop out for every 100 students who obtain a diploma.

The legislation that we are considering today is ultimately designed to increase a youth's employment skills, basic skills, and employability. However, if we do not adequately address the problem of an increasing dropout rate, we will be defeating the very purpose of this legislation. Research points to a positive correlation between completion of high school and later employment. The Vice President's Task Force on Youth Employment reported in their "Review of Youth Employment Problems, Programs, and Policies" that the employment gains of a high school graduate far exceed those of a dropout. Between the ages of 20 and 24, the employment gap between graduates and dropouts had reached 11 percent; 28.7 percent of the dropouts were unemployed whereas 17.3 percent of the high school graduates were unemployed. One of the major findings reported by the task force includes this statement:

There is broad agreement that education increases both employment stability and earnings and partially offsets the effects of inequalities in family background. Educational attainment increases labor force participation, and employment stability. Four years of high school . . . are associated with an increase in earnings of 40–50%.

The amendments that I offer today are in recognition of these findings. Although percentages about the rate of dropouts may be inexact, there can be no dispute with the fact that the number of students who are dropping out must be reduced, and that by reducing this rate, the number of employed and employable youths will increase.

The first amends the allocation to schools section which presently requires that schools conduct activities that will have a major effect on a youth's achievement and other qualities. This amendment simply adds the phrase "or resumption of school attendance" after the word retention. This is designed to encourage the school to conduct activities which will encourage youths to return to complete their education.

The second amendment adds under authorized activities, other activities the school may provide to encourage youths to complete their education. The final amendment adds as one of the purposes of the Secretary's demonstration and development activities the motivation of youth to continue or resume school attendance.

I believe that these amendments will encourage schools to provide activities to draw students back into the school, and encourage the development of demonstration activities whose successful results could be replicated nationwide.

Mr. PERKINS. Mr Chairman, will the gentleman yield?

Mr. WEISS. I would be pleased to yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, this includes dropouts. I see no objection to the amendment.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I would be pleased to yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, the minority accepts the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. WEISS).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 66, line 11, insert "(1)" immediately before "During"; on lines 15 and 22, redesignate paragraphs (1) and (2) as subparagraphs (A) and (B); on lines 16, 19, and 20, redesignate clauses (A), (B), and (C), as clauses (i), (ii), and (iii), respectively; and after line 23 insert the following new paragraph:

(2) During any fiscal year for which appropriations are made for purposes of this title, a local educational agency shall use not less than one-half of the funds received by it under this part for that year for programs and services for students in grades seven through nine.

Page 86, line 20, insert "(A)" immediately before "the requirement", and on line 22, strike out "and" and insert in lieu thereof "(B) the requirement that not less than one-half of the funds available to any local educational agency under such part shall be used for programs and services for students in grades seven through nine, and (C)".

Page 62, after line 17 insert the following new paragraph:

(4) Any local educational agency shall use not less than one-half of the funds it receives under this subsection for planning and inservice training in schools serving students in grades seven through nine.

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, earlier I said to the committee that I was very concerned that enough money was not being provided to the problems of young people at the junior high school level and that I felt that given the evidence that was submitted to the committee that we ought to be very concerned with these young people, because in fact it has been established that many people who make a decision to drop out of high school, to change their lifestyles, do it at this very young age and then carry out that decision in the 9th, 10th, and 11th grades.

I want to read to the committee some testimony that was provided to our committee by Dr. Joan Lipsett, who is in the Center for Early Adolescence in North Carolina, who testified:

The decision to drop out of school is often made during the preceding high school years.

Second, she presented some of the evidence that was put together by the National Institute of Education in their State school study which tells us:

The National Institute of Education's (NIE's) Safe School Study tells us that boys in the seventh grade of junior high schools are the most victimized of our students. The only part of our population for whom first admissions to mental hospitals increased in the 1970's were adolescents under 15. The only age group for which the birth rate is increasing are girls fifteen and under. The incidence of running away peaks around ages 14 and 15. Alcohol abuse is becoming a serious problem from adolescents. The National Institute on Alcohol Abuse and Alcoholism reports that 19 percent of 14 to 17-year-olds experience alcohol-related problems. The average age of initiation to alcohol is 12.9. Sixty-two percent of seventh graders

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and 80 percent of eighth graders drink. Beginning at age 10, there is a steady rise in youth's contact with police and courts. Studies indicate that juvenile crime begins to "bloom" during early adolescence.

I think it would be a terrible tragedy if we really talked about the problems of unemployed youth and failed to provide the moneys to help those youth that apparently are the most critically in need of our help who are engaged in social problems in record numbers and make these decisions to drop out of school at such an early age.

I think at the least if we are starting to parcel out money in this legislation by mandate, if you will, that as we were told by the Secretary of Education and we were told by other experts that what we wanted to try to do was to bring the concentration of focus on this very young group.

So what my amendment does is to say that at least 50 percent of the money in title II will be used in this young age population during their formative years at the junior high school level.

I would hope that the committee will give favorable consideration to this legislation, so again perhaps we can prevent some of the problems that are so costly to correct in later years.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment.

First, let me state that we do not know how much money will be appropriated in 1982, 1983, 1984, and 1985. These are the years that we are talking about.

This amendment is an undue restriction on local school districts. I believe that we should give the local people the discretion to determine whether their needs are greater at the 7th through 8th grade level or in the later years of high school.

□ 1850

The gentleman from California this afternoon talked about duplication with title I. We spend practically all of the title I money throughout the country in the elementary schools and in the 7th and 8th grade for the disadvantaged. Hardly any of that title I money is spent in the high schools of this country. It is nearly all spent in the elementary schools and some of it in the 7th and 8th grades.

Why should we then usurp the discretion of the local school districts where they have boards and well-coordinated different groups, all the interested groups in the community, and try to mandate this from Washington?

My colleagues can spend money now under this legislation in the 7th and 8th grades if the school districts and the councils involved want to and everybody agrees this is where it should be spent. There are no restrictions now and the flexibility is here.

Let us not destroy that flexibility in this bill. I would think the local schools know more about where this money should be spent than we here in Washington. I say again we do not know how much money is going to be appropriated in 1982, 1983, and 1984 for this purpose.

Regardless of the amount appropriated, half of it is split with labor. We hold the CETA youth programs in title I of this bill harmless, and all over and above that is equally divided.

So I would urge the Members of this body to vote against the gentleman's amendment. They can do this now at the local school districts and if everybody involved at the local level agrees, they can do just what the gentleman from California wants done.

Mr. GOODLING. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I am sympathetic to the idea behind this, but there is a real problem here because we are saying in grades 7 through 9 you must spend 50 percent of the money. We would be taking from the school site council the opportunity to determine where their real need is, and in some schools that may not be the need, so I do not think we can get in the business of saying you have to use 50 percent of this money for grades 7 and 9. We are targeting the ages 11 through 17 in this bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The amendment was rejected.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 66, line 11, insert "(1)" immediately before "during"; on lines 15 and 22, redesignate paragraphs (1) and (2) as subparagraphs (A) and (B); on lines 16, 19 and 20, redesignate clauses (A), (B), and (C), as clauses (i), (ii) and (iii), respectively; and after line 23 insert the following new paragraph:

(2) During any fiscal year for which appropriations are made for purposes of this title, a local educational agency shall use not less than 40 percent of the funds received by it under this part for that year for programs and services for students in grades seven through nine.

Page 66, line 20, insert "(A)" immediately before "the requirement", and on line 22, strike out "and" and insert in lieu thereof "(B) the requirement that not less than 40 percent of the funds available to any local educational agency under such part shall be used for programs and services for students in grades seven through nine, and (C)".

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, this amendment has the same intent as the previous amendment, but I am having a rather difficult time getting time to speak. I use this procedure, therefore. What this amendment does is say you only have to use 40 percent. For those people who are upset about 50 percent, you can now vote for 40 percent.

The point is this: That we have a very vulnerable group of young people in our school system who need a concentration of effort to help them get through that very tough time of life so they do not become dropouts, so they do not become criminals, and we spend billions later.

I would like to read to the committee from what the Secretary of Education told us:

We know that title I (ESEA) works. Compensatory education programs have proven their ability to help disadvantaged youngsters achieve at or above grade level. We also know that the very real gains that title I youngsters show in grades 1 through 4 can be lost if those programs are not sustained into the upper grades.

Unfortunately, since funds have not been available under title I to provide comprehensive coverage . . . most school districts have chosen to focus these resources on younger children.

We must redress that imbalance . . . by investing in programs that enhance the . . . skills of disadvantaged junior and senior high school students.

As we have learned from our title I experience, the earlier the intervention, the more effective the treatment . . . that is why we are encouraging school districts to concentrate at least half of their resources on the junior high school youngsters. We know we can be more effective in preventing dropouts by reaching young people before they become totally discouraged and alienated from school.

Again I want to cite the question of cost effectiveness for those who are so concerned about how we are spending this money. I would quote what Dr. Lipsett said again before the committee that—

It is at the very least cost ineffective to spend considerable amounts of money on the very young in the early grades of schooling without following through to make good on our investment. Likewise, it is an inefficient use of our public moneys to concentrate on remediation and reeducation at the time of transition into the labor market, while failing to support necessary programs in the middle grades that could reduce the need for later widespread remediation. Most importantly, it is tragic to fail to place more of our resources at a key point in education, a time of maximal growth and stress, when the possibilities for positive intervention in young people's lives are almost boundless.

The point is we can deal with the problem in a preventative fashion, or we can deal with it later by putting billions of dollars in our justice system, into our unemployment system, into our retraining programs, our remedial education programs. We can continue to do that or target the money early.

Let me just close by saying two gentlemen got up here and said how can we tell these local districts to spend this money at the junior high school level. We just told them they had to spend 3 percent of the money for alternative education programs. We just told them that they had to spend 25 percent for vocational education. But somehow now my amendment does not jive because we are telling local school districts what to do.

I suggest that is what this legislation is doing, and that is why the school boards are opposed to this legislation. So let us not get it all mixed up here, because I suspect we are going to have a lot of conflicting amendments. But what is good for one is good for the other. We have the 3-percent set-aside and the 25 percent for vocational education, and now I am going to try to put a little money in on behalf of the junior high school students who are the most vulnerable school age population.

I ask for an "aye" vote.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment. I do not know where we are going at this late hour, because this is the same amendment the gentleman offered just a few moments ago except he has cut the percentage from 50 percent down to 40 percent. He also has another amendment to cut it down to 35 percent if he offers it in a few minutes.

But I think that we all know that the local school districts know best where to spend their money, and the council and all of the advisory groups in the community will make that decision.

Again let me state that title I serves many of the elementary grades, 7 and 8, the elementary grades. It hardly ever reaches high schools.

We do not know what the appropriation will be. It was all right that we mandated the small amount of 3 percent for outside organizations that the gentleman referred to, but to here mandate 40 percent and destroy local flexibility is unreasonable.

Mr. GOODLING. Mr. Chairman, I move to strike the last word and rise in opposition to the amendment.

There is no question that under title I at the present time some of the money is flowing on in the follow-through programs where they picked up a youngster at a young age and followed him right on through the grades.

However, my experience in education would tell me that if they get this money, since we are targeting ages 11 through 17, most of the money is going to go to that 11-, 12-, and 13-year-old. It is going to go there simply because it is so much easier to do remedial work with that group than it is as the youngster gets older. So I just think it will naturally flow there.

□ 1900

They had that opportunity. The school site council helps direct them, and I have to oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. MILLER of California. Mr. Chairman, on that I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 493]

Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashbrook
Aspin
Atkinson
AuCoin
Bafalis
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Boggs
Boland
Boner
Bonior
Bonker
Bouquard
Bowen
Brinkley
Brodhead
Brooks
Broomfield
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cheney
Chisholm
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Hughes
Hutchinson
Hutto
Ireland
Jacobs
Jeffords
Jeffries
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCormack
McDonald
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Ottinger
Pashayan
Patten
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Purseil
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Robinson
Rodino
Roe
Rostenkowski
Roth
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
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Thomas
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Van Deerlin
Vander Jagt
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Weiss
White
Whitehurst
Whitley
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

□ 1910

The CHAIRMAN. Three hundred and fifty-nine Members having answered to their names, a quorum is present, and the Committee will resume its business.

The pending business is the demand of the gentleman from California (Mr. MILLER) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

□ 1920

Mr. WEISS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise for the purpose of engaging in a colloquy with the distinguished chairman of the Committee on Education and Labor.

Throughout the bill reference is made to the assessment of a youth's employment skills. And in the definitions section, the definition of employment skills includes those skills which are not occupation specific such as job responsibility and responding constructively to supervision. Would the gentleman clarify the intent of this section? Is it the intent of the committee to encourage the use of testing and tests, and in particular personality tests to attempt to determine the youth's nonoccupation specific skills, or their ability to respond constructively to supervision, or be responsible on the job?

Mr. PERKINS. I would be pleased to respond to the gentleman. It certainly was not the committee's intent to require the use of testing and specifically of personality testing. Nor was it our intent to encourage such use. We clearly intend to give local school districts and prime sponsors freedom to use whatever means they believe best to achieve these purposes.

Mr. WEISS. Mr. Chairman, I thank the gentleman.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 60, line 25, strike out "ten" and insert in lieu thereof "seven".

Mr. MILLER of California. Mr. Chairman, the purpose of this amendment is to make sure that vocational education is applied to students who are currently enrolled in grades 7, 8, and 9; and does so by deleting grade 10 and lowering the grade threshold to grade 7.

The purpose of this again is based upon the testimony of the Secretary of Education and many other witnesses before our committee, to make sure that we concentrate the dual purposes of this program both in getting young people to acquire basic skills and provide job skills at the level where they are making decisions as to whether or not to stay in school.

As I pointed out earlier in my comments, that apparently is at the junior high school range. So, this amendment would say that vocational educational

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services must be offered to students in 7th, 8th, and 9th grades as well as the 10th grade.

I want to read to the Members what the people representing the Council for Great City Schools testified. They said that vocational education has not served the neediest students, and I quote:

Vocational education is the oldest of the Federal programs (related to youth employment) but in many ways is the most stagnate. Its funds continue to be spread in a per child basis throughout the nation and its focus remains on student placements. Because of this emphasis the most "job ready" youth are ones chosen for vocational education slots while the neediest of teens fall through the cracks to become our unemployed. Vocational education is focused in grades 11–12 for the most part, a point at which most of the "high risk" youth have already left school.

In testimony from the coordinator of an occupational work adjustment program in Columbus, Ohio, he testified to the committee that—

There is "need for a program designed for students between the ages of 14 and 15. . . . it is much easier to place 1 year old students on jobs in the private sector" . . . so the need is for the younger students. In Ohio, vocational education currently does not serve these students.

The point is this: We do not deny that these young people need employability skills. They need to be shown the direction that gainful employment is within their possibility; they need to be shown that they can acqure the skills to go out and get a job, because apparently what we now see from the existing system is this, that they do not see any hope of getting a job. They do not understand what skills they will need, and they fail to move ahead to acquire those skills, and therefore determine that the job market is a hopeless place for them to pursue, and they drop out of school. What happens is that we come along later, and we try to retrain these people when they are much older.

Again, I think the point of this amendment is, we can make an effort to provide for preventative care and preventative teaching and preventative acquisition of these basic job-related skills to the younger people, or we can wait and try to catch them at the 11th and 12th grades where they have already made a decision to drop out, or in fact as the people from the urban schools have said, they have already left school.

We have to remember something. In New York City; the gentleman from New York City and the gentlewoman from New York (Mrs. CHISHOLM) testified that the dropout rate may be as high as 45 percent in the high schools. That means that when we go to work to concentrate our effort, 45 percent of them may have fled.

What are we going to do? Are we going to spend money on that effort, or put the money up front?

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, I have two questions. When the gentleman talks about grades 7 and 8, is he talking about 11-, 10-, 12-year-olds, or is he talking about someone who may be in that grade but because of problems may be 16, 15? That is question 1.

Question 2, when the gentleman talks about general work experience, is he talking about a job for a 12-year-old or a 9-year-old? What exactly does the gentleman mean by that?

Mr. MILLER of California. What we are talking about is, we are talking about, to answer the gentleman's question, extending the components of vocational education to the junior high school level. We heard testimony from the committee——

Mr. GOODLING. The gentleman said general work experience. That is what has me confused.

Mr. MILLER of California. The amendment specifically talks about vocational education. The point was that we heard testimony from the witness from Ohio that in fact they were providing work experience, and the Secretary of Education came before us and recommended that we provide means to provide it. Remember, we talk about a stipend for these junior high school aged students so that they could get out and get general work experience. So it is the intent, if that component of vocational education is applicable, then it ought to be provided for younger students who maybe are not ready to get general work experience. We can help them understand what the potential in the job market in their community may be.

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 4 additional minutes.)

Mr. MILLER of California. So, while the middle schools, so to speak, provide education for a range of students in different age brackets, the fact is many of them must be, given the dynamics of our economy, exposed to the opportunities of work—to actual work, if it applies—and to gaining employability skills.

□ 1930

Hopefully the other part of the legislation, the basic skills, will also be addressed at the junior high school level.

So I think this amendment is a very rational one. If we are really talking about title I and title II working together, we must understand that we have got to bring this component of education to the junior high school level so that it can be dealt with there.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I am delighted to yield to the gentleman from California.

Mr. HAWKINS. Mr. Chairman, in the gentleman's interpretation, in his discussion of the amendment, he keeps referring to vocational education. However, the amendment merely strikes "ten" on line 25 and inserts in lieu thereof "seven".

So the gentleman does leave in the language which provides that in connection with the private sector, general work experience can then be given to those grade 7, which might go down as low as age 11 or 12.

In this amendment, does the gentleman intend, therefore, in connection with the private sector, to be affording general work experience for young people at that age level? Is that the intent?

Mr. MILLER of California. Mr. Chairman, it is my intent that the full range of programs be available to grades 7 through 11, because it is now 10 through 12. It covers that full range of programs to be made available.

We have heard much testimony here in the last few minutes about the overwhelming judgment of the local school boards, and I would suspect that a local school board, if it was not applicable or was not necessary or they did not deem it in the best interest, would not send an 11-year-old out for general work experience, but at the same time they might want to provide that 11-year-old with some understanding about the world of work, as they say, or about employable skills across the board.

But there are also people in those grades who are much older because they have stayed back and had learning difficulties. They are 14, 15, and 16 years old, and they are still at the junior high school level. So it is a discretionary thing.

The CHAIRMAN. The time of the gentleman from California (Mr. MILLER) has expired.

(On request of Mr. HAWKINS, and by unanimous consent, Mr. MILLER of California was allowed to proceed for 1 additional minute.)

Mr. HAWKINS. Mr. Chairman, will the gentleman yield further?

Mr. MILLER of California. I yield to the gentleman from California.

Mr. HAWKINS. Mr. Chairman, does not the amendment allow youth at ages 11 or 12 to be given general work experience in the private sector? Is that the intent, to be providing children at that age with general work experience?

Mr. MILLER of California. That is at the discretion of the local school board.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment, and I will only take a couple of minutes.

I think it would be beneficial to many youngsters if they had work experience from the third grade on through high school. That was my privilege when I was in the grades, for an hour a day. But to take a seventh-grade youngster and put him in the training program and let that seventh-grade youngster spend a half day or so in a vocational training school, I think, is stretching it a little too far.

I think that the Members will agree with me, because that youngster should be learning the basics in the elementary grade, in the seventh grade.

Besides that, let me repeat again that the local school districts have the authority, if they want to extend this training to seventh and eighth graders, to do so. They have that flexibility now. But we may waste some limited funds if we do not know what will be appropriated. I hope the funds will be appropriated in the future, but we do not know.

Mr. Chairman, let us not destroy a bill that has been well thought out by putting some amendments in here that are unreasonable.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The amendment was rejected.

The CHAIRMAN. Are there other amendments to title II?

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 61, line 9, insert "unemployed" immediately before "youth".

Mr. MILLER of California. Mr. Chairman, I will say to the Members of the committee that the purpose of this amendment is to make sure that if we are going to try to do something about unemployed youth, we direct it to unemployed youth and not employed youth. This simply makes a change, requiring that the word "unemployed" be inserted before the word "youth".

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, I have no problems with the amendment, as long as we say we will give a preference to the unemployed youth.

Mr. PERKINS. Mr. Chairman, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The amendment was agreed to.

The CHAIRMAN. Are there any additional amendments to title II?

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California: Page 60, line 2, insert "(including that of teenage parents)" immediately after "student dropout rate".

Page 71, after line 9, insert the following new paragraph (and redesignate the succeeding paragraphs accordingly):

(7) special programs and services to address the needs of and to retain teenage parents;

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, the purpose of this amendment is to make sure that we make an effort toward keeping school-age mothers, if you will, in school, because we know in many cases—and I have read the statistics—unfortunately, that is not so.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from California.

Mr. HAWKINS. Mr. Chairman, we accept the amendment on our side.

Mr. GOODLING. Mr. Chairman, if the gentleman will yield, I have no problems with the amendment as long as we are not making it a special case, as long as we are including them and they are to be included with the same emphasis as the other people in the other categories.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MILLER).

The amendment was agreed to.

The CHAIRMAN. Are there any further amendments to title II?

Mr. MILLER of California. Mr. Chairman, I want to extend my streak here. I feel like the Orioles: It is late in the season.

AMENDMENTS OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I have a group of amendments at the desk that I wish to offer en bloc, and it is my understanding that they are acceptable. I hope the Members will vote for the amendments, and I offer them en bloc.

Mr. GOODLING. Mr. Chairman, we have no objection to those amendments en bloc.

The CHAIRMAN. The Clerk will report the amendments.

Mr. PERKINS. Mr. Chairman, while the Clerk is looking for the amendments, I want to state that we have reviewed them several times, and we accept them.

The CHAIRMAN. The gentleman from Kentucky (Mr. PERKINS) accepts the amendments. We are waiting for the Clerk to locate the amendments.

Mr. MILLER of California. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc and be considered as read, and that they be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California (Mr. MILLER) that the amendments be considered as read and considered en bloc?

The Chair will state that there is a technical problem here. We have to get the amendments first. Does the gentleman from California (Mr. MILLER) want to come up to the Clerk and give us the amendments to make sure that we have the right ones?

The Clerk now has the amendments. Is there objection to the request of the gentleman from California (Mr. MILLER) to dispense with the reading of the amendments by the Clerk?

Mr. GOODLING. Mr. Chairman, reserving the right to object, could we have the Clerk just read the page and the line?

Mr. JEFFORDS. Mr. Chairman, reserving the right to object, will the gentleman tell us which amendments these are that he is offering?

Mr. MILLER of California. Yes, I would be glad to do that.

The CHAIRMAN. First of all, the Chair will state that at the initial request of the gentleman from Pennsylvania (Mr. GOODLING), the Clerk will read the page and the first line.

(The Clerk proceeded to read the page and line numbers of the amendments.)

Mr. PERKINS (during the reading). Mr. Chairman, if the gentleman will yield to me, these are the amendments that we have agreed to. They are just technical and informational amendments, and we accept them. I refer to the ones that the Clerk has read thus far.

□ 1940

Mr. GOODLING. Mr. Chairman, we are trying to find page 63, line 5. We have not found it yet. Did the Clerk say 63, line 5?

Mr. MILLER of California. I would be glad to offer them individually, one at a time.

Mr. GOODLING. Just so that we know what they are.

The CHAIRMAN. The Clerk will continue to read the number and the first line.

The Clerk proceeded to read the number and the first line of the amendments.

The CHAIRMAN (during the reading). The Clerk will suspend.

Mr. GOODLING. Reserving the right to object, Mr. Chairman, the Clerk read page 63, line 5. We cannot find that. The Clerk will have to read that amendment. I cannot find it.

The CHAIRMAN. The Clerk will report that amendment.

The Clerk proceeded to read the amendment.

Mr. GOODLING (during the reading). We have no objection.

The CHAIRMAN. The Clerk will continue to read the number and the first line, without objection.

The Clerk concluded reading the number and first line of the amendments.

The CHAIRMAN. Is there objection to the request of the gentleman from California (Mr. MILLER) that the amendments be considered as read and considered en bloc, and that they be printed in the RECORD?

There was no objection.

The amendments are as follows:

Amendments offered by Mr. MILLER of California: Page 62, line 19, insert (1)" immediately before "The State".

Page 63, after line 5, insert the following new paragraph:

(2) States which have previously established minimum standards in the form of minimum competency, proficiency, or basic skills standards, and which have met the requirements of paragraph (1) are exempt from the requirements of this subsection.

Page 68, line 7, after the period, insert the following: "The chief administrator of the school shall provide to the school site council and the local education agency, upon request, a written description of the criteria and process for selecting students to participate in programs funded under this part.".

Page 67, insert after line 21 the following new sentence: "The council shall establish bylaws regarding its operation."

Page 87, line 21, insert "and members of school site councils" immediately after "State agencies".

Page 88, line 6, insert "and members of school site councils" immediately after "State agencies".

Page 88, line 11, insert "and school site councils" immediately after "State agencies".

Page 63, line 15, strike out "the need of the designated school" and insert in lieu thereof "those designated schools having the greatest need for assistance under this part".

Page 71, after line 12, insert the following new paragraph (and redesignate the succeeding paragraphs accordingly);

(8) special programs to address the problems of and to retain students who would otherwise be suspended or expelled from school;

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Page 60, line 3, insert "reducing disciplinary exclusions" immediately after "student attendance,".

Page 58, line 10, strike out "(1)", and on page 59 strike out lines 1 through 3.

Page 88, line 4, insert "(1)" immediately before "Each"; on lines 6, 8, and 10, redesignate clauses 1, 2, and 3 as clauses (A), (B), and (C), respectively; and after line 16 insert the following new paragraph:

(2) Not later than 120 days after enactment of this Act, the Secretary shall, in order to assist State educational agencies in carrying out the provisions of paragraph (1), initiate a program of technical assistance and information dissemination.

Mr. MILLER of California. Mr. Chairman, these amendments, again, are for the purposes of trying to provide additional focus for this program so that it indeed impacts on the students and those schools which need the funds to the greatest extent within our student population.

It is my understanding that both the majority side of the committee and the minority side of the committee have reviewed the amendments and have agreed to accept them.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, as I understand these amendments, they are technical and informational, and these are the last of the Miller amendments.

Mr. MILLER of California. Unfortunately, yes.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, we have no objection to the amendments.

Mr. MILLER of California. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered en bloc by the gentleman from California (Mr. MILLER).

The amendments were agreed to.

The CHAIRMAN. Are there other amendments to title II?

Mr. BUCHANAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise not to offer an amendment, rather to express concern about the provision detailed in section 218(b) of H.R. 6711, which specifies resource equivalency requirements which all local educational agencies receiving funds under title II must follow.

The intent of this fund'ng requirement appears to be similar to that of the comparability requirement under title I of the Elementary and Secondary Education Act.

The resource equivalency provision was among those issues initially raised by the committee when the President sent down his youth education and employment legislation.

In making every effort to determine the intent of the administration on this provision, it became clear that there was confusion at all levels. Although the resource equivalency provision is similar to the comparability provisions in title I of ESEA, the administration could not explain how the resource equivalency provisions substantially differed from those currently used under the title I program.

Various interested groups of State educators and civil rights associations were involved in lengthy discussions to arrive at a clear expression of what comparability provision would be workable in this program. Progress was interrupted by the publication, on June 11, 1980, of proposed regulations governing the implementation of the title I ESEA program. Due to the changes specified for the comparability provisions in the proposed regulations, it became necessary for all interested parties to reevaluate their respective positions. For this reason, I state for the record and urge my colleagues to join me in requesting that the other body look carefully at this provision during their consideration of the Youth Act of 1980. I believe that it is imperative that this issue be clarified, and that congressional intent not be left to the discretion of the regulation writers to determine.

The CHAIRMAN. Are there other amendments to title II? If not, the Clerk will designate title III.

Title III reads as follows:

TITLE III—GENERAL PROVISIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. (a)(1) There are authorized to be appropriated such sums as may be necessary to carry out part A of title IV of the Comprehensive Employment and Training Act for fiscal year 1981.

(2) There are authorized to be appropriated $50,000,000 to carry out section 213(c) of this Act for fiscal year 1981.

(3) There are authorized to be appropriated such sums as may be necessary for fiscal year 1982 and each of the three succeeding fiscal years of which—

(A) the sum of—

(i) an amount equal to (I) the amount available for part A of title IV of the Comprehensive Employment and Training Act for fiscal year 1980, or (II) the total amount appropriated pursuant to this paragraph for a subsequent fiscal year, whichever is less, and

(ii) one-half of any amount appropriated pursuant to this paragraph for such subsequent fiscal year in excess of the amount available for part A of title IV of the Comprehensive Employment and Training Act for fiscal year 1980,

shall be available to carry out part A of title IV of the Comprehensive Employment and Training Act (as amended by title I of this Act); and

(B) the remainder of any amount appropriated for any such subsequent fiscal year in excess of the amount available for part A of title IV of the Comprehensive Employment and Trainng Act for fiscal year 1980 shall be available to carry out title II of this Act.

(b) To the end of affording the responsible State, local, and Federal officers concerned adequate notice of available Federal financial assistance under the provisions of and the amendments made by this Act, appropriations under subsection (a) are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the pending fiscal year and one for the succeeding fiscal year.

JOINT REGULATIONS

SEC. 302. (a) The Secretary of Education and the Secretary of Labor may, by joint regulation, require that the percentage of funds required to be used for joint programs between prime sponsors and local educational agencies under section 423(d) of the Comprehensive Employment and Training Act and section 220 of this Act be increased (from 22 percent) by 3 percent for each fiscal year beginning after September 30, 1982.

(b) The Secretaries shall notify the Congress not later than thirty days prior to promulgating any regulation under subsection (a). In the event that the Secretaries determine not to issue any such regulation for any fiscal year described in such subsection, they shall so report to the Congress and shall include in such report a statement of the reasons for such determination.

EFFECTIVE DATE; TRANSITION PROVISIONS

SEC. 303. (a) The amendments made by section 102 shall take effect on October 1, 1981.

(b) Funds appropriated pursuant to section 301(a)(1) of this Act may be used for the purpose of developing plans for the implementation of programs under part A of title IV of the Comprehensive Employment and Training Act as amended by section 103 of this Act.

(c) For the purpose of promoting the accuracy of the tentative allocation required by section 432(b) of the Comprehensive Employment and Training Act (as amended by this Act) by notifying potential recipients of their approximate share of that allocation, the Secretary of Labor shall, within thirty days after the date of enactment of this Act, distribute to each potential applicant for funds under part A of title IV of that Act a list of the poverty areas (as defined in section 432(e) of that Act) in such applicant's State, the number of residents of such areas who are at or below the poverty level, and the total number of such individuals in such areas nationally. The Secretary is authorized to make the first tentative allocation under such section 432(b) on the basis of expressions of interest from such applicants in response to the materials distributed pursuant to the preceding sentence.

Mr. WEISS. Mr. Chairman, I have an amendment to title II.

The CHAIRMAN. Is there objection to returning to title II of the bill?

Mr. SNYDER. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. WEISS. It is at the desk, Mr. Chairman.

The CHAIRMAN. The Chair will advise the gentleman from New York that he was not on his feet, and we have already passed title II.

● Mr. MITCHELL of Maryland. Mr. Chairman, with some admitted reluctance, I rise in support of H.R. 6711, the Youth Act of 1980. I share the concern of many of my colleagues, including members of the Education and Labor Committee, that title II of the measure before us today fails to adequately address the impact of chronic unemployment among minorities and youths from lower income families.

The fact that 42 percent of Hispanics, 39 percent of blacks, and only 7.6 percent of whites are less than 18 years old strongly indicates that the current youth unemployment problem will move rapidly to become a minority unemployment dilemma throughout this decade. Right now, in some of our major cities, we are faced with a minority youth unemployment rate as high as 30 percent. In recognition of this alarming fact, title I, youth training and employment, has been carefully designed to foster the critical involvement of the private sector in the alleviation of long-term structural unemployment among our Nation's youth.

The need for the passage of an initiative which embraces the initial intention of H.R. 6711 goes without question. We cannot realistically expect the prevailing problem of low-level productivity to correct itself in the absence of adequate skill training programs for the youth of this Nation. Moreover, we are constantly working to insure that our educational institutions focus on an orientation toward labor market conditions and requirements.

I believe that the stated intentions of title II are commendable. Certainly such stated objectives as, first, a concentration of resources on urban and rural communities where the need is greatest; second, the continued stress on private sector participation; third, clear performance standards for program participants and services providers; fourth, the linkage of high school curriculums objectives with basic skills programs; and, fifth, the development of additional occupational skills training programs, are critical. It is questionable, however, that the meeting of such objectives, as addressed in the measure before us, will adequately serve our low-income, secondary school students.

I am particularly concerned that the poverty formula, which will serve as the basis for the dispersal of title II moneys to States, may be plagued by inequitable distribution. The subsequent distribution to the neediest districts within those States; and, finally, only to schools within those districts which have substantial concentrations of poor children, may leave many schools which are greatly in need, completely without funds due to a failure to qualify for participation. To address this problem, the Department of Education has proposed that the State receive a supplemental grant to enable it to meet the needs of those schools which may not be adequately reached by the basic formula. I am concerned that the reliance upon such a supplemental may leave the affected schools quite vulnerable to the impact of adverse economic situations.

In addition to this problem, title II leaves itself very susceptible to the evils of administrative and cost duplicity. The bill includes postsecondary students and institutions among the eligible participants to receive title II funds. We have the Higher Education Act to address th's level, and the focus of such funds in this area is questionable. Moreover, such a provision detracts from the title II available funds to be targeted for use at the junior high and high school levels.

I applaud the committee and the Department of Education for seriously attempting to focus needed attention on the critical necessity of employability programs for our schoolchildren. However, I must warn that we pay careful attention to the efforts of our colleagues, through amendments, to bring those intentions into realistically structured approaches.

I know that there are additional concerns about H.R. 6711. The validity and continued use of vocational education as a ma nstay for many of our low-income youth is being questioned. Of particular concern to me is also the failure of the measure before us to provide a more sufficient level of targeted funding to alternative educational facilities. While many of us are not convinced that alternative structures can act as adequate surrogates for the traditional school system, we have to face the fact that a growing number of our youth will have to rely on these establishments. We could use the bill before us to initiate a serious commitment to upgrading these facilities.

I do hope that my colleagues will carefully evaluate the efforts of Representatives MILLER and CHISHOLM, members of the Education and Labor Committee, who are fighting to make H.R. 6711 a well structured measure. We need the initiatives set forth by the bill's objectives. For the sake of our youth, let us seriously consider guiding the passage of H.R. 6711 through this body.●

● Mr. FRENZEL. Mr. Chairman, I would love to vote for a bill that would make a real impact on youth employment. But H.R. 6711 is merely a rehash of the old programs that have not worked very well in the past.

Yes, some of the CETA youth job programs work. Some of them work very well. I have been a vigorous supporter of some of these programs.

However, looking at the broad range of CETA youth job programs, one sees a very poor return on the taxpayers' dollar. Studies, by the GAO and others, confirm the lack of effectiveness. So do regular news stories in our daily papers.

In my judgment, something new and different is needed, but H.R. 6711 is more of the same old thing. And if the committee could not give us innovation, it could at least have concentrated on those few programs which are proven winners.

The bill is not wholly without merit. It is an improvement over existing law, especially in title II, where coordination between sponsors is mandated, and a special emphasis on vocational education is added.

But the improvements are modest in comparison with the scope of the problem. My negative vote is really a protest against this body's unwillingness to improve the program so that there will be some assurance that the nearly $1 billion authorized will be well spent.●

● Mr. WATKINS. Mr. Chairman, the majority of Americans have come to realize that the soundest, most productive investment a nation can make is in the education of its children. Through the Youth Act of 1980, we have the opportunity to improve the ability of our Nation's educational system to combat a chronic national condition—an ever-increasing youth unemployment rate.

In this day and time of limited resources, our Nation is learning to make the most of what we have through increased productivity. We now have the opportunity to help our Nation's ultimate resource, our youth, become productive members of society. The Youth Act is a commendable effort on behalf of the Education and labor Committee to focus education and training programs on young people that are groping to obtain direction for their lives. It focuses on the needs of high school youth for specific career-oriented education, a need that is not always met in a traditional high school setting.

Vocational education has proven to be extremely effective in helping young people obtain the necessary skills for employment, thus benefitting themselves, their communities, and our society as a whole. It has been argued that basic skills training should focus on students in junior high school rather than those in high school, but we must realize that the critical situation we face today concerns the multitude of youth that do reach the high school level only to realize they possess little opportunity for employment in the private sector. These students quickly become discouraged since they do not possess either the ability or the basic skills to pursue additional education that would improve employment opportunities. It is at this point that a large segment of our greatest resource—our youth—becomes a nonproductive part of society, destined to an existence far below that level which their actual potential would allow with only a little guidance and direction at the proper time.

A program to combat youth unemployment must provide the opportunities for disadvantaged youth to link education with job training, experiencing the relationship between school and a private sector job. We need to encourage American youth to think about jobs they might seek and for whom they might work, but even further, we need to encourage American youth to apply the knowledge and skills acquired through education to create a job for themselves.

Title II of the Youth Act recognizes the far-reaching capabilities of secondary and vocational schools to provide school-based programs in basic and employment skills training. This bill would allow poor youth in depressed communities, both rural and urban, an opportunity to acquire those skills essential for competing for good jobs. The target established for vocational education funding in this bill is set at 25 percent of available funds. This is a very reasonable target, and has been recommended by the Education and Labor Committee after extensive deliberation. It provides the targeting that is drastically needed to prepare youth citizens for a responsible role in life.

Vocational education has proven to provide the necessary link in connecting education and training to employment. I believe you will find the results of Oklahoma's outstanding vocational education program both impressive and indicative of the abilities of such a program to help combat youth unemployment.

The unemployment rate for students in Oklahoma completing regular second-

ary level vocational education programs is only 3 percent. For those completing postsecondary programs, the unemployment rate is only 1 percent; 77 percent of all students completing secondary level vocational education programs in Oklahoma are employed in the field they studied or a related one. And, for those completing postsecondary programs, 96 percent are employed in the field they studied or a related one. I believe these figures speak for themselves; vocational education can and does possess a great employment potential for its participants.

The Youth Act represents a positive approach to helping our youth become self-supporting, productive citizens. We must confront the current crisis of youth unemployment, and we should support the Education and Labor Committee's efforts in this regard.●

Mr. HINSON. Mr. Chairman, the overall unemployment rate is expected to climb to between 8.4 and 9.4 percent during the fourth quarter of this year, and the Congressional Budget Office (CBO) predicts unemployment to remain that severe well into 1981. The picture for youth is much more bleak.

The Mississippi State Employment Security Commission projects that practically one of every three young men and women in our State who wants a job will go unemployed in 1981. Minority youth will fare even worse.

The effects of such high rates of unemployment are as disastrous as they are numerous. There is widespread despair.

Despite the almost $100 billion which has been spent on public sector employment and training programs, poor people and young people are finding that structural unemployment problems still persist. This sad condition cannot continue. The Federal Government's expensive efforts must result in long-term gains for the Nation's unemployed.

In order to affect long-term gains, Federal employment and training programs must focus on job placement within the private sector. These programs must be coordinated with efforts of private industry in order to increase job opportunities. Four of five jobs are in the private sector.

The objective of H.R. 6711, the Youth Act of 1980, is to provide poor youth between the ages of 16 and 21 years old with a variety of programs and services designed to enhance their private sector employability. The act's various approaches are targeted toward the poorest and most hard hit areas in the Nation, with community participation vigorously sought.

Many businesses have previously been reluctant to get involved with CETA. Many have blamed their reluctance on Government paperwork. Many have argued that CETA prime sponsors failed to match training programs with their businesses' manpower needs. And others have been turned off by CETA's less than satisfactory image.

However, the 1978 passage of title VII of CETA signaled a welcomed change in focus for Federal employment and training policy—away from public service employment (PSE) and toward private sector initiatives for youth and the disadvantaged. There is great need to accelerate this trend toward private sector initiatives if the needs of the structurally employed are to be addressed adequately.

The Youth Act of 1980, H.R. 6711, provides Members of Congress with an opportunity to further this trend.

Moreover, the act links CETA with the educational system. Public-private partnerships, nonprofit organizations, and community-based organizations are vigorously sought for the purpose of providing linkages between the schools, the CETA system, and the private sector.

Some organizations have become very successful in this area. They provide both in-school and out-of-school youth with opportunities to acquire or upgrade their job skills, to become oriented to the workplace, and then to move into unsubsidized private sector employment.

An example of such an organization is 70001 Ltd., which conducts 59 programs in 24 States and is starting a program in Mississippi. They provide a wide variety of preemployment training, educational and motivational activities, job placement in the private sector, and retention services. 70001 Ltd. was started by Thom McAn, Inc., in Wilmington, Del., in 1969 and enjoys the support of 45 business and trade associations as well as hundreds of local businesses.

The Youth Act of 1980 will encourage such organizations as 70001 Ltd. to help our Nation's youth prepare for and take advantage of existing employment opportunities.

The youth, who have been particularly hard hit by the present recession, are the foundation of our Nation's future. They deserve to be taught necessary skills that they might be able to improve their own lives. With this act, Congress has the opportunity to begin to lay the foundation for long-term solution rather than allowing the Government to continue to deal with a critical unemployment problem with short-term solutions.

● Mr. BIAGGI. Mr. Chairman, today we have before us legislation which addresses one of our most pressing domestic problems which we face as a Nation—youth unemployment. This bill, H.R. 6711, the Youth Act of 1980 of which I am an original cosponsor, was sent to Congress in January of this year by President Carter. In doing so, this administration committed itself to this issue by making this bill its No. 1 domestic priority for 1980. Clearly, approval of this legislation is critical if we are to begin to eliminate the chronic situation of increasing numbers of our young people on the streets—and without the skills to help them into the job market.

As New York's ranking member of the House Education and Labor Committee, I have been involved with this bill since its inception. The reason why is very clear—unemployment statistics nationwide are grim and particularly dismal in my own city of New York. Youth unemployment has always run in excess of the national figures. With a recession, the situation is grossly compounded. At the present time, we are looking at youth unemployment figures for the first quarter of 1980 of 16.2 percent for 16- to 19-year-olds, with my own State of New York registering even higher figures at 22.1 percent. Especially tragic is that in New York City, this figure is even higher at 27.4 percent with the overall minority youth figures compounding this figure at 34.4 percent.

Yet since the time of the submission of this bill to Congress, our economic condition has significantly deteriorated, as we enter a recession of moderate magnitude. Recession traditionally means higher unemployment and thus far, this is hold ng true. Expectations are that the unemployment rate may reach 8 percent by the year's end.

This bill, H.R. 6711, provides targeted assistance to the most disadvantaged of our youth to assist them in developing basic job training skills in school before they graduate. The centerpiece of this legislation is its recognition of the need to coordinate existing youth employment programs with education programs. It represents a long overdue union of two mainstays of our society.

Title I of this bill extends our current youth employment programs in title IV of CETA through fiscal year 1985. While there is no one, clear cause of youth unemployment, we do know that it is left unchecked by the lack of jobs for youth as well as the absence of coordination between educational and job training. CETA has provided us with an impressive example of how youth employment programs can and should work. We have rightfully placed these programs in title I of the Youth Act to provide a strong foundation upon which to build the newer portion of this initiative, the education component in title II.

While we have learned that jobs are important to keeping youth productive members of society, we are also painfully aware that many of these youth lack the basic educational skills which allow them to find and maintain meaningful employment or to advance in the jobs they currently hold. Title II provides a new program of job training, vocational skills and remedial education to high school age youth who need this training to enter the world of work. The money in this title is targeted to provide services to our most needy young people, largely through both secondary schools and area vocational schools, as well as community-based educational organizations. Built into this title is close cooperation between the educational community, employment and training officials and private sector employers.

If we do not rise to the challenge of assisting these youth, we are simply opening the door for their continued slide toward a lifetime of poverty, joblessness, despair, and even crime—the ultimate act of desperation. Many of our current high school programs are inadequate for the needs of this population. The dropout rate for my own city of New York is an incredible 45 percent. Of those who do remain in school through graduation, the Carnegie Council on Policy Studies reports that at least 20 percent of these students lack adequate basic skills.

Title II of this bill will help us close many of the gaps in our current high school programs which in many cases are inadequate for the needs of disadvantaged, low-income youth. Funds are targeted to the neediest of our students in low-income urban and rural areas. Responsibility for these programs rests at the local level in order to instill a greater sense of responsibility for these youth at the community level. In addition, we have built upon the positive lessons of vocational education and have provided for such programs in the implementation of these educational programs.

To receive funds under this title, eligible schools must submit plans to local educational agencies which will detail how they will serve eligible youth in the community. These plans must have the approval of the school's site council, also established under this bill and made up of interested members of the education and labor community. Final funding of these proposals will be based upon both need and quality of plan.

To further coordinate the linkage for working programs in the education and employment arena, the committee bill requires that 22 percent of the funds under this title be used for joint programs between local educational agencies and CETA prime sponsors. I am confident that such joint programs will insure that disadvantaged youth receive the proper job and basic skills training in order to prepare them for the world of work.

The pressing need for this legislation is even more pronounced if one examines the existing Federal programs which have been created for our students and schools. The Elementary and Secondary Education Act—our single, largest Federal education program—provides educational opportunities to our youngest school children. In addition, we have the Higher Education Act, which provides extensive aid to postsecondary students. What we are currently lacking in our Federal educational policy is a coordinated program to help those students—in junior high and high schools—in that difficult transition between childhood and adulthood into the world of work. This bill, H.R. 6711, will provide the missing piece to completing a full-scale, coordinated Federal education policy for all our students, from our youngest preschoolers to our senior citizens, who are going back to schools in record numbers.

I also wish to commend our distinguished chairman, Mr. PERKINS, for his commitment to seeing this bill through our committee in an expeditious as well as judicious fashion. Credit should also go to GUS HAWKINS, who chairs our Employment Opportunities Subcommittee and is a long-standing advocate of full employment opportunities for all our citizens. I am aware that we moved on a very fast track with this bill and it is commendable that my colleagues worked so hard to reach an accord on this bill with concerned members of the education and labor community to produce a truly bipartisan measure that merits our support.

Surely we cannot expect that the problem which urban areas face in these days of rising inflation and unemployment can be quickly and painlessly eliminated. However, this bill before us today, the Youth Act of 1980, provides a bold, new initiative which can help us to begin teaching our youth to help themselves. I fully support it and urge my colleagues to do the same.●

● Mr. STOKES. Mr. Chairman, I simply cannot let the debate and amendments on H.R. 6711 go by without stating for the record the need for our Department of Labor and our city, county, and State officials to concentrate more on using community-based organizations to target Federal funds to those who need them most in our inner cities.

I have introduced community-based organizations jobs legislation for adults and youth the past four sessions of Congress because I consider this such a critical issue.

Ever since the Nixon administration introduced us to manpower revenue sharing, our community organizations have had to fight and struggle to secure funds and maintain their comprehensive programs in the face of administrators who fail to acknowledge the value of a demonstrated track record of effectiveness.

I notice that Chairman HAWKINS of the Employment Opportunities Subcommittee has retained the provision of the Original Youth Demonstration Project Act in this bill, H.R. 6711. This means that community-based organizations like the Opportunities Industrialization Centers, the National Urban League, recruitment training programs and labor union related training programs should be given special consideration by prime sponsors as deliverers of employment and training services.

Maintaining this provision is critical. These community-based organizations understand the problems facing our youth. Moreover, the people in the neighborhoods are provided the opportunity to actively participate in solving problems that so directly affect them. Since the neighborhoods have so much at stake, they are in the best posiiton to effect real change.

OIC, for example, has created an anti-dropout program which has been tested in five cities and proven effective in areas with high school dropout rates as high as 50 percent.

The program, called the career intern project, was included in the 1980 Youth Act as an amendment accepted by Chairman HAWKINS of the subcommittee and by the Committee of the Whole under Chairman PERKINS.

This program enables students to attend an alternative high school if they have dropped out or if they are considered serious risks for dropping out before graduation. The record shows that, among the students in the program, over 70 percent were either employed or in college or technical school after attending the alternative school.

As this example demonstrates, community-based organizations play a critical role in our attempt to reduce unemployment among youth. I urge my colleagues to support special provisions for community-based organizations as is done in this legislation.●

● Mr. PURSELL. Mr. Chairman, I rise to express my support for the bill before us—the Youth Act of 1980 (H.R. 6711). This legislation addresses one of the most serious and continuing problems facing our Nation—youth unemployment.

While the national jobless rate stands at an unacceptable 7.7 percent—over 14 percent in my State of Michigan—the rate for potential workers between the ages of 16 and 19 approaches 20 percent. Chronic youth unemployment is particularly concentrated among disadvantaged and minority groups. Poor youth are twice as likely to be unemployed as their middle class counterparts, and less than half of the young blacks seeking work can find it.

Unfortunately, this situation is not a temporary one, simply awaiting the country to work its way out of the current recession. Rather youth unemployment has risen continuously since World War II, regardless of conditions in other segments of the workforce.

As a member of the Education and Labor Committee during my first term in Congress, I recognized the need to deal with this deplorable situation and was pleased to participate in developing the Youth Employment and Demonstration Projects Act of 1977. The committee, including my Michigan colleagues BILL FORD and DALE KILDEE, is to be commended for its outstanding work this year in building on the experience gained through these projects and presenting to us a bill that has bipartisan support, as well as the backing of education and community groups from throughout the Nation. Needless to say, H.R. 6711 is a compromise, but it is one that is workable, meaningful and comprehensive.

Title I consolidates three major programs authorized by the 1977 act administered by the Department of Labor. Title II establishes a new program, administered by the Department of Education, to improve youth employability through school-based training in basic and employment skills, such as reading, writing, arithmetic and work habits.

The committee, thus, has acknowledged that the answer to the youth unemployment problem lies both in the labor market and in the educational system, along with coordination and cooperation between the two. For example, it is especially noteworthy that dropouts are three times as likely to be unemployed as high school graduates.

During my service on the Education and Labor Committee, I participated in formulation of the so-called "Quie Amendment," which is now part of the Comprehensive Employment and Training Act (Public Law 95-524). This provision requires all prime sponsors to actively seek involvement of local educators in designing programs under various CETA titles.

That amendment was a small, but important step, in forming necessary partnerships between the schools and all others active in the tasks of insuring adequate employment opportunities and preparing young people for those posi-

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tions. This legislation today brings us a great distance further down the road of coordination and cooperation essential to meet these goals.

Accordingly, I highly recommend H.R. 6711 to my colleagues and pledge my best efforts to its passage and subsequent implementation, as well as to future actions aimed at insuring meaningful jobs—jobs that produce not only more goods and services, but that provide a source of increased dignity and pride to each and every American.●

Are there further amendments? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. NATCHER) having assumed the chair, Mr. MURTHA, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6711) to extend the authorization of youth training and employment programs and improve such programs, to extend the authorization of the private sector initiative program, to authorize extensive and remedial education programs for youths, and for other purposes, pursuant to House Resolution 702, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. MILLER of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 337, nays 51, not voting 44, as follows:

[Roll No. 494]

AYES—337

Addabbo, Akaka, Albosta, Ambro, Anderson, Calif., Andrews, N.C., Andrews, N.Dak., Anthony, Applegate, Ashbrook, Aspin, Atkinson, AuCoin, Bafalis, Bailey, Baldus, Barnes, Beard, R.I., Bedell, Bellenson, Benjamin, Bennett, Bereuter, Bethune, Bevill, Biaggi, Bingham, Blanchard, Boggs, Boland, Boner, Bonior, Bonker, Bouquard, Bowen, Brademas, Breaux, Brinkley, Brodhead, Brooks, Broomfield, Brown, Calif., Broyhill, Buchanan, Burlison, Burton, John, Burton, Phillip, Byron, Campbell, Carney, Carr, Carter, Cavanaugh, Chappell, Chisholm, Clausen, Clay, Clinger, Coelho, Coleman, Collins, Ill., Conte, Corcoran, Corman, Cotter, Coughlin, Courter, D'Amours, Daniel, Dan, Danielson, Davis, Mich., Davis, S.C., de la Garza, Deckard, Dellums, Derrick, Derwinski, Dicks, Dingell, Dixon, Donnelly, Dornan, Dougherty, Downey, Drinan, Duncan, Tenn., Early, Eckhardt, Edgar, Edwards, Ala., Edwards, Calif., Edwards, Okla., Emery, English, Erdahl, Erlenborn, Ertel, Evans, Del., Evans, Ind., Fary, Fascell, Fazio, Fenwick, Ferraro, Findley, Fish, Fisher, Fithian, Flippo, Florio, Foley, Ford, Mich., Ford, Tenn., Forsythe, Fountain, Fowler, Frost, Fuqua, Garcia, Gaydos, Gephardt, Giaimo, Gibbons, Gilman, Gingrich, Ginn, Glickman, Goldwater, Gonzalez, Goodling, Gore, Gradison, Grassley, Gray, Green, Grisham, Guarini, Gudger, Guyer, Hall, Ohio, Hamilton, Hammer-schmidt, Hanley, Hansen, Harkin, Harris, Hawkins, Heckler, Hefner, Heftel, Hillis, Hinson, Hollenbeck, Hopkins, Horton, Howard, Hubbard, Huckaby, Hughes, Hutchinson, Hutto, Ireland, Jacobs, Jeffords, Jenkins, Jenrette, Johnson, Calif., Johnson, Colo., Jones, Okla., Jones, Tenn., Kastenmeier, Kazen, Kemp, Kildee, Kogovsek, Kostmayer, LaFalce, Lagomarsino, Leach, Iowa, Lehman, Leland, Lent, Levitas, Livingston, Long, La., Long, Md., Lott, Lowry, Lujan, Lundine, Lungren, McClory, McCormack, McHugh, McKinney, Madigan, Markey, Marks, Marlenee, Marriott, Mathis, Matsui, Mattox, Mavroules, Mazzoli, Mica, Mikulski, Mineta, Minish, Mitchell, Md., Mitchell, N.Y., Moakley, Moffett, Moore, Moorhead, Calif., Mottl, Murphy, Ill., Murphy, Pa., Murtha, Musto, Myers, Ind., Natcher, Neal, Nelson, Nichols, Nolan, Nowak, Oakar, Oberstar, Obey, Ottinger, Panetta, Pashayan, Patterson, Pease, Pepper, Perkins, Petri, Pevser, Pickle, Porter, Preyer, Price, Pritchard, Purseil, Quillen, Rahall, Railsback, Rangel, Ratchford, Regula, Reuss, Rhodes, Richmond, Rinaldo, Ritter, Rodino, Roe, Rose, Rosenthal, Rostenkowski, Roth, Roybal, Rover, Russo, Sabo, Santini, Sawyer, Scheuer, Schulze, Sebelius, Seiberling, Shannon, Sharp, Shelby, Shumway, Shuster, Simon, Skelton, Smith, Iowa, Smith, Nebr., Snowe, Snyder, Solarz, Solomon, Spellman, Spence, St Germain, Stack, Stangeland, Stanton, Stark, Steed, Stewart, Stokes, Stratton, Studds, Swift, Synar, Tauke, Tauzin, Thomas, Traxler, Trible, Udall, Ullman, Van Deerlin, Vanik, Vento, Volkmer, Walgren, Walker, Wampler, Waxman, Weaver, Weiss, White, Whitehurst, Whitley, Whittaker, Whitten, Williams, Mont., Williams, Ohio, Winn, Wirth, Wolff, Wolpe, Wright, Wydler, Wylie, Yates, Yatron, Young, Fla., Young, Mo., Zablocki, Zeferetti

NAYS—51

Archer, Bauman, Beard, Tenn., Brown, Ohio, Butler, Cheney, Cleveland, Collins, Tex., Conable, Crane, Daniel, Crane, Philip, Daniel, R. W., Dannemeyer, Dickinson, Frenzel, Gramm, Hagedorn, Hall, Tex., Hance, Harsha, Hightower, Holt, Ichord, Jeffries, Kelly, Kindness, Kramer, Latta, Leath, Tex., Lee, Lewis, Loeffler, McDonald, McEwen, McKay, Maguire, Martin, Michel, Miller, Calif., Miller, Ohio, Montgomery, Paul, Robinson, Rudd, Satterfield, Sensenbrenner, Stenholm, Stockman, Stump, Taylor, Wyatt

NOT VOTING—44

Abdnor, Alexander, Anderson, Ill., Annunzio, Ashley, Badham, Barnard, Burgener, Conyers, Daschle, Devine, Dodd, Duncan, Oreg., Evans, Ga., Holland, Holtzman, Hyde, Jones, N.C., Leach, La., Lederer, Lloyd, Luken, McCloskey, McDade, Mollohan, Moorhead, Pa., Murphy, N.Y., Myers, Pa., Nedzi, O'Brien, Patten, Quayle, Roberts, Rousselot, Schroeder, Staggers, Symms, Thompson, Vander Jagt, Watkins, Wilson, Bob, Wilson, C. H., Wilson, Tex., Young, Alaska

□ 2000

The Clerk announced the following pairs:

On this vote:

Mr. Annunzio for, with Mr. Barnard against.

Until further notice:

Mr. Alexander with Mr. O'Brien.

Mr. Murphy of New York with Mr. Bob Wilson.

Mr. Thompson with Mr. Abdnor.

Mr. Staggers with Mr. Hyde.

Mr. Mollohan with Mr. Quayle.

Mr. Patton with Mr. Rousselot.

Mr. Ashley with Mr. Burgener.

Mr. Myers of Pennsylvania with Mr. Badham.

Mr. Charles H. Wilson of California with Mr. Young of Alaska.

Mr. Roberts with Mr. Symms.

Mrs. Schroeder with Mr. Vander Jagt.

Mr. Watkins with Mr. McDade.

Mr. Nedzi with Mr. McCloskey.

Mr. Moorhead of Pennsylvania with Mr. Conyers.

Mr. Jones of North Carolina with Mr. Leach of Louisiana.

Mr. Lederer with Ms. Holtzman.

Mr. Daschle with Mr. Duncan of Oregon.

Mr. Dodd with Mr. Holland.

Mr. Evans of Georgia with Mr. Lloyd.

Mr. Charles Wilson of Texas with Mr. Luken.

Mr. STARK changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

TITLE AMENDMENT OFFERED BY MR. PERKINS

Mr. PERKINS. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. PERKINS: Amend the title so as to read: "A bill to extend the authorization of youth training and employment programs and improve such programs, to authorize intensive and remedial education programs for youth, and for other purposes.".

The title amendment was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO CORRECT SECTION NUMBERS, PUNCTUATION, REFERENCES AND CROSS REFERENCES IN THE ENGROSSMENT OF H.R. 6711

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill H.R. 6711, the Clerk be authorized to correct section numbers, punctuation, references and cross references to reflect the actions of the House in amending the bill H.R. 6711.

The SPEAKER pro tempore (Mr. FARY). Is there objection to the request of the gentleman from Kentucky?

There was no objection.

GENERAL LEAVE

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 6711, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

THE FBI STORY

(Mr. HANLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. HANLEY. Mr. Speaker, as we all know, the late 1960's and early 1970's were a turbulent time in our Nation, a time when emotions concerning the Vietnam war were tearing at the seams of our society. It also was a time when terrorist activity was at its greatest in our recent history.

It was felt then, and I believe rightly so, that our national security was threatened by this rise in terrorism. And we, as a nation, turned to our Federal law enforcement body, the Fedral Bureau of Investigation, to ferret out this evil, and bring the subversives to justice.

It is deeply disturbing, therefore, to learn of the plight of two of the very men we turned to for help. W. Mark Felt and Edward S. Miller are two former FBI officials who were in charge of the early 1970's pursuit of the terrorist "Weather Underground." These two men, entrusted with protecting the national security, are scheduled to stand trial soon on charges of conspiring to violate civil rights. They are accused of ordering break-ins in 1972 and 1973 at five apartments in hopes of finding letters or other clues as to the Weathermen's whereabouts.

A number of very serious questions are posed by this impending trial, and for the benefit of my colleagues, I offer an article which appeared in the August 18, 1980, issue of the Wall Street Journal.

I think it is important that these two public servants know that we stand with them, that we will not turn our backs now, after they served us in our time of need. The very fabric of our law enforcement capabilities is threatened by this case, but I am confident that, in the end, these Government agents will be vindicated, and their colleagues' faith in our criminal justice system will be restored.

The article follows:

FBI STORY

Two former FBI officials in charge of the early '70s pursuit of the terrorist "Weather Underground" are scheduled to stand trial soon on charges of conspiring to violate the civil rights of their quarry's friends and relatives. More than two years and four months have elapsed since the Justice Department sought the original indictments, the kind of trial delay that recently led a court to order a convicted triple murderer released from jail.

Trial procedure isn't the only problem with the FBI case. The prolonged hesitation at Justice hints at doubts about its judgment in this particular balancing of civil liberties against national security. Perhaps national security concerns weren't as trivial and the FBI professionals weren't as reckless as the post-Watergate mind had assumed.

The FBI's former acting associate director, W. Mark Felt, and its former assistant director, Edward S. Miller (in charge of intelligence), are accused of ordering break-ins in 1972 and 1973 at five apartments in hopes of finding letters or other clues to the Weathermen's whereabouts. (Former acting FBI Director L. Patrick Gray III is also charged; but the government has severed his case until it disposes of his subordinates.)

The defense is planning to show that the FBI had serious reason to suspect foreign involvement with the Weathermen, and the delay comes because Justice has been denying it the documents to do so. One could wonder what use a foreign power would expect to make of the Weathermen, a repellent collection of spoiled upperclass brats. But one also wonders just what is in those classified documents the government has been refusing to release.

The full story is being censored in the judge's chamber, but enough has leaked out to indicate the problem isn't simply "graymail", wherein the defense tries to deter a trial by threatening to force disclosure of sens[illegible] documents. Yes, it turns out, the Weathermen *were* in touch with Cuba, North Vietnam and North Korea. Yes, one member even traveled to Algeria to meet with PLO leader Yasser Arafat. (The meeting fell through, but Arafat offered to reimburse the expenses.) The FBIs earlier report of no foreign involvement was misleading because some crucial information wasn't shared within the bureau and the standards of proof for "involvement" were too rigid.

The government might argue that even these circumstances don't justify break-ins, but then let it explain what circumstances do. Even in the heat of its moral flush, Justice has declined to make a case about an illegal FBI entry at an Arab center in Dallas. The break-in yielded a list of 94 alleged Fatah agents said to be planning the assassinations of American Jewish leaders.

Do the Weatherman deserve greater constitutional protection than potential Arab assassins? After all, these sons and daughters of lawyers and bureaucrats have claimed bombings in a men's room in the U.S. Capitol, Gulf Oil's international headquarters and the Los Angeles office of the California Attorney General, among other incidents. Three of their members died when they accidentally blew up a Manhattan townhouse where they were assembling bombs. A bomb which may have been theirs claimed the life of a San Francisco policeman. Not bad reasons for law enforcement concern.

The reward for this concern, however, has been a costly Justice Department investigation (some estimates top $20 million), forcing some 140 agents and former agents to retain counsel at their own expense even though Messrs. Felt and Miller took blame for the break-ins voluntarily to cut short this turmoil. The Society of Former Special Agents of the FBI has spent more than a million dollars to defend its members. The cost in shattered FBI morale can't be measured.

And now, when the terrorist bombings are coming from right-wing groups like the anti-Castro Omega 7, the same voices that egged on this case complain that the FBI can't defend internal security. Indeed, Cuban, Russian and Iranian agents can play the bully-boy on American soil with unprecedented impunity. The suspect in the recent Bethesda assassination of an anti-Khomeini Iranian exile had such obvious contacts with Iranian diplomats that the earlier kinds of surveillance might have prevented the crime.

A balance can and must be struck between national security and individual rights that favors personal freedom. But things have gone too far when government agents are threatened with harsher punishment than the Weathermen they were chasing.

□ 2010

THE BRAVE AND COURAGEOUS POLISH PEOPLE

The SPEAKER pro tempore (Mr. FARY). Under a previous order of the House, the gentleman from California (Mr. DORNAN) is recognized for 10 minutes.

Mr. DORNAN. Mr. Speaker, we are witnessing a tremendous test of will in Poland. It has been reported that a Bulgarian artillery unit arrived in northern East Germany last night, complementing the arrival of a Czechoslovakian tank unit. The arrival of these forces just happens to coincide with a massing of East Bloc personnel for Warsaw Pact military exercises scheduled for early September. There are, according to published sources, approximately 20,000 Soviet troops in Poland, manning two armored divisions. Other sources indicate that there may be as many as four armored divisions in the country. As the tension mounts during the next few days, I think that we ought to reflect upon what is truly happening in Poland. We are witnessing an inspiring display of character and courage on the part of the Polish people in their continuing struggle for freedom.

During my first trip to Poland, the first of several trips, about 15 years ago, I asked to see the Warsaw ghetto. I was taken to an area where there was a nice memorial, but it was really just a massive vacant lot. Then, I went into a small museum off the city center square. There, I saw a large photograph of the great city of Warsaw in the winter of 1944. There was virtually no shape visible, just endless white. The site was blanketed with a heavy snowfall, rolling low hills as far as the eye could see, with a few jagged sticks haphazardly sticking out of the barren landscape.

The post World War I revitalized Poland was victimized again by a cruel history, caught in the great totalitarian squeeze play in 1939 organized by the butchers Adolf Hitler and Joseph Stalin. The plains of Poland once again became an arena of European cruelty and cour-

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age, the first open battlefield of the Second World War. The great suffering of the Poles, particularly the Polish Jews of Warsaw, was almost beyond comprehension. But so was the great courage of the Polish resistance. The price of that resistance was brutal, remorseful Nazi and Kremlin oppression and the physical destruction of the ancient and beautiful city of Warsaw itself. The Kremlin's occupation and the installation of a Communist puppet government dashed hopes of the Polish people for a true postwar liberation. Unfortunately, it was an arrangement acceded to by the Western Allies at the heartbreaking Yalta Conference.

Warsaw rose like a phoenix from this rubble of the great holocaust. Some people in this country have had a lot of fun making jokes at the expense of the Polish people over the last decade, but I think even they are about to be shocked into dead seriousness by a repeat of Polish courage. We are all about to see what an incredibly heroic people our Polish brothers and sisters are, and what their thousand year history has taught the world over and over. True grit.

We have a truism in the English speaking world, "You can't keep a good man down."

Well, "you cannot keep a good people down," and I hope this House of the people finds a means to respond imaginatively and forcefully to what will probably be a period of awful suffering for the great Polish people as they once again rise up and demand their freedom. This yearning for liberty will continue among the peoples of all captive nations as long as they are crushed under Communist totalitarian rule.

Mr. Speaker, the strikes in Poland are growing even at this very moment and include at least 150,000 workers. It is especially significant that Pope John Paul II has broken his careful silence on his homeland and has told pilgrims at the Vatican that "we here in Rome are united with our fellow Poles." In Warsaw, oppressed by an alien regime, the Poles can thank God that they are not alone, bereft of great moral and spiritual suoport. Now the Kremlin has its answer to the brutal Stalin's cynical question: "How many divisions does the Pope have?" Looking over the hundreds of thousands of factory workers and their supporters, the Holy Father seems to have done quite well indeed.

Whatever the outcome of the current crisis, certain facts will forever stand forth as testimony to an unadulerated truth: The communism of Poland, like communism in virtually every other country, is not a "worker's movement." The Polish Communist Government, which now sits in power only because it can call upon an invading reserve of the Kremlin's massive military strength, is not a "worker's government." The so-called "People's Democracy," the phrase that Communist propagandists always use to describe the Polish state, is anything but a "people's democracy," a fact bluntly admitted by former politburo member Jan Szydlak who recently rejected the workers' demands for greater political freedom with the remark:

The Communists do not intend to give up their power, nor to share it with anyone else.

For all of the froth of "government concessions", that is the bottom line. I have never heard a better description of political conditions in Poland. Never.

Mr. Speaker, let us join together in this House and show moral support for the brave Poles, a people whose history is itself a celebration of national independence, a deep and abiding religious faith, and great courage in the face of extreme adversity.

God save Poland.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. DORNAN. I am delighted to yield to the gentlewoman.

Mrs. FENWICK. Mr. Speaker, I am happy and moved that our colleague has brought this to the attention of the House. I would like to associate myself with his remarks.

Mr. DORNAN. I thank the gentlewoman.

THE TAX ON MARRIAGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. PEYSER) is recognized for 60 minutes.

GENERAL LEAVE

Mr. PEYSER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the subject of this special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. PEYSER. Mr. Speaker, I rise today to discuss an inequity which exists in our tax structure. Specifically I am speaking about the "marriage tax" which penalizes the two-earner married couples. While I have raised many questions on a number of taxes or tax cut proposals that have been made, this is one that really should be addressed immediately and one which a number of Members in the House have already taken a very definite and positive action on. The gentlewoman from New Jersey (Mrs. FENWICK), the gentleman from Virginia (Mr. FISHER), the gentleman from New York (Mr. CONABLE), and others have already introduced and have legislation before the Ways and Means Committee.

I would like to point out that the marriage tax is the difference between the tax liability of a married couple in which each spouse earns income and the couple files jointly as compared with the combined tax liability of these same two people if each were to file as an unmarried taxpayer.

This marriage penalty begins to occur when one spouse earns at least one-fifth of the family income.

Let me give my colleagues an example of what is involved. If a man and woman each earned $15,000 in 1979 and they were single they would have each paid a Federal income tax of $2,345 for a combined tax liability of $4,690. If these same two people had been married the tax on a $30,000 income filed jointly would have been $5,593. The marriage penalty tax would have been $903.

This, Mr. Speaker, obviously does not make good sense.

I would like to quote for a moment, Mr. Speaker, what is happening as a result of this tax. I am extracting from a statement of the gentleman from Massachusetts (Mr. DRINAN) and would then ask that the statement be put into the RECORD immediately following mine.

What Mr. DRINAN says here at the outset is that:

Two clergymen in Culver City, California announced earlier this summer that they are willing to perform secret marriages to allow newlyweds to escape higher taxes on their combined incomes. "We will perform marriage ceremonies in the eyes of God, but not in the eyes of the IRS," said Rabbi Allen Malker of Temple Akiba. Said the Rev. Robert Johnson of the Grace Lutheran Church, "It's not a legal ceremony, but it is not an illegal ceremony."

It just seems to me, Mr. Speaker, when we have clergymen going to this extreme, at this point it is high time that the House take real action on this matter.

Mr. Speaker, to highlight again the feature of the current law which led to the marriage penalty, in the first place a different standard deduction for single and married taxpayers exists. While two single individuals may each claim a standard deduction of $2,300 for a total of $4,600, married taxpayers may claim only $3,400.

Second, the tax rate faced by the second worker of a married couple are higher because the total income is subject to our graduated tax rate.

Mr. Speaker, in 1979 approximately 16 million Americans paid a marriage tax penalty of $8.3 billion. This penalty works against families with two wage earners, which is especially disturbing given the fact that with the ever-increasing inflation, a great many families need two incomes in order to make ends meet.

By taxing married couples more heavily than individuals, we are penalizing the institution of marriage. Further, we are discouraging the nonworking spouse—generally the woman—from taking a job. I recently received a letter from a woman in my district which accurately sumarizes the present inequity. She wrote:

My boyfriend and I would like to marry. If we do so, our Federal income taxes will total several thousand dollars more each year than if we choose to remain single. This result is due to the fact that we are both wage earners and there is not a large gap between the levels of our incomes. I have told him that we ought to remain single until we decide to have children and put away the money saved toward the purchase of a home. Emotionally, this is not an easy decision to accept.

I really sympathize with those couples who are married, working and raising children, carrying an increased tax burden as well as the costs of raising a family.

Mr. Speaker, there are several bills which have been introduced which seek

to redress this serious inequity. In both the 95th and 96th Congress, the gentlewoman from New Jersey (Mrs. FENWICK) has introduced legislation which would give married couples the option of filing separate returns as single individuals or filing jointly. This bill has over 230 cosponsors.

Bills have also been introduced by the gentleman from Virginia (Mr. FISHER) and the gentleman from New York (Mr. CONABLE) which would provide some relief to the two-earner married couple through a deduction equal to a percentage of earned income of the spouse with the lower salary.

Mr. Speaker, the House Ways and Means Committee held hearings on this issue in April. Testimony was given by both Members of Congress and private citizens that the tax laws are prompting more and more taxpayers either to divorce and reap gains by filing returns as single taxpayers or to avoid marriage in the first place.

Mr. Speaker, it is clear that we must act to correct the existing discrimination that the tax code perpetrates against married couples. I urge the Ways and Means Committee to report legislation which would eliminate the marriage tax penalty.

Mr. Speaker, I would simply say that I have talked to members of the Ways and Means Committee and they have indicated a complete willingness to move ahead with this tax as an individual measure. I would say the purpose of this special order tonight is to provide that stimulus that I hope will motivate the committee to move promptly on this.

● Mr. DRINAN. Mr. Speaker, two clergymen in Culver City, Calif., announced earlier this summer that they are willing to perform secret marriages to allow newlyweds to escape higher taxes on their combined incomes. "We will perform marriage ceremonies in the eyes of God, but not in the eyes of the IRS," said Rabbi Allen Malker of Temple Akiba. Said the Reverend Robert Johnson of the Grace Lutheran Church, "It's not a legal ceremony, but it is not an illegal ceremony."

The latest version of the so-called marriage tax was created by Congress in 1969 when it tried to remove from the tax code what was termed the tax on remaining single. The objection to provisions that led to a single person with an income of $20,000 paying more than a couple with the same combined income—the proper result of a progressive tax code—was based on the notions, since discarded, that two can live as cheaply as one, and that one member of a couple is the taxpayer while the other is a tax shelter in the form of a spouse. The removal from the Tax Code of what was perceived to be an inequity caused a situation with which we are now all too familiar: Two married working people, one of whom earns no more than 80 percent of their total income, pay more tax than if they were not married.

A few approaches to the problem have been suggested, such as allowing spouses to file as single taxpayers. Such an approach, however, would ignore the principle that two couples with the same income, no matter what the percentage derived from each respective spouse, should pay the same income tax. Because of the effects of a graduated income tax, a couple with an 80–20 percent split in income that files single returns would pay 40 percent more taxes than a couple with the same $10,000 earned on a 50–50 percent basis by both spouses.

Another proposal, to provide a two-earner couple with a 10-percent tax credit on the income of the lower earning spouse, has the same disadvantage of treating various couples with the same combined incomes differently on the basis of the spouses' earning ratio.

I concede the problem is difficult, but we should not correct it by creating a new one. I favor a return to the tax provisions that existed before 1969: income splitting that attributes one-half of a couple's combined income to each spouse. Michael and Robert McIntyre pointed out in the May 1980 issue of the Tax Reform Research Group's People & Taxes:

Income splitting makes the reasonable assumption that married partners share the total family income equally and that each individual spouse therefore has about the same ability to pay taxes as a single person with half of the family income. . . . Besides eliminating the tax on marriage, income splitting has the additional very important advantages of: treating all married couples with similar incomes the same, no matter what the types of income or the nominal earnings division between the spouses; maintaining a progressive rate structure; and easy administrability. There is no other approach to the problem which satisfies these three objectives.

We have all heard numerous examples of couples paying more taxes after marriage or less after divorce. Every married couple can save taxes by divorcing and splitting their income as part of the alimony agreement. Income splitting for married taxpayers would remove this tax benefit of divorce.

Let us be aware that any legislation to eliminate the marriage tax entails a tax reduction; the marriage tax now raises $23 billion for the U.S. Treasury—over nine times the excise taxes on tobacco, four times the taxes on alcohol, and three times the highway-use taxes. If this Congress is still committed to a balanced budget—and projections for fiscal year 1981 already include a deficit of $30 billion—it must remember that any additional revenues to cover those now unfairly collected by the marriage tax will ultimately be borne largely by married people who constitute three-quarters of all taxpayers. This reality should not, however, discourage us from insuring that Federal revenues, totaling whatever amount, are raised fairly.

Having served as editor-in-chief of the Family Law Quarterly, chairman of the ABA's section on family law, and a professor of family law at the Boston College Law School, I have long been aware of this quirk in our tax laws. I have sponsored and cosponsored legislation in the past few Congresses to deal with it. I hope that this Congress will accept the opportunity to finally abolish the tax on marriage.●

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I will be very pleased to yield to the gentlewoman from New Jersey who has been one of the prime movers for the past 2 years on this particular measure. I am delighted to yield at this time.

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Mrs. FENWICK. I thank my colleague for yielding.

I would like to thank the gentleman from New York (Mr. PEYSER) for scheduling this special order on what millions of Americans consider to be the most unfair feature of our Federal Tax Code—the "marriage tax."

I would also like to commend the gentleman from New York (Mr. PEYSER) as a cosponsor of our bill. Now we have 237 Members of this House who are in favor of H.R. 3609. I am happy that H.R. 3609 is a successor to a bill which I have introduced in every single Congress since I came here in January 1975. We cannot continue an unfair and inequitable tax.

The clergymen who have been quoted by the gentleman in the well, Mr. PEYSER, are joined by many others. I received a letter 2 or 3 years ago from a priest in Florida who begged me to press forward with this bill because it was causing such tremendous strain on the people of his parish. Senator MATHIAS who introduced this bill in the Senate last year received a letter from a Protestant clergyman in Maryland who said:

You can hardly believe what I am now writing you. Contrary to everything that my Christian conscience would dictate to me, when young people come before me, I sometimes counsel not to marry on account of the penalty that marriage incurs under our Federal Code.

I think the time has come when we have to stop this. I am happy to see that Secretary Miller of the Department of the Treasury and many, many other authorities, including both platforms of the political parties, have endorsed some form of relief for the working and married people of this country. It is an unfair tax. It is contrary to sound social policy.

I congratulate our colleague, the gentleman from New York, for asking for this special order on this subject.

Mr. Speaker, under present law, a husband and wife who both work generally pay more tax than they would if they were single. The resulting penalty has at least two negative effects: It discourages marriage, and it discourages married women who want to go to work.

I have proposed to eliminate this "tax on marriage" by simply allowing two-earner married couples to be taxed as if they were single. This change is long overdue. The marriage tax was created "inadvertently," according to several Members of the Ways and Means Committee, more than 10 years ago. We have yet to correct that mistake.

Several States are ahead of Congress in this respect. They have "combined-separate" tax forms, which allow couples to file separately on the same form by placing two columns on the tax form. If we adopted this format for our Fed-

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eral tax forms, we could allow couples to pay separately according to the rate schedule for singles while minimizing the added administrative burden placed upon the Internal Revenue Service.

In addition, the fact that increasing numbers of married women are now working makes this change necessary. More than half of all the married women in the country now work, which means that up to 40 million Americans, more than half the married couples in America, may be paying the marriage tax. Demographic experts testified at the House Ways and Means Committee's hearings on the marriage tax in April that by the end of this decade, at least two-thirds and perhaps as many as three-quarters of all the married women in the country will be working. So the problem will become even more widespread, and the need for change will become even more dramatic in the years to come.

Elimination of the marriage tax is not only long overdue, it is also sensible and widely supported. A recent poll conducted by the Gallup organization for the White House Conference on Families found that 83 percent of those surveyed favored elimination of the marriage tax. Significantly, 77 percent of the single individuals surveyed supported this change.

In addition, the recently adopted platforms of both the Republican and Democratic Parties call for the elimination of the marriage penalty. The National Taxpayers' Union, the President's Interdepartmental Task Force on Women, the Women's Equity Action League, the American Association of University Women, and Business and Professional Women have all endorsed H.R. 3609, which allows married couples to file as singles.

A recent Justice Department study called the marriage tax "the major source of sex discrimination within the Tax Code." The study was referring to the fact that by taxing the income of the second spouse at such a high marginal rate, our current Tax Code has the effect of discouraging many married women from going to work. For example, if a husband married to a nonworking wife earns $10,000, he pays $702 in taxes—assuming that he does not itemize deductions. If his wife goes to work for the same $10,000 salary, the couple's tax bill jumps to $2,745. The effective tax on her income is $2,143. Significantly, the United States is the only country in the OECD—the only major industrialized country in the free world—in which the tax cost of the second earner's entry into the work force is higher than that of the first.

Clearly, we must act. I am, of course, happy to note that the Senate Finance Committee has recognized this need and has included a provision which would reduce the marriage tax in its proposed tax cut bill. I am very pleased that a congressional committee has reported legislation on the marriage tax issue, because I have been working on this issue since I was first elected to Congress. But I would hope that when this issue comes before the House, we will adopt a more comprehensive and straightforward approach to this problem.

The Finance Committee has proposed to grant married two-earner couples a deduction of 5 percent on the first $30,000 earned by the lesser earning spouse in 1981, with the deduction rising to 10 percent in subsequent years. While such a provision would reduce the marriage tax, it would not eliminate it. It would only reduce it partially. Dissatisfied couples would still cry out for change, fly to Haiti in the winter for divorces, and do the many desperate things they are doing now to fight this unfair marriage penalty. Adoption of the deduction proposal would only serve to perpetuate the source of the problem—the aggregation of spouse's incomes. Instead of going to the source of the problem, it would only add another twist to our already hopelessly complicated code, providing an arbitrary level of relief, and in some cases, providing relief even where no marriage penalty exists.

At a comparable cost, we could adopt H.R. 3609 and completely eliminate the marriage penalty. It is estimated that H.R. 3609 would reduce Federal revenues by about $8 billion annually. The Senate's deduction proposal, meanwhile, will cost at least $5 billion annually. If the initial revenue impact of H.R. 3609 is felt to be too great, however, it could be phased in gradually over a number of years. The difference between the tax rate schedule for marrieds filing separately and that for singles could be reduced by 20 percent a year for 5 years, for example, at a cost of under $2 billion in the first year. Yet at the end of the 5-year period, the marriage penalty would be completely eliminated, once and for all.

Mr. Speaker, I greatly appreciate the opportunity to take the floor and call for the elimination of this tax. I thank all of my colleagues who have joined me in this effort, and I sincerely hope that we will accomplish our goal in the very near future.

Mr. PEYSER. I appreciate the gentlewoman's comments. In keeping with what she has just said, I would like to point out I have just received a letter from a young woman who told me that she is living with a young man whom she really wants to marry. She said she really feels guilty about living this way, but they have decided, because of what it would cost them if they get married, that until they have children or she becomes pregnant, they will not marry. This just is not right.

Mrs. FENWICK. If the gentleman will yield further, that is what started me on this whole thing. A young woman spoke to me in exactly those terms in the autumn of 1974. That is what started me on the whole subject. I had no idea what was happening to the working people of this country.

Mr. PEYSER. I thank the gentlewoman.

Mr. CLAUSEN. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I will be glad to yield to the gentleman from California.

Mr. CLAUSEN. I thank the gentleman for yielding. I want to commend the gentleman from New York (Mr. PEYSER) for taking this special order. I want to associate myself not only with the remarks that he has made but also to associate myself with the real champion, the gentlewoman from New Jersey (Mrs. FENWICK), who has been carrying the principal burden as far as the House is concerned on the repeal of the so-called marriage tax. Each one of us has made reference to cases in point or life examples of where the people in contemporary society are struggling with their consciences simply because of the inequities that are involved in our existing Tax Code. So, once again, as a cosponsor of the legislation I want to commend the gentleman for his taking the special order, again giving the Members of this House a chance to expand on this effort. I cannot believe with 237 Members who have already cosponsored this legislation that the Committee on Ways and Means and the Department of the Treasury would not accede to the requests that are being made and will continue to be made until such time as this inequity is resolved.

Mr. PEYSER. I thank the gentleman for his comments. One of the things I am hoping for is that the Committee on Ways and Means will be willing to take this as a separate issue, because the problem is what has been happening is that they have been holding it as part of a major tax reform program. I am not arguing the pros and cons of major tax reform, but here is a measure where people, as we know, are suffering as the gentleman pointed out, and we could pass this through the House immediately. I am just hopeful we can create the pressure to bring this about.

I will be glad to yield to my friend.

Mr. CLAUSEN. I thank the gentleman for yielding. Of course, I will use everything that I have in the way of influence at my command to advance that objective, because the Committee on Ways and Means, I am sure, is convinced that the overwhelming majority of the Members of the House are on the right side, and it is just a matter of time when they would yield to what is the right position. So I would certainly join the gentleman in the well, the gentlewoman from New Jersey, (Mrs. FENWICK), and all those who are interested in this particular legislation in advancing it to fruition.

Mr. CARNEY. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I will be glad to yield to the gentleman from New York.

Mr. CARNEY. I thank the gentleman for yielding. I, too, would like to echo the sentiments of my colleague, the gentleman from California (Mr. CLAUSEN), and I would like to commend my colleague, the gentleman from New York State (Mr. PEYSER) who is in the well now, for bringing this special order tonight. At the same time I think we would like to pay that same type of compliment to the gentlewoman from New Jersey (Mrs. FENWICK) for her position that she has taken for the past several years on this bill. It is a bill whose time is now with 237 cosponsors. I think that before we end our business in the 96th Congress this bill should be brought to the floor of

this House for some sort of final resolution. I believe with 237 cosponsors we know what that would be and, hopefully, we could have that same success in the Senate and we can end this very inequitable situation that we have with our present law again.

May I commend the gentleman from New York for his activities here today. Hopefully, this will stimulate the rest of our colleagues to bring this bill out before the end of the 96th Congress.

Mr. PEYSER. I thank the gentleman for his comments.

Mr. PETRI. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I will be glad to yield to my friend, the gentleman from Wisconsin.

Mr. PETRI. I thank the gentleman for yielding.

Mr. Speaker, I would like to commend the gentleman from New York (Mr. PEYSER) for calling this special order to focus attention on the important issue of the "tax on marriage," and would like to take particular note of the contributions of the gentlewoman from New Jersey (Mrs. FENWICK) to the worthwhile effort for reforming this unnecessary quirk in our Federal Tax Code. Our distinguished colleague, Mrs. FENWICK, has done a more than admirable job in marshaling support for outright repeal of the marriage tax through her bill, H.R. 3609, which I have cosponsored. Her insistence on sound public policy in this area should result in more equitable tax treatment of the hard-earned dollars of America's working men and women.

Several of our colleagues have noted the origin of the tax on marriage, but I would like to reiterate one point that is crucial to consideration of repeal of this tax. That is, the tax on marriage was created inadvertently. It was a mistake, generally recognized as such, and the opportunity to rectify this oversight should not be passed by.

Until 1969, unmarried people generally paid higher Federal taxes than their married counterparts. So the remedy for this inequity was to fiddle with the tax tables so that a single wage earner would not benefit greatly by marrying someone with an independent income. However, in fiddling, Congress created the "Tax on Marriage," the catch-phrase describing the situation whereby a husband and wife who both work generally pay more tax than they would if they were single. The tax falls on a married couple if the income of one spouse exceed 20 percent of the income of the other—the more equal the two incomes, the larger the tax.

There are several real effects of this tax policy. First, we are discouraging marriage. While some have questioned whether young people are making the decision to marry on such practical grounds as their tax liabilities, I have talked to several people who are. Certainly a tax penalty that can easily exceed $2,000 and can go as high as $4,400 per year, creates a strong disincentive to marriage. And we are all familiar with the highly publicized cases of couples divorcing at the end of the calendar year to avoid such penalties.

Another real effect is the frustration many working wives feel having made the decision to go to work only to discover that their income is so heavily taxed that the decision barely pays off. In fact, the effective tax rate on a $20,000 second income can easily reach 55 percent or more when social security and State income taxes are included. One working wife and mother wrote to me that she went to work to provide, in her words, "such luxuries as shoes for my children."

Were married couples given the option of filing as individuals, as proposed under H.R. 3609, this would, of course, result in a relatively higher tax burden on the family with one worker earning, for example, $20,000, than the family with two workers earning $10,000 each. In my view, this would be an acceptable disparity, giving tacit recognition to the additional costs incurred through a spouse's decision not be a full-time homemaker. The $20,000 single-earner family filing a joint return would still pay less tax than a single person earning $20,000. Of course, any tax reduction for certain married couples increases the percentage of the total tax burden that falls on everyone else. However, if we must choose between overtaxing marriage and excessively encouraging it, surely it is preferable to err on the side of encouraging this valuable institution.

The Senate Finance Committee has chosen to recommend an alternative approach to reducing the tax on marriage, not through outright repeal, but by granting a tax deduction for the second earner. There are several flaws to this approach. First, I would argue that this would clutter our already complicated Tax Code. In the waning days of March and early April, we all heard numerous complaints about the seemingly unnecessary proliferation of lines in the Federal tax return forms. Through a deduction for the second earner, we would be adding yet another, when the approach of H.R. 3609 could be so much simpler and more straightforward.

Moreover, the tax deduction for a second earner maintains the tax policy of devaluing the second earner's income. This would only continue the insult to the second wage-earning spouse.

Finally, Mr. Speaker, I would like to point out that my home State of Wisconsin already allows married couples with two incomes the option of filing as if they were single. It is an honest and equitable approach and I commend it to the Congress, as proposed by the gentlewoman from New Jersey in her bill, H.R. 3609.

Mr. PEYSER. I thank the gentleman for his comments.

I think in conclusion, Mr. Speaker, I simply want to again emphasize the need to move forward on this program. The bill is before the Committee on Ways and Means, and it is my hope that by public participation by Members of Congress clearly stating their desire to move ahead on this bill, before the 96th Congress adjourns we can have enacted this legislation.

● Mr. OBERSTAR. Mr. Speaker, today's special order offers a welcome opportunity to speak out on behalf of my constituents who have written to me or spoken to me about the unfair tax burden on married couples in which both spouses work.

These couples are counting on us to act to remove an inequitable tax burden they bear simply because they are married.

I have cosponsored the legislation introduced by our colleague, the gentlewoman from New Jersey (Mrs. FENWICK), which would allow married couples to file as though both partners were single. I hope that this Congress will enact that legislation, or some form of it, in this session, either pre- or post-election.

The marriage tax costs 19 million married couples almost $5 billion annually. In the past few months, I have come to see this cost not just as an aggregate figure but in its impact on the lives of individuals.

In the past 6 weeks, I have held 16 congressional town hall meetings to give the people I represent the opportunity to speak out on the issues before Congress. At just about every meeting, my constituents raised the marriage tax issue. These people are not couples with incomes of $100,000, but middle income people fighting inflation and facing a substantially higher tax because they are married.

In the months since I cosponsored the Fenwick bill, I have come to realize the importance of this legislation.

I want to thank the gentleman for New York (Mr. PEYSER) for sponsoring this special order. I hope that it furthers our efforts to offer working couples meaningful relief. I hope that this House will vote soon on legislation that provides adequate tax relief to middle and low-income working Americans.

I hope that repeal of the marriage tax will be attached to that kind of tax bill, and not to one which provides a disproportionate share of the benefits of a tax cut to the richest of Americans. ●

● Mrs. HOLT. Mr. Speaker, as a cosponsor of H.R. 3609, introduced by the distinguished gentlewoman from New Jersey (Mrs. FENWICK), I am happy to participate in the special order requested by the gentleman from New York (Mr. PEYSER) to discuss the urgent need to repeal the inequitable "marriage tax." H.R. 3609 already has 237 cosponsors and although it was introduced on April 10 last year, the House Ways and Means Committee did not hold hearings on it until April 2 this year.

More than half of all married women in American are employed outside their homes. Many have taken outside jobs for reason of economic necessity, and many to fulfill personal ambitions.

But an unusual tax burden is imposed on them for working. For Federal tax purposes, a wife's income is combined with that of her husband, and the total is then subject to a higher tax rate than

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they would experience if they were taxed separately on their individual incomes.

It is called "the marriage tax," and it causes married couples to lose an estimated $5 billion per year to the Federal Government. It may also be a factor in causing many couples to avoid the marriage ceremony and make other arrangements.

Any fair person must be outraged at "the marriage tax." A married woman should be able to take employment without her family being abused by an abnormally high tax burden.

Mr. Speaker, the time has come for Congress to repeal the "marriage tax" by giving married couples the option of filing as though each spouse were single. This should be part of any new tax legislation.●

● Mr. BRINKLEY. Mr. Speaker, I rise in support of Representative FENWICK's bill, H.R. 3609, to repeal the marriage penalty tax by allowing married two-earner couples the option of filing as if they were single. I feel that this bill is superior to other legislative efforts in that it provides the vehicle by which we can eliminate the penalty entirely. This can be accomplished in 1 year or gradually by reducing the difference between the schedules for married couples and single individuals by 20 percent annually for 5 years beginning next year. Also, Representative FENWICK's bill is a simpler approach than the two-step deduction adopted last week by the Senate Finance Committee.

H.R. 3609 will not create a hardship for any other group of taxpayers, as it will only affect those who are subject to the marriage penalty tax.

This popular measure is a feasible approach to correcting a situation which will be multiplied in years to come as more and more wives take jobs outside the home. Let us eliminate both the disincentive to marriage and disincentive to work by totally removing unfair tax treatment of married couples.●

● Mr. WOLFF. Mr. Speaker, I wish to take this opportunity to applaud the efforts of both the Senate Finance Committee and my colleague, Mr. PEYSER, for their efforts to focus upon and hopefully alleviate the so-called marriage penalty which plagues our system of taxation. Although this issue has become central to many of our attempts to correct the imperfections which pervade our Tax Code, this issue is of particular salience today. Over the past decade, we have witnessed a dramatic shift in the American work force, with more and more women infusing today's job market and providing substantive contributions to our Nation's productivity. In part this phenomenon is the result of sociological trends or the more tangible product of the "women's movement," but we must not let sociological studies obscure the more fundamental reason for this phenomenon: Necessity.

With the cost of raising a family, maintaining adequate housing, providing clothing and meals, and funding even nominal amounts of transportation reaching unmanageable levels, many women are returning to work simply to insure that these basic expenses will be afforded. We have all heard from these women—women who have been more than willing to return to work outside of their homes and accept the additional burden on their time and energies, but who are unwilling to be financially penalized by taxes over and above the prescribed rate for an individual income. These dual-income families fail to understand why their taxes are so much higher than their single counterparts whose income is devoted only to their personal expenses, rather than the expenses of an entire family.

I share their inability to fathom such an inequitable system of taxation. I fail to understand why an unmarried couple making $15,000 each in 1979 paid between 14 and 26 percent each in taxes, while the married couple making the same amount paid between 21 and 32 percent—or an additional $903. One need not consult an accountant to realize the financial incentives which we have provided for cohabitation.

I'm sure we have all read the stories of couples who choose to divorce in December only to remarry in January in an attempt to avoid this curious "tax on marriage." Although such adventures may be seen as amusing to some, they attest to a sobering flaw within our system of collecting revenues. It is my fervent hope that this penalty will be abolished as soon as possible—and that we might begin to consider the impact of all of our legislation upon the family structure and remain mindful of this impact when correcting old laws or initiating new.●

● Mr. MINISH. Mr. Speaker, it is a pleasure to participate in this special order aimed at correcting the tendency of our tax structure to exact a higher levy from married people than from those who are single.

There is a lot of fashionable political talk these days about preserving the family, although what the Government should or could do in that way is not always clear. In this case, however, we can take a simple action which is entirely appropriate and just by removing the penalty which married couples face at tax time. We have heard stories about couples repeatedly divorcing and remarrying just to avoid being penalized for their marital status every April. I have heard from constituents who are on the verge of dissolving their marriage and simply living together in order to save hundreds of tax dollars annually. The fact is that this quirk of our tax system punishes millions of ordinary couples, and their numbers are increasing as more and more two-career couples become a reality of the job market. In many marriages, both partners work because they want to, but it is particularly ironic that the marriage tax hits hardest those couples who work because they have to make ends meet. The "marriage tax" adversely affects the lives of people who are under enough pressure already.

I have favored legislation to correct this inequity for some time now, but we have seen such bills stuck in Congress year after year. It would be a shame for the 96th Congress to expire without resolving this problem. The Democratic platform for 1980 has pledged specifically to "end tax discrimination that penalizes working married couples," and here is one campaign promise we can redeem now, even before the elections. We have before us several good bills to deal with the problem. In reconciling them, I think we should look for the least complicated solution, one which would simply allow married couples the option of filing returns as if they were single, and by extending to single individuals the same tax benefits of income splitting which are now enjoyed by those who are married. This approach is simple and just. My own bill embodies it, and some of the other bills before the House do so as well.

I am prepared to support any version of this legislation which is founded on the principle of equal treatment of individual taxpayers. Let us act now to send the Senate some good legislation and eliminate this unfair situation in 1980. Thank you.●

● Mr. HOLLENBECK. Mr. Speaker, I am joining today with many of my colleagues in calling for changes in existing law which discriminate against married persons.

The basic structure of our income tax laws which favors married, one-earner couples, dates back to 1948. At that time, in the average American family, the husband worked and the wife stayed at home. Now 30 years later, families in which both husband and wife work outnumber one-earner couples. Yet despite this change, the male "head of the household" concept still holds fast in our national tax policy.

Unfortunately, by trying to solve the inequity between single and married persons, Congress failed to anticipate the millions of married women entering the labor force during the last decade. The Tax Reform Act of 1969 established a new, lower rate schedule for single wage earners and ignored the impact this would have on households with two wage earners. This new rate schedule, combined with an increase in the standard deduction has produced what is commonly known as the "marriage tax."

This tax structure forces millions of working couples to pay more in Federal income taxes than they would if they were single. The Treasury Department estimates that 16 million working couples have paid an additional $8.3 billion in 1979 taxes simply because they were married. Much of the extra tax revenue is a result of a couple's income being combined for tax purposes, thus pushing the household into a higher tax bracket than either spouse would be individually. The result is a tax on married couples at all income levels. For example, a husband and wife each earning $15,000 a year pay a penalty of $907 on their joint return. At higher income levels the penalty is even greater.

In testimony before the House Ways and Means Committee, it is documented that "thousands" of couples are quietly

getting "tax divorces" every year. Thus, we are faced with one of today's greatest ironies. The U.S. Tax Code actually encourages people to save money by divorcing or remaining single.

It is not right to penalize people for adhering to a socially moral way of living. It is not right, in this era of runaway inflation to discourage people from working to help meet the family bills. And it is not right to penalize women who wish to pursue a career for getting married. I appeal to the Members of this body to seize this opportunity to repeal the unfair tax burden on married couples. There are several bills pending in the Ways and Means Committee right now which would extend such equity to our tax laws. As a cosponsor of legislation allowing married, two-earner couples the option of using the singles' tax rate for each spouse's own income, I cannot overemphasize the importance of invoking immediate changes in existing law.●

● Mr. HINSON. Mr. Speaker, I believe it is time for the serious consideration of legislation to repeal the "tax on marriage." Several proposals have been introduced to alleviate this gross inequity in our tax laws, ranging from allowing married couples the option of filing as if they were still single, each taking the single zero bracket amount and each using the single rate schedules, to giving married couples a tax deduction of 10 percent of the lower earning spouse's income. Reconciling the many complex and different approaches will not be an easy task; but as one of the many cosponsors of legislation addressing the existing "marriage penalty," I urge that we reach some form of a workable and equitable solution to this problem.

I feel that it is fundamentally wrong for our Federal tax structure to create a situation which penalizes married people and destroys a wide range of normal incentives for family stability and maximum work efforts. The marriage tax, by its very nature, strikes at the deepest traditions of our society. Furthermore, the present tax law does not reflect present social conditions. Clearly, with 57 percent of today's families having both the husband and wife working, the male "head of household" concept which holds sway in national tax policy is no longer accurate nor fair. The Internal Revenue Service has estimated that more than one-half of all taxpayers are married, and at least one-half of all married couples are two-earner couples. This marriage tax adversely affects one-quarter of all American taxpayers at all income levels.

Until some solution is reached to append the "marriage penalty" embedded in our income tax codes, millions of working, tax-paying Americans will be unjustly discriminated against and the family concept will be undermined, as couples are actually given a financial incentive for divorce. The "marriage penalty" poses a national problem which demands the immediate attention of this Congress, and I urge my colleagues to join me in seeking quick action on this all-important remedial legislation to repeal the tax on marriage.●

● Mr. BEREUTER. Mr. Speaker, I commend my colleague for requesting this special order today to discuss the inequities of the "marriage tax."

One of the first bills I cosponsored as a new Member of Congress was that sponsored by my distinguished colleague from New Jersey, Congresswoman FENWICK, which would eliminate this unfair tax. So far, Congress has not acted on this bill or similar proposals offered by other Members. I hope this effort today will move Congress to act this year.

Every year millions of Americans pay extra taxes simply because they are married. Under present law, a husband and wife who both work generally pay more tax than they would if they were single. This may not have been a serious problem when husbands were the lone breadwinners in most families. That is not the case now. IRS figures show that over half of all the married couples in our country are two-earner couples. This means that as many as 38 million Americans are affected by the "marriage tax."

Now is the time to eliminate this unfair tax and have our tax code respond to changing social conditions. We can do this by repealing the "marriage tax" and allowing individuals the option of being taxed as if they were single.

I would like to have printed in the RECORD at this point a recent editorial by the Omaha World Herald, largest newspaper in my State, which has come down firmly in favor of repeal of this unfair tax.

[From the Omaha World Herald, Aug. 8, 1980]

WORKING COUPLE NEEDS A BREAK

There are inconsistencies in the nation's income tax laws, but the so-called "marriage tax penalty" is one of the worst.

Because of the way the tax laws are written, a married working couple has to pay more tax than two single persons making the same amounts.

It is periodically deplored, but nothing gets done about it.

The subject came up at a congressional hearing on the tax code. Several proposals for correcting the marriage penalty are pending. But Emil M. Sunley, deputy assistant Treasury secretary, declined to make a recommendation on any of them. The Carter administration has made no proposals of its own.

One couple, recently married, totaled up their income taxes and found they would have to pay an additional $2,400. At one time, couples were getting divorced, using the favorable tax break to take a vacation at some exotic island, and then remarrying upon return. The Internal Revenue Service quickly put an end to this. Yet the tax penalty continues.

While several solutions have been suggested, simply giving couples the option of filing separate returns or filing jointly would end the impasse.

The government is dragging its feet, apparently because it might lose revenue.

Marriage is in enough trouble in this country, with the divorce rate high, without having to face the additional burden of higher taxes. The law encourages live-in relationships.

There should be no more delay in changing the tax code.●

● Mr. QUAYLE. Mr. Speaker, I rise to commend the Senate Finance Committee for its recommendation of a tax cut measure and particularly for "seeing the light" and the need to overcome the burden which the marriage tax imposes on working couples.

The marriage tax refers to the fact that when two working people marry, they generally pay more tax than they would if they had remained single. If one spouse's income is at least 20 percent of that of the spouse, the couple will pay extra tax under the current tax rates.

There is currently a schedule called "married filing separately," but these tax rates are higher than for either the single or married filing jointly schedules. For example, if two individuals earn $20,000 and $10,000, respectively, they would pay $6,047 if they filed as "married filing separately," $5,592 as "married filing jointly," and $5,014 if they filed as two single individuals.

The Senate bill does not go nearly far enough in removing this marriage tax. It allows for a 5-percent deduction for the smaller of the two salaries. Thus a couple earning $15,000 would pay $5,993 under the Senate plan.

I have introduced legislation which would simply permit married taxpayers to file singly or jointly, whichever would yield the lower tax. Under this proposal, the couple earning $15,000 each could file as individuals and pay $5,210, a savings of $783.

I urge my colleagues to take a meaningful step toward ending the marriage tax and supporting single filing for married couples.●

● Mr. RITTER. Mr. Speaker, I rise in strong support of H.R. 3609, a bill to eliminate the tax on marriage, of which I am a cosponsor.

It is a shame that 535 astute and intelligent Members of Congress must have their eyes pried open before they take some action on this obvious inequity in our tax system. We are constantly reminded by all forms of media as well as our constituents of sad and frustrating tales of people who must choose not to marry in order to live within their means. Marriage should be a joyous expression of love and the desire to form a family unit. But tax policy, in this instance, works against that very cornerstone of our communities and our country—the family. We need to nurture and cherish the family. We need Government policies which do not penalize the economic underpinnings of the family. Indeed, the very meaning of the word "economy," going back to ancient Greek, is "family."

Since coming to Congress almost 2 years ago, I have advocated cutting back on personal income taxes. Every dollar taken from the American people in taxes is one less dollar that could be working to produce much needed savings, create "real" jobs and strengthen the economic health of America. Inflation has firmly established a situation where more and more families must bring in two incomes just to make ends meet. If Congress is going to help the American public fight inflation—which it is at least talking about doing during this election year—it seems to me one of the most logical places to start is with the elimination of the marriage tax penalty. By eliminating this tax penalty, we not only reduce the

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taxes the American family is forced to bear in these costly times, but we right a wrong that Congress helped to create. In my opinion, and I'm sure in the opinion of the more than 230 cosponsors of this bill, H.R. 3609 is one necessary building block in the effort to restore permanent incentives and provide the climate of lasting prosperity we need to get our economic house in order.●

● Mr. BALDUS. Mr. Speaker, I am pleased to be participating in this special order today because I believe that it is important during this preelection rash of tax cut proposals for us to reflect upon what we, in Congress, can be doing to really provide some tangible tax relief for our constituents back home in our respective States. We have seen many proposals for many different types of tax cuts and credits, but I can't think of one of them that addresses the direct concerns of as large a group of citizens as the proposal that calls for a repeal of the so-called marriage tax.

The marriage tax penalty came into being in the late 1960's, when the tax structure was revamped to remove what was then an unfair tax burden on single people. It was simply inadvertent that single people ended up paying taxes at lower rates than those people who were married and both working. The net effect is that some 19 million two-wage-earner families are paying a marriage tax to the Federal Government, and those who are aware of it are rightfully angry and resentful at having to do so.

We no longer live in a day and age where it is a luxury for a married woman to work nor where it is more customary for a married woman not to work. Furthermore, for many it has become a downright economic necessity to have a secondary wage earner in a family. It is unfortunate that these marriage tax penalties work special hardship on women who work since they are most frequently the secondary wage earners in a family. A woman may face the steepest tax rates in the tax code because her income is taxed on top of her husband's and the rates of progressivity is much higher in the married schedule than in the other schedule. This same penalty is also faced by the increasing numbers of professional couples who end up paving the highest taxes of all. It is not just a matter of a few hundred dollars assessed upon those few couples in extremely high tax brackets: It signifies approximately $4,500 in extra taxes for married couples earning $35,000 each, and approximately $1,700 for married people earning $20,000 each.

It is no laughing matter that each and every one of us here today has received letters from our constituents claiming that they have either divorced or are considering the possibility of divorce as a means to avoid this tax on their marriages.

It would seem to me that our tax system would do better to reward those men and women who are working together to raise and support a family and themselves—rather than make it increasingly more difficult for them to make ends meet trying to do so.

I believe that we, in Congress, would do well to consider the fact that a repeal of this inequitable tax on marriage would provide more tax relief for a larger number of our constituents than most of the tax proposals that have been introduced in this Congress.

Thank you.●

● Mr. PATTEN. Mr. Speaker, it appears that some semblance of a tax cut will emanate from the 96th Congress. While no one can be certain of how such a tax cut will be composed, I urge that any reduction in taxes be predicated upon a guarantee by the leadership to remedy the marriage penalty in the Internal Revenue Code of 1954.

For those of us who have spent the past decade on this issue, it is clear that the tax cut of 1980 may be the only vehicle to bring about an expeditious end to the marriage tax. During his testimony before the House Ways and Means Committee, Emil Sunley of the Department of the Treasury cited the marriage penalty as a problem of high priority, and an issue which would be addressed by the administration once the requisite funds became available. With recent discussion of a $30 billion tax cut, I say to all my friends on this issue, "the funds are available—Congress now has the means to take action."

Let me assure the skeptics that our objective is far more noble than to merely provide tax relief for a certain group of citizens. We all recognize that middle America has been taking it on the chin in this period of high inflation, high interest, and rising unemployment. Our purpose in remedying the marriage penalty, however, is to provide fairness and justice for those who have, for too long, been discriminated against by our present Tax Code.

Our objective is also bipartisan. This is because the issue of the marriage penalty pervades political and ideological boundaries. Lower- and middle-income couples, the women's right movement, and even the institution of marriage itself is jeopardized by our inaction. Therefore, I call on my colleagues to make every effort to insure that the 96th Congress does not adjourn without this body having put to rest the issue of the marriage tax.

If we agree that the prerequisite to any cut in taxes should be a provision to resolve the marriage penalty, then I would ask my colleagues to look at a plan that I proposed earlier this year. In March 1980, I introduced H.R. 6798, the Marriage Penalty Offset Tax Credit Act. H.R. 6798 employs the tax credit as an equitable and economically prudent method of remedying a substantial portion of the marriage penalty.

The following excerpt of my testimony provides an explanation of how the Marriage Penalty Offset Tax Credit Act would help to ease the harsh effects of the marriage tax. In the crucial weeks ahead, it is my hope that the House Ways and Means Committee will take action to guarantee that the tax cut of 1980 will include a provision addressing the marriage penalty. To that extent, I offer the Marriage Penalty Offset Tax Credit Act of 1980 as a means toward achieving our goal.

TESTIMONY OF REP. EDWARD J. PATTEN, OF NEW JERSEY, BEFORE THE HOUSE COMMITTEE ON WAYS AND MEANS, APRIL 2, 1980—THE MARRIAGE PENALTY OFFSET TAX CREDIT ACT OF 1980 (H.R. 6798)

Mr. Chairman, I am appreciative of the opportunity to address your Committee today. My purpose is to discuss the Marriage Penalty in the Internal Revenue Code, and in specific, the use of a tax credit to remedy this problem.

The present structure of the Internal Revenue Code of 1954 provides a substantial subsidy to married one-paycheck couples, at the expense of married two-paycheck couples. More specifically, the Marriage Penalty generally occurs when neither spouse earns greater than 80 percent of the combined family income.

This penalty is extremly harsh. Many couples are assessed hundreds, and sometimes thousands of dollars in taxes, merely because they fall within the two-paycheck penalty bracket. We know that 19 million couples are affected by the Marriage Penalty each year. The IRS estimates that the penalty amonuts to $11 billion annually.

The tax rates within the Internal Revenue Code have had a checkered history. However, it is fair to say that although Congress did not create the current rates with a discriminatory intent, the present code has been systematically discriminating against lower and middle income families, the institution of marriage, and the equal rights of women. Recognizing the situation as it stands, we have a duty to act affirmatively. We can no longer sit back idly, perpetuating the discriminatory nature of our tax code. To that extent, I must commend you Mr. Chairman, and all of the members of this Committee, for holding hearings today and taking the first step in what undoubtedly will be a long and arduous task of remedying the Marriage Penalty.

The following are brief examples of some of the Marriage Penalty's most blatant discriminatory effects:

1. LOWER AND MIDDLE INCOME COUPLES

What is most intolerable about the Marriage Penalty, is that it primarily discriminates against lower and middle income families. Couples with a combined income within the ranges of $5,000 to $50,000 bear 99 percent of the Marriage Penalty. It is estimated that in 1974, less than 1 percent of the couples paying the penalty had a combined income in excess of $50,000.

It is sad to note that those primarily affected by the Marriage Penalty are least able to bear its burden. These lower and middle income couples are the same families who are presently being most crippled by double-digit inflation, double-digit interest rates, and soon to follow I fear, double-digit unemployment. We need not add insult to injury by making these couples continue to pay more than their fair share of taxes.

2. THE INSTITUTION OF MARRIAGE

There is much evidence to suggest that the weakening of the family unit is eroding the basic fiber of our society. I was raised as a traditionalist, so I believe firmly in the institution of marriage. As a personal aside, I note that this year marks the 45th anniversary of my own marriage.

Whether or not you believe as I do in this sacred institution, I think you will agree that at the very least, the American people deserve a tax system which harbors no prejudice for or against the institution of marriage. Unfortunately, the present Internal Revenue Code offers the American people less than they deserve with respect to this issue.

As Commissioner Kurtz has witnessed

through litigation, the Marriage Penalty is forcing many couples to resort to quickie divorces for tax purposes. These couples remarry and subsequently divorce again before the next tax year emerges. The number of married couples who have been forced to take this route represents only the "tip of the iceberg." We can never begin to estimate those who have opted in favor of nonmarital cohabitation, solely because of a tax system which discriminates against marriage.

3. EQUALITY FOR WOMEN

Nor has the Marriage Penalty been a friend of the women's movement. In short, the penalty is repugnant to modern social reality and to the equal rights of women. Since first coming to Congress, I have witnessed the number of married women in the work force triple. Unfortunately, some of these married women were forced to enter the job market due to economic necessity. It is a somber fact that under present economic circumstances, it takes two paychecks to maintain a family. Yet, despite our sad state of economic affairs, many married women have entered the work force in realization of the new opportunities afforded them through changes in the law and enlightened thinking. For these women, the Marriage Penalty serves as a major obstacle toward reaching their full potential.

The Marriage Penalty tells women, "it will be cheaper for you to remain in the home as a housewife, than to enter the active labor force and explore a career in any of the ever expanding number of job opportunities." It would truly be ironic for a government on one hand to give women the legal right to be all they can be, while at the same time perpetuating economic disincentives to discourage women from exercising their newly won rights.

Congress cannot be oblivious to the increasing number of married women in the work force. Nor can we ignore the chilling effect the Marriage Penalty has had on this nation's goal of achieving equality for women.

MARRIAGE PENALTY OFFSET TAX CREDIT ACT OF 1980

There is no secret to eradicating the Marriage Penalty from the Internal Revenue Code. Creating one tax rate schedule for both married and single persons would permanently end this controversy. The IRS claims that the cost of eliminating the penalty would be $11 billion. I support proposals which would eliminate the Marriage Penalty. However, I have been in these hallowed halls too long to know that this Congress is not prepared to bear the $11 billion price tag of this proposal.

Mr. Chairman, most of us in this room have spent nearly a decade trying to remedy the Marriage Penalty problem. To this date, we have failed to attract sufficient support from our colleagues to move this issue beyond square one. I find that especially in a year when the President is asking us to balance the budget, a permanent solution to the problem of the Marriage Penalty is not politically feasible.

Despite the fact that it is impractical to think that Congress can eliminate an $11 billion Marriage Penalty in one year, there are 38 million Americans desperately in need of some form of immediate relief. Recognizing the major symptoms of the Marriage Penalty, I have introduced H.R. 6798, the Marriage Penalty Offset Tax Credit Act of 1980.

Let me preface my discussion of H.R. 6798 by emphasizing that my bill does not portend to the definitive answer to the Marriage Penalty problem. However, I believe that especially through the use of the Tax Credit, H.R. 6798 can serve to eliminate a substantial portion of the penalty, especially among lower and middle income couples, at a cost which is fiscally responsible.

TAX CREDITS AND EQUITY

I have seen many proposals dealing with the Marriage Penalty. As I recall, most of these proposals would use a deduction to help offset the Marriage Penalty. I am an ardent supporter of Tax Credits as opposed to deductions, and my bill relies firmly on the concept of using the Tax Credit to help remedy the Marriage Penalty.

Unlike itemized deductions, Tax Credits are available to all eligible married couples, regardless of whether they file the long or short form with the IRS. Moreover, where deductions provide a greater benefit for persons in higher income brackets, a Tax Credit provides a dollar for dollar deduction against tax owed, without discriminating on the basis of income. As a matter of equity, it makes far more sense to combat the Marriage Penalty with a Tax Credit.

ELIGIBILITY

Mr. Chairman, I have seen some proposals which would provide *all* married couples with a deduction or credit to remedy the Marriage Penalty. However, these proposals are excessive.

Whenever one spouse earns greater than 80% of the total earned income of the husband and wife, the Marriage Penalty dissipates. In fact, these one-paycheck families presently enjoy a Marriage Benefit under the Internal Revenue Code. If our aim is to offset the Marriage Penalty at a cost affordable to this Congress, we cannot provide those couples presently receiving a Marriage Benefit with additional deductions or credits.

H.R. 6798 provides for a Tax Credit equal to 10% of the earned income of the Secondary Wage Earner (i.e. the spouse earning 50% or less of the couple's combined earned income). The maximum credit allowable is $500 and the credit is nonrefundable. In order to make H.R. 6798 as lean and efficient as possible, I have formulated the Marriage Penalty Offset Tax Credit to only trigger when couples are actually faced with a Marriage Penalty.

Under the Marriage Penalty Offset Tax Credit Act of 1980, a married couple would only be eligible for a 10 percent tax credit when the Secondary Wage Earner earns 30 percent or more of the combined earned income of the husband and wife. The 10 percent tax credit shall be reduced by one percent for every percent the Secondary Wage Earner earns less than 30 percent of the couple's combined earned income.

As you can see from the eligibility table, my Tax Credit would dissipate with the Marriage Penalty. There is no Tax Credit for couples where one spouse earns 80 percent or more of the combined income of the husband and wife (i.e. one-paycheck families).

ADDITIONAL CONSIDERATIONS

1. Earned Income under H.R. 6798, is the same as defined under I.R.C. § 43(c)2.

2. Only one spouse shall be treated as the Secondary Wage Earner, even when both husband and wife each earn 50 percent of their combined earned income.

3. The Tax Credit is only allowable where married couples file a Joint Return under I.R.C. § 6013.

Eligibility Table for the Marriage Penalty Offset Tax Credit Act of 1980

Second wage earner's percentage of earned incomes:	*Tax credit percentage*
50 to 30 percent	10
29 percent	9
28 percent	8
27 percent	7
26 percent	6
25 percent	5
24 percent	4
23 percent	3
22 percent	2
21 percent	1
20 to 0 percent	0

EFFECT

I am especially pleased with the results indicating that H.R. 6798 would have its primary impact upon married couples filing joint returns in the $5,000 to $50,000 ranges of income. As stated earlier, these taxpayers are most in need of immediate relief. While my bill would not eliminate the entire Marriage Penalty, it would provide eligible lower and middle income couples with genuine assistance until such time as the Congress is able to completely eliminate the Marriage Penalty.

Earlier in the year, the IRS conducted a revenue study on several of my proposals to remedy the Marriage Penalty. Their results indicated that a bill similar to H.R. 6798 would cost about $5.5 billion. Since that study, I have incorporated several refinements in my proposal which leads me to believe that H.R. 6798 may cost substantially less than projected by the IRS. Chief among those refinements was basing eligibility on earned income percentages, instead of gross income.

In order to receive a more accurate projection of the cost of H.R. 6798, I have commissioned the Joint Committee on Taxation to conduct a revenue study on the Marriage Penalty Offset Tax Credit Act of 1980. I am confident that my proposal will cost the Treasury less than $5 billion.

As an additional note on cost, I must emphasize one point, Mr. Chairman. Our actions here today should not be construed by our fellow members or the White House, as providing eligible married couples with a tax cut. That issue has become a matter of partisan debate and presidential politics. Rather, what we are doing today is simply eliminating the injustice of over-taxation which has been wrongfully imposed upon 38 million Americans for almost one decade.

CONCLUSION

Mr. Chairman, while I have spoken unwaveringly in support of H.R. 6798, I must pay deference to the expertise of yourself and this Committee.

I do know, for example, that there will be instances in which the Marriage Penalty Offset Tax Credit will not only remedy the Marriage Penalty, but occasionally overcorrect the inequity. Also, this Committee may develop an opinion on whether or not the Marriage Penalty Offset Tax Credit should be non-refundable. But collateral issues aside, I hope that I may impress upon this Committee the importance of adopting the Tax Credit as a means to offset a substantial portion of the Marriage Penalty.

We are going to hear many proposals today, from many able men and women who are genuinely concerned about the lower and middle income married persons who are in such desperate need. I can only hope that when this Committee concludes its work, it will see fit to incorporate the concept of the Tax Credit and the provisions of the Marriage Penalty Offset Tax Credit Act of 1980, as a viable legislative program to help the working married couple.●

Mr. PEYSER. Mr. Speaker, I yield back the remainder of my time.

SUMMARY OF MAJOR RECOMMENDATIONS OF THE NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. CORMAN) is recognized for 15 minutes.

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● Mr. CORMAN. Mr. Speaker, at a press conference this morning, Wilbur J. Cohen, Chairman of the National Commission on Unemployment Compensation, presented a summary of the major recommendations of the Commission, along with a summary of the positions of the Commission members on each issue that was considered.

I have included the outline summary of the Commission's major policy recommendations at the end of this statement and hope that all Members will take the time to read it. The compete preliminary document released today can be obtained by calling the National Commission Office at 235–2782. The comprehensive final report of the Commission is expected to be completed by the end of September.

The National Commission on Unemployment Compensation was established by Public Law 94–566, enacted in October 1976. This law directed the Commission to undertake a thorough and comprehensive examination of the Federal-State unemployment compensation system and, on the basis of that examination, to recommend to Congress and the President necessary and appropriate changes in the unemployment compensation law.

The Commission was chaired by former Secretary of Health, Education, and Welfare Wilbur J. Cohen, and was composed of representatives of management, labor, and the general public. It included one Member of Congress, Representative MARY ROSE OAKAR of Ohio. The Commission completed its consideration of legislative recommendations on June 30. This concluded 28 months of dedicated effort by the Commission members and staff, including 80 days of working meetings—37 days of public hearings—in 18 different cities, the commissioning of 65 research projects and preparation of over 5,000 pages of research and analysis. The final report of the Commission will address a broad range of issues, covering the financing, adequacy, and administration of unemployment benefits.

The Commission's recommendations should provide the legislative agenda for unemployment compensation in the 97th Congress. It is my intention to incorporate the Commission's recommendations into a bill as soon as the Congress receives the final report and to hold public hearings before the Subcommittee on Public Assistance and Unemployment Compensation as soon as the schedule permits.

The Commission has provided the most thorough and important examination of the Federal-State unemployment compensation system that has ever been undertaken. The congressional response should be commensurate with the work of the Commission in its thoroughness, objectivity, and commitment to strengthening the unemployment compensation system.

The material follows:

OUTLINE OF MAJOR RECOMMENDATIONS OF THE NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

I. REMOVAL OF UNEMPLOYMENT COMPENSATION ACCOUNTS FROM THE UNIFIED FEDERAL BUDGET

State unemployment compensation revenues, benefit payments, and trust fund reserves should not be used in computing Federal income or expenditures. Inclusion of these items in the Federal budgetary process not only distorts Federal budget realities, but has led to congressional decisions based upon truncated deliberations without full hearings and adequate consideration of the substantive issues involved and their impact upon State unemployment compensation programs.

II. FINANCIAL—RECOMMENDATIONS FOR PUTTING THE FEDERAL-STATE PROGRAM ON SOUND FINANCIAL FOOTING

A. Increase in Federal Unemployment Tax Act (FUTA) taxable wage base:

1. Establish wage base as a percent of national average total wage in covered employment so that as wages increase, the base will increase automatically.

2. 50 percent beginning in 1983; 55 percent beginning 1985; 60 percent beginning in 1987; and 65 percent beginning in 1989.

B. Reduce employer payroll taxes for past debts:

1. Reduce employer payroll taxes under FUTA by canceling current indebtedness from FUTA collections to Federal general revenues:

(a) Federal Supplemental Benefits ($5.8 billion)

(b) Federal share of Extended Benefits paid when the national trigger was on in 1975 through 1978 ($3.3 billion)

2. Reduce employer payroll taxes under State unemployment compensation laws by rebating to the States the State share of Extended Benefits paid when the national trigger was on in 1975 through 1978 ($3.3 billion).

Total reduction in employer payroll taxes: $12.4 billion.

C. Strengthen requirements for borrowing from loan fund to assure prudent financial policies:

1. Moneys borrowed in the future should bear interest;

2. Acceptable State solvency provisions required as a condition for borrowing;

3. No further deferrals of repayment;

4. Permit States to repay loans from their trust funds on an incremental installment basis as an alternative to recapture through automatic increases in employer FUTA taxes.

D. Reinsurance—provide States protection against unusually heavy benefit costs in order to maintain State solvency:

1. Financed from a contribution rate of 0.1 percent of taxable payrolls over at least a seven-year period (without increasing present FUTA tax);

2. Initial rate of payment not to exceed 30 percent of excess costs (however defined) and no payment before 1985 (prorated if balance in fund is insufficient for full payout);

3. Benefits costs must exceed 2.7 percent of taxable payrolls before a State could qualify;

4. Reexamine reinsurance experience at end of decade.

E. Establish Board of Trustees for UI trust funds to:

1. Set investment policy for trust fund;

2. Report to Congress on estimated amounts to finance sound administration;

3. Develop improvements in policies and laws governing management of trust funds, and recommend changes to improve financing, benefits and administration of UI, ES programs;

4. Explore State investment of specified portion of its reserve funds in non-Federal obligation to earn higher rate of interest than available by Federal investment.

Board to consist of three cabinet officers and representatives of employers, labor, and the general public.

F. Correct FY 1982 shortfall in funds for State costs of administration:

Present appropriation ceilings that permit only a fixed portion of FUTA collection for administration of UI and ES programs will result in a FY 1982 shortfall of $230 million. Recommend a one-time congressional authorization to raise the ceiling and permit transfer from unused FUTA funds. An additional $100 million advance from general revenues will also be needed.

G. Recommendations to the States on financing—(not Federal law changes):

1. States should reexamine State solvency provisions and establish objective of a reserve balance based on careful evaluation of past and prospective benefit-cost ratios and future revenue-generating capacity;

2. Ensure effective charging of all benefits in fund replenishment provisions of solvency arrangements.

3. Eliminate zero minimum tax rates and establish maximum rates in terms of anticipated benefit costs;

4. New employer rates equal to average rate for their industry.

5. In any individual State, the operation of its system of experience rating and tax schedules should be adjusted in relation to the wage base and the amount of tax revenues needed to assure the solvency of the trust fund.

III. REMOVE UNEMPLOYMENT BENEFITS FROM BEING SUBJECT TO FEDERAL INCOME TAX

1. Taxation of benefits may be offset by an equal increase in benefits;

2. Discriminatory treatment since not all other income is presently taxed under Federal Income Tax;

3. No effective way for IRS to police tax provision.

IV. BENEFITS—RECOMMENDATIONS FOR ENSURING A SOUND BENEFIT STRUCTURE

A. Repeal current Federal standards:

1. Repeal current FUTA requirement that States restrict eligibility of certain undocumented alien workers.

2. Repeal current FUTA requirement that States deny payment of benefits to professional athletes under certain conditions.

3. Repeal current FUTA requirement that States reduce benefits by amount of any pension payment received by a claimant.

4. Repeal FUTA provisions requiring States to deny benefits to professional employees between school terms and prohibiting States from applying such denial to nonprofessional employees of colleges and universities. Permit States discretion to handle issues of payment or denial during school breaks without Federal restrictions.

B. Establish Federal basic minimum benefits standards:

1. Maximum equal to 55 percent of State average weekly wage beginning in 1982, 60 percent in 1984, 66⅔ percent in 1986.

2. Weekly benefit below State maximum that averages at least 50 percent of individual's average weekly wage.

3. No more than 39 weeks of work for 26 weeks of benefits.

4. Change current FUTA requirement barring total cancellation of benefit rights to prohibit any cancellation of benefits rights except for fraud and receipt of disqualifying income.

C. Greater protection during periods of heavy unemployment and to older workers:

1. Change State Extended Benefit trigger to remove the 120 percent factor, establish the trigger as an IUR of 4.0 percent seasonally adjusted for a 13-week moving average and repeal current 5.0 percent option.

2. Establish permanent (triggered) FSB-type program extending total benefits to maximums of 52 weeks and 65 weeks during periods of high unemployment.

3. Establish lifetime reserve benefit program for workers 60 and over with at least 40 social security quarters of credit and current UI eligibility—to a maximum total benefits of 52 weeks.

D. Program for Displaced Homemakers:

Recommend that Congress and Department of Labor give consideration to possible solutions to problems of this group through: unemployment insurance credits for equivalent work; transfer of unemployment compensation credits earned by spouse; and pilot projects or studies.

E. Recommendations to States—(not Federal law changes):

1. Weekly benefit amount of not less than 50 percent, preferably 60 percent, of claimant's average weekly wage.

2. Maximum of 66⅔ statewide average weekly wage, with periodic adjustment to ensure that a significant percentage (75–80 percent) have a 50 percent wage replacement rate.

3. Partial benefit formula that provides strong incentives to accept part-time work.

4. Minimum qualifying requirement of at least 14 weeks but not more than 39 weeks for 26 weeks of benefits.

5. No disqualification for voluntary leaving with good cause including compelling family obligations and sexual harassment

6. Disqualification for misconduct limited to misconduct connected with the work.

7. No reemployment and earnings requirement for any disqualifying act.

8. Disqualifications for discharge for misconduct, refusal of work, voluntary quit should be for a variable number of weeks depending upon seriousness of the action.

9. No specific actively seeking work availability requirement.

F. Extend and maintain coverage:

1. To agricultural workers on the same basis as other workers instead of current limitation to farms with ten or more workers or a $20,000 quarterly payroll;

2. To household workers if employer pays $50 (instead of $1,000) for such service in a quarter;

3. Oppose pending legislation redefining independent contractor which would remove substantial numbers of workers from unemployment compensation coverage

V. INITIATIVES FOR INCOME MAINTENANCE OF THE LONGER-TERM UNEMPLOYED

A. Increase in CETA job slots:

In the absence of any other Federal programs to provide job opportunities to those who have exhausted unemployment compensation benefits, the total number of CETA job slots should be doubled, from 450,000 to 900,000.

B. Financing of unemployment compensation benefits for CETA workers:

Proposals to repeal funding of unemployment compensation benefits to CETA job-programs employees from the Federal Unemployment Benefit Account (general revenues) should be rescinded. Repeal would require that annual cost of $35–50 million be paid from CETA program grant funds or other State or prime sponsor sources.

C. Unemployment Assistance:

Recommend establishment of a program of income-tested benefits, administered completely separate from unemployment compensation, to provide some minimum protection for all unemployed persons exhausting or not eligible for unemployment compensation benefits, and for whom no other job or program is available.

VI. MORE EFFICIENT ADMINISTRATION

A. Permit U.S. Treasury Department to delegate State collection of FUTA taxes.

B. Allocate additional Federal funds to improve techniques and develop special procedures for detection of fraud, errors, and tax delinquencies.

C. Require quarterly wage reporting to assist cross-matching and prompt payment of benefits.

D. Strength appeals process:

1. Remove specific obstacles in State laws to fair hearings and take steps to ensure all parties know and understand the law, their rights and obligations.

2. Improve quality of hearings and determinations by developing better trained, more competent referees.

3. Establish specific promptness standard for second-level appeals performance.

E. Strengthen and implement procedures aimed at speeding the processing of interstate claims and appeals.

F. Increased Grants-to-States for administrative financing for unemployment compensation and employment service;

1. Full funding of cost model instead of 85 percent as in FY 1980;

2. Greater flexibility to States to use funds and retain funds until third quarter;

3. Reauthorization of Reed Act money for use by States;

4. Improved Federal staffing for technical assistance to States.

G. Strengthening and improving the United States Employment Service (ES):

A substantial and continuing increase in basic ES staffing is imperative to meet the needs of unemployment compensation claimants and all other unemployed workers and of employers in filling job vacancies promptly.

Instead of the present 15-year-old ceiling of 30,000 ES position, a gradual increase should begin as quickly as feasible, using four ES staff years per 10,000 workers in the civilian labor force, to reach 50,000 positions by 1985.

H. Administrative costs of non-FUTA subject employers (State and local government, and nonprofit employers):

These costs should not continue to be borne by FUTA subject employers, as at present. One possible option is to have such costs paid from Federal general revenues.

VII. SPECIAL EMPLOYEE PROTECTION PROGRAMS (TRADE ADJUSTMENT ACT, ETC.)

A. Special Federal programs should not be paid concurrently or be a supplement to UI.

B. Total costs of such programs should be paid from general revenues.

C. Amount and duration of special program benefits should not be considered precedent or pattern for UI.●

IN MEMORY OF REPRESENTATIVE HAROLD RUNNELS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BRADEMAS) is recognized for 5 minutes.

● Mr. BRADEMAS. Mr. Speaker, I join my colleagues in sadly paying tribute to the memory of Representative Harold Runnels, whose service to his constituents in New Mexico and the Nation ended with his death on August 6.

Mr. Speaker, Harold Runnels brought his knowledge of the energy industry to his work on the Committee on Interior and Insular Affairs where he was a forceful advocate of policies he considered best for the Nation's future needs. As a member of the Committee on Armed Services, he supported measures to maintain a strong national defense.

The effectiveness with which Harold Runnels served in this body is attested to by the fact that he was the first officeholder in New Mexico's history to be without opposition in either the primary or general election in 1978. This year Congressman Runnels had only token opposition in the primary and no opponent in November.

I had the privilege of knowing Harold Runnels since 1971 when he began his service in the House. His reputation for honesty and straightforwardness was well-deserved.

Mr. Speaker, Harold Runnels was also one of the wittiest and engaging persons to sit in this body.

In his last months with us we also recognized his courage as he fought a valiant battle against illness—a battle he knew could not be won.

Mr. Speaker, Harold Runnels served the Nation well. He will be missed.●

TALK OF FEDERAL PROMOTION OF EDUCATIONAL EXCELLENCE IS HOGWASH

(Mr. ASHBROOK asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. ASHBROOK. Mr. Speaker, President Carter claims to be the most "pro-education" President in our Nation's history. For the next 71 days we can expect that claim to be repeated over and over again. We can expect to hear Mr. Carter boasting about his increases in Federal education spending, and his creation of a Cabinet-level Department of Education.

But there is a serious problem with this claim. The programs expanded by Mr. Carter and the Democratic Congress have actually harmed education. Academic achievement, as measured by standardized test scores, has been going downhill ever since massive Federal involvement began 15 years ago. Public confidence in the schools has been declining since at least 1970, teacher morale is at its lowest point in history, and so many principals in the public schools are planning to leave their jobs that within 2 years we worry that not many "exceptional" principals will be left.

If there is one thing the Federal Government has shown it cannot do, it is the promotion of educational excellence. Mr. Carter's education bureaucracy is required by law to set specific goals for its programs and to report annually to Congress on its progress toward those goals; but the bureaucrats have never once obeyed that law, and the Democratic Congress has never penalized them for not obeying. Their skills in the NEA are part of the problem and so right along with Federal meddling.

What Washington can do is to make it harder for teachers to teach by strangling them with redtape, and that is exactly what Mr. Carter and the Democratic Congress have done. The Federal paperwork burden on State and local ed-

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ucators for the coming school year amounts to about 10 million man-hours, and every minute of that time will be taken away from what these educators want to do and what local taxpayers hired them to do. There are over 1,000 pages of fine print regulations propounded by education bureaucrats—not all in this administration, of course, but certainly expanded by Carter appointees.

The only way to rescue the public school system is to take power away from Mr. Carter's bureaucrats and restore it to individual principals, classroom teachers, and democratically elected local school boards. This administration and this Congress have chosen to travel in precisely the opposite direction—toward greater centralization—and that mistaken choice has harmed every school in America.●

THE RAILROAD RETIREMENT SYSTEM MUST BE SAVED

(Mr. FISH asked and was given permission to extend his remarks at this point.)

● Mr. FISH. Mr. Speaker, I wish to address the House in the matter of an early hearing and quick enactment of legislation which is of critical importance to railroad workers throughout the United States, their wives and their dependents.

The bill to which I refer is H.R. 7793.

I have joined with others in this body in cosponsoring this important measure which must be enacted before this Congress adjourns if we are to save the basic railroad pension system for which railroad men and women have worked throughout their full railroad employment and to which they are deservedly entitled.

There are more than 91,000 persons in New York State alone who depend heavily upon a railroad retirement pension as their basic, if not their only, source of income during their retirement years. Those individuals affected include active and retired railroad employees, their wives and their dependents.

Throughout the country there are more than 1½ million participants and beneficiaries in the railroad industry whose secure future depends upon a speedy resolution of the problems which this bill addresses.

These problems, with which the bill is concerned, are twofold. First, the cost-of-living provisions in the Railroad Retirement Act which adjust the amount of the retirement benefit in terms of the declining value of the dollar will expire on January 1, 1981, unless these provisions are reauthorized by Congress. Second, an immediate and significant cash crisis has developed in the railroad retirement system, which if not forestalled, will cause a total collapse of the program before too long.

Current law provides for an annual adjustment in the railroad pension based on 32.5 percent of the annual increase in the Consumer Price Index. These annual adjustments are really minimal in impact as they represent less than one-third of the cost of living adjustment applied to the social security benefit or to the Federal employees retirement benefit.

The preretirement cost-of-living adjustment provided for in current law amounts to 62.5 percent of the annual fluctuation in the Consumer Price Index. This too will expire if this legislation is not enacted. Indexing in the railroad retirement program is based on a complicated formula which calculates the dollar amount of the pension and takes into consideration, among other factors, levels of earnings in preinflation years. Thus extension of this provision is essential to a substantive pension policy.

I firmly believe that few will argue with continuing this limited form of indexing to reflect the declining purchasing power of retirement dollars. It is a matter of equity, pure and simple.

The other problem addressed by this bill is the cash flow crisis currently afflicting the railroad retirement system. The financial stability of the system has steadily declined over the last few years and, if nothing is done to alleviate the crisis, the projected balance in the railroad retirement account will reach zero by 1986. Of course the effects of this could be felt by as early as mid-1982 if the general economic trend does not improve.

This economic condition has been caused by a number of factors of which the most significant appears to be inflation. High unemployment resulting in fewer payroll dollars going into the system coupled with the continuing drain of windfall benefit payments have aggravated the shortfall to the present point of crisis.

In other words, and more simply, payments far exceed revenues right now and the revenue produced solely from the 9.5-percent payroll tax is not enough.

The bill further provides for a variable or self-adjusting tax which will go up or down depending on whether the railroad retirement reserve goes up or down. It is modeled after the system which has worked so successfully in the financing of the railroad unemployment insurance program. This variable tax is designed to maintain a minimum of 3 months' reserve at the lowest point of the account.

In point of fact if Congress does not act this year to save the railroad retirement system—heretofore a self-financing system—then we can expect that some form of Federal subsidy will be necessary next year to tide the system over its cash crisis. This infusion of general funds for this purpose would be unprecedented and would certainly make the argument for a Federal bailout in other areas much more likely.

The consequences of a collapse of the railroad retirement system are much too devastating to contemplate. We cannot let this happen. That the 96th Congress act in this matter cannot be questioned.●

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. PEYSER, for 60 minutes, today.

(The following Members (at the request of Mr. LIVINGSTON) to revise and extend their remarks and include extraneous material:)

Mr. DORNAN, for 10 minutes, today.

Mr. RHODES, for 60 minutes, on August 28.

Mr. GILMAN, for 60 minutes, on September 3.

(The following Members (at the request of Mr. TAUZIN) to revise and extend their remarks and include extraneous material:)

Mr. GONZALEZ, for 15 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. CORMAN, for 15 minutes, today.

Mr. DOWNEY, for 5 minutes, today.

Mr. BRADEMAS, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. FISH, to extend his remarks prior to the vote on the veto overriding of H.R. 7102.

Mr. DORNAN, to extend his remarks immediately preceding the vote on H.R 6974.

Mr. SANTINI, to extend his remarks immediately preceding the vote on H.R. 6974.

Mr. MITCHELL of Maryland, on H.R. 6711, the Youth Act of 1980, in the Committee of the Whole today.

(The following Members (at the request of Mr. LIVINGSTON) and to include extraneous matter:)

Mr. CAMPBELL.
Mr. RITTER.
Mr. CONTE.
Mr. MICHEL.
Mr. GOODLING in two instances.
Mr. HYDE.
Mr. LIVINGSTON.
Mr. FINDLEY.
Mr. LAGOMARSINO in three instances.
Mr. HOLLENBECK.
Mr. GREEN.
Mr. DORNAN in two instances.
Mr. DERWINSKI in two instances.
Mr. QUAYLE.
Mr. ROTH.
Mr. ASHBROOK in two instances.
Mr. PURSELL.

(The following Members (at the request of Mr. TAUZIN) and to include extraneous matter):

Mr. BARNES in two instances.
Mr. ICHORD.
Mr. STOKES in two instances.
Mr. NOWAK in five instances.
Mr. RODINO.
Mr. DINGELL in two instances.
Mr. WEISS.
Mr. FISHER.
Mr. HAMILTON.
Mr. MOFFETT.
Mr. WHITLEY.
Mr. MAVROULES.
Mr. YOUNG of Missouri.
Mr. STARK.
Mr. MOORHEAD of Pennsylvania.
Mr. GIAIMO.

Mr. WOLFF in two instances.
Mr. MINISH.
Mr. MCDONALD.
Mr. HARRIS.
Mr. PATTEN.
Ms. OAKAR in two instances.
Mr. DONNELLY.
Mr. SKELTON.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2549. An act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes.

[Inadvertently omitted from the Record of August 25, 1980]

S. 496. An act to increase the appropriations ceiling for title I of the Colorado River Basin Salinity Control Act (the act of June 24, 1974; 88 Stat. 266), to increase the appropriations authorization for the Small Reclamation Projects Act of 1956 (70 Stat. 1044), and for other purposes.

ENROLLED BILL SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 5892. An act to provide for an accelerated program of wind energy research, development, and demonstration, to be carried out by the Department of Energy with the support of the National Aeronautics and Space Administration and other Federal agencies, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, bills of the House of the following title:

On August 11, 1980:

H.R. 7102. An act to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes; and

H.R. 7786. An act to amend Public Law 90-331 to provide for personal protection of the spouses of major Presidential and Vice-Presidential candidates during the 120-day period before a general Presidential election.

On August 21, 1980:

H.J. Res. 589. Joint resolution providing additional program authority for the Export-Import Bank.

ADJOURNMENT

Mr. PEYSER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 27 minutes p.m.), the House adjourned until tomorrow, Wednesday, August 27, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5162. A letter from the Acting Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice that a decision has been made to convert the military family housing maintenance function at Williams Air Force Base, Ariz., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5163. A letter from the Acting Assistant Secretary of the Air Force (Research), Development and Logistics), transmitting notice that a decision has been made to convert the military family housing maintenance function at Columbus Air Force Base, Miss., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5164. A letter from the Secretary of Education, transmitting proposed final regulations to implement Executive Order 12185 on energy conservation awareness, pursuant to section 431(d)(1) of the General Education Provision Act; to the Committee on Education and Labor.

5165. A letter from the Chairman, U.S. Nuclear Regulatory Commission, transmitting reports covering the second and third quarters of fiscal year 1980 on the Commission's hiring and promotion of minorities and women, pursuant to section 201(h) of the Energy Reorganization Act of 1974, as amended (91 Stat. 1482); to the Committee on Post Office and Civil Service.

[Omitted from the Record of August 25, 1980]

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 6121. A bill to amend the Communications Act of 1934 to make certain revisions in the provisions of such act relating to the regulation of telecommunications activities; with amendment. Referred to the Committee on the Judiciary for a period ending not later than October 1, 1980 for consideration of such provisions of the bill and amendment as fall within its jurisdiction under clause 1(m), rule X (Report No. 96-1252, pt 1).

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MOAKLEY: Committee on Rules. House Resolution 767. Resolution providing for the consideration of H.R. 6417. A bill to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes (Rept. No. 96-1253). Referred to the House Calendar.

Mr. DERRICK: Committee on Rules. House Resolution 768. Resolution providing for the consideration of H.R. 6628. A bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes (Rept. No. 96-1254). Referred to the House Calendar.

Mr. ZEFERETTI: Committee on Rules. House Resolution 769. Resolution providing for the consideration of H.R. 6721. A bill to provide for the improvement of the Nation's airport and airway system, and for other purposes (Rept. No. 96-1255). Referred to the House Calendar.

Mr. BEILENSON: Committee on Rules. House Resolution 770. Resolution providing for the consideration of H.R. 5806. A bill to amend sections 46(f) and 167(l) of the Internal Revenue Code of 1954 regarding the treatment of public utility property and to provide a transitional rule with respect thereto (Rept. No. 96-1256). Referred to the House Calendar.

Mr. MURPHY of Illinois: Committee on Rules. House Resolution 771. Resolution providing for the consideration of H.R. 7668. A bill to strengthen the system of congressional oversight of the intelligence activities of the United States (Rept. No. 96-1257). Referred to the House Calendar.

Mr. ULLMAN: Committee on Ways and Means. H.R. 7779. A bill to amend the Internal Revenue Code of 1954 to authorize three additional judges for the Tax Court; with amendments (Rept. No. 96-1258). Referred to the Committee of the Whole House on the State of the Union.

Mr. PERKINS: Committee on Education and Labor. Report pursuant to section 302(b) of the Congressional Budget Act of 1974 (Rept. No. 96-1259). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ADDABBO:

H.R. 8023. A bill to amend the Social Security Act to provide that the Federal Government will gradually take over the local share of welfare and medicaid costs, and for other purposes; jointly, to the Committees on Ways and Means and Interstate and Foreign Commerce.

By Mr. BROOKS (for himself, Mr. WRIGHT, Mr. PICKLE, Mr. KAZEN, Mr. HALL of Texas, Mr. CHARLES WILSON of Texas, Mr. COLLINS of Texas, Mr. GRAMM, Mr. ARCHER, Mr. ECKHARDT, Mr. LEATH of Texas, Mr. WYATT, Mr. STENHOLM, Mr. LELAND, Mr. HANCE, Mr. LOEFFLER, Mr. PAUL, Mr. FROST, Mr. MATTOX, Mr. GONZALEZ, Mr. HIGHTOWER, Mr. WHITE, Mr. DE LA GARZA, Mr. JOHNSON of California, Mr. HARSHA, and Mr. CLAUSEN):

H.R. 8024. A bill to change the name of Aubrey Lake, Tex., to Ray Roberts Lake; to the Committee on Public Works and Transportation.

By Mr. ECKHARDT (for himself and Mr. WAXMAN):

H.R. 8025. A bill to limit medicare and medicaid payments for certain drugs; jointly, to the Committees on Ways and Means and Interstate and Foreign Commerce.

By Mr. GOODLING (for himself and Mr. ASHBROOK):

H.R. 8026. A bill to amend the Farm Labor Contractor Registration Act of 1963; to the Committee on Education and Labor.

By Mr. OBERSTAR:

H.R. 8027. A bill to provide for the extension of the period for repayment of revenue bonds issued by the St. Lawrence Seaway

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Development Corporation to the Secretary of the Treasury from 50 years to 80 years, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. PASHAYAN (for himself and Mr. COELHO):

H.R. 8028. A bill to amend the Internal Revenue Code of 1954 to provide for nonrecognition of gain on the sale or exchange of farm property under rules similar to the rules for nonrecognition of gain on the sale or exchange of a principal residence; to the Committee on Ways and Means.

By Mr. WEISS:

H.R. 8029. A bill to amend title 44, United States Code, to permit citizen suits to recover records wrongfully removed from agency files; to the Committee on Government Operations.

By Mr. WON PAT:

H.R. 8030. A bill to grant diversity jurisdiction to the District Court of Guam, and to grant such jurisdiction to such court regardless of the sum or value of the matter in controversy; to the Committee on Interior and Insular Affairs.

By Mr. MOORHEAD of Pennsylvania:

H.J. Res. 600. Joint resolution to authorize and request the President to designate the week of September 7, 1980, to September 14, 1980, as "National Life Flight Week"; to the Committee on Post Office and Civil Service.

By Mr. DORNAN:

H. Con. Res. 421. Concurrent resolution expressing the sense of Congress for the Polish people; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1918: Mr. TRAXLER and Mrs. SMITH of Nebraska.

H.R. 3258: Mr. STANTON.

H.R. 4223: Mr. BEARD of Rhode Island, Mr. CONTE, Mr. GRAY, Mr. GREEN, Mr. RINALDO, and Mr. WHITEHURST.

H.R. 5211: Mr. ROE.

H.R. 5401: Mr. SEIBERLING, Mr. ROE, Mr. JENRETTE, Mr. MATTOX, Mr. RODINO, Mr. OTTINGER, Mr. ERDAHL, Mr. BENNETT, Mr. MITCHELL of Maryland, Mr. BUCHANAN, Mr. ROSENTHAL, Mr. THOMPSON, Mr. MILLER of Ohio, Mr. NOWAK, Mr. PORTER, Mr. PANETTA, Mr. WEAVER, Mr. VAN DEERLIN, Mr. LUNDINE, Mr. PREYER, Mr. OBERSTAR, Mr. NEAL, Mrs. COLLINS of Illinois, Mr. BAILEY, and Mr. STOKES.

H.R. 6194: Mr. PETRI, Mr. HEFTEL, and Mr. ROYER.

H.R. 6402: Mr. BADHAM.

H.R. 6637: Mr. MICHEL, Mr. DANNEMEYER, Mr. GOLDWATER, and Mr. STOCKMAN.

H.R. 7089: Mr. PRICE, Mr. MURPHY of Illinois, Mr. COTTER, Mr. GRAY, Mr. LEHMAN, Mr. SCHEUER, Mr. CONYERS, Mr. YOUNG of Missouri, Ms. SPELLMAN, Mr. VENTO, and Mr. YATES.

H.R. 7254: Mr. BARNES, Mr. SCHEUER, Mr. BOLAND, Mr. BUTLER, Mr. MOFFETT, Mr. STARK, Mr. DASCHLE, and Mr. WIRTH.

H.R. 7286: Mr. MOLLOHAN.

H.R. 7319: Mr. JENRETTE, Mr. OTTINGER, Mr. GINGRICH, and Mrs. SPELLMAN.

H.R. 7557: Mr. PICKLE, Mr. PREYER, and Mr. EVANS of the Virgin Islands.

H.R. 7688: Mr. WILLIAMS of Montana, Mr. HOPKINS, Mr. MOFFETT, Mr. SCHEUER, Mr. FASCELL, Mr. DUNCAN of Tennessee, Mr. EVANS of the Virgin Islands, Mr. STACK, Mr. OBERSTAR, Mr. EVANS of Indiana, Mr. PORTER, Mr. COELHO, Mr. PAUL, Mr. MARRIOTT, Mr. MAVROULES, Mr. AUCOIN, Mr. DOUGHERTY, Mr. ROE, Mr. LEVITAS, Mr. ULLMAN, Mrs. SPELLMAN, Mr. MATHIS, and Mr. GINN.

H.R. 7749: Mr. SEBELIUS, Mr. THOMAS, Mr. DERWINSKI, Mr. ROYER, Mrs. SPELLMAN, and Mr. RAILSBACK.

H.R. 7770: Mr. PETRI, Mr. FUQUA, and Mr. KOSTMAYER.

H.R. 7846: Mr. ARCHER, Mr. COLLINS of Texas, Mr. ROYER, Mr. FORSYTHE, Mr. STOCKMAN, Mr. BADHAM, Mr. WHITEHURST, Mr. EDWARDS of Oklahoma, Mr. DERWINSKI, Mr. ERDAHL, Mr. STANGELAND, and Mr. MINETA.

H.R. 8012: Mr. OTTINGER.

H.J. Res. 69: Mr. ULLMAN and Mr. BROWN of Ohio.

H.J. Res. 488: Mr. WHITTEN and Mr. MURPHY of New York.

H.J. Res. 502: Mr. KEMP, Mr. MURPHY of Illinois, Mr. WINN, Mr. LEDERER, Mr. DOWNEY, Mr. WALGREN, Mr. VAN DEERLIN, Mr. SCHEUER, Mr. MURPHY of Pennsylvania, Mr. FAZIO, Mr. PORTER, Mr. RICHMOND, Mr. WHITEHURST, Mr. STARK, Mr. EDWARDS of California, Mr. BEILENSON, Mr. LAFALCE, Mr. CONYERS, Mr. BEVILL, Mr. CLAY, Mr. STACK, Mr. BARNES, Mr. MARKS, Mr. HAWKINS, Mr. OBERSTAR, Mr. MAGUIRE, Mr. MCCLOSKEY, Mr. PEYSER, Mr. RODINO, Mr. MURPHY of New York, Mr. RATCHFORD, Mr. HYDE, Mr. WEISS, Mr. YATES, Mr. MCDADE, Mr. FORSYTHE, Mr. FRENZEL, Mr. CORMAN, and Mr. MYERS of Indiana.

H.J. Res. 511: Mr. BROYHILL, Mr. DASCHLE, Mr. HORTON, Mr. OBERSTAR, Mr. COLLINS of Texas, Mr. FORSYTHE, Mr. HINSON, Mr. MITCHELL of New York, Mr. DANNEMEYER, Mr. LEACH of Iowa, Mr. GRISHAM, and Mr. WHITEHURST.

H.J. Res. 594: Mr. TAUKE.

H. Con. Res. 134: Mr. DODD and Mr. MCCLORY.

H. Con. Res. 354: Mr. GINGRICH.

H. Con. Res. 376: Mr. FISHER.

H. Con. Res. 404: Mr. ATKINSON, Mrs. SPELLMAN, Mr. GREEN, Mr. BEDELL, Mr. LUNGREN, Mr. FROST, Mr. DOWNEY, Mr. ERTEL, Mr. BONKER, Mr. PHILLIP BURTON, and Mr. KILDEE.

H. Con. Res. 405: Mr. VOLKMER, Mr. CHENEY, Mr. SAWYER, Mr. THOMAS, Mr. LIVINGSTON, Mr. CARNEY, Mr. CONABLE, Mr. LAGOMARSINO, Mr. SYMMS, Mr. MARRIOTT, Mr. SEBELIUS, Mr. CLAUSEN, Mr. JEFFRIES, Mr. CLINGER, Mr. MICHEL, Mr. EVANS of Delaware, Mr. SENSENBRENNER, Mr. MOORE, Mr. SOLOMON, Mr. STANGELAND, Mr. ASHBROOK, Mr. ERDAHL, Mr. JEFFORDS, Mr. EDWARDS of Oklahoma, Mr. LOEFFLER, Mr. HAGEDORN, Mr. SHUSTER, Mr. RITTER, Mr. ENGLISH, Mr. WEAVER, Mr. HANCE, Mr. BALDUS, Mr. PATTERSON, Mr. WALKER, Mr. BEARD of Rhode Island, Mr. YOUNG of Missouri, Mr. STOCKMAN, Mr. CLEVELAND, Mr. GINGRICH, Mr. RUDD, Mr. HINSON, Mr. CORCORAN, Mr. DERRICK, Mr. DASCHLE, Mr. LUJAN, Mr. YOUNG of Florida, Mr. GLICKMAN, Mr. COUGHLIN, Mr. DECKARD, Mr. COLEMAN, Mr. MATHIS, and Mr. PAUL.

H. Res. 759: Mr. PEPPER, Mr. MURPHY of Illinois, Mr. DERWINSKI, Mr. BROOMFIELD, Mr. CORMAN, Mr. KEMP, Mr. MCDADE, Mrs. BYRON, Mr. FORSYTHE, Mr. HUGHES, Mr. SEBELIUS, Mr. LUNGREN, Mr. RHODES, and Mr. JOHNSON of California.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

414. By the SPEAKER: Petition of the Municipal Council, Jersey City, N.J., relative to funding for new sewage treatment and water plants; to the Committee on Public Works and Transportation.

415. Also, petition of the Association of Chief Executives of the Pacific Basin, relative to the proposed dumping and storage of nuclear waste in the Pacific Basin region by Japan; jointly, to the Committees on Foreign Affairs, and Interior and Insular Affairs.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7112

By Mr. WEISS:

—Page 3, after line 4 insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ALLOCATIONS TO STATE GOVERNMENTS.—

"(1) IN GENERAL.—In the case of any entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $2,300,000,000 to make allocations to State governments under section 107 for such entitlement period.

"(2) ENTITLEMENT PERIODS.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983.

Page 5, line 6, strike out the close quotation marks and the following period and strike out lines 7 through 23 and insert in lieu thereof the following:

"SEC. 107. ALLOCATIONS TO STATE GOVERNMENTS.

"From any amount appropriated pursuant to section 105(c) (1) for any entitlement period beginning on or after October 1, 1981, there shall be allocated to each State government an amount which bears the same ratio to the amount so appropriated for that period as the amount allocable to that State under section 106(b) bears to the sum of the amounts allocable to all States under section 106(b).".

(b) CONFORMING AMENDMENTS.—

(1) PAYMENTS.—Section 102(a)(1) of the Act is amended by striking out "the entitlement" and inserting in lieu thereof "the allocation, if any,".

Page 6, strike out lines 6 through 11 and redesignate the succeeding subparagraph accordingly.

H.R. 7765

By Mr. LOTT:

—On page 54, strike all after line 18 through line 4 on page 55 and insert in lieu thereof the following:

"EFFECTIVE DATES

"SEC. 416. This subtitle and the amendments made by this subtitle shall become effective upon the date of the enactment of this Act".

—On page 54, strike lines 19 through 21; and on page 55 strike lines 3 and 4.

H.R. 7998

By Mr. ASHBROOK:

—Page 51, after line 23, insert:

SEC. 308. None of the funds appropriated by this Act shall be expended to enforce such part or parts of the regulations promulgated to carry out the provisions of title IX of the Education Amendments of 1972, Public Law 92-318, which have been found by three United States circuit courts of appeal to exceed the statutory authority under which they were promulgated, and by one United States circuit court of appeals not to exceed such authority, unless and until the United States Supreme Court shall have resolved the conflict in these decisions in favor of the validity of the challenged part or parts of the regulations.

And renumber the remaining section accordingly.

—Page 51, after line 23, insert:

SEC. 308. None of the funds appropriated by this Act (other than those specifically appropriated to fund authorizations for bilingual education programs) shall be used by

the Secretary of Education to enforce regulations which would require a State or local educational agency, as a condition of eligibility for the receipt of funds appropriated under this Act, or otherwise, to address the educational needs of students of limited English-speaking ability by a program other than one of intensive instruction in English.

And renumber the remaining section accordingly.

—Page 51, after line 23, insert:

SEC. 308. None of the funds appropriated by this Act shall be expended to enforce such part or parts of the regulations promulgated to carry out the provisions of title IX of the Education Amendments of 1972 (Public Law 92-318) which have been found to exceed the statutory authority under which they were promulgated:

(1) within the area of jurisdiction of a United States circuit court of appeals which has made such a finding and which has not been reversed by the Supreme Court of the United States; or

(2) within the area of jurisdiction of a United States circuit court of appeals when one or more United States district courts within such area has made such a finding, and in which there is no contrary finding by a United States district court, and such finding has not been reversed.

And renumber the remaining section accordingly.

—Page 60, after line 19, insert:

SEC. 510. None of the funds appropriated by this Act shall be expended pursuant to any order or injunction of any court of the United States which would compel the expenditure of such funds for a purpose for which such expenditure is specifically prohibited by this Act.

By Mr. HANSEN:

—On page 9, line 13, strike out the figure "$207,206,000" and insert the figure "$181,520,000".

By Mr. HARRIS:

—Page 57, line 17, insert the following new section:

SEC. 501. No part of any appropriation contained in this Act shall be expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), pursuant to any obligation for services by contract, unless such executive agency has awarded and entered into such contract in full compliance with such Act and regulations promulgated thereunder.

—Page 57 after line 17, insert the following new section:

SEC. 501. In the case of any agency which has, for the period beginning on October 1, 1980, and ending on July 31, 1981, obligated less than 80 percent of the funds appropriated to such agency under this Act for the fiscal year ending September 30, 1981, the amount of funds which shall be available to such agency and which may be apportioned to such agency under section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) for the period beginning August 1, 1981, and ending September 30, 1981, shall be reduced by an amount equal to 80 percent of the funds appropriated to such agency under this Act for the fiscal year ending September 30, 1981, reduced by the amount of funds obligated by such agency under this Act during the period beginning on October 1, 1980, and ending on July 31, 1981.

By Mr. KRAMER:

—Page 48, line 6, strike out "$238,882,000" and insert in lieu thereof "$226,937,900".

—On page 52, line 11, strike out "$158,047,000" and insert in lieu thereof "$154,047,000".

By Mr. MILLER of Ohio:

—Page 60, after line 19, add:

SEC. 510. Of the total budget authority provided in this Act, for payments not required by law, 2 per centum shall be withheld from obligation and expenditure; *Provided*, That of the amount provided in this Act for each appropriation account, activity, and project, for payments not required by law, the amount withheld shall not exceed 5 per centum.

By Mr. PEASE:

—Page 3, line 2, strike out the colon and insert in lieu thereof the following: ", and at least $20,000,000 shall be for training under section 236 of the Trade Act of 1974:".

By Mr. ROYBAL:

—On page 28, strike out line 24 and all that follows thereafter through page 29, line 10, and insert in lieu thereof the following: "For expenses necessary to carry out the provisions of title III of the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-223), $1,800,000,000.".

By Mr. WALKER:

—Page 52, after line 3, insert the following new section:

SEC. 309. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

—Page 60, after line 19, insert the following new section:

SEC. 510. No part of any appropriation contained in this Act shall be used in connection with the issuance, implementation, or enforcement of any rule, regulation, standard, guideline, recommendation, or order which includes any ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex, and which requires any individual or entity to take any action with respect to (1) the hiring or promotion policies or practices of such individual or entity, or (2) the admissions policies or practices of such individual or entity.

By Mr. WEAVER:

—Page 44, line 12, strike "$407,689,000" and insert $408,064,000 including $375,000 which should should remain available until expended for section 525 of the Education Amendments of 1976, and;".

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SENATE—*Tuesday, August 26, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

O God of all life and all history come amongst us as the unseen reality of all our striving. Guide us through the duties of this day with joyous hearts and confident spirits. Grant that our words and deeds may fit the pattern Thou hast for the Nation. Be with us when we separate. Give journeying mercies to those who travel. Out of the coming contests forge a new and a better nation where the things that are unseen and eternal transcend the things which are seen and temporal. Lead us and this Nation in paths of righteousness for Thy name's sake and bring us at last to be at peace in Thy perfect kingdom.

We pray in that name which is above every name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 26, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM PROXMIRE, a Senator from the State of Wisconsin, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. PROXMIRE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the acting majority leader, the Senator from Kentucky, is recognized.

THE JOURNAL

Mr. FORD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FORD. Mr. President, I have nothing to use my 10 minutes for this morning. I am glad to yield to the minority leader.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader, the Senator from Tennessee, is recognized.

Mr. BAKER. Mr. President, I thank the acting majority leader.

STATEMENT BY GOVERNOR REAGAN ON TAIWAN

Mr. BAKER. Mr. President, on Wednesday of last week I had the opportunity to discuss with the distinguished majority leader the statements Governor Reagan had made concerning our relations with Taiwan. I said then that his statements with respect to Taiwan were properly the subject of consideration in a Presidential campaign, and that I looked forward to further amplification of those statements.

At a press conference yesterday, Governor Reagan issued a clear and definitive statement of his view of what our relationship should be, not only with Taiwan, but as well with the People's Republic of China. It is my hope that this statement receives as much attention as the remarks which occasioned it.

In his statement, Governor Reagan demonstrates a thorough understanding of the delicate balance of relations constructed by the Taiwan Relations Act. He knows, and it is clear that he knows, that the United States cannot and should not adopt a "two-China" policy. More importantly, the statement demonstrates an understanding that great nations, while they may share many interests and disagree on others, may still go forward and build a strong and constructive relationship.

I favor and support a continuing strengthening of our relations with Peking and I believe it very much to our mutual benefit to pursue together those interests we have in common. But I also share Governor Reagan's frustration as I have watched over the past 18 months the conduct of our relations with Taiwan, the framework for which was established by Congress in the Taiwan Relations Act.

I believe Governor Reagan's statements were born of the frustration which we share and which I fully understand. I am pleased that he has issued this statement which I consider a principled and unassailable exposition of our future relations with China and Taiwan. I commend it to my colleagues, I invite further comment on it, and I ask that it be inserted in its entirety in the RECORD. I would add, as well, Mr. President, that the Wall Street Journal, in its lead editorial this morning, places the entire episode in the proper perspective. The editorial accurately describes the situation as I see it and I ask that it too be placed in the RECORD following Governor Reagan's statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY RONALD REAGAN

Ten days ago George Bush and I met with you here in Los Angeles on the occasion of his departure for Japan and China, a trip he undertook at my request. As we stressed at the time, the purpose of the trip was to provide for a candid exchange of views with leaders in both countries on a wide range of international topics of mutual interest. Ambassador Bush returned last evening, and has reported his findings in detail.

We are both very pleased with the results of his extensive discussions. In a series of meetings with distinguished leaders in Japan, including Prime Minister Suzuki, Former Prime Ministers Fukuda, Kishi and Miki, Foreign Minister Itoh and Minister of International Trade and Industry Tanaka, he had the opportunity to hear their views and recommendations concerning the future of U.S.-Japanese relations.

Our Republican Party Platform stresses that Japan will remain a pillar of our policy for Asia, and a Reagan-Bush Administration will work hard to insure that U.S.-Japanese relations are maintained in excellent condition, based on close consultation and mutual understanding.

Japan's role in the process of insuring peace in Asia is a crucial one, and we must reinforce our ties with this close ally. Japan is our second most important trading partner, and we are her first. We have close ties in other fields, too. A most important example is the U.S.-Japan Mutual Security Treaty which recently marked its twentieth anniversary.

Understanding the Japanese perspective is important for the success of American policy. As Ambassador Bush will tell you in detail, he found Japanese leaders unanimous in their view that the United States must be a strong, reliable, leading partner.

I appreciate receiving their views, and I am grateful to them for the courtesies extended to Ambassador Bush. I would also like to express my appreciation to, and regard for, U.S. Ambassador Mike Mansfield, who also extended many courtesies.

Of equal importance was Ambassador Bush's trip to China, where he held a series of high-level meetings. As I said on August 16, "we have an obvious interest in developing our relationship with China, an interest that goes beyond trade and cultural ties. It is an interest that is fundamental to a Reagan-Bush Administration."

The meetings in Beijing provided for extensive exchanges of views. George has reported to me in great detail the points of similarity and agreement, as well as those of dissimilarity and disagreement. Since the objective of the trip was to have just such an exchange without necessarily reaching agreement, I believe that the objective was reached.

We now have received an updated, first-hand report of China's views, and the Chinese leaders have heard our point of view.

While in Beijing, Ambassador Bush and Richard Allen met at length with Vice Premier Deng Xiaoping, Foreign Minister Huang Hua, as well as with other top foreign policy experts and military leaders. I appreciate the courtesies which the Chinese leaders extended to our party, and I also wish to thank U.S. Ambassador Leonard Woodcock for his kind assistance.

We now maintain full and friendly diplomatic relations with China. This relationship began only a few years ago, and it is one which we should develop and strengthen in the years ahead. It is a delicate relationship, and the Reagan-Bush Administration will handle it with care and respect, with due regard for our own vital interests in the world generally, and in the Pacific region specifically.

China and the United States have a common interest in maintaining peace so that our nations can grow and prosper. Our two-way trade has now reached approximately $3.5 billion annually, and China's program of modernization depends in a major way on Western and U.S. technology.

Along with many other nations, we and China share a deep concern about the pace and scale of the Soviet military buildup. Chinese leaders agree with Japanese leaders that the United States must be a strong and vigorous defender of the peace, and they specifically favor us bolstering our defenses and our alliances.

It is quite clear that we do not see eye to eye on Taiwan. Thus, this is an appropriate time for me to state our position on this subject.

I'm sure that the Chinese leaders would place no value on our relations with them if they thought we would break commitments to them if a stronger power were to demand it. Based on my long-standing conviction that America can provide leadership and command respect only if it keeps its commitments to its friends, large and small, a Reagan-Bush Administration would observe these five principles in dealing with the China situation.

GUIDING PRINCIPLES FOR THE FAR EAST

First, U.S.-Chinese relations are important to American as well as Chinese interests. Our partnership should be global and strategic. In seeking improved relations with the People's Republic of China, I would extend the hand of friendship to all Chinese. In continuing our relations, which date from the historic opening created by President Nixon, I would continue the process of expanding trade, scientific and cultural ties.

Second, I pledge to work for peace, stability and the economic growth of the Western Pacific area in cooperation with Japan, the People's Republic of China, the Republic of Korea and Taiwan.

Third, I will cooperate and consult with all countries of the area in a mutual effort to stand firm against aggression or search for hegemony which threaten the peace and stability of the area.

Fourth, I intend that United States relations with Taiwan will develop in accordance with the law of our land, the Taiwan Relations Act. This legislation is the product of our democratic process, and is designed to remedy the defects of the totally inadequate legislation proposed by Jimmy Carter.

By accepting China's three conditions for "normalization," Jimmy Carter made concessions that Presidents Nixon and Ford had steadfastly refused to make. I was and am critical of his decision because I believe he made concessions that were not necessary and not in our national interest. I felt that a condition of normalization—by itself a sound policy choice—should have been the retention of a liaison office on Taiwan of equivalent status to the one which we had earlier established in Beijing. With a persistent and principled negotiating position, I believe that normalization could ultimately have been achieved on this basis. But that is behind us now. My present concern is to safeguard the interest of the United States and to enforce the law of the land.

It was the timely action of the Congress, reflecting the strong support of the American people for Taiwan, that forced the changes in the inadequate bill which Mr. Carter proposed. Clearly, the Congress was unwilling to buy the Carter plan, which it believed would have jeopardized Taiwan's security.

This Act, designed by the Congress to provide adequate safeguards for Taiwan's security and well-being, also provides the official basis for our relations with our long-time friend and ally. It declares our official policy to be one of maintaining peace and promoting extensive, close, and friendly relations between the United States and the seventeen million people on Taiwan as well as the one billion people on the China mainland. It specifies that our official policy considers any effort to determine the future of Taiwan by other than peaceful means a threat to peace and of "grave concern" to the United States.

And, most important, it spells out our policy of providing defensive weapons to Taiwan and mandates the United States to maintain the means to "resist any resort to force or other forms of coercion" which threaten the security or the social or economic system of Taipei.

This Act further spells out, in great detail, how the President of the United States, our highest elected official, shall conduct relations with Taiwan, leaving to his discretion the specific methods of achieving policy objectives.

The Act further details how our official personnel (including diplomats) are to administer United States relations with Taiwan through the American Institute in Taiwan. It specifies that for that purpose they are to resign for the term of their duties in Taiwan and then be reinstated to their former agencies of the U.S. government with no loss of status, seniority or pension rights.

The intent of the Congress is crystal clear. Our official relations with Taiwan will be funded by Congress with public monies, the expenditure of which will be audited by the Comptroller General of the United States; and Congressional oversight will be performed by two standing Committees of the Congress.

You might ask what I would do differently. I would not pretend, as Carter does, that the relationship we now have with Taiwan, enacted by our Congress, is not official.

I am satisfied that this Act provides an official and adequate basis for safeguarding our relationship with Taiwan, and I pledge to enforce it. But I will eliminate petty practices of the Carter Administration which are inappropriate and demeaning to our Chinese friends on Taiwan. For example, it is absurd and not required by the Act that our representatives are not permitted to meet with Taiwanese officials in their offices and ours. I will treat all Chinese officials with fairness and dignity.

I would not impose restrictions which are not required by the Taiwan Relations Act and which contravene its spirit and purpose. Here are other examples of how Carter has gone out of his way to humiliate our friends on Taiwan:

Taiwanese officials are ignored at senior levels of the U.S. government.

The Taiwan Relations Act specifically requires that the Taiwanese be permitted to keep the same number of offices in this country that they had before. Previously, Taiwan had 14 such offices. Today there are but nine.

Taiwanese military officers are no longer permitted to train in the United States or to attend service academies.

Recently the Carter Administration attempted to ban all imports from Taiwan labeled "Made in the Republic of China," but was forced to rescind the order after opposition began to mount in the Congress.

The Carter Administration unilaterally imposed a one-year moratorium on arms supplies even though the Act specifies that Taiwan shall be provided with arms of a defense character.

The Carter Administration abrogated the Civil Aviation Agreement with Taiwan, which had been in effect since 1947, in response to demands from the People's Republic of China.

I recognize that the People's Republic of China is not pleased with the Taiwan Relations Act which the United States Congress insisted on as the official basis for our relations with Taiwan. This was made abundantly clear to Mr. Bush, and, I'm told, is clear to the Carter Administration. But it is the law of our land.

Fifth, as President I will not accept the interference of any foreign power in the process of protecting American interests and carrying out the laws of our land. To do otherwise would be a dereliction of my duty as President.

It is my conclusion that the strict observance of these five principles will be in the best interests of the United States, the People's Republic of China and the people on Taiwan.

The specific implementation of these treaties will have to await the results of the election in November, but in deciding what to do I will take into account the views of the People's Republic of China as well as Taiwan. It will be my firm intention to preserve the interests of the United States, and as President I will choose the methods by which this shall best be accomplished.

REAGAN AND CHINA

As soon as it became evident last spring that Ronald Reagan would be the Republican presidential nominee, press speculation began over how long it would be before the Californian got himself in trouble by shooting from the hip on an important public policy question.

A lot of people thought they had found the answer when Mr. Reagan last week raised hackles in Peking with his insistence on an "official" U.S. relationship with Taiwan. The candidate had unnecessarily raised a sensitive issue that had long ago been settled, it was alleged, fulfilling all the worst fears about how a President Reagan would conduct foreign policy. His running mate, George Bush, had drawn maximum publicity to all this by trying to explain it all to China's top leadership on a well-publicized visit to Peking.

And yesterday, in a chaotic-sounding press conference in Los Angeles, the Republican team didn't succeed very well in explaining where the difference lies between such subtle shades of meaning as "official" and "government-to-government." Was it another case of a candidate "shooting himself in the foot" as did George Romney with his complaint about being "brainwashed" by the incumbents or Gerald Ford's televised insistence that Poland wasn't under the heel of the Soviet Union?

We don't much think so. Whatever confusions resulted from the question-and-answer session in Los Angeles, Mr. Reagan made his position on Taiwan clear in the

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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statement he read at the outset. Moreover, it is a respectable and responsible position, one that expresses a tenet of the Reagan philosophy that he has no reason to jettison.

Mr. Reagan said clearly that he supports the present U.S. law that addresses U.S.-Taiwan relations. The prescriptions of that law about how the U.S. conducts its business with Taiwan could hardly be anything other than "official," since they are the law of the land. He was critical of the Carter administration for seemingly going out of its way to embarrass a country that has been a showcase of the type of economic development we profess to believe in. It is a developing nation that borrowed external capital, invested it wisely and is building a better life for its citizens than is available in most other countries in Asia. Mr. Reagan's fundamental position is that Taiwan should be treated with consideration and respect and that we should not be cowed by the fear that Peking might be annoyed at American self-assertiveness.

None of this requires the U.S. to sunder its strategically important and growing entente with Peking. It would merely make it clear to Peking that the U.S. adheres to certain principles that do not evaporate when a former adversary makes friendly overtures. Mr. Bush may not have had great success in selling this in Peking, but, considering how easy a time China's rulers have had with Mr. Carter, why would anyone expect him to get a hearty welcome?

The semantic tangle that Mr. Reagan found himself in yesterday was the sort of thing that can prove embarrassing to a candidate. The important thing, however, is whether the candidate is right on the substantive issue and we find the Reagan position more attractive than that of Mr. Carter.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EAGLETON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR EAGLETON

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Missouri (Mr. EAGLETON) is recognized for not to exceed 15 minutes.

JERUSALEM RESOLUTION

Mr. EAGLETON. Mr. President, the United States has again faltered in its handling of a sensitive U.N. resolution critical of Israeli policies. Last week's decision not to veto the so-called Jerusalem resolution was, in my opinion, a grave mistake.

During 1980, the United Nations has established a dismal record for itself. On no fewer than eight occasions, the organization has acted to condemn Israeli policy and thus further damage prospects for resumption of the stalled Middle East peace negotiations. That is a particularly alarming record for an international body whose one reason for being is to foster the cause of peace among nations.

Mr. President, the message of these resolutions could not be clearer. Supporters of PLO interests are repeatedly using the U.N. as a forum to attack Israel and chip away at its support in the world community. Given the past failure of the United States to exercise its veto rights, it is no surprise that PLO interests have again sought to use the Council as a tool to foment censure of Israel for formally declaring Jerusalem its permanent and undivided capital. It dismays me that the United States failed to employ the use of its veto power on a measure that so clearly warranted it. Such timidity will surely invite even stronger resolutions in the future.

In the forcefully worded rebuke he delivered before the Security Council, Secretary of State Muskie made the strongest possible case for vetoing the resolution. He quite correctly noted that the measure "fails to serve the goal of all faiths who look to Jerusalem as holy," and added:

> We must share a common vision of this ancient city's future—an undivided Jerusalem, with free access to the holy places for people of all faiths.

In defending the U.S. abstention, Secretary Muskie declared the resolution "fundamentally flawed" because it singles out Israel without regard to the actions of other parties or to the difficult issues of this historic dispute. Referring collectively to the several recent anti-Israel resolutions, Mr. Muskie attacked the U.N.'s activities when he charged:

> I believe that in its work on the Middle East over the past five months, the United Nations has been the focus of attempts not to advance the cause of peace but to restrain it, contrary to the ideals and purposes of this institution.

In addition, he pointed out that the Jerusalem resolution and those that preceded it, "have failed the critical tests of reason, of balance."

Mr. President, the United States failure to veto a measure as damaging as the Jerusalem Resolution is deplorable. In my opinion, the abstention will have no effect other than to encourage hard-line Islamic nations to again attempt to misuse the United Nations mechanism. It is time the United States drew the line against such provocative manuevers and made it clear to all it will not waver from its long standing commitment to Israeli security.

ORDER OF BUSINESS

Mr. STENNIS. Mr. President, will the Senator yield me his remaining time?

Mr. EAGLETON. I yield the remaining time.

Mr. STENNIS. I thank my colleague. I hope it is agreeable with the Chair.

The ACTING PRESIDENT pro tempore. The Senator may proceed.

Mr. STENNIS. Mr. President, I especially thank the Senator from Missouri. It is characteristic of him to be helpful.

LONG-TERM POLICIES TOWARD RECESSIONS; CONGRESS BLAMED FOR CHAOS IN DOMESTIC AID PROGRAMS; FIELD FOUNDATION RESTUDIES POLICIES AFTER 40 YEARS

Mr. STENNIS. Mr. President, I was greatly encouraged yesterday when, by coincidence, there were three items in the New York Times of serious import but they were all what I consider to be on the positive, affirmative, side and a positive approach to our problems.

In the New York Times of August 25, 1980, on the front page, these three articles that I will refer to now quite briefly appeared, and then I will ask permission to put them into the RECORD. I add that even in the confusion of a Presidential election year—and that is part of our system—there is emerging what I think is challenging and helpful, this positive thinking of a constructive nature. I refer with some pride to the fact that we have a bipartisan Joint Economic Committee, now chaired by the Senator from Texas (Mr. BENTSEN), which is working diligently on a positive approach to the economic structure and the economic problems, of the Nation and making real headway in the unanimous or nearly unanimous reports that they make.

I am now referring to the article here entitled "Joint Panel Urges Long-Term Policies Toward Recessions. Bipartisan Congressional Report Assails Temporary Remedies and Stresses Production."

I want to add that this is a field entirely beyond my special application, but what they are saying here certainly seems to me to make a lot of sense, and I hope we can follow up on their suggestions. I highly commend and thank the Senator from Texas, Mr. BENTSEN, whose knowledge and leadership in this field is excellent and I believe it will be highly fruitful.

I ask unanimous consent that this article to which have referred, written by Robert D. Hershey, Jr., be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JOINT PANEL URGES LONG-TERM POLICIES TOWARD RECESSIONS

(By Robert D. Hershey, Jr.)

WASHINGTON.—In perhaps the strongest bipartisan economic statement from Congress in decades, the Joint Economic Committee said today that the nation must stop treating recessions as temporary emergencies requiring hasty remedies and should instead look for long-term solutions.

The committee's midyear report reflects what has become a broad feeling on Capitol Hill that the economy cannot be successfully "fine tuned." It also puts heavy emphasis on the increasingly popular idea, especially among Republicans, that people must be encouraged to produce more rather than to consume more.

The 20-member committee, made up of senior Senators and Representatives, is the principal Congressional forum for discussion of broad economic issues. It does not originate legislation, but it plays an influential advisory role in shaping economic policy.

PARTISAN IN THE PAST

During the mid-1950's and through the next two decades it was strongly partisan, generally reflecting liberal Democratic views calling for stimulation of demand. In recent years, the committee has become more conservative under the leadership of its chairman, Senator Lloyd M. Bentsen, Democrat of Texas, and its vice chairman, Representative Richard Bolling, Democrat of Missouri. Now the panel increasingly tends to take up problems of production and to emphasize a united bipartisan front.

Today's report was endorsed by all but one of the committee's 12 Democrats—who include Senator Edward M. Kennedy of Massachusetts—and all eight Republicans. Only Representative Parren J. Mitchell, a Maryland Democrat, withheld his support. He said he did so because the report did not endorse an immediate fiscal stimulus to help the nation's 8 million unemployed workers, including 2.5 million blacks.

Today's report, which focused on the Government's response to the six recessions since World War II, shows disillusionment with economic policies followed by this country during most of that period.

The report concluded that "Government attempts to shorten the duration or reduce the intensity of recessions through countercyclical programs initiated during specific downturns have been ineffective."

In fact, the panel found, in a number of cases the measures not only come too late to help but also damaged the economy by overstimulating the recovery.

Exhibiting profound disenchantment with economic forecasting, the committee declared: "The onset of a recession is rarely, if ever, accurately anticipated, and the existence of a recession may not be known until several months or quarters after it has begun." And even when a recession has been recognized, the panel added, it is not possible to predict how deep it will be or how long it will last.

These problems are compounded by the Government's delays in acting and by additional lags while a public works program, for example, is carried out and its impact is transmitted to the economy, the committee said. It concluded that such uncertainties are "if anything more pronounced" when Government actions are based on monetary policy rather than fiscal, or public spending, policy.

Instead of "scattered, hit-or-miss" Government responses, the committee said, "the prudent course of action during a recession is to design new policy initiative to steer the recovery along the most desirable path so as to improve the structure and the performance of the economy over the long run."

Accordingly, the panel recommended that about half of the next tax cut be designed to increase productivity by stimulating corporate investment in new plant and equipment. The other half, it said, should reduce personal tax rates to encourage "work, saving and investment at the individual level." The tax bill approved by the Senate Finance Committee last week is broadly consistent with these goals.

WORKER TRAINING URGED

The Joint Economic Committee said existing antirecession programs should be overhauled to stress training of unemployed workers in skills that will be needed in the private sector.

"Economic policy must focus on the supply side of the economy, on the long-term capacity to produce, and not just on the current recession," the report said.

Unless Congress makes such changes, the committee said, the economic recovery this time is likely to be "very weak" and the entire decade could be marked by high rates of both inflation and unemployment.

The presnt consensus on the committee owes much to acceptance by most of its members of a long-held minority view stressing the debilitating effect of inflation on real corporate earnings and investment and on the costs of Federal regulation.

One example of the way committee thinking has changed lies in a passage from its 1976 report, which was at odds with the Ford Administration and was full of confidence that the economy could be "managed" over the short term.

"The Joint Economic Committee must deplore the continual statements of Administration officials that purvey ignorance and misinformation to the public on matters of economic policy," it said four years ago. "Despite its deficiencies, economics has become a highly developed discipline. Administration officials often speak as though they had heard nothing of its progress in the past 40 years."

Mr. STENNIS. Further along the same line there is an article by John Herbers in the New York Times entitled "Chaos in Domestic Aid Programs Is Laid to Congress in U.S. Study." I am not affirming that I believe all these points are correct and true, but certainly there is a great element of truth in it, and we have to take the blame anyway because it is within the congressional responsibilities.

I want to add though that the tremendous volume of work that these 100 Senate Members have to do, these people who compose the Senate, in the field of active legislation and also oversight is so great that it is getting to where it is almost humanly impossible to give the degree of attention by these constitutional officers, the 100 Senators, that the problems really deserve.

I refer to another item here that I noticed with some considerable interest which is entitled "Field Foundation Restudies Polices After 40 Years." That is a story, of course, of the Field Foundation after the first 40 years, and with the great good they have done, not all of which I would agree with, of course, but they are restudying their approaches, and it looks to me as if in this field of education they are going to lean more heavily toward the idea of the basics in education.

I ask unanimous consent that these two articles to which I have referred, in order to give them further spread and publicity, be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

CHAOS IN DOMESTIC AID PROGRAMS IS LAID TO CONGRESS IN U.S. STUDY

(By John Herbers)

WASHINGTON.—A Federal commission, ordered by Congress to conduct a thorough study of the state of American Government, has concluded that Congress itself is chiefly to blame for what it found to be an unmanageable, wasteful and unaccountable system of domestic aid programs.

The Advisory Commission on Intergovernmental Relations, created by Congress in 1959 to make seemingly innocuous studies in Federal-state relations, has come to the conclusion that the Federal system is simply out of control. It also found that the declining influence of political parties is contributing to the problem.

The panel has begun to publish its newest findings in a series of provocative reports and background papers that Congress commissioned in 1976 in response to rising public discontent with Government at all levels.

The 26-member commission is required by law to consist of six members of Congress, three officials from the Executive branch, four governors, four mayors, three state legislators, three elected county officials and three private citizens, each appointed for two-year terms. Former Mayor Abraham D. Beame of New York is the current chairman. The commission has a staff of about 37, headed by Wayne Anderson, the executive director.

A LACK OF UNDERSTANDING

"Neither public officials nor the general public comprehend fully the new complexities of domestic public policy, or adequately control—or even check—the myriad forces that have generated it," the commission said in its first printed volume, titled "A Crisis of Confidence and Competence."

Yet the language and conclusions in that volume are mild compared with some of its documents yet to be published. In some of those, the commission depicts the Federal Government as so overloaded with programs and issues that it cannot cope with need for reforms.

The myriad programs are so intertwined among the state, local and Federal Governments that no government can deal with them, according to the commission.

While all levels of government and the courts were found to have played roles in the failures of the last two decades, the commission singled out Congress as having had more to do with bringing about "the crisis of confidence" than any other entity.

"Our findings belie the notion that Congress acts as a great rubber stamp for Presidential, bureaucratic or interest group initiatives," the commission said. "In fact, in many instances the opposite would be far closer to the truth."

Congress was depicted as quick to take on minor new issues, but timid in drawing up such needed reforms as overhauling the welfare system. Members of Congress were found to be so preoccupied with such narrow concerns as potholes, libraries, rat control and policemen's pensions that they had little time to deal with such major responsibilities as foreign affairs and the economy.

STATES HEED CRITICISM

All this might have gone unnoticed—Congress has been ignoring the commission's advice for years—had not the group's findings and recommendations become the fulcrum for an incipient revolt by the states against the Federal Government.

The National Governors Association, with the support of the National Conference of State Legislatures, has formally called on the President and Congress to appoint a high-level commission next year to recommend reforms in the Federal system, including the realignment of powers between the state and Federal Governments, through legislative or constitutional change.

That move, made at the governors' annual convention in Denver this month, was based on a similar recommendation that the commission made at a meeting in Washington earlier this summer.

The commission has suggested that reform could begin with a series of "tradeoffs" that would give the Federal Government full responsibility in some areas while giving the states responsibility for other areas.

For example, the Federal Government could take over the full costs and responsibility for public welfare, including Medicaid, social services and food stamps. It would also assume responsibility for social insurance, including unemployment insurance, and housing programs.

The panel suggests that the states could then take over the responsibility for education, libraries, fire protection, police and corrections, natural resources, hospitals and health services. While the commission maintains that there would be little difference in the costs that each would have to bear, it contends that the public would at least know who was responsible for what.

Many of the more than 500 grant programs could then be consolidated or phased out, according to the commission.

In documents supporting its recommendations for change, the commission said that much of the "increasingly dysfunctional" state of the Government stemmed from the decline in the influence of national political

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parties, which once served to keep "the bulk of domestic governmental issues and programs completely out of the Washington arena."

This situation, it said, leads to "a total confusion" in official role playing. "Presidents act almost as frequently in a mayoral or a gubernatorial role as a national Presidential one," the commission said, "and Congress plays municipal and county council almost as often as it acts as a national deliberative body. It has produced a situation where no level or set of officials is performing the functions it is best suited to perform."

PROBLEM IS DESCRIBED

The commission contends that Congress has refused to assume full responsibility for functions that should be purely national, such as income maintenance, health insurance and welfare. Nor has Congress been willing to relinquish matters that should be strictly local, such as urban parks, rural fire control and acquaculture according to the commission.

"A rather fanciful form of federalism, then, has emerged," it said. "Basic policies in most program areas appear to be made in Washington and their implementation achieved through decisions, orders, mandates, conditions, regulations and the lure of Federal loot for 12 million state and local civil servants.

"And, in the end, the fancy becomes caprice because the subnational governments, their elected officials and bureaucracies are capable of highly differentiated responses to all this—in terms of compliance, cooperation, participation and conflict," the commission said. "Equally fanciful is any notion that the Federal aid system as a whole protects the interests of the needy or equalizes levels of public services. Questions of equity are largely ignored in the scramble for benefits."

That the Federal Government is capable of controlling such a system, despite 14 years of repeated failures, is one of the "pervasive myths" of Washington, the commission said.

"Where does this leave the electorate?" the commission asked. "Frustrated, fearful, alienated and/or angry. The system has become highly incomprehensible even to those whose job it is to have an overall understanding of it."

FIELD FOUNDATION RESTUDIES POLICIES AFTER 40 YEARS

(By Kathleen Teltsch)

The Field Foundation, one of the country's leaders in liberal philanthropy, has changed its top director and decided to review its grant-making policies.

The foundation, established 40 years ago by Marshall Field, the late millionaire retailer and philanthropist, has been regarded as a pioneer in support of civil-rights causes and antipoverty undertakings. Because it has frequently been an innovator—it was one of the first to support voter registration in the South in the early 1960's—the foundation has had a significant influence on the activities of other, and sometimes wealthier, foundations.

The changes in the foundation's administration were announced by Mrs. Marshall Field 3d, the board chairman, in a brief statement that underscored the private philanthropy's intention to maintain its "traditional commitments" to programs to protect civil liberties and civil rights and to support its work on behalf of children. In its most recent report, the foundation listed assets of $16 million and said it had spent $1.8 million in grants. The report was made in November 1979.

The foundation, which is based in New York City, accepted the resignation of its longtime director, Leslie W. Dunbar, a political scientist and civil-rights activist. As his successor, the foundation named Richard W. Boone, who had been acting director while Mr. Dunbar was away on a two-year leave of absence.

The differences between the outgoing director and the foundation officers and some board members were said to have developed since Mr. Dunbar ended a two-year sabbatical last fall, and they erupted at a board meeting in June. At that time a decision was made to review the foundation's financing policies.

"It was unpleasant for everyone," Mr. Dunbar said of the June meeting, explaining during an interview last Tuesday that he had tendered his resignation shortly thereafter to make it easier for board members to conduct their review.

"I was afraid that the restudy would focus around me, and I didn't want that," Mr. Dunbar said. He had sought to resign in 1977 but had been persuaded instead by Morris B. Abram, the foundation's president, to take a leave of absence

Mr. Abram has been a personal friend of Mr. Dunbar's since the two were brought together two decades ago by their common interest in the civil-rights movement in the South.

Mr. Dunbar, who is 59 years old, joined the foundation in 1965 from the Southern Regional Council, an organization of white and black Southerners set up in 1944 to work for "equal opportunity for all the South's people."

Under his direction, the Field Foundation, besides its older, traditional concerns, also focused on what were perceived as abuses of government power both at home and abroad in the name of national security. Grants were made to organizations for studies on covert surveillance, erosion of civil liberties and also to support research on American armaments programs.

While most of Mr. Dunbar's proposed grants were approved, some were challenged The board refused to give funds to the Committee Against Registration and the Draft and, pending the forthcoming policy review, held off on a recommended grant of $50,000 to continue studies or armaments transfers and human rights by the Institute for Policy Studies in Washington.

The institute is a controversial research organization, described by some as "liberal" or "leftist" and by its director, Robert Borosage, as a "center for research, education and social invention." At least some of the foundation's board members were said to have questioned activities of the institute, one being its submission of a human-rights complaint to the United Nations focusing on the treatment of American Indians.

According to Mr. Dunbar, his harmonious relations with the officers of the Field Foundation underwent a sudden change last fall when he returned from his sabbatical and, for the first time, "lost the feeling that he was interpreting the will of the board."

Consequently he decided to step aside, so the foundation members could decide if they wanted to continue financing programs that examined activities of the Government that were justified as "national security interests." As Mr. Dunbar sees it, civil liberties will be increasingly threatened in the next few years by a return to what he calls the "free-wheeling" activities of Government intelligence agencies.

One of the differences between now and the "McCarthyism of 30 years ago," he said, is that there are organizations around to monitor the Government's "inherent tendency" to abuse civil liberties, and there are also competent litigators to fight back.

During several interviews by telephone, Mr. Abram acknowledged that divergencies existed, but he insisted that they were not between him and Mr. Dunbar but involved the institutional position of the foundation.

"Les has increasingly seen the problem of the United States and international peace as being threatened by what he describes as United States militarism," Mr. Abram said. "The institution did not accept his vision that the U.S. is the principal offender in the arms race or the disturber of world peace. The U.S. is not always right, but it certainly is not always wrong, and, comparably, it is one of the most moral of nation states."

SCHOLAR PROTESTS RESIGNATION

The Dunbar resignation prompted a protest to the foundation's directors from Vine Deloria Jr., a legal scholar and writer on Indian affairs, who joined the board in April. He warned that the departure of "the most respected foundation executive in the country" would severely damage the foundation's reputation. Citing Mr. Dunbar's close ties to minority groups, he insisted that acceptance of the resignation would arouse "suspicions" about the foundation's future undertakings.

Mr. Boone, who is 53, has also had a long career in assisting minority groups, particularly youth, in positions within and outside government, and he had been selected by Mr. Dunbar to serve during his sabbatical. Previously he was director of the Citizens Crusade Against Poverty and director of the Robert F. Kennedy Memorial.

Mrs. Field, reached by telephone praised Mr. Dunbar's "magnificent" contributions to the foundation, but she added pointedly that before he joined it, the institution had already acquired its reputation as one of the most liberal and innovative foundations in the tradition initiated by her late husband.

She was reminded of an incident, she said, in which her husband was criticized for provoking attacks by sticking out his neck, and he had responded, "What's a neck for?"

Mr. STENNIS. I thank the Senators for this time and now yield the floor.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may proceed as if in morning business for not to exceed 5 minutes.

The PRESIDING OFFICER (Mr. FORD). Without objection, it is so ordered.

Mr. PROXMIRE. I commend my friend from Mississippi for what he has just said. I served for 4 years as chairman of the Joint Economic Committee. This is the first time Senator BENTSEN has put together a unified report by Republicans and Democrats alike as to our approach to economic problems, and I join Senator STENNIS in congratulating Senator BENTSEN on doing a marvelous job.

That panel has been led by such outstanding people as Paul Douglas, who was, of course, a great economist; Hubert Humphrey, whom we all know was a tremendously able Senator; but nobody—and, as I say, I chaired it for 4 years—had been able before to unify that committee as Senator BENTSEN has done.

Mr. STENNIS. Mr. President, if the Senator will yield, let me thank him for his remarks and especially commend him for the fine work he has consistently done over the years in this field. His contribution has been real and it has been great.

Mr. PROXMIRE. Mr. President, I am so glad that the Senator from Mississippi has called our attention to this matter. It was a front page article in the New York Times, and I was very impressed by that, too.

He also properly pointed to the chaos in the domestic affairs article. That was an allegation by the Governors. And they are feeling their oats. They are very concerned about what is happening to revenue sharing. I think we can anticipate a struggle in the next couple of years in that area.

I think it was most constructive for the Senator from Mississippi to call this vital article to our attention. And, of course, the Field Foundation shift to a more basic education grant is another area I think we should take note of. So I want to thank my good friend from Mississippi for calling our attention to these articles.

THE MISSING TREATY

Mr. PROXMIRE. Mr. President, on July 2, 1980, the Senate unanimously ratified the International Convention on Maritime Search and Rescue, the International Atomic Energy Agency Safeguards Agreement, and the 1978 Protocol of the International Convention for the Safety of Life at Sea.

That we should approve these agreements unanimously should come as no surprise to anyone, Mr. President. We are a nation which places a very high value on human life. We are always seeking ways to preserve and enhance it. We set industry standards to protect the health of workers around the world; we establish procedures to save the lives of those in trouble in the open sea, no matter what their nationality.

But apparently, Mr. President, we draw the line at genocide. We approve all sorts of international safety regulations and rescue procedures, but we fail to support an international prohibition of race murder.

Where are our values, Mr. President? Where are our priorities?

What kind of sense does it make to approve safety standards while failing to condemn mass murder? What safety are we providing for members of threatened races, religious sects, or national groups?

The picture of shipwrecked sailors being pulled from the sea by efficient rescue teams is a warming one, Mr. President. But not warm enough to take away the chill we must feel when we face up to the horrors of genocide. The author, Herman Wouk, in "War and Remembrance," assists us to this confrontation:

> As the cart passes the SS officers, there is a whiff of the disinfectant, rather like carbolic acid. The naked people look not much different than they did less than half an hour ago, except that they are absolutely still now, streaked with excrement, and all jumbled together, some with jaws hanging open and wide eyes fixed and staring—old men, little children, pretty women, in an inert heap.

Would safety regulations have saved these people, Mr. President? Would maritime search and rescue efforts have been of any use to them?

Eighty-five nations have united to proclaim genocide an international crime. Only one major nation has lacked the initiative to take this demonstrative step. That nation, Mr. President, is the United States of America. And this body—the U.S. Senate—is the only obstacle to passing the Genocide Treaty. Every President—Republican and Democrat—has pleaded with us to pass it. The House has no voice in this. It is up to us.

Three international agreements were approved by the U.S. Senate on July 2. The Genocide Treaty was not one of them. Why not?

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, H.R. 2977, which the clerk will state by title.

The legislative clerk read as follows:

> A bill (H.R. 2977) to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order there will now be 10 minutes equally divided on an amendment by the Senator from Kansas (Mr. DOLE).

UP AMENDMENT NO. 1525

(Purpose: To assure representation of groups with interest in service opportunities for handicapped individuals on the Commission on National Service)

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 1525.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

> On page 53, line 13, after "youth" insert a comma and the following: "handicapped individuals,".

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DOLE. Mr. President, my staff has informed me that the committee has agreed to accept this amendment. I am pleased with the committee's action as I truly believe this amendment strengthens the intent of the National Service Commission.

NATIONAL SERVICE COMMISSION

Mr. President, H.R. 2977, the Domestic Violence Prevention and Services Act and National Service Commission Act, includes authority to establish a Presidential Commission on National Service.

The concept of a national service program is not new. Since 1910, when the first national service concept was proposed, there has been much discussion of this concept within the private and public sectors. We have seen numerous versions of this concept in operation with the establishment of the CCC (Civilian Conservation Corps), Peace Corps, and ACTION.

Mr. President, my amendment is direct and to the point, it simply amends the language of the bill to include representation of groups with interest in service opportunities for handicapped individuals on the Commission on National Service.

The amendment that the Senator from Kansas is offering is not so much on the question of the pros and cons of a national service program rather to the makeup of the Commission. As you know, the Commission will eventually offer recommendations to the Congress as to the feasibility of such a program.

The Senator from Kansas has yet to be convinced of the merits of any mandatory service, except in the event of a national emergency. Thus, it is my hope that this Commission, after careful consultation with each of the constituent groups which will be affected by national service, will provide the facts enabling an informed decision to be made on this very important matter.

Mr. President, I strongly believe that the Commission can be effective only if its membership is broadly representative of those individual organizations, and groups that would or should be most affected by the development of a national service program.

Again, I want to state that this amendment is intended to help promote the participation of handicapped individuals in all decision processes of this country.

Mr. CRANSTON. Mr. President, I am very pleased to accept the amendment by my colleagues from Kansas (Mr. DOLE) to include representatives of organizations and groups with a primary interest in service opportunities for handicapped individuals among the groups specifically mentioned for participation by their representatives on the Presidential Commission on National Service. I have been privileged to work with the Senator from Kansas on many matters and bills to assist and protect disabled persons. I am most appreciative of his interest and concern in developing this amendment, and, on behalf of our side I am more than happy to accept it.

Mr. DOLE. Mr. President, I appreciate very much the statement by the Senator from California. We have worked together in a number of areas with reference to handicapped and disabled Americans. I appreciate his continuing interest in this effort.

Mr. CRANSTON. Mr. President, I am sure the amendment is acceptable to the minority also.

The ACTING PRESIDENT pro tempore. Is all time yielded back?

Mr. DOLE. Mr. President, I yield back any remaining time.

Mr. CRANSTON. Mr. President, I yield back any remaining time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (UP No. 1525) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 30 minutes equally divided on an amendment by the Senator from Missouri (Mr. DANFORTH).

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield briefly?

Mr. DANFORTH. I yield.

Mr. ROBERT C. BYRD. Mr. President, Senator YOUNG has been very patiently waiting. I wonder if we can accommodate him at this point.

The ACTING PRESIDENT pro tempore. Does the Senator request that the time not be taken from either side?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may be recognized for not to exceed 2 minutes without the time being taken from either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LOUIS L'AMOUR GOLD MEDAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—and this has been cleared with the minority leader—that the Senate proceed to the consideration, for not to exceed 2 minutes, of S. 1953, Calendar Order No. 988.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1953) to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Louis L'Amour.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Banking, Housing, and Urban Affairs with amendments as follows:

On page 2, line 10, strike "$15,000" and insert "$20,000";

On page 2, line 15, after "machinery," strike "and";

On page 2, line 16, after "expenses," insert "and the gold medal";

So as to make the bill read:

That (a) the President of the United States is authorized to present, on behalf of the Congress, to Louis L'Amour, a gold medal of appropriate design in recognition of his distinguished career as an author and his contributions to the Nation through his historically based works. For such purpose, the Secretary of the Treasury is authorized and directed to cause to be struck a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Treasury. There are authorized to be appropriated not to exceed $20,000 after October 1, 1981, to carry out the provisions of this subsection.

(b) The Secretary of the Treasury may cause duplicates in bronze of such medal to be coined and sold under such regulations as he may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, overhead expenses, and the gold medal and the appropriation used for carrying out the provisions of this subsection shall be reimbursed out of the proceeds of such sale.

(c) The medals provided for in this Act are national medals for the purpose of section 3551 of the Revised Statutes (31 U.S.C. 368).

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. YOUNG. Mr. President, I am very pleased Chairman PROXMIRE and his committee approved this bill to authorize a commemorative gold medal to be presented by the President on behalf of Congress to the distinguished American author, Louis L'Amour, in recognition of his most significant contributions to the United States. I am pleased, too, to be associated with the bill's several cosponsors, including Senators GARN, WALLOP, BURDICK, KASSEBAUM, THURMOND, STEVENS, LAXALT, ARMSTRONG, MCGOVERN, and SASSER.

I cannot help but feel this is one of the most meritorious gold medal bills considered by the Senate. This provides an opportunity to express the gratitude of the American people to this man whose name is synonymous with historical novels on the American frontier.

Louis L'Amour is recognized as a foremost authority on the life and times of the western frontiersman. The settlement of the vast territory known as the "Western Frontier" was an experience unique to America. The courageous men and women who ventured westward into this territory fraught with danger sought against almost insurmountable odds, to build our Nation. Louis L'Amour, in a unique way, tells the story of this great American adventure. He honors those who sought little recognition. He records their struggle to survive in the wilderness and their success in building the foundation for our great Nation. He epitomized the adventurous western spirit.

Mr. President, many books have been written on the westward movement, but few, if any, relate the experiences of these brave Americans as Louis L'Amour does. He is renowned for his painstaking attention to detail. He meticulously researches this tough but thrilling period of our history. Although his novels are fictional, they are based on actual people, places, and events.

His works are authentic. Louis L'Amour bases his literary works on historical records, such as diaries which were kept by a high percentage of the pioneers and which, through extensive and exhaustive efforts, he has been able to find. He has located family journals and it is not uncommon to find him searching through libraries at home and abroad, courthouse records and newspapers, and other valuable material to obtain the most accurate information available.

To Louis L'Amour, accurate accounts of the lives of the early pioneers are crucial. Minute details are never overlooked. He has set the record straight on many misconceptions about the westward movement. He is an expert on the Old West.

He shares his vast knowledge with the tens of millions of people throughout the world who read his novels about one of the last great frontiers. He has authored 77 books, and over 100 million copies bear his name.

Louis L'Amour has united the people of this country from coast to coast and made them friends with the pioneers who grappled with an untamed and hostile land.

But more importantly, Mr. President, Louis L'Amour has won our Nation a host of friends abroad. He is without question one of our most valuable literary ambassadors. His books have been translated into as many as 19 foreign languages, which in itself demonstrates the wide acceptance and respect for Louis L'Amour.

His novels are accurate and wholesome, making them the kind that can be shared by families and read and enjoyed by young and old alike. Louis L'Amour has the admiration of his readers, for in their hearts and minds he brings alive this very significant chapter in our Nation's past. Louis L'Amour has done much for our Nation and our people. He plays a major role in our understanding of the Old West.

Mr. President, by honoring Louis L'Amour, we honor the brave men and women who settled the West. Had it not been for the important diaries and records they kept, along with the legends that have been passed down by generations, it would be impossible for Louis L'Amour to write the brilliant accounts of the lives they led. But he has sought out this information and has embellished it for generations to come. He has enhanced the American spirit and helped to affirm our continued dedication to our most cherished values.

Louis L'Amour assures us that this heritage will not be lost, but will become a major part of our folklore forever. Mr. President, in this high-technology era in which we live, it is evident that people yearn to know more of the adventures of the frontiersmen who, through Louis L'Amour, have become heroes in their own right. He is without question a great American who has made significant contributions to the United States.

Mr. President, I urge my colleagues to approve this meritorious bill without delay. In the past, the United States has honored dedicated Americans with the national gold medal. Louis L'Amour is deserving of this high honor. He is a proud American who has dedicated his life to preserving a very important part of our American heritage.

Louis L'Amour has excited millions of people in this country and throughout the world with the fascinating stories which came out of the settling of the West by the courageous men and women who built a solid foundation for our great Nation and the character of our people.

Mr. President, I thank the leaders for bringing up this bill now, especially the distinguished majority leader, and my good friend the Senator from Missouri, Mr. DANFORTH, for yielding me this time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATOR WENDELL FORD

Mr. ROBERT C. BYRD. Mr. President, the enactment of legislation to provide for the development of new energy resources has proved to be a most difficult and contentious undertaking. Assuring our Nation's future energy security has and will continue to require leadership, industry and ingenuity. During the 96th Congress, the Senate passed critical measures on energy production, utility coal conversion, the Energy Mobilization Board, and the windfall profit tax, thereby providing the blueprint for America's future energy independence. No one has been more involved in forging this program than Senator WENDELL FORD, of Kentucky.

As Governor of his State, WENDELL FORD displayed the kind of foresight and leadership which have served him so well in the Senate. He was responsible for the establishment of a $57.5 million State research and development program to find new ways of using coal. When he came to the Senate 6 years ago, Senator FORD was determined to see the Federal Government follow Kentucky's example. As a member of the Senate Energy Committee, and as chairman of its Subcommittee on Energy Resources and Materials Production, he has been one of the principal architects of legislation to make synthetic fuels from coal and oil shale a reality. He has fought to increase Federal support for coal research and development, to improve this Nation's energy transportation network and to provide economic assistance for areas impacted by energy development. He served tirelessly on the conference committees on the Energy Mobilization Board, and natural gas pricing and synthetic fuels legislation, constantly striving to strike the balance that will make our energy programs work.

WENDELL FORD has been an ardent spokesman for coal as chairman of the Senate Coal Caucus. He has been an outspoken proponent of increased use of coal by industry and utilities, cosponsoring and managing legislation which was overwhelmingly passed by the Senate to mandate 80 utilities to convert to coal. His support and persistence have won Kentucky two important synthetic fuel pilot projects—the H-coal plant at Catlettsburg and the SRC I facility. In advocating increased coal use, Senator FORD has advanced our Nation's most vital economic and national security interests, as well as supporting one of Kentucky's most important industries.

Senator FORD has brought his special brand of down-home commonsense to other areas as well. He was responsible for a remarkable achievement—the enactment of the Federal Trade Commission authorization bill in a form which returned the FTC to a position of respect and responsibility while curbing excessive Government regulation. Since assuming the chairmanship of the Consumer Subcommittee of the Commerce, Science, and Transportation Committee, WENDELL FORD has given real meaning to the duty of congressional oversight. Since 1977, the subcommittee has held 27 different sets of hearings, all personally chaired by the distinguished Senator from Kentucky, including vigorous inquiries into the activities of the Consumer Product Safety Commission, the National Highway Traffic Safety Administration, and the FTC. Trivial and time-consuming Government regulation became the subcommittee's target as Senator FORD strove to weed out those rules and regulations which create a burden on business and consumers while serving no useful public purpose. This is the type of effective leadership that is needed to insure that the Federal Government remains responsive to the American people.

Kentucky's agricultural economy has also had a strong advocate in Senator WENDELL FORD. He has been an outspoken defender of price supports for tobacco and has worked with U.S. Trade Representatives Robert Strauss and Reuben Askew to win trade concessions to benefit the tobacco industry. He has supported legislation to maintain the family farm, which is the backbone of Kentucky agriculture, and he has urged that increased production of gasohol as an economical source of energy and a wise use of America's agricultural capacity.

WENDELL FORD is an effective spokesman for the people of Kentucky. His No. 1 priority has been to keep in touch with his constituents, traveling back to his State almost every weekend. He is a valued Member of the U.S. Senate, aiding the leadership as a deputy whip and serving as chairman of the Senate Democratic Campaign Committee. His warmth and good humor are appreciated by his colleagues and his legislative skills are widely respected. He has put the experience he gained in State government to good use in tackling the problems his State has in dealing with complex Federal programs and the Federal bureaucracy.

We look forward to WENDELL FORD's continued contribution to the Nation's leadership.

IMPROVING OUR PORTS

Mr. ROBERT C. BYRD. Mr. President, we have reached the end of an era in world energy supplies. The ready availability of oil—the basis for economic growth in the past few decades—has passed. The development of new energy sources has become an urgent necessity. Substitutes for oil, particularly to generate electricity and industrial power, must be encouraged if the industrialized and developing nations are to avoid crippling economic dislocation.

There is international recognition that increased coal use to meet growing energy demand will be required. Last year, the member nations of the International Energy Agency adopted principles calling for a strong steam coal utilization strategy and the active promotion of an expanded and reliable international steam coal trade. This past June, at the Venice economic summit, the industrialized democracies committed that no new oil-fired generating capacity would be constructed and that coal production and use would be doubled by 1990. The Venice summit communique states that it will be necessary "to improve infrastructures in both exporting and importing countries, as far as is economically justified, to insure the required supply and use of coal."

While the U.S. Congress, particularly the House of Representatives, has struggled to devise a program to mandate our own coal-capable utilities to convert to coal, the European Community has moved swiftly to implement this policy. The strength of their commitment to the substitution of coal for oil in the generation of electricity can be witnessed by the line of coal colliers waiting to be loaded at our ports. U.S. steam coal exports have jumped from almost nothing in 1978, to more than 2 million tons last year and are projected to reach between 9 and 12 million tons in 1980. The explosive export growth has caught the major coal ports unprepared. The inability of our ports to handle more coal is now one of the greatest constraints on increased exports.

The world coal study, recently completed at MIT, projects that the international trade in coal may increase to 100 million tons or more per year. The United States can and must provide much of this coal. The exploitation of our vast coal reserves for export can provide a critical offset in our balance-of-payment deficit. Increased coal production will put American miners back to work. And the increased dependency of our allies and developing countries on American coal, rather than OPEC oil, will have highly advantageous foreign policy implications.

For all of these reasons, the United States must invest in improving our rail and port facilities. Our European trading partners have indicated that they will not sign long-term supply contracts if we do not have the port facilities to move the coal. Currently, coal colliers must wait at Norfolk Harbor as long as a month to be loaded, costing the companies that buy the coal $15,000 to $20,000 a day while they sit idle. This delay can add as much as $3 a ton to the price of U.S. coal, making it difficult to compete with other coal exporting nations.

The Department of Energy has undertaken a full-scale review of the coal ex-

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port situation. Experts from the Army Corps of Engineers, which would be responsible for much of the dredging and other construction work, are participating in this study, to be concluded in the late fall. It is hoped that the results of this study will provide a coordinated plan and legislative agenda to improve our ports and railroads. We have little time to waste, as we cannot allow competing coal exporting nations to capture this crucial trade.

An article in the New York Times of August 24, 1980 described the coal moving and handling difficulties at Hampton Roads, Va. Other ports, such as Baltimore and Philadelphia, may also be appropriate centers for this expanded coal trade, but require expensive improvements as well. This initiative must and will be one of the principles of any reindustrialized program and will be one of the first orders of business when the 97th Congress convenes.

I ask unanimous consent that the New York Times article of August 24, 1980, "Hampton Roads: Catching up to the Coal Boom," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 24, 1980]

HAMPTON ROADS: CATCHING UP TO THE COAL BOOM

(By Eric Pace)

NORFOLK, VA.—The courteous, soft-spoken pilot who came on board the Indian coal freighter *Kasturba* outside the Virginia port of Hampton Roads was no ordinary guider of ships.

He was Capt. Richard L. Counselman Jr., president of both the Virginia Pilots Association and the Maritime Association of Hampton Roads, a vast and historic harbor complex that includes the port cities of Norfolk, Portsmouth, Chesapeake and Newport News—the gateway for more than two-thirds of the nation's overseas coal exports.

But even Captain Counselman was unable to take the *Kasturba* into Hampton Roads, whose four miles of brackish, blue-gray water—the battleground of the ironclads *Monitor* and *Merrimac* in the Civil War—constitute one of the world's finest natural harbors. With 40 other freighters waiting to put in at the coal-loading piers, the captain had to park the ship in a second-string anchorage 20 miles away to begin what could be a 21-day wait for a turn to pick up its cargo.

Under traditional nautical terminology, such protected places near shore where ships can ride at anchor are called "roadsteads," or "roads." That Hampton Roads offers so many safe places for ships to anchor has contributed to the evolution of its name and to its prestigious standing in the world maritime community. But that so many coal vessels are anchored in the local waters these days is not something the port is proud of.

Each day a collier waits costs an average of $15,000, and with the world increasingly coming to Hampton Roads for the bounty of the rich United States coal fields, the backups are putting a roadblock into the path of this harbor's entry into the new coal age.

In a sort of classic pincer movement, two major rail networks, the Norfolk & Western and the Chesapeake & Ohio, are steadily bringing coal from Virginian and other interior mines to the continent's edge. But the limited ability of the coal-moving and loading system to handle the booming demand for export coal at Hampton Roads has snarled the flow of what has become a promising major export item. As a result, conflicts have developed among coal producers, transporters and buyers over who is to blame.

"We cannot be tied to you by long-term coal contracts if you do not have the port facilities to move the coal to us," Philippee Jullenne, a coal-buying representative for France, said at a recent coal industry gathering at Richlands in southwestern Virginia. "And your railroads are saying that they will not build the piers without the contracts." He said that delays at Hampton Roads were proving enormously costly for France this year.

"We would like to see contracts set up long term," Allen B. Childress, an executive of the Norfolk & Western, said recently. "Everybody wants someone else to make the commitment first before they make the commitment."

Despite the problems, vast amounts of coal are being moved through Hampton Roads: 24 million tons were loaded during the first six months of 1980—95 percent of it for export. That was a marked increase from the 17 million tons loaded during the same period in 1979. And the figure is expected to exceed 46.4 million tons this year, compared with 1979's total of 34 million tons, which was valued at more than $1.8 billion.

The port and the surrounding area are hoping to benefit from the boom—as the world moves toward increasing use of coal as a substitute for costly oil from the volatile Middle East—but the current transport problems have Hampton Roads running scared. Although Federal payrolls and spending—notably at the Norfolk naval base and the huge Newport News shipyard—have blunted the impact of the recession in the area, the role coal plays in the regional economy is great.

The movement of each ton of export coal onto a freighter here brings $18.42 to the state economy, port authority officials report, including $12.86 that the coal companies spend getting the coal to dockside; $3.78 that is paid for fuel supplies, repairs and other services to the coal vessels, which are known as colliers; and $1.55 that is paid to have the coal put on board.

But coal's presence reaches a far greater universe than the flossy suburbs and gleaming office towers that coexist with substandard housing and patches of shabbiness here.

The coal-rich Appalachian region to the west, already plagued by substantial unemployment among miners, could be turned into a boom area by increased coal exports. And the big coal customers in Europe and Japan are eager to tap the United States supplies; millions of dollars have been invested in Appalachian mines by France, Germany, Rumania and Japan.

Indeed, the United States economy as a whole has a deep interest in exploiting its vast coal reserves as a way to offset a mounting foreign payments deficit that has been aggravated by the high price of oil from abroad.

"If nothing is done about this apparent breakdown in our coal transportation network, America will not be able to fully develop its coal resources and will have to forfeit a multibillion-dollar business," said John W. Warner, Virginia's Republican Senator, who is pressing for a bill that would provide $300 million for dredging Hampton Roads channels to accommodate larger coal ships.

With those kinds of stakes, the incentives for solving the problems of Hamption Roads are great. "Everybody's trying to get their act together here now," Captain Counselman said. "We've trying like mad to remain the No. 1 exporting port for coal."

The maritime association, the Virginia Port Authority, the coal companies and the railroads have all been taking steps toward easing the bottleneck. But the task is complex and made more so by environmental questions, which have also complicated plans to build a new oil refinery at Portsmouth. And there is a certain amount of urgency involved; because Hampton Roads is facing stepped-up competition from Baltimore and other rival ports.

In fact, some of the major coal companies are looking elsewhere. The Consolidation Coal Company, for example, the nation's second-largest producer, recently bought a marine terminal in Baltimore for $30 million. And officials of the Port Authority of New York and New Jersey have been studying the possibility of getting more coal-export business for their area, which accounted for only 3,000 tons last year.

But steps are being taken to bring Hampton Roads' problems under control. The port authority's chairman, Glenn J. Sedam Jr., is to meet soon with representatives of several coal-producing companies to discuss the industry's future and the possible construction of an additional coal-export installation here.

Mr. Sedam, a lawyer, said that the success of such a facility would depend greatly on cooperation from the Chessie System, which owns the Chesapeake & Ohio, and Norfolk & Western. "They have the ability to strangle it if they won't deliver coal to it," he said.

The steps that the railroads have already taken include sending in efficiency experts and providing instruction for inexperienced coal shippers.

And earlier this month, Chessie reopened an inactive coal pier in Newport News, which is on Hampton Road's north side, to increase its loading capacity. It has spent money dredging around its coal piers in Norfolk and has stepped up its loading activity at the two coal piers there.

There is hope that there will be additional investment in facilities here by the two railroads, both of which want to merge with other railroads. "Future equipment needs, new facilities and yard expansions are all under study," John T. Collinson, president of the Chessie System's railroads, said recently.

Predictions of the impact of the mergers differ, but officials here note that Chessie's prospective union with Seaboard Coast Line Industries would provide Chessie with direct access to the south side of Hampton Roads on track now owned by Seaboard—track that would become very important, they say, if another coal pier were to be built on the south side.

The coal companies have also acted to reduce the delays. The A. T. Massey Coal Company, a subsidiary of the St. Joe Minerals Corporation with headquarters in Richmond, has arranged to buy an oil-loading pier in Newport News from Chessie and plans to convert it to load coal. The cost of the pier and the conversion is to be more than $60 million.

For its part, the Army Corps of Engineers has been working on the plans to deepen Hampton Roads channels, to 55 feet from their present level of 45 feet. But planning for the project has been complicated by doubt about where to put the material dredged up from the port's muddy bottom. The material, which resembles chocolate pudding, has been polluted by pesticides and other substances, which has raised the concern of environmentalists. After much study, the Corps of Engineers now envisages dumping the material on the Craney Island landfill area on Hampton Roads' south side and in an area of the Atlantic Ocean eight miles off the Virginia coast.

Similarly, environmental considerations have stirred debate over the proposed oil refinery in Portsmouth, which would be one of only two in the state. But last month, a Federal judge in Richmond upheld the state's issuing of an effluent discharge permit for the installation, and an executive of

the company that is to build it said that work would proceed.

Still, the oil business plays a relatively small role in the work of Hampton Roads compared to the coal trade: 28 million barrels of oil imports moved through the port last year, and 94,000 barrels of oil products were exported. Coal exports constituted 80 percent of Hampton Roads' total export tonnage in 1979, with corn and soybeans making up 12 percent.

There are many industries dotting the region around the port. They range from the new 113,000-square-foot Gwaltney Hot Dog Company plant in Portsmouth—said to be the world's largest frankfurter factory—to the busy Newport News Shipbuilding yard—also said to be the world's largest.

The yard is where the nuclear-powered aircraft carrier Carl Vinson was launched in March. It is now being outfitted there, with its hulking superstructure swathed in scaffolding. The yard also has contracts for preliminary work toward another big aircraft carrier, which is to cost $1.3 billion. Operated by a division of Tenneco Inc., the yard has 23,000 employees and is hiring more, thanks to the continued Government business.

The impact of Government funds is even more evident across the water from Newport News, on Hampton Roads's south side, which is the site of Norfolk's naval complex, the largest such layout in the world. All told, serving or retired military personnel and their family members make up 35 percent of the population of the five cities on the south side.

With such a Government presence, the region has been somewhat insulated from the national economic downturn. Unemployment in the five cities was 7.1 percent in June, which was the highest for the area since January 1978, but less than the national figure of 7.8 percent. "This area is holding up much better than other portions of the United States because it's so highly dependent on Government funds," said Thomas Olds, a Newsport News shipyard executive.

The relative prosperity here is so pronounced, local people like to say, that in the poorer regions of the Carolinas an indigenous version of the "Three R's" is taught: "reading writing, and the road to Norfolk."

Still, the road from Norfolk to the world's coal consumers remains more or less jammed. But local officials are eager to get things moving more efficiently. "Other ports want our business," said Mr. Sedam, the port authority chairman, "but this port is going to get out there and be very aggressive."

DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2283

(Purpose: To strike title I and instead to authorize the same amounts as under title I to be added to the title XX ceiling of the Social Security Act)

Mr. DANFORTH. Mr. President, I call up my amendment No. 2283.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 2283.

Mr. DANFORTH. I ask unanimous consent that further reading be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 1, line 9, strike title I and insert in lieu thereof the following: That there are authorized to be appropriated $15,000,000 for fiscal year 1981, $20,000,000 for fiscal year 1982, and $30,000,000 for fiscal year 1983. Such appropriated sums shall be added to the indexed ceiling amount otherwise applicable under section 2002(a)(2)(A) of the Social Security Act.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. The yeas and nays have already been ordered.

Mr. DANFORTH. Mr. President, I yield myself 5 minutes.

The issue presented by this amendment is not whether or not there should be a domestic violence prevention and services program. The issue is not whether Federal funds should be made available for such a program. Each of those two points is conceded by the amendment. Rather, the sole issue that is presented by this amendment is whether a new, duplicative categorical grant program, with new Federal bureaucracy and new requirements on the States, should be created to administer such a program or, in the alternative, whether such a program should not be conducted under title XX of the Social Security Act, the existing Federal block grant program for social services.

The domestic violence program is specifically provided for in title XX of the Social Security Act, the basic social services block grant program. Title XX provides, among other things, that funds under the title XX block grant program may be used by the States for "preventing or remedying negligence, abuse, or exploitation of children and adults unable to protect their own interests or preserving, rehabilitating, or reuniting families."

Furthermore, in H.R. 3434, which was passed by the Congress and signed into law by the President just a few months ago, the conference report specifically states as follows:

As in both the House and Senate bills effective October 1, 1979, title XX funds could be used for emergency shelter for not in excess of 30 days in any 6-month period as a protective service to an adult in danger of physical or mental injury, negligence, maltreatment, or exploitation.

So, Mr. President, under title XX, the block grant program, exactly the purposes intended to be served by the bill which is now before the Senate can be served. What my amendment would do is authorize precisely the same funds that are authorized under the bill, but instead of going to a separate categorical grant program, these funds would be added on to title XX of the Social Security Act. Further also to track this bill, these particular add-on funds would be subject to the appropriation process. So the funding would be identical in amount, the only difference being that, instead of setting up a new categorical grant program with all of the strings attached to local governments and with all of the bureaucracy required to administer such a program, the funds, instead, would be added on to title XX.

From the standpoint of matching, under my amendment, the matching requirements would be much more favorable to the States than is the case under the bill. The matching requirement for title XX funds is 25 percent for the State's share. Under the bill, the local match is 25 percent the first year, then going up to a third the second year, and 50 percent the third year.

Mr. President the clearest way to leverage decisions on the State basis is to use categorical grants and to use categorical grants with high match requirements. That is the way to take over State and local decisionmaking. This amendment is designed to remedy that problem and the issue that the Senate will be voting on is whether or not we prefer the categorical grant approach or, instead, the block grant approach.

The ACTING PRESIDENT pro tempore. The 5 minutes of the Senator from Missouri has expired.

Who yields time?

Mr. CRANSTON. Mr. President, I yield myself 10 minutes.

I want to restate my opposition to the amendment of the Senator from Missouri (Mr. DANFORTH).

I am strongly opposed to this amendment which would eliminate title I of this bill, the domestic violence program, and transfer funds that might have gone into title I programs into the General Social Security Act title XX fund. There is no doubt in my mind that an attempt to deal with the problem of domestic violence through the use of the already limited title XX funds would be a grossly inadequate and cost-ineffective way to provide assistance to victims of domestic violence and their families.

As I stated yesterday, after nearly 3 years of carefully examining the problem of domestic violence and various proposals to address this tragic social problem, I feel very strongly that there is a great need for legislation which specifically addresses the problem of domestic violence. Title I of the legislation pending before us today confronts the problem of domestic violence in a very specific and positive manner. A simple transfer of funds authorized under this bill to the general title XX social services program would clearly be insufficient to meet the genuine needs of the victims of domestic violence.

The title XX program of grants to States for social services is a program already under excessive stress due to major reductions recently enacted by the Congress. In fact, title XX funds have been cut sharply for fiscal year 1980—by $200 million from their 1979 level as a result of the enactment of Public Law 96-272—and the fiscal year 1981 level returns merely to the fiscal year 1979 level of $2.9 billion. The $15 million increase the Senator from Missouri has proposed hardly balances the great squeeze facing the States in their title XX programs this year and next.

There is absolutely nothing in Mr. DANFORTH'S proposal that would assure that the transferred funds would be used for domestic violence victims. In fact, it

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is more likely that any additional funds available under title XX would be eagerly sought by the programs and projects which now are receiving title XX funding and facing the large reductions in real dollars in the availability of title XX funds.

In sum, States are hardly able to maintain existing programs at their current level—let alone fund new programs. Yet, the Senator from Missouri would suggest domestic violence victims should be told to turn to title XX for the help they need.

Mr. President, I want to make one additional observation on the inadequacy of title XX to meet the needs of domestic violence victims. Title XX is basically a social services program focused upon low-income individuals. Generally, families whose incomes are above 115 percent of the poverty line are excluded from title XX services.

Yet, Mr. President, one of the things we know about domestic violence is that it affects families of every economic level. It is found in the homes of the college educated, in middle and upper income families as well as those in lower economic levels. The income restrictions in title XX—and its general focus on low-income individuals—could severely hamper efforts to help victims of domestic violence and could preclude the type of grants envisioned by title I to agencies serving the general public, such as law enforcement personnel or emergency rooms, which deal with victims of domestic violence of all economic levels.

Domestic violence is not a problem suffered only by low-income families and needs a legislative response which is not tied, as title XX programs generally are, to the economic status of the victim.

Mr. President, in addition to the basic question of whether any of the funds which would be added to title XX by the Senator's amendment would ever be used to help any domestic violence victims, this approach totally ignores much of what we have attempted to achieve in title I. This amendment would not provide any mechanism for encouraging States to involve local and community groups in long-term planning for assistance to domestic violence victims. Nor would his proposal do anything to encourage shelter and service providers to develop alternative long-range funding mechanisms independent of Government—a matter of much debate yesterday as we agreed to my modification of Senator HUMPHREY's amendment, dealing with a local share and nongovernmental funding sources.

Moreover, Mr. President, by adopting this approach, we would eliminate all of the carefully drafted provisions of title I aimed at providing for evaluations of the effectiveness of domestic violence programs as well as provisions limiting the size and duration of grants—further provisions designed to encourage projects to limit their dependency upon Federal funding.

As well, the effort to emphasize programs in the private sector through the requirement that two-thirds of the funds received by the States go to private nonprofit entities would be lost.

Likewise, our efforts to make sure that the bulk of the funds are expended on direct services—emergency shelter services—for domestic violence victims rather than on indirect services, would be lost. And there would be no coordinating effort at the Federal level nor any authority to provide technical assistance or training in a cost-effective efficient manner. Nor would there be any vehicle for the sharing of information on effective approaches—leaving each State and community on their own to find out what techniques, successes, or failures had been achieved in other localities.

Mr. President, the amendment of the Senator from Missouri would discard all of the checks and balances which have been painstakingly built into this legislation; it would ignore the pleas of victims of domestic violence for help; and it would place these victims at the bottom of the long list of groups seeking funding from the already hard-pressed, reduced title XX program.

The record is clear that we cannot continue to ignore the problem of domestic violence. We must not forget the terrible toll this problem places upon law enforcement personnel as well as the shattered families themselves; one-fifth of all police deaths and 40 percent of police injuries occur in domestic violence situations. My colleagues heard the statistics and the data over and over during our debate yesterday.

Mr. President, simply put, this amendment would destroy our effort to deal with the problem of domestic violence. We cannot continue to turn our back on this problem and hope it will disappear or that somehow, some way, somebody else will take care of it. That is what this amendment would do and I strongly urge its defeat.

Mr. President, in conclusion, I would like to make it very clear to my colleagues who support legislation to address the problem of domestic violence, that a vote for the pending amendment is a vote against any effective action to help domestic violence victims and prevent domestic violence incidents.

Mr. President, I reserve the remainder of my time.

Mr. DANFORTH. Mr. President, I yield myself 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized for 5 minutes.

Mr. DANFORTH. Mr. President, first, just to correct what I am afraid is a misstatement of the law made by the Senator from California when he stated that title XX is means tested and that, therefore, a domestic violence program under title XX would not be available to low-income people, that is not correct.

Under section 2002(a)(6) of the Social Security Act, it is specifically provided that the income test does not apply to services directed at the goal of preventing or remedying neglected youth, or exploitation of children and adults unable to protect their own interests.

So the means test argument just simply does not apply.

A domestic violence prevention and services program established under title XX would be equally available to people who were rich, poor, or everywhere in between.

Second, Mr. President, when we vote on final passage on this bill in a week or so, 2 weeks, whenever it is going to be, at that time the decision will be made by the Congress as to whether we want any program or not.

That is the time, whether or not my amendment is adopted, we will have a vote on whether or not there is going to be any additional money for this particular program.

Indeed, at times of tight budgets and high deficits, I am sure the argument will be made that maybe we do not want any new programs or any new increases in levels of existing Federal programs. But that issue, on whether or not we want any domestic violence program, is not presented by the amendment of the Senator from Missouri.

The sole issue that is presented in this amendment is whether or not the additional funds, if there are to be additional funds, should come in the form of categorical grants or in the form of block grants.

The Senator from California argues that in his belief the funds are more efficiently spent if they are in the form of categorical grants. I cannot agree with that because the nature of categorical grants is to set up a new bureaucracy.

This program will set up a new bureaucracy instead of availing itself of the existing title XX program. It sets up specific requirements that have to be met by State governments. Some 10 percent, for example, of the funds have to be spent on a State plan.

Therefore, Mr. President, instead of placing all of these funds in the hands of people who are in need, a good portion of the program is going to just increase the cost of Government itself, simply because it is a categorical grant program.

Now, it is quite true that when decisions are left to State governments, State governments might decide things differently than we in Washington would decide them. If we devise categorical grant programs, and this is always the argument for categorical grants programs, then we maintain the control on how the decisions are made. We make the decision here in Washington. The basic philosophical question that is put before the Senate on this amendment is this: Do we really believe that? Do we really believe that decision should be made right here? Or do we believe in the block grant concept, which allows the States discretion on whether to spend money on domestic violence prevention or drug abuse or alcohol abuse or numerous other social services?

I believe that the mood of the country is such that Washington does not, in fact, have all the answers and that it is fundamental to our system that people at the local level and State level should have responsibility for making decisions as to public policy.

That is the whole issue presented by this amendment—not whether or not there should be domestic violence prevention services, not whether or not there should be increased Federal funding. Instead, the sole question is this: Do we believe that there should be yet another categorical grant program, yet another bureaucracy, yet more restraints and restrictions and redtape on local government, or do we believe in the block grant concept?

The PRESIDING OFFICER (Mr. ZORINSKY). The time of the Senator has expired.

Mr. HUMPHREY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. How much time does the Senator desire?

Mr. HUMPHREY. One minute.

The PRESIDING OFFICER. The Senator has 4 minutes and 35 seconds remaining.

Mr. HUMPHREY. Mr. President, I do not want to impose upon my colleague's time; neither is it necessary, after his eloquent argument, to say much more.

However, as the floor manager for this side, I urge our colleagues to accept the Danforth amendment. For those States which choose to make domestic violence prevention their first priority, the money still will be there—in fact, will be there in more generous quantities, given the more favorable matching formula proposed by Senator DANFORTH. Those States which have other priorities they rank first will be in a better position to address the needs to which they give priority.

Mr. CRANSTON. Mr. President, the arguments have been made, so I will not take any additional substantial time.

If the amendment of the Senator from Missouri is adopted, the effect would be to gut the domestic violence program. There is no assurance that any money at all—no assurance that one penny—would be allocated to dealing with the problem of domestic violence if the amendment is adopted. For that reason, I oppose the amendment very strongly.

I am prepared to yield back my time.

Mr. DANFORTH. Mr. President, of course, if the Senate wants absolute assurance that State governments never will do anything wrong, the thing to do is to establish a whole host of categorical grant programs. If State governments are given no authority to make decisions, they will not make wrong decisions. Clearly, when decisionmaking power is allowed locally, local governments or States governments can make good decisions or bad decisions.

I do not know of any monopoly of wisdom in Washington. But even if we had a monopoly of wisdom in Washington, the whole concept of the country, as I understand it, is that we should have a diversity of decisionmaking; that the concept of revenue sharing is that there should be diversity of decisionmaking on spending funds; that the concept of a block grant is that there should be a diversity of decisionmaking on the spending of Federal funds; that the concept of a categorical grant is that there should be no diversity of decisionmaking; and that we in Washington should tailor make the programs and gain the very assurances that the Senator from California states that he wants.

The absolute maximization of the leverage power of Federal decisionmaking is by having relatively high match requirements on Federal funds. With high match requirements, we not only can decide how Federal money is being spent but also, in effect, how local money is being spent.

Therefore, under title XX, the match requirement is 25 percent. Under this bill, the match requirement goes up in 2 years to 50 percent, absolutely maximizing our ability in Washington to tailor-make programs and to make decisions. It is my view that that is absolutely wrong, as a matter of concept.

Again, under title XX, it is specifically provided that funds under title XX which would be increased by the Danforth amendment, in exactly the amount of the bill, can be used for preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests. That is not income testing under title XX.

Under H.R. 3434, just passed by Congress this year, it is expressly provided that title XX funds can be used for emergency shelter.

Mr. President, I am prepared to yield back the remainder of my time.

● Mr. DOLE. Mr. President, the purpose of the Danforth amendment is to preserve the block grant concept rather than allow categorical grants to proliferate.

The amendment would strike title I of the domestic violence bill which provides Federal matching funds to States for establishing and running shelters for battered spouses.

Authorize Federal matching funds over and above the statutory ceiling for social services under title XX of the Social Security Act in the amounts which would have been available under title I of the domestic violence bill—$15 million in fiscal year 1981, $20 million in fiscal year 1982, and $30 million in fiscal year 1983.

Provide that the additional funds for title XX must go through the appropriations process and, like most other title XX funds, will be available to the States at a 75 to 25 match to be used for any social services the States determine are appropriate.

Title XX was established to financially aid the States to provide social services to help individuals to become or remain self-sufficient; the States have always been free to decide what services to provide to whom.

Categorical programs, such as that created under the domestic violence bill, establish Federal rather than State priorities for providing services.

Under title XX, States already provide protective services to adults, counseling, alcohol and drug abuse treatment, day care, and other services not only directed at the immediate problems suffered by victims of domestic violence but also directed at the root causes of such violence.

The Congress has given a lot of lip service recently to cutting Federal programs, turning social decisions back to levels of government better equipped to handle them and reigning in the Federal bureaucracy; this amendment gives us the opportunity to put our votes where our mouths are.

The Federal Government has no business getting into the treatment of domestic ills of this nature in any event, and we already have a social services mechanism for putting funds in the hands of the States to deal with these problems; we should use that flexible mechanism rather than create another program with its own bureaucracy which puts unnecessary limits on the States.

It makes no sense to spend months trying to balance the budget and then turn around and create a program with built-in increases in funding and the potential for extraordinary growth; instead we should use the existing title XX program and the appropriations process to decide if more Federal money should be funneled into social services to help solve the domestic violence problem.

As Senator DANFORTH has said, this is a very simple issue: either the Senate prefers categorical grants to States which limit their ability to determine what is best for their citizens or we prefer block grants which give the States the flexibility to make their own choices based on the needs of their citizens as they see them.

The Senator from Kansas believes we should opt for the latter approach, and I strongly urge my colleagues to support the amendment.●

The PRESIDING OFFICER. Does the Senator from California yield back his time?

Mr. CRANSTON. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Missouri.

Mr. CRANSTON. Mr. President, a parliamentary inquiry. We vote on two amendments successively. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. CRANSTON. Which is first?

The PRESIDING OFFICER. The Danforth amendment is pending first.

Mr. CRANSTON. Followed by the Levin amendment?

The PRESIDING OFFICER. The Levin amendment.

Mr. CRANSTON. Each is a 15-minute rollcall vote?

The PRESIDING OFFICER. That is correct.

Mr. CRANSTON. I thank the Chair.

The PRESIDING OFFICER. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana

(Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) and the Senator from West Virginia (Mr. RANDOLPH) would each vote "nay."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. LAXALT), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), the Senator from Wyoming (Mr. SIMPSON), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 36, nays 46, as follows:

[Rollcall Vote No. 379 Leg.]

YEAS—36

Armstrong	Hatch	Percy
Baker	Hayakawa	Proxmire
Byrd, Harry F., Jr.	Heflin	Schmitt
Chafee	Heinz	Schweiker
Cochran	Helms	Stennis
Cohen	Hollings	Stevens
Danforth	Humphrey	Thurmond
Dole	Jepsen	Tower
Eagleton	Kassebaum	Warner
Exon	Lugar	Young
Garn	McClure	Zorinsky
Goldwater	Morgan	
	Nunn	

NAYS—46

Baucus	Glenn	Moynihan
Bayh	Hart	Nelson
Bentsen	Hatfield	Packwood
Biden	Huddleston	Pell
Boschwitz	Inouye	Pryor
Bradley	Jackson	Riegle
Burdick	Javits	Sarbanes
Byrd, Robert C.	Johnston	Sasser
Cannon	Kennedy	Stafford
Chiles	Leahy	Stevenson
Cranston	Levin	Stone
Culver	Mathias	Tsongas
DeConcini	Matsunaga	Wallop
Durenberger	Melcher	Williams
Durkin	Metzenbaum	
Ford	Mitchell	

NOT VOTING—18

Bellmon	Laxalt	Ribicoff
Boren	Long	Roth
Bumpers	Magnuson	Simpson
Church	McGovern	Stewart
Domenici	Pressler	Talmadge
Gravel	Randolph	Weicker

So Mr. DANFORTH's amendment (No. 2283) was rejected.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1524 (SUBSEQUENTLY AMENDMENT NO. 2284)

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to vote on the amendment of the Senator from Michigan. The question is on agreeing to the amendment of the Senator from Michigan. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER (Mr. SARBANES). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 27, nays 58, as follows:

[Rollcall Vote No. 380 Leg.]

YEAS—27

Bayh	Jackson	Mitchell
Biden	Johnston	Pell
Bradley	Kennedy	Randolph
Cranston	Leahy	Riegle
Culver	Levin	Sarbanes
Durkin	Lugar	Sasser
Heinz	Mathias	Stone
Hollings	Matsunaga	Tsongas
Inouye	Metzenbaum	Williams

NAYS—58

Armstrong	Ford	Nelson
Baker	Garn	Nunn
Baucus	Glenn	Packwood
Bentsen	Goldwater	Percy
Boschwitz	Hart	Proxmire
Burdick	Hatch	Pryor
Byrd, Harry F., Jr.	Hatfield	Schmitt
Byrd, Robert C.	Hayakawa	Schweiker
Cannon	Heflin	Simpson
Chafee	Helms	Stafford
Chiles	Huddleston	Stennis
Cochran	Humphrey	Stevens
Cohen	Javits	Stevenson
Danforth	Jepsen	Thurmond
DeConcini	Kassebaum	Tower
Dole	Laxalt	Wallop
Durenberger	McClure	Warner
Eagleton	Melcher	Young
Exon	Morgan	Zorinsky
	Moynihan	

NOT VOTING—15

Bellmon	Gravel	Ribicoff
Boren	Long	Roth
Bumpers	Magnuson	Stewart
Church	McGovern	Talmadge
Domenici	Pressler	Weicker

So Mr. LEVIN's amendment (No. 2284) was rejected.

UP AMENDMENT NO. 1526

(Purpose: Technical amendment)

Mr. CRANSTON. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an unprinted amendment numbered 1526.

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 10, line 24, insert the following: beginning with "local" strike out all through "organizations" on page 11, line 1 and insert in lieu thereof "units of general local government".

On page 13, line 18, strike out "Director of the Center" and insert in lieu thereof "Secretary".

On page 15, line 5, strike out "Director" and insert in lieu thereof "Secretary".

On page 15, line 9, strike out the comma and "through the Director,".

On page 16, line 24, strike out "local public agencies" and insert in lieu thereof "units of general local government".

On page 23, line 1, strike out "Director" and insert in lieu thereof "Secretary".

On page 23, line 6, strike out "Center" and insert in lieu thereof "Secretary".

On page 23, line 16, strike out "consult with the Director and".

On page 24, line 11, strike out "Director" and insert in lieu thereof "an officer designated by the Secretary from the Department of Health and Human Services".

On page 25, line 21, strike out "Director" and insert in lieu thereof "Secretary".

On page 28, strike out lines 11 through "for" on line 18 and insert in lieu thereof the following: "Secretary for making grants to States under section 102(a); not less than 22 per centum nor more than 24 per centum shall be used by the Secretary for making grants to units of general local government under section 102(b); not less than 1 per centum nor more than 3 per centum shall be used by the Secretary for making grants to Indian tribes, intertribal organizations, and urban Indian organizations under section 102(c); 10 per centum shall be used by the Secretary for making grants to States under section 103; and 5 per centum shall be used for".

Mr. CRANSTON. Mr. President, this is a technical amendment which makes conforming changes in the text of the bill to reflect the amendments of the Senator from Utah which were adopted yesterday, deleting the requirement for a national center and modifying the direct grant provisions under section 102(b) of title I. I believe that these changes are acceptable to the minority.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1526) was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

● Mr. KENNEDY. Mr. President, I have long recognized the vital role that the family plays in our society, and have long believed that the proper role of Government is not to interfere with the family. Our goal is to take the needed steps to strengthen families, and to provide the background and the framework in which they can best function.

Throughout my career in the Senate, I have been a strong advocate for programs to fill the needs of the family, whether in education policy, aid to the

handicapped, Head Start, health care, child welfare, tax policy, social security, or employment. The legislation we are considering today, the Domestic Violence Prevention and Services Act, S. 1843, addresses a problem which not only undermines the family structure, but exacts a tremendous social cost. It is a problem which for too long has been hidden from society, but which can no longer be neglected.

Domestic violence cuts across all socioeconomic lines and has been described as reaching "epidemic proportions." A 1977 national study of domestic violence, conducted by Dr. Murray Straus of the University of New Hampshire, found that of the couples surveyed 3.8 percent of the women were victims of one or more physical attacks by their husbands during the prior 12-month period. Nationwide this translates into 1.8 million abused wives.

In 1978, the Boston City Hospital reported that 70 percent of the assault victims examined in the emergency room were women who were abused in their homes.

A Maryland State Police survey reported that almost 90 percent of its 15,312 cases of spousal violence involved assaults or attempted assaults on women.

In Kansas City in 85 percent of all spousal homicides or aggravated assaults, the police were called to the home more than once, and in 50 percent of the homicide cases, they were called five or more times before the homicide occurred.

Violence in the home is a subject about which little has been done. Yet it is a pervasive problem which exists in all settings—urban as well as suburban. The victims of domestic violence suffer from a multitude of problems including legal, medical, economic, and psychological. In most instances abused women have no place to turn. They endure the situation believing that it will change or fearing the unknown if they leave and seek outside assistance. Many are economic prisoners, unable to support themselves or their children if they leave. And there is little support from the legal system.

The fact is that women who have been victimized at home have too often found themselves victimized again by a society which ignores their plight. Only recently have we become aware of the seriousness of the problem and that its victims need help.

At the same time, we must face the realization that violence in the home is rarely limited to one victim. It occurs not only between spouses, but includes children, infants and the elderly. A recent Connecticut study revealed that in 40 percent of the cases where mothers were being abused by father, these fathers were also beating the children of the household. And, many of the children of violent households become abusers of their own spouses and children, perhaps also of the very parents who once hurt them.

We live, unfortunately, in a violent society. Domestic violence is another manifestation of a society that has lost respect for the individual. The purpose of S. 1843 is to provide real help to the real victims of domestic violence. It will also provide help for the perpetrators of domestic violence to end the cycle of violence.

Mr. President, in 1977 I was a primary cosponsor of the first bill introduced in the Senate to address this issue. Representative BARBARA MIKULSKI was the chief sponsor of domestic violence legislation on the House side. Compassion and understanding has been the hallmark of her leadership throughout the development of this legislation, and I am grateful to have had the benefit of her counsel. I also wish to acknowledge the important contributions of Representative LINDY BOGGS who introduced the first domestic violence bill in the House.

In the Senate, Senator CRANSTON is to be commended for his leadership on this serious issue. I joined with him as an original cosponsor of this legislation and strongly support its comprehensive approach.

S. 1843 does not seek to impose a federally mandated solution to the problem of domestic violence, but rather provides an effective mechanism to provide Federal support to State, local, and community activities to prevent domestic violence, and to provide direct services to the victims. It also provides an efficient means of coordinating Federal programs and activities pertaining to domestic violence.

I would further point out that the domestic violence legislation enjoys a broad range of support among religious groups, women's organizations, police, corrections and law enforcement associations, civil rights groups, civic associations, State and city agencies, and legal and medical associations.

It is my hope that this legislation will be quickly enacted and signed into law so that this much-needed assistance to States and local communities can begin.●

Mr. CRANSTON. Mr. President, a third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

MENTAL HEALTH SYSTEMS ACT

Mr. KENNEDY. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1177.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1177) to improve the provisions of mental health services and otherwise promote mental health throughout the United States, and for other purposes.

(The amendment of the House is printed in the RECORD of August 22, 1980, beginning at page 22728.)

Mr. KENNEDY. Mr. President, I move that the Senate disagree to the House amendment and request a conference with the House, and that the Chair be authorized to appoint conferees.

The motion was agreed to; and the Chair appointed Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, Mr. HUMPHREY, and Mr. STAFFORD conferees on the part of the Senate.

DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT

The Senate continued with the consideration of the bill H.R. 2977.

Mr. ROBERT C. BYRD. Mr. President, have the yeas and nays been ordered on the bill on final passage?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. HUMPHREY. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

Mr. ROBERT C. BYRD. Mr. President, under the order of yesterday, I am authorized to call up S. 2718, Calendar Order No. 785, Export Trade Act, after consultation with the minority leader. Consultations have been had. I therefore execute the order by calling up Calendar Order No. 785.

The PRESIDING OFFICER. The bill will be stated.

The assistant legislative clerk read as follows:

A bill (S. 2718) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. STEVENSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, I ask unanimous consent that Robert Russell of the Banking Committee staff, and

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Patricia Sherman and Andrew Carothers of my staff be granted the privilege of the floor during consideration of this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President I yield to the distinguished Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I thank the Senator for yielding.

I ask unanimous consent that Mr. Bill Reinsch of my staff be granted the privilege of the floor during debate and rollcalls on this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, the United States ran a trade deficit in June of $2.28 billion, the 50th consecutive monthly trade deficit.

The trade deficits mount with no end in sight, adding to inflation and unemployment, weakening the dollar and our influence in the world, while 20 thousand American companies which could export do not.

For years the United States relied on the conventional wisdom, including a weak dollar and higher growth rates abroad, to right the trade deficits. The futility of that course is now obvious—but the United States still has no export policy.

In January 1978, the Senate Subcommittee on International Finance commenced a year-long study of U.S. export policy. Its report recommended a number of measures to improve U.S. competitiveness. These recommendations included the establishment of export trading companies to provide a broad range of export services to U.S. producers, linking them with overseas markets. The subcommittee also recommended revision of the Webb-Pomerene Act of 1918 to clarify the antitrust laws relating to export trade associations and export trading companies, and the use of tax incentives, such as expanding the export benefits of DISC, to enable U.S. producers to compete with their foreign competitors in the world market.

This bill implements those recommendations. It facilitates the formation of American export trading companies to bring the products of small- and medium-sized American firms to foreign markets and also benefit the largest corporations with new possibilities for "package" deals and exported turnkey projects.

The trading companies would represent all American companies worldwide, spotting market opportunities, meeting the price competition, absorbing exchange rate fluctuations, handling the details of export transactions and, through their services as intermediaries, offering a full range of services and products to foreign purchasers and domestic producers.

S. 2718 would: First, increase the financial leverage of all exporters by directing the Export-Import Bank to develop an improved guarantee program to support commercial loans to U.S. exporters; second, direct the Secretary of Commerce to promote export trading companies by providing information on such companies to U.S. producers; third, permit banks to make limited investments in export trading companies. Such investments could not exceed 5 percent of a bank's capital, and all controlling investments by banks and all investments over $10,000,000 would be subject to prior approval and conditions imposed by Federal bank regulatory agencies to insure the safety and soundness of banks and fair competition; fourth, authorize additional appropriations to the Economic Development Administration and Small Business Administration to support increased loans and guarantees for U.S. exports, including exports through U.S. export trading companies.

Title II would revise the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and export trading companies and provide a certification procedure which would enable such associations and companies to obtain antitrust preclearance for specified export trade operations. The clearance procedure would facilitate exports by permitting firms to determine in advance exactly which export trade activities would be immune from antitrust suit and which ones would not.

Title III of the bill would extend the tax deferral available under the DISC—Domestic International Sales Corporation—provisions of the tax code to the exports of export trading companies, including exports of services. The use of subchapter S of the tax code, which permits certain passthroughs to shareholders of closely held corporations would be allowed for some export trading companies. Title III has been introduced separately as S. 2757 and referred to the Committee on Finance for its consideration. Accordingly, I intend to offer an amendment deleting these provisions from the bill.

The success of trading companies in exporting U.S. products has already been demonstrated by foreign trading companies. Mitsui Trading Co. is America's sixth largest exporter. Foreign trading companies represent the businesses of many foreign nations to the disadvantage of the United States in all the world's markets.

Mr. President, this bill will substantially improve the Nation's ability to compete in the world. It will result in more jobs for American workers and will improve our ability to pay for the goods and services we import, including oil. It carefully balances other objectives, including the safety and soundness of banks, with increased export promotion.

This bill will not, by itself, restore the competitiveness of the United States in a newly competitive world. But it is a first step toward a strong export policy for the United States. No other step will do more to strengthen the marketing of American goods and services in the world. Basically, the bill repeals disincentives and impediments in the law. It is a deregulation bill. It helps to put American industry on the same footing as its foreign competitors. It gives American business, especially small business, a chance to compete in the world.

I urge the Senate's support of S. 2718.

Mr. HEINZ. Mr. President, S. 2718 is the first serious attempt by this Congress to remedy the dramatic competitive decline in the United States vis-a-vis our trading partners and our trading competitors.

This bill is the product of nearly 3 years of concerted effort by Senator STEVENSON and our committee, which has held hearings including witnesses from virtually every segment of our economy, from academics, from business people, from labor, from consumers, from exporters, from importers.

It represents, perhaps, the most carefully researched response to a national problem that I have seen in my nearly 10 years in legislative service.

And that problem is that we are faced with a situation in which our trade deficit is getting progressively worse. That is a serious problem, Mr. President, because it is through our earnings in exports that we pay our ever-increasing import bills, particularly the $90 billion a year for our oil imports.

We should be mightily concerned because, notwithstanding a burgeoning Federal budget deficit, estimated in this "year of the balanced budget" at some place between $30 billion and $40 billion, the sad fact is that our trade deficit, which is not between the American Government and our people, but between the American people and other foreign trading partners, threatens to be larger than our Federal budget deficit.

This fact—that our trade deficit is larger than our budget deficit—is a sign of the deep economic trouble this country is in.

I would be the first to admit that perhaps the legislation that we bring to the Senate floor today will not solve every one of our trading problems. It would at least bring us into the 20th century as far as international trade is concerned, and put us on a par with our trade competitors who have long been better organized and better structured for global competition.

With respect to trade opportunities, we approved the implementing legislation on the MTN about a year ago and that was a major step toward breaking down the barriers to free and fair international trade.

However, it seems our trading competitors have taken far more advantage of those lessened barriers than we have, and the fault, if it lies anyplace, lies with the Government here in Washington, D.C.

While it is a fault, perhaps, not of commission but of omission, it is nonetheless a problem that we believe must be remedied, and remedied promptly through the passage of the strongest possible bill that we can get from this Congress and from this administration.

I believe that S. 2718 in its present form is such a bill. By opening the door to the establishment of export trading companies, it will break down the barriers that we have erected over the years to the creation of meaningful institutions to help us and our firms, our employees, and our employers, export.

There is something of an irony to the fact that the sixth largest exporter in the United States is a Japanese trading company. Where, we may ask, are all the American trading companies?

The answer is that while a few may on paper exist, in terms of structure and the ability to perform, the ability to get financing, the ability to offer services, the answer is that American trading companies do not exist. With rare exceptions, they are here only in name.

That is why our trading companies legislation, S. 2718, which addresses many of the disincentives to the effective formation and operation of trading companies, is so important.

So perhaps in the future we will be able to displace as the No. 6 U.S. exporter the Mitsui Trading Co., and maybe we will have some American trading companies right up there in the top 5 and relegate the Mitsuis and the others to the bottom 100.

Mr. President, there is one other issue to which I would like to briefly address myself. It has to do with a provision in this legislation regarding bank participation in export trading companies.

Very simply, if we are to mobilize our small- and medium-sized manufacturers into exporting, we have to have what I can best describe as strong and full service trading companies. That means financing, that means the participation of some kind of financial institutions, that means the participation, therefore, in our society of both banks and bank holding companies.

Without them, we cannot have successful, financially strong, trading companies unless we want to continue to operate with one or both arms tied behind us.

The Commerce Department has estimated that there are about 20,000 small- and medium-sized firms that could be exporting but are not. Export trading companies will facilitate the entry of these firms into world trade. The United States neglects billions of dollars in potential export business each year because small- and medium-sized producers cannot afford the cost and risks involved in fully developing opportunities to market their products and services abroad.

It is all too easy to explain away the nonparticipation of these 20,000 small- and medium-sized firms identified by the Commerce Department, who could export profitably but do not. The conventional wisdom is that these firms have compared the large, rich domestic market with the risky international environment and decided not to take chances, or that they have simply refused to make the effort necessary to find the right export management firm to handle the international segment of their business. These explanations may well be valid. But they do not justify inaction on the part of the administration or Congress. I believe that, in this case, we must go beyond the conventional wisdom and create an environment in which the export market actually becomes an attractive alternative to the expansion of domestic market opportunities. Export trading companies can do just that.

Obviously, we are not going to solve this problem overnight. But every successful program of trade promotion is a step in the right direction. Small- and medium-sized businesses have too long been excluded from the role in our Nation's export picture which similar sized firms play for our trade competitors. Where our competitors have incentives and official credit and promotion programs, we have antitrust barriers and structural impediments to surmount before our firms can even begin to compete.

This bill will help to overcome some of those barriers by encouraging the development of intermediaries to provide the marketing and financial tools necessary to help smaller business, while at the same time helping them to benefit from economies of scale and diffusion of risk.

The Japanese Shoshoga, or trading company, has strong financial ties with financial institutions, and this lesson has not been lost on many other countries. The same is true for the Europeans and Brazilians, and all the other countries that have strong trading companies.

Without question, if we want to get into the 20th century where exporting is concerned, we must have trading companies with financial muscle.

Second, there is, to me, some irony in the fact that if we do not permit American banks and bank holding companies to have necessary financial participation in American trading companies, they would be in the unique position of being able to own outright foreign trading companies in other countries, as they do now, but not here. We would be putting our American banks in the strange position of undercutting and weakening our trade surplus by the successful operation of trading companies in Brazil, Europe, and other places, owned or substantially owned by them, while prohibiting them from strengthening our trading position by permitting them to do the same thing here that they are permitted to do overseas.

We believe our legislation properly addresses this issue.

I hope that my colleagues will stand firm with Senator STEVENSON and me, with our subcommittee, and with our committee, and will defeat any crippling amendments to this bill, regardless of the color under which they may appear before our colleagues.

Allowing the participation of the banking organizations in export trading companies does involve some risk but the provisions of this bill limits their financial exposure to such a degree that the risk is quite minimal if not as close to nonexistent as can be obtained in an uncertain world. At this point, is it not more important to ask, what do we risk if we do not act to increase our exports? That risk is known. Our trade deficit will continue to grow. If we assume that we will continue with the same track record for 1980 as the first quarter of this year, we will have a $44 billion deficit; $14 billion more than last year.

In evaluating the relative risks involved in an enterprise, we should consider all the possibilities. In this case, we must weigh the risk to the banks of their involvement against the benefits to our economy which will be accrued by increased exports. The sponsors of this legislation believe that ETC's will significantly increase U.S. exports—particularly those of small- and medium-sized businesses—if they are adequately capitalized. At this point, the most effective way for ETC's to raise capital is to encourage banks to get into the business. If the Senate takes actions that will discourage the participation of banks in ETC's, it will have significantly decreased the probability that this legislation will be an effective vehicle with which to obtain the goal of increased exports, a goal upon which we all agree.

S. 2718, which includes the Export Trading Company Act of 1980 and the Export Trade Association Act of 1980, can substantially and permanently expand U.S. exports, particularly by small- and medium-sized firms that do not export at present. S. 2718 would revise Government policies which have tended to discourage formation of U.S. export trading companies in the past. S. 2718 aims at long-term improvement in America's trade posture through improved export intermediation by private American export traders.

Title I of S. 2718 would: First, increase the financial leverage of all exporters by directing the Export-Import Bank to develop an improved guarantee program to support commercial loans to U.S. exporters; second, direct the Secretary of Commerce to promote export trading companies by providing information on such companies to U.S. producers; third, permit banks to make limited investment in export trading companies (such investments could not exceed 5 percent of the banking capital and all controlling investments and all investments over $10,000,000 would be subject to prior approval and conditions imposed by Federal bank regulatory agencies to insure the safety and soundness of banks and fair competition); fourth, authorize additional appropriations to the Economic Development Administration and Small Business Administration to support increased loans and guarantees to enable expansion of U.S. exports, including exports through U.S. export trading companies.

Title II would revise the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and export trading companies and provide a certification procedure which would enable such associations and companies to obtain antitrust preclearance for specified export trade operations. The clearance procedure would facilitate exports by permitting firms to determine in advance ex-

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actly which export trade activities would be immune from antitrust suit and which ones would not.

Title III extends the tax deferral available under the DISC (Domestic International Sales Corporation) provisions of the tax code to exports of export trading companies, including exports of services. The use of subpart S of the tax code (which permits certain passthroughs to shareholders to closely held corporations) would be allowed for some export trading companies. Title III has been introduced separately as S. 2757 and referred to the Committee on Finance for its consideration.

Mr. President, I urge my colleagues to study this bill carefully, to weigh its enormous benefits against the risks of inaction, and then to join with me in providing an overwhelming vote in favor of this vital legislation.

Mr. President, I wish to pay special thanks to my retiring colleague, Senator STEVENSON. I know of no one who has been more scholarly, more thorough, more zealous, or more singleminded in his dedication to improving the economic position of this country—in particular, its international economic position.

I know of no one who has worked harder on a piece of legislation as well as an approach to an overall problem, involving not just this measure but also the Export Administration Act amendments and other initiatives to strengthen the exporting community of this country, than has Senator STEVENSON.

It has been a great personal pleasure for me to have the opportunity, as the ranking minority member on the International Finance Subcommittee, to work with him in this very important effort. It is my view that with his retirement at the end of this year, we will be losing a literally irreplaceable asset, a knowledgeable man, committed to his job and to this country.

I would be remiss, therefore, if I did not take this opportunity, on behalf of all our colleagues, to thank Senator STEVENSON for his leadership, for his vision, for his hard work, and for his effective management of these and related issues over a long period of time. I shall miss his presence. I know that my colleagues will join me in saluting his valuable work. We hope to have the continued benefit of his guidance and counsel, even if it be from some place farther away than across the aisle.

Mr. PROXMIRE. Mr. President, will the Senator from Pennsylvania yield?

Mr. HEINZ. I am happy to yield to my friend from Wisconsin.

Mr. PROXMIRE. Mr. President, in the course of his remarks, the distinguished Senator from Pennsylvania said that our trade deficit is becoming progressively worse and our deficit will be larger than the budget deficit—a near catastrophe to our country.

I ask my good friend from Pennsylvania if he would argue that this is because our exports have been lagging, that they are not expanding the way we would expect them to expand in a growing economy. Is that what he argues?

Mr. HEINZ. The Senator from Pennsylvania maintains that our trading position is deteriorating.

Almost every country in the world is experiencing a growth in exports and in imports. We are experiencing a growth in nominal terms in both, but we are not experiencing a growth in exports as large as our growth in imports.

That creates a trade deficit. That creates a weakening of the dollar. That creates, in part, devaluations because of the floating dollar, which is inflationary and further weakens the dollar.

To me, it is relatively immaterial whether we are exporting more this year than last year. The question is, Are we playing our proper role in the world economy? Are we competitive? Or are we losing our margin for success and, instead, creating a ledger for future failure?

If one looks at the economies of Japan, West Germany, and others, to name a few, one will be forced to the conclusion that they are healthy because, among other things, they are able to maintain a strong currency and have that strong currency because they export more than they import.

Even a country like Japan, which is short on natural raw materials within its geographical boundaries, is able, nonetheless, to accomplish export miracles.

However, we have more in the way of worldwide commitments to peace and to international stability than does Japan. Therefore, I believe it is essential that we move aggressively to strengthen our clearly deteriorated international economic position.

Mr. PROXMIRE. The Senator from Pennsylvania indicated that we were lagging in our exports compared to Germany and Japan. That certainly was the strong implication of what he said. That is not true. That is not the fact.

What do the facts show? The facts show that since 1972, the rate of increase in exports for the United States has been 20.5 percent. That is a greater increase in exports than that of Germany and Japan and twice the increase in our gross national product.

In fact, according to statistics compiled in 1979 by the Federal Reserve Bank of St. Louis and just released, the U.S. exports are up 20.5 percent per year; Germany, 20.4 percent per year; and Japan up, 19.7 percent per year from 1972 to 1979. It is hard to find a developed country in the world with a larger increase in exports.

There is not case the Senator can make, on the basis of the facts, that our exports are lagging, that the reason for cur deficit is that our exports are lagging.

The Senator knows that the reason for our trade deficit is that our imports are increasing, and they are increasing for a number of good reasons. One is that we are unable to compete in the automobile industry and other industries as effectively as we should, because we are losing our productivity.

Mr. HEINZ. Will the Senator permit me to respond?

Mr. PROXMIRE. Certainly—on the Senator's time.

Mr. HEINZ. I appreciate that.

Mr. PROXMIRE. The Senator has the floor.

Mr. HEINZ. First of all, anybody who would contend that our international economic position is stronger today than it was 5 years ago must be reading something different from what this Senator has been reading.

In 1972 we had on our merchandise account a net balance of minus $6 billion; we had a surplus of nearly $1 billion in 1973; a dificit of $5 billion in 1974; a surplus of $9 billion in 1975, and a dificit of $9 billion in 1976. Since that time, what concerns me is that our trade deficits have been running at or near $30 billion a year: $30.8 billion in 1977, $33.8 billion in 1978, $29.5 billion in 1979.

If we compare the first quarter of 1979 with the first quarter of 1980, our trade deficit for the first quarter of 1980 is running at twice the rate of last year's disastrous performance.

So, regardless of what reasons one may try to bring forward through manipulation of the statistics, the fact is that one would have to be something of an ostrich to conclude, based on the numbers, that we do not have any problem. We have major problems.

I respect what the Senator from Wisconsin has said. He is an excellent mathematician. He could not have got through Harvard Business School without being one, and I salute the Senator from Wisconsin for some great creativity.

Mr. PROXMIRE. Mr. President, may I say to my good friend from Pennsylvania I appreciate that very much, but looking at the arithmetic, the Senator knows perfectly well the way we look at our international balance is not solely on the basis of our trade balance. Our balance on current account is the more comprehensive measure of our position. That includes not only the trade balance. That includes the balance on what the tourists spend abroad. That includes foreign aid. That includes what we sell and and what the tourists spend in this country and it also includes our return from investments abroad, which is a very big positive item. That is the way we get to our total current account balance. That is the overall balance that indicates how we are doing.

On the basis of our current account balance we over the last 8 years have been virtually even. We have had a deficit of an average less than $400 million a year, and that is the way, as the Senator knows, that we are able to pay for what we import with what we not only export but our return on investment and our receipts from service exports and other receipts.

Overall, the case has not been made by the distinguished Senator from Illinois and the Senator from Pennsylvania that this country's international balance is as bad as it is. I know that is the current belief. I know if one walks down the street and asks the people about this who have any knowledge at all and know

what we are talking about, most of them would say, yes, we are in terrible shape. But look at the facts. Look at the facts, and the facts show that we have increased our exports, No. 1. The facts show, No. 2, that even with the big increase that we have in imports that our balance on current account, which includes everything, shows that we are very close to a balance over the last 8 years.

Furthermore, Mr. President, we have been able to do this in spite of the fact that we suffered the worst inflation in our history and a drop in productivity.

There is the answer. If we want to do something about improving our international position, we do not have to be so concerned about exports as we do about improving our basic economic position, increasing our productivity, reducing our inflation, and then our trade deficit will take care of itself.

I say all this preliminary to the fact. I think there is much good in the bill of the Senator from Illinois and the Senator from Pennsylvania. However, I do think that it goes so far in destroying the relationship between banking and commerce in this country that we can modify that slightly, and I mean only slightly, and have a good bill which will help promote exports.

Mr. HEINZ. Mr. President, has not the Senator's time for debate expired?

Mr. PROXMIRE. I think I have the floor.

Mr. HEINZ. It is my time, I think, still.

Mr. PROXMIRE. There is no time on this bill at all.

Mr. HEINZ. Mr. President, I yielded to the Senator from Wisconsin.

Mr. PROXMIRE. No.

The PRESIDING OFFICER. The Senator from Wisconsin has the time.

Mr. HEINZ. Very well. I apologize to the Senator from Wisconsin. I thought I had yielded to him.

Mr. PROXMIRE. Mr. President, I am simply saying to my good friend from Pennsylvania that if he will accept our amendment submitted by the Federal Reserve and look at the amendment, he will see it is a very moderate amendment. It only slightly modifies the bill of the Senator from Illinois and the Senator from Pennsylvania. If he will do that, I think he will see that we would be able to help promote exports without having the unfortunate effect of determining a principle that we have had in this country for over 100 years of keeping banking and commerce separate and we could do so in accordance with the recommendation of the Federal Reserve Board, of Mr. Volcker and Mr. Wallick, and other people who devoted a great deal of time and are deeply concerned about this and in fairness to banks, big and small, in this country.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 1963

(Purpose: To delete tax provisions from the bill)

Mr. STEVENSON. Mr. President, I call up amendment No. 1963.

Mr. TSONGAS. Mr. President, will the Senator yield so that I may make a statement?

Mr. STEVENSON. Yes; but first I wish to have the amendment stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an amendment numbered 1963:

Beginning on page 40, line 10, and continuing to the end of the bill, delete all of title III—Taxation of Trading Companies.

Mr. STEVENSON. Mr. President, before I yield to my good friend from Massachusetts, I wish to thank the Senator from Pennsylvania for his charitable words of a moment ago. He is too modest. Our work has been the work of a partnership that goes back many years now.

It has been a great satisfaction and pleasure for me to work with him on many of the structural weaknesses in our economy, including our failure to support our exports abroad, and I have no doubt that that work will continue with his leadership after I have left the Senate. I am grateful to him.

I yield to the Senator from Massachusetts for a question.

Mr. TSONGAS. Mr. President, I wish to make a statement.

Mr. STEVENSON. Without losing my right to the floor, Mr. President, I ask unanimous consent to yield to the Senator from Massachusetts for that purpose.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. PROXMIRE. Mr. President, I did not hear the unanimous-consent request. What was it?

The PRESIDING OFFICER. The request was that the Senator from Illinois be permitted to yield to the Senator from Massachusetts for a statement without losing his right to the floor.

Mr. PROXMIRE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TSONGAS. Mr. President, I rise in strong support of S. 2718, the export trading company bill.

Let me at the outset comment on the statements made by the former chairman of the committee, and that is to try to give the impression that somehow the U.S. export position is rosy and that we need not worry about it.

That is a singular view, and I do not know anyone out in the real world trading community who shares it.

The example has been given, and correctly so, that U.S. exports are increasing at a rate equal to that of a major trading competitor. That is quite true.

The question is, What base do we start from? If we have a situation where 10 percent of our GNP and 20 percent, let us say, of Germany's increases at the same rate, that increase is correct. But what is not correct is that that increase is far more significant in terms of dollars and in deutsche marks for the German than it is for the United States. So we increase at the same rate but in absolute terms we fall farther and farther behind, which is exactly what is happening with the United States relative to the Germans, the Japanese, and others. So we can use these figures any way we wish, but in reality the fact is that if we take the posture that our export situation need not improve then that will be received joyously by the Japanese and the Germans who—like our exporters—know better.

This bill is very important and I think anyone who comes from a State that has export potential should be particularly concerned about it. The fact is that if we look at the United States in its relative position to our major competitors we simply do not take the export game seriously.

The only reason we are in a situation with our dollar in decline or not strong relative to the yen and the deutsche mark is that these are the competitors, and, for these competitors, the export trading company bill would be a modest, kindergarten step which they have left far behind.

The Japanese know, the Germans know, and the Swiss know they have to export to survive. Well, the United States traditionally has had something like 93 percent of its product consumed domestically, so it was not necessary for our exporters to worry about exchange rates and devaluations and all the intricacies of international trade.

Well, that era is over. You cannot import the kind of dollar amounts of oil we do, cars, TV sets, what have you, and not be in a position where we are hemorrhaging so badly that in time the entire structure will fall apart. The United States simply will not survive as a world power, industrial power, if we do not develop our ability to compete in international markets.

This bill is at best a modest step in that direction, and to have the argument made that it should be watered down even further I think is ludicrous on its face.

In addition, those companies of the United States that have the greatest potential for export in terms of new commodities, new products, innovations, happen to be the small- and medium-sized businesses, about 20,000 of them. I hope the concern for those kinds of companies will prevail in our deliberations today.

I have been involved in this issue for the last 2 years, and have served on the subcommittee which developed the legislation, and I would like to commend the Senator from Illinois and the Senator from Pennsylvania on their initiative. I think what they are talking about is, perhaps, considered a new idea now, but most people will recognize this as the obvious step as the years go on.

The issue before the Senate today concerns the nature of the bank investments in the export trading company.

The subcommittee held extensive hearings on this matter. There were prolonged negotiations with the bank regulatory agencies and, indeed, with other governmental departments. This legislation is a compromise. It is not the original legislation. It represents, I think, the best case compromise which facilitates banking involvement and, also protects

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the public interest. It provides a meaningful role for financial institutions, while carefully providing for proper restraints on that role.

There are those who argue that we do not want the banks to be a major participant in export trading companies. However you may come down on that, the fact is if you take the bankers out in any significant way you do not have an export trading company. If you are not going to have an export trading company that does not mean anything, we should not even pass the bill.

Banks will supply two critical resources that small- and medium-sized companies need to have. One is investment capital. Go out and talk to some of your small businesses and ask them why they cannot be involved in the export trade, and invariably you get the response that they do not have the capital to do it.

Second, and more importantly, the small companies simply do not have the knowledge and managerial expertise in international financing. Those can only be supplied by the banks and those in the banking community.

If we try to undermine the role of the banks in this legislation, there is going to be one certain result, and that is the banks are going to withdraw. Banks will simply not be willing to play a leading role without the kind of controls which will insure sound management, minimization of risks, and the enhancement of profit.

We can structure a bill here that will make sure that in no possible case can there be any kind of violation or any kind of possible misdeed by any bank. But what you end up with is a structure that is appealing to nobody, and again we have a hollow shell of legislation that is passed out of the Senate.

I will submit for the RECORD the criteria in the legislation that limits what the banks can do. I think they are quite sound. To weaken even further the banking participation, we would make the legislation not worth passing.

Finally, let me comment on the concern about the antitrust implications of the bill. There is going to be an amendment filed by the Senators from Wisconsin, Ohio, and Massachusetts, and obviously I have a great deal of respect for these Members and generally vote with them.

The fact is, however, that to weaken this bill further beyond the compromise that came out of the deliberations of the committee is simply not wise. I think if we are going to be in a position to compete effectively with the Germans, the Swiss, the Japanese, and others, we have to be willing to look at exports in perhaps a somewhat different fashion, and I hope my colleagues, looking to the long-term viability of our country in the export trade around the world, will see fit to stick with the committee version.

I thank the Senator from Illinois. I ask unanimous consent that the limitations on the banking participation be printed in the RECORD.

There being no objection, the limitations were ordered to be printed in the RECORD, as follows:

LIMITATIONS

While the legislation permits banks to acquire a controlling interest, banking participation is limited in the following ways:

Investment in ETCs is limited to 5 percent of the bank's capital and surplus.

Total bank exposure of both investments and loans is limited to 10 percent of capital and surplus.

Bank regulatory agencies must approve controlling investments of ETC voting stock, even if the interest is less than $10 million.

Bank regulatory agencies must approve acquisitions by consortia of banks for more than 50 percent of an ETC, even if individual bank investments are not equivalent to a controlling interest.

The name of an ETC may not be similar to that of a bank investor.

A bank must terminate its ownership of an ETC if the ETC takes speculative positions in commodities.

Banks are specifically prohibited from making preferential loans to an ETC that it controls, which insures the availability of bank credit to competitors

In addition, the banking regulatory agencies are given numerous powers and authorities with respect to banking involvement in ETCs. These include power to disapprove applications where export benefits are outweighed by adverse banking factors, and conditions which limit financial exposure, possible conflicts of interest and unsound banking practices.

Mr. PROXMIRE. Mr. President, if the Senator will yield, I would like to respond to the Senator while he is on the floor. The Senator from Utah is patiently waiting to call up some amendments and, therefore, I will defer my questioning of the Senator from Massachusetts until the Senator from Utah has had a chance to have had his amendments considered.

Mr. STEVENSON. Mr. President, the pending amendment strikes title III from the bill. Title III extends the provisions of DISC to trading companies. It also makes it clear that they are eligible for subchapter S treatment.

Those provisions have been introduced separately and referred to the Committee on Finance where they are being considered. Because they are being considered there, and that is the appropriate committee, it would not be appropriate, I believe, for the Senate to act on these provisions in this bill.

Mr. PROXMIRE. Mr. President, if the Senator will yield very briefly on this amendment, which I will support, I think it is a good amendment.

Mr. STEVENSON. I have not yielded back.

Mr. PROXMIRE. I beg the Senator's pardon.

Mr. STEVENSON. But I will yield the floor eventually.

Mr. PROXMIRE. May I tell the Senator that if he will yield for a question, I just want to ask for the yeas and nays on this amendment. I will explain why, and without the Senator s yielding I cannot do it very well.

Will the Senator yield for 30 seconds so that I can explain?

Mr. STEVENSON. Yes. I hope he will explain why we have to have the yeas and nays on an amendment as to which there is no opposition.

Mr. PROXMIRE. The reason why, Mr. President, I think the yeas and nays are necessary on this is, it is my understanding that this is in the House bill or likely to be in the House bill. It will be in conference, and an amendment like this, which is so important, I think it is necessary that we have a RECORD vote. I think the RECORD vote will indicate the Senate's position emphatically that the DISC provision should be out, and for that reason I think we should have a rollcall vote.

Mr. STEVENSON. Mr. President, the vote of the Senate, whether it is recorded or not, will indicate nothing about the position of the Senate on this issue because the amendment is offered only with a view to giving the Committee on Finance an opportunity to report legislation on a House-originated bill. As we all realize, this bill, which is not House-originated, would be subject to a point of order on the House side.

Mr. PROXMIRE. May I suggest that we set this amendment aside temporarily and let the Senator from Utah call up his amendment, and we can act on them and then act on the amendment of the Senator from Illinois. Is that all right?

Mr. STEVENSON. It is not all right, but I do not have much choice except to ask unanimous consent that the amendment be temporarily laid aside, Mr. President,in order to permit the Senator from Utah to bring up his amendments.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Chair recognizes the Senator from Utah.

UP AMENDMENT NO. 1527

(Purpose: To add clarifying language to this bill)

Mr. GARN. Mr. President, first, let me thank my colleagues for asking unanimous consent. My amendments are brief and they are going to be accepted.

Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah (Mr. GARN) proposes an unprinted amendment numbered 1527.

Mr. GARN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 35, between lines 19 and 20, insert the following:

(f) Compliance with other laws—Each association and each export trading company and any subsidiary thereof shall comply with U.S. export control laws pertaining to the export or transshipment of any good on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

Mr. GARN. Mr. President, this is the first of two amendments that are needed to clarify important aspects of the future role of export trading companies in East-West trade.

My first amendment simply clarifies the fact that export trading companies shall be required to comply with U.S. export control laws. This amendment makes it incumbent on both the shipper and the export trading company to see that export control laws have been observed before an item is shipped, and that no loopholes are used to avoid these laws because there has been a middleman involved in the exporting process.

It also requires export trading companies, which are not mentioned in the Export Administration Act at present, to provide end use statements whenever they transship goods included on the commodity control list. This means that the intended end use following each transshipment facilitated by that company shall be described fully.

I understand this amendment is acceptable to the managers of the bill.

Mr. HEINZ. Mr. President, I have examined the Senator's amendment. I think it is a meritorious amendment, and certainly for the minority side we are prepared to accept it.

Mr. STEVENSON. Mr. President, as I understand this amendment it makes it clear that the exports of trading companies from the United States are subject to the Export Administration Act, and that certainly is our intention.

I think it is a sound amendment. It makes what was intended clear, and that being the case I am delighted to accept the Senator's amendment.

Mr. GARN. I thank the managers of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah.

Mr. GARN'S amendment (UP No. 1527) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1528

Mr. GARN. Mr. President, I send another unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Utah (Mr. GARN) proposes an unprinted amendment numbered 1528.

Mr. GARN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 37, line 9, after the period, add the following: "The Office Export Trade in the Commerce Department shall report to the Congressional Committees of appropriate jurisdiction on an annual basis, all East-West trade transactions requiring validated licenses, and any other relevant information on the role of U.S. export trading companies or subsidiaries thereof in East-West trade."

Mr. GARN. Mr. President, my second amendment calls for an annual report to Congress on the East-West trade activities of export trading companies and any subsidiaries they may establish abroad. After my recent experience with Commerce Department reticence, I feel this is the only way Congress will have to assess the role of these new companies in an important foreign policy area. If these companies become involved in the shipment and transshipment of strategic goods, the appropriate congressional committees should have some means of judicious oversight over the implications of such involvement for the country's security and economic welfare.

This is simply requiring that these companies, if they are created under the terms of this bill, would report to Congress on an annual basis.

I understand the managers are willing to accept this amendment.

Mr. STEVENSON. Mr. President, I think this is a sound amendment, too. It does require reports, as the Senator indicated. Those would be of value to the committee. I am prepared to accept the amendment.

Mr. HEINZ. Mr. President, we are prepared on our part to accept the amendment, as well.

Mr. GARN. I thank my colleagues.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah (Mr. GARN).

The amendment (UP No. 1528) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, I thank my colleagues for their consideration.

AMENDMENT NO. 1963

Mr. STEVENSON. Mr. President, I believe under the previous order, the Senate now returns to amendment No. 1963, is that correct?

The PRESIDING OFFICER. The pending business now before the Senate is the amendment offered by the Senator from Illinois.

Mr. STEVENSON. Amendment No. 1963?

The PRESIDING OFFICER. Amendment No. 1963.

Mr. STEVENSON. That is the amendment which deletes the tax provisions. The Senator from Wisconsin wants a rollcall vote. That is his right.

But I think the record should show that many of us who vote for this amendment do not support the amendment. We are voting for the amendment in order to give the committee, the Finance Committee, an opportunity to consider the issue and to report legislation on a House-originated bill. These tax provisions would make the bill subject to a point of order in the House.

So, many of us who support the amendment will vote against it; that is to say, those of us who support the tax provisions will vote for the amendment which deletes them. So the rollcall vote, in my humble judgment, will indicate nothing about the true feeling of the Senate on this issue.

With that, I hope, if the Senator insists, that we can proceed to a rollcall vote and get this amendment out of the way.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. STEVENSON. I am happy to yield to the distinguished Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I want to associate myself with Senator STEVENSON'S remarks. I strongly support the DISC provisions in the bill that we reported. But I also support deleting them from the legislation at this time so that we may give the Senate Finance Committee the appropriate opportunity to study and, hopefully, report, as is their right, a revenue measure that contains the amendments to DISC that will make the export trading company legislation work.

I would only add that, as a member of the Finance Committee—and I see two other very distinguished members of the committee on the floor, Senator BENTSEN and Senator DANFORTH—that we are going to do everything we can to expedite consideration of a DISC provision to go hand in hand with this legislation.

I am reasonably confident that such a provision will not only be acceptable to the members of the committee but that it will, in fact, be taken up during the week of September 13 when the committee will reassemble to put together a committee amendment to the bill earlier reported. I am quite confident that the committee amendment will include a DISC provision that is necessary to making the export trading company legislation work.

Therefore, while I support the DISC provisions in this bill, I also support removing them at this time and will vote for the motion to take them from this bill. But I do not want anyone to misunderstand my position in terms of support of the substance.

Mr. BENTSEN. Will the Senator yield for a further comment?

Mr. STEVENSON. Yes, I yield to the Senator from Texas.

Mr. BENTSEN. Mr. President, I would like to support and buttress those remarks. As a member of the Finance Committee, we have a responsibility there and the jurisdiction there. DISC has had substantial support within that committee. I think it is an integral part of what we are trying to do in encouraging exports. I support this as a procedural thing for the establishment of jurisdiction.

I compliment the chairman of the subcommittee, the Senator from Illinois, for all that he has done over the years in trying to encourage exports. Before people really understood how much exports were a part of testing the effectiveness and the efficiency of our economic system and contributing to trying to curb inflation and holding the value of the dollar, the Senator from Illinois was out there leading the fight.

I hope that in this very important piece of legislation we will not break down in procedural questions, because I think it is very fitting, with the long fight we have had in leading this, that, frankly,

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I would like to see this as one of his many major contributions in his tenure in the Senate, not just because I want his name on it, but because I think it is a great step in trying to encourage exports for our country.

I will, therefore, support his position in returning that portion of it to the Finance Committee for their consideration. I also say to Senator HEINZ that I am confident we could move very quickly after September 13 to take positive action on it.

Mr. STEVENSON. Mr. President, I thank the Senator for his very kind words and also for his explanation of his support for the amendment. It now would appear, on the basis of this record, that there is substantial support in the Senate for the tax provisions.

I am also grateful to my colleagues for their assurances that those provisions will receive attention soon in the Finance Committee, the appropriate committee, and with, I think, on the basis of everything I know, a very strong possibility of favorable action by the Senate on these provisions this year, a year in which it is probable that the Congress will act on taxes. So I thank them.

If we are going to have a rollcall vote——

Mr. PROXMIRE. Mr. President, may I have the floor?

Mr. STEVENSON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, in the first place, I think we should be very clear that what we are doing is exactly what the Senators from Illinois and Pennsylvania say—we are not acting on the substance of this matter. We are acting on whether or not we should proceed to include these tax provisions without waiting for hearings and without waiting for determination by the Finance Committee on it.

They have had some hearings, I presume, but they have not come to a conclusion on it. They have jurisdiction and we do not. As a matter of fact, the prime jurisdiction in this matter, as we all know, under the Constitution is the Ways and Means Committee in the House and with the House itself. So we are really jumping the gun by putting this into a bill without having our own Finance Committee and without having the House having had a chance to act on it first.

Mr. President, the tax provisions here would make the export trading companies with bank ownership eligible for DISC tax treatment. They would make receipts from the export trade services eligible for DISC tax benefits. They would exclude export trading companies from the requirements of subchapter S relating to closely held corporations requiring that 20 percent of such a corporation's annual income be domestic income.

I am afraid that the committee's action on the Tax Code is another example of the questionable procedures that have been followed in considering this bill. The bill should not be considered at all by the Senate until the tax writing committees have given detailed consideration to these tax provisions.

That was my position last May and I have been saying this since then. I am grateful to my good friend from Illinois and my good friend from Pennsylvania for finally coming around to my views.

That is why I think this is such an important vote. It does not, I would agree wholeheartedly, indicate that they have changed their mind as to whether or not these tax provisions should be in it. It does indicate, however, that they agree now, and we ought to make that very clear by an emphatic Senate vote, that we should not act until the Senate Finance Committee has had a chance to give us their views on this. They have jurisdiction; we do not.

On substantive grounds, I join with the administration in opposing this major expansion of the tax benefits afforded to export activities.

In the most recent committee hearings on this legislation, Commerce Secretary Klutznick, giving the administration's position, stated the following:

> Many, if not all, ETCs should be able to meet the requirements of present DISC legislation and benefit from DISC tax deferral status. Modification of U.S. banking laws to permit bank ownership of export trading companies will effectively expand DISC coverage without requiring any change in the DISC statute itself. However, to amend DISC legislation to cover exports of all services, as well as services provided by other U.S. firms to export trading companies, as S. 2379 would do, would definitely alter the nature and scope of the DISC program and substantially increase its revenue costs. The present realities of the budget situation do not permit such an extension at this time. I could also raise questions about our international obligations in this area and our concerns for tax equity.

Assistant Treasury Secretary Bergsten subsequently provided the committee with a more detailed statement of the administration's position and with estimates of the potential impact of title III on tax revenues. Giving what were styled as "conservative estimates," the Bergsten letter stated that the extension of DISC benefits to "services produced in the United States" could result in revenue losses of $200 to $500 million and similar coverage of "export trade services" could cost the Treasury $100–$200 million. I also agree with the administration's opposition to the amendments to subchapter S contained in title II on the ground that any legislation of this sort should be considered within the context of the proposal by the Joint Committee on Internal Revenue Taxation to overhaul subchapter S. This seems to me to be perfectly reasonable and in fact far preferable to precipitous actions by this committee.

For that reason, Mr. President, I am glad the Senator from Illinois submitted his amendment, and for that reason I think it is appropriate that we have a rollcall so it is clear where the Senate stands on legislation that may be in the House bill. For that reason, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, we are looking at what could be a 3-year $100 billion hemorrhage on trade. We have had some $60 billion in the last 2 years and it could approach $40 billion this year. We have expanded our trade. We made some substantial increases in the amounts of exports. But the problem that we run into is other countries are also doing the same thing. So we get down to a question of what percentage of that export trade belongs to the United States.

For a long time in this country, we had such an incredible domestic market that we did not think foreign trade was necessary to us. So we ignored it. But now we find that we have substantial inroads in our own domestic markets because of the competitiveness of some of the other countries and the growth that they have shown.

I think one of the real tests for the efficiency of an economy is how it does on trade, how it does against the competitor.

You do not have to follow everything that your competitor does and everything that the most successful one does. But you can learn from what they have done.

If you look at the Japanese and the incredible increase they have had in their trade, what they have been able to accomplish, one of the tools that they have used is export trading companies to try to assist.

The question is, Should banks be involved? Well, I think they ought to have the opportunity to be involved. I share the concern of my friend from Wisconsin about control of export trading companies by banks. I do not want a repetition of the system in Germany. If you want to buy an interest in a company in Germany, who do you go to? You go to a bank and they sell you an interest in the company because they own it. They do not have the kind of stock exchange and the stock market that we have in this country. They have that kind of power and I do not want to see it happen in this country.

But I do think where we have put limitations on them, where it requires the regulatory authority's approval before you allow it, that you can have that kind of control and you can protect that kind of an encroachment.

We held 9 days of hearings by the Joint Economic Committee in the Far East and there we found a diminishing percentage of the trade that is being carried on by the United States, an incredible increase by Taiwan, by Hong Kong, by Japan, by South Korea, and our not adjusting to the local markets, not doing the enterprising we ought to do, not establishing name identification, and we sure did not see much in the way of small companies involved, not there.

What do we do about it? Why can the bank help?

Well, while we were holding our hearings in Hong Kong, I had three representatives of three banks in Houston, Tex., regional banks, who had representatives in Hong Kong, who were paying for the rent on offices, paying for the salaries of those representatives there. Who do they want to promote? They would like to promote their depositors back home.

They would love to see an increase in the size of the small businesses or the medium-size business depositing with them back in their hometown. They would like to do it, because that makes him more successful, a bigger depositor of their bank.

But time and time again we have small businessmen, or heads of medium-size companies, that decide, "I would really like to take a trip to Hong Kong, and I would like to find some excuse to expense it. So what I am really going to say is this is a business trip and I am going over there to explore the foreign markets."

At least 99 times out of 100 I am sure he does not accomplish much of anything, other than getting an upset stomach.

Then he comes back and argues with the IRS and then he really does have an upset stomach because they deny it. They say this was not a serious effort.

But if he has the representatives of his local bank where he has the contracts, they send the letters of introduction off and he arrives over there. They tell him what he can do, how he can adjust the local market, who he ought to see, give him the introductions, help him get underway and hopefully, seriously, do a job in selling his products overseas.

We have to see more of that type of thing accomplished. That is why I think the trading companies are very important and that is why I believe that having the banks having the capability or the ability to become involved in that is also very important and a major contribution that can be made. I strongly support that.

I believe that the trading companies are one of the positive, affirmative things we can do this year to show that we are deeply concerned about trade for our country.

We have done a lot of other things but this is more meaningful. We have taken the commercial attachés from the State Department and put them under the Commerce Department, as commercial attachés, who are the lowest on the pecking order. If you want to continue to grow in the State Department, be sure to take a commercial attaché's job. Years ago we took the agricultural attachés away from them and now we have taken the commercial attachés away from them. Now we are seeing a step forward. I think this is a major thing that can be accomplished to try to help the export of U.S. products.

I would hope very much that before we leave for the Labor Day recess we will have taken positive action.

The Senator from Illinois has been in the forefront of this fight for a long time. He has given a great deal of thought and consideration to it. I would like to see it implemented to do something to help us be more affirmative, to show we are more serious about what we want to do in increasing trade.

I assure you, Mr. President, with the drain on our dollars going to the OPEC countries, because of what is happening to us in the importation of oil, we are going to see the competition for trade intensify substantially. This is one of the positive things we can do to help.

Mr. President, as an original cosponsor of S. 2718 I am convinced this legislation is absolutely essential if the United States is to succeed in the tough, competitive world of trade. I am also pleased to see that so many of my colleagues concur in this analysis and 55 Senators have agreed to cosponsor the Export Trading Companies Act.

It is no secret, Mr. President, that this country's recent trade performance leaves much to be desired. During the past 2 years our balance of trade deficit has exceeded $60 billion and could go over $40 billion this year alone.

This chronic hemorrhage of dollars abroad contributes to domestic inflation. It debases the value of currency and undermines efforts to deal with our energy problems. It creates real doubts about our future access to rapidly expanding world markets. The magnitude and persistent nature of our deficits suggest that the United States is in danger of becoming uncompetitive in world trade.

Before America can return to world economic leadership and compete successfully in the international marketplace, we must demonstrate that we can put our own economic house in order. Our problems with trade are obviously a function of deep-seated domestic economic problems like inflation, declining productivity, low rates of savings and investment, and excess demand in the system. It will take time, sacrifice, and discipline to achieve the sort of fundamental reforms required to restore a healthy, dynamic American economy characterized by stability and real growth. As we succeed in this effort our trade performance will inevitably improve.

The long term nature of our economic problems should not, however, discourage us from taking steps that will have an immediate and favorable impact on our ability to export.

The time has long since passed when American business and industry can accept unique, self-imposed restraints on our ability to market our products abroad.

S. 2718, the Export Trading Companies Act, will clearly promote American commercial interests and act as a spur to our exports. We have seen that efficient export trading companies, able to provide a wide variety of services for their clients, have been an essential ingredient in the commercial success of nations like Japan that have emerged as consistent winners in the battle for export opportunities.

Earlier this year I traveled to East Asia with a delegation from the Joint Economic Committee. The purpose of our trip was to assess American competitiveness in the world's fastest growing market.

While in the region we met with members of the American business community and with local government officials. We held 9 days of hearings. And I can tell you, Mr. President, that the issue of export trading companies was high on the agenda in every country we visited.

The American business community overseas, the people who are on the front lines in the battle for world markets, made the point time and again that our export performance would be well served by legislation to permit more efficient and effective American export trading companies. And S. 2718 is precisely the sort of legislation they were talking about.

Thousands of smaller and medium size U.S. businesses are currently put off by the risks and complexity of exporting. S. 2718 will facilitate and encourage their entry into export markets. Trading companies of the type envisioned in this legislation will help spread out the risks of foreign trade and absorb currency fluctuations. They will help identify emerging market opportunities, assist in organizing joint construction projects abroad, and handle the logistics of foreign trade that currently deter so many potential exporters.

In addition, S. 2718 helps to clarify many of the long-standing antitrust ambiguities that currently hinder the formation of American consortia to bid on significant export projects. Senator DANFORTH and I have long been interested in the effort to update the Webb-Pomerene Act and make it applicable to the export of services as well as goods. S. 2718 accomplishes that objective. It also expands and clarifies the antitrust exemption for export trade associations and transfers administration of the act to the Department of Commerce. It creates an office within Commerce to promote joint export activities and establishes a specific certification procedure that will eliminate the element of uncertainty in current law.

I am also enthusiastic, Mr. President, about the banking aspects of the Export Trading Company Act which would permit the U.S. banking community to participate in export trading companies and provide the financial resources and expertise that have become such an essential ingredient in the success of our competitors. We have seen, time and again, that the ability to offer attractive credit terms to potential foreign buyers often means the difference between winning and losing sales.

While the United States has traditionally discouraged relationships between banks and trading companies, our competitors in trade have gone in the opposite direction and, with bank-owned trading companies, have frequently gained a competitive advantage over U.S. exporters. By permitting U.S. banks to acquire ownership in export trading companies under specified conditions, S. 2718 would provide an important new asset in our drive to restore export competitiveness to the American economy.

This legislation is not a line for line copy of the Japanese model; it does not provide for unrestricted bank access to export trading company ownership. By demanding approval of Federal banking agencies in appropriate circumstances, S. 2718 contains the necessary safeguards to prevent abuses when banks enter commercial export activities. A bank that owns stock in a trading company is also prohibited from making credit available to that company on terms more favorable than those afforded similar borrowers in similar circumstances.

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For too long, Mr. President, this Nation has approached international trade as a luxury rather than a necessity. Today success in the world of trade has become an indispensable ingredient of domestic prosperity. The United States has been slow to adjust and adapt to the changing environment of trade, and our share of world exports has decreased dramatically as a result.

As we move to bring about the fundamental reforms that will restore stability and real growth to our domestic economy, we can all agree on the necessity of removing, wherever possible, impediments to American exports.

Our exporters must compete against the combined resources of the most efficient and aggressive trading nations in the world. I can see no good reason to continue to deny them the support and assistance of full-fledged American export trading companies.

Enactment of the Export Trading Company Act will even up the rules of the game and enable our exporters to compete more effectively for world markets.

This legislation reflects high credit on the work of Senator STEVENSON and his colleagues on the International Finance Subcommittee. It clearly deserves the support of the Senate and I hope we can move quickly to enact it into law.

Mr. PROXMIRE. Will the Senator yield?

Mr. BENTSEN. I am glad to yield. I understand the concern of my friend from Wisconsin.

Mr. PROXMIRE. I want to tell the Senator from Texas that I agree with virtually everything he said. That may shock him a little bit, because he may have anticipated that I take a little different position on trading companies. I do not.

I think the Senator will also agree that the report of the Joint Economic Committee, on which he did such a magnificent job in getting agreement of both Republicans and Democrats, is a powerful expression of the absolute necessity that we improve our productivity and reduce the rate of inflation. That is the heart and soul of our export problem. If we can get inflation under control and improve our productivity, then we can make progress on exports and on reducing our trade deficit. The Senator has been one of the leading fighters in that field. He has made some very constructive suggestions as to how to do it.

Would the Senator consider the amendment I am offering, recommended by the Federal Reserve Board, which would still permit the banks to have an ownership position in export trading companies—No. 1—and in the event that the Federal Reserve determined that in order to improve our export position with respect to a particular bank in a particular area, it was necessary for the banks to have a controlling ownership position—more than 20 percent ownership position—they would be permitted to go ahead and do that? Why would that not be a practical approach that would get around a situation that would otherwise knock out 100 years of experience, in which we have separated the banks from commerce?

We all know what a terrific disadvantage it is to try to compete with another firm which is owned by a bank, because they have access to credit. There is every reason in the world to expect that they are going to be able to beat you to the punch on it. We not only have opposition from the Independent Bankers Association to the bill in its present form—representing the small banks—but I am sure the overwhelming majority of businessmen concerned with the kind of competition they would have, would also oppose this bill unless we can get this kind of reasonable modification in accordance with the recommendations of the Federal Reserve Board.

Mr. BENTSEN. Mr. President, I understand the Senator's point, but I think the limitation of 20 percent is one that gets down to a level where we are not going to have a serious participation on the part of the bank. Then we say, OK, we let them have an exemption for that if they can prove that an export opportunity is going to be lost.

Mr. PROXMIRE. If the Senator will yield on that, they can own up to 100 percent if the Federal Reserve Board approves it.

Mr. BENTSEN. That is what I said, with the exception that they have to prove that an export opportunity would be lost. This gives me some concern, that definition in a particular frame of time, as to being able to get that sold and to have it in a continuing thing.

In addition to that, if I am going to be operated on, I sure want the knife in the hands of a friendly surgeon. I just really do not believe that is what the situation is here. We have someone who is going to operate that really does not want you to have any of it.

Mr. PROXMIRE. The whole purpose of the bill is, if the Senator will yield, to expand exports. If it cannot meet that test, why should we permit something that can pose a serious danger to the competitive system we have had in this country and that, for 100 years, we have followed in prohibiting banks from engaging in commerce?

Otherwise, it would permit, without the approval of the Federal Reserve Board, banks to own any number of businesses where they would compete unfairly. This is a very moderate modification of the export trading company legislation.

Mr. BENTSEN. I say to my friend, when we talk about 100 years of doing something one way, that does not necessarily mean that conditions have not changed, time has not changed, competition has not changed. I think, finally, we have to adapt to it. That is what we are talking about doing here. I believe that this is a positive move forward with very careful safeguards placed around what the banks might be able to do.

Mr. PROXMIRE. If the Senator will yield very briefly, the term "services" in the bill is defined as the following on page 4, line 14:

(3) the term "services produced in the United States" includes, but is not limited to accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services.

That is about as comprehensive a litany as we can get and, as I say, it is not confined to that. They can get into almost anything.

What I am proposing is—certainly the Federal Reserve Board is a friendly surgeon. As the Senator knows, they are expert in this area. They certainly are in favor of doing all they can to promote a strong dollar and to improve our export position. But this would safeguard our banking structure. I hope the Senator will consider the amendment.

As I say, I view a vote for the amendment as a vote in favor of export trading companies, not a vote against them.

Mr. TSONGAS. Will the Senator from Texas yield?

Mr. BENTSEN. I am happy to yield.

Mr. TSONGAS. I would like to inquire of the Senator from Wisconsin——

Mr. BENTSEN. Mr. President, I shall give up the floor. If I am going to be a conduit, I would rather the Senator would have the floor on his own.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Massachusetts.

Mr. TSONGAS. Mr. President, if I may inquire of the chairman, he made the statement that small- and medium-sized companies were opposed to the bill in its present form. My experience is just to the contrary. Before we let that argument pass without a challenge, I should like to give the Senator from Wisconsin an opportunity to provide the authority for that statement.

Mr. PROXMIRE. Mr. President, after the Senator from Massachusetts left the committee—which was a great loss, believe me—he was replaced by a very brilliant Senator, GEORGE MITCHELL. But we also miss my good friend from Massachusetts. After that, as the Senator knows, we had hearings on this matter. We had the export management companies come in and they opposed the bill. I do not, but they did. They are small businesses and they represent small businesses.

I do not argue that they were right. They are not. But I say that what the small businesses oppose is having banks in a position to own a competitor and then compete from a position where, if there is any credit crunch—and we all know there are going to be credit crunches in the future—their competition will not get the money they need and they will get it.

Mr. TSONGAS. Is the Senator saying in his argument that small- and medium-sized businesses are opposed to the bill—the exact contrary of what I have been told by all the people I have dealt with in Massachusetts—that it is existing export companies who, by definition, would now have competition if this bill passes? Is that it?

Mr. PROXMIRE. No, what I am telling the Senator is I do not know whether they are opposed to the bill or not. I am not opposed to the bill and they may

well support my position. I say it stands to reason that, on the basis of representation we have had for years and years—the Senator knows how often insurance companies, auto leasing companies and others have come up and said, "Do not let the banks get into this business. They do not know what they are doing, they make mistakes in the business, but they have a colossal advantage—they have credit. They give our competition credit which we cannot get." That is where I say we run into opposition on the part of small businesses.

Mr. TSONGAS. Mr. President, I simply say that any Senator listening who would like to find out how smaller companies feel about it should give them a call between now and the vote, because I have talked to a number of Massachusetts-based companies that have enormous export potential. They are strongly in favor of this bill. I just did not want the statement to go unchallenged that gave the impression that these companies are opposed. It is just the opposite.

Mr. PROXMIRE. Mr. President, as long as the Senator has the floor, he made a statement earlier and I would appreciate it very much it he would permit me to question him for just a couple of minutes.

The Senator talked about the decline of the dollar compared to the deutschemark and the yen. He indicated, I presume, the reason that he made that allegation was that he felt the dollar declined in part because our exports were too feeble, they should be built up and they should be greater than they were.

He said that, after all, sure, we may have a bigger increase percentagewise in exports than Japan and Germany, but that does not mean anything, because we start from a smaller base than they do.

Mr. TSONGAS. As a percentage of GNP, that is correct.

Mr. PROXMIRE. As a percentage of GNP. But I think that nobody, including, I am sure the Senator from Massachusetts, on mature reflection, would expect that we would ever have exports in relationship to gross national product as great as, say, in Japan, Germany, or England. No way. They have to import virtually all their food in both Germany and Japan. They import virtually all their oil. They are small islands that have to export a great deal to pay for that. We are not in that position.

What I am saying, however, is that on the basis of statistics which are very clear—no one has refuted them—we have increased our exports more than our competitors have, percentagewise and absolutely.

Mr. TSONGAS. Mr. President, I was in the Chair yesterday when the chairman was making statements on the increases—as I recall, 20-percent increases—perhaps all the comments he made yesterday were in the 20-percent range.

If the chairman starts off with the premise that we can never hope to be a major trading power percentagewise, as the Japanese and the Germans, he is correct.

I do not happen to share that assumption.

The only reason the Japanese and Germans have done it is because they have the discipline to do it. It has nothing to do with imports and exports, because many countries around the world have exactly the same problems in terms of energy and food that do not happen to have major trading companies.

The difference is that they decided they will be in this thing and do it well. That is the same kind of discipline I would like to see us impose on ourselves.

Mr. PROXMIRE. May I say to my good friend from Massachusetts that we both agree we should have export trading companies, we both agree we should improve our exports. I would put more emphasis on whether or not we can improve our productivity, or our fight against inflation.

I think that it fundamental and more important. But I have no objection to the trading companies, provided we have the kind of traditional and healthier competitive relationship than in the past in respect to banks and competition, to those at a disadvantage, when the bank owns a competitor and the smaller business has to compete without that access to credit.

Mr. TSONGAS. Another way of arguing it is that we can send the United States in to play tennis with the Japanese and give them a paddle ball. If we do not give them the tools, why bother with the process?

Mr. PROXMIRE. The Federal Reserve is not interested in sabotaging this legislation. They made a perfectly sincere proposal to permit us to have effective export trading companies.

They take a position which I think is very moderate, that the banks can own completely an export company. They can own the whole thing.

However, they should come for approval, if they own more that 20 percent, to the Federal Reserve to make sure they meet the requirements of the act, which is necessary in order to increase our exports.

Mr. TSONGAS. I spent 2 years on the Senator's committee, and listened to the chairman argue with the Federal Reserve. Now they happen to be in agreement with the chairman. So now we have wisdom and prudence at the Federal Reserve.

I would also like to point out that the bill contains the following limitations:

Investment in ETC's is limited to 5 percent of the bank's capital and surplus. Total bank exposure of both investments and loans is limited to 10 percent of capital and surplus. Bank regulatory agencies must approve controlling investments of ETC voting stock, even if the interest is less than $10 million. Bank regulatory agencies must approve acquisitions by consortia of banks for more than 50 percent of an ETC, even if individual bank investments are not equivalent to a controlling interest. The name of an ETC may not be similar to that of a bank investor. A bank must terminate its ownership of an ETC if the ETC takes speculative positions in commodities.

That, I would argue, is rather significant, and that was what the compromise in the committee was all about.

One could argue that we have gone too far. It seems to me, if we go further, in essence we kill the bill.

Mr. PROXMIRE. If the Senator will yield for a moment, the 5-percent figure the Senator refers to in capital and surplus, of course, that is not very much for a little bank. With a big bank, it can be plenty.

Furthermore, these are highly leveraged operations, as the Senator knows.

It is perfectly possible a big bank, under these circumstances, with 5 percent of their capital and surplus, 10 percent, including loans, would be in a position to have a very decisive and extensive ownership position that could be very damaging to competitors.

I am willing to go along with this, providing the Federal Reserves says it is necessary in order to increase our exports.

I do not see why that is unreasonable.

Mr. TSONGAS. In that position, we may have a situation where we cannot compete. The Japanese and Germans have those kinds of tools and that capability.

Mr. PROXMIRE. I say to my friend from Massachusetts, the Senator indicated this is simply a matter of providing financing to export companies. It is not. It will allow banks to take a position in commodities and goods. Banks have no expertise whatever in warehousing and merchandising goods.

There is nothing in the bill keyed to small business specifically. This would be something that could work with the large business, instead.

Does the Senator agree with that, that this bill does go beyond financing, this permits banks to take positions on commodities or goods?

Mr. TSONGAS. I simply reiterate the statement I made earlier that the bank must terminate its ownership of an export trading company if the trading company takes speculative positions on commodities.

Mr. PROXMIRE. What expertise do the banks have in buying commodities and buying goods and warehousing, merchandising?

Mr. TSONGAS. I suppose one could argue, what expertise do small companies have now?

Mr. PROXMIRE. We have had bad experience with banks getting out; once beyond financing, we are in great trouble. We had to bail out some of those banks.

That is the kind of thing. I do not think the Senator from Massachusetts or the Senator from Wisconsin are far apart.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1963) of the Senator from Illinois.

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr.

CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), the Senator from Georgia (Mr. TALMADGE), and the Senator from Washington (Mr. MAGNUSON) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 84, nays 0, as follows:

[Rollcall Vote No. 381 Leg.]

YEAS—84

Armstrong	Goldwater	Nelson
Baker	Hart	Nunn
Baucus	Hatch	Packwood
Bayh	Hatfield	Pell
Bentsen	Hayakawa	Percy
Biden	Heflin	Proxmire
Boschwitz	Heinz	Pryor
Bradley	Helms	Randolph
Burdick	Hollings	Riegle
Byrd, Harry F., Jr.	Huddleston	Sarbanes
Byrd, Robert C.	Humphrey	Sasser
Cannon	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Javits	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
Cranston	Kassebaum	Stevens
Culver	Laxalt	Stevenson
Danforth	Leahy	Stone
DeConcini	Levin	Thurmond
Dole	Lugar	Tower
Durenberger	Mathias	Tsongas
Durkin	Matsunaga	Wallop
Eagleton	McClure	Warner
Exon	Melcher	Williams
Ford	Metzenbaum	Young
Garn	Mitchell	Zorinsky
Glenn	Morgan	
	Moynihan	

NOT VOTING—16

Bellmon	Kennedy	Roth
Boren	Long	Stewart
Bumpers	Magnuson	Talmadge
Church	McGovern	Weicker
Domenici	Pressler	
Gravel	Ribicoff	

So Mr. STEVENSON'S amendment (No. 1963) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. JAVITS. Mr. President, will the Senator yield to me such time as I may require?

Mr. STEVENSON. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I thank my colleague very much.

Mr. President, I support this legislation which I know from my own involvement in it has been arduously crafted for over a year by Senators STEVENSON, DANFORTH, and others, including Senator HEINZ. I am very grateful that they have done what is so essential for the American export trade.

The provisions of this bill relating to export trading companies in particular reflect the kind of dynamic innovation that our export trade so sorely requires. It has been apparent to many of us in the Congress that the way out of our deteriorating export competitveness is not to be achieved simply through exchange rate movements or changes in the business cycle—both of which, in their own way provide intermittent, but increasingly unpredictable fillips to our international competitiveness.

Yet any export trade policy—and that is what we have been talking about for the past year, Mr. President—must include innovative tools whereby our export potential is unleashed and supported by Government action.

Despite recent indications from the administration that things are better than they appear respecting our trade performance, our export performance is still in a grim state. One can look at relative improvements in the current account brought about principally by altered rules for repatriated earnings, or one can look at the leveling off of our massive trade account deficit as cause for optimism.

But Mr. President, in the markets that will increasingly determine our export competitiveness, the facts are clear. U.S. companies are being out-hustled and outsold in the developing countries and third markets of the world. It is clear that we need aggressive marketing to establish a foothold in these areas before our competitors lock up these markets for their own goods, technologies and suppliers.

Both the concept of the Export Trading Company and the strengthening provisions of the Webb-Pomerene Act are forceful and positive changes that I hope will serve as the cutting edge for further export expansion ideas taking shape here in the Congress and in the private sector. We have ideas before us that have been advanced by the President's Export Council, on which Senator STEVENSON and I sit, through the Senate Export Caucus, of which I am a member, through the various trade committees in the Congress and through private trade groups. Yet, as witnessed by the recent unfortunate events surrounding the Eximbank appropriations measure, I feel we have some distance to go before either we or the administration can muster the will to support similar innovative ideas like the Export Trading Company proposal.

This legislation before us today represents tireless negotiations and compromise with those who believe that these proposals go too far in untying the hands of U.S. business to sell overseas. The most difficult of these discussions involved the exemptions granted to export trade associations and export trading companies from Clayton Act and FTC antitrust provisions.

Mr. President, the provisions of the bill carefully safeguard the principles of our antitrust laws and permit ample coordination among the Secretary of Commerce, the Attorney General and the FTC to insure that certain conditions are met prior and subsequent to the certification process.

I think it is well documented that uncertainty, or at least perceived uncertainty, about the extraterritorial application of U.S. antitrust laws is one of the greatest single inhibitors to increased U.S. foreign trade and investment. The overwhelming handicap of not knowing how his operation will be looked upon by law enforcers here at home compounds the inherent problems resulting from the already uncertain and risky climate abroad which faces the U.S. businessman engaged in exports.

This uncertainty results in the loss of new markets for U.S. exporters who forgo opportunities to be daring and innovative and rely instead on tried and true markets. Furthermore, even those businessmen who take advantage of the Webb-Pomerene Act maintain that the exemption presently provided is too narrow to allow them sufficient support to compete in the fiercely competitive world marketplace of today.

This matter of extraterritorial application of U.S. antitrust law is of special concern to me. As the sponsor with Senator MATHIAS of S. 1010, a bill to establish a Commission on the International Application of U.S. Antitrust Laws, I have sought to provide a thorough review of this subject. The aim of the Commission is to address these concerns and to promote a more productive relationship between the antitrust laws and the U.S. business community. The antitrust provisions of S. 2718 are necessary steps in the direction of rationalizing our antitrust objectives with our international trade interests. As proposed in S. 1010, the Commission would assess additional steps that may be taken in this direction without compromising our continuing goal of viligant antitrust enforcement.

The growing size of foreign conglomerates and the active participation of foreign governments in commercial activities make it very difficult for U.S. firms to compete effectively, for they are hindered by strict antitrust constraints which do not affect their foreign competitors. I am convinced that we must continue vigorously to enforce very high standards for business practices affecting U.S. citizens. On the other hand, we must not completely disregard pragmatic considerations when dealing with cartels and combinations created with either the support or the encouragement of foreign governments.

Under current export practices, the bids for a foreign construction contract in many cases will include several from small U.S. companies, but only one bid from each foreign country. That one bid is generally from a large consortium which has been organized with the approval of the foreign government and frequently with an active government role.

To cite a specific example, I refer to a recent article in the August 18, 1980 issue of Business Week entitled "The Engineers Leading a National Export Drive." The article tells of the formation of a State-created engineering corporation (Technip) owned by a consortium of French companies, banks and government agencies including the French Atomic Energy Commission and the Banque National de Paris. In fact 82 percent of Technip's stock is held by government agencies, nationalized companies and state controlled banks. As one industry analyst put it, "When Technip does it, it offers a complete package." In the developing world, increasingly the principal competitive arena for U.S. manufactured exports, Technip has been dubbed France's "export strike force."

I ask unanimous consent that the entire article appear at the end of my remarks.

Mr. President, to those who indicate that proposals such as S. 2718 are premature, I would say look to the developing country markets and see what U.S. bidders are confronting. S. 2718 is a modest and necessary tool which can open up our export base to small and medium sized firms and also can provide U.S. exporters with a team approach in third markets that will increasingly be the proving ground for U.S. export policy.

I would also add that I am opposed to the pending amendment which would further restrict majority ownership by banks of export trading companies. Controlling interest by banks is vital to the success of this export legislation. The amendment being proposed would not only impose excessively strict requirements before controlling interest would be approved by banking authorities, but in my opinion would needlessly deter bank investment in ETC's since bank investment strategies increasingly call for controlling interest to safeguard bank and depositor interests.

I thank my colleague for yielding.

Mr. PROXMIRE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Illinois has the time.

Mr. JAVITS. I will yield.

Mr. PROXMIRE. Mr. President, I am not going to take much time.

I do say I have great respect for the Senator from New York, as he knows.

I am wondering if the Senator has had a chance to look at the Federal Reserve Board amendment which would permit banks to have an ownership interest, in fact permit them to go to 100 percent under some circumstances. The circumstances are that the Federal Reserve itself would have to determine that this was necessary in order to promote exports. Absent that, the banks would still be allowed to own 20 percent.

But what our amendment would do would be to follow what the Federal Reserve recommended to us and would not permit banks to get involved in commerce and trade unless we had this highly competent and expert agency determining that that was necessary in order to promote exports.

Mr. JAVITS. Mr. President, the Senator enjoys my equal respect and regard.

I will look at it again. I have examined that amendment. I feel that the export trading corporations are so essential to our country that I wish to go with the committee bill and on that ground, but I will examine the Senator's points and look at the Federal Reserve idea again.

Mr. PROXMIRE. I appreciate very much the Senator's openmindedness on this. He is as expert as anybody in this body on banking, trade, finance, and exports and of the importance of exports to our foreign policy as well as to our commerce and our economy.

So I do hope the Senator will take another look at this amendment.

As the Senator knows, Chairman Volcker, a man of great ability, and Mr. Wallich, who has given this his principal attention by the Federal Reserve Board, an outstanding economist, both feel very fervently and strongly about this amendment, and I hope the Senator will take another look at it.

Mr. JAVITS. As I said before, I will. But I think this matter of freedom of action is essential if we are to have the kind of support we need.

Mr. DANFORTH. Mr. President, the United States needs to become an aggressive exporter of its goods and services. One need only look at our growing trade deficit to appreciate that our industries are losing the competitive battle within world markets.

For the first 70 years of this century our Nation had a positive trade balance with its trading partners. For the better part of this century, U.S. industry was efficient, had innovative capacity, and was unexcelled in technological leadership. Today, the statistics and the outlook is not that encouraging. In 1977 the United States ran a $26.5 billion deficit, a $28.5 billion deficit the next year, and a $25 billion deficit last year. This year the projected trade deficit is $30 billion. The economic stability of our Nation is being swiftly eroded.

In the last two decades the U.S. share of free world exports declined from 15 to 11 percent. Within the last 5 years our major competitors have managed to increase real exports by 4 percent a year, while the value of U.S. exports, adjusted for inflation, has shown little if no growth. Looking at the relative importance of exports as a percentage of GNP, U.S. exports account for approximately 7 percent of GNP in contrast to Japan where exports account for 14 percent of GNP and for 22 percent of GNP in Germany. Something has to be done to spur U.S. exports.

Mr. President, S. 2718 is a step in that direction. The bill encourages and provides a framework within which export trading companies may be formed. The bill enables banking institutions to invest in export trading companies under specified and carefully regulated conditions. Further, S. 2718 significantly amends the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and provides a certification procedure whereunder export trading companies and trade associations may receive antitrust clearance for specified export trade activities.

Mr. President, I would like to address my remarks to the antitrust provisions of S. 2718, specifically title II. Title II finds its origin in S. 864, the Export Trade Association Act of 1979 introduced by myself and Senators BENTSEN, CHAFEE, JAVITS, and MATHIAS on April 4, 1979, and later joined on by Senator HEINZ. Hearings were held on S. 864, and other bills, on September 17 and 18, 1979, before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs. A revised version of S. 864 was introduced on February 26, 1980, as amendment No. 1674. Hearings on the revision were held on March 17 and 18, and April 3, 1980.

Before I address myself to the particulars of title II of S. 2718 I believe a brief historical background of the current law—the Webb-Pomerene Act of 1918 (15 U.S.C. 61–66)—which title II amends will prove beneficial.

In 1914 Congress directed the Federal Trade Commission to study and report to the Congress on the conditions affecting U.S. export trade. In 1916 the Federal Trade Commission published a report that found American manufacturers and producers when attempting individually to enter foreign markets to be at a disadvantage because of strong combinations of foreign competitors and organized buyers. The report also noted that the threat of antitrust prosecutions under the Sherman Act deterred exporters from carrying out collective efforts to challenge foreign cartels.

In response to the findings of the FTC report, Congress passed in 1918 what has come to be known as the Webb-Pomerene Act. The purpose behind passage of the Webb-Pomerene Act was to provide U.S. exporters with the ability to compete in international markets on an equal basis with their foreign competitors. The Webb-Pomerene Act provides a limited exemption from both the Sherman and Clayton Antitrust Acts to qualified joint ventures in export trade known as Webb-Pomerene associations. The Webb-Pomerene law exempts from U.S. antitrust laws any association established "for the sole purpose of engaging in export trade," (15 United States Code, Section 62) as long as the association, its acts, or any agreements into which the association enters, do not: first, restrain trade within the United States; second, restrain the export trade of any domestic competitor of the association; or third, artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by such association or substantially lessen competition within the United States or otherwise restrict trade therein (15 United States Code, Sec. 62).

The Webb Act defines "export trade" to include only "trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States" (15 United States Code, section 61). As is obvious, the Webb Act does not extend to exports of services.

Mr. President, both the legislative history of the Webb Act and the administrative and judicial interpretation of the act shed light on its scope and intended effect.

The debate on pasage of the Webb Act was centered on the resolution of two points mentioned in the FTC report. These were: First, that American firms and U.S. exports might be benefited if cooperative arrangements reduced the

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costs of foreign marketing or enhanced the bargaining power of American firms when dealing with foreign buyers; and second, that domestic trade might be affected adversely if cooperative arrangements enabled American firms either to exploit consumers in the home markets or exclude non-members firms from the export market.

The legislative history of the Webb Act, including both House and Senate Reports and the debates in the CONGRESSIONAL RECORD, evidences that Congress presumed that formation of export trade associations would enable smaller American firms to compete more effectively with large and powerful firms abroad by permitting American sellers to combine and bargain collectively. It was believed that the combined power of American firms would provide the means for entry into foreign markets which previously were blocked by the power and tactics of sellers and buyers abroad.

Early in the history of the Webb Act the FTC issued a letter setting forth its enforcement intentions. In that letter, known as the 1924 "silver letter," the FTC announced that an association could qualify under the Webb Act if it existed for no other purpose than to fix prices and allocate sales in foreign markets—as long as the substantive criteria set forth in the act were met—and while foreign corporations were excluded from membership in Webb associations, these associations might enter into any cooperative arrangements with non-nationals which might enhance their trade position in foreign markets.

A second determination of the "silver letter"—permitting restrictive agreements between Webb associations and foreign nationals—was rescinded in 1955. Under the new criteria outlined by the FTC, if export associations enter into restrictive agreements with foreign competitors, those agreements will not be within the antitrust protections of the Webb Act and the lawfulness of the associations' activities will be judged under the Sherman Act, as would similar conduct by an individual exporter.

After issuance of the "silver letter" it was not until the 1940's that further clarification was afforded the scope of the Webb-Pomerene antitrust exemption through a series of investigations conducted by the commission known as the "202 series of recommendations." These investigations concluded that a Webb-Pomerene association may not.

Enter into agreements of any kind with domestic producers who are not members of the association which fix prices, terms of sale, or otherwise restrain the free export of goods of nonmember firms. Pipe Fittings and Valve Export Association. (1948)

Enter into agreements of any kind whereby exports of domestic nonmember producers are deducted from the export quota of the association. Florida Hard Rock Phosphate Export Association. (1945)

Enter into agreements of any kind which prohibit association members from selling to domestic exporters in competition with the association, or which deduct sales by a member within the United States from the member's export quotas through the association. Phosphate Export Association. (1946)

Falsely represent that it is the sole export representative of the United States in a given industry. Pacific Forest Industries. (1940)

Enter into agreements of any kind with owners or operators of shipping terminals, thereby restricting use of such terminals to only association members. Phosphate Export Association. (1946)

Be involved in acquiring control of any patent or process useful in the production of the goods it markets. Sulphur Export Corporation. (1947)

Enter into an agreement of any kind which precludes or restricts the right of the association or its members from using a trademark or label in the United States. General Milk Co., Inc., Ltd. (1947)

Enter an agreement of any kind whereby it controls or attempts to control any of the terms or conditions of sales by its members within the United States. Phosphate Export Association. (1949)

Enter an agreement of any kind with any foreign producer or cartel whereby the United States is designated as an exclusive trade area, or imports into the United States are otherwise curtailed or restricted. Export Screw Association of the United States. (1947)

Own stock, either directly or indirectly through subsidiaries, in corporations or other producers outside the United States. Export Screw Association of the United States. (1947)

Enter an agreement of any kind whereby foreign producers are guaranteed the right to sell within a given area a specified tonnage over and above sales in that area by the association. Sulphur Export Corp. (1947)

Enter an agreement of any kind which discriminates among its members as to the right of withdrawal, resignation or restricting the right of former members to compete with the association after withdrawal. Phosphate Export Ass'n. (1946)

Conduct office operations jointly with a domestic trade association. Carbon Black Export, Inc. (1949)

Enter an agreement of any kind to "maintain the status quo" in the world market of the industry and to do nothing which would encourage or increase competition in the industry. Sulphur Export Corp. (1947)

Take into membership anyone who is not a citizen of the United States, nor any foreign purchaser, customer, representative or agent of a foreign company. Phosphate Export Association. (1946).

In 1966 the Commission in Advisory Opinion No. 91 determined that membership by a firm owning foreign entities is permissible in a Webb-Pomerene association.

Further clarification as to the parameter of the antitrust exemption provided under the Webb Act has been gained through adjudication of a number of cases brought by the Department of Justice. Of these cases there are two major decisions which interpret the scope of the Webb Act.

In the first case, United States against Alkali Export Association (Southern District, New York, 1944) the court found that a Webb association had violated the Sherman Act by participating in foreign cartels that engaged in practices resulting in the use of monopoly power to extinguish the competition of independent domestic competitors engaged in export trade and, which carried out practices that stabilized domestic prices by removing surplus products from the domestic market. In the second case, United States against Minnesota Mining Mfg. (District Court, Massachusetts, 1950) the court held that an export association could not establish or operate jointly-owned facilities abroad and then went on to give illustrations of conduct that a Webb association may lawfully carry out: First, an association could be created by a majority of the firms in an industry; second, the association could be used as the members' exclusive foreign outlet; third, members of the association could agree that goods would be purchased only from member producers; fourth, resale prices could be fixed for the associations' foreign distributors; fifth, prices could be fixed and quotas established for members; and sixth, foreign distributors could be required to handle only the members' products.

The Minnesota Mining case provides the most authoritative interpretation of the scope and rationale of the antitrust exemption under the Webb-Pomerene Act. As stated by the court:

> Now it may very well be that every successful export company does inevitably affect adversely the foreign commerce of those not in the joint enterprise and does bring the members of the enterprise so closely together as to affect adversely the members' competition in domestic commerce. Thus every export company may be a restraint. But if there are only these inevitable consequences, an export association is not an unlawful restraint. The Webb-Pomerene Act is an expression of Congressional will that such a restraint shall be permitted.

In enacting the Webb-Pomerene Act, Congress envisioned an eager American business community availing itself of the opportunity to pool its facilities, resources, and expertise in such a fashion as to implement an ambitious joint exporting program. That vision never materialized.

At their high water mark between 1930 and 1935, Webb-Pomerene associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. Today the number of associations has dwindled to around 30 and their share of total U.S. exports has dipped to less than 2 percent.

The reasons for this poor showing are many. To list but a few:

The business community traditionally has placed top priority on tapping the vast domestic market and has been much slower to focus on the prospects overseas.

The ever-expanding U.S. service industries have been excluded from qualifying for the act's antitrust exemption.

The Department of Justice, and to a lesser extent the Federal Trade Commission have been perceived by the business community as exhibiting a thinly veiled

hostility toward Webb-Pomerene associations. Therefore, the threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act.

All in all, there remains the strong impression among most parties that the Webb-Pomerene Act is a quaint relic of the past—a cracked plate that is not good enough to be brought out for company and yet not so useless as to be thrown away. This is regrettable, particularly at a time when we are suffering year in and year out $30 billion deficits.

Title II to S. 2718 modifies the Webb-Pomerene Act in a way that will permit many more American firms to make use of its updated provisions to promote exports.

Title II does the following:

It makes the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services. (The National Commission for the Review of Antitrust Laws and Procedures made this same recommendation in its report to the President.)

It expands and clarifies the act's antitrust exemption for export trade associations, and provides an antitrust exemption for export companies formed under title I of S. 2718.

It requires that the antitrust immunity be made contingent upon a preclearance procedure.

It transfers the administration of the act from the FTC to the Department of Commerce.

It creates within the Department of Commerce an office to promote the formation of export trade associations and trading companies.

It provides for the establishment of a task force whose purpose will be to evaluate the effectiveness of the Webb-Pomerene Act in increasing U.S. exports and to make recommendations regarding its future to the President.

Mr. President, with respect to amendments made to the Webb-Pomerene Act by title II of S. 2718, section 201 states the short title of the act while section 202 sets forth findings by the Congress regarding exports and joint exporting activities and the need for amending the 1918 Webb-Pomerene Act (15 United States Code, sections 61 to 66).

Section 203 amends section 1 of the Webb-Pomerene Act (15 United States Code, section 61) and defines the pertinent terms to be used in the amended Webb-Pomerene Act. "Export trade" is amended to include trade in services as well as that in goods, wares or merchandise. "Service" is defined as meaning intangible economic output and is intended to be an all-encompassing definition, a term not limited by usage relevant to any particular point in time. The term "trade within the United States" retains the definition under section 1 of the Webb-Pomerene Act. The definition of "antitrust laws" is intended to be all inclusive of both Federal and State statutes prescribing the competitive norms within the marketplace. Within the Federal jurisdiction this includes the Sherman Act, the Clayton Act, the Wilson Tariff Act and the Federal Trade Commission Act. The remaining definitions in section 203 are self-explanatory. It should be noted that the amendments to the Webb Act contained in title II are expanded to include qualified "export trading companies" as well as Webb associations.

Mr. STEVENSON. If I may inquire of the Senator from Missouri as to section 203 of title II.

Mr. DANFORTH. You may.

Mr. STEVENSON. There seems to be some discrepancy between the language of S. 2718, as reported by the Senate Banking Committee and the section-by-section analysis contained in Senate Report 96-735. Specifically, section 203 of the bill includes the following definition of "association":

> The term "association" means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any state or of the United States.

The section-by-section analysis of section 203 in the committee report includes the following:

> The term "association" refers to any combination of persons, partnerships, or corporations, all of which must be citizens of the United States or created under the laws of any State or of the United States. A foreign controlled subsidiary created under the law of any state or of the United States, however, cannot be a member of the "association".

Your original bill, S. 864, which is now title II of S. 2718, contained a prohibition against export trade association participation by foreign controlled subsidiaries located in the United States. However, that limitation was deleted in the revised version of S. 864 (Senate amendment 1674), was not included in S. 2718 as reported. Because participation of foreign controlled entities has been an area of uncertainty as well as controversy, clarification of the discrepancy between the bill's actual language and the committee explanation is desirable. Specifically, does title II of S. 2718 contain any prohibition against the participation of foreign controlled subsidiaries?

Mr. DANFORTH. There is no such prohibition as long as the foreign controlled subsidiaries meet the requirement of paragraph (5) of section 1 of the act that they be "created under and exist pursuant to the laws of any State or of the United States."

Mr. STEVENSON. I thank the Senator from Missouri.

Mr. DANFORTH. Section 204 of title II amends sections 2 and 4 of the Webb-Pomerene Act (15 United States Code, sections 62 and 64) and establishes the scope of the antitrust exemption. Section 2 of the Webb-Pomerene Act exempts from the application of the Sherman and Clayton Antitrust Acts (specifically sections 1 to 7 of title 15 of the United States Code) any Webb association that is established for the sole purpose of engaging in export trade; does not restrain trade in the United States; does not restrain the export trade of any domestic competitor of the association; that does not artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by the association; or does not substantially lessen competition within the United States.

Section 4 of the Webb-Pomerene Act extends the jurisdiction of the Federal Trade Commission Act to include unfair methods of competition used in export trade even though the acts were engaged in outside the United States.

Section 204 of title II establishes a new section 2 to the Webb-Pomerene Act. Section 2(a) sets out the eligibility criteria for the antitrust exemption afforded under the act for export trade associations and trading companies. Section 2(a) establishes six eligibility criteria. They are that the association or trading company and their export trade activities:

First, serve to preserve or promote export trade;

Second, result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association;

Third, do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association;

Fourth, do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association;

Fifth, do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and,

Sixth, do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowledge, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members.

With the exception of the requirements in paragraphs (1), (4), and (6) of section 2(a) of the act—provisions that impose additional criteria for eligibility in addition to those found in the standards of the current Webb-Pomerene Act—the substantive law of antitrust as modified by the amended Webb-Pomerene Act—the substantive law of antitrust as modified by the amended Webb-Pomerene Act has not been altered. The amendment of the Webb-Pomerene Act by section 204(a) of title II of S. 2718, with the exceptions as noted, is a codification of court interpretations of the Webb-Pomerene exemption to the domestic antitrust laws. In this regard I make specific reference to the decision in United States against Minnesota Mining & Manufacturing Co. which I alluded to earlier in my remarks. Also, the amendment is consistent with the present enforcement policy of both the Department of Justice and the Federal Trade Commission.

As stated by Ky Ewing, Deputy Assistant Attorney General, Antitrust Division, Justice Department, during hearings on

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S. 864 (now title II to S. 2718) before the International Finance Subcommittee of the Senate Banking Committee on September 18, 1979:

> We note (that S. 864) would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal . . . is to bring the Act into what we conceive to be the current state of antitrust law interpreted by the court. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 138.)

Similarly, Daniel Schwartz, Deputy Director, Bureau of Competition, Federal Trade Commission, testified that the antitrust standards specified in S. 864 "are essentially equivalent to the standards of the Webb-Pomerene Act." (September 17, 18 hearing record on Export Trading and Trade Associations, p. 194.)

In his prepared statement, Mr. Ewing further explained that:

> The judicially accepted legal threshold test for applicability of the Sherman Act to activity abroad places a heavier burden on government and private plaintiffs than that applicable domestically. The presence of a substantial and foreseeable effect on U.S. domestic or foreign commerce is required, not merely some minimal effect. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 144.)

Mr. Ewing also noted in his testimony before the subcommittee that:

> The Department of Justice has long predicated its enforcement efforts in export related matters upon the ability to prove a substantial and foreseeable effect on U.S. commerce. (September 17, 18 hearing record on Export Trading and Trade Associations, pp. 154–155.)

Mr. HEINZ. Would the Senator from Missouri yield for a question on section 204(a)?

Mr. DANFORTH. Yes.

Mr. HEINZ. If section 204(a) is nothing more than a codification of not only current judicial understanding of section 2 of the Webb Act but also the enforcement intent of both the Department of Justice and the Federal Trade Commission, why was it necessary to amend this section of the Webb Act with the exception of paragraphs (1), (4), and (6) as you noted?

Mr. DANFORTH. The amendment is necessary to provide certainty to the business community in their international trade activities assuring them that their activities do not run afoul of domestic antitrust laws. This is accomplished by establishing a certification procedure and by codifying not only present applicable case law but also the enforcement intentions of the antitrust oversight branches of our Government. Two examples will suffice. Under the present Webb-Pomerene Act if an activity of a Webb association is "in restraint of trade within the United States" (section 2 of the Webb-Pomerene Act) then the international trading activity of that association is not exempt from prosecution under the antitrust laws. When is a "restraint" actionable? When it is de minimus, insignificant, something more than inconsequential, substantial, or just what kind of measurement is to be employed? The Court in Minnesota Mining held that the restraint has to be something more than the inevitable consequences of the joint activity of competitors. The Department of Justice stated its enforcement intent under the Webb Act to be against joint exporting activities that have a substantial and foreseeable restraint on domestic trade. It would seem to this Senator that for the business community to be sure as to the circumstances under which its international trade conduct is to be held accountable, that the test judging the conduct be written in law. It is for this reason that "substantial" modifies the phrase "restraint of trade" and "substantially" modifies "lessening of competition" in section 2(a) of the act.

A second example relates to section 2 of the Webb-Pomerene Act which states that a joint exporting activity which "artificially or intentionally enhances or depresses prices within the United States" is outside the scope of the antitrust exemption provided by the act. The point I wish to make here is that for a business venture to rely on such a test—"artificially or intentionally"—is to place reliance on a standard which gives a false sense of security to joint exporting activities. The courts in the area of antitrust jurisprudence have developed a test that looks not to the mind—intent of the actors—but to the foreseeable consequences of their actions—the effect. It is for this reason that under paragraph 3 of section 2(a) of the act, the eligibility criteria is that the joint exporting activity does not "unreasonably enhance, stabilize or depress prices within the United States * * *", a test that looks to the effect of the actions, not at the intent of the actors.

Mr. HEINZ. I thank the Senator from Missouri for his explanation.

Mr. DANFORTH. It should be noted that the eligibility criteria found in paragraph (6) of section 2(a) of the act requires nothing more than a determination by the Secretary that the international trading activity of the trade association or export trading company not be solely trade in the "licensing of patents, technology, trademarks, or know-how" with the exception that such trade may be present if it is incidental to the sale of goods or services. It is the purpose of S. 2718 to further U.S. export trade in goods and services and not to promote trade in processes or ideas that could well result in the opposite effect occurring.

Mr. President, under section 2(b) of the act an export trade association, export trading company and their respective members that have their trade, trade activities and methods of operation certified according to the procedures set forth under section 4 of the act and carried out in conformity therewith are exempt from the operation of the antitrust laws be it private or sovereign—State or Federal—enforcement of those laws. The immunity from prosecution under the antitrust laws is complete from the day the certification goes into effect until it is either revoked or rendered invalid pursuant to actions taken under section 4 (d) or (e) of the act. If a revocation or invalidation occurs under the act, the loss of immunity is prospective only.

Mr. STEVENSON. Will the Senator from Missouri yield for an inquiry?

Mr. DANFORTH. Yes.

Mr. STEVENSON. Would the Senator, for the benefit of his colleagues, and as the author of title II of S. 2718, explain how the antitrust immunity provided under title II, which attaches after certification, differs from the antitrust immunity afforded under the current Webb-Pomerene Act.

Mr. DANFORTH. I would. Under current law, a Webb-Pomerene association that complies with the filing requirements of section 5 of the Webb Act and which is not in violation of the substantive law standards of section 2 of the Webb-Pomerene Act is exempt from the operation of the antitrust laws but only as to those sections of the Sherman and Clayton statutes set out in the Webb-Pomerene statute. Further, neither the fact of immunity nor the extent thereof is known until an association is sued and obtains a judicial determination that section 2 of the Webb-Pomerene Act has not been violated. What the Webb association has is only a hope. A case in point is United States against United States Alkali Export Association—Southern District of New York, 1944. In that case a Webb association was charged with entering into agreements with foreign cartels for the purposes of dividing world alkali markets, assigning international quotas, and fixing prices in certain territories other than the United States. The Webb association admitted the agreements but asserted in defense that it had complied with the filing requirements of section 5 of the statute, that its activities were not in violation of section 2 of the statute and therefore the association was immune from prosecution under the antitrust laws. Notwithstanding the association's belief that it was in compliance with the law, the court found to the contrary. The court's holding placed the arrangements employed by the alkali association outside the protective provisions of the Webb Act and exposed the association to liability under the antitrust laws. The Webb association which was organized in 1919 found out, after appeals, that the antitrust immunity which it believed it had for 40 years did in fact not exist.

Under the procedures established by title II of S. 2718, a Webb association—or for that matter an export trading company—whose export trade activities have been certified and which association or company acts within that certification knows for certain that those activities are exempt from both private and sovereign enforcement of either State or Federal antitrust laws.

The latter, besides encompassing the Sherman and Clayton antitrust laws and the Wilson Tariff Act includes the antitrust provisions of the Federal Trade Commission Act, sections 5 and 6 thereof. The certainty provided through the certification process is not lost until action is taken pursuant to the provisions of title II either to revoke or invalidate

the certification. If the latter occurs, the loss of the antitrust exemption is prospective—for future conduct only.

Mr. STEVENSON. I thank the Senator. I can see that title II provides certainty to Webb associations and trading companies as to what activities they may undertake without fear of prosecution or suit under the antitrust laws.

Mr. DANFORTH. Under section 2(c) of the act, when a certificate is issued by the Commerce Department, and the Department of Justice or Federal Trade Commission has previously advised the Department of Commerce of its disagreement with a determination to issue a certificate granting immunity under the act, the immunity from the operation of the antitrust laws is held in abeyance for 30 days. This provision is applicable to the issuance of a certificate under section 4(b).

Section 205, Mr. President, provides conforming changes in style to section 3 of the Webb-Pomerene Act (15 United States Code, section 63).

Section 206 amends sections 4 and 5 of the Webb-Pomerene Act (15 United States Code, sections 64 and 65) and adds an additional seven sections to the act. Section 4 of the Webb-Pomerene Act extended the jurisdiction of the Federal Trade Commission Act to include acts committed outside the United States. Under title II both the Department of Justice and the Federal Trade Commission have authority to seek invalidation of a certificate when the export trade, export trade activities, or methods of operation of the association or trading company no longer meet the requirements of section 2 of the act. One of the eligibility criteria under the act, specifically paragraph (4) of section 2(a), is that of "unfair methods of competition," an antitrust standard uniquely within the expertise of the Federal Trade Commission and a standard which establishes a norm of competitive behavior prescribed by section 5 of the Federal Trade Commission Act. While under the current Webb Act there exists no exemption for joint exporting activity that may be found to violate section 5 of the Federal Trade Commission Act, such an exemption is provided under the Export Trade Association Act of 1980."

Section 5 of the Webb-Pomerene Act establishes administrative requirements for associations operating under the act. Each association, within 30 days after its formation, has to submit a statement to the Federal Trade Commission giving details concerning its certificate of incorporation and bylaws. The association must also furnish to the Commission such information as the Commission requests. The Commission may also investigate associations if it believes that the law may have been violated. Recommendations for readjustment can be made by the Commission and if the association does not comply with the recommendations the Commission may refer its findings to the Department of Justice for any appropriate action. Under the present Webb-Pomerene law a Webb association that complies with the filing requirements of section 5 would not know if it had an immunity from the operation of the antitrust laws until a judicial determination was rendered that section 2 of the Webb-Pomerene Act had not been violated.

Mr. President, section 206 of title II provides a new section 4 to the Webb-Pomerene Act. Section 4(a) establishes the procedure to apply for certification as either an export trade association or export trading company. The section, specifically paragraphs (1) through (9), describes the information to be included in the application for certification which paragraphs I believe are self-explanatory. Most notable of the informational filing requirements are a description of the circumstances showing that the association or export trading company will serve a need in promoting the export trade in the goods or services involved, a description of the methods by which the association or company intends to conduct its export trade and any other information which is reasonably available to the applying parties and which is necessary for the grant of certification.

Under section 4(b)(1) the Secretary of Commerce is required to certify an association or company within 90 days after receiving the application. During this 90-day period the Secretary will have the opportunity to consult with both the Department of Justice and the Federal Trade Commission. The purpose for the consultation is to provide an opportunity for the two antitrust enforcement agencies of our Government to share with the Secretary of Commerce their respective analysis of and any concerns they may have relative to the eligibility criteria of the act, section 2(a).

Under section 4(b)(1) an association or company will be granted a certificate upon a determination by the Secretary that first, the association or trading company and their respective export trade, trade activities, and methods of operation meet the requirements of section 2 of the act and second, that the association or company and their respective activities will serve a specified need in the promotion of the applicable export trade.

Mr. HEINZ. Will the Senator from Missouri yield for a question?

Mr. DANFORTH. Yes.

Mr. HEINZ. There has been some concern raised as to the application of the "needs test" in title II of S. 2718. As the Senator from Missouri is aware, in its report to the President and the Attorney General on January 22, 1979, the National Commission for the Review of Antitrust Laws and Procedures concluded that if the Congress determines that it is necessary to continue the Webb-Pomerene exemption, it should seriously consider that before any immunity from the operation of the antitrust laws is afforded an association of joint exporters, the latter "be required to make a showing of need." Under section 2(a) of the act, specifically paragraph (1), one of the eligibility criteria for ascertaining whether a certification is to be issued is whether the joint exporting activities "serve to preserve or promote export trade." How are the eligibility criteria of section 2(a)(1) related, if at all, first to the needs showing under section 4(a)(6) and second, to the needs determination required of the Secretary under section 4(b)(1)?

Mr. DANFORTH. There is no relationship.

Mr. HEINZ. Would the Senator then explain what is required in the showing of a specified need under section 4 and the reason for the eligibility criteria of paragraph (1) of section 2(a)?

Mr. DANFORTH. The reason for providing an exemption from the operation of the antitrust laws for the joint exporting activities of either a Webb association or export trading company is that without such an exemption, and an exemption which is certain, it would not be reasonable to conclude that such joint exporting activities would be undertaken except on an infrequent basis. Therefore, to encourage such activity, an exemption is available. However, the exemption should only be utilized to preserve—that is to say, maintain the status quo—or promote—that is to say, add to—export trade. To be eligible for the exemption such a finding—that the association or trading company will preserve or promote export trade—should be made by the Secretary of Commerce. Further, since the existence of that fact is one of six eligibility criteria, the finding would be subject to judicial consideration under a section 4(e) action.

On the other hand, the determination by the Secretary under section 4(b)(1) utilizing information tendered pursuant to section 4(a)(6) is not subject to judicial consideration under a section 4(e) action. The reason behind requiring the Secretary to not only determine that the six eligibility criteria of section 2(a) will be met but that the activities of the Webb association or export trading company will serve a specified need in promoting the export trade covered by the certification is simple. It was believed that those seeking to avail themselves of the benefit of the Webb-Pomerene exemption should come forward and share with the oversight agency, the Department of Commerce, the reasons they believe their activities will be in furtherance of the export trade of our Nation. The needs demonstration required by section 4 of the act is nothing more than a subjective explanation by the association or trading company as to how its activities will further U.S. trade. The Secretary in his determination will either agree or disagree with that evaluation.

Mr. HEINZ. I thank the Senator. I too believe that the needs showing within section 4 contemplates nothing more than a subjective explanation by the Webb association or trading company that the activities of the association or company will further U.S. export trade.

Mr. DANFORTH. Mr. President, the Secretary, under section 4(b)(1) must specify in the certificate the permissible export trade, trade activities, and methods of operation of the association or company. The immunity from the operation of the antitrust laws provided by section 2(b) of the Act applies to those enumerated activities.

Under section 4(b)(1) the Secretary must issue the certificate or deny the application 90 calendar days after an ap-

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plication is filed but may extend that process by an additional 30 days with the agreement of the applicant. After an application is filed, by the 45th day, the Secretary is to deliver to the Attorney General and the Federal Trade Commission a copy of any certificate the Secretary proposes to issue. No later than 15 days thereafter—in the case of a certificate delivered on the 45th day, by the 60th day—the Attorney General or Commission may give written notice of an intent to offer advice on the determination. If the Commission or Attorney General does not respond within the 15-day period or formally advises the Secretary of no disagreement with his intent to issue a certificate then the Secretary may issue a certificate at any time. If the Attorney General or Commission advises the Secretary of an intent to offer advice on the application, then such advice must be provided the Secretary within 45 days of the date the Attorney General or Commission received from the Secretary a copy of the proposed certification. In the case of the Attorney General or Commission notifying the Secretary of Commerce of his intention to offer formal advice on the 60th day after the certificate has been filed the formal advice must be given by the 90th day, since the proposed certificate was tendered to each agency on the 45th day. The extension of time afforded under section 4(b) applies only to the granting of the certificate and not to the time during which the Attorney General or Commission is obligated to act.

Mr. STEVENSON. Would the Senator yield for a question on section 4(b)(1)?

Mr. DANFORTH. Yes.

Mr. STEVENSON. What is the purpose of the last sentence of section 4(b)(1)? Is it not the intent of the author of this title that the two respective antitrust enforcement agencies establish a process similar to that utilized for enforcement of the domestic antitrust laws whereby they will reconcile any potential conflict as to which agency will enforce its respective law against a given company or industry in a manner so that all those concerned know that one or the other agency will assume primary jurisdiction?

Mr. DANFORTH. Yes, that is the intent.

Mr. STEVENSON. I thank the Senator.

Mr. DANFORTH. Mr. President, section 4(b)(2) of the act provides that an association may request expedited consideration on its application. The time constraints in section 4(b)(1) must still be honored but it is expected that if a need is demonstrated justifying expedition then all affected agencies will act in due speed.

Section 4(b)(3) provides a mechanism whereby an association whose application for certification or amendment thereto is denied is to be afforded a hearing with respect to that determination pursuant to section 557 of title 5 of the United States Code.

Section 4(c) of the act requires that after certification, if there occurs a material change—meaning something more than inconsequential—related to the association or trading company's membership, trade, trade activities or methods of operation, then an affirmative duty on the part of the association or company exists to report the change to the Department of Commerce. At the time the report is made the association or company may request that its certification be amended. Under section 4(c) if the request for an amendment to the certification is reported by the association or company within 30 days of the fact of the change the antitrust immunity provided by the act continues uninterrupted if the material change subsequently becomes incorporated into the certification through approval by the Secretary of Commerce. The decision as to whether the 30-day test has been met is within the discretion of the Secretary who shall state such when acting upon the request for an amendment to the certification. It should be noted that any interruption in the period of the antitrust immunity occasioned by the failure to notify the Secretary of a material change within the 30-day period does not affect the scope of the underlying certification except as to that part relevant to the material change. One final comment concerning section 4(c) is necessary. The request to obtain certification for a material change must be made within the 30-day period after the change occurs. The decision by the Secretary to accept the request and approve the change is not required to be made within the 30-day period.

Under section 4(d) the Secretary, after notification to an association or trading company and after affording it a hearing, may require that the association or company amend its organization or methods of operation to correspond to its grant of certification. Further, if the Secretary determines that the eligibility criteria of section 2(a) of the act are no longer met, the Secretary must either revoke the certification or himself make such amendment to the certification to satisfy the eligibility criteria of the act.

Mr. President, section 4(e)(1) authorizes either the Department of Justice or the Federal Trade Commission to bring an action to invalidate, in whole or in part, the certification granted to an association or trading company on the grounds that the eligibility criteria of section 2 of the act are no longer being met. Once an association or trading company's export trading activity has been certified under the act, the only action provided by law against the association, trading company or their respective members would be either a self-initiated action by the Secretary under section 4(d) of the act or an action by the Department of Justice or Federal Trade Commission under section 4(e) of the act.

Mr. HEINZ. Will the Senator yield for a question on section 4(e) of the act?

Mr. DANFORTH. Yes.

Mr. HEINZ. Would a private party have a cause of action against a Webb association, trading company or their respective members under the Federal, or for that matter, State antitrust laws for injury to it?

Mr. DANFORTH. Section 4(e)(3) of the act provides that only the Department of Justice or the Federal Trade Commission has standing to bring a cause of action in court against a trading company or Webb association for violation of section 2 of the act. Therefore, apart from the complained-against activity being ultra vires to the certification, a private party has no standing to bring suit. However, after a certificate has been revoked or invalidated, a private party could have standing to bring an action under the antitrust laws based on activities subsequent to the revocation or invalidation. I would also point out that a private party who may be "aggrieved by an order of an appropriate banking agency" pursuant to section 105(e)(1) of S. 2718 (Title I of the legislation) may not employ the broad standing provision of section 105(e)(1) in order to obtain standing against an export trading company or association with respect to its export trade, trade activities and methods of operation.

Mr. HEINZ. I thank the Senator.

Mr. DANFORTH. Under section 4(e)(1), before the Department of Justice or Federal Trade Commission may sue to invalidate a certification, it is required to notify the affected parties 30 calendar days in advance. It is anticipated that this 30-day period will allow sufficient time for the parties to resolve their differences, if at all possible. The 30-day notification period is not applicable to an action seeking a restraining order under section 4(e)(2).

The authority of the district court under an action for invalidation is to consider the issues de nova. The only issues that are before the court are whether the requirements of section 2(a) of the act, the eligibility criteria, are being complied with by the association or trading company. While the Secretary of Commerce must consider the requirements of section 2(a) and determine that the activities of the association or trading company will serve a specified need in promoting the applicable export trade in order to issue a certificate, the specified need determination of the Secretary is not an issue which is subject to consideration by the district court in a section 4(e)(1) action.

The district court in a section 4(e)(1) action may either issue an order invalidating the certificate, after which the association or company may continue to exist but does so without the protection of the antitrust immunity of section 2(b) of the act, or require the association or company to modify its organization or methods of operation in order to comply with the requirements of section 2(a) of the act.

Under section 4(e)(2), during the 30-day period the effective date of the grant of certification is held in abeyance, the Department of Justice or Federal Trade Commission may seek an applicable order prohibiting the certificate from taking effect. It is anticipated this right of action granted by section 4(e)(2) will be used sparingly. This provision for a temporary restraining order or prohibition is applicable to the issuance of a certificate pursuant to section 4 of the act. Further, the common law requirements applicable to the granting of either a temporary restraining order or preliminary injunction must be met by the moving party before the court can issue such an order. Congress means for this not to be an easy burden to overcome.

The provision for the restraining order or prohibition was added at the request of the Department of Justice. It exists as a safety valve where, in the opinion of the antitrust enforcement agencies of our Government, the Secretary of Commerce intends to issue a certification to either a Webb association or a trading company and there exists, on the face of the certification, obvious violations of section 2 of the act.

The sole issue before the court is whether on the face of the certification there exist such obvious violations of section 2 of the act that a restraining order or prohibition must be issued.

Mr. President, section 5 of the act mandates that within 90 days after enactment, the Secretary of Commerce, after consulting with both the Department of Justice and the Federal Trade Commission, publish proposed guidelines. The guidelines are to relate to the process by which the Secretary of Commerce will reach his determinations under section 4 relative to whether the requirements of section 2 of the act are being met. The guidelines shall be periodically reviewed and revised where warranted.

Sections 6 and 7 of the act are self-explanatory. Section 9 of the act requires that portions of applications, amendments, and annual reports that contain trade secrets or confidential business or financial information, which if disclosed could competitively harm the party submitting the information, be held confidential and not disclosed except as provided under section 9(b). The latter section, under specific circumstances, allows disclosure to the Attorney General or Federal Trade Commission. Sections 10, 11, and 12 of the act, I believe, are also self-explanatory.

Mr. President, in September 1978, President Carter announced his initial steps toward the formulation of a coordinated national export policy. At that time, he called for a reduction of domestic barriers to exports. He urged that the laws and policies affecting the international business community, including the antitrust laws, be administered firmly and fairly but with "a greater sensitivity to the importance of exports than has been the case in the past." S. 2718 seeks to give some teeth to that proclamation. Particularly, the changes in the Webb-Pomerene Act that we advocate will assure a more hospitable attitude toward those whose important task it is to push American goods and services abroad. Yet, at the same time, the provisions which we offer for consideration today are tough enough to allow the appropriate authorities to uncover and terminate any domestic anticompetitive spillover from the operations of export trade associations or trading companies.

Mr. President, this bill alone is not going to solve the problem of our trade deficit. It is only a step, but it is a significant step in the right direction.

UP AMENDMENT NO. 1529

(Purpose: To include non-profit service organizations in the definition of export trading companies and to encourage the involvement of small, medium-size and minority businesses in export activities)

Mr. STEVENSON. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1529.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 22, insert after "services", the following new language: ", particularly by small, medium-size and minority concerns,".

On page 5, line 10, insert after "company", the following new language: ", whether operated for profit or as a non-profit organization,".

On page 6, line 4, at the end of the sentence delete the period and add the following new language: ", whether operated for profit or as a non-profit organization.".

On page 9, line 16, insert after "company," the following new language: ", whether operated for profit or as a non-profit organization,".

On page 14, line 7, insert after "concerns" the following new language: "(with special emphasis on small, medium-size and minority concerns)".

On page 17, line 5, strike out "smaller and medium-sized" and insert in lieu thereof "small, medium-size and minority".

On page 19, line 5, insert after "guarantees," the following new language: "and operating grants to non-profit organizations,".

On page 19, line 10, strike out "or" and insert in lieu thereof a comma.

On page 19, line 11, insert after "medium-size" the following new language: "and minority".

On page 20, line 10, immediately preceding the word "Guarantees" insert the following new language: "The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns.".

On page 23, line 20, insert after "corporations" the following new language: ", whether operated for profit or organized as non-profit corporations,".

Mr. STEVENSON. Mr. President, if I am granted the floor, I will offer a series of amendments all of which, I believe, are noncontroversial, and most of which are technical and clarifying.

This is such an amendment. It simply clarifies the definition of an export trading company and an association under the Webb-Pomerene Act to make it clear that not-for-profit organizations can be trading companies. This will permit local and State nonprofit trade centers to participate in export development activities through the trading company structure.

The amendment will be of particular value to small- and medium-sized and the minority businesses which do not now sell goods abroad but which could, with this medium, engage in export activities.

It insures that minority businesses will participate in export development by making them eligible for EDA and SBA loans and guarantees extended to export trading companies.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

Mr. PROXMIRE. I am sorry, I missed that. This is an amendment the Senator is offering; will he identify the amendment?

Mr. STEVENSON. It is an unprinted amendment.

Mr. PROXMIRE. In the first place, this amendment, as I understand it, in approval standards places particular emphasis on small- and medium-sized and minority concerns and, as thus, is an improvement in the bill. I criticized the bill before because it did not have this in it. I think this represents an improvement.

Is it in the standards for approval of the application that the focus must be on small-, medium-sized, and minority concerns?

Mr. STEVENSON. Yes, it also makes it clear that not-for-profit organizations can be trading companies. It clarifies the definition in that respect which otherwise is ambiguous. That is all it does.

Mr. PROXMIRE. Does it indicate if the application is not focused on small-medium-sized, and minority and not-for-profit concerns that the application will not be approved?

Mr. STEVENSON. No, it does not do that. The applications in question are to EDA and SBA. It simply underscores the public interest in providing assistance to minority businesses without making any changes in the underlying laws with respect to EDA and SBA and their authorities to support in the case of SBA all small businesses, and in the case of EDA all businesses.

Mr. PROXMIRE. I misunderstood. When I said I favored the amendment, I understood this affected the section for approval. Otherwise it just seems to be rhetoric. It seems to say that we favor small, medium-sized, and minority concerns but we are not going to insert it into our criteria for approval and, therefore, the bill still does not provide effective protection to make sure that this would promote small, medium-sized, and minority concerns which, as we know, provide a big potential for exports, but have been neglected because they do not feel they have the financing or the expertise.

Mr. STEVENSON. Well, Mr. President, it does also apply to applications to the appropriate Federal banking agencies. It does so on page 14 of the bill, making it clear that one of the criteria to be applied by such agencies is the benefit for minority business. But it does not confine all export trading companies to minority trading companies.

Mr. PROXMIRE. Well, supposing an application came along that did not in-

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volve small, medium-sized, and minority concerns, it is a big bank and it is a large firm. Would they be able to—would the approval go ahead anyway?

Mr. STEVENSON. If they meet all of the criteria, yes. The principal beneficiaries would be small and medium-sized businesses.

Mr. PROXMIRE. How is that determined if they are dealing with a large firm?

Mr. STEVENSON. Because the application——

Mr. PROXMIRE. That means if a large firm buys some supplies from a small business or minority business they would qualify, some materials or supplies or whatever, as a subcontractor?

Mr. STEVENSON. The trading companies, regardless of who has investments in the trading companies, will be serving all American industry. The principal beneficiaries of those trading companies, including those which are likely to be most successful and active, that is to say, the bank-controlled trading companies, will be small and medium-sized businesses because they otherwise are without the means with which to sell their goods in foreign markets. That is what the trading companies do. That is the purpose of the legislation.

Mr. PROXMIRE. Then if there are no benefits demonstrable to small business, the application should be denied?

Mr. STEVENSON. In every instance there are going to be benefits to small business.

Mr. PROXMIRE. Must that be demonstrated?

Mr. STEVENSON. Even if the customer of the trading company is the largest American company, it has small business suppliers who will be indirect beneficiaries.

Mr. PROXMIRE. Then I cannot see that this amendment does anything at all, except to indicate we are all in favor of small business.

Mr. STEVENSON. It does not. It is purely, as I said, a clarifying, technical amendment.

It puts emphasis on support for minority businesses; it makes it clear that not-for-profit organizations can be trading companies.

Mr. PROXMIRE. Well, Mr. President, I certainly will not oppose the amendment. But, as I think our colloquy has indicated, it does not have a great deal of force. It certainly does not, as the Senator frankly admits, mean that small business, medium-sized business, and minority concerns are going to have any particular advantage they would not have otherwise.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

Mr. STEVENSON's amendment (UP No. 1529) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1530

(Purpose: To extend the Notification Time Period for additional bank investment in subsidiary export trading companies—§ 105(b)(2))

The PRESIDING OFFICER. Is there further amendment?

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1530:

On page 11, line 13, strike "sixty" and insert in lieu thereof "ninety".

Mr. STEVENSON. Mr. President, under section 105(b)(2) of S. 2718, a banking organization with a controlling interest in an export trading company must give the appropriate bank regulatory authority 60 days prior written notice before it makes any additional investment in a trading company's subsidiary or before the trading company's subsidiary engages in any new line of activity.

As a result of advice by the Comptroller and the Chairman of the Federal Deposit Insurance Corporation, I am offering this amendment to lengthen that notification period by 30 days so that the total period would be 90 days. That should be sufficient to afford the regulatory agency adequate time for the consideration of any such proposals.

Mr. PROXMIRE. Mr. President, will the Senator yield on this amendment?

Mr. STEVENSON. Yes.

Mr. PROXMIRE. Mr. President, is there a position taken by the regulatory agencies if they ask for the additional time?

Mr. STEVENSON. Yes.

Mr. PROXMIRE. Do they say 90 days would be adequate?

Mr. STEVENSON. That is what they requested.

Mr. PROXMIRE. They requested that. That was the Federal Reserve, the Comptroller, and FDIC?

Mr. STEVENSON. I think the FDIC was the only one that asked for this and it is getting what it asked for. This is the same period already provided for bank holding company investments under section 4(c)(8) of the Bank Holding Company Act.

Mr. PROXMIRE. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1530) was agreed to.

UP AMENDMENT NO. 1531

(Purpose: To extend the Approval Period of Controlling Investments by banks in export trading companies—§ 105(b)(3))

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1531.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, lines 8–9, strike "the ninety-day period which" and insert in lieu thereof "a period of one hundred and twenty days, which period".

Mr. STEVENSON. Mr. President, under section 105(b)(3) of S. 2718, the appropriate Federal banking agencies have 90 days to act on any application by a banking organization to invest more than $10 million in an export trading company or to acquire a controlling interest in an export trading company.

This amendment responds to suggestions by the Comptroller of the Currency and the chairman of the Federal Deposit Insurance Corporation. It extends that approval period to 120 days. In this case, the approval period is 30 days longer than the comparable period provided under the Bank Holding Act. But we are once again trying to be responsive to the interests and the desires of the regulatory agencies. I do not know of any opposition to this amendment.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, as I understand it, this amendment extends from 90 days to 120 days a period for what?

Mr. STEVENSON. The approval of applications by banks for controlling interest in trading companies.

Mr. PROXMIRE. Approval of the application by the Federal Deposit Insurance Corporation?

Mr. STEVENSON. Whatever the regulatory agency is.

Mr. PROXMIRE. Did the Senator say this was the request of the FDIC?

Mr. STEVENSON. And the Comptroller.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1531) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2279

(Purpose: To prohibit speculation in securities and foreign exchange by export trading companies in which banks may invest (section 105(c)(3)))

Mr. STEVENSON. Mr. President, I call up amendment No. 2279.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an amendment numbered 2279.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, insert after "commodities contracts" on line 14, the following new language ", in securities, or in exchange,".

Mr. STEVENSON. Mr. President, section 105(c)(3) of the bill, which was recommended by the Board of Governors of the Federal Reserve System, requires a banking organization that owns any voting stock of an export trading company to terminate its ownership of such stock if the export trading company speculates in commodities. The chairman of the FDIC recommended that section be broadened to preclude any speculation in foreign exchange and securities.

I believe the distinguished chairman of the Banking Committee has expressed similar concerns. This amendment is intended to alleviate the concerns which I believe he has expressed and which have been expressed by the chairman of the Federal Deposit Insurance Corporation.

It makes it clear that a banking organization would have to terminate its stock interests in a trading company if that trading company took positions in securities or exchange, other than, of course, as necessary in the ordinary course of its business operations.

Mr. PROXMIRE. Will the Senator yield?

Mr. STEVENSON. Yes.

Mr. PROXMIRE. First, as far as the amendment itself is concerned, as I read it, it says:

On page 13, insert after "commodities contracts" on line 14, the following new language ", in securities, or in exchange,".

Is there an omission there? Should that be "in foreign exchange"?

Mr. STEVENSON. That might make it clearer. It is certainly intended to be foreign exchange. We are trying to be comprehensive here in order to include foreign exchange. But "foreign exchange" is more descriptive and I guess we would lose nothing by changing it from "exchange" to "foreign exchange."

Mr. PROXMIRE. I think that would be a little more helpful.

The Senator has indicated, in response to our criticism, that this amendment would require approval for a continuing position by a bank in a commodity contract, for approval for them to engage in a commodity contract before a bank, for example, could buy a certain amount of wheat or grain, or whatever. In connection with an export trading company, it would need approval. Is that what this amendment does?

Mr. STEVENSON. The Senator is correct. If it is a bank-controlled trading company, before it took any such position for speculative reasons, as opposed to the ordinary course of its trading company activities, it would have to obtain approval.

Mr. PROXMIRE. It simply would limit it, then, for speculative reasons. However, as the Senator has pointed out, if this is for ordinary business transactions, it would still not meet my fundamental criticism, which is that the banks have no expertise in this area. They have gotten into trouble in speculating in real estate. Here they would be speculating in commodities.

The speculation, of course, can be defended as being just the ordinary course of operations, depending on the kind of trading company that they have purchased. This would obviously be helpful, but it would seem to me it would not eliminate the fundamental objection, which is that banks would still take positions in the ordinary course of business through the companies they own in commodities.

Mr. STEVENSON. The bill simply gives the agencies the authority to determine what is speculation and what is not. The trading company, to be successful, obviously has to acquire title to goods, including commodities. One of the purposes is to create intermediaries which can absorb exchange rate fluctuations. That means that they will be dealing in foreign exchange. But we prohibit—the agencies cannot permit because we prohibit—speculation in foreign exchange or in securities. Because there is a need to distinguish between perfectly legitimate business and ordinary activities in the conduct of trade, the agencies will have regulatory authority to determine which is which. Should a trading company exceed its authority under the law, as well as the regulations to come, it could be divested. A bank-controlled trading company could be divested of all investment by the bank.

Mr. PROXMIRE. The language on page 13 reads:

A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts other than as may be necessary in the course of its business operations.

This will insert the additional language "in securities or in exchange." Is that right?

Mr. STEVENSON. Yes.

Mr. PROXMIRE. So the problem which it seems to me presents itself here is, who will determine whether or not the bank has terminated its ownership? Is this by a banking regulatory body, the Federal Reserve, the FDIC, or the Comptroller?

Mr. STEVENSON. First of all, the bank in its application to the regulatory agency has to describe all the activities of the trading company. With respect to those activities, including—and this is explicit on page 14 of the bill—including taking title of goods, wares, merchandise, commodities, and so on, "the appropriate Federal banking agencies shall establish standards designed to insure against any unsafe or unsound practices."

We have the law, we will have the regulations, we will have the application and the reaction from the regulatory agency which can impose additional standards, and, finally, in addition to all of those prohibitions, the threat of divestiture as a result of action by the appropriate agency if, in violation of any of those provisions, the bank-controlled trading company speculates, that is to say, takes title, deals in exchange, commodities, or securities in a way that is speculative and not in the ordinary course of its trading company business.

I do not know what more can be done than that. If there is anything more that can reasonably be done to accomplish the objective, which is to encourage legitimate trading activities and not speculation, we will be happy to consider it. We have gone as far as we know how to go and have gone as far as the regulatory agencies have suggested that we go. On this point, at least, I do not know of any problem from the Federal Deposit Insurance Corporation, the Federal Reserve Board, or the Comptroller.

(Mr. BRADLEY assumed the chair.)

Mr. PROXMIRE. Let me see if I understand this. Suppose there is a bank or a bankholding company. Say there is a bank, which is under the jurisdiction, for purposes of this legislation, of the Federal Deposit Insurance Corporation. Would they have the Federal Deposit Insurance Corporation make this judgment as to whether or not they would have to terminate their ownership, or would all three of the regulatory agencies have to make the determination?

Mr. STEVENSON. It is the appropriate Federal regulatory agency, which in the case offered by the Senator, would be the FDIC. We assume, as in the case of all banking regulation, these agencies would get together through the medium of the examination council and establish procedures and regulations which are uniform.

Mr. PROXMIRE. That is a good presumption. That is not required in the legislation. It may or may not happen. As the Senator knows, in the real world what can happen in this legislation is that the Federal Deposit Insurance Corporation with respect to a State nonmember bank may have one view, the Comptroller with regard to a national bank may have an entirely different view, and the Federal Reserve Board with regard to a State member bank would have a different view. So in the way the regulations have operated to date, in spite of the fact that they have been trying to work together, they often provide conflicting positions.

Mr. STEVENSON. Yes. Well, this bill is not intended to overhaul the regulation of banks. It accepts the existing structure for the regulation of banks. I know the Senator from Wisconsin has complaints about that structure, and I think he makes a strong case. But I do not think this is the place to resolve these large questions about what institutions regulate the banks.

Mr. PROXMIRE. I think it is a reasonable position. The only objection that this Senator would have is that here, again, we would have a temptation on

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the part of the regulator to compete on the basis of laxity. As Arthur Burns said when Chairman of the Federal Reserve Board, there is competition in laxity. Here is another opportunity for them to attract a bigger constituency.

Mr. STEVENSON. The law as it stands now defines which agency has the jurisdiction. The Congress has responded to the concerns of the Senator by writing into law the examination council, the very purpose of which is to eliminate a competition in laxity and to establish uniformity through cooperation between all these agencies. So far as I know that system is working well.

Mr. PROXMIRE. Would the Senator give the Examination Council the authority to administer this determination? The statute then would assure that we would have uniform regulation.

Mr. STEVENSON. The Bank Examination Council is not itself a regulatory agency. It is more of a method for cooperation among the regulatory agencies. I do not see how we would do that. If the Senator has in mind some expression of intent, that is to say some language which might indicate that it is our intention for these agencies to work out whatever differences exist between them through the Bank Examination Council, then, yes, in fact that is our expectation and our hope. If we can do anything to fulfill it by being more explicit in the law, I think that should be considered.

Mr. PROXMIRE. We did it in the depository deregulation agency that we set up for handling regulation Q. We gave them this kind of coordinating authority and it worked. Why could we not do it in this case for the regulatory council?

Mr. STEVENSON. Offhand, Mr. President, I have no problem. Indeed, I think it makes a lot of sense. Maybe we should take a little time to try to work out some language which would accomplish the objective which I believe we both share.

Mr. PROXMIRE. Mr. President, would the Senator be willing to—we can do this one of two ways. We can have a quorum call and have the staff work it out or we can lay this amendment aside and proceed to another amendment. Meanwhile, it would not delay the Senate. Either way the Senator wants to operate is fine with me.

Mr. STEVENSON. Mr. President, it occurs to me that the Senator from Wisconsin might be most interested—and I would be, too—in an amendment that requires these agencies to cooperate through the Bank Examination Council with respect to all of their responsibilities under the bill. Maybe, therefore, we ought to act on this amendment and try to prepare an additional amendment which would have that effect.

Mr. PROXMIRE. That is fine. I would have no objection to that. We can act on this amendment, with the understanding that we shall work on another amendment that we can put in that would require greater coordination for the whole bill.

Mr. STEVENSON. Mr. President, I think the Senator has made an excellent suggestion. I shall be happy to work with him on it.

Mr. President, this has been discussed with the minority. I do not know of any opposition to it.

Mr. DANFORTH. There is no objection, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2279) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENSON subsequently said: Mr. President, I ask unanimous consent that on amendment No. 2279, approved by the Senate, that the amendment be modified by inserting on page 13, line 14, the word "foreign" before the word "exchange."

This carries out the understanding earlier with the Senator from Wisconsin which we neglected to take care of at the time.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified.

AMENDMENT NO. 2280

(Purpose: To define the scope of activities of export trading companies in which banks may invest section 105(a)(13))

Mr. STEVENSON. Mr. President, I call up amendment 2280 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes amendment numbered 2280.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, strike lines 14 through 18 and insert in lieu thereof the following new definition of export trading company:

"(13) for the purposes of this section, the term 'export trading company' means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade: *Provided, however*, That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided, further*, That nothing in this Act shall be construed to permit any such company, for purposes of this section, (A) to engage in the business of underwriting, selling, or distributing securities in the United States, or (B) to engage in manufacturing or agricultural production activities in the United States.".

Mr. STEVENSON. Mr. President, it has been suggested by some, including, I believe, the distinguished chairman of the Committee on Banking, that export trading companies could, theoretically, enable a bank to engage in nonbanking and nontrading activities. It has been suggested that a bank-owned export trading company could engage in nontrading activities—that is to say, activities unrelated to export trade. That is not our intention at all. I believe this amendment will make our intention clear.

Mr. President, the amendment would strike the definition of export trading company in section 105(a)(13) and insert in lieu thereof a definition which provides as follows:

First, to be an eligible investment for a banking organization under section 105, an export trading company must be "exclusively" engaged in activities related to international trade. The bill had provided that it must be "principally" engaged in such activities.

This language reflects the recommendation of the Comptroller of the Currency that all activities of bank-owned export trading companies should be related to international trade. While this would include barter, import, so-called third-country trade, it would clearly not include manufacturing, agriculture, securities, or other such activities.

Second, while the bank-owned trading company must be exclusively engaged in international trade activities, it must also meet the other exporting tests that are now in the bill. Those tests are found in section 103(a)(5).

The amendment removes any doubt that the definition of trading companies specifically provides that no bank-owned trading company can engage in the securities business in the United States or anywhere else, or engage in manufacturing or agricultural production. These prohibitions are intended to reaffirm the basic policies of the Glass-Steagall Act and the Bank Holding Company Act.

Mr. President, I emphasize that this definition of trading companies applies only to bank-owned trading companies. Other trading comoanies could be involved to some extent in nontrading activities. I am hopeful, Mr. President, that this amendment does respond to the concerns which have been expressed to the effect that, as drafted, the bill might permit banks to engage in nonbanking and nontrade activities. That was not our intention.

Mr. President, I modify the amendment to eliminate, on line 12 and on line 13, the phrase "in the United States" to make it clear that these nontrading bank activities which are proscribed are proscribed worldwide.

I send that modification to the desk.

Mr. PROXMIRE. Mr. President, before the Senator sends the modification to the desk, I wish to ask a question.

I have the printed amendment before me here. In my printed amendment, on page 2, lines 3 and 5, it is stated "or distributing securities in the United States," and "to engage in manufacturing or agricultural production activities in the United States."

Do those references which confine the activity to the United States mean that it cannot be engaged in something other than international trade?

Mr. STEVENSON. That is correct. The amendment has been modified in two places, to make it clear that the underwriting, selling, distributing of securities

is proscribed no matter where it takes place—United States or abroad.

Mr. PROXMIRE. That is fine. That is on page 2, lines 3 and 5, "in the United States" is deleted, is that correct?

Mr. STEVENSON. On page 2 of the printed amendment, yes, the Senator is correct.

The PRESIDING OFFICER. The amendment is so modified.

The amendment as modified is as follows:

On page 9, strike lines 14 through 18 and insert in lieu thereof the following new definition of export trading company:

"(13) for the purposes of this section, the term 'export trading company' means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade: *Provided, however*, That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided, further*, That nothing in this Act shall be construed to permit any such company, for purposes of this section, (A) to engage in the business of underwriting, selling, or distributing securities, or (B) to engage in manufacturing or agricultural production activities."

Mr. STEVENSON. Mr. President, this amendment has also, I believe, been cleared on the minority side. I do not know of any opposition to it.

Mr. DANFORTH. Mr. President, the amendment is acceptable to the minority.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (No. 2280) as modified was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2280, AS FURTHER MODIFIED

Mr. STEVENSON subsequently said: Mr. President, it has been brought to my attention that amendment No. 2280 as modified, to this bill, already approved by the Senate, contained an inadvertent error. I ask unanimous consent that that amendment be further modified to add the words, "whether operated for profit or as a nonprofit organization" after the words "international trade" and before the colon.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, much of the discussion this morning has related to the question of the so-called banking sections of the pending legislation. There is pending at the desk, and after Senator PROXMIRE has called up his amendment, having to do with the banking subject, I, on behalf of myself, Senator PROXMIRE and Senator KENNEDY, will call up an amendment having to do with the antitrust aspects of this legislation.

I. INTRODUCTION

Mr. President, at the outset let me say that I share the goal of this legislation: the creation of a workable competitive framework for American businesses engaged in export trade.

But I also strongly believe in our national commitment to free and open competition as the guiding force of our economic system. To preserve this system, we must be extremely careful before granting or expanding exemptions from our antitrust laws.

One such exemption which has been on our books since 1918 is the Webb-Pomerene Act: Webb-Pomereme grants immunity from the antitrust laws to associations engaged solely in export trade so long as such associations do not substantially lessen competition within the United States or restrain the export trade of any domestic competitors.

II. S. 2718—WHAT IT DOES

Title II of S. 2718 expands the Webb-Pomerene exemption. First it makes the provisions of the act explicitly applicable to the exportation of services. Second, it expands and clarifies the act's exemption for export trading companies. Third, it transfers the administration of the act from the Federal Trade Commission to the Department of Commerce.

It is in that particular last area, particularly, that there is concern as to the propriety and rightness of the legislation as it comes to the floor.

S. 2718 gives the Secretary of Commerce the responsibility for determining whether the antitrust exemption will be granted pursuant to the certification process set out in the bill. In the event that the Attorney General or the FTC believe that the granting of such an exemption would substantially lessen competition in U.S. commerce, contrary to the eligibility requirements of the bill, they can so advise the Secretary of Commerce. But the important point is that the Secretary is free to disregard that advice and grant the exemption. That provides a wide hole in the entire antitrust laws.

It so happens that the present Secretary of Commerce is an extremely able and dedicated public servant. It is to the administration's credit that they have been able to bring him on board in that role and to accept those responsibilities. I have tremendous respect for him. He is not only an able public servant, he is my good friend, and I think the world of him.

But the legislation is not applicable to any one particular Secretary of Commerce. Although I would be inclined to have confidence in this particular Secretary of Commerce, the fact is that we must draft legislation and pass legislation that is applicable regardless of who may be the incumbent Secretary of Commerce.

So what we find is that the Secretary of Commerce is in the position to grant the antitrust exemption and the only recourse left to the Attorney General or the Commission is to bring an action within 30 days in Federal district court seeking to invalidate the granting of the exemption.

Mr. President, there are many things I am for and against. But there is one thing I know I am very strongly against. That is, more litigation in our courts. We need no more of that.

It is not enough to say that there is recourse for the Attorney General and the FTC to be able to go into court, because the Government should not be fighting one arm of Government against the other. Further, Commerce Department approval carries with it immunity from suits by private parties or State attorneys general for failure of the export companies to meet the eligibility requirements of the act.

III. OUR AMENDMENT

Our amendment leaves the nature and scope of the antitrust exemption granted by S. 2718 intact. It does, however, alter the procedural framework:

First, instead of giving the Secretary of Commerce exclusive authority to determine the grant of an antitrust exemption as in the current bill, our amendment gives that authority to the Secretary in conjunction with the Attorney General or the Federal Trade Commission. If the Attorney General or the Commission believe that granting the exemption would substantially restrain competition contrary to the eligibility provisions of S. 2718, the Secretary is precluded from granting the exemption.

Now, is it not right, is it not proper, that the arm of Government, in this case those arms of Government, both the Antitrust Division or the Attorney General, as well as the Federal Trade Commission, should have the authority to pass on the question of whether or not there should be an antitrust exemption, and that is all that is being attempted in this effort by our amendment.

It is a major difference to talk about there being an advisory opinion, because my good friend from Illinois, the author of this legislation, recognizes that there is a propriety in having the Attorney General and the FTC as a part of the process.

But, more than being a part of the process, it is a question of having validity to the position taken by the Attorney General or the FTC, where there is an antitrust question involved.

Second, it eliminates the authority of the Attorney General or the Commission to seek to invalidate, through Federal court action, the Secretary's granting of the antitrust exemption. By giving the Attorney General or Commission a direct say in the decisionmaking process, such litigation authority is not necessary. We have effectively eliminated the need to go to court.

Third, it eliminates the authority of the Attorney General or Commission to seek to invalidate the antitrust exemption certification through Federal court action in situations where the Attorney General or FTC originally had no objection to the grant of such an exemption.

That, too, is proper; because if they are not going to object in the first instance, it is inappropriate that they go into court once the decision has been made available to those business organizations involved.

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IV. REASONS FOR THE AMENDMENT

The main thrust of our amendment is, of course, the grant to the Attorney General or the FTC of what, in effect, is a veto power over the grant of any antitrust exemption.

S. 2718 quite properly charges the Secretary of Commerce with the responsibility of encouraging and promoting the development of export trading companies. Yet, it also gives him authority to determine whether our antitrust laws should be enforced. It seems to us inherently difficult, if not impossible, to pursue both functions fairly and effectively.

The Attorney General and the Commission both have substantial expertise about competition and antitrust issues and they are free from any responsibility or interest in either promoting or discouraging export trading associations or companies. If an exemption and immunity from our antitrust laws is to be granted, it should be granted by the agency or agencies responsible for interpreting and enforcing those laws. They also have the greatest expertise in analyzing the competition issues set forth as eligibility requirements under the bill.

We are confident that the Attorney General and the Commission will not take a prosecutorial bias into their determinations. We believe they will fully and fairly fulfill their statutory responsibility consistent with the intent of Congress; namely, to grant an antitrust exemption where the activities of the export company will not substantially lessen competition in the United States or anticompetitively injure domestic competitors.

By giving the Attorney General or the Commission authority in the granting of the antitrust exemption, we eliminate the need for extending authority to litigate to the Attorney General to seek Federal court reversal of the Secretary's decision. We thereby eliminate the anomaly of two of our most important executive agencies going into court, one taking one position on behalf of the Government and the other taking a position diametrically opposed to that.

Mr. President, our Government has enough matters in court and our Government has enough problems on a day-by-day basis that we should not be providing a way to expend thousands and perhaps hundreds of thousands of dollars of the taxpayers' money while one part of the Government goes into court and takes one position and the other side of Government goes into court and takes another position.

Is it not right, is it not appropriate, that the two arms of Government that traditionally have been given antitrust authority, the two arms of Government that have been most concerned about free competition, should have the right to participate and actually to be involved in the determinative question of whether or not an antitrust exemption should exist?

However, if the Attorney General or the Commission has authority over the grant of the antitrust exemption, something additional will be added. It will be that businessmen would have the certainty that a decision granting the exemption will not subsequently be overturned by either the Attorney General or the Commission. As a matter of fact, is it not right that once a decision is made, it become a finality?

The fact is that under the present legislation, if the Secretary of Commerce decides that there should be an exemption and the FTC or the Attorney General wants to question that decision, they have the right to go into court after the fact, and the businessmen will never know what the answer is, until the court finally rules on it.

I believe that the amendment we are proposing would very much short circuit that entire process. It would provide for finality when the Attorney General and the FTC had signed off. But today, if the proposal made by the Senator from Illinois were to become law, there would not be any finality, and, actually, we would be expanding the process many months, perhaps years, into the future.

Because we feel as we do about bringing the issue to a head, we have eliminated the authority of the Attorney General or the Commission to seek to invalidate the exemption in those situations in which they had not opposed it initially.

Mr. President, I am concerned about the public being protected in these circumstances. I represent to the Senate that there is adequate protection to the public in such circumstances, because, under our amendment, the Attorney General retains the right to file an antitrust action where an export company goes beyond the scope of its certified and approved activities and thereby substantially lessens competition. I also point out that the Secretary of Commerce has authority to revoke or modify an exemption certification where that is appropriate.

We also have left intact the appeal process from a negative determination on an application for the antitrust exemption. Our amendment makes it clear that the appeal process contemplated in the bill applies to a negative determination by the Attorney General, or Commission as well as the Secretary of Commerce.

CONCLUSION

In conclusion, I believe that this amendment substantially strengthens this important legislation. It leaves the nature and scope of the proposed antitrust exemption completely intact, but better protects the American people from unfair restraints of trade, and lessening of competition, by modifying the procedural aspects.

Mr. President, at a later point, I will address myself further to the economic consequences that would result from the adoption of the Export Trading Company Act of 1980 in its present form.

We should recognize that this is a serious inroad into the antitrust protection that this Nation has been proud of for so many years. It is an incursion into the antitrust processes and procedures where the FTC and the Attorney General have been involved.

I have tremendous respect for the author of the measure and for his past history of concern for antitrust laws, antitrust protections, and for his concern with respect to export trade.

I share that concern with him in connection with the subject of export trade. I recognize that it is in our Nation's interest that we help American businesses in every way possible in expanding that export trade. I have no quarrel with the basic thrust of the legislation in that respect. But like in so many other areas, sometimes the legislation that is proposed to achieve a particular objective goes beyond the pale just a bit.

In this instance, I believe that it has gone beyond the pale and would break down some of the antitrust concerns which so many Americans share. It is for that reason that at the appropriate time I will call up the amendment that has been introduced by myself, Senator PROXMIRE and Senator KENNEDY.

Mr. President, I suggest the absence of a quorum.

Mr. DANFORTH. Mr. President, will the Senator withhold that?

Mr. METZENBAUM. Yes.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 2281 (AS MODIFIED)

(Purpose: Technical amendments)

Mr. DANFORTH. Mr. President, I call up amendment 2281, as modified.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 2281, as modified.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 4, delete the word "sourced" and insert in lieu thereof the word "produced" and further on line 5 insert the following after the word "States": ", and".

On page 5, line 6, insert a "," after the word "financing".

On page 23, line 4, delete the word "includes" and insert in lieu thereof the word "means".

On page 23, between lines 5 and 6, insert the following new paragraph (4) and renumber (4) through (10), as numbers (5) through (11) respectively:

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.".

On page 24, line 22, insert the phrase ", export trade activities" after the word "trade".

On page 25, lines 4, 8, and 12, insert the phrase "or export trading company" after the word "association" on each line.

On page 26, lines 5 and 6, delete the phrase "with respect to its export trade, export trade activities, and methods of operation".

On page 26, lines 7 and 8, delete the phrase "as relates to their respective" and insert in lieu thereof "with respect to their".

On page 26, line 8, delete the word "or" and insert in lieu thereof the word "and".

On page 26, line 10, delete the second "the" and insert in lieu thereof the word "this".

On page 26, line 14, delete the word "the" and insert in lieu thereof the word "an".

On page 26, line 16, insert the word "export" after the word "such".

On page 27, line 19, delete the first word "company".

On page 28, line 11, insert the phrase "or export trading company" after the word "association".

On page 28, line 12, insert a "," after the word "activities".

On page 28, line 13, insert the phrase "or export trading company" after the complete word "association".

On page 29, line 6, insert the phrase "or export trading company" after the partial word "ation".

On page 30, line 13, insert the word "and" after the partial word "ation".

On page 30, lines 17 and 18, delete the phrase "that the association or export trading company and its activities".

On page 31, line 16, delete the phrase "notice and" and insert in lieu thereof the word "noticed".

On page 34, line 11, delete the word "chairman" and insert in lieu thereof the word "Commission".

On page 34, line 15, delete the phrase "the certification" and insert in lieu thereof the phrase "its certificate".

On page 34, line 18, delete the "," after the word "failed".

On page 34, line 22, delete the word "revocation" and insert in lieu thereof the word "invalidation".

On page 35, line 19, delete the word "criteria" and insert in lieu thereof the words "eligibility requirements".

On page 37, line 15, delete the phrase "such Act" and insert in lieu thereof the phrase "the Export Trade Association Act of 1980".

On page 38, lines 16–18, delete in its entirety lines 16 and 17 and the partial word "tion" on line 18.

On page 40, line 9, delete the number "14" and insert in lieu thereof the number "13".

On page 35, line 2, delete the word "and" and insert in lieu thereof the word "or".

On page 37, line 17, delete the number "5" and insert in lieu thereof the phrase "4(a)(1)–(9)".

On page 26, line 14, insert the phrase "in whole or in part" after the word "validation".

On page 31, line 10, insert the phrase "and the petitioning association or export trading company" after the word "Secretary" and further delete the word "his" and insert in lieu thereof the phrase "the Secretary's".

On page 39, line 10, delete the phrase "it to modify its" and insert in lieu thereof the phrase "the association or export trading company to modify its respective".

On page 39, line 10, insert the phrase ", and in so doing afford the association or export trading company a reasonable opportunity to comply therewith," after the word "operations".

On page 39, line 10, insert the phrase ", and section 4" and insert in lieu thereof the phrase ", sections 5 and 6" and further on line 4 delete the number "44" and insert in lieu thereof the numbers "45, 46".

On page 34, line 19, delete the word "The" and insert in lieu thereof the phrase "Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c).".

Mr. DANFORTH. Mr. President, this amendment is simply in the nature of a technical amendment. It makes various grammatical corrections as technical corrections for the purpose of clarifying the bill. It has been cleared with the majority and minority managers of the bill and I believe all interested parties.

Mr. PROXMIRE. Mr. President, is the amendment of the Senator from Missouri pending?

The PRESIDING OFFICER. The amendment of the Senator from Missouri is pending.

Mr. PROXMIRE. Will the Senator identify the amendment again? I am very sorry. I stepped out of the Chamber momentarily.

Mr. DANFORTH. Yes, amendment 2281 relating to technical corrections.

Mr. METZENBAUM. Mr. President, will the Senator from Missouri yield for a question?

Mr. DANFORTH. I yield.

Mr. METZENBAUM. This amendment, as I understand it, is a technical amendment dealing with the antitrust aspects of the legislation?

Mr. DANFORTH. Yes, It makes certain grammatical changes throughout the bill and clarifying changes with respect to the antitrust portion.

Mr. METZENBAUM. And there is nothing substantive in the amendment?

Mr. DANFORTH. There is nothing substantive in the amendment.

Mr. METZENBAUM. Mr. President, I have no objection to it from an antitrust standpoint and I gather it is that part of the bill that is affected.

Mr. PROXMIRE. I have no objection.

Mr. DANFORTH. I move the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri.

The amendment (No. 2281), as modified, was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2282, AS MODIFIED

(Purpose: To provide for automatic certification of existing Webb-Pomerene Associations)

Mr. DANFORTH. Mr. President, I call up amendment No. 2282, as modified, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 2282, as modified.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, line 18, redesignate paragraph (3) as paragraph (4), and insert immediately after paragraph (2) the following new paragraph:

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of April 3, 1980, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1980. Any such application must be filed within 180 days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.".

On page 37, strike out lines 10 through 19, and insert in lieu thereof the following:

"SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING ASSOCIATIONS.

"(a) ELIGIBILITY.—To be eligible for the antitrust exemption provided by this section, an association must have been registered with the Federal Trade Commission under this Act on April 3, 1980.

"(b) DURATION.—The antitrust exemption provided by this section shall extend only to the existence of an eligible association, and to agreements made and acts done by such association, prior to 180 days after the date of enactment of the Export Trade Association Act of 1980, or, in the event that an eligible association files an application for certification pursuant to section 4 of this Act during such 180 days, prior to the Secretary's determination on such application becoming final.

"(c) EXEMPTION.—Subject to the limitations in subsections (a) and (b), nothing contained in sections 1 to 7 of the Sherman Act shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.".

Mr. DANFORTH. Mr. President, for the information of the Senator from Ohio this does go to the antitrust portion of the bill.

Section 206 of title II adds a new section 8 to the Webb-Pomerene law. Section 8, as presently drafted, provides a procedure for automatic certification under the Export Trade Association Act of 1980 for existing Webb-Pomerene associations if associations request to be certified within 180 days after enactment of such act. Under section 8 existing Webb-Pomerene associations would lose the immunity from the operation of the antitrust laws afforded them under section 2 of the present Webb-Pomerene law on the date of passage of the Export Trade Association Act of 1980. Yet, under section 8, as presently drafted, a Webb-

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Pomerene association which seeks certification under the Export Trade Association Act of 1980 would not obtain the immunity afforded it under section 2(b) of that act until it was certified by the Secretary of Commerce. The certification is not retroactive to the date of passage of such act.

Under my amendment, an existing Webb-Pomerene association which requests certification within the applicable time would not lose the immunity from the operation of the antitrust laws provided under section 2 of the present Webb-Pomerene law until a final determination is made pursuant to the provisions of the Export Trade Association Act of 1980.

Under the amendment, new paragraph (3) of section 4(b) provides automatic certification for existing Webb-Pomerene associations which request such certification within 180 days after enactment of the act. Under the amendment, the certification process for existing Webb-Pomerene associations is to comport with the process applicable to other associations seeking certifications under the act, with two exceptions:

First, under paragraph (3) of section 4(b) the Secretary's review of the application for certification is to be summary in nature. Specifically, the Secretary is required to determine whether the application shows "on its face" whether a certificate should issue. It is further stated that unless the Secretary "possesses information clearly indicating that the requirements of section 2(a) are not met"—again, by looking at the application "on its face" and having available the advice of the Department of Justice or Federal Trade Commission—the Secretary must issue the certificate for the export trade, export trade activities and methods of operation that meet the requirements of section 2(a) of the act.

Second, when issuing a certificate pursuant to paragraph (3) of section 4(b) the Secretary need not determine that the association and its activities "will serve a specified need in promoting the export trade of the goods, wares, merchandise or services described in the application." An existing Webb-Pomerene association need not have to demonstrate that its existence is in furtherance of U.S. export trade. Such would be presumed.

The second part of the amendment I am offering strikes section 8 of title II to S. 2718. Under new section 8 it is made clear that an existing Webb-Pomerene association which seeks certification under the Export Trade Association Act of 1980 within 180 days after such act's enactment retains the immunity from the operation of the antitrust laws it had under section 2 of the present Webb-Pomerene law. This is accomplished by reenacting section 2 of such law, as provided under subsection (c) of section 8, but making the immunity provided by subsection (c) applicable only to existing Webb-Pomerene associations that meet the requisites of subsections (a) and (b) of section 8.

The immunity which is carried over by section 8 from the current Webb-Pomerene law is not lost by a Webb-Pomerene association to which it attaches until a final determination is made as to the association's request for certification. For instance, if the Secretary under paragraph (3) of section 4(b) determines not to issue a certificate to an existing Webb-Pomerene association or determines not to certify a method of operation requested in the application, and the association appeals that determination under the provisions of new paragraph (4) to section 4(b), the immunity provided by section 8 continues to attach until a final decision is reached on the Webb-Pomerene association's request for certification.

Mr. PROXMIRE. Mr. President, will the Senator yield on his amendment for a question?

Mr. DANFORTH. I yield.

Mr. PROXMIRE. One of the problems, as the Senator knows, when we amend sections of the bill is that it may make it impossible under the Senate rules to amend that section further. That is why when we have a committee amendment we get unanimous consent that the amendment be treated as original text subject to further amendment.

Will the Senator have any objection to that kind of unanimous-consent request here now? We could examine it at some time over a period of a half-hour or so with the Parliamentarian and get his opinion, but I am sure the Senator does not want to block the Metzenbaum-Kennedy amendment.

Mr. DANFORTH. No, I have no objection to that and no intent to block that amendment. I will, of course, oppose it when it is raised but that is a separate issue.

Mr. PROXMIRE. If the Senator will get unanimous consent that his amendment could be treated as original text subject to further amendment, I will appreciate it very much.

Mr. DANFORTH. All right. Mr. President, I ask unanimous consent that the amendment be treated as original text and subject to further amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DANFORTH. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Missouri.

Mr. METZENBAUM. Mr. President, there are certain antitrust aspects to the amendment that I do not find objectionable or any problem with, and I have no objection to the Senate acting promptly on the amendment.

Mr. STEVENSON. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 2282), as modified, was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1532

(Purpose: To conform the definition of Bankers' Bank to its definition in P.L. 96-221—§ 105(a)(5))

Mr. STEVENSON. Mr. President, I send another technical amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1532.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike lines 12 through 16 on page 7 and insert in lieu thereof the following:

(5) the term "bankers bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent State law requires directors' qualifying shares) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees.

Mr. STEVENSON. Mr. President, this amendment improves and clarifies the definition of bankers' banks in the bill.

The amendment provides a more accurate definition of bankers' banks which, under section 105, are permitted to invest in export trading companies. Bankers' banks are banks formed and owned by banks engaged exclusively in providing services for other banks.

Under the bill, a number of small banks in a State could form a bankers' bank in order to hold their interest in a trading company, thus allowing them to combine more efficiently their banking resources. This simply improves and makes more definite the definition of bankers' banks.

Mr. PROXMIRE. Mr. President, if the Senator will yield, I think it is a better definition in the bill. It is much clearer, and I am happy to support it.

Mr. STEVENSON. Mr. President, this has been approved, I believe, on the minority side, and I do not know of any opposition to it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (UP No. 1532) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1533

(Purpose: To define more restrictively "Capital and Surplus"—§ 105(a)(10))

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1533.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, insert a semicolon after "profits" on line 1, and strike the remainder of line 1 and all of line 2.

Mr. STEVENSON. This amendment strikes language which permitted each bank regulatory agency to include within the definition of capital and surplus "such other items" as the agency might deem appropriate.

With this amendment capital and surplus would be limited to paid-in and unimpaired capital and surplus, and undivided profits.

The amendment was recommended by the chairman of the Federal Deposit Insurance Corporation. I do not know of any opposition to it.

Mr. PROXMIRE. Mr. President, once again this is a substantial improvement because what it does, of course, is to provide that capital and surplus does mean unimpaired capital and surplus and undivided profits, but not everything else they want to throw in, which is what the language of the bill itself did provide before the Senator from Illinois properly amended it. So I am happy to support his amendments.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (UP No. 1533) was agreed to.

UP AMENDMENT NO. 1534

(Purpose: To authorize bank regulatory agencies to establish Standards on Taking Title for Export Trading Companies in which Banks Invest More than $10 million or which Banks Control—§ 105(d)(2))

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1534:

On page 15, strike lines 1-16 and insert in lieu thereof the following:

"appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held."

Mr. STEVENSON. Mr. President, this amendment eliminates the requirement that the banking agencies establish standards for taking title within a certain time period. Second, it gives the regulatory agencies specific authority to establish inventory-to-capital ratios for export trading company subsidiaries of banking organizations. Third, it makes all such authority permissive and gives the agencies maximum flexibility in implementation. They can proceed on a case-by-case basis or act by general regulation or overall statements of policy or guidelines.

It is intended to respond to some recommendations by the Independent Bankers Association and also the chairman of the Federal Deposit Insurance Corporation, who did suggest more flexibility. It should moderate some of the burdens on the agencies, increasing their authority and give the maximum flexibility for dealing with bank interests in trading companies.

I hope, therefore, the Senate will adopt the amendment.

Mr. PROXMIRE. Mr. President, this amendment has merit, but it illustrates some of the difficulty with the bill.

As I understand this amendment, it provides that the appropriate Federal banking agency may establish an inventory to capital ratio and enforce that. That would mean the inventory to capital ratio, say, is 10 to 1 is all right; the 11 to 1 may not be regarded as sufficient capital, excessive inventory.

The problem is that you have three different regulatory bodies, and one could provide 5 to 1, another could provide 10 to 1 or 20 to 1. Maybe 10 to 1 is a proper ratio and 5 to 1 too restrictive; 20 to 1 would be much too permissive.

This is another illustration of why it would be so helpful if we could concentrate regulation either in the Federal Reserve or in the Bank Regulatory Council so that a single agency could make the determination and make it uniform and consistent. But I have no objection to the amendment.

I hope as we proceed with the bill that the Senator from Illinois and the Senator from Pennsylvania will consider modifying the bill to give the authority to the Regulatory Council so that we can have a consistent application to this legislation.

Mr. STEVENSON. Mr. President, the Senator makes this good point again, and I respond again by just saying that this is not the time or the bill with which to overhaul the regulatory structure for financial institutions in the United States. This bill accepts the existing structure. But I do recognize the validity of much of what the Senator says.

The Congress has responded to his concerns in the past by creating the Bank Examination Council for the very purpose of coordinating the activities of these regulatory agencies and establishing uniform policies and procedures with respect to regulation of banks. And I would, therefore, be willing to do what I think would happen anyway, which is make it clear that in this case as in all cases we do rely on the agencies through the Bank Examination Council to coordinate their activities, their policies, regulations, and so on, so that none of the concerns expressed by the Senator materialize. I hope we can work to that end and, in the meantime, that we can approve this amendment.

Mr. PROXMIRE. If the Senator will yield, I am not trying to reform our regulatory system at all. The Senator from Illinois raises a perfectly proper point. If we are trying to reform it now, that obviously would take hearings and action by the committee and we should have an entirely different bill.

What I am trying to do in this case, however, is to do what we did with regulation O, which is give the power to a particular group to act and in this case—and only in this single authority with respect to the export trading companies—it would be given to the Regulatory Council. They would not have any regulation over the other myriad of responsibilities that all three of the regulatory bodies have now, but it would be an assurance that, as far as this legislation is concerned, we would have uniform regulations and it would, frankly, eliminate one of the principal objections I have to the legislation. Offhand, I cannot think of any reason I should oppose the bill if we could get an agreement on this kind of concentrated authority and power. I am talking about a power, not just an opportunity to sit down and talk it over and then go back and decide what they want to do individually.

Mr. STEVENSON. Mr. President, I am certainly willing to work with the Senator. Maybe we could work something out. Offhand, I have some reservations about giving the power to regulate all of the activities of the banks in connection with trading companies to an agency which, really, is not an agency. It is not a bank regulatory agency. It is more of a mechanism, a coordinating mechanism for those which are bank regulatory agencies. But our objective is the same. I would certainly like to try to work something out with the Senator.

Mr. PROXMIRE. I certainly hope so. All I am talking about is that we give the Regulatory Council the power to issue the regulation and the agencies which carry it out. They would obviously follow through with them. But the regulations themselves would be uniform.

Mr. STEVENSON. Let me discuss it with the Senator and with others and see if we cannot work something out along those lines.

Mr. President, I do not know of any opposition to this amendment. It has been cleared with the minority.

The PRESIDING OFFICER (Mr. MOYNIHAN). The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1534) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1535

(Purpose: To clarify that the removal of statutory restrictions to bank investment in export trading companies applies only to banking laws)

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

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The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1535:

On page 9, line 20, strike the word "other" and insert after the word "law" the following new language: "applicable only to banking organizations".

Mr. STEVENSON. Mr. President, I offer this amendment at the request of the administration. It is another clarifying amendment. It makes it clear that the removal of the statutory impediments in section 105(b)(1) to bank investment in export trading companies refers only to banking laws and not to securities or other laws.

Again, I do not know of any opposition to this amendment. It is technical. It has been cleared with the minority.

Mr. PROXMIRE. Mr. President, as I understand it, the Senator's amendment would make it clear that we are referring only to laws applicable to banking organizations. Is that correct?

Mr. STEVENSON. The Senator is correct.

Mr. PROXMIRE. It is a technical amendment, in that sense?

Mr. STEVENSON. Yes.

Mr. HEINZ. Mr. President, as I understand the amendment, it is clarifying and technical in its nature. I certainly can accept it on behalf of the minority.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1535) was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, the Senator from North Carolina has an amendment that he would like very much to have considered by the Senate. I think he can be here in a very few minutes. For that reason, I am going to suggest the absence of a quorum. If we cannot reach him right away, then I have a statement I would like to make. I hope that the Senator from Illinois and the Senator from Pennsylvania will permit that brief quorum call.

UP AMENDMENT NO. 1536

(Purpose: To require State law to govern the activities of State-chartered banks)

Mr. MORGAN. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN) for himself and Mr. PROXMIRE, proposes an unprinted amendment numbered 1536:

On page 18, after line 24, insert the following new section:

"(g) Nothing in this legislation shall be construed to permit a State chartered bank to invest in an export trading company unless the State chartered bank is specifically permitted to do so by State law."

Mr. MORGAN. Mr. President, first, I commend the distinguished Senator from Illinois for the work he has done on this bill promoting export trading companies. From time to time he has been nice enough to keep me informed of what he was doing. I certainly share with him his concern for trying to enhance the abilities and the opportunities of this country to engage more in the export business. But there is one provision in it which bothers me because of my own philosophical beliefs about our so-called system of federalism which I think sometimes we are inclined to forget.

I thank my colleague, the Senator from Illinois, for recognizing this problem. I think he was trying to find a cure for it. However, I am not quite sure I agree—in fact, I do not quite agree—with his remedy.

The bill, as I understand it, would involve itself with State-regulated banks. It would permit State-regulated banks to engage under the provisions of this bill to the extent that federally chartered banks would.

While I have no objection to State banks doing so, and I hope, as a matter of fact, that State banks will if this legislation is finalized, but I believe very strongly in the dual system of banks. I do not believe that we in the Congress should be passing laws that in any way attempt to regulate banks chartered by the various States or to enhance the authority granted to them by the various States.

After all, it is the State regulatory agencies which are charged with the solvency and the accountability of the various States.

This is not a new problem with me, or not a new thought with me. I believe my colleagues on the Banking Committee know that consistently during my tenure in the Senate and on the Banking Committee, I have tried to oppose every measure that in any way attempted to subject State-chartered banks to Federal control, to Federal regulations, or to Federal involvement, here, again, because of my very strong belief that the dual banking system is important to America, and also because of my very strong belief in the provisions of the Constitution which say that all powers not granted to the Federal Government are reserved to the States.

I want to give a number of examples.

Earlier this year when interest rates were a problem and some of the usury laws of the various States tended to hamper the ability of the States to carry on their commerce, there was an effort made on more than one occasion to preempt State usury laws. Although I recognized the hardship that existed, it was my strong feeling then, and it is still my strong feeling, that the people on the State level should be the ones to remedy the situation. After all, the closer a government is to the people, the more attentive or the more knowledgeable it is of hardships which may exist and the more quickly or more readily relief can be granted.

I was not able to win my point on every occasion because the Congress did, over my objection, preempt the usury laws of the various States.

However, I think we did gain some concessions, because generally, most of those preemption laws provided that the State laws were preempted but that, then, the States could come back and reenact them. Well, half a loaf was better than none and I think that was at least some concession toward the State's authority and the State's right to regulate its own chartered institutions.

Here again, when Congress—I believe last November—passed the Financial Institutions Deregulation Act of 1979 or 1980, or whatever it was, I moved to strike provisions that enabled the Federal Reserve Bank to require reserves from State-chartered banks. If my recollection serves me correctly, the Senate on that occasion agreed with me and did strike it, saying, in effect, that that would subject State-chartered institutions to Fedral control. However, in trying to work out the differences between the House and the Senate, the conference committee put that provision back in and it was ratified by Congress—here again, over my objections in the Senate.

Mr. President, none of those things is relevant to the question before us, except for the point of trying to show to my colleagues my continued concern about those of us here in Congress enacting legislation which interferes with the rights of the States to regulate their own institutions.

I see my colleague from Illinois has already recognized the problem, for which I am thankful, because there is an amendment on my desk, which I think he had proposed to offer, that would authorize the State to restrict the rights of State banks to engage in these activities, but it would have taken affirmative action on the part of the State to permit it. All my amendment does is say that State banks cannot participate unless and until they are authorized by the laws of the State under which and by which they are chartered. I think that is a reasonable provision and I think, Mr. President, that many States would, in States where banks want to participate, readily adopt this and see the wisdom of it. I hope that my State would. Here again, Mr. President, I think it is a decision that ought to be made by the States.

The proponents of this bill can make a persuasive case as to why we ought to go on now and let the States do it, giving to the States the right but also requiring them to take affirmative action to get out from under the provisions of this law. But I can make a persuasive case for Federal regulation or Federal control for almost everything that this Congress has ever done. My colleagues last year, when they were attempting to preempt and did preempt State usury laws, made some very persuasive arguments, and I agree with their arguments. But I just felt that we were seeking relief in the wrong place.

I hope that my colleagues will accept this and I shall promise them this: If they do accept it and if the State banks in my State want to participate or there is a desire to get those banks to participate, I shall do what I can to assist them in doing that. I feel sure that my legislature, which is certainly very much concerned about export business—my goodness, we export soybeans, we export

tobacco. We are beginning to sort of pat ourselves on the shoulder and talk about how great we are in the export business. We have a Governor in North Carolina who is very aggressive in this area. He has gone on his own trade missions abroad. We in North Carolina have some offices—I think we have one in Japan, maybe one in Europe—maybe in Germany—trying to promote exports and I surely do not want to do anything to discourage it.

Mr. President, this is consistent with my basic philosophy and, I might also add, is consistent with the unanimous position taken by the Governors Conference of this country, just recently meeting in Colorado.

I thank the Senator.

VETERANS PHYSICIANS COMPARABILITY ACT—MESSAGE FROM THE HOUSE

The PRESIDING OFFICER. Will the distinguished Senator from Wisconsin have the kindness to withhold so the Senate may receive a message from the House?

At 2:26 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House, having proceeded to reconsider the bill (H.R. 7102) to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, on reconsideration by the House, and two-thirds of the House of Representatives agreeing to pass the same.

The PRESIDING OFFICER. The Chair lays before the Senate the President's veto message on H.R. 7102, which the clerk will state, and it will be spread in full upon the Journal.

The assistant legislative clerk read as follows:

To the House of Representatives:

I am returning without my signature H.R. 7102, the Veterans Administration Health Care Amendments of 1980, because this bill would provide $80 million a year to Veterans Administration ("VA") physicians in unwarranted salary bonuses rather than target that amount on veterans themselves.

As President, I have worked with the VA to ensure that the health care provided to our veterans is the finest in the world. Toward that goal, during the last three years, I have supported and signed legislation to expand and improve the treatment of all veterans who need to receive care from the Veterans Administration. Clearly, much more remains to be done for our veterans, and it is essential that we direct additional funds to those most in need.

What is *not* essential, and what does *not* further our goal of directly helping sick and disabled veterans, is spending a large sum of money to give VA physicians currently earning an average of $55,000 a year up to 38% bonuses, making them by far the highest paid medical personnel in the entire government. Indeed, so generous are the bonuses provided in this bill that mid-career VA physicians could earn 30% more ($76,200 vs $58,700) than the maximum authorized annual salary for Armed Forces physicians. The Defense Department has recommended a veto of this bill because this differential in pay may adversely affect its ability to solve the current physician recruitment and retention problems in the military.

I am concerned about attracting and retaining excellent VA physicians. But the current salary and benefits are more than sufficient to do that. At the same time, the current level of health care is not, in all areas, sufficient. Therefore, rather than spend $80 million on unneeded bonuses for a relatively few physicians, I would prefer that the Congress target funds more directly on improving health care benefits and treatment for veterans.

I therefore urge the Congress to pass a bill which meets the other goals of H.R. 7102, including the Veterans Administration real and specific needs for certain physician specialists, while providing—from the money that would have been projected for excessive bonuses—for improved health care treatment of veterans.

JIMMY CARTER.

THE WHITE HOUSE, *August 22, 1980.*

THE EXPORT TRADING COMPANY ACT OF 1980

The Senate continued with consideration of the bill.

Mr. PROXMIRE. Mr. President, will the Senator from North Carolina yield?

Mr. MORGAN. I am happy to yield.

Mr. PROXMIRE. I congratulate the Senator from North Carolina on his position. That may come as something of a surprise. He and I have been on opposite sides when this kind of issue has come before the Banking Committee and before the Senate. I must confess that it is with a heavy heart that I have opposed him in the past.

I opposed him with respect to overriding State laws on usury. I felt that was absolutely essential. I may have been wrong, and I did it with a heavy heart, recognizing there was a great deal of justice in the position taken by my good friend from North Carolina.

Mr. President, in this case I cannot for the life of me see how his amendment could enfeeable the bill. It seems to me it would strengthen the bill. It would provide what is much more important, of course, a recognition of the integrity of the bank regulators and of the sovereignty that we have written into our Constitution with respect to our States.

Mr. President, is the Senator from North Carolina familiar with the Conference of State Bank Supervisors?

Mr. MORGAN. Yes, Mr. President, I am.

Mr. PROXMIRE. Will the Senator permit me to read from a short letter which they have written on this subject?

Mr. MORGAN. I shall be happy to hear it.

Mr. PROXMIRE. This letter was dated July 24 and addressed to me as chairman of the Banking Committee. They have said this, with respect to S. 2178, the bill before us, the Export Trading Company Act of 1980:

In accordance with your request for comments by the Conference of State Bank Supervisors regarding the above bill, this is to advise that the Conference shares your concerns that this bill would violate the principle of the separation of banking and commerce, which concept has done much to prevent an unhealthy concentration of economic power in this country. Bank equity in nonbanking enterprises, like government equity is the worst type of contrived credit allocation.

While we are supportive of the stated objective to increase U.S. exports, we believe that to permit banks to hold a controlling equity interest in export trading companies would raise serious regulatory problems of the type which the Federal Reserve Board and the FDIC have spelled out in communications on this bill.

The worthy goal of increased exports can be achieved more effectively by reducing government-related burdens on producers of goods and services which might be sold abroad. High taxes, government-fed inflation, consequent high interest rates, government-sponsored labor monopoly, related high labor costs and direct control adversary-type government regulations, all merit attention ahead of another government program—particularly one which has all the ingredients of more, not less, regulatory burdens. The Export Trading Company Act of 1980 inevitably would take on more of the characteristics of high government costs and a bureaucratic power structure than of export expansion.

Finally, representing the primary chartering and regulatory source for state-chartered commercial banks, the Conference must express its strong objection to those provisions in S. 2718 which would permit state-chartered commercial banks to take equity positions in business enterprises in violation of state banking codes banning such action. This proposed action would constitute a serious preemption of state authority to determine the operating powers of banks which they charter and supervise. Certainly in the absence of some overriding national policy considerations, which we do not perceive here, CSBS must object to those statutory provisions in S. 2718 which would enlarge state-chartered banks' powers beyond those which a state authorizes for its institutions.

Sincerely,

LAWRENCE E. KREIDER,
Executive Vice President-Economist.

Mr. President, that is precisely the issue that the Senator from North Carolina would address. What they are saying here is that if the States are to have any genuine, respected authority over their banks, they should not be overridden by this kind of legislation on this issue.

I want to tell my friend from North Carolina once again that while I disagree, as I assume the Senator from North Carolina may disagree with some of the arguments here, frankly, I think the trading company is a good idea, provided that the amount of bank equity is limited and the Federal Reserve Board, or some other single agency, has authority to determine whether or not the power is necessary to expand our exports.

I do not think the rest of the legislation is objectionable. In fact, I think it can be very constructive. But certainly, the part the Senator would amend that deals with the authority of the State banking regulators and would interfere with that authority and override and deny their authority, I think is wrong. The Senator's amendment would correct that.

Mr. MORGAN. I thank my distinguished chairman.

Mr. President, I do have in my State a very active and competent and aggressive commissioner of banks. He is our regulatory authority, or State regulator.

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I have known him for many years. I knew him when he was in State government as the commissioner of revenue for our State, then he became a vice president of one of the largest corporations in our State. He is now back in that position as commissioner of banks, and he is very cognizant of that fact.

I have a tendency, every time this question arises, to expound on a point of our philosophy, upon my own philosophy of the rights of the States.

But I really do not think we can tell that story too much. I certainly cannot, coming from North Carolina.

I am not the first North Carolinian to ever raise this question. As a matter of fact, Mr. President, I cannot resist saying to this Senate that my State was not a part of the United States when it came into existence. In March of 1789, we refused to ratify the Constitution of the United States even though 11 other States had already ratified it, and the United States had come into being because at least nine had ratified it.

The reason we did not ratify it was this very reason. North Carolinians were individualists. They were afraid of a government far removed from the people. They were concerned because there was nothing in the Constitution that was brought to us from Philadelphia that guaranteed that we in the States would enjoy these privileges.

I know very well that one of the proponents of the Constitution said in that debate in Hillsboro that we do not have to worry about usurpation of powers by the Federal Government, we do not have to worry about the deprivation of rights, because, after all, we are not going to be ruled any more by a king, or monarch, or somebody from the ruling class, or the elite. We are going to govern ourselves, and surely, we would not deprive ourselves of these precious rights and we would not remove government far from the people.

I remember there was a man in that convention who later held this same Senate seat I now hold, who said, in effect, that there lies within the breast of every human being a secret lust for power, and these rights cannot be entrusted even to our own.

It was not until the Congress, after the formation of the United States, after George Washington's election, until after this Congress had proposed the amendments, which now constitute the first 10 amendments, had been submitted to the people and at least one State ratified those amendments, before my State would even consider coming into the Union. We set out 27 different provisions that we said had to be incorporated into the Constitution before we would even consider becoming part of the Union. One of those provisions was that all rights not specifically delegated to the Federal Government in the Constitution would be reserved to the States.

If my recollection serves me correctly, that is the 10th amendment.

So, my philosophy is one I grew up with. It is one that has been prevalent in North Carolina from the very beginning. We did not have an opportunity to vote for Washington because of that.

It follows on through, down through my immediate predecessor (Mr. Sam Ervin), who I suspect spent most of his life on the floor of this Senate, jealously defending the same kind of rights of the States that I am now defending.

So I do feel very strongly about it, although I support everything that the Senator from Illinois (Mr. STEVENSON) is trying to do with regard to promoting export trade. I just feel so strongly about it that I feel I have to oppose it.

Mr. PROXMIRE. If the Senator will yield further, the Senator from North Carolina has been extremely consistent and eloquent. I think he is winning Congress to his position on this. I hope he does, because he should.

But this particular issue is unusual because it deals, as the override or usury did not, with the dual banking system, which goes to the very heart of our trying to diversify economic power in this country, and try to give as much of the economic authority, in the economic sphere, as possible to the States and not have the Federal Government have a monopoly.

The heart of the dual banking system is the chartering and regulation process. If the States lose that authority, the dual banking system becomes, in my judgment, a sham.

Now, the power of the institution goes to the heart of the charter. In other words, if the bank regulators are going to lose the authority to determine whether or not a bank can diversify into commerce, which it does to some extent, and I think constructively does so, it seems to me that is an extraordinary bad precedent. If certainly enfeebles the dual banking system.

So if the Federal Government dictates the powers of the State banks, it takes over the chartering and regulatory process.

In that sense, this part of the bill strikes at the heart of the dual banking system itself, something I think all of us on the Banking Committee, particularly the Senator from North Carolina, but all of us, are aware of, and in varying degrees support.

Mr. MORGAN. It strikes me that if we give the State banks this authority to act independently of their regulatory agencies, that we could, in effect, have State banks' soundness jeopardized without, maybe, even the regulatory agency knowing about it.

I wonder if the Senator from Illinois would yield for a short colloquy with me on this.

Mr. STEVENSON. By all means. I am happy to. The Senator has the floor.

Mr. MORGAN. Does the thrust of the Senator's bill, would the thrust of what the Senator seeks to accomplish by his bill, be substantially hampered if the State banks had to get permission of their own States before they could participate?

All I am trying to say is this: Is the thrust of the Senator's bill so important that it would be jeopardized by saving to the State banks, "You must go through your normal regulatory authority before you can participate"?

Mr. STEVENSON. Mr. President, so far as I know, no State legislature in the country has addressed this issue. Therefore, no State regulatory agency at the present time has the authority to permit the State banks to do what the national banks would be permitted to do under this bill.

So there could be some significant delay before State banks could participate in the ownership of trading companies. That could put the State banks at a disadvantage, as the national banks get into trading companies. What is more, it also could retard the development of trading companies, which we believe is very dependent on participation by banks, including State banks. So there is some concern about the effects on the trading companies.

However, I am very impressed by what the Senator from North Carolina and the Senator from Wisconsin have said, and I share their concerns about the federal system and the wisdom of respecting and preserving it. I also share their concerns about anything we might do here to impair the dual banking system.

Therefore, at the appropriate time, I should like to address all these concerns, including my concern about the viability of trading companies, getting them off to a strong start, by offering a substitute for the Senator's amendment, on behalf of myself and Senator HEINZ, Senator GARN, and Senator TOWER.

If the Senator will yield to me further, I will explain what we have in mind, and perhaps he can accept this as a substitute.

Mr. MORGAN. I will yield in a moment.

I suspect that if I were to call the major State banks in my State today, they would say, "I wish you would withdraw your amendment, because we would like to have this authority."

I believe that is pretty prevalent, by the fact that all too often we want to have our cake and eat it.

I remind the Senator of the situation in which we found ourselves in the Banking Committee a few days ago, when the independent insurance agents of America were asking us to preempt State laws in order to prohibit bank holding companies from selling insurance. I do not believe that bank holding companies should sell insurance.

Here, again, I was troubled by the same idea: that the insurance agents were asking us, on one hand, to preempt State laws for that purpose but, on the other hand, they were saying, "Don't let the Federal Government regulate insurance."

In that connection, we then offered an amendment to that bill, saying, "All right, let's set up a commission to study the preemption of State laws."

Let me say, first, that my friends in the banking community supported my view: "You should not preempt State laws. Let the States regulate the insurance agents. This bill has no business up here."

Then, when we offered an amendment to the same bill, to set up a study commission and report back in 17 months with regard to preemption of usury laws,

the same people who were hollering "States' rights" to me a few minutes before said, "No, let's not do this, because this would preempt all State usury laws for 17 months."

What I am saying is that, human nature being what it is, we sometimes look at things as to how they will affect us in the immediate future.

I suspect that what I am doing probably would meet with the disapproval of a great many of my State banks, but I do not believe they should be allowed to have their cake and eat it.

Mr. PROXMIRE. Mr. President, I understand that the Senator from Massachusetts is prepared to speak. Perhaps while he is speaking, the staffs could work together and see if we could work out an acceptable compromise on this issue.

I know that the Senator from Illinois had an amendment that related to this directly and went part of the way toward the problems posed here by both the Senator from North Carolina and the Senator from Wisconsin.

Will the Senator permit the Senator from Massachusetts to speak briefly?

Mr. MORGAN. Yes.

Mr. KENNEDY. Mr. President, I support the amendment Senator METZENBAUM will propose dealing with the antitrust exemption contained in this bill. The bill as it now stands would allow the Secretary of Commerce to grant the members of an export trading company an exemption from the antitrust laws. It would allow the Attorney General to sue in court to set aside the exemption when he believes it is not warranted.

The amendment that Senator METZENBAUM and I have offered would simplify this system and, in doing so, would offer additional protection to the American public. It would have the Attorney General, not the Secretary of Commerce, decide whether an exemption is warranted. If he decided to grant the exemption, however, his decision would be final. It would grant immunity from both subsequent private antitrust suits and Government actions.

There are two basic reasons why this amendment should be enacted. First, the Attorney General, not the Secretary of Commerce has the relevant expertise. The Attorney General has administered the antitrust laws for nearly 100 years. The Secretary of Commerce has little experience in the antitrust area. This fact is highly relevant, for the bill does not purport to set aside antitrust standards. Rather, the bill allows an exemption only if the exempted agreement will not lead to "a substantial lessening of competition or restraint of trade." The Justice Department has administered standards like this one for years. It has also habitually authorized practices that do not violate those standards. It has a system of granting "business review" clearances to firms whose agreements are not anticompetitive. To allow a different agency to administer this exemption threatens to weaken it to the detriment of the public.

We have seen some agencies in the past abuse the power to grant immunity from the antitrust laws. The Civil Aeronautics Board and the Interstate Commerce Commission each, for many years, cost consumers billions of dollars by granting antitrust immunity where it was not warranted. We also know that abuse of this power in the antitrust area could threaten the public with the creation or sustenance of international cartels. In the past, we have seen international cartels, such as the quinine cartel, force buyers to pay exorbitantly high prices for drugs or other items in foreign trade.

Thus, it is particiularly important, when giving agencies the power to grant antitrust exemptions, to guarantee that this power cannot be abused. To do so, it is vital that the power rest in the hands of the Attorney General, who understands and can administer fairly the complex legal rules contained in the antitrust laws, and not delegate that power to an agency without experience in this area.

Second, the business community, in exporting, is less in need of exemptions from the antitrust laws, than in need of certainty about what it can and cannot do. The antitrust laws themselves allow agreements among exporters when those agreements are "reasonable."

The basic problem for business, however, is how to know whether an agreement is "reasonable," particularly when private plaintiffs, as well as the Government, may challenge any such agreement in court. The bill, without our amendment, will not give business this certainty. To the contrary, it will spawn lawsuits, as the Attorney General challenges the Secretary of Commerce's determinations in court. That has been the experience under the merger law exemptions contained in the Bank Merger Act of 1966. I have every reason to believe that this similar statute would lead to similar uncertainty and legal tangle. With our amendment, however, the business community will have the requisite certainty. The exporters would make a single stop—at the Department of Justice—and ask for clearance. If their agreement is reasonable, immunity will be granted. Then, neither private plaintiffs, nor the Attorney General, will sue further, thus allowing the export companies to go forward with their proposed arrangement.

In sum, Mr. President, I believe that our amendment will better carry out the purposes of this bill than the language it now contains in this area. It will provide increased certainty to allow business planning; it will provide increased protection for the consumer from possible agency abuse of the power to grant immunity from the antitrust laws. For these reasons, at the appropriate time when the amendment is offered and debated I hope that it will be accepted.

Mr. President, earlier this year we were able to make substantial progress in reducing dramatically the antitrust exemption in the trucking area, for example, which will mean greater competition in establishing the prices to move goods through the motor carrier bureaus and across the trucking lanes of this country.

Earlier last year when we passed the airline deregulation legislation we also reduced dramatically the types of immunities from the antitrust laws that were created under previous legislation.

The fact that we eliminate some of the antitrust exemptions does put a higher premium on the activity and the action of the Department of Justice and on the Antitrust Division.

But I do think that that is the appropriate place for these types of judgments to be made. They have the expertise. They have the knowledge. They have the know-how. And with the type of amendment that has been fashioned I believe that we will actually expedite many of the purposes of the legislation.

Finally, I am mindful that the Justice Department itself has indicated to the committee its willingness to effectively waive this type of intervention, but I do take notice of the fact that the antitrust division itself did not state a position on this particular issue. It has been brought to my attention that those who have been the most concerned about the forces of competition in our society, the maintenance of our antitrust laws, competition, and the protection of the consumers believe that the kind of remedy that the Senator from Ohio (Mr. METZENBAUM) has offered, in which I join with him, offer the best opportunity to carry forward the spirit of this legislation, do it in a timely fashion and also protect the consumers of this country.

We welcome the opportunity. I know the Senator from Ohio as well as myself welcome the opportunity to work with the members of the committee in trying to achieve the objectives which we have presented in our amendment, but we have been unable to make those adjustments and changes to date. I do think that they are of sufficient importance and hope that we will be able to have an opportunity to discuss those further.

Mr. PROXMIRE. Mr. President, will the Senator from Massachusetts yield?

Mr. KENNEDY. I yield.

Mr. PROXMIRE. Mr. President, I thank the Senator from Massachusetts for his comments and I wish to ask him a question or two. Before I do that I wish to point out the Senator from Massachusetts has been the leading force in the Senate in calling for deregulation, particularly deregulation of airlines and elsewhere. If we are going to deregulate we have to recognize the fundamental regulator in American commerce has been competition. That is far more effective and far more satisfactory, of course, than bureaucratic interference. The Senator has recognized that over and and over again. That is what disturbs me here, and that is what is at stake here. Let me read to the Senator from the committee report that makes that so clear. I read just two short paragraphs:

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Between 1930 and 1935 Webb-Pomerene associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. By 1979 the number of associations had dwindled to 33 and their share of total U.S. exports had dipped to less than 2 percent.

The reasons for this poor showing are many. First, the vast majority of the 250 or so Webb-Pomerene associations formed over the last 60 years lacked sufficient product-market domination to exert foreign market price control and membership discipline.

What that is saying is they did not have the ability to fix prices and did not have the ability to allocate markets. They did not have the authority in that respect.

Let me point out what the bill provides. On page 29 at the top of the page it provides that this kind of information will be filed with the Commerce Department for the Commerce Department to make a decision.

The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, warest, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

The difficulty here, as the Senator pointed out, is that this would go to the Commerce Department. The Commerce Department has no experience, no expertise in the area of antitrust. The Justice Department has it now.

We would take that away from the Commerce Department and in the judgment of the Senator from Wisconsin that would certainly enfeeble our ability to enforce our antitrust laws.

I wish to congratulate the distinguished Senator from Massachusetts on his statement.

I ask the Senator this: Could price fixing, allocation of markets abroad, sanctioned by the Commerce Department complicate our foreign trading relations?

Mr. KENNEDY. Mr. President, I just wish to indicate to my friend and colleague that the Senator has stated the situation exactly as I understand.

There is also a provision in here which states that after the Department of Commerce acts they can have the action for validation of the certificate by the Attorney General or chairman.

So actually what we are doing, we are having a preliminary standard which is basically an antitrust standard which has been established in this legislation and which the Antitrust Division has the expertise, the understanding, and the know-how, and is making judgments on that standard almost daily, being applied by the Commerce Department, and then if the Justice Department should make a judgment for invalidation then it all has to return to the Justice Department and we get the delay. We get the uncertainty. We have all the disadvantages of the bureaucracy. And what we are proposing is that the agency of Government which has the expertise, the understanding, the knowledge, and the know-how make the judgment and make it final and make it certain.

So, for all the businesses in this country that are attempting to be involved in this procedure and can meet the other criteria of the legislation they can just go to one shop, so to speak. They know when they receive the judgment determined by the Justice Department that it will be the final judgment made.

There will be the degree of certaintly that will be made by the agency that has both the knowledge and the understanding in this area. What we can be assured of, to the extent that we can be assured of anything, is that the Antitrust Division is going to try and maintain its responsibility in protecting the consumer of this country.

Mr. PROXMIRE. Could not this division of authority complicate our foreign trading relations? For example, suppose we have some country that is moving in the direction of stronger antitrust laws and we come in as the very powerful, superpower, very vital and important trading nation, with our proposals for price fixing and for maintenance of certain markets and for exclusions of some people from the markets. Could we not destroy that movement toward the kind of thing we have been trying to promote in the world for years, the kind of market system of which we all approve so warmly?

Mr. KENNEDY. The Senator is quite correct. He makes a very valid point. I know it is in an area where the Senator has a great deal of expertise as the result of considerable hearings, but it certainly would be my understanding that that could be the case.

It seems to me that this amendment which we offer is reasonable. It does seem to me to reduce bureaucratic shopping, and it also insures that the application of the rules of antitrust laws will be made by those who have been charged by the administration and by Congress with insuring their fair, just, and adequate application.

It does seem to me to be completely consistent with the legislation, and it seems to me to be, quite frankly, contributive to the direction that the sponsors of the legislation would like to go in this very narrow and limited area.

I would just remind the Senate that over the period of the last two sessions we have learned, I think, very clearly that the carving out of antitrust exemptions and the creation of immunities have cost consumers in this country a great deal. They have contributed to the fires of inflation.

It seems to me we want to insure that this new piece of legislation is not going to contribute to that type of policy which, I think, the Senate now in its wisdom is increasingly rejecting and it is relying, as it should, on the forces of competition in our society.

Mr. PROXMIRE. Mr. President, if the Senator will yield further, because I do not want to hold up the Senate any longer, I know this is a very important piece of colloquy which has taken place, but as I understand the Senator from Massachusetts and Ohio, with the Metzenbaum-Kennedy, and now which I am cosponsoring with them, amendment, this does not take the position that we want to discourage export trading companies. We want to promote them.

Mr. KENNEDY. The Senator is absolutely correct.

Mr. PROXMIRE. It does not go to the people but it goes to the procedure of who shall have jurisdiction here.

Mr. KENNEDY. The Senator is quite correct.

I just want to make a parenthetical point. It seems to me that one of the major additional problems we have faced in fashioning and shaping our export policy over the period of recent years is the requirement of multiagency shopping. This has complicated it. The major industries of this country have been able to develop the kind of staff and resources so as to be able to do it.

In many instances they have not been as energetic as some of the newer and younger companies. One of the major hinderances I have seen in talking to small businessmen and women across this country is the fact that they want to reduce the number of agencies they are going to have to shop around for, and they also want certainty, and this amendment achieves that.

We achieve certainty, predictability, and we reduce the kind of bureaucracy which I think has hindered the possibilities for foreign export. But I do want to state that I agree fundamentally with the Senator from Wisconsin when he says that we do need a strong export policy. We do want to insure legislation which wil be enacted to help and assist us in achieving that policy. I certainly want to reach that outcome in a way which is going to be fair to the exporters, fair to our consumers, protect them and enhance the United States as a powerful trading partner.

I thank the Senator.

VETERANS PHYSICIANS COMPARABILITY ACT—VETO

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed for not to exceed 10 minutes to the consideration of the President's veto message on H.R. 7102.

The PRESIDING OFFICER (Mr. TSONGAS). Is there objection? The Chair hears none, and it is so ordered.

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I ask that Mr. SIMPSON and Mr. CRANSTON control the time equally.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 7102.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

The House of Representatives having proceeded to reconsider the bill (H.R. 7102) entitled "An Act to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

The Senate proceeded to reconsider the bill (H.R. 7102), the Veterans Physicians Comparability Act, returned to the House by the President, on August 22, 1980, without his approval, and passed by the House of Representatives, on reconsideration, on August 26, 1980.

Mr. CRANSTON. Mr. President, I rise to urge my colleagues to join with me and with our colleagues in the House of Representatives in voting to override the President's veto on Friday of H.R. 7102, the Veterans' Administration Health-Care Amendments of 1980. The House vote to override earlier today was 401 to 5.

Mr. President, as I stated yesterday, I sought to avoid a confrontation with the administration on this issue by personally discussing the matter with the President. However, I believe that the bill Congress sent to the White House on August 11 was a sound and responsible one—carefully designed to meet very real needs in the VA health-care system—and that the President received singularly bad advice and took inappropriate action in vetoing H.R. 7102.

I call for an override of the veto because not only are the reasons stated in support of the veto ones with which I cannot agree, but the reasons stated are premised on major factual misstatements. As I will demonstrate shortly, the veto message consists of one incorrect statement after another.

Mr. President, during the development of H.R. 7102, numerous meetings were held with representatives of the administration, including officials of the Office of Management and Budget, the Office of Personnel Management and, on many occasions, of the Veterans' Administration. Throughout this process, there was a bona fide effort on the part of the two Committees on Veterans' Affairs to accommodate the concerns raised by the administration, and a great many changes were made in the final legislation as a result of those efforts.

Mr. President, yesterday I had a "Dear Colleague" letter delivered to each Senator's office that included, as enclosures, the President's veto message on H.R. 7102 together with a rebuttal to the points made in that message. Another copy of that letter and enclosures is being placed on each Senator's desk at this time, and the text of the letter and attachments were prinited in the RECORD yesterday at my request at 22884.

The first basis mentioned in the veto message as justifying a veto was the cost of the special pay increases included in H.R. 7102. In the veto message, the cost of these increases was described as $80 million. Simply stated, that figure is wrong. The Congressional Budget Office estimates the fiscal year 1981 cost of the special pay increases as $31.7 million—the effective date of the increases is delayed until January 1, 1981—and the cost for each of the next 4 fiscal years as $44.9 million. Thus, the message is in error on what appears to be a point fundamental to the veto. I would also like to note that, because of a major cost savings provision in title IV of the bill, CBO estimates a fiscal year 1981 net cost savings for the total measure of over $50 million and savings over the first 5 years of over $350 million.

Mr. President, the VA's special pay authority was enacted in 1975 to help address significant recruitment and retention problems facing the VA at that time—including difficulties resulting from a lack of comparability with the rates of pay available to military physicians because of increases in those rates enacted shortly before the time of the 1975 VA legislation. Although the VA's special pay authority was extended a number of times between 1975 and the present, the rates of special pay themselves have not been increased for 5 years. The information available on the effectiveness of the special pay program suggests that it worked as intended in the first year or two after it was enacted but that it had largely lost its impact by 1978. Over the period from 1975, DOD likewise had little assistance in its efforts to attract quality physicians and so, although neither agency was progressing in a satisfactory manner, at least DOD and VA remained roughly comparable.

However, earlier this year, the Congress passed and the President signed the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, a measure that provided for very significant increases in special pay for DOD doctors. I strongly supported that legislation when it was before the Congress because I recognized that a legitimate and compelling need existed for the increases in special pay it provides for. However, I believe that the same need exists in the VA, and to suggest, as the veto message does, that this is not the case is to ignore both the record made by the two Committees on Veterans' Affairs this year and the reality of the marketplace for physician services that was recognized in the case of DOD by Public Law 96-284.

Mr. President, another erronous point in the veto message is that Congress proposes to increase compensation for VA physicians as an end in itself. This line of argument assumes, most mistakenly, that somehow any problems in VA health care can be remedied by targeting funds on the veteran patients and not providing pay increases to the health-care providers, including VA physicians. The logic of this point escapes me.

Certainly, there are other needs in a health-care system beyond assuring an appropriate mix of qualified health-care personnel. But equally obviously, there can be no health-care system without the needed personnel. It is abundantly clear to me and the Committees on Veterans' Affairs in both Houses—and, to this point a bipartisan, nearly unanimous Congress—to the veterans service organizations and to individual veterans across the country, that VA physician staffing is not all it could or should be and that the quality of VA health care suffers accordingly.

There certainly are many excellent, dedicated physicians in the VA, but there are not enough of them. The declines in the various indicators of the quality of VA physician staffing—board certification, source of medical education, quality of prior experience, and academic appointments—demonstrate the decrease in overall physician quality within the VA. In addition, many qualified physicians are leaving full-time service in the VA in mid-career for a part-time appointment, a trend which bodes badly for the future of the VA, I believe. Without a strong basic core of dedicated, career physicians, I am concerned that the VA health-care system will be in jeopardy in the not too distant future. Health care through the VA is one of the key components in the overall scheme of veterans' benefits, and it must be maintained under a strong and viable system. To achieve that result, the personnel needs of the system must be met, and I believe H.R. 7102 is a most appropriate step toward that end.

Mr. President, the final area in which the veto message is in error involves the relationship between compensation for DOD physicians and the special pay provisions in H.R. 7102 for VA physicians. I would note at the outset that I do see a relationship between DOD and VA.

On the one hand, the VA must be strong to back up the Defense Department's health care resources in the event of war. I have recently been stressing this point a great deal, and the GAO, in a recently released report, "The Congress should mandate formation of a military-VA-civilian contingency hospital system," buttresses this point most convincingly. Second, the VA and DOD are both Federal sector employers and, as such, may be viewed in a somewhat similar light by some physicians evaluating career options.

However, despite these valid bases for comparing the two systems, I do not believe that it is possible to make a genuine comparison of the two systems or to insist on a direct analogy between them. As is discussed more fully in the "Dear Colleague" letter I sent yesterday, the DOD and VA work forces are very dissimilar, as are their sources of physician recruitment, and the overall design of the two system's pay provisions.

However, Mr. President, to the extent that a comparison of the two pay systems can be made, the veto message is again in error. The statement that a mid-level VA physician could earn more than the highest-paid DOD physician is not grounded in fact. Quite the contrary is true since there would be a reasonable comparability between the maximum pay for physicians under both systems when the effect of Public Law 96-284 and H.R. 7102 are considered—$70,900 for the O-6 level in the military with 22 years of service, in effect since July, increasing to $76,000 after the October 11.7 percent military pay raise, compared to a maximum now for VA physicians of $61,600, increasing to $77,610 as of January 1.

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The military figures I am using—unlike those in the veto message—are based on the standard DOD estimates of real military compensation—RMC. However, there are a great many benefits that are received by DOD physicians which are not taken into account in the RMC figures, such as medical and dental care, PX and commissary privileges, various tax advantages, and noncontributory retirement available after 20 years, that also are not available to VA physicians. When these considerations are factored into a comparison of the two systems the notion that H.R. 7102 would somehow make VA physicians pay superior to the value of DOD compensation is totally undermined.

Mr. President, as a final point on the issue of the relationship between the VA and DOD, I want to note that the committee was very cognizant of DOD's need for physicians throughout the consideration of H.R. 7102, and it took steps to guard against any untoward impact on the military services ability to recruit and retain sufficient qualified personnel. I believe that this effort was successful, and I regret that DOD's interests were raised as a basis for vetoing a bill that had the fully legitimate goal of assuring that the VA—as well as the military—is able to recruit and retain the physicians needed.

I urge my colleagues to join with me in voting to override this ill-conceived veto so that H.R. 7102 can become law. The overwhelming margin by which the House of Representatives voted to override the veto earlier this afternoon—401 to 5—attests to the inappropriateness of the veto. The VA must be able to provide quality health care to the Nation's sick and disabled veterans—that is our national obligation—and H.R. 7102 will provide the much needed wherewithal for the agency to fulfill that mission.

I would like to yield 1 minute to the distinguished Senator from Colorado.

The PRESIDING OFFICER. The Chair will say that the Senator from Wyoming controls the remaining time.

Mr. SIMPSON. Mr. President, I ask unanimous consent for an additional 3 minutes of time for the distinguished chairman of the committee. I have now been advised that Senator THURMOND would like 2 or 3 minutes of time. I will require no more than that myself. I wonder if the majority leader would agree to that?

The PRESIDING OFFICER. Is there objection to the request? If not, it is so ordered.

The Senator from California has 3 minutes remaining.

Mr. CRANSTON. Would the Senator like to proceed first?

Mr. SIMPSON. Mr. President, I yield myself 3 minutes of my time.

Mr. President, as the ranking minority member of the Veterans' Affairs Committee, I would like to join my esteemed colleague and the chairman of the Senate Veterans' Affairs Committee in urging the Senate to override the President's veto of H.R. 7102, the Veterans' Administration Health Care Amendments of 1980.

I am very much aware that he has made every effort, as chairman of the committee, to avoid this veto confrontation. I point out to my colleagues that the Veterans' Affairs Committee of the Senate has dedicated a great deal of time and effort this year in developing legislation that best serves the interest of the Nation's veterans. We had so many difficult choices to make; indeed, we were forced to make a variety of painful reductions in veterans programs to satisfy our obligations under the Budget Act, and we went back to the drawing board many times.

I can assure you that any authorizing legislation to include H.R. 7102 that has been reported by the Veterans' Affairs Committee in this year was subjected to very close and careful scrutiny. We would not have reported this bill were we not thoroughly convinced that it was absolutely critical to affording veterans the medical care they both deserve and require.

We met our obligations under the budget and we must now meet our obligation to insure that this Nation's veterans receive appropriate medical care from sufficient numbers of qualified and capable physicians.

The President remarks that the additional compensation afforded to VA physicians by this bill "is not essential" and "does not further our goal of directly helping sick and disabled veterans."

I find this statement to be an absolute flight from logic. We can build the best hospitals and equip them with the latest in medical technology; but if we cannot provide an adequate number of qualified physicians and certified specialists, we cannot hope to offer the quality of care necessary to meet the needs of our veterans population.

Attracting and retaining VA physicians is "essential" and does very much to "further our goal of directly helping sick and disabled veterans."

Without the necessary incentive and special pays, the Veterans' Administration will continue to lose qualified physicians and certified specialists to the civilian health care market. I do not feel that the VA can indefinitely continue to recruit foreign-born graduates of foreign medical schools—and even these individuals, once they achieve board certification, are abandoning their positions within the VA or converting to part-time status. I believe that it is indicative of the problem the VA has in attracting and retaining high quality physicians to note that in 1979, 2,166 of the 6,221 full-time physicians employed by the VA were foreign-born graduates of foreign medical schools.

The PRESIDING OFFICER. The Senator has used his 3 minutes.

Mr. SIMPSON. Mr. President, I yield myself an additional 30 seconds of my allotted time.

In closing, Mr. President, let me note that I will not be taking the lead in overriding vetoes of spending bills on very many occasions. But in this instance, the President's veto is so patently ill-conceived that I cannot, in good conscience, passively accept the consequences of his action. H.R. 7102 is essential to the maintenance of a first-rate health care system for the veterans of this compassionate Nation.

Mr. President, I reserve the remainder of my time for Senator THURMOND at the appropriate time.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I yield 2 minutes to the distinguished Senator from Colorado, who is the author of the Uniform Services Health Professionals Special Pay Act, and who played a key part in its enactment by Congress. He is a member of the Armed Services Committee and a valued friend of the veteran.

Mr. HART. Mr. President, I support the vote to override the President's veto of H.R. 7102, the Veterans' Administration Health-Care Amendments of 1980.

As the principal sponsor in the Senate of legislation to provide for increases in special pay for military physicians that was ultimately enacted as the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, I am keenly sensitive to the needs of DOD to improve its ability to recruit and retain physicians. At the same time, and in fact because of my involvement with military physician staffing concerns, I also realize that the Veterans' Administration is faced with problems in its efforts to recruit and retain physicians similar to those confronting DOD.

Mr. President, in his veto message, the President raised concerns about DOD's physician recruitment efforts as a justification for the veto of H.R. 7102. I do not believe that the President's concerns in this regard are well founded.

Mr. President, first and foremost, it must be recognized that the two work forces are very different and DOD and VA are not really competing for the same physician personnel. DOD has and will continue to rely on obligated service to recruit a work force that is younger and less experienced than VA's and this difference is fully appropriate in light of the different medical missions of the two agencies.

Nevertheless, Mr. President, it is important that the two agencies not be in a competitive relationship and I am convinced that, rather than creating an imbalance between VA and DOD, H.R. 7102 will serve to help restore the balance that existed prior to the enactment of the military physician pay legislation earlier this summer. I know that the chairman of the Committee on Veterans' Affairs (Mr. CRANSTON) is aware of DOD's needs for physician personnel—he strongly supported the military physician pay legislation when it was before the Senate this year—and I know that he and the entire committee were careful in designing H.R. 7102 to prevent any VA improvements from having an adverse impact on DOD. I believe that they succeeded in their efforts and I regret that the President was advised to the contrary.

Mr. President, I join with my good friend, the chairman of the Veterans' Affairs Committee (Mr. CRANSTON) in urging our colleagues to vote to override the President's veto of H.R. 7102. The VA is facing many of the same problems

faced by DOD in its attempts to recruit and retain doctors. Public Law 96-284 will help alleviate those problems for DOD and I do not believe that the VA should be restricted in its efforts to find suitable remedies because of unfounded fears about any impact on DOD. Our Nation's veterans deserve quality health care through the VA and a fundamental predicate to that goal is sufficient quality personnel to provide such care. H.R. 7102 is a well designed measure that will help achieve that end and should be enacted without further delay.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I yield 1 minute to the distinguished Senator from West Virginia (Mr. RANDOLPH), an outstanding member of our committee and a great leader in numerous efforts on behalf of veterans.

Mr. RANDOLPH. Mr. President, those Senators who have spoken in favor of overriding the presidential veto are not doing it in a sense of opposition, per se, to the Chief Executive of our Republic. Those of us who favor the veto—and I shall support it on the rollcall—know that the medical personnel of the Veterans' Administration are capable and are dedicated in their work. They are not compensated as are others, such as Defense Department physicians.

In West Virginia we have Veterans' Administration hospitals, in Beckley, Clarksburg, Huntington, and Martinsburg. I have personally visited these facilities. I have carefully reviewed the physician shortages.

I feel that the advisors of the President on this issue have done so on the basis of fallacy rather than fact.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CRANSTON. Mr. President, I yield my remaining time to the Senator from South Carolina.

The PRESIDING OFFICER. There is no time remaining.

Mr. THURMOND. Mr. President, I ask unanimous consent for 3 minutes.

The PRESIDING OFFICER. The Chair will state that the Senator from Wyoming has 1 minute and 14 seconds remaining.

Mr. SIMPSON. Mr. President, I yield the remainder of that time to the Senator from South Carolina. The chairman of the committee, Senator CRANSTON, has yielded the remainder of his time to the Senator from South Carolina. How much time is that?

The PRESIDING OFFICER. There is no remaining time to the Senator from California.

Mr. THURMOND. Mr. President, I ask unanimous consent for 3 minutes.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I was dumbfounded that the President vetoed this veterans bill. He vetoed it on a theory that the VA doctors will be paid more than defense doctors.

I yield to no one my interest in the defense establishment. But I must say, in all fairness, that the defense doctors do get PX and commissary privileges, they get housing allowances—nontaxable—they get medical and dental benefits, and they do not contribute to their retirement.

The VA doctors do contribute to their retirement. They pay 7 percent of their retirement to civil service, so, really, you cannot hardly compare the two. If you are able to really compare them, I think the benefits would be about the same, approximately the same. In fact, the VA may end up with a little bit less.

Further, this bill not only contains a provision for an increase in benefits for VA doctors, but it contains a geriatric provision, which is very important. This provision provides for studies in different centers of this country for our older people and what can be done to help these older people. It will not only help the older veterans and their families, it will help all older people.

As I say, I was just dumbfounded that the President saw fit to veto this bill.

Mr. President, I ask unanimous consent to have printed in the RECORD a memorandum which shows where the President's veto message is incorrect in several areas; an outline showing VA doctors' pay and DOD doctors' pay; and letters sent to me from the American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans concerning this subject.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRESIDENT'S VETO MESSAGE OF H.R. 7102 IS INCORRECT IN SEVERAL AREAS

1. Veto message: "Bill would provide 80 million a year—in "unwarranted salary bonuses—"

Fact: Title I of H.R. 7102, the special pay provision is estimated by CBO to cost $31.7 million in fiscal year 81 and $44.9 million for each of the next four years.

2. Veto message: ". . . current salary and benefits are more than sufficient to do that (attract and retain VA excellent physicians)".

Fact: 599 full-time physicians have converted to part-time status in the last three years. In 1979, 2,166 VA physicians were foreign-born and graduates of foreign medical schools. In 1979, full-time board certified VA physicians dropped 49.3 percent to 45.5 percent. Recruitment of a full-time radiologist takes over 2 years.

3. Veto message: H.R. 7102 increases in special pay would "give VA physicians currently earning an average of $55,000 a year up to 38 percent bonuses . . ."

Fact: The current maximum a VA physician can receive is $61,800. The maximum possible under H.R. 7102 would be $76,200—an increase of 23 percent, not 38 percent. Under recently enacted Public Law 96-284 which became effective July 1, the percentage increase in the maximum pay for military physicians is 17 percent for senior-level physicians and 25 percent for mid-level physicians. Not only has this increase become effective, on October 1, DOD physicians will receive the 11.7 percent cost-of-living raise.

VA physicians will, depending on Congressional Action, receive a cost-of-living increase (7 percent recommended in the budget); however, the $50,100 statutory cap will prevent many senior-level VA physicians from receiving any increase.

VA DOCTORS

Base pay: $40-$42,000—capped at $50,100. Special pay based upon factors; specific job (Service chief-Dept. Chief): 9,900-15,300; scarce specialty: 4,000-15,500; bd. cert.: 2,000, full time status: 6,000, tenure 1,000-8,000, hard-to-recruit areas 2,000-5,000.

Retirement: Contributory-Civil Service (7% of pay).

Profile of VA Dr.: Over 35 yrs.; bd. certified; several yrs. experience; treating ill and older people.

DOD DOCTORS

Base Pay: upper $20's-(Capt.) Special pay based upon factors:

Lump sum at start: $10,000.

Incentive base on specialty: up to $8,000.

Eligible for yearly bonus.

Retirement — non-contributory — retirement after 20 yrs; 4 yrs. schooling counting towards retirement.

PX and Commissary privileges.

Housing Allowance—non taxable.

Medical and Dental benefits.

Profile of DOD Dr.: upper 20's; just out of residency training; non-bd. certified; treating basically younger and well individuals.

THE AMERICAN LEGION,
Washington, D.C., August 26, 1980.

Hon. STROM THURMOND,
Senate Committee on Veterans Affairs,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR THURMOND: The American Legion is appalled by the President's action on August 22 to veto H.R. 7102, the Veterans' Administration Health Care Amendments of 1980. We view the veto as a disservice to America's veterans and we endorse your efforts to override that veto.

This legislation, as approved by Congress, is an attractive proposal for several reasons. First, it substantially enhances the ability of the Veterans' Administration to retain qualified health care personnel by improving salaries, especially for those who are in critical medical specialty fields. Second, it enhances that agency's ability to recruit qualified personnel by establishing a scholarship program for medical and nursing students. Third, the Act's provision authorizing the Veterans' Administration to more closely scrutinize eligibility for free health care will produce cost-savings in fiscal year 1981 sufficient to fund the salary increases and the scholarship program authorized therein, with the Federal Treasury realizing an additional $57 million surplus.

It is our understanding that a major part of the President's rationale for vetoing H.R. 7102 was his belief that it would unfairly compete with DoD's efforts to recruit and retain qualified physicians. We reject this line of reasoning as being both inaccurate and insufficient to justify a veto.

The President's veto message made reference to comparative physician salary figures which, first, grossly misrepresented the facts in the case and, second, attempted to oversimplify the matter by failing to address all relevant arguments. One such argument deals with the attractiveness of military service in fringe benefit areas, items which are critical to any medical student's career decision. In fact, the message seems to imply that Congress failed to recognize the potential for competition between the two pay proposals—a particularly serious implication when one considers that both chambers have voted on two versions of the military physican proposal and this VA physicians proposal within the past six months.

The American Legion, having been a strong advocate of both physician packages, is convinced that each will effectively work toward its designed goal and that neither of them will significantly dilute the impact of the other. We, therefore, reiterate our support for the enactment of H.R. 7102 through your efforts to override the President's ill-advised veto.

Sincerely,

MICHAEL J. KOGUTEK,
National Commander.

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VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, D.C., August 25, 1980.

Hon. STROM THURMOND,
Committee on Veterans' Affairs,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: Needless to say, I was appalled when on Friday, August 22, the President vetoed H.R. 7102, the "Veterans' Administration Health-Care Personnel Act of 1980," particularly, in view of the cost-savings provisions therein of $109 million.

The President's rationale "that mid-career VA physicians could earn 30 percent more ($76,200 vs. $58,700) than the maximum authorized salary for Armed Forces physicians," is in my opinion a transparent coloring of the facts and untenable. The alleged 30 percent more for mid-career VA physicians is more than offset by fringe benefits available to Armed Forces health-care personnel in that a 20 percent savings in cash outlays is available through use of commissaries and exchange facilities and the additional 10 percent is easily offset by tax-free quarters' allowances for Armed Forces personnel as well as free medical care for their dependents. In addition, DOD recruitment is directed at medical school graduates serving their internship while, on the other hand, 58 percent of VA physicians are over 35 years of age and 50 percent are board certified.

On behalf of the 2.5 million men and women of the Veterans of Foreign Wars and our Ladies Auxiliary and all of our nation's 30 million veterans, I urge in the strongest possible terms override of the President's veto of H.R. 7102.

Sincerely,

T. C. SELMAN,
Commander-in-Chief.

DISABLED AMERICAN VETERANS,
Washington, D.C., August 25, 1980.

Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: On Thursday of last week, Jimmy Carter appeared before a National Convention of the American Legion and publicly declared his gratitude to those who have served in our nation's Armed Forces. He reaffirmed the support of his Administration for federal programs designed to care for our nation's veteran population. Less than 24 hours later, President Carter *vetoed* H.R. 7102, the Veterans' Administration Health Care Personnel Act of 1980.

I am appalled and shamed by what I consider to be the most unparalleled display of hypocrisy ever committed by a President of the United States.

It is no secret that the quality of VA health care has suffered tremendously under the Carter Administration. Thousands of VA hospital beds have been slashed from the system, the ranks of direct health care personnel have become demoralized and decimated, medical research in the VA is at a standstill, untold numbers of veterans have had their health care entitlements reduced or been denied medical treatment and services outright, etc. The litany is almost endless.

And now this latest affront to all those who have ever donned a military uniform of the United States.

At a time when our VA hospitals have over 900 vacancies for full-time physicians and 4600 vacancies for full-time nurses which it cannot fill, at a time when 500 of our ever-decreasing number of VA hospital beds lie idle because there is no one to staff them, Jimmy Carter characterizes a bill that would enable the VA to recruit and retain qualified physicians, dentists and nurses as being "unwarranted", "not essential" and "excessive".

Without a doubt, the veto of H.R. 7102 is the capstone in this Administration's policy of abandonment of VA health care.

By sending this measure to the White House, the Congress has graphically demonstrated that it has not abandoned VA health care, that it has determined that our VA hospital system shall remain a strong and vibrant national resource.

I urge that you vote to override the President's veto of H.R. 7102.

Sincerely yours,

STAN PEALER,
National Commander.

Mr. THURMOND. Mr. President, I express the hope that this Senate will have the courage to override this veto. The House has just overridden it by a vote of 401 to 5. This Senate ought to override it. It is not right. The veterans are entitled to the provisions of this bill. I hope the Senate will override it and see that those veterans get that benefit.

Mr. MATHIAS. Mr. President, last Friday, August 22, President Carter vetoed a much-needed piece of legislation, the Veterans' Administration Health-Care Amendments of 1980, H.R. 7102. This bill is designed to improve the quality of health care for our veterans by promoting the recruitment and retention of vital medical personnel, establishing a geriatrics and gerontology advisory committee, and strengthening the VA's ability to recover costs of care and services provided for non-service-connected disabilities. The President focuses on title I, relating to recruitment and retention of personnel, as the major reason for vetoing the bill.

Although the President, in his veto message, expresses support for insuring that the "health care provided to our veterans is the finest in the world," a position which I vigorously support, his veto would have the opposite effect. The provision of quality health care relies to a great extent on having adequate numbers of qualified personnel to furnish that care. But the VA system, with its uncompetitive salary structure, is becoming increasingly unable to attract and keep qualified health care professionals. The number of full-time physician vacancies tripled during the 12-month period from April 1979 to April 1980.

In the past, the VA has relied on interim special pay provisions while a permanent salary structure could be provided. Now, when the Congress approves legislation which makes significant progress in this direction, the President vetoes the bill. We must act to reverse the decline in the quality of health care provided to our veterans caused by the personnel shortages in the VA. I urge my colleagues in the Senate to override the President's veto of this legislation and reverse this trend.

Mr. JAVITS. Mr. President, last Friday, August 22, the President vetoed H.R. 7102, the Veterans' Administration Health-Care Amendments of 1980 because of provisions it contains authorizing special pay programs for physicians and other health care providers in order to provide for improved recruitment and retention of health personnel in the VA health-care system. Mr. President, I disagree with the President's view on this bill and feel that the special pay programs authorized in the legislation are vitally necessary to insure the availability of high quality health care services to our Nation's veterans.

The President's major reasons for vetoing the bill included:

First, the bill represented an unnecessary expenditure of $80 million per year;

Second, current salary levels and benefits are adequate to recruit and retain health-care providers into the VA health-care system; and

Third, the pay provisions are so generous that a midcareer VA physician could earn 30 percent more than the maximum authorized annual salary for Armed Forces physicians.

Mr. President, these arguments are simply incorrect. With respect to the President's first point, the CBO estimates that the special pay provisions would cost $31.7 million in fiscal year 1981 and $44.9 million in each of the next 4 fiscal years—not $80 million as the President suggested. Moreover, current salary levels and benefits are not adequate to recruit and retain health-care providers in the VA system. Veterans health facilities report widespread staff vacancies. In addition, roughly one-third of full-time VA physicians are alien foreign medical graduates. And the percentage of full-time board-certified physicians dropped from 49.3 percent in 1978 to 45.4 percent in 1979. Such statistics indicate, contrary to the President's assertion, that current salary levels and benefits are not adequate to meet the needs of the VA health-care system.

Finally, it is inaccurate to draw direct parallels between pay scales and benefits of military and VA physicians. For example, benefits such as free medical and dental care, commissary and PX privileges, certain tax advantages, and noncontributory retirement are enjoyed by military physicians and no VA physicians. Furthermore, the President's statement indicating that a midcareer VA physician could earn 30 percent more than the maximum authorized annual salary for Armed Forces physicians is simply incorrect. The maximum authorized salary for military physicians will be over $76,000 after the October military pay raise; under H.R. 7102 (effective January 1, 1981), the maximum a VA physician could receive is $77,610. Given the other benefits for military physicians which I discussed earlier, the military physician will continue to be compensated well above the VA physician.

Mr. President, I oppose the President's veto of this bill and urge my colleagues to override this action.

The PRESIDING OFFICER. All time has expired. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding? The yeas and nays are required and the clerk will call the roll.

Mr. CRANSTON. Mr. President, a parliamentary inquiry. A yea vote is a vote to override and a nay vote is a vote to sustain the veto. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. STENNIS. Mr. President, on this vote, I have a pair with the distinguished Senator from Washington (Mr. MAGNUSON) and the distinguished Senator from South Dakota (Mr. MCGOVERN). If they were present and voting, they would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. PRESSLER) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The yeas and nays resulted—yeas 85, nays 0, as follows:

[Rollcall Vote No. 382 Leg.]

YEAS—85

Armstrong	Glenn	Morgan
Baker	Goldwater	Moynihan
Baucus	Hart	Nelson
Bayh	Hatch	Nunn
Bentsen	Hatfield	Packwood
Biden	Hayakawa	Pell
Boschwitz	Heflin	Percy
Bradley	Heinz	Proxmire
Bumpers	Helms	Pryor
Burdick	Hollings	Randolph
Byrd, Harry F., Jr.	Huddleston	Riegle
Byrd, Robert C.	Humphrey	Sarbanes
Cannon	Inouye	Sasser
Chafee	Jackson	Schmitt
Chiles	Javits	Schweiker
Cochran	Jepsen	Simpson
Cohen	Johnston	Stafford
Cranston	Kassebaum	Stevens
Culver	Kennedy	Stevenson
Danforth	Laxalt	Stone
DeConcini	Leahy	Thurmond
Dole	Levin	Tower
Durenberger	Lugar	Tsongas
Durkin	Mathias	Wallop
Eagleton	Matsunaga	Warner
Exon	McClure	Williams
Ford	Melcher	Young
Garn	Metzenbaum	Zorinsky
	Mitchell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stennis, against.

NOT VOTING—14

Bellmon	Long	Roth
Boren	Magnuson	Stewart
Church	McGovern	Talmadge
Domenici	Pressler	Weicker
Gravel	Ribicoff	

The PRESIDING OFFICER. On this vote the yeas are 85 and the nays zero. Two-thirds of the Senators present and voting having voted in the affirmative, the bill, on reconsideration, is passed, the objections of the President of the United States notwithstanding.

UNANIMOUS-CONSENT AGREEMENT—MILITARY PROCUREMENT CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 4:45 p.m. today, the Senate proceed to the consideration of the military procurement conference report, if the papers have arrived by then, and, if not, upon their arrival, and that there be 30 minutes time limitation on the report, 15 minutes under the control of Mr. PROXMIRE, and 15 minutes under the control of Mr. STENNIS.

Mr. METZENBAUM. I had told Senator STENNIS that I would like to comment about an amendment they dropped out of the bill. It is not a matter at issue, but I would like about 7 minutes.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HEINZ. Reserving the right to object.

Mr. TOWER. Reserving the right to object.

Mr. ROBERT C. BYRD. Mr. President, Mr. METZENBAUM wants 10 minutes.

Mr. METZENBAUM. Ten minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be 40 minutes to the side, 40 minutes to be controlled by Mr. TOWER, 15 minutes by Mr. STENNIS, 15 minutes by Mr. PROXMIRE, and 10 minutes by Mr. METZENBAUM, on the military procurement conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980

Mr. PROXMIRE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2719.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2719) to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes.

(The amendment of the House is printed in the RECORD of August 22, 1980, beginning at page H7584.)

Mr. PROXMIRE. Mr. President, I move that the Senate disagree on the amendment of the House, and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. TSONGAS) appointed Mr. PROXMIRE, Mr. WILLIAMS, Mr. CRANSTON, Mr. GARN, and Mr. TOWER, conferees on the part of the Senate.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

The Senate continued with the consideration of S. 2718.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I would like to inquire about amendments to the export bill.

The Senator from Virginia (Mr. HARRY F. BYRD, JR.) has an amendment. Would the Senator agree to a time limitation?

Mr. HARRY F. BYRD, JR. Ten minutes.

Mr. ROBERT C. BYRD. Ten minutes, equally divided, on the amendment of the Senator from Virginia (Mr. HARRY F. BYRD, JR.).

Mr. PROXMIRE. As the Senator knows, I have an amendment and I do not want a time limitation on that amendment.

Mr. ROBERT C. BYRD. All right.

Mr. President, I ask unanimous consent that there be a time limitation of 10 minutes on the amendment by the Senator from Virginia (Mr. HARRY F. BYRD, JR.) equally divided.

Mr. HEINZ. Reserving the right to object—

Mr. ROBERT C. BYRD. It is an amendment which the Senate has adopted on a previous occasion. As a matter of fact, it is an amendment which I offered.

I temporarily withhold my request.

Would Mr. METZENBAUM be agreeable to a time limitation on his amendment? I have discussed it with him, and earlier——

Mr. METZENBAUM. I do not want to agree to a time limitation. But I give assurance that when the Proxmire amendment is concluded and I call up my amendment, that I do not contemplate being involved in a lengthy discussion.

But there are some others who are cosponsors with me on the subject and I prefer not to enter into a time agreement.

Mr. ROBERT C. BYRD. All right.

Then Mr. PROXMIRE has an amendment, Mr. METZENBAUM has an amendment, and Mr. HARRY F. BYRD, JR., has an amendment.

Does any other Senator have an amendment?

Mr. PROXMIRE. Senator MORGAN has an amendment pending.

Mr. ROBERT C. BYRD. Yes. Rather than the pending amendment by Mr. MORGAN.

Then, may I say that it is hoped by the leadership that the Senate can move along and expedite action on this measure. It is the intention of the leadership to be in late today until the measure is finished.

Several Senators addressed the Chair.

UP AMENDMENT NO. 1536

Mr. STEVENSON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the amendment offered by the Senator from North Carolina.

Mr. STEVENSON. Mr. President, the Senator from North Carolina has been a strong supporter of exports. He has been one of the principal architects of this bill.

We did not, in approving it in com-

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mittee, have any intention of preempting the States.

I, therefore, am prepared to accept his amendment.

I yield to the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I will agree with my colleague from Illinois in this matter.

Mr. PROXMIRE. Mr. President, before we act on the amendment, I want to be sure we are in a position to hold this amendment in conference. I have no illusions about the conference. I expect to be a member of the conference, inasmuch as the measure emerges from our committee. I have had a chance to observe the position taken by other members of the committee, and I hope we are going to sustain this amendment.

A rollcall vote would be one way of doing it, but I do not want to delay the Senate with a rollcall vote on this amendment. Since I take it there is unanimity and I understand that both the Senator from Illinois and the Senator from Pennsylvania support this amendment, I hope they will do their best to sustain it in conference.

Mr. STEVENSON. I support the amendment. I have indicated earlier that I believe there is a preferable way of handling this matter. I have every intention of supporting the wishes of the Senate and will always do so in conference. I hope that if this bill is passed, we can expect the same of the distinguished Senator from Wisconsin, in conference, with respect to all the provisions of the bill.

Mr. HEINZ. Mr. President, if the Senator will yield, I believe that the Senator from North Carolina has focused on a very important issue with his amendment, and I certainly support what he is trying to do.

I can say with great sincerity that this is a legitimate amendment, a legitimate issue for us to consider, and I believe that the Senate position is something we should uphold in conference.

Mr. PROXMIRE. I thank the Senator.

Once again, I am not going to ask for a rollcall vote on this one, but I hope we can vindicate the trust that the Senator from North Carolina is placing in us by not asking for a rollcall vote. I believe we would have a virtually unanimous vote, since the managers of the bill support it, but I hope we can translate that into keeping it in the final bill.

Mr. MORGAN. I thank the Senator from Wisconsin and the managers of the bill. I believe that, with their support, it would be unanimous; and in the interest of time, I will not ask for a rollcall vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from North Carolina.

The amendment (UP No. 1536) was agreed to.

UP AMENDMENT NO. 1537

(Purpose: To limit the funds authorized for the operation of the Senate in Fiscal Year 1981)

Mr. HARRY F. BYRD, JR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Virginia (Mr. HARRY F. BYRD, JR.) proposes an unprinted amendment numbered 1537:

At the end of the bill, add a new section.

"Sec. . In the fiscal year beginning October 1, 1980, the aggregate amount of funds made available to the Senate shall not exceed 90 per centum of the aggregate amount of the funds made available for such purposes for the fiscal year beginning on October 1, 1979."

Mr. HARRY F. BYRD, JR. Mr. President, this amendment requires a reduction of 10 percent in the cost of operation of the Senate. It is identical to an amendment I offered on June 2, 1980, as modified by an amendment in the second degree by the distinguished majority leader. This modified amendment was agreed to in the Senate on a rollcall vote of 82 to 1, and the amendment I have just sent to the desk is the precise amendment which was approved by the Senate at that time.

As I see it, it is essential that there be a cutback in the huge growth of Federal spending.

In my view, the projected spending total in the first concurrent budget resolution for 1981, which we passed in June, was far too high at $613 billion. Already, the administration and the Budget Committee are advising us that the total will be at least $21 billion higher than that.

In the reduction of Federal spending, the legislative branch should set an example for the Government and the Nation.

The amendment I have presented would require that the aggregate of funds made available to the Senate in 1981, including such items as funds for each Senator to operate his office, for employment and travel, and for committee operations, be held to 90 percent of the level authorized for such purposes in the current fiscal year of 1980.

I understand that outlays for the Senate and its committees for these purposes amount to approximately $210 million for the current year, so the reduction could reach $21 million. However, it probably will be less, because some Senators—myself included—do not use their full entitlement for expenses.

The amount involved, in terms of a total Federal budget of $634 billion, is not particularly significant. But the step being urged here is significant, because it is a matter of the Senate setting an example in the fight against inflation.

Mr. President, I hope this amendment will be approved overwhelmingly by the Senate, as it was approved overwhelmingly on June 2 of this year.

I reserve the remainder of my time.

Mr. HEINZ. Mr. President, I believe it is a mistake to clutter up this measure with nongermane amendments, and I really have grave reservations about opening any doors at all to nongermane amendments.

One mitigating factor in this instance is that, as the Senator from Virginia pointed out, this amendment has been adopted by the Senate by an overwhelming vote. Because that is the case, I do not see any reason to drag things out, and I am willing to accept the amendment, with the understanding that has been stated.

Mr. STEVENSON. Mr. President, for that reason, and only that reason—namely, that it was adopted overwhelmingly in the Senate prior to this—I am willing to accept the amendment and take it to conference.

Mr. HEFLIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Virginia. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Are there other Senators who wish to vote?

The results was announced—yeas 81, nays 2, as follows:

[Rollcall Vote No. 383 Leg.]

YEAS—81

Armstrong	Garn	Moynihan
Baker	Glenn	Nelson
Baucus	Hart	Nunn
Bayh	Hatch	Packwood
Bentsen	Hatfield	Pell
Biden	Hayakawa	Percy
Boschwitz	Heflin	Proxmire
Bradley	Heinz	Pryor
Bumpers	Helms	Randolph
Burdick	Hollings	Riegle
Byrd, Harry F., Jr.	Huddleston	Sarbanes
Byrd, Robert C.	Humphrey	Sasser
Cannon	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Jepsen	Simpson
Cochran	Johnston	Stafford
Cohen	Kassebaum	Stennis
Cranston	Lavalt	Stevenson
Culver	Leahy	Stone
Danforth	Levin	Thurmond
DeConcini	Lugar	Tower
Dole	Mathias	Wallop
Durenberger	Matsunaga	Warner
Durkin	McClure	Williams
Eagleton	Melcher	Young
Exon	Metzenbaum	Zorinsky
Ford	Mitchell	
	Morgan	

NAYS—2

Stevens	Tsongas

NOT VOTING—17

Bellmon	Javits	Ribicoff
Boren	Kennedy	Roth
Church	Long	Stewart
Domenici	Magnuson	Talmadge
Goldwater	McGovern	Weicker
Gravel	Pressler	

So Mr. HARRY F. BYRD, JR.'s amendment (UP No. 1537) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I know of only two more amendments, I believe, those of Mr. PROXMIRE and Mr. METZENBAUM. I am told by Mr. PROXMIRE that his amendment will take a good while—3 or 4 hours?

Mr. PROXMIRE. At least.

Mr. ROBERT C. BYRD. So I suggest that Senators schedule their day accordingly. It will be a long day and a long session because it is the intention of the leadership to finish the bill today.

I hope we will not have to go too late, but I suggest that Senators not be under any illusions. The Senate will be in late in order to finish this bill.

Several Senators addressed the Chair.

Mr. GLENN. Mr. President, I rise to urge my colleagues to vote in support of S. 2718, a bill to encourage exports by facilitating the formation and operation of export trading companies. The purpose of this bill is to improve U.S. export performance at a time when American companies are facing vigorous competition in the international marketplace. From every corner of the world, Government planning and financing of foreign trade challenges the resources of American firms. To meet this challenge, American companies must organize the most efficient business operations possible. We in Government must do what we can to help American business meet this challenge. We can no longer sit idly by while American firms lose their competitive edge. We must act now to free the adventurous spirit of American enterprise from the yoke of tax laws and Federal regulations that limit its resourcefulness.

One way in which we can do this is by facilitating the formation of trading companies. The trading company is not a new idea. It is as old as commerce itself and has enjoyed great success in other countries. In Japan, for example, the top 10 trading organizations, the Sogo Shoshas, account for approximately 60 percent of Japan's imports and 50 percent of its exports. Trading companies have also played an important role in the economic growth of many European countries. Yet, despite their historical and international success, trading companies have not flourished in the United States.

There are several reasons—both economic and legal—for this failure. It is my contention that the economic conditions no longer prevail and that the legal restraints are outdated as well. First, we have been generally self-sufficient for the bulk of our economic needs throughout our Nation's history. Second, the industrial revolution occurred early in our history and its effects spread quickly. This made the acquisition and distribution of goods easy and further reduced our dependence on foreign trade. Third, the large size of our domestic market meant that American businessmen had ample growth opportunities close at hand and with relatively low risks involved. These factors, all product of our unique geographic and economic heritage, limited the attractiveness and need of foreign trade companies. These unique conditions no longer prevail. The interdependence and competitiveness of the world market make it impossible for the United States to sustain its economic growth while operating on out-dated notions of resource self-sufficiency in limited domestic markets. We must acknowledge and respond to the very real international challenges that confront us in foreign trade.

Unfortunately, Federal laws and regulations limit our ability to respond to these new challenges. For example, Government regulations prevent U.S. banks from offering many important trading services. In addition, antitrust uncertainties deter many U.S. firms from cooperating with other U.S. producers in their organization of export activities. These restrictions are anachronisms. They hamper American firms at a time when foreign governments are cooperating with and, in many instances, subsidizing and directing the efficient operation of export trade. These restrictions cost American businessmen opportunities abroad and cost American workers jobs at home.

Mr. President, S. 2718 addresses many of these obstacles and facilitates the formation and operation of export trading companies. It accomplishes this by allowing banking organizations to play a significant role in the future success of American export trading companies. In the past, many small- and medium-sized firms found foreign markets difficult to penetrate and too costly to do business in. Bank participation will enhance opportunities for small- and medium-sized firms to export their products by giving them access to the capital, financing and financially-related services and marketing capacities which U.S. banking organizations can provide.

While the degree of future bank participation in export trading companies, and the forms that such participation may take, remain unclear at this point, section 105 of the bill sets certain limitations on the level of involvement permitted banking organizations that invest in or finance these companies.

S. 2718 permits banking organizations to invest up to $10 million in one or more export trading companies without prior regulatory agency approval as long as that investment does not amount to control. Investments in excess of $10 million, or any investment or action which amounts to control of an export trading company, must be approved by the appropriate Federal banking agency.

The bill sets an overall limit on a bank's involvement by prohibiting the total cost of its direct and indirect investments in and loans to an export trading company from exceeding 10 percent of the bank's capital and surplus. Total equity investment by a bank in one or more trading companies cannot exceed in the aggregate 5 percent of the bank's capital.

Some have argued that these restrictions do not go far enough, that banks should not be allowed to gain control of an export trading company, an innovation that would represent a substantial departure from the long-established separation of banking and commerce in our economic system. They fear that the public's deposits may become exposed to undue risk if banks acquire ownership control of trading companies.

Legitimate questions concerning the scope of bank participation do merit careful consideration. With their international offices, experience in trade financing, and familiarity with domestic U.S. producers, banks will be likely sources of leadership in forming export trading companies. But I feel that S. 2718 includes important safeguards which not only insure against any unsound banking practices, but also insure against any unfair competitive advantages accruing to a trading company or export trade service firm with a bank investor.

A specific provision of the bill prohibits banks from extending credit on a preferential basis to an export trading company in which it has an equity interest. This subsection meets a traditional concern of U.S. policy that banks not favor their affiliates in lending practices. But even without the inclusion of this provision, the Financial Institutions Regulatory and Interest Rate Control Act of 1978 already provides safeguards against such unfair competitive advantage to banking institutions.

The 5-percent limit placed on total equity investments and the 10-percent limit placed on a bank's total investments in or financing of trading companies protect banking organizations from overexposure. I see no harm in allowing a bank to own a trading company as long as such limitations exist. In fact, I think it is wiser to permit banks to have equity and management control over their affiliate relationships rather than to have that capital exposed to decisions by majority nonbank partners. Banking organizations would probably be more inclined to form export trading companies if they can control their investments. Such investments would also be a long-term incentive for them to establish the additional framework needed to provide a complete range of export services.

In addition, S. 2718 stipulates that any proposed or existing investments by banking organizations in trading companies may be terminated by the appropriate Federal regulatory agency upon its determination that the ownership or control of any such investment constitutes a serious risk to the financial safety, soundness or stability of that bank. I believe that these limitations, when combined with the banking agencies' broad regulatory, supervisory, and examination powers and existing legal restrictions, such as on loans to affiliates, assure that this legislation will not create a serious risk to the safey and soundness of bank participation in export trading companies.

I support this bill because I firmly believe that we in Congress must finally recognize the link between international trade and domestic prosperity. This link is especially clear in my home State of

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Ohio. Nationally, Ohio ranks fourth in manufactured exports, ninth in agricultural exports and first among the States in jobs related to exports. More than 1 out of every 8 Ohio jobs in the manufacturing sector is dependent on export markets and the produce from 1 of every 3 acres of Ohio farmland is exported.

Unfortunately, exporting remains principally the domain of large corporations with strong marketing staffs and financial backing. There are many firms and financial institutions in the State of Ohio with great potential as participants in the formation of trading companies. I am hopeful that this bill and other trade-related legislation before the Congress will aid their efforts to increase exports from our State.

The challenge before us is clear. Improving our export performance is one of this Nation's most critical economic priorities and cooperation between business and Government is a critical ingredient in any comprehensive national effort to bring this about. For this reason, and in light of my previous comments, I urge my colleagues to oppose any amendments that would restrict the operation of export trading companies and to support S. 2718 as reported.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, first, I want to make it clear that the only difference between the Senator from Illinois, the Senator from Pennsylvania and myself is on the procedures here. It is not on the substance. What I want to do is to have this legislation administered by a single authority. I am perfectly willing to have the Examination Council, which includes the FDIC and the Comptroller and the Federal Reserve Board, make a decision. But I think we should concentrate it. I do not think it should be scattered and diffused, because if we do that we will have inconsistency, and if we do that I think there is likely to be competition and laxity, and if we do that I think it is much more likely that we are going to have a situation in which the banks may well become involved—much more likely that they will be involved—in commerce under circumstances that are unnecessary. That is all that is separating us.

Mr. President, I still maintain, and I want to reiterate and emphasize the fact, that this bill is fundamentally founded on the erroneous premise that we have lagging exports. The fact is we do not have lagging exports. Our exports have increased twice as fast as the gross national product has increased since 1972, twice as fast.

I cannot think of any other major area, big area, involving tens of billions of dollars in the economy in which we have had that big an increase.

Exports have not been doing badly; they have been doing well in relationship to everything else in our economy. The gross national product measures everything, and exports, as I say, have been going up at an annual rate of 20 percent.

The gross national product has been going up at a rate of 10 percent. That is not an indication of a lag. It is an indication of an expansion.

Furthermore, Mr. President, as I pointed out earlier, and my good friend who now occupies the chair (Mr. TSONGAS) disagreed vigorously, gave good reason for disagreeing, but I once again reiterate the fact that this country's exports grew more rapidly than those of Germany during this time, more rapidly than those of Japan, more rapidly, of course, than those of the United Kingdom, more rapidly than Belgium or Sweden or Canada.

Mr. President, the fundamental notion on which this bill is bottomed is that our exports are not doing well and we have to gut our antitrust laws, we have to abolish a relationship with respect to our banks and the rest of the economy that has served us well for 100 years just is not substantiated by the facts.

The real problem—if we have a problem on exports, and I think we do—of course, is the declining productivity and inflation. I think all of us recognize that productivity has been sharply declining in this country, the rate of increase in productivity. As a matter of fact, in the last couple of years it has actually been declining not just in its rate of increase but it has been going down. A shocking kind of situation.

I have on my door a chart that compares the increase in productivity in this country over the last 20 years. In the first place, the period ending 10 years ago and, in the second place, the period ending in 1979. It shows that in both periods the United States increase in productivity was behind every other developed country in the world. It shows that the decline for all countries, unfortunately—all the free countries—has been substantial, but the decline on the part of the United States has been virtually catastrophic.

There is nothing here that will increase our productivity. That is what we have to do. We have a program for increasing productivity. We have a program for decreasing the burden the Federal Government represents on the Government and decreasing taxes. That will help improve our export performance as well as curbing imports. But gutting our antitrust laws and inviting the banks to step in to commerce certainly will not help.

Mr. President, this act is a bill which, as I have said—and I repeat—I may support if amendments are adopted to safeguard the risks inherent in bank control of export trading companies and if the Antitrust Division of the Justice Department is not stripped of its jurisdiction to administer antitrust laws governing joint ventures of U.S. companies doing foreign trade. But I am convinced that this bill has made no progress. Once it passes here, it has to go over to the House of Representatives and be considered there. There are a number of Congressmen in the House—far more than in the Senate—who are very skeptical about this bill. If it is going to become legislation this year, I think we need to develop a consensus on it here in the Senate.

Who opposes this bill? The Federal Reserve and the Federal Deposit Insurance Corporation, two of our three principal regulatory agencies, oppose the bill as drafted. How about the banking profession? If you could argue that the banking profession was solid, that the bankers supported the bill, you might have a strong argument. But the fact is that most of the bankers—the Independent Bankers Association, representing virtually all of the small- and middle-size bankers in the country—oppose the bill as drafted, as I am going to document.

As we have indicated previously, those small businessmen now engaged in export trade, particularly the export associations, appeared before our committee in the last hearings that we had and opposed the bill as drafted.

Mr. President, I will not oppose reasonable efforts to increase exports. I want to throw out the bathwater, but I do not want to throw the baby out with the bathwater.

The separation between banking and commerce and the enforcement of the antitrust laws has served this Nation and our free economy well. I wonder if any Senator really wants to gut our antitrust laws in order to establish institutions called export trading companies.

We need to take care in this legislation that, in permitting banking organizations to overstep the bounds between banking and commerce, we build in protections and we build those in in a significant way, guarding against undue risks for the banking system and conflicts of interest in the granting of credit by financial institutions.

We also need to take care in this legislation that associations of American companies engaged in foreign trade will not complicate our foreign relations and will not substantially and adversely affect U.S. commerce.

(Mr. MITCHELL assumed the chair.)

Mr. PROXMIRE. Mr. President, in a previous colloquy that I had with the Senator from Massachusetts, Senator KENNEDY, we pointed out that if this bill passes it could discourage other countries from trying to establish effective antitrust laws and to secure the kind of competition that has been the great boon for this country. Because this legislation encourages price fixing. And I quoted from the reports and from the legislation itself to show where and how it does that.

It encourages fencing off certain areas for exclusive handling by particular concerns. It shifts the administration of the antitrust laws to the Commerce Department from the Justice Department respecting trade. Now, that just will not do.

What does the Commerce Department know about the antitrust laws? No experience with it. The Justice Department has the expertise, they have the experience, and they have established a reputation of being champions of free enterprise and competition.

We know there is always a temptation on the part of every competing business-

man to reduce competition. I have been in business long enough to want to do that myself. Adam Smith was absolutely right that any time you get the competitors together, businessmen or competitors together, you can expect a conspiracy in the restraint of trade. It is the most natural thing in the world. It is the way business operates and businessmen themselves will admit that.

That is why it is vitally important that we do everything we can to maintain the integrity of our antitrust laws and why we cannot do that if we are going to shift administration of the antitrust laws from the Justice Department which, as I say, developed a clear and well-respected adverse position, and shift that instead to the Commerce Department, which is the one department in our Government which has a responsibility for representing business, the interests of business, and promoting business.

I do not think anybody, any fair-minded person, would say, under those circumstances, that the administration of the antitrust provisions with respect to trading companies would be in the hands of an objective, concerned agency that would fight to protect competition if we move it, as the bill does, to the Commerce Department.

Mr. President, the controversy concerning bank participation comes down to the circumstances in which banking organizations may be permitted to control export trading companies. As I say, the Federal Reserve and the FDIC believe that control carries with it a commitment to the enterprise that goes beyond the capital commitments. Export trading companies engage in high-risk ventures. If banks are to control export trading companies, the risk must be reduced, along with potential for conflicts of interest.

Along with the Senator from Texas, Senator TOWER, the Senator from Massachusetts, Senator KENNEDY, and the Senator from Ohio, Senator METZENBAUM, I intend, at a later date, to offer printed amendment numbered 2276, which will alleviate the concerns I have expressed by permitting banking organizations control of export companies subject to the standards designed to minimize the risks and conflicts of interest.

Mr. President, the antitrust provisions of this bill are not only the concern of a few Senators, they are the concern of people who have been most deeply and directly involved in the export business.

I received a letter from the president of the International Commodities Export Corp. That man is Mr. E. S. Finley.

Mr. Finley's letter was written in July. It is a remarkable letter, because he, of course, is an expert in the export business. His firm lives by exporting. His firm has done a magnificent job in increasing their exports. I think that they know as much about the export business and how to increase exports as virtually anyone you can get.

What does he say? Let me read from his letter. He says:

> I am writing to you with regard to the legislative proposals aimed at stimulating U.S. exports and in particular with regard to those which would expand the Webb-Pomerene Act and its exemption in the antitrust laws.
>
> I founded this company 3 decades ago and have led it to a point where we play a significant role in the export of fertilizers and allied products. We were able to do this because we have paid attention to the forces of supply and demand; because we were willing to be competitive.

Mr. Finley underlines that:

> One measure of our success is the fact that, since 1948, U.S. exports have gone up 1,400 percent.

That is about fifteenfold:

> While our exports have gone up 9,200 percent.

In other words, this man is talking as an expert whose exports have increased more than six times as rapidly as U.S. exports generally. Obviously, he speaks from authority, he speaks from a position of success, he knows what he is talking about. He goes on to say:

> Surely, we have shown that we are in favor of expanding the U.S. export trade to which we have made such a contribution. We are, however, in favor of basing such expansion on increased—not restricted—competition.

Mr. Finley goes on to say:

> The purpose of this letter is to warn you of the dangerous features of any expansion of the antitrust exemptions under the Webb-Pomerene Act. I have testified in 1978 before the National Commission for the Review of Antitrust Laws and Procedures (copy enclosed). I have also presented a policy statement before National Journal's Policy Forum in 1979 (copy enclosed). In both of these papers I have described a most typical of all Webb-Pomerene associations and have shown that contrary to the generally accepted concept, the expansion of the Webb-Pomerene Act's antitrust exemption will not stimulate an increase in our exports. This exemption was intended originally by Congress to enable small U.S. businesses to compete against European cartels. Contrary to this intent, this exemption has enabled, in fact, the large U.S. companies to form cartels of their own, most often in the areas where there is practically no foreign competition.

Of course, Mr. Finley is talking about the Webb-Pomerene Act in its present form. The situation would become far worse if we adopt the pending bill. He goes on to say:

> This exemption has discouraged, and not encouraged, competition and it will lead to further U.S. cartelization and control over the flow of U.S. exports. If exports are being restrained now (as they certainly are), they would be restrained even more if such bills were to pass.

He is talking about the bill pending before the Senate at this moment. Continuing:

> Moreover, the Webb-Pomerene associations benefitting from our antitrust exemptions are composed of members which, together, dominate also our domestic scene. Their immunized actions taken with respect to export pricing and quoting have a direct and adverse effect on the domestic market which they are able to influence simultaneously.

I think a lot of people should be struck by that because I think many feel that here is somebody talking about foreign trade and so our passing this bill may interfere with competition abroad. I have indicated the difficulty there. But what Mr. Finley points out is that this will have a perverse effect on competition within this country. As he points out, "Thus, our farmer, our worker, our tradesman, and, of course, our consumer, is forced to pay higher prices for the product."

He goes on to say:

> The 1967 FTC study and hearings on the operation of Webb-Pomerene conducted by the U.S. Senate demonstrated how little that Act and its antitrust exemption have done to encourage U.S. exports since 1916. To stimulate U.S. exports, we do not need the continuation and expansion of an act which encourages anti-competitive behavior.
>
> We need, instead, to recognize that our failure to gain our appropriate share of the export market is due to this very anti-competitiveness which, in turn, contributes dramatically to our overall declining productivity, inflation and much, much higher domestic prices of products.

Mr. President, this reinforces, certainly, the point I have been trying to make here, that the way to increase our exports is to improve our productivity. What Mr. Finley says, as an experienced and highly successful businessman, is that the passage of legislation of this kind will reduce competition, which I do not think anybody can deny it certainly will, and in doing so, of course, increase prices because the principal regulator we have of higher prices is competition. Those higher prices, of course, will increase inflation, increase prices in this country, and make it harder for us to sell abroad, not easier, as well, of course, as make it much harder for the consumer.

Then Mr. Finley points out:

> The companies who need it the least benefit from the anti-competitive blessing of Webb-Pomerene and have produced hordes of witnesses to testify about the desirability of continuing that blessing.

I have been in this body for 23 years and I love it and I have great respect for my colleagues, but we all know that when we are talked to by our friends at home, and the people who talk to us are the ones who have a stake and have a benefit in this, we listen. Of course, if we did not listen we would not be around here very much.

But there are times when we have to recognize that the testimony we get does not come from the consumers, it does not come from those who are interested in competition; it comes from people who want to reduce competition, it comes from people who perfectly naturally want to do their best to increase their profits by reducing competition as much as possible.

Mr. Finley points out:

> The general public who will be adversely affected cannot usually muster the resources to make its voice heard.
>
> Our export markets will expand with more—not less—competition. Companies such as ours can contribute to the give and take of the marketplace if they are allowed to. As my National Journal article illustrates all too graphically, the Webb-Pomerene associations operate by excluding such companies as ours from the marketplace so that prices can be set for export and domestically, and production can be restricted.
>
> A number of commissioners of the National Commission for the Review of Antitrust Laws and Procedures favored outright

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repeal of the Act. The majority decided that if any antitrust immunity should be granted, it should de minimis require a demonstration that the proposed association would not adversely affect either the domestic or international trade of the U.S.

I do not know anybody who has proposed that kind of safeguard. I have not proposed it. What I proposed is simply that the Federal Reserve be allowed to make a determination before they permit the export trading association to be owned by a bank; that is, more than 20-percent owned, that is essential to promoting exports. That is all we are asking, even though we know it would have an adverse effect on competition. We do not go nearly as far as Mr. Finley. I wish we could, but we are not going to. We offer an extraordinarily modest and limited amendment.

Mr. Finley concludes:

It is increased competition and increased productivity that represent the foundations on which to build an expanded export trade.

How true, Mr. President.

We are certainly not going to get it unless we improve productivity, unless we reduce inflation. As I say, the evidence we have indicates that whatever effect the Export Trading Act will have, it will be to increase inflation and reduce productivity.

Mr. President, I have here also a letter from the president of the Midland, Inc., which is an exporter, which also represents, as I say, an expert in the field. This man is named Leonard M. Goldstein. It is a letter to Senator METZENBAUM. He has this to say:

I am writing this letter to you because of your involvement in the Senate Sub-Committee reviewing legislation concerning the Export Trading Company. I have the feeling that my viewpoint will be received sympathetically, because I find that you traditionally represent my point of view on most issues, and your votes in the Senate would pretty much be mine if I were there instead of you. This is not too surprising, inasmuch as we received our educations at the same university and in the same fraternity house, only a few years apart.

Midland, Inc. is an Export Management Company and the writer has been involved in International Trade for 35 years. My experience in this field causes me to look with a great deal of skepticism at the legislation which would provide for Export Trading Companies.

While I am in complete agreement with the goals Congress seeks to achieve thru the Export Trading Company and other legislation designed to encourage U.S. export activity, I seriously doubt that your colleagues have zeroed in on the real source of the current problems and, therefore, I fear that you will fall far short of the mark in trying to solve them.

As you must know, up until a relatively few years ago, we traditionally enjoyed large, favorable trade balances and unlike almost all other developed nations of the world, principally Europe and Japan, international trade was not looked upon as an important factor in our economic well-being. True, when anyone bothered to examine the facts, they soon found that millions of Americans were employed as a result of our export trade; but certainly, with very few exceptions, most domestic manufacturers during the period of 1946 thru 1979, achieved generally favorable profit results without depending upon foreign trade. The Japanese Ministry of Foreign Affairs in their analysis concerning U.S. export competitiveness describes our country as the world's "biggest and most indifferent exporter". My own experience in dealing with literally dozens of small and medium sized American manufacturers, would certainly reinforce that description. Surely, no one can deny that our country has been a reluctant exporter.

Mr. President, this letter was written by a man who has been an exporter for 35 years, one who recognizes that we have been far too casual in promoting our exports and that we should and can do a far, far more effective job. Yet he says that this legislation is the wrong way to go.

He goes on to say:

If one were to try to isolate the single most powerful barrier to expansion of our export trade, it would be the relative indifference of the American manufacturer to the overseas market. I have found that even those companies that are most active internationally, invariably lean domestically when there is any kind of priority decision to be made. Very few American manufacturers are willing to design for and service foreign markets. A U.S. producer, who will readily risk hundreds of thousands, if not millions of dollars on new ventures, new products and new markets in the United States, becomes extremely conservative outside our borders. Incidentally, I would recommend your reading the Japanese report, which was prepared by the Japanese Embassy in Washington and is titled "Analysis of Selected Economic, Legal, Social and Organizational Factors Concerning the U.S. Exports, or Impairing U.S. Export Competitiveness."

The issue then it seems to me, Senator Metzenbaum, would be how do we get their attention—that is the attention of the American, small and medium sized manufacturer, to the potential profits available to him overseas. I really do not believe that there is any basis, in fact, for the proposal that says the Export Trading Company is the answer to our problem.

The Export Management Company is, and has been available for many years, to provide the expert services required to enable the small and medium-sized manufacturer to partake of the world market. The Export Trading Company, and specifically the involvement of banks in such companies, is fraught with danger. It seems to me that it sets up a classical conflict of interest when I approach my bank for funds to finance expansion of my export activities in competition with their own Export Trading Company operations. Furthermore, the Export Management Company, because of its very nature, which demands sensitivity and attentiveness to the needs of each overseas market, is in a far better position to provide positive results for the manufacturer, than this new, glamorous, well-financed (and I would guess ponderous and rigid as well), brain child of some large bankers.

There is either great naivete, or a complete lack of understanding, when the proponents of this legislation would have one believe that we should have the Export Trading Company because it has proven to be so successful in countries such as Japan and Germany. First of all, I am not aware of the Export Trading Company's existence in Germany as it operates in Japan, where it seems to be a very unique type of organization, filling the needs of that singular market. One needs to remember that Japan and Germany, as well as other European and Scandinavian countries, have depended, for their very existence, on international trade. There certainly are a great many other more valid factors that have been responsible for the success of those countries, in creating and maintaining a favorable balance of trade.

Finally, it seems to me that there are some things that Congress can do that will stimulate and influence American manufacturers toward greater interest and attention to the export markets of the world.

First of all, the most effective way to get the manufacturer's attention is to provide him the opportunity to earn more profit on the export sale than on the domestic sale. This is done in many ways by our competitors, most of them involving tax advantages or incentives. In some countries certain domestic taxes are waived on merchandise shipped overseas, and in others, different forms of tax benefits are provided the exporter.

Secondly, the overseas offices of the United States Department of Commerce must provide a great deal more service to the exporter than is done currently. In the late 1940's and 1950's, when I first entered the international field, the Department of Commerce provided exporters a great many facilities and services without charge. Today the services seem to have diminished, but now we pay for them. In comparison, I have found, because we also represent Canadian manufacturers, that the counterpart of our commercial attachés, working for the Canadian government, provide all kinds of specific and special services for the taxpayer. These include providing lists of potential customers, market-by-market, personal survey work and arranging for appointments between exporter and potential customers when the exporter visits a particular country. My experience has been that our Commerce people are usually overstaffed and underworked. Unfortunately, however, we are unable to just write a letter to the commercial attaché in Paris, describing a new kind of widget that we are manufacturing, sending him literature and price information and asking if he can provide us some assistance in putting us in touch with potential importers for the product.

In summary, therefore, it is my firm belief that it is not the Export Trading Company, or any other cosmetic types of activity which will change the image of the United States as an "indifferent exporter". Instead, it is going to take real profit incentives and meaningful assistance on the part of our staffs overseas, to turn this thing around. I am sure you know that oil prices mean that the United States, just as Western Europe and Japan, now has to be very, very much concerned about its export activity. The problems that have been created in the past seven years, with the advent of OPEC, will not be resolved by some surface-like creation of new organizations which are supposed to provide miracles.

Sincerely,

LEONARD M. GOLDSTEIN,
President.

Mr. President, I might say that I do not share the views of Mr. Finley and Mr. Goldstein completely. I think that, in general, they are experienced men in the field, highly successful men in the field. They obviously know what they are talking about. I think we should listen to their recommendations carefully. I happen to think that export trading companies can play an important role. I intend to introduce legislation to that end.

But I do not, as chairman of the Senate Banking Committee, want to be in the position of having them destroy the separation we have had for more than 100 years of banking and commerce. I think this is vicious. I think it can be very adverse to competition.

I think it will not be long before our constituents will be coming in and asking, "How in the world could you have voted for that bill? It puts me in competition with a competitor owned by a bank. In any kind of a credit crunch I cannot make out. He can get all the credit he wants, and obviously, I cannot."

That is just what the pending bill before the Senate would do. It is that kind of unfairness I am trying my best to correct as much as I possibly can.

Mr. President, I have read a letter from Mr. Finley. I qualified him as president and chief executive officer of a highly successful commodities export corporation.

I would like to now read from his testimony because it is very telling testimony before our Banking Committee on July 25 of this year.

Incidentally, this firm not only has had a vast increase, but they have an annual volume of close to a quarter of a billion dollars. So, obviously, he speaks with enormous success, as I say, and with vast experience in the field. He says:

Nobody can question the importance of increased exports to our economy. While those of the other industrialized countries frequently represent 20 to 40 percent of their gross national product, ours represent barely 10 percent. With a continuing annual trade deficit running into many billions of dollars, it is understandable that all of us are deeply concerned. Unfortunately, some well-meaning legislators and certain private interests are creating a climate of panic to gain quick acceptance of solutions which eventually will hurt our country much more than the current deficits. Indeed, I am sad to note that Congress can only come up with a bill to encourage the creation of U.S. "trading companies" and expanded antitrust exemption of U.S. export activities by amendment of the Webb-Pomerene Act.

These voices are simply saying that if we will allow virtually unbridled price fixing, with immunity under antitrust laws, our failure to export a substantial share of our gross national product will have been corrected. I am chagrined by this bill as a business man, as an exporter, as an entrepreneur and as an economist.

For the past two decades, we have been told over and over again that billions of dollars worth of potential annual export business is neglected because small and medium size producers are unable to develop foreign markets. We have also been told that only one in ten U.S. manufacturing firms sells abroad. We are told that this new legislation would help materially to get these small producers to export. The fallacy of it is that the world has changed in the last quarter of a century and even the developing and under-developed countries now have local industries which can produce the needed goods we are talking about and therefore, in most cases, make it almost impossible for the U.S. to succeed in such exports. We are also told that important service contracts abroad elude our major contractors.

But there is nothing in our antitrust laws that prevents our major contractors to join together in projects.

This highly publicized bill, S. 2718, tells us that we should go the OPEC way. My personal experience tells me otherwise. One measure of the success of my company is the fact that, since 1948, U.S. exports have gone up 1,400 percent, while our own exports have gone up 9,200 percent. We did not need any protective devices or legislation to do this. We were able to do it because we paid close attention to the forces of supply and demand and because we were willing to be competitive. Surely, we have shown that we are in favor of expanding U.S. exports by making this contribution over the years. We are in favor of further expansion, but we believe that such expansion should be on the basis of increased, and not restricted, competition.

The purpose of my coming here is to warn this committee of the dangerous features of any expansion of the antitrust exemptions under the Webb-Pomerene Act. I have testified in 1978 before the National Commission for the Review of Antitrust Laws and Procedures. I have also presented a lengthy policy statement before the National Journal's Policy Forum in 1979.

I have testified before the Subcommittee on Foreign Commerce of the Committee on Commerce on S. 2754 in January, 1972.

In many of these papers, I have described typical Webb-Pomerene associations and have shown that, contrary to the generally accepted concept, the expansion of the Webb-Pomerene Act's antitrust exemption—

Which is, of course, what the pending bill does. Continuing:

Will not stimulate an increase in our exports. As we all know, this exemption was intended by Congress originally to enable small U.S. businesses to compete against the then prevailing European cartels. Contrary to this intent, this exemption has enabled, in fact, large U.S. companies to form cartels of their own, most often in the areas where there is practically no foreign competition.

Moreover, this exemption has discouraged, and not encouraged, competition and has led, and continues to lead, to further U.S. cartelization and control over the flow of U.S. exports. If exports are being restrained now, as they certainly are, they would be restrained even more if such bills were to pass. The most disturbing fact about all this is that the Webb-Pomerene associations benefitting from antitrust exemptions are composed mostly of members which, together, dominate also our domestic scene. Their immunized actions taken with respect to export pricing and setting quotas have a direct and adverse effect on the domestic market which they are able to influence simultaneously.

Mr. President, I think that is a very serious charge. It is a charge that should concern us because it means, of course, prices are going to be higher for consumers, it means we are enfeebling the forces of competition by undermining the antitrust laws, and it means that the legislation we are adopting here, in the long run, far from helping our exports, will hinder them because, as I say, the basic problem with the American economy today is inflation.

We all know that if we can increase productivity and reduce inflation we will increase our exports and do other things even more important. But we cannot do that if we are going to undermine the principal institutional provision we have now in the law in this country, the antitrust laws which enforce competition.

It is fascinating. We hear lots of talk on inflation and how we can cope with it by holding down Federal spending, by getting agreement on the part of the workers not to demand such high wages and salaries. We get many other suggestions, including wage and price controls. Some of these suggestions are constructive. I believe that holding down the budget and holding down wage increases can be helpful. But by far the most effective way we can combat inflation is to stimulate and encourage competition every way we know.

Our principal weapon in this regard should be the antitrust laws. It does not make any sense, when the No. 1 problem of our economy, the No. 1 issue facing us, when we go home and talk to our people, is inflation. We know that we are in the worst inflation we have been in during the peacetime history of our country.

Last month, inflation happened to be zero, for 1 month. Everybody knows that was a phony. The underlying rate of inflation is at least 9 percent, probably 10 percent. It was higher than that a while ago and can go much higher again.

For us to adopt legislation here that is going to aggravate inflation, in the judgment of the best experts we can get to testify on it—people who have had the greatest experience in the field—does not make any sense.

I continue to read from the testimony of Mr. Finley:

Thus, our farmer, our worker, our tradesman and, of course, our consumer, is forced to pay higher prices for the product.

The 1967 FTC study and hearings on the operation of Webb-Pomerene conducted by the U.S. Senate demonstrated how little that Act and its antitrust exemption have done to encourage U.S. exports since 1916. To stimulate U.S. exports, we do not need the continuation and expansion of an act which encourages anti-competitive behavior.

We need, instead, to recognize that our failure to gain our appropriate share of the export market is due to this very anti-competitiveness which, in turn, contributes dramatically to our overall declining productivity, inflation and much, much higher domestic prices of products.

The companies who need it the least benefit from the anti-competitive blessing of Webb-Pomerene and have produced hordes of witnesses to testify about the desirability of continuing that blessing. The general public who will be adversely affected cannot usually muster the resources to make its voice heard.

DEFENSE AUTHORIZATIONS, 1981—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the conference report on the military procurement bill. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6974) to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize military training student loads, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

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The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 18, 1980.)

Mr. STENNIS. Mr. President, I understand that there are 40 minutes to each side. The 40 minutes of the so-called opposition will be under the control of the Senator from Texas (Mr. TOWER). On the other side, 15 minutes will be under my control, 15 minutes are allotted to Senator PROXMIRE, and 10 minutes are allotted to Senator METZENBAUM.

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. Mr. President, I will take a few minutes with respect to this matter, and then we can yield time.

The conference report on H.R. 6974, the fiscal year 1981 defense authorization bill, is fully endorsed by me and all other Senate conferees, each of whom has signed this report.

We had an active, vigorous conference, with all 17 members of our committee serving as conferees. I asked that they be appointed because all had taken an active part, sometimes a vigorous part, in the writing of this bill.

This bill adds up to the largest number of dollars of any military authorization bill ever presented to the Senate. The bill has been under the process of construction and refinement for many months. There have been hearings, rehearings, and subcommittee hearings—more than 45 of them by our committee and subcommittees—and a similar effort was made in the House of Representatives. We had approximately eight long sessions among the conferees as well as additional meetings among subunits of the conferees. Our Defense Appropriations Subcommittee has had 18 hearings. During all this time, we had two or three debates on the budget resolution.

Mr. President, I particularly thank all members of our committee, including the subcommittee chairmen and the ranking minority members, for the splendid work they did in dealing with this matter.

As an indication of how many items are to be considered in this bill, there were 700 differences between the House bill and the Senate bill when we started our conferences. A great deal of work went into the bill by highly competent staff members, and I especially thank Mr. Hugh Evans, who is the senior legislative counsel member of the Senate group. He is not a member of our staff directly, but he did a world of work in connection with this matter.

Mr. President, I do not have much time, and I do not believe much time is needed. This bill is a new start, we might say, with reference to the most modern weaponry that science and money can provide—ships, aircraft, tanks, missiles, and other weapons of all kinds. It is really a source of pride to think that we do have the ability and knowhow—and so far we have the money—to provide such a massive array of military power.

I believe that the most serious problem connected with our defense is the shortage of certain types of U.S. military manpower. Frankly, I am disappointed that we do not have a system to get enough of the necessary manpower to carry out what we need and to handle the complex military weaponry we have. Recent years have brought about a weakness in our ability in this field. Without dwelling on it now, it has been fully explained through hearings and debates. It adds up to the fact that our All-Volunteer Force, with all deference to it, is not sufficiently supplying the manpower—enough of the right talent, capacity, courage, willpower, and determination—to fill the role our units need.

This brings me to think about and pay tribute to a great many very rugged Reserve units that we have scattered through all of our services. They represent a great deal of talent, training, and a special form of patriotism that fits in so well with the needs of our time. I wish to see the Reserves assigned more of the real missions and given substantially more of the hardware, the machinery, the weaponry, the planes, and other items. We are improving the system in that way.

We had a very fine debate this year with reference to the military Selective Service Act that was directed at the matter of registration. This legislation was passed by a considerable vote in each house and signed by the President who had recommended it. Contrary to some predictions there was a quiet, orderly, and I thought very fine patriotic response as a whole to this law that required young men who were born in a certain 2-year period to register.

Incidentally, there is a military pay increase carried in this bill. In round terms an additional $700 million is included, which is enough to help in certain needed areas. I think it will provide some help but I do not believe that it is yet a substitute for a reasonable Selective Service Act. When I say "reasonable" that means one without any kind of exceptions, excuses, or any kind of deferment.

I think now that peacetime registration is understood better and accepted by the public that I hope the situation will be such next year, regardless of who is President, that we can move on this matter. I have dwelt on the registration matter over and over because of its necessity and because of its obvious importance.

I point out, also, that we put in additional planes, ships, and missiles. We emphasize the spares as parts of our readiness progress. We were impressed, also, by the high cost of all of these items. We compensated for that in that we know we have the best weaponry, as good as can be found anywhere. We do have the know-how to continually have the best and the most modern weaponry.

We are building up the naval power and I wish it were faster. We are building up the active inventory of planes. I think we can look forward to a continuation of these programs.

Mr. President, I ask unanimous consent that my prepared statement and a summary of the conference report be inserted in the RECORD.

Along with others, I will be glad to answer questions that might be on the minds of any of the Members at this time.

I yield the floor.

There being no objection, the statement and summary were ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR STENNIS

Mr. President, the report from the committee of conference on H.R. 6974, the Fiscal Year 1981 Defense Authorization Bill, is fully endorsed by myself and all other Senate conferees, each of whom has signed this report.

Long hours were spent in conference with our dedicated colleagues from the House of Representatives on this military authorization bill. The result is most positive and satisfying. We have succeeded in combining the best thinking of both Houses into one comprehensive and well-reasoned bill. The differences between the House bill and the Senate amendment were carefully studied to find those elements that would most effectively and efficiently improve America's defense posture and preparedness.

The conference committee greatly benefitted from the participation of the entire Senate Armed Services Committee, all 17 members of which were appointed as conferees. The Senate conferees worked hard in presenting and defending the Senate's positions. There were over 700 differences between the House bill and the Senate amendment. Eliminating these differences took eight long sessions by the full conference committee and many sessions as well by various subcommittees.

CONFERENCE REPORT IS A MAJOR MILESTONE IN A LONG PROCESS

This conference report represents a major milestone in a long process of development and review of the authorization request of the Department of Defense. The Military Departments began work on this request a full 20 months ago. Before it was forwarded to the Congress, this authorization request was carefully reviewed and refined by the Secretary of Defense and his assistants and finally by the President and others within his Executive Office. The work of those in the Department of Defense—both uniformed and civilian—should be recognized for their initial work on this request as well as their useful testimony and counsel on these important matters.

This careful review was continued within the Congress. The Senate Armed Services Committee had a total of 45 hearings by the full committee or subcommittees. Twelve markup sessions by the full committee were necessary to fully cover all of the issues. The Senate itself vigorously debated many of the important issues decided by this Defense Authorization Bill. On the House side, a similar effort was made including a total of 32 hearings and markup sessions by the full House Armed Services Committee and 68 hearings by its subcommittees. And now, the conference report with its thoughtful recommendations is at hand. Next comes the appropriations process. The Senate Defense Appropriations Subcommittee has had 18 hearings to date. While this entire process is not completed, this conference report is a major and most significant milestone.

RECOGNITION OF HARD WORK BY COMMITTEE MEMBERS

As Chairman of the Armed Services Committee, I am proud of this conference report and the hard work of the committee membership during the last 8 months leading to this result. I particularly want to thank the distinguished Senator from Texas, Mr. Tower, who as the ranking minority member of the committee has provided his extensive expertise and wise counsel.

While every member of the Armed Services Committee contributed to this bill, the chairmen and the ranking minority members of each subcommittee should be especially recognized: Senators Nunn and Jepsen of the Manpower and Personnel Subcommittee; Senators Culver and Warner of the Research and Development Subcommittee; Senator Byrd of Virginia and Senator Goldwater of the General Procurement Subcommittee; and Senators Morgan and Humphrey of the Procurement Policy and Reprogramming Subcommittee. The Committee also benefited from special reports by Senators Cannon and Goldwater on aircraft programs, by Senator Exon on programs related to the Rapid Deployment Force and by Senator Levin on civil defense.

TRIBUTE TO HUGH EVANS, SENIOR LEGISLATIVE COUNSEL OF THE SENATE

I would also like to recognize the dedicated work of Hugh Evans, a senior legislative counsel of the Senate. While not a member of the Committee staff, but rather of the overall Senate staff, Mr. Evans provided most valuable assistance to the committee in the preparation of the conference report. His careful and thorough technical review of the bill greatly improved the clarity of the legislation. He exhaustively researched each provision to ensure that the decisions of the conference committee were accurately and effectively translated into law. The conference report was significantly improved by his determined and skillful efforts. The entire Armed Services Committee salutes Hugh Evans in appreciation for his many contributions to this bill and for his long hours of work.

H.R. 6974 IS A MASSIVE BILL

As reported by the committee of conference, H.R. 6974 is a massive bill. It covers all phases of American military posture and preparedness around the world. In dollar terms, it is the largest military authorization bill in this Nation's history.

The bill contains authorization for procurement of the ships, aircraft, tanks, missiles, and other weapon systems that will sustain America's military might. Programs for research and development of new and advanced weaponry are included as are authorizations for civil defense. The bill also sets personnel end strengths—both civilian and military—and contains extensive provisions relating to military compensation and benefits.

The military program authorized by this bill will give the boost to America's defenses which is needed to meet the challenges to peace and freedom that are emerging in many areas of the globe. This bill definitely provides our military forces with the weapons and equipment necessary to meet the challenges we face now and are likely to face in the future. Enactment of this legislation should serve as a clear and certain signal to friend and foe alike that the United States will continue to take the steps necessary to protect our vital interests and to defend the values cherished by the American people.

MANPOWER

H.R. 6974 also devotes considerable attention to our most serious defense problem: shortages of certain types of U.S. military manpower. U.S. defense efforts in recent years have been weakened by the inability to attract and retain sufficient numbers of competent military personnel with the necessary skills, knowhow, discipline, and dedication.

The basic fact is that the All Volunteer Force is not working. It is not providing the manpower—both in terms of numbers and of quality—that we need. It has lessened the sinews of real military discipline that is the foundation of strong and capable military units. It has unfairly spread the burden of military service so that the composition of our military forces is not representative of our society as a whole.

Another criticism of the volunteer concept is its high cost. The President's fiscal year 1981 budget includes some $78 billion for manpower costs—about 51 percent of the total defense budget and a 50 percent increase since 1975. The substantial pay, bonus, and allowance increases made since creation of the All Volunteer Force, along with recruiting and other expenditures made in the drive for volunteers, have not achieved the desired result. Recruiting for the active forces has fallen short of the mark; the National Guard and Reserve are below authorized strengths; and the quality problems of those who do volunteer has been highlighted in debate on the Senate floor.

The conference report takes several actions that, it is hoped, will somewhat help these manpower problems. Reflecting concern on the manpower quality problem, the conference report places restrictions on male non-high school graduates who may enter the Army and on the recruits entering all Services who score poorly on the entrance examination. These restrictions set the standards for our military manpower.

To help meet these standards, the conferees added about $1.0 billion in military pay and benefit raises in addition to approving the $3.4 billion increase in military compensation requested by the President and authorized $75 million in increased military education benefits. We hope that this money will help, but we know that these added funds are not the solution. We must not expect too much from these pay and benefit raises. There is no testimony that gives a factual presentation of how much help these steps will afford. They may temporarily help, but the basic problems will continue. A revised form of draft will be necessary to correct our military manpower problems—and there is no time to lose.

As we enter the decade of the 1980's, the need for a new revised selective service system is the most critical security issue facing America. The draft system that is now on the law books was largely written to meet the wartime manpower needs of World War II with some modification during the Korean War and Vietnam war periods. I believe we should look toward a selective service system designed to operate in peacetime with a capacity to expand in time of war. This system must be perceived as being as fair as possible with few, if any, exemptions and with only a limited period during which any person is liable to call by random selection except in emergencies.

Reinstitution of peacetime registration of young men has been accepted by the American public. Resistance to renewal of registration has been minimal. The public must become better informed as to the facts on our manpower situation. The country should then proceed with the necessary task of development and use of a new and fair form of military draft. This is no quick conclusion with me. I am fully convinced after close examination and helping try to make the Volunteer forces concept work that it will not work. The remedy is a new type of Selective Service.

SUMMARY OF THE PROCUREMENT RECOMMENDATIONS OF THE CONFERENCE REPORT

Compared to the President's authorization request for fiscal year 1981 of $46.9 billion, the conference report authorizes $52.9 billion for procurement, research and development, civil defense and educational benefits for military personnel—an increase of $5.9 billion over the request. In addition, the military compensation and benefit raises approved by the bill will add about $1.0 billion to defense spending in fiscal year 1981.

More than 90 percent of the increase over the President's authorization request recommended by the committee of conference is for procurement additions. The naval shipbuilding program was increased by $2.2 billion—about a 35 percent addition—above the President's request.

There were very few differences in the shipbuilding program to be resolved by the conference committee. In addition to the 16 ships requested by the President, the conference report authorizes an additional SSN-688 nuclear attack submarine, two more FFG-7 guided missile frigates, reactivation of the *New Jersey* battleship and *Oriskany* aircraft carrier and procurement and modification of eight existing SL-7 commercial containerships. These additions to the shipbuilding program will increase the rate of modernization of the U.S. Navy and most importantly will, through the use of existing combatants and cargo ships, put additional warfighting potential and projection capabilities at sea soon.

Moreover, research and development funding was recommended for several important shipbuilding initiatives: design work on a new class of light aircraft carriers, improvement of the AEGIS cruiser, design of a new DDG-X destroyer, design of a LH-X (VSS) air-capable amphibious ship, and analysis of the potential of diesel electric submarines.

Aircraft procurement for all Services was increased by $2.4 billion over the President's request. Procurement of a total of 612 aircraft and helicopters would be authorized by this bill, or 146 aircraft and helicopters more than requested by the President. These additions recommended by the conference committee include 55 combat aircraft, 25 combat helicopters, 14 support aircraft and 52 trainer aircraft and helicopters. Key among these additions are 6 more F-14's and 12 more F-18's for the Navy and 12 more F-15's for the Air Force. Total procurement authorizations for these aircraft are 30 F-14's, 60 F-18's and 42 F-15's. The conference also approved the Administration's request for 180 F-16's for the Air Force.

Another important aircraft initiative authorized by the conference report is a 25 percent increase in the request for aircraft spares and repair parts. This recommendation was based upon the concern about the inadequate readiness of military aircraft. Included in this increase, which totals $643 million, is an additional $136 million for Navy replenishment spares and $216 million for replenishment spares and $181 million for war reserve spares for the Air Force.

The conference committee also authorized funding of the AV-8B aircraft for the Marine Corps, a program of special interest to the Congress. The bill authorizes $243 million for research and development and $90 million in procurement for the AV-8B program.

For the record and for those who reconcile dollar amounts, the bill totals for Navy aircraft and Air Force aircraft are $0.3 million and $2.0 million less respectively than the program decisions described in the Statement of Managers. This results from an administrative error. The bill totals are correct, and these dollar differences are unspecified reductions in the appropriate accounts.

For tracked combat vehicles, 569 XM-1 tanks and 400 Fighting Vehicle Systems are authorized. The House bill and Senate amendment were in agreement on these important Army procurement programs. Funding for both Army and Marine Corps tracked combat vehicles were approved at or near the authorization request. The Army's funding was increased by $69 million, or 3 percent, while the Marine Corps' funding was approved at the requested level.

Authorization for procurement of missiles was increased by $533 million above the request of $6.6 billion. Two-thirds of the increase is for additional Navy missile procurement including 150 more Harpoons, 30 more Tomahawks, 80 HARMs and 240 more Standard MRs.

Authorization funding for Navy torpedo procurement was also increased substantially—more than double the authorization request. In addition to the requested torpedo

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procurement, 144 MK-48 torpedoes, 288 MK-46 torpedoes and 280 MK-60 Captor mines are authorized.

SUMMARY OF R. & D. RECOMMENDATIONS

The conference report recommended a total of $16.9 billion for research and development—an increase of $410 million above the President's request. Two of the major research and development issues in conference involved strategic programs. Regarding a new bomber, the conference provided $300 million for full-scale engineering development of a multi-role bomber aircraft in addition to $75 million in procurement funds for this program. Candidate aircraft for this effort are to include advanced technology aircraft, the B-1 bomber aircraft and derivatives of the B-1, and the FB-111B/C aircraft. The Secretary of Defense is directed to submit by March 15, 1981, a status report on this development effort including his recommendations on which aircraft should be developed.

The language differences between the House and the Senate on the MX missile were resolved by adopting bill language making it clear that the Congress is committing itself to a complex MX system of 200 missiles and 4600 shelters, wherever the missiles and shelters may be located, while directing the Secretary of Defense to study the feasibility of the "split-basing" concept.

Another major conference issue in research and development was the C-X strategic airlift aircraft. The House bill provided no funds for this program while the Senate amendment contained $50 million. The conference committee compromised on an amount of $35 million and bill language, similar to that contained in the Senate amendment, restricting expenditure of these funds pending submission of a study of overall mobility requirements by the Secretary of Defense.

SUMMARY OF MANPOWER PROVISIONS

Regarding manpower, the conferees agreed to an 11.7 percent military pay raise and authority for the President to reallocate up to 25 percent of the basic pay increase by grade and years of service; both of these provisions were in the Senate amendment.

The conferees also agreed to fifteen other provisions affecting military compensation and benefits.

Key among these provisions are increases in the maximum amounts of the enlistment and reenlistment bonuses for active forces from $3,000 to $5,000 and from $15,000 to $20,000 respectively, a continuation bonus of up to 4 months' basic pay for each year an aviator extends on active duty, and $75 million for a 1-year test of increased educational assistance for military personnel. These programs and other manpower provisions in the bill should help attract and assist in the retention of personnel with greater skills.

AUTHORIZATION OF OPERATION AND MAINTENANCE

The conferees agreed to expand the authorization process to cover operation and maintenance funds as recommended by the House bill. Authorization of operation and maintenance was recommended by the conferees because of the increased concern over the readiness of U.S. military units. The conferees further agreed that the Armed Services Committees should focus their review on those portions of operation and maintnance funding with the greatest impact on force readiness.

CONCLUDING REMARKS

I urge my Senate colleagues to approve the conference report on the Defense Authorization Bill. The overall direction of the bill is consistent with real national security needs. The compromises reached by the conferees preserve the heart of the Senate amendment while incorporating valuable and worthwhile elements of the House bill. After careful review, I am certain that the Senate will fully endorse the conference report.

SUMMARY OUTLINE OF THE DEFENSE AUTHORIZATION ACT, 1981

The conference report accompanying H.R. 6974 authorizes $52,853 million for military procurement, research and development, civil defense and educational benefits for military personnel. This authorization funding is $5,945 million more than the President's amended request. This authorization for fiscal year 1981 is $11,463 million—or 28 percent—above the fiscal year 1980 authorization.

FISCAL YEAR 1981 AUTHORIZATION RECOMMENDATIONS OF CONFERENCE REPORT

[Millions of dollars]

	March amended request	House bill	Senate amendment	Conference report	Conference report changes to: Amended request	House bill	Senate amendment
Procurement	30,310.3	36,261.8	34,897.4	35,769.8	+5,459.5	−492.0	+872.4
Research and development	16,478.3	16,714.5	16,903.2	16,888.5	+410.2	+174.0	−14.7
Civil defense	120.0	167.0	114.5	120.0		−47.0	+5.5
Educational benefits			45.0	75.0	+75.0	+75.0	+30.0
Total authorization	46,908.6	53,143.2	51,960.7	52,853.3	+5,944.7	−289.9	+892.6

In addition to these authorizations, the conference report approved military compensation and benefit raises, above those proposed by the President, that will add about $1.0 billion to defense spending in fiscal year 1981.

PROCUREMENT

About 92 percent of the authorization increase was for additional procurement. Naval shipbuilding and aircraft procurement were substantially increased.

CONFERENCE RECOMMENDATIONS ON PROCUREMENT

[In millions of dollars]

	Authorization	Change to request
Naval vessels	8,363.2	+2,184.0
Aircraft	16,974.1	+2,371.3
Missiles	7,087.1	+533.1
Tracked combat vehicles	2,359.3	+68.8
Torpedoes	386.6	+216.2
Other weapons	599.5	+86.2
Total	35,769.8	+5,459.5

NAVAL SHIPBUILDING

The conference report approved the authorization request for 16 new ships and two ship conversions. Added to this request was authorization for procurement of one more SSN-688 submarine and two more FFG-7 frigates, reactivation of the *New Jersey* battleship and *Oriskany* aircraft carrier, and purchase and modification of eight SL-7 commercial containerships. With these additions, the authorized shipbuilding program includes 31 ships:

Two CG-47 cruisers, one LSD-41 amphibious ship, six FFG-7 frigates, one Trident submarine, two SSN-688 submarines, five T-AGOS (SURTASS) ships, one T-AKX maritime prepositioning ship, one ARS salvage ship, Service Life Extension Program for the *Saratoga* aircraft carrier, conversion of a T-AK cargo ship, reactivation of the *New Jersey* battleship, reactivation of the *Oriskany* aircraft carrier, and purchase and modification of eight SL-7 containerships.

AIRCRAFT PROCUREMENT

The requested authorization for aircraft procurement is increased by about 15 percent by the conference report.

CONFERENCE RECOMMENDATIONS ON AIRCRAFT PROCUREMENT

[Dollar amounts in millions]

	Authorization: Quantity	Authorization: Amount	Change to request: Quantity	Change to request: Amount
Army aircraft	111	$1,076.4	+31	+$143.0
Navy aircraft	195	6,150.6	+91	+1,135.3
Air Force aircraft	306	9,747.1	+24	+1,093.0
Total	612	16,974.1	+146	+2,371.3

The requested authorization was for 466 aircraft and helicopters. The conference recommends authorization of 612 aircraft and helicopters, or an increase of 146. In addition, the authorization funding of aircraft spares and repair parts was increased by $643.2 million, or about 25 percent, to help improve the readiness of military aircraft.

The sole aircraft authorization request for the Army was for 80 UH-60A Black Hawk helicopters. The conference increased the authorization to 88 UH-60A's and added 17 AH-1S Cobra-TOW helicopters and 6 C-12D utility aircraft.

A total procurement of 104 aircraft and helicopters were requested for the Navy. The conference authorized the requested procurement and added 91 aircraft and helicopters. Combat aircraft were increased by 37 (12 A-6E's, 3 EA-6B's, 6 F-14's, 12 F-18's and 4 P-3C's); support aircraft, by 2 C-9B's; and trainer aircraft and helicopters, by 45 T-34C's and 7 TH-57C's. Funding of the AV-8B aircraft for the Marine Corps was also authorized with $243 million in research and development and $90 million in procurement.

For the Air Force, procurement of 282 aircraft was requested of which all but 10 were combat aircraft. The conference added 12 F-15's, 6 A-7K's, and 6 C-130H's to the request for a total of 306 aircraft. Total Air Force aircraft authorizations in the conference report are 180 F-16's, 42 F-15's, 60 A-10's, 6 A-7K's, 2 E-3A's, 6 KC-10A's, 4 TR-1's, and 6 C-130H's. In addition, $382 million is authorized for the U.S. contribution to the NATO E-3A AWACS program.

COMBAT VEHICLE PROCUREMENT

Tracked combat vehicle procurement is authorized at $2,313.5 million for the Army and $45.8 million for the Marine Corps. These levels are $98.8 million, or 3 percent, greater than requested for the Army as requested for the Marine Corps.

Included at the request level in the Army account are authorizations for 569 XM-1 tanks and 400 Fighting Vehicle Systems. The House bill and the Senate amendment were in agreement on these important combat vehicle programs.

MISSILE PROCUREMENT

The conference report increases missile procurement by about 8 percent from the President's request with two-thirds of the increase provided for Navy missiles.

CONFERENCE RECOMMENDATIONS ON MISSILE PROCUREMENT

[In millions of dollars]

	Authorization	Change to request
Army	$1,580.5	+$66.1
Navy	2,236.4	+348.8
Marine Corps	94.0	+19.6
Air Force	3,176.2	+98.6
Total	7,087.1	+533.1

The procurement numbers for Army surface-to-air and anti-tank/assault missiles were authorized at requested levels. Included in this request were 183 PATRIOT missiles for which the funds may not be obligated or expended until the Secretary of Defense certifies that the PATRIOT missile system is suitable for hardware production.

Authorization of Navy missiles was approved as requested and was increased by 30 Tomahawk, 150 Phoenix, 80 HARM, and 240 RIM-66E Standard MR missiles. The Marine Corps' request for 347 Stinger missiles was also authorized.

For the Air Force, 480 Air Launched Cruise Missiles and 11 Ground Launched Cruise Missiles are authorized. Funding for Sparrow missiles was increased by $22.3 million and $90.0 million, which was not requested, was added for the Rapier air defense missile. The conferees also agreed to authorize $5.0 million for the deployment of additional Minuteman III missiles in existing Minuteman II silos and $24.7 million for the Minuteman survivable power program.

TORPEDO PROCUREMENT

The President's request for torpedo procurement was $170.4 million. The conferees agreed to authorize $386.6 million for these programs, an increase of $216.2 million. Included in this increase are 144 MK-48 torpedoes, 288 MK-46 torpedoes and 280 CAPTOR mines which were not requested.

RESEARCH AND DEVELOPMENT

The programs authorized by the conference report would increase the President's request for military research and development by $410.2 million, or by slightly more than 2 percent.

CONFERENCE RECOMMENDATIONS ON RESEARCH AND DEVELOPMENT

[In millions of dollars]

	Authorization	Change to request
Army	3,248.0	+13.5
Navy	5,112.8	+247.2
Air Force	7,159.9	+126.5
Defense agencies	1,325.7	+23.0
Test and evaluation, defense	42.1	
Total	16,888.5	+410.2

The most significant research and development results of the conference were the recommendation of a series of new and important initiatives for Navy shipbuilding and the resolution of three controversial Air Force programs—a new bomber, the MX missile and the C-X aircraft. In addition, the conferees agreed to increase the authorization request for the Trident II missile system to $65 million, or $28.1 million above the request.

For the Navy, research and development authorization included $30 million for design work on a new class of light aircraft carriers, $40 million for improvement of the AEGIS cruiser, $74 million for design of a new DDG-X destroyer, $9 million for design of an LH-X (VSS) air-capable amphibious ship, and $2 million for analysis or the potential of diesel electric submarines.

The conferees authorized $300 million for full-scale engineering development of a multi-role bomber aircraft, in addition to $75 million in procurement funds, to achieve an Initial Operational Capability (IOC) as soon as practicable, consistent with the aircraft selected, but not later than 1987. This aircraft should have the capability of performing the missions of conventional bomber, cruise missile launch platform, and nuclear weapons delivery system. The Secretary of Defense is directed to submit a status report to the Committees on Armed Services of the House and Senate on this effort by March 15, 1981, to include his recommendations on which aircraft should be developed. Candidate aircraft shall include but not be limited to advanced technology aircraft, the B-1 bomber aircraft and derivatives of the B-1 aircraft, and the FB-111B/C aircraft.

The compromise bill language adopted by the conference on the MX missile is intended to make clear that Congress is committing itself to a complete MX system of 200 missiles and 4600 shelters, wherever the missiles and shelters may be located, while directing the Department of Defense to study the feasibility of the concept known as "split basing." The conferees direct that the Secretary of Defense submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than February 1, 1981, the results of this study identifying locations, in addition to the Great Basin of Nevada and Utah, that might be suitable for construction of the remaining multiple protective shelters and evaluating the costs and the military, environmental, and socioeconomic consequences associated with such further construction and deployment in all such areas.

The Air Force requested $81.3 million to begin full-scale development of a new strategic airlift aircraft, designated C-X. The House bill authorized no funds for this program, while the Senate amendment authorized $50.0 million. The conferees agreed on an authorization of $35.0 million for development of this aircraft, but because the conferees share a number of concerns about the C-X program, not more than $15.0 million of this amount can be obligated and expended prior to February 1, 1981. Remaining funds may be obligated and expended 60 days following submission of a report by the Secretary of Defense on the C-X program. The report required of the Secretary is similar to the report requested in the Senate amendment.

RAPID DEPLOYMENT FORCE

Within the procurement and research and development authorizations, the conference report recommends important programs related to the Rapid Deployment Force. Several on-going mobility programs were approved: $298.4 million for procurement of KC-10A Advanced Tanker Cargo Aircraft, $236.7 million for modification of C-5A and C-141 strategic airlift aircraft and $54.8 million for enhancements of the Civil Reserve Air Fleet.

Two requested initiatives were also approved: $207 million for procurement of one maritime prepositioning ship and $35 million for research and development of the C-X aircraft.

In addition, the conference report recommends procurement funds for two congressional initiatives related to the Rapid Deployment Force: $285 million for the eight SL-7 containerships and $26 million for lightweight armored vehicles for the Marine Corps.

PERSONNEL END STRENGTH AUTHORIZATIONS

The end strengths for active forces, reserve forces, and civilian personnel authorized by the conference are:

ACTIVE FORCES

	Authorization	Change to request
Army	775,300	−500
Navy	537,456	+3,856
Marine Corps	188,100	+2,900
Air Force	564,500	
Total	2,065,356	+6,256

The conferees adopted a provision on the quality of active force recruits placing the following limitations on new accessions for the military:

for fiscal year 1981, the Army can enlist or induct no more than 35 percent non-high school graduates among the male non-prior service accessions in the Army;

for fiscal year 1981, the Services as a whole may not enlist or induct more than 25 percent of the new accessions from personnel who score between the 10th and 30th percentile on the entrance examination;

for fiscal year 1982, each Service may not enlist or induct more than 25 percent of its new accessions from personnel who score between the 10th and 30th percentile on the entrance examination;

for fiscal year 1983 and each fiscal year thereafter, each Service may not enlist or induct more than 20 percent of its new accessions from personnel who score between the 10th and 30th percentile on the entrance examination.

The conferees agreed that the Secretary of Defense may exceed the limitations on personnel scoring between the 10th and 30th percentile if he determines it is in the interest of national security and the House and Senate pass a concurrent resolution of approval.

RESERVE FORCES

The conference approved the requested average strength levels for reserve forces, totaling 880,000 prsonnel, without change, but added 500 Naval Reservists on full-time active duty.

CIVILIAN PERSONNEL

The conferees agreed to provide an overall Department of Defense authorization for civilian personnel of 986,000, a reduction of 4,000 from the President's request. The conferees agreed that none of the reductions proposed would come from activities that are industrially funded.

MILITARY COMPENSATION AND BENEFITS

In an effort to redress the serious personnel problems of the Services, the following provisions regarding military compensation and benefits, which will have a budget impact of adding about $1.0 billion to defense spending, were adopted by the conference:

A 1-year suspension of the current pay raise mechanism and an 11.7 percent increase in military basic pay, subsistence and quarters allowance effective October 1, 1980.

Authority for the President to reallocate up to 25 percent of the basic pay increase by grade and years of service, with a provision that such a reallocation cannot be used to increase the raise in basic pay above 11.7 percent for personnel with 4 years or less of service.

An increase in the enlistment bonuses for active forces from $3,000 to $5,000 for certain skills.

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An increase in reenlistment bonuses for active forces from $15,000 to $20,000.

A one-year extension of the enlistment and reenlistment bonuses and educational assistance program for all units of the Army Guard and Reserve.

A new selective affiliation bonus for the Selected Reserve.

A new reenlistment bonus of $600 for the Individual Ready Reserve for a one-year trial.

An increase in the per diem allowance from $35 to $50 for military personnel on temporary duty travel and an increase from $50 to $75 in the maximum reimbursement for high cost areas.

An increase in the reimbursement paid for moving a mobile home or trailer.

Discretionary authority for the Secretary of Defense to offer up to 4 months of basic pay for each year an aviator extends on active duty for aviators with 6 to 18 years of service.

A 2-year extension of the Marine Corps Platoon Leaders Class (PLC) program.

A family separation allowance for E-1's through E-4's with 4 years or less of service.

$75 million for a directed one-year test of increased educational benefits as contained in both the House and Senate bills including a loan forgiveness program.

In the CHAMPUS program, coverage for routine infant medical care and an increase from $350 to $1,000 per month in the maximum coverage for handicapped dependents.

With respect to military retired pay, a once yearly cost-of-living increase as opposed to the current twice yearly adjustment, contingent on a similar change in current law for Federal Civilian retirees.

The basis for calculating retired pay of the uniformed services is changed to an average of the highest 3 years of basic pay rather than final basic pay. This provision applies to individuals who join the service after the date of enactment of this bill.

CIVIL DEFENSE

The House bill provided $167 million for attack-related civil defense while the Senate amendment authorized $114.5 million. The conference report recommends $120 million, which was the President's authorization request.

The conferees agreed, with minor changes, to language in the Senate amendment which makes an important statement on overall U.S. civil defense policy.

GENERAL PROVISIONS

The conferees agreed to eight general provisions in the bill.

The most important of these general provisions was the requirement for annual authorization of appropriations for operation and maintenance beginning with fiscal year 1982. Authorization of operation and maintenance was recommended by the conferees because of the increased concern over the readiness of U.S. military units. The conferees agreed that the Armed Services Committees should focus their review on those portions of operation and maintenance funding with the greatest impact on force readiness. Key among these portions are aircraft flying hours, ship steaming hours, battalion training days, and depot maintenance.

The conference report adopted a provision, contained in the Senate amendment, that would restrict eligibility for benefits awarded based on service in the military to those who have completed at least 2 years of active service, except in cases of injury or certain unusual circumstances relating to hardship or disability.

The conference report also contains a provision that would exempt certain contracts from liability for payment under the profit limitation provisions of the Vinson-Trammell Act of 1934 and would prohibit the responsible agencies from implementing the statute before October 1, 1981. This provision is to relieve contractors of contingent liability under the statute, for which no regulations have been promulgated, until the Congress has an opportunity to revise the outmoded law. The Senate amendment had proposed to relieve from liability contractors whose contracts were completed between October 1, 1976 and October 1, 1981. The conference report modifies this slightly by specifying contracts for which final payment was made during this 5-year period.

The conferees agreed to a provision, modifying language in the Senate amendment, expressing the sense of the Congress that NATO allies and Japan should increase their contributions to common defense to levels more commensurate with their economic resources and that the President should seek from these allies greater acceptance of international security responsibilities and greater contributions to the common defense including, when appropriate, greater contributions to host nation support. The conferees also agreed to require the Secretary of Defense to submit by March 1, 1981 a one-time report addressing the issues of burden-sharing, real growth in defense spending and implementation of common defense commitments by NATO member nations and Japan.

Mr. TOWER. Mr. President, I yield myself such time as I may require.

Mr. President, I wish to commend our distinguished chairman, Senator STENNIS, for the splendid leadership that he provided during the course of our conference, deliberations, and negotiations on this year's military procurement bill. He has always provided valuable guidance. In his years of dedicated service we have come to take his splendid leadership for granted.

I also commend the staff members of the Armed Services Committee of the Senate for the very fine work that they did in preparation of the conference. I especially thank the Republican conferees from the Senate on the conference committee who unhesitatingly responded to every request to lend their valuable assistance and special knowledge in helping to resolve the complex and sometimes controversial issues in the conference.

This DOD authorization conference report now before the Senate recommends fiscal year 1981 defense authorizations about $6 billion above the request for procurement and research and development and, moreover, recommends legislation to increase military pay and benefits by a net increase of over $1 billion.

It is important to recognize that both the House and Senate Armed Services Committees independently assessed the fiscal year 1981 DOD authorization request and manpower proposals, and determined that they were seriously inadequate. These two separate and independent analyses concluded that the President's defense request must be increased by a minimum of $6 to $7 billion. For comparison, the service chiefs testified before the Senate Armed Services Committee that increases of $10 to $11 billion were required.

It is also important to note that the Senate itself voted to increase the national defense function of the first concurrent budget resolution by almost $9 billion. In fact, the Senate overwhelmingly rejected every single attempt on the floor to reduce that defense recommendation by votes of 2 to 1 or more. The mandate of the Senate and the Congress is quite clear—the fiscal year 1981 defense request is inadequate, it must be increased. This DOD authorization conference report is the first step in meeting that need.

Mr. President, the chairman has provided a detailed summary of the items in the conference report as well as a general summary of the entire fiscal year 1981 DOD authorization bill, as amended, including program recommendations not in conference. I refer my Senate colleagues to the chairman's remarks for this detail, which I will not repeat. Instead, let me simply illustrate that this recommended increase in the fiscal year 1981 DOD authorization represents a balanced allocation of additional funds for critically needed improvements in force readiness, for urgently needed near-term initiatives to enhance our rapid-response force capability, and for restoring reductions in planned force modernization. This recommended authorization by no means simply constitutes a $6 billion increase in so-called "hardware" procurement traditionally viewed as adding to planned modernization. This is a balanced recommendation providing additional funds for readiness, for near-term initiatives, and for force modernization.

For readiness, this authorization bill as amended recommends $2.8 billion for initiatives not contained in the President's request. To address now critical manning problems adversely impacting combat readiness, especially within the Navy, the conference recommendations include a net increase in military manpower benefits of almost $1.6 billion. This recommendation includes an 11.7-percent pay raise for the military, which can be selectively allocated to redress epidemic losses of highly trained, mid-level personnel. This compares to the President's 7.4 percent budget request. It is interesting to note that even the President's recent July-revised projection for defense still only allows for a woefully inadequate 9.1 percent military pay raise.

Also for readiness, the recommendation adds over $700 million for desperately needed spare parts for missiles and aircraft, some of which are fully mission capable less than one-half the time.

Finally, for combat sustainability—another integral part of overall combat readiness—the authorization recommendation adds $500 million to the request for torpedoes and air- and ship-launched missiles to begin to address critical inventory shortfalls, with inventory of some air-to-air missiles as low as 30 to 40 percent of combat readiness requirements.

To increase our rapid-response force capability and to enhance naval forces to meet our increased Indian Ocean commitment in the near-term, the recommendation adds over $0.8 billion for near-term initiatives. Almost $300 million has been added for immediate purchase of eight SL-7 cargo ships for fast

sealift. About $550 million is included to reactivate and modernize the battleship *New Jersey* and the aircraft carrier *Oriskany* as near-term initiatives appealed for by the Chief of Naval Operations—but not requested by the Secretary of Defense—to enhance naval forces to meet our increased commitment to the Indian Ocean.

Now, for force modernization, the recommended fiscal year 1981 DOD authorization as amended by the conferees adds about $3 billion in procurement. Aircraft procurement is increased by $1.7 billion, adding 146 aircraft, 52 of which are noncombat trainers for basic flight instruction. The recommendation still only restores 12 of the 81 Air Force aircraft deleted by the administration from last year's plan for fiscal year 1981 and only adds 89 of the 134 naval aircraft not requested but needed to meet minimum active force requirements based on Navy testimony. In addition, the recommendation includes 37 aircraft for guard and reserve forces. The Administration requested no aircraft for these forces whose combat capability is a critical part of our total force planning.

For strategic forces modernization, most significantly, the conferees added $75 million for procurement and $300 million for research and development to begin development of a multi-role, manned penetrating bomber to be deployed as early as practicable but not later than 1987 in order to enhance our strategic forces during the "window of vulnerability" in the 1980's. Also of interest is the conferees agreement to authorize initial funding ($5 million) for the deployment of additional Minuteman III missiles in Minuteman II silos.

For naval forces modernization, the authorization recommendation adds $1.3 billion for new ship construction, including one additional nuclear attack submarine to provide two of the three required based on Navy testimony and including two additional FFG-7 guided missile frigates to restore the procurement to the six planned 1 year ago.

In summary, the authorization recommendation adds to the defense request $2.8 billion for force readiness, almost $1 billion for near-term initiatives, especially as related to the Indian Ocean, and $3 billion in procurement for force modernization. This is a balanced recommendation. It will improve our overall military capability and force posture. Recent claims by the Secretary of Defense that increased defense funding proposed by Congress "jeopardizes the added military capability we all seek" since the increases create "a serious imbalance in the President's defense programs" are preposterous and represent calculated deception.

A legislative provision of special importance and significance in the authorization bill is the agreement by the conferees to begin authorization in fiscal year 1982 of the "operations and maintenance" or O. & M., account of the Department of Defense budget. This legislative step would allow—in fact, require—the Armed Services Committees of the Congress to review the readiness implications of the O. & M. request as well as the O. & M. implications of the weapon system procurement requests. This new legislative requirement will undoubtedly result in more disciplined, more comprehensive authorization recommendations in the future—even better suited to overall defense needs.

Mr. President, the fiscal year 1981 DOD authorization conference report is the result of the careful and extensive review of both Armed Services Committees and represents our collective judgment. It deserves full support and unqualified endorsement of the Senate. I call on my colleagues—indeed, I urge them—to vote for this conference report to express once again their conviction that we must begin immediately to take those steps necessary to provide our Nation with the capability required to meet our national security objectives. This is the first step and only the first step, but it is a step which surely must be taken.

Mr. President, I yield to the distinguished Senator from Arizona (Mr. GOLDWATER) such time as he may require.

Mr. GOLDWATER. I thank my friend from Texas.

Mr. President, I will not take long.

I also commend the distinguished chairman of the committee for the way he conducted the committee during the entire year. I wish to join my friend from Texas in thanking the members of the staff for the always good work that they have done.

Mr. President, I think we have to realize that appropriating, even authorizing, this amount of money, the most that we have ever authorized in peacetime, is not something that is easy to do.

The prices of our equipment we buy today are absolutely overwhelming. When I think of the most expensive airplane we flew in World War II, being the old B-24, that cost $244,000, and realize that today a single-seater fighter plane can cost as much as $20 million to $25 million, and that when the F-14 is ready to take off on a mission and she has $1 million worth of ammunition tied under her, and we are looking at a main battle tank now that is going to cost over $1 million, it is not easy for us to do the things that we used to do more easily.

Mr. President, I would like to remind our colleagues and the American people that the first charge of the Constitution to our Government is to defend the people of our country wherever they may be, to defend them, their freedoms, and their property, and to do this we have to be far better prepared than we find ourselves today.

I totally disagree with the President and some members of his Cabinet when they try to tell us we are still superior to the Soviets. From the testimony of the Joint Chiefs of Staff, and particularly the Chairman, given before our committee, we are not.

I think while we should not make the target to be vastly superior to the Soviets, we should at least make the target one that we can accomplish our mission with, namely, to defend our people and to defend their rights and their freedoms.

Mr. President, I do not want to go all through this bill. It is a lengthy bill, and the Chairman has touched on it and others will touch on it. I would like to take just one point as an example, and maybe two.

No matter how much good equipment we have unless we have good men and good women now the system means nothing.

We have been very derelict in the military in our failure to recognize the growing needs of the specialists and the enlisted ranks in the grades of sergeant and above. We have been very derelict in our recognition of the needs of junior officers, particularly pilots, in all the services. I am happy to say that this bill takes a great step toward alleviating some of those shortcomings we have been having in the past several years.

Mr. President, we also have in this bill money for the Air Force to develop a new aircraft that will be someplace between the giant C-5 and the not so small C-141. We need this plane to accomplish getting our troops wherever they have to be gotten to around the world.

I would just like to mention, for example, that if we plan to move a mechanized division from the United States to an area where there is no pre-positioned equipment we would have to move the division's 16,000 soldiers, plus 50,000 tons of cargo, and to do this by air would require 400 trips by the giant C-5 transports, and we just have 70 of them when they are all in flying condition; and 1,200 trips by the C-141, and there are 234 of them in the full-strength fleet.

By contrast, the equipment for the whole division can move on just three large, properly equipped cargo ships.

Mr. President, our merchant marine is in such bad condition that we do not even have those cargo ships.

I mention this one item to point out that the problems of the military are not confined to just the equipment alone that we think of in use on the battlefield or in the sky or on the seas. We have these problems of lift that we never had to consider before, and we have the problems of the men and women in the military.

Mr. President, I am very proud and very happy to join with my colleagues on the Armed Services Committee in recommending to the Senate that we overwhelmingly adopt the conference report. It is a good report. It is well-thought out, very well-worked out, and I think in all of my years on the Armed Services Committee that it comes closer to unanimity than any one I can remember.

I yield the floor and I thank my friend from Texas.

Mr. STENNIS. Mr. President, I yield the floor to the Senator from Colorado.

Mr. HART. Mr. President, I thank the chairman.

I wish to join my colleague from Arizona in commending this bill to our colleagues for their satisfactory acceptance. It is a good bill, and one which strongly reflects the original Senate bill. I think that is particularly true, Mr. President, with regard to naval issues where the

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conference bill almost exactly reflects the Senate position.

The Senate owes a great deal of thanks to the distinguished chairman of the Armed Services Committee, Senator STENNIS, for the favorable outcome of the conference. He worked tirelessly for the Senate viewpoint. He was highly effective on all matters, but especially so on the very important naval issues in dispute. Again, the bill strongly reflects the Senate viewpoint on those issues.

Of great importance were a series of naval R. & D. initiatives, initiatives taken by the Senate to give us more shipbuilding options in the future. Today, we must too often choose between building ships which are so expensive we can never build the number we need, or building no ships at all. Why? Because neither the Navy nor the Administration has developed other options, options which would permit us to have ships which are individually effective yet also affordable in the numbers needed. In the absence of action by others, the Senate has sought to address this problem.

The Senate bill contained R. & D. initiatives for light carriers, for a combined amphibious assault ship and VSTOL carrier, for a naval version of the advanced Harrier VSTOL aircraft, for conventional attack submarines, and for modular naval weapons and sensors, among others. Thanks to strong support by the chairman, and equally by the members of the Senate R. & D. Subcommittee, especially Senators CULVER and WARNER, all these initiatives were approved by the conference. I am deeply grateful to the chairman and the R. & D. Subcommittee conferees for their insistence on the Senate positions, and I believe the Senate should be grateful also.

I do believe the conference report language on one of these items could use some clarification. The program I refer to is the light carrier. In the Senate report, the language made quite clear the intent of the program, which provides $30 million in design money for a light carrier. The report established the following guidelines for the light carrier:

First. Size: Every effort should be made not to exceed 40,000 tons full-load displacement.

Second. Aircraft complement: Ship should be capable of operating most—but not necessarily all—of existing or planned CTOL and VSTOL aircraft. In this regard, ski jump technology should be aggressively pursued. Should actual testing verify current analysis, ski jump should be considered for use rather than catapults because of ease of construction and simplicity of operation.

Third. Life-cycle costs: Emphasis during ship design should be placed on minimizing the personnel requirements and reducing life-cycle costs. Attention should be given to ship modularity to permit mission change without major and costly conversion.

Fourth. Vulnerability: Attention should be given to minimizing the vulnerability of the light carrier and weapons systems by such means as location of key equipments in less vulnerable areas of the ship, armorplating of vital areas, and silencing to reduce acoustic signature.

Fifth. Acquisition cost: In order to acquire a number of light carriers, cost is a matter of singular importance to the committee. Therefore, a target of $1 billion in 1981 dollars is suggested for follow-ship costs.

The conference report language is more general. It states:

If the United States Naval forces are to continue to carry out their mission, there is strong evidence to support the need for additional aircraft carrier forces. For over three years, the Navy has been studying various sea-based aircraft platform alternatives. Despite this intense study effort, no program has been forthcoming to increase naval air capability at sea. Air-at-sea continues to provide the greatest flexibility in meeting new and challenging technological changes in warfare. It would be shortsighted indeed to fail to provide adequate forces, and especially air capable platforms, in this era of increasing Soviet naval capability. In providing for adequate forces in the years ahead, the Navy should consider carriers of all various designs.

Therefore, $30 million is authorized for such additional R&D effort as may be required to permit a definitive recommendation by the Navy to the Congress for a new class of aircraft carrier.

I believe some explanation of legislative intent may be helpful in establishing the meaning of the conference language.

I believe more certainty is needed in that legislative intent, and discussion of that subject may be helpful in that connection.

First, the "definitive recommendation" to the Congress called for in the conference report requires a light carrier design sufficiently well developed to permit authorization of the ship by the Congress. We are not speaking here merely of a need for a general recommendation. We have enough of those, from many sources. What we need now, and what this $30 million is for, is a ship; a specific ship, a ship that is through the contract design phase.

Second, the conference report language, by not addressing the specific characteristics of the ship, especially as regards size and cost, leaves the Senate report language still in force as far as the legislative intent is concerned. The carrier design to which this $30 million is to be applied should not exceed 40,000 tons full load displacement, nor $1 billion in fiscal year 1981 dollars for follow-ship cost. These goals are necessary if the purpose of the light carrier program—which is carriers sufficiently affordable to permit us to have greater numbers—is to be achieved.

Third, where the conference report language states, "In providing for adequate forces in the years ahead, the Navy should consider carriers of all various designs," the report is referring to existing carriers as well as to those which may be procured in the future. Thus, the language does not suggest the $30 million in carrier R. & D. funds can be applied to any carrier other than the light carrier as described in the Senate report language. The conference report language merely affirms what the Senate has made clear all along: that the light carriers envisioned here would supplement, not replace, the existing force of 12 large carriers, creating a mixed force of large and light carriers, carriers "of all various designs" which will be in service "in the years ahead."

The Navy of course may and probably should consider carrier designs for the future in addition to the light carrier as described in the Senate bill. This same bill contains a separate initiative for a smaller VSTOL carrier, the LH-X (VSS). However, the $30 million in carrier R. & D. money in this bill may not be applied to designs other than the light carrier as described in the Senate bill. That is the legislative intent.

Again, Mr. President, this is a good conference report. It is much more the Senate bill than the House bill. It is a victory for the Senate positions. I urge my colleagues to support it.

Mr. President, I thank the Senator from Mississippi, the distinguished floor manager.

The PRESIDING OFFICER. The time of the Senator from Mississippi has expired.

Who yields time?

Mr. METZENBAUM. Mr. President, I yield myself 5 minutes of my own time.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to address the chairman of the Armed Services Committee and to indicate to him the continuing concern I have had over a period of years.

Mr. STENNIS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct. Will the Senator from Ohio please suspend until the Senate is in order.

The Senator from Ohio.

Mr. METZENBAUM. I thank the chairman of the Armed Services Committee and the Presiding Officer.

Over the years I have risen on this floor to discuss with the chairman of the Armed Services Committee competitive bidding by the Department of Defense, and routinely we have seen the Department of Defense award contracts on a noncompetitive bid basis, so much so that studies have been made over the years by the distinguished Senator from Wisconsin (Mr. PROXMIRE), who pointed out in one series of studies how as much as 50 percent could be gained if competitive bidding were used.

And other studies have been made by the GAO and by various other governmental agencies, all of which have indicated the need to use competitive bidding. The Secretary of Defense himself has been quoted in the New York Times as saying one of his great frustrations has been his inability to cause competitive bidding to be a reality of life in the Department of Defense.

Several years ago I came to the floor of the Senate and offered a couple of amendments on the subject of competitive bidding to a Department of Defense appropriations bill. It was approved by the Members of the Senate and lost out in the conference committee.

In this year, also, I came to the floor of the Senate not attempting to address myself to the total issue of competitive bidding, but limiting the issue to the

question of sole procurement of experts and consultants by the Department of Defense and requiring certain new reporting requirements as pertains to the Department of Defense hiring these consultants and experts without using competitive bidding and without giving prior notice.

When that matter went to the conference committee, again the House, which did not have it in, insisted on their position, the Senate receded, and the amendment came out.

But, having said that, that is the bad news. I would also like to address myself to the good news, because I think that in this instance the good news is better than the bad news. Although we lost technical language of the amendment itself that had been offered and agreed to on the floor of the Senate, it is a fact that the conferees did recognize that legislation has been introduced in both House of Congress relating to contracts for procurement of experts and consultants and that the present regulations require certain types of notification prior to award of such contracts. Therefore, they said, "We will delete the language in the Senate amendment."

Well, that is bad on its face and that would disturb me much, except that the conferees went on to say, and I read the language of the report:

The conferees insist, however, that in order to closely monitor such contract awards, the Secretary of Defense, during fiscal year 1981, submit, on a quarterly basis, a report containing a listing of all contracts for consultants and experts that are (1) awarded without the required 10 days' publication and (2) on a basis other than advertisement and acceptance of the lowest competitive bid.

They went on to say:

Each such report should include the type of contract, the scope of work, the reason for a sole source or other award, and the reason for waiver of notification or other waiver being given.

Mr. President, I think, frankly, that the report language actually goes further than the amendment that had been adopted on the floor of the Senate. I hope that the Department of Defense understands that they are to live up to the report language. If they live up to the report language, we will not have changed the law but we will at least have established a precedent and maybe we will have given a message from both Houses of Congress that both Houses of Congress do not believe that there ought to be sole source procurement of experts and consultants without adequate notice in advance and without competitive bidding.

If we take that major step forward with respect to the experts and consultants, then I hope that the next step will be, in connection with all procurement, except certain specified exceptions, that in all cases we will be using competitive bidding and we will be using advertisements in advance.

Mr. President, there are not any of us in Congress who do not support the concept of the military having adequate funds to make our Nation No. 1 throughout the world. But that does not mean that we have to waste funds at the Department of Defense—and they have been wasting them. They continue to waste those funds. They are indifferent to the concerns of the Congress and the people.

I believe we are giving a message by this report language, a message saying that we expect the Department of Defense to use competitive bidding, to use prior notice and to see to it that we can save some dollars while at the same time maintaining our military strength.

Mr. President, I commend the chairman of the Armed Services Committee, who is actually the leader in this respect, for this language being included in the report. I think he has done a superb job. I am very proud to associate myself with him.

Mr. STENNIS. We certainly thank the Senator very much for a lot of hard work he has done.

Mr. COHEN. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. The Senator from Ohio has 4 minutes remaining?

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. Mr. President, I yield 1 minute to the Senator from Maine.

Mr. COHEN. Mr. President, I wish to say, in response to the Senator, that this problem of the wasting of Government money or taxpayer's money through unsolicited proposals or through sole source contracts is endemic throughout our bureaucracy.

The Senator pointed simply to the defense industry as such and the defense establishment. I agree with the Senator in his point.

Senator LEVIN of Michigan and I have introduced a measure in this body just last week, after hearings which lasted for some 11 months investigating the problem of hurry-up spending in which agencies wait until the last month of the fiscal year in which to contract out to various experts and to various contractors. We have found that is the most abused period of time through sole source contracts.

So we welcome the Senator to join in this bill that we have introduced. I believe there will be another bill introduced in the House. We welcome the Senator's support, not only to get at the problem of defense spending, but Government spending at all levels.

Mr. METZENBAUM. I thank the Senator from Maine. I might point out to him that I have joined with the junior Senator from Arkansas on this very same subject. I will be very happy to look at the Senator's language and associate myself with it after I have an opportunity to read it.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2 minutes and 33 seconds remaining.

Mr. METZENBAUM. Mr. President, I yield 33 seconds to my friend from Alabama.

Mr. HEFLIN. Mr. President, I would like to express my support for the conference report and also extend my appreciation to all my colleagues, and also the conferees for adopting the $15 million increase in the ballistic missile defense program. Although the command which administers the program is located at Huntsville, Ala., it is a program of national importance; and, thus, my interest is far from parochial.

Now, Mr. President, I would like to speak on a topic that has a direct bearing on this report—the Anti-Ballistic Missile Treaty (ABM) of 1972. As we know, the Soviet Union's quest for global domination—seen most recently in the wake of Afghanistan—has postponed debate of SALT II, and in the words of my distinguished colleague from New Mexico (Mr. DOMENICI) has placed "the entire future of the SALT process in doubt, and thus makes it appropriate to reexamine all strategic force concepts, including ABM, which were previously deemed incompatible with the SALT process." This is vital because, if the SALT Treaty should go unratified or the existing "gentlemen's agreement" be abrogated, a new round of offensive improvements in the area of nuclear weapons is likely; and the potential vulnerability of our land-based missiles within a few years demand that we examine a ballistic missile defense system.

For years, debate has revolved around the issue of whether, to what extent and in what role, we should deploy an ABM system. The basic options have been seen as protection of our missiles and/or our cities from a nuclear attack. In one sense, the debate was settled by the ABM Treaty in 1972 which, in the words of a respected arms control analyst, limited ABM systems in such a way as to encourage the eventual termination of an existing American ABM program and to discredit in the eyes of the American public the entire notion of ballistic missile defense.

Now, 8 years later, the ABM Treaty continues to be a cornerstone of American policy and is regarded by some as the great success of the U.S. arms control policy in the post-war period. It has been argued by its supporters that this agreement, which limits the development and deployment of ballistic missile defenses, constituted a radical departure in Soviet strategy and signaled Moscow's acceptance of the U.S. policy of mutual assured destruction (MAD).

Yet, Mr. President, I contend that this treaty falls into the current category of arms agreements where the biggest and perhaps the only beneficiary has been the Soviet Union, not the United States. We, the United States, are responsible for this disparity which can easily be seen when one looks back on the ABM Treaty debate. The most striking feature of the debate was the massive and almost willful failure of the anti-ABM forces to give serious attention to Soviet attitudes. A brief look at the Soviet actions preceding the treaty prove that the signing was not an indication of a Soviet acceptance of U.S. policy, as arms control proponents have claimed.

After the Cuban missile crisis, the Soviets were determined never again to

allow themselves to be face down by superior American force. As early as 1964, they unveiled the galosh ABM system designed to defend Moscow. In the meantime, the idea of negotiating limitations on strategic arms had gained headway in both countries.

While receptive to offensive arms control, the Soviets initially displayed considerable distaste for any ABM limitations. When asked about a moratorium on ABM development, Soviet Premier Kosygin asserted that an antimissile defense "is not a cause of the arms race, but represents a factor preventing the death of people."

This Soviet distaste to ABM limitations conveniently and drastically changed after successful tests of our Safeguard ABM system.

Though somewhat limited, this system was still very potent and directly threatened the success of the Soviet preemptive counterforce strategy. The logical Soviet solution to this problem was to freeze both Soviet and United States deployment and attempt to close a technological gap by means of an intensified research and development program.

Thus, my belief is that the Soviets signed the ABM Treaty, not of a newfound conviction of the wisdom of mutual assured destruction, but in order to arrest the planned deployment of the American Safeguard system and to dampen American interest in a strategic field in which this country held at that time a commanding technical lead.

The Soviet Union succeeded in their plan, conveniently with the help of anti-ABM forces, whose argument against deployment of the ABM was based on two premises. The first argument was technical.

Questions were raised about the ability of the safeguard radar to track many targets simultaneously, and also that the ABM radar technology would be unable to keep pace with the ability of the Soviets to saturate the defense with penetration decoys and eventually with multiple independently targetable re-entry vehicles, MIRV's.

Technical advances made since the treaty have easily overcome these problems and have shown the capability to respond to further increases in the Soviet threat.

The second argument that anti-ABM forces gave was based on the strategic view that had achieved status during the 1960's—the view that stable nuclear deterrents requires each side to possess an assumed capability of inflicting unacceptable damage upon the other.

Under the logic of this mutual assured destruction, ABM and every other form of strategic defense were undesirable. By demonstrating belief in the possibility of defense against nuclear attack by the other side, they suggest belief in the possibility of successful nuclear attacks by one's own side.

As I explained earlier, the Russians have never adopted this policy of MAD, and the administration apparently abandoned it publicly a few weeks ago. Today, the argument that an ABM system does not coincide with our MAD strategy holds no water because the policy of MAD no longer seems to exist.

Therefore, I ask, Mr. President, why should we continue to abide by this obsolete treaty that limits our ability to deter nuclear attack, especially in view of the fact that if we do not do something soon, the vulnerability of our land-based missile will leave us open to nuclear blackmail by the Soviet Union. If this question were posed to ABM opponents, they would respond that any attempts to change the ABM Treaty would endanger all arms control agreements and result in a new and further expensive arms race. Of course, it would be unwise to deny that a serious return to ABM defense might have great consequences for the future direction of strategic programs in both the United States and the Soviet Union. However, I contend, Mr. President, that we have been in an arms race—and a losing one, I might add—with the Soviet Union for the past decade, despite so-called arms control agreements. The vulnerability of our land-based missiles proves the existence of this arms race. In response to ABM opponents' claim that a new and expensive arms race would occur, it is my judgment that the limited Soviet economy could not handle increased expenditures to cover a new arms race in the area of defense systems, but would have to readjust their expenditure decisions.

Therefore, would it not be more desirable to engage in an arms race that builds weapons to defend our country, instead of a race that builds weapons to destroy? Now, this would be a real move toward limiting offensive nuclear weapons, thus reducing the chance of nuclear war.

Also, Mr. President, a move toward ABM defense would open up a new range of strategic possibilities and provide a cushion in American strategic planning that is currently lacking. Of course, I am not ignoring the fact that the Soviets are likely to engage in an intensified competition in this area.

Yet, once faced with a prospect of competing in a technological game in which this country enjoys—and which this country will certainly continue to enjoy important advantages, it is conceivable that the Soviets will prove much more amenable to strategic restraint.

So, I ask, why should we continue to abide by a treaty that mandates parity in one of the few areas where we hold a clear technological advantage, especially since our BMD system, integrated with a deceptively based MX system, would provide protection to our land-based ICBM forces at the lowest cost that has ever been analyzed.

In conclusion, Mr. President, what must be done in a systematic and serious rethinking of the role of the ballistic missile defense in American nuclear strategy. As I explained earlier, the policy of MAD apparently no longer exists, thus an ABM system could play a very vital role in our policy of strategic deterrence.

Therefore, we must have a comprehensive nuclear strategy ready before 1982 when the United States and the Soviet Union meet for the ABM review conference. This conference could have drastic consequences for American interests if it is not preceded by a review of strategic requirements for the 1980's.

We must not allow, Mr. President, this country to remain in the very vulnerable and costly situation that we face today and in the days ahead.

Mr. METZENBAUM. Mr. President, I yield 1 minute to the Senator from Arkansas.

Mr. PRYOR. Mr. President, I appreciate the Senator from Ohio yielding to me.

Mr. President, I applaud the Senator from Ohio for bringing this matter to the Senate's attention. I am very pleased that the conferees did adopt some language as it relates to the hiring of consultants and especially in an attempt to stop many of the abuses that we are finding today in sole-source contracting. This, of course, only relates specifically to the Department of Defense.

Mr. President, I can state that in S. 2880 we are trying to approach this subject on the whole of the Federal Government and trying to look at the entirety, the entire spectrum of Federal contracting out, specifically as it relates to sole-source contracting. We feel that if the provision in S. 2880 can prevail, we will certainly make giant steps forwards in curtailing some of the abuses that we have found.

Once again, I commend the Senator from Ohio. I am proud that I joined with him as a cosponsor and proud to have him join me as a cosponsor of S. 2880.

Mr. METZENBAUM. Mr. President, if I have any time remaining, I yield it to my friend from Mississippi.

The PRESIDING OFFICER. The Senator has 27 seconds remaining.

Mr. TOWER. Mr. President, I yield such time as he may require to the distinguished Senator from Maine (Mr. COHEN).

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I wish to add my own words of commendation to the chairman of the committee and also the ranking minority member, Senator TOWER, for their leadership on this particular measure. It is a complicated bill with many new weapons systems and new programs.

I express my appreciation for having the opportunity to serve on the committee under their leadership. I particularly express my support to Senator TOWER for something I believe he initiated this year, the first time, at least, since my service in the Congress, including that in the House. Many of us attempted to talk, from time to time, about increasing defense spending on a percentage basis. We have talked in the past about a 3-percent solution for NATO countries, including the United States. Some have talked about a 5-percent solution. Some have gone as high as a 10-percent solution.

I believe that Senator TOWER is correct in recognizing it is not the percentage of increase that is of critical concern but, rather, what kinds of systems are needed

and what is the level of spending which is necessary to keep this country free and secure, not only for our people but for our allies and also for our interests around the world.

For the first time, Senator TOWER brought forth an opportunity for the members of the committee to consider a series of options, options 1, 2, and 3, or A, B, and C, which were available at that time, giving the members of the Senate Armed Services Committee an opportunity to evaluate specific systems, what was necessary in terms of professional military judgments, and whether we were prepared to support the level of spending necessary in their judgment. I commend him for that initiative and associate myself with his efforts.

Mr. President, during Senate consideration of H.R. 6974, the Defense Authorization bill, our distinguished colleagues, Senator CRANSTON and Senator MATSUNAGA, expressed concern over language in the Armed Services Committee's report on that bill. The report, on page 121, suggested that a program of educational assistance, as provided in the authorization bill "may well be the last hope of the Volunteer Force to attract personnel of needed quality."

Senator CRANSTON, chairman of the Veterans' Affairs Committee and a supporter of the All-Volunteer Force, said that he categorically rejected that suggestion. Senator MATSUNAGA, also a member of the Veterans' Affairs Committee and one of the leading forces in bringing the Volunteer Army into being and in working for improved pay and benefits for those in uniform, joined in taking strong exception to the committee language.

I share their deep concern, and I want to thank them for drawing attention to the erroneous statement made in the committee report. When the Armed Services Committee was marking up the authorization bill, I raised an objection to the draft language which had been drawn up suggesting that an educational benefits package might be the last chance to preserve the Volunteer Army. The committee agreed to change the language. Through an apparent oversight, however, the change was not made.

The Armed Services Committee's report should have said: "But an effective educational assistance program may well be the best approach for the Volunteer Force to attract personnel of needed quality." Unfortunately, because of the inadvertent inclusion of incorrect, rejected language, a misleading impression has been created.

Realizing that corrections somehow never catch up with inaccuracies, I hope in this case that we can be successful. Already, I have seen one magazine article which uses the incorrect language as the basis of a story it ran on the education package. My only hope is that by drawing attention on the floor today to the regrettable situation which has resulted from use of the wrong language, we will establish a clearer perspective for evaluating the importance of the education program.

I want to point out that the language which should have appeared in the committee report on the bill does appear in the conference report on the measure. On page 96 of the conference report, it is stated:

> The implementation of an effective educational assistance program may well be the best approach for the volunteer force to attract personnel of needed quality.

A 1-year test program, as provided in this legislation, may not provide sufficient time to determine whether educational incentives are, in fact, the best approach for attracting top-quality recruits. I think, though, that we are taking an important step in moving toward improved educational benefits. From this experiment, I hope we will have the basis for developing a program which will encourage educationally motivated men and women to enlist and reenlist.

One of the recurring themes before the Armed Services Committee in this past year has been about the devastating effect that ending the GI bill had on military recruiting. It is more than coincidence, I believe, that the dropoff in recruit scores on military entrance exams occurred just after the GI bill was ended.

The way to reverse this situation is through a combination of programs such as we have included in our package. Forgiveness of student loans, a proposal I introduced in this body, holds great potential for attracting those with a college education into our Reserve and Active Forces.

I firmly believe that educational incentives, along with fair compensation for those serving their Nation, do offer the best approach for attracting top quality enlistees. But I join my colleagues, Senator CRANSTON and Senator MATSUNAGA, in categorically rejecting any claim that they may be the last hope for the Volunteer Army.

I regret that the correction I requested when we marked up the authorization bill inadvertently was not made. At the same time, however, I want to offer two commendations for allowing the record to be set straight. Were it not for the vigilance of the two distinguished members of the Veterans' Affairs Committee, and for their colloquy on the floor, the misimpression might have been allowed to stand. I also want to thank the staff of the Armed Services Committee for going back over the notes of the meeting at which I raised the objection and for making the correction in language in the conference report. That should do much to set the record straight.

Educational incentives should help attract quality recruits. Those incentives should, if applied properly, enable us to build a better military. But we must keep their impact in perspective. If there is a "last hope for the Volunteer Force to attract personnel of needed quality," that hope lies with a Congress which has failed to provide the incentives necessary to maintain that force. Through the efforts in this Congress to improve pay and benefits and to provide this educational incentives package, we are reversing the record of nonsupport. We must now keep this momentum going and continue to take necessary steps which will demonstrate to our men and women in uniform that we do care about the job they are doing on behalf of their Nation and that we are committed to providing programs to maintain a strong Volunteer Force.

Mr. PROXMIRE. Mr. President, it is my understanding under the unanimous-consent agreement I have 15 minutes. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. PROXMIRE. So far we have had nothing but sweetness and light and, unfortunately, I will have to shatter that sweetness and light because I think this is a bad conference report. I oppose it because of its budgetary excesses, its undisciplined priorities, and its inflationary effect on the national economy. The distinguished Senator from Mississippi has said this is the largest procurement bill we have ever had. That is true. The conference report agrees on a military procurement budget of $52.8 billion, which is, incidentally, $700 million beyond, over, what we did in the House, and we had a very, very big bill at that time.

This reflects a 12.6 percent increase over the administration's request of some $46.9 billion. Let me repeat that. This is 12.5-percent higher than President Carter asked us to pass. He asked us to pass a big procurement bill.

It is higher, including all of the changes that President Carter may have made in the meanwhile. There was a clamor to try to reduce this bill after it passed the House.

According to the Secretary of Defense and the President, the original request was not only in line with all other national priorities, but it was sufficient to meet the known international threats to our security. So we are about to substitute a new assessment for the relative military balance for that so carefully calculated by the Secretary of Defense and his advisers.

Mr. President, how do we ever get into this position? In the first place, I think that, unfortunately, in recent years, the defense procurement bill has become another porkbarrel bill, a bill in which those who wanted to get more for their States got more for their States, unfortunately; in which the merits of the programs have too often been ignored in order to provide more jobs or more opportunities for profits in various sections of the country. In other words, it is a porkbarrel bill with all the problems that a porkbarrel bill represents.

The basis for the reassessment, the basis for our going so high, for our going over the administration, for our going far higher than ever before, is an oft quoted but little examined statistical reevaluation of United States and U.S.S.R. defense spending. That reevaluation allows advocates of increased military spending to claim that the Soviet Union has outspent the United States by 30 percent or 40 percent or even 50 percent,

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depending upon the category of spending addressed. This is the so-called dollar costing method. The Soviet defense programs are costed out in U.S. dollars. That is, every component of Soviet defense spending is viewed as if it were produced here in the United States in U.S. dollars, with U.S. inflation, with U.S. prices, with U.S. manpower costs.

How utterly ridiculous this method is is disclosed when you compare it with what the ingredients are. Thus, the Soviets huge standing army, more than twice that of the United States, is given costs equal to what it would be to produce that army here in the United States with the All-Volunteer Force pay costs.

Mr. President, assume we apply that to the Chinese Army. They have something like 7.5 million people in the Chinese Army. Suppose we paid all of them the way we pay people in this country. On that basis we would argue the Chinese are paying far more for their defense than we are, and they would be. That indicates how ridiculous it is for us to simply take their manpower and, of course, give their manpower the kind of treatment we give ours, wholly unrealistic.

They have a draft system in Russia which we do not have. They pay their military people about one-fifth of what we pay them. They use their military people to harvest crops and build roads. They have about 1 million of their people mobilized on the Chinese border. There just is no comparison.

Mr. President, then the figures are used over and over in the American press to suggest and outright claim that the U.S.S.R. is outspending the United States in defense. This is done in the face of the clear disclaimer that the CIA places on these figures, and they have made the calculation.

There was an excellent letter which appeared in the Washington Post a week ago Sunday by a CIA expert who had been responsible in great part for this computation, saying how wholly we had been deceived in this estimate and how, in fact, the increase in Soviet spending had never exceeded 3 percent a year, in spite of the fact that we argue it has been increasing at such a much more rapid rate than anything we have done or contemplate doing.

Mr. President, the CIA says about their statistics:

> Estimated dollar costs do not measure actual Soviet defense expenditures or their burden on the Soviet economy. Similarly, dollar cost analysis does not reflect the Soviet view of the distribution of the Soviet Union's defense effort. Neither the system of accounts nor the structuring of expenditures by military mission is the same for the Soviet Ministry of Defense and the U.S. Department of Defense.

Now, consider that disclaimer. First, they say you cannot use the dollar cost method to measure actual Soviet expenditures. That makes any statement about the Soviet's outspending the United States by 30 percent or 40 percent or 50 percent to be a simple, obvious error. It simply is not true.

We are comparing a phantom army with a real army, a phantom army that has no economic reality, no basis in cost or burden to the U.S.S.R. economy. It is a statistician's mirage. And yet these figures are cited over and over as justification for the huge increase in defense spending this year.

Mr. TOWER. Will the Senator yield for a clarifying question? Is he saying that the Soviet Army is simply a phantom army?

Mr. PROXMIRE. Of course not. What I am saying is that what they are doing is to apply the pay that we have for our Army to an army of 4.3 million, which is an army which is used entirely differently than our Army.

You can only measure an army, as the Senator knows, by the weapons they have available. If we used this technique, we would have to apply the same measurement to the Chinese, I suppose. I hope that the Senator from Texas would not argue that the Chinese, because they have far more people than the Soviet Union or this country—in fact, more than both combined—have more power than both combined. I am saying this statistic does not mean anything, that that comparison is meaningless.

Mr. President, it is time that the American public understands that these quotes about being outspent by the U.S.S.R. are just plain inaccurate. They are nonsense, balderdash, baloney, phony, fake, and, I might add, untrue.

Mr. President, the gross total of this bill aside, contained therein are commitments to several military programs I believe to be most unwise and injudicious. Foremost among these is the $1.6 billion commitment to the MX missile system. The MX is a curious concept—curious because each week we get a new version of the MX. Rails, trenches, loops, straight lines—the geometry of the deployment scheme is a mapmaker's delight. And, of course, we cannot decide where to put it. This bill accomplishes a neat political trick by mandating that one-half of the 4,600 shelters for the MX be outside of Utah and Nevada. This is a new form of revenue sharing or perhaps burden sharing—a spread-the-wealth plan—except that no one really wants the full impact of the MX in their area.

In addition, the Congress is insisting that a World War II battleship and a Korean war aircraft carrier be taken out of mothballs and added to the fleet. The Defense Department objects to both projects. I repeat, the Defense Department objects to both those projects. We are taking in this bill a World War II battleship and a Korean war aircraft carrier out of mothballs and adding them to the fleet.

In addition, the conference report deletes the $94 million needed for B-52 modernization while adding $300 million for research and development and $75 million for long lead procurement of a new multirole bomber to be deployed by 1987.

Mr. President, there is good news and bad news in this conference report. I have just told the bad news and, unfortunately, I think that outweighs the good news. But there is good news. There are positive as well as negative aspects. In part, this bill continues the emphasis, well placed in my opinion, of rewarding our military personnel with pay and benefits to which they are entitled. The authorization of $1 billion for the 11.7-percent pay raise is a welcomed change from prior years, when military personnel were forced to defray part of the cost of inflation out of their own pocketbooks. If the All-Volunteer Force is to work, we must attract and hold qualified, skilled personnel and adequate pay and benefits is the place to start.

Mr. President, the military force is like any other group of human beings. We have to pay them adequately. That is why I think the Senate was wise to override the veto this afternoon. There is no question that we are losing competent people. When we lose maintenance people, when we lose engineers, when we lose pilots who cost a great deal to train, it is an enormous loss. No matter how good our equipment may be, unless we have capable, competent, able people, and we certainly have them in the military, unless we retain them, give them the incentive to stay, we are obviously going to weaken our military greatly. So in that respect, I think this conference report is good. I approve of that.

Mr. President, I do not want my vote against this conference report to be interpreted as opposition to the pay raise. To the contrary, I have supported and shall continue to support increases in pay, but I cannot overlook the economic and military consequences of the unbridled and misdirected spending in this bill.

Mr. President, I ask for the yeas and nays on passage of the conference report.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PROXMIRE. I yield the floor.

Mr. TOWER. Mr. President, I shall yield in just a moment to my colleague from South Carolina, but I cannot let what the Senator from Wisconsin has said go totally unanswered.

Mr. President, even if we proceed on the assumption that the method of calculating Soviet defense expenditures is phony, we still have to consider the threat based on what the Soviets have. Even if they got it all for nothing, even if it were free, the fact remains that they have more ships, more intercontinental ballistics missiles, more submarines, more artillery pieces, more tactical aircraft than the United States does. The fact is that they are superior to us in virtually every aspect of military endeavor, with the possible exception of strategic capability. And there, we have only a rough equivalency and we are losing that. So that is what we have to look at.

The Senator from Wisconsin is focusing on entirely the wrong thing. It does not matter what the relative amounts spent by the United States and the Soviet Union are. What matters is the relative military posture of the two countries.

The Senator from Wisconsin said we should measure an army by the weapons available to it. If you want to measure it by that, look at what the Soviets have compared to what we have. This is typical of the Senator from Wisconsin. His way of stopping Russian aggression is to slap a wheat embargo on the Soviet Union. His way of fighting Soviet aggression is to impoverish the American farmer and to cut back on defense spending.

I am certain the Soviets are scared to death by the wheat embargo. Rats. They could not care less. So a few of their citizens suffer a little discomfort because they get 2½ pounds less a year—2½ pounds less—with the embargo than they would get without it.

Mr. President, do you think the people in the Kremlin give a damn about that? Of course not. There will be meat on Brezhnev's table tonight and tomorrow night and the night after that. And he will exercise sway and control over his people by virtue of an authoritarian government with the military power to back it up. And he will go into Afghanistan or any other place he wants to go, as long as he believes there is no likelihood of a credible challenge by the United States of America through a strong foreign policy and the military force to back it up.

Mr. President, I certainly hope the Senate will not buy the means of fighting aggression of the Senator from Wisconsin—that is, by taking wheat markets away from the American farmer—but by arming this country with what it needs to provide a credible deterrent to aggression.

I yield 3 minute to the Senator from South Carolina.

Mr. PROXMIRE. Will the Senator yield to me?

Mr. TOWER. Mr. President, I have yielded to the Senator from South Carolina. I shall be glad to have a colloquy with the Senator from Wisconsin later, but I have yielded to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I support the conference report on H.R. 6974, the Defense Authorization Act for Fiscal Year 1981, which authorizes $2.8 billion in defense spending.

These funds include $35.7 billion in procurement, $16.9 billion in research and development, and $120 million in civil defense.

This bill represents the most determined effort the Congress has undertaken in recent years to bolster our sagging Defense Establishment. It increases by approximately $7 billion the budget request submitted by President Carter.

Besides addressing our procurement needs, the bill authorizes a 11.7 percent pay increase for military personnel and provides 15 new or increased items relating to military pay and benefits. I consider this pay raise and increased incentives as very important in slowing the loss from the services of valuable, trained military personnel.

Among the significant procurement items in the strategic area, the conference agreed to provide $375 million for research, development, and procurement of a new bomber. The conference report language permits selection of a new bomber by March of 1981 from among the various candidates such as the B-1 and variants, the FB-111, and the new technology bomber.

A compromise was also reached in the MX missile language which stresses the need to move forward with deployment of this program. In another important strategic area, the funding for the Navy's Trident II missile was increased by splitting the difference between the two bills.

In the shipbuilding area, both bills contained aggressive programs in excess of that recommended by the administration. These higher levels were approved by the conference which, in addition, provided funds for reactivation of the *New Jersey* battleship and the *Oriskany* carrier.

Mr. President, the conferees also agreed on a number of increases in aircraft procurement. The recommended levels of aircraft procurement were hardly meeting the attrition rates, and the increased rate approved by the conference significantly lowers the unit cost.

Especially gratifying was the decision of the conference to procure needed aircraft for the Reserve and Guard. While our committee did not include these items in the Senate bill, the Senate conferees wisely receded to the House on such items as A-7K trainer aircraft, C-130 transport planes, and attack helicopters for the Guard and Reserve.

Mr. President, this conference report represents nearly 2 weeks of work by the Senate and House conferees and I urge its acceptance by the Senate.

I thank the Senator for yielding.

Mr. PROXMIRE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. PROXMIRE. Mr. President, I say to my good friend from Texas, in the first place, I am delighted to hear the Senator from Texas agree that it may be—he did not say it was, but it may be phony for us to make this comparison that they spend 30 or 50 percent more by simply taking their Army and trying to reproduce it here.

The Senator talked about weapons. That is where he concentrated his fire. He said they have more ships, more planes, more missiles. That is another illusion. So they have more ships. What is important is the firepower, the tonnage, the capacity of those ships. How many aircraft carriers do they have?

Mr. TOWER. Will the Senator yield? I am delighted——

Mr. PROXMIRE. Mr. President, we would have 14. If I had my way, we would have cut out the additional aircraft carrier we have. We already have 6 to 1 predominance over the Soviet Union in aircraft carriers. Obviously, they can deliver far more firepower than the ships the Soviet Union has. How can we justify spending $2.5 billion, not counting the planes that cost another $7.5 billion, on a small destroyer or some other weapons system that is far smaller?

Furthermore, Mr. President, our submarines. We have fewer submarines, but ther are quieter.

The submarines are also faster, far tougher to detect. Our planes are better. We have more warheads than the Soviet Union. Surely, they have more throwaways. We have more warheads than the Soviet Union.

Mr. President, the point I make is not that we can resolve here tonight or in several days which country has the greatest military power. What I say is that we should not just automatically take the notion that they have 30 or 50 percent, whether they are encouraging spending at a far greater rate than we are.

When we look at what the CIA tells us, and I have had hearings in committee every year for 10 years, those hearings have been in executive session, they show they are behind us in every single technological respect.

Furthermore, I am proud to support the wheat embargo. It is doing the job.

That is one of the reasons for the strike in Poland, because they are not able to ship the kind of feed grain they have in the past.

Furthermore, the testimony we have had on the record—this is not executive session—before our committee by the intelligence agency, indicates the strikes in Russia, the automobile plants, the truck plants, and the tank plants, are caused in large part because they do not have the meat they should have. Of course, they cannot process the meat because they do not have their feed grains to feed their cattle.

There is not any question, Mr. President, that the wheat embargo is difficult for us. Of course, it is tough for our farmers, and hard for our taxpayers. But, Mr. President, since that wheat embargo went in, our farm exports have gone up.

Nobody can tell me under those circumstances this is not a price worth paying, when we have the kind of difficulty we now have in the Soviet Union, the kind of protest they have, and also, of course, the consequences the Communist Party is suffering in Poland.

Mr. TOWER. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Texas.

Mr. TOWER. Mr. President, the Senator from Wisconsin has really demolished his own argument when he talks about the fact that we have superior tonnage than the Soviet Union. This is true. He said we had a 6-to-1 edge on aircraft carriers. We used to have a 14-to-nothing edge on aircraft carriers.

The Soviets are building carriers now and that is symptomatic of other things they are doing. They are building capital ships at a great rate on a per annum basis than the United States. They are

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building more tonnage than we are. They are not going to tolerate our retaining this narrow edge of maritime superiority unless we show them that we intend to maintain that edge by funding and authorizing the capital ships necessary.

Even what we have in this budget is inadequate in terms of our projected naval shipbuilding needs.

If we lose that tenuous margin of maritime superiority, we are really in the soup because we must protect our sealanes of communication. They are lifelines to the United States. The Soviets do not need to protect sealanes for anything except perhaps a little chocolate and bananas. They have what they need. They do not require the sealanes of communication.

But if the sealanes of communication are cut, then this will have a disastrous effect on the economic welfare of the people of the United States of America.

They are outbuilding us on ships. Yet, the Senator from Wisconsin would have us shrink our shipbuilding program.

The fact is that they are ahead of us.

Mr. PROXMIRE. Will the Senator yield?

Mr. TOWER. It was pointed out, 20,000 tanks facing us in central Europe against 7,000 for NATO. Is the Senator from Wisconsin going to pretend that is not an edge?

I do not care how much they paid for them to get there. They are there.

If we do not do something about it, then we are going to find our power diminished in this world to the extent there will only be one superpower left. Then watch the other nations of this world rush to make their unilateral accommodations with the Soviet Union, whether we have a wheat embargo or not.

I yield to the Senator from Virginia.

Mr. WARNER. Mr. President, I would like, momentarily, to direct a question to my distinguished colleague from Wisconsin. But by way of preparatory comment, I would like to express my appreciation to the chairman of the committee, the Senator from Mississippi (Mr. STENNIS), and to the ranking minority member, the Senator from Texas (Mr. TOWER).

I am nearing the completion of 2 years of service on this committee with these two fine leaders. I wish to express to them my personal gratitude.

I believe that they treat each and every member of the committee, be it a freshman or a senior veteran, with equality and give them every opportunity to participate in the work of our committee.

We also enjoy a very fine staff which has worked hard to put together this bill that we are soon to address.

I followed the colloquy here with great interest between the Senator from Wisconsin and the Senator from Texas. The Senator from Texas closed by briefly stating that this Nation has been a maritime nation since its very inception, dependent more and more each year on the sealanes, not only to nourish and feed our economy, our way of life, but also to protect us from enemies.

All of our principal allies save Canada, and to a lesser extent Mexico, are upon either the Atlantic or Pacific Ocean, and they, too, are dependent on the sealanes as a link between the United States and our perimeter of defense.

Yet, historically, the Soviet Union, and I say this in a most dispassionate way, has been a land nation, building slowly in concentric circles, acquiring neighboring countries.

We know that their perimeter of defense is Poland and Czechoslovakia, and on down through Rumania and Bulgaria, and that is their concept of defense. They can reach their allies by a simple road, most often.

It always has perplexed me why they want to enter into this naval race with the United States for they are not dependent on the seas, either historically or today, for raw materials or support of their allies.

I ask the Senator, and I would be interested in his views, as to why the Soviet Union, under the guidance of Admiral Gorshkov over the past 15 years, has taken a navy from just a coastal defense force to where it is today, capable of challenging the United States on every ocean and every sealane of the world. What is the purpose and the motivation there?

Mr. PROXMIRE. Obviously, the Soviet Union has demonstrated that much of what they believe in was represented by force and violence. They said that.

They will do it if they can. We have to deter them.

If anybody thinks I do not think we have to have a strong military force, he is wrong. I think we do. The question is, how much.

As the Senator from Texas indicated, we have more naval tonnage, we have 6 aircraft carriers, 13 aircraft carriers——

Mr. TOWER. We will not have them forever.

Mr. PROXMIRE. We have a decisive advantage here.

What I am saying is that it is how much.

Obviously, we can make an argument for an infinite expenditure. We have spent a trillion dollars on defense. I suppose we can make that argument, because we do not know for sure how much they are building.

The fact is, however, that on the basis of the best information we can get, we have a clear and decisive naval advantage over the Soviet Union today.

It is not everything it was years ago. Of course not. But, nevertheless, it is still decisive in most respects.

Mr. WARNER. The Senator used the term "advantage." Yet the man probably best capable to judge the potential of the Navy is the Chief of Naval Operations.

Mr. PROXMIRE. The Senator from Virginia is a distinguished Senator and also a former Secretary of the Navy. He knows a great deal about this. He also knows, I think, if we are going to call for the final word on how much we need, we do not go to the Chief of Naval Operations. He will tell us he wants everything he can possibly get. The wish list is infinite.

You would not go to the head of HEW to ask how much they would like to have for health, education, and welfare.

Mr. TOWER. I am afraid the Senator from Wisconsin does not go to the doctor when he is sick, either, because he is afraid that the doctor will give him the wrong diagnosis and send him a bill.

Mr. WARNER. We in the United States enjoy today only the slimmest margin of superiority, and that margin is fast disappearing.

Mr. TOWER. Mr. President, I yield 5 minutes to the distinguished Senator from California.

Mr. CRANSTON. I thank the Senator from Texas very much.

Mr. President, this conference report on the fiscal year 1981 defense authorization bill contains a very important congressional initiative. Section 204, a modification of the Glenn-Cranston amendment, requires the Secretary of Defense to develop and build a multirole bomber to replace the B-52. The defense bill provides $75 million in procurement funds and $300 million in development funds for this bomber program. This section requires that the multirole bomber must be capable of fulfilling the three roles currently filled by the B-52 aircraft: Strategic penetrating bomber, cruise missile carrier, and conventional bomb carrier. The Secretary of Defense is required by the amendment to report to Congress by March 15, 1981, on the design of the aircraft he believes can best meet these criteria.

The legislative intent of this amendment is clear. Since cancellation of the B-1 in 1977, Congress has waited for the Defense Department to design a replacement for the B-52. Now, in 1980, Congress will wait no longer. Instead, Congress has acted. This bill directs that work begin on the multirole bomber.

I stress this because Secretary Brown, in a recent statement, suggests that he interprets section 204 as requiring him only to "study" the issue of a new multirole bomber, not to prepare to build one.

On the ABC television network program, "Issues and Answers," on August 17, 1980, with Bob Clark and John McWethy, Secretary Brown said:

> We have, as I told the Congress in unclassified testimony, design studies on bombers that might be used in the late 80s and early 90s should we decide to go ahead with a new bomber design, and of course we've been working on, and always worked on various kinds of advanced technology, aerodynamic, electronic, and so forth. . . . But there is no full-scale development program for new intercontinental bomber.

Clark then asked:

> Mr. Secretary, I have sensed some sort of a smog around your remarks here. The President rejected plans, stopped the B-1 bomber . . . are there now plans in the works for the President to propose a new manned bomber, whether the B-1 or some successor to the B-1?

Secretary Brown answered:

> Whether we will need a new penetrating bomber is not clear, but the Congress has asked us in the authorizing legislation that is now passing through the Congress to look at the B-1 and its derivatives, the FB-111 and its derivatives, and any new bomber design involving new technologies that we can come up with. And we will proceed to do that, but there's no decision to go ahead with any new bomber and the design is that of paper design.

Clark asked:

> Well, these decisions don't come straight out of the blue because there is so much paperwork and planning and drafting involved before they come to pass. Can you rule out now during the Presidential campaign there will be no proposal for a new manned bomber?

Secretary Brown replied:

> There will be no proposal for a new manned bomber. There will be a willingness to study what Congress has asked us to study, that is which design makes sense. But there will be no propoal, no decision.

Mr. President, these remarks seem to characterize the Glenn-Cranston amendment as requiring only a study. As such, they are a serious misinterpretation of that amendment. And those of us who thought that the existence of the "stealth" program indicated that Secretary Brown had recognized the need for a new manned bomber were greatly disappointed to hear the Secretary say he still does not think it is "clear" whether we need a new manned bomber.

Let me make clear the relationship between "stealth" and the Glenn-Cranston amendment. Senators GLENN and CULVER and I were aware of the stealth program when we drafted the amendment. Our amendment stated that in designing the multirole bomber, the Secretary of Defense could consider "advanced technology aircraft," in addition to the B-1, the FB-111, and variants of the B-1 and FB-111. This phrase "advanced technology aircraft" was meant to include the stealth technology program, though Senators GLENN and CULVER and I could not acknowledge this because the very existance of stealth was still secret at that time. Moreover, the amendment deliberately required the new bomber to have an initial operational capability of 1987 precisely to allow the Secretary of Defense to consider the stealth technology program as well as the B-1 and FB-111.

I believe it is critical that the United States have the very best bomber to meet the enemy air defense threat of the future. Thus, the Glenn-Cranston amendment was designed to allow the Secretary of Defense the opportunity to incorporate the most advanced technology into that new bomber. Last Thursday, in light of the very detailed information about the stealth program which I read in the press—including reports indicating that the California defense industry is among those working on stealth—I asked Dr. William Perry, Under Secretary of Defense for Research and Engineering, to brief me more fully about the results of the stealth technology development effort. I learned that stealth may be the largest leap in air-defense related technology since the creation of radar itself.

In sum, the Glenn-Cranston amendment allows the Secretary of Defense to incorporate, where possible, the fruits of the stealth technology program into the multirole bomber mandated by that amendment.

And, the stealth program does not supplant the Glenn-Cranston amendment. Rather, since the Secretary of Defense has not committed himself to building a bomber to replace the B-52, whether it is based on stealth or other bomber technology, the Glenn-Cranston amendment is all the more necessary as it requires the Secretary of Defense to develop and produce a new bomber which can be operational by 1987.

Mr. President, the conferees made changes in the Glenn-Cranston amendment during the conference, of course. The changes made were improvements, because they strengthened the Glenn-Cranston amendment and clarified the legislative intent behind it. In light of these clarifications, I find Secretary Brown's misinterpretation of section 204 all the more disturbing.

COMPARISON OF GLENN-CRANSTON AMENDMENT WITH CONFERENCE VERSION—SECTION 204

First, the conferees agreed to fund the multirole bomber at a level of $375 million, which is $248 million more than was contained in the Senate bill. This increased level of funding demonstrates the importance Congress attaches to the development of a multirole bomber and provides a better level of funding with which to launch its program.

Second, the conferees designated $75 million of the $375 million as procurement funds, to be spent on long-lead items. The Senate bill had designated no funds for procurement. These procurement funds will allow the Defense Department to move quickly once it has decided on the design of the multirole bomber to purchase those items which must be ordered long in advance. This will insure that actual production of the multirole bomber can proceed as soon as possible once the design decision is made.

Third, the conferees advanced the level of the research and development effort for the multirole bomber. The Senate bill specifies that the funds were for the "advanced development and engineering development of a strategic bomber." Senator WARNER proposed that language on the floor of the Senate, and it was incorporated into the Glenn-Cranston amendment. The purpose and effect of Senator WARNER's language was to stress that Congress wants the actual development of the multirole bomber to begin in fiscal year 1981 and that a mere study or "paper" effort is not satisfactory. The changes made in the language by the conferees further strengthen this purpose and effect. The conferees stated that the $300 million must be spent on "full-scale engineering development" rather than "advanced development and engineering development." Since "full-scale engineering development" is the next stage of research and development beyond "advanced development and engineering development" in defense lexicon, the effects of the change is to further the basic message of the Glenn-Cranston amendment: Congress wants action, not more study.

Fourth, the conference language underscores the Congress insistence on speedy development of the multirole bomber. The Glenn-Cranston amendment adopted by the Senate stated that the Secretary of Defense must recommend an aircraft "which can achieve an initial operation capability in 1987." The conference version improves this by stating that the Secretary of Defense must develop an aircraft "to achieve an initial operational capability as soon as practicable, consistent with the aircraft selected, but not later than 1987."

Fifth, the conferees improved the wording relating to the report required on the multirole bomber. The Glenn-Cranston amendment stated that "the Secretary of Defense shall submit a report on the results of this effort, including comparisons * * *" and the conference language states "the Secretary of Defense shall submit a status report on the results of the development effort to date." I feel this change, though seemingly small, underscores the original intention in requiring the report. That is, we wish to stress that work on selecting the new bomber must commence with the beginning of the fiscal year, October 1, 1980, and the Secretary of Defense must be prepared to report on the status of that effort as the Armed Services Committees consider the fiscal year 1982 defense authorization bill.

Sixth, the language of the conference report further emphasizes that the law directs the Secretary of Defense to make a selection of a new bomber, which must fulfill the roles of a conventional bomb, cruise missile carrier and strategic penetrating bomber and must report this selection to the Congress. The conference report states on page 82:

> The Secretary of Defense is directed to submit a status report . . . to include his recommendations on which aircraft should be developed.

I welcome this clarification.

Seventh, the conferees did decide to change the reporting date from February 15, 1981, to March 15, 1981. I am not convinced that the Secretary needs that additional month, given the number of years he has had to study the issue of a follow-on bomber to the B-52 since cancellation of the B-1 bomber in 1977. However, the new reporting date will still provide the Senate and the House Armed Services Committees with the Secretary's recommendation for the multirole bomber before markup of the fiscal year 1982 defense authorization bill, and therefore I will raise no objection to this change.

With these changes made in conference to the Glenn-Cranston amendment, there should be no doubt in Secretary Brown's mind as to Congress intent. I call on the members of the House and Senate Armed Services Committees to follow with care the efforts of the Defense Department on the multirole bomber to insure that the legislative intent of the amendment is complied with.

I compliment my colleagues in the Senate who served on the conference committee for these "improvements" to the Glenn-Cranston amendment. I wish to thank Senator CULVER, chairman of the Armed Services Subcommittee on Research and Development, and Senator WARNER, ranking minority member of that subcommittee. Senators CULVER and WARNER were key cosponsors of the

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amendment, and I thank them for their support, help and cooperation.

Mr. President, I ask unanimous consent that the Glenn-Cranston amendment, as adopted by the Senate, the final version of the amendment, as adopted by the conference, the portion of the transcript of Secretary Brown's appearance on "Issues and Answers" related to the multirole bomber aircraft, and Dr. Perry's and Mr. Brown's press conference statements regarding the "stealth" technology program be printed in the RECORD for the convenience of my colleagues in the Senate and all readers of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

On page 38, line 11, insert the following: strike the figure "$9,541,943,000" and insert in lieu thereof: "$9,516,943,000."

Section 201, page 45, line 23, strike the figure "$7,135,197,000" and insert in lieu thereof $7,160,197,000." On page 45, line 24, strike out the semicolon and insert in lieu thereof "and of which not more than $91,000,000 may be obligated or expended for the advanced development and engineering development of a strategic bomber which can achieve an initial operation capability in 1987. Such advanced development and engineering development shall include but not be limited to the FB-111B/C aircraft; a multi-role bomber aircraft, a variant of the B-1 bomber aircraft; and advanced technology aircraft, or an appropriate mix of such aircraft, so long as such aircraft have the capability of performing the missions of conventional bomber, cruise missile launch platform and nuclear weapons delivery system."

On page 51, line 21, insert the following:

Section 206: The Secretary of Defense shall vigorously pursue the advanced development and engineering development of a strategic bomber which maximizes range, payload and ability to perform the missions of conventional bomber, cruise missile launch platform, and nuclear weapons delivery in both the tactical and strategic role. The Secretary of Defense shall submit a report on the results of this effort including comparisons of advanced technology aircraft with the B-1 and derivatives of the B-1 and the FB-111B/C in terms of cost and military effectiveness. This report shall be submitted to the Committees on Armed Services of the Senate and House by February 15, 1981.

CONFERENCE REPORT ON FISCAL YEAR 1981 DEFENSE AUTHORIZATION BILL FINAL STRATEGIC BOMBER LANGUAGE

MULTI-ROLE STRATEGIC BOMBER

SEC. 204. (a) The Secretary of Defense shall vigorously pursue full-scale engineering development of a strategic multi-role bomber which maximizes range, payload, and ability to perform the missions of conventional bomber, cruise missile launch platform, and nuclear weapons delivery system in both the tactical and strategic role.

(b) Of the funds authorized to be appropriated for the Air Force under this title, $300,000,000 may be obligated or expended for full-scale development, following compliance with subsection (c), of a multi-role bomber aircraft to achieve an Initial Operational Capability as soon as practicable, consistent with the aircraft selected, but not later than 1987. Such aircraft shall have the capability of performing the missions of conventional bomber, cruise missile launch platform, and nuclear weapons delivery system.

(c) The Secretary of Defense shall submit a status report to the Committees on Armed Services of the Senate and House of Representatives by March 15, 1981, on the results of the development effort to date. The Secretary shall include in such report comparisons of the various candidate aircraft in terms of cost and military effectiveness. Candidate aircraft shall include, but not be limited to, advanced technology aircraft, the B-1 bomber aircraft and derivatives of the B-1 aircraft, and the FB-111B/C aircraft.

(NOTE.—Title I, Procurement, contains $75 million for procurement of long-lead items associated with this multi-role bomber program.)

ISSUES AND ANSWERS

Mr. MCWETHY. Mr. Secretary, bits and pieces about a new bomber called Stealth have been leaking out over the past week. Can you shed any light on what this new bomber is?

Secretary BROWN. We have, as I told the Congress, in unclassified testimony, design studies on bombers that might be used in the late 80s and early 1990s should we decide to go ahead with a new bomber design, and of course we've been working on, and always worked on various kinds of advanced technology, aerodynamic, electronic and so forth. The details of these technologies, as is the case, for example, with many intelligence programs, are kept secret and I intend to continue to keep them secret.

Mr. MCWETHY. There have been reports that a limited number of members of Congress have been funneling money to the Defense Department to build a new bomber in a skunk-works kind of situation, and that they have already slipped some preproduction money to them.

Secretary BROWN. It is, of course, the case that all of the money that is appropriated for the Defense Department is approved by the Congress. And we have always kept the appropriate members of Congress informed about the details of new technologies, whether intelligence or anything else. But there is no full-scale development program for a new inter-continental bomber.

Mr. CLARK. Mr. Secretary, I have sensed some sort of a smog around your remarks here. The President rejected plans, stopped the B-1 bomber. The Republicans are making a very big campaign issue out of that.

Secretary BROWN. Yes.

Mr. CLARK. Is there, are there now plans in the works for the President to propose a new manned bomber, whether the B-1 or some successor to the B-1?

Secretary BROWN. The President cancelled the B-1 on the basis that it was not sure enough of being able to penetrate Soviet air defenses at the end of the 1980s and in the 1990s. That judgment has been very, very much born about, that is verified by the recent Soviet improvements in ther air defense systems. That was a correct judgment.

The President decided at the same time that cruise missiles, which are a lot harder to see, fly a lot lower, would be much better able to penetrate Soviet defenses. And so we have a very substantial cruise missile program, with the cruise missiles actually coming into the force at the end of 1982.

Whether we will need a new penetrating bomber is not clear. But the Congress has asked us in the authorizing legislation that is now passing through the Congress to look at the B-1 and its derivatives, the FB-111 and its derivatives, and any new bomber design involving new technologies that we can come up with. And we will proceed to do that, but there's no decision to go ahead with any new bomber and the design status is that of paper design.

Mr. CLARK. Well, these decisions don't come straight out of the blue because there is so much paperwork and planning and drafting involved before they come to pass. Can you rule out now during the Presidential campaign there will be no proposal for a new manned bomber?

Secretary BROWN. There will be no proposal for a new manned bomber. There will be a willingness to study what Congress has asked us to study, that is which design makes sense. But there will be no proposal, no decision, there can't be because it's not far enough along in design for a new bomber.

STATEMENT BY WILLIAM J. PERRY, UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING

World War II demonstrated the decisive role that air power can play in military operations. It also demonstrated the potential of radar as a primary means of detecting aircraft and directing fire against them. On balance, though, the advantage clearly was with the aircraft. Subsequent to World War II, defensive missiles—both ground launched and air launched—were developed and "married" with radar fire control systems. This substantially increased the effectiveness of air defense systems, shifting the balance against aircraft. For the last few decades we have been working on techniques to defeat such air defense systems. At present, our military aircraft make substantial use of electronic countermeasures (jamming) and flying low to place themselves in "ground clutter," both of which degrade the effectiveness of air defense radars. By these means we have maintained the effectiveness of our military aircraft in the face of radar-directed defensive missiles.

However, the Soviets continue to place very heavy emphasis on the development and deployment of air defense missiles in an attempt to offset the advantage we have in air power. They have built thousands of surface-to-air missile systems, they employ radars with high power and monopulse tracking circuits which are very difficult to jam, and in the last few years they have developed air-to-air missiles guided by "look-down" radars which are capable of tracking aircraft flying in "ground clutter."

Because of these developments and because of the importance we attach to maintaining our air superiority, we have for years been developing what we call "penetration" technology: the technology that degrades the effectiveness of radars and other sensors used by air defense systems. A particular emphasis has been in developing that technology which makes an aircraft "invisible" to radar. In the early 60's, we applied a particular version of this technology to some of our reconnaissance aircraft.

In the mid-70s we applied it to the cruise missiles then being developed (Tomahawk and ALCM). By the summer of 1977 it became clear that this technology could be considerably extended in its effectiveness and could be applied to a wide class of vehicles including manned aircraft. We concluded that it was possible to build aircraft so difficult to detect that they could not be successfully engaged by any existing air defense systems. Recognizing the great significance of such a development we took three related actions: first, we made roughly a ten-fold increase in our investment to advance this technology; second, we initiated a number of very high priority programs to apply this technology; and third we gave the entire program extraordinary security protection, even to the point of classifying the very existence of such a program.

Initially we were able to limit knowledge of the program to a very few Government officials in both the Executive and Legislative Branches and succeeded in maintaining complete secrecy about the program. However, as the program increased in size—currently the annual funding is 100 times greater than when we decided to accelerate the program in 1977—it became necessary to brief more people. The existence of a stealth program has now become public knowledge. But even as we acknowledge the existence of a stealth program, we will draw a new security line to protect that information about the program which could facilitate a Soviet countermeasures program. We will continue to protect at the highest security level information about:

a. the specific techniques which we employ to reduce detectability;

b. the degree of success of each of these techniques;

c. characteristics of specific vehicles being developed;

d. funds being applied to specific programs; and

e. schedules of specific programs.

With those ground rules, I think you can see that I am extremely limited in what I can tell you about the program. I will say this. First, stealth technology does not involve a single technical approach, but rather a complex synthesis of many. Even if I were willing to describe it to you, I could not do it in a sentence or even a paragraph. Second, while we have made remarkable advances in the technology in the last three years, we have been building on excellent work done in our defense technology program over the last two decades. Third, this technology—theoretically at least—could be applied to any military vehicle which can be attacked by radar-directed fire. We are considering all such applications and are moving with some speed to develop those applications which are the most practical and which have the greatest military significance. Fourth, we have achieved excellent success on the program, including flight tests of a number of different vehicles.

STATEMENT BY SECRETARY OF DEFENSE HAROLD BROWN

I am announcing today a major technological advance of great military significance.

This so-called "stealth" technology enables the United States to build manned and unmanned aircraft that cannot be successfully intercepted with existing air defense systems. We have demonstrated to our satisfaction that the technology works.

This achievement will be a formidable instrument of peace. It promises to add a unique dimension to our tactical forces and the deterrent strength of our strategic forces. At the same time it will provide us capabilities that are wholly consistent with our pursuit of verifiable arms control agreements, in particular, with the provisions of SALT II.

For three years, we have successfully maintained the security of this program. This is because of the conscientious efforts of the relatively few people in the Executive Branch and the Legislative Branch who were briefed on the activity and of the contractors working on it.

However, in the last few months, the circle of people knowledgeable about the program has widened, partly because of the increased size of the effort, and partly because of the debate underway in the Congress on new bomber proposals. Regrettably, there have been several leaks about the stealth program in the last few days in the press and television news coverage.

In the face of these leaks, I believe that it is not appropriate or credible for us to deny the existence of this program. And it is now important to correct some of the leaked information that misrepresented the Administration's position on a new bomber program. The so-called stealth bomber was *not* a factor in our decision in 1977 to cancel the B-1; indeed, it was not yet in design.

I am gratified that, as yet, none of the most sensitive and significant classified information about the characteristics of this program has been disclosed. An important objective of the announcement today is to make clear the kinds of information that we intend scrupulously to protect at the highest security level. Dr. Perry, my Under Secretary of Defense for Research and Engineering and a chief architect of this program will elaborate on this point further.

In sum, we have developed a new technology of extraordinary military significance. We are vigorously applying this technology to develop a number of military aircraft and these programs are showing very great promise.

We can take tremendous pride in this latest achievement of American technology. It can play a major role in strengthening our strategic and tactical forces without in any way endangering any of our arms control initiatives. And it can contribute to the maintenance of peace by posing a new and significant offset to the Soviet Union's attempt to gain military ascendancy by weight of numbers.

I would now like to ask Bill Perry to give you some additional details on our stealth program.

* "Invisible" is of course a figure of speech.

Mr. TOWER. Mr. President, I yield to the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I should like to give my views on the importance of the military procurement conference agreement and on its relationship to the budget resolution.

I think it is no secret to the Senate where I stand on matters dealing with national security. For years we have witnessed significant increases in Soviet defense spending levels that have resulted in vast improvements in their military capabilities.

We have seen direct Soviet aggression in Afghanistan and Soviet-backed aggression in Southeast Asia, Africa, and the Middle East. Over this same time period, favorable worldwide opinion of the economic and military strength of the United States has diminished. I am disheartened and concerned by these trends. My colleagues in Congress are concerned. The American public and our allies abroad are concerned.

While the administration voices similar concern about this situation, its followup has been inadequate. This is why I have led the fight in the Congress to improve the defense program to enable the United States to counteract the Soviet drive for superiority. We need to spend more—more for pay and benefits of our military personnel—more for the operational readiness of our forces and equipment—and more for new equipment that provides for the technological superiority of the U.S. Armed Forces.

That has been my position and that position will not change. But, it is attainable only if we have the will to do it and this is a large responsibility that we in the Congress must share with whomever sits in the White House. Even if we have to use some diplomatic persuasion or out-and-out bluntness to get our point across..

That is why I favor the trends set in the conference agreement before us. However, I must warn the Senate of my concerns about the priorities set in this agreement and about the relationship between the spending it would allow and the spending assumed in the budget resolution.

Let me first tell the Senate where the budget resolution stands today. The first budget resolution was approximately $6 billion over the President's March defense budget request. The priorities assumed in the budget resolution placed $4 billion of this $6 billion in military personnel and operations and maintenance. The remaining $2 billion was assumed for procurement and R. & D.

In July the President revised his economic forecast and supplied the Congress with new estimates for national defense spending totals. As a result of this action, the President added $7 billion in budget authority and outlays to his previous estimate. These revised estimates essentially provide the funds for military personnel and O. & M. at the amounts assumed in the first budget resolution. The primary difference between the President and the first resolution in these two areas is that the President provides for only a 9.1 percent pay raise for military personnel while the resolution provides for 11.7 percent.

Although the President included the Congress increases for O. & M. and personnel in his revised request, he did not include the provisions for additional procurement and research and development that had been provided in the first budget resolution.

Last Thursday, the Budget Committee completed its markup of the second budget resolution. As part of that markup the committee adopted revised totals for national defense of $173.6 billion in budget authority and $159.4 billion in outlays—an increase of $3.1 billion in budget authority and $5.6 billion in outlays over the first budget resolution totals. The basis for this increase was the committee's decision to adjust the national defense function to take account of outlay reestimates associated with faster spending of prior-year budget authority and to insure that there were sufficient funds available to maintain the program assumptions that had been the basis of the first budget resolution.

Since the President revised his economic assumptions and increased his O. & M. and manpower funding levels to roughly those assumed in the first budget resolution, the proposed ceilings for national defense set in the second budget resolution exceed the President's revised defense request by slightly over $2 billion in budget authority. This $2 billion difference essentially reflects the difference between the President's request and the Budget Committee's assumptions of the added funds that are necessary to maintain the procurement initiatives assumed by Congress in the first budget resolution.

The procurement authorization conference agreement exceeds the President's request by approximately $6.5 billion. It takes no magican to see that $6.5 billion is greater than the proposed $2 billion increase to the President's request contained in the second budget resolution. It is obvious that something has to give if we are to stay within our proposed budget ceilings.

What I want the Senate to know is that we cannot fully fund the authorizations provided in the conference agreement and also fully fund our vital O. & M. readiness and military personnel needs. It simply cannot be done and still maintain budget integrity.

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Hopefully, the defense appropriations bill will shortly be before us. That bill will become the legislative vehicle whereby the Congress will make its decision regarding priorities in the defense program. I sincerely hope that at that time the Congress develops a realistic balance among our manpower, readiness, and procurement needs.

Mr. TOWER. Mr. President, I yield 3 minutes to the Senator from Iowa.

Mr. JEPSEN. Mr. President, I had not intended to comment on this bill until remarks were made by the Senator from Wisconsin about the grain embargo. I just want to put into perspective and into the realm of accuracy the situation with respect to the grain embargo.

The Senator from Wisconsin said—and being from Wisconsin he should know better—that the grain embargo is directly responsible for causing the meat shortage in Russia. I suggest that the meat on the table takes at least 24 months to get there. The gestation period for a cow, once it is bred, is 283 days. When a calf is born it takes 14 to 18 months before it becomes meat on the table. If there is a shortage of meat on the table in Russia, it started 18 to 24 months ago. The embargo is 8 months old.

The grain embargo is a dismal failure and was politically motivated. It is not a partisan matter. All Senators from neighboring States around Wisconsin, Republican and Democrat, have called for an end to the embargo. The Governors Conference today called for an end to the embargo. It was a unanimous vote except that the Governor of Kansas abstained.

The embargo was a unilaterally implemented, economic sanction. It was doomed from the start unless we had a monopoly on grain production. It was doomed from the start unless we had cooperation from other nations in enforcing and implementing the embargo.

Contrary to what the President said when he announced the embargo, contrary to what was announced to the general public in this country, we found out very quickly, within 24 hours, that other countries which raise grain had not agreed to go along with the embargo. In fact Argentina and Australia increased their exports immediately. Canada, which did agree 8 days after the embargo to go along with the United States, said about 3 weeks ago that it was a blunder, withdrew, and immediately sold an additional 1.4 million metric tons of grain to Russia.

I sat in the DIA committee hearing with the Senator, and the Defense Intelligence Agency said the grain embargo had very little impact.

This is just to set the record straight.

Mr. TOWER. Mr. President, I yield 3 minutes to the Senator from Ohio.

Mr. GLENN. Mr. President, I wish to fully endorse the remarks of my distinguished colleague from California. As usual, his arguments are accurate, concise, and penetrating. The statement of the Secretary of Defense is troubling and we should not leave any room for doubt as to our intentions regarding the issue of a modern bomber.

What is even more deeply troubling to me is that this treatment of the multirole bomber, when combined with other straws in the wind leads to an impression that we may not be dealing seriously with our Nation's defense.

In addition to the Secretary of Defense's misinterpretation of a clear congressional directive to build a new bomber, we have reports that two of the three supply ships planned for the highly touted rapid deployment force will be eliminated from next year's defense budget. This, along with other shipbuilding cuts and indecision about strategic airlift requirements could leave us with a rapid deployment force that is neither rapid nor deployable and may not even be a real force.

We read of a Presidential decision that directs how future nuclear wars might be fought. And then we read that the United States lacks the weapons capable of implementing the new strategic targeting policy.

The credibility of our national will and of our military capabilities must never be in doubt—either by our friends or by those who would oppose us. Not because this is an election year. Not because votes may—or may not—go to the candidate who out-hawks the others, but because our Nation's future depends on universal recognition that we are capable and that we are resolute.

This Congress has done its work well in this year's authorization bill. On the matter of a new bomber:

It is not our intent that our airmen should continue to go in harm's way in antiquated aircraft.

It is not our intent that we be presented with yet another study.

Briefly:

It is our intent that the Secretary of Defense come here early next year to report what kind of aircraft will be built and explain how he arrived at that decision.

It is also our intent that the modern bomber must be capable of performing as a conventional bomber, cruise missile launcher, and nuclear weapons delivery system.

And, Mr. President, it is our intent that we want this plane to begin appearing on our runways—not in a study—but on our runways as soon as practicable, but not later than 1987.

Mr. President, the language that came from the conference committee tells the Secretary of Defense in section 204(b) "Of the funds authorized to be appropriated for the Air Force under this title, $300 million may be obligated or expended for full-scale development following compliance with subsection (c)," and so forth.

That leaves no doubt what the intent was.

When the Secretary of Defense says there will be no proposal for a new manned bomber he is thwarting the will of Congress and I think he should take note of these remarks at the earliest possible time.

I thank the distinguished Senator from Texas.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TOWER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Texas has 3 minutes and 30 seconds remaining.

Mr. TOWER. I yield 1 minute to the Senator from Maine.

Mr. COHEN. I thank the Senator for yielding.

Mr. President, I was interested in Senator TOWER's statement over the weekend condemning the release of the information on what is now referred to generally as the stealth program.

As the Senator from California said only a very few limited number of Senators had access to that highly classified information. It is one thing for a report to come out in a newspaper and quite another for our Secretary of Defense to then hold a public hearing and then confirm its actual planning operation.

But I simply wish to note that in today's Wall Street Journal there is a story about Kodak reported mulling a 35-millimeter camera being made in Japan and utilizing a cartridge film. The article itself points out that the weapon would be a Japanese-made 35-millimeter camera with the Kodak label. In Rochester, N.Y., Kodak, as is its custom, would not confirm or deny that it is considering such a camera.

I commend the Secretary of Defense to adopt such a policy of noncommital in the future.

Mr. ROBERT C. BYRD. Mr. President, the fiscal year 1981 defense procurement authorization conference report—H.R. 6974—is a major contribution to our national security effort. It is extraordinary in both complexity and magnitude. It is the largest peacetime defense procurement authorization in our Nation's history, and it covers a wider range of issues than any procurement bill in the past. It is the product of hundreds of hours of hearings, markup sessions, floor debate, and conference. Each of the six Senate Armed Services subcommittees was involved in the preparation of this bill, and all of the members of the committee served on the conference committee. The Senate owes a great debt of gratitude to those members, and especially to the chairman of the Armed Services Committee, Senator STENNIS; and the ranking minority member, Senator TOWER.

Over the past several years, the Senate has set a course of significant and steady increases in the defense budget. This year, the Senate voted to set as a target for fiscal year 1981 a growth in the defense budget, after inflation, of 8.5 percent in budget authority, and of 5.5 percent in outlays. This conference report will contribute toward achievement of those goals.

The administration and Congress have undertaken a number of initiatives to enhance our defense preparedness and to revitalize our Armed Forces for the jobs facing them in the 1980's. This bill sustains those initiatives. Among them are:

Accelerated acquisition of Navy ships and Air Force fighter aircraft;

Overhaul and modernization of major Army weapons systems;

Pursuit of technological breakthroughs in strategic weaponry, while strengthening all three legs of our strategic triad;

Increased military presence in the Pacific and Indian Oceans and in the Middle East;

Constant attention to the effectiveness and strength of the North Atlantic Treaty Organization;

Enhanced readiness through military registration and steps to retain career military personnel; and

Steps to improve and invigorate our intelligence agencies.

Events of the past few years have reminded the American people of the need to maintain a first-rate security capacity. That is the purpose of this bill. The planned inventory of Navy ships in 1985 is 27 percent higher than the low point of that inventory, in 1978. The bill before us, H.R. 6974, will contribute to that goal by authorizing $8.4 billion for Navy shipbuilding, and by adding 17 new ships.

At the end of fiscal year 1980, the Air Force will have 516 F-15 fighter aircraft, compared to only 94 in 1976; and it will have 158 F-16's, compared to 2 in 1976. H.R. 6974 will add, for fiscal year 1981, 42 F-15's and 180 F-16's.

Our contribution to NATO is part of our policy to strengthen the European theater through a program of equipment modernization. All NATO members have pledged to increase defense spending by 3 percent a year, after inflation. For the 5-year period ending with fiscal year 1981, U.S. troop strength in Western Europe will have grown by more than 44,000 military personnel—a 15-percent increase. H.R. 1954 will contribute toward maintenance of that force.

The bill before us breaks new ground by authorizing $1.1 billion for the rapid deployment force. This force will give us needed flexibility in the Middle East and Southwest Asian theaters.

In our strategic arsenal, the technological breakthrough offered by the cruise missile has been pursued. H.R. 6974 authorizes continued purchase of cruise missiles. The bill also authorizes deployment of 200 MX missiles to strengthen the land leg of our strategic triad. Additional funds over the President's request have been included for research and development of the Trident II missile. New funds also have been included for seed money for a new generation of manned strategic bombers.

Last February, the Senate authorized $0.5 billion in additional pay and allowances. H.R. 6974 authorizes additional funds to cover an 11.7 cost-of-living military pay increase, and to cover special bonuses for both pilot and general troop reenlistment, per diem, educational and medical benefits and reserve pay.

H.R. 6974 also will add 2,900 troop positions to the Marines.

Finally, congressional review of general military readiness is strengthened by bringing operations and maintenance accounts into the regular authorization process.

I congratulate the committee on adoption of this conference report. Our troops in the field will benefit from increased pay and benefits, and from improved equipment. This bill also gives our military commanders additional flexibility to tailor our defense responses to a changing world. Finally, this bill represents a sound response to the defense needs raised by the administration and by both Houses of the Congress.

I wish to thank again the chairman of the Armed Services Committee, Senator STENNIS; and the ranking minority member of the committee, Senator TOWER; and the other members of the committee for the time and effort they have put into this legislation.

They have the gratitude of the Senate, and of the Nation.

Mr. PROXMIRE. Mr. President, I yield back my time. The yeas and nays have already been ordered.

Mr. TOWER. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the conference report.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENSON (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Idaho (Mr. CHURCH). I have voted no. If the distinguished Senator from Idaho were present, he would vote "yea." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from North Dakota (Mr. BURDICK), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. BURDICK) and the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from New Yory (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Are there other Senators in the Chamber who desire to vote?

The result was announced—yeas 78, nays 2, as follows:

[Rollcall Vote No. 384 Leg.]

YEAS—78

Armstrong	Glenn	Nelson
Baucus	Goldwater	Nunn
Bayh	Hart	Packwood
Bentsen	Hatch	Pell
Biden	Hayakawa	Percy
Boschwitz	Heflin	Pryor
Bradley	Heinz	Randolph
Bumpers	Helms	Riegle
Byrd, Harry F., Jr.	Hollings	Sarbanes
Byrd, Robert C.	Huddleston	Sasser
Cannon	Humphrey	Schmitt
Chafee	Inouye	Schweiker
Chiles	Jackson	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
Cranston	Kassebaum	Stevens
Culver	Laxalt	Stone
Danforth	Leahy	Thurmond
DeConcini	Levin	Tower
Dole	Lugar	Tsongas
Durenberger	Mathias	Wallop
Durkin	Matsunaga	Warner
Eagleton	Mitcher	Williams
Exon	Metzenbaum	Young
Ford	Mitchell	Zorinsky
Garn	Morgan	
	Moynihan	

NAYS—2

Hatfield Proxmire

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

NOT VOTING—19

Baker	Javits	Ribicoff
Bellmon	Kennedy	Roth
Boren	Long	Stewart
Burdick	Magnuson	Talmadge
Church	McClure	Weicker
Domenici	McGovern	
Gravel	Pressler	

So the conference report was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the conference report was adopted.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

The PRESIDING OFFICER. The Senate will now resume consideration of S. 2718.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I should alert Senators to the fact that the ERISA legislation may still be brought up today. Senator WILLIAMS was here on the floor a moment ago and indicated that they have about worked everything out.

I turn to the distinguished Senator from New Jersey (Mr. WILLIAMS). Will the Senator enlighten the Senate on what the prospects are for action on ERISA yet today?

Mr. WILLIAMS. Mr. President, at this point, I can only respond that it is a possibility that we will be able to bring it up, but I cannot say more than that. There are developments even within the last 2 minutes that lead me to feel that I can only call it a possibility.

Mr. ROBERT C. BYRD. Mr. President, may I say that the Senate will continue

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on into the evening on the Export Trading Act until we can make some disposition one way or the other or decision with respect to ERISA.

I am informed by my congenial and very able friend, Mr. PROXMIRE, who never misses a rollcall vote in this Senate and who has the all-time record for rollcall votes, that he does not intend to let the export trading bill pass the Senate today. He, very frankly, conscientiously, and straightforwardly, informed me a little while ago that he intended to filibuster the export trading bill.

That being the cause, I suggest to Senators that they stay around until we can determine whether or not ERISA is going to be called up and whether or not Mr. PROXMIRE really means to filibuster.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. PROXMIRE. Regrettably, I must say to the majority leader, and for the edification of my colleagues, that there will not be a vote on the export trading bill tonight if I can help it. If I am still conscious and able to speak, there will not be a vote on the bill tonight.

Mr. ROBERT C. BYRD. What about tomorrow?

Mr. PROXMIRE. Well, it depends on my endurance, if I can keep going, yes. If the Senator wants to keep it in session for 36 hours, I will do my best.

Mr. ROBERT C. BYRD. The Senator from West Virginia does not want to keep us in session. But we will be in tomorrow if the Senator is not going to let us vote this evening. That does not mean we have to stay in all night, of course. But the Senate will be in tomorrow.

Then there will be a cloture vote, I am sorry to say, but I am acting on the instructions of the distinguished Senator from Wisconsin (Mr. PROXMIRE). I will be offering a cloture motion and there will be a cloture vote on the export trading bill when the Senate returns on Wednesday, a week from tomorrow.

Mr. PROXMIRE. Well, that is entirely up to the leader, if we have a session tomorrow. I understood we were not going to have one.

Mr. ROBERT C. BYRD. We will have a session tomorrow.

The PRESIDING OFFICER. If there is no further amendment, third reading of the bill.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business before the Senate is S. 2718.

Mr. PROXMIRE. Mr. President, about 1½ hours ago, when the Senate began consideration of the conference report of the military procurement bill, I was speaking on the export trading company bill. I was quoting a distinguished and highly successful exporter, Emil Sherer Finley.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I regret to offer the cloture motion, but I do it with a smile and the Senator understands.

Mr. PROXMIRE. Mr. President, I certainly do. The Senator from West Virginia, the majority leader, has been more than fair. I appreciate what he had to do as leader.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the bill S. 2718.

Adlai E. Stevenson, Alan Cranston, Jennings Randolph, Patrick J. Leahy, Robert C. Byrd, Claiborne Pell, Jake Garn, John Heinz, Lawton Chiles, Joseph R. Biden, Jr., Paul E. Tsongas, Max Baucus, Lloyd Bentsen, Henry M. Jackson, Bill Bradley, Robert Dole, Rudy Boschwitz, Dennis DeConcini, Thomas F. Eagleton, John C. Danforth.

Mr. STEVENS. Mr. President, may I ask the leader to respond to a question? I have just finished talking to one Member on our side who I assured there was no reason to come back because we were going to recess tonight and that there would be no possibility of votes tomorrow.

I have not discussed with the distinguished Senator from Wisconsin the question of what might occur tomorrow on this bill in order to qualify it for a vote on the Wednesday we return, a vote on the cloture petition. Would there be any possibility in the leader's mind of any rollcall votes tomorrow if we are in for the purpose of qualifying the vote for cloture on the following Wednesday?

Mr. ROBERT C. BYRD. If the Senate can complete action on ERISA this evening, there is still a possibility that ERISA may be called up—Senator WILLIAMS is working on the matter—if that is disposed of this evening, that is the only question mark, with respect to ERISA. There might be a vote on that. There might be a vote on tomorrow.

Mr. STEVENS. We may not even get that bill tonight, to my understanding. I thought we had an understanding that if we finished these other matters there would not be any votes tomorrow.

Mr. ROBERT C. BYRD. We had an understanding that with the other matters, as the Senator said, including the Export Trading Act, we would go out tonight and go over until Wednesday, a week from tomorrow. But the Senator from Wisconsin is exercising his right under the rules and does not wish to let the Senate act on the measure tonight or tomorrow, which, as I said, is within his right.

Certainly, he can keep the Senate from voting on the measure today or tomorrow. But other than the possibility that there would be a vote on ERISA, I have no intention to have any vote on anything else. The Senator from Wisconsin would have to speak for himself as to whether or not he would call for a rollcall vote on anything else, such as a motion to recess.

Mr. PROXMIRE. I certainly would not. I want to do all I can to avoid a roll call. I promise that I will do everything I possibly can. It is my understanding that the purpose of going out tomorrow was to enable Senators to get that extra day. I cannot understand why we cannot act on ERISA tonight. If we cannot act on ERISA tonight, why not act on it when we come back?

Mr. STEVENS. I believe we can dispose of the cloture today by unanimous consent, if it would meet with the majority leader's agreement and the agreement of the Senator from Wisconsin. This Senator intends to leave tomorrow morning to take his last son to college. I do not plan to be here in any event. Our leader has gone, thinking there would be no necessity for being here tomorrow.

Mr. PROXMIRE. I have no objection at all, if the Senator wants to forgo that additional day, concerning the cloture motion. That would be fine.

Mr. ROBERT C. BYRD. I appreciate the willingness of the distinguished Senator from Wisconsin to allow the Senate to proceed to a vote on cloture a week from tomorrow even though the Senate will not be in tomorrow. Therefore, I ask unanimous consent that if the Senate goes out today and does not come in tomorrow, the vote occur on Wednesday a week from tomorrow under the cloture rule as though the Senate had been in session on tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. The only thing that possibly remains is the ERISA.

Mr. STEVENS. We will do our best to help the majority leader work through that problem. As I said, I must leave tomorrow morning.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. PROXMIRE. Mr. President, as I was saying, Mr. Emil Sherer Finley is president and chief executive officer of a tremendously successful export company which has increased their exports by over 9,000 percent in the last relatively few years. He has a company which now has a volume of close to a quarter billion dollars. He obviously is qualified to talk about exports and how to increase them. He has far, far more experience than anybody in this body. He said this, in the course of his presentation to the Senate:

In many of these papers, I have described typical Webb-Pomerene associations and have shown that, contrary to the generally

accepted concept, the expansion of the Webb-Pomerene Act's antitrust exemption will not stimulate an increase in our exports. As we all know, this exemption was intended by Congress originally to enable small U.S. businesses to compete against the then prevailing European cartels. Contrary to this intent, this exemption has enabled in fact, large U.S. companies to form cartels of their own, most often in the areas where there is practically no foreign competition. Moreover, this exemption has discouraged, and not encouraged, competition and has led, and continues to lead, to further U.S. cartelization and control over the flow of U.S. exports.

What he is saying is that the Webb-Pomerene Act and the kind of action that we would take under the bill that is pending would discourage competition. This expert on exporting, this man who has been such a smashing success, has said that it would lead to further U.S. cartelization and control over the flow of U.S. exports.

He says this:

If exports are being restrained now, as they certainly are, they would be restrained even more if such bills were to pass. The most disturbing fact about all this is that the Webb-Pomerene associations benefitting from antitrust exemptions are composed mostly of members which, together, dominate also our domestic scene. Their immunized actions taken with respect to export pricing and setting quotas have a direct and adverse effect on the domestic market which they are able to influence simultaneously. Thus, our farmer, our worker, our tradesman and, of course, our consumer, is forced to pay higher prices for the product.

The 1967 FTC study and hearings on the operation of Webb-Pomerene conducted by the U.S. Senate demonstrated how little that Act and its antitrust exemption have done to encourage U.S. exports since 1916. To stimulate U.S. exports, we do not need the continuation and expansion of an act which encourages anti-competitive behavior.

We need, instead, to recognize that our failure to gain our appropriate share of the export market is due to this very anti-competitiveness which, in turn, contributes dramatically to our overall declining productivity, inflation and much, much higher domestic prices of products.

The companies who need it the least benefit from the anti-competitive blessing of Webb-Pomerene and have produced hordes of witnesses to testify about the desirability of continuing that blessing. The general public who will be adversely affected cannot usually muster the resources to make its voice heard.

Our export markets will expand with more—not less—competition. Companies such as ours can contribute to the give and take of the marketplace if they are allowed to.

Now, Mr. President, I would like to refer to Dr. Henry Wallich, who is, as we all know, a Governor of the Federal Reserve Board, their expert in this area, and the Federal Reserve Board's witness before our committee. Dr. Wallich is a former professor at Yale University. He was a columnist who has appeared in Newsweek. He is recognized as one of the most eloquent economists in the country and certainly an expert on banking and an expert on international economics. He is about as well-qualified as anybody on the Federal Reserve Board could be to speak on this. He is probably the most accomplished and widely respected professional economist on the Federal Reserve Board.

In appearing before our committee, this is what Dr. Wallich had to say:

I am pleased to submit a statement on S. 2379, a bill that is designed to facilitate the formation and operation of export trading companies. My statement on behalf of the Board of Governors is limited to the section of the bill that provides for bank investment in trading companies.

Of course, that is the section that concerns this Senator and that is the section which our amendment would address. Continuing:

The Board strongly supports the view the United States needs a strong export sector, and I have been concerned that exports are sometimes hampered by Government regulations. It is noteworthy that under such handicaps, U.S. exports have nevertheless grown rapidly in the last several years.

Mr. President, Dr. Wallich is the outstanding expert on this matter at the Federal Reserve and generally. He does point out in his statement that he favors a strong export center, as does the Board itself. The exports have grown rapidly in the past several years under severe handicaps. But he does say this:

This growth however has reflected in good part the depreciation of the dollar, and the improved competitive position of the United States that has resulted, as well as the benefits from the expansion of economic activity abroad. Over the past two years exports have increased 50 percent in value and 20 percent in volume, with strong performances in both agricultural and manufactured goods.

Mr. President, consider that. Over the past 2 years, exports have increased 50 percent in value and 20 percent in volume. You would think, from the tears shed by the supporters of this bill, that exports were on their last legs, that exporters were really suffering. But in this recession, in spite of all the other difficulties that we have, in spite of the fact that inflation makes it very difficult for exports, over the past 2 years, exports have increased 50 percent in value. That is 50 percent. And 20 percent in physical volume, with stronger performance in both agriculture and manufactured goods.

We should expect that growth in our exports will depend in part on growth in the main markets in which we sell. Thus, as economic activity slows abroad, we should expect growth in our export sales to slow also, although we still look for some increase in exports of manufactures this year. Further growth in exports and a narrowing of the U.S. trade deficit in the years ahead will depend on our ability to bring inflation under control and to establish an environment favorable to growth of productivity and the international flows of goods and services.

Every economist who testifies, particularly the highly competent economists like Dr. Wallich, point out that if we are going to increase our exports, we do it by improving our situation on inflation, holding our prices down, and that means, of course, improving our productivity. Nobody argues that export trading companies are going to play any part except maybe a modest, negative part in that. In fact, they may do more harm than good as far as our productivity is concerned and increasing our competitiveness and thereby holding down prices through competition; they will reduce, not increase our capacity.

Dr. Wallich goes on to say:

Among the measures already taken to strengthen U.S. exports are certain actions by the Federal Reserve to increase the capabilities of Edge Corporations to provide international banking services. I recently reviewed these measures before this Subcommittee. These changes in rules for Edge Corporations were in response to the Congressional mandate in the International Banking Act, and were designed to help the financing of exports. One change expanded the powers of Edge Corporations by permitting them to finance the production of goods for export. A second change permitted Edge Corporations to establish domestic branches, thereby increasing the possibilities for international banking services to expand into new areas. In the nine months since this change in Board regulation, the Board has approved applications for branches of Edge Corporations in 11 cities, including five cities in which no Edges have previously operated. A number of other applications for Edge Corporations are anticipated over the next few months.

The concrete benefits of these actions in expanding international banking services, and in particular in facilitating the financing of U.S. exports will, of course, be observed only gradually. But we believe that they may be significant over the longer run.

The bill before this committee—

He is talking now about the bill before the Senate—

seeks to strengthen U.S. exports by facilitating the establishment of export trading companies that could supply and package a range of services necessary for exporting, and that could also engage directly in selling goods for export. It would enlist the support of U.S. banks for both types of activities by permitting banks and Edge Corporations to invest in export trading companies. In this connection it might be noted that although banks and Edge Corporations cannot now invest in such trading companies, bank holding companies are permitted to hold up to 5 percent of the stock of nonbanking companies as passive investments.

The Board shares the view that banks have expertise in some of the areas noted in the bill. U.S. banks can now provide, either directly or through their Edge Corporations and affiliates, a wide variety of services relating to exports. In addition to a full range of financing services, these include foreign exchange facilities, information on foreign markets and economies, introductions, business references, and advice on arranging shipments. A number of U.S. banks with sizable networks of international banking and financial facilities have substantial expertise in these areas. Moreover, the provision of these advisory and ancillary services are a useful adjunct to international financing, which is the principal business of many banks and of Edge Corporations. Edge Corporations have wide latitude under the law to provide advisory services relating to exporting. In addition, in the case of uncertainty about the permissibility of certain activities, Edge Corporations may apply under the Board's procedures for permission to broaden the scope of the export-related services that they offer.

Mr. President, what all this says, of course, is that under present law, pres-

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ent practice, there is a great deal that can be done without changing the law to provide bank financing of exports and to bring the expertise of banking and the assistance of banking into the act.

Then what does Dr. Wallich say? Of course, he is the authority on this as the representative of the Federal Reserve Board in this area. He says:

No requests of this sort have yet been received. The Board would of course review any such applications carefully in the light of all the surrounding circumstances.

Extension of the investment powers of banking institutions to include companies that buy and sell goods and services for their own account would go far beyond these existing financial facilities. Such an extension would raise basic questions regarding the traditional separation of banking and commerce. This tradition, which stands in sharp contrast to the practice in some countries abroad, helps ensure that banks will remain impartial arbiters of credit and contribute to a healthy competitive environment in the commercial sector.

That one paragraph states the case about as well as it can be stated. This is what we want to do. Those of us who want to modify the Stevenson-Heinz bill want to make sure that we do not have an unnecessary intrusion of banks into commerce so that banks can compete unfairly with industry.

We have had this separation for 100 years. It served us well. Whenever there has been any departure from it, there have been loud and perfectly legitimate and proper and understandable complaints from those who have to compete with a business that is owned by a bank.

It gets all the credit it needs when it is needed, especially in credit crunch periods and, of course, the unaffiliated independent competitor does not get it. So the competition is grossly unfair.

Dr. Wallich goes on to say:

The separation of banking and commerce has a long tradition in American banking. It is embodied in the Bank Holding Company Act, and endorsed by the Board. That tradition has served this nation well in promoting economic competition and a strong banking system. In addition, the Board has several more specific concerns about a breaching of the separation of banking and commerce, as is proposed in S. 2379.

Dr. Wallich, speaking for the Federal Reserve, says this:

(a) The possibility that bank-owned companies or manufacturing companies dealing with them will have more favorable access to bank credit than other companies. For example, the associated company might well receive more liberal credit terms such as lower interest rates, longer maturities, and less stringent collateral requirements.

I do not think that anybody who is realistic or has been in business would deny that is what happens. Obviously, if anybody in this Senate were a banker he would be inclined to provide better terms for a bank that his own bank owned. It is natural and predictable. It is what happens over and over again.

Anybody who says that would not happen believes in the tooth fairy. We know that happens.

Dr. Wallich goes on to say:

Moreover, as between otherwise equal potential borrowers, the bank might well make credit available to an associated company but not to others. Thus, there is a potential for unfair competition among trading companies.

I recall so well addressing a group of automobile dealers, they leased automobiles and were in competition with the banks who were also leasing. They made a case that would bring tears to anybody's eyes. No matter how hard they tried or how competitive they were, or how much more efficient, competent, and knowledgeable than the banks, they were beat every time because the banks had the credit and the competitors not associated with a bank did not have the credit.

Dr. Wallich goes on to say:

(b) The exposure of the bank that arises from risks encountered in commercial trading and the holding of inventories. This risk is enhanced when high leveraging is involved as is typically the case with trading companies.

Of course, mainly, the bank will invest a relatively small ownership capital and the borrowing body, trading company, will be highly leveraged, so that the loss which wipes out the entire equity is larger than the capital investment and that is a risk that does not occur just occasionally, but often. That danger is typical, according to Dr. Wallich, and he, of course, is right. He continues:

Margins for error are small in circumstances where the nature of the business necessarily contains the potential for sizable price movements and marked shifts in demands for products. In the case of Japanese banks associated with Japanese trading companies large losses were sustained in one instance where a trading company failed, and difficulties have been encountered by others.

Now, we are always pointing to the Japanese. Everything they do seems to be what we should try to imitate.

There is no question, they have had great success.

But I think Dr. Wallich points to the fact that they take risks, too, that in a specific case do not work out. The trading companies fail and the banks suffer and the banks' stockholders suffer, too.

Often, under those circumstances, if the case is sufficiently bad, it may well be that a bank would have to be bailed out.

Now, as Dr. Wallich goes on to say:

(c) The possibility of conflicts of interest in the exercise of its credit judgment between the bank's fiduciary responsibility to depositors and its ownership interests. Examples of such classic conflicts are legion, the more obvious ones being where bank management runs undue risks in extending credit to such an associated company in the hopes that the company will be successful and provide a handsome return to shareholders and hence management; or where it continues to extend credit to an associated company in distress rather than cut its losses.

Dr. Wallich points to the increased complexity of the bank supervision:

For bank supervisors, as for bank management, there are very substantial differences between supervising banking and financial activities and supervising commercial enterprises, which involve risks that must be evaluated and controlled on the basis of specialized knowledge and expertise.

The Board would be concerned about this legislation also because of the precedent that would be established. In today's environment, with rising prices for energy and the need for painful cuts in many areas of the economy, pressures might well arise for banks to make investments in areas where worthwhile economic and social objectives are being threatened by the need to economize. Taken alone, each of these objectives might be worthwhile, but in aggregate they could represent a substantial claim on bank capital.

To summarize very quickly what the Federal Reserve Governor is saying is that these are dangers.

First, the possibility that bank-owned companies, or management companies dealing with them, will have more favorable access to bank credit than other companies.

Second, the exposure of the bank to areas of some risk encountered in commercial trading and the holding of inventories.

Three, the possibility of conflicts of interest in the exercise of its credit judgment between the bank's fiduciary responsibility to depositors and its ownership interests.

Finally, the increased complexity of bank supervision.

Now, Dr. Wallich says:

The Board would be concerned about this legislation also because of the precedent that would be established. In today's environment, with rising prices for energy and the need for painful cuts in many areas of the economy, pressures might well arise for banks to make investments in areas where worthwhile economic and social objectives are being threatened by the need to economize. Taken alone, each of these objectives might be worthwhile, but in aggregate they could represent a substantial claim on bank capital.

We need to remember that bank capital is low already—about $90 billion for all banks relative to total liabilities of $1.5 trillion.

That means bank capital represents only about 6 percent of a bank's liabilities. That means a decline of 6 percent in a bank's net worth, typically, in the average case, wipes it out. That is the average case. There are many banks which have a far lower capital ratio.

There are banks, as we all know, that have capital ratios that are less than 3 percent.

Now, it is this factor, among others, which makes the Federal Reserve Board concerned about permitting the banks to get into this high risk area of export trading companies where, as I say, the leverage is very high and where bad news for a couple of years could put a bank in very serious danger, particularly if the bank were suffering any other difficulties.

As Dr. Wallich points out:

Capital ratios have been declining over the years, in part as a result of inflation, and there is now little room in bank balance sheets for new generic risks.

This does provide a new generic risk. He says:

If we now encourage banks to divert capital from its traditional role as a support for lending activity and to invest it in nonbanking activities, we are necessarily curtailing the amount of lending that banks can do for other purposes. Bank capital can most productively be invested in supporting banking activity.

Mr. President, I believe we should be very sensitive to that. All of us can recall, I believe, how concerned we were at the dearth of capital available to lend to farmers and small businessmen a few months ago, early this year. There was a terrific credit crunch, with very high interest rates. We had many people come to our office and point out what a tough time they had getting credit.

As Dr. Wallich points out, this will make it tougher. The banks already are undercapitalized. They need capital desperately, and their capital is going to be absorbed for this purpose; and it is a purpose which, as I pointed out earlier, the most successful exporters say will not be helpful. In fact, it will be counterproductive.

This is what Dr. Wallich says:

Edge Corporations, banks and bank holding companies may currently engage in some of the activities offered by trading companies. Moreover, the Board has established procedures under the recently revised Regulation K by which member banks, bank holding companies and Edge Corporations can apply to engage in new international activities, and the Board is committed to processing applications in an expeditious manner. Banks are, of course, not permitted to engage in "buying or selling goods, wares, merchandise or commodities in the United States," and the Board has supported this limitation on bank activity.

Mr. President, as we all know, the Chairman of the Federal Reserve Board, Paul Volcker, was overwhelmingly approved by this body a relatively short time ago. I believe most of us feel that he has done a good job under very difficult circumstances as Chairman of the Federal Reserve Board. It is about the only effective inflation fighting agency we have in the Government.

Dr. Volcker has taken unpopular but certainly very strong anti-inflation positions since he has been in office, and I believe that the esteem and respect that Chairman Volcker has has been enhanced by his performance.

Chairman Volcker addressed himself to this subject and wrote me a letter on it several days ago, on August 20. This is what he wrote:

I am responding to your letter requesting a draft amendment to S. 2718, the Export Trading Company Act of 1980, to permit bank holding companies under special circumstances to have a controlling interest in export trading companies while maintaining a general policy that banking organizations should not ordinarily be permitted to control export trading companies.

The principal difference between the bill reported by the Senate Banking Committee and the recommendations contained in my letter of May 12 is that the bill permits U.S. banks to acquire controlling interests in export trading companies. The issue of control is of course an important one. The recommendations in my letter of May 12 would help keep risks to banks at manageable levels provided that the banks had non-controlling investments. It continues to be my view that banking organizations should not generally be permitted to control export trading companies in view of the implicit commitments of bank resources, the increased financial risk that accompany control and the need to maintain the line between banking and commerce.

The issue of permitting banks to extend their area of operations arises, as you know, in many contexts other than export trading companies. Control often carries an implicit commitment by a bank to place the full resources of the institution behind its subsidiary. In many institutions this is a matter of corporate policy, and it is recognized in the market place. As your Committee report notes, a banking organization is more likely to become involved in the management and operation of an export trading company if it has a controlling interest in that company. Although a bank may judge that it can operate an international commercial banking business more efficiently and safely through controlling investments in affiliates, control and the involvement in management in a non-banking business would increase the potential financial risk to the owning banks, and might also increase the likelihood of conflicts of interest.

So we should have our eyes wide open as to what we are doing here, particularly if we do not modify the Stevenson-Heinz bill; because if we fail to modify this bill we are being warned by the Chairman of the Federal Reserve Board—if anybody knows whereof he speaks in this matter, he does—that we will be decreasing the safety and soundness of our banks and we will be creating a situation which, according to the best judgment of the Federal Reserve, is dangerous.

I will read that sentence again, because others may disagree. He says:

Although a bank may judge that it can operate an international commercial banking business more efficiently and safely through controlling investments in affiliates, control and the involvement in management in a nonbanking business would increase the potential financial risk to the owning banks, and might also increase the likelihood of conflicts of interest. This consideration lies behind the recommendation that as a norm bank ownership interest be limited to less than 20 percent.

The Export Trading Company Act seeks to limit these risks by providing that controlling investments by banks be subject to prior approval and statutory safeguard. Prior approval is all we are asking, and we even have tempered that and have been turned down.

It does not have to be the Federal Reserve Board. It can be the consolidated committee that acts together. It can be a combination of the Federal Reserve, the Comptroller of the Currency, and the FDIC acting in concert. We are perfectly willing to permit that and to withdraw our objection, if that can be done.

But we have been told that will not work. We would confine the authority to that particular function; and we have ample precedent, as we have indicated over and again here today, for that kind of transfer.

Chairman Volcker goes on to say:

The Export Trading Company Act seeks to limit these risks by providing that controlling investments by banks be subject to prior approval and to certain statutory safeguards. My concern about the provisions of S. 2718 that are designed to give supervisors powers to step in and prevent unsafe practices is that it would involve the supervisors to a substantial degree in decisions regarding operations of export trading companies. Bank supervisors are not able to anticipate all future eventualities in acting on applications and are unlikely to be able to supervise the operations of export trading companies sufficiently closely to ensure that risks to banks could be avoided, when those risks are magnified by bank control and involvement in management.

Finally, I should note that the sort of detailed supervision of export trading company operations that might be necessary under S. 2718 would be contrary to the philosophy adopted by the Board in its recent amendments of Regulation K, which sought to reduce the need for detailed supervisory review, and regulation of international bank operations.

The control issue goes to the heart of concerns that have been long standing in legislation and policy. Apart from its significance in this case, it also would be an important precedent in other areas. Consequently, I continue to feel that legislation in this area should be consistent with the basic presumption that a line be maintained between banking and commerce. In my personal opinion, that concept could perhaps reasonably be bent to recognize some special circumstances that might arise in which limited purpose (and presumably limited in size) export trading companies might be permitted, upon application to bank regulators, to be controlled by a bank. That would accommodate situations where an ETC designed for certain specialized purposes (i.e., for particular projects or rather specialized trade and financing problems) might not be established without the possibility of strong bank sponsorship.

I do not conceive of such an "exemption" from the basic presumption against control being extended to large, general or multiple purpose, export trading companies that would be capable of standing on their own feet without bank sponsorship—able to attract and retain necessary management and expertise and, indeed, ready to do business with competing banks.

And here is another reason, Mr. President, why our amendment makes sense. As Chairman Volcker points out the big export trading companies have no need to be owned by the bank. They could have the bank have 20-percent ownership, but for the bank to have control under those circumstances would serve no purpose. As Chairman Volcker points out, the big export trading companies would have the expertise and the access to the credit market to enable them to do a perfectly adequate and complete job without having the banks get involved.

That is the kind of judgment we would get if our amendment which would require the Federal Reserve or some other single agency to make a decision as to whether or not the ownership over 50-percent ownership by the bank would be necessary to increase exports.

Then, Chairman Volcker goes on to say:

However, there may indeed be certain special circumstances in which the risks associated with bank control of an export trading company would be outweighed in the public interest by the salutary effect the trading company would have in promoting U.S. exports. This situation might exist when particular goods and services currently not being offered in international trade could be marketed by having access to the expertise of a bank assisted export trading company. Further, if the exposure of the trading company (and its bank holding company owner) is reasonable in relation to its activities, it may be in the public interest to permit control of the export trading company. The critical element in any case involving control is the need for bank involvement in the organization and continued operation of such an export trading company. This condition could be met when, for example, the limited size, specialized purpose or temporary nature of the proposed

new export facility makes it unlikely that it could attract the financial management, expert resources and knowledge of foreign markets without the commitment implied by bank control.

This the Chairman of the Federal Reserve would permit and so would I, and so would our amendment, so would the amendment, of course, which is offered really by the Federal Reserve itself.

Chairman Volcker goes on to say:

The export of many products requires a high degree of sophistication and specialized knowledge in the areas of marketing, documentary requirements, financing, etc. In order for a banking organization to control an export trading company, it must bring to the enterprise already existing expertise that is essential to the successful operation of the export trading company. I would expect further that the need for continued bank involvement would be demonstrable on an ongoing basis.

One issue which I have not addressed previously in the context of the control issue is whether, in those cases where the export trading company is to be controlled by a banking organization, it is preferable that ownership reside in the bank or in the bank holding company. This issue was discussed at the Committee's hearings several weeks ago. Limiting controlling interests to bank holding companies would be consistent with the general scheme of Federal banking laws which requires that nonbanking activities be performed by a corporate entity separate from the bank. Also, this approach would be more harmonious with concerns about breaching the line between banking and commerce.

There is an argument that all investments, including those below 20 percent of the export trading company's stock, should be restricted to bank holding companies. However, a good case can be made that passive minority investments of a purely financial nature and with reduced risk to the investor should be permitted for banks as well as bank holding companies.

The enclosed draft amendments to S. 2718 are consistent with the views expressed in the foregoing paragraphs. As a footnote, I would mention that there is no reference in the amendments to a procedure requiring sixty day notification before a banking organization engages through an export trading company in "any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval."

That particular part was, I think, taken care of by an amendment offered by the distinguished Senator from Illinois a little earlier.

The last paragraph in the Volcker letter reads as follows:

By permitting bank control of export trading companies only where there is a clear need, I believe the purposes of S. 2718 can be accomplished. At the same time, the concerns I have expressed as to bank exposure would be mitigated by allowing the bank regulatory agencies to review critically any proposal in light of the risks involved. If S. 2718 were amended to permit bank holding company control in these limited circumstances, I would be prepared to support this legislation.

This is precisely the amendment that I am offering. The amendment is suggested by the Chairman of the Federal Reserve Board. In spite of all the perfectly legitimate thoroughly understandable concerns he has about bank involvement in this area, the Chairman of the Federal Reserve Board has not only said that the banks should be allowed to control 2 percent of an export trading company, but he goes further than that. He says they should be allowed to control and, as a matter of fact, even 100-percent control under our amendment, but they should get the approval of the Federal Reserve Board before that, and the argument between the Senator from Illinois and the Senator from Wisconsin is whether or not a single agency, and I have suggested both the Federal Reserve Board and the Examination Council, either one—we will take either one of them—should be the agency that can make the decision. Otherwise, we have a competition in laxity which is most unfortunate.

Mr. President, just today, August 26, the Vice Chairman of the Federal Reserve Board, Mr. Schultz, wrote me a letter on this matter. It is a short letter, and I think the Senate should be aware of this letter because I think it is of considerable importance. He writes as follows:

In the absence of Chairman Volcker, I am writing to comment on an issue related to S. 2718, the Export Trading Company Act of 1980. It is our understanding that consideration will be given to permitting national banks in special circumstances to have a controlling ownership interest in an export trading company.

While supporting legislation to permit a bank holding company to acquire a controlling interest in certain limited circumstances, as set forth in Chairman Volcker's letter of August 20, I would be opposed to allowing banks to acquire such a controlling ownership interest primarily for safety and soundness considerations.

Our experience indicates that a bank may feel obligated to bail out a troubled subsidiary, particularly when it is wholly-owned. The use of a bank's funds to rescue a troubled ETC could have a substantially adverse effect on the financial condition and future operation of that bank. By placing controlling interest of ETC's in the bank holding company, the bank would be better insulated from the uncertain risks of this new operation. The insulation from the bank is more complete in the bank holding company because of existing statutory restrictions on the amount of funds a bank holding company can take from its subsidiary banks.

It goes on to say:

It should also be noted that almost all of the banks that would be likely to control an ETC are part of bank holding companies. Moreover, most of these bank holding companies would appear to possess the financial capacity, independent of their bank, to make the necessary capital investment needed to organize and operate an ETC.

Finally, I would note that S. 2718 draws substantially from provisions of the Bank Holding Company Act, particularly those that deal with the nonbanking activities of bank holding companies. Over the years the Board and its staff have developed considerable expertise in administering the Bank Holding Company Act—expertise which would be valuable in supervising and regulating this new area of banking organization activity. Authorizing control to be acquired only at the bank holding company level would take advantage of that expertise as well as promote safety and soundness and uniform administration of the Act.

Mr. President, for the life of me I cannot understand what is wrong with that, with having bank holding companies serve as the device by which the banks could own and control 100 percent, under the circumstances where that is necessary, the export trading company. That would permit us to have a situation where the Federal Reserve Board, as Vice Chairman Schultz has pointed out, has the expertise, has the experience, in dealing with the bank holding company agent, and it would permit maximum protection of the banks because the bank holding company would be the agency that would own the export trading company, not the bank itself.

The expertise would be involved, the financing would be involved, the conflict of interest would be sharply reduced, the unfair competition would be reduced, and all of the positive and constructive benefits that could go to export trading companies would go to them under the Federal Reserve amendment.

So I hope when the Senate votes on this a week from tomorrow, when we return, they will keep this in mind and permit us to have a vote up and down on the Federal Reserve amendment, without having it, through some parliamentary device, prevented by some intervening amendment or something of the kind.

Mr. President, I suggest the absence of quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. STEVENSON. Mr. President, much has been said, not by me, about the competitiveness of the United States. I do not see how there can be much doubt about the decline which has set in. I do not, however, want to prolong this debate. But for those who are interested, I ask unanimous consent that a statement of Michael Aho, Director of the Office of Foreign Economic Research of the Bureau of International Labor Affairs in the Department of Labor, be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF MICHAEL AHO

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear here today to discuss a subject of vital concern: the international competitiveness of the United States. You and the other members of the Committee are to be complimented on your excellent work investigating factors which contribute to the competitiveness and long-run health of the U.S. economy.

As background for the Administration's review of U.S. competitiveness mandated by section 1110(b) of the Trade Agreements Act of 1979, my office prepared five background analyses on different aspects of U.S. international competitiveness. The Administration's report will be released shortly. Today, I

would like to discuss the results of our research studies. I am submitting the executive summaries of the five studies and a short paper for the record.

Over the past two decades, the United States has suffered an erosion in its competitive position in world markets and in the domestic market. This conclusion is based upon extensive empirical research which analyzed the trade of 34 countries in over 100 commodities. The increased international competition facing U.S. producers is mainly the result of changing world resource supplies and technological capabilities. Because of higher rates of growth in investment and expanded research activity in other countries, the United States has experienced a relative decline in its trade performance over the past two decades.

To some degree this is to be expected because the United States emerged from World War II with its industrial base intact, giving it a unique position in the world economy. That unique position has disappeared with the more rapid growth of investment, skilled labor, and most recently, research and development efforts by other countries. This rapid growth has narrowed the range of products in which the United States has a decided competitive advantage.

Every day we read about increased competition in traditional industries like steel and autos that has caused adjustment problems for workers, firms and their communities as some plants have been forced to close down or reduce production as a result of increased import competition. At the same time the United States is also experiencing increasing competition in high technology industries like aircraft and computers which have historically been our strength. Furthermore, it is likely that this competition will continue and increase in the 1980s because of the higher rates of investment and the increased technical effort by our major competitors.

We at the Labor Department are very concerned about the long-run competitive structure of the U.S. economy. The decline in U.S. trade performance increases our concern about the competitive position of U.S. industry because changes in trade performance are a leading indicator of changes in the competitiveness of our domestic economic base.

In conducting our research we examined, at both an aggregate and a highly detailed commodity level, the competitiveness of U.S. producers in world markets. We examined both the short-term, and the more subtle long-term, changes in this competitiveness. A variety of measures and indicators were used to examine and assess changes in competitiveness and the structure of trade.

Our results provide statistical support for many of the assertions made in the popular press that the United States has suffered a deterioration in its competitive position and that Japan is one of the principal sources of increased competition in many key U.S. export products. However, like most issues, there is evidence showing positive as well as negative developments. Therefore, let me present some evidence on both sides.

Among the positive developments in the international competitive position of the United States are the following:

Over the decade of the 1970's the volume of total U.S. exports increased by the same amount (80 percent) as the average of the other seven major industrial countries. Manufacturing exports expanded by 79 percent compared to 85 percent for the other major industrial countries.

Capital goods showed a record trade surplus of $32.6 billion in 1979.

Agricultural goods also had a record trade surplus of $18 billion in 1979.

Manufacturing exports increased by 23 percent in 1979, compared to 17 percent for our major competitors.

Among the negative developments:

Net trade: The United States had a trade balance deficit for 6 years during the 1970's and a deficit in manufacturing for 3 years. On a disaggregated commodity level, net trade is theoretically the best indicator of competitiveness. Of the major export categories, the United States has gone from being a net exporter to a net importer in several important categories including automobiles, telecommunications apparatus and inorganic chemicals.

In 1979, five of the seven major industrial countries had larger trade surpluses in manufacturing than the United States. Among the major industrial countries, we maintain a bilateral trade surplus in manufactures only with Canada. The bilateral deficits in manufactures trade are largest with Japan (—$17 billion) and Germany (—$5 billion).

Loss of export shares: Although trade is becoming increasingly important to the U.S. economy, the United States is playing a relatively smaller role in the world economy. Our analysis of U.S. export market shares for 102 manufactured commodities indicated that since the 1960's, the United States had trend declines in 71 percent of the commodities compared to 26 percent for Japan and 24 percent for West Germany. Most of the U.S. declines occurred in the 1960's with the 1970's representing mostly a period of stabilization but at reduced levels.

Among the top five U.S. manufacturing export earners (road motor vehicles, nonelectrical machinery, aircraft, other electrical machinery, and office machines (computers)), only aircraft had an increase in its export market share. In many of the traditionally strong U.S. exports, the decline in share had been greater than the decline in the share of overall manufacturing.

Increased competition from foreign producers in the domestic market:

Import penetration ratios have increased in many of the important manufacturing sectors, including inorganic chemicals, electric power machinery, power generating machinery and automobiles.

Erosion of our competitive position in formerly strong export commodities in third market areas:

A comparison of U.S. export performance with that of four major competitors (France, Germany, Japan and the United Kingdom) in common third markets showed that of the top 17 U.S. export commodities, 14 experienced share losses in the world market between 1962 and 1969, and all 17 showed losses to these competitors between 1970 and 1977.

The research also focused upon trade performance in high technology products which, along with certain agricultural products, have traditionally been a principal source of strength in the U.S. trade balance. High technology products include aircraft, computers, and many chemical and machinery products.

Our findings indicated that the United States still has a comparative advantage in technology-intensive products in world markets. In particular, when compared to its major competitors, the United States still has: (1) a greater concentration of high-technology exports; (2) one of the largest export market shares in high-technology products; (3) the greatest technological content in its exports, and, thus, more high-technology products among the products which characterize its comparative advantage.

There are several indications, however, that U.S. dominance in world trade of high-technology products is being eroded. This is troublesome because these are the sectors which contribute the most to productivity growth and holding down inflation. The indications of this erosion are:

The U.S. export market share in technology-intensive commodities has fallen over time. In 1977, the U.S. share fell to second behind Germany, whose share had remained roughly constant since the early 1960s. During that period Japan's share quadrupled to a point where it was just behind the United States and Germany.

The decline in the U.S. share and the improved performance by Japan and Germany were present throughout the entire period even after exchange rate realignments began in 1971.

Many high technology products show continuing increases in their import penetration ratio that are more rapid than for manufacturing as a whole. Several of the technology-intensive products had such a rapid growth of imports relative to exports that the United States became a net importer of these products.

The United States is losing out to competitors in some of its traditionally strong products in third market areas.

Among the major U.S. competitors, Japan exhibits the most dramatic change in trade performance in technology-intensive commodities. Between 1962 and 1977, the share of technology-intensive products in total Japanese exports and the technological content of Japan's exports more than doubled. Japan now has the largest trade surplus in technology-intensive products. In the 1960's Japan's trade performance in high technology products ranked low among Organization for Economic Cooperation and Development (OECD) countries. Since then, Japan has risen to second, behind only the United States as an exporter of technology-intensive products. Finally, Japan has begun to compete successfully in technology-intensive products with the United States and other major countries in third market areas, where all competitors face the same market conditions.

The rapid growth of Japanese exports of technology-intensive goods, and the growing share of Japan's exports to markets that were traditionally dominated by U.S. producers, demonstrate that Japanese competitiveness in technology-intensive goods is increasing. Consequently, Japan has joined the United States in having a competitive advantage in technology-intensive products, and this implies that competition between the two countries in these products will increase in the future.

What factors are responsible for this decline in U.S. international competitiveness?

The factors which can affect the international competitive position are manifold. They include: (1) the longer term factors which affect cost, investment in newer capital equipment and innovation and technical change; (2) input costs, including the effects of taxation policy and energy costs; (3) labor-management relations; (4) policies of

other nations such as trade barriers and industrial policy; (5) a number of largely nonquantifiable factors related to the product, including quality, delivery time, servicing; (6) managerial initiative and objectives, including entrepreneurial effort in developing new markets, devotion to quality control, etc.; (7) finally, U.S. export promotion policies as well as policies which inhibit exports.

A consistent explanation emerging from our analysis is that the decline in U.S. trade performance since the early 1960's is the result of changing world resource supplies and technological capabilities. These changes are the result of differences in the rates of growth across countries of net investment in equipment and research activity, and the acquisition of skills through education and other training.

Capital available per worker in the United States grew at an annual rate of 1.7 percent between 1963 and 1975, well below that of other developed countries and many of the major developing countries. The percentage of skilled workers in the U.S. labor force grew at an annual rate of 1.3 percent between 1963 and 1975, also below that of most countries.

This relatively slower growth in U.S. capital and skilled labor, along with differences in the growth of these resources in other countries, has altered the distribution of resources among countries and has thereby expanded the capabilities of many countries to supply products to the world market.

The U.S. share of world capital fell from 42 percent in 1963 to 33 percent in 1975. By comparison, Japan's share of world capital increased twofold over the same period, from 7 to 15 percent. The U.S. world share of skilled labor fell from 29 percent to 26 percent; its world share of arable land, however, increased from 27 to 29 percent.

The decline in the U.S. share of the world's capital stock is the result of slower real growth in the United States combined with the fact that the United States allocated a smaller proportion of its national income to investment than its major competitors. In 1978, the United States allocated only 7.3 percent of its gross national product (GNP) to gross fixed capital formation in machinery and equipment whereas Japan allocated 10.9 percent, Germany 8.9 percent, France 9.1 percent, and the United Kingdom 9.2 percent. In terms of total gross fixed capital formation, the United States allocated 18.1 percent, Japan 30.2 percent, Germany 21.5 percent, France 21.5 percent, and the United Kingdom 18.1 percent.

The share of U.S. output devoted to research and development declined from 2.97 percent to 2.27 percent between 1964 and 1977. Japan's share rose from 1.48 to 1.94 percent; Germany's rose from 1.57 to 2.26 percent.

Research and development and investment in skills and capital equipment are factors which affect the long-run competitive position of a country and they are also the major sources of productivity growth. In recent years, U.S. productivity growth has slowed in manufacturing and it lags behind that of all of our major foreign competitors, except the United Kingdom. Over the last decade, manufacturing productivity in the United States increased by an average of 2.5 percent per year. In Japan, the average increase was 5 percent, in West Germany, 5.5 percent, in France, 4.5 percent, and in Canada, 4 percent.

This more rapid growth of capital, skilled labor, and technical resources by other countries relative to the United States has intensified competition in traditionally strong U.S. export products and has narrowed the range of products in which the United States has a competitive advantage. This competition will continue and increase in the 1980's because the United States continues to lag behind other countries in net real investment growth and because of the relative decline in our research and development effort.

With these results in mind, let me raise a few policy issues.

INDUSTRIAL POLICY

The United States does not have an explicit industrial policy, but to the extent that our major competitors adopt industrial policies, and target their industrial development, we are faced with the results of their industrial policy. For example, the focus of Japan's industrial strategy for the 1980's is to develop high technology industries as their next source of industrial strength. If this industrial targeting is successful, then the competition from Japan we are currently experiencing will increase. The semiconductor industry has already become a source of some concern.

It is imperative that our policies be directed toward enhancing the competitiveness and flexibility of U.S. industry so that we can respond to this challenge. Enhancing the competitiveness of high technology, export-oriented firms will increase the demand for higher skilled and more productive workers. But we cannot overlook the adjustment problems created by the internationalization of our economy.

ADJUSTMENT PROBLEMS

In order to export, the Nation has to import. If policies were to be adopted to restructure industry and to encourage the exports of high technology products, we need to recognize and deal with the adjustment problems created by such a policy. The workers in more traditional, import-competing industries are on average less skilled, less educated, lower paid, older and more like to be female or members of minority groups. (See Table 1). In short, those workers who would have to bear the brunt of the adjustment burden are least able to afford it. They are also the least occupationally mobile. This contrasts sharply with the higher skilled and better educated workers needed in the higher technology industries and suggests that training and adjustment programs may be necessary to facilitate the transfer of displaced workers. More should be done to retrain and to help these workers to adapt their skills to new occupations in other industries. The Department of Labor is presently designing a pilot project to determine the feasibility of providing readjustment to displaced workers.

INTERNATIONAL TRADE AGREEMENTS

The nontariff barrier codes, particularly on government procurement and subsidies, which were agreed to during the Multilateral Trade Negotiations, need to be implemented and the ensuing developments closely monitored. In industries such as telecommunications and information processing, the governments in other countries often serve as the purchasing agent. Since the United States has traditionally had a competitive advantage in these industries, we must ensure that U.S. firms have access to foreign markets on an equal footing with local competitors in these markets. There are many potential problems involved with trade in higher technology products which may require new negotiations and new negotiating strategies. In order to learn more about the problems, the Department of Labor is cosponsoring a research project with the Office of the U.S. Trade Representative to examine the potential for negotiations.

LABOR, MANAGEMENT, AND GOVERNMENT COOPERATION

Some influence on the competitive position of the United States lie outside the immediate realm of policy. One of these areas is labor-management relations. Differences among nations in the degree to which labor and management cooperate with one another can have an effect on the international competitiveness of their firms and industries. This seems to be the case in Japan and Germany, which have had the best trade performance in recent years and where labor and management cooperate closely with one another.

Close cooperation between labor and management can allow them to address mutual problems which interfere with productivity growth. The United States should encourage joint efforts on the part of labor and management to improve productivity which in turn can have a direct effect on U.S. competitiveness in world markets. Joint efforts could also help to smooth the process of adjustment to economic change.

An effort in tripartite cooperation among labor, management and Government has been begun in the steel industry with the formation of Steel Tripartite Advisory Committee. The Committee is concentrating its efforts on community adjustment, productivity improvement and industrial modernization. A similar tripartite effort is included as part of the President's economic program for the automobile industry. As these efforts proceed, they should provide the experience needed to assess the applicability of cooperative approaches for U.S. industry. In order to obtain a more in-depth look at labor management relations and adjustment policies in other countries, the Department of Labor is cooperating with the Japanese Ministry of Labor on a research project which involves cross-national comparisons and on-site visits.

Let me conclude by observing that competitive advantage does not remain constant. Research and development and investment in capital equipment and labor skills are key factors which affect the long-run competitive position of a country and they are also the major sources of productivity growth. To the extent the United States undertakes less real investment and devotes less resources to research and development than its major competitors, then the long run international competitiveness of U.S. industry will be reduced. Over time, larger capital expenditures overseas in newer facilities will enhance the competitiveness of foreign firms. Increased research and development will enable them to develop newer products and processes with which U.S. firms will have to compete. Although depreciation of the dollar will make U.S. products look more attractive in world markets, this will reduce our real income and overall welfare at home. Not doing enough to lower costs and develop newer, higher quality products may lead to a long-run structural decline in the U.S. competitive position in manufacturers and even in high-technology manufactures.

The United States needs to encourage investment and research to prevent such a decline. Expanded investment and innovative activity would not only affect U.S. long-run competitive advantage, but would also contribute to the productivity growth which is necessary for the Nation to enjoy real income gains in the future.

Mr. Chairman, this concludes my prepared statement. If the Committee has any questions, I would be happy to answer them.

CHARACTERISTICS OF THE INDUSTRIES IN WHICH TRADE HAD THE LARGEST POSITIVE AND NEGATIVE IMPACT UPON JOB OPPORTUNITIES, 1964–75

	Average of the 20 industries in which trade had the most favorable impact on job opportunities*	Overall manufacturing average	Average of the 20 industries in which trade had the least favorable impact on job opportunities
Demographic characteristics of the labor force (percent):[1]			
Female	21.5 (23.2)	29.4	41.1
Minority	7.4 (6.0)	10.1	11.5
Under 25 yr old	15.4 (15.2)	16.4	15.8
Over 50 yr old	24.4 (23.8)	26.5	28.0
Family income below the poverty level	5.8 (4.3)	7.0	9.8
Annual earnings under $10,000	72.1 (70.0)	77.4	81.7
Annual earnings under $12,000	83.5 (82.2)	87.2	89.7
High school education (4 yr)	39.1 (40.8)	36.6	34.0
College education (4 yr)	6.9 (7.6)	5.1	3.1
Occupational breakdowns and industry characteristics:			
Unionized workers as a percentage of the labor force[2]	40.0 (38.0)	49.0	51.3
Skill measured as a percentage of the average wage in manufacturing (1973)[3]	104.0 (105.2)	100.0	97.8
Skilled workers as a percentage of the labor force[4]	55.8 (59.2)	50.0	38.8
White collar workers as a percentage of the labor force[5]	36.3 (39.4)	30.3	21.1
Technical intensity (scientists and engineers as a percentage of the labor force)[6]	6.87 (7.76)	3.20	2.29
Technical intensity (R. & D. as a percentage of sales)[7]	5.90 (6.58)	2.36	1.39
Foreign direct investment proxy (foreign dividends plus tax credits as a percentage of firm's assets)[8]	.53 (.59)	[9].34	.52

*The weighted average in parentheses is calculated by excluding veneer and plywood; sawmills and planing mills; and logging. These industries should be considered separately due to their relatively high natural resource content and geographic concentration of production.

[1] Source: Census of Population, 1970, Subject Reports: Industrial Characteristics, U.S. Department of Commerce, 1972, (Washington, D.C.: U.S. GPO).

[2] Source: Freeman, Richard and James Medoff, "New Estimates of Private Sector Unionism in the United States," Industrial and Labor Relations Review, vol. 32, No. 2, (January 1979).

[3] Source: Employment and Earnings, U.S. Department of Labor. Index is the average hourly wage in the industry divided by the average hourly wage in manufacturing.

[4] Source: Census of Population, 1970, Subject Reports: Occupations by Industry, U.S. Department of Commerce, 1973, (Washington, D.C.: U.S. GPO) Skilled workers are defined to include professionals, managers, sales, clerical and craftsmen.

[5] Source: Same as 4. White collar workers include all defined as skilled except craftsmen.

[6] Source: C. F. Bergsten, T. Horst and T. Moran, American Multinationals and American Interests, (Brookings Institution: Washington, D.C.) 1978, table 3–2.

[7] Source: R. Kelly, "The Impact of Technological Innovation on International Trade Patterns," Staff Economist Report, ER–24, Department of Commerce (December 1977).

[8] Source: Bergsten, Horst and Moran, table 3–2.

[9] Median.

Source: C. M. Aho and J. Orr, "International Trade and Domestic Employment: Characteristics of Workers in Trade-Sensitive Industries", Economic Discussion paper 2, Office of Foreign Economic Research, Bureau of International Labor Affairs, Department of Labor, April 1980.

SUMMARIES OF RECENT ANALYSES ON U.S. INTERNATIONAL COMPETITIVENESS AND THE CHANGING STRUCTURE OF U.S. TRADE

(By Thomas O. Bayard)

TRENDS IN U.S. TRADE: 1960–79

Executive summary

International trade is becoming increasingly important to the U.S. economy. A common measure of the domestic significance of foreign trade, the ratio of U.S. exports plus imports to GNP, has risen from 10 percent in 1960 to almost 22 percent in 1979. This report summarizes the most important trends in U.S. trade since 1960 and attempts to assess the impact of changes in macroeconomic factors such as real GNP growth, inflation, and exchange rate changes on U.S. trade flows.

Although trade is becoming increasingly important to the U.S. economy, the United States' role in the world economy is becoming smaller. The U.S. share of total world exports declined from 18 percent in 1970 to 14 percent in 1979. The U.S. share of world exports of manufactures fell from 21 percent to 17 percent in the same period. The United States experienced a substantial loss of market share in the import markets of Japan and the developing countries, but increased its share of centrally planned economies' imports in the 1970's.

The United States had small surpluses in its agricultural trade in the 1960s. Agricultural exports soared in the 1970s, mainly on the strength of increased exports to the developed countries and, especially, to the centrally planned economies. The surplus averaged well over $10 billion since the mid-1970s. In 1979, the U.S. agricultural trade surplus reached a record of $17.9 billion.

Because of the importance of U.S. manufactured exports and imports in total trade, the manufactured goods trade balance has tended to coincide with the movements in overall trade balance and to be influenced by the same macroeconomic trade factors. The surplus in manufactures declined through the late 1960s and a deficit emerged in 1972. Since then, there have been wide fluctuations in the manufactures trade balance. In 1979, the United States had a surplus of more than $4 billion in manufactured products.

The United States trade position in manufactures has been particularly strong in capital equipment and high-technology products. Both of these designations frequently apply to the same product category (e.g., advanced electrical machinery). In 1979, the United States trade balance in capital goods reached a record surplus of $32.6 billion. There is evidence, however, that the United States is losing its lead in high technology exports in recent years; in large part to Japan. Although U.S. exports of consumer and automotive products have grown rapidly in recent years, import gains have kept ahead of those of exports and the trend since the 1960's has been toward greater trade deficits in these products.

The United States ran small trade deficits in petroleum and petroleum products through the 1960s. The emergence of OPEC as a successful cartel was in part due to the growth in U.S. (and Western) dependence on energy imports. Both the volume and the price of oil imports tended to increase in the early 1970s, although the volume of imported oil has dropped significantly over the last two years. Recent declines in U.S. oil import volumes have been more than offset by rapid price increases. The oil deficit grew from $3 billion in 1971 to $55 billion in 1979 and has had a dampening effect on U.S. economic growth.

The U.S. trade surplus with the developed countries (DCs) declined through the 1960s. Deficits emerged in the late 1960s and early 1970s. In 1979, however, a large improvement took place in the U.S. trade position vis a vis developed countries because of a substantial increase of U.S. exports to these countries.

The less developed countries supplied 45 percent of total U.S. imports in 1979 compared with only 26 percent in 1972, primarily because of the rapid rise in oil imports. The LDC's share of U.S. exports rose from 31 percent in 1972 to 37 percent in 1979.

CHANGES IN THE INTERNATIONAL PATTERN OF FACTOR ABUNDANCE AND THE COMPOSITION OF TRADE: A MULTI-COUNTRY ANALYSIS OF CHANGING COMPARATIVE ADVANTAGE IN MANUFACTURED GOODS WITH SPECIAL REFERENCE TO THE UNITED STATES

(By Harry P. Bowen)

EXECUTIVE SUMMARY

This paper assesses the role of changes in relative resource supplies across countries as an explanation of the changing structure of U.S. trade and the growing competition to United States producers in international markets since the early 1960s. Although focusing primarily on the United States, the analysis also considers the impact of changing resource supplies on the trade structure of thirty-three other countries. In so doing, the analysis provides a basis for understanding the impact of relative resource changes on U.S. comparative advantage within the world economy.

The analysis first examines the changes that have occurred in the availability of resources (capital, labor of differing skills and land) across the thirty-four countries over the period from 1963 to 1975. Next, using traditional input-output methods, an analysis of the relationship between changes in resource structure and changes in the composition of trade as reflected in the changes in a country's implicit exchange of these factors' services is conducted. Finally, a formal statistical analysis of the resource determinants of U.S. comparative advantage is conducted at five points in time over the period from 1963 to 1978.

Overall, the analysis indicates that a consistent explanation for the decline in U.S. trade performance since the early 1960s is the result of changing world resource supplies. These changes are the result of differences in the rates of growth across countries of net real investment in equipment and the acquisition of labor skills through education and other training.

The data on resource supplies indicate that there have been substantial changes in resource structure across countries. In par-

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ticular, it is found that the capital abundance position of the United States has been substantially eroded since the early 1960s. In terms of the growth in capital per worker, the United States outpaced only two countries: Ghana and Yugoslavia, both of which showed a decline. In comparison, Japan's capital per worker grew at an average annual rate of 10.1 percent, second only to Korea whose relative capital endowment grew at the surprisingly rapid rate of 11.9 percent per year. Other countries showing relatively rapid rates of growth in capital per worker include Greece, Spain, Hong Kong, Brazil and Mexico. As a result of this differential growth, the United States fell from first to sixth on the basis of the ranking of capital available per worker. This relative decline is also found, to a lesser degree, with respect to the U.S. availability of skilled labor.

When resource structure was assessed on the basis of a country's world share of each resource, similar declines for the United States were found. In particular, the U.S. share of world capital fell from 44 percent in 1963 to 33 percent in 1975. By comparison, Japan's share of world capital increased twofold over the same period, from 7 to almost 15 percent. The U.S. world share of skilled labor fell from 29 percent to 26 percent, its world share of arable land, however, increased from 27 to 29 percent.

Examining the changes in the composition of a country's trade and its exchange of factor services, the results indicate that changes in the availability of resources in the United States relative to the rest of the world have had a major impact on the structure of U.S. trade. In particular, the structure of U.S. trade since the late 1960s has been significantly influenced in the capital-intensive sectors and the composition of U.S. trade has shifted such that its relative exchange of capital services with the rest of the world has declined. This finding is consistent with the decline in the capital abundance position of the United States relative to the rest of the world.

When U.S. exports going to developed and developing countries are examined, the results suggest that the accumulation of skilled labor and capital in the developed countries has contributed to a decline in the absorption of these factors from the United States and that, therefore, these countries have expanded their ability to compete in those sectors representing major U.S. manufacturers' exports. The results also suggest that the accumulation of capital in the less developed countries has reduced their absorption of capital services from the United States but that they continue to absorb increasing amounts of skilled labor.

The formal statistical analysis of the resource determinants of U.S. comparative advantage indicates that the changes in the resource availability of the United States relative to other countries provide a significant explanation of the changes in U.S. trade structure and the increasing competition to the United States in world markets. It is found that skilled labor and capital remain important determinants of the commodities in which the United States has a comparative advantage. But given this, what matters for changes in trade performance in such products among countries is the rate at which these resources are accumulated.

In this regard, the findings indicate that the relatively more rapid growth of physical capital, and to a lesser degree, skilled labor by the developed countries has enabled them to become increasingly competitive in those commodities representing U.S. comparative advantage. The results further indicate that the increasing accumulation of physical capital and semiskilled labor by the developing countries has enhanced their ability to compete in those commodities representing U.S. comparative disadvantage. Therefore, the results suggest that both U.S. export and import-competing industries will face increasing competition in the 1980s. The likely consequence of this increased competition in world markets will be to narrow the range of products representing U.S. comparative advantage.

TRENDS IN TECHNOLOGY-INTENSIVE TRADE: WITH SPECIAL REFERENCE TO U.S. COMPETITIVENESS

(By C. Michael Aho and Howard F. Rosen)

EXECUTIVE SUMMARY

Recently there has been a decline in U.S. research effort both relative to its trading partners and relative to past efforts. Consequently, the question arises whether the United States will lose its competitive advantage in those technology-intensive commodities which have traditionally characterized its comparative advantage.

This paper examines recent trends in the pattern of trade in technology-intensive products to see whether there has been an erosion of the U.S. competitive position in these products. The analysis is basically descriptive and uses a variety of measures to compare U.S. trade performance in technology-intensive commodities with that of other major industrial countries for the period from 1962–1977.

The analysis employs and compares all of the methodologies and indicators normally used to examine competitiveness and comparative advantage. These include: largest export earners, net exports, export-import ratios, "revealed" comparative advantage indices and exports and imports relative to domestic production and consumption. The analysis also examines U.S. export performance relative to major competitors in important commodities in third markets where all producers face the same market conditions.

The analysis shows that, in recent years, there has been a noticeable shift in the pattern of trade in high-technology products. The United States still maintains a strong competitive (and comparative) advantage in technology-intensive products, but U.S. competitiveness in those products in world markets has been deteriorating. The primary source of increased competition is Japan.

Several indicators revealed that high-technology products have been the source of strength in the overall U.S. manufacturing trade balance. Technology-intensive products comprise an increasing proportion of U.S. exports. Every year since 1962, the United States has had a trade surplus in technology-intensive products.

Relative to its major competitors, the United States still has (1) a greater concentration of high technology exports; (2) one of the largest export market shares in high technology products; (3) the greatest technological content in its exports; and (4) more technology-intensive products among the products which comprise its comparative advantage. However, there are several indications that the U.S. dominance in trade of high-technology products is beginning to erode.

The U.S. export market share in these commodities has fallen over time. In 1977, the U.S. share fell to second behind Germany, whose share had remained roughly constant over the fifteen-year period. During that period Japan's share quadrupled to a point where it was just behind the United States and Germany. The decline in the U.S. share and the improved performance by Japan and Germany were present throughout the entire period even after the exchange rate realignments began in 1971.

Another indication of a decline in U.S. competitiveness is the sustained increase in the import penetration ratio in high technology products. For many of the products the increases in their import penetration ratio was more rapid than for manufacturing as a whole. On a net export basis, several of the technology-intensive products had such a rapid growth of imports relative to exports that the United States became a net importer of those products. Finally, the United States is losing out to competitors in some of its traditionally strong products in third market areas.

Japan exhibits the most dramatic change in trade performance in technology-intensive commodities. Between 1962 and 1977, there was a remarkable shift in the structure of Japanese exports towards the higher technology industries. The share of these products in total exports more than doubled over the 1962–1977 period. Japan now has the largest trade surplus in technology-intensive products. In the 1960s Japan's trade performance in high technology products ranked low among the OECD countries. Since then, Japan has risen to second, behind only the United States as an exporter of technology-intensive products. The amount of technology embodied in Japan's exports has more than doubled between 1962 and 1977. Finally, Japan has begun to compete very favorably with the United States and other major countries in third market areas, where all competitors face the same market conditions.

The fact that U.S. exports remain more technology-intensive than exports from other major industrialized countries indicates that the United States has not lost its comparative advantage in technology-intensive goods. But the rapid growth of Japanese exports of technology-intensive goods and the growing share of Japan's exports to markets that were traditionally dominated by U.S. producers, demonstrate that Japanese competitiveness in technology-intensive goods is increasing. If these trends continue, competition between the two countries will increase in the future as both countries specialize on exporting similar products.

Research and development is one of the factors which affects the long-run competitive position of a country. To the extent the United States devotes less resources to research and development than its major competitors, then the long run international competitiveness of U.S. industry will be reduced. Increased R&D by firms in other countries will enable them to develop newer products and processes with which U.S. firms will have to compete. Although depreciation of the dollar will make U.S. products look more attractive in world markets, this will reduce real income at home. Not doing enough to lower costs and develop newer, higher quality products could lead to a long-run structural decline in the U.S. competitive position. To prevent such a decline the United States may need to put more resources into research activity.

ASSESSING THE CHANGING STRUCTURE OF U.S. TRADE IN MANUFACTURED GOODS: AN ANALYSIS AND COMPARISON OF VARIOUS INDICATORS OF COMPARATIVE ADVANTAGE AND COMPETITIVENESS

(By Michael Aho, Harry P. Bowen, and Joseph Pelzman)

EXECUTIVE SUMMARY

This paper examines the growing importance of international trade to the U.S. economy and attempts to determine those commodities in which the United States has increased, maintained or lost a comparative and competitive advantage. The analysis focuses on the changes in the trade structure of the United States over the period from 1962 to 1977. The analysis is conducted at a highly disaggratated level using 102 manufacturing categories as defined at the 3-digit level of the Standard International Trade Classification (SITC).

A major contribution of this paper is that the analysis of U.S. trade structure and trade performance is based on an extensive list of indicators normally used to measure a country's performance in world markets. These indicators are first used to examine the changes that have occurred in the structure of U.S. comparative advantage and that of its major competitors. Cross-tabulations of the indicators at specific points in time as well as their change over time are then used to examine the relationships between the indicators and to determine a consistent list of commodities (based on all the measures) in which the U.S. has maintained or lost a comparative and/or competitive advantage.

Having established that international trade is playing an increasing role in U.S. economic activity, a determination of the specific commodities accounting for this growing interdependence was then made. This was accomplished using two measures, the ratio of exports to domestic shipments and the ratio of imports to apparent consumption.

Among the commodities with a high ratio of exports to domestics shipments and which therefore play an important role in the U.S. export sector are: machinery and appliances—other than electric, aircraft, power generating machinery—other than electric, and chemicals.

The commodities demonstrating a high import to apparent consumption ratio include musical instruments, pottery, textile and leather machinery, iron and steel tubes, silver and footwear.

A number of different measures were then used to determine the structure of U.S. comparative advantage and U.S. trade performance. These measures were:

Indexes of Revealed Comparative Advantage.—Two indexes were used. One is defined as a country's world market share of a particular commodity divided by the country's share of total world manufacturing exports. The second index is the ratio of a country's exports to imports of a particular commodity divided by the ratio of its total manufacturing exports relative to its total manufacturing imports.

Net Exports (divided by domestic shipments).

Import Penetration Ratio (divided by the overall manufacturing import penetration ratio).

Constant Market Share Residual.—At a commodity specific level, the CMS procedure identifies two component effects contributing to export growth. One is due to the increase in world trade of the commodity and the other is due to the regional or market distribution of the country's exports of the commodity. Once these two effects have been determined the residual effect is measured as the difference between the actual increase in exports and that which would have occurred had the country maintained its market share of the commodity in each regional market. When this residual effect is negative it is interpreted as a decline in competitiveness. Conversely, when the residual effect is positive it is taken to mean that the country has increased its competitiveness.

Based on the changes in the two indexes of revealed comparative advantage between 1962 and 1977, changes in U.S. trade performance across the 102 manufacturing commodities were examined. The results of this analysis indicated that:

Five commodities showed improved performance based on both indexes of revealed comparative advantage. These were: other inorganic chemicals, manufactured fertilizers, cotton fabrics-woven, glass and miscellaneous nonferrous base metals.

Three commodities revealed a disadvantage on both indexes. These were: articles of rubber, n.e.s. (representing mostly rubber tires), telecommunications apparatus and miscellaneous manufacturers.

Fourteen commodities maintained an advantage on the basis of both indexes. These included: explosives, tools for use in the hand or in machines, electric power machinery, and electrical medical apparatus.

Twelve commodities maintained an advantage on the basis of one index and revealed a disadvantage on the other. Notable among these twelve are: inorganic chemicals, road motor vehicles, medical and pharmaceutical products, plastics and metalworking machinery.

The above results were based only on changes in the indexes between two years, 1962 and 1977. As an indication of overall changes, the trend changes in three of the more important indicators (net exports, revealed comparative advantage and import penetration) were computed based on annual data and lists of the commodities showing either consistent positive or consistent negative performance across those indicators were complied. These are presented below.

Commodities showing consistent positive performance were:

Organic chemicals.
Other inorganic chemicals.
Essential oils, perfume and flavour material.
Fertilizers, manufactured.
Explosives and pyrotechnic products.
Leather.
Veneers, plywood boards.
Paper and paperboard.
Textile fabrics, woven other than cotton.
Tulle, lace, embroidery.
Special textile fabrics and related products.
Floor coverings, tapestries, etc.
Glass.
Rails and railway track of iron or steel.
Nickel.
Lead.
Tin.
Miscellaneous nonferrous base metals.
Machines for special industries.
Equipment for distributing electricity.
Scientific measuring and controlling instruments.
Photographic supplies.

Commodities showing consistent negative performance were:

Inorganic chemicals.
Manufactures of leather.
Articles of rubber, nes.
Pig iron.
Universals, plates and sheets of iron or steel.
Zinc.
Wire products (excluding electric).
Nails, screws, nuts and bolts.
Manufactures of metals, nes.
Telecommunications apparatus.
Domestic electrical equipment.
Road motor vehicles.
Furniture.
Clothing (except fur clothing).
Fur clothing.
Footwear.

Overall, the cross-tabulations indicated that the measures most often agreed as to the commodities with declining international performance. When net exports was used as the base indicator of trade performance, the indicators showing most agreement as to changes in trade performance were first the two indexes of revealed comparative advantage and then the constant market share residual.

Lastly, the results indicate that the United States has improved its performance in many of its key export products including scientific instruments and certain chemical products. But the United States has also suffered an erosion in its international performance in the key export earning sectors of telecommunications apparatus and road motor vehicles. These changes reflect changes in the composition of U.S. trade in response to changes in world trade and international competition. Continuing adjustments are likely to occur as resources are reallocated toward those sectors showing improved performance.

A CONSTANT MARKET SHARE ANALYSIS OF U.S. EXPORT GROWTH

(By Harry P. Bowen and Joseph Pelzman)

EXECUTIVE SUMMARY

This paper examines the movements of U.S. world market export shares between 1962 and 1977. It also evaluates the performance of U.S. exports in particular subperiods over the 1962–1977 period rising the Constant Market Share (CMS) model. The particular subperiods analyzed are 1962–1969, 1970–1973 and 1974–1977. The entire analysis was performed for 102 manufacturing commodities defined at the 3-digit SITC level. In the main body of the paper an indepth analysis of the performance of the top eighteen U.S. manufacturing export earners over the entire 1962–1977 period is conducted as is a CMS analysis of the growth of total U.S. manufacturing exports.

An appendix provides a comprehensive and concise summary of U.S. export performance for each of the 102 commodities. For each 3-digit group, a brief written summary is given indicating the changes in U.S. relative export performance, a brief list of the major competitors in each commodity, and a summary of the CMS results. Further information on U.S. trade performance is provided in the form of a graph indicating the movement in both the U.S. world share of exports and U.S. net exports over the 1962–1977 period.

Although trade is becoming increasingly important to the U.S. economy, the United States is playing a relatively smaller role in the world economy. An analysis of U.S. export market shares for 102 manufactured commodities indicated that the United States had trend declines in 71 percent of the commodities compared to 26 percent for Japan and 24 percent for West Germany. Most of the U.S. declines occurred in the 1960s with the 1970s representing mostly a period of stabilization.

Among the top five U.S. manufacturing export earners (road motor vehicles, nonelectrical machinery, aircraft, other electrical machinery, and office machines (computers)), only aircraft had an increase in its export market share.

The Constant Market Share model facilitates the analysis of this export performance by enabling one to attribute U.S. export growth to four specific sources:

The growth of world trade.

The commodity composition of U.S. exports.

The market distribution of U.S. exports.

A residual representing the difference between the actual increase in a country's exports and the increase that would have occurred had the country maintained a constant share in each market and in each commodity.

This model allows one to address the following questions: (1) What would U.S. exports have been if they had expanded at the same rate as world trade? (2) What is the influence of the commodity composition of U.S. exports on its export performance? (3) What is the effect of the relative growth in demand for U.S. exports in key country or regional markets? (4) What portion of U.S. export growth is unexplained by these factors? The changes in this last component are

usually attributed to changes in competitiveness.

The CMS results for total U.S. exports indicated the following:

Over the entire 1962–1977 period the United States experienced a decline in its competitiveness as reflected by the CMS residual with most of this decline occurring in the 1962–1969 period.

During the 1962–1969 subperiod the United States export performance was enhanced by the relatively faster growth in key markets but this was not sufficient to offset major declines in competitiveness.

During the 1974–77 subperiod a positive source of U.S. export growth was the favorable commodity composition of its exports.

The decline in the competitiveness component of the CMS equation may not necessarily imply a general loss in U.S. competitiveness for two reasons:

A comparison of the various countries' export unit values over the 1962–1977 period demonstrated that during the 1970–1977 period the growth in U.S. export unit values was far smaller than its major competitors with the exception of Japan during 1974–1977.

A comparison of growth rates of gross domestic product (GDP) indicated that in each of the three subperiods the growth of U.S. GDP was less than that of its major competitors.

Therefore, it is possible that the decline in U.S. competitiveness as captured by the CMS analysis may, in part, be attributed to differences in GDP growth rates and differential increases in export unit values among major trading partners not reflective of actual changes in competitiveness.

To substantiate the conclusions based on the analysis of total U.S. exports, and to determine if major shifts across commodities had occurred during the 1962–1977 period, the CMS analysis was performed separately for each of the 102 manufacturing commodities. The results of this analysis indicated that:

In most cases the decline in U.S. export shares in the 1960's and early 1970's was due to residual competitiveness factors.

The growth of U.S. exports in the 1974–1977 period was retarded by both the slower growth in key U.S. export markets as well as competitiveness factors.

Whereas the 1960s represented primarily a period of decline in U.S. competitiveness, the latter part of the 1970's appears to have been a period of realignment in response to major changes in international trade.

Under ideal circumstances, the CMS analysis would allow for separate identification of each of the above effects. In practice, however, this procedure is subject to a number of biases on both conceptual and empirical grounds. Therefore, to determine the extent to which the CMS results generated were susceptible to identifiable biases, three sensitivity tests were conducted. In particular, variations in the overall CMS estimates were examined as a result of changes in:

The choice of base year.

The level of aggregation of commodities.

The definition of the world market.

The results of the various sensitivity tests indicate that:

The CMS component estimates were not severely affected by the commodity aggregation but did appear highly sensitive to both changes in the base year chosen and to variations in the definition of the world market.

Its high sensitivity to base year changes supported the conclusion that major structural changes have occurred in the U.S. export sector.

U.S. TRADE PERFORMANCE: THE ROLE OF CHANGES IN RESOURCE ENDOWMENTS AND CHANGES IN TECHNOLOGY

(By C. Michael Aho and Harry P. Bowen)

There is no doubt that the United States has declined as a dominant force in world trade. The U.S. share of manufactures exports has declined from over 25 percent in the early 1960s to 15.5 percent in 1979. This note discusses reasons for the decline in the level of the U.S. share and also some of the relative changes that have occurred.[1] It also explains some of the reasons for the increased international competition facing U.S. industries.

A principal reason for the reduced dominance of the United States in world trade is the more rapid accumulation of capital and skilled labor abroad. Between 1963 and 1975, the capital available per worker in the United States increased by 1.7 percent per year whereas the percentage of highly-skilled labor in the work force increased by 1.3 percent per year.

In contrast, capital per worker in Japan increased by 10.1 percent per year while the percentage of skilled workers in Japan's labor force increased by 3.4 percent per year. In fact, the growth in U.S. capital per worker was the lowest among the developed countries as well as many of the developing countries. This was also true, for the most part, of the growth in the percentage of skilled workers in the U.S. labor force.

The relatively slower growth of the U.S. capital stock could reflect both the slower real growth of U.S. GNP and the fact that the United States allocates a smaller proportion of its GNP to investment. In 1978, the United States allocated only 7.3 percent of its GNP to gross fixed capital formation in machinery and equipment, whereas Japan allocated 10.9 percent, Germany 8.9 percent, France 9.1 percent, and the United Kingdom 9.2 percent. In terms of total gross fixed capital formation, the United States allocated 18.1 percent, Japan 30.2 percent, Germany 21.5 percent, France 21.5 percent and the United Kingdom 18.1 percent.

The relatively slower growth in capital and skilled labor in the United States, along with the growth of these resources in other countries, has resulted in a reallocation of capital and skilled labor around the world. Table 1 provides an indication of the reallocation of capital and skilled labor by showing the U.S. world share of capital and professional/technical workers in 1963 and 1975. The world resource shares of selected countries are also shown. In 1963, the percentage of the world's capital located in the United States was 42 percent. By 1975, the U.S. share of the world's capital had fallen to 33 percent. Japan's share of capital more than doubled, from 7 to 15 percent. Note that the United States' share of skilled labor also declined between 1963 and 1975.[2]

TABLE 1.—WORLD SHARE OF CAPITAL AND SKILLED LABOR

	Capital		Skilled labor	
	1963	1975	1963	1975
United States	41.93	33.43	29.36	26.33
Japan	7.09	14.74	7.84	8.62
Germany	9.12	8.27	7.08	6.56
United Kingdom	5.60	4.89	6.97	6.44
France	7.14	7.94	6.57	6.24
Mexico	1.07	1.59	1.64	2.12
Korea	.13	.40	.57	1.64
Brazil	1.63	2.38	2.88	3.82
Hong Kong	.08	.12	.21	.19

A more direct picture of the changes in resource availability between the United States and other countries can be obtained by examining the availability of capital and skilled labor resources on a bilateral basis. Table 2 contains bilateral comparisons between the United States and selected countries. These data indicate, for example, that in 1963 the United States had six times the amount of capital compared to Japan and almost four times the amount of skilled labor. But by 1975, the United States had only two times Japan's capital and just over three times the amount of skilled labor. Clearly, the most dramatic change among those shown is that between the United States and Korea where the disparity in capital availability was substantially reduced.

TABLE 2.—RELATIVE CHANGES IN CAPITAL AND SKILLED LABOR

[Ratio of U.S. share to other country's share]

	1963	1975
Capital:		
United States/Japan	5.91	2.27
United States/Germany	4.50	4.04
United States/United Kingdom	7.49	6.84
United States/Mexico	39.19	21.03
United States/Korea	332.54	83.57
United States/Hong Kong	524.13	278.58
Skilled labor:		
United States/Japan	3.74	3.05
United States/Germany	4.15	4.01
United States/United Kingdom	4.21	4.08
United States/Mexico	17.90	12.42
United States/Korea	51.51	35.11
United States/Hong Kong	139.81	138.58

[1] Often the concepts of comparative advantage and competitiveness are confused. Depreciation of the dollar will enhance the competitiveness of all U.S. industries relative to foreign competitors. Comparative advantage refers to the structure of trade relative to trading partners. A nation will always have a comparative advantage in something.

If the United States were to experience a trade deficit, say because of a loss of an export market overseas (net capital flows held constant at zero to simplify the discussion), the dollar would depreciate, thereby enhancing U.S. industrial competitiveness. The important questions are how the U.S. trade balance would be brought back into balance and which sectors would be involved. The dollar depreciation will increase the volume of exports and decrease the volume of imports, and assuming stability conditions hold, will bring the value of exports and imports back into balance. Which sectors respond is determined by underlying comparative cost considerations and will depend upon the structure of resource endowments and technology and how they change over time in different countries. Nonetheless, some sectors will respond and on the export side, they will be the sectors that are more competitive internationally. From a policy perspective however, it is important that industries and agriculture continually try to enhance their competitiveness (through investment, research, etc.) because depreciation of the dollar will lead to a deterioration in the terms of trade. Thus, depreciation of the dollar can always increase the competitiveness of U.S. industries, but only at the cost of a real income loss for domestic consumers as the real cost of imports in terms of exports rises.

[2] However, the U.S. world share of arable land increased between 1963 and 1975 from 27 percent to almost 30 percent. Thus, the United States is becoming increasingly abundant in land relative to capital and skilled labor, and it would be expected that this would enhance the international competitiveness of the agricultural sector relative to manufacturing.

These changes in the resource position of the United States both with respect to the world and individual countries have had their impact on the composition of U.S. trade. One method for assessing this impact is to examine the changes in the implicit exchange of capital and skilled labor services that are contained, or embodied, in U.S. trade as a result of changes in the composition of trade. Figure 1 shows the ratio of capital services to total labor services embodied in U.S. manufactured exports to the developed and developing countries. Figure 2 shows the ratio of skilled labor to total labor services embodied in U.S. manufactured exports to these two country groups.

(Figures mentioned in the text not printed in RECORD.)

These figures indicate that, over time, the composition of U.S. manufactures trade has shifted toward those commodities which employ less capital per worker in production and thus that both the developed and developing countries have absorbed less capital per worker from the United States. These charges are consistent with higher rates of capital accumulation abroad than in the United States. Further, since the early 1970s, the composition of U.S. manufactures trade to the developed countries has shifted toward those sectors employing less skilled labor indicating a reduced absorption of skilled labor by the developed countries from the United States. However, since the early 1960s, the composition of U.S. manufactures trade to the developing countries has shifted continuously toward the more skill-intensive commodities and thus the developing countries are absorbing more skilled labor services.

These comparisons suggest that the changes in the structure of factor abundance of the United States relative to the rest of the world have had a significant impact on the structure of its trade. More detailed statistical analysis confirmed these results.[3] In particular, the relatively more rapid growth of physical capital, and to a lesser degree skilled labor (human capital), by the developed countries has enabled them to become increasingly competitive in those commodities in which the United States has traditionally had a comparative advantage. The results also indicated that the increasing accumulation of physical capital and semi-skilled labor by the developing countries has enhanced their ability to compete in many manufacturing commodities. This suggests, therefore, that both export and import-competing industries in the United States will face increasing competition in the 1980s if the U.S. share of world resources continues to decline.

The decline in U.S. research and development effort both relative to the effort in other countries and relative to our own past effort could also be partially responsible for the increased competition being experienced by U.S. industry and for the changes in the structure of U.S. trade. Tables 3 and 4 compare research and development expenditures as a percentage of GNP and the number of scientists and engineers per 10,000 workers for the major countries.[4]

Technology-intensive products have traditionally been the source of strength in the U.S. trade balance.[5] All of the empirical evidence indicates that in the past the United States has had a unique advantage in the trade of high technology products. However, that unique advantage is slowly disappearing in part because of the increased research and development effort overseas.

Figure 3 compares the technological content of U.S. manufacturing exports and imports over time and confirms that the United States has been and remains a net exporter of products which utilize relatively more technological input (research and development). Figure 4 compares the technological content of U.S. manufacturing exports to developed and developing countries over time. Since 1971, there has been a significant decline in the technological content of U.S. manufacturing exports to the developed countries. The technological content of U.S. manufacturing exports to the developing countries continues to increase, but only slightly. These findings are similar to the results for skilled labor, but are not surprising because the industries which intensively use skilled labor tend also to be technology-intensive.

TABLE 3.—R. & D. EXPENDITURES AS A PERCENTAGE OF GROSS NATIONAL PRODUCT, 1964–77

Country	1974	1968	1972	1975	1977
France	1.81	2.08	1.86	1.82	1.79
Germany	1.57	1.97	2.33	2.39	2.26
Japan	1.48	1.61	1.85	1.94	[1] 1.94
United Kingdom	2.30	2.29	2.06	2.05	NA
United States	2.97	2.83	2.43	2.30	2.27

[1] 1978.

Source: National Science Board, Science Indicators 1978, Washington, D.C., 1979, table 1-1.

TABLE 4.—SCIENTISTS AND ENGINEERS PER 10,000 IN THE LABOR FORCE, 1965–77

Country	1965	1968	1972	1975	1977
France	21.0	26.4	28.1	29.3	[1] 29.9
Germany	22.6	25.9	35.7	39.4	40.5
Japan	24.6	31.1	38.1	47.9	49.9
United Kingdom	21.4	17.2	27.8	30.6	NA
United States	64.1	66.9	58.3	56.4	57.4

[1] 1976.

Source: National Science Board, Science Indicators 1978, Washington, D.C., 1979, table 1-3.

Finally, Figure 5 and Table 5 compare the technological content of manufacturing exports of the major OECD countries for the period from 1962 to 1977. The technology-intensity of U.S. exports has remained almost constant over time showing only a slight decline after 1971.

TABLE 5.—TECHNOLOGY CONTENT OF OECD MANUFACTURED GOODS EXPORTS

	1962	1966	1970	1974	1977
United States	3.3	3.1	3.7	3.6	3.5
France	2.0	2.2	2.2	2.1	2.3
Germany	2.1	2.2	2.3	2.2	2.1
Japan	1.8	2.1	2.5	2.4	2.8
United Kingdom	2.3	2.6	2.5	2.6	2.7
OECD	2.3	2.3	2.5	2.4	2.5

Although there has been little change in the level of technological content of European manufactures exports, there has been a significant increase in the technological content of Japanese manufactures exports. By 1977, Japan ranked second behind the United States in terms of the technological content of its exports. This confirms the widespread impression that the United States is experiencing increased competition from Japan in the more technically sophisticated industries. A comparison of export market shares in third market areas reinforces this conclusion.

Changes in relative competitiveness in high-technology products can best be measured by examining exports of the major countries to a third market region where everyone faces the same market conditions. Such a comparison reveals that the United States has been losing ground, particularly to Japan. For example, in 1962 the U.S. share of exports of high-technology products to developing countries was 46 percent. By 1970 the U.S. share had dropped to 31 percent and it fell further to 25 percent in 1977. In contrast, Japan's share rose from 6 percent in 1962 to 13 percent in 1970 and to 22 percent in 1977. Thus, although the United States maintains the lead in exports of high-technology products, its competitive advantage is being eroded at least with respect to Japan.

In conclusion, the changing distribution of world resources, and thus their availability among countries, along with the increased technical effort by our major competitors are jointly responsible for the relative decline in the dominance of the United States in world trade. Because the United States emerged from World War II with its industrial base intact, it had a unique position in the world economy. That unique position has now largely disappeared, and the United States must now concentrate on keeping its industrial and agricultural base competitive because, if past trends continue, U.S. industries are likely to face increased international competition in the future.

[3] After identifying the commodities which constitute the U.S. export and import bundles, the analysis was carried out for a cross section of thirty four countries at five different points in time. See Bowen (1980) for details.

[4] See National Science Foundation (1980) for a more complete discussion.

[5] Aho and Rosen (1980) identify seventeen 3-digit commodities as technology intensive and compare recent U.S. trade performance in these commodities with overall U.S. manufacturing trade, with past U.S. performance and with the performance of major competitors.

BIBLIOGRAPHY

Aho, C. Michael and Howard F. Rosen (1980). "Trends in Technology-Intensive Trade: With Special Reference to U.S. Competitiveness." Office of Foreign Economic Research, Department of Labor, June.

Bowen, Harry P. (1980). "Changes in the International Pattern of Factor Abundance and the Composition of Trade: A Multi-Country Analysis of Changing Comparative Advantage in Manufactured Goods with Special Reference to the United States." Office of Foreign Economic Research, Department of Labor, June.

National Science Foundation (1980). *Science Indicators.*

U.S. Department of Commerce (1980). *International Economic Indicators*, June.

Mr. STEVENSON. Mr. President, much has also been said about the issue of controlling interests by banks in trading companies, and the position of the Federal Reserve Board on that issue.

The most comprehensive statement of which I am aware on that issue is by the Comptroller of the United States. He discusses at some length the importance of bank participation through controlling interests in trading companies, and concludes that not only will the trading companies be served but also the banks.

Therefore, I also ask unanimous consent that a statement by the Comptroller before the Committee on Banking, Housing, and Urban Affairs be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF JOHN G. HEIMANN

This is in response to the Committee's request for the views of the Office of the Comptroller of the Currency on the "Export Trading Company Act of 1980" (S. 2718). We welcome the opportunity to comment on this legislative proposal. Our comments are limited to those provisions which permit bank participation in new export trading ventures.

S. 2718 is designed to promote the expansion of U.S. exports through the formation and operation of export trading companies ("ETCs") to facilitate the export of goods and services on behalf of small- and medium-sized firms. The bill provides for a significant role for U.S. banking organizations as an important component of the promotion of

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exports by permitting their investment in and ownership of ETCs.

This Office supports the concept of export trading companies and urges the enactment of this legislation. Our national interests require the strengthening of U.S. competitiveness in world markets. The proposed ETCs appear to be a viable means to further that national objective. Various testimony on S. 2718 and similar bills has strongly advocated bank participation as an essential element to successful trading company operations. ETCs require the capital, financing, financially-related services, and marketing capacities which U.S. banking organizations can provide through their national and international networks to small- and medium-sized firms across the U.S. We believe that it is necessary for a significant role to be taken by banks to assure the success of ETC operations.

While the degree of future bank participation in ETCs, and the forms that such participation may take, remain unclear at the early conceptual stage of developing a U.S. model for trading companies, we do anticipate a wide range of bank lending to and investment in ETCs. This would reflect the diversity of probable bank participants as well as the diversity of the local and regional businesses which ETCs would serve. Permitting banks to have equity interests in ETCs would be a long-term incentive for them to establish the additional organizational framework necessary for them to provide a complete range of services to effectively promote exports of goods and services. A bank prudentially may require a controlling interest in an ETC in which it becomes an active participant. For these reasons we do not want to foreclose a bank's ability to acquire such an interest. Accordingly, we support ownership of ETCs by banking organizations if the reasonable supervisory safeguards in S. 2718 are enacted.

Equity participation by banks in ETCs would to a limited extent breach the traditional policy of separating banking and commerce. However, we believe that S. 2718 addresses the national interest of export promotion in a way which preserves the safety and soundness of the banking system. The Congress has previously permitted limited bank participation in commercial activities over the past 60 years to accommodate particular national needs—our current trade imbalances require similar legislative action.

A healthy and expanding export sector has become increasingly essential to a strong U.S. economy, the stability of our external accounts, and our critical fight against inflation. Exports contribute significantly to U.S. employment, production and growth; enable economies of scale which contribute to the efficient use of resources and reduced prices; and provide a constructive method for the payment for U.S. imports of essential and desired commodities. U.S. industries must be able to compete abroad if they are to maintain their ability to compete at home.

The Commerce Department reports that only 10 percent of the 250,000 U.S. manufacturing firms export their products and that total U.S. exports account for the lowest percentage of gross national product of any industrialized nation. Also, 95 percent of U.S. manufacturing firms are small- or medium-sized companies which employ less than a thousand persons. These companies represent a small share of exports, about 10–15 percent of total U.S. exports. Conversely, most U.S. exports are the sales of a small number of U.S. firms. Approximately 100 U.S. firms account for 50 percent of the total exports of U.S. manufacturers. The purpose of this bill is to strengthen the international competitiveness of the U.S. by providing small- and medium-sized U.S. firms increased opportunities to export. At present, these firms face a number of structural obstacles and disincentives to exporting which are difficult for the independent firm to overcome.

FLEXIBLE ETC SERVICES

At the present time, small- and medium-sized U.S. firms have four primary methods available by which they may export goods and services. They may: sell directly to foreign end-users; sell through foreign agents or brokers; sell through U.S. export management companies; or, find a large U.S. multinational firm that needs certain products for specific overseas activities. These methods apparently have not provided U.S. firms with adequate opportunities to export their goods and services. These methods entail problems for small- or medium-sized firms which act as disincentives to exporting. Such practical barriers include:

Selling directly overseas ties up the current cash flow of U.S. firms because of slower payment time than in the domestic market.

Foreign export agents or brokers often demand total product control and extremely flexible pricing.

The majority of export management companies lack the expertise to handle more than one or two specialized product lines. Most of these companies lack the management and capital necessary to expand geographically and to establish overseas sales offices.

Generally, large U.S. multinational firms do not directly involve smaller firms in foreign trade.

Besides these difficulties, small- and medium-sized U.S. firms lack other necessary capabilities and expertise such as specialized knowledge of markets to match specific product demands, funds for the development of a foreign market for their particular products, adequate working capital, and adequate financing for foreign purchasers of goods or services. These problems have substantially contributed to the lack of participation of many small- and medium-sized U.S. firms in export trade.

The export trading companies would be an alternative to the existing cumbersome export mechanisms and would encourage the involvement of small- and medium-sized U.S. firms in export trade. As demonstrated by the successful operation of export trading companies in other countries, an export trading company can develop and provide an integrated package of managerial and financial services to facilitate exports. Export trading companies, through volume transactions, also permit economies of scale to reduce the costs of exporting goods or services by U.S. firms.

Export trading companies abroad have proved to be effective. They act as more than intermediaries handling a broad spectrum of products. Export trading companies not only function as a bridge between suppliers and users of products but also provide many other services essential to successful exporting. For example, an export trading company may offer expertise in financing, credit services, market analysis, distribution channels, documentation, leasing, communications, accounting, foreign exchange and advertising. Essentially, an export trading company reduces the requirements for special expertise and capital investment of firms interested in exporting. U.S. businesses should not be deprived of the same advantages as those enjoyed by foreign competitors through their access to such foreign ETC exporting assistance.

THE ROLE FOR BANKS

U.S. banking organizations should play a significant role in the development of export trading companies. They can contribute significantly to U.S. export capabilities in several ways. First, banks have extensive national and international networks comprised of branches, subsidiaries, affiliates, representative offices and correspondent relationships. These networks not only can provide essential marketing and other services abroad but, more importantly, these networks extend throughout the U.S. touching virtually all small- and medium-sized firms. Second, U.S. banks can provide through that network a wide range of export-related financing as well as ancillary services, such as assistance and guidance in the identification of foreign markets, foreign exchange, trade documentation, transportation and warehousing. Third, banks can provide export trading companies and exporters the financing necessary for export transactions.

Major foreign banks which are involved in export trading companies provide a convenient single-source service for exporters abroad. U.S. banks, however, are not authorized under existing laws to offer the complete range of services essential to attracting small- and medium-sized U.S. firms into exporting their goods and services.

Traditionally, the export promotion efforts of U.S. banking organizations have been adjunct to overall commercial lending because their operations have been legally confined to those activities which are considered to be closely related to the business of banking. U.S. banking organizations have the systems, skills, and experience necessary to provide one-stop export services to U.S. firms but need broader authority to do so. S. 2718 would provide that authority by permitting participation in ETCs by banking organizations.

U.S. bank investment in ETCs would facilitate achievement of the underlying purposes of the proposed legislation. With equity participations in ETCs, banks could readily package essential one-stop exporting services which would greatly reduce the expertise and overhead expenses required of individual firms seeking to sell abroad.

There are other reasons why S. 2718 properly permits U.S. banks to invest in ETCs. First, the investment authorities contained in S. 2718 would increase the number of possible investors and available capital to form ETCs. Second, banks with their international offices, experience in trade financing, and familiarity with domestic U.S. producers, are likely sources of leadership in forming ETCs. They possess many of the skills important to ETC organization and management. Third, their investment in ETCs would provide banking organizations with an incentive to create the long-term organizational framework necessary to accommodate export promotion as a mainstream function. Finally, by permitting U.S. banking organizations to hold equity investments in ETCs, S. 2718 would rationalize the present system of authorities. U.S. banks are presently permitted to be involved in foreign ETCs which can buy and sell goods and services abroad. Foreign banks operating in the United States may also own a foreign ETC which can export goods to the United States.

We do not know, however, the degree and forms of participation that U.S. banks may develop with ETCs. We also cannot forecast whether banks would immediately begin to organize ETCs should this bill be enacted. We are only working with a conceptual model for ETCs at this time. However, we anticipate that, should the legislation be passed, U.S. banks over time would develop ETC relationships suited to the wide range of commercial transactions generated by their own local and regional economies. We are confident that U.S. multinational banks would seize any new opportunities in this area. Moreover, multinational and regional banks would also offer ETC facilities and participations to local banks and firms through joint ventures.

We support the provisions of S. 2718 which provide for U.S. banking organizations to own a controlling interest in ETCs. This Office generally prefers banks to have equity and management control over their affiliate relationships rather than have that capital exposed to decisions by majority non-bank partners. It also is reasonable to expect banks to be more inclined to form ETCs if the banks can control their investment and the ETC's activities. The unfavorable bank experience during the early 1970's with less than controlling participations in REITs, foreign banks and finance companies have led U.S. banks to adopt investment strategies which generally avoid non-controlling positions in affiliates.

We recognize that equity participation by U.S. banking organizations in ETCs would represent an exception to traditional policy which separates banking and commerce. However, we believe that the proposed legislation is consistent with previous exceptions Congress has made in order to further necessary national policies. Congress has permitted banks to own equity participations in Edge Act Corporations, international financial or holding companies, commercial corporations oriented towards national or community purposes, and bank service and other banking related entities. Similarly, we believe this bill addresses the national interest (of export promotion) in a way which preserves the safety and soundness of U.S. banking system.

SUPERVISORY SAFEGUARDS

The proposed legislation contains several necessary supervisory safeguards regarding U.S. bank involvement in ETCs. First, S. 2718 addresses entry and aggregate investment limitations: U.S. banks could not invest more than $10 million or acquire a controlling interest in an ETC without prior agency approval; a U.S. bank would not be permitted to invest more than 5 percent of its capital and surplus in the stock of one or more ETCs; the aggregate amount of loans and investments a U.S. bank could make in an ETC would be limited to 10 percent of the bank's capital funds; and, no group of banks could acquire more than 50 percent of an ETC without prior agency approval, even if no one bank were to acquire a controlling interest, and no bank were to invest $10 million or more.

Second, the legislation would also establish several other restrictions on banking organization investors and ETCs. For example, the name of an ETC could not be similar in any respect to that of a banking organization investor. If an ETC takes speculative positions in commodities, all banking organization investors would be required to terminate their ownership interests. A banking organization would be prohibited from making preferential loans to any ETC in which it has any interest, or to any customers of such an ETC. These limitations and restrictions have been structured to provide minimal financial exposure by banking organizations in ETCs and to prevent conflicts of interest.

Most importantly, S. 2718 provides substantial regulatory flexibility to the federal financial supervisory agencies to control investments by banking organizations in ETCs. If an agency determines that the anticipated export benefits of an investment are outweighed by adverse banking factors, the agency may disapprove an investment application submitted by a particular bank. Controlling investments in ETCs by banking organizations can otherwise be limited by (1) conditions imposed by the agencies to limit a banking organization's financial exposure or to prevent possible conflicts of interest or unsound banking practices; and (2) standards set by the agencies regarding the taking of title to goods and inventory by the ETC subsidiary, to ensure against unsafe or unsound practices that could adversely affect a controlling banking organization. The agencies may examine bank-controlled ETCs and may use their cease-and-desist authority to enforce any and all requirements of the law. The agencies may also require divestiture of any ETC investment that would constitute a serious risk to a banking organization investor.

These provisions adequately mitigate the supervisory concerns which we expressed regarding earlier proposals as to the safety and soundness of participating national banks. We do not feel, therefore, that additional statutory restrictions—such as a specific limit on the maximum interest a banking organization may have in an ETC, or a minimum capital ratio for bank-owned ETCs—need be enacted. As you know, Edge Act Corporations (EACs) must now operate within a leveraging regulation which requires paid-in capital and surplus to equal at least seven percent of an EAC's consolidated risk assets. The administrative authority granted to the federal agencies by S. 2718, in our opinion, will allow similar requirements to be imposed upon bank-owned ETCs through implementing regulations, with appropriate variations to take account of different types of permissible ETC activities. We believe that such regulatory authority to fashion particular limitations is preferable to a specific statutory provision.

While we support this legislation, we recommend that certain amendments be adopted. First, the definition of "export trading company" should be clarified to limit non-exporting activities by ETCs to conduct which facilitates U.S. exports, such as activities necessarily involved in international barter arrangements. The bill, as presently drafted, defines an ETC as a company organized and operated "principally" to export U.S. goods and services, among other activities. This definition should be supplemented by a requirement that all activities of an ETC be "related to" international trade.

Second, the specific time limits for agency disposition of investment applications should be extended. S. 2718 requires agency action within 60 days of written notice from a banking organization of its intention to make additional investments or to have an ETC undertake certain activities. S. 2718 would require agency action within 90 days of notice from a banking organization of its intention to make an investment of $10 million or more or to acquire a controlling investment in an ETC. We suggest that these time limits be extended to 90 days in the former case, 120 days in the latter. In either case, an agency's failure to disapprove or impose conditions on a proposed investment within the appropriate time limit would result in the investment being deemed approved. We believe that the additional 30 days will allow the appropriate agencies to give more extensive considerations to new investment or activity proposals. At a minimum, specific statutory authority should be provided for the agencies to extend the time period in appropriate cases.

We fully support the objectives of S. 2718—encouraging the efficient provision of export trade services to U.S. producers and suppliers. The restrictions on bank involvement should adequately protect depositors of banking organizations which choose to participate in the management of ETCs. The limited opening of this area of activity to banks will create a unique U.S. export trading company system to allow more U.S. producers to benefit from existing international marketing networks and trade financing expertise.

Mr. BAKER. Mr. President, 10 years from now, when we review our efforts to resurrect the American economy, the legislation we consider today, the Export Trading Companies Act, will be seen as a major step in eliminating the uneasy relationship between Government and the private sector.

America needs a vigorous export policy. Our balance-of-trade deficits, which have grown significantly over the past several years, would be even greater were it not for the strength of our agricultural and high technology exports.

We can do even better. S. 2718 will improve U.S. export performance by encouraging the creation of companies designed to enhance the export capabilities of thousands of small- and medium-sized American producers.

The major problem for potential American exporters has been the marginal cost of establishing export capabilities. This bill is designed to eliminate the many disincentives to exportation of goods and services by cutting through the regulatory obstacles to aggressive international trade competition.

This bill will not solve all our problems. For far too long, we have shackled American enterprise in rules and regulations which our foreign competitors are free to ignore. We have tried to impose on the international market the rules which govern our domestic markets, and the American economy has paid the price.

Senators on the Banking, Housing and Urban Affairs Committee have expressed some concern about commercial bank participation in export companies, and their concern is not without merit. But we all agree that we must take the risks in order to reverse the mounting trade deficits of the last few years.

The managers of this bill, Mr. STEVENSON and Mr. HEINZ are to be congratulated on their work. They have produced a bill which addresses the core problems facing American exporters.

Speaking for the Members on this side of the aisle, I would like to express my admiration for the senior Senator from Illinois who is retiring from the Senate at the end of this session. His efforts on the behalf of American enterprise and the American people deserve our greatest respect and appreciation.

Mr. THURMOND. Mr. President, I rise today to express my support of S. 2718, the Export Trading Company Act of 1980, of which I am pleased to be a cosponsor.

The purpose of this important legislation is to promote and facilitate the formation of export trading companies and associations. Under the provisions of this bill, the Economic Development Administration and the Small Business Administration are directed to give special consideration to loan and guarantee applications of export trading companies. The Export-Import Bank is directed to establish a program to provide loan guarantees to export trading companies. In addition, banks are allowed to invest in these companies; and in so doing provide the expertise so necessary

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to the success of the export trading company.

Mr. President, this bill also establishes a mechanism whereby certain activities of export trading companies are exempt from application of antitrust laws. This exemption is granted through a preclearance procedure, and is vital if these companies are to be successful.

Mr. President, I cannot overemphasize the need and importance of increasing our exports. Every other industrialized nation has a higher rate of exports relative to GNP than does the United States. It is no wonder that we find ourselves with a devalued dollar and an unfavorable balance of payments. Furthermore, each additional billion dollars in exports creates between 40,000 to 50,000 new jobs—jobs that are desperately needed by the Nation's unemployed.

Mr. President, fewer than 10 percent of our domestic manufacturing firms are engaged in exporting. Most small and medium sized producers cannot afford the costs and risks involved in fully developing opportunities to market their products and services abroad. The establishment of export trading companies will do much to help these smaller companies overcome the present barriers prohibiting their entry into the export market.

Mr. President, I sincerely hope that my colleagues in the Senate will recognize the need and importance of this legislation and support its passage.

EXPORT TRADING COMPANIES: HELPING TO REALIZE AMERICA'S EXPORT POTENTIAL

Mr. BRADLEY. Mr. President, this Nation's economic performance during the past decade has made us all more aware of the primary role that international trade and investment now plays in determining levels of growth, employment, and income in the United States. Increasingly, global markets shape the structure of U.S. industry by creating new demand for the output of some sectors, reducing demand for others and sorting out the competitive position of firms within industries. Having our economy become more intertwined in this way with the economies of foreign nations presents us with attractive opportunities as well as with competitive challenges.

These opportunities and challenges alike require that we have a national trade strategy aimed at turning the United States into an effective trading Nation in the rapidly changing international economy. To be successful our trade strategy must promote:

First, strongly competitive industries;

Second, a capacity for economic adjustment based on the fair distribution of costs and benefits attending adjustment among the affected segments of American society;

Third, a clear sense of the economic directions that will enhance the competitive advantages of the United States, reinforced by supportive public policies and market behavior; and

Fourth, an improved integration of U.S. domestic and foreign economic policies founded on greater attention to maximizing the benefits of trade to the United States.

Recognizing the need for formulating a national trade strategy, the Finance Trade Subcommittee currently is holding hearings on changing world economic conditions and the prospects for a trade strategy. I have the honor to chair these hearings. The urgency of adopting an integrated approach to the international challenges and opportunities facing us today has been continually underscored during the sessions we have had so far.

Trade can have much the same positive effect on living standards as advances in technology or productivity—with the added benefit that trade does not incur additional investment costs. With trade based on comparative advantage, Americans exchange goods and services they produce at relatively less cost for what foreign producers make relatively more cheaply than Americans. As with productivity gains, with trade too, Americans get "more" than they otherwise would get for "less".

Competitive exports are the means by which Americans can get "more for less." Regrettably, indications are that the United States is not now exporting at its full potential. To the extent that we fall short of this potential, we short-change ourselves of the benefits of trade, essential benefits such as more jobs, increased technological progress and productivity, higher income and quality of life, anti-inflationary pressures, a stronger dollar and a larger pool of economic resources with which to realize U.S. national security interests abroad.

There are a variety of obstacles that are keeping the United States short of its export potential. Many obstacles stem from Government policies and practices, with sound, but nontrade purposes, which inadvertently have an adverse impact on exporting. Other obstacles can be traced to a history of strong domestic markets in the United States, a history which means that U.S. producers have paid relatively little attention to foreign market opportunities.

This as inattentiveness is in sharp contrast to the OECD countries who are now our fierce competitors for international markets. For example, Japan, almost bereft of natural resources, realized very early in its economic development that in order to pay for its essential raw materials and food, it had to become a vigorous exporter of manufactured goods. Over the years, Japan's exporting tradition has evolved into a powerful trade strategy unrivaled in its efficiency and adaptability to changing world circumstances. But Japan is by no means the only industrialized country that places far greater emphasis on exporting to invigorate its economy than does the United States. France and Germany sell some 35 percent of their manufactured products abroad; the Benelux countries sell 60 percent of their manufactures abroad; the United States still exports less than 10 percent of its manufactured products.

With merchandise trade deficits that have hovered around $30 billion in recent years, we can no longer afford to neglect our export potential.

S. 2718, the Export Trading Companies Act introduced by Senator STEVENSON, takes an important step in assisting U.S. companies to narrow the gap between export potential and current performance. I am proud to be one of the early cosponsors of this legislation and gratified that my judgment is now confirmed beyond dispute by the good company of 51 of my distinguished colleagues.

Mr. President, as you know, the purpose of the bill is to promote exports by facilitating the formation of export trading companies or associations, and it is well designed to do this. Its key achievement is to permit export trading companies to integrate a range of export services, most importantly banking services into a single one-stop shop for firms wanting to export.

A second important achievement is to reduce obstacles posed by antitrust laws to the formation of export trading companies without undermining the legitimate purpose of these laws in deterring activity that restrains competition in domestic markets. An array of conditions and certification procedures established by the bill safeguard the integrity of the banking system and the public interest in strong competition in domestic markets.

The departments and agencies charged with administering banking and antitrust law are vested with important powers of certification and review and they will be expected to exercise these powers with vigilant concern for the larger public interest.

As a result of having reasonably balanced the Nation's interest in promoting exports and regulating markets in order to promote competition and equity, existing export trading companies will multiply and will be able to enhance considerably their effectiveness. American exports will be in a position to compete more vigorously with products of foreign enterprises, whose governments long ago adopted more consolidated approaches to trade.

The bill is particularly a boon to small businesses. Small businesses in America are now just beginning to appreciate what America's big businesses have known for some time: The world has become smaller, national markets are interdependent and opportunities for market growth beyond U.S. borders are even greater than growth opportunities within them. Today, exports account for nearly 10 percent of United States' GNP, but U.S. small business generates some 15 percent of export sales.

I know small business can do better given the right opportunities. S. 1718 offers this kind of right opportunity to small business. For it is small business which now lacks adequate access to information, specialized skills, economies of scale, international marketing and distribution systems, and most importantly, export financing. Big business, most of which is multinational, already has achieved these trade advantages, particularly the integration of export-related services, through its internal structure or through long-term contracts or business relationships. This bill helps overcome informational and organizational barriers to exporting for small business. It thereby opens the field to a class of business that I believe can take

on a dynamic role in improving America's trade performance.

Mr. President, we are now in a position to move quickly and make a forceful statement in support of American exports—and therefore American prosperity—by unanimously adopting this much-needed legislation. I truly hope adoption will be unanimous.

Mr. President, I know Senator STEVENSON has worked long and tirelessly on making the export trading companies bill a sound, responsible piece of legislation. He has tried to accommodate, consistent with the bill's objectives, the concerns of his colleagues and of executive branch agencies. The bill is a worthy compromise in the fullest sense. I commend Senator STEVENSON on his foresight in introducing the idea of export trading companies to the U.S. Senate, his creativity and judgment in working through the provisions of the bill, his flexibility in responding to the legitimate concerns of others, and his determination to stay the course until the necessary work is done. I am proud to be part of the effort under his distinguished leadership and I am sure his efforts will be rewarded with passage of this legislation today.

Mr. LEAHY. Mr. President, today the Senate has an opportunity to approve legislation which is of vital importance to our Nation's economy.

The goal of realizing our Nation's full export potential has been heightened by today's conditions of recession and rising unemployment, and S. 2718, the export trading company bill, will bring us dramatically closer to realizing that goal.

The fact that our Nation continues to neglect a major share of our potential export business is inexcusable. It is inexcusable given today's rising levels of unemployment. It is inexcusable given the long string of consecutive trade deficits we have mounted, and the weakening of the dollar and added domestic inflation that have resulted from those deficits.

Mr. President, S. 2718 would encourage the provision of export trading services to tens of thousands of small- and medium-sized companies not now realizing their full export potential. The products of these companies would, in many instances, be highly competitive in world markets. It is essential that we do all we can to see that they reach those markets.

It is my strong belief that this bill will facilitate a marked improvement in our Nation's long-term export performance and trade posture.

The provisions in the bill which permit bank participation in the operations of export trading companies are, I believe, especially important to the effectiveness of this legislation.

Those provisions, like the bill itself, were the result of countless hours of delicate negotiations. It would be unwise and counterproductive for us to amend or delete these provisions here on the Senate floor.

Mr. President, in closing I would like to commend the junior Senators from Illinois and Missouri, and others, for their untiring efforts in drafting and redrafting this export trading company legislation. Their efforts, coming at this time of less than favorable economic circumstances, have done a tremendous service to our Nation's economy and businesses.

Mr. DURENBERGER. Mr. President, my Minnesota constituents are chomping at the bit to increase exports. Congressman BILL FRENZEL and I recently held our second trade conference in Minnesota and the attendance was outstanding. We had people from agriculture, high-technology companies, banks, and an entire range of other companies.

Their message was clear: Give us just a little encouragement and just a little relief from the present obstructions to trade, and we will start reducing our balance-of-trade deficit and improving our economy.

S. 2718 is a significant step in that direction and I wholeheartedly support it.

I am especially pleased to support the additional funding for SBA's participation in promoting export expansion. Numerous successful small businesses are just a step or two away from becoming international in scope. This added emphasis by SBA should help them take that all important step.

There is no reason why exports should account for only 7.5 percent of our GNP, the lowest percentage of any industrialized nation. There is no reason why we should not be the world's leading exporter instead of second to Germany and barely ahead of Japan. By freeing our business sector to more easily form export trading companies and associations we are following a successful pattern established by most European and Asian countries. These companies and associations provide the necessary economies of scale in financing, marketing and other areas to greatly increase the participation of smaller and medium-size companies in the export field.

We need to significantly close the gap between our exports and our imports. Foreign oil alone will cost close to $80 billion in 1980. This trade deficit continues to weaken the international value of the dollar.

Exports are already a significant factor in our economy. Nearly one-third of all farm production is exported. Over 12 percent of our employment is related to exports. The potential is even greater and I am glad to support this aid to fulfilling that potential.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I have cleared this request with Mr. PROXMIRE. I ask unanimous consent that I may offer a cloture motion and that it be considered as having been entered on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the bill S. 2718.

Robert C. Byrd, Alan Cranston, Jennings Randolph, Patrick J. Leahy, Claiborne Pell, Jake Garn, John Heinz, Adlai E. Stevenson, Lawton Chiles, Joseph R. Biden, Jr., Paul E. Tsongas, Max Baucus, Lloyd Bentsen, Henry M. Jackson, Bill Bradley, Robert Dole, Rudy Boschwitz, Dennis DeConcini, Thomas F. Eagleton, John C. Danforth.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that amendments in the first degree may be offered up until 1 p.m. tomorrow as though the Senate were in session tomorrow. I think this would be a courtesy we would extend to the distinguished Senator from Wisconsin if we go to cloture, and I would like to make this request as a courtesy to Senators who might oppose it.

Mr. PROXMIRE. Mr. President, I thank the distinguished leader. I want to be sure we have an opportunity to vote on the amendments this Senator offers and the Senator from Ohio and the Senator from Massachusetts offer.

Earlier today I obtained unanimous consent to have the Danforth amendment treated as original text for purposes of amendment. The Senator from Illinois introduced a whole series of amendments. They were excellent amendments in many cases, and they were offered as if they were committee amendments.

I am concerned that it may be those amendments may amend parts of the bill which our amendment might affect, and for that reason I ask unanimous consent that the Federal Reserve amendments, which I am sure the Senator from Illinois is fairly familiar with, be in order notwithstanding the fact that they may amend a part of the bill which the Senator's previous amendments have affected.

I also ask unanimous consent that the Metzenbaum-Kennedy amendment be in order under the same condition.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, would these amendments be germane otherwise under cloture?

The PRESIDING OFFICER. They have to be germane.

Mr. ROBERT C. BYRD. I understand that they would have to, but the Senator is asking unanimous consent that they be in order. Would they otherwise be in order?

The PRESIDING OFFICER. If the Senator gets unanimous consent they will be in order.

Mr. ROBERT C. BYRD. Yes. That is why I am reserving the right to object.

Can the Parliamentarian advise the Chair as to whether or not the amendments, the aforementioned amendments, would be germane?

Mr. PROXMIRE. They are 2276 and 2277.

The PRESIDING OFFICER. Amendment 2277 is germane. Amendment 2276 does not appear to be germane.

Mr. ROBERT C. BYRD. Mr. President, I will leave it up to the distinguished Senator from Illinois as to whether or not he wants to allow that amendment to come in under cloture. That amendment would not be permitted in under cloture. But if the request by Mr. PROXMIRE is agreed to, it would be allowed to come in notwithstanding the

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invoking of cloture. I will leave it up to the distinguished Senator from Illinois.

Mr. STEVENSON. Mr. President, reserving the right to object, and assuming these amendments are germane, would they be in order as amendments to the bill as it is now amended?

The PRESIDING OFFICER. Amendment 2277 amends the bill in more than two places and will be subject to a point of order on that ground.

Amendment 2276 also amends the bill in more than two places and would be subject to a point of order on that ground.

Mr. STEVENSON. Would they not also be out of order as amendments to parts of the bill which have already been amended?

The PRESIDING OFFICER. The only restriction on amendments to a part of the bill already amended is if they directly amend an amendment already agreed to. These would not fall in that category.

Mr. STEVENSON. I thank the Chair.

Mr. President, I will object. I do not wish, however, to deprive the distinguished Senator from Wisconsin of a vote on his amendment, nor do I wish to deprive the Senator from Ohio of a vote on his amendment.

Therefore, if my friends, the authors of these amendments, were willing to agree to an order which established a time for such votes by the Senate, after even more time to debate, if that is their desire and if the majority leader is willing, I would not object. But, under these circumstances. I regret that I must do so.

Mr. PROXMIRE. Mr. President, I think the Senator from Illinois is reasonable. I understand his position.

I would agree to a time limitation. What the Senator, as I understand it, is suggesting here is that we agree to a vote, either at a certain time or with a certain amount of time allowed on each amendment. I think, under the circumstances that would be fine, if we qualify both amendments to say vote on one after an hour of debate. I do not know what Senator METZENBAUM wants to do. I would have to consult with him. But I think he probably would have something like the same time necessary.

I would not insist, under those circumstances on proceeding.

As the Senator from West Virginia knows very well, I can file a whole series of amendments and I can break this down into parts and so forth and qualify it and just not amend it in two places. But I think what we all want to do is get the votes on these amendments. We have discussed them at great length today.

Therefore, I would agree to an unanimous-consent agreement that would have us vote at a certain time on my amendment. I will do my best to urge the Senators from Ohio and Massachusetts to agree to have a vote at a certain time on their amendment.

Mr. STEVENSON. Mr. President, reserving the right to object, I thank the Senator and commend him for both his forthcoming and cooperative attitude.

I would have no objection to an order which established a time for the votes on these two amendments.

I do think, in order to accomplish our purpose, it would be necessary for such an order to guard against a number of additional amendments and that, therefore, the order might also rule out other amendments or establish a time for the vote on final passage.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the return of the Senate on Wednesday, a week from tomorrow, after the two leaders have been recognized under the standing order, and the order for the recognition of a Senator—I believe there is an order in?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. The Senate resume consideration of the pending measure, the Export Trading Act; that Mr. PROXMIRE be recognized to call up his amendment numbered 2276; that there be 1 hour debate thereon, equally divided between Mr. PROXMIRE and Mr. STEVENSON, and the vote then occur up or down on the amendment; after which there be 1 hour on an amendment by Mr. METZENBAUM, to be equally divided in accordance with the usual form; after which the Senate will proceed immediately to third reading, without further amendment, motion, debate, or point of order; after which the Senate proceed immediately to a vote on final passage, without further debate, motion, or point of order; and that there be no time for debate on a motion to reconsider the vote on final passage; provided further, that on an amendment by Mr. RIEGLE to provide assistance to small business to hire export managers, there be a 30-minute time limitation, the time to be equally divided in accordance with the usual form; and on an amendment by Mr. HELMS to strike the EDA, there be a 30-minute time limitation, equally divided in accordance with the usual form; and, of course, with the additional proviso that if the agreeement is entered into, the cloture motion that has been entered would be withdrawn.

Mr. STEVENS. Mr. President, reserving the right to object, and I do not think I shall object, how many amendments then are taken care of by this agreement and is it a closed agreement that there be no other amendments?

The PRESIDING OFFICER. It would not shut out second-degree amendments, but it would shut out the debate on second-degree amendments.

Mr. PROXMIRE. Mr. President, would the Senator consider modifying his unanimous-consent agreement to provide that there be no second-degree amendments? Because, otherwise, we have no way of knowing what is likely to come in. I would feel better, if the Senator from Illinois would not object.

Mr. STEVENSON. I have no objection.

Mr. ROBERT C. BYRD. Mr. President, I make that request.

Mr. PERCY. Mr. President, reserving the right to object.

Mr. STEVENS. If the Senator will withhold a minute; are we acquainted with the text of the four amendments? Are they identified in the request sufficiently to know the subject matter? I am sorry I came in late in the discussion.

The PRESIDING OFFICER. The subject matter has been identified.

Mr. STEVENS. No other first-degree amendments would be in order?

The PRESIDING OFFICER. The Senator is correct; or second-degree amendments.

Mr. STEVENS. I heard that, yes. I thank the Chair.

Does the Senator from Illinois wish to object?

Mr. PERCY. Mr. President, I reserved the right to object to inquire, because the Senator from Illinois has a particular problem. My plane at Dulles does not land until 5 o'clock Wednesday night. I intended fully to be here tomorrow to work and hoped that we would not be having business that would require a lot of voting.

The PRESIDING OFFICER. Will the Senator use the microphone. It is very difficult to hear.

Mr. PERCY. Mr. President, I wondered what the timing would be on these votes and whether or not it would be possible to back them up or push them off until Thursday morning when more Senators would be back, considering that there would be at least four votes. We would get all of the debate out of the way and just have them when the full Senate would be here.

Mr. ROBERT C. BYRD. Mr. President, I do not wish to put off votes until Thursday. We are knocking tomorrow off. The Senate was supposed to be in tomorrow. I do not think we should extend this to add another day to the Labor Day break. I say this respectfully to the distinguished Senator. It is perfectly all right with me to have the votes occur, say, at 3 or 4 o'clock on Wednesday afternoon, but to put them over until Thursday I would not be agreeable to.

Mr. PERCY. Would it be possible to have them back-to-back beginning at 6 o'clock and have them finished up by 7 o'clock? That would enable the Senator from Illinois to get back. I would not make that request other than the fact that it is a very important engagement that I have on the west coast and there does not seem to be any way I can get back that I know of before 5 o'clock. We land at Dulles. It is not unusual for us to be here until 6:30 or 7 in the evening. Having been away, that would certainly accommodate the Senator from Illinois very much and I do want to vote on this measure.

Mr. ROBERT C. BYRD. Of course, I do want to accommodate the Senator from Illinois but I do not want to inconvenience the entire Senate to do it.

Mr. PERCY. It is just a question of getting a plane out of the west coast that would get here in time.

Mr. ROBERT C. BYRD. I would be glad to give the Senator from Illinois a live pair if he wishes to have a live pair. I would be glad to do that.

Mr. PERCY. No; I would want to vote on this measure. The Senator knows how strongly I feel about it. I certainly want to be as accommodating as I possibly can be. The question that I have is in the past we have backed up votes. We are certainly planning to be here up until 7. If there is any reason someone cannot stay here until 7, the Senator from Illinois would weigh his request against that Senator. We would ordinarily begin this voting process by 3 or 4 o'clock. The Senator from Illinois is asking for a couple more hours.

Mr. ROBERT C. BYRD. The voting process, as laid out in the request, would probably depend on what time the Senate comes in on its return. I had earlier thought we would come in at 10 o'clock that day because the Senate will have been out a week and a day, or a week. The Senate is only going to have about 25 days, including Saturdays, give a day or two one way or the other, when the Senate returns until it goes out again. I will get the Senator live pairs on his votes, if he wishes, or try to get live pairs for him, but I would like to see the Senate get on with its business. There may or may not be other business that would take us up to 6 or 7 o'clock. If there were, I would have no particular problem. There may be other Senators who are going to leave. If we enter into an agreement tonight to accommodate a Senator to have these votes not occur before 6 or 7 o'clock, there may be Senators who are not here today who plan to leave at 5 o'clock or 6 o'clock, and thereby they would be discommoded. I wish we could accommodate every Senator.

Mr. STEVENS. Reserving the right to object, Mr. President, what time will we be coming in on Wesnesday, if I might ask the leader?

Mr. ROBERT C. BYRD. I plan to come in at 10 o'clock because we are going to take up another bill, the veterans vocational rehabilitation bill.

Mr. STEVENS. We have a series of special orders also that morning, do we not?

Mr. ROBERT C. BYRD. We have one special order.

I am advised there are three. We are going to have the veterans vocational rehabilitation bill.

The PRESIDING OFFICER. The Chair wishes to correct a statement. There are no special orders on Wednesday. On Thursday there are special orders.

Mr. STEVENS. I might state to the Chair, it would be my hope that the requests of Senators HATCH and BAKER for 15 minutes each that morning would be granted. I am just trying to figure out the time in terms of this time agreement. If the time did start running on this bill at noon, is the leader still going to take up the veterans bill?

Mr. ROBERT C. BYRD. Yes. Under the order that was entered earlier the veterans vocational rehabilitation bill would be coming up on Wednesday following the disposition of the Export Trading Act.

Mr. STEVENS. That would be afterward, under the order?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. Would it be convenient to take it up before, under the arrangements we are now preparing, instead of awaiting the completion of the export bill?

Mr. ROBERT C. BYRD. There is no time agreement on the veterans vocational rehabilitation bill.

Mr. STEVENS. But it was contemplated it would be the pending business when we came back?

Mr. ROBERT C. BYRD. That is true. But it was also contemplated that the Senate would complete action on the now pending business before we went out today.

It is perfectly all right with me, if it is agreeable to the distinguished Senator from Illinois and the Senator from Wisconsin——

Mr. STEVENS. I spoke to the Senator from Wyoming (Mr. SIMPSON) and he indicated he was prepared to take that up when we came back.

Mr. ROBERT C. BYRD. If they have no objections to go ahead with the veterans vocational rehabilitation bill, it is all right with me.

The request that I have just offered was to the extent that immediately after the two leaders are recognized on Wednesday and the order for a Senator—I thought an order had been entered—the Senate would return to this bill, which means that if this order is entered, the Senate will be back on this bill on that Wednesday. We have a time agreement on it, if it is entered into, and it would have to be disposed of before we go to the veterans vocational rehabilitation bill. If Senators want to proceed with the two in reverse, it is all right with me.

Mr. STEVENS. Does the Senator from Wisconsin see any problem? That would be my request on the leadership. Unfortunately, I will have to miss the votes on this bill in any event. But I do think we might take up the veterans bill after my discussion with Senator SIMPSON.

Mr. ROBERT C. BYRD. May I say also that if this request is not agreed to, the Senate will be voting at about 1 hour and 15 minutes after the Senate comes in, the Senate will be voting on cloture on this bill, and the Senator from Illinois would miss that vote. I have a considerable degree of confidence that cloture will be invoked, in which case there will be votes all afternoon. So whether or not we get the agreement, I think what is going to happen is that we will be voting all afternoon if we do not get the agreement, which would mean that we would have the votes in any event.

Mr. STEVENS. Might I ask my good friend as a matter of accommodation if we could not change the order, to go ahead with the time agreement as outlined, to take up the veterans bill, grant the request of Senators HATCH and BAKER for their 15 minutes following the other individual special order, and complete the veterans bill prior to taking up this bill under the time agreement as specified? That would carry the matter into probably Thursday morning at the latest in consideration of this bill.

Mr. ROBERT C. BYRD. Mr. President, in any event, let me withdraw that request temporarily.

ORDER FOR RECOGNITION OF SENATORS BAKER AND HATCH ON WEDNESDAY, SEPTEMBER 3, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. HATCH and Mr. BAKER be recognized, each for not to exceed 15 minutes, on Wednesday a week from tomorrow, following the standing order for the recognition of the two leaders.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. STEVENS. I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, what is the wish of Mr. STEVENSON and Mr. PROXMIRE? Do they wish to reverse the order of these two bills?

Mr. STEVENSON. Mr. President, is there any estimate as to how long the veterans bill will take?

Mr. ROBERT C. BYRD. May I ask the distinguished senior Senator from Illinois, when he took on the engagement in California, did he not take into consideration that they might be some rollcall votes during the day?

Mr. PERCY. The Senator from Illinois miscalculated totally. I cleared the deck for tomorrow, figuring we would be here right up until the last minute, and took the chance that, with all the family wedding and a lot of family members out there, I just hate to break into that. I was planning on landing at 5 o'clock. I thought we were coming in at noon so that we would not be voting immediately.

Mr. STEVENS. Mr. President, if the Senator from Illinois will yield to me, I have just been informed that we have an objection on this side to taking up the veterans bill prior to the export bill. I reluctantly report that to the leadership.

Mr. CRANSTON. Prior to when?

Mr. STEVENS. Prior to the export bill. It was the understanding that it would follow the export bill and there is an objection that I have to raise.

Mr. PROXMIRE. Mr. President, I am perfectly willing to have this come any time at all at the convenience of the leader. Any time he and Senator STEVENSON want to schedule it is fine with me. We can have it early on Wednesday, late on Wednesday, Thursday—whenever.

Mr. ROBERT C. BYRD. I thank the Senator from Wisconsin. This is characteristic of him and I am most appreciative.

Mr. PERCY. Would it be possible, Mr. President, is it acceptable to those managing the bill to have the votes either on Wednesday, beginning at 6 o'clock or 6:15, or Thursday morning? Finish all the debate on Wednesday and have a time certain for Thursday morning or Wednesday morning?

Mr. ROBERT C. BYRD. Mr. President, suppose there is a Senator who has engagements on Thursday morning who is

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not here now. We are going to discommode that Senator.

I think the time will have to come when Senators simply have to take their chances. They either accept an engagement or they let the engagement go. If they accept the engagement, they miss rollcall votes. We are all adults here and we know what our responsibilities and duties are in the Senate. We know that we either make a promise and keep it to speak elsewhere, or we turn down the engagement and stay here and make the rollcall votes. I sometimes marvel at how the Senate stands the strains of accommodating every individual Senator.

Mr. CRANSTON. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. CRANSTON. Is there not an agreement—not a time agreement, but an agreement—that the veterans vocational rehabilitation bill will be laid down?

Mr. ROBERT C. BYRD. Oh, yes, Mr. President.

Mr. CRANSTON. So it is already in the works, despite any objection on that side to taking it up.

Mr. ROBERT C. BYRD. Yes; that is true, Mr. President. But if this request is agreed to, the cloture motion will be vitiated. If the request is not agreed to, then there will be a vote on cloture, and I assume it will be invoked. The last time a cloture motion was entered, cloture was invoked the very first time around. If that is the case, then we shall have rollcall votes on that Wednesday afternoon, like it or not.

Mr. President, I have indicated my willingness to give the distinguished Senator a pair on each of the votes if that would assist him. I do not like to give pairs, because I like my rollcall votes to count back home, where the people are watching my voting record.

Mr. President, I renew the request.

The PRESIDING OFFICER (Mr. RIEGLE). Is there objection?

Mr. STEVENS. Reserving the right to object, does this mean that the export bill will go ahead of the veterans bill?

Mr. ROBERT C. BYRD. It does, Mr. President.

Mr. STEVENS. The agreement that was previously mentioned, four amendments in the first degree, no amendments in the second degree, and this expression will follow upon no amendment—was there some request for no time for reconsideration?

Mr. ROBERT C. BYRD. Yes; there will be no time for no debate on the motion to reconsider.

The PRESIDING OFFICER. The Chair advises that it will be the first order of business upon returning on Wednesday.

Is there objection?

The Chair hears none. It is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator from Illinois for yielding in this instance to the needs of the Senate. I personally appreciate it very much.

Mr. STEVENS. May I ask the leader about the balance of the evening? Are we going to try to finish this matter this evening?

Mr. CRANSTON. May I ask another question? Are we going to lay down the vocational rehabilitation bill, and could we deal with the Dole amendment, which is noncontroversial? We can take that very swiftly.

Mr. ROBERT C. BYRD. The veterans legislation will automatically come down at the close of business under the order for opening statements only. If Senators would like to allow an amendment or so this evening——

Mr. DOLE. I have one that they are willing to accept, if I can find my staff.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. DOLE may call up an amendment to the veterans vocational rehabilitation bill today, it being understood that the managers will accept the amendment and that there will be no rollcall vote.

Mr. DOLE. It is the naming of a hospital.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

It is so ordered.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, may I ask my friend the leader—we have an increasing number of people who are trying to leave, if it is possible to leave this evening. Is it the intent to have votes tonght? The ERISA matter will be worked out.

Mr. ROBERT C. BYRD. Mr. President, is there any intention to request the yeas and nays on the ERISA matter? I see no indication of such.

Mr. STEVENS. I previously checked that on my side and the indication was that there would be no requests. I assume there will be no further votes this evening.

Mr. ROBERT C. BYRD. Mr. President, I state that there will be no further rollcall votes today

EMPLOYEE RETIREMENT INCOME SECURITY ACT

Mr. ROBERT C. BYRD. Mr. President, under the order of yesterday, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 3904.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes.

(The amendment of the House is printed in the RECORD of August 25, 1980.)

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the following members of the staff of the Committee on Labor and Human Resources be accorded the privileges of the floor during the consideration of this matter, and during all rollcall votes thereon: Steven Sacher, Gary Ford, Michael Goldberg, Peter Turza, Mildred Dunmore, Susan Painter, Irene Linton, Martin Jenson, Thomas Altmeyer, and Luther Washington,

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1538

Mr. WILLIAMS. Mr. President, I move that the Senate concur in the House amendment to the Senate amendment to H.R. 3904 with a further amendment, which I send to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. WILLIAMS) proposes an unprinted amendment numbered 1538 to the House amendment.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike section 414 and insert in lieu thereof the following:

"Sec. 414. (a) Section 3304(a)(15) of the Internal Revenue Code of 1954 (relating to requirements for approval of State unemployment compensation laws) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof the following: 'except that—

"'(A) the requirements of this paragraph shall only apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained (or contributed to) by a base period or chargeable employer (as determined under the State law), and

"'(B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;'

"(b) The amendment made by subsection (a) shall apply to certifications of States for 1981 and subsequent years."

Mr. WILLIAMS. Mr. President, last month we amended and approved, by a vote of 85 to 1, H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1980. However, over objections by Senator JAVITS, myself, and others, the Senate included amendments to such unrelated laws as the Occupational Safety and Health Act, the Mine Safety and Health Act, and the Civil Rights Act of 1964. Earlier this week, the House of Representatives deleted these nongermane amendments, made several germane changes, and passed the bill, as amended, for a second time. The Senate must now pass on the most recent House version of the bill.

Our decisions today will likely determine the fate of this legislation. So I ask my colleagues to weigh its merits carefully. I ask that this great institution not deny 8 million Americans, working and

retired, the protections that this bill affords.

Four committees of the Congress have considered this legislation, and four have approved it. Both business and labor have scrutinized its every word, and both support it. Uniformly, those groups who would be affected by this measure, those who would be protected by it, and those who must pay for it, support its enactment.

We have worked for 2 years, and drawn on 6 years of practical experience, in fashioning this legislation. We have assured sounder funding of multiemployer plans. We have more equitably allocated the burden of paying for pension benefits in these plans. And we have, most importantly, provided substantial benefit protection for the 8 million workers covered by these plans.

Mr. President, it is time to act. On August 1, a law which everyone agrees is unfair, unworkable and potentially enormously expensive, took effect because the Senate added nongermane amendments that paralyzed the House in its deliberations on this matter.

Only now—a month later—has a fragile compromise been struck in the House that allows us one more opportunity to enact this legislation.

We should delay no more. I ask my colleagues not to again ensnare this legislation in a tangle of unrelated matters.

It is clear that the House feels that substantive and fundamental changes to essential worker protection programs such as the mine safety and health program, the occupational safety and health program, and our Nation's equal employment opportunity programs should not be made in an ill-considered manner, in connection with pension legislation.

I believe that there is wisdom in the action which has been taken by the House, and I believe that in view of the necessity of enacting this pension legislation, the Senate should accede to that action.

The effects of those nongermane amendments are, as we are coming to understand them, profound. For example, the amendment offered by the Senator from Oklahoma, relating to the Occupational Safety and Health Act, would exempt 2.4 million workplaces from safety inspections under OSHA.

These workplaces employ 9 million workers. This was not a mere codification of the existing appropriation rider. The current appropriation rider exempts 800,000 fewer workplaces, and denies protection to 3.8 million fewer workers than does the amendment of the Senator from Oklahoma.

I believe, as I have always believed, that such profound changes in statutory programs should be adopted by the Congress only after thorough study by the legislative committee. It is only as a result of such study that we can fully appreciate the effects of our actions. The House of Representatives apparently shares that belief, and it would not accept this amendment. I would urge my colleagues to accept the wisdom of the House's position.

The same can be said for the amendment offered by the Senator from Wyoming, as modified by the Senators from Georgia and Florida.

That amendment would transfer from the jurisdiction of the Mine Safety and Health Administration the mines that so far this year are responsible for 66 percent of all the mining fatalities which did not occur in coal mines. And that amendment would transfer those mines to an agency which is truly unequipped to deal with the safety and health problems at those very hazardous operations. OSHA has no experience in mine safety, it has no standards, and it would no doubt take years for OSHA to develop applicable standards. It has limited resources, and could not devote enough of these resources to the hazardous mines.

The House of Representatives was just unwilling to agree to such dramatic changes to the programs of two Federal agencies without a clear understanding of the need and a clear idea of what the effects of this change would be on workers.

With respect to both of these amendments, I certainly do not believe that by agreeing to the House's refusal to accept these amendments, we are saying that that is the end of the matter. It is not. These are clearly matters for continuing scrutiny by both the Senate and the House of Representatives.

But by agreeing now to the House's refusal to accept these nongermane amendments, we are rededicating ourselves to the careful and thoughtful examination of important programs through the proper legislative procedure. We are rededicating ourselves to the proposition that the Congress of the United States will not rush to ill-considered conclusions.

In addition to striking these nongermane amendments, the House made several changes in the pension provisions of the bill. Although I, of course, much preferred the Senate bill in these areas, I am prepared to accept most of the changes that have been made by the House.

I would like to summarize these changes briefly for my colleagues:

First. The Senate version of the bill provided that the Hawaii prepaid health care law would not be preempted by section 514(a) of the Employee Retirement Income Security Act of 1974. It also required the Secretary of Labor to conduct a study of the feasibility of extending this exemption to other State health care laws.

The House deleted this provision.

Second. The Senate version of the bill did not allow the benefit guarantee level to be reduced except by Congress.

The House has amended this provision so that, if premiums prove inadequate to support the guarantee level, the guarantee level will decrease automatically to the point at which it can be supported by premiums. In sum, the House version does not require the Congress to act in order for guarantees to be decreased.

Third. The House added to the Senate bill a provision that was in the earlier House version. This provision would authorize the trustees of a multiemployer plan that is in serious financial difficulty to reduce or eliminate benefit increases that have been in effect for less than 5 years.

The Senate version of the bill did not grant plan trustees this authority.

Fourth. The Senate bill provided for compulsory arbitration of disputes over an employer's withdrawal liability. The plan was to have met its burden of proof in the arbitration with respect to the plan's unfunded vested benefits if certain standards were satisfied, and the arbitrator's findings of fact were to be presumed correct—subject to rebuttal—in any subsequent court proceeding.

The House amended this provision to provide that any plan determination would be rebuttably presumed to be correct in any proceeding—whether before an arbitrator or a court.

Fifth. Both the Senate and House versions of the bill allow an employer that withdraws from a multiemployer plan to pay withdrawal liability in annual installments in accordance with a payment schedule determined by the plan. Under the Senate bill, the amount of an employer's annual payment was based on the employer's highest contribution base units and rates in 2 of the previous 5 years.

The House changed the manner in which the two amounts are determined. The House bill focuses on the 3 plan years in the last 10 during which the employer's contribution base units and rates were greatest.

Sixth. Both the Senate and the House versions of the bill direct the PBGC to establish by regulation a supplemental guarantee program for multiemployer plans. This program will insure benefits that exceed the guarantee levels established in the bills.

As passed by the Senate, H.R. 3904 provided that the PBGC would establish terms and conditions that a plan must satisfy in order to qualify for supplemental coverage. The House added specific requirements for coverage, including a requirement that, generally, a plan's assets equal or exceed 15 times the plan's annual benefit payments.

Seventh. Both the Senate and the House bills contain a "safe harbor" funding provision for plans in reorganization. This safe harbor has the effect of limiting the increase in required employer contributions for plans in reorganization.

Under the Senate bill, a plan in reorganization could increase benefits for either past or future service and still get the benefit of the safe harbor rule, but employers would be required to contribute amounts necessary to fund the normal cost of the increase.

The House amendment provides that if a plan in reorganization increases benefits for past service, the employers lose the protection of the safe harbor rule.

Eighth. The Senate version of the bill authorized a special reinsurance fund for employers in the building and construction industry.

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The House deleted this provision.

Ninth. The Senate version of the bill granted the General Accounting Office access to the records of plans, employers and unions on their study of the program.

The House bill limits access to plan records only.

Tenth. The House modified the Senate provision regarding unemployment compensation to assure that unemployment compensation is not reduced as a result of increases in social security of railroad retirement benefits, and made certain other changes in this area.

Eleventh. As approved by the Senate, H.R. 3904 provided that if a participant is retired or within 36 months of his normal date of retirement on July 29, 1980, the participant's benefit would be fully rather than partially, guaranteed.

The House excluded from this rule's protection participants in plans that are terminated as a result of all employers withdrawing from the plan.

Twelfth. As approved by the Senate, H.R. 3904 provided a mandatory de minimis deductible of the lesser of $100,000 or 0.75 percent of the plan's total unfunded vested benefits. The House reduced the dollar amount in this formula to $50,000.

Mr. President, the amendment that I have offered simply would strike the unemployment compensation pension-offset provisions adopted by the House and insert in their place the pension-offset provision adopted by the Senate as an amendment to the pending legislation on July 29.

The amendment would limit the pension offset to those persons who are receiving pension or retirement income from an employer for whom they worked during their unemployment compensation base period or an employer who is chargeable for unemployment compensation benefits under the State law.

The amendment also would authorize the States to limit the amount of the pension offset to take into account employee contributions to the pension or retirement plan from which they are receiving benefits.

Under the amendment, this change in the current requirements of law would apply to certifications of State unemployment compensation programs by the Secretary of Labor for 1981 and subsequent years.

Mr. President, the changes made by this amendment are not entirely satisfactory to me.

They do reduce the harmful effects of the unfair and punitive pension-offset requirement of current law. Fewer retirees will suffer the reduction of the unemployment benefits to which they have a right. Some will suffer smaller reductions in those benefits than under current law.

But the inequities are not eliminated—or even reduced to an acceptable minimum—by the provisions of this bill as it now stands. Many of those problems would be solved by the language that came over to us from the House earlier today—language that we find it necessary to remove for the time being so as not to endanger or further delay enactment of this urgently needed legislation in the midst of complex impediments posed by the Congressional Budget Act and its procedures.

With the language in H.R. 3904 as we are now about to vote final passage, there remains the unacceptable discrimination against older workers whose retirement income derives from pensions or annuities. For these workers, unemployment benefits frequently will be reduced by some or all of the amount of their retirement benefits, but there is no such offset for those who have retired on the proceeds of regular savings, life insurance, real estate holdings, or investments in securities.

H.R. 3904 now provides that the States "may" take account of employee contributions to the pension fund, but it should flatly so require. To deny an involuntarily unemployed older worker full entitlement to unemployment compensation benefits, reducing them by the amount of the claimant's own contributions to a pension fund, is one of the inequities of current law that probably will remain in some States. The most glaring case in point involves individuals who were self-employed during their regular working years and established a Keogh plan retirement account entirely with their own funds. After retirement, and after being laid off from a job that may have been necessary for survival, they find that their own financial resources, saved over the years, are being used to reduce their unemployment benefits. This kind of treatment should be flatly prohibited, which the bill does not do.

Some unemployed workers still will have their unemployment benefits reduced, even if the employer who funded their pension is not the same employer who is charged for the unemployment benefits. In other cases, social security recipients will continue to lose unemployment benefits to the extent or half or somewhat less of their social security payments.

Mr. President, H.R. 3904 is one of the most important and urgently needed bills with which I have been involved in many years. Since we are operating under a severe time restriction for enactment of the ERISA provisions of this bill, I am constrained not to press further at this time for improvement of the pension-offset provisions in the bill, although they represent half or less of a loaf of relief for retired Americans who must work to survive.

I remain convinced, however, that the remaining inequities in the pension-offset as modified by this bill—and they are numerous—must be dealt with promptly. I also believe that outright repeal of the pension-offset provision is the only solution.

Therefore, I shall work diligently with Senator JAVITS and the other cosponsors of S. 3012, our bill to repeal this provision altogether, for its enactment at the earliest possible time. I would welcome the support of all Senators in this endeavor.

Let me repeat what I said earlier. I believe that, with respect to the ERISA provisions, the Senate bill was a better bill, that it afforded greater protection for participants and beneficiaries, and for employers as well. I especially dislike the House provision under which guarantee levels can be reduced without congressional action.

But, taken as a whole, the bill before us is a sound bill. It will greatly improve the lot of America's retirees. And, most importantly, I believe that the time has come for conciliation, and for action.

This unemployment-offset amendment, Mr. President, was originally offered by the Senator from Rhode Island (Mr. CHAFEE) and the Senator from New Jersey (Mr. BRADLEY). My understanding is that it will be favorably received when this measure is returned to the House.

Mr. CHAFEE. Mr. President, this amendment which we have presented stays within the budget. This is an amendment that both the House and the Senate have passed previously and, indeed, the Senate has passed it twice.

I understand, as the Senator from New Jersey has pointed out, that the House will accept this amendment. So it assures the passage of ERISA which we all believe is so important.

So, Mr. President, I enthusiastically join in support of this amendment and in support of the overall bill.

Mr. BRADLEY. Mr. President, I am pleased that this amendment has been offered again and that the Senate will adopt it.

I think that it moves a great distance toward resolving the very serious human problems caused by the offset provision in the law that became effective April 1 of this year.

I support this measure. It is probably not the best that we could have gotten under an ideal circumstance, but that is not the world we live in. I think it goes a long way toward resolving this very serious inequity for pensioners who are employed in a second job, laid off, and denied the unemployment compensation they have a right to.

So I strongly support the amendment and urge that we adopt it.

Mr. STEVENS. Mr. President, the distinguished Senator from New York (Mr. JAVITS) has had to depart early this evening. I ask unanimous consent that the statement he would have made at this time appear in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. JAVITS. Mr. President, we come to the Senate floor today with H.R. 3904 as amended by the House of Representatives in response to the Senate amendments passed on July 29, 1980. Despite my opposition to certain changes made by the House, I am recommending to the Senate that it accept the latest House version and consider but two amendments.

As Senator WILLIAMS and I reported to the Senate on August 6, 1980, the failure of the House to respond to the Senate bill before August 1, 1980, resulted in ERISA's present termination insurance going into effect. While I know of no multiemployer plans which have terminated since August 1—in part, I believe, because of uncertainty about congressional intentions—a potentially dangerous situation persists.

There are at least five plans I know about for which it is economically advantageous to terminate under the present rules, particularly the 30 percent of net worth limitation on employer liability and the 100 percent guarantee of vested benefits. If these five plans with gross termination liabilities totaling $1.1 billion terminated, and we assume collection of employer liability similar to what the Pension Benefit Guaranty Corporation (PBGC) has experienced to date, the net liability which could be shifted to the PBGC by these five plans alone is $800 million.

In light of the prsent law, annual 50-cent premium per participant and the fact that the PBGC has already committed virtually all of its funds to plans covered during the discretionary period, the PBGC, even with its $100 million borrowing authority from the Treasury, would have insufficient resources to pay the potential guaranteed benefits under these plans.

The bill approved by the House makes the following changes in the Senate-passed bill:

The Wallop amendment which would transfer regulatory authority of stone, sand, and gravel, clay and phosphate surface mining from the Mine Safety and Health Administration to the Occupational Safety and Health Administration was deleted.

The Boren amendment which would grant a permanent blanket exemption for certain small businesses from the enforcement provisions of the Occupational Safety and Health Act was dropped.

The Schweiker amendment which would exempt Government contractors with five or fewer employees from the affirmative action requirements of any equal employment opportunity Executive order was dropped.

The Chafee-Bradley amendment which would, among other things, require the reduction of unemployment compensation benefits by the amount of a pension benefit only if the pension comes from the last employer, was expanded so that payments under either the Social Security Act or the Railroad Retirement Act cannot be used to reduce unemployment insurance benefits.

The Wallop amendment to expand the de minimis rule on employer withdrawal liability was dropped.

The Domenici amendment which would apply the present 100-percent guarantee to the benefits of the participants in multiemployer plans who were in pay status as of July 29, 1980 or who are within 3 years of normal retirement and are vested was made inapplicable to participation in plans that are terminated as a result of all employers withdrawing from the plan.

The Bentsen-Long amendment to facilitate a program by the South Bend Lathe Co. to pay lost pension benefits to its employees was left intact.

The Cranston amendment giving the PBGC regulatory authority to modify the motion picture element of the entertainment industry withdrawal liability rule was kept.

In addition, the House made the following changes to the ERISA bill:

The provision saving the Hawaii prepaid health care law from ERISA preemption was deleted.

A provision that benefit guarantees automatically be reduced if the Congress does not approve a PBGC request for increased premiums was added.

An amendment to require that a plan electing supplemental guarantee coverage meet a 15 to 1 assets to benefit ratio test was added.

A provision permitting a plan in reorganization to reduce or eliminate benefits not in effect for 5 years was added.

The provision requiring arbitration of disputes over withdrawal liability was dropped, and a requirement that a plan's withdrawal liability determinations be presumed correct was added.

The Senate safe harbor provision for funding under the minimum contribution requirement was replaced by a rule that if a plan in reorganization increases benefits for past service, the employers lose the protection of the safe harbor rule.

The Senate provision on the annual amount payable under the 20-year cap on withdrawal liability would be changed so that it would be computed in relation to the 3 years during which an employer's contribution base units were the highest out of the 10 years preceding a withdrawal.

The Senate provision authorizing a special insurance fund for employers in the building and construction industry was deleted even though certain related Tax Code provisions were maintained.

The Senate provision granting the General Accounting Office access to records of plans, employers, and unions for a GAO study of the insurance program was limited to plan records only.

Mr. President, I am pleased with the changes the House made dealing with unemployment insurance and the providing of a full guarantee for certain participants in or near pay status. The House's elimination of the unemployment insurance offset regarding social security and railroad retirement benefits is a significant step toward the full elimination of the retirement income offset as provided in my bill, S. 3012. Unfortunately, in order to get this bill through the Senate, it appears necessary to replace the House provision with the more limited, original Senate provision. I am also of the view that the House's deletion of the OSHA, MSHA, and affirmative action Senate amendments was desirable.

I am greatly troubled by the House changes which would disadvantage participants and beneficiaries of employee benefit plans. Among these, I would include the adding of the automatic guarantee reduction provision, the asset-benefit test for supplemental guarantee coverage, and the permissive authority of plans to eliminate certain recently guaranteed benefits. These provisions are a step backward from the policy of protecting plan participants and beneficiaries. Ordinarily, I would oppose these provisions and others in the House bill, but under the present time pressures for passage of this measure, I am willing to accept these changes in order to pass a bill today. The House's deletion of the Hawaii preemption exemption would also disadvantage participants and beneficiaries, and the Senate may wish to consider restoring the exemption provided in the original Senate bill for the limited situation.

I recommend to my colleagues that they vote for passage of the bill before us even though they may dislike certain aspects of what the House has done to the Senate bill. If we do not act today, the consequences in the months and years ahead may be most unfortunate.●

Mr. BAUCUS. Mr. President, will the distinguished Senator from New Jersey yield for a clarification?

Mr. WILLIAMS. I am happy to yield to the Senator from Montana.

Mr. BAUCUS. First, I commend the Senator from New Jersey for his able leadership in securing passage earlier this week of the Multiemployer Pension Plan Amendments Act of 1980. Let me assure my colleague that I am hopeful we can remove all obstacles to prompt enactment of this vital legislation.

If the Senator from New Jersey would permit me, I would appreciate a clarification about section 410 which deals with the treatment of certain severance pay arrangements and supplemental retirement income payments as welfare plans.

The CONGRESSIONAL RECORD of July 29 describes the severance pay provision as permitting the Department of Labor to prescribe rules to treat certain severance pay arrangements and supplemental retirement income payments as welfare plans rather than as pension plans. Under the explanation, an employer could provide for the payment of monthly supplemental payments to retirees based on a formula amounting to 3 percent multiplied by the retiree's monthly pension benefit multiplied by the number of years that such retiree's pension benefit has been in pay status.

As the Senator knows, I introduced this provision as an amendment to the ERISA legislation when the Senate Finance Committee considered the bill earlier this year. I offered the amendment at the request of the Montana Power Co. when I learned that the company's practice of providing supplemental payments to its retirees to cope with rising inflation could be jeopardized under ERISA requirements.

Briefly, the Montana Power Co. has a voluntary supplemental payments program, in addition to a retiree's normal pension, which is designed to enable retirees to cope with the inflationary forces in our economy. In 1975, the Department of Labor issued certain regulations which severely restricted the company's practice of making these supplemental payments to retired workers. The amendment I offered, therefore, is intended to allow companies such as the Montana Power Co. to provide supplemental payments to retirees to reflect inflation. The amendment in no way represents an at-

tempt to circumvent or undermine the underlying principles of ERISA.

My question to the Senator from New Jersey is this: Is it his understanding, based upon the Montana Power Co. arrangement I have just described, that they would qualify for the special treatment afforded supplemental cost-of-living programs under section 410 of the ERISA legislation?

Mr. WILLIAMS. The Senator is correct. Let me assure my friend from Montana that section 410 of the Multiemployer Pension Plan Amendments Act of 1980 is drafted to allow the Montana Power Co. to continue this practice of providing supplemental cost-of-living adjustments to its retirees, in addition to its normal pension payments. It is certainly not our intent to deter or prohibit certain arrangements which are designed to enable retired workers to cope with the brutal impact of inflation. I thank the Senator for clarifying the purpose of section 410.

Mr. BRADLEY. Mr. President, I want to confirm once again with my distinguished colleague, the chairman of the Senate Labor and Human Resources Committee, that the withdrawal liability provisions do not apply retroactively to events such as, for example, a closing of a facility which occurred prior to April 29, 1980, the effective date of the withdrawal liability provisions.

Specifically, I want to confirm that a technical change in the language of section 4217 was not intended to alter the purpose of that section, as stated in the joint explanation of 1076. My understanding is that neither contributions nor base units attributable to facilities closed before April 29, 1980 will be taken into account in any of the following determinations: First, whether or not a partial withdrawal, as defined in section 4205, has occurred; second, the amount of unfunded vested benefits allocable to a withdrawing employer pursuant to section 4211; third, the partial withdrawal adjustment set forth in section 4206; and fourth, the determination of annual liability payments pursuant to section 4219 (c).

Is that understanding correct?

Mr. WILLIAMS. Yes, that is correct. The withdrawal provisions are not to apply retroactively to closing of a facility which occurred prior to April 29, 1980. Specifically, neither contributions nor base units attributable to a facility closed before April 29, 1980, will be taken into account for any purpose.

Mr. DOLE. Mr. President, I support the efforts here to finally resolve this controversy. I strongly support the efforts by Senator CHAFEE. I am pleased there has been an agreement on that. I understand that the House will agree to that amendment.

I believe this bill could have been drafted with more sensitivity in the interests of those who will have to live with its rules. The bill is a significant improvement over present law.

In fairness, it is fair to all employers and those who remain in multiemployer plans, as well as those that withdrew, also improves stability of the termination insurance system and helps assure that benefit guarantees will be available to retirees as needed.

I certainly urge that we accept this bill.

Mr. President, the multiemployer pension plan bill which the Senate sent to the House last month was, in this Senator's opinion, balanced in its concerns for the interests of employers, employees, and retirees, and the multiemployer plans themselves.

We reduced the level of guaranteed benefits and provided for increased premiums to protect the termination insurance system.

We imposed liability on employers who withdraw from multiemployer plans to protect the plans from insolvency.

At the same time, we recognized that the burden on employers, especially smaller employers, could be very great, possibly too great to bear. We, therefore, provided several minor exceptions to the withdrawal liability provisions. One very important protection which immediately comes to mind is the $100,000 mandatory de minimis provision which Senator WALLOP proposed as a floor amendment and which was accepted by a convincing majority of the Members.

Another important protection for withdrawing employers was our provision concerning the base period for computing withdrawal liability. The House provision will greatly increase withdrawal liability because it refers to employment history up to 10 years prior to the year an employer withdraws from a plan. Our provision looks back only 5 years because we recognized that liability should be based upon more current data.

We also were concerned about employees, especially older employees and retirees. We thus, eliminated a plan's authority to reduce benefits while in reorganization. It should be noted that the PBGC itself informed the Finance Committee that this provision would have no substantial effect on plan solvency.

We also included a provision to grandfather retirees and employees who will soon retire under present law benefit guarantee levels. The reason for this is simply that these people will have insufficient time to save additional amounts for retirement years to make up for reduced guaranteed benefits.

The House has decided to return to us a bill that is less attractive from the standpoint of both employers and employees. They have substantially increased withdrawal liability for employers while allowing unnecessary cutbacks in guaranteed benefits to the detriment of employees.

Multiemployer plans are of great importance to workers in certain industries with high turnover or which use hiring halls. Without multiemployer plans, many individuals would never work for one employer long enough to receive pension benefits.

It is important to protect the termination insurance system from plan insolvencies. It is questionable, however, whether a system with insufficient protections for either employers or employees will remain viable for long.

This Senator has long argued that there is need for a review of the impact of this legislation on employers, employee benefits, and the pension plans. The Senate bill included the requirement of a GAO study and congressional hearings. The House version of this provision limits the authority of the GAO to obtain records only from plans, not from either employers or unions. It may be very difficult to determine the effect of this legislation on employers, for instance, without adequate information from them.

The House has also stricken from the Senate bill several additional provisions which seemed reasonable and meritorious to a majority of us.

Included among those measures is Senator WALLOP's provision to place surface mining operations under the jurisdiction of OSHA, rather than MSHA. This measure has enjoyed wide support and should not have been summarily rejected by the House.

Similarly, the provision to exempt small businesses from affirmative action guidelines was very persuasively argued by Senator SCHWEIKER and is of substantial merit. Equally important is Senator BOREN's OSHA amendment relating to small business.

I strongly support Senator CHAFEE's amendment to modify the unemployment compensation pension offset provision, I do not believe the House version of the modification is sound. Furthermore, I do not believe the Senate should be forced to accept the more costly unemployment compensation package passed by the House. I hope we will agree to reinstate the original provision we passed last month.

This Senator understands the importance of this bill to the employers, employees, and plan trustees who have waited and lived with uncertainty about the law that will apply to multiemployer plans. Nevertheless, this Senator is disappointed that the House did not consider these nongermane provisions as carefully as they may merit.

One feature of the Senate bill I am pleased has been retained in the bill before us is that withdrawal liability does not apply retroactively. This includes events such as, for example, a closing of a facility which occurred prior to April 29, 1980, the effective date of the withdrawal liability provisions.

A technical change was made in the language of section 4217 but this was not intended to alter the purpose of that section, as stated in the joint explanation of 1076.

The withdrawal provisions will not apply retroactively in any way to closing of a facility which occurred prior to April 29, 1980. Specifically, neither contributions nor base units attributable to a facility closed before April 29, 1980, will be taken into account for any purpose relating to the imposition or computation of withdrawal liability.

I believe there is no question about this interpretation.

In conclusion, the Senator from Kansas believes this bill could have been drafted with more sensitivity to the needs and interests of those who will have to live with the rules it contains. However, the bill is a significant improvement over present law. It is fairer

to all employers—those who remain in multiemployer plans as well as those who withdraw. It may also improve the stability of the termination insurance system and help assure that benefit guarantees will be available to retirees if needed.

The Senator from Kansas, therefore, urges that the Senate, in the spirit of compromise, accept this bill.

I congratulate those that have been able to build this compromise bill this evening: Senators WILLIAMS, CHAFEE, BRADLEY, MATSUNAGA, JAVITS, and others who have shown great interest in the measure.

Mr. JEPSEN. Mr. President, we are here once again to try and pass the multiemployer pension plan amendments to ERISA. Yesterday, the House passed this bill by a unanimous vote. A month ago, the Senate passed it with only one dissenting vote. I cast that vote.

As I pointed out in a subsequent statement, I voted against S. 1076 at that time because I felt that it was unreasonable to expect the Senate to have to vote on such complicated and far-reaching legislation without the benefit of a committee report or sufficient time for study or debate.

Another concern I had is that this legislation would do for multiemployer pension plans what ERISA has already done for single-employer pension plans; namely, put them out of business. The fact is that ERISA has been a disaster for many small companies. Its strict requirements and excessive paperwork caused many companies to simply drop their pension plans rather than submit to ERISA. In the 5 years since implementation of ERISA, 59,365 pension plans were terminated, compared to only 17,895 during the previous 5 years. And the ratio between new pension plans and terminated plans has fallen from 13.5 to 1 before ERISA to 4 to 1 since ERISA. I fear that the same thing will happen to those Americans covered by multiemployer pension plans as well, as the result of S. 1076. As Robert Merry wrote in the Wall Street Journal on July 31, the multiemployer pension bill "could contribute to the eventual demise of multiemployer pension plans, which in turn would threaten the financial well-being of millions of current and future retirees."

I am the first to admit that a lot of pension plans are in serious trouble today, particularly multiemployer plans. General Motors, for example, has an unfunded vested benefit liability of $6.1 billion. Ford's liability is $1.9 billion, Chrysler's is $1.2 billion, and United States Steel's is $1 billion. Lockheed's unfunded pension liability amounts to 117 percent of its net worth. LTV's amounts to 87 percent of its net worth; Chrysler's to 66 percent of its net worth; National Steel's to 47 percent of its net worth; and Bethlehem Steel's unfunded pension liability comes to 46 percent of its total net worth. And the situation is getting worse, as pension benefits promised in earlier years begin to make themselves felt.

At this point I am including a table listing the pension liabilities of 100 major companies. For these companies, unfunded vested benefit liabilities rose almost 14 percent last year alone, compared to 5.5 percent the year before:

Company	Fiscal year end	Unfunded prior service costs		Unfunded vested benefits		Fiscal 1979 or 1980 pension and retirement expense	
		Millions	As percent 3-yr average pretax profit	Millions	As percent net worth	Millions	As percent labor expense
Allied Chemical	12	$406.0	113.6	$62.0	4.3	$62.0	7.2
Aluminum Co. of America	12	880.0	168.3	492.0	19.5	146.0	10.7
Amerada Hess	12	5.3	.7	0	0	7.3	NR
American Brands	12	250.1	56.1	183.1	10.3	59.5	NR
American Can	12	433.5	200.0	191.6	18.1	89.3	7.3
American Home Products	12	0	0	NR	NR	8.1	1.1
American Stores	1	18.3	34.2	5.4	1.6	26.8	NR
American Telephone & Telegraph	11	NR	NR	229.1	.5	2,641.7	14.9
Ashland Oil	9	2.6	4.4	0	0	27.4	NR
Atlantic Richfield	12	NR	NR	118.0	1.9	143.0	12.7
Beatrice Foods	2	98.3	19.0	0	0	51.9	NR
Bendix	9	515.0	211.8	244.4	23.6	93.3	7.9
Bethlehem Steel	12	1,057.0	−1,536.3	1,191.0	46.3	312.7	10.6
Boeing	12	NR	NR	100.0	5.4	128.7	5.7
CPC International	12	205.0	77.1	120.4	12.2	36.5	5.3
Caterpillar Tractor	12	1,100.0	133.7	445.0	14.5	151.8	6.7
Charter	12	10.0	5.4	7.5	1.2	NR	NR
Chrysler	12	1,864.0	−478.0	1,200.0	65.8	260.6	7.0
Cities Service	12	100.0	23.9	IS	0	37.7	7.8
City Investing	12	138.0	65.9	35.0	3.8	26.9	NR
Coca-Cola	12	IS	0	NR	NR	33.0	NR
Colgate-Palmolive	12	99.3	31.7	NR	NR	41.0	NR
Conoco	12	IS	0	NR	NR	104.3	9.0
Consolidated Foods	6	18.1	8.4	IS	0	24.0	NR
Continental Group	12	446.0	223.9	0	0	96.8	7.0
Deere	10	365.0	77.5	278.0	14.1	137.0	7.8
Dow Chemical	12	NR	NR	12.3	.3	115.3	7.2
Du Pont	12	1,525.4	119.0	787.8	14.8	425.7	11.7
Eastman Kodak	12	524.0	34.3	0	0	228.7	7.2
Engelhard Minerals & Chemicals	12	48.4	15.4	IS	0	20.4	NR
Esmark	10	178.0	142.2	166.0	19.1	36.9	NR
Exxon	12	NR	NR	0	0	546.0	13.1
Federal National Morgage Association	12	NR	NR	0	0	2.7	NR
Firestone Tire & Rubber	10	544.2	747.9	217.2	14.8	79.1	4.5
Ford Motor	12	5,100.0	209.9	1,920.0	18.4	811.2	6.1
Foremost-McKesson	3	NR	NR	0	0	13.2	NR
General Dynamics	12	NR	NR	80.0	9.3	76.1	5.2
General Electric	12	1,082.0	50.5	706.0	9.6	412.9	5.0
General Foods	3	214.0	51.3	IS	0	59.2	6.5
General Motors	12	11,900.0	199.0	6,100.0	31.8	1,571.5	7.0
General Telephone & Electronics	12	471.3	38.7	0	0	278.0	NR
Georgia-Pacific	12	73.0	14.4	30.0	1.5	35.0	NR
Getty Oil	12	NR	NR	0	0	36.2	10.2
Goodyear Tire & Rubber	12	845.2	239.9	454.0	21.0	144.6	6.5
Grace (W.R.)	12	NR	NR	0	0	31.1	2.5
Great Atlantic & Pacific Tea	2	6.0	32.1	0	0	42.5	NR
Gulf & Western Industries	7	347.0	125.8	160.0	10.7	64.5	NR
Gulf Oil	12	519.0	21.1	63.0	.7	161.0	10.9
Halliburton	12	NR	NR	IS	0	71.8	2.8
IC Industries	12	107.8	71.9	68.1	5.2	24.3	NR
International Business Machines	12	788.0	14.4	190.0	1.3	971.0	NR
International Paper	12	318.0	77.9	158.0	5.9	72.0	5.8
International Telephone & Telegraph	12	613.0	73.7	116.0	2.1	266.0	5.2
Jewel	1	0	0	NR	NR	22.1	NR
Johnson & Johnson	12	NR	NR	0	0	49.4	3.7
K Mart	1	NR	NR	0	0	43.6	2.2
Kraft	12	5.8	1.7	2.9	.2	40.7	4.7
Kroger	12	126.8	93.5	44.5	7.3	71.9	NR
LTV	12	980.0	1,897.7	624.0	86.9	182.0	NR
Litton Industries	7	IS	0	51.0	5.5	41.4	NR

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Company	Fiscal year end	Unfunded prior service costs: Millions	Unfunded prior service costs: As percent 3-yr average pretax profit	Unfunded vested benefits: Millions	Unfunded vested benefits: As percent net worth	Fiscal 1979 or 1980 pension and retirement expense: Millions	Fiscal 1979 or 1980 pension and retirement expense: As percent labor expense
Lockheed	12	949.0	1,038.7	391.0	117.4	160.0	10.7
Loews	12	72.2	21.9	25.5	2.5	20.0	NR
Marathon Oil	12	NR	NR	0	0	29.7	11.1
McDonnell Douglas	12	NR	NR	116.0	8.4	176.2	10.8
Minnesota Mining & Manufacturing	12	500.0	50.2	0	0	82.5	4.3
Mobil	12	NR	NR	283.1	2.7	285.3	7.7
Monsanto	12	493.6	93.7	34.9	1.3	92.3	6.0
National Steel	12	NR	NR	660.0	46.7	96.5	7.6
Occidental Petroleum	12	93.0	7.5	NR	NR	27.9	3.5
Pacific Gas & Electric	12	NR	NR	0	0	77.7	10.8
Penny (J. C.)	1	172.0	35.7	0	0	55.0	NR
PepsiCo	12	NR	NR	3.0	.2	36.7	NR
Philip Morris	12	53.6	7.1	NR	NR	54.0	NR
Raytheon	12	111.2	41.7	96.7	10.9	39.1	3.4
Republic Steel	12	914.0	792.0	526.0	35.3	101.4	7.6
Reynolds (R. J.) Industries	12	309.0	34.8	43.0	1.3	75.0	NR
Rockwell International	9	540.0	136.2	330.0	21.4	236.0	8.6
Safeway Stores	12	0	0	0	0	109.9	NR
Sears, Roebuck	1	906.0	77.9	136.0	1.8	186.3	NA
Shell Oil	12	126.0	8.4	NR	NR	155.0	13.2
Signal	12	255.0	94.9	NR	NR	73.2	NR
Southland	12	NR	NR	0	0	NR	NR
Sperry	3	NR	NR	0	0	94.5	NR
Standard Oil (Indiana)	12	NR	NR	67.4	0	109.6	8.5
Standard Oil Co. of California	12	314.0	14.2	0	0	79.9	7.1
Sun	12	19.1	2.1	6.2	.2	76.5	NR
TRW	12	470.0	143.9	148.0	12.8	96.8	4.7
Tenneco	12	230.0	27.5	55.0	1.5	96.0	NR
Textron	12	256.0	88.9	24.0	2.1	58.0	4.5
Trans World	12	321.7	460.5	287.0	44.1	108.7	6.8
UAL	12	725.0	666.4	190.0	16.4	182.0	NR
Union Carbide	12	896.0	130.5	133.0	3.3	172.6	8.0
Union Oil Co. of California	12	NR	NR	0	0	38.5	7.9
United Brands	6	114.0	NR	23.8	4.4	16.7	NR
U.S. Steel	12	1,300.0	−1,446.6	1,000.0	20.4	389.5	7.7
United Technologies	12	272.4	53.2	41.6	1.7	160.3	5.5
Westinghouse Electric	12	924.0	204.6	904.0	39.9	182.0	NR
Weyerhaeuser	12	207.0	35.2	NR	NR	58.6	5.2
Woolworth (F. W.)	1	NR	NR	42.3	3.3	25.9	NR
Xerox	12	NR	NR	0	0	229.5	NR
Composite		45,892.0	92.3	22,420.7	7.1	16,113.7	7.9

Source: Standard & Poor's Compustat Services.

The problem is that as union wage demands became greater and greater, companies sought to defer as many benefits as possible in order to stay in operation. So in lieu of wage increases they promised pension benefits. The workers were happy with this arrangement because they were able to acquire nontaxable benefits. Companies benefited also because it allowed them to accumulate capital.

The abuses which gave rise to ERISA, by and large, occurred in the multiemployer pension plan area, where unions had control of the pension plan rather than the employers. We are all familiar, I am sure, with the abuses involving the Teamsters' Central States Pension Fund. The unions have not really concerned themselves much with the actuarial soundness of their plans. Each year they negotiated with employers for specific contributions to the pension plan that were not necessarily sufficient to pay for vested benefits being promised by the unions.

Now we have gotten ourselves into a fix whereby it would be to the advantage of many multiemployer plans to terminate, with the Federal Government picking up the tab. Here, today, at the last possible minute, we are trying to do something about this by changing the law. Since August 1, 1980, the Government has been liable for billions of dollars of pension liabilities accrued by these multiemployer plans. Luckily, none have terminated yet.

In my view, this exercise only points out the futility of our efforts to straighten out this mess. The law is excessively complicated and really does not solve the problem of actuarially unsound pension plans. It merely makes the U.S. taxpayer liable. If the economy weakens any further, as the result of the Carter administration's disastrous policies, we may find ourselves facing an avalanche of liabilities for pensions that will run into the multibillion-dollar range. What we are doing today is a band-aid, stop-gap solution to one aspect of the problem.

This is another example of Congress abdicating its legislative responsibility to deal with a serious problem in a thorough and realistic manner. I agree that all employees that have entered into pension agreements with employers should be guaranteed their pension as long as the employer is in existence. I do not agree that it is the Government's responsibility to financially protect and bail out the employers and labor unions who knowingly mismanaged and misrepresented pensions and pension funds. There has always been professional, financially secure and actuarily sound pension plans available from the life insurance industry—and I hasten to add—they have always paid their claims as promised. Appropriate action by this Congress would have required all pension funds that are suspect of mismanagement or misrepresented to be corrected immediately by appropriate private sector action. For some reason—investigations by the Labor Department and other governmental bureaus have mysteriously faded into the bureaucratic woodwork. I assure you that we will attempt to correct that in the next session of Congress.

Mr. DURENBERGER. Mr. President, portions of section 4203 of the bill under consideration today provide for a special withdrawal liability procedure from a multiemployer pension plan in the trucking industry to fit the unique conditions that exist in that industry. For example, the contribution base of a plan in the trucking industry almost always will be protected because motor freight volume is relatively constant. When one employer leaves a plan, affected employers will almost always be reemployed by another employer who takes his place. In addition, many of these pension plans provide portability through reciprocal agreements.

Because of these unique circumstances in the motor carrier industry, a withdrawal occurs under this section if an employer ceases all covered operations under the plan and either PBGC determines that the plan has suffered substantial damage as a result of such withdrawal, or the employer fails to furnish a bond in the amount of 50 percent of the employer's withdrawal liability. Thereafter, PBGC has 5 years to determine if the employer's withdrawal, together with any other withdrawals, has damaged the plan's contribution base. In this case, the employer will be treated as having withdrawn from the plan and the bond will be paid to the plan. Thus, this amendment provides for a withdrawal liability procedure modified for the conditions that exist in the trucking industry which fully protects the plan's contribution base.

With specific reference to 4203(d)(1)(A), it should be observed that if the majority of the contributions to any pension plan are made by employers engaged in the over the road (long) and short haul trucking industry, the household goods moving industry and the public warehousing industry, this withdrawal liability procedure will apply to all employers who contribute to such a plan.

● Mr. RANDOLPH. Mr. President, I rise again in support of the multiemployer pension reform bill. Although I have reservations regarding two particular germane changes that the House has made to the ERISA bill, I urge my colleagues to support the bill now before us. We cannot risk delaying this bill any longer by attaching highly controversial, nongermane amendments to it—the stakes are too high for retirees, for the Government, and for stable labor-management relations.

I wish to say a special word to all my colleagues who have a particular interest in the health and stability of the coal industry. Great progress has been made in the effort to rebuild a workable labor-management relationship in the coal fields. This bill is carefully designed to further encourage that process while protecting the interests of all retired miners. However, without enactment of this legislation, there are grave concerns that many of the same severe economic pressures that seriously complicated the last coal negotiations will again threaten negotiations which are scheduled to begin in several weeks.

Those unnecessary pressures, which resulted from the liability provisions in ERISA may now be even greater since mandatory coverage went into effect on August 1. This legislation is too important to risk by again attaching controversial nongermane amendments.

I am fearful if we do not act now, our moment may pass. Several pension plans are already teetering on the brink of disaster and could bankrupt the Government's pension insurance system, resulting in extreme pressures to utilize Federal revenues to prop up the system. While there will be another day for those who support several nongermane amendments, there may not be another chance to put together the broad base of support for this bill that now exists among retirees groups, labor, and management.

As I have said, I am not entirely pleased with the House's actions regarding certain changes they have made. I am seriously disturbed by the House provision that will automatically result in another cutback in pension guarantees if the bill's premiums are inadequate to support its guarantees and if such premiums are not affirmatively raised by Congress. Such a severe cutback should not be left to the bureaucracy, nor allowed to go into effect by congressional inaction. The issue of whether to cut guarantees, raise premiums, or do a combination of both should be left to congressional action.

This issue may not materialize. However, depending on PBGC's experience with the bill's premiums, and since one of my major concerns, the UMWA pension plans, contractually guarantees the retiree's benefits, I have reluctantly come to the conclusion that these provisions must not hinder this bill's passage. I will, however, strongly fight any future efforts to further cut back on these guarantees.

In addition to contractual guarantees, all present retirees will retain 100 percent guarantees by the PBGC in most cases. While I would have greatly preferred the final Senate provisions regarding trustee authority to cutback on pension benefits, the 100-percent guarantee provisions help to moderate the concern that I have with the greater flexibility the House bill provides in this regard.

I expect PBGC, however, to promulgate strict regulations to insure that plan trustees will not prematurely or arbitrarily exercise this authority to cut back benefits. It is my further understanding from the House, and Chairman WILLIAMS, that these House changes do not in any way affect the substance of the colloquy that I engaged in with Chairman WILLIAMS during earlier Senate debate on the fiduciary responsibilities of plan trustees.

Therefore, I strongly urge the Senate to accept the House-passed bill.●

Mr. WILLIAMS. Mr. President, Senator JAVITS and I have a number of comments on the version of H.R. 3904 presently before this body.

DEFINITION OF EMPLOYER

Under current law, a group of trades or businesses under common control, whether or not incorporated, is treated as a single employer for purposes of employer liability under title IV. Thus, if a terminating single employer plan is maintained by one or more members of a controlled group, the entire group is the "employer" and is responsible for any employer liability. The leading case in this area is *Pension Benefit Guaranty Corporation* v. *Ouimet Corp.*, 470 F. Supp. 945 (D. Mass. 1979), in which the court correctly held that all members of a controlled group are jointly and severally liable for employer liability imposed under section 4062 of ERISA. The bill does not modify the definition of "employer" in any way, and the Ouimet decision remains good law.

OBLIGATION TO CONTRIBUTE

The bill defines obligation to contribute as an obligation arising—

First, under one or more collective bargaining, or related, agreements, or

Second, as a result of a duty under applicable labor-management relations law.

The committees intend that the term obligation to contribute under a collective bargaining, or related, agreement apply to any situation in which an employer has directly or indirectly agreed to make contributions to a plan. This includes cases in which the employer signs a collective bargaining agreement or a related agreement such as a participation agreement or memorandum of understanding, and cases in which the employer agreed to be bound by an association agreement.

PARTIAL WITHDRAWAL

It is desirable to clarify the meaning of one of the general partial withdrawal liability tests—that described by proposed ERISA section 4205(b)(2)(A)(i)—about which there may be some confusion. This provision describes a partial withdrawal in a case where the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute to the plan but continues to perform the same type work under the collective bargaining agreement for which contributions were previously required or where the employer transfers the same type work to another geographical location. Examples of these two situations are where an employer bargains out of making contributions to a plan that the employer was previously required to make under a collective bargaining agreement that is otherwise in effect with respect to other requirements, or, where work that was undertaken at one geographic location for which contributions to a plan were made is transfered by the employer to another of his plants at a different geographic location where contributions to a plan for the work performed are not required.

AVOIDANCE OR EVASION OF LIABILITY

We intend that the term "employer" be construed in a manner consistent with the bill and its purposes. We intend that employers not be able to evade or avoid withdrawal liability through changes in identity, form or control, or through transactions which are less than bona fide and arms length. Hence, for example, a building and construction industry employer—or for that matter any employer contributing to a plan—will not be able to evade withdrawal liability by "going out of business" and resuming business under a different identity.

WITHDRAWAL LIABILITY FUNDS

The bill provides for the establishment of withdrawal liability payment funds. It is useful to clarify the material contained in the Joint Explanatory Statement on S. 1076 printed in the RECORD on July 24, 1980 at page S10120. Under the bill, the board of trustees of a fund is composed of equal representation of employer trustees and employee trustees of plans that contribute to the fund. In addition, the committees intend that PBGC rules with respect to withdrawal liability funds will not require competitive liability between the PBGC administered fund and one of the private reimbursement funds. In other words, PBGC's rules may have other objectives as stated in the bill, but PBGC may not use its rulemaking power to assure that the PBGC-administered fund secures competitive equality with private reimbursement funds.

If the fund so provides, it may pay an employer's attributable liability as long as the employer's total liability is paid to the plan in a single payment and the fund is subrogated to the rights of the plan against the employer regarding attributable liability. The bill provides definitions of attributable and unattributable liability for these purposes. It is noted that if a fund does not provide for the payment of employer's attributable liability, the distinction between such liabilities and unattributable liabilities as described in the bill (which may be further defined by the corporation), need

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not apply. Therefore, in the case of a fund that does not insure attributable liabilities, it is intended that the definition of unattributable liability in the bill will not be applicable but the fund may establish its own definition of unattributable liability.

CONSTRUCTION INDUSTRY "SUPERTRUST"

New ERISA section 4223(h) as added by the earlier Senate version of H.R. 3904 would permit the establishment by building and construction industry employers of a tax exempt trust to protect such employers from the risk of having to pay higher contributions under a multiemployer plan necessitated because of a decline in the plan's contribution base or for other reasons. This provision recognized the continuing risk to employers remaining as plan contributors of being required to make higher contributions to plans to fund benefits for plan participants whenever other employers cease to be contributing employers.

Subsection (h) was dropped from the bill yesterday by the House for reasons unrelated to the continuing recognition by Congress that building and construction industry employers are faced with a risk of potential importance under various circumstances arising out of their participation in multiemployer pension plans. It is recognized that such employers may wish to insure themselves against such risks by the purchase of insurance from an insurance carrier or other person, and nothing in the Multiemployer Pension Plan Amendments Act of 1980 should be construed to prohibit the purchase of insurance by such employers, from any other person.

CERTAIN PRE-1980 WITHDRAWALS

The bill excludes certain reductions in an employer's contribution base that occurred prior to April 29, 1980, from the computation of that employer's withdrawal liability (section 4217(a)). The bill gives PBGC the authority to prescribe regulations to reallocate that portion of an employer's withdrawal liability to other employers. It is the intent of the Congress that plans must reallocate that liability in a manner not inconsistent with the PBGC regulations.

BENEFIT REDUCTIONS IN REORGANIZATION

The bill provides that a plan in reorganization may only reduce accrued benefits under certain conditions. One of the conditions is that the plan may not subsequently reduce the rate of employer contributions; however, it is not intended to proscribe subsequent reductions in the rate of employer contributions in the event previously reduced benefits are restored. Thus, if a plan has reduced benefits, and the benefit is later restored, the bill would not prohibit a decrease in the rate of employer contributions.

DISCRETION OF PLAN TRUSTEES

We do not intend to restrict plan sponsors' prudent exercise of judgment in administering the withdrawal liability provisions generally. It is expected that plan trustees will need to make practical collection decisions which are consistent with their fiduciary duties and characteristic of any responsible creditor concerned with maximizing the total ultimate recovery at supportable costs. Thus, for example, where it is prudent and in the participants' interest, plan trustees may decide to settle a withdrawal liability dispute for less than the full amount claimed, to cooperate with an employer's other creditors in a contractual or court-supervised renegotiation of the employer's indebtedness, or even to forego the assessment or further collection of liability where it is apparent from the circumstances that the costs involved would exceed the amount likely to be recovered.

PLANS NOT AMENDED TO COMPLY WITH ERISA

It has been brought to our attention that a significant number of pension plans—perhaps as many as 25,000—have never been amended to conform with the requirements of title I of ERISA. This is particularly disturbing because title I contains a number of requirements relating to minimum vesting and participation standards, mandatory joint and survivor annuities, and so forth, that provide crucial protection to plan participants.

Under current law, the PBGC guarantees pension benefits that are nonforfeitable under the terms of a terminated plan. As a result, if a plan administrator or plan sponsor has not amended a plan to comply with ERISA, the PBGC is unable to guarantee the benefits to which a participant is entitled under the standards established by title I of ERISA. In effect, innocent participants are paying the price when their employers disregard the law.

We believe that when a nonamended plan terminates, the PBGC should guarantee those benefits to which the participant would have been entitled if the plan had conformed to the essential requirements of title I, subtitle B, part 2. Accordingly, the bill amends current law to delete the requirement that the PBGC may only guarantee benefits that are nonforfeitable under the terms of a plan. Under the bill, the PBGC has authority to guarantee benefits for which the participants have satisfied the appropriate requirements of title I of ERISA. We expect the PBGC to issue regulations to implement these provisions of the bill in a practicable manner. For example, the regulations may provide that a nonamended plan will be treated as if it had been amended to satisfy the provisions of section 203(a)(2)(A) of ERISA. The PBGC regulations will treat a plan as having been amended on the date that section 211 of ERISA provided that the relevant provisions of title I first applied to the plan. The regulations will also apply to those plans which were not amended on a timely basis, but which were later amended in contemplation of termination. Thus, the appropriate plan amendments will be deemed to have been effective on the date provided in section 211. This provision applies to plans that terminate after the date of enactment of the bill.

DELINQUENT CONTRIBUTIONS

Recourse available under current law for collecting delinquent contributions is insufficient and unnecessarily cumbersome and costly. Some simple collection actions brought by plan trustees have been converted into lengthy, costly, and complex litigation concerning claims and defenses unrelated to the employer's promise and the plan's entitlement to the contributions. This should not be the case. Federal pension law must permit trustees of plans to recover delinquent contributions efficaciously, and without regard to issues which might arise under labor-management relations law (other than 29 U.S.C. 186). Sound national pension policy demands that employers who enter into agreements providing for pension contributions not be permitted to repudiate their pension promises.

In this regard we endorse judicial decisions such as *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459 (1960); *Lewis* v. *Mill Ridge Coals, Inc.*, 298 F.2d 552 (6th Cir. 1962); and *Huge* v. *Long Hauling Company, Inc.*, 590 F.2d 457 (3rd Cir. 1978). Cases such as *Western Washington Laborers-Employers Health and Security Trust Fund* v. *McDowell*, F. Supp., 103 LRRM 2219 (W.D. Wash., 1979) and *Washington Area Carpenters Welfare Fund, et al.* v. *Overhead Door Company*, C.A. No. 79-0097, USDC D.C., April 22, 1980, are considered to have been incorrectly decided and this legislation is intended to clarify the law in this respect by providing a direct, unambiguous ERISA cause of action to a plan against a delinquent employer.

These same principles apply to a plan's claim for employer withdrawal liability assessed in accordance with this legislation.

The public policy of this legislation to foster the preservation of the private multiemployer plan system necessitates that provision be made to discourage delinquencies and simplify delinquency collection. The bill imposes a Federal statutory duty to contribute on employers that are already obligated to make contributions to multiemployer plans. A plan sponsor that prevails in any action to collect delinquent contributions will be entitled to recover the delinquent contributions, court costs, attorney's fees, interest on the contributions owed and liquidated damages. The intent of this section is to promote the prompt payment of contributions and assist plans in recovering the costs incurred in connection with delinquencies.

It is intended that the specific provisions of this section concerning interest and liquidated damages are not limitations on the amounts otherwise set forth in collective bargaining agreements or plan documents; they constitute a minimum, not a maximum. For example, we understand that there are multiemployer plans which currently provide, in the event of employer contribution delinquency, for the payment of interest and liquidated damages which are in excess of the provisions of this section. Such practice will not be affected by the provisions of this section which directs a court to award unpaid contributions, interest, liquidated damages, reasonable attorney's fees, and costs as well where the plan does not sufficiently address such items.

Under the provisions of the bill, in addition to any other consequences that flow from a default in paying withdrawal liability, a failure to make withdrawal liability payments within the time prescribed is to be treated in the same manner as a delinquent contribution to the plan.

The PRESIDING OFFICER. Does any other Senator desire recognition?

Mr. MATSUNAGA addressed the Chair.

The PRESIDING OFFICER. The Chair is about to put the question. Does the Senator from Hawaii——

Mr. MATSUNAGA. I have an amendment to offer.

Mr. WILLIAMS. Is there an amendment pending with no further discussion?

Mr. MATSUNAGA. This is not an amendment to the amendment, if an amendment is pending.

Mr. WILLIAMS. We are ready for the question on the amendment.

The PRESIDING OFFICER. The Chair will withhold the amendment of the Senator from Hawaii.

The Chair would say to the Senator from Hawaii that no amendment is in order at this point.

The Chair inquires: Does the Senator from Hawaii wish to have this amendment considered as an amendment to the matter that is now pending?

Mr. MATSUNAGA. Yes.

A point of inquiry: If the amendment now pending is adopted, will it then be in order for me to offer my amendment?

The PRESIDING OFFICER. The Chair advises that what is pending is a motion to concur with an amendment, so that if that action were to be taken, that would foreclose the Senator from Hawaii from offering his amendment.

Mr. MATSUNAGA. It is for that reason that I offer my amendment as an amendment to the pending amendment. This would be an additional amendment which has been agreed to by the floor manager.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. MATSUNAGA) proposes an unprinted amendment numbered 1539 to unprinted amendment numbered 1538.

The amendment is as follows:

(Purpose: To restore the waiver of preemption in the case of the Hawaiian Health Care Plan)

At the end of UP-1538 add the following:

SEC. 417. WAIVER OF PREEMPTION IN CASE OF HAWAIIAN HEALTH CARE PLAN

(a) Section 514(b) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Law (Haw. Rev. Stat. 393-1 through 51), as in effect on January 1, 1979.

"(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a) any State tax law relating to employee benefit plans.

"(C) Notwithstanding subparagraph (A), parts (1), (4), and (5) of this subtitle shall supersede the State law described in such subparagraph, but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of Hawaii to assist them in effectuating the policies of provisions of such laws which are superseded by such parts.".

(b) The Secretary of Labor shall conduct a study on the feasibility of extending the exemption from section 514 (a) of the Employee Retirement Income Security Act of 1974 to include other State laws which establish health care plans and report to the Congress within 2 years after the date of the enactment of this Act.

(c) The amendment made by this section shall take effect on the date of the enactment of this Act.

Mr. MATSUNAGA. Mr. President, when the Senate passed H.R. 3904, the Multi-Employer Pension Amendments of 1980, on July 29, 1980, by a vote of 81 to 1, it approved a provision which would establish an important and long overdue clarification of the intent of Congress on the preemption of the Hawaii Prepaid Health Care Act of 1974 by the Employee Retirement Income Security Act of 1974 (ERISA).

Unfortunately, the substitute amendment to H.R. 3904 that was adopted by the House of Representatives on August 25, 1980, arbitrarily deleted this vitally important provision to the State of Hawaii.

The Hawaii State Legislature began consideration of the Prepaid Health Care Act legislation in 1971, about the time Congress began its review of private pension programs. The Hawaii State Legislature passed the Prepaid Health Care Act legislation in April 1974, prior to the passage of the ERISA legislation by Congress.

Since the Prepaid Health Care Act concerned only the mandated provision of basic comprehensive health insurance protection for employees, and since the Federal Government had not yet taken any formal action on national health insurance legislation, the Hawaii State legislature did not envision a conflict with any existing or immediately anticipated Federal laws when it passed the Prepaid Health Care Act legislation in April 1974. Indeed, the State legislature clearly and rightfully felt that it was pioneering a new and uniquely innovative area of State law when it passed the Prepaid Health Care Act legislation.

In November 1977, however, a Federal district court in San Francisco ruled that because the Hawaii Prepaid Health Care Act and State health insurance laws, generally, were not specifically exempted by Congress, the Hawaii act was preempted by ERISA's broad preemption authority over State laws. This ruling was made in spite of the court's own finding that the legislative history of ERISA contains no mention of preempting State health insurance laws.

The court found that Congress specifically exempted from preemption State laws concerning unemployment compensation, worker's compensation and disability insurance, but concluded that the preemption of the Hawaii Prepaid Health Care Act was accomplished by the inadvertence, if not by the intention of Congress. The court stated that the resolution of this ambiguity in ERISA preemption authority lies with the Congress and not the courts.

The court's decision was rendered in a suit filed by Standard Oil Co. of California against the Hawaii Prepaid Health Care Act. It is the only formal complaint ever received by the State from any employer doing business in Hawaii over the health insurance requirements of the act. The suit was based solely on this ambiguous congressional intent of ERISA's preemption authority over Hawaii's State health insurance law.

During the 95th Congress, with the cosponsorship of Senator INOUYE, I introduced legislation which would clarify this intent of Congress with respect to the preemption of the Hawaii Prepaid Health Care Act. Over the past 3 years, the hearing records of both the Committee on Labor and Human Resources and the Committee on Finance have explicitly and conclusively indicated that the preemption of the Hawaii health insurance law was never envisioned or intended by Congress. In fact, both committees have acknowledged the need to correct this serious ambiguity in ERISA preemption authority through the approval of the Matsunaga amendment to S. 1076, the Senate companion bill to H.R. 3904.

As a result of the passage of the Prepaid Health Care Act, Hawaii has the most comprehensive basic health insurance protection for its residents in the entire country. Because the Hawaii act is based on a community standard of outpatient and prevention-oriented health insurance protection which was established by the private sector over a period of 40 years, the mandated health insurance coverage did not include any inefficient, inappropriate, or uneconomical benefits.

Over the past 4 years, several nationally recognized health economists have made a close and analytical study of Hawaii's health care delivery system and have all concluded that the system is a model of free market competition, in which the consumer is the greatest beneficiary, and that it is a very practical and economical approach to the provision of basic comprehensive health insurance protection for the State's residents.

The passage of this narrow exemption strictly for the Hawaii Prepaid Health Care Act from preemption by ERISA would permit the continuation of this exemplary health care delivery system for all of Hawaii's residents and is therefore vitally important to the State of Hawaii. It is strongly supported by the Committee on Labor and Human Resources, the Committee on Finance, the U.S. Department of Labor, the State of Hawaii, the American Council of Life Insurance, the Health Insurance Association of America, the Hawaii State Federation of Labor AFL-CIO, and the International Longshoremen's and Warehousemen's Union.

Because the passage of the Hawaii Prepaid Health Care Act preceded the passage of ERISA in 1974 and because Congress clearly never intended to preempt this uniquely innovative and successful State law, this august body will no doubt agree with me that it remains the right of the State of Hawaii to retain the Prepaid Health Care Act and all the benefits guaranteed by the law for all of Hawaii's residents.

The amendment which I am offering

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would restore the Senate-approved provision relative to the Hawaii State Prepaid Health Care Act to H.R. 3904.

I thank the distinguished chairman of the committee on Labor and Human Resources, Senator WILLIAMS, for his patience and understanding in this matter. His continued support of a measure vitally important to Hawaii and its people is deeply appreciated.

Mr. President, I urge the adoption of my amendment.

Mr. STEVENS. Mr. President, I wish to make an inquiry.

It is my understanding that when the bill was sent to the House, the amendment that the distinguished Senator from Hawaii is offering was part of the Senate-passed version. The House has deleted that amendment, among others, and sent the bill back to the Senate. We are now adding an amendment to the bill as passed by the House which restores a portion of the matter deleted; and this, in effect, puts the Hawaii amendment back in that category.

Does the Senator from Hawaii agree with that statement?

Mr. MATSUNAGA. Yes; I do agree with that statement. However, I might explain to the Senator from Alaska that the so-called Hawaii amendment was included by error in a list of amendments which were deemed to be nongermane by the House. The Hawaii amendment was in fact a germane amendment. The floor manager in the House indicated that they did make a mistake in listing this amendment as being nongermane. I have spoken to those who might be objecting to this amendment on the House side, and it appears now that they will accept this amendment if added to the House-passed bill.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. STEVENS. I yield to the Senator from Kansas for the purpose of asking a question of the Senator from Hawaii.

Mr. DOLE. Mr. President, I want to confirm what the Senator from Hawaii has said.

We have been in telephone conversation with Representative ERLENBORN of Illinois and Representative ASHBROOK of Ohio. As I understand it, they have conveyed to both Senators from Hawaii, Senator INOUYE and Senator MATSUNAGA, that they now have no opposition and that they will try to work it out on the House side so that this bill can finally become law.

Mr. MATSUNAGA. If the Senator from Alaska will yield, I will respond to the Senator from Kansas. Representative ASHBROOK indicated to me that he has no objection; but that he would discuss the matter with Representative ERLENBORN. In talking with Representative ERLENBORN, he indicated that he had not had a chance to discuss the matter with Representative ASHBROOK.

When I told Representative ERLENBORN that Representative ASHBROOK had indicated to me that he would not object to the Hawaii amendment, Representative ERLENBORN said that he would need to speak to Representative THOMPSON, and if Representative THOMPSON has no objection, he did not see any reason to object. However, he said he could not give me a definite answer until he had conferred with Representative THOMPSON.

Mr. WILLIAMS. Mr. President, will the Senator yield?

Mr. MATSUNAGA. I yield to the Senator from New Jersey.

Mr. WILLIAMS. Representative THOMPSON, who manages this bill in the other body, is fully aware of this amendment. It was offered by the Senators from Hawaii, and it has been in our bill since it has come from the Finance Committee.

In earlier discussions with Representative THOMPSON, he indicated that he viewed the amendment offered by the Senator from Hawaii favorably.

Mr. MATSUNAGA. I thank the Senator from New Jersey for confirming my belief that the House is prepared to accept my amendment.

Mr. STEVENS. Mr. President, may I continue my inquiry to the Chair?

If this amendment is adopted in the form offered now as an amendment to the amendment, will it restore the Hawaii amendment in the form that it passed the Senate originally?

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). The Chair cannot interpret the effect of the amendment.

Mr. STEVENS. I am not seeking to get the Chair's interpretation of the amendment. I just want to make sure that in form it is going back into this bill as it was when it passed the Senate previously.

The Senator from Hawaii stated that the intent is the same. I am just asking a procedural question.

It is not being offered as an amendment to the amendment but, rather, as an amendment in its own right. Will it come out in the bill so that it is an amendment standing on its own?

The PRESIDING OFFICER. The Chair is not advised as to the precise wording of the amendment.

Mr. DOLE. It is the same wording?

Mr. MATSUNAGA. Exactly.

If the Senator from Alaska will yield, I wish to assure him that language of my amendment is exactly the same language of the amendment which was agreed to by the Senate by a vote of 85 to 1 on July 29 of this year.

Mr. STEVENS. I have not been precise in my request to the Chair.

It is my understanding that it will not affect the language which was in the original amendment that was previously agreed to. It will be added at the end of that section. Is that right?

The PRESIDING OFFICER. It amends language at the end of the bill.

The question is on agreeing to the amendment offered by the Senator from Hawaii.

The amendment was agreed to.

Mr. WILLIAMS. Mr. President, this lengthy and complex legislation was developed by the administration and crafted and refined by the Committee on Labor and Human Resources and the Committee on Finance over a period of more than 2 years. It represents the dedicated work of many. Now that we have reached this stage in our consideration of this measure, I want to take just a few moments to acknowledge the contributions of several dedicated staff members.

Certainly, Steve Sacher, who is the general counsel of the Committee on Labor and Human Resources, has been instrumental in the development of this bill, as he has in the development of other pension legislation. Gary Ford of our staff also made a major contribution in negotiating and crafting the ERISA reform legislation that we now have before us. In what can only be described as a model of bipartisan cooperation, they worked closely over a period of many months with Peter Turza of Senator JAVITS' staff, who made a very significant contribution in the development of this bill.

Also, Mr. President, the technical and support assistance of Ms. Mildred Dunmore, Ms. Irene Linton and Ms. Susan Painter of this committee must be acknowledged. They worked behind the scenes, and they worked long hours, and they were unselfish in their devotion to this project.

I must also acknowledge the contributions of the members of the staff of the Committee on Finance. The bill is really the joint product of the staffs of both committees, and the efforts of Jack Curtis, Jeff Gates, and Richard Belas of the staff of the Finance Committee are certainly apparent in the bill. Similarly, the important work of the staff of the Joint Committee on Taxation, in both the Senate and the House, should be acknowledged, especially the efforts of the committee's staff director, Bob Shapiro, and committee staff members Bill Lieber, Richard Stanger, and Sandra Mills.

Staff of the Pension Benefit Guaranty Corporation have provided invaluable assistance to both the Senate and House committees. In particular, Robert Nagle, PBGC's executive director, Henry Rose, the Corporation's General Counsel, Gerald Cole, head of the Office of Policy and Planning, and Mitch Strickler, Vince Cicconi, J. P. Morgan, Terry Deneen and Terry Craig are to be commended for their tireless efforts over a grueling 2 years.

From the Treasury Department, we received expert assistance from Daniel Halperin, Deputy Assistant Secretary for Tax Legislation, Douglas Sorenson of the Office of Tax Legislative Counsel, Ellen A. Hennessy of the Office of the Chief Counsel, IRS, and Kenneth T. Yednock of the Office of the Assistant Commissioner EP/EO, IRS.

Stuart Sirkin, Chief, Division of Policy Planning of the Office of the Administrator, pension and welfare benefit programs, and Gretchen Young, employee benefit plan specialist were the very capable representatives of the Department of Labor and gave generously of their time and talents.

The PRESIDING OFFICER. The question is now on the motion of the Senator from New Jersey as amended by the Senator from Hawaii.

The motion, as amended, was agreed to.

Mr. CHAFEE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHAFEE. I want to make certain that the amendment presented by the Senator from New Jersey dealing with the pension offset and the revision thereto is now standing, that it is now enacted, that it has not been vitiated by the amendment of the Senator from Hawaii. Is that correct?

The PRESIDING OFFICER. It has not been. It has been supplemented.

Mr. CHAFEE. So the language presented by the Senator from New Jersey——

The PRESIDING OFFICER. Has been supplemented by the Senator from Hawaii.

Mr. STEVENS. Mr. President, is that matter subject to reconsideration?

The PRESIDING OFFICER. Yes, it is.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. WILLIAMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who seeks recognition?

Mr. CHAFEE. Mr. President, I understand that now these amendments will be sent back to the House. Is that correct?

The PRESIDING OFFICER. The Senate has concurred in the House amendments with the additional amendments offered by the Senate.

Mr. CHAFEE. By the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey and the Senator from Hawaii.

Mr. CHAFEE. And now it will proceed back to the House?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISABLED VETERANS REHABILITATION ACT OF 1980

Mr. CRANSTON. Mr. President, I call up calendar order No. 796 and ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1188) to improve and modernize the vocational rehabilitation program provided service-disabled veterans under chapter 31 of title 38, United States Code, and for other purposes,

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Veterans' Affairs with an amendment to strike all after the enacting clause and insert the following:

That (a) this Act may be cited as the "Disabled Veterans Rehabilitation Act of 1980".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—REHABILITATION AMENDMENTS

SEC. 101. (a) Chapter 31 is amended to read as follows:

"Chapter 31. TRAINING AND REHABILITATION FOR SERVICE-CONNECTED DISABLED VETERANS

"Sec.
"1500. Purpose.
"1501. Definitions.
"1502. Basic entitlement.
"1503. Periods of eligibility.
"1504. Scope of services and assistance.
"1505. Duration of rehabilitation programs.
"1506. Initial and extended evaluations; determinations regarding serious employment handicap.
"1507. Individualized vocational rehabilitation plan.
"1508. Allowances.
"1509. Entitlement to independent living services and assistance.
"1510. Leaves of absence.
"1511. Regulations to promote satisfactory conduct and cooperation.
"1512. Revolving fund loans.
"1513. Books, supplies, and equipment.
"1514. Vocational rehabilitation for hospitalized members of the Armed Forces and veterans.
"1515. Vocational rehabilitation outside the United States.
"1516. Rehabilitation resources.
"1517. Employment assistance.
"1518. Personnel training, development, and qualifications.
"1519. Rehabilitation research and special projects.
"1520. Pilot program of independent living services and assistance.
"1521. Veterans' Advisory Committee on Rehabilitation.
"1522. Evaluations after individual unemployability adjudications.

"§ 1500. Purpose

"The purposes of this chapter are to provide for all services and assistance necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living, and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

"§ 1501. Definition

"For the purposes of this chapter—

"(1) The term 'independence in daily living' means the ability of a veteran, without the services of others or with a reduced level of the services of others, to live and function within such veteran's family and community.

"(2) The term 'medical condition' means a disability, including an alcohol or drug dependence or abuse disability, or combination of disabilities of a veteran.

"(3) The term 'program of education' has the meaning provided in section 1652(b) of this title.

"(4) The term 'program of independent living services and assistance' includes both (A) the services provided for in this chapter that are needed to enable a veteran to achieve independence in daily living, including, but not limited to, such counseling, diagnostic, medical, social, psychological, and educational services as are determined by the Administrator to be needed for such veteran to achieve maximum independence in daily living, and (B) the assistance authorized by this chapter for such veteran.

"(5) The term 'rehabilitated to the point of employability' means rendered employable in the occupation for which a vocational rehabilitation program has been provided under this chapter.

"(6) The term 'rehabilitation program' means (A) a vocational rehabilitation program, or (B) a program of independent living services and assistance for a veteran for whom a vocational goal has been determined not to be reasonably feasible.

"(7) The term 'serious employment handicap' means a significant impairment of an individual's ability to prepare for, obtain, or retain employment consistent with such individual's abilities, aptitudes, and interests.

"(8) The term 'vocational goal' means a gainful employment status that is consistent with an individual's abilities, aptitudes, and interests.

"(9) The term 'vocational rehabilitation program' includes both—

"(A) the services provided for in this chapter that are needed for the accomplishment of the purposes of this chapter, including, but not limited to, such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Administrator to be needed—

"(i) in the case of a veteran for whom the achievement of a vocational goal has not been determined not to be reasonably feasible, (I) to determine whether a vocational goal is reasonably feasible, (II) to improve such veteran's potential to participate in a program of services designed to achieve a vocational goal, and (III) to enable such veteran to achieve maximum independence in daily living, and

"(ii) in the case of a veteran for whom the acheivement of a vocational goal is determined to be reasonably feasible, to enable such veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment, and

"(B) the assistance authorized by this chapter for a veteran receiving any of the services described in clause (A) of this paragraph.

"§1502. Basic entitlement

"An individual veteran shall be entitled to rehabilitation under the terms and conditions of this chapter if such individual—

"(1) is a veteran who has a service-connected disability which is, or but for the receipt of retirement pay would be, compensable under chapter 11 of this title and which was incurred or aggravated in service on or after September 16, 1940; or

"(2) is, pending discharge or release from active military, naval, or air service, hospitalized in a hospital over which the Secretary of Defense has jurisdiction.

"§ 1503. Periods of eligibility

"(a) Unless a longer period of eligibility is authorized pursuant to subsection (b), (c), or (d) of this section, educational assistance or rehabilitation may not be afforded to a veteran under this chapter after the end of the ten-year period beginning on the date of such veteran's discharge or release.

"(b)(1) If the Administrator determines that a veteran has been prevented from entering or completing a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a medical condition made it infeasible for such veteran to participate in such a program, the ten-year period of eligibility shall not run during the period of time that such veteran was so prevented from participating in such a program.

"(2) If the Administrator determines that a veteran has been prevented from entering or completing a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of its section because (A) such veteran had not met the requirement of a discharge or release under conditions other than dishonorable before (i) a change, correction, or modification of a discharge or dismissal made pursuant to section 1553 of title 10, (vi) a correction of the military records of the service department concerned under section 1552 of title 10, or (iii) other corrective

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action by competent authority, or (B) such veteran's discharge or dismissal was, under section 3103 of this title, a bar to benefits under this title before the Administrator made a determination that such discharge or dismissal is not a bar to such benefits, the ten-year period of eligibility shall run from the date on which such veteran's discharge or dismissal was so changed, corrected, or modified or the Administrator made such determination, as appropriate.

"(3) If the Administrator determines that a veteran has been prevented from entering or completing a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because such veteran had not established the existence of a service-connected disability which is compensable under chapter 11 of this title and such veteran has a serious employment handicap, vocational rehabilitation may be afforded such veteran during the ten-year period beginning on the date on which notification is mailed to such veteran that it has been determined that such disability exists.

"(c) A veteran who is in need of services to overcome a serious employment handicap may be afforded a vocational rehabilitation program after the expiration of the period of eligibility otherwise applicable to such veteran if the Administrator determines that an extension of the applicable period of eligibility is necessary for such veteran based upon such veteran's particular employment handicap and need for such services and if—

"(1) such veteran had not previously been rehabilitated under this chapter;

"(2) such veteran had previously been rehabilitated under this chapter but (A) such need for such services has developed from, or as a result of, a change in such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran previously received vocational rehabilitation under this chapter, or (B) the occupation for which such veteran had been so rehabilitated was not appropriate in view of such veteran's employment handicap and abilities; or

"(3) the Administrator determines, under regulations which the Administrator shall prescribe, that an extension of the period of eligibility of such veteran is necessary to carry out the purposes of this chapter.

"(d) A veteran whose disability or disabilities are so severe that the achievement of a vocational goal by such veteran is determined not to be reasonably feasible may be afforded a program of independent living services and assistance under this chapter after the expiration of the period of eligibility otherwise applicable to such veteran if the Administrator determines that an extension of the period of eligibility of such veteran is necessary for such veteran to achieve maximum independence in daily living.

"§ 1504. Scope of services and assistance

"(a) Services and assistance which the Administrator may provide under this chapter, pursuant to regulations which the Administrator shall prescribe, shall include—

"(1) evaluation, including periodic reevaluations as appropriate with respect to a veteran participating in a rehabilitation program, of the potential for rehabilitation of a veteran, including diagnostic and related services (A) to determine whether such veteran's disability or disabilities cause a serious employment handicap and whether a vocational goal is feasible for such veteran, and (B) to provide a basis for planning a suitable vocational rehabilitation program or a program of services to improve the vocational rehabilitation potential or independent living status of such veteran, as appropriate;

"(2) educational, vocational, psychological, employment, and personal adjustment counseling;

"(3) an allowance and other appropriate assistance, as authorized by section 1508 of this title;

"(4) a work-study allowance as authorized by section 1685 of this title;

"(5) placement services to effect suitable placement in employment, and postplacement services to attempt to assure satisfactory adjustment in employment;

"(6) personal adjustment and work adjustment training;

"(7) vocational and other training services and assistance, including individualized tutorial assistance, tuition, fees, books, supplies, and licensing fees, and equipment and other training materials determined by the Administrator to be necessary to accomplish the purposes of the rehabilitation program in the individual case;

"(8) loans as authorized by section 1512 of this title;

"(9) treatment, care, and services described in chapter 17 of this title;

"(10) prosthetic appliances, eyeglasses, and other corrective and assistive devices;

"(11) services to a veteran's family as necessary for the effective rehabilitation of such veteran;

"(12) for the most severely disabled veterans requiring homebound training or self-employment, or both homebound training and self-employment, such license fees and essential equipment, supplies, and minimum stocks of materials as the Administrator determines to be necessary for such a veteran to begin employment and are within the criteria and cost limitations that the Administrator shall prescribe in regulations for the furnishing of such fees, equipment, supplies, and stocks;

"(13) travel and incidental expenses under the terms and conditions set forth in section 111 of this title, plus, in the case of a veteran who because of such veteran's disability has transportation expenses in addition to those incurred by persons not so disabled, a special transportation allowance to defray such additional expenses during rehabilitation, job seeking, and the initial employment stage;

"(14) special services related to blindness and deafness, such as—

"(A) language training, speech and voice correction, training in ambulation, and one-hand typewriting;

"(B) orientation, adjustment, mobility, reader, interpreter, and related services; and

"(C) telecommunications, sensory, and other technical aids and devices; and

"(15) services necessary to enable a veteran to achieve maximum independence in daily living.

"(b) A program of independent living services and assistance may include the types of services and assistance described in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796).

"(c) A rehabilitation program (including individual courses) to be pursued by a veteran shall be subject to the approval of the Administrator.

"§ 1505. Duration of rehabilitation programs

"(a) The period of extended evaluation under section 1506(b) of this title for a veteran for whom the reasonable feasibility of achieving a vocational goal is undetermined may not exceed twelve months, except that such period may be extended for additional periods of up to six months each if the Administrator determines that, during the extended period concerned, it is reasonably likely that a determination can be made with respect to such veteran as to whether the achievement of a vocational goal is reasonably feasible.

"(b) Except as provided in subsection (c) of this section, the period of a vocational rehabilitation program for a veteran under this chapter following a determination of the reasonable feasibility of achieving a vocational goal may not exceed forty-eight months, except that, in the case of a veteran who is determined to have a serious employment handicap, the counseling and placement and postplacement services described in section 1504(a)(2) and (5) of this title may be provided for an additional period not to exceed eighteen months.

"(c) In the case of a veteran who has been determined to have a serious employment handicap, the Administrator may extend the period of vocational rehabilitation for such veteran to the extent necessary to enable such veteran to achieve a vocational goal if—

"(1) such veteran had previously been rehabilitated to the point of employability under this chapter but (A) such veteran's need for further vocational rehabilitation has developed from, or as a result of, a change in such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran had been so rehabilitated, or (B) the occupation for which such veteran had been so rehabilitated was not appropriate in view of such veteran's employment handicap and abilities; or

"(2) the Administrator determines, under regulations which the Administrator shall prescribe, that such an extension is necessary to carry out the purposes of this chapter.

"(d) Unless the Administrator determines that a longer period is necessary and likely to result in a substantial increase in a veteran's level of independence in daily living, the period of a program of independent living services and assistance for a veteran under this chapter following a determination that such veteran's disability or disabilities are so severe that the achievement of a vocational goal is not reasonably feasible may not exceed twenty-four months.

"§ 1506. Initial and extended evaluations; determinations regarding serious employment handicap

"(a) A veteran with a service-connected disability who applies for benefits under this chapter shall be provided with an initial evaluation consisting of such services described in section 1504(a)(1) of this title as are necessary to determine whether such veteran has a serious employment handicap and to determine, if reasonably feasible without extended evaluation, whether the achievement of a vocational goal is reasonably feasible for such veteran.

"(b) Where the Administrator has determined that a veteran has a serious employment handicap and that the achievement of a vocational goal is reasonably feasible for such veteran, such veteran shall be provided counseling in accordance with an individualized written plan of vocational rehabilitation developed under section 1507(a) of this title.

"(c) Where the Administrator has determined that a veteran has a serious employment handicap but the Administrator is unable to determine, in an initial evaluation pursuant to subsection (a) of this section, whether or not the achievement of a vocational goal is reasonably feasible, such veteran shall be provided with extended evaluation consisting of the services described in section 1504(a)(1) of this title, such services under this chapter as the Administrator determines necessary to improve such veteran's potential for participation in a program of services designed to achieve a vocational goal and enable such veteran to achieve maximum independence in daily living, and assistance as authorized by section 1508 of this title.

"(d) As expeditiously as possible (and, if applicable, not later than the end of the period of extended evaluation for a veteran under subsection (c) of this section, including any extensions under section 1505(a) of this title), the Administrator shall determine whether the achievement of a vocational goal

by such veteran is reasonably feasible. In determining whether the achievement of a vocational goal is reasonably feasible, the Administrator shall resolve any reasonable doubt in favor of determining that such achievement is reasonably feasible.

"(e) In connection with each period of extended evaluation of a veteran and each rehabilitation program for a veteran who is determined to have a serious employment handicap, the Administrator shall assign a Veterans' Administration employee to be responsible for the management and followup of the provision of all services (including employment assistance under section 1517 of this title) and assistance under this chapter to such veteran.

"§ 1507. Individualized vocational rehabilitation plan

"(a) The Administrator shall formulate an individualized written plan of vocational rehabilitation for a veteran described in section 1506(b) of this title. Such plan shall be developed jointly with such veteran, and shall include, but not be limited to (1) a statement of long range rehabilitation goals for such veteran and intermediate rehabilitation objectives related to achieving such goals, (2) a statement of the specific services (which shall include counseling in all cases) and assistance to be provided under this chapter, (3) the projected date for the initiation and the anticipated duration of each such service, (4) objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (5) the name and business address and telephone number of the Veterans' Administration employee assigned responsibility for the management and followup of the provision of such services and assistance to such veteran.

"(b) The Administrator shall review at least annually the plan formulated under subsection (a) of this section for a veteran, and such veteran shall be afforded the opportunity to participate in each review of such plan. Based on such review, the Administrator shall, jointly with such veteran, redevelop such plan as appropriate.

"(c) Prior to agreeing to a plan under subsection (a) of this section or to any redevelopment or denial of redevelopment of a plan under subsection (b) of this section, a veteran shall be informed of such veteran's opportunity for a review as set forth in the following sentences. If a veteran does not agree to such plan, redevelopment, or denial of redevelopment, such veteran may submit to the person described in subsection (a)(5) of this section a written statement, prepared by or for such veteran, containing such veteran's objections to such plan and requesting a review of the plan as proposed. The Administrator shall review such statement and the plan as proposed and render a decision on such review not later than ninety days after the date on which such veteran so submits such statement, unless a longer period, not to exceed one hundred and fifty days, is allowed for rendering such decision in certain cases under regulations of the Administrator.

"§ 1508. Allowances

"(a)(1) Except for a veteran who makes an election under subsection (f) of this section, each veteran shall be paid a subsistence allowance in accordance with this section during a period determined by the Administrator to be a period of such veteran's participation under this chapter in (A) extended evaluation, or (B) a rehabilitation program.

"(2) A veteran who is determined to have a serious employment handicap and who is determined, at the conclusion of such veteran's pursuit of a program of vocational rehabilitation under this chapter, to be rehabilitated to the point of employability shall be paid a subsistence allowance, as prescribed in this section for full-time training for the type of program that the veteran was pursuing, for two months following the conclusion of such pursuit.

"(b) Except as otherwise provided in this section, the subsistence allowance paid to a veteran under this chapter shall be determined in accordance with the following table, and shall be the monthly amount shown in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the appropriate type of program being pursued as specified in column I:

"Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$265	$328	$386	$29
Three-quarter-time	199	246	289	21
Half-time	132	164	194	14
Farm cooperative, apprentice, or other on-job training:				
Full-time	231	279	322	21
Extended evaluation:				
Full-time	265	328	386	29
Independent living training:				
Full-time	265	328	386	29
Three-quarter-time	199	246	289	21
Half-time	132	164	194	14".

"(c)(1) If the vocational rehabilitation program for a veteran includes training on the job by an employer in any month, such employer shall be required to submit to the Administrator a statement in writing showing any wage, compensation, or other income paid by the employer to such veteran for such month, directly or indirectly. Based upon such written statement, the Administrator is authorized to reduce the subsistence allowance of such veteran to an amount considered equitable and just in accordance with criteria which the Administrator shall establish in regulations which the Administrator shall prescribe.

"(2) A veteran pursuing on-job training or work experience as part of a vocational rehabilitation program in a Federal agency under the provisions of section 1516(a)(1) of this title without pay or for nominal pay shall be paid the appropriate subsistence allowance rate provided in subsection (b) of this section for an institutional program.

"(d)(1) The Administrator shall, in accordance with regulations, which the Administrator shall prescribe, not inconsistent with regulations governing the determination of full-time status and part-time status under chapter 34 of this title, define full-time and each part-time status for veterans participating in rehabilitation programs under this chapter.

"(2) A veteran participating in extended evaluation on less than a full-time basis may be paid a proportional subsistence allowance in accordance with regulations which the Administrator shall prescribe.

"(e) In the case of a veteran pursuing a rehabilitation program on a full-time residential basis in a specialized rehabilitation facility, the Administrator may, upon the request of such veteran, (1) pay to such facility the cost of such veteran's room and board in lieu of payment to such veteran of the subsistence allowance (not including any portion payable for any dependents) payable under subsection (b) of this section, and (2) pay to such veteran that portion of the allowance for dependents payable, as determined by such veteran's dependency status, under subsection (b) of this section for a full-time institutional program.

"(f) To the extent that a veteran who is determined to be entitled to rehabilitation under this chapter has remaining eligibility for and entitlement to educational assistance benefits under chapter 34 of this title, such veteran may elect, as part of a vocational rehabilitation program under this chapter but in lieu of the services and assistance described in section 1504(a)(3) (other than an allowance and other assistance under this subsection) and section 1504(a)(7) and (8) of this title, to pursue an approved program of education and receive allowances and other forms of assistance equivalent to those authorized for veterans enrolled under chapter 34 of this title, if the Administrator approves the educational, professional, or vocational objective chosen by such veteran for such program. In the event that such veteran makes such an election, the terms and conditions applicable to the pursuit of a comparable program of education and the payment of allowances and provision of assistance under such chapter shall be applied to the pursuit of the approved program of education under this chapter.

"(g)(1) Notwithstanding any other provision of this title, the subsistence allowance for a veteran who is pursuing a rehabilitation program under this chapter while incarcerated in a Federal, State, county, or local prison or jail, shall be paid as follows:

"(A) If such veteran has no dependents, the Administrator shall withhold such allowance while such veteran is so incarcerated and pay such allowance to such veteran upon such veteran's release from prison or jail or, at the request of such veteran, purchase with such allowance, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(B) If such veteran has one or more dependents, the Administrator shall pay such allowance to such veteran's dependent or dependents (or the legal guardian or guardians thereof) designated by such veteran to receive such allowance, but only to the extent that both the veteran and the designated dependent or dependents (or the legal guardian or guardians thereof) so request. To the extent that such veteran does not request the Administrator to pay to a particular dependent of such veteran an amount payable on account of such dependent or such dependent does not join in such request, the amount involved shall not be paid to or accrued by such veteran. The Administrator shall, while such veteran is so incarcerated, withhold any amount of such allowance, not payable on account of a dependent or dependents, that is accrued by such veteran and shall pay such amount to such veteran upon such veteran's release from prison or jail or, at the request of such veteran, purchase with such amount, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(2) The provisions of paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a rehabilitation program under this chapter while placed and residing in a halfway house or while participating in a work-release program.

"(h)(1) Notwithstanding any other provision of this title, the allowance for a veteran who has made an election under subsection (f) of this section and who is pursuing an institutional program of education under this chapter while incarcerated in a Federal, State, county, or local prison or jail, shall be computed and paid as follows:

"(A) If such veteran is pursuing a program of education on a half-time or more basis and has no dependents, the Adminis-

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trator shall pay such veteran such amount, not in excess of the appropriate rate, as is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans pursuing the same program. The Administrator shall withhold any amount in excess of such cost and pay such amount to such veteran upon such veteran's release from prison or jail or, at the request of such veteran, purchase with such excess amount, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(B) If such veteran is pursuing a program of education on a half-time or more basis and has one or more dependents, the Administrator shall pay such veteran such amount, not in excess of such appropriate rate, as is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans pursuing the same program; and the Administrator shall pay any amount in excess of such cost to such veteran's dependent or dependents (or the legal guardian or guardians thereof) designated by such veteran to receive such excess amount, but only if both the veteran and the designated dependent or dependents (or the legal guardian or guardians thereof) so request. To the extent that such veteran does not request the Administrator to pay to a particular dependent of such veteran an amount payable on account of such dependent or such dependent does not join in such request, the amount involved, if not payable to such veteran under the first sentence of this subparagraph, shall not be paid to or accrued by such veteran. The Administrator shall pay any excess amount accrued by such veteran to such veteran upon such veteran's release from prison or jail or, at the request of such veteran, purchase with such excess amount, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(2) The provisions of paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of education under this chapter while placed and residing in a halfway house or while participating in a work-release program.

"(i) Notwithstanding any other provision of this title, in the case of a veteran pursuing a rehabilitation program while receiving care in a Veterans' Administration hospital, nursing home, or domiciliary facility, or in a facility with which the Administrator, under the provisions of chapter 17 of this title, has contracted for such veteran's care at Veterans' Administration expense, the subsistence or (if such veteran has made an election under subsection (f) of this section) other allowance appropriate for the type of training pursued shall, after such veteran has been receiving such care for thirty days, accrue and be withheld (and converted to securities), paid to dependents, and paid to such veteran upon discharge from such facility under the same terms and conditions set forth in subsection (g) or (h) of this section, as appropriate, except that the Administrator shall, upon the request of such veterans, pay to such veteran all or part of such monthly allowance payments as are determined to be necessary to meet continuing financial obligations of such veteran.

"(j) Payment of a subsistence allowance may be made in advance in accordance with the provisions of section 1780(d) of this title.

"§ 1509. Entitlement to independent living services and assistance

"Where the Administrator has determined under section 1506(d) of this title that the achievement of a vocational goal by a veteran is not reasonably feasible, such veteran shall be entitled, pursuant to the provisions of section 1520 of this title, to a program of independent living services and assistance designed to enable such veteran to achieve maximum independence in daily living.

"§ 1510. Leaves of absence

"The Administrator shall prescribe such regulations as the Administrator determines necessary for granting leaves of absence to veterans pursuing rehabilitation programs under this chapter. During authorized leaves of absence, a veteran shall be considered to be pursuing such program.

"§ 1511. Regulations to promote satisfactory conduct and cooperation

"The Administrator shall prescribe such rules and regulations as the Administrator determines necessary to promote satisfactory conduct and cooperation on the part of veterans who are pursuing rehabilitation programs under this chapter. If a veteran fails to maintain satisfactory conduct or cooperation, the Administrator may, after determining that all reasonable counseling efforts have been made and are not reasonably likely to be effective, discontinue services and assistance unless the Administrator determines that mitigating circumstances exist. In any case in which such services and assistance have been discontinued, the Administrator may reinstitute such services and assistance only if the Administrator determines that—

"(1) the cause of the unsatisfactory conduct or cooperation of such veteran has been removed; and

"(2) the rehabilitation program which such veteran proposes to pursue (whether the same or revised) is suitable to such veteran's abilities, aptitudes, and interests.

"§ 1512. Revolving fund loans

"The revolving fund established pursuant to part VII of Veterans Regulation Numbered 1(a) is continued in effect, and may be used by the Administrator, under regulations prescribed by the Administrator, for making advances, not in excess of twice the amount of the full-time institutional monthly subsistence allowance for a veteran with no dependents, as set forth in section 1508(b) of this title, to veterans pursuing rehabilitation programs under this chapter. Such advances, and advances from such fund made before the effective date of the Disabled Veterans Rehabilitation Act of 1980, shall bear no interest and shall be repaid in such installments, as may be determined by the Administrator, by proper deductions from future payments of compensation, pension, subsistence allowance, educational assistance allowance, or retirement pay.

"§ 1513. Books, supplies, and equipment

"Any books, supplies, or equipment furnished a veteran under this chapter shall be deemed released to such veteran, except that if the Administrator determines that, because of fault on such veteran's part, such veteran has failed to complete the course involved, the Administrator may require such veteran to return any or all of such books, supplies, or equipment not actually expended, or to repay the reasonable value thereof. Such books, supplies, and equipment may be turned in to educational or training institutions for credit under such terms as may be approved by the Administrator, or may be disposed of in such other manner as the Administrator may determine.

"§ 1514. Vocational rehabilitation for hospitalized members of the Armed Forces and veterans

"(a) Services and assistance may be provided under this chapter to an individual who is hospitalized pending discharge from active military, naval, or air service if such individual would be eligible for such services and assistance except for the fact that such individual has not been discharged or released from such service. In such cases, no subsistence allowance shall be paid.

"(b) Services and assistance may be provided under this chapter to a veteran who is receiving care in a Veterans' Administration hospital, nursing home, or domiciliary facility or in any other hospital or medical facility.

"§ 1515. Vocational rehabilitation outside the United States

"Pursuant to regulations which the Administrator shall prescribe, a program of vocational rehabilitation under this chapter may be provided outside the United States if the Administrator determines that such training is (1) necessary in the particular case to provide the preparation needed to render a veteran employable and enable such veteran to obtain and retain suitable employment, and (2) in the best interest of such veteran and the Federal Government.

"§ 1516. Rehabilitation resources

"(a) Notwithstanding any other provision of law, for the purpose of providing services under this chapter, the Administrator may—

"(1) use the facilities of any Federal agency (including the Veterans' Administration) to provide training or work experience as part or all of a veteran's vocational rehabilitation program without pay or for nominal pay when the Administrator determines that such training or work experience is necessary to accomplish such veteran's rehabilitation;

"(2) use the facilities, staff, and other resources of the Veterans' Administration;

"(3) employ such additional personnel and experts as the Administrator considers necessary; and

"(4) use the facilities and services of any Federal agency, agencies maintained by joint Federal and State contributions, private institutions and establishments, and private individuals.

"(b)(1) While pursuing on-job training or work experience under clause (1) of subsection (a) of this section, a veteran shall be considered to be an employee of the United States for the purposes of the benefits of chapter 81 of title 5, but not for the purposes of laws administered by the Office of Personnel Management.

"(2)(A) Use of facilities, staff, and other resources of the Department of Medicine and Surgery under clause (2) of subsection (a) of this section, to provide rehabilitation services under this chapter, including hospital care and medical services described in chapter 17 of this title, shall, as provided for in a veteran's individualized written plan under section 1507 or 1520(a) of this title, be procured through contract with such department; and the amounts of payments for such services shall be determined in accordance with current accounting principles used within such department, subject to review and modification by the Administrator with respect to the reasonableness of proposed charges.

"(B) Except as provided in chaper 17 of this title, hospital care and medical services provided under this chapter shall be furnished in facilities over which the Administrator has direct jurisdiction.

"(3) Use of facilities and services under clause (4) of subsection (a) of this section, shall be procured through contract, agreement, or other cooperative arrangement.

"§ 1517. Employment assistance

"(a) A veteran with a service-connected disability who has participated in a vocational rehabilitation program under this chapter or a similar program under the Rehabilitation Act of 1973 and who is determined to be employable shall be furnished assistance (including any assistance necessary to assure that such veteran receives the benefit of any applicable provisions of law or regulation providing for special consideration or emphasis or preference for such veteran in employment or training) in obtaining employment consistent with such

veteran's abilities, aptitudes, interests, and employment handicap. Such assistance may include (1) direct placement of such veteran in employment, (2) utilization of the services of United States employment and training outreach program specialists under section 2003A of this title, and (3) utilization of the job development and placement services of (A) programs under the Rehabilitation Act of 1973, (B) the State employment service and the Veterans' Employment Service of the Department of Labor, (C) the Office of Personnel Management, and (D) any other public or nonprofit organization having placement services available. To the extent that resources are available, a veteran without a service-connected disability who has participated in such a similar program and who is determined to be employable may be furnished the assistance described in the preceding sentence.

"(b)(1) If a veteran has completed vocational rehabilitation for self-employment in a small business enterprise under this chapter, the Administrator shall cooperate with the Small Business Administration to assist such veteran to secure a loan for the purchase of equipment needed to establish such veteran's own business and to assure that such veteran receives the special consideration provided for in section 8 of the Small Business Act (15 U.S.C. 633(b)).

"(2) The Administrator may, under the terms and conditions set forth in clause (12) of section 1504(a) of this title, furnish a veteran described in such clause who has trained under a State rehabilitation program with the objective of self-employment in a small business enterprise such supplementary equipment and initial stocks and supplies as are determined to be needed by such veteran if such supplementary equipment and initial stocks and supplies, or assistance in acquiring them, are not available through the State program or other sources.

"(c) The Administrator shall prescribe regulations, with the concurrence of the Secretary of Labor in light of the provisions of title V of the Rehabilitation Act of 1973 (29 U.S.C. subch. V) and section 2012 of this title, and regulations prescribed thereunder, to authorize payments to be made to employers for providing on-job training to veterans who have been rehabilitated to the point of employability in individual instances where the Administrator determines that such payment is necessary to obtain the needed on-job training or to begin employment. Such payments shall not exceed the direct expenses incurred by such employers in providing such on-job training or employment opportunity. If any such veteran participates in such on-job training that satisfies the criteria for payment of a training assistance allowance under section 1787 of this title, such veteran shall, to the extent that such veteran has remaining eligibility for and entitlement to such allowance, be paid such allowance.

"§ 1518. Personnel training, development, and qualifications

"(a) The Administrator shall provide a program of ongoing professional training and development for Veterans' Administration counseling and rehabilitation personnel engaged in providing rehabilitation services under this chapter. The objective of such training shall be to assure that rehabilitation services for disabled veterans are provided in accordance with the most advanced knowledge, methods, and techniques available for the rehabilitation of handicapped persons. For this purpose, the Administrator may employ the services of consultants and may make grants to and contract with public or private agencies (including institutions of higher learning) to conduct such training and development.

"(b) The Administrator shall coordinate with the Commissioner of the Rehabilitation Services Administration in the Department of Education and the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor for planning and carrying out personnel training in areas of mutual programmatic concern.

"(c) Notwithstanding any other provision of law, the Administrator shall establish such qualifications for psychologists providing evaluation and rehabilitation services to veterans under this chapter and for employees performing the functions described in section 1506(f) of this title as the Administrator determines are necessary and appropriate to assure the quality of rehabilitation programs under this chapter. In establishing such qualifications, the Administrator shall take into account the provisions of section 4105(a)(10) of this title and the qualifications established for comparable personnel under the Rehabilitation Act of 1973 (29 U.S.C. ch. 16).

"§ 1519. Rehabilitation research and special projects

"(a) The Administrator shall carry out an ongoing program of activities for the purpose of advancing the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans. For this purpose, the Administrator shall conduct and provide support for the development or conduct, or both the development and conduct, of—

"(1) studies and research concerning the psychological, educational, employment, social, vocational, industrial, and economic aspects of the rehabilitation of disabled veterans, including new methods of rehabilitation; and

"(2) projects which are designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.

"(b) For the purpose specified in subsection (a) of this section, the Administrator is authorized to make grants to or contract with public or nonprofit agencies, including institutions of higher learning.

"(c) The Administrator shall cooperate with the Commissioner of the Rehabilitation Services Administration and the Director of the Institute of Handicapped Research in the Department of Education, the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor, and the Secretary of Health and Human Services regarding rehabilitation studies, research, and special projects of mutual programmatic concern.

"§ 1520. Pilot program of independent living services and assistance.

"(a) During fiscal years 1982 through 1985, the Administrator is authorized to contract with public or nonprofit agencies (including contracting for services under section 1516(b)(2) of this title) with a demonstrated capacity to conduct programs of independent living services for severely handicapped persons to provide, under regulations which the Administrator shall prescribe, programs of independent living services and assistance under this chapter in various geographical regions, to veterans as to whom it is determined that the achievement of vocational goals is not reasonably feasible, who are selected pursuant to criteria prescribed in such regulations, and who have remaining entitlement and periods of eligibility for rehabilitation under this chapter. The Administrator shall, to maximum extent feasible, include in such program substantial numbers of such veterans receiving long-term care in Veterans' Administration hospitals and nursing homes and in nursing homes with which the Administrator contracts for the provision of care to veterans. A program of independent living services and assistance for a veteran shall consist of such services described in section 1504 (a) and (b) of this title as the Administrator determines necessary to enable such veteran to achieve maximum independence in daily living. Such veteran shall have the same rights with respect to an individualized written plan of services and assistance as are afforded veterans participating in vocational rehabilitation under section 1507 of this title. Any contract for services that are initiated with respect to any veteran prior to the end of fiscal year 1985 may be continued in effect after the end of fiscal year 1985 for the purposes of providing services and assistance to such veteran in accordance with the provisions of this chapter. Programs of independent living services and assistance shall be initiated for no more than five hundred veterans in each of the fiscal years 1982 through 1985, and the first priority in the provision of such programs shall be afforded to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of a service-connected disability.

"(b) Not later than September 30, 1984, the Administrator shall submit to the Congress a report on the programs of independent living services and assistance provided for in subsection (a) of this section. Such report shall include—

"(1) the results of a study which the Administrator shall conduct of the accomplishments and cost-effectiveness of such programs, including the extent to which (A) such programs have met needs for comprehensive independent living services that would not otherwise have been met, (B) severely disabled veterans have achieved and maintained greater independence in daily living as a result of participation in the programs, and (C) costs of care in hospital, and nursing home, and domiciliary facilities have been and may be avoided as the result of such services; and

"(2) the Administrator's recommendations for any legislative changes with respect to the provision of independent living services and assistance to veterans for whom the achievement of a vocational goal is not feasible.

"§ 1521. Veterans' Advisory Committee on Rehabilitation

"(a) The Administrator shall appoint an advisory committee to be known as the Veterans' Advisory Committee on Rehabilitation (hereinafter in this section referred to as the 'Committee'). The members of the Committee shall be appointed by the Administrator from the general public and shall serve for terms to be determined by the Administrator not to exceed three years. Service-connected disabled veterans shall constitute not less than one-half of the membership of the Committee, and the Committee shall also include individuals who have distinguished themselves in both the public and private sectors in the fields of rehabilitation medicine, vocational guidance, vocational rehabilitation, and employment and training programs. The Administrator may designate one of the members of the Committee as the chairperson of the Committee. The Committee also shall include representatives of the Department of Medicine and Surgery and the Department of Veterans' Benefits, of the Commissioner of the Rehabilitation Services Administration and of the Director of the National Institute for Handicapped Research in the Department of Education, of the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor, and of the Secretary of Health and Human Services.

"(b) The Administrator shall advise and consult with the Committee on a regular basis with respect to the administration of veterans' rehabilitation programs under this title.

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"(c) The Committee shall submit to the Administrator and the Congress an annual report on the rehabilitation programs and activities of the Veterans' Administration, and shall submit such other reports or recommendations to the Administrator and the Congress as the Committee determines appropriate. The annual report shall include an assessment of the rehabilitation needs of veterans and a review of the programs and activities of the Veterans' Administration designed to meet such needs.

"§ 1522. Evaluations after individual unemployability adjudications

"Following the adjudication of a claim under chapter 11 of this title of any veteran for total disability on the basis of such veteran's individual unemployability resulting from service-connected disability, the Administrator shall provide for a comprehensive diagnostic evaluation by Veterans' Administration employees responsible for such evaluations under this chapter when, in the opinion of the Administrator, there exists a potential for the vocational rehabilitation and employment of such veterans.".

(b) The items relating to chapter 31 in the table of chapters at the beginning of title 38, United States Code, and at the beginning of part III of such title, are amended to read as follows:

"31. Training and Rehabilitation for Service-Connected Disabled Veterans 1500".

TITLE II—EMPLOYMENT AND EDUCATION AMENDMENTS

SEC. 201. Section 220 is amended by—

(1) amending the catchline by inserting "and promotion" after "Coordination";

(2) inserting after "title" a comma and "and shall actively promote the effective implementation, enforcement, and application of all provisions of law and regulations providing for special consideration, emphasis, or preference relating to employment, training, and other related opportunities for veterans, with particular emphasis on the needs of veterans with service-connected disabilities and other eligible veterans taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title"; and

(3) amending the table of sections at the beginning of chapter 3 by amending the item relating to section 220 by inserting "and promotion" after "Coordination".

SEC. 202. Section 244 is amended by inserting after "Administration" in clause (1) a comma and "and, in cooperation with the Secretary, actively seek to promote the development and establishment of employment, training, and other opportunities for veterans, with particular emphasis on the needs of veterans with service-connected disabilities and other eligible veterans, taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title".

SEC. 203. Section 1652 is amended by—

(1) inserting after "chapter" the first time it appears "and chapter 36 of this title";

(2) striking out in subsection (e) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The";

(3) striking out in subsection (f) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The"; and

(4) striking out in subsection (g) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The".

SEC. 204. Section 1701(a) is amended by—

(1) inserting after "chapter" the first time it appears "and chapter 36 of this title";

(2) striking out in paragraph (9) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The";

(3) striking out in paragraph (10) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The"; and

(4) striking out in paragraph (11) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The".

SEC. 205. Section 1772 is amended by adding after subsection (c) the following new subsection:

"(d) The Administrator shall be responsible for the approval of all programs of training on the job other than those described in subsection (c) of this section (including apprenticeship programs), and shall exercise this responsibility directly or through agreements with non-Veterans' Administration sources, including those described in section 1771(a) of this title. Pursuant to regulations jointly prescribed by the Administrator and the Secretary of Labor, the Administrator shall actively promote the development of programs of training on the job (including programs of apprenticeship) for the purposes of section 1777 and 1787 of this title and shall utilize the services of veterans' employment and training outreach program specialists under section 2003A of this title to promote the development of and, as appropriate, approve such programs.".

SEC. 206. Section 1777 is amended by—

(1) amending subsection (a) by—

(A) striking out "Any State approving agency may approve a" and inserting in lieu thereof "A";

(B) inserting "may be approved" after "apprenticeship)";

(C) striking out "it finds that"; and

(D) striking out "subsections (b) and (c)" and inserting in lieu thereof "subsection (b)";

(2) amending subsection (b) to read as follows:

"(b) The Administrator, after consultation with the Secretary of Labor, shall prescribe regulations specifying criteria for the approval of programs of training on the job (including registered and nonregistered apprenticeship training meeting the standards of apprenticeship puolished by the Secretary pursuant to section 50a of title 29) in order to carry out the provisions of subsection (a) of this section and to assure the appropriateness of the training provided in meeting the purposes of chapters 34 and 35 of this title. Such criteria for a program of training on the job (other than a program of apprenticeship) shall include a certification that—

"(1) the training content and procedures of the course are adequate to qualify the eligible veteran or person for appointment to the job for which such veteran or person is to be trained;

"(2) the wages to be paid the eligible veteran or person (A) upon entrance into training are not less than wages paid nonveterans in the same training position and are at least 50 per centum of the wages paid for the job for which the veteran or person is to be trained, and (B) will be increased in regular periodic increments until, not later than the last full month of the training period, they will be at least 85 per centum of the wages paid for the job for which such veteran or person is being trained;

"(3) there is reasonable certainty that the job for which the eligible veteran or person is to be trained will be available to such veteran or person at the end of the training period; and

"(4) the job customarily requires full-time training for a period of not less than three months and the length of the training period is not longer than that customarily required by training establishments in the community."; and

(3) striking out subsection (c) in its entirety.

SEC. 207. Section 1787(a) is amended to read as follows:

"(a) An eligible veteran or an eligible person shall be paid a training assistance allowance as prescribed by subsection (b) of this section while pursuing a full-time program of training on the job (including a program of apprenticeship) approved under section 1777 of this title, subject to the conditions and limitations set forth in chapters 34 and 35 with respect to educational assistance.".

SEC. 208. Section 2003 is amended by inserting after "veterans' employment representative" the first time it appears "(and shall assign full-time clerical support to each such representative)".

SEC. 209. (a) Chapter 41 is amended by inserting between sections 2003 and 2004 the following new section:

"§ 2003A. Veterans' Employment and Training Outreach Program

"(a)(1) The Secretary of Labor shall make available each State, directly or by grant or contract, such funds as may be necessary to support a program of employment and training outreach designed to meet the employment needs of veterans, especially disabled veterans of the Vietnam era. Funds provided to a State shall be sufficient to support the assignment of one veterans' employment and training outreach program specialist for each 5,300 Vietnam-era and disabled veterans residing in such State. Such specialist shall be a veteran, and shall be a disabled Vietnam-era veteran or disabled veteran unless the Secretary finds that a disabled Vietnam-era or disabled veteran is not available, and shall be compensated at a rate not less than the rate prescribed for an entry level professional in the State concerned. Such additional funds as may be necessary to support the reasonable expenses of such specialists for training, travel, supplies, and fringe benefits shall also be available by the Secretary to the State.

"(2) Specialists assigned pursuant to paragraph (1) of this subsection shall be in addition to and shall not supplant employees assigned to local employment service offices pursuant to section 2004 of this title.

"(b) Pursuant to regulations prescribed by the Secretary, veterans' employment and training outreach program specialists shall be assigned only those duties directly related to meeting the employment needs of eligible veterans, with priority for services as follows: to disabled Vietnam-era veterans who are participating in or have completed a program of vocational rehabilitation under chapter 31 of this title; to other disabled veterans; and to other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title. Maximum emphasis shall be placed on assisting economically or educationally disadvantaged veterans. Not more than three-quarters of the veterans' employment and training outreach program specialists in each State shall be stationed at local employment service offices in such State. Specialists not so stationed shall be stationed at centers established by the Veterans' Administration to provide a program of readjustment counseling pursuant to section 612A of this title, veterans assistance offices established by the Veterans' Administration pursuant to section 242 of this title, and such other sites as may be determined appropriate in accordance with regulations jointly prescribed by the Secretary and the Administrator.

"(c) Each veterans' employment and training outreach program specialist shall carry out the following functions for the purpose of providing services to eligible veterans in accordance with the priorities set forth in subsection (b) of this section:

"(1) Develop job and job training opportunities for such veterans through contacts with employers, especially small- and medium-sized private sector employers.

"(2) Pursuant to regulations jointly prescribed by the Secretary and the Administrator, promote, develop, and, as appropriate, approve apprenticeship and other on-job training positions pursuant to section 1787 of this title.

"(3) Carry out outreach activities to locate such veterans through contacts with local veterans organizations, the Veterans' Administration, the State employment service agency and local employment service offices, and community-based organizations.

"(4) Provide appropriate assistance to community-based groups and organizations and prime sponsors under the Comprehensive Employment and Training Act in providing services to such veterans.

"(5) Provide appropriate assistance to local employment service offices employees with responsibility for veterans in carrying out their responsibilities pursuant to this chapter.

"(6) Consult and coordinate with other appropriate representatives of Federal, State, and local programs for the purpose of developing maximum linkages to promote employment opportunities for and provide maximum employment assistance to such veterans.

"(7) Carry out such other duties as will promote the development of entry-level and career job opportunities for such veterans.

"(d) Individuals serving as staff in the Disabled Veterans Outreach Program conducted under title III of the Comprehensive Employment and Training Act on the date of enactment of this section shall be appointed as veterans' employment and training outreach program specialists in the State in which such individual is so serving, unless the Secretary for good cause shown determines that such individual is not qualified for such appointment.

"(e) The Secretary shall administer the program provided for by this section through the Deputy Assistant Secretary for Veterans' Employment.".

(b) The table of sections at the beginning of chapter 41 is amended by inserting after the item relating to section 2003 the following:

"2003A. Veterans' Employment and Training Outreach Program.".

SEC. 210. Chapter 34 is amended by—

(1) striking out in the last sentence of section 1677(b) "$288" and inserting in lieu thereof "$317";

(2) amending the table contained in paragraph (1) of section 1682(a) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional:				
Full-time	$342	$407	$464	$29
Three-quarter-time	256	305	349	21
Half-time	172	204	232	14
Cooperative	276	323	367	21";

(3) striking out in section 1682(b) "$311" and inserting in lieu thereof "$342";

(4) amending the table contained in paragraph (2) of section 1682(c) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$276	$323	$367	$21
Three-quarter-time	207	243	276	17
Half-time	139	162	184	11";

(5) striking out in section 1692(b) "$69" and "$828" and inserting in lieu thereof "$76" and "$911", respectively; and

(6) striking out in section 1696(b) "$311" and inserting in lieu thereof "$342".

SEC. 211. Chapter 35 is amended by—

(1) striking out in section 1732(b) "$251" and inserting in lieu thereof "$276"; and

(2) striking out in section 1742(a) "$311", "$98", "$98", and "$10.40" and inserting in lieu thereof "$342", "$108", "$108", and "$11.40", respectively.

SEC. 212. Chapter 36 is amended by—

(1) striking out in section 1786(a)(2) "$311" and inserting in lieu thereof "$342";

(2) amending the table contained in paragraph (1) of section 1787(b) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Periods of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months	$249	$279	$305	$13
Second 6 months	186	217	243	13
Third 6 months	124	155	180	13
Fourth and any succeeding 6-month periods	52	92	119	13";

and

(3) striking out in paragraph (3) of section 1798(b) "$311" and inserting in lieu thereof "$342".

TITLE III—TECHNICAL PROVISIONS; EFFECTIVE DATE

SEC. 301. Section 612(f)(2) is amended by inserting "any veteran for whom medical services are provided pursuant to an individualized written plan of rehabilitation developed under chapter 31 of this title" after "more".

SEC. 302. Section 1781 is amended by inserting "or subsistence allowance granted under chapter 31" after "36".

SEC. 303. Section 1795 is amended by—

(1) amending clause (4) to read as follows:

"(4) chapters 32, 34, 35, and 36 of this title, and the former chapter 33";

(2) striking out the comma immediately following "thereof)" and inserting in lieu thereof a period; and

(3) striking out "but this section shall not be deemed to limit the period for which assistance may be received under chapter 31 alone." and inserting in lieu thereof a period and the following new sentence: "No person may receive assistance under chapter 31 of this title in combination with assistance under any of the provisions of law cited in clauses (1), (2), (3), and (4) of this section for a period in excess of forty-eight months (or the part-time equivalent thereof) unless the Administrator determines that additional months of benefits provided for by such chapter are required to accomplish the rehabilitation purposes set forth in such chapter.".

SEC. 304. Section 1631(a)(1) is amended by adding at the end thereof the following new sentence: "The 36-month maximum shall be subject to the provisions of section 1795 of this title limiting the aggregate period for which any person may receive assistance under two or more programs of education administered by the Veterans' Administration.".

SEC. 305. Section 1682 is amended by adding at the end the following new subsection:

"(h) Notwithstanding any other provision of this title in, the case of an eligible veteran pursuing a program of education while receiving care in a Veterans' Administration hospital, nursing home, or domiciliary facility or in a facility with which the Administrator, under the provisions of chapter 17 of this title, has contracted for such veteran's care at Veterans' Administration expense, the educational assistance allowance appropriate for the type of training pursued shall, after such veteran has been receiving such care for thirty days, accrue and be withheld (and converted to securities), paid to dependents, and paid to such veteran upon discharge from such facility, as appropriate, under the same terms and conditions set forth in subsection (g) of this section, except that the Administrator shall, upon the request of such veteran, pay to such veteran all or part of such monthly allowance payments as are determined to be necessary to meet continuing financial obligations of such veteran.".

SEC. 306. Section 1624(a) is amended to read as follows:

"(a)(1) If a participant dies, the amount of such participant's unused contributions to the fund shall be paid to the living person or persons first listed below:

"(A) The beneficiary or beneficiaries designated by such participant under such participant's Servicemen's Group Life Insurance policy.

"(B) The surviving spouse of the participant.

"(C) The surviving child or children of the participant, in equal shares.

"(D) The surviving parents of the participant, in equal shares.

"(2) If there is no such person living, such amount shall be paid to the participant's estate.".

SEC. 307. The authority to make loans in the increased amounts authorized under sections 1512 and 1798(b)(3) of title 38, United States Code, as amended by sections 101(a) and 211(3) of this Act, respectively, shall be effective only to such extent or in such amounts as are provided in appropriation Acts. The preceding sentence shall be effective only if, on the day a bill containing amendments substantively identical to the amendments made by sections 101(a) and 211(3) of this Act to increase the amounts of loans authorized by sections 1512 and 1798(b)(3) of such title is passed by the House of Representatives or the Senate, there is in effect in such body a rule which provides that it shall not be in order in such body to consider a bill containing such amendments unless such bill provides that the authority to make such loans in such increased amounts shall be effective only to such extent or in such amounts as are contained in appropriation Acts.

SEC. 308. (a) Except as provided in subsection (b) of this section the provisions of this Act shall become effective on October 1, 1980.

(b) With respect to veterans who are participating in a program of vocational rehabilitation under chapter 31 of title 38, United States Code, on September 30, 1980—

(1) individualized written plans of vocational rehabilitation shall be formulated un-

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der section 1507 of such title (as amended by section 101(a) of this Act) for such veterans to the extent that and at such times as the Administrator determines that the formulation of such plans is feasible and on the basis of such priorities for the formulation of such plans as the Administrator shall prescribe; and

(2) extensions may be granted a veteran under section 1503(c) and 1505(c) of such title (as amended by section 101(a) of this Act) without regard to the requirement for a determination of a serious employment handicap.

The PRESIDING OFFICER. The Senator from California may proceed.

Mr. CRANSTON. Mr. President, I rise in support of S. 1188, the proposed Disabled Veterans Rehabilitation Act of 1980, as reported from the Committee on Veterans' Affairs. This legislation includes provisions to improve and modernize Veterans' Administration rehabilitation programs for service-connected disabled veterans by comprehensively restructuring and recodifying chapter 31, title 38, United States Code, and provisions to enhance training and employment of opportunities for veterans.

INTRODUCTION

Mr. President, on May 21, 1978, as chairman of the Committee on Veterans' Affairs, I introduced S. 1188 at the request of the administration. On February 19, 1980, I submitted amendment No. 1661 to S. 1188.

On February 28, 1980, the committee held a hearing, which I chaired, on the bill and the amendment. Those testifying included Guy H. McMichael III, General Counsel of the Veterans' Administration, Robert Humphreys, then Commissioner, Rehabilitation Services Administration, Department of Health, Education, and Welfare, Dennis R. Wyant, Deputy Assistant Secretary for Veterans' Employment, Department of Labor, Edward A. Densmore, Deputy Director, Human Resources Division, General Accounting Office, Edward V. Roberts, director, State Department of Rehabilitation, State of California, experts with backgrounds in various aspects of rehabilitation, and representatives of the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, the Blinded Veterans Association, the Paralyzed Veterans of America, and of other concerned organizations.

At that hearing, Mr. President, the committee received extensive, uncontradicted testimony, that the 37-year-old statutory framework in chapter 31 of title 38 is out of date and badly in need of a thorough overhaul. During the decades since the basic legislative foundation for the VA's vocational rehabilitation was laid, there have been many major advances in rehabilitation concepts and great changes in the role of handicapped individuals in our society. A most significant development in that regard was the congressional enactment of the Rehabilitation Act of 1973 revising and refocusing the Federal-State vocational rehabilitation program and promoting the availability of comprehensive services and educational, training, and employment opportunities for seriously handicapped persons. As a principal author of that landmark legislation in 1973, I have been most concerned that the concepts and methods—now both developed and tested by experience—under the Rehabilitation Act are made fully available to service-connected disabled veterans under the VA chapter 31 program.

Witnesses at our hearing generally emphasized the need for a legislative structure that would provide a basis for and foster the provision of a comprehensive range of services through an administrative process assuring that various types of services needed by the individual service-connected disabled veteran are provided in a coordinated, effective manner. Thus, the testimony indicated a need for a rehabilitation program capable of meeting the many physical, psychological, and emotional needs that an individual may have following a disabling injury or illness, as well as providing the training and assistance necessary to equip the individual for an occupation or profession that is suited to his or her abilities, aptitudes, and interests.

Mr. President, after carefully reviewing the testimony received by the committee and the written comments and other documents, the committee met in open session on April 2, 1980, and voted to report favorably S. 1188 with an amendment in the nature of a substitute. Titles I and III of the bill as reported are derived, with modifications, from amendment No. 1661. Title II consists of employment and education provisions derived from oversight hearings held in 1979 and 1980 and information and recommendations received by the committee as part of its continuing oversight responsibilities, and from S. 2308, introduced by the Senator from South Carolina (Mr. THURMOND), on February 2, 1980.

HIGHLIGHTS OF S. 1188 AS REPORTED

Mr. President, S. 1188 as reported, which I will refer to as the committee bill, contains three titles—title I, "Rehabilitation Amendments;" title II, "Employment and Education Amendments;" and title III, "Technical Provisions; Effective Date." I shall highlight certain major provisions of titles I and II of the committee bill.

TITLE I—REHABILITATION AMENDMENTS

Mr. President, the rehabilitation amendments contained in title I of the committee bill incorporate the recommendations of those who testified at the February 28 hearing, both with respect to the broad statutory framework for VA rehabilitation programs for service-connected disabled veterans and to specific details as to services which may be necessary to prepare a service-connected veteran for an occupation and to function with the maximum possible independence in his or her family and in the community.

Among the major provisions of title I of the committee bill are those which would expand the scope of services authorized under chapter 31 in certain respects. The new services would include, very importantly, pretraining services to help improve the ability of severely disabled veterans to participate in vocational training and independent living services for seriously disabled chapter 31 participants in need of this kind of assistance to achieve a maximum level of independent, self-sustaining life in their families and communities and to achieve the capacity for vocational rehabilitation.

The committee bill would also create a 4-year pilot program of independent living services—limited to 500 new participants each year—for those who are determined to be too severely disabled to pursue a vocational goal. In addition, the committee bill would provide the opportunity for extended, in-depth evaluation of rehabilitation potential in the relatively rare cases in which it is impossible to determine at the time of the initial evaluation whether it is reasonably feasible for the veteran to pursue a vocational goal. During the period of extended evaluation, the veteran could be provided independent living services and services to improve his or her potential for pursuing training toward a vocational goal.

Title I of the committee bill would also expand the purpose and effective operation of the chapter 31 program beyond achieving employability of the veteran to helping the veteran find and maintain employment in a suitable job, and would place emphasis on the provision of employment assistance, including extensive postplacement services. The types of employment assistance to be furnished veterans under chapter 31 as revised by this title would include a broad range of services, such as direct VA assistance in job placement and VA use of the various outreach and job development services provided by other agencies.

In addition, the Administrator would be required to provide any assistance needed to assure that the veteran receives the benefit of any applicable special consideration, preference, or emphasis in employment or training for which the veteran is eligible under any provision of law or regulation. Also, certain very severely disabled veterans would be made eligible, within criteria and cost limits that the Administrator would prescribe in regulations, for such items as license fees and essential equipment, supplies, and minimum stocks as the Administrator determines to be necessary for the veteran to begin employment or start his or her own small business.

The committee bill would also authorize payments to employers, under regulations which the Administrator would prescribe with the concurrence of the Secretary of Labor, to defray the employers' direct expenses in providing on-job training and employment opportunities to veterans rehabilitated under chapter 31 where such payments are necessary for the veteran to obtain needed training or to begin employment.

In sum, as these examples show, title I of the committee bill seeks to make certain that, following completion of a vocational rehabilitation program, a veteran with a serious employment handicap is assured of all reasonable assistance that

he or she may need in making a successful entry into the workforce and adjusting to his or her employment situation.

I would like to stress at this point that the provisions of part A of title II of the committee bill that were designed to enhance employment and related opportunities for veterans, are likewise designed to be of general benefit to chapter 31 participants in their efforts to seek suitable employment and, in certain respects, would provide for particular emphasis on helping meet the employment needs of chapter 31 participants.

Title I of the committee bill would also provide for a 10-percent cost-of-living increase in the existing chapter 31 subsistence allowance rates and establish new rates, at levels commensurate with the existing rates as so increased, for the new categories of chapter 31 participation that the committee bill would create—extended evaluation and programs of independent living services and assistance. In addition, provisions in the committee bill are designed to eliminate the financial incentive under current law for service-connected disabled veterans attending low-tuition schools to receive the higher GI bill allowances available to them under chapter 34 and, thus, to forego participation in a chapter 31 program, even though they could benefit substantially from the counseling and other services available only under chapter 31.

According to the GAO's report on the current VA vocational rehabilitation program from 1973 to 1977, 92 percent of veterans with a 100-percent disability who would be eligible for services under chapter 31, trained under chapter 34 instead. To help assure that disabled veterans receive the counseling and other services they may need to be successfully rehabilitated, the committee bill would permit chapter 31 participants to elect—to the extent that they have chapter 34 eligibility and entitlement—to receive under chapter 31, chapter-34-equivalent allowances instead of the subsistence allowance, tuition, and fees, and certain other assistance specified in chapter 31.

Finally, Mr. President, I would also like to note that title I of the committee bill would provide for more efficient use of the time and efforts of chapter 31 counseling psychologists by focusing their services directly on veterans who are in need of them. Thus, the committee bill would require that individualized written plans of vocational rehabilitation be prepared only for veterans who have serious employment handicaps and would mandate counseling only for those veterans. In all other cases, counseling would—in order to avoid unnecessary and perfunctory counseling sessions—be available upon the veteran's request.

TITLE II—EMPLOYMENT AND EDUCATION AMENDMENTS

PART A. VETERANS' EMPLOYMENT PROVISIONS

Mr. President, title II of the committee bill would make a series of amendments to title 38 that are designed to enhance employment, training, and other employment-related opportunities for veterans, particularly those who have service-connected disabilities, those who are participating in or have completed chapter 31 vocational rehabilitation programs, and those to whom the employment emphases in chapter 42 apply, which includes Vietnam-era veterans as well as service-connected disabled veterans.

First, the provisions of the committee bill would require the Administrator of Veterans' Affairs to play an increased, active role in advocating the effective implementation of existing laws and regulations relating to employment, training, and other employment-related opportunities for veterans and, in cooperation with the Secretary of Labor, in developing and establishing such opportunities. These provisions are intended—in light of the fact that the VA is the one Federal agency with overall priorities and responsibilities pertaining to the assistance of veterans—to provide the Administrator with explicit authority and responsibility to serve as a central focus for coordinating and promoting Federal efforts to meet veterans' employment needs.

Second, the committee bill would also increase the accountability of the Administrator with respect to the VA's program of training on the job under the GI bill and streamline and enhance the program so as to make it more attractive to both employers and eligible trainees. These modifications are also designed to encourage the development of increased linkages between this program and other programs that provide incentives to employers to hire certain veterans.

Third, the committee bill would establish a new veterans' employment and training outreach program—VETOP—in the Department of Labor. This new program is modeled on the current, highly successful disabled veterans outreach program—DVOP—now conducted by the Department of Labor under the Comprehensive Employment and Training Act. "VETOP" specialists—like "DVOP" staff—would have a variety of responsibilities and duties designed to promote employment and training opportunities for veterans, especialy chapter 31 trainees and those who have service-connected disabilities—both within local employment service offices and at locations such as the new veterans' readjustment counseling centers.

PART B. GI BILL COST-OF-LIVING INCREASE

Mr. President, title II of the committee bill would also provide for a 10-percent cost-of-living increase in GI bill benefits.

The purchasing power of the GI bill dollar has declined since 1970 as a result of the continued rise in the cost of living as measured by the Consumer Price Index—CPI—and an increase is long overdue. Since 1970, the Congress has increased benefits almost 78 percent. However, the increase in the CPI from 1970 through July 1980 has been close to 119 percent. Since the last increase in benefits, made by Public Law 95-202, effective October 1, 1977, the cost of living has increased by more than 30 percent. This rate of inflation has created hardships for many veterans attempting to pursue education under the GI bill.

On January 24, Mr. President, in connection with the consideration of the proposed "GI Bill Amendments Act of 1980," the Senate approved a 15-percent cost-of-living increase, effective September 1, 1980, in the rates of GI bill educational assistance allowances. The cost of the 15-percent rate increase was estimated by the Congressional Budget Office—CBO—to be $376 million for fiscal year 1981.

However, in connection with the congressional budget for fiscal year 1981, that increase has been reduced in the committee bill to a 10-percent increase effective October 1, 1980. Moreover, despite repeated efforts of myself and other members of our committee to secure adequate levels in the first concurrent resolution on the budget for fiscal year 1981—House Concurrent Resolution 307—for this increase, together with other high-priority legislation regarding veterans' programs, the first budget resolution does not make adequate provision for this increase.

Consequently, in S. 2885, the proposed "Reconciliation Act of 1980," which the Senate passed on June 26 pursuant to section 3 of the first budget resolution, the Senate passed a provision—section 801—requiring that the Senate-passed GI bill rate increase be reduced to 10 percent and that its effective date be postponed to January 1, 1981. Consistent with the Senate action, I will include in the committee amendment that I intend to offer to the committee bill, a provision to postpone until January 1, 1981, the effective date of the 10-percent GI bill rate increase.

COST ESTIMATE

Mr. President, according to estimates received from CBO, the cost resulting from the enactment of the committee bill during the first 5 years following enactment would be $291.0 million in fiscal year 1981; $372.9 million in fiscal year 1982; $326.9 million in fiscal year 1983; $256.7 million in fiscal year 1984; and $211.7 million in fiscal year 1985. The costs for fiscal year 1981 would be reduced to $167 million as a result of making the GI bill increases effective on January 1, 1981.

SUMMARY OF COMMITTEE BILL PROVISIONS

Mr. President, in addition to the major provisions outlined above, the committee bill would make many other substantive changes in title 38 to improve and modernize rehabilitation programs for service-connected disabled veterans and to enhance employment, training, and educational programs for veterans, as well as making several amendments of a technical nature. I would like now to summarize the provisions of each of the three titles of the committee bill.

Title I of the committee bill, "Rehabilitation Amendments," would comprehensively restructure and recodify chapter 31 of title 38, relating to vocational rehabilitation for service-connected disabled veterans. Included in title I of the committee bill are provisions that would:

First, provide that the purposes of revised chapter 31 are to provide for all services and assistance necessary to enable service-connected disabled veterans to achieve maximum independence in

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daily living and, to the maximum extent possible, to become employable and obtain and maintain suitable employment.

Second, extend the basic eligibility period for participation in a program of rehabilitation from 9 to 10 years, with authorization for the Administrator to extend this period if a disability—including a drug or alcohol dependence or abuse disability—made the veteran's participation infeasible, if the veteran had not met the requirement of a discharge or release under conditions other than dishonorable but the nature or character of the discharge or release was changed—or a statutory bar to benefits was removed—by appropriate authority, or if the veteran had not established the existence of a service-connected disability; and provide a full 10 years of eligiblity from the date on which the veteran satisfies the nature-of-dicharge requirements or is determined to have a service-connected disability.

Third, provide for an extension of the period of eligibility for a veteran with a serious employment handicap if the veteran satifies the nature-of-discharge litated under chapter 31 to the point of employability, if the veteran's service-connected disability has changed so that the veteran is no longer able to perform the functions of the occupation for which the veteran had been rehabilitated under chapter 31 to the point of employability, if that occupation has proven inappropriate, or if the Administrator otherwise determines that an extension is necessary to carry out the purposes of chapter 31; and would provide in the case of a veteran for whom it has been determined that the achievement of a vocational goal is not reasonably feasible, for an extension if necessary for the veteran to achieve maximum independence in daily living.

Fourth, provide for a broad, expanded range of services and assistance for veterans participating in chapter 31 programs, which would generally enable to VA to provide whatever services and assistance are determined to be necessary to help a service-connected disabled veteran achieve the maximum level of rehabilitation, including pre-training services, various forms of employment assistance, and independent living services and assistance.

Fifth, provide for an initial evaluation process to determine whether a service-connected disabled veteran applying for benefits under chapter 31 has a serious employment handicap and to determine, if reasonably feasible without extended evaluation, whether the achievement of a vocational goal is reasonably feasible for the veteran.

Sixth, provide for a period of extended evaluation of up to 12 months—during which services necessary to improve the veteran's vocational potential and ability to function independently may be provided—in the case of a veteran who has been determined to have a serious employment handicap but for whom a determination could not be made during initial evaluation as to whether the achievement of a vocational goal is reasonably feasible; provide for additional periods of extended evaluation of up to 6 months if the Administrator determines that, during the extended period, it is reasonably likely that a determination can be made as to whether a vocational goal is reasonably feasible for the veteran; and require the Administrator to determine, as expeditiously as possible during initial or extended evaluation, the reasonable feasibility of the achievement of a vocational goal and to resolve any reasonable doubt in favor of determining that the achievement of a vocational goal is reasonably feasible.

Seventh, generally provide each eligible veteran with 48 months of entitlement to vocational rehabilitation and provide that a veteran who has been determined to have a serious employment handicap may receive 18 additional months of counseling, placement, and post-placement services; and provide eligible veterans whose disabilities are so severe that the achievement of a vocational goal is not reasonably feasible with 24 months of entitlement—under a pilot independent living services program—to independent living services and assistance, which may be extended if the Administrator determines that a longer period is necessary and likely to result in a substantial increase in the veteran's level of independence in daily living.

Eighth, require the Administrator to formulate jointly with a veteran who has been determined to have a serious employment handicap and for whom it has been determined that the achievement of a vocational goal is reasonably feasible, an individualized written plan of vocational rehabilitation; and provide for a special, expedited "appeal process" if the veteran does not agree to the plan.

Ninth, authorize a subsistence allowance to be paid to a veteran during any period, as determined by the Administrator, that the veteran is participating in a rehabilitation program—including a program of either vocational rehabilitation, including a period of evaluation, or of independent living services and assistance; and authorize a 2-month post-training subsistence allowance for a veteran who has a serious employment handicap and who has been determined to be rehabilitated to the point of employability.

Tenth, increase by 10 percent the existing monthly subsistence allowance rates for veterans participating in rehabilitation programs under chapter 31; and increase the maximum amount that may be loaned to a chapter 31 participant from $200 to twice the full-time institutional monthly subsistence allowance for a veteran with no dependents.

Eleventh, authorize veterans participating in rehabilitation programs under chapter 31 who have remaining eligibility for entitlement to educational assistance benefits under chapter 34 to make an election to receive, in lieu of a subsistence allowance and certain other forms of assistance specified in chapter 31, an allowance and assistance equal to that provided to veterans enrolled in GI bill training under chapter 34.

Twelfth, modify the method of payment of allowances to a chapter 31 participant who is incarcerated or who is receiving care for a period of more than 30 days in a hospital, nursing home, or domiciliary facility at VA expense, generally by providing for the escrow of amounts not paid as dependents' allowances during the period of the veteran's incarceration or care and for payment of the escrowed amount upon the veteran's release.

Thirteenth, authorize the Administrator to contract with the VA's Department of Medicine and Surgery—D.M. & S.—for the use of D.M. & S. facilities and services for the provision of rehabilitation services under chapter 31; and authorize the use of chapter 31 funds to reimburse D.M. & S. for the costs of providing such services.

Fourteenth, provide for a 4-year—fiscal years 1982 through 1985—pilot program of contract independent living services and assistance in various geographic regions for those severely disabled veterans, limited to 500 new individual contracts annually, for whom the achievement of a vocational goal is determined not to be reasonably feasible; and require a report to Congress not later than September 30, 1984, on the pilot program.

Fifteenth, require the Administrator to provide a program of ongoing professional training and development for VA chapter 31 counseling and rehabilitation personnel in order to assure that rehabilitation services for veterans are provided according to the most advanced knowledge, methods, and techniques; and require the Administrator to coordinate with the Rehabilitation Services Administration and the Department of Labor in planning and carrying out personnel training in areas of mutual programmatic concern.

Sixteenth, establish a Veterans' Advisory Committee on Rehabilitation, whose members would be appointed by the Administrator from the general public, with at least one-half the membership being service-connected disabled veterans; and require an annual report to the Administrator and the Congress on its assessment and review of VA rehabilitation programs.

Seventeenth, require VA vocational rehabilitation personnel to accomplish a comprehensive diagnostic evaluation of a service-connected disabled veteran following the adjudication of the veteran's disability compensation claim for a 100-percent disability rating on the basis of such veteran's individual unemployability, if it appears that the veteran may have the potential for vocational rehabilitation and employment.

Mr. President, title II of the committee bill, "Employment and Education Amendments," is divided into two parts. Part A, "Program Adjustments," would amend three chapters of title 38—chapter 3, Veterans' Administration; Officers and Employees; chapter 36, Administration of Educational Benefits; and chapter 41, Job Counseling, Training, and Placement Service for Veterans. Included in part A of this title are amendments which would:

First, require the Administrator of Veterans' Affairs to play an increased, active role with respect to advocacy of the effective implementation, enforcement, and application of existing laws and regulations relating to employment, training, and other related opportunities for veterans.

Second, require the Administrator, in cooperation with the Secretary of Labor, to seek actively to promote the development and establishment of employment, training, and other employment-related opportunites for veterans.

Third, make the Administrator directly responsible and accountable for the promotion, development, and approval of programs of training on the job for the purposes of GI bill benefits.

Fourth, streamline and update the provisions setting forth the approval criteria for programs of training on the job.

Fifth, require the provision by the Department of Labor of direct secretarial support to veterans' employment representatives assigned to the States.

Sixth, establish a new veterans' employment and training outreach program—VETOP—modeled after the successful disabled veteran outreach program—DVOP.

Part B of title II of the committee bill, "GI Bill Rate Increases," includes amendments to chapters 34, 35, and 36 of title 38, relating to educational assistance for veterans, survivors, and dependents, which would provide for a 10 percent cost-of-living increase in rates of educational assistance and training allowances paid to persons eligible for such benefits under these chapters.

Mr. President, title III of the committee bill, "Technical Provisions; Effective Date," includes provisions which would:

First, provide certain chapter 31 participants with the same eligibility and priority for the receipt of VA outpatient care and the same eligibility for contract outpatient care as veterans with service-connected disabilities rated as 50 percent or more disabling.

Second, add a reference to chapter 31 subsistence allowances—including chapter 34 equivalent allowances—to the existing provisions barring the payment of chapter 34, 35, or 36 educational assistance allowances to certain Federal personnel receiving training at Government expense.

Third, add a reference to the chapter 32 post-Vietnam era veterans' educational assistance program in the listing of VA educational assistance programs under which no person may receive benefits for an aggregate period of more than 48 months; and delete the reference to chapter 31 from that listing, but generally provide that no person may receive assistance under chapter 31 in combination with assistance under the listed education programs for a period in excess of 48 months.

Fourth, modify the method of payment of educational assistance allowances to chapter 34 GI bill trainees while such trainees are receiving care in a community hospital, nursing home, or domiciliary facility at VA expense.

Fifth, include in the statutory scheme for the distribution of a deceased participant's unused contributions to the chapter 32 post-Vietnam era veterans' educational assistance fund the deceased participant's surviving spouse, children, and parents.

Sixth, provide for a conditional limitation on the authority to implement the increase, proposed in titles I and II, in the maximum amounts of VA chapter 31 subsistence loans and chapter 34 education loans.

Mr. President, in order that all Senators and the public may have a full understanding of the various provisions of the committee bill, I ask unanimous consent that there be printed in the RECORD at this point pertinent excerpts from Senate Report No. 96-746 accompanying this bill.

There being no objection, the excerpts from the Senate report were ordered to be printed in the RECORD, as follows:

DISCUSSION

TITLE I: REHABILITATION AMENDMENTS

Background

History of VA Vocational Rehabilitation Programs

Throughout our Nation's history, our people and our Federal Government have shown special concern for meeting the needs of those who are disabled as a result of wartime service in the country's Armed Forces and, more recently, as the result of service in time of either war or peace. Federal assistance to those so disabled has been based upon the national purpose that everything possible should be done to help the disabled veteran readjust to civilian life.

The first effort to provide specifically for vocational rehabilitation began in 1917 when the Congress enacted the War Risk Insurance Act of 1917, Public No. 90, 65th Congress. That Act included, as part of its benefits package for service-connected disabled veterans, general provisions for vocational rehabilitation, without specifying how rehabilitation was to be accomplished.

In 1918, the Vocational Rehabilitation Act, Public No. 178, 65th Congress, was enacted and provided more specific provisions for a service-connected disabled veteran's vocational rehabilitation program. To be eligible to participate in that program, the veteran had to demonstrate an inability to carry on gainful employment or reenter the occupation that the veteran left when entering active service.

Following training, and as part of the program, responsibility for finding suitable employment for rehabilitated veterans was placed upon the Government. The vocational rehabilitation program for World War I disabled veterans terminated in 1928. During the program, approximately 675,000 veterans applied for rehabilitation, of whom approximately half were rated as eligible for rehabilitation training.

On December 12, 1941—5 days after the Japanese attack on Pearl Harbor—President Roosevelt requested the joint efforts of several Federal agencies, including the Veterans' Administration, to study the problems of rehabilitating disabled World War II veterans. Subsequently, in 1943, Congress enacted Public No. 16, 78th Congress, which included provisions for a vocational rehabilitation program for those who incurred service-connected disabilities in active service on or after December 6, 1941, and prior to the termination of hostilities in World War II. The purpose of that program was to restore employability lost by virtue of a handicap due to service-connected disability. A veteran participating in that program was provided with a subsistence allowance and the VA paid tuition and fees for the training that the veteran pursued. By 1950, approximately 550,000 disabled veterans from World War II had benefited from the program.

Shortly after the outbreak of the Korean conflict, President Truman recommended the renewal of the World War II vocational rehabilitation program. Congress responded to this recommendation with the enactment in 1950 of Public Law 894, 81st Congress, and that Act as amended in 1951 by Public Law 110, 82nd Congress, provided a vocational rehabilitation program similar to the World War II program, for veterans who incurred service-connected disabilities and needed to overcome the handicap of a disability incurred or aggravated by such service. However, the disability had to be a direct result of armed conflict or incurred by a serviceperson either while engaged in extra-hazardous service or while the United States was engaged in war; and training was required to be completed by participating veterans on or before August 20, 1963.

Thus, vocational rehabilitation legislation historically has been enacted to address the prospective needs of service-connected disabled veterans when the Nation was faced with an existing or potential major military conflict. However, in 1962, with the enactment of Public Law 87-815, vocational rehabilitation benefits were granted to any veteran of World War II and the Korean conflict if he or she had a service-connected disability rated as 10 percent or more disabling and was in need of vocational rehabilitation; and a veteran whose disability was incurred after World War II and at any time other than during the Korean conflict was also made eligible for vocational rehabilitation benefits if his or her service-connected disability was rated as 30 percent or more disabling or, if rated less than 30 percent, if he or she had a pronounced employment handicap.

In 1974, Public Law 93-508, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, liberalized the eligibility requirements for vocational rehabilitation—now, as so liberalized, the current requirements under chapter 31 of title 38—by extending the eligibility to any veteran with a service-connected disability rated 10 percent or more disabling who is in need of vocational rehabilitation, defined as training for the purpose of restoring employability lost by virtue of a handicap due to service-connected disability. This measure made the eligibility requirements of the existing program for both wartime and peacetime veterans comparable to the eligibility requirements of the programs provided to veterans of World War II and the Korean conflict.

From June 1943 through January 1980, a total of approximately 831,700 disabled veterans trained under the VA vocational rehabilitation program. Of those, 621,300 were World War II veterans, 77,000 were veterans of the Korean conflict, 23,600 were post-World War II peacetime veterans who were trained after 1972 when the law was changed to provide for their eligibility, and 109,800 were Vietnam-era veterans. As of the end of January 1980, there were a total of 14,900 veterans in vocational training under chapter 31.

Need for Revision of Current VA Vocational Rehabilitation Program

Throughout the period from 1943 through the present, Congress has enacted various laws, in addition to those mentioned, expanding and making improvements in many aspects of the VA's rehabilitation program and increasing the level of subsistence allowance in light of the inflation that occurred during that period, but the purpose and structure of the program have remained intact, without comprehensive revision. In light of changes in the general field of rehabilitation of handicapped persons since World War II and in light of the enactment of Public Law 93-112, the Rehabilitation Act of 1973, the Senate Committee on Veterans' Affairs has for 6 years had major concerns

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regarding the need for major revisions in the chapter 31 program.

The Rehabilitation Act of 1973 substantially restructured and redefined concepts regarding handicapped individuals generally and rehabilitation services and training and employment opportunities for them.

Thus, in 1974, in the Committee report to accompany S. 2784, S. Rept. No. 93-907, on page 52, the Committee noted that the vocational rehabilitation chapter and the implementating regulations had many inconsistencies and strongly recommended that the VA thoroughly review chapter 31 for possible legislative and administrative changes, particularly in light of the Rehabilitation Act of 1973.

Again, in 1976, for substantially the same reasons, the Committee—in its report to accompany S. 969, the Veterans Education and Employment Assistance Act of 1976, S. Rept. No. 94-1243, on page 43—urged the VA to conduct a thorough review of the vocational rehabilitation program for possible legislative and administrative changes. The Committee also noted that it expected the Administrator of Veterans' Affairs, in the conduct of the study, to confer with the Commissioner of the Rehabilitation Services Administration in the Department of Health, Education, and Welfare.

However, by 1977, the Committee had received no such recommendations from the VA. Thus, the Committee included in S. 457, the GI Bill Improvement Act of 1977, a provision requiring the Administrator, after consultation with the Commissioner of the Rehabilitation Services Administration in the Department of Health, Education, and Welfare, to submit to the President and the Congress by March 1, 1978, a report of a study of the VA's vocational rehabilitation program under chapter 31.

That provision, as enacted in section 307 of Public Law 95-202, required that the report include the Administrator's recommendations for changes in chapter 31, recommendations with respect to the need for services of vocational rehabilitation specialists to provide chapter 31 trainees with appropriate job development and job placement assistance, recommendations for utilizing the veterans education programs provided for by chapters 32, 34, 35, and 36 to meet the needs of disabled veterans eligible for chapter 31 training, and a description and analysis of the scope and quality of the chapter 31 program in comparison to vocational rehabilitation provided under the Rehabilitation Act of 1973.

That study, entitled "A Study of the Provisions for Veterans Vocational Rehabilitation", submitted on October 5, 1978, as well as a subsequent VA study entitled "Summary Report of the Vocational Rehabilitation (Chapter 31) Program Evaluation", conducted pursuant to section 219 of title 38 and submitted on October 5, 1979, strongly indicate that the present VA vocational rehabilitation program is antiquated and in need of a complete overhaul—rather than piecemeal amendment—to be able to best serve the rehabilitation needs of the most deserving group of veterans—those who are disabled while serving our Nation in its Armed Services.

The VA, in its study and program evaluation, highlighted several areas of the current vocational rehabilitation program as needing new emphasis and attention. The most basic conclusions were that VA vocational rehabilitation programs needed to provide more comprehensive services and that the goal of vocational rehabilitation should be suitable employment, rather than completion of training. The VA also cited needs for improved outreach efforts to seriously disabled veterans, more effective case management and coordination of all vocational rehabilitation services in individual cases, improved, ongoing staff development, and improvements in job assistance, followup activities, and records systems.

In addition, the VA evaluation report emphasized the need for a more aggressive program management approach, including an improved, more structured review and evaluation system.

In 1978 VA report also indicated that, between 1973 and 1977, individuals with disability ratings of 30 percent or greater have increased their use of chapter 34 benefits and decreased their use of chapter 31 benefits in recent years.

Following up on the VA studies, on May 11, 1979, the Administrator of Veterans' Affairs submitted legislation to modernize and make extensive improvements in the chapter 31 vocational rehabilitation program, which was introduced as S. 1188.

Although the VA studies provided much useful information and the Administration-requested bill would do much to make needed improvements in the current vocational rehabilitation program, the Chairman believed that a further, independent study was needed to develop information, in addition to that contained in those studies, on certain major issues before the Committee undertook to make the first comprehensive revisions of the vocational rehabilitation program in more than 25 years. Thus, in a March 1, 1979, letter to the Comptroller General, the Chairman requested that the General Accounting Office conduct an extensive study of the program.

The GAO report submitted on February 26, 1980, entitled "New Legislation and Stronger Program Management Needed to Improve Effectiveness of VA's Vocational Rehabilitation Program" (HRD-80-47), generally affirmed the VA's findings with respect to several problem areas, revealed additional problems, and recommended various administrative and legislative changes.

The GAO's strongest recommendation for change was made in the area of central management. The GAO indicated that the limited effectiveness of the current VA vocational rehabilitation program stems from poor central management and a lack of accountability for program results.

GAO also recommended the implementation of the case-manager concept whereby one person would be assigned the responsibility and held accountable for the veteran's case from point of application through employment placement, including followup services to be provided the veteran.

The methods of VA outreach efforts were also criticized in the GAO report, as was the prolonged time it takes to process applications for those veterans interested in enrolling in the chapter 31 program. Also, according to the GAO, the emphasis of the VA vocational rehabilitation program is primarily on financial assistance rather than on comprehensive rehabilitative services, and followup services are often inadequate.

The VA has indicated its concurrence in most GAO findings and recommendations for administrative action, and a willingness to initiate substantial efforts to improve and streamline the program.

Although the Committee bill provisions place emphasis on affording comprehensive rehabilitation services, provide for the improved management of individual cases involving veterans with serious employment handicaps, and provide for followthrough employment-assistance services following the veterans' completion of vocational rehabilitation, it understands that many factors relating to the administration and management of the chapter 31 program, are beyond the reach of legislation and will have a very critical effect on the future success of VA rehabilitation programs for service-connected disabled veterans. Thus, the Committee is encouraged by the emphasis that the Administrator of Veterans' Affairs, Max Cleland, has placed on VA rehabilitation programs. During the next few years, the Committee plans to monitor very closely the VA's activities in this field.

Committee bill provisions

Title I of the Committee bill would restructure chapter 31 of title 38 to update, improve and expand Veterans' Administration rehabilitation programs for service-connected disabled veterans under that chapter.

At the February hearing the Committee received extensive, uncontradicted testimony, that the 37-year-old statutory framework in chapter 31 of title 38 is out of date and badly in need of a thorough overhaul. During the decades since the basic legislative foundation for the VA's vocational rehabilitation was laid, there have been many major advances in rehabilitation concepts and great changes in the role of handicapped individuals in our society. A most significant development in that regard was the congressional enactment of the Rehabilitation Act of 1973 revising and refocusing the Federal-State vocational rehabilitation program and promoting the availability of comprehensive service and educational, training and employment opportunities for seriously handicapped persons. Witnesses generally emphasized the need for a legislative structure that would provide a basis for and foster the provision of a comprehensive range of services through an administrative process assuring that various types of services needed by the individual disabled veteran are provided in a coordinated, effective manner. Thus, the testimony indicated a need for a rehabilitation program capable of meeting the many physical, psychological, and emotional needs that an individual may have following a disabling injury or illness, as well as providing the training and assistance necessary to equip the individual for an occupation or profession that is suited to his or her abilities, aptitudes, and interests.

Various witnesses also emphasized the importance that a rehabilitation program in order to be most effective needed to be able fully to meet the individual's needs at each stage of the process—from the very outset, beginning with outreach to and motivation of the veteran to participate in rehabilitation, through evaluation of the veteran's particular needs, and the planning and provision of services and assistance that the veteran may need to be prepared for an occupation and to function with maximum independence in his or her family and community, and culminating in the obtaining of, adjustment to, and maintenance of suitable employment.

The Committee has fully considered the recommendations of those who testified at the hearing—both with respect to their recommendations regarding the general nature and broad outlines of a statutory framework for the VA's rehabilitation program for service-connected disabled veterans, and with respect to a great variety of specific details that they recommended be incorporated in the legislation. Thus, the Committee bill incorporates many features responsive to specific concerns raised at the hearing and reflects an effort to make provision for truly comprehensive services that will help to assure each eligible veteran of full opportunity for a productive life.

The section-by-section analysis which appears at a later point in this report provides a detailed description of each of the provisions of this title of the Committee bill and the changes made from current law. The following discussion outlines the major purposes of and concepts embodied in the Committee bill.

Scope of Services

The Committee bill would specify a broad range of services and assistance that the VA may provide to participants in chapter 31 programs. The intention with respect to specifying such services is to provide clear authority for the full range of diagnostic, evaluative, counseling, pre-training, training, post-placement, and other services that may be needed to assist the veteran in entering and pursuing rehabilitation and in finding, adjusting to, and maintaining employment. This range of services very closely parallels those available to nonveterans participating in a program of rehabilitation in Federal-State vocational rehabilitation program under the Rehabilitation Act of 1973.

As the Administrator explained in his May 11, 1979, letter transmitting the administration-requested legislation, the VA interpretation of current law equates vocational rehabilitation under chapter 31 with training and thus does not provide for pretraining services that may enable a veteran, whose mental or physical disability renders entry into training infeasible, to prepare for entry to a training program. The Committee bill would authorize such services.

In addition, the Committee bill would make clear that the VA may provide, as part of a vocational rehabilitation program, services to enable the veteran to achieve maximum independence in daily living. For many veterans with serious disabilities which impair their abilities to care for themselves, to move about in their homes and communities, and to communicate and deal effectively with others, these so-called "independent living services" are essential to enable them to achieve a maximum level of independent, self-sustaining life in the community, which, in turn, the Committee views as often critical to their ability to find and hold gainful employment in the community. The Committee bill deals specifically and fully with the provision of independent living services both in terms of such services in conjunction with extended evaluation and vocational training as well as through a 4-year pilot program of independent living services and assistance (discussed more fully, below) for those who are determined, at least in the earlier stages of rehabilitation, to be too severely disabled to pursue a vocational goal.

The provision of clear authority for both pre-training, post-training, and independent living services in the Committee bill reflects, in part, the Committee's view that the VA's rehabilitation program should provide an integrated, nonfragmented approach in order to offer seriously disabled veterans the best opportunity to realize their full potentials. Thus, whereas the current VA program under chapter 31 is focused primarily on vocational training and relies on other programs to meet more basic needs relating to the veteran's ability to function, the provision of the Committee bill recognize the importance of providing a unified program of vocational, prevocational, nonvocational, and post-training services and assistance and focus responsibility and accountability on the chapter 31 program and its management and counseling personnel for the success of the entire rehabilitation effort.

Evaluation of Rehabilitation Potential

For a rehabilitation program to serve an individual veteran fully and effectively, provision must be made for achieving a full understanding of the veteran's disabilities and abilities at the outset and, in appropriate cases, for periodical reevaluations of the veteran's progress and possibly changing needs. The Committee recognizes that in certain cases, because of particularly serious and intractable disabilities, the evaluation process may necessarily be extensive in order to gain a fair assessment of the veteran's capabilities and prospects for rehabilitation and make a valid determination of the type of vocational objective that might be appropriate for the veteran.

Thus, the Committee bill provides both for an initial evaluation, intended to be of brief duration and, where necessary, extended evaluation. In both cases, the basic purpose of evaluation is to assess the veteran's needs in order to provide a basis for planning and appropriate program rehabilitation. In addition, the Committee bill would specifically require determinations as to whether the veteran has a serious employment handicap and whether the achievement of a vocational goal is reasonably feasible for the veteran. The determination regarding the existence of a serious employment handicap provides the basis for focusing VA counseling and other resources on such veterans (as discussed below); and the determination regarding the reasonable feasibility of a vocational goal provides the basis for the veteran to move on to a vocational rehabilitation program, where such a goal is reasonably feasible, or, where it is not—at least not yet—to pretraining to make it more feasible or to possible participation in the pilot program of independent living services and assistance for which the Committee bill provides.

Where the necessary assessments and determinations cannot be made during initial evaluation, the Committee bill, as noted, provides for a period of extended evaluation—a new concept, drawn from the Rehabilitation Act of 1973, in chapter 31. During extended evaluation, the veteran could be provided, in addition to services of a diagnostic and evaluative nature, services that may be necessary and appropriate to improve the veteran's ability to pursue a program leading to a vocational goal as well as the veteran's ability to live and function independently.

Extended evaluation generally may not exceed 12 months. Where necessary, however, the Committee bill would authorize an extension of up to 6 months if it is reasonably likely that a determination could be made during the period of the extension as to whether a vocational goal is feasible for the veteran. Additional extensions of up to 6 months each would be authorized under the same circumstances. In requiring specific determinations regarding the necessity for extensions at periodic intervals no greater than 6 months, the Committee's goal would be to cause movement toward an end of extended evaluation and, it is to be hoped, toward establishment of a vocational goal whenever feasible.

To assist further in accomplishing this end and to make every attempt to avoid extended evaluation where it is not clearly necessary and to prevent it from becoming a convenient "dumping ground" for difficult cases, the Committee bill would require that determinations as to whether the achievement of a vocational goal is reasonably feasible be made as expeditiously as possible and that any doubt as to whether or not the achievement of a vocational goal is reasonably feasible be resolved in favor of determining that such achievement is reasonably feasible. This provision was adopted by the Committee after receiving forceful testimony at the February hearing from Edward V. Roberts, Director of the California State Department of Rehabilitation, who strongly urged this approach. According to his testimony, which also was endorsed by the other rehabilitation specialists at the hearing, it is very important in the rehabilitation process to start the individual moving as quickly as possible toward a vocational objective in order to avoid the onset of various secondary problems such as alcohol and drug dependence and abuse and depression, and to provide goals that challenge the individual to strive toward achieving the highest levels of independence, education, training, and employment that are reasonably possible.

Individualized Written Rehabilitation Plans

When it has been determined that the veteran has a serious employment handicap and that the achievement of a vocational goal by the veteran is reasonably feasible, the Committee bill would require the development of an individualized written plan of vocational rehabilitation (hereafter referred to as plan).

The plan, which would include counseling in all cases, would also include, but not be limited to (1) a statement of long-range rehabilitation goals and intermediate rehabilitation objectives related to achieving the goals; (2) a statement of the specific services and assistance to be provided the veteran; (3) the projected date for the initiation and the anticipated duration of each such service; (4) objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved; and (5) the name and business address and telephone number of the Veterans' Administration employee (case manager) assigned responsibility for the management and followup of the provision of services and assistance to the veterans. The plan would be developed jointly with the veteran and would be required to be reviewed at least annually.

With respect to the requirement that the plan be developed jointly with the veteran, the Commissioner of the Rehabilitation Services Administration and the Director of the California State Department of Rehabilitation both testified at the February hearing that the similar requirement in the Rehabilitation Act of 1973 had been implemented successfully and served to enhance the individual's participation in the rehabilitation process. The Director of the California Department further testified that a joint development of an individual's plan serves as a kind of "contract" between the disabled individual and the agency providing services that holds each party accountable.

Under the Committee bill, the veteran would be afforded the opportunity to participate in the periodic review of his or her plan and, any redevelopment of the plan would be required to be accomplished jointly.

Also, to enhance the quality of the veteran's participation in the development and redevelopment and to provide for a prompt, impartial means for resolving differences over the contents of the plan between the veteran and the VA personnel responsible for its content, the Committee bill would establish an expedited, informal appeal process whereby such differences would be decided by a VA employee in an administrative position superior to those directly responsible for the plan. Before agreeing to any plan or to its redevelopment, the veteran would be advised of this opportunity for the review of the plan and his or her objections to it.

Participants in the pilot program of independent living services and assistance would have the same substantive and procedural rights with respect to an individualized written plan of services and assistance.

Employment Assistance

A principal focus of the Committee bill is to enlarge the stated purpose and effective operation of the vocational rehabilitation program under chapter 31 beyond achievement of the employability of the veteran to the actual employment of the veteran in a suitable job and the maintenance of the veteran in employment. Under current law, the stated purpose of vocational rehabilitation is that of "restoring emoloyability, to the extent consistent with the degree of disablement, lost by the virtue of a handicap due to service-connected disability", and present section 1511(5) authorizes the Administrator to "cooperate with and employ the facilities of other governmental and

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State employment agencies for the purpose of placing in gainful employment persons who have received vocational rehabilitation". However, the February 1980 GAO report, as well as the VA studies of October 1978 and 1979, indicate that job placement services, post-placement services to help with the veteran's adjustment in employment, and other post-training followup are seriously deficient under the VA's current program.

The Committee bill includes in the statement of purposes of chapter 31 clear language to make it possible for the veteran "to obtain and maintain suitable employment", and also mandates, rather than merely authorizes, that the Administrator furnish employment assistance to a veteran who has a serious employment handicap and who has been determined to be employable.

The Committee bill would also require such assistance to be provided service-connected disabled veterans who have participated in either vocational rehabilitation under chapter 31 or a similar Federal-State program under the Rehabilitation Act of 1973—and, to the extent of available resources, would authorize help for a veteran without a service-connected disability. The employment assistance to be furnished such veterans under section 1517 of the Committee bill would include a broad range of services such as direct VA assistance in job placement and VA use of the various outreach and job development services provided by other agencies, including the services of veterans employment, training, and outreach program specialists under new section 2003A of title 38, as proposed to be added by section 209 of the Committee bill, Federal-State vocational rehabilitation programs under other public or nonprofit organizations. In addition, the Administrator would be required to provide any assistance needed to assure that the veteran receives the benefit of any applicable special consideration, preference, or emphasis in employment or training for which the veteran is eligible under any provision of law or regulation.

At the February 28 hearing, the Committee received from the General Counsel of the Veterans' Administration, the Commissioner of the Rehabilitation Services Administration, the Department of Education, and the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor, very favorable responses to the suggestion that these three agencies work together, utilizing their individual areas of expertise and avoiding duplicative efforts, to assure that the important employment purpose in revised chapter 31 would be carried out.

Various other provisions of the Committee bill are also designed to provide the veteran with maximum, appropriate opportunities for and assistance in seeking employment. Thus, the provision for a special travel allowance for veterans whose disabilities require them to incur extraordinary expenses authorizes the continuation of such an allowance, following the veterans' participation in vocational rehabilitation, while the veteran is seeking employment and during the initial employment phase (new section 1504(a)(13)).

In the cases of the most severely disabled veterans requiring homebound training or self employment, or both, the Committee bill would authorize the provision, within criteria and cost limits that the Administrator would prescribe in regulations, of such license fees, and essential equipment, supplies, and minimum stocks as the Administrator determines to be necessary for the veteran to begin employment. Also, in the case of any veteran who has completed vocational rehabilitation for self-employment in a small business enterprise, the Administrator would be required to cooperate with the Small Business Administration to assist the veteran to secure a loan for the purchase of equipment needed by the veteran to establish his or her own business and to assure that the veteran receives the special consideration provided for veterans in section 8 of the Small Business Act.

The Administrator would also be required to prescribe regulations, with the concurrence of the Secretary of Labor, to authorize the VA to make payments to employers for providing on-the-job training to veterans who have successfully completed vocational rehabilitation under chapter 31. Such payments could be made for the purpose of defraying (and could not exceed) his employers' direct expenses in providing the veteran with an on-job training of employment opportunity.

Finally, the Committee would note that, for veterans who have a serious employment handicap, the bill would make available post-training counseling and placement services for up to 18 months (or longer if specifically determined to be necessary for rehabilitation purposes) in order to help assure that the veteran finds a suitable job and makes a satisfactory adjustment to it.

INDEPENDENT LIVING

As previously noted in the discussion of the scope of services authorized under chapter 31 as it would be revised by the Committee bill, the Committee bill expressly provides for the provision of independent living services for chapter 31 participants who need assistance in achieving maximum independence in functioning in their communities and families. Thus, a veteran may be provided such services during extended evaluation and vocational training. In the case of some severely disabled veterans, the Committee believes that such services can be extremely valuable to the achievement of a vocational goal because the ability to function independently in the community is very frequently of vital importance to the individual's ability to participate in training and education programs or to obtain and maintain gainful employment.

In the cases of those veterans whose disabilities are so severe that following evaluation it is determined that the pursuit of a vocational goal is not feasible, the Committee bill would entitle such veterans to independent living services and assistance under the 4-year pilot program during fiscal years 1982 through 1985 in various geographic regions. Under this pilot program, the VA would provide up to 500 veterans per year, with independent living services and assistance through contractual arangements with public or nonprofit agencies with expertise in the provision of such services.

At the February hearing, the Commissioner of the Rehabilitation Services Administration in the Department of Education, testified that independent living services are long overdue and would be a highly desirable and important adjunct to the VA's rehabilitation system and could serve important vocational purposes as well. In this connection, the Committee wishes to stress that, although at the time the veteran enters a program of independent living services and assistance it would have been determined that achievement of a vocational goal is not reasonably feasible for the veteran, the possibility of reversing that determination should continue to be reexamined. In fact, the possibility is that, as the veteran attains certain independent living skills his or her potential for vocational training may increase. The Commissioner also stressed in his testimony that the most desirable approach for the VA in carrying out the pilot program would be to contract for such services with programs that have already been established rather than to initiate any parallel program solely from VA resources and personnel.

Thus, the Committee bill would authorize the Administrator to contract with public or nonprofit agencies that have demonstrated a capacity to conduct programs of independent living services for severely handicapped persons. This contract authority would include the authority to contract with the VA's Department of Medicine and Surgery (DM&S). The Committee notes in this regard that this would enable part of the pilot program to be carried out in the very fine DM&S blind rehabilitation centers.

The Committee bill would provide a broad delineation of the scope of independent living services and assistance, by making them coexistive with services and assistance that may be provided under section 702 of the Rehabilitation Act of 1973, as added in the 1978 amendments (Public Law 95-602) to that Act. Thus, under chapter 31, severely disabled veterans would be entitled to the full range of services and assistance—including appropriate accommodations to and modifications of living space, attendant care, and prevention services—that are available to nonveterans under the Rehabilitation Act of 1973.

In order to help the Congress assess the effectiveness of independent living services and assistance to these severely disabled veterans and determine whether they should be expanded to reach all such veterans under chapter 31 and be made a permanent entitlement, the Committee bill would mandate a study by the Administrator focusing on the key aspects of the pilot program and require that a report of the study, including the Administrator's recommendations, be submitted not later than September 30, 1984, the end of the third fiscal year of the 4-year pilot program.

Allowances

In addition to the established subsistence allowances for institutional training and farm cooperative and on-job training—rates which the Committee bill would increase by 10 percent—the Committee bill would establish new rates to correspond with the provisions in the Committee bill that would establish extended evaluation and a pilot program of independent living services and assistance. The full-time rate for each of these new types of programs would be equal to the full-time rate for institutional training as part of a vocational rehabilitation program (as proposed to be increased by 10 percent by the Committee bill).

The subsistence allowance paid to a veteran during vocational rehabilitation is intended to defray his or her living expenses. Since, under this chapter, the VA pays the costs of tuition, fees, books, and other training material, the allowance does not include any amount for such expenses. Thus, chapter 31 subsistence allowance rates are set at amounts lower than the GI Bill educational assistance allowance rates under chapter 34—the full-time institutional-training rate under the chapter 31 subsistence allowance for a veteran with no dependents is $241 ($265 with the 10-percent increase proposed in title I of the Committee bill) and the corresponding institutional-training rates for the chapter 34 educational assistance allowance is $311 ($342 with the 10-percent increase proposed in section 210 of the Committee bill).

These differences in the monetary consequences for the veteran with a service-connected disability in terms of chapter 31 and chapter 34 participation have apparently produced certain unfortunate results. The reports received by the Committee from both GAO and the VA indicated that there has been a definite shift in recent years away from the use by service-connected disabled veterans with severe disabilities of chapter 31 vocational rehabilitation benefits to the use of the chapter 34 GI Bill education assistance allowance. It was reported that many such veterans enrolled in State-supported schools with low tuition and fees elect to

train under the chapter 34 program because the educational assistance allowance they receive under that program is substantially higher than the subsistence allowance they would receive under chapter 31, and the fact that the VA would pay their tuition and fees under chapter 31 does not detract from the financial attractiveness to them of chapter 34 benefits when college tuitions are low.

Unfortunately, however, a chapter 34 participant—even though service-connected disabled—is not eligible for counseling and other services available under chapter 31. Thus, the effect of an election of chapter 34 benefits is to cut the veteran off from chapter 31 services which may be of substantial value to his or her rehabilitation and employment.

To eliminate this disparity in the financial attractiveness of chapter 31 and chapter 34 benefits and thus help to assure that disabled veterans receive the counseling and other services they may need to be successfully rehabilitated, the Committee bill (new section 1508(f)) would permit chapter 31 participants to elect, to the extent that they have chapter 34 eligibility and entitlement, to receive under chapter 31 allowances which are chapter-34-equivalents instead of receiving payment of the subsistence allowance, tuition, and fees, and certain other assistance specified in chapter 31.

The Committee notes that a veteran under chapter 31—despite the fact that he or she would still be in receipt of levels of benefits prescribed by chapter 34—would still be considered, by virtue of his or her enrollment in the chapter 31 program, an eligible member of a target group—"a vocational rehabilitation referral"—for the purposes of the Targeted Jobs Tax Credit authorized by section 51 of the Internal Revenue Code as amended by section 321 of the Revenue Act of 1978 (Public Law 95-600). This authority provides for a tax credit of up to $3,000 a year to an employer who hires a member of a targeted group.

Focusing of Services on Veterans With Serious Employment Handicaps

In order to achieve the most efficient use of chapter 31 personnel and other resources, the Committee bill would focus such resources on those veterans likely to have the greater need for services and assistance—those who have a serious employment handicap. Thus, as indicated, during evaluation, a determination would be required as to whether the veteran has such a handicap.

Where it is determined that the veteran has a serious employment handicap, the Committee bill would require that a case manager be assigned to the veteran—to manage and followup on the services and assistance to be provided—that an individualized written plan of vocational rehabilitation be prepared, that the plan provide for counseling services, and that those counseling services actually be provided.

Other veterans would, of course, be eligible for counseling services, and the Committee intends that such services be made available to any chapter 31 participants as necessary. However, there would be no statutory mandate that such services be provided in all cases. Thus, in many cases, unnecessary, routine, perfunctory counseling sessions could be avoided, and the time and efforts of chapter 31 counseling psychologists would be conserved in order to focus them most directly and fully on those who have serious employment handicaps or who, although not so seriously handicapped, feel a specific need for counseling services. This refocusing of counseling resources meets one major GAO recommendation.

TITLE II: EMPLOYMENT AND EDUCATION AMENDMENTS

Part A, "Program Improvements", of title II of the Committee bill would make a series of amendments designed to enhance employment opportunities for eligible veterans. These amendments focus primarily on improvements and expansions of existing programs now conducted by the VA and the Department of Labor.

Part B, "GI Bill Rate Increases", of title II would provide for a rate increase of 10 percent in GI Bill educational assistance allowances.

Part A—Program Improvements

Background

The Committee, in carrying out its continuing oversight responsibilities, has focused on issues related to veterans' employment in a series of hearings this session on Vietnam veterans readjustment. The first four hearings in this series—held in Chicago on January 25, in Los Angeles on January 26, and in Washington, D.C. on February 21 and March 4—have provided the Committee with an extensive review of existing job-training and employment programs and an understanding of where improvements need to be made. The Committee received much testimony indicating that what is needed to meet the employment-related needs of Vietnam-era veterans is not extensive new programs but rather initiatives to provide for more effective and forceful use of existing programs and enforcement of existing laws designed to meet the employment needs of veterans. The Committee also observed that there are substantial prospects for making existing programs and benefits work more productively in helping overcome veterans' employment problems through the development of stronger interrelationships between such programs and benefits so that the advantages of each may serve better to supplement the beneficial aspects of the others. In this context, part A of the Committee bill would make a number of amendments designed to strengthen and improve current efforts in this area.

Committee bill provisions

Administrator's increased responsibilities for advocacy and promotion of certain federal programs

Section 220 of title 38, United States Code, currently requires the Administrator to seek to achieve maximum reasonable effectiveness coordination, and interrelationship of all services and programs affecting veterans and their dependents carried out by Federal Government agencies other than the VA and the maximum coordination of those non-VA services and programs with services and programs carried out by the VA. Pursuant to this authority, the VA carries out a variety of initiatives designed to enhance programs and services for veterans and dependents, including coordination with other Federal agencies on the distribution of information pertaining to veterans.

A major current VA undertaking which the VA asserts is carried out pursuant to this authority is the Career Development Center (CDC) project, under which centers have been established on a pilot-project basis in two cities, and 35 new centers are scheduled for operation in 1980. These centers are designed to provide veterans with full career development training, including systematic, comprehensive evaluation, counseling, and referral services. This type of consolidation of multiple efforts to assist veterans should help overcome the many inefficiencies that result from fragmented services and help all of the programs concerned achieve maximum effectiveness. Ironically, however, the Committee notes that the Veterans' Employment Service of the Department of Labor was not involved in the development of the CDC project. Recently, the VA has advised that specific steps have been taken to inform the Veterans' Employment Service and other appropriate agencies about the operations of the centers and to establish appropriate coordination and referral procedures with such agencies. The Committee expects the Administrator to assure that such information and coordination activities are carried out effectively in a way consistent with the asserted underlying section 220 authority.

Section 201 of the Committee bill would build on the existing section 220 authority by expanding the Administrator's responsibilities in connection with various Federal programs to include the active promotion of effective implementation, enforcement, and application of all provisions of law and regulations providing for special consideration, emphasis, or preference relating to employment, training, or other opportunities for veterans. In this regard, the Committee intends that the Administrator assume the role of an active advocate in connection with a wide variety of provisions of law and regulations affecting veterans, particularly those related to employment and training.

Over the years, many provisions of law have been enacted relating to veterans' employment that do not fall within the jurisdiction of the VA. These include such initiatives as the Targeted Jobs Tax Credit (TJTC) enacted by the Revenue Act of 1978 (Public Law 95-600); mandatory listing and affirmative action provisions for disabled and Vietnam-era veterans pursuant to section 2012 of title 38; job counseling, training, and placement services under chapter 41 of title 38 (implemented through the Veterans' Employment Service and indicators of compliance required to be met by the State employment security agencies); veterans preference (under title 5 of the United States Code), veterans readjustment appointments (under section 2014(b) of title 38), and noncompetitive appointments (under section 3112 of title 5) in civil service employment; special consideration for disabled and Vietnam-era veterans in programs conducted under the Comprehensive Employment and Training Act (CETA); and special consideration for veterans in the provision of small business loans under the Small Business Act of 1954, as amended. Each such provision is aimed at helping veterans to prepare for, obtain, or enhance employment, but, with implementation responsibilities scattered among various Federal agencies, a lack of focus has tended to prevent these provisions from being carried out with maximum effectiveness with respect to veterans.

In October 1978, in connection with his Message on the Progress of Veterans of the Vietnam Era, the President announced the establishment of the White House Veterans' Federal Coordinating Committee (WHVFCC), in order to improve the delivery of services to veterans and implement the President's ordered improvements in employment opportunities, educational opportunities, and other veterans' services and benefits. Initially, this seemed to be a promising effort to improve executive branch efforts targeted on Vietnam-era veterans.

However, on a number of occasions, the Committee has sought input from the WHVFCC. On December 21, 1979, the Committee requested specific information from the executive director of the WHVFCC for use by the Committee during a forthcoming series of hearings being conducted on Vietnam veterans readjustment. A response to that request was asked to be provided by January 17. A second request for this information was made in early February. To date, this specific information has not been received.

In addition, the Committee requested the executive director of the WHVFCC to appear and present testimony during the series of hearings. This request was at first ignored and then refused by the executive director on the grounds that White House policy does not permit members of the White House staff to appear before congressional committees. Instead, representatives from various

Federal agencies—the VA, the Department of Labor, the Department of Health, Education, and Welfare—have testified at these hearings on their agencies' efforts.

Finally, in a letter dated March 3, 1980, the executive director of the WHVFCC advised the Committee that a status report on the implications of the Presidential Review Memorandum was being prepared and would be transmitted to the Committee shortly. More than 2 months later, this report has not been submitted.

Thus, the Committee is unable to conclude other than that the WHVFCC has failed to achieve any significant gains in terms of interagency efforts to improve services to veterans and serve as a central focus for the Federal Government's responsibilities in this regard. The Committee believes, however, that there continues to be a demonstrated need for coordinated efforts in this area—particularly with respect to employment. Thus, the purpose of this amendment is to establish the VA—the one agency with overall priorities and responsibilities pertaining to the assistance of veterans—as a focal point within the executive branch for promoting the effective implementation, enforcement, and application of these and other provisions of law and regulations aimed at enhancing employment, training, and other opportunities for veterans. The Committee intends for the Administrator, in carrying out this responsibility, to take an increased, active role in assuring that congressional intent with respect to each of these programs is fully carried out.

Section 201 of the Committee bill also would require the Administrator, in carrying out this advocacy responsibility, to place particular emphasis on the needs of service-connected disabled veterans and of other eligible veterans taking into account applicable rates of unemployment and the employment emphasis set forth in chapter 42 (as it is proposed to be amended by section 802 of S. 870 as passed by the Senate in H.R. 5288 on January 24, 1980) which require contractors with the Federal Government to have affirmative action plans for the hiring and promoting of seriously service-connected disabled and Vietnam-era veterans.

The Committee, while recognizing that progress has been made in terms of the employment situation for Vietnam-era veterans generally, is deeply concerned by continuing high rates of unemployment among disabled, younger, and minority group veterans. For example, during the first quarter of 1980, rates of unemployment for younger Vietnam-era veterans reached 17 percent. Rates of unemployment for all Vietnam-era veterans under 40 in the first quarter exceeded the comparable rates for 1979—in one case, for Vietnam-era veterans age 25 to 29, by more than 27 percent. Black and other minority group veterans also experienced rates of unemployment exceeding those of their nonveteran peers, as well as those of 1979, during the first quarter.

These veterans and others whose unemployment rates evidence the greatest need for assistance are to receive, under the Committee provisions, particular attention from the Administrator in connection with his proposed new advocacy role.

Administrator's Increased Responsibilities for Promotion of the Development and Establishment of Certain Opportunities for Veterans

Section 244 of title 38 currently requires the Administrator, in providing outreach services to veterans for the purposes of assuring that veterans receive timely and appropriate assistance in obtaining benefits to which they are entitled, to cooperate with and use the services of various Federal, State, or local organizations. In this connection, the Administrator is required to arrange with the Secretary of Labor for the matching of veterans with appropriate job or job-training opportunities.

Section 202 of the Committee bill would expand upon this authority to require the Administrator, in cooperation with the Secretary of Labor, to seek actively to promote the development and establishment of employment, training, and related opportunities for veterans. In carrying out his promotional responsibility, the Administrator would be required to place particular emphasis on the needs of those veterans also stressed in section 201 and discussed, *supra*.

The Administrator's activities could take a variety of forms—ranging from promotion of effective implementation of the law to actual outreach activities targeted at providers of employment and training opportunities. In this regard, the Committee intends that duplication of existing efforts—such as those conducted by the Department of Labor pursuant to the Secretary's responsibilities as set forth in section 305 of CETA to provide for an outreach and public information program to promote maximum job opportunities for veterans—will be minimized and that maximum coordination will be sought by the Administrator in carrying out this expanded responsibility.

Taken together, sections 201 and 202 are intended to make explicit the authority of and responsibility for the Administrator to be an active participant in policymaking regarding veterans employment needs. The Committee does not intend that the functions of other agencies should be usurped by the Administrator but rather that such functions be supplemented by the VA and that the Administrator take an active and forceful role in advocating and stimulating the implementation of employment-related initiatives.

Improvements in the VA's Program of Training on the Job

Since 1944, the GI Bill has provided a program of assistance to veterans and other eligible persons (spouses and dependent children of veterans with service-connected disabilities rated permanently and totally disabling and of veterans who have died from service-connected causes) under which they may elect to use their GI Bill benefits for pursuit of a program of training on the job. Eligible trainees may choose to train in an apprenticeship or other on-job training position. Apprenticeship training seeks to train a worker in the full-range of a craft; other on-job training generally seeks to bring an individual in a shorter time to an acceptable skill for a particular job.

Under these programs, a VA-approved employer must assure the veterans or eligible person of a permanent job upon successful completion of the training program. During the training period, the employer pays the trainee less than the regular wage and the VA pays a training assistance allowance that is reduced at 6-month intervals. The monthly training assistance allowances, currently and as title II, part B, would propose to increase them by 10 percent for the pursuit of training on the job are set forth in the following table:

TABLE 1.—GI BILL ALLOWANCES FOR PROGRAMS OF TRAINING ON THE JOB (SEC. 1787(b) OF TITLE 38)

	Existing law				S. 1188 (title II, part B)			
	No dependents	1 dependent	2 dependents	Each additional dependent	No dependents	1 dependent	2 dependents	Each additional dependent
Periods of training:								
1st 6 mo	$226	$254	$277	$12	$249	$279	$305	$13
2d 6 mo	169	197	221	12	186	217	243	13
3d 6 mo	113	141	164	12	124	155	180	13
4th and any succeeding 6-mo periods	56	84	108	12	62	92	119	13

Programs of training on the job have been successful in assisting veterans in reentering the labor market following military service that has often provided few civilian skills. Such programs are also valuable to veterans whose experiences in the labor market since service have resulted in limited career potential and marginal-skill jobs.

The Committee, in its review of veterans' employment and training assistance programs, has noted three characteristics of apprenticeship and other on-job training programs: Participation rates have been relatively low; the programs have been quite successful for veterans who participate in them; and the costs of approving training-on-the-job positions for purposes of the use of GI Bill benefits have been very high.

Of the 5.1 million Vietnam-era veterans who have participated in the current GI Bill through fiscal year 1978, only 465,227—or 9.1 percent—have participated in full-time programs of training on the job. In fiscal year 1979, an estimated 84,000 veterans participated in programs of training on the job, more than 10 percent less than the 93,600 who participated in fiscal year 1978. There has been a continual decline in the number of veterans participating in this type of training since 1974 when almost 129,000 were enrolled in such programs.

A variety of factors account for the low and declining rates of participation. The dropoff in recent years parallels the decline in overall GI Bill participation rates, which can generally be attributed to constantly increasing numbers of Vietnam-era veterans who have completed their pursuit of training under GI Bill programs and have taken their places in permanent employment, and to the effect of the 10-year delimiting period on the declining numbers of veterans who have educational assistance eligibility remaining. The impact of an economic downturn also adversely affects levels of participation in this kind of program as the job market constricts. As unemployment rates rise, new opportunities for training programs decrease, often very sharply as they did during the 1975 recession. The Committee also believes that a rather slow-moving administrative process resulting in lengthy delays from the point at which the employer or veteran first applies for participation until the VA issues the first

training allowance has also depressed participation rates.

In a 1978 General Accounting Office (GAO) study, entitled "Veterans Response to GAO Questionnaires on the Operation and Effect of VA Educational Assistance Programs under 38 U.S.C. 1651", apprenticeship and other on-job training programs were found to have an outstanding record of success for those who participated in them; 85 percent of the Vietnam-era veterans who trained under the GI Bill in apprenticeship programs and 77 percent who trained in other on-job training programs stated they had achieved their primary training objective. By comparison, only 56 percent and 49 percent of those who enrolled in undergraduate college and vocational technical programs, respectively, thought they had achieved their primary training objective.

The GAO also found that 89 percent of those who completed apprenticeship training were placed in jobs related to their training and that 86 percent of those who completed other on-job training programs found related employment.

With respect to the costs of approval of programs of training on the jobs, the Committee notes a report prepared for the VA pursuant to Public Law 95-202 by the National Academy of Public Administration Foundation, entitled "GI Course Approvals", which contains an extensive discussion of the approval process for programs of training on the job. In that report, the Academy stated:

On-the-job approvals are costly. Some 43 percent of the contracts costs of State approval agencies in 1978 were attributable to the on-the-job and apprenticeship approvals for 93,578 trainees, or about $60 per trainee, compared to $5 for each trainee at an educational institution.

The report discusses in depth a variety of issues related to the approval of programs of training on the job, including apprenticeship registration, the requirements for a progressive wage scale and for determinations of prevailing wage rates, and the lack of uniform and objective approval criteria for programs of training on the job.

Sections 205 through 207 of the Committee bill would make a series of amendments, related to the VA's program of training on the job, designed to streamline the approval process and provide for increased participation in the program by both employers and veterans.

Under current law, responsibility for approvals of programs of training on the job generally resides with State approving agencies (SAA's). Approvals of apprenticeship training programs by SAA's are made pursuant to standards of apprenticeship published by the Secretary of Labor pursuant to section 50a of title 29, United States Code. Other on-job training programs must meet criteria set forth in present section 1777 of title 38 which include detailed specifications relating to wages, length of training, and training content.

The procedures used by SAA's in approving programs are generally consistent among SAA's. The process usually begins when an expression of interest in the program is received by the SAA from an employer or a veteran. An initial site inspection/approval visit is then conducted by the SAA in order to assure that the criteria set forth in law and regulations are met. The SAA assists the employer in making the application and in selecting job titles and wage schedules, and assists the employer and the veteran in completing necessary documentation. Thereafter, the SAA submits the documentation to the VA so that benefits may be awarded. This process takes an average of 4 weeks or less. Approvals for additional trainees by an already-approved employer are generally made in the same fashion. SAA's visit each active employer or business establishment at least once a year and, in some cases, twice.

In 1971, the VA launched an extensive outreach campaign to create new opportunities in these training positions. Regional VA offices were instructed to utilize employees from its Adjudication Division to make contacts with potential employers. SAA's were instructed to approve training positions prior to the time a veteran was available to fill the position so as to reduce the interval between the time a veteran was matched with a position and the time the first benefit check was received. Emphasis was placed on smaller businesses, and notices of new opportunities were to be disseminated quickly to the U.S. Employment Service so that qualified applicants could be sought. The VA made additional funds and employee-years available for this outreach campaign, and the initiative was successful in expanding training positions for veterans and contributed to the peak enrollments in 1974.

Since that time, however, the VA's program of training on the job has ceased to be a priority. Outreach and promotional efforts are virtually nonexistent, and the program has been criticized by congressional committees on a number of occasions, particularly for lack of coordination between the VA and the Department of Labor in terms of referring eligible veterans for open positions despite attempts to provide for such coordination through an interagency agreement.

Section 205 of the Committee bill would amend section 1772 of title 38 in order to make the Administrator directly responsible for the promotion, development, and approval of programs of training on the job. The Committee believes that the Administrator should be more actively involved in efforts in this area and should have a more visible role, especially in terms of developing and promoting opportunities.

In this connection, the Committee notes that, on January 24, 1980, the Senate approved the proposed "GI Bill Amendments Act of 1980" (S. 870/H.R. 5288) containing a provision for a targeted delimiting date extension for the use of GI Bill educational benefits by certain Vietnam-era veterans. Under that legislation, an eligible Vietnam-era veteran with entitlement to educational benefits remaining could have up to 3 additional years to use those benefits for pursuit of a program of training on the job. The Committee believes that in this context, the Administrator's increased responsibilities would be especially important in helping to assure that maximum opportunities are made available for unemployed and underemployed Vietnam-era veterans, reaching the end of their delimiting periods, who could benefit from that extension.

The Committee stresses that the basic purpose of amendment proposed by section 205 is to increase the accountability of the Administrator with respect to programs of training on the job. The Committee is concerned by reports of lack of uniform and objective approval criteria for approval of programs. The October 1979 VA-submitted report notes that "interpretations and application of statutory requirements differ from one VA regional office to another. A Central Office advisory opinion is often given only to the regional office requesting it, and different judgments by different regional staff . . . cause confusion and frustration . . .". The Committee believes that by making the Administrator directly accountable—to the Congress and the public—for the development, promotion, and approval of programs, much of the confusion and frustration—which eventually adversely affects the veteran trainee—can be avoided.

The provisions of section 205 of the Committee bill would specify that the Administrator, in carrying out responsibilities with respect to promotion, development, and approval of programs, could utilize both VA and non-VA sources, including the SAA's. The Committee is aware that SAA's have been involved in approval of training programs for over 30 years and have developed much valuable expertise. The Committee expects that the Administrator would make the necessary arrangements to gain the benefit of this experience and expertise so that approvals will be made in the most efficient and effective manner possible.

Additionally, the Committee bill provisions would require the Administrator to utilize the services of the new veterans' employment and training outreach program specialists (discussed below) in carrying out those responsibilities. The Committee expects that this involvement would also result in the development of increased job-training opportunities for veterans.

Section 207 of the Committee bill would make a series of amendments to section 1777 of title 38 dealing with the criteria for approval of programs of training on the job. When the present criteria were enacted in 1967, they were based on criteria drawn from the original provisions of the World War II GI Bill. Since that time, the Federal Government—and particularly, the Department of Labor—has accumulated extensive experience and expertise with programs of training on the job—most recently under such authorities as CETA and the Manpower Development and Training Act of 1964.

In light of that experience, the Committee believes that the criteria for approval of programs of training on the job should be made more realistic in terms of the labor market of the 1980's by drawing on the experiences of both the VA and the Department of Labor. Thus, the Committee bill would require the Administrator and the Secretary to jointly prescribe regulations for approval of programs.

The proposed legislation would simplify the present criteria while retaining the safeguard relating to wages, appropriateness of training, and assurances of future employment. In addition, the Committee bill would reduce, from 6 months to 3 months, the minimum length of VA on-job training programs for which GI Bill benefits may be used, and remove the 2-year maximum limitation on the training period for such programs. The Committee believes that in some cases valid and valuable training may be accomplished in less than 6 months and expects that criteria developed for approval of such shorter training will assure its value. It notes that under the Help through Industry Retraining and Employment (HIRE) program—one of the components of the President's economic stimulus package of 1977, under which employers were reimbursed for their training costs in hiring veterans and other eligibles—the *maximum* length of training is 6 months. Since that is the *minimum* length of training under the present VA program, very few linkages of the two programs—which would result in benefits to both employers and veterans—have been developed. Quality job-training opportunities have been developed under the HIRE program—although not nearly as many as the Committee had hoped—and the failure to develop effective linkage between the two initiatives is thus disappointing and wasteful. These linkages should be improved as a result of the shorter minimum period proposed in the Committee bill.

With respect to the removal of the 2-year maximum on other than apprenticeship training, the Committee likewise believes that there may be valid programs of training requiring more than a 2-year training period—such as those in the allied health fields. The maximum training period would, of course, be limited to the veteran's months of entitlement up to a maximum of 45 months.

In this regard, the report submitted by the VA, "GI Course Approvals", indicates that some VA officials believe the duration of a

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training program is often determined "backwards, assigning arbitrary lengths of time to each portion of training so that the portions add up to the whole—usually, the maximum permissible time of two years." The report further notes that SAA staff report that "[employers, especially in small companies, may not want to go through the approval process for a 6- to 12-month program." Thus, they design a program of the maximum 2-years' duration.

The suggestion was made in the report that "a more realistic training period should be arrived at by listing the skills and knowledge to be mastered, relying on the [Labor Department's] *Dictionary of Occupational Titles* definitions, and then allocating a reasonable amount of time to each skill."

The Committee believes that this suggestion has merit and expects that, in developing criteria for the approval of programs of training on the job, the Administrator and the Secretary will address this issue, particularly with respect to the approval of programs of on-job training of less than 6-months and greater than 2-years' duration, so that appropriate periods of training will be determined for individual cases. In addition, the Committee expects that the streamlining of the approval process will encourage employers to seek approval of valid on-job training programs of shorter duration.

The Committee bill would also delete from present section 1777(c) certain specified criteria for the approval of a program of training other than apprenticeship training. These criteria include requirements for related instruction; adequate space, equipment, instructional material and personnel; and adequate records of the trainee's progress. The deletion of these criteria is designed to provide greater flexibility but not to relax necessary quality-control standards for approval of a training establishment. In prescribing the required regulations regarding training procedures as part of implementing this section, the Administrator and the Secretary should take into consideration whether some or all of the deleted criteria are necessary to assure the value of the training.

The Committee wishes to note in this regard that prime sponsors under CETA are required to develop maximum feasible linkages between their programs and the VA's program of training on the job. It is anticipated that the criteria developed by the VA and the Labor Department would result in increased implementation of this requirement. The Committee does not expect that all on-the-job training programs approved under CETA would be approved automatically for VA benefits but does expect that the criteria will provide for the joint approval, with increased efficiency, of more quality training positions.

The Committee stresses that it plans to monitor very closely implementation of these new provisions related to programs to training on the job. The Committee expects that there will be a substantial increase in the number of veterans training and employed as a result of these amendments, but intends that such an increase not be made by lowering the quality of the training experience itself or diminishing the benefit to the veterans of participation in the program.

Secretarial Support for State Veteran's Employment Representatives

Section 2003 of title 38 requires the Secretary of Labor to assign to each State a veterans' employment representative (SVER). In addition, the Secretary is required to assign an assistant veterans' employment representative for each 250,000 veterans residing in the State. These representatives are Federal employees of the Veterans' Employment Service of the Department of Labor.

In 1979, in connection with the President's fiscal year 1980 budget, the Department of Labor proposed to eliminate all of the 52 secretarial positions in the offices of the SVER's and to offset the impact of these cuts by having each State employment security agency (SESA) provide secretarial and clerical assistance to the SVER attached to it.

This proposal was criticized widely by many individuals, organizations, and members of Congress on the grounds that it would severely undermine the work of the SVER's. Nine members of the Veterans' Affairs Committee joined in a letter to Secretary of Labor Ray Marshall regarding these proposed cuts on March 6, 1979, urging reconsideration of the proposal to eliminate secretarial support for the SVER's Secretary Marshall responded to that letter on April 3, 1979, indicating that while no incumbent would be removed from a secretarial position, the Department's plans to require SESA's to provide secretarial assistance had not been modified. Chairman Cranston subsequently wrote again on May 1, 1979, to Secretary Marshall raising additional concerns and Secretary Marshall responded on May 30, 1979, further clarifying the Department's plans to implement the proposed elimination of secretarial support to the SVER's.

This proposed cutback was also the focus of extensive questioning by Senator Strom Thurmond and the Chairman at an oversight hearing of the Committee on May 23 1979, focusing on veterans' employment. Again, no modification of the Department's proposal was forthcoming.

Subsequently, an amendment directing the Secretary to continue to provide direct secretarial support to the SVER's, offered by Senator Quentin Burdick, to the Labor-HEW Appropriation Act for Fiscal Year 1980, and agreed to by the Senate Committee on Appropriations, was incorporated into law by reference in Public Law 96-123, enacted on November 20, 1979. This had the effect of blocking the implementation of the Department's proposal for fiscal year 1980.

On February 2, 1980, Senator Thurmond introduced S. 2308, a bill to amend section 2003 of title 38, United States Code, to provide for the assignment of clerical or secretarial employees to assist veterans' employment representatives assigned to the States. The purpose of this bill was to codify in law a requirement for direct secretarial support for the SVER's and to assure that no elimination of such support would occur in the future. The measure is cosponsored by all Members of the Committee, as well as Senator Dole.

During Committee consideration of S. 1188, a provision derived from S. 2808, was incorporated into title II of the Committee bill as section 208, to amend section 2003 of title 38 to require the Secretary of Labor to assign to each SVER direct full-time clerical support and assure that this support is continued and protected against any proposed cutbacks in the future.

Veterans Employment and Training Outreach Program

In January of 1977, the Department of Labor unveiled a three-pronged initiative designed to reduce the high rates of unemployment among Vietnam-era and disabled veterans. The three components of the initiative, which were part of the President's economic stimulus package, were the Help through Industry Retraining and Employment (HIRE) program, a 35-percent new-hire goal for Vietnam-era veterans in public service jobs under titles II and VI of CETA, and the Disabled Veteran Outreach Program (DVOP).

Under the DVOP program, nearly 2,000 disabled veterans were hired with Federal funds (totaling $26 million) by State employment security agencies (SESA's) in the spring and summer of 1977, and assigned to local employment service offices. DVOP units were established in 100 of the Nation's largest cities with every State supplied with a DVOP capability on a State-wide basis if it had no large cities.

The primary mission of the DVOP program is to identify disabled veterans in need of employment assistance and help them to obtain needed employment services, including counseling, job development, and placement. The program's design is to locate and help find jobs for disabled veterans—primarily those from the Vietnam conflict—through the use of formerly unemployed disabled veterans working as DVOP staff who understand the needs of other veterans in the same predicament and can serve as models demonstrating to employes how well disabled veterans can work when given a chance.

DVOP staff receive both classroom and on-the-job training in local employment services offices to acquaint them with the full range of services available to veterans They are taught to recognize a veteran-applicant's need for indepth career counseling or other services. In addition, DVOP staff are prepared to provide veteran-applicants with information about educational, medical, employment, and social services available to them from the VA, CETA prime sponsors, vocational rehabilitation offices, and other public agencies and community services groups.

Though the money for the salaries and expenses of the DVOP program is currently made available through title III, "Secretary's Federal Responsibilities", of CETA, DVOP staff are generally considered employees of local employment service offices. DVOP staff perform duties similar to those performed by the regular employment service staff but are required to concentrate their efforts only on disabled and other veterans. Their duties, pursuant to a Department of Labor field memorandum (FM No. 227-77, dated March 30, 1977) are to:

(1) Assist in duties related to the placement of veterans only and not be assigned other duties or programs requiring significant amounts of time, such as solely administrative or clerical duties.

(2) Perform intensive outreach to locate disabled Vietnam-era veterans through contacts with local veterans organizations, CETA prime sponsors, colleges, universities, trade schools, Veterans' Administration hospitals, U.S. Veterans Assistance Centers, local agencies such as the Urban League, OIC (Opportunities Industrialization Centers), SER, and other community service groups.

(3) Screen local office applicant files to identify disabled veterans, with emphasis on Vietnam-era disabled veterans, for appropriate referral to job-order listings, particularly public service employment opportunities available through CETA prime sponsors, and job-training opportunities developed through the HIRE program.

(4) Assist local office staff in contacting employers primarily through personal visits, to encourage them to hire or train disabled veterans.

(5) Assist local staff in developing job or training opportunities for individuals disabled veterans, with particular emphasis on disabled Vietnam-era veterans.

(6) Assist the local veterans' employment representative to achieve optimum local office liaison with community groups and veterans organizations.

In fiscal year 1979, although program emphasis continued to be placed on obtaining suitable employment for disabled Vietnam-era veterans, DVOP staff were required to assume wider responsibilities relating to veterans in order to provide maximum assistance to minority and disadvantaged veterans. Greater emphasis was also placed on job development and employer relations.

The program, although one of the most successful of the initiatives mounted by the

Administration to deal with the problems of unemployed veterans, has not been without its problems. In the early stages, initial staffing progressed slowly in some States and vacancies remained unfilled for long periods of time. Orientation and training were not always timely and sometimes less than adequate. Diversion of DVOP staff to general employment service activities not related to veterans—or "mainstreaming"—was not uncommon. However, many of these problems have been corrected, and monitoring by the Department of Labor has tended to curb extensive mainstreaming of DVOP staff.

As noted above, the program has been highly successful. Through the cooperation of the VA, listings have been furnished to DVOP staff of more than one-half million Vietnam-era veterans with service-connected disabilities rated as compensable. These veterans have been the focus of DVOP outreach efforts and those contacted have been offered personalized employment assistance, including job counseling and referral to supportive services, as necessary. During the period January 1977 through January 1980, DVOP staff have contributed to the successful placement in jobs of more than 135,000 disabled Vietnam-era veterans.

The degree of success enjoyed by the program is evidenced by the Department's decision to continue the program. Initially, the program was scheduled to terminate in September 1978. However, the Department made the decision to continue the program at fiscal year 1978 levels through fiscal year 1979 and, subsequently, through fiscal year 1983 at gradually reduced levels. At this time, there are 1,600 staff assigned to DVOP, and the program is funded for fiscal year 1980 at a level of $25.1 million. The Department's plans for fiscal year 1981 call for an end of year level of 1,000 staff at funding of $21 million.

During the Committee's hearings on Vietnam veterans readjustment much testimony was received in support of the continuation of the DVOP program at its initial levels as a permanent part of the Nation's efforts to meet the employment needs of veterans. At the Los Angeles hearing held on January 26, 1980, as well as at an earlier employment oversight hearing held in Washington, D.C., on May 23, 1979, the Committee heard from a number of DVOP staff regarding their personal experiences with the program and their very strong support for its continuation on a permanent basis. In addition, the Committee has received many communications of support from individuals nationwide. The American Legion, Veterans of Foreign Wars, Disabled American Veterans, AMVETS, Military Order of the Purple Heart, and Marine Corps League have all adopted resolutions in support of permanent continuation of the program.

Thus, section 209 of the Committee bill would provide, on a permanent basis, for the conduct of a program modeled on the successful DVOP design—the veterans' employment and training outreach program (VETOP).

The Committee bill would require the Secretary to make sufficient funds available to each State in order to support a level of appproximately 2,000 VETOP specialists nationwide. The VETOP specialists, as entry level professionals, would carry out functions and duties in much the same way as DVOP staff now do, reaching out to eligible veterans and making job development contracts with employers. In carrying out these duties, VETOP specialists would be required to assign their priorities in the following order: Disabled veterans who have participated in or completed a program of vocational rehabilitation under chapter 31 of title 38; other disabled veterans; and other eligible veterans, taking into account the needs of categories of veterans with relatively high rates of unemployment (such as young Vietnam-era and minority group Vietnam-era veterans) and the employment emphasis set forth in chapter 42, Employment and Training of Disabled and Vietnam Era Veterans, of title 38 (as it is proposed to be amended by section 802 of S. 870 as passed by the Senate in H.R. 5288 on January 24, 1980)—particularly Vietnam-era veterans. (Chapter 42 also emphasizes veterans with serious service-connected disabilities but such veterans would be included in the first or second priority categories.)

The Committee bill would provide that not more than three-quarters of the VETOP specialists could be stationed in local employment services offices. Other specialists could be stationed at such locations as the new readjustment counseling centers established by the VA pursuant to section 612A of title 38 for Vietnam-era veterans, the VA's U.S. Veterans Assistance Centers (USVAC's), and other locations as determined appropriate by the Secretary and the Administrator, such as at community-based organizations. The concept of readjustment counseling centers and the "store-front" approach were designed primarily to address the needs of those Vietnam-era veterans who are not seeking assistance from the VA because they view the agency as a part of an unresponsive, overwhelming Federal bureaucracy. Early experience shows that these veterans coming to these centers often have serious job-related difficulties. The Committee believes that for such veterans, the linking of needed job-related assistance should be facilitated and that VETOP specialists could be an important element in assuring maximum assistance with minimum referrals to other agencies. However, the Committee does not intend to require the full-time permanent outstationing of a VETOP specialist at each readjustment counseling center; rather, the Committee believes that the outstationing of srecialists in such centers could be on a part-time basis and should only be in accordance with interagency and local determinations, as appropriate. In addition, VETOP specialists could provide valuable assistance to many so-called "self-help" community-based veterans groups that conduct outreach efforts and provide employment assistance to Vietnam-era veterans.

Among the duties specifically assigned to the VETOP specialists by the Committee bill would be the responsibility for promoting, developing, and approving, in accordance with regulations developed jointly by the Administrator and the Secretary, opportunities for VA programs of training on the job. In this regard, the Committee expects that VETOP specialists would be sufficiently familiar with other Federal initiatives designed to assist veterans seeking jobs—such as the Targeted Jobs Tax Credit—so as to familiarize employers with the possible linkages that exist and how these programs can be beneficial to both the employer and the veteran.

The Committee bill would provide that the VETOP program would be administered through the office of the Deputy Assistant Secretary for Veterans' Employment. In this regard, the Committee intends that the Department would carry out monitoring of the program in order to avoid the abuses and problems that occurred in the DOVP program, and that appropriate grievance and other procedures be developed for the administration of the program so as to provide for resolution of issues arising in its implementation—such as employee complaints, salary levels, and other day-to-day related matters.

Part B—GI bill rate increases

Part B of title II of the Committee bill, "GI Bill Rate Increases", would provide for a 10-percent increase in the amount of GI Bill educational assistance allowances paid pursuant to chapter 34, 35 and 36. The following table compares the benefit levels for the various allowances provided for by current law with the benefit levels which would be effected on October 1, 1980, under the Committee bill.

TABLE 2.—COMPARISON OF BENEFIT LEVELS IN CURRENT LAW AND AS PROPOSED BY COMMITTEE BILL

	Existing law				S. 1188			
	No dependents	1 dependent	2 dependents	Each additional dependent	No dependents	1 dependent	2 dependents	Each additional dependent
INSTITUTIONAL AND COOPERATIVE TRAINING (COLLEGE TRAINING) (CH. 34, SEC. 1682(A))								
Full-time	$311	$370	$422	$26	$342	$407	$464	$29
Three-quarter	233	277	317	19	256	305	349	21
Half-time	156	185	211	13	172	204	232	14
Cooperative	251	294	334	19	276	323	367	21
FARM COOPERATIVE TRAINING (CH. 34, SEC. 1682(A))								
Farm cooperative:								
Full-time	$251	$294	$334	$19	$276	$323	$367	$21
Three-quarter	188	221	251	15	207	243	276	17
Half-time	126	147	167	10	139	162	184	11
APPRENTICESHIP OR OTHER ON-JOB TRAINING (CH. 36, SEC. 1787)								
Periods of training:								
1st 6 mo	$226	$254	$277	$12	$249	$279	$305	$13
2d 6 mo	169	197	221	12	186	217	243	13
3d 6 mo	113	141	164	12	124	155	180	13
4th and any succeeding 6-mo periods	56	84	108	12	62	92	119	13

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OTHER PROVISIONS

	Existing law	S. 1188
Flight training	$288	[1] $317
Active duty and less than half-time	311	[2] 342
Correspondence courses	311	[3] 342
Special supplementary Assistance	69	[4] 76
Loan	311	[5] 342

[1] 90-percent of established charges, with 1 mo charged to entitlement for each $317 cost.
[2] Establishment charges for tuition and fees, but not to exceed full-time rate of $342 per month.
[3] Established charges, with 1 mo charged to entitlement for each $342 cost.
[4] Per month, with maximum of $911.
[5] Amount of available loan determined by multiplying months of entitlement to educational assistance times the value of 1 mo entitlement ($342) up to maximum of $2,500.

OTHER PROVISIONS—WAR ORPHANS, WIDOWS, AND WIVES EDUCATIONAL ASSISTANCE (CH. 35)

	Existing law	S. 1188
Full time	$311	$342
Three-quarter time	233	265
Half-time	156	172
Institutional-business courses	251	272
Special restorative training	311	346

A chronology of educational assistance allowances since the beginning of the current GI Bill program (in 1966)—including the rate increase proposed by the Committee bill—are shown in the following table:

TABLE 3.—CHRONOLOGY OF ACTUAL AND PROPOSED EDUCATIONAL ASSISTANCE RATES UNDER POST-KOREAN CONFLICT AND VIETNAM-ERA VETERANS' GI BILL PROGRAM

Law, effective date, and type of Course	Percentage increase for single veteran	Single veteran	Veteran and 1 dependent	Veteran and 2 dependents	Additional dependents
Public Law 89-358, June 1, 1966: Full-time institutional		$100	$125	$150	
Public Law 90-77, October 1967:					
Full-time institutional	30.0	130	155	175	$10
Full-time cooperative farm		105	125	145	7
Full-time training on the job		80	90	100	
Public Law 91-219, Feb. 1, 1970:					
Full-time institutional	34.6	175	205	230	13
Full-time cooperative farm		141	165	190	10
Full-time training on job		108	120	133	
Public Law 92-540, Oct. 1, 1972:					
Full-time institutional	25.7	220	261	298	18
Full-time cooperative farm		177	208	236	14
Full-time training on job		160	179	196	8
Public Law 93-508, Dec. 3, 1974, retroactive to Sept. 1, 1974:					
Full-time institutional	22.7	270	321	366	22
Full-time cooperative farm		217	255	289	17
Full-time training on job		189	212	232	9
Public Law 94-502, Oct. 1, 1976:					
Full-time institutional	8.0	292	347	396	24
Full-time cooperative farm		235	276	313	18
Full-time training on the job		212	238	260	11
Public Law 95-202, Oct. 1, 1977:					
Full-time institutional	7.0	311	370	422	26
Full-time cooperative farm		251	294	334	19
Full-time training on the job		226	254	277	12
S. 1188, Oct. 1, 1980:					
Full-time institutional	10.0	342	407	464	29
Full-time cooperative farm		276	323	367	21
Full-time training on the job		249	297	305	13

The current GI Bill program was established in 1966 in order that (1) service in the Armed Forces be made more attractive, (2) eligible veterans and dependents might benefit from attaining a higher educational level than they might otherwise have been able to afford, (3) individuals whose lives and careers have been disrupted by their active duty in service might receive vocational and educational readjustment assistance, and (4) individuals who served their country honorably might attain the vocational or educational objectives they would have otherwise realized had they not served in the military. Since the inception of the current GI Bill in 1966, Congress has intended that the educational assistance allowance cover, in part, the costs incurred by the veteran-student for tuition, fees, books, supplies, subsistence, and other associated costs.

Since 1966, Congress has increased the rates of educational assistance by more than 200 percent. Yet, even the benefit increases provided by past amendments have not assured that benefit levels kept pace with the rate of inflation from year to year. For example, in 1976, Congress increased GI Bill educational assistance allowances by 8 percent. However, the increase in the cost of living (as measured by the Consumer Index (CPI))—between September 1, 1974, and effective date of the increases provided by Public Law 93-508, and October 1, 1976, the effective date of increases provided by Public Law 94-502—was 14.08 percent.

The Committee believes that a cost-of-living increase in GI Bill benefits is long overdue. The GI Bill purchasing power has declined since 1970 as a result of the continued rise in the cost of living as measured by the CPI. The Congress has increased benefits almost 78 percent since 1970 (from $175 to $311). However, the increase in the CPI from 1970 through April 1980 has been close to 111 percent. Since the last increase in benefits, made by Public Law 95-202, effective on October 1, 1977, the cost of living has increased by more than 30.3 percent. This rate of inflation has badly eroded the value of the GI Bill educational assistance dollar and has created hardships on many veterans attempting to pursue their educations under the GI Bill.

On January 24, in connection with the consideration of the proposed "GI Bill Amendments Act of 1980," the Senate approved a 15-percent cost-of-living increase in the rates of educational assistance allowances paid under chapter 31, 34, 35, and 36 of title 38. At that time, the cost of this rate increase, effective September 1, 1980, was estimated by CBO to be $22 million for fiscal year 1980 and $376 million for fiscal year 1981 and to total $1.4 billion over the period fiscal year 1980 through 1984.

The Committee is deeply committed to providing relief to veterans training under the GI Bill. Likewise, the Committee is concerned about the need to balance the Federal budget and understands the necessity of curbing Federal expenditures as a necessary step toward efforts to reduce inflation.

Consequently, after serious examination and consideration, the Committee, in conjunction with its March recommendations to the Senate Budget Committee, recommended that a 10-percent increase in GI Bill benefits be enacted in lieu of the 15-percent increase that had already passed the Senate. This percentage increase is consistent with the President's recommendations made in his January and revised budgets for fiscal year 1981.

Thus, part B of title II of the Committee bill would provide for a 10-percent increase in GI Bill educational assistance allowances prescribed by chapters 34, 35, and 36 of title 38. A comparable increase in benefit levels for chapter 31 is proposed to be made by section 101(a) of the Committee bill. CBO estimates the fiscal year 1981 cost of this increase, together with the cost of the increase in chapter 31 rates, would be $258 million. Thus, this proposal would result in $118 million in savings over the Senate action taken earlier this year.

TITLE III: TECHNICAL PROVISIONS AND EFFECTIVE DATE

New section 1516(a)(2)(B) of title 38 (as proposed to be added in the revision to chapter 31 made by section 101(a) of the Committee bill) would require that health-care services provided as a part of rehabilitation program under chapter 31 be provided in VA-operated health-care facilities except where otherwise authorized under chapter 17 (health care). Section 301 of the Committee bill would—in light of this requirement and in order to assure chapter 31 participants who have serious employment handicaps and whose care is called for in their rehabilitation plans appropriate eligibility for and priority in the provision of outpatient care in VA facilities and on a contract basis—amend present section 612(f)(2) to provide chapter 31 participants with the same eligibility for VA outpatient care that veterans with service-connected disabilities rated at 50-percent-or-more disabling presently have. This would have the effect of including these chapter 31 participants together with 50-percent-rated veterans in the second priority category for VA outpatient care in present section 612(i), behind veterans receiving treatment for a service-connected disability, and of making chapter 31 participants eligible for contract care on the same basis as 50-percent-rated veterans (which is the same, under present section 601(4)(C)(i) and (ii), as the basis on which contract care is available for the treatment of a service-connected disability).

Section 305 of the Committee bill would amend section 1624(a) of title 38 to revise the current law provision designating those to whom a deceased participant's unused contributions to the chapter 32 educational fund are to be paid. Under current law, such

unused contributions are paid to the person or persons designated by the deceased participant as the beneficiaries of the participant's Servicemen's Group Life Insurance (SGLI) policy, or, where the participant had no SGLI policy or had made no such designation, to the deceased participant's estate.

The Committee agrees with the approach reflected in current law that payment be made directly to those persons whom the participant probably would have liked to receive his or her unused contributions—instead of being paid to the participant's estate—and that the designated SGLI beneficiaries may be presumed to be those whom the participant would desire to be benefited.

However, the Committee does not believe that current law goes far enough in enabling payment to be made directly to the persons who, in all likelihood, the participant would have wished to receive payment if the participant is not covered under SGLI or has not designated an SGLI beneficiary.

Thus, section 305 would amend the provision involved so that the deceased participant's unused contributions to the educational fund be paid to the participant's SGLI beneficiary, or, if the participant is not covered under SGLI or has not designated a beneficiary, to the participant's surviving spouse, or, if there is no surviving spouse, to the participant's surviving child or children, or if there is no surviving child, to the participant's parents—thus simplifying payment and tax consequences in these instances. Under the amendment, only where there is no surviving spouse, child, or parent would payment be made to the participant's estate.

Section 308 would generally provide for an October 1, 1980, effective date.

Other provisions in this title are technical in nature and are described below in the section-by-section analysis of the bill.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office, estimates that the costs resulting from the enactment of the Committee bill during the first 5 years following enactment would be $291.0 million in fiscal year 1981; $372.9 million in fiscal year 1982; $326.9 million in fiscal year 1983; $256.7 million in fiscal year 1984; and $211.7 million in fiscal year 1985. A detailed breakdown of the costs, as estimated by CBO, over the 5-year period follows:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE—MAY 15, 1980

1. Bill number: S. 1188.

2. Bill title: Disabled Veterans Rehabilitation Act of 1980.

3. Bill status: As ordered reported by the Senate Veterans' Affairs Committee, April 2, 1980.

4. Bill purpose: To improve and modernize the vocational rehabilitation program provided service disabled veterans under chapter 31, title 38, U.S.C., to provide a 10 percent cost-of-living adjustment for those who train under the GI Bill, Vocational Rehabilitation and Survivors' and Dependents' Educational Assistance programs, make modifications to the GI Bill on-the-job-training program, create an outreach program for veterans employment and training and for other purposes.

5. Cost estimate: This bill would result in additional future federal liabilities through an extension of existing entitlements that would require subsequent appropriation action to provide the necessary budget authority. The figures shown as "Required Budget Authority" represent an estimate of the additional budget authority (BA) needed to cover the estimated outlays (O) that would result from enactment of S. 1188. Only provisions which have a budget impact are itemized.

[In millions of dollars]

	Fiscal year— 1981	1982	1983	1984	1985
TITLE I					
10-percent rate increase for ch. 31:					
Budget authority	10.6	15.1	15.3	12.7	10.7
Outlays	9.6	15.5	15.6	13.0	10.7
Elimination of the requirement that disabled veterans show a need for vocational rehabilitation:					
Budget authority	2.1	5.3	6.3	6.9	7.4
Outlays	2.1	5.3	6.3	6.9	7.4
Other improvements to ch. 31:					
Budget authority	16.4	19.0	16.9	16.6	16.3
Outlays	16.1	19.3	16.9	16.6	16.3
Total title I (function 700):					
Budget authority	29.1	39.4	38.5	36.2	34.4
Outlays	27.8	40.1	38.8	36.5	34.4
TITLE II					
Changes in OJT:					
Budget authority	1.9	5.7	3.9	2.5	1.9
Outlays	1.9	5.7	3.9	2.5	1.9
Expanded outreach program (function 500):					
Budget authority	12.9	23.6	34.8	42.7	46.1
Outlays	12.9	23.6	34.8	42.7	46.1
10-percent rate increase for chs. 34 and 35:					
Budget authority	275.4	296.9	243.7	168.3	129.3
Outlays	248.4	303.5	249.4	175.0	129.3
Total title II (function 700 except as noted):					
Budget authority	290.2	326.2	282.4	213.5	177.3
Outlays	263.2	332.8	288.1	220.2	177.3
Total cost:					
Budget authority	319.3	365.6	320.9	249.7	211.7
Outlays	291.0	372.9	326.9	256.7	211.7

6. Basis of estimate:

TITLE I—REHABILITATION AMENDMENTS

This title would restructure chapter 31 of title 38, U.S.C. to update, improve and expand the Vocational Rehabilitation Program for service connected disabled veterans under that chapter. Major provisions of this title would:

(1) Enlarge the purpose and effective operation of the VA's rehabilitation programs beyond the veterans' employability to obtaining and maintaining employment and to enable a veteran to achieve independence in daily living.

(2) Specify a broad range of services and assistance that may be provided under chapter 31 in order to provide clear authority for a full range of evaluative, counseling, independent-living, pretraining, training, and employment-assistance services. (The VA interpretation of current law equates vocational rehabilitation under chapter 31 with training and thus does not provide for pretraining services that may enable a veteran, whose mental or physical disability renders entry into training infeasible, to prepare to enter into a training program.)

(3) Provide authority for independent living services to help a veteran with very serious disabilities to live and function within his or her family and community (including authority for a 4-year (fiscal years 1982–1985) pilot program of independent living services and assistance (limited to 500 new veterans entering the program each year) for veterans as to whom the achievement of a vocational goal has been determined not to be reasonably feasible).

(4) Enable veterans participating in chapter 31 rehabilitation programs who have remaining eligibility for and entitlement to chapter 34 (GI Bill) benefits to receive, as part of their chapter 31 benefits, allowances and assistance equal to the chapter 34 allowances and assistance appropriate to their training programs in lieu of payment of the subsistence allowance, tuition, and fees and of certain other services and assistance provided for under chapter 31.

(6) Establish a Veterans Advisory Committee on Rehabilitation.

(7) Eliminate the requirement that disabled veterans show a need for vocational rehabilitation before receiving it.

(8) Provide a 10 percent cost-of-living increase for those training under chapter 31.

(9) Provide for a liberalization of the delimiting period and associated eligibility and provide for a liberalization of entitlement.

CBO and the VA have identical cost estimates for provisions of this title except for items (7) and (8).

[In millions of dollars]

	Fiscal year— 1981	1982	1983	1984	1985
Cost for all items except (7) and (8):					
Budget authority	16.4	19.0	16.9	16.6	16.3
Outlays	16.1	19.3	16.9	16.6	16.3

Item (7): The VA has estimated that the elimination of the requirement that disabled veterans show a need for a program of vocational rehabilitation would result in 1,000 additional trainees in fiscal year 1981 at a cost of $3.8 million. They assume that none of these veterans would have trained under chapter 34. CBO believes that it is unrealistic to assume no offset for chapter 34 training. CBO's estimate assumes that in fiscal year 1981 two-thirds of the additional 1,000 trainees would have trained under chapter 34 at two-thirds of the cost. Because chapter 34 is a declining program, the offsets are reduced.

	1981	1982	1983	1984	1985
Additional trainees under ch. 31	1,000	2,000	2,000	2,000	2,000
Number who would have trained under ch. 34	667	955	648	441	309

COST ESTIMATE

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
Estimated budget authority	2.1	5.3	6.3	6.9	7.4
Outlays	2.1	5.3	6.3	6.9	7.4

Item (8): CBO assumes additional persons will train in the Vocational Rehabilitation Program when benefit levels are raised above what they would have been. VA estimates do not.

ESTIMATED TRAINEES

	Fiscal year—				
	1981	1982	1983	1984	1985
Current law	25,500	22,900	20,300	17,600	15,000
With rate increase	26,800	25,500	23,000	19,800	16,800

These additional trainees plus the rise in the average benefit is expected to result in additional budget authority in fiscal year 1981 of $10.6 million and $9.6 million in outlays.

COST ESTIMATE

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
Estimated budget authority	10.6	15.1	15.3	12.7	10.7
Outlays	9.6	15.5	15.6	13.0	10.7

TITLE II—EDUCATION AND EMPLOYMENT AMENDMENTS

This title would do three things: (1) Enhance the GI Bills on-the-job-training program so as to make the program more attractive to both employers and employees; (2) establish a new Veterans' Employment and Training Outreach Program (VETOP); and (3) provide for a 10 percent rate increase for those training under the GI Bill (chapter 34) or the Survivors' and Dependents Educational Assistance Program (chapter 35).

Item (1): This item would modify the OJT program in various ways. It would require that the VA become actively involved in promoting veterans employment programs including not only the VA's own programs but also programs in other agencies. It would place responsibility for the approval of on-the-job training with the Administrator of the VA and require that the Administrator and the Secretary of Labor to issue joint regulations specifying the criteria for the approval of programs.

It is intended that, under the new criteria many existing on-the-job training positions—such as those conducted under the HIRE program—could be considered approved for GI Bill benefits. In this fashion, existing programs which offer an incentive to employers to train individuals could be linked more easily to a program of assistance to veterans.

Additionally, because it is anticipated that approval process could be simplified and the apparent employer-perceived Government interference reduced, employers would be more likely to participate in the program, particularly if by virtue of hiring certain veterans—those participating in a program of vocational rehabilitation or those who served during the Vietnam era and who are economically disadvantaged—they become eligible for a tax credit under the Targeted Jobs Tax Credit (TJTC) program. Employers would also be given more latitude through a reduction in the minimum length of on-the-job training from 6 to 3 months.

By placing the responsibility of approval with the Administrator, it is anticipated that the approval itself would become more cost-effective and timely. The Administrator could choose to approve programs directly or through agreements with non-VA sources, such as the new VETOP specialists or State approving agencies.

These amendments would also make the Administrator responsible for the promotion of development and establishment of programs of training on the job.

CBO estimates assume both savings and costs would result from this set of provisions. Savings would result because the VA anticipates assuming the approval process themselves and it expects that payments to State approval agencies would be more than the cost of doing the approvals themselves. The Veterans' Administration has estimated that by eliminating payments to State approving agencies for this function it would save $4.8 million in fiscal year 1981. This would be offset by a cost of $2.4 million which would be required to pay additional employees. Costs would also result because additional trainees would be induced into training as a result of the liberalizations under this set of provisions. These additional trainees would also result in additional expenses.

The following table shows the impact on trainees and the one following it shows the impact on costs.

IMPACT ON TRAINEES

	1981	1982	1983	1984	1985
Estimated additional trainees due to this provision	4,000	5,900	4,000	2,700	1,900

IMPACT ON EXPENDITURES OVER CURRENT LAW

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
Elimination of payments to State approving agencies	−4.8	−3.4	−2.3	−1.6	−1.1
VA approval costs	2.4	1.7	1.2	.8	.6
Cost of additional trainees	4.0	7.1	4.8	3.2	2.3
Administrative and counseling costs for additional trainees	.3	.3	.2	.1	.1
Net additions to expenditures as a result of OJT modifications	1.9	5.7	3.9	2.5	1.9

This estimate reflects what the expenditure impact would be if this provision modified current law. It does not account for the fact that this provision has a complementary companion piece in S. 870 (passed the Senate January 24, 1980) to extend the delimiting date for on-the-job training. If the current provision passed along with S. 870, the on-the-job training modifications would apply there as well. This would result in additional costs as follows:

COST OF MODIFICATIONS OF ON-THE-JOB-TRAINING AS APPLIED TO THE 3-YEAR EXTENSION OF THE DELIMITING DATE AS PASSED BY THE SENATE UNDER S. 870

[By fiscal years, in millions of dollars]

1981	1982	1983	1984	1985
1.7	3.	2.	0	0

Item 2: This provision would establish a new Veterans' Employment and Training Outreach Program (VETOP) in the Department of Labor. This program would make available to each State sufficient funding to support 2,000 VETOP specialists nationwide. These specialists would supplement but not supplant the existing staff of Veterans' Employment Service and local veterans' employment representatives. They would have a variety of duties designed to promote employment and training opportunities for eligible veterans. This program would absorb the Disabled Veterans Outreach Program (DVOP) now conducted by the DOL under title III of CETA. The costs of the new VETOP program would be offset by what the DVOP would have cost.

COST ESTIMATE

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
Cost of VETOP program	33.9	36.6	39.5	42.7	46.1
Cost of DVOP program	−21.0	−13.0	−4.7	0	0
Net addition to cost	12.9	23.6	34.8	42.7	46.1

Item 3: The provision would raise benefit levels by 10 percent for chapters 34 and 35 (respectively, the GI Bill and the Survivors and Dependents Educational Assistance Program). It is expected that this will raise expenditures in two ways. First, it will cause the average cost per trainee to go up by about 10 percent. Second, it will cause additional persons to train who would not have trained otherwise. The following table shows the estimated number of veterans training under the GI Bill with and without the 10 percent increase.

ESTIMATED NUMBER OF VETERANS WHO WILL TRAIN UNDER THE GI BILL

[In thousands]

	Fiscal year—				
	1981	1982	1983	1984	1985
Without the 10-percent increase	668	442	291	200	141
With the 10-percent increase	720	516	350	238	167

Similar relative differences occur for the smaller Survivors' and Dependents' Educational Assistance Program.

COST ESTIMATE

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
Estimated budget authority	275.4	296.9	243.7	168.3	129.3
Outlays	248.4	303.5	249.4	175.0	129.3

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Al Peden (225-7766).
10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

SECTION-BY-SECTION ANALYSIS OF S. 1188 AS REPORTED

Section 1

Subsection (a) of section 1: Would provide that the Committee bill may be cited as the "District Veterans Rehabilitation Act of 1980".

Subsection (b) of section 1: Would provide that whenever in the Committee bill an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—REHABILITATION AMENDMENTS

Section 101

Would amend, by comprehensively restructuring and recodifying it, chapter 31 of title 38, United States Code, relating to vocational rehabilitation programs for service-connected disabled veterans, to improve, modernize, and expand rehabilitation opportunities for such veterans. This section, derived from Amendment No. 1661, would expand Veterans' Administration rehabilitation programs beyond vocational training programs provided under current law to include comprehensive rehabilitation consisting of all services and assistance necessary to evaluate a veteran's potential for pursuing a vocational goal, to prepare a veteran to participate in vocational training, and to enable a veteran to achieve maximum independence in daily living, and, to the maximum extent feasible, obtain and maintain suitable employment. The provisions of chapter 31 as proposed to be revised are as follows:

New section 1500.—Purposes: Would state the purposes of chapter 31 as being to provide all services and assistance necessary to enable a service-connected disabled veteran to achieve maximum independence in daily living, and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment. Present chapter 31 does not contain a provision stating the purposes of this chapter. However, present section 1501(2) defines the term "vocational rehabilitation" as meaning—

training (including educational and vocational counseling, all appropriate individualized tutorial assistance, and other necessary incidental services) for the purpose of restoring employability, to the extent consistent with the degree of disablement, lost by virtue of a handicap due to service-connected disability.

Thus, the Committee bill would enlarge the purpose of vocational rehabilitation under chapter 31 beyond enabling the veteran to achieve employability to enabling the veteran to obtain and maintain suitable employment, and would add enabling the veteran to achieve maximum independence in daily living to the chapter 31 purposes. ("Independence in daily living" would be defined in proposed new section 1501(1), as discussed in the analysis below.) In addition, the stated purposes of chapter 31 would be expanded, in terms of the services to be provided, to include "all services" necessary to achieve the rehabilitation of the veteran, and the concept of rehabilitation would be expanded beyond the provision of services and assistance to help overcome a handicap due to a service-connected disability to include the complete rehabilitation of a veteran with a service-connected disability, including rehabilitation with respect to any non-service-connected disabilities which the veteran may have.

New section 1501.—Definitions: Would define certain terms for purposes of chapter 31, as follows (with numbering corresponding to the clauses in this new section):

(1) The term "independence in daily living" would mean the ability of a veteran—without the help of others or with a reduced level of help from others—to live and function within his or her family and community. The wording is intended to parallel the conceptualization of such independence in title VII of the Rehabilitation Act of 1973, under which State vocational rehabilitation programs provide Federally-assisted independent living services and assistance. No comparable definition appears in present chapter 31, which provides only for vocational rehabilitation and does not expressly provide for services and assistance to help the veteran achieve independence in daily living.

(2) The term "medical condition" would be defined to include an alcohol or drug dependence or abuse disability. This term is used in proposed new section 1503, which provides for a "tolling" (extension) of the veteran's chapter 41 period of eligibility delimiting period) while a medical condition makes it infeasible for the veteran to participate in vocational rehabilitation. Present section 1503(b)(1), relating to delimiting-period extension, provides that an extension may be granted a veteran who lacks "medical feasibility for training because of disability". Under that provision, it is unclear whether or not an alcohol or drug dependence or abuse disability would be considered a "disability" for purposes of extending a veteran's period of eligibility. This definition would thus clarify that such a disability would be so considered.

(3) The term "program of education" would have the same meaning provided in present section 1652(b) of title 38, where the term is used to define the educational or training pursuits for which GI Bill benefits may be provided under present chapter 34. This term is used in proposed new section 1508(f) in conjunction with the proposed provision for veterans participating in vocational rehabilitation under chapter 31 to receive the equivalent of chapter 34 allowances and assistance in lieu of the subsistence allowance and certain forms of assistance specified in chapter 31.

(4) The term "program of independent living services and assistance" would be defined broadly to include all services determined to be necessary to enable a veteran to achieve maximum independence in daily living and the assistance authorized in chapter 31 for veterans receiving such services. The term is used in connection with the pilot program of independent living services and assistance that would be established under proposed new section 1520 for those service-connected disabled veterans for whom the achievement of a vocational goal is determined not to be reasonably feasible.

(5) The term "rehabilitated to the point of employability" would mean rendered employable in the occupation for which the veteran received training in a vocational rehabilitation program under the chapter.

(6) The term "rehabilitation program" would mean either a vocational rehabilitation program (which can include independent living services), as proposed to be defined in clause (9) of this new section, or a program of independent living services and assistance, as proposed to be defined in clause (4).

(7) The term "serious employment handicap" would mean a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veterans' abilities, aptitudes, and interests. This term is used in various provisions in chapter 31, as proposed to be revised, which provide a focusing of counseling and certain other services on veterans who have such a handicap (for example, new sections 1506(b) and 1507) which make provision for delimiting-date extensions and extended entitlement for certain such veterans (new sections 1505(b) and 1503(c), respectively).

(8) The term "vocational goal" would mean a gainful employment status that is consistent with the veteran's abilities, aptitudes, and interests.

(9) The term "vocational rehabilitation program" would be defined broadly to include all services necessary to accomplish the purposes of chapter 31, as stated in proposed new section 1500, from evaluation of a veteran's rehabilitation potential through placement in a suitable job and followup employment counseling. Such services would include, but not be limited to, such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined necessary by the Administrator. Such services, including, as necessary, independent living services during an evaluation period and vocational training period, would be provided to a veteran for whom the achievement of a vocational goal has not been determined not to be reasonably feasible in order to determine whether a vocational goal is reasonably feasible, to improve the veteran's potential to achieve a vocational goal, and to enable such a veteran to achieve maximum independence in daily living. In the case of a veteran for whom the achievement of a vocational goal has been determined to be reasonably feasible, such service would be provided to enable the veteran to become employable and obtain and maintain suitable employment. (Thus, where the achievement of a vocational goal is determined not to be reasonably feasible for a service-connected disabled veteran, he or she would be ineligible to participate in a vocational rehabilitation program but would have entitlement for participation in a program of independent living services and assistance.) A "vocational rehabilitation program" would also include allowances and assistances as authorized in chapter 31.

Present section 1501(2) provides for certain specific vocational rehabilitation "training services", including educational and vocational counseling and individualized tutorial assistance, but does not provide for any additional services except in the phrase "and other necessary incidental services". The VA, although it presently provides for a broad range of vocational training and related services under this provision does not, under current law, generally provide pretraining services to enable a veteran to develop the potential to pursue vocational training. As the Administrator explained in his May 11, 1979, letter transmitting the Administration-requested legislation, the VA interpretation of current law equates vocation rehabilitation with training and thus the VA does not offer pretraining services to enable a veteran, whose mental or physical disabilities render entry into training infeasible, to prepare to enter into a vocationally-oriented training program. The Committee bill would expand the range of services and assistance authorized to be provided under chapter 31 to include pretraining services for veterans who could not enter a program of vocational rehabilitation because of a lack of ability to participate in vocational training, as well as independent living services to enable the veteran to achieve maximum "independence in daily living", as that term is proposed to be defined in clause (1) of this new section.

New section 1502.—Basic entitlement: Would extend basic entitlement for chapter 31 benefits to all veterans who have a service-connected disability that is, or but for the veteran's receipt of retirement pay would be, compensable under present chapter 11 (service-connected disability compensation) of title 38. Under present section 1502(a), basic entitlement is limited to veterans who are in need of vocational rehabilitation, which is defined in present section 1501(2) as training to restore "employability . . . lost by virtue of a handicap due to service-connected disability." Thus, under current law, entitlement is limited to veterans who need training to overcome an employment handicap resulting from service-connected disability, and the Committee bill would eliminate the requirement of a determination that the veteran's service-connected disability constitutes some form of employment handicap.

As under current law, only veterans with disabilities arising out of service on or after September 16, 1940, would have entitlement to chapter 31 benefits. Also as under current law, present section 1510, an individual who

would be eligible for chapter 31 benefits but for the fact that he or she has not yet been discharged or relieved from active service, would have basic entitlement for chapter 31 benefits while hospitalized in a Department of Defense hospital pending discharge from active service.

New section 1503.—Periods of eligibility:

Subsection (a): Would lengthen the basic period of eligibility (delimiting period) in current law, present section 1503(a), from 9 to 10 years following the veteran's discharge or release from active-duty service. A 10-year basic delimiting period would be consistent with the 10-year basic GI Bill delimiting period under present chapter 34.

Subsection (b): Would both modify each set of circumstances under which an extension of the delimiting period may be based due to certain factors temporarily precluding the veteran's participation in vocational rehabilitation under chapter 31, as well as revise the method by which the length of such extensions are calculated.

Present section 1503(b) provides for a 4-year extension of the current 9-year delimiting period when the veteran has been prevented from completing vocational rehabilitation within the 9-year period because (1) the disability made the veteran's training infeasible, (2) the veteran had not timely met the requirement of a discharge or release under conditions other than dishonorable but the nature of the discharge or release was changed by appropriate authority, or (3) the veteran had not timely established the existence of a service-connected disability.

The Committee bill would provide that the 10-year delimiting period would not run during any period that the veteran is prevented from entering or completing a vocational rehabilitation program under this chapter because a medical condition made it infeasible for the veteran to participate in such a program. Also, by virtue of the definition of "medical condition" proposed in new subsection 1501(2), the Committee bill would make clear that a medical condition entitling the veteran to a "tolling" of the 10-year delimiting period includes an alcohol or drug abuse or dependence disability—as would the Senate-passed amendment to section 1662(a)(1) of title 38, with respect to GI Bill trainees, in section 201 of H.R. 5288 as passed by the Senate on January 24, 1980, which provides for including such a disability among the disabilities which result in a tolling of the 10-year delimiting period for chapter 34 benefits. (See S. 870 as reported on September 7, 1979, S. Rept. No. 96-314, 96th Cong., 1st sess.)

The Committee bill would also provide each eligible veteran with a full 10 years of eligibility from the date on which the veteran satisfies the nature-of-discharge requirements or the veteran is determined to have a service-connected disability.

Similarly, the Committee bill would expand the existing chapter 31 delimiting-period-extension provision with respect to the nature-of-discharge requirements so that a full 10 years of chapter 31 eligibility would be afforded in cases where a determination by the Administrator removes such a bar.

Subsection (c): Would, in terms generally parallel to current law, provide for a delimiting-period extension for an eligible vetran who has a serious employment handicap if either the veteran has not previously been rehabilitated under chapter 31 to the point of employability, or the veteran's service-connected disability has worsened to the extent that the veteran is no longer able to perform the duties of the occupation for which he or she was so rehabilitated. In comparison to the Committee bill, which proposes to make service-connected disabled veterans who have a "serious employment handicap" (as proposed to be defined in new section 1501(7)) eligible for consideration for a delimiting-period extension in these circumstances, present section 1503(c) provides such eligibility to veterans who are "in need of vocational rehabilitation to overcome the handicap of blindness, or other serious disability, resulting from a service-connected disability".

In addition, the Committee bill also would provide for an extension where the occupation for which the veteran had previously been rehabilitated under chapter 31 to the point of employability has proven to be inappropriate in light of the veteran's employment handicap and abilities. There is no comparable provision in current law.

The Committee bill would provide for an extension where the Administrator determines that an extension is necessary to carry out the purposes of this chapter.

This is designed to provide the Administrator with sufficient discretion to provide an extension as necessary to meet vocational rehabilitation needs following a determination of the appropriateness of granting an extension in an individual case of a veteran with a serious employment handicap. There is no comparable discretionary provision for an extension of the period of eligibility under current law.

Subsection (d): Would provide for a delimiting-period extension in the case of a veteran for whom the achievement of a vocational goal is determined not to be reasonably feasible if it is determined that an extension is necessary for such veteran to achieve maximum independence in daily living. This would provide authority for an extension of the period of eligibility for such a veteran to participate in a program of independent living services and assistance, eligibility and a program which do not exist under present law.

Since current law does not provide for programs of independent living services and assistance, there is no comparable extension provision in current law.

New section 1504.—Scope of services and assistance: Would provide for a broad and expanded range of services and assistance that the Administrator may furnish to participants in chapter 31 programs. As previously noted in the analysis of new section 1501(9), current law does not clearly specify the services and assistance available to veterans while participating in vocational rehabilitation training. The Committee bill provisions would continue in effect all existing authority in current law for services and assistance furnished under chapter 31 and expand such services and assistance to provide clear authority for the full range of diagnostic, evaluative (including periodic reevaluations as appropriate), counseling, pretraining, employment, and other services that may be necessary to assist the veteran in entering and pursuing rehabilitation and in finding, adjusting to, and maintaining suitable employment.

Subsection (a): Would provide that the services and assistance authorized to be provided under chapter 31 pursuant to regulations which the Administrator must prescribe, shall include services and assistance as follows (with numbering corresponding to the clauses in this subsection):

(1) Evaluation (including periodic reevaluations as appropriate for a veteran participating in a rehabilitation program, of a veteran's potential for rehabilitation), including such diagnostic and related services as are needed to determine whether the veteran has a serious employment handicap and whether a vocational goal is reasonably feasible for the veteran and to provide a basis for planning a suitable vocational rehabilitation program, or a program to improve the veteran's rehabilitation potetnial or independent living status. There is no specific provision in current law for such evaluations. The purpose of this provision would thus be to provide an explicit statutory basis for the provision of whatever evaluation services are needed in connection with an eligible veteran's participation in a chapter 31 rehabilitation program.

(2) Educational, vocational, psychological, employment, and personal adjustment counseling. Under current law, in present section 1501(2), vocational rehabilitation expressly includes educational and vocational counseling, and VA regulations (38 CFR § 21.700) provide for personal adjustment counseling "whenever needed prior to entering training, while pursuing training, or in adjusting to employment following training." Specific provisions for such counseling services in this provision in the Committee bill would thus underscore the congressional intention that a broad range of counseling be available to veterans participating in chapter 31 programs.

(3) An allowance and other appropriate assistance, is authorized by new section 1508. The allowances and certain other assistance payable under proposed new section 1508 and the differences between the provisions of new section 1508 and current law with respect to allowances and other assistance, are described below in the analysis of that new section.

(4) A work-study allowance is auhtroized by present section 1685. This provision recodifies the provision in present section 1502(d) relating to the eligibility of chapter 31 participants to perform veteran-student services under present section 1685, under which an additional educational assistance allowance, referred to as the "work-study allowance", is paid for services in connection with various VA program activities, and veterans with service-connected disabilities rated 30-percent or more disabling receive a priority in the provision of work-study assignments.

(5) Placement services to effect suitable employment of a veteran and postplacement services to attempt to assure satisfactory adjustment in employment. Employment assistance services for chapter 31 participants under the Committee bill and the differences between the provisions of the Committee bill and current law with respect to employment assistance, are described below in the analysis of proposed new section 1517.

(6) Personal and work adjustment training. There is no specific provision for such training in current law. However, such training is provided as part of the "training . . . for the purpose of restoring employability", provided for in the definition of "vocational rehabilitation" in present section 1501(2). Provision for such training in this provision of the Committee bill would thus underscore the congressional intention that comprehensive training opportunities, including training necessary to help assure the maintenance of employment after the completion of vocational training, be made available to veterans who participate in chapter 31 programs.

(7) Vocational and other training services and assistance, including individualized tutorial assistance, tuition, fees, books, supplies, and licensing fees, and equipment and other training materials determined by the Administrator to be necessary to accomplish the purpose of rehabilitation in individual cases. Under current law, present section 1501(2), vocational rehabilitation expressly includes "training" and "individualized tutorial assistance", and "training" has been interpreted to include tuition, fees, books, supplies, and licensing fees, and equipment and other training materials necessary for vocational rehabilitation. Present section 1509, relating to the release to or return by the veteran of books, supplies, and equipment furnished under chapter 31, recognizes that such items may be furnished as part of vocational rehabilitation; and VA regulations (38 CFR §§ 21.230–21.243) provide detailed rules for the furnishing, release, and return of such items, including tools and other training materials. The Committee is also advised that, under current VA practice, the VA pays the cost of license fees necessary for the veteran to engage in the occupation for which he or she trained under chapter 31.

Thus, this provision of the Committee bill would clarify and codify current laws, regulations, and practice with respect to these forms of assistance in vocational rehabilitation and, to the extent appropriate for programs of independent living services and assistance—for which provision would be made in proposed new sections 1509 and 1520—extends their applicability to include such programs.

(8) Loans, as authorized by proposed new section 1512, which recodifies, with certain modifications (including an increase in the maximum amount of loans) present section 1507. The provisions of new section 1512 and the changes it would make in current law are described below in the analysis of that new section.

(9) Treatment, care, and services described in present chapter 17 of title 38. Such treatment, care, and services encompass a comprehensive range of medical and dental treatment, care, and services.

Present section 1506 authorizes the Administrator to furnish chapter 31 participants with medical care, treatment, and hospitalization as necessary to accomplish the purpose of chapter 31, whether or not such medical care, treatment, or hospitalization is otherwise authorized under chapter 17 of this title. VA regulations (38 CFR § 253(a)) condition entitlement to such health care on a medical determination that treatment is necessary to enable the veteran's entry into, continuation in, or expeditious return to a course of training.

This provision of the Committee bill would thus recodify the Administrator's authority to provide a comprehensive range of inpatient and outpatient care and services to chapter 31 participants and make clear that such care and services for a chapter 31 participant may be furnished as a chapter 31 benefit as part of the veteran's entitlement under this chapter. In the Committee's view, this provision, together with proposed new section 1516(2)(A), which would provide for the procurement of rehabilitation and health care and services from VA health-care facilities for chapter 31 participants, would help to provide for the furnishing of all services needed to meet the rehabilitation and health needs of the veteran in a comprehensive, coordinated manner. Of course, under the definitions of "program of independent living services and assistance" and "vocational rehabilitation program" in proposed new section 1501 (4) and (9), determinations that such care and services are necessary to achieve a rehabilitation purpose would continue to be required.

(10) Prosthetic appliances, eyeglasses, and other corrective and assistive devices. Present section 1506 authorizes the Administrator to furnish chapter 31 participants with "prosthesis" on the same basis as medical care, treatment, and hospitalization, as discussed above in connection with clause (9) of this subsection; and the same VA regulations noted above (38 CFR § 21.253) provide for the "[f]urnishing and repair of orthopedic and/or prosthetic appliances." Thus, in a manner similar to that discussed above in connection with clause (9) of this subsection, it is the Committee's intention to authorize the Administrator to provide comprehensively, as part of chapter 31 programs, for the furnishing of all corrective and assistive devices that chapter 31 participants require.

(11) Services to a veteran's family as necessary for the effective rehabilitation of such veteran. There is no specific provision for such services in current law as part of vocational rehabilitation. However, under chapter 17, relating to health care and services, the VA has authority to provide such mental health services, consultation, professional counseling, and training for a veteran's family members as may be essential for the effective treatment or rehabilitation as part of the veteran's VA hospital care (section 601(5)(B)) and as part of outpatient services in connection with the treatment of a service-connected disability or, under certain circumstances, following VA hospitalization (section 601(6)(B)). Thus, although such services generally could be provided as chapter-17-described services under clause (9) of this subsection (discussed above), the Committee intends by specially including necessary services to the veteran's family to assure that all necessary services to the family will be available and to underscore the Committee's view that such services may be very important to the rehabilitation process in some cases.

(12) License fees, essential equipment, supplies, and minimum stocks of materials that the Administrator determines necessary for the most severely disabled veterans requiring homebound training or self-employment, or both, and that are within the criteria and cost limitations that the Administrator would be required to prescribe in regulations. There is no provision in current law for the furnishing or such fees, equipment, supplies, and stocks, and, under VA regulations (38 CFR §§ 21.239 and 21.242), relating to furnished supplies to veterans pursuing training in the home and furnishing veterans with special equipment, only such supplies and special equipment as are necessary for the veteran's training are furnished. Thus, Committee bill would provide new authority for the Administrator to provide certain very severely disabled veterans to undertake the gainful employment for which training had with "start-up" items necessary for the veteran been provided.

(13) Travel and incidental expenses under the terms and conditions set forth in section 111 of title 38, plus, in the case of a veteran who, because of his or her disability, has transportation expenses in addition to those incurred by persons not so disabled, a special transportation allowance to defray such additional expenses during rehabilitation, job seeking, and the initial employment stage. Under subsection (a) of present section 111, the Administrator is authorized to "pay the actual necessary expense of travel (including lodging and subsistence), or in lieu thereof an allowance based upon mileage traveled, of any person to or from a Veterans' Administration facility or other place in connection with vocational rehabilitation . . .", and under subsections (b) and (c), the Administrator may pay the fee and travel expenses of an attendant for a chapter 31 participant.

The Committee bill would provide assurance that the extraordinary travel costs of a seriously disabled veteran do not interfere with his or her participation in rehabilitation and efforts to seek and embark upon employment.

(14) Special services related to blindness and deafness, including language training, speech and voice correction, training in ambulation, and one-hand typewriting; orientation, adjustment mobility reader interpreter, and related services; and telecommunications, sensory, and other technical aids and devices. There is no express provision for such special services, aids, and devices under current chapter 31. However, under chapter 17 (health care), "mechanical or electronic equipment" to overcome the handicap of blindness (section 614(b)) and therapeutic and rehabilitative devices (section 617) may be provided to certain service-connected disabled veterans. VA regulations authorize the provision, under chapter 31, of "special equipment made up of items which, because the nature of the veteran's handicap are necessary to enable him to undertake and pursue successfully the prescribed course of training", including "[s]pecial equipment . . . required for training purposes . . . to overcome the handicap of blindness (38 CFR § 21.242 (a) and (b)), and, under certain circumstances, reader service, necessary for the successful pursuit of a course of vocational rehabilitation by a veteran with a visual impairment" (38 CFR § 21.279(a)). The purpose of this provision of the Committee bill would thus be to provide an explicit statutory basis in chapter 31 for the provision of whatever special services, aids, and devices may be needed in connection with enabling blind or deaf eligible veterans to participate successfully in a chapter 31 rehabilitation program.

(15) Services necessary to enable a veteran to achieve maximum independence in daily living. There is no express provision in current law or VA regulations for furnishing, under chapter 31, such independent living services. However, under chapter 17, health care, rehabilitative services that may be provided as part of hospital care and medical services to eligible veterans are sufficiently broad in scope to cover such services (section 601 (5), (6), and (8)).

Under the Committee bill, independent living services would be authorized to be provided, under chapter 31, at any stage of participation that they are needed.

Subsection (b) would provide that a program of independent living services and assistance may include the types of services and assistance described in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796). Thus, this provision would assure that all of the services which are available to nonveterans under Federally-assisted State rehabilitation programs would be made available to veterans in need of such services and assistance. There is no comparable provision under current law.

Subsection (c) would subject rehabilitation programs (including individual courses) under chapter 31 to the approval of the Administrator. Present section 1502(a) states "such vocational rehabilitation [shall be furnished] as [may be] prescribed by the Administrator". VA regulations generally refer to approval of training in excess of 4 years (38 CFR § 21.206) and section 210 of title 38 relating to the general authority of the Administrator implies such authority. However, there appears to be no explicit authority to provide for the requirement that the Administrator approve rehabilitation programs in the individual case. Thus, the Committee bill would codify the Administrator's right to approve or disapprove rehabilitation programs under chapter 31.

Section 1505.—Duration of rehabilitation programs: Would establish the length of time, in months, that an eligible veteran would have entitlement to benefits under this chapter.

Subsection (a): Would provide that, in the case of a veteran for whom the reasonable feasibility of achieving a vocational goal is undetermined, the period of extended evaluation (discussed below in the analysis of proposed new section 1505(b)) may not exceed 12 months, except that the duration of extended evaluation may be extended for additional periods of up to 6 months if the Administrator determines that during the extended period it would be reasonably likely that a determination could be made as to whether or not the achievement of a vocational goal is reasonably feasible for such a veteran.

Since current law does not provide for extended evaluations, there is no comparable provision in current law regarding the months of entitlement to such evaluation.

Subsection (b): Would except as provided in subsection (c) of this new section,

provide that, following a determination that the achievement of a vocational goal is reasonably feasible for a veteran, the period of a vocational rehabilitation program for a veteran may not exceed 48 months, except that, in the case of a veteran who is determined to have a serious employment handicap, the counseling and placement and postplacement services described in proposed new section 1504(a) (2) and (5) may be provided for an additional period of up to 18 months.

Present section 1502(b) provides that a course of vocational rehabilitation may not exceed 4 years unless the Administrator prescribes a longer period. By regulation (38 CFR §§ 21.20(b) and 21.203(c)), this general 4-year limitation has, in the case of institutional training, been equated with 48 months of entitlement, and charges to entitlement for three-quarter and half-time training are measured and assessed on the same basis as charges to entitlement for GI Bill training under chapter 34. VA regulations (38 CFR § 21.290) also require the provision of "follow assistance" for employed veterans "where . . . it is determined that such assistance is required" and provide for such assistance to continue "for a period of time necessary to determine that there is reasonable assurance that the [veteran] . . . has made a satisfactory employment adjustment."

In providing for 48 months of basic entitlement, the Committee intends to provide for continuation of the current administrative policy with respect to the charging of entitlement for part-time institutional training and to provide for the extension of that policy to include such independent living training, extended evaluation, and training or work experience in a Federal agency for no or nominal pay as is provided on a part-time basis.

With respect to the express provision for counseling, placement, and postplacement services generally for up to 18 months beyond the basic 48-month period in the cases of veterans with serious employment handicaps, it is the Committee's intention to underscore the VA's responsibility to provide such assistance to these veterans after the completion of training in order to assure that they receive all appropriate help in obtaining and maintaining suitable employment. Of course, in appropriate cases, this 18-month period could be extended in accordance with subsection (c) of this new section.

Subsection (c): Would, in the case of a veteran determined to have a serious employment handicap, provide the Administrator with authority to extend the duration of a period vocational rehabilitation beyond 48 months to the extent necessary to enable the veteran to achieve a vocational goal where the veteran's need for further vocational rehabilitation arose out of a worsening of the veteran's service-connected disability to the extent that the veteran is prevented from performing the duties of the occupation for which the veteran had been rehabilitated, or the veteran had previously been rehabilitated under chapter 31 to the point of employability, but either the occupation for which the veteran had been rehabilitated proved not to be appropriate in view of the veteran's employment handicap or abilities.

In addition, the Administrator would be given discretionary authority to provide an extension where the Administrator determines, under regulations which the Administrator would be required to prescribe that an extension is necessary to carry out the purposes of chapter 31 (as set forth in proposed new section 1500).

Under current law, present action 1502(b), the Administrator is given broad discretion to prescribe a period of vocational rehabilitation longer than 4 years, and by regulation (38 CFR § 21.203) training is authorized for a period greater than 4 years where, among other situations, the veteran "cannot be trained to employability in [a suitable occupation] . . . without exceeding 4 years training time", or "training in excess of 4 years is necessary in order to qualify the seriously handicapped veteran for employment."

It is the Committee's intention in providing for broad discretion, under regulations that the Administrator must prescribe, to grant an extension to a veteran with a serious employment handicap to allow for similarly broad standards to be applied in such cases as long as the extension would actually be necessary to carry out the purposes of vocational rehabilitation under chapter 31.

Subsection (d): Would provide that the duration of a program of independent living services and assistance for a veteran for whom it has been determined that the achievement of a vocational goal is not reasonably feasible, may not exceed 24 months, unless a longer period is necessary and likely to result in a substantial increase in a veteran's level of independence in daily living.

Since current law does not provide for such programs of independent living services and assistance, there is no comparable provision in current law regarding the duration of such programs.

New section 1506.—Initial and extended evaluations; determinations regarding serious employment handicap.

Subsection (a): Would require that each veteran with a service-connected disability who applies for benefits under this chapter be provided with an initial evaluation consisting of such diagnostic and evaluative services described in new section 1504(a)(1) as are necessary to determine whether the veteran has a serious employment handicap and to determine, if reasonably feasible during an initial evaluation, whether the achievement of a vocational goal is reasonably feasible for the veteran. (In addition, under section 1504(a)(1)(B), evaluation services would be provided for the purposes of planning a suitable vocational rehabilitation program for the veteran.) The determination in all cases whether the veteran has a serious employment handicap is, under the provisions of the Committee bill, necessary in all cases because various other provisions—including certain delimiting period extension provisions (new section 1503(c)), and provisions authorizing additional months of entitlement (new section 1505(c)), and requiring certain counseling services (new section 1506(b)), the development of an individualized written plan of vocational rehabilitation (new section 1507(a)), and the assignment of a case manager (new section 1506(e))—are keyed to the determination that such a handicap exists. There is no comparable provision in current law.

Subsection (b): Would require that, where it is determined that the veteran has a serious employment handicap and that the achievement of a vocational goal is reasonably feasible, the veteran be provided with counseling in accordance with an individualized written plan of vocational rehabilitation. (The plan and the inclusion of provision of counseling in the plan would be required under proposed new section 1057 (a).) There is no comparable provision in current law.

Subsection (c): Would provide that, where it is determined that a veteran has a serious employment handicap but it cannot be determined during the initial evaluation pursuant to subsection (a) of this new section whether or not a vocational goal for the veteran is reasonably feasible, the veteran is to be placed in extended evaluation. During extended evaluation, diagnostic and evaluative efforts would be provided in an attempt to determine whether or not a vocational goal is reasonably feasible and, as appropriate, to plan a program to improve the veterans' vocational rehabilitation potential and independent living abilities. In addition, a veteran in extended evaluation would be entitled to such services under this chapter as the Administrator determines necessary to improve the veteran's vocational rehabilitation potential and to achieve maximum independence in daily living. During a period of extended evaluation, the veteran would be entitled to an allowance as specified in new section 1508 (a)(1), (b), and (d)(2).

There are no comparable provisions under current law.

Subsection (d): Would require that determinations regarding the reasonable feasibility of achieving a vocational goal be made as expeditiously as possible and that any reasonable doubt be resolved in favor of determining that the achievement of a vocational goal is reasonably feasible. If the veteran has been placed in extended evaluation under subsection (c) of this new section, the determination regarding the feasibility of a vocational goal would be required to be made by the end of the period of extended evaluation, including any extensions of that period granted under new section 1505(a). These requirements are intended to assure that veterans are not needlessly placed or continued in extended evaluation when there is a reasonable possibility of involving them in vocational training.

There is no comparable provision in current law.

New section 1507.—Individualized vocational rehabilitation plan:

Subsection (a): Would require the Administrator to formulate an individualized written plan of vocational rehabilitation for each veteran determined to have a serious employment handicap. Each such plan would be required to be developed jointly with the veteran and to include, but not be limited to: (1) A statement of long-range rehabilitation goals and intermediate rehabilitation objectives related to achieving those goals; (2) a statement of the specific services, which must include counseling in all cases, and assistance to be provided the veteran; (3) the projected date for the initiation and the anticipated duration of each such service; (4) objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved; and (5) the name and business address and telephone number of the Veterans' Administration employee (case manager) assigned responsibility, pursuant to new section 1506(e), for the management and follow up of the provision of services and assistance to the veteran.

There is no comparable provision in current law and VA regulations (38 CFR § 21.212) requiring in all cases a "detailed individual training program" are less specific with respect to the content of the program.

Subsection (b): Would require the Administrator to review the plan at least annually and afford the veteran the opportunity to participate in the review. Based on this review, the Administrator would be required, jointly with the veteran, to redevelop the plan as appropriate.

Subsection (c): Would provide for a special appeal process if the veteran does not agree either to the plan, its redevelopment, or the denial of its redevelopment. Thus, this subsection would require that, prior to agreeing to the plan or to any redevelopment or denial of redevelopment of the plan, the veteran be informed of his or her opportunity for a review. The procedures for such a review would be as follows: If the veteran does not agree to the plan or redevelopment or denial of redevelopment of the plan, the veteran may submit to his or her "case manager" (the VA employee described in new section 1506(e)) a written statement setting forth the veteran's objections to the plan and requesting a review of the plan as proposed to him or her. The Administrator would be required to review the plan as proposed and the veteran's statement, and to render a decision within 90 days after the veteran

submits his or her statement unless a longer period of up to 150 days is allowed in certain cases under regulations prescribed by the Administrator.

It is the Committee's intention that, unless the veteran is receiving assistance from another person in preparing his or her statement objecting to the plan, such as a service officer of a veterans' service organization, VA personnel would, upon request, provide the veteran with any assistance that he or she may need in expressing his or her objections in writing. With respect to the conduct of the review, the Committee expects that generally a first review would be conducted within the VA regional office administering benefits to the veteran and that, where appropriate and necessary, a further review would be conducted in the VA Central Office. The provision for allowing between 90 and 150 days for completion of the review is intended to allow for an extended review period in extraordinary cases or where Central Office review is provided. In all cases, it is the Committee's intention that an impartial review be provided and that no such appeal be finally denied except by VA personnel in a higher administrative position than the employee or employees who proposed the plan. Also, the Committee notes that this special review process is intended to supplement, not supplant, the veteran's other rights in general VA adjudications and appeals processes.

There are no comparable provisions in current law.

New section 1508.—Allowances: Would provide for the computation and payment of allowances for veterans participating in programs under this chapter and increase by 10 percent existing monthly subsistence allowance rates.

Subsection (a): Would provide that—except for veterans who make an election pursuant to subsection (f) of this new section to receive, in lieu of a subsistence allowance and certain other chapter 31 forms of assistance, an allowance and assistance equal to those provided to veterans enrolled in training under chapter 34, relating to GI Bill educational assistance—subsistence allowances would be paid to a veteran during any period, as determined by the Administrator, that the veteran is participating in extended evaluation or a rehabilitation program (proposed to be defined in new section 1501(6) to include both a vocational rehabilitation program and a program of independent living services and assistance). In addition, a veteran who has a serious employment handicap and who, at the conclusion (either by completion or by early termination) of such veteran's pursuit of a program of vocational rehabilitation, has been determined to be rehabilitated to the point of employability, would be paid a subsistence allowance for the following 2 months at the full-time rate for the type of training the veteran had been pursuing.

Present section 1504(a) provides for the payment of a subsistence allowance only for participation in a course of vocational rehabilitation. Thus, the Committee bill would provide for allowances in two new categories of chapter 31 participation that the Committee bill would create—extended evaluation and a program of independent living services and assistance.

The provision in this subsection of this new section for the payment to a veteran with a serious employment handicap of a subsistence allowance for the 2 months following the veteran's pursuit of a program of vocational rehabilitation under this chapter would replace the provisions of present section 1504(a) which entitles a veteran who has been determined to be employable to the payment of a subsistence allowance for 2 months after that determination has been made. Under VA regulations (38 CFR §§ 21.204 and 21.281), the making of that determination corresponds with the completion or termination of the course of training, and the Committee bill provision would be consistent with those regulations. In the case of a veteran who trained on a part-time basis, however, whereas VA regulations (38 CFR § 21.134) limit this 2-month post-training payment to twice the part-time rate that the veteran was receiving when he or she was determined to be employable, the Committee bill would provide for such payments to be at the full-time rate in all cases for the type of training involved. In addition, there is no distinction in current law between those who have and do not have a serious employment handicap.

Where a veteran has elected to receive a chapter-34-equivalent allowance in lieu of a subsistence allowance, it is the Committee's intention that the postvocational training allowance be based on the chapter 31 subsistence allowance applicable to the type of training that the veteran has pursued.

Subsection (b): Would, in terms substantively equivalent to the provisions of present section 1508(b), provide for the computation of subsistence allowances for veterans participating in a program of vocational rehabilitation based on whether the type of program being pursued is institutional training or is farm cooperative, apprenticeship, or other on-job training, and would provide a 10-percent increase in the subsistence allowance rates for vocational rehabilitation. In addition, this subsection would provide for the computation of new allowances for extended evaluation and a program of independent living services and assistance. In both cases, the full-time rate would be equal to the full-time rate for institutional training for a program of vocational rehabilitation. Less than full-time rates for extended evaluation would be established in regulations which the Administrator would be required to prescribe under subsection (d)(2) of this new section. Three-quarter-time and half-time rates for programs of independent living services and assistance would be equal to the corresponding part-time institutional training rates for vocational rehabilitation programs.

Subsection (c): Would continue in effect the substance of the provisions of present section 1504(c) which require that, where the veteran's vocational rehabilitation includes training on the job, the employer submit to the VA monthly statements of the income that the veteran has received from the employer and which authorize the Administrator to reduce the subsistence allowance payable to the veteran for the months involved to an amount considered equitable and just. However, the Committee bill would add a requirement that the Administrator prescribe regulations setting forth criteria for exercising the authority to make such reductions.

In addition, this subsection would clarify that, where a veteran is pursuing, as part of a vocational rehabilitation program, on-job training or work experience in a Federal agency (under the provisions of new section 1516(a)(1)) without pay or for nominal pay, the veteran is entitled to a subsistence allowance at the appropriate rate provided in subsection (b) of this new section for institutional training. Under present section 1511, training or work experience in a Federal agency for which no pay is received is authorized as part of vocational training, and, under the VA's interpretation of the current law provisions establishing subsistence allowance rates, present section 1504(b), payments in such cases are required to be made at the rate provided for on-job training—a rate that is lower than the institutional training rate in light of the fact that on-job training participants ordinarily receive some wages. Since, in the Committee's view, the institutional rate is more appropriate where the training or work experience is for no or nominal pay, the Committee bill would so provide.

Paragraph (1) of subsection (d): Would require the Administrator to define, for a veteran participating in a rehabilitation program, full-time and each part-time status in accordance with regulations that the Administrator would be required to prescribe that would not be inconsistent with regulations governing the determination of such status under chapter 34, relating to GI Bill educational assistance. Under present section 1504(d), the Administrator is required to define full-time and part-time, but there is no requirement for the Administrator to prescribe regulations or to define full-time status and part-time status under chapter 31 so as to avoid inconsistency with full- and part-time status definitions under chapter 34.

Paragraph (2) of subsection (d): Would provide that, in the cases of a veteran participating in extended evaluation on less than a full-time basis, a subsistence allowance may be paid, in accordance with regulations that the Administrator must prescribe, at a rate proportional to the full-time rate for extended evaluation. Since current law makes no provision for extended evaluation, there is no comparable provision in current law.

Subsection (e): Would provide that, where a veteran is pursuing a rehabilitation program on a full-time basis in a specialized rehabilitation facility, the Administrator may, upon the veteran's request, pay the facility for the cost of the veteran's room and board in lieu of paying the veteran the subsistence allowance otherwise payable, exclusive of any amounts payable to the veteran for dependents, and pay to the veteran any subsistence allowance amount payable for the veteran's dependents. Thus, where the facility's charges for room and board exceed the single-veteran allowance rate, the VA would be authorized to pay those charges that the veteran would be unable to pay from the allowance payable for his or her subsistence if it were paid. This subsection would not apply in the case of a veteran participating in a rehabilitation program while receiving care in a medical facility at VA expense under chapter 17, relating to health care; subsection (i) of this new section would apply in such cases.

There are no comparable provisions in current law.

Subsection (f): Would permit a veteran—to the extent that he or she has remaining eligibility for and entitlement to GI Bill educational assistance benefits under chapter 34—to elect chapter-34-equivalent benefits in lieu of certain services and assistance provided for in chapter 31. To receive chapter-34-equivalent benefits, the veteran must be pursuing training that would qualify for such benefits as an approved program of education under chapter 34, and the benefits would consist (1) of an allowance equal in amount to the amount of the chapter 34 educational assistance allowance payable for that type of training and (2) other forms of assistance available to a veteran pursuing such training under chapter 34 (such as education loans under section 1798, a work-study allowance under section 1685, and a tutorial assistance allowance under section 1692). The chapter-34-equivalent benefits would be provided in lieu of the chapter 31 benefits for which the veteran would otherwise be eligible under new section 1504(a)(3) (the subsistence allowance and other assistance authorized under the provisions of this new section, section 1508, other than the provisions of this subsection), (7) (vocational and other training services and assistance, including individualized tutorial assistance, tuition, fees, books, supplies, and licensing fees, and certain equipment and other materials), and 1504(a)(8) (loans under new section 1512). Where a veteran makes an election under this subsection, the terms and conditions applicable to the pursuit of a comparable

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chapter 34 program of education and to the payment of allowances and provision of assistance under chapter 34 (for example, provisions relating to charges to entitlement and the making of education loans) would apply to the veteran's pursuit of an approved program of education under chapter 31.

There is no comparable provision in current law.

Subsection (g): Would modify the method of payment of subsistence allowances in the case of an incarcerated veteran participating in rehabilitation under chapter 31 in a manner similar to that in section 207(3) of H.R. 5288, as passed by the Senate on January 24, 1980, would modify the method of payment of educational assistance allowances to incarcerated veterans pursuing GI Bill training on a half-time or more basis under chapter 34. (See section 107(3) of S. 870 as reported on September 7, 1979, S. Rept. No. 94-314, 96th Cong., 1st sess.)

Paragraph (1) of subsection (g): Would require the Administrator, where the veteran has no dependents, to withhold all subsistence allowances during the veteran's incarceration and pay the allowances withheld to the veteran at the time of the veteran's release from incarceration. Upon the veteran's request, the Administrator would invest the amounts withheld in United States Government securities. If investment in securities is made, the Committee intends that the Administrator seek to invest the funds in the highest interest yielding securities. These withholding and investment provisions are designed to block the flow into prisons of funds not needed for educational costs and to provide for the accrual of funds to assist incarcerated veterans in readjusting to society upon their release.

Where the veteran has one or more dependents, the Administrator would pay the subsistence allowance to the dependent or dependents designated by the veteran to the extent that both the veteran and the dependent so designated request payment of the allowance to be made. To the extent that the veteran does not request payment to a particular dependent of an amount payable on account of that dependent, or the dependent does not join in the request, the amount involved would not be accrued by or paid to the veteran. Amounts not paid to or payable on account of the veteran's dependent, would, as in the case of a veteran with no dependents, be withheld, invested in securities (if the veteran so request), and given to the veteran upon release from incarceration. These provisions for veterans having dependents would serve the same purposes described above with respect to veterans without dependents, and would, in addition, by requiring both the veteran and dependent to agree to any payment to a dependent, protect some dependents of incarcerated veterans from the unwitting loss of eligibility for various forms of public assistance through the receipt of allowances that may be of less value to the dependents than such assistance.

Paragraph (2) of subsection (g): Would provide that the provisions of paragraph (1) of this new subsection would not apply in the case of eligible veterans pursuing rehabilitation programs while in halfway houses or on work-release programs. In these instances, such veterans would receive allowances under chapter 31 on the same basis as nonincarcerated veterans.

There is no comparable provision in current law.

Subsection (h): Would provide a method of payment of allowances to a veteran participating in a chapter 31 program of vocational rehabilitation who has elected to receive chapter-34-equivalent allowances under subsection (f) (discussed above) of this new section for the pursuit of training on a half-time or more basis. This method of payment would be substantively identical to the method provided for in the Senate-passed provisions in section 207(3) of H.R. 5288 for the withholding, during the veteran's incarceration, of amounts in excess of the costs to the veteran of tuition and fees, the conversion of any withheld amounts to Government securities, payments to dependents, and payments to the veteran upon release. In this regard, this subsection makes no provision for incarcerated veterans training on a less than half-time basis, since present section 1682(b) in chapter 34, which would govern the payment of allowances in such cases, provides that, in the case of such training, payment is made only for the cost of tuition and fees, or the half-time rate, whichever is the lesser. (It should be noted that this subsection would be unnecessary if section 207(3) of H.R. 5288 as passed by the Senate is enacted since proposed subsection (f) of this new section would provide that the terms and conditions applicable to chapter 34 educational assistance allowances would apply to the chapter-34-equivalent allowances and the provision that H.R. 5288 would add would then apply.) The provisions of the Committee bill would provide as follows:

Paragraph (1) of subsection (h): Would provide that, where an eligible veteran is pursuing a program of education on a half-time or more basis, payment of a chapter-34-equivalent allowance would be made directly to the veteran in an amount no greater than the cost of tuition and fees. If the veteran has one or more dependents, the dependents' allowance in excess of the cost of the veteran's tuition and fees would be paid to the veteran's dependent or dependents, but only if the veteran requests such payment and the dependent or dependents concur in such request. If no such request is made, or the dependent or dependents do not concur, no dependents' allowances would be paid or accrued. The portion of the veteran's allowance in excess of the cost of tuition and fees, if any, would be held in escrow by the Administrator under the same terms and conditions specified for veterans with no dependents or released to the dependents if the veteran requests such release and the dependents concur in the request. This provision, by requiring both the veteran and dependent to agree, would protect some dependents of incarcerated veterans from the unwitting loss of eligibility for various forms of public assistance through the receipt of allowances that may be of less value to the dependents than such assistance.

Any amounts accrued by the veteran, but not paid to the veteran or the veteran's dependents, would be held in escrow by the Administrator for the veteran and would be released to the veteran at the time of his or her release from incarceration. At the request of the veteran, the Administrator would invest such excess amount in United States Government securities. If such investment is made, the Committee intends that the Administrator seek to invest the funds in the highest interest yielding securities. This provision is designed to block the flow into prisons of funds being paid in the form of assistance allowances not needed for educational costs and to provide for the accrual of funds to assist incarcerated veterans in readjusting to society upon their release.

Paragraph (2) of subsection (h): Would provide that the provisions of paragraph (1) of this new subsection would not apply in the case of eligible veterans pursuing training while in halfway houses or on work-release programs. In those instances, such veterans would receive allowances on the same basis as nonincarcerated veterans.

Subsection (i): Would provide that, in the cases of veterans receiving care in a hospital, nursing home, or domiciliary facility at VA expense if the veteran has been institutionalized for more than 30 days, the allowances payable under this chapter to the veteran would accrue and be withheld (and converted to securities), paid to dependents, and paid to the veteran upon discharge from the facility under the same terms and conditions set forth in subsection (g) or (h) of this new section—depending on whether the veteran had made an election under subsection (f) of this new section. However, upon the request of the veteran, the Administrator would pay to the veteran so much of the allowance as the veteran needs to meet his or her continuing financial obligations during such institutionalization.

There is no comparable provision in current law.

Subsection (j): Would recodify the provision in present section 1502(d) authorizing subsistence allowance payments to be made in advance in accordance with section 1780 of title 38 to veterans participating in a rehabilitation program under chapter 31.

New section 1509.—Entitlement to independent living services and assistance: Would provide that where the Administrator has determined under new section 1506 (d) that the achievement of a vocational goal is not reasonably feasible for a veteran, such veteran shall be entitled, pursuant to the provisions of new section 1520 (which, as discussed below, provide for a pilot program of independent living services and assistance for veterans as to whom it is determined that the achievement of a vocational goal is not reasonably feasible), to a program of independent living services and assistance designed to enable the veteran to achieve maximum independence in daily living.

There is no comparable provision in current law.

New section 1510.—Leaves of absence. Would, in terms generally substantively identical to the provisions of present section 1505, authorize the Administrator to prescribe regulations for granting leaves of absences to chapter 31 participants. However, the provision in present section 1505 limiting such leaves of absence for a veteran to no more than 30 days in any 12-month period would be deleted. The Administrator would thus be given the discretion to reconsider that limitation and to incorporate it in the regulations with or without modification or not at all.

During authorized leave, the veteran would, as under present section 1505, be considered to be pursuing a program of rehabilitation and would be entitled to continue to receive an allowance under this chapter during a period of authorized leave.

New section 1511.—Regulations to promote satisfactory conduct and cooperation: Would require the Administrator to prescribe such rules and regulations as the Administrator determines to be necessary to promote satisfactory conduct and cooperation on the part of veterans pursuing rehabilitation programs under chapter 31. Where a veteran fails to maintain satisfactory conduct or cooperation, the Administrator would be authorized, after determining that all reasonable counseling efforts have been made and are not reasonably likely to be effective, to discontinue services and assistance under chapter 31 unless the Administrator determines that mitigating circumstances exist. Where services and assistance have been discontinued, the Administrator would be authorized to reinstitute them only if the Administrator determines that the cause of the veteran's unsatisfactory conduct or cooperation has been removed and that the veteran's rehabilitation program (whether the same as the veteran's previous program or a revised program) is suitable to the veteran's abilities, aptitudes, and interests.

Present section 1508 contains a substantively similar requirement for the Administrator to prescribe rules and regulations to promote "good" (as compared to "satisfactory" in the Committee bill) conduct and cooperation on the part of veterans participating in vocational rehabilitation, and specifically provides that penalties for the breach of such rules and regulations may extend to (1) forfeiture of 3 months of subsistence allowances, and (2) permanent disqualification from further vocational rehabilitation. No specific provisions regarding the nature and extent of penalties are set forth in the Committee bill. The Committee does not generally favor the imposition of penalties in such situations.

There are no provisions in current law comparable to the Committee bill provisions which mandate the exhaustion of reasonable counseling efforts prior to a discontinuance of rehabilitation services and assistance and establish standards for reinstituting rehabilitation services and assistance after a discontinuance.

New subsection 1512.—Revolving fund loans: Would recodify with certain modifications, present section 1507, relating to the making of loans to chapter 31 participants from a revolving fund. The Committee bill would increase the maximum amount that may be loaned to a chapter 31 participant from $200 to twice the full-time institutional monthly subsistence allowance for a veteran with no dependents, as set forth in new section 1508(b) ($2 \times \$265 = \$530$).

As under current law, these loans would bear no interest and would be repaid in installments as determined by the Administrator, by deductions from future payments of compensation, pension, or retirement pay. The Committee bill would also provide for the deduction of installment payments from subsistence allowances or educational assistance allowances.

Under the Committee bill, loans under this provision would not be available to veterans who have elected, under new section 1508(f), to receive chapter-34-equivalent allowances and assistance, because chapter 34 makes provision for such veterans to obtain loans under present subchapter III of chapter 34.

Section 306 of the Committee bill would provide that the increase in the maximum loan would take effect only to such extent or in such amounts as are contained in Appropriations Acts if, under a rule of the House of Representatives or the Senate, such a provision is required in order for a bill providing for such an increase to be in order at the time the House of Representatives or Senate passes a bill providing for this increase. (See the analysis of section 306, below.)

New section 1513.—Books, supplies, and equipment: Would recodify, without substantive change, the provision of present section 1509, relating to the release to a veteran of books, supplies, and equipment furnished to him or her under this chapter and the required return and disposition of such books, supplies, and equipment (or repayment for their reasonable value) when, because of the veteran's fault, he or she has failed to complete the course involved.

New section 1514.—Vocational rehabilitation for hospitalized members of the Armed Forces and veterans:

Subsection (a): Would recodify the provisions of present section 1510, which authorize the provision of vocational rehabilitation under chapter 31 to an individual in the active military, naval, or air service, who is hospitalized pending discharge from active service and who but for the fact that he or she has not been discharged or released, would be eligible for participation in a chapter 31 program. The only substantive modification would be to expand this authority to include the provision of all service and assistance (other than a subsistence allowance or chapter-34-equivalent allowance pursuant to new section 1508(f) under chapter 31, not just vocational rehabilitation as under present section 1510. As under current law, since such an individual would be receiving his or her military pay while participating in rehabilitation, no allowance would be payable.

Subsection (b): Would expressly authorize the provision of services and assistance under chapter 31 to a veteran who is receiving care in a VA hospital, nursing home care, or domiciliary care facility or in any other hospital or medical facility. Current law neither specifically authorizes nor prohibits the provision of chapter 31 services and assistance in such circumstances. However, VA regulations (38 CFR § 21.226) prescribe certain rules and conditions for the provisions of training under chapter 31 while a veteran is hospitalized in a VA facility. It is the Committee's intention that, as a result of the enactment of this provision, the Administrator reevaluate such regulations and expand them to include appropriate provisions relating to the provision of all rehabilitation services and assistance provided for in the Committee bill and the provisions of such services and assistance in VA nursing home and domiciliary care facilities and other health-care facilities, as well as in VA hospitals.

New section 1515.—Vocational rehabilitation outside the United States: Would authorize, pursuant to regulations that the Administrator must prescribe, a chapter 31 participant to pursue a program of vocational rehabilitation outside the United States if the Administrator determines that such training is necessary in a particular case to provide the preparation needed to render the veteran employable and that vocational rehabilitation outside the United States is in the best interest of the veteran and the Federal Government.

Current law, present section 1502, simply prohibits the provision of vocational rehabilitation outside the United States to a veteran "on account of post-World War II service if the veteran, at the time of such service, was not a citizen of the United States". However, current VA regulation (38 CFR § 21.20(c)) limits the availability of vocational rehabilitation in a foreign country (other than the Philippines) by specifying that such training may be authorized only if adequate training for the selected objective is not available in the United States and if training is pursued under the direct supervision of a representative of the VA. According to the VA's report entitled A Study of the Provisions for Veterans Vocational Rehabilitation, Chapter 31, Title 38, United States Code, submitted in February 1978, this regulation has the effect of essentially ruling out the possibility of foreign training since the VA has no means of furnishing direct supervision of vocational rehabilitation trainees in foreign countries.

Thus, the Committee bill would establish specific criteria under which the Administrator would be required to prescribe regulations to permit pursuit of vocational rehabilitation training outside the United States—as pursuit of postsecondary education is permitted outside the United States for participants in the chapter 34 or 35 educational assistance programs pursuant to sections 1676 and 1723 of title 38 (as proposed to be clarified by sections 206(b) and 303(3), respectively, of S. 870 as passed by the Senate in H.R. 5288 on January 24, 1980). The Committee bill would also eliminate the prohibition based on citizenship at the time of service.

New section 1516.—Rehabilitation resources:

Subsection (a): Would generally authorize the Administrator—in providing training or work exeprience as part of a chapter 31 participant's vocational rehabilitation program—to make use of various Federal facilities, staff, and resources and would authorize the Administrator to employ such additional personnel and experts as the Administrator considers necessary. The Administrator would also be authorized, in providing any services under chapter 31, to make use of facilities and services maintained by joint Federal and State contributions, private institutions and establishments and private individuals.

Present section 1151 provides the Administrator with substantially the same authorities with respect to the provision of vocational rehabilitation.

Paragraph (1) of subsection (b): Would provide that a veteran pursuing on-job training or work experience as part of his or her vocational rehabilitation program would be considered an employee of the United States for purposes of being entitled to Federal employees workers' compensation (under chapter 81 of title 5, United States Code), if injured while engaged on this on-job training or work experience, but would not be considered a Federal employee for purposes of laws administered by the Office of Personnel Management.

Present section 1511 contains substantively identical provisions.

Where such training or work experience is afforded a veteran who has a serious employment handicap, it is the Committee's intention that the veteran's individualized written plan of rehabilitation so provide.

Paragraph (2) of subsection (b): Would specifically authorize the Administrator to contract with the VA's Department of Medicine and Surgery (DM&S) for the use of DM&S facilities and services for the provision of rehabilitation services under chapter 31—including hospital care and medical services authorized under chapter 17, relating to VA health care, as provided for in a veteran's individualized written plan of rehabilitation under new section 1507, relating to plans for vocational rehabilitation, or new section 1520 (a), relating to plans for independent living services and assistance—and would authorize reimbursement of DM&S for such services. Under current law, DM&S provides certain rehabilitative services (defined in present section 601(8)) under chapter 17 of title 38 as part of hospital and medical care of veterans, but coordination with chapter 31 programs has been cited as a major difficulty. This provision is designed to help overcome such difficulties by providing a strong relationship between chapter 21 rehabilitation activities and DM&S medical care. Also, under current law, health-care services provided by DM&S to chapter 31 participants are funded through the VA's medical care appropriations account even though the care is directly related to the veteran's rehabilitation The Committee bill provision would provide for the funding of such care through the VA's readjustment benefits account which, as a source of expenditures for entitlements, is a more secure funding source.

The amounts of payments to DM&S for such services would be determined in accordance with accounting principles used within DM&S at the time the services are provided and would be subject to review and modification by the Administrator with respect to the reasonableness of DM&S's proposed charges. Except as provided in chapter 17, which sets forth certain criteria, in present section 601(4)(C), for the provision of health care and services at VA expense in non-VA facilities, hospital care and medical services provided under this chapter would be required to be furnished in VA facilities.

There are no comparable provisions in current law. The Committee notes that the general requirement that health care and services for chapter 31 participants be furnished by VA facilities would place chapter 31 participants on an equal basis with other service-connected disabled veterans with re-

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spect to eligibility for contract care in non-VA facilities. Under the amendment to the present 612(i) proposed to be made by section 301 of the Committee bill, chapter 31 participants would be entitled to the same priority consideration in the provision of VA outpatient care as veterans with service-connected disabilities rated as 50 percent or more disabling.

Paragraph (3) of subsection (b): Would provide that the use of non-VA facilities as authorized in subsection (a) of this new section for the provision of rehabilitation services under chapter 31, shall be procured through contract, agreement, or other cooperative arrangement. This provision codifies the current general VA practice with respect to the making of arrangements for the use of non-VA facilities. The only express provision currently in chapter 31 in this respect, present section 1511(4), authorizes the VA to make use of public or private institutions or establishments "by agreement or contract".

New section 1517.—Employment assistance: Would require the Administrator to provide a wide range of employment assistance efforts to disabled veterans who have participated in vocational rehabilitation under chapter 31 or in Federal-State programs under the Rehabilitation Act of 1973. Thus, this new section provides a much greater emphasis on employment assistance than the only provision currently in chapter 31 regarding such assistance, present section 1511, which authorizes—but does not require—the Administrator to "cooperate with and employ the facilities of other governmental and State employment agencies for the purpose of placing in gainful employment persons who have received vocational rehabilitation".

Subsection (a): Would provide that employable service-connected disabled veterans who have participated in a vocational rehabilitation program under chapter 31 or a similar Federal-State program under the Rehabilitation Act of 1973 shall be provided—and, to the extent resources are available, employable veterans without service-connected disabilities, may be provided—with assistance in obtaining suitable employment. Such assistance would include direct VA placement services, use of the services of veterans' employment and training outreach program specialists under new section 2003A (proposed to be added by section 209 (a) of the Committee bill), and the placement services of Federal-State programs under the Rehabilitation Act of 1973, State employment services and the Veterans' Employment Service of the Department of Labor, the Office of Personnel Management, and other public or non-profit organizations having services available.

The Committee bill would also require the Administrator to provide assistance to assure that veterans receive the benefit of any applicable provision of law or regulation which provides for special consideration, emphasis, or preference to be given veterans in employment or training.

Paragraph (1) of subsection (b): Would require the Administrator to cooperate with the Small Business Administration (SBA) (1) to assist veterans who have completed chapter 31 vocational rehabilitation for self-employment in a small business enterprise to secure a loan for the purchase of equipment necessary to establish such veteran's own business and (2) to assure that the veteran receives the special consideration with respect to SBA loans provided for in section 8 the Small Business Act (15 U.S.C. 633(b)).

Paragraph (2) of subsection (b): Would provide that the Administrator may—under the terms and conditions set forth in new section 1504(a)(12) (discussed above), relating to the provision of certain equipment, stocks, and supplies to the most severely disabled veterans requiring homebound training or self-employment, or both, to enable them to begin employment—furnish veterans who have trained under a Federal-assisted State rehabilitation program with the objective of self-employment in a small business enterprise, such supplementary equipment and initial stocks and supplies as the veteran needs if those materials (or assistance, such as a loan, in acquiring them) are not available through the State program or other sources (such as the Small Business Administration).

Subsection (c): Would require the Administrator to prescribe, with the concurrence of the Secretary of Labor, regulations under which payments would be authorized to be made to employers for providing on-job training to veterans rehabilitated under this chapter to the point of employability where necessary for the veteran to obtain needed training or to begin employment. The formulation of such regulations would be required to take account of the provisions of title V of the Rehabilitation Act of 1973 and regulations prescribed thereunder, requiring that certain Federal contractors take affirmative action with respect to the employment of handicapped persons and prohibiting programs or activities receiving Federal financial assistance from discriminating against otherwise qualified handicapped persons, and section 2012 of title 38, requiring certain Federal contractors to take affirmative action with respect to the employment of certain service-connected disabled veterans and Vietnam-era veterans. This requirement that such provisions be taken into account is intended to avoid unnecessary Federal expenditures in situations where the prospective employer is otherwise required to make a special effort—including making reasonable workplace accommodations—to provide for the employment of the veteran concerned. Payments under this subsection would not be permitted to exceed the direct expenses incurred in providing the on-job training or the employment opportunity.

This subsection would also provide that, if a veteran is participating in such on-job training and the training meets the criteria for payment of a training assistance allowance under present section 1787, relating to GI Bill training assistance allowances for on-job training under chapter 34, the veteran shall—to the extent that he or she has remaining eligibility for and entitlement to such an allowance—be paid that allowance.

New section 1518.—Personnel training, development, and qualifications:

Subsection (a): Would require the Administrator to provide a program of ongoing professional training and development for VA chapter 31 counseling and rehabilitation personnel in order to assure that rehabilitation services for veterans are provided according to the most advanced knowledge, methods, and techniques. The Administrator would be authorized to employ the services of consultants and make grants to and contract with public and private agencies in order to conduct such training and development.

There is no comparable provision in current law.

Subsection (b): Would require the Administrator to coordinate with the Commissioner of the Rehabilitation Services Administration in the Department of Education and the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor in planning and carrying out personnel training in areas of mutual programmatic concern.

There is no comparable provision in current law.

Subsection (c): Would require the Administrator to establish qualifications for chapter 31 psychologists and the VA employees (case managers) assigned responsibility for the management and followup of rehabilitation services to veterans who have a serious employment handicap. In establishing such qualifications, the Administrator would be required to take into account the qualifications required for psychologists employed by the VA's Department of Medicine and Surgery and the qualifications required of psychologists and persons carrying out case-management responsibilities in Federal-State vocational rehabilitation programs under the Rehabilitation Act of 1973.

There is no comparable provision in current law.

New section 1519.—Rehabilitation research and special projects:

Subsection (a): Would require the Administrator to carry out ongoing programs for the purpose of advancing the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans. For that purpose, the Administrator would be required to conduct and provide support for research and studies concerning various specified aspects of the rehabilitation of disabled veterans, including new methods of rehabilitation, and for projects designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.

Subsection (b): Would, for the purpose specified in subsection (a) of this new section, authorize the Administrator to make grants to or contract with public or nonprofit agencies, including institutions of higher learning.

Subsection (c): Would require the Administrator to cooperate with the Commissioner of the Rehabilitation Services Administration and the Director of the Institute of Handicapped Research in the Department of Education, the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor, and the Secretary of Health and Human Services regarding studies, research, and special projects of mutual programmatic concern.

There is no comparable provision in current law.

New section 1520.—Pilot program of independent living services and assistance: Would provide for a 4-year (fiscal years 1982 through 1985) pilot program of contract independent living services and assistance for those severely disabled veterans for whom the achievement of a vocational goal is determined not to be reasonably feasible.

Subsection (a): Would authorize the Administrator, during fiscal years 1982 through 1985, to contract with public or nonprofit agencies (including the Department of Medicine and Surgery (DM&S) under new section 1516(b)(2), authorizing the Administrator to procure from DM&S rehabilitation services under chapter 31) to provide in various geographic areas programs of independent living services and assistance under chapter 31 to veterans for whom it is determined that the achievement of vocational goals is not reasonably feasible. This authority to enter into contracts would be limited to contracts with agencies that have a demonstrated capacity to conduct independent living services programs for handicapped persons, and the Administrator would be required to prescribe regulations regarding the contract services and assistance to be provided under this subsection and establishing criteria for the selection of veterans to participate in this pilot program. No more than 500 veterans per year could be taken into the pilot program in each of the 4 fiscal years of the programs, and first priority in selection would be required to be given to veterans for whom the reasonable feasibility of a vocational goal is precluded solely as the result of a service-connected disability. To the maximum extent feasible, the Administrator would include among those selected substantial numbers of veterans receiving long-term care in VA hospitals and nursing care homes and in other nursing care homes at VA expense. To be eligible to participate, a veteran must have remaining entitlement (under new sections 1502 and 1505(d)) and eligibility (under new section 1503(a) and (d)) for independent living services and assistance.

Veterans participating in the pilot program would be provided such services described in new subsections (a) and (b) of new section 1504, which, respectively, set forth the scope of services and assistance generally authorized for chapter 31 participants and authorize the provision, in programs of independent living services and assistance, of the range of services and assistance authorized under section 702 of the Rehabilitation Act of 1973 to be provided to participants in Federal-State rehabilitation programs. In addition, this subsection would provide veterans participating in the pilot program with the same rights with respect to an individualized written plan of services and assistance as are afforded under new section 1507 to veterans participating in a vocational rehabilitation program.

Any contract for services that is initiated with respect to a veteran before the end of fiscal year 1985 could be continued thereafter for the purposes of providing services and assistance to the veteran.

Subsection (b): Would, in order to assist the Congress in assessing the effectiveness of programs of independent living services and assistance for severely disabled veterans and determining whether such programs should be expanded to reach all such veterans and be made a permanent entitlement under chapter 31, mandate a study by the Administrator focusing on the accomplishments and cost-effectiveness of the pilot program and require that a report on the results of the study, including the Administrator's recommendations, be submitted to the Congress not later than September 30, 1984, the end of the third fiscal year of the 4-year pilot program. The study would be required to develop information (to be included in the report) on the extent to which (1) the program meets needs for comprehensive independent living services that would not otherwise have been met, (2) severely disabled veterans are helped through the program to achieve and maintain greater independence in daily living, and (3) the costs of care in hospital, nursing home care, and domiciliary care facilities have been and may be avoided through the provision of independent living services.

New section 1521.—Veterans' Advisory Committee on Rehabilitation: Would establish a Veterans' Advisory Committee on Rehabilitation (hereafter referred to as "the Committee").

Subsection (a): Would require the Administrator to appoint the members of the Committee from the general public, with not less than half the membership being service-connected disabled veterans. The Committee would also include individuals who have distinguished themselves in the public and private sectors in certain fields relevant to the rehabilitation of veterans. In order to help assure adequate coordination within the VA and among relevant Federal agencies and to assure that the Committee has the perspectives of Federal officials with particularly relevant responsibilities, the Committee would include representatives of the VA's Department of Medicine and Surgery and Department of Veterans' Benefits, of the Commissioner of the Rehabilitation Services Administration and of the Director of the National Institute for Handicapped Research in the Department of Education, of the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor, and of the Secretary of Health and Human services.

Subsection (b): Would require the Administrator to advise and consult with the Committee on a regular basis regarding the administration of veterans' rehabilitation programs under title 38.

Subsection (c): Would require the Committee to submit to the Administrator and the Congress an annual report on the rehabilitation programs and activities of the VA, including an assessment of the rehabilitation needs of veterans and a review of the VA's programs and activities designed to meet those needs, and such other reports or recommendations as the Committee deems appropriate.

There is no comparable provision in current law.

New section 1522.—Evaluations after individual unemployability adjudications: Would require, after the adjudication of a service-connected disabled veteran's claim for a rating of total disability on the grounds of individual unemployability and if the Administrator considers that the veteran may have the potential for vocational rehabilitation and employment, that the veteran be provided with a comprehensive diagnostic evaluation by chapter 31 VA personnel. This provision is designed to help assure that a veteran with vocational rehabilitation potential would be afforded every opportunity and encouragement for paticipation in vocational rehabilitation as close as possible to the time when a disability-related, severe employment problem is recognized.

There is no comparable provision in current law.

Subsection (b) of section 101 would amend the tables of chapters at the beginning of title 38 and part III of title 38 in the United States Code to reflect the amendment to the title of chapter 31 proposed to be made by section 101(a) of the Committee bill.

Title I.—Cost: It is estimated that the enactment of the provisions of title I of the Committee bill would cost $27.8 million in fiscal year 1981 and a total of $177.6 million in fiscal years 1981 through 1985.

TITLE II—EMPLOYMENT AND EDUCATION AMENDMENTS

Part A—Program improvements

Section 201

Would amend present section 220, relating to Veterans' Administration efforts to promote the coordination of all Federal programs affecting veterans and their dependents.

Clause (1) of section 201 would amend the heading of present section 220 to reflect the changes proposed to be made by this section of the Committee bill.

Clause (2) of section 201 would amend present section 220 to require the Administrator actively to promote the effective implementation, enforcement, and application of all provisions of law and regulations relating to employment, training, and other opportunities for veterans, and, in carrying out this responsibility, to place particular emphasis on the needs of veterans with service-connected disabilities and of other eligible veterans, taking into account applicable rates of unemployment and the employment emphasis set forth in chapter 42 of title 38, relating to employment and training of disabled and Vietnam-era veterans. The Committee's intention regarding this emphasis is to assure, first, that the needs of service-connected disabled veterans are emphasized, and, second, with respect to all other veterans eligible for the benefit of such laws and regulations, that the Administrator give particular attention to the needs of categories of veterans with relatively high rates of unemployment (such as young Vietnam-era veterans and minority group Vietnam-era veterans) and those veterans focused upon by chapter 42 (as it is proposed to be amended by section 802 of S. 870 as passed by the Senate in H.R. 5268 on January 24, 1980)—Vietnam-era veterans. (Chapter 42 also applies to veterans with serious service-connected disabilities, but they would be included in the first category for emphasis.)

Present section 220 makes the Administrator responsible for seeking to achieve maximum feasibility effectiveness, coordination, and interrelationship of all programs and activities affecting veterans carried out by all agencies of the Federal Government. The purpose of this amendment is to require that, with respect to employment, training, and other opportunities, the Administrator also take an active advocacy role by promoting effective implementation of the various laws. Thus, the Administrator would be responsible for seeking to ensure that programs conducted by the VA, as well as provisions implemented by other Federal agencies affecting veterans—for example, the CETA program within the Department of Labor, the VCI program conducted by the Department of Education, the civil service veterans' preference laws, and the provisions mandating preference for veterans under the Small Business Act—are implemented effectively in accordance with the law and congressional intent.

Clause 3 of section 201 would amend the present table of sections of chapter 3 to reflect the changes proposed by this section of the Committee bill.

Section 201—Cost: Enactment of the provisions of section 201 is estimated to entail no significant cost.

Section 202

Would amend clause (1) of present section 244, relating to the utilization of other agencies in carrying out the purposes of subchapter IV of chapter 3 of title 38, which include the provision of effective outreach services to eligible veterans with respect to VA benefits and services, to require the Administrator, in coperation with the Secretary of Labor, to seek actively to promote the development and establishment of employment, training, and other opportunities for veterans. In carying out this responsibility, the Administrator would be required to place special emphasis (as proposed in section 201 of the Committee bill with respect to the active promotion of the implementation of laws relating to such opportunities) on the needs of veterans with service-connected disabilities and other eligible veterans, taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42, as discused above.

Clause (1) of present section 244 currently requires the Administrator only to make certain arangements with the Secretary of Labor to match eligible veterans with appropriate job or job-training opportunities. Thus, the purpose of this amendment is to place with the Administrator the additional responsibility, in cooperation with the Secretary, to promote employment, training, and other opportunities for veterans through benefits and services administered by the VA—for example, the VA's on-job training program. Thus, the Administrator would have the responsibility, in connection with the VA's outreach services program, to promote actively VA programs of job, on-job training, and other employment-related opportunities for eligible veterans.

Section 202—Cost: Enactment of the provisions of section 202 is estimated to entail no significant cost.

Section 203

Would amend present section 1652, relating to definitions for the purposes of veter-

ans' educational assistance under present chapter 34, to clarify that the definitions applicable to chapter 34 in present section 1652 apply as well to chapter 36, relating to the administration of educational benefits. Curently, certain of these definitions do not expressly apply to chapter 36 despite the fact that the terms involved are used extensively in chapter 36.

Section 203—Cost: Enactment of the provisions of section 203 is estimated to entail no cost.

Section 204

Would amend present section 1701(a), relating to definitions for the purposes of survivors' and dependents' educational assistance under present chapter 35, to make the same type of clarifications proposed by section 203 of the Committee bill with respect to the applicability to chapter 36 of definitions in chapter 34.

Section 204—Cost: Enactment of the provision of section 204 is estimated to entail no cost.

Section 205

Would amend present section 1772, relating to the approval of education and training courses for purposes of veterans', and survivors' and dependents', educational assistance under present chapters 34 and 35, respectively, to add a new subsection (d), as follows:

New subsection (d): Would make the Administrator responsible for the approval of all programs of training on the job (including apprenticeship programs) for purposes of the utilization of GI Bill benefits and provide that the Administrator may exercise this responsibility directly or through agreements with non-VA sources, including State approving agencies. The new subsection would also require that, pursuant to regulations jointly prescribed by the Administrator and the Secretary of Labor, the Administrator actively promote the development of programs of training on the job for purposes of the utilization of GI Bill benefits and utilize, as appropriate, the services of the veterans' employment and training outreach program specialists proposed in section 209 of the Committee bill.

Under current law, State approving agencies function as the approval agents for programs of training on the job (except for certain apprenticeship programs in which interstate carriers provide the training involved in more than one State), and extensive criteria for the approval of such programs are codified in section 1777. It is the purpose of this amendment to place the responsibility of approval with the Administrator in order to foster streamlining of the approval process itself (as proposed in the revisions of the section 1777 approval criteria set forth in section 206 of the Committee bill) and make the Administrator directly accountable for the timely and cost-effective approval of maximum opportunities for VA programs of training on the job for veterans and other eligible persons.

Section 205—Cost: It is estimated that enactment of the provisions of section 205, together with the enactment of section 206 of the Committee bill, would cost $1.9 million in fiscal year 1981 and a total of $15.9 million in fiscal years 1981 through 1985. (This estimate does not assume enactment of the targeted delimiting date extension proposed in S. 870 as passed by the Senate in H.R. 5288 on January 24, 1980; if such an extension were enacted, enactment of the provisions of sections 205 and 206 of the Committee bill would cost an additional $1.7 million in fiscal year 1981 and $6.7 million in fiscal years 1981 through 1985.)

Section 206

Would amend present section 1777, relating to the approval of programs of training on the job for the purposes of veterans', and survivors' and dependents', educational assistance under present chapters 34 and 35, respectively.

Clause (1) of section 206 would make conforming amendments in present section 1777(a), relating to the criteria for the approval of training on the job, to reflect the changes proposed by section 205 of the Committee bill regarding the direct responsibility of the Administrator for the approval programs of training on the job.

Clauses (2) and (3) of section 206 would amend subsections (b) and (c) of present section 1777, relating to the criteria for the approval of training on the job, to delete the existing provisions and replace them with a revised subsection (b) that would require the Administrator and the Secretary of Labor jointly to prescribe regulations—in order to carry out the provisions of present section 1777(a) (as proposed to be amended by clause (1) of this section of the Committee bill) and to assure the appropriateness of training—specifying criteria for the approval of programs of training on the job (including registered and nonregistered apprenticeship training meeting the standards of apprenticeship published by the Secretary pursuant to present section 50a of title 29). Criteria for the approval of a program of training on the job other than a program of apprenticeship would be required to include the following certifications:

(1) The training content and procedures of the course are adequate to qualify the individual for the job for which training is received. This criterion is identical to the criterion set forth in present section 1777(c)(1), except that the training procedures of the course (as well as the training content of the course as under current law) would be taken into account. In this regard, the Committee notes that certain specified criteria set forth in present section 1777(c) would be deleted—such as requirements for related instruction; adequate space, equipment, instructional material, and instructor personnel; and adequate records of progress. It is not the Committee's intention to prohibit the inclusion of such criteria in the approval process for a program of training. Rather, the Committee intends that, in prescribing regulations to specify the criteria for approving programs of training on the job, the Administrator review the criteria in present section 1777(c) regarding training procedures and determine whether to include, modify, or omit all or some of those criteria in the new regulations.

(2) The wages meet certain criteria identical to those set forth in present section 1777(b)(1).

(3) A reasonable certainty exists, as required in present section 1777(b)(2), that the job involved will be available at the end of the training period.

(4) The job customarily requires full-time training of not less than 3 months and the length of the training period is no longer than customarily required by training establishments in the community. Under clauses (2) and (3) of present section 1777(c), the length of training may not be less than 6 months or longer than 2 years and the length of training may not exceed the length of training customarily required by training establishments in the community. The effect of this provision would thus be to reduce the minimum length of training and to delete the 2-year maximum.

Thus, it is the purpose of this section of the Committee bill to provide for the streamlining of the approval criteria in light of changes that have occurred in the area of on-the-job training programs since the enactment of this section in 1971 in Public Law 90-77, including the development of an extensive Federal expertise with the operation of such programs and, at the same time, to preserve the integrity of the VA's program of training on the job in providing quality training to veterans and other eligible persons.

Section 206—Cost: The cost of the enactment of the provisions of section 206 have been estimated in conjunction with the cost of the enactment of section 205; the combined estimate of the costs of enactment of both sections is noted above in the analysis of section 205.

Section 207

Would make conforming amendments in present section 1787(a), relating to the payment of a training assistance allowance for the pursuit of a program of training on the job, to reflect the changes proposed to be made by sections 203, 204, and 205 of the Committee bill.

Section 207—Cost: Enactment of the provisions of section 207 is estimated to entail no cost.

Section 208

Would amend present section 2003, relating to assignment of State veterans' employment representatives, to require the Secretary of Labor to assign full-time clerical support to each State veterans' employment representative. Current law makes no explicit reference to clerical support for the State veterans' employment representatives, but such support is presently provided directly by the Secretary. However, such direct support was threatened by budgetary cutbacks for fiscal year 1980. The effect of this amendment would be to assure the continuation of this support against any cutbacks that may be proposed in the future.

Section 208—Cost: Enactment of the provisions of section 208 is estimated to entail no cost.

Section 209

Would amend present chapter 41, relating to job counseling, training, and placement service programs for veterans.

Subsection (a) of section 209 would add a new section 2003A, entitled "Veterans' Employment and Training Outreach Program," to establish a program of employment and training outreach modeled on the highly successful Disabled Veterans Outreach Program (DVOP), conducted under the Comprehensive Employment and Training Act (CETA). The new section would consist of five subsections as follows:

Subsection (a) of new section 2003A: Would require the Secretary of Labor to provide sufficient funds to each State for the establishment of a program of veterans employment and training outreach. The funds provided each State would be required to be sufficient to support the assignment of one veterans' employment and training outreach program (VETOP) specialist for each 5,300 Vietnam-era and service-connected disabled veterans residing in the State. This would establish the program at a level of approximately 2,000 specialists nationwide. These specialists would be in addition to the employees of local employment service offices assigned pursuant to present section 2004 and would not be considered employees of the employment services in each State for the purposes of any personnel ceiling level established by the Federal Government for State employment agencies. Each VETOP specialist position would be required to be filled by a service-connected disabled veteran of the Vietnam era or a service-connected disabled veteran, unless the Secretary finds that such a veteran is not available, in which case any veteran (as defined in section 101(2) of title 38) may serve in the position. VETOP specialists would be paid at a rate not less than the rate prescribed for an entry level professional in the personnel system of the State concerned. In addition to funds for the salaries of these specialists, funds would be required to be made available to the State by the Secretary for training, travel, and supplies and fringe benefits for each specialist.

Subsection (b) of new section 2003A: Would provide that, pursuant to regulations prescribed by the Secretary, VETOP specialists must be assigned only those duties directly related to meeting the employment needs of eligible veterans and that priority of services to such veterans be in the following order: To disabled Vietnam-era veterans who are participating in or have completed a program of vocational rehabilitation under chapter 31 of title 38, to other disabled veterans, and to other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphasis set forth in chapter 42. (The terms "applicable rates of employment" and "employment emphases set forth in chapter 42" are discussed in the analysis of section 201(2) of the Committee bill, above.) Maximum emphasis would be required to be placed on assisting economically or educationally disadvantaged veterans.

This new subsection would provide that not more than three-quarters of the VETOP specialists in a particular State may be stationed in local employment service offices in that State and would require that specialists not stationed in such local offices be stationed at VA readjustment counseling centers established pursuant to present section 612A, United States Veterans' Assistance Centers established pursuant to present section 242, and other appropriate sites, as determined under regulations to be prescribed jointly by the Secretary and the Administrator. The Committee expects that such other sites would include community-based organizations and VA or Department of Labor regional offices.

Subsection (c) of new section 2003A: Would prescribe the functions for the NETOP specialists and require that, in carrying out these functions, for the VETOP, these specialists provide services in accordance with the priorities set forth in subsection (b) of new section 2003A. The VETOP specialists' functions are set forth in clauses (1) through (7) of subsection (c), as follows:

Clause (1) of subsection (c): Would require VETOP specialists to develop job and job training opportunities for eligible veterans through contacts with employers. Emphasis would be required to be placed on the development of such opportunities through contacts with small- and medium-sized private sector employers.

Clause (2) of subsection (c): Would make VETOP specialists responsible, pursuant to regulations to be prescribed jointly by the Secretary and the Administrator, for promoting, developing, and, as appropriate, approving programs of training on the job pursuant to section 1787 as proposed to be amended by section 206 of the Committee bill. It is the Committee's intention that such regulations permit VETOP specialists to maximize opportunities for programs of training on the job for eligible veterans and foster linkages between the VA's program and other Federal employment assistance efforts, such as the Targeted Jobs Tax Credit established by Public Law 95-600, while preserving the successful aspects of the existing in the VA's program of training on the job.

Clause (3) of subsection (c): Would require VETOP specialists to carry out outreach activities to locate eligible veterans through contacts with local veterans' organizations, the VA, State employment security agencies, local employment service offices, and community-based organizations.

Clause (4) of subsection (c): Would require VETOP specialists to provide appropriate assistance to community-based organizations and CETA prime sponsors in providing services to eligible veterans.

Clause (5) of subsection (c): Would require VETOP specialists to provide appropriate assistance to employees of local employment services offices (assigned pursuant to existing section 2004) in carrying out their responsibilities related to veterans. In this regard, it is the Committee's intention that VETOP specialists not be mainstreamed into the day-to-day operations of the local employment services office, but rather that, with respect to programs for veterans, they supplement and enhance the services already provided by these local employees.

Clause (6) of subsection (c): Would require VETOP specialists to consult and coordinate with representatives of other Federal, State, and local programs for the purpose of developing maximum linkages between various programs in order to promote employment opportunities for and provide maximum employment assistance to eligible veterans.

Clause (7) of subsection (c): Would require VETOP specialists to carry out other duties that would promote entry-level and career opportunities for veterans.

Subsection (d) of new section 2003A: Would provide that those individuals serving as DVOP staff on the date of enactment of this section would be appointed as VETOP specialists unless good cause is shown in individual cases for not making such an appointment. The purpose of the provision is to provide for an orderly transition and assured continuity between the two programs.

Subsection (e) of the new section 2003A: Would provide for the Secretary to administer VETOP through the Deputy Assistant Secretary for Veterans' Employment (DASVE) or a successor to that office (as is provided for in section 805 of S. 870 as passed by the Senate in H.R. 5288 on January 24, 1980). It is the Committee's intention that the DASVE have functional responsibility for the implementation, monitoring, and enforcement of the provisions of this new section.

Subsection (b) of section 209 would amend the present table of sections of chapter 41 to reflect the changes proposed by this section of the Committee bill.

Section 209—Cost: Enactment of the provisions of section 209 is estimated to cost $12.9 million in fiscal year 1981 and a total of $160.1 million in fiscal years 1981 through 1985. The cost reflects an offset of a total of $38.7 million representing the projected cost of DVOP as now funded by the Department of Labor.

Part B—GI Bill Rate Increases

The amendments made by this part would provide for a 10-percent increase in the rates of educational assistance under chapters 34, 35, and 36 of title 38, in lieu of the 15-percent increase passed by the Senate in title I of H.R. 5288 on January 24, 1980.

Section 210

Would amend chapter 34, relating to veterans' educational assistance, to increase by 10 percent the rates of educational assistance.

Clause (1) of section 210 would amend subsection (b) of present section 1677, relating to the computation of charges to a veteran's educational assistance entitlement for the receipt of an educational assistance allowance for the pursuit of flight training, to increase by 10 percent the educational assistance allowance amount based on which 1-month's entitlement to educational assistance is charged.

Clause (2) of section 210 would amend present section 1682, relating to the computation of educational assistance allowances, to increase the rates of such allowances by 10 percent. (Under present section 1732, the rates in section 1682 for institutional, farm cooperative, and independent study training for a veteran without dependents apply to survivors' and dependents' educational assistance under chapter 35. Thus, the rate increase provided for in this clause would apply to assistance for such training under chapter 35.)

Clause (3) of section 210 would amend present section 1692(b) relating to individualized tutorial assistance, to increase by 10 percent the maximum monthly amount and total maximum amount payable to an eligible veteran for tutorial assistance.

Section 211

Would amend chapter 35, relating to survivors' and dependents' educational assistance, to increase by 10 percent certain rates of educational assistance.

Clause (1) of section 21 would amend present section 1732(b), relating to the computation of the educational assistance allowances paid for pursuit of certain full-time programs of education consisting of institutional courses and alternate phases of training in a business or industrial establishment, to increase the rate by 10 percent.

Clause (2) of section 211 would amend present section 1742(a), relating to the training allowance for special restorative training, to increase by 10 percent the rates of allowances payable and entitlement charged for pursuit of a course of such training.

Section 212

Would amend chapter 36, relating to administration of educational benefits, to increase by 10 percent the references to the rates of certain educational assistance allowances.

Clause (1) of section 212 would amend present section 1786(a)(2), relating to the computation of charges to educational assistance entitlement for the receipt of a educational assistance allowance for the pursuit of training by correspondence, to increase by 10 percent the educational assistance allowance amount based on which 1-month's entitlement to educational assistance is charged.

Clause (2) of section 212 would amend present section 1787(b), relating to the computation of training assistance allowances payable to veterans and other eligible persons for apprenticeship or other on-job training, to increase by 10 percent the rates of training assistance allowances for pursuit of such training.

Clause (3) of section 212 would amend present section 1798(b)(3), relating to the maximum aggregate amount of VA educational loans that may be made to any veteran or other person, to increase the maximum aggregate amount within the existing overall limit of $2,500 by 10 percent.

Part B—Cost: Enactment of the provisions of Part B is estimated to cost $284.4 million in fiscal year 1981 and a total of $1.1 billion in fiscal years 1981 through 1985.

TITLE III—TECHNICAL PROVISIONS;

EFFECTIVE DATE

Section 301

Would amend present section 612(f)(2) to provide chapter 31 participants with the same eligibility for VA outpatient care that veterans with service-connected disabilities rated at 50-percent-or-more disabling presently have. This would have the effect of including chapter 31 participants together with 50-percent-rated veterans in the second priority category for VA outpatient care in present section 612(1), behind veterans receiving treatment for a service-connected disability, and of making chapter 31 participants eligible for contract care on the same basis as 50-percent-rated veterans (which is the same, under present section 601(4)(C)(i) and (ii), as the basis on which contract care is available for the treatment of a service-connected disability). However, a chapter 31 participant receiving care for a service-connected disability would, of course, retain his or her entitlement to priority in the first category.

Section 302

Would amend present section 1781 to add a reference to the chapter 31 subsistence allowances to the existing provisions barring the payment of chapter 34, 35, or 36 educational assistance allowances to an individual who is on active duty in the Armed Forces and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Education or Health and Human Services in the case of the Public Health Service), and to an individual who is training under the Government Employees Training Act and receiving a full salary while in such training. For the purposes of this provision, the term "subsistence allowance" would be especially defined to include a chapter-34-equivalent allowance paid pursuant to new section 1508(f), as proposed to be amended by section 101(a) of the Committee bill.

Section 303

Would amend section 1795, generally limiting to 48 months (or part-time equivalent thereof) the aggregate period for which a person may receive assistance under the laws cited therein, to delete chapter 31 from—and include chapter 32, relating to the post-Vietnam-era veterans' educational assistance program in—the listing of the laws to which that limit applies. In addition, section 1795 would be amended to provide that no person could receive assistance under chapter 31 in combination with assistance under the laws cited therein for a period in excess of 48 months (or the part-time equivalent thereof) unless the Administrator determines that additional months of benefits under chapter 31 are required to accomplish the rehabilitation purposes set forth in chapter 31 (in new section 1500 as proposed to be added by section 101(a) of the Committee bill).

Under current law, chapter 32 is not included and chapter 31 is included in the listing of laws to which the 48-month maximum applies, but that limit is explicitly made inapplicable to the receipt of assistance under chapter 31 alone.

Thus, the effects of this amendment are to subject the receipt of chapter 32 benefits in combination with other VA educational assistance to the 48-month maximum and to authorize the Administrator to provide an exception to the 48-month maximum for a chapter 31 participant where necessary for rehabilitation purposes, as discussed above.

Section 304

Would amend section 1631(a)(1) to clarify that the 36-month (or part-time equivalent) limitation on the receipt of benefits under chapter 32, relating to the post-Vietnam-era veterans' educational assistance program, would be subject to the provisions of section 1795, as proposed to be amended by section 303 of the Committee bill, as discussed above.

Section 305

Would add a new subsection (h) to present section 1682, relating to educational assistance allowances payable to chapter 34 GI Bill trainees, to modify the method of payment of such allowances to eligible veterans while they are receiving care for more than 30 days in a VA hospital, nursing home, or domiciliary facility, or other health-care facility at VA expense. The method of payment, as proposed to be revised, would be substantively identical to that described above in the analysis of new section 1681(1) as proposed to be added by section 101(a) of the Committee bill.

Section 306

Would amend present section 1624(a), relating to the chapter 32 post-Vietnam-era veterans educational assistance program, to modify the provision designating those to whom a deceased chapter 32 participant's unused contributions to the chapter 32 educational fund are to be paid. Under current law, such unused contributions are paid to the person or persons designated by the deceased participant as the beneficiaries of the participant's Servicemen's Group Life Insurance (SGLI) policy, or, where the participant had no SGLI policy or had made no such designation, to the deceased participant's estate.

The Committee bill would provide that deceased participant's unused contributions to the chapter 32 educational fund be paid to the living person first listed below:

The participant's SGLI beneficiary.

The participant's surviving spouse.

The participant's surviving child or children, in equal shares.

The participant's parents.

Thus, under the Committee bill, only where there is no SGLI beneficiary or surviving spouse, child, or parent would payment be made to the participant's estate.

Section 307

Would provide that—if, on the date that either the House of Representatives or the Senate passes a bill containing the amendments to sections 1512 and 1798(b)(3) of title 38 proposed to be made by sections 101(a) and 211(3) of the Committee bill to increase the maximum amounts of VA direct loans under chapters 31 and 34, respectively (vocational rehabilitation subsistence loans and GI Bill education loans), a rule in that body requires that, for the bill to be in order it must provide that the authority to make such loans in such increased amounts shall be effective only to such extent or in such amounts as are contained in appropriation Acts—such authority would be effective only to such extent or in such amounts. This provision is added to the bill in anticipation of the possibility that section 16 of S. Con. Res. 86, as passed by the Senate on May 12 and currently pending in conference, may be adopted as part of the rules of the Senate and the House regarding new guaranteed and direct loans. Section 16 provides:

It shall not be in order in the House or Senate to consider any bill, resolution, or amendment authorizing new direct loans or new loan guarantees unless that bill, resolution, or amendment also provides that the authority to make or guarantee such loans shall be effective only to such extent or in such amounts as are contained in appropriation Acts. This section shall not apply to agricultural price support and related programs of the type in operation on January 1, 1980, which are funded through the Commodity Credit Corporation.

Section 308

Would provide for an October 1, 1980, effective date for the Committee bill except in two respects in connection with veterans who are participating in chapter 31 vocational rehabilitation on the day before the effective date (hereinafter referred to as "current participants").

First, in light of the practical impossibility of individualized written plans of vocational rehabilitation being prepared (under new section 1507 as proposed to be added by section 101(a) of the Committee bill) for all current participants on the first day that the legislation goes into effect, the Administrator would be authorized to provide for the formulation of plans for these veterans on the bases of feasibility and priorities that the Administrator would determine.

Second, the granting of delimiting period and entitlement extensions, under new sections 1503(c) and 1505(c), respectively, providing for extensions under certain circumstances in the cases of veterans with serious employment handicaps, would be authorized for current participants without a requirement that they be determined to have a serious employment handicap. This provision would both facilitate the administration of the transition to the new program and assure that current participants do not lose their eligibility for consideration for extensions on the grounds that they are determined not to have such a handicap.

Title III—Costs: Enactment of the provisions of title III of the Committee bill is estimated to entail no significant cost.

CONCLUSION

Mr. CRANSTON. Mr. President, I reiterate that the provision of effective, comprehensive rehabilitation services for disabled people is an area of my deepest personal commitment, and that there is no group within our society more deserving of our efforts in this regard than those who, while serving in our Nation's Armed Forces, received disabling injuries. Indeed, the best possible services and assistance for service-connected disabled veterans has long been, and will continue to be, the top priority of the Committee on Veterans' Affairs. Thus, I am extremely pleased that the Senate is moving ahead with this legislation to make needed, comprehensive improvements in the chapter 31 rehabilitation program for service-connected disabled veterans, and with the other important changes in current law which would be made by the committee bill. I strongly recommend that the Senate take favorable action on this legislation.

In closing, Mr. President, I express my particular appreciation to the ranking minority member of the committee, the distinguished Senator from Wyoming (Mr. SIMPSON), for his continuing very able assistance on this legislation. As always, it is a pleasure serving with him on the committee. I would also like to express my thanks to the distinguished Senator from South Carolina (Mr. THURMOND), for his fine work on S. 2308, which he introduced on February 2, 1980, to assure the continued direct assignment of full-time clerical or secretarial employees to assist State veterans' employment representatives. This measure was incorporated in section 208 of title II of the pending legislation. I also extend my appreciation to the other Senators who are cosponsors on this bill and have been very helpful—Senators TALMADGE, RANDOLPH, DURKIN, MATSUNAGA, and STAFFORD who serve with us on the Committee on Veterans' Affairs—and Senator MCGOVERN.

Mr. President, I also express my thanks to the members of the committee staff for their hard and effective work on this bill—Janice Orr, Michael Buchanan, Babette Polzer, Ed Scott, Jon Steinberg, Julie Susman, and Harold Carter. They were most ably assisted by Ingrid Post, Becky Walker, Terri Morgan, Karen Anne Smith, Ann Garman, Julia Butler, Jim MacRae, and Walter Klingner. I also want to thank minority staff members Garner Shriver, Ken Bergquist, and John Pressly for their diligent and productive efforts.

Mr. SIMPSON. Mr. President, I shall be very brief.

I also have enjoyed working with Senator CRANSTON. It always has been a very fascinating experience and very much a learning experience for me in my first term in the Senate, and I have come to enjoy that experience very much.

The Disabled Veterans Rehabilitation Act of 1980 comes before the Senate in S. 1188. I believe this bill is a very fair and just measure and that my colleagues recognize the necessity in its passage.

This bill is principally designed to restructure and recodify chapter 31 of title 38, United States Code, relating to rehabilitation programs for service-connected disabled veterans. This bill also makes related amendments to chapters 3, 34, 35, 36, and 41. These various amendments will restructure the various VA functions for service-disabled veterans and, at the same time, provide for a modest cost-of-living increase in educational assistance and training allowances for eligible veterans and dependents.

Specifically, Mr. President, title I of this bill would update, improve, and expand VA rehabilitation programs for service-disabled veterans. The major provisions of this title will do a number of things that will be beneficial—both to the veteran and to the VA. First of all, it enlarges the scope of the VA's rehabilitation efforts beyond the mere employability of the veteran in order to include programs designed to find the veteran employment and to insure that he maintains the capability to perform effectively in order to retain his job.

This title also provides emphasis on developing the ability of the veteran to achieve the maximum possible independence in his day to day life—consistent with the extent of his physical limitations. Nothing erodes the spirit of a person more than the realization that he may be a burden to others. Where possible every disabled veteran must be given the opportunity to achieve and maintain employability as well as the capability to live life with all possible independence.

To accomplish this objective this legislation provides the VA with the clear authority for a full range of services for the veteran. Such services include evaluation, counseling, independent-living assistance, pretraining, training, and employment-assistance. For these veterans for whom achievement of a vocational goal is impossible, a maximum effort will be made to insure that the veteran receives the therapy, training and assistance necessary to function as independently as possible within both family and community.

Title I of S. 1188 will also enable those veterans participating in chapter 31 rehabilitation programs, who are still eligible for and entitled to chapter 34 benefits (the GI bill), to receive similar allowances and assistance as those who are receiving chapter 34 benefits. Therefore, such veterans would receive chapter 34 benefits appropriate to their training programs in lieu of payment of the subsistence allowance, tuition, and fees and of other certain specified services and assistance as is provided for under chapter 31.

To assist the VA in effecting the necessary programs, this legislation establishes a Veterans Advisory Committee on Rehabilitation, to be constituted of a wide range of individuals who have the requisite knowledge in the field of rehabilitation. This will naturally include disabled veterans who have successfully effected rehabilitation—those who have a first-hand perspective of the promises and limitations of vocational rehabilitation. This title will also provide for a 10 percent cost-of-living increase for those veterans training under chapter 31. The last cost-of-living increase for chapter 31 recipients was in October 1977. Considering the ravages of inflation, such an increase can, at best, be classified as most minimal.

The total cost of this title is estimated at $29.1 million for fiscal year 1981 rising to $34.4 million in fiscal year 1985. These figures include the cost-of-living increase and other improvements to chapter 31.

Title II of S. 1188 has three essential provisions. First of all, it will improve the GI bill's on-the-job-training (OJT) programs by making them more attractive to both employees and employers. This provision will require the VA to actively promote not only its own OJT programs but also similar programs in other Federal agencies. This legislation will also allow many existing OJT programs to qualify for approval under either chapter 31 (vocational rehabilitation) or chapter 34 (the GI bill). Such programs may possibly include the HIRE program, and other programs that meet the requisite criteria for approval. Thus, existing employer incentive programs that train individuals can be individually linked to programs of assistance for veterans.

Second, title II of this bill would establish a new veterans' employment and training outreach program (VETOP). This program would be modeled after the highly successful disabled veterans outreach program (DVOP) conducted under the Comprehensive Employment and Training Act (CETA), by the Department of Labor. The third and last of these essential provisions provides for a 10-percent rate increase for those training under the GI bill (chapter 34) or the survivors' and dependents' educational assistance program (chapter 35). This would be in lieu of the 15-percent increase passed by this body in title I of H.R. 5288 on January 24, 1980. This minimal increase is as vital as the 10-percent increase is for chapter 31 recipients, and for the same reasons.

The costs of title II of this bill are $290.2 million in fiscal year 1981 declining to $177.3 million in fiscal year 1985. This decline is predicted since it is anticipated that there will be far fewer veteran participants in any of these programs by 1985. The total costs of this bill, once in effect on October 1, 1980, would be $319.3 million in fiscal year 1981 but will decrease to $211.7 million by 1985.

Mr. President, I believe that S. 1188, the Disabled Veterans Rehabilitation Act of 1980, as amended, is a very necessary effort for us in Congress in order to continue to satisfy our commitment to those veterans of our Nation who have suffered the most in service to their country. I trust my colleagues will support the passage of S. 1188.

UP AMENDMENT NO. 1540

(Purpose: To rename the Veterans' Administration Medical Center in Topeka, Kansas, as the "Colmery-O'Neil Veterans' Administration Medical Center")

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself and Mrs. KASSEBAUM, proposes unprinted amendment numbered 1540.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 71, lines 4 and 5, strike out "Technical provisions; effective date" and insert in lieu thereof "Miscellaneous Provisions".

On page 74, between lines 21 and 22, insert the following new section:

SEC. 308. The Veterans' Administration Medical Center in Topeka, Kansas, on and after the date of enactment of this Act, shall be known and designated as the "Colmery-O'Neil Veterans' Administration Medical Center", in honor of the late Harry W. Colmery and Ralph T. O'Neil. Any reference to such center in any law, regulation, map, document, record, or other paper of the United States shall after such date be deemed a reference to the Colmery-O'Neil Veterans' Administration Medical Center.

On page 74, amend line 22 to read as follows:

"SEC. 309. (a). Except as provided in section 308 of this Act and subsection (b) of".

Mr. DOLE. Mr. President, I might state at the outset I wish to thank both my colleagues, the distinguished Senator from California (Mr. CRANSTON) and the distinguished Senator from Wyoming (Mr. SIMPSON) for permitting me to offer this amendment at this time and for agreeing to accept the amendment.

It will honor two outstanding Americans from Kansas. I do have the approval of the entire Kansas delegation.

The amendment is offered for myself and my colleague, Senator KASSEBAUM, with the approval of five Members of Congress from Kansas.

Mr. President, for those who have had any interest or involvement in veterans' affairs, the names of "Harry Colmery and Ralph O'Neil" should require no explanation as to their many contributions to country and fellowman. For those who did not have the good fortune of knowing these men, I would like to tell you briefly about these great Americans, and why we are proposing this legislation:

HARRY W. COLMERY

Harry Colmery devoted his entire life to championing the cause of the veteran. During his military duty he served as instructor of officers in infantry drill regulations, squadron commander, assistant adjutant and acting adjutant of Carrothers Field, and as judge advocate and defense counsel before general and special courts-martial. He also served in the Officers Reserve Corps, Air Service.

As Past National Comander of the American Legion, Harry provided the inspiration and leadership which have become the cornerstone of this veterans' organization. Harry Colmery is also regarded as one of the principal drafters of the GI bill of rights and one who also spent much of his life orchestrating veteran benefit programs.

The insight and compassion evident in this important document are typical of

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the forces which guided his life. No matter what the undertaking, Harry pursued it with a spirit of reaching out to help his fellowman.

He further displayed his commitment to the principles which made this country great through his active participation in numerous civic and professional groups. Harry was also an active member and leader in the Republican Party. He was a member of the National Republican Policy Committee, a delegate to the 1936 national Republican convention—at which Alf Landon was nominated—and a Republican primary candidate to the U.S. Senate in 1950.

RALPH T. O'NEIL

Ralph O'Neil was also a man who devoted a great deal of his life to the interest and involvement in veterans' affairs. His sterling career in the military was only the beginning of a lifelong participation in public service activities and organizations.

His service as a soldier may be summarized by the statement that he served in six major engagements and led in person the first detachment of American troops which crossed the Neuse River near the historic city of Sedan and established the bridge head at Dun-Sur-Meuse. Ralph was gassed, injured in action, cited for gallantry in action on the field of battle, recommended for the DSC, decorated with the Silver Star and with the Order of Commander of the Crown of Italy.

As past national commander of the American Legion, Ralph's dedication and hard work led to the improvement of veterans medical care. Ralph traveled throughout the country urging that we needed "beds awaiting veterans—not veterans awaiting beds." His concern and diligent efforts led to a provision by Congress that established some 8,000 additional hospital beds for veterans.

A lifelong member of the Democratic Party, Ralph actively participated in the councils which formulated the policies of the party. His influence in national affairs was also recognized and utilized by his party in many Presidential campaigns; particularly in 1932, when he was the national head of the ex-service men's organization and assistant to national chairman Farley.

I am very honored serving a State that has such a strong tradition of veterans who continue in service to their fellow men after their military service. Therefore, the task of choosing only two men to immortalize at our Topeka, Kans., Veterans Hospital was extremelly difficult.

Mr. President, at this time I express my deepest appreciation to my distinguished colleagues of the Veterans Committee; and especially Senator SIMPSON, ranking member of the Veterans Committee and Senator THURMOND, without their support this measure could not have been possible. I would also like to thank Mr. Troxal Mellinger, the Kansas State Commander of the Veterans of Foreign Wars; Mr. John W. Carr, the State Commander of the American Legion; and Mr. John Snyder, the Kansas State Commander of disabled American Veterans, and all the national offices of these organizations for their valuable contribution of this matter.

Mr. President, in addition I note that this amendment has the full support of the entire Kansas congressional delegation. Mr. President, I urge prompt consideration and passage of this important piece of veterans legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD letters which I have received in relation to this matter.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C., May 22, 1980.

Hon. ROBERT DOLE,
U.S. Senate,
Washington, D.C.

DEAR BOB: It has been brought to my attention that you intend to amend previously introduced legislation to rename the Veterans' Hospital in Topeka.

It is my understanding that your amendment will add the name of Ralph T. O'Neil to that of Harry W. Colmery in the identification of the V.A. Hospital.

Bob, I think this is a fine way to honor these two distinguished Kansans, and you can count on my support.

With all good wishes,
Most sincerely,

LARRY WINN, JR.,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, D.C., May 23, 1980.

Hon. BOB DOLE,
Dirksen Senate Office Building.

DEAR BOB: I understand you are planning to amend S. 2413, naming the Veterans Administration Hospital in Topeka the Harry Colmery Veterans Administration Hospital, to include Ralph O'Neil, the first National Commander of the American Legion from Kansas.

In this regard, I wish to offer my strongest possible support of the amended bill. It is most fitting that both Harry Colmery and Ralph O'Neil's achievements as past National Commanders from Kansas be remembered in this manner. This past week I had the opportunity to speak to several of our friends and fellow Kansas American Legionnaires and they, too, are most enthusiastically supportive of the amended bill.

I, of course, will do all I can to get S. 2413 passed by the House and hope you will let me know of any further action I might take in support of this bill.

Sincerely yours,

KEITH G. SEBELIUS.

HOUSE OF REPRESENTATIVES,
Washington, D.C., May 22, 1980.

Hon. BOB DOLE,
U.S. Senate,
Washington, D.C.

DEAR BOB: It has been brought to my attention that you intend to amend previously introduced legislation to rename the Veterans' Hospital in Topeka.

It is my understanding that your amendment will add the name of Ralph T. O'Neil to that of Harry W. Colmery in the identification of the V.A. Hospital.

You can count on my support for this way of honoring these two distinguished Kansans.

With best regards,

DAN GLICKMAN.

HOUSE OF REPRESENTATIVES,
Washington, D.C., May 22, 1980.

Hon. BOB DOLE,
Dirksen Senate Office Building.

DEAR BOB: I want to take this opportunity to offer my support and endorsement of recent legislation introduced by you and Senator Kassebaum to rename the Veterans' Administration Hospital in Topeka.

To rename the hospital after Mr. Harry W. Colmery and Mr. Ralph T. O'Neil would, I believe, be a very fitting tribute to these two great Americans from our state of Kansas.

We are both aware of the long and distinguished careers these men had in veterans' affairs and I believe both are very deserving of the honor you and Senator Kassebaum have proposed.

Again, I offer my support for the Colmery-O'Neil Veterans' Administration Hospital and trust the proposal will receive prompt and favorable consideration.

Best wishes.
Sincerely,

BOB WHITTAKER.

MAY 22, 1980.

Hon. ALAN CRANSTON,
Ranking Member, Veterans Affairs Committee, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is to let you know of my agreeability in amending S. 2413 for the purposes of changing the name of the Veterans Administration Hospital in Topeka, Kansas.

I understand Senator Dole has asked that his bill be amended to read "Colmery-O'Neil" instead of the original "Harry W. Colmery Veterans Administration Hospital". As you may know I have introduced similar legislation in the House to change the name to "Harry W. Colmery", but am not adverse to having it read "Colmery-O'Neil". I appreciate your consideration of this request.

Sincerely,

JIM JEFFRIES,
Member of Congress.

Mr. DOLE. Mr. President, I say very quickly what this amendment does is to name the Veterans' Hospital in Topeka, Kans., the Colmery-O'Neil Veterans' Administration Medical Center and I think it is self-explanatory and has been cleared on both sides.

Mr. CRANSTON. Mr. President, I have no objection to the amendment offered by the distinguished Senator from Kansas (Mr. DOLE) which would rename the Veterans' Administration Medical Center at Topeka, Kans., the "Colmery-O'Neil Veterans' Administration Medical Center."

Mr. President, the Committee on Veterans' Affairs has an informal policy with respect to the naming of VA medical facilities after individuals. The committee policy basically does not favor naming such facilities after living persons and, in the cases of deceased persons, calls for the concurrence of all Members of the Congressional Delegation of the State concerned and of the State components of the major veterans' organizations. As my colleague has stated in his remarks, these criteria have been fully met, and I appreciate his cooperation in this regard.

Therefore, we are perfectly prepared to accept the amendment.

Mr. SIMPSON. Mr. President, our side of the aisle also accepts the amendment of the Senator from Kansas and appreciates his working with the committee.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas.

The amendment (UP No. 1540) was agreed to.

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is ordered.

THE 90TH BIRTHDAY OF COL. HARLAND D. SANDERS

Mr. HUDDLESTON. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

Mr. HUDDLESTON (for himself, Mr. FORD, Mr. JEPSEN, Mr. CHAFEE, Mr. GOLDWATER, Mr. CRANSTON, Mr. ROBERT C. BYRD, Mr. METZENBAUM, Mr. HELMS, Mr. JOHNSTON, Mr. GLENN, Mr. THURMOND, Mr. HARRY F. BYRD, JR., Mr. BAYH, Mr. BRADLEY, Mr. SASSER, Mr. BAKER, Mr. MITCHELL, Mr. GARN, Mr. JAVITS, Mr. NELSON, Mr. YOUNG, Mr. BENTSEN, and Mr. DOLE) proposes a resolution (S. Res. 512) to congratulate Colonel Harland D. Sanders on the celebration of his 90th birthday.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I will not object, I believe this resolution has been cleared on both sides of the aisle.

Mr. STEVENS. Mr. President, it is my understanding that this deals with the Colonel Sanders Resolution and it has been cleared on this side.

Mr. ROBERT C. BYRD. Mr. President, I have no objection.

Mr. HUDDLESTON. Mr. President, I thank the distinguished majority leader and the acting minority leader.

Mr. President, the resolution contains the names of 25 cosponsors, thereby staying the requirement by the Judiciary Committee that it not go directly to that committee.

The resolution simply commends one of America's outstanding citizens, Kentuckian, Col. Harland Sanders, who will be observing his 90th birthday in a few days. I ask that the resolution be agreed to.

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 512

Whereas, Colonel Harland D. Sanders is one of the world's most recognized personalities;

Whereas, the Colonel, in his capacity as "Kentucky's Official Ambassador of Goodwill" and in his capacity as the Nation's unofficial goodwill ambassador, travels some 250,000 miles per year promoting international understanding.

Whereas, the Colonel is universally recognized as a pioneer in the fast-food industry;

Whereas, the Colonel by virtue of his charitable foundation's generous contributions to programs for the research and rehabilitation of illness in children, has never forgotten those less fortunate than he;

Whereas, the Colonel not only gives money but also gives of his time, working at age 89 as last year's Chairman of the March of Dimes campaign; visits the handicapped children participating in the unique handicapped scouting program he sponsors; speaks to senior citizens, motivating them always to feel useful and that life has a purpose for them; and

Whereas, the Colonel is a tireless, energetic symbol of what senior citizens can accomplish in all fields of endeavor;

Now, therefore, be it resolved that the Senate of the United States wishes to extend its hearty congratulations to Colonel Harland D. Sanders on the celebration of his 90th birthday.

EARLE C. CLEMENTS JOB CORPS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 8010, which is a House bill at the desk.

The PRESIDING OFFICER (Mr. HEFLIN). The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 8010) to amend the Comprehensive Employment and Training Act to designatee a Job Corps Center as the "Earle C. Clements Job Corps Center".

The PRESIDING OFFICER. Without objection, the bill will be considered as having been read the first and second times, and the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, it is with very special feeling that I rise in support of this legislation to honor one of the closest friends and wisest counselors that I have had, and that is my good friend, Earle Clements.

Over the years, no individual has had a greater influence on my life—or, for that matter, on the State that both of us were privileged to serve in the U.S. Senate.

Earle Clements has served his community, State and Nation well, from county clerk to U.S. Senator, and this bill to name the Morganfield Job Corps Center in his honor is most appropriate.

After many years in Washington, Earle has returned to the land of his roots and now lives back in his hometown of Morganfield. We miss him here, but those of us who are privileged to be from the Bluegrass State know that there is no place like home.

A farmer, teacher, and athlete, Earle C. Clements held political office for more than 30 years, including Governor, U.S. Representative and U.S. Senator, before losing in his bid for reelection to a third term in the U.S. Senate in 1956. Long after that defeat, however, he has continued to be a prominent force in State and national activities of the Democratic Party.

Mr. Clements was born on a farm in Union County, son of Aaron W. and Sallie Tuley Clements.

After graduating from Morganfield High School with the class of 1915, he entered the College of Agriculture at the University of Kentucky. During the 1915–16 seasons, he played center on one of UK's winning football teams and was honored by selection to the "All-Southern" eleven in 1916.

On July 9, 1917, he entered World War I as a private in the infantry and mustered out as a captain on September 12, 1919.

In the years 1920–31 he coached the Morganfield High School football team as a hobby. In 1922 he became sheriff of Union County, serving until 1926, when he was elected county clerk.

On January 18, 1927, Earle Clements married Sara M. Blue, daughter of James Samuel and Lou Willis Blue of Morganfield.

He served two terms as county clerk, his second term ending January 1, 1934. At that time he was elected Union County judge and after the first term, was reelected for service until 1941.

From 1942 to 1944, Clements was a member of the State Senate from the fourth district, serving Union, Webster, and Henderson counties. He was Democratic floor leader in 1944.

In 1944, he was elected to the 79th Congress and was reelected to the 80th Congress in 1946. He resigned his seat in the House after being elected Governor. He did a turnabout in 1950 when he resigned as Governor to take a seat in the U.S. Senate.

In 1947, Clements was elected Governor over Republican Eldon S. Dummit by a vote of 387,795 to 287,756.

As Governor, he witnessed the beginning of a new $6 million Capitol Annex, the lowering of racial barriers, the riddance of the $5,000 salary limit on public officials, and the establishment of long-range economic surveys for Kentucky's industrial growth and development.

In 1950, Governor Clements was elected at the same time to both a short term and a full 6-year term to the U.S. Senate. He defeated Charles I. Dawson, the Republican candidate, by a majority of more than 56,000 votes.

This unusual situation was created when the occupant of that seat for 22 years, Senator Alben Barkley, was elected Vice President of the United States.

After that election in 1948, Governor Clements appointed Garrett L. Withers to fill Barkley's Senate seat. Senator Withers stepped aside toward the end of the term for a special election to fill the remainder of the session and to elect a full-term Senator. Clements made the race successfully and resigned the governorship to move on to the Senate.

In 1956, he was an unsuccessful candidate for reelection to the Senate, being defeated by Republican Thurston B. Morton by a narrow margin. Governor Clements is still active in politics, though he has not again been a candidate for public office. I know that my colleagues who know and respect him as I do will agree that this tribute to him is well deserved.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was read the third time and passed.

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Mr. FORD. I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PREPRIMARY REPORTS FOR STATE OF LOUISIANA

Mr. ROBERT C. BYRD. Mr. President, the Office of Public Records, Office of the Secretary of the Senate, Room A–623, 119 D Street, NE., will be open Monday, September 1, 1980, from 9 a.m. to 12 noon, to receive the 12-day preprimary reports for the State of Louisiana. If any questions arise, please contact that office on 224–0322.

LOST FREEDOM IN ESTONIA, LATVIA, AND LITHUANIA

Mr. BRADLEY. Mr. President, today I would like to remind my colleagues that August marks a very sad anniversary—40 years ago this month the Soviet Union secured its brutal hold over the Baltic States.

Historically Estonians, Latvians, and Lithuanians had distinct languages and societies, and all they lacked for full nationhood was political independence. Finally, in 1918 as the First World War was ending, they were able to declare themselves independent republics. Quickly forming democratic governments, they took their places in the world community by becoming members of the League of Nations. On July 28, 1922 the United States established diplomatic relations with all three states. Freedom lasted for 22 years until June 1940 when, pursuant to its understanding with Nazi Germany, the Soviet Union ruthlessly invaded the three defenseless republics. After rigging elections and installing puppet governments in each state, the Soviets cemented their domination of the Baltic States in August 1940 by incorporating them into the Union of Soviet Socialist Republics.

The United States refused to accept Soviet control over this area in 1940, and we still maintain diplomatic relations with representatives of the former independent governments. Although 40 years have passed, our resolve to see an end to Soviet tyranny in the Baltic States remains as firm as ever. The Soviet invasion of Afghanistan only reinforces our commitment to the cause of liberty in the formerly independent republics on the Baltic.

In sad commemoration of the loss of freedom in Estonia, Latvia, and Lithuania, I ask unanimous consent to have printed in the RECORD a statement prepared by the Joint Baltic American National Committee describing in fuller detail the Soviet invasion and occupation of the Baltic States.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE SOVIET INVASION AND OCCUPATION OF THE BALTIC STATES

Soviet armies invaded and occupied the independent Baltic countries of Lithuania, Latvia and Estonia from June 15–17 in 1940, destroying the freedom of three nations and peoples which had established themselves as viable European states since having gained their independence in 1918. The initial stage for the invasion was set on August 23, 1939, with the signing of a Treaty of Non-aggression between the U.S.S.R. and Nazi Germany, secret protocols of which assigned the Baltic States to the Soviet sphere of influence.

With Soviet troops being massed on the borders of Lithuania, Latvia and Estonia, the militarily inferior countries acquiesced to Soviet imposed pacts of mutual assistance, concluded in September and October of 1939. These pacts granted permission to the Soviets to establish a limited number of military bases on Baltic territory. The Soviets next provoked a number of border incidents, then in early June of 1940 charged the three Baltic States with having formed a military alliance against the U.S.S.R., charges which were groundless. These Soviet acts culminated on June 14, when Lithuania was presented with an ultimatum, to be answered within 24 hours, which demanded formation of a new Lithuanian government acceptable to the U.S.S.R. and freedom of entry for a massive contingent of Soviet troops. Like ultimata were presented to Estonia and Latvia on succeeding days. The invasion of Lithuania began on June 15, of Latvia and Estonia on June 17. Mechanized units of the Soviet army were followed soon by units of Soviet security police. With press, radio and telegraph under Soviet control, the complete isolation of the Baltic States from the outside world was carried out in a number of days. Freedom of organization and of public assembly were suspended and Baltic government officials and military officers were imprisoned and executed.

Soviet emissaries arrived in the Baltics to direct the occupation and to form the new governments. Elections of Soviet puppet parliaments were directed, with only a communist slate of candidates allowed. These nonrepresentative bodies then "requested" that the Baltic States be incorporated into the U.S.S.R. This was accomplished when Lithuania on August 3, 1940, Latvia on August 5, and Estonia on August 6, were "admitted" as members of the U.S.S.R.

One year later, on June 14–15, 1941, the Soviets carried out a mass deportation of Balts, roughly 30,000 from each nationality, to slave labor camps in Siberia. With these first deportations through others lasting into the early 1950's, approximately 10 percent of the Baltic peoples were subject to this fate, constituting an overt Soviet effort to eradicate Baltic nationalism and to pave the way of Sovietization and Russification of Estonia, Latvia and Lithuania.

PROSECUTION FOR EXTORTION, BLACKMAIL, AND RELATED FORMS OF VIOLENCE — S. 1722

Mr. McCLURE. Mr. President, when S. 1722 is considered in the Senate, I will offer an amendment to put unions on the same footing as other persons and organizations with respect to prosecution for extortion, blackmail, and related forms of violence.

Currently, labor unions can be prosecuted under 18 U.S.C. 875, 876, and 877, if a perpetrator travels across State or international boundaries, or if the mails are used in the course of the commission of the offense.

In addition, as Deputy Assistant Attorney General Ron Gainer pointed out in a June 20 speech to the lawfirm of Seyfarth, Shaw, Fairweather, & Geraldson, unions can currently be freely prosecuted under the Travel Act, 18 U.S.C. 1952.

The Public Service Research Council, which has a long-standing interest in labor violence, argues that these four sections would allow prosecution in virtually every instance in which death, injury, or serious property damage is threatened or perpetrated in connection with a labor dispute, whether by labor or management.

Unfortunately, section 1722 of the Criminal Code recodification bill would exempt from the purview of all of these sections violence which occurs in the course of a labor dispute, unless the Attorney General can and will comply with a strict set of certification requirements.

The Deputy Assistant Attorney General has stated his opposition to section 1722. And I am told that Senator KENNEDY's Judiciary Committee aide Kenneth Feinberg has privately expressed reservations about the section. As nearly as I can tell, the only support for the labor union exemption comes from certain officers within the AFL–CIO, which is said to have drafted the section 1722 language.

I cannot believe that either the rank and file union membership or most labor union leaders favor insulation from prosecution for those very few rotten apples who use threats and violence to achieve labor union objectives.

In fact, I call upon the honest and law-abiding citizens who make up the leadership and membership of America's labor unions to support the vigorous prosecution on those few outlaws who would use their labor union affiliation as a shield to protect them from prosecution from unlawful acts.

In any organization—be it a union, a corporation, or even Congress—there may be those who from time to time violate the law. This should not be used to impugn the fundamental honesty and integrity of the vast majority of the persons who make up those organizations.

But neither is it the role of the leadership of any of those organizations to exempt their membership from the full application of the laws of the United States.

For this reason, I am today sending around to the offices of my colleagues a total of 13,886 petitions which I have received from all parts of the country, urging that those who engage in violence and then hide behind labor unions be subject to the same laws as other Americans.

I would urge my colleagues to carefully consider this issue in light of the considerable interest from their friends and constituents—many of them no doubt labor union members.

NEW BOMBER LEAKS

Mr. McCLURE. Mr. President, for the last week, the newspapers have been filled with accounts of a highly classified "stealth" bomber program which may some day produce aircraft which are virtually undetectable by radar. That this program exists has now been publicly confirmed by Secretary of Defense Brown, but administration disclosures of the existence of this highly classified program have apparently been going on for some time.

On August 14, 1980, George C. Wilson wrote in the Washington Post, "President Carter will commit himself to developing a new strategic bomber, perhaps as early as tonight when he accepts renomination at the Democratic National Convention, Government sources said yesterday. Such a commitment would steal a march on GOP standard-bearer Ronald Reagan and his adherents who have lambasted Carter for cancelling the B–1 bomber in 1977."

Last week's press conferences by Secretary Brown and the stories printed during the Democratic Convention, however, were not the first actions taken by administration officials to make known the existence of this advanced bomber technology. During Senate debate on the defense authorization bill this year, momentum toward congressional commitment to a near-term strategic bomber was softened by administration assertions in the halls of Congress that application of this advanced technology was near at hand.

In fact, despite the impression which has been left with some members of the press and, perhaps, with some of the American people, President Carter has not committed himself to a new strategic bomber employing advanced technology. He has simply revealed the existence of this highly classified program in order to reduce the criticism he has received for his decision to cancel the B–1 and to discourage efforts by the Congress to undo that mistake. If President Carter should announce that he is beginning a new strategic bomber program which would exploit advanced technologies, he will be once again lagging behind and responding to recommendations contained in the Republican Party platform, just as he did when he announced his new strategic targeting doctrine.

For clarification of the issues surrounding the so-called "stealth" bomber, I would commend to my colleagues a statement by Senator JOHN TOWER, ranking minority member of the Armed Services Committee, and a statement by Dr. William Van Cleave, defense adviser to Ronald Reagan. I ask unanimous consent that these documents be printed in the RECORD, along with the newspaper article.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR JOHN TOWER

I would like to make a statement about Secretary Brown's revelation yesterday concerning "stealth technology."

While I have had knowledge of this technology program for some time, I have been very much impressed by how well this closely guarded secret has been kept. In fact, I commend jouralists who had some knowledge of the existence of this technology and who forebore from publishing. I hope you will continue to use this same good judgment about this and other important defense technologies.

Today, it is not my intention to disclose anything new about this technology. I would not even comment at all if I did not believe that the American public is being deceived by the Administration's version of events.

To be blunt, the Administration is attempting to make political hay out of what Secretary Brown announced yesterday as "a major technological advance of great military significance". I would have remained silent if Secretary Brown's press release had not been so obvious as to its intent.

Furthermore, during the recent Senate debate on the strategic bomber question, as Administration agents were scurrying from office to office on Capitol Hill, leaking and dropping hints about this technology, trying to kill any chance for a bomber that could be deployed quickly, I kept my silence. In the past few days, my worst fears have been realized. Therefore, I have come to the judgment that I cannot keep my silence any longer.

In recent weeks, the Carter Administration has been conducting a media blitz aimed at revising the history of President Carter's pallid performance on national defense. Thus, the President announced on the deck of the aircraft carrier *NIMITZ* support for military benefits issues Congress was about to enact and which he had strongly resisted for months. Now, the President has announced a new strategic targeting policy which sounds very much like what we called for in the Republican Platform. All of this was to be expected, especially in an election year.

However, the Administration's selective leak of highly classified information concerning "stealthy bomber technologies" goes beyond the bounds of propriety, even in an election year. Everyone privy to the details of this technology was clearly aware of the importance of keeping this promising technology secret for as long as possible so as not to alert the Soviet Union to the need to develop countermeasures. Nevertheless, through selective leaks and even through carefully orchestrated briefings and press conferences, the Administration is performing a sleight-of-hand act to conceal its real intent and to reduce its current political embarrassment.

I deplore this gross violation of security which is misleading and dangerous in two respects. First, no bomber is likely to be deployed using this technology until the 1990s. Therefore, it contributes nothing to our strategic deterrent during the 1980s when this nation faces its greatest military threat since Pearl Harbor. Promises by President Carter about a paper bomber are a hollow response to the strategic inferiority we will face in the 1980s. This inferiority would have been less severe, according to Chairman of the Joint Chiefs, General David Jones, had Carter not cancelled the B–1. Based on Carter's record of performance, we must conclude that Carter's promises are worth nothing.

The second effect of the Administration's leak concerns the reaction in Moscow. Having now been officially notified by the President that their future could be less bright in the 1990's, there is all the more incentive for them to use their current military advantage for aggression before we catch up. Thus, with a bluff premised on something that may or may not happen in the 1990's, President Carter has raised the risks of Russian aggression today. Secretary Brown, in his statement yesterday, recognized confirmation that this technology will certainly encourage Soviet development of countermeasures.

It has been my experience after nearly twenty years in the Senate, sixteen of which have been spent on the Armed Services Committee, and after serving as Vice Chairman of the Intelligence Committee, that it is ten times worse to confirm officially a leak. With all due respect to the media, when the U.S. government publicly confirms leaked information, it is given a lot more credence by the Kremlin.

For myself, I will reveal no more than what the Administration has already unveiled, but I would like to place what has been revealed in proper perspective.

The timing of the Administration's revelation of the "stealth" technology is politically motivated and does not coincide with either a new breakthrough or a new commitment.

"Stealth" technology is not new, but it does offer promise for the future. While the technology may work, it is reckless grandstanding on the part of the Secertary of Defense to insinuate that his stealthy bomber is to be deployed in the 1980's. In fact, what the Carter Administration is trying is a "snow job".

Experts familiar with "stealth" technology agree that the application of this technology to a strategic bomber, if proven feasible, will be very difficult and very expensive and may not be possible until the 1990's, long after a new manned bomber is most needed.

The Ford Administration pursued both the B–1 and "stealth" technology. A recent Air Force committee strongly supported development and procurement of a multi-role bomber derived from the B–1, and Congressional leaders who argued for a B–1 derivative in the FY 1981 defense authorization bill did so in full knowledge of the "stealth" program.

As "stealth" technology proves itself feasible for a strategic bomber, such a bomber is more likely to be deployed by a pro-defense administration which believes in the need for a manned bomber than by an anti-defense administration which starves defense programs and then makes grandiose promises in election years.

The Administration, which has opposed the development of a new manned penetrating bomber on principle, has made no commitment to building a "stealth" bomber. In fact, the "stealth bomber" program has been slowed in the last year.

It appears to me that Mr. Carter feels morally justified in being untruthful and in jeopardizing national security to advance his reelection prospects.

STATEMENT BY WILLIAM R. VAN CLEAVE

For purely political election year reasons, Jimmy Carter has had his Secretary of Defense violate the sanctity of some of the most tightly controlled and highly classified national security information, a technology development program whose eventual effectiveness depends critically on the secrecy necessary to stay ahead of Soviet countermeasures. Jimmy Carter is obviously so concerned about the emerging truth of the dangerous state of our military capability after three years of his Administration that he is willing to put in jeopardy the eventual success of this program by announcing it prematurely. Being unable to run a campaign on his real defense record, he is trying to conjure up a new one.

Moreover, he grossly exaggerates what we know of the effectiveness of this technology and distorts the time factors involved in any eventual application of the technology. His Secretary of Defense proclaims that this technology assures that our vehicles can successfully penetrate Soviet air defenses, but then he acknowledges that he means that this future capability of the 1990's can penetrate existing air defense systems. Perry proclaims that this technology makes an aircraft invisible to radar; and then footnotes that "invisible is of course a figure of speech." Maybe we should call this the Figure of Speech Program, rather than Stealth. It is like the Emperor's clothes. You can't see it. And the reason you can't see it is that it isn't there!

Added to this invisibility is the uncertainty about the application of the technology, acknowledged by Brown and Perry, and the lack of any decision concerning a real strategic bomber, which—using the excuse of this 1990's technology—the Carter Administration intends to delay, and delay. Invisibility plus uncertainty plus indecisiveness plus continued delay equals what? It equals Carter's defense program, but not any real, tangible capability.

We are, however, gratified that Jimmy Carter has admitted his mistake on the need for a penetrating bomber, but we still have

no program with which to face this critical decade of the 1980's.

We, of course, welcome advanced research and development programs that might lead to improvements in our defense, and we strongly support a program to produce a new strategic bomber, but in timely fashion; not paper programs aimed uncertainly at the distant future.

The Republican platform specifically endorses: accelerated development and deployment of a new manned strategic penetrating bomber that will exploit the $5.5 billion already invested in the B–1, while employing the most advanced technology available.

Advances, yes; miracles, no. There are no panaceas for our defense problems.

The fact is that technology continues to advance. This very program is the result of such evolution (not revolution). But we cannot always wait for new technologies that seem to be just over the horizon. We would never get around to producing anything if we did that, while the strategic balance would continue its deterioration.

This program, as a substitute for early deployment of a B–1 derivative, would delay for years the introduction of an effective new bomber to our force. It is no answer to our strategic requirements for the 1980s, but is yet another 1990s paper solution. And, I am concerned—indeed, I am convinced—that the announcement of this program, as if it were already an actual bomber program, is yet another Carter gimmick. It allows him to appear to be doing something to provide a modern bomber force, while in fact actually delaying a bomber program. I repeat that this is a technology development program, with some future promise—at least until the Administration blew its security—but not an actual strategic force program. The Administration has blurred the distinction.

PRESIDENT GAINS ENDORSEMENT FOR MX BLOCKBUSTER MISSILE

(By George C. Wilson)

President Carter will commit himself to developing a new strategic bomber, perhaps as early as tonight when he accepts renomination at the Democratic National Convention, government sources said yesterday.

Such a commitment would steal a march on GOP standard-bearer Ronald Reagan and his adherents who have lambasted Carter for canceling the B1 bomber in 1977.

Breakthroughs in technology, sources said, will enable Carter to argue that his cancellation was a good move because the contemplated new bomber could foil Soviet defenses which are becoming lethal enough to down a B1.

One key breakthrough is a top-secret way to make a long-range bomber virtually invisible to enemy radar used to detect invading aircraft and aim guns and missiles at them.

Some Air Force enthusiasts have nicknamed this new bomber "Stealth" because of its ghost-like qualities. Technocrats explain Stealth presents a small, virtually undetectable "cross-section" to radar beams searching for it. They call it the High Technology Aircraft.

Presidential aides have drafted remarks about a new bomber for Carter to deliver to the convention tonight. But the president could decide to hold off. It depends in part on how he reads the mood of the convention, sources said.

"You're going to hear about these new bomber breakthroughs sooner or later in this campaign," one knowledgeable official said in discussing the administration's plan for combating Reagan's claim that Carter has let down the nation's guard by canceling the B1 and other actions.

Although the Air Force is secretive about the breakthroughs for foiling enemy radar, Lt. Gen. Kelly H. Burke, Air Force research chief, has said publicly that "high on our list of hardware explorations" in looking for a new bomber "is radar-absorbing material to reduce radar cross-sections, which would improve survivability against both surface-to-air missiles and look-down, shoot-down" interceptor planes.

William J. Perry, Pentagon research chief, contends that Soviet strides in developing airborne radar that can look down and spot invading, low level bombers would doom the B1, which some members of Congress are still championing.

Perry also opposes the Strategic Air Command's proposal to stretch the F111 into a long-range bomber for the 1980s and 1990s. "Over my dead body," Perry once said in asserting that the stretched F111 did not make sense. He would rather go for new technology to stay ahead of Soviet defenses.

Carter is thus in position to contend that the Pentagon experts agree that a better bomber than the B1 was worth waiting for. He does not have to commit himself to putting a bomber in production since that decision is years away.

Beside combating Reagan, Carter's commitment to a new bomber would get him off the hook with Congress. The House and Senate, in compromising on a weapons money bill this year, directed the Carter administration to choose some kind of bomber by next March 15.

For fear the Pentagon would balk at putting a new bomber in production, as it has for two decades now with the B70 and then the B1, Congress said it wanted whatever bomber was chosen to be in service by 1987.

Although this sounds like plenty of time to design and produce a new bomber, it actually is not. Modern warplanes take about 10 years to advance from the drawing board to the runway.

To some Air Force leaders, this means Carter will have to settle for a bomber simpler to build than the Stealth, perhaps leaving an opening for a variant of the B1. But they concede going back to any kind of bomber resembling the B1 would be politically uncomfortable for Carter.

An attractive middle ground for Carter would be to promise to develop a new bomber, give the public a peek at the wonder technology now in reach—such as airplane skins which absorb or deflect radar beams—and leave the specific choice open until after the November election.

The Air Force Scientific Advisory Board studied various bomber options last month and concluded that the new plane should be able to perform a multitude of missions, not just deliver a nuclear weapon to a stationary target. Missiles are accurate enough to do that, the board reasoned.

A multimission bomber could attack moving targets, drop mines or fire missiles at ships, the board concluded and reportedly discouraged the idea that a virtually "invisible" aircraft like Stealth could be built anytime soon.

Jimmy Carter would not be the first Democratic president to disclose warplane secrets to dramatize a commitment to a strong national defense. President Johnson on Feb. 29, 1964, ripped the secrecy veil off the A–11 spy plane built at the Lockheed "Skunk Works" in California, a highly secret facility that is expected to contribute technology to any new bomber deployed by the United States.

PROPOSED FISH RESTORATION ACT WOULD HELP STATES PROTECT AND EXPAND SPORT FISHING OPPORTUNITIES

Mr. RANDOLPH. Mr. President, recreational fishing is the most popular participative outdoor sport in the United States with approximately 60 million Americans benefiting from the physical challenges and the esthetic environments which characterize the sport.

The angling harvest, too, is valuable. Fish worth an estimated $1.5 billion per year are consumed at the nation's dinner tables. For Americans, fishing is a well-established tradition, and we have innocently assumed that because of our bountiful resources our children's children will continue to enjoy the same opportunity.

Mr. President, this is not a time for complacency. Our fisheries resources, beset by problems of pollution and depletion for agricultural and industrial purposes, are being required to support an ever-increasing demand from the angling public. If we are not prepared to dramatically increase efforts to protect, restore, and enhance our fisheries resources we should be prepared to tell 60 million frustrated fishermen where else they can go.

Government at every level shares responsibility for what has happened to our fisheries resources. In most instances, however, it is the individual States which must correct the problems. The fisheries agencies in the 50 States have the authority, professional skills, and the determination to meet this challenge, but their efforts are being strangled for want of adequate funding. Virtually all State funds for fisheries management and research must come from the fishermen themselves through a variety of licenses. Despite continuing increases in license costs, the purchasing power of license revenues continues to decline through inflation and is less today than in 1970. During this past 10-year period, some 15 million additional fishermen began placing added demands on the resources and fisheries agencies in the face of declining revenues were given new and broadened missions. A 50-State survey conducted early this year disclosed a need for nearly $80 million in new funds per year simply to maintain acceptable fisheries management programs. Even larger amounts will be needed to meet future challenges.

Mr. President, in August of last year, Senator LONG and I introduced S. 1631 to relieve this critical dollar shortage by expanding the funding base of the Dingell-Johnson Federal Aid to Fisheries Restoration Act. Our bill, offered with the endorsement of every nationwide recreational fishing organization and many other conservation groups, would supplement the present 10 percent manufacturers excise tax on sales of fishing tackle with a similar tax on sales of previously exempt tackle items plus a 3 percent manufacturers excise tax on sales of most recreational boats, motors, and boat trailers. This tax will generate an estimated $80 million to $100 million per year which the States are prepared to match on the established one-to-three basis. We have reasoned that, since more than 80 percent of all recreational boating concerns fishing, it is appropriate that owners of pleasure craft and the boat and motor industry support the protection and enhancement of these resources. It is also apparent that boaters, even nonfishing boaters, are using and greatly benefiting from fishermen investment in access areas, new lakes, and other facilities and services provided by State fisheries agencies with fishermen funds.

On May 20, the Committee on Environment and Public Works held a hearing on S. 1631. That hearing produced strongly supportive testimony from virtually all State fisheries agencies plus approximately two dozen conservation and recreational fisheries organizations. I believe the bill would receive strong support by the Senate as a whole.

Representative JOHN BREAUX and 35 colleagues have introduced companion legislation in the House (H.R. 6074) and have held hearings on that bill. Hopefully quick action by the House on this tax measure will pave the way for additional Senate consideration. It may well mean the future of recreational fishing as we know it and as we are determined it must remain. Even under the most ideal of circumstances, considerable time will elapse between the introduction of problem-solving legislation and the actual solution of the problem. The pressures on the Nation's fisheries resource agencies are growing rapidly. In the finest user-pays traditions, America's recreational anglers have asked that Congress enact this Federal aid to fisheries legislation and have expressed their willingness to pay.

FARM INCOME

Mr. COCHRAN. Mr. President, farmers have faced more than their share of problems this year. Sharp increases in input costs, record interest rates during planting, depressed prices during the major marketing season, and now crop failures in many areas of the country have combined to put farmers in a financial bind.

Many farmers will not survive this year, not because they are poor managers, but because they are not allowed to operate in a market environment where they can make a profit.

In my State, like those in many other major agricultural regions of the country, farmers have been hit by the worst weather in recent memory. Cotton yields in Mississippi are expected to be down 17 percent, soybeans down 28 percent and corn yields down 31 percent. Weather conditions have not improved since this assessment was made in early August. If anything, crops may have deteriorated.

The pending reductions in production have strengthened prices, leading many to think that the worst is over. While it is true that the higher prices are welcomed relief to those with products to sell, those hit by a crop failure have nothing to cheer about.

Farm income prospects for the year have remained the same throughout. The August "Agricultural Outlook Report" published by USDA provides the latest assessment. This report confirms that farm income is still expected to decline 30 percent. When inflation is taken into account, the purchasing power of farm income this year will be down nearly 40 percent.

This points out a flaw in the administration's farm policy of depending on a crop failure to provide price strength. Higher prices benefit farmers when derived from increased demand or from reductions in production through less acreage. When supplies are reduced by lower yields, the result is simply to drive the cost per unit to prohibitive levels. Often the resulting higher prices do not cover the actual unit cost.

We now have the curious spectacle of USDA "recalculating" farm income in an effort to make this year's disastrous decline in income seem less severe by comparison. The Department of Agriculture now says that the decline in income this year will only be 11 to 22 percent rather than the 22 to 37 percent indicated earlier. This recalculation will not fool anyone except a few bureaucrats in Washington. It definitely will not help pay the bills.

To help improve farm income, we need to get effective control of inflation, to develop markets rather than embargo them, and make it easy for foreign customers to purchase U.S. farm products through direct credit programs rather than guaranteed loan programs proposed by the administration. This will provide price strength through the marketplace and give farmers incentive to produce for profit rather than wait for a crop failure for higher prices.

SUPERFUND: WHO SHOULD PAY?

Mr. BRADLEY. Mr. President, the 96th Congress has an excellent opportunity to pass legislation to deal with what I believe may be the most important environmental problem any Congress will ever have to deal with—the spread of dangerous chemicals onto our land and the detrimental effects that such contamination can have on our population.

I have seen in my home State of New Jersey the fear that can grip a town when it is believed chemical contamination is crippling its children.

I have seen how a chemical company improperly stocked 50,000 barrels of toxic and explosive material in Elizabeth. In June of last year, I testified before the Committee on Environment and Public Works and said:

> The potential effects of an explosion at the Chemical Control Corporation site are staggering. One need only remember that only a few miles away across the river is Manhattan. Clearly, a disaster here would affect millions of people.

We saw those barrels explode on the eve of Earth Day's 10th anniversary and just recently learned that additional explosives such as picric acid and nitroglycerin could have detonated on the site. It was only luck which prevented this incident from becoming a full-fledged human disaster.

Last month the Committee on Environment and Public Works reported a bill which addresses a host of problems created by the improper disposal of dangerous chemical wastes, spills and other releases of toxic contaminants. S. 1480, the Environmental Emergency Response Act, commonly known as the "superfund" legislation, would not only provide for the cleanup of inactive hazardous waste disposal sites, but would also provide liability, compensation, cleanup and emergency response for the release of hazardous substances into the environment.

One aspect of this important legislation—and a major reason why I am a cosponsor of S. 1480, is that it correctly answers the question of who should pay the costs associated with the problems caused by the release of chemical contaminants into the environment.

A major thrust of the Senate legislation, since its inception by Senators CULVER, MUSKIE and STAFFORD, has been that those found responsible for harm caused by chemical contamination should pay the cost that such damages incur. Those costs will first be centered in provisions to make those responsible for harm, liable for the costs. And, second, if the costs of response, cleanup and compensation have to be recovered from a federally-created fund, then those contributions to the fund should come from those interests who benefit the most from the production and commerce of the hazardous substances which cause the harm.

The approach taken by the committee has been called a "superfund" approach because after 3 years an $800 million a year fund would be authorized with one-eighth paid by general revenues and the bulk of the fund supported by fees from industry. The fund would be large because the problem is large.

The fee itself would be placed on the feedstocks—or the building blocks of all hazardous substances—and, as the Senate report on S. 1480 states, it would "raise more revenue without creating significant economic impact in the national economy than a fee on wastes and products because it spreads costs more broadly throughout the chain of commerce of hazardous products and wastes."

The chemical industry opposes the fund and fee concept inherent in the Environmental Emergency Response Act reported from committee. The industry argues first, that because the problem of toxic chemicals in the environment is a "societal" problem, society at large—or the taxpayers—should directly pay the bill for the problems caused by improperly handled deadly chemicals. Second, the industry asserts that it is inappropriate for the chemical industries of today to provide the up-front funds needed to protect society from damages caused by past disposal practices.

Both of these beliefs are misdirected.

To assume that the average taxpayer should pay the bulk of the incredible costs of cleanup, emergency response and compensation which continue to mount from past releases, is to assume that the average American taxpayer is to blame for past mishandling of dangerous chemicals. This obviously is not true. What we are all guilty of is ignoring this growing problem for such a long time. I am not so naive as to believe that the costs of this fund will not ultimately be passed on to the consumer in higher prices. But

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I believe the real cost of items which have deadly byproducts should be reflected in their final price. We neither benefit the producer, the consumer, nor the public at large to do otherwise.

To ignore those who have erred in the past with respect to hazardous substances would, in essence, be telling those who profit from the introduction and use of hazardous chemicals in our society that the longer it takes for actual hazards to appear, the less responsible they are for the consequences of those actions.

Furthermore, the assertion by the Chemical Manufacturers Association that the chemical industry would pay a disproportionate share of the fund is unfounded. S. 1480 provides that the taxpayers of this country will assume more than 50 percent of the cost of the authorized fund. The bill requires industry to pay 87.5 percent, and the Federal Treasury to contribute the remaining 12.5 percent. But assuming an industry tax bracket of 45 percent, after tax deductions for payment to the fund, the net industry contribution would be 48 percent, while the taxpayers would pay for approximately 52 percent. In fact, the general public will pay an even larger proportion due to the State or local cost-sharing required for Government response of problem sites.

The second major criticism by the chemical industry arises from their belief that it is unfair to tax today's industries to pay for the cleanup and compensation resulting from past chemical problems which they maintain they had no part in creating. CMA has called the fee system "selective, inequitable, and oppressively burdensome."

But the belief that it is somehow inappropriate for those industries doing business today to help finance a means to protect our society against damages caused by past disposal practices has been rejected by all the congressional committees which have examined the issue carefully. It is reasonable to assume that today's generators bear a substantial share of the responsibility for the problems resulting from past unsafe chemical disposal. It should be noted that 85 percent of the 53 largest chemical companies in the nation began generating chemical wastes more than 10 years ago.

The Library of Congress has recently conducted research on the corporate ownership patterns of the major chemical companies from 1939 to 1979 in order to determine the longevity of those companies.

The Library of Congress found that:

> The lists show that of the top ten chemical firms in 1939, four are in the top ten in 1979. All are still in existence in 1979 in some form, however, some firms are not conducting business under their old corporate title but were acquired by other firms.

The analysis found that 5 of the top 10 firms in 1960, as in 1954, were still in the top 10 in 1979; 8 of the top 10 in 1968 remained in that category in 1979.

This demonstrates a continuity between those chemical companies of the past and the major companies of today. Not only is the chemical industry the source of most hazardous wastes, but the majority of the chemical wastes come from the large companies. Therefore, legislated fees, which might be imposed on those who profit from the production and use of hazardous chemicals today, will not be inequitable because the actors—then and now—are basically the same.

Furthermore, we cannot accept the argument that the generators of wastes did not know how these products were being stored or disposed. Other legislation now regulates the transporters and operators of disposal sites. Nonetheless, the current problems directly relate to production and disposal and the costs should reflect that fact.

Whether the specific question by those who would oppose S. 1480 is couched in terms of strict liability or the shifting of presumptions created by statute, the real question remains unchanged: Who should pay when chemical harm has taken place?

The State of New Jersey has already established a superfund because our citizens recognize the urgent need to clean up potentially lethal toxic wastes. My State cannot afford continued Federal inaction. Citizens of other States are not fortunate enough to have such a State effort.

I am a cosponsor of S. 1480, the Environmental Emergency Response Act, because I recognize the urgency and dimensions of the problem, as well as placing the burden of who should pay for those damages in the proper place.

I look forward to hearings soon on S. 1480 in the Finance Committee, on which I serve, to discuss this very issue. I want to emphasize here the urgent need to bring this issue to the floor of the Senate in this session of Congress. There is not much time left to debate and pass such important legislation. We cannot afford to wait—and the victims of toxic chemical contamination cannot afford to pay the consequences.

A MAN FOR ALL SEASONS—GEORGE HERMAN OBERTEUFFER

Mr. PACKWOOD. There died yesterday a good man and a great leader. He was George Herman Oberteuffer—known to generations of Oregon boys, now grown to manhood, as Chief Obie.

He was for 40 years an executive of the Boy Scouts, and for 32 of those years he was the scout executive of the Portland Area Council of the Boy Scouts. Many a lad in those years when asked, "What do you want to be, son, when you grow up?" responded, "I want to be like Chief Obie." A higher compliment a man could not have.

Upon his retirement in December 1957, Chief Obie could look back upon a lifetime of leadership with the knowledge that he had left a legacy likely to be matched by few and exceeded by none.

Two articles written upon his retirement in the Oregonian and the Oregon Journal in 1957 well capsulized his life to that time. Those articles read as follows:

[From The Portland (Oreg.) Oregonian, Dec. 29, 1957]

G. H. OBERTEUFFER

From the windows of his farm south of Portland there is a view of Mt. Hood which has been a source of constant enjoyment and inspiration for G. H. Oberteuffer, who will retire at the end of this year as executive of the Portland area Boy Scout Council.

A tall, athletic man whose looks belie his 65 years, the moutains and trails of the West have been a virtual necessity for Oberteuffer as he has followed his 39 years of professional scouting, for he is a man who lives what he teaches.

In his long career there have been several occasions when he has been asked to take a national job in the scout movement, but this would involve leaving Oregon, a thing he cannot bring himself to do.

STAFFERS FIND DIFFICULTIES

Even though he has reached the compulsory retirement age, members of his staff know he is a hard man to keep up with in outdoor action. "I've got to have exercise," he says. "I have stood for vigorous action on the part of my professional staff, for you can't do good with the boys unless you believe what you teach."

He was illustrating this even during his last staff meeting at Camp Meriwether on the Oregon Coast. After the meeting he proposed a hike over Cape Lookout to Netarts bay and return, a trip of some 18 miles. "Well, some of them laughed at me, but we went ahead anyhow, and the weather was just right. It turned out to be a lovely hike."

To most of his staff and to the 32,000 boys in scouting under the direction of the Portland area council, Oberteuffer is known simply as "Obie," and he admits that it is probable that many of his workers don't know his correct name.

The nickname is, perhaps, a symbol of the intimate manner in which Oberteuffer has guided the council or 32 years and seen it grow from 2000 boys enrolled in about 80 troops to the present 990 troops scattered through 15 western Oregon and Washington counties.

BOYS ISSUE CALL

For all his deep interest in the job ("I wouldn't have traded it for anything," he states), Obie got into professional scout work largely by accident—and by a call from boys themselves.

Educated in Portland and the University of Oregon, where he took a premed course, Oberteuffer found on graduation that restricted finances made it impossible to continue a medical education.

"I've kept up my interest in science, though," he notes, waving to a large shelf of scientific works in the comfortable study of his home.

"I got switched off onto teaching," he recalls, "and in fact was offered a teaching fellowship at the University of California. But that came two weeks after I had accepted the post of scout executive for the Spokane area."

It was in Spokane some years earlier that Obie had his first experience in scout work, serving as counselor during a summer period. He then went to McMinnville, where he became principal of the high school, but one night "some boys came over after supper and said they had lost their scoutmaster."

HOBBIES INCLUDE RIDING

"They asked me to take the job, and I said 'No'. But they said, 'We're not going to leave until you say you will.' So I did, and I've never regretted it."

That was 39 years ago. Later at a meeting of scout leaders, he decided to go into the work professionally, and received the Spokane post.

All his life Oberteuffer has been a horseman. On his nine-acre farm now he has two saddle horses, a brood mare and three colts, and one of his hobbies has been to ride the Skyline trail along the crest of the Cascades and Sierras.

In the early days, he recalls, the Portland area had many blank spaces in it where scouting was unknown. "Scoutmasters then had to be people who knew woods lore, and they weren't always easy to find.

"But nowadays we realize that leadership is a job for several people, a scoutmaster and a troop committee with at times the aid of experts. A scoutmaster now can call on assistants for technical work."

This, he indicates, has made it easier to facilitate the growth of scouting. "Men used to be afraid to take the job of scoutmaster, because they thought they might be stuck with a gang of kids and left high and dry, and perhaps it was that way at times, but not today."

It was in 1926 that Camp Meriwether was built south of Cape Lookout, and for 18 years Obie directed the camp activities. "I made a lot of contacts with the boys during that period, and I still hear from many of them."

He has found that if a boy is a scout "long enough to have an adequate scouting experience" chances are slight that any delinquency problems will develop.

VETERAN OFFERS EVIDENCE

"I can prove this from the boys I've known, and who are now grown men. We're not a reform movement at all, but I do believe that after a decent home and a good school and church, scouting is probably the next in line.

"I don't think scouting has all the answer, but it does teach self-reliance. It teaches the boys to go it themselves, rather than sit on their fannies and watch it done."

The fastest growing part of the Portland council under his leadership has been the Cub Scout program. "It caught on like wildfire."

Today more than 60 percent of the boys of Cub Scout age, from 8 to 10 years, are in cub packs. In the Boy Scout age group 11 to 12 years, 40 percent of the boys are enrolled, and in Explorer ages, from 14 to 16 years, 25 percent are enrolled.

Obie's special pride has been the growth of camps in the area. Camp Clark is just north of Camp Meriwether, and is a primitive area where the boys do their own cooking.

At Camp Baldwin and at Baldwin ranch east of the Cascades near Dufur, boys get a taste of ranching, while at Camp Cooper in the Coast mountains they have excellent fishing. At a camp at Spirit Lake they can engage in boating and hiking.

And at Nanitch point lodge on Mount Hood there is an 80-boy ski facility.

In Happy Valley east of Mt. Tabor is a unique training cottage for scout leaders, completed two years ago. It is the only training center of its kind in the United States.

Soon to open is a new headquarters building at 25 S. W. Grant Street. "It will have a view of the east side and of Mount Hood," Obie says, but a new executive will sit in Obie's chair.

"I don't have any feeling of regret about retiring," he says. "In fact, my wife and I have been planning for it. I may do some writing about scout work and do some volunteer work. I don't want to just sit, so I'll be staying in things downtown. But I'll have more time with my horses. I haven't had a chance to ride for fun nearly as much as I'd like to."

[From the Portland (Oreg.) Oregon Journal, Dec. 29, 1957]

RETIRING "OBIE LEAVES MARK ON PORTLAND AREA: SCOUTING—EXECUTIVE SERVES 40 YEARS

(By Betty Ann Rettenmier)

"If I were doing an article on Obie's retirement, I'd begin in a satirical way," said a long-time volunteer Boy Scout worker.

"I'd say first that Obie did not personally lay all of the rails for the Oregon Trunk Railway when he was a young man. He did not own the wild horse of the reef of the well-known campfire story he tells. He was not present when the sailing ship 'Struan' was wrecked near Camp Meriwether—all Boy Scout legends to the contrary. You know how he personalizes every story he tells."

The Scouter was talking about his friend, George Herman Oberteuffer, Boy Scouts of America executive of Portland area council since 1925.

Another of Obie's good friends, a former assistant, Guy Miller, of Eugene, will take his place behind the big desk in Boy Scout headquarters after January 1.

Obie, a tall, handsome horseman with broad shoulders, shrewd, blue eyes, a warm handshake, and a sense of humor to match, is not a retiring personality. His firm hold on the reins of a job in a profession noted for the policy of transfer for advancement has made him unusual in the eyes of many professional Scouters throughout the country.

He has had many chances for higher pay in Scouting posts elsewhere, including executiveship of four of the largest councils in large eastern metropolitan cities. But as he once told job interviewers, in explaining his preference for the Northwest, "Please show me three things—a horse, a mountain, and a tree."

Obie's 40-year influence on the youth and adults of the Northwest cannot be measured. Statistically speaking, there were 2,061 boys and leaders registered with the Boy Scouts when he came to Portland in 1925. Total registration now is about 42,000.

One of the council's first summer camps, acquired after Obie came to Portland, was Meriwether, near Tillamook. Boys vied Tom Sawyer fashion for the honor of saddling Obie's horse, Skipper, and for other camp chores. Obie, his wife, the former Mildred Healy, daughter Georgie Ann, and son Bill, spent most of 17 summers there.

The Council has grown from Multnomah County and part of Columbia County to its present 15,000 square miles, comprising 15 counties in Oregon and Washington. There now are 18 professional staff men and an office force of 15 to administer the Scouting program and direct training of volunteer leaders.

Scouting in his beloved Northwest has become much more imaginative under Obie's leadership than the cartoon type assistance of little ladies across the street and burning of fingers at camp fires. Portland area scouts can climb mountains, go on 100-mile horseback rides, travel by canoe down the Willamette, go winter camping in the snow, plant trees in the Tillamook burn, help in rescues, and go scouting in Europe and the Far East.

There also are swim and first aid meets, the annual drive to collect for the Goodwill Industries, craft shows, circuses and the individual skill requirements which help a boy to be more resourceful.

Besides Meriwether, summer campers of today have a choice between Spirit Lake, Camp Baldwin on Mount Hood slopes, Camp Clark on the Meriwether Reservation and Camp Cooper near the Coast Range summit in Tillamook County.

There is also a Nanitch Point mountain lodge, Camp Millard in Clackamas County for weekend campers, a new Portland office building under erection, and a training center in the architectural style of a small timberline lodge on Mount Scott, where Obie rode his favorite horse as a boy.

"I hate to think that Obie will be retiring," recently wrote Kenneth A. Wells, one of Obie's first assistants in Portland and now national director of the Boy Scouts' research service in New Brunswick, N.J. "I know it is inevitable," he said, "but for me he is somewhat the eternal youth.

"My experiences with Obie were the richest ones of my life, and it is extremely difficult to put into words even a fragment of a proper expression of my feelings.

"I have always felt that he was a man with a profound respect for the worth and dignity of others. His sense of what is right and just grows from his deep faith in all human beings.

"I have felt that he always and everlastingly sought for the truth without ever expecting to find it. I am sure that his personal hurt at a friend's failure was much keener than his personal pleasure at a friend's success.

"By my standards, he is one of the most deeply religious of men. I suppose if I were to try to phrase it in one sentence, I would have to say, 'He is the finest man I have ever known.' "

Obie, dubbed by many "the best friend a boy ever had," is in his best wisecracking form at staff meetings when his team sets goals, plans activities and training sessions and works on the highly detailed "keep-it-simple-make-it-fun" program of leadership and character-building for boys.

Here's a sample of his advice on getting along with the approximately 12,000 adult volunteers, "Tell 'em plainly what you think. Then smile."

The "aura" of Obie, the ability to inspire others to help boys and to make the growing up years memorable, has been compared to that of a well-known evangelist. And to Obie, as one of the custodians of a great idea, his profession has many of the elements of a children's crusade. As Obie puts it, a successful Boy Scout executive is a cross between a preacher, college president and a little boy playing Indian.

It all began at McMinnville one evening in 1916, when Obie, then principal of the high school, was approached by three boys to head a scout troop, now No. 233. After several hours of persuasion, Obie consented. The trio left at midnight.

Obie caught the vision of Scouting during two summers as a camp counselor near Spokane and became a B. S. A. executive in 1918. First assignment was Spokane, where he remained until promoted to regional executive in 1924. He came to Portland the following year as council executive.

Says Wells: "He made numerous, rather drastic changes in the local council organization and I remember distinctly that a group of us who were then considered older Boy Scouts held a rather formal debate at one of the Portland schools, probably Sunnyside. I was the principal debater on the question, "Resolved: That the changes being made by the new Scout executive are not desirable." I took the affirmative side, namely that they were not desirable. As I remember it, my side won the debate.

Portland was a natural homing point for the Oberteuffers, and the new job meant less travel away from home. Obie's father, W. G. Oberteuffer, had moved his family there when Obie was three years old from Washington, D.C., to accept an office in the Army Quartermaster department. Obie went through Portland schools, then worked his way through the University of Oregon. His B.A. degree was in education, after a switch from pre-med.

While at Oregon he boarded with a sister, Mrs. E. R. Moller, now of Hood River, his freshman year, and lived at the Beta Theta Pi house for the rest of his college career.

A brother, Dr. Delbert Oberteuffer, chairman of the physical education department at Ohio State University, shares Obie's love of the out-of-doors. They once hiked from Seaside to Portland and operated a scout camp near Spokane together.

Two other brothers, Robert K. and William G., live in California.

Obie was the first man in the Boy Scout movement to thumbs-down military style camping, with tents in rows and morning

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exercises. He changed it to informal groups of boys at a number of campsites.

From the time son Bill was a small boy "hiking" with Obie to Wahtum Lake, riding in a packsack on his father's shoulders, he also has been an outdoorsman. Bill, Georgie and Obie had many riding and hiking trips along the Pacific Crest trail during family activity years. In 1937, Obie accompanied his son and a group of scouts on horseback to Chico, Calif., part of the 1,300 mile way from Mt. Hood to Tijuana. In 1953, Obie hiked with Bill and his wife Margaret for 250 miles along the John Muir trail in California.

It was Bill, however, who introduced his father to trout fishing, deer hunting and mountain climbing. Obie climbed his first and only major peak at 59 with Bill and Margaret, experienced mountaineers, as guides. Bill and Margaret, incidentally, share another of Obie's enthusiasms. Both are Portland high school teachers.

Some of Obie's honors are a surprise when mentioned to his family because "he never talked about them at home." The "boss executive" is a member of the Clackamas County sheriff's posse, was on the national board of the Camp Fire Girls, president of the Oregon Social Workers and vice president of the Pacific Coast Camp Directors Association. He also has been president and master of the fox hunt of the Lake Oswego Hunt Club. Obie also was one of two organizers of the Boys and Girls Council, which was the forerunner of the group work and recreation division of the Council of Social Agencies.

When one of Portland's most active public figures retires, he has plans. One of them, broached to a field man on his staff, goes like this: "Say, how about a horse trek next summer to Crater Lake? I'll sign on as wrangler for $6 a day and grub."

I could close this eulogy here, and the reader would realize that a fine man had died. It would be incomplete and indeed unfair, however, if I didn't tell more.

I didn't know Chief Obie during his Scouting days. As a matter of fact, I never met him prior to his retirement. It was only in the early 1960's when I started to date his daughter Georgie, now my wife, that I became acquainted with Obie. He was everything and more that anyone who had known him for a lifetime ever said.

Love is not a word I use carelessly. But if ever one man loved another, I indeed loved Obie.

In his retirement he was more active than most people yet to retire. He continued to give. He taught horseback riding, not just to the neighborhood children, but to many children throughout the Portland area including special classes for the deaf. His stern but gentle hand, even in retirement, continued to guide yet another generation who grew to love and admire Obie as much as did the rest of us. He even went the extra mile and attempted to teach me horseback riding. He started with a clumsy, albeit willing, student. While he was to have a score and more of happy years in retirement, I think he felt that even that length of time wouldn't be sufficient to get me past the rudimentary stage of horsemanship.

So he turned instead to giving me counsel during my formative years in politics and during my years of marriage to his daughter. He was a wise and willing adviser. He was never obtrusive. He never forced his views. Yet he was always ready to listen. When dispassionate judgment was needed, he would be ready to give it if asked. And when given, it was better advice for free than that which could be purchased at any price from any source.

He was a willing worker. I can well recall Obie in his early seventies pulling the other end of a two-man crosscut saw as we steadily worked our way through trees blown down on my property after a storm. Though forty years my senior, he was by far ready and able to work further into the evening than I.

In his mid-seventies Obie became a member of the Portland Metropolitan Youth Commission. Serving with people one third his age, he matched them ideas for ideas. He wove carefully a pattern of advice based in part upon his years of experience in dealing with youth and in part on his full realization that the world had changed.

The greatest pleasure of all, however, was to watch our children grow and mature at Obie's side. The love he lavished on them would be the envy of any grandchild. Yet, it was not the fawning love of a grandparent who could spoil and then return the child to its parents. It was the same love and leadership that he had given to children and young people throughout his life. Our children were simply blessed to have more of it because of the family relationship.

He was one of the few people I have ever met who could give love and leadership in appropriate proportion. He was one of those unique people who could properly keep in balance memories to be cherished and remembered while fully realizing that times past could never be relived. To his last days Obie could live in the contemporary swirl of youth who did not yet know what memories were. He mingled among them in such a way, however, that when those youths eventually approach Obie's age, they indeed will remember their youth and Obie's part in it and will truly know how fond memories are. More a man could not ask. He was truly a man for all seasons.

THE FAMILY FARM

Mr. PERCY. Mr. President, the August 15 edition of the Christian Science Monitor ran an interesting and informative column written by Mr. Robert B. Delano, president of the American Farm Bureau Federation. The column entitled "The Family Farm Does Not Need Saving," accurately describes the state of America's biggest and most successful business.

In Illinois, we have close to 105,000 farms. They come in all shapes and sizes. These amazing units of productivity farm an astounding 28.6 million acres of some of the richest soil in the country. Illinois ranks first in the Nation in agricultural exports contributing favorably to our Nation's balance-of-payments. For example, only about 28 percent of Illinois' corn crop will be used on the farm where it is produced. The rest, close to 900 million bushels, will be moved away from the home farm to other markets both foreign and domestic. These figures point up the fact that more than ever before American farmers rely on the world market for their livelihood.

I ask unanimous consent that the article be printed in the RECORD at this time.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE FAMILY FARM DOES NOT NEED SAVING

(By Robert B. Delano)

In an election year when a grain embargo, high interest rates, inflation, and extremely adverse weather conditions are playing havoc with the nation's agricultural economy, political panaceas are the last thing farmers need. However, many political "answers" to falling farm income can be expected between now and the Nov. 4 general election.

What America's food and fiber producers do need is political and public recognition that the family farm, while changing, is alive and well despite efforts by many in politics and elsewhere to argue otherwise.

Public confusion has been created by talk of corporate takeover of U.S. agriculture, of mysterious "middlemen" who supposedly inflate food prices, and by suggestions that the best answer to falling farm income is more of the same government involvement which helped create it.

It is time for the American people to compare the realities of today's agriculture with the media myths that surround it.

The agricutural figures are astonishing. In the United States only 3 percent of the population handles all of the farming activities needed to feed and clothe the other 97 percent!

Even more astounding this task is done so well by this small group that even in times of high inflation, food prices have not risen nearly as much as have other mainline living costs.

While a majority of the entire population must engage in agriculture in a number of other countries (65 percent in India), each American farmer feeds nearly 70 others—about 20 of them living in other countries.

Wholesale application of modern technology to American farming has made this production possible. "Peasants" in developing countries sow grain by hand and harvest with sickles, while U.S. farmers use high-speed mechanical drills for seeding and harvest with self-propelled combines.

So many Americans have been freed from the hard work of farming in so little time—historically speaking—that much of the U.S. population has only a hazy understanding of what now takes place in the country.

With the vast majority of all voters living in cities and towns, it is not inaccurate to say that the future of American agriculture depends to a large degree on the clarity of this understanding.

Unless well traveled, many otherwise knowledgeable Americans might deny that food in this country is a bargain, although food here now costs less in terms of average disposable income than literally anywhere else in the world.

The 16.5 percent U.S. share of after-tax income spent on food compares with 23 percent for the United Kingdom and Belgium, 25 percent for Finland, 26 percent for France, 28 percent for Denmark, and 35 percent for the Soviet Union. In selected developing countries, the food-cost share is between 50 and 80 percent of disposable income.

There are those who suggest that, good as the U.S. food production record is, there are hidden costs in terms of diminished human values as, in theory, corporate agriculture engulfs the family farm.

They may be reassured. Conglomerate farming—that is, farm ownership and operation by large corporate interests poses little or no threat to family farming.

Fifty years ago, from 2 to 3 percent of all U.S. farms could be classed as corporate operations. Today, that has fallen to less than 2 percent. Further, almost all of these incorporated farms (over 80 percent) also are family owned and operated, with 10 or fewer family stockholders. The family farm is often incorporated for tax-saving reasons and to create a separate legal entity to allow the continued operation of the farm as a viable family unit on the demise of the original owners.

Conglomerates that enter agriculture have a long and dismal record of failure. Returns on conglomerate farm investments are something less than 4 percent. Conglomerate farming is not a growth industry.

But, through consolidation and sometimes incorporation, the family farm is changing in keeping with a changing America. Political or social pressures to prevent change in an attempt to recapture the virtues of a simpler life could hurt the family farm by freezing it in a rigid, moribund pattern.

A return to the "good old days" of horse-and-buggy farming would require that one person in five leave his or her nonfarm occupation to work in production agriculture. There, a first job would be to produce and train about 25 million horses and mules to do the farmwork (about 21 million were in use 50 years ago) and about a third of our present farm acreage would go to feed this horsepower.

Food would cost about twice as much as now, with just barely enough to go around. Diets would run heavily to cabbage and potatoes with little meat, cheese, or milk.

A bright spot would be agriculture's independence from OPEC oil—but, since farming consumes only about 3 percent of total U.S. energy, this wouldn't be of much national help.

Of course, such a retreat from the advances made by modern agriculture in America is out of the question. Farmers and their families only wish to keep moving—forward! That is progress.

Progress, stimulated by reduced political tampering and lessened regulatory interference with the farming and ranching business, will do more to sustain the family farm than any panaceas offered by vote-seekers campaigning this year to "save the family farm!"

NOW IS THE TIME

Mr. PERCY. Mr. President, I wish to point out to my colleagues a significant speech made by R. Hal Dean, chairman and chief executive officer of Ralston Purina Co.

Hal Dean's address at the St. Louis Convention Center, on July 2, 1980, is significant for two reasons. First, he discusses American agriculture as "the greatest continuing example of the success of private enterprise and productivity the world has ever known." It has been the startling leaps in agricultural productivity that have given us the most abundant, least expensive, foods in the world. Second, Mr. Dean dramatically brings to our attention the danger to our entire economy and way of life if the growth in the cost and size of Government continues in the future as it has in the past.

As he so aptly points out at the conclusion of his remarks, "now is the time" to take action to slow this serious expansion of Government into the private economy. He is right on target with his assessment.

Mr. Dean notes the extent to which Federal spending has grown in the last 25 years. Whereas in the 1950's and 1960's Federal expenditures accounted for 18 to 19 percent of GNP, we are now facing a Federal budget that consumes 23 percent of GNP. Unless we act soon to place a lid on spending, the private economy, which generates those dollars in the first place, will be imperiled. It is time to wind down Federal spending so that it is roughly in the "historical" range of the 1950's and 1960's.

Those of us who worked so hard to establish a budgetary process for Congress several years ago were optimistic that by this time we could be working on a Federal budget that was essentially balanced. Many of us are dismayed that—for a variety of reasons—we have been frustrated in this effort. The so-called balanced budget for fiscal year 1981, passed by Congress this spring, is now in deficit by over $17 billion and the administration is forecasting a fiscal year 1981 deficit of $30 billion.

I did not support the spring budget resolution because of this ruse and I will find it hard to support the final budget this fall if spending is still growing by leaps and bounds.

Another important point touched on by Hal Dean is tax policy. Taxes in fiscal year 1981 are set to rise by $86 billion, sapping paychecks and corporate earnings alike. The combination of inflation and taxes have, in Mr. Dean's words, resulted in "a shortfall in capital formation and thus an almost catastrophic downtrend in American productivity." The Congress Joint Economic Committee has just released its midyear report and has unanimously recommended a slash in the burden of taxation to stimulate economic growth.

It is as if the committee had acted on Hal Dean's excellent comments in this regard. I for one am more determined than ever to develop tax policies that will boost economic growth and productivity, thereby meeting more human needs through growth of the private sector. The tax bill recently reported by the Finance Committee moves us in that direction.

As Hal Dean points out, "now is the time" for these initiatives.

Mr. President, I ask unanimous consent that Mr. Dean's statement be printed in the RECORD at the close of my remarks.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS BY R. HAL DEAN

Good morning, ladies and gentlemen.

What a proud and historic occasion we are witnessing here today. It is very difficult for me to express the level of excitement I feel. The idea of such a grand convention has been a dream for a long time. As Dub has noted, the reality of our being together—physically or by television—is a wonderful achievement . . . . the sort of thing which could only become possible in our modern world of high speed transportation and communication.

In the minutes we have together this morning I would like to share a few personal thoughts about agribusiness today, some observations as to what trends are occurring in the general business environment, and, finally, some ideas with regard to our shared futures as Americans.

At the risk of possibly embarrassing you, Mister or Mrs. Dealer, I think it is worthwhile to begin by taking a moment for some self-examination. In considering what factors distinguish you from many business people today, it occurs to me that there is something very special about you and your role as a dealer.

As suppliers of hundreds of products to America's farmers, you and your business are directly linked to the greatest success story America has to tell to its citizens and the world in 1980. Despite the seemingly endless bad economic news from Washington, the bombast from Tehran, the latest OPEC price hikes or whatever, American agriculture remains what it has been for decades—the greatest continuing example of the success of private enterprise and productivity the world has ever known.

In the midst of all the disturbing economic indicators, American agriculture continues to not only maintain its leadership position in the world, but to increase its productivity, year after year. This is a magnificent, continuing achievement which—unfortunately—most Americans continue to take for granted.

Well, this is one instance where someone wants to set the record straight and to give proper credit where it is long overdue: By providing many of America's farmers with the tools to do their jobs more efficiently from a cost/benefit standpoint, you play a vital role—in fact, a critical role—in making this great American success story possible.

I congratulate you.

As builders of American agriculture and, more specifically, of the quality of life in your own community, I know you are concerned about the advancement of policies in our nation which have increasingly come to bear on all of our lives. This morning I would like to single out two major trends for you and then talk about America's future in more general terms.

In 1979 the Public Relations Society of America commissioned a major study of the attitudes of Americans as they look forward to the decade of the 1980's. Although the study and its findings were somewhat complex, one basic conclusion clearly emerged from all of the investigation.

Many Americans—especially younger Americans—have developed a very strong sense of what they see as their entitlements. They see their Nation and their future providing them with several things: Good housing, a clean environment, cheap energy, cheap public transportation, a college education, comprehensive health care, and several other conditions, all of which boil down to one notion: The country owes me a great deal. Notice I did not say that these were expectations. These are what people indicate they are entitled to. Without any sacrifice on their part. A big difference.

Well, as business people, you know who would pay for all of these increased goodies. After learning of this study and its implications, I asked myself the obvious question: Why have so many Americans developed such an attitude?

I believe a good part of the answer lies in the fact that a majority of Americans—six out of 10—are on the dole from the Federal Government in some fashion. Through that portion of the Federal budget which consists of so-called transfer payments, we have become a Nation in which the number of persons who receive no such payments, and work, and pay their taxes—folks I call the producers—are outnumbered by those who in at least one way have a hand out for the Federal dollar. I call such people the takers.

Now, I will readily acknowledge that many of these payments such as Medicaid, Medicare and Social Security, etc.—go to Americans who in most instances desperately need the money and deserve it. But what has happened since the early 50's is that this well-intended aid has clearly grown like Topsy to the point where the total bill outstrips the Nation's ability to meet the cost. Programs such as food stamps and Aid to Dependent Children have grown in huge proportion to their original scale when enabling legislation was first enacted. I note that Senator PROXMIRE, a superb legislator in behalf of social programs, has recently announced his opposition to the Food Stamp program as it is constituted today.

Things have gotten out of hand. The transfer payment segment of the Federal budget has been growing under Republicans and Democrats alike at an annual rate of about 8½ percent over the past quarter-century. This is considerably faster than the overall national economy has been growing.

Seeing how much you can get from Uncle Sam has become a national pasttime. Unfortunately, few people seem to have read the Pogo cartoon strip and learned that "The enemy is us" and, I might add, the enemy still pays the bills.

Slowly, without our noticing at first, government policy has grown so great in its influence upon our citizen's lives, that it has come to now directly affect social change among individuals. That may sound rather exaggerated, but consider this:

With the emphasis on satisfying the demands of the takers at the expense of the producers, our Nation's annual budget has reached the point where almost 75 percent of spending is mandated by a law. We've been locked in, until now, to such at trend. That trend, of course, has given us a string of deficit Federal budgets which has generated the devastating rate of inflation which influences the quality of all of our lives.

Within the past year, many Americans became so convinced that prices would skyrocket that they went out on a buying spree the likes of which we may never see again. Credit card companies found customer accounts going over limits. People seemed to show little concern about being able to meet payments. They only seemed to care about acquiring that new micro-wave before its price went up 10 percent.

What impact did the public's perception of the government's ability to check inflation have upon America's financial institutions? It was devastating. To meet their spending, people pulled their money out of savings accounts in an unprecedented manner. Personal savings, as a percent of family after tax income, sunk to 4½ percent at the end of 1979. Twenty years ago savings was recognized as a key goal of young Americans in order to generate sufficient down payment to buy a home. Today, many young Americans have given up on that dream, and simply put their money into keeping their heads above water. They feel that there is no incentive to save, especially since savings interest has been taxed, up to now.

This is a clear example of how we have changed as a society and it troubles me a great deal. We are a nation alone in the so-called developed world with regard to family savings. Consider these percentages of personal savings as a percent of after tax income in some other nations. Remember, Americans are averaging 4½ percent.

Canada, 9 percent, West Germany, 14 percent, Great Britain, 17 percent, France, 17 percent, and Japan, 25 percent.

Congressman Jack Kemp of New York has succinctly stated the problem:

Quote. "If you tax something, you get less of it. If you subsidize something, you get more of it. The problem with the United States today is that we tax work, savings, thrift, production, capital, and we subsidize nonwork, welfare and consumption." Unquote.

There is no question in anyone's mind that economic growth must come first in our society—for without it there will be no means to fund social goals.

In the past 10 years, inflation combined with an almost Marxist progressive tax code has produced an increasing penalty on individual initiative, risk, savings and investment.

I might also note that now the term "windfall" has taken on a new and accusatory meaning. Americans must come to realize that our government itself is reaping an unprecedented "tax windfall" resulting from the progressive income tax and its inflationary programs and policies.

As inflation continues unchecked, it undermines our capital structure and thus further erodes our nation's productive capacity.

So inflation and taxation, the twin grim reapers, are working in tandem to lower our standard of living. Taken together these conditions have a devasting effect on the attitude of American workers and have, in large part, brought about the shift from a thrift to a spending society.

The result has been a shortfall in capital formation and thus an almost catastrophic downtrend in American productivity.

The 19th century Scottish essayist, Thomas Carlyle, put the capital formation requirement in very straightforward terms:

"Man is a tool-using animal . . . without tools he is nothing, with tools he is all."

These are sobering facts, especially because they are part of a trend which is now more than a decade in duration. Obviously, the trend cannot be allowed to continue. The capacity of the tax-paying producers to satisfy the demands of the many takers has reached its limit.

In an ironic way, one of our greatest national problems at this time may be helpful in enabling many Americans to understand why we must change this trend. I'm referring to the energy crisis and the increasing acceptance of the need for conservation as at least a short-term solution until alternative sources are developed.

There is clearly a growing acceptance of the fact that our natural resources are not unlimited . . . that the utilization of our natural assets of clean water, air, land and energy is finite. But it is time that federal policy recognize another finite resource abroad throughout the land—capital. There is just so much capacity on the part of the American small businessman and corporation to meet the cost of government which insists upon nth-degree techniques of environmental and other regulatory requirements which produce a tiny result at an enormous price to our national economic stamina.

Day after day, week after week, month after month, we hear or read of federal intentions to cut the cost of various types of regulation or red tape. However, the fact of the matter is that day after day, week after week, month after month we continue to be faced with the same non-productive demands to fill out forms or to install yet another new and improved filtration system. This policy is sapping American business of what little profit it is able to generate in an inflationary, recession economy. It must be changed!

Again, a basically sound social idea of the need to protect the natural environment has been subverted into a monstrous perversion of the original intent. In the macro sense, this is part of overall evolution and growth of government which we have permitted to mushroom since the end of World War II.

We are all aware of the astronomical stories of government growth. I became aware of some facts the other day which shocked me. Consider this:

Today more than 40 percent of a worker's productivity and wages goes to support government and this percentage is growing every day.

Since 1950, total U.S. employment is up 44 percent; federal government employment is up 193 percent; state and local government payrolls are up 855 percent. As a result, property taxes are up 550 percent, sales and gross receipt taxes are up 794 percent and personal income taxes are up 2,373 percent.

In this century, population in the U.S. has only grown around threefold, while federal spending has multiplied 600 times.

I mention these incredible examples not to be flippant but to underscore the seriousness of the situation. We are running out of time. The private enterprise system has just so much resiliency left in it after being forced to fuel the bloated and unnecessary federal hot air boilers for these many years.

The time is late, but there are several encouraging signs within recent months. A small but active and influential number of key legislators and federal officials are hearing the statements of business people and are becoming motivated to work in our behalf. Many of these people are not traditional supporters, but are, instead, now convinced that business people are not merely crying wolf. The tin ears in Washington are still affixed in many Capitol offices, but many are being pulled off by concerned and involved business people who are getting this message across.

The logic of sunset legislation and tax policy reform, among many constructive strategies, is being heard.

Interestingly, this new-found empathy for the thoughts and concerns of the business person is coming from new quarters, some of which are quite unexpected. Recently, Harold Williams, chairman of the influential Securities and Exchange Commission, made the following statement on the need for regulatory reform:

"We need to develop a coherent set of principles aimed at creating an equilibrium between the energies of a free, private economy and the meliorating effect of regulation. That equilibrium must not fetter the private sector and prevent it from continuing to provide us with the wealth necessary to attain our national aspirations."

I consider this to be an important statement, one which speaks not only to regulation but which naturally opens the door to the larger question of government spending policy which I touched on earlier.

There are enormous tests ahead for our nation's economy, its business people and all other Americans. The collision of government economic policy against the unreasonable expectations of entitlement of many Americans will soon be heard across this land unless there is a new sense of reality in our nation's administration.

I know you share the view that our nation remains a great nation founded on great principles. But we also have great problems, many of which have been induced by government policy over the long term. How can we hope to overcome the terrible inertia of this pattern?

Recently, it has occurred to me that a substantial part of the answer to that question lies before us so plainly that we have been overlooking it. When you compare the strengths and weaknesses of our free society with those of a controlled society, we can identify one significant distinction.

In the controlled society, the state represents that civilization's only institution. All policy stems from the position of the state on various issues. In our nation, on the other hand, we have a diverse and influential variety of free institutions—all of which contribute toward the creation of the people's views on public issues.

Sometimes strengths are also weaknesses, but I believe that our society's greatest strengths are its institutions.

Consider the rich contributions made to our world by the impact of our modern, free institutions: churches, unified labor, business, medical institutions, the gamut of non-profit organizations, an uncontrolled press and other media, the educational community, and many others—all shaping the evolution of the American public's free expressions regarding public issues.

Now, you may take the cynical view and say that this freedom has led us down a road toward so-called polarization and single issue politics. Well, I would have to concede that view has some validity. But consider the alternative—a nation in which our choices and points of view are dictated to us.

And, more importantly, look what is beginning to happen among representatives of our society who disagree. Our free institutions are realizing that disagreement born out of a common concern is the first step in true problem-solving. Instead of engaging in endless name-calling, increasing numbers of people who represent our key institutions are sitting down to discuss their disagreements. Agreeing often in advance that they share a common concern—say, the state of the environment—Americans are beginning to more fully utilize the inherent strength of our institutions. Through sincere communication premised on the notion of seeking a better way to handle our problems, Americans are learning how to better understand each other and the problems confronting us.

I'd like to take a minute to provide a specific example of what I'm referring to. A few weeks ago the education center at our Keystone resort in Colorado was the site of a very special seminar. The subject was the vexing problem of hazardous waste disposal. The attendees to that seminar were, as you might expect, environmentalists, and government environmental officials. I would suggest to you that such dialogue would not have taken place five years ago.

In that instance and in countless others, a new sort of modern local and national leadership is emerging, a leadership made possible by the flexibility of our institutions to change in order to meet our society's needs.

Yes, I would agree that the process is painfully slow, but, I think it is most important that we take note of the fact that such change—however painful at first—is able to occur.

This sort of activity gives me a sense of encouragement, not that I expect some imminent major breakthroughs in any of the major public issue areas which concern me as a businessperson and an American. But because, in a larger sense, it indicates that Americans are recognizing the fact that we all have a stake in the resolution of the major issues of today . . . and that we have very little time remaining to sit around and point fingers of blame . . . and that through sincere efforts of utilizing our network of free institutions we can achieve solutions, make compromises or at least ameliorate the harmful impact of many current trends.

This is the time, it seems to me, to more fully mobilize the inherent strength of our local and national institutions. At the risk of appearing overly dramatic, I call on you in this regard, upon your return home, to give serious consideration to your own involvement in this process.

As I have indicated, there is a cadre of people in Washington who would welcome your ideas and expressions of concern and assistance. Unfortunately, there are also many legislators and agency personnel who are not yet convinced that the situation in government is serious nor that anyone out there west of the Potomac really gives a damn about their government's conduct.

As a leader in your community and in the agribusiness industry, your voice will not only be heard, it will be forceful and, through your usual degree of diligence and hard work, you can be effective.

I invite you to join in this effort. I can think of no more important use of our time and personal energy. The future of the private enterprise system and, with it, much of the quality of our nation's future are at stake.

It is time that we, as business leaders, transcend our immediate day to day problems and begin to focus on the future.

It is time we acknowledge that we cannot and should not depend on "the other guy" to do it for us.

It is time we get serious with ourselves and our legislators about setting clear goals for governmental reform.

It is time we stop talking and start doing in Washington and across the land.

"Now is the time."

Thank you.

THE GAS LINES MAY BE JUST AS LONG NEXT TIME

Mr. PERCY. Mr. President, last summer's gasoline lines today are only a memory, but the question of what caused them remains. A recent series in the Chicago Sun-Times points out that panicked customers, shortened station hours and oil companies' inventory policies each played a part in creating the lines. But they were not the only culprits.

According to Thomas J. Moore, a reporter for the Sun-Times, the Department of Energy failed to plan ahead for the shortage, so that when the crunch finally came, the DOE was unable to do much about it. I agree with Mr. Moore's assessment.

The Permanent Subcommittee on Investigations, of which I am ranking minority member, recently held hearings on the DOE's gasoline allocation program, which is our Nation's first line of defense against a gasoline shortage. We were told that, far from easing the shock of the shortage, DOE's hasty, ill-considered actions actually made the gas lines worse. Witness after witness told of DOE's inattention to the threat of energy emergencies.

Mr. Moore concludes:

That threat is not going to go away. The oil industry and the federal government ought to get together to improve contingency planning so they can handle the next crisis better than they did the last one.

I thoroughly agree. In my view, two of the DOE's most important responsibilities are to plan for energy emergencies and to manage those emergencies effectively when they do occur.

Mr. President, I ask that the final article in Mr. Moore's series from the Chicago Sun-Times of July 31, 1980, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GAS PINCH—KEY QUESTIONS ANSWERED

(By Thomas J. Moore)

This series has examined the problems of "the new world of oil" that began to emerge early last year after oil production halted for two months in Iran. These articles conclude with some key questions and answers.

Q: Were the gasoline lines artificially created by the oil companies?

A: Substantial quantities of gasoline that could have been made available to consumers were not. The crisis was in no sense faked. The reason why gasoline deliveries were reduced varied by company. Some simply didn't have gasoline. Some had gasoline at the time and feared a future shortage. Still others must have calculated that it was to their benefit to keep a large stock.

Q: Did the oil companies conspire to hold back the supplies?

A: From the evidence available so far, it doesn't look that way. Each company seemed to be out for itself, scrambling to get all the crude oil it could. Some were much more successful than others.

Q: If the companies didn't conspire, why did nearly all cut back supplies in May, June and July?

A: That remains one of the most disturbing facts about the gasoline crisis. With a few exceptions, the large oil companies uniformly reduced supplies available in those three months, although their stockpiles and access to crude oil differed substantially. Both before and after that period there were larger and more logical differences in the amount of gasoline each company supplied.

Because the monthly supply decisions are publicly announced, there was no need for any conspiracy. It was clear from reading the trade newspapers that the major refiners were cutting back.

Once it was evident that we were going to have gas lines, it may have been difficult to buck the trend. A firm that advertised that it had plenty of supply might find some of its gasoline given to a competitor, or motorists might flock to its stations and quickly drain away those extra gallons of gasoline. The safe thing to do in a crisis is hunker down and hold on to supplies. It is not clear where playing it safe ends and hoarding begins.

Q: How does the oil industry explain what happened?

A: The American Petroleum Institute, the trade association of the large oil companies, thinks differently. Here is a summary of its explanation:

Supplies were reduced somewhat by the Iranian revolution but probably not enough to cause gasoline lines. The lines were caused by a combination of consumer panic and the Energy Department.

Consumers became alarmed and got into lines to top their tanks unnecessarily. Gasoline stations began to shorten hours as supplies ran low, which made the gasoline lines worse.

The Energy Department allocation program forced the oil companies to ship gasoline to where it was not needed and prevented them from sending to where it was in demand. Finally, price controls prevented the free market from distributing the supply.

Q: What's wrong with this explanation?

A: We should be skeptical of an industry trade association that finds government and consumers at fault and its own members completely blameless.

There are elements of truth in the API analysis but the thrust of this series was that the prime cause of the crisis was that the oil companies did not deliver enough gasoline.

Q: Who is really to blame for the gasoline lines?

A: One of the reasons we got so few convincing explanations last summer is too many people were trying to find someone to blame and not enough were trying to find answers.

The Sun-Times inquiry does not find any villains. It found a series of mistakes that resulted in a shortage that should not have occurred.

The oil companies held on to too much gasoline. In part they were worried about supplies, but they also had to notice a tight market keeps prices moving up. They may have miscalculated how much rising prices would reduce demand.

The Energy Department was either unwilling or unable to get the gasoline out of storage tanks and on the market.

When the shortage began, some consumers made a bad situation worse. As time passed, and with the help of odd-even rationing and minimum-purchase rules, citizens learned how to avoid most of the lines.

Q: Can anything be done to prevent another crisis?

A: This country imports 42 percent of its oil. Much of it comes from remote and unstable regions of the world. Alternative energy in quantity is unlikely to be available much before 1990.

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Between now and then Americans face a period of high vulnerability in which a shortage could occur at any time that would make last summer's lines seem like a pleasant memory.

That threat is not going to go away. The oil industry and the federal government ought to get together to improve contingency planning so they can handle the next crisis better than they did the last one.

THE 19TH AMENDMENT

Mr. DECONCINI. Mr. President, on August 26, 1920, the 19th amendment to the Constitution received final certification and over 26 million women gained the right to vote. Today, on the 60th anniversary of women's suffrage, we rededicate ourselves to the goals of the early suffragettes for equal rights for all citizens.

The women's suffrage amendment was neither the beginning nor the end of a long struggle for equal rights for women. Today we are still seeking to insure, constitutionally, that all American women have the equality of opportunity. Today there are over 80 million American women of voting age; women comprise over 40 percent of the American work force; and, yet, for every $1 that an American man earns, an American woman only earns 59 cents.

The official beginning of the suffragette movement in the United States was in 1848 at the first convention for equal rights for women held in Seneca Falls, N.Y. That convention, led by Elizabeth Cady Stanton and Lucretia Mott, concerned themselves with the abolition of slavery, voting rights for women and blacks, and equal rights under the law for all citizens of the United States. It was 20 years before the first amendment was introduced into the Senate calling for the vote for women and another 52 years until women's suffrage was attained through the 19th amendment. Three years later, the Equal Rights Amendment was introduced into the Congress. Yet, it was not until March 22, 1972, that House Joint Resolution 208, the Equal Rights Amendment, received final congressional approval.

During the past 8 years, much has been accomplished toward final ratification of the amendment; much remains to be done. I joined the majority of my Senate colleagues who voted for extension of the time limit to ratify the ERA, but now time is running short. June 20, 1982, is the deadline for ratification; 35 States have ratified the amendment and 3 more are still needed.

I am committed to achieving ratification of the ERA. I have encouraged the legislature in my own State of Arizona to expeditiously complete ratification of the ERA; I ask my colleagues to do the same. The Equal Rights Amendment may be one of the most important pieces of legislation of the 1970's, and we cannot afford to let it die.

I recognize that the ERA will not solve all the problems of inequity facing American women. Problems of equal pay and equal opportunity will not be solved overnight. The Congress and State legislatures need to deal with many difficult issues including education, training and child care for working mothers. However, the ERA is the cornerstone for finding remedies. The ERA will provide a constitutional foundation for solving the problems of all women whether they be homemakers, working mothers, single women or retirees. Perhaps most importantly, the ERA will provide the logical conclusion to the Declaration of Independence: "We hold these truths to be self-evident that all Men and Women are created equal, that they are endowed by their Creater with certain unalienable Rights, that among these rights are Life, Liberty, and the Pursuit of Happiness."

I believe that the early suffragettes would be shocked to see that, in the 132 years since Seneca Falls and the 60 years since ratification of the 19th amendment, there is still no Equal Rights Amendment in our Constitution. Let us commit ourselves to seeing that in the 1980's, equality of rights under the law shall not be abridged on account of sex.

ADDRESS BY DR. GEORGE DURST

Mr. THURMOND. Mr. President, Dr. George Durst, a distinguished South Carolinian and a fellow alumnus of Clemson University, recently delivered an outstanding speech at the 50th anniversary of the graduation of the class of 1930.

In his speech, Dr. Durst, discusses the remarkable advances our country has made in the last half-century and stresses the importance of a strong national defense in what he terms the "real world."

Mr. President, in order to share this speech with my colleagues, I ask unanimous consent that it appear in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS OF DR. GEORGE G. DURST

Class of 1930!!! 50 years!!! I don't believe it!!! Our crowd of classmates have been acting like a bunch of sophisticated sophomores even since we got here!!!

When we were students, there was the happy rumor that Winthe was going to be moved to Clemson and put on Hotel Hill!!!

That was like the one about the ice cream refrigerator breaking down in the dairy building—with free ice cream available for all!!!

So what happens?—We came back yesterday and found ourselves, of all things, put on Hotel Hill—in a women's dormitory!!!

This supreme irony!!! Reminds us of that old cartoon "Born 50 years too soon."

This is a time for nostalgia and bittersweet memories!!!

What an era in which we have lived!!!

Our childhood memories reach back to the times when the principal personal transportation was by shoe leather or horse or mule; over dusty or muddy roads. We came to Clemson when the Model T Ford was in its glory and when we left, some of the roads had been paved, and the Model A Ford had replaced the Model T.

We've seen the miracle of transportation go on into rockets and incredible trips to the moon.

We've seen medical science; from the days of iron quinine and strychnine; to penicillin, polio vaccine and open heart surgery.

Plant breeding—has realized the age old dream of growing two ears of corn where one once grew. One of our own classmates, the late, noted Dr. W. C. Barnes is credited with developing, at the Clemson Coastal Experiment Station, new and much improved strains of cucumbers that now account for seventy per cent of those grown throughout the world!

We've seen communications go from the telegraph, morse code and the hand cranked telephone with "central" asking for "number please"—to radio, television, computer technology and communication satellites.

The production of energy; From the water wheel and wood or coal fired steam engines to the miracles of atomic power.

I hold a vivid memory of one of our Clemson professors telling us that there was—if it only could be released, enough energy in a teaspoonful of atoms to propel an ocean liner across the Atlantic. That prophetic statement has been called to mind many times as we have seen the wonderful developments and applications of atomic energy.

The use of this great source of badly needed energy must not be limited by narrow minded and ill informed obstructionists!!!

There have been no deaths from commercial atomic power plants! ! ! However, we of the class of 1930, can remember many fatal steam boiler explosions in the saw mills and cotton mills of our youth.

I repeat—what an era in which we have lived! ! !

We came to Clemson only seven and three quarter years after the end of World War I, and we left here only nine years before the outbreak of World War II.

Our Clemson training served us and our nation well. We had the training and maturity to become mostly field grade officers during that war. I'm sorry I don't have more specifics, but I know our class had at least six full Colonels, one Brigadier General and one Major General. It's dangerous to attempt to say more because I'm sure too much would be left out. Perhaps, before it's too late, someone in the history department here, working for an advanced degree, will do, as a thesis, a study of the contributions of Clemson men in the defense of our nation. It would make indeed a very proud story! ! !

Memories of Clemson days! ! !

Our Freshmen shaved heads! ! !—Hazing!—Some hazing helped us to develop the self control and self discipline that later stood us in good stead in tough situations during war and peace.

Our class was included in the last two trips by the Corps of Cadets to Columbia, there to pitch our pup tents on the State Fair Grounds!!! That was a never to be forgotten experience!!! The State Fair—The Midway—The Steel Building, seeing friends, family and politicians everywhere—Big Thursday!

We beat Carolina all the three years our classmates were eligible to play varsity football—and what celebrations!!!—including a memorable snake dance down Main Street in Columbia.—This could properly be called the beginning of the growth of Clemson football into its present greatness; for it had been in decline from the days of Coach Heisman until then.—Two of our classmates were kept on at Clemson and helped coaches Neely and Howard to develop the great teams that first won national recognition in the Cotton, The Sugar, The Orange and The Gator Bowls.

Other cherished memories!

What a dream land the talented student artists created of the old wooden gymnasium for our dances, and the flock of beautiful girls coming to the dances!!—break dances—one was introduced to and expected to dance with, those ladies from all over the state and beyond.

We remember the summer R.O.T.C. Camp. Most of us crowded into second hand Model T Fords and made a disorganized caravan through Atlanta and on to Anniston, Alabama and Fort McClellan.

We came to Clemson four hundred fifty freshmen. Four years later one hundred seventy-five graduated. Many had fallen out for financial reasons. The 1929 stock crash took a terrible toll! Finishing; we were faced with the great depression of the early 1930's! That's when the Clemson instilled overall training and character building stood out!!!

On entering we all had high dreams of making a million dollars. The Class of 1930 has done very well in that respect. I don't know how many could now be classed as such, but I do know of several bonafide millionaires from our class—(If the present rate of inflation continues, we all may become technically millionaires, but our millions won't be worth much!!!)

Our Alumni Office informs me that records show that we have had twenty-five ranking executives in business or industry, fifteen have been career military men, eleven teachers at colleges or technical schools, many others own their own businesses or farms; we've had three physicians, and one attorney, many have been elected or appointed to high offices or positions in government. Previously mentioned are two who served our Alma Mater as coaches.

Our class has actively supported the Athletic Program, The Clemson Alumni Association, and through the Alumni Association the Academic Programs, (I have just learned of a gift amounting to more than one quarter million dollars received by the Alumni Association from one of our classmates). Four of our members have received the Alumni Distinguished Service Award—the Alumni Associations highest award—one of our members has served as National President of the Alumni Association.

We are proud of the continued progress made by our Alma Mater under the far sighted vision of Thomas G. Clemson and all those leaders who have followed him.

So, I bring you Greetings! and a Challenge! from the Class of 1930!!

Members of our class have been through great and terrible adventures since we left.

The great depression! with its Bread Lines! Bank Failures! and Mortgage Foreclosures!—We know something of unemployment and social problems!!

We have seen formerly great nations defeated, demorilized, and their whole social structures disrupted!!

We have seen unspeakable conditions existing among people whose homelands were subjected to enemy occupation!!

The evil tragedy and the terrors of prisons, concentration camps and gas chambers we have also witnessed!!

We know something of war and what war means to nations and people who have been defeated!!!!

Unfortunately, there are today those in high places debating about moneys spent on Military preparedness versus various social programs.

My classmates who for fifty years have been out in the real world and literally on the firing lines join me in bringing one message!!!

There can be no security!!! no welfare!!! no social programs!!! for our richly blessed Nation in the real world as it exists today without our first—making all the needed sacrifices to be fully prepared—with both the means and the determination to defend ourselves and our way of life!!!!

THE NEED FOR A REVITALIZATION OF AMERICA'S ECONOMIC POWER

Mr. THURMOND. Mr. President, much has been said in recent months, even by President Carter, that our Nation is in an irreversible economic and political decline. I reject this thinking, and I believe the American people also reject it.

While there may be periods in our history when we experience economic or political setbacks, our ability to overcome these problems should never be doubted and our determination to remain the greatest and strongest Nation in the world should always be pursued.

Mr. President, in this connection, a recent editorial entitled, "A New Social Contract" appeared in the August 6, 1980 issue of the Aiken Standard newspaper. This editorial addresses these issues, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

A NEW SOCIAL CONTRACT

The new by-phrase "reindustrialization of America," to which Democrats as well as Republicans now pay ardent lip-service, is ideal for this campaign year. Even though it is imprecise, it sounds good and serves well the candidate who wishes to bid for the simultaneous support of labor and business management. For, "reindustrialization" is a broad term that covers the country's economic malaise, recaptures the image of the past when U.S. industry ruled supreme, and calls for an industrial reformation.

We shall hear much more about "reindustrialization" and not merely from the politicians. This spring, Harvard University and the New York Stock Exchange jointly sponsored the First Conference on U.S. Competitiveness to examine why Japan, and not the United States, is the most dynamic, most technologically competitive, best managed economy in the world. The conference observed that the decline in U.S. economic power is a major factor behind the lack of U.S. dominance in the councils of the world—a dominance that was once taken for granted.

We find a sure storm signal in the falling rates of U.S. productivity. Japan and Germany are consistently outstripping the United States in economic productivity. While U.S. manufacturing growth has dwindled to 1.6 percent annually, the growth rate for Japan and Germany has steadily increased to about 5 percent. Output per manhour has actually declined in some key U.S. industries during the last decade.

The United States is still the world's most productive society, but the trends are going the wrong way. Last year, the American share of manufactured exports worldwide declined to 15 percent compared to a new high of 21 percent for West Germany.

Ironically, while the output of U.S. workers, compared with world rivals, has been declining, the hourly wages for U.S. workers have soared much faster and higher than those in any other nation.

Appropriately, the Harvard-Stock Exchange conference recognized the destructive role of the federal government: tax laws that discourage saving and investment, paralyzing costly overregulation, and incoherent trade policies and export strategies. But the conference took an equally hard look at U.S. corporate management that has presided over declining auto, steel, shoe, textile, and other stricken industries.

Richard W. Kopcke, an economist with the Federal Reserve Bank of Boston, places about half the blame for slumping U.S. productivity on slower capital accumulation and plant modernization caused partly by mismanagement but largely by faulty taxation and rising inflation rates. In any event, the miserable results can be seen in a weakened dollar and larger and larger trade and payments deficits.

Most economists agree the OPEC price increases have not helped, but cannot be blamed primarily for declining U.S. productivity. After all, this country produces about half of its oil requirements compared with Japan and West Germany that must import all of theirs.

What to do?

In a recent and exhaustive analysis of this problem by the magazine Business Week, it was suggested that the time has come for cooperation rather than confrontation among America's three big partners: labor, business, and government. This would embody in a "social contract" not unlike the close economic-government relations existing in Japan, West Germany, Brazil, Mexico and South Korea.

Business Week makes the point with which we agree, that the first initiative for this must come from business and labor because neither Congress nor the Administration is capable of providing the leadership necessary for a "reindustrialization of America." Leaders of the various economic and social groups should strive without delay, therefore, for a consensus of what is needed and present this agenda to Washington.

The basic immediate problem is that much of the country's corporate leadership has been shaken and demoralized into accepting the U.S. economic decline as inevitable. The first order of business, then, is for America's business and labor leaders to regain their confidence and to reasert the old Yankee traits of ingenuity, trading, and work ethic that have provided this country the highest standard of living anywhere in the history of mankind.

U.S. FOREIGN POLICY AND IRAN

Mr. THURMOND. Mr. PRESIDENT, America has changed its direction in foreign policy so often in recent years that our allies no longer look to us for leadership.

This lack of policy direction could be related to our continued renunciation of the use of force even from a contingency planning standpoint. The recent adverse reaction by the administration to the statement by Republican Presidential Candidate Ronald Reagan that our effort in Vietnam was "a noble cause" is a symptom of the administration attitude which fails to even use our military power as a policy tool in dealing with various Communist advances. It seems that the administration still suffers from what some have termed the "Vietnam Syndrome."

This attitude may have unnecessarily prolonged the Iranian crisis as we telegraphed to the revolutionary leaders there that they need not fear any military action on our part.

In connection with this new policy, I commend to the attention of my colleagues a recent article written by Jeffrey B. Gayner, Director of the Washington-based Heritage Foundation. This article appeared in newspapers throughout the country, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

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IRAN AND THE "VIETNAM SYNDROME"

(By Jeffrey B. Gayner)

The continuing Iranian débâcle has understandably generated considerable despair and frustration. But the latest episode in this seemingly endless crisis—the disastrous rescue attempt—could have the positive effect of generating the kind of serious evaluation of US policy that has been smothered in the silence that non-partisanship and the carefully controlled non-flow of authoritative news has until now dictated.

It is possible, therefore, that the failure of the rescue mission can provide the impetus to rescue us from the Administration's naive missionary policy which has been so long on moral rhetoric, but so short on resolute action.

The refusal of the Carter Administration to use or even acknowledge the relevance of armed force in international relations has, time-and-time again, led to never-ending negotiations and eventual acommodation to adamant adversaries. Such a line runs from the Panama Canal treaties to recongnition of communist China, the Rhodesian embargo to aiding Nicaraguan Marxists, accepting Soviet bases in Cuba and SALT agreements, and now to the Iranian revolution and the Afghanistan invasion.

Consider the resignation of Secretary of State Cyrus Vance. The Secretary has understandably aroused enormous sympathy as a thoroughly decent and honourable man who quit as a matter of principle. But the principle at issue obviouly reveals the essence of the failure of our foreign policy over the past three and a half years. Vance, and innumerable other key figures at the State Department and in the Administration, suffer from an apparently incapacitaing Vietnam syndrome concerning the use of force.

Ironically, Vance resigned over the use of what now appears an incredibly modest force for the limited purpose of freeing American hostages. Quite possibly limiting the rescue mission to so few men and little equipment contributed to its ignominious demise in the desert. Yet even 90 men and eight helicopters challenging Teheran led Vance to fear a possible escalation eventually inviting Soviet retaliation. The division in the Administration concerned this level of risk taking.

The object lesson of contrasting the Soviet and American positions on the use of force become gruesomely clear in Afghanistan. While we sent 90 men to Teheran, the Soviets ordered 90,000 men to Kabul and violently overthrew the existing government.

Tens of thousands have died and hundreds of thousands have fled the Brezhnev blitzkrieg. The American response to this brutal breach of the peace has been to suggest the reinstitution of the draft and the boycotting of the Olympics—proposals that have been more divisive in the West than destructive of the Red Army's capacity to hold Afghanistan. We apparently dare not aid those fighting for their independence, although the Kremlin showed no similar reluctance to arm their proxies in South Vietnam who eventually killed over 50,000 American servicemen. Afghanistan, indeed, will become the Soviet's Vietnam—communist aggression will again prevail by military force.

In contrast, American policy in Iran has amply demonstrated our irresolution through a tortuously slow escalation of actions against Teheran.

This American campaign has lacked any compelling credibility. The U.S. obviously has the capacity to hold all of Iran hostage for as long as Khomeini's terrorist squad hold Americans hostage. Instead of immediately cutting off food and other supplies destined for Iran, we waited long enough for Teheran to find alternative sources. We waited weeks before even closing down Iranian consulates around the United States and fully five months before ousting the Iranian diplomatic corps; and now we protest to Europeans for 'foot dragging' by waiting five weeks to impose sanctions on Iran. We noisily called for the deportation of Iranians residing here, but we now find that immigration officials have timidly allowed even more of Khomeini's followers into the United States. These are the same immigration officials who are trying to stem the flow of Cuban refugees from Castro tyranny.

The actions the U.S. has taken lack credibility in Iran and around the world. Just as the painfully slow escalation of the war in Vietnam ended in disaster, so also the snail's-pace escalation in Iran has only reinforced our adversary's perception of the lack of resolve by the United States to defend its vital interests.

We have not learned yet that in an increasing number of instances patience is not a policy but a substitute for tough decisions.

We casually watched the Shah and his successors fall as we hoped for the best; this watchful waiting policy has continued to the present. The alleged complexity of the world has apparently incapaciated our leaders from sensing basic realities. Some effective middle ground of action must exist for the United States to take between the Soviet's sledgehammer approach to problems and our amorphous ambivalence.

The sooner we find that middle ground, the better.

THE DEATH OF MRS. JENNY C. CHILDS

Mr. THURMOND. Mr. President, recently, the Republican Party of South Carolina lost a dear and devoted employee to cancer.

Jenny C. Childs, from Chapin, S.C., passed away on August 4, 1980, after a short and unexpected illness.

She had been active in State and local politics for many years. She had worked for the South Carolina Republican Party for over 4 years, and had served two terms as president of the South Carolina Federation of Republican Women.

She was born in Pickens County and was married to Thomas L. Childs of Chapin. She was a member of the Chapin Baptist Church.

I had known Jenny for many years. She was an outstanding lady who well served the public and her country.

Jenny was dedicated and sincere in everything she undertook. She served the Republican Party unselfishly in many capacities. She was an inspiration to those around her.

My heartfelt sympathy is extended to her husband, Tom, and to her children. Mrs. Linda McClary of Irmo, and Capt. Thomas Michael Childs, stationed in Germany. I know she will be sorely missed.

Mr. President, in order that I might share an article from The State newspaper in Columbia, S.C., and two statements from the South Carolina Republican Party, about this fine lady, I ask unanimous consent that these be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

[From the Columbia (S.C.) State, Aug. 4, 1980]

MRS. CHILDS, POLITICIAN

Mrs. Virginia Cantrell Childs, 49, wife of Thomas L. Childs, of Chapin, died Sunday at Baptist Medical Center.

Born in Pickens County, she was a daughter of the late Carl F. and Mae Bell Dorsey Cantrell. She was a member of Chapin Baptist Church.

Mrs. Childs, active in local and State Republican party activities, served two terms as president of the South Carolina Federation of Republican Women.

Surviving are her husband; a daughter, Mrs. Linda McClary of Irmo; a son, Capt. Thomas Michael Childs, stationed in Germany; a sister, Mrs. Kathleen Cantrell Powell of Pickens; two brothers, Virgil Charles Cantrell of Pickens and Franklin Cantrell Jr. of York; and a granddaughter.

The family suggests that those who wish may make memorials to the American Cancer Society.

Plans will be announced by the Dunbar Funeral Home.

REPUBLICAN NATIONAL COMMITTEE,
August 8, 1980.

MEMORANDUM

Re Jenny C. Childs Memorial Fund.
To State GOP Leadership.
From Beverly Gosnell, National Committeewoman.

The South Carolina Republican Party lost a close and dear friend and worker this past weekend in the passing away of Jenny Childs.

Jenny was an inspiration to us all. Always working to make her Party grow, she developed the love and respect of everyone she came in contact with.

To best remember Jenny and her devotion to the Party, a Memorial will be established in her name. A committee will be named to determine the best use for this memorial (such as an Intern Program or perhaps a Scholarship Program). This Memorial will be continued year after year and is completely separate from the S.C. Republican Party Finance Program.

In the meantime, if you wish to contribute please send your gift to the Jenny C. Childs Memorial Fund to my attention, in care of S.C. Republican Party, P.O. Box 5247, Columbia, S.C. 29250. The money will be deposited into a savings account. You will receive further details once the Committee is established and has met.

Jenny's love for all will live in our hearts forever.

SOUTH CAROLINA REPUBLICAN PARTY,
August 1980.

JENNY CHILDS
1931–1980

With deep shock and sorrow the S.C. Republican Party notes the untimely loss of a dear friend and faithful worker, Jenny Childs.

Jenny served the party in many capacities at all levels—most recently as full time Receptionist in state party headquarters and as the immediate past President of the S.C. Federation of Republican Women. Her friendly disposition and genuine concern for all people with whom she worked made her a well known and beloved Republican leader. Her enthusiasm for and dedication to the success of the party and its candidates will be sorely missed. Our heartfelt sympathy is extended to her husband Tom, and children, Mike and Linda.

Jenny, "May the Lord Bless you and keep you and make his face to shine upon you, now and forevermore." Amen

TIME TO REESTABLISH A REASONABLE DISTRIBUTION OF POWER BETWEEN THE STATES AND THE FEDERAL GOVERNMENT

Mr. MORGAN. Mr. President, once again I rise to express by deep concern over the continuing trend to imbalance the relationship between States and the

National Government in favor of the latter. The authority of the States is being eroded to a degree that raises serious questions about the functioning of federalism today. Many regulations, court decisions, and congressional actions appear to challenge the very foundations upon which this Nation was built.

The Founding Fathers created a carefully layered system of separate units with specified functions. In order to maintain this constructive and productive relationship, Hamilton and Madison enjoined the Congress to ask "Is this legislative proposal an appropriate function for the Federal Government?" Unfortunately, in our haste to impose national standards, in our sincere attempt to let righteousness flow from Washington, we have largely disregarded the question posed in the Federalist Papers. The tenth amendment which reserves unlisted powers to the States and the people has become, as is often said, a hollow shell. It is our obligation, Mr. President, to insure that this situation is corrected.

I have no doubt, Mr. President, that the Congress is a major culprit in the process of diluting what was once a positive and reenforcing federalism. We passed grant programs without determining whether a national solution was required. In some cases, we expect actions on part of the States and local governments without providing the necessary funding. In other cases, we are by-passing State governments all together when dealing directly with cities and local communities. It is no wonder that the Advisory Commission on Intergovernmental Relations refers to us as "Congress plays municipal and county council almost as often as it acts as a national deliberative body." We must not allow this impression to continue to exist.

For this reason, Mr. President, I am pleased to note that the States, through their Governors, are forcefully beginning to reassert the authorities that once belonged to the States. When the National Governors' Association met in Denver in early August, a strong plea was made for a fundamental reassessment of the relationships between the Federal, State, and local governments. Such a reassessment is long overdue; I strongly support it, and I am convinced that it will strengthen our system of government.

Many excellent statements were made by the participants, and new ideas on federalism advanced which I would like to share with my colleagues. Governor Otis Bowen from Indiana, the past chairman of the association, makes an urgent plea for a greater reliance upon the States which have "modernized their constitutions, streamlined their administrative structures, and vastly expanded their fiscal powers." The drift toward centralized bureaucratic rule cannot continue, and States must be permitted to assume their rightful place in a constructive partnership.

Mr. President, I ask unanimous consent that excerpts from a speech delivered by Governor Bowen be printed in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

GOV. OTIS R. BOWEN, INDIANA

What I have enjoyed most about our meetings is the opportunity to debate and seek agreement on the great issues that face our nation from a perspective that is more fundamental and more enduring than that of partisanship.

Woodrow Wilson, who was a great scholar as well as governor and president, once wrote that "the question of the relation of the states to the federal government is the cardinal question of our Constitutional system. At every turn of our national development, we have been brought face to face with it, and no definition either of statesmen or of judges has ever quieted or decided it. It cannot, indeed, be settled by the opinion of any one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question."

Today, it is indeed a new question, and one that is full of hazards and opportunities for the states. For events in Washington and in the world in just the last 12 months have made it evident that we stand at what Wilson called "a new turn in our national development."

It is clear, for example, that we are in the midst of a shift in federal resources away from domestic programs and toward policies designed to insure our national security in an increasingly dangerous and unstable world.

It is also clear that Washington has changed the terms of the partnership that was envisioned during the dramatic growth of the intergovernmental aid system in the 1960s and that was symbolized for many of us by the enactment of the general revenue sharing program in 1972.

That partnership was based on mutual respect and trust, on a sharing—not only of revenues but of responsibilities, on a conviction that by joining together, federal, state, and local governments could improve the material well-being of our citizens while preserving to the maximum degree their right to self-government.

Although the intergovernmental partnership is functioning reasonably well in a number of areas, the signs of change are not difficult to find:

The federal aid system has become more fragmented, not less, since 1972, more subject to special interest group pressure and bureaucratic whim and less responsive to the commonsense judgements of elected political leaders.

While federal aid has declined, federal rules and red tape have grown, as Washington has sought control not only of its funds but of ours. It is now obvious that in many programs the federal government's policy voice far exceeds its financial commitment.

The expansion of programs through which the federal government deals directly with tens of thousands of local governments has undermined the ability of the states to coordinate resources in traditional policy areas and has made many cities dangerously dependent on federal aid.

The rising federal tax burden, which this year will reach 22 percent of GNP, the highest level since World War II, has not only failed to balance the federal budget but is eroding public support for all domestic spending and foreclosing the fiscal options of state and local governments.

Finally, the Governor's recommendations for achieving budget restraint through increased flexibility and lower overhead costs, which we made in December 1978 at a time when virtually all others were demanding higher spending, have been ignored. Instead, when the budget was resubmitted in March, a disproportionate share of the cuts came in the form of an unprecedented breach of commitments to flexible federal-state partnership programs—revenue sharing, LEAA, welfare reform, highways, economic development, preventive health and others. . . .

The new economic, fiscal, and political realities confronting the nation demand a new response from the states, a response that is more aggressive, more independent, more skeptical of federal power . . . a response that I believe should be based less on revenue sharing than on revenue keeping.

One approach to revenue keeping—and there are many others—is to secure the enactment of a federal tax credit for a portion of state sales and income taxes. Through such a tax credit, the states would have more room to raise their own resources in order to meet—at lower cost and more efficiently—the important needs which they have defined, and to assume responsibilities in areas where the federal government is performing poorly. Such a tax credit would reduce the growing imbalance between federal and state revenues—now 22 percent of GNP compared to 7 percent—but still enable the federal government to meet important national objectives.

It would circumvent not only the worst features of an unnecessarily complex and inefficient grant system but also the entrenched alignments of special interest groups that pervade our nation's capital.

Such a change in the federal tax code also could be progressive, granting relief not just to the well-off who now claim state and local taxes among their itemized deductions but to low and moderate income families who do not itemize.

We should not delude ourselves that persuading the Congress to make such a change will be an easy task, but neither should we underestimate our constitutional and political powers to bring about constructive change.

One thing is clear: whatever direction we decide to pursue, the time to act is now. We cannot afford to pass by this "new turn in our national development" and allow the drift toward centralized bureaucratic rule to continue.

Let us therefore say to whoever is elected this year to the Presidency and the Congress: "We, the nation's Governors, pledge to work cooperatively with you to meet the needs of our people. But in their name and in their interest, we demand of you a commitment to a partnership worthy of the name."

Mr. MORGAN. Mr. President, another eloquent statement was made by Governor Richard Snelling of Vermont who points to the bureaucratic nightmare that has been created by Federal assistance. State revenue sharing has been eliminated this year and with it much of the flexibility that existed in fiscal cooperation. Block grants, once given for broad purposes, have now become more and more restrictive, and categorical grant programs are still overburdened with conditions and controls. Perhaps it is time for a more clearly delineated division of fiscal responsibilities?

Mr. President, I ask unanimous consent that excerpts from a speech delivered by Governor Snelling be printed in the RECORD.

There being no objection, the excerpts

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were ordered to be printed in the RECORD, as follows:

GOVERNOR RICHARD A. SNELLING, VERMONT

What we call American federalism today is far from the delicately balanced intergovernmental relationship dreamed of in Madison's day. Today the Federal system is not really Federal; it isn't even systematic. The textbook distinctions between State and Federal interests have been blurred by the evolution of the Federal grants-in-aid system, now consisting of almost 500 separate programs, and States and local governments have lost much of their own identities, becoming more like "sub-national units" than independent members in a Federal system.

Some programs in the grants system are "entitlements" to States but for the purpose of carrying out Federal mandates. Some are "optional" grants, available to States and municipalities on an annual basis. But all provide a common problem—they are part of a system that is fundamentally disorganized, overregulated and bound up in a twisted mess of good ideas and missed opportunities. The Federal presence in State and local governments does not even resemble the concept of federalism held by American political leaders a generation ago . . .

Things have changed enormously in the last twenty years. Now 4 out of 10 State and local employees are actually Federal employees in disguise, marching like a secret army to the guidelines and regulations of Washington. Now almost 25 percent of the budgets of State and local governments are Federal tax dollars, recycled and restricted and guarded by serious penalties for noncompliance with even minor details. The grant-in-aid system cost 83 billion dollars in fiscal year 1979 alone, and accounted for 17 percent of the total budget of the U.S. Government. . .

When the grants-in-aid system began to take shape almost fifty years ago, it came as a reaction to the fiscal and administrative limitations of State and local governments, when America was in the midst of the great depression. The Federal Government assumed the burden of need the States could not afford, because the States had legal limits to their capacity to carry debt and the Federal Government had few apparent objections to deficit spending. And after all, only the Federal Government can print money and expand the money supply. Curiously enough, many of the program designs originated in individual State programs first—unemployment insurance in Wisconsin, food stamps in Vermont, for instance.

Once the programs became federalized, however, Washington decided that State and local governments needed detailed regulations and guidelines to insure accountability and uniformity in the administration of these programs. The States and municipalities, it was argued, were not as sophisticated or as capable of implementing Federal goals by themselves, without the firm leadership of the Washington bureaucracy.

Today those roles are reversed. Today the Federal Government stands in critical need of greater accountability, because of its failure to control Federal spending, while the States, on the basis of their wide experience with grants administration, have become the more efficient and effective government operation. States today are better at fiscal management, targeting resources, and planning for the future than the Federal Government, which now stands as the worst example of uncontrolled growth and bad management in the intergovernmental system.

In the last decade or two, some efforts toward reform have been tried, but without lasting success. Block grants, offering State and local governments more flexibility in determining priorities and designing programs, were invented in the 60's, but have always been limited to a small percentage of the full grants budget. Some State and local leaders were suspicious of the idea of block grants at first, fearing that they were certain opportunities for Federal grants cutbacks.

Even those block grants that were acclaimed as offering States and municipalities greater freedom were not always administered in that same spirit. The language in the HUD community development block grant, for instance, describes a smorgasbord of activities cities can undertake, but Federal administrators of this program have actually restricted its use almost entirely to housing programs.

The history of the last decade of Federal reform has not been very inspiring. The next logical step for the grants system would have been to look for innovative ways to restructure and streamline existing grant programs, but instead Congress has consistently reverted to its old habit of enacting narrow, categorical grant programs, trussed up with the usual conditions and controls so familiar to the States and local governments over the years. Overall the system continued to grow ever larger and more cumbersome, until it reached its high water mark in 1978. 1978 was the year "fiscal restraint" entered the political vocabulary.

1980 will be remembered, among other things, as the year the State share of revenue sharing died. If a eulogy were to be given, it would rank this program as one of the best in a series of attempts to rationalize the federalist system. It was only eight years old when it succumbed to budget-balancing fever. The Congress killed it, with some help from the President. It was easy, almost painless, to strike the 2.6 billion dollars from the budget, in the name of a pseudo-balance.

Revenue sharing was Federal money without strings. It was the largest domestic program ever enacted by Congress, and it allowed States the discretion to put the funds where the States thought the money would do the most good. Administration of these funds cost only one-twelfth of 1 percent of total funds granted, compared to the 12 to 17 percent most categorical grant programs expend on administration. It was a first step away from the rigid, time-consuming and wasteful grant system, although many Members of Congress were never comfortable with the trust it reposed in the States.

This lack of confidence has always seemed ill-founded. The States and cities, by almost everyone's admission, have used the money wisely, for projects as diverse as property tax relief, community improvement, and the extension of necessary services to needy people formerly without hope and opportunity under the present grants system.

State revenue sharing was cut from the budget, in lieu of the broad structural reforms called for by the condition of the present grants system, in part because of the strong forces arrayed against reform. ACIR has identified an iron triangle—consisting of Members of Congress and their staffs, Federal employees and special interest groups—devoted to maintaining the status quo, for the sake of its own survival.

In spite of these barriers to reform, however, dramatic change in the Federal system is now a real possibility, given the present climate of fiscal and budgetary restraint. The taxpayer revolt demonstrated that there are necessary limits to government growth. The budget-balancing process in Congress this year proved that an incremental approach to reform cannot offer us the real cost savings that system-wide reform would provide. The continuing failure of the grant-in-aid system to deliver on its promises of ever greater aid and benefits to its various constituencies is leading America ever closer to the inevitable, comprehensive and systematic overhaul the Federal system so desperately needs.

We can have a government that works, but we truly do need to rebuild the system from the ground up. We can have a system that provides broad opportunities for freedom, human growth, security and wise stewardship of our resources, if we think seriously about who knows best how to administer programs. We can have an accountable and efficient Federal system, but only if we only learn to focus on results, rather than process; on needs, rather than regulations; on people, rather than programs.

Mr. MORGAN. Finally, Mr. President, there are the remarks by Gov. Bruce Babbitt, of Arizona, which I strongly recommend to everyone's attention. He not only exhorts us "to dust off the Federalist Papers," a sentiment with which I heartily agree, but he also provides us with an agenda for action. Foremost is his demand for the States to be given a voice on Federal legislation, followed by his suggestion, first made by my predecessor Senator Sam Ervin, to clarify the method by which States can initiate constitutional amendments.

Mr. President, I ask unanimous consent that a speech delivered by Governor Babbitt be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

GOV. BRUCE BABBITT, ARIZONA

Many modern observers believe that the states are obsolescent, headed the way of the passenger pigeon and the Edsel. Others, less pessimistic, would say that the states will always have a role, if only to administer Federal grants and carry out Federal mandates.

It didn't begin that way. The proper relation between the states and the Federal Government was a central issue in the Constitutional Convention. The extent to which the states and the Central Government should have different, sharply differentiated functions was debated extensively by Alexander Hamilton and James Madison in the Federalist Papers, the most important book on American government.

Today, however, the Federal system is in complete disarray. Congress has lost all sense of restraint. The Congress no longer even asks the question that preoccupied Hamilton and Madison: "Is this legislative proposal an appropriate function for the Federal Government?"

It is long past time to dust off the Federalist Papers and to renew the debate commenced by Hamilton, Madison, and Jefferson.

They would ask not only whether a proposal is a good program, but also "Is this a Federal function?"

They would ask, "Is it the role of the National Congress to fund programs for jellyfish control? A comprehensive program for rat control? Grants to local libraries?"

They would ask, "Is it appropriate to have a national program that buys typewriters, desks, guns and patrol cars for local police agencies across the entire continent?"

They would certainly ask how the Federal Government has come to be so deeply involved in that most uniquely local of all American institutions, the public school.

And, they would ask how we have allowed their most original creation, a carefully layered system of separate units with specified functions to become scrambled into one undifferentiated governmental omelette.

They would ask what happened to the concept of enumerated powers in Article I, and why the 10th Amendment, reserving powers to the states, is a hollow shell.

If the states are to have a future, the process of sorting out and separating must begin now. We must devise ways to unscramble the omelette and reconstitute a layered Federal system in which each level

of government has its own flavor, shape and function.

I suggest several ways to begin the process of unscrambling and differentiating the roles of the state and the Federal Government.

First, each proposed Federal law should be required to contain a "Federalist footnote," an explicit explanation to the public (and to the shades of Hamilton and Madison) of why the proposal is a matter of Federal concern and why it should not be addressed at the state and local level.

I would also propose two constitutional changes. Neither makes substantive changes. Neither advocates specific social or fiscal policies. Rather, each is a neutral proposal designed to clarify and enhance the procedural role of the states in the Federal process.

The states should advocate a Constitutional Sunset process for all Federal legislation. In its essence, a Constitutional Sunset amendment would allow the states, by petition of ⅔ of state legislatures, to sunset any piece of Federal legislation, other than laws relating primarily to defense and foreign relations. Constitutional Sunset would provide a powerful check on Congress, and it would restore the state-Federal nexus lost by enactment of the 17th Amendment.

Alexander Hamilton argued in the Federalist that the election of U.S. Senators by state legislatures would be the most powerful restraint on Federal invasion of state prerogatives. With that check lost by enactment of the 17th Amendment providing for direct election of Senators, Constitutional Sunset could restore the balance.

The states should also demand congressional action on the legislation originally conceived by Senator Sam Ervin, which would clarify the method by which states initiate constitutional amendments and to remove the threat of a runaway convention. For many years Congress has paid lip service to the Ervin amendments, but failed to act. Many of us believe that Congress refuses to act because it prefers to oppose state initiated amendments by waving the bloody shirt of a runaway convention, a potential problem that it could readily resolve. If Congress refuses to legislate, the states themselves should initiate a constitutional amendment to clarify the amending procedures of Article V.

Finally, the President, the Congress, the Governors and the state legislatures should initiate a national convocation, outside the Constitutional process, to review the state of Federalism and make recommendations for action as we approach the bicentennial of the Constitution.

The states are at a crossroads. One branch of that road could lead to abolishing the states. Governors could then be designated as regional representatives of the Federal Government. State capitols might become area service offices for HHS and HUD.

The other branch could lead to a renewal of the debates initiated by Hamilton, Madison, and Jefferson and a revival of true Federalism.

Mr. MORGAN. In conclusion, Mr. President, the time has come in our national history to consider specific steps which will reestablish a reasonable redistribution of power between the States and the Federal Government. We must see whether a better functional division of responsibility can gain greater public support. We must bring greater cohesion to our grant programs with the objective of restoring the governmental vigor to our States which they once possessed in abundance. We must exercise greater self-control in our own legislative efforts to insure that only problems requiring a national solution be addressed by the Congress. Perhaps States should have a veto over Federal legislation which directly affects them. Ultimately, there may also be a need for the States to have their own spokesman in the executive branch of the Federal Government who can protect their interests before administrative decisions are made.

Many of these ideas need further exploration and, for this reason, I welcome the initiative taken by the National Governors' Association that seeks to establish a national commission on federalism. I shall support such a step.

A BALANCED FEDERAL BUDGET

Mr. DECONCINI. Mr. President, there was a time—not too long ago—when the American economy was a paragon of efficiency, productivity and responsible management. While the rest of the world suffered the ravages of inflation and recession, the American economy experienced only minor fluctuations on its consistently upward course. The American dollar, like American citizenship, was prized; indeed, it served as the functional equivalent of a world currency.

Today, however, the American economy is in decline. We are beset by persistent inflation and declining productivity. The response of our Government has been to place massive restrictions on credit to drive interest rates through the ceiling. Simultaneously, we have done little or nothing to slow down the ever-growing Federal deficit or to make provision for capital improvements in our industry.

Apologists for this policy are fond of claiming that this alarming inflation rate is the result of higher oil prices. Certainly, there is an element of truth in this contention. However, all the recent studies that I have seen indicate that only a fraction of the overall inflation rate is attributable to the price of oil. It is far too easy to point the finger abroad and make the culprits nations over whose actions we have little control. In doing this, the Government absolves itself of blame; more importantly, it justifies continuing in the same old ways.

For the first time in decades, this Congress seriously considered the issue of a balanced budget. Together with a number of distinguished colleagues, I introduced a constitutional amendment to mandate a balanced Federal budget except under certain specified conditions. Hearings were held on the proposal in the Judiciary Committee, but we failed to report it by a slim margin. Although not immediately successful, the balanced budget amendments did focus the attention of the Congress and the Nation on the growing unmanageability of the Federal deficit.

When the Federal Government spends more in tax dollars than it collects, it must resort to borrowing. This has a number of obvious ramifications. First, by spending more than it takes in, the Government clearly contributes to the inflationary spiral. It creates new money without any concomitant creation of goods or services. Thus, the net effect is for consumers to bid up the price of goods which simultaneously spurs workers to demand higher wages to allow them to keep abreast of or slightly outdistance inflation. Like a vicious circle, this pushes the cost of goods and services up which further contributes to the rising price index.

Second, but just as important, borrowing by the Federal Government to finance its deficit competes with business and individual borrowing in the Nation's money markets. The artificially created competition for loanable funds drives the price of borrowed money upward. Business, then, is forced to pay more for the capital it needs to expand, adding yet another turn to the inflationary screw. Indeed, there are times when expansion is slowed because capital for long-term investment is simply not available.

The resulting intolerably high inflation rates cause the Government to panic. Its solution is quintessentially short-term and short-sighted—it raises interest rates through the Federal Reserve System. Thus, at a time when the average consumer and the average businessman is being devastated by inflation because of the steadily dwindling purchasing power of the dollar, interest rates soar. High interest rates do not cure inflation. Overly high interest rates only add to inflation. What they cure, in the short run, are further increases in interest rates. This occurs because at some point the cost of borrowing money is even greater than the projected inflation rates. Thus, the demand for capital decreases; but the demand for capital is also the key to industrial expansion and increases in productivity. Unless productivity increases, there can be no real increases in the standard of living.

I would hope the present administration would heed the lessons of the last few years and recognize that there is no magic formula to cure inflation. The "spend, spend, spend" credo of the Johnson-Nixon administrations is as deceptive as an old-fashioned cure-all—it tasted good, but did nothing to cure the underlying illness. Indeed, deficit spending may taste good to some voters and politicians, but it only makes the economy sicker, and the prospects of healing dimmer.

What we need is a different kind of medicine, one that may not taste as good, but which will help cure both the body politic and the economy. That may be a bitter pill to some—especially in an election year—but unless we put the brakes on the runaway Federal deficit and learn to live within our means, our inflation rate will continue at unacceptably high levels and productivity will continue to decline. Even though the constitutional amendment approach has been temporarily stalled, we must demand that the Federal budget be in balance. We must also demand that the Federal Reserve System not artificially push up interest rates so that American families are pushed out of the housing and other markets.

Economic sanity will eventually produce economic health. But if we continue to opt for "Dr. Washington's cure-all, spend-all tonic," we will continue to be in deep, deep trouble. A little self-restraint and a little political courage are

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required. It is certainly within our character as a people to make the short-term sacrifices necessary to preserve the integrity of this great Nation and its economic system.

THE GRAIN EMBARGO IS WORKING

Mr. HUDDLESTON. Mr. President, my colleagues and the American people have been understandably concerned over reports that the administration's restrictions on the sale of U.S. feed grains to the Soviet Union have failed to penalize the Soviet Union for their invasion of Afghanistan.

The press has been reporting Soviet successes in buying this grain from other countries. But these reports have missed the real story.

For the Soviet consumer and the Soviet bosses that story is dark and looking darker. To make up for the lost grain, the Soviets have had to cut way back on meat production. In May of this year total Soviet meat output was down 5 to 6 percent from May a year ago. In June, meat production dropped 10.7 percent, and in July it was 15 percent below July 1979. This was reported in the Soviet press, but has received little or no attention in this country.

Those are dramatic shortages for Soviet consumers who had hoped that some day their per capita meat consumption could get up at least to the level of Eastern Europe. In Hungary and Poland people eat 156 to 159 pounds of meat a year on the average, which is far below the U.S. level of 244 pounds per year.

But this year the Soviets will not even make their goal of 139 pounds per capita. They are stuck where they were in 1975—a disastrous harvest year at 125 pounds per capita. That is what the American grain embargo means to the U.S.S.R. in 1980.

What it means in 1981 is equally severe. Last week Secretary of Agriculture Bob Bergland testified that the Soviet grain harvest in 1980 would be in the range of 200 to 225 million metric tons—and most likely in the vicinity of 210 million metric tons.

Sources available to me, however, indicate that worsening weather conditions in the Soviet Union make even that target an unlikely goal. New data leads U.S. experts to estimate that Soviet crop prospects are heading down to the 200 million metric-ton range for this year.

Last year's Soviet crop was only 179 million metric tons, the smallest since 1975. To make up the difference between what they grew and what they needed the Soviets wanted to import 36 million metric tons between last fall and now. They failed to meet that target.

For that period they are going to run 8 to 9 million metric tons short of what they wanted, and the new harvest outlook means they will be in the same fix next year too.

The press, which has reported the grain purchases the Soviets did make around the world, did not report one peculiar aspect of these imports. Since they do not come from the United States, they arrive in smaller loads, and Soviet ports have not been able to handle those loads efficiently.

The average load per ship has dropped and the time those ships spend in port has gotten longer and longer. All of this means that the Soviets next year will want to buy substantially more than the 30 million metric tons they wanted in 1980—grain they wanted but could not get.

And it means that the Soviets will not be able to handle that volume of imports even if they can find sellers willing to supply them.

While the news media in this country has failed to adequately convey the hardships caused by the American embargo, there can be little doubt that the hardships are known and felt in the Soviet Union.

No less that other farm-State Senators, I regret very much that the embargo has caused problems for our own farmers. Measures have been taken to offset those impacts, some of which were not implemented as quickly as I would have liked.

But the fact is that the embargo is having the desired effect of making the Soviets pay a heavy price for their invasion of Afghanistan. And it is important that the American people, and especially the American farmer, understand that the sacrifices they have been called upon to make are serving a success purpose.

THE POLISH PEOPLE

Mr. DURENBERGER. Mr. President, all Americans rightly feel great sympathy and admiration for the Polish people, who have retained a strong national identity throughout centuries of occupation or outright annexation by foreign powers. It speaks well of the Poles, and it reflects the best in all people, that the Poles have never forgotten their heritage or surrendered their quest for greater self-determination. This is why neighboring colonial powers and empires have always feared even such a benign thing as the music of Chopin. It is Chopin's famous work, "The Polonnaise," which has served to inspire the Polish people throughout the past century and a half.

Because of my own Polish heritage, I am acutely aware of the courage of those workers now demanding what we take for granted in this country. But it is also because of my Polish heritage that I am aware of the delicate nature of relations between Poland and the Soviet Union. For centuries, the Poles have had to live in the shadow of one empire or another, and they have suffered frequent intervention at the hands of numerous foreign dictators. They have had to adapt to this situation, and they have therefore won only partial victories. However reprehensible this is, it is also reality. When they have pressed too hard and frightened too many foreign potentates, the Poles have suffered occupation.

The Polish strikers themselves have shown great sensitivity to this situation, and have been careful to state their demands in language which is at least superficially orthodox by Marxist standards. While they are undeniably challenging the status quo, they are taking pains to avoid a crisis, for they know that they will lose everything if the Soviets should intervene. They are as astute as they are courageous.

American support must be tempered with the same wisdom. I and other Americans want the Poles to succeed in their quest for an improved quality of life. But we must follow the example shown by the Pope and by the strikers themselves insuring that our support and our sympathy do not become gratuitous provocation, resulting only in disaster.

ADM. HYMAN RICKOVER'S TESTIMONY ON S. 2880, CONSULTANT REFORM ACT

Mr. PRYOR. Mr. President, on Wednesday, August 20, 1980, I had the honor of presiding over a hearing of the Senate Governmental Affairs Committee on S. 2880, the Consultant Reform Act of 1980 which I, together with 17 other Members of the Senate have introduced.

It was a special honor and privilege that day to have a most distinguished citizen and public servant Adm. Hyman G. Rickover, testify. I take this opportunity to place in the RECORD the written statement of a man who has the admiration and affection of millions of Americans.

The material follows:

OPENING REMARKS OF ADM. H. G. RICKOVER

Thank you for inviting me to testify on S. 2880, a bill aimed at eliminating abuses that have been brought to light by this committee, the General Accounting Office, and others, regarding the Government's use of consultants. Among these abuses are:

A. Contracting for useless or unnecessary work.

B. Showing favoritism in the award of contracts—particularly in contracts to former Government employees.

C. Using consultants to perform agency functions or to circumvent agency personnel ceilings.

D. Commissioning studies to buy time while creating an impression of action.

E. Paying excessive rates for consultants.

These problems are not new. I observed many of them before World War II when I first came to Washington to run the Bureau of Ships electrical section. Even in those days there were self-proclaimed experts with impressive credentials who could be hired to perform studies and give advice. After a few encounters with these so-called "experts," I decided I would be much better off taking advantage of and, where necessary, developing in-house Government expertise to provide the supervision and technical direction for my programs.

I now limit contracts under my cognizance to bona fide equipment manufacturers and shipbuilders, for research and development, design, production, and maintenance work. My programs depend heavily on input from such manufacturers. I do not use the services of the so-called "think tanks" or consulting firms.

I am not saying that all consulting firms are incompetent, or that all consulting contracts are unnecessary or wasteful. Once in a great while a short-term need for specialized knowledge and expertise might be best filled by a consultant. I can conceive that consulting firms may be useful to help with the work of some civilian agencies, for example, in gathering data or conducting statistical surveys.

In the Defense Department, however, there

has been a rapid growth in the use of consultants as a result of increased workloads, personnel hiring restrictions, and easy access to consulting services. Many consultants are friends or former co-workers of Defense Department employees. In my opinion, vast sums are being wasted through consulting contracts. Moreover, in terms of delay and inefficiency the true cost to the Government of useless studies and excessive use of consultants far exceeds the contract amounts.

The use of consultants often impedes, rather than facilitates, action by Government agencies. For the past two decades consultants and systems analysts have endlessly studied and debated the relative merits of nuclear and non-nuclear ships, and the proper composition of our future Navy. Contracts for studies frequently waste the time of agency personnel who often must educate the so-caled experts doing the study, assist them in gathering the data, and then respond to their reports and recommendations—which often defy common sense.

Studies have been conducted in attempts to prove that non-nuclear aircraft carriers and cruisers are as effective as, but cheaper than, nuclear powered carriers and cruisers; that, in response to the Soviet Union building faster submarines we should build slower submarines; that we should once more consider building diesel powered submarines; and so on. Some years ago one Defense Department study concluded it would be cost effective to sink 10 of our Polaris submarines.

Each year there is controversy in the Department over the shape of the Navy's future shipbuilding programs. Often the concession to those whose programs are cut back is a promise to conduct "further studies." As a consequence, the Navy's long-range shipbuilding program has for years been in turmoil.

Another problem which results from excessive use of consultants is that the skills and motivation of Government personnel tend to atrophy. Where consultants prepare the Government's long-range plans and budgets, draft contracts, prepare responses to Congress, and the like, the Government people become mere figureheads, avoiding the hard thinking and the "dirty details." As a result, Government project officers and contracting officers who rely on consultants to draft their contracts are often poorly equipped to negotiate and administer them. In a recent case, an Assistant Secretary of the Navy hired consultants to prepare a report of the Navy's ship procurement process. The Navy command responsible for ship procurement then hired consultants, including a firm involved in writing the report, to draft the Navy's response.

With virtually unlimited personnel resources available from consulting firms, Government offices have undertaken marginal work they would otherwise have not done. Once under contract, aggressive consultants can sometimes turn these minor or unimportant jobs into major projects resulting in follow-on contracts and additional profits.

Probably the best way to cut down on waste in the consulting business is to reduce drastically the funds available for this purpose and to make them more visible throughout the budget process. This is particularly important in the case of large defense programs where the vast sums being given to consultants are hidden in the total program cost.

In addition, Congress should make it difficult for Government agencies to contract with consultants. Agencies tend to use consultants excessively mainly because funds for this purpose are readily available to large numbers of Government employees, and consulting contracts are easy to award. For these reasons, approval levels for such contracts should be set high in the chain of command, preferably at the Secretarial level, to reduce the likelihood of "make-work" projects and favoritism.

Existing Federal statutes and Defense procurement regulations appear to set strict limits on the hiring and pay of consultants. There are prohibitions against using consultants to perform duties which could be performed by regular employees; to avoid personnel hiring requirements; or to circumvent civil service procedures and pay limitations.

But these restrictions are easily circumvented. The Defense procurement regulations, for example, point out that by statute the maximum rate of pay for individual consultants or experts cannot exceed the top rate of the Civil Service pay scale. But these limits do not apply in cases where the Government contracts with a company for specific tasks. As a result, former Government employees and others who want to be paid more than the law prescribes for individual consultant agreements, join consulting firms.

In recent months, the President, through the Office of Management and Budget, has directed Government agencies to tighten their controls over consulting contract procedures. Hopefully this will result in improvement. However, history has shown the need for more permanent safeguards. The bill you are considering today, S. 2880, is a step in the right direction. However, to be effective it should be strengthened substantially.

I have the following comments and recommendations:

1. The bill's provisions should be directed specifically at consulting contracts, as the title "Consultant Reform Act of 1980" suggests, rather than all contracts. The problems which need to be addressed arise primarily with the award of consulting contracts to perform studies, provide advice, or perform paperwork jobs and administrative services for the Government agencies. Applying the provisions of S. 2880 to contracts such as those for research and development; design, production, maintenance, or operation of hardware; housekeeping services; supply contracts and the like, will cause unnecessary paperwork, delay day-to-day work, and mask the consulting abuses which should be the focus of the bill.

2. I agree with the requirement to publicize proposed consulting contracts in excess of $10,000 in the Commerce Business Daily. This will close a loophole in existing regulations which could be interpreted as exempting consulting contracts from the requirements to publicize. But this requirement will not do much to prevent abuses. Few will be able to discern from skillfully worded public announcements whether contracts are really necessary, or whether they stem from special relationships between consultants and their generous clients. It is all too easy for those charged with spending money that is not their own to be generous.

If the purpose of such a reporting requirement is to enhance competition for consulting contracts, you should bear in mind that many consulting contracts are awarded on a cost reimbursement basis with little or no objective criteria for judging contractor performance either before or after the fact. In these cases, the traditional benefits of competitive bidding are largely lost.

3. S. 2880 proposes to broaden public access to Government contract files and amend the Freedom of Information Act to provide access to contractor data developed under Government contracts. I consider that public access to contract data already allowed under the Freedom of Information Act should not be broadened. The disadvantages would far outweigh the advantages. Not many citizens will be willing or able to ferret out consulting contract abuses by going through Government or contractor files. Those who would benefit most from the proposed provision are claims lawyers and others who already have seised upon the Freedom of Information Act as a vehicle with which to harass the Government. Under this Act they already obtain information they could not otherwise obtain about their competitors, as well as data with which to devise a basis for bid protests or lawsuits against the Government. Further, making all data generated under Government contracts subject to the Freedom of information Act would place some contractors in the position of having to decide whether to forego Government contracts or risk the disclosure of proprietary data to competitors.

4. The provision that would limit procurement obligations in the last two months of a year to 20 percent should apply only to consulting contracts. If this provision is applied across the board to all procurements, data on last minute contracting for consultants would be lost in sums totaling many millions of dollars for other delayed procurements.

5. The requirement for formal evaluation of contractor performance, and for listing detailed information on reports generated under contracts should apply only to contracts with consultants. Applying these requirements to all contracts would generate unnecessary paperwork. The list of required reports for the TRIDENT ship construction contract, for example, is more than 90 pages long and includes reports for such items as construction status, cost, schedules, weight, design submittals and the like. I see no benefit in applying the proposed requirements for consultants to other contracts.

6. The requirement that agencies identify and justify amounts in their budgets for consulting contracts is a good one. I would go a step further and require that such sums should be requested by agencies and authorized by Congress as a specific line item in the agency budget.

7. I agree with the proposed requirement requiring disclosure of conflict of interest situations; also sanctions in cases where contractors do not make truthful disclosures. In addition, I recommend that any company that does consulting work or employs a subcontractor to do consulting work should be required to disclose the names and past affiliations of any former Government employees who will be used on a project; the proposed rate of pay for his service; and in the case of "unsolicited" proposals, whether any Government officials suggested directly or indirectly the submission of that proposal.

8. The bill should require that any consulting contract in excess of $50,000 be approved, at a minimum, at the Assistant Secretary level. Each approving official in the chain should also be required to certify that he is personally knowledgeable of the work to be done; that the work needs to be done; and that it cannot be performed in-house.

9. Either the General Services Administration or the Office of Management and Budget should be required by law to establish a standard set of offeror certifications and terms and conditions. These would be required for all consulting contracts. At a minimum these should include:

(a) Standards for cost charging to consultant contracts.

(b) Requirements for consultants to certify that the rates charged to the Government are no higher than those charged to the contractor's most favored commercial customer.

(c) A prohibition against Government agencies paying consultants at a rate higher than the top of the Civil Service pay scale, except with the prior written approval of the head of the agency.

10. Require the Inspector General of each agency to review annually the agency's use of consulting contracts and compliance with applicable requirements. The results should be submitted to the Office of Management

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and Budget and to the appropriate Congressional oversight committee.

I believe S. 2880, modified as I have recommended, will go a long way toward discouraging many of the abuses which have come to light.

However, I must not convey the impression that by enactment of your legislation, the problems will go away. Those in the consulting business are shrewd and have friends in Government. These Government employees themselves often look forward to acquiring the fruits of the consulting cornucopia, with the assistance of their friends already in the racket.

Consulting to Government today is an endeavor requiring little responsibility, but assures financial success. Your legislation may hinder the process for a while, but I doubt the abuses will be eliminated. At any moment during a 24-hour day only one-third of the people in the world are asleep; the other two-thirds are awake and creating problems. Consultants are wide-awake, clever people who can ferret out where the manna is, as they have amply proved.

A LONG-RANGE TAX REDUCTION PROGRAM NEEDED

Mr. PERCY. Mr. President, we have heard a great deal from the present administration about tax cuts in the last several months. Just a few weeks ago, Treasury Secretary Miller testified that it is not an appropriate time for the Congress to consider a tax cut. On Thursday, the administration is expected to announce its new economic program which will most likely include tax cuts for individuals and business. But apparently the administration intends to stand firm on its position that the Congress wait until next year to enact tax reduction legislation.

I believe this is a mistake. Fortunately, the Senate Finance Committee also rejected this advice last week when it ordered reported to the Senate a tax cut plan that will help offset the nearly $90 billion tax increase that will go into effect next year.

In light of this discussion and the imminent unveiling of the administration's recommendations, I thought my colleagues would be interested in a brief news item that appeared in the Wall Street Journal last October. The story quotes Alfred Kahn as saying:

> In the next few months, we are actively planning the kind of tax incentive plans that will get at the basic problems of inflation.

That was encouraging news at the time. Many of us looked forward to seeing those plans when it became apparent that the Nation's economy had taken a nosedive and that productivity was in its second worst slump since 1947.

This article concludes by pointing out that—

> Mr. Kahn emphasized, however, that the administration won't consider any across-the-board tax cuts while consumer spending and housing starts remain strong.

Therein lies the irony of this small news item: according to the administration, we cannot afford tax cuts when the economy is healthy and we cannot afford them when it is ailing.

Mr. President, I ask unanimous consent that the Wall Street Journal article of October 19, 1979, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TAX INCENTIVE PROGRAMS BEING MULLED
KAHN SAYS

ATLANTA.—Alfred Kahn, chairman of the Council on Wage and Price Stability, said here that the administration is considering some tax incentive plans targeted at fighting inflation.

Speaking to 300 businessmen at a Project Management Institute seminar, Mr. Kahn said that "in the next few months, we are actively planning the kind of tax incentive plans" that will "get at the basic problems of inflation." He didn't elaborate.

In recent months, various administration officials have discussed tax cuts such as accelerated depreciation allowances for business.

Mr. Kahn emphasized, however, that the administration won't consider any across-the-board tax cuts while consumer spending and housing starts remain strong.

Mr. PERCY. Mr. President, for some time, I have joined my colleagues on this side of the aisle in emphasizing the need for a long-range program of tax reduction that will stimulate business investment and offset automatic tax increases caused by inflation known as bracket creep. Last week, the Finance Committee recommended a package of tax reduction proposals which incorporated many of the measures we have advocated, some for several years.

On balance, the tax cut package is a good one. It takes much from the economic program developed under the leadership of Senator JACK JAVITS and the subsequent legislation introduced by Senator JACK DANFORTH which all 41 Republican Senators endorsed in July 1979; and the Tax Reduction and Job Creation Act of 1980 introduced by Senators DOLE, ROTH, and BAKER with my support and that of 33 other Republican Senators.

The Finance Committee package will cut individual income tax rates and provide more rapid writeoffs for business investment. It also incorporates a proposal which Senator CRANSTON and I introduced to increase the capital gains exclusion from 60 to 70 percent for individuals, making the effective maximum rate under committee bill 20.1 percent. The package also adopts the same reduction for the alternative corporate capital gains tax rate, from 28 to 20 percent.

The committee adopted a modified version of the popular 10–5–3 plan which was included in both Republican proposals. This measure calls for a 2–4–7–10 depreciation system for equipment and machinery, an optional 20-year, straight-line writeoff for structures, and an election to expense up to $25,000 of expenditures each year for new or used equipment and machinery.

Just as important, the package includes a cut in the maximum corporate tax rate from 46 to 44 percent by 1982 and wider corporate brackets to benefit small businesses—very similar to the Danforth-Javits Tax Reduction Act of 1978—and a tax credit for research and development expenditures authored by Senator DANFORTH and included in the 1979 Republican package.

Increased individual savings incentives are provided in the form of expanded individual retirement accounts and the problem of the so-called marriage tax penalty is addressed with a deduction for 5 percent in 1981—10 percent in 1982—of the first $30,000 for the spouse with the lower earnings.

Mr. President, I commend the Finance Committee for taking this very important initiative. The committee, in recommending tax cuts for businesses and individuals effective January 1, 1981, has recognized that the economy cannot afford to wait until sometime next year, contrary to the administration's view. I hope the Senate will act on these proposals at the earliest possible date.

NATIONAL STRATEGIES TO END DEPENDENCE ON FOREIGN OIL ARE SERIOUSLY FLAWED

Mr. PERCY. Mr. President, ending America's dependence on imported oil is one of the greatest challenges our Nation faces today. Yet our present strategies for ending that dependence are seriously, if not fatally, flawed, as the distinguished former Secretary of the Treasury George Shultz recently pointed out. The administration's gasoline rationing plan, which Congress has approved, is a financial nightmare. It would cost over $100 million to develop and roughly $2 billion to administer. Yet all this money may buy America little protection, as the plan is so fraught with problems that it might be useless when an emergency does strike. More important, all the talk about rationing may deflect us from taking other, more meaningful actions which could reduce America's vulnerability to oil shortages.

Mr. Shultz made several other important points about the economy, regulatory burdens on American business, and national defense issues in his recent appearance on "Meet the Press."

Mr. President, I ask unanimous consent that the transcript of Mr. Shultz' "Meet the Press" interview be printed in the RECORD, and I recommend it to my colleagues.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

MR. SHULTZ'S "MEET THE PRESS" INTERVIEW

Mr. MONROE. Our guest today on Meet The Press is economist George P. Shultz, former Secretary of Labor and former Secretary of the Treasury under President Nixon. Mr. Shultz is Vice Chairman of the Bechtel Companies, engaging in international construction. He's a member of Ronald Reagan's economic advisory committee.

Mr. Shultz, we're facing an economic crisis involving deepening recession and high inflation. Senator Kennedy says that President Carter is using Republican economic policies to meet this crisis. You've been talking for some hours recently with Governor Reagan. Do you think he would use genuinely different economic policies?

Mr. SHULTZ. He certainly would.

Mr. MONROE. In what respect?

Mr. SHULTZ. He would do things intended to release the energies of the enterprises of this country to do creative things, to do new things, to improve our productivity, and really to get our economy rolling in a healthy direction.

Mr. MONROE. Don't President Carter and the Democratic economic advisors claim to be doing the same kinds of things? How can Republicans argue, for example, with President Carter's policies when they seem very close to classic Republican policies, such as emphasis on a balanced budget, refusal to go in for wage/price controls, hints of a tax cut next year, but not until after the budget and inflation come under better control?

Mr. SHULTZ. The president's budget that the Congress has just acted on contains a gigantic tax increase. Any talk about tax cuts has to be put in proportion to the huge tax increase that the administration has proposed and the Congress has accepted.

The administration recently imposed detailed credit controls, which were a bad mistake, on the American economy. The administration has just sent up to Congress a proposal to ration gasoline, which among other things is said by them to cost almost $100 million to develop and almost $2 billion to administer. Those are not policies that I would advocate, and I don't believe they are policies that Governor Reagan would tolerate as president.

Mr. MONROE. The president is hinting about a tax cut for next year. It's expected that that tax cut will include in it proposals to spur American productivity. How do you think you'll be able to distinguish the president's tax cut from the one advocated by Governor Reagan?

Mr. SHULTZ. Governor Reagan has advocated a reduction in the tax burden in practically every speech that he has made that I've read, and certainly wants to point these reductions in taxes at things that will stimulate investment and improve the productivity of our economy. To the extent that our friends in the Democratic Party, President Carter, and the Congress, come around to that point of view, I'm all for it.

Mr. ROWEN. Mr. Shultz, do you fully agree with Governor Reagan's economic philosophy and program as he's articulated it, or do you have any reservations at all?

Mr. SHULTZ. I think Governor Reagan is very much on the right track in the general line of policy that he has been advocating lately, and I might note, at least insofar as I've been able to follow it, and I have followed it, that basically he has been advocating for many years the things he advocates now.

Mr. ROWEN. Let me be specific. Do you agree with his proposal for a massive $30 billion tax cut?

Mr. SHULTZ. I certainly do. I think that right now we should identify the long-term strategy that we want to be on to create a healthy economy, and be thinking in terms of where we want to be three, four, five years from now. One of the things that we want and which I think is essential is to have a lower rate of taxation on the American people. As I said a minute ago, the rate of taxation on the American people is being raised in the proposed budget, and I think we should get it back at least to an even keel with the past year.

Mr. ROWEN. Don't you think that Governor Reagan is overpromising, perhaps in the same pattern as President Carter did last time around, when he says we can cut taxes, increase military spending, and still balance the budget? Is that a realistic point of view?

Mr. SHULTZ. I think it comes down to three questions:

First, how much do you need to increase spending for defense? I think we need to have a substantial increase in spending for defense.

Second, how much help do you think you will get when you reduce taxes from the reaction of people to that in terms of their behavior? I think right now the risks in our economy are so great that we won't get nearly the reaction that we can expect once we create a more healthy situation.

And third, how successful can a determined president be in keeping non-defense spending under control? I believe that a determined president with help all around can do a great deal in that regard and make the kind of statement that you've put forward a realistic statement.

Mr. ROWEN. In your mind, though, if you had to assign priorities at some point, and sometimes it comes down to that, should increased military spending or taking care of the sick economy, as you've called it, take priority?

Mr. SHULTZ. Defense and a healthy economy go together, of course, but I believe what we should do is to figure out what we must do for our defense, and after we've done that, then let the budget and tax decisions be in a follow-on position to that. We must do what we need to do in defense.

Mr. WILL. If we can believe what we read in newspapers there is an argument going on in Reagan circles about a matter of degree, that you were just talking about. That is, how much response there would be in terms of increased economic activities, and hence, increased revenues to the government as a result of lower tax rates. There are those on the one side in the Reagan camp who says we can cut 30 percent in three years, and there are other who say that there has to be accompanying spending reductions and that the 1963 analogy with John Kennedy's tax cut doesn't hold in our times.

In other words, that Reagan by being wedded to this substantial tax cut is over-optimistic about the amount of revenues that would come in; you might have an enormous deficit and enormous inflation.

Where do you come out in this argument?

Mr. SHULTZ. I think that we have to get control of spending as we reduce taxes. In fact, I think if your object, as I believe it should be, is to reduce the call of the government on the resources of the country and release it more to private hands, you have no alternative but to confront spending, because what's spent in the budget plus what is spent as a result of off-budget financing and government guarantees, plus the mandated activity that government calls upon the private sector to do, that is the measure of the government's call on our resources whether you finance it by taxes or by borrowing or however you finance it. So I think you just have to confront that issue.

Mr. WILL. That's a question of political will, and on the evidence of the budget process in the last few weeks, there's reason to doubt whether Congress has that political will. Is it your advice to Governor Reagan that he should confront the country with the necessity for decreased government benefits?

Mr. SCHULTZ. What you have to do in order to get the result that Mr. Rowen was talking about is control the rise in nondefense spending. If you can make that increase more moderate than it's been in recent years, you can get there from here.

Mr. WILL. You're a Californian, and the people of California were just recently given a chance by referendum to cut their income taxes in half, and they rather substantially rejected that proposal. Does this indicate that the tax revolt in general has lost its steam; and second, that it's politically difficult to promise tax cuts if people think they're also going to lose something in terms of federal benefits, government benefits?

Mr. SCHULTZ. In California we had a tax reduction, following the so-called Proposition 13 that's been well publicized. We've also had an amendment to the California Constitution that is directed toward the control of spending. I think in general people said that, we have constitutionally put a limit on spending and we've taken a swipe at taxes, and we think we've given a message to our government in California as to where we want to go; now let's see if this new system will work.

Mr. LEVINE. I imagine you would agree that the country is in a recession, and you've spoken of holding down all expenditures except those for defense. Does that mean that a Ronald Reagan administration would cut back on aid to those who are unemployed, would simply let the recession run its course?

Mr. SHULTZ. I think the most important program that helps people who have become unemployed in the kind of recession we're having, which is constituted of big layoffs in major industries—people draw unemployment insurance. I think the unemployment insurance program is a very important program. I've always supported it. When I was in the government as Secretary of Labor and in other positions, I tried in many respects to improve it. It is in place, and it will work. I don't think anybody would want to cut back on it. I certainly wouldn't.

Mr. LEVINE. You spoke earlier of releasing the energies of business under a Reagan administration. How would you specifically go about releasing those energies which you've referred to?

Mr. SCHULTZ. I think that there are two things that must be done. One is to, to lessen the tax burden, particularly as it hits productivity-generating investment, particularly as it hits people who are creative and innovative. That's one side of it.

The other side of it is to make sense out of the regulatory overlay that goes across our whole economy and represents a very big stack of wild cards that anybody making an investment is forced to play with.

So those are the two things that I think have to be done. If you do them, there's a lot that will come forward, particularly if we can create an economic environment that doesn't have this high inflation and the uncertainties of where it's going to go.

Mr. LEVINE. You advocate, as indeed does Governor Reagan, a balanced budget. As you look back, why weren't you able to achieve a balanced budget when you were in a position of authority, both as head of the Office of Management and Budget and later as Secretary of the Treasury?

Mr. SHULTZ. The budget that has just been voted on by the Congress is supposed to be balanced. I don't suppose any of you think it will be balanced. I certainly don't think it will turn out to be balanced. I think the policies that are being followed by our government right now are virtually insane.

There's no way to balance the budget when we have a recession of the dimensions that we are starting into right now. Think of it. We're starting a recession. Monetary policy is in one of the tightest holes since World War II, and on top of that, there is proposed in the budget an increase in tax revenues on the order of $90 billion. At least a third of that, perhaps more than a third of that, constitutes tax rate increases. Who ever heard of economic policy imposing that kind of policy on an economy that's going into a recession?

Mr. MONROE. You have been talking about cutting government spending. In response to Mr. Levine, you said you would not cut government spending in relation——

Mr. SHULTZ. I've been talking about keeping government spending from continuing this terrific rise that it has been in.

Mr. MONROE. Would this mean in relation to health programs, welfare programs, job programs, that there would be cuts or that there would simply be no increases?

Mr. SHULTZ. You have to look at these programs and figure out, as we continuously do, but perhaps not as intensively as we should, how well they are really working, whether or not we can get more mileage out of the spending that takes place by reforming their structure or doing them a different

way, and all of that sort of thing. They deserve a close scrutiny.

Mr. MONROE. You are talking about scrutinizing most closely those areas of government spending that go to help poor people, the disadvantaged, are you not?

Mr. SHULTZ. I didn't make any such statement at all. All I talked about was that we must do a decent job on defense. If we don't defend ourselves adequately, all the rest of this business is not worth very much. So we must do that.

That leaves a very large chunk of money being spent by the government for all sorts of things, and that's what we need to concentrate on and get control of.

Mr. MONROE. On another subject, there's been some speculation that you might possibly be considered to be Secretary of State in a Reagan cabinet, if that comes about. Would you be interested in that position?

Mr. SHULTZ. I'm very well satisfied with what I'm doing. I'll be delighted to see a President Reagan administration. There are an awful lot of good people that can man it, and some good fresh people who haven't undergone the rigors of government service who I think should be given an opportunity.

Mr. ROWEN. You spoke a moment ago of the need to reduce, I think you said, the "regulatory overlay," which I guess translates, more or less, into getting government out of business affairs.

Were you in favor of the government rescue effort for Chrysler, and do you think that Governor Reagan would have pursued such a policy?

Mr. SHULTZ. I think that was a mistake. I was not in favor of it.

Mr. ROWEN. Do you think that Governor Reagan would tend to keep the government away from such rescue operations, holding firm to a free market policy?

Mr. SHULTZ. That would certainly be his instinct, as I have listened to him talk and talked with him.

Mr. ROWEN. Do you agree with his suggestion that the auto industry is so overregulated that in effect we're making a mistake by saying that an American should not have the God-given right to buy a gas guzzler if he wants to?

Mr. SHULTZ. I think the American automobile industry has been regulated to death, almost literally to death, in the case of one of the companies. I think it's partly because of the nature of the regulation.

Mr. ROWEN. You're blaming Chrysler's bad situation on government regulation?

Mr. SHULTZ. Partly.

Mr. ROWEN. Not on mis-management on the part of the company?

Mr. SHULTZ. I said partly.

Mr. ROWEN. Okay But where do we go——

Mr. SHULTZ. I'll give another reason why our automobile companies look as though they missed the market on small cars and cars that are not gas guzzlers, to use your phrase.

That goes back to the Government's price control on gasoline. The price of gasoline in the United States has been roughly half what it is in other parts of the developed world. As a result, consumers in other countries have insisted on small cars that are very economical on gas. Consumers in the United States were presented by their government with very low prices relative to everybody else, and they preferred larger cars until very recently, when the prices started rising and people became genuinely concerned about the availability of gasoline.

Mr. WILL. A cluster of short answer questions:

Would you favor changing the way we calculate the Consumer Price Index and also changing the extent to which we index government benefits?

Mr. SHULTZ. I think those are questions that deserve examination. I don't consider myself enough of a student of the precise statistics of the Consumer Price Index to want to say an unqualified, yes, but I think the answer is probably yes.

Mr. WILL. How big is the deficit to be in fiscal '81? In the alleged balanced budget?

Mr. SHULTZ. Oh, above $50 billion.

Mr. WILL. About $50 billion?

Mr. SCHULTZ. Above $50 billion.

Mr. WILL. How deep will unemployment go?

Mr. SCHULTZ. I think right now unemployment is probably around 8.5 percent, the unemployment rate——

Mr. WILL. Double digit?

Mr. SCHULTZ. In the middle of May our figure was 7.8 percent, and the unemployment insurance statistics suggest that it has been rising pretty rapidly since then. So it's probably well, well above 8 percent. I think it's certainly going to get above 9 percent. And it may very well be that this will be a year in which we have double digits in three dimensions.

We've had double digit inflation. We've had double digit interest rates. And it is conceivable that we'll have a double digit unemployment rate.

Mr. WILL. There's obviously going to be a political impulse on the part of a President seeking re-election to do something antirecession in the midst of this. What can he do that won't make it worse?

Mr. SHULTZ. What should be done is to identify the long-term path that we want to be on, and then get on it as fast as we can.

One dimension of getting on it—and I think we have to think of this long run in terms of a mosaic that's got a lot of pieces to it—one of the pieces is that taxes are too high, and the budget that's up there, as I've said, contains big tax rate increases. So I think we should have a reduction in tax rates now.

Mr. LEVINE. In reply to my previous questions, Mr. Shultz, you described why the President Carter administration will not be able to balance the budget, but what my question was was this:

Why were you, in your position of authority as head of Office of Management and Budget and as Treasury Secretary, unable to achieve what you advocate, namely a balanced budget?

Mr. SHULTZ. Well, I don't advocate a balanced budget under any and all circumstances, and I never have. I did put forward the idea of a balanced budget at—when the economy is healthy. And I think myself that that is a pretty good concept, although it never seemed to sell around here very well. But it's still a good concept.

Balancing the budget is tough, but it was balanced in fiscal 1969. That's the last time. The last budget that I had to do with when I was Director of the Office of Management and Budget did come in almost balanced. I think it was in the red about two or three billion.

I might say also about whether or not you can control spending, you remember that in 1972 the budget was projected to spend about $260 billion. We said that it should be contained to $250. We campaigned for that in the Congress. We tried to get a spending ceiling, which we weren't able to get, and people said this was just a lot of politics, that we couldn't control it. Do you remember what that budget finally came in at? $246.6 billion. So if you do put in the effort, you can get there.

Mr. LEVINE. In a recent speech, earlier, this month in fact, you said, "Right now, the general view seems to be that anyone who serves in the government should have his head examined." In view of that, do you think Ronald Reagan will have difficulty choosing a vice presidential candidate who would accept that? Whom would you like to see be in that job?

Mr. SHULTZ. I'm not a political type person, and I don't know what, what the selection—I'm sure he'll select somebody of great ability and leadership qualities for that post. I do think that whoever is president must concern himself with the problem of attracting the ablest people into government, because government is very important. We have to do it well, and it takes good people to do it well.

Mr. MONROE. Thank you, Mr. Shultz, for being with us today on "Meet the Press."

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 9:07 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, with an amendment in which it requests the concurrence of the Senate.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following bill and joint resolution:

H.R. 507. An act to authorize Federal participation in stream rectification, Trinity River division, Central Valley project, California, and for other purposes; and

S.J. Res. 83. Joint resolution to authorize the Camp Fire Girls of Cundys Harbor, Maine, to erect a memorial in the District of Columbia.

The enrolled bill and joint resolution were subsequently signed by the Acting President pro tempore (Mr. PROXMIRE).

ENROLLED BILLS SIGNED

At 1:08 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 496. An act to increase the appropriations ceiling for title I of the Colorado River Basin Salinity Control Act (the Act of June 24, 1974; 88 Stat. 266), to increase the appropriations authorization for the Small Reclamation Projects Act of 1956 (70 Stat. 1044), and for other purposes; and

S. 2549. An act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. PROXMIRE).

At 2:26 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House, having proceeded to reconsider the bill (H.R. 7102) to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, on reconsideration by the House, and two-thirds of the House of Representatives agreeing to pass the same.

The message also announced that the House has passed the following bill, with an amendment in which it requests the concurrence of the Senate:

S. 2719. An act to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 7411. An act authorizing the Secretary of the Interior to accept the conveyance of the United First Parish Church in Quincy, Mass., and authorizing the Secretary to administer the United First Parish Church as a national historic site, and for other purposes; and

H.R. 8010. An act to amend the Comprehensive Employment and Training Act to designate a Job Corps Center as the "Earle C. Clements Job Corps Center."

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5892) to provide for an accelerated program of wind energy research, development, and demonstration, to be carried out by the Department of Energy with the support of the National Aeronautics and Space Administration and other Federal agencies.

The message further announced that, pursuant to the provisions of 22 U.S.C. 276a–1, as amended by Public Law 95–45, the Speaker has appointed Mr. PREYER, Chairman; Mr. DERWINSKI, Vice Chairman; Mr. FOUNTAIN; Mr. PEPPER; Mr. BOWEN; Mr. LEVITAS; Mr. ICHORD; Mr. DE LA GARZA; Mr. DUNCAN of Oregon; Mr. BROOMFIELD; Mr. MCCLORY; and Mr. BUTLER as members of the delegation to attend the Conference of the Interparliamentary Union, to be held in Berlin, East Germany, on September 16 through September 24, 1980, on the part of the House.

At 5:00 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 2080. An act to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5168) to extend certain expiring provisions of law relating to personnel management of the Armed Forces.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6974) to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 7434. An act to provide for the establishment of the Boston African American National Historic Site in the Commonwealth of Massachusetts, and for other purposes.

ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

H.R. 5892. An act to provide for an accelerated program of wind energy research, development, and demonstration, to be carried out by the Department of Energy with the support of the National Aeronautics and Space Administration and other Federal agencies, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. PROXMIRE).

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 7411. An act authorizing the Secretary of the Interior to accept the conveyance of the United First Parish Church in Quincy, Mass., and authorizing the Secretary to administer the United First Parish Church as a national historic site, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 7434. An act to provide for the establishment of the Boston African American National Historic Site in the Commonwealth of Massachusetts, and for other purposes; to the Committee on Energy and Natural Resources.

ENROLLED MEASURES PRESENTED

The Secretary of the Senate reported that on today, August 26, 1980, he had presented to the President of the United States the following enrolled bills and joint resolution:

S. 496. An act to increase the appropriations ceiling for title I of the Colorado River Basin Salinity Control Act (the Act of June 24, 1974; 88 Stat. 266), to increase the appropriations authorization for the Small Reclamation Projects Act of 1956 (70 Stat. 1044), and for other purposes;

S. 1998. An act to provide for the United States to hold in trust for the Tule River Indian Tribe certain public domain lands formerly removed from the Tule River Indian Reservation;

S. 2055. An act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon;

S. 2549. An act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes; and

S.J. Res. 83. Joint resolution to authorize the Camp Fire Girls of Cundys Harbor, Maine, to erect a memorial in the District of Columbia.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–4477. A communication from the Chairwoman of the Merit Systems Protection Board, transmitting, pursuant to law, a report on an apportionment or reapportionment which might indicate a necessity for a deficiency or supplemental estimate; to the Committee on Appropriations.

EC–4478. A communication from the Assistant Secretary of Defense, transmitting, pursuant to law, a report on certain transfers of funds appropriated to the Department of Defense; to the Committee on Appropriations.

EC–4479. A communication from the Assistant Secretary of the Army for Manpower and Reserve Affairs, transmitting, pursuant to law, proposed legislation to provide authority for additional nominations for appointment to the military academies; to the Committee on Armed Services.

EC–4480. A communication from the Assistant Secretary for Research, Development and Logistics of the Air Force transmitting, pursuant to law, a report advising that transient aircraft maintenance at Vandenberg Air Force Base, California, will be converted to performance under contract; to the Committee on Armed Services.

EC–4481. (Not assigned.)

EC–4482. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, a report on the Strategic and Critical Materials Stock Pile; to the Committee on Armed Services.

EC–4483. A communication from the Acting Secretary of Transportation, transmitting, pursuant to law, the 1980 Highway Safety Stewardship Report; to the Committee on Commerce, Science, and Transportation.

EC–4484. A communication from the Vice President for Governmental Affairs of the National Rail Passenger Corporation, transmitting, pursuant to law, the report for June, 1980, on revenues and expenses; to the Committee on Commerce, Science, and Transportation.

EC–4485. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to certain contractor indemnifications on the Northeast Corridor Improvement Project; to the Committee on Commerce, Science, and Transportation.

EC–4486. A communication from the Assistant Secretary of Interior, transmitting

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draft legislation to amend the Wild and Scenic Rivers Act for inclusion of 21 additional rivers in the national system; to the Committee on Energy and Natural Resources.

EC-4487. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report evaluating materials used by trade associations in making annual estimates of Outer Continental Shelf oil and gas reserves and estimates of ultimate recovery; to the Committee on Energy and Natural Resources.

EC-4488. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report "A Shortfall in Leasing Coal from Federal Lands: What Effect on National Energy Goals?"; to the Committee on Energy and Natural Resources.

EC-4489. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a prospectus proposing the acquisition of space by lease in Austin, Texas; to the Committee on Environment and Public Works.

EC-4490. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a proposed prospectus which proposes continued occupancy under a succeeding lease of space located at 1755 Jefferson Davis Highway, Arlington, Virginia; to the Committee on Environment and Public Works.

EC-4491. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a proposed prospectus which proposes the acquisition of space by lease in Los Angeles, California; to the Committee on Environment and Public Works.

EC-4492. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a proposed prospectus which proposes continued occupancy under a succeeding lease of space located at 1030 15th Street, NW., Washington, D.C.; to the Committee on Environment and Public Works.

EC-4493. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a proposed prospectus which proposes the acquisition of space by lease in Los Angeles, California; to the Committee on Environment and Public Works.

EC-4494. A communication from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to amend the National Visitor Center Facilities Act of 1968 to authorize the Architect of the Capitol to provide steam to the facility; to the Committee on Environment and Public Works.

EC-4495. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Federal-State Environmental Programs—The State Perspective"; to the Committee on Environment and Public Works.

EC-4496. A communication from the Charleston, Oregon Sanitary District, transmitting, for the information of the Senate, responses to various statements in the report of the Comptroller General entitled "EPA Should Help Small Communities Cope With Federal Pollution Control requirements"; to the Committee on Environment and Public Works.

EC-4497. A communication from the United States Trade Representative, transmitting, pursuant to law, the Twenty-Fourth annual report of the President on the Trade Agreements Program, and various protocols and agreements negotiated thereunder; to the Committee on Finance.

EC-4498. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the statistical appendix to the annual report of the Secretary of the Treasury on the State of the Finances for fiscal year 1979; to the Committee on Finance.

EC-4499. A communication from the Acting Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to August 19, 1980; to the Committee on Foreign Relations.

EC-4500. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Weak Financial Controls Make The Community Services Administration Vulnerable to Fraud and Abuse"; to the Committee on Governmental Affairs.

EC-4501. A communication from the Mayor of the District of Columbia, transmitting, a draft of proposed legislation to amend the District of Columbia Self-Government and Governmental Reorganization Act to clarify the limitations on the legislative authority of the Council of the District of Columbia; to the Committee on Governmental Affairs.

EC-4502. A communication from the Director of Administration, Department of Energy, transmitting, pursuant to law, a proposed new system of records for the Department of Energy for implementing the Privacy Act; to the Committee on Governmental Affairs.

EC-4503. A communication from the Assistant Secretary of Housing and Urban Development for Administration, transmitting, pursuant to law, a proposed new system of records for the Department of Housing and Urban Development for implementing the Privacy Act; to the Committee on Governmental Affairs.

EC-4504. A communication from the Assistant Secretary of State for Congressional Relations, transmitting a draft of proposed legislation to amend title 18, United States Code, to implement the Convention on the Physical Protection of Nuclear Material, and for other purposes; to the Committee on the Judiciary.

EC-4505. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations implementing Executive Order 12185 on Energy Conservation Awareness; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and referred as indicated:

POM-847. A resolution adopted by the Legislature of the Territory of Guam; to the Committee on Governmental Affairs:

"RESOLUTION No. 573

"Whereas, geographical barriers and expensive or slow postal service impede access to information by organizations and professions, most significantly the Guam Public Library system, and are particularly significant to the non-contiguous parts of the United States and its territories and to the visually impaired; and

"Whereas, the delivery of library books and materials and audio-visual materials by surface mail causes serious delays in delivery, often resulting in the receipt of information when it is no longer of use; and

"Whereas, domestic telecommunication rates do not apply to non-contiguous areas of the United States; now, therefore, be it

"Resolved, That the Fifteenth Guam Legislature respectfully requests the United States Postal Service to change appropriate policies and regulations so that all library materials addressed to and from non-contiguous parts of the United States and its territories will be sent as first class mail at surface mail rates; and be it further

"Resolved, that Federal Communications Commission policy regarding telecommunications rates concerning library services should be revised to ensure that domestic rates apply to non-contiguous parts of the United States and its territories; and be it further

"Resolved, That the United States Postal Service handle library materials addressed to or coming from the visually impaired as first-class mail; and be it further

"Resolved, That the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the President of the United States; to the United States Congressman for Guam; to the Speaker, U.S. House of Representatives; to the President Pro Tem, United States Senate; to the United States Postmaster General; to the Federal Communications Commission; to the United States Postmaster General for Guam; to Magdalena Taitano, Territorial Librarian; and to the Governor of Guam."

POM-848. A resolution adopted by the Senate of the State of Ohio; to the Committee on Commerce, Science, and Transportation:

"RESOLUTION

"Whereas, The members of the Senate of the 113th General Assembly of Ohio seek to have the Congress of the United States repeal efforts by private interest groups to dismember the current Conrail system, taking for themselves the lucrative lines and leaving for the public only those lines which are in need of subsidy; and

"Whereas, The taxpayers of the United States have already invested $3.3 billion in the ailing system, expecting in return good service and inexpensive transportation for their investment. The job has not been an easy one. Eighteen thousand miles of track have been abandoned, fourteen thousand jobs have been lost. Another $1.3 billion is projected to be spent with the loss of an additional twenty-three thousand jobs. Federal support was given in an effort to curb the enormous losses incurred under private management; and

"Whereas, The United States Railway Association, who watched this massive federal assistance program improve our railroad system, now wants these revitalized Conrail lines to be returned to the private sector, thus giving a $3.3 billion bonus to private railroads. Its recommendation is to turn over the profitable Conrail lines to private corporations while letting the federal government continue to underwrite the losses on the remaining lines. Such opportunism should not be allowed to flourish at the expense of the American taxpayer; and

"Whereas, Ohio, as well as many other states, has been willing to make sacrifices during the transition period from private to public control. The desire to achieve a workable, economically feasible railroad system motivated the states to accept otherwise oppressive cutbacks in jobs and services. Now that the belt-tightening measures are working, the United States Railway Association would have the States lose the investment that taxpayer dollars made possible; therefore be it

"Resolved, That we, the members of the Senate of the 113th General Assembly Ohio, in adopting this Resolution, urge the Congress of the United States to retain Conrail within the public sector for the benefit of the country and its citizens. At a time when mass transportation systems provide the key to our energy problems, it is more necessary than ever to protect the country's investment; and be it further

"Resolved, That the Clerk of the Senate transmit duly authenticated copies of this Resolution to the President of the United State Senate; to the Speaker of the United States House of Representatives; and to the members of the Ohio Congressional Delegation."

POM-849. A resolution adopted by the Legislature of the Virgin Islands; to the Committee on Energy and Natural Resources:

"RESOLUTION No. 1014

"Whereas Senator J. Bennett Johnson introduced a bill, S. 2017, that would require the Federal Internal Revenue Service to collect income taxes in the Virgin Islands, a function now performed by the local Virgin Islands Department of Finance; and

"Whereas the President of the United States proposed, on February 14, 1980, that the Internal Revenue Code be 'fully extended' to the territories, replacing the 'mirror' system of income tax now in effect and endorsing collection by the Federal Internal Revenue Service; and

"Whereas since 1922, tax collection within the Virgin Islands has been the responsibility of the Territory; and

"Whereas the imposition of Federal collection of taxes after more than half a century of local prerogative over collection responsibility flies in the face of the historical commitment by the United States to greater local autonomy for the territories; and

"Whereas the characterizations of the new federal control as 'Statelike' treatment for the territories is mere window-dressing of the bitter fact that the people of the Virgin Islands are now being deprived of any direct control over the manner and method of tax collection; and

"Whereas Virgin Islanders have long been without voting representation over the amount of income taxes collected, the proposals by Senator Johnston and the President would now remove from their oversight and review the tax collection officials themselves—totally unlike a State which, through elected representatives and the Presidential vote, can directly influence both the amount and the method of federal taxation; and

"Whereas the new federal proposals would continue to cover over into the Virgin Islands Treasury the amounts collected under application of the Federal tax code, this covering over does not justify the fact that the people themselves have never had direct voting influence over the amounts covered and are now to be deprived of local control of the manner and method of tax collection; Now, Therefore,

"Be it resolved by the Legislature of the Virgin Islands:

"Section 1. The Congress of the United States and the President of the United States are hereby petitioned to reject and withdraw any proposal that would deprive the people of the Virgin Islands from maintaining local control over the manner and method of tax collection under the 'mirror theory' of taxation.

"Section 2. Immediately upon the passage of this Resolution, the President of the Legislature shall forward signed copies to the President of the United States, the Vice President, as President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Committee on Energy and Natural Resources and each member thereof, the Chairman of the House Committee on Interior and Insular Affairs and each member thereof and the Secretary of the Interior."

POM-850. A resolution adopted by the Suffolk County Legislature, Suffolk County, New York, requesting the United States Senate to approve S. 1872, to amend Title 38, United States Code, amending acts to be known and cited as the "Vietnam Veterans Act"; to the Committee on Veterans' Affairs.

POM-851. A resolution adopted by the Association of Chief Executives of the Pacific Basin, opposing nuclear waste dumping and storage in the Pacific Basin Region; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Labor and Human Resources, with an amendment:

S. 2490. A bill to provide certain requirements for infant formula, and for other purposes (Rept. No. 96-916).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 509. An original resolution to pay a gratuity to Madeline R. Miller.

By Mr. PELL (for Mr. CHURCH), from the Committee on Foreign Relations, with amendments and an amendment to the title:

S. Res. 484. A resolution relative to the Treaty of Mutual Cooperation and Security with Japan and announcing Tokyo conference (Rept. No. 96-917).

By Mr. MELCHER, from the Select Committee on Indian Affairs, without amendment:

S. Res. 510. An original resolution authorizing supplemental expenditures by the Select Committee on Indian Affairs (Rept. No. 96-918). Referred to the Committee on Rules and Administration.

By Mr. BAYH, from the Committee on the Judiciary, with an amendment:

S. 506. A bill to amend title VIII of the Act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes (together with minority and additional views) (Rept. No. 96-919).

By Mr. JACKSON, from the Committee on Armed Services, without amendment:

S. 3074. An original bill to authorize appropriations for the Department of Energy for national defense programs for fiscal year 1981, and for other purposes (Rept. No. 96-920).

S. Res. 511. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3074. Referred to the Committee on the Budget.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Jack Hood Vaughn, of the District of Columbia, to be an Assistant Administrator of the Agency for International Development (Ex. Rept. No. 96-50).

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MATHIAS:

S. 3065. A bill to amend title 5 of the United States Code to provide special comparability allowances to physicians employed by the United States Government in order to enhance the recruitment and retention of such physicians; to the Committee on Governmental Affairs.

By Mr. CHILES (for himself and Mr. STONE):

S. 3066. A bill to provide for the use and distribution of the award granted by the Indian Claims Commission to the Seminole Nation as it existed in Florida on September 18, 1823, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. MORGAN:

S. 3067. A bill to direct the Secretary of the department in which the United States Coast Guard is operating to cause the vessel Capt. Tom to be documented as a vessel of the United States so as to be entitled to engage in the coastwise trade; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY:

S. 3068. A bill to discharge the States from the obligation of repayment of money deposited with them under the Act of June 23, 1836; to the Committee on Finance.

By Mr. NELSON:

S. 3069. A bill to amend the Internal Revenue Code of 1954 to make the investment tax credit for motor vehicle manufacturing property refundable; to the Committee on Finance.

By Mr. DURENBERGER:

S. 3070. A bill to amend the Revenue Act of 1978 with respect to foreign tax credit adjustments for capital gains; to the Committee on Finance.

By Mr. JOHNSTON:

S. 3071. A bill to amend the Internal Revenue Code of 1954 to provide a credit for investment in equity securities of domestic corporations; to the Committee on Finance.

By Mr. MELCHER:

S. 3072. A bill to establish the Rattlesnake National Recreation Area and Wilderness in the State of Montana; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 3073. A bill to amend chapter 55 of title 10, United States Code, to improve vision care services under CHAMPUS; to the Committee on Armed Services.

By Mr. JACKSON (from the Committee on Armed Services):

S. 3074. A bill to authorize appropriations for the Department of Energy for national defense programs for fiscal year 1981, and for other purposes. Original bill reported and placed on the calendar.

By Mr. STONE:

S. 3075. A bill to prevent unnecessary spending by government offices at or near the end of a fiscal year; to the Committee on Governmental Affairs.

By Mr. DURKIN:

S. 3076. A bill to provide an exemption from the tax on failure to distribute income, by and on excess business holdings of, a private foundation under the Internal Revenue Code of 1954; to the Committee on Finance.

By Mr. MOYNIHAN:

S.J. Res. 197. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day"; to the Committee on the Judiciary.

By Mr. HEINZ:

S.J. Res. 198. Joint resolution to authorize and request the President to designate the week of September 7, 1980, to September 14, 1980, as "National Life Flight Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MATHIAS:

S. 3065. A bill to amend title 5 of the United States Code to provide special comparability allowances to physicians employed by the U.S. Government in order to enhance the recruitment and retention of such physicians; to the Committee on Governmental Affairs.

FEDERAL PHYSICIANS COMPARABILITY ACT OF 1980

● Mr. MATHIAS. Mr. President, over the past years I have been concerned about the difficulties Federal agencies encoun-

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ter in recruiting and retaining first-rate medical people in the general schedule, the Veterans' Administration and the uniformed services. I have sponsored and cosponsored several bills and their extensions to remedy this significant recruitment and retention problem by providing variable incentive pay for medical personnel.

This legislation includes:

S. 1947 (H.R. 5015)—an act to extend the Federal physicians comparability allowance of 1978.

S. 2844—a bill to extend temporarily certain special pay provisions pertaining to physicians and dentists by the Veterans' Administration.

S. 2845—a bill to extend temporarily certain special pay provisions pertaining to medical officers of the uniformed services.

Public Law 95-603—The Federal Physicians Comparability Alowance Act of 1978.

Public Law 94-123—An act to provide special pay and incentive pay for certain physicians and dentists employed by the Department of Medicine and Surgery of the Veterans' Administration in order to enhance the recruitment and retention of such personnel.

Several bills, passed in the 96th Congress' second session, are intended to promote the recruitment and retention of health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration and to revise the special pay provisions for medical officers and other health professionals in the uniformed services. The bill I am introducing today would put the pay of general schedule physicians on a par with what their Veterans' Administration and uniformed services colleagues receive for performing identical medical services, frequently working side-by-side.

Everyone wants to have access to first-class medical care. But outstanding physicians, although devoted to public service, cannot justify remaining in the employ of the Federal Government to the detriment of their livelihood and life-style. Comparability pay allowances are only reasonable measures to retain their services.

Today there are 2,187 physicians in the general schedule. They serve in a number of Federal agencies—Department of Health and Human Services, Department of the Army, National Aeronautics and Space Administration, Federal Aviation Administration, Food and Drug Administration, U.S. Postal Service, Department of Commerce, Central Intelligence Agency, Library of Congress, D.C. Public Health clinics, National Security Agency, National Science Foundation, Social Security Agency, Drug Enforcement Agency, Bureau of Engraving and Printing, National Bureau of Standards, Department of Energy, Tennessee Valley Authority, Panama Canal Zone, Department of Labor.

These physicians provide diagnostic, preventive or therapeutic services to patients, conduct medical research and experimentation and identify causes or sources of disease or disease outbreak. They evaluate physical fitness, provide initial treatment of on-the-job illness or injury and perform preemployment examinations, preventive health screenings, medicolegal autopses, fitness-for-duty examinations and the evaluation of disability. They are responsible for the administration of medical and health programs including the administration of patient care or medical research and experimentation programs.

The Office of Personel Management indicates that the causes of employee retirement include cardiovascular conditions, malignancy, diseases of the bones and joints, bronchial disease, diseases of the eye, ear, nose and throat, genitourinary conditions, cirrhosis, gastrointestinal diseases and mental and nervous diseases. These medical problems need to be evaluated very seriously.

Any Federal employee who requires a medical fitness-for-duty examination in order to determine retirement eligibility options desperately needs high quality competence on the part of the physician who is responsible for the examination and, subsequently, for the determination, in large part, of that employee's future income.

The cost of this legislation, an annual expenditure of $42.1 million (estimated by my staff and the staff of the American Academy of Federal Civil Service Physicians), would be fully offset, I believe, by the high order of medical care and service provided by this cadre of general schedule physicians. I believe Federal employees deserve the best health care available anywhere in this Nation. It is important to recruit and retain the best physicians to provide this care.

For these reasons, I introduce my bill, S. 3065, the Federal Physicians Comparability Act of 1980, to bring to general schedule physicians appropriate equality for joining and remaining in Government service.

I ask unaminous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3065

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Federal Physicians Comparability Act of 1980."

SEC. 2. Subchapter V of chapter 59 of title 5, United States Code, relating to allowances, is amended by amending section 5948 to read as follows:

"§ 5948. Physicians comparability allowances

"(a) Notwithstanding any other provision of law, a Government physician who has been employed by the Federal Government for a period of not less than one year shall be entitled to special pay in accordance with this section and such regulations as the President or his designee may prescribe.

"(b) A physician who meets the requirements described in subsection (a) is entitled to a variable special payment at the following rates:

"(1) $5,000 per year, if the physician has less than six years of creditable service under subsection (f).

"(2) $10,000 per year, if the physician has at least six but less than eight years of creditable service under subsection (f).

"(3) $9,500 per year, if the physician has at least eight but less than ten years of creditable service under subsection (f).

"(4) $9,000 per year, if the physician has at least ten but less than twelve years of creditable service under subsection (f).

"(5) $8,000 per year, if the physician has at least twelve but less than fourteen years of creditable service under subsection (f).

"(6) $7,000 per year, if the physician has at least fourteen but less than eighteen years of creditable service under subsection (f).

"(7) $6,000 per year, if the physician has at least eighteen but less than twenty-two years of creditable service under subsection (f).

"(8) $5,000 per year, if the physician has at least twenty-two or more years of creditable service under subsection (f).

"(c)(1) Subject to the provisions of this subsection, a physician who is entitled to a variable special payment under subsection (b) is entitled to an additional annual incentive payment of $10,000 for any twelve-month period during which the physician is not undergoing medical internship or initial residency training, as determined under regulations prescribed under subsection (h).

"(2) In order to receive an annual incentive payment described in paragraph (1), a physician shall execute a written agreement under which the physician agrees to remain on active duty for a period of not less than one year beginning on the date the physician accepts the award of such payment.

"(3) Any agreement under paragraph (2) shall specify the terms under which the head of the agency and the physician may elect to terminate the agreement, and the amounts, if any, required to be refunded by the physician for each reason for the termination, including the amount required to be refunded under paragraph (4).

"(4) A physician who voluntarily terminates employment before the end of the period for which a payment was made to such physician under this subsection shall refund to the United States an amount which bears the same ratio to the amount paid to such physician as the unserved part of such period bears to the total period for which the payment was made.

"(d) A physician who is entitled to a variable special payment under subsection (b) who is board certified, as determined under regulations prescribed under subsection (h), is entitled to an additional payment for board certification at the following rates:

"(1) $2,000 per year, if the physician has less than ten years of creditable service under subsection (f).

"(2) $2,500 per year, if the physician has at least ten but less than twelve years of creditable service under subsection (f).

"(3) $3,000 per year, if the physician has at least twelve but less than fourteen years of creditable service under subsection (f).

"(4) $4,000 per year, if the physician has at least fourteen but less than eighteen years of creditable service under subsection (f).

"(5) $5,000 per year, if the physician has eighteen or more years of creditable service under subsection (f).

"(e)(1) The special pay authorized under subsections (b) and (d) of this section shall be paid monthly. The special pay authorized under subsection (c) of this section shall be paid annually at the beginning of the twelve-month period for which the physician is entitled to such payment.

"(2) Special pay authorized under this section is in addition to any other pay or allowance to which a physician is entitled. The amount of special pay to which a physician is entitled under this section may not be included in computing the amount of any increase in pay authorized by any other provision of this title, or in computing retired pay, severance pay, or readjustment pay.

"(f) For purposes of this section, creditable service is computed by adding all periods during which a physician was employed by the Federal Government in active service.

"(g) For purposes of this section, the term—

"(1) 'Government physician' means any individual employed as a physician who is paid under—

"(A) section 5332 of this title, relating to the General Schedule;

"(B) subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;

"(C) chapter 54 of this title, relating to the Merit Pay System;

"(D) section 5361 of this title, or similar statutory authority, relating to administratively determined pay for certain specially qualified scientific or professional personnel;

"(E) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

"(F) title 4 of the Foreign Service Act of 1946 (22 U.S.C. 861-890), relating to the Foreign Service;

"(G) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

"(H) section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission; or

"(I) any system of pay established by the United States Postal Service;

"(2) 'agency' means an Executive agency, as defined in section 105 of this title, the Library of Congress, and the District of Columbia government; and

"(3) 'special pay' means the variable special payment authorized under subsection (b), the annual incentive payment authorized under subsection (c), and the payment for board certification authorized under subsection (d).

"(h) The Director of the Office of Personnel Management shall prescribe regulations for the administration of this section. At a minimum, such regulations shall include standards for determining—

"(1) whether the physician is board certified for purposes of subsection (d) of this section; and

"(2) the categories of physicians to whom the special pay provisions apply under this section.

"(i) The Director of the Office of Personnel Management shall conduct a review every two years of the special pay for Federal physicians authorized by this section. A report of the results of the first such review shall be submitted to the Congress not later than September 30, 1982, and the results of each subsequent review shall be submitted to the Congress not later than September 30 of each second year thereafter.".

SEC. 3. (a) Except as provided in subsection (b), the amendment made by section 2 of this Act shall apply to the special pay payable for periods beginning after the last day of the month in which this Act is enacted.

(b) The amendment made by section 2 of this Act does not affect the validity of any agreement which was entered into before the date of enactment of this Act under the provisions of section 5948 of title 5 of the United States Code which were in effect on the day before the date of enactment of this Act, if the physician covered by such agreement elects to continue to receive a comparability allowance under such an agreement rather than to receive special pay as authorized under section 5948 of title 5 of the United States Code, as amended by section 2 of this Act.●

By Mr. LEAHY:

S. 3068. A bill to discharge the States from the obligation of repayment of money deposited with them under the Act of June 23, 1836; to the Committee on Finance.

● Mr. LEAHY. Mr. President, today I am introducing a bill to discharge the States from the obligation of repayment of money deposited with them under the act of June 23, 1836.

For several years prior to 1836 the United States had been enjoying an era of great prosperity and world trade. When the surplus in the Treasury continued to increase beyond all expectations the administration of President Andrew Jackson reported that the balance on hand, with the accruing receipts, was "likely for some time to come to exceed the real wants and just objects of the Government for expenditure"—report of the Treasurer, 1836, page 687—and it was decided to deposit the surplus with the 26 existing States according to the number of electoral votes each had.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD a table which outlines the amounts distributed to the 26 States at that time.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

State:	*Amount*
Alabama	669,086.79
Arkansas	286,751.49
Connecticut	764,670.60
Delaware	286,751.49
Georgia	1,051,422.09
Illinois	477,919.14
Indiana	860,254.44
Kentucky	1,433,757.39
Louisiana	477,919.14
Maine	955,838.25
Maryland	955,838.25
Massachusetts	1,338,173.58
Michigan	286,751.49
Mississippi	382,335.30
Missouri	382,335.30
New Hampshire	669,086.79
New Jersey	764,670.60
New York	4,014,520.71
North Carolina	1,433,757.39
Ohio	2,007,260.34
Pennsylvania	2,867,514.78
Rhode Island	382,335.30
South Carolina	1,051,422.09
Tennessee	1,433,757.39
Vermont	669,086.79
Virginia	2,198,427.99
	28,101,644.91

Mr. LEAHY. Pursuant to act of Congress, act of June 23, 1836, chapter 115, 5 statutes 52, the U.S. Government deposited $28,101,644 with the several States in the form of interest-free demand loans. My own State of Vermont received $669,086.79, which has now been held in trust for 144 years. The act of 1836 did not specify any conditions under which these funds were to be used. The only proviso was that the monies were to be returned to the Federal Government upon call.

It is with a great sense of pride that I recount the words Senator Boggs spoke in 1971 when he said:

> The only States to profit in the long run as a result of the surplus revenue of 1836 were Vermont and my own State of Delaware.

But while Vermont has profited from the 1836 payment, we have also carried this liability for some 144 years now.

For 74 years nothing further was done by the Congress or the Treasury. Then by the act of June 25, 1910, 36 Statutes 776, the Treasurer of the United States was relieved from further accountability for these deposits. However, the States were not discharged. To the contrary, the act provided in part:

> *Provided*, That the credit herein authorized to be given to the Treasurer of the United States shall in no wise affect or discharge the indebtedness of the several States to the United States as is provided in said Act of Congress, approved June 23, 1836, and shall be made in such manner as to debit the respective States chargeable therewith upon the books of the Treasury Department, until otherwise directed by the Congress.

For 70 years now, we have had the strange anomaly of States remaining liable to the Federal Government for the very deposits for which the Federal Government was relieved of accountability.

Prior to June 25, 1910, the Secretary of the Treasury carried the total of the surplus revenues distributed to States in 1837 as part of his cash accountability but labeled it as "unavailable funds of the General Treasury." After the act of June 25, 1910, the Treasury was relieved of cash accountability and Congress was left with the responsibility of deciding what should be done with the deposits.

After 144 years of confusion it is time for Congress to meet that duty and decide whether to demand repayment from the States, or to relieve the States from the obligation of repayment of money deposited with them. Any attempt to demand repayment would create more problems than it would solve. Many of the States have either no record of the money, lost it through improvident loans, spent it on establishing schools, or had their funds liquidated during the Civil War. It would be unrealistic to expect these States to repay after all these years.

The only sensible solution is to wipe these obligations off the books. Since the Treasury is no longer accountable for the debt under the act of June 25, 1910, it is not carried as an asset on the books of the United States. At the present time it is recorded only as a memorandum book entry and the removal of the debt would in no way affect the balance in the Treasury. Nor would it affect the public debt.

It is unfair to permit this confused condition to prevail. Under the act of June 25, 1910, Congress has to resolve this situation. After 144 years of uncertainty, let us clear the record.●

By Mr. NELSON:

S. 3069. A bill to amend the Internal Revenue Code of 1954 to make the investment tax credit for motor vehicle manufacturing property refundable; to the Committee on Finance.

AUTOMOTIVE MANUFACTURING INVESTMENT TAX CREDIT ACT OF 1980

● Mr. NELSON. Mr. President, today I am introducing the Automotive Manufacturing Investment Tax Credit Act of 1980.

This proposal would provide immediate economic relief to the domestic automotive manufacturing industry by allowing auto companies a refundable investment tax credit for all investments in business equipment and machinery. Basically, the companies will be allowed to take the general investment tax credit

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permitted under current law even if they are not making a profit.

Under present law, with certain special rules for utilities, railroads and airlines, earned investment tax credits can be used to offset only the first $25,000 of tax liability plus 70 percent of the tax liability in excess of $25,000. Credit exceeding that limit can be carried back 3 years and, generally, forward 7 years.

Although the purpose of the credit is to encourage acquisition of new equipment by reducing its cost, and thereby to provide an incentive for making equipment purchases, the present rules, particularly the nonrefundable aspect of the credit, discriminate against taxpayers with low or nonexistent profits. These taxpayers are often fledgling businesses seeking to become established in a competitive industry or businesses in a period of rapid growth. The current rules have an extremely adverse impact on businesses in capital intensive industries.

The investment tax credit was originally adopted as a subsidy to encourage businesses to buy new equipment in order to modernize our Nation's industrial capacity. However, it is extremely unfair that the companies that need the subsidy the most do not receive it. If a company is having difficulty making a profit, for whatever reason, it is unable to use the investment credit. The company obviously plans to become profitable. It does not intend to go out of business. Yet the single most important investment incentive that could be used by the company to grow and expand and become more competitive is unavailable to it until it turns a substantial profit. This may take years for the new business or the company experiencing temporary economic difficulties. And by that time the relief provided may be too little and too late because other more established and profitable competitors may have already wiped out the underdog.

Nowhere is this more evident than in the domestic auto industry. During the next decade, U.S. auto companies must undertake a massive retooling and modernization program in order to compete with the Japanese and Germans. This will require enormous capital investments. During this period companies such as American Motors, Chrysler and Ford will have either a very low or nonexistent Federal tax liability due to heavy depreciation and business expense deductions. As a result, these companies will not be entitled to the investment tax credit unless it is made refundable because they cannot afford to wait some 7 years in order to claim tax credits they cannot use today. They need the credits now in order to provide the necessary funds for a rapid modernization program.

Some experts maintain that accelerated depreciation is the solution for the auto industry's capital formation requirements. But accelerated depreciation deductions without a refundable investment tax credit simply will not do the job for the auto industry. In fact, if the companies take greater depreciation, they will have even less profits against which to take their investment tax credits. However, the two taken together—rapid depreciation and a refundable tax credit—would provide a complete capital cost recovery system for the automotive industry.

It is imperative that Congress act now. America's auto industry is in serious trouble. Sales and production have suffered their steepest decline in 20 years, dropping some 23 percent between 1979 and 1980 alone. Auto and parts supplier industries are suffering the worst layoffs since World War II. This month, 350,000 auto workers are out of work, together with hundreds of thousands more in related industries, such as steel, rubber, textiles, and tools. The crisis in the auto industry could cost Federal and State governments over $2 billion this year alone in lost revenues and increased spending. The automobile industry is a major customer for thousands of small and medium-sized businesses throughout the country. The industry uses one-fourth of all the steel consumed in the United States, one-half of the iron, almost two-thirds of the synthetic rubber, and one-third of the zinc.

The investment tax credit is a highly valuable means of stimulating capital formation by taxpayers who are profitable and thus incur a tax liability. But it is of no immediate value to taxpayers such as certain domestic auto companies who are suffering losses and thus incur no tax libility, this legislation will assist the auto industry at a time of need when it is engaged in a massive retooling effort to produce more fuel-efficient vehicles in the face of competition from imports and escalating fuel costs. It will assist in putting thousands of American workers back to work.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3069

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 46(a)(10)(A) of the Internal Revenue Code of 1954 is amended to read as follows:

"(10) SPECIAL RULES IN THE CASE OF ENERGY PROPERTY.—Under regulations prescribed by the Secretary—

(A) IN GENERAL.—This subsection and subsection (b) shall be applied separately—

(i) first with respect to so much of the credit allowed by section 38 as is not attributable to the energy percentage or the application of the regular percentage to motor vehicle manufacturing property,

(ii) second with respect to so much of the credit allowed by section 38 as is attributable to the application of the energy percentage to energy property, and

(iii) then with respect to so much of the credit allowed by section 38 as is attributable to the application of the regular percentage to motor vehicle manufacturing property."

(b) section 46(a)(10) of the Internal Revenue Code of 1954 is further amended by adding new paragraphs (C) and (D) to read as follows:

"(C) REFUNDABLE CREDIT FOR MOTOR VEHICLE MANUFACTURING PROPERTY.—In the case of so much of the credit allowed by section 38 as is described in subparagraph (A)(iii)—

(i) paragraph (3) shall not apply, and

(ii) for purposes of this title (other than section 38, this subpart, and chapter 63), such credit shall be treated as if it were allowed by section 39 and not by section 38.

"(D) MOTOR VEHICLE MANUFACTURING PROPERTY DEFINED.—For purposes of this paragraph, the term 'motor vehicle manufacturing property' means section 38 property which is used in connection with the trade or business of manufacturing motor vehicles, and the term 'motor vehicles' means vehicles driven or drawn by mechanical power manufactured primarily for use on the public streets, roads and highways, except vehicles operated exclusively on rail or rails."

(c) section 46(b) of the Internal Revenue Code of 1954 is amended by adding a new paragraph (4) to read as follows:

"(4) CERTAIN UNUSED CREDITS MADE REFUNDABLE.—Notwithstanding paragraphs (1) and (3), in the case of unused credits accumulated in the two unused credit years before the taxable year ending before January 1, 1981, which are attributable to the application of the regular percentage to motor vehicle manufacturing property (as defined in section 46(a)(10)(D)), section 46(a)(3) shall not apply, and such unused credits shall be treated as if they were allowed by section 39 and not by section 38 in the taxable year ending before January 1, 1981."●

By Mr. DURENBERGER:

S. 3070. A bill to amend the Revenue Act of 1978 with respect to foreign tax credit adjustments for capital gains; to the Committee on Finance.

FOREIGN TAX CREDIT ADJUSTMENTS FOR CAPITAL GAINS

● Mr. DURENBERGER. Mr. President, I am introducing a bill in the nature of a technical correction relating to the determination of foreign source income, where one corporation realizes gain from the disposition of stock in a second corporation.

Mr. President, prior to the Tax Reform Act of 1976, it had been possible for a domestic corporation to increase the limitation on allowable foreign tax credits by selling at a location outside the United States the stock of a second corporation. The capital gain on that sale was treated as foreign source income even though the corporation whose stock was disposed of derived all or substantially all its income from sources in the United States instead of from foreign sources.

In order to deal with this situation, the Tax Reform Act of 1976 amended Code section 904 to provide that the gain from disposition of the stock of the second corporation would be U.S. source income unless (i) the stock was sold in the foreign country where the second corporation had derived more than 50 percent of its income for the immediately preceding 3 years, or (ii) the stock was sold in a foreign country that imposed at least a 10-percent tax on the gain from disposition of the stock. Section 904(b)(3)(C).

There is no apparent reason why gain from the disposition of stock of a corporation which derives most of its income from foreign sources should be treated as U.S. source income. Indeed, so long as the underlying earnings and earnings potential which give the stock its value are foreign source, it is only logical that gain on disposition of the stock should be treated as foreign source income also. This is true whether or not the corporation whose stock is sold may, by happenstance, have derived more than 50 percent of its income in one particular foreign country.

It is, for example, illogical to treat as foreign source income the gain from disposition of stock of a corporation which derived 51 percent of its income in foreign country A and 49 percent in the United States; and not to treat as foreign source income gain from the disposition of stock in a corporation which derived 100 percent of its income from sources outside the United States—one-third in each of foreign countries A, B, and C. Obviously, the gain should be foreign source in any case where the corporation whose stock is sold derived more than 50 percent of its income from sources outside the United States.

It is also obviously the case that there is no necessity to require that the country where the stock is sold impose at least a 10-percent tax on the gain. Capital gain taxes in foreign countries are usually less than in the United States and in some cases nonexistent. In those cases, a difference in the characterization of income based on the nominal distinction between a 10-percent and a 9-percent rate, or even a zero rate, is purely arbitrary.

In other cases, however, the capital gain tax rate in the country where the corporation derives most of its income may be higher than the U.S. rate. There is no rational reason for requiring a U.S. corporation to pay the highest possible foreign tax rate on the sale, or to make the sale in a country which imposes a tax of at least 10 percent. In both cases, the effect is merely to increase tax payments by U.S. taxpayers to foreign countries and to increase the amount of available foreign tax credit.

These defects in the Tax Reform Act of 1976 were recognized and partially corrected by title VII of the Revenue Act of 1978 which dealt with technical corrections to the Tax Reform Act of 1976. Section 701 (u)(2)(C) of the 1978 act added Code section 904(b)(3)(D) which corrected the 1976 act insofar as concerns gain from the disposition of stock in a liquidation. Section 904(b)(3)(D) in effect provides that gain from the disposition of stock by means of liquidition of a foreign corporation will be treated as foreign source income if the liquidated corporation derived more than 50 percent of its income from foreign sources for the immediately preceding 3 years. This correction of the 1976 act eliminated the requirement that the corporation have derived more than 50 percent of its income in any one particular foreign country and eliminated the requirement that at least a 10-percent tax have been paid in the foreign country where the liquidation occurred. As previously discussed, section 904(b)(3)(D) represents the correct rule for determining the source of gain from the disposition by one corporation of stock of a foreign corporation outside the United States. Because the amendment made by the 1978 act was a technical correction of the 1976 act, it was made effective as of the effective date of the provision in the 1976 act which it corrected; that is, taxable years beginning after December 31, 1975.

The 1978 act failed, however, to correct the 1976 act insofar as concerns gains from the disposition of stock in a foreign corporation when that disposition is in the form of a sale of stock instead of a liquidation. There is no apparent distinction between a liquification of a corporation and a sale of at least 80 percent of the stock of the corporation. The same rule, the one provided by the technical correction in the 1978 act, should apply in both situations.

Mr. President, this bill amends section 701(u)(2)(C) of the 1978 act to provide that a sale of at least 80 percent of all classes of stock of a corporation would be treated the same as a liquidation.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3070

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 701(u)(2)(C) (relating to foreign tax credit adjustments for capital gains) of the Revenue Act of 1978 is amended—

(i) by inserting "And gain from sale of stock of certain foreign subsidiaries" after "gain from liquidation of certain foreign corporations";

(ii) by inserting "either" after "shall not apply with respect to";

(iii) by inserting "or a sale of at least 80 percent of the total number of shares of all classes of stock of a foreign corporation," after "to which part II of subchapter C applies"; and

(iv) by inserting "or sale" after "during which the distribution".

(b) EFFECTIVE DATE.—The amendments made by section (a) shall apply to taxable years beginning after December 31, 1975.●

By Mr. JOHNSTON:

S. 3071. A bill to amend the Internal Revenue Code of 1954 to provide a credit for investment in equity securities of domestic corporations; to the Committee on Finance.

INDIVIDUAL EQUITY INVESTORS' INCENTIVE ACT OF 1980

● Mr. JOHNSTON. Mr. President, today I am introducing legislation to reward Americans who sacrifice immediate consumption in order to increase their savings through investment in U.S. corporate stock, the foundation of our productive free enterprise system. Simply stated, my bill provides a 10-percent tax credit (up to a maximum of $1,000 per individual) for the cost of purchasing equity securities each year a taxpayer increases his or her investments in such securities over the previous year's holdings. This bill will stimulate a shift of investment from debt to equity as a source of capital for economic growth and will stimulate an expansion of the numbers of individual Americans with a stake in the future of American enterprise.

Mr. President, there is no stronger advocate of the laws of supply and demand and the role of the free market than I. Unfortunately, the free market has not always been permitted to allocate resources. We all recognize how the free market has been disregarded by an OPEC cartel. What is not so obvious is how the free market has been disregarded by governments which accord their own industries an unfair competitive advantage over our own. Our most recent historical response to the intrusion of foreign governments in the marketplace has been to negotiate fair and consistent rules within which our own private enterprise could effectively compete. Nevertheless, there has been a steady erosion of markets and the competitive postures of our own industries resulting from the penetration of foreign government supported industries.

Mr. President, it is time we learn again the lessons of OPEC and begin to boost the capacity of American industry to face the challenges of new realities. As we begin to tighten our belts and to forego the extravagance of excessive energy consumption through conservation, so too must we begin to eliminate excessive borrowing and to increase savings. As we begin the long journey toward energy independence through more exploration and production and more investment in alternative energy sources, so too must we create the environment for investments which will once again permit our economy to exhibit that innovation and vitality which led the world to recovery after World War II.

No one in Congress or in the administration doubts that the challenges of revitalizing the U.S. economy will be easy. Profound changes in the marketplace have taken place over the past several decades. I am convinced, however, that the challenges will be less difficult once American enterprise shifts from excessive dependence on capital sources which retard innovation, initiative, and development and commercialization of new technology. In recent years, American industry has more and more depended on debt for expansion and new production. Now that American industry is being called upon to demonstrate its superior creativity, its response will more than likely be feeble if excessive debt continues to straddle its balance sheets. This problem has been well summarized in an August 14 Washington Post article by James Rowe, entitled "Corporate America Wallowing in Debt." I ask unanimous consent that the August 14 article by James Rowe be included in the RECORD at the conclusion of my remarks.

In my view, excessive dependence on debt fosters rigidity and inflexibility. Excessive debt stifles innovation and initiative and inhibits productive risk taking which has historically characterized American enterprise. The legislation I have introduced today partially offsets the tax preference for debt financing and begins to shift tax preferences toward equity-risk capital financing.

Mr. President, I fully appreciate the efforts of the Senate Finance Committee and others to promote capital formation through corporate and capital gains tax reduction. The proposed adjustments of depreciation ranges and the proposed authorizing of alternative depreciation methods are commendable and I do not

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doubt that I will support them. Nevertheless, these proposals do not address the issues of democratic capitalism or the fundamental problems associated with excessive debt. My distinguished colleague from Louisiana, Senator RUSSELL LONG, however, has long been a pioneer in the effort to expand the equity/ownership base of corporate America. His approach has focused primarily on incentives for employee stock ownership plans. While I continue to support my senior colleague's efforts in this area, I have concluded that his efforts must be expanded beyond employee stock ownership plans.

The bill I have introduced addresses straightforwardly the expanded ownership by Americans of American industry. Employee ownership of corporate stock will continue to receive the highest level support, but the options available to individual Americans for ownership will be expanded beyond the companies within which they are associated. As diversification by industry is important as an end itself, so should diversification of stock ownership by Americans in domestic corporations be an important end itself. My legislation accomplishes this objective.

Mr. President, the legislation I have introduced is not unlike the French Monory Law and is similar to legislation offered in the House by Congressman SCHULZE and in the Senate by Senator NELSON. Enacted in 1978, the French Monory Law permits each French household an annual income tax deduction of 5,000 French francs, or approximately $1,250, for net new investments in shares of French companies. Unlike Congressman SCHULZE's original version, my bill limits the 10-percent tax credit to incremental increases in equity securities and excludes debt securities from qualifying for the credit benefit. Because the Federal Reserve regulates the growth of money supplies and indirectly the cost of money, any effort on the fiscal side to stimulate borrowing or to affect the cost of borrowing can be offset by independent monetary policies. Unlike Senator NELSON's bill, my legislation is not limited to "new issues" of equity securities of small businesses. The problems relating to supply side economics, productivity, and reindustrialization are not those of small business alone. Excessive balance sheet debt is not solely a characteristic of small business.

I have not limited the benefit of the tax credit to "new issues" of equity securities because the vitality and strength of the secondary markets are equally as important to capital formation and to increased investments in new equity issues.

There is no doubt that original distribution of equity securities is enhanced by the confidence of investors in the liquidity provided in the secondary markets. The availability of the tax credit for purchases of equity securities in the secondary markets is also fully consistent with policies to promote expansion of corporate ownership. My legislation carefully limits the availability of the tax credit to incremental increases of or net additions to a taxpayer's investment in equity securities of domestic corporations. The 1 year holding for qualified securities necessary to be entitled to the credit also prevents premature liquidations of a taxpayer's equity security portfolio after filing for the incentive credit.

Mr. President, it takes no great intellectual nor even an economist to understand the objectives of my legislation. The first objective is to reduce corporate reliance on excessive debt in order to stimulate innovative production and expansion of America's industrial base. Second, my bill proposes to increase individual savings which, in recent years, has been at an all time low. Finally, my bill promotes "popular capitalism" by stimulating an increase in the ownership base of industrial America.

Mr. President, it is most important to recognize that the reindustrialization of America will never occur if we wait for the OPEC petrodollar or the eurodollar to begin the process. Reindustrialization of America will begin only with American dollars and with American investment. Self-help is good for the individual soul and will be good for American productivity. It is time, Mr. President, that Americans take stock in themselves and begin to save and invest in their own futures. By rewarding ordinary individual American taxpayers who demonstrate faith and confidence in the economic foundation of America, we establish the necessary preconditions for renewing American productivity and enterprise.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CORPORATE AMERICA WALLOWING IN DEBT

(By James L. Rowe, Jr.)

NEW YORK—American corporations are sinking deeper into debt.

As their debt loads mount, which has been happening to a frightening degree in the last decade, companies will find it more difficult to expand and modernize their facilities.

The botom line is jobs, the political watchword of the 1980 presidential campaign.

The growing inefficiency of much of American industry has been recognized by economists and politicians alike. That's what the so-called reindustrialization debate is all about.

Without a vastly more efficient and expanded industrial plant, the United States will find it nearly impossible to provide the high-paying manufacturing jobs that were the bulwark of the U.S. economy for most of the century and that promise economic prosperity for many lower-income citizens.

For the deeper a company gets into debt—and the shorter-term that debt becomes—the harder it is to expand during periods of good times because it is that much harder to maintain the debt load during bad times.

Henry Kaufman, the chief economist for Salomon Brothers whose prescient forecasts of interest rates have made him Wall Street's latest guru, said that corporations face an "unprecedented" and perhaps unachievable challenge: "restoring balance sheets to some reasonable level of normality."

In a recent study, Kaufman and his colleagues James McKeon and David Foster noted that at the start of the 1960s equity—stock and retained earnings—accounted for two-thirds of the capitalization of manufacturers. Today equity accounts for only half.

"The extraordinary volume of debt financing has overwhelmed additions to equity. The growth of equity was behind debt in the second half of the '60s. The next decade, however, witnesed an alarming widening of this gap. For nonfinancial corporations, market debt alone grew more than $620 billion, while total liabilities (including bank loans) rose $900 billion, more than doube the $420 billion . . . additions to equity."

Furthermore, companies have been finding it more difficult to sell long-term debt—bonds—and have been relying upon their banks, the commercial paper market and other sources of short-term money.

But the more a company relies upon debt, the more exposed it becomes to adversity and the shorter the term of that debt, the greater the exposure.

When times get tough, a company can omit a dividend or dip into its retained earnings. The company must keep up payments on its long-term bonds, but it has to continuously refinance its short-term borrowings.

As a company gets deeper in debt, an ever-growing share of its income must go to pay off its creditors.

In 1973, manufacturing companies as a whole had earnings about 6.1 times greater than their interest payments. In 1979—which in terms of the usual business cycle is equivalent to 1973 in being at the end of an expansion—that ratio had fallen to 4.4 times.

But things are worse than they seem, Kaufman contends. The manufacturing sector of the economy includes the oil industry, one "whose capitalization has for long been higher in equity than most others and which has not suffered the same degree of deterioration that most have. . . . When this industry is excluded from the calculations, the balance sheets of nonpetroleum manufacturers are found to be even more seriously deficient in equity capitalization."

As business cycles run their normal course, companies usually fluctuate from being what economists call "liquid"—that is cash-rich and clear of most short-term debts—to being heavily in debt.

Companies are deepest in debt at the end of an economic boom. During the end of a recession and the beginning of a recovery, companies sell stocks and bonds in order to pay off the short-term debt.

Corporations have been issuing bonds at a record pace since May. But with interest rates coursing up again and bonds becoming more difficult to sell, companies have been moving back into the short-term market.

"But even if that proves short-lived, it would take well over a year of monthly public bond calendars exceeding $6 billion each, heavy private placement volume and unprecedented repayments of short-term debt merely to restore" corporate balance sheets to their best levels of the 1975–79 boom, Kaufman said. But the 1975–79 period was weak compared with the 1960s and 1950s, when the nation's industrial establishment was in good shape.

But because investors, shaken by the bond market collapses of recent years, are skeptical about investing their money in long-term securities and because the federal government is borrowing in the long-term market more than it did in 1975 and 1976, such a performance by corporations is unlikely, Kaufman said.

There are no magic solutions to the problem, although an end to inflation—which would give investors the confidence to invest in long-term debts and stocks again—is the usual nostrum. An end to inflation, however, does not seem in the cards.

In the meantime, while politicians talk about reindustrializing America, building $12 billion jobs programs or granting tax incentives to businesses to invest, they must come to grips with the corporate debt overload.

A faster tax writeoff will be an inducement to step up investment only as long as a company does not substantially boost its debt exposure to take advantage of that tax incentive.●

By Mr. INOUYE:

S. 3073. A bill to amend chapter 55 of title 10, United States Code, to improve vision care services under CHAMPUS; to the Committee on Armed Services.

● Mr. INOUYE. Mr. President, today I am introducing legislation that would provide for a comprehensive and preventive vision care program for members of the Uniformed Services and their dependents, by removing the present legislative restrictions under the civilian health and medical program of the Uniformed Services (CHAMPUS).

Presently, there are approximately 9.1 million Department of Defense beneficiaries worldwide, of which 8.6 million are eligible for CHAMPUS benefits.

Under my proposal, eye examinations, including, but not limited to, preventive and diagnostic services, when performed by a doctor of optometry, osteopathy or medicine, will be authorized for reimbursement. In cases that are deemed appropriate, lenses and eyeglass frames will also be provided.

During our recent deliberations on the fiscal year 1980 Department of Defense appropriations bill, we decided to remove our prior Appropriations Committee restriction on optometry services. We did this primarily in recognition that all the available evidence now indicated that eye/vision disorders comprise the second most chronic health condition in our Nation. Given the pressing need to retain highly trained personnel in the Armed Services, it was our considered judgment that "skimping" on eye/vision care as a means of controlling costs, simply no longer made any sense. Unfortunately, however, it now becomes evident to me that it is also necessary to modify the basic CHAMPUS authorization act to accomplish our purpose.

Across our Nation, the major health provider of these vision services has been the doctor of optometry, commonly called the optometrist. He or she presently provides approximately two-thirds of the vision care services in the United States, and thereby functions as the basic entry point to the entire health care system for those in need of vision care.

The optometrist is exceptionally well prepared for this very important role. I understand that approximately 85 percent of the students entering optometry school have completed 3 or more years of college, usually majoring in the biological or physical sciences. The optometry professional curriculum itself consists of a total of 4 additional years, leading to the degree of Doctor of Optometry. Seven schools also have graduate programs which grant a Master of Science degree and six have programs leading to a Ph. D. in physiological optics. There are 14 fully operational schools and colleges of optometry nationwide that is Ohio State and the University of California. The total enrollment now approaches 5,000 with an aggregate graduating class of approximately 1,000 doctors of optometry each year. In all, there are currently approximately 20,000 active optometrists in the United States.

During our Senate Appropriations Committee deliberations I was particularly distressed to learn that at this time it has been estimated that only 50 percent of the United States' population who require some form of vision care services actually receive them. The American Optometric Association estimates that this figure can be broken down demographically as follows:

1. 25 percent of Americans under age 20.
2. 40 percent between ages 20–30.
3. 50 percent between ages 30–40.
4. 70 percent of those aged 40–50.
5. 85 percent of those aged 50–60.
6. 95 percent of those over 60.

Furthermore, apparently 46 percent of the U.S. population aged 18 to 44 wear corrective lenses, and over 51 percent of our total population wear corrective lenses. Undoubtedly, the proportions are not significantly different for our active duty personnel or their families. Of special interest, 90 percent of the vision care services required are considered to be within the scope of the Optometrists Practicing Act.

In my judgment, it is now time for the Congress to commit ourselves to providing high quality health care to all our active duty personnel and their dependents. Without question, this must include ready access to eye/vision care, and especially the preventive examinations. For too long now, we have only talked about the importance of preventive services; the time has now come to provide them.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3073

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 55 of title 10, United States Code, is amended as follows:

(1) Section 1079 is amended—

(A) By striking out ", well-baby care, and eye examinations may not be provided," where it appears in subsection (a)(3) and inserting in lieu thereof "and well-baby care may not be provided;";

(B) by striking out the period at the end of subsection (a)(5) and inserting a semicolon in lieu thereof;

(C) by inserting the following new clause at the end of subsection (a):

"(6) eye examinations and vision care services (including but not limited to preventive, diagnositc and treatment services) may be provided when performed by a doctor of optometry, osteopathy or medicine"

SEC. 2. This Act becomes effective October 1, 1980.●

By Mr. STONE:

S. 3075. A bill to prevent unnecessary spending by government offices at or near the end of a fiscal year; to the Committee on Governmental Affairs.

FEDERAL GOVERNMENT FISCAL RESPONSIBILITY ACT OF 1980

Mr. STONE. Mr. President, I have been working for a number of years to bring Federal spending under control. I have supported across-the-board budget cuts to reduce total Government spending without gutting any particular program. I have also cointroduced a constitutional amendment tying growth of the Federal budget to the growth of national production in the preceding year. One cause of excessive Federal Government spending is a Government custom know as "end-of-fiscal-year dumping." This is the use it or lose it philosophy that results in the practice of Federal offices spending their budget allotment prior to the end of the fiscal year, whether the expenditures are needed or not, to avoid having any unspent funds. It is a practice which some studies have shown is fairly widespread throughout the Government.

I understand why the agencies do it: They are fearful that if they have a surplus 1 year, their reward for prudent management will be a budget cutback the next year, when they may legitimately need additional funds. And because the response to a surplus is often a budget reduction, it has become the mark of a smart administrator to make sure a department, division, or agency spends every penny of its allotted budget. This wrong-headed attitude costs the taxpayers a great deal of money.

Last October I wrote to the Comptroller General requesting that the General Accounting Office study the current spending practices of the agencies to gage the magnitude of the problem. Several Congressmen have also written to the Comptroller on this topic. On July 28, the GAO released its major study of this area, following up some earlier, preliminary reports. The July report verifies what has been suspected and what the earlier reports indicated—there is a significant amount of abnormally high expenditures in the fourth quarter at a number of agencies and offices. A majority of the 16 agencies covered in the July report had year-end "surges" of spending. The September surge (which is defined as the amount of funds obligated during September which are in excess of the average amount of funds obligated during the prior 11 months) is particularly dramatic at certain agencies.

The Department of Housing and Urban Development had a September surge in fiscal year 1978 of 956 percent—obligating over $20 billion in September as opposed to the prior 11 month average of under $2 billion. Their September 1979 surge was down, but still amounted to 317 percent. The Environmental Protection Agency's September surges were 436 percent for 1978 and 526 percent for 1979 (representing obligations of 33 percent of their yearly total and 36 percent, respectively). And the State Department had September surges of 133 percent and 510 percent for 1978 and 1979.

Specific examples which the GAO has uncovered, give an idea of the scope of the problem:

First. In April of 1977, the Commissioner of the Public Buildings Service of the General Services Administration, notified the regions that there were large unobligated balances in three accounts and urged them to obligate them before the end of the fiscal year. The regions complied and in one region obligations

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from one account increased in September by 111 percent over the monthly average of the rest of the fiscal year;

Second. In 1975, the Maritime Administration awarded 42 percent of its contracts in the last 2 days of the fiscal year, and 73 percent in the last month of the fiscal year;

Third. Since 1976, HUD has invalidly obligated a significant portion of its appropriations for assisted housing at the end of each fiscal year. In fiscal year 1979 HUD deobligated $7 billion of the invalid obligations and reobligated the money. HUD expects to deobligate and reobligate several billion in this fiscal year;

Fourth. In five of seven contracts awarded under the Indian Self-Determination and Education Assistance Act of 1975 that GAO reviewed, the Bureau of Indian Affairs added funds near the end of a fiscal year although no increases were requested and there was no indication of how the extra money would be spent;

Fifth. The Judiciary, Department of Energy, and Environmental Protection Agency, made more than 60 percent of their last quarter obligations in September for both fiscal years 1977 and 1978;

Sixth. Seventeen contracts were signed on the last day of fiscal year 1979 by the Acting Commissioner of Education over the objections of the Director of the Grant and Procurement Division. A thorough review of seven of these contracts found four as questionable (totaling more than $1.3 million).

Seventh. An aide to U.S. Commissioner Ernest Boyer cautioned Boyer that the end of the 1979 fiscal year was coming and that unless money was spent, surplus funds would lapse; suggestions for spending the money included remodeling the offices of the Commissioner and the Executive Deputy Commissioner.

In its analysis of what causes Government officials to frantically spend funds at the end of a fiscal year—even if the funds are not tied to a specific year and would be available beyond the last quarter of a fiscal year—the GAO listed two reasons which are really part of the same philosophy: First, the belief that all funds must be spent before the end of the fiscal year to avoid agency reprograming or congressional inquiries about unspent appropriations; and second, the perception that a manager is evaluated, in part, on spending ability. These two reasons go hand-in-hand. The other reasons cited by agency officials for larger year-end spending sprees are lack of effective advance procurement planning systems and appropriations and budget processing delays that push decisions about grant awards and purchasing toward the end of the fiscal year.

Obviously there are going to be many reasons, and some quite legitimate, for a particular office spending a disproportionate amount of its appropriations at the end of a fiscal year. But it is clear from the many examples which the GAO uncovered of questionable grants and other obligations being made in the final days of the fiscal year that there are large sums of money—perhaps billions of dollars—being spent every year for unnecessary goods or being given to undeserving grant applicants.

Besides the large sums being wasted through this practice, the GAO report hints at the large amount of overtime that is being paid by the agencies at the end of the fiscal year to the employees who are processing the grants and purchase orders by which the unspent appropriations are being improperly diverted. Additionally, these year-end surges result in the regular procurement process being short-circuited; regulations and laws being violated; goods and services being contracted for at higher prices than would be the case in less hurried negotiations; inadequate justification for contracts or awards; and lower employee morale due to the heavy workload at the end of the year.

Presidents as far back as Johnson have issued directives to try to halt end-of-fiscal-year dumping. In 1979, the Director of the Office of Management and Budget issued detailed instructions to all executive department heads to control this practice, emphasizing that preventing unnecessary Federal Government buying is a key to controlling inflation; but still it continues.

Several Members of Congress have introduced legislation aimed at halting these practices by imposing a percentage limit on the amount of obligations an agency may enter into in the last quarter of the fiscal year. While I think this approach has some merit, I do not think it gets at the heart of the problem. Bureaucrats will be clever enough to adjust their "dumping" schedule to an earlier quarter, if necessary, to get around a fourth-quarter cap and a set limit does not take into account that for individual agencies or offices there may be a very legitimate reason for spending more than 20 percent (or whatever the figure) of their budget. Additionally, the ceiling approach provides no real incentives for offices to abstain from spending in any quarter nor does it instill a regard for proper procedures.

As a July 19, 1979, GAO letter report to Representative IKE SKELTON notes with regard to the 20-percent fourth-quarter cap in the Defense and Foreign Assistance Appropriations bills, such limits "do not guarantee that (the obligations which are incurred in the fourth quarter) * * * are for goods and services needed at that time or that proper procurement practices are followed." The July 1980 GAO report backs such a limitation only as a temporary way to get a handle on the problem.

After reviewing the GAO reports, I have isolated several aspects of the year-end spending surge which I think need to be addressed by the Congress:

First, the lack of incentive on the part of Government offices to effect savings in their areas;

Second, the lack of any systematic review of "dumping" practices and of guidelines by which to measure agency spending;

Third, the fear that if a surplus is realized one year, it will be seen not as effective management but rather as poor budget planning, reflecting an inflated request for money for that fiscal year; and

Fourth, the lack of any certain penalty against an office found "dumping" funds.

Today I am introducing legislation which seeks to stop the end-of-fiscal-year dumping practice, by addressing the underlying reasons for the problem. Entitled the "Federal Government Fiscal Responsibility Act of 1980," the bill directs the Comptroller General, after consultation with the appropriate congressional committees, to issue regulations which define practices that will constitute "dumping." It places the responsibility for instituting controls to prevent unnecessary year-end spending on the head of each Government office covered by the bill. Unlike some legislation which focuses only on the agencies, my bill would also cover congressional offices, support agencies of the Congress, each office under the control of the President, and the Judiciary.

Each head of a Government office would be empowered to provide awards or other forms of public recognition to employees who contribute to the elimination of unnecessary spending. This will, hopefully, set a positive, competitive tone in the offices to see who can achieve savings as opposed to the current contest to see who can find the most creative ways to unload surplus tax dollars. Additionally, by resolution, the Congress will recognize the public servants who, through efficient and prudent management, accomplish their duties for less than the original estimate.

The policing of this new cost-cutting effort will be done through systematic random audits of the GAO. Obviously, it is too big a task to constantly monitor every office, but the knowledge that each year certain offices will be selected for a thorough audit of their spending practices, should serve as an effective check on the "dumping" problem.

Finally, the bill addresses the congressional response that is necessary to encourage offices to make savings. In some ways this is the most difficult part of the legislation to draft because, in order for it to work, there must be a conscious commitment on the part of every Member of Congress to revise the way he/she thinks about end-of-year surpluses. The bill instructs the authorizing and appropriating committees not to reduce a Government office's new budget authority on the basis that the office achieved a savings in the preceding year. It does recognize that budget reductions may be justified for other reasons but these would have to be spelled out in the committee report. The bill also allows a surplus in 1 year to be carried over to the next fiscal year's budget authority for that office. The bill is drafted to provide a floor on new budget authority of the amount provided to the office in the year of the surplus, plus the surplus amount itself. Any decrease in this amount—plus an inflation adjustment—has to be explained and cannot be for the purpose of penalizing the office for incurring a surplus. This provision is to encourage offices to accumulate surpluses and not

to fear budget reductions because of them.

In the case of the Appropriations Committee, an additional reason for being able to reduce an office's new budget authority below the floor would be if such a floor would result in the appropriations bill exceeding the level of total new budget authority or total budget outlays set forth in the most recently passed concurrent resolution on the budget.

Most office budgets go up each year, so the savings will usually go to absorb some or all of the increase that would otherwise come out of new revenue sources. Only in the case where no (or a very low) budgetary increase was requested for an office and no good reason for reducing the office's budget existed, would the addition of the savings to the preceding year's budget authority result in an office getting more funds than it would otherwise require in a particular year. Such instances should be few, and given the constant monitoring of spending practices that the bill envisions, it would continue to be the office's responsibility to spend only such sums as are necessary and justified in any fiscal year.

But even more important than this reward for good management is the penalty to be imposed for dumping funds. In the event a Government office is found to have engaged in unnecessary spending during a fiscal year, the committees are directed to authorize new budget authority which cannot exceed the amount of new budget authority for the preceding year, reduced by the amount of the unnecessary spending. Thus an office found by the GAO to be wasting tax dollars in this fashion will find any increase in their budget denied to them and will additionally be penalized the amount of any funds they wasted the preceding year.

To summarize, the bill seeks to insure that offices which have savings will get funded at least the preceding year's level plus the amount of the savings (barring the need to reduce the amount for such reasons as transfer of functions to another agency; elimination of a program, et cetera). It also guarantees that offices that have excess funds and try to conceal it by spending the money will see their budget cut back correspondingly.

This bill incorporates the major recommendations in the GAO report. It places the responsibility for proper spending practices squarely on the head of each Government office. In striving to bring this problem under control the office heads will want to consider the GAO advice that advance procurement planning with a system to monitor such planning, be instituted. They will also want to review their documentation procedures. The major thrust of the bill is aimed at overturning the presumption that managers will be judged on their spending abilities and that all available funds must be spent by the end of a fiscal year. I think the other GAO recommendations can be implemented within the framework of this legislation.

Mr. President, "dumping" is a serious problem and reflects an attitude within the Federal bureaucracy that may cost taxpayers billions of dollars each year. This legislation would go a long way toward eliminating the practice.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3075

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Government Fiscal Responsibility Act of 1980."

STATEMENT OF FINDINGS AND POLICY

SEC. 2. (a) The Congress finds and declares that—

(1) a significant amount of spending by government offices at or near the end of the fiscal year is unnecessary and wasteful;

(2) the congressional and administrative response to a government office which has a surplus in its budget at the end of the fiscal year has been to decrease the budget of such office for the succeeding fiscal year;

(3) such responses, and a concern about such responses, has created an atmosphere which encourages a government office to spend all the funds appropriated to such office for each fiscal year; and

(4) there is no incentive for a government office to refrain from spending all the funds appropriated to such office for any fiscal year and no systematic process to review whether an office is unnecessarily spending funds at or near the end of a fiscal year.

(b) It is the policy of the United States to—

(1) eliminate unnecessary spending by government offices at or near the end of each fiscal year; and

(2) recognize and reward any such office which carries out its functions and programs through prudent and efficient management without engaging in unnecessary spending.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "government office" means—

(A) every agency within the meaning of clauses (A) through (G) of section 5721 (1) of title 5, United States Code;

(B) each office and committee of the Senate and the House of Representatives;

(C) the office of the Architect of the Capitol;

(D) the General Accounting Office;

(E) the Congressional Budget Office;

(F) the Cost Accounting Standards Board;

(G) the Office of Technology Assessment; and

(H) each office or council within the Executive Office of the President which submits a request for appropriations to the President under section 215 of the Budget and Accounting Act, 1921;

(2) the term "head of each government office" means—

(A) in the case of an Executive agency, the individual designated by statute, Executive Order, or regulation as the head of such agency;

(B) (i) in the case of the Department of the Army, the Secretary of the Army;

(ii) in the case of the Department of the Navy, the Secretary of the Navy; and

(iii) in the case of the Department of the Air Force, the Secretary of the Air Force;

(C) in the case of a court of the United States, the Chief Justice or Chief Judge of that court;

(D) in the case of the Administrative Office of the United States Courts, the Director of such Office;

(E) in the case of the Library of Congress, the Librarian of Congress;

(F) in the case of the United States Botanic Garden, the Director of such Garden;

(G) in the case of the Government Printing Office, the Public Printer;

(H) (i) in the case of a committee of the Senate or the House of Representatives, or a joint committee of the two Houses, the chairman of such committee;

(ii) in the case of the Office of any Member of Congress, the Member;

(iii) in the case of the Office of the Vice President, the Vice President;

(iv) in the case of any other office in the Senate, the individual designated by the President pro tempore of the Senate; and

(v) in the case of any other office in the House of Representatives, the individual designated by the Speaker of the House of Representatives;

(I) in the case of the office of the Architect of the Capitol, the Architect of the Capitol;

(J) in the case of the General Accounting Office, the Comptroller General of the United States;

(K) in the case of the Congressional Budget Office, the Director of such Office;

(L) in the case of the Cost Accounting Standards Board, the Chairman of such Board;

(M) in the case of the Office of Technology Assessment, the Director of such Office; and

(N) in the case of each office or council referred to in paragraph (1) (H), the individual designated by statute, Executive Order, or regulation as the head of such office or council;

(3) the term "unnecessary spending" means any obligation or expenditure of budget authority by a government office at or near the end of a fiscal year which meets the regulations established by the Comptroller General of the United States under section 4;

(4) the term "savings" means any amount of budget authority provided to carry out any program or function of a government office in any fiscal year which is not obligated or expended by such office in such fiscal year; and

(5) the term "budget authority" has the same meaning as in section 3(a)(2) of the Congressional Budget and Impoundment Control Act of 1974.

REGULATIONS FOR UNNECESSARY SPENDING

SEC. 4. Within 120 days after the date of enactment of this Act and after consultation with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives, the Comptroller General of the United States shall issue regulation describing those actions which constitute the unnecessary obligation or expenditure of budget authority by a government office at or near the end of a fiscal year. Regulations issued by the Comptroller General of the United States under this section shall be binding on all government offices.

ENCOURAGING THE ELIMINATION OF UNNECESSARY SPENDING

SEC. 5. (a) (1) The head of each government office shall institute such controls and take such other action as may be necessary to eliminate unnecessary spending by the office. Such action may include the provision of awards or other public recognition to officers and employees who contribute to the elimination of unnecessary spending.

(2) The head of each government office which is subject to chapter 45 of title 5, United States Code, shall make awards under paragraph (1) in accordance with such chapter. The head of any government office which is not subject to such chapter shall make awards under paragraph (1) in such amounts and in such manner as the head of the office determines appropriate.

(b) As soon as possible after the end of each fiscal year, the head of each government office shall prepare and transmit to the Congress a report describing the savings of the office during the preceding fiscal year.

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The report shall list the divisions of the office which were responsible for such savings and the programs of the office in which such savings were made.

(c) Notwithstanding any other provision of law, any savings of a government office during a fiscal year shall remain available for obligation or expenditure during the succeeding fiscal year for the same purpose for which such funds were appropriated.

AUDITS OF GOVERNMENT OFFICES

SEC. 6. By April 1 of each fiscal year, the Comptroller General of the United States shall perform random selective audits of at least 15 government offices to determine whether such offices have engaged in substantial unnecessary spending during the preceding fiscal year. In performing such audits, the Comptroller General may examine such classes of obligations and expenditures made by a government office or such classes of functions and programs carried out by a government office as the Comptroller General determines appropriate.

CONGRESSIONAL ACTION

SEC. 7. (a) At the beginning of each fiscal year, the Congress shall recognize by appropriate resolution each government office which has achieved savings during a fiscal year.

(b) In reporting any bill or resolution to authorize the enactment of new budget authority for a fiscal year for a program or function carried out by a government office, each committee of the Senate and the House of Representatives having legislative jurisdiction over such program or function (except the Committees on Appropriations) shall—

(1) in the case of any program or function with respect to which such government office achieved savings in the preceding fiscal year, authorize the enactment of new budget authority for such fiscal year for such program or function in an amount which is not less than the amount of the new budget authority authorized for the preceding fiscal year for such program or function plus the amount of any savings achieved by such office with respect to such program or function in the preceding fiscal year, except that such committee may authorize the enactment of such new budget authority in an amount which is less than such amount if such committee includes in the report accompanying such bill or resolution (A) a statement indicating that the committee is not authorizing the enactment of such new budget authority in such lesser amount solely on the basis that the office achieved such savings and (B) a statement of the reasons for such lesser authorization; and

(2) in the case of any program or function with respect to which such government office engaged in unnecessary spending during the preceding fiscal year (as determined by the Comptroller General of the United States pursuant to section 6)—

(A) authorize the enactment of new budget authority for such fiscal year for such program or function in an amount which does not exceed an amount equal to the total amount of new budget authority authorized to be enacted for the preceding fiscal year for such program or function reduced by the amount of any such unnecessary spending; and

(B) consider additional reductions of such new budget authority to prevent additional unnecessary spending by such office.

(c) In reporting any bill or resolution to provide new budget authority for a fiscal year for a program or function carried out by a government office, the Committees on Appropriations of the Senate and the House of Representatives shall—

(1) in the case of any program or function with respect to which such government office achieved savings during the preceding fiscal year, provide new budget authority for such fiscal year for such program or function in an amount which is not less than the sum of the amount of new budget authority provided for the preceding fiscal year for such program or function plus the amount of any savings achieved by such office with respect to such program or function in the preceding year, except that such committee may provide such new budget authority in an amount which is less than such sum if such committee includes in the report accompanying the bill or resolution—

(A) a statement indicating that the committee (i) is not providing such new budget authority in such lesser amount solely on the basis that the office achieved such savings or (ii) is providing such new budget authority in such lesser amount in order that the enactment of the bill or resolution as reported would not violate section 311(a) of the Congressional Budget Act of 1974; and

(B) a statement of the reasons for the provision of such new budget authority in such lesser amount; and

(2) in the case of any program or function with respect to which such government office engaged in unnecessary spending in the preceding fiscal year (as determined by the Comptroller General of the United States pursuant to section 6)—

(A) provide budget authority in an amount which does not exceed the total amount of new budget authority provided in the preceding fiscal year for such program or function reduced by the amount of any such unnecessary spending; and

(B) consider additional reductions of new budget authority to prevent additional unnecessary spending by such office.

(d) Effective beginning with the second fiscal year after the fiscal year in which this Act is enacted each amount of new budget authority referred to in paragraphs (1) and (2) of subsection (c) shall be adjusted to reflect changes during the preceding fiscal year in the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(e) The provisions of subsections (a), (b), (c), and (d) and clauses (i) through (v) of section (3)(2)(H) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

By Mr. MOYNIHAN:

S.J. Res. 197. A joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day"; to the Committee on the Judiciary.

CONSTANTINO BRUMIDI DAY

● Mr. MOYNIHAN. Mr. President, the joint resolution I am introducing today will recognize a man whose work enriches our workplace, and delights the millions of tourists who visit the Capitol each year. I speak of Constantino Brumidi, the distinguished artist, who spent the years 1855 through 1880 painting the fresco and frieze of the rotunda dome, and many of the frescos that decorate the Capitol, including those on the corridors of the Senate wing, the formal offices of the President and Vice President, the Senate reception room, and the present House and Senate Appropriation Committee rooms. This year marks the 175th anniversary of Brumidi's birth. It seems fitting that we honor this man affectionally known as the "Michaelangelo of the Capitol of the United States" on September 18, the day that marks his arrival, 128 years ago, on these shores from Italy.

Brumidi once said:

I no longer wish fame and fortune. My only ambition and my only long lasting prayer is that I may live long enough to make the Capitol beautiful, in the only country on Earth where liberty exists.

Brumidi did not live long enough to complete his work, but he surely made the Capitol beautiful.

New York's Mayor Koch has already approved a proclamation for "Brumidi Day," and a special mail cancellation with the postmark "Constantino Brumidi—U.S. Capitol Artist—175th Anniversary," will be used that day. We in Congress, surrounded as we are by the artwork that so beautifully expresses Brumidi's devotion to his adopted country, should take this opportunity to acknowledge our appreciation of this great artist and patriot, and the contribution he made to our Nation's heritage.●

By Mr. HEINZ:

S.J. Res. 198. A joint resolution to authorize and request the President to designate the week of September 7, 1980, to September 14, 1980, as "National Life Flight Week"; to the Committee on the Judiciary.

LIFE FLIGHT WEEK

● Mr. HEINZ. Mr. President, today it gives me great pleasure to introduce a joint resolution requesting the President to designate the week of September 8 to 15, 1980 as "Life Flight Week." This resolution, which will be offered in the House by Representative WILLIAM MOORHEAD commemorates the achievements of American technology in the field of health care, which are manifested in Allegheny General Hospital's "life flight" service.

"Life flight" was the first emergency medical helicopter transportation service in the Northeastern United States. The helicopters cover a 4-State area, encompassing a radius of 130 miles around Pittsburgh, Pa., linking 98 urban and community hospitals with specialty care facilities in Pittsburgh. Over 700 persons have been assisted during life flight's 2-year operation.

Since life flight will celebrate its second anniversary during the week of September 8 through 15, 1980, it is most appropriate to recognize both the worthy achievements and the admirable promise of future cooperation between medical and transport technologies which are embodied in life flight.

Mr. President, I ask unanimous consent that the text of this joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 198

Whereas, Life Flight has provided rapid transportation to medical facilities for critically injured and ill persons via helicopter;

Whereas, 700 patients from four different States have been served by Life Flight in the two years of its existence;

Whereas, Life Flight connects the staffs and facilities of 98 urban and community hospitals to foster vital cooperation among medical providers;

Whereas, Life Flight provides a model for other communities in developing integrated medical service across a wide interstate area;

Whereas, other communities should be encouraged to adopt services like Life Flight; and

Whereas, September 8, 1980, marks the third anniversary of Life Flight: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate the week of September 7, 1980, to September 14, 1980, as "National Life Flight Week" and to call upon Federal, State, and local government agencies and the people of the United States to observe such week with appropriate programs, ceremonies and activities.●

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. SASSER, the Senator from Oklahoma (Mr. BOREN), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 2, a bill to require authorizations of new budget authority for Government programs at least every 10 years, to provide for review of Government programs every 10 years, and for other purposes.

S. 336

At the request of Mr. MATHIAS, the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 336, a bill to amend the Internal Revenue Code of 1954.

S. 2216

At the request of Mr. CHAFEE, the Senator from Tennessee (Mr. BAKER) was added as a cosponsor of S. 2216, a bill to improve the intelligence system of the United States; and for other purposes.

S. 2490

At the request of Mr. WILLIAMS, the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from New York (Mr. JAVITS), the Senator from Massachusetts (Mr. KENNEDY), and his name were added as cosponsors of S. 2490, a bill to provide certain requirements for infant formula, and for other purposes.

S. 2520

At the request of Mr. DURENBURGER, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 2520, a bill to amend the Internal Revenue Code of 1954 to increase the amount of the unified credit allowed against estate tax and gift tax.

S. 2753

At the request of Mr. BAYH, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of S. 2753, a bill to prohibit the importation into the United States of motor vehicles, and of parts of motor vehicles, that are products of the Union of Soviet Socialist Republics.

S. 2890

At the request of Mr. LEVIN, the Senator from Georgia (Mr. TALMADGE), the Senator from Missouri (Mr. EAGLETON), the Senator from Wisconsin (Mr. NELSON), and the Senator from West Virginia (Mr. ROBERT C. BYRD) were added as cosponsors of S. 2890, a bill for the relief of Maria and Timofei Chmykhalov, and for Lilia, Peter, Liubov, Lidia and Augustina Vashchenko.

S. 2926

At the request of Mr. TSONGAS, the Senator from Nevada (Mr. LAXALT), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Arkansas (Mr. BUMPERS), the Senator from California (Mr. HAYAKAWA), the Senator from Illinois (Mr. STEVENSON), the Senator from New York (Mr. MOYNIHAN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Kansas (Mr. DOLE), and the Senator from Kentucky (Mr. HUDDLESTON) were added as cosponsors of S. 2926, a bill to provide for an accelerated research, development, and demonstration program to achieve confirmation of the engineering feasibility of magnetic confinement fusion, and for other purposes.

S. 2967

At the request of Mr. NELSON, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 2967, a bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes.

S. 2968

At the request of Mr. SASSER, the Senator from Missouri (Mr. DANFORTH) was added as a cosponsor of S. 2968, a bill to amend section 2809 of title 42, United States Code, to provide for the establishment of heat crisis programs during periods of heat emergencies.

S. 2979

At the request of Mr. METZENBAUM, the Senator from Iowa (Mr. CULVER), and the Senator from Kentucky (Mr. FORD) were added as cosponsors of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

S. 3007

At the request of Mr. HOLLINGS, the Senator from Kansas (Mr. DOLE), and the Senator from Oklahoma (Mr. BELLMON) were added as cosponsors of S. 3007, a bill entitled the "Methane Transportation Research, Development, and Demonstration Act 1980."

SENATE JOINT RESOLUTION 176

At the request of Mr. INOUYE, the Senator from California (Mr. CRANSTON), the Senator from California (Mr. HAYAKAWA), the Senator from Alabama (Mr. STEWART), the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Wisconsin (Mr. NELSON) were added as cosponsors of Senate Joint Resolution 176, a joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week," and for other purposes.

AMENDMENT NO. 1690

At the request of Mr. MATHIAS, the Senator from Florida (Mr. STONE) was added as a cosponsor of amendment No. 1690 intended to be proposed to S. 1722, a bill to codify, revise, and reform title 18 of the United States Code; and for other purposes.

SENATE CONCURRENT RESOLUTION 116—SUBMISSION OF A CONCURRENT RESOLUTION ON THE BALTIC STATES QUESTION

Mr. THURMOND submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 116

Whereas the United States, since its inception has been committed to the principle of self-determination;

Whereas this essential moral principle is also affirmed in the Charter of the United Nations;

Whereas the Union of Soviet Socialist Republics is, according to its constitution, a voluntary federation of autonomous republics;

Whereas the three Baltic Republics (the Republic of Lithuania, the Republic of Latvia, and the Republic of Estonia) did not become member republics of the Union of Soviet Socialist Republics voluntarily but rather were occupied militarily by the Russian Armed Forces in the early days of World War II and subsequently incorporated by force into the Union of Soviet Socialist Republics and have since been governed by governments approved by, and subservient to, the government of the Union of Soviet Socialist Republics;

Whereas the ethnic makeup of the Baltic peoples (the Lithuanians, Latvians, and Estonians) is distinctly foreign in language, culture, common traditions, and religion from that of the Russian people;

Whereas, by deportation and dispersion of the native populations of the Baltic States to Siberia and by a massive colonization effort in which Russian colonists replace the displaced native peoples, the Soviet Union threatens complete elimination of the Baltic peoples as a culturally, geographically, and politically distinct and ethnically homogeneous population

Whereas, despite such treatment, the spirit of the citizens of the Baltic States is not broken and the desire of the citizens of the Baltic States for national independence remains unabated;

Whereas the United States has consistently refused to recognize the unlawful Soviet occupation of the Baltic States and has continued to maintain diplomatic relations with representatives of the independent Republics of Lithuania, Latvia, and Estonia; and

Whereas the United Nations and the United States delegation to the United Nations have consistently upheld the right of self-determination of the people of those countries in Asia and Africa that are, or have been, under foreign imperialist rule: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the President and the Secretary of State should take all necessary steps to bring the Baltic States question before the United Nations and to urge that the United Nations request the Soviet Union—

(A) to withdraw all Russian and other nonnative troops, agents, colonists, and controls from the Republics of Lithuania, Latvia, and Estonia, and

(B) To return all Baltic exiles from Siberia and from prisons and labor camps in the Soviet Union;

(2) until the Baltic States become independent, the Secretary of State should, through such channels as the United States Information Agency and other information

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agencies of the United States Government, do his utmost to bring the matter of the Baltic States to the attention of all nations by means of special radio programs and publications;

(3) the United States should not agree to the recognition by any international conference, of the Soviet Union's unlawful annexation of Lithuania, Latvia, and Estonia, and it should remain the policy of the United States not to recognize in any way the annexation of the Baltic States by the Soviet Union.

(4) the President should require that all government map publishers, and should request that all private map publishers show, on all maps of Europe, the Republics of Lithuania, Latvia, and Estonia as independent states, with a footnote explaining that the military occupation and forced incorporation into the Soviet Union of Lithuania, Latvia, and Estonia has never been recognized by the United States;

(5) the right of self-determination should be returned to the peoples of Lithuania, Latvia, and Estonia through free elections conducted under the auspices of the United Nations after Soviet wtihdrawal from the Baltic States; and

(6) the right of self-determination should be made a prime political objective of the United Nations and should be accorded through free elections under the auspices of the United Nations to all peoples now involuntarily subjugated to Soviet communism.

THE BALTIC STATES

Mr. THURMOND. Mr. President, the unprovoked invasion of Afghanistan by the Soviet Union on December 27, 1979 reaffirmed to the world that the Soviet leadership has not abandoned its aggressive, expansionist policies. Their lack of respect for freedom, dignity, and the right of self determination has shown itself time and again since the Communists came to power in Russia and began their drive for world domination. Yet, in spite of the Kremlin's efforts, resistance and unrest among the brave peoples in Nations under Communist domination continues, as evidenced by events now occurring in Afghanistan and Poland.

Mr. President, the Baltic Republics of Lithuania, Latvia, and Estonia have suffered Soviet domination for 40 years. Today, I offer a resolution reaffirming our refusal as a free people to recognize the unlawful incorporation of the Baltic States into the U.S.S.R.

Mr. President, Lithuania, Lativa, and Estonia all lost their freedom to the Soviet Union within a span of a few days and in a manner that has become all too typical. Just before the outbreak of World War II, all three of the Baltic Republics were forced—under threat of invasion—to sign a mutual assistance treaty with the Soviet Union under which Soviet military bases were established in strategic locations. As soon as this was done, the Republics found themselves at the mercy of the occupying Soviet military forces.

The next step in the incorporation of the Baltic Republics into the U.S.S.R. was the infiltration of Soviet spies and agents into the political and social institutions of the Republics. In July 1940, elections were held on demand of the Kremlin in each of the Republics for the purpose of forming a new government "friendly" to the Soviet Union. As expected, the pro-Soviet candidates were declared elected in each of the countries. These new governments wasted no time in requesting incorporation of their respective countries in the U.S.S.R. Lithuania, Latvia, and Estonia thus ceased to exist as independent, sovereign states.

Mr. President, passage of the concurrent resolution I have submitted today will reaffirm to the world our commitment to the principle of true self determination. It will send a clear message to the Kremlin that we do not and will not recognize the subjugation of independent states by the Soviet Union.

SENATE CONCURRENT RESOLUTION 117—SUBMISSION OF A CONCURRENT RESOLUTION CONCERNING THE FATE OF RAOUL WALLENBERG

Mr. MOYNIHAN (for himself, Mr. PELL, Mr. BOSCHWITZ, and Mr. CHURCH) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 117

Whereas in July 1944, at the request of the American War Refugee Board and the Swedish Government, Swedish Diplomat Raoul Wallenberg undertook a mission of mercy to Budapest, Hungary, as a result of which thousands of Hungarian Jews were saved;

Whereas considerable evidence exists that Raoul Wallenberg was abducted by Soviet forces in Hungary in 1945, in violation of international standards of diplomatic immunity;

Whereas Soviet officials originally denied having custody of Wallenberg, but subsequently stated that a prisoner named "Walenberg" died in a Soviet prison in 1947;

Whereas reports from former Soviet prisoners indicate that Wallenberg may not have died in 1947 but may still be alive in a Soviet prison;

Whereas significance of Wallenberg's heroic and humanitarian actions has been obscured by the wall of silence that surrounds his fate;

Whereas the continued internment of Wallenberg, if indeed he is still alive, is in direct contravention of the Final Act of the Helsinki Conference on Security and Cooperation in Europe, which states: "The participating states will respect human rights and fundamental freedoms . . . and fulfill in good faith their obligations under international law . . ."; and

Whereas the purpose of the Madrid Conference on Security and Cooperation in Europe to be held in November, as stated at the Belgrade Conference held in 1978, is to "continue the multilateral process initiated by the CSCE" to review compliance with the Helsinki Final Act; Now, therefore, be it

Resolved by the Senate (House of Representatives concurring), that it is the sense of the Congress that the President should express to the Soviet Government the deep concern of the Congress and the American people for the fate of Raoul Wallenberg, and should urge the Soviet Government to cooperate fully in ascertaining his fate.

SEC. 2. It is further the sense of the Congress that the United States delegation to the review meeting of the Conference on Security and Cooperation in Europe which will be held in Madrid in November 1980 should urge that the case of Raoul Wallenberg be considered at that meeting by the signatory countries to the Final Act of the Helsinki Conference on Security and Cooperation in Europe.

RAOUL WALLENBERG

● Mr. MOYNIHAN. Mr. President, I join today with my colleagues from Minnesota, Idaho, and Rhode Island in submitting a concurrent resolution that seeks to add one small item to the agenda of the Madrid Review Conference on Security and Cooperation in Europe. Our concern is with the fate of Raoul Wallenberg, a hero of the closing days of the Second World War, who succeeded in saving thousands of Jews from Nazi totalitarianism only to fall victim to the "liberating" forces of the Red Army. Despite the immunity he enjoyed as a Swedish diplomat, he was taken prisoner by the Soviet forces, and since that time, despite the inquiries of family, friends, and governments alike, the Soviet Government has been unwilling to provide an account of what befell him in their custody.

The continuing Soviet silence on this question for 35 years has been a breach of international legal norms, and we would be unwise to expect any cooperation now. Yet there is an opportunity before us to raise this issue in an international forum. In acceding to the Final Act of the 1975 Helsinki Conference on Security and Cooperation in Europe, the Soviet Union not only reiterated these traditional obligations of international law and diplomacy, but assumed also the obligation to join with other European nations in reviewing each nation's record of compliance.

The next such review conference will be held this fall in Spain. To my colleagues and me it seems the appropriate occasion to ask once more for Raoul Wallenberg's freedom, if he is still alive, and for an explanation if he is not.

Mr. President, our Nation has experienced directly an assault on our diplomatic representatives, and we have no difficulty in seeing this principle in the case of Raoul Wallenberg. But we ask our Government to press his case at Madrid not on these grounds but as a champion of liberty. Security and cooperation—these are the principles the review conference will uphold, but still more must we remember our deepest attachment of all—to the struggle for freedom that Raoul Wallenberg symbolizes to this day.●

SENATE RESOLUTION 509 — ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution, which was placed on the calendar:

S. RES. 509

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Madeline R. Miller, widow of Donald S. Miller, an employee of the Senate at the time of his death, a sum equal to nine months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 510 — ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. MELCHER, from the Select Committee on Indian Affairs, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 510

Resolved, That S. Res. 357, Ninety-sixth Congress, agreed to March 4 (legislative day, January 3), 1980, is amended as follows:

(1) In section 1, strike out "January 2, 1981,", and insert in lieu thereof "February 28, 1981,";

(2) In section 2, strike out "$525,300", and insert in lieu thereof $630,360"; and

(3) In section 3, strike out "January 2, 1981.", and insert in lieu thereof "February 28, 1981.".

SENATE RESOLUTION 511—ORIGINAL RESOLUTION REPORTED TO WAIVE THE CONGRESSIONAL BUDGET ACT

Mr. JACKSON, from the Committee on Armed Services, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 511

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 3074, a bill to authorize appropriations to the Department of Energy for national security programs for fiscal year 1981 and fiscal year 1982, and for other purposes.

Such waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

For the foregoing reasons, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to S. 3074 as reported by the Committee on Armed Services.

AMENDMENTS SUBMITTED FOR PRINTING

DISASTER RELIEF ACT AUTHORIZATIONS—S. 3027

AMENDMENT NO. 2285

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted an amendment intended to be proposed by him to S. 3027, a bill to extend authorization for the Disaster Relief Act, and for other purposes.

LEGISLATIVE ACTION NEEDED TO OVERCOME BUREAUCRATIC OBSTACLES TO PROVIDING NEEDED DISASTER RELIEF TO PENNSYLVANIA RESIDENTS AFFECTED BY 1972 HURRICANE AGNES FLOOD

● Mr. HEINZ. Mr. President, the amendment I am today offering to S. 3072 is intended to correct a gross inequity that has been perpetrated upon residents of the area of Wilkes-Barre, Pa., as a result of bureaucratic bungling on the part of the Federal Emergency Management Agency and its predecessor, the Office of Emergency Preparedness.

The history of Wilkes-Barre's longstanding efforts to secure disaster relief funds so that restoration of streets and other work to undo the damage wrought by the 1972 Hurricane Agnes flood is a long and complex one. For the benefit of my distinguished colleagues, let me briefly summarize the contents of my voluminous files on this subject.

Following the 1972 Agnes flood, FEMA approved and advanced to the city of Wilkes-Barre funds for the restoration of the Osterhout Free Library and other nonprofit privately owned libraries. By FEMA's own admission, these funds were approved and advanced with the knowledge that the libraries in question were not municipally owned.

After the funds for library in restoration in Wilkes-Barre had already been spent, FEMA determined that it had in fact erred in approving this funding, that the privately owned nonprofit libraries were not eligible recipients of assistance under the Disaster Relief Act.

As a result, FEMA deleted some $612,000 from the city's outstanding claim with FEMA to compensate for the funds that had erroneously been advanced to Wilkes-Barre.

Because Wilkes-Barre had already spent these funds for library restoration, as earmarked by FEMA, the effect of this denial of part of the citv's claim has been to preclude the restoration of streets in the city's neighborhoods damaged by the flood. In short, for years the residents of Wilkes-Barre have been denied the disaster relief to which they are legally entitled as a result of bureaucratic snafus for which they were not responsible.

The purpose of this amendment, therefore, is to correct the gross injustice which has been perpetrated on the citizens of Wilkes-Barre by authorizing FEMA to reimburse for the restoration of the libraries as if they were eligible under the Disaster Relief Act. This language has been drafted by counsel at FEMA and will correct this inequity without opening the proverbial floodgates to new disaster relief claims.

I hope that my distinguished colleagues can support this amendment as S. 3072 comes up for consideration.

I ask unanimous consent that copies of recent correspondence from FEMA and a chronology of FEMA's action to date on Wilkes-Barre's claim be inserted in the RECORD. Finally, I ask unanimous consent that the text of the amendment be printed in the RECORD.

There being no objection, the amendment and material were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 2285

At the end of the bill, add the following:

"SEC. 4. Any privately owned nonprofit library damaged or destroyed by Hurricane Agnes in 1972 in the State of Pennsylvania is hereby entitled to assistance as if eligible under the provisions of the Disaster Relief Act of 1970 as in effect at the time of such disaster."

FEDERAL EMERGENCY MANAGEMENT AGENCY,
Washington, D.C., August 18, 1980.

Hon. H. JOHN HEINZ, III,
U.S. Senate,
Washington, D.C.

DEAR JOHN: You have requested the opinion of the Federal Emergency Management Agency (FEMA) concerning the appropriateness of the language found at section 4 of H.R. 6863, 96th Cong., 2d Sess., to authorize relief for six private nonprofit libraries in Pennsylvania which were damaged in 1972 in Hurricane Agnes. That provision currently states:

"Sec. 4. Any privately owned nonprofit library damaged or destroyed by Hurricane Agnes in 1972 in the State of Pennsylvania is hereby declared eligible for assistance under the provisions of the Disaster Relief Act of 1970 as in effect at the time of such disaster."

FEMA's Office of General Counsel believes that the language of section 4 of H.R. 6863 is inadequate because it indicates that the libraries for which relief is sought were ". . . eligible for assistance under the provisions of the Disaster Relief Act of 1970." In fact, the need for the proposed relief legislation has arisen because these libraries were not eligible for assistance under the terms of the Disaster Relief Act of 1970. The language of the proposed legislation can be modified slightly to correct this problem. Our Office of General Counsel suggests the following language:

"Sec. 4. Any privately owned nonprofit library damaged or destroyed by Hurricane Agnes in 1972 in the State of Pennsylvania is hereby entitled to assistance as if eligible under the provisions of the Disaster Relief Act of 1970 as in effect at the time of such disaster."

House Report No. 96–962, which accompanies H.R. 6863, contains a brief discussion of the proposed legislation. The Report states at page 3 that enactment of section 4 of H.R. 6863 would relieve the Osterhout Library of liability to the Federal Government in the amount of $457,318, and would relieve the West Pittston Library of liability to the Federal Government in the amount of $9,984. These figures do not represent the full amount of the costs of repairing these two libraries following the damages they suffered in Hurricane Agnes. Neither of these two libraries has undergone final audit following completion of their repairs and, until final audit, it is not possible to calculate precisely what amount they would be eligible for if the proposed legislation were enacted. However, our best estimates of the amounts they would be eligible for are $565,423 for the Osterhout Library and $48,986 for the West Pittston Library. We, therefore, recommend that the statistics in the House Report be amended to the higher figures, but with the proviso that the exact amounts for the relief of these libraries are subject to final audit.

I hope this information is of assistance to you. If I can be of any further assistance in this matter, please feel free to contact me.

Sincerely yours,

JOHN W. MACY, Jr.,
Director.

FEDERAL EMERGENCY MANAGEMENT AGENCY,
Washington, D.C., June 30, 1980.

Hon. H. JOHN HEINZ III,
U.S. Senate,
Washington, D.C.

DEAR JOHN: This is in response to your letter of June 4, 1980 concerning the City of Wilkes-Barre's disaster claim that stems from the Agnes disaster in Pennsylvania.

Our Regional office in Philadelphia approved funds for a privately owned library in Wilkes-Barre whose damages were included

by the City in its own project application. It was the Region's understanding that the City owned the library. Funds were advanced to the City, based on the approved project application, and a portion of those funds was earmarked for the library.

Subsequent to that transaction the library was found to be a private nonprofit facility and therefore ineligible under PL 91–606, the disaster law in effect at that time. (Private nonprofit libraries then, as now, were ineligible under the law.) The amount advanced for the library ($457,318) was recouped by the Region by withholding that amount from later payments to the City. The total eligible cost of restoration of the library (if it were eligible) is unknown until such time as the library records are audited by FEMA auditors.

Wilkes-Barre had approached our Regional Office with the proposal that the indebtedness be lifted from them by FEMA and be placed on the library so that the City would be released from responsibility for the expenditure of the $457,318 by the library, and FEMA would then have to look to the library for the return of that amount.

Our contractual agreement (project application) is with the City. When its agent signed the project application the City assumed responsibility for all funds advanced or paid to it. We have no such agreement with the library, nor could we, since under PL 91–606 a private nonprofit organization could not apply for disaster assistance on its own behalf.

The Reauthorization Bill—H.R. 6863—which is pending Congressional action includes in Section 4 relief for private nonprofit libraries that were damaged by Hurricane Agnes. My Associate Director William Wilcox, testified on that Bill on March 26, 1980. A copy of the Committee Report is enclosed for your information.

The special legislation that is pending Congressional action which we as an agency have endorsed, would provide relief for Osterhout Library as well as five other private, nonprofit libraries in Pennsylvania.

I am very concerned about Osterhout Library and the City's problem and I can assure you that as soon as the bill is passed we will have an audit made of Osterhout's records so that the proper amount of payment may be expedited. However, under the circumstances I do not believe there is anything to be gained by the City from a visit at this time. We will be glad to discuss the problem with them by telephone if they have any questions.

I will continue to monitor the progress of the bill and work with you towards a solution of the problem as rapidly as possible.

Sincerely yours,

JOHN W. MACY, Jr.,
Director.

SUMMARY OF F.E.M.A.'S ADMINISTRATIVE ACTION

1. September 11, 1972:

On this date a letter from Mr. David Lacy, Assistant City Planner, to Mr. Kevin Nelson of OEP (see Exhibit A) requested that OEP make decision concerning the legal status of the Osterhout Library. The letter clearly requests that OEP make such a determination. The letter also requested information regarding whom should be the sponsor of an application for the Osterhout Library if OEP deemed it eligible for assistance.

2. September 13, 1972:

Mr. Ray Willman, OEP, attended a meeting on this date with City officials and officials of the Osterhout Library (see Exhibit B, minutes of meeting). It was reported that OEP had designated the Library as "a public institution" thereby making it eligible for funding through OEP. It was also determined by OEP that the City should act as the agent for funding. OEP's decision was made with full knowledge of the fact that the library was not municipally owned.

3. November 28, 1972:

On this date, Mr. Dick, State Council of Civil Defense, advised the City that Supplement #1 (Osterhout Library Claim) had been approved in the amount of $591,450. See Exhibit C–1 and C–2 for notice of approval and Exhibit C–3. The engineering analysis provides further documentation that Supplement #1 was approved with full knowledge that the library was not municipally owned. Please refer to Exhibits D–1 and D–2, and D–3.

The important point to be acknowledged is that OEP made the initial mistake. It appears that OEP officials in field did not fully understand the criteria for eligibility for libraries. The City and the Osterhout Library acted in good faith under the advice and direction of OEP.

4. The actual funding to the Library was divided into two phases. Phase I was the physical restoration of the building and Phase II was a grant-in-lieu for the replacement of books, periodicals, etc.

5. September 1975:

A federal audit is completed on Phase I and approved in the amount of $173,531.42 (see Exhibit E).

6. April 9, 1975:

With Phase II (grant-in-lieu) still incompleted, Mr. Paul Cain and Ms. Barbara Bosak (FDAA) advised the Library to request for a time extension. (See Exhibit F).

7. August 5, 1975:

All work under Phase II is completed. The Osterhout Library requests an audit for full settlement for their claim.

8. August 20, 1975:

Mr. Herbert Herman, FDAA, conducts a final inspection on the grant-in-lieu portion of the claim. See Exhibit G for a copy of the Final Inspection Report. Under Item 10 (Remarks), Mr. Herman states

"Applicant has spent the exact amount of the grant-in-lieu in a careful manner with very good records and documentation. All costs are in order and therefore full reimbursement is recommended subject to final audit."

9. May 17, 1976:

Mr. Arthur T. Doyle (FDAA Regional Director) notifies Mr. Craig Williamson (Acting Director of State Council of Civil Defense) that FDAA was now questioning the eligibility of thirteen libraries throughout the State which received assistance (see Exhibit H). The Osterhout Library is one of such libraries. The letter also notes a survey was conducted for each library, and a copy of FDAA's survey of the Osterhout is forwarded to Wilkes-Barre for verification of its accuracy (see Exhibit I).

Two important points for verification are:

(1) from August 20, 1975, the date which a final audit was requested, FDAA took no positive action to schedule such audit. If such an audit were conducted the City of Wilkes-Barre would today be in a more favorable position, i.e. we would have received a bill of collection rather than FEMA's withholding of funds;

(2) the survey of the Osterhout Library (Exhibit 1) was forwarded to us by FDAA. Thus a review of the information contained within it again verifies that Supplement No. 1 was approved by FDAA with full knowledge that the Osterhout was a private non-profit library.

10. July 29, 1976:

Mr. Dallas Dick (State Office of Civil Defense) advised the City of Supplement #37 which deletes $612,000 from the claim as a result of FDAA's declaration of ineligibility (see Exnibit J).

11. August 13, 1976:

Mr. Arthur Silverblatt, Attorney for the Osterhout Library, prepares the appeal. (See Exhibit K).

12. October, 1976:

Mr. Arthur Doyle notifies Mr. Oran K. Henderson (Director of the State Council of Civil Defense) that libraries must be owned by the state or local government to be eligible (see Exhibit L). Mr. Doyle notes in this letter that two outstanding appeals based on the Doctrine of Estoppel, Law of Restitution etc. had been referred to the FDAA Administrator for his determination. To date we have never received a formal notice per the Law of Restitution under Mr. Silverblatt's appeal.

13. 1978, 1979, 1980:

The City has requested that FEMA issue a bill of collection to the Osterhout in order that other funds programmed for street restoration within the South Wilkes-Barre Disaster Urban Renewal Project could be released. FEMA has advised us that such action cannot be taken.

NOTICES OF HEARINGS

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. SASSER. Mr. President, I would like to announce that the Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs will hold a hearing on S. 2691, the State and Local Government Cost Estimate Act of 1980 and a related measure. The hearing will be held in Room 3302, Dirksen Senate Office Building at 9:30 a.m. on September 4, 1980.

For further information regarding this hearing, you may wish to contact John Callahan or Andrew Conlin of the Subcommittee staff at 224–4718.

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. HARRY F. BYRD, JR. Mr. President, I wish to announce that the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance will hold a hearing on Wednesday, September 10, 1980 on H.R. 6883, the Installment Sales Revision Act of 1980, and several miscellaneous tax bills.

The hearing will begin at 9 a.m. in room 2221 of the Dirksen Senate Office Building.

The following pieces of legislation of general application, unless otherwise noted, will be considered. Revenue estimates will be available at the time of the hearing:

H.R. 6883—This bill would revise the installment sales provisions of the Internal Revenue Code (Code Sec. 453) and related code sections to simplify the tax treatment of installment sales. Senators Long and Dole have introduced a similar measure, S. 2451.

S. 2512—Introduced by Senator Mathias. Would allow architects, engineers and other design professionals to deduct from gross income money paid into a self-insurance fund set up to cover service liability losses and expenses.

S. 2900—Introduced by Senator Mathias. Would extend the exemption from the Federal Unemployment Tax Act to officers and crew of vessels between 10 and 15 tons when such vessels are subject to the same restrictions as vessels under 10 tons.

S. 2915—Introduced by Senator Roth. Would provide that for purposes of Sec. 904 (relating to the limitations on the foreign tax credit), gain from the disposition of a patent, copyright or other similar property right which would otherwise qualify as a Sec. 1231 asset, shall be treated as ordinary income rather than as capital gain.

S. 2916—Introduced by Senators Dole and Talmadge. Would allow the investment tax credit, to the etxent it is attributable to the active conduct of a trade or business, to be claimed against alternative minimum tax liability on a current basis.

Witnesses who desire to testify at the hearing must submit a written request, including a mailing address and phone number, to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by no later than the close of business on September 2, 1980.

Witnesses who are not scheduled to make oral presentation, and others who desire to present their views to the subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than September 12, 1980.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, I wish to announce that the Committee on Labor and Human Resources has scheduled a hearing on Friday, September 5, 1980, at 8 a.m., in room 4232 Dirksen Senate Office Building, on the nomination of John C. Truesdale, of Maryland, to be a member of the National Labor Relations Board.

COMMITTEE ON THE JUDICIARY

Mr. METZENBAUM. Mr. President, the Judiciary Committee hearing on S. 2216, the Intelligence Identities Protection Act, scheduled for Wednesday, August 27, 1980, has been postponed until Friday, September 5, 1980. The hearing will begin at 9 a.m. in Room 2228 of the Dirksen Senate Office Building on the 5th.

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. HARRY F. BYRD, JR. Mr. President, I wish to announce that the subcommittee on Taxation and Debt Management will conduct a hearing on extending the Airport and Airway Trust Fund and the aviation-related excise taxes transferred to that trust fund which are slated to expire or be reduced on October 1, 1980. The hearing will be held on Monday, September 8, 1980 in room 2221 of the Dirksen Senate Office Building and will begin at 10:00 a.m.

Witnesses who desire to testify must submit a written request to Michael Stern, staff director, Committee on Finance, room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by no later than the close of business on September 2, 1980.

Written testimony submitted by witnesses not making oral statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies by September 12, 1980, to Michael Stern, staff director, Committee on Finance, room 2227 Dirksen Senate Office Building, Washington, D.C. 20510.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, the Committee on Labor and Human Resources has rescheduled the hearing on the home energy assistance program for September 24 at 10 a.m. in room 4232 of the Dirksen Senate Office Building. This hearing will be the first in a series of hearings to be held in Washington and in the field by the committee in the anticipation of the reauthorization of this program next year. Announcement of the scheduling of these additional hearings will be made in the near future. For further information on these hearings, please contact Pat Markey (224–0326) or Mary McGrath (224–1099) of the committee staff.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. PRYOR. Mr. President, I wish to announce that the Committee on Governmental Affairs will hold hearings on S. 2116, S. 2267, and S. 2327 on September 4, 1980, at 10 a.m., in room 3302 of the Dirksen Senate Office Building.

Anyone wishing additional information about the hearing may contact the committee staff at 224–4751.

SPECIAL COMMITTEE ON AGING

CHILES AND DOMENICI ANNOUNCE HEARINGS—SOCIAL SECURITY: WHAT CHANGES ARE NECESSARY?

Mr. CHILES. Mr. President, on behalf of Senator DOMENICI and myself I am pleased to announce that the Senate Committee on Aging will next month begin a series of hearings entitled "Social Security: What Changes Are Necessary?" We have scheduled the opening hearing for September 16, 1980 in room 5110, Dirksen Senate Office Building beginning at 10 a.m.

Older citizens throughout my State of Florida and around the country have been asking a very simple and obvious question: What is the true status of social security financing and why does not Congress do something to make it secure? I think the time has come to give them some straight answers. Despite our efforts in 1977 to put social security on sound footing, we are now told that more needs to be done. Resolving the short and long term financing problems of social security must be a top priority for the 97th Congress. It is time to make the necessary hard decisions, and to restore full confidence in America's most popular and successful domestic program.

In its oversight capacity, I feel the Committee on Aging is ideally suited to help shed light on the major social security issues likely to come before Congress next year. It is my hope that the work we have planned will complement and not duplicate the work of other committees. At the same time it is our intention to bring into clearer focus the changes that are now being proposed.

Any quick review of opinion on the status of social security will show that all minds do not view the future in the same way. As examples, compare the following:

The Advisory Council on Social Security in December, 1979, stated:

> The social security system has met all its obligations over the past 40 years, and this council is thoroughly convinced that any fear that benefit payments will be interrupted is unjustified. . . . After reviewing the evidence, the council is unanimously convinced that all current and future social security beneficiaries can count on receiving the benefits to which they are entitled.

Fortune magazine in their August 25, 1980 issue warned:

> The cost of carrying the aged and disabled in the style we have become accustomed to promising them may ultimately be more than workers are willing to pay. If no changes are made in the Social Security system, the tax rate needed to finance benefits 50 years from now will be double or possibly triple the current rate.

The Washington Post in a June editorial concluded:

> Social security is so important to the well-being of millions of Americans that it is difficult to view calmly any threat to its financial stability. But the problems highlighted . . . by the Social Security trustees are really not cause for major alarm. They can and should be fixed quickly and easily by a technical change in the way revenue is allocated among the . . . trust funds. Given that the country has entered a period so far somewhat badly charted by economic forecasters, however, people might be wise to arm themselves psychologically for more surprises. . . . The important thing is to maintain steadfast support of the Social Security system, and work these problems through as they arise.

Michael Boskin, Stanford professor of economics, before the Budget Committee earlier this year testified:

> The Social Security system is in serious trouble today. Put simply, when the post-World War II baby boom generation retires early in the next century, the ratio of retirees to workers in our society will increase from one retiree for every three and one-quarter workers to one retiree for every two workers. Combined wtih other economic factors, this creates a long-term deficit in the Social Security System of hundreds of billions of dollars.

It should come as no surprise that there exists a wide spectrum of viewpoints on the present problems and future directions of social security. In fact, at least six groups have been reviewing this program over the past several months and have made several major recommendations. These groups include:

HEW: Social Security and the Changing Roles of Men and Women—Report issued February 1979.

1979 Advisory Council on Social Security—Report issued December 7, 1979.

Universal Social Security Coverage Group—Report issued March 1980.

Social Security Board of Trustees—1980 Annual Report issued June 17, 1980.

President's Commission on Pension Policy—Interim Report issued May 1980.

National Commission on Social Security—Interim Report issued on January 11, 1980.

In short, debate has begun in earnest about many issues deeply imbedded within social security—and the major focus is on financing. With the payroll tax already scheduled to rise from 6.13 to 6.65 percent on January 1, 1981, the average American worker will once again be reminded that the cost of social security hits close to home.

In just a short time, the 97th Congress will convene and we will become embroiled in the day-to-day struggles over balancing the budget, tax cuts, and inflation. It is inevitable that social security financing questions will become part of that debate. With a program as large and complex as social security, there is a clear risk that the issues of most concern will not receive the time and at-

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tention they might otherwise deserve. It is therefore our intention that the hearings announced today will provide the time and the opportunity for more deliberate and careful study; and at the close of our review, I am hopeful that our committee members will be in a position to make helpful recommendations to Congress.

Mr. DOMENICI. Mr. President, I am extremely pleased to join with Senator CHILES today in announcing a series of hearings by the Senate Committee on Aging on "Social Security: What Changes Are Necessary?"

As a member of both the Senate Budget Committee and the Committee on Aging, I am concerned about the financial soundness of the social security system from both the fiscal and social perspectives.

There is hardly an American family today that is not touched by social security. The program covers over 90 percent of the Nation's employed persons. It is a major source of income for two-thirds of the beneficiaries over 65, and for almost a third of our Nation's elderly it is practically their only source of income. Social security sends out 35 million checks each month totaling over $12 billion. Its annual cost of living increases have undeniably been a factor in reducing the poverty rate among the elderly from 33 percent in 1959 to 14 percent in 1978.

Even though social security monthly payments replace only a portion of preretirement income people retiring up through the present have received a favorable overall return on their investment. For example the average current retiree receives about a $42,000 net transfer from the social security system. This is six times the amount these beneficiaries paid in, plus interest. So indeed, most people have gotten back far more than they paid into the system and they are generally satisfied with it.

Social security has been remarkably generous and seemingly sound. But, we now face a rapidly changing demographic picture. More people are living longer and more people are reaching retirement age. Indeed, life expectancy has increased by 25 years since 1900. When this positive accomplishment is combined with the trend toward early retirement, the result is an increase in the number of people who are expecting a retirement income.

Since social security is a pay-as-you-go system, with the benefits financed by the currently working population, the ratio of retired to active workers is a critical issue. When the baby-boom generation born during the 1940's and 1950's reaches retirement age following the year 2000 the retired population will mushroom. For example, if current fertility and mortality rates continue, by the year 2030 there will be only two people of working age for every one of retirement age, versus three workers per retiree today.

On one side of this dilemma knowledgeable experts tell us that OASI and DI are soundly financed by the planned payroll tax increases, interfund borrowing, and shifting health insurance financing to some source of general revenues. On the other hand equally qualified theorists maintain that we are facing a serious long-term crisis in financing the system and that only major change will save us.

I listen to these convincing positions and wonder how much reform is needed—what is the right amount of change? It is becoming increasingly clear that this payroll tax financed system is extremely vulnerable to high inflation, high unemployment, and declining productivity.

The primary solution we have accepted at the moment is simply to raise payroll taxes. The August 25, 1980 Fortune magazine described these projected social security payroll tax increases as a nightmarish burden. The article noted that:

> The social security tax increases that have had Americans screaming lately are nothing compared with what's coming when the baby boom starts retiring around 2010.

This year the combined social security tax rate—including both the employer's and the employee's "contributions"—is 12.25 percent of taxable payroll. Under present law, the levy will rise to 15.3 percent in 1990.

The magazine projected payroll tax rates for 2010, 2030, and 2050 under three sets of assumptions—optimistic, intermediate and pessimistic. The "intermediate" tax rates in the projections are 16.6 percent in 2010, 25.4 percent in 2030, and 25.0 percent in 2050. Most pension experts think the intermediate tax rates are about the lowest Americans can reasonably hope for unless benefits are reduced.

Mr. President, this article summarizes well the major issues and points being made by economists and other analysts regarding the future of social security. Therefore, I ask unanimous consent that the text of the article be printed in the RECORD following my statement.

Not only does social security affect the daily lives of 35 million Americans who are beneficiaries, but any change in a system which adds over $12 billion a month to the economy has far reaching implications. Even minor changes in the system may affect the interaction between social security and savings, capital formation, employment and productivity.

The Senate Committee on Aging has been conducting a study of major income and employment issues affecting older Americans. A series of hearings on "Work after 65" revealed a growing interest on the part of employers to hire and retain workers past the usual retirement age. As a part of its attempt to highlight these issues in June of 1980, the committee published an information paper entitled "Emerging Options for Work and Retirement Policy." This comprehensive background document examines the potential economic impact of an aging population, suggests further research needed and outlines policy options for major income and employment issues.

Mr. President, these hearings, which will take an in depth look at several approaches to reform of the social security system, are a continuation of this major issue exploration by the committee. The committee intends that this will be a comprehensive and objective approach to examining the broad range of proposed solutions, analyzing them and hopefully making some recommendations which will be helpful to us when we take up legislation on this matter in the 97th Congress.

It has been my observation that the broader the involvement of the committee and Members of the Senate in an issue and the greater our corporate level of understanding, the better the legislative results.

For this reason I am particularly hopeful that the information produced will result in a heightened level of understanding of these complex issues on the part of all of our colleagues in the Senate. If the Committee on Aging can present information in a way which will help to sort out the mindboggling options in this terribly complicated problem and result in a more informed decision when legislation is considered, we will have performed a most appropriate and helpful service to the entire Senate.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Fortune, August 25, 1980]

HOW TO SAVE SOCIAL SECURITY

(By A. F. Ehrbar)

Last spring, when Washington was carrying on its brief flirtation with a balanced budget, some people in the Carter Administration and on Capitol Hill actually were talking out loud about cutting Social Security benefits. Specifically, they proposed holding the automatic cost-of-living raise that beneficiaries got on July 3 to something less than the 14.3 percent increase in the consumer price index. Would-be cost cutters in the Office of Management and Budget and the Congressional Budget Office figured it would be fair to trim $4.7 billion from the scheduled $16.8-billion increase because the C.P.I. has been overstating inflation recently.

Hardly anyone took the proposal seriously, of course. The survival instinct still stops politicians from reducing transfer payments to 31 million voters in an election year. Yet the fact that responsible officials mentioned the proposal at all suggests that an across-the-board cut in Social Security benefits may no longer be politically unthinkable. Even many liberals agree that benefits must be trimmed—especially those promised to workers now in their 30s or younger.

The cost of carrying the aged and disabled in the style we have become accustomed to promising them may ultimately be more than workers are willing to pay. If no changes are made in the Social Security system, the tax rate needed to finance benefits 50 years from now will be double or possibly even triple the current rate, which will raise $150 billion or so this year. Happily, though, a couple of comparatively modest changes—raising the retirement age in the next century and revising the benefit formula—could avert such horrific costs, provided the changes are made soon.

Next year alone, the Social Security tax rate jumps from 6.13 percent to 6.65 percent—for a combined employer-employee rate of 13.3 percent—and the taxable wage base scoots up from $25,900 to $29,700. The new rate and wage base work out to a maximum tax per employee of $1,975, nearly $400 more than this year's maximum. Adding in the employer-paid portion, which most economists agree is passed back to employees as lower wages, high-income workers will pay $3,950 in Social Security taxes next year.

A CONGRESSIONAL FLIP-FLOP

Onerous as the 1981 tax hike may be, it is only the fourth of eight increases mandated by Congress in 1977. By 1990 the combined employer-employee tax rate will climb another two percentage points to 15.3 percent, and after next year the wage base will rise at the same pace as average wages. If wages increase at a real rate of 1.5 percent through the Eighties, high-income workers in 1990 will pay Social Security taxes of $5,300—in 1981 dollars.

Congress began scrounging around for ways to roll back those increases just a month after it voted for them. Chairman Al Ullman of the House Ways and Means Committee, for instance, has been touting a value-added tax as a replacement for part of the payroll levy, and Senator William Roth Jr., cosponsor of the Kemp-Roth tax-cut bill, suggested using some of the tax on "windfall" oil profits to eliminate the 1981 increase. Congress may still substitute a less visible tax for part of the Social Security increases, but it's unlikely to reduce total tax collections.

In fact, Congress may well raise taxes even higher. The package of tax increases legislated in 1977 was supposed to put Social Security on a solid footing, but it hasn't kept the system out of the red. Rapid inflation has ballooned benefits while high unemployment and meager real wage gains have depressed revenues. As a result, the Social Security Administration has been depleting the trust funds that are its working capital.

The Old Age and Survivors Insurance trust fund will be exhausted by late next year or early 1982. The administrators can continue paying benefits after that if Congress allows them to borrow excess reserves from the disability- and hospital-insurance trust funds. But there is a good chance that the combined funds won't be adequate to finance benefits by early 1984.

Every year, Social Security actuaries make three projections of future costs and revenues—optimistic, intermediate, and pessimistic. In this year's intermediate projection, which assumes the current recession will be mild and short, the combined trust funds squeak through 1984 with a small safety margin and then rebuild to a comfortable level. But many, including some liberal congressional aides who ordinarily play down Social Security problems, say the intermediate projection is too optimistic. In the pessimistic projection the system goes broke in January 1984, and stays broke.

WHEN BABY-BOOMERS RETIRE

The immediate financial crunch is a mere inconvenience compared to the one that's coming when the baby-boom generation starts retiring 30 years from now. As the multitudes born in the philoprogenitive years following World War II leave the labor force after 2010, the retired population will mushroom. Meanwhile, the population of revenue-producing workers will stagnate because the baby boom was followed by the comparatively barren Sixties and Seventies. By 2030, when the last of the boomers will be over 65, the combined payroll tax rate needed to finance benefits probably will be at least 25 percent of taxable payroll, and could be as high as 36 percent.

Those estimates, and the ones for 2050 in the chart on the preceding page, are derived from the Social Security Administration's intermediate pessimistic projections (few rational adults heed the optimistic one). Most of the striking difference between the two estimates reflects different assumptions about future fertility and mortality rates. In the pessimistic estimate, the fertility rate continues to fall, as it has in all industrialized countries for the last 150 years, and life expectancy improves at a rapid pace. Those factors combine to lift the number of beneficiaries per 100 workers from 31 today to 68 in 2030 and 84 in 2050 (the number of persons aged 20 to 64 actually declines after 2070). The intermediate estimate assumes a slower gain in life expectancy and an increase in the fertility rate; the number of beneficiaries per 100 workers reaches 52 in 2030 and remains fairly constant after that.

As with the shorter forecasts, many pension experts believe the intermediate projections are too optimistic. One is Thomas Woodruff, executive director of the President's Commission on Pension Policy, a group studying the effects that the baby boom will have on all retirement systems. Woodruff believes the pessimistic projection is more realistic, though the President's Commission is using the intermediate one so its forecasts will be comparable to those of other researchers.

The problem of paying for the retirement of the baby-boom generation is more urgent than it might appear. The only way to avoid sky-high payroll tax rates is to reduce promised benefits, and that should be done soon if it is to be done at all. Cutting benefits may be politically impossible if we wait until the Nineties, when the oldest of the postwar generation will be only ten or 15 years away from collecting them. Moreover, it's questionable whether society should alter long-standing commitments so soon before they come due. Says William Agee, chairman of Bendix Corp. and one of the few businessmen who has made a close study of Social Security: "Procrastinating until the burden forces the breaching of promises will only make the problem worse. Young and old will be pitted against one another in a fearful battle over the remains of a shrinking economy."

Two simple changes would eliminate the need for any payroll tax increases beyond the level now set for 1990. One is to raise the retirement age, starting in the year 2000, from 65 to 68. A new study by four economists at the National Bureau of Economic Research shows that such a change would eliminate the long-term deficit in the Old Age and Survivors portion of Social Security. Using the Social Security Administration's intermediate projection, the economists calculated that the present value of the old-age deficit is about $885 billion. That is, the old-age benefits that will be paid over the next 75 years—discounted to the present at a 3% real interest rate—are $885 billion more than the old-age portion of the payroll taxes that will be collected.

The total deficit, including the hospital portion of Medicare and disability benefits, is much larger. Stanford economist Michael J. Boskin, who headed the National Bureau study team, figures that the hospital and disability deficits come to 50% to 70% of the old-age deficit. That puts the present value of the total Social Security deficit at $1.3 trillion to $1.5 trillion—more than double the national debt.

When Boskin's team calculated the effect of raising the retirement age to 68, they came up with a $200-billion surplus in the old-age portion of the system. Says Boskin, a 34-year-old baby-boomer who advocates later retirement: "Altering the length of retirement by a single year, by changing either the retirement age or life expectancy, raises or lowers the Social Security deficit by about $350 billion."

A CASE FOR LATER RETIREMENT

While raising the retirement age obviously amounts to a benefit cut, it wouldn't mean a large reduction in the length of retirement. Robert Myers, a former chief actuary of Social Security and another proponent of later retirement, estimates that a man 68.9 years old in the year 2000 will have the same life expectancy a 65-year-old had when the Social Security Act was passed in 1935; for women, life expectancy at 72.5 will be the same as it was at age 65 in 1935.

Boskin and Myers have a lot of support in their call for a later retirement age. The National Commission on Social Security, set up by Congress to evaluate possible changes in the system, has tentatively endorsed a plan to raise the eligibility age to 68 over a 12-year period starting in 2000. The President's Commission has recommended that Congress consider raising the age, and the last two Social Security Advisory Councils have supported the idea. The councils are groups that assess the state of the system every four years.

Most of the opposition to later retirement comes from Social Security expansionists like former Commissioner Robert Ball, old-age lobbyists like the American Association of Retired Persons, and Congressmen. In 1977, Barber Conable, the ranking Republican on the Ways and Means Committee, proposed a plan similar to the one endorsed by the National Commission. Conable couldn't even muster the support of the Republicans on the committee, but he did draw 3,000 letters from enraged Gray Panthers.

PRICE INDEXING VS. WAGE INDEXING

The other change that would bring large savings is an adjustment in the benefit formula that Congress adopted in 1967. That formula ties initial benefit levels to average wages. That is, future retirees will be entitled to benefits that rise by the same amount as average wages until a person is 60; after that, an individual's benefits are tied to the C.P.I. Since wages rise faster than prices over the long run, benefits paid to future retirees will be higher than the present ones, even in constant dollars. The idea behind the formula, called "wage indexing," is to assure that pensions replace a constant percentage of pre-retirement income.

An alternative is to index initial benefits to prices instead of wages. Under that formula Social Security would gradually replace a smaller percentage of pre-retirement income, but it would provide future retirees with at least as much purchasing power as persons retiring this year. In fact, the formula for determining initial benefits would cause them to continue to rise in real terms, though at a slower rate. In 1977, a congressional consulting panel headed by Harvard economist William C. Hsaio estimated that a worker with average earnings who retires in 2050 would get a pension with a real value of triple the current benefit under wage indexing and double the present benefit under price indexing. Hsaio, who favors price indexing, figures it would save roughly the same amount as raising the retirement age.

In addition to reducing costs, price indexing would boost private savings and economic growth. Social Security cuts into savings by diminishing the need to provide for retirement—though the magnitude of the effect is a matter of hot dispute. Studies by Martin Feldstein, president of the National Bureau of Economic Research and another price-indexing proponent, indicate that Social Security may reduce private savings by as much as 38 percent.

If we changed the benefit formula and raised the retirement age, the combined cost savings would wipe out the entire long-term Social Security deficit and leave room for a payroll tax cut sometime after the year 2000. The lower costs would also give Congress the flexibility it will need to correct some of the system's deficiencies, such as the inequitable treatment of working wives.

BILLION-DOLLAR NIBBLES

Under current law a couple gets 150 percent of the husband's basic pension while both are alive, and the survivor gets 100 percent after one of the two dies. That benefit usually is greater than what working wives can

collect on their own earnings (they can't take both), so most of them get nothing in return for the payroll taxes they pay. Since Congress isn't likely to repeal the 50 percent bonus for housewives, correcting the mistreatment of working wives will be expensive. And with a majority of wives now in the labor force, voters are bound to demand some such change.

Unfortunately, Congress has no similarly simple options for dealing with Social Security's short-term financial troubles. Slashing benefits to current retirees still is politically unthinkable; it also would be morally indefensible to cut payments to persons who depend on Social Security just to get by. However, a handful of unnecesary benefits could be eliminated without harming the truly needy. The cuts would be puny relative to total costs, but just nibbling at Social Security can save several billion dollars a year.

One potential cut is the payment to survivors between 18 and 21 years old who are full-time students. The benefit was added in 1965, before Congress created the panoply of college-assistance programs available now. Another benefit that could go is the payment to surviving spouses with 16- and 17-year-old children. The reasoning behind the benefit is that single parents aren't able to work, but that obviously isn't the case when children reach 16. A third prospective cut is the $255 lump-sum death benefit, originally meant to cover burial costs.

The benefit most deserving of elimination is the so-called minimum payment, intended to help persons whose covered earnings were too low to qualify for even a subsistence-level pension. The prime beneficiaries now are federal employees. Though exempt from Social Security taxes, many moonlight in order to qualify for the minimum pension. The Congressional Budget Office estimates that those four cuts, all of which were proposed by President Carter last year, would save $3.2 billion a year by fiscal 1985.

PENALIZING THE INDUSTRIOUS

Two other desirable reforms would actually entail higher costs, but would make the system fairer. One is to get rid of the earnings test for retirees between 65 and 72. They now lose 50 cents in benefits for every dollar they earn over $5,000. The provision, which exacts a large penalty from poor retirees who want to supplement their benefits, doesn't affect those with substantial capital income or private pensions. In effect, the system applies a means test to beneficiaries who work but not to those who are idle.

Eliminating the earnings test for people 65 and over would be surprisingly cheap. Last year the Social Security Administration saved only $2.1 billion by reducing the benefits of workers who earned too much. The full cost wouldn't even be that high because many retirees would work more—and so pay more Social Security and income taxes—if they didn't have to sacrifice benefits.

The second reform, and the most controversial of all possible changes, is to reverse the income-tax treatment of Social Security—tax the benefits and exempt the payroll taxes. The common view, of course, is that benefits should be tax-exempt because retirees paid for them with after-tax dollars. In fact, Social Security is a welfare system that dispenses benefits on the basis of past earnings instead of need, with proportionately larger payments going to low earners. The Internal Revenue Service (not Congress) originally exempted the benefits from income taxes in 1940 precisely because they were welfare payments. Moreover, the taxes a worker pays have no direct relation to the benefits he receives; taxes are determined by the cost of paying benefits to others during the years he works.

The case for taxing Social Security benefits rests on the enormous wealth transfers the system effects—not just from high earners to low earners, but also from one age group to another. One estimate of the intergenerational transfers, shown in the table above, was calculated by Boskin and his associates. They defined a transfer as the difference between the pension benefits a person will receive and what he could have earned by investing the old-age portion of his taxes (including the part paid by the employer) in an annuity with a 3 percent real return. They found that persons born before 1913 who survived to collect benefits will, on average, receive net transfers of nearly $60,000 in 1980 dollars. In other words, persons born before 1913 "paid for" only 14 percent of the benefits they will collect. The other 86 percent is a windfall. In contrast, persons born between 1943 and 1952 will pay $374 more in taxes than they'll collect in retirement benefits, and persons born after 1952 will suffer successively larger losses.

A SUBSIDY FOR HIGH EARNERS

Some wealth transfer from the richer working-age generation to the poorer retired generation is justifiable. But Social Security makes glaringly inequitable transfers from poor young workers to rich retirees. As Boskin says, "It makes little sense for current unskilled workers to surrender income to subsidize retired doctors and lawyers beyond fair returns on the taxes they paid."

Reversing the tax treatment would help redress that imbalance. Exempting young workers from income taxes on their "contributions" would reduce their total Social Security losses somewhat because the value of the tax savings would be greater than the taxes they would eventually pay on benefits. The deduction would be worth more to high-income individuals in higher tax brackets, but they ultimately would pay higher taxes on benefits; on balance, over their lifetimes, the change probably wouldn't have much effect on the wealth transfers among workers the same age.

The change would be fair to retirees as long as they were taxed only on benefits over and above the payroll taxes they paid into the system—a tax treatment identical with that now given to employee thrift plans, where workers invest after-tax dollars and pay taxes only on the earnings. Including benefits in taxable income wouldn't penalize the elderly poor; some 60 percent of Social Security recipients would pay no taxes at all.

A case can be made that an elderly couple with $15,000 of income from Social Security and a private pension deserves preferential tax treatment. But a stronger case can be made for a worker with a wife and two or three children and the same income. His Social Security payroll deduction this year will be $919.50, on which he'll pay another $130 or more of income taxes.

In 1978, the change would have cost $5.4 billion in lost income-tax revenues. Mickey D. Levy of the American Enterprise Institute made a study of the effects of various tax treatments of Social Security and found that exempting payroll taxes would have reduced income-tax revenues by $9.4 billion in 1978. Including benefits (in excess of payroll taxes paid) in the recipients' taxable income would have increased revenues by $4 billion, and taxing all benefits would have boosted revenues $6.9 billion.

A PASSION FOR CAMOUFLAGING COSTS

The political history of Social Security gives little reason for optimism about any of these reforms, with the possible exception of eliminating the earnings test. Congress has frequently boosted benefits over the years, comfortable in the knowledge that the full bill for its vote-getting largess would come due only in the distant future. In the process, Social Security has evolved from a reasonably modest program to keep the elderly out of extreme poverty into a full-blown federal pension system.

Congressmen frequently talk of reforming the system, especially now that some of the formerly distant costs are driving up the tax rate. But the talk focuses more on camouflaging costs than on reducing them. Says Jake Pickle, chairman of the Ways and Means subcommittee on Social Security: "We've had 120 bills to freeze the taxes, but nobody's talking about cutting those benefits. If somebody does say he's going to cut benefits, we may want to freeze him."

The forces working against change are formidable. Cutting current benefits would anger the elderly, more of whom vote than any other age group, yet it wouldn't save enough to permit a sizable tax cut. Cutting future benefits is politically expensive because the elderly, ever watchful, see any reduction as a precedent that threatens their own benefits.

THE CRAVEN COLLECTIVE

Barber Conable, weary and bent from previous battles, is despondent about the prospects for heading off the long-term crisis. "We should be able to design a system based on the facts of the baby boom," he says. "But it's going to take a Congress that is politically accountable, and this Congress is not. This craven collective will break and run as soon as they get 300 letters on a subject."

Still, under pressure from a public indignant over big increases in an extremely visible tax, Congress and the White House may be starting to move away from the traditional politics of Social Security. President Carter's proposal to cut certain benefits last year was a remarkable event. Though Congress rejected the cuts out of hand, a few Democrats on Ways and Means are starting to talk as though some reductions might really be possible at last. Pickle, for one, has been saying that a later retirement age might be possible. And Jim Jones of Oklahoma, an influential young member of the committee, hopes to engineer a major overhaul of the system next year.

Jones believes that public outrage over next January's payroll tax increase, combined with the looming 1984 deficiency in the trust funds and the bad news about the long-term deficit that will be coming out in the final reports of the National Commission and the President's Commission, will force Congress to act. "The average Congressman has put Social Security out of his mind," Jones says. "But the events of history are converging, and the public will demand that we do something." Jones's assessment that the nation at last has an opportunity to get control of the largest "uncontrollable" in the budget seems correct, but the opportunity is sure to dwindle if Congress delays for long.

Mr. COHEN. Mr. President, one of the major issues which will confront the 97th Congress is the question of how best to maintain the short- and long-range fiscal stability of the social security system.

As a member of the Special Committee on Aging, I am pleased that the committee has decided to hold hearings on this critical issue. The hearings which the committee will hold should lay a solid groundwork for the debate anticipated next year.

The September 16 hearing will focus closely on two major areas: The projected financial crisis, and long-range overall changes needed for social security. That hearing will provide the basis for an indepth review of the wide range of questions which must be considered

if we are to have comprehensive legislation to strengthen the system.

For the millions of Americans participating in social security, the hearings we will hold this fall and the legislation we will almost surely consider next year will have profound significance. Only 3 years ago, Congress approved legislation which, we believed, would solve the problems with the system. Our optimism proved to be unfounded. The economic difficulties of the past few years have had a strong, negative impact on the system.

Even under the most optimistic economic assumptions, social security faces severe new short-run strains because of those national economic problems. Even the large social security tax increases approved in 1977 will not be enough to keep the system solvent unless the Nation's economy improves substantially. The system cannot withstand many more record cost-of-living increases on the order of the 9.9 percent boost in 1979 and the 14.3 percent jump this year.

As we look to solutions to social security's financing problems, we must do so with an eye toward the economy. We must also take into account changing population patterns. People now live longer and retire earlier. Today, there are 3.3 workers for each person receiving benefits. By the year 2030, the ratio will shrink to 2 to 1.

Social security trustees have said they believe that the system can get by for a few years through interfund borrowing, if the economy stabilizes. If economic conditions remain bad, or if they worsen, shifting money from one trust fund to another will not be enough.

A number of proposals for strengthening social security have been put forward. These include increasing social security taxes, allowing the medicare portion to be paid by general tax revenues, cutting back benefits, changing cost-of-living computations, taxing half the benefits, and providing universal coverage.

There are problems with all of these proposals, and it may be difficult to reach a consensus on the best approach to take in dealing with social security's financial difficulties. We owe it to the American people to take the steps necessary, however complex or controversial, to insure the future fiscal strength of the system.

The Aging Committee's hearings provide an important forum for early consideration of some of the alternatives before us. They will, I hope, be a prelude to development of thoughtful recommendations for legislative solutions to social security's problems.

I look forward to participating in the hearings. Senator CHILES, the chairman of the Aging Committee, and Senator DOMENICI, the committee's ranking Republican, deserve great credit for initiating their valuable efforts to draw attention to an issue we will almost surely be asked to confront next year.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. STEVENSON. Mr. President, I ask unanimous consent that the select committee on Indian Affairs be authorized to meet during the session of the Senate today to consider the State of Maine judgment legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

PLANT WATERING

● Mr. SASSER. Mr. President, I call the attention of my colleagues to an article in a recent issue of the U.S. News & World Report entitled "Just Say They're Watering Down Your Tax Dollars." The article retells our efforts here in the Senate and in the Congress to eliminate nonessential expenditures of plant watering services for Federal employees. The article points out that despite our legislative efforts, the plant watering contracts still go on and on and on—just like Tennyson's Brook—to the tune of $54,400 a year. I shall submit the article for the RECORD at the conclusion of my remarks.

COMPTROLLER GENERAL'S DECISION

Mr. President, a recent letter to me from the Acting Comptroller General indicated that he was informing the six delinquent agencies that these latest plant watering expenditures are in violation of law, that such contracts shall be canceled immediately, and that the General Accounting Office will be forced to take formal exception to any illegal payments made for plant maintenance services rendered after April 30, 1980.

AGENCY RESPONSE

I am pleased to inform my colleagues today that the six affected agencies have finally communicated to the Comptroller General that they have taken corrective action to terminate the plant watering contracts found to be in violation of the Comptroller General's decision and the law.

CONCLUSION

Mr. President, I believe that this is one battle for the taxpayers of our country that has been waged and won.

The article follows:

JUST SAY THEY'RE WATERING DOWN YOUR TAX DOLLARS

Lawmakers are discovering they often are no match for bureaucrats seeking to circumvent the intent of Congress.

Consider the losing battle Senator Jim Sasser (D-Tenn.) has been waging against the use of private contractors to tend ornamental plants in government offices.

During a hearing last year by a Senate Appropriations subcommittee that Sasser heads, he learned that a tiny bureaucracy called the Copyright Royalty Tribunal was paying $1,100 a year to have its plants fed and watered.

Further investigation found that taxpayers had spent $816,700 over four years on plant-care services throughout the government, an amount "equivalent to the taxes paid by 400 hard-working Tennessee families in a year," Sasser pointed out.

Armed with that information, he easily won approval of an amendment outlawing the use of public funds for that purpose.

However, recently a follow-up by congressional investigators showed that seven agencies are still paying $54,400 a year to contractors for plant services.

"Most incredible was the revelation that the Internal Revenue Service is wasting nearly $33,000 to have its plants watered," says Sasser. "I just can't imagine that the nation's tax collector would lead such a waste parade."

INTERNATIONAL ANTITRUST TASK FORCE

● Mr. MATHIAS. Mr. President, in May, the Governmental Affairs Committee unanimously reported out S. 1010, my bill to establish a task force to examine the international implications of U.S. antitrust laws. I expect that the measure will be soon scheduled for floor action and passed by the Senate.

In that regard, I think it might be appropriate to address the concerns of some of my colleagues who view S. 1010 as a potential threat to antitrust enforcement. Frankly, I can understand their concern, but I want to reassure them that the original impetus and continuing pressure for enactment comes from precisely the opposite direction.

My original associate, Senator JAVITS, and I, have long shared the conviction that the antitrust laws are the basic tenets of our great free enterprise system. S. 1010 is true to that conviction, and we expect the task force will suggest ways to enhance the efficient and effective enforcement of the antitrust laws.

Recently, I asked the former Chief of the Foreign Commerce Section of the Antitrust Division, Douglas E. Rosenthal, to prepare a "statement of purpose" for the proposed task force. Drawing on his extended experience, he has written an excellent summary of the issues that the task force should address. In so doing, I think he gets to the heart of the matter—that we owe it to both our allies and our own international traders to come to grips with their serious concerns.

Rather than summarize Mr. Rosenthal's statement of purpose, I request that it be printed in full in the RECORD at the conclusion of my remarks. In anticipation of the upcoming debate on S. 1010, I would urge all of my colleagues to read it.

The statement follows:

STATEMENT OF PURPOSE

There are four important goals of the foreign economic policy of the United States that are relevant to the work of this Commission. One is to promote open and competitive markets for both imports and exports. Two is to maintain amicable diplomatic relationships with nations with whom we trade. Three is to help American workers and enterprises when they suffer sudden, substantial, and sometimes unfair, hardship in international commerce. Four, and no less important for being only recently appreciated, is to facilitate export opportunities for U.S. goods and services.

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The first goal is embodied in our antitrust laws, which represent not only rules for proper conduct in the market place, but also an expression of America's commitment to a system of economic freedom. The second is reflected in our diplomatic policy, in our commitment to seek to resolve disputes with other nations with due regard for the fact that not every sovereign people approves of our institutions or accepts the validity of our laws. The third goal is embodied in our trade law which seeks to set appropriate limits to sometimes necessary departures from free market principles. The fourth goal is furthered by pending legislation seeking to lessen or remove existing impediments to the aggressive marketing of U.S. exports.

It is becoming increasingly apparent that in particular policy applications these goals may conflict. The primary task of this Commission is to consider the apparent conflict between the first goal, the goal of antitrust, and each of the other three goals. To the extent significant conflicts are determined to exist, the Commission is responsible for recommending practical compromises that will, to the fullest extent possible, express continuing commitment to and preservation of all four goals of U.S. policy. This Commission shall be committed to free markets; it shall be committed to seeking accommodations with our trading partners; it shall be committed to assisting those Americans seriously injured in the international market place; and it shall be committed to the promotion of U.S. exports. It is charged with recommending small limitations on one goal in a particular context where that is likely to yield a net expansion of offsetting goals in a variety of contexts. This exercise need not produce a fundamental reconstitution of U.S. policy or U.S. institutions. However, where sharp conflicts between two desirable objectives appear unavoidable, the scope and elements of such conflicts shall be laid out so that possible further executive, legislative and judicial action may be considered.

The most important of apparent conflicts is between the effective enforcement of U.S. antitrust law and amicable relations with our trading partners—including our closest and most important allies. The jurisdiction of U.S. antitrust law is broader in scope than that of every other nation in the world—have, perhaps the Federal Republic of Germany. U.S. antitrust investigations involve procedures which contradict foreign ideas of fairness. What we in the U.S. do by legal proceedings between private persons, other nations, even other nations with our common law heritage, only do by diplomacy between governments. These differences are leading us into increasingly serious international economic confrontation. Are there ways to reduce these confrontations without unraveling the fabric of U.S. antitrust enforcement?

Many American business executives perceive that the antitrust laws discourage aggressive export marketing—especially where exporting would be enhanced by joint ventures among competitors. Do the antitrust laws discourage such aggressive marketing? If so, is it appropriate that they do so? If not, and if there is a problem, how can they be modified so that exports are not inappropriately disadvantaged?

There is an increasing perception of conflict between antitrust law and policy, on the one hand, and trade law and policy, on the other. The antitrust laws are hostile to international cartels. In certain limited instances, U.S. trade law promotes international cartelization through import limitations and orderly marketing agreements. Some suggest that the antitrust laws discourage U.S. industries from legitimately exercising rights conferred under the trade law. Others claim that the antitrust laws limit the ability of foreign industries to settle U.S. domestic trade actions. How true are these assertions and what should be done about the problems that generate them?

The specific Commission objectives set forth in Section 3 of this statute fall within one of these three areas of perceived conflict. They should be studied in greater or lesser degree depending upon the extent to which they are judged relevant to the cause or cure of one of these three sets of problems.●

ON FINITE OIL RESOURCES

● Mr. TSONGAS. Mr. President, many of us have been urging for some time that the fundamental reality of the current energy situation is that oil and gas are finite resources. But there are still those who believe that if we just unshackle the oil companies and decontrol the price of oil, then we would have as much oil as we need. As much as I would like to tell this to my constituents, it just is not so.

In this Nation, we will spend more for oil and invest more for exploration, but we will find less oil. The giant fields that gushed oil out of the ground were found long ago and are now being emptied.

An article that appeared in the Wall Street Journal on July 8, 1980 bears these points out. Mr. President, I ask that the full text of the article appear in the RECORD.

The article follows:

DESPITE BIG OIL HUNT, U.S. CRUDE OUTPUT IS LIKELY TO KEEP SLIDING

(By Rich Jaroslovsky and John R. Emshwiller)

When President Carter announced his decision last year to decontrol U.S.-produced crude oil, he acknowledged that the higher prices would sting American consumers. But he saw a silver lining: "The immediate effect of this action will be to increase production."

It's increasingly apparent, though, that the silver lining doesn't exist. Despite a boom in oil exploration and drilling, U.S. crude-oil production seems likely to continue its long-term decline, and at rates sharper than even some pessimists had predicted. Too little oil is being found to sustain the pesent flow, say energy experts both within and outside the government, and the outlook may be bleak indeed.

Certainly any hopes of increasing domestic output, or even holding production steady at the current 8.6 million barrels a day, are fading fast. "We aren't going to get the quick kick-up in production that the public has simplistically been led to expect," a senior Energy Department official says flatly. Instead, analysts are anticipating further declines in U.S. output during the next decade and—unless demand drops even more than optimists hope—perhaps greater U.S. dependence on foreign oil.

PECULIAR ECONOMICS

"Unfortunately, as prices get higher, production forecasts get lower," says Lawrence Goldstein, senior economist for the Petroleum Industry Research Foundation. "It is peculiar economics."

The past optimism grew out of the belief that decontrol would lead companies to find and extract large quantities of oil that were uneconomical to produce with price controls in force. Now, though, many producers and analysts are echoing Paul Hoenmans, executive vice president of Mobil Corp's exploration and production division, who says, "It doesn't appear there are great volumes of oil yet to be found in the U.S."

The problem is basic. Production from the lower 48 states, where the U.S. pumps most of its oil, has been falling nearly 4 percent annually since 1973 as old fields are depleted. For a while, that decline was offset by surging Alaskan output. Soon, though, Alaska is expected to level out for several years, and the outlook for the lower 48 is growing gloomier.

Unpublished Energy Department, figures show that some major U.S. oil companies are losing lower-48 production at a rate exceeding 10 percent a year, with one concern showing a dismal 17 percent drop. "We are inordinately dependent on aging, over-the-hill fields now in irreversible decline," the senior energy officials says.

HARDER TO FIND

At the same time, new oil is becoming harder and harder to discover. Despite occasionally promising finds, such as in the Overthrust Belt in the Rocky Mountains, the nation isn't adding enough new reserves to offset what it is using. "The price is there, the incentive is there, but we aren't getting the oil," says Lisle Reed, an Energy Department oil analyst. "The resource base is shot."

So a crunch may be coming, and soon. Since President Carter's hopeful words last year, the Energy Department has been quietly but steadily backing down from its initial public projection for 1985 production of nine million to 9.3 million barrels a day. The agency says production will still be higher than it would have been without decontrol, but it now officially projects that output will sag to about eight million barrels daily in 1985.

And nearly everybody else calls those official figures still too high. Exxon Corp. forecasts U.S. production in 1985 at about 7.9 million barrels a day, with a drop to 6.1 million by 1990. Mr. Reed sees 1985 output at 6.5 million barrels. An unreleased Energy Department study is gloomier yet; even with speedier leasing of government lands for exploration and a pickup in Alaskan production—both far from certain—the study says 1985 output may fall below seven million barrels.

Even optimists concede the country needs a lot of breaks to improve the outlook. Shell Oil Co. says it thinks 1990 production could still total nine million barrels a day, but it estimates that about a third of that must come from oil yet to be discovered.

DRILLING AT RECORD PACE

Of course, companies are out looking for that oil. Spurred by decontrol and higher prices, drilling is going on at record rates. But that effort isn't turning up a lot more oil.

"Price doesn't really have much to do with finding oil," Mr. Reed maintains. "Price does have an effect on drilling, but drilling isn't the major factor in adding new oil. The key to finding oil is opening up fresh new territory." The trouble is, he says, that most of the territory in the U.S. has already been plumbed—and much of what's left is under environmental or other constraints.

Some new oil is being found. Government figures show that the thousands of smaller producers are finding about as much oil as they are producing. "We're holding our own," says C. John Miller, president of the Independent Petroleum Association of America, a group of smaller operators.

It's the big companies, though, that are having the big problems. To offset the huge quantities of oil they pump, these companies must find huge new fields just to stay even. And, in many previously promising areas such as the Baltimore Canyon, they aren't finding them. "Over the last five years, exploration in what were viewed as hopeful areas have turned up fairly negative results," an Exxon official says.

Gloomy pronouncement may fuel public speculation that the oil companies are purposely sitting on big reserves to create a shortage and drive up price. Even normally skeptical government officials, though, doubt that's the case.

"Production and exploration units have virtually unlimited budgets right now," says Paul Bloom, the Energy Department's special counsel and a man who has accused the companies of billions of dollars of chicanery in pricing. After reviewing production activities of the major companies, Mr. Bloom concluded that almost every feasible effort is being financed. "The dollars are chasing projects," he says.

Adds the department's Mr. Reed: "The oil people are out there busting their tails. It isn't their fault, but the oil they've been finding isn't significant in terms of the nation's demand."

Many oilmen complain, though, that the government isn't doing all it could to help them. They particularly cite, as deterrents to the hunt for oil, the new "windfall profits" tax and policies on leasing public land and offshore areas.

Still assailing the tax months after its passage, one executive says that with fewer and fewer big pools of oil to be found, "we are looking at going after smaller, costlier fields. And there is a real question whether the extra cost will soon overtake the remaining extra revenue" after the tax.

That damping effect isn't yet in evidence, the independent producers' Mr. Miller concedes, but he anticipates it later in the decade as drilling costs continue to rise. On the other hand, he contends that if oil prices were allowed to climb without the windfall tax, "I think we could arrest this decline in crude-oil production and kick it back up."

Government officials disagree with that notion, though, and so do some oil-industry executives. The prospects for finding much more oil are so bleak, says Robert Baldwin, president of Gulf Oil Corp's refining and marketing unit, that "if crude oil went to $100 a barrel, we couldn't arrest the decline rate." (The world price now averages a bit over $30 a barrel.)

Admittedly, Mr. Baldwin says, "there's a lot of area yet to be looked at" in the U.S. "But none of those represent the kind of crude-oil production we had in say, East Texas or Louisiana." What the country needs, he says, "is to find three or four accumulations like Alaska's North Slope." And that, he adds, isn't likely.

To get at what oil is left, many observers expect a concerted effort by the oil industry to persuade the government to speed up the leasing of public lands and promising offshore areas, especially in Alaska, for exploration and production. "In Alaska, some of the most promising areas aren't going to be available until the late 1980s" under current government timetables, Mobil's Mr. Hoenmans complains. And a federal official predicts that the government is "going to be under increasing and soon excruciating pressure" to allow more drilling sooner.

Already, Republican presidential candidate Ronald Reagan is urging increased effort in Alaska, and he has even asserted that the state may have more oil than Saudi Arabia. While Mr. Reed of the energy agency dismisses that claim, he does say that "we've got a gold mine in Alaska . . . just bountiful potential," and says he objects "violently" to the planned pace of development there.

Just how much oil Alaska has is a subject of hot debate, with environmentalists arguing that pro-development forces have substantially overestimated the potential. In any event, though, production from the state's more remote areas will pose severe technical and logistical problems that even the industry says will require much time, money and effort to conquer.

The Carter administration is more hopeful about the prospects for using "tertiary," or enhanced, recovery methods to get more oil out of depleting fields in the lower 48 states. These costly, still-exotic techniques are designed to flush out more of the oil—up to two-thirds of the original pool, in some cases—left in the ground when a field's pressure drops and it can't be worked by normal methods.

By some estimates, tertiary recovery—which includes such techniques as injecting steam, carbon dioxide or chemicals into the field—could yield up to one million barrels a day of extra production by 1990, compared with only a trickle now. It is "the only area of optimism" on the production front, Mr. Goldstein says.

But it may take five to seven years before tertiary methods really begin paying off, Mr. Reed says, and "the first round of results has been kind of disappointing." Indeed, another energy official says almost every big producer "has at least one field they privately refer to as a disaster," where an expensive production-increasing plan either didn't work or even made matters worse. Adds Gulf's Mr. Baldwin: "Most of the people who express euphoria about tertiary recovery almost certainly don't know the facts."●

COST OF HEALTH CARE IN AMERICA

● Mr. DURENBERGER. Mr. President, in the Washington Post this morning, it was reported by Spencer Rich that the cost of health care in America last year rose to $943 per person.

This startling news underscores the concern many of us have about the uncontrolled inflation of health care costs. A recent report from the Health Care Financing Agency (HCFA) predicted that by 1990, the cost of health care would exceed $3,000 per person.

Given these statistics, there is no doubt in my mind that we cannot continue subsidizing medical care in the same old ways. We must turn rather to new approaches, new directions which hold promise of restraining costs. Only by such changes can we in Congress responsibly approach filling the gaps in present medical insurance coverage.

The Health Incentives Reform Act, S. 1968, which I have sponsored together with Senators DAVE BOREN and JOHN HEINZ, proposes such new ideas. And while this so-called procompetitive approach is new to Congress, it is by no means new to the Nation as a whole. The Twin Cities in Minnesota have thriving competition in health care; other examples exist in Seattle, Wash., Hawaii and elsewhere.

I commend the following article to readers of the RECORD, and hope that these new figures will drive home the point we have been making: Health care costs simply must be restrained by more open reliance on competitive, market forces.

The article follows:

AVERAGE HEALTH BILL WAS $943 PER PERSON IN 1979

(By Spencer Rich)

Americans spent $212.2 billion on their health last year, an average of $943 per person and an increase of 12.5 percent over the previous year.

Secretary of Health and Human Services Patricia Roberts Harris, in yesterday's announcement, said the $212.2 billion health spending for calendar 1979 worked out to 9 percent of the gross national product, the highest proportion ever.

Thirty years ago the figure was only 4.4 percent. But the share of national treasure spent on health has been growing steadily in the post-World War II era, fueled by the growth of employer-provided health insurance and by implementation of Medicare and Medicaid.

The HHS figures show that by far the biggest health cost is hospitals—$85.3 billion last year. In addition, $40.6 billion went to doctors, $17.8 billion to nursing homes, $17 billion to drugs and $13.6 billion to dentists.

HHS calculated that hospital costs went up 12.5 percent from 1978 to 1979. This includes federally run hospitals and state and local psychiatric and long-term care hospitals, as well as nonfederal acute-care hospitals.

HHS has earlier calculated that 1979 costs for nonfederal acute-care hospitals had risen 13.4 percent, substantially faster than HHS 1979 guidelines of 11.7 percent.

Continued growth of hospital costs beyond the HHS guidelines could help boost a new Carter administration drive for mandatory hospital cost controls.

The cost-control bill was beaten in the House in 1979 after a massive campaign by the Federation of American Hospitals, American Hospital Association and other industry groups that said voluntary cost-control efforts could do the job.

A remarkable feature of the health statistics is the growth of government expenditures for health as a proportion of the total.

In 1950, about a quarter of all health spending came from federal, state or local government sources, and the other three-quarters from private resources. By 1979, however, $406 of the total $943 per person came from government sources—43 percent.

In 1979, the federal government paid $61 billion for health, state and local governments paid $30.5 billion and insurance companies paid $54 billion. Patients laid out $60 billion from their own pockets.

Medicare and Medicaid—the two giant federal programs—amounted to about $51 billion, including state matching funds, or about a quarter of the national health outlay.

And Medicaid, which totaled $29.3 billion, now is as big by itself as all three major federal-state, income-support welfare programs combined (Supplemental Security Income, Aid to Families with Dependent Children, and food stamps).●

FEDERAL GIVEAWAY PROGRAMS

● Mr. SASSER. Mr. President, on four recent occasions I have reported to my colleagues about the activities being conducted by the Government Printing Office—at the direction of the Library of Congress and the Smithsonian Institution—under an obscure law with its antecedents dating back to the 19th century.

Under section 1719 of title 44 of the U.S. Code, over 1.6 million copies of 20,441 publications are printed for distribution to foreign governments, including the governments of the Soviet Union, Cuba, and Iran. This Federal giveaway program costs the taxpayer at least $1.1 million a year. In return for the 1.6 million copies we print for shipment overseas, we receive 275,486 in return, or a 6 to 1 disadvantage.

ORIGINAL INTENT

Apparently, this citation in title 44 was originally intended for the exchange

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of official journals, parliamentary documents, and literary publications.

There may be some justification for sending such documents as the CONGRESSIONAL RECORD, the Federal Register and the Public Papers of the President to foreign countries in exchange for similar documents published by those countries.

However, Mr. President, I can see no justification for sending such sensitive publications as Army Field Manuals, and Army Technical Manuals (including the publication "Field Artillery Battalion, LANCE") to the Governments of the Soviet Union, Cuba, and others. Most of these documents are being sent automatically with no thought as to how they may be used.

PURPOSE OF TRANSFER PROGRAM

Mr. President, section 1719 of title 44, United States Code, provides for the distribution of Government publications, including the CONGRESSIONAL RECORD, to foreign governments which agree to send the United States similar publications of their governments for delivery to the Library of Congress.

As I have earlier indicated, the United States ships numerous military manuals, Defense Intelligence Agency publications and Central Intelligence Agency publications to the Soviet Union and 30 other foreign powers. We do not receive Soviet KGB or military manuals in return.

H.R. 7302

Mr. President, on June 3, the House of Representatives passed H.R. 7302 which would transfer to the Superintendent of Documents the function of distributing Government publications to foreign governments. Mr. President, I am opposed to the continuation of this program in its present form in which we appear to be receiving far less than what we get. I believe this program is fraught with abuse, waste, error, and confusion—especially confusion. Moreover, I can see no good reason why a program such as this should be shifted from the executive branch to the legislative branch. The legislative branch of Government should not be placed in the position of having to decide which Executive Branch Agency (DIA, CIA, DOD) documents should be shared with other countries. That is an executive and administrative function.

NEED FOR REFORM

Over the past 2 months I have been urging that those who now have the responsibility for the distribution of these U.S. Government publications to foreign powers should exert some measure of discipline so that the appropriate balance can be struck between what we give and what we get. I am in no way opposed to the concept of the exchange program and, indeed, believe if conducted properly, it can make a healthy and positive contribution to mutual understanding among nations. However, this program, as it now stands, appears to fall far short of that goal and the intent of Congress. I have urged that it be cleaned up, that Federal agency officials should carefully screen any documents sent overseas, and that it should be left where it is in the executive branch.

DEFENSE DEPARTMENT RESPONSE

I am encouraged, Mr. President, that representatives of the affected agencies have taken notice of my remarks in the RECORD and have been in contact with my office about my concerns. Progress is being made.

The Under Secretary of Defense for Policy Review, Adm. Daniel Murphy, shares my concern about the transfer to any country of Defense Department technical data and other information which might prove detrimental to U.S. interests. Accordingly, in response to the concerns I have expressed, he has issued a memorandum to the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff and the Directors of the Defense Agencies asking that all Defense Department components review their policies and procedures with respect to the approval and issuance of unclassified field manuals, technical manuals and other publications containing valuable technical or operational data.

Admiral Murphy and the staff of the Department of Defense are to be commended for their timely efforts to tighten up the international exchange program by limiting distribution of documents required for official use or for administrative or operational purposes only, and precluding further shipment of such documents to the Soviet Union, Cuba, Iran, and others.

Admiral Murphy's memorandum follows:

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS, CHAIRMAN OF THE JOINT CHIEFS OF STAFF, AND DIRECTORS OF THE DEFENSE AGENCIES

DISTRIBUTION OF UNCLASSIFIED PUBLICATIONS

Recently, certain members of Congress expressed concern over the subject matter of a large number of unclassified US Government publications automatically distributed to foreign governments under the International Exchange Program. A large portion of these are Defense-originated publications including, among others, field manuals and technical manuals developed for use of the armed forces.

I share the expressed Congressional concern over the transfer to any country of Department of Defense technical data and other information which might prove detrimental to US interests. I am particularly concerned that the DoD proponents of publications such as field manuals and technical manuals may not be giving due consideration to the fact that when these documents are published, they become eligible for automatic distribution to foreign governments including the Soviet Union, Cuba, and Iran under the International Exchange Program.

Accordingly, I ask that all DoD Components review their policies and procedures with respect to the approval and issuance of unclassified field manuals, technical manuals and other publications containing valuable technical or operational data. If it is determined that such publications should not be made available under the International Exchange Program and constitute publications required solely for official use or strictly for administrative or operational purposes, it is recommended that a legend substantially as follows be placed on such publications and that printing requisitions indicate clearly distribution limitations:

"Distribution Statement—This publication is required for official use or for administrative or operational purposes only. Distribution is limited to US Government agencies. Other requests for this document must be referred to (insert controlling DoD office)."

We will arrange with the Library of Congress and the Government Printing Office that DoD documents to which the legend is applied are not included in the International Exchange Program.

DANIEL J. MURPHY,
Admiral, USN (Ret.).●

NOTICE OF DETERMINATIONS BY THE SELECT COMMITTEE ON ETHICS

● Mr. WALLOP. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD this notice of a Senate employee who proposes to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee on Ethics has received requests for determinations under rule 35 which would permit Ms. Mary E. Stansel, a member of the staff of Senator HEFLIN, Mr. John Robertson, a member of the staff of Senator HATFIELD, and Ms. Jacqueline B. Parker, a member of the staff of Senator LEVIN, to participate in a cultural exchange program sponsored by a foreign educational organization, The Tamkang College of Arts and Sciences, in Taiwan from August 10 to August 17, 1980.

The committee has determined that participation by Ms. Stansel, Mr. Robertson, and Ms. Parker in the program in Taiwan, at the expense of Tamkang College, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Ms. Catherine M. Anderson, a member of the staff of Senator SASSER, to participate in a cultural exchange program sponsored by a foreign educational organization, The Tamkang College of Arts and Sciences, in Taiwan from August 10 to August 17, 1980.

The committee has determined that participation by Ms. Anderson in the program in Taiwan, at the expense of Tamkang College, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received requests for determinations under rule 35 which would permit Mr. Dennis Thomas (a member of the staff of Senator ROTH), Mr. Michael J. Altier (a member of the staff of the Judiciary Committee), and Mr. Michael C. Moffet (a member of the staff of Senator KASSEBAUM) to participate in a cultural exchange program sponsored by a foreign educational organization, the Tamakang College of Arts and Sciences, in Taiwan from August 10 to August 17, 1980.

The committee has determined that participation by Messrs. Thomas, Altier, and Moffet in the program in Taiwan, at the expense of Tamkang College, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Ms. Lorraine Huang, a member of the staff of Senator CRANSTON, to participate in a cultural exchange program sponsored by a foreign educational organization, the Tamkang College of Arts and Sciences, in Taiwan from August 10 to August 17, 1980.

The committee has determined that participation by Ms. Huang in the program in Taiwan at the expenses of Tamkang College, is in the interests of the Senate and the United States.●

CONSUMER SUBCOMMITTEE HOLDS OVERSIGHT HEARINGS ON FTC MOBILE HOME RULE

● Mr. BAYH. Mr. President, last week the Consumer Subcommittee of the Senate Commerce Committee, chaired by our distinguished colleague from Kentucky, WENDELL FORD, held an oversight hearing on the Federal Trade Commission's proposed trade regulation rule affecting the sale and service of manufactured housing. The hearing, held pursuant to an agreement Senator FORD and I reached when the FTC authorization bill was on the floor, was a broad-based inquiry into the need for additional Federal regulation of an industry that is already one of the most extensively regulated—indeed the most regulated segment of the housing industry—and the way in which consumers of manufactured housing can be served in the most efficient and least costly way possible.

Representatives from the FTC, HUD (which already regulates the construction of manufactured housing), the manufactured housing industry, State government, a public interest housing organization, and the manufactured housing dealers' organization testified. So you can see, Mr. President, the hearing in which I participated after delivering my testimony, provided a forum for all sides of this important issue to be aired, which underscores the far-reaching and thorough way Chairman FORD conducts the Consumer Subcommittee's oversight hearings.

There are several pieces of testimony that were introduced into the record at the hearings that I would like to share with my colleagues, Mr. President—including my own and that of the distinguished majority whip of the House, JOHN BRADEMAS. It is our opinion that if further regulation of this pervasively regulated industry is needed—and we are not convinced that any new regulation is needed until Congress has had more time to study the Mobile Home Act's dramatic effect on consumer complaints—then the responsibility for that program should be under HUD's jurisdiction.

Also, Mr. President, I would like to call your attention to one other very important piece of testimony that was presented to the subcommittee last week. Although she did not testify in person before the subcommittee, Dr. Suzanne Lindamood, an associate professor of housing at Kansas State University, did prepare remarks on the FTC's proposed rule. Her testimony is particularly compelling, Mr. President, because it represents what I believe is an objective look at this problem. Of equal significance is the fact that Professor Lindamood is one of eight consumer—and I stress "consumer"—representatives on HUD's Mobile Home Advisory Council. Professor Lindamood, who notes at the outset of her statement that she is "not inherently opposed to the type of regulation proposed by the FTC," goes on to maintain that "I have not, however, seen convincing evidence that would lead me to conclude that the regulation is necessary."

Mr. President, because Congress will be involved in this issue in the days ahead, I ask that my testimony—along with Congressman BRADEMAS' and Professor Lindamood's—be printed in the RECORD.

The testimony follows:

TESTIMONY OF SENATOR BIRCH BAYH

Chairman Ford, and members of the Subcommittee, thank you for the opportunity to appear today and participate in your oversight hearings on the Federal Trade Commission's proposed Trade Regulation Rule on mobile home sales and service. My statement will be short. I am here to listen to the distinguished group of witnesses your Subcommittee has assembled here today for this inquiry into the FTC's proposed TRR.

Under your leadership, Mr. Chairman, this subcommittee has provided Congress with a model of what we should be doing to fulfill our important oversight function. Yours is not a task I envy, however, inasmuch as—I think it is fair to say—the FTC has been one of the most active agencies of the executive branch. It seems to be that we are faced with one key question when we fulfill the duty of oversight—whether it is oversight over an active agency or an inactive agency—and that question is: has the agency carried out the will of Congress in serving the public interest? I have been involved in government long enough to know that this concept has no uniform definition, but when Congress is engaged in oversight of the Federal Trade Commission I believe we should be guided by an inquiry into whether the FTC is examining ways to protect the consumer at the least cost to the consumer.

The recently passed FTC Authorization legislation—the passage of which, Chairman Ford, is testimony to your skill as a legislator and leader—supports my claim that Congress is gravely concerned that the FTC is carrying out its duties without proper attention to the costs, benefits, need and authority of its regulatory initiatives. This is a particularly important issue when it comes to the regulation of mobile homes—or manufactured housing, as the industry appropriately desires to be called. The manufactured housing industry now provides 93% of the housing available in this country for under $35,000. And more importantly, the median income of a mobile home purchaser is $10,000 per year. People who live in manufactured homes tend to be young families, rural families, families living on fixed incomes; in other words, the very people Congress should be most attentive to when examining federal programs. We should be attentive to the kind of consumer protection afforded these people when they purchase mobile homes, and we should be attentive to whether these people are being helped or hurt by the kind of "consumer protection" that's being proposed. In other words, as the Joint Economic Committee said in its recent report on balance in government regulation, we should examine whether the contemplated regulatory initiative is cost-effective.

When I took the Senate floor last December to announce that I intended to sponsor an amendment to the FTC authorization legislation to block the FTC's mobile home TRR, I did so because, based on the information available to me at that time, I was gravely concerned that the Commission was about to promulgate a regulation which was not cost-effective. It seemed to me then and—without prejudging the testimony that will be presented today—it seems to me now that the Commission has failed to address—to my satisfaction—the role that one of its sister agencies plays in the regulation of the mobile home industry. I am referring, of course, to HUD's regulation of mobile home construction and safety.

I am confident that Undersecretary Marrero and the industry representatives present today will describe HUD's mobile home program in detail. For my part, allow me to go back and provide a little history on the subject of manufactured housing regulation. In the early 70's, it became clear that there were product difficulties with mobile homes. The FTC began a proceeding in 1972, but in 1974 Congress responded to consumer complaints by passing the National Mobile Home Construction and Safety Standards Act of 1974.

At that time Congress decided that mobile homes were part of the housing industry, and gave authority to HUD to regulate all aspects of the manufacture and design of mobile homes in order to insure their quality and soundness. At about the same time Congress also enacted the Magnuson-Moss Warranty Federal Trade Commission Improvement Act which was aimed at promoting the full and complete disclosure of the terms and conditions of warranties, and setting standards for classifications of "full" or "limited" warranties. I supported both pieces of legislation, because I believed, on balance, that the consumers of this country would be well-served by them.

Significantly, the manufactured housing industry is the only segment of the housing industry that is regulated to this extent. The modular housing industry is not as thoroughly regulated, and the site-built housing industry is not as thoroughly regulated. As a result of the Mobile Home Act, consumer complaints have declined dramatically. The number of mobile home complaints coming into HUD in 1979 represented about one-tenth of one percent of the total mobile homes built. I believe everyone in this room will agree that the quality of mobile homes available to consumers is significantly better since the implementation of the Mobile Home Act in June 1976.

But now, based on consumer complaints that pre-date the implementation of the Mobile Home Act, the staff of the FTC has recommended, in a 700-page report that was made available only 10 days ago, that the Commission go forward with a trade regulation rule that will result in an inflationary impact on a product designed for people who can least afford further price increases without any promise of significant benefits to these consumers. The FTC staff says the increased cost per home will be $100–$125; an expert consulted by the Commission testified that the cost of compliance with the Rule would be $272 in 1978 dollars and further stated that the record supporting the need for the Rule was "thin;" the industry says the increased price per home might run from $700 to $1200.

I am also concerned, Mr. Chairman, about

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the impact that the rule will have on the small businesses that comprise 30 percent of the producers and almost all of the dealers of manufactured housing. The big companies can afford the costs of compliance, but what about the smaller manufacturers who have already incurred great costs in complying with the Mobile Home Act? And what about the dealers? I am concerned that the bigger companies will simply expand their direct marketing efforts and drive the dealers out of business so as to reduce the number of consumer complaints.

Returning to the FTC staff's estimates of the inflationary impact of the proposed rule, even if I were to accept that estimate at face value—and based on my experience, regulatory agencies frequently underestimate the inflationary impact of their decisions—I am not convinced that the FTC staff asked itself the key question: should they be involved in this proceeding at all? The staff report says that HUD does not have the authority to undertake the regulation of mobile home sales and service, which, in my view, is open to some question, and as a result the FTC's proceeding is justified. The question of whether the FTC has the expertise to involve itself in this proceeding is never addressed. Nor the need for this regulation in 1980.

When an agency begins an inquiry into an issue in 1972 it seems to me that what we may be seeing is an example of institutional inertia. Once the process begins moving, it continues to move regardless of the changes that occur along the way. Changes like the Mobile Home Act.

Since 1976 the Department of Housing and Urban Development has built an impressive program for regulating the construction of mobile homes, and possesses a staff with expertise in mobile home issues. I should point out that HUD personnel know the difference between a mobile home and a modular home. I'm not sure the FTC does. Are you aware, Chairman Ford, that one of the "consumer complaint letters" that the FTC has been carrying around Capitol Hill—a letter from a law firm in Kentucky—concerns a modular home? This letter is supposed to serve as an example of the need for a trade regulation for mobile home sales and service. When you couple this example with the problem that I stated earlier—that the staff report makes no effort to differentiate between complaints based on homes built before the implementation of the Mobile Home Act and those built afterward—I have serious doubts as to whether there is a need for any further regulation, and—if there is—whether the FTC is the appropriate agency to be involved in the regulation of the mobile home industry.

So, Mr. Chairman, I think we need to keep in mind two questions as we proceed today. First, is there a need for further regulation of the manufactured housing industry to protect consumers—and is that regulation cost-effective? Then, if the further regulation is needed—and the increased price of a mobile home to consumers can be justified—the second question is: should the FTC be running the program?

In closing, let me return to the Joint Economic Committee report I referred to earlier. The authors of the JEC report make a number of policy recommendations on how Congress can do a better job of making government regulation more responsive to the needs of society.

The first recommendation calls on Congress to encourage those regulatory initiatives that are cost-effective. The second recommendation is that Congress should assist in the identification of cost-effective means of implementing regulatory goals. One of the ways Congress can do that, the report states, is to coordinate the reporting requirements of regulatory agencies and reduce the number of overlapping agency jurisdictions. We have the opportunity today to begin implementing some of the worthy policy recommendations of the JEC.

One last comment, Mr. Chairman. Protection of the consumer is the goal of everyone in this room. This proceeding is designed as an inquiry into how we can achieve that goal in the most cost-effective way. If a regulation is promulgated which prices manufactured housing out of the reach of a lower-income family, or forces a small businessman out of business, we have not fulfilled the goal of consumer protection. By the same token, if there are gaps in the federal government's response to real consumer protection problems, we must make certain that the agency with the best understanding of the existing problems is the one charged to fill those gaps.

Thank you for the opportunity to testify, Chairman Ford. I'd be delighted to answer any questions, but I know my distinguished colleague from the House side, John Brademas, is on a tight schedule.

STATEMENT BY CONGRESSMAN JOHN BRADEMAS

Mr. Chairman, distinguished Members of the Senate Commerce Consumer Subcommittee:

I want to thank you very much for this opportunity to testify on the proposed Federal Trade Commission rule requiring mobile home manufacturers and dealers who choose to offer written warranties to provide full and timely service for covered defects.

As you know, the proposed FTC rule was issued last Monday, August 11. It is now open to public comment for sixty days, ending October 14. The Federal Trade Commission is expected to act on the proposed rule soon after that date.

Mr. Chairman, the third District of Indiana, which I have the honor to represent, is a major manufacturer of mobile homes. Elkhart, Indiana, located in my district, has the distinction of being the "Mobile Home Capital of the United States."

Over the past year, the mobile home industry has been hard hit by the recession, and far too many mobile home workers are jobless.

I believe that the proposed FTC rule is a prime example of government over-regulation costly to consumers and harmful to the industry and its workers.

Mr. Chairman, let me take just a few minutes to outline my reasons for opposing FTC regulation of the mobile home industry.

The Federal Trade Commission report, which recommends additional Government regulation concerning the warranties most mobile home companies already offer, was initiated nearly eight years ago.

This was prior to passage by Congress of the 1974 Mobile Home Construction and Safety Act, which gave the Department of Housing and Urban Development authority to set standards for mobile home construction.

The FTC report does not differentiate between mobile homes built before the Mobile Home Construction and Safety Act and those built after its implementation.

Mr. Chairman, I believe the proposed FTC rule would duplicate Federal regulations already on the book. Under the Mobile Home Construction and Safety Act, the Department of Housing and Urban Development requires mobile home manufacturers to inspect their products and to certify that they meet certain fire and safety requirements. The law sets standards for plumbing and electrical systems and has led to improvements in the quality and durability of mobile homes.

Under the Mobile Home Construction and Safety Act, Mr. Chairman, manufacturers of mobile homes must recall, repair, and replace major structural defects and safety standards any time during the lifetime of the mobile home. This is in addition to any warranty now offered by the manufacturer.

Mr. Chairman, from reviewing estimates provided by the Federal Trade Commission and the mobile home industry, it is clear to me that the FTC proposal is expensive.

The FTC gives a conservative estimate that it would cost manufacturers, thereby consumers, no more than $100 to $125 to comply with these proposed rules. An independent consultant has testified before the FTC that the cost would be closer to $275, while the industry estimates the additional cost to run between $800 and $1,000.

These costs would be passed on to consumers. Today, the median income of a prospective mobile home owner is $10,000 per year. Therefore, the proposed FTC rule would increase housing costs for those least able to afford it and would be extremely burdensome to young families and those living on fixed incomes.

Mr. Chairman, we must work to ensure that mobile homes are well built and safe.

To date, existing HUD regulations have been effective in improving the quality of mobile homes. So, too, have been State mobile home standards, self-regulation by the mobile home industry, and competition between manufacturers and dealers.

If there is a need for further regulation of the mobile home industry to protect mobile home buyers, we should seriously consider the Department of Housing and Urban Development, which has already shown expertise in this industry, as the Government agency responsible for establishing and enforcing further mobile home regulations.

Mr. Chairman, workers in my Congressional district are proud of the high quality mobile home they produce.

These homes meet a vital need for safe, decent and affordable housing.

Mr. Chairman, I hope that you and members of this Subcommittee will give the proposed FTC rule your careful review.

Again, I very much appreciate this opportunity to testify before your Subcommittee this morning.

STATEMENT OF SUZANNE LINDAMOOD

My name is Suzanne Lindamood, and I am an associate profesor of housing in the Department of Family Economics at Kansas State University. I have a Ph.D. in Housing from the Department of Consumer Economics and Housing, Council University. My doctoral dissertation was a comparison of mobile home and conventional home residence in social, economic, and housing terms. I am a consumer member of the HUD mobile home advisory council, author of a college textbook—Housing, Society and Consumers (West Publishing Company, 1979), editor of the professional journal—Housing and Society, and a reviewer for the Journal of Consumer Affairs. I have also directed several large household surveys on housing conditions and satisfaction, and have for seven years taught graduate and undergraduate courses in housing, research methods, and research for policy analysis. I am speaking today for myself only, and not on behalf of any organization.

My primary concern and the context in which I am speaking today is the housing situation that lower income consumers face and the potential impact of the additional regulation proposed by the Federal Trade Commission on the housing choices available to them. I am not inherently opposed to the type of regulation proposed by the FTC. At this time I have not, however, seen convincing evidence that would lead me to conclude that the regulation is necessary. I feel that the FTC has not gathered solid quantitative evidence of the benefits of the

proposed regulation and it has not shown that the regulation would solve the warranty problems of mobile home consumers. The FTC has provided no evidence as to whether most mobile home consumers are willing and able to pay more for the estimated increase in quality.

I will address three issues in my statement today—(1) the impact of additional regulations on lower income consumers; (2) the adequacy of existing regulations of mobile homes; and (3) the adequacy of the private market process in meeting the needs of mobile home consumers.

IMPACT ON THE LOWER INCOME CONSUMER

The main problems facing housing consumers today is cost, not quality. Many housing policies adopted at the local, state and federal levels have had the goal of increasing quality, but have had the result of imposing severe cost problems on consumers, especially on lower income consumers. We see quality problems in rural and urban areas, so we pass stricter housing and building codes at the local level. We pass zoning restrictions to keep our lower quality homes and to maintain the character of an area. We see renters paying a large portion of their incomes for rent, so we pass rent control. The end result of all of these individual regulations is a decrease in the availability of lower cost housing, and an increase in cost. The rent income ratio has been increasing rapidly, and now about half of low income renters pay 35 percent or more of their income for rent. The fundamental problem is that the higher the quality required in housing, the more it will cost. An increase in cost to consumers means either that they decrease the money available for food, clothing and medical care, or that they seek out lower cost housing that they can afford.

Many of the quality requirements have gone beyond what is reasonable in terms of health and safety, and although the intention may be for better housing, the cost burden is on the consumer, and sometimes the result is lower quality housing rather than higher quality housing. In the case of mobile home owners purchasing at the lower end of the price range, most would be renters if they could not own a mobile home. Consumer research has shown that the most important aspect of housing to the majority of people is ownership, and consumers indicate that they would react to increasing housing costs by choosing a lower quality of unit in order to remain a homeowner. Additional regulations could deny consumers the opportunity to choose the most appropriate quality-cost tradeoff.

In order to justify a mandatory increase in quality which is unrelated to health and safety, research is needed which clearly ascertains whether consumers are willing and able to pay for that increase. All other things being equal, consumers want higher quality and more warranty service, but in the real world, there is no free lunch. We need to determine whether the consumer feels that extra cost is worth it. The FTC report argues that the expected benefits of higher quality and better warranty service would be greater than the cost of regulation. Although the FTC does not present concrete evidence of this, it is plausible, yet it does not allow for the fact that consumers have different preferences and resources.

Mobile home are virtually the only new housing being built for lower income persons by either the public or private market. Manufacturers will respond to extra regulation by passing the cost on to the consumer. Some lower income consumers will not benefit from the improved quality because they will not be able to buy mobile homes. For lower income consumers the alternatives to buying new mobile homes are buying used mobile homes and renting conventional housing which is of lower quality than new mobile homes. Research has shown that mobile home are more desirable to consumers than other lower cost housing options due to ownership possibilities, and the mobile type of structure is preferred to duplexes, townhouses and high rises by many consumers. If higher quality housing is an important societal goal, then we should deal with the issue of how society can help lower income consumers pay for the higher quality, not how to force them to pay for it without assistance.

It is difficult to come up with an exact cost for the proposed FTC regulations, with estimates ranging from $125 to $1,000. Taking $500 as a midpoint (and likely as any other estimate to be accurate) this represents a 6.25 percent increase in the price of an $8,000 mobile home. Using one estimate of the price elasticity of mobile home demand (Gates, 1980) we could expect a 15 percent drop in sales.

The FTC has not provided any quantitative breakdowns of the benefits we are told would come from the proposed rule. The FTC has asserted that the benefits would exceed the costs and has assumed, without substantiation, that the increased cost would be good for consumers. In order to do an adequate economic analysis of the impact, a survey needs to be done that would provide information on consumers' preferences, likely behavior, and alternatives available to them, in addition to quantifying the cost of unperformed warranty service.

ADEQUACY OF EXISTING REGULATIONS

The purchaser of a new mobile home is already one of the best protected housing consumers. The mobile home is the only class of housing that is covered by mandatory national construction codes (the HUD standards). In addition, each consumer must receive an owner's manual which states the warranty obligation of the manufacturer; to whom to write if they have a warranty problem; and the HUD address if they do not receive satisfaction. I know of no other type of housing in which the consumer receives this much information either about the home or about what to do if problems arise.

In terms of problems related to safety and durability I believe that the HUD mandate under Title 6 is proving successful. Research indicates that the mobile home being built today is a safe and durable product. If there are violations of the standards, they should be dealt with by HUD, and regulations that would essentially duplicate HUD's mandate to ensure safety and durability would be an additional unwarranted burden at this time.

As to the issue of the quality of mobile homes, the FTC report implies that the mobile home consumer is facing a worse situation than other housing consumers, and that special action needs to be taken. I have seen no studies that provide solid evidence that mobile homes have more problems than other housing. Two recent studies of conventional housing found that a majority of recent purchasers of housing (new homes were not separated from existing) encountered problems. (White 1979, Meeks, 1980) I have seen no studies of mobile home warranty problems that would stand up to normally accepted standards for consumer research. The Ohio study the FTC chose to emphasize in a recent news release would be characterized by most survey researchers as fatally flawed, as it did not follow standard survey procedures to assure a representative sample. Also, the type of information needed was not gathered, and the type of data analysis needed was not performed.

One means by which we weigh the overall adequacy of a housing unit in meeting the criteria the occupants feel important is the reported satisfaction level of the occupants. Studies comparing the satisfaction levels of mobile home occupants to conventional home occupants have found high levels of satisfaction among both groups. (Moore 1979; Shelton 1979; Lindamood, 1974). We can conclude that mobile home residents do not view their housing as being worse than or having more problems than realistic housing alternatives.

I believe that the high satisfaction levels of mobile home residents, coupled with the protection now offered by the HUD standards indicate that the proposed FTC regulation is not needed at this time, and that any new regulations must be justified by sound, conclusive evidence.

FUTURE ADJUSTMENT OF THE MOBILE HOME MARKET

In a properly functioning unregulated product market, manufacturers will attempt to offer products of various quality and price levels to meet the demands of different types of consumers. Manufacturers need to be concerned about the reputation of their products, because consumers learn from experience and by word-of-mouth. The FTC reports on the proposed mobile home regulation ignore the possibility of market adjustment, since the implicit assumption is complete consumer ignorance of product quality before purchase. The FTC analysis also suggests that there is considerable price competition, and price sensitivity on the part of consumers, so that manufacturers and dealers have incentives to cut costs without regard to quality. This is plausible in the short-run, but in the long run there would have to be no communication among consumers for the situation to persist. A more plausible scenario would have the market process leading to a situation where mobile home purchasers got the quality for which they are willing and able to pay.

Therefore, I feel that the FTC has not adequately substantiated its case. The FTC bases the case for regulation on anecdotal information and some defective surveys of mobile home consumers. The expected benefits of the regulation are stated in qualitative not quantitative terms, and no consumer input was obtained on preferences or willingness to pay for additional quality or service. The FTC assumes that the existing HUD quality standards are inadequate, despite the fact that the standards have existed a relatively short time. The FTC ignores the potential harm the regulation might inflict on lower income consumers. I cannot support the proposed FTC regulation on the basis of the evidence presented by the FTC. I might support the proposed regulation if the FTC could present a comprehensive, quantitative analysis showing that the expected benefits were greater than the expected costs for most potential mobile home consumers.

REFERENCES

Gates, Howard. "Price dependence of mobile home demand", Manufactured Housing Institute, May, 1979.

Lindamood, Suzanne. *An Analysis of a Housing Alternative: Household Characteristics, Housing Satisfaction, Residential Mobility, and Housing Expenditures of Mobile Home and Conventional Home Residents*, Ph.D. dissertation, Cornell University, 1974.

Meeks, Carol B. and Eleanor H. Oudekerk, "Home Warranties: A New Issue In Consumer Protection", unpublished manuscript, Department of Consumer Economics and Housing, Cornell University, 1980.

Moore, Glenda N. and Mary Wallace Crocker. "Home Owner Satisfactions: Manufactured Houses Versus Conventional Houses", *Housing and Society*, v. 6, n. 3, 1979, pp. 206–217.

Shelton, Gladys, Kenneth Gruber and Gerard Gray. "Mobile Home and Conventional Living: A Socioeconomic and Psychological Comparision", paper presented at the annual meeting of the American Association of Housing Educators, October 18, 1979, to be

published in the conference proceedings issue of *Housing and Society*, v. 7 (1980).

U.S. Department of Housing and Urban Development. *Annual Housing Survey: 1977, Part C*, U.S. Government Printing Office, 1979.●

MEDICAL CARE

● Mr. DURENBERGER. Mr. President, I read with great interest the column by John S. Hoff, representing the National Council of Community Hospitals, in today's Washington Post. Titled "A Little Healthy Competition," the article discusses many of the issues my colleagues and I have been wrestling with over the past year on the Senate Finance Committee.

The Health Incentives Reform Act, S. 1968, which I sponsored together with Senators JOHN HEINZ and DAVE BOREN, is one of a growing number of "procompetitive" bills. Senator SCHWEIKER is sponsor of such legislation in the Senate (S. 1590, the Comprehensive Health Care Reform Act), and there are four such bills in the House of Representatives. The unavoidable conclusion is that competition is catching on as the wave of the future in health care legislation.

Mr. Hoff describes several provisions of the most recent procompetitive bill, H.R. 7527, sponsored jointly by Congressmen GEPHARDT and STOCKMAN. Like our own Health Incentives Reform Act, the Gephardt-Stockman bill would encourage employers to offer their employees a choice of health care plans; like our bill, theirs would encourage cost awareness on the part of consumers by giving them a dollar incentive to choose more efficient, lower cost plans; and like S. 1968, H.R. 7527 would limit the amount of an employer's contribution for health insurance which may be excluded from the employee's income tax.

Thus while each of the procompetitive bills differs in detail from the others, the basic tenets are the same: Our current methods of financing health care are inadequately competitive, promoting costunconsciousness and inefficiency; consumers of health care should be exposed to the cost of their care so that they can make cost-effective decisions; and providers of health care should be rewarded for providing high quality, accessible services at competitive price.

The National Council of Community Hospitals, which Mr. Hoff represents, has been a strong supporter of our bill and of the competitive approach in general. I am pleased to recommend the following article for readers of the CONGRESSIONAL RECORD.

The article follows:

A LITTLE HEALTHY COMPETITION

(By John S. Hoff)

The Post declared this spring that the antitrust laws are, with respect to medical care, "obsolete" and that they "undercut the public's real interests." I fear The Post may have rushed too quickly to judgment. The answers are not quite so clear as The Post's assertions would suggest.

The Richmond Planning Agency asked the Justice Department whether it could participate with hospitals in concerted action affecting the supply and price of health services. This has come to be known as "joint planning," a process in which a planning agency encourages hospitals to agree among themselves which hospital will provide what service.

Joint planning entails two or more hospitals in a community meeting together behind closed doors to divide up markets. This may work to the detriment of hospitals' customers. Indeed, the Richmond Planning Agency apparently contemplated concerted action on hospital prices. Joint planning also may harm other hospitals; it provides a means for the established hospitals to ensure under the ostensibly benign guise of planning that other hospitals in the community do not encroach upon their turf.

Society has made an emphatic decision to prohibit, not to encourage, collaboration by competitors. If we have determined that the "efficiencies" of permitting McDonald's and Burger King to divide markets and avoid duplication are not sufficient to warrant reductions in competition, why is that judgment not equally applicable to health care?

While the Post is incorrect in saying that the antitrust laws are obsolete in health care, that statement does flirt with the core issue. Economic competition in health care has been stifled by planning and regulation and a uniquely intrusive bureaucracy. It has been distorted by third-party cost reimbursement, which enables hospitals to compete in terms of service, plant and equipment while knowing that the patients' health insurance will pay for it.

The proper response to this state of affairs is to consider the benefits economic competition might provide.

Legislation to deregulate the health care delivery system (while retaining regulations that promote safety and quality) was recently introduced by Reps. Richard Gephardt (D-Mo.) and Dave Stockman (R-Mich.). The Gephardt-Stockman bill would require providers to compete in terms of price as well as quality. It would help all Americans in obtaining health care, including the self-employed and the working poor, who currently receive no federal assistance. The federal contribution would be provided in a way that would not anesthetize individuals to the cost of health care insurance, as is currently the case, but would require them to consider the cost as well as the quality of their health care.

The bill would limit the amount of an employer's contribution for health care plans that an employee may exclude from his taxable income. The bill does not have the government set the limit. It leaves it up to a community referendum: the limitation would be the average premium paid by similarly situated employees in the same community. If an employee purchased with an employer contribution a health care plan that cost more than this community average, the employee would have to report the excess as income and pay income taxes on it.

The Gephardt-Stockman bill further encourages cost-conscious purchasing decisions by providing that if an employee obtains coverage for less than the community average, he may keep the difference between the cost of the premium and the employer's contribution as a tax-free cash refund. To ensure that the employee is sufficiently insured, the refund would be available only if he purchased a plan that provided comprehensive health care coverage and protected him against large medical bills.

In this way, the bill remedies the fact that the tax laws now encourage employees to obtain more insurance (which is tax-free) rather than more wages (which are taxable). This condition has significantly contributed to increases in the cost of health care. The Gephardt-Stockman bill makes the tax laws neutral on the employee's choice between insurance and wages.

The American people are increasingly coming to the conclusion that a competitive system of private initiative rather than government regulation is the most effective and responsive way to provide services. Changing the economic incentives of the system could go a long way toward constraining cost increases and responding to the needs of the American people. Competition in the health care industry is not, as The Post's editorial implies, "obsolete" or "inconsistent with the public interest." Rather, it is being suppressed by a regulatory framework that is thwarting the public interest.●

SUBMERGED LANDS LEGISLATIVE HISTORY—H.R. 39, ALASKA LANDS BILL

● Mr. TSONGAS. Mr. President, I am submitting for myself, Senator JACKSON, Senator HATFIELD, and Senator ROTH—the cosponsors of the substitute for the Energy Committee Alaska lands bill—additional information regarding a submerged lands provision in H.R. 39 which passed the Senate last Wednesday. This discussion is meant to serve as a legislative history for this provision, which was not in the bill as it was reported from committee.

The material follows:

STATEMENT OF LEGISLATIVE HISTORY

Mr. TSONGAS. By the beginning of the 95th Congress, some six years after the enactment of the Alaska Native Claims Settlement Act, only a small percentage of the forty-four million acre Native land entitlement had been conveyed to the Native regional and village corporations authorized by the Act to administer the Native claims settlement for the Alaska Native people. In response to this delay, the House of Representatives included a procedure in its version of H.R. 39 to immediately convey the core townships around each Native village (Section 801) and expedite the conveyance of the remainder of the entitlement (Section 802). Similar provisions were included in the version of H.R. 39 reported in 1978 by the Senate Energy and Natural Resources Committee. At the same time, and in response to the same concerns, Assistant Secretary of the Interior Martin initiated a comprehensive reorganization of the Bureau of Land Management Native Conveyance Office in Anchorage.

H.R. 39 as passed by the House last year retained the instant conveyance section, but dropped the expedited procedure for the conveyance of lands outside the core townships. The bill reported by the Senater Energy and Natural Resources Committee last fall retained both the instant and expedited conveyance provisions which were included in the bill which it reported during the previous Congress.

On February 12, 1980, Mr. Morris Thompson, then President of the Alaska Federation of Natives, by letter informed Senator Jackson that as a result of Secretary Martin's reorganization the land conveyance logjam had been broken and the rate of conveyance of Native lands was beginning to accelerate. However, President Thompson indicated in his letter that one major impediment to the success of the Native land conveyance effort still remained—the "submerged lands" issue.

The submerged lands issue identified by President Thompson is perhaps the most complex and confusing issue within the matrix of the Native land conveyance process. Pursuant to the Submerged Lands Act of 1953 and section 6(m) of the Alaska Statehood Act, title to unreserved lands beneath waters which were navigable at the time of Alaska statehood vested in the State of Alaska. Obviously, if such submerged lands are located within Native selection areas they are not available for conveyance by the Department of the Interior to the Native corporations, because title had passed from the Department on the State in 1959.

As a result, when a parcel of submerged land is located within a Native selection area, the Bureau of Land Management makes an administrative determination as to whether at the time of Alaska statehood the water covering the parcel was navigable. If it determines that the water was indeed navigable, the parcel is excluded from the conveyance (since it is already owned by the State) and additional acreage is conveyed to the corporation from among its other selections to compensate for the excluded parcel.

However, if the Bureau of Land Management determines that the water was not navigable at the time of Alaska statehood, then the parcel is conveyed to the corporation and charged against its acreage entitlement under the Alaska Native Claims Settlement Act.

Unfortunately, only the federal courts, not the Bureau of Land Management, can authoritatively determine the navigability of the water covering the submerged land which in my previous example was conveyed to the Native corporation as a result of the Bureau's administrative determination of non-navigability.

Next year, ten years from now, or a hundred years from now, the State of Alaska, or any other party with standing in the District Court to quiet title to the parcel, can challenge the administrative determination of non-navigability. And if the court agrees that the Bureau's determination was erroneous and, consequently, that the water was in fact navigable at the time of Alaska statehood, the Native corporation, through no fault of its own, loses title to the parcel since the Department of the Interior did not own the parcel at the time it was conveyed to the corporation. But since the parcel was already charged against the corporation's acreage entitlement under the Alaska Native Claims Settlement Act, and since the corporation's land selection authority has expired and its overselections most probably no longer exist, its total conveyed acreage will be reduced by the amount of acreage within the lost parcel.

As a result, a Native corporation being conveyed a parcel of submerged land under water determined by the Bureau of Land Management to be non-navigable is faced with an unenviable choice. It can either accept the conveyance and risk a future judicial determination of navigability with its resultant loss of title to the parcel and reduction of the corporation's total conveyed acreage, or it can refuse conveyance of the parcel by appealing the Bureau of Land Management's administrative determination or non-navigability to the Alaska Native Claims Appeal Board and then to the United States District Court.

Although exercise of the latter option theoretically preserves the corporation's acreage entitlement, the most recent example of the use of this approach (an appeal by the Doyon Corporation of Bureau of Land Management determinations of non-navigability of two small segments of the Nation and Kandik Rivers) resulted in a week-long hearing before the Alaska Native Claims Appeal Board involving an administrative law judge, lawyers representing Doyon, the State, and the Department of the Interior, and innumerable witnesses.

Doyon estimates that its selections alone contain at least five hundred similar bodies of water, not counting water bodies within the selections of its village corporations. It is estimated that approximately thirty-five hundred water bodies similar in character to those at issue in the Nation-Kandik appeal are included within Native selections filed throughout the state. Even a conservative extrapolation from the Doyon experience gives some indication of the staggering administrative, financial, and litigatory burden placed upon the Federal and State governments and the Native corporations and groups by the present situation.

The present situation with respect to this issue is intolerable for all affected parties. In recognition of this fact, the House of Representatives included a complicated provision dealing with this issue in the version of H.R. 39 which it passed last year. Section 918 of that legislation establishes a complex process for the conveyance of submerged land acreage to the Native corporations, with parcels under water bodies of a certain size not being charged against the corporation's acreage entitlement, while other parcels under smaller water bodies are charged against the entitlement. Complicated exchange provisions also are included.

Section 918 was not included in the bill reported last year by the Senate Energy and Natural Resources Committee because the Department of the Interior had not formally approved the amendment by the time the committee completed its work on H.R. 39. Since that time, however, the Department of the Interior has formally endorsed the concept embodied in section 918 of the House bill, as has the State of Alaska.

However, subsequent to the Department of the Interior's formal approval of the section 918 concept, a simpler approach to the resolution of the submerged lands issue was proposed. At the suggestion of the State the other interested parties began work on a new submerged lands amendment based upon the establishment of statutes of limitation for challenges to Native title to all parcels of submerged lands conveyed to the Native corporations and Native groups.

That amendment is now included as section 901 of the Senate-passed bill. The amendment has been reviewed and approved by the Department of the Interior, the Alaska Federation of Natives, and the State of Alaska. To my knowledge, this amendment represents the first time a state has agreed to confirm its ownership of submerged lands within a limited period of time established by legislation.

Because of the complexity of both the subject matter, and of the procedure established by the amendment, I believe that it would be helpful to briefly review several important provisions of section 901.

Subsection (a) establishes statutes of limitation within which any challenge to Native title of a parcel of submerged land, or any interest therein, must be brought in the United States District Court by the State of Alaska, or by any other party which meets the normal standing requirements which are a prerequisite to the prosecution of a civil action in the District Court. The time periods set out in the subsection are five years from the date of an interim conveyance which includes the challenged parcel, if the interim conveyance was executed after the date of enactment of this Act, and seven years after the date of enactment of this Act, if the interim conveyance was executed on or before the date of enactment of this Act.

The five and seven year distinction is important and has a sound, rational basis. Soon some fifteen million acres of land will have been conveyed to Native corporations pursuant to the Alaska Native Claims Settlement Act. This acreage contains hundreds, and perhaps thousands, of parcels of submerged land, the majority of which has not been evaluated by the State of Alaska because prior to the passage of this amendment there was no statute of limitations within which the State was compelled to identify and confirm its ownership under the Submerged Lands Act.

Consequently, it would be manifestly unfair to now compel the State to evaluate all of the determinations of non-navigability for all of those hundreds of parcels of submerged land within five years, while at the same time evaluating all of the determinations of non-navigability which will be made by the Bureau of Land Management after the date of enactment of this Act. However, the State has assured me that within the next seven years it can evaluate all determinations of non-navigability of waters covering submerged lands already conveyed. Consequently, section 901 establishes two distinct time periods in order to ensure that State interests will be adequately protected.

It also should be noted that the amendment repeatedly employs the phrase "parcel of submerged land." Lest there be any confusion engendered by the use of this term, I would like to explain briefly the types of acreage and interests in land within the purview of the term. Native lands are normally conveyed by a document called an interim conveyance. Each interim conveyance describes the lands conveyed by that particular document. A map of the land conveyed by the interim conveyance may reveal that some or all of the lands described in the document are covered with water. By the use of the term "parcel" it is intended that the submerged lands amendment apply to any or all of the acreage covered with water described in an interim conveyance. For example, a ten mile river may meander through land described in a particular interim conveyance. A challenge to Native title to all of the acreage under the river, a challenge to only one acre, or a challenge to only a few acres under a small segment of the river, all must be filed in the United States District Court within the requisite time limit.

The term "parcel" also includes both the surface estate and the subsurface estate which may be conveyed to different corporations. For example, several regional corporations have selected subsurface estate in lieu of the subsurface estate under the surface estate selected by villages located within wildlife refuges. The term "parcel" is intended to apoly to any subsurface estate independent of its surface estate, as well as to surface and subsurface estates conveyed to a village or group corporation and its companion regional corporation. It also applies, of course, to any surface estate conveyed independent of its subsurface estate.

Subsection (a) also recognizes that not all Native lands have been, or will be, conveyed by interim conveyance. Because they already have been surveyed, some Native lands have been, or will be, conveyed by the execution of a patent, without going through the interim conveyance procedure. With respect to these conveyances, the statutes of limitation begin to run from the date of execution of the patent.

For the purposes of subsection (a), an interim conveyance and a patent are "executed" at the time they are signed and dated by the official of the Bureau of Land Management authorized to execute such documents. Notice of such execution should be promptly made to the State and other affected parties.

Subsection (b) clarifies that a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable shall not be subject to review by the Alaska Native Claims Appeal Board, and that the execution of the conveyance document described in subsection (a) shall be the final agency action by the Secretary of the Interior with respect to the navigability issue. All administrative

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remedies will have been exhausted and the ownership of the submerged land within the conveyance area may be determined in the United States District Court, if such a determination is sought within the time period established by subsection (a). The only exceptions to the principles which I have just outlined are appeals of determinations of non-navigability which are pending before the Alaska Native Claims Appeal Board on the date of enactment of this Act, and original judicial actions to quiet title to lands beneath a water body brought in a United States District Court by the State, or by a person with standing, prior to any Bureau of Land Management determination regarding the non-navigability of the water body.

With respect to pending appeals, which are few in number, the Alaska Native Claims Appeal Board is not divested of jurisdiction. However, such appeals must be valid. They must be prosecuted by persons who have satisfied the requirements for standing before the Alaska Native Claims Appeal Board. However, if all parties involved in an existing appeal before the Appeal Board mutually stipulate to a dismissal in order to have the case decided in a Federal court, we would expect the Alaska Native Claims Appeal Board to immediately grant the dismissal.

Subsection (c) awards each Native corporation or Native group which is a defendant in any action brought pursuant to subsection (a) its actual costs and actual attorney's fees, including all costs and attorney's fees incurred on appeal, in any instance in which the Federal courts judicially affirm the corporation's or group's ownership of the parcel of submerged land which is the subject of the action. With respect to this provision, it should be emphasized that while the purpose of this subsection is to make each affected defendant corporation and group whole for all legal expenses to which it has been subjected by a non-prevailing plaintiff, including the State of Alaska if it is a non-prevailing plaintiff, in an action challenging the corporation's or group's title to submerged land, I fully expect that the Native corporations and groups will exercise reasonable restraint with respect to the costs and fees which they incur defending such litigation.

Subsection (d) states that no Native corporation or Native group shall be determined to have been conveyed its acreage entitlement under the Alaska Native Claims Settlement Act until the statutes of limitation in subsection (a) have run and any civil actions filed pursuant to that subsection have been reduced to a final judgment. During this time period a major purpose for maintenance of Native overselections will be to ensure that adequate replacement lands will be available to fulfill a corporation's or group's acreage entitlement if it should lose title to a parcel of submerged land because of a judicial determination of navigability.

The amount of overselections retained by each corporation and group during the pendency of the conveyance process should be reasonably related to the magnitude of the potential loss of submerged lands by such corporation or group, and may be reduced by the Secretary pursuant to his existing authority. However, it must be emphasized that the expiration of the statutes of limitation and the absence of any civil actions filed pursuant to subsection (a) are not justification for the elimination of a corporation's or group's overselections if other portions of the corporation's or group's acreage entitlement have not yet been fully conveyed.

Subsection (e) establishes a procedure through which the State of Alaska, by agreement with the affected Native corporation or group, may acquire submerged lands acreage which otherwise would be conveyed to such corporation or group. Until such time as the acreage acquired by the State pursuant to this subsection may be determined to be navigable and vested in the State pursuant to section 6(m) of the Alaska Statehood Act, the acreage shall be charged against the State's acreage entitlement under section 6(b) of the Statehood Act.

Mr. President, the remainder of the provisions of the amendment are self-explanatory. However, I would like to emphasize one additional, very important component of this amendment. The Native corporations and Native groups are concerned that they be conveyed full and complete title to the lands which they have selected and which they have a right to receive pursuant to the Alaska Native Claims Settlement Act. At the same time, the State of Alaska is concerned that its title to water bottoms conveyed to it in 1959 be confirmed.

Under the terms of the amendment, a parcel of submerged land determined by the Bureau of Land Management to be covered by non-navigable water will be conveyed to the appropriate Native corporation or Native group (unless litigation is initiated by the State, or another party with standing, prior to conveyance by the Bureau of Land Management). The State is thereafter free to seek a judicial determination of the ownership of the parcel within the time period established by this amendment. Any parcel which is the subject of a civil action filed pursuant to subsection (a) will remain in Native ownership during the pendency of the action. However, it should be emphasized that the District Court may grant preliminary injunctive relief to permit continued public use of the parcel during the pendency of the action, if the granting of such relief is appropriate under the law and under the facts relating to the particular parcel at issue.

As this amendment and its context clearly indicate, the statutes of limitation established for determining title, as between the State and the various Native corporations, to certain submerged lands, have no applicability to the determination of title to submerged lands in Alaska which are not first determined by the BLM to be eligible for conveyance to Native corporations under the terms of the Alaska Native Claims Settlement Act.

And finally, it should be noted that this amendment is not intended to have any effect, either positive or negative, on the result in any future litigation challenging the correctness of the Secretary's initial decision not to treat conveyances of submerged lands to Native corporations and Native groups in the same manner in which conveyances to other entrymen are treated, that that is quitclaiming submerged acreage under lakes larger than fifty acres and streams wider than three chains to the entryman, but not charging such submerged acreage against the entryman's entitlement.

Mr. STEVENS. I concur with this discussion of the submerged lands provision in H.R. 39 as passed by the Senate.●

U.S. RELATIONS IN ASIA-PACIFIC REGION

● Mr. LAXALT. Mr. President, our relations with the nations and peoples of the Asia-Pacific region are vital to our national interest. Broadening and deepening our relationship with the People's Republic of China while continuing to expand our close ties of friendship with Japan, Korea, Taiwan, and the other nations in the region has to be among our most pressing foreign policy priorities.

But how to go about it? In December of 1978, the Carter administration tried a new approach. Throwing over the policies of its predecessors, it accepted for all practical purposes unchanged, the Chinese "Three Conditions." Normalization with Beijing was thus achieved in a manner which previous administrations had rejected as an unacceptable compromise of a close U.S. ally. A mutual security treaty, among our most sacred commitments, was unilaterally abandoned, leaving our friends with serious questions as to the steadfastness of our remaining commitments, and Beijing's leaders with what had to be private doubts as to the seriousness of our pursuit of our new relationship.

Many of my colleagues shared my misgivings about this rather shabby treatment of Taiwan. No one objected to normalization of relations with Beijing. It was a healthy step that had to come. But did it have to carry such a high price tag?

Dr. Kissinger, President Ford, former Under Secretary of State Rostow, and others close to the negotiations or who journeyed to Beijing in a private capacity, at the time said "No." The People's Republic of China was fervently searching for a counterweight to Soviet expansionism in Asia, and against this grave threat they considered Taiwan a largely peripheral issue.

As my good friend and colleague Barry Goldwater told the Senate little more than a week ago:

> President Carter was more Chinese than the Chinese. The policies he adopted were not insisted upon by Communist China officials. Instead they are the policies of American amateurs who are preoccupied with what seems fashionable at the moment, rather than what is sound or necessary over the long run.

But all this is prolog. The question now is the future. The Congress has passed the Taiwan Relations Act, aimed at continuing our friendship with Taiwan while we seek through other avenues to expand our ties with Beijing. Governor Reagan realizes that there is but one China. He also recognizes our need to stand by our friends on Taiwan as the Congress intended when it passed the Taiwan Relations Act. If elected, he will end the series of unedifying petty harrassments which have for too long characterized this administration's conduct of our relations with Taiwan. He will also continue to pursue avenues of common interest with the People's Republic of China. But above all, he will pursue peace and security in the Asia-Pacific region in a way which is fully cognizant of the extreme sensitivity and complexity of the various interrelationships in the region and the legitimate interests of all those involved.

Mr. President, Governor Reagan spoke cogently and forcefully to this question yesterday at a press conference in Los Angeles. I ask that the text of his remarks be printed in the RECORD.

The remarks follow:

STATEMENT BY RONALD REAGAN

Ten days ago George Bush and I met with you here in Los Angeles on the occasion of his departure for Japan and China, a trip he undertook at my request. As we stressed at the time, the purpose of the trip was to provide for a candid exchange of views with leaders in both countries on a wide range of international topics of mutual interest. Ambassador Bush returned last evening, and has reported his findings in detail.

We are both very pleased with the results of his extensive discussions. In a series of meetings with distinguished leaders in Japan, including Prime Minister Suzuki, Former Prime Ministers Fukuda, Kishi and Miki, Foreign Minister Itoh and Minister of International Trade and Industry Tanaka, he had the opportunity to hear their views and recommendations concerning the future of U.S.-Japanese relations.

Our Republican Party Platform stresses that Japan will remain a pillar of our policy for Asia, and a Reagan-Bush Administration will work hard to insure that U.S.-Japanese relations are maintained in excellent condition, based on close consultation and mutual understanding.

Japan's role in the process of insuring peace in Asia is a crucial one, and we must reinforce our ties with this close ally. Japan is our second most important trading partner, and we are her first. We have close ties in other fields, too. A most important example is the U.S.-Japan Mutual Security Treaty which recently marked its twentieth anniversary.

Understanding the Japanese perspective is important for the success of American policy. As Ambassador Bush will tell you in detail, he found Japanese leaders unanimous in their view that the United States must be a strong, reliable, leading partner.

I appreciate receiving their views, and I am grateful to them for the courtesies extended to Ambassador Bush. I would also like to express my appreciation to, and regard for, U.S. Ambassador Mike Mansfield, who also extended many courtesies.

Of equal importance was Ambassador Bush's trip to China, where he held a series of high-level meetings. As I said on August 16, "we have an obvious interest in developing our relationship with China, an interest that goes beyond trade and cultural ties. It is an interest that is fundamental to a Reagan-Bush Administration."

The meeting in Beijing provided for extensive exchanges of views. George has reported to me in great detail the points of similarity and agreement, as well as those of dissimilarity and disagreement. Since the objective of the trip was to have just such an exchange without necessarily reaching agreement, I believe that the objective was reached.

We now have received an updated, first-hand of China's views, and the Chinese leaders have heard our point of view.

While in Beijing, Ambassador Bush and Richard Allen met at length with Vice Premier Deng Xiaoping, Foreign Minister Huang Hua, as well as with other top foreign policy experts and military leaders. I appreciate the courtesies which the Chinese leaders extended to our party, and I also wish to thank U.S. Ambassador Leonard Woodcock for his kind assistance.

We now maintain full and friendly diplomatic relations with China. This relationship began only a few years ago, and it is one which we should develop and strengthen in the years ahead. It is a delicate relationship, and the Reagan-Bush Administration will handle it with care and respect, with due regard for our own vital interests in the world generally, and in the Pacific region specifically.

China and the United States have a common interest in maintaining peace so that our nations can grow and prosper. Our two-way trade has now reached approximately $3.5 billion annually, and China's program of modernization depends in a major way on Western and U.S. technology.

Along with many other nations, we and China share a deep concern about the pace and scale of the Soviet military buildup. Chinese leaders agree with Japanese leaders that the United States must be a strong and vigorous defender of the peace, and they specifically favor us bolstering our defenses and our alliances.

It is quite clear that we do not see eye to eye on Taiwan. Thus, this is an appropriate time for me to state our position on this subject.

I'm sure that the Chinese leaders would place no value on our relations with them if they thought we would break commitments to them if a stronger power were to demand it. Based on my long-standing conviction that America can provide leadership and command respect only if it keeps its commitments to its friends, large and small, a Reagan-Bush Administration would observe these five principles in dealing with the China situation.

GUIDING PRINCIPLES FOR THE FAR EAST

First, U.S.-Chinese relations are important to American as well as Chinese interests. Our partnership should be global and strategic. In seeking improved relations with the People's Republic of China, I would extend the hand of friendship to all Chinese. In continuing our relations, which date from the historic opening created by President Nixon, I would continue the process of expanding trade, scientific and cultural ties.

Second, I pledge to work for peace, stability and the economic growth of the Western Pacific area in cooperation with Japan, the People's Republic of China, the Republic of Korea and Taiwan.

Third, I will cooperate and consult with all countries of the area in a mutual effort to stand firm against aggression or search for hegemony which threaten the peace and stability of the area.

Fourth, I intend that United States relations with Taiwan will develop in accordance with the law of our land, the Taiwan Relations Act. This legislation is the product of our democratic process, and is designed to remedy the defects of the totally inadequate legislation proposed by Jimmy Carter.

By accepting China's three conditions for "normalization," Jimmy Carter made concessions that Presidents Nixon and Ford had steadfastly refused to make. I was and am critical of his decision because I believe he made concessions that were not necessary and not in our national interest.

I felt that a condition of normalization—by itself a sound policy choice—should have been the retention of a liaison office on Taiwan of equivalent status to the one which we had earlier established in Beijing. With a persistent and principled negotiating position, I believe that normalization could ultimately have been achieved on this basis. But that is behind us now. My present concern is to safeguard the interest of the United States and to enforce the law of the land.

It was the timely action of the Congress, reflecting the strong support of the American people for Taiwan, that forced the changes in the inadequate bill which Mr. Carter proposed. Clearly, the Congress was unwilling to buy the Carter plan, which it believed would have jeopardized Taiwan's security.

This Act, designed by the Congress to provide adequate safeguards for Taiwan's security and well being, also provides the official basis for our relations with our long-time friend and ally. It declares our official policy to be one of maintaining peace and promoting extensive, close, and friendly relations between the United States and the seventeen million people on Taiwan as well as the one billion people on the China mainland. It specifies that our official policy considers any effort to determine the future of Taiwan by other than peaceful means a threat to peace and of "grave concern" to the United States.

And, most important, it spells out our policy of providing defensive weapons to Taiwan and mandates the United States to maintain the means to "resist any resort to force or other forms or coercion" which threaten the security or the social or economic system of Taipei.

This Act further spells out, in great detail, how the President of the United States, our highest elected official, shall conduct relations with Taiwan, leaving to his discretion the specific methods of achieving policy objectives.

The Act further details how our official personnel (including diplomats) are to administer United States relations with Taiwan through the American Institute in Taiwan. It specifies that for that purpose they are to resign for the term of their duties in Taiwan and then be reinstated to their former agencies of the U.S. government with no loss of status, seniority or pension rights.

The intent of the Congress is crystal clear. Our official relations with Taiwan will be funded by Congress with public monies, the expenditure of which will be audited by the Controller General of the United States; and Congressional oversight will be performed by two standing Committees of the Congress.

You might ask what I would do differently. I would not pretend, as Carter does, that the relationship we now have with Taiwan, enacted by our Congress, is not official.

I am satisfied that this Act provides an official and adequate basis for safeguarding our relationship with Taiwan, and I pledge to enforce it. But I will eliminate petty practices of the Carter Administration which are inappropriate and demeaning to our Chinese friends on Taiwan. For example, it is absurd and not required by the Act that our representatives are not permitted to meet with Taiwanese officials in their offices and ours. I will treat all Chinese officials with fairness and dignity.

I would not impose restrictions which are not required by the Taiwan Relations Act and which contravene its spirit and purpose. Here are other examples of how Carter has gone out of his way to humiliate our friends on Taiwan:

Taiwanese officials are ignored at senior levels of the U.S. government.

The Taiwan Relations Act specifically requires that the Taiwanese be permitted to keep the same number of offices in this country that they had before. Previously Taiwan had 14 such offices. Today there are but nine.

Taiwanese military officers are no longer permitted to train in the United States or to attend service academies.

Recently the Carter Administration attempted to ban all imports from Taiwan labeled "Made in the Republic of China," but was forced to rescind the order after opposition began to mount in the Congress.

The Carter Administration unilaterally imposed a one-year moratorium on arms supplies even though the Act specifies that Taiwan shall be provided with arms of a defense character.

The Carter Administration abrogated the Civil Aviation Agreement with Taiwan, which had been in effect since 1947, in response to demands from the People's Republic of China.

I recognize that the People's Republic of China is not pleased with the Taiwan Relations Act which the United States Congress insisted on as the official basis for our relations with Taiwan. This was made abundant-

ly clear to Mr. Bush, and, I'm told, is clear to the Carter Administration. But it is the law of our land.

Fifth, as President I will not accept the interference of any foreign power in the process of protecting American interests and carrying out the laws of our land. To do otherwise would be a dereliction of my duty as President.

It is my conclusion that the strict observance of these five principles will be in the best interests of the United States, the People's Republic of China and the people on Taiwan.

The specific implementation of these treaties will have to await the results of the election in November, but in deciding what to do I will take into account the views of the People's Republic of China as well as Taiwan. It will be my firm intention to preserve the interests of the United States, and as President I will choose the methods by which this shall best be accomplished.●

PROPOSED ARMS SALES

● Mr. PELL. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $5 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of a proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD at this point the three notifications I have received.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C. August 18, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-87, concerning the Department of the Army's proposed Letter of Offer to Saudi Arabia for defense articles and services estimated to cost $30.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA,
Director.

Transmittal No. 80-87

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value: Major Defense Equipment*, $0.0 million; Other, 30.0 million; Total, $30.0 million.

(iii) Description of articles or services offered: Construction and related services necessary to provide an expanded underground command and operations center.

(iv) Military department: Army (HAZ, Amendment No. 2).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: None.

(vii) Section 28 report: Case not included in Section 28 report.

(viii) Date report delivered to Congress: 18 Aug., 1980.

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 19, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-90, concerning the Department of the Army's proposed Letter of Offer to Tunisia for defense articles and services estimated to cost $23.8 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA,
Director.

[Transmittal No. 80-90]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Tunisia.

(ii) Total estimated value: Major defense equipment,* $22.5 million; other, $1.3 million; total, $23.8 million.

(iii) Description of articles or services offered: Three hundred I-CHAPARRAL, MIM-72F, missiles.

(iv) Military department: Army (UDL).

(v) Sales commission, fee, etc., paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: None.

(vii) Section 28 report: Included in report for quarter ending 31 March 1980.

(viii) Date report delivered to Congress: 19 August 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 19, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-91, concerning the American Institute in Taiwan's proposed Letter of Offer to the Coordination Council for North American Affairs for defense articles and services estimated to cost $15.5 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director.

[Transmittal No. 80-91]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Coordination Council for North American Affairs (CCNAA), Pursuant to P.L. 96-8.

(ii) Total estimated value: Major defense equipment*, $14.5 million; Other, $1.0 million; Total, $15.5 million.

(iii) Description of articles or services offered: Ninety I-HAWK missiles.

(iv) Military department: American Institute in Taiwan for the U.S. Army (XYG).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: None.

(vii) Section 28 report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: 19 August, 1980.●

A NEW STEEL POLICY

Mr. HEINZ. Mr. President, as the American steel industry continues to sink into one of the deepest crises in its history, it is vital that the Congress turn its full attention to new policy initiatives that will create a new industrial policy for the United States and restore our steel industry to a position of world competitiveness.

Achieving that result, of course, demands a thorough understanding of the current problem. An important contribution to that understanding has recently been made by Eugene Frank of M. Waddell and Towne, Inc. I have known and respected Gene Frank for a long time. He is clearly one of the Nation's foremost analysts of the steel industry, whose incisive comments have been a great contribution to the Senate Steel Caucus.

Gene has recently completed a new analysis of the industry which deserves the close attention of all those who share my concern for the future of steelmaking in the United States.

Mr. President, I ask that Gene Frank's study, along with a recent letter on steel policy sent to the President by the four leaders of the Senate Steel Caucus, be printed at this point in the RECORD.

The study and letter follow:

STEEL INDUSTRY AND THE 1980's: THE DECADE FOR DECISION

In the very near future, our government must decide if it wants a viable domestic steel industry and a strong industrial base for this nation.

The steel industry issue has become an issue of national significance. The evidence documenting this statement is overwhelming.

For a multiplicity of reasons, world demand for metal during the decade of the '80s will increase substantially from current levels. Most every nation, regardless of size, maturity or political bent will have to consume more metal, to attain its political, social and economic goals. Each nation will endeavor to have a strong and growing economy to provide jobs for expanding labor forces. Standards of living must be improved in order to provide all people with adequate food, shelter, clothing and medical and dental care. Most nations will expend special effort to overcome their energy, pollution and transportation problems as well as rebuild the infrastructures of their industries and cities.

The accomplishment of these goals will require metal. Regardless of what skeptics may say, the world is and will be for some time to come, in the "Steel Age." We cannot progress and improve living standards without steel.

Currently, due to economic dislocations, caused by the oil cartel, the world is in a period of oversupply of steel. The energy crisis has sent economics into a tailspin, promoting many steel producing nations to use their steel industries exports as a cushion against unemployment and to obtain currency to pay for escalating energy costs. The steel export push by foreign producers at

below-cost-of-production prices has not only strapped them financially, but has also put a strain on many of the governments that either own or subsidize them. It should be emphasized that the dumped imports into the American market created artifically low price levels here, injured our industries' capabilities and increased unemployment.

As a result, not only have steel expansion plans been postponed or discarded but many foreign producers became more concerned about survival and began to rationalize their production facilities.

When world demand picks up the supply will not be there because of the rationalization and absence of expansion. Sometime during the decade of the '80s steel will be in short supply in world markets.

Regardless of whether demand merely approaches the supply level or exceeds it by one ton or one hundred and fifty one million tons, which is a distinct possibility, steel prices on the world market will become chaotic. The desire of many nations to escalate world prices in order to recoup past losses and fund necessary expansion plans will be hard to suppress.

It must be remembered that most foreign governments use their steel industries as instruments of social, economic, and foreign policy rather than as a profit center. By contrast, the American company which has to compete against the resources of an entire nation, must make a profit to survive. Foreign steel industries, aside from being used to maintain employment levels and obtain foreign currency by exporting also provide below-cost feedstock for other exporting industries such as automobiles and trucks. Massive amounts of indirect steel imports are entering the United States in the form of autos, trucks and parts, injuring both the auto and steel industries.

Because the U.S. marketplace is the most open in the world, it has served as the dumping ground for excess foreign steel production and with the dumping of steel is the associated unemployment caused in American steelworkers ranks. As a result of these action, the American marketplace is also becoming the burial ground for a number of American steel plants. These plants became weakened after years of being impacted by unfairly traded imports which captured domestic market growth and contributed to artificially low prices. The low prices and loss of volume prompted a cost/price squeeze and a capital shortfall which along with mandated massive pollution expenditures, curtailed modernization programs. The inability to obtain an adequate return on capital prompted the closing of plants and the idling of tens of thousands of American steelworkers.

In contrast to our plant closings, other countries are advertising their new facilities throughout the United States, an accomplishment only made possible because of our open market policy and lack of enforcement of our trade laws.

Foreign governments place considerable strategic and economic importance on their steel industries and view them as national assets, the most essential ingredient for industrialization, economic development and the economic stability of their nation.

The U.S. government, in contrast, has taken a wholly different view. For two decades, this country has chosen not to enforce its trade laws to prevent the dumping of steel in our marketplace. Instead, under the banner of free trade and the desire to control domestic steel prices and wages, it has welcomed the dumped imports.

In essence, our government by not enforcing its trade laws has permitted many inefficient foreign industries to push once efficient American plants out of their own marketplace.

Nor is the U.S. policy allowing dumped steel imports the only policy that differs from foreign policy. This nation has enacted laws and regulations that built up unrealistic costs for its steel industry and did nothing to provide such things as adequate depreciation, tax reform, support for new technology and a reasoned approach to pollution control.

As an example, some of our foreign competitors allow equipment to be written off in two years while we were held to fifteen years.

In summary, our government has lacked the foresight to recognize the necessity of having a viable domestic steel industry. Instead, it has chosen to sacrifice its steel industry in the arena of international politics. International politics should not be permitted to govern international trade and decide domestic economic policy.

Today, the United States is the only industrialized nation in the free world unable to supply its own steel requirements. With each day that passes, this nation continues to liquidate its steel sector, despite its ability to compete if competition is fair.

As the liquidation of the American steel industry persists, this nation's dependence upon unreliable foreign sources of supply increases.

By 1990, it is likely that the U.S. will be consuming between 135 and 150 million tons of steel. If the current pace of industry liquidation continues, this nation's steel industry will only have the capability to ship between 80 and 85 million tons of finished product in that year.

We cannot afford to import 50 to 70 million tons of steel. Dependence upon foreign sources for such quantities would be as damaging to the U.S. economy as this country's current dependence on foreign oil. And dependence upon foreign sources for substantial quantities of both steel and oil would cause irrepairable damage to the U.S. economy and our national security.

The need to import such vast quantities of steel must be avoided at all costs. When world steel markets tighten, international steel prices will no doubt escalate as they have in the past. In fact, the possibility exists that offshore steel might not be available at any price. It's also conceivable that when combining future levels of inflation with shortages, international steel prices could exceed $1,000 per ton—so that, even if the steel were available, the need to purchase 50 to 70 million tons of foreign product could result in a deficit balance of steel trade approximating 50 to 70 billion dollars. We then have to think of our oil and auto deficits and our eroded industrial base.

Past government policy, or lack of policy, has contributed substantially to the steel crises of 1980. Since July of 1979 approximately 80,000 American steelworkers have lost their jobs, many steel plants have been closed permanently and most companies have started to lose money on their steel operations.

While the future of additional millions of tons of capacity hangs in the balance, along with thousands of additional steel jobs, agencies of the U.S. government battle over "Turf Rights." Without a well-defined national policy for the steel industry to serve as a guide, job-secure employees of the Justice Department and the Council on Wage and Price Stability will not permit themselves to be overshadowed by the International Trade Commission or the trade laws of this nation.

As an example, if the criminal laws of this nation were not enforced, every man, woman and child would demand they be enforced. What is so different about steel communities, auto communities, labor and industries insisting that our trade laws be enforced. They have, along with the entire nation been severely injured because of trade abuses. They must take the issue and the individuals involved, who have placed themselves above the law of the land and who do not know the difference between free trade and fair trade, to the courts and also to task at the election polls.

Nor will Treasury, the EPA, the Council of Economic Advisors, the State Department and others take a back seat to anyone in their efforts to use the steel industry and the steelworkers as political whipping boys. As the agencies fiddle, the nation burns and the communist nations and our friendly trading partners cheer.

The price of this lack of policy and the battle for Turf Rights will not only be paid for by the unemployed steelworker, the devastated steel communities and a steadily emaciated steel industry. It likewise will be paid for by a weakened U.S. economy and a crippled national security effort.

For two decades the people of the United States have been without an adequate economic plan. They have watched the United States begin an economic slide which could result in this nation becoming a second-rate economic power. It must be realised that the United States has been in an "economic hot war" and has been losing battle after battle, but they know we have not yet lost the war. Today, even after two decades of battering, the American steel industry is still competitive in its own marketplace.

A wiser legislative branch, led by the Congressional Steel Caucus, the Senate Steel Caucus, along with a better informed Administration and supported by the labor movement and all of industry will see to it that this nation has a winning overall game plan and a solid plan for its steel sector. With everyone in our government pulling in the same direction instead of pulling the industrial base of this country apart our future will be secure.

As for the steel industry, it must be realized that all the problems of the industry must be dealt with in concert. The treatment of one problem without the treatment of all will not be effective.

A sound sectorial plan for steel, because of its unique status, could serve as a format for all of industry. Industries such as autos, fasteners, shoes, textiles, tires and rubber, televisions and many others have been under seige with comparable problems. Every industry in the United States can't be in trouble because of inefficient labor and inadequate management.

To solve the steel crisis the U.S. must enforce its trade laws, balance its pollution goals with its economic goals, provide adequate capital formation by shortening depreciation, installing favorable investment-tax credits through reform of our tax laws and reduce the number of oppressive regulations now suffocating all of industry.

After the cancers that have crippled our industries are cured, American ingenuity will come to the forefront and set the pace for research and development and the adoption of new technology which again will set the world standard for excellence and competence.

For those companies, plants and communities that survive the current crisis, the steel needs of our economy alone are so great that if the domestic industry is allowed to serve those needs a bright future is assured.

The American heritage that rightfully belongs to this nation's youth will be passed on to them intact as soon as this nation adopts a sound economic plan.

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U.S. SENATE,
Washington, D.C., July 23, 1980.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: The growing crisis in our economy has affected some sectors more than others. Of particular concern to us is the deteriorating situation in the steel industry. We estimate approximately 75,000 steelworkers are now unemployed, more than at the worst of the 1977 crisis. Capacity utilization is down to less than 55 percent and expected to fall even further.

We are aware that your Administration has been considering various alternatives to help revitalize the steel industry, a discussion which began last winter when several companies were considering filing anti-dumping petitions, but which is only now moving towards resolution. We are concerned about the time this process has taken and in an effort to accelerate the decision making process, we are writing to provide our own suggestions as to how this unprecedented situation in the industry can be met.

First, with respect to the capital cost problem, a great variety of approaches are possible.

All of us support a revision in depreciation schedules to shorten asset lives for long-term capital investments. Such a revision must address the capital formation problems of the steel industry and should include serious consideration of a complete revision of the present complex depreciation schedules for all industry such as suggested in the 10–5–3 proposal, the Capital Cost Recovery Act.

One measure of particular importance for the steel industry would be one-year amortization of pollution control equipment. We support environmental standards that protect the health and safety of our steelworkers and indeed all our citizens. It is clear, however, that our pollution control laws impact unequally on different industrial sectors, with steel being one of the hardest hit. Pollution control expenses in the next couple of years could be as high as 50 percent of new investment in the steel industry. We believe that in the case of such a basic industry it is appropriate for the government to spread the burden of these exceptional costs by providing a tax benefit. Such a step will not only facilitate timely compliance with environmental standards, it will also contribute to solving the industry's overall capital problems. Furthermore, there would be no distortion of investment patterns since these are mandated expenditures.

We can further enhance capital formation through revision of the investment tax credit. The present investment tax credit tends to provide the greatest benefits for assets with useful lives of seven years. The credit is graduated up to 10 percent for assets with shorter lives, but it does not go beyond 10 percent for assets in the steel industry with longer lives. A revision of the investment tax credit to provide more equal return on investment for all asset lives would not only help the steel industry, but some of the very short-lived assests used in the auto industry as well.

Under present law, if industrial revenue bond financing and rapid amortization of pollution control equipment is used, the investment tax credit is reduced to only 5 percent. The full 10 percent investment tax credit could be applied to pollution control facilities regardless of whether rapid depreciation and tax exempt bonds are used as well.

Also, the investment credit could be made refundable, particularly for industries like steel. In many cases, companies are losing tax credits to which they are entitled because they haven't sufficient tax liability to absorb them.

With respect to environmental regulations, we support environmental standards that protect the health and safety of our steelworkers and indeed all our citizens. We would urge that the EPA and the Administration strengthen their resolve to work in a cooperative manner with individual steel companies with regard to environmental compliance schedules. There has been some progress in this area, but much more must be done. The limited life policy should be aggressively utilized. Standards should be reviewed on a continuing basis. In particular, we urge EPA to weigh carefully all relevant factors in its enforcement of compliance deadlines. This is especially important in those cases where local and state governments have made reasonable efforts to achieve implementation plans that are not yet approved. It is both unfair and uneconomic to expect industry to spend many millions of dollars to meet a compliance deadline when the plan that is supposed to map that compliance is not approved, and which may, when it is finally approved, dictate a different course of action than the one taken.

While we applaud the bubble concept as a constructive and creative idea, it has not solved all the steel industry's problems. Application of the concept is constrained by numerous regulatory factors which have made its relevance to the steel sector marginal at best. Consideration should be given to allowing this system to be more broadly utilized.

In the area of trade, it was our view earlier this year that you would have been well-advised to pursue a policy of a two-track system of relief against unfairly priced foreign imports, utilizing both an improved trigger price mechanism and permitting pursuit of anti-dumping complaints on a selective basis. Other voices in the Administration prevailed, and such action was not taken. We are now seeing the consequences of that misjudgment as our trade relations with Europe and Japan worsen and no early warning system exists for either the basic or specialty steel industry against foreign steel imports sold at a predatory price. In this regard, it simply makes no sense to characterize as either inflationary or unnecessary, policy needed to protect the domestic industry at a time when it is particularly vulnerable against predatory pricing. It is likewise difficult for us to see how the continued progress of the now pending dumping cases will resolve all the above problems.

Nor has there been the development of the International Steel Committee into the kind of genuinely constructive forum for solving issues arising from world steel trade that we sought in 1978. The reticence on the part of our representatives or the reluctance of the other nations of the OECD to arrive at formulas for general improvement of the present situation are sources of keen disappointment. We strongly urge that this international forum, established specifically for the resolution of such trade disputes, be aggressively utilized.

We repeat our long-held view that this matter is best resolved through a settlement satisfactory to all parties. We believe each party has retained sufficient flexibility in its position to permit such a settlement and that there are a number of acceptable alternatives worth pursuing. We stand ready to assist in facilitating such a settlement with the industry. Should such an agreement include the restoration of the Trigger Price Mechanism, we would recommend that its coverage be extended to include speciality steel products as well.

With respect to the critical issue of steel research and development, neither industry nor government has done nearly enough. Although future tax reforms can provide the industry with a portion of the capital necessary for such activity, there is no doubt that government must dramatically increase its support of both basic and applied research. At present, federal support for basic research in steel-making amounts to under 2 percent of the industry's R&D spending—far less than the government contributes for any other category of industrial research. Additional help could come in the form of tax incentives to encourage greater steel industry R&D spending. But more directly, both the scale of steel-making and the industry's reliance on already well-established technologies means that the need for Federal assistance in funding pilot-plant demonstration projects is undeniable.

We particularly note the importance of the commercialization of coke-making and coal-based technologies that would improve blast furnace productivity, meet environmental attainment standards and improve worker safety. This is a particularly vital area for government-industry cooperation. It is essential to the overall recovery of the steel industry and would provide substantial benefits to the coal industry as well. Congress has taken the initiative in this regard, and we hope to be able to count on your continued interest, support and cooperation in this area.

Finally, we want to again emphasize our view that there must be a focus of leadership on steel policy matters within the Administration. For far too long, this country has relied on crises and ad hoc commissions to generate and carry out what has passed for national steel policy. We have some evidence that this responsibility for steel policy matters has unofficially devolved on Secretary Klutznick. If that is the case, it would be helpful, both to him and to those of us in Congress concerned about the steel industry, if such status were publicly and officially announced.

Mr. President, we have been leading the Senate Steel Caucus since its inception and have met with you and members of your Administration on a number of occasions to discuss steel problems. We recognize and appreciate your commitment to solving this basic industry's problems, and we hope you appreciate our commitment as well as our determination to seek legislative solutions on our own if appropriate leadership from the Executive Branch is not forthcoming.

Sincerely,

JOHN HEINZ.
BIRCH BAYH.
JENNINGS RANDOLPH.
JOHN GLENN.

SAFETY GUIDELINES FOR OFFICES

Mr. METZENBAUM. Mr. President, occupational diseases kill about 100,000 Americans each year. While OSHA regulations have made some headway in this area, much remains to be done. A major part of the problem stems from the fact that one-quarter of America's workers spend their days in offices, worksites not covered by existing OSHA regulations.

The hazards associated with office environments are just now being discovered. Products such as air fresheners, solvents, adhesives in building products, cleaning fluids, fire-retardant chemicals, and finishes may be turning the insides of offices into veritable danger zones. Faulty ventilation systems are now thought to be the primary culprit in the spread of bacterial infections such as Legionnaire's disease. In addition, some insulating materials contain starch, a prime breeding ground for disease-causing fungi.

Health hazards in the office are not limited to structural deficiencies. The increased use of video display terminals has presented us with a new set of problems. Over half of America's office workers now use some sort of data processing equipment. Complaints from these workers include soreness and redness in the eyes, back and neck pains, and dizziness. Although the levels of radiation emitted by these machines are fairly low, we do not yet know the effects of long-term exposure to low-level radiation. It is shameful to note that the Soviets have done more research on this subject than we have.

The extent of these health problems is hard to estimate. Clearly, a series of studies on the health effects of substances commonly used in offices, of poorly ventilated buildings, and of new kinds of office machinery is badly needed.

It is my hope that the findings of these studies will result in safety guidelines for offices. Such guidelines would provide both employees and workers with reliable information about the possible risks of various office environments. Once we have sufficient knowledge we can take the necessary precautions and make America's offices safer, healthier, and more productive.

I submit the following materials for the RECORD.

The materials referred to are as follows:

[From the Dayton (Ohio) News, Apr. 24, 1980]

STUDY PROBES COMPUTER DRAWBACKS

(By Sid Karpoff)

The office of the future will be completely automated and will place a variety of new stresses on clerical workers and secretaries, according to a report issued Wednesday by Dayton Women Working and its national umbrella organization.

The report entitled "Race Against Time: Automation of the Office", says that over 10 million micro-processors are in use around the United States and that 40 percent of the total work force in the country will be involved in some form of information processing by 1985.

The report says that the continued introduction of computer systems in offices around the country is resulting in elimination of jobs by consolidating tasks that a single person can handle through a computer operation.

According to Debra Walker, staff member of Dayton Women Working, the move toward automation "is not as much concerned with efficiency as in terms of control. Managers will be able to tie more office workers to a single location for more hours during the day in order to monitor their work," she said.

Already there have been recorded increases in the rate of stress-related diseases among office workers who work with the automated equipment, the report says, including increased eye and back strain, nausea and headaches.

Walker said even with the increased work load that clerical workers and secretaries are being asked to absorb, their pay scales continue to lag far behind that of male counterparts.

She said Working Women is seeking to have Congress hold hearings to determine what the effects of automation in the workplace are and enact stringent requirements and standards to relieve the effects.

The release of the report coincided with National Secretaries Day.

[From the Dayton (Ohio) Journal Herald, Apr. 24, 1980]

OFFICE AUTOMATION "DEHUMANIZING"

(By Judith L. Schultz)

Offices are fast becoming factories of paperwork for the 18 million clerical workers in the United States, a major new report by Working Women, National Association of Office Workers, says.

The office as factory is not just a clever reference to the growing use of automated word processors and business machines.

According to the report, released yesterday, National Secretaries Day, dehumanization and fragmentation of jobs by technology is becoming a major threat to clerical workers, who are in the fastest growing segment of the labor force.

Women, who hold 80 percent of all clerical jobs, will be affected disproportionately by the computerization of their jobs, the report said.

The report, "Race Against Time: Automation of the Office," was released locally by Dayton Women Working.

Noreen Wilhelm, director, said during a press conference, that automation of office jobs certainly has advantages in terms of efficiency, but the dangers it presents to the women office worker are serious.

Secretaries, bank tellers and file clerks—whose jobs are the first targeted for automation—are liable to face downgraded jobs, added job stress and occupational disease, more piecework with less room for responsibility or creativity on the job, and eventually fewer jobs because of automation, Ms. Wilhelm said.

"Our concern is that, in the process of automation, jobs be redesigned with the human factor in mind," she said.

Automation increasingly has meant that the office worker who used to do a variety of tasks each day now sits all day in front of a word processor or video display terminal (VDT) doing only one step in a long process of work, much like an assembly line worker.

Often, the clerical worker in these circumstances faces additional work pressures as quotas demand that more information be entered into the computer each day.

These "piecework" jobs, often done in office cubicles that prevent any contact with other workers, usually are downgraded from secretarial or clerk jobs.

"So, yes, absolutely you are going to see pay cuts involved. In one instance cited in the study, a secretary who used to earn $155 a week now makes $135 a week as a word processor," Ms. Wilhelm said.

Eventually, because the computer can do more work, quicker, than a secretarial pool or several clerks, "job cuts will be common," she said.

And the Working Women report also cites a study of secretarial-clerical workers riveted in front of keyboards all day that found a fourth of them suffer from "severe muscular distress in the arms, neck and shoulders, diagnosed as an occupational disease. The problems are significantly worse among VDT operators, and are exacerbated by rapid-work pacing."

Ms. Wilhelm stressed that the move by office managers to automation is not made with "efficiency as the whole reason. Control of the workforce is a key factor because it is easy to supervise the amount of work done."

Dayton Women Working is joining the call, with other like organizations, for congressional hearings to provide a public airing of problems associated with automation; a moratorium on further manufacture and introduction of VDTs until safer and better designed machines are developed; and further studies by the U.S. Department of Labor to assess the impact of automation in key industries.

"We can't just let automation come in and then say, 'that's the wave of the future,'" Ms. Wilhelm said. "First we need to see that it can be controlled and adapted to the people who have to work with it."

RACE AGAINST TIME: AN OVERVIEW OF OFFICE AUTOMATION

The American workforce is undergoing enormous changes as clerical work replaces manufacturing employment as the base of the economy. Now clerical work is being transformed by automation of the office. What is the effect of automation on the job itself, on the American economy, and on the office worker? Office workers are in a race against time trying to answer these questions before irreparable harm is done.

There are 10,000 times as many computers in use today as there were 25 years ago.

In the early 1950's, there were barely 1,000 computers in the United States; by the end of 1980, industry experts estimate that 10 million minicomputers will be at work across the country.

The widespread use of the computer has been made possible by the introduction of microprocessors in the 1970's. A single "computer-on-a-chip" in 1985 may have 25 times the capacity of a computer which filled an entire room 15 years ago.

In addition, microprocessors have reduced computation costs 100,000 fold since 1960. In fact, if computers are compared to cars in terms of cost and technology, M.I.T. estimates that the production of a Rolls Royce would cost $2.50 and the car would run for 312,500 miles on a half gallon of gasoline.[1]

Already extensively used in the offices of the federal government, multinationals and financial institutions, mini-computers, with their low cost, high power, and small size, make it possible for medium and small businesses to introduce office automation. According to *Technology Review*, sales of small business computers are expected to triple by 1984, creating a $10 billion market.

If total computer sales continue at their present annual growth rate of 12 percent, the computer industry predicts that its revenues will be the largest in the world by 1990, outstripping both auto and oil giants.[2]

As the United States continues the historic transition to an "information economy", clerical workers will be more affected by the widespread office automation than other sectors of the white collar workforce.

By the end of 1979, clerical workers numbered 18 million, accounting for 18% of all employment. Since women hold 80% of all clerical jobs, clerical employment accounts for 35% of the country's 42 million working women, according to the Bureau of Labor Statistics.

Over 50% of the 20 million new jobs projected by 1990 will be in white collar work: managerial, professional, technical, sales, and clerical. The U.S. Department of Labor estimates there will be 4.8 million new jobs for clerical workers—such as bank tellers, secretaries, typists, and computer/peripheral equipment operators—making clerical work the fastest-growing occupation in the 1980's.

Of the estimated 3.5 million offices in the U.S., about 1.5 million are considered large enough for some form of office automation.[3] IBM estimates that, by 1985, 40% of the total workforce will be employed in jobs primarily involved in information-processing.

A report by Siemans, the West German high technology firm, estimates that 40% of the work done in the office today is suitable for automation by 1990.

Occupations which are targeted for automation—file clerks, bookkeepers, secretaries and typists, and bank tellers—are all at least 90% female.

Management's idea of the office of the future is a recreation of the factory of the past.

To move to electronics is "a way to en-

Footnotes at end of article.

force discipline and standardization in the office," says one business expert.[4] "Business can finally monitor and measure the clerical function," add another.[5]

Future office workers could become as physically restricted as their blue-collar counterparts on the assembly line with the introduction of conveyor belts to move documents and files, and modular "cockpitlike" workstations, predicted by U.S. News & World Report (9/18/78). White collar shift work is increasing to get the most out of the new machines, and piecework—pay-per-line-of-information processed—is beginning to appear.

Automation in the office means the majority of women office workers will be paid less for doing more work, in jobs which are more monotonous, and which offer fewer opportunities for advancement.

Across the country, clericals working at video-display-terminals (VDT's) average only $7 a week more than conventional typists in 1979; in many Sunbelt cities, they earn even less than typists.[6] But numerous studies show that typing speed increases from 50% to 150% when word-processing equipment is used,[7] computer vendors claim that document production can be increased by as much as 500%.[8]

Contrary to business assertions that automation will upgrade most jobs, successful automation means that large numbers of employees perform the tedious, quick but accurate work of data entry. A federal study in the 1960's found that 70 percent of the new automated jobs in a large bank were low-rated, and that one bank reduced the average pay for certain clerks by 22 percent after automation.[9]

Interchangeable data entry operators are already absorbing the jobs of many file clerks, keypunch operators, bookkeepers and bank tellers. While such semi-skilled clerical jobs abound, skilled clerical jobs are being eliminated. The Word Processing Plan of IBM calls for the elimination of the personal secretary, who performs the most varied tasks in clerical work, and is highest paid.

IBM claims that "soaring clerical wages" are a major incentive for office automation and cites the 68 percent increase in the average secretary's pay from 1965 to 1975. However, the cost of living between 1967 and 1977 increased 86 percent! In banking and insurance, among the most automated industries, wages for clericals are 8 percent to 19 percent below the national averages by occupation, according to the Department of Labor.

Sex discrimination in employment continues within the newly emerging computer occupations.

The very first operational computer, the ENIAC used to perform the calculations for the atomic bomb in 1944–45, was successfully programmed by 100 women who were hired to do what was mistakenly identified as as "clerical" (and thus "women's") work.

As computer programming occupations were defined as technical and professional, they became overwhelmingly male. Although women re-entered programming in the 1970's, they remain only 19 percent of all computer specialists and are concentrated in the lowest-skilled and lowest-paid computer jobs as applications programmers and coders.

The majority of computer-related clerical positions are held by women: 95.6 percent of key punch and key entry operators; 62 percent of computer/peripheral equipment operators; and 75 percent of all office machine operators are women.[10]

A sociological study of five large employers in 1977 found that when computerization was introduced, the proportion of low-level clerical jobs remained the same, and that clericals were rarely upgraded to fill new skilled jobs. The study found that the automated clerical jobs were more mechanical and narrow, and that "the main avenues for clerical workers are either horizontal or downward."[11]

Even though it takes fewer people to do more work, office automation has not reduced the need for clerical workers—at least not yet.

In the 1960's the U.S. Department of Labor found that banks could handle the same volume of work with reductions in labor requirements of 40 to 50 percent.[12] In 1976, the Bureau of Labor Statistics found that employment growth in banking had slowed in relation to increased volume of transactions.

From 1960 to 1973, banking transactions increased 8.3 percent a year, and employment grew at an annual rate of 4.5 percent. But from 1973 to 1976 employment growth slowed to 3.2 percent a year while banking transactions continued to rise sharply at a 7.2 percent annual rate.

Although employment in certain occupations—such as bookkeepers, stenographers, and many types of clerks—will level off or decline, the overall need for clerical workers is apparently absorbing the potential employment displacement effects of automation in clerical-intensive industries such as banking and insurance.

However, the design of technology at this point is mainly being determined by what management wants—and it is already clear computers are sold by promises of reduced labor. "What can't be automated will be done by executives and by part-time employees," predicts Larry Wells of Creative Strategies International, a California consulting firm.

Studies in France and Great Britain predict enormous employment displacement in the future. A report prepared for the French Ministry of Industry by advisor Simon Nora predicts 30 percent displacement in the banking and insurance workforce; British economists believe office automation could lead to permanent unemployment levels of up to 20 percent.[13]

Ten other countries have initiated major studies on the effects of office automation. However, the U.S. Department of Labor currently has no method for calculating the impact of automation on employment projections.

OFFICE AUTOMATION MAY BE HAZARDOUS TO YOUR HEALTH

Clerical workers rank second-highest victime of stress-related diseases, including coronary heart disease (CHD), according to a 1977 NIOSH study of 130 occupations. According to recently released findings of the Framingham Heart Study, women clerical workers with children and blue collar husbands are almost twice as likely to develop CHD than men.[14]

An estimated seven to 10 million people work on VDT's the key units of office automation. Recent studies link VDT's to eyestrain, migraine headaches, nausea, lower and upper back pain and occupational stress. Studies in Austria and Sweden indicate that adequate break time and redesign of jobs are essential if health risks are to be reduced for VDT operators.[15]

Unless occupational safety and health findings are taken into acount, office automation will integrate stress-causing factors directly and permanently into clerical jobs. The health of clerical workers will be severely threatened by rapid pacing of work enforced by computerized monitoring, increased job dissatisfaction due to less varied work and lack of advancement opportunities, and eye- and muscle-strain from VDT's in poorly designed jobs.

"People will adapt nicely to office systems if their arms are broken," an IBM official told Business Week in 1975. "And we're in the twisting stage now."[16]

The resistance to office automation by secretaries and managers alike is widely recognized as a factor that has slowed the rate of penetration by automated office systems. Despite rapid advances, office technology is still incomplete. Fierce competition between the major computer companies will spur the drive for new innovations. IBM and Xerox sink annual sums of $1.5 billion or more into research and development efforts.

Although the pace of technological innovation seems overwhelming, office workers and managers will continue to have an impact on the penetration of automation into the office. IBM's Vice President William F. Laughlin (cited above) makes it clear that his company does not have endless patience with those who might resist the office of the future.

Office workers must organize to protect their futures.

Women office workers are engaged in a race against time. Unless clericals organize to influence automation in the 1980's—while the technology is still being developed—the health, well-being and employment of women office workers will be sacrificed for the sake of management's constant quest for "corporate progress."

FOOTNOTES

[1] *White Collar*, May, 1979.

[2] *Technology Review*, Nov., 1979.

[3] Uhlig, Ronald P. *et al.*, *The Office of the Future* (ICCC. 1979).

[4] *Computer Decisions*, July-August 1979: A roundtable on the "office of the future" for vendors, users and consultants.

[5] Donald C. Vadnais of 3M in *Nation's Business*, Feb., 1979.

[6] Administrative Management Society, *Office Salaries Directory*, 1979–80.

[7] *White Collar*, May, 1979: on FIET Conference on Computers and Work (1978).

[8] *Nation's Business*, Feb., 1979.

[9] *Technology and the American Economy*, Vol. II (Washington, D.C. 1966).

[10] U.S.D.L., B.L.S., *Employment and Earnings*, January 1980.

[11] Glenn & Feldberg, *Social Problems* 25, October, 1977).

[12] U.S.D.L., B.L.S., *Technological Trends in Major American Industries*, Bulletin No. 1471 (DC, 1966).

[13] *New Scientist*, April 26, 1979).

[14] *American Journal of Public Health*, Feb., 1980.

[15] Olav Ostberg, *International Journal of Occupational Health & Safety* (Nov./Dec., 1975), and H. Holler *et al. Stresses and Strain on the Eyes Produced by Work with Display Screens*, Vienna, Austria, 1975).

[16] *Business Week*, June 30, 1975: special issue on "The Office of the Future."

REPORT ON VISIT BY ANDREW HYDE TO THE VASHCHENKO AND CHMYKHALOV PENTECOSTAL FAMILIES IN THE AMERICAN EMBASSY, MOSCOW

● Mr. MATHIAS. Mr. President, a young constituent of mine, Andrew Hyde of Westmoreland Hills, has just completed an internship with a member of Parliament in the House of Commons, the Honorable David Atkinson. His work with the Member of Parliament was similar to that of interns on Capitol Hill. He dealt with constitutent problems, environmental matters, and Council of Europe issues.

One thing that Andrews did for Mr. Atkinson, however, was very unusual. He visited the Soviet Union to meet with the members of the Vashchenko and Chmykhalov families who have sought

sanctuary in the American Embassy in Moscow. Two years ago these families came from Siberia to Moscow to seek help from our Embassy in order to emigrate from the Soviet Union on the grounds of religious conscience. They live in cramped quarters in the Embassy, afraid to leave the shelter that we have provided for them. Andrew was asked to meet with the family and to bring back a progress report to Mr. Atkinson.

I ask that the report prepared by Andrew Hyde on the Vashchenko and Chmykhalov Pentecostal families be printed in the RECORD.

The report follows:

REPORT ON THE VISIT BY ANDREW HYDE

I arrived at the Embassy around 1:00 pm and was escorted out to a courtyard to meet the families.

They had been told of my planned visit, and they were waiting in their quarters in the basement of the Embassy.

They arrived five minutes later, accompanied by a member of the Embassy Staff and two others who were to act as my translators. Introductions were made all around, as they faced me with the two translators.

After passing on the greetings and best wishes from both Mr. Atkinson and Reverend Pollock, I explained to them who I was, and what my interests concerning them were. I said that I had come to the Soviet Union on my own, primarily as a tourist, but that Mr. Atkinson, who had visited them nine months before, was interested in a personal update on their situation.

I went on to update events in Europe, concerning them. I told them that Mr. Atkinson had brought their plight on the floor of the House of Commons as part of an adjournment debate he was presenting on the freedom of Religion in Eastern Europe and the USSR, and he had also prepared a written declaration for the Council of Europe, of which he is a member, concerning the granting of their exit visas. They had not known about that, and appeared very pleased.

I went on to describe the news from Reverend Pollock, that the American version of his book; The Siberian Seven was due out in the next several weeks. This, they had known about, but were glad to hear of its confirmation. Also much to their delight I handed them a photograph of themselves from Reverend Pollock.

I inquired as to how they were getting along, and if any visible progress was being made with the Soviet Government. They replied that they were being treated well at the Embassy, but were becoming even more concerned about the fate of their relatives at home. Pytor Vashchenko told me that they had heard recently from them, and that Alexander, their son, who is in prison for refusing to join the army since it would jeopardise his chances of being allowed to emigrate, was subject to continual harassment and abuse from the authorities.

Maria Chmykhalov detailed to me how her family had been informed by a Soviet Government representative that the United States no longer wanted her and her son Timofei or the Vashchenkos, and that they were only searching for an excuse to kick them out of the Embassy. The family, however, knew the opposite to be the truth, and this only helped to reinforce it to them. They knew there was a great deal of support for the seven in the United States and elsewhere.

Pytor also related to me how his family was still being threatened at home. The Authorities had attempted to make a deal: they would issue visas to the families at home, if they would only disown the seven in the Embassy. They flatly refused.

I asked the translators what sort of contact the families had with the Soviet Government Departments for them. They replied none. The Soviets considered the families to be entirely an American problem, which had to be dealt with by the United States Government. Everytime a Senator or Congressman came to Moscow and asked about the families the Soviets merely responded that if they just went home, they would receive their exit visas as soon as it was determined that they hadn't broken any laws. This offer had been reiterated only several weeks prior to my visit.

The Translators told me, as I already know, that to accept what the Soviet Government offered was equivalent to suicide, and they knew it—from experience. Also recent world events had tended to obscure their case in some respects, yet strengthen it in others as their symbolism grew.

I asked them if I could be of some help to their cause. They thought it would be best if I could do what was possible to keep the publicity of their plight alive, and convince people of the need to write their legislative representative, be he a Member of Parliament or Congressman.

On the account of Maria's ill health we said our farewells and they returned to their quarters.

They seemed to look fairly well, though two years inside the Embassy had taken its toll, and the strain of their ordeal was showing. They were very pleasant and visibly delighted in having a visitor who was so young. Our conversation in the cold, crisp Moscow air lasted for approximately 20 minutes.●

IOWA NATURAL HERITAGE FOUNDATION HELPS PRESERVE IOWA'S PAST

● Mr. CULVER. Mr. President, as chairman of the Senate Resource Protection Subcommittee, I have long been involved in efforts to preserve outstanding natural and wildlife areas. The pressures for development are great, and many unique areas are lost every year. I believe it is essential that, wherever possible, we take the necessary steps to preserve these areas for future generations.

For this reason, I want to acquaint my Senate colleagues with the efforts of the Iowa Natural Heritage Foundation, a nonprofit private institution created by the Governor of Iowa. Under the chairmanship of Robert Buckmaster of Waterloo, the Foundation works with the State and private individuals to acquire and preserve acreage that is part of Iowa's natural heritage.

Recently I had the pleasure of working with the Foundation to help acquire "The Mines of Spain," near Dubuque. Part of the original land grant given Julien Dubuque by the Spanish Government in 1796, the "Mines," represent the last undeveloped bluffland along the Upper Mississippi River in Iowa, and is an irreplaceable component of Iowa's past. Along with a generous donation of land by the Lott family—the current owners of the site—a combination of State and Federal funds were needed to purchase the "Mines." I helped secure a $1.2 million grant from the Department of the Interior which, combined with State matching funds, enabled the Foundation to acquire the 1,300 remaining acres of "Mines of Spain" from the Lott family.

In a recent interview in the Waterloo Courier, Bob Buckmaster talked about the goals of the Iowa Natural Heritage Foundation and some of the future activities in which it will be engaged. I believe the type of work the Foundation is doing should serve as a model for similar preservation efforts around the country, and I ask that the interview be printed in the RECORD.

The interview follows:

DEAL NEGOTIATED ON PRESERVATION OF LAND ALONG MISSISSIPPI RIVER

Robert Buckmaster was salmon fishing in Iceland when he got word that negotiators had reached an agreement on the Mines of Spain deal.

That land acquisition had been in the works for more than a decade, but once Buckmaster's group got involved, the arrangement was worked out within a year.

What sounds like a glamorous, international land deal was really an attempt to preserve a piece of Iowa's heritage. The Mines of Spain is a popular name for the 1,300 acre tract along the Mississippi River that was the site of the first white settlement in Iowa.

And Buckmaster's group—the Iowa Natural Heritage Foundation—is a private, nonprofit organization that series as a catalyst to help the state acquire and preserve Iowa's natural resources.

"If we want our grandkids to know what this state is like, we've got to start moving," said Buckmaster, who is Chairman of the Board of Black Hawk Broadcasting in addition to his work as Chairman of the foundation. "Iowa ranks 49th in the nation in the amount of publicly-held land," he said.

The Mines of Spain deal is the first large-scale acquisition in which the year old foundation has been involved.

The group was created to work as a liaison between government and private citizens who want to protect their land for future generations.

"Some people just don't trust government," said Buckmaster, citing the case of a Fairfield man who wanted to preserve 130 acres of timber and farmland.

"He doesn't trust the government, but he'll deal with us. We're going to take title to the land and lease it to the county conservation commission for 99 years."

The foundation is in the midst of a $5 million fund-raising project which Buckmaster said will give the group another advantage government does not enjoy—readily available money.

"Let's say the state hears of a piece of land they want to buy right now, but they don't have the money. We can borrow against the $5 million, take title and the state can buy it from us."

The fund will serve as an endowment, Buckmaster said, to provide income for operating expenses and colateral for loans.

The foundation's goal is not to acquire land itself but to serve as a "facilitator" for government, which Buckmaster said is best able to manage the property.

The foundation also hopes to get involved in research and education projects, such as developing a statewide conservation curriculum for the public school and compiling a survey of unique land areas.

"If we don't know what we have, how can we protect and preserve it?" Buckmaster asked, stressing the need for such programs.

He said only Connecticut ranks lower than Iowa in the amount of publicly owned land, probably because "so much of our land has economic value.

"Just 150 years ago, Iowa had seven million acres of timber," Buckmaster said. "Today it has 1.5 million acres. We used to have 25 million acres of native prairie; now we have 3,000 acres with no tract more than 80 acres.

"At one time we had seven million acres of wetlands; now its 100,000 acres. We drained it, tilled it, and farmed it."

Gerald Schnepf, executive secretary of the foundation, said he is hopeful the acquisition of the Mines of Spain area will encourage further preservation.

"We've put forth considerable effort and time. We had a great deal of patience, which government doesn't have," said Schnepf. "We can work at the landowner's pace—that's the kind of service we can offer."

The area adjacent to Dubuque's southern boundary was part of a Spanish land grant given to Julien Dubuque, who obtained lead-mining rights from the Indians in the late 1790's.

"It was the site of the first white settlement in this state," said Schnepf. "Iowa started right here."

The area was home to Indians as early as 5,000 B.C. and preliminary archeological studies suggest a wealth of Indian mounds and artifacts.

It is also home to several rare and endangered plants and animals, including the bald eagle, red-shouldered hawk and jeweled shooting star. The stands of black cherry, oak and walnut are of great commercial value, said Schnepf.

"The current owners are an elderly couple who started acquiring the land in the 1940's," said Schnepf. For about 15 years, people working in the owners' behalf tried to interest the National Park Service and the Iowa Conservation Commission in the land.

"But its more than 1,300 acres—and that's expensive," said Schnepf. "It's been appraised at between $3 million and $4 million."

So the foundation—with the help of Governor Robert Ray, Senator John Culver and local officials—put together a funding package that includes $700,000 in state money and $1.7 million in federal dollars to buy the land.

WEAK U.S. POLICY ENCOURAGES CASTRO MILITARY MOVES IN CENTRAL AMERICA

● Mr. HUMPHREY. Mr. President, if you can believe the shocking Evans and Novak newspaper column printed August 1, and I am inclined to, then two convoys of Soviet armaments have recently been delivered by Fidel Castro's Cuban regime to the Marxist Sandinista regime in Nicaragua.

Evans and Novak assert that the current purpose of these armaments and other Soviet tanks and long-range artillery is "for use in the coming battle for neighboring El Salvador."

Evans and Novak correctly point out that the Carter administration "has adopted the leftist cause in El Salvador, while giving a cold shoulder to anti-Communist elements."

Castro and his Soviet suppliers see what Evans and Novak see. No observer in the United States should be surprised that Soviet armaments are being rushed into Central America through the Marxist regime in Nicaragua.

The leftists appear to have targeted El Salvador as the next victim to fall to Marxism. For Castro and the Soviets, the situation is ripe right now. I think it is likely that there will be an explosion in El Salvador before the November elections.

Here are the reasons why I believe there may be an attempted Marxist takeover in El Salvador before our Presidential elections.

First. The Soviets and their agents know that a Reagan administration is unlikely to sit idly by while totalitarian Marxist revolutions, fueled with Cuban and Soviet aid, take over more countries in the Western Hemisphere.

Second. The Carter administration has a weak foreign policy when it comes to Central and Latin America. The United States has tolerated the wholesale growth of Soviet influence in this area under the Carter administration. Secretary of State Muskie has continued Carter's policies which actually foment Marxist revolution in the area.

Third. U.S. Ambassador to El Salvador, Mr. Robert White, is an unsatisfactory representative of U.S. interest there. He has embraced the left wing in El Salvadoran politics, while giving a cold shoulder to the moderates and the right.

Fourth. There are reports from within El Salvador that the Marxists are gathering force for a probable coup. The Marxists have now formed a Revolutionary Front just as the Sandinistas did before they seized power in neighboring Nicaragua.

Fifth. The U.S. State Department has urged El Salvador's Government to nationalize privately owned farms, banks, and businesses. These seizures have caused the virtual collapse of the country's economy, making unrest inevitable.

In sum, a revolutionary coup attempt or an invasion attempt, or both, are imminent in El Salvador.

I realize that foreign policy disasters for this country seem to help this President in the polls. Twice before, in Iran and Afghanistan, when Jimmy Carter was at record lows in public opinion polls, the public rallied to the President, expecting him to act as a U.S. President should. Instead, he dithered around, doing too little and doing it too late.

I doubt that the American people will be fooled a third time. This time, if President Carter wants to help himself with the American people, he should do the following:

He should act quickly and firmly to interdict the flow of Soviet arms into El Salvador through Cuba and Nicaragua.

He should immediately replace those in the State Department who are responsible for our left leaning policy which harasses all anti-Communist elements, particularly these days in El Salvador and Guatemala.

He should cancel all U.S. aid to the Sandinista regime in Nicaragua until they cease to be the tool of Communist revolution in Central America.

He should undertake a policy toward Nicaragua similar to that employed by this country against the Somoza regime in its last stages. That is, he should encourage those elements who oppose the current regime and encourage those who, in this case, want to restore economic and political freedom in Nicaragua.

Such a policy switch is probably beyond the capability of this administration. There are too many bureaucrats in the State Department and the White House. I repeat, though, that it would be both wise policy for our country and politically very helpful to our now very unpopular President.

If Señor Castro is to be stopped in his latest power grab in Central America, President Carter will have to move fast. It clearly appears that the Marxists are about to mount warfare in Central America while they see us led by a crippled presidency.

Mr. President, for the last year on the Senate floor I have been predicting Soviet-Cuban military moves in Central and Latin America.

I have introduced an amendment requiring the President to report to Congress every 90 days on Soviet military activity in Cuba. In addition, this provision would require an annual report on Soviet military assistance to Cuba and on the military capabilities of the Cuban armed forces.

This proposal is intended to ensure that Soviet military activities in the Caribbean are brought fully to the attention of the Congress in a timely fashion.

My proposal has been approved by both houses of Congress and is now awaiting Conference.

Mr. President, I ask that the Evans and Novak column entitled "Carter's Caribbean Choice" be entered in the RECORD.

The article follows:

CARTER'S CARIBBEAN CHOICE

Two convoys of ships carrying Soviet arms from Cuba have been secretly unloaded in Marxist Nicaragua to help build a growing weapons cache there for use in the coming battle for neighboring El Salvador, a development that may force beleaguered President Carter to reconsider his courtship of the left in Central America.

This secret supply undercuts the administration's policy of aiding Nicaragua's Sandinista regime in hope of preventing its total embrace of Moscow and Havana. Similarly, the administration has adopted the leftist cause in El Salvador, while giving a cold shoulder to anti-communist elements.

Thus, the revelation of Marxist Nicaragua's turning into a staging area for subverting El Salvador puts a hard Caribbean choice to Carter. Should he try to rally national support for himself on this issue, he would have to sacrifice his own policy. Yet senators in close touch with the worsening Caribbean crisis, such as Democrat Richard Stone of Florida, may demand exactly that.

Officials here believe the arms sent to Nicaragua are earmarked for use by Marxist factions in the battle for El Salvador. That is the next intended victim of Soviet-backed insurgency in what used to be Uncle Sam's back yard.

Exactly what equipment was delivered is not yet known to U.S. intelligence officials, who described the unopened crates as containing "heavy equipment." What these sources do know is that arms already delivered to Nicaragua include Soviet tanks and long-range artillery pieces. Like the arms in the newly disclosed two convoys, all came from Cuba.

For Jimmy Carter, this continuing evidence of Soviet-Cuban intentions to dominate the Caribbean comes at a precarious political moment in an area of critical sensitivity. If détente is dead elsewhere, Carter's men have worked hard to insulate Central America from the Cold War.

There has been a pattern to Carter decisions in the beleaguered Caribbean since he courted Cuba's Fidel Castro by canceling a U.S. naval exercise at Guantanamo Bay in January 1977. Time and again, Jimmy Carter has either looked away or explained away each provocation: the sinister Nicaraguan mission to Moscow early this year; the appearance in Cuban waters last year of two Soviet submarines; the late 1978 discovery that Moscow was arming Cuba with late-model MiG23s potentially capable of nuclear delivery.

U.S. diplomats in Central America—especially Nicaragua and El Salvador—have operated on orders that amount to this: a warm embrace for the left, a cold shoulder to the right. Those who did not go along were removed. In successfully pressing for aid to Nicaragua, the administration unsuccessfully tried to get it on an unconditional basis with no democratic procedures required.

Carter may decide that the new Soviet arms challenge should not be dismissed with wordy assurances that all is well in the Caribbean. With opposition to his renomination rising and his standing in the polls sinking to record lows, Carter may react sharply to this new challenge from the Moscow-Havana axis.

After Carter backed out of his demand last September that the Soviet brigade be withdrawn from Cuba, the Iran and Afghanistan crises revived his political fortunes just in time for the primary season. Could Central America do the same now even if it means standing his present policy on its head?

But the case for action transcends election-year politics. "The Russians and the Cubans are testing, testing," one high-level official told us. If Carter allows this newest test to pass unchallenged, he added, no Caribbean country up to and including Mexico can fail to get the message: "It's up for grabs and they're doing the grabbing."

One Democratic senator who backs Carter's reelection will put this demand to Carter: make a complete disclosure to the American people; cut off the $65 million in U.S. aid now available to the Sandinista regime (and block an additional $70 million aid package now moving through Congress); prepare for action, including a naval blockade, if Castro again thumbs his nose at the White House.

Such actions might help Carter's fallen political fortunes. Far more important, they would finally show a glint of Carter steel at the U.S. back door that would match the genuine efforts he is making to block further Soviet encroachments in more distant parts.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. PELL. Mr. President, section 36 (b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million, or in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that 10 such notifications were received, four on August 18 and six on August 19, 1980.

Interested Senators may inquire as to the details of these preliminary notifications at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 18, 1980.

Dr. HANS BINNENDIJK,
Acting Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 18, 1980.

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Acting Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

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The Department of State is considering an offer to a Northeast Asian country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
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DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 18, 1980.

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The Department of State is considering an offer to a North American country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 19, 1980.

Dr. HANS BINNENDIJK,
Acting Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

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The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 19, 1980.

Dr. HANS BINNENDIJK,
Acting Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

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The Department of State is considering an offer to a Southeast Asian country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 19, 1980.

Dr. HANS BINNENDIJK,
Acting Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

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Sincerely,

ERNEST GRAVES,
Director.

SENATOR MOYNIHAN ON THE UPCOMING SPECIAL SESSION OF THE U.N. GENERAL ASSEMBLY

● Mr. JAVITS. Mr. President, I would like to call the attention of my colleagues to an article which was written by my distinguished colleague from New York, Senator DANIEL MOYNIHAN, regarding the upcoming eleventh special session of the United Nations General Assembly, which is scheduled to begin on Monday, August 25. Senator MOYNIHAN's timely article, which appeared in the Wall Street Journal on August 19, articulates the concern, which I share, that the world economy is facing a crisis which threatens the future of international economic cooperation and global development and which should be addressed at the upcoming global negotiations.

This international economic crisis has been precipitated by increasing energy costs and, if we do not take effective countermeasures soon, will seriously impede development and economic growth in both the oil importing developing nations and the industrialized countries. As a result of increased oil prices, the less developed nations (LDC's) increasingly face growing debt service payments and it is widely acknowledged that the needs of these countries cannot be met by the capital flows which are currently projected. The international economic system is thus faced with the choice of either increasing their capital flows into the LDC's or acquiescing to slower economic growth in these oil importing LDC's.

In this article, Senator MOYNIHAN recognizes that as opposed to the post 1973–74 oil price increases, resolution of this problem cannot be undertaken without the active and responsible involvement of the oil producing countries in OPEC. In calling for OPEC to accept the responsibility for its oil-pricing policies, he cogently argues with supporting data, that the "U.S. and the West have no reason to feel apologetic" for the situation facing these LDC's.

Senator MOYNIHAN's call on the LDC's, the industrialized countries and the OPEC nations to develop a working relationship borne out of a mutual interest in the survival of the world economy echoes the recent conclusions of the Brandt Commission. Increasing trade and financial ties between the LDC's and the industralized countries of the West have strengthened the economic linkages between development and economic growth in both groups of nations. While it is in the interest of the OPEC nations, which seek stable capital markets for their petro dollar surpluses, to avert a worldwide recession.

As Senator MOYNIHAN notes, the forthcoming eleventh special session of the U.N. General Assembly provides the forum for serious negotiations regarding this problem with representatives from oil-producing nations. OPEC nations must be encouraged to share the responsibility with the industrialized countries to develop a program to ease the economic burdens which increased energy prices portend for the oil importing developing nations. In order to avert a global recession, agreements with the oil-producing nations to stabilize price and supply fluctuations of oil must be reached. At the same time it is imperative that OPEC nations directly channel increasing aid to the poorer nations.

Such a tripartite solution to the development problems of the 1980's can only result from the U.N. deliberations if the OPEC issue is faced head-on and not papered over. I join Senator MOYNIHAN in urging the U.S. delegation to the U.N. special session, in a forthright manner and free of any guilt feelings, to raise the OPEC issue, thus increasing the possibility of success at New York. Mr. President I commend Senator MOYNIHAN's article to my colleagues and request that it be printed in the RECORD.

The article follows:

A PATTERN OF FAILURE

(By DANIEL PATRICK MOYNIHAN)

Next Monday the eleventh special session of the U.N. General Assembly will convene in New York to commence "global negotiations" on the condition of developing countries, and the future of international economic co-operation.

For the first time in the history of such conferences (there have been four since this the founding of the U.N.) the delegates will confront a true, as against a rhetorical, world economic crisis..

This is the crisis brought on by the OPEC cartel which has shaken the economies of the developed nations and devastated those of the less developed. The crisis is now compounded by the upheaval in Iran and Soviet advances. President Sadat has put it that the "entire Gulf region is shaking, not only Saudi Arabia, but all the emirates and sheikdoms there. . ."

OPPORTUNITY FOR THE U.S.

Just at the crisis is unprecedented so is the opportunity. For the first time in this history of "North-South" relations there is an intense and perceived interest in the parties reaching agreement; and perhaps for the last time the U.S. has the power to bring it about.

It is possible to devise an interlinking arrangement in which the oil producers would be secure in their nations; the developed countries in their oil supplies; and the developing economies in both. It is for us to provide military security to the Gulf, with the Europeans and Japanese helping in both money and arms; it is for the producers to fund the balance of payments of the least developed countries (LDCs); it is for the LDCs to recognize that their interests lie with the West and so to conduct themselves.

Success would be momentous. So would failure; much as the failure of the London Economic Conference of 1930, the sign of an international system that cannot save itself.

Failure is almost certain.

There have been two preliminary meetings. The UN Conference on Tariffs and Trade met in Manila in May 1979; the UN Industrial Development Organization (UNIDO) met in New Delhi last January. Both conferences failed. Both failed according to plan in a by-now ritualized pattern. The U.S. did not desire failure, any more than it will desire failure at the coming UN special session. But it acted so as to make failure almost certain, and is doing so once more. The only success has been that of the Soviets, for whom the Leninist doctrine persists: "The Worse the Better."

The pattern is simple enough. At the outset the LDCs, with a heavy majority of the votes, present a set of propositions that are not going to be agreed to. The Europeans and the Japanese keep their heads down. The U.S. asks that the majority be reasonable. It is not. Tensions mount, ending in a marathon closing session at which the original demands of the LDCs are adopted by them and rejected by the others in an atmosphere ranging from disappointment to bitter imprecation.

The New Delhi Conference of UNIDO followed the precise pattern. The Group of 77 arrived with a proposal for a vast transfer of wealth. The Americans responded with discussions of strategies for "endogenous industrialization." Nothing was achieved. An Indian newspaper headline read "Poor Nations Let Down by the Rich."

This did not, of course, prevent the adoption of the "New Delhi Declaration and Plan of Action" calling for a $300 billion "North-South global fund to promote industrialization of developing countries." The official press release explained, "The fund would provide financing on soft terms and would be controlled by the developing countries, while developed countries would provide the bulk of the resources." The developed countries voted against the declaration; the Socialist countries voted for, it being understood they would not contribute.

Now this is atrocious. The U.S., with Britain, founded the UN, set its directions and has paid far the greater share of its costs. The trade of the developing countries is overwhelmingly *with* the West; the transfer of capital to them is overwhelmingly *from* the West. Their economies can improve only as ours do—and vice versa.

Moreover, aid to the LDCs has increased. In an address in New York given at the time of the New Delhi Conference C. Fred Bergsten, Assistant Secretary of the Treasury for International Affairs, reported that for the least developed nations aid receipts increased from 2.6% of combined GNP at the outset of the 1970s to over 10% by 1978. For all countries with per capita income below $400 the growth was from 3.3% to 4.7% of GNP—an increase of a third within the space of a decade. Mr. Bergsten went through an impressive recitation and concluded: "The record clearly belies any view that the U.S. has been ungenerous in its help, or protectionist in its trade, or unresponsive to the needs of others."

The U.S. and the West have no reason to feel apologetic. The real problem for the LDCs is that oil price increases have routinely wiped out aid transfers and export earnings. OPEC is the dirty little secret of every conference on North-South relations, or as an American at the Tariffs and Trade meeting put it, the "hidden item on the agenda." We all have an interest in directly confronting the oil problem. External debt of non-OPEC developing countries grew from $142 billion in 1974 to $315 billion in 1978, and Salomon Brothers estimates that American banks are owed—from these LDCs—some 130% of their total equity capital and loan loss reserves.

It is difficult to ask the LDCs to confront the implications of OPEC. It is shattering alike to their hopes and to their ideology. And they do still have hopes that they might get some share of the swag if they keep quiet. But why do *we* keep quiet?

There will be barriers to success at this month's meeting. We will be dealing with national elites that have a vested interest in perpetuating a crisis that offers justification for the (largely Soviet) model of modernization through mobilization and strong central control. Also, the LDCs have learned that the failure of such conferences tends to bring forth yet greater offerings from a guilt-stricken Washington. Lastly, the Soviet Union and its proxies will be doing their best to keep the session from succeeding, a process in which old-fashioned fear plays a part. (At the June meeting of the Organization of African Unity, not a word was said about Cuban and East German troops marauding about the continent, but a stern resolution declared the American base at Diego Garcia, 1,200 miles out in the Indian Ocean, to be a "threat to Africa.")

But failure isn't inevitable if our representatives go into the session with something more than good intentions.

The last special session of the General Assembly on North-South relations was held in 1975, when I was ambassador to the UN. The session was expected to fail as its predecessors had done. It did not. After two intense weeks it ended with unanimous agreement to a long list of undertakings, including measures to deal with the OPEC-induced payments problems of the LDCs, without which a score of developing nations would have defaulted by now.

We took the initiative in a four-hour opening day speech—and held it. We stayed up longer, talked more, flooded the place with paper. We rejected nothing, but rewrote everything to conform in others' language to our proposals. We never got mad, but made clear that we would not shrug off failure, that we would try to make it costly for those we judged responsible. We ended up, after every possible crisis, with unanimous agreement.

It wasn't that hard. The LDCs needed an agreement, and we wanted one. The Europeans weren't against it, and the Soviets couldn't prevent it once our initiative took hold.

BRINK OF UPHEAVAL

The world is on the edge of convulsion. One successful meeting at the UN isn't going to change that, but another failure could bring us closer.

At a recent hearing in Washington, Congressman Bingham of New York asked former British Prime Minister Edward Heath what he would do about the coming special session. The answer was direct and useful. We have to "recreate" the world economy. We have to have a guarantee of oil supplies for the next 20 years in order to get out of the overdependence of the present period: a dependence the oil exporters don't want any more than the importers. We have to protect the exporters, and finance the importers. Everyone shares this interest—including the Soviets if they but know. There is a world economy: If it collapses everyone collapses.

The LDCs desperately need someone to raise the OPEC issue in a forum in which the oil producers have to listen and even negotiate. We, and only we, can do this. It is in everyone's interest that we should. The question is one of daring.●

SHOULD IT BE LEGAL TO HIRE ILLEGAL ALIENS?

● Mr. HUDDLESTON. Mr. President, the lack of jobs in the United States is creating economic, social and political problems which will haunt us for years to come. We know from experience that adequate employment is as necessary for the development of a stable and constructive society as it is for a growing economy. However, the lack of a rational and comprehensive immigration policy is exacerbating our already serious unemployment problem generated by an economic recession.

One of the outstanding columnists in this country, William Raspberry, has written about this unattended problem for a long time. In an article on the young children who are participating in inner-city violence, he again pinpoints uncontrolled immigration as one of the underlying causes of these problems. He states:

> These pitiful and very dangerous souls exist not only in Miami but in slums across America. Their situation (and, consequently, America's) grows worse with each new wave of immigrants who elbow ahead of them for a chance to start at the bottom; Cubans and Haitians in Miami, Mexicans in Texas and California, Vietnamese in cities from Arlington to Des Moines.

Unfortunately, much of this problem is our fault because, as Mr. Raspberry correctly points out, the older children "want desperately to work."

More recently he wrote an article which took a cool and logical look at the question: Should it be legal to hire illegals? Mr. Raspberry's conclusion is that the proposal to make it unlawful for American employers to hire illegal aliens "makes sense" to him. He states that:

> Sooner or later, somebody is going to have to start talking sense on the question of immigration.
>
> I have in mind in particular the immigrants now flooding illegally into this country. They may provide temporary relief for employers who've had trouble filling their bottom-of-the-barrel jobs, but, in the long term, they spell not "relief" but "trouble."

I agree completely with Mr. Raspberry's assessments and recently introduced a fair-hiring amendment (No. 1960) to S. 1763 which would make it illegal to hire illegal aliens.

I ask that both of Mr. Rapsberry's articles be printed in the RECORD.

The articles follow:

SHOULD IT BE LEGAL TO HIRE ILLEGALS?

It won't happen during the current political campaign, of course. But sooner or later, somebody is going to have to start talking sense on the question of immigration.

I have in mind in particular the immigrants now flooding illegally into this country. They may provide temporary relief for employers who've had trouble filling their bottom-of-the-barrel jobs but, in the long term, they spell not "relief" but "trouble."

It's no mystery why they come. America is still viewed by the world's oppressed as the land of opportunity, whether their repression is political, economic or some combination of these.

A poll taken last year by the Kettering Foundation found that fully one-third of Latin Americans wanted to leave their homelands to seek a better life—90 percent of them naming the United States as their home of choice. Southeast Asians, Soviet Jews, South Koreans, Mexicans, Ethiopians—millions of people in all parts of the world would, if they could, come to America.

Some of these millions do manage to get here and, when they do, they too often constitute an additional barrier to the employment of low-skilled black Americans whose joblessness already is a national disgrace.

The facile explanation is that the newcomers will work harder than native-born blacks and at less than the minimum wage. Thus, the explanation goes, blacks create their own unemployment. To which Roger Conner, executive director of the Federation for American Immigration Reform (FAIR), makes this response:

"To the extent that illegal immigrants work more cheaply, harder and with fewer protections than American workers, they are being exploited; and to the extent that they take good jobs at good pay with the protection of the law, they are competing illegitimately and unfairly for the jobs Americans want and need."

The almost inevitable result will be hostility, and occasionally open warfare, between the new immigrants and the blacks they displace.

As Labor Secretary Ray Marshall observed, "I am convinced that we are sowing the seeds of a serious future civil rights struggle, and we would be better off if we were to confront it now."

But we aren't confronting it. Indeed, one still hears talk of "amnesty" or blanket grants of citizenship for the illegals already in America.

Such proposals, while they seem only a common-sense way of dealing with a *fait accompli*, in fact are a recipe for exacerbating an already bad situation.

Awarding citizenship to illegal aliens not only penalizes those would-be immigrants who have waited patiently until their numbers are called but also creates a new wave of immigrants: the families of the new citizens who, by U.S. law, are automatically eligible for immigration.

Our refusal to face up to the problem of illegal immigration raises another serious question: what to do about the children of these illegal aliens a dozen or 20 years from now? Is there any doubt that there will be demands for full rights for these sons and daughters who, it will be argued, are Americans in all but the most technical sense?

Already a federal judge has ruled that 17 school districts in Texas cannot escape the burden of educating the children of the illegal aliens—estimated at between 40,000 and 110,000. The districts had asserted the right to charge them tuition. Judge Woodrow Seals rules otherwise, holding that they cannot deny the alien children the equal protection of the law.

Will that equal protection also put them in line for the benefits of affirmative action and other programs designed to increase opportunity for America's own minorities?

No one feels good about tramping on the aspirations of the world's huddled masses, but sooner or later we will have to grasp this moral and political nettle.

Conner has suggested one possible way. He would make it unlawful for Americans to hire illegal aliens. As the law now stands, it is a crime for an illegal alien to take a job; it is unlawful to harbor an illegal alien. But there is no federal law against hiring an illegal alien.

Changing the law in that regard would remove "the magnet of jobs," Conner believes, and thereby make it possible to control the flow of illegals into the country.

Once that is accomplished, with the aid of a beefed-up Immigration and Naturalization Service, Conner would be willing to support proposals to grant amnesties or pardons to the illegals already here.

The point, he says, is that "we must have an operative program for effective law enforcement *before* such pardons are granted."

It makes sense to me.

"LITTLE SHORTIES," LITTLE HOPE

They call them, writes Post reporter Herbert Denton, "the litle shorties."

They are the 11-, 12- and 13-year-olds on the front lines of the brick-throwers and window smashers in Miami's angry Liberty City.

But to see them primarily as teen-age and pre-teen hoodlums is to miss nearly the whole tragedy of their situation, which is that they are hardly dry behind the ears and already almost totally without hope.

Saddest of all, their sense of hopelessness is an accurate reflection of their reality. Look at the world from their point of view and it's almost impossible not to be hopeless.

When you live in poverty and squalor, when the availability of your next meal is genuinely in doubt, when of every 10 black youths you see, eight cannot find work, you cannot dream midde-class dreams of a bright future. You dream, if at all, of survival.

The "little shorties," Denton wrote, have "no hope and, as a result, no fear."

Which is another way of saying that they have weighed their situation and concluded that they have nothing to lose. And so they strike out at "the crackers"—whites who, as they see it, are responsible for their hopelessness.

"You're not talking about a handful of kids," Denton quoted the editor of Miami's black newspaper, the Miami Courier, as saying. "You are talking about hundreds, hundreds who have no fear."

The absence of fear is a real concern to the authorities because it removes inhibitions to violence. These children are willing to risk their freedom, even their lives, to lash out at the system that has left them behind. Perhaps from their point of view, they really aren't risking so much.

But if these youngsters aren't afraid, the rest of America ought to be. There is no deadlier threat—to tranquility or to the "system"—than people who reckon that they have nothing to lose, who have no stake in preserving what the rest of us hold dear.

These pitiful and very dangerous souls exist not only in Miami but in slums across America. Their situation (and, consequently, America's) grows worse with each new wave of immigrants who elbow ahead of them for a chance to start at the bottom: Cubans and Haitians in Miami, Mexicans in Texas and California, Vietnamese in cities from Arlington to Des Moines.

The rationale for preferring the new immigrants to home-grown blacks is that the former are ambitious and the latter don't really want to work. (People keep on uttering this slander even when, in Miami, blacks find themselves suddenly ineligible for the low-grade jobs that used to be available because they now require fluency in Spanish.)

As a matter of fact, the most hopeful finding in Denton's dismal report is that the "little shorties" want desperately to work, although it's anybody's guess how long this last remnant of humanness will last.

Before it's too late, America must be made to recognize that the story of Liberty City is no more than an exaggeration of the story of the U.S. slums and to start looking for ways not to prevent the occasional explosion of despair but to solve the problem of uselessness.

The common characteristic of the most explosive slums, from Miami's Liberty City to Los Angeles' Watts, is the disappearance of business enterprise. While our leaders are busy fighting inflation, they might more usefully look for ways to entice businesses—black-owned businesses, preferably, but businesses of some kind—into the bombed-out central cities.

Business activity would help to halt the spreading blight and the revenues would make it possible to provide vital services to this frustrated underclass.

But the real bottom line would be the creation of jobs and the sense of hope that comes from being productive.

"Little shorties" do grow up.●

GOVERNMENT SHOULD HELP SHIPPERS PURCHASE RAILROADS

● Mr. CULVER. Mr. President, the bankruptcies of the Rock Island and Milwaukee Railroads have been a serious blow to the economy of my State. Liquidations of the two lines could result in a loss of over $300 million to Iowa's economy, along with loss of over 5,200 jobs. The economic consequences of the collapse of these lines, however, also goes far beyond its impact on a single State. It has a serious effect upon the entire grain export market, which in recent years has been the one bright spot in our balance-of-payment situation.

People in all parts of the country have gotten the message: Railroads are vital to America and essential rail lines must be preserved.

One of Iowa's most important lines that potentially faces abandonment is the grain-gathering "gateway" line of northwest Iowa from Iowa Falls through Estherville, Rake, Dows, and Buffalo Center. This line channels grain into the north-south line from Minneapolis to Kansas City which serves as the principal outlet by which western Iowa farmers transport commodities to Houston for export. Several railroad companies have expressed an interest in acquiring this "gateway" from the Rock Island system, but no formal offers have been made. Western Iowa farmers, in turn, cannot make long-range business plans without knowing that there will be service along the "gateway" in the future.

The Rock Island Transition Act provides $25 million for noncarrier acquisition of former Rock Island rail segments. These funds—drawn from the Federal Railroad Administration's section 505 rehabilitation program—are to be used to help private associations of shippers, farmers, or former rail employees purchase essential lines that would otherwise be abandoned. However, $25 million will not be enough to help private groups acquire rail segments across the Midwest.

In Iowa, shippers have recently formed the Iowa Falls Western Holding Co. to purchase 320 miles of the "gateway." The group has recently applied to the FRA for $25 million to acquire and upgrade the line. This single application would exhaust all Federal money currently available for noncarrier acquisition of the Rock Island. It is obvious that if the Federal Government is to provide realistic opportunities for shippers to purchase rail segments, more funds must be made available.

Last year, I offered the successful amendment to the windfall profit tax bill permitting windfall revenues to be used for railroad improvement. Recently, I put these revenues "to work" in the cause of improving midwestern rail transportation by introducing legislation to double the amount of funds available for noncarrier railroad acquisition under the "505" program. The bill earmarks $50 million for Rock Island purchase and $36 million for Milwaukee Railroad purchase, and specifies that the additional funds be made available from windfall profits tax revenues. This increase provides a more realistic pool of funds that will be needed to help private groups acquire essential rail lines.

Mr. President, many shippers are resting their economic futures on the purchase of rail lines and the reestablishment of efficient, permanent service. The Federal Government should not hold out the promise that all shippers can or should run their own railroads. But where there is solid evidence to suggest that shippers can acquire and operate rail lines, the Government should provide enough funds to help them get the job done. The Iowa shippers who are seeking to acquire the "gateway" can meet that test. I will continue to work for enactment of my legislation so that they and other groups of shippers throughout the Midwest can be assured of adequate rail service in the future.●

TRIBUTE TO THE PUBLIC/COMMUNITY HEALTH NURSE

● Mr. INOUYE. Mr. President, since 1893, when Lillian Wald established the Henry Street Visiting Nurse Service and proposed that her nurses be called "public health nurses," their sole mission has been to serve the public.

By 1901, there were 58 public health nursing organizations employing about 130 nurses; and in 1912 3,000 were engaged in what we now call public or community health nursing. The most recent data shows that as of January 1974, there are 65,104 public/community health nurses working in 11,516 agencies in all 50 States and Territories of our Nation.

Today, I would especially like to acknowledge the public/community health nurses' unique contribution to our Nation's health care system. In many ways, they are still the traditional public health nurses—but now with an even expanded role. This role has expanded in harmony with the changing concepts of health care delivery. Today, they not only work in federally funded State and local agencies such public health clinics, but

also in schools, industries, ambulatory care centers, residences for unwed mothers, single room occupancy hotels, day care centers, senior citizen centers, and neighborhood health centers. As you can see, a public/community health nurse can be found in any setting that addresses a community health need.

Of special interest, even with this expanded role, our Nation's public/community health nurses still maintain a proud tradition of providing health care service through home visits. The public/community health nurses are those health professionals who still make housecalls. According to the latest available data from the Department of Health and Human Services, public/community health nurses made 7.8 million home visits to 3.9 million people in the program area of health promotion alone during the 1970–71 fiscal year. In addition, they made 13.3 million home visits to nearly 1.7 million persons with a chronic disease or disability.

What are public/community health nurses? He or she is first of all a registered nurse; that is a graduate of an approved nursing education program that was authorized by the State to prepare persons for licensure. This graduate must then meet various State requirements for licensure in the State he or she wishes to practice.

Historically, preparation as a registered nurse and on-the-job training used to be sufficient to meet the requirements of public health nursing. But in recent years, with the even greater emphasis on the family and community, over one-third of the public/community health nurses are now prepared at the baccalaureate level in programs accredited by the National League of Nursing. This has provided them with a liberal arts education and most importantly, essential nonelective core courses in both the theory and actual supervised practice of public/community health nursing. I might add, they still must meet the State licensing requirements.

Without question, this trend, within organized nursing, to become better prepared, highly trained professionals, has continued to upgrade health care services to the community. Presently there are 21 universities that offer a Masters of Public Health in Nursing (for example Johns Hopkins and Columbia) and 50 accredited, university affiliated schools of nursing, such as Yale and Catholic University, that offer a Master of Science in Public Health Nursing in 32 of our States.

The public/community health nurse with a master's degree is uniquely prepared to programmatically plan, coordinate and evaluate, and, in addition, supervise the actual practice of the baccalaureate public/community health nurse, home health aides, and other auxiliary personnel.

The public/community health nurse's practice functions in accordance with the American Nurses' Association Standards of Practice. Their function includes identifying subgroups within the community who are at higher risk of illness or poor recovery and targeting their resources toward those groups, families and individuals. The public/community health nurses see firsthand a family's difficulties and strengths, and then carefully assess the physical, psychological, economic, and environmental factors involved. In coordination with other health professionals, and various community groups who provide specialized backup care, they develop a system of total patient care management.

They often function as teachers, in the rehabilitation process, instructing families in physical care of the patient; including such procedures as giving hypodermics, positioning in bed or wheelchair, and helping families cope with the problems resulting from the patients convalescence.

With their primary emphasis being on prevention, the public/community health nurses observe family life, noting the health needs of all members of the family. Unlike the traditional "illness" orientation of their medical colleagues, these nurses advise their clients on good preventive health practices, including exercise, diet, and need for routine medical examinations. They support individuals whose mental health may be threatened and refer families to community resources for help with emotional problems, family planning, housing, and employment. In addition, they stress the importance of a special emphasis on planning for the community as a whole in order to improve the health of the community through nursing intervention. As I indicated, this intervention may involve working with a wide variety of community leaders, health related groups, populations at risk, families, individuals, and relevant sociopolitical interests. The active participation of the public is welcomed and even considered an essential ingredient in the process.

There is no question in my mind that the public/community health nurse has been shown to be cost-effective. In a 1977 report by the New York City Health Systems Agency and the Visiting Nursing Association of Greater New York, 500 chronically-ill individuals who were deemed eligible for long-term institutional care, but who were instead receiving public health nursing care, were surveyed.

It was found that the monthly median home health cost of primary care to these low-middle income patients, was 54 percent less than nursing home care would have been, and 32 percent less than had it been delivered in a formally designated health facility, such as a home for the aged.

Similarly, in a New York Research Demonstration Project, presently being conducted, home health care averaged 70 percent less in cost than long-term institutional care. I might add, that there were no complaints that lower quality care were being provided, and in fact, just the opposite was true. These individuals were very pleased to be able to remain at home and avoid institutionalization.

In conclusion, from all that I have heard and from my own personal experiences, the public health nurse, who today is more commonly called the public/community health nurse, has been doing an outstanding job. She was my family's major health care provider during my own youth.

And, for example, I personally did not ever see a doctor until I was 7, and then for a tonsillectomy. It was the periodic visits of the public/community health nurse that helped maintain the health of my family. I will always owe her a debt of gratitude as it was one of these health professionals that first discovered a physical impediment that had affected my brother's speech patterns, and which had been overlooked by our family doctor. Once discovered, it was readily corrected, but I am sure this single discovery had a profound effect on changing my brother's entire life. For without the ability to communicate, I shudder to think what would have been his future. It is for this preventive community health approach that I salute the public/community health nurse today.●

CRIMINAL CODE REFORM

● Mr. CRANSTON. Mr. President, the Los Angeles Times of August 24, in a well-reasoned editorial, argues that Congress should reject the proposed revision of the Federal Criminal Code (S. 1722) and, instead, "approach criminal law reform in cautious incremental stages that can be thoroughly debated and understood."

The Times sums up its case against the bill this way:

> Drafters of this legislation, who attempted the most momentous legislative reform in this nation's history, confronted the most difficult problem in a democracy: bringing freedom and state power into proper balance. They have tipped that balance against freedom and the individual, and the legislation that they devised should be rejected.

I agree with the Los Angeles Times' assessment of the bill.

The most significant provisions of the Federal Criminal Code Reform Act directly affect ordinary citizens in their relations with the Central Government powers. The controversial provisions of the bill are those which empower the Government to protect itself from individuals. The state, as we have seen, can be very vindictive in defending its interests.

Overzealous prosecutors tend to feel that the ends justify the means. Ambitious investigators know how to use grand jury and other investigative proceedings to coerce individuals and businesses.

Earlier versions of S. 1722 also tilted too far in favor of central Federal power against the individual and against our freedoms. I opposed these bills, and I oppose S. 1722 in its present form for the same reasons.

Our national effort to control crime is not dependent upon enactment of S. 1722. Criminal Code reform is not a key part of the war on crime. We are continuing and will keep up vigorous investigation and prosecution of criminal acts.

Americans enjoy unparalleled civil and political freedom partly because our

Constitution, in addition to the specific guarantees of the Bill of Rights, does not concentrate police power in any one place. On the contrary, the Constitution deliberately makes difficult the consolidation of police power.

The Department of Justice wants the Criminal Code reform bill passed because existing law is inconsistent, contains omissions, and is difficult to enforce from a prosecutor's point of view. If S. 1722 is passed, the Department of Justice will have in its grasp prosecutorial and investigative powers capable of reaching virtually every nook and cranny of American life. The only practical limitation on the scope of the Department's jurisdiction will be the limits of ingenuity of the prosecutors and their resources.

Another consequence of the bill will be a vast grant of new interpretive authority given to the Department of Justice and to the courts. As such, it amounts to giving a blank check to our law enforcement agencies to determine the extent of their own powers. When has an agency exercised self-restraint in similar circumstances?

Mr. President, Congress has been unable to determine the scope of a "charter" for the Federal Bureau of Investigation and the Central Intelligence Agency. There are good reasons for this inability, which are alluded to by the Los Angeles Times editorial: bringing freedom and state power into balance is an immensely difficult undertaking.

Furthermore, the context in which to make this difficult decision has not yet been established, for our vital law enforcement agencies still are in the midst of rebuilding after years of isolation from congressional oversight, of rule as private fiefdoms, and after a series of disgraces which still haunt the Nation.

The Criminal Code bill proposes to set fundamental policy in sentencing and other aspects of punishing criminal acts. There has been very little national discussion of whether mandatory sentencing, for example, is desirable. Prison alternatives are not discussed in the bill. The Department of Justice has asked for and received in the bill extraordinary authority to appeal sentences in criminal cases.

There has been little preparation for this type of debate on the part of Senators. The Judiciary Committee did not agree unanimously on these provisions, and yet we will be asked to decide after a period of debate some fundamental policy questions directly affecting the liberties and rights of Americans.

Mr. President, I agree with the Los Angeles Times' call for Congress to consider Criminal Code reform in cautious incremental stages. I urge my colleagues to consider this position, and I ask that the editorial of the Los Angeles Times of August 24 be printed in the RECORD.

The editorial follows:

A SCALE UNBALANCED

In the middle of a heavy workload, in a session dominated by the rancorous political maneuvering of a presidential election and with adjournment just six short weeks way, Congress will take up the most significant criminal-law reform legislation ever considered since the beginning of this nation.

Senate Bill 1722 and its companion bill in the House of Representatives (H.R. 6915) propose nothing less than a revision of the entire body of federal criminal law—a massive undertaking never before attempted, and one whose full implications have been studied by only a handful of legislators.

It is inconceivable under these circumstances that Congress can act rationally on legislation that pushes federal power into every nook and cranny of this nation. It is inconceivable, if the Senate and the House approve their respective bills, that their differences can be rationally reconciled in conference. Yet the Senate version may be considered this week and action by the House may follow shortly.

The legislation, which involves the incredibly complex task of consolidation and redefinition of more than 3,000 laws, should be aborted.

It would appear to be a task best left to the legal experts whose stated goal is to reduce the confusion of conflicting statutes that have accumulated over two centuries. But revision of the code represents far more than eliminating archaic laws, modernizing others and bringing all together in a tidy package. It would define the boundaries of American freedom, and affect the liberty of every individual and every social group in the nation. Rewriting the federal criminal code is in significance secondary only to rewriting the Constitution, and, as the Constitution was a profound political document, so is revision of federal criminal law a profound political undertaking.

The public, confronted with what may seem to be arcane disputes over abstruse legal language, may be only dimly aware that criminal law embodies the governing philosophy of a nation, and that politics, in the highest sense, has been at the root of the struggle over the code in the past decade.

The political struggle became explicit as soon as the National Commission on Reform of Federal Criminal Laws, appointed by President Lyndon B. Johnson, presented its report nine years ago. Richard M. Nixon's Justice Department, dissatisfied with the first Senate version of reform, wrote separate legislation that contradicted most of the national commission's recommendations.

What eventually emerged was a compromise measure, S 1, which was so repressive that it was denounced by former Sen. Sam Ervin (D-N.C.) as a design for what would be "essentially a police state." A second compromise, under the powerful sponsorship of Sen. Edward M. Kennedy (D-Mass.), coasted through the Senate, but the effort failed in the House.

Now the latest measure (S 1722), backed by Kennedy and the Justice Department, will be put before the Senate, and Rep. Robert F. Drinan (D-Mass.), chairman of the House Judiciary Committee, is pushing the House bill toward passage. Of the two, the Senate bill is more significant because it has the full weight of the Justice Department behind it, and likely will prevail if the legislation reaches conference.

In an attempt by its sponsors to pacify critics of prior reform legislation, S 1722 represents some improvement over preceding bills. It would expand the protection of civil rights, including the addition of sex to the category of unlawful discrimination, and the classes of persons protected would include aliens. It would repeal the Smith Act, which made it a criminal offense to advocate the overthrow of the government, and would repeal the Logan Act, the 1798 statute that prohibits private citizens from discussing foreign policy with foreign officials. If a judical order is held to have violated the First Amendment, that fact would be allowed as a defense against a charge of contempt of court.

But S 1722 carries forward a variety of provisions that outweigh these and some other gains.

The bill would give judges broad power to deny bail and imprison accused persons before they had been tried, which would undermine the principle that a person is innocent until proved guilty. The government would be allowed to appeal some sentences. A similar but narrower provision in current law has been held unconstitutional by an appeals court. S 1722 would retain the so-called immunity-use law, which forces witnesses to testify in exchange for partial immunity from prosecution as a result of their testimony. This provision would seriously erode the historic protections of the Fifth Amendment.

Sentence reform is attempted, but, in addition to allowing the government to appeal sentences, this section has other serious defects. It would eliminate parole, restrict good-time early release and not encourage alternatives to prison—an approach long urged by the American Bar Assn.

Various provisions of S 1722 could result in severe sanctions against the exercise of First Amendment rights, especially in time of an emergency. Persons writing or speaking against a war, even if the war were undeclared, could be liable to prosecution if military authorities interpreted their conduct as "inciting insubordination." News reporters could be charged with an offense if they refused to identify news sources or if under certain circumstances they disclosed information obtained by them from a government official. Federal employees who reveal government wrongdoing and journalists who receive such information could be charged with an offense. These defects by no means exhaust the list of the legislation's deficiencies.

Drafters of this legislation, who attempted the most momentous legislative reform in this nation's history, confronted the most difficult problem in a democracy: bringing freedom and state power into proper balance. They have tipped that balance against freedom and the individual, and the legislation that they devised should be rejected.

Congress can then approach criminal-law reform in cautious incremental stages that can be thoroughly debated and understood.

JURISDICTION OF STONE, CLAY, SAND, AND GRAVEL SURFACE MINING OPERATIONS

● Mr. BUMPERS. Mr. President, I rise today to join Senator WALLOP in deploring the actions of the House of Representatives in refusing to allow a vote on the merits of the Senate amendment to transfer stone, clay, sand, and gravel surface mining operations from MSHA's jurisdiction to OSHA's jurisdiction.

The Senate has gone on record in support of this amendment and there is a broad base of support in the House of the legislation. There are six bills in the House which are almost identical to the Senate amendment and which have 219 sponsors and cosponsors. Yet the House of Representatives has refused to allow a vote on the substance of the proposal.

We are not trying to deprive the employees of these surface mining operations safety regulations in this legislation. We are simply trying to insure that the small employers who make up the sand, gravel, stone, and clay mining industries are governed by a flexible system of regulation which fosters a spirit of cooperation and not adversity between the regulated and the regulator.

Because of the importance in quickly passing this legislation, I do not intend to ask the Senate to amend the House-passed bill. However, I do wish to thank my fellow Senators for their support on this issue in the past and to promise that I will continue to work for passage of this legislation in the future.●

CLARKSVILLE LITTLE LEAGUE CHAMPS

● Mr. SASSER. Mr. President, the State of Tennessee and the citizens of Montgomery County and Clarksville are honored and proud to have been represented in the National Little League southeastern region tournament at St. Petersburg, Fla., this month.

The Clarksville National Little League All-Stars—a talented group of 14 excellent athletes—finished runnersup in the tournament. Although they fell in the final game to the champion Tampa, Fla., team, they gave it their best effort and have nothing for which to be ashamed.

These 14 young athletes represented their community well, finishing second in a tournament in which a total of 7,600 Little League players participated.

Under the able direction of team manager Carrol Poole and Coach Dan Ender, these youngsters came within two runs of winning the tournament and moving on to the national tournament at Williamsport, Pa. The team returned to Clarksville on August 24 after a grueling 15-hour bus ride, but they were in high spirits when they were greeted by a crowd of proud parents, friends, and prideful well-wishers. They represented their hometown and State with excellence and in the best tradition of sportsmanship.

These accomplished players played with tenacity, coming from behind several times to win the State tournament and earn the trip to the southeastern tournament. They represented several Little League teams in the Clarksville area, and I know all Tennesseans are proud of them.

The team members are Jimmy Galbreath, Eric Mazzie, Steve Miller, Craig Cross, Bryan Alsobrooks, John Davidson, Jim Brewer, Brad Cooper, Sean Thomas, Scott McLean, Chris Ender, Timmy Rye, Frank Goodlett, and Chad McKinny.

I am sure this competition has been a tremendous learning experience for the players. They have gained self-confidence and wisdom in the past several weeks.

I wish them well in future endeavors.●

EQUALITY DAY—AUGUST 26, 1980

● Mr. BAYH. Mr. President, 60 years ago today, the Constitution was amended to insure the right of women to vote. Since that time, great strides have been made to reaffirm and protect the rights of all citizens. Even though, to this date, two States have never ratified the 19th amendment to the Constitution, it was declared, in a certificate by the Secretary of State, dated August 26, 1920, to have been ratified by the legislatures of 36 of the 48 States.

Article XIX reads as follows:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.

WOMEN'S SUFFRAGE

The 19th amendment to the Constitution of the United States was adopted after a long campaign by its advocates who had largely despaired of attaining their goal through modification of individual State laws. Agitation in behalf of women's suffrage was recorded as early as the Jackson administration but the initial results were meager. Beginning in 1838, Kentucky authorized women to vote in school elections and its action was later copied by a number of other States. Kansas in 1887 granted women unlimited rights to vote in municipal elections. Not until 1869, however, when the Wyoming Territory accorded women suffrage rights on an equal basis with men and continued the practice following admission to statehood, did these advocates register a notable victory. Progress continued to be discouraging, only 10 additional States having joined Wyoming by 1914, and, judicial efforts having failed, a vigorous campaign brought congressional passage of a proposed amendment and the necessary State ratifications.

Following the Supreme Court's interpretation of the 15th amendment, the State courts which passed on the effect of the amendment ruled that it did not confer upon women the right to vote but only the right not to be discriminated against on the basis of their sex in the setting of voting qualifications, a formalistic distinction to be sure but one which has restrained the possible applications of the amendment.

In only one case has the Supreme Court itself dealt with the amendment's effect, holding that a Georgia poll tax statute which exempted from payment women who did not register to vote did not discriminate in any manner against the right of men to vote, although it did note that the amendment "applies to men and women alike and by its own force superseded inconsistent measures, whether Federal or State."

The 19th amendment to the Constitution was proposed by the Congress on June 4, 1919. It only took 14 months to ratify by the requisite 36 States out of the 48 States.

My own State of Indiana ratified the 19th amendment on January 16, 1920, making it the 26th State to ratify women's suffrage.

Mr. President, it behooves us all to stop and reflect for one moment today on those courageous women and men who fought long and hard for the right of women to vote. I believe we can all agree, now, that this victory was well worth their every effort. I ask that my colleagues join with me in honoring those stalwart citizens of days goneby—and join with me in honoring the women and men of today who still keep the light burning for the promise of equality of all, irregardless of sex.

The Constitution of the United States was drafted as the living safeguard of individual freedom and equality under the law. It was conceived by those determined to achieve the blessings and the promise of freedom for all individuals. To insure the growth of that concept, provisions were made for amending procedures to the Constitution. The promise of equality has always been one of America's greatest traditions. The fear of equality has never been an American tradition. No woman or man who is a citizen of this great Nation should be denied equality under the law solely on the basis of being either male or female. The equal rights amendment now before the States for ratification would afford the protection of equal rights for both men and women.

Mr. President, the promise of equality is a traditional American way of life. I believe the United States of America and the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all, will prevail.●

ARMY ROTC SCHOLARSHIPS

● Mr. HATCH. Mr. President, as this Senate well knows, I have been an avid supporter of a strong national defense. For this reason, on August 4, 1980, along with a majority of this body, I supported H.R. 5766 which, among other things, doubled the authorized number of Army ROTC scholarships.

However, on August 12, 1980, some 4 days later, the American Bar Association Law Student Division brought to public attention a study which had been submitted to the Army some 10 months earlier. The study, which was prepared by individuals of the J. Rueben Clark Law School, at Brigham Young University, pointed out that scholarship cadets did not distinguish themselves in ROTC performance, their attitudes toward active duty, personal motivation, or career retention. This study also revealed serious morale problems among reservists, and those who had been affected by the draft in the Vietnam era.

Members of the ROTC regional command who received this study in October 1979, estimated it to be worth over $50,000, inasmuch as it is an unparalleled piece of research. Inasmuch as national Army leaders had full notice of this data some 6 months before H.R. 5766 was related to this body, it is doubly disturbing that this information was not brought to us before the vote was held on August 4.

The organizations and individuals who bring this information are credible. The Law Student Division of the American Bar Association is the second largest section of the ABA. With nearly 40,000 members, it is often said that it serves the function of being the conscience of the ABA. The J. Rueben Clark Law School and Brigham Young University, located in Provo, Utah, are sponsored by the Church of Jesus Christ of Latter-Day Saints, commonly known as the Mormon church.

At this institution the integrity of their graduates is as important as their academic distinction. Mr. Matthew Hilton, principle author of this study, began the research shortly before his nomination by Brigham Young University as a Rhodes and Danforth scholar candidate. He is currently on Law Review, Editor

and Chief of the Legislative Drafting Service, and holds a commission in the U.S. Naval Reserve JAG Corp. Dr. Howard B. Christensen, coauthor and also at BYU, is nationally recognized for his work in statistics.

The fact that this study is being brought to us does not mean that these organizations or individuals do not favor a strong national defense. They do. And they also wish to help Congress correct present statutes so as to allow the Department of Defense to more effectively use appropriated monies to protect our Nation. C. S. Lewis observed that:

> The real traitor to our order is not the man who criticizes that order from within, but the man who flatters our self-complacency.

The American Bar Association Law Student Division has requested that those committees with supervisory authority over the Army ROTC program needed for authorization or appropriation review this data. I agree with this request. I suggest that hearings be held in the near future so that this additional and crucial information may be presented to Congress and aid us in our efforts to promote a stronger national defense. By so doing we will avoid a serious problem discussed by Sir William Butler when he noted:

That a nation who makes a strict line of demarcation between its fighting and thinking men is likely to have its fighting done by fools and its thinking done by cowards.

I trust we are neither.

I therefore request that this body recognize the efforts of these organizations and individuals by including this ABA Law Student Division resolution and executive summary of the report's relationship to H.R 5766 in the CONGRESSIONAL RECORD. I also request hearings be held in short order to allow the allegations contained in said study to be presented to the appropriate committees of this body.

The information follows:

AMERICAN BAR ASSOCIATION LAW STUDENT DIVISION RECOMMENDATION

J. Reuben Clark Law School of Brigham Young University recommends adoption of the following resolution:

Resolved, That the Chairperson be empowered to appoint a committee of three to investigate the present status of R.O.T.C. law and programs, with special emphasis on the effect future changes in draft laws or other military related legislation will have on the program, and submit the results to interested congressional committees.

Resolved, That, where appropriate, the Division recommends congressional committees examining military affairs use, non-military personnel to present additional insights into the operation of military programs when such programs are being reviewed for additional appropriations in an effort to insure that all significant, viable alternatives are examined and discussed.

REPORT

On October 16, 1979, the J. Reuben Clark Law School submitted to the U.S. Army a three-year study evaluating the Army R.O.T.C. program in the West. Among other things, the study found serious problems in the cost-effectiveness of the majority of the ROTC recruiting practices, an absence of recognition by the Army of negative effects of the draft on the junior officer corps and serious problems of active duty which discouraged junior officers from further affiliation wtih the Armed Forces. Such obserations had not been discussed earlier by the Army before appropriate congressional committees when military/civilian leaders were required to report on program status before receiving appropriations.

Even though the study was evaluated by several field commanders and found to be "an unparalleled piece of research" of "highly Professional quality," conservatively estimated to be worth $50,000, national Army leaders did not find it appropriate to discuss or mention any of these results in the recent legislation before Congress which doubled the size of the Army R.O.T.C. scholarship program. H.R. 5766 passed with amendments by the Senate on August 4, 1980, does not reflect some of the serious and sobering conclusions, found by the J. Reuben Clark Law School Legislative Drafting Service.

Inasmuch as current House leaders expect the amended bill to pass the House by voice vote after August 18, 1980, the place to submit the additional needed information questioning the value of both the scholarship program and the methods by which the latest legislation was introduced and passed by Congress is before the House and Senate Appropriations Committee, this resolution is to authorize such action be taken in the name of the ABA/LSD.

While R.O.T.C. legislation is not the most crucial matter in our national defense, alternative voices need to be heard as to exploring options in adequately maintaining such a defense. At this time, the effect of the draft on the R.O.T.C. program needs to be heard . . . especially if it will call attention to both the positive and negative aspects of such action.

This recommendation in no way denies the viability of maintaining an adequate national defense force. The principal author of the study still holds a reserve commission in the United States Naval Reserve. Rather, the issues involved concern the right of Congress to know of serious problems which are neither discussed nor raised in Congressional hearings and are possibly blocked from being heard by those who feel it would be adverse to the short term interests of the military.

EXECUTIVE SUMMARY

The American Bar Association/Law Student Division J. Reuben Clark Law School Legislative Drafting Service and Mr. Matthew Fenn Hilton request that appropriate Congressional committees involved with the review of H.R. 5766 hold hearings to re-evaluate the justification for authorizing the increase in Army ROTC scholarships from 6,500 to 12,000.

H.R. 5766 is the result of committee hearings held earlier this session on the former H.R. 3308 which dealt with designating 600 scholarships for the use of military junior colleges. Testimony in hearings on H.R. 3308 and written or spoken comments on the House floor indicate that the bill is premised on the assumption that an increase in the number of ROTC scholarships will increase the number of junior officers in the various components of the Army Reserve. H.R. 5766 passed the House on November 26, 1979 after two-thirds of the House approved a suspension of the rules. The Senate amended the bill on August 4, 1980. As of this date, the amended version has not been accepted by the House or been sent to conference.

While the Senate amendments are valuable, the greatest concern lies with the doubling of the size of the ROTC scholarship program. Concerns in this area have been expressed to national military leaders in the form of a study entitled Army ROTC in the West. This report, done as a public service, was submitted to the Army Region IV ROTC Headquarters on October 16, 1979. It was subsequently distributed to ROTC institutions in that Region and national military leaders.

Members of Region IV command found the study to be an "unparalleled piece of research" of "highly profesional quality", estimated to be worth at least $50,000 to the Army. The study noted, among other things, several basic conclusions which run counter to the assumptions behind the passage of H.R. 5766.

1. Commissioned scholarship cadets do not distinguish themselves from non-scholarship officers in any significant way in areas of participation in ROTC, career plans, perception of active duty or personal motivation while on active duty.

2. Those commissioned officers who served in the Reserves reported significant areas in their ROTC training and Reserve service which deterred them from either being more actively involved in their ROTC training, continuing their affiliation with the Reserves or being more motivated to fulfill assignments while in the Army.

3. The commissioned officers who joined ROTC because of a desire to avoid being drafted showed a significantly higher propensity to serve in the Reserves, even though they had a more negative perception of ROTC and their military service than those who were not influenced by the draft.

Because this information was not presented to appropriate Congressional committees when H.R. 5766 was considered, it is requested that Congress re-evaluate the present and proposed legislation dealing with the Army ROTC scholarship program.●

THE MAGNETIC FUSION ENERGY ENGINEERING ACT

● Mr. CRANSTON. Mr. President, I am pleased to announce that I am joining those of my colleagues who have endorsed and cosponsored S. 2926, the Magnetic Fusion Energy Engineering Act, 1980.

This bill, authored by my good friend from Massachusetts, PAUL TSONGAS, declares a Federal policy of promoting broad participation of domestic industry in magnetic fusion research and fostering cooperation among governments, universities, industries, and national laboratories in this highly promising energy-producing technology.

Californians have long been among the Nation's leaders in the research on magnetic fusion.

Fusion is far preferable to fission as an energy source, for at least three reasons:

Unlike fission, fusion would be proliferation-proof, stopping the ever-increasing danger that the spread of fissionable materials creates of a survival-threatening nuclear holocaust.

While all nuclear energy poses some radiation hazards, fusion reduces tenfold the potential health hazards of fission.

Uranium and other fissionable materials are scarce, finite resources dependence on which could some day lead us to another energy crisis, while the supply of hydrogen atoms upon which fusion depends is inexhaustible.

Moreover, the Tsongas bill reduces the taxpayers' burden by $19 billion over the House-passed McCormack bill, while still moving DOE's fusion program 15 years ahead of its present schedule.

I believe that S. 2926 gives us a technically balanced program at a sensible cost that avoids the danger of overaggressive commitment too soon, while moving research along at a rate that will maintain U.S. world leadership in the development of this very significant technology of the future.●

NO PRESSURE ON ISRAEL AFTER THE ELECTION

● Mr. LEVIN. Mr. President, an erudite editor in my home State of Michigan has been engaged in what he terms truth searching on the Carter administration plans regarding Israel and the Middle East. Philip Slomovitz, the editor of the Jewish News in Southfield, Mich., was not satisfied to let stand without question the "common reverberation" that President Carter would sell out Israel after the Presidential election in November. He challenged the administration to respond. What he got back from Press Secretary Jody Powell was a letter that he feels "emphatically demolished" the fears that the administration would resort to pressure on Israel to obtain peace in the Middle East.

Mr. President, I present for the RECORD the Jewish News' presentation of the exchanges between the always articulate and insightful Mr. Slomovitz and the President's press secretary.

The material is as follows:

WHITE HOUSE REFUTES "FEARS" RE-ELECTED PRESIDENT COULD RESORT TO "PRESSURES" FOR ISRAEL'S SUBMISSION

Distressing assumptions—which escalated into fears—that a re-elected President would have no obligation to pursue the policy of unrestrained defense of Israel's security and might yield to demands for "pressures" upon Israel to submit to enemy demands, was emphatically demolished in a statement to The Detroit Jewish News made in behalf of the President.

Press Secretary to the President Jody Powell registered the refutation in an extensive reply from the White House to the questions on this issue, raised primarily in the media and in some Jewish ranks, by the editor of The Detroit Jewish News.

Powell made this declaratory statement on the question of pressuring Israel:

"We can understand your concerns and desire to look behind the unsubstantiated reports and the speculations that some columnists—often without checking with anyone in a level to know—freely indulge in. Truth-searching, as you called it in your concluding paragraph, can sometimes be difficult. But the truth in this particular case is in the public statements, the unwavering commitments, and prayers, of the President."

The White House-Detroit Jewish News exchange of views on this vital issue follows:

THE JEWISH NEWS,
Southfield, Mich., JULY 24, 1980.

President JIMMY CARTER
The White House
Washington, D.C.

DEAR MR. PRESIDENT: Because it is a common reverberation, because the question we address to you is judged as a normality in the current political speculations, what we address to you will surely be related in the seriousness in which it is approached.

The predictions, if the reports are to be treated as justified and acceptable prophecy, is that 1981 will be a "tough" year for Israel. Some apply to such augury the definition "calamitous."

We are not dealing in secrets. The media keep emphasizing that the general trend is to await action on peace negotiations until after the Presidential election. The contention is that as of November 5 the avenues will be opened for pressure on Israel. It is not necessary to define the term. Pressure is assumed to mean obstruction in Israel's path against assuring that nation's guaranteed security.

Egyptian spokesmen have been quoted similarly, giving emphasis to the view that bidding time until after the election will give you the freedom to exert your influence. The intimation is that as of November 5 you will be a free man to act firmly, to deal with the Israel issue without interference from the pleadings that come in behalf of Israel from the friends and supporters of the Jewish state.

I repeat: this is not a question posed with animosity, with antagonism. It is an echo of what is being repeated in the spoken commentaries, in the printed columns of correspondents, in the conclusions reached that at the moment there is an election at stake, and that after November 5 the President will be a free man.

In the interest of the American principle of fair play, in justice to Israel and her position as a beleaguered nation, in the best interests of the incumbent who is a candidate for re-election—please permit me to resort to this annotation—it is vital that our respected leader, that the head of our government, make his position known on this vital, if embittered, question.

What of November 5 and its aftermath, Mr. President?

I address this question to you in all seriousness, with due respect for the man we honor as our President.

I sincerely hope for an early reply from you, in the spirit of truth-searching in which this is addressed to you.

Faithfully yours,

PHILIP SLOMOVITZ.

THE WHITE HOUSE,
Washington, August 5, 1980.

MR. PHILIP SLOMOVITZ,
The Jewish News,
Southfield, Mich.

DEAR MR. SLOMOVITZ: Thank you for your recent letter to President Carter expressing your concern over news media predictions and unsubstantiated reports that claim the year 1981, after the Presidential election, will be a "tough" year for Israel and that President Carter will be a free man to "bear down" on our friend and ally.

We regret that you lend so much credence to these reports and urge you to, once again, review the public record and the words and actions of President Carter.

In March 1978, he repeated a pledge he has never varied from: "'We have a commitment to the preservation of Israel as a nation, to the security of Israel, the right of the Israeli people who have suffered so much to live in peace, that is absolutely permanent and unshakeable." The President has never wandered from this commitment, and never will.

In his recent statement to the Democratic Platform Committee,' which laid down an agenda for 1981 and thereafter, the President pointed out: "Our nation feels a profound moral obligation to sustain and assure the security of Israel. That is why our relationship with Israel is, in most respects, a unique one. It is organic; it is derived from our deepest moral imperatives."

The President's commitment to achieving peace in the Middle East is also unshakeable. No previous President has devoted so much of his personal time, so much of his heart and soul, so much of his will power, and sincere prayer, to achieving peace in the Middle East than Jimmy Carter. I dare say, and I don't think anyone can challenge me, that this nation has never previously seen a President so deeply and sincerely committed to peace in the Middle East, the security of Israel, and to the principles of human rights as President Jimmy Carter—and this nation probably won't see a President with this kind of deep commitment again after Jimmy Carter.

We know of no intentions, to quote your words, of putting "pressure" on Israel after the elections. Our role has always been that of a mediator, a friend, talking to one side, then the other, trying to keep the negotiations alive and moving. Pressure never works and we do not employ it, and won't in the future. We will, however, continue to stress the vital importance of constantly working towards peace.

President Carter told the same Platform Committee: "We must move toward peace in the Middle East. Without peace, there is a growing prospect, indeed inevitability, that this region will become radicalized, susceptible to foreign intrusion, and possibly involved in another war. Thus, peace in the Middle East also is vital for our national security interests, and this is why we have a strategic interest in supporting Israel, the only democracy in this unstable region, as well as Egypt."

You wrote of echoes of what is being repeated "in the spoken commentaries, in the printed columns of correspondents, in the conclusions reached that at the moment there is an election at stake." But none of these sources carries the words of Jimmy Carter. The reports do not reflect the President and his plans. He has repeatedly made his commitments known, his intentions known, his hopes and prayers known, and has never wavered from them as regards Israel and the Middle East. Nor will he.

I do agree that 1981 will be a "tough" year. It will be tough on the United States because of our economic and energy problems. It will be tough on other nations which are suffering from higher inflation and more desperate energy problems than we are. It will be tough on nations of the Middle East as we try to work through some difficult negotiations. It will be tough on the developing Third World Nations, on the hungry people of the world. But "tough" also means challenge—an atmosphere in which President Carter is disciplined, compassionate, a man of peace and fair play.

We can understand your concerns and desire to look behind the unsubstantiated reports and the speculations that some columnists—often without checking with any one in a level to know—freely indulge in. Truth-searching, as you called it in your concluding paragraph, can sometimes be difficult. But the truth in this particular case is in the public statements, the unwavering commitments, and prayers, of the President.

Again, thank you for writing.

Sincerely,

JOSEPH L. POWELL,
Press Secretary to the President.●

A CRISIS IN CONFIDENCE AND COMPETENCE

● Mr. DURENBERGER. Mr. President, "A Crisis in Confidence and Competence," a report issued by the U.S. Advisory Commission on Intergovernmental Relations (ACIR), in July of this year, was the subject of a recent article in the Washington Star. According to the article, the ACIR report presented a stinging indictment of Congress:

> Congress was depicted as quick to deal with minor new issues, but timid in drawing up needed reforms;
>
> Members of Congress were found to be so preoccupied with such narrow concerns they had little time to deal with major responsibilities.

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Indeed, the headline of the article read, "Congress Is To Blame for Aid Program Ills, U.S. Study Panel Says." I shall submit this article for the RECORD at the close of my remarks.

I am critical of our Federal aid system; I see evidence every day that confirms my belief that the system is out of control. I am inclined to accept the notion that Congress must assume some responsibility for the current state of chaos. I read the ACIR report to find out where we in Congress had gone astray and how we might proceed to redeem ourselves.

Clearly, Congress created the 498 grant programs and has the power to change them. ACIR made that point clear. Yet, ACIR did not single out Congress for condemnation, as the newspaper article would have one believe. The report which was cited, the first in a series of 10, identified and presented an analysis of four key problems of federalism, and suggested that it was time for a major reassessment of the public purposes and responsibilities within the American system.

The four problems plaguing the intergovernmental system, as identified by ACIR, are familiar ones:

Administrative failures, redtape, and tension between levels of government, something ACIR calls the problem of implementation;

Poor performance and inadequate results—that is, programs have not brought about the results all of us expected or hoped for;

Excessive cost and waste—or fiscal "inefficiency";

Lack of adequate control and responsiveness through the political process, or the crisis of accountability.

Having identified the problems, and in the explanation of them, ACIR did not point a finger of blame alone at any one level of government or at any branch of Government. For example, in explaining the reason for the gap between national policies and concrete actions of governments at all levels to deal directly in implementing those policies, ACIR cited the difficulties inherent in trying to mobilize local efforts to achieve national program goals. I quote:

> While implementation often is not straightforward even in programs administered directly by the national government, the difficulties are multiplied many times in the intergovernmental arena. Here the traditional administrative "hierarchy of command" breaks down, owing to the political autonomy of state and local governments in the Federal system. Separate administrative, personnel and political systems are involved and—regardless of Federal requirements, conditions, or even mandates—these jurisdictions are not simply administrative agents of the national government.

The ACIR elaborates on its point by quoting Martha Derthick, a leading scholar of federalism and governmental policies:

> To achieve many of its domestic purposes . . . the federal government relies on local governments. However, because of the division of authority among governments in the federal system, the federal government cannot order these governments to do anything. It gets them to carry out its purposes by offering incentives in the form of aid, which they may or may not accept, and by attaching conditions to the aid. To achieve results, federal officials must have enough knowledge of local politics to perceive what incentives are necessary; they must supply the incentives in sufficient quantity; and they must direct the incentives to those holders of local power whose support is required to achieve the federal purpose. In short, they must intervene successfully in local politics.

Did Congress cause these four major problems with our intergovernmental aid system? In a real sense, the answer is "Yes," by creating so many single-purpose aid programs. But according to the ACIR report, "The problems identified can be regarded as symptoms, not root causes." What are the fundamental causes, asks ACIR, and then answers the question, "(O)n this question, no consensus emerges."

My point is simply this: For too long, all the participants in the intergovernmental system, and the media, have been quick to find fault with one another. Congress blames the Governors, the Governors say Congress has lost all sense of restraint; mayors, Governors, and national political leaders blame the Federal bureaucrats. While the hot potato is thrown from one group to another, no action is taken to bring about some positive changes.

At their recent conference in Denver, the Nation's Governors passed a resolution calling for Congress and the President to convene a National Commission on Federalism. The Commission would work for 2 years on legislative, administrative, and perhaps constitutional action to reform and rebalance the power relationships between the Federal and State governments. I would welcome such a Commission. I would welcome a forum for the positive and fruitful exchange of views on how the intergovernmental system can be improved; moreover, I would welcome the commitment of all concerned to implement some improvements. But remedial action will not be easy. By ACIR's own admission—

> It seems unlikely that any of the intergovernmental shortcomings catalogued here will be resolved easily, or by minor tinkering with the details of federal administrative practice.

However difficult the task, the conversations about reform must not be postponed.

Certainly Congress is not above criticism. I am discouraged that the grant reform bill is still tied up in the Intergovernmental Relations Subcommittee because so many special interests are afraid of a restructuring; I was disappointed that opponents were nearly successful in watering down the Sunset bill when it was marked up by the Governmental Affairs Committee; I believe it is time to bring the negotiations about regulatory reform to a close and move ahead with consideration of this bill on the Senate floor. I recognize these shortcomings of Congress, but I am not willing to believe that Congress alone is the obstacle to a smooth running intergovernmental system.

But we must move ahead to bring about some fundemental changes in the relationships between the Federal Government, and the States and their subdivisions. The problems are critical, and they will not go away by simply placing blame. I urge that we take up the offer presented by the Governors to establish a National Commission on Federalism and begin serious negotiations about meeting the needs of the people of this country.

The article follows:

CONGRESS IS TO BLAME FOR AID PROGRAM ILLS, U.S. STUDY PANEL SAYS

A federal commission, ordered by Congress four years ago to conduct a thorough study of the state of American government, has concluded that Congress itself is chiefly to blame for what it found to be an unmanageable, wasteful and unaccountable system of domestic aid programs.

The Advisory Commission on Intergovernmental Relations, created in the Eisenhower administration to make seemingly innocuous studies in federal-state relations, has concluded that the federal system is simply a series of provocative reports and background papers that Congress commissioned in 1976 in response to rising public discontent with government at all levels.

"Neither public officials nor the general public comprehend fully the new complexities of domestic public policy, or adequately control—or even check—the myriad forces that have generated it," the commission said in its first printed volume, titled "A Crisis of Confidence and Competence."

Yet the language and conclusions in that volume are mild compared with some of its documents yet to be published. In some of those, the commission depicts the federal government as so overloaded with programs and issues that it can not cope with needs for reforms.

The myriad programs are so interwined among the state, local and federal governments that no government can control them, according to the commission.

While all levels of government and the courts were found to have played roles in the failures of the last two decades, the commission singled out Congress as having had more to do with bringing about "the crisis of confidence" than any other entity.

"Our findings belie the notion that Congress acts as a great rubber stamp for presidential, bureaucratic or interest group initiatives," the commission said. "In fact, in many instances the opposite would be far closer to the truth."

Congress was depicted as quick to take on minor new issues, but timid in drawing up such needed reforms as overhauling the welfare system. Members of Congress were found to be so preoccupied with such narrow concerns they had little time to deal with major responsibilities.

Congress has been ignoring the commission's advice for years, but the group's findings became the fulcrum for an incipient revolt by the states against the federal government.

The National Governors Association, with the support of the National Conference of State Legislatures, this month formally called on the president and Congress to appoint a high-level commission next year to recommend reforms in the federal system, including the realignment of powers between the state and federal governments.

The commission has suggested that reform could begin with a series of "trade-offs" that would give the federal government full responsibility in some areas while giving the states responsibility for others.

For example, the federal government could take over the full costs and responsibility for public welfare, including Medicaid, social services and food stamps. It would also assume responsibility for social insurance, including unemployment insurance, and housing programs. The states could then take over the responsibility for education, libraries, fire protection, police and corrections, natural resource, hospitals and health services.

While the commission maintains that there would be little difference in the costs, the public would at least know who was responsible for what.●

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following Calendar Orders Nos. 991, 982, 983, 984, and 985.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANNUAL ADDRESS ON STATE OF THE JUDICIARY

The Senate proceeded to consider the bill (S. 2483) to amend title 28 of the United States Code, to require the Chief Justice of the United States to give an annual address to the Congress on the state of the judiciary, which has been reported from the Committee on the Judiciary with an amendment on page 2, line 4, strike "shall" and insert "may"; so as to make the bill read:

> That title 28 of the United States Code is amended by inserting after section 6 the following new section:
>
> "§ 7. State of the judiciary address
>
> "The Chief Justice may at such times as may be mutually agreed by the Chief Justice, the majority leader of the Senate, and the Speaker of the House of Representatives, address in person the Senate and the House of Representatives meeting in joint session. Each such address shall include information on the state of the judiciary and recommendations for the enactment of such measures as the Chief Justice deems are necessary and expedient. During any calendar year in which the Chief Justice does not appear personally to make such an address, a copy of such address shall be transmitted to Congress not later than March 15 of each such year.".
>
> SEC. 2. The table of chapters for chapter 1 of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 6 the following new item:
>
> "7. State of the judiciary address.".
>
> SEC. 3. The amendments made by this Act shall take effect with respect to the first full calendar year occurring after the date of the enactment of this Act.

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from Alabama (Mr. HEFLIN) is recognized.

Mr. HEFLIN. Mr. President, I rise in support of Senate bill 2483, a bill which would request the Chief Justice of the United States to address on a periodic basis a joint session of Congress on the state of the U.S. judiciary.

Under the Constitution the responsibilities for governing this Nation are divided among three coequal branches: the legislative branch, the executive branch, and the judicial branch. Because of our attention to the business and duties of Congress, Members of the Senate and House are familiar with the intricacies and workings of, as well as problems facing, the legislative branch. Moreover, through various means and contacts, including the President's state of the Union message, Members of Congress are informed of the many programs and problems of the executive branch. In my judgment, however, Congress has given insufficient attention to the third coequal branch of government, the U.S. judiciary.

Although there are numerous points of contact at the committee and subcommittee level with the judicial system, the Congress as a whole largely ignores the third branch until some crisis situation demands that we provide additional Federal judges or implement some reorganization so that the judicial branch may accomplish its constitutional mandate without being overwhelmed with important, but time-consuming work.

At least a partial remedy to this situation would be for the leadership of the Congress to periodically invite the Chief Justice of the United States to appear before a joint session of Congress to inform the entire Congress as to the "State of the Judiciary." Such an address by the Chief Justice would not eliminate the need for congressional hearings and oversight, but would focus the attention of the Congress and the Nation on the many problems which face our judiciary allowing us to set priorities and provide impetus to programs which require congressional action.

Recognition of the need and importance of a "State of the Judiciary" address by the Chief Justice is not new. As far back as 1953, then Deputy Attorney General William P. Rogers made such a suggestion in an address to the Fourth Circuit Judicial Conference. Congressman ROBERT MCCLORY has introduced a similar bill. In stressing the need for emphasizing to the people of this country the great importance of the judicial process in a free nation, Mr. Rogers stated that an address by the Chief Justice would "materially contribute to a better understanding among the three great branches of our Government."

In addition, the distinguished chairman of the Senate Judiciary Committee, Senator KENNEDY, and the able Senator BIRCH BAYH, have introduced similar legislation in the 94th and 95th Congress. I appreciate their assistance and guidance in this legislation and am delighted they are cosponsors of Senate bill 2483. I would also like to thank the distinguished ranking minority member of Judiciary, Senator STROM THURMOND, for his aid in the processing of this legislation.

Thank you, Mr. President.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. HEFLIN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

> A bill to amend title 28 of the United States Code to request the Chief Justice of the United States to give an annual address to the Congress of the state of the judiciary.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the remainder of the request on the calendar orders.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZATION FOR CERTAIN ACTION DURING THE RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over to Wednesday, September 3, the Secretary of the Senate be authorized to receive messages from the House of Representatives and the President of the United States, and that they may be appropriately referred.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over until September 3, when the Senate reconvenes, the Vice President of the United States, the President of the Senate pro tempore, the Acting President pro tempore, and the majority leader as Acting President pro tempore may be authorized to sign all duly enrolled bills and resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

VESSEL INSPECTION AND MANNING LAWS

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5164.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 5164) to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. On behalf of Mr. CANNON I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. CANNON, Mr. LONG, Mr. HEFLIN, Mr. PACKWOOD, and Mr. WARNER conferees on the part of the Senate.

RECESS OF THE SENATE FROM AUGUST 27 TO SEPTEMBER 3, 1980, AND ADJOURNMENT OF THE HOUSE FROM AUGUST 28 TO SEPTEMBER 3, 1980

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a concurrent resolution and ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk

will report the concurrent resolution by title.

The legislative clerk read as follows:

Concurrent resolution (S. Con. Res. 118) providing for a recess of the Senate from August 27 to September 3, 1980, and an adjournment of the House from August 28 to September 3, 1980.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the concurrent resolution.

The concurrent resolution (S. Con. Res. 118) was agreed to as follows:

Resolved by the Senate (the House of Representatives concurring), That when the Senate completes its business on Wednesday, August 27, 1980, it stand in recess until 10:00 o'clock a.m. on Wednesday, September 3, 1980, and that when the House completes its business on Thursday, August 28, 1980, it stand adjourned until 12:00 o'clock noon on Wednesday, September 3, 1980.

TREATY OF MUTUAL COOPERATION AND SECURITY WITH JAPAN

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 484.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 484) relative to the Treaty of Mutual Cooperation and Security with Japan and announcing Tokyo conference.

The Senate proceeded to consider the resolution which had been reported from the Committee on Foreign Relations with amendments as follows:

On page 2, line 5, strike "to convene a parliamentary and scholarly conference" and insert "in private and government forums";

On page 2, line 6, strike "commemorate" and insert "discuss";

On page 2, line 8, after the semicolon, insert "and how best to perpetuate and augment them;";

On page 2, line 9, strike "said conference is" and insert "any such discussions are";

On page 2, line 9, strike "in Tokyo on the dates of August 29 through August 31, 1980, under the auspices of the Japan Center for the Study of Security Issues, Hideaki Kase, chairman, and former Prime Minister Kishi, honorary chairman, with a distinguished Japanese organizing committee of parliamentarians and former ministers";

On page 2, line 16, strike "proceedings of the conference" and insert "discussions and evaluations";

● Mr. HATCH. Mr. President, I first want to thank the members of the Foreign Relations Committee for their efforts in reporting this resolution to the floor. I know that they, like the other committees of the Senate, have a busy schedule of business before them.

This resolution is to commemorate the 20th anniversary of the Treaty of Mutual Cooperation and Security between the United States and Japan. These past 20 years have seen these two great nations grow closer together through increased economic trade and cultural ties. The people of Japan have worked extremely hard in the past 30 years to rebuild a nation that suffered the ravages of war. They have worked closely with the people of the United States to realize the potential they held. Today they are the leading economic power in the Far East and one of the top three economic powers in the world.

As we begin the 1980's it would be useful to pause and reflect upon what has transpired. These past 20 years have been years of a strong and fruitful relationship. More importantly, they have laid the groundwork for an even better future. The year 1980 not only marks 20 years since the signing of the treaty, but it also marks a point only 20 years from the beginning of a new century. Events continue to swirl around us at an ever maddening pace, changing circumstances continually. The threats that we once knew 20 years ago have changed, some disappearing, other increasing in intensity. These events have forced the allies of the Western world to draw closer together, to cooperate in an expanded list of areas.

This resolution calls for the convening of forums to discuss and evaluate the achievements of the treaty and to look to the future. It calls for a clear and thoughtful discussion of the issues facing the two nations. This weekend, August 29–31, will see the first of such conferences being held. This conference will be held in Tokyo, Japan. A distinguished list of American scholars, headed by former President Gerald R. Ford, will sit down with their Japanese counterparts, led by Prime Minister Zenko Suzuki and one of the signers of the treaty, Nobusuke Kishi. They will meet and commence the task of planning for the future.

Mr. President, it is significant that such a conference is being sponsored and arranged by private think-tanks on both sides of the Pacific. It is a signal that private citizens of both nations recognize the problems facing Japan and the United States. It indicates that they are willing to look for solutions to the issues. On the American side the conference is being sponsored by the Heritage Foundation, the Georgetown Center for International Studies, Stanford Research Institute, and the Institute of American Relations. The cosponsor on the Japanese side is the Japan Center for the Study of Security Issues.

I will be attending this conference as a member of the U.S. delegation and in accordance with the resolution will report to the Senate on the decisions and actions of the conference.●

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The amendments were agreed to.

The resolution, as amended, was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas in 1960 the United States of America and Japan solemnly entered into a Treaty of Mutual Cooperation and Security;

Whereas over a period of twenty years since that time the Japanese people have faithfully fulfilled their commitments to the defense of Japan, as provided within the framework of that treaty;

Whereas the Mutual Defense Treaty between the United States and Japan has proven beneficial to both nations and provided for the defense of the western Pacific area;

Whereas the international security environment and the economic balance between the two nations has greatly changed during the past twenty years: Now, therefore, be it

Resolved, That it is the sense of the Senate that the twentieth anniversary of this treaty be commemorated and observed; and be it further

Resolved, That it is in the best interest of both the United States and Japan in private and government forums to discuss and evaluate the achievements of the Treaty of Mutual Cooperation and Security; and how best to perpetuate and augment them; and be it further

Resolved, That when any such discussions are held the Senate would express an interest in receiving a report as to the discussions and evaluations.

The title was amended so as to read:

A resolution relative to the Treaty of Mutual Cooperation and Security with Japan.

ORDER FOR RECESS UNTIL 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I thank the Senator from West Virginia for his consideration.

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

THE ALBUM OF AUSCHWITZ

Mr. LEVIN. Mr. President, today, at the Yad Vashem Museum in Jerusalem, Israel's living memorial to the holocaust an album filled with photographs of the Auschwitz prison camp, held privately by Mrs. Lili Meier, a survivor of the Auschwitz camp, will be placed in the museum for all the world to see.

These photographs are perhaps the most significant documentation of the acts which took place during the Nazi holocaust and the most complete visual record of the death camp at Auschwitz known to exist. A few of the photos from Mrs. Meier's album are widely recognized because she sold them after she was freed from prison in order to raise money to emigrate to the United States.

Mrs. Meier held the remaining photographs in her album at her home in Florida. Pictures in the album are overwhelming to anyone who views them. They are especially significant to Mrs. Meier as she appears in at least one of them, and they contain photographs of

members of her family just before they were separated from her for the last time.

She found the album on a nightstand in a German barracks on the day Auschwitz was liberated by allied troops in December 1944. She held on to them as a stone on her heart, in her words until Nazi hunter Serge Klarsfeld located her last month. The photographs are extraordinary and unique historical documents, and they are also a vital personal and emotional record of one of the most tragic periods of world history.

Mr. President, I wish that we could enter these photographs in the RECORD at this time. Obviously, we cannot. Today, in Jerusalem, they will become a part of Yad Vashem. Soon, they will be available in book form. In recent days, the New York Times and the Washington Post have carried articles about Mrs. Meier and the "Holy Document" she has safely kept for the world all these years. The world now takes on the task of remembering, and avoiding a similar fate for any of its peoples.

I ask unanimous consent that the articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

"HOLY DOCUMENT" OF AUSCHWITZ FOUND

(By Jo Thomas)

MIAMI, Aug 13—It is an album filled with photographs of people on the edge of death, the new Jewish arrivals at Auschwitz in 1944. A young survivor found the album and, in it, her own photograph and those of her parents, grandparents and little brothers, now all dead. She kept the album for 36 years.

It was not until three weeks ago that Serge Klarsfeld, a Nazi hunter, found Lili Jacob, now Mrs. Eric Meier, a waitress in Miami Beach, and told her the album was, in his words, "a holy document" containing all but three of the known photographs of the Jews at Auschwitz.

A number of photographs that Mrs. Meier sold from her album to the Jewish Museum in Prague in 1946 to get money to emigrate to the United States have been reproduced in books all over the world. Mr. Klarsfeld said in a telephone interview today. But the existence of the album itself had not been known.

The album is also significant, he said, because it shows that all the Auschwitz photographs, taken by an unknown official of the S.S. (Nazi elite guard), were made in 1944. Previously, he said, historians believed they were taken over a period of years.

Mrs. Meier has agreed to give the album to the Yad Vashem Museum in Israel in a ceremony Aug. 25.

CLOSING THE PAST

"A stone will come off my heart," she said this morning.

"I want to close the past," she said, looking at a stack of copies of the photographs in the album, which will remain in a bank vault until her departure. "I felt this was all I had left. I never thought of parting with it. But I'm feeling relieved that I'm doing the right thing."

She was 17 when she arrived at Auschwitz. Her family had lived in Bilki, a town then in Czechoslovakia and now in the Soviet Union. Her father was a cattle dealer. One day the whole family was told to gather a few things to go to a resettlement camp. The cattle cars took them instead to the death camp.

When her family was divided up by the guards, "three brothers went to the left with my father and the two youngest went to the right with my mother." She went on: "Me, they selected out. I looked like I could work. I ran back to my mother. The guard noticed me and ran back. He beat me up and called me all sorts of dirty names. He stabbed me in the arm with a bayonet. I never saw my parents again."

She testified against the guard in a 1964 trial in a German court in Frankfurt, and she still bears the scar of the bayonet wound on her arm. The tatoo she was given on May 9, 1944, was erased many years later in Miami Beach after she won a contest on the television program "Queen for a Day." She asked for a plastic surgeon to remove the tatoo, and it was done.

KNEW HER TATTOO NUMBER

When Mr. Klarsfeld rang her doorbell last month, he knew the tattoo number. It was one of the reasons Mrs. Meier changed her mind about being afraid to open her door.

On the day Auschwitz was liberated by Allied troops in December 1944, Lili Jacob was ill with typhus, lying in a camp hospital.

"We heard noise, music—something we never heard. So we ran down to see. I was weak and I passed out. Two of my friends carried me into a deserted German barracks.

"It was very cold. When I woke up, I was freezing. I saw a nightstand and reached for a pajama jacket. The album was underneath. When my friends came back, we looked in it and we found a picture of the rabbi who married my parents. Then I found a picture of my two brothers."

The photograph shows Selig Jacob, then 10 years old, and Zrilu, then 8½, a star pinned to his coat, the faces of both boys serious and uncertain.

Another photograph, on a page labeled in elegant script, "No More Capable Men," shows old people near a boxcar. One man with a white beard was her grandfather. A woman lying on the ground was her grandmother.

Lili Jacob was in the front row of another picture showing a crowd of young women in ill-fitting dresses, their heads shaved.

There are dozens of other pictures, some taken twice, as if the photographer wanted to be sure he was not out of focus: pregnant women walking to their deaths, old women and young children waiting outside the ovens in a pleasant grove chosen so they would not be alarmed.

The photographer is not known. Mr. Klarsfeld said today that he believes it was Ernst Hofmann, a teacher by profession, who had become assistant to the chief of the identification service at Auschwitz.

When she left the camp, Lili Jacob took the album with her. She married Max Zelmanovic, a childhood friend who had also survived the camps. Penniless, she sold some of the photographs in Prague in 1946 so she could come to the United States. When she arrived in New York in 1948, she had the album in her arms.

She has worked as a waitress at the famous Restaurant in Miami Beach for 26 years, and the years have brought two children and three grandsons. Mr. Zelmanovic died there years ago and she was remarried.

The walls of her home are hung with color photographs of smiling children, but she also treasurers the black and white pictures of people who do not smile—people who were caught for a moment before they vanished. Finally, she is ready to let them go.

"I am happily married. I have a good job. I have nice people to work for," she said. "After I go to Israel I'm going to Auschwitz. I want to close the past."

THE "MIRACLE" ALBUM OF AUSCHWITZ

(By Elisabeth Bumiller)

The faces of the Jewish girls who would die at Auschwitz are thick and sullen, framed by the peasant scarves of Eastern Europe, and then, beyond, an April sky made ashen by crematoriums that smoked 24 hours each day. This is a photograph of them straight off the cattle cars. Their eyes are ringed like those of raccoons, their bodies wrapped in lumpy coats that have, absurdly, the decorated fur collars and cuffs of another life.

One woman holds a crumpled scarf to her mouth. "She's crying because they took her child away from her," says one who was there. Near the crying woman is a young girl. In a burst of puckishness still intact from that other life, she sticks out a tongue at her Nazi picture-taker.

The one who was there: Lili Meier, 54, Miami Beach waitress, grandmother and owner of a rare photo album chronicling the horror inside Auschwitz. Her picture is in it, as are those of her brothers, parents and grandparents. Only she survived.

"I never look at it alone," she says. "Never." It is an album that chills even those who weren't there. And it is an album that is not easy to look at, even on a bright afternoon in her home.

Tomorrow, the collection of 192 pictures taken by a member of the German SS will be donated to the Yad Vashem museum in Jerusalem, a memorial to 6 million Jews who died in the Holocaust. Lili Meier will be there and so will Serge Klarsfeld, the Nazi-hunter who knocked on her door this summer. They talked through the screen. She had an album, he'd heard, and could he come in?

What he saw in her den made him pale. These are not pictures of nameless bodies, of open pits. These are faces—broad, rough faces from rural Hungary—that show human pain. These are faces of individual lives, haunting faces frozen on film: a small but enduring defense against the Nazis who captured them. They are both awful and wonderful souvenirs.

"Without that album," says Klarsfeld, "you wouldn't have a visual sense of the selection process of the separation of families, of the way to the gas chambers."

Says Susan Sontag, the cultural critic and author of a hook on photography: "In a certain way, these are more interesting than all the photographs made of what happened after the camps were closed. Any record of what these people did while living in the camp is extremely precious to us."

How Lili Meier found the album is one of those astonishing tales that emerge from the chaos of war. It was December 1944, and she was 17 and sick with typhus at a German camp hospital. The day was cold, and so she reached for a pajama jacket lying on a nightstand near her bed. Under it was a beautiful brown photo album. "Something just pulled me toward it right away," she said.

She clutched it to her thin chest as much for warmth as anything else. Then she slept. When she woke, she leafed through it and there, toward the end, she saw herself: a bald girl shorn of her long, dark hair standing with hundreds of other bald girls in front of a building at Auschwitz. She also saw her brothers and her parents, long since dead. She screamed.

"You must understand the miracle," says Klarsfeld. "One day, this man took his photographs and he photographed the woman who would one day find the album. It is very extraordinary. She understands that she had to give it to the museum. It's too important for a private person."

In this picture are two young boys, and even though the photograph is in black and white, you can tell that their cheeks are rosy. The one on the left stares straight at the lens. A pout. The one on the right is taller and stares off to the left, his right hand tugging at a button on his coat. He wears the cloth Star of David mandated by the Nazis, and behind him is the cattle car. The boys are too small to work, so soon they will die.

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"These are two of my brothers," says Lili Meier, "Zrilu is 8½ and Selig is 10."

Lili Meier, who was Lili Jacob back then, had five brothers in all. They lived in Bilky, Czechoslovakia, a small border town in the Carpathian Mountains that had changed hands from Hungary. Now it is part of the Soviet Union. Surrounding it were potato fields and pines. The streets were cobblestone.

Lili Jacob's father was a horse trader who made enough money to keep his wife in crocheted curtains and a live-in maid. Lili went to high school in Bilky, took a train to see movies in the next town, and had a boyfriend her parents didn't like because his mother ran a rooming house. She was tall and dark and remembers taking long walks with him under fruit trees, another part of a pre-Nazi life she has come to paint as nothing but idyllic. Sometimes she would hear Hitler on the kitchen radio, but he was dismissed all around. "Everyone thought he was kind of a maniac," she says.

The maniac's troops marched into Czechoslovakia one day, and Bilky once again became part of Hungary. Then the rumors started. He was after the Jews.

The knock on her door came in April 1944. She and her family were ordered out, first to the yard of the town's synagogue, soon after to a ghetto in Berehobo, where they slept on the floor of a brick factory. Next there was a three-day train ride.

They got off at Auschwitz.

"Here's the train," says Lili Meier, pointing with a maroon fingernail to a picture numbered 35 in the album. "And here's the watchtower, and the smoke, constant, you know. Right away we started inhaling it from the crematoriums. Everybody got nauseous."

The train is long and black and beside it are huddles of people. Everyone looks hunched over, round and dull as old sacks in a row. Already the selection process is beginning. In one line are the women and children, in another the men. Soon they'll be subdivided into those who are strong enough for work and those who aren't. The sky, but for the gray smoke, is a flat off-white.

"I was standing next to my mother as they were sorting us," says Lili Meier. "The German came over and put me in the working group. But he noticed that I ran away, back to my mother. He stuck me in my arm with his bayonet and he said, 'You're in a concentration camp and you'd better behave or you'll be shot on the spot.' Then my mother marched away, and my father, and my five brothers. I never saw them again."

Lili's job was to clean the toilet cans. They were put on a cart that she pulled, horse fashion, with three other girls to the fields. There they emptied them, sometimes two and three times a day. If the girls weren't fast enough, the German soldiers whipped them across their backs.

Her breakfast was a slice of bread and water. Dinner was barley soup and bread again. Sleep was escape. "At least while you slept," she says, "you couldn't think."

A woman, stooped and bent, walks away from the camera to what she was told were the showers. Her arms are spread like mother-duck wings around three small children. She seems to be hurrying them along, hurrying them toward cleanliness. Behind her is a tiny overcoat with two spindly legs, the left foot stepping just ahead of the right as it dutifully follows grandmother. Above the shoes are two little anklets. At least you can't see the faces.

Lili Jacob was at Auschwitz six months, tatooed in blue ink on her forearm as number A10862. Serge Klarsfeld thinks that the man who took the pictures of her and the others was Ernst Hoffman, a teacher and deputy to the chief of the camp's identification service. "All of the photographs from that album were taken in one day or so—maybe two," says Klarsfeld. Many of them are identical, as if the photographer took two to make sure the event was properly recorded.

The album itself is titled *"Um Siedlung der Juden aus Ungarn,"* or, "The Downfall of the Jews from Hungary." The pictures are in neat chronology from arrival to crematorium, and appear to be presented as a proud testament to the efficiency of the Germans. But somehow, in seeing the agony of the faces, there comes a suggestion of sympathy from the photographer.

"No," says Lili Meier. She will not even discuss it.

"He can't wipe that expression off people's faces," says Sontag. "He could be looking at it in a sadistic way and reveling in their pain."

Lili Meier's pain has never really ended. She was liberated, still sick with typhus, by American troops in December 1944. By this time she had been moved to another camp hospital near Nordhausen, Germany. One day the prisoners heard English in the streets and realized they were free. To prove it to themselves, they rushed over to the German barracks. Lili, who passed out, was carried out by friends and placed on a bed inside the barracks. She found the album there.

Afterward, she went back to Bilky, where she waited. "Every day I would go to the train to see if somebody came back from my family—but nobody came back," she says. She soon married another camp survivor, then immigrated to America in 1948. She paid for her passport by selling some copies of the pictures to a museum in Prague. These have been reproduced in books on the Holocaust.

She and her husband, a butcher, settled near what is now Little Havana in Miami. The warm air was always softly protective, and the winter skies just plain brilliant. Hibiscus bloomed red, and sometimes, on trellises and backyard porches, you could smell night jasmine. There was no gray in this world, no sights or smells to tug at her past. "I just love it here," she says.

In 1977 her husband died, and she has since remarried. She was, and still is, a waitress at The Famous in South Miami Beach, a kosher restaurant with seltzer and chocolate syrup on tables that are crowded and noisy on Friday nights. The place is loaded with yiddishkeit and waitresses who announce, "I've got one piece of chocolate cake left, you want it or not?" If you don't, they bring it anyway. Lili Meier has worked there for 26 years.

She kept her album in a closet or under a mattress. Looking at it always terrified her; yet, there was her mother, her brothers, her own bald head. They were pictures she loved as much as hated.

Regularly, she woke up screaming. It's better now, "I couldn't have spoken to you the way I've spoken now, with the years," she says. "I did see professional help. I'm not embarrassed about it. I always asked him 'How long am I going to cry?'"

Always there was the tattoo. Then in 1958, she was picked "Queen for a Day" on the old television show. Her requested prize was a plastic surgeon to remove A10862 from her forearm. No general anesthetic. "I said," she says, "'Look, doctor, I was wide awake when they tattooed it. I want to be wide awake to see that it's out.'"

She lives in a small house in Southwest 14th Street with her second husband, surrounded by plastic knickknacks, pictures of her grandchildren, and a life that is contentedly middleclass. Her two daughters are grown, and have come to see the album on their own terms. One wants to inherit copies of the pictures; the other refuses to even look at them.

There is still the loose end of Auschwitz. Part of the trip to Jerusalem—her first—will include a stop at the remains of the camp. "I want to see for myself that my parents are not there, that my parents are really dead," she says. "That's the only way I can rid myself of that memory."

The photographs are soon to be published in a book. She is pleased, and she announces this fact with pride. She wears white polyester pants, a purple velour top, endless gold jewelry and a bouffant hairdo. She drinks a glass of liquid protein as she tiptoes through the album. Finally, she comes to the last picture.

It is a close-up of the ovens. Three of them. The doors of two have been opened, perhaps by a guard under instructions from the photographer who wanted a precise documentary. They are empty and, except for the ashes and the few leftover bones, could just be old-fashioned ovens for baking bread. They are horrible.

Lili Meier puts her hands to her neck, then her face. This is impossible for her to see. She bounds from the den to the kitchen. "You're sure I can't offer you some lunch?" she says. She busies herself with coffee, grapefruit juice, cheese and soda creckers.

Later, back in the den, she can talk. "I have lived with this for so many years," she says. "It's been weighing so heavily on my heart. Now I want the album to be shown to the world. I don't want it hidden anymore."

(Mr. Baucus assumed the chair.)

RECESS UNTIL 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I move, in accordance with the previous order, that the Senate stand in recess until 10:30 a.m. tomorrow.

The motion was agreed to; and, at 9:04 p.m., the Senate recessed until Wednesday, August 27, 1980, at 10:30 a.m.

NOMINATIONS

Executive nomination received by the Senate August 26, 1980:

INTERNATIONAL ATOMIC ENERGY AGENCY CONFERENCE

The following-named persons to be the Representative and Alternate Representatives of the United States of American to the 24th session of the General Conference of the International Atomic Energy Agency:

Representative:

John C. Sawhill, of the District of Columbia.

Alternate Representatives:

Gerard C. Smith, of the District of Columbia.

Roger Kirk, of the District of Columbia.

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

Anne Thorsen Truax, of Minnesota, to be a Member of the National Advisory Council on Women's Educational Programs for a term expiring May 8, 1982, vice Jon W. Fuller, term expired.

THE JUDICIARY

S. Gerald Arnold, of North Carolina, to be U.S. district judge for the eastern district of North Carolina, vice a new position created by Public Law 95-486, approved October 20, 1978.

WITHDRAWAL

Executive nomination withdrawn from the Senate August 26, 1980:

Charles B. Winberry, Jr., of North Carolina, to be U.S. district judge for the eastern district of North Carolina, vice a new position created by Public Law 95-486, approved October 20, 1978, which was sent to the Senate on March 29, 1979.

EXTENSIONS OF REMARKS

THE QUESTION OF ISRAELI USE OF U.S. WEAPONRY IN LEBANON

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. HAMILTON. Mr. Speaker, I want to share with my colleagues some correspondence I have had with the Department of State regarding reports that Israel may have used U.S.-supplied weapons within Lebanon in March of this year in possible violation of the law.

This inquiry to the Department of State was prompted by a March 16, 1980, Washington Post story which cited reports of a persistent deployment inside Lebanon by Israel of sophisticated American weaponry—tanks, artillery, and helicopter gunships.

The first response from the Department of State arrived June 30, 1980, and was classified. I requested an unclassified response which reached me July 31.

Fighting between Israeli and PLO forces has occurred recently and some Israeli forces entered Lebanon. I would note that the Department of State stated in the last paragraph of its letter that Congress will be notified promptly if facts develop which lead the Department to an assessment that a substantial violation of a relevant United States-Israeli bilateral agreement may have occurred.

The Washington Post article, my March letter and the unclassified July 31 response are included here for the information of my colleagues:

[From the Washington Post, Mar. 16, 1980]

ISRAELI ARMS DEPLOYMENT SAID TO VIOLATE U.S. LAW

(By Edward Cody)

BEIRUT, Mar. 15—Despite secret diplomatic protests by Washington, Israel has persisted in deploying advanced U.S.-supplied weaponry against Palestinian guerrillas within Lebanon in possible violation of American law, according to knowledgeable sources.

The U.S. arms, which under terms of their transfer to Israel are to be limited to defensive use, have been spotted a half-dozen times by international observers inside Lebanese territory in recent months despite a controversy generated last August by similar deployments, the Arab and Western sources said.

U.S. protests in the past have been followed by Israeli withdrawal of the disputed weapons, which have included heavy artillery, late-model tanks and sophisticated helicopter gunships, the sources said. But the weapons have turned up again on Lebanese soil some time later, they added.

The Carter administration has kept its protests private to avoid further friction with Israel, observers here said.

The deployments also are seen as a secondary problem compared to the dispute over Israel's settlements policy and the negotiations among Egypt, Israel and the United States over autonomy for Palestinians in Gaza and the West Bank.

[In Washington, the State Department refused to comment on its diplomatic consultations with Israel, but said that "Israel is well aware of our position" on the arms issue.]

Secretary of State Cyrus Vance said in a letter addressed during the August controversy to Rep. Clement Zablocki (D-Wis), chairman of the House Foreign Affairs Committee, that Israel had been told its use in Lebanon of some U.S. supplied arms may violate U.S. law and the conditions of their transfer.

"Further action on our part will depend on the course of events and our assessment of them," Vance added in the letter, a response to congressmen asking whether U.S. arms control laws had been violated by Israel.

Since then, and as the U.S.-made weapons were again spotted on Lebanese soil, U.S. Ambassador Samuel Lewis in Israel has been instructed a number of times to convey the Carter administration's displeasure in private protests to the government of Prime Minister Menachem Begin, the sources said.

According to Arab analysts here, the weapons have been deployed in Lebanon with increasing frequency in the last few weeks in response to a growing number of Palestinian commando raids on villages in the Israeli-sponsored "Free Lebanon" border enclave run by Christian militia leader Saad Haddad.

Israeli forces handed over the secessionist border strip, about 60 miles long and five miles deep, as they withdrew under international pressure following their invasion of the border area in the spring of 1978. With Haddad in control instead of U.N. forces, the area has become an Israeli-protected buffer separating northern Israel from the bulk of Palestinian guerrillas encamped in the southern Lebanon and headquartered in the town of Nabatiyeh.

Fighting has settled into a sporadic confrontation of limited artillery exchanges and village raids, with an occasional period of several days during which the shelling intensifies. It is during these periods of increased fighting that Haddad's Israeli sponsors bring in the heavy U.S.-made artillery such as 175mm howitzers and self-propelled cannons, Arab sources said.

During the intense shelling of last August, the Israeli 175mm howitzers were used with deadly effect against southern Lebanese villages that Haddad and his Israeli allies said were harboring Palestinian commandos. As a result, a large portion of the south's civilian population fled north to Sidon and Beirut. Since then, most have returned, with occasional temporary flights north during heavy exchanges.

The shelling has drawn little attention in recent months because its intensity is far below that of last August. There are, however, regular exchanges between Palestinian artillery near Nabatiyeh and Haddad's Israeli-supplied howitzers and Sherman tanks in "Free Lebanon" or Israel's own artillery deployed across the border.

In addition, Israeli patrols use U.S.-made helicopter gunships to raid Lebanese villages said to cooperate with the Palestinian guerrillas and to deploy their own U.S.-supplied tanks within the Haddad enclave, the sources said.

Israel made no public commitment to keep its U.S. weapons south of the Lebanon border after the August complaints. But the United States has applied public and private pressure to reduce Israeli shelling and aid to Haddad and to force compliance with the restrictions attached to U.S. arms.

MARCH 18, 1980.

Hon. CYRUS R. VANCE,
Secretary of State, Department of State, Washington, D.C.

DEAR MR. SECRETARY: The March 16, 1980, Washington Post carried a story from Beirut, Lebanon, indicating that Israel is persisting in deploying advance U.S.-supplied weaponry within Lebanon in possible violation of American law and that these weapons are being used against Palestinian guerrillas located in Lebanon.

I would want to know the following: (a) is any U.S.-supplied equipment now deployed in Lebanon and, if it is, what equipment is so deployed; (b) is this equipment in Israeli hands or has it been provided to the forces of Col. Haddad; (c) what understandings does the United States have with Israel about such deployments of U.S.-supplied equipment and are these understandings written or oral and from when do they date; (d) what is the United States doing to stop any such potential use of U.S.-supplied equipment; (e) do you consider it a violation of American law for any U.S.-supplied equipment to be provided by the Israelis to Col. Haddad forces or for that equipment to be deployed in Lebanon; (f) does the United States believe that a violation of American agreement may have occurred; (g) if a violation may have occurred, why was Congress not renotified?

I appreciate your consideration of these questions and look forward to an early reply.

With best regards.

Sincerely yours,

LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East.

DEPARTMENT OF STATE,
Washington, D.C., July 31, 1980.

Hon. LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East, Committee on Foreign Affairs, House of Representatives.

DEAR MR. CHAIRMAN: I am writing in regard to your letter of July 21 in which you requested an unclassified response to questions concerning Israeli deployments of United States-origin military equipment within Lebanon.

From time to time, we have developed confirmed information that Israel has deployed small quantities of United States-origin military equipment in Lebanon. These deployments have generally involved very small amounts of equipment (three or four pieces), and have been limited in duration.

On receipt of such information, we have reminded Israel of its obligations concerning the use of FMS-origin defense articles and services. The Government of Israel has categorically assured us that there are cur-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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rently no major items of United States-origin military equipment remaining in Lebanon from previous Israeli deployments there. We understand this response to mean that Israel has no items of U.S. supplied and controlled equipment in Lebanon which can be accounted for.

To the best of our knowledge there are currently no major items of U.S. supplied and controlled equipment deployed in Lebanon. Furthermore, we have no information that any United States-origin military equipment subject to U.S. controls has been provided to the Lebanese Christian forces by Israel since the February, 1978 instances, of which you are aware.

The use and transfer by Israel of defense articles and defense services acquired under the Foreign Military Sales program are governed by the terms of the standard form FMS sales contract (DD form 1513 Letter of Offer and Acceptance), which contract fulfills the requirements of the Arms Export Control Act. Insofar as the use by Israel of FMS-origin defense articles and services is concerned, the contract incorporates by reference the pertinent provisions of the Mutual Defense Assistance Agreement of July 23, 1952, between the United States and Israel, to the effect that the Government of Israel assures the United States Government that such equipment, materials, or services . . . are required for and will be used solely to maintain its internal security, its legitimate self-defense, or to permit it to participate in the defense of the area of which it is a part, or in United Nations collective security arrangements and measures, and that it will not undertake any act of aggression against any other state.

With respect to transfer, the terms of sale provide that Israel may not, without the prior consent of the United States, transfer ownership or possession of FMS-origin defense articles to anyone not an officer, employee, or agent of the Government of Israel. There are no agreements or understandings with the Government of Israel that are inconsistent with the foregoing limitations. We are satisfied that the Israelis fully understand the terms and conditions governing the use and transfer to third parties of FMS-origin defense articles and services.

Depending upon the specific circumstances, deployment in Lebanon of U.S.-supplied equipment subject to U.S. controls could be a violation of the terms of sale, as would any transfer to Major Haddad's forces.

From our assessment of the available facts, we do not believe there are grounds for a finding that a substantial violation of any relevant bilateral agreement may have occurred since our last notification. Should facts develop that would require a different conclusion, we will of course promptly take all necessary steps, including reports to the Congress in accordance with the law.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary
for Congressional Relations.●

IN SUPPORT OF TAX REDUCTIONS

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. RITTER. Mr. Speaker, the arguments for providing tax cuts to the American people in 1981 get stronger every day. More and more leading economists are expressing their support for some tax relief and the need for such relief in the very near future. Paul McCracken's article in the Wall Street Journal of August 18 is such a case in point. I urge all my colleagues, whether they support tax reductions or not, to review Mr. McCracken's astute points on the need for tax cuts as well as a shorter leash on Government spending.

The article follows:

THE ROAD TO BUDGET BALANCE

What would constitute responsible budget policy in 1980?

The case for bringing the federal budget into balance is strong, and this clearly ought to be the serious objective of budget management. There are two basic reasons. The requirement that the budget should be balanced does impose a strong discipline or constraint on the forces producing an increase in the share of economic resources allocated to the public sector. The balanced-budget rule in effect says to those in government: "If you increase spending (which governments are very much inclined to do), you must increase taxes (which governments are inclined not to want to do)."

The balanced-budget rule, in short, imposes on government a crude cost-benefit calculus. That over the years it was more than just rhetoric is indicated by the fact that from 1789 to 1929, excluding wars, black-ink years outnumbered red-ink years for the federal budget by close to three to one. And it is also clear enough from history that the economy then was delivering a better performance than has been true for several years of creating job opportunities, increasing real incomes, and avoiding major uncertainties about the future purchasing power of money.

GOOD OLD DAYS

From 1900 to 1929, for example, the unemployment rate averaged 4.7 percent, the consumer price index rose at the average rate of 2.5 percent per year (or 1.1 percent, if the World War I inflation is excluded), and productivity improved 2 percent per year (and with some tendency for the rate of increase to be accelerating). The candidate who could credibly put forward a program assuring that in the 1980s the unemployment rate would average 4.7 percent, the rate of inflation (assuming no war) would be 1.1 percent per year, the real incomes would rise 2 percent per year would deserve and probably get the job in November.

Now no one would suggest that the only difference between the 1970s and 1980s and the first three decades of this century is budget policy. Hopefully no one would go so far, however, as to suggest that differences in budget policy during these two periods are irrelevant in explaining their different records of economic performance. During the 30 years 1900 through 1929, there were 19 surplus years and 11 years of deficits, but three of the 11 deficit years were World War I. Thus, during those three decades surplus years outnumbered deficit years two to one. By contrast during the 30 years 1950 through 1979, there were only five surplus years, 25 with deficits, and no surplus year at all after 1969.

The stronger budget during the earlier 30-year period made two important contributions to that era's good economic performance. There was no pressure from large budgetary deficits crowding Washington in the direction of "printing new money" to cover the gap between revenues and outlays. And the tendency toward Treasury surpluses augmented the flow of savings, thereby enabling the orderly financing of vigorous rates of capital formation.

This does not mean that the spasm of effort, or at least rhetoric, earlier this year about a balanced budget for fiscal 1981 was good policy. For one thing it squandered some more of a commodity in uncomfortably scarce supply—namely, the credibility of government. At the time those at both ends of Pennsylvania Avenue were hoping to get points from the folks back home for fiscal rectitude, the folks back home saw the posturing for what it was—more rhetoric than substance.

The basic problem with the spasm of effort earlier this year to stitch together something that would look like a balanced budget was that it reflected no carefully devised strategy to bring outlays and revenues into balance with each other. This saga cannot begin with the phrase, "In the beginning . . ." The effort must take account of the fact that for close to half a century there has been inadequate fiscal discipline in the budgetary process. Unless there is a carefully developed strategy, efforts to achieve a balance in the budget will continue to be spasmodic, ad hoc, and in the end ineffectual, as 1980 demonstrated.

What might the elements of a strategy to achieve a stronger budget be?

The first requirement is to face frankly the fact that the share of any increased earnings diverted to government through higher taxes is now so high as virtually to assure a leaden, arthritic, creaking economy. Revised estimates from the "Mid-Session Review of the 1981 Budget" make this point dramatically clear. Federal revenues are now projected to rise from $518 billion in this fiscal year to $604 billion in fiscal 1981, a rise of $86 billion. During that same period state and local government revenues will probably rise almost $30 billion, for an increase in the total tax take of roughly $115 billion. Yet the administration's own economic projections indicate an increase in the total national income (which is more relevant than GNP) of something like $210 billion.

The nation's fiscal plan, in short, calls for the increase in taxes to absorb about 55 cents out of each projected additional dollar to be earned. And we profess bewilderment about the inability of the economy to perform well!

A particularly serious shortfall in the economy is, of course, capital formation. So serious is this shortfall that the net stock of capital per person at work, in real terms, has actually been declining instead of growing at its historical rate of 2.5 percent per year. This means impeded productivity and the slower introduction of new technology into the production process.

Why has this occurred? the most obvious reason is that corporate retained earnings in real terms last year were 10 percent lower than in 1969—this in an economy whose numbers at work have increased 24 percent. The major casualties of this under-investment are workers whose jobs are in jeopardy because they work in obsolete plants—and people generally who have been denied much hope of rising real incomes.

The first step for fiscal policy if we are to encourage economic progress, instead of economic arthritis and ultimately reach balance in the budget, is direct action on taxes so that a dollar is worth earning and saving and investing. Without such action, the probability of urgently needed economic revitalization is low, and without that economic revitalization the probability that the budget will ever be balanced is close to zero. The strategy of holding off on any tax action until the budget is balanced is simply leading us down the road to yet higher levels of public spending and budgets chronically in the red.

The second step in this strategy for achieving a stronger economy and stronger budget must be direct limitations on federal outlays. A mandate that the budget must be balanced, even if the result could be delivered, would in fact lead us to an overly large public sector and taxes so high as to have strong disincentive effects. The spending side of the budget must be attached directly to a shorter leash. The Congress should declare the ratio of federal outlays to GNP that represents public policy—with perhaps a two-thirds vote of both houses of Congress required to break this limit (and perhaps with the further provision that any federal disbursements beyond that limit would become, on a pro rata basis, the personal obligations of members of Congress).

CAMOUFLAGED TREND

The relentless pressures of interest groups feeding at the federal budget trough have resulted in a more rapidly rising proportion of our output and income being diverted to government than has been realized—a process camouflaged by the rapidly, and quite clearly dangerously, declining proportion of our economic resources devoted to national security. Direct payments to individuals are projected to rise 17 percent to 18 percent this year and again in fiscal 1981, though the capacity of the economy to enlarge real income and output is not over 3 percent. Outlays for federal pensions in the original budget message were projected to increase 12.5 percent next year—a figure that, when the books are closed in 1981, will almost certainly be found to be too small. If federal outlays for civilian purposes had enlarged during the last decade only as rapidly as the nation's total income and output (about 10 percent per year), the federal government would be spending $140 billion less in 1980, and after-tax incomes of people generally would be higher and rising more rapidly in real terms.

For well over a decade our strategy has been to reach a better economy by a generalized resistance to spending in order to achieve a balanced budget, thereby winning the right to tax reduction. This predictably has left us with swollen federal outlays, deficits, and an enervated economy. The road to a stronger budget and stronger economy by immediately taking needed tax action and directly attaching a shorter leash on spending is at least worth trying.●

NEEDED: CREATIVE APPROACH TO HOUSING PROBLEM

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. ANDERSON of California. Mr. Speaker, one of the most serious problems facing our Nation today is the shortage of reasonably priced housing. This shortage is certainly apparent to anyone who has tried to either purchase or rent a place to live. And it is a problem that, as the elected Representatives of the people, we must try to solve.

Unfortunately, the traditional approach to solving problems such as this have all too often centered on simply throwing money at them. The thinking has been, "throw enough money at the problem and it will go away." Well, that has been tried, and all that seems to have gone away is available housing. In Los Angeles, I am told, the vacancy rate is less than 1 percent.

Clearly, something needs to be done. A recent editorial in the Torrance Daily Breeze has fairly stated the problem—which is easy enough to do—and then gone on to suggest creative approaches aimed at its solution.

I believe we should all take heed.

[From the Daily Breeze, Aug. 21, 1980]

FIND BETTER WAYS

It is time to find better ways to house the nation's poor—a job the government apparently cannot do, despite the $3 billion a year the Department of Housing and Urban Development is spending on its subsidized housing program.

It is unfortunate, but not surprising, that the Section 8 housing subsidies, intended by Congress to help 40 million Americans who cannot afford adequate housing, have been found by the General Accounting Office to be wasteful and ineffective.

Housing is simply following the pattern of other well-intentioned federal programs in demonstrating that massive infusions of tax money will not cure the social ills they are intended to meet.

HUD has already signed contracts obligating $128 billion in future rent subsidy payments, but Section 8 programs are helping only 1.4 million of the 14.8 million families living in substandard or overcrowded dwellings.

This is tokenism, supported by a vast expenditure of tax money.

Predictably, the rent subsidy program suffers the same problems that commonly afflict federal giveaways.

In the first place, the GAO found, nobody tries to hold costs down. Rather, local administrators are under pressure to enroll as many reluctant landlords as possible and they do this by offering to pay inflated rents.

At the same time, little effort is made to check the eligibility of applicants and benefits are often wasted on the undeserving.

Worse, some obviously luxury apartment units were found by GAO where the government was paying rent subsidies as high as $7,000 a year.

To supplement a scaled-down rent subsidy program, other strategies should be tried. And experience makes it clear that these ought to be aimed at keeping direct government involvement at a minimum.

The nation's stock of low-cost dwellings can undoubtedly be increased simply by encouraging the construction of new housing. As new units are put on the market, less desirable ones are vacated to be filled at lower rents.

But, as has often been observed, complex permit systems, environmental requirements and a host of state and local land-use regulations, together with high interest rates, have practically mandated a housing shortage.

Governments at federal, state and local levels can take some positive steps, however, to reverse these pressures that create a tight housing market. The layers of approval now required for new construction can be reduced, density bonuses can be offered as an inducement to build low-rent units.

Surplus government land can be released for low-income apartment construction. Mortgage-backed bonds can be issued to underwrite low-interest mortgages.

All would help to relieve at lowered costs the tight housing market that works it's greatest hardships on low income families.●

GOVERNMENT HARD TO UNDERSTAND

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. MICHEL. Mr. Speaker, this Congress for many years has been guilty of solving problems with problems. We have sought to eliminate deficiencies in Government programs by enacting new programs with deficiencies of their own. We have sought to make up for the shortcomings of Federal agencies by creating new agencies which have shortcomings all their own.

What better example than the Energy Research and Development Agency, which the Congress created only to find that it was not up to the job of solving our energy problems? How did Congress react? Congress created the Department of Energy, and soon, no doubt, someone in this House will be on the floor with legislation to create a Federal agency to oversee the Department of Energy.

A newspaper in my district recently focused on this bureaucratic ferris wheel in the health field, where the Federal Government for so long promoted with mad abandon the construction of more facilities and more hospital beds. We are now in the process of attempting to reverse that misguided trend with another Government-sponsored program to slow growth and eliminate beds.

The newspaper's editorial comment points up the futility of the Government practice of surgery before diagnosis in its actions and its reactions to public need.

At this point I insert in the RECORD the editorial, "Government Can Be Hard To Understand," by Norma Cunningham, from the August 19, 1980, edition of the Register-Mail, Galesburg, Ill.

GOVERNMENT CAN BE HARD TO UNDERSTAND

Seldom have the vagaries of government been more adequately pinpointed than they were during a meeting of an area health planning agency last week.

One board member lamented the current attitude of government on a cutback in hospital beds by saying that the federal government for a number of years handed out generous grants to hospitals for construction and expansion but that same government is now ordering hospitals to "shape up."

For a number of years in the late 1960s and early 1970s, hospitals across the nation were eligible to apply for federal funds under the Hill-Burton Act. Hospitals which qualified and there were many of them in this area, received federal assistance for construction of new buildings or remodeling and addition to existing ones.

Quite naturally, there was a spurt in building activity among hospitals which saw an opportunity to replace aging structures or to expand and modernize them. That was seen then as a benefit to the patient and a step toward upgrading health care.

Within the last few years, Congress approved a measure calling for the establishment of health systems agencies to study

and plan for health care needs and to avoid the duplication of services that result in increased costs to patients.

As part of the overall plan, federal guidelines have been drawn to reduce over-bedding and to eliminate specialized hospital services that do not meet standards of utilization. One of the guidelines has set a limit of four hospital beds for each 1,000 residents in an area, and if that guideline is put into effect without modification, it is going to mean that some hospital beds within the region served by the regional health systems agency will be taken out of service. Exactly how that will be done or what hospitals will be involved has not yet been decided, but there is little doubt that the rule will have some effect on this area.

It is also conceivable that strict application of the guidelines for specialized services like obstetrics, pediatrics and intensive care may reduce beds available for those services or even remove a service from a hospital if the occupancy rate does not meet standards.

When you consider the amount of taxpayer money that went into the construction or remodeling that made those beds available, it is hard to track the logic of those who first give and then take away, seemingly with little thought or planning. A private business that built a four-story building five years ago, only to discover now that it really only needed four rooms would be in real trouble with its stockholders.

And that is exactly why government is in trouble with its stockholders who are called upon every year to contribute to it. The taxpayer is learning that the government practice of surgery before diagnosis is turning out far too many botched cases.

The hospital-health care field serves as a perfect illustration of good intentions gone awry, but it is only one phase of government spending with little planning or long-range objectives. The same hospitals which were encouraged to build and expand are now being told that they may have overdone it.

There's no doubt that mounting health care costs are a concern. Health care is often not optional, but the bills which can result from a hospital stay can be devastating to a family's budget. For that reason, it is justifiable that there should be a concern in government for costs.

But taxpayers would give greater weight to government programs—and the expense of them—if there was more coordinated planning and less contradiction.

That's little enough to ask—and it's time that bureaucrats and elected officials began to listen.●

CLIFFORD EVANS HONORED

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. RODINO. Mr. Speaker, I would like the House to join me in recognizing one of the most respected members of the Washington press corps, Mr. Clifford Evans.

As vice president of RKO General Broadcasting's Washington News Bureau, Cliff covers an expansive range of stories concerning the events that affect the lives of all Americans. His reporting has been widely respected here in Washington and across the country. It has been my privilege to be Cliff's friend for many years, and my high regard for his professional standards is shared, I know, by many Members of this House.

This is why it is especially pleasing to note that this year Cliff was installed as vice president of the White House Correspondents. In addition to that honor, Cliff has received the prestigious Barnet Nover Memorial Award for Excellence in Broadcast Journalism. This is the first time that a broadcast journalist was so honored. He received the award for his reports from Jerusalem earlier this year on positive changes in the stalled Mideast peace talks.

Clifford Evans richly deserves this recognition. Cliff is persistent and thoughtful in getting to the heart of the matter he is reporting. He is fair but tough, and his professional talents have earned him awards from the United Nations Association, Variety magazine, the Newspaper Guild, and the Lasker Award among many others.

Mr. Speaker, the special honors bestowed upon Cliff this year are worthy of our notice and congratulations to RKO General's ace correspondent.●

SPEECH BY IKE SKELTON AT THE MFA CONVENTION IN COLUMBIA, MO.

HON. CHARLES WHITLEY

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. WHITLEY. Mr. Speaker, on August 11 during the recent congressional recess, my good friend and colleague, IKE SKELTON, a capable and effective member of the House Committee on Agriculture, addressed the MFA convention in Columbia, Mo. In it, he did an excellent job of summing up the current situation facing American agriculture and the prospects for the foreseeable future. I hereby submit it for inclusion in the RECORD for the benefit of my colleagues:

SPEECH BY CONGRESSMAN IKE SKELTON AT THE MFA CONVENTION IN COLUMBIA, MO.

As I speak to you today, these are not good times for Missouri agriculture. You know the problems better than I:

The increasing cost of producing farm commodities, led by the rapid escalation in fuel and fertilizer costs;

Low prices for almost all farm commodities, a problem which worsened in the wake of the suspension of grain sales to the Soviet Union;

Record high interest rates, which peaked just as many farmers were preparing to borrow money for the spring planting season; and,

Drought—perhaps the worst in our history, certainly the worst since the years of 1936 and 1954.

These are not new problems for those in farming. They have been with us before. But their effects seem to be as devastating as never before. The question we must ask is this: What can we, the farmer and his representatives in Congress, do together to assure strength in the agricultural economy, and to assure the survival of our system of highly efficient, owner-operated family farms?

FARM BILL—1981

As many of you know, the basic farm legislation comes up for renewal in 1981. Congress must give this legislation a thorough review. I am sure that the situation in agriculture today will lead many to advocate a massive revision in our farm laws. This must be rejected. In my view, the basic law is sound. It contains the tools which, if used properly, can protect farm income. This must be the task of Congress next year. We must make such changes as are necessary to insure that the flexibility granted to the executive branch by the farm law is utilized properly. Loan rates and target prices, for example, must be brought into line with present economic realities. In addition, we must review other laws which impact on the farm, such as Federal estate tax laws, to determine if amendments are necessary in these areas. But we should reject the "meat ax" approach in favor of the "scapel". The current crisis situation should not serve as an excuse for increased government involvement in agricultural decision-making, or for a radical departure from our traditional market-oriented agriculture.

GRAIN EMBARGO

The current embargo on grain shipments to the Soviet Union has been badly mishandled. Quite frankly, it has been most disappointing to me. It is clear that adequate steps have not been taken to fully protect farm incomes. Legislation which would establish the loan rate at the average market price for the 15 days prior to the announcement of an embargo is currently pending before the House. I introduced a version of this legislation. If it is not enacted this year, it should be a high priority item next year for inclusion in the basic farm law. Let me add this: during the entire embargo episode, I never heard an unpatriotic remark from a Missouri farmer.

As you know, I am a strong supporter of an aggressive agricultural export policy, my record is quite clear in this regard. However, I have noted that some have called for legislation to establish an all-out ban on grain embargoes. In light of this, we should look at the world in which we live—an increasingly dangerous world. Frankly, at the present time, our military strength is not what it should be. In the current world situation, we cannot have laws that might require us to trade with an enemy of this country during military conflict, or one who participates in aggression and terrorism which is contrary to our national security. In such situations, when there is no recourse, efforts should be made to insure that farmers alone do not bear the burden of such action. That is why I introduced legislation earlier this year for economic protection for the farmers against grain embargoes.

FARM EXPORTS

Embargoes aside, farm exports must continue to be a priority for Congress. We must carefully assess the value of the eleven trade offices established under the authority of the Agricultural Trade Act of 1978. Should their value be confirmed, we should move quickly to expand their number to the full authorization of twenty-five, concentrating on areas where there is a potential for increased sales of our farm goods. In addition, we need to improve the credit terms which our nation offers to our customers. Rigid credit terms have caused us to lose sales and miss new market opportunities. We need to make changes which would allow the financing needs of our potential customers to be accommodated on a flexible, case-by-case basis. Legislation which I introduced to put the commodity credit corporation export financing mechanism on a revolving fund basis is one such approach.

GASOHOL

Alcohol fuels made from domestically-produced, renewable resources offer a near-term alternative to lessen our dangerous dependence on imported oil, and can provide an additional market for surplus grain and agricultural wastes. Legislation to provide financial assistance to stimulate the production of alcohol fuels is now in place. We must move ahead rapidly on this program. We must dismiss the arguments of those nay-sayers who fret that the production of alcohol fuels might add to the cost of food. I doubt that this would be true, however, we must continue our all out efforts to make sure that our economic security is not beholden to the whims of the OPEC oil ministers.

RESTRICTIONS ON AGRICULTURE

Unfortunately, we will not be able to devote our full efforts to positive attempts to improve farm income. We must also be on the defensive against those, both in and out of government, who would place unwarranted and unreasonable restrictions on agriculture. We can expect, once again, to see assaults on the use of nitrates in meat, antibiotics in animal feed, and certain valuable pesticides. These assaults must be repulsed. I also expect controversy to continue over USDA's pamphlet on dietary guidelines. Two weeks ago, I attempted to amend the agriculture appropriations bill to cut off funding for these pamphlets. Although the amendment failed on a technicality, I will continue my efforts to see that these ill-founded and ill-advised dietary guidelines do not become the basis for far-reaching government intrusion into what kind of food farmers can produce and consumers can eat.

ROLE OF USDA

The issuance of the dietary guidelines is the manifestation of a more serious question concerning the proper role of the Department of Agriculture. Today, it is more essential than ever that USDA direct its primary attention to those basic programs of agriculture which directly affect farmers and farm production. Its basic purpose must remain what it was at its creation in 1862—to strengthen agriculture. USDA must speak for—and be a representative of—the American farmer within the government.

CONSERVATION AND RESEARCH

Although our emphasis should properly be on immediate solutions to the current crisis in farming, it would be foolish to overlook the long term. American agriculture is the foundation of our economic well-being. Agricultural productivity has allowed us to have the world's highest standard of living. Therefore, we must make every effort to preserve and protect our land and water resources. Shortsighted attempts to reduce funding for soil and water conservation programs, and for agricultural research must be rejected.

IMPORTANCE OF FARMER COOPERATIVES

We must also vigorously oppose any attempt to weaken our family farm system through amendments to the Capper-Volstead Act. Farmer cooperatives are a vital part of our economic system. They have helped our family farmers feed our Nation and much of the world, and they have served to check inflation. The effectiveness of farmer cooperatives should be increased, not reduced.

INFLATION

One area agriculture must become involved in is too often overlooked. Profit is a function of both the price received for a product and the cost of producing it. In recent years, the cost of producing farm commodities has skyrocketed. The cost of fuel used on farms rose 46 percent in 1979. A further large increase is a certainty for 1980. Farmers thus have a large stake in the fight against inflation. They must join the fight to curb excessive government spending, and to bring about energy independence.

FARMERS AND CONSUMERS

You as farmers and I, as a Member of the House of Representatives, from a State with a great agricultural tradition, have a job to do. We must let the American people know what a great buy their food really is. We must educate them on how much the productivity of the American farmer contributes to their standard of living.

Some comparative statistics with the Soviet Union are illuminating:

About 23 percent of the entire Soviet workforce is employed in agriculture, eight times that in the U.S.

The farm sector receives about one-fourth of all Soviet investment capital, five times more than that spent in the U.S.

Yet, the actual farm output of the Soviet Union is still only 80 percent of ours.

Here's the most striking statistic for those who might think the owner-operated family farm is outmoded—the 2-3 percent of the Soviet Union's farm land that is privately owned produces about 25 percent of all Soviet agricultural output.

Our agricultural system has allowed the American consumer to spend only about 16 percent of his income on food. The comparable figure for the Soviet Union is 45 percent. Even the other western democracies don't stack up—Germany is 27 percent, France is 24 percent, and the United Kingdom is 31 percent.

Despite inflation, today's family buys considerably more food than it did 25 years ago. Clearly, the cost of food to the American consumer is not high compared to the cost of producing it, compared to the cost of food in other countries, and compared to the cost of other things in America.

I am reminded of a story told by the late Congressman Jerry Litton, a great friend of Missouri agriculture. During consideration of farm legislation on the House floor, Congressman Litton looked at the gallery where various banners were being displayed. One read, "Milk is for children, not for profit". Jerry Litton's thoughts on seeing that banner are as meaningful today as they were then: "There'll be food available for Americans as long as there is profit in it for those who produce it."

This is the message we must take to the American consumer. We must overcome the kind of thinking represented by that banner. We must engage consumers in a dialogue, you with your customers and me with their representatives in Congress, and convince them that the survival of the family farm is a priority for all Americans.●

MCPL NUCLEAR ALERT XI: PRESIDENTIAL DIRECTIVE 59

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. HOLLENBECK. Mr. Speaker, the recently announced change in our strategic policy, codified in Presidential Directive 59, has provoked quite a bit of controversy in the media. Believing that a thorough understanding of the implications of this change will benefit all concerned Americans, Members of Congress for Peace Through Law has gathered together the best of the recent articles on this subject. The articles I am inserting today are among the more informed and thoughtful discussion of the change in our strategic posture, and I commend them to the attention of my colleagues, along with a copy of the letter forwarded to Mr. Carter by several Members of Congress.

[From the Bergen (N.J.) Record, Aug. 18, 1980]

MISGUIDED MISSILE

Presidential Directive No. 59 may sound like one of those innocent White House documents that's attached to a routing slip and circulated throughout the bureaucracy until it winds up in the wastebasket. In fact, this document is anything but innocent. It is a description of America's new strategy for conducting a nuclear war.

The strategy is simple and straightforward: Soviet cities and industries will no longer be the primary targets of America's nuclear weapons. From now on, our missiles and bombs will also be pointed at military targets, including the silos that house Soviet missiles and bombs. In other words, our long-standing threat of reducing Soviet cities and industries to rubble in the event of a nuclear attack against the United States will soon be replaced by the presumably more chilling threat of an all-out strike against military targets in the Soviet Union.

In Pentagon parlance, we are trading in our old strategic doctrine of "mutual assured destruction" (MAD, for short) for a new one of "flexible response." The old doctrine, with its apt acronym, held that as long as the United States had the military capacity to destroy every major Soviet city and industry even after we absorbed the first strike in a nuclear attack, Moscow would be deterred from launching such an attack in the first place. The new doctrine assumes no such thing; it is premised on the fanciful belief that the two superpowers could somehow fight a "limited" nuclear war in which one side would emerge victorious. Not too many military strategists believe this, of course; but they are convinced that the Russians believe it. And if the Russians believe it, they must be developing the capacity to fight a "limited" nuclear war. And if they're developing this capacity, we have to match them—warhead for warhead, bomber for bomber, first-strike capability for first-strike capability.

Who foisted this misguided missile plan on President Carter? Well, it certainly wasn't Secretary of State Muskie; he read about it in the newspapers. Nor can we blame the allies, who were as stunned as Mr. Muskie was when the president dropped his bombshell. Even Secretary of Defense Harold Brown and National Security Adviser Zbigniew Brzezinski can't be held totally culpable, although both have been pushing the "flexible response" doctrine for some time.

The distinct impression is that this sudden shift in our nation's nuclear strategy was fashioned not out of military necessity but political expediency. It has Ronald Reagan's mark all over it. It's almost as if Mr. Carter lifted an entire plank out of the Republican Party platform—the one directing

our defense establishment to develop a "clear capability to destroy military targets"—and transformed it overnight into national policy. That the president did this on the eve of the Democratic Convention only heightens suspicion that the real target of his directive was the Republicans rather than the Russians.

It's an age-old practice for incumbents to play around with economic or social policies in order to blunt an opponent's criticism during a presidential campaign. But playing around with nuclear strategy is dangerous business, made all the more dangerous in this case by the frightening possibility that we might actually come to believe we could "win" a nuclear war, that we might someday come to view our most lethal atomic weapons as little more than common bullets in a "limited" nuclear exchange. If our old doctrine was mad, our new doctrine is sheer lunacy.

[From the Christian Science Monitor, Aug. 22, 1980]

STRATEGIC DELUSIONS

(By Charles W. Yost)

The "new" strategic doctrine recently adopted by the Carter administration (to the considerable annoyance of its secretary of state who was not consulted or informed) is of course not new at all but merely a resurrection of a policy proposed by a Republican secretary of defense, James Schlesinger, several years ago. What is new, and difficult to explain, is the formal adoption of so far-reaching and questionable a policy in the midst of an election campaign.

The essential feature of this "doctrine" is the curious contention that the "massive retaliation" provided by our strategic nuclear triad, the capability to destroy most Soviet cities and industrial establishments and to decimate its population, would not be sufficient to deter the Soviet Union from risking aggression against us but must be supplemented by a further capability to carry out attacks of pinpoint accuracy against Soviet missile sites and command centers. Among other reasons cited for this shift is that massive retaliation may be no longer "credible," and hence an effective deterrent, whereas the now projected threat to Soviet missiles and leaders is alleged to be more credible.

This is a transparent rationalization. If there is one fact about nuclear war between the United States and the Soviet Union which is crystal clear, it is that such a war could not be "limited" but would, within a few days at least, escalate into full-scale nuclear war. The Soviets are quite aware of this fact and indeed reiterated it in Pravda only a few days ago. The deterrent provided by our strategic triad—land-based missiles, submarine-based missiles, and bombers (soon to be fortified with cruise missiles)—is eminently "credible" to the Soviets. If all this will not deter them, the addition of a supplementary threat to their missiles—which of course would have to be launched first if it were to have much real effect—could hardly be expected to do so.

Indeed it is a projected Soviet "first-strike" capability against our land-based missiles by increasingly accurate Soviet SS-18s which we have been persistently protesting as threatening and "destabilizing." Does it not occur to us that a similar capability on our side would be, in Soviet eyes, even more destabilizing since more than two-thirds of the Soviets' strategic arsenal is concentrated in vulnerable land-based systems, as compared with only about one-third of ours?

The most serious threat of nuclear war is not in fact calculated aggression but a misperception on the part of one or both sides that the other is contemplating and preparing for a first strike. It is precisely such a misperception to which our new doctrine significantly contributes.

The real reasons for proclaiming this doctrine are not that the old one had ceased to be credible as a deterrent. Rather they are, first, that a justification is required for the deployment of new weapons with which technology is so extravagantly providing us and, second, that we are in the midst of a national debate about strategic defense, which is far more political than substantive, but which the administration obviously believes obliges it to show itself at least as tough-minded as its domestic adversaries. Unhappily this debate has long been based on the false assumption that one can never have too much of a good thing.

This combination of factors has, for example, committed the administration to the deployment of the MX missile, an enormously costly and environmentally damaging device which can only be justified, if at all, on the theory that our present threat of massive retaliation is not "credible." We have therefore slipped into the extraordinary situation of publicly undermining our own deterrent in order to justify a new generation of strategic weapons. This seems a particularly peculiar posture for an administration which has consistently recognized that arms control is an essential feature of national security and which continues to support ratification of SALT II.

One other element of this esoteric debate is the claim that Soviet strategic doctrine assumes a "war-fighting" capacity even in case of nuclear war. So what? So does American military doctrine. It is the responsibility of generals and admirals to prepare to fight, as best they can, whatever kind of war they may have to fight. That does not mean, either on the American or the Soviet side, that they want to fight such a war or intend to start one.

It is high time that strategic doctrine be brought out of the clouds and down to earth. The central fact is that any US-Soviet war would almost certainly be, or soon become, an unlimited nuclear war. The only way to forestall such a hideous eventuality is to prevent it from starting. To do so we need a well-calculated national defense, not strategic extravagances more likely to provoke than deter attack.

Out present strategic triad, strengthened by Trident submarines and cruise missiles, a SALT II agreement promptly followed by negotiation of SALT III reductions, new intermediate-range missiles in Europe if mutual limitations cannot be agreed, much better maintenance of the capabilities of forces already in being, an improvement in the quality of our armed personnel through better pay and benefits, and by restoration of the draft if necessary—these are the basic components of a realistic national security policy. Neither new technology nor domestic politics should be allowed to obscure or pervert them.

[From the New York Times, Aug. 24, 1980]

TERROR IN DISGUISE

(By Tom Wicker)

Suppose that sometime in the next few years, when they are expected to have the ability to do so, the Soviets should contrive to deliver about 2,000 nuclear warheads with a high degree of accuracy upon the 1,000 Minuteman missiles in the United States ICBM force, effectively wiping it out.

What should an American President do in response? What could he do?

At that point, he would have lost about 25 percent of his strategic nuclear forces. But with perhaps 10 percent of the megatonnage that would remain to him in airborne and underwater launchers, he could order the assured destruction of 200 Soviet cities, containing more than 60 percent of the Soviet industrial base and 30 percent of the Soviet population (about 90 million people).

The trouble with that, numerous defense analysts now insist, is that the Soviets would retain, even after such retaliation, the power to launch a second strike against American cities that would be equally devastating. Since the President would know that, these analysts ask, would he in fact order that retaliatory attack? Or, to spare American cities, would he accept the loss of his ICBM's and bow to whatever demands the Soviets might make?

Secretary of Defense Brown and President Carter insisted this week that Mr. Carter's Presidential Directive 59 was designed to cope with such an a pocalyptic dilemma by giving a President more options for nuclear response and making it clear to the Soviets "that any or all of the components of Soviet power can be struck in retaliation, not only their urban industrial complex" (as Mr. Brown put it to the Naval War College).

He said the resulting "countervailing strategy" stressed "being able to employ strategic nuclear forces selectively" and put the Soviets on notice "that if they chose some intermediate level of aggression, we could, by selective, large (but still less than maximum) nuclear attacks, exact an unacceptably high price in the things the Soviet leaders appear to value most—political and military control, military force both nuclear and conventional, and the industrial capability to sustain a war."

All this may seem persuasive and as Mr. Brown noted, the United States has for years been aiming its nuclear power at a range of military targets as well as at Soviet cities. But both the basic assumptions and the practical conclusions need to be questioned outside the narrow world of defense specialists. For example:

Granted the agonizing quandary in which the cited example would place a President, would it be any greater than that of his Soviet opposite in deciding to launch the first strike? Whatever that leader's policy goal, he would be taking the calculated risk that his attack might and probably would result in the destruction, for all practical purposes, of modern Soviet society—including at least 60 percent of that industrial capacity he supposedly values so highly.

Mr. Brown said Soviet leadership "appears to contemplate at least the possibility of a relatively prolonged" nuclear exchange and that "in some circles at least they seem to take seriously the theoretical possibility of victory in such a war."

That's pretty thin stuff to go on, but assuming a Soviet leader so utterly unconscionable or mad as to chance it, might he not be even more likely to go ahead if he thought the American response would be on military targets only? If he envisioned a "relatively prolonged" but thus limited nuclear exchange might he not see more possibility of ultimate advantage than in having his cities and industrial base pulverized?

And though Mr. Brown strongly denied that the "countervailing strategy" sought a "first strike" capacity, are the Soviet leaders—particularly if they can conceive of a "winnable" nuclear war—likely to accept his assurances? If we think they might launch a first strike on military targets, why shouldn't they think we might, particularly

as we "stress" our capacity for selective strikes? And if both sides think that of the other, isn't one ultimately likely to try it before the other can?

If these and other questions raise doubts about the "countervailing strategy" as a deterrent, what about its emphasis on the capacity to wage "limited" nuclear war, if necessary? Mr. Carter called that an "improvement in our nation's defense capability," but Mr. Brown conceded to the War College "the immense uncertainties involved in any use of nuclear weapons" and added, chillingly:

"We know that what might start as a supposedly controlled, limited strike could well—in my view would very likely—escalate to a full-scale nuclear war. Further, we know that even limited nuclear exchanges would involve immense casualties and destruction."

So the "improvement" comes down to much the same old threat, the same old balance of terror, made dangerously more "thinkable" in the guise of "additional options" for "flexibility"—and requiring, of course, vast new weapons programs. More about that in another article.

[From the Washington Post, Aug. 22, 1980]

THE PD59 AFFAIR

Presidential directives dealing with nuclear strategy can have a value in forcing the people who are responsible for these things to finish their sentences and face up to the implications of their policy. But there are also several respects in which these documents are endemically and incorrigibly phony.

First, no nuclear war could conceivably bear any resemblance to the scenarios assumed by these statements of strategic intent: if they do this, we do that, then if they come back with this, we can do the other . . . and so on. Invariably, bloody nuclear chaos is made to sound like something taking place on the center court at Wimbledon.

Second, the best people in our strategy-making apparatus know this. And their acknowledged purpose is not to lay out a prospectus for real war, but to create possibilities of action that, once known and believed, will discourage an opponent from trying us or from pushing too hard. So, it is perceptions of reality not reality itself, the Pentagon planners are mainly concerned with. Defense Secretary Harold Brown said as much in his Annapolis speech Wednesday.

Finally, merely as an exercise in policy-setting these documents have a certain air of fraudulence to them. It's not always so certain (and the present case is a good example) that the strategy preceded the weapons development needed to fulfill it. The strategy can be an after-the-fact justification or a belated acknowledgment that, whatever we were claiming our strategy and intent to be, we were, all along, developing an arsenal that could and would do something else.

There is a pronounced element of this post facto reasoning to the announcement that we have now formulated a nuclear strategy vis-a-vis the Soviet Union that incorporates the improved accuracies and other changed characteristics of nuclear weapons under development. For a long time, American government spokesmen were more or less forswearing certain war plans for which the government was, however, simultaneously beginning to create a uniquely suitable arsenal. And there have also been official statements and hints and lurches and lunges along the way to revelation of PD59 that such a change of strategy was being fashioned. When Secretary Brown said this was nothing new and not a total policy reversal, but something evolved and partial, he was no doubt absolutely right. And it also seems reasonable to us that there should have been some evolution. Much in the alternative scheme that this one supersedes had taken on the attributes of an immutable, sacred doctrine that it was heretical and bloodyminded even to question, no matter how politely or from what responsible motives. Nor did that alternative evidently make sufficient provision for dramatic changes in Soviet planning and strength.

But having acknowledged all that, we are bound to say there is something plenty fishy about the manner of disclosure of the altered strategy and the exclusion of Secretary Muskie from knowledge of what was about to happen. It cannot have been inadvertent or merely "thoughtless" or justified by any theoretical division of labor and jurisdiction: it was a calculated freeze-out. Mr. Muskie was thereby denied an opportunity to argue or discuss or recommend anything in relation to a presidential decision concerning the topmost order of national security business, a decision bound to have seismic reverberations in his own field of activity. He was faced with an accomplished fact.

Secretary Muskie was right to be furious and noisily so. Is he there for window-dressing? Is he going to be cut out of the big game when it involves that supremely important interconnection of military, strategic and diplomatic concerns that actually defines the U.S.-Soviet relationship? There is a downside to the evolutionary trend that has led to PD59, and you get the idea from what happened to Mr. Muskie that someone, somewhere might have been afraid that he would make that negative argument, that resistance, real or imagined, was being preempted.

If this is so it doesn't say much for the way in which the final decision was reached and inevitably—fairly or not—raises questions about the decision itself. But the alternative hypotheses aren't any better. Did someone—everyone—"forget" the secretary of state's claim to concern in these matters? Was someone trying merely to upstage and overwhelm him on the bureaucratic battlefield? For whom was the leak of the change of strategy intended? The Russians? The Republicans? The voters, bless their poor, much put-upon souls?

An administration under attack politically for a sogginess of spirit and weakness of will in defense matters surely has the right, even the duty, to answer back. And it also has the right/duty to let the potential aggressor whom all this hardware and planning is meant to deter from aggression know what American intentions are. But no administration serves itself or its constituency or the credibility of its policy when it lets disorderly and self-aggrandizing and suspicion-breeding politics get into the act, and is seen to close a key player out of the argument. That unfortunately is what seems to have happened in the PD59 affair.

[From the Washington Star, Aug. 14, 1980]

THE REBIRTH OF NIXON'S WAR PLAN

(By I. F. Stone)

It all started with Richard Nixon. The germ, the beginning and the rationale of President Carter's "new" limited nuclear war directive may be found in Nixon's State of the World message in 1971.

Nixon's phrases are virtually identical in their Delphic solemnity with those we are beginning to hear now. Nixon said we had to have the military means to "provide us with the alternatives appropriate to the nature and level of the provocation" so we can respond "without necessarily having to resort to mass destruction." This was the doctrine of limited nuclear war.

We then heard talk of the president's need for nuclear "options" and of the "immorality" of strikes against cities when we could "pinpoint" military objectives so that civilians, as innocent passersby, could go unscathed.

These "surgical" strikes would give both sides—almost in the very words of a famous soft drink advertisement—a pause for a Pepsi and "reflection," and interval of lucidity for "bargaining."

When James R. Schlesinger became Nixon's secretary of defense, the new policy was explained early in 1974 as a way of giving the United States "flexible response." It made nuclear war sound admirably antiseptic.

Schlesinger's salesmanship, though brilliantly seductive, ran into antagonism on Capitol Hill. A Senate Foreign Relations subcommittee summoned him to a hearing on March 4, 1974, and a scathing cross-examination by the chairman. The chairman was Sen. Edmund Muskie.

And now here we are again, six years later, in the middle of the Democratic national convention, and here's Nixon's old limited war doctrine, still alive, still being implemented and now given new impetus by a newly signed and surreptitiously unveiled "Presidential Directive No. 59" authorizing accelerated development of the new missiles, satellites and intelligence devices required.

And the secretary of state, now Muskie, protests that he wasn't consulted and was taken by surprise. The surprise attack may also give the secretary a pause for reflection. Such surprises finally drove his predecessor, Cyrus Vance, to resign.

The manner, timing and strategy of the directive's leak are still mysteries here. Somebody high up indeed called in two leading Pentagon correspondents, Richard Burt of the New York Times and Michael Getler of the Washington Post. They were given the story in a secrecy as deep as Deep Throat's. Secretary Brown and Dr. Brzezinski are the prime suspects.

One cute little touch makes me think it was Brzezinski. The correspondents were told, in the words of The New York Times account Aug. 6, that "neither the State Department nor the Arms Control and Disarmament Agency had been involved in formulating the strategy." That was rubbing it in, as Brzezinski so often did, in his private wars with Vance.

Unless the White House and the Pentagon are lying, this was not strictly true. They explain that State and ACDA did sit in on earlier discussions but before Muskie took office in May. Both White House and the Pentagon must have known, from their knowledge of what happened in 1974, that it was better to keep Muskie in the dark.

The timing of the leak was especially humiliating for Muskie. It came on the eve of his speech in San Francisco declaring that SALT II ought to be an issue in the presidential campaign.

How can one be for arms limitation with SALT II and at the same time be for an expansion of the arms race into a new dimension by making it possible to "pinpoint" limited nuclear first-strike targets? The leak, like the policy, was a low blow at Muskie and at all our hopes for a saner world.

I must add, as a postscript, that Muskie's interrogation of Schlesinger in 1974 led to

the appointment of a special congressional advisory panel of prestigious nuclear war experts. They were asked to assess the reassuring casualty estimates furnished Congress by the Pentagon in support of its argument for "limited" war strikes.

The experts concluded unanimously in 1975 that the casualty figures in the projected limited war "exchanges" ("Tennis, anyone?") were "substantially too low" and "did not reflect the larger uncertainties." One of the signers of that report was the same Harold Brown who is now secretary of defense.

All this spells preparations for thermonuclear brinksmanship. As this is written, Richard Burt turned up in The Times with a new leak revealing two companion directives, Nos. 58 and 53. They deal with where and how to hide the president safely in a nuclear confrontation and how to protect command communications from radioactive disruption when and if the bombs begin to fall. Add draft registration, and all this spells perilous days ahead.

Are the Democrats nominating a new model Goldwater?

MEMBERS OF CONGRESS FOR PEACE THROUGH LAW,
Washington, D.C., August 26, 1980.

President JIMMY CARTER,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As Members of Congress long interested in and still committed to controlling nuclear arms, we are writing to express our deep concern over recent reports regarding your decision to implement a new strategic policy for the United States, reported as Presidential Directive No. 59.

Many serious questions and uncertainties arise as a consequence of this shift in strategic policy. We are deeply distressed that this policy seems based on the assumption that nuclear war is limitable. As we understand the new doctrine, its purpose is to allow for nuclear options short of a total strike—thereby enhancing our credibility in the use of nuclear weapons. We believe, however, that since it is extremely unlikely that nuclear war can be limited, this policy has precisely the opposite effect intended: it creates the illusion of flexible response, when in reality any decision to use nuclear weapons would have the same cataclysmic consequences as a total nuclear strike.

Moreover, we question whether, by providing ourselves with other, more "palatable strategic choices than assured destruction, we present a more effective deterrent to Soviet aggression. We can foresee circumstances in which, under this doctrine, our nuclear deterrent would in fact be weakened. Suppose the Soviets were preparing an invasion of Western Europe. Fearing that such an invasion might provoke us into an attack upon their nuclear arsenal, they would be forced to fire their missiles in order to avoid losing them. And the mere suspicion that the Soviets might behave in this way would force us into the same "use or lose" syndrome, in which the pressures compelling us to launch our own weapons might well prove irresistible.

This new policy would, we believe, mark the end of the arms control process, for two reasons. First, in order to make credible the counterforce threat, we envision a call to a massive arms race: the doubling of the already enormous MX program, the addition of very expensive ABMs to our arsenal, and the restructuring, at great costs, of our air defense and civil defense programs. And second, this "evolutionary" change in our strategic policy, stemming from improvements in the diversity and accuracy of our nuclear weapons, leads us to the conclusion that nuclear weapons technology is leading and therefore determining nuclear strategy. As more sophisticated types of weapons are added to our already overwhelming strategic capability, arms control agreements become much harder to negotiate, if not obsolete.

Mr. President, because strategic planning appears increasingly to be chasing, rather than directing, advances in weapons technology, we believe that, now more than ever, strategic decisions must be arrived at only after thorough and frank discussion among all those professionally responsible for developing our foreign and defense policies. We recognize the need for a certain amount of secrecy in the formulation of our nuclear strategy; nevertheless, we do not believe that a shift in policy of this magnitude should be made without prior consultation with the Secretary of State, the Arms Control and Disarmament Agency, and the Congress.

We request a full accounting of Presidential Directive #59 at the earliest possible time, and ask that its effective date be deferred until the Congress, the State Department, and the Arms Control and Disarmament Agency have had ample opportunity to consider and debate its implications.●

LEGISLATION TO AMEND TITLE 44, UNITED STATES CODE, TO PERMIT CITIZEN SUITS TO RECOVER WRONGFULLY REMOVED GOVERNMENT DOCUMENTS

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. WEISS. Mr. Speaker, the right of citizen access to unclassified Government records is a fundamental principle of a free society, as Watergate reminded us. Yet we still face major obstacles to real openness.

Henry Kissinger's removal of telephone transcripts from his office shortly before he stepped down as Secretary of State 4 years ago illustrates one such obstacle. Mr. Kissinger removed these documents without the official review required by the Records Disposal Act, 44 U.S.C. 3301 et seq. The Solicitor General has conceded that at least some of the transcripts qualify as official records. Nonetheless, the Supreme Court has ruled that private citizens have no right under existing law to recover the papers for the public's view.

I am introducing legislation today to create a right of recovery, and to deter Government officials from such improper removal of documents.

Mr. Kissinger deeded the transcripts, which record his notes of telephone conversations while Secretary of State, to the Library of Congress after having them removed from the State Department. Neither the State Department's records official nor the Administrator of General Services reviewed them.

But in the court case that followed, *Kissinger* v. *Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980), the Supreme Court ruled that the State Department cannot be required to recover documents no longer in its possession to satisfy a Freedom of Information Act (FOIA) request for them—even if they were unlawfully removed.

According to the Court, both the Records Disposal Act and the Federal Records Act of 1950, 44 U.S.C. 2901 et seq., allow only an agency head, with the assistance of the Administrator of General Services, to initiate an action through the Attorney General to recover records in such cases. The Court could find no evidence in the two applicable statutes that Congress had contemplated a private right of action. Therefore, any individual's request, including that of the Reporters Committees, could be refused. The telephone transcripts are thus shielded from public scrutiny for at least 25 years, under the terms of Kissinger's bequest.

The former Secretary has clearly circumvented the Fredom of Information Act. The New York Times declared that the decision created "a loophole in the Freedom of Information Act big enough for high officials to walk through." And Justice Stevens, in a dissenting opinion, viewed the outcome in ominous terms, saying that:

> It thus creates an incentive for outgoing agency officials to remove potentially embarrassing documents from their files in order to frustrate future FOIA requests.

An election often signals a change in agency personnel. This is an especially appropriate time, then, to commence congressional action to insure that Henry Kissinger's conduct does not become standard practice.

Citizens must be granted the power to compel return of public records. This flaw in the Federal Records Management Acts must be corrected. Unless a private right of action is established, guarantees of open government are meaningless. To insure that the FOIA, in the words of Justice Brennan,

> Is to be more than a dead letter, we must necessarily incorporate some restraint upon the agency's powers to move documents beyond the reach of the FOIA requester.

Under my proposed legislation, an individual would have the right to bring suit in Federal district court to recover records unlawfully removed from any person or agency with custody of them. Prior to initiating any action, notice of the alleged violation must be given to the Administrator of GSA, the appropriate agency head, the Attorney General, and the person or agency which has custody of the documents. This notice provision permits the Government to comply with the procedures established in title 44 on its own initiative. If no action is taken within 60 days, the individual can commence proceedings. In the event the Attorney General starts an action to recover the records, the interested party can intervene in the Attorney General's suit, as a matter of right, to guarantee diligent prosecution of the litigation. The legislation also permits the awarding of court costs, plus reasonable attorney's fees, to any party in an action.

My proposal is consistent with the Federal Government's interest in record control. It would enable the agency executive to have the information available when he needs it, in accordance with the statutes' legislative intent. Citizen suits will supplement the Federal records management system by further insuring retention of important documents.

I believe this legislation offers the strongest useful deterrent to the unlawful removal of records at all levels of Government. I might note that I am also an original cosponsor of legislation introduced by my distinguished colleague and subcommittee chairman, Mr. PREYER, to give the Archivist of the United States authority to begin proceedings to recover documents. I feel this additional measure introduced today is necessary, however, to avoid undue restraint that may be placed upon a Government official, such as the Archivist, in this type of situation.

In Kissinger, Justice Brennan noted that "it is Congress which has the resources and responsibility to fashion a rule about document retention that comports with the objectives of the Freedom of Information Act." I urge my colleagues to accept this charge and join me in supporting this legislation.

H.R. 8029

A bill to amend title 44, United States Code, to permit citizen suits to recover records wrongfully removed from agency files

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 2905 of title 44, United States Code, is amended by designating the existing paragraph as subsection (a) and by adding at the end thereof the following new subsection:

"(b)(1) Except as provided in paragraphs (2) and (3), any person may commence a civil action on his own behalf against any person (including the United States and any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in possession of any records removed from an agency in violation of the provisions of this chapter or of standards, procedures, or guidelines promulgated pursuant to such provisions. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order the return of any such records or to issue any other orders necessary to obtain compliance with such provisions, standards, procedures, or guidelines.

"(2) No action may be commenced under paragraph (1) prior to 60 days after the plaintiff has given notice of the alleged violation (A) to the Administrator of General Services, (B) to the head of the agency from which such records are alleged to have been removed, (C) to the Attorney General, and (D) to the person who is alleged to have custody of such records.

"(3) No action may be commenced under paragraph (1) if, within 60 days after receipt of the notice required by paragraph (2), the Attorney General commences and is diligently prosecuting an action for the recovery of the records to which such notice pertains, but if such an action is instituted the person giving such notice may in ervene as a matter of right in such action.

"(4) In any action under this subsection, the Administrator, if not a party, may intervene as a matter of right.

"(5) The court, in issuing any final order in any action brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate.".

SEC. 2. Section 3106 of title 44, United States Code, is amended by designating the existing paragraph as subsection (a) and by adding at the end thereof the following new subsection:

"(b)(1) Except as provided in paragraphs (2) and (3), any person may commence a civil action on his own behalf against any person (including the United States and any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in possession of any records removed from an agency in violation of the provisions of this chapter or of standards, procedures, or guidelines promulgated pursuant to such provisions. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order the return of any such records or to issue any other orders necessary to obtain compliance with such provisions, standards, procedures, or guidelines.

"(2) No action may be commenced under paragraph (1) prior to 60 days after the plaintiff has given notice of the alleged violation (A) to the Administrator of General Services, (B) to the head of the agency from which such records are alleged to have been removed, (C) to the Attorney General, and (D) to the person who is alleged to have custody of such records.

"(3) No action may be commenced under paragraph (1) if, within 60 days after receipt of the notice required by paragraph (2), the Attorney General commences and is diligently prosecuting an action for the recovery of the records to which such notice pertains, but if such an action is instituted the person giving such notice may intervene as a matter of right in such action.

"(4) In any action under this subsection, the Administrator, if not a party, may intervene as a matter of right.

"(5) The court, in issuing any final order in any action brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate.".●

IN MEMORY OF HANNAH FOGELSON

HON. ANTHONY TOBY MOFFETT

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. MOFFETT. Mr. Speaker, while the Nation's attention was focused on the Democratic Convention in New York, a dear friend and rare individual passed away. The news of Hannah Fogelson's death did not reach me until I returned home from New York, and I greatly regret that I was unable to be with her family and friends at her memorium.

Hannah was one of those persons who was always willing to lend a helping hand to those who relied on her. She was there for an elderly person in need of assistance, a progressive cause in need of a voice, or a maverick political candidate in need of a supporter. She was an unselfish, giving person who asked little in return for her good work except the eventual success of her causes.

Hannah's work with the elderly in New Britain, Conn., is reflective of her commitment to and recognition of the problems our senior citizens face daily. She understood the social and economic implications of their problems and sought change through the political process. The plight of the elderly was one of many issues Hannah became active in; she held leadership positions as a member of the Connecticut Caucus of Democrats as well as other progressive groups.

Hannah Fogelson served her community well and her passing is a great loss. Although she was 74 years old, her death is a painful shock to those of us who knew her well and her absence will be greatly felt.●

NORTHERN VIRGINIA COMMUNITY FOUNDATION

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. FISHER. Mr. Speaker, it gives me great pleasure to commend the people of the region of northern Virginia for their efforts in establishing the Northern Virginia Community Foundation. This foundation can be the vehicle through which all of us, individuals, businesses, and associations, can return to the community a portion of the wealth and resources from which we have all benefited. The foundation can become our community conscience.

The Northern Virginia Community Foundation will act as a unifying group to identify unmet philanthropic needs of the region, and to direct receipt and distribution of foundation funds. This foundation can further the philanthropic aims of the region, without duplicating efforts of existing organizations. Indeed, the Northern Virginia Community Foundation, with support from all of us, can assist with grants organizations already functioning in the region. Our U.S. Government encourages this kind of public spirited giving through provisions of its tax laws.

Similar foundations work well for community betterment in such areas as Cleveland, Dallas, San Francisco, and South Dakota.

All of us can rejoice that northern Virginia citizens are bringing to reality such a worthy concept.●

REAGAN AND CHINA

HON. CARROLL A. CAMPBELL, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. CAMPBELL. Mr. Speaker, today's Wall Street Journal contains an editorial that puts Governor Reagan's recent statements on China policy in perspective. It is a good counterbalance to the overreaction of some other elements of the media, and I commend it to my colleagues' attention:

[From the Wall Street Journal, Aug. 26, 1980]

REAGAN AND CHINA

As soon as it became evident last spring that Ronald Reagan would be the Republican presidential nominee, press speculation began over how long it would be before the Californian got himself in trouble by shooting from the hip on an important public policy question.

A lot of people thought they had found the answer when Mr. Reagan last week raised hackles in Peking with his insistence on an "official" U.S. relationship with Taiwan. The candidate had unnecessarily raised a sensitive issue that had long ago been settled, it was alleged, fulfilling all the worst fears about how a President Reagan would conduct foreign policy. His running mate, George Bush, had drawn maximum publicity to all this by trying to explain it all to China's top leadership on a well-publicized visit to Peking.

And yesterday, in a chaotic-sounding press conference in Los Angeles, the Republican team didn't succeed very well in explaining where the difference lies between such subtle shades of meaning as "official" and "government-to-government." Was it another case of a candidate "shooting himself in the foot" as did George Romney with his complaint about being "brainwashed" by the incumbents or Gerald Ford's televised insistence that Poland wasn't under the heel of the Soviet Union?

We don't much think so. Whatever confusions resulted from the question-and-answer session in Los Angeles, Mr. Reagan made his position on Taiwan clear in the statement he read at the outset. Moreover, it is a respectable and responsible position, one that expresses a tenet of the Reagan philosophy that he has no reason to jettison.

Mr. Reagan said clearly that he supports the present U.S. law that addresses U.S.-Taiwan relations. The prescriptions of that law about how the U.S. conducts its business with Taiwan could hardly be anything other than "official," since they are the law of the land. He was critical of the Carter administration for seemingly going out of its way to embarrass a country that has been a showcase of the type of economic development we profess to believe in. It is a developing nation that borrowed external capital, invested it wisely and is building a better life for its citizens than is available in most other countries in Asia. Mr. Reagan's fundamental position is that Taiwan should be treated with consideration and respect and that we should not be cowed by the fear that Peking might be annoyed at American self-assertiveness.

None of this requires the U.S. to sunder its strategically important and growing entente with Peking. It would merely make it clear to Peking that the U.S. adheres to certain principles that do not evaporate when a former adversary makes friendly overtures. Mr. Bush may not have had great success in selling this in Peking, but, considering how easy a time China's rulers have had with Mr. Carter, why would anyone expect him to get a hearty welcome?

The semantic tangle that Mr. Reagan found himself in yesterday was the sort of thing that can prove embarrassing to a candidate. The important thing, however, is whether the candidate is right on the substantive issue and we find the Reagan position more attractive than that of Mr. Carter.●

LACKAWANNA, N.Y., MAN LEADS AMERICAN LEGION

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. NOWAK. Mr. Speaker, it is a distinct pleasure to bring to my colleagues' attention the election of Michael J. Kogutek of Lackawanna, N.Y., as the new national commander of the American Legion.

Mike is a long-time friend and resident of the 37th Congressional District of New York, which I am privileged to represent.

In addition to his more than three decades' membership in the American Legion, Mike has been an active leader in a variety of community endeavors. I am confident that the dedication he has exhibited in the past will serve him well as he embarks on his new duties as national commander.

In the months ahead, I am sure that we will be hearing from Mike as he sets his course toward insuring that the most equitable job, educational and health benefits are available for the veterans who have served our Nation so diligently.

Certainly, I know I share the views of my fellow western New Yorkers in expressing pride that we have a native son leading this effort and in wishing him well in this vital work.

At this point, I insert in the RECORD copies of local newspaper articles reporting on Mike Kogutek's achievement:

[From the Buffalo Evening News, Aug. 21, 1980]

LEGONNAIRES ELECT WNYER AS LEADER

(By Peter Simon)

Michael J. Kogutek of Lackawanna today was elected national commander of the 2.6 million-member American Legion, fulfilling a goal he has worked for since 1968.

Mr. Kogutek was chosen by acclamation at the American Legon's national convention today in Boston an hour after President Carter gave the keynote speech to the delegates.

A plant manager at Buffalo Brake Beam Co., Mr. Kogutek said the organization will take strong stands on national and international issues and seek to regain a leadership role in American politics.

"It is time for the American Legion to be heard once again in the halls of Congress and for its influence to be felt in the White House," he said during his campaign.

Mr. Kogutek said he plans to take a one-year leave from his job and spend a considerable amount of time at the Legion's headquarters in Indianapolis and its offices in Washington.

He also will travel extensively to talk about "Americanism."

Mr. Kogutek, 54, is a former police officer and commissioner of public works for the City of Lackawanna. He also was a past president of the Lackawanna Chamber of Commerce and the Central Railway Club of Buffalo and the 1977 recipient of the Am-Pol Eagle's citizen-of-the-year award.

In 1968, he was named state commander of the American Legion. It was then he decided to one day seek the national commander post. During his year as state commander, membership reached a new high, and Mr. Kogutek acquired a reputation as a aggressive spokesman for Legion platforms.

He is a Republican committeeman and supports the presidential bid of Ronald Reagan. Mr. Kogutek became a charter member of the Matthew Glab Post 1477, American Legion, 34 years ago and was Erie County commander 16 years ago.

[From the Buffalo Evening News, Aug. 22, 1980]

KOGUTEK ACHIEVES LEGION PINNACLE

(By Peter Simon)

After 34 years as a member of the American Legion, Michael J. Kogutek of Lackawanna has reached the pinnacle of success in the organization.

He was elected national commander Thursday at the group's convention in Boston, and became the first Western New Yorker to hold that post in the American Legion's 62-year history.

The election culminated two years of active campaigning, so Mr. Kogutek took a few hours to relax and enjoy the big day.

His wife Dorothy and their two children, Michael and Sharon, looked on proudly as Mr. Kogutek accepted the personal congratulations of President Carter.

Anthony Druzbik Jr., commander of the Legion's Buffalo district and a friend of Mr. Kogutek, presented the colors at the election session.

His job now, Mr. Kogutek said, is to put into practice his strong views on the role of the American Legion.

"I'm going to try to recruit a larger membership, and we're going to zero in especially on Vietnam veterans," said the president of the 2.6-million-member group.

"We're going to let Congress know how strong we are, and we have to reach some of the younger congressmen who know very little about our organization," Mr. Kogutek added.

"We'll work to preserve existing veterans' benefits and to get some new ones—particularly in the area of jobs and education," he added.

Mr. Kogutek said the American Legion will continue to press for a strong defense system, American support for Taiwan and South Korea, and improved pay for servicemen.

Mr. Kogutek said he will travel to Asia in December "to check on those bases out there." Also in the works is a visit to American servicemen in Europe and extensive traveling in the United States.

"And I will be seeing the president again Sept. 24 in the White House to present him with copies of the platform we adopted at the convention," he said.

Mr. Kogutek, a Republican committeeman and former Lackawanna commissioner of public works, said he will stay away from partisan politics.

"No longer do I have the luxury of supporting one candidate or another," he said.

[From the Buffalo Courier-Express, August 23, 1980]

NEW COMMANDER SEES NATIONAL ROLE OF LEGION GROWING

(By Daniel S. Parker)

Michael J. Kogutek, 54, joined the ranks of Hamilton Fish, the late Theodore Roosevelt Jr., and Maurice Stember when he became the fourth New York Legionnaire to attain the organization's highest position.

Kogutek, of 61 Leonard St., Lackawanna, was elected National Commander by acclamation at the American Legion's 62nd annual convention Thursday.

Returning from the convention at Greater Buffalo International Airport Friday, Kogutek—who will direct the 2.6 million member group—said he was "thrilled and ecstatic" with the honor, but said there is a lot of work ahead.

A veteran of the U.S. Navy with service in the South Pacific during World War II, Kogutek has taken a one-year leave from his job as plant manager of the Buffalo Beam Co. in Lackawanna.

"The role of the Legion in the 1980s will become more important," Kogutek said Friday, "because of our past advocation of a strong defense. Now our defense has deteriorated and the American Legion must insist that the White House and Congress institute new defense plans."

He said the Legion will ask Congress not to enact the SALT II Treaty "until it is properly amended so that the U.S. can have a definite accounting of Soviet build-up."

Kogutek, who met with the three major presidential candidates when they visited the Legion convention in Boston this past week, already plans to meet with President Carter in September.

After testifying before the Senate and House Veteran's Affairs Committees on Sept. 22-23, Kogutek will meet with President Carter in the White House on Sept. 24 to present him with the resolutions just adopted by the Legion convention.

Although the Legion doesn't endorse political candidates, Kogutek, noted, the organization encourages its members to "play an important part in the campaigns of candidates, especially those who are helpful to the American Legion's concerns."

Hoping to boost membership to 3 million, Kogutek stressed the importance of membership, saying, "we need more clout."

During his one-year term, Kogutek, a 34-year member of the Legion, hopes to maintain the Veteran's Administration hospital system and prevent it from becoming "party of a national insurance system."

He also plans to strengthen the Legion's youth operation such as its baseball, Boy's Nation, oratorical and, any essay programs, so "the youth of today are better equipped to handle themselves as adults."

Prior to his election Thursday, Kogutek has a longstanding association with the Legion. He joined the Matthew Glab Post 1477 in Lackawanna in 1946. In 1964 he was elected Erie County Legion commander. He became district commander for the eight Western New York communities in 1968.

Kogutek, when asked about the strike in Poland, said, "The Legion has not taken a position on it and I no longer have the luxury of commenting on it."●

FINANCIAL INTEGRITY ACT

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. HYDE. Mr. Speaker, Federal agencies and the programs they administer have succumbed to a debilitating ailment that costs the taxpayers literally billions of dollars every year. This costly ailment has three names—waste, fraud, and abuse.

Because these three culprits are so commonplace, they no longer excite much anger—they have become accepted practice.

The GAO conducted an extensive study and reported a total of 130,000 cases of fraud and other illegal acts against 21 major agencies in the 2½ years ending March 31, 1979. GAO stated that poor internal controls are the No. 1 problem in Federal Government agencies. Knowing the source of the problem is half the battle.

With a sense of urgency pervading Congress to cut Federal spending and reduce inflation, this body would be irresponsible if it did not implement legislation to correct the identified problem.

I have introduced H.R. 8006 on August 22 identical to S. 3026 introduced on August 6 by Senators EAGLETON, PERCY, and MATHIAS, designed to strengthen the internal accounting and administrative controls maintained by Federal agencies.

Basically, this legislation will require each Federal agency to maintain effective systems of internal accounting and administrative control as an integral part of its management practices. The systems shall be evaluated on an ongoing basis and when detected, weaknesses must be promptly corrected. All levels of management of the agencies must involve themselves in assessing and strengthening the systems of internal accounting and administrative control to minimize fraud, errors, abuse, and waste of Government funds.

The head of each agency would be required to report on their systems by December 31 of each year. The reports are to be addressed to the President and made available to Congress and the public. The format for these reports and guidelines for performing control evaluations are to be established by GAO and OMB.

The bill I have introduced will not solve all the problems of fraud, waste, and abuse, but it will bring pressure to bear upon those responsible for the accountability of every single tax dollar appropriated to that agency by this body.

We rightfully express concern about cutting programs and services that have proven useful, but perhaps some of these programs can be retained if we eliminate waste and fraud wherever possible. One giant step in this direction is to affix responsibility in each agency, increase oversight and stewardship over the spending of our constituents hard earned tax dollars and install a degree of professional administration that has been sadly lacking.

I am hopeful the House will act promptly on this measure. By doing so, we will demonstrate our commitment to tightening the reins on Government spending and making federally funded programs more responsive to the needs of the people they are intended to help.●

FARM LABOR CONTRACTOR REGISTRATION BILL

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. GOODLING. Mr. Speaker, I am introducing a bill to clarify the Farm Labor Contractor Registration Act (FLCRA). The purpose of this bill is to focus the Labor Department's implementation of this act on the protection of migrant workers from abuses by crew leaders. That is what Congress intended in 1963 when the act was originally passed and again in 1974 when the act was substantially amended.

When I say this bill would clarify the act, I am referring to interpretations by the Department of Labor of certain ambiguities in the statute's wording that have resulted in applications beyond all reasonable and rational expectations. As I said at hearings on this act in 1978, our problem is one of legislation which was written for one purpose and got expanded somewhere along the line.

The result of the Labor Department's interpretations has been unnecessary and unproductive harassment for many Pennsylvania fruit and vegetable farmers, mushroom growers, fruit and vegetable processors, and other agricultural employers.

I am inserting in the RECORD at the end of my remarks a letter from Mr. Charles C. Kingston of Musselman's Fruit Products Division, Biglerville, Pa., explaining the problems his company has encountered.

I have heard of additional problems with the FLCRA from the Pennsylvania Food Processors Association, from the American Mushroom Institute of Kennett Square, Pa., and from the Pennsylvania Farmers Association. In the 95th Congress, the jurisdiction over this act was in the Subcommmittee on Economic Opportunity of the Committee on Education and Labor. At that time, I was the ranking minority member of the subcommittee.

We held hearings on the act in February 1978, and again in December 1978. We established in those hearings a clear record showing the need to clarify who is a farm labor contractor.

The Department of Labor says for the purposes of the FLCRA, any em-

ployee in agriculture and many processing plant employees are migrant workers, regardless of whether they are permanent, local, transient, seasonal, or otherwise or whether they return home overnight or not. Such an interpretation is a far stretch from what we intended. This bill defines the term "migrant worker" to mean migrant worker, including the day-haul worker.

This bill would also clarify the definition of farm labor contractor so that it does not include farmers or other fixed-base agricultural employers, or their full time or regular employees, or farmer cooperatives. This is consistent with the amendments to the act in 1974 when we explicitly intended farmers and other agricultural employers and cooperatives and their employees not to be regulated under this act as farm labor contractors or crew leaders. It is due to the interpretations of the Labor Department that the Department is now trying to implement the law contrary to our intent.

This bill is identical in substance to an amendment adopted recently in the Senate. The Senate amendment is title III of the child nutrition bill, H.R. 7664, as passed by the other body.

We will soon be going to conference on H.R. 7664. Although the Senate amendment is a nongermane rider, I do believe it responds to the problem and should be adopted by the House conferees.

I insert in the RECORD at this point a copy of the bill and a section-by-section analysis of it.

MUSSELMAN FRUIT PRODUCTS DIVISION,
Biglerville, Pa., Nov. 12, 1979.

Listed below are the problems encountered by this company when we comply with the registration requirements under the Farm Labor Contractor Registration Act.

Proponents of the 1974 amendments to the act, as interpreted by the Department of Labor, will say that registration is simply an administrative act. It, in reality, involves much more than that.

1. We had to fill out the required forms to apply for the crew leader license. This was relatively simple. A single page notorized form was all that was required. However, information given on the form, i.e. that we would recruit, hire, furnish, transport and house migrant workers while acting as a crew leader, necessitated much more paperwork.

2. Our operation is such that in all cases our year-round farm employees supervise our picking crew. Many of our labor camps are not within walking distance of the orchard where the individual crews are working. Therefore, these year-round employees must transport these workers to and from work in company owned vehicles. Because they perform this activity, it is necessary to have them certified as crew leader employees by the Department of Labor. In 1978, we registered eight employees and in 1979 the figure was up to ten. Each of these people had to submit a physician's report evidencing good health and this must be resubmitted to the department every three years. Of course, these physical examinations are at company expense.

3. Each of these individuals had to be fingerprinted by the state police. At least four of these employees had to be fingerprinted more than one time and two were asked four times to return to the Penna. State Police barracks to be fingerprinted. The Dept. of Labor said the prints were illegible and could not be checked properly. These men were not suspected of having committed any criminal act and therefore considered this to be harassment.

4. All vehicles used to transport seasonal farm employees were required to be inspected according to a Dept. of Labor inspection form, regardless of the fact that all these vehicles are inspected semiannually as required by the state of Penna. Motor Vehicle Law, and each of the vehicles used to transport workers had a current inspection sticker in force. The inspection requirements for Penna., and for the Dept. of Labor do not vary very much. Vehicle inspection for FLCRA must be done every year and of course is simply an unnecessary expense.

5. A statement showing that we have adequate insurance had to be submitted with the application. This presented no problem, other than having to put the required information on the accepted department form. This information had to come from our corporate office in St. Louis.

6. We had to attach to the application packet a narrative summary of our migrant housing indicating type of construction, capacity, location and evidence of being approved housing under the various inspection authorities—i.e. OSHA and the Pa. Dept. of Environmental Resources. We have nine camps in Pennsylvania and one in West Virginia. Also included with the packet was a letter to the department certifying that the housing described does meet applicable state and federal safety and health standards.

In the event that we used an already-licensed crew leader as one of the people operating our camps, it was necessary to send to him, before he left home, a special housing form certifying that the camps which he would be occupying while with us meet all existing federal and state safety and health standards.

7. Prior to the crews leaving their home state, the department requires that the crew leader gives each employee a statement showing area of employment, type of work, transportation, housing and insurance given to the employee, wage rates, charges made for crew leader services, period of employment, any existing labor disputes and the name and address of the contractor. This information had to be furnished in English and Spanish. This was done with much difficulty in our case since we employ 180 to 200 workers each year coming from several different areas in the South.

8. The Crew Leader Registration Act requires that the contractor shall refrain from recruiting, employing or utilizing with knowledge the services of any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment. The act further stipulated that the contractor must make an affirmative showing of a bonafide inquiry of each prospective employee's status as a U.S. citizen. This, in effect, means that for every employee that the registered crew leader hires he must question each and every one of them regarding their status as a citizen or non-citizen of this country. In addition, they must see acceptable evidence of U.S. citizenship from each and every person—that is a birth certificate or a certificate of citizenship or a certificate of naturalization. If these are not available, then the employer—the crew leader—must see a U.S. identification card from the I.N.S. showing that this individual is legally admitted to the United States. In effect what this does is make the crew leader solely responsible for the legality of each and every one of his people. When employing 180 to 200 employees, this is a very difficult task at best. It is also the only law in the books in the U.S. that requires any employer to do this.

While the foregoing did not necessitate a tremendous expenditure of money, it did take up an awfully lot of time on some person's part preparing the documents required for this application. Having the application filled out, receiving the necessary cards, etc. has not changed our operation one bit. We are not doing anything now as registered crew leaders that we did not do prior to becoming registered.

Sincerely,

CHARLES C. KINGSTON.

H. R. 8026

A bill to amend the Farm Labor Contractor Registration Act of 1963

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1980".

SEC. 2. Section 3(b)(2) of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2042(b)(2)) is amended—

(1) by striking out "personally", and

(2) by striking out "his" and inserting in lieu thereof "such person's".

SEC. 3. Section 3(b)(3) of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2042(b)(3)) is amended by striking out "on no more than an incidental basis".

SEC. 4. (a) Section 3(b) of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2042(b)) is amended by adding at the end thereof the following:

"(11) any nonprofit or cooperative association of farmers, growers, or ranchers, duly incorporated and qualified under the nonprofit association or farmer cooperative statutes of a State, and operated solely for the mutual benefit of the members thereof, and any fulltime or regular employee of such association or cooperative who engages in such activity solely for his or her employer.".

(b) Section 3(b) of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2042(b)) is amended—

(1) by strking out "or" after the semicolon in paragraph (9), and

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; or".

SEC. 5. Section 3 of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2042) is amended by adding at the end thereof the following:

"(h) The term 'for such person's own operation' refers to the operations of a person as a farmer, processor, canner, ginner, packing shed operator, or nurseryman, and includes all activities by such person or such person's employees with respect to the agricultural or horticultural commodities which are or will be the subject of or diverted from such operations, and regardless of whether such person has title to such commodities at the time such operations or activities are performed.

"(i) The term 'regular employee' includes an employee who is employed on a seasonal or part-time basis by any person referred to in subsection (b)(1) or subsection (b)(2) of this section.".

SEC. 6. Subsection 3(d) of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2042(d)) is amended by inserting ", on a farm or ranch" after "grading".

SEC. 7. Subsection 3(g) of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2042(g)) is amended to read as follows:

"(g) The term 'migrant worker' means an individual engaged on a farm or ranch, on a seasonal or other temporary basis, in agricultural employment who cannot regularly return to his or her domicile each day after working hours, or who is transported from and to his or her domicile each workday by the person who recruits, solicits, hires, or furnishes such worker for agricultural employment on a farm or ranch owned or operated by another person.".

SECTION-BY-SECTION ANALYSIS OF FLCRA BILL

1. Title: The Farm Labor Contractor Registration Act Amendments of 1980.

2. Section 2 strikes the word "personally" and substitutes "such person's" for the word "his" in subsection 3(b)(2) of the Act. Subsection 3(b)(2) excludes farmers, processors, canners, ginners, packing shed operators, and nurserymen from the definition of "farm labor contractor," subject to certain limitations. The changes clarify subsection 3(b)(2) so that the listed businesses are excluded regardless of their form of doing business, including operating as an individual, corporation, partnership, association, joint stock company, or trust. This clarification reflects the interpretation adopted by the Ninth Circuit in *Marshall v. Green Goddess Avocado Corp.*, and by federal district courts in *Espinoza v. Stokely-VanCamp* and *Cantu v. Owatonna Canning Co., Inc.*

3. Section 3 deletes the phrase "on no more than an incidental basis" in subsection 3(b)(3) of the Act. Subsection 3(b)(3) excludes from the definition of "farm labor contractor" any full-time or regular employee of an entity listed in subsections 3(b)(1) or (2) if the employee engages in farm labor contracting activities solely for his employer "on no more than an incidental basis." The ambiguity of the phrase "on no more than an incidental basis" has resulted in much controversy and disagreement about how the Act should be implemented.

The Secrctary of Labor told 52 Senators in a letter on November 26, 1979, that the phrase should be interpreted to mean no more than 20 percent of an employee's time. This interpretation is still vague and subject to different interpretations, as well as creating much difficulty in implementation. It also results in a situation where an employer is excluded from registration, but not the employee. As a matter of fairness and public administrative policy, many feel that in those situations in which the Act has excluded the employer from registration, his employee should be excluded as well.

Striking the phrase "on no more than an incidental basis" resolves these problems. Some have expressed concern that striking the phrase opens a loophole by allowing a crew leader to escape regulation by becoming a full-time or regular employee of an exempt employer. This fear is answered by the fact that an employer may be held liable for the actions of an employee. If an employee abuses a migrant worker, the employer may be held responsible under the Fair Labor Standards Act, the Wagner-Peyser Act, and numerous other statutes. The change is consistent with the original Congressional intent of the Act that a person, either an employer or an employee, is required to register under the Act if he supplies migrant workers for another operation or employer.

4. Section 4 creates a new subsection 3(b)(11) in the Act which excludes cooperative associations of farmers, growers or ranchers from the definition of "farm labor contractor."

5. Section 5 creates two new subsections, 3(h) and 3(i), which would provide as follows:

a. Subsection 3(h) defines the term "for such person's own operation", which is found in subsection 3(b)(2) (as amended by this bill). Subsection 3(b)(2) currently states that an employer is excluded from the definition of "farm labor contractor" if he supplies migrant workers "solely for his own operation." Congress added this phrase to ensure that a crew leader would not evade regulation under the Act by claiming also to be a farmer. However, the Labor Department has gone beyond Congressional intent by saying that an employer cannot be engaged "solely for his own operation" if he does not have title to the commodity. The new subsection 3(h) clarifies Congressional intent so that an employer can act solely "for such person's own operation" regardless of whether he has title to the commodity. This relates to the numerous situations throughout agriculture, including the livestock, cotton, citrus, fruit and vegetable industries, where a producer or processor performs an activity pursuant to his own operation, but does not have title to the commodity. Encompassed by the term "such person's own operation" are all activities by a person with respect to commodities which are or will be the subject of or diverted from his operation. For example, when a canner harvests a crop destined for his cannery, he is engaged in activities for his own operation, regardless of when title to the crop is deemed to pass. Under some circumstances, external blemishes resulting from causes such as insects, weather conditions, or cultural practices often render a grower's crop, or part of his crop, better suited for processing than for shipment in fresh form. For that reason, packing sheds often find it necessary to make advance commitments to handle a quantity large enough to provide reasonable assurance of an adequate supply which will be blemish free and suitable for shipment in fresh form when the crop matures. Then, at harvest time, as a part of his own operation, the packing shed selects the crops best suited for fresh shipment and takes those to its packing shed to be packed. The other crops, which are found to be best suited for processing, are diverted for delivery to processors for processing. The amendment would make clear that when a packing shed or its employees are engaged in the cultivation, harvesting, or handling of a crop so diverted, those activities are regarded as "for such person's own operation."

b. Subsection 3(i) defines the term "regular employee," found in subsection 3(b)(3) of the Act, to include any seasonal or part-time employee of an entity in 3(b)(1) or (2). The purpose is to state explicitly that, for example, a foreman, who in many agricultural sectors is employed on a seasonal basis, is excluded from the definition of "farm labor contractor," if he meets the other limitations of 3(b)(3).

6. Section 6 amends Section 3(d) of the Act to clarify Congressional intent in the definition of "agricultural employment." The amendment makes clear that the inclusion in the definition of "agricultural employment" of "handling, planting, drying, packing, packaging, processing, freezing, or grading" refers to those operations that are done on the farm or ranch. This is consistent with the references in the definitions of "agricultural employment" and "migrant worker" to agriculture as defined in the Fair Labor Standards Act and agricultural labor as defined in the Internal Revenue Code. Those two statutes have long been held to differentiate clearly between an operation on the farm and an operation in a plant or business away from the farm.

7. Section 7 is a new definition of the term "migrant worker" in subsection 3(g) of the Act. This definition reflects the underlying purpose of the Act: the protection of the true migrant agricultural worker. An agricultural worker whose domicile is on or near a farm, and who never comes in contact with a true labor contractor, does not need the Act's protections. The new definition covers the actual migrant worker as well as the "day-haul" worker.●

WE ARE BURYING OURSELVES

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. DERWINSKI. Mr. Speaker, I direct the attention of the Members to a very penetrating article by John Battistella, a distinguished journalist writing in the Suburban Life Citizen, serving Cook County, Ill. In his column of Wednesday, August 20, Mr. Battistella discusses several important domestic as well as foreign policy decisions that this country has made in error. Mr. Battistella's astute observations follow at this point:

NIKITA ERRED ABOUT BURYING U.S.

While at the zenith of his career as premier of the Soviet Union, Nikita Krushchev said Russia "would bury the U.S."

How wrong he was.

We are burying ourselves * * * in a grave lined with decadence; marked by indigestion; brought on by unparalleled bounties; compounded by greed, corruption, mistrust and growing incompetence; much of it nurtured by decades of boasting.

How can one explain, for example, that a nation of 200 million supposedly intelligent people finds itself in a position to choose the next president not because of who is the best but rather according to who is not the worst.

Some media commentators say there are plenty of good men in commerce and industry to occupy the White House but that they are not interested in the presidency.

If this is true, how does one explain the troubled waters business and industry are trying to navigate, not a little of it attributable to foreign competition?

Detroit, for example, finds itself in a mess with drastically lower sales and corresponding layoffs.

The Motor City likes to tell the world that it invented mass production, but foreign competitors are beating Detroit at its own game.

Like Zenith Corp., Detroit is complaining of unfair foreign competition. But for decades our political and academic leaders have been telling us that free enterprise thrives on competition.

Were this true of our economy, it would be flourishing instead of wallowing in a growing morass of diminishing sales and an increasing army of unemployed.

There was a time when we boasted of our technological and industrial prowess, attributing much of it to Yankee ingenuity and know-how.

We are still being reminded of our technological "supremacy" but qualify it with lamentations of selling sophisticated technological equipment to Russia, the acknowledged potential adversary if hostilities break out.

Yet Washington, although at increasingly longer intervals, continues to tell the world

that we are the most powerful nation on earth.

Whatever happened to Teddy Roosevelt's injunction, "Speak softly but carry a big stick?"

Proponents of our public education, especially elementary and high school, for decades have been singing its praises. "Quality education" they call it. Yet college and university officials are appalled at the academic level of many students wanting to venture into higher education.

How can educators and publishers justify using some textbooks with several pages devoted to the late Marilyn Monroe, but not a line about the assassination of President John F. Kennedy, or the resignation of Richard Nixon?

Teen-age pregnancies are soaring in the wake of years of sex education beginning in the elementary schools.

Then there is the American Civil Liberties Union which spends much of its time and efforts defending our rights. But we do not have an American Civil Duties Union. Is not one needed?

Free speech and expression and all other "reasonable rights" are in the U.S. Constitution. But aren't we paying a frightful price by permitting lobbyists to function under the protection of this freedom? Registering them does not curb them.

Free speech and a free press are among the sturdiest pillars of our society. But isn't lobbying and all its ugly forms and money behind it an abuse of the intent of free speech?

Freedom interpreted literally implies that it is there for anyone to have if one so chooses. But do we not owe as much to freedom as we expect from it?

It is the abuse of these privileges which we have come to accept as God-given rights.

Increasingly, rights all too often are wronged.●

AS FAMINE SPREADS IN EAST AFRICA, CONGRESS SHUTS THE U.S. LARDER

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. CONTE. Mr. Speaker, this year we have been witness to an abundance of brilliant publications on the state of the world economy, the environment, and the international political order. The Brandt Commission supplies us with clearly delineated goals for a peaceful and prosperous planet, chief among which was to achieve consensus and cooperation in the North-South Dialog. The Presidential Commission on World Hunger advocated solutions to the problems of hunger and malnutrition which daily confront four-fifths of the worlds population. Global 2000, provided startling projections of our future should we continue on our current collision course with the Earths' biological and ecological systems.

A common denominator in each of these reports was the highlighting of the issue of world hunger and underscoring the importance of solutions to this problem. However, major impediments remain in achieving the lofty objective of assuring that man's most basic right—the right to food—is met. The following article by Kenneth Schlossberg, which appeared in the Los Angeles Times, points out some of these major constraints, an admonition which Congress should in fact heed.

AS FAMINE SPREADS IN EAST AFRICA, CONGRESS SHUTS THE U.S. LARDER

For the past year and a half, a presidential commission on world hunger has been trying to find ways for the world to eliminate hunger and famine. The commission concluded that although massive famines have occurred throughout history, "acute international concern and improved emergency relief mechanisms have done much to reduce the scale of starvation caused by civil strife as well as natural disaster."

Yet, even as the commission was concluding its final session June 16, a famine situation had developed in the Somalia region of East Africa that may rival in its horrible consequences what the world has recently witnessed in Southeast Asia.

Moreover, while this tragedy has been unfolding, the American food-aid program—Food for Peace—has been paralyzed by the congressional battle to achieve a balanced budget. Whether the budget will actually be balanced a year from now is dubious. What is almost certain is that thousands of Africans will die because our country, the greatest food producer on earth, could not act in time to send 35,000 tons of food required during the last month.

The best description of the dimension of the crisis came last March in testimony by the Committee for Somali Refugee Relief before the U.S. Senate subcommittee on African affairs. At that time, it was estimated that there were 614,000 refugees in camps throughout Somalia and an additional 700,000 refugees roaming the interior of the country.

Most of the refugees are ethnic Somali although some 200,000 are from southern Ethiopia. Somalia and Ethiopia have been engaged in a long struggle for control of the Ogaden desert area; Ethiopia has generally gained the upper hand, hence the flight of the Somali.

The Department of State reports that 90 percent of the refugees in camps are women and children. Late last year, a U.S. mission to Somalia estimated that 153,000 children under age 6 were in the camps, and 60 percent of the total camp population is under 15 years of age.

The U.N. mission also reported that among children under 6, 60 percent had gland enlargement, including tuberculosis; 54 percent had acute purulent rhinitis; 30 percent had acute purulent ear infection; 26 percent had lung disease, including TB; 18 percent had diarrheal disease and 11 percent suffered from vomiting.

Malnutrition is, of course, rampant and, as usual, strikes hardest at young children, who are the least able to fight for available food, and at women, who are prepared to sacrifice the most so their children may survive. The ideal daily ration should be 100 grams of rice, 200 grams of millet or sorghum, 60 grams of sugar, 60 grams of oil, 100 grams of bread, 60 grams of powdered milk and a minimal amount of tea.

The actual daily ration is as little as one-third of that. All food must be brought in by trucks; there are no storage facilities in the camps. Frequently, a 10-day reserve supply is destroyed by heavy rains, which also render the roads impassable.

Dr. Kevin M. Cahill, director of the tropical disease center at Lenox Hill Hospital in New York, has had a long interest in Somalia and visited that country the same time as the U.N. mission. Cahill reported that epidemics of disease, such as cholera, are an imminent danger and "are associated with the virtual absence of safe drinking water, the lack of sanitary facilities, the ease with which infectious diseases spread among malnourished people, and the prevalence of insect-borne diseases."

At the time of Cahill's visit, there was no immunization program of any kind against polio, measles, diphtheria, cholera or malaria. There were no storage facilities for vaccine or medicines, and very few doctors. In one camp of 34,000, there was one French doctor, one Somali doctor and two nurses. In another camp of 34,000 people, there was one Somali doctor and 2,000 people had died in one week.

These conditions are not the result of unconcern by the Somali government. In a Congressional Record statement, Sen. George McGovern (D-S.D.), chairman of the African affairs subcommittee, said: "Unlike Southeast Asia, where some unwilling host governments literally pushed refugees back across borders or out into the sea, the Somali government has sought to accommodate refugees to the greatest degree possible. Since many of these refugees are ethnic Somali, the government has contributed up to $15 million for their care—even though Somalia has serious problems of growing debt and dwindling reserves of foreign exchange."

Somalia is about the size of Texas but, unfortunately, not nearly as well-off. It has an annual per capita income of $70. Its normal population is 3.4 million to 4 million people, 60 percent of whom are nomadic. It is also a net importer of food, normally importing one-fourth of the food supply used by its normal population. Due to a severe drought in the region, local food production is down significantly.

Based on the gravity of the situation, Dr. Jean Mayer, president of Tufts University in Boston and, as an internationally renowned nutritionist, vice chairman of the presidential commission on world hunger, wrote Congressional leaders in May, pointing out that the U.N. team which surveyed refugee needs in Somalia last December estimated that 160,000 tons of food would be required during the calendar year 1980. Of this amount, only 90,000 tons had been firmly pledged—73 percent by the United States.

"The date will soon pass when it will be possible to arrange for food shipments to reach Somalia in time to avert serious shortages," Mayer said. "Also, the total amounts now under consideration by other donors would cover only one-half of the additional 70,000 tons required for the rest of this year.

"Meanwhile, AID's Food For Peace Title II program is out of money . . . it now appears certain that thousands of people will begin to die of starvation."

Despite the urgency of this plea, a supplemental appropriation remained bottled up in Congress while the battle over the balanced budget resolution took place from mid-May until the first week in July. No food moved during this time period. While the budget was being balanced, the bellies were going empty.

The cause of this paralysis in American food aid is cited in the report of the presidential commission. As one of its recommendations on food aid, it proposed that Congress reinstate the "borrowing authority" of the Commodity Credit Corporation, since revised procedures adopted by Congress limit borrowing of currently appropriated funds. This eliminated the flexibility when special circumstances required urgent or extraordinary measures to provide food aid.

If nothing else comes of the commission's report, implementation of this recommendation would have been well worth the time and effort that went into it. If this flexibility is restored to our food aid effort, then once again we would be able to move with the speed that imminent starvation requires.

Most Americans probably would support such a change. Certainly when it comes to our own fellow citizens, we didn't let the budget issue stand in the way of meeting basic human needs. At the same time foreign food aid was caught in the budget battle, our domestic food stamp program was also running out of money. But it was exempted from the budget process so that our own hungry poor wouldn't suffer food shortages.

Perhaps the difference in the response is that there exists a political constituency and myriad watchdog groups to fight for food aid at home, while the hungry overseas go almost unrepresented—unless the world and national media raises a hue and cry about their plight.

What we need is a permanent, independent but government-funded commission to keep our own country's and other nations' feet to the fire on the hunger issue. We have a model in the U.S. Commission on Civil Rights, which annually oversees our progress in this area, holds public hearings and issues annual reports. If such a permanent U.S. commission on world hunger existed, it could quickly bring the public spotlight to bear on a potential tragedy.

This problem is going to get worse before it gets better. According to a final conclusion of the commission report, "A major crisis of global food supply—of even more serious dimensions than the present energy crisis—appears likely within the next 20 years, unless steps taken now to facilitate a significant increase in food production in the developing nations. Such a crisis would have grave implications for all nations, including the United States; but those nations with the largest numbers of hungry people would suffer the most."●

PROBLEM OF ACID RAIN

HON. DONALD J. MITCHELL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. MITCHELL of New York. Mr. Speaker, I know that many of my colleagues in the House of Representatives—especially those in the Northeast—share my concern about the perplexing problem of acid rain. An August 6, 1980, editorial from the Evening Telegram of Herkimer, N.Y., forcefully articulates the growing concern for this issue among many residents of the Northeast:

ACID RAIN EFFECTS TOO DEVASTATING

The acid rain problem is one environmental difficulty demanding action. If it is not forced by complaints from the Northeast, particularly plagued by this type of fallout, it will be by Canada, which is also suffering from the impact.

The source of the pollution is the Ohio Valley, and it is caused primarily by coal-burning utility plants. In order to meet air standards, these plants simply built very high smokestacks, which carried sulphur fumes out of their own area and into the clouds, where they mingled with rain and have been coming down in the East as weak sulfuric acid.

There are ways of checking this at the source, without ceasing to burn coal. An expense is involved, but the present situation is causing such heavy losses that it would be more than offset. The acid has the effect of "sterilizing" lakes, particularly on high ground, as in the Adirondacks, killing not only fish, but all plant life and even insects on which they might feed.

In addition, this fallout damages forests, and has been blamed for many of the timber blights which have lately swept the Adirondacks, preying on trees weakened by the acid. Over a period of time, it also lessens the fertility of the soil, whether for growing timber or for farming.

The Northwest governors have repeatedly protested the situation, but have gotten nowhere, expecially because the use of coal instead of oil is being pushed as a conservation measure by the administration. However, if protests start coming from Canada, as they are expected to come soon, there is a little more prospect of action.

Environmental safeguards are basically not something being pushed by old ladies in tennis shoes. They have a definite economic basis, because when land and timber are destroyed the whole economy of the state suffers, just as the fishing industry suffers when oil spills or toxic chemicals kill fish or make them unfit to eat.

When something one state or group of states permits injures other states, it is time to put something ahead of pure states' rights. The rights of individuals end when they encroach on those of other people, and the same rule should apply in inter-state relations.

New York State and the rest of the Northeast should join to make sure that something is done, and there should not be much more delay. Much of the damage already done may be irretrievable.●

GOVERNOR REAGAN'S REMARKS ON THE TAIWAN RELATIONS ACT

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. LAGOMARSINO. Mr. Speaker, the recent attention to Governor Reagan's statements regarding his views of U.S. policy toward Taiwan seems to me to have overlooked the point that Governor Reagan so clearly made in his news conference statement August 25—the guiding principle for U.S. policy is the Taiwan Relations Act.

There was some discrepancy surrounding the Bush trip to China and statements made before he left and while he was there. But, I think Bush has excellent credibility with the Chinese from his past experience there. He also knows there are still points of disagreement with respect to some aspects of the overall United States-China policy. But the Reagan statement yesterday clears up any misunderstandings about what the U.S. position should be based on the Taiwan Relations Act mandated by the Congress. A careful and consistent implementation of that act is what is needed, something which the Carter administration has failed to do.

I urge my colleagues to consider carefully what Governor Reagan says about the Taiwan Relations Act and the importance of our relations with Taiwan and China.

The statement follows:

STATEMENT BY RONALD REAGAN

Ten days ago George Bush and I met with you here in Los Angeles on the occasion of his departure for Japan and China, a trip he undertook at my request. As we stressed at the time, the purpose of the trip was to provide for a candid exchange of views with leaders in both countries on a wide range of international topics of mutual interest. Ambassador Bush returned last evening, and has reported his findings in detail.

We are both very pleased with the results of his extensive discussions. In a series of meetings with distinguished leaders in Japan, including Prime Minister Suzuki, Former Prime Ministers Fukuda, Kishi and Miki, Foreign Minister Itoh and Minister of International Trade and Industry Tanaka, he had the opportunity to hear their views and recommendations concerning the future of U.S.-Japanese relations.

Our Republican Party Platform stresses that Japan will remain a pillar of our policy for Asia, and a Reagan-Bush Administration will work hard to insure that U.S.-Japanese relations are maintained in excellent condition, based on close consultation and mutual understanding.

Japan's role in the process of insuring peace in Asia is a crucial one, and we must reinforce our ties with this close ally. Japan is our second most important trading partner, and we are her first. We have close ties in other fields, too. A most important example is the U.S.-Japan Mutual Security Treaty which recently marked its twentieth anniversary.

Understanding the Japanese perspective is important for the success of American policy. As Ambassador Bush will tell you in detail, he found Japanese leaders unanimous in their view that the United States must be a strong, reliable, leading partner.

I appreciate receiving their views, and I am grateful to them for the courtesies extended to Ambassador Bush. I would also like to express my appreciation to, and regard for, U.S. Ambassador Mike Mansfield, who also extended many courtesies.

Of equal importance was Ambassador Bush's trip to China, where he held a series of high-level meetings. As I said on August 16, "we have an obvious interest in developing our relationship with China, an interest that goes beyond trade and cultural ties. It is an interest that is fundamental to a Reagan-Bush Administration."

The meetings in Beijing provided for extensive exchanges of views. George has reported to me in great detail the points of similarity and agreement, as well as those of dissimilarity and disagreement. Since the objective of the trip was to have just such an exchange without necessarily reaching agreement, I believe that the objective was reached.

We now have received an updated, first-hand of China's views, and the Chinese leaders have heard our point of view.

While in Beijing, Ambassador Bush and Richard Allen met at length with Vice Premier Deng Xiaoping, Foreign Minister Huang Hua, as well as with other top foreign policy experts and military leaders. I appreciate the courtesies which the Chinese leaders extended to our party, and I also wish to thank U.S. Ambassador Leonard Woodcock for his kind assistance.

We now maintain full and friendly diplomatic relations with China. This relationship began only a few years ago, and it is one which we should develop and strengthen in the years ahead. It is a delicate relationship, and the Reagan-Bush Administration will handle it with care and respect, with due regard for our own vital interests in the world generally, and in the Pacific region specifically.

China and the United States have a common interest in maintaining peace so that our nations can grow and prosper. Our two-way trade has now reached approximately $3.5 billion annually, and China's program of modernization depends in a major way on Western and U.S. technology.

Along with many other nations, we and China share a deep concern about the pace and scale of the Soviet military buildup. Chinese leaders agree with Japanese leaders that the United States must be a strong and vigorous defender of the peace, and they specifically favor us bolstering our defenses and our alliances.

It is quite clear that we do not see eye to eye on Taiwan. Thus, this is an appropriate time for me to state our position on this subject.

I'm sure that the Chinese leaders would place no value on our relations with them if they thought we would break commitments to them if a stronger power were to demand it. Based on my long-standing conviction that America can provide leadership and command respect only if it keeps its commitments to its friends, large and small, a Reagan-Bush Administration would observe these five principles in dealing with the China situation.

GUIDING PRINCIPLES FOR THE FAR EAST

First, U.S.-Chinese relations are important to American as well as Chinese interests. Our partnership should be global and strategic. In seeking improved relations with the People's Republic of China, I would extend the hand of friendship to all Chinese. In continuing our relations, which date from the historic opening created by President Nixon, I would continue the process of expanding trade, scientific and cultural ties.

Second, I pledge to work for peace, stability and the economic growth of the Western Pacific area in cooperation with Japan, the People's Republic of China and Republic of Korea and Taiwan.

Third, I will cooperate and consult with all countries of the area in a mutual effort to stand firm against aggression or search for hegemony which threatens the peace and stability of the area.

Fourth, I intend that United States relations with Taiwan will develop in accordance with the law of our land, the Taiwan Relations Act. This legislation is the product of our democratic process, and is designed to remedy the defects of the totally inadequate legislation proposed by Jimmy Carter.

By accepting China's three conditions for "normalization," Jimmy Carter made concessions that Presidents Nixon and Ford had steadfastly refused to make. I was and am critical of his decision because I believe he made concessions that were not necessary and not in our national interest. I felt that a condition of normalization—by itself a sound policy choice—should have been the retention of a liaison office on Taiwan of equivalent status to the one which we had earlier established in Beijing. With a persistent and principled negotiating position, I believe that normalization could ultimately have been achieved on this basis. But that is behind us now. My present concern is to safeguard the interests of the United States and to enforce the law of the land.

It was the timely action of the Congress, reflecting the strong support of the American people for Taiwan, that forced the changes in the inadequate bill which Mr. Carter proposed. Clearly, the Congress was unwilling to buy the Carter plan, which it believed would have jeopardized Taiwan's security.

This Act, designed by the Congress to provide adequate safeguards for Taiwan's security and well-being, also provides the official basis for our relations with our long-time friend and ally. It declares our official policy to be one of maintaining peace and promoting extensive, close, and friendly relations between the United States and the seventeen million people on Taiwan as well as the one billion people on the China mainland. It specifies that our official policy considers any effort to determine the future of Taiwan by other than peaceful means a threat to peace and of "grave concern" to the United States.

And, most important, it spells out our policy of providing defensive weapons to Taiwan and mandates the United States to maintain the means to "resist any resort to force or other forms or coercion" which threaten the security or the social or economic system of Taiwan. This Act further spells out, in great detail, how the President of the United States, our highest elected official, shall conduct relations with Taiwan, leaving to his discretion the specific methods of achieving policy objectives.

The Act further details how our official personnel (including diplomats) are to administer United States relations with Taiwan through the American Institute in Taiwan. It specifies that for that purpose they are to resign for the term of their duty in Taiwan and then be reinstated to their former agencies of the U.S. government with no loss of status, seniority or pension rights.

The intent of the Congress is crystal clear. Our official relations with Taiwan will be funded by Congress with public monies, the expenditure of which will be audited by the Comptroller General of the United States; and Congressional oversight will be performed by two standing Committees of the Congress.

You might ask what I would do differently. I would not pretend, as Carter does, that the relationship we now have with Taiwan, enacted by our Congress, is not official.

I am satisfied that this Act provides an official and adequate basis for safeguarding our relationship with Taiwan, and I pledge to enforce it. But I will eliminate petty practices of the Carter Administration which are inappropriate and demeaning to our Chinese friends on Taiwan. For example, it is absurd and not required by the Act that our representatives are not permitted to meet with Taiwanese officials in their offices and ours. I will treat all Chinese officials with fairness and dignity.

I would not impose restrictions which are not required by the Taiwan Relations Act and which contravene its spirit and purpose. Here are other examples of how Carter has gone out of his way to humiliate our friends on Taiwan:

Taiwanese officials are ignored at senior levels of the U.S. government.

The Taiwan Relations Act specifically requires that the Taiwanese be permitted to keep the same number of offices in this country that they had before. Previously, Taiwan had 14 such offices. Today there are but nine.

Taiwanese military officers are no longer permitted to train in the United States or to attend service academies.

Recently the Carter Administration attempted to ban all imports from Taiwan labeled "Made in the Republic of China," but was forced to rescind the order after opposition began to mount in the Congress.

The Carter Administration unilaterally imposed a one-year moratorium on arms supplies even though the Act specifies that Taiwan shall be provided with arms of a defense character.

The Carter Administration abrogated the Civil Aviation Agreement with Taiwan, which had been in effect since 1947, in response to demands from the People's Republic of China.

I recognize that the People's Republic of China is not pleased with the Taiwan Relations Act which the United States Congress insisted on as the official basis for our relations with Taiwan. This was made abundantly clear to Mr. Bush, and, I'm told, is clear to the Carter Administration. But it is the law of our land.

Fifth, as President I will not accept the interference of any foreign power in the process of protecting American interests and carrying out the laws of our land. To do otherwise would be a dereliction of my duty as President.●

WOMEN'S EQUALITY DAY

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. GREEN. Mr. Speaker, today is the 60th anniversary of the ratification of the 19th amendment, which granted women the right to vote. It is also the 60th anniversary of Women's Equality Day, which was declared in recognition of the granting of the suffrage. Sixty years ago, this day was a milestone in the fight for women's rights and ended a 72-year battle for recognition of women as citizens who had a right to vote. Since 1920, much progress has been made in the area of women's rights. However, I would like to take this opportunity, on Women's Equality Day, to stress the importance of our continued efforts in this area.

In this Congress, we have made efforts to promote equal treatment of women. Last year, the Domestic Violence and Prevention Service Act was passed by the House, and this bill is now being considered by the Senate. I hope that this legislation, which recognizes and attempts to deal with a problem which has previously been overlooked, will be enacted into law this year. There are also many proposed changes in the social security benefit structure, the tax sheltered individual retirement accounts to benefit homemakers, and the elimination of the "marriage tax," which would benefit couples. Efforts to pass new laws in these areas mark the progress which has been made since the start of the suffrage movement in the United States and are encouraging to the many proponents of the women's rights movement.

Unfortunately, there are two issues which require further action and vigilance on our parts. The equal rights amendment was introduced in 1923—57 years ago—and the struggle for ratification of this vital amendment continues. We need approval by only three more States in order to give women their rightful place in the Constitution. It is my hope that with the combined efforts of the House, the Senate, State officials, and concerned citizens, this amendment will be ratified. We hope this will not take another 15 years, and thus last as long as the fight for the 19th amendment did. But whatever it takes, we shall continue this struggle.

Many of us who believe that women should have the right to choose whether or not to have an abortion have been fighting for years against restrictions on the use of Federal funds for them. Again in this Congress we are faced with decisions of the role of the Federal Government in providing abortion services. I feel it is essential to allow a woman the freedom to make this important decision on the basis of personal conviction, without regard to economic circumstance, and I urge my colleagues to consider these amendments and bills carefully.

In closing, I would compliment the individuals and groups who have worked hard toward the passage of legislation and the implementation of programs which seek to provide for the needs of women and to recognize their role as participants in all sectors of our society. As we work here in Congress, we must continue to devote our efforts toward making "Women's Equality Day" a reality.●

ANTIBIOTICS IN ANIMAL FEEDS—A MATTER OF POLICY

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. DINGELL. Mr. Speaker, on May 7, 1980, I introduced with my distinguished colleague, HENRY A. WAXMAN, H.R. 7285, the Antibiotics Preservation Act, a bill to preserve the therapeutic efficacy of human antibiotics, particularly penicillin and tetracycline, by restricting their current use in animal feeds.

Throughout 2 days of hearings that were held on the bill in June, and the discussions that have ensued, one point has become readily apparent—20 years of scientific investigation have provided us with volumes of relevant and incisive information on all aspects of this health threat, yet, definitive and unequivocal quantitative data establishing the precise magnitude of the human health risks is not at hand and never will be. The risks are real but impossible to quantitate given the profligate use of antibiotics for both therapeutic and agricultural purposes. Science has taken us as far as it can in providing decisionmakers with policy relevant information on this pervasive health risk. What we now face is a fork in the road where a prudent policy decision and not further study will be the pathfinder. In that vein, I commend to my colleagues the following articles from the New York Times and Science which call urgent attention to the need for a policy determination on the matter of antibiotics in animal feeds:

[From the New York Times, June 17, 1980]

NEW WORRY OVER DRUGS IN ANIMALS—ANTIBIOTICS IN FEED MAY LESSEN VALUE IN HUMANS

(By Robert Reinhold)

The widespread use of low doses of human antibiotics as additives in animal feed may be diminishing the value of "miracle drugs" in the treatment of humans.

That is the growing suspicion based on considerable but inconclusive evidence of doctors who have long wondered why they have had to administer ever larger doses of antibiotics to combat bacterial infections in their patients.

Part of the answer may be that the doctors themselves have so overused drugs like penicillin and tetracycline that the bacteria have learned to fight back, so to speak, by becoming resistant.

But the fear that drugs used in animals may also have a role has lent impetus to new legislation. In an effort to clear a decade-long regulatory logjam, two Congressmen have introduced a bill to give the F.D.A. explicit authority to ban the routine "subtherapeutic" use of human antibiotics in animal feed. Last week, hearings were held on the bill, called the Antibiotics Preservation Act, which is sponsored by Representative Henry A. Waxman of California and Representative John D. Dingell of Michigan, both Democrats.

The feed issue is a classic example of the regulatory dilemma that so often confronts the Government on scientific matters: A potential hazard to human health is recognized, but it can be remedied only by economic dislocation and, in this case, possibly by shrinking the food supply.

Meanwhile, the putative hazard has become so deeply entangled in the economy that politically powerful vested interests—the agriculture and drug industries—are able to thwart action.

Complicating matters in this case is the incompleteness of the evidence, and, according to a recent study by a panel of the National Academy of Sciences, the problem is so complex that it is probably impossible to devise a study to measure the risk. So the Government must act in the dark, balancing uncertain risk against known benefits.

"Therapeutic failure with these antibacterials would lead to large but presently unquantifiable morbidity and mortality in humans and animals," stated a recent report by the Congressional Office of Technology Assessment. "Once significant effects on human health do become widely observable and quantifiable, it may be too late to address the problem."

The stakes are not small. Nearly all poultry, 85 percent of pigs and hogs and about 60 percent of cattle are raised today on feed treated with antibiotics, mainly penicillin and tetracycline. The drugs are believed to prevent disease and promote growth, and they have helped transform agriculture by allowing big producers to raise large numbers of animals in small, confined feed lots.

According to drug industry sources, nearly half of all antibiotics made in the United States are sold for animal feed use. In 1979, this meant $243.7 million in total sales, according to figures compiled by the Animal Health Institute, a drug industry trade group.

Doubts about the wisdom of this practice have grown with its spread in the last 30 years, and many European countries have banned routine addition of antibiotics to feed. Though subject to debate, there is mounting circumstantial evidence that the resistance to antibiotics developed in intestinal Escherichia coli bacteria, or "flora," of animals can ultimately be transferred to pathogenic, or disease-causing, bacteria that invade humans.

The agents of this transfer are R plasmids, bits of extrachromosomal material that endow bacteria that contain them with resistance to certain antibiotics. The natural forces of "selection" favor the breeding of such bacteria with regular feeding of antibiotics that kill off nonresistant strains.

Many experts believe these R plasmids are capable of hopping about from one species of bacteria to another. Convincing, and to many worrisome, evidence of this has come from laboratories at the University of Washington and in the Netherlands. They found that the same type of R plasmids present in ordinary harmless intestinal bacteria were also present in two antibiotic-resistant pathogens: Hemophilus influenzae, which is thought to cause meningitis in infants, and Neisseria gonorrhoeae, which causes gonorrhea.

EPIDEMIC IN CONNECTICUT

A Salmonella epidemic in the nursery of a Connecticut hospital in 1976 was traced to infected calves on a dairy farm where the mother of one infant lived. The organism was found resistant to six antibacterials. However, a study published in the Journal of the American Medical Association last February did not say what, if any, antibiotic was used in the animal feed.

In another study, Prof. Stuart B. Levy of Tufts University fed chickens on a farm with tetracycline-supplemented feed. Within months, the intestines of humans living on the same farm were heavily laden with tetracycline-resistant bacteria, but not those of their neighbors on a nearby farm. Dr. Levy concluded: "The data from this and other studies argue strongly against the present-day practice of unqualified and unlimited use of antibiotic-supplemented feeds in animal husbandry."

Representative Dingell said in an interview that he was convinced that "this poses a substantial peril to the health of the American people." He dismissed arguments that the loss of the antibiotics would cost the food industry and public billions of dollars, saying adequate substitutes from among drugs not used for humans were available.

Others are more cautious. The National Academy of Sciences panel examined the evidence and concluded that "the postulations concerning the hazards to human health that might result from the addition of subtherapeutic antimicrobials to feeds have been neither proven nor disproven." However, it added that this does not mean the hazards do not exist.

RISK IS THEORETICAL

"The risk is theoretical," said Dr. L. M. Skamser of the American Cyanamid Company in Princeton, N.J., makers of chlortetracycline and a major supplier of farm feed drugs. He said there was "no evidence" linking animal feed drugs to human illness. "We need more study," he added.

Dr. C. D. Van Houweling, former head of the Food and Drug Administration's Bureau of Veterinary Medicine and now Washington representative of the National Pork Producers Council, said that not a single case of human illness could be traced to the antibiotics.

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However, his successor, Dr. Lester Crawford, argues that the issue is whether doctors will have a good drug to use in the event of a widespread outbreak of an infectious disease like Salmonella infection. The erosion of penicillin's effectiveness through resistance, he said, might make it necessary to resort to newer antibiotics that are more toxic than penicillin and less effective than it once was.

Representative Dingell argues that conclusive evidence is not needed, that the risk warrants action. He acknowledges that his bill faces an "uphill fight," given the power of the livestock industry and the antiregulatory mood in Congress. The present bill appears to be in part an effort to circumvent the agriculture committees in Congress, which are hostile to regulation.

The F.D.A. has already tried to move on its own authority. But the agency's hands have been tied by Congress, which, after it proposed restrictions on the feed drugs in 1977, imposed a moratorium on restrictions until a full study could be completed. But now the National Academy of Sciences report says that such a study is impossible.

Thus, the F.D.A. finds itself in a "Catch-22 situation," in the words of Dr. Crawford. He said the agency would seek new guidance from Congress, which is often more sensitive to immediate economic and political concerns than long-term scientific ones.

[From Science, July 25, 1980]

HEALTH COMMITTEE INVESTIGATES FARM DRUGS—PROPOSED LEGISLATION WOULD ENABLE FDA TO BAN THE USE OF ANTIBIOTICS IN ANIMAL FEEDS

(By Eliot Marshall)

Although pigs are at center stage in this controversy, the National Pork Producers Council decided not to speak at hearings on the farm use of antibiotics held 12 and 24 June by Representatives Henry Waxman (D-Calif.) and John Dingell (D-Mich.). The congressmen were laying out the case for their bill (H.R. 7285), which would give the Food and Drug Adminstration (FDA) more power to carry out its intention of banning the use of penicillin and tetracycline as feed additives. The FDA has been blocked for 2 years now in this campaign by agricultural committees in Congress. They have insisted that the question needs more study, not action (see *Science*, 25 April). Dingell and Waxman are trying to break the logjam.

"We're dealing with raggedy science," said Dingell's aide, who explained that Dingell decided to push for new legislation because he thinks the experts are not likely to resolve the issue soon. A panel at the National Academy of Sciences concluded this spring that for technical reasons it may be impossible to prove what many people suspect—that using antibiotics in the barnyard helps create drug-resistent bacteria which will infect humans.

The Pork Council stayed away from the hearings, according to a letter from its president, "mainly because we do not consider it to be a good use of our time or [of that of] the members on the subcommittee"—Waxman's health and environment subcommittee of the House Interstate and Foreign Commerce Committee. The pork people may not have liked the idea that that their farm issue was being turned into a health issue. They declared it a boring scene, and kept their distance.

An aide to Dingell speculated that the Pork Council really stayed away out of embarrassment. Its chief lobbyist and regular Washington spokesman, C. D. Van Houweling, retired 2 years ago from the directorship of the bureau of veterinary medicine at the FDA. This office is directly responsible for animal drug policy, and it is being pressured mightily by the drug and meat producers to say that it is all right to mix penicillin and tetracycline in feeds as a growth promoter.

Van Houweling left office before the new bureaucrats' ethics code went into effect, and so he is not prevented from engaging in what the new code would call a conflict of interest. A year from the day of his retirement, he was free to lobby Congress and his old colleagues to see things the way the pork producers do. According to his own interpretation, however, he was free to act as he pleased on the "generic issue" involving antibiotics "the day after I walked out of the office." Yet it may still prove a bit hard for him to execute this change of roles with grace.

Van Houweling's situation contrasts, incidentally, with that of his successor, Lester Crawford. The latter will retire on 1 August to return to the faculty of the University of Georgia. Crawford told Science that the reformed ethics code, which does affect him, will mean that during his lifetime he will never be able to go before the FDA to argue his position—that the pork producers are wrong. He thinks that penicillin and tetracycline are so valuable as human medicines that their potency should not be compromised, which he thinks is happening today, by allowing them to be used as animal fatteners.

Had Van Houweling or his associates from the Pork Council shown up to speak, Dingell would have given them a hard time. No doubt the pork people knew this. In the event, Dingell dished out his invective to the Animal Health Institute, which he referred to as the "Animal Hypocrisy Institute." Its members (52 large drug makers) produce 90 percent of the veterinary pharmaceuticals used in this country each year. It too favors the use of penicillin and tetracycline in feeds. Dingell said, "Such groups are always eager to use science as a shill, and seek comfort in, and profit from uncertainties." This sort of language, Van Houweling said, is incredibly unfair, since every interest group has the right to organize under however fancy a name it chooses to make its views known.

The pork producers themselves gave a fairly good explanation for their absence. In the letter to the subcommittee, they said that this issue had already been reviewed by the Senate and House agriculture committees, and by the agriculture appropriations subcommittee in the House (all of which sided with the meat producers and drug companies against the FDA). The letter hinted that Waxman and Dingell were interfering in other people's business. It pointed out that there is no rock-solid proof that human health is being endangered by the use of antibiotics in feeds. And it chided the subcommittee for diverting its staff from attacking "the many pressing, critically important national problems facing this nation and Congress," among which is not the feed question.

Lastly, the pork people wrote, "Unfavorable publicity for our products, just when we are trying desperately to encourage the consumption of pork . . . is the last thing we need. Providing a public platform for misguided activists to make unfounded charges is a distinct disservice to not only the pork producers but all animal food producers in the U.S., and the U.S. consumer."

Van Houweling saw it as a case of "the wrong bill in the wrong committee at the wrong time." The cattlemen also stayed away, he pointed out. And he was baffled by Dingell's decision to intervene in a matter already being handled by other committees. "I don't see how he can push this as a health issue," Van Houweling said.

Where does the misguided activism come from? Thomas O'Brien comes from the Harvard Medical school, where he is associate professor of medicine and director of the microbiology laboratory at the Peter Bent Brigham Hospital. He told the subcommittee on 12 June that his concern about animal feeding practices stems not from a "theoretical" worry, but from what is already known about the behavior of bacteria. By creating an environment in which bacteria do battle over a long period with antibiotics, man is forcing the bacteria to remold themselves by evolutionary processes into strains which are invulnerable to the antibiotics used against them. The ability to resist antibiotics is carried in genes, and it can be passed from one generation to another. O'Brien thus described the problem as a cumulative one: the more we expose bacteria to antibiotics, the more we will have to contend with resistant strains.

None of this would affect animal feeds if animal bacteria were distinct from human bacteria, but they are not. Some strains inhabit both realms, and genes for resistance can pass freely from animal to human bacteria. O'Brien suggested that there may be a finite number of types of antibiotic to be discovered. He saw an ominous sign in the fact that there has been a declining rate of discovery of new types since 1960. In view of this, he said, it would be prudent to use our most valuable antibiotics—penicillin and tetracycline—most sparingly.

William Hewitt, chief of the division of infectious diseases at the University of California at Los Angeles, challenged the notion that antibiotics are a depleting resource, but agreed that penicillin and tetracycline are becoming obsolete for some illnesses because they have been so broadly administered over the last three decades. There is no evidence that feeding drugs to animals has contributed to this phenomenon, he said. He thought it would make more sense to restrict the human use of these drugs than to attack the farm problem.

Yet because 40 percent of the antibiotics used in this country are used in feeds, and because there are 18 substitutes for penicillin and tetracycline available at little extra cost, attacking the farm problem is the easiest thing to do.●

DENVER POST FEATURES CLARENCE STREIT

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. FINDLEY. Mr. Speaker, the Sunday, August 17, issue of the Denver Post featured a great citizen of freedom, Clarence K. Streit, who has devoted 41 years to the advancement of the concept of federation of democracies.

The review was written by Kit Miniclier, Post staff writer and former expert on foreign affairs for the Associated Press.

The text of the Streit piece follows:

STREIT STILL STRESSES NEED FOR FEDERATION OF DEMOCRACIES

On the basis of his quotation above, Clarence K. Streit concludes that national patriotism has served increasingly to divide the world as man's inventions strive to bring its inhabitants closer together.

"The shame is not lessened . . . when a whole nation assumes that it has given more than it has received, that there is something naturally superior and peculiarly sacred in it, that it is the Elect of God or the Chosen People, that it is meant to be the lord of others.

"Like everything else that has outlived its usefulness, nationalism has changed from a beneficent into a maleficent force," dividing mankind, creating greater misunderstandings, quarrels and wars, he concludes.

Streit, a Rhodes Scholar and former New York Times foreign correspondent, penned these thoughts in 1939, on the eve of World War II, in proposing a union of the world's more experienced democracies.

His powerful argument for an end to national patriotism, a key phrase used by Adolf Hitler at the time, has been honored by statesmen on both sides of the Atlantic, and Streit has been credited with laying the foundation for the Atlantic Alliance and the North Atlantic Treaty Organization. Streit has been nominated several times for the Nobel Peace Prize.

Now 84, he recently completed a sentimental journey to many of the capitals of Europe he knew as a journalist, and stopped off in Denver en route to visit his childhood home in Missoula, Mont.

Streit, who long ago recognized the interdependence of mankind for raw materials, manufactured goods, inventions and political thought, has devoted 41 years to his dream of a federation of world democracies and feels it is as relevant today as it ever was—to prevent another major war and ease the coming world depression.

A federation of democratic nations psychologically would offset the impact of the depression because it would create confidence and faith, he said, citing the optimism of the first Continental Congress, operating with dollars "that weren't worth a damn" to develop a federal system built on "compromise after compromise."

He warned that the next global depression will be much worse than the last, partly because of the fragmentation of economic systems by small political entities, and the economic stress upon the small nations arising from high-interest Eurodollar debts and the soaring costs of vital raw materials, including oil from the OPEC countries.

"I'm not for imperialism or anything like it, but there was a form of economic stability during the last depression, with the British, French, Portuguese, Belgian and Dutch empires," he said.

"Today there is a worldwide money market which never sleeps. When the stock markets close in London they are still open in New York. When New York closes, San Francisco is still open, and then Tokyo and Hong Kong."

In arguing for "Union Now," the title of his first book, which initially was printed privately in 1939, Streit said the English, American and French revolutions recognized that men no longer needed mysticism to keep them together.

"They need only Union Now to bring them all together to free mankind still more. . . . They have now enough experience behind them and intelligence in them to understand that freedom lies in free men freely uniting, trusting in each other and depending on each other.

"They are mature enough to understand that the way to man's freedom can't possibly lie in worshiping the accident of birth."

He envisions a world government based on an expanding union of democracies "as countries grow up."

"But all that is in the far future. We've still got a job to do in our time," he said in an interview, expressing the hope that a convention of parliamentary democracies would set the stage for an Atlantic union.

Under his proposal, a convention of NATO countries would form the initial group, agreeing to transform their military alliance into a federal union which would become a member of the United Nations.

The union would secure the right of each member nation "to govern all its purely national affairs in complete independence," and provide for admission of other countries "as rapidly as this will advance liberty and peace."

Streit, founder of Federal Union Inc. a non-profit educational membership association, and editor of Freedom & Union, "a magazine of the democratic world," was honored by members of Congress in 1978 and 1979 for his vision.

A book of 150 letters from statesmen on both sides of the Atlantic paid tribute to his ideas. "This world—torn by conflicts, divided into factions—only can survive if nations stand together to forward mutual understanding and peace. Your ideas have inspired and encouraged men who aim at this great goal," wrote former West German Chancellor Willy Brandt.

"You are one of those rare individuals who have devoted your life to working against great odds for a great ideal. You have contributed enormously to the cause of peace and freedom in the world," added Richard Nixon.

John Anderson, R-Ill., now an independent candidate for president, told Streit: "You share with few the honor of having helped direct America toward a safer and more prosperous tomorrow."●

NEW BEGINNINGS WITH CULINARY ARTS

HON. BOB LIVINGSTON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. LIVINGSTON. Mr. Speaker, I believe the following article recently written by Ms. Renee Peck in the New Orleans Times-Picayune/States-Item will be of extreme interest to my colleagues who are concerned about prisoner rehabilitation.

The innovative approach to work training undertaken by Warden G. Joseph Putnam at the Jackson Barracks Work Training Facility in New Orleans will go far in placing these prisoners back into society with meaningful jobs. I might add that the prisoners' work training is quite practical considering the unique and outstanding tradition New Orleans has for "good eatin'."

The article follows:

NEW BEGINNINGS WITH CULINARY ARTS

(By Renee Peck)

Leonard Boyer had been up since 3 a.m., lining up pots and pans, paring vegetables, thawing chickens for his culinary arts class dinner that evening.

"I've always liked to cook," reflected the slim young man as he lifted the lid from a jar of paprika. "I like frying, baking, broiling, sauteing, the whole thing. This is my profession. I'd really like to be a chef."

"Knowing how to cook is a great thing for bachelors," grinned Alvin Pratt as he deftly stuffed boned chickens with a spicy rice dressing. "I always did like to cook—my mother had 18 kids and I used to help out in the kitchen. But my profession is working on the oil rigs. Still, it's always nice to have other talents to fall back on."

Other students moved busily around the kitchen, stirring sauces, garnishing trays of appetizers, sampling a bit of bread pudding or marinated crab. The scene could have been taking place in any commercial training kitchen. The hopes, desires, fears and aspirations of these students are the same as those of apprentice-chefs anywhere.

But these 11 students are not like their counterparts in other parts of the country. They are inmates at the state Work Training Facility in the Jackson Barracks. And, for them, this culinary arts class might make all the difference in overcoming a past mistake.

"Many people look on prisoners as nonproductive members of society," says Ronald Crawford. "How can that be corrected? By making us productive members of society, that's how. Train us to do something worthwhile, and we can contribute, too."

The first program of its kind in the country, the Work Training Facility's culinary arts class is designed to teach inmates a marketable skill, one that will enable them to find jobs and establish careers upon their release.

"Oh, I've always liked to cook, but if it can get me a job . . . well, that'll be the hard part," says James Jones, whose ultimate goal is to become a successful musician.

Almost every student's remark is prefaced with, "When I get out . . ." And perhaps for the first time, each aspiring chef is looking upon that time as a true chance for a new beginning.

"This is not just a cooking class," says Carmen Riley, culinary arts instructor at Elaine P. Nunez Vocational Technical School, which has helped sponsor the program. "We're not teaching just cooking, but how to deal with your fellow man. Students help one another, and there's a strong sense of unity.

"These inmates are learning to express themselves, which is very important to someone who is confined. Some had feelings of neglect, of constantly being kicked about. Now they are optimistic. For the first time, they're thinking, 'hey, maybe there is a chance for me.'"

The attractive young professor admitted that at first she was skeptical about instructing a class composed of prison inmates.

"You hear so many negative things about them. I didn't know what to expect. Society has us believe that these guys are hardened criminals who can't learn."

Instead, Riley found a group of men "starving for trades. They realized they had made mistakes and were crying for another chance. They really want to do better. I'm not saying that 100 percent of them will make something out of themselves. But 90 percent of my students are highly motivated, not only in class but in the entire facility. They're in class because they really want to be there."

And the class has come a long way in its four months of training. Members meet for two 3-hour sessions weekly. From textbook work on basic kitchen tools, safety, nutrition and ingredients, they have progressed to preparation skills involving techniques of frying, broiling, sauce making and garnishing. They recently embarked on cake baking and decorating, and when they complete the course at the end of this month, each will receive a certificate from Nunez Institute.

"Some of these guys couldn't even boil water when we started," says Riley. "Now they're deboning chickens and making cream sauces. The students help plan the

coursework and have input into menus and subjects covered.

"And I leave it open as to what each student does. If one likes baking, he can concentrate on that. Others might prefer frying or garnishing. Different talents are emerging in different students. One student, Kirby Christopher, has taught himself wood carving and is good with his hands. He took to cake decorating with ease.

"To make this program work, students have to get more than a promise of a job out of class. They have to enjoy it and get something out of it. I don't look at a job as something to get paid for, there has to be something in it for the individual."

At the recent class dinner, it was obvious students were having a good time in front of the stove. Their cooking was seasoned with a sense of humor.

"Ever skin a rabbit?" asked Donald Fletcher as he prepared to demonstrate how to debone a chicken. "Well, this is something like that. Probably, anyway—I've never skinned a rabbit.

"I told my wife about the class and what we were doing," continued the fledgling chef as he cut deftly along the backbone. "She couldn't believe I was eating Trout Margeurite in prison.

"I didn't know anything when I started, but, man, now I know it all," grinned Joseph Morgan. "We do have a lot of fun together."

But behind the laughs and teasing remarks is a culinary crew that could compare favorably with any commercial kitchen in the city.

"My personal aim is to send out qualified guys," stresses Riley. "I'm not going to recommend them for a job just because they've completed the course. But almost any one of my students will have a definite head-start in any restaurant or hotel kitchen."

A second culinary arts class will begin at the Work Training Facility in September. And students who completed the first course will get advanced training in addition to helping supervise beginners.

The program has already drawn praise from a number of interested onlookers. "Without a doubt, the culinary arts class is the best thing that has ever happened to this institution," declares warden G. Joseph Putnam.

"There's a lot of talent here," says Nunez director John Kane. "And it's more than a teaching experience. It's opening up a whole new world to these students."

"The program has already been recognized by the American Institute of Architects, which is devoting an exhibit to it at its San Francisco convention," adds Charles Blaise, chairman of the Citizen's Advisory Committee which pioneered the program. "And the Washington, D.C., headquarters of the National Chamber of Commerce has heard about it and is interested in generating national publicity for it."

But the proof of the pudding, so to speak, will come when the first class graduate seeks that elusive job on the "outside."

"Students are already wondering, 'Will we really be accepted?'", says Riley. "We're trying to place one student on work release in a hotel kitchen now. That first student out will have a lot of responsibility on his shoulders. People will be looking at him as an example. It's going to be an uphill battle, both for us and for society. If that first guy doesn't make it, he'll say 'It's because I'm an excon or because I'm the wrong color.'

"But we can't put a label on a guy just because he's once been in jail. We wouldn't have as much crime now if this sort of program had been available 15 or 20 years ago. It's simply a matter of caring. I get satisfaction in turning out not only a potential professional, but a person with character, too.

"We're a small group of people, but we're talking loud. I hope someone out there is listening."●

CONGRATULATIONS TO HUGH A. O'BRIEN

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. DORNAN. Mr. Speaker, Hugh A. O'Brien, chief of police of the city of Manhattan Beach, Calif., will be honored at the Proud Bird restaurant in Los Angeles, Wednesday, September 10, by his many friends and colleagues for a quarter century of enlightened community leadership, perceptive law enforcement, and continued devotion to duty. I will be unable to attend this event, so I would like to take this opportunity to honor Chief O'Brien before this distinguished body.

Chief Hugh A. O'Brien of the Manhattan Beach Police Department will retire effective September 23, 1980. He has served the city of Manhattan Beach and its citizens for 25 years, over 7 years in the capacity of chief of police. O'Brien assumed the position of acting chief of police in 1972 and was thereafter appointed permanently as chief of police.

Since June 2, 1980, Chief O'Brien has enjoyed an earned leave from the city of Manhattan Beach. He has since accepted a position with Hughes Aircraft Co., El Segundo, as head of personnel security. At Hughes, O'Brien will be responsible for security investigation involving Hughes Aircraft employees.

Chief O'Brien has developed a distinguished record of professional law enforcement throughout his career. As a policeman, O'Brien began as an officer in 1952 with the El Segundo Police Department. In 1954, Chief O'Brien joined the Manhattan Beach Police Department and was assigned to the patrol division.

In 1956 O'Brien transferred to the police detective bureau specializing in vice control. He was promoted to sergeant in charge of the juvenile bureau in 1958. After 14 years as sergeant, he became a lieutenant with the Manhattan Beach Police Department in charge of the juvenile and investigation bureaus.

Chief O'Brien was promoted to captain in 1966 and was assigned to the patrol division. In 1969, he became captain in charge of the investigation and youth services division. In this position, he held responsibility for investigating felonies as well as planning and coordinating police-community relations programs.

Chief O'Brien has attended El Camino College and the University of Southern California. He holds an advanced certificate from the California Commission, Police Officer Standards and Training. O'Brien is a graduate of the F.B.I. National Academy, the University of Southern California Delinquency Control Institute and the U.S. Treasury Department Bureau of Narcotics Training Institute. Among his published writings are a booklet entitled "Laws for Youth", for which he received a National Award from the Ladies Home Journal magazine and an article concerning alarm systems published in the October 1968 Federal Bureau of Investigation Law Enforcement Bulletin.

Chief O'Brien is the recipient of numerous awards including the South Bay Bar Association "Outstanding Officer of the Year Award," the Manhattan Beach Jaycees "Citizen of the Year Award," and the Manhattan Beach Chamber of Commerce "Rose and Scroll Award." The California Assembly honored Chief O'Brien with a House resolution recognizing his "outstanding achievements as a law enforcement officer." The chief is associated with the International Association of Chiefs of Police, the Los Angeles County Peace Officer's Association, the Southern California and State of California Juvenile Officer's Associations, the Southern California Police Community Relations Officers Association, the Manhattan Beach Kiwanis Club, B.P.O.E. Lodge 1378, and the Manhattan Beach V.F.W. Post No. 9631. Chief O'Brien is an honorary life member of the California PTA, has served on the Governor's advisory committee on youth, and is a former member of the Southern California Juvenile Officers Association—board of directors.

Chief Hugh O'Brien served with the U.S. merchant marine from 1944 to 1946 during which time he participated in the invasion of Okinawa. He was a member of the U.S. Army 82d Airborne Division during 1946 and 1947. In 1950 he joined the U.S. Marine Corps serving with the First Marine Division in Korea during which time he participated in the invasion of Inchon Harbor, the capture of the city of Seoul, the Chosra River battle and the evacuation of the city of Hamnung, North Korea.

Chief O'Brien is a native of New York, N.Y., born September 11, 1927. He has lived in the South Bay area since 1941 graduating from Redondo Union High School in 1947. He currently lives in Torrance with his wife Michelle and three sons: Dan, 20, a junior at the University of Southern California; Tim, 18; and Michael, 12. His daughter, Erin, 23, is married to Michael Preston, a former Torrance resident.

Chief O'Brien has been an inspiration to the South Bay community. I am confident that the recognition which Hugh will receive on September 10 will result in continued service and dedication to our community.

Chief O'Brien, congratulations, and thank you.●

COMMEMORATION OF CAPTIVE NATIONS WEEK

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. DERWINSKI. Mr. Speaker, for several weeks, I have been inserting articles and proclamations regarding the commemoration of Captive Nations Week. As a followup on this same topic, I wish to direct special attention to additional articles which appeared in publications across the country and to a proclamation issued by Gov. Bruce Babbitt of the State of Arizona.

First, I wish to begin with Governor Babbitt's proclamation, which is followed by two news accounts of observances of Captive Nations Week on each coast, one from the Buffalo, N.Y., News, and the other from the Richmond, Calif., North East Bay Independent & Gazette. As evidence of the great deal of public support in this country for those peoples suffering under Communist rule, I include several letters to the editor, the first appearing in the Marlborough, Mass., Enterprise by Mrs. Earle Tuttle; Mr. Joseph Trainor addressed his remarks to the editor of the Boston, Mass., Herald-American; a letter from the American Friends of the Anti-Bolshevik Bloc of Nations in the New York, News-World; followed by Mr. Ed Laete of the Estonian Society, Inc., of Omena Lake, Mich., which was published in the Sturgis, Mich., Journal and the final comments by V. V. Zebauers of Denver, carried in the Denver, Colo., Post.

The material follows:

PROCLAMATION FROM BRUCE BABBIT, GOVERNOR, STATE OF ARIZONA

CAPTIVE NATIONS WEEK

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, Byelorussia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, Cambodia, South Vietnam, Laos and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom loving peoples in the captive nations look to the United States as the citadel of human freedom and to the people of the United States as the leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86-90 establishing the third week in July each year as Captive Nations week and inviting the people of the United States to observe this week with appropriate prayer, ceremonies and activities and expressing their sympathy with and support for the just aspirations of captive peoples;

Now, therefore, I, Bruce Babbitt, Governor of the State of Arizona, do hereby proclaim the week of July 13 through 19, 1980, as Captive Nations Week and call upon the citizens to join with others in observing this week by offering prayers and dedicating their efforts for the peaceful liberation of the captive nations.

[From the Buffalo (N.Y.) News, July 15, 1980]

CAPTIVE NATIONS—LEST WE FORGET

Every year since 1959, Captive Nations Week has been observed throughout the nation to help keep alive the hope of freedom within countries that have fallen under the Soviet yoke. This year is, as President Carter noted in his proclamation, a period when "Soviet aggression against Afghanistan is the latest stark reminder" of the reasons for the observance.

The observance lost some of its impact during the most cordial years of detente. Some people seemed to think that it was out of date, that the better policy was to develop closer ties with Moscow and seek to soften some of the harshness of the Soviet system. In 1977, President Carter seemed hesitant about even signing the annual proclamation, leaving it until the last moment.

Detente certainly is important, but it should never be forgotten that underlying it is the continuing conflict between the Western world and the Soviet empire. When two Soviet satellites sought to move toward freedom, they were overrun with Russian tanks—in Hungary in 1956 and in Czechoslovakia in 1968.

And in recent years, Moscow has demonstrated that it is not satisfied merely to keep what it has; it is always ready to exploit turmoil in Africa or Asia, and in the case of Afghanistan, it actually used its own troops to invade and occupy a previously independent country.

This week's observance is a useful reminder that all of the captive nations yearn to breathe free, and someday, surely, they will be.

[From the Richmond (Calif.) North East Bay Independent & Gazette, July 21, 1980]

SOVIET CONSULATE PROTEST

SAN FRANCISCO.—More than 100 demonstrators burned red flags and threw eggs at the Russian consulate in San Francisco Sunday.

They were protesting what they said was the execution of 15 Lithuanian soldiers in the Soviet Army who had refused to shoot civilians and prisoners of war in Afghanistan.

After the demonstration, some 50 cars led by a hearse went to a noon rally at Union Square, where protestors from more than a dozen countries gathered to remember "Captive Nations Day." The day is proclaimed each year by Congress for refugees and descendants of people in countries under Soviet domination.

[From the Marlborough (Mass.) Enterprise, July 29, 1980]

LET'S WAKE UP AMERICA!

To the Editor:

I wish more mention had been made by the media last week about the first Captive Nations Day program held under the hot noonday sun on the steps of our State House in Boston.

It delighted me to find Gov. King speaking to more than 75 gathered, some in colorful traditional costume, to read the list of the 45 countries now under godless Communism and to try to break through the wall of apathy.

The high point for me came after the singing of God Bless America when several different ethnic groups sang their national anthems—the facial expressions of beauty and determination shining forth in that sunlight, I'll never forget. The Cuban soprano had to pause as she sobbed quietly.

"These are our greatest allies in the free world today," said Edward F. King, main speaker for the hour-long rally, as he drew a parallel to our Civil War with his affirmation, "the world cannot exist half-slave, half-free."

As a ring of children brightly-dressed in the costumes of Latvia, Lithuania, Ukraine, Estonia, Cuba joined hands to sing about freedom and dance around a prostrate figure representing the Soviet bear, I was struck with the contrast between their faces and those of another circle of people I had just encountered having lunch on the Boston Common within earshot of the microphone.

"Here's a likely-looking group," I had said offering a complimentary copy of a special tabloid newspaper published by The Citizens' Forum and edited by my husband in observance of Captive Nations Week in this country. "Do you know what those voices are saying?" I asked a sophisticated-looking ring of a dozen young professional people seated under the trees. When a women replied, "We're sitting as far away from them as possible," I turned sadly away.

Is it possible we take our blessed freedom for granted? Perhaps we ignore at our peril what these people who long to return to their native lands, are trying to tell us. Wake up America!—Mrs. Earle W. Tuttle, Acton.

[From the Boston (Mass.) Herald-American, July 4, 1980]

THE BAMBOO CURTAIN SLAVES

The week of July 13-20 is Captive Nations Week. And although our government has abandoned them, we should not forget the political prisoners rotting away in the slave labor camps of Red China.

Today over 80 million Chinese are denied basic human rights. According to columnist Victor Reisel, between 40 to 50 million are confined in prison camps. The other 30 million are denied their rights due to their "bad class background," i.e. they happen to be relatives of people who were landlords before the revolution.

Most Americans cannot relate to 80 million political prisoners. That's a statistic. I think a cross-section of prisoners' stories would better serve to drive home the bestial brutality of Chinese Communism.

Liu Shihkun, 24, was approached by the Gonganbu (Ministry of Public Security) and told to serve as an informer. Liu refused. According to Amnesty International's book, "Political Imprisonment in the People's Republic of China," Liu, a pianist, had his fingers broken and was sent to prison for five years. If he survives the Chicom Gulag, he'll be out in 1983.

In 1974, Chung Chunte, 29, put up a wall poster in Peking, urging "more democracy" in the Chinese Communist Party. Chung was carted off to Jilin labor camp, where, in his own words, "I was at once ringed by four people who held my legs, twisted my arms and grabbed my head. They thrashed me before tying me with ropes."

Li Zhengtian 38, wrote an essay in 1977 in which he stated that "the masses of people demand democracy; they demand a socialist legal system . . . and they demand the human rights which protect people." Li was sentenced to life imprisonment in the dreaded Guandgong labor camp.

The prisoners of Chinese Communism have no Solzhenitsyn or Sakharov to speak out for them. So it's up to us. Next time you hear about the U.S sending military aid to Red China, remember Liu, Chung and Li, and demand that Congress stop funding Communist butchers!—Joseph Trainor. Attleboro.

[From the New York (N.Y.) News-World, July 21, 1980]

TO ALL WHO LOVE FREEDOM AND JUSTICE

As the world enters the 1980s, its peace and security are threatened by the growing power of the communist colonial empire, the U.S.S.R. Its tentacles are strangling freedom of nations and individuals, not only in the so-called Soviet Union and European satellites; but also in Cuba, Vietnam, Cambodia, Angola, Ethiopia, and the mountains and gorges of Afghanistan. They are presently poised to strike at Iran and the Middle East to grab the Free World's main oil reserves. The Soviet army, navy and air force outnumber Western defenses and are daily growing more menacing while the response of this country and the Free World as a whole has been feeble and inadequate.

Soviet propaganda has been allowed to capture the minds and hearts of millions of simple people throughout the world. The Free World's media very often themselves fall victim to Moscow's perfidious lies and repeat its propaganda masquerading as liberalism. By signing the Helsinki accord, the Free World's leaders have handed over all Eastern Europe to Moscow's tender mercies without leaving any hope to the Captive Nations for their eventual liberation.

We, who love freedom and believe in justice, cannot agree with such a situation. Ardently sympathizing with the liberation aspirations of the non-Russian nations imprisoned in the U.S.S.R.—the Ukrainians, Byelorussians, Lithuanians, Latvians, Estonians, Georgians, Armenians, Turkestanis, North Casucasians, Azerbaijanis, Cossacks, Tatars, and others—as well as those oppressed within the satellite states, voice our vehement protest against the inhuman totalitarian tyranny and terror practiced by Moscow, national enslavement, genocide and Russification, economic deprivation, exploitation of workers and peasants, cultural stultification, political and religious persecution, denial of the most basic human rights to nations and individuals by the Bolshevist Moscow regime, aided and abetted by those who support Soviet chauvinism, imperialism, colonialism, and communism.

We appeal to the freedom-loving people of the United States and the entire Free World: Beware of Moscow's traps. Beware of the resistance to all attempts of Moscow to infiltrate and capture non-communist nations. Remember that attack is the best defense.

Demand that government leaders, your representatives in the Congress, and the media show real official condemnation of Moscow's policies of genocide, Russification, national and religious persecution.—American Friends of the Anti-Bolshevik Bloc of Nations, Ukrainian Chapter, New York.

[From the Sturgis (Mich.) Journal, July 17, 1980]

MANY NATIONS STILL IN "CAPTIVITY"

EDITOR: Each year the third week of July is designated as Captive Nations Week by our Congress and was signed by President Eisenhower in 1959. The key words of this law are, ". . . the President is authorized and requested to issue a proclamation . . . each year until such a time as freedom and independence shall have been achieved for all the captive nations of the world."

The sad truth is that since 1975, the number of captive nations is increasing because of the illegal seizures of Laos, Cambodia, South Vietnam, Angola and Afghanistan, by forces of Marxist-Atheistic-Communism.

The Afghan President was murdered by the Russian invading army. Another Communist was set up as new president and massive slaughter is taking place. Afghan people, devoutly Moslem, are fighting for their freedom. Such international crime as to take over other smaller countries is customary by Russian Communists. So the Marxist-Leninist holocaust continues. Also Cold War by Soviets continues.

The unbelievable American and free world self-destruction is that our government, and partly Congress, still by trade and loans, granted under the process of detente, helps Soviets to finance and build a military might for its projects devoted to the world conquest.

Indeed the Marxism-Communism is a global threat for the free world. During the Captive Nations Week there will be parades, proclamations, speeches in Congress and church services in awareness to keep America free and independent and that some day all the Captive Nations again will enjoy their God-given rights for self-determination, and Freedom from Marxist-Leninist-Communism's tyranny.

All nations have a right for independence.—Ed Laete, Estonian Society, Inc., Omena Lake.

[From the Denver (Colo.) Post, July 18, 1980]

CAPTIVE NATIONS

To the Denver Post:

On July 17, 1959, President Dwight D. Eisenhower signed into law the Captive Nations Week Resolution, Public Law 86-90, providing for designation of the third week of July as "Captive Nations Week."

It ends with: "The president is . . . authorized . . . to issue a similar proclamation each year until . . . freedom and independence shall have been achieved for all the captive nations of the world."

The number of nations under communist rule is increasing, the latest Afghanistan.

Who is next?—V. V. Zebauers, Denver.●

ST. LAWRENCE SEAWAY LEGISLATION: ENDING INEQUITY

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. OBERSTAR. Mr. Speaker, users of the St. Lawrence Seaway bear a burden borne by the users of no other federally constructed waterway.

Seaway users, through tolls charged on the seaway, pay all operation and maintenance costs. Furthermore, they must make an annual payment to reduce the outstanding capital construction debt. In 1980, Seaway users will reduce the $110 million debt by $2.5 million, in addition to paying all operation and maintenance costs. In 1982, that payment will rise to $5 million.

Frankly, this seaway policy discriminates against our entire Great Lakes region. The doubling of the debt service payment in 1982 will exacerbate the discriminatory policy.

I have introduced H.R. 3258, legislation to restructure the St. Lawrence Seaway Development Corporation to convert the outstanding debt into equity ownership by the U.S. Government. H.R. 3258 would require that tolls be sufficient to meet all operating and maintenance costs and to insure an annual return on the equity. H.R. 3258 would remove a burdensome debt repayment requirement which will force the United States to seek much higher tolls beginning in 1982.

Hearings held by the House Water Resources Subcommittee in Duluth on April 26, indicated widespread support throughout the Great Lakes and upper Midwest for H.R. 3258. It may not be possible, however, to enact H.R. 3258 at this late date in the session. In the interest of expediting seaway financing legislation, I am today introducing legislation which takes a less far reaching refinancing step than H.R. 3258.

The bill I am introducing would retain the present debt but would extend the repayment period from 50 to 80 years. That change would prevent the debt service payment from escalating in 1982 from $2.5 million to $5 million.

I must emphasize that this bill does not forgive the outstanding debt. It does require continued payment on the debt, but at a more reasonable level than that now scheduled for 1982 and beyond. This bill will enable the Great Lakes to remain active, as Congress intends, as America's fourth seacoast.●

REV. GEORGE NISHIMOTO, CLERGYMAN AND COMMUNITY LEADER

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Ms. OAKAR. Ms. Speaker, I am deeply saddened to learn of the death of an outstanding clergyman and community leader, Rev. George Nishimoto. Dr. Nishimoto was proud of his Japanese-American heritage and proud of his family. He was a true friend to the community and to me.

The following is an article which appeared in our Cleveland Plain Dealer:

REV. GEORGE NISHIMOTO, HEADED WEST SIDE ECUMENICAL MINISTRY

The Rev. George N. Nishimoto was an executive in the national offices of the United Church of Christ before coming here in 1974 as executive director of the West Side Ecumenical Ministry.

The Rev. Mr. Nishimoto, 64, of Lakewood, died Sunday at Cleveland Clinic Hospital after several months' illness with cancer.

Memorial services will be at 7 p.m. Thursday at Lakewood Congregational Church, 1375 W. Clifton Blvd.

The minister was a student at Eden Theological Seminary in St. Louis during World War II, but his family lived in San Francisco and was evacuated along with other Japanese-Americans from the West Coast and placed in a relocation center in Topaz, Utah.

After he received his bachelor of divinity degree from Eden in 1945, the Rev. Mr. Nishimoto did some pastoral work at Topaz. Later in the year he went to Chicago where he was associate secretary of the Greater Chicago church federation.

There he worked with the 40,000 to 60,000 Japanese-Americans who went to Chicago from relocation centers at the end of the war.

In 1947, he founded the Kenwood-Ellis Community Center and Church on Chicago's South Side and was pastor there until 1961, when he became pastor of the Japanese-American Congregational Church on the city's North Side.

Two years later he went to New York as executive secretary for Church Vocations and Student Care in the Council for Church and Ministry of the United Church of Christ.

In 1974 he came to Cleveland to direct the West Side Ecumenical Ministry, a social service agency of 39 Catholic and Protestant congregations on Cleveland's West Side in the near western surburbs.

The Rev. Mr. Nishimoto was a graduate of the University of California at Berkeley, and in 1950 received a master's degree from McCormick Theological Seminary, Chicago. Eden Seminary awarded him an honorary doctorate in 1971.

The Japanese-American Citizens League at its biennial convention this summer honored him with a citation for his work with Japanese-Americans.

He was in his third term as president of the league's Cleveland chapter.

He was a former chairman of the church and ministry committee of the Western Reserve Association of the United Church of Christ and a member of the UCC Ohio Conference Commission on Church and Ministry.

At Lakewood Congregational Church he was a member of the mission and service department and taught confirmation classes.

His hobbies were golf, swimming and painting, but he had little time for them.

Surviving are his wife, Toshi; sons, John Mark of Honolulu and Peter; a brother and a sister.●

FAIR TREATMENT FOR PROTESTERS

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. DONNELLY. Mr. Speaker, on July 18, 17 members of the Association of Lithuanian-American Young People were arrested after a peaceful protest outside the gate of the Soviet Embassy in Washington. These young men and women were expressing their outrage against the Soviet invasion of Afghanistan, the occupation of their native Lithuania since 1940, and the Soviet Union's cruel disregard for the most basic human rights.

As reported in the Saturday, July 19, Washington Post, "The protesters surrendered peaceably, even good naturedly, to the police." The 17 are charged with demonstrating within 500 feet of a foreign mission. It appears that the U.S. attorney's office is planning to prosecute the Lithuanian-Americans to the fullest extent of the law. The case is scheduled for September 16.

On July 27, 192 pro-Khomeini demonstrators were arrested after violent confrontations with District and U.S. Park Police. Several police officers and bystanders required emergency care following this incident which ensued when the pro-Khomeini protesters attempted to disrupt a peaceful rally organized by the Iran Freedom Foundation, a group which strongly opposes the continuing Embassy captivity. As you know, these students were released under what amounts to a blanket amnesty. All charges were dropped, even though not 1 of the 192 arrested could produce an INS entry-identification card, a Federal offense in most instances.

I need not recount how the arrested Iranians benefit by attendance at U.S. colleges and universities, yet they incessantly chant their support for the continuing imprisonment of our diplomatic personnel in Tehran, and its perpetrators.

Fellow colleagues, when has our Nation's sacred tradition of equal justice under the law declined so alarmingly that it, along with 52 of our countrymen, can be held bound and gagged by foreign terrorists?

In the words of one Lithuanian-American:

While we do not believe that those arrested should be treated any better than the Iranians, we cannot understand why they should be treated worse.

Surely, in our Government's pledge to protect an individual's first amendment guarantee of free speech and assembly, we must refrain from persecuting those whose views we do not abide; but by the same token, it is equally unjust to give preferential treatment to those who castigate our Nation without restraint.

It is truly a sad day for our country when Americans must wonder why our Government treats our own citizens more severely than the misnomered students who grate so insolently on our Nation's patience.●

HAS THE SOVIET UNION VIOLATED THE BIOLOGICAL WARFARE CONVENTION?

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. BROWN of California. Mr. Speaker, there has been considerable discussion in the Congress about alleged Soviet violations of their treaty obligations concerning chemical and biological warfare in connection with an anthrax incident at Svendlovsk. While I have not examined this matter in depth, I have been concerned that efforts are being made to expand U.S. work on chemical and biological weapons in reaction to this incident.

Recently, I came across an article in the British scientific journal New Scientist written by the former Soviet scientist who first reported the alleged nuclear disaster in the Urals in the late 1950's. I was surprised that Dr. Zhores Medvedev considered the evidence of a major nuclear disaster far more overwhelming than the evidence of a Soviet treaty violation.

Frankly, I find the explanation of the Soviet anthrax incident in the following article to be more credible than other speculative accounts brought to my attention. Without making any firm judgments, I commend the following article to my colleagues. In the meantime, I urge my colleagues to resist precipitous actions in this area.

The article follows:

[From the New Scientist, July 31, 1980]

THE GREAT RUSSIAN GERM WAR FIASCO

(By Dr. Zhores Medvedev)

In May this year I received a letter from the director of the Federation of American Scientists, Dr. Jeremy J. Stone, in which he asked me to express "any ideas about the attached issue of a Soviet anthrax incident". I wrote back giving him my opinion on the anthrax story. I did not then see the need to write an article on the subject. The case was already in the hands of the CIA; the "attached issue" referred to by Stone was a press release from the US Senate of 16 April, 1980, on the intention to prepare the "Soviet Biological Warfare Resolution". I was sure that the CIA had many more resources than I did to find out all the details of the Sverdlovsk incident. However, recent reports indicate that the public version of the Sverdlovsk epidemic has contributed to the decision by the US House of Representatives to pass a resolution to start some work on the production of a so-called binary chemical weapon. This made me reconsider my initial passive attitude. I realised that even my limited knowledge about the background of the Sverdlovsk anthrax story might be of some interest to the public here and probably even to the CIA, which, as I found earlier from the CIA files on the 1958 Urals nuclear disaster, is not always able to assess information about the USSR correctly.

The story that there had been an outbreak of anthrax in Sverdlovsk became headline news in many Western newspapers on 19 March this year. David Passage, an official spokesman from the US State Department, had stated at a press conference the previous day that an "outbreak of disease" in Sverdlovsk, a city of 1.2 million people, had raised questions whether the Soviet Union had violated the terms of a 1975 convention that bans the development, production or stockpiling of biological agents or toxins. The United States has recently expressed concern to the Soviet Union about these reports. This statement was based, not on intelligence information, but on two articles, the first published in Now! magazine on 26 October, 1979, and the second published in Bild Zeitung of Hamburg, a sensational tabloid, on 13 February, 1980.

The US State Department statement contained no new information apart from what had been published in Now! and Bild Zeitung. Neither Now! nor Bild was the first to report their stories. In both cases the "sensation" appeared originally in an obscure Russian-language emigré magazine Possev published in Frankfurt. Possev (the word means "sowing" in Russian) is the paper of the NTS (the People-Workers' Alliance),

which was founded in 1930 as a revolutionary anti-Soviet emigré group.

At the beginning of October 1979, Possev published a short unsigned story about an alleged bacteriological accident in Novosibirsk during the spring of 1979. According to this story, several thousands died of a mysterious disease. The escape of the bacteria was associated with secret research facilities near a suburb called Uktus.

On 26 October, 1979, this same story reappeared in Now! as a major cover story. There was no mention yet that the disease was a form of anthrax. David Floyd added some details trying to connect the disaster with the alleged secret bacteriological institute established in the Siberian Branch of Academy of Sciences of the USSR "which is headed by Dr. Knorre, a corresponding member of the Academy, and Dr. Solganik, a specialist in molecular biology". Akademgorodok, the science town near Novosibirsk where this institute was established, was described by Floyd as "a closed science town where much of the academy's most secret research work is done". When I read the article I telephoned the science correspondent of Now! and told him that the published information was wrong. It is well known that Akademgorodok is not a "closed town", but an open international research centre visited by many foreign scientists. Novosibirsk is also open to foreign tourists. Dr. D. G. Knorre and Dr. R. Salganik cannot be directors of the bacteriological institute: Knorre is head of the nucleic acid laboratory of the institute of organic chemistry; and Salganik is a deputy director of the institute of cytology and genetics in Novosibirsk. Knorre is also an editor of the international journal FEBS Letters, while Salganik is a member of some international biochemical and cell biology committees; they both often travel abroad.

I received no explanation from Now! for this part of its article, but I found the source in another emigré Russian language publication Russkaya Mysl (Russian Thought). In an article on Academician Yu Ovchinnikov, an emigré writer, Mark Popovsky, had made the same statement as Floyd about Knorre and Salganik.

At the beginning of January 1980, Possev published a more detailed story. This time, however, it was about a Sverdlovsk accident. The author, N.N., reported that there had been rumours in Sverdlovsk about an outbreak of anthrax ("Siberian ulcer") resulting from an explosion in the nearby military settlement, Number 19, south-west of Sverdlovsk. The cloud of anthrax bacteria was carried by the north wind over Kashino village. The first deaths were registered on 4 April. Afterwards some 30 to 40 people were dying per day for the next month.

Some details about the accident, although based on secondhand rumours, gave the impression that something really had happened in Sverdlovsk, probably a localised anthrax epidemic. Vaccination was carried out in only one suburb of Sverdlovsk. Other parts of the story were clearly false. N.N., for example, wrote that people could not get the bodies of their dead relatives for the funerals (this could well be the case as anthrax victims have to be cremated), but instead were given symbolic "empty coffins". The bacteria strain was indicated to be either V-21 or U-21. (The appearance of the name of the bacterial strain among local rumours is rather strange.) On 16 July, 1980, The New York Times published the same story, but named the strain as "I-21".

It was Possev's story that was reprinted as front page news by Bild Zeitung a few weeks later. The West German newspaper removed a few technical details, such as the names of the bacteria and how long the epidemic lasted. The same story appeared in Nature at the end of March, without indicating the source but containing all the details of Possev's version.

Mark Popovsky, who was interviewed by Science in April, did not add anything new to the Possev story, despite the fact that he insisted that he had got information from a friend in Sverdlovsk. Neither Bild, nor Nature nor Science has acknowledged the existence of Possev's story, but the links between them are clear, some statements being identical. Nature gave the name of the alleged bacterial strain (V-21) and the figure of dead in all cases was around 1000.

In April 1980, Possev acknowledged that its story was wrong and that what it had reported in 1979 as a "Novosibirsk case" was really a "Sverdlovsk case". In this new article the description of the origin of the epidemic was a clear mixture of its previous two stories. Uktus was now a suburb of Sverdlovsk and the germ plant was situated here, not in the "military settlement No. 19". Bodies of the dead were not burned, as in the earlier Bild and Possev versions, but buried in a disinfectant liquid.

The Soviet Union was officially asked by the US government for an explanation, and in a rather rare admission Tass acknowledged that there had been an anthrax epidemic in Sverdlovsk. According to Tass, this was caused by adverse weather conditions which had made sheep and cattle susceptible to contagious diseases, by lack of personal hygiene in tending livestock, and by the purchase of unbranded meat, wool and hides from unauthorized individuals. Tass also acknowledged that anthrax has never been completely eradicated from the Urals.

This explanation was initially accepted. Nobody in the West had really expected that there would be any official reaction from the USSR at all. It is true, of course, that anthrax still is quite a common problem among farm animals in the Urals, Siberia, Soviet Middle East and even Caucasus. However, human cases of anthrax were usually found in rural areas. A few days later the US government on the basis of "new intelligency reports", made clear that it could "refute the Soviet version of the anthrax story". However, all the "new intelligence" apparently consisted of was a few details published earlier in Possev, but missing in Bild.

The Sverdlovsk anthrax outbreak again made headline news in early July when the report of the US Congressional Committee on Intelligence was released (New Scientist, 10 July, p. 93). This report, however, did not contain any new details. It repeated the same information which had been published in the Possev articles. The only difference was that the mysterious V-21 or U-21 strains were correctly replaced by Bacillus anthracis spores. It was also revealed that the military settlement Number 19 was under the supervision of Colonel General Efim Ivanovich Smirnov. However, this name is familiar—Efim Smirnov was named in the Now! story last year. According to Now!, Efim Smirnov was head of the Red Army's medical services during the Second World War and is now responsible for the development of bacteriological weapons for the Ministry of Defence. A person who had such a high position in the Soviet Army 40 years ago would be a very old person by now. Anybody who knows the Soviet system will realise that such a ranking and old official must live and work in Moscow. He would not be in charge of local facilities at Sverdlovsk.

The Washington Post also distorted the original reports about the duration of the epidemic. Describing the case, the Washington Post informed: "This information indicates that approximately 1000 people died within a matter of hours." All Russian sources, however (Possev, Popovsky, and recently Russkaya Mysl), described an epidemic which lasted about one month with about 30 to 40 fatalities per day. Using independent emigre sources in Israel, the Sunday Times reported a total death toll of 300. The prolonged character of the epidemic (beginning in April and ending in May) is also consistent with the publication in April 1979 of three articles about anthrax in a local newspaper Vecherny Sverdlovsk. It is rather strange that even the original author, N.N., did not mention these articles.

Some of the data mentioned in the reports of this anthrax epidemic, can be checked easily using standard Soviet medical reference books. Anthrax is apparently still a serious problem in eastern parts of the USSR. This means that research and the production of the vaccine is certainly going on in research centres which, of course, are well sealed off from outside attention. The anthrax vaccine is made from live, and still virulent encapsulated bacteria. Immunity after vaccination is short and revaccination is necessary after one year. The vaccine is active for not more than two years. This means that the production of the anthrax vaccine entails large-scale cultivation of anthrax bacteria and production of spores.

The medical authorities in the USSR are certainly responsible for the anthrax outbreak in Sverdlovsk. It was connected either with tainted meat or wool or a laboratory accident. But there are no facts yet to indicate that the production of a bacterial weapon was the cause of the Sverdlovsk epidemic. The bacteriological facilities of the military system could take part in this work, but there has been no single fact published about the Sverdlovsk case which has indicated a possible stockpile of an actual anthrax weapon. If an outbreak of pulmonary anthrax (which is suspected by the CIA) is the result of the accidental explosion of an actual weapon (with a cloud of spores), then the stories that the epidemic continued for a whole month (with 30 to 40 casualties per day) could not have been the case. Pulmonary anthrax develops a few hours after the infection has been inhaled and the disease continues for only two to three days. Death is almost inevitable, not within three to four hours as reported, but two to three days. Intestinal anthrax is also lethal; death is usually within one to six days after infection. If the epidemic really lasted for one month, then the pulmonary form could have been present during only the first few days, not later.

The Sverdlovsk epidemic, as is usual in the USSR because of secrecy about all epidemics, will hardly be described in detail in Soviet medical literature. However, it is not reasonable to use arguments about the tragedy in Sverdlovsk to revive germ warfare preparations or chemical warfare research and production elsewhere. The unproved and artifically sensationalised reports about the alleged Soviet "violation" of the Biological Warfare Convention do not justify the possible violation of this Convention by other nations.●

THE 1980 OLYMPICS

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. STOKES. Mr. Speaker, as the United States tried to pretend that nothing significant was taking place, the 1980 Olympic games in Moscow

came off without any major disturbances. Perhaps this was because the major eruption came months before when we, under the guise of human rights and concern for the people in Afghanistan, decided to boycott the games and urged our allies to do likewise.

As you recall, I voted against that move. I felt then and still believe that it was a hypocritical political move especially taking into account the fact that we refused to support a similar boycott of the Olympic games by African nations at the 1972 Olympics.

What we started was not a fight for human rights but rather a tug of war with the Soviet Union using the Olympic games as a backdrop. But, Mr. Speaker, this was a political power race with no winner.

We proved our point to the 60 nations which boycotted the Olympics about the evils of Soviet expansionism but not to the over 100 nations that participated.

In the midst of this action, the situation in Afghanistan remains the same and the dreams of our athletes were thwarted—some forever.

Mr. Speaker, this should be proof that political games and the Olympic games do not mix. At this time, I would like to enter an article which appeared in U.S. News & World Report about the Olympic boycott.

OLYMPIC BOYCOTT: WHAT IT PROVED, WHAT IT DIDN'T

(By Robert P. Martin)

The Moscow Olympics turned out to be neither the roaring success sought by the Kremlin nor the disaster that boycotting nations had hoped to inflict on the Soviet Union as punishment for its invasion of Afghanistan.

As the two weeks of competition drew to an August 3 close, the profit and loss columns for the United States and Russia looked like this:

Athletes from Communist countries—especially the Soviet Union and East Germany—dominated competition. Many world records were set, as expected. A plus for Moscow.

The Russians did not win many new friends or admirers with their heavy security measures or their alleged cheating in some events. A debit for the Kremlin, which had hoped to enhance the Soviet image.

The games failed to persuade the non-Communist world to look more kindly on Soviet foreign policy in general or the Afghan invasion in particular. Besides the more than 60 nations that boycotted the games, 16 countries that did show up refused to march or show their flags in ceremonies. Another setback for Moscow.

President Carter's boycott failed either to get the games moved from Moscow or to induce Russia to pull its troops out of Afghanistan. That's a setback for the White House.

The press from the Communist world lambasted the U.S. and its boycotting allies for not participating and justifiably praised the Soviets for staging a stupendous athletic spectacle. That was no surprise—and no real gain for either side.

It all adds up to no clear victory for either of the superpowers in using the Olympic Games as a political weapon.

The boycott did damage the Olympic movement. But Olympic supporters doubt that the wound will prove fatal. The Olympics have survived other crises, such as the slaughter of Israeli athletes by Palestinian terrorists in Munich in 1972 and a boycott by African nations of the Montreal games in 1976.

Despite the U.S.-led boycott that kept many of the world's best athletes away, the games cannot be faulted for inferior performances.

More than 30 world records were set. In swimming, there were seven new world and 13 new Olympic marks. Poland's pole vaulter Wladyslaw Kozakiewicz set a world record of 18 feet 11½ inches. East German Gerd Wessig jumped a world-record height of 7 feet 8.8 inches.

Other records undoubtedly would have been broken if such boycotting nations as the U.S., West Germany, Japan and Canada had sent their stars here. Several Americans have exceeded the records that were set in Moscow. Says a British sportswriter: "With the Americans out of the games, a lot of competitors got medals they otherwise would never have had a chance of winning."

MEDALS WON IN MOSCOW OLYMPICS

	Gold	Silver	Bronze	Total
U.S.S.R.	77	59	46	182
East Germany	43	34	40	117
Bulgaria	6	16	16	38
Hungary	7	9	14	30
Poland	2	13	15	30
Rumania	5	5	12	22
Britain	5	7	8	20
Czechoslovakia	1	3	9	13
Italy	7	3	3	13
France	6	3	3	12
Others	25	29	47	101

Note.—Includes events completed through Aug. 1.

BOTTOM LINE

The boycott also meant that some athletes at the games performed far below Olympic standards. Many teams were beefed up with inexperienced performers at Soviet urging—and sometimes with Soviet financial aid—to swell the number of entrants.

Examples: Tanzania entered a men's field-hockey team for the first time simply to give Soviet organizers an even number of teams. It gave up a high total of 28 goals in three matches. A bicyclist from Zimbabwe fell off his cycle 10 yards into his first race. A Libyan swimmer finished more than a minute behind the winner in a 400-meter race.

Despite Soviet attempts to pad the entry list, the 5,928 competitors from 81 countries made up the smallest field since the Tokyo games of 1964.

Soviet journalists searched diligently among athletes, coaches and spectators for praise of the Soviet effort—and scorn for the boycotters. They found some of both.

When the U.S. government gave the U.S. Olympic Committee 10 million dollars to develop the American Olympic movement, a commentator for the Soviet news agency Tass said it "demonstrates once again the extent to which the shopkeeper mentality has affected the U.S. politicians who think that money can buy anything, including sports pride."

West Germany's head of the International Shooting Union was quoted as saying: "During the Olympics, Moscow has turned into a world center of peace, friendship and understanding peoples."

Moscow was indeed a zone of peace, free of violence or major demonstrations. But there was little chance for friendship or contact between the Soviet people and Western visitors. It was not a typically festive Olympic atmosphere.●

GRADUATION ADDRESS GIVEN BY WIFE OF CONGRESSMAN FISHER

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. SKELTON. Mr. Speaker, recently, I had the opportunity and pleasure to hear Peggy W. Fisher, the wife of our distinguished colleague, Congressman JOSEPH L. FISHER, deliver the graduation address at Glebe Acres Preparatory School in northern Virginia.

Her talk to the students was most impressive, and I wish to acknowledge and share the fine advice Mrs. Fisher gave the students of Glebe Acres Preparatory School.

Her address is as follows:

GRADUATION ADDRESS, GLEBE ACRES PREPARATORY SCHOOL

I am honored to stand before you tonight to address this graduating class of 1980. This is a major turning point for you. Behind you lie twelve to fourteen years of schooling. Behind you lie the formative years when your family and teachers helped you to gather the tools that you will use the rest of your lives.

These tools include skills in communication, reasoning, research, self-discipline, creativity, and physicial and mental fitness. The tools of communication involve speaking, writing, listening and responding. If you can speak with clear articulation, if you choose your words well in both speaking and writing, and if you have learned to listen to the ideas of others and to respond to them thoughtfully, you are well on your way. Without the tools of communication you would be tongue-tied and ineffective. Without communication you would be out of touch with the world about you.

You have been given the tool of reason. Conflicting ideas have been presented, opposing philosophies, the pros and cons of choices to be made have challenged your judgment. You have discovered that these differences are essential ingredients in a free society. Yours is the responsibility to use the tool of reason well—to weigh your priorities, your understandings, your sources of knowledge. In the end your reasoning must be yours alone though you will listen to the reasoning of others as you come to your own conclusions.

You have been given the tools of research—the ability to dig out information through books and periodicals, through interviews and questioning. You have learned to organize your findings in written reports. The tools of research are vital in the professional world.

You have been offered the tool of self-discipline. If you have made use of this tool, you are fortunate, for you will have learned how to organize your time, to fit in a variety of expectations for yourself, to live up to your standards for yourself, to gain some power over the great frustration which threatens to overwhelm us all when the demands of life seem almost more than we can bear.

You have been offered the tools of creativity—whether in art or music or literary skill or in creativity of invention or scientific discovery or in creative thinking where innovative ideas could add new dimension to the lives of others as well as to your own.

You have been offered the tool of physical fitness. Respect for your body, its

strength and health could make the difference literally of decades in your life and in the quality of the lives of children you may someday bring into this world. As long as you have good physical and mental health you can cope with whatever challenges life brings your way. Without good mental and physical health every task is made difficult.

These tools, then—the tools of communication, of reason, of research, of self-discipline, of creativity, and of physical and mental fitness, are tools which you will take with you wherever you may go. You will use them to build your lives as adults. You will use them and they will be further honed in higher education and professional training. You will use them as you become involved in your communities and in your work. They will undergird you in the homes you build. Cherish these tools.

There is one more resource which your family and your teachers have given you and which will stand you in good stead as you face the adult world—this is the ingredient of affection. Your welfare is important to them. Lovingly they have watched you mature. They may be a bit nervous as you go out on your own. You must forgive them if they seem concerned. It's not that they want to keep a tight grip on you. To the contrary they are eager for you to try your wings. But they don't want you to be hurt. They wonder if they could have or should have done better by you. They tend to blame themselves if things go wrong. You see, they love you. They care about you. They don't want to let you down. But they know too that they must let you go, just as you yourselves know that you must move up to the next rung on the ladder.

With these thoughts in mind I would like to read to you from poetry I have written.

YOU ARE A MAN, MY SON

You are a man, my son.
I look to you for hope,
For courage, love, and strength.
The time has come when you
Must lead the way, not I.
You are a man, my son.
In you I trust my dreams.

LOVELY DAUGHTER THAT YOU ARE

For you, my dear, a lifetime lies ahead:
Your childhood past, you enter now
Into a world of choices great and small.
Your love of beauty and your zest for life
Increase with your awareness of the world
Around you. You are beautiful,
My dear, and as we see you grow toward
Womanhood, our hearts are filled with love
And gratitude that you have lived with us
Enriching every day and every year.
Forgotten soon will be the tears and angry words.
Remembered, though, will be the love
That gave you life, that helped you grow
Into the lovely daughter that you are.●

FEDERAL RETIREMENT SEPTEMBER COLA SAVED

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. HARRIS. Mr. Speaker, Federal and military retirees will be receiving their full cost-of-living adjustments this September, and those employees who have retired prior to September 1 will receive the September 1980 COLA and the full March 1980 "look-back." I have worked for months to be able to make this statement and to stop the ill-conceived plan to once again make Federal employees the scapegoats of inflation.

I and other congressional supporters of the twice a year COLA were successful in keeping the budget reconciliation bill bottlenecked in the Rules Committee. This bill contains language to eliminate the "look-back" benefits, prorate the first COLA for new retirees, and eliminate the March 1981 COLA for all retirees. But the battle is not yet won. I have urged members of the Rules Committee to allow a separate yea or nay vote on section 401 of the bill relating to COLA adjustments when the legislation is again taken up after the Labor Day recess. A majority of the members of that committee have indicated that there is enough support for a separate vote on the COLA elimination.

I will continue my fight against the elimination of the March 1981 COLA. The purpose of the two cost-of-living adjustments is to protect retirees against inflation. This is not a cause of inflation but a response to it.

I am disturbed that the present budget resolution totally ignores a huge area of wasteful Federal spending. As chairman of the House Subcommittee on Human Resources, I have uncovered widespread waste and mismanagement of millions, perhaps billions, of dollars annually for private consulting contracts. I am particularly concerned at this time, then we in the Congress are pressured to cut key Federal programs, that we must not waste money on consulting services which could be used to decrease the Federal deficit or fund necessary human service programs. The American taxpayer should not have to subsidize big business through Federal contracting.

I offered an amendment in the House Post Office and Civil Service Committee to substitute the savings from my legislation, H.R. 4717, to eliminate wasteful Federal contracting and yearend spending, for the savings which would result from the elimination of one of the semiannual COLA's. My amendment narrowly missed passage by a vote of 8 to 10.

Every American must be willing to make some sacrifices if we are going to balance the budget and break the inflationary spiral. But I cannot see placing all of this burden on those who can least afford it, the elderly and the poor. Clearly, the savings accrued from the elimination of one COLA will have a negligible effect on the present budget deficit, while having a dramatic impact on the needs of thousands of Americans living on a fixed income.

I have introduced House Concurrent Resolution 365 expressing the sense of Congress to defeat any reconciliation bill or resolution which would alter the present cost-of-living formula for Federal and military retirees, and I urge my colleagues to vote against any reconciliation bill that eliminates the present "look-back" benefits or the prorating of annuities. The Federal Government made a commitment to its employees to provide certain retirement benefits as a condition of employment. Federal employees contribute 7 percent of their entire salary to the civil service retirement fund and their benefits are rightfully earned.

I will certainly continue my efforts to insure that our retirees are adequately protected against the ravages of inflation. I hope my colleagues soon realize the inequity of this situation and stop playing games with the pay and benefits of active and retired Federal and military employees.●

MAN IN WHITE HOUSE SHOULDN'T THROW STONES

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. McDONALD. Mr. Speaker, it is interesting these days to hear what the President proclaims and then to watch what he does. He has always proclaimed he was building a strong national defense without any waste. So what does he do this week; he cancels the consolidation of Philadelphia and Atlanta offices of DCASR (Defense Contracting Administration Service) in Atlanta, which had been pending for several years. In furtherance of saving the taxpayers money, the White House announced the major reasons for the change were too many defense installations in the South and high unemployment in the Philadelphia area. The consolidation in Philadelphia will crown an office noted for its inefficiency, manned by 80 percent temporary employees and requiring costly new construction. Who gets it in the neck—the taxpayers and the Department of Defense as usual. Mr. George F. Will, the columnist, recently capsuled this trait of the President in a column entitled "Man in White House Shouldn't Throw Stones" that appeared in the Washington Post of June 15, 1980.

The column follows:

[From the Washington Post, June 15, 1980]

MAN IN WHITE HOUSE SHOULDN'T THROW STONES

(By George F. Will)

Jimmy Carter says Ronald Reagan's campaign will feature "demagoguery." Hmm. That's an interesting warning from the man who early in 1977, said: Hey, let's mail everybody some money—a $50 tax rebate.

Attacked entire classes of Americans, including doctors and lawyers.

Pandered to other public prejudices with repeated attacks on another safe target, oil companies.

Undermined respect for, and compliance with, the tax system by ridiculing it as "a disgrace to the human race."

Further lowered the discussion of complicated tax matters by displaying, for the merriment of yahoos, a stack of volumes containing the tax code, as though the size of the volumes is self-evident proof of something.

Lowered the tone still further by harping on the "three martini lunch."

BLAMED OPEC

Blamed most of America's inflation on wicked foreigners—OPEC—in spite of the fact that 11 of the 13 industrial nations that are more dependent on OPEC than America have lower inflation rates than America has.

Announced, as the economy tumbled into a free-fall, that his economic policies "suit me fine."

Said, as those policies produced the worst two consecutive months of rising unemployment statistics in the history of American unemployment statistics, that "no working man or woman can find fault with our policies."

Declared, six months after his treasury secretary declared the recession half over, and shortly before the shatterning unemployment figures, that the nation's economy had "turned the corner."

BIG SPENDER

Submitted a budget calling for a percentage increase of federal expenditures exceeded only once in a quarter of a century, and then denounced Edward Kennedy as "the biggest spender perhaps in the history of the United States Senate."

Said that, "The differences between me and Sen. Kennedy are very minor."

Shattered the record for peacetime tax increases, proposed a budget calling for the federal government to command the highest percentage of GNP since 1944, a year of total war mobilization—and then denounced as "ideological nonsense" Reagan's idea that taxes should be cut.

Said, three months ago, shortly before even his administration began to admit that the deficit will be at least $20 billion, that: "I don't have any doubt that we will have a balanced budget in 1981."

Delivered, 11 months ago, one of the worst speeches in the history of speeches, the "malaise" sermon in which he told the nation: I'm unpopular, so you're sick.

Followed that performance with yet another flamboyant visit to the porch of "average Americans."

Described SALT II, which not even a Democratic-controlled Senate would ratify, as "a major achievement of my administration.

WAFFLED ON CUBA

Went on television to make a histrionic declaration that the presence of Soviet combat troops in Cuba is "unacceptable."

Went on television to say that, come to think about it, the presence is acceptable.

Solemnly said that the invasion of Afghanistan was the gravest threat to peace since the Second World War—and then cut the defense budget.

U.N. VOTE

Deliberately supported a grossly anti-Israel U.N. resolution, and then when surprised by the public's revulsion, had his secretary of state say, in effect: Oops! It was all a misunderstanding.

Said: "If I ever lie to you, don't vote for me."

Said, when it suited his political situation: "I want the world to know that I am not going to resume business-as-usual as a partisan campaigner out on the campaign trail until our hostages are back here—free and at home."

Bashed the ayatollah with the national Christmas tree.

Went on television as the polls were opening in the Wisconsin primary, to announce, falsely, a breakthrough in the hostage crisis.

Said, months after two U.S. servicemen were killed defending the U.S. Embassy in Pakistan: "We've not had any loss of life during this administration because of people being sent into combat."

INCOMPLETE SUCCESS

Sprinted to Texas, on the eve of the Texas primary, to use a visit with the casualties of the rescue mission as a photo opportunity.

Baptized the rescue calamity "an incomplete success."

Having done his best to hold down military pay, used the men of the USS Nimitz, returning from an unreasonably long voyage, as props in a skit in which he said, in effect: Come to think about it, I'm for the pay increase I opposed until last week.

Enough, already.

Carter says Reagan is a demagogue. But, then Carter called Hubert Humphrey a "loser," LBJ a liar, and Edward Kennedy a "demagogue" whose campaigning is "very dangerous to our country," its principles, and peace. When Carter, directed by his inner compass to the low road, issues warnings about "demagoguery," he is indulging, characteristically, in that against which he pretends to be warning.●

BIRTH OF A FOREIGN POLICY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I would like to bring to the attention of my colleagues a commentary by William Randolph Hearst, Jr., on the development of a specific foreign policy by Governor Reagan compared to the inconsistencies and contradictions of the policies of President Carter.

[From the Los Angeles Herald Examiner, Aug. 24, 1980]

BIRTH OF A FOREIGN POLICY

(By W. R. Hearst Jr.)

SAN FRANCISCO.—Despite the shock it caused some professional politicians of both parties, Gov. Ronald Reagan's declaration that the Vietnam war was a "noble cause" and his call for a military realignment that would put us on par with the Soviets was the first step in establishing a firm foreign policy. That is something we have been lacking for four years.

Many found it distasteful to bring the Vietnam issue out from under the rug where it has been hidden away for the last four years. After all, that war involved four administrations, two Republicans and two Democratic—those of Eisenhower, Kennedy, Johnson and Nixon—and its conclusion left us without a foreign policy.

It is nice to hear a clear and decisive voice—even if some of you disagree with Gov. Reagan's premise—instead of the waffling that has come from the White House and State Department since the Carter presidency began. I suspect that my disenchanted friend Cy Vance, who quit as Secretary of State, would have a lot to say if his professionalism did not keep him mute at this time.

Gov. Reagan, addressing delegates at the convention of the Veterans of Foreign Wars in Chicago, said that "world peace must be our Number One priority . . . but it must not be peace at any price, it must not be a peace of humiliation and gradual surrender" as the Soviet pressures against peace are built up.

The time has come, he said, for the U.S. to reassert its advantage in military strength to preserve world peace—such as it is—and to shake its "Vietnam syndrome" and recognize that intervention against the power spread of the Russian-backed North Vietnamese Communists was a "noble cause."

And then he delivered his uppercut, "let us tell those who fought in that (Vietnamese) war that we will never again ask young men to fight and possibly die in a war that our government is afraid to let them win."

There has never been a person whose judgment I respected, including my own father, who was not a firm believer in the fact that a strong military force, backed by a firm foreign policy, was the only way to secure world peace. No dictator is going to start a war if he knows he is certain to get hell beat out of him.

In Washington, Presidential Press Secretary Jody Powell said that Reagan is trying to have it both ways by proposing massive tax cuts and a balanced budget, as well as increased veterans' benefits.

The White House also wants things "both ways." President Carter helicoptered aboard the giant carrier Nimitz to congratulate the men on completion of their arduous mission in the Middle East.

He heard the men complain that they were unable to perform at top proficiency because of personal money worries. Their spouses had to work, they said. Their families were on food stamps. Their children could not have all the things required for a normal life. As a consequence, they worried about their loved ones while away on sea duty.

President Carter promised he would do something about getting higher pay scales in the military services, jumped back into the helicopter, and was barely seated at his White House desk when he ordered a freeze on military spending.

The tumultuous and inherently explosive situation in Poland is not to be taken lightly. Embattled Polish workers, unquestionably at the risk of their lives and backed by nearly all their countrymen, are on strike at the ports and industrial centers, demanding "bread and justice."

They defy Communist authority, forcibly installed in a devoutly Catholic nation by Stalin and the Red Army after World War II. The system imposed on them by force and terror has led 35 million Poles to force puppet regimes to collapse twice.

Now the third confrontation is at hand. We must ask ourselves: What kind of a "socialist system" is this that is incapable of feeding its own people and which has been supported by Western loans and credits the last 10 years to the tune of $30 billion? The Polish rag-tag government of Edward Gierek can't even pay interest and principal due on its loans this year.

Bernard D. Kaplan, Hearst European Correspondent who has spent considerable time in Poland, reported the dilemma facing France and Germany this way:

The two big Western continental countries, reports Kaplan, are trying to work out collective loans and credits to Poland for around $3 billion at low interest.

That would enable the Communist regime to satisfy the legitimate grievances of the strikers and help restore some economic order in the have-not nation.

Both Chancellor Helmut Schmidt and President Giscard D'Estaing are fearful lest the Poles explode with the dire consequences that could follow from direct Soviet intervention. Remember, World War II followed the German invasion of Poland. It isn't alarmist to predict that something similar could occur with the U.S.S.R savagely

trying to repress rebellious Poles who have a long history of fighting oppression against long odds.

Polish-born Pope John Paul II, breaking his silence on the unrest to his homeland, was ever-mindful of Polish resistance against oppression. His carefully chosen words to a throng in St. Peter's Square were most solemn and compassionate.

"We here in Rome are united with our fellow Poles," declared the pontiff who then prayed to the Virgin Mary to protect Poland.

At this stage, the administration in Washington stays mum with the terse explanation that it will say and do nothing because American official views could trigger the Russians off to massive and savage intervention in the heart of Europe.

Soviet tactics haven't paid off in any satellite state, or with client regimes. Being quiet in the circumstances that currently convulse Poland is like being inert.

For better or worse, Ronald Reagan is putting together a specific foreign policy. Jimmy Carter has not done so in four years as president. Perhaps the upcoming election will spawn a new and firm foreign policy. It had better.●

UNEMPLOYMENT COMPENSATION RECOMMENDATIONS

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Ms. OAKAR. Mr. Speaker, it is with great pride and honor that I announce to my colleagues today the release of the recommendations from the final report by the National Commission on Unemployment Compensation. As the only Member of Congress to have had an opportunity to be a member of the Commission, I can assure you that these recommendations for change in the Federal-State unemployment compensation program represent some 2½-years of comprehensive hearings and discussions held throughout the country.

As my colleagues may recall, the Unemployment Compensation Amendments of 1976—Public Law 94-566—included provision for the establishment of a National Commission on Unemployment Compensation to make a comprehensive study of the Federal-State Unemployment Compensation system, the first study of such depth since the passage of the Social Security Act in 1935. Seven members were appointed by the President and three each by the President pro tempore of the Senate and the Speaker of the House of Representatives. Wilbur J. Cohen, former Secretary of Health, Education, and Welfare, served as chairman by appointment of President Carter.

The active Commissioners who served on the Commission with me and whose participation provided a constructive framework for the discussion of the problems related to unemployment compensation were: Walter Bivens, deputy executive director (Retired), Mississippi Employment Security Commission; Mrs. Beatrice Coleman, president and board chairman, Maidenform, Inc.; Warren L. Cooper, vice president for public affairs, Midwestern Region, Kaiser Aluminum & Chemical Co.; John D. Crosier, executive vice president, Jobs for Massachusetts, Inc.; Wilbur Daniels, executive vice president, International Ladies Garments Workers Union; J. Eldred Hill, Jr., executive director, UBA, Inc.; Ken Morris, director, region 1-B, United Auto Workers; Dolores Gloria Sanchez, publisher, Eastern Group Publications, Inc.; Bert Seidman, director, Department of Social Security, AFL-CIO; and Edward T. Sullivan, business manager, Service Employees International Union, Local 254, AFL-CIO.

In releasing the recommendations, Wilbur J. Cohen, chairman of the Commission, stated;

The Federal-State unemployment compensation and employment service system of our nation helps to stabilize the utilization and supply of labor and to cushion the adverse impact of unemployment on individuals and the economy. The system has proven its value under the impact of several recent recessions (especially in 1974-75 and again in 1980). The system is essential to a competitive market-priced and labor-exchange economy. It is also essential to a democratic and pluralistic society which values the importance of incentives, productivity, labor and capital mobility, and the alleviation of the hardships of jobless workers during periods of unemployment. But weaknesses in the system have become clearly evident. The system needs to be strengthened and improved both at the State and Federal levels as soon as possible.

The following is a list of the major recommendations made by the Commission.

I. REMOVAL OF UNEMPLOYMENT COMPENSATION ACCOUNTS FROM THE UNIFIED FEDERAL BUDGET

State unemployment compensation revenues, benefit payments, and trust fund reserves should not be used in computing Federal income or expenditures. Inclusion of these items in the Federal budgetary process not only distorts Federal budget realities, but has led to congressional decisions based upon truncated deliberations without full hearings and adequate consideration of the substantive issues involved and their impact upon State unemployment compensation programs.

II. FINANCING—RECOMMENDATIONS FOR PUTTING THE FEDERAL-STATE PROGRAM ON SOUND FINANCIAL FOOTING

A. Increase in Federal Unemployment Tax Act (FUTA) Taxable Wage Base.

1. Establish wage base as a percent of national average total wage in covered employment so that as wages increase, the base will increase automatically.

2. 50 percent beginning in 1983; 55 percent beginning in 1985; 60 percent beginning in 1987; 65 percent beginning in 1989.

B. Reduce employer payroll taxes for past debts.

1. Reduce employer payroll taxes under FUTA by canceling current indebtedness from FUTA collections to Federal general revenues:

(a) Federal Supplemental Benefits ($5.8 billion)

(b) Federal share of Extended Benefits paid when the national trigger was on in 1975 through 1978 ($3.3 billion)

2. Reduce employer payroll taxes under State unemployment compensation laws by rebating to the States the State share of Extended Benefits paid when the national trigger was on in 1975 through 1978 ($3.3 billion).

Total reduction in employer payroll taxes: $12.4 billion.

C. Strengthen requirements for borrowing from loan fund to assure prudent financial policies.

1. Moneys borrowed in the future should bear interest;

2. Acceptable State solvency provisions required as a condition for borrowing;

3. No further deferrals of repayment;

4. Permit States to repay loans from their trust funds on an incremental installment basis as an alternative to recapture through automatic increases in employer FUTA taxes.

D. Reinsurance—provide States protection against unusually heavy benefit costs in order to maintain State solvency.

1. Financed from a contribution rate of 0.1 percent of taxable payrolls over at least a seven-year period (without increasing present FUTA tax);

2. Initial rate of payment not to exceed 30 percent of excess costs (however defined) and no payment before 1985 (prorated if balance in fund is insufficient for full payout);

3. Benefits costs must exceed 2.7 percent of taxable payrolls before a State could qualify;

4. Reexamine reinsurance experience at end of decade.

E. Establish Board of Trustees for UI trust funds to:

1. Set investment policy for trust fund;

2. Report to Congress on estimated amounts to finance sound administration;

3. Develop improvements in policies and laws governing management of trust funds, and recommend changes to improve financing, benefits and administration of UI, ES programs:

4. Explore State investment of specified portion of its reserve funds in non-Federal obligation to earn higher rate of interest than available by Federal investment.

Board to consist of three cabinet officers and representatives of employers, labor, and the general public.

F. Correct fiscal year 1982 shortfall in funds for State costs of administration.

Present appropriation ceilings that permit only a fixed portion of FUTA collections for administration of UI and ES programs will result in a fiscal year 1982 shortfall of $230 million. Recommend a one-time congressional authorization to raise the ceiling and permit transfer from unused FUTA funds. An additional $100 million advance from general revenues will also be needed.

G. Recommendations to the States on financing—(not Federal law changes).

1. States should reexamine State solvency provisions and establish objective of a reserve balance based on careful evaluation of past and prospective benefit-cost ratios and future revenue-generating capacity;

2. Ensure effective charging of all benefits in fund replenishment provisions of solvency arrangements.

3. Eliminate zero minimum tax rates and establish maximum rates in terms of anticipated benefit costs;

4. New employer rates equal to average rate for their industry.

5. In any individual State, the operation of its system of experience rating and tax schedules should be adjusted in relation to the wage base and the amount of tax revenues needed to assure the solvency of the trust fund.

III. REMOVE UNEMPLOYMENT BENEFITS FROM BEING SUBJECT TO FEDERAL INCOME TAX

1. Taxation of benefits may be offset by an equal increase in benefits;

2. Discriminatory treatment since not all other income is presently taxed under Federal Income Tax;

3. No effective way for IRS to police tax provision.

IV. BENEFITS—RECOMMENDATIONS FOR ENSURING A SOUND BENEFIT STRUCTURE

A. Repeal current Federal standards.

1. *Repeal* current FUTA requirement that States restrict eligibility of certain undocumented alien workers.

2. *Repeal* current FUTA requirement that States deny payment of benefits to professional athletes under certain conditions.

3. *Repeal* current FUTA requirement that States reduce benefits by amount of any pension payment received by a claimant.

4. *Repeal* FUTA provisions requiring States to deny benefits to professional employees between school terms and prohibiting States from applying such denial to nonprofessional employees of colleges and universities. *Permit* States discretion to handle issues of payment or denial during school breaks without Federal restrictions.

B. Establish Federal basic minimum benefits standards.

1. Maximum equal to 55 percent of State average weekly wage beginning in 1982, 60 percent in 1984, 66⅔ percent in 1986.

2. Weekly benefit below State maximum that averages at least 50 percent of individual's average weekly wage.

3. No more than 39 weeks of work for 26 weeks of benefits.

4. Change current FUTA requirement barring total cancellation of benefit rights to prohibit any cancellation of benefit rights except for fraud and receipt of disqualifying income.

C. Greater protection during periods of heavy unemployment and to older workers.

1. Change State Extended Benefit trigger to remove the 120 percent factor, establish the trigger as an IUR of 4.0 percent seasonally adjusted for a 13-week moving average and repeal current 5.0 percent option.

2. Establish permanent (triggered) FSB-type program extending total benefits to maximums of 52 weeks and 65 weeks during periods of high unemployment.

3. Establish lifetime reserve benefit program for workers 60 and over with at least 40 social security quarters of credit and current UI eligibility—to a maximum total benefits of 52 weeks.

D. Program for displaced homemakers.

Recommend that Congress and Department of Labor give consideration to possible solutions to problems of this group through: unemployment insurance credits for equivalent work; transfer of unemployment compensation credits earned by spouse; and pilot projects or studies.

E. Recommendations to States—(not Federal law changes).

1. Weekly benefit amount of not less than 50 percent, preferably 60 percent, of claimant's average weekly wage.

2. Maximum of 66⅔ statewide average weekly wage, with periodic adjustment to ensure that a significant percentage (75-80 percent) have a 50 percent wage replacement rate.

3. Partial benefit formula that provides strong incentives to accept part-time work.

4. Minimum qualifying requirement of at least 14 weeks but not more than 39 weeks for 26 weeks of benefits.

5. No disqualification for voluntary leaving with good cause including compelling family obligations and sexual harassment.

6. Disqualification for misconduct limited to misconduct connected with the work.

7. No reemployment and earnings requirement for any disqualifying act.

8. Disqualifications for discharge for misconduct, refusal of work, voluntary quit should be for a variable number of weeks depending upon seriousness of the action.

9. No specific actively seeking work availability requirement.

F. Extend and maintain coverage.

1. To agricultural workers on the same basis as other workers instead of current limitation to farms with ten or more workers or a $20,000 quarterly payroll;

2. To household workers if employer pays $50 (instead of $1,000) for such service in a quarter;

3. Oppose pending legislation redefining independent contractor which would remove substantial numbers of workers from unemployment compensation coverage.

INITIATIVES FOR INCOME MAINTENANCE OF THE LONGER TERM UNEMPLOYED

A. Increase in CETA job slots.

In the absence of any other Federal programs to provide job opportunities to those who have exhausted unemployment compensation benefits, the total number of CETA job slots should be doubled, from 450,000 to 900,000.

B. Financing of unemployment compensation benefits for CETA workers.

Proposals to repeal funding of unemployment compensation benefits to CETA job-programs employees from the Federal Unemployment Benefit Account (general revenues) should be rescinded. Repeal would require that annual cost of $35-50 million be paid from CETA program grant funds or other State or prime sponsor sources.

C. Unemployment Assistance.

Recommend establishment of a program of income-tested benefits, administered completely separate from unemployment compensation, to provide some minimum protection for all unemployed persons exhausting or not eligible for unemployment compensation benefits, and for whom no other job or program is available.

MORE EFFICIENT ADMINISTRATION.

A. Permit U.S. Treasury Department to delegate State collection of FUTA taxes.

B. Allocate additional Federal funds to improve techniques and develop special procedures for detection of fraud, errors, and tax delinquencies.

C. Require quarterly wage reporting to assist cross-matching and prompt payment of benefits.

D. Strengthen appeals process.

1. Remove specific obstacles in State laws to fair hearings and take steps to ensure all parties know and understand the law, their rights and obligations.

2. Improve quality of hearings and determinations by developing better trained, more competent referees.

3. Establish specific promptness standard for second-level appeals performance.

E. Strengthen and implement procedures aimed at speeding the processing of interstate claims and appeals.

F. Increased Grants-to-States for administrative financing for unemployment compensation and employment service.

1. Full funding of cost model instead of 85 percent as in fiscal year 1980;

2. Greater flexibility to States to use funds and retain funds until third quarter;

3. Reauthorization of Reed Act money for use by States;

4. Improved Federal staffing for technical assistance to States.

G. Strengthening and improving the United States Employment Service (ES)

A substantial and continuing increase in basic ES staffing is imperative to meet the needs of unemployment compensation claimants and all other unemployed workers and of employers in filling job vacancies promptly.

Instead of the present 15-year-old ceiling of 20,000 ES positions, a gradual increase should begin as quickly as feasible, using four ES staff years per 10,000 workers in the civilian labor force, to reach 50,000 positions by 1985.

H. Administrative costs of non-FUTA subject employers (State and local government, and nonprofit employers).

These costs should not continue to be borne by FUTA subject employers, as at present. One possible option is to have such costs paid from Federal general revenues.

VII. SPECIAL EMPLOYEE PROTECTION PROGRAMS (TRADE ADJUSTMENT ACT, ETC.)

A. Special Federal programs should not be paid concurrently or be a supplement to UI.

B. Total costs of such programs should be paid from general revenues.

C. Amount and duration of special program benefits should not be considered precedent or pattern for UI.

Mr. Speaker, it is my sincere hope that Congress will seriously review the Commission's recommendations and take quick action. These recommendations deserve careful consideration and implementation. I want to thank the Speaker for appointing me to the National Commission on Unemployment Compensation. It has been a rich and rewarding experience.●

CORRECTING A REAL INJUSTICE

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. STARK. Mr. Speaker, it has been 2 years since the Congress sent the District of Columbia voting rights amendment to the States for ratification. To date, nine States have approved the amendment.

I expect my home State, California, will be the 10th, perhaps within the next week. The following editorial from the August 25 edition of the Los Angeles Times presents convincing arguments for the quick ratification of this amendment by the necessary 38 States.

CORRECTING A REAL INJUSTICE

The 750,000 residents of the District of Columbia must pay taxes, serve in the military and even accept federal authority over their municipal government, yet they do not have a single voting member of Congress.

A constitutional amendment to correct that injustice by allowing the District to elect two senators and one member of the House of Representatives is now pending in legislatures across the country. None of the necessary 38 states have ratified it, but the California Senate has twice refused to concur in Assembly approval of the amendment.

Only last month, the upper house rejected the proposal by only three votes, but it may have another opportunity to do what is right.

Despite the earlier defeat of a resolution by Assemblywoman Maxine Waters (D-Los Angeles), Sen. Nicholas C. Petris (D-Oakland) is pushing identical legislation, and intends to bring it to the floor before the Aug.

31 adjournment if he can round up the votes to pass it.

He reduces the issue to its essentials when he argues that denial of representation to the District amounts to taxation without representation, and also denies its residents a voice in the enactment of laws that are as binding on them as on all other Americans.

But Petris' most conservative colleagues ignore the equities of the issue, and advance a number of specious reasons for opposing ratification. They say that adding two more members to the U.S. Senate would dilute the power of California's senators—an argument that could have been made against statehood for Alaska and Hawaii. They say that most Washingtonians work for the government, and would elect representatives who would vote to fatten their salaries and benefits—an argument that could be made for denying the vote to citizens of Sacramento and every other state capital in the country.

No, the real objection of most conservatives is that the District almost certainly would vote Democratic. So be it. It is wrong to withhold the franchise on the basis of party affiliation, just as it is wrong that the Voting Rights Act should apply to all sections of the country except the city where it was written into law.●

CALL DISTRICT FORUM ON NORTHERN IRELAND

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. WOLFF. Mr. Speaker, it has been my continuing effort to investigate and draw attention to the appalling situation in Northern Ireland. Inherent in our commitment to the defense of political liberty, our Nation assumes the responsibility of coming to the aid of the oppressed Catholic minority of Northern Ireland. It is the duty of Congress to fight discrimination and to uphold the tenets of human rights and civil liberties. I urge my colleagues to join me in my endeavors to remedy this situation by focusing attention and speaking out on this important matter. I insert in the RECORD today an article recently printed in my constituent newsletter calling for a district forum on Northern Ireland.

The article follows:

If the United States' commitment to human rights means what it says, we must speak out against violations of human rights no matter where they occur. We cannot be selective in our condemnation of abuses in one area of the world while turning our heads in silence on another.

Human rights violations take on many forms—They can be committed by lawless vigilantes or by authorities acting under the cover of law—but, in reality, these violations serve to undermine the basic tenets of law and order. Either motivation is repugnant to the cause of human rights.

Either we are or we are not, committed to the defense of basic human rights. We must condemn all violations of human rights, be they the result of terrorist activities in the Mid-east, Asia, Africa, Latin America, or those violations being carried out against the Catholic minority in Northern Ireland. We must make every effort to focus world attention on these injustices even though they may be committed in a nation which has been our closest ally—Britain.

What has happened in Northern Ireland and continues to take place is not a religious war, but is the consequence of a traditional struggle brought about by the injustices of the past that are perpetuated today in political manifestations.

Violence is not the answer to political problems and I do not condone these acts taking place on either side. The violence must be ended if we are to achieve the human rights and civil liberties to which the people of Northern Ireland are entitled.

Consistent with my efforts over the years to investigate and voice strong objections to human rights violations and discrimination, I am calling together the leaders of the Irish-American community in the 6th Congressional District for an open forum to exchange views and determine what new steps can be taken to end the strife in Northern Ireland and attain a lasting peace.

The forum will be held on Wednesday, September 24, at 8:00 P.M., in the Irish-American Center at 297 Willis Ave., Mineola.

COMMITMENT TO HUMAN RIGHTS

It is the responsibility of Congress in its commitment to support worldwide human rights to investigate fully and speak out about the situation in Northern Ireland.

Let our nation move now to demand the restoration of human rights; the end to oppression of the minority and the freedom of political prisoners in Northern Ireland. Perhaps this approach is what is needed to deal with the root causes of the violence.

As most of you will recall, I have been to Northern Ireland and have personally witnessed the violence; have seen the terror and destruction in the streets; have observed the grief sticken families; and having to use an alias, Joe Branigan, (recognition as a Congressman would have concealed the true conditions), have been the only Congressman ever to venture inside the prison at Long Kesh.

The deprivation of human rights in Northern Ireland cannot be ignored by any peoples concerned with human and civil liberties of the individual. Our own nation, more than two centuries ago, rose up in rebellion to attain freedom from the oppressive practices of the British under King George III.

In 1698, during the reign of King William, the entire Catholic clergy was ordered out by the British and any who remained or returned were subject to being hanged, drawn and quartered. Prior to that infamous period, during the reign of King James I, the lands of the six Irish counties of Donegal, Derry, Tyrone, Fermanagh, Cavan, and Armagh, some 4 million acres, were confiscated and the owners driven away from their homes. The lands of Antrim Down and Monaghan had already been divided by the British and awarded to the favorites of the British Crown.

The "penal laws" enacted by the British in these early days on the Catholic population in Ireland read as some of the most inhuman acts ever imposed. For example, the Irish Catholic was forbidden to exercise his religion, forbidden to receive an education, enter a profession, hold public office, engage in a trade. He was forbidden to live in a corporate town or own a horse valued at more than 5 pounds. The Irish Catholic could not purchase or lease land, accept a mortgage, inherit land from a Protestant, hold a life annuity. He could not vote, could not keep arms, could not educate his child nor send him abroad for schooling.

In 1782, Ireland had a constitution and presumably was "independent" from England. However, the so-called "constitution" contained glaring violations of human rights. In brief, no Catholic could sit in the Irish Parliament or vote for a Member of Parliament. The infamous "Rotten Boroughs" were created, meaning that of the 300 members of Parliament, only 64 were from the Irish counties while 264 were from the "rotten boroughs" that were the property of British peers—and this at a time when three-quarters of the population in Ireland were members of the Catholic Church.

But the Irish remained undaunted in their quest for freedom and the right to liberty. Today, this determination to achieve human rights is as strong as ever. Just as those of Jewish heritage will never forget the oppression and holocaust wrought on their people, the Irish will not forget the centuries of discrimination under the British.

STRUGGLE GOES ON

In this century, the struggle has continued. In 1918 there was a general election in Ireland sponsored by the British, on the question of whether or not the people wanted self-rule or to continue under the British. Approximately 83 percent of the Irish people voted for self-rule. The British then deemed the election null and void, an act that unleashed a new wave of violence, guerrilla warfare and resistance. By 1921, the situation was so tense that the British realized they could never continue their hold on Ireland. However, to maintain their foothold, they took the area around Belfast with its enclave of British loyalists, and arbitrarily partitioned Ireland into two states. The Republic of Ireland in the south and Northern Ireland in the north to remain under British Crown, a basic gerrymander to retain power. Northern Ireland created out of terrorism remains a state of violence where discrimination against the Catholic Irish flourishes unabashed—in jobs, in housing, in the exercise of basic human rights. In Northern Ireland where there are cities with pro-British populations the unemployment rate is minimal, but in areas where the Catholics live, unemployment often surpasses 80 percent.

The British in Northern Ireland also exercise what they call "Special Powers," an abhorrent abuse of the law implemented in 1971 that permits the imprisonment of Irish nationals without charges or trial—blatant violation of human rights and civil liberties (as set forth in Britain's own Magna Carta) and the catalyst that ferments the spread of violence and unrest.

We in America must stand against this type of oppression regardless of the agent or instrument of that oppression. The free world must assure the peoples of Northern Ireland that we are truly committed to upholding human rights in that part of the world. The fight for justice is long and arduous, but until the discrimination and bigotry is harnessed in Northern Ireland, there will be no ultimate peace.●

JEWISH WEEK WARNS AGAINST PLO "MODERATE" LABEL

HON. MICHAEL D. BARNES

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. BARNES. Mr. Speaker, the local Washington metropolitan area newspaper Jewish Week published an important article in its August 14-20 edition describing the manipulation of the media by the PLO and its leader, Yasser Arafat.

I urge my colleagues to read the article and the analysis of author Martin H. Miller on the PLO's efforts to gain respectability through use of the press, and I commend Jewish Week and editor Joseph M. Hochstein for presenting this valuable essay. The article follows:

THE MEDIA RECYCLE ARAFAT AND THE PLO AS MODERATES

(By Martin H. Miller)

What motivates the press of America and Western Europe to serve as conveyors of propaganda for Yasser Arafat and the PLO? Why do our wire services, feature and news services, and daily newspapers give aid and comfort to the most prominent member of the international terrorist network, an organization dedicated to undermining and destroying the stability of our society? Even the penetration of the capitals of our world—Washington, Paris, Rome, London—by Palestinian assassins and PLO-trained murderers has failed to deter the journalist apologists for Arafat.

The latest instance is the interview of Arafat by Joseph Fitchett of the International Herald Tribune published August 2 in The Washington Post with a Beirut dateline. The article begins, "Palestine Liberation Organization Leader Yasser Arafat has denied that his guerrilla group recently called for the destruction of Israel or abandoned its interest in negotiating for a Palestinian state to coexist with Israel."

A few paragraphs later Fitchett notes, "Arafat accused Israel of trying to misrepresent the PLO with misleading documents widely publicized in Western Newspapers and circulated at the United Nations. These purport to prove that the PLO has reverted to its old hard-line goal of never compromising with Israel."

ARAFAT'S EXPLANATION

Fitchett presents Arafat's explanation of how the text of the manifesto or political program issued by Al Fatah after its recent 11-day conference in Damascus was leaked by a "radical Palestinian journalist to a Beirut newspaper, Al Liwa, which published it as a scoop giving Fatah's political platform." This is the text Arafat doesn't like. It proclaims the dedication to violence of the largest and most influential component of the PLO.

The latest "It really isn't so" approach in behalf of the PLO began to surface shortly after the Damascus conference. On its front page on June 7, The Washington Star published a New York Times News Service article datelined Beirut, built around an explanation by Mahmoud Labadi, "the chief PLO spokesman here," that the Al Fatah Damascus conference didn't mean it when it vowed death to the Jews. "The reports were the product of a misunderstanding."

Arafat's "moderation" was the theme of an article by The Washington Post correspondent Edward Cody dated July 5 from Beirut. In Cody's words, "Arafat and Farouk Quaddoumi, or Abut Lutf, head of the PLO political department and its unofficial foreign minister, are considered within the guerrilla leadership here as the chief proponents of moderation and use of diplomacy to advance the Palestinian case against Israel.

ARAFAT'S "RELUCTANCE"

"But they and their moderate allies have been outnumbered in recent Palestinian meetings, informed PLO officials say, particularly at the Fatah congress in Damascus that issued the June 1 communique." According to Cody, hard-line PLO-ers were pushing Arafat to violence because of the "lack of tangible progress from diplomacy." The Washington Post headline on the Cody article is, "Tough Rhetoric Masks PLO Strategy." The use of the word "rhetoric" helps to underscore the "moderate" nature of the PLO. Do you expect violence from people who engage in "rhetoric"?

Fitchett's August 2 article was unusual in presenting an alleged interest by Arafat in "negotiating for a Palestinian state to coexist with Israel." Some months ago, despairing of finding any evidence of the so-called Arafat policy of moderation, I telephoned one of the State Department's key office directors for the Middle East. He referred me to Arafat's conversations with Rep. Paul Findley of Illinois. When I wanted something more "official," more tangible, the best he could do was tell me to check the reports of the Foreign Broadcast Information Service, the U.S. agency which monitors foreign broadcasts and news reports. When I asked him how he explained Arafat's threat to "cut off the hands of the United States, to cut off the hands of Jimmy Carter," he retorted, "That's Arafat's high-flown rhetoric. Arafat does that sort of thing. It is unfortunate. It always comes out sounding awful."

I should have asked the State Department Middle East expert how "moderate" were the PLO murders of the American ambassadors to Lebanon and the Republic of Sudan. We could also ask International Herald Tribune correspondent Fitchett how "moderate" were the recent PLO murders of a French policeman and a neighbor of Shahpour Bakhtiar in Paris or the killing on July 27 of a Jewish youth and the wounding of 20 of his companions who were on their way to a summer camp, in Antwerp.

OFFICIAL VOICE OF PLO

We might ask Mr. Fitchett why he accepted so readily Arafat's explanation of "erroneous press reports to distort Palestinian intentions." Arafat and his apologists seem to have been unaware that the United States government monitored and published the text of the PLO broadcast of the resolutions of the Al Fatah conference. The broadcast was June 1 over the Voice of Palestine, the PLO's radio station in Beirut. The Foreign Broadcast Information Service gave its translation of the broadcast in its daily report for the Middle East and Africa dated June 5. It would be hard to find a more official voice for the PLO than its own radio station, broadcasting in Arabic to the Arab world.

The voice of Palestine transmitted verbatim some 49 paragraphs giving the political program or policy declaration of the Fourth Conference of Fatah in Damascus. Evident throughout is the determination to destroy Israel. What is given equal or higher priority is the PLO's hostility toward the United States. For example, "The United States stands at the top of the enemies of our people and nation. It is pursuing a policy hostile to our people, our revolution, our Arab nation and to all Arab and liberation forces.

"The United States supports the Zionist entity and its agents in the area and establishes military alliances aimed at surrendering the area to its military influence so that it may continue to plunder our nation's resources. For this reason, the world front hostile to U.S. policy must be strengthened and fight to foil this policy and to strike at U.S. interests in the area."

ROLE OF MEDIA

The Damascus conference also hailed Iran's humiliation of the United States and declared it would "strengthen our relations of struggle with the Islamic Revolution in Iran which brought down the strongest U.S. bastions in the area . . ."

The media generally ignores the anti-U.S. dedication of the PLO. Instead, at the time of the imprisonment of the American hostages in our embassy in Teheran, there were stories of how Yasser Arafat would persuade his friend, Ayatollah Khomeini, to release the Americans. Later, it turned out, the PLO helped to plan Iran's anti-American strategy and to guard the hostages.

Nor is there much mention of the PLO's collaboration with the Soviet Union to oust the United States from the Middle East. This PLO policy was also reiterated at Damascus. Our will is "to strengthen the strategic alliance with the socialist countries, especially the Soviet Union, as this alliance is necessary in order to confront effectively and seriously the U.S. and Zionist plots against the Palestine question and the world liberation issues."

Al Fatah and Yasser Arafat's plans for Israel were no secret for those who listened to the PLO's Voice of Palestine. As stated in the Damascus resolutions, ". . . Fatah aims to liberate the whole of Palestine . . . the political program stressed that the security of armed struggle and its continuing escalation must not be affected . . . in view of the fact that the armed popular revolution is the only inevitable path to liberate Palestine . . . to escalate armed struggle inside the occupied land and across all confrontation lines against the Zionist enemy . . . to stand firmly against any attempt to legalize the Camp David accord."

Especially ridiculous is the attempt to imply that Arafat must take the road of violence because his diplomatic moves have gone unrewarded. Not only do the United Nations and its constituent organizations devote themselves to advancing the PLO cause, a host of nations, separately and in regional alliances, salute Arafat and the PLO. But the recognition accorded Arafat and the PLO has brought only more PLO violence. Among the most afflicted have been the people of Arab lands on which the PLO has descended. Lebanon, for example, once the Switzerland of the Middle East—the Arab country which came closest to democracy—is now a shambles. The PLO was a major contributor, along with the Syrian "peace-keeping forces," to the killing of 70,000 Lebanese and the physical destruction of their country. Thousands of Arabs killed in other lands are part of the PLO toll.

NON-ARAB VICTIMS

Non-Arabs are victims, too. From 1973 through April 1979, Near East Report reveals, there were 1,575 terrorist attacks across Israel's borders, costing 133 lives. From 1967 to 1978 Arab terrorists in Europe, Asia and Africa killed, 1,133 people, wounded 2,498 and held 2,753 hostage. During this time, too, the PLO has been providing training, haven, money, intelligence and weapons to terrorist movements in Ireland, Germany, Japan, Italy, Africa and Latin America. American revolutionaries, too, have been trained in PLO camps.

These facts must be known to Joseph Fitchett, Edward Cody, and other Middle East "experts" who salute Arafat as a "moderate." Instead they should pay heed to Leonard J. Davis who observes in Near East Report, "When newspapers legitimize terrorists in words, they are no different than those nations which legitimize terrorists in diplomacy. They too become collaborators in terror."●

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PERSONAL EXPLANATION

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. ROTH. Mr. Speaker, I was unable to be present on the afternoon of August 22. Had I been present, I would have voted as follows:

Rollcall 480, yea;
Rollcall 482, nay;
Rollcall 483, yea.●

THE WORKERS WHO DARE TO UNITE

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. RITTER. Mr. Speaker, today our thoughts are with the Polish workers who continue to strike for critical economic and social demands, as pressure mounts to resolve their conflict with Communist government leaders. A majority of the Members of the House of Representatives have expressed their concern for the peaceful solution of the Polish confrontation without foreign intervention by joining me in cosponsoring House Concurrent Resolution 406. Members may be interested in the following commentary by George Will for the September 1 issue of Newsweek, which provides a historical and political perspective on the significance of the Polish workers' challenge.

The commentary follows:

THE WORKERS WHO DARE TO UNITE

In Poland a public servant's lot is not a happy one. The public is such a nuisance, and it is so hard to get good work done. Recently a Communist official who was being pestered by people who wanted to reopen a nineteenth-century church had a most tiresome time organizing a demolition team willing to dynamite the church.

What a spectacle. A regime committed to indoctrinating everyone with the intellectual junk of dialectical materialism reduces an old building to rubble in order to fight what materialists disbelieve in—the autonomous life and the power of ideas. And now another specter is haunting the regimes that are trying to keep a sinewy grip on Eastern Europe: the workers of their world might unite.

To those of us who believe that Western democracies are, whether they know it or not, in the fifth decade of a war with the totalitarians, there is satisfying historical symmetry in the fact that the specter rises from Poland, and especially from Gdansk. Forty-one Augusts ago Gdansk was Danzig, and appeasers were down to their last slogan: "Why die for Danzig?" Forty-one years ago last Sunday the Soviet Union became Hitler's ally, preparatory to raping Poland. In 1939 Danzig was the last inch of Europe's fuse. In 1980 Gdansk is a sputtering fuse of unknown length.

Poland has sputtered intermittently for three decades, but what now gives the world reason to hold its breath is that some of the strikers' demands threaten the regime's roots—or, rather, its buttresses; it has no roots. Today's troubles are no more about food prices than the American Civil War was about Fort Sumter. On other occasions of labor unrest, the regime has bought peace with economic concessions. This time not even a regime that believes everyman is "economic man" and believes history is a story of economic forces can believe that it faces an economic challenge.

Demands: True, some demands (such as abolition of special shops open only to police and party officials) pertain to relatively mundane idiocies and mendacities of Communist life. But shopping is not a minor matter in a country where the typical woman spends two hours and ten minutes a day waiting in lines. Anyway, the workers' critical demands attack the ligaments of totalitarianism: access for all religious groups to the mass media, guaranteed free expression for all, free trade unions.

The name of a dissidents' organization may seem stilted, but it defines the issue: Committee of Social Self-Defense. Polish society is at war with Poland's government. Totalitarianism means total domination of society by the state, suppression or politicization of all mediating structures—such as churches and labor unions—that act as buffers between the individual and the state. Totalitarianism is a twentieth-century disease, dependent on modern bureaucracy and other potential instruments of social control, such as broadcasting.

Today's drama in Poland is riveting because it says—it shouts: "Totalitarianism doesn't work. Indoctrination is less potent, human beings are less malleable, mediating structures rooted in the social soil are more resilient than totalitarians think." But thinking is not something totalitarians do elegantly. Totalitarianism is tyranny with delusions of grandeur, delusions rooted in intellectual rubbish about Herrenvolk or new socialist man. Intellectually, totalitarians are the most loutish tyrants. To signal confidence in its marionette in Warsaw, Moscow has just announced plans for a spanking new edition of the writings of Edward Gierek. Imagine, if you can bear to, curling up with one of those books.

Poland is the Soviet Union's largest "ally" (if that description can be used of a manacled nation). So it is delicious that strikers decorated the gates of Lenin Shipyard with the Polish flags, portraits of Pope John Paul II, and blue and white banners of the Virgin Mary. Lenin: founder of a "dictatorship of the proletariat" in which the proletariat is denied trade unions. Polish flags: dear me, didn't Lenin say workers have no fatherland, no country but the "socialist movement"?

The Pope: the most consequential statesman of our time is a Pole living abroad and governing a city-state 1/1,000th the size of Andorra, from which he governs Poland more, in a sense, than does the government planted by bayonets in Warsaw. The banner of Virgin Mary: religion is the *opiate* of the masses? Building Bolshevism is not all beer and skittles in a nation in which 30 million of the 35 million citizens are Catholics whose Catholicism is an undiluted fighting faith.

Domination: The Polish Government is arresting people. The Kremlin, too, is acting in character, jamming broadcasts from the West. Both are violating the Helsinki agreements on human rights and the freedom of information. But then, the point of the Helsinki meeting was less those pieces of paper than the West's formal acquiescence in Soviet domination of Eastern Europe—in the outcome of the 1939-45 phase of the war against totalitarianism.

Poland is surrounded by Soviet satellites and Soviet divisions, so the current drama, which is yet to be played out, can hardly come to a happy conclusion. Perhaps the fact that justice and power are so entirely on opposite sides encourages romantic and sentimental judgments. Viewed from afar, the Polish workers may seem nobler than any lot of people can be. But, on the other hand, the democracies, increasingly cynical about their leaders and themselves, are incapable of crediting anyone with virtues that they, like cattle at twilight, plod along without.

One would have to be made of marble not to be moved by the glimpses we get of Polish workingmen and -women organizing themselves against a leviathan. A grainy, black-and-white photograph of those people seated at a table, quietly taking their lives into their own hands by talking about organizing, is a reminder that the simple decencies of life only seem banal to people who owe their enjoyment of those decencies to the bravery of previous generations. To paraphrase what Dean Acheson said of Louis Brandeis, the Polish workers may receive some undiscriminating praise, but they are worthy of the urge which gives rise to it.●

TRIBUTE TO DOROTHY GAGE

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I wish to bring to the attention of my colleagues the record of community service performed by my constituent, Mrs. Dorothy Gage, of Oxnard, Calif. Labor Day, September 1, 1980, marks the 25th year of Mrs. Gage's active participation in the Ventura County muscular dystrophy organization.

Mrs. Gage is the parent of three afflicted children and one healthy one. Her family was the first to be used in a research program at UCLA into the background and family involvement of muscular dystrophy.

Mrs. Gage pioneered the Ventura County Association of Muscular Dystrophy and is currently serving full time as county chairman. In addition, she has worked tirelessly for the muscular dystrophy telethon for the past 15 years.

I wish to join with the Ventura County Muscular Dystrophy Association in commending Mrs. Dorothy Gage for dedicated efforts in fighting muscular dystrophy.●

SUPERFUND: SCIENCE AND THE LAW

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. BROWN of California. Mr. Speaker, the following article appearing in the August 29, 1980 issue of Science magazine skillfully highlights the conflict between the scientific and legalistic or humanitarian approaches taken to the hazardous waste problems. This distinction is important to

recognize as we consider the superfund legislation, since lack of understanding and conclusive scientific evidence have been sited in attempts to delay such legislation.

Any environmental regulations will ultimately be required to stand up under scientific scrutiny. However, I believe that we simply cannot afford the risks to our health and to the environment that delaying action pending extensive and prolonged scientific studies would entail. In a rush for conclusive scientific results, poor studies will be designed, further confusing matters and generating not understanding, but anger and a mistrust of science.

Clearly action is needed in cleaning up of hazardous waste sites, and further understanding of the problems caused by toxic materials is essential to reasonable legislation. I urge my colleagues to take positive action with regard to the superfund legislation, and amendments that may arise on the House floor that would provide funds for research to promote scientific understanding of the problems involved. The article follows:

[From Science, Aug. 29, 1980]

CONTINUING CONFUSION OVER LOVE CANAL

(By Barbara J. Culliton)

The task of bringing science to bear in solving the problems of Love Canal is still far from complete, and what has been accomplished to date is hardly an object lesson in how to apply science to public policy.

The controversy surrounding the chromosome aberration study commissioned by the Environmental Protection Agency (EPA) refuses to subside. With more studies of the health of Love Canal residents being planned, there is vigorous debate about what, if anything, such surveys can accomplish. Already apparent is a fundamental difference in approach between lawyers and scientists. The lawyers want quick results that can serve as evidence for law suits; researchers contend that environmental issues as complex as that of Love Canal defy almost any attempts to develop immediately useful data.

EPA's first attempt to bring science to bear on the Love Canal problem began last fall. Convinced that hundreds of families should be moved away from Love Canal, EPA attorneys asked the Department of Justice to seek a court order requiring Hooker Chemical Corporation to pay for the relocation of the families. It was Hooker that buried tons of toxic wastes in the abandoned canal in the 1940's and early 1950's. The Justice Department advised EPA to provide some evidence to the effect that continued residence in the Love Canal neighborhood was hazardous to health.

EPA officials decided that a search for chromosomal aberrations would fit the bill and, in January of this year, Dante Picciano of the Biogenics Corporation in Houston was commissioned to conduct a "pilot" study as quickly as possible.

Picciano, as it happened, was able to provide the evidence that EPA was looking for. The summary of his report, dated 14 May 1980, stated: "It appears that the chemical exposure at Love Canal may be responsible for much of the apparent increase in the observed cytogenetic aberrations and that the residents are at an increased risk of neoplastic disease, of having spontaneous abortions, and of having children with birth defects."

Before Picciano's findings could be submitted to any measure of peer review, they came to public attention, stirring new fears among the already distraught people of Love Canal and prompting renewed demands from them that they be relocated.

For more than a year, reports of excessive illness among Love Canal residents had been accumulating. Justice Department attorney Anthony Roisman calls the Picciano study the final straw that forced the policy-makers to a decision. Presidential aide Jack Watson took a personal interest in the situation, as did other high-ranking Executive Branch personnel. Steps were taken to provide funds for relocation of some 700 Love Canal families and, according to a number of scientists, the policy-makers began exerting considerable pressure for additional (and speedy) studies of the health of Love Canal residents.

Yet the Picciano study, despite its considerable catalytic effect on the politicians, came almost immediately under severe criticism from scientists, and in particular from two review panels convened by the EPA. One panel was chaired by David Rall of the National Institute for Environmental Health Sciences, and the other, by Roy Albert of New York University Medical Center.

Both review panels criticized the Picciano study for its lack of controls (see Science, 13 June 1980), and the EPA has now accepted the verdict of the Albert panel that the lack of controls makes it impossible to draw any conclusions from the study. Certain technical criticisms made by the Albert panel, however, have been disputed by other scientists, such as Marvin Legator of the University of Texas, Galveston, and Margery Shaw of the University of Texas Health Science Center. Shaw believes that anomalies dismissed as artifacts by the Albert panel were real aberrations as claimed by Picciano. Picciano also has defended his study and explained why it was conducted without controls (see Letters, Science, 15 August 1980).

Quite apart from the controversy that has entrammeled the Picciano study, the EPA's original choice of a chromosomal aberration survey may not have been particularly well advised. As a tool for demonstrating health effects, chromosome studies are notoriously difficult to interpret. No more than a handful of specific diseases has been shown to be associated directly with a known chromosomal aberration. And past experience makes cytogeneticists extremely wary about drawing hard and fast conclusions. Thalidomide, for instance, does not produce chromosomal aberrations, whereas aspirin, which does, is not known to cause birth defects in humans although it does in lower animals. The fact that the Love Canal residents have been exposed to unknown amounts of chemicals adds to the difficulty of interpreting a chromosome study. Some cytogeneticists doubt if anything of value can be learned from such a study in the short term.

Nevertheless, if the people of Love Canal are willing—and it is not certain that they are—another, "more definitive" and controlled chromosome study will soon be started under the auspices of the Center for Disease Control (CDC) in Atlanta. It is likely that Michael Bender of Brookhaven, in collaboration with a group at the Oak Ridge National Laboratory in Tennessee, will conduct the study.

What will it prove? Bender, who says he is willing but "reluctant" to be involved, believes that the only reasons for a follow-up cytogenetic study at Love Canal is "humanitarian," to give the residents more information. He does not think it has the potential of being of any real value unless it is conducted as part of a long-range epidemiological study. Picciano agrees: "The only value of another cytogenetic study will be its long-term academic value," he says. "Besides, you don't need a cytogenetic study to know something's wrong up there at Love Canal. The trees don't have any leaves. The kids play with rocks, and when they throw them against a wall they explode."

According to Renata Kimbrough of CDC, "A second chromosome study will not resolve the Picciano controversy, nor will it prove that exposure to the dump is causing broken chromosomes. And if it is negative, that won't prove that there is no harm. The real problem is that we don't yet have the scientific tools to answer the kinds of broad questions that are being asked of us in situations involving dump sites and other environmental problems." To complicate matters further, Love Canal residents have threatended to boycott future studies or to give false information if they do participate.

In addition to a second chromosome study, plans are also under way to "assess the health" of the citizens of Love Canal by offering each an ordinary physical exam. "It would not be a study of much epidemiological value," according to Kimbrough but, if handled properly, could produce interesting baseline data for following the people for the next 10 or 20 years. The health assessment study will be conducted jointly by CDC and the State University of New York at Buffalo if they can agree on what should be included. Negotiations are not going smoothly.

In the continuing debate about what to do at Love Canal, two things are apparent. First, everyone is acutely aware that Love Canal is not only a problem in its own right but foreshadows problems to come. There are thousands of other toxic waste dumps throughout the country. Second, it is clear that scientists approach the issue from a decidedly different vantage point than do lawyers and policy-makers.

Where the scientific community seeks certainty and studies that measure up to the most rigorous standards, attorneys can willingly settle for much less. Roisman of the Justice Department explains that from a legal viewpoint, it is not necessary to prove beyond any doubt that exposure to chemicals at Love Canal caused chromosome aberrations that can be linked directly to disease. What Justice wants to show the court in its suit against Hooker is that such a chain of cause and effect is possible. "The laws we're seeking to implement all have to do with the idea of endangerment." Roisman says. "We need to show that there is risk."

A recent decision by the U.S. District Court in Arkansas set a precedent that the Justice Department thinks would apply to the Hooker case. The issue in the Arkansas case had to do with the hazards of exposure to minute quantities of dioxin. The Court did not require proof that citizens were being harmed before granting relief. Rather, it only required evidence that the presence of dioxin in the soil "gives rise to reasonable medical concern for the public health." Acknowledging the uncertainties involved, the Court said, "These concepts of potential harm, whether they be assessed as 'probabilities and consequences' or 'risk and harm,' necessarily must apply in a determination of whether any relief should be given in cases of this kind in which proof with certainty is impossible."

Despite the legal perspective, scientists remain concerned about the quality of research that will be used in future efforts to deal with environmental issues. At the very least, cytogeneticists would like to get to-

gether to devise a protocol that everyone can agree to, should additional chromosome studies be done. They plan to thrash it out when the American Society of Human Genetics meets in New York next month. Shaw says, "I think it is our civic duty to make sure these things are done right. The present situation is such a God-awful mess."●

TRIBUTE TO JAMES S. McDONNELL

HON. ROBERT A. YOUNG

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. YOUNG of Missouri. Mr. Speaker, James S. McDonnell, one of the towering figures in the development of the aviation industry in this century, died last week at his home in suburban St. Louis at the age of 81. Mr. McDonnell's dynamism and dedication—both as founder and board chairman of the McDonnell Douglas Corp., and as a civic leader—will inspire younger leaders of our Nation for years to come.

Starting with one employee in a small office more than 40 years ago, Mr. McDonnell developed McDonnell Douglas into one of the largest manufacturers of commercial and military aircraft, spacecraft, and missiles. The firm currently employs more than 82,000 persons, and had 1979 sales of more than $5 billion. Since the late 1950's, when the company received a contract for Mercury, the Nation's first manned orbital spacecraft, McDonnell Douglas has participated in every U.S. manned spacecraft program.

The firm's tradition of excellence is being accentuated again this week with the FAA's certification of the newest version of the DC-9—the sixth model built by the company.

Mr. McDonnell was born in Denver in 1899 and grew up in Little Rock. He attended Little Rock schools and was graduated from Princeton University in 1921 with a B.S. degree and honors in physics. He was interested in aviation and enrolled in the graduate program at Massachusetts Institute of Technology, where he received an M.S. degree in aeronautical engineering in 1925.

He wanted to learn how to fly and joined the Army Air Service for flight training at Brooks Field, San Antonio, Tex. He received his wings as a reserve second lieutenant in 1924. Leaving the military, he held several jobs in aircraft plants in the East and Midwest.

In 1938, after rising to chief project engineer for land planes with the Glenn L. Martin Co. of Baltimore, he decided to strike out on his own. In 6 months, he raised $165,000 from his own savings, family, friends, and businessmen, and decided on St. Louis as the location for his company. The McDonnell Aircraft Corp. was legally incorporated in July 1939.

The firm began to grow during World War II, manufacturing millions of pounds of aircraft parts. The company also designed and built its first airplane, a prototype bomber destroyer called the XP-67. Government contracts for jet propulsion research followed.

In 1943, the Navy contracted with McDonnell to design and develop a jet fighter that could operate from an aircraft carrier, the world's first. The result was the FH-1 Phantom I, a twin-engine fighter which first flew in 1946. The company has developed many outstanding military aircraft, including the F-4 Phantom II, the F-101 Voodoo, the F-15 Eagle and the F-18 Hornet.

In 1966, the Douglas Aircraft Co., recognized for its DC series of commercial airlines, issued merger discussion invitations. The two companies were joined the following year as the McDonnell Douglas Corp. Then, the firm began work on the DC-10, an advanced design wide-body airliner.

Until recently, Mr. McDonnell had remained active in the management of his company. As chairman of the McDonnell Foundation and president of the McDonnell Aerospace Foundation, he oversaw the distribution of millions of dollars to charity and medical and scientific research. He was a strong supporter of the United Nations and the North Atlantic Treaty Organization.●

INDUSTRIAL EXPERT AGREES WITH CONGRESS THAT RAPID DEVELOPMENT OF SYNTHETIC FUELS IS CRUCIAL TO THE UNITED STATES

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. MOORHEAD of Pennsylvania. Mr. Speaker, as Members of the House of Representatives know, Congress passed historic legislation in late June to develop a viable synthetic fuels industry in the United States. This legislation, called the Energy Security Act, contained the House "fast-start" synthetic fuels program under the Defense Production Act of 1950.

The House approach, which I had the honor to champion, directs the President to take immediate action to expedite the development of synthetic fuels in the United States. That effort has gotten off to a wobbly beginning, but I am happy to report there are definite signs it is being placed on an accelerated track.

The absolute need for the United States to take swift action is described in illuminating detail by Mr. Edward Donley, chairman and chief executive officer of Air Products and Chemicals Inc., in a speech which he delivered before the Executives' Club of Chicago last April. The text follows:

SYNFUELS, SECURITY AND THE NATIONAL WILL

A MOVE IN THE DIRECTION OF ENERGY INDEPENDENCE

Today is the 18th of April—the anniversary of Paul Revere's ride 205 years ago across the countryside near Boston to warn the villagers of the march of British troops. Three years ago today, President Carter announced his first energy program. He has since called our energy crisis the moral equivalent of war.

There is more than a coincidence of dates involved here. We Americans are dangerously dependent upon a thin line of oil tankers stretched half around the world. This should worry us at least as much as the line of redcoats worried our ancestors at Lexington and Concord. If you recall Longfellow's famous poem, you'll remember the refrain, "The fate of a nation rode that night." In a very real sense, the fate of our nation rides now on the political decisions regarding energy which we are in the process of making.

Our energy security, like the energy security of all industrial nations, is still tied to events in far-off places. An interruption in the flow of oil from the Middle East would imperil the economies in all of the importing countries.

We saw this during the '74 embargo and again last year when the revolution occurred in Iran. Today our dependence on foreign oil, created in part by our own energy policy, has caused a serious balance of payments problem and aggravated inflation. It has also placed strains on the international monetary system, as all countries struggle to deal with the escalating costs of petroleum.

Moreover, America's credibility as a dependable ally is weakened when our supply lines reach across the globe to a region rent by deep and perhaps irreconcilable cultural, religious, nationalistic, and military conflicts. In some instances these societies despise our influence. In Iran, political forces which are mysterious to us have openly violated international law by seizing U.S. citizens and U.S. property.

What are we called upon by these circumstances to do? Fortunately we have at hand in the United States the resources to deal effectively with this problem. We have massive quantities of indigenous coal and shale—enough to furnish our energy needs for several hundred years. We have the technology to convert these raw materials into high quality clean fuels. We also have the capital formation capacity to provide the needed funds. And most importantly, we have the technically trained and educated people who can do the job.

But to make these resources work for us, we need a tripleplay approach to energy policy; conservation, deregulation, and technology development. All three of these elements already are underway to some extent. Gasoline consumption declined five percent in the United States during 1979. Total energy consumption by industry declined six percent between 1973 and 1978; at the time industrial production increased 12 percent.

In the area of deregulation, some controls have been removed. This will give petroleum companies better incentives to seek new domestic discoveries and to use enhanced recovery techniques. Beyond that, it will permit major efficiencies in what has become a torturously controlled distribution system.

But even with these improvements, domestic United States oil production is expected to decline steadily over the remainder of this century. Consequently, shrinking supplies will make it possible for OPEC to

continue raising prices. An even greater danger is the possibility that futher political turmoil in the Middle East could occur and cut off or drastically reduce the flow of oil.

Our chief defense against this treat is to aggressively pursue synthetic fuels development. When we in the United States begin to produce synfuels, the price of these fuels will tend to become OPEC's ceiling price. OPEC will recognize that what we can do in a handful of plants, we can do in hundreds of plants. We will also have demonstrated the capacity to become more self-sufficient, and to hold in our hand the control over the rate at which dollars leave this country to buy foreign oil.

It's essential that we put our technologies to work to increase domestic fuel supplies and establish a limit on energy costs. As long as the United States remains so dependent on foreign oil for a large share of our energy, there is no way to constrain OPEC price increases.

If the free market, rather than a cartel, controlled our oil supplies, the development of synfuels would be an evolutionary process. The technologies to produce them would evolve gradually. As conventional oil production declined, the price of oil would rise enough to justify the development of a synfuels industry.

But given the present world oil supply situation, we must accelerate our development of synfuels to protect ourselves. This accelerated development of synfuels faces a combination of risks—business, environmental, technical, and regulatory. In the aggregate they are too much for a private capital system to bear alone. And unlikely as it seems today, OPEC could in the future reduce world oil prices to undermine the financial structure of a fully private synfuels industry.

As a result, the private sector has looked to the government for ways to mitigate these uncertainties. International political forces control the world energy business. We cannot leave our government completely out of the development of synthetic fuels. Assuring adequate future energy supplies at prices that will not bankrupt the United States must be a matter of national policy. In the present world geopolitical situation, this cannot be settled completely by strictly private industry.

However, a cooperative government/industry program to develop an American synfuels industry is not synonymous with intrusion of the Government into the free market. Pricing in the international oil market is controlled by the OPEC cartel. Building a synfuels industry would be a move toward restoration of competition and a free market. Government involvement is a necessary beginning that will end with private industry commercialization synfuels during the decade of the 80s.

There is ample precedent for the kind of government/industry cooperation which is necessary to accelerate commercialization of synthetic fuels. Air Products is an example of this—it's the one I know best.

Our cooperative efforts with the government date back almost to our founding in 1940. World War II created an urgent need for oxygen for use by aviators in our military aircraft. Air Products responded by designing and building oxygen generators to produce the gas for the government. We had the ability to develop the technology but the private sector rewards did not immediately justify the financial risks. So the government funded the research and development work and we proceeded.

During the Cold War, our nation's missile and space programs required large quantities of liquid oxygen and liquid hydrogen for use as aerospace vehicle propellants. Government-sponsored basic research and development contracts were awarded to our company to help meet these needs. These contracts were followed by pilot plants and demonstration plants. Subsequently, we—and our competitors—applied this technological know how successfully in the private sector, both here and overseas.

Reduced cost of industrial oxygen today is one of the commercial benefits reaped from these government/industry cooperative technological efforts. In 1945, oxygen cost about $1.00 per hundred cubic feet. Even though it is a very energy-intense product, oxygen now costs only about 30 cents. Why? Because the technology developed cooperatively by government and industry resulted in economies of scale which reduced costs and thus benefited the whole society.

I can't promise that kind of cost reduction for synthetic fuels, but in the history of chemical engineering every process which has been developed has followed a learning curve, which has resulted in lower costs as time and technical experience have been accumulated.

The technology for converting our nation's vast coal reserves into environmentally acceptable alternatives to imported oil and natural gas is ready today to be developed, demonstrated, and put to work. We have formed a new privately owned enterprise, International Coal Refining Company, which is now working with the government to apply this technology to the production of solid, liquid, and gaseous fuels and chemical feedstocks from domestic coal resources. International Coal Refining is building the first module of a new plant in Kentucky. It will cost approximately $1.3 billion and will produce 20,000 barrels per day of synthetic crude oil and related products by 1984. It is being designed to permit expanding it to a capacity of 100,000 barrels daily by the late 80s.

The Administration and Congress recognize the importance of this work and are now completing work on legislation that will foster the growth of a major coal-based synfuels industry. This industry will be based on Research and Development work that has gone on for several years in both the public sector and cooperatively in the public/private sector. In our own company, for example, we began this research work about ten years ago and have spent about $75 million in this effort during that period. The Department of Energy has been, for some time, moving ahead rapidly with the development of synfuels projects such as our solvent refined coal process and other processes.

A coal-based synfuels program has enormous potential. It would use both established and new technologies to convert our coal reserves into a variety of environmentally acceptable fuels. Processes of this general type have been successfully used elsewhere in the world for the past 40 years.

There are two classes of technologies that make synfuels from coal: existing technologies which can be put to work immediately and advanced technologies which are in the process of being demonstrated.

The existing processes for making synfuels from coal convert coal into synthesis gas—a mixture of carbon monoxide and hydrogen. This gas is a suitable feedstock for producing a variety of chemicals and fuels, including synthetic natural gas and synthetic gasoline. These technologies are well developed commercially, and we could build large-scale plants using them now.

The advanced technologies have passed through Research and Development and pilot plant phases only, and are now ready for commercial demonstration. They liquefy the coal by direct hydrogenation; that is, they add the hydrogen necessary to purify the coal and to convert it to oil. These newer technologies are more efficient than the existing processes and could produce up to 50 percent more fuel per pound of coal. The SRC-I (Solvent Refined Coal) process which we have been developing is one of the advanced liquefaction technologies and will be incorporated in the demonstration plant we are now building in Kentucky.

When and at what cost could coal-based synfuels be available?

Legislation now before the House of Representatives sets a production target of two million barrels of oil equivalent daily by 1990. The Senate version calls for 1.5 million barrels by 1995.

We estimate that at commercial scale, synthetic crude oil made by our SRC-I process could sell for approximately $30 per barrel in 1979 dollars. This syncrude could be converted to gasoline and other products in existing oil refineries. The synthetic gasoline could sell for about $1.50 at the pump, again in '79 dollars. The plant will also produce a solid product which can be used as a high quality, clean-burning fuel in power plants, thus reducing the need for utilities to burn imported oil.

I have emphasized coal-based synfuels because I know them best, and believe they are a realistic near-term alternative to imported oil. There are of course others with immediate potential, shale oil in particular. In addition to the SRC process, several synfuel developments should be pursued simultaneously through the demonstration stage. To commit to one or two technologies now, using only pilot plant or laboratory data as criteria, would be an unwise route to follow.

The legislation now before Congress would provide $20 billion for about the first five years of synfuels development. The primary objective would be to encourage private industry to develop synfuels through the use of purchase contracts, price guarantees, loans, and loan guarantees. The main thrust of the program is not toward direct grants to corporations or construction of government plants. Once the commercialization state is successfully reached, private investment should replace federal incentives.

Swift development of synthetic fuels is crucial to the United States. It would be a strong signal to OPEC—and a welcome one to our allies—that America is committed to the goal of eventual energy independence. As synfuels come into the market and cut our need for foreign oil, they will impose a price ceiling on energy, a ceiling that will be determined by market forces instead of the cartel's political decisions.

The development of an American synfuels industry will have other important effects. It will begin to reduce the outpouring of dollars we now spend for imported oil. In certain fields, such as computers and jet aircraft, the U.S. enjoys world technological leadership. This strengthens our capacity to fill the role as leader of the free world which the 20th Century has thrust upon us. If we continue now to move resolutely ahead with development of these synthetic energy programs, we will be able to provide this kind of technology leadership for ourselves and our allies well into the 21st Century.

This synfuels program would create hundreds of thousands of American jobs, requiring, for example, 50,000 engineers and 150,000 construction workers during its development years. The Kentucky plant we have planned, producing 100,000 barrels per day in 1990 would by itself create 50,000 new jobs in the coal mining and related support industries.

Finally, these developments will enable us to plan a more independent course in the management of future United States foreign policy.

To move in the direction of energy independence, we need the passage of the current legislation to provide for initial synfuels developments. For the administration and the congress to accomplish this in a free democratic society such as ours, a majority of our citizens must understand and support the program.

We have waited dangerously long. We need to go forward now and to be prepared to hold steady to a firm and resolute course for many years into the future.●

TRIBUTE TO DR. D. ALLAN BROMLEY

HON. ROBERT N. GIAIMO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. GIAIMO. Mr. Speaker, I take this opportunity to pay tribute to an eminent scientist, inspiring teacher, and close friend, Dr. D. Allan Bromley.

Dr. Bromley is the president of the American Association for the Advancement of Science (AAAS) and also holds the Henry Ford II professorship of physics at Yale University. His accomplishments in the field of nuclear physics have represented breakthroughs in the areas of energy, medicine, and food production. As an adviser to congressional staffs and Federal agencies, Dr. Bromley has opened the lines of communication between the scientific community and the public. His commitment to the useful application of science can only benefit this country in the future.

I have firsthand knowledge of Allan Bromley's insight into the field of nuclear physics. On several occasions, I have had the pleasure of being his only student. We have sat in his office, and he has explained to me with chalk and board the intricacies of the latest scientific advances. Given the tremendous advances that science is making daily, Allan Bromley's ability to speak in language that the layman can understand leads to a greater appreciation of the importance of continued research into the pure as well as the applied science.

Mr. Speaker, I insert an article from the February 1980 issue of Science magazine in the RECORD as a fitting tribute to my good friend, Dr. D. Allan Bromley.

D. ALLAN BROMLEY, PRESIDENT-ELECT

(By Joseph Weneser)

In the fall 1979 election, D. Allan Bromley was chosen president-elect of the AAAS. I have been asked to tell you something of his work, style, and outlook. He is a noted nuclear physicist who holds the Henry Ford II Professorship of Physics at Yale University, where he teaches and carries on an active research program. He is one of the statesmen of science, who has given much of his time and administrative skill to the committees and organizations through which the science enterprise governs itself and speaks to our government. His industrial activities span an interesting range of the applications of technology and knowledge. Not least of all, he is a lucid and skillful speaker who frequently addresses public forums on topics of science and technology. If Allan Bromley appears from this description to be a very busy man, then I have correctly pictured him to you.

He was born in the farm country of northern Ontario, Canada, in 1926. It was typical of that time and that area that an education in the three R's was stressed and that verbal skills were acquired as a by-product of industrious reading of the Bible and the classics. A prize essay on the moral structure of society earned Allan an award that made possible his studies at Queens University in Kingston, Ontario. Whether acquired through this early training or through a benign heredity, his ability to express himself easily, coherently, and lucidly is a formidable asset for a spokesman of science.

After graduating from Queens University in Ontario with the degrees of Bachelor of Science and Master of Science, Bromley went to the University of Rochester, where he earned his Ph.D. in 1952 with a thesis in nuclear physics. He spent several years on the faculty at Rochester before returning to Canada, to the Chalk River Laboratory. There, Bromley and his co-workers installed the first of the new tandem electrostatic accelerators. Working with it, they began to investigate, in addition to experiments with light nuclei, how sizable amounts of nuclear matter interact with one another. Using beams of energetic nuclei (heavy ions), they demonstrated that there were unexpected but simple modes of motion in the peripheral collisions between compound nuclear systems.

Bromley was one of the pioneers of the field of heavy-ion nuclear physics, and in the early days of that subject—the late 1950's and early 1960's—he presented with missionary enthusiasm the many scientific opportunities that it offered. These include establishment of the basic modes of interaction of massive nuclei and the physical laws that characterize them—how they exchange energy, momentum, and mass. By using the large amounts of momentum carried into heavy-ion interactions, one could explore the domain of high angular momentum—an interesting and important part of the nuclear world that could be glimpsed from afar but could not otherwise be entered with laboratory experiments. Equally important was the possibility of breaking out of the narrow range of nuclear species to which nature had confined us, for heavy ions were the key to creating in the laboratory the full range of nuclear species. A host of technological applications provided additional allure.

But before these scientific advances could be achieved, new and more powerful electrostatic accelerators and cyclotrons had to be designed and built. Bromley's was a vigorous and convincing voice in making the case for these machines so that funding would be available. In the 1960's and 1970's the heavy-ion capabilities of the United States and of the world took a sizable step forward, and the scientific results that followed have made this investment a profitable one. The promise of this field is still bright, and the case for further investment compelling.

In 1960 Bromley left Canada to become director of research at the Heavy Ion Laboratory at Yale. While working with the Yale linear accelerator, he began a collaboration with the High Voltage Engineering Corporation to design an electrostatic accelerator with a significantly increased energy capability. The first of these accelerators, the Emperor Tandem Van de Graaff, provides the experimental beams for Yale's Wright Nuclear Structure Laboratory, one of this country's major academic nuclear physics centers. Bromley founded the Wright Laboratory in 1966 and has been its director since then, while also serving as chairman of Yale's Physics Department from 1970 to 1977. In addition, he is an enthusiastic teacher who continues to give graduate and undergraduate courses, and more than 25 students have obtained advanced degrees with him over the years.

I must turn now to another important area in which Bromley is active—in the organization, government, and justification of physics. In 1969 the National Academy of Sciences and the National Research Council, in response to the needs of a number of government agencies and the President's science adviser, undertook a survey of the physics research enterprise in the United States. The final product, the report entitled Perspectives in Physics, is now well known. Carrying out the survey and producing the report required a prodigious effort, taking several years and involving some 200 eminent physicists to a greater of lesser degree. As chairman of the central Physics Survey Committee, Bromley was very much the heart and soul—and frequently the brawn as well—of all aspects of the work and especially of the formulation of the projects.

The stimulus for this survey was a need to understand the status, opportunities, and problems of physics in the United States in 1969. In the preceding decade physics, and U.S. science in general, had a strong growth period. Then the outlook changed, and as the 1970's approached physicists faced steadily increasing competition for available federal support. Therefore, the committee took on the task of developing contingency alternatives to ensure the most effective use of the available support. It did so, not in the conventional manner of recommending specific funding levels, but by delineating "the scientific, and to some extent the social, consequences of several different rates of funding increase or decline for each subdiscipline" of physics. Unfortunately, the succeeding years saw effective declines in funding levels, and the need for agonizing choices between conflicting priorities was upon the physics community. The survey report provided an important step in forming the patterns of analysis and the modes of decision within that community—or more accurately, the several communities that represent the major subdisciplines of physics.

Out of the many things the committee accomplished, I find particularly interesting that it "attempted to place physics in perspective in U.S. society," to assess the contributions of physics and physicists, and to examine how the transference of discoveries made in the research enterprise could be improved. The first step alone—a survey of the practical applications that had become important parts of our technology, our medical usage, our food production, or other aspects of our lives—was an enormous undertaking. It could only be done in small part, but even the listing of the more spectacular and obvious cases was heartening and exciting. Whether evaluated in terms of lives saved, or the impossible dream made tangible, or, more crassly, money earned or saved in the economy, the spin-offs and applications justified the research program—even if one were to put aside the fundamental gain in knowledge of the nature of the physical world. To explore fully the dynamics of the interaction between pure research and its useful applications was beyond the charge of the survey, but it was a theme to which Bromley would return over the next years.

The survey report has served to give both government officials and scientists a balanced statement of what is at stake in the competition between dollars and scientific

opportunities. Bromley took an important role and became a frequent traveler to Washington to explain the nuances of the survey to the funding agencies, to the office of the President's science adviser, to congressional staffs, and at congressional hearings. Many of us who took part in the survey feel strongly that better and easier communication with Washington and with the public is an absolute necessity for the health of both science and public decisions involving the uses of science. Allan Bromley is among the scientists who are convinced that they have an active responsibility and cannot remain as spectators.

In more recent years, Bromley has had several major commitments in addition to his continuing activities at Yale. He has been chairman of the U.S. National Committee of the International Union of Pure and Applied Physics since 1971 and has served on a number of committees reporting to the Defense Department and the Agency for International Development. In 1975 he was elected vice president of the International Union of Pure and Applied Physics and still holds that office. He is a member of the Joint Committee on Cooperation between the U.S. Department of Energy and the U.S.S.R. State Committee on Peaceful Uses of Atomic Energy in the area of fundamental research; he is also a member of the Joint Working Group on Science Policy between the U.S. National Academy of Sciences and the National Science Foundation and the U.S.S.R. Academy of Sciences and State Committee on Science and Technology. He has served on national advisory committees on the support of science in both Canada and West Germany. He headed the formal U.S. delegation of nuclear scientists that visited the People's Republic of China in May and June 1979.

Bromley is a consultant to the Argonne, Berkeley, Brookhaven, and Oak Ridge National Laboratories, to GTE, IBM, Union Carbide, and several other major industrial organizations. He is an associate editor of six international scientific journals and serves on the boards of directors of several major companies.

Nevertheless, the many enterprises in which Allan is involved leave time and space for family life and enjoyment. He and his wife, Pat, who works with the New Haven Colony Historical Society, live in one of the New Haven suburbs. Their son David is completing his doctorate in many-particle physics at Stanford, and their daughter Lynn is an assistant treasurer at the Chase Manhattan Bank in New York City. Allan is an avid audio fan, a photographer, and an enthusiastic hockey player.

When I telephoned Allan to congratulate him on his selection as president-elect of AAAS, he ended the conversation with "I'll be calling on you for some things that will need doing." My guess is that he will be calling on all of us; given the nature of our times, there will be a great many things that the scientists of AAAS could and should be doing.

THE FEC'S NONINVESTIGATION

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 26, 1980

● Mr. DORNAN. Mr. Speaker, yesterday I inserted into the RECORD the first three discrepancies concerning the Peck/Peck/Dennis/Stewart scandal.

Earlier this year, I had intended to submit this material to the Federal Election Commission as part of a formal complaint for adjudication.

However, after reading and rereading the letters which I exchanged with the FEC concerning this matter, I think any fairminded person would conclude that Congressman DORNAN is not going to get justice at the hands of the current FEC General Counsel Charles Steele. His letters are a masterpiece of obfuscation, and indifference toward the laudable goals which led to the establishment of the FEC in the first place.

Because nothing has been done by the responsible Federal officials, I have no recourse but to present this case to my colleagues and the public who are the ultimate arbiters in our constitutional scheme of government, of the performance of this Nation's public officials—elected or unelected.

The next three discrepancies are presented for your consideration. Judge for yourselves.

Peck says he had no reason to suspect the $13,000 in sequential cashiers checks, yet there are different versions of how the money was received. Addresses and occupations for some donors are not complete or correct.

Carey Peck and Terry Pullen—Peck's campaign manager—give different versions about the acceptance of the $13,000. Young Peck said the 13 cashiers checks had been inspected as they came into his headquarters and were found to be "good—that was real money and those were real people," Peck said. See February 5, 1980, Santa Monica Evening Outlook—an unfortunate story filled with uninvestigated and unsubstantiated disinformation.

Yet, Carey Peck's campaign manager, Terry Pullen, told Congressman DORNAN's campaign manager, Arnold Steinberg, in a face-to-face conversation in June 1980, that "we never bothered to check out the money."

Contrast the above with the following: "Peck said he had no reason to believe the contributions were made improperly"—El Segundo Beacon, January 30, 1980, article by Rich Connell.

Yet, FEC Chairman Tiernan had said that such circumstances were suspicious. The FEC had gone to court to deny tens of thousands of dollars of matching funds to Presidential candidate La Rouche, because of eight sequentially numbered cashiers checks—series of 2-4-2—and money orders all drawn on the same bank in amounts less than $50.

Carey Peck never knew or met 12 of the so-called people who donated maximum $1,000 donations. And he only solicited money from one of them. Congressman DORNAN has talked to a number of the donors. None of the "phantom donors" received so much as a thank you note for their phantom maximum $1,000 donations—such thank you notes are a standard fundraising policy, especially considering the amounts involved, and the fact that Carey planned to run again. According to James Dennis, he received a hurried phone call, just prior to the election, for more money. Dennis told Congressman DORNAN in front of the FBI, "Peck or Pullen phoned and begged, 'Can you send $9,000 or $10,000 more?'" He sent and/or hand-carried up to $11,000 more plus he claims he gave Gregory Peck $10,000, in cash, to invest in Dennis' name in Peck's Broadway play, "Sweeney Todd."

It simply is not reasonable to believe that "parties" were held at branches of the First National Bank of Birmingham, which resulted in sequentially numbered $1,000 checks being drawn and forwarded to the Carey Peck for Congress Committee. Persons who are wealthy enough to contribute $1,000 would use a personal check which provides a better record than a cashiers check for IRS and other critical accounting purposes.

Elsewhere, we find that "Peck and his former campaign treasurer, Stan Caiden, said there was no reason for suspicion because Dennis came highly recommeded by Cranston and Stewart"—see Daily Breeze, Torrance, Calif., January 29, 1980, by Rich Connell.

Congressman DORNAN has also had personal, face-to-face conversations with both Senator CRANSTON, and Senator STEWART. Each denied emphatically that they recommended Dennis to Carey Peck's campaign as a funding source.

We also find that Peck said his campaign workers checked with Dennis to verify the names and occupations (?) of the donors. His campaign also checked with some of the donor's businesses, Peck said—see Daily Breeze article cited above—Pullen now makes Peck a liar by saying they did not check with anything or anybody except Dennis' secretary. This would be an insult to Dennis.

Why would Carey Peck have to check the names if he had the cashiers checks in front of him? Why would Carey Peck's campaign workers check the businesses of the phantom contributors instead of checking with the contributors themselves? Although the above Peck statement is contradicted elsewhere, what could Carey's people have done and found. Remember that Carey said: "His campaign also checked with some of the donors businesses." Andy Shadix and James Dennis—whom Carey said he trusted—both worked at Dennis Mining Supply Co., a dummy corporation. There would be no reason to check these two. Since Carey's FEC forms list no home address or business address or occupation for Mike Henley, this reference could never be checked. That entry is blank to this day.

There is no occupation listed for "Robbie Chancey" who was 4 years old in the fall of 1978;

James Chancey is listed as employed at Alfa Coal Co., while Charles Mike Chancey is listed as working at Alfa Coal Sales—obvious "monkey business" with Federal forms. A long distance phone inquiry would have shown Peck that the Alfa Coal Sales

or Alfa Sales Co., simply did not exist. Reporters have only to call the Alabama long distance operator, 205-555-1212 for information.

Roy J. Ledbetter, listed as employed by the Alabama Tennessee Oil Co., Birmingham, also worked for a company that did not exist in November-December 1978.

The phone book does not list a subcontractor, Johnny Desmond, Route 1, Prinston, Ala.

Max Gurley supposedly owns D & O Enterprises in Arley, Ala. Gurley's company also does not exist.

A check with the personnel division of the Birmingham branch of IBM—Mrs. Billy Snow 205-870-8950—would reveal that no Gary M. Dennis worked at any branch or part of the IBM Corp. in Birmingham in October-November 1978. That accounts for 10 of the phantom contributions which could be checked out to see if the Peck campaign had received "good" donations. Three are left.

First, let us consider Terry Henley, to pursue Mr. Peck's "alleged" inquiries with businesses where his phantom donors purportedly worked. As there are 90 State Farm agent offices in Birmingham, Carey would presumably have called the main State Farm number, 205-939-0001—an inquiry concerning personnel would have been directed to 205-933-6850—the regional office. They might not have even answered a question about a "sales trainee" because he was currently employed there and State Farm does not give out information about their current employees over the phone. However, if Peck did find out that trainee Henley worked there, did it not strike him odd that a "sales trainee" gave him $1,000?

Richard Morehart does work for Bessemer Oil in Bessemer, Ala. The company is so small that Richard himself might have answered the phone. He told Congressman DORNAN January 10, 1980, that Carey Peck never called or wrote to him about anything much less a $1,000 donation.

That leaves Wayne Moore, who is manager for the branch of the bank from which the suspect checks were drawn. He was never personally called by Carey Peck or the campaign or received a thank you, although he did meet Gregory Peck in October 1978. He too talked to Congressman DORNAN.

In view of the one probable or even possible contact, that is, Terry Henley, Carey Peck's latest explanations seem as limp as the others.

Recall, that title 2, United States Code, section 441(f) states that contributions made in the name of another are prohibited.

There is further reason to be suspicious of Carey Peck's handling of the phantom donors. We presume that Carey Peck sent "thank you notes" to his other $1,000 donors. If he did not send thank you notes to the Dennis contributors, was it because he did not formally want to find out whether the money was bad? As every candidate knows, he or she tries to keep the funding sources favorably disposed. If Peck claims he sent thank you notes, as he once told Daily Breeze reporter Rich Connell, then he has other problems. First, a check of the Birmingham City directory and phone book for the fall of 1978 does not produce the addresses which Carey listed in his FEC forms for Charles Mike Chancey, Jamie Chancey, or Robbie Chancey, or Roy Ledbetter. Any thank you notes sent to these four persons would have produced four letters returned by the post office indicating "no such address or person," by no later than December 10, 1978. This would have—or should have—made Carey suspicious.

The Birmingham street directory shows that 3164 is the smallest number for Starlake Drive and 3206 is the smallest street number for Starlake Circle. The Chancey address Peck cites is 2106 Starlake Drive. A Charles and Jamie Chancey were listed at 2112 Ceder Crest Drive in the fall of 1978. A check of the relevant phone directory for Max Gurley and Johnny Desmond in the summer of 1979 failed to produce those names or addresses listed by Carey Peck. Chalk up two more returned letters. This brings the total to at least six bad addresses which would have produced return mail to Carey and should also have produced suspicion in an honest candidate. The Roy Ledbetter address also appears bad. An observant mailman could possibly have found the correct street address for Gary Dennis at Mountain Lodge Apartments. However, if Peck claims he sent letters, he should produce the returned envelopes and start explaining why he was not suspicious in November or December 1978.

PECK CAMPAIGN LIQUIDATES DEBTS APPARENTLY WITH LAST OF DENNIS CONTRIBUTIONS

Jack Hentchell—former ITEL employee—told Congressman DORNAN on May 22, 1980, that it seemed to him Dennis had spent the night prior to the Chasen's dinner, 1978, at Gregory Peck's Carolwood mansion. If Dennis did arrive on the 14th of November in Los Angeles, it seems reasonable that Dennis brought the last five sequential cashiers checks with him. He says he did. What about Carey's prior claim that all the checks came in the mail? This $5,000 would have enabled the Cary Peck campaign to make out $4,803 in checks the next day to liquidate part of the campaign debt which they did—see relevant Peck FEC expenditure forms.

Even if Carey Peck's campaign did not cash the Dennis checks until November 25, 1978—receipt date on Carey Peck's FEC forms—was the presence of or firm anticipation of having bona fide cashiers checks—Dennis' in person pat on the back—the reason for making out $4,803 in checks on November 15, 1978, to cover prior campaign expenses? The bill repayments might have been mailed later than the date claimed for making out the check.

Since the Office of General Counsel of the FEC has previously been unwilling to discover anything about the receipt of the first five Dennis checks, or anything about the character of the remaining Dennis/Peck checks, perhaps another Federal agency should be involved—or is. Or was and has been called off.

Title 2, United States Code, section 437g(a)(2) states that the FEC shall make an investigation of an alleged violation of the Federal Election Campaign Act based upon information ascertained in the normal course of carrying out its supervisory responsibilities. For an investigation to take place four of the six members must vote affirmatively. Such investigation may include a field investigation or audit. In this outrageous scandal, absolutely nothing has been done except to divert press inquiries with disinformation.

EXCERPTS FROM CAREY PECK'S FEC FORM—ITEMIZED EXPENDITURES

Page	Check made out to	Date disbursed	Amount
1-6	Beverly Wilshire	Nov 15	$1,884
2-6	Democratic National Commission	do	603
2-6	Vice Presidential Plane		
2-6	Val Dembroski	Nov 15	41
2-6	General Telephone	do	528
3-6	Jules Glazv Accountant	do	963
3-6	MacArthur Beverage, D C	do	160
4-6	Pine Tree Transportation	do	90
4-6	Prod Plus (radio)	do	48
5-6	Stahler Trucks	do	170
6-6	Xerox	do	316
	Total		4,803

Peck claims he returned money to Dennis voluntarily, yet Dennis' lawyer claims Dennis notified Peck by letter. Dennis claims he discussed it by phone with Peck people in March.

According to a February 2, 1980, Evening Outlook article by Will Thorne, Dennis' lawyer, Steve Salter, wrote a letter dated August 8 to the FEC which stated in part: "Mr. Dennis has previously notified the Peck campaign regarding these matters—of illegal contributions."

Yet, in an article by Rich Connell on January 29, 1980, in the Daily Breeze, Peck claimed he voluntarily returned the money without even talking to Dennis, only his lawyer, Salter—who denies this—unfortunately, Connell did not phone Salter or put this denial in what was supposed to be a definitive story.

Peck says he became suspicious about Dennis when he received Alabama news clippings involving Dennis' affairs. A reporter has yet to ask Peck the younger or Peck the elder if any, any, of their circle of friends or political pals "caught" the national broadcast of James Dennis' incredible ABC 20/20 television show bagman confessions. Really, an obvious question.●

SENATE— *Wednesday, August 27, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by Hon. DONALD W. RIEGLE, JR., a Senator from the State of Michigan.

PRAYER

Rev. James David Ford, D.D., The Chaplain, House of Representatives, offered the following prayer:

O gracious Lord, who has created the heavens and the Earth, grant to us the ability to see Thy glory and the works of Thy hand. May not the demands on our attention and time or the necessary commitments we make dull us from the awareness of the brightness and the opportunities of each new day. Help us to see the possibilities for service and good will that are about us wherever we are, and may we always be thankful for Thy daily grace and forgiveness. In spite of all our differences or difficulties may we lift up our eyes to Thee, O Lord, our Creator and Redeemer so that by doing we more clearly may see Thy will for us. Grant to us the assurance of Your presence and promise, this day and every day. In Thy name, we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 27, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DONALD W. RIEGLE, JR., a Senator from the State of Michigan, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. RIEGLE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized for not to exceed 10 minutes.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE PROGRAM

Mr. ROBERT C. BYRD. Mr. President, for the information of my colleagues, I wish to say just a few words about the major legislation that needs to be completed prior to adjournment of the Senate this year.

When we return on September 3, the Senate will have 28 working days, including 5 Saturdays. I am not saying that the Senate will have to be in on those 5 Saturdays, but I am saying that if all 5 Saturdays were included, the Senate would only have 28 working days prior to the October 4 recess.

At this time, I expect that it will be necessary for the Congress to return after the November elections in order to complete action on priority measures. The joint congressional leadership has already announced that the Congress will return on Wednesday, November 12. It is hoped that during the month of September the Senate will be able to complete action on the remaining authorization bills, as many of the appropriations bills as possible, and as many conference reports as possible. The more we accomplish during September, the less we will have to consider when the Congress returns in November.

Mr. President, I will mention a few of the expiring authorizations and other matters:

The marine protection research measure, Calendar No. 744; title VII, CETA, Calendar No. 761; hazardous materials transportation, Calendar No. 768; Army Corps of Engineers/law enforcement, Calendar No. 793; Securities and Exchange Commission, Calendar No. 802; Department of Treasury/international affairs, Calendar No. 816; Water Resources Council, Calendar No. 824; military construction, Calendar No. 998; Department of Energy/weapons programs, Calendar No. 1002; health manpower, to be reported; revenue sharing, after the House acts; disaster relief, Calendar No. 976.

All of the 13 regular appropriations measures are yet to be considered. There are several conference reports. For example: higher education, foreign assistance, and child nutrition.

Then there are the really tough ones: The second concurrent budget resolution; any tax measures that may be taken up, before or after the elections.

May I say in that connection, I intend to have discussions with the Senate Democratic Policy Committee and with others of my colleagues with respect to any decision concerning the taking up of any tax bill. Upon the return of Mr. LONG following the election in Louisiana, this matter will be discussed with my colleagues in order that I might be able to get a consensus on whether or not the tax bill should be taken up this year and, if so, when.

Then, there is youth employment and also domestic violence which is on the calendar and which will be considered on September 4 under the order.

There is possibly legislation on regulatory reform; fair housing, Calendar No. 1001, is also a candidate; and there are others. A good bit remains to be done. There is also the resolution of disapproval on shipment of nuclear fuel to India.

I suggest to the chairmen that they seriously consider the halting of committee action on measures. The calendar is quite filled with measures already. There are 24 pages of items on the general calendar. Many of them will never be taken up. They will die on the calendar when the Congress adjourns this year. I hope that committees will not continue to grind out legislation that will not go anywhere, legislation that may be passed by the Senate but which will not go through the other body, and some legislation that will not even be taken up in the Senate.

Mr. President, I hope that committees would spare their time in reporting out, needlessly, any measures that are not going to be acted upon by the Senate or by the other body.

Finally, I thank my colleagues on both sides of the aisle for their continued cooperation and assistance with the leadership in the scheduling of legislation. I look forward to a continuing spirit of cooperation when we return from the Labor Day recess.

WARREN G. MAGNUSON

Mr. ROBERT C. BYRD. Mr. President, the U.S. Senate is often referred to as "the world's greatest deliberative body." WARREN G. MAGNUSON, the distinguished senior Senator from Washington, President pro tempore of the Senate, exemplifies the stature and reputation of the Senate. His knowledge and foresight, his experience and leadership are qualities which help to make this institution great. His countless contributions have enhanced the Senate.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Now serving his sixth full term, Senator MAGNUSON—or "MAGGIE," as his constituents and colleagues know him—has served in the U.S. Senate since 1944. Before being elected to the Senate, he was a Member of the House of Representatives. During his years of service to his State and to the Nation, he has compiled a record of accomplishments which is long, impressive, and far reaching. He has been a leader in a variety of fields—health, education, consumer protection, the environment, and employment—all of which have significant impact upon the lives of the American people.

Throughout his career, Senator MAGNUSON—recently called "Mr. Health" by the Washington Post—has been one of the strongest congressional advocates of medical research and assistance. In his first term in Congress, he cosponsored a bill to create the National Cancer Institute. During the debate on the legislation, then Congressman MAGNUSON said that one of the main purposes of the bill was:

> The hope that somewhere, someplace, out of this money . . . there will become known to the people of the United States the cause of cancer and the cure of cancer.

This major achievement initiated the war on cancer and "MAGGIE'S" role as a national leader in health legislation.

As a freshman Senator, WARREN MAGNUSON introduced a bill to create the National Science Foundation, and the first medicare bill. He also authored legislation which established the National Health Services Corps, which recruits and assigns health professionals to serve areas where there is a shortage of health personnel. He has been a champion of the Public Health Service hospitals and clinics programs, and he has worked for the establishment of community health centers. These measures have brought needed medical care to millions of Americans. In Washington alone, Senator MAGNUSON'S efforts succeeded in keeping open the Seattle PHS hospital and 7 other hospitals and 27 clinics. They are now expanding their services to provide health care to surrounding communities which do not have their own facilities.

Senator MAGNUSON cosponsored legislation to establish the National Institutes of Health (NIH). During the past 25 years, the NIH has made substantial progress in heart disease, leukemia, Hodgkins disease, infant mortality, hypertension, and numerous other diseases. NIH research has led to significant health care improvements and reductions in mortality.

Senator MAGNUSON has served on the Senate Appropriations Committee since 1953. In 1969, he became chairman of the Appropriations Subcommittee on Labor-Health, Education and Welfare (recently renamed Labor-Health and Human Services, and Education). As chairman of that subcommittee, he continues his long-standing interest in the health and well-being of the American people. He closely monitors health and social programs to insure that they are adequately funded and making the best use of their resources.

For his contributions to the health field as chairman of the Labor-HHS and Education Appropriations Subcommittee, Senator MAGNUSON was awarded the Albert Lasker Public Service Award in Health, often referred to as the "American Nobel Prize in Medicine." He donated the honorarium to the Fred Hutchinson Cancer Research Center, a center established through his own legislative efforts.

Senator MAGNUSON became chairman of the full Senate Appropriations Committee in January, 1978. As chairman of this important committee, he has made a concerted effort to cut inefficiency and waste in the Federal Government, while insuring that adequate funding is provided for vital programs. In the fiscal 1980 budget, his committee made sharp reductions in unnecessary Federal travel, low priority research, and funds for hiring private consultants.

At the same time, the committee provided additional money for valuable programs such as child immunization and preventive health care, vocational education training, and assistance for the elderly. By making cuts in unnecessary spending, the committee was able to add money for vital programs and still hold the budget $8 million below what the administration had originally proposed. This accomplishment was due largely to WARREN MAGNUSON'S expert guidance.

Another of MAGGIE'S hallmarks has been his concern for consumers. He was chairman of the Senate Commerce Committee from 1955 until 1978, and continues as a ranking member of the committee. As chairman, he became recognized as a major force in consumer protection legislation; his efforts are legendary. He is the author of more consumer protection legislation than any Member of the Senate. Some of the laws he actively supported include the Truth-in-Lending Act, the Magnuson-Moss Warranty Act, the Toxic Substances Control Act, the Poison Prevention Packaging Act, and the U.S. Fire Administration Act. Renowned for his contributions to and support for consumer issues over the years, in 1977, Senator MAGNUSON was named the "Consumer of the Year" by the National Consumer League.

Senator MAGNUSON has also devoted his attention and legislative skills to the field of energy. He sponsored legislation, recently enacted, to establish an independent synthetic fuels corporation charged with accelerating the production of synthetic oil and natural gas from domestic coal and oil shale. He has been a strong advocate of incentives to encourage the use of renewable resources such as solar, wind and geothermal power. He has also championed programs to develop hydroelectric dams in the Northwest and to promote the development of ocean thermal energy conversion systems. He has fostered hydroelectric projects in Washington, which have proved invaluable to the State for providing inexpensive electricity, jobs and reduced costs in living.

Senator MAGNUSON'S career is filled with numerous other examples of his active involvement in issues of national and international importance. He has shown particular concern for the Puget Sound environment and fisheries. He is the author of the Ports and Waterways Safety Act, which made possible a traffic control system for vessels in Puget Sound to minimize the danger of collisions. The 200-mile fishing limit law is but one of the numerous legislative initiatives WARREN MAGNUSON has championed on behalf of American fishermen.

WARREN MAGNUSON has been in the forefront of numerous issues and has an enviable record of accomplishment. In national security, he has supported increased defense spending and incentives to help stem the exodus of skilled personnel from the military. In education he is an advocate of aid to help students meet the increasing costs of post-secondary education. In taxes, he cosponsored the small savers amendment, which excludes from Federal income taxes the first $200 of combined interest and dividends for an individual or $400 for a couple filing a joint return. In the environment, Senator MAGNUSON is the author of the Endangered Species Conservation Act. He sponsored the Safe Drinking Water Act, and he is a supporter of programs to recycle and reuse our resources.

Senator MAGNUSON'S record speaks for itself. The causes he has championed and the accomplishments he has compiled, bear witness to this Senator's statesmanship. He has been a true leader in the Senate, and he continues to lead the way on the issues of current concern to Americans. It is an honor to work with "MAGGIE."

HELSINKI REVIEW CONFERENCE AGAIN FOCUSES ATTENTION ON GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the second Helsinki Review Conference will convene November 11 in Madrid. Thirty-five nations will be represented at that Conference. Of these nations, the United States will stand alone as the only major democratic nation and the only world power which has not ratified the Genocide Convention. Already the Soviet Union has begun its campaign to discredit this country's expressed devotion to human rights.

Soviet allegations about our failure to ratify the Genocide Convention will damage U.S. credibility at the conference not because the Soviet Union can boast a superior record on human rights. To the contrary, our failure to ratify the Genocide Convention will damage U.S. credibility at the Conference because it will prompt needless doubts about this

country's devotion to human rights. Dr. William Korey of B'nai B'rith argues this point in "Sin of Omission," an important article which appears in the summer issue of Foreign Policy. In this article, Dr. Korey anticipates the impending encounter over U.S. credibility at the upcoming Conference and expertly clarifies for us the costs of our reluctance to ratify the Genocide Convention.

Dr. Korey is in a unique position to write on this topic. He has long been an ardent supporter of human rights. He is the author of "The Soviet Cage," an excellent and scholarly exposé of Soviet anti-Semitism and repression. As director of the B'nai B'rith International Policy Research Office, he has participated in a number of international conferences on human rights. He knows firsthand the embarrassment to U.S. representatives caused by the failure of this body to ratify the Genocide Convention.

Mr. President, I commend Dr. Korey for his expertise and foresight. I ask unanimous consent that the entirety of Dr. Korey's article be printed in the RECORD, and I add my voice to his in urging my colleagues to ratify the Genocide Convention before the November Conference.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SIN OF OMISSION

(By William Korey)

During 1979 the U.S. Commission on Security and Cooperation in Europe—the so-called Helsinki Commission—held hearings and issued several reports that predictably focused upon Soviet abridgments of the core of the Helsinki Final Act—the free movement of peoples and ideas. The documentation was supplemented in December of that year with a detailed semiannual report by President Carter to the commission that stressed Kremlin failings. Particularly emphasized was the massive assault by Moscow upon the various Helsinki monitoring committees in the USSR, thereby subverting the cornerstone of the Helsinki human rights principle.

The Soviet response deliberately avoided commenting on the American charges of noncompliance but cleverly shifted the discussion to a very different plane, the validity of which is certain to evoke broad support not only from the Warsaw Pact states but from the neutral and Western blocs as well. This should prompt concern in both the White House and Congress about America's human rights posture at international meetings.

On November 13 the Soviet daily *Pravda* highlighted the charge that "of the 40 existing international agreements on human rights, the United States of America has ratified only 10." The party organ editorialized that this statistical record is "not likely" to improve the characterized international public opinion as one of "indignation." In this manner the Soviets signaled how they will respond at Madrid to charges of Helsinki Basket III violations on the free flow of people and information.

Far more sharply pointed was a Moscow radio broadcast on December 9, the 31st anniversary of the Genocide Convention, which outlaws acts committed with an intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. On the radio program "International Observers Roundtable," several major Soviet commentators highlighted the failure of the United States to ratify the genocide treaty. One commentator, noting the large number of contracting parties to this treaty, observed: "It can hardly be that the whole world is out of step, while the United States is in step." A second Moscow analyst, familiar with the proceedings of the Senate on various international rights treaties, noted sharply that "the Senate's position speaks quite eloquently . . . of the present American enthusiasm for human rights."

The American failure to ratify the genocide treaty is a profound embarrassment to U.S. representatives in international forums. Eighty-six countries are contracting parties to the convention. American allies and friends find it both puzzling and dismaying that the United States is the only major democratic country and the only world power not to become a party to the treaty. Several years ago, Arthur J. Goldberg told the Senate Foreign Relations Committee that during his tenure as U.S. ambassador to the United Nations he was often asked to explain the American failure to ratify the convention. "Frankly," he advised the Senators, "I never found a convincing answer. I doubt that anyone can."

The embarrassment carries overtones of a remarkable irony. For the United States was largely responsible for drafting and promoting the Genocide Convention in the U.N. General Assembly. After this first U.N. human rights treaty was unanimously approved in 1948, the United States hastened to be among the first to sign it. In June 1949 President Truman sent the treaty to the Senate, where it has since remained.

Few today recall the reasons for the initial opposition to the treaty, which sprung largely from the American Bar Association (ABA). It was argued that genocide and other human rights issues are not proper subjects for a treaty and that such treaties tilted the federal-state balance of authority toward unwarranted federal domination. Even then the arguments were regarded in many legal circles as anachronistic. Although the ABA reversed itself in 1976 and is today a vigorous supporter of the treaty, various conservative and isolationist organizations still hold to the ABA's earlier position.

In the early 1950s Senator John Bricker (R.-Ohio) gave expression to prevailing American fears about internationalism by proposing an amendment to the Constitution limiting presidential treaty-making authority. To defuse the momentum gathering in Bricker's favor, the late Secretary of State John Foster Dulles assured the Senate that human rights can best be effected by "methods of persuasion, education, and example" and not by "formal undertakings" such as treaties. While all subsequent administrations rejected the Dulles doctrine, lingering "Brickeritis" paralyzed Senate action.

The malaise has proved costly. It has raised questions about the credibility of U.S. leadership in the promotion of both human rights and international law. It has inhibited us from blowing the whistle in international forums on violators of human rights treaties, including those guilty of genocide. It has deprived the United States of a role in shaping the implementing organs created by some international treaties, especially the Covenant on Civil and Political Rights.

Most important, the malaise has made the United States vulnerable to charges of hypocrisy in all international forums, especially at the forthcoming Madrid conference. Indeed, the Final Act carries a ringing endorsement of human rights treaties and urges its signatories to fulfill obligations as set forth in such international declarations and agreements as the international covenants on human rights.

Few can doubt that human rights will emerge as a central element in East-West confrontation at the Madrid review meeting. Sensitizing the international community to the gross Soviet abridgments of Helsinki obligations is an essential and at times productive exercise in fostering compliance or preventing even more dangerous violations.

The United States, in view of its failure to ratify the genocide treaty and other human rights agreements, will be handicapped in championing these concerns. The Soviet response of last winter is warning enough. Yet laxity in responding to the challenge appears to be pervasive. The Senate leadership is reluctant to call up the genocide treaty without definitive assurances of a two-thirds favorable vote. It also anticipates a filibuster and, therefore, the need for support by three-fifths of the Senate to bring about cloture. With some incumbents threatened in their re-election campaigns by extreme conservative opponents, profiles in courage in supporting a breakthrough initiative will be hard to find.

Deputy Secretary of State Warren Christopher urged the Senate Foreign Relations Committee last November to approve ratification of several human rights treaties on its agenda, particularly the genocide convention.

But more than urgent appeals for ratification—including at least five such appeals by Carter—is required for passage. Without a determined and sustained administration initiative involving the investment of necessary political capital, a breakthrough is not likely to be achieved. And yet progress before the November meeting is indispensable if the U.S. commitment to human rights is to be vindicated and its role at Madrid uncompromised.

Mr. PROXMIRE. Mr. President this body and this body alone, the U.S. Senate, stands in the way of ratifying that convention. The President has asked for it. Every President, Republican and Democratic, since Harry Truman, has pleaded with the Senate to ratify the Genocide Convention. The time has certainly come when we should act. I plead with my colleagues to do so.

Mr. President, I thank my good friend, the majority leader, and I yield the floor.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for routine morning business for not to exceed 10 minutes.

THE LAMEDUCK SESSION

Mr. STEVENS. Mr. President, I reserve my time, but first I say to my good friend from West Virginia that it is very seldom that I disagree with him publicly, but I hope the Senate and the Congress will find some way to avoid a session after the election. The impact on my mind of the time I was sitting in the Chair until 4 p.m. on New Year's Eve, when we had come back after the election and accomplished nothing in the period for November to the end of December, is still so vivid that I just hope that, with the goodwill and cooperation of all Members of

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the Senate and House, it will be possible to finish our work, or at least to temporarily finish it to tie together a budget resolution and a continuing resolution on appropriations. If we can, somehow, convince the Congress that it is not in the public interest to have a lameduck Congress and a possibility—we on this side have to at least hope for the possibility of a lameduck President at the same time. If we are having a transition in the Presidency and a lameduck Congress at the same time, I do not think the public interest can possibly be served.

I do think that for that period every 4 years, when it is possible to have a change in the administration and the executive branch, Congress should not be here. Congress should not be involved in the process of working out the transition of Government on the executive level.

Even more than that, I am confident that it is almost impossible to accomplish controversial objectives in a period after an election.

I am sure my good friend has some reservations about the lameduck session, too, but I assure him, if there is anything we can do on this side of the aisle to assist in working out time agreements, or even work out understandings which would lead us to arrangements such as continuing resolutions on anything other than the budget resolution—I understand with the Budget Act, that is not possible. It is my hope that we shall try, anyway, to avoid that session after the election, because I really believe it is something that is not in the public interest in a Presidential election year.

I say that with all good feelings; I am sure my friend knows that. It is a difficult thing for me to contemplate such a session this year.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. STEVENS. I am happy to yield to my good friend.

Mr. ROBERT C. BYRD. Mr. President, I do not recommend a postelection session. I hope we shall not have to have it. I just say that, as of now, it appears that there will have to be one.

I do not anticipate a transition in the Presidency, I say to my good-natured friend, but regardless of that aspect, I think that whatever chance there is of our being able to avoid a post-election session lies in the ability to get time agreements and expedite the work on the remaining "must" legislation. As to whether or not there is a postelection session, part of our destiny lies in the hands of the other body. I appreciate the assurances of cooperation from the distinguished acting minority leader. I have to say that cooperation from the other side of the aisle has been good. I am proud to say that, glad to say it.

But it seems that, recently, there has developed a filibuster epidemic in the Senate. It seems that every week, there has to be a filibuster on something of late. I am not blaming the other side of the aisle for this; the more recent filibusters have occurred on this side of the aisle.

I hope that we can rid ourselves of the filibuster syndrome, in which a Senator or a couple of Senators will decide that they are going to hold up a bill and engage in an act of futility, which really holds up the Senate in its work. If we can get away from the filibuster binge and get time agreements on legislation and everyone cooperates, we can at least pare our work down to where, if we have to come back after the election, there will not be more than 1, 2, or 3 items left to do.

Mr. President, I thank the Senator for his assurance of cooperation. This is what it will require. We have to have the cooperation of both sides and I shall welcome the cooperations of all Senators in this regard.

Mr. STEVENS. Mr. President, I thank my distinguished friend from West Virginia. I yield such time as my distinguished colleague from Minnesota might desire.

THE LUBAVITCHER REBBE ON "FAMILY PLANNING"

Mr. BOSCHWITZ. Mr. President, I wish to enter into the RECORD today excerpts of a speech given by the Lubavitcher Rebbe, who is one of the truly saintly people of our age and one of the extraordinary leaders of the Jewish faith. The speech has to do with family planning and the Lubavitcher Rebbe's words and thoughts on it are very stirring. I hope that many of my colleagues will read it and read it with great care.

Mr. President, I ask unanimous consent that the excerpts in their entirety be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE LUBAVITCHER REBBE ON "FAMILY PLANNING"

(Excerpts—abbreviated and freely translated—from his address to the Nshei uBnos Chabad Convention, 17 Sivan, 5740)

Children are the most cherished Divine blessing known to mankind. "Be fruitful and multiply, and replenish the earth, and subdue it" (Gen. 1:28) is the first precept and blessing in the Torah. It teaches us that the world was created for the sake of mankind, and that it is a Divine obligation to marry and raise a family, and bring up the children in accordance with the will of the Creator, so that the world will be populated by a human race worthy and capable of "subduing it"—not only physically and materially, but also spiritually; a humanity committed to the Divine laws of justice and morality and mutual concern, under the tutelage of our Heavenly Father.

A truly blessed home is one that is filled with the joy of children, boys and girls, who are reared in the ways of our first ancestors, Abraham and Sarah, "to follow in the way of G-d, practising righteousness and justice" (Gen. 18:19).

Marriage, is a sacred, Divinely ordained, institution founded on purity and sanctity of family life (Taharas Hamishpocho), the observance of which is a precondition of true and lasting happiness, highlighted by the blessing of healthy offspring, healthy both physically and spiritually. Each child that is born into the home represents an additional Divine blessing to the parents and grandparents; there are no unwanted children, and no child is a burden, G-d forbid.

Knowing that children are a blessing from G-d, parents have no reason to be apprehensive about being able to provide for the child. Surely the Giver of the blessing will provide. And "He who feeds and sustains the whole world" is able to take care of the children as well as of the parents.

If economic considerations cannot justify the limitation of a family, what about a home where the relationship between husband and wife is in need of improvement; should they hesitate about increasing the family? We must, again, turn to the Torah for guidance. The Torah teaches us that where a wife, by reason of immodest behavior, arouses the husband's suspicion and jealousy, thus creating a serious disruption of Sholom Bayis (harmonious relationship), but is found innocent of unfaithfulness, she will be rewarded by bearing offspring (Num. 5:29)—as a clear sign of G-d's favor and greatest blessing. For, children, more than anything else, cement the mutual relationship between husband and wife and the peace and harmony in their home.

In reality, any such argument for limiting the size of one's family on grounds of economic, or social considerations, or postponing having children until the relationship attains the highest level, and the like, is contrary to the spirit and letter of the Torah. Only in most exceptional cases is the use of certain contraceptives permitted by Jewish Law—and only a very competent Rabbinic authority is qualified to rule on whether such an exceptional situation does in fact exist.

The truth of the matter is that in the overwhelming majority of cases, all the arguments to justify birth control stem from the same source—the Yetzer Hora (evil inclination), that inner tempter, whose function is to distract a man or a woman, from the way of the Torah and test his/her faith in G-d. This wily Yetzer works cleverly. He will not attempt to persuade someone to recklessly disregard the Divine laws, but will clothe vice in a garment of virtue, saying that whatever reprehension there may be in denying oneself another child, it will be more than offset by being able to devote more time and attention to worthy good causes, communal causes, and the like.

Aside from the religious aspect, experience has shown that couples who take the path of so-called "family planning"—a catching phrase that appeals to the sense of orderliness and forethought, and purporting to give parents the right to decide if, and when, and how many children they should have, sooner or later discover to their great dismay, that it has been counter-productive in the very areas of its supposed advantages. The actual effects of family planning have been, and are, emotional upsets, frustrations, strained relationship between husband and wife, all of which inevitably take a toll of ill health. It has caused such couples to seek psychoanalysis, psychotherapy, marriage counselling in an effort, often futile, to straighten matters out. Thus, far from bringing orderliness into family life, family planning has caused disturbances and complications in the normal family affairs, with added financial burdens in doctors' bills, reduced mental and physical efficiency, not to mention the fact that family planning has often proved irreversible, and would-be parents eventually discovered that the blessing of children, or more children, has, alas, eluded them.

It does not require special perception or insight to realize that when the normal physical and spiritual process of married life, as decreed by the Creator and Giver of Life, is tampered with, distorted, or altered, the peace of the household is bound to be disturbed. It is folly to attempt to take over G-d's bookkeeping and accounting to figure out how many children He is able to care for.

Proponents of family planning have concentrated their main propaganda on the female partner in marriage, since she has the task of childbearing and rearing the infants. I therefore urge every woman not to be swayed by it, but rather reflect on the great, very great Divine blessing and privilege of motherhood, with complete trust in G-d that following the Divinely ordained way of life brings with it the three-fold blessing of children, life, and sustenance. Children—healthy children, happy children, and as many as G-d will grant; life—a life free of all those complications that unfortunately afflict the homes where family planning is practiced; sustenance—in a generous measure in all needs, and more.

No wife and mother needs to feel chagrined at being dubbed "old-fashioned", or at odds with modern times and modern culture. What "modern culture"? That which produced the Holocaust? The Holocaust of a million Jewish children? Indeed, the answer is: Every Jewish woman should realize, and do all she can to impress upon others, that it is a sacred duty and eternal merit of every Jewish mother to help replenish this horrible void.

Jewish women have a proud tradition and heritage of being the "Builders of the House of Israel". Even under the most abject conditions of slavery under the Pharaohs, with the horrendous decree of having their boy babies snatched from them and thrown into the Nile, they continued to bear children, and prolifically, even if it meant delivering them in the fields. It is this determination that produced the redeemer Moses, and the Divine hosts, whom he led to freedom: freedom not only from physical slavery, but also spiritual freedom with the receiving of the Torah at Sinai. Moreover, it is the children of that generation, and of all subsequent generations, that God accepted as guarantors that the Torah would be kept and cherished.

I further urge you, all the participants of this convention and all Jewish women everywhere, to take the initiative for a world-wide campaign to promote Taharas Hamishpocho and to bring the message of true motherhood into every home. Jewish women have historically played a crucial part in the preservation of our people, and they must do the same in the present critical times.

And in the merit of adhering to God's plan, all human planning and designs against our people, and against humanity in general will come to naught, and we can confidently look forward to the fulfillment of the Divine promise, through the mouth of our Prophet Micah (7:15): "As in the days of your exodus from the land of Egypt, I will show you wonders."

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar. I ask unanimous consent that the time required not exceed 2 minutes.

Mr. STEVENS. There is no objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

There being no objection; the Senate proceeded to the consideration of executive business.

Mr. ROBERT C. BYRD. The nominations are: Calendar Order No. 266 on page 3; calendar orders under Department of State on page 7; Calendar Order No. 284 on page 7, and the nominees under Civil Aeronautics Board and the first two nominees of the Corporation for Public Broadcasting on page 8, also including for confirmation the nominations placed on the Secretary's desk in the Navy.

Mr. STEVENS. There is no objection to that procedure, Mr. President.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The nominations will be stated.

FEDERAL ENERGY REGULATORY COMMISSION

The assistant legislative clerk read the nomination of John David Hughes, of Texas, to be a member of the Federal Energy Regulatory Commission.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF STATE

The assistant legislative clerk proceeded to read the nominations.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominees be considered and confirmed en bloc.

Mr. STEVENS. There is no objection.

The ACTING PRESIDENT pro tempore. Without objection, the nominees are considered and confirmed en bloc.

The nominees considered and confirmed en bloc are as follows:

William Jennings Dyess, of Alabama, to be an Assistant Secretary of State.

Diego C. Asencio, of Florida to be Assistant Secretary of State for Consular Affairs.

Theresa Ann Healy, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Sierra Leone.

Allen Clayton Davis, of Tennessee, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Revolutionary Republic of Guinea.

Walter C. Carrington, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Senegal.

Peter Jon de Vos, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea-Bissau and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cape Verde.

Henry L. Kimelman, of the Virgin Islands, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Haiti.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider en bloc the vote by which the nominees were confirmed en bloc.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

U.S. METRIC BOARD

The assistant legislative clerk read the nomination of Bruce Paul Johnson, of Nevada, to be a member of the Board.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was considered and confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CIVIL AERONAUTICS BOARD

The assistant legislative clerk read the nomination of James Robert Smith, of Florida, to be a member of the Civil Aeronautics Board.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORPORATION FOR PUBLIC BROADCASTING

The assistant legislative clerk read the nomination of Diana Lady Dougan, of Utah, to be a member of the Board of Directors; and the nomination of Lillie E. Herndon, of South Carolina, to be a member of the Board of Directors.

Mr. THURMOND. Mr. President, I rise to endorse the confirmation of Ms. Lillie E. Herndon of South Carolina for reappointment to the Board of Directors of the Corporation for Public Broadcasting.

I believe that Ms. Herndon is well qualified and deserving of renomination to this post. Her background gives evidence to the fact that she is an industrious and hard-working individual. Ms. Herndon graduated from Blaney High School in Blaney, S.C., in 1932. Soon after graduation, she enrolled in Draughn's Business School. Due to her daytime employment at a local department store, she attended night classes. Ms. Herndon graduated from Draughn's Business School in 1934. She has also been

awarded an honorary doctorate of humanities degree from Columbia College.

Ms. Herndon's many years of service to her State and country have well qualified her for this position. She has served president of the National PTA, and chairman of the South Carolina State Board of Education. Ms. Herndon has served as the National Chairman of the Action for Foster Children Committee. She has served as the vice president of the National Association of State Boards of Education. In addition, Ms. Herndon has served as a U.S. delegate to international conferences on education in France, Israel, Egypt, and the Soviet Union.

Mr. President, Ms. Herndon has had 5 years of service as a member of the Board of Directors of the Corporation for Public Broadcasting. For the last 2 years, she has served as Chairman. During her 5 years of service on the Board, Ms. Herndon has missed only one Board meeting—and this was due to a snowstorm.

Mr. President, I can think of no one better qualified to serve as a member of the Board of Directors of the Corporation for Public Broadcasting. I sincerely hope my colleagues in the Senate will join me in supporting Ms. Herndon's renomination.

The ACTING PRESIDENT pro tempore. Did the Chair understand the Senator to say that there was a snowstorm in South Carolina?

Mr. THURMOND. The snowstorm must have been somewhere else and she could not get a plane back.

The ACTING PRESIDENT pro tempore. The Chair thanks the Senator.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that these two nominations be considered and confirmed en bloc.

Mr. STEVENS. There is no objection, Mr. President.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The nominations are considered and confirmed en bloc.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominees were confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE NAVY

The assistant legislative clerk read the nominations placed on the Secretary's desk in the Navy.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations be considered and confirmed en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominees are considered en bloc and confirmed en bloc.

The nominees considered and confirmed en bloc are as follows:

Navy nominations beginning Frederick Aalbue, to be lieutenant (j.g.), and ending Michael W. Miller, to be lieutenant (j.g.).

Navy nominations beginning Russell S. Akerman, to be lieutenant, and ending Cheryl E. Hale, to be lieutenant.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider en bloc the vote by which the nominations were confirmed en bloc.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask that the President be immediately notified of the confirmation of the nominees.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the following Calendar Orders Nos. 982, 983, 984, and 985.

Mr. STEVENS. There is no objection, Mr. President.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FEDERAL PROPERTY FOR CIVIL DEFENSE

The Senate proceeded to consider the bill (S. 2566) to authorize the Administrator of General Services to donate to State and local governments certain Federal personal property loaned to them for civil defense use, and for other purposes, which had been reported from the Committee on Governmental Affairs with amendments as follows:

On page 1, line 3, strike "SECTION 1." and insert "That (a)";

On page 2, at the beginning of line 1, insert "(A)";

One page 2, line 3, strike "(DCPA)";

On page 2, line 3, strike "and";

On page 2, at the beginning of line 4, insert "(B)";

On page 2, line 5, strike "law" and insert "Act";

On page 2, line 7, strike "the DCPA (Department of Defense)" and insert "such Agency";

On page 2, line 9, strike "property";

On page 2, line 10, strike "the Defense Civil Preparedness Agency" and insert "such Agency";

On page 2, line 12, strike "regarded as surplus property" and insert "disposed of in accordance with subsection (b)";

On page 2, at the beginning of line 14, insert "(b)";

On page 2, line 15, after "property" insert "described in subsection (a)";

On page 2, line 16, after "enactment" insert "of this Act";

On page 2, line 17, strike "Director," and insert "Director of the";

On page 2, line 22, strike "In order to accomplish the above, the Directors," and insert "SEC. 2. To carry out the first section, the Director of the";

On page 2, line 24, strike "such" and insert "the";

On page 2, line 25, strike "on loan" and insert "described in such section";

On page 3, line 1, after "after" insert "the date of";

On page 3, line 3, strike "the" and insert "a";

On page 3, line 7, strike "Administrator who may transfer the property to a Federal agency or to the appropriate State agency, upon its receipt, for distribution in accordance with subsections 202(a) and 203(j)" and insert "Administrator. Such property shall be disposed of pursuant to the provisions";

On page 3, line 12, strike "1979" and insert "1949.";

On page 3, line 12, strike "(40 U.S.C. 485 (a) and 484(j)). Property not transferred as above shall be otherwise disposed of pursuant to the provisions of that Act.";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Federal personal property—

(A) transferred by a component of the Department of Defense to the Defense Civil Preparedness Agency by July 15, 1979,

(B) which is, on the date of enactment of this Act, on loan to a State or a State and local government jointly, under a written loan agreement executed by such Agency, and

(C) which was transferred with the functions and property of such Agency to the Federal Emergency Management Agency, shall be disposed of in accordance with subsection (b).

(b) The Administrator of General Services shall transfer title to the property described in subsection (a) to the State or local governments holding the property on the date of enactment of this Act upon receipt of a certification by the Director of the Federal Emergency Management Agency that the property is being used by the State or local government concerned for a purpose consistent with that for which it was furnished.

SEC. 2. To carry out the first section, the Director of the Federal Emergency Management Agency shall survey the property described in such section and shall, within one hundred and eighty days after the date of enactment of this Act, notify the Administrator of General Services of those items of property which are being used by a State or local government for the purpose for which the property was furnished. If property on loan is not being used in a manner consistent with the purpose for which furnished, the Director shall so notify the Administrator. Such property shall be disposed of pursuant to the provisions of the Federal Property and Administrative Services Act of 1949.

Mr. STEVENS. Mr. President, I wish to join in support of S. 2566. This is basically a technical bill that would enable States to take title to property that had been loaned to them by the Federal Government. It has been determined that repossession of the property would be burdensome and costly. S. 2566 is designed to transfer the property and the cost is minimal.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent the amendments be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendments were agreed to en bloc.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RETIRED AIR TRAFFIC CONTROLLERS

The Senate proceeded to consider the bill (H.R. 1781) to amend title 5, United States Code, to provide that certain air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes.

Mr. STEVENS. Mr. President, I wish to join in support of H.R. 1781. This bill provides that the air traffic controllers employed by the Department of Defense receive the same retirement considerations as the Department of Transportation controllers. This bill extends the mandatory retirement and early retirement benefits presently applicable to Department of Transportation controllers to Defense Department controllers.

Such changes will not only encourage competent individuals to become air traffic controllers, it will also create a viable alternative for the latter part of their careers. Recognizing that separating and controlling air traffic is an arduous task, H.R. 1781 helps to insure that our controllers are operating at peak performance. Anything less would be unfair to them and jeopardize the general public.

Finally, occupational categories, entry requirements, training, and health standards for the controllers of the Departments of Transportation and Defense are identical. Therefore, it is only equitable that Defense Department air traffic controllers, with the same unique pressures and responsibilities as the Transportation Department controllers, should have the same retirement benefits.

The bill (H.R. 1781) was ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMPLOYEE SURVIVORSHIP BENEFITS

The Senate proceeded to consider the bill (H.R. 5410) to amend title 5, United States Code, to require any Federal employee who elects at the time of retirement not to provide survivorship benefits for the employee's spouse to notify (or take all reasonable steps to notify) the spouse of that election.

Mr. STEVENS. Mr. President, I wish to join in support of H.R. 5410. H.R. 5410 will amend the existing law to require that any Federal employee who elects at the time of retirement not to provide survivorship benefits for the employee's spouse to notify the spouse of that decision. Whether the decision involved full, partial, or no survivor benefits, this amendment provides that at least the spouse is made aware of what his or her expectations for the future are. The law does not require that the spouse agree, nor does it entitle the spouse to a portion of the retiree's annuity in the absence of notification.

Passage of this measure will insure that a spouse is not inadvertently kept uninformed of whether she or he can count on a former spouse's annuity. Such information is certainly vital to the future planning of any spouse.

H.R. 5410 would simply make notification imperative and certainly save widows and widowers much misunderstanding and hardship in the long run.

UP AMENDMENT NO. 1541

(Purpose: To remove certain inequities in the Secret Service Retirement System)

Mr. ROBERT C. BYRD. Mr. President, I send to the desk an amendment by Senator PELL and ask that it be stated.

The ACTING PRESIDENT pro tempore. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. PELL, proposes an unprinted amendment numbered 1541.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

One page 2, between lines 10 and 11, insert the following:

SEC. 2. The last sentence of section 12(b) of the Act of September 1, 1916, as amended (D.C. Code, sec. 4–522), is amended to read as follows: "Any member of the United States Secret Service Division appointed from the Executive Protection Service, or appointed from the Metropolitan Police force prior to January 1, 1972, and assigned to duties directly related to the protection of the President shall receive credit for periods of prior service with the Metropolitan Police force, the United States Park Police force, or the Executive Protective Service toward the required ten years or more service.".

On page 2, line 11, strike out "SEC. 2." and insert in lieu thereof "SEC. 3.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a statement by Mr. PELL be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR PELL

I am offering an amendment to correct a small legislative oversight in our federal retirement laws, which affects a handful of Secret Servicemen.

By legislation enacted in 1940, Secret Service employees with 10 years service were allowed to elect coverage under the District of Columbia's retirement system—a much more generous one than regular civil service retirement is. Legislation enacted in 1964, which my amendment aims to correct, allowed members of the Executive Protective Service—when they transferred to the Secret Service—to credit periods of prior service with the District Police, Park Police, or Executive Protection Service towards the required 10 years. The reason for the change, I understand, was that the Secret Service was having trouble recruiting people from the Executive Protective Service and District Police because these people were reluctant to transfer to the Secret Service and be placed under the less generous provisions of the civil service retirement system.

For some reason, and I believe it was legislative oversight, the 1964 amendment applied only to personnel who were recruited to the Secret Service directly from the Executive Protection Service. Despite some legislative history which suggests that the Congress intended to do otherwise, personnel who were recruited from the District Police were not included in the 1964 legislation. At first, the Secret Service apparently believed they were, however, because a handful of men—one of them a constituent of mine—were informed that their credits could be transferred when they joined the Secret Service from the D.C. Police.

My amendment corrects the oversight by giving the credit for prior service with the Park Police, District Police, or Executive Protection Service to Secert Service personnel appointed from the D.C. police force—as well as those appointed from the Executive Protection Service. I would point out that the fiscal impact of the amendment as estimated by the Congressional Budget Office, is $31,000 over the next 5 years. But I do not think that the amount of money involved, which is relatively slight, is the paramount issue. I think it is only fair that we extend the same treatment to Secret Servicemen recruited from one branch of government that we extend to those who happen to be appointed from another branch. Having looked into the background of the problem, I believe that what my amendment achieves was meant to be included in the 1964 legislation.

I have testified on behalf of this amendment before the Civil Service and General Services Subcommittee, and I very much hope that my amendment will be accepted at this time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment (UP No. 1541) was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMPLOYEE OFFICIAL TRAVEL EXPENSES

The Senate proceeded to consider the bill (H.R. 7072) to amend sections 5702 and 5704 of title 5, United States Code, to increase the maximum rates for per diem and actual subsistence expenses and mileage allowances of Government employees on official travel, and for other purposes,

Mr. STEVENS. Mr. President, I wish to join in support of H.R. 7072. Essen-

tially, this bill calls for a long overdue increase in the maximum rates of per diem for official Government travel. For a number of years, Federal employees, who are required to travel, have been forced to subsidize, without reimbursement, part of their own official travel.

In view of the continuing loss of comparability pay by Federal employees in comparison to private sector employees, we must not denigrate Federal employees again by refusing to approve this measure. There is no question that productivity is closely alined with morale and passage of this measure will, I believe, increase Federal employees' morale by acknowledging that they have, but should not continue to absorb costs that should rightfully be paid by the Federal Government.

This bill increases the maximum per diem rate from $35 to an austere $50 which still only provides for the most modest accommodations. In addition, per diem for certain high cost areas and to areas outside the contiguous 48 States is also increased. Finally, in light of present gasoline prices, this bill increases mileage allowances for official automobile use by Federal employees.

The bill (H.R. 7072) was ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent there be a brief period for the transaction of routine morning business, not to extend beyond 30 minutes, and that Senators may speak therein up to 5 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Is there further morning business?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NATIONAL CLIMATE PROGRAM ACT AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 834.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1391) to amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981 and 1982.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert the following:

That section 9 of the National Climate Program Act (15 U.S.C. 2908) is amended to read as follows:

"SEC. 9. AUTHORIZATION FOR APPROPRIATIONS.

"In addition to any other funds otherwise authorized to be appropriated for the purpose of conducting climate-related programs, there are authorized to be appropriated to the Secretary, for the purpose of carrying out the provisions of this Act, not to exceed $50,000,000 for the fiscal year ending September 30, 1979, not to exceed $65,000,000 for the fiscal year ending September 30, 1980, not to exceed $25,500,000 for the fiscal year ending September 30, 1981, not to exceed $39,100,000 for the fiscal year ending September 30, 1982, and not to exceed $43,700,000 for the fiscal year ending September 30, 1983.".

SEC. 2. The National Climate Program Act (15 U.S.C. 2901 et seq.) is further amended by adding at the end thereof the following:

"SEC. 10. CIVILIAN EARTH REMOTE SENSING SYSTEM.

"(a) AUTHORITY.—The Secretary of Commerce is authorized, during the fiscal year 1981, to plan and provide for the development and operation of a civilian earth remote sensing satellite system.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for fiscal year 1981, $15,000,000 to carry out the provisions of this section.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask unanimous consent that the committee amendment be adopted and treated as original text for the purpose of further amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UP AMENDMENT NO. 1542

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. That amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. CANNON, proposes an unprinted amendment numbered 1542.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike Section 2 of the Committee amendment to S. 1391, lines 20–25 on page 2 and lines 1–5 on page 3.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by Mr. STEVENSON in connection with the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR STEVENSON

This amendment would strike Section 2 of the bill dealing with a U.S. operational, civilian earth remote sensing system. Section 2 was added by the Committee on Commerce, Science, and Transportation to the climate legislation in the hope that a civilian earth remote sensing system could be implemented in fiscal year 1981.

For years the Committee on Commerce, Science, and Transportation and the Subcommittee on Science, Technology and Space have been urging the Administration to move forward with an operational land remote sensing satellite system. In Presidential Directive/NSC–54, dated November 16, 1979, the President assigned NOAA management responsibility to proceed with such a system. As the initial step NOAA was to prepare a transition plan that would outline the requirements necessary to move from the existing experimental system developed by the National Aeronautics and Space Administration to a fully operational system that would meet various public and private user requirements.

NOAA was given 6 months to produce the transition plan. The plan, minus recommendations and budget requirements, was completed on June 16, 1980. The Subcommittee on Science, Technology, and Space held hearings in June and July of this year to review the Administration document.

While NOAA has done a commendable job in a short time, neither the document made available to the Subcommittee nor the hearings provide an understanding of the course of action to be followed by the Administration. Section 2 of S. 1391 provides NOAA with authority to move beyond planning and a study effort during fiscal year 1981. They have sufficient authority already to pursue such efforts. Since an Administration decision on specific actions is not likely to occur before January 1981, there is no current need to include Section 2 in the bill and, therefore, the Committee recommends it be deleted.

After all this time and Congressional interest it is unfortunate that the Administration, OMB in particular, is not ready to move forward vigorously with an operational civil land remote sensing system.

The Congress should establish long-term policy and the institutional framework necessary for a civilian earth remote sensing system. Such legislation was introduced earlier in this Congress, and I expect to introduce a modified version of that bill.

I urge the Senate to accept the amendmnt and approve the bill as amended.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by Mr. STEVENSON on the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR STEVENSON

The Senate has before it S. 1391, a bill to authorize appropriations to the Secretary of Commerce to carry out provisions of the National Climate Program Act for fiscal years 1981, 1982 and 1983. The bill also provides authorization for fiscal year 1981 for the development of a civilian earth remote sensing system.

In 1978 the Congress approved the National Climate Program Act, a bill developed by my Subcommittee on Science, Technology, and Space of the Committee on Commerce, Science, and Transportation. The Act recognizes that climate and climate fluctuations have major impact on food production, water resources, energy supplies and use, the economy and human welfare. Climatic conditions during the past 25 years have been relatively

mild, but more severe weather conditions in the last few years may be indicative of significant climate fluctuations and change in the future. The severe heat and drought in the southwest is the most recent example of the impact of climate. Any climate changes would likely cause serious problems, and the United States needs to be prepared to adapt to future climate fluctuations should they occur.

Under the Climate Act, the objectives of the National Climate Program are: (1) to organize more effectively the Federal Government's planning, management and budgeting functions for climate research and advisory services; (2) to develop more reliable knowledge about climate and to improve the capability to forecast climatic changes; and (3) to use existing and future climate information to determine the effect of climatic change on agriculture, water and other areas.

Since passage of the Climate Act, the National Oceanic and Atmospheric Administration in the Department of Commerce has acted as lead Federal agency through a National Climate Program Office (NCPO). With the assistance of other agencies and Departments, NCPO prepared a 5-year plan. The Subcommittee held a hearing on that plan and found that it served as a sound basis on which to proceed with future program activities.

The plan outlines opportunities and provides specific priorities and budgeting requirements. The plan, if followed, would also implement the Congressional intent of having a balanced program i.e., one that combines new research with application of already existing information.

While the Program is progressing I am concerned, however, over the lack of support provided the NCPO which is responsible for overseeing the Program. The Administration requested only $1.0 million for FY 1981 for the office. It is not possible for NCPO to coordinate a $135 million program, prepare 5-year plans and annual reports, advise OMB on program priorities, support advisory groups, administer an intergovernmental grants program, and support the experimental climate forecast centers, all within its meager resources. Thus, the Commerce Committee reviewed the total climate program budget request and, specifically, the request by the Department of Commerce for Fiscal Year 1981. The Committee increased by $1.0 million the authorization level for the Secretary of Commerce in Fiscal Year 1981 to be used by the National Climate Program Office.

Based on our review of the implementation of the Climate Act, I believe continued authorization is justified. I urge my colleagues to support S. 1391.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I send to the desk an amendment to the title.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. CANNON, proposes a title amendment as follows:

Amend the title so as to read as follows: "A bill to amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981, 1982, and 1983.".

The ACTING PRESIDENT pro tempore. Without objection, the title amendment is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move en bloc to reconsider the vote by which the bill was passed and by which the amendment to the title was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE CONCURRENT RESOLUTION 410—CORRECTIONS IN ENROLLMENT OF S. 2680

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 410, which makes corrections in S. 2680.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 410) directing the Secretary of the Senate to make corrections in the enrollment of S. 2680.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 410) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WHITE RIVER NATIONAL FOREST

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BUMPERS, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1967.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 1967) entitled "An Act to modify the boundary of the White River National Forest in the State of Colorado", with the following amendment:

Page 1 of the Senate engrossed amendment, strike out lines 2 through 9, inclusive, and insert:

SECTION 1. The exterior boundary of the White River National Forest in the State of Colorado is hereby modified to include additional areas of approximately thirty-two thousand three hundred and seven (33,307) acres and three thousand eight hundred and forty-one (3,841) acres, in Eagle and Pitkin Counties, respectively, as generally depicted on the maps entitled "Boundary Modification, White River National Forest, Colorado" (Minturn Addition and Aspen Addition), dated July 1980.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BUMPERS, I move that the Senate concur in the House amendment to the Senate amendment.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by Mr. BUMPERS.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR BUMPERS

The House amendment to the Senate amendment to H.R. 1967 would add approximately 32,307 acres of land to the White River National Forest in Eagle County, Colorado and 3,841 acres in Pitkin County, Colorado, for a total addition of approximately 36,148 acres. The original House passed bill would have added approximately 69,081 acres to the Forest and the Senate amendment approximately 19,043 acres. The House amendment represents a fair compromise between the two versions.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE RESOLUTION 513—AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAYH and Mr. THURMOND, I send to the desk a resolution and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 513) authorizing supplemental expenditures by the Committee on the Judiciary for inquiries and investigations.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by Mr. BAYH.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR BAYH

This resolution amends Senate Resolution 350 so as to increase total expenditures authorized for the Committee on the Judiciary by $197,000 from $4,971,700 to $5,168,700, of which the amount may be expended for the procurement of services of individual consultants is increased by $21,000 from $177,500 to $198,500. The additional monies would be applied to fund a new subcommittee established under the Judiciary Committee as approved by unanimous consent of the Senate on July 24, 1980. The subcommittee was mandated to conduct an investigation of activities relating to individuals representing the interests of foreign governments. The subcommittee shall submit to the Senate, not later than October 4, 1980, an interim or final report.

PURPOSE OF INVESTIGATION

This investigation was initiated by the unanimous consent of the Senate on July 24, 1980. Its purpose is to determine whether individuals representing foreign governments as their agents have attempted to influence the actions of the United States government. Moreover, the subcommittee is to determine if the current laws of the United States are sufficient to meet any such challenges and whether existing government agencies and departments have responded appropriately to any such attempts.

ORGANIZATION

By order of the Senate the newly formed subcommittee was made up of seven Members of the Judiciary Committee and two

Members of the Foreign Relations Committee.

In order to complete its task in the most efficient and economical manner, the subcommittee will use, to the extent possible, existing staff resources of its Members. The Members have agreed to designate members of their personal or Committee staff to serve as staff investigators assigned to the new subcommittee. There are nonetheless both salary and operational expenses which must be provided for by an increase in the amount the Committee on the Judiciary may expend for investigations. The subcommittee has retained a Special Counsel, it has retained the service of a former high ranking FBI official as Director of Investigation, and must reimburse the General Accounting Office for accountants and auditors who have been detailed to the subcommittee.

The investigation also will entail significant travel, deposition and witness expenses, as well as the possibility of retention of additional temporary outside consultants.

This resolution will provide funds to augment existing resources to enable the subcommittee to carry out its responsibilities. The subcommittee intends that the staff assigned by Members to this investigation, and consultant, will be a unified nonpartisan staff.

The resolution was agreed to, as follows:

S. RES. 513

Resolved, That section 2 of Senate Resolution 350, Ninety-sixth Congress, agreed to March 5 (legislative day, January 3), 1980, is amended by striking out the amounts "$4,971,700" and "$177,500" and inserting in lieu thereof "$5,168,700" and "$198,500", respectively.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE RESOLUTION 514—COMMENDING ROBERT C. LOUTHIAN FOR HIS SERVICE TO THE SENATE

Mr. ROBERT C. BYRD. Mr. President, on behalf of myself and Mr. BAKER, I send to the desk a resolution and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated.

The legislative clerk read as follows:

A resolution (S. Res. 514) commending Robert C. Louthian for his service to the Senate:

Whereas, Robert C. Louthian is retiring after having served for more than twenty-eight years as an attorney on the staff of the Office of the Legislative Counsel of the Senate; and

Whereas, during this long period of service Robert C. Louthian has performed his duties for the Senate with skill and distinction: Now, therefore, be it

Resolved, That the Senate of the United States extends its appreciation and gratitude to Robert C. Louthian for his long and faithful service in the Office of the Legislative Counsel of the Senate.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Robert C. Louthian.

The resolution was agreed to.

The preamble was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

REPORT OF DEFERRAL AND REVISION OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 234

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Appropriations, the Committee on the Budget, and the Committee on Commerce, Science, and Transportation, jointly, pursuant to order of January 30, 1975:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report a new Department of Commerce deferral of $15.8 million in funds for the International Energy Exposition in Knoxville, Tennessee. In addition, I am reporting a revision to a previously transmitted deferral for the National Oceanic and Atmospheric Administration's Coastal energy impact fund increasing the amount deferred by $0.5 million.

The details of each deferral are contained in the attached reports.

JIMMY CARTER.

THE WHITE HOUSE, *August 27, 1980.*

MESSAGES FROM THE HOUSE

At 11:09 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6308. An act to provide for an accelerated program of research and development of magnetic fusion energy technologies leading to the construction and successful operation of a magnetic fusion demonstration plant in the United States before the end of the twentieth century to be carried out by the Department of Energy;

H.R. 6864. An act to authorize appropriations for the administration of the Deepwater Port Act of 1974;

H.R. 6889. An act entitled the "Methane Transportation Research, Development, and Demonstration Act of 1980";

H.R. 7380. An act to establish the Big Sur Coast Area in the State of California;

H.R. 7682. An act to amend title 10, United States Code, to provide greater flexibility for the Armed Forces in ordering Reserves to active duty, and for other purposes;

H.R. 7694. An act to provide civilian career employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico the same relative rotation rights as apply to other career employees, to authorize the Delegates in Congress from Guam and the Virgin Islands to have two appointments at a time, rather than one appointment, to each of the service academies, and to authorize the establishment of a National Guard of Guam; and

H.R. 7865. An act to provide for an accelerated and coordinated program of light water nuclear reactor safety research, development, and demonstration, to be carried out by the Department of Energy.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

H.R. 5166. An act to extend certain expiring provisions of law relating to personnel management of the Armed Forces, to provide a variable housing allowance for members of the uniformed services to reflect housing costs in different areas of the United States, to improve certain special and incentive pays for members of the uniformed services, and for other purposes; and

H.R. 6974. An act to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, track combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve Component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. RIEGLE).

The message further announced that the House agrees to the following concurrent resolution, without amendment:

S. Con. Res. 118 Concurrent resolution providing for a recess of the Senate from August 27 to September 3, 1980, and an adjournment of the House from August 28 to September 3, 1980.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 6308. An act to provide for an accelerated program of research and development of magnetic fusion energy technologies leading to the construction and successful operation of a magnetic fusion demonstration plant in the United States before the end of the twentieth century to be carried out by the Department of Energy; to the Committee on Energy and Natural Resources.

H.R. 6864. An act to authorize appropriations for the administration of the Deepwater Port Act of 1974; to the Committee on Environment and Public Works.

H.R. 6889. An act entitled the "Methane Transportation Research, Development, and Demonstration Act of 1980"; to the Committee on Energy and Natural Resources.

H.R. 7380. An act to establish the Big Sur Coast Area in the State of California; to the Committee on Energy and Natural Resources.

H.R. 7682. An act to amend title 10, United States Code, to provide greater flexibility for the Armed Forces in ordering Reserves to active duty, and for other purposes; to the Committee on Armed Services.

H.R. 7694. An act to provide civilian career employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico the same relative rotation rights as apply to other career employees, to authorize the Delegates in Congress from Guam and the Virgin Islands to have two appointments at a time, rather than one appointment, to each of the service academies, and to authorize the establishment of a National Guard of Guam; to the Committee on Armed Services.

H.R. 7865. An act to provide for an accelerated and coordinated program of light water nuclear reactor safety research, development, and demonstration, to be carried out by the Department of Energy; to the Committee on Energy and Natural Resources.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4506. A communication from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the military family housing maintenance function at Williams Air Force Base, Arizona, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4507. A communication from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the military family housing maintenance function at Columbus Air Force Base, Mississippi, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4508. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report that sets forth the financial condition and operating results of Working Capital Funds of the Department of Defense for the fiscal year ending September 30, 1979; to the Committee on Armed Services.

EC-4509. A communication from the Chairman, Advisory Council on Historic Preservation, transmitting, pursuant to law, a special report containing comments by a panel of the Advisory Council on Historic Preservation which met on July 14 and 15, 1980, at Mountain Home VA Medical Center, Johnson City, Tennessee; to the Committee on Energy and Natural Resources.

EC-4510. A communication from the General Counsel, Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-4511. A communication from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, certifying that, in order to maintain in the third quarter of fiscal year 1980 the budgeted level of operation for Radio Free Europe/Radio Liberty, Inc., $813,633 is needed because of the downward fluctuations in foreign currency exchange rates; to the Committee on Foreign Relations.

EC-4512. A communication from the Chairman, United States Nuclear Regulatory Commission, transmitting, pursuant to law, a report on the number of full-time permanent employees hired and promoted during the second and third quarters of fiscal year 1980; to the Committee on Governmental Affairs.

EC-4513. A communication from the Secretary, U.S. Consumer Product Safety Commission, transmitting, pursuant to law, a new system of records; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and referred as indicated:

POM-852. Joint resolution adopted by the Legislature of Palau; to the Committee on Energy and Natural Resources:

"HEM JOINT RESOLUTION No. 101

"Whereas, on July 9, 1980, the people of Palau voted on the Constitution of the Republic of Palau, as adopted by the Palau Constitutional Convention with amendments proposed by the Seventh Palau Legislature; and

"Whereas, pursuant to Subsection 3 of Section 3 of Public Law No. 7-2-8, the Election Commissioner certified and transmitted the results of the Referendum to the Legislature; and

"Whereas, the certified results of the Referendum are as follows:

"Total registered voters	7,082
Total yes votes	3,829
Total no votes	905
Invalid votes	165
Total votes cast	4,899
Percent of yes votes	78
Percent of no votes	19
Percent of invalid votes	3
Percent of registered voters voting	69;

"And

"Whereas, no complaints or irregularities concerning the Referendum have been registered or reported; and

"Whereas, this Legislature is the judge of the Referendum and the results thereof pursuant to Subsection 5 of Section 3 of Public Law No. 7-2-8; now, therefore,

"*Be it resolved* by the House of Elected Members of the Seventh Palau Legislature, Fifth Regular Session, 1980, the House of Chiefs concurring, that the results of the July 9, 1980 Constitutional Referendum are hereby approved and the Constitution of the Republic of Palau, as adopted by the Palau Constitutional Convention with amendments proposed by the Seventh Palau Legislature, is hereby declared adopted by the people; and

"*Be it further resolved* that certified copies of this Joint Resolution be transmitted to the President of the United Nations Trusteeship Council, the President of the United States, the United States Secretary of State, the United States Secretary of the Interior, the President of the United States Senate, the Speaker of the House of Representatives, the United States President's Personal Representative to the Micronesian Status Negotiations, the High Commissioner of the Trust Territory of the Pacific Islands, and the Acting District Administrator of Palau."

POM-853. A resolution adopted by the Legislature of Palau; to the Committee on Labor and Human Resources:

"HEM RESOLUTION No. 106

"Whereas, Section 314 (d) of the Public Health Service Act of 1944, as amended, 42 U.S.C. § 246 (d), directs the Secretary of Health and Human Services to 'make grants to . . . health and mental health authorities to assist in meeting the costs of providing comprehensive public health services'; and

"Whereas, the Trust Territory of the Pacific Islands was excluded from grants under this program until 1967, after it had been in existence for some 23 years; and

"Whereas, the President's proposed fiscal year 1981 budget would totally eliminate any alcohol or drug abuse program funding in Palau; and

"Whereas, it would be an act of bad faith for the United States to cut this crucial program while agreeing during negotiations for a Compact of Free Association with Palau that such funding would be continued at least at present levels; and

"Whereas, elimination of funding under this program would terminate the positions of eight medical personnel, leaving the sick without adequate care and increasing Palau's unemployment problem; now, therefore,

"*Be it resolved* that the House of Elected Members, Fifth Regular Session, 1980 that the United States Congress is hereby respectfully requested to restore fully the funding of the § 314 (d) program for grants for comprehensive public health services to a level which permit its uninterrupted continuation; and

"*Be it further resolved* that certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the House of Representatives of the United States Congress, the Secretary of the United States Department of Health and Human Services, and the High Commissioner of the Trust Territory of the Pacific Islands."

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOLE:

S.J. Res. 199. Joint resolution designating the week of September 28–October 4, 1980 as "National High School Activities Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE:

S.J. Res. 199. Joint resolution designating the week of September 28–October 4, 1980, as "National High School Activities Week"; to the Committee on the Judiciary.

NATIONAL HIGH SCHOOL ACTIVITIES WEEK

● Mr. DOLE. Mr. President, it gives me great pleasure to introduce a joint resolution designating National High School Activities Week this fall during the week of September 28–October 4. It also gives me great pleasure to announce that our distinguished colleague in the House, the minority Congressman JOHN RHODES will be introducing an identical resolution in that body. For months, the National Federation of State High School Associations has been making recommendations for the promotion of their activities programs in conjunction with high schools across the country. This resolution already has the support of the President's Council on Physical Fitness and Sports.

IMPORTANCE OF EXTRACURRICULAR ACTIVITIES

While we all recognize the importance of a formal, academic high school education, very little attention is given to the significant role that extracurricular activities play in channeling the energies and talents of young people. The development of teenage interests outside the classroom is an extremely valuable way in which high school students are provided a means of social involvement and interaction among their peers. Often, these activities extend opportunities for teenagers to become involved in the affairs of their community, and this serves to instill in young people an early sense of civic duty.

Perhaps the most beneficial outcome of high school students' involvement in extracurricular activities is the develop-

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ment of a sense of self-awareness concerning their potential as individuals who can contribute to the society in which they live. High school activities give teenagers a chance to exercise their talents in areas which are of special interest to them, and, because they are specifically interested in what they are doing, they tend to do very well, even to the point of excelling. These kinds of activities enable students to participate in various programs on a voluntary basis, and, because they enjoy their participation, they tend to take more interest in their academic education during school hours.

Certain high school activities promote skills and talents in performance of an individual nature, like involvement as an editor, writer, or reporter on the school newspaper. Forensics, dance, and theater also emphasizes individual abilities. However, many more activities such as sports, debate, and participation in student government promote team spirit and provide many opportunities for interaction with individuals of the same age group who possess similar interests.

LEADERSHIP ROLE OF ACTIVITIES DIRECTORS

While emphasizing the importance of the activities themselves, it is important to recognize the role that the guidance and encouragement of teachers, coaches, and program directors play in enriching the lives of high school students. Most of those who participate will become better citizens, because of their involvement in extracurricular activities. The informal lessons they have learned are significant factors in the molding of their characters in later life. The leadership also provides these young people with a positive outlook toward getting along with other people.

Being a teenager is a difficult time of life, because young people go through so many changes during this period. Often there is little support and positive reinforcement from parents and siblings. This is a very fragile time for teenagers psychologically. Highly qualified teachers and other individuals who give so much of themselves, along with their time, in the process of conducting these activities quite often become friends and counselors, and sometimes even role models, for the young people with whom they work and play. Even more than their teaching roles in the classroom, these teachers who become friends and counselors instill in the students with whom they come in contact important attitudes and values that serve them throughout their lives.

This would seem to be an appropriate time to express appreciation to those who direct school activities. They have demonstrated enormous dedication, usually without the prospect of even minimal financial remuneration. Their chief reward comes only from the fulfillment of witnessing the growth and development of these young people they serve.

FUTURE SUCCESS POTENTIAL OF ACTIVITIES

At this point, I ask unanimous consent to have printed in the RECORD part of an article on National High School Activities Week by David Harty that expressed the long-range value of these extracurricular programs in terms of the future development of high school students.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

NATIONAL HIGH SCHOOL ACTIVITIES WEEK

(By David Harty)

The American College Testing Service (ACT) conducted a study of itself, comparing the value of four factors in predicting success (measured by self-satisfaction in participation in a variety of community activities two years after college). Three of the four factors—high grades in college, high grades in high school and high scores on the ACT test—were found to have no predictive value. The only factor which could be used to predict success in later life was achievement in "extracurricular" activities. The College Entrance Examination Board's Scholastic Aptitude Test (SAT) was also examined for its accuracy in predicting how successful a person might be at a chosen career upon graduation from college. Results indicated that "the SAT's offered virtually no clue to capacity for significant intellectual or creative contributions in mature life." The study found that the best predictor for creativity in mature life was a person's performance during youth, in independent, self-sustained ventures. These youngsters who had many hobbies, interests and jobs or were active in extracurricula activities were most likely to be successful in later life. Participation in activities does make better citizens.

The "Study Report on the Cost Impact of Interscholastic Programs" presented April 6, 1979, by the Minnesota State High School League indicates in a random sampling of school districts in Minnesota that approximately 2.03 percent of the general fund budget is spent on the interscholastic program. An informal tally of several school districts in the state of Iowa, revealed that somewhere between 1.5 percent and 2 percent of the general fund budget was expended on the interscholastic program for the 1977–78 school year. School activities are a bargain.

Mr. DOLE. Mr. President, I can think of no worthier cause that would deserve more public awareness than the important role that high school activities play in the lives of teenagers. Communities themselves benefit from involvement of high school students in that the activities keep young people busy with healthy, constructive programs, and often these teenagers become directly involved in community affairs. There has been so much emphasis on the importance of the formal academic classroom experience, that it is time that we gave some recognition and generated a greater amount of public awareness of "the other half of education." I ask the support of my colleagues in approving this resolution.●

ADDITIONAL COSPONSORS

S. 2983

At the request of Mr. SCHWEIKER, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 2983, a bill to amend the Internal Revenue Code of 1954 to reduce the tax on capital gains.

AMENDMENTS SUBMITTED FOR PRINTING

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS AND TRADE SERVICES—S. 2718

AMENDMENT NO. 2886

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to S. 2718, a bill to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

ADDITIONAL STATEMENTS

ERISA

● Mr. WALLOP. Mr. President, on July 29 the Senate labored late into the night on S. 1076, the Multiemployer Pension Plan Amendments of 1980. Many Members were familiar with the history of the legislation, having worked on it in either the Finance or the Labor Committee. Those who were not directly involved in the consideration of the legislation were appraised by the floor managers in their introductory remarks of its detailed history, the time constraints surrounding enactment, and the need for the bill.

Nevertheless, many members including myself felt that certain additions and modifications to the legislation should be made. Accordingly, amendments were offered and adopted by the Senate. The two amendments I proposed were adopted by record votes: The "MSHA" amendment passed by a vote of 52 to 37. My second amendment, increasing the de minimis exemption for withdrawing small employers from $50,000 to $100,000 was adopted by a vote of 47 to 42. The Senate also adopted other amendments, including the Boren-Church OSHA amendment (48 yeas to 36 nays) the Schweiker affirmative action amendment; the Chafee pension offset amendment; and others.

Last night, Mr. President, we were back on the floor, a short month later, being asked to agree to House amendments to the Senate-passed bill. The House has seen fit to delete from the Senate-passed legislation several important provisions on which the majority of this body has expressed support. In particular, the MSHA amendment, the de minimis amendment, the OSHA amendment, and the affirmative action amendments have all been stripped from the bill. I deeply regret that the full House did not, as a result of its committee system and procedural rules, have an opportunity to vote up or down on the Mine Safety and Health Administration (MSHA) amendment. If such a vote had occurred, I am confident that it would have pased by a substantial majority, some 219 Members of the House being cosponsors of analogous bills which would transfer surface sand, gravel, stone and clay mining operations from MSHA to OSHA.

However, the message of the House leadership is clear: a vote on the merits of this proposal apparently will not occur in the context of this ERISA legislation. In light of their rather adamant position, I did not request the Senate to go through the exercise of voting once again to send the MSHA amendment back to the House.

As a body, we are clearly and firmly on record in support of the MSHA legislation as is the House. The will of the majority on the MSHA proposal having been blocked on this pension legislation, we will now redouble our efforts to move it at the earliest available moment on a measure other than H.R. 3904 (S. 1076).

My regrets on the MSHA amendment find company with my equally strong regrets about the House deletion of the de minimis amendment. This amendment provided limited relief to the smallest employers who will be most directly and seriously impacted by the extension of withdrawal liability to all employers. Not only would the amendment have mitigated the financial blow to a withdrawing small employer, but it would simultaneously have encouraged more small employers to join multiemployer plans, a result which is critical to the growth and maintenance of these plans.

The amendment was supported by the small business community whose voice, in this instance as in many others on this legislation, was drowned out by big business and labor. When this legislation takes effect, many small businessmen are going to wonder what hit them. I am disressed that the interests of these small businesses have not adequately been protected, and that, in the long run, the consequences of the House action will be to discourage small employers from entering plans.

In addition to the deletion of my two amendments, the House has made other significant changes in the ERISA legislation. One of these changes concerns me because of its punitive effect on withdrawing employers. Both the Senate and House versions of the bill allow an employer that withdraws from a multiemployer plan to pay withdrawal liability in annual installments in accordance with a payment schedule determined by the plan. Under the Senate bill, the amount of an employer's annual payment was based on the employer's highest contribution base units and rates in 2 of the previous 5 years. The House changed the manner in which the two amounts are determined. The House bill focuses on the 3 plan years in the last 10 during which the employer's contribution base units were greatest and the highest rate within the last 10 years.

This amendment is likely to impose real hardship upon many employers. This can be expected in many cases since the contribution rate will have increased in the most recent years, while the base will have declined over 10 years, thus reaching back to the earliest years of the plan when the base was greatest. The net effect of this formula is to impose upon a withdrawing employer an annual contribution rate that may exceed any amount the employer has ever paid during his previous years of active participation in the plan. In my view, this imposes a penalty on many employers at a time when they can least afford it and contrary to all assertions that withdrawal liability was not intended to be punitive.

Another disturbing House amendment restricts GAO to plan records for purposes of studying the multiemployer pension plan program. The Senate would have granted GAO access to the records of plans, employers and unions for purposes of carrying out their study. Under the House restrictions, it will be very difficult for GAO to ascertain with precision the impact the changes in the multiemployer pension law will have on employers, which was the Senate's design.

The House made other noteworthy modifications. However, rather than detailing each of these, I will sum up by saying that the House amendments to the Senate-passed ERISA bill do not improve the legislation. Suffice it to say that many of its provisions have not adequately been considered because of the time pressures surrounding enactment. I would venture to say that many of the private sector proponents of the legislation will soon be heard to complain about some of the same provisions that are now being heralded. We in Congress will undoubtedly hear from this Nation's small businesses who will find the withdrawal liability sections of the bill particularly onerous.

I have long understood the need for congressional action on ERISA and have supported that effort. Nonetheless, I am sorry that in our desire for prompt action we have sacrificed the usual careful scrutiny that helps avert future problems.●

DISABLED VETERANS REHABILITATION ACT OF 1980

● Mr. DOLE. Mr. President, at the request of the chairman of the Senate Veterans' Affairs Committee, Senator CRANSTON, I am submitting, for the RECORD, copies of letters from major veterans organizations in Kansas regarding my amendment to S. 1188.

Mr. President, my amendment will change the name of the Topeka Veterans Administration Hospital to honor two outstanding Kansans who devoted their lives to improving the lot of veterans all across the country. These two men are Harry Colmery and Ralph O'Neil.

For the RECORD, I submit the following correspondence:

AMERICAN LEGION,
Topeka, Kans., May 28, 1980.

Senator ROBERT DOLE,
2213 Dirksen,
Washington, D.C.

DEAR SENATOR: On behalf of 60,000 Kansas Legionnaires, I ask your full support in the use of Ralph T. "Dyke" O'Neil's name along with that of Harry Colmery's, in re-naming the Topeka V.A. Hospital.

Mr. O'Neil contributed a great deal to the Veterans of Kansas and this recognition is deserved and would be appreciated.

Sincerely,

JOHN WM. CARR,
Department Commander.

VETERANS OF FOREIGN WARS,
DEPARTMENT OF KANSAS,
June 6, 1980.

In re: Renaming of Topeka V.A. Medical Center.

Hon. ROBERT DOLE,
U.S. Senator,
Dirksen Building, Washington, D.C.

DEAR SENATOR DOLE: In reference to my objection to the proposition to change the name of the Topeka V.A. Medical Center to Colmery-O'Neil V.A. Medical Center, I withdraw my disapproval of this action.

Respectfully yours,

TROXAL MELLINGER,
Commander.

DISABLED AMERICAN VETERANS,
Washington, D.C., June 24, 1980.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CRANSTON: This is to confirm that this office has been advised by Mr. John Schneider, immediate Past Department Commander, DAV Department of Kansas, that the Kansas DAV organization, during its recent 1980 State Convention, endorsed the renaming of the VA Medical Center, Topeka, Kansas as the "Colmery/O'Neil VA Medical Center."

Sincerely,

JOHN F. HEILMAN,
National Legislative Director.

DISABLED AMERICAN VETERANS,
DEPARTMENT OF KANSAS,
June 6, 1980.

Senator ROBERT DOLE,
U.S. Senate,
Washington, D.C.

DEAR BOB: The Department of Kansas Disabled American Veterans supports you on your bill to rename Topeka Veterans Administration Hospital.

Sincerely,

JOHN SCHNEIDER.●

VIETNAM'S GULAG

● Mr. HUMPHREY. Mr. President, I submit the following article from the August 21, 1980, edition of the Wall Street Journal for printing in the RECORD.

There

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headquarters and said: "We are arresting you." I asked: "Why are you arresting me, what have I done?" but they only replied: "The best thing is for you to think and remember. It is for you to work out."

I was taken to a small cell. It was very dark—the only light coming from a small hole in the wall through which I could breathe fresh air. The first night I slept easily as I was still optimistic because I knew I hadn't done anything.

Each day I made a notch on the wall and soon I had been there for seven weeks. My only visitor was another prisoner—a girl who every morning would bring me a bowl of rice.

The first day she came I was very hungry and began to gulp the rice down but I soon realized they must have mixed some sand with it. It was impossible to eat. When they finally called me for questioning I asked the official why they had put sand in my rice. "So you remember what you have done wrong in the past," he said.

They made me write an account of my life and every morning would take me to their office where the air was very fresh. I wrote pages and pages so as to postpone the time when I would once more be shut up all day long.

I had first become involved in politics when I was a pharmacy student at Saigon University in the 1960s. At that time I believed Thieu was head of nothing but a puppet government in the hands of the Americans. I became interested in the struggle for peace at Saigon University and was elected vice president of the student union. When the student union president was arrested, I organized student demonstrations all over Vietnam against the Thieu government. For this as well as other activities, I was arrested and imprisoned many times by that government.

During these years the National Liberation Front had approached me to join them. But I refused, preferring to support their goals independently through the student union. At the end of the war in May 1975, I was asked to join the finance committee of the provisional revolutionary government. I agreed, but in a split over policy I soon resigned. (Although the Communists never told me this, I believe that my resignation was the cause of my arrest.)

After I finished my account I was taken to Le Van Duyet prison in the center of Saigon where I stayed for over two years.

I was put in a small cell with 50 others. People died every day through lack of medical attention and in the evening you could hear the voices call out: "Warden, this is room number three, someone has just died."

I was worried about my French wife and three sons and was anxious for them to leave Vietnam. I knew there could be reprisals against them and through one of the prison wardens—a former friend—I sent a letter to my wife saying not to wait for my release but to take the children to France. And if she had to write a letter to the authorities denying my existence, then she must.

When she finally left for France in June 1977, I felt easier. Then I heard the news of my mother's death. She had been denied medical treatment because she had one son in prison and another who had left with the Americans. I was very sad and very angry and through my friend again sent a letter to the chief of the secret police in Saigon saying: "You are responsible for my mother's death. I have now been in prison for 27 months and I still don't know what I have done to oppose the Communists. If you find out nothing then you must release me." More important, I had my friend bribe an important official.

Later I was called to the prison commandant's office and was told I was released. He said that the government needed me to cooperate with them. "If we give you an exist visa you must tell the West how wonderful everything is here. And how well we treat our prisoners." I agreed with them, but only I knew what I would really tell the West.

I was given an exit visa but didn't leave Vietnam immediately. In prison, I had given up hope for a free Vietnam. I had become very angry and very ashamed to have ever supported the NLF. I wanted to get rid of the Communist regime. But then I said to myself: "I think this because I have been in prison for over two years. Before I leave I must find out if the rest of the country feels the same way."

I discovered that everyone hated the regime because they were always hungry and were even less free than they had been under President Thieu. In Vietnam today there are over 800,000 people in prison and in so-called reeducation camps. In Cambodia the political prisoners were exterminated quickly but in Vietnam they die slowly.

When I was released my friends still in prison asked me to tell the world what is happening and, if no one will stand up to the Vietnamese Communists, to send them cyanide to put an end to their agony. "Help us to die quickly," they said.

In Vietnam nobody dares to protest for fear of arrest. Few people abroad speak because they fear for the safety of their families still in Vietnam.

But even if it means the death of myself and my family, I must do something for the thousands of prisoners who die each year and the millions of people who have to support the unsupportable and accept the unacceptable.●

SEA CHANGE OR MIRAGE? CARTER'S POLICY SHIFTS ON DEFENSE

● Mr. DOLE. Mr. President, in recent weeks the administration has released news of a heretofore secret development that would enable a new generation of strategic bombers to penetrate enemy radar undetected. The Soviet Union may have had some inkling of this discovery through its intelligence channels. With this unnecessary but politically timely public disclosure, however, we can be sure the Russians now are pulling out all stops to discover whatever they can about the stealth bomber technology, just as they did when they obtained the KH-11 spy satellite plans 2 years ago. Was there any military or diplomatic purpose to be served by this announcement?

In the same vein, Presidential Directive 59 regarding nuclear war strategy was recently leaked to the press corps to symbolize Mr. Carter's new get-tough policy with the Soviet Union. At least the President seems, partly by this belated articulation of a long process, to recognize after 4 years in office that we need to have a better balance of power in the world, and a reevaluated geostrategic policy toward the U.S.S.R., before we can have meaningful arms control discussions. SALT II is "O.B.E.", overtaken by events, and if it was ever marginally in our interests, it is obsolete now and must be renegotiated in a new context.

DEFENSE COMMITMENT QUESTIONS

But, these news stories so recently splashed over the Nation's headlines raise as many questions about our Nation's commitment to defense as they seem to solve. After delaying MX for 3 years, Jimmy Carter is now pushing it for all it is worth. After canceling the B-1 bomber and delaying its alternate, the cruise missile, he is now coming up with a new bomber from scratch. The Soviets must be calculating now, as they begin Warsaw Pact exercises on the borders of Poland, how much of this new rhetoric is election-year heroics and how much represents a new American awakening to the dangers of military and strategic neglect.

Things have been allowed to slip and slip badly in the last few years. During the last Arab-Israeli war, U.S. forces went on alert to deter Soviet intervention. Last week a key Soviet official in Moscow said that Russia would find it "difficult" to act the same way it did in 1973. "At that time we sought to contain the war (sic). We would not act the same way again in a confrontation." Now their military and strategic position has been allowed to become significantly enhanced while this administration delayed programs, cut defense expenditures and reduced the numbers of ships, planes, and missiles at our disposal.

We have heard of Mr. Carter's commitments before. Last Thursday he gave a rousing speech to the VFW convention. On Friday he vetoed the Veteran's Health Act of 1980, which was supported by every national veterans' group. Last spring he deemanded the Congressional Armed Services Committees hold back on defense spending, then flew out a few days later to *Nimitz* when it returned from duty off the coast of Iran for a highly publicized address to the crew, calling for more benefits and higher pay. Will the real Carter defense policy please stand up?

CARTER'S "NEW" STRATEGY

In yesterday's Washington Post, retired Lt. Gen. Edward Rowny analyzed what Presidential Directive 59 will mean for the United States in credible strategic terms. General Rowny was the military member, representing the Joint Chiefs of Staff, at the SALT II negotiations under three Presidents. Mr. President, I ask that his article be printed in the RECORD.

The article follows:

THAT 'NEW' NUCLEAR STRATEGY

The Carter administration is making quite a stir about the "revolutionary" thinking embodied in its Presidential Directive 59: a nuclear strategy giving priority to attacks on military targets in the Soviet Union rather than on Russian cities and industrial complexes. This is a more realistic and effective way to deter the Soviet Union, which has been inexorably building its military capabilities for the last 15 years. However, several hard questions about the administration's so-called new nuclear strategy still need to be answered.

One would expect that this strategy would bear the distinct imprint of the Democratic Party. I must note with a certain bemusement, however, how far the directive has moved toward the positions of previous Republican administrations and the 1980 Republican platform. Then-secretary of defense James Schlesinger announced in 1974 a similar revision in our targeting doctrine. But the Carter administration did not implement the programs needed to carry it out. In fact, President Carter seriously considered reducing the U.S. strategic force to a minimum deterrence level of 200 strategic missiles, while the Soviets presumably would have been allowed 10 times that number.

The 1980 Republican Party's platform has resurrected the earlier Schlesinger doctrine and calls for the programs to implement it: "Our objective must be to assure the survivability of the U.S. forces possessing an unquestioned, prompt, hard-target counterforce capability sufficient to disarm Soviet military targets in a second strike. We reject the mutually assured destruction (MAD) strategy of the Carter administration, which limits the president during crises to a Hobson's choice between mass mutual suicide and surrender."

It is said that imitation is the most sincere form of flattery. But the present administration's words describing the new policy are not merely flattering—they are vindicating. They offer a ray of hope to those of us who registered skepticism about the credibility of America's nuclear deterrent. Up to now, President Carter's approach to nuclear deterrence appeared to rest America's security on a position of minimum deterrence. In January 1979, he said: "Just one of our relatively invulnerable Poseidon submarines, comprising less than 2 percent of our total missile force, carries enough warheads to destroy every large and medium-sized city in the Soviet Union."

We know the concepts embodied in Presidential Directive 59 are not new and have been in bureaucratic channels for several years. Secretary of Defense Harold Brown hinted at a countervailing strategy in his two most recent posture statements. Clearly, we all would have benefited from having it sanctioned and implemented earlier. A more vexing question is why the new doctrine became policy at this time. Was it another ill-timed or ill-conceived leak? A more plausible answer seems to be that it was done for reasons of political expediency.

The most crucial question of all, however, is: Will the strategy in fact be implemented or will it fall by the wayside when the winds shift again? This is the same administration that canceled the B1 bomber, delayed the MX missile, postponed development of both the Trident II submarine missile and strategic cruise missiles and backtracked on the neutron warhead. Has the leopard changed its spots or has it merely camouflaged itself for the duration of the political campaign? If the latter is the case and Presidential Directive 59 falls by the wayside, the nation will be the loser.

Following the Soviet invasion of Afghanistan, President Carter reportedly said that he had learned more about the Soviets in one week than he had in the preceding three and a half years. Yet the military programs that he proposed since that time would increase our defense effort scarcely enough to make any difference.

Secretary of State Muskie's spontaneous reaction to the administration's new nuclear strategy indicates that he questions how it came about. He has just been briefed; we have yet to hear whether Muskie agrees with its wisdom. We have yet to learn if Muskie is convinced that the name of the game in deterrence is not what would deter us but what would deter Soviet leaders from attempting to capitalize on their newly acquired military capabilities.

Furthermore, the secretary recently called SALT II "indispensable to our security." Such a statement is ill advised. It is our military posture, not SALT, that is indispensable to our security. SALT II does not improve that posture. And to declare the treaty indispensable to our security is to tell the Soviet leaders that the United States is willing to permit its military security to become hostage to SALT.

Therefore, while the announcement of a new U.S. nuclear strategy is welcome, we must be concerned as to whether this newly enlightened administration can be counted on to act out of character. It is one thing to enunciate policy and quite another to execute it in the form of commitment to programs.

If the new strategic doctrine is to be implemented, our current forces must be survivable. The MX missile must be deployed in the most expeditious and economical manner. We must build more accurate land- and sea-based missiles, improve and protect our intelligence and communications systems and strengthen our virtually nonexistent strategic and civil defense against nuclear attack. Such programs have not been realistically addressed by the current administration.

In the final analysis, then, the crux of the matter is: Can the Carter administration be counted on to put its money where its mouth is?●

RIEGLE ISSUES VOTE CORRECTION

● Mr. RIEGLE. Mr. President, yesterday, the Senate approved a measure calling for a 10-percent reduction in the funds allocated for Senate operations. I inadvertently cast my vote against this proposal yesterday. I fully intended to support this bill, because, I feel strongly that it is important for Senate to set an example for other areas of government in the fight against inflation. On June 2, 1980, I did, in fact, vote in favor of a similar measure proposed by the distinguished majority leader.●

ANTI-IRANIAN RALLY

● Mr. LAXALT. Mr. President, the other day in Washington, a number of patriotic Americans had a rally to protest the continuing imprisonment of our hostages in Iran. Although attendance was not what many of us would have liked, my good friend SAM HAYAKAWA was there. As usual, he added strength and forcefulness to the meeting which sent a clear message to Khomeini that after nearly 300 days, he should at long last let our people go.

Senator HAYAKAWA has issued a statement in conjunction with that rally, which I think should be brought to the attention of all my colleagues. Therefore, Mr. President, I ask that Senator HAYAKAWA's statement and an article from the Washington Star be printed in the RECORD.

The statement follows:

STATEMENT BY SENATOR HAYAKAWA

I am here today because I believe we have let Iran spit in our faces, while we pretend its raining. Not only have Khomeini's henchmen held 52 of our citizens captive for almost 300 days, but now—on our own soil and probably with the Ayatollah's money—they demonstrate, agitate and propagandize in support of the principles of this semi-insane, so-called "holy man." It's time we put an end to this spewing out of pro-Khomeini anti-Americanism in the streets of our cities.

I firmly believe that Iranian citizens who agitate against the United States should be deported. While our laws guarantee the right of citizens and noncitizens alike to peacefully assemble and demonstrate for whatever cause they like, we must recognize that the present situation is extraordinary. We are in a state of belligerency with Iran—whether we declare it or not—as long as Iranians hold our people hostage. Iranian citizens in this country should behave with dignity and respect for the sensitivity of this situation—or they should be sent back to Iran. By ranting and raving in our streets, they create the possibility of confrontations with our own citizens. If an Iranian is seriously hurt, it could jeopardize the American hostages.

I was amazed to find that our immigration regulations do not provide the necessary Presidential authority for the deportation of dissident nationals. In searching for an appropriate legal means for their speedy deportation, I found that a section of the U.S. Code, written in 1798, can be applied to this situation with only a minor amendment.

Under our present law, if a foreign government perpetrates a "predatory incursion"—an invasion or attack—to U.S. territory, the President can proclaim citizens of that nation who are in the United States to be "alien enemies." The President would then have the authority to deport them. But for the purposes of this section of the law, our U.S. missions abroad are not considered to be U.S. territory and therefore not covered by this provision.

In March of this year, I introduced the "American Sovereignty Protection Act." The bill, very simply, states that an attack or "predatory incursion" to a U.S. mission abroad, with or without the taking of hostages, would allow the President to declare nationals of the invading country to be "alien enemies," subject to deportation.

My bill, S. 2437, has been languishing in the Senate Judiciary Committee for almost six months now. You can help it become law by writing to your Senators and Congressmen or the Senate Judiciary Committee. Representative William Whitehurst of Virginia has introduced companion legislation in the House of Representatives.

It is my hope that this rally and march will emphasize our concern for the hostages in Tehran and that it will be conducted with enthusiasm, vigor and dignity. Let's let the Ayatollah know that we have not forgotten our people. Let's let Iranian agitators know that their agitation only strengthens our Americanism.

FEW JOIN ANTI-IRANIAN RALLY HERE

(By Toni House)

Mark James, a 29-year-old stockbroker who thinks Americans should stand up for America, gazed out on the 150 faces before him on the Washington Monument Grounds yesterday and frowned.

James, who spent the last three weeks organizing the city's first anti-Iranian march, told authorities he hoped for a turnout of 10,000.

"We gave the American public an opportunity to speak out on a sensitive subject . . . to take a couple hours out of their day. Evidently Americans have forgotten the hostages," he mourned.

But the young organizer's spirits rebounded some with enthusiasm of the crowd that did turn out to march in a half-block long column up 17th Street NW and past the White House, singing "God Bless America" and waving American flags.

President Jimmy Carter was at the White House yesterday but did not appear as the crowd chanted "Wake up, Jimmy! Wake up, Jimmy!" However, the marchers drew considerable interest from tourists and other passersby who applauded or honked their car horns.

Some even jumped into the line of march, swelling the crowd to 250 as it moved north.

The march was called by James and about a dozen friends in an ad hoc committee called Americans Against Iran to demonstrate their concern for the 52 American hostages held in Iran and against Iranian propaganda activity in the U.S.

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The committee had no financing and little experience. They ran off 10,000 fliers which they distributed on city street corners and counted on word of mouth and media exposure to draw the crowd, James said.

Myrtle Brickman, a colleague of James, was supportive. "It's a pretty good turnout considering there were no resources," she said. "I have a feeling if there was an organization behind it, we'd have a pretty respectable turnout."

The star of the rally was Sen. S. I. Hayakawa, R-Calif., sponsor of a bill to enable the U.S. to deport Iranian nationals, who marched with a bullhorn at the head of the column behind a sign proclaiming "Day 294," shouting "Go to Hell, Khomeini." Yesterday was the American hostages' 294th day of captivity.

Hayakawa's bill is aimed at the dissident Iranians who have demonstrated in Washington and elsewhere in favor of the Iranian leader, the Ayatollah Ruhollah Khomeini, and the holding of the U.S. hostages.

The bill would enable the president to declare nationals of a foreign country "alien enemies" and permit their deportation if their government were to make or permit an aggressive action against a U.S. mission abroad.

U.S. law now does not allow the deportation of people with proper visas unless they commit a law punishable by a year or more in prison.

"I am here today because I believe we have let Iran spit in our faces while we pretend it's raining," Hayakawa told the roaring marchers. "It's time we put an end to this spewing out of pro-Khomeini anti-Americanism in the streets of our cities."

Although James was discouraged at the number of people who turned out for the march, the marchers themselves seemed undaunted by their small numbers. Maria Cox and Eunice Lee, in Washington from El Paso, Texas, bore a homemade banner bearing a quote from Genesis obliquely referring to Iranians as the rear end of a wild ass.

"We're religious," said Cox of the reference.

And when it was over, people crowded around James with congratulations and suggestions for how to do it bigger and better next time.

"Why don't you have it during lunchtime when there will be more people around?" "We need a spokesman for our cause" and "Why don't you get a pig and dress it in a little black hat and a Santa Claus beard?" various people suggested.

"Why don't you organize the next march?" said James. "I'm going home."●

GEORGE STAFFORD WILL BE MISSED IN RURAL AMERICA

● Mr. DOLE. Mr. President, yesterday afternoon George Stafford announced that he is resigning his position on the Interstate Commerce Commission at the end of August.

Quite simply, I and my colleagues from Kansas are saddened to see him go. For over 13 years Commissioner Stafford has been a fixture at the ICC, as Commissioner, Vice Chairman and the Commission's first permanent Chairman.

George has been a lifelong Republican active in Kansas politics. He was Frank Carlson's right hand man for over 20 years, as executive assistant to Governor Carlson in the late forties and administrative assistant to Senator Carlson from 1950 to 1967. When I succeeded Senator Carlson in the Senate, it was George Stafford who aided the transition.

But Commissioner Stafford has performed his duties in an even handed, bipartisan manner. He was the choice of both Republican and Democratic administrations, having been appointed by President Johnson in 1967 and reappointed to a second term by President Nixon.

If George Stafford has been guided by any particular "special interest," it has been the transportation needs and problems of rural America. Those of us who represent America's heartland have known for over a dozen years that at least one man at the Interstate Commerce Commission understood the impact of ICC decisions on the railroads, highways, and airways of Kansas and the rest of rural America. That is not to say Commissioner Stafford was parochial or possessed limited vision. But it has always been reassuring to know that small town America would not be ignored as the ICC exercised its vast and important power.

George Stafford was born and reared in the Midwest. His hometown of Valley Falls, Kans. is not unlike my home of Russell or the thousands of other small communities across our Nation. It may very well be that the availability of transportation is more important to these small towns than the urban centers on each coast. Without adequate truck and rail service to these small rural communities, the isolation would be enhanced and the quality of life limited. Commissioner Stafford knows this in his bones.

Mr. President, during the past year I have been reminded over and over again of this simple fact. Many communities in my State have been awaiting the verdict. In the wake of the Rock Island Railroad's bankruptcy, would the trains continue to pull into town? The future of farmers, small businessmen, and entire towns has been on the line. As private citizens and Government have worked together trying to insure that the tracks would not go unused, the Interstate Commerce Commission often was the focal point for important decisionmaking. Through it all, George Stafford has been a friend and an advocate. Much to his credit, over 90 percent of this once-abandoned Rock Island track will have rail service this fall.

This is only the most recent example of the Commissioner's importance. As the senior member of the Nation's senior regulatory body, he has been on the cutting edge of important developments in transportation. It is hard to imagine the Interstate Commerce Commission without him.

Yes, George Stafford will be sorely missed. I congratulate him for years of service to his State and his Nation and wish George and his lovely wife Lena a happy and fruitful retirement.●

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that committees may have until 5 p.m. on Wednesday, August 27, 1980, to file reports, bills, and conference reports.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECORD TO REMAIN OPEN UNTIL 3 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may have until 3 p.m. today to submit statements for the RECORD and introduce bills and resolutions.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I believe authority has already been given for the signing of bills and joint resolutions, has it not?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I believe that the Secretary of the Senate has already been authorized to receive and make appropriate referrals of messages. Am I correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS UNTIL 10 A.M., WEDNESDAY, SEPTEMBER 3, 1980

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the provisions of Senate Concurrent Resolution 118, that the Senate stand in recess until the hour of 10 a.m. on Wednesday, September 3, 1980.

The motion was agreed to; and, at 11:12 a.m., the Senate recessed until Wednesday, September 3, 1980, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 17, 1980:

FEDERAL ENERGY REGULATORY COMMISSION

John David Hughes, of Texas, to be a Member of the Federal Energy Regulatory Commission for the term expiring October 20, 1983.

DEPARTMENT OF STATE

William Jennings Dyess, of Alabama, a Foreign Service officer of class 1, to be an Assistant Secretary of State.

Diego C. Asencio, of Florida, a Foreign Service officer of class 1, to be Assistant Secretary of State for Consular Affairs.

Theresa Ann Healy, of Virginia, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Sierra Leone.

Allen Clayton Davis, of Tennessee, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Revolutionary Republic of Guinea.

Walter C. Carrington, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Senegal.

Peter Jon de Vos, of Florida, a Foreign Service officer of class 3, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea-Bissau and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cape Verde.

Henry L. Kimelman, of the Virgin Islands, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Haiti.

U.S. METRIC BOARD

The following-named person to be a Member of the U.S. Metric Board for the terms indicated:

For the remainder of the term expiring June 14, 1982:

Bruce Paul Johnson, of Nevada.

CIVIL AERONAUTICS BOARD

James Robert Smith, of Florida, to be a Member of the Civil Aeronautics Board for the remainder of the term expiring December 31, 1980.

James Robert Smith, of Florida, to be a Member of the Civil Aeronautics Board for the term of 6 years expiring December 31, 1986.

CORPORATION FOR PUBLIC BROADCASTING

The following-named persons to be Members of the Board of Directors of the Corporation for Public Broadcasting for terms expiring March 26, 1986:

Diana Lady Dougan, of Utah.

Lillie E. Herndon, of South Carolina.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE NAVY

Navy nominations beginning Frederick Aalbue, to be lieutenant (j.g.), and ending Michael W. Miller, to be lieutenant (j.g.), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 23, 1980.

Navy nominations beginning Russell S. Akerman, to be lieutenant and ending Cheryl E. Hale, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 28, 1980.

HOUSE OF REPRESENTATIVES—*Wednesday, August 27, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Lord God, Your love created us and breathed into us the breath of life, we offer our prayers and supplication for the good of all Your people. We know that in every way we are different one from another—in our work or where we live or in the variety of our attitudes. Yet, O Lord, we praise Your name that in spite of all human differences, we are one in Your Spirit. We know that You look upon all Your creation with love and forgiveness and with the gift of peace. May each of us so focus our eyes on You that we may see our common humanity and our mutual goals and better serve those committed to our care. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Saunders, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate having proceeded to reconsider the bill (H.R. 7102) entitled "An act to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was resolved, that the said bill pass, two-thirds of the Senators present having voted in the affirmative.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6974) entitled "An act to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes."

The message also announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 8010. An act to amend the Comprehensive Employment and Training Act to designate a Job Corps Center as the "Earle C. Clements Job Corps Center."

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5164) entitled "An act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. CANNON, Mr. LONG, Mr. HEFLIN, Mr. PACKWOOD, and Mr. WARNER to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate with amendments to a bill of the House of the following title:

H.R. 3904. An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 2719) entitled "An act to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. PROXMIRE, Mr. WILLIAMS, Mr. CRANSTON, Mr. GARN, and Mr. TOWER to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 118. Concurrent resolution providing for a recess of the Senate from August 27 to September 3, 1980, and an adjournment of the House from August 28 to September 3, 1980.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair would ask the gentleman from Pennsylvania (Mr. SHUSTER) what he intends to do with the doll. The Chair is not going to allow the Congress to be held up to ridicule and will object to any such exhibit being used in debate.

Mr. SHUSTER. Mr. Speaker, if I may respond, I simply want to introduce this duck as a symbol of the lameduck session that I want to speak to.

The SPEAKER. The Chair is of the opinion the Member would be holding the House up to ridicule and would ask the gentleman to make the speech without utilizing the apparatus or the doll or anything of that nature.

Mr. SHUSTER. Mr. Speaker, this is certainly not the intention.

The SPEAKER. That is the way the Chair feels about it and the Chair so rules.

POSSIBLE LAMEDUCK SESSION

(Mr. SHUSTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHUSTER. Mr. Speaker, I hoped to be able to use the symbol I have here which we have named Donald Democrat, the poor little lame duck.

Yesterday in the Republican Policy Committee when we took our position in opposition to the lameduck session which has been announced for this Congress, we believe, Mr. Speaker, there is time to get the work of the people accomplished by working this Friday, for example, by not going out at 3 o'clock this Thursday, by extending to October 18 our adjournment and we believe that the real reason for not doing the people's work and instead for scheduling a lameduck session is a bit perhaps more cynical. It is to avoid the controversial votes which would be taken before the election. It would seem some might be more interested in getting reelected than staying here to vote and do the job which they were elected to do. We think Donald Democrat, the lame duck, symbolizes what is happening here. The majority is ducking the budget and its massive deficit, the majority is ducking the issue of a strong national defense, the majority is ducking the issue of inflation and unemployment, the majority is ducking the issue of high taxes.

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

MAGNITUDE OF THE SOCIAL SECURITY PROGRAM

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, social security income and expenditures are growing at an amazing rate, both in dollar amounts and in their relationships to total Federal receipts and outlays.

Income to the trust funds which pay cash benefits is estimated this year to be $102.9 billion. When hospital insurance trust fund revenue is added, the total becomes $147.3 billion.

If no system changes are made, that figure will balloon to a quarter of a trillion dollars in 1984, and by the end of this decade it will be touching the half-trillion dollar mark. That would represent a 1,246-percent gain over a decade ago and a 242-percent advance from today's levels.

On the outgo side, the three funds fed by payroll taxes spent $29.7 billion in 1970, are estimated to be spending $149.2 billion this year, and are projected to spend $451.4 billion in 1990. Ten years ago, these expenditures represented about one-seventh of total Federal outlays. Today, they represent one-fourth, and if current projections hold, the gap between social security spending and all Federal spending will continue to narrow.

There are other reasons, of course, for the Congress to concentrate on social security. The number of taxpayers who support the system is at 110 million, and climbing; the number of beneficiaries is at 35 million, and rising even more rapidly.

There is no other governmental program comparable to social security in terms of income, outgo, and persons affected. Nothing even comes close.

Thus far, we have spent a relatively small amount of time on social security, and we have been able to avoid great confrontations on difficult social security issues. But we will not be able to get away with either dodge in the future. The sheer magnitude of the system will not let us.

POSSIBLE LAMEDUCK SESSION

(Mr. WRIGHT asked and was given permission to address the House for 1 minute.)

Mr. WRIGHT. Mr. Speaker, normally I do not feel called upon to respond to ridiculous comments made in an obviously partisan fashion by one of our colleagues.

The gentleman from Pennsylvania (Mr. SHUSTER) has been so farfetched this morning in his wild allegations that it does warrant some response.

The gentleman has taken a position, so piously wrapping about himself the cloak of mock outrage, that it will be the fault of the Democratic leadership that we have to return for a so-called lameduck session, if, indeed, one should become necessary.

I would remind the gentleman, though I do not like being partisan, that it has been the continuous, repeated efforts of the Republican side to prolong debate, to drag out time, and to prevent our completing our work on schedule that have kept us from finishing at an earlier date. Notwithstanding that fact, I think we can take some pride in the House and in the fact that we have been pretty well on schedule in the enactment of appropriations bills. Today, if we will stay here and work, it is our firm intention to finish the Labor-HEW bill in 1 day.

We are doing everything possible, given the climate that exists on the other side and the strong sense of partisanship that exists in any election year, to finish this schedule. So far as the gratuitous comments are concerned, in which the gentleman from Pennsylvania accuses the Democrats of ducking issues, I think it might be well to suggest that if the gentleman does not want to go home on October 4 as we have promised and face the public, it might be those on his side who are ducking the responsibility of going back and reporting to the American people why they voted as they did.

For example, the gentleman mentions the budget. If I were he, I think I would be very leery about mentioning the budget, on the same grounds one should not mention rope in the house of a man who has been hanged. For years and years the Republican Party has been piously prating about the need for a balanced budget and in the last few years, particularly this year, they have been wrapping about themselves the garb of patriotism, draping a flag about their shoulders and saying, "We ought to increase defense spending."

Well, all right. In June we presented the first balanced budget in the past 12 years and it involved the largest single dollar increase in defense expenditures for any year since World War II. How did the Republican side vote? They voted no. Predictably, consistently, they have voted overwhelmingly against the budget year after year. And so they come with very unclean hands when they try to accuse the majority side of not having passed the budget, if, indeed, we are not able to pass the budget before October 4.

I can assure the gentleman it is the purpose of the majority and it is the purpose of the leadership that we shall do the best we can to expedite the completion of our legislative schedule, and that we shall keep our promise to let the Members go home and face the public beginning October 4.

□ 1010

THE 72D ANNIVERSARY OF BIRTH OF PRESIDENT LYNDON B. JOHNSON

(Mr. PICKLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PICKLE. Mr. Speaker, today, August 27, is the 72d anniversary of the birth of President Lyndon B. Johnson. Issues come and go, trends change, the pendulum swings back and forth; but through it all, the vision that President Johnson had for this country continues to shine, and the improvements he made in the lives of millions of citizens are still felt everyday.

As members of the same legislative body where L. B. J. began his political career, we can be inspired by his drive and appreciative of his accomplishments. Despite reduced budgets, despite the legitimate questions we have about the role and size of Government. President Johnson's goals that our system should provide equal rights and economic opportunities for all are as relevant today as they were throughout the sixties.

A new book has just been published about L. B. J., and it is fascinating. Merle Miller has done an oral history about President Johnson, and it contains the stories, the personality and describes the motivations that made this complex but very human person tick.

In the book, "Lyndon," Hubert Humphrey describes L. B. J. in this manner:

He was an All-American President. He was really the history of this country with all the turmoil, the bombast, the sentiments, the passions. It was all there. All in one man.

Today, Mr. Speaker, we remember our friend, President Johnson, and respect his accomplishments. He was our education President. He had the most pleasant and effective relationship with the Congress than any of our Presidents. He knew the Congress, and the Congress knew him. History will rate him as one of our best Presidents.

WHAT IS A LAMEDUCK?

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, the majority leader's 3-minute 1-minute speech appears to indicate that a postelection lameduck session likely commencing November 12 is probable. However, the history of the 20th amendment illustrates that a lameduck session violates the spirit, if not the letter, of the law.

As Emanuel Celler, the longtime chairman of the House Judiciary Committee, said in 1932 when they were debating that proposition:

What is a lame duck? A lame duck is a wild bird which has been hit with a bullet by a hunter and is brought down. It is not killed, merely lamed and wounded. It is usually tractable, docile and easily tamed.

So it is with lame ducks in the House and probably in the other House. They have been hit with the shot of their constituents and become very lame, docile, and tractable.

Now, it seems to me inconceivable that for these many years lame ducks defeated by their constitutents have been able to come back to the House and vote on any proposition, be it appropriations or whatnot.

Mr. Speaker, if one would go through the CONGRESSIONAL RECORD and read the debate in 1932 surrounding the consideration of the 20th amendment, it becomes obvious that the main reason for adopting that amendment was to rid this institution of the practice of lameduck sessions. I would hope that we would not retreat to that pre-20th amendment position this year.

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PRESIDENT CARTER DEFENSE CUTS LEAD TO WRONG ARMY IN WRONG WAR IN WRONG DECADE

(Mr. BAUMAN asked and was given permission to address the House for 1 minute.)

Mr. BAUMAN. Mr. Speaker, if we may tear ourselves away from ducks of all stripes for a moment, I would like to call the attention of the House to an article in this morning's Baltimore Sun by Charles W. Corddry, an outstanding military correspondent. The article reveals that the Secretary of the Army, Clifford Alexander, and the Chief of Staff of the Army, Gen. Edward C. Meyer, have told Secretary of Defense Brown that the plans of the administration currently being discussed for the 1982 fiscal year budget are about to destroy the effectiveness of the U.S. Army. What was hitherto a secret memorandum reveals the Carter administration's total insincerity about building up our defenses and, in fact, the memorandum that I quote says:

This is the wrong army prepared for the wrong war in the wrong decade.

The article details substantial cuts being planned by President Carter in the Army and its weapons, even to the point where his own Secretary of the Army says that the Army will lose its effectiveness to respond in the near future to any crisis that may occur. I think this is worthy of debate in the campaign, and I hope that Mr. Carter will explain why he is following this path while uttering soothing words of reassurance about our defense capabilities in public.

The article follows:

ARMY LEADERS SAY CUTS WOULD RESULT IN UNPREPAREDNESS

(By Charles W. Corddry)

WASHINGTON.—The Army secretary and chief of staff have accused Defense Secretary Harold Brown's staff of making such drastic changes and cuts in planned programs that the Army would not be combat-ready, modernized or able to sustain itself in a protracted conflict.

In a harsh internal Defense Department document, Secretary Clifford L. Alexander, Jr., and Gen. Edward C. Meyer, the chief of staff, told Mr. Brown that the effect of his staff's decisions would be "the wrong Army prepared for the wrong war in the wrong decade."

In seeking to reverse program decisions advanced for the next budget, which goes to Congress in January, the Army leadership said minimum money needs for fiscal 1982 had been cut $1.4 billion below the level Mr. Brown himself issued in guidance in February.

They said $7.2 billion had been sliced from the five-year plan for fiscal 1982 through 1986 envisioned in Mr. Brown's "consolidated guidance" to the armed services.

The protests were sure to heighten the political debate being conducted against the background of Republican presidential candidate Ronald Reagan's claims of defense shortfalls.

The Army secretary and top military officer contended that the Pentagon staff actions raised questions about the "integrity" of the entire planning process.

Among their specific complaints, which filled eight single-spaced pages, were these:

Recent Program Decision Memoranda (PDM), prepared in Mr. Brown's office, canceled a secret new nuclear warhead for the 1,200-mile range Pershing II missile and a new nuclear shell for the 155-mm. howitzer. Both previously were primary objectives for updating tactical nuclear forces in Europe in the fiscal 1982–86 plan.

PDM among the last steps before submitting a budget to the president, demonstrated a lack of clear strategy and plans for using the Rapid Deployment Force, the all-service force for employment in remote trouble spots such as the Persian Gulf.

Higher priority was given to buying equipment for the force while the Army's numbers of lightly equipped battalions, suitable for rapid deployment, were threatened with reduction. Another "inconsistency" was the cut in planned ammunition stocks for the Army part of the Rapid Deployment Force from a 90-day to a 30-day supply. This was said to be counter to Mr. Brown's original guidance and to degrade significantly the Army's fighting ability.

War reserve stock level goals for major Army items were cut from 30 days to 15 days. The Army leadership contended this would be unacceptably low and would throw the service's procurement programs into disarray.

The support forces that each Army division in Europe would need by the 10th day after mobilization would number 22,000 men in various back-up units. Mr. Brown's staff ruled that 16,000 would be allowed.

The forces projected by the program decisions would not be capable of responding to potential challenges. The Army must have more resources, the leaders said, if it is to be the ground force that natural strategy calls for.

Since the critique was sent to Mr. Brown, he has met with service leaders to work on amended program decision memoranda. But sources indicated the Army made slight headway.

The Alexander-Meyer document was seen as the result of continual changes in original guidance to the Army since last winter. It will serve as a record for later appeals to President Carter and to Congress, in a year in which the disposition and the political pressures are to expand defense budgets.

The first full budget proposal for fiscal 1982 is to be assembled by September 15 for Mr. Carter's review.

The Army budget for the current fiscal year is $34 billion and for fiscal 1981, starting October 1, it will be about $40 billion. The likely range for fiscal 1982 is $45 billion to $48 billion.

The signature of General Meyer—handpicked by Mr. Carter over several senior generals—on the protest document was an indication of strong personal and professional feelings about the Army's fate, and, in the judgment of observers, of a willingness to put his career on the line.

He and Mr. Alexander left no doubt of their strong conviction that Mr. Brown's staff had ordered course changes in midstream and opened wide gaps between Army responsibilities and capabilities.

The Army created by the decision memoranda, they contended, would have "neither near-term readiness, modernization or sustainability."

It was not only the financial cuts they protested but the way in which the Brown staff ordered them to arrange programs.

The new Patriot air defense program, they said, was stretched out to make room for more of the short-range, European-designed Roland antiaircraft missiles. Delaying the Patriot's arrival in Europe by several years was a prime example of how the program decisions had degraded modernization of air defenses against an increasing Soviet aircraft threat, they said.

The decisions would cut the Army's planned purchase of Blackhawk utility helicopters to 40 percent of the need and would end a program for providing airborne target-detection and radar-jamming systems in the Blackhawk's basic airframe, they also said.

The two leaders cited, as additional evidence of "undermining" Army priorities, a decision lowering emphasis on a new attack helicopter armed with the Hellfire antitank missile in favor of items accorded lesser importance by the Army.

The Army heads strongly urged reversal of the decision against producing a new nuclear shell for 155-mm. howitzers, arguing current rounds have limited tactical use. Cancellation of the new weapon could produce adverse political reaction among allies, they contended.

In stating their worries about a slowdown and directed changes in the Army modernization program, the secretary and the general said the Soviet Union now holds qualitative and numerical superiority in most areas in ground forces.

They said Mr. Brown's office had "ignored" the sort of modernization program they considered essential to provide quality equipment for the Army in an orderly sequence.

PRESIDENT'S FIFTH ECONOMIC PLAN OF 1980

(Mr. BETHUNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BETHUNE. Mr. Speaker, this morning I am interested in the much ballyhooed new economic plan to be announced shortly by the White House, because I think it raises some serious questions about whether the plan is intended to improve the Nation economically or Mr. Carter politically.

This is the fifth economic plan of 1980. In January, the President submitted a budget with a $16 million deficit. It cost a million dollars just to print it, and it was discarded and completely revised in 6 short weeks. In February, the President decided to embrace a balanced budget, but that did not last long. We now know the deficit is going to be near $50 billion.

On March 14, the President panicked and threw the country into a recession, millions of people out of work, with heavy-handed reckless credit policies. In June, he changed course again. He removed the falling credit restrictions and has muttered incoherently about tax cuts and jobs all summer long.

Now, he says he has found it. Is it political or is it economic? Since 1976, when the President first promised a balanced budget, we have had the highest peacetime tax burden, runaway Federal spending, two additional departments of Government, the highest inflation and interest rate ever, and the steepest economic decline since World War II.

I think it is much more reliable to look at the record than to look at the promises.

GROWTH IN GOVERNMENT

(Mr. WALKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALKER. Mr. Speaker, the American people have been expressing time and time again their concern about the growth of Government. Only the recent Democratic Convention, which was made up of 40 percent Government employees, seems unconcerned about the growth of big government.

A study I recently completed shows why the American people should be concerned about that growth. Over the last 25 years, the Federal Government has spent $6 trillion, 49 percent of which has been expended in the last 4 years. That represents a 799-percent increase in Government growth in that period of time, 25 years, and a 1,944-percent increase in social welfare spending.

In constant dollars, the situation over 25 years is even more disturbing, with a 116-percent growth in government as a whole, a 531-percent increase in social welfare spending, and only a four-tenths of 1 percent increase in defense spending.

Mr. Speaker, the American people have a right to be concerned about growth in Government.

THE 1-MINUTE SPEECH

(Mr. MITCHELL of Maryland asked and was given permission to address the House for 1 minute.)

Mr. MITCHELL of Maryland. Mr. Speaker, my colleagues, the quality of the 1-minute speeches, particularly those which are vehemently partisan, has deteriorated to the point that I now have to play some word games while I listen to them. This morning, I played a word game beginning with "C" in the alphabet, trying to think of words that might describe these vehemently partisan 1-minute speeches.

Choler, meaning bilious;
Carping;
Cantankerous;
There is the word "cant," meaning insincere use of pious phraseology;
Catastrophe, an utter failure;
Chafing, as in irritating;
Crochety, as in annoying;
Clamor, as in din;
Clatter, as in rattling; and
Finally we come to the word "crud," something disagreeable or contemptuous.

DEMOCRATS ARE RESPONSIBLE FOR LAMEDUCK SESSION

(Mr. ERDAHL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ERDAHL. Mr. Speaker, a few moments ago we heard the majority leader criticize the Republicans for two significant things. One was for voting against a balanced budget, which I think every Member of this House and the American people should know is not a balanced budget; it is a phony balancing. Even today it could be out of balance to the extent of between $30 and $40 billion.

The other charge which needs a response was to accuse the minority of controlling the schedule of this House, and possibly bringing about a lameduck session. Here too, every American should know that every single committee chairman, every single subcommittee chairman, and every committee is controlled by the majority of this Congress. The majority sets the schedule. The majority is responsible for a lameduck session which might occur, which the American people do not want.

To accuse the minority of this House for setting the schedule and possibly causing a lameduck session is like blaming the tail for wagging the dog.

□ 1020

RECESS OF THE SENATE FROM WEDNESDAY, AUGUST 27, 1980, TO WEDNESDAY, SEPTEMBER 3, 1980, AND ADJOURNMENT OF THE HOUSE FROM THURSDAY, AUGUST 28, 1980, TO WEDNESDAY, SEPTEMBER 3, 1980

The SPEAKER laid before the House the privileged Senate concurrent resolution (S. Con. Res. 118) providing for a recess of the Senate from August 27 to September 3, 1980, and an adjournment of the House from August 28 to September 3, 1980.

The Clerk read the title of the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 118

Resolved by the Senate (the House of Representatives concurring), That when the Senate completes its business on Wednesday, August 27, 1980, it stand in recess until 10 o'clock a.m. on Wednesday, September 3, 1980, and that when the House completes its business on Thursday, August 28, 1980, it stand adjourned until 12 o'clock noon on Wednesday, September 3, 1980.

The SPEAKER. Without objection, the Senate concurrent resolution is concurred in.

Mr. BAUMAN. Mr. Speaker, are we permitted to debate this matter?

The SPEAKER. No, it is not debatable.

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I wondered whether any Member intended to explain the necessity for the recess, in view of the fact there has been some objection quite obviously from the minority about recessing at all because of the announced lameduck session.

Is there any Member who wants to justify this and tell us why we should not stay here and do the business of the people?

The SPEAKER. The Chair will state that this is a long-announced recess, since the beginning of the year, and Members from both sides of the aisle expect to be home, of course, and in their district through Labor Day.

The gentleman from Maryland lives within driving distance of the Capitol, and he can go home on a daily basis, but the leadership must take into consideration those who live on the west coast and those who live in southern and northern sections of the country. The leadership, I am sure, was in agreement with this earlier in the year when the schedule for for the year was printed.

The question comes on adoption of the Senate concurrent resolution. Without objection——

Mr. BAUMAN. Mr. Speaker, I would further reserve the right to object, unless the Chair wants to put the question.

The SPEAKER. The Chair would like to put the question unless the gentleman desires to say something further. Does the gentleman reserve the right to object to adopting the concurrent resolution by unanimous consent?

Mr. BAUMAN. I reserve the right to object, Mr. Speaker.

I am only saying, Mr. Speaker, that the legislative schedule has been changed before. We have been told that we will recess on October 4, as opposed to staying and completing our work, and then we will come back into further session after the election. If that kind of a major change can be made, it seems to me there is still time for us to consider the possibility of staying in session, as has been suggested by the minority leader, the gentleman from Arizona (Mr. RHODES).

The SPEAKER. The Chair will put the question, and the Members, if they desire to vote on it, may vote as they see fit.

Mr. BAUMAN. I thank the Chair and I urge a vote against the recess so that we can stay here and finish our business and avoid a lameduck session.

The SPEAKER. The question is on the Senate concurrent resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

Tht SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 241, nays 155, not voting 36, as follows:

[Roll No. 495]

YEAS—241

Addabbo	Clay	Giaimo
Akaka	Cleveland	Gibbons
Albosta	Coelho	Ginn
Alexander	Collins, Ill.	Gonzalez
Anderson, Ill.	Corman	Gore
Andrews, N.C.	Cotter	Gramm
Annunzio	D'Amours	Gray
Anthony	Daniel, Dan	Guarini
Ashley	Danielson	Gudger
Aspin	Daschle	Hall, Ohio
Atkinson	Davis, Mich.	Hall, Tex.
AuCoin	Davis, S.C.	Hance
Badham	de la Garza	Hanley
Bailey	Dellums	Harkin
Baldus	Derrick	Harris
Barnard	Dicks	Hawkins
Barnes	Dingell	Hefner
Beard, R.I.	Dixon	Heftel
Bedell	Donnelly	Hightower
Bellenson	Downey	Hinson
Benjamin	Drinan	Holland
Bevill	Duncan, Oreg.	Howard
Biaggi	Early	Hubbard
Bingham	Eckhardt	Huckaby
Blanchard	Edwards, Calif.	Hughes
Boggs	English	Hutchinson
Boland	Ertel	Hutto
Bolling	Fary	Jenkins
Boner	Fascell	Jenrette
Bonior	Fazio	Johnson, Calif.
Bouquard	Ferraro	Jones, N.C.
Brademas	Fisher	Jones, Okla.
Breaux	Fithian	Jones, Tenn.
Brinkley	Flippo	Kastenmeier
Brodhead	Florio	Kazen
Brooks	Foley	Kildee
Brown, Calif.	Ford, Tenn.	Kozlovsek
Buchanan	Fountain	Kostmayer
Burlison	Fowler	LaFalce
Burton, Phillip	Fuqua	Leath, Tex.
Byron	Garcia	Lehman
Cavanaugh	Gephardt	Leland
Chisholm		

Lloyd	Oakar	Solarz
Long, La.	Oberstar	Spellman
Long, Md.	Obey	Stack
Lowry	Ottinger	Staggers
Lujan	Panetta	Stark
Lundine	Patten	Steed
Luken	Patterson	Stenholm
McCormack	Pease	Stewart
McDonald	Pepper	Stokes
McEwen	Perkins	Stratton
McHugh	Peyser	Studds
McKay	Pickle	Swift
Maguire	Preyer	Synar
Markey	Price	Tauzin
Matsui	Quayle	Traxler
Mattox	Rahall	Udall
Mavroules	Rangel	Ullman
Mazzoli	Ratchford	Van Deerlin
Mica	Richmond	Vanik
Mikulski	Roberts	Vento
Miller, Calif.	Rodino	Volkmer
Mineta	Roe	Walgren
Minish	Rose	Waxman
Mitchell, Md.	Rosenthal	Weaver
Moakley	Rostenkowski	Weiss
Moffett	Roybal	White
Montgomery	Russo	Whitley
Murphy, Ill.	Sabo	Whitten
Murphy, N.Y.	Santini	Wirth
Murphy, Pa.	Satterfield	Wolff
Murtha	Scheuer	Wolpe
Musto	Seiberling	Wright
Natcher	Shannon	Wyatt
Neal	Sharp	Wydler
Nelson	Shelby	Yates
Nichols	Simon	Young, Mo.
Nolan	Skelton	Zablocki
Nowak	Smith, Iowa	Zeferetti

NAYS—155

Anderson, Calif.	Goldwater	Mottl
Andrews, N.Dak.	Goodling	Myers, Ind.
Archer	Gradison	O'Brien
Ashbrook	Grassley	Pashayan
Bafalis	Green	Paul
Bauman	Grisham	Petri
Beard, Tenn.	Guyer	Porter
Bennett	Hagedorn	Pritchard
Bereuter	Hamilton	Pursell
Bethune	Hammer-schmidt	Quillen
Broomfield	Hansen	Railsback
Broyhill	Harsha	Regula
Burgener	Heckler	Rhodes
Butler	Hillis	Rinaldo
Campbell	Hollenbeck	Ritter
Carney	Holt	Robinson
Carr	Hopkins	Roth
Carter	Horton	Rousselot
Cheney	Hyde	Royer
Clausen	Ireland	Rudd
Clinger	Jeffords	Sawyer
Coleman	Jeffries	Schroeder
Collins, Tex.	Johnson, Colo.	Schulze
Conable	Kelly	Sebelius
Conte	Kemp	Sensenbrenner
Corcoran	Kindness	Shumway
Coughlin	Kramer	Shuster
Courter	Lagomarsino	Smith, Nebr.
Crane, Daniel	Latta	Snowe
Crane, Philip	Leach, Iowa	Snyder
Daniel, R. W.	Lee	Solomon
Dannemeyer	Lent	Spence
Derwinski	Levitas	St Germain
Dickinson	Lewis	Stanggeland
Dornan	Livingston	Stanton
Dougherty	Loeffler	Stockman
Duncan, Tenn.	Lott	Stump
Edgar	Lungren	Symms
Edwards, Ala.	McClory	Taylor
Edwards, Okla.	McCloskey	Thomas
Emery	Madigan	Trible
Erdahl	Marks	Vander Jagt
Erlenborn	Marlenee	Walker
Evans, Del.	Marriott	Wampler
Evans, Ind.	Martin	Whittaker
Fenwick	Michel	Williams, Mont.
Fish	Miller, Ohio	Williams, Ohio
Forsythe	Mitchell, N.Y.	Wilson, Bob
Frenzel	Moore	Winn
Gilman	Moorhead, Calif.	Wylie
Gingrich		Yatron
		Young, Fla.

NOT VOTING—36

Abdnor	Conyers	Gaydos
Ambro	Deckard	Glickman
Applegate	Devine	Holtzman
Benker	Dodd	Ichord
Bowen	Evans, Ga.	Leach, La.
Brown, Ohio	Findley	Lederer
Burton, John	Ford, Mich.	McDade
Chappell	Frost	McKinney
Mathis	Nedzi	Whitehurst
Mollohan	Reuss	Wilson, C. H.
Moorhead, Pa.	Thompson	Wilson, Tex.
Myers, Pa.	Watkins	Young, Alaska

Messrs. GOODLING, SEBELIUS, GREEN, MOORE, PURSELL, and KELLY changed their votes from "yea" to "nay."

Mr. FLIPPO changed his vote from "nay" to "yea."

So the Senate concurrent resolution was concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1030

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS, 1981

Mr. NATCHER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7998) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1981, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from Illinois (Mr. MICHEL) and myself.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The SPEAKER. The ouestion is on the motion offered by the gentleman from Kentucky.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7998, with Mr. FUQUA in the Chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the unanimous-consent agreement, the gentleman from Kentucky (Mr. NATCHER) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. MICHEL) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. NATCHER).

Mr. NATCHER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, one of the nicest things that has happened to me since I have been a Member of Congress is the opportunity that I have had to serve on the Subcommittee on Labor, Health and Human Services, Education and Related Agencies Appropriations. On this committee we have BOB MICHEL, of Illinois, NEAL SMITH, of Iowa, SILVIO CONTE, of Massachusetts, ED PATTEN, of New Jersey, GEORGE O'BRIEN, of Illinois, DAVE OBEY, of Wisconsin, CARL PURSELL, of Michigan, ED ROYBAL, of California, LOUIS STOKES, of Ohio, and JOE EARLY, of Massachusetts.

These are all able Members of the House, Mr. Chairman.

As you know, our friend and colleague, ED PATTEN, of New Jersey, is retiring at the end of this Congress and he will be missed by all of us. This will be the last regular bill that he will assist us present to the Congress.

ED PATTEN is a kind, considerate man. He is a man of fine judgment with the courage to carry out his convictions, a true public servant. Throughout his long career in public life, he has been a friend of the working people, small business, industry, the farmers, professional people, and the veterans. In every position that he has served in either private or public, he has achieved distinction. His service in all of his assignments has been marked by a high sense of conscience and duty. He loves people and they in turn, love him. His contributions to better Government will long be remembered. ED PATTEN has been good for the State of New Jersey and for the United States of America.

Mr. Chairman, today we present to the House the 1981 appropriation bill for the departments of Labor, Health and Human Services, and Education, and several related Government agencies. This is one of the largest and most complex appropriation bills that come before the House each year.

The total budget authority recommended in the bill is $84,551,710,000. In addition to this amount, we authorize the use of $201,556,762,000 in various trust funds such as unemployment compensation, social security, and railroad retirement. The grand total of appropriations, trust funds, permanent appropriations, and interfund transfers is $274,398,131,000. That is an increase of $29,991,967,000 over the grand total for all these programs in 1980.

This bill is $5,654,000 under the President's budget estimates for fiscal year 1981. It is $4,610,198,145 over the appropriation for 1980.

While the total amount in the bill is just under the President's budget total, the committee had to make many adjustments to individual programs because the budget proposed major cutbacks or terminations. The gross increases in the bill amount to $1,170,541,000 but they are offset by gross decrease of $1,176,195,000. So we tried to move funds around within the budget in order to maintain current funding levels wherever we could. We wanted to take care of programs which were omitted in the budget or which were cut back from last year.

For the benefit of the Members I want to highlight some of the details of the committee's recommendations.

DEPARTMENT OF LABOR

The bill includes $11,892,977,000 for the Department of Labor a reduction of $277,211,000 from the budget request and $1,291,357,000 below the 1980 appropriation. In addition, the bill includes authority to expend $2,169,808,000 from the

Unemployment Trust Fund, the amount requested and an increase of $211,109,000 over 1980.

The committee recommended $3,492,000,000 for public service employment under CETA. This will finance 369,000 jobs in 1981, about the same as the expected 1980 level. The Committee reduced the budget by $236,800,000 in title II-D because of a lower than expected enrollment level in 1980.

The bill includes $136 million for the Young Adult Conservation Corps, an increase of $12,128,000 over the budget request. The amount in the bill, together with expected carry-in funds from 1980, will support 12,600 service-years in 1981, an increase of about 900 over the level that could be funded with the budget request.

The committee made a reduction of $25,500,000 in CETA title III discretionary funds, to a revised level of $305.1 million. The committee turned down the budget increases totaling $5.5 million for research and development and technical assistance and training. We also made a reduction of $20 million in the base for other title III programs. The budget justification for these discretionary funds was very sketchy.

The committee added $10 million to the budget for community service employment for older workers. The revised total of $277.1 million will provide about 54,200 part-time jobs, an increase of about 2,000.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The bill contains $57,120,574,000 in budget authority for the new Department of Health and Human Services. This is the first appropriation bill which allocates funds separately to this new Department which came into existence as a result of the creation of the Department of Education. The amount recommended in the bill for health and human services programs is $5,284,464,000 more than available for these activities in 1980 but $336,605,000 less than requested by the President. In addition to the funds appropriated in this bill, this Department is charged with responsibility for administering $177,457,171,000 of trust fund programs—principally the social security retirement, disability, and health insurance activities.

Approximately $44 billion of the $57 billion included in this bill is allocated to the "entitlement" program administered by the Department. These include $2.9 billion for title XX social services programs, $7.3 billion for aid to families with dependent children, $7 billion for supplemental security income, $1.1 billion for black lung benefits, and $25.8 billion for the Federal funds share of medicare and medicaid. The committee has approved the President's budget request for these so-called mandatory or uncontrollable programs. These activities form the basis of our income security and health insurance programs for the needy. More than 50 million Americans are expected to benefit directly from these programs in 1981.

The committee has made a number of changes to the President's budget request for controllable or discretionary programs. This was done because of the committee's rejection of certain reductions proposed by the President and its desire to increase certain other programs but to keep the overall bill within the total requested by the President and provided for under the budget resolution. Among those areas to which the committee added money over the request were:

The National Institutes of Health, an additional $126 million for a total of $3,616 million.

Alcohol and drug abuse formula grants, an increase of $80 million to restore these programs to 85 percent of their funding level.

314(d) health incentive grants, an increase of $36 million to partially restore this program which the President proposed be eliminated.

Health planning, plus $15 million.

Emergency medical services, plus $8.9 million.

Included in those programs which the committee recomended be reduced below the level recommended by the President are:

Low-income energy assistance, minus $400 million for a total of $1.800 million.

Title XX social welfare training, minus $55 million.

Alcoholism project grants, minus $35.3 million.

Alcohol, drug abuse, and mental health research, minus $16.6 million.

Community health centers, minus $28 million.

Professional Standards Review Organization, minus $19 million.

Work incentives, minus $20 million.

In most cases the committee has recommended deletion or reductions in the amount of the increase proposed by the President rather than cutting programs below 1980 funding. As an example, while the recommendation for low income energy assistance is $400 million below the amount recommended by the President, it is $200 million more than available for this purpose in 1980. The committee has approved substantial increases over 1980 in a number of areas as requested by the President including the new child welfare services program ($163.5 million) and refugee assistance ($690 million).

DEPARTMENT OF EDUCATION

For the new Department of Education, the committee bill includes $14,137,984,000 over the President's budget request. The total amount recommended by the committee is $68,215,145 over the 1980 appropriation for education.

The President's budget proposed major cutbacks in several education program, such as impact aid, direct student loans, vocational education basic grants, support and innovation grants to school districts, public service, and mining fellowships. The committee restored these programs to approximately the level of 1980 appropriations.

For elementary and secondary education, we recommend $3,838,135,000. The largest program in this area is title I grants for disadvantaged children where the committee provides $3,369,772,000 for basic grants to State and local educational agencies. This is an increase of $254,179,000 over the 1980 appropriation. For concentration grants, we provide $145,000,000 an increase of $45,000,000 over last year.

For support and innovation grants to States and local school districts, the committee recommends $142,400,000, an increase of $46,400,000 over the budget. The committee amount is $55,000,000 less than last year which will mean that there will be a reduction in the number of innovative projects from 7,500 to 5,000 next year.

In this bill, we have $740,000,000, an increase of $406,000,000 over the budget request for school assistance in federally affected areas. Category B payments were reduced by $271,000,000 in the budget and we restored $224,000,000.

For equal educational opportunities, we recommend $292,008,000, a slight reduction from the 1980 appropriation. For education for the handicapped we recommend $1,102,050,000 an increase of $53,025,000 over last year. For vocational and adult education we restored the $37,500,000 reduction proposed for vocational education basic grants and approved a $20,000,000 increase for adult education.

For student assistance, we recommend the sum of $3,356,550,000 an increase of $200,800,000 over the budget request. For basic opportunity grants, we include the budget figure of $2,159,000,000 to continue the current program level. We recommend $370,000,000 for supplemental opportunity grants and $550,000,000 for work study. There was no budget request for direct student loans, but we provided $200,800,000 for this program.

For the student loan insurance fund, we approved the budget request of $1,390,990,000. We will need to reconsider this matter after the enactment of pending legislation which revises the guaranteed student loan program.

Mr. Chairman, for other higher education programs we recommended $407,689,000 which is an increase of $17,150,000 over the budget request. For school improvement programs, we recommended $166,973,000, a reduction of $7,480,000 from last year.

RELATED AGENCIES

The bill includes $1,400,175,000 for the related agencies, a reduction of $13,869,000 from the budget and an increase of $48,878,000 over 1980.

For the domestic programs of ACTION, the bill provides $158,047,000, a reduction of $11,107,000 from the budget but an increase of $12,463,000 over the 1980 amount. Included are $33.8 million for VISTA and $88.9 million for older American volunteer programs.

The committee recommends $537.8 million for the Community Services Administration, a net reduction of $1 million from the budget and $9.5 million below last year. Included are $394.3 million for community action agency funding and $6 million for the national youth sports program.

□ 1050

Mr. MICHEL. Mr. Chairman, I yield myself 13 minutes.

Mr. Chairman, as our distinguished chairman indicated, this bill contains $84.5 billion, the largest by far of all our domestic appropriations bills.

When the trust funds, such as social security and unemployment compensation, are added in, the total comes to $274 billion. This amounts to 43 percent of the total Federal budget.

I have been preaching for some time now on the need to place restraints on our entitlement programs, and this bill provides a graphic indication as to just how uncontrollable our entitlement programs have become.

The amount in the bill itself represents a 5.7 percent increase over the 1980 level. However, when the trust funds are added in, the total of $274 billion represents a 12 percent increase. That is because the trust funds themselves have gone up by 15 percent over 1980.

The impact of entitlements is even more striking when we look at the individual parts of this bill. Of the $4.6 billion by which the bill is above 1980, $1.3 billion represents increases for medicaid, $1.6 billion for medicare, $681 million for SSI, $92 million for black lung, and $1.4 billion for AFDC. These increases added together amount to $5.1 billion. To be sure, the bill shows some offsetting reductions due to shifts of funds from one year to another, but these figures do indicate that the bulk of the increases in the bill have resulted from these uncontrolled entitlements.

And that is not all. This bill does not contain $4.2 billion in additional unemployment funding which the administration indicates will be required, nor does it include another $1.3 billion which CBO estimates will be needed for medicaid, AFDC, and SSI.

So it is very evident from these figures that something must be done to restrain these uncontrollable entitlement programs if we are ever going to control Federal spending. Some positive steps have been taken as part of the reconciliation process, but we need to do a lot more.

High cost increases for entitlement programs are also reflective of a malfunctioning economy. Some of these increases are due to automatic cost-of-living increases resulting from high rates of inflation, and others are due to high rates of unemployment which increase the number of needy recipients. Taken together, they show just how badly the Carter administration has mismanaged the economy.

I mentioned earlier the $4.2 billion for increased unemployment costs which the administration has recently requested. You might be interested in knowing that over $23 billion is now expected to be paid out in unemployment benefits in 1981, an increase of $8 billion, or 53 percent, over the original estimate of just last January, and $9 billion above the 1980 level.

Thirteen million Americans are expected to receive unemployment benefits in 1981. As a comparison, just 8.3 million were paid unemployment benefits in 1979. At present, some 3.6 million are receiving benefits, compared with 1.3 million just 1 year ago.

Because most of the increases over 1980 in this bill are in the entitlement area, I have to say that overall it is a reasonably good bill. This is the first time in a long while that I have been able to say that about a Labor-HEW bill.

To be sure, there are a number of discretionary areas where reductions could be made, but the bill does come out below a reasonably tight budget by $5.6 million. Last year, the bill also came out below the budget, but then it was done with mirrors. This year the figures are reasonably straightforward, although with a few caveats.

For instance, we have not included some $609 million of items in the budget which are unauthorized. Last year, $932 million was appropriated for these items, including the health manpower programs in which the President has proposed significant reductions. So, if at some point along the line we end up restoring some of these proposed reductions, which seems likely, the overall appropriation level will surely exceed the budget.

Besides the unauthorized items, this bill also excluded $2.7 billion in new programs proposed by the President, including the youth initiative.

The biggest increases in the bill over the budget are $336 million for impact aid, $200 million for the direct student loan program, and $126 million for NIH. These are offset by decreases of $400 million in the low income fuel assistance program, and $250 million for CETA.

MICHEL AMENDMENT

Before touching on some of the specific items in this bill, let me state that we have not included any reduction for waste, fraud, and abuse, as has been included in the final version for the past 2 years. The Department of HEW has simply not produced the savings we have mandated. In 1980, for instance, they have projected savings of only $50 million of the $500 million we required. I do not know how we can enforce it, because if we do seek to mandate the savings, they simply take the money away from the States in an arbitrary fashion.

We do have in effect the error rate standards requiring that the States reduce their AFDC and medicaid error rates to 4 percent by 1982, and I think this offers our best long-run hope for producing savings through reduced waste. For instance, if the 4 percent error rate standard were in effect today, it would produce Federal dollar savings of $393 million in AFDC and $236 million in medicaid, for a total of $629 million.

I thus do not intend to offer a waste, fraud, and abuse amendment this year, because, unfortunately, it would simply represent a spinning of our wheels.

LABOR DEPARTMENT

CETA: The budget proposed an enrollment level at the end of 1981 of 240,000 jobs for the title II–D public service employment program, and 149,000 jobs for the title VI program. We have gone along with those levels, except that we have assumed a lower starting level for the II–D program, and thereby have reduced the budget estimate by $236 million. That assumption may not be all that sound, since the July enrollment level is already above the assumed starting level.

We have provided a small increase over the budget for the Young Adult Conservation Corps program, but the amount will still result in a cutback in this program below the 1980 level.

The language we added last year restricting the use of CETA funds for prisoners has been included in the bill again this year. We also included report language stating that the restriction does not apply to training. This language was needed to correct a misinterpretation on the part of the Labor Department.

Unemployment benefits: We have included $222 million to pay unemployment benefits to former public service employment jobholders. I never thought this was a proper expenditure, and it is encouraging to note that the Ways and Means Committee has proposed elimination of this payment as part of its reconciliation package. If this provision is adopted, we could see a reduction of about $50 million in this account in 1981, and much larger reductions in succeeding years.

Likewise, there is a reconciliation provision pertaining to ex-service personnel, who also receive benefits under the FUBA account. That provision could reduce costs by $45 million below the level we provided.

Employment service: One of the reasons the military is having difficulty in recruiting volunteers for the Armed Forces is the uncooperative attitude of the employment service. We have thus included report language on page 9 directing the Secretary of Labor to confer with the Secretary of Defense on ways and means by which the Labor Department can be more helpful in meeting military manpower needs.

Women in construction: You have probably heard from many of the contractors in your districts about the arbitrary "goals and timetables" for the employment of women being imposed upon them by the Labor Department. Contractors are unable to meet these standards because there are not enough trained women nor enough apprenticeship slots available for such training. Yet the Department has been emphasizing enforcement activities over the need to provide additional training opportunities.

We have included report language, on page 12, directing the Department to turn these priorities around, and to administer the program in a more uniform, less arbitrary manner, and with a little less redtape.

OSHA: The bill contains about $10 million for program expansion, over and above regular inflationary increases. This includes an additional $2 million for the development of new regulations, something which I really do not think we need at this point in time. You might also be interested in knowing that, despite President Carter's promise in 1976 to reduce Federal regulations, the number of OSHA regulations has gone up by a net of 94 pages in the Federal Register during the first 3 years of his administration.

We have retained all the limitations enacted last year except for the Schweiker amendment, which exempts small businesses with good safety records from inspections. I do not think there was any sound basis for leaving out that language.

Mine Safety Administration: We have retained in the bill the language we added last year prohibiting the Department from applying its detailed training standards to shell dredging or to sand, gravel, or limestone mines.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Community health centers: We reduced the budget request by $28 million, to $325 million. This still provides a $5 million increase over 1980. This program has received a significant increase in funding over the past few years, and we felt that it was now time for a greater effort to be placed on obtaining funds from other sources, such as third-party insurers, as well as to improve the management of the program.

Family planning: We provided $166 million, an increase of $4 million over both the budget and the 1980 level. I should mention that other HEW programs will be providing another $250 million for family planning in 1981, an increase of $26 million, or 12 percent, over 1980.

Emergency medical services: The budget proposed a substantial reduction, but we restored $9 million of it, bringing the total to $30 million. This is a proven program that saves lives and reduces health costs, but the administration wanted to cut it off in midstream. We said "no".

Health incentive grants (314–D): The administration wanted to eliminate this $68 million program of formula grants to the States, but we restored $36 million of it. The original amount under this program amounted to only 2.3 percent of all State public health expenditures, so they ought to be able to absorb the partial reduction.

NIH: The bill provides a $126 million increase over the budget, and a $187 million increase over last year. While this increase is slightly smaller than in previous years, I still felt we could have lived with in the budget recommendations. The budget contained sufficient funding to provide a stabilized level of new and competing research grants, a goal which has been our prime objective over the past few years.

The bill contains a $36 million increase for research training grants, and among the Institutes. Cancer receives the biggest overall increase over the budget—$36 million.

Mental health: We reduced the budget request for the various mental health programs by $38 million. This still provides a $41 million increase over last year. The budget request represented a 16-percent increase, which was excessive.

Alcoholism and drug abuse formula grants: We have restored most of the funding for these formula grants to the States, which basically represent the core of the effort to fight alcoholism and drug problems. The administration proposed elimination of these programs, which was hard to understand in view of the continuing serious problems in these areas.

Health planning: The administration proposed a 30 percent, or $38 million, reduction for local health planning agencies, another reduction difficult to understand in view of the role such agencies play in trying to limit health costs. We restored $15 million of the reduction and suggest in the report that other health planning funds ought to be shifted to the local agencies. I would also suggest to the administration in view of its push for a reduction here, that it not require the agencies to perform all the functions provided in the law. It is obviously unfair to require agencies to perform tasks and then cut the funding necessary to allow them to do so.

PSRO's: The administration proposed a nearly $50 million, or 33-percent increase. We cut it to $30 million.

Low income energy assistance: The bill provides $1.8 billion, a reduction of $400 million below the budget but $200 million, or 12 percent above last year. If the States distribute this money only to those most in need, rather than to everybody in an income category, whether they really need the money or not, this increase should go even further toward helping the truly needy. We have also limited assistance to a maximum of $500 per household. Last year, States were making payments as high as $1,400 per household, which is ridiculous.

In addition, we have changed the formula from that contained in the windfall profits bill. Under that windfall profit formula, some cold weather States would actually lose funds, despite an increase in funding for the overall program. The formula in this bill would better spread the increases around and would insure that no State receives less than it did in 1980.

Refugee assistance: The bill contains $590 million for refugee assistance, nearly equal to the budget request and $173 million above last year. An additional $50 million for 1981 was included in the recently enacted supplemental.

Social services: We have provided the authorized level of $2.9 billion for grants to the States under title 20.

We also provided $163 million for child welfare services, the new program established by H.R. 3434. This is the amount requested by the Ways and Means Committee.

We have retained the 1980 ceiling of $75 million for State and local training, thus reducing the budget by $55 million. Most of the increase would have gone directly to institutions of higher education and was not really needed.

Head Start: $820 million is provided, an increase of $85 million over the 1980 level and equal to the budget request.

Aging: A total of $683 million is provided for the various aging programs, such as nutrition, social services, et cetera, an increase of $10 million over the budget and $31 million over 1980.

Day care regulations: The Department has recently issued a set of heavy-handed regulations prescribing Federal standards for day care. These regulations basically dictate the manner in which day care centers are to be operated, the number of staff per children, services to be provided, et cetera. This has basically been a State and local responsibility up to now, and there is no sound reason for the Federal Government to come in and establish such detailed standards.

The estimated cost of implementing these regulations over the next 4 years is $35 million to the Federal Government—not counting substantial additional amounts for training under the State and local training program—and $400 million to States and localities. The Department is also requesting 40 additional positions to implement these regulations.

The Senate version of the budget reconciliation bill contains a provision which delays the implementation date of the regulations for a year. I would hope, rather than us having to deal with the issue here, that the House conferees on the reconciliation bill would accept the Senate provision in this regard.

DEPARTMENT OF EDUCATION

Title I: For the most part we went along with the budget request, with some small adjustments here and there in the individual parts. A total of $3.5 billion is provided.

Support and innovation: The budget proposed a $100 million reduction in this program, and we restored about half of it. I think we could have made a bigger reduction in the State agency management part of this program, where the funds basically go to pay State salaries.

Impact aid: We restored most of the reduction proposed for this program, thus increasing the budget by $376 million, to a total of $790 million. My own long-established view, of course, is that a much sharper reduction could and should have been undertaken.

Emergency school aid: We cut the budget request by $34 million, and did this by eliminating most of the proposed increases over the 1980 level.

Education for the handicapped: We went along with the budget request of $1.1 billion, which is a $53 million increase over 1980. This represents enough to cover increased costs as well as to provide services to an additional 50,000 handicapped children.

Vocational education: We funded all the vocational programs at last year levels, thus restoring budget reductions of $54 million.

Student assistance: We went along with the budget request for the BEOG program, and restored $200 million to continue operation of the direct loan program. The BEOG amount will allow an increase in the maximum grant award to $1,800, up $50 from the 1980 level. A total of 2.5 million students will be receiving awards.

We left out a portion of the guaranteed loan funds, due to a lack of authorizing legislation.

Teachers centers: We reduced the budget request for teacher centers by $1.3 million, to last year's level of $13 million. This item gives me cause for concern, because it appears that the NEA is trying to muscle in and take

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control of the operation of these centers. Most of these centers are operated by local school districts, but the law requires that the governing boards for the centers be comprised with teachers as a majority. The NEA in many cases is controlling the selection of teachers to these boards.

Frankly, there appears to be little justification for even having these centers. All they do is provide additional training and advice to teachers which is already available in the schools of education of our colleges and universities. This is another of those small, categorical programs which should never have been started in the first place and ends up being used by special interest groups to further their own ends.

Bilingual regulations: Let me take a minute to discuss some language we included in the committee report pertaining to the bilingual regulations recently proposed by the Department of Education.

When we had the legislation before us creating the new Department, we heard all sorts of promises by its proponents that it would not interfere with local decisionmaking. Yet one of the first things out of the box from the Department is a regulation dictating how local school districts are to educate non-English-speaking children.

Let me cite for you just how specific those regulations are in this regard:

First. They require non-English-speaking children to be taught basic courses in their native languages.

Second. They prescribe the specifics of how such children are to be identified and assessed. They require all children to take achievement tests and arbitrarily state that all children scoring below a 40th percentile are to be considered non-English speaking.

Third. They prescribe specific class sizes and composition.

Fourth. They prescribe staffing requirements, qualifications for teachers, and teacher training requirements.

Fifth. They prescribe specific criteria for notifying parents.

Sixth. They establish additional recordkeeping requirements.

The additional cost to school districts of complying with these regulations will range between $180 and $590 million, according to the Department's own cost analysis.

It is absolutely ridiculous that the Federal Government should go this far in dictating local educational policy. The Civil Rights Act does not require it; the Supreme Court has not called for it; the act creating the Department prohibits it; but yet here we have it. The Department has become a law unto itself.

The time to nip this Federal usurpation of local authority is in the bud, before the regulations are finalized. That is why we included report language, and let me read it to you, because it is a very clear and specific message to the Department.

The committee is concerned about regulations proposed by the Department which would dictate to local school districts the methods and procedures by which they are to educate non-English-speaking children, at a potential additional cost of hundreds of millions of dollars to such districts. The law creating the Department of Education prohibits the Department from interfering with local decisionmaking in the areas of curriculum, administration, and personnel.

The committee believes that any final regulations should leave it up to local school districts as to how they provide equal education opportunities to non-English-speaking children. Specifically, such regulations should not require schools to teach basic courses in languages other than English, should not prescribe requirements for staffing, teacher qualifications, or teacher training, should not prescribe specific methods and procedures for identification and assessment, and should not prescribe class size or composition.

The Department has a responsibility for insuring that equal educational opportunities are provided to all children. It does not have any power or responsibility for specifying the methods used to provide such opportunities. If the Department feels it needs to establish regulations in this regard, then they should be of the broadest possible scope, allowing school districts many options. The enforcement activity should focus on whether a special effort is being made to assist non-English speaking students, and not on how it is being done.

RELATED AGENCIES

ACTION: The budget request has been reduced by $11.1 million. The amount in the bill still provides the agency a $12.4 million increase over last year. We cut the VISTA budget by $3.7 million, and the new volunteer demonstration program by $8.6 million, while increasing the Older American programs by $3 million. Sam Brown has never liked the Older American programs, basically because our senior citizens are not as easy to manipulate in the direction he wants to take the agency.

Community Services Administration: We basically went along with the budget for CSA, except that we restored $6 million to keep in operation the national youth sports program run under contract by the NCAA.

We also included language calling for management improvements by the agency, particularly in the area of procurements and audit follow-ups. Frankly, CSA is one of the worst run agencies in the Government. Even its own Inspector General has been highly critical. The General Accounting Office just last week issued a report strongly criticizing its management.

Where does the problem lie? It lies with the people appointed by President Carter to run the agency. When appointments are made with the primary objective of appealing to certain interest groups, and not on the basis of solid managerial expertise, you are going to have problems. And that is what we have and in CSA. I do not really look for much improvement until we get better talent over there.

Corporation for Public Broadcasting: The budget request of $172 million was approved. This represents advance funding for fiscal year 1983.

There has been some controversy surrounding the efforts of several public television stations to publish a magazine called DIAL and to solicit advertizing for it as a means of raising money. The issue is whether they will be directly or indirectly using Federal funds to help finance this endeavor, thus in effect using a Federal subsidy to give them an unfair competitive advantage over private commercial magazines.

The stations have stated that they will not be using Federal funds for the mazazine, that the magazine will not be sold on newsstands, and that it will not be promoted on the air. I think the stations ought to be put on notice that we are going to be watching them in this regard, because we do have a fine line here, and we do not want to be in a position of either directly or indirectly favoring one publication over another.

Mr. NATCHER. Mr. Chairman, we have no further requests for time on this side, and I reserve the balance of my time.

Mr. MICHEL. Mr. Chairman, I yield 6 minutes to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Chairman, first I want to take this opportunity to compliment our chairman, BILL NATCHER, of Kentucky, not only for bringing out a good bill but for his fairness as chairman of this committee. I say in all sincerity, and I have been on the committee for 22 years, there is no man who chairs a committee better than BILL NATCHER. He is a gentleman, he is a gentleman with the witnesses, he is a gentleman and a fair player with all of the members of the committee.

I agree with every word he said about our good friend ED PATTEN who is leaving the committee. ED brought an unparalleled sense of humor to all committee proceedings. ED's exuberant and spontaneous personality added real heart to our committee. His wit and willingness to express himself graphically brought us all terrific joy. It is hard to describe ED's unique style on the floor, but to share it in committee is a rare treat. When issues got a bit heated and people got tight on some issue, ED PATTEN was always there to interject his sense of humor that would loosen all of us up. We are going to miss him. ED, you are a good man. You are a good man and you have served your people well. We love you, ED.

Those with eagle eyes among you—like my good friend, BOB MICHEL—have already noticed the very leanness of the Labor, Health and Human Services, and Education bill for fiscal 1981 that is before the House for consideration today.

When I say this is a lean bill, I am not talking about phony numbers or hollow cuts. This bill is trim, and it is trim because every member of the subcommittee markup, under the fine-tuned direction of my good friend, BILL NATCHER, of Kentucky, demonstrated fiscal responsibility during the 11 hours we spent in markup.

There is no denying that this was a tough bill to mark up. As we all know, there are many vital, human programs funded through these agencies. The quality of living experienced by millions of Americans of all ages, races, and

creeds is significantly affected by the programs funded through this appropriation bill. The committee members really struggled to balance their own support of key programs like maternal and child health, biomedical research, student financial assistance, or energy assistance, with the harsh realities of the fiscal constraints that face this committee on every appropriation bill this year.

With the annual inflation rate currently in the neighborhood of 13 percent, I think it is truly remarkable that we have reported this important bill at a level below the President's budget, and even more remarkably at a level just 5 percent above the 1980 level. These figures alone confirm that this bill reflects and underscores our concern for the Nation's economic situation.

I am proud of the bill that we have before us today. There are few increases and they are modest. Many items have been held at, or very near, their 1980 level. And yet, within these fiscal restraints, this bill continues to provide strong Federal support for programs that are vital to the well-being of millions of American families.

There are areas and programs which every subcommittee member would have liked to have increased further than we were able, but we recognized our responsibility to hold the line.

I would like to touch on a few areas of particular concern to me. Unfortunately, the bill contains a significantly reduced Young Adults Conservation Corps. I was pleased to lead the initiative to raise it above the level the President proposed. His 50 percent reduction would have rendered the program ineffective. The President's action would have eliminated more than 8,000 young people from participation in the program. The committee's recommended level of $137 million for the YACC in 1981 will provide about 13,000 jobs for American teenagers. I consider that a critical minimum when you recognize that averall teenage unemployment is 16 percent, and unemployment among minority teenagers is nearly 30 percent.

In the area of health services, the bill contains $166 million dollars for family planning services. This figure is very lean particularly when you compare it with the fiscal 1980 level of $162 million. These funds support critical services to thousands of women and adolescents. This is an important program as it can help prevent the more than 1 million teenage pregnancies that occur each year, not to mention the nearly 400,000 abortions obtained by teenagers each year.

This bill also provides much needed support for alcoholism formula grants—a program the President proposed to eliminate. The committee's recommended level of $50 million for these formula grants is vital to the continuation of alcohol treatment and planning programs across the Nation. It is worth noting that even at the $50 million level, the program is actually funded at 10 percent below its fiscal 1980 level.

The bill contains $1.8 billion for low income energy assistance to help this Nation's needy citizens deal with the ever-increasing costs of heating their homes. The bill would provide very modest increases for many of the Northern Tier States, while providing more significant increases for many States in other sections of the country, including the South and West. Obviously, not every State comes out ahead of last year, but no State would receive less than last year under this bill. It is important to remember that this program was developed to help those States that face freezing winters deal with the high cost of home heating.

The committee's recommendation would establish the 1981 program under the authority of the Economic Opportunity Act of 1964, the same authorization as last year's program. The committee chose not to use the recently passed windfall profit authorization because it drastically skews the distribution of these funds to States that are not in as great a need of assistance as are the Northern Tier States.

Under Education, the committee has included $3.356 billion for student financial assistance programs, including BEOGS, SEOGS, work-study and direct loans. While it is hoped that this level will provide adequate support for the thousands of American college youth that need assistance with the skyrocketing tuitions of many colleges and universities, it is also worth noting that this level is actually $63 million below the 1980 level. Again, you can see that there were many tough decisions that had to be made.

I urge my colleagues in this body to support the measure before you today. It is the best darn Labor, Health and Human Services and Education bill that you have had before you.

I urge its swift adoption.

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Mr. MICHEL. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Michigan (Mr. PURSELL) who serves on the subcommittee.

Mr. PURSELL. Mr. Chairman, I will not take the full 5 minutes. I, too, want to congratulate the full committee and subcommittee for their outstanding work, the chairman, the gentleman from Kentucky (Mr. NATCHER), and the subcommittee ranking member, the gentleman from Illinois (Mr. MICHEL), the gentleman from Massachusetts (Mr. CONTE), and other members of the committee.

I think much will be discussed today on aspects of what I think basically is a good bill—NIH biomedical research, funding for higher education in America for young students. The student loan program, I think, is about $200 million.

I want to take a few minutes to express some comments on a subject that does not get any debate on this floor, and that is our young boys and girls of America. We have been talking about various issues in health, the national health insurance and other programs which may or may not be our future solution to improving the health of our country. But in this committee report, some of us have been interested in the development of elementary-secondary nutritional and physical education programs combined. So we have had some meetings with the President's Council on Physical Fitness, and they have assured us that they would like to lead a national effort in working with the Department of Education and the Department of Health and Human Services as a catalyst to try to improve physical education in the United States. The Members might be surprised to know that physical education is not being taught in a maximum curricula capacity like other basic subjects in our elementary system. It really has been deleted because of budget constraints within local school districts. Nutritional programs have been separate and apart from physical education, but we have a conflict with junk food and other problems in our society. So the President's Council is going to lead a national effort with universities throughout the United States to look at problems of elementary physical education and nutritional programs in the United States.

The Members might be surprised to know that of all first-graders in the United States of America, 15 percent are showing signs of obesity. We talk about later in life not having manpower for defense, we talk about the high expense of research and health costs at the senior age level because people have habitually abused their bodies through smoking and alcohol and other problems. So I think as a preventive effort in terms of the elementary and secondary schools, we should encourage the development through local control of physical education in every classroom in America, at least a part of each school day, for the growth of their physical as well as their mental development.

I am encouraged by this bill. I want to congratulate the chairman, the gentleman from Kentucky (Mr. NATCHER), for allowing some of us to spend some time on this in a concentrated effort.

Mr. NATCHER. Mr. Chairman, at this time I yield such time as he may consume to the Chairman of the Committee on Appropriations, the distinguished gentleman from Mississippi (Mr. WHITTEN). As the Members well know, Mr. Chairman, he is the dean of the House.

Mr. WHITTEN. I thank the Chairman.

Mr. Chairman, I rise in support of the pending bill and wish to pay tribute, if I may, to the members of this subcommittee, especially to the chairman, the gentleman from Kentucky (Mr. NATCHER) with whom I have served for many years. BILL NATCHER is the very tops in what a Member of Congress should be. This committee without exception is comprised of men of standing and ability and may I add such Members are needed on this subcommittee for no other bill goes through Congress any year which touches the well-being of the American people as much as do the programs that are included here. I want to commend not only the chairman, who is an outstanding Member of Congress, but all of the members of this subcommittee. They have met for months, taken

the testimony of hundreds of witnesses on hundreds of appealing and worthy projects, and they have come out with a bill that is below the budget recommendations.

Mr. Chairman, the bill before us provides funds for Health Services, the Center for Disease Control, Social Security Administration, alcohol, drug abuse, and mental health, the National Institutes of Health, for elementary and secondary education, for rehabilitation and the handicapped, for vocational and adult education, for community services, railroad retirement, and many, many others.

As chairman of the 54-member Appropriations Committee, I serve as ex-officio member of this and all other subcommittees. As you can see, this is a most enviable position in the Congress to be of service.

APPROPRIATION BILLS PASSED

This will make the 10th appropriation bill passed by the House of Representatives and, Mr. Chairman, I am proud to report that while meeting our basic needs the total in these bills is $3.2 billion below the budget. I say this because perhaps our greatest domestic problem is that of inflation.

Bills passed are those for Housing and Urban Development, for energy and water development, the Department of the Interior, for military construction, for State, Justice and Commerce, for the Department of Transportation, for Treasury, Postal Service, for legislative, and for Agriculture. Specific items of special interest to consitiuents in my district appear on page 19434 of the CONGRESSIONAL RECORD of July 24.

The bill for the Department of Defense has been marked up and awaits action.

AN OVERVIEW

Mr. Chairman, we face a real financial crisis brought about by many factors, the chief factor perhaps being the increased cost of energy. We have literally been held up by the OPEC nations of the Middle East. However, I believe the cause of our financial crisis goes a little deeper since we spent huge sums in effect defending Japan and West Germany, particularly. After World War II they were able to spend their money on their economy, developing new and modern factories to employ the most modern methods in direct competition with us in international markets. In addition, billions of American dollars flowed into Europe and Japan from our expenditures there. For years these dollars were hoarded for their security. However, when these and other nations became fearful of the value of our dollar, they started spending them, and they thereby greatly increased our inflation. In other words, they ran down the value of our dollar, which made everything cost us more in terms of cheap dollars.

INTEREST ON THE DEBT

To add to this problem, the Nation kept borrowing more and more, and by obtaining the money, interest rates started skyrocketing—doubling the interest our Government has to pay on its debt, an annual obligation.

Another serious problem is that various governmental agencies imposed greater and greater restrictions on industry, making it more and more expensive for America to produce, increasing the cost to the consumer and actually causing a reduction in U.S. output, giving advantages to foreign competitors.

And perhaps, we ourselves, as a nation, incurred more obligations than we were willing to pay for, adding to the public debt, and thus to the annual interest payment.

CORRECTIVE ACTION

We have spent and are spending billions of dollars to become self-sufficient in energy. The Government is reviewing restrictive regulations and seems to be making a little headway. We hope for a speedup.

We finally got the Federal Reserve Bank to take action to help bring down interest rates. No one could buy a home and no business could prosper at the high interest rates which prevailed. They took action and conditions improved. I regret, however, to say that interest rates seem to be creeping up again. We must do everything possible to balance our budget, to level off so as to stabilize the value of your money.

CONGRESSIONAL BUDGET ACT

Congress passed the Congressional Budget Control Act, fixing a ceiling on spending. I headed the study committee which recommended it. This legislation became necessary because the Congress was bypassing the annual review process of the Committee on Appropriations. I think because our committee had been below the budget every single year since World War II.

This budget ceiling process has not been as successful as we hoped because of the unexpected increases in the cost of fuel for the military and in the rate and amount of interest on the debt, plus the effect of inflation and other costs.

If we are to save the Budget Act, it is my belief we must amend the act to provide for the unforeseen emergencies, such as crop failure, floods, drought, or volcanoes.

NATIONAL DEFENSE

As most of you know, I have long supported the B–1 bomber and the nuclear carrier not only for their value in time of war but because they are invaluable in our effort to prevent war, which after all is what we seek.

We have recommended substantial increases in funds and equipment for the National Guard and Reserves which I know to be a bright spot in our defense.

The world picture is looking better. The labor unrest in Poland demonstrates the kinds of problems the Soviets are faced with in all of the Warsaw Pact countries such as East Germany and Romania. The Russian invasion of Afghanistan has not gone well. Resistance is not only continuing but is increasing. This attack on Moslem Afghanistan has upset the Arab countries which the Russians have been courting. Iran is no longer a friend of ours but they are not friendly with the Russians either, in part because of the Russian invasion of Afghanistan. To listen to some, you would think that we had all the problems, but we do not.

As to our overall action to support national defense, since 1977 our real defense spending has increased 10 percent during this period.

We have increased our capability of getting men to where we need them quicker, and to retain our preeminence at sea.

In the area of strategic forces, the new MX intercontinental ballistic missile system is being deployed in a mobile and surviviable basic mode to offset Soviet advances in missile accuracy. This will add greatly to our comparative strength.

We have made similar advances by placing Trident I missiles on Poseidon submarines and by building new Trident submarines. Our new submarines are much quieter and have a longer range than older models.

It has just been made public that we have developed aircraft which cannot be seen by Russian radar. Since World War II, the principal means of detecting aircraft has been with radar. Our newly developed aircraft will negate Soviet air defenses which cost them at least $100 billion. This is the most important breakthrough in military technology in recent years and gives us a considerable advantage.

I could give you details to show that we are moving forward in every area to maintain our superiority and it is costing more money. Our proposed defense appropriation bill is $157 billion as compared with this year's $131 billion.

PUBLIC WORKS, DEVELOPMENT AND SOCIAL PROGRAMS

In addition to funds for defense, the National Guard and Reserves, aircraft and nuclear carriers, we have provided funds for the Natchez Trace Parkway, the Tenn-Tom Waterway, funds in bills which have passed the House and are now in the Senate; for social security, medicaid and medicare, veterans assistance, vocational education, 4–H, FFA, Head Start, school lunch and other food programs, for our cities, towns, and counties which have made many capital improvements through the use of revenue sharing, the EDA, or the Appalachian Commission—things such as new courthouses, schools, libraries, and streets improvements; funds for water and sewer loans and grants, housing, flood control and watershed protection, soil conservation, reforestation, rural electrification and rural telephones; for agriculture, including research and extension, the Farmers Home Administration, Soil Conservation Service, forestry, and for price supports essential to the national economy.

AGRICULTURE AND OTHER PROGRAMS

We have provided for rural housing, sewer and water grants, in fact we have made available to small cities and rural areas all that we have in our major cities, except perhaps the great amount of grime and crime.

I point out to all the standard of living of most any nation is determined by how small a percentage of the time goes into providing food, clothing, and shelter. In

Russia, it takes almost 50 percent of their time. In our country, the records show it takes 16.5 percent of the time, which means that the other 83.5 percent is available to provide all the other thousand and one things that make for our high standard of living.

So I say to you here that our agricultural sector represents less than 5 percent of our people, but that 5 percent constitutes the biggest market that industry and labor has and is the biggest dollar earner for our country in world trade. Truly, agriculture is the key to our prosperity. But the man or woman engaged in agriculture may find that the farm chemicals or farm fertilizer that has been economical and cheap in the past has been restricted by their Government and they are then required to use something far more expensive and often far more dangerous.

Mr. Chairman, the House of Representatives is the peoples branch of Government, comprising 435 Members.

It is the Congress which disposes, the President who proposes, and the umpire or referee is the judicial branch headed by the Supreme Court.

It is easy to see that an individual Member has a real problem in trying to get the best he can for the people of his district, his State, and the Nation.

I feel most fortunate to be chairman of the Committee on Appropriations. I think it is perhaps the best place to serve the people—though we seldom get exactly what we would prefer. Besides being chairman of the Appropriations Committee and serving as chairman of the Agriculture and Rural Development Subcommittee, I am, under the rules, an ex officio member of the other 12 appropriations subcommittees. This means dealing with funds for all the many programs of Government. It also means dealing with the Senate in the many conferences on our bills. The penalty is that whatever we agree to in conference we have to sign and defend, while others who are not involved in the negotiations to get the best possible agreement can take individual and independent positions. Of course their views do not have the impact on the issues as those of the conferees who are active in the deliberations.

TWO WAYS TO SERVE

I have frequently said there are two ways to serve as a Representative in Congress. One is to sit back and merely record your views. While this approach may be popular with people who judge you by your vote alone, it accomplishes very little in obtaining results.

The other way to serve is to do all you can to bring about what you believe in, to accomplish something. They call us Congressman, but really the name is Representative in Congress; this means that a Representative is something like a lawyer working for you. It means getting the best settlement possible. It does mean that sometimes it may be a little more, other times you are forced to accept a little less. In other words, we must adjust the House position with that of the Senate and defend the settlement, while some of our colleagues have the luxury of voting "no."

With the support of my colleagues I hold a most enviable position in Congress to be of service, that of chairman of the Committee on Appropriations of the U.S. House of Representatives.

Mr. Chairman, I believe we must always do the best we can to solve our problems. Today it is our financial system that is in trouble, for our real wealth—our soil, our forests, our natural resources, our buildings, our roads, our schools, our factories, our cars, our television sets, our material wealth—greatly exceeds that of any nation in the history of the world. Surely such a rich country can solve its financial problems. It is up to us to do the job.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa (Mr. GRASSLEY).

Mr. GRASSLEY. Mr. Chairman, it seems important, at this time, to call the attention of the Members to several facts regarding the implementation, by the executive branch, of the Older Americans Act.

Near the end of April of this year, members of the House Select Committee on Aging learned that Secretary of Health and Human Services, Patricia Harris, planned to reorganize the Office of Human Development Services, the parent organization for the Administration on Aging. Because this reorganization involved considerable change in the delivery of services to the aging network under the Older Americans Act, both majority and minority members of the committee signed a joint letter to Secretary Harris asking that she postpone, for at least 60 days, the proposed reorganization. The letter was dated May 2, 1980. On May 8, 12 Members of the other legislative body signed and dispatched a similar letter. Twelve national aging organizations joined in making the same request of the Secretary.

These letters did not oppose the planned reorganization, they merely requested its postponement, for 60 days, while its legality under the Older Americans Act was checked and its impact on service delivery to the Nation's seniors was evaluated.

In arrogant disregard for the congressional request, Secretary Harris proceeded with the planned reorganization and made it official on May 18, 1980.

On the 28th of May, the House Select Committee on Aging received an answer to its request for a legal opinion on Secretary Harris' action, from the American Law Division of the Congressional Research Service. I will quote briefly from this opinion:

> Under Section 201 of the Older Americans Act, the Secretary of the Department of Health and Human Services may not approve the delegation of any function of the Commissioner on Aging. . . . Based on the legislative history, it appears that the Congressional intent behind the 1974 Amendments to the Older Americans Act was to foreclose all delegations of authority from the Commissioner on Aging. . . . Such delegations had to first be submitted to the Congress at least 60 days prior to their effective date. . . . We conclude that the Secretary is precluded from approving such transfer by Section 201 of the Older Americans Act.

This legal opinion will be made part of the RECORD.

Mr. Chairman, the Select Committee on Aging cannot legislate—its members can only advocate and provide oversight for older Americans. It is for the purpose of discharging this responsibility that I call the Members' attention to the record of this confrontation between the legislative and executive branches. As the ranking minority member of this committee, I want to make it clear that I and my colleagues feel strongly that the Secretary of Health and Human Services has acted with contemptuous disregard for the intent of Congress in this matter.

Mr. NATCHER. Mr. Chairman, I yield such time as he may desire to the distinguished gentleman from Missouri (Mr. CLAY).

Mr. CLAY. Mr. Chairman, it is certainly not a revelation, Mr. Chairman, that millions of Americans are unemployed, or that crime is reported to be increasing, or that the Nation's prisons are literally bursting at the seams. Study after study shows that about half of those arrested in major metropolitan areas are unemployed, and that the youth unemployment rate is directly related to the number of offenses reported to the police.

In fact, a recent report by the Federal Bureau of Prisons concluded that even following 1 year after their release from Federal penal institutions, about one-half of young, adult males were still unemployed. Of course, these figures are not revelations either, and neither are the recent disturbances in Miami, put simply, crime is a very good indicator of the state of our economy, and right now, things look pretty bleak.

Last year, this body passed an amendment that would have earmarked at least $5 million for title III offender programs. I sponsored that amendment because the Department of Labor had been shirking its responsibility—responsibility not only to provide national coordination, but additional manpower services to offenders. The reason is very simple. Offenders are harder to place because of the stigma of an arrest or conviction record. They require much higher training costs, and frequently need special support services in the areas of drug or alcohol abuse.

This year, Mr. Chairman, I have some good news and I have some bad news to report about employment programs for offenders. The good news is that if it were not for CETA, programs for ex-offenders would literally disappear. That is the conclusion of a recent survey funded by the Justice Department.

The bad news is that according to one of DOL's own studies, CETA offender activities in fiscal year 1979 barely touched the needs of this group. To quote from this report:

> CETA has served less than 2 percent of offenders potentially eligible for services in fiscal year 1979.

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In fact, more than half of the prime sponsors have no. I repeat, no programs targeted to ex-offenders.

Mr. Chairman, offenders not only need employment, but they also will only succeed with additional supportive services—such as drug rehabilitation, education, and even temporary housing. Although these services are mandated by title III, the Department is simply ignoring them, just as they are ignoring the mandate to eliminate artificial barriers to employment which discriminate against the hiring of the handicapped, the mentally ill, and especially ex-offenders.

Mr. Chairman we can remedy some of these problems by adding $5 million to title III discretionary funds for the purpose of implementing employment and supportive services to ex-offenders. Last year, DOL allocated only $2.7 million to title III offender programs, and this year, the budget level is uncertain due to a $20 million reduction in discretionary funds by the Appropriations Committee. This is not money for research, but is designed instead to leverage more programs for those who are especially disadvantaged by contact with the criminal justice system.

Winston Churchill once said that—

What is done to the criminal is a very accurate index to the quality of any civilization.

Providing employment services to offenders is one way to improve the quality of life for all of us.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Chairman, I certainly want to commend the distinguished subcommittee chairman, the gentleman from Kentucky (Mr. NATCHER), for his work on this bill (H.R. 7998).

Chairman NATCHER is one of the ablest and most diligent Members of the House. He is a fair man. He has been most fair in his consideration of all issues.

I also wish to commend the distinguished ranking minority member, the gentleman from Illinois (Mr. MICHEL), another of the truly able Members of this body, for his work in bringing this bill before the committee today.

Mr. Chairman, I have many problems with this bill, not the least of which is the high cost and the ever-increasing size of many of the programs involved.

According to my own calculations, taking into consideration appropriations under this bill and appropriations not yet provided for programs under this bill's jurisdiction, Congress will end up appropriating $300 million more in budget authority and $1.7 billion more in outlays than assumed for these programs under the first budget resolution.

Since the defense bill will be the last major bill taken up by the Appropriations Committee this year, the inevitable result will be that the defense bill will become the target for cuts to keep total appropriations within the budget targets because other appropriations bills, such as this one, will ultimately exceed their targets.

Mr. Chairman, I was most pleased that the Appropriations Committee accepted report language which I offered to page 26 of the committee report accompanying this bill, concerning a sex education project of the Public Health Service's Center for Disease Control (CDC).

The committee report states:

The Committee is concerned that the Center has gone beyond its limited mandate for disease control with a sex education project initiated in 1977. The Committee instructs the Center to provide a complete report of expenditures to date for this project and its objectives before any further funds are obligated. The Center is also instructed to ensure that no sex education activities being conducted under its auspices, including those of contractors and grantees, are carried on without formal approval of the governing body of the school or other organization involved in such activity. Further, no sex education program, project, course, activity, inventory, or questionnaire involving human participants is to be conducted under the auspices of the Center, its contractors, or grantees without the informed written consent of each participant or subject, or his parents or legal guardian in the case of a participant or subject under 18 years of age.

The sex education project to which the report refers was initiated in 1977, when the Center for Disease Control budgeted funds for the evaluation and improvement of U.S. sex education programs.

In fiscal years 1978 and 1979, CDC awarded $1,619,000 to a contractor—Mathtech, Inc., of Bethesda, Md.—for this project.

The funding came from CDC's overall health education program, not from any separate line item approved for this specific purpose by Congress.

Mathtech, Inc., the contractor selected by CDC for this project has been actively involved in the promotion of sex education throughout the United States.

Its report entitled "An Analysis of U.S. Sex Education Programs and Evaluation Methods," published and distributed throughout the country by CDC in July 1979, included a series of recommended student questionnaires containing many explicit and highly personal questions for adolescents of junior high age and older, concerning the full range of their sex attitudes, activities, and birth control methods.

I have been informed that the questionnaires were devised during the 1977–79 contract period by Mathtech, Inc., and then distributed to selected teachers known to Mathtech throughout the country who had expressed an interest in using them in the classroom.

This appears to have circumvented Office of Management and Budget Approval of such questionnaire use in conjunction with a Federal contract, which is required but was not done in this case.

The intent of the questionnaires, according to the CDC report, is to help evaluate "the effectiveness" of sex education programs for use by schools and other groups in local communities.

According to the CDC report, the questionnaires were pretested by different groups throughout the country before they were widely distributed as part of the report, in order to verify their "reliability and validity coefficients."

The field-testing was conducted by teachers in St. Louis, Philadelphia, Texas, and California, according to Dr. Peter Scales, one of the report's three authors, and involved about 200 youngsters of junior and high school age.

I am informed that some revisions of the questionnaires resulted from the pretesting before they were finalized for widespread public distribution and use via the CDC report.

The CDC report also listed 20 selected sex education programs throughout the country which the contractor termed "exemplary" comprehensive courses covering all aspects of human sexuality and student values.

Following publication of its July 1979 report, CDC awarded Mathtech, Inc., three additional contracts—

First. To develop model sex education programs to be made available to communities and other interested groups upon request;

Second. To develop and implement model sex education programs for parents; and

Third. To identify individuals and groups who can begin, expand, and support sex education programs for young people, and to identify and help overcome barriers to sex education.

These three new contracts are currently underway with fiscal year 1980 funds, and are intended to continue into fiscal year 1981.

Mr. Chairman, the amendment to the report adopted by the Appropriations Committee is intended to guarantee that no sex education program, project questionnaire, or other activity sponsored or funded by the Federal Government is adopted for use in schools or by other organizations without formal approval of the school board or appropriate governing body concerned.

The report instructions also require informed written consent from any participant or subject of such federally sponsored sex education activities, or from the parents or legal guardian of a participant or subject under 18 years of age.

However, I am still not convinced that this sex education program is justified at all.

Its rationale is based upon reducing unwanted teenage pregnancies, venereal disease, and providing alternatives to abortion.

I favor these goals.

However, many people believe that sex education programs in the public schools, no matter how well organized or presented, inevitably increase student awareness and interest in sex, as well as unrestrained sexual activity that increases unwanted pregnancy and VD, since such courses are rarely taught in the context of what is morally right and wrong in the eyes of most families.

In my judgment, Congress should

make sure that federally funded health education programs and other established programs for use in educating our youth are never designed to teach or legitimize immorality, sexual promiscuity, or homosexuality.

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Mr. MICHEL. Mr. Chairman, at this time I yield such time as he may consume to the gentleman from Missouri (Mr. COLEMAN).

Mr. COLEMAN. Mr. Chairman, in considering the recommendation of the Appropriations Committee that almost $175 million be appropriated for bilingual education, I think it is important that the goals of this program be clearly understood. In this regard I would like to compliment the Appropriations Committee for the description of the bilingual education program which appears in the committee report. I believe that this language accurately reflects the intention of Congress in reauthorizing title VII in 1978. The language on pages 87–88 of the report reads as follows:

This program is authorized by Title VII of the Elementary and Secondary Education Act to develop English proficiency and increased educational opportunities for children who, because of their limited English proficiency, are not making satisfactory progress in school. To achieve this goal, assistance is provided to local school districts to increase their capacity to develop and maintain bilingual education programs which use the students' home language to the extent necessary to build basic skills while the students are learning English. (Pages 87–88.)

I would like to ask the distinguished chairman whether this statement from the committee report also reflects his understanding of the bilingual education program?

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. COLEMAN. I do yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, I would like to say to my distinguished friend from Missouri that at the time we presented the subcommittee report to the full committee, my friend, the distinguished ranking minority member on this subcommittee, the gentleman from Illinois (Mr. MICHEL), offered language relating to recently proposed regulations on bilingual education. I would like to yield to the gentleman from Illinois at this point.

Mr. MICHEL. Mr. Chairman, I thank the distinguished subcommittee chairman. If the gentleman will yield further, the answer to his question is yes.

Mr. COLEMAN. Then let me ask a further question. I would also like to ask whether it is the gentleman's understanding that, as the committee report language states, the Federal assistance authorized under the title VII program is to support only those local programs which "use the students' home language to the extent necessary to build basic skills while the students are learning English?" That is a direct quote from the report language.

Mr. MICHEL. Mr. Chairman, we mean what we say.

Mr. COLEMAN. By the gentleman's response may I assume that it is the clear intention of the committee not to provide funds for local programs which use the students' home language beyond that extent necessary to build basic skills while the students are learning English?

Mr. MICHEL. That is exactly right. As a matter of fact, I have raised this issue during the past couple of years during our hearings, because of evaluations of the program which showed that some projects were keeping children substantially beyond the point where they were knowledgeable in English. The Department stated that the standards were being tightened in this regard to insure a quicker transition. I hope they are following up in this regard, because title VII funds should only be used to move students into the mainstream as quick as possible, and, I might add, in as cost effective a manner as possible.

Mr. COLEMAN. I thank the subcommittee chairman and the ranking minority member of the subcommittee for their responses.

The key concept behind the bilingual education program is helping children of limited competence in the English language to achieve competence in English. It is to this standard that we must judge the results of the bilingual education program. To the extent that a particular program operated on the local level neglects the teaching of English, that program should not be called bilingual education within the meaning of title VII.

In enacting title VII, it was the intention of Congress to establish equal educational opportunity for all children. I believe that such an objective requires the teaching of English. The Bilingual Education Act sought to eliminate the disadvantages children of limited English-speaking ability were facing in the public schools. Typically, these children were two to three grade levels behind their counterparts who were proficient in English. The dropout rate for Hispanic students in some areas of the country were as high as 85 percent and a very small percent of these students were attending college.

Through the establishment of instructional programs in the home language of limited English-speaking students, Congress sought to make these students feel at home in the public schools. Congress also sought to provide these students with a clear path into the mainstream of employment and economic opportunity. In our predominantly English-speaking Nation, this requires the teaching of English.

Creating equal educational opportunities is not my only concern with the bilingual education program. I am also concerned about the broader consequences for our Nation if we consciously foster the growth of non-English-speaking language minorities through the bilingual education program. One need only think of the great political upheavals Canada is presently undergoing to appreciate the dangers of purposely creating basic splits in our society. In Canada, Quebec is, to a very large extent, a separate nation within a nation. English Canadians feel little in common with French Canadians and French Canadians feel little in common with English Canadians. They do not communicate with one another because they do not speak each other's language.

Mr. Chairman, the intent of title VII is clearly to ease the transition of students of limited English proficiency into the English-speaking mainstream. It is my hope that in approving title VII appropriations today, that we are signaling clearly to the Department of Education that the bilingual education program will be operated in accordance with this understanding.

● Mrs. HOLT. Mr. Chairman, these appropriations in H.R. 7998, and others to be considered, would be almost $1 billion under the target set by the Appropriations Committee for Labor, Health, Human Services, Education, and related agencies.

But any analysis of this legislation would be faulty if we failed to consider the assumptions of the conference report on the first budget resolution for 1981, which this House adopted several weeks ago. The appropriations in H.R. 7998 would be $1 billion more than the amount proposed for these activities in the first budget resolution.

What has happened can be summarized as follows: The Appropriations Committee did not accept the functional allocations recommended by the budget conference report. In allocating total budget authority, it reduced the amount available to its Defense Subcommittee and increased the amount available to its Labor-HEW Subcommittee.

The Defense Subcommittee was left with an allocation $2 billion less than the amount that House-Senate conferees had deemed necessary for defense, and the Labor-HEW Subcommittee received a target $2 billion higher than the conference report has proposed for its social programs.

This bill has not used all of that extra $2 billion that was taken from defense, but that does not alter the fact that this legislation is a budget buster. It is $1 billion over the conference report assumptions.

Also notable is the fact that the Defense appropriations bill will be the last to be considered this year, and this is part of a carefully designed scheme. The majority party leadership of this House has ordained that every other activity of the Federal Government will get its money first, and defense will get whatever is left.

Because of what is happening with this legislation, any attempt to appropriate the budgeted amount for defense will be condemned as budget busting.

This is an election year, and the majority party loves to pass out goodies to its many constituencies at such a time, even if this means postponing some desperately needed improvements in our deteriorating defense posture.

Mr. Chairman, I urge the House to defeat this legislation. The Committee should reduce the appropriations of $84.8 billion by at least $1 billion.

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This bill is part of a design to play fast and loose with our national security, and we should not tolerate it.●

● Mr. ULLMAN. Mr. Chairman, I would like to call to the attention of my colleagues in the House a serious budgetary situation in Oregon which was not contemplated at the time we drafted the low-income energy authorization as part of the windfall profits tax legislation (H.R. 3919) enacted earlier this year. I understand that other States are in similar straits due to the recession and are likely to experience comparable problems.

I have noted that the Appropriations Committee, which provides $1.8 billion in low-income energy assistance, uses a different funding authority from that contemplated by the windfall profits tax legislation. The committee report states that the regulations promulgated on May 30 by the Department of Health and Human Services are to be used with only minor modifications. One of the primary criteria used is that States must maintain benefit levels in AFDC and SSI to be eligible for low-income energy assistance. This is commonly known as a maintenance-of-effort clause and is found in a number of Federal welfare laws and regulations. This clause was well intended and was meant to prevent States from reducing their own contributions to welfare benefit levels and later supplementing them with Federal moneys.

Oregon has a very good record in terms of its assistance to the poor. It has one of the highest AFDC benefit standards. It also supplements the Federal SSI benefit level for its elderly and disabled citizens. However, because of the severe recession, Oregon's unemployment rate has increased to 9.5 percent, and the number of workers on the unemployment rolls has doubled since April. Because of this reduction in the labor force, the State projects a $204 million revenue shortfall for fiscal year 1981. This is relative to a total general revenue budget of $1.277 billion. In light of its constitutional requirement to balance the budget and its inability to raise taxes significantly in a recessionary period, the State has had no choice but to cut back on its social services and income maintenance programs. Oregon spends one-third of its general revenue moneys on human services, of which AFDC payments are a substantial portion. Thus, it was impossible to avoid a reduction in these payment levels. Consequently, the State stands in violation of the maintenance-of-effort clause.

To guard against this kind of unplanned situation, the Secretary was given authority under the bill developed by the Ways and Means Committee to waive any requirements of the State plan that the Secretary found to be detrimental to achieving the purposes of the act. In this case I think it is abundantly clear that the State did not lower its benefit level just to offset the increased Federal funding. Failure to waive the requirement would put the low-income families of Oregon in an even more severe financial situation and does not achieve the Federal objective of increasing income maintenance payments to offset the oil price increases imposed by decontrol and OPEC. To clarify the record, I would hope that in the conference committee report this concern will be noted and that the Secretary, in determining whether a waiver may be applicable, will be directed to take into account a State's budgetary situation.●

● Mr. BIAGGI. Mr. Chairman, I rise in strong support of the amendment that will be offered by my friend and colleague from Connecticut who serves with me on the House Education and Labor Committee. The gentleman's amendment would restore funds for Educational Information Centers, authorized under title IV, part A, subpart 5, section 419 of the Higher Education Act of 1965.

As New York's senior member of the House Education and Labor Committee and the House Select Committee on Aging, I am strongly supportive of the work which EIC's have done in helping to provide important resource material to students looking for both information on financial aid as well as degree programs available to them. These information centers are particularly useful to those adults who have faced barriers to postsecondary education in the past, the adult, nontraditional student, who wished to pursue a degree to learn practical job skills or to upgrade current skills for career advancement. Our senior citizens of this Nation—who are returning to school in record numbers—are heavily reliant upon the work which EIC's are doing across the Nation.

I am aware that the committee, in its report to accompany this bill, cited duplication with our "TRIO" programs as the reason why it chose not to fund this $3 million program this year. As a member of the authorizing committee, I can assure my colleagues that the target population for our TRIO programs—low income, disadvantaged minority youth—is not the same population which EIC's were created for in our 1976 education amendments. Through the expansion of our financial aid programs to middle income families in the 1978 amendments, EIC's became even more pivotal in getting information to the adult, nontraditional students. I want to inform my colleagues that this emphasis on this type of student has been reinforced to an even greater extent in our reauthorization of our Higher Education Act this year and EIC's will play an even greater role as we seek to expand services to this population.

Mr. Chairman, I urge support of this amendment to assure that this very small, but effective program is maintained for our Nation's current and future student population. I am firmly committed to maintaining the integrity of the EIC program and feel that this is a small investment to make for so large a return for so many. I urge the adoption of the amendment.●

● Mr. ALBOSTA. Mr. Chairman, in 1973 the fire-retardant polybrominated biphenyl (PBB) was inadvertently mixed into livestock feed in Michigan. This contamination affected thousands of farm animals, resulting in their death or destruction.

Unfortunately, until the source of the contamination was determined, substantial amounts of PBB contaminated the meat and milk produced on those farms hit by PBB. The bloodstream of the people in Michigan, particularly in my area of Michigan and where farmers consume their own products, was infiltrated by this toxic chemical.

When I was in the Michigan legislature, I served as chairman of a special committee that investigated the PBB incident, and while there is currently a study going on through the National Institute of Environmental Health Sciences about the symptoms associated with PBB contamination, it appears evident that the State of Michigan Department of Public Health will not acknowledge the severity of the dangers of PBB until the actual toxicity level of that chemical is scientifically determined. In addition, information is needed that will determine the best way to dispose of PBB and clean it from the land.

It is my intention to request those two studies by the National Institute of Environmental Health Sciences, so the work can begin to help the people of Michigan rid themselves of this terrible problem.●

● Mr. FRENZEL. Mr. Chairman, my principal system to this bill is that it spends too much money, but the gentleman from Ohio (Mr. PEASE) will make an excellent point, regrettably with a very expensive amendment.

I believe that the worker retraining portion of Trade Adjustment Assistance is the most important part of that law.

Regular unemployment compensation will cover idled workers nearly as well as the trade-related special coverage. But that trade compensation assumes that the trade problem will soon go away. Unfortunately, usually it will not.

That is why the training element is so important. It is the only long-term protection, except for the employer assistance, in the TAA law.

I do believe the size of the Pease amendment is too big. Nevertheless, I believe this body owes a debt to the gentlemen for directing our attention to the shortage of funds for this function in the committee's bill.●

● Mr. MURPHY of New York. Mr. Chairman, I rise in support of the language contained in section 205 of the bill under consideration this afternoon, language which states "None of the funds provided by this act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term."

The Congress has debated the abortion question and voted on variations of this provision—popularly known as the Hyde amendment—since 1976. Throughout the years of at sometimes heated discussion, I have steadfastly supported the Hyde language and consistently voted to prohibit Federal funding of abortions. I flew down from New York this morning prepared to once again join my like-minded colleagues and prevent any weakening of the abortion prohibition contained in this appropriations bill. However, I am delighted to find out that after the countless votes and hours of debate we have undertaken since 1976, it has finally been brought home to those Members of this body that seek to open up Federal abortion funding, that they cannot win, and that this year we can proceed with the consideration and approval of this bill with expediency.

The right to life, which the Hyde amendment guarantees, is the most sacred right any human has. In the case of the preborn, this right must be protected by those of us in this Congress because they obviously are unable to protect themselves. We have taken on this responsibility in other cases where individuals whose mental or physical conditions prevent them from acting on their own behalf. This must be our greatest obligation to those whom we represent.

Again, I congratulate the Members—both those who share my prolife commitment, and those who do not but made the reasonable decision this year not to engage in a battle for exceptions to the Hyde language that they could not win—and urge your approval of this bill.●

● Mr. GILMAN. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from California (Mr. ROYBAL).

This amendment does absolutely nothing in terms either of alleviating or helping the low-income residents in some of the coldest parts of our Nation—the Northeast. In fact, the amendment seeks to change the formula in such a manner that the Northeastern States will be even worse off than they were last year. After all that has already been said about this exceptionally poorly conceived amendment, I would like to add that the approval of the amendment would not only prove to be a calamity for our citizens in the colder States, but most certainly would enhance the trend that is favoring the Sun Belt States.

Furthermore, there is no sound basis upon which this amendment may be justified, either in terms of dollars or actual need. Because of the recent rapid rises in home energy costs and lack of a definition of "need"; there is almost no information on the degree to which low-income households need or will need assistance. Up to this point, program cost estimates have typically been arbitrary dollar figures; the impetus to provide home energy aid has not come from firm estimates of need. Rather, it has arisen out of a perception that home energy cost increases have far outpaced any increases in income available to low-income households. Therefore, it is only logical to reason that the priority for low income should be centered around two fundamental points: First, those States which express the most urgent need in terms of severe weather and; second, those households which simply have no money at the moment and do need financial assistance. In any analyses of need and costs, it must be assumed that the major goal is to provide substantial aid primarily for home heating costs, but including some aid for other home energy costs, to a large proportion of the lower-income population.

Accordingly, it is necessary to maintain the existing formula, simply because the most severe weather happens to be in the Northeastern parts of the United States, and because the financial need for energy cost assistance is higher there than anywhere else in the United States due to the exceptionally high utility rates—which have brought on altogether new problems not faced by citizens of the Sun Belt. To support the Roybal amendment would be a vote against the Northeast, against the poor and against the idea of equity.

Mr. Chairman, I urge my colleagues to vote against this amendment which, for all intents and purposes, is an exercise in futility and not deserving of the sacrifices it would bring to bear on our elderly and the indigent.●

Mr. GRASSLEY. Mr. Chairman, the President's first budget request for fiscal year 1981 included $30 million for the social services and senior centers which are funded under title III of the Older Americans Act. This was an increase of about $33 million above the fiscal year 1980 funding level.

The need for the increase was very clear. Beginning in fiscal year 1981, the Older Americans Act requires that the support and administrative costs for the elderly nutrition services be transferred from the nutrition account to the account for the provision of social services. Both functions come under the same title of the act.

In his revised budget request for fiscal year 1981, the President deleted the $33 million increase for social services and Senior Centers, leaving the funding proposal for this function at essentially the same level as it was in fiscal year 1980. However, the law still requires that the support costs for the nutrition program be transferred to the social services account. Moreover, these costs will be greatly higher than has been the case in the past. This is due not only to inflation but to the fact that the nutrition program has been expanded to include home-delivered meals. The magnitude of these support costs is such that it will require a major reduction in such social services as health, recreation, transportation, housing, home repair, legal services, employment, assistance, outreach programs, and dozens of other services which are provided to the elderly by the area agencies on aging and their associated senior centers.

On August 27, the House voted to restore $10 million of the $33 million reduction contained in the President's budget request. This is a small step in the right direction, but a most timid and inadequate one. What was needed and what remains needed is the restoration of the full $33 million. Otherwise, the House will abandon services which are vital to the well being and to the dignity of thousands of older Americans who depend on these services as assurance against the alternative of institutional care.

In my opinion, the House has evaded its responsibility in this matter. Unless the Senate passes a measure which restores the money which the President cut from the program, and unless the House accedes to the Senate position, essential services to the elderly will be left derelict.

We must face our responsibility to see that this does not occur.

● Mr. FRENZEL. Mr. Chairman, the Departments of Labor, Health and Human Services, and Education appropriation bill for fiscal year 1981 is some $30 billion over the bill brought before us last year. Of course, that $30 billion does not even count some $700 million in programs not yet authorized, that are likely to be authorized. And, if this Congress follows its usual course, we will have at least one supplemental appropriation in multi-billion-dollar figures.

This bill, our largest single appropriation, comes at a time when we are asking the U.S. taxpayers to pay some $80 billion annually just for interest on Congress overspending. That total debt is not quite $1 trillion yet, but is getting close.

At the same time, we asked the American public this year to put a halt on their use of credit card spending. Our President's wage guideline limits workers to from 7½- to 9½-percent increases.

But Congress asked no sacrifice of itself. It did not falter one step. It just kept right on spending.

For instance, this bill is some $30 billion over last year, but it is only one of the more than a dozen appropriation measures that will be considered. My constituents are frustrated with the inflation that Congress has forced upon them and outraged by our spending habits. I, too, am outraged.

I cannot really blame our Appropriations Committee. They are forced to spend by law. The blame rests with Congress collectively, but most of all with its majority group and its leadership. But, whoever is at fault, this bill is just too expensive for me to support.

H.R. 7998 contains the funding for many worthwhile programs—programs that I have enthusiastically supported, and still do. Among those are biomedical research, mental health, child welfare services, elementary and secondary education, education for the handicapped, and programs for the aged. These programs all deserve increases.

However, many of the biggest budget busters are also included in this bill. Even though we have finally managed to cut it from last year by some $23 million, CETA is still slated to receive over $6 billion in funds in H.R. 7998. We have studied the program and know that it is mostly ineffective. Studies tell us it does not work; we know it does not work; and yet we continue to fund it to the tune of billions of taxpayers' dollars.

Last year we sent all SSI recipients a check for energy assistance. Those in nursing homes, those that lived in apartment buildings and those that lived with relatives, all received a check from the Federal Government to pay their utility bills. Many of them got money to pay utility bills, but they had no utility bills. H.R. 7998 includes $1.8 billion to carry on that program. Not only does it continue the program, but it gives away $200 million more of the taxpayers' money than last year. While some attempts were made to put more sense into this give-

away program, it still does not assure that the dollars will be used for the purpose for which they were intended.

Finally, the bill makes a valiant effort toward reducing impact aid spending by saving $35 million over last year's spending. The sad fact remains, however, that we are still scheduled to spend $224 million for category B kinds, or those children whose parents live or work on Federal property. The latter still provides the local school district with a property tax base. This program is particularly popular in the Washington, D.C. metropolitan area, where moms and dads work in the District of Columbia, but live in Maryland or Virginia. In these areas, the schools maintain a splendid tax base, but also receive in addition, huge, unwarranted, Federal handouts.

This bill preserves Congress record as the world's greatest, and most wasteful, spender. H.R. 7998 means not only that Congress does not care about present deficits, but also that it has no real interest in the manner in which taxpayers' dollars are spent. I suggest to my colleagues that they carefully consider $30 billion more than last year when they cast their vote on this bill.

Since no progress has been made in reducing entitlements and authorizations, I believe we have to vote down this bill, even though its principal offense is that it is financing other bad laws. H.R. 7998 is the best target available on which we can express displeasure with the congressional unwillingness to curb its spending.●

● Mr. EARLY. Mr. Chairman, I rise in support of H.R. 7998, the Labor, Health and Human Services, Education and related agencies appropriation bill for fiscal 1981.

I know that the Members are concerned about a great many of the programs in this bill. As we have frequently heard, this is a difficult year. In some instances reductions were made in appropriation requests. In others, the increases are not sufficient. All in all, though, I feel that it is a bill that deserves the support of the House.

I share the feeling of many of my colleagues who would have liked to have seen greater increases in many necessary and worthwhile programs. And, I would like to call to the attention of my colleagues one area, in particular, where I feel additional funds should have been provided. That is the National Institutes of Health.

The committee bill provides a total of $3.616 billion for the National Institutes of Health. While this is an increase of $126 million over the budget requests for the various institutes and $187.3 million over the comparable appropriation for fiscal year 1980, it is an increase of about 5.5 percent over the fiscal year 1980 appropriations. Although this increase may be viewed as generous by some, it will fund only slightly more competing research projects than proposed in the budget or funded in fiscal year 1980. Much of the increase will go toward restoring particular programs and activities which were reduced in the budget request—activities such as new research training opportunities which were eliminated, clinical trials, and categorical centers.

Congress has, for many years, taken a special interest in the National Institutes of Health. It has long recognized its importance to, and impact on, not only the economic aspects of health problems, but also the quality of life for millions of individuals both in our own country and abroad.

However, I feel that much more needs to be done—that our efforts should be intensified. We are all aware of the years of life lost to illness and of the disabilities which often deprive adults and children of active and productive lives. An investment in basic research returns far more in dollars than is expended. It has been estimated that each dollar invested in NIH research leads to approximately $20 in reduced health care costs and an increase in human productivity.

Support of research in medicine and health is as important as any other kind of knowledge that we could buy. It is a sound investment—an investment that provides many returns—and one that should be made.●

Mr. NATCHER. Mr. Chairman, we have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The Clerk will read.

The Clerk proceeded to read the bill.

Mr. NATCHER (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read, printed in the RECORD and open for amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The bill is as follows:

H.R. 7998

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums as appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1981, and for other purposes, namely:

TITLE I—DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

PROGRAM ADMINISTRATION

For expenses of administering employment and training programs, $88,762,000, together with not to exceed $35,215,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund, and of which $7,202,000 shall be for carrying into effect the provisions of 38 U.S.C. 2001–2003.

EMPLOYMENT AND TRAINING ASSISTANCE

For expenses necessary to carry into effect the Comprehensive Employment and Training Act of 1973, as amended, and sections 326 and 328 of the Trade Expansion Act of 1962 (19 U.S.C. 1951 and 1961) and sections 236, 237, and 238 of the Trade Act of 1974 (19 U.S.C. 2101) and section 51 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 51), and sections 210, 211, and 212 of Public Law 95–250, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the Comprehensive Employment and Training Act of 1973, as amended, $6,156,763,000 plus reimbursements, to remain available through September 30, 1982, and of which $1,910,000 shall be for the National Commission for Employment Policy: *Provided,* That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers.

TEMPORARY EMPLOYMENT ASSISTANCE

For public service employment, training, and related services, as authorized by title VI of the Comprehensive Employment and Training Act, $1,293,000,000, to remain available until September 30, 1982.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

To carry out activities under Title V of the Older Americans Act of 1965, as amended, $277,100,000, of which $221,680,000 shall be for national grants or contracts with public agencies and public or private nonprofit organizations under paragraph (1)(A) of section 506(a) and $55,420,000 shall be for grants to States under paragraph (3) of section 506(a).

FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES

For payments during the current fiscal year of benefits and allowances to unemployed Federal employees and ex-servicemen, as authorized by title 5, chapter 85 of the United States Code, of benefits and payments as authorized by title II of Public Law 95–250, of trade adjustment benefit payments and allowances, as provided by law (19 U.S.C. 1941–1944 and 1952; part I, subchapter B, chapter 2, title II of the Trade Act of 1974), and for reimbursement to States for unemployment benefits paid on the basis of public service employment as authorized by title II of the Emergency Jobs and Unemployment Assistance Act of 1974, as amended, and for reimbursements as authorized by section 121 of Public Law 94–566, $1,260,000,000 together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15 of the current year: *Provided,* That, in addition, there shall be transferred from the Postal Service Fund to this appropriation such sums as the Secretary of Labor determines to be the cost of benefits for ex-Postal Service employees: *Provided further,* That amounts received during the current fiscal year from the Postal Service or recovered from the States pursuant to 5 U.S.C. 8505(d) shall be available for such payments during the year: *Provided further,* That amounts received or recovered pursuant to section 208(e) of Public Law 95–250 shall be available for payments.

GRANTS TO STATES FOR UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICES

For grants for activities authorized by the Act of June 6, 1933, as amended (29 U.S.C. 49–49K; 39 U.S.C. 3202(a)(1)(E)); Veterans' Employment and Readjustment Act of 1972, as amended (38 U.S.C. 2001–2013); title III of the Social Security Act, as amended (42 U.S.C. 501–503); sections 312 (e) and (f) of the Comprehensive Employment and Training Act of 1973, as amended; and necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, 19 U.S.C. 1941–1944, 1952, and chapter 2, title II, of the Trade Act of 1974, and section 43 of the Airline Deregulation Act of 1978 including, upon the request of any State, the payment of rental for space made available to such State in lieu of grants for such purpose, $24,500,000, together with not to exceed $2,051,000,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund, and of which $354,200,000 shall be available only to the extent necessary to meet increased costs of administration resulting from changes in a State law or increases in the number of unemployment insurance claims filed and claims paid or increased salary resulting

from changes in State salary compensation plans embracing employees of the State generally over those upon which the State's basic grant was based, which cannot be provided for by normal budgetary adjustments: *Provided,* That an additional $81,300,000 may be expended from the Employment Security Administration account to the extent necessary to meet additional costs of administration due to an increase of at least 15 percent in the rate of insured unemployment for a calendar quarter in 1981 over the rate of insured unemployment for the corresponding calendar quarter in 1980 which cannot be provided for within the amounts made available above: *Provided further,* That any portion of the funds granted to a State in the current fiscal year and not obligated by the State in that year shall be returned to the Treasury and credited to the account from which derived.

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For repayable advances to the Unemployment Trust Fund as authorized by sections 905(d) and 1203 of the Social Security Act, as amended, and to the Black Lung Disability Trust Fund as authorized by subsection b(2) of section 3 of the Black Lung Benefits Revenue Act of 1977, and for nonrepayable advances to the "Federal unemployment benefits and allowances" account, to remain available until September 30, 1982, $660,000,000.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Labor-Management Services Administration, $59,161,000.

PENSION BENEFIT GUARANTY CORPORATION

The Pension Benefit Guaranty Corporation is authorized to make such expenditures within limits of funds and borrowing authority available to such corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 849), as may be necessary in carrying out the program through September 30, 1981, for such corporation.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employment Standards Administration, including reimbursement to State, Federal and local agencies and their employees for inspection services rendered $171,057,000 together with $364,000 which may be expended from the Special Fund in accordance with sections 39(c) and 44(j) of the Longshoremen's and Harbor Workers' Compensation Act.

SPECIAL BENEFITS

For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by title V, chapter 81 of the United States Code; continuation of benefits as provided for under the head "Civilian War Benefits" in the Federal Security Agency Appropriation Act, 1947; the Employees' Compensation Commission Appropriation Act, 1944; and sections 4(c) and 5(f) of the War Claims Act of 1948 (50 U.S.C. App. 2012); and fifty per centum of the additional compensation and benefits required by section 10(h) of the Longshoremen's and Harbor Workers' Compensation Act, as amended, $404,146,000 together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to September 15 of the current year: *Provided,* That in addition there shall be transferred from the Postal Service fund to this appropriation such sums as the Secretary of Labor determines to be the cost of administration for Postal Service employees through September 30, 1981.

BLACK LUNG DISABILITY TRUST FUND

For payments from the Black Lung Disability Trust Fund, $922,244,000, of which $892,731,000 shall be available until September 30, 1982, for payment of all benefits and interest on advances under subsection (b)(2) of section 3 of the Black Lung Benefits Revenue Act of 1977, as authorized by section 424(a)(1), (2), and (4) of the Black Lung Benefits Act, as amended, and of which $20,970,000 shall be available for transfer to Employment Standards Administration, Salaries and Expenses and $10,543,000 for transfer to Departmental Management, Salaries and Expenses for expenses of operation and administration of the Black Lung Benefits program as authorized by section 24(a)(5) of the Black Lung Benefits Act, as amended: *Provided,* That in addition, such amounts as may be necessary may be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to June 15 of the current year: *Provided further,* That in addition, such amounts shall be paid from this fund into miscellaneous receipts as the Secretary of the Treasury determines to be the administrative expenses of the Department of the Treasury for administering the fund during the current fiscal year, as authorized by section 424(a)(5) of the Black Lung Benefits Act, as amended.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, $207,206,000: *Provided,* That none of the funds appropriated under this paragraph shall be obligated or expended for the assessment of civil penalties issued for first instance violations of any standard, rule, or regulation promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful, or repeated violations under section 17 of the Act) resulting from the inspection of any establishment or workplace subject to the Act, unless such establishment or workplace is cited, on the basis of such inspection, for 10 or more violations: *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, order or administrative action under the Occupational Safety and Health Act of 1970 affecting any hunting, shooting, or fishing: *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended for the proposal or assessment of any civil penalties for the violation or alleged violation by an employer of 10 or fewer employees of any standard, rule, regulation, or order promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful or repeated violations and violations which pose imminent danger under section 13 of the Act) if, prior to the inspection which gives rise to the alleged violation, the employer cited has (1) voluntarily requested consultation under a program operated pursuant to section 7(c)(1) or section 18 of the Occupational Safety and Health Act of 1970 or from a private consultative source approved by the Administration and (2) had the consultant examine the condition cited and (3) made or is in the process of making a reasonable good faith effort to eliminate the hazard created by the condition cited as such, which was identified by the aforementioned consultant, unless changing circumstances or workplace conditions render inapplicable the advice obtained from such consultants: *Provided further,* That none of the funds appropriated under this paragraph may be obligated or expended for any State plan monitoring visit by the Secretary of Labor under section 18 of the Occupational Safety and Health Act of 1970, of any factory, plant, establishment, construction site, or other area, workplace or environment where such a workplace or environment has been inspected by an employee of a State acting pursuant to section 18 of such Act within the 6 months preceding such inspection: *Provided further,* That this limitation does not prohibit the Secretary of Labor from conducting such monitoring visit at the time and place of an inspection by an employee of a State acting pursuant to section 18 of such Act, or in order to investigate a complaint about State program administration including a failure to respond to a worker complaint regarding a violation of such Act, or in order to investigate a discrimination complaint under section 11(c) of such Act, or as part of a special study monitoring program, or to investigate a fatality or catastrophe: *Provided further,* That none of the funds appropriated under this paragraph may be obligated or expended for the inspection, investigation, or enforcement of any activity occurring on the Outer Continental Shelf which exceeds the authority granted to the Occupational Safety and Health Administration by any provision of the Outer Continental Shelf Lands Act, or the Outer Continental Shelf Lands Act Amendments of 1978.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Mine Safety and Health Administration, $148,398,000, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work and the purchase of not to exceed sixty-six passenger motor vehicles for replacement only: *Provided,* That the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private: *Provided further,* That the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations: *Provided further,* That any funds available to the Department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of major disaster: *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended to carry out section 115 of the Federal Mine Safety and Health Act of 1977 or to carry out that portion of section 104(g)(1) of such Act relating to the enforcement of any training requirement, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate or surface limestone mine.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered, $106,324,000.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for departmental management including $1,734,000 for the

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President's Committee on Employment of the Handicapped, $113,490,000 together with not to exceed $2,293,000 to be derived from the Employment Security Administration account, Unemployment Trust Fund.

SPECIAL FOREIGN CURRENCY PROGRAM

For payments in foreign currencies, which the Treasury Department determines to be excess to the normal requirements of the United States, for necessary expenses of the Department of Labor, as authorized by law, $70,000, to remain available until expended: *Provided*, That this appropriation shall be available, in addition to other appropriations to such agency for payments in the foregoing currencies.

GENERAL PROVISIONS

SEC. 101. Appropriations in this Act available for salaries and expenses shall be available for supplies, services, and rental of conference space within the District of Columbia, as the Secretary of Labor shall deem necessary for settlement of labor-management disputes.

SEC. 102. None of the funds appropriated under this title shall be used to pay any prisoner for work performed prior to 12 months before the presumptive release date of such prisoner.

SEC. 103. No part of the funds appropriated under this title may be used to carry out any activities for or on behalf of any individual who is an alien in the United States in violation of the Immigration and Nationality Act or any other law of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

This title may be cited as the "Department of Labor Appropriation Act, 1981."

TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH SERVICES ADMINISTRATION

HEALTH SERVICES

For carrying out titles III, V, VII, X, XI, and XII of the Public Health Service Act, the Act of August 8, 1946 (5 U.S.C. 7901), section 1 of the Act of July 19, 1963 (42 U.S.C. 253a), section 108 of Public Law 93-353, section 427(a) of the Federal Coal Mine Health and Safety Act as amended, and title V and XI of the Social Security Act, $1,231,787,000 of which $1,800,000 shall be available only for payments to the State of Hawaii for care and treatment of persons afflicted with Hansen's disease and $6,969,000 to be available until expended, shall be used to renovate the Public Health Service hospitals and the National Hansen's Disease Center: *Provided*, That this appropriation shall be available for payment of the costs of medical care, related expenses, and burial expenses hereafter incurred by or on behalf of any person who has participated in the study of untreated syphilis initiated in Tuskegee, Alabama, in 1932, in such amounts and subject to such terms and conditions as prescribed by the Secretary of Health and Human Services and for payment, in such amounts and subject to such terms and conditions, of such costs and expenses hereafter incurred by or on behalf of such person's wife or offspring determined by the Secretary to have suffered injury or disease from syphilis contracted from such person: *Provided further*, That when the Health Services Administration operates an employee health program for any Federal department or agency, payment for the estimated cost shall be made by way of reimbursement or in advances to this appropriation: *Provided further*, That when the Health Services Administration provides health care services to active duty Department of Defense uniformed services personnel and their dependents, to retired uniformed services personnel and their dependents, and to the dependents of deceased uniformed services personnel in a Public Health Service medical facility, payment for the estimated cost shall be made by way of reimbursement to this appropriation.

CENTER FOR DISEASE CONTROL

PREVENTIVE HEALTH SERVICES

To carry out titles III and XVII of the Public Health Service Act, title IV of the Health Services and Centers Amendments of 1978, the Federal Mine Safety and Health Act of 1977, and the Occupational Safety and Health Act of 1970; including insurance of official motor vehicles in foreign countries; and purchase, hire, maintenance, and operation of aircraft, $329,441,000 of which $5,951,000 shall remain available until expended and shall be for construction and equipment of facilities of or used by the Center for Disease Control ($4,951,000) and for providing assistance in health emergencies ($1,000,000): *Provided*, That training of employees of private agencies shall be made subject to reimbursement or advances to this appropriation for the full cost of such training: *Provided further*, That none of the funds appropriated under Section 314(d) of the Public Health Service Act may be used for the payment of salaries or expenses for any State-level administrative employee.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CANCER INSTITUTE

For carrying out, to the extent not otherwise provided, the Public Health Service Act with respect to cancer, $1,001,330,000.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

For expenses, not otherwise provided for, necessary to carry out the Public Health Service Act with respect to heart, lung, blood vessel, and blood diseases, $560,246,000.

NATIONAL INSTITUTE OF DENTAL RESEARCH

For expenses, not otherwise provided for, to carry out title IV of the Public Health Service Act with respect to dental diseases, $71,206,000.

NATIONAL INSTITUTE OF ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES

For expenses necessary to carry out title IV of the Public Health Service Act with respect to arthritis, rheumatism, metabolic diseases, and digestive diseases, $371,993,000.

NATIONAL INSTITUTE OF NEUROLOGICAL AND COMMUNICATIVE DISORDERS AND STROKE

For expenses necessary to carry out to the extent not otherwise provided, title VI of the Public Health Service Act with respect to neurological and communicative disorders and stroke, $253,838,000.

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

For expenses not otherwise provided for, to carry out title IV of the Public Health Service Act with respect to allergy and infectious diseases, $232,355,000.

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

For expenses not otherwise provided for, necessary to carry out title IV of the Public Health Service Act with respect to general medical sciences, $335,676,000.

NATIONAL INSTITUTE OF CHILD AND HUMAN DEVELOPMENT

To carry out, except as otherwise provided, title IV and title X of the Public Health Service Act with respect to child health and human development, $223,565,000.

NATIONAL EYE INSTITUTE

For expenses necessary to carry out title IV of the Public Health Service Act, with respect to eye diseases and visual disorders, $120,254,000.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

To carry out, except as otherwise provided, sections 301, 311 and 472 of the Public Health Service Act with respect to environmental health sciences, $97,269,000.

NATIONAL INSTITUTE ON AGING

To carry out, except as otherwise provided, title IV of the Public Health Service Act with respect to aging, $76,091,000.

RESEARCH RESOURCES

To carry out, except as otherwise provided, sections 301 and 372 of the Public Health Service Act with respect to research resources and general research support grants, $184,439,000: *Provided*, That none of these funds, with the exception of funds for the Minority Biomedical Support program, shall be used to pay recipients of the general research support grants programs any amount for indirect expenses in connection with such grants.

JOHN E. FOGARTY INTERNATIONAL CENTER FOR ADVANCED STUDY IN THE HEALTH SCIENCES

For the John E. Fogarty International Center for Advanced Study in the Health Sciences, $9,138,000 of which $1,700,000 shall be available for payment to the Gorgas Memorial Institute for maintenance and operation of the Gorgas Memorial Laboratory.

NATIONAL LIBRARY OF MEDICINE

To carry out, to the extent not otherwise provided for, section 301 with respect to health information communications and parts I and J of title III of the Public Health Service Act, $44,730,000.

BUILDINGS AND FACILITIES

For construction of, and acquisition of sites and equipment for, facilities of or used by the National Institutes of Health, where not otherwise provided, $11,750,000 to remain available until expended.

OFFICE OF THE DIRECTOR

For expenses necessary for the Office of the Director, National Institutes of Health, $22,549,000, including purchase of not to exceed thirteen passenger motor vehicles for replacement only.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH

For carrying out the Public Health Service Act with respect to mental health, drug abuse, and alcoholism; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; the Drug Abuse Prevention, Treatment, and Rehabilitation Act; and the Community Mental Health Centers Act as amended (42 U.S.C. 2681, et seq.); $992,477,000 of which $5,425,000 for design and modernization and improvement of government owned or leased intramural facilities shall remain available until expended.

SAINT ELIZABETHS HOSPITAL

For expenses necessary for the maintenance and operation of the hospital, including clothing for patients, and cooperation with organizations or individuals in scientific research into the nature, causes, prevention, and treatment of mental illness, $94,273,000 or such amounts as may be necessary to provide a total appropriation equal to the difference between the amount of the reimbursements received during the current fiscal year on account of patient care provided by the hospital during such year and $118,595,000.

CONSTRUCTION AND RENOVATION, SAINT ELIZABETHS HOSPITAL

For construction, alterations, repair, improvement, extension, and equipment of facilities for or used by Saint Elizabeths Hospital: $1,500,000 to remain available until expended.

HEALTH RESOURCES ADMINISTRATION

HEALTH RESOURCES

For carrying out titles VII and XV of the Public Health Service Act and section 1122 of the Social Security Act, $168,260,000, of

which $4,300,000 shall remain available until expended for loan guarantees made prior to fiscal year 1981 and interest subsidies under part B of title VII.

MEDICAL FACILITIES GUARANTEE AND LOAN FUND

During fiscal year 1981, no commitments for direct loans or loan guarantees shall be made.

ASSISTANT SECRETARY FOR HEALTH

SALARIES AND EXPENSES

For expenses necessary for the Office of the Assistant Secretary for Health and for carrying out titles III, XII, XIII, and XVII of the Public Health Service Act, titles IV, VI, VII, and VIII of the Health Services and Centers Amendments of 1978, $179,966,000: *Provided*, That funds contained herein for carrying out section 1303(i) and 1304(k) of the Public Health Service Act which are unobligated on September 30, 1981, shall remain available through September 30, 1982.

HEALTH MAINTENANCE ORGANIZATION LOAN AND LOAN GUARANTEE FUND

Any amounts received by the Secretary in connection with loans and loan guarantees under title XIII of the Public Health Service Act and any other property or assets derived from operations respecting such loans and loan guarantees, including any money derived from the sale of assets, shall be available to the Secretary without fiscal year limitation for direct loans and loan guarantees as authorized by said title XIII, in addition to funds specifically appropriated for that purpose. During 1981, and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $155,000,000, and total commitments to guarantee loans shall not exceed $170,000,000 of contingent liability for loan principal.

RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED OFFICERS

For retired pay of commissioned officers, as authorized by law, and for payments under the Retired Serviceman's Family Protection Plan; Survivor Benefit Plan and payments for medical care of dependents and retired personnel under the Dependents' Medical Care Act (10 U.S.C., ch. 55), such amounts as may be required during the current fiscal year.

HEALTH CARE FINANCING ADMINISTRATION

GRANTS TO STATES FOR MEDICAID

For carrying out, except as otherwise provided, title XIX of the Social Security Act, $15,877,052,000.

For making, after June 30 the current fiscal year, payments to States under title XIX of the Social Security Act, for the last three months of the current fiscal year; and for making after July 31 of the current fiscal year, payments for the first quarter of the succeeding fiscal year; such sums as may be necessary, the obligations incurred and the expenditures made thereunder for payments under such title to be charged to the subsequent appropriation therefor for the current or succeeding fiscal year.

In the administration of title XIX of the Social Security Act, payments to a State under such title for any quarter in the period beginning July 1 of the prior year and ending September 30 of the current year may be made with respect to a State plan approved under such title prior to or during such period, but no such payment shall be made with respect to any plan for any quarter prior to the quarter in which a subsequently approved plan was submitted.

Such amounts as may be necessary from this appropriation shall be available for grants to States for any period in the prior fiscal year subsequent to June 30 of that year. No payment shall be made from this appropriation to reimburse State or local expenditures made prior to October 1, 1978 unless a request for reimbursement had been officially transmitted to the Federal Government by the State within two years after the fiscal year in which the expenditure occurred.

PAYMENTS TO HEALTH CARE TRUST FUNDS

For payment to the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as provided under section 217(g), 229(b), 1168 and 1844 of the Social Security Act, and sections 103 (c) and 111(d) of the Social Security Amendments of 1965, $9,577,120,000.

PROGRAM MANAGEMENT

For carrying out, except as otherwise provided, titles XI, XVIII, and XIX of the Social Security Act, and sections 1526 and 1533 (d) of the Public Health Service Act, $123,872,000, together with not to exceed $885,140,000, to be transferred to this appropriation as authorized by section 201(g)(1) of the Social Security Act, from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds referred to therein: *Provided*, That such amounts as are required shall be available to pay travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands to reconsideration interviews and to proceedings before administrative law judges under title XVIII of the Social Security Act: *Provided further*, That $10,000,000 of the foregoing amount shall be apportioned for use pursuant to section 3679 of the Revised Statutes (31 U.S.C. 665), only to the extent necessary to process workloads not anticipated in the budget estimates and to meet mandatory increases in costs of agencies or organizations with which agreements have been made to participate in the administration of title XVIII and after maximum absorption of such costs within the remainder of the existing limitation has been achieved: *Provided further*, That none of the funds appropriated under this paragraph shall be allotted or otherwise awarded to any Professional Standards Review Organization which the Secretary of the Department of Health and Human Services has determined should be terminated from the Professional Standards Review Program because of its inability to effectively or efficiently discharge its responsibilities under the Social Security Act.

SOCIAL SECURITY ADMINISTRATION

PAYMENTS TO SOCIAL SECURITY TRUST FUNDS

For payment to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, as provided under sections 201(g)(1), 217(g), 228(g), 229(b), 702, and 1131(b)(2) of the Social Security Act, $672,225,000.

SPECIAL BENEFITS FOR DISABLED COAL MINERS

For carrying out title IV of the Federal Mine Safety and Health Act of 1977, including the payment of travel expenses either on an actual cost or commuted basis, to an individual, for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands, to reconsideration interviews and to proceedings before administrative law judges, $1,097,751,000: *Provided*, That after July 31, such amounts for benefit payments as may be necessary may be charged to the subsequent year appropriation.

SUPPLEMENTAL SECURITY INCOME PROGRAM

For carrying out the Supplemental Security Income program under title XVI of the Social Security Act, section 401 of Public Law 92-603, section 212 of Public Law 93-66, as amended, and section 405 of Public Law 95-216, including payment to the social security trust funds for administrative expenses incurred pursuant to section 201(g)(1) of the Social Security Act, $7,005,117,000, to remain available until expended: *Provided*, That for carrying out these activities after July 31, such sums as may be necessary shall be available, the obligations and expenditures therefor to be charged to the appropriation for the succeeding fiscal year: *Provided further*, That any portion of the funds provided to a State in the current fiscal year and not obligated by the State during that year shall be returned to the Treasury.

ASSISTANCE PAYMENTS PROGRAM

For carrying out, except as otherwise provided, titles I, IV, X, XI, X.V, and XVI of the Social Security Act, and the Act of July 5, 1960 (24 U.S.C., ch. 9), $8,145,689,000, to remain available until expended.

For making, after June 30 of the current fiscal year, payments to States under titles I, IV, X, XIV, and XVI, respectively, of the Social Security Act for the last three months of the current fiscal year and for making after July 31 of the current fiscal year payments for the first quarter of the succeeding fiscal year such sums as may be necessary, the obligations incurred and the expenditures made thereunder for payments under each of such titles to be charged to the subsequent appropriations therefor for the current or succeeding fiscal year. No payment shall be made from this appropriation to reimburse State or local expenditures made prior to October 1, 1978 unless a request for reimbursement had been officially transmitted to the Federal Government within two years after the fiscal year in which the expenditure occurred.

LOW INCOME ENERGY ASSISTANCE

For expenses necessary to carry out a program of energy assistance for low income households as authorized under the Economic Opportunity Act, of 1964, $1,800,000,000 including $1,776,000,000 for special energy allowance grants to States or Territories, $20,000,000 which shall be transferred to the Community Services Administration for energy assistance to migrants and native Americans and $4,000,000 for Social Security administrative costs: *Provided*, That none of the funds appropriated in this paragraph shall be used to provide assistance either in cash or in kind to any household during fiscal year 1981 which exceeds a value of $500.

REFUGEE ASSISTANCE

For expenses necessary to assist in the domestic resettlement of recent immigrants to the United States as authorized under the Refugee Act of 1980, the Immigration and Nationality Act or the International Security Act, $690,457,000, to remain available until September 30, 1982.

LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, not more than $2,660,850,000 may be expended as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided*, That such amounts as are required shall be available to pay travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, to reconsideration interviews and to proceedings before administrative law judges under titles II, XVI, and XVIII of the Social Security Act: *Provided further*, That $50,000,000 of the foregoing amount shall be apportioned for use pursuant to section 3679 of the Revised Statutes

(31 U.S.C. 665), only to the extent necessary to process workloads not anticipated in the budget estimates and to meet mandatory increases in costs of agencies or organizations with which agreements have been made to participate in the administration of titles XVI and XVIII and section 221 of the Social Security Act, and after maximum absorption of such costs within the remainder of the existing limitation has been achieved: *Provided further*, That $13,500,000 authorized herein shall be available only for acquisition of sites, construction, renovation, and equipment of facilities and for payments of principal, interest, taxes and any other obligations under contracts entered into pursuant to the Public Buildings Purchase Contract Act of 1954 and the Public Building Amendments of 1972, and shall remain available until expended.

ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT SERVICES

GRANTS TO STATES FOR SOCIAL AND CHILD WELFARE SERVICES

For carrying out activities authorized by sections 420, 1110, and 2001 of the Social Security Act, $3,154,650,000, of which $163,550,000 shall be for child welfare services authorized by section 420, and of which not to exceed $75,000,000 may be used for training authorized by section 2001.

For making, after June 30 of the current fiscal year, payments to States authorized by section 2001 of the Social Security Act, for the last three months of the current fiscal year, and for making after July 31 of the current fiscal year, payments for the first quarter of the succeeding fiscal year; such sums as may be necessary, the obligations incurred and the expenditures made thereunder to be charged to the subsequent appropriations therefor for the current or succeeding fiscal year. No payment shall be made from this appropriation to reimburse State or local expenditures made prior to October 1978 unless a request for reimbursement had been officially transmitted to the Federal Government by the State within two years after the fiscal year in which the expenditure occurred.

HUMAN DEVELOPMENT SERVICES

For carrying out except as otherwise provided, sections 426, 1110, and 1115 of the Social Security Act, the Older Americans Act of 1965, as amended, the Child Abuse Prevention and Treatment Act, title II of Public Law 95-266 (Adoption Opportunities), the Runaway Youth Act, the Community Services Act of 1974, as amended, sections 106, 107, and 306 of the Comprehensive Employment and Training Act of 1973, and the Developmental Disabilities Services and Facilities Construction Act, as amended, $1,725,533,000, of which $6,000,000 shall be available for title VI of the Older Americans Act of 1965 as amended, $43,181,000 shall be for grants under part C of the Developmental Disabilities Services and Facilities Construction Act, $7,500,000 shall be for section 113 of such Act, and $3,000,000 to remain available until expended shall be for the White House Conference on Aging.

WORK INCENTIVES

For carrying out a work incentive program, as authorized by part C of title IV of the Social Security Act, including registration of individuals for such program, and for related child care and other supportive services, as authorized by section 402(a)(19)(G) of the Act, including transfer to the Secretary of Labor, as authorized by section 431 of the Act, $365,000,000 which shall be the maximum amount available for transfer to the Secretary of Labor and to which the States may become entitled pursuant to section 403(d) of such Act, for these purposes.

DEPARTMENTAL MANAGEMENT

GENERAL DEPARTMENTAL MANAGEMENT

For expenses not otherwise provided, necessary for general departmental management, including hire of six medium sedans, $126,468,000 together with not to exceed $8,000,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from any one or all of the trust funds referred to therein.

OFFICE OF THE INSPECTOR GENERAL

For expenses necessary for the Office of the Inspector General, $30,735,000, together with not to exceed $6,000,000 to be transferred and expended as authorized by Section 201(g)(1) of the Social Security Act from any one or all of the trust funds referred to therein. For making payments to States for Medicaid State fraud control units under Sections 1903(a)(6) and 1903(a)(7) of the Social Security Act for fiscal year 1981, $22,310,000; and for the fourth quarter of fiscal year 1980 and, after June 30, 1981, for the first quarter of fiscal year 1982, such sums as may be necessary, to be charged to the subsequent appropriation therefore for fiscal year 1981 or 1982. Funds provided for making payments for the first quarter of fiscal year 1981, shall be available for payments during the last quarter of fiscal year 1980.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, $17,920,000, together with not to exceed $2,350,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from any one or all of the trust funds referred to therein.

POLICY RESEARCH

For carrying out, to the extent not otherwise provided, research studies under section 1110 of the Social Security Act, $22,700,000.

GENERAL PROVISIONS

SEC. 201. None of the funds appropriated by this title for grants-in-aid of State agencies, to cover, in whole or in part, the cost of operation of said agencies, including the salaries and expenses of officers and employees of said agencies, shall be withheld from the said agencies of any State which have established by legislative enactment and have in operation a merit system and classification and compensation plan covering the selection, tenure in office, and compensation of their employees, because of any disapproval of their personnel or the manner of their selection by the agencies of the said States, or the rates of pay of said officers or

SEC. 202. None of the funds provided herein shall be used to pay any recipient of a grant for the conduct of research an amount equal to as much as the entire cost of such research.

SEC. 203. None of the funds contained in this title shall be available for additional permanent positions in the Washington area if the total authorized positions in the Washington area is allowed to exceed the proportion existing at the close of fiscal year 1966.

SEC. 204. Appropriations in this Act for the Health Services Administration, the National Institutes of Health, the Center for Disease Control, the Alcohol, Drug Abuse, and Mental Health Administration, the Health Resources Administration, the Office of the Assistant Secretary for Health, the Health Care Financing Administration, and Departmental Management shall be available for expenses for active commissioned officers in the Public Health Service Reserve Corps and for not to exceed two thousand eight hundred commissioned officers in the Regular Corps; expenses incident to the dissemination of health information in foreign countries through exhibits and other appropriate means; advances of funds for compensation, travel, and subsistence expenses (or per diem in lieu thereof) for persons coming from abroad to participate in health or scientific activities of the Department pursuant to law; expenses of primary and secondary schooling of dependents in foreign countries, of Public Health Service commissioned officers stationed in foreign countries, at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools available in the locality are unable to provide adequately for the education of such dependents, and for the transportation of such dependents, between such schools and their places of residence when the schools are not accessible to such dependents by regular means of transportation; expenses for medical care for civilian and commissioned employees of the Public Health Service and their dependents, assigned abroad on a permanent basis in accordance with such regulations as the Secretary may provide; rental or lease of living quarters (for periods not exceeding 5 years), and provision of heat, fuel, and light and maintenance, improvement, and repair of such quarters, and advance payments therefor, for civilian officers, and employees of the Public Health Service who are United States citizens and who have a permanent station in a foreign country, purchase, erection, and maintenance of temporary or portable structures; and for the payment of compensation to consultants or individual scientists appointed for limited periods of time pursuant to section 207(f) or section 207(g) of the Public Health Service Act, at rates established by the Assistant Secretary for Health, or the Secretary where such action is required by statute, not to exceed the per diem rate equivalent to the rate for GS-18; not to exceed $9,500 for official reception and representation expenses related to any health agency of the Department when specifically approved by the Assistant Secretary for Health.

SEC. 205. None of the funds provided by this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

SEC. 206. Funds advanced to the National Institutes of Health Management Fund from appropriations in this Act shall be available for the expenses of sharing medical care facilities and resources pursuant to section 326 of the Public Health Service Act.

SEC. 207. Funds appropriated to the Department of Health and Human Services under title II may not be used to pay the compensation of experts or consultants (other than full-time employees) or organizations thereof, or to procure by contract the services of experts or consultants or organizations thereof, in excess of $110,000,000 during fiscal year 1981. Expenditures for all consultant services in the fourth quarter of fiscal year 1981 may not exceed 30 per centum of the total annual fiscal year 1981 expenditure for such consultant services.

This title may be cited as the "Department of Health and Human Services Appropriation Act, 1981."

TITLE III—DEPARTMENT OF EDUCATION

ELEMENTARY AND SECONDARY EDUCATION

For carrying out, to the extent not otherwise provided, title I, parts A and B ($3,514,772,000), title IV, part C, title V, part B and title VII of the Elementary and Secondary Education Act; Public Law 92-506; and sections 1524 and 1525 of the Education Amendments of 1978, $3,838,135,000: *Provided*, That of the amounts appropriated above the following amounts shall become available on July 1, 1981, and shall remain available until September 30, 1982; title I, parts A and B

($3,514,772,000 of which $145,000,000 shall be for the purpose of section 117), title IV, part C ($91,400,000 and any reductions required thereby shall be proportionate among the States), and title V, part B ($51,000,000) of the Elementary and Secondary Education Act.

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), $740,000,000 of which $75,000,000 shall be for payments under section 6 and $665,000,000 shall be for entitlements under sections 2 and 3 in accordance with subsections 5(c)(1) and (2) of said Act: *Provided*, That entitlements under section 3(b)(1) and (2) of that title shall be limited to payments made in accordance with the schedule described in section 5(c)(1) and entitlements under section 3(b)(3) of that title shall be limited to payments in accordance with the schedule described in sections 5(c)(1) and 5(c)(2)(A) of that title. The limitations in this Act shall not operate under the last two sentences of section 5(c) of the Act of September 30, 1950, to prevent the allocations and payments under section 5(c)(2)(A) provided for in this Act: *Provided further*, That the total amount paid with respect to entitlements under section 3(a) attributable to children who reside on, or reside with parents employed on, property which is described in section 403(1)(C) of said Act shall not exceed the amounts paid under that section in fiscal year 1980, and any reductions required thereby shall be derived by proportionately reducing the payments attributable to such children applied for by all local educational agencies under section 3(a): *Provided further*, That the provisions of section 5(e) shall not apply to this appropriation: *Provided further*, That funds appropriated under Public Law 94-303 for fiscal year 1976 payments under subparagraphs (A), (B), (C) and (D) of section 305 of the Education Amendments of 1974 remaining available after all claims have been paid shall be available for payments under section 7 of said Act: *Provided further*, That no payments shall be made under section 7 of said Act to any local educational agency whose need for assistance under that section falls to exceed the lesser of $10,000 or five per centum of the district's current operating expenditures during the fiscal year preceding the one in which the disaster occurred: *Provided further*, That none of the amounts appropriated herein shall be available for payments under the second paragraph (2) of section 305(a) of the Education Amendments of 1974.

For carrying out the Act of September 23, 1950, as amended (20 U.S.C. ch. 19), $50,000,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act: *Provided*, That with the exception of up to $25,000,000 for section 10 and up to $22,000,000 for section 14(a) and (b), none of the funds contained herein for providing school facilities shall be available to pay for any other section of the Act of September 23, 1950, until payment has been made of 100 per centum of the amounts payable under sections 5 and 14(c): *Provided further*, That, notwithstanding section 421A(c)(2)(A) of the General Education Provisions Act, the Secretary of Education is authorized to approve applications for funds to increase school facilities in communities located near the Trident Support Site, Bangor, Washington, on such terms and conditions as the Secretary may reasonably require without regard to any provision in law: *Provided further*, That notwithstanding section 421A(c)(2)(A) of the General Education Provisions Act, The Secretary of Education is authorized to approve applications for funds to increase school facilities in Bryan County, Georgia, on such terms and conditions as the Secretary may reasonably require without regard to any provision in law.

EQUAL EDUCATIONAL OPPORTUNITIES

For carrying out title IV of the Civil Rights Act of 1964, the Emergency School Aid Act, and title IX, part C of the Elementary and Secondary Education Act of 1965, $292,008,000: *Provided*, That the provisions of section 604(b)(2) of the Emergency School Aid Act relating to the reservation of funds shall not apply to sums appropriated under this Act.

LIBRARIES AND LEARNING RESOURCES

For carrying out, to the extent not otherwise provided, titles I and III of the Library Services and Construction Act (20 U.S.C., ch. 16); title II of the Higher Education Act; and title III, part A and title IV, part B of the Elementary and Secondary Education Act, $263,655,000: *Provided*, That $171,000,000 for title IV, part B of the Elementary and Secondary Education Act shall become available for obligation on July 1, 1981, and shall remain available until September 30, 1982.

EDUCATION FOR THE HANDICAPPED

For carrying out the Education of the Handicapped Act, $1,102,050,000, of which $922,000,000 for part B and $25,000,000 for section 619 shall become available for obligation on July 1, 1981 and shall remain available until September 30, 1982.

REHABILITATION SERVICES AND HANDICAPPED RESEARCH

For carrying out, to the extent not otherwise provided, the Rehabilitation Act of 1973, as amended including section 130, and the International Health Research Act of 1960, $965,875,000, of which $845,750,000 shall be for activities under section 100(b)(1), $8,509,000 shall be for activities under section 100(b)(3), and $18,000,000 shall be for activities under section 711 of the Rehabilitation Act of 1973.

VOCATIONAL AND ADULT EDUCATION

For carrying out, to the extent not otherwise provided, the Vocational Education Act of 1963, as amended, the Adult Education Act, the Career Education Incentive Act, and title III, part E and title VIII, section 804 of the Elementary and Secondary Education Act, $925,497,000 of which $10,000,000 for part B, subpart 2 of the Vocational Education Act shall remain available until expended and $896,880,000 for the Vocational Education Act and the Adult Education Act shall become available for obligation on July 1, 1981, and shall remain available until September 30, 1982: *Provided*, That $6,500,000 for State advisory councils under section 105 of the Vocational Education Act shall be used to provide to each State, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Trust Territory of the Pacific Islands, and Northern Mariana Islands an amount equal to the amount it received in the previous fiscal year.

STUDENT FINANCIAL ASSISTANCE

For carrying out subparts 1 ($2,159,000,000), 2 ($370,000,000), and 3 ($76,750,000) of part A, and parts C ($550,000,000) and E ($200,800,000) of title IV of the Higher Education Act, $3,356,550,000, which shall remain available until September 30, 1982: *Provided*, That amounts appropriated for Basic Opportunity Grants shall be available first to meet any insufficiencies in entitlements resulting from the payment schedule for Basic Opportunity Grants published by the Secretary of Education during the prior fiscal year: *Provided further*, That pursuant to section 411(b)(4)(A) of the Higher Education Act, amounts appropriated herein for Basic Opportunity Grants which exceed the amounts required to meet the payment schedule published for any fiscal year by 15 per centum or less shall be carried forward and merged with amounts appropriated the next fiscal year.

STUDENT LOAN INSURANCE

For necessary expenses under title IV, part B of the Higher Education Act $1,390,990,000, to remain available until expended.

HIGHER AND CONTINUING EDUCATION

For carrying out title I-A, III, VIII, IX and XI and sections 417, 420, 745, and 1203 of the Higher Education Act; the Mutual Educational and Cultural Exchange Act of 1961; title VI of the National Defense Education Act; the National Science Foundation Act of 1950, section 3(a)(1); and title III, Part G of the Elementary and Secondary Education Act, $407,689,000 including not to exceed $10,000,000 for section 801(b) of the Higher Education Act: *Provided*, That $26,000,000 made available for interest subsidy grants under section 745 shall remain available until expended: *Provided further*, That no State shall receive less under title I-A of the Higher Education Act than it received for the fiscal year 1980.

HIGHER EDUCATION FACILITIES LOAN AND INSURANCE

For the payment of such insufficiencies as may be required by the trustee on account of outstanding beneficial interest or participations in assets of the Department of Education authorized by the Department of Health, Education, and Welfare Appropriation Act 1968, to be issued pursuant to section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(c)), $1,656,000 to remain available until expended, and the Secretary is hereby authorized to make such expenditures, within the limits of funds available in Higher Education Facilities Loan and Insurance, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitation as provided by section 104 of the Government Corporation Control Act (31 U.S.C. 849) as may be necessary in carrying out the program set forth in the budget for the current fiscal year: *Provided*, That $25,000,000 is hereby released from amounts available in the Higher Education Loan Fund for Graduate Facilities. Notwithstanding the campus loan limits contained in the regulations, the Secretary may, in cases of special and critical need, provide funds in excess of the campus loan limit.

COLLEGE HOUSING LOANS

The aggregate amount of commitments for loans made from the fund established pursuant to title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749), for the fiscal year 1981 shall not exceed the total of loan repayments and other income available during such period, less operating costs. For the payment of such insufficiencies as may be required by the Government National Mortgage Association, as trustee, on account of outstanding beneficial interests or participations issued pursuant to section 302(c) of the Federal National Mortgage Association Charter Act, amended (12 U.S.C. 1717), in assets of the College Housing Loan Fund as authorized by the Independent Offices and Departments of Housing and Urban Development Appropriation Act, 1968 (81 Stat. 341, 357), $14,271,000, to remain available until expended. During fiscal year 1981 and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $110,000,000.

SCHOOL IMPROVEMENT

For carrying out the General Education Provisions Act, to the extent not otherwise provided, title II, title III, parts A, B, C, and L, and title IX parts A and E of the Elementary and Secondary Education Act; title V, part A and section 532 of the Higher Education Act; the Alcohol and Drug Abuse Education Act; the Alcohol and Drug Abuse Education Act; part B of the Headstart-Follow Through Act; section 3(a)(1) of the National Science Foundation Act of 1950, as amended; and section 303(c)(2) of the Comprehensive

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Employment and Training Act of 1973, as amended, $166,973,000.

SPECIAL INSTITUTIONS

AMERICAN PRINTING HOUSE FOR THE BLIND

For carrying out the Act of March 3, 1879, as amended (20 U.S.C. 101–105), $4,921,000.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

For carrying out the National Technical Institute for the Deaf Act (20 U.S.C. 681, et seq.), $20,305,000.

GALLAUDET COLLEGE

For carrying out the Model Secondary School for the Deaf Act (80 Stat. 1027) and for the partial support of Gallaudet College authorized by the Act of June 18, 1954 (68 Stat. 265), $49,768,000, of which $6,594,000 shall be for construction and shall remain available until expended. If requested by the college, such construction shall be supervised by the General Services Administration.

HOWARD UNIVERSITY

For the partial support of Howard University, $133,983,000, of which $10,240,000 shall be for construction and shall remain available until expended. If requested by the University, such construction shall be supervised by the General Services Administration.

OFFICE OF CIVIL RIGHTS

SALARIES AND EXPENSES

For expenses necessary for the Office of Civil Rights, as authorized by section 203 of the Department of Education Organization Act and for the Architectural and Transportation Barriers Compliance Board as authorized by Section 502 of the Rehabilitation Act of 1973, as amended, $49,215,000.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of 5 medium sedans, $238,882,000. During the current fiscal year up to $10,500,000 in collection of Federally insured defaulted loans may be transferred to the Salaries and Expenses account for the payment of related collection activities; together with not to exceed $600,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from any one or all of the trust funds referred to therein.

EDUCATIONAL STATISTICS

For necessary expenses to carry out section 406 of the General Education Provisions Act, $9,947,000.

RESEARCH AND RELATED ACTIVITIES

For necessary expenses to carry out sections 404 and 405 of the General Education Provisions Act, $87,514,000.

EDUCATIONAL, RESEARCH, AND TRAINING ACTIVITIES OVERSEAS (SPECIAL FOREIGN CURRENCY PROGRAM)

For payments in foreign currencies which the Treasury Department determines to be in excess to the normal requirements of the United States, for necessary expenses of the Department of Education, as authorized by law, $3,000,000 to remain available until expended. This appropriation shall be available, in addition to other appropriations to such agency.

GENERAL PROVISIONS

SEC. 301. None of the funds appropriated by this title for grants-in-aid of State agencies to cover, in whole or in part, the cost of operation of said agencies, including the salaries and expenses of officers and employees of said agencies, shall be withheld from the said agencies of any State which have established by legislative enactment and have in operation a merit system and classification and compensation plan covering the selection, tenure in office, and compensation of their employees, because of any disapproval of their personnel or the manner of their selection by the agencies of the said States, or the rates of pay of said officers or employees.

SEC. 302. Funds appropriated in this Act to the American Printing House for the Blind, Howard University, the National Technical Institute for the Deaf, and Gallaudet College shall be subject to audit by the Secretary of Education.

SEC. 303. None of the funds provided herein shall be used to pay any recipient of a grant for the conduct of research an amount equal to as much as the entire cost of such research.

SEC. 304. No part of the funds contained in this title may be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to force on account of race, creed or color the abolishment of any school so desegregated; or to force the transfer or assignment of any student attending any elementary or secondary school so desegregated to or from a particular school over the protest of his or her parents or parent.

SEC. 305. (a) No part of the funds contained in this title shall be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed, or color the transfer of students to or from a particular school so desegregated as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

(b) No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 306. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing, or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 307. Funds appropriated to the Department of Education under Title III may not be used to pay the compensation of experts or consultants (other than full-time employees) or organizations thereof, or to procure by contract, the services of experts or consultants, or organizations thereof, in excess of $35,000,000 during fiscal year 1981. Expenditures for all consultant services in the fourth quarter of fiscal year 1981 may not exceed 30 per centum of the total annual fiscal year 1981 expenditure for such consultant services.

SEC. 308. The total full-time equivalent employment of the Department of Education during fiscal year 1981 shall not exceed 7500.

This title may be cited as the "Department of Education Appropriation Act, 1981."

TITLE IV—RELATED AGENCIES

ACTION

OPERATING EXPENSES, DOMESTIC PROGRAMS

For expenses necessary for Action to carry out the provisions of the Domestic Volunteer Service Act of 1973, $158,047,000.

COMMUNITY SERVICES ADMINISTRATION

COMMUNITY SERVICES PROGRAM

For expenses of the Community Services Administration $537,800,000 of which $44,500,000 for the purpose of carrying out title VII, part A, of the Economic Opportunity Act of 1964 shall be available until September 30, 1982.

COMMUNITY DEVELOPMENT CREDIT UNIONS REVOLVING FUND

During 1981 and within the resources and authority available, gross obligations for the amount of direct loans shall not exceed $1,000,000.

RURAL DEVELOPMENT LOAN FUND

During 1981 and within the resources and authority available, gross obligations for the amount of direct loans shall not exceed $8,000,000. During 1981, total commitments to guarantee loans shall not exceed $2,000,000 of contingent liability for loan principal.

CORPORATION FOR PUBLIC BROADCASTING

PUBLIC BROADCASTING FUND

For payment to the Corporation for Public Broadcasting, as authorized by the Public Telecommunications Financing Act of 1978, for the fiscal year 1983, $172,000,000: *Provided*, That these funds shall not be used to pay for receptions, parties, and similar forms of entertainment for government officials or employees: *Provided further*, That these funds shall not be available or used to aid or support any program or activity excluding from participation in, denying the benefits of, or discriminating against any person on the basis of race, color, national origin, religion, or sex.

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service to carry out the functions vested in it by the Labor Management Relations Act, 1947 (29 U.S.C. 171–180, 182), including expenses of the Labor-Management Panel and boards of inquiry appointed by the President; hire of passenger motor vehicles; and rental of conference rooms in the District of Columbia; and for expenses necessary pursuant to Public Law 93–360 for mandatory mediation in health care industry negotiation disputes, and for convening factfinding boards of inquiry appointed by the Director in the health care industry; and for expenses necessary for mediation or complaints under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), and for expenses necessary for the Labor Management Cooperation Act of 1978 (29 U.S.C. 125a), $25,919,000.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Federal Mine Safety and Health Review Commission, $4,617,000.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

SALARIES AND EXPENSES

For necessary expenses of the National Commission on Libraries and Information Science, established by the Act of July 20, 1970 (Public Law 91–345), $691,000.

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management

Relations Act, 1947, as amended (29 U.S.C. 141–167), and other laws, $116,635,000: *Provided*, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 per centum of the water stored or supplied thereby is used for farming purposes.

NATIONAL MEDIATION BOARD

SALARIES AND EXPENSES

For expenses necessary for carrying out the provisions of the Railway Labor Act, as amended (45 U.S.C. 151–188), including emergency boards appointed by the President, $4,780,000.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Occupational Safety and Health Review Commission, $7,860,000.

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE

SALARIES AND EXPENSES

For expenses necessary for the President's Commission to conduct a study of ethical problems in medicine and biomedical and behavioral research as authorized by 42 U.S.C. 300V, including costs of contracts, authorized by section 1803(c) of the Public Health Service Act, $1,500,000.

RAILROAD RETIREMENT BOARD

FEDERAL PAYMENT TO RAILROAD RETIREMENT ACCOUNT

For payment to the Railroad Retirement Account, as provided under sections 15(b) and 15(d) of the Railroad Retirement Act of 1974, $350,000,000, which shall be the maximum amount reimbursable for the subsidy for fiscal year 1981 costs.

LIMITATION ON ADMINISTRATION

For expenses necessary for the Railroad Retirement Board, $36,750,000, to be derived from the railroad retirement accounts: *Provided*, That $500,000 of the foregoing amount shall be apportioned for use pursuant to section 3679 of the Revised Statutes, as amended (31 U.S.C. 665), only to the extent necessary to process workloads not anticipated in the budget estimates and after maximum absorption of the costs of such workloads within the remainder of the foregoing limitation has been achieved: *Provided further*, That notwithstanding any other provision in law, no portion of this limitation shall be available for payments of standard level user charges pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. (j); 45 U.S.C. 28a–r).

SOLDIERS' AND AIRMEN'S HOME

OPERATION AND MAINTENANCE

For maintenance and operation of the United States Soldiers' and Airmen's Home, to be paid from the Soldiers' and Airmen's Home permanent fund, $20,326,000: *Provided*, That this appropriation shall not be available for the payment of hospitalization of members of the Home in United States Army hospitals at rates in excess of those prescribed by the Secretary of the Army upon recommendation of the Board of Commissioners of the Home and the Surgeon General of the Army.

TITLE V—GENERAL PROVISIONS

SEC. 501. Appropriations contained in this Act, available for salaries and expenses, shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18.

SEC. 502. Appropriations contained in this Act, available for salaries and expenses, shall be available for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901–5902).

SEC. 503. Appropriations contained in this Act, available for salaries and expenses shall be available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities.

SEC. 504. No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after August 1, 1969, which involves the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control of an institution of higher education, to require or prevent the availability of certain curricula, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution.

SEC. 505. The Secretaries of Labor, Education, and Health and Human Services are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act: *Provided*, That such transferred balances are used for the same purpose, and for the same periods of time, for which they were originally appropriated.

SEC. 506. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 507. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress.

SEC. 508. The Secretaries of Labor, Education, and Health and Human Services are each authorized to make available not to exceed $7,500 from funds available for salaries and expenses under titles I, II, and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and representation expenses not to exceed $2,500 from funds available for "Salaries and expenses, Federal Mediation and Conciliation Service"; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed $2,500 from funds available for "Salaries and expenses, National Mediation Board".

SEC. 509. None of the funds appropriated by this Act shall be used to pay for any research program or project or any program, project, or course which is of an experimental nature, or any other activity involving human participants, which is determined by the Secretary or a court of competent jurisdiction to present a danger to the physical, mental, or emotional well-being of a participant or subject of such program, project, or course, without the written, informed consent of each participant or subject, or his parents or legal guardian, if such participant or subject is under eighteen years of age. The Secretary shall adopt appropriate regulations respecting this section.

This Act may be cited as the "Department of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1981".

The CHAIRMAN. Are there any points of order against any part of the bill? The Chair hears none.

Mr. NATCHER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will now make a unanimous-consent request that all debate on this bill and all amendments thereto close at 7 p.m. on the clock.

Mr. Chairman, as I briefly mentioned at the time of general debate when I made my first statement, we started hearings on this bill back in January. We concluded the hearings during the latter part of April. All of the members on our subcommittee attended these hearings, Mr. Chairman. We held hearings at night. We made up our mind we were going to bring this bill to the House of Representatives under the President's budget and the congressional budget resolution which we have done. The bill is $5,654,000 under the President's budget request.

Mr. Chairman, from time to time, not only this year, but last year and the year before—I have served on the Committee on Appropriations for 26 years—my friend, the gentleman from Massachusetts (Mr. CONTE) will tell you this is correct, Mr. Chairman, from time to time we bring our bills out here, we consume a lot of time, and we simply wear the House out.

Mr. Chairman, we have carefully considered this bill. Most of the issues have been thoroughly and repeatedly discussed in this House. This is a good bill and, Mr. Chairman, at this time I ask unanimous consent that all debate on this conclude at 7 p.m. on the clock and also on all amendments and amendments thereto.

Mr. CONTE. Mr. Chairman, reserving the right to object and I shall not object, I agree with the chairman. He and I have discussed this at great length. Most of the amendments that will be offered have been offered in the past and have been debated in the past, time and time again.

Mr. Chairman, the time specified is 7 o'clock, a time certain on this bill and any amendments thereto?

Mr. NATCHER. Mr. Chairman, the gentleman is exactly right.

Mr. Chairman, as one or two of our friends have pointed out to me in the last 2 or 3 days, we have had amendments offered to this bill, we have had certain matters discussed year after year. When we reach one of those points, Mr. Chairman, we are going to be reason-

able, we are going to be fair, but we are going to ask that debate be limited on those amendments.

Mr. CONTE. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. BAUMAN. Mr. Chairman, I reserve the right to object.

Mr. Chairman, I would pose a question to the gentleman from Kentucky. There will be no intention on the part of the gentleman from Kentucky should this request be granted, to unduly hamper the rights of any Member to offer amendments germane to the bill, taking into account the fact that 7 o'clock would impose upon us an overall limitation on how many amendments could be debated?

Mr. NATCHER. If the gentleman will yield to me, Mr. Chairman, I want the gentleman to know that he has my word what the gentleman has just stated to the House that will take place. There will be no effort, no attempt to limit any Member as far as a legitimate amendment is concerned. We are not going to try to shut anyone off. We are going to be reasonable and we are going to be fair. I think the gentleman from Maryland, my friend, will say when we conclude this bill that we have done just exactly what we explained we would do.

Mr. BAUMAN. Further reserving the right to object, Mr. Chairman, I just want to state for the RECORD that the gentleman from Kentucky has been very kind to discuss this matter with me and with others on our side who are concerned about not only a limitation on time for amendments but the right of all Members to offer amendments and to be protected.

□ 1130

I would only note at this point that the gratuitous slurs by the majority leader this morning about the minority holding up the proceedings of the House being a reason for a lameduck session are proven today to be false. We are not in any way, on the minority ride, trying to block the progress of this House. We have had votes without any rollcalls on more than 40 suspensions in the last few weeks, a sure sign of cooperation.

This is another example, I think, of the minority wishing to cooperate with the majority; and the gentleman from Kentucky, being one of the fairest Members of the House, I feel quite sure will honor his commitment to allow all Members to have their say.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. OBEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I simply want to take this time to inform the Members that this bill does contain a number of items they ought to know about, which control fraud, abuse, and waste in programs under the operation of the departments in this bill.

In the Department of Health Services, for instance, this bill provides funding for 25 new audit positions, and special projects coordinated by the Inspector General's Office for investigations of waste, fraud, and abuse in Federal programs under this legislation. In addition, the bill makes it possible for the new State medicaid fraud control units to continue their investigations of fraud with the same level of Federal involvement we had this year. These fraud control units are just now getting some cases ready for trial in my State, for instance, and it is important that the investigations do not lose their momentum. Also at HHS, there have been some cases of waste and mismanagement which have been brought to our attention and which are addressed in this bill.

A GAO report, for instance, which studied the cancer control program at the National Cancer Institute came to the conclusion that significant problems existed in its operation. I think the report leaves little doubt that those involved in decisionmaking in cancer control have not had a clear idea of what they specifically expected to achieve with their $70 million expenditure. Consequently, this bill transfers $5 million from the cancer control operation at NCI to other parts of the Cancer Institute, and adds an additional $11 million for areas within NCI where we have been getting good results. Especially in something as critical as cancer research, we need to see to it that each and every dollar is spent wisely.

In addition, this bill includes a $1 million reduction in the budget for the Community Services Administration. This cut was made in the agency's administration accounts, and is designed to insure that CSA makes some improvements in management of programs. Very frankly, while most of the local community action programs across the country have made progress over the past few years in serving low income and elderly people, the Federal agency itself has some problems, especially, as the committee report indicates, in contracting and auditing, in which CSA's performance has been questionable.

I think this cut will bring to the attention of the administrators the necessity to clean up their shop in that respect.

Also, I should point out that at the Department of Labor there is an increase of more than $3 million over fiscal year 1980 for the Office of Inspector General. This office is just getting off the ground but it is intended to insure that we examine carefully programs such as CETA and other programs, which have had some rather bad publicity in the past because of waste and fraud. I suspect that we will be getting more information out of that agency as it gets into its work.

AMENDMENT OFFERED BY MR. REGULA

Mr. REGULA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REGULA: On page 57, after line 17, add a new section as follows:

SEC. 501. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

And renumber the following sections accordingly.

Mr. REGULA. Mr. Chairman, first I would like to congratulate the subcommittee for including sections 207 and 307 in this bill. The best way to put an end to abuse and waste of contracting funds is to put a spending limit on the agencies. I understand that the figures in the bill are estimates provided by the administration on the amount needed for experts and consultants in the next fiscal year.

I have added this amendment requiring public disclosure of consultant contracts to each appropriations bill we have passed this year. I believe this is absolutely necessary if we are going to continue limiting agencies' spending for experts and consultants. With more information available to us next year it should be easier for the subcommittee to arrive at a realistic figure without depending on administration estimates which we have seen are unreliable since nobody has been able to provide a final figure on the number of consultants employed by the Government.

Mr. MICHEL. Mr. Chairman, will the gentleman yield?

Mr. REGULA. I yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Chairman, I want to commend the gentleman for the initiative that he has taken on this matter, on this and the other appropriations bills that have come to the floor. It seems to me only fitting and proper that what we did for one department, we ought to be doing for all, and make it a uniform standard.

So, I commend the gentleman for offering the amendment here to our bill, and certainly have no objection to it.

Mr. REGULA. I thank the gentleman.

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. REGULA. I yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, I would like to say to the distinguished gentleman from Ohio, who is a member of the Committee on Appropriations, and one of the good members, that we have no objection on this side.

Mr. REGULA. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. REGULA).

The amendment was agreed to.

Mr. ROYBAL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take this time to express my concern about report language that was introduced in full committee, at page 112 of the committee report. I refer to that language that may be interpreted to mean that the Department of Education's Office of Civil Rights should not enforce equal educational

opportunity regulations for children who are unable to speak the English language. Knowing that the honorable gentleman from Illinois (Mr. MICHEL), who introduced this language, would not endorse the infringing of civil rights of any group of people in this great country of ours, I would point out that the proposed regulations covered in committee report language are regulations designed to protect the rights of students who come from homes where a language other than English is spoken, and not to mandate any Federal education program to local schools.

As all my colleagues know, the right to equal educational opportunities for children of limited English proficiency was unanimously upheld by the Supreme Court in the Lau against Nichols case in 1974. The Lau decision was for children of limited English proficiency what the Brown against Board of Education decision in 1954 was for the black and minority children. It was simply a guarantee of equal educational opportunity. As the Supreme Court stated, there is no equality of treatment merely by providing students with the same facilities, for students who do not understand English are effectively foreclosed from any meaningful education.

The Department of Education's proposed regulation in this area stems from this Department's ruling on the 1964 Civil Rights Act. Not only do the provisions of these regulations reflect past Federal court decisions and also past administrative policies on the part of the Department, but the proposed regulations project the rights of these students who number over 3.5 million.

The proposed regulations, however, also protect the rights of local districts. For too long local districts have had to negotiate with the Office of Civil Rights in this area without the benefit of specific and formal guidelines. By publishing proposed regulations which afford an amount of clarity, the Department is attempting to prevent arbitrary and capricious enforcement by agency bureaucrats. The clear focus of these regulations and the legal precedents make it clear that the language of the gentleman from Illinois would not be needed to obtain effective civil rights enforcement in this latter area. As we all know, to effectively protect the civil rights of all our children, factors such as identification and assessment of schools, class sizes, and class concepts have to be reviewed.

We have had to do this in matters of racial discrimination, sex discrimination, and in enforcing the rights of the handicapped.

To protect the rights of limited English-speaking children, the Department of Education proposed regulations, rightfully taking these factors into account.

I know that the gentleman from Illinois and many other Members of Congress share my concern that students of limited English proficiency be mainstreamed into regular English classrooms as soon as they are English proficient. The proposed regulations which are in clear and concise English clearly reflect this objective.

□ 1140

Mr. Chairman, we can go over the language, but I do not think it is necessary to take it paragraph by paragraph. I would like to ask the gentleman from Illinois (Mr. MICHEL) whether or not he agrees in general with this statement.

Mr. MICHEL. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Chairman, I appreciate the gentleman's yielding.

Unfortunately, on the day when we were considering my amendment in the full committee, the gentleman was not there. I regret that we could not have had whatever exchange we may have had at that time, but it is just as well for purposes of legislative history that we discuss it here on the floor.

I would have to say that the gentleman and I share the same feelings with respect to how our young people are best taught bilingually. Without going into specifics, I think from the discussions we have had we share a common ground, and I certainly did not intend by my report language here to in any way suggest that school districts ought to be permitted to violate, for example, the Civil Rights Act. By no stretch of the imagination did I intend that.

The CHAIRMAN. The time of the gentleman from California (Mr. ROYBAL) has expired.

(On request of Mr. MICHEL, and by unanimous consent, Mr. ROYBAL was allowed to proceed for 5 additional minutes.)

Mr. MICHEL. Mr. Chairman, if the gentleman will yield further, the responsibility of the Department and its Civil Rights Office is to carry out the Civil Rights Act, by investigating complaints of discrimination and taking any necessary followup action.

In any normal proceeding the first step, I believe, is to determine whether discrimination exists, and if it is found to exist, then the defendant is allowed to develop remedies to rectify the problem. Only when the defendant is uncooperative or does not develop an effective solution does the Government step in and suggest a remedy.

My problem with the Department of Education is that with these particular regulations which they have just promulgated, they have ignored the first two steps here and jumped right to the third step. It has in effect unilaterally declared that all school districts with non-English-speaking children are guilty of discrimination, have been uncooperative in developing a solution and, therefore, must have a remedy imposed upon them.

Mr. Chairman, the Association for Supervision and Curriculum Development, the American Association of School Administrators, the American Federation of Teachers, the Council of Chief State School Officers, the Council of Great City Schools, the National Association of Elementary School Principals, the National Association of Secondary School Principals, the National Association of State Boards of Education, the National Conference of State Legislatures, the National PTA, and the National School Boards Association all want to come and testify against these regulations.

Mr. ROYBAL. Mr. Chairman, if the gentleman will permit me to continue at this particular time, I will add that these are proposed regulations? That is true, is it not?

Mr. MICHEL. Yes.

Mr. ROYBAL. But we also have an equal number and perhaps a greater number of people testifying in favor of those regulations. So since they are just proposed regulations at this time, I think we must discuss the language that the gentleman is proposing which is based on proposed regulations, regulations which have not yet gone into effect, regulations which will be reviewed by the general public for comment.

What I want to know is, whether the gentleman's language precludes bilingual education from being used wherever needed in the schools of this Nation. I do not believe that is the gentleman's intent.

Mr. MICHEL. Of course not.

Mr. ROYBAL. Mr. Chairman, I believe that it is the gentleman's intent—as it is also mine—that if a youngster is not proficient in the English language and speaks only the language of the home, whether it be French, German, Vietnamese, or Spanish or whatever, that he be given the opportunity to use the language of the home as a vehicle for the learning of English, and that once he becomes proficient in the English language, that is, proficient enough to be able to keep up with his first, second, third, or whatever class it is, he will no longer be the recipient of that kind of training. Once he reaches that level, he then is on an equal basis with everyone else to proceed in the regular curriculum with all the other children.

Mr. Chairman, that is my understanding of what the gentleman intends.

Mr. MICHEL. Mr. Chairman, if the gentleman will yield further, I do not want in any way to leave the impression here that I subscribe to the Department of Education issuing a uniform set of rules, regulations, and guidelines for the teaching of English in a bilingual setting. That ought to be varied, depending upon the school district and the area of the country, and it should depend on how they best feel they can teach the English language to those who are proficient only in their native tongue.

Mr. ROYBAL. But the gentleman does agree that the language of the home, whatever it happens to be, can effectively be used as a vehicle for the learning of English?

Mr. MICHEL. Well, it naturally can be, yes.

Mr. ASHBROOK. Mr. Chairman, will my colleague yield on that point?

Mr. ROYBAL. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I thank my colleague for yielding, because I have been listening to his statement closely as this is an area in which I have great interest.

When the gentleman talks about the language of the home, I hope that my

colleague, the gentleman from California (Mr. ROYBAL), is not indicating that he thinks bilingual education programs should be used to promote the language of the home for teaching such things as mathematics, the native history of that country, plain geometry, and so forth.

Could it not be directed for intensification of the ability of that young person to speak English? Is that my colleague's interpretation?

Mr. ROYBAL. That is correct. The language of the home is to be used as a vehicle for the learning of English. Once English proficiency is reached the child is ready to learn almost anything else.

I am sure that there is not a single Member of this House, for example, who would excel in any classroom in which everyone spoke a strange foreign language. But you would have a chance if the language of your home, in this case being English, were used as a vehicle to the learning of that language.

The CHAIRMAN. The time of the gentleman from California (Mr. ROYBAL) has again expired.

(On request of Mr. CORRADA, and by unanimous consent, Mr. ROYBAL was allowed to proceed for 5 additional minutes.)

Mr. CORRADA. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Puerto Rico.

Mr. CORRADA. Mr. Chairman, I rise to associate myself with the remarks of the distinguished gentleman from California in his concern over the language adopted by the Committee on Appropriations in its report on this bill, H.R. 7998. I am in extreme disagreement with the position taken by it on page 112 toward the recently proposed regulations on bilingual education. I am further most disappointed in this attempt to take a step backward in advancement toward extending equal educational opportunity to every child in our great country.

In 1964 Congress enacted the Civil Rights Act, title VI of which prohibits discrimination under any program or activity receiving Federal financial assistance. Under this act, each Federal agency is given rulemaking authority along with the responsibility to enforce the mandate of title VI. The Department of Education has fulfilled this requirement by publishing for public comment regulations for schools enrolling limited-English proficient students. The Appropriations Committee in undercutting the Department's regulations not only attempts to interfere in the agencies statutorily designated jurisdiction, but also blatantly ignores the 1974 Supreme Court decision which upholds this interpretation of title VI as it relates to education.

In its report, the Committee on Appropriations expresses concern over regulations which prescribe requirements for staffing, teacher qualifications, and class size or composition. Yet none of these standards can be attributed uniquely to the bilingual education program—they are, indeed, more generally applicable to civil rights enforcement such as handicapped rights, sexual or racial discrimination.

The issue is, therefore, not one of regulating the bilingual education program, but more importantly one of protecting the civil rights of the minority student. It would be highly improper for Congress to place upon the Department the responsibility for compliance while withholding the tools for enforcement.

Mr. Chairman, let me underline once again that my gravest concern is for the helpless minority child who is caught in this tug of war. The bilingual education program was created to give him an equal footing in his preparation and schooling so as to be competitive in the labor market and to claim his rightful place in our productive society. You must agree that education is the cornerstone of a youngster's life and by denying the limited English proficient student this education in an understandable format we are for all intents and purposes sentencing him to a never-ending uphill battle to attain equal footing with his peers. The price of such a goal is never cheap—yet it is only by showing our support in monetary terms that the sincerity of our intentions can be determined.

I am disappointed to see the budget for bilingual education reduced by $17 million for fiscal year 1981, however, I will not dispute the wisdom of the Committee on this issue as they struggle to stay within stringent fiscal constraints. My preoccupation goes beyond budgetary details and becomes a matter of philosophical ideology.

It is my purpose to have the intent of Congress clarified to show that we are in support of the bilingual education program and that we recognize the harmful ramifications which the report language, as stated, would have upon those children of limited English-speaking ability. This is not a matter to be taken lightly nor is it one which will quickly fade, and although some of the decisions which we must make are not easy we must nevertheless have the courage to support full implementation of the Civil Rights Act.

Mr. Chairman, in its report the Committee on Appropriations expresses concern about regulations which prescribe requirements for staffing, teacher qualifications, and class size or composition. Yet none of these standards can be attributed uniquely to the bilingual education program. They are, indeed, more generally applicable to civil rights enforcement, such as the handicapped's rights and sexual or racial discrimination.

□ 1150

The issue, therefore, is not one of regulating the bilingual program but, more importantly, one of protecting the civil rights of the minority students by providing certain guidelines so that equal educational opportunity under the Lau against Nichols decision of the Supreme Court would be allowed to these children, and it would be highly improper for the Congress to place on the Department of Education the responsibility for compliance with civil rights, yet withholding the tools for enforcement of these rights for children who have language problems in the schools. I would hope definitely that we would not want to give the impression that Congress for minority children who have language problems at school and that we will support the Lau against Nichols decision as the law of the land and provide the Department of Education with the instruments to enforce these civil rights.

Mr. SIMON. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Illinois.

Mr. SIMON. Let me just add that I read a column in the New York Times by Al Shanker, the president of the American Federation of Teachers, criticizing the regulations. We checked and checked on some other criticisms, and we found that many of the criticisms were on the rough drafts of the regulations rather than the final published regulations. It could be that the regulations do need further modification, but my guess is much of the criticism is directed not toward the published regulations but toward the original rough draft.

Let me add one other factor here that I hope will be increasingly a part of bilingual education. The people in our country whose mother tongue is another language represent a great resource for teaching—young people whose mother tongue is not English—whether it is Spanish, Vietnamese, Chinese, whatever it might be. We changed the law a couple years ago to encourage more children whose mother tongue is English to get into the bilingual program. Both the children whose mother tongue is English, and those whose mother tongue is not English, would benefit. That is happening on a small scale, but we find it is a healthy thing educationally to have that integrated kind of a class, and I hope that happens a great deal more.

Mr. ROYBAL. I thank the gentleman.

● Mr. WEISS. Mr. Chairman, I would like to associate myself with the remarks of the gentleman from California, (Mr. ROYBAL).

The language in the Labor-HHS appropriations report raises serious questions about the commitment of this Congress, and this Nation to provide equal educational opportunities for all children. I believe that the report language does not accurately reflect the sense of this Congress, and obviously, not even the members of the Appropriations Committee.

The intent of Congress which has been established in policy, law, and by a court decision, could not be more clear. And Education and Labor Committee report dealing with the bilingual title of the Elementary and Secondary Education Act states that "large numbers of children of limited English proficiency have educational needs which can be met by the use of bilingual educational methods and techniques" and that "equal educational opportunity" at times requires such techniques. And the Supreme Court ruled in the 1974 case of Lau against Nichols that an equal educational opportunity was be-

ing denied when children whose language is other than English were taught in an English only classroom.

The Department of Education has recently issued proposed regulations designed to implement what has in effect been 5 years of departmental policy; policy which has led to agreements with the more than 400 school districts which enroll the majority of the Nation's limited English speaking students. These regulations are in draft form and are now subject to extensive public review and comment. Nationwide hearings are planned, including a hearing in New York City next month. To attempt to circumvent these proposed regulations now, by attaching language to an appropriations report, without hearings, without consideration, is not only foolhardy, but contrary to the deliberative process.

There are approximately 3.6 million school-age children from non-English-speaking homes who have a limited ability to speak or understand English. Two million four hundred thousand of these children are between the ages of 5 and 14. If we accept this report language without protest we may be denying these children an opportunity to receive an education, and we deny them a future.

I urge my colleagues to speak up against the report language. It simply is not the intent of the committee or this Congress to deny an equal educational opportunity to any of this Nation's children.●

Mr. BEREUTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as my colleagues may recall, last year, during the consideration of the Labor-HEW appropriations bill, this body adopted an amendment I offered which prevented HEW, now HHS, from using any of its fiscal 1980 monies for implementation of the system for hospital uniform reporting, SHUR.

I wish to bring to the attention of my colleagues developments which have occurred since that time, and then I will ask some questions of the very distinguished subcommittee chairman, the gentleman from Kentucky (Mr. NATCHER).

The language of the conference report on last year's bill with respect to the SHUR system stated:

> The conferees, therefore, direct that the Secretary not issue final regulations for the program until the Department's proposed revisions have been formally approved by the appropriate committee of each House designated by the Speaker of the House of Representatives and the majority leader of the Senate.

During floor consideration of the conference report, in response to my inquiry, the distinguished subcommittee chairman stated his expectation that the committee appointed by the Speaker would hold public hearings prior to giving its approval and that a date for implementation of the final reporting system would be up to that committee.

On March 19, 1980, the Department issued a proposed revision of the SHUR system, called the annual hospital report, AHR. It is my understanding that the Department has not yet completed its review of the comments it received in response to its notice of proposed rule making and has not as yet forwarded its final version to the House. Therefore, the Speaker has not yet appointed the appropriate committee to review the proposal as mandated by the conference report language.

I would like to ask the distinguished subcommittee chairman whether he is of the opinion that the conference report language prohibiting implementation of final regulations prior to committee approval remains applicable to the Department's proposed revision of the SHUR program.

I yield to the distinguished subcommittee chairman for that purpose.

Mr. NATCHER. Mr. Chairman, as the gentleman has pointed out to the members of the committee, we had a colloquy last year somewhat similar to this, and I want the gentleman in the well to know that the statement he has just made is correct.

Mr. BEREUTER. I thank the chairman. I have one further question:

Would it be the gentleman's conclusion that, therefore, it would not be necessary to amend the legislation currently under consideration to continue the restraint on the Department's action in this regard?

Mr. NATCHER. If the gentleman will yield, Mr. Chairman, I would like to say to the gentleman that that statement is correct. It would not be necessary.

Mr. BEREUTER. I thank the chairman.

I would like to indicate to the Members of the House that I continue to have substantial concerns regarding the Department's proposed revisions of the SHUR system, that I intend to make these concerns known when hearings on AHR are held by the appropriate committee or committees, and that I will continue to monitor this situation very closely.

Again, I thank the distinguished subcommittee chairman, the gentleman from Kentucky (Mr. NATCHER), for his kind response.

Mr. STOKES. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as a member of the Labor/HEW Subcommittee, I rise in support of the fiscal year 1981 Labor-HEW Appropriations bill. At the outset, I want to personally commend the distinguished gentleman from Kentucky (Mr. NATCHER) who has made the work of the subcommittee much easier through his exceptional hard work. Our subcommittee chairman has demonstrated superb leadership in the development of this bill. He has always been fair and equitable and has permitted every member of this subcommittee every opportunity to serve his constituency. We are indeed fortunate in this Congress to have a chairman of the caliber of BILL NATCHER.

Mr. Chairman, our subcommittee worked very hard on this bill under very difficult circumstances. The fiscal year revised budget submitted by the President gave us a no growth budget and the spending constraints set under the first concurrent budget resolution made it difficult to address all of the real human needs which are provided for under the programs contained in this bill. But, I believe that the committee has made a valiant effort to insure that the health, education and welfare needs of the American people are met. Thus, I urge your support of the bill.

There are several items in this bill that I would like to mention specifically. The bill includes $7.4 billion for CETA employment and training programs. The committee's intent was to provide for 369,000 jobs under titles II–D and VI, although I am somewhat concerned that not enough funds have been provided to fund this number of jobs. I personally would have liked to see more money provided for more jobs. We have included report language, however, indicating that a supplemental appropriation request would be considered by the committee if the committee's enrollment assumptions turn out to be too low.

Because of my strong interest in the youth unemployment problem, which is particularly devastating among black youth, I hope you will support the committee's recommendation of $839 million for the summer youth employment program and $561 million for job corps. In addition, I am extremely pleased to note that our committee restored $6 million to the budget for the national youth sports program which the President had proposed to terminate. This program helps to keep thousands of young people who otherwise would have nothing to do during the summer constructively occupied. Most importantly, this program exposes young people to college campuses, provides athletic and health instruction, physicals, and meals.

Unfortunately, our committee was not able to consider funding for the new youth initiative since the necessary authorizing legislation has not yet worked its way through the Congress. However, our committee has indicated its desire to consider an appropriation for this purpose as soon as authorizing legislation is enacted.

In the area of health, the committee made significant decisions. For the National Institutes of Health (NIH), the President had proposed very little or no growth for most of the Institutes which would have crippled our Nation's research program. This bill protects and continues the Nation's investment in research and research training by providing $3.6 billion for NIH. The bill provides funds to stabilize individual investigator-initiated research projects at about 5,000 new and competing awards; and provides funds for new training awards.

I am particularly proud of NIH's increased emphasis on diabetes research for which the Congress has provided funding in past years and this year.

Major advances in diabetes research have been achieved through federally supported research. Most recently, scientists have succeeded in transplanting insulin producing cells from rats to mice, raising the possibility that human diabetics might ultimately be treated with transplanted animal insulin cells.

Additional funds are also provided in the bill to help to maintain current services levels in community health centers and in mental health professions training. Funds are included to help alleviate the severe underrepresentation of minorities in mental health disciplines, as recommended by the President's Commission on Mental Health. With respect to health planning our committee is very supportive of the health planning program and partially restored a 30-percent budget reduction recommended by the President. Unfortunately, we just could not find the funds to fully restore health planning funding to the current year's level.

The bill does well by our young people with respect to their educational development. At my urging, the committee recommends nearly $3 billion for title I basic and concentration grants, if there ever was a program deserving of congressional support, title I, is it. The National Institute of Education, GAO, and independent evaluators all agree that title I dollars are dollars well spent.

In addition, the concentration grant funds are sorely needed by school districts that have large numbers of low-income children who need additional services. These school districts, in general, are hurting financially and will be further disadvantaged by cutbacks in Federal revenue-sharing funds which in many States support local education. The bill before you includes increases for both title I basic and concentration grants so that every school district eligible for title I, assistance does better under the committee recommendations.

An equally good investment is the committee's recommendation of $820 million for Head Start and $164 million for child welfare services newly authorized under H.R. 3434.

Mr. Chairman, I could go on and on with respect to the specific provisions of the bill—among the programs which I have not mentioned are student financial assistance, higher education programs, programs for the elderly, title XX, and so forth.

I would like to take a final moment, however, to address a specific issue relating to training and technical assistance under the Community Services Administration (CSA) budget. CSA is one of the related agencies provided for in this bill. Our committee recommended a reduction in funds for training and technical assistance, however, I would like the RECORD to show my support of work of the national antihunger organizations which receive a portion of these funds. These organizations, including the interchurch council in my own congressional district, have performed a true service by working to insure that federally funded food programs serve poor people who are eligible and truly in need of assistance. I would hope that the Community Services Administration will continue to place a high priority on funding this activity.

In conclusion, Mr. Chairman, I think that our subcommittee has recommended an admirable bill, and I urge all my colleagues to support it.

□ 1200

AMENDMENT OFFERED BY MR. PASHAYAN

Mr. PASHAYAN. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

JOHN E. FOGARTY INTERNATIONAL CENTER FOR ADVANCED STUDY IN THE HEALTH SCIENCES

For the John E. Fogarty International Center for Advanced Study in the Health Sciences, $9,138,000 of which $1,700,000 shall be available for payment to the Gorgas Memorial Institute for maintenance and operation of the Gorgas Memorial Laboratory.

The Clerk read as follows:

Amendment offered by Mr. PASHAYAN: Page 20, line 5, strike out "$1,700,000" and insert in lieu thereof "$1,800,000".

Mr. PASHAYAN. Mr. Chairman, this does not add any money to the funding level. It merely permits the Gorgas Memorial Laboratory to use $1.8 million rather than $1.7 million from its parent fund.

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. PASHAYAN. I yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, the distinguished gentleman in the well from California has been nice enough to submit his amendment to both sides prior to offering the amendment in the committee. We have had an opportunity to examine this amendment.

As the gentleman points out, it adds no money to this bill.

Mr. Chairman, that pleases us on this side immensely. I want the gentleman to know it. It adds no money.

The amendment as offered would make the amount earmarked for the Gorgas Memorial Laboratory $1.8 million instead of $1.7 million. We had this matter before the subcommittee at the time of the hearings. Unless there is some objection on this side, Mr. Chairman, that I know nothing about, we would accept the gentleman's amendment.

Mr. PASHAYAN. I appreciate the support of the chairman.

I should just like to say the Gorgas Memorial Laboratory does research in tropical diseases and supplies information to our armed services.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. PASHAYAN).

The amendment was agreed to.

Mr. GARCIA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the Secretary of Education has proposed rules to implement provisions of title VI of the Civil Rights Act of 1964 preventing national origin discrimination in elementary and secondary education. The proposed rules prohibit recipients of Federal financial assistance from denying equality of access to any student because of that student's limited proficiency in English.

The action of some States in denying equality of access to large numbers of students with limited proficiency in English represents one of the most serious barriers to equal opportunity in education. The number of these students is large and growing. Estimates by the National Institute of Education and National Center for Educational Statistics place the number of limited English proficient schoolage children at over 3½ million. The overwhelming majority of these children were born in this country. Of all the limited English-proficient children in this country, the largest group is Hispanic. The second largest group speaks Asian languages such as Chinese, Korean, Vietnamese, and Cambodian.

Obviously the student who does not speak English will face difficulty obtaining an appropriate education. These limited English-proficient students face two main problems. First, they must be taught English. Second, while they are learning English, they must have the opportunity to keep pace with their English-speaking classmates who are learning other subjects. Localities implementing educational practices that do not address these problems impose substantial and unnecessary burdens on these students.

In the past, too many schools have failed to meet the needs of limited English-proficient students. Students who rely on a language other than English drop out of school at a much higher rate than that of members of their own ethnic, racial or socioeconomic group who speak English. For Hispanic students who primarily speak Spanish, this dropout rate is more than three times higher than that of Hispanic students who primarily speak English.

The Lau decision, which is the Supreme Court case that upheld these guidelines as an appropriate and permissible interpretation of title VI, involved approximately 3,000 limited English-proficient Chinese students enrolled in the San Francisco public school who were required to attend classes taught exclusively through English. The opinion of the Court noted that title VI of the Civil Rights Act of 1964 prohibited conduct which had discriminatory effect as well as conduct which was intentionally discriminatory.

The Court reasoned that exclusion based upon a characteristic unique to a national origin minority group had the same effect as an intentional scheme to exclude such a group from a realistic chance to obtain an education. In part, the opinion stated:

> There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum: for students who do not understand English are effectively foreclosed from any meaningful education. (Lau, supra, at p. 566).

The recommendations in the committee report blatantly ignore the educational needs of more than 3 million children. The recommendations also ignore 5 years of Federal policy designed to implement the 1974 Supreme Court decision in Lau against Nichols, which recognized that non-English speaking children were being denied an equal educational opportunity when educated in English-only classrooms. Remedial efforts have led to more than 400 agreements between school districts and the Federal Government during these past 5 years. The Department of Education's recently proposed regulations represent a continuation of past efforts and merely attempt to clarify future direction. Indeed, we are eager to see this process completed expeditiously.

I urge my colleagues to reaffirm their commitment to the basic principle of equality in education and to support continued Federal efforts in the area of bilingual education.

Mr. Chairman, I want to say particularly to the gentleman from Illinois, the ranking minority member of the subcommittee, that there are all one or two questions that concern me. I would hope that he would be kind enough to respond.

In the gentleman's statement, in the language in the bill, the gentleman cites:

> The law creating the Department of Education prohibiting the Department from interfering with local decision making in the area of curriculum, administration and personnel.

What the gentleman from Illinois left out of that statement were the last seven words to the section which I believe should have stated, were "except to the extent authorized by law," taking us to the 1964 Civil Rights Act.

The problem I have, as a former legislator from the State of New York, I can tell the gentleman that in certain areas of the State we had no problem in implementing bilingual education programs yet in other areas of the State where there was an obvious need for it, the local school boards refused to come forward with a plan. We then had no choice but to go through with legislation to force the locality to compile. That is the part that worries me.

Mr. MICHEL. Mr. Chairman, will the gentleman yield?

Mr. GARCIA. I yield to the gentleman from Illinois.

Mr. MICHEL. If I might respond to the gentleman, I would say that what the Department really ought to be doing in any regulations is to develop the process by which it investigates alleged cases of discrimination, and not prescribe the remedy. I would give them all the money in the world to do just that, but I think that what I want to make absolutely sure is that they do not prescribe the remedy because that remedy may be somewhat different in Ohio as in New York or in my home State of Illinois.

Wherever there is to be found a case of discrimination, such as suggested by the gentleman, there ought to be funds in this bill to investigate that and provide for a remedy.

Up to this point, what we see the Department doing is just assuming that there is this discrimination everywhere and therefore big government is going to come in and say, "You have got to do it this way," and I am just absolutely sure that is the wrong way to do it.

Mr. GARCIA. Just to follow up, in the Brown case tried in 1954, dealing with segregated schools, if we had left it up to the localities to implement the program to insure that both white and black students were to obtain an equal education, where would we be today? The Supreme Court decision made it possible.

Mr. MICHEL. I would respond to the gentleman by saying that ever since that Court decision and all the intervening years and all the different cases, locally around the country, some have been rationalized and adjudicated in different ways depending again upon the State and the locality and the district, the configuration, all kinds of factors that go into implementing that Supreme Court decision.

While it was a decision with which we all agree, it has been implemented in actual practice in a variety of ways depending upon the State and locale in which one finds the problem.

Mr. GARCIA. I would just like to thank the gentleman from Illinois, because I do get reassurance in the gentleman's tone and the manner in which he makes this presentation that he, as ranking minority member of this very important Appropriations Subcommittee, the subject of bilingual education, that is very important to Hispanics and more so every day to Asians, I am delighted that the gentleman's attitude is such as it is. That we can work with him to insure fairness as it relates to education for all people.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. GARCIA. I yield to the gentleman from Ohio.

Mr. ASHBROOK. I listened to my colleague, and I wanted to ask him about one statement he made.

Did my colleague mean to say that the Lau decision, as he interpreted it, required bilingual instruction?

The CHAIRMAN. The time of the gentleman from New York (Mr. GARCIA) has expired.

(At the request of Mr. ASHBROOK and by unanimous consent, Mr. GARCIA was allowed to proceed for 2 additional minutes.)

Mr. ASHBROOK. If the gentleman will continue to yield, did I understand my colleague to say that?

Mr. GARCIA. The Lau decision was based upon the city of San Francisco where there were 3,000 students of Asian background who were, in the opinion of the Court, and title VI of the Civil Rights Act of 1964 prohibited from an education. There was educational discrimination taking place in the city of San Francisco as it related to Asians.

Mr. ASHBROOK. The Court did not say, and I think I want the record to be sure to show that, the Court did not require or did not mandate the instruction of bilingual education. It simply said if there was discrimination, something should be done. Reasonable minds could probably differ as to the alternatives as to what could be offered. It might be intensive instruction in English. It could be bilingual, but the court did not, as I understand it, mandate bilingual education.

I think my colleague indicated in his comment that the court did mandate bilingual education. I simply want the record to show that the Supreme Court certainly did not mandate bilingual education.

Mr. GARCIA. It says there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education.

Mr. ASHBROOK. I would agree with that 100 percent.

Mr. GARCIA. That was the crux of the Lau decision. Based upon the fact it was Asian students who had no knowledge of English or very little, that if one takes both the statements that I have just read, the paragraph, coupled with the fact that these students could not speak English, my interpretation would be that, yes, it was meant to teach bilingual education to a point in which these students would be proficient in the English langauge.

□ 1210

Mr. ASHBROOK. Mr. Chairman, if the gentleman will yield further, I certainly would accept that as the gentleman says it is his interpretation; but I think the record should show that the Court did not mandate the instruction of bilingual education.

The Court it clearly said something had to be done. Reasonable minds in Congress or in the Office of Education might differ as to what should be done. If my colleague interprets it to be bilingual education, that is fine, but I do not think that is what I would say, nor what the Court said.

AMENDMENT OFFERED BY MR. BAUMAN

Mr. BAUMAN. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

> SEC. 205. None of the funds provided by this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

The Clerk read as follows:

> Amendment offered by Mr. BAUMAN: On page 37, line 9, strike the period, insert a colon, and add the following: "*Provided, however*, That the several states are and shall remain free not to fund abortions to the extent that they in their sole discretion deem appropriate.".

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the distinguished gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, the gentleman from Maryland has been kind enough to submit to both sides a copy of his amendment. We have no objection to the amendment on this side.

Mr. BAUMAN. Mr. Chairman, I urge support for the amendment.

Mr. Chairman, the amendment before the Committee simply seeks to clarify a legal question which has plagued the States ever since a series of Federal courts have sought to impose their view of congressional intent with regard to the funding of abortions under the medicaid program. The result has been that many States have been forced against

the wishes of their legislatures to fund abortions.

The amendment before us says that each and every State of the Union shall have the right to determine whether or not, or to what extent, if any, it will fund abortions. The amendment is nothing more than a reaffirmation of the States right to make this decision and a similar amendment was adopted by this House last December 11 by the overwhelming vote of 235 in favor and 155 opposed. That amendment was offered to the child health assurance program, H.R. 4962, which has not yet been acted upon by the other body. I offered the amendment at that time and I hope that it will again be adopted today.

Mr. Chairman, let me explain the background and need for this amendment and what my intent is in offering it here today.

The U.S. Supreme Court in its June 30, 1980, ruling upholding the constitutionality of the Hyde amendment (Harris against McRae and Williams against Zoaraz) rejected claims against the legislation which were grounded in the first and fifth amendments to the Constitution. At the same time, the Court held that States participating in the medicaid program are not required to fund "medically necessary" abortions on the grounds that title XIX of the Social Security Act "does not require a participating State to include in its plan any services for which a subsequent Congress has withheld Federal funding.

The language employed by the Court in analyzing the legislative history of title XIX and the various appropriations riders to which it has been subject rested upon the basic proposition that the essence of the medicaid program is a system of "cooperative federalism," a shared endeavor between the Federal Government and the States. By viewing the overall framework of the medicaid program in this light, the Court avoided consideration of the authorization-appropriation process or characterization of the nature of the Hyde amendment according to House rules. The Court nonetheless agreed with the result reached by the district court in McRae regarding the statutory question which was withdrawal of Federal funds for abortion in specific instances relieves any prior obligation of States under title XIX to fund "medically necessary" abortions. The Court characterized the Hyde amendment as a "substantive amendment" to the Social Security Act.

Mr. Chairman, while the constitutionality of State and congressional restrictions on the use of public moneys for abortion was upheld, the question whether a State must provide abortion services in those instances where Federal funds are available was not resolved. It is clear that the ambiguity in the opinions of the Supreme Court on this question can be resolved by a further act of Congress.

Mr. Chairman, it was this unresolved question which I was attempting to address when, as I have just said, I offered the States' rights amendment which was adopted last December 11. I seek to resolve the issue again today. My amendment seeks to make clear that Congress in no way intended to require any State funds to be obligated for abortions by making funds available in annual appropriations for medicaid.

The previous failure by Congress to enact language clarifying the obligation of the several States with respect to abortion funding under medicaid was the occasion of protracted litigation in numerous States beginning in 1978. At least 13 States whose statutory or budgetary scheme restricting abortion funding have subsequently been ruled constitutional were placed under Federal court orders to fund abortions because of a presumed requirement that "medically necessary" abortions be provided under title XIX. The failure of the Congress to clarify this question has resulted in needless confusion at the State level. States have been subjected to essentially erroneous interpretations of the Medicaid Act. This confusion has led to frustration of both congressional intent and of the will of State legislatures to meet their legitimate obligations under the Medicaid Act without being forced to provide abortion funding on demand.

Because the medicaid program is clearly an example of cooperation between the Federal and State governments, the Congress has a positive obligation to preclude further confusion at the State level resulting from the current ambiguity in Federal law. Congress should make clear that the several States retain authority under the Constitution, analogous to that of the Congress, to expend or refuse to expend public funds for abortion.

Mr. Chairman, I hope the adoption of this amendment by the House will once and for all make clear the intention of Congress and put an end to the uncertainty which exists.

I want to thank the gentleman from Kentucky (Mr. NATCHER) and the gentleman from Illinois (Mr. MICHEL) for their cooperation and support for this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. BAUMAN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. RATCHFORD

Mr. RATCHFORD. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

HIGHER AND CONTINUING EDUCATION

For carrying out titles I-A, III, VIII, IX and XI and sections 417, 420, 745, and 1203 of the Higher Education Act; the Mutual Educational and Cultural Exchange Act of 1961; title VI of the National Defense Education Act; the National Science Foundation Act of 1950, section 3(a)(1); and title III, Part G of the Elementary and Secondary Education Act, $407,689,000 including not to exceed $10,000,000 for section 801(b) of the Higher Education Act: *Provided*, That $26,000,000 made available for interest subsidy grants under section 745 shall remain available until expended: *Provided further*, That no State shall receive less under title I-A of the Higher Education Act than it received for the fiscal year 1980.

The Clerk read as follows:

Amendment offered by Mr. RATCHFORD: On page 44, line 13 after "section 801(b)" insert the following: "and $3,000,000 for education information centers under section 418".

Mr. RATCHFORD. Mr. Chairman, I offer this amendment to correct what I view as an oversight on the part of the committee in completing the difficult task of bringing this bill to the floor. The amendment would reinstate from funds provided in the bill $3 million for educational information centers, in fiscal year 1981, the same amount allocated to this program for the past 2 years, thereby allowing the continuation of this important program.

As many of my colleagues are aware, the educational information centers provide information, counseling, and referral services to individuals interested in pursuing a college education. The EIC's are particularly important because they serve as an essential link for adults attempting to enter, or to return to school. This need for supportive services to adults was emphasized repeatedly in the recent reauthorization of the Higher Education Act, and the EIC program was actually strengthened by the Committee on Education and Labor. It is only through the educational information centers, that all the student aid programs, designed to help adults get a college education, will be meaningful.

In the committee report on this appropriations bill, the rationale offered for elimination of the EIC program was that the centers duplicate the services offered under the TRIO programs. Yet the crucial point is that the target populations for the these programs are not the same—while the TRIO programs are designed to reach out to minorities, the poor and the disadvantaged, the EIC program is designed to reach the housewife, the factory worker, and the older American. The centers are in place, and working well in the great majority of States—we cannot afford to eliminate them at a time when postsecondary education for adults is so very important.

Mr. NATCHER. Mr. Chairman, will the gentleman from Connecticut yield at this point?

Mr. RATCHFORD. I would be happy to yield to the chairman of the subcommittee.

Mr. NATCHER. Mr. Chairman, I would like the members of the committee to know that the gentleman from Connecticut has been kind enough to submit to us on this side and to the other side as well, a copy of his amendment. We know about this amendment, Mr. Chairman. It is $3 million for education information centers.

For the benefit of the committee, in the 1979 fiscal year, the budget omitted this program. As the gentleman knows, the committee put the $3 million back in. In 1980 they again sent us the budget and left it out. We again put the $3 million back in the bill.

The amendment offered by the gentleman from Connecticut adds no money to this bill. The $3 million under the gentleman's amendment, and I believe the gentleman would agree with me, that the $3 million would come out of the total for higher education. It adds nothing to the bill. It puts the education information centers back in the same position that they were in in 1979 and 1980.

As my distinguished friend, the gentleman from Illinois (Mr. MICHEL) and also the other Members on that side recall, last year we put this money in.

Mr. Chairman, we have no objection to the amendment on this side.

Mr. CONTE. Mr. Chairman, will the gentleman from Connecticut yield to me?

Mr. RATCHFORD. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Chairman, I have discussed this amendment with the gentleman from Connecticut. I wholeheartedly support this amendment. It is a good amendment and ought to be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. RATCHFORD).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 60, after line 19, insert:

"SEC. 510. None of the funds appropriated by this Act shall be expended pursuant to any order or injunction of any court of the United States which would compel the expenditure of such funds for a purpose for which such expenditure is specifically prohibited by this Act."

Mr. ASHBROOK. Mr. Chairman, this amendment is not addressed to any particular court action or any particular language in an appropriations Act. Rather, it is intended as a defense of the constitutional role of the Congress as the sole possessor of the power to appropriate Federal funds.

Clause 7, section 9, of article I of the Constitution provides:

No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Mr. Chairman, as we all know, a single U.S. district court judge—Judge Dooling of the U.S. District Court for the Eastern District of New York—found the Hyde amendment unconstitutional and ordered the Secretary of Health, Education, and Welfare to make payments for a purpose for which no appropriation had been made by law. Until that time, the plain language of clause 7 had governed the conduct of our governmental affairs, and the explicit grant of power to the Congress as the sole possessor of the power to legislate Federal appropriations had never been denied.

It was for that reason—one having nothing to do with the issue of medicaid payments for abortions—that on March 18 of this year 238 Members of this Congress, including a majority of the Members of this House filed an amici curiae brief with the Supreme Court of the United States in the case, Harris against McRae.

That brief convincingly argued the central point presented in my amendment—that a prohibition against the use of funds in an appropriations bill means that no funds are appropriated for that purpose—even if the prohibition is struck down by a court. It is asserted that funds cannot constitutionally be drawn from the Federal Treasury except "in Consequence of Appropriations made by Law," which is a power the Constitution vests solely in the Congress.

Judge Dooling apparently took the extraordinary position that a court can strike down a specific prohibition of expenditures in an appropriations act and order the expenditure made. The congressional brief correctly characterized that position as one which "ignores the nature of the appropriations power, disregards the practice and precedents of Congress, and in the most fundamental way subverts the Constitution of the United States by making meaningless the reservation to the Congress of the right to determine when 'money shall be drawn from the Treasury.'"

My amendment, which I hope will be offered to and made a part of this and every subsequent appropriations act, would protect this power from judicial incursion.

When the Supreme Court decided the McRae case on June 20, and held the Hyde amendment constitutional, it did so without ever addressing the issue of the sole authority of the Congress to appropriate Federal funds. Indeed, we cannot expect a court to address the issue unless it is so squarely presented that a case cannot be decided on any other grounds. That is how courts guard their powers. We can guard ours only through legislation, and that is what my amendment does.

Sadly, even though the Supreme Court on June 20 vacated the judgment of the district court and remanded the McRae case for further proceedings consistent with that action and the majority opinion, Federal moneys to this day continue to be spent for the prohibited purpose. This is an absolutely disgraceful situation, and one which my amendment is designed to prohibit from happening again. We need this amendment to protect the abortion funding prohibition in this bill.

Please observe that the wisdom of the Hyde amendment, or any similar action, is not at issue. Many who vigorously opposed the amendment joined in the amici curiae brief. Many of us opposed so-called anti-Vietnam war amendments which were attached to appropriations acts a few years ago, but I for one would have strongly opposed a court's assertion of the right to nullify such an amendment and order money spent for the prohibited purpose. In the absence of an appropriation—which only Congress can make—Federal money cannot be spent for any purpose.

So this is not a Democrat against Republican or a liberal against conservative issue. It cuts both ways and all ways. The issue is the integrity of the legislative power of Congress, which appears to be assaulted on all sides. We should surrender this constitutional power neither to the bureaucrats nor to the courts. Rather we must affirmatively assert it. That is what my amendment does, and I urge its adoption.

With regard to the question of abortion, this amendment is critical because on February 19 of this year the U.S. Supreme Court refused to stay Judge Dooling's January 15 order enjoining the Hyde amendment which thereafter forced the Department of Health and Human Services to pay for "abortion on demand" contrary to the will of this Congress as expressed in the fiscal year 1980 Labor/HEW appropriations bill. The Washington Post on February 20 reported that according to HEW's own figures, the Court's denial of this stay would involve over 400,000 such abortions and 88 million of Federal tax dollars in fiscal year 1980. And even though subsequently on June 30 the Court itself held the Hyde amendment constitutional, because of a technicality in the Court's own rules with regard to a motion for rehearing, the American people are still paying for abortion-on-demand at this very moment.

At this time it is not known when the Supreme Court will act on the motion for rehearing of its June 30 decision, and possibly it may not act until after the fiscal year 1980 ends on October 1. Should the Court not act before October 1 of this year, the matter then would be sent back before Judge Dooling after the next fiscal year begins, and the fiscal year 1981 bill now before this Congress could again be enjoined by Judge Dooling. This could happen if, as rumored, the plaintiffs raise the "free exercise of religion" argument on which the Court said they previously lacked standing. This action would present Judge Dooling with another reason to possibly enjoin the latest Hyde amendment now in this bill before us today.

My amendment is essential if we are to protect the integrity of the fiscal year 1981 Hyde amendment, and any and all provisions in this Appropriations Act from the raw judicial power of the lower Federal courts to order the expenditure of funds not appropriated by this Congress. The dangerous precedent we have already allowed should be a warning to all of us.

This amendment preserves the clear and explicit concept of the separation of powers between the executive and judicial branches over the appropriation of taxpayer dollars. I urge all of the Members of this body who joined the amicus brief in this case, as well as all others, to support this amendment. It is time now for Congress to clearly and explicitly stand up for its rights It may be Mr. Hyde's amendment today, but tomorrow it could be yours.

Mr. OBEY. Mr. Chairman, would the gentleman yield for a question?

Mr. ASHBROOK. Certainly, I would be glad to.

Mr. OBEY. Mr. Chairman, I understand that in this amendment the gentleman is saying that no funds shall be provided regardless of a court decision.

Mr. ASHBROOK. Where they are spe-

cifically prohibited by the act. If there is no prohibition, if it is up in the air, I would assume they could.

Mr. OBEY. Is my understandng correct that the gentleman intends to offer another amendment later on in the bill relating to title IX, which in that case would, in fact, do just the opposite?

Mr. ASHBROOK. No; It would not do the opposite. As a matter of fact, based of the precedents of this House, it would simply say——

Mr. OBEY. I mean, in that case, does not the gentleman's amendment say that no funds shall be provided for enforcement of title IX where the court says that the expenditure of those funds would go beyond the will of the Congress?

Mr. ASHBROOK. Well, as my friend, the gentleman from Wisconsin knows, in title IX they are talking about regulations, not law, and not talking about the Congress acting. They are talking about the regulations.

Second, you are talking about a situation where the court of appeals, not even a lowly district court, but the courts of appeals in three jurisdictions has said that HEW exceeded their authority. In one jurisdiction they said they did not exceed their authority.

If my colleague will let me continue, my amendment in that case would simply say that where there is a regulation and two courts of appeals say HEW exceeded its authority only, one court of appeals found HEW did not exceed its authority, appropriated funds should not be spent until it has been litigated and affirmatively decided one way or another by the Supreme Court. This is a different situation.

Mr. OBEY. My only concern is that the gentleman appears to be relying upon a court decision in one instance and objecting to a court decision in the other. I do not see how that is intellectually consistent.

Mr. ASHBROOK. Well, in one case there is the law. It has been clearly determined in Harris against McRae what the law is. I am relying on that.

In the case of title IX, you have two conflicting court of appeals decisions, not on statutory law, but on a regulation. It was not an appropriation. It was not the Hyde amendment. It was not an enactment of this Congress. It was on a regulation issued by HEW that reasonable people on one side thought exceeded their authority.

Mr. OBEY. I understand that. I do not object to the gentleman's first amendment. I am not going to lodge any objection to it; but I would suggest that the gentleman is asking this House to take an inconsistent position if the gentleman pursues this amendment which asks us to make certain that the judgment of the court does not apply, but yet in the next instance on title IX to ask that the judgment of the court indeed do apply. I just do not understand how the gentleman can be that comfortable in relying on the court in one instance and not in the other.

Mr. ASHBROOK. In the one instance, in Harris versus McRae, the court decided that a statutory enactment did not exceed our constitutional abilities.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

(By unanimous consent, Mr. ASHBROOK was allowed to proceed for 1 additional minute.)

Mr. ASHBROOK. In the case of title IX, we are talking about regulations which are contended in three jurisdictions to exceed the authority of the statute; so in both cases it is consistent because we are talking about the authority of the statute and whether the authority has been exceeded.

Mr. OBEY. But my point is that the gentleman is relying on a decision of the court which may or may not be final, because it has not yet been heard by the Supreme Court in the title IX case, as I understand it; so I do not understand if the gentleman is following the logic of this amendment, which I think is consistent, why the gentleman would then in the next instance give the court the benefit of the doubt, even though that court decision itself is not yet final. Why should a lower level court be able to impose its judgment on an agency of the U.S. Government in a process which is not yet final? That is my only objection to what the gentleman is trying to do.

Mr. ASHBROOK. Exactly that point was raised on the IRS amendment regarding private schools. In that case, you had a Federal district court order. It was unappealed. It was an order not a decision and the precedent of this House was that it had an uncontroverted status of law. That is what we are trying to get at here. If it is to be a precedent, it should not be in conflict in different court of appeals decisions.

Mr. OBEY. The gentleman is not uncomfortable being on both sides of the issue?

Mr. ASHBROOK. Let us discuss that when the amendment comes up.

□ 1220

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. PEASE

Mr. PEASE. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

EMPLOYMENT AND TRAINING ASSISTANCE

For expenses necessary to carry into effect the Comprehensive Employment and Training Act of 1973, as amended, and sections 326 and 328 of the Trade Expansion Act of 1962 (19 U.S.C. 1951 and 1961) and sections 236, 237, and 238 of the Trade Act of 1974 (19 U.S.C. 2101) and section 51 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 51), and sections 210, 211, and 212 of Public Law 95–250, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the Comprehensive Employment and Training Act of 1973, as amended, $6,156,763,000 plus reimbursements, to remain available through September 30, 1982, and of which $1,910,000 shall be for the National Commission for Employment Policy: *Provided*, That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers.

The Clerk read as follows:

Amendment offered by Mr. PEASE: Page 3, line 2, strike out the colon and insert in lieu thereof the following: ", and at least $20,000,000 shall be for training under section 236 of the Trade Act of 1974:".

Mr. PEASE. Mr. Chairman, I first want to commend Chairman NATCHER and all of the members of the Subcommittee on Labor-Health and Human Services and Education on the outstanding service you have provided in shaping this bill. It is never easy to strike a balance among hundreds of competing human needs. This task is especially difficult now as we struggle to exercise more fiscal discipline.

But there is one area of the bill that we can improve upon. There are no funds explicitly allocated in the fiscal year 1981 Labor-HHS appropriation bill for employment training in the burgeoning trade readjustment assistance (TRA) program. Despite the fact that more than $800 million is to be available in fiscal year 1981 to pay TRA benefits, there is no guarantee that even $1 will be available for TRA employment training. That does not make sense.

More than 200,000 auto workers have been laid off an recent months because of the recession and changes in consumer demand. Thousands more American workers in related industries like rubber and steel are out of work while we struggle to find coordinated approaches to reasserting our Nation's industrial strength.

These people need immediate help which they are receiving in TRA benefits and job search and relocation allowances. But some of them also need training for new jobs.

It was not the intention of the Congress to authorize a new unemployment compensation program under the guise of TRA when it approved the Trade Act of 1974. But it is true that virtually all of the emphasis and funding since then has been concentrated on TRA benefits and not on training.

The fact of the matter is the Trade Act was intended to cushion the impact upon American companies and workers affected by increased imports and to provide training for displaced workers in need of new skills and new jobs. But under current law we are required to appropriate funds for TRA benefits, job search, and relocation allowances. Training is the stepchild that only get funded if there are any title III–CETA discretionary moneys left over.

The time has come to upgrade the importance of employment training in the TRA program. Many idled American workers are signing up for training only to find that none is available. More than 1,000 unemployed auto workers in Lorain County in my district have registered for training in recent months, but there are no employment training programs in operation because the $1 million allotted for training in Ohio in fiscal year 1980 was used up last March—long before the full effect of the auto industry slump hit. And I am certain many of my colleagues are encountering similar problems in your districts.

The amendment I am offering will insure that at least $20 million will be available in fiscal year 1981 to fund TRA employment training for unemployed workers in such basic industries as autos, steel, and rubber. Specifically, my amendment allocates at least $20 million for TRA employment training out of the funds appropriated for CETA employment and training assistance.

This is a prudent first step toward restoring the importance of training in the much-maligned TRA program. Unless my amendment is approved, we will have absolutely no assurance that any CETA funds will be spent for badly-needed TRA training. In fact, rumor already has it within the Department of Labor that nobody should count on any of the $10 million mentioned in the Department's original budget plan—which was even less than the $13.7 million to be spent on TRA training in fiscal year 1980.

My amendment does not add any additional funds to this bill. It merely directs a small portion of the already-approved funding to a pressing need. I hope you will support it.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I am happy to yield to my colleague from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Ohio.

The basic purpose of the worker trade adjustment assistance program under the Trade Act of 1974 is to help workers adjust to increased import competition. Congress placed considerable emphasis on accomplishment of adjustment through training when suitable employment opportunities are not available, including provisions to facilitate job search and relocation.

Trade adjustment assistance was not intended to be an income maintenance and compensation program. Unfortunately, it has largely become one, a reason being that funds for training are allocated annually from the Secretary of Labor's discretionary account under title III of CETA rather than from a trust fund which has never been established as the Trade Act required.

The need for training of import-impacted workers has never been greater than it is now. The $10 million allocated for training in fiscal year 1980 has run out long ago and the Labor Department has a backlog of requests for training that would require an additional $45 million. Only $10 million from the title III CETA fund was targeted for trade adjustment assistance training in fiscal year 1981. Now that the discretionary fund is being cut in this appropriations bill by $20 million, training funds for fiscal 1981 will probably be considerably less than $10 million. Clearly this amount is insufficient given our high and rising unemployment. Auto and other workers in our basic industries, who previously have not been seeking training in large numbers, now are in the realization that their layoffs are permanent not temporary. The fact that the availability of funding is so uncertain undermines fulfillment of the basic purpose of the trade adjustment assistance program.

The proposed amendment will provide some certainty as well as an increase in funding that is so clearly needed. I urge its passage.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. PEASE) has expired.

(At the request of Mr. GILMAN and by unanimous consent, Mr. PEASE was allowed to proceed for 2 additional minutes.)

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I am happy to yield.

Mr. GILMAN. Mr. Chairman, I, too, want to commend the gentleman from Ohio for focusing attention on this very important measure. I just want to clarify for my colleagues, if the gentleman will yield for a question, does the gentleman propose any additional money or is he earmarking money already in the bill for training purposes?

Mr. PEASE. There is no additional money in this amendment.

Mr. GILMAN. The gentleman is earmarking how much for training purposes?

Mr. PEASE. At least $20 million.

Mr. GILMAN. I commend the gentleman for this effort at a time when so many of our autoworkers and so many other workers in important industries are being laid off, and we find there have not been sufficient training moneys available. The gentleman's amendment will make certain at a time of need that there will be these training moneys available, and without adding additional funding to the bill. I would urge our distinguished chairman of the subcommittee and distinguished ranking member of the subcommittee and ranking member of the committee to support this measure.

Mr. PEASE. I thank the gentleman.

Mr. GILMAN. Mr. Chairman, I rise in strong support of this important amendment offered by my good friend, the gentleman from Ohio (Mr. PEASE).

Mr. Chairman, it is imperative that additional funds be earmarked for the trade readjustment program (TRA). This is one of the least costly of the programs authorized by the Trade Act of 1974, but one of the best values. Rather than paying people unemployment benefits, this amendment will provide for retraining experienced workers thrown out of their jobs by imports to qualify for available work.

Less than $10 million was allocated for this program under the Secretary of Labor's discretionary authority in the last fiscal year. That amount was grossly inadequate—and I frankly do not understand, given the fact that the money ran out so quickly and is so desperately needed, why the Labor Department came back with the very same $10 million request for fiscal 1981. The committee cannot be criticized for not giving this program higher priority, given the limited materials prepared for them by the Department in justification—but we are here on the floor today to ask that a far greater share of the $6 billion-plus employment and training budget be earmarked for this very important program.

Earlier this year, the Ford assembly plant in Mahwah, N.J., which abuts my congressional district, closed permanently, throwing thousands of my constituents out of jobs that many have held for as much as 15 and 20 years.

It is our obligation to those employed to live up to our responsibility to protect them in some measure from the effects of imports that we allow into our country—to retrain them for meaningful jobs in our economy.

In 1979, before the sharp upturn in job displacements due to imports, less than 10 percent of those who applied for job training were able to get it.

Only if we pass the amendment offered by the gentleman can we expect that the funds available for training these individuals will approach the required funding.

If the current flood of imports continues unabated, we will need to allocate more funding to this program; but this is a start and will provide funds for the workers now in need of training in the 26th Congressional District of New York and elsewhere across our Nation.

Mr. MICHEL. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I am happy to yield.

Mr. MICHEL. I appreciate the gentleman yielding.

Did I understand the gentleman to say that he had a specific figure of workers that he knew were desiring training and were denied funds, for example, in his home State? I will tell the gentleman the problem I have. If my memory serves me correctly, a recent GAO report on the trade adjustment program pointed out that only about 2 percent of the workers who were drawing the benefits even expressed any interest in training and applied for it. Now, if there are several hundred thousand, 2 percent of that is a significant number, to be true.

But I am concerned because the original intent of this act was that there really were displaced workers as a result of imports, and that they had to be retrained and, frankly, moved to different parts of the country to be gainfully employed again. But we have gone a far cry from the original intent, and simply have an extension only on a broadened scale of unemployment compensation. It ought to go more directly to what the gentleman is talking about here, training. If that is the gentleman's intent, of course, and he can support that with some specific figures, and there are several thousand who would then take advantage of the training, I think it is well worthwhile.

The CHAIRMAN. The time of the

gentleman from Ohio (Mr. PEASE) has again expired.

(At the request of Mr. MICHEL and by unanimous consent, Mr. PEASE was allowed to proceed for 2 additional minutes.)

Mr. PEASE. I thank the gentleman very much. I am well aware of his interest in emphasing the training aspect of the whole TRA program. I am informed that there are 1,000 auto workers in my district who have expressed an interest in receiving training. The amount of funding that is provided this year is totally insufficient to meet that need.

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I am happy to yield to the distinguished subcommittee chairman.

Mr. NATCHER. I want to commend the gentleman in the well, Mr. PEASE, for offering this amendment. The gentleman was nice enough yesterday to submit to us a copy of his amendment explaining to us what he had in mind.

I would like to call to the attention of the members of the committee that in the supplemental appropriation bill we approved $1,500,000,000 under the Trade Act. At that time, as my friend from Illinois (Mr. MICHEL) has pointed out, during hearings we tried to ascertain the exact number of unemployed automobile workers. The figure that we have at this time, Mr. Chairman, as of today, we have 265,000 automobile workers who are currently receiving trade adjustment benefits under the Trade Act, and many of these workers will not be called back by the automobile industry and will have to develop new job skills.

□ 1230

Mr. Chairman, the amendment offered by the gentleman from Ohio adds no money to this bill. It provides that at least $20 million of the discretionary funds shall be used for the purpose set forth in the amendment. I think the amendment is a good amendment. We have no objection to it.

Mr. PURSELL. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I will be happy to yield to my friend from Michigan.

Mr. PURSELL. I want to congratulate our two committee leaders for supporting the amendment. I am not sure $20 million is adequate. Perhaps it should be $50 million. However, under the prevailing constraints I think it is reasonable. I want to point out there are other training programs available beyond TRA benefits in which workers can participate, either with universities or their local high schools in order to finish getting their high school degree or take basic votech program.

I do not think that Congress has hard data on the types of programs that are available and I am not sure that management and labor together encourage the basic assembly line workers to upgrade their skills.

I would ask that the record show that we as Members of Congress should encourage more development, more training programs even beyond TRA benefits so we can upgrade those skills in jobs other than just the auto industry because it is true as they point out some of these people will never go back to an auto job for the rest of their lives.

Mr. PEASE. Mr. Chairman, I thank the gentleman from Michigan for his contribution.

Mr. CONTE. Mr. Chairman, will the gentleman yield to me?

Mr. PEASE. I will be happy to yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Chairman, I strongly support the gentleman's amendment and commend him for offering the amendment. I rise to support the gentleman's amendment calling for at least $20 million to be used for training programs under section 236 of the Trade Act of 1974.

The $20 million set aside by this amendment would not increase any outlays or budget authority for this bill. Neither would it reduce the amount of trade adjustment assistance provided by other sections of this bill.

It would simply provide that at least $20 million of title III, CETA funds under the discretion of the Secretary would be used to develop and maintain training programs for beneficiaries of trade adjustment assistance.

Mr. Chairman, there are an estimated 265,000 auto workers who are out of work or who are now working at jobs outside the auto industry for which they were never trained. I maintain that it is a wise investment not only for this Congress to provide these unemployed workers with trade adjustment assistance, but also to help retrain them so that they can reenter the workforce and provide more directly for their families.

This is a wise amendment and I urge my colleagues to support it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. PEASE).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BIAGGI

Mr. BIAGGI. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

HUMAN DEVELOPMENT SERVICES

For carrying out except as otherwise provided, sections 426, 1110, and 1115 of the Social Security Act, the Older Americans Act of 1965, as amended, the Child Abuse Prevention and Treatment Act, title II of Public Law 95-266 (Adoption Opportunities), the Runaway Youth Act, the Community Services Act of 1974, as amended, sections 106, 107, and 306 of the Comprehensive Employment and Training Act of 1973, and the Developmental Disabilities Services and Facilities Construction Act, as amended, $1,725,533,000, of which $6,000,000 shall be available for title VI of the Older Americans Act of 1965 as amended, $43,181,000 shall be for grants under part C of the Developmental Disabilities Services and Facilities Construction Act, $7,500,000 shall be for section 113 of such Act, and $3,000,000 to remain available until expended shall be for the White House Conference on Aging.

The Clerk read as follows:

Amendment offered by Mr. BIAGGI: Page 32, line 11, strike out "$1,725,533,000" and insert in lieu thereof "$1,748,533,000".

Mr. BIAGGI. Mr. Chairman, I had intended to pursue this amendment but in the light of a discussion I have had with the subcommittee chairman, I ask unanimous consent to withdraw the amendment, but would like to engage in colloquy with the subcommittee chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from New York (Mr. BIAGGI)?

There was no objection.

Mr. BIAGGI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as an original member of the House Select Committee on Aging and cosponsor of the 1978 Older Americans Act amendments, I intended to offer this amendment which provides for a modest but essential addition in funds for title III-B of the Older Americans Act.

My amendment would have increased title III-B, the social services portion of the act, by $23 million and thereby brings the total appropriation level to $280 million.

The figure that I was proposing in this amendment is identical to that funding level proposed by the President in his first budget—namely $280 million. Unforseen economic conditions forced the submission of a second budget which recommended a funding level of $247 million.

The subcommittee saw fit to add $10 million to the title III-B program. This certainly will help, but it clearly is not the total solution.

Succinctly stated, title III-B is the glue which holds the Older Americans Act together. Nowhere is the relationship clearer than between the title III-B program and the nutrition program.

Under the terms of the 1978 Older Americans Act amendments, title III-B is to assume the funding responsibility for those supportive services necessary for the operations of the nutrition program. Previously, funding was provided by the nutrition program which has utilized approximately 20 percent of their budget on these services. Based on the FY 1980 appropriation figure of $320 million for the nutrition program, $64 million was spent on supportive services. This $64 million now becomes the funding responsibility of title III-B which is only being provided with a $10 million increase.

Let me make an even clearer illustration—title III-B provides the funds for transporting seniors to and from the various nutrition programs as well as for the national home-delivered meals program.

H.R. 7988 provides $350 million for the nutrition program, a $30 million increase from last year. Yet, unless we provide a corresponding increase in funds for title III-B, we may end up negating the value of the increase—or worse, promote interruptions in the nutrition program. My amendment would provide the necessary funds to keep the nutrition program operating successfully.

Title III-B has other responsibilities which merit a higher increase in funds than is proposed in this bill. Title III-B Services include: Senior citizen centers which offer a place in the community where seniors can engage in activities of interest to them and pursue friendships; transportation, counseling, and recreational and education activities, to name a few.

In preparation for this amendment I spoke as recently as yesterday with officials representing State and area agencies on aging. Universally, they tell me that $10 million will not be enough to fund their responsibilities under title III-B.

My amendment is both modest and defensible. It is offered in the spirit of cost effectiveness because funds spent on social services are in some cases responsible for keeping seniors out of more expensive nursing home care—also funded by the Federal Government.

Finally, let me conclude by again praising the chairman, Mr. NATCHER, for his outstanding commitment to the needs of older Americans. Last year, I offered an amendment seeking an increase in funds for title III-B. It was withdrawn with the assurances of the chairman that he would support a higher level in conference. The net result was a $50 million increase in funds for the title III-B program in fiscal year 1980. I hope for a similar result today.

Mr. Chairman, I would like to yield to the distinguished chairman of the Select Committee on Aging, the gentleman from Florida (Mr. PEPPER).

Mr. PEPPER. Mr. Chairman, I would ask the gentleman to yield in order that I may state my strong support for the amendment that the gentleman has offered for funds for transportation and social services provided senior citizens under title 3(b) of the Older Americans Act.

Mr. Chairman, I rise in strong support of the Biaggi amendment to increase funds for transportation and social services provided to senior citizens under title III-B of the Older Americans Act.

The members of the Appropriations Committee and the Labor-HEW Subcommitte have faced a difficult challenge this year. Funding for social service programs was slashed by almost a half-billion dollars from last year's level under the terms of this year's first concurrent budget resolution. These cuts were made in the face of staggering increases in the cost of service delivery, as well as an increased service population. With all things considered, then, the members of the Appropriations Committee deserve to be commended for their excellent work in developing H.R. 7998.

Nevertheless, as chairman of the Select Committee on Aging I cannot support the inadequate funding level for title III-B transportation and social services under the Older Americans Act. H.R. 7998 would fund transportation services at $257 million—a $23 million reduction from the administration's January budget request. The $280 million appropriation recommended by the President would have held funding at last year's level, with an increase that barely accounts for inflation. At that level, we could at least provide the same level of services as in fiscal year 1980, although the Administration on Aging predicts a significantly increased service population.

Mr. Chairman, inflation and greater numbers of needy elderly people have figured into the funding equation for years now. This year, however, there is a new factor in the equation. The 1978 Older Americans Act amendments prohibit the use of title III-C nutrition money for transportation of elderly persons to and from meal sites as of fiscal year 1981. Until this year, 20 percent of title III-C funds could be used for this purpose. Therefore, the funding level for title III-B, which represents a reduction in services due to inflation and increased clientele, must now absorb an additional 20 percent of the cost of transporting people to and from meal sites.

The current funding levels for hot meals are grossly inadequate. No Member of this body can ignore the two impoverished elderly persons languishing on the waiting list for every individual served a hot meal under the program. Over 400,000 senior citizens do receive one meal a day, 5 days a week, however. How cruel and ironic is the prospect of thousands of elderly people shut off from this worthy program, simply because they could not get to the meal site.

The strong support in this House for the title III-B transportation and social services program was evident when we authorized fiscal year 1981 funding at $480 million. Let us reaffirm that support by backing it up with the requisite dollars.

Mr. Chairman, the Biaggi amendment would merely reinstate the $280 million funding level originally requested by the President. Let us demonstrate that this body has more than a rhetorical commitment to the senior citizens whose very existence depends upon adequate access to the nutrition program.

Mr. NATCHER. Mr. Chairman, will the gentleman yield to me?

Mr. BIAGGI. I yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, since I have been a member of this committee and the Subcommittee on Labor, Health and Human Services and Education, we have always found the gentleman in the well to be very cooperative with the committee and especially does that apply to my distinguished friend, the gentleman from Florida (Mr. PEPPER).

I know of the gentleman's interest in the matter that he has under discussion before the committee at this time. I want the gentleman to know that in the future, in any supplemental appropriation bill or in any bill that comes to our committee containing additional funds pertaining to the subject matter that the gentleman is discussing with the committee at this time, that every consideration will be given to the matter. I want the gentleman to know that.

Mr. BIAGGI. Mr. Chairman, I thank the gentleman and I am comforted by that assurance because on a prior occasion the gentleman made the same statement and was productive when the occasion arose. I want to thank the gentleman on behalf of myself and members of the Select Committee on Aging, for his concern for the elderly.

Mr. PEPPER. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Florida.

Mr. PEPPER. Mr. Chairman, I want to join my distinguished colleague from New York in expressing my appreciation, very warm gratitude to the distinguished chairman of the subcommittee, the able gentleman from Kentucky (Mr. NATCHER) for the very considerate and very meaningful attitude the gentleman and his subcommittee have displayed to matters pertaining to the elderly whether it be for their welfare, their income, their illness, or other matters vital to their interest. We are very grateful for the warm, compassionate attitude the gentleman from Kentucky and his subcommittee have always displayed.

Mr. BIAGGI. might add to that, the elderly of this Nation have no greater friend than the distinguished subcommittee chairman from Kentucky.

Mr. NATCHER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield to the distinguished gentleman from Nebraska (Mr. CAVANAUGH).

Mr. CAVANAUGH. Mr. Chairman, I thank the gentleman for yielding. I would note that every Member of the House who has addressed the House today has paid his due respects and accolades to the chairman of the subcommittee. It is, I think, unquestioned in this House that the chairman of the subcommittee is legendary in his generosity and in his fairness to the Members of this House and it has been an honor to me in a brief time to serve with a Member who stands out as a historic figure in service to this House and in service to the country.

I rise for my last colloquy with the chairman on a subject in which we have engaged in many discussions. The gentleman has been so generous as to discuss with me the issue of impact aid to education. Once again, the chairman has directed this legislation which I am pleased to support through that difficult task of balancing the needs of fiscal responsibility and restraint with the needs of meeting legitimate educational needs of this country.

The Congress does have the responsibility to financially fund local school districts by providing funds to offset the cost of providing education to children of Federal personnel, especially military dependents through a program of impact aid in lieu of taxation of Federal facilities.

The committee has provided $790 million in fiscal year 1981 for carrying out

title I of the act as amended, which is an increase of $376 million over the budget request but a decrease of $35 million below the 1980 appropriation. The 1980 appropiration was $39 million less than the 1979 appropriation. Costs are going up as funding is going down. If funds are reduced proportionately across entitlements, this causes the burden for replacing lost funds to fall heaviest upon the districts which are the most dependent upon and deserving of those funds.

I am concerned that in areas of heavily impacted districts, especially in the areas serving military installations, the educational programs of military dependents may be seriously affected. The districts most adversely affected by proportionate reductions are those heavily impacted districts which are 50 percent impacted with pupils in either category (A) or category (B) or both. These highly impacted districts serve either Indian reservations or military installations. The Congress recognized the special problem of heavily impacted districts by enacting section 3(d)2(B) of Public Law 81-874.

The criticism on the category (B) impact aid program is that the money goes to districts which do not need it. Only section 3(d)2(B) of Public Law 81-874 designates need as a prerequisite for funding. Section 3(d)2(B) is a budget balancing provision which directs the Secretary of Education to increase payments to the extent necessary to enable those districts which are at least 50 percent impacted with federally connected pupils to provide an educational program equivalent to those of comparable districts in their State.

Section 3(d)2(B) is designed to assist those districts which are heavily impacted, need the assistance the most, and have no other source of funding available despite reasonable tax efforts. This is why I am particularly concerned about the present status of section 3(d)2(B) of Public Law 81-874 (20 U.S.C. title 13, section 238), as amended.

Since this section has always been funded in the past and in a similar colloquy during consideration of the 1980 Labor-HEW appropriations bill (H.R. 4389), you, Mr. Chairman, assured me that sufficient funding was provided in the bill for section 3(d)2(B), I would like to know the intent of the committee with respect to this section for the 1981 fiscal year. Mr. Chairman, does the committee intend that districts which qualify for 3(d)2(B) funding be fully funded within the terms of the law when it becomes necessary to increase their rate of payments?

□ 1240

Mr. NATCHER. Mr. Chairman, the answer to that question is yes. As the gentleman from Nebraska knows, Mr. Chairman, when the budget for fiscal year 1981 was submitted it only had $6 million for category B of impact aid. The bill we now have before the committee contains $224 million. We put that amount back in the bill, and as the gentleman from Nebraska further knows, the amount under category A of impact aid totals $428 million.

In addition to that, we have in the bill $50 million for school construction, which is a part of the impact aid law.

Now, in answer to the gentleman's question, Mr. Chairman, the committee is fully aware that the heavily impacted districts will suffer a disproportionate loss of funds under the bill as the burden of replacing funds falls heaviest on those most reliant upon these funds. The committee has made provision for those districts which were heavily impacted by providing amounts sufficient to fund section 3(d)(2)(B) of Public Law 81-874.

So in direct answer to the gentleman, the answer to the gentleman's question would be "Yes."

Mr. Chairman, before finishing my statement, I would like for the members of the committee to know that it has been a distinct honor and privilege for us to serve with the distinguished gentleman from Nebraska, who has announced his retirement at the conclusion of this Congress. He has been an able, distinguished Member of the House. This is the kind of a Member on both sides of the aisle, Mr. Chairman, that we need in the House of Representatives.

Mr. CAVANAUGH. I thank the chairman. I thank the chairman for his kindness in this and every matter which I have brought before him.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

SEC. 307. Funds appropriated to the Department of Education under Title III may not be used to pay the compensation of experts or consultants (other than full-time employees) or organizations thereof, or to procure by contract, the services of experts or consultants, or organizations thereof, in excess of $35,000,000 during fiscal year 1981. Expenditures for all consultant services in the fourth quarter of fiscal year 1981 may not exceed 30 per centum of the total annual fiscal year 1981 expenditure for such consultant services.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 51, after line 23, insert:

"SEC. 308. None of the funds appropriated by this Act (other than those specifically appropriated to fund authorizations for bilingual education programs) shall be used by the Secretary of Education to enforce regulations which would require a State or local educational agency, as a condition of eligibility for the receipt of funds appropriated under this Act, or otherwise, to address the educational needs of students of limited English-speaking ability by a program other than one of intensive instruction in English."

And renumber the remaining section accordingly.

Mr. ASHBROOK. Mr. Chairman, this amendment is intended to put a stop to one of the most outrageous and ill-considered power grabs ever attempted by Federal education officials. It would use a perfectly justified and reasonable decision of the Supreme Court of the United States to impose controversial and costly requirements on thousands of public schools in all parts of the Nation—requirements neither required nor contemplated by the Court itself.

I do not ask my colleagues to rely upon my explanation or interpretation of the proposed regulations requiring extensive bilingual education programs. Albert Shanker, president of the United Federation of Teachers, explained the situation very well in his regular article "Where We Stand" in this Sunday's New York Times. Mr. Shanker entitled his article "Ed Department Knows Best—Without Any Evidence; Can U.S. Force Schools To Go Bilingual?" Let me read the first half of this article, and submit the rest for the RECORD. He wrote as follows:

The new Department of Education has issued a set of proposed regulations on the education of children whose original language was not English. The proposal is an unmitigated disaster. It threatens the fabric of American education and the future of our country. The public should bring pressure on President Carter and Secretary of Education Shirley Hufstedler so that the plan is abandoned.

Back in 1974 the Supreme Court decided in Lau against Nichols that it was not enough for a school district to provide the same education for a child who could not understand English as it provided for children who do. The decision deserved support. Obviously, when a child who speaks and reads no English is put into a regular class, the child cannot be expected to understand or learn.

The Court did not say what should be done. It just ordered that something be done, something which recognized the special needs and problems of the non-English-speaking child. The Court suggested some approaches: "Teaching English to students of Chinese ancestry who do not speak the language is one choice. Giving instruction in Chinese is another. There may be others."

While the Court demanded that something special be done, it left open the question of the specific program to be used. It was to be left to educators to decide on just what is the best educational method . . . and to local school boards, elected by the people in their communities to oversee the schools. It was appropriate for the federal government to state and define the law, right for qualified professional educators to find the best educational methods and within the political province of local school boards to adapt programs to local conditions and needs.

Furthermore, there is no evidence that any given method of teaching children who do not speak English is better than another. Were there overwhelming evidence that one approach was successful while others were not, it might make sense to mandate the successful program. Where no such evidence exists, it makes sense to allow for professional and local choice . . . and for widespread experimentation so that better programs can be developed.

Now, despite the lack of evidence that one program is better than another, the Administration proposes to mandate one program for the majority of other-language children, whether or not that is the choice of the teacher, the principal, or the local school district. That program is bilingual education, instruction in the child's original language while the child is learning English.

Under the new rules, children from other countries with a different native language will be instructed in English if their English is superior to their use of their native language. Such children are few in number. Those who are superior in their native language—almost all—and whose English ability is at a level with 40% of all the students in the same grade nationally or statewide must be taught in both languages. In other words,

unless an immigrant child is nearly at or above the average for native-born children, the child must be taught in both languages.

That is the heart of the matter. It is an absolutely correct interpretation of the holding in Lau against Nichols and of the requirements of these regulations. I submit that this is a flagrant example of "legislation by regulation" without any basis in law, and ought to be stopped. Mr. Shanker concludes his article with the observation that:

This new policy is a radical change. It is bad for the child. It will do harm to the nation.

I can only add that it would do harm to our constitutional doctrine of separation of powers. My amendment would prohibit the Department of Education from requiring more than the Court indicated might be needed—instruction in English for children in our schools who do not understand English.

If local school districts wish to go beyond this and are able to go beyond this and provide supplementary programs of bilingual education, bicultural education, or whatever, that is their choice to make and my amendment leaves them free to make that choice. But it would prohibit the Department of Education to require such programs under the guise of enforcing the Lau decision. It would prohibit them from requiring schools to provide instruction in a language other than English when such schools feel that it would be ineffective, inadvisable, or downright impossible with the resources they have at their disposal.

If we believe in local control of education, if we oppose "legislation by regulation" or executive branch fiat, and if we oppose the deliberate distortion of the requirements of Supreme Court decisions, we shall adopt this amendment.

The entire Shanker column is included at this point:

[From the New York Times, Aug. 24, 1980]

ED DEPARTMENT KNOWS BEST—WITHOUT ANY EVIDENCE: CAN U.S. FORCE SCHOOLS TO GO BILINGUAL?

(By Albert Shanker)

The new Department of Education has issued a set of proposed regulations on the education of children whose original language was not English. The proposal is an unmitigated disaster. It threatens the fabric of American education and the future of our country. The public should bring pressure on President Carter and Secretary of Education Shirley Hufstedler so that the plan is abandoned.

Back in 1974 the Supreme Court decided in *Lau v. Nichols* that it was not enough for a school district to provide the same education for a child who could not understand English as it provided for children who do. The decision deserved support. Obviously, when a child who speaks and reads no English is put into a regular class, the child cannot be expected to understand or to learn.

The Court did not say what should be done. It just ordered that something be done, something which recognized the special needs and problems of the non-English-speaking child. The Court suggested some approaches: "Teaching English to students of Chinese ancestry who do not speak the language is one choice. Giving instruction in Chinese is another. There may be others."

While the Court demanded that something special be done, it left open the question of the specific program to be used. It was to be left to educators to decide on just what is the best educational method . . . and to local school boards, elected by the people in their communities to oversee the schools. It was appropriate for the federal government to state and define the law, right for qualified professional educators to find the best educational methods and within the political province of local school boards to adapt programs to local conditions and needs.

Furthermore, there is no evidence that any given method of teaching children who do not speak English is better than another. Were there overwhelming evidence that one approach was successful while others were not, it might make sense to mandate the successful program. Where no such evidence exists, it makes sense to allow for professional and local choice . . . and for widespread experimentation so that better programs can be developed.

Now, despite the lack of evidence that one program is better than another, the Administration proposes to mandate one program for the majority of other-language children, whether or not that is the choice of the teacher, the principal, or the local school district. That program is bilingual education, instruction in the child's original language while the child is learning English.

Under the new rules, children from other countries with a different native language will be instructed in English if their English is superior to their use of their native language. Such children are few in number. Those who are superior in their native language—almost all—and whose English ability is at a level with 40 percent of all the students in the same grade nationally or statewide must be taught in both languages. In other words, unless an immigrant child is nearly at or above the average for native-born children, the child must be taught in both languages.

School districts will have to comply or face federal prosecuton. They will need thousands of bilingual teachers—who are not available. They will be required to retrain their existing staff to become bilingual—a noble goal but one which is difficult and expensive and adds to the great burdens already faced by the classroom teacher. But also, while the existing teachers are learning to speak a second language, the regulations require that ". . . other bilingual individuals . . . provide services in the interim." In other words, instruction will be given by individuals not licensed or certified to teach. The Administration has determined—without any empirical evidence—that children from Spanish, Chinese, Italian, Vietnamese and many other backgrounds will learn more if taught in both languages by someone other than a teacher than if they are taught intensively to learn English by a regular teacher.

Still another section of the regulations sounds good but, in light of the previous conflicts on this issue, it may have ominous consequences. The regulations require educational programs and activities to be "operated with respect for the culture and cultural heritage of the . . . limited-English-proficient students." Does this mean just what it says? If so, there can be no argument. But it may mean much more. If a Puerto Rican teacher is employed to teach Mexican American children, could this be viewed as a lack of respect for the Mexican culture and heritage? Will this section be used to enforce the notion that only teachers of the same ethnic origins can teach their own?

The issues raised by the proposed federal regulations are huge. Should the U.S. government impose particular educational programs? Can it mandate programs which are still experimental and whose superiority has not been demonstrated? Can it override professional judgment and local control? And, should it impose huge new costs on hard-pressed local school districts? The goverment estimates the cost at between $180 million and $591 million, but that is like its estimate of the cost of educating the handicapped and of other programs. It will be much, much more, and with money in short supply, it will be taken from other current educational programs. Money that could be used to teach English intensively to these very children will be used for testing, placement and teacher language training.

But the biggest issue of all is the question of bilingualism. Will federal programs lead the U.S. to become another Quebec? The American people come from many cultures, many language backgrounds. One of the major purposes of the American public school has been to "Americanize" waves of immigrants—most of whom did not speak English. That meant teaching them English. Ethnic groups had their foreign language newspapers and neighborhoods where their language was spoken, their culture preserved. But in the schools, as in public life in general, English was used. This policy worked. It brought many together to forge a nation. This new policy is a radical change. It is bad for the child. It will do harm to the nation.

Mr. ROYBAL. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I would be happy to yield.

Mr. ROYBAL. Mr. Chairman, I would like to have some clarification as to what exactly takes place if the gentleman's amendment were to be adopted. Does it mean then that any school district cannot use the language of the home in any particular classroom even though that particular child does not speak the English language?

Mr. ASHBROOK. Absolutely not.

Mr. ROYBAL. Then, what does it mean?

Mr. ASHBROOK. Well, it means that the Secretary of Education cannot enforce in every school district a requirement that they go forward with one program that Department mandates in response, they say, to the Lau decision.

Mr. ROYBAL. The Lau proposals are not yet regulations, but proposals. They do not go so far as to say that every district must do it, but they do set particular guidelines so that a determination can be made on whether or not a particular child or children in that classroom would be in need of instruction using the language of the home. I do not see how the gentleman's amendment would actually improve this particular bill. On the contrary, it ignores the needs of students of limited English speaking ability and places him in an intensive English class.

I think we have already discussed the intent of the Michel amendment. We have already, I think, discussed the intent of the proposed Lau decision, or regulations. We know that they are going to be put out into floor debate countrywide. It seems to me that the gentle-

man's amendment at this time would not be needed, and it would be best that we not adopt it.

Mr. ASHBROOK. If my colleague would continue, the Michel amendment, of course, goes to the bilingual education program. As I have indicated, my amendment does not disturb in any way the programs and the appropriations to fund authorization for bilingual education programs. Those are ongoing, and if we want to make such programs available in the gentleman's district or in special districts where the need is greater than it would be in other parts of the country, they can continue to do that.

But, all I am talking about are the regulations which seem to go far beyond anything that is needed, which would require and mandate bilingual education programs, whether needed or not. That is precisely what I am endeavoring to do with my amendment. The gentleman indicated that regulations have not yet gone into effect. My amendment would prevent them from going into effect.

Mr. ROYBAL. Well, first of all, the regulations have to be presented and will be presented for discussion throughout the Nation. Final regulations then would be issued based on the findings at that particular time. What the gentleman's amendment, as I said, does is almost mandates that a particular classroom be taught only in the English language. If that is so, then it would be in violation of the Lau decision and violation of civil rights.

Mr. ASHBROOK. I do not agree with the gentleman at all.

Mr. CORRADA. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I wish that the Members would oppose the Ashbrook amendment just offered. As our colleague pointed out, this is not really an amendment against bilingual education programs. It is even worse. It is an amendment against equal educational opportunity and civil rights of the children who would receive the benefit of these programs.

Let me explain why. In 1974 the Supreme Court of the United States, in the case of Lau against Nichols, decided that children who come from homes where the language is other than English and have a deficiency in being able to be proficient in the English language, are entitled as a matter of protection to their equal educational opportunity rights to be taught in the language spoken at home, while that child becomes proficient in the English language.

□ 1250

In other words that special instruction is necessary for these children so that they will be able to develop skills in mathematics, in science, and so on, and instruction may be given in the language spoken at home while there is, of course, a strong effort to make that child become proficient in English so that then he can go into the mainstream of the regular classroom.

What the Ashbrook amendment is saying is that in the event that the Department of Education approves regulations that now are only proposed regulations—and they are subject to public hearings throughout the entire country where all groups are entitled to go and offer their views of those proposed regulations—what the Ashbrook amendment is saying is that in the event the regulations from the Department of Education to enforce these equal educational opportunities of these children are accepted, no moneys shall be spent to allow for such enforcement of these regulations.

What we are telling this Nation is that in the Constitution of the United States we talk about equal rights for everybody in this Nation. We are talking about protecting the right of children to education, but then we are telling the people of this Nation that we are not going to allow any funds to be provided to enforce these rights.

So I think that this amendment should be defeated, and in any event, I suggest to my colleague on the Committee on Education and Labor that people should appear and testify at the public hearings that are going to be held this fall before the regulations become final in December, and if next year our distinguished colleague thinks that some remedy is necessary, at that time in other education legislation, as a member of the Committee on Education and Labor he should make an effort to bring these issues to the members of the committee, but he should not try in an appropriations bill to formulate an education policy that could be a disservice to the opportunity of millions of minority children in this Nation to equal education opportunity. These children want to become skilled through education and be productive to our society so that they can then join the mainstream of the American society.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. CORRADA. I surely will yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I assure my colleague that I recognize he is a very able and accurate Member of Congress, but I am sure he did not mean to say what he said.

The gentleman said that the Lau decision required instruction in a non-English language to a child who is deficient in English. The Lau decision in no way requires that.

I will ask my colleague if that is what he meant to say. That is what he said. I say categorically, because I have studied the decision very carefully and studied its mandate, and it did not say that.

Mr. CORRADA. Mr. Chairman, may I ask, how does my colleague interpret that decision then?

Mr. ASHBROOK. Mr. Chairman. I interpret that decision as requiring actions, but the HEW or the Office of Education has set about to implement one course of action which was not required, and I am simply saying they should not force schools to go in that direction. They cannot say there is only one direction that all districts should go where there are English-deficient students in the enrollment.

We all want to help because I think we all agree with the thrust of the Lau decision but let me give the gentleman one example.

The CHAIRMAN. The time of the gentleman from Puerto Rico (Mr. CORRADA) has expired.

(On request of Mr. ASHBROOK, and by unanimous consent, Mr. CORRADA was allowed to proceed for 2 additional minutes.)

Mr. ASHBROOK. Mr. Chairman, if the gentleman will yield further, let me give the gentleman an example of how these regulations go. If the gentleman will bear with me for just three sentences, under the new rule, children coming from other countries "with a different native language will be instructed in English if their English is superior to their use of their native language."

How many of those do we have? Not very many.

"Those who are superior in their native language"—that is almost all of them—and those "whose English ability is at a level with 40 percent of all the students in the same grade nationally or statewide must be taught in both languages."

In other words, unless an immigrant child is nearly at or above the average for native-born children, the child must be taught in both languages. How ridiculous can we get?

That is the type of regulation they are trying to implement. I am saying in my amendment that this is wrong, and they should not go forward with that type of regulation until we have had hearings, legislation and a congressional action.

We want to change the bilingual program but certainly not by regulation. They should not try to change law by regulations.

Mr. CORRADA. Mr. Chairman, if I may continue and reclaim my time, some of the objections the gentleman has raised may be raised concerning these proposed regulations—and that is only what the gentleman is talking about—in the hearings that will be held this fall. If those regulations are to be implemented, then we could tackle this problem and then say that in any event the regulations are only for the purpose of implementing the Lau against Nichols decision.

The regulations do not go beyond Lau against Nichols. They simply seek to provide guidelines so that local education agencies would be able to know what it is the decision requires from them and so that the guidelines can be effectively implemented.

But again let me say that this will be the subject of hearings, and I believe the amendment, in any event, is absolutely premature and would cripple what could be effective regulations to implement Lau, which is what I am sure my colleague would like to see happen.

Mr. ASHBROOK. Absolutely.

Mr. Chairman, if my colleague will yield further, No. 1, hearings do not prevent the implementation of regulations; and, No. 2, in the Department of Education we even have an example where the Secretary is on record defying

our committee's action on regulations issued by that Department.

So in light of that, I say that my amendment is not only appropriate but necessary to see that they do not go forward with this one-track approach until we at least have some input and until the matter can be adequately heard before our committee.

Mr. CORRADA. Mr. Chairman, I hope that the amendment will be voted down.

Mr. GARCIA. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, this is part of a continuing conversation that we had earlier today. I wish that we did not need the money to enforce civil rights. In order to insure civil rights we really have no choice but to the Federal route, whether it be the Supreme Court or the congressional route.

If we left it up to the localities whether they should implement the program which the Supreme Court clearly decided in a case dealing with Asians living in San Francisco, left to the localities, we would never have had this program implemented.

We go back to the Brown decision of 1954 as it related to black and white schools. If we as a Nation did not take this action, where would we be today?

What we are trying to do is develop a country not of educational cripples but of contributors. What we are doing here with the gentleman's amendment is limiting the moneys—and I do not know exactly how much money the gentleman is talking about—and the amendment is unclear.

The language itself is not specific, I am sure some of the Members will question its fiscal impact. The problem I have with the amendment offered by the gentleman from Ohio (Mr. ASHBROOK) is that what we are trying to do is progress. The gentleman's amendment would make it possible for those people who never had an interest in educating the downtrodden to continue with business as usual attitude.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. GARCIA. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, first, as for the civil rights aspect, I am sure my colleague understands that Albert Shanker has been in the forefront of the civil rights movement for years. I may not be able to make that statement myself, but I know that Albert Shanker can. I know that Albert Shanker takes the exact point of view that I am taking. I am sure that the gentleman has read his column in the New York Times.

Mr. GARCIA. Mr. Chairman, if I may reclaim my time, the advantage I have in talking about Albert Shanker is that I was a State representative for 13 years in New York State, and I can tell the gentleman that not once did I support his legislation because his legislation and whatever he tried to do was detrimental to the people. Especially as it dealt with bilingual education. So Albert Shanker, I will say to the gentleman, is not an authority.

Mr. ASHBROOK. Mr. Chairman, I lost on that one, and maybe I will try something else. That was strike 1, and I will say to the gentleman, "You got me on that one." This is strike 2.

Would my colleague, the gentleman from New York (Mr. GARCIA) honestly propose that a part of the civil rights of any student is to be taught in his native language arithmetic and all the various courses in education, or is it his basic right to learn English? I think that is the civil rights program we are talking about.

Mr. GARCIA. Mr. Chairman, I will ask the gentleman to listen to this. The gentleman from Puerto Rico (Mr. CORRADA) did not bring up the subject I would like to talk about.

In Puerto Rico, there are school districts that have a bilingual problem in reverse, the students speak English in many of the courses in Puerto Rico that are taught in Spanish, because the students were born in New York or Chicago or someplace on the mainland. So we have a problem there in reverse.

Mr. ASHBROOK. And that is handled by the bilingual program, funds for which and appropriations for which I do not even attempt to touch by this amendment. Is that not correct?

Mr. GARCIA. I appreciate what the gentleman from Ohio has said. The only point I am trying to make here is that I just wish his amendment was not necessary.

Mr. ASHBROOK. I do, too, but the Office of Education makes it necessary.

Mr. GARCIA. Mr. Chairman, I see it from a different point of view. My point is that I wish it were not necessary. I just wish that the local school districts and the various States would take it upon themelves to put justice forward as it relates to education. That has not been the case.

□ 1300

Historically that has not been the case in this country. We have had only one choice but to go either through the congressional route or to the courts. And so to that end I would say to the gentleman from Ohio that I believe there is no question in my mind that the amendment is bad. I disagree with it. I would hope that the Members of this Chamber would vote against the amendment.

Mr. ASHBROOK. I thank my colleague.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding, and I would like to pose a question to the chairman which is not directly on this amendment.

Mr. Chairman, in this bill there is $10,805,000 which provides for the lead-based poison prevention program. Recently it has been reported in the press of New York City that we have high levels of lead-based paint found in the school system, exposing children to potential harm. Would it be the chairman's understanding that the funds under this program could in fact be used by the city of New York in both detection and possible treatment for affected children?

Mr. NATCHER. Mr. Chairman, if the gentleman will yield to me at this point, I would like the gentleman to know that for a number of years our distinguished friend on the subcommittee, the gentleman from Ohio, Mr. LOU STOKES, each time when this matter has been brought to the attention of the subcommittee, has made a fight to see that adequate funds are appropriated as far as lead-based paint poisoning is concerned. Our friend, the gentleman from Ohio (Mr. STOKES), has made this fight down through the years. This is a serious matter, Mr. Chairman, and unless there is some restriction in the law that prohibits what the gentleman from New York City has in mind, I see nothing wrong with it.

Mr. BIAGGI. I thank the chairman, and I am deeply grateful to the gentleman from Illinois (Mr. HYDE) for yielding to me.

Mr. HYDE. I am delighted to be of help.

Mr. Chairman, I fully support the notion that we need bilingual education. I fully sympathize with students who do not have proficiency in English suddenly thrust into an atmosphere where they do not understand what is going on, they do not understand the language and they cannot learn. They need help, and they need special help. This should be a concern of ours.

But I do not view this amendment as adverse to that concept. This amendment says something that makes a lot of sense, and it simply says to the new, massive Department of Education, "Do not be telling local school districts which are in the trenches, which have to deal with the problem on a day-to-day basis, how to conduct their buisness."

You see, we knew when this new Department of Education was set up that the flow of power and decisional authority was going to be reversed. Instead of being localized in New York City where the problem is, in Chicago where the problem is, in Los Angeles, in San Antonio, now it is going to be made on the banks of the Potomac. That is the wrong way to go. Let us make these decisions, let us exercise our judgments where the problem is. Let us control education locally where it has always been controlled. But instead, it has to move to Washington where the elitists sit around the table and decide what is good for Puerto Rico, what is good for Miami, what is good for Chicago, what is good for New York.

This amendment does not prohibit bilingual education in any way that the gentleman from Puerto Rico or the gentleman from New York wants. It simply says to the Department of Education, "Do not be putting out regulations requiring States or local educational agencies, as a condition of eligibility for the

receipt of funds appropriated, to address the educational needs of students of limited English-speaking ability by a program other than one of intensive instruction in English."

I am informed by staff that there are separate programs for bilingual education. They are not inhibited by this amendment by the gentleman from Ohio. They are not touched at all. We shall move forward with bilingual education. But I do resent the Department of Education pronouncing curricula for local school districts. And that is what they are doing. Next it will be history, next it will be geography. Let them keep their nose out of what is going to be taught and how it is going to be taught. Let the New York School Board, let the Chicago School Board make those decisions.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from Ohio.

Mr. ASHBROOK. The exact language of Justice Douglas in the Lau decision, which I will leave here on the desk for any of my colleagues who want to read it, reads as follows:

> Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioners ask only that the Board of Education be directed to apply its expertise to the problem and rectify the situation.

Now, the Office of Education comes in to them and says, "We have one approach for you, we are going to mandate one approach," and that is exactly what I am trying to negate in this particular amendment.

Mr. HYDE. It is the same thing HUD does in housing.

Mr. CORRADA. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from Puerto Rico.

Mr. CORRADA. Mr. Chairman, is the gentleman aware that we are talking here about proposed regulations that are open for comment and public hearings throughout the entire Nation as to how the Lau against Nichols decision should be implemented, that is, guidelines for implementing Lau?

The CHAIRMAN. The time of the gentleman from Illinois (Mr. HYDE) has expired.

(On request of Mr. CORRADA and by unanimous consent, Mr. HYDE was allowed to proceed for 1 additional minute.)

Mr. HYDE. I continue to yield to my friend, the gentleman from Puerto Rico.

Mr. CORRADA. If those guidelines should go beyond what Lau against Nichols requires, I am sure that there are ways and means that this will be brought to the attention of the Department of Education and probably to court. But I am sure that the gentleman will not tell me that, in connection with the civil rights of minorities in this Nation, there is nothing that the Federal Government has to do in terms of seeing that equal educational opportunities are afforded. And if we leave, as the gentleman says, the merits in the hands of the local education agency, what is it that will happen? There will be many areas where there will be no sensitivity whatsoever, because this is a minority problem and the majority may not be concerned about these students.

What I am saying is that this Congress has to exercise the responsibility of seeing that the rights guaranteed by the Constitution of the United States be afforded to all American citizens.

Mr. ROYBAL. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think what we should do at this particular point is to clarify the language of the amendment, and also the intent of the Lau remedies.

Under the Lau remedies, the following language can clearly be seen, and that is that "schools are required to provide instruction for elementary students through their strongest language until the students are able to participate effectively in a classroom where instruction was given exclusively in English." It is very clear. Once that student reaches English proficiency, he remains or is transferred to a class that uses nothing but English. The student then continues to progress according to his own ability.

Now, under the language of the gentleman from Ohio (Mr. ASHBROOK), he says two things, the way I read the amendment. He says:

> None of the funds appropriated by this act (other than those specifically appropriated to fund authorizations for bilingual education programs) shall be used by the Secretary of Education to enforce regulations which would require a State or local educational agency, as a condition of eligibility for the receipt of funds appropriated under this act, or otherwise, to address the educational needs of students of limited English-speaking ability by a program other than one of intensive instruction in English.

That simply means that the young student will be placed in a program that uses intensive instruction in English. Therefore, it violates, in my opinion, his right to equal educational opportunity. The language, as I read it, and the gentleman can clarify it in just a moment, is actually in two steps.

□ 1310

The gentleman says it is all right if it is under the Department of Education Act, but none of the funds under this act can be appropriated unless moneys are used for the instruction of children in English intensive instruction class.

Mr. GARCIA. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from New York.

Mr. GARCIA. I thank the gentleman for yielding.

I would like to say there is a decision that has come down since Lau which has just been brought to my attention. It is Rios against Read, eastern district of New York. It is an unpublished report. There was no appeal taken. I would like to read three of the paragraphs from this decision:

> Taken together, the statutes and the legislative history . . . mandate teaching such children subject matter in their native tongue by competent teachers.

And then on page 19:

> A denial of educational opportunities to a child in the first years of schooling is not justified by demonstrating that the educational program employed will teach the child English sooner than a program comprised of more extensive Spanish instruction. While the District's goal of teaching Hispanic children the English language is certainly proper, it cannot be allowed to compromise a student's right to meaningful education before proficiency in English is obtained.

The last paragraph reads:

> Thus, the statutory obligations upon the school district require it to take affirmative action for language deficient students by establishing an ESL and bilingual program and to keep them in such program until they have attained sufficient proficiency in English to be instructed along with English-speaking students of comparable intelligence.

I thank the gentleman very much for yielding.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Ohio.

Mr. ASHBROOK. I thank the gentleman for yielding.

Was it a State statute the court interpreted? If it is a district court decision on a State statute as against a Federal decision by the Supreme Court, there is a little bit of difference there.

Mr. GARCIA. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from New York.

Mr. GARCIA. Under title VI of the civil rights law. It is a post-Lau decision. It was, again I repeat, the eastern district of New York. It is an unpublished opinion, Rios against Read. There was no appeal taken.

Mr. ASHBROOK. If my colleague would yield, in response, there would be no part on my amendment, and it is not its intention, and I do not think it would be its application to prevent any school district the gentleman is talking about from going ahead with any of the programs they want. All I am saying is that the Department of Education cannot require the program they would mandate.

The CHAIRMAN pro tempore (Mr. JENKINS). The time of the gentleman from California (Mr. ROYBAL) has expired.

(At the request of Mr. WEISS and by unanimous consent, Mr. ROYBAL was allowed to proceed for 2 additional minutes.)

Mr. WEISS. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from New York.

Mr. WEISS. I thank the gentleman for yielding.

I am somewhat confused by the amendment, especially as it has been clarified now by the rereading of it by the gentleman from California. I listened with some sympathy to the gentleman from Ohio explaining how what he was trying to preclude was the Department of Education mandating one specific approach after the Supreme Court had laid out a number of possibilities, and then I listened to the amendment that the gentleman offers; and in fact, his amendment mandates that only one specific approach be utilized. That confuses and perturbs me.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Ohio.

Mr. ASHBROOK. That is not the case at all. I am only saying that the Secretary of Education cannot require one specific program. Local districts and States can meet local needs with whatever bilingual approach they provide to meet the need and the rights of the targeted student.

Mr. WEISS. If the gentleman will yield further, except one specific approach.

Mr. ASHBROOK. In New York, one can do anything one wants with local funds Federal bilingual programs have provided—and I have not disturbed them—for a variety of approaches. All I am saying is the Secretary of Education cannot say, "Let us go forward on this one track."

Mr. ROYBAL. Mr. Chairman, I can well understand the intent of the gentleman's amendment, but that is not the way it reads. If one reads the language, leaving out the little fringe words, it simply says that none of the funds appropriated under this act shall be used to address the educational needs of students of limited English-speaking ability in programs other than those of intensive instruction in English.

Mr. WEISS. That is right. It seems to me whatever the gentleman's intentions were, the drafting of that amendment flies directly in the face of its intention.

Mr. ASHBROOK. If the gentleman will yield further, he left off the most important operative words, "As a condition for the eligibility for the recipient of funds appropriated." That is what we are against is using the carrot and stick as a means of saying you do not get any Federal funds unless you implement this one approach mandated by the Department of Education.

The gentleman left out the most important words.

Mr. NATCHER. Mr. Chairman, the gentleman's amendment has been thoroughly discussed on both sides.

I ask at this time for a vote on the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. GARCIA. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 496]

Addabbo, Akaka, Albosta, Alexander, Ambro, Anderson, Calif., Anderson, Ill., Andrews, N.C., Andrews, N. Dak., Annunzio, Anthony, Applegate, Archer, Ashbrook, Ashley, Aspin, Atkinson, AuCoin, Badham, Bafalis, Bailey, Baldus, Barnard, Barnes, Bauman, Beard, R.I., Beard, Tenn., Bedell, Bellenson, Benjamin, Bennett, Bereuter, Bethune, Bevill, Biaggi, Blanchard, Boggs, Boland, Bolling, Boner, Bonior, Bonker, Bouquard, Brademas, Brinkley, Brodhead, Brooks, Broomfield, Brown, Calif., Broyhill, Buchanan, Burgener, Burlison, Burton, John, Burton, Phillip, Butler, Byron, Campbell, Carney, Carr, Carter, Chappell, Cheney, Chisholm, Clausen, Clay, Cleveland, Clinger, Coleman, Collins, Ill., Collins, Tex., Conable, Conte, Corcoran, Corman, Cotter, Coughlin, Courter, Crane, Daniel, Crane, Philip, D'Amours, Daniel, Dan, Daniel, R. W., Danielson, Dannemeyer, Daschle, Davis, Mich., de la Garza, Dellums, Derrick, Derwinski, Dickinson, Dicks, Dixon, Donnelly, Dornan, Dougherty, Downey, Duncan, Oreg., Duncan, Tenn., Early, Eckhardt, Edgar, Edwards, Ala., Edwards, Calif., Edwards, Okla., Emery, English, Erdahl, Erlenborn, Ertel, Evans, Del., Evans, Ind., Fary, Fascell, Fazio, Ferraro, Findley, Fish, Fisher, Fithian, Flippo, Florio, Foley, Ford, Mich., Ford, Tenn., Forsythe, Fountain, Fowler, Frenzel, Frost, Fuqua, Garcia, Gaydos, Gephardt, Giaimo, Gibbons, Gilman, Gingrich, Ginn, Glickman, Goldwater, Gonzalez, Goodling, Gore, Gradison, Gramm, Grassley, Green, Grisham, Guarini, Gudger, Guyer, Hagedorn, Hall, Ohio, Hall, Tex., Hamilton, Hammer-schmidt, Hance, Hanley, Hansen, Harkin, Harris, Hawkins, Hefner, Heftel, Hightower, Hillis, Hinson, Holland, Hollenbeck, Holt, Hopkins, Howard, Hubbard, Huckaby, Hughes, Hutchinson, Hutto, Hyde, Ireland, Jacobs, Jeffords, Jeffries, Jenkins, Jenrette, Johnson, Calif., Johnson, Colo., Jones, N.C., Jones, Okla., Jones, Tenn., Kastenmeier, Kazen, Kelly, Kemp, Kildee, Kindness, Kogovsek, Kostmayer, Kramer, LaFalce, Lagomarsino, Latta, Leach, Iowa, Leath, Tex., Lee, Lehman, Leland, Lent, Levitas, Lewis, Livingston, Lloyd, Loeffler, Long, La., Long, Md., Lott, Lowry, Lujan, Luken, Lundine, Lungren, McClory, McCloskey, McCormack, McDade, McEwen, McHugh, McKay, Madigan, Maguire, Markey, Marks, Marlenee, Marriott, Martin, Matsui, Mattox, Mavroules, Mazzoli, Mica, Michel, Mikulski, Miller, Calif., Miller, Ohio, Mineta, Minish, Mitchell, Md., Mitchell, N.Y., Moakley, Moffett, Mollohan, Montgomery, Moore, Moorhead, Calif., Motti, Murphy, N.Y., Murphy, Pa., Murtha, Musto, Myers, Ind., Natcher, Neal, Nelson, Nichols, Nolan, Nowak, O'Brien, Oakar, Oberstar, Obey, Ottinger, Panetta, Pashayan, Patten, Patterson, Paul, Pease, Pepper, Perkins, Petri, Peyser, Pickle, Porter, Preyer, Price, Pritchard, Pursell, Quayle, Quillen, Rahall, Rangel, Ratchford, Regula, Reuss, Rhodes, Richmond, Rinaldo, Ritter, Roberts, Robinson, Rodino, Roe, Rose, Rostenkowski, Roth, Roussselot, Roybal, Royer, Rudd, Russo, Sabo, Santini, Satterfield, Sawyer, Schroeder, Schulze, Sebelius, Seiberling, Sensenbrenner, Shannon, Sharp, Shelby, Shumway, Shuster, Simon, Skelton, Smith, Iowa, Smith, Nebr., Snowe, Snyder, Solomon, Spellman, Spence, St Germain, Stack, Staggers, Stangeland, Stanton, Stead, Stenholm, Stewart, Stockman, Stokes, Stratton, Studds, Stump, Swift, Symms, Synar, Tauke, Tauzin, Taylor, Thomas, Traxler, Trible, Udall, Ullman, Van Deerlin, Vander Jagt, Vanik, Vento, Volkmer, Walgren, Walker, Wampler, Watkins, Waxman, Weaver, Weiss, White, Whitehurst, Whitley, Whittaker, Whitten, Williams, Mont., Williams, Ohio, Wilson, Bob, Wilson, Tex., Winn, Wirth, Wolf, Wolpe, Wright, Wyatt, Wylie, Yates, Yatron, Young, Fla., Young, Mo., Zablocki, Zeferetti

□ 1330

The CHAIRMAN. Three hundred ninety-two Members have answered to their name, a quorum is present, and the committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from New York (Mr. GARCIA) for a recorded vote. Five minutes will be allowed for the vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 213, noes 194, not voting 25, as follows:

[Roll No. 497]

AYES—213

Albosta, Ambro, Andrews, N.C., Andrews, N. Dak., Applegate, Archer, Ashbrook, Badham, Bafalis, Barnard, Bauman, Beard, Tenn., Bennett, Bereuter, Bethune, Bevill, Boland, Boner, Bouquard, Brinkley, Broomfield, Broyhill, Buchanan, Burgener, Butler, Byron, Campbell, Carney, Carter, Chappell, Cheney, Cleveland, Clinger, Coleman, Collins, Tex., Conable, Corcoran, Coughlin, Courter, Crane, Daniel, Crane, Philip, D'Amours, Daniel, Dan, Daniel, R. W., Dannemeyer, Davis, Mich., Derrick, Derwinski, Dickinson, Duncan, Oreg., Duncan, Tenn., Edwards, Ala., Edwards, Okla., English, Erdahl, Erlenborn, Ertel, Evans, Del., Evans, Ga., Evans, Ind., Fenwick, Findley, Fish, Fithian, Flippo, Foley, Forsythe, Fountain, Frenzel, Gaydos, Gibbons, Gingrich, Glickman, Goldwater, Goodling, Gore, Gradison, Gramm, Grassley, Grisham, Gudger, Guyer, Hagedorn, Hall, Tex., Hamilton, Hammer-schmidt, Hansen, Hefner, Hillis, Hinson, Holland, Holt, Hopkins, Hubbard, Huckaby, Hughes, Hutchinson, Hutto, Hyde, Ireland, Jacobs, Jeffords, Jeffries, Jenkins, Johnson, Colo., Jones, N.C., Jones, Okla., Jones, Tenn., Kemp, Kindness, Kramer, Lagomarsino, Latta, Leach, Iowa, Leath, Tex., Lee, Lent, Levitas, Lewis, Livingston, Loeffler, Long, Md., Lott, Luken, Lungren, McClory, McCormack, McDade, McDonald, McEwen, Madigan, Marks, Marlenee, Marriott, Martin, Hansen, Mathis, Mazzoli, Mica, Michel, Miller, Ohio, Mitchell, N.Y., Mollohan

Montgomery	Rhodes	Staggers
Moore	Ritter	Stangeland
Moorhead, Calif.	Robinson	Stanton
Mottl	Roe	Stenholm
Murphy, Pa.	Roth	Stockman
Murtha	Rousselot	Stratton
Myers, Ind.	Royer	Stump
Neal	Rudd	Symms
Nelson	Russo	Tauke
Nichols	Sabo	Taylor
O'Brien	Satterfield	Thomas
Oberstar	Sawyer	Trible
Pashayan	Schulze	Vander Jagt
Paul	Sebelius	Walgren
Perkins	Sensenbrenner	Walker
Petri	Sharp	Wampler
Preyer	Shelby	Whitehurst
Pritchard	Shumway	Whitley
Pursell	Shuster	Whittaker
Quayle	Smith, Nebr.	Wilson, Tex.
Quillen	Snyder	Winn
Rahall	Solomon	Wylie
Regula	Spence	Yatron
	St Germain	Young, Fla.

NOES—194

Addabbo	Fisher	Panetta
Akaka	Florio	Patten
Alexander	Ford, Mich.	Patterson
Anderson, Calif.	Ford, Tenn.	Pease
Anderson, Ill.	Fowler	Pepper
Annunzio	Frost	Peyser
Anthony	Fuqua	Pickle
Ashley	Garcia	Porter
Aspin	Gephardt	Price
Atkinson	Giaimo	Rallsback
AuCoin	Gilman	Rangel
Bailey	Ginn	Ratchford
Baldus	Gonzalez	Reuss
Barnes	Gray	Richmond
Beard, R.I.	Green	Rinaldo
Bedell	Hall, Ohio	Roberts
Beilenson	Hance	Rodino
Benjamin	Hanley	Roe
Biaggi	Harkin	Rosenthal
Bingham	Harris	Rostenkowski
Blanchard	Hawkins	Roybal
Boggs	Heckler	Santini
Bolling	Heftel	Scheuer
Bonior	Hightower	Schroeder
Bonker	Hollenbeck	Seiberling
Brademas	Howard	Shannon
Breaux	Jenrette	Simon
Brodhead	Johnson, Calif.	Skelton
Brooks	Kastenmeier	Smith, Iowa
Brown, Calif.	Kazen	Snowe
Burlison	Kelly	Solarz
Burton, John	Kildee	Spellman
Burton, Phillip	Kozovsek	Stack
Carr	Kostmayer	Steed
Cavanaugh	LaFalce	Stewart
Chisholm	Lehman	Stokes
Clausen	Leland	Studds
Clay	Lloyd	Swift
Coelho	Long, La.	Synar
Collins, Ill.	Lowry	Tauzin
Conte	Lujan	Traxler
Corman	Lundine	Udall
Cotter	McCloskey	Ullman
Danielson	McHugh	Van Deerlin
Daschle	McKay	Vanik
Davis, S.C.	Maguire	Vento
de la Garza	Markey	Volkmer
Dellums	Matsui	Watkins
Dicks	Mattox	Waxman
Dingell	Mavroules	Weaver
Dixon	Mikulski	Weiss
Donnelly	Miller, Calif.	White
Dornan	Mineta	Whitten
Dougherty	Minish	Williams, Mont.
Downey	Mitchell, Md.	Williams, Ohio
Drinan	Moakley	Wilson, Bob
Early	Moffett	Wirth
Edgar	Murphy, N.Y.	Wolff
Edwards, Calif.	Musto	Wolpe
Emery	Natcher	Wright
Fary	Nolan	Wyatt
Fascell	Nowak	Yates
Fazio	Oakar	Young, Mo.
Ferraro	Obey	Zablocki
	Ottinger	Zeferetti

NOT VOTING—25

Abdnor	Harsha	Myers, Pa.
Bowen	Holtzman	Nedzi
Brown, Ohio	Horton	Stark
Conyers	Ichord	Thompson
Deckard	Leach, La.	Wilson, C. H.
Devine	Lederer	Wydler
Dodd	McKinney	Young, Alaska
Eckhardt	Moorhead, Pa.	
Guarini	Murphy, Ill.	

□ 1340

The Clerk announced the following pairs:

On this vote:

Mr. Abdnor for, with Mr. Guarini against.

Mr. Brown of Ohio for, with Mr. Murphy of Illinois against.

Mr. Deckard for, with Mr. Conyers against.

Mr. Devine for, with Mr. Thompson against.

Mr. Wydler for, with Mr. Lederer against.

Mr. Young of Alaska for, with Mr. McKinney against.

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: Page 60, after line 19, insert the following:

SEC. 510. (a) None of the funds under this Act may be used to implement, administer, or enforce regulations issued under sec. 451 of the GEPA, 20 U.S.C. 1234, pertaining to the operations of the Education Appeal Board, 45 CFR Part 100–D (1980); regulations issued under sec. 321–322 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 2961–2963 pertaining to arts education, 45 CFR Part 161–C (1980); regulations issued under secs. 346–348 of the ESEA, 20 U.S.C. secs. 3001–3003, pertaining to law-related education, 45 CFR Part 161–G (1980); regulations issued under title IV of the ESEA, 20 U.S.C. 3061 et seq., pertaining to grants to State and local educational agencies for educational improvement resources and support, 45 CFR Part 134 (1980); or any other regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

(b) None of the funds under this Act may be used to terminate any program or activity with respect to which regulations have been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

Mr. LEVITAS (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. LEVITAS. Mr. Chairman, this amendment is similar to one which has been adopted by this body on several other occasions relating to the withholding of funds for the purpose of implementing any regulation which has been disapproved by action of Congress pursuant to existing law. It is not a legislative veto amendment in and of itself, but it is an amendment which says that if there is already in place in the law a legislative veto and it is exercised in accordance with the law, then we should not be providing the funds for agencies to implement regulations which have been disapproved of through the orderly process established by law. This is not some theoretical problem. This is not some hypothetical concern.

In fact, with respect to this very appropriations bill, it is an extremely real matter. The Congress through existing legislative procedures vetoed four regulations issued by the Department of Education. Those regulations were vetoed after consideration in both Houses of Congress. However, even though these regulations were vetoed by action of both Houses, and it is my recollection by unanimous votes, the administration announced as its policy that they were going to implement the regulations, nevertheless. In a memorandum to officials in the Department of Education, the Secretary of Education said that, based on the opinion of the Attorney General, it is now the official policy of this administration and the Education Department to disregard these vetoes. She specifically stated:

Accordingly, you are instructed to treat the disapproved regulations as final and effective rules, beginning immediately.

I suggest to my colleagues, Mr. Chairman, that that is outrageous. The law is very clear. The law provides for a disapproval procedure, and it is not up to this administration, this Secretary, or this President—or any President—to decide which laws they are going to follow and which laws they are not going to follow.

The administration's action makes the issue one of whether or not we in Congress are going to allow the law to be ignored. I do not believe any Member of Congress can stand by and allow our mandates to be treated in such a cavalier fashion. The Constitution of the United States requires the President of the United States to faithfully execute the laws. He is not given the authority to pick and choose those laws he wants to implement and those that he does not want to implement.

If there is a constitutional problem with legislative vetoes, let the courts decide it. Let the Supreme Court make the decision. But even those of us who would disagree with the legislative veto—and I suppose there are one or two people left who fall in that category—I think all of us must unanimously be in accord that once a veto has been exercised, that regulation is disapproved and we should not fund the administration to implement disapproved or vetoed regulations.

Let me mention one other item here. Section (b) of this amendment provides that programs which have been in place shall not be terminated because the regulations, new regulations implementing those programs, have been disapproved by Congress. That is a very important feature in this particular situation. The regulations which were vetoed by Congress dealt with programs which have been funded for a long time, programs which were in place and did not require the new regulations which were vetoed by Congres to carry them on.

The second part of this amendment will assure that those programs which were being conducted without these vetoed regulations will continue until new and revised regulations can be issued by the Department and put in place without being vetoed by the Congress. This portion of the amendment will ensure that funding for programs and the programs themselves will continue even if regulations affecting the programs have been disapproved by Congress. This section is included in order to protect the ongoing programs.

Mr. Chairman, I have offered this amendment so that we may be certain that the laws we have set forth with regard to legislative vetoes are enforced and not ignored. We are facing a significant challenge to our constitutional powers, and we must rise to meet it. My amendment will do so in simple direct fashion. I urge every Member of this body to support its passage.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I will be happy to yield to the gentleman.

Mr. FORD of Michigan. I thank the gentleman for yielding and I want to compliment the gentleman. As the ranking majority member on the Committee on Elementary, Secondary and Vocational Education and chairman of the Subcommittee on Postsecondary Education, I have been intimately connected with the so-called one-House veto that we have had in the General Education Provisions Act for a decade. The value of that provision has been that it was passed during the early days of the Nixon administration.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. FORD of Michigan, and by unanimous consent, Mr. LEVITAS was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. If the gentleman will continue to yield, the value is that over the years it has not had to be used. What it has produced in the past is a pattern. The regulation writers would sit down with the House and Senate committees and discuss the advisability of the regulation that they were proposing and how it would fit. For a long time that seemed to be working, and we would not have to veto regulations. Very recently there has been sparked—I think to a large extent by the gentleman's very active legislating, putting legislative vetoes in a number of other kinds of laws—a reaction on the part of some people who got a little stubborn in the executive branch about their prerogatives. They are now being stubborn to the point of trying to create a test where none should take place.

The gentleman from Colorado (Mr. KRAMER) has an amendment attempting to do the same thing. I think that the gentleman's amendment does it more effectively and more clearly. While this is not our committee, I believe that most members of the Committee on Education and Labor would agree that we want to protect a practice that has worked very well to keep an eye on the regulation writers at HEW, now the new Office of Education. I compliment the gentleman for this amendment and hope that it passes.

□ 1350

Mr. LEVITAS. Mr. Chairman, I thank the gentleman for his comments and his observations.

Mr. Chairman, I might say I have followed the activities of the Committee on Education and Labor in this process and I think it demonstrates the way in which this type of legislative veto mechanism can be properly used. The great fear that legislative vetoes will be exercised frequently really is an unnecessary fear. Once the administration knows the committee and Congress has some say so about it in the form of a veto, they will work with the Congress to develop reasonable regulations. It is regrettable they failed to do so in this instance and that it was necessary for the gentleman's committee to report out the veto resolution which was adopted by the Congress.

Mr. FORD of Michigan. Mr. Chairman, will the gentlman yield for a question?

Mr. LEVITAS. I will be happy to yield.

Mr. FORD of Michigan. One of the appeals of the gentleman's amendment, and his approach to the solution, is that it would not penalize local school districts nor would it threaten the continued flow of money to local school districts while a discussion was going on between the committees and the administration over the status of regulation.

Is it the understanding of the gentleman that money under an entitlement program, such as impact aid in title I and the others, would continue to flow to the school districts without regard to the status of disagreement between the administration and the executive, or the legislative branch, over pending regulations?

Mr. LEVITAS. The gentleman's interpretation of my intention is absolutely correct. That is precisely what I have included. Subsection (b) is to assure there will be no penalizing of the local schools as a result of a dispute between the legislative and the executive branches and these ongoing programs will continue to be funded under preexisting procedures which were in place before the vetoed regulations were issued.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. LEVITAS).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WALKER

Mr. WALKER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WALKER: Page 52, after line 3, insert the following new section:

SEC. 310. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

Mr. WALKER. Mr. Chairman, this amendment is basically language being offered as a preventive measure. You may remember when we first instituted the Department of Education there were amendments offered on the House floor by myself, there was an amendment offered in the Senate, both of which were adopted at one time or another in the Department of Education bill which related to school prayer. In both instances, the proponents of the Department had those amendments stricken out and the Department is now in operation and would have to be assumed based upon that as being somewhat antiprayer in its attitude. That has to be put together with the fact that in 21 of the 44 States that I recently polled, there is action pending in those States relative to voluntary prayer in the public schools. In those legislatures legislation has been introduced. In some cases it is moving. In the State of Massachusetts there is a law in the books relating to voluntary prayer in the public schools. Therefore, it is reasonable to assume at some point the Department of Education might decide that this is something they are going to stand in the way of.

All this amendment says is that the Department of Education shall not use its funds to prevent any State from going ahead with a voluntary school prayer program that it may wish to put into effect.

It seems to me there is no justification in our constitutional history for the present ban on voluntary prayer in our public schools. Certainly our modern public school curriculum has been adopted to provide a maximum choice of subjects to the students. Unfortunately, as a result of this Supreme Court decision, one of the few subjects to which our students may not be exposed is voluntary school prayer.

My reaction to the Supreme Court is that it has overstepped its bounds. That is not merely an emotional reaction. It is one that is supported in some of the highest courts of our States and by constitutional scholars.

In the Schempp against Abington case which decided the school prayer issue, Mr. Justice Clark speaking for the Court formulated a new set of legislative tests for measuring legislative action regarding Government entanglement with religion.

The test asks: "What are the purpose and effect of the enactment? If either is the advancement or inhibition of religion the enactment exceeds the scope of legislative power as circumscribed by the Constitution." In other words, in order to comply with demands of the establishment clause "there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."

Erwin Griswold, dean of the Harvard Law School viewed this holding as "sheer invention" by the Court. Prof. Charles Rice of Notre Dame Law School has said that the establishment clause does not require Government abstention from all matters of religion. He asserts that the clause demands Government neutrality only as among the various sects of theistic religions and not that it must not show affirmative hospitality to theistic religion over the nontheistic creeds. Justice Joseph Story, a contemporary of the framers of the Constitution, I believe, would concur with Professor Rice's analysis.

Unfortunately, the prohibition of voluntary prayer in the schools flies in the face of constitutional history, scholarly constitutional analysis and the will of the majority of the American public.

The amendment I am offering here is offered to assure that as we go about attempting to correct an unjustified separation of prayer from the schools, the

new Department of Education does not stand in the way of that process.

Mr. PEYSER. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from New York.

Mr. PEYSER. I would like to ask a question. Has the Department of Education at this time done anything that would interfere with the type of program you are speaking of, are there any regulations presently existing?

Mr. WALKER. I would say to the gentleman, absolutely not. I know of no action that the Department of Education has taken in this regard. That is the reason I have described what I am doing as a preventive thing, based upon the fact there are a number of States moving in the direction of institution of voluntary prayer programs in their States.

Mr. PEYSER. Mr. Chairman, I have one further question. Is there any money at all in this appropriation bill as it now exists that could possibly be directed to this? I mean, is there anything in the bill itself which speaks to the prayer amendment?

Mr. WALKER. I am not aware there is any money in, except certain administrative funds, money which goes for public relations activities, could easily be diverted into that kind of a program if such an effort was deemed necessary by the Secretary.

Mr. PEYSER. Mr. Chairman, I thank the gentleman and I oppose the amendment even though it obviously does nothing.

Mr. ATKINSON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Pennsylvania (Mr. WALKER).

In 1962, the U.S. Supreme Court started handing down a series of opinions that collectively have become known as the "school prayer" cases. The Court held that the classroom recitation of nondenominational prayers on a voluntary basis by public school students constituted an "establishment of religion" that was prohibited by the first amendment of the U.S. Constitution if Government sponsorship was involved. We are all well aware that this line of judicial reasoning did not sit well with the American people in 1962 and that an overwhelming majority of the good citizens of this Republic still disagree with the Supreme Court on the need to restore this longstanding national tradition.

During the past 18 years, there has been a continuing popular effort to enact a legislative remedy to the school prayer issue. The longevity and resiliency of this movement are a testimony to the depth of feeling and public support for bringing the recognition of Almighty God back into the school systems that our people finance with their hard earned tax dollars.

I commend my distinguished colleague from Pennsylvania (Mr. WALKER) for responding to the public concern for the restoration of school prayer. His amendment will preclude executive branch bureaucratic interference into this sensitive area and leave the resolution of this controversy where it ultimately must be decided—the Congress of the United States.

Mr. WYLIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment, Mr. Chairman, I compliment the gentleman from Pennsylvania for his able persistence in keeping this subject before us for discussion. This amendment does afford me an opportunity to reiterate my support for voluntary prayer in public schools. My efforts to make this right unmistakable have always been overwhelmingly supported by the residents of central Ohio. I might say that one of the foundation stones of our democracy as written into the Constitution by our Founding Fathers is belief in a creator who endows us with certain inalienable rights. We should always guarantee the right of any citizen the freedom to recognize the Supreme Deity in any forum he chooses, including our public schools.

□ 1400

I can well remember back, Mr. Chairman, to my own days in public schools. We would begin our day with a brief nondenominational prayer, and a Pledge of Allegiance to the flag of the United States. These simple expressions of faith in God and our allegiance to America were a moment of serious reflection that generally tended to establish a positive atmosphere for the remainder of the day's classroom activities.

I think our generation is making it hard for young people to relate with our laissez faire attitude about family and school and belief in a supreme deity. I believe a positive vote on this amendment would reaffirm our belief in this basic principle.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding. I just take a few moments here to congratulate the gentleman for his leadership. I certainly appreciate his statement because as long as 8 years ago he was a leader on this floor on this issue, and has continued to be a national spokesman on the issue of school prayer. I appreciate his statement on this issue and his support for my amendment today.

Mr. WYLIE. I thank the gentleman for his comments of approval and for your excellent leadership.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. WALKER).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. HARRIS: Page 57, after line 17, insert the following new section:

SEC. 501. No part of any appropriation contained in this Act shall be expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), pursuant to any obligation for services by contract, unless such executive agency has awarded and entered into such contract in full compliance with such Act and regulations promulgated thereunder.

Page 57 after line 17, insert the following new section:

SEC. 501. In the case of any agency which has, for the period beginning on October 1, 1980, and ending on July 31, 1981, obligated less than 80 percent of the funds appropriated to such agency under this Act for the fiscal year ending September 30, 1981, the amount of funds which shall be available to such agency and which may be apportioned to such agency under section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) for the period beginning August 1, 1981, and ending September 30, 1981, shall be reduced by an amount equal to 80 percent of the funds appropriated to such agency under this Act for the fiscal year ending September 30, 1981, reduced by the amount of funds obligated by such agency under this Act during the period beginning on October 1, 1980, and ending on July 31, 1981.

Mr. HARRIS (during the reading). Mr. Chairman, I ask that the amendments be considered and read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, the amendemnt I am offering today is a simple amendment, yet it would have the effect of insuring that contract actions which violate existing law and regulations will not be funded through appropriations under this act. It has been drafted in order to conform to the House rules in that it merely requires adherence to existing law and regulations.

An investigation by my subcommittee has exposed numerous instances of agency noncompliance with revised OMB Circular A-76, which is executive branch policy guidance for acquiring commercial or industrial products and services, and OMB Circular A-120, which provides guidelines for the use of consulting services. These revised guidelines were issued by the Office of Federal Procurement Policy under authority granted by Public Law 93-400.

A-76 requires that determinations concerning the source of commercially available products and services shall be based on the results of a rigorous, uniform cost comparison analysis. The purpose of this policy is to insure that the taxpayers receive the best return on their tax dollars.

Recently, Department of Energy officials informed my subcommittee that a $5-million support service contract was let in May of 1980 without the benefit of the required cost comparison analysis. DOE officials were unable to explain why the requirement was ignored a full year after its effective date. This is just one of many examples which my investigation has uncovered.

At the same hearing we discovered that the Department of Energy was improperly using contract consultants in the formulation of national policy in violation of Circulator A-120. Most shocking of all was the revelation that these very same consultants who were improperly influencing national energy policy have undisclosed ties with the energy industry and the OPEC oil cartel.

Noncompliance with existing requirements is not limited to the Department of Energy. GSA spent a quarter of a million dollars more than necessary on a contract because of restrictive personnel ceilings in direct violation of A-76. HEW awarded 1,203 contracts during the 5-month period subsequent to the effective date of A-76. None of these actions were based on the required cost comparison analysis.

The list goes on and on.

Perhaps the most frustrating problem I have encountered in my 1½-year investigation of Federal contracting is the lack of complete and accurate information concerning the extent of the Government's contracting activity. Although regulations require procurement actions to be reported to a central repository (Federal Procurement Data Center), a recent GAO report prepared at my request shows that agencies have not fulfilled this requirement.

In fact, when I requested a list of contractual obligations for fiscal year 1979 for all executive agencies, HUD was listed as showing no contractual obligations for that year.

I can understand why an agency can have startup difficulties in establishing a new program. But I cannot understand or condone noncompliance with a direct legislative mandate fully 5 years after that mandate was enacted into law.

The amendment I am offering would have the effect of requiring adherence to legislative mandate and executive regulation in these vital areas. It is time for this Congress to use its power over the pursestrings to insure that its mandates are effectively implemented. I urge my colleagues to support this amendment.

Mr. Chairman, my amendment would establish firm controls over wasteful year-end spending sprees by limiting agency spending to 20 percent during the last 2 months of the fiscal year. This amendment has already been adopted to four fiscal year 1981 appropriations bills by overwhelming margins.

My Subcommittee on Human Resources has conducted an intensive investigation and received testimony from a wide variety of groups, individuals and Government agencies concerning the problem of year-end spending. The subcommittee's probe has revealed that funds appropriated for specific programs are not being rationally obligated to achieve the congressionally intended objective. Rather, much of the funds are being pushed out in the final weeks of the fiscal year on questionable contracts, grants and other spending.

GAO investigations, done at my request, are documenting the fact that funds are being diverted from the purpose laid out by Congress, causing millions, perhaps billions, of dollars, to be wasted on unnecessary projects and purchases during the last 2 months of the fiscal year. Federal agencies operate under a "use it or lose it" policy which reflects a fear that their budget will be cut the following year unless all funds are expended. Former Treasury Secretary Blumenthal has stated that year-end spending amounts to agencies "literally pushing money out the door with a wheelbarrow."

The administration has expressed concern about this wasteful year-end spending and has repeatedly issued directives to agencies in an effort to curb the abuses. Each summer since 1977, President Carter and OMB Director James McIntyre have urged agencies to avoid year-end spending sprees. Despite these directives, the year-end spending remains a major abuse. In fiscal year 1979, seven major Federal agencies spent more than 20 percent of their single year appropriations in the last 2 months of the fiscal year: 47.2 percent at HUD—$16 billion, 41.7 percent at EPA—$2.2 billion, 22.9 percent at HEW—$14.3 billion, 30.3 percent at Commerce—$907 million, 23.1 percent at Interior—$1.3 billion, 22.1 percent at Postal Service—$3.2 billion and 22.8 percent at DOT—$1.4 billion. If these seven agencies had limited spending to 20 percent in the last 2 months of the fiscal year, they could have saved $13 billion. I am convinced that a substantial portion of this amount could have been returned to the Treasury with minimal adverse effect on congressionally mandated programs.

Quite simply, the flurry of obligations at the end of the fiscal year is a very poor management practice. Increased year-end obligational activity places Government negotiators in a very poor bargaining position and results in contracts and grants being let and goods being purchased without adequate consideration. This "rush" to award contracts and grants seriously impairs the objectiveness as well as the thoroughness of the proposal evaluation process. In addition, I am particularly concerned that a large number of the contracts being let at the end of the year are sole-source to big firms ostensibly based on "unique qualification" and "time exigency." This type of year-end giveaway effectively bars firms without the "connections" and is "wired" against small businesses, which do not have the "inside track."

Direct congressional action to halt the year-end spending sprees must be taken. The waste clearly has not been eliminated administratively. As a matter of fact, it appears that while OMB has been monitoring outlays, it has been ignoring obligation rates. It makes no sense to me for OMB to check funds already "spent" while ignoring the even more important task of monitoring funds which could be saved. As a result, the practice of obligating "use it or lose it" funds at the end of the fiscal year has continued unabated.

Congressional support to limit year-end spending has been widespread. The House and Senate Budget Committees have included language in the fiscal year 1980 second concurrent resolution stating:

> The conferees are very concerned about wasteful government spending which may result from agency practices of obligating substantial amounts of funds during the last weeks and months of the fiscal year in order to avoid lapse of unneeded funds at the year end. . . . the conferees urge the appropriate committees to consider the need for language in FY 81 spending bills to control the obligation rates for federal programs or consider alternative legislative remedies for this program.

The conferees for the second budget resolution clearly felt Congress must take action to eliminate year-end spending abuses in all Federal agencies. In the report on the budget for fiscal year 1981, the House Budget Committee reaffirmed its concern about year-end spending and recognized that it is an area where savings can be made.

In addition, the Department of Defense has had a year-end spending limitation on its annual appropriation bill since 1953. And the Department of Health, Education, and Welfare had a year-end spending limitation in its fiscal year 1980 appropriation bill. Finally, my legislation—H.R. 4717 and H.R. 7287—to control year-end spending has bipartisan support from over 75 Members.

A year-end spending limitation has also been endorsed by the General Accounting Office in recent testimony before the Government Operations Committee:

> We support the temporary use of a limitation on year-end spending as a means of conveying Congress concern—not only with year-end spending itself—but with the need to strengthen the budget execution procurement process.

At a time when Congress is struggling to trim Federal spending and balance the budget, we cannot ignore this uncontrolled area of Federal spending. The abuse in year-end spending is widely recognized—let us not let it continue in fiscal year 1981. I strongly urge your support of my amendment to H.R. 7998, the Labor-HEW appropriations bill for fiscal year 1981.

● Mr. WAXMAN. Mr. Chairman, though I support the purpose of the Harris amendment, I am concerned about its effect on certain Federal programs. I hope the gentleman from Virginia can allay my fears. HHS pays the States for the Federal share of medicaid and various public assistance and social service programs on a quarterly basis. If these programs were to be limited to 20 percent for the last quarter, the States would receive substantially less than their full share of the Federal Government's financial participation. While I understand that this is an agency rather than a program cap, these programs constitute such a substantial share of the HHS budget that I am afraid that the extra 5 percent for these programs, when totaled, could easily bring the quarterly total to 20 percent of the agency budget and shut down all other programs and services funded by HHS for the last few months of each fiscal year.

I would like to know if this were to happen, whether the agency would be able to maintain all Federal programs. Is there any provision for a waiver so as not to, in effect, shut down important agency programs?●

Mr. HARRIS. Mr. Speaker, with regard to Mr. WAXMAN's statement, I certainly understand the concerns of the gentleman from California. First, the limitation applies agency-wide and thus, gives the agency considerable flexibility with the spending patterns of each of its programs. Second, we can, I am sure, in negotiation with the other body, come up with waiver provisions to take care of programs like this which can be seasonal in nature. I want to go on record as personally supporting such an approach.

Mr. NATCHER. Mr. Chairman, will the gentleman yield to me?

Mr. HARRIS. I will be happy to yield.

Mr. NATCHER. Mr. Chairman, these amendments have been previously offered and adopted in connection with other appropriation bills.

Mr. Chairman, we have no objection to either amendment.

Mr. HARRIS. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. ROYBAL

Mr. ROYBAL. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

LOW INCOME ENERGY ASSISTANCE

For expenses necessary to carry out a program of energy assistance for low income households as authorized under the Economic Opportunity Act, of 1964, $1,800,000,000 including $1,776,000,000 for special energy allowance grants to States or Territories, $20,000,000 which shall be transferred to the Community Service Administration for energy assistance to migrants and native Americans and $4,000,000 for Social Security administrative costs: *Provided*, That none of the funds appropriated in this paragraph shall be used to provide assistance either in cash or in kind to any household during fiscal year 1981 which exceeds a value of $500.

The Clerk read as follows:

Amendment offered by Mr. ROYBAL: On page 28, strike out line 24 and all that follows thereafter through page 29, line 10, and insert in lieu thereof the following: "For expenses necessary to carry out the provisions of title III of the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-223), $1,800,000,000.".

The CHAIRMAN. The gentleman from California (Mr. ROYBAL) is recognized for 5 minutes in support of his amendment.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from New York.

Mr. WOLFF. Mr. Chairman, I thank the gentleman for yielding. I take this time to engage in a very short colloquy with the chairman of the subcommittee relative to the Helen Keller National Institute for the Deaf and Blind.

Mr. Chairman, as I understand it, it has been agreed that according to the desires and wishes of a number of the Members of this body, that there will be additional funding available for the Helen Keller Institute for the Deaf and Blind. Am I correct in that, Mr. Chairman?

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, the gentleman from New York is correct. As I recall, last year $2.5 million was expended in this program. The gentleman has in mind raising the amount up to $3.5 million, with no increase in the bill, but out of total rehabilitation services funding. As far as our committee is concerned, we would have no objection.

Mr. WOLFF. I thank the gentleman from Kentucky for all of his understanding and assistance.

Mr. Chairman, I had intended to offer an amendment at this time to provide additional funds for the Helen Keller National Center for Deaf-Blind Youth and Adults.

The Helen Keller National Center has faithfully served visually and orally handicapped citizens from across the country for the past 11 years, and is the only agency of its kind in the United States. The center is operated by the Industrial Home for the Blind under an agreement with HEW signed in 1969. The center's main facility is located in Sands Point, N.Y., and operates outreach facilities in 8 regional offices across the country, and provides financial assistance to 13 other rehabilitation centers at a rate of $100,000 per year. The center has provided hundreds of deaf-blind Americans with the chance to play a constructive role in society through its remarkably innovative and overwhelmingly successful methods of teaching.

Over the past 2 fiscal years, the center has been funded by Congress at a rate of $2.5 million per year. The center has wisely and judiciously used every drop of these precious funds to support much needed services. In the past 2 years, however, fuel, labor, and medical costs have risen so dramatically that the center has found it impossible to keep pace with inflation at the suggested level of funding.

Fortunately, the crisis has been headed off. Thanks to the efforts of the distinguished chairman of the subcommittee, Mr. NATCHER, $1 million in previously unearmarked funds will now be set aside for use by the center. Although the financial difficulties which the center has encountered in recent years are by no means completely solved, this is a step in the right direction. I wish to commend my distinguished colleagues Mr. ADDABBO, Mr. ROYBAL, and Mr. GILMAN for their support and assistance in helping to gain for the center these most valuable funds in this the centennial year of the birth of the late Helen Keller.

Mr. ROYBAL. Mr. Chairman, under the bill before us the committee has appropriated $1.8 billion for low-income energy assistance under the authority of the Economic Opportunities Act of 1964. My amendment proposes to do nothing more than appropriate the identical amount under the authorization provided by the Crude Oil Windfall Profit Tax Act of 1980, as requested by the administration.

My amendment neither increases nor decreases the amount appropriated by the committee for this worthwhile program. The authorization chosen by the committee allows the committee to propose its own formula to distribute the funds appropriated, thus effectively undoing the work and debate conducted by this House, by the Senate, and by the conference committee on the windfall profit tax. We passed that conference report less than 6 months ago.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, it would be my hope that the members of the committee would vote and support the amendment of the gentleman from California. It is the most equitable approach. I have been with this energy program ever since it was inaugurated many years ago, and this formula in the bill presently is completely unfair. This is an equitable approach, and I would hope that the money could be distributed for energy purposes for the poor throughout the country on the basis that the gentleman has proposed.

Mr. ROYBAL. I thank the gentleman.

May I say to the House that I am certain that no formula devised by any committee will meet with the approval of all the Members of the House. The truth of the matter is that the formula previously adopted is the fairest formula that has ever been presented to this House up to this time. We can probably go on discussing the merits of the cost of heating oil over the last 3 years, and whether or not we should consider changes in various forms of heating energy, particularly over the last 5 or 10 years. These are some of the points that can be brought up in debate, but I suggest to my colleagues that these points should not be debated on an appropriation bill.

If some of the Members have problems with or questions about the formula in the windfall profit tax, then let us debate amendments to that bill next year. This is neither the time nor the place in which to invent a new formula and ignore the one that we passed just a few months ago.

We must take into consideration the fact that many States have already relied on that formula passed by this House and by the other body, and have drafted guidelines and regulations that meet the provisions of these programs. If we impose a new authorization for these funds, some of the States may find themselves in the position of having to draft new regulations, thus delaying the implementation of the program well into the winter.

□ 1410

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, I congratulate the gentleman on offering this amendment, and I rise in support of the amendment. Today we have the opportunity to select a formula for the distribution of funds for energy

assistance to low-income elderly persons. We use a formula because we have no way of knowing how extreme next year's weather will be. We are all aware that any formula is an artificial tool. But even with that recognition, our responsibility is not diminished. It lies in forging that tool—shaping it by using the best knowledge that we have to accomplish its task.

Since 1973 the Community Services Administration has provided some assistance to low-income people to pay fuel costs. And in 1977 Congress appropriated funds for a special emergency energy program to pay excessive heating bills. In that year and in each year since, we have discussed the need for this program with great sympathy and concern for poor people who endured freezing temperatures because they were unable to pay for heat or who heated their homes but had no means to pay for it.

If we had been determining a formula for the distribution of energy funds prior to July, I have little doubt that we would have chosen a formula that was weighted so that it would provide moneys where we felt they were needed most to help people avoid illness and death—the Northern States. This summer, however, has brought with it fresh facts—mordant facts—that we cannot dismiss. The old, the frail, and the poor have yet another enemy in the from of intense, unmitigating heat. The elderly, especially those who suffer from heart disease, high blood pressure, respiratory illness, or diabetes, are particularly vulnerable to excessive and prolonged hot weather. As a result, during periods of very high temperatures older persons or those who have specific medical problems may build up body heat, which leads to illness or death.

We should also consider that in at least a dozen States, local governments and social service agencies have been compelled to distribute fans and air conditioners to the elderly and poor and to keep senior citizens centers open 24 hours a day so older persons from the community would have a comfortable and safe place to stay. It would have stretched these jurisdictions beyond their fiscal means had the Federal Government not come forth with additional funds.

I do not believe that any of my colleagues from the cold States have any positive arguments to support why it is more rational to send a greater amount of money to their States when over 2,000 people died in the summer in the South from heat-related illnesses. The formula we select should conform to the reality we have faced this summer. It must allow us to respond equitably to the needs of people in all regions of our country. It is my hope that you will join me, Mr. ROYBAL, and others, and take this opportunity to select a formula that responds to both the devastating conditions of excessively hot and cold weather.

Mr. FLIPPO. Mr. Chairman, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Alabama.

Mr. FLIPPO. Mr. Chairman, I would like to associate myself with the remarks of the gentleman from California (Mr. ROYBAL) and say that I strongly support his amendment. I thank the gentleman for offering it.

Mr. ALEXANDER. Mr. Chairman, I rise in support of the amendment offered by my colleague from California (Mr. ROYBAL). The issue here is not whether $1.8 billion will be made available next year for low-income energy assistance. The issue is how that money will be distributed.

When Congress enacted the Crude Oil Windfall Profit Tax Act of 1980 we included a low-income energy assistance program and made distribution instructions an integral part of the provisions. Athough the distribution instructions are tilted in favor of the coldest weather States they are fairer to all States than are the formulae proposed for use under the program language now in the bill before us.

It should be kept in mind that the distribution instructions in the Windfall Profit Tax Act have been before the whole Congress. The formulae developed in the appropriations bill before us were developed in the Committee on Appropriations Labor-HEW Subcommittee and are untouchable so far as this whole House are concerned. These formulae are not a part of the language of the appropriations bill, they are part of the language of the committee report and that report is not under consideration in the House.

Because the rules of the House prohibit legislation on an appropriations bill we have the choice of accepting the committee's formulae which are heavily weighted to the benefit of our coldest weather States or adopting the amendment before us using the Windfall Profit Act which has instructions not so heavily weighted for the cold States.

The Economic Opportunity Act of 1964, as amended, which the Committee on Appropriations proposes to use as authority for the funding of a low-income energy program does not contain a prejudice in behalf of cold- or hot-weather States. It is neutral. If the committee's intent had been to achieve fair treatment for all low-income persons with energy bill problems it could have done so by using the Economic Opportunity Act authorization. The fact that the formula developed in committee and used in the committee report more heavily in favor of our snowbelt States than even the Windfall Profit Tax Act instructions strongly indicates that fairness was not a real consideration before the committee.

Although my home State of Arkansas would receive $2.4 million more in low-income energy assistance under the proposal my colleague from California, I am not really satisfied with any of the formulae we have under consideration. None of them is really fair.

None of these formulae specifically take into account that in States where we have severe cold weather accompanied by snow and ice storms followed by severe hot weather, some people have suffered a double blow in this era of booming home energy bills. All these formulas appears to take the attitude that home air cooling in the summer is nice to have but not essential to human health.

In fact, the Windfall Profit Tax Act goes so far as to say that States can only assist with home cooling bills if the aid applicant has a doctor's certificate saying air-conditioning is a medical necessity. There is no similar requirement for home heating assistance.

I am advised that more people died in this Nation during the June–July heat wave than died from cold in the past half century.

The more than 1,200 people who died in 23 States in June and July because of the impact of climatic heat is just one of the tragic pieces of evidence of the dangers to human health and life excessive climatic heat poses.

In July 1966, 2,500 deaths related to climatic heat were reported in just three places, St. Louis, Illinois, and New York City.

These are only two of the repeated instances of these kinds of tragedies. They are found to a greater or lesser degree in every decade. And, heat waves, according to numerous scientific studies, strike the Nation at least every 2 years.

It is the dramatic instances that focus our attention on the dangers of excessive climatic heat. Death, especially in multiples, makes headlines. Heat-related illnesses are so frequent they rarely do. Yet, it is clear from medical studies reported in such publications as Environmental Research, an internal journal of environmental medicine and environmental science, that heat-induced or aggravated illnesses, accidents and productivity losses are a real and continuing hazard of stress caused by high climatic temperatures.

If the objective of the low-income energy assistance program is to provide a fair and compassionate governmental response to persons needing aid to pay essential energy bills then the cost of cooling should be figured into the distribution formula. If the program is simply a callous political response to the special interest pressures brought by the most densely populated of our States, which are at present the Snowbelt States, then we are well on our way to success and thoroughly trampling the American tradition of fair play in the process.

Mr. Chairman, I would like to ask a question of the gentleman from California (Mr. ROYBAL), and I would like to ask another question of one of the members of the committee, the gentleman from Wisconsin (Mr. OBEY), concerning the distribution of funds.

Mr. Chairman, directing this question to the gentleman from California (Mr. ROYBAL), there has been a great deal of debate, as you know, about what the low income energy assistance funds can be used for under the committee's proposal and under the provisions of the Windfall Profit Tax Act. I would like to know if

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it is the understanding of the gentleman from California (Mr. ROYBAL) that under the windfall profit tax law the States, in making their plans for using this money, have sufficient flexibility to allow some of the funds to be used for aid in paying cooling energy bills as well as heating bills.

Mr. ROYBAL. Mr. Chairman, will the gentleman yield?

Mr. ALEXANDER. I yield to the gentleman from California.

Mr. ROYBAL. Mr. Chairman, that is precisely what my understanding is. The gentleman is correct.

Mr. ALEXANDER. Mr. Chairman, directing my next question to the gentleman from Wisconsin (Mr. OBEY), during full committee consideration of the low-income energy assistance proposal I understood the gentleman from Wisconsin (Mr. OBEY) to say that under the committee proposal the funding being recommended could be used for aid in paying heating bills or cooling energy bills, either one. As you know, there has been a great deal of debate about what funding under this program can pay for. I would like to know if my understanding of what the gentleman from Wisconsin said in committee is correct? Can this money be used for paying either heating energy or cooling energy bills, or both?

Mr. OBEY. Mr. Chairman, if the gentleman will yield, I would direct the gentleman's attention to the language on page 75 of the committee report which reads as follows:

> A State may choose to reserve a portion of its energy assistance allowance as a contingency to be used in the event of heat-related problems which might occur in the summer of 1981. The Committee urges those States with a history of heat-wave related problems to take into consideration the potential need for life-saving cooling assistance in the design of their energy programs.

So the answer is, "yes," and that is why we believe the committee formula is more equitable.

Mr. ALEXANDER. Mr. Chairman, would the gentleman also respond to this question:

Under the authority for energy assistance, Is it the gentleman's understanding of the law that it is up to the States to elect whether or not the funds appropriated under this bill can be used for either heating or for cooling assistance, or for both?

Mr. OBEY. Mr. Chairman, if the gentleman will yield, that is the committee's understanding. The purpose of the distribution formula this year is to give the Governors the widest possible latitude, with a couple of very narrow exceptions in determining exactly how their money is going to be used.

Mr. ALEXANDER. Mr. Chairman, I thank the gentleman from Wisconsin (Mr. OBEY) very much.

Mr. MICHEL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I do so even though in my own State of Illinois, under the amendment, we would be receiving $5 million more than what we have in the committee formula. The fact is, however, that under the windfall profit tax formula 15 States would lose money, even with the $200 million increase that we have in the bill for this item.

Most of these States are States with the coldest climates, where the needs are most severe. I think that is what we were initially talking about with the fuel subsidy program.

On the other hand, some of the warmest-weather States, under the windfall profits tax formula, gain substantially. Florida would get a 150-percent increase and Louisiana over 100 percent. Hawaii gets over 400 percent, California and Arizona over 100 percent, Texas over 50 percent, Georgia over 50 percent, and Mississippi over 100 percent. We can see what the pattern is in the difference between the two formulas.

Under the committee formula, no State would lose funds, and all but five would gain. It is the fairest and the most equitable formula that we can adopt to put the money where the real needs are, and the States which suffered the greatest heat wave this summer would gain substantially under our committee formula.

Texas would go up by 25 percent, Oklahoma 27 percent, New Mexico 40 percent, Arkansas 24 percent, and Kansas 50 percent. There is thus substantial increased funding for these States to set aside for any possible heat waves next summer if they so choose, and, of course, the Governors under the State plans have the flexibility to do that.

I would urge the Members to support what our committee has done here, as distinguished from catering at this juncture to the old formula, what I call an antiquated formula that never even got started and that frankly is very disproportionate.

Mr. ANTHONY. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Arkansas.

Mr. ANTHONY. Mr. Chairman, I would just like to say for the record, that the gentleman's State, although he would yield on the formula that was in the windfall profit bill, and would go with the committee formula, it should be noted, would be the gainer of $2.1 million, whereas Arkansas would be the loser of $2.3 million. So I think that is significant.

Mr. MICHEL. No, Mr. Chairman, the gentleman is not correct.

Mr. GRAMM. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. Yes, I yield to the gentleman from Texas.

Mr. GRAMM. Mr. Chairman, there is only one problem with the gentleman's logic: it is invalid.

We have had numerous studies from the U.S. Weather Service that sought to determine what is the relation between heating needs and cold. They have found that substantially there is a linear relationship between how cold it is and how much you have to pay to heat. So if Massachusetts is three times as cold as Texas on average, which it is on heating degree days, it takes three times as much money to bring a house to 68 degrees.

The problem with the formula which has been offered by the gentleman from Wisconsin (Mr. OBEY) and the problem with the formula which was enforced last year is that, based on no engineering data, based on no logic, heating degree days are squared, so that States with three times the heating needs, on the basis of that individual part of the formula alone, are allocated nine times as much money.

What the Senate sought to do in a hodgepodge compromise is to eliminate about half the bias that existed in last year's formula.

But the objective of this bill was to help poor people who were cold—not poor people generally, regardless of temperature, but poor people who were cold.

It gets cold in Texas, it gets cold in north Florida, and all we are saying is that we should establish a formula that provides funds more closely to need, not a formula which squares need and, therefore, greatly distorts the money.

□ 1420

Mr. MICHEL. Of course, that is not the first time there have been some complicated computations and formulas around here, whether it is a program for education, health, welfare, or all of the rest. And I just think that, on the basis of equity, what we were initially trying to get at with the fuel subsidy program was to help the cold States with their fuel problems.

The gentleman mentions the relationship between cold weather and the amount of funds a State receives. The fact is that Illinois has three times the number of heating degree days, which measure how cold it is, than does Texas. Under the committee formula, Illinois would receive three times the amount of funds as Texas. Under the windfall profit formula, Illinois would get only twice as much. In other words, Illinois is three times as cold, and under the gentleman's argument should, therefore, receive three times as much money as Texas. Yet under the formula the gentlman is supporting, Illinois would get only twice as much. I do not think that is either right or fair.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MICHEL) has expired.

(On request of Mr. GRAMM and by unanimous consent, Mr. MICHEL was allowed to proceed for 2 additional minutes.)

Mr. GRAMM. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Texas.

Mr. GRAMM. I think that the whole country applauded when we had the allocation of slightly more than $20 million to assist those people who had been affected by heat, 1,200 people died. So as far as I know, that number is at least 10 times the number which has ever been established in the last decade of the number of people who died of cold. But the problem is that we are here allocating $1.8 billion. We are changing the formula on an amendment that the gentleman from Wisconsin (Mr. OBEY) offered on Friday afternoon.

Mr. OBEY. That is not correct.

Mr. GRAMM. We are changing a formula in such a way as to cut the allocation going to Arkansas by almost 40 percent, a State which suffered a large number of people killed by heat. We are cutting the allocation to Texas by a substantial portion at the very time that we find that heat kills as well as cold. We are taking a formula which is already unfair and which is already biased by the squaring provision and we are making it worse. That, basically, is our complaint.

Mr. MICHEL. The gentleman is entitled to his opinion.

Mr OBEY. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Chairman, I think the point ought to be made that nobody's allocation is being cut under this formula. The gentleman from Texas is simply dead wrong when he says that. No one.

In addition, it should be pointed out that the committee, because of stories that some families received up to $1,400 last year, imposed a cap of $500 per family under the program. The Roybal amendment eliminates that cap. I do not think we want to be on record as doing that.

Mr. MICHEL. I would agree with the gentleman. I made that point earlier during discussion in general debate.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MICHEL) has again expired.

(On request of Mr. GRAMM and by unanimous consent, Mr. MICHEL was allowed to proceed for 1 additional minute.)

Mr. GRAMM. If the gentleman will yield further, the gentleman from Wisconsin, whose State is among those six States that benefit most from the change in the formula which he has presented, fails to recognize that under his allocation formula, Alabama sees its percentage allocation drop from 1.17 to 0.82; Arizona's drops from 0.57 to 0.39. Moving on down, Kansas drops from 0.93 to 0.88. So, granted, we put more money in the program; but the relative share going to American taxpayers who have legitimate needs is being cut. That is undeniable. That is a fact.

Mr. MICHEL. Of course, what the gentleman has ignored altogether are the increases over last year which we are providing this year, and I just think that you cannot ignore that.

Mr. OBEY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think we ought to put in perspective exactly what is happening on this amendment. Last year the Congress adopted a formula which, very frankly, was unfair to the South. It provided a much larger amount of the money available than it should have to Northern States. In response to that, Senator LONG, on the windfall profit tax legislation, adopted an amendment which, for the block grant portion of the program, provided phenomenal increases for the Southern States at the expense of the Northern States. So we had two formulas, one which grossly favored the North, another which grossly favored the South.

In addition to that, the Long formula, which the Roybal amendment seeks to adopt as our own today, was based on the assumption that there would be $3.1 billion available to fund this program. The problem is, we "ain't got no" $3.1 billion. We have got $1.8 billion. And so the committee is trying to find a way to distribute this money in a way which will not provide a net reduction below what any State had last year.

So what the committee did was say this: We should not take the Long formula, which resulted with the numbers available in this bill in net dollar reductions for 14 States, we should not take that formula. Rather, we should assure that every State gets at least the dollar amount that it got last year. And then we ought to distribute the rest on a little more fair basis.

We have a lot of people who are talking about what their States lose under the committee formula. The fact is, no State loses a dime under the committee formula. We are simply saying, for instance, to a State like Ohio, "Fellows, be satisfied with the 24 percent increase; do not insist upon the 27 percent increase." And we are saying to other States in a similar position, "In the interest of assuring that no State gets less than it got last year, you ought to be willing to take an increase for your State which is slightly smaller." That is what we do.

I want to point out some other problems with the Roybal amendment. The Roybal amendment adopts the Long formula, which provides for a $120 minimum grant to any family in the country eligible for the program. That in effect turns it into a new welfare program. I do not think we want to do that. I thought the purpose of this was to zero in on heating and cooling problems, not to create an additional AFDC program. But, nonetheless, if the Roybal amendment is adopted, the formula applies of the Long amendment, which means there is a $120 minimum payment to any eligible family rather than zeroing the money in on need.

Second, under the Roybal amendment, Hawaii gets six times as much money as it got last year. Now, pray tell, who is going to freeze to death in Hawaii? And, for that matter, who is going to suffer by intolerable heat in Hawaii? I know of no State that has a better climate in the entire Union. But they would get not the $400,000 they got last year, but $2.6 million, in addition to which, if the committee provision is not retained, we lose the cap which is in this bill right now on the amount that any family can receive under this program. We had families that received up to $1,400 last year under this program, and I do not think that is politically or substantively defensible. So the committee provision has a $500 cap on the amount that any one family can receive.

The issue of cooling has been brought up. This bill does not relate to the cooling versus heating issue. We make it possible for the Governors in their State programs to provide cooling or heating assistance because we eliminated the cutoff date for the spending of the program which applied to last year's bill.

The CHAIRMAN. The time of the gentleman from Wisconsin (Mr. OBEY) has expired.

(By unanimous consent, Mr. OBEY was allowed to proceed for 2 additional minutes.)

Mr. OBEY. Mr. Chairman, this is my last point. The State of Texas last year received $28 million. Under the committee bill they will receive $35 million. But they are saying, "No, that is not enough. We want some States in the country to take a net reduction in the amount they had last year so we can get $55 million."

I suggest that that is not the fair way to approach it, and I would urge that Members support the commitee position.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Califorina.

Mr. FAZIO. Mr. Chairman, I would like to ask the gentleman this question: I think we are all aware of the problem the gentleman's committee faced when you were required to reduce the total allocation from $3.1 billion to $1.8 billion. But why did you not simply put in a hold-harmless clause to provide a floor below which no State could fall in the allocation and then reallocate the remainder of the funds? Why did you, if I can remember what you said, try to make the formula work "a little more fairly?" Why did you change the formula? That is really, I think, the essence of what we are arguing about. We are not opposed to caps on what an individual can obtain in assistance. I think we understand the need to make the program more flexible and give the Governors jurisdiction to distribute the funds. But you have changed the formula, you have done more than protect States that would have lost funds under the Long formula, and in doing so you have caused some States to lose a tremendous amount of money that they had anticipated under the full funding.

Mr. OBEY. I would suggest to the gentleman that losing money that you anticipated, that you did not get last year, is a whole lot less painful than losing money that you did get last year, in addition to which California is going to have, in your case, 80 percent more available in the State block grant program for the Governor to use where it is needed, because we are giving the Governors total authority this year as opposed to last year when you were having SSI recipients in San Diego get $37 and somebody on the Oregon border getting $37, whether they needed the same amount or not.

□ 1430

Mr. FAZIO. The gentleman and I would join the gentleman from Illinois (Mr. MICHEL) in agreement that we probably should have gone in that direction last year with more discretion for the Governors. The point I want to reiterate is the formula that you have offered which will cost Indiana, Illinois and Ohio, for example, and the other States that are in the loser category, is faulty and unnecessary. We resolved this issue in the windfall profit tax bill and we should stick with it.

Mr. OBEY. They will get substantially more money than they got last year.

Mr. CONTE. Mr. Chairman, I rise in opposition to the amendment.

Mr. PEPPER. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Florida.

Mr. PEPPER. Mr. Chairman, I rise in strong support of the Roybal amendment to reinstitute the original formula for the distribution of low-income energy assistance funds among the States.

The original formula as written into the enabling legislation, the Windfall Profit Tax Act, was the result of a painstakingly constructed compromise. This compromise was designed to avoid the fatal flaws contained in the hastily conceived program which Congress enacted in desperation in order to provide emergency energy assistance before the winter of 1980. These efforts enabled thousands of low-income and elderly persons living in the "frost-belt" States to survive skyrocketing home heating costs last winter. Only a few months later, however, the tragic shortcomings became all too apparent. A seemingly interminable killer heat wave hovered over the southern third of the Nation. It did not relax its blistering grip until over 2,000 people, mostly low-income and elderly, had died.

The allocation formula in last year's program was not geared to temperature extremes, only to extremes in cold weather. No provisions were made for the devastating effects of prolonged, blazing heat on elderly people. Attempts to make such provisions were ridiculed and buried under charges of "regionalism" and "factionalism." Only after 2 months of a searing heat wave did the harsh reality that there were simply no funds available for cooling assistance become apparent.

Today we are 6 months older and 2,000 deaths wiser. I know that no Member of this body would ever willingly pay such a price for this knowledge. But what we know now is already embodied in the enabling legislation. Under the allocation formula for energy assistance in fiscal year 1981, a repeat of this tragedy could not occur. The formula is geared to extremes in temperature and recognizes the reality that blistering heat is every bit as fatal as bitter cold.

This carefully crafted formula was cavalierly scrapped in favor of the report language on page 76. The formula inserted into this appropriations bill is based once more on heating costs and on the number of days of extreme cold. This change should be rejected simply on the grounds that it legislates in an appropriations measure. More importantly, however, approval of this change threatens to unearth the spectre of thousands more heat-related deaths resulting from insufficient funds to help victims of excessive heat.

Mr. Chairman, the fiscal year funding level of $1.8 billion for the low-income energy assistance program falls drastically short of the $3.1 billion authorization. I suppose that this level reflects the optimistic meteorological assumptions of a very mild winter and a very mild summer. But this reduced funding rate leaves no margin for error. Last summer's experience indicates that the altered formula in the report language greatly exceeds this margin.

I urge every Member to reject the altered formula proposed in the committee report and to support this amendment to reinstate the original allocation formula.

Mr. MOAKLEY. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to my good friend from Massachusetts.

Mr. MOAKLEY. Mr. Chairman, I wish to express my strong support for the low-income energy assistance appropriations allocation formula as approved by the appropriations Committee.

The Northeast region of the United States, like the rest of our country, has been hard hit by rapidly escalating rates of inflation and unemployment. Much of the problem is due to our traditional overdependence on foreign sources of energy and by our lack of foresight in coping with the worldwide depletion of energy resources. Hardest hit, as always, are the poor and those on fixed incomes, who are not able to keep up with high inflation and with rising energy prices. As might be expected, the ranks of unemployed have risen as the economy has declined, and the Northeast can anticipate that there will be as much as a 40-percent increase in those eligible for fuel assistance this year, in comparsion to last year.

These same households, which are already hard pressed, are also the ones that often must rely on considerably older housing stock, which is rarely energy efficient.

Those of us who have been blessed with what this country has to offer can take advantage of new energy efficient household goods; we can take advantage of tax credits for reducing fuel costs; we can afford to buy the newer, more fuel efficient cars. But, the poor and the elderly are less fortunate and must rely on living in buildings with poor insulation, in driving older gas-guzzling cars or using mass transit which has seen dramatic rises in fare rates due to these same higher energy costs. It is a vicious circle, the circle of poverty, magnified to an even greater degree when our economic picture is not robust.

In Massachusetts, where we are repeatedly hit by severe winters, the poor and elderly become susceptible to the elements and are often placed in a position in which they must decide between paying their utility bills or buying food. This is simply a situation, given the resources of our Nation and our commitment to justice, that we cannot allow to happen.

Fuel prices, since he 1972 oil embargo, in Boston have skyrocketed. During the winter of 1978–79, in a 5-month period alone, the price of home heating oil rose by almost 26 percent. According to the Massachusetts energy office in one 2-week period in mid–1979, the price rose by 4.5 cents per gallon.

At present, the price of home heating oil is more than $1 per gallon, over 30 cents more per gallon than it was in June 1979. This means that in slightly more than a year's time, the price of home heating oil has risen by 50 percent.

It is perfectly clear that we must continue to relieve the financial pressures which are being placed on our Nation's poor by subsidizing their fuel bills until we can arrive at a sensible solution to our Nation's energy crisis.

Although Massachusetts will only receive an approximate 10 percent increase over last year's budget, while facing substantially higher percentages of newly eligible recipients, we believe the committee's recommendation is fair, not just to us, but to each region of the country with their own particular energy problems.

The committee formula will give each State, at a minimum, their 1980 allotment. It will also give fair increases, based on need, to those States which are hardest hit by the rapid rise in fuel costs and by the downturn in the economy.

Mr. Chairman, I urge my colleagues to support the committee's recommendation and to support their fair allotment formula.

Thank you.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from South Carolina.

Mr. CAMPBELL. Mr. Chairman, I rise in support of the Roybal amendment to the Labor-HHS-Education appropriations bill. The formula for distributing funds to be used for low-income energy assistance must reflect the true energy needs of all of our citizens in all parts of the country. It must reflect the fact that the poor and the elderly are threatened as much by the unrelenting heat of the summer Sun as the often brutal cold of the winter frost. Indeed, this summer we have experienced a heat crisis in many parts of the country leaving in its wake the tragic deaths of over 1,200 elderly Americans. These deaths and countless other heat-related illnesses might have been avoided if more people could have afforded to cool their homes.

Without increasing or decreasing the amount appropriated, the Roybal amendment will assure that Congress keeps faith with all the States by distributing low-income energy assistance funds in accordance with the provisions of the Windfall Profit Tax Act passed earlier by this Congress. The elderly citizens of

the South—already held financially captive by inflation—must not be held hostage by those who refuse to acknowledge the real energy needs of people who happen not to live in the Northeastern United States.

I urge adoption of this amendment.

Mr. CONTE. Mr. Chairman, I stand to express my strong disagreement with the amendment offered by my good friend, and I say that respectfully, my good friend, the gentleman from California, ED ROYBAL.

This amendment would drastically strew the distribution of funds under the low-income energy assistance program toward Southern and Western States at the direct expense of the very coldest part of the United States.

Mr. Chairman, when this program was established, it was understandably geared to meet the ever-increasing needs of low-income persons who were facing dire freezing winters and rapidly skyrocketing costs of home heating oil.

Last year Congress saw fit to provide this aid so that thousands of low-income families around the country would not be forced into the life-threatening situation of having to choose between feeding their families and heating their homes.

This body, under the authority of the Economic Opportunity Act of 1964, provided $1.6 billion in 1980, and while the amendment was not adequate to meet all of the needs, it did provide vital relief to many needy families.

In the Northeast, where conditions can be particularly severe during the winter months, my own State of Massachusetts, and its sister State of New York, provided their own State funds to assist in this program. These were the only States in the Union, the only States, compared to the rich States of California and Texas, to add their own State funds to the Federal doles. Massachusetts, $15 million; New York $10 million.

For the fiscal year 1981 the committee recommended once again using the authority of the Economic Opportunity Act of 1964 to operate the low-income assistance program. The committee has recommended a 12-percent increase over 1980 for a total of $1.8 billion. At the same time, the number of eligible households by the Long amendment has increased nearly 2 percent. Obviously, a $1.8 billion level is going to be spread very thin, particularly when you also consider that the cost of home heating oil may well increase from the current level of $1 a gallon to $1.15 to $1.20 per gallon this winter.

Let us face some other facts as well. We all know that the gentleman from Louisiana, RUSSELL LONG, pulled a fast one when he put in the windfall profit formula for energy assistance. He caught us sleeping, but we are not sleeping today. I should add to that, that when the windfall profit formula was being determined, and as it was being determined, we were talking about a program level at a minimum of $2.2 billion and a potential maximum appropriation of $3.2 billion. We all know the economic and the budgetary squeeze that we are in, and we can only go for the $1.8 billion under the budget authority.

Under the Long formula, southern and western tier States would receive outrageously—outrageously—large increases, many in the range of 150 to 200 percent.

At the same time, many States in the Northeast, the section of the country where they have very harsh winters, would actually receive less money than they did in 1980. That is absolutely unacceptable, and this amendment should be defeated.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. CONTE) has expired.

(By unanimous consent, Mr. CONTE was allowed to proceed for 3 additional minutes.)

Mr. CONTE. Under this amendment, Louisiana, the rich oil State of Louisiana, would receive 115 percent more, while New York would receive an 11-percent cut over last year under this amendment.

Florida—my good friend, the gentleman from Florida (Mr. PEPPER), I was surprised at him, because I bled with him for the poor—that rich State and that great rich district of his, Miami, will get 147 percent more, more than they did last year. This is unconscionable. People are driving down to Florida by the thousands. Why? To pick the oranges and grapefruits and live in that sunny climate, and they want to come up here and grab this money away from those freezing people in New England. I am surprised.

My good friend, the gentleman from California, ED ROYBAL, I was surprised at him. I stood side by side with him, shoulder to shoulder, fighting for the poor people, fighting for bilingual education, because he needed it; he needed it. And now my people need it. They are desperate. Why, they cannot take any more people in his State. Everybody has gone to California. How many more Congressmen are they going to get? Five? Six? Everybody is going to California. California, here I come. Why? Why? Because of the beautiful climate in California.

My population is going down because you have to go out there and chop the wood to keep your stove going, and huddle up there by the stove, because you cannot afford any oil; and you want to take this small morsel away from us.

I say to the gentleman from California (Mr. ROYBAL) I am surprised at him, because there is a man with the milk of human kindness in his veins—up until this point. I hope nobody will object when he asks unanimous consent to withdraw this amendment.

Mr. GRAMM. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, we have heard a great deal of rhetoric, some of it quite good, but I would like now to talk about the facts.

First of all, in 1980, when we established the low-income energy assistance program, we had a formula written for allocating those funds. Now, technically and in terms of engineering, we know what the relationship is between how cold it is and how much it costs to move a house from whatever degree temperature they face outside to 68°. That is one of the best-documented facts in the engineering of heating, and that relationship is linear. There is a linear, direct relationship between the number of heating degree days in a State and how much energy it takes to bring a house in that State up to 68°.

I cite the Systems Handbook of the American Society of Heating. In fact, the Department of Human—I lose these new names, they change so often—the old HEW has never presented any facts to substantiate the fact that we ought not to use the linear relationship in measuring need.

□ 1440

In 1980 when this formula was written, we took heating degree days and the number of poor people and we squared heating degree days, so these people in Massachusetts that have three times the heating needs of people in Texas did not get by that element of the formula alone, and there were other elements, three times as much money, which we are willing to give them because it is colder in Massachusetts. They, by that element of the formula, got nine times as much money.

When the Senate sought to rewrite the formula for fiscal year 1981, they did not sit down and try to come up with a fair formula. I grant that. They came up with a political collage whereby each State chose from six options that element which was fairest to them; but that formula did not bring justice. I have here a run that was done for my office by Health and Human Services which would allocate assistance on the basis of heating requirements alone. By that formula the States of the Northeastern United States, even by the Long formula, are still greatly overcompensated. In fact, the formula that the gentleman from California (Mr. ROYBAL) wants to go back to is a grossly inequitable formula which cheats 22 States of this country from what they are entitled to by the legitimate needs of their people as determined by how cold it is and how poor they are.

Now, second, when the gentleman from Wisconsin (Mr. OBEY) offered an amendment to move us back to formulas that brought in squaring in a higher proportion to the Long formula; when the gentleman brought in not how cold it is and not how much does fuel cost, but how much has it gone up in the last few years, he distorted this formula further, a formula that was already distorted.

So I think the time has come to sit down in an authorization bill, not in an appropriation bill, and work out a fair formula. That is what I have sought to do with the speaker. We have not yet come to an agreement, but I think it is imperative here that we not take a formula that already cheats people and make that formula worse.

No amount of political rhetoric from the people who seek to gain by a formu-

la that has no basis in fact and no basis in justice can change the fact that there is not, nor has there ever been, any relationship between heating degree days squared and the cost of heating.

Mr. WRIGHT. Mr. Chairman, will the gentleman yield?

Mr. GRAMM. I yield to the distinguished majority leader.

Mr. WRIGHT. I think the gentleman is making a significant statement. All of us surely do want to help people who are poor, wherever they live in this country—people who cannot afford to protect themselves against the severities of weather, whether it be extreme cold or extreme heat.

I wonder if the gentleman from Texas has any figures that would compare the number of people who have died in this present summer from extreme heat because they were not able to afford the kinds of protection that a modest amount of money might have brought for them, as against those who might have died from the extreme cold in winter just passed.

Mr. GRAMM. The best data, the best figure I have is a rough ball park figure; about 1,200 people this summer died from heat-related causes.

The CHAIRMAN. The time of the gentleman from California has expired.

(At the request of Mr. ANTHONY, and by unanimous consent, Mr. GRAMM was allowed to proceed for 5 additional minutes.)

Mr. GRAMM. Mr. Chairman, to complete that answer, by the most generous assessment that I have seen that brings in cold related deaths, we have in this year, which granted is a remarkable year, over 10 times as many people dying from heat-related causes as cold-related causes; but I remind the gentleman that the formula we seek to protect here does not provide for cooling. All we are saying is do not make an unfair formula which does not provide for cooling, which overcompensates some regions on heating, worse than it already is, when our people are dying from heat-related causes.

Mr. ANTHONY. Mr. Chairman, will the gentleman yield?

Mr. GRAMM. I yield to the gentleman from Arkansas.

Mr. ANTHONY. Mr. Chairman, I thank the gentleman from Texas for yielding.

I would like to make a response to the gentleman in the well previously talking about how unconscionable it is that we are trying to defend our rights under this formula.

The State of Arkansas has been besieged with a very unusual heat wave this year. Because of the high utility bills, yes, the State of Arkansas has high utility bills also; 120 deaths directly related to the heat.

I think this is someth'ng that cannot be too dramatized and it is something that we should be aware of; so when you use the word unconscionable, I think with 120 funerals in Arkansas, that word could also be used.

I just would like to make three quick points. If this amendment carries and if the cap is removed, I do not think there is any question but what we could refine the language of the act to put the cap on. I strongly support the cap at $500. I think the amendment would probably go through without it.

Mr. CONTE. Mr. Chairman, will the gentleman yield to me?

Mr. GRAMM. I would be happy to yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Chairman, the gentleman is very kind to yield to me.

To the answer the gentleman from Arkansas just made in his statement, there is nothing to prevent the State leaders of Arkansas, the officeholders, to take this money, and Arkansas, mind you, under this Obey amendment gets 24 percent more than they got last year; there is nothing to prevent them from giving that money to the poor people for air-conditioning, or for fans or for electrical bills or other energy needs.

Furthermore, in regard to Texas, as I said, we have one of the fairest chairmen in the House of Representatives, the gentleman from Kentucky, BILL NATCHER. When Texas got in trouble, the administration came up and they wanted $26 million in two reprograming requests. I think I was out in Detroit at the Republican Convention. I got a call from BILL NATCHER's office saying, "SILVIO, will you go along with this $26 million for reprograming for Texas and other States that are suffering because of the heat wave?"

I said, "Yes, sir, Mr. Chairman."

And within 5 minutes we reprogramed $26 million for Texas for the heat wave.

Mr. GRAMM. Mr. Chairman, reclaiming my time, I would like to respond to the gentleman. We are talking here about a $1.8 billion program. We appreciate the $26 million, but if Texas were given its fair share on the basis of heating, our allocation would be 46 percent above what the gentleman from California (Mr. ROYBAL) is seeking to preserve; so we are not asking for justice here. We know because the first formula was so biased that we are not going to get that. All we are saying is, having already been cheated, let us not make it rape. That is what the Obey change does.

I thank the gentleman.

Mr. BURGENER. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, we seemed faced with a choice between two faulty proposals. I think, however, both of them at $1,800 million, the Roybal amendment as I understand it will not increase the amount of money; but if you come from a Southern or a Western State, you are far better off taking the Roybal amendment than you are going with the committee amendment, because the committee amendment skews the whole business toward the colder States.

I have a county of 90,000 people. Imperial County, where the summer temperatures are routinely 110 and 115 degrees. In terms of economic need, the unemployment there is currently 25 percent.

Now, admittedly, the Obey formula directs it heavily toward the North and Northeast unfairly, I believe, and the Roybal formula, which is the old one has some inequities in it, but at least gives it the desperate need for cooling more attention and would be the better way to go if you come from the South or the West.

I did not vote for this program initially. I think it started out at $200 million, with great difficulty trying to figure out how to divide it up.

Now, here we are at $1,800 million fighting over this money with a new formula that we think in the South and the West is grossly unfair, so I support the Roybal amendment and hope that even it will be improved.

Mrs. BOGGS. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Roybal amendment.

I would just like to remind the House, Mr. Chairman, that we had many Federal programs in housing, in housing for the elderly, in private housing, that completely ignored all of the architectural necessities of the South, because it was so inexpensive to climatize a house. You could make a house cool in the summer and warm in the winter with a very small amount of money.

□ 1450

We built 202 housing programs for the elderly and handicapped in this manner. We have built other kinds of housing under VA and FHA 235, 236 programs and so on under many of the Federal programs where it was much cheaper to make small houses with low ceilings, with small windows, with no cross ventilation, with no porches. Now the people are caught in these small, erstwhile climatized houses unable to afford the present utility costs.

So it is absolutely necessary for us to be able to get some of this help, support, and relief to the people who are caught in houses out of which they cannot afford to move, and which they cannot afford to climatize properly to lead healthy lives. I would implore my colleagues not to discriminate against the elderly in the South when they are thinking about voting on this amendment.

● Mr. GRASSLEY. Mr. Chairman, the amendment before us purports to redistribute Federal grants for low-income energy assistance on the premise that relief from summer's heat is as necessary to the elderly as is protection against the cold of winter. The impetus for the proposal seems to stem from the fact that we are experiencing the hottest summer of the century.

Among persons whose deaths have been attributed to the unusual heat of this summer, a high percentage have been elderly. This is a good argument for the amendment except for the fact that the elderly comprise a high percentage of total deaths under all climatic conditions. I am not aware of any studies which prove that the age distribution of deaths over the past 2 months has been remarkably different from other summers in the past. Such observation does not lessen my deep concern for the elderly and especially the elderly poor who have suffered this summer's heat without air conditioning and sometimes

without so much as an electric fan. However, it does suggest that a once-in-a-century summer should not distort our entire perspective on energy assistance. Where would this leave us if our next experience proves to be a once-in-a-century winter?

Cold kills people every year. That is a documented and irrefutable fact. In cold weather the elderly poor, especially, are subject to hypothermia, the gradual loss of internal heat which invariably leads to death unless the body heat is restored. It is the recognized lethality of prolonged exposure to cold which underlies the low-income energy assistance program.

It gets pretty hot in the Midwest and I know that Iowans appreciate relief from the heat of July and August just as much as anybody else. But it also gets mighty cold and it stays mighty cold for about 5 months. If this amendment tells Iowans that they are going to lose over $2 million in the energy assistance needed to get them through the winter, they are going to oppose it and so am I.

The net effect of the proposed amendment is to shift vast amounts of the funds for low-income energy assistance from the cold States into the Sun Belt. Maine loses about 25 percent of its total allocation and the Florida allocation is more than doubled. New York loses about $37 million and California gains over $43 million. Montana makes an 18-percent sacrifice while the allocations to Hawaii is increased by almost 300 percent.

What this seems to mean is that the Congress has more concern for people fanning themselves against the heat than it has for those who are huddled against the cold. Anyone who has had both experiences can tell you that it should be the other way around.

I urge my colleagues to join me in opposing this amendment.●

Mr. BIAGGI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I would like to touch on a subject that has been raised with relation to the warm climates. Many of the Members may recall within the last month the President enacted into law a fund, a reprograming fund consisting of some $21 million that would deal with the heat wave that struck the various States in our country. The majoriy leader, when the gentleman from Texas (Mr. WRIGHT) posed the question as to the number of deaths that resulted from excessive heat, he simply had to know that his State was one of the beneficiaries of this legislation because he engaged at that time in the floor debate. There is no question that we are concerned about the elderly and those who might be susceptible to the heat problems, but we did in fact, respond.

With relation to the overall approach to the energy problem so far as the poor and the elderly are concerned, I think it was a year or so ago we passed a bill of great magnitude. We appropriated some $1.65 billion. I did not think the formula was the most equitable then, nor do I think so now. Our concerns at that point were the freezing temperatures where people froze to death and were compelled to live under the most adverse circumstances. The administration, the Congress responded. The President signed the bill.

Now what we are trying to do is make what I believe is a formula that was not perfect to begin with even less equitable. I would suggest my colleagues give serious thought to the nature of this bill and its impact on the entire program because we may well be required to come back here next winter for some additional funding. We should not lose sight of the original purpose of the bill.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman.

Mr. OBEY. Mr. Chairman, I thank the gentleman for yielding. I would just like to again repeat a couple of points.

First, the Members from Texas who are objecting to the House formula ought to recognize that they are getting $7 million more than they got last year. If you support the Roybal amendment, you are taking money away from 14 States, they will get less money than they got last year so that Texas can get an even larger increase than they had in the past. In addition to that, the gentleman from California indicated that if you are a Westerner you ought to support the amendment because you do better under the Roybal amendment. That is true if you are a Westerner from California. But if you are from Colorado, Idaho, Montana, Nebraska, Oregon, or Wyoming, and a number of other States, you do better under the House bill.

Third, I want to point out if you look at the increase in the Btu equivalent requirements for heating in this country you will see that the increase for Houston has been approximately $2.01 per million Btu. In Boston, for instance, it is $2.84, which ought to give you an idea of where the biggest problems lie, if you simply look at the cost change in energy requirements over the last 2 years.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I am delighted to yield.

Mr. JEFFORDS. Mr. Chairman, I certainly want to commend the gentleman for his statements.

I would like to take this opportunity to describe the serious and potentially tragic problems that rising energy costs are causing for low-income people. At a time when consumer purchasing power is being constantly eroded by inflation, the cost of home heating oil in New England continues to escalate in dramatic proportions. For people on fixed incomes, particularly the elderly, this situation can literally force people to a choice between freezing and starvation. Only an adequate low-income fuel assistance program can cushion these individuals from the possibility of disaster in the winter months.

Mr. Chairman, the amount appropriated in fiscal year 1980 for low-income fuel-assistance sufficed only because we experienced an unusually mild winter in New England. If we face harsh weather conditions in 1980–81, many people will suffer severe financial difficulties as fuel costs continue to rise. While the situation would be hard if fuel assistance benefits were level funded with last year, it would be literally untenable if benefits were cut back. That is exactly what would happen to my State under the Roybal amendment. Last year, Vermont received approximately $9.4 million from the Federal Government for fuel assistance. Under the Roybal amendment, Vermont would receive about $8.3 million.

The problems that such a cutback would impose on low-income people in Vermont can be readily understood by examining recent fuel oil price history. In the fall of 1978, home heating oil customers paid an average price of 50 cents per gallon. One year later, consumers were paying prices in the mideighties, and fuel oil is now going for about $1.04 per gallon in New England. It is expected to rise at least to the $1.15 to $1.20 range this winter. To give you an idea of what this means in actual dollar terms for low-income Vermonters, the average heating bill for low-income fuel oil users in the 1978–79 heating season was $740; this amount increased to $1,260 in the 1979–80 winter. This represented an increase of $520 in 1 year. The percentage of income spent by low-income households for heating also increased dramatically: In 1978–79, low-income fuel oil users spent approximately 18 percent of their income for heating in Vermont; in 1979–80, that proportion had risen to 28 percent.

Fuel oil prices will continue to rise through the next year, as the administration oil price decontrol plan becomes fully implemented. I have opposed oil price decontrol, and I deplore the increment it will add to prices which would rise rapidly under the OPEC cartel actions, without the boost they will receive from oil price decontrol.

Mr. Chairman, the rising cost of home heating has become an untenable financial burden for many low-income families in the Northeast. The amount provided for in the committee bill, approximately $10.9 million for the State of Vermont, is modest next to the increased cost for this group. Home heating costs rose $12.1 million between 1978–79 and 1979–80 for low-income households.

A substantial cutback in Federal fuel assistance benefits is particularly unjust in the case of a State like Vermont, where people have conserved fuel oil and shifted to alternative home heating sources in record numbers. Fully one-half of Vermont households are making use of wood as a primary or backup heating source. Vermont has also made great strides in reducing fuel oil consumption over the last 5 years.

This is not the time to penalize States where people are making every effort to help themselves. I urge the defeat of the Roybal amendment.

Mr. BIAGGI. I would like to address myself to some of the thinking that goes on in the minds of our colleagues when they consider this legislation. They oftentimes are thinking about parochial interests. I want you to know that the original legislation dealing with providing

relief for the elderly, the elderly and poor during the heat wave, was introduced by myself. None of that money came to New York. As a matter of fact, the people in Texas did very well, and rightly so because they were subjected to extraordinary heat.

What I am saying is I urge you not to think in terms of regional interests, of parochial interests. Think objectively, because that is what I thought about when I introduced the legislation.

We did not have that problem in New York. We knew the people in Missouri, Arkansas, Texas, and areas like that were dying in great numbers, extraordinary numbers. We responded as a national body. I suggest and I hope that my colleagues will think in similar fashion.

Mr. BEARD of Rhode Island. Mr. Chairman, I move to strike the requisite number of words and rise to oppose the amendment.

Mr. NATCHER. Mr. Chairman, will the gentleman from Rhode Island yield to me?

Mr. BEARD of Rhode Island. Yes; I will.

Mr. NATCHER. Mr. Chairman, not consuming any of the gentleman's time from Rhode Island, any of his 5 minutes, I just was wondering if we could get a time limit as to the balance of the debate on this amendment. This amendment started at 5 minutes after 2. We have now consumed nearly an hour.

Mr. Chairman, I would like to suggest and ask unanimous consent that all debate on this amendment and all amendments thereto end at 3:15.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. MOFFETT. Mr. Chairman, reserving the right to object, may I be recognized?

Mr. NATCHER. I will yield to the gentleman, but the gentleman from Rhode Island has the time.

Mr. BEARD of Rhode Island. Mr. Chairman, reclaiming my time at this point in order to be able to get my point across——

Mr. NATCHER. Mr. Chairman, I will make my request following the gentleman from Rhode Island.

Mr. BEARD of Rhode Island. If I may reclaim my time, I recognize the problems that people have experienced in Texas, the heat wave in other parts of the country, but I will tell my colleagues that Rhode Island and the North also has very similar problems. We have hot summers. We have had temperatures up to 100 degrees and over. We have had some elderly people with heart conditions suffer, and some have died. Maybe not as many as the people in Texas and other areas.

But we also have very cold winters. Under this formula last year, Rhode Island received $11.8 million. The Long-Roybal formula would have had us down to 10.5. The committee got us up to 12.7.

Why an increase? Very simple. Oil has gone up in the past year. Oil has not gone down, so why should our formula go down?

Cold is a matter of survival. If people do not have heat they will die. The same as some people have died in the Southern States from the heat. But it should be fair.

The State of Louisiana, it is incredible the increase they have gotten. If we only had been left alone at last year's level I might not have a big argument here today, but you are cutting my State, we are talking about old people, we were talking about poor people, not looking for an air-conditioner, looking for the ability to pay their oil bills. That is what we are talking about here today.

What SILVIO CONTE echoed was very similar to what I am saying right now. We are talking about survival, survival for the Southern States and the hot areas, but also survival in the cold States, in the cold States.

It is difficult for our people to survive with less money. Go after the oil companies. The oil companies have raised the price, so why should we be cut.

I would be less than a Representative from Rhode Island if I did not get up here and oppose this amendment. I could see Senator LONG looking out for his State, trying to get what he can get, but let us not be ridiculous. Let us not be ridiculous here regardless of where we come from. Let us be fair. Let us not cut the States that suffer the cold weather.

Now let me just take it back a few years ago when we had that blizzard of 1978. I will show you how stupid we can be in this country. Do you know where the heavy snow equipment was stored? Not in the North, it was stored in the Southern States. They had to fly the equipment in. When is the last time it snowed in Florida?

My colleagues know what I am saying. It is commonsense we are talking about here, commonsense. My people are asking questions about this Congress and what are we working with, are we working on all cylinders when they cut our formula and have to realize that oil bills have gone up.

As far as I am concerned, Senator LONG has made a mistake. I do not care where you come from. I do not care where you come from, let us be fair. If we want to have equity, let us treat everybody fair and do not cut a State like my State.

I am only one of two here in the House. We have two Senators. Texas has the majority leader. There is a big delegation in Texas and in California. The Southern States are a big bloc.

□ 1500

We are talking about survival. I am being fair, too. I understand your air-conditioning and the need for it. But understand what it is to be old and poor in a northern climate trying to survive. That is what we are here talking about. This formula basically stinks and I want it recorded that way. It is not fair. It is not fair to anyone and I hope the Congress, as a collective body here, has more commonsense than this amendment has and the people who sponsor it.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Chair would like to remind the Members that no personal references should be made to Members of the other body.

Mr. MOFFETT. Mr. Chairman, I move to strike the requisite number of words.

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. MOFFETT. I will be happy to yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, following the allocated time of 5 minutes to the gentleman from Connecticut, I would like to ask unanimous consent that all the time on this amendment and all amendments thereto close at 3:20.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. ASHBROOK. Mr. Chairman, I reserve the right to object.

Mr. Chairman, the gentleman has been so fair, I am just wondering if we could get agreement from the Chair that Members would not rise and then ask unanimous consent to transfer their time to someone else.

Mr. NATCHER. Mr. Chairman, there will be no objection to that from this side.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The CHAIRMAN. Debate will cease at 3:20.

Mr. MOFFETT. Mr. Chairman, I think it is important at the outset to remind ourselves why we are here. I say this in recognition of the fact that the issue is one that has gone by us, and that is decontrol. We are here mopping up post-decontrol, it seems to me, and we have created another large new bureaucratic subsidy program as a band-aid on that decision that we made.

Now, I think when we have a list circulating around the floor, it has been my experience in my relatively short time here, when you have lists circulating on the floor of States that win and States that lose, it brings out the worst in all of us in this body.

I do not think anyone can remember a time when we had lists circulating on the House floor where this body—we may have done the right thing, but where we really acted as a body with a national interest in mind.

As the gentleman from Rhode Island has stated and the gentleman from Massachusetts (Mr. CONTE) has stated, obviously we have a parochial interest in this. Let us understand there are a couple of basic facts. When the windfall profit tax was passed that authorizing legislation envisioned $3.1 billion. It gave, in that formula, a tilt, it seems to me, that was very, very fair, to say the least, toward the South. I do not think anyone can argue with that.

For my own part, and I think this is true for most of the people from the North and from the northeast and New England, we never had any objection to that. At least I do not recall voicing any objection or hearing our people voice objection to that because we thought it was fair. The problem is, of course, that the $3.1 billion was then squeezed down to $1.8 billion by the Appropriations Committee and, as a result, our region is going to suffer greatly. My own State would receive less money and a number

of other States, as the gentleman from Wisconsin (Mr. OBEY), has pointed out, would also receive much less money. So that is where we find ourselves.

Mr. Chairman, I might add when you look at the northeast and the question of the formula, we would not really be fighting over the formula, if the promises of the windfall profit tax had been kept, but they have not been kept. What we are saying now is we have some particular generic pricing problems in the Northeast. The northeastern consumers pay $44.95 for a hundred therms of natural gas, for example, compared to a national average of $35.23. That is $44 to $35.

Fuel oil prices, as my colleagues know, are significantly higher. Prices in New England are 1 cent a gallon higher than the national average of all fuel oil prices.

Coal costs are $140 per ton in New England, compared to a national average of $75. Even wood is more expensive; $96 per cord in New England compared to a $75 average. In total, New England energy consumers, all income classes, spend 26 percent more for energy than the average household in the country.

We have been conserving. Oil use in New England has dropped by 15 percent since the embargo, 1973–74, which is one thing that I think our region can say it has really excelled in and we are doing much better.

The criticism is made sometimes we do not do enough in terms of energy development. We are doing fuel cells and solar and hydro and biomass. There is no burning objection to a refinery in the northeastern part of the country, despite what some people may believe.

In addition to all this, if we look at the revenue-sharing formula which is headed for this floor, the oil-producing States are going to be allowed to get more money because of their oil severance taxes, because an oil and gas severance tax will be considered as part of their taxing efforts. So we lose there. There is going to be a $150 billion windfall to oil- and gas-producing States in the next 10 years because of their severance taxes so we are losing on that formula.

Now we are not blaming other regions for our problems but we do have unique problems and we urge you to just put those lists aside for a moment and try to get back to the goals of the original program. Or in the alternative, let us work on a compromise that can satisfy all regions.

But do not shortchange the Northeast.

The CHAIRMAN. Members standing at the time of the unanimous-consent request to limit debate will be recognized for 30 seconds each.

The Chair recognizes the gentleman from Illinois (Mr. O'BRIEN).

Mr. O'BRIEN. Mr. Chairman, in support of the Obey committee amendment I would like to address the question of fuel costs very briefly. I would also like to point out that Illinois stands to lose if the Obey committee amendment prevails.

On valid fuel costs testimony before our committee, the estimates were: Oil from 1978 to March 1980, up 112 percent, for the balance of 1980, another 11 percent, and 1981, up 20 percent.

Gas, 1979 to March 1980, up 40 percent. Balance of 1980, up 2 percent; 1981, up 5 percent.

Electricity, 23 percent, 1 percent, and 1½ percent in the same periods.

The point I make is this: Fuel for heating is far and away and will continue to be more costly than fuel for air-conditioning and cooling.

This must persuade us to support the Obey committee amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Arkansas (Mr. ANTHONY).

Mr. ANTHONY. Mr. Chairman, I rise in strong support of the Roybal amendment, but I would also like to thank the committee for the additional funds that were provided for our State because of the unusual heat situation that we did face this summer. Arkansas ran out of money early and we went scrambling for funds because we did have people who were without fans and without cooling and we did have unprecedented deaths due to the heat wave in the State of Arkansas.

For the State of Arkansas we would like to thank you for making those additional terms available. It also points up the fact why I am fighting to keep this formula the way it is.

It is absolutely ludicrous to conclude that poor people struggling with their utility costs should be assisted when those costs are attributed to cold weather but ignored when the costs are caused by hot weather.

This summer my home State of Arkansas has experienced the most severe heat wave in recent memory. It is estimated that at least 120 people have died as a direct result of the unrelenting heat. Most were poor people. Many were elderly. Some were found on the floor of their homes with their electric fans or air-conditioners turned off because of fear that they could not pay next month's electric bill.

Mr. Chairman, I realize that this summer has been unseasonably hot in the Midwest and Southwest. For example, in Little Rock, Ark., since June 23, the temperature has exceeded 90° every day but one and during early July exceeded 100° for 20 consecutive days. We have no guarantee that this will not occur next year.

Under the allocation of funds formula contained in the bill, in its present form, Arkansas would receive 0.67 percent of the total, whereas under the formula prescribed in the amendment, the percentage would increase to 0.81 percent of the total. This represents a difference of over $2 million for the State of Arkansas.

Mr. Chairman, let me summarize by saying that without the amendment this bill penalizes poor people who happen to live in areas of this country other than the Northeast. I have mentioned the most glaring examples of cases where heat has caused death. It is also worth mentioning that without assistance thousands of poor people in my home State will be cold this winter because of the heat wave this summer. Their ability to pay for utilities this summer has been so strained that they will have to reduce the amount of heat used this winter.

Mr. Chairman, I urge that this amendment be adopted.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. COUGHLIN).

Mr. COUGHLIN. Mr. Chairman, I rise in strong opposition to the amendment. The purpose of this program after all, was to provide fuel assistance and that fuel assistance can be provided to all States in the way that they deem necessary for heating or for cooling and that is at the option of the Governors of the States, as it should be, and all States are treated fairly.

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The CHAIRMAN. The Chair recognizes the gentleman from Massachusetts (Mr. SHANNON).

Mr. SHANNON. Mr. Chairman, I rise in strong opposition to this amendment, as well. I think we have to keep in mind that at the time this program was conceived, and at the time we considered the windfall profit tax, and at the times when we were considering the appropriations for this program in the past, nobody intended that the sort of severe heat problems we have seen this year should be addressed by this program.

If there is a problem; if there is a need that has to be addressed in the Southern States of this country, as has happened this year, we should address them separately and not try to take a program that does not meet the heating needs of people in this country and ask it to do even more.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan (Mr. PURSELL).

Mr. PURSELL. Mr. Chairman, I would like to speak on behalf of the Northeast Coalition. I think the Obey proposal as written in the committee is fair when we look at all 50 States combined. So, I would ask the Members to oppose the Roybal amendment and support what I think is the fairest in terms of equity across this country.

The CHAIRMAN. The Chair recognizes the gentleman from Hawaii (Mr. AKAKA).

Mr. AKAKA. Mr. Chairman, I rise to support the Roybal amendment which provides funds under the low-income energy assistance program for the State of Hawaii. These funds have helped the poor in Hawaii face an ever-increasing burden of energy payments. They look to a future of paying even more for energy because of higher oil costs. Let me point out a number of facts:

First, electricity rates have doubled in 8 years and are scheduled to increase at a rate of 20 percent per year.

Second, 90 percent of electricity in Hawaii is produced from oil products. Hawaii's oil import amounts to over one-

half of the total import of goods to Hawaii.

Third, the cost of oil will be increased from $22 per barrel to $30 a barrel early next year.

Fourth, the largest utility company in the State has been granted Public Utility Commission approval to increase cost of electricity by 9.3 percent in three increments in 6 months.

Fifth, the average Oahu residential electric consumer (using 700 kw per month) paid $40.39 in June 1979 as compared to $49.31 in June 1980, an increase of 22 percent.

I ask my colleagues to support the fair Roybal amendment.

The CHAIRMAN. The Chair recognizes the gentlewoman from Maine (Mrs. SNOWE).

Mrs. SNOWE. Mr. Chairman, I rise in opposition to the amendment offered by my colleague from California, Representative EDWARD ROYBAL. Despite an overall increase of $200 million in the funding for the 1981 low-income energy assistance program, the Roybal amendment would deprive many northern tier States of the funds they so desperately need to combat the upcoming winter. Specifically, the passage of Mr. ROYBAL's amendment would provide $22.2 million less to New England for 1981, and $5.9 million less for my home State of Maine, a reduction we can ill afford.

As you know, the cruel winters of New England cause untold agony for the low-income and elderly citizens residing there. To reduce the amount of available Federal funds for energy assistance could spell disaster for these families. Inflation alone will have its effects on this program, the detrimental effects we all know so well. But to further reduce the funding received by the New England region to a level below that of last year is, in my mind, an indefensible action.

No one can discount or minimize the disastrous effects on the Southern States of the recent, lingering heat wave. We can only be thankful that such tragedies occur infrequently, and I am pleased that in this particular instance, Congress moved quickly to provide assistance to the affected States in a timely fashion. I must stress, however, that the poor and elderly citizens of the northern tier States face cold winters year after year, without respite. In this age of inflation and skyrocketing fuel costs, the survival of these citizens depends on an adequate fuel assistance program. There is no question that more money is needed this year for these States. I challenge anyone to make sense of this move to decrease energy assistance funding in those States which experience the worst weather on a regular basis and in which the most dramatic increases in fuel costs have occurred.

In closing, I urge my colleagues to insure an equitable and effective low-income energy assistance program for this Nation by opposing the amendment offered by Mr. ROYBAL. In conjunction with this, I urge my colleagues' continued support for energy conservation programs such as the Department of Energy's weatherization program, which in the long run will reduce the need for the fuel assistance program under consideration today. Any efforts we can make to promote energy conservation on a personal and national level will help to reduce our Nation's dependence on foreign sources of oil. We might also be able to halt the growing need for admittedly expensive, but desperately needed, low-income fuel assistance programs.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Chairman, in my district last winter there were actually people who had to make a terrible choice, many of them senior citizens, as to whether they were going to have to turn off the heat or be able to eat adequately. That was under last year's formula.

Under the formula Mr. ROYBAL would propose, New York would actually lose $23.6 million below what the State got last year. People should not be forced to make that kind of choice, so I hope the Roybal amendment will be rejected.

I would be happy to do whatever is needed to help the Southern States, but we simply must not deprive our senior citizens of adequate heat.

Mr. Chairman, when Senator LONG authored the low-income energy assistance provisions under the windfall profit tax, the provisions made for the cold, high-energy cost States was unfair, actually cut below last year, despite great increases in energy costs in the interim.

Knowing that the Long formula would pose undue hardship on low-income residents, particularly the elderly who often find themselves choosing among the basic necessities during harsh winter weather, I, along with 31 of my colleagues from New York, asked the Subcommittee on Labor, Health, Education, and Welfare to restore funding to the levels established before the windfall profit tax.

My friends from Massachusetts, Mr. CONTE and Mr. EARLY, both worked hard to see that these funding levels were restored by the subcommittee and the full committee.

We can no longer force our senior citizens to turn off the heat in order to buy food, or go hungry in order to stay warm. I urge my colleagues to maintain the funding levels approved by the Appropriations Committee.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. EDGAR).

Mr. EDGAR. Mr. Chairman, I think this debate marks a point in history when this Congress is going to be increasingly dealing with regional concerns. In light of the energy dilemmas that we have, a great deal more discussion than a 30-second time limit ought to be set aside for issues like formulas for low-income fuel assistance and other related energy issues that get States pitted against each other.

I would hope that we would defeat the Roybal amendment and support the committee position, particularly because all States receive an increase except Hawaii. I think that is significant for the total Nation.

The CHAIRMAN. The Chair recognizes the gentleman from Massachusetts (Mr. EARLY).

Mr. EARLY. Mr. Chairman, I rise in opposition to the Roybal amendment.

Mr. Chairman, the low-income energy assistance program is one of the programs Chairman NATCHER mentioned at the outset of this debate in his discussion of the budget restraints. It is one of the programs in this bill most affected by the fiscal difficulties we face. Unfortunately, it was necessary for the subcommittee to recommend $400 million less than the amount recommended by the administration.

However, the committee bill does provide a $200 million increase over last year's funding level—$1.8 billion compared to $1.6 billion.

As Mr. OBEY has indicated, under the formula in the committee bill, with one exception, no State would receive less money than it received in fiscal year 1980. Under the Roybal amendment, 15 States—States like Washington, Connecticut, Maine, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, the District of Columbia—would receive less than they had last year even though we have been able to provide an additional $200 million. And, at the same time, we would ask these States to provide assistance to many more households.

I hope that the Roybal amendment is defeated.

The CHAIRMAN. The Chair recognizes the gentleman from New Hampshire (Mr. D'AMOURS).

Mr. D'AMOURS. Mr. Chairman, I rise in very strong opposition to the Roybal amendment. Defending one's parochial interests is a part of the way this institution functions, I suppose, but let us not go so far that we are, going to give poor people in States like New Hampshire and the other Northeastern States less money in a projected colder winter than they had to heat themselves in last year's warmer winter. Not long ago, this body refused to give these people windfall tax moneys to insulate their homes and to make their furnaces more efficient.

The CHAIRMAN. The Chair recognizes the gentleman from Kansas (Mr. GLICKMAN).

Mr. GLICKMAN. Mr. Chairman, I rise to express my strong support for the amendment offered by our colleague from California (Mr. ROYBAL). Quite frankly, the amendment raises a basic question of equity. It is one which quite clearly needs to be addressed based on our experience during this past summer with the devastating heat that has stricken so much of the Nation west of the Appalachians.

At present, this program is operating under a funding formula established as part of the windfall profit tax legislation. The formula is based on number of heating degree days. The bill we have before us alters that formula in such a fashion as to be even more favorable to

States in the Northeast where heating is the main problem.

In my view, neither of these formulas gives adequate consideration to a problem which became all too real earlier this summer: The need to provide assistance for covering cooling costs at times of extreme heat. When we were first considering the need for emergency energy assistance, in most areas of the country the question of assistance for cooling was considered to be largely a theoretical problem. I can tell you from firsthand experience, it is not only a theoretical problem. The largest city in my State of Kansas, Wichita, had over 40 days this summer when temperatures surpassed 100 degrees. And that was true throughout the midsection of the country. Hundreds and hundreds of people died as a result of the heat, all too many of them because they were afraid to turn on fans or air conditioners for fear that they would not be able to pay the bills.

My colleagues, I remind you that when we established this program we were responding to the need to save lives. We were concerned that people might not have heat. We also need to be concerned that people might not be able to survive blistering days in midsummer. The committee report urges States which have experienced heat to hold back some of their funds to meet that eventuality, I ask the committee and my colleagues what they expect from a State like mine where it is not unusual to have both long, cold winters and blistering summers?

I urge the adoption of the amendment.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I rise in opposition to the amendment which would alter the formula contained in the committee report for the low-income energy assistance program.

The committee has devised an equitable and rational formula. In contrast, the amendment would result in the loss of $100 million in these funds to the cold weather States, at the same time the program will be increased by $200 million. The committee's formula strikes a fair balance between the needs of senior citizens and low-income families in warm weather States and cold weather States.

Since the committee bill provides for a hold harmless provision, only one State will suffer a reduction in funds from last year. It would be unconscionable for this body to reduce the allocation to cold weather States who have experienced dramatic increases in heating expenses. Members of this body who come from the "land of the snow" would be hard pressed to explain to our constituents that we voted for a 12-percent increase in a program they have found to be indispensible, while allowing a change that would result in a reduction to their State of more than $11 million.

In my State, home heating costs have increased drastically. The cost of some fuel sources have more than doubled. The intent of this program was to provide heating assistance to low-income persons; the basic thrust of this program should be maintained.

I applaud the committee action to maintain the intent of the program, but they have also responded to the legitimate needs of senior citizens in warmer climates. This has been accomplished in two ways.

First, the committee has provided that no State with more than 500 degree days will receive less than it did last year. The committee has instituted a dual formula. States would be able to choose between a formula which targets money based on a heating expenditure or on total residential energy expenditures.

The second aspect of the program, which addresses the concerns of the warm States, is the block grant nature of the program. The Governor can decide which activities he feels are most critical in his State. Based on these decisions, a state plan is submitted to HHS for approval.

The committee report specifically states that programs to meet the cooling needs of seniors and low income families are eligible activities.

The committee has worked a laudable balance. It has maintained the original intent of this program and has responded fairly and sympathetically to the cooling need of citizens in warm weather States.

I urge my colleagues to reject this amendment and support the language of the bill as reported from the committee.

The CHAIRMAN. The Chair recognizes the gentleman from Puerto Rico (Mr. CORRADA).

Mr. CORRADA. Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from California.

The changes made by the Appropriations Committee to the authorizing language of the low-income energy assistance program will result in an unfair distribution of funds under that program. It is my understanding that, under the new language, the poor and the elderly among my constitutents in Puerto Rico will be left out completely from the program. Mr. Chairman, if anybody still believed that energy assistance was the exclusive concern of cold-weather States, their view was swiftly dispelled by the tragic heat wave that affected the Southwest region of our country earlier this summer. The physical devastation and millions of dollars in economic losses because of the heat wave, pales when compared to the loss of human life. And who were the most affected? It was the poor and the elderly—those that could not afford even a fan, let alone air conditioning.

This unfortunate example, Mr. Chairman, shows the fallacy behind the present authorizing language in this legislation. If we are to have a low-income energy assistance program, let it be one that accounts for all the weather problems that may arise. The original intent of the program as proposed by the administration was to give assistance to the poor in our Nation to help them to defray the inflationary increases of home energy costs.

In the statement of findings and purposes on title III of the windfall profit tax bill, dealing with the low-income energy assistance, the Congress goes on record as finding that both home heating and cooling are necessary to avoid a threat to life, health, or safety. That statement of congressional intent should not be swept aside in a haphazard manner by the House.

The language in this legislation is not only unclear but also contradictory on its face. On page 76 of the report accompanying H.R. 7998, the committee states, and I quote: "no State shall receive fewer dollars than they receive under last year's programs," but the very next sentence reads that "no money is allocated to any State, territory, or Commonwealth in which the annual number of heating degree days in fewer than 500 as a historical average." In all fairness, how is this provision to be administered? On the one hand, we are specifying that no State shall receive less than the amount received last year and yet, on the other hand, we are saying that no money shall be allocated to a State that does not meet the heating degree days criteria.

Because of this conflict in the instructions we would be enacting regarding this program, I urge all my colleagues to support Congressman ROYBAL's amendment to use the language in the windfall profit tax law. In doing so, we would be insuring that all our citizens that need of the low-income assistance program will have it available to them. Let us not act hastily in turning our backs to those citizens of our Nation that may need it the most.

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. WYATT).

Mr. WYATT. Mr. Chairman, as a Representative of Texas, I thought we were here today to talk about poor people. I would point out that in my congressional district the increase has been two and a half times since 1973. If we are going to talk about people I think we ought to talk about a fair formula. That is what I hope we would be here for today.

Mr. PHILLIP BURTON. Mr. Chairman, will the gentleman yield?

Mr. WYATT. I yield to the gentleman from California.

Mr. PHILLIP BURTON. Mr. Chairman, I rise in support of the Roybal amendment. I yield to no one about my concern for the poor. The formula in the bill stinks; it is invidious; it discriminates against the people in equally adverse conditions. This is not a plea for sectional preference. Our plea is for national equity.

The CHAIRMAN. The Chair recognizes the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Chairman, the House has a choice. It can stick with the committee bill, which provides no reduction for any State and moderate increases for most; or, it can take the Roybal formula, which provides drastic cuts for 14 States to finance huge increases for others. The Roybal formula was based on a formula that was drafted when we had $3.1 billion

available. We do not have that today. We have $1.8 billion, in addition to which, if we pass it, we lose the $500 cap per family, and we provide a minimum grant to every family of $120, which turns into a welfare payment. I do not think we ought to do that.

□ 1520

Mr. CONTE. Mr. Chairman, I urge defeat of the Roybal amendment.

I explained this in the well of the House earlier in debate. It is a badly conceived amendment. As I said, it was unconscionable to even offer the amendment to take this money away from people who desperately need this money to buy fuel.

Last year we would not have had a program and we would not have had a bill if it had not been for the gentleman from Massachusetts, Mr. JOE EARLY, and me. Last year we should keep in mind that this House appropriated $250 million, and we went to conference and raised it to $1,600 million, and that was a temporary measure to help low-income people with their fuel cost and nothing else.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. MICHEL).

Mr. EMERY. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Maine.

Mr. EMERY. Mr. Chairman, I rise in opposition to the gentleman's amendment. Let us talk figures for a minute. Maine residents are disproportionately dependent on $1 a gallon heating oil as a source of winter warmth. Our winters are among the coldest in the entire country, and a frightening number of older people in the State have poverty level incomes. Maine utilized 100 percent of last year's $22 million energy assistance allocation and served 55,000 of the 75,000 eligible households. Individuals received a maximum of $350, the lowest maximum in New England.

If we strike the committee language and return to the windfall profits bill language as advocated by my colleague, Mr. ROYBAL, 140,000 Maine residents will become eligible for an energy assistance fund which is $5.8 million less than last year's. Obviously, we will be forced to reduce individual grant levels; $200 will not go far toward offsetting the personal liabilities associated with a $1,000 winter heating bill. We will simply not be serving the real needs of the Nation's poor and elderly if we elect to strike the Appropriation Committee's very responsible efforts to draft an equitable distribution formula.

Increased weatherization efforts in New England and elsewhere in the country can reduce the overall need for continued energy bill compensation. Unfortunately, this year the community action agencies in Maine expect to weatherize only 3,600 of the 55,000 households who received energy bill aid last year. Until we can straighten out the restrictive Department of Energy and Department of Labor regulations which prevent comprehensive insulation efforts, we have to face the fact that poor and elderly New England residents cannot afford necessary heating expenses. If we accept the Roybal amendment, these people lose. Elimination of the committee formula will simply place energy costs beyond the means of a large percentage of needy people.

Mr. MICHEL. Mr. Chairman, I want to make one brief point. This program came into being for one reason—the unconsionable increase in OPEC oil prices. Our reaction to it was an attempt to give some assistance to those sections of the country that relied so heavily on oil for heating purposes and were hit so badly.

The significance of the figures that the gentleman from Illinois (Mr. O'BRIEN) cited reflect the fact that in 1981 oil prices are going up another 20 percent for those who will need it while those who use electricity for their air-conditioning in the South and border States, is going up only 1½ percent. The Roybal amendment is the original Long amendment over in the other body. It was designed more as an extension of welfare assistance to the States rather than meet the specific problem of aiding the colder States with their fuel assistance problems.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. ROYBAL).

Mr. ROYBAL. Mr. Chairman, I yield to no one in my concern for the poor. Anyone who believes that this amendment was written because of opposition to anyone who suffers from cold is very sadly mistaken.

This amendment was drafted because it is more equitable, fair to more States, than the language of the gentleman from Wisconsin (Mr. OBEY). My amendment, for example, increases all States over last year except mine. The language of the gentleman from Wisconsin, reduces substantially funds for 22 States.

● Mr. DRINAN. Mr. Chairman, I rise in strong opposition to the Roybal amendment, which would allocate funds for the low-income energy assistance program under the formula devised in the windfall profit tax legislation.

I support the provisions of the Appropriations Committee not as the best possible, but as the best possible given the appropriation of only $1.8 billion for the energy assistance program—$400 million less than the amount requested by the administration and fully $1.3 billion less than the amount authorized in the windfall profit tax legislation.

In the next fiscal year, more households than ever—in every region of the country—will be eligible for and will genuinely need assistance in paying their utility bills. If we cannot spare more than $1.8 billion to help the poor and elderly, we must at least make sure that each State receives no less than it had received in the previous year. The present language of the Labor-HEW appropriations bill does this. The amendment does not.

The tragic consequences of the recent heat wave in the South have made clear the need for Federal assistance to help offset the cost of residential cooling. And the formula of the Appropriations Committee will provide to these States increased funding for this purpose.

Before the end of the year, poor and elderly in my State will once again begin to struggle to afford to warm their homes. And the present formula will provide slightly greater assistance to New England States, as well.

I urge my colleagues to approach the formula question as did the Appropriations Committee: How can we provide the fairest allocation of an inadequate amount, $1.8 billion, of low-income energy assistance funds? The answer is not to slash funds for some States and to thereby deprive thousands of needy households of the assistance upon which they have come to depend. The poor and elderly of Massachusetts cannot afford to lose almost $13 million. The poor and elderly of New England, which pay the highest utility rates in the country, cannot afford to lose nearly $33 million.

I urge my colleagues to reject this amendment.●

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. NATCHER) to close debate.

Mr. NATCHER. Mr. Chairman, I ask for a vote on the amendment, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. ROYBAL).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GRAMM. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 199, noes 215, not voting 18, as follows:

[Roll No. 498]

AYES—199

Akaka
Alexander
Anderson, Calif.
Annunzio
Anthony
Applegate
Archer
Badham
Bafalis
Barnard
Beard, Tenn.
Benjamin
Bennett
Bethune
Bevill
Boggs
Bolling
Boner
Bouquard
Brademas
Breaux
Brinkley
Brooks
Brown, Calif.
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Campbell
Carter
Chappell
Clausen
Clay
Coelho
Coleman
Collins, Tex.
Corman
Crane, Daniel
Crane, Philip
Danielson
Dannemeyer
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dixon
Dornan
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
English
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fithian
Flippo
Ford, Tenn.
Fowler
Frost
Fuqua
Gephardt
Gibbons
Gingrich
Ginn
Gilckman
Goldwater
Gonzalez
Gore
Gradison
Gramm
Grisham
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hawkins
Heftel
Hightower
Hillis
Hinson
Holland
Hopkins
Hubbard
Huckaby
Hutchinson
Hutto
Ireland
Jacobs
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kindness
Lagomarsino
Latta
Leath, Tex.
Lehman
Leland
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lott
Lujan
Lungren
McDonald
Mathis
Matsui
Mattox
Mazzoli
Mica
Miller, Calif.
Miller, Ohio
Mineta
Mollohan
Montgomery
Moore
Moorhead, Calif.
Motl
Natcher
Nelson
Nichols
Oakar
Panetta
Pashayan
Patterson
Paul
Pepper
Perkins
Pickle
Price
Quayle
Quillen
Rahall
Rhodes
Roberts
Rostenkowski
Rousselot
Roybal
Royer
Rudd
Russo
Santini
Sebelius
Seiberling
Sharp
Shelby
Shumway
Simon
Skelton
Snyder
Spence
Stack
Staggers
Stanton
Stark
Steed
Stenholm
Stokes
Stump
Synar
Tauzin
Taylor
Thomas
Udall
Van Deerlin
Vanik
Volkmer
Watkins
Waxman
White
Whittaker
Whitten
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wright
Wyatt
Yates
Young, Fla.
Young, Mo.

NOES—215

Addabbo
Alboata
Ambro
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Bauman
Beard, R.I.
Bedell
Bellenson
Bereuter
Biaggi
Bingham
Blanchard
Boland
Bonior
Bonker
Brodhead
Broomfield
Brown, Ohio
Broyhill
Butler
Byron
Carney
Carr
Cavanaugh
Cheney
Chisholm
Cleveland
Clinger
Conable
Conte
Corcoran
Cotter
Coughlin
Courter
D'Amours
Daniel, Dan
Daniel, R. W.
Daschle
Davis, Mich.
Dicks
Dingell
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Edgar
Emery
Erdahl
Erlenborn
Ertel
Evans, Del.
Fenwick
Ferraro
Findley
Fish
Fisher
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Frenzel
Garcia
Gaydos
Giaimo
Gilman
Goodling
Grassley
Gray
Green
Guarini
Gudger
Hagedorn
Hanley
Hansen
Harkin
Harris
Harsha
Heckler
Hefner
Hollenbeck
Holt
Horton
Howard
Hughes
Hyde
Jeffords
Johnson, Colo.
Jones, N.C.
Kastenmeier
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Leach, Iowa
Lee
Lent
Long, Md.
Lowry
Luken
Lundine
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mavroules
Michel
Mikulski
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Neal
Nolan
Nowak
O'Brien
Oberstar
Obey
Ottinger
Patten
Pease
Petri
Peyser
Porter
Preyer
Pritchard
Pursell
Railsback
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Robinson
Rodino
Roe
Rose
Rosenthal
Roth
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sensenbrenner
Shannon
Shuster
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Solomon
Spellman
St Germain
Stange and
Stewart
Stockman
Stratton
Studds
Swift
Symms
Tauke
Traxler
Trible
Ullman
Vander Jagt
Vento
Walgren
Walker
Wampler
Weaver
Weiss
Whitehurst
Whitley
Williams, Mont.
Wirth
Wolff
Wolpe
Wydler
Wylie
Yatron
Zablocki
Zeferetti

NOT VOTING—18

Abdnor
Barnes
Bowen
Collins, Ill.
Conyers
Devine
Dodd
Holtzman
Ichord
Leach, La.
Lederer
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Thompson
Young, Alaska

□ 1530

The Clerk announced the following pairs:

On this vote:

Mr. Murphy of Illinois for, with Mr. Lederer against.

Mr. Bowen for, with Mr. Murphy of New York against.

Mr. Leach of Louisiana for, with Mr. Abdnor against.

Mrs. Collins of Illinois for, with Mr. Devine against.

Mr. SATTERFIELD changed his vote from "aye" to "no."

Messrs. MILLER of California, WILLIAMS of Ohio, and STARK changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

□ 1540

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for the purpose of engaging in a colloquy with the distinguished chairman of the committee, the gentleman from Kentucky (Mr. NATCHER).

Mr. Chairman, last year this body approved an amendment that would have earmarked at least $5 million for title III offender programs. Although the amendment was not accorded final legislation, the conferees on this appropriations bill, in their report language, directed the Department of Labor to utilize a significant portion of CETA title III resources to fund projects for offenders.

In a colloquy on the floor between the distinguished gentleman from Kentucky and myself, I asked if "significant" meant at least 1 percent of title III funds. The distinguished chairman of the committee said at that time that the amendment was deleted. The earmarking of the $5 million in which the gentleman is interested was dropped, also.

And then we placed in the conference report this language and I quote:

However, the conferees directed the Department to utilize a significant portion of CETA title III resources to fund projects for offenders.

Now, as to one percent, I would say to the gentleman we would hope on our side, the conferees, at least the amount the gentleman had in mind, should be used for this purpose, at least that amount. I would say that on the record.

Mr. Chairman, I want to point out that last year DOL allocated only $2.7 million to the title III offender program.

I have not yet seen any written commitment from DOL regarding the level of funds they intend to allocate to this program in the upcoming fiscal year.

So, my question to the distinguished chairman, the gentleman from Kentucky is: Is it still the intention of this legislation to spend a significant amount of money on title III offender programs; and, if so, what does the gentleman determine to be a significant amount?

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Kentucky.

Mr. NATCHER. I would like to say to my friend from Missouri that the committee has inquired of the Department to find out exactly how much is to be expended in the fiscal year 1980. The exact amount will be $4,900,000. It is the intention of our committee, and I say this to the gentleman on the record, that in the year 1981 we are asking them to spend at least $5 million.

As the gentleman well knows, this would be under CETA title II discretionary fund money. We are requesting at least $5 million.

I want to commend the gentleman on the part he has played as far as this expenditure and this request is concerned.

This is a good program. This is a program on which at least $5 million should be expended by the Department.

Mr. CLAY. I thank the gentleman.

AMENDMENT OFFERED BY MR. WALKER

Mr. WALKER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WALKER: Page 60, after line 19, insert the following new section:

SEC. 512. No part of any appropriation contained in this Act shall be used in connection with the issuance, implementation, or enforcement of any rule, regulation, standard, guideline, recommendation, or order which includes any ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex, and which requires any individual or entity to take any action with respect to (1) the hiring or promotion policies or practices of such individual or entity, or (2) the admissions policies or practices of such individual or entity.

Mr. WALKER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. WALKER. Mr. Chairman, this is an amendment that I offer on behalf of the gentleman from Georgia (Mr. LEVITAS) and myself.

This is an amendment to deal with an issue that this committee has dealt with on previous occasions, namely, the question of the use of quotas, discriminatory quotas, in our society; and this amendment is an antiquota amendment. It is an amendment which has been adopted overwhelmingly by the Committee of the Whole in 1977 and 1978. It was also adopted overwhelmingly in 1979, with similar language in the Department of Education Organization Act.

This amendment is in line with where the American people are on this particular issue. Recently a poll in Family Weekly showed 81 percent of over 135,000 households polled came out opposed to quota-based hiring.

Certainly all of us recognize that discrimination cannot and must not be

tolerated. The affirmative action concept, when it is practiced in a nondiscriminatory fashion can effectively promote equal opportunity for all individuals. However, the use of quotas or other numerical requirements to further the progress of one individual or one group of individuals at the expense of others is entirely counterproductive to any effort to provide equal opportunities for all.

Quota systems are inherently discriminatory, and the majority of Americans appear to agree that the quota-based practices must cease. It is in that spirit that this amendment is offered.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Chairman, I commend the gentleman from Pennsylvania for offering this amendment, and I am pleased to be associated with him in this endeavor.

Discrimination cannot be countenanced in any fashion, whether it is direct discrimination or reverse discrimination. There is a need for us to continue to pursue diligently the eradication of all forms of discrimination. Reasonable affirmative action programs, which do not provide for rigid quotas or numerical ratios, are one way in which this can be accomplished. But quotas and numerical ratios are by their very definition exclusionary and, therefore, discriminatory.

The purpose of this amendment would be to eliminate discrimination through the use of quotas and at the same time move forward with the eradication of all forms of discrimination.

I commend the gentleman for his efforts and urge adoption of the amendment.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding.

As I understand the amendment, this amendment in no way impacts on affirmative action plans that are required in terms of developing efforts to expand opportunities for minorities, women, and others. Is that correct?

Mr. WALKER. That is correct. This amendment simply says that you cannot use a firm numerical requirement as a part of those programs. You cannot use counterdiscrimination as a pattern in affirmative action efforts.

□ 1550

Mr. PANETTA. If the gentleman will yield further, this amendment is specifically directed to what the courts have called quotas and the use of quotas only. Is that correct?

Mr. WALKER. I would say to the gentleman that is precisely the case, that we are attempting to eliminate the use of quotas in hiring practices and in educational admission policies.

Mr. PANETTA. Mr. Chairman, I thank the gentleman.

Mr. NATCHER. Mr. Chairman, will the gentleman yield to me?

Mr. WALKER. I would be glad to yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, I have had an opportunity to discuss the gentleman's amendment with him before he presented it. As the gentleman knows, last year in conference the amendment dropped out. The gentleman recalls that.

Mr. WALKER. Yes, I do.

Mr. NATCHER. Mr. Chairman, unless there are further Members that want to speak on this amendment, I ask for a vote.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. WALKER).

The amendment was agreed to.

Mr. BIAGGI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wish to engage the chairman in a colloquy pertaining to the community service employment for older Americans, what is also known as title V of the Older Americans Act. As an original cosponsor of the original 1978 Older Americans Act amendments and a member of the authorizing committee, I wish to point out to the chairman a discrepancy between the law and this legislation. Specifically, the 1978 amendments mandated that any moneys appropriated for this program above fiscal year 1978 levels were to be distributed under a formula whereby 55 percent of the funds would go to grants for States and the remaining 45 percent for the national grants for some eight national contractors.

However, H.R. 7988 in addition to providing a $10 million increase for the program specifies in report language that the entire $277 million provided for the program is to be distributed, 80 percent to national contractors and 20 percent to the States.

I wonder if the chairman could explain the background for the committee's position.

Mr. SMITH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I would be delighted to yield to the gentleman from Iowa.

Mr. SMITH of Iowa. To start with, as the gentleman knows, about 1977 or 1978 we had quite a dispute between the State agencies and the contractors. The State agencies, of course, are good at lobbying. They have a regular lobbying activity and the contractors do not have that kind of muscle. That is the reason the gentleman's committee as well as ours has been trying to protect the contractors.

What happened was that we found that in the case of the contractors in most States they had only one employee, sometimes, a half-time employee that was not an elderly person. All others were eligible recipients.

In the case of the State agency, many times it has been as much as 30 percent of their money is salaries and expenses for noneligible recipients, that is for staff and other kinds of expenses.

So the problem is that under the formula that is in the legislation, the increase that we have for fiscal year 1981 of $10 million over this year would provide contractors with only $198.745 million for fiscal year 1981, compared to $194.04 million for fiscal year 1980. I am talking about the contractors. That is only a 2.3-percent increase, but they are required to pay the minimum wage. The minimum wage goes up a lot more than that, so under the formula in the authorizing legislation they would have to reduce the number of people or else pay less than the minimum wage, which is not permitted.

So with a $277 million funding level, it is not possible to do what was apparently intended in the legislation. I believe that legislation, however, assumed there might be $450 million available in fiscal year 1981.

Mr. SMITH of Iowa. But since there is only $277 million available, the only way to avoid laying off some of the green thumb employees and retired teachers employees is to do it the way we did in the appropriations bill.

Mr. BIAGGI. We are really talking about the amount of moneys that are appropriated. That is the critical factor.

Mr. SMITH of Iowa. That is right. It comes about as a result of having only $277 million, which is $10 million more than the budget request.

Mr. SMITH of Iowa. But it is still a lot less than we could use in this kind of program.

Mr. BIAGGI. If the money is appropriated and would reach the levels the gentleman has indicated, then would the law apply?

Mr. SMITH of Iowa. It would be a completely different ball game if there were $450 million.

Mr. BIAGGI. I thank the gentleman very much.

AMENDMENT OFFERED BY MR. KRAMER

Mr. KRAMER. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of 5 medium sedans, $238,882,000. During the current fiscal year up to $10,500,000 in collection of Federally insured defaulted loans may be transferred to the Salaries and Expenses account for the payment of related collection activities; together with not to exceed $600,000 to be transferred and expended as authorized by section 201 (g)(1) of the Social Security Act from any one or all of the trust funds referred to therein.

The Clerk read as follows:

Amendment offered by Mr. KRAMER: On page 52, line 11, strike out "$158,047,000" and insert in lieu thereof "$154,047,000".

Mr. KRAMER. Mr. Chairman, the amendment I offer is one that would cut the recommended level of administrative expenses in the Department of Education by 5 percent. This is a very small

cut; in fact, in terms of dollar amount we are talking about less than $12 million. When we talk about the entire fiscal year 1981 Education Department total appropriation, we are talking about less than 1 percent.

The reason for the amendment is to show the Department of Education that the will of Congress cannot be flouted, without some sanctions being imposed against the Department of Education for that process.

On July 23, the Department of Education informed Chairman PERKINS, the chairman of the Committee on Education and Labor, that the Department intended to ignore the legislative veto exercised by Congress with respect to several regulations promulgated by the Department of Education which this Congress, both House and Senate, found inconsistent with statutes passed by the Congress.

The Department, nevertheless, insists on maintaining its position.

The gentleman from Georgia about 2 hours ago passed an amendment which I feel is helpful and which, indeed, prohibits the Department of Education from using any moneys appropriated by this bill to enforce regulations that have been vetoed by this body. My amendment, however, in my judgment, supplements and complements that of the gentleman from Georgia, because we must first and foremost, I think, remember one thing. If the Department of Education has said once that they will refuse to obey the will of this body, in other words, that they will refuse to change legislatively vetoed regulations, there is nothing that can stop them from flouting the amendment presented by the gentleman from Georgia as well.

What we are talking about is the integrity here of the legislative process. I think to cut in a very small and really nominal way the administrative expenses of the Department of Education will show them that we intend to assert our power over that Department of Government.

I think it is less than prudent on our part to simply willy-nilly give the Department of Education full funding in light of their refusal to obey the will of the Congress. I think to do so would be to compromise our power and put us in a very unenviable situation.

I think we must reinforce in the minds of not only the administration, but the Department of Education, that the power that Congress has to give also implies the power to take away. Clearly, neither the President nor his Cabinet officers have the power to pick and choose those laws of ours which they like, which they are going to enforce, and to disregard those laws of ours which they do not like and not enforce.

I think this issue goes well beyond the simple question of legislative veto. It goes to the issue of whether or not our laws that we pass in due fashion are going to be obeyed by the executive. I can think of no greater persuasion than to hit the Department of Education in a nominal, kind of friendly way, where it hurts most, in the pocketbook, because ultimately the real power that this body exercises is the power of the purse. If we refuse to sanction that conduct of the Department of Education, which has flouted the will of this body, I think we encourage that conduct to be repeated, not only in the Department of Education, but in other agencies as well.

The CHAIRMAN. The Chair understands that the gentleman had two amendments printed in the RECORD and only one was at the desk. It appears to be the gentleman is speaking to a different amendment than the one that was read. Could the gentleman clarify the amendment that he wishes to be under consideration at this time?

Mr. KRAMER. It is the one that comes first in the RECORD. It would be at page 48, I believe, Mr. Chairman.

The CHAIRMAN. That was not the one that was read.

Without objection, the amendment will be withdrawn and the Clerk will read the amendment that the gentleman intended to offer.

The Clerk read as follows:

Amendment offered by Mr. KRAMER: Page 48, line 6, strike out "$238,882,000" and insert in lieu thereof "$226,937,900".

The CHAIRMAN. The gentleman will resume.

Mr. KRAMER. I thank the Chair.

Mr. Chairman, does that give me an additional 5 minutes?

The CHAIRMAN. The gentleman is recognized for 5 minutes.

□ 1600

Mr. KRAMER. Mr. Chairman, to be specific, let us examine what the Department of Education has done in terms of our overturn of their regulations. They have added matching requirements in two of their programs. Those matching requirements were inconsistent with the statute. They intend to implement those matching requirements for 1980, nevertheless, and they have told us that they intend to do so.

There is also an entity called the Education Appeals Board which listens to audit appeals from State and local educational agencies. Under the terms of the statute, it was this body's intention that an expedited level of appeal be offered and that decisions be made quickly and, therefore, a 30-day appeal provision was put into the law which this body passed. The administration, the Department of Education, felt that this was not sufficient time and, rather than coming back to ask the Congress to revise that statute, or to consider some changes, they, on their own initiative, decided that they would not enforce the statute as we passed it but provide, at their discretion, the ability of the chairman of that Educational Appeals Board to simply waive the 30-day requirement and allow appeals to be lodged after that period of time.

In the sense of the great issues that confront this body, certainly these are not great issues. They are not issues dealing with the important issues of inflation, the important issues of taxation, over-regulation and national defense. But they are important in that they go to the heart of the direct challenge to this body's basic integrity and basic power.

The only way we can convince the Department of Education and other errant departments to follow the laws as we have prescribed them to be followed is to show them their funding is not guaranteed, that no matter what happens their funding is not sacrosanct and protected, but to show them that we are prepared to take those steps, even though modest in nature, to cut their budgets when they flout the will of this body.

Mr. Chairman, with that explanation I hope that this amendment will be adopted as a good and sufficient complement to the amendment offered by the gentleman from Georgia.

It does one additional thing. It ensures that the Department of Education will not again, nor any other governmental agency, flout the will of this body.

Mr. FORD of Michigan. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I agree with a good deal of what the proponent of the amendment has said. I would like to say at the outset he is a member of my committee and a very valuable contributing member of the committee and very conscientious Member of this House. I know his intention with respect to the amendment as he has described it is a good intention. I know he has been deeply concerned, as have other members of the committee, with what appeared to be impending confrontation between the new Department of Education and our committee.

Earlier this year we, by virtually unanimous action in the committee, and then here on the floor, turned down four sets of regulations. Shortly after that the Justice Department leaned on the new Secretary of Education and said, "Look, that Congress over there is beginning to get too frisky with this business of vetoing regulations, and they are crossing the constitutional line with respect to the separation of powers between the executive and legislative branch, and we want you, the new Office of Education, to be the cutting edge of our challenge to this assertion of authority by the legislative branch."

There are several things wrong with that, not the least of which is that education legislation has been subject to the review of regulations for longer than any other kind of legislation that we have been passing around here. The amendment that originally put that into permanent law, and the permanent law that has existed since the late 1960's, was constructed by our former colleague from Michigan, Mr. O'Hara. For years that amendment was not needed in the sense of being a real weapon because we worked with HEW and subsequently with the Office of Education in a rather harmonious way to have regulations reviewed by us with real consultation, and

we felt that the legislative purposes intended by that provision of the law were being met through subsequent or through several administrations. As a matter of fact through now the third administration that has had to work with it.

I do not know what has motivated the Department of Justice to take this hard line stance, nor do I know as a lawyer why they would pick the worst possible set of circumstances to make their test. I can show them some other places where they probably could make a much stronger case than they could make with something that three successive administrations have acknowledged as proper and have agreed to go along with, starting with President Nixon, then President Ford, and then President Carter in the early part of this administration. So they have picked a very bad precedent-setting place to make their test.

But I suggest to the gentleman from Colorado that if he is looking for an agency to punish for trying to initiate this kind of a confrontation with the Congress it is not the Office of Education, it is the Justice Department that is not only pushing the Office of Education but pushing other groups, other parts of the executive branch in the same direction. They just happened to find this set of regulations handy and, as I suggest, I think they were not very wise tactically to pick them, particularly since in a bipartisan fashion, with the gentleman and I both on the same side, we had rejected the series of proposed regulations so thoroughly in both the committee and here on the floor.

I agree that we had a confrontation. I joined with the chairman, the gentleman from Kentucky (Mr. PERKINS) as did the ranking Members on the Republican side, in objecting to this proposed course of conduct by the new Department of Education. As a result of that, we believe that we are on the way toward working out the problems. We have not got it all worked out and that is why I supported the amendment of the gentleman from Georgia a little while ago.

I believe the amendment of the gentleman from Georgia does those things that the gentleman from Colorado (Mr. KRAMER) and I would like to have done and accomplishes them in full with no bad side affects. When one takes something for relief for something, one wants to be sure that while they are relieving one pain they do not create a new problem.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent Mr. FORD of Michigan was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, the unfortunate aspect of the amendment now pending before us is that it attempts with a shotgun to do what the gentleman from Georgia has already done with a rifle. He has put a bullet, silver tipped, if you will, through the heart of this effort over there to circumvent the clear intention of Congress and now we are being asked to fire with buckshot at the whole Department. The effect of the gentleman's amendment would be to cut $11 million plus, $11.944 million from administrative money. The theory of that is that you punish those bureaucrats over there and somehow that will make them behave better in the future.

My own experience indicates that will not be true, but I want to tell my colleagues that right now it is the wrong way to go at them. At the moment I have pending over there, with the collaboration of the minority members on my committee, requests for them to make some adjustments in their administrative staff, to give better attention to programs that have now been lumped together in new departments over there since the creation of the Department, and the excuse they are using is that the Appropriations Committee has cut back on their money for operations for their office staff and professionals, and they cannot do what we are asking them to do.

□ 1610

My understanding is the bill before us already reflects a $5.299 million cut in the funds available for the operation of a new Office of Education.

To put another $12 million cut into the pot will not work in our favor. It will provide that Department with an excuse to drag their feet on things that we on the authorizing committee are pressing very hard for them to do. We are pressing for them to make changes, to make improvements in the administration of these programs so that we do, indeed, spend money in the way Congress intended for the programs and in the places and for the purposes that we intended them to be spent for.

While I cannot quarrel at all with the intent of the gentleman from Colorado, and I completely agree with all of the criticism the gentleman has leveled at the people over there for the attitude they have displayed toward our committee with regard to these regulations, I believe that at this point in the bill the adoption of the amendments by the gentleman from Georgia has rendered this amendment unnecessary and the amendment of the gentleman from Georgia takes care of the problem. I am satisfied with the Levitas amendment and I will pledge to the gentleman from Colorado that if it does not get it done I am one of the chairmen who will be calling for hearings and the gentleman will have his opportunity. As a matter of fact, we have some hearings scheduled by our full committee chairman next month with the Secretary and the Department of Justice to come in and explain that July letter which I received earlier in the day. I know the gentleman, I have seen the gentleman cross-examine witnesses before the committee and I know we will have a full opportunity to give them every opportunity to explain.

Mr. Chairman, I ask that we not accept this amendment at this time.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. PURSELL and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. PURSELL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Michigan.

Mr. PURSELL. Mr. Chairman, I would like to support the gentleman from Michigan on his thesis on opposing this amendment. As I recall in the Department of Education we also asked the Department to reduce its staff. We think in the process, that is what is happening there. We have not monitored it that closely recently but in light of that congressional intent to hold the line on staffing, I think it is all the more important and that the gentleman's words have a great deal of merit, today.

Mr. KRAMER. Mr. Chairman. will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Colorado.

Mr. KRAMER. Mr. Chairman, I appreciate the remarks of the gentleman but I would like to make a couple of comments.

Mr. Chairman, my figures indicate there is a small increase in the appropriation this year rather than a decrease, 0.5 percent.

I agree with the gentleman, that what the Department of Education has done has bad side effects but I think for us not to respond has worse side effects because if we allow them to flaunt the law once as they have done with the concurrent resolutions that we have had, there is nothing at all to keep them from flaunting the amendment that was incorporated by the gentleman from Georgia this morning.

Mr. NATCHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the amendment offered by the distinguished gentleman from Colorado goes too far and it should be defeated. As pointed out by the gentleman from Michigan (Mr. FORD), a member of the Committee on Education and Labor in the House, when we marked this bill up, Mr. Chairman, for departmental management we reduced the amount $5,299,000. In addition to that we allowed no increase in travel and before we finished we agreed to reduce this departmental management category by 100 positions.

Mr. Chairman, that is enough reduction to make. This amendment ought to be defeated.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. NATCHER. I do yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Chairman, I would like to say, as one Member of this House who voted against the establishment of the new Department of Education is that I do not think it is wise to so greatly hamper that administration or that new agency that we cause some problems in administering the laws which they are charged with administering in an effective way.

As the chairman has pointed out, we have already reduced this appropriation substantially and I would urge defeat of the amendment.

Mr. LEVITAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as many Members of this body know, I have been not only concerned but, indeed, outraged by the arrogance of the administration in blatantly and repeatedly refusing to abide by laws duly passed by Congress and signed into law by Presidents of the United States. There is no question that Congress passed a law that provides for a legislative veto of regulations issued by the Department of Education and when the Congress operated in accordance with that law, the Attorney General, first, and then, in this instance, the Secretary of Education, said they were not going to abide by the law, that they were going to pick and choose those laws they want to obey.

So, no one who has been following the proceedings of this body in the last few years can doubt my outrage or doubt the offense that I have taken to this flagrant action. It is intolerable and cannot be left unchallenged.

However, I must respectfully disagree with the approach taken by the gentleman from Colorado (Mr. KRAMER) for whom I have great respect and who has been so supportive of efforts to curb the bureaucracy. I think by following the approach the gentleman suggests, we would be pursuing the wrong method. We might even be shooting at one target and hitting another. The blanket reduction of approximately $12 million that is contained in the gentleman's amendment could be applied by the Secretary in any number of different ways. It could well not be the Secretary or the Under Secretary or the Assistant Secretary or the persons responsible for writing those regulations who are penalized.

It could be that all of the high officials in the Department, who are responsible for this travesty, would continue to receive their salaries, but that some lower level innocent employees would be cut, or that some important contract services or other necessary expenses for making certain that the Department is administered as best it can be would be the ones who would have this reduction inflicted upon them.

I share the frustration and the anger that the gentleman from Colorado has, but, Mr. Chairman, I think my amendment, which this committee has previously adopted, really cuts right at the heart of the problem. By cutting off all funding for regulations which have been vetoed, it would make any person implementing those regulations personally liable for the expenditure of those funds. That is a very heavy sanction and threat to assure that those regulations will not be implemented.

I would hope, and, knowing the skill of the gentleman from Kentucky when it comes to conferring with the other body, I believe that we can feel confident that my amendment will be retained in conference and enacted into law and that will do the job. For that reason I think we are on target by the action we have already taken and I think by pursuing the proposal of the gentleman from Colorado we might miss the target and, therefore, I urge the defeat of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado (Mr. KRAMER).

The amendment was rejected.

AMENDMENT OFFERED BY MRS. BYRON

Mrs. BYRON. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, $207,206,000: *Provided*, That none of the funds appropriated under this paragraph shall be obligated or expended for the assessment of civil penalties issued for first instance violations of any standard, rule, or regulation promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful, or repeated violations under section 17 of the Act) resulting from the inspection of any establishment or workplace subject to the Act, unless such establishment or workplace is cited, on the basis of such inspection, for 10 or more violations: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, order or administrative action under the Occupational Safety and Health Act of 1970 affecting any work activity by reason of recreational hunting, shooting, or fishing: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended for the proposal or assessment of any civil penalties for the violation or alleged violation by an employer of 10 or fewer employees of any standard, rule, regulation, or order promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful or repeated violations and violations which pose imminent danger under section 13 of the Act) if, prior to the inspection which gives rise to the alleged violation, the employer cited has (1) voluntarily requested consultation under a program operated pursuant to section 7(c)(1) or section 18 of the Occupational Safety and Health Act of 1970 or from a private consultative source approved by the Administration and (2) had the consultant examine the condition cited and (3) made or is in the process of making a reasonable good faith effort to eliminate the hazard created by the condition cited as such, which was identified by the aforementioned consultant, unless changing circumstances or workplace conditions render inapplicable the advice obtained from such consultants: *Provided further*, That none of the funds appropriated under this paragraph may be obligated or expended for any State plan monitoring visit by the Secretary of Labor under section 18 of the Occupational Safety and Health Act of 1970, of any factory, plant, establishment, construction site, or other area, workplace or environment where such a workplace or environment has been inspected by an employee of a State acting pursuant to section 18 of such Act within the 6 months preceding such inspection: *Provided further*, That this limitation does not prohibit the Secretary of Labor from conducting such monitoring visit at the time and place of an inspection by an employee of a State acting pursuant to section 18 of such Act, or in order to investigate a complaint about State program administration including a failure to respond to a worker complaint regarding a violation of such Act, or in order to investigate a discrimination complaint under section 11(c) of such Act, or as part of a special study monitoring program, or to investigate a fatality or catastrophe: *Provided further*, That none of the funds appropriated under this paragraph may be obligated or expended for the inspection, investigation, or enforcement of any activity occurring on the Outer Continental Shelf which exceeds the authority granted to the Occupational Safety and Health Administration by any provision of the Outer Continental Shelf Lands Act, or the Outer Continental Shelf Lands Act Amendments of 1978.

The Clerk read as follows:

Amendment offered by Mrs. BYRON: At page 10, line 10, insert after "fishing;" the following new proviso:

"*Provided further*, That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 with respect to any employer of ten or fewer employees who is included within a category having an occupational injury lost work day case rate, at the most precise Standard Industrial Classification Code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. § 673), except—

"(1) to provide, as authorized by such Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;

"(2) to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violations found;

"(3) to take any action authorized by such Act with respect to imminent dangers;

"(4) to take any action authorized by such Act with respect to health hazards;

"(5) to take any action authorized by such Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, and take any action pursuant to such investigation authorized by such Act;

"(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act: *Provided further*, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees".

Mrs. BYRON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

POINT OF ORDER

Mr. GAYDOS. Mr. Chairman, I make a point of order against this amendment.

The CHAIRMAN. The gentleman will state his point of order.

Mr. GAYDOS. Mr. Chairman, I raise a point of order against this amendment for the reason that it is legislation on an appropriations bill. The amendment changes existing statutory law and, in effect, amends the Occupational Safety and Health Act of 1970 by exempting a specific class of employers from the integral provisions of the act. This amendment goes far beyond reducing or restricting the amount of money in the appropriation.

The language of this amendment would clearly impose on OSHA officials new additional duties not otherwise required by existing law. Look at all the additional determinations to be made by the Department of Labor. OSHA officials, under this amendment, would be required to make determinations on the exempt status of firms which are not required by existing law. In Deschler's Procedure, chapter 26, section 11.1, the Parliamentarian's note states that—

When an amendment, while curtailing certain use of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments, and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order . . . the extra duties which may invalidate an amendment as being "legislation" are duties not now required by law. The fact that they may presently be in effect on a voluntary basis does not protect an amendment from a point of order under clause 2, Rule XXI.

Section 11.2 of that same chapter in Deschler's clearly states the grounds for ruling that the amendment before us is out of order. According to Deschler's:

Where an amendment, in the guise of a limitation, imposes additional determinations and duties on an executive, it may be ruled out as legislation on a general appropriations bill in violation of clause 2, Rule XXI.

This amendment assumes the character of legislation because, although it is phrased as a restriction on administrative action, the amendment clearly requires OSHA officials to make inspections, complete evidence, and make judgments and determinations in a certain defined manner rather than simply limiting the availability or use of funds. This amendment serves to change existing law by adding to the basic statute conditions or requirements governing the scope of investigations and the assessment of penalties pursuant to these investigations. In other words, this amendment provides an affirmative direction to executive officials in situations where the statute provides these officials with the discretion in the exercise of their authority.

This amendment's wording has the character of legislation since it does not restrict executive action by a simple negative, but rather, it defines in detail the conditions or requirements to govern the actions of administrative officials.

According to Deschler's Procedure, chapter 26, section 11.26:

While it is in order on a general appropriation to limit the availability of funds therein for part of an authorized purpose while appropriating the remainder of it, language which restricts not the funds but the discretionary authority of a federal official administering those funds may be ruled out as legislation.

This is a precedent to guide us. A point of order was raised against an amendment to the agriculture, environment, and consumer appropriations for fiscal 1975. In that situation, according to Deschler's Procedure, language in a paragraph of a—

General appropriations bill containing funds for the Federal Trade Commission for the purpose of collecting line-of-business data from . . . "not to exceed 250 firms" . . . was conceded to directly interfere with the discretionary authority of the F.T.C.—a restriction on the scope of the investigation rather than a limitation on availability of funds—and was ruled out in violation of Rule XXI, Clause 2.

The amendment before us directly interferes with the discretionary authority of OSHA by limiting the scope of general schedule safety inspections to only those inspections or investigations meeting the substantive requirements of the amendment. This approach is tantamount to limiting safety inspections to a fixed number of firms.

Accordingly, this amendment does not qualify under rule XXI, clause 2, since it changes existing law and since it is not germane to the subject matter of the bill in that it goes far beyond limiting or reducing the availability of funds.

□ 1620

The CHAIRMAN. Does the gentlewoman from Maryland wish to be heard on the point of order?

Mrs. BYRON. Yes, I do, Mr. Chairman.

Mr. Chairman, I rise in opposition to the point of order. This amendment does not impose any additional duties upon the Secretary of Labor, and therefore is not legislation in an appropriation bill.

The amendment is divided into two parts. The first part restricts the expenditure of funds by OSHA to conduct routine safety inspections in businesses which have 10 or fewer employees, with good safety records. The second part is a series of exceptions to this limitation. In order to comply with the limitation regarding the size of the business and the safety records of the industry, no new duties are required of the Secretary. Section 24 of the Occupational Safety and Health Act already requires the Secretary to maintain occupational and safety health statistics. Section 1904–20 of title XXIX of the Code of Federal Regulations specifically includes the exact statistics that are utilized in the first part of my amendment.

None of the exceptions listed in the second part of the amendment impose any additional duties beyond what is already in the existing law.

Finally, Mr. Chairman, even if the administration of a limitation contained in my amendment would impose certain incidental but additional duties on the executive branch, that still would not destroy the character of the limitation under the procedure of chapter 25, section 10.4, 10.5, and 10.8.

The CHAIRMAN. Does the gentleman from Wisconsin wish to be heard on the point of order?

Mr. OBEY. Yes, I do, Mr. Chairman.

Mr. Chairman, I would just like to emphasize the point made by the gentleman from Pennsylvania, namely, that this amendment would require the Administrator to make a determination on the loss work day case rate for each business in each category before the routine inspections could proceed. I think that clearly establishes new burdensome duties.

Mr. GAYDOS. Mr. Chairman, I would like to be heard further on the point of order. I would like to point out to the Chair and call attention to lines 6, 7, and 8 in the suggested amendment in so far as standard industrial classification code is referred to and included in the amendment. It appears nowhere—I emphasize nowhere—in the legislation as it now exists. That is directing the Administrator or his agents to another area of activity, going to another code, another set of precedents in order to analyze, accumulate, use personnel to accumulate all types of statistics in that area that apply to that SIC classification code. I think that of itself is obvious that we are asking for additional duties on the administration.

The CHAIRMAN. Does any other Member wish to be heard on the point of order?

The Chair is prepared to rule.

The gentleman from Pennsylvania makes a point of order against the amendment offered by the gentlewoman from Maryland on the ground that it constitutes legislation on an appropriation bill. In reviewing the amendment, it would prohibit the use of funds in the bill to enforce standards or rules under the Occupational Safety and Health Act with respect to certain employers, except for enumerated functions and activities authorized under such Act. The amendment applies to employers with 10 or fewer employers whose business falls within a category having an injury work loss day rate less than the national average as indicated by statistics published by the Bureau of Labor pursuant to law. The amendment does not require individual findings of injury rates in each separate business, but only a determination as to the category into which the business falls.

The Chair has reviewed the set of statistics that is required by section 673 of the OSHA law, and finds that the determination as to what category that the business relates to and the relationship between the average rate for that category and the average rate for all business is very easily ascertainable and is now being undertaken under OSHA regulations.

□ 1630

Furthermore, the amendment does not require the compilation and publication of such statistics but refers to the most recent publication of the statistics already compiled pursuant to statute. The exemptions from the limitation refers only to those functions and authorities which are provided by law in title 29 of the United States Code.

No new duties or determination are hereby required, and the final proviso, while requiring findings as to the temporary status of a farm labor camp, is already in the bill and the amendment does not add legislation to that permitted to remain in the bill.

The gentleman from Pennsylvania (Mr. GAYDOS) has argued in essence that the amendment seeks to amend existing law by restricting executive discretion to perform certain activities under the Occupational Safety and Health Act. The Chair cannot agree with the assertion of the gentleman that the amendment requires OSHA to perform its authorized function in a certain manner.

The amendment restricts the use of funds to carry out part of the authorized activity while allowing but not requiring the agency to use funds in the bill to carry out other authorized activities. While an amendment to an appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity or a portion thereof authorized by law if the limitation does not require new duties or impose new determinations.

The Chair overrules the point of order, and the gentlewoman from Maryland (Mrs. BYRON) is recognized for 5 minutes in support of her amendment.

Mrs. BYRON. Mr. Chairman, I would like to take this opportunity to briefly explain what my amendment would do and what it would not do. It would exempt small businesses in safe industries from routine OSHA safety inspections. It would not exempt any firms from compliance with OSHA health requirements. It provides for a number of exceptions that would permit continued OSHA jurisdiction even over the safety regulations which exist for those firms.

This amendment is similar to the Boren amendment to the Senate version of the multiemployer pension plan legislation. As you know, the House did not have an opportunity to vote on that provision when we considered that legislation on Monday. Language identical to the Boren amendment cannot be offered to this appropriations bill under the rules of the House, and it is my hope that should the House approve my amendment, it will be perfected in the Senate along the lines of the Boren amendment.

I think it is important to keep in mind the fact that this amendment is also similar to language that was approved by the House as part of the conference report to last year's Labor-HEW appropriations bill.

This amendment would relieve small businesses of the burden of routine OSHA safety inspections. Several weeks ago a constituent of mine—a small businessman, Mr. Edward Bauerlein—complained to me that he was visited by eight Government inspectors in 1 day. Of course not all of these inspectors were from OSHA. In fact they were from all three levels of government—Federal, State, and local. However, I think this does illustrate the need to reduce the burden of government regulatory activities on businesses, particularly small businesses. My amendment provides one opportunity to do just that.

In addition to lessening the burden on small businesses, my amendment would also have the effect of targeting OSHA's routine safety inspections to industries that have accident rates above the national average. This is a sensible practice that OSHA claims it is already doing. Since OSHA has the resources to inspect only 2 percent of the Nation's workplaces annually, it certainly is not in the interests of American workers to waste those resources inspecting firms which are in nonhazardous industries. In fiscal year 1979, 71 percent of OSHA's inspections resulted in no "serious" citations and 46 percent of the inspections found no hazards whatsoever. Clearly it makes sense to direct OSHA's inspections to industries which warrant the inspections the most. This will best serve the interests of the American workers and I believe such targeting practices should be required by Congress and not simply left to the administrative discretion of OSHA.

Finally, Mr. Chairman, I would like to emphasize that my amendment would allow OSHA to continue to inspect all businesses and take necessary action whenever its inspection is in response to a worker complaint, including a complaint of discrimination under the act. My amendment would only affect the routine OSHA inspections which are the most burdensome and least fruitful. Furthermore, the amendment applies only to safety inspections and not to health, and only to those businesses employing 10 or fewer employees. Furthermore, OSHA would still be able to inspect a small business in response to a worker complaint or under other circumstances mentioned in the exceptions.

In conclusion, my amendment is both responsive and responsible. It is responsive to the need to cut down on the extent to which government regulatory activities burden the private sector and add to inflation. It is also responsible to the legitimate interests of workers in a safe working environment.

Mr. GAYDOS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise in opposition to this amendment because it changes existing law and in effect amends the Occupational Safety and Health Act of 1970 by exempting a specific class of employers from the integral provisions of this act. Under present law, the manner and scope of safety inspections are presently left to the discretion of administrative officials. This amendment is a classic example of legislating on an appropriations bill.

The language in this amendment is not contained in any bill before the House Committee on Education and Labor or the Senate Committee on Labor and Human Resources.

There are presently five bills dealing with OSHA and small business before the Subcommittee on Health and Safety, which I chair. The sponsors of these bills have not called for any hearings or actions on these bills. For my colleagues' information, during the 96th Congress the Subcommittee on Health and Safety has conducted 35 days of oversight hearings on OSHA.

I strongly oppose this amendment.

First, if this amendment is adopted, it would exempt from several important provisions of the act, 2.3 million establishments, 53 percent of the total presently covered by OSHA, and 7.7 million workers, 12 percent of the total covered by OSHA.

In effect, this amendment would result in a 44-percent increase in exempted establishments and a 48-percent increase in exempted workers over the number of exempted establishments and workers under the Schweiker rider to the Labor-HEW appropriations bill for fiscal 1980.

Second, it seems fundamental, that workers in small businesses are entitled to the same protection as workers in large enterprises. This amendment creates two classes of employees, one class entitled to the full protection of the law, and another class of substantially less than fully protected workers.

Third, this amendment creates a statutory exemption from the act, and its effect is to eliminate even the remote possibility of inspection with its powerful deterrent function and incentive toward compliance with safety standards.

Fourth, this amendment also contains a distinction between health and safety for the purposes of enforcement which is arbitrary and detrimental to an effective occupational safety and health program. Presidently, 12 percent of OSHA's programed safety inspections uncover health hazards that are subsequently investigated by industrial hygienists. For example, approximately 25 percent of OSHA's investigations of potential asbestos exposure were triggered by compliance officers in programed safety inspections. Furthermore, many workplace conditions present hazards both to the health and safety of workers; for example, excessive noise, vibrating machinery, work in confined spaces—the list is endless. Injuries causing severe bodily harm result in impaired health whether the cause is attributed to a health or safety hazard.

Fifth, if this amendment becomes law, it would provide a further disincentive to employment. Many small firms may discourage the hiring of an 11th employee or encourage the 11th employee's discharge in order to keep the workforce at 10 and gain the advantage of the exemption.

Sixth, this amendment is not needed. Under the act, the manner and scope of safety inspections are presently left to the discretion of administrative officials. Presently, OSHA has in effect an administrative targeting system which

focuses on high-hazard industries. As a result, in fiscal year 1979, less than 0.5 percent of small businesses with 10 or fewer workers received a programed OSHA inspection. During fiscal 1979, OSHA conducted 286 general schedule or programed safety inspections which would have been prohibited under this amendment. During the course of these 286 general schedule inspections, 83 serious, willful, and repeat violations were cited.

During the past 3 years of the present administration, OSHA has made a major effort to develop programs and policies to help small business employers eliminate serious workplace hazards, such as:

First, free onsite consultation.

Second, new directions grant program for education and training.

Third, elimination of recordkeeping requirements for small businesses.

Fourth, paperwork reduction.

Fifth, lightening of penalties for small businesses.

Sixth, appointment at OSHA of a special assistant for small businesses.

Seventh, OSHA-Small Business Administration cooperative agreement.

Eighth, better information source (small business handbooks).

Ninth, deletion of unnecessary and redundant safety standards.

In conclusion, I urge my colleagues to defeat this amendment.

□ 1640

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield?

Mr. GAYDOS. I yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Chairman, I merely rise to compliment the gentleman on a very important observation, message, and position he has taken. I wholeheartedly agree with him. I wish to say that I realize that he represents an industrial district that is far different from the characteristics from the one I have the honor to represent, but the conditions he essentially pictures and situation he portrays to us is accurately reflected in what is happening in my district with the small owners. It is very important.

The CHAIRMAN. The time of the gentleman from Pennsylvania (Mr. GAYDOS) has expired.

(By unanimous consent, Mr. GAYDOS was allowed to proceed for 3 additional minutes.)

Mr. GONZALEZ. The gentleman has stated about all I could say, and I just merely wish to emphasize the fact that I am in wholehearted agreement. His message is very clear. I hope his position is sustained and that we vote down this pending amendment.

Mr. GAYDOS. I want to thank my colleague for his statement and for his support.

I just want to emphasize that less than one-half of 1 percent of small businesses with 10 or fewer workers received a programed OSHA inspection last year. During fiscal year 1979, for instance, OSHA conducted 286 general, scheduled, or programed safety inspections which would have been prohibited under this amendment.

Let me say this to my colleagues in conclusion: I tried to be fair in discharging the responsibilities of that chairmanship.

I have made an attempt to keep all of my colleagues informed. I have held hearing after hearing. I have endeavored to urge OSHA and MSHA to interpret the acts reasonably.

Mr. ERLENBORN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I want to compliment the gentlewoman from Maryland for offering this amendment. As she explains, it is quite similar to the current law which is the result of an amendment to the appropriation bill 1 year ago for the current fiscal year.

I think it is interesting that, though there were the same sort of predictions of dire consequences a year ago when this amendment was offered and debated, that now, after almost a year's experience, it appears to be impossible for the opponents of the amendment to take the well and to give us facts and figures as to an increase in accidents in the workplaces that were exempted as a result of the passage of that law. In other words, the evidence just is not there.

The gentleman from Pennsylvania, in opposing the amendment, if I recall correctly, said that about half of the workplaces or 44 percent of the workplaces would be exempted under this.

The gentlewoman said that only about 2 percent of all of the workplaces could be visited in any one year by inspectors.

□ 1650

Well, that means that if half were exempted, then we would allow as many as 4 percent of the dangerous workplaces to be inspected under casual inspections as a result of the adoption of this amendment. In other words, more dangerous workplaces would have the services of inspectors, and we would have freed up the waste of inspectors in places that have proven records of safety.

It seems to me that if organized labor, that is making this one of the biggest fights of this Congress to oppose this sort of legislation, really had the safety and the welfare of the working men and women of this country at heart, they would want the Occupational Safety and Health Administration to concentrate their scarce manpower in those places that have proven to be unsafe, those places where the working men and women of this country are exposed to danger.

Now, the gentlewoman has made the point, but I will reiterate: Under this amendment certain things are not done. We do not stop the process of a complaint being made by a worker and, therefore, an inspection being held. So any time a worker in the workplace fears there is danger, that worker may make a complaint and an inspection, even under this amendment, will be held the same as it is today. It does not exempt from inspection for health purposes. This is a modest amendment to concentrate short manpower into those places where we need the inspections for the benefit of men and women in the workplace.

I urge that the amendment be adopted.

Mrs. BOUQUARD. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentlewoman from Tennessee.

Mrs. BOUQUARD. Mr. Chairman, I rise in support of the Byron amendment exempting small businesses from routine OSHA inspections.

There is not a Member that has not faced the repeated cries of his or her constituents to get the Government out of their lives; to reduce its size and insist that efficiency and effectiveness be priorities of each and every Government agency. The passage of this amendment gives us opportunity to assure this kind of responsiveness from the folks at OSHA. It requires that OSHA's limited resources be targeted at those industries prone to injury. Is this not the true intent of OSHA?

As of now, OSHA's effectiveness in protecting the health and safety of American employees is open to question. Depending on whose statistics you use and which side of the issue you wish to take, you can make a case that OSHA is either the guardian angel of employees or the nemesis of employers.

Those of us who represent the State of Tennessee have been afforded the opportunity to work with an aggressive, vocal group of business people who participated in the recent White House Conference on Small Business. I have heard their complaints about needless and unjustified safety inspections by OSHA personnel. I have listened to them reaffirm the fact that small businesses run the preponderance of safe workplaces.

So now we have a chance to remove one of the impediments to small business without removing the responsibility for providing a safe workplace. I would encourage each of you to support this effort.

Mr. ERLENBORN. Mr. Chairman, I hope the amendment will be adopted.

Mr. OBEY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I do not think I will take the full 5 minutes. I must say that there is a great deal which the gentleman from Illinois has said with which I agree.

I think it is important for OSHA, and I think it is important for organized labor to recognize that if OSHA is to be effective, OSHA must concentrate its inspections in the most dangerous places which we can find. The problem with this amendment is that while it is intended to do that, I do not really believe that it accomplishes its purpose, because what it does is to say, as the Schweiker amendment said last year, that OSHA should determine which businesses fall into dangerous categories for inspection purposes by looking at the standard industrial classification codes.

The problem with that classification system is simply that one can be a businessman who happens to be in a subgroup of that classification which is a very safe business but because the overall category is somewhat higher than the national average in terms of injury rates or lost days, he will be required to be under the gun for inspection.

I would just suggest to this body that what this amendment does is to lock OSHA into its present practice of using the standard industrial classification codes in order to determine which is the safest and which is the least safe workplace in the country. I do not think we want to do that.

I do not find anybody in either business or labor who is satisfied at the present time with the method by which OSHA determines who is going to be inspected and who is not. There are a lot of reasons why they have had problems, not the least of which has been the type of training which a lot of OSHA inspectors have received.

The fact is, if we want OSHA to in the future more efficiently and effectively target the kinds of workplaces that ought to be inspected, then do not tie them into using the same classification system which they use today. You do that if you support this amendment.

I would suggest that you should look at the language in the report, because the committee took out language very similar to the language being offered by the gentlewoman, because we were concerned about the rigidity of the present OSHA inspection system, and we said instead this: The committee deletes the language directing OSHA to continue to use current methods of targeting inspections and directs the agency to develop and implement better methods of targeting inspections so as to prevent inspections of establishments with good worker health and safety records and concentrate inspections in workplaces where the most serious problems exist.

I would suggest to this body that what is a safe industry changes over time, and if we require people to inspect on the basis of this rigid classification service, we are going to have people inspecting on the basis of indexes which are years old and irrelevant to the new problems facing both workers and management.

I urge this body to vote down the amendment.

I yield back the balance of my time.

Mr. ASHBROOK. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, the Byron amendment which closely parallels the Boren amendment which was added to the multiemployer ERISA bill, H.R. 3904. It passed the Senate 48 to 36 on July 29, 1980. But the House was prevented from voting on the amendment.

This amendment is essentially the same as language in last year's Labor-HEW appropriations bill. It is compatible with current policies of OSHA. Only safe workplaces would be exempt.

OSHA admits most general schedule inspections are directed toward high hazardous large industries specially and I quote DOL "less than one-half of 1 percent of the Nation's small businesses received an OSHA general schedule inspection." If that is the case what are the harmful effects of amendments—still allow for employee complaint inspections, health hazards.

Not an amendment to law, 1-year restriction on appropriations.

Safety and health of workers is important. However, administrative actions impose undue burdens, especially on small business. Amendment attempts to relieve small business from routine OSHA safety inspections, but with some certainty to small business as to who will be exempted. At the same time, the amendment protects workers to the degree necessary through the six exceptions listed.

Inspection of small business could be carried out after employee complaints, and to investigate health hazards or imminent dangers.

Last year the exemption for safe small business was based on the occupational illness and injury incidence rate. This amendment modifies that concept in favor of a formula based on lost workday case rates.

The illness and injury rate does not take into account whether any workdays were lost. The measure should be actual lost workdays and/or restricted work, the standard which OSHA uses. The current injury rate is 9 injuries per 100 workers, while the lost workday case rate is 4 worker injuries per 100 workers. Since it is current OSHA policy to target only businesses with a lost workday case rate of four or more, the amendment would bring into law current policy.

To help Members understand the Standard Industrial Classification Code language, it should be noted that an SIC category includes an entire industry, not individual businesses. Therefore, an industry could have a high hazardous rating but there could be businesses within that industry with safe records that would not qualify for the exemption.

This amendment is needed to provide continued relief to small business from the expansive rules and regulations of OSHA. It is necessary that it be considered in this appropriation process because of the reluctance of our Committee on Education and Labor to consider any improvements to the Occupational Safety and Health Act.

Mr. OBEY. Mr. Chairman, will the gentleman yield for a question?

Mr. ASHBROOK. I yield to the gentleman from Wisconsin.

Mr. OBEY. Is the gentleman happy with the present method by which OSHA determines where it ought to go? Does the gentleman think OSHA is doing such a great job he ought to lock them into doing what they have been doing in the past?

Mr. ASHBROOK. No; but that is why I am supporting the amendment of my colleague from Maryland. I understood the gentleman was using that as an argument in opposing the gentlewoman's amendment.

Mr. OBEY. The gentleman is asking that the committee require OSHA to use as its basis for determining where one goes, the index which they have been using in the past. I do not see how that reforms OSHA. I do see how it locks them into the present system.

Mr. ASHBROOK. I thought your argument was whether or not this amendment would exempt areas where there are no incidents of hazardous employment and high incidents of risk. Like it or not, OSHA uses that particular guideline. It has worked, and from that particular standard, I happen to think the amendment makes sense, because we are exempting areas where there are not proven incidents of hazardous employment.

Mr. OBEY. If the gentleman will continue to yield, if we intend to do that, we really do not, because those groupings have all kinds of subclassifications which can be much safer than the general grouping or, for instance, the other way around.

If the gentleman looks at building services, would the gentleman say window washing on a skyscraper, 30 stories up, is a safe job, even though it happens to belong to a safe classification called building services?

Mr. ASHBROOK. I would say it is hazardous employment but it does not have a high incidence of injury. There is a difference.

Mr. OBEY. I would suggest the gentleman switch jobs with a window washer 30 floors up and see whether he wants OSHA to cover him or not.

Mr. ASHBROOK. The other point that was made earlier by my friend from Pennsylvania, the last statistics from the Bureau of Labor Statistics in 1978 show that in establishments of 1 to 19 employees, 90.6 percent of them have no—n-o—incidence of injury or illness. We are not talking about the areas of high and hazardous occupation or high incidence of illness and injury in the Byron amendment.

The statistics, as you go up to 2,500 and over, 72.7 percent of them do have accidents.

So we are exempting the employment areas of under 10 the gentleman is talking about, on the record of the Department of Labor's own statistics, an area where 81 percent of them show no illness or injury.

Mr. OBEY. If the gentleman will continue to yield, by category, that may be certainly correct, but it is not necessarily true of individual employers within the categories.

I would also suggest that this House really has a fundamental problem in dealing with issues like this. I do not criticize in any way people who have offered amendments to this bill today for these purposes.

□ 1700

But we are not equipped in this forum without benefit of hearings, without benefit of committee expertise, and Lord knows the Appropriations Committee is not the committee which is expert in this area. We are simply not equipped to be voting on all these language amendments which may sound good or sound bad, but which we really do not have the ability to judge in this forum.

I would urge the House in the interest of institutional responsibility to be very

restrained in the kind of amendments that it both offers and adopts under these conditions.

Mr. ASHBROOK. Well, I would say to my friend, the gentleman from Wisconsin, that I agree with him 100 percent. I happen to think this is one of those amendments that falls into that area restrained and responsible.

To my friend, the gentleman from Kentucky, I say it is one of those amendments that does not need wide debate, because we have debated this before. The Byron amendment is almost the same as the Boren amendment which passed the Senate by a vote of 48 to 36.

We have debated it, in effect, on the ERISA bill. We have had it before us on a number of occasions, so this just did not come out of the blue somewhere. This is an amendment that we have had before us repeatedly. It is basically the one that 2 days ago we were talking about getting a separate vote on in connection with ERISA.

Mr. STENHOLM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to take just a moment to rise in strong support of the amendment that is under debate, I would make a couple of observations.

The point is well taken that we contine to debate these types of issues on appropriations bills and there are other forums that might be better served to utilize for the purpose of debating these issues, but it is my observation in the short year and a half that I have been here that we never have the opportunity to debate these issues except in this forum.

The second point that I would like to make is this. I observe that inflation is a tremendous problem in this country. The small businesses of this Nation have been crying for relief from the Federal bureaucratic regulatory maze that we have imposed upon them.

I observe that this vote will be a simple way that we can express ourselves as to whether or not we wish to in a small way recognize that the heavy Federal hand of bureaucracy is not the best way to solve all the problems that we have in our local communities. The best way to solve these problems that my good friend from Pennsylvania has made good points on is to admit that these problems are best served by taking care of them on the State or local level. By us having this option now to provide for the exemption of the small businessman, it is a way in which we are going to have in just a moment to put our card in the box and press yes or no as to whether or not we are hearing the small businessman in his cry for relief from Federal regulations.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Maryland (Mrs. BYRON).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GAYDOS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 225, noes 178, not voting 29, as follows:

[Roll No. 499]

AYES—225

Akaka
Albosta
Alexander
Andrews, N.C.
Andrews, N.Dak.
Anthony
Applegate
Archer
Ashbrook
Aspin
Atkinson
Badham
Bafalis
Baldus
Barnard
Bauman
Beard, Tenn.
Bedell
Bennett
Bereuter
Bethune
Bonker
Bouquard
Breaux
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Butler
Byron
Campbell
Carney
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Coughlin
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daschle
Davis, S.C.
de la Garza
Deckard
Derrick
Derwinski
Dickinson
Dornan
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Evans, Del.
Evans, Ga.
Evans, Ind.
Findley
Fisher
Foley
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Gephardt
Gibbons
Gingrich
Glickman
Goldwater
Goodling
Gramm
Grassley
Grisham
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Holt
Hopkins
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jenrette
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kindness
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Lott
Lujan
Lungren
McClory
McDonald
McEwen
McHugh
McKay
Madigan
Marlenee
Marriott
Martin
Mathis
Mica
Michel
Miller, Ohio
Mitchell, N.Y.
Montgomery
Moore
Moorhead, Calif.
Myers, Ind.
Neal
Nelson
Nichols
O'Brien
Panetta
Pashayan
Paul
Pickle
Porter
Preyer
Pritchard
Quayle
Quillen
Rhodes
Roberts
Robinson
Rose
Roth
Rousselot
Royer
Rudd
Santini
Satterfield
Sawyer
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
Stangeland
Steed
Stenholm
Stockman
Stratton
Stump
Tauke
Tauzin
Taylor
Thomas
Trible
Udall
Ullman
Vander Jagt
Walker
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Wilson, Bob
Wilson, Tex.
Winn
Wyatt
Wylie
Yatron
Young, Fla.

NOES—178

Addabbo
Ambro
Anderson, Calif.
Annunzio
Ashley
AuCoin
Bailey
Barnes
Bellenson
Benjamin
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Brademas
Brodhead
Brown, Calif.
Burlison
Burton, John
Burton, Phillip
Carr
Cavanaugh
Chisholm
Clay
Coelho
Collins, Ill.
Conte
Corman
Cotter
Courter
D'Amours
Danielson
Davis, Mich.
Dellums
Dicks
Dingell
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Calif.
Ertel
Fary
Fascell
Fazio
Fenwick
Ferraro
Fish
Flippo
Florio
Ford, Mich.
Ford, Tenn.
Garcia
Gaydos
Gilman
Ginn
Gonzalez
Gore
Gradison
Gray
Green
Guarini
Hall, Ohio
Hawkins
Heckler
Hollenbeck
Horton
Howard
Hutchinson
Johnson, Calif.
Kastenmeier
Kildee
Kogovsek
Kostmayer
LaFalce
Lehman
Leland
Long, La.
Long, Md.
Lowry
Luken
Lundine
McCloskey
McCormack
McDade
McKinney
Maguire
Markey
Matsui
Mattox
Mavroules
Mazzoli
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Motti
Murphy, Pa.
Murtha
Musto
Natcher
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Patten
Patterson
Pease
Perkins
Petri
Peyser
Price
Pursell
Rahall
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Scheuer
Schroeder
Seiberling
Shannon
Simon
Solarz
St Germain
Stack
Stanton
Stark
Stewart
Stokes
Studds
Swift
Synar
Thompson
Traxler
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Waxman
Weaver
Weiss
Williams, Mont.
Williams, Ohio
Wirth
Wolpe
Wydler
Yates
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—29

Abdnor
Anderson, Ill.
Beard, R.I.
Bowen
Conyers
Devine
Dodd
Fithian
Frost
Giaimo
Holtzman
Ichord
Kemp
Leach, La.
Lederer
Marks
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Pepper
Railsback
Staggers
Symms
Wilson, C. H.
Wolff
Wright
Young, Alaska

□ 1720

The Clerk announced the following pairs:

On this vote:

Mr. Abdnor for, with Mr. Lederer against.
Mr. Devine for, with Mr. Pepper against.
Mr. Symms for, with Mr. Wolff against.
Mr. Young of Alaska for, with Mr. Conyers against.

Mrs. HECKLER and Messrs. GUARINI, BONER of Tennessee, and VOLKMER changed their votes from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mrs. FENWICK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, could the distinguished subcommittee chairman answer a question with regard to the use of the $6.8 million that is in the bill for fluoridation. I know this is a very controversial issue. What is the intent of the committee? It seems to me entirely appropriate if a community or a group wishes to have a referendum that they should perhaps be helped with the cost of that referendum, but it seems to me that it does not stop there.

Mr. Chairman, it is at the request of my constituents that I bring this to the floor. These are letters I have received

on the subject. I think all of us feel it is proper, if there is a call for a referendum or if there is a request for information, that there should be money available to provide that information to the citizens who wish to have it. However, I hope the money will not be used by the Government to deliberately promote, advertise or advocate the use of fluoride in the general water supply.

Mr. NATCHER. Mr. Chairman, will the gentlewoman from New Jersey yield to me?

Mrs. FENWICK. I yield to the gentleman from Kentucky.

Mr. NATCHER. I would like to say to the distinguished gentlewoman from New Jersey, in this bill we have $6,813,000 for this program on fluoridation. With regard to the States, cities, and counties who have this program, it is up to those people to decide. We do not decide where the money is to be spent. It is a grant program. It is up to them to make the decision.

Mr. Chairman, I think the request of the gentlewoman is fair. The matter the gentlewoman points out with regard to this money is only fair.

Mr. Chairman, the Federal Government should have nothing to do with a community's decision to fluoridate.

Mrs. FENWICK. Mr. Chairman. I thank my colleague and I am immensely reassured. In other words, this money will go to the States. If it is used, it will be used in the States and localities according to decisions made there, and not here in Washington.

Mr. NATCHER. The gentlewoman is exactly correct.

AMENDMENT OFFERED BY MR. MILLER OF OHIO

Mr. MILLER of Ohio. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of Ohio: Page 60, after line 19, add:

SEC. 513. Of the total budget authority provided in this Act, for payments not required by law, 2 per centum shall be withheld from obligation and expenditure: *Provided*, That of the amount provided in this Act for each appropriation account, activity, and project, for payments not required by law, the amount withheld shall not exceed 5 per centum.

Mr. NATCHER. Mr. Chairman, will the gentleman from Ohio yield to me?

Mr. MILLER of Ohio. I yield to the subcommittee chairman.

Mr. NATCHER. Mr. Chairman, I would suggest we place some time limitation upon consideration of this amendment. This is an amendment that has been discussed time after time in the House. I am wondering now, Mr. Chairman, if a unanimous-consent request of 15 minutes would be in order.

Mr. Chairman, I ask unanimous consent that all debate on this amendment and any amendments thereto be concluded in 15 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. CONTE. Mr. Chairman, reserving the right to object.

Does that include the time for the gentleman in the well?

Mr. NATCHER. Mr. Chairman, the gentleman in the well, as I recall, has been allocated 5 minutes. I know the gentleman from Massachusetts will want to speak on this. I believe when the gentleman from Massachusetts is recognized he should have 5 minutes. The gentleman from Wisconsin (Mr. OBEY) if he wants time I think he should have 5 minutes and, Mr. Chairman, I would like to have 2 minutes.

Mr. Chairman, I ask unanimous consent that the time for consideration of this amendment be so limited.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky that debate close in 17 minutes?

There was no objection.

The CHAIRMAN. The gentleman from Ohio (Mr. MILLER) will be recognized for 5 minutes, the gentleman from Wisconsin (Mr. OBEY) will be recognized for 5 minutes, the gentleman from Massachusetts (Mr. CONTE) will be recognized for 5 minutes, and the gentleman from Kentucky will be recognized for 2 minutes.

The Chair recognizes the gentleman from Ohio (Mr. MILLER).

Mr. MILLER of Ohio. Mr. Chairman, this is the first time that I can recall that we really have time fixed and know what we are going to do. I am not sure we know exactly how we are going to do it.

□ 1730

Members of the committee, this is the standard 2-percent amendment, and in this bill, which has a total of $84.5 billion, the mandatory parts total $51 billion and the nonmandatory parts $33 billion. The 2-percent reduction on the $33 billion nonmandatory portion is $666 million—an amount equal to only 15 percent of the increase over last year.

We would still have 85 percent of the $4.3 billion increase over last year. All we are asking for is a reduction equal to 15 percent of the amount of the increase.

We have had a national budget that has tripled in 10 years. In the 4 fiscal years, since 1977, when we had a budget of $402 billion, it has grown to a projected budget of $633 billion for fiscal year 1981. We find that we will have had an increase of $231 billion in these 4 years. All we are requesting is a cut equal to 15 percent of the increase over last year from this particular budget—85 percent would be left.

It is possible to do it. The people back home are looking for some reduction. This is the year of the balanced budget, and what are we doing? We are going to have a deficit of possibly $60 billion.

Now, I know Members are going to hear all kinds of screams. We have already heard the screams today. We have heard them loud and clear, that we cannot reduce. Well, we can reduce. It is possible because there is $33 billion worth of items in this bill that are nonmandatory. It is possible to reduce it just 2 percent. On the very important items we do not need to take them down at all. The amendment is prepared so that, again, the high-priority items need not be touched.

It would be foolish to reduce the high-priority health items in the bill such as cancer, heart and arthritis research, and I would be ashamed if my committee did that. Anyone who understands the language of the amendment knows that they can reduce the low-priority items and not touch the high-priority items. They have that latitude. They can choose the low-priority items for reduction and not cut the high-priority items 1 cent. The committee can make the reductions in conference like we must do in reconciliation under the Budget Act.

Mr. Chairman, I will not take the balance of the 5 minutes, but I would recommend an aye vote on the amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Wisconsin (Mr. OBEY) for 5 minutes.

Mr. OBEY. Mr. Chairman. I know it is like attacking motherhood to suggest that there is something wrong with an across-the-board cut in an appropriation, but let me suggest to you that there is. I think the fundamental problem facing this House is that through the years we have lost too much respect for ourselves and our legislative ability to make decisions. I think we demean this House and we weaken the institutions within this House that make it able to function when we adopt clumsy amendments like this and totally ignore what has been developed each and every year in the committee system.

When I came to this House 12 years ago, there was an awareness on the part of almost every Member of the House that you could not write major pieces of legislation on the floor; that if there was not a built-in assumption that legislative sanity required that you give the committee the benefit of the doubt, you would have legislative chaos. I suggest to you that either the committee system means something, or it does not.

This committee has held months of hearings on this bill. I want to ask you a question: How many of you—how many of you wrote our subcommittee and said, "Hey, boys, I want more money for cancer. I want more money for arthritis. I want more money for muscular dystrophy. I want more money for impact aid. I want more money for handicapped education?"

How many of you had guts enough to write us on those amendments, and then are going to vote for an amendment which makes across-the-board reductions in all of those items?

Now, whenever somebody back home in my district says to me, "What's the matter with you, Obey? Can't you vote to cut out a lousy 2 percent from that bill?" my answer is that the rational way to legislate is to have the people who know the most about the program decide where that money is going to go, and then you argue the programs on the merits. We adopted a budget resolution in this House, and this bill is $6 million below that budget resolution for these items. Now, in my judgment that means that this committee has been extremely responsible.

When is the last time you can remember that you had the gentleman from

Illinois (Mr. MICHEL), in even unenthusiastic support for this Labor-HEW bill. He is not a big spender. He knows what the committee did. When we put together the increases that the subcommmittee wanted, we took a look at where we were and we said, "Fellows, you can't go this high. We are above the budget." So, one by one the members went round the table and they volunteered reductions in their own pet programs.

I do not think you want to cut cancer by $50 million. I do not think those of you who wrote us on impact aid want to cut impact aid by $40 million. I do not think you want to cut handicapped education by $55 million. I do not think you want to cut student aid by $167 million. I suggest to the Members that this committee is a tight bill. If you want to cut individual items, have the guts to propose what those reductions ought to be, but do not pretend that this is part of the legislative process. All it is is an attack on the committee system which makes this House less and less able each year to function intelligently.

Mr. PURSELL. Mr. Chairman, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Michigan.

Mr. PURSELL. Mr. Chairman, I would like to support the gentleman's comments. I think the House should also know that this bill, if we take out all entitlements, general fund appropriations by the subcommittee and the full committee, the increase over last year is only 5.1 percent. That is a really tight budget, and I have to compliment the committee and the subcommittee for its work.

The CHAIRMAN. The Chair recognizes the gentleman from Massachusetts (Mr. CONTE) for 5 minutes.

Mr. CONTE. Mr. Chairman, we did not come here with a quickly conceived or padded budget. Since February, day in and day out throughout the spring we held important hearings on this bill. We carefully scrutinized the health, education, and human service programs that make up such a vital portion of this bill. We went through 6 months of hard work.

Then we sat down in committee and carved out a responsible, fiscally trim bill. After more than 11 dogged hours in subcommittee markup, we came out with a bill that was $33 million over the President's budget. So, as my fine chairman, the gentleman from Kentucky will tell you, we went back and all the subcommittee members agreed we would make more painful cuts in order to underscore our concern for fiscal responsibility at this economically difficult time.

We cut a little more from many programs that are dear to our hearts and vital to the well-being of this Nation's children, this Nation's poor, this Nation's schools, this Nation's medical community, this Nation's workers. We trimmed them all in order to report out a bill that would be under the budget level and that would show only a very modest increase over fiscal 1980.

This is such a bill. It is under the President's budget by $6 million, and it is less than 5.7 percent above the 1980 level for these same programs. It is obvious that at this level each of the agencies, and all the individual programs will have to tighten their money belts several notches in 1981. So, why take another 2 percent which will certainly cripple many vital service programs.

First of all, across-the-board cuts are not selective. They deny and reject all those weeks and months of careful scrutiny that the committee has put in to preparing this bill. This amendment does not respect the fact that the committee has done its job well and has directly expressed its will.

Where would we take this 2 percent anyway? Before you stand for a rollcall, I want you to know what you are doing if you vote for this cross-the-board cut.

We could cut a bit from community health centers, but they are already $21 million below the budget request, and nearly level funded with 1980. Do you really want to send a message to all Americans that you are cutting back even further on providing adequate and proper medical care to those in need?

We could take another 2 percent from family planning, but it is already nearly $11 million below the budget request and virtually level funded as of 1980. Further cuts there would result in more than 1 million pregnant teenagers each year having more than 400,000 abortions. Surely, that is a wise road to travel.

We could take another 2 percent from alcoholism treatment programs, but they are already 10 percent below 1980 and alcoholism in this country is on the rise. There are nearly 10 million Americans with serious alcohol problems. Should we cut those programs further and put more drunk drivers back on the road? Absolutely not.

We could take another 2 percent from basic educational opportunity grants, but they are already trimmed slightly below the original 1980 level. With college tuitions soaring past $7,000, $8,000, and $9,000, a 2-percent cut will only lead to the exclusion of low- and middle-income Americans from American colleges.

So, I ask you: Where are you going to take this 2-percent cut across-the-board? You have to be a magician. You have to be a magician, and there are no magicians in this House.

So once and for all, let us do the right thing. Let us stand up and say this committee has done a good job; they have worked hard, and let us defeat this amendment.

□ 1740

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. NATCHER) for 2 minutes to close the debate.

Mr. NATCHER. Mr. Chairman, I want to join in the remarks made by my friend, the gentleman from Massachusetts, Mr. SILVIO CONTE, and my friend, the gentleman from Wisconsin, Mr. DAVE OBEY.

We worked hard on this bill. This bill is $5,600,000 under the budget.

Mr. Chairman, it is right easy to come in here and offer an amendment calling for a 2-percent or 5-percent reduction. This is the same bill, Mr. Chairman, that has been vetoed seven times since 1969. We put this bill under the budget.

The amendment offered by my friend, the gentleman from Ohio, Mr. CLARENCE MILLER, could cut research on heart, lung, and blood diseases $28 million. That is what the gentleman from Ohio (Mr. MILLER) wants. We do not want that.

Mr. MILLER of Ohio. Mr. Chairman, will the gentleman yield?

Mr. NATCHER. I do not yield to the gentleman.

Mr. Chairman, if the gentleman's amendment was adopted, he would cut research on arthritis, metabolism, and digestive diseases by as much as $18,500,000. We do not want that. If his amendment is adopted, research on diabetes could be reduced $7,600,000.

Mr. Chairman, further, if the gentleman's amendment was adopted, as far as family planning is concerned, it might be reduced $8,300,000.

Mr. MILLER of Ohio. Mr. Chairman, would the gentleman yield on that?

Mr. NATCHER. I do not yield at this time.

Mr. Chairman, the gentleman from Ohio (Mr. MILLER) comes in every year offering this amendment. If we adopt it, as far as elementary and secondary education is concerned, I want him to go back to Ohio and tell his people that he wants to reduce aid to elementary and secondary education to the extent, Mr. Chairman, of $175,700,000. That is what he would do.

Mr. MILLER of Ohio. Mr. Chairman, will the gentleman yield on that?

Mr. NATCHER. I do not yield on that.

Mr. Chairman, as far as education for the handicapped is concerned, this amendment could cut up to $55,100,000. That is what my friend, the gentleman from Ohio, Mr. CLARENCE MILLER, wants to tell the people of the State of Ohio.

Mr. Chairman, we do not want the other 49 States to join with him, and I ask that this amendment be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. MILLER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. MILLER of Ohio. Mr. Chairman, I demanded a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred and eleven Members are present, a quorum.

The pending business is the demand of the gentleman from Ohio (Mr. MILLER) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BAUMAN

Mr. BAUMAN. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

CORPORATION FOR PUBLIC BROADCASTING

PUBLIC BROADCASTING FUND

For payment to the Corporation for Public Broadcasting, as authorized by the Public Telecommunications Financing Act of 1978, for the fiscal year 1983, $172,000,000: *Provided*, That these funds shall not be used to pay for receptions, parties, and similar forms of entertainment for government officials or employees: *Provided further*, That these funds shall not be available or used to aid or support any program or activity excluding from participation in, denying the benefits of, or discriminating against any person of the basis of race, color, national origin, religion, or sex.

The Clerk read as follows:

Amendment offered by Mr. BAUMAN: On page 53, line 15, strike the period, insert a colon, and add the following: "*Provided further*, That none of the funds appropriated herein shall be used for grants to any public telecommunications entity, whether national, regional, or other system of public telecommunications which on or after October 1, 1980, as indicated in the audit report indicated by section 392(h) of Public Law 95-567, engages in the production or financing, directly or indirectly, of any magazine, journal, or other printed publication which accepts or receives, payment or credits for the placing of commercial advertising in such publication.".

Mr. BAUMAN. Mr. Chairman, I have discussed this amendment with the gentleman from Kentucky (Mr. NATCHER) and the gentleman from Illinois (Mr. MICHEL). I understand it has their acceptance.

The amendment goes simply to the appearance of a publication on the part of four public television stations of a new monthly magazine called Dial. The thing that concerns me most—and I have researched this to some extent—is that this magazine, which in its first publication goes to 650,000 recipients, is in fact being financed in part by taxpayers' funds. I do not believe the Federal Government should be in the commercial publishing business. Even greater is my concern about Federal control and funding of what purports to be a private publication. Such an arrangement raises serious first amendment questions.

Apparently, in the first publication of this magazine, the four stations which are part of the Public Broadcasting System are using their special tax-exempt nonprofit status and their preferential lower cost mailing rate to compete with the business of private publications. This amendment would simply say that public funds are not to go to any entity, either a quasi-governmental or governmental agency such as public broadcast stations, that publish a publication which seeks and obtains commercial advertising.

I would cite yesterday's Washington Star article in which it is pointed out that the first edition of this magazine took in $580,000 in private ad revenues. I certainly do not think that is the appropriate kind of thing to be done by a magazine published by Government agencies of any sort with taxpayers funds.

Mr. Chairman, the day has not yet come when the Federal Government or its agencies should be in open competition with private enterprise completely unauthorized by Congress or any other legal authority. This is especially so when a government-funded and created agency seeks to begin publishing what purports to be a news and entertainment magazine in four of our major cities including a large part of the U.S. citizenry.

This should be stopped now, and I urge the adoption of the amendment.

Mr. MICHEL. Mr. Chairman, if the gentleman will yield, I want to say that I made mention during the course of general debate of the particular problem I had with that proposal to publish the magazine called Dial.

I am particularly concerned about the solicitation of advertising for the publication. It comes very close to using Federal funds to give the public broadcasting stations an unfair competitive advantage over private commercial magazines.

Mr. BAUMAN. Mr. Chairman, I thank the gentleman from Illinois (Mr. MICHEL).

Mr. NATCHER. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the chairman of the subcommittee.

Mr. NATCHER. Mr. Chairman, I would like for the committee to know that during the hearings on this bill the distinguished gentleman from Illinois (Mr. MICHEL) very carefully developed a number of matters pertaining to public broadcasting.

As far as the gentleman's amendment is concerned, we have no objection to it on this side of the aisle.

Mr. BAUMAN. Mr. Chairman, I thank the subcommittee chairman, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. BAUMAN).

The amendment was agreed to.

Mr. WILLIAMS of Montana. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take this time for the purpose of developing a dialog with the distinguished subcommittee chairman.

Mr. Chairman, the gentleman and I have discussed the difficulty, especially among low-income folks, of meeting the rising costs of fuel for home heating and transportation. As the gentleman knows, in the past, through his assistance and the assistance of his appropriations subcommittee, the Community Service Administration has been directly involved in helping to mitigate these costs through a program of alternative energy technologies and through energy education and training programs.

Does it remain the gentleman's understanding that the committee continues to support the promotion of these programs as necessary to meet the special needs of the poor, and does the committee encourage the appropriate expenditure to be continued to be made available through CSA, thus encouraging and continuing appropriate technology research and demonstration?

Mr. NATCHER. Mr. Chairman, will the gentleman yield to me?

Mr. WILLIAMS of Montana. I am pleased to yield to the gentleman.

Mr. NATCHER. Mr. Chairman, I would like to say to the distinguished gentleman from Montana (Mr. WILLIAMS) that I can state to the gentleman that it is our intention that the efforts which the Nation has begun toward appropriate technology research and demonstration should continue.

In addition, Mr. Chairman, I would like to say to the gentleman from Montana that the efforts thus far represent a demonstration of what can be done through the Community Services Administration to assist low-income people who are hardest hit by rising energy costs.

I want to thank the gentleman from Montana (Mr. WILLIAMS) for bringing this matter to the attention of the committee at this time.

Mr. WILLIAMS of Montana. Mr. Chairman, I thank the subcommittee chairman, and I yield back the balance of my time.

□ 1750

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 51, after line 23, insert:

"SEC. 309. None of the funds appropriated by this Act shall be expended to enforce such part or parts of the regulations promulgated to carry out the provisions of title IX of the Education Amendments of 1972, Public Law 92-318, which have been found by three United States circuit courts of appeal to exceed the statutory authority under which they were promulgated, and by one United States circuit court of appeals not to exceed such authority, during any part of the fiscal year ending September 30, 1981, in which the conflict in these decisions shall not have been resolved in favor of the validity of the challenged part or parts of the regulations."

And renumber the remaining section accordingly.

Mr. ASHBROOK. Mr. Chairman, the Department of Education—and before them, HEW—has attempted to apply title IX regulations to the employment practices of entire school systems and universities, rather than to Federal programs in such systems.

For the record, at least 10 U.S. district courts and three U.S. circuit courts of appeal have held that this exceeds the scope of the statute. That is the issue here. HEW appealed to the U.S. Supreme Court, which refused to hear the appeal. But even after that, HEW continued to apply that interpretation and those regulations in all other courts of appeals jurisdictions where it has not been litigated.

Since that time, the Second Circuit Court of Appeals, on the other hand, has upheld the regulations, although a petition for a rehearing en banc is pending. So it is really hard to say at this point; that holding might be reversed. But there are inconsistent decisions.

My amendment would say that until these regulations are clearly held by the U.S. Supreme Court to be consistent with the law—which, I might add, seems to be doubtful, be that as it may—until they are found one way or another, they

certainly should not be applied by the Department of Education against the overwhelming weight of judicial disapproval.

Mr. SIMON. Mr. Chairman, I move to strike the requisite number of words.

So that I understand—and I just heard this amendment briefly—are we talking about discrimination in employment here?

Mr. ASHBROOK. If the gentleman will yield, we are talking about title IX regulations which were promulgated, the so-called sex discrimination regulations.

Mr. SIMON. But specifically these court decisions that the gentleman is referring to, I think they are in the area of employment, is that correct, on title IX?

Mr. ASHBROOK. That is correct. All in the area of employment, that is correct.

Mr. SIMON. And if the gentleman's amendment carries, the gentleman would say to the Department that until the Supreme Court rules, they cannot do anything about cases where there would be blatant discrimination against women in the case of employment; is that correct?

Mr. ASHBROOK. No. That is covered under title VII. I am not trying to inhibit their efforts they may make on a case-by-case basis. I am concerned about the overreach of their regulations which seem to exceed statutory authority.

Mr. SIMON. Can the gentleman clarify what the impact of his amendment is, then?

Mr. ASHBROOK. Well, the title IX regulations were applied to entire universities. Ten district courts and three courts of appeals have said that they exceed the statutory authority of HEW. One court of appeals has said they do not. I happen to think the weight is in favor of the three that have said they exceed; but at least until the Supreme Court resolves this issue, we should not allow the bureaucracy, as it often does, to forum-shop. You know, to apply standards in areas where the courts say they are all right, to not follow courts in other areas. I would like to see a consistent decision here. Our universities would like a uniform rule. I think this makes a lot of sense, and I do not think the statutory authority is going to be protected until such time as the court decides one way or another as to who is right and who is wrong.

Mr. SIMON. Then if I understand the amendment offered by the gentleman correctly, it would say that title IX does not apply to universities until there is a Supreme Court decision; is that correct?

Mr. ASHBROOK. No, not at all. Just those regulations that were promulgated that have been held of doubtful constitutional validity.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from California.

Mr. PANETTA. The gentleman from Ohio does not intend to inhibit their ability to enforce the requirements of title IX?

Mr. ASHBROOK. Not at all. Only those that are in question.

Mr. PANETTA. What the gentleman is directing it at is the regulations that they have initiated. The gentleman is not intending that they cannot initiate new regulations to try to deal with this.

Mr. ASHBROOK. Absolutely not. Nor would I want to restrict the implementation of regulations if the Supreme Court in fact says, "You have not exceeded your authority." I happen to think they will say that. I have noted for the record that three courts of appeals districts have said they exceeded their statutory authority. What we are trying to do is to protect the integrity of the statutes and the regulations implemented under the statutes.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I want to be sure what we are doing here. As I understand it, what we are doing with this amendment, then, touches only those regulations which are under challenge in the court and have been already found by one or more courts to be contrary to the statute; is that correct?

Mr. ASHBROOK. That is fair to say. It is fair to say that the overwhelming weight of judicial decisions have been against them at this point.

Mrs. FENWICK. We hope they will not be. But I mean finally. But the rest of the regulations remain intact?

Mr. ASHBROOK. As far as this amendment is concerned, exactly.

Mrs. FENWICK. I thank the gentleman.

Mr. SIMON. I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. KRAMER

Mr. KRAMER. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

TITLE IV—RELATED AGENCIES

ACTION

OPERATING EXPENSES, DOMESTIC PROGRAMS

For expenses necessary for ACTION to carry out the provisions of the Domestic Volunteer Service Act of 1973, $158,047,000.

The Clerk read as follows:

Amendment offered by Mr. KRAMER: On page 52, line 11, strike out "$158,047,000" and insert in lieu thereof, "$154,047,000".

Mr. KRAMER. Mr. Chairman, this is a modest amendment. It does not seek to cut back existing program levels, but it holds off additional expansion of the ACTION Agency at this time. The bill allows $12½ million increase over last year's appropriation for the Agency—that is 8½ percent—and the previous year's funding was a 22.1-percent increase; thus, in 2 years a 30-percent increase for the ACTION Agency.

This $12½ million increase is broken down into $4 million for VISTA, $5½ million for Older Americans, and almost $3 million for program support.

What my amendment does is cut this $12½ million by $4 million. This represents only a 2½-percent reduction of the entire agency appropriation in this bill and less than one-half of 1 percent of the entire bill.

The reduction would be in these areas: It would allow a cost-of-living increase for VISTA volunteers, but it would eliminate a proposed $2 million expansion for the VISTA program. It would allow a modest increase in program support, but it would restrict an additional $2 million increase in program support which the agency had requested for additional staff in urban and energy initiatives.

Now, at a time of fiscal restraint, when other agencies are being required to tighten their belts, to absorb inflationary increases at last year's funding levels and to freeze new hires, I believe it is inappropriate for this particular agency to be exempt from that overall restraint and to continue to enjoy budget increases and program expansion.

I would point out to my colleagues that in this very same bill a similar agency, the Community Services Administration, is receiving an almost $2 million reduction in program support from last year's level.

I would further point out that ACTION has just recently benefitted from a $4 million supplemental appropriation, of which more than $2 million is being used for VISTA expansion and nearly $1 million is being used for program support activities.

If these fiscal facts alone are not sufficiently persuasive, I think it is important to look at what the agency in fact is going to do with these funds.

The agency's budget request to the Congress indicates that the proposed expansion of VISTA is to increase the agency's energy-related activities, including development of community-controlled alternative energy processes and systems—and get this—community greenhouses and gardens, solar water heaters, fuel cooperatives, and advocacy for energy equity.

In the first place, do we want ACTION to be using Federal funds to experiment with solar energy projects, or can this better be done by other agencies more experienced in these fields? Do we want the agency to duplicate other activities of agencies, such as the Community Services Administration, by allowing ACTION to use the energy situation to justify further program expansion? I would argue no.

□ 1800

Second, when we associate advocacy activity with ACTION, it raises some questions about some of the Agency's past controversial activities, which have seen volunteers become involved in lots of prohibited activities.

Last year we had tremendous debates on the floor about lobbying activities, labor-organizing activities, the electioneering and campaigning activities of the agency. Indeed, one of the agency energy advocacy grants this year was given to the Citizen Labor Energy Coalition. This group makes no distinction between advocacy and lobbying. Their own

literature talks about, brags about, legislative campaigns and lobbying activities they have been involved with in at least four separate legislatures.

For example:

The Wisconsin C/LEC . . . has helped get a Lifeline Bill introduced into the Wisconsin State Legislature. . . .;

The Michigan Energy Coalition, organized by C/LEC affiliates in Michigan, won passage in December in the state Senate of their Lifeline Bill;

The Coalition (in Kentucky) is planning a legislative campaign. . . .;

Coalition affiliates, led by Massachusetts Fair Share are engaged in a legislative campaign to abolish the fuel adjustment clause. . . .

One other troublesome point about this particular grant is the familiarity of the names of people associated with the coalition. For example, the executive director is none other than Heather Booth, whom we should remember as the head of the Midwest Academy, recipient of one of the most controversial ACTION grants which was found to use highly inflationary and inappropriate material in the training of VISTA volunteers, and which was also found by the agency's own auditors to have problems administering Federal funds. Other names on the board of directors include Michael Ansara, Massachusetts Fair Share—an ACTION grantee (this year $200,000); Bob Creamer, Illinois Public Action Council—an ACTION recipient; Joe Fish, Carolina Action—an ACTION recipient. It also includes Tom Hayden, head of the campaign for economic democracy.

In short, if this is the type of program which the agency is seeking VISTA expansion for, I think a better use could be found for those Federal funds.

Let me give this body another example in the few minutes remaining of another type of program which this VISTA expansion is going to fund, if we grant such an expansion: Recently, the district program director in Philadelphia disapproved a proposal submitted by an organization group called Tenants Action Group for a VISTA project. In his own report to the regional director, he said and I quote:

The letterhead of the TAG suggests that this is not a responsible organization. The logo is that of a rioting mob. I believe the taxpayers of this country and members of Congress who appropriate federal funds would be appalled if the ACTION agency provided federal resources to an organization that depicts itself as a rioting mob.

He further noted that the group was strenuously opposed by the Homeowners Association, which accused them of "violence and hostility towards the private rental market," citing as example. "There have been instances of vicious and unwarranted public attacks on property owners. It would seem that their motive was to drive them into bankruptcy and the natural effect would also be generating the abandonment of the properties by these owner-investors." He further noted that the group was involved in extensive lobbying activity, did not have tax exempt status and would probably not qualify because of its lobbying activities. In spite of these very serious findings, the Regional Director and the VISTA Director overruled the District Program Director to fund the project, and there are now rumors that the District Program Director may find his job in jeopardy for interfering with the direction which his superiors want to take.

The CHAIRMAN. The time of the gentleman from Colorado (Mr. KRAMER) has expired.

(By unanimous consent, Mr. KRAMER was allowed to proceed for 30 additional seconds.)

Mr. KRAMER. In conclusion then the organization is still involved in some of those activities that we tried to pass amendments on last year. This program expansion would accelerate those kinds of activities. We are not asking for any reduction in expenses at all. We are simply limiting the increases to this agency, an agency that would be given 30 percent increase over the last 2 years. We are asking for a very modest cutback in that otherwise 30 percent over 2 years.

Mr. NATCHER. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Colorado (Mr. KRAMER).

Mr. Chairman, the total amount requested for ACTION was $169,154,000. After we had our hearings on the bill and marked it up, we reduced ACTION by $11,107,000. A further reduction in this program cannot be warranted at this time. We have reduced the budget for VISTA by $3,744,000. A further $2 million reduction would eliminate a very modest program increase that was approved by the committee.

Mr. Chairman, the committee bill provides an increase of less than 10 percent over the 1980 level, not 22 percent, as I believe the gentleman explained. It is less than a 10-percent increase.

Mr. KRAMER. Mr. Chairman, will the gentleman yield?

Mr. NATCHER. I yield to the gentleman from Colorado.

Mr. KRAMER. The gentleman is correct. The 22-percent figure, and I would like to make that clear, was for 1980. The 1981 budget, my calculations indicate, is an 8½-percent increase. So when I talked about 30 percent, that was over 2 years.

Mr. NATCHER. The gentleman is right. There is less than a 10-percent increase.

Mr. Chairman, this amendment should be defeated. I ask for a vote on the amendment.

Mr. CONTE. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is a barebones budget. We have cut this budget, as the good chairman said, $11.1 million, and we cut VISTA, Mr. Chairman; the President asked for 37.5. We cut it down to 33.8. We cut services learning; the President asked for $4 million, and we cut it down to $2.8 million. Foster Grandparents, a great program, a splendid program, has only a modest increase—not nearly enough to account for inflation and increased pay costs. It is a splendid program. The gentlewoman from New Jersey knows that.

Even the important senior companion program shows no growth. The President asked for 12.7. We gave him 12.7.

The citizen participation and voluntary demonstration program. The President asked for nearly $12 million, or $11.9. We cut that down to $3.4. That is an awful cut. I do not think we could take much more here. This is a barebones budget right down to the marrow.

Mr. KRAMER. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Colorado.

Mr. KRAMER. I thank the gentleman for yielding.

With the success and fantastic oratory and great speeches I have heard from the gentleman, I am loath to even take him on here this afternoon, but I would suggest that what the gentleman is saying is correct; but the programs that this amendment zeros in on represents increases of rather substantial proportions when considered against the appropriations bill as a total, and even the agency appropriations aspect of the total appropriations, and I think that when the agency is out there using this money to promote organizations that show rioting mobs on their letterheads, they still have not learned their lesson. When we are cutting back $2 million on Community Services Administration, it seems to me a very inappropriate use of taxpayers' money to increase this agency still bent on doing their lobbying and prohibited activities, by $4 million.

Mr. CONTE. Let me say to the gentleman that I will be glad to work with him. I do not believe in wasteful programs either. I will be happy to work with the very able, I might say, young gentleman, who makes a great contribution to this House. I would welcome working with him to let us try to clean up the source of his concerns. But we cut down this program, and this amendment would reduce that and also make it impossible to provide the proper oversight for VISTA for the RSVP program, and for the urban volunteers.

Mr. KRAMER. If the gentleman will continue to yield, this does not cut any staff. It simply reduced what otherwise would be increases.

Mr. CONTE. The gentleman's amendment, as I read it, merely cuts $4 million out of ACTION. That would reduce ACTION staff, and it would reduce the oversight and evaluation of the agency's programs that I mentioned. Everybody in this House who has gone home, and they all have and worked with the Foster Grandparents program, know this is really an outstanding program.

Mr. KRAMER. I agree. We do not touch that program.

Mr. CONTE. The gentlewoman from New Jersey can vouch for that.

Mr. KRAMER. We do not touch that program. All we are aiming in on is rioting logos.

Mr. CONTE. Let us vote this amendment down. I will be glad to work with this gentleman.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from New York.

Mr. OTTINGER. I join my friend from Massachusetts in strong opposition to this amendment. I would like to address some of the problems the gentleman from Colorado raised.

The VISTA volunteers, in working with solar energy, are applying techniques for poor people, on which he sup-

ports me very strongly in the Committee on Science and Technology so far as developing that technology.

The Foster Grandparents program is not only an excellent program, but it suffers like everything else from inflation. The modest increase is needed so that the grandparents can in fact continue to participate.

I do hope that the committee will reject this amendment and will support the very excellent program.

Mr. CONTE. Mr. Chairman, I yield back the balance of my time and ask for a vote on the amendment.

Mr. ROUSSELOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I merely take this time to say my colleague did not have a chance to respond adequately to what this covers and what it does not. The gentleman was not trying to cut out any of those wonderful and splendid programs the gentlemen were talking about.

I would say to the gentleman from Massachusetts (Mr. CONTE), he does not want to cut those programs out. That is not Mr. KRAMER.

Mr. KRAMER. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Colorado.

□ 1810

Mr. KRAMER. Mr. Chairman, I thank the gentleman for yielding. I will not take but 30 seconds to clarify the record that I understand is being made here.

I could not agree more with some of the remarks that I have heard here about the Foster Grandparents and RSVP and things like that. They are good programs. I have been supportive of those in the past and I will continue to be supportive of them.

Mr. ROUSSELOT. But the gentleman does not touch those programs.

Mr. KRAMER. We do not touch those programs. This amendment simply reduces the amount of what otherwise would be increases over 1980 in 1981 in two areas. No. 1, it cuts back on VISTA expansion by $2 million. VISTA being the program that I alluded to where there are examples of the district director having his job in jeopardy because he dares to say that this VISTA project should not be involved in sponsoring an organization that has Rioting Mobs on their letterheads.

Mr. ROUSSELOT. And that is only $2 million.

Mr. KRAMER. And we have $2 million more.

Mr. ROUSSELOT. Two million dollars.

Mr. KRAMER. That is all. The other $2 million simply cuts back on what otherwise would be substantial increases in staffing in the ACTION headquarters office. It allows some increases, but it moderates the amount of those increases between 1980 and 1981 by $2 million. That is simply what the amendment does. It does not touch any of those other wonderful programs.

Mr. ROUSSELOT. So the gentleman is just trying to help out the committee to make a modest decrease. That certainly sounds reasonable.

Mr. MICHEL. Mr. Chairman, will the gentleman from California yield to me?

Mr. ROUSSELOT. Why of course, I yield. I do not want to get my colleague from Massachusetts upset.

Mr. MICHEL. Well, if the gentleman will yield to me, let me say that I want to commend the gentleman from Colorado for the action he has taken in the legislative committee in this area.

Now, we have had to take some pretty drastic measures over the last several years in our Appropriations Committee with respect to this agency. It has been badly administered and fraught with all kinds of problems which we do not need to detail here. The gentleman has picked up on what we did initially by oversight in our committee and addressed himself to those issues in the Legislative Committee. I applaud him for that.

Personally, I do not have a problem with the gentleman's amendment. In the supplemental, we gave them a $4 million increase. They went out and hired 25 additional people to expand the program; so there is some fat there.

Mr. ROUSSELOT. There is some fat?

Mr. MICHEL. There is good reason for our keeping the pressure on. I just want to commend the gentleman for his initiative.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. Well, I kind of promised my colleague, the gentleman from Massachusetts, that I would yield to him.

Mr. JOHN L. BURTON. Well, I will get the gentleman some more time.

Mr. ROUSSELOT. Well, I do not want to take too much time. Well, yes, I will yield to my colleague.

Mr. JOHN L. BURTON. I wonder if the gentleman from Colorado could tell us what the substance was of the program that was rejected because of the logo.

I mean, God knows anybody would fund anything with an elephant or a donkey on it.

Does it deal with logos? Could the gentleman tell us what the substance of that program was? I mean, were they going to fund rioting mobs or were they going to stop mobs from rioting? There is a difference, does the gentleman not agree?

Mr. ROUSSELOT. I yield to the gentleman from Colorado.

Mr. KRAMER. The substance of the program was a tenants action group. Characterized by the district director, the purpose was basically to assault and make vicious attacks on all the landlords in that particular area.

Mr. JOHN L. BURTON. To physically assault them and commit crimes?

Mr. KRAMER. Well, the gentleman will have to talk to the district director about that.

Mr. JOHN L. BURTON. No; the gentleman is the one who is making the allegation.

Mr. KRAMER. Well, let me finish, and the ultimate objective in the opinion of the district director was to drive these landlords into bankruptcy.

Now, those are the words of the district director. The district director's opinion was overridden at the regional level by the regional director. This is the same old problem that we saw last year when we tried to bring forth and we had passed in this House four or five very productive amendments, most of which were taken out in the conference committee to try to rectify this situation.

The agency has obviously not learned its lesson yet. It is still bent on the same kind of action as before the legislation expired.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. JOHN L. BURTON. Mr. Chairman, I move to strike the requisite number of words.

I yield to the gentleman from Massachusetts.

Mr. CONTE. Well, I was kind of hoping we would go to a vote here. I think the House is ready to defeat this amendment. The gentleman himself admitted that $2 million would come out from ACTION headquarters staff. So how are we going to supervise and oversee the actions of VISTA if we cut the staff by $2 million?

I hope we vote on this and strike it down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado (Mr. KRAMER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. KRAMER. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Eighty-seven Members are present, not a quorum. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 500]

Addabbo	Bellenson	Burton, Phillip
Akaka	Benjamin	Butler
Albosta	Bennett	Campbell
Alexander	Bereuter	Carney
Ambro	Bethune	Carr
Anderson, Calif.	Bevill	Carter
Andrews, N.C.	Biaggi	Chappell
Andrews, N.Dak.	Bingham	Cheney
Annunzio	Blanchard	Chisholm
Anthony	Bolling	Clausen
Archer	Boner	Clay
Ashbrook	Bonior	Cleveland
Aspin	Bonker	Clinger
Atkinson	Bouquard	Coelho
AuCoin	Brademas	Coleman
Badham	Breaux	Collins, Ill.
Bafalis	Brinkley	Collins, Tex.
Bailey	Brodhead	Conable
Baldus	Brooks	Conte
Barnard	Broomfield	Corcoran
Barnes	Brown, Calif.	Corman
Bauman	Brown, Ohio	Cotter
Beard, R.I.	Broyhill	Coughlin
Beard, Tenn.	Buchanan	Courter
Bedell	Burgener	Crane, Daniel
	Burlison	Crane, Philip
	Burton, John	Daniel, R. W.

Danielson	Jacobs	Pursell
Dannemeyer	Jeffords	Quayle
Daschle	Jeffries	Quillen
Davis, Mich.	Jenkins	Rahall
de la Garza	Jenrette	Rangel
Deckard	Johnson, Calif.	Ratchford
Dellums	Johnson, Colo.	Regula
Derrick	Jones, N.C.	Reuss
Derwinski	Jones, Okla.	Rhodes
Dickinson	Jones, Tenn.	Richmond
Dicks	Kastenmeier	Rinaldo
Dixon	Kazen	Ritter
Donnelly	Kelly	Roberts
Dornan	Kildee	Robinson
Dougherty	Kindness	Rodino
Downey	Kogovsek	Roe
Drinan	Kostmayer	Rose
Duncan, Oreg.	Kramer	Rosenthal
Duncan, Tenn.	LaFalce	Rostenkowski
Early	Lagomarsino	Roth
Eckhardt	Latta	Rousselot
Edgar	Leach, Iowa	Roybal
Edwards, Ala.	Leath, Tex.	Royer
Edwards, Calif.	Lee	Rudd
Edwards, Okla.	Lehman	Russo
Emery	Leland	Sabo
English	Lent	Satterfield
Erdahl	Levitas	Sawyer
Erlenborn	Lewis	Scheuer
Ertel	Livingston	Schroeder
Evans, Del.	Lloyd	Schulze
Evans, Ga.	Loeffler	Sebelius
Evans, Ind.	Long, La.	Seiberling
Fary	Long, Md.	Sensenbrenner
Fascell	Lott	Shannon
Fazio	Lowry	Sharp
Fenwick	Lujan	Shelby
Ferraro	Luken	Shumway
Findley	Lungren	Shuster
Fish	McClory	Simon
Fisher	McCloskey	Skelton
Fithian	McCormack	Smith, Nebr.
Flippo	McDonald	Snowe
Florio	McEwen	Snyder
Foley	McHugh	Solars
Ford, Mich.	McKay	Solomon
Ford, Tenn.	McKinney	Spellman
Forsythe	Madigan	Spence
Fountain	Maguire	St Germain
Fowler	Markey	Stack
Frenzel	Marlenee	Staggers
Frost	Marriott	Stangeland
Fuqua	Martin	Stanton
Garcia	Mathis	Steed
Gaydos	Matsui	Stenholm
Gephardt	Mattox	Stewart
Gibbons	Mavroules	Stockman
Gilman	Mazzoli	Stokes
Gingrich	Mica	Stratton
Ginn	Michel	Studds
Glickman	Mikulski	Stump
Goldwater	Miller, Calif.	Swift
Gonzalez	Miller, Ohio	Synar
Goodling	Mineta	Tauke
Gore	Minish	Tauzin
Gradison	Mitchell, Md.	Taylor
Gramm	Mitchell, N.Y.	Thomas
Grassley	Moakley	Thompson
Gray	Moffett	Traxler
Green	Mollohan	Trible
Grisham	Montgomery	Ullman
Guarini	Moore	Van Deerlin
Gudger	Moorhead, Calif.	Vanik
Guyer	Mottl	Vento
Hagedorn	Murphy, Pa.	Volkmer
Hall, Ohio	Murtha	Walgren
Hall, Tex.	Musto	Walker
Hamilton	Myers, Ind.	Wampler
Hammer-schmidt	Natcher	Watkins
Hance	Neal	Waxman
Hanley	Nelson	Weaver
Hansen	Nolan	Weiss
Harkin	Nowak	White
Harris	O'Brien	Whitehurst
Hawkins	Oakar	Whitley
Heckler	Oberstar	Whittaker
Hefner	Obey	Whitten
Heftel	Ottinger	Williams, Mont.
Hightower	Panetta	Williams, Ohio
Hillis	Pashayan	Wilson, Bob
Hinson	Patten	Winn
Holland	Patterson	Wirth
Hollenbeck	Paul	Wolff
Holt	Pease	Wolpe
Hopkins	Pepper	Wyatt
Horton	Perkins	Wydler
Howard	Petri	Wylie
Hubbard	Peyser	Yates
Huckaby	Pickle	Yatron
Hughes	Porter	Young, Fla.
Hutchinson	Preyer	Young, Mo.
Hutto	Price	Zablocki
Hyde	Pritchard	Zeferetti

□ 1830

The CHAIRMAN. Three hundred and eighty-eight Members have answered to their names, a quorum is present and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Colorado (Mr. KRAMER) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 240, not voting 30, as follows:

[Roll No. 501]

AYES—162

Anthony	Grisham	Murphy, Pa.
Archer	Guyer	Myers, Ind.
Ashbrook	Hagedorn	O'Brien
Badham	Hall, Tex.	Pashayan
Bafalis	Hammer-schmidt	Paul
Bauman	Hance	Petri
Beard, Tenn.	Hansen	Porter
Bennett	Harsha	Quayle
Bethune	Hightower	Quillen
Bevill	Hinson	Rahall
Brooks	Holt	Regula
Broomfield	Hopkins	Rhodes
Brown, Ohio	Hubbard	Ritter
Broyhill	Huckaby	Roberts
Burgener	Hutchinson	Robinson
Butler	Hutto	Roth
Campbell	Hyde	Rousselot
Carney	Ireland	Royer
Chappell	Jacobs	Rudd
Cheney	Jeffries	Santini
Clausen	Jenkins	Satterfield
Cleveland	Johnson, Colo.	Sawyer
Clinger	Kelly	Schulze
Coleman	Kindness	Sebelius
Collins, Tex.	Kramer	Sensenbrenner
Conable	Lagomarsino	Shelby
Corcoran	Latta	Shumway
Coughlin	Leath, Tex.	Shuster
Courter	Lee	Snowe
Crane, Daniel	Lent	Snyder
Crane, Philip	Lewis	Solomon
Daniel, Dan	Livingston	Spence
Daniel, R. W.	Loeffler	Stanceland
Dannemeyer	Lott	Stanton
de la Garza	Lujan	Stenholm
Derwinski	Luken	Stockman
Dickinson	Lungren	Stratton
Dornan	McDonald	Stump
Dougherty	McEwen	Tauke
Duncan, Tenn.	McKay	Taylor
Edwards, Ala.	Marlenee	Thomas
Edwards, Okla.	Marriott	Trible
Emery	Martin	Volkmer
English	Mathis	Walker
Erlenborn	Mica	Wampler
Ertel	Michel	White
Evans, Ga.	Miller, Ohio	Whitehurst
Evans, Ind.	Mitchell, N.Y.	Whitten
Fish	Mollohan	Wilson, Bob
Filippo	Montgomery	Wyatt
Forsythe	Moore	Wydler
Frenzel	Moorhead, Calif.	Wylie
Gingrich	Mottl	Yatron
Goodling		Young, Fla.
Gramm		

NOES—240

Addabbo	Bereuter	Chisholm
Akaka	Biaggi	Clay
Albosta	Bingham	Coelho
Alexander	Blanchard	Collins, Ill.
Ambro	Boggs	Conte
Anderson, Calif.	Boland	Corman
Andrews, N.C.	Bolling	Cotter
Andrews, N.Dak.	Boner	Danielson
Annunzio	Bonior	Daschle
Ashley	Bonker	Davis, Mich.
Aspin	Bouquard	Davis, S.C.
Atkinson	Brademas	Deckard
AuCoin	Breaux	Dellums
Bailey	Brinkley	Derrick
Baldus	Brodhead	Dicks
Barnard	Brown, Calif.	Dingell
Barnes	Buchanan	Dixon
Beard, R.I.	Burlison	Donnelly
Bedell	Burton, John	Downey
Bellenson	Burton, Phillip	Drinan
Benjamin	Carr	Duncan, Oreg.
	Carter	Early
	Cavanaugh	Eckhardt
	Edgar	Kazen
	Edwards, Calif.	Kildee
	Erdahl	Kogovsek
	Evans, Del.	Kostmayer
	Fary	LaFalce
	Fascell	Leach, Iowa
	Fazio	Lehman
	Fenwick	Leland
	Ferraro	Levitas
	Findley	Lloyd
	Fisher	Long, La.
	Fithian	Long, Md.
	Florio	Lowry
	Foley	Lundine
	Ford, Mich.	McClory
	Ford, Tenn.	McCloskey
	Fountain	McCormack
	Fowler	McHugh
	Frost	McKinney
	Fuqua	Madigan
	Garcia	Maguire
	Gaydos	Markey
	Gephardt	Matsui
	Gibbons	Mattox
	Gilman	Mavroules
	Ginn	Mazzoli
	Glickman	Mikulski
	Goldwater	Miller, Calif.
	Gonzalez	Mineta
	Gore	Minish
	Gradison	Mitchell, Md.
	Gramm	Moakley
	Grassley	Moffett
	Gray	Murtha
	Green	Musto
	Guarini	Natcher
	Gudger	Neal
	Hall, Ohio	Nelson
	Hamilton	Nolan
	Hanley	Nowak
	Harkin	Oakar
	Harris	Oberstar
	Hawkins	Obey
	Heckler	Ottinger
	Hefner	Panetta
	Heftel	Pashayan
	Hillis	Patten
	Holland	Patterson
	Hollenbeck	Pease
	Horton	Pepper
	Howard	Perkins
	Hughes	Peyser
	Jeffords	Pickle
	Jenrette	Preyer
	Johnson, Calif.	Price
	Jones, N.C.	Pritchard
	Jones, Okla.	Pursell
	Jones, Tenn.	Rangel
	Kastenmeier	Ratchford

NOT VOTING—30

Abdnor	Holtzman	Myers, Pa.
Anderson, Ill.	Ichord	Nedzi
Applegate	Kemp	Nichols
Bowen	Leach, La.	Railsback
Byron	Lederer	Swift
Conyers	McDade	Symms
D'Amours	Marks	Vander Jagt
Devine	Moorhead, Pa.	Wilson, C. H.
Dodd	Murphy, Ill.	Wilson, Tex.
Giaimo	Murphy, N.Y.	Young, Alaska

□ 1840

The Clerk announced the following pairs:

On this vote:

Mr. Vander Jagt for, with Mr. Murphy of Illinois against.

Mr. Symms for, with Mr. Lederer against.

Mr. Young of Alaska for, with Mr. Conyers against.

Mr. Abdnor for, with Mr. Nedzi against.

Mr. Nichols for, with Mr. Myers of Pennsylvania against.

Mr. Devine for, with Mr. Moorhead of Pennsylvania against.

Mr. BREAUX, Mr. JONES of Tennessee, Mrs. BOUQUARD, and Mrs. FENWICK changed their votes from "aye" to "no."

Mr. FLIPPO changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ROUSSELOT

Mr. ROUSSELOT. Mr. Chairman, I offer an amendment.

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The portion of the bill to which the amendment relates is as follows:

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Mine Safety and Health Administration, $148,398,000, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work and the purchase of not to exceed sixty-six passenger motor vehicles for replacement only: *Provided*, That the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private: *Provided further*, That the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations: *Provided further*, That any funds available to the Department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of major disaster: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to carry out section 115 of the Federal Mine Safety and Health Act of 1977 or to carry out that portion of section 104(g)(1) of such Act relating to the enforcement of any training requirement, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate or surface limestone mine.

The Clerk read as follows:

Amendment offered by Mr. ROUSSELOT: At page 13, line 5, strike the period and add the following: ", nor shall any funds appropriated under this paragraph be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Federal Mine Safety and Health Act of 1977 with respect to any person engaged in the surface mining of stone, clay, colloidal phosphate, sand or gravel."

Mr. ROUSSELOT. Mr. Chairman, I will be brief. The basic thrust of this amendment is to provide that OSHA have the basic responsibility of these four areas of surface mining: Stone, clay, phosphate, and sand and gravel.

Mr. Chairman, over the past year and a half, the Members of this body have heard a great deal about an agency called the Mine Safety and Health Administration (MSHA) and the act which it purports to administer, the Federal Mine Safety and Health Act Amendments of 1977.

We have all heard from our constituents about the MSHA inspectors swooping into small sand, gravel, clay and stone operations and citing them for so-called violations such as trash on the floor of the employees lunchroom, to malfunctioning windshield wipers on out-of-service vehicles in parts of the country where little or no rain falls—citations which must, by law, receive fines.

We have read and heard fine statements about the terrific job the agency is doing and how its now changing its ways—becoming more receptive.

I say that MSHA has not turned over a new leaf, the agency and its supporters are making inaccurate statements about its so-called "new look" that the situations brought to our attention by constituents with stone, sand, gravel, and clay operations have not been resolved. Conditions have not improved to any appreciable degree. What has been resolved, has been resolved through amendments to last year's appropriation bill.

Let us look at the record of the past year and a half.

We all know that 12 hearings have been held on this issue in the House. It appears that despite consistent, overwhelming testimony from all elements of the noncoal mining industry—these hearings are slated to continue ad infinitum with the committee showing no inclination to take action toward resolving the injustices found not just in the administration of the act—but in the act itself.

The first hearings on this issue were held March 20–21, 1979, for Members of the House to express their concerns. Thirty-five Members representing the minority and majority spoke on behalf of the need for change.

This was then followed with many days of hearings by concerned industry members and the labor interests—hearings which are still continuing.

The National Crushed Stone Association on June 25, spoke for the need for change. It represents an industry who's average size is 11 employees per operation.

On July 9, 1979, the National Sand and Gravel Association and National Industrial Sand Association, with an average of seven employees per site, spoke to the need for change in this act.

The Associated General Contractors, Pennsylvania Aggregates Association, North Carolina Aggregates Association, producers from Oklahoma and Pennsylvania, small independent clay and phosphate producers, lime producers, the National Association of Counties, and the National Clay Pipe Association all appeared before the subcommittee, and all stated that the MSHA act and the agency need change and are not applicable to these small operators who are located in every county in this country.

Even Lloyd McBride, president of the United Steelworkers testified that MSHA should change its procedures to include:

Citation-free technical advisory teams to assist operators with engineering recommendations during production cycles;

Regulatory inspections in which first-instance citations are issued upon discovery of violations during production cycles.[1]

This year the American Mining Congress testified with a detailed list of problems. The National Constructors Association has urged OSHA jurisdiction for their people when performing on-site construction activities. Yet the committee has indicated little if any desire to move on this issue.

The list of problems, inconsistencies and difficulties of MSHA continues. Two hundred and eighteen Members of this body have indicated support for a change in jurisdiction for these industries. The committee with jurisdiction has refused to move on this issue and, in fact, only one remaining hearing is planned.

This action would not change any provision of either OSHA or MSHA Act. By expanding this denial of funds from training to enforcement, section 4(b)(1) of the OSHA Act would come into play. This provision calls for OSHA to exercise control over any industry not being enforced under the aegis of another Federal law.

Finally, I would like to draw my colleagues attention to the December 26, 1979, press release from OSHA which indicates those small businesses with good safety records. These records are based on having a statistical injury/illness rate in 1977 of fewer than 7 per 100 full-time workers per year.

Nonmetallic, nonfuel minerals of which stone, sand and gravel are the vast majority, posted an injury/illness incidence rate of 5.1. Some of the other industries which did not have as good a record included:

Men's and boy's suits and coats	6.5
Newspapers	5.3
Leather gloves and mittens	6.4
Optical instruments and lenses	6.5
Watches, clocks and watchcases	5.5
Health services	6.9
Social Services	5.4

Certainly, there is always need in every industry and service to continually improve safety and health conditions. But the policeman approach of MSHA is not the answer. It appears methods of aggravation are the product—not constructive efforts to better safety.

This issue has been kicked around for over a year and half. To date the committee has shown no inclination to take the needed action.

I urge support for this amendment to move the stone, clay, sand and gravel industries from the heavy foot of MSHA to OSHA.

I urge the support of my colleagues. There have been over 21 hearings on this issue in the House, and yet we have not been able to have legislation to accomplish what this amendment does. I believe it should be accomplished, and I believe this is the way to do it.

I yield to my colleague Mr. GRASSLEY, who I know has supported this concept.

Mr. GRASSLEY. I want to compliment the gentleman from California (Mr. ROUSSELOT) for offering this amendment. Since limestone quarries and gravel pits have been included in MSHA, our owners and operators in Iowa have been harassed by Government inspectors in unbelievable numbers. They have tried to equate open quarry safety with coal mines. There is no comparisons.

Furthermore, if we proportionately had as many coal mine inspectors as quarry inspectors in my State we would have an army of them. It is probably the least cost-effective inspection done by the Federal Government.

I urge everybody to vote for this much needed amendment.

Mr. ROUSSELOT. I thank my colleague for his support. There is a question that needs to be answered:

The question is: Does the MSHA amendment create a void in Federal enforcement of safety and health standards over the surface mining of sand, gravel, stone, clay, and colloidal phosphate?

The answer: No. OSHA, under the Occupational Safety and Health Act, has jurisdiction over these mines.

[1] USW Testimony, October 23, 1979, p. 8.

Let me give my colleagues the reasons:

First. OSHA by its terms applies to all employers engaged in a business affecting commerce, 29 U.S.C. § 652(5). Thus, OSHA legally covers mines which are also covered under the Mine Safety and Health Act of 1977.

Second. The drafters of OSHA realized that there was the potential problem of dual regulation. Thus they included in the act a deferral provision, 29 U.S.C. § 653(b)(1). It provides that where another Federal agency exercises its own statutory authority to prescribe or enforce occupational safety or health standards, then OSHA will not apply.

Third. The legislative history of OSHA shows that the key factor triggering deferral is the exercise of another agency's statutory authority. Mere existence of the authority is not sufficient to cause deferral. Thus the exercise of MSHA's statutory authority over mines has effectively deferred the exercise of OSHA's statutory authority over them.

Fourth. The appropriations limitation has the effect of not providing funding for fiscal year 1981 for the exercise of MSHA's statutory authority over the surface mines described in the pending amendment. Thus there will be no exercise of statutory authority by MSHA.

Fifth. The effect of this nonexercise under section 4(b)(1) of OSHA (29 U.S.C. 653(b)(1) thus triggers, by operation of existing law, the responsibility of OSHA to assume enforcement activity over the described surface mines.

I urge my colleagues to support this needed amendment.

Mr. GAYDOS. Mr. Chairman, I rise in opposition to the gentleman's amendment.

I just want to make a point to my colleagues, that historically there has been a distinction between usual occupations and mining as such. To state that the mining operations such as colloidal phosphate, surface clay, sand and gravel, and stone; to say that those are not mining operations is completely inaccurate. They are mines as such, always have been considered as mines.

In the last 100 years, under the court decisions, they have been identified as a mining operation. There has been a reason why distinctions have been made in the law between mining and the jurisdiction attaching thereto and OSHA. When you have a mine, you have a very dangerous operation. Proof of that very simple statement is that more than 50 percent of all the deaths and the injuries that occur in surface metal and nonmetallic mining occur in those four categories: Sand and gravel, surface clay, colloidal phosphate, and stone.

So, to say anything else, that it is not a dangerous operation, is a very inaccurate statement. There is a reason why, in the Mining Act, for instance, there are two required annual inspections of surface mines. Mining is inherently dangerous.

I ask my colleagues to keep that clear distinction in mind in turning down this amendment. This amendment should not be adopted. This amendment is not worth the paper it is written on. This amendment is unrealistic. I ask my colleagues to vote it down unanimously.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield briefly?

Mr. GAYDOS. I yield to the gentleman from California.

Mr. ROUSSELOT. Does my colleague know there are well over 210 Members in this House who are on a similar bill to what this amendment accomplishes? I made no such statement that there are not dangers involved, but that is what we created OSHA for. OSHA has overlapping jurisdiction which it has not exercised simply because MSHA has enforced its act.

I believe enforcement responsibility should be exercised by OSHA. As the gentleman knows, MSHA's standards are primarily directed to the risks and hazards of deep mining. Those unique risks and hazards simply do not exist in stone, sand, gravel operations. I hope my colleagues who cosponsored the legislation (H.R. 1603) will vote for the amendment.

Let me make an additional point on the issue of maximum safety to prevent fatalities.

By placing these operations under OSHA it is not by any means a foregone conclusion that fatalities will increase. Opponents of this amendment would have you believe that the safety standards of MSHA are uniquely tailored to provide maximum protection for stone, sand and gravel workers. I submit, however, that in reviewing the fatalities which occurred in this industry and the MHSA citations issued we have discovered that OSHA has identical standards and OSHA would be required to enforce these standards just as zealously as MSHA. Thus the transfer of enforcement to OSHA will not exact a lesser standard of care from the employers.

Mr. GAYDOS. I will respond and say that I did try to be as fair as I could. I held hearings during 1979 and 1980, and of course the question is raised, why no legislation as a result of those hearings? I have to be very frank in responding to my friend and say that when our colleagues came before the committee, and the other witnesses as well, it was clear that there are so many misconceptions floating around about MSHA, what it covers, what it does not cover, what the act requires, I could go down the litany, that the committee's job was to work with MSHA and endeavor to clarify these many misconceptions.

I have to respond finally to my friend and say that I have been fair. I have held hearings. I have asked my colleagues to come in and many did testify. I have done what I could do, and I must say that I am not in a position to recommend any type of legislation because of the difficulty I alluded to.

Mr. ROUSSELOT. Well, the gentleman does acknowledge, does he not, that OSHA has jurisdiction over these mines?

Mr. GAYDOS. Never. Let me respond for a point of clarification. OSHA jurisdiction never attached to the miners in this category. These mines were covered in 1966 by the Metal and Non-Metallic Act. There is no question about that. They were under the jurisdiction of the Department of Interior in 1977. They became subject to the jurisdiction of the Labor Department when MSHA was created as an agency separate from OSHA.

□ 1850

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not try to use all the time allotted, but I rise in strong opposition to this amendment.

I think that as we look at the number of workers that have been injured and killed in sand and gravel type of mines, obviously it motivates me to speak up for them and for others who are in danger of experiencing injury or death in a sand or gravel mine incident.

Earlier today this body passed an amendment exempting from OSHA inspection employees or OSHA-covered employers that have 10 or fewer employees from a random inspection if their injury rate was below the average. That particular amendment affected 53 percent of all employers and 12 percent of all employees who will not have an adequate OSHA safeguard, these employees will not have the review of their workplace so necessary to determine whether or not there are safety problems. Now this amendment is saying that we are going to remove the sand and gravel workplace from MSHA, a workplace that is really very, very dangerous in terms of injuries and death-related incidents, and we will not cover them in OSHA inspections because of the safety record. A lot of employees do not fit into these safety inspection classification because they end up dead; they end up buried in a sand pit or they end up buried in a gravel pit.

Those workers who need this protection are likely experiencing that particular circumstance. I think, that they deserve the best protection and the oversight possible from the Federal Government as they enjoy MSHA. Many States have opted for self regulation in OSHA.

But I do not think the Congress ought to turn its back on these workers who are experiencing the danger inherent in these mining environment workplaces and that is what this amendment effectively does. It turns its back on those few workers who need that minimal type of protection to insure that they do not experience a serious injury or death. That is what the amendment offered by the gentleman from California (Mr. ROUSSELOT) would accomplish by negating the coverage in MHSA and placing the workers in the watered down OSHA program, weakened specifically on this floor today.

Mr. GAYDOS. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from Pennsylvania.

Mr. GAYDOS. Mr. Chairman, I want to make a very significant point, if I may.

Everybody should understand that for over 10 years the miners have been subjected to MESA, in the Department of the Interior, and when we passed MSHA, that is, the Mining Safety and Health Act, they just took all the personnel and all the standards and just transferred them from the Department of the Interior over to the Department of Labor.

So this is not a new concept. This has

been in existence. The standards are there, and the trained personnel are there.

Mr. VENTO. Mr. Chairman, I commend the gentleman from Pennsylvania (Mr. GAYDOS) for his remarks, and I think this amendment deserves a "no" vote.

Mr. TAUKE. Mr. Chairman, will the gentleman yield?

Mr. VENTO: I yield to the gentleman from Iowa.

Mr. TAUKE. Mr. Chairman, I would point out to the gentleman from Minnesota (Mr. VENTO) that first of all, under this amendment the workers are not left uncovered; they are still covered by OSHA.

Mr. VENTO. Mr. Chairman, I will take back my time.

The gentleman says they are still covered by OSHA, and we just passed an amendment which exempted from the OSHA inspections these particular sites, which, I tell the Members, are very dangerous. They cause a lot of problems in terms of injuries and deaths.

On an average basis, no. On an average basis, they do not cause that particular problem, but even though we have low numbers of injury, it only takes one injury before a death occurs. So even though the numbers might look good and they are exempt, I think they need to be covered; there needs to be inspection.

Mr. TAUKE. Mr. Chairman, if the gentleman will yield further, I suggest to the gentleman that the coverage received under MSHA by the people in the sand and gravel pits is not very adequate. The kind of training they receive is underground evacuation, for example, and this does not do a thing for sand and gravel pits in the State of Iowa. So we need the kind of coverage under MSHA which comes from OSHA in the sand and gravel pits.

Mr. VENTO. But, Mr. Chairman, that is the type of coverage that the House has proposed be removed in terms of inspection. The strategy here apparently is to weaken OSHA and remove the MSHA protection. That is the strategy that is being pursued, I think, and we ought to recognize it for what it is.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, there is no attempt to remove them from the general safety and health standards of OSHA, not at all. As a matter of fact, they had coverage before MSHA existed. So the gentleman's statement that it is an attempt to remove the coverage is not correct.

Mr. VENTO. Mr. Chairman, I will take back my time.

Mr. ROUSSELOT. Mr. Chairman, if the gentleman is a true supporter of OSHA, then he knows OSHA has the capability to a greater degree to abide by the health and safety standards for these workers than does MSHA, because MSHA does not have the same requirements.

Mr. VENTO. Mr. Chairman, I hope that the points have been made clear in this limited time Mr. Chairman.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, before we hastily call for a vote and yell, "Vote, vote," let us understand something. Let us understand something from a businessman's standpoint.

I do not understand why we would take a set organization and then get into a whole transitional period when this organization has been working with sand and gravel over the years and now try to transfer it to OSHA.

I want the Members to understand something. We are not dealing with a bureaucracy here; we are dealing with the lives of young people who are killed.

On January 3, 1979, a gentleman from View, Tex., who was 22 years old, was crushed by a conveyor belt.

On January 24, 1979, a gentleman from Simi Valley, Calif., who was 43 years old, was pulled into a conveyor belt.

Then we find a gentleman from Mineral, Va., who was 51 years old, who fell into a crusher.

We are talking about people's lives here. This is the record in the sand and gravel industry: In 1974, 39 people were killed; in 1975, 21 were killed; in 1976, 24 were killed; in 1977, 26 were killed; in 1978, 25 were killed; and in 1979, 11 were killed.

The record shows that this organization has reduced fatalities. Before the Members yell, "Vote, vote, vote" on this amendment, I want to say that this is not a question of bureaucracy; it is a question of human lives. Sand and gravel people get equipment rolled on them, they drown in the quarry pools, and they get pulled into conveyors.

Mr. Chairman, we have an organization to oversee that worker's safety, and let us not give it up just because it is 7 o'clock at night.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Chairman, the gentleman from Pennsylvania (Mr. GAYDOS) and the gentleman from California (Mr. MILLER) have stated the facts most eloquently, as did our colleague, the gentleman from Minnesota (Mr. VENTO).

The fact of the matter is that if this succeeds and this goes under OSHA, I would be amazed if they had one inspection in 5 years, as distinguished from the mandatory two inspections a year. And this is in the most dangerous occupation that one can think of, as the gentleman has just pointed out.

Mr. Chairman, this is a bad amendment.

Mr. GAYDOS. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Pennsylvania.

Mr. GAYDOS. Mr. Chairman, I think our colleagues ought to remember the one important statistic. More deaths and injuries occur in surface mining operations in these four categories, that is, sand and gravel, hard rock, colloidal phosphates, and clay than in all other metal and nonmetallic mines.

Mr. MILLER of California. Mr. Chairman, if I may reclaim my time, I just want to tell the Members, in case they want to know, how this affects their districts.

These people who are killed come from South Bend; they come from Bath, Pa.; they come from Elberton, Ga.; they come from Petoskey, Mich.; they come from Red Oak, Ga.; they come from Columbus, Ga.; they come from Houston, Tex.; they come from Augusta, Iowa; and they come from Oxnard, Calif.

These are all young working people with famililes who are killed in this industry.

This is not just a question of voting to transfer jurisdiction; this is a question of fooling around with the lives of people who are out there working.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. ROUSSELOT).

The question was taken, and on a division (demanded by Mr. ROUSSELOT) there were—ayes 66, noes 59.

So the amendment was agreed to.

AMENDMENT OFFERED BY MR. HANSEN

Mr. HANSEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HANSEN: At page 10, line 10, insert after "fishing:" the following new proviso: "*: Provided further*, That no funds appropriated under this paragraph shall be obligated or expended for the acquisition by OSHA of warrants on an ex parte basis in advance of attempted entry of workplaces.".

□ 1900

Mr. NATCHER. Mr. Chairman, will the gentleman yield to me for 1 minute?

Mr. HANSEN. I yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Chairman, as I understand the parliamentary procedure at this point, this is the last amendment printed in the RECORD that will be considered. All other amendments that are submitted are to be voted upon but there will be no debate on the amendments since we fixed the time at 7 o'clock. Is that correct, Mr. Chairman?

The CHAIRMAN. The amendment offered by the gentleman from Idaho was not printed in the RECORD.

The gentleman from Idaho (Mr. HANSEN) is recognized for 30 seconds.

Mr. HANSEN. Mr. Chairman, this amendment provides, very simply, that we hold OSHA inspections to the same procedures that the Congress authorized, to begin with, that no funds appropriated shall be obligated or expended for the acquisition by OSHA of warrants on an ex parte basis in advance of an attempted entry into workplaces. It is keeping faith with the employers who can volunteer and should volunteer their workplace for inspection before a warrant is issued.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Idaho (Mr. HANSEN).

The question was taken; and on a division (demanded by Mr. HANSEN) there were—ayes 22, noes 85.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates is as follows:

SEC. 103. No part of the funds appropriated under this title may be used to carry out any activities for or on behalf of any individual who is an alien in the United States in violation of the Immigration and Nationality Act or any other law of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: Page 14, after line 18, insert the following new section:

SEC. 104. None of the funds appropriated by the first three paragraphs of this title for emloyment and training administration program administration, employment and training assistance, and temporary employment assistance may be used to provide any assistance to any government of a nation other than the United States.

Mr. BUTLER. Mr. Chairman, I ask unanimous consent that I may have 30 seconds in which to explain the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

Mr. DAVIS of South Carolina. I object.

The CHAIRMAN. Objection is heard.

Mr. BUTLER. Mr. Chairman, I ask unanimous consent that I may have 15 seconds in which to explain the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BUTLER. Mr. Chairman, this amendment prohibits the use of CETA funds for manpower training programs in foreign countries. It is a practice which is now going on, as revealed by oversight hearings, and it should not be.

I urge adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. BUTLER).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. PANETTA

Mr. PANETTA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PANETTA: On page 51, after section 308, insert the following new section:

"SEC. 309. Nothing in this Act shall restrict the authority of the Secretary of Education to carry out the provisions of title VI of the Civil Rights Act of 1964."

And renumber the remaining sections accordingly.

Mr. PANETTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. OBEY. Mr. Chairman, reserving the right to object, I would be reluctant to having the amendment not read, unless the gentleman can explain it in very short order.

POINT OF ORDER

Mr. NATCHER. Mr. Chairman, as I recall now, in due deference to my friend, the gentleman from California, the time of 7 o'clock has been fixed, Mr. Chairman.

The CHAIRMAN. The point of order is well taken.

The Clerk will report the amendment.

Mr. PANETTA. Mr. Chairman, I ask unanimous consent that I be given 15 seconds in which to explain the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. BAUMAN. Mr. Chairman, I object to not reading the amendment.

Mr. PANETTA. Mr. Chairman, I withdraw my request.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk concluded the reading of the amendment.

Mr. BAUMAN. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. Does the gentleman renew his request for 15 seconds?

Mr. PANETTA. Mr. Chairman, I would renew my request to explain the amendment in 15 seconds.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from California (Mr. PANETTA) is recognized for 15 seconds.

Mr. PANETTA. Mr. Chairman, I have discussed this with both sides. I think they are agreeable to this. This basically implements the intent that most of the authors of the amendments have stated, that none of the amendments that have been adopted today in any way inhibit the enforcement of title VI.

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Maryland (Mr. BAUMAN) insist on his point of order?

Mr. BAUMAN. Mr. Chairman, I make the point of order that it is legislation on an appropriation bill.

The CHAIRMAN. Does the gentleman from California (Mr. PANETTA) wish to be heard on the point of order?

Mr. PANETTA. Very briefly, Mr. Chairman.

I believe this is in line. As a proviso it does not in effect constitute legislation. It really would be a proviso with regard to the other amendments that were in fact adopted. I believe that it is parliamentarily acceptable.

The CHAIRMAN (Mr. FUQUA). The gentleman from Maryland (Mr. BAUMAN) makes a point of order on the amendment offered by the gentleman from California (Mr. PANETTA).

In reviewing the amendment, it appears that it is not in the form as submitted a restriction or a limitation on the expenditure of funds, or an exception therefrom, but rather does provide certain directions as the way in which the bill must be interpreted and, therefore, is legislation on an appropriation bill.

The Chair sustains the point of order. Are there further amendments?

AMENDMENT OFFERED BY MR. SAWYER

Mr. SAWYER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SAWYER: Page 29, line 10, strike out the period and insert in lieu thereof the following: "*: Provided further*, That payments may not be made to people who live in institutions or other living arrangements where they are not vulnerable to energy cost increases."

Mr. SAWYER. Mr. Chairman, I ask unanimous consent to address the House for 10 seconds.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The CHAIRMAN. The gentleman from Michigan (Mr. SAWYER) is recognized for 10 seconds.

Mr. SAWYER. Mr. Chairman, this merely prohibits the debacle that occurred last time on a bill, when people in nursing homes, prisons, and everything, got the checks, and this makes sure that the money we send out goes to the people who need it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. SAWYER).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HANSEN

Mr. HANSEN. Mr. Chairman, I offer an amendment which has been printed in the RECORD.

The Clerk read as follows:

Amendment offered by Mr. HANSEN: On page 9, line 13, strike out the figure "207,206,000" and insert the figure "181,520,000".

The CHAIRMAN. Was the gentleman's amendment printed in the RECORD?

Mr. HANSEN. It was, Mr. Chairman.

The CHAIRMAN. The gentleman from Idaho (Mr. HANSEN) is recognized for 5 minutes.

Mr. HANSEN. Mr. Chairman, I realize the hour is late. I will take about 1 minute.

I would like to say that my amendment would mean a savings of approximately $25 million to the American taxpayers, and at the same time force OSHA to become more efficient.

My proposal seeks to have the same effect as previous amendments to the fiscal year 1981 appropriations bill that was approved overwhelmingly by the House and Senate last year.

I would like to point out to all of my colleagues that this amendment is not meant to impose a hardship upon OSHA, but rather to force that agency to concentrate its resources in the areas of the most need and provide sufficient incentive for employers to obtain and maintain good safety records.

Mr. Chairman, I might say that the record is replete of OSHA going up and down the street, spending this time on inspections of a random nature, which even salesmen do not do any more, missionaries do not do, and OSHA is very out of date. They ought to be targeting the worst first, and they can do this if we cause them to have to take another look at their budget.

I urge the adoption of this amendment.

● Mr. SYMMS. Mr. Chairman, I rise in support of my colleague from Idaho Mr. HANSEN's amendment to the Labor/HEW appropriations bill to reduce the funding for the Occupational Safety and Health

Administration (OSHA) to the fiscal year 1980 level. This will bring OSHA's funding from the $207.2 million recommended by the committee down to $181.5 million, approximately a 12-percent reduction.

There are many reasons why we need to adopt this amendment. I know that all of us are extremely concerned about safety in the workplace, but I cannot see that OSHA has significantly curbed the number of injuries on the job despite the fact that Congress has spent over $1 billion for this agency over the years. In fact, since OSHA was created, the rate of serious work injuries has actually increased by 25 percent. It would seem that after 10 years of operation, this agency would have accomplished more in the way of decreasing deaths and injuries in the workplace.

I think that one of the main reasons OSHA has not been effective in lowering the number of fatalities and serious injuries in the workplace is that the agency has been spreading itself too thin by trying to conduct inspections of all businesses, including workplaces with good records of safety. And while OSHA has gone about its business of inspecting the premises of some of these small businesses who have good safety records, it has created a great deal of animosity and public controversy due to the actions of overzealous OSHA inspectors who harass and intimidate some of these small businessmen. I want to see that these types of unnecessary and counterproductive activities are eliminated. And the only way to halt these activities is to decrease the level of funds to OSHA so that they will have to concentrate their activities on the firms where there is a safety problem and stop bothering those businesses with good safety records.

I can well anticipate that some of the Members in this body are going to claim that this is some kind of attempt to gut the effectiveness of the agency and lessen our commitment to safety in the workplace. However, if we are truly concerned about worker safety, we should ask ourselves why OSHA has not been more effective, despite the fact that Congress increases its level of funding each year.

I say we should make OSHA more responsible and effective in the protection of the worker by forcing it to spend its time on inspecting those firms who have bad safety records where the health and safety of the workers are truly in jeopardy. I urge my colleagues to help bring about a better worker safety program by voting for the Hansen amendment. OSHA will then understand that it needs to retarget its operations and quit wasting time and money on areas where problems do not exist.

I thank the gentleman for providing me with this opportunity to speak in support of the Hansen amendment, and I wish to thank my colleague from Idaho (Mr. HANSEN) for all the fine work he is doing in this area to try and make OSHA a more responsible agency.●

Mr. NATCHER. Mr. Chairman, I rise in opposition to the amendment, and I yield at this time to the gentleman from Wisconsin (Mr. OBEY).

□ 1910

Mr. OBEY. Mr. Chairman, I would simply like to point out the fact that the increase to which the gentleman refers in the budget for OSHA is for two items. No. 1 is mandatory pay items and mandatory rent increases which we cannot do anything about.

No. 2, the increases which this Congress mandated OSHA to provide fine-free consultation service to small businesses who are asking for an opportunity to talk to OSHA about what they do to get in compliance without being subjected to fines if they are out of compliance.

So both of these are required by initiatives taken by the Congress itself. If this body wants businessmen to have to proceed without being able to consult with OSHA before they get hit with a fine, go ahead and vote for the Hansen amendment. If this body thinks it is a useful service to small business to provide some advice to them without fines being allowed, then vote against it.

Mr. CONTE. Mr. Chairman, will the gentleman yield?

Mr. NATCHER. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Chairman, I will be very brief because the hour is late.

I agree with the gentleman from Wisconsin. Just like everything else in this budget, this is a barebone budget. The administration had asked for $209,580,000. The committee cut that down to $207,206,000. We have been very, very diligent. We cut that budget down. I know the gentleman is not completely satisfied, but we did a good job. It is a barebone budget. And, I might add that if we expect OSHA to meet our mandates we must provide it with adequate funding to do so.

I hope the amendment is defeated.

Mr. NATCHER. Mr. Chairman, I ask for a vote on this amendment, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Idaho (Mr. HANSEN).

The amendment was rejected.

Mr. NATCHER. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. FUQUA, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7998) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1981, and for other purposes, had directed him to report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The SPEAKER. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER. Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 320, nays 83, not voting 29, as follows:

[Roll No. 502]

YEAS—320

Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
Bafalis
Bailey
Baldus
Barnes
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burlison
Burton, Phillip
Butler
Carter
Cavanaugh
Chappell
Chisholm
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Conte
Corcoran
Corman
Cotter
Coughlin
D'Amours
Danielson
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Emery
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Frost
Fuqua
Garcia
Gaydos
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Grassley
Gray
Green
Guarini
Gudger
Guyer
Hall, Ohio
Hamilton
Hammer-schmidt
Hanley
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Hopkins
Horton
Howard
Hubbard
Huckaby
Hutchinson
Hutto
Hyde
Jacobs
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kildee
Kogovsek
Kostmayer
LaFalce
Leach, Iowa
Lehman
Leland
Lent
Levitas
Lloyd
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marriott
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Roberts
Robinson
Rodino
Roe
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Shannon
Sharp
Shelby
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solars
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stewart
Stokes
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Wampler
Watkins
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolff
Wolpe
Wright
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—83

Archer
Ashbrook
AuCoin
Badham
Barnard
Bauman
Bennett
Broyhill
Burgener
Burton, John
Campbell
Cheney
Cleveland
Collins, Tex.
Conable
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Derwinski
Dickinson
Edwards, Okla.
English
Evans, Ind.
Fenwick
Fowler
Frenzel
Gephardt
Goldwater
Gradison
Gramm
Grisham
Hagedorn
Hall, Tex.
Hance
Hansen
Holt
Hughes
Ireland
Jeffries
Jenkins
Kelly
Kindness
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Lewis
Livingston
Loeffler
Luken
Lungren
McDonald
Marlenee
Mathis
Mattox
Miller, Calif.
Miller, Ohio
Moorhead, Calif.
Mottl
Nelson
Pashayan
Paul
Ritter
Rousselot
Rudd
Satterfield
Sensenbrenner
Shumway
Shuster
Skelton
Solomon
Stenholm
Stockman
Stump
Taylor
Thomas
Walker
Weaver
Wyatt

NOT VOTING—29

Abdnor
Anderson, Ill.
Bowen
Byron
Carney
Carr
Conyers
Devine
Dodd
Giaimo
Holtzman
Ichord
Kemp
Leach, La.
Lederer
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nichols
Railsback
Roe
Symms
Vander Jagt
Waxman
Wilson, C. H.
Wilson, Tex.
Young, Alaska

□ 1920

The Clerk announced the following pairs:

Mr. Murphy of New York with Mr. Carney.
Mr. Nichols with Mr. Young of Alaska.
Mr. Lederer with Mr. Railsback.
Mr. Murphy of Illinois with Mr. Devine.
Mr. Moorhead of Pennsylvania with Mr. Abdnor.
Mr. Myers of Pennsylvania with Mr. Kemp.
Mr. Nedzi with Mr. Symms.
Mr. Dodd with Mr. Vander Jagt.
Mr. Bowen with Mr. Giaimo.
Mr. Roe with Mr. Charles H. Wilson of California.
Mr. Charles Wilson of Texas with Mr. Conyers.
Mr. Carr with Mr. Leach of Louisiana.
Mr. Ichord with Ms. Holtzman.
Mr. Waxman with Mrs. Byron.

Mr. DECKARD changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1930

Mr. NATCHER. Mr. Speaker, I ask unanimous consent to insert in the RECORD at this point a detailed table showing the amounts in H.R. 7998, just passed, by each of the programs funded in the bill, together with appropriate comparisons.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The tables referred to follow:

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal 1981 budget	House bill compared to fiscal year 1980 appropriation
SUMMARY					
Title I—Department of Labor:					
Federal funds	$13,184,334,000	$12,170,188,000	$11,892,977,000	−$277,211,000	−$1,291,357,000
Trust funds	(1,959,051,000)	(2,170,172,000)	(2,170,172,000)		(+211,121,000)
Unauthorized, not considered: Federal funds	(325,000,000)	(150,000,000)		(−150,000,000)	(−325,000,000)
Title II—Department of Health and Human Services:					
Federal funds	51,836,110,000	57,457,179,000	57,120,574,000	−336,605,000	+5,284,464,000
Trust funds	(3,324,855,000)	(3,592,424,000)	(3,562,340,000)	(−30,084,000)	(+237,485,000)
Unauthorized, not considered: Federal funds	(607,679,000)	(459,331,000)		(−459,331,000)	(−607,679,000)
Title III—Department of Education: Federal funds	14,069,768,855	13,515,953,000	14,137,984,000	+622,031,000	+68,215,145
Title IV—Related agencies:					
Federal funds	1,351,299,000	1,414,044,000	1,400,175,000	−13,869,000	+48,876,000
Trust funds	(39,730,000)	(36,750,000)	(36,750,000)		(−2,980,000)
Grand total, direct appropriations all titles:					
Federal funds	80,441,511,855	84,557,364,000	84,551,710,000	−5,654,000	+4,110,198,145
Trust funds	(5,323,636,000)	(5,779,346,000)	(5,769,262,000)	(−30,084,000)	(+445,626,000)
Unauthorized, not considered: Federal funds	(932,679,000)	(609,331,000)		(−609,331,000)	(−932,679,000)
TITLE I—DEPARTMENT OF LABOR					
EMPLOYMENT AND TRAINING ADMINISTRATION					
PROGRAM ADMINISTRATION					
Planning, evaluation and research	4,585,000	4,058,000	4,058,000		−537,000
Trust funds	(346,000)	(345,000)	(345,000)		(−1,000)
Comprehensive employment development	39,709,000	39,907,000	39,907,000		+198,000
Trust funds	(51,000)	(51,000)	(51,000)		
Apprenticeship services	14,497,000	14,111,000	14,111,000		−386,000
U.S. Employment Service	1,225,000	902,000	902,000		−323,000
Trust funds	(9,864,000)	(9,697,000)	(9,697,000)		(−167,000)
Veterans Employment Service: Trust funds	(7,251,000)	(7,202,000)	(7,202,000)		(−49,000)
Unemployment insurance service	161,000	162,000	162,000		+1,000
Trust funds	(9,286,000)	(9,234,000)	(9,234,000)		(−52,000)
Equal opportunity and special review	3,865,000	3,656,000	3,656,000		−209,000
Trust funds	(559,000)	(556,000)	(556,000)		(−3,000)
Executive direction and management	25,990,000	25,966,000	25,966,000		−24,000
Trust funds	(7,899,000	(8,130,000)	(8,130,000)		(+231,000)
Total, program adminstration	125,288,000	123,977,000	123,977,000		−1,311,000
Federal funds	90,032,000	88,762,000	88,762,000		−1,270,000
Trust funds	(35,256,000)	(35,215,000)	(35,215,000)		(−41,000)
EMPLOYMENT AND TRAINING ASSISTANCE					
General training and employment program (CETA, title II):					
Employment and training services (title II A, B, C)	2,054,000,000	2,117,000,000	2,117,000,000		+63,000,000
Public service employment (title II-D)	1,485,000,000	2,435,800,000	2,199,000,000	−236,800,000	+714,000,000
(Deferrals nonadd)	(−28,000,000)				(+28,000,000)
Subtotal, (title II)	2,539,000,000	4,552,800,000	4,316,000,000	−236,800,000	+777,000,000
Youth programs:					
Special programs (CETA, title IV):					
Youth employment and training programs	692,086,000				−692,086,000
Youth community conservation and improvement program	134,008,000				−134,008,000
Young adult conservation corps (title VIII)	250,254,000	123,872,000	136,000,000	+12,128,000	−114,254,000
(Deferral, nonadd)	(−13,760,000)				(+13,760,000)
Summer youth employment program (CETA, title IV)	608,567,000	839,008,000	839,008,000		+230,441,000
Job Corps (CETA, title IV)	427,700,000	560,683,000	560,683,000		+132,983,000
Subtotal, youth programs	2,112,615,000	1,523,563,000	1,535,691,000	+12,128,000	−576,924,000
National programs (CETA, title III)	528,678,000	330,572,000	305,072,000	−25,500,000	−223,606,000
Welfare reform projects (nonadd)	(175,000,000)				(−175,000,000)
Private sector programs (CETA, title VII) (unauthorized)	(325,000,000)	(150,000,000)	•••	•••	•••

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
EMPLOYMENT AND TRAINING ASSISTANCE—Continued					
Total, enployment and training resistance	$6,180,293,000	$6,406,935,000	$6,156,763,000	−$250,172,000	−$23,530,000
Temporary Employment Assistance (CETA, title VI)	1,627,000,000	1,293,000,000	1,293,000,000		−334,000,000
(Deferral, nonadd)	(−203,000,000)				(+203,000,000)
Subtotal, Comprehensive Employment and Training Act (CETA)	7,807,293,000	7,699,935,000	7,449,763,000	−250,172,000	−357,530,000
Unauthorized, not considered	(325,000,000)	(150,000,000)	•••	•••	•••
Community Services Employment for Older Americans	266,900,000	267,100,000	277,100,000	+10,000,000	+10,200,000
FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES					
Payments to former Federal personnel	518,000,000	611,000,000	611,000,000		+93,000,000
Trade adjustment assistance	381,000,000	413,000,000	413,000,000		+32,000,000
Unemployment assistance and payments under other Federal unemployment programs	51,000,000	236,000,000	236,000,000		+185,000,000
Total, FUBA	950,000,000	1,260,000,000	1,260,000,000		+310,000,000
GRANTS TO STATES FOR UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICES					
Unemployment insurance service	(832,200,000)	(965,800,000)	(965,900,000)		(+133,600,000)
Employment services:					
Federal funds	22,300,000	24,500,000	24,500,000		+2,200,000
Trust funds	(665,990,000)	(731,000,000)	(731,000,000)		(+65,010,000)
Subtotal, employment services	688,290,000	755,500,000	755,500,000		+67,210,000
Contingency fund	(423,010,000)	(435,500,000)	(435,500,000)		(+12,490,000)
Total, grants to States	1,943,500,000	2,156,800,000	2,156,800,000		+213,300,000
Federal funds	22,300,000	24,500,000	24,500,000		+2,200,000
Trust funds	(1,921,200,000)	(2,132,300,000)	(2,132,300,000)		(+211,100,000)
Advances to Unemployment Trust Fund and Other Funds	1,741,000,000	670,000,000	660,000,000	−10,000,000	−1,081,000,000
Advance appropriation for 1981	400,000,000				−400,000,000
Total, Employment and Trained Administration	13,233,981,000	12,177,812,000	11,927,640,000	−250,172,000	−1,306,341,000
Federal funds	11,277,525,000	10,010,297,000	9,760,125,000	−250,172,000	−1,517,400,000
Trust funds	(1,956,456,000)	(2,167,515,000)	(2,167,515,000)		(+211,059,000)
LABOR-MANAGEMENT SERVICES ADMINISTRATION					
SALARIES AND EXPENSES					
Labor-management relations policy and service	4,029,000	4,526,000	4,526,000		+497,000
Labor-management standards enforcement	16,648,000	16,777,000	16,777,000		+129,000
Veterans reemployment rights	2,494,000	2,589,000	2,589,000		+95,000
Pension and welfare benefit programs	28,827,000	31,773,000	31,773,000		+2,946,000
Executive direction, management and support	4,169,000	4,169,000	4,169,000		+3,000
Undistributed funds			−673,000	−673,000	−673,000
Total, LMSA	56,164,000	59,834,000	59,161,000	−673,000	+2,997,000
EMPLOYMENT STANDARDS ADMINISTRATION					
SALARIES AND EXPENSES					
Improving and protecting wages	64,814,000	64,641,000	64,641,000		+457,000
Elimination of discrimination in employment	51,646,000	54,037,000	54,037,000		+2,391,000
Workers' compensation	36,920,000	41,135,000	41,135,000		+4,215,000
Trust funds	(352,000)	(364,000)	(364,000)		(+12,000)
Program development and administration	16,055,000	16,493,000	16,499,000		+444,000
Undistributed Federal funds			−5,255,000	−5,255,000	−5,255,000
Total, salaries and expenses	169,157,000	176,676,000	171,421,000	−5,255,000	+2,264,000
Federal funds	168,805,000	176,312,000	171,057,000	−5,255,000	+2,252,000
Trust funds	(352,000)	(364,000)	(364,000)		(+12,000)
SPECIAL BENEFITS					
Federal employees compensation act benefits	279,017,000	400,474,000	400,474,000		+121,457,000
Longshore and harbor workers' benefits	3,369,000	3,672,000	3,672,000		+303,000
Total, special benefits	282,386,000	404,146,000	404,146,000		+121,760,000
BLACK LUNG DISABILITY TRUST FUND					
Benefit payments	826,419,000	900,731,000	890,731,000	−10,000,000	+64,312,000
Employment Standards Administration, salaries and expenses	22,227,000	20,970,000	20,970,000		−1,257,000
Departmental Management, salaries and expenses	10,677,000	10,543,000	10,543,000		−134,000
Total, Black Lung Disability Trust Fund	859,323,000	932,244,000	922,244,000	−10,000,000	+62,921,000
Treasury administrative costs (indefinite)	756,000	756,000	756,000		
Total, Employment Standards Administration	1,311,622,000	1,513,822,000	1,498,567,000	−15,255,000	+186,945,000
Federal funds	1,311,270,000	1,513,458,000	1,498,203,000	−15,255,000	+186,933,000
Trust funds	(352,000)	(364,000)	(364,000)		(+12,000)
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION					
SALARIES AND EXPENSES					
Safety and health standards	6,510,000	8,721,000	8,721,000		+2,211,000
Enforcement:					
Federal enforcement	78,048,000	84,245,000	84,245,000		+6,197,000
State programs	42,360,000	43,500,000	43,500,000		+1,140,000
Technical support	13,024,000	16,727,000	16,727,000		+3,703,000
Compliance assistance	32,176,000	41,689,000	41,689,000		+9,513,000
Safety and health statistics	6,906,000	6,973,000	6,973,000		+67,000
Executive direction and administration	7,370,000	7,725,000	7,725,000		+335,000
Undistributed funds			−2,374,000	−2,374,000	−2,374,000
Total, OSHA	186,394,000	209,580,000	207,206,000	−2,374,000	+20,812,000
MINE SAFETY AND HEALTH ADMINISTRATION					
SALARIES AND EXPENSES					
Enforcement:					
Coal	58,614,000	61,778,000	61,778,000		+3,164,000
Metal/nonmetal	30,165,000	32,079,000	32,079,000		+1,914,000
Standards development	1,909,000	1,659,000	1,659,000		−250,000
Assessments	6,755,000	6,777,000	6,777,000		+22,000
National Mine Health and Safety Academy	6,914,000	5,229,000	5,229,000		−1,685,000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
Education and training	$11,608,000	$11,770,000	$11,770,000		$+162,000
Technical support	18,545,000	22,961,000	22,961,000		+4,416,000
Program administration	9,055,000	11,927,000	11,927,000		+2,872,000
Undistributed funds			−5,782,000	$−5,782,000	−5,782,000
Total, Mine Safety and Health Administration	143,565,000	154,180,000	148,398,000	−5,782,000	+4,833,000
BUREAU OF LABOR STATISTICS					
SALARIES AND EXPENSES					
Labor force statistics	40,450,000	39,820,000	39,820,000		−630,000
Prices and cost of living	34,632,000	37,533,000	37,533,000		+2,901,000
Wages and industrial relations	13,221,000	13,032,000	13,032,000		−189,000
Productivity and technology	3,220,000	3,551,000	3,551,000		+331,000
Economic growth	798,000	762,000	762,000		−36,000
Executive direction and staff services	10,569,000	11,626,000	11,626,000		+1,057,000
Total, Bureau of Labor Statistics	102,890,000	106,324,000	106,324,000		+3,434,000
DEPARTMENTAL MANAGEMENT					
SALARIES AND EXPENSES					
Executive direction	9,473,000	10,012,000	10,012,000		+539,000
Legal services	29,785,000	32,424,000	32,424,000		+2,639,000
Trust funds	(207,000)	(212,000)	(212,000)		(+5,000)
International labor affairs	8,917,000	9,179,000	9,179,000		+262,000
Administration and management	15,313,000	15,893,000	15,893,000		+580,000
Adjudication	5,790,000	8,072,000	8,072,000		+2,282,000
Promoting employment of the handicapped	1,642,000	1,734,000	1,734,000		+92,000
Women's Bureau	3,237,000	3,837,000	3,837,000		+600,000
Inspector General	31,052,000	34,249,000	34,249,000		+3,197,000
Trust funds	(2,036,000)	(2,081,000)	(2,081,000)		(+45,000)
Minimum Wage Study Commission	1,247,000	1,045,000	1,045,000		−202,000
Undistributed Federal funds			−2,955,000	−2,955,000	−2,955,000
Total, salaries and expenses	108,699,000	118,738,000	115,783,000	−2,955,000	+7,084,000
Federal funds	106,456,000	116,445,000	113,490,000	−2,955,000	+7,034,000
Trust funds	(2,243,000)	(2,293,000)	(2,293,000)		(+50,000)
Special foreign currency program	70,000	70,000	70,000		
Total, departmental management	108,679,000	118,808,000	115,853,000	−2,955,000	+7,084,000
Federal funds	106,526,000	116,515,000	113,560,000	−2,955,000	+7,034,000
Trust funds	(2,243,000)	(2,293,000)	(2,293,000)		(+50,000)
Total, Labor Department	15,143,385,000	14,340,360,000	14,063,149,000	−277,211,000	−1,080,236,000
Federal funds	13,184,334,000	12,170,188,000	11,892,977,000	−277,211,000	−1,291,357,000
Trust funds	(1,959,051,000)	(2,170,172,000)	(2,170,172,000)	•••	(+211,121,000)
Unauthorized, not considered	(325,000,000)	(150,000,000)	•••	•••	•••
TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES					
PUBLIC HEALTH SERVICE HEALTH SERVICES ADMINISTRATION					
HEALTH SERVICES					
Community health services:					
Community health centers:					
Primary health care centers	320,000,000	353,094,000	325,000,000	−28,094,000	+5,000,000
Research and demonstration center	10,000,000		7,000,000	+7,000,000	−3,000,000
Black lung services	4,500,000	4,500,000	4,500,000		
Subtotal	334,500,000	357,594,000	336,500,000	−21,094,000	+2,000,000
Home health services	5,000,000		4,000,000	+4,000,000	−1,000,000
Hypertension	20,000,000	20,000,000	20,000,000		
Maternal and child health:					
Grants to States	345,500,000	357,400,000	357,400,000		+11,900,000
Sudden infant death syndrome	2,802,000	2,802,000	2,802,000		
MCH research and training	30,843,000	24,043,000	30,000,000	+5,957,000	−843,000
Subtotal	379,145,000	384,245,000	390,202,000	+5,957,000	+11,057,000
Genetic services	14,567,000	14,945,000	16,445,000	+1,500,000	+1,878,000
Family planning	162,000,000	162,047,000	166,047,000	+4,000,000	+4,047,000
Migrant health	39,700,000	44,700,000	43,400,000	−1,300,000	+3,700,000
National Health Service Corps (unauthorized)	(74,075,000)	(87,232,000)	•••	•••	•••
Program support	33,874,000	38,709,000	36,000,000	−2,709,000	+2,126,000
Subtotal, community health services	988,786,000	1,022,240,000	1,012,594,000	−9,646,000	+23,808,000
Health care services and systems:					
Patient care and special health services:					
PHS hospitals and clinics	171,171,000	164,033,000	164,033,000		−7,138,000
Federal employee health	758,000	792,000	792,000		+34,000
Payments to Hawaii	1,800,000	1,800,000	1,800,000		
Subtotal	173,729,000	166,625,000	166,625,000		−7,104,000
Emergency medical services	32,125,000	21,100,000	30,000,000	+8,900,000	−2,125,000
Program support	10,039,000	10,021,000	10,021,000		−18,000
Subtotal, Health care services and systems	215,893,000	197,746,000	206,646,000	+8,900,000	−9,247,000
Refugee assistance	36,000,000				−36,000,000
Buildings and facilities	3,000,000	4,769,000	4,769,000		+1,769,000
Program management	7,674,000	7,778,000	7,778,000		+104,000
Total, Health Services	1,251,353,000	1,232,533,000	1,231,787,000	−746,000	−19,566,000
Unauthorized, not considered	(74,075,000)	(87,232,000)	•••	•••	•••
CENTER FOR DISEASE CONTROL					
PREVENTIVE HEALTH SERVICES					
Disease control:					
Basic preventive health programs:					
Health incentive grants	68,000,000		36,000,000	+36,000,000	−32,000,000
Risk reduction and health education	13,500,000	13,717,000	13,717,000		+217,000
Subtotal	81,500,000	13,717,000	49,717,000	+36,000,000	−31,783,000
Disease prevention program:					
Venereal diseases	47,255,000	47,637,000	47,637,000		+382,000
Immunization	30,148,000	30,422,000	30,422,000		+274,000
Fluoridation	6,762,000	6,813,000	6,813,000		+51,000
Subtotal	84,165,000	84,872,000	84,872,000		+707,000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES—Continued					
CENTER FOR DISEASE CONTROL—Continued					
PREVENTIVE HEALTH SERVICES—Continued					
Control of chronic conditions:					
Chronic diseases	$17,668,000	$19,284,000	$19,284,000		+$1,616,000
Environmental hazards:					
Urban rat control	14,522,000	13,538,000	13,538,000		−984,000
Leadbased paint poisoning prevention	11,790,000	10,805,000	10,805,000		−985,000
Other environmental hazards	3,703,000	5,223,000	5,223,000		+1,520,000
Subtotal, control of chronic conditions	47,683,000	48,850,000	48,850,000		+1,167,000
Subtotal, disease control	213,318,000	147,439,000	183,439,000	+$36,000,000	−29,909,000
Occupational safety and health:					
Research	61,485,000	62,383,000	62,383,000		+898,000
Training	13,850,000	14,252,000	14,252,000		+402,000
Program support	4,217,000	4,546,000	4,546,000		+329,000
Subtotal	79,552,000	81,181,000	81,181,000		+1,629,000
Epidemiology services	27,019,000	29,153,000	29,153,000		+2,134,000
Technology development and application	24,874,000	26,823,000	26,823,000		+1,949,000
Buildings and facilities	11,436,000	4,951,000	4,951,000		−6,485,000
Program management	3,703,000	3,894,000	3,894,000		+191,000
Total, preventive health services	359,932,000	293,441,000	329,441,000	+36,000,000	−30,491,000
NATIONAL INSTITUTES OF HEALTH					
National Cancer Institute	999,254,000	965,105,000	1,001,330,000	+36,225,000	+2,076,000
National Heart, Lung, and Blood Institute	527,682,000	532,799,000	560,264,000	+27,465,000	+32,582,000
National Institute of Dental Reserych	68,368,000	69,951,000	71,206,000	+1,255,000	+2,838,000
National Institute of Arthritis, Metabolism, and Digestive Diseases	341,367,000	361,211,000	371,993,000	+10,782,000	+30,626,000
National Institute of Neurological and Communicative Disorders and Stroke	242,094,000	246,807,000	253,838,000	+7,031,000	+11,744,000
National Institute of Allergy and Infectious Diseases	215,487,000	226,412,000	232,355,000	+5,943,000	+16,868,000
National Institute of General Medical Sciences	312,478,000	328,139,000	335,676,000	+7,537,000	+23,198,000
National Institute of Child Health and Human Development	209,034,000	215,031,000	223,565,000	+8,534,000	+14,531,000
National Eye Institute	113,034,000	115,562,000	120,254,000	+4,692,000	+7,220,000
National Institute of Environmental Health Sciences	83,912,000	93,769,000	97,269,000	+3,500,000	+13,357,000
National Institute on Aging	70,000,000	74,317,000	76,091,000	+1,774,000	+6,091,000
Research Resources	169,199,000	173,878,000	184,439,000	+10,561,000	+15,240,000
John E. Fogarty International Center	8,989,000	9,138,000	9,138,000		+149,000
Subtotal	3,360,898,000	3,412,119,000	3,537,418,000	+125,299,000	+176,520,000
National Library of Medicine	44,000,000	44,389,000	44,730,000	+341,000	+730,000
Buildings and facilities	3,250,000	11,750,000	11,750,000		+8,500,000
Office of the Director	20,995,000	22,189,000	22,549,000	+360,000	+1,554,000
Total, National Institutes of Health	3,429,143,000	3,490,447,000	3,616,447,000	+126,000,000	+187,304,000
ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION					
ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH					
General mental health:					
Research	141,192,000	156,458,000	147,000,000	−9,458,000	+5,808,000
Unauthorized, not considered (rape program)	(4,058,000)	(5,718,000)	* * *	* * *	* * *
Training	90,354,000	90,354,000	93,854,000	+3,500,000	+3,500,000
Community programs:					
Mental health centers (continuations only)	235,411,000	257,294,000	253,000,000	−4,294,000	+17,589,000
Demonstrations	7,600,000	47,100,000	20,000,000	−27,100,000	+12,400,000
Unauthorized, not considered	(50,932,000)	(63,361,000)	* * *	* * *	* * *
Program support	34,943,000	38,061,000	37,000,000	−1,061,000	+2,057,000
Subtotal, general mental health	509,500,000	589,267,000	550,854,000	−38,413,000	+41,354,000
Unauthorized, not considered	(54,990,000)	(69,079,000)	* * *	* * *	* * *
Drug abuse:					
Research	46,000,000	50,192,000	46,000,000	−4,192,000	
Training	8,680,000	7,644,000	7,644,000		−1,036,000
Community programs:					
Project grants and contracts	161,000,000	161,000,000	161,000,000		
Grants to States	38,000,000		30,000,000	+30,000,000	−8,000,000
Program support	18,540,000	19,448,000	19,448,000		+908,000
Subtotal, drug abuse	272,220,000	238,284,000	264,092,000	+25,808,000	−8,128,000
Alcoholism:					
Research	22,251,000	25,141,000	22,251,000	−2,890,000	
Training	7,200,000	5,821,000	5,821,000		−1,379,000
Community programs:					
Project grants and contracts	78,706,000	108,308,000	73,000,000	−35,308,000	−5,706,000
Grants to States	54,800,000		50,000,000	+50,000,000	−4,800,000
Program support	10,167,000	10,841,000	10,167,000	−674,000	
Subtotal, alcoholism	173,124,000	150,111,000	161,239,000	+11,128,000	−11,885,000
Building and facilities		5,425,000	5,425,000		+5,425,000
Program management	9,814,000	10,867,000	10,867,000		+1,053,000
Total, Alcohol, drug abuse and mental health	964,658,000	993,954,000	992,477,000	−1,477,000	+27,819,000
Unauthorized, not considered	(54,990,000)	(69,079,000)	* * *	* * *	* * *
St. Elizabeths Hospital	89,084,000	94,273,000	94,273,000		+5,189,000
Construction and renovation (St. Elizabeths Hospital)		1,500,000	1,500,000		+1,500,000
Total, ADAMHA	1,053,742,000	1,089,727,000	1,088,250,000	−1,477,000	+34,508,000
HEALTH RESOURCES ADMINISTRATION					
HEALTH RESOURCES					
Health planning and resources development:					
Health planning:					
Local planning and implementation	124,717,000	86,717,000			
State planning and regulation	32,000,000	32,000,000			
Technical assistance	1,000,000	1,700,000			
Program support	9,622,00	9,685,000			
Subtotal, health planning	167,339,000	130,102,000	145,102,000	+15,000,000	−22,237,000
Health facility financing, compliance, and conversion:					
Health teaching facilities	5,300,000	4,300,000	4,300,000		−1,000,000
Program support	4,328,000	4,752,000	4,752,000		+424,000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES—Continued					
HEALTH RESOURCES ADMINISTRATION—Continued					
HEALTH RESOURCES—Continued					
Health professions education (unauthorized)	($478,614,000)	($303,020,000)	* * *	* * *	* * *
HRA program management	12,898,000	14,302,000	$14,106,000	−$196,000	+$1,208,000
Total, health resources	189,865,000	153,456,000	168,260,000	+14,804,000	−21,605,000
Unauthorized, not considered	(478,614,000)	(303,020,000)	* * *	* * *	* * *
Payment of Sales Insufficiencies	2,000,000				−2,000,000
Medical Facilities Guarantee and Loan Fund	45,000,000				−45,000,000
Total, Health Resources Administration	236,865,000	153,456,000	168,260,000	$+14,804,000	−68,605,000
Unauthorized, not considered	(478,614,000)	(303,020,000)	* * *	* * *	* * *
OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH					
SALARIES AND EXPENSES					
Program operations:					
Health statistics:					
National health surveys and analysis	25,420,000	28,860,000	28,860,000		+3,440,000
Cooperative health statistics	14,578,000	6,658,000	6,658,000		−7,920,000
Program support	3,052,000	3,197,000	3,197,000		+145,000
Subtotal	43,050,000	38,715,000	38,715,000		−4,335,000
Health services research:					
Research	22,449,000	26,779,000	23,177,000	−3,602,000	+728,000
Program support	7,257,000	7,755,000	7,755,000		+498,000
Subtotal	29,706,000	34,534,000	30,932,000	−3,602,000	+1,226,000
Health care technology:					
Research	1,990,000	3,420,000	2,670,000	−750,000	+680,000
Program support	1,260,000	1,330,000	1,330,000		+70,000
Subtotal	3,250,000	4,750,000	4,000,000	−750,000	+750,000
Program management	687,000	732,000	732,000		+45,000
Subtotal program operations	76,693,000	78,731,000	74,379,000	−4,352,000	−2,314,000
Health maintenance organizations:					
HMO development activities	43,813,000	50,900,000	43,813,000	−7,087,000	
Management training and technical assistance	1,500,000	1,500,000	1,500,000		
Program support	9,067,000	9,977,000	9,977,000		+910,000
Subtotal, health maintenance organizations	54,380,000	62,377,000	55,290,000	−7,087,000	+910,000
Special health initiatives:					
Adolescent health	7,500,000	8,700,000	10,000,000	+1,300,000	+2,500,000
Smoking and health	12,500,000	13,042,000	13,042,000		+542,000
Health promotion	1,652,000	5,278,000	3,278,000	−2,000,000	+1,626,000
International health	700,000	790,000	790,000		+90,000
Physical fitness and sports	882,000	942,000	942,000		+60,000
Subtotal, special health initiatives	23,234,000	28,752,000	28,052,000	−700,000	+4,818,000
Public Health Service management:					
Regional management	5,262,000	5,406,000	5,406,000		+144,000
Program direction and support services	16,334,000	17,500,000	16,839,000	−661,000	+505,000
Subtotal, PHS management	21,596,000	22,906,000	22,245,000	−661,000	+649,000
Undistributed pay supplemental	1,161,000				−1,161,000
Total, salaries and expenses	177,064,000	192,766,000	179,966,000	−12,800,000	+2,902,000
Scientific activities overseas	6,520,000				−6,520,000
Retirement pay and medical benefits for commissioned officers:					
Retirement payments	38,632,000	43,117,000	43,117,000		+4,485,000
Survivors benefits	1,160,000	1,359,000	1,359,000		+199,000
Dependent's medical care	37,133,000	47,482,000	47,482,000		+10,349,000
Total, retirement pay and medical benefits	76,925,000	91,958,000	91,958,000		+15,033,000
Total, Assistant Secretary for Health	260,509,000	284,724,000	271,924,000	−12,800,000	+11,415,000
Total, Public Health Service	6,591,544,000	6,544,328,000	6,706,109,000	+161,781,000	+114,565,000
Unauthorized, not considered	(607,679,000)	(459,331,000)	* * *	* * *	* * *
HEALTH CARE FINANCING ADMINISTRATION GRANTS TO STATES FOR MEDICAID					
Vendor payments	13,787,139,000	15,031,015,000	15,031,015,000		+1,243,876,000
State and local administration:					
General administrative expenses	726,000,000	809,897,000	809,897,000		+83,897,000
Provider certification	42,000,000	36,140,000	36,140,000		−5,860,000
Total, grants to States	14,555,139,000	15,877,052,000	15,877,052,000		+1,321,913,000
Appropriation available from subsequent year	3,923,000,000	4,280,000,000	4,280,000,000		+357,000,000
Appropriation available in prior year	−4,126,071,000	−3,923,000,000	−3,923,000,000		+203,071,000
Total adjusted appropriation including borrowing	14,352,068,000	16,234,052,000	16,234,052,000		+1,881,984,000
PAYMENTS TO HEALTH CARE TRUST FUNDS					
Military service credits	141,000,000	141,000,000	141,000,000		
Supplemental medical insurance	7,097,000,000	8,737,000,000	8,737,000,000		+1,640,000,000
Hospital insurance for uninsured	696,906,000	659,000,000	659,000,000		−37,906,000
PSRO hospital review activities:					
Medicaid, direct appropriations	33,250,000	52,120,000	40,120,000	−12,000,000	+6,870,000
Medicare, nonappropriated funds	(552,516,000)	(78,180,000)	(78,180,000)		(+25,664,000)
Subtotal, PSRO hospital review (nonadd)	(85,766,000)	(130,300,000)	(118,300,000)	(−12,000,000)	(+32,534,000)
Total, payment to trust funds	7,968,156,000	9,589,120,000	9,577,120,000	−12,000,000	+1,608,964,000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
PROGRAM MANAGEMENT					
Professional standards review organizations:					
Hospital review (see previous account)	($85, 766, 000)	($130, 300, 000)	($118, 300, 000)	($−12, 000, 000)	($+32, 534, 000)
Nonhospital activities, appropriated funds:					
Federal funds	29, 050, 000	29, 372, 000	22, 372, 000	−7, 000, 000	−6, 678, 000
Trust funds	(29, 600, 000)	(32, 966, 000)	(32, 996, 000)		(+3, 396, 000)
Subtotal, appropriations	58, 650, 000	62, 368, 000	55, 368, 000	−7, 000, 000	−3, 282, 000
Total, PSRO budget	(144, 416, 000)	(192, 668, 000)	(173, 668, 000)	(−19, 000, 000)	(+29, 252, 000)
Research, demonstration and evaluation:					
Federal funds	30, 490, 000	31, 164, 000	30, 000, 000	−1, 164, 000	−490, 000
Trust funds	(16, 292, 000)	(21, 193, 000)	(20, 000, 000)	(−1, 193, 000)	(+3, 708, 000)
Subtotal, research and evaluation	46, 782, 000	52, 357, 000	50, 000, 000	−2, 357, 000	+3, 218, 000
Medicare contractors: Trust funds	(672, 380, 000)	704, 384, 000)	(694, 384, 000)	(−10, 000, 000)	(+22, 004, 000)
State certification:					
General program support, Federal funds	2, 000, 000	4, 500, 000	4, 500, 000		+2, 500, 000
Medicare certification, trust funds	(27, 645, 000)	(29, 760, 000)	(29, 760, 000)		(+2, 115, 000)
Federal administration:					
Federal funds	66, 587, 000	67, 962, 000	67, 000, 000	−962, 000	+413, 000
Trust funds	(102, 694, 000)	(110, 891, 000)	(108, 000, 000)	(−2, 891, 000)	(+5, 306, 000)
Subtotal, Federal administration	169, 281, 000	178, 853, 000	175, 000, 000	−3, 853, 000	+5, 719, 000
Total, program management:					
Federal funds	128, 127, 000	132, 998, 000	123, 872, 000	−9, 126, 000	−4, 255, 000
Trust funds	(848, 611, 000)	(899, 224, 000)	(885, 140, 000)	(−14, 084, 000)	(+36, 529, 000)
Total, HCFA appropriation request	22, 448, 351, 000	25, 956, 170, 000	25, 935, 044, 000	−21, 126, 000	+3, 486, 693, 000
SOCIAL SECURITY ADMINISTRATION					
Payment to social security trust funds	676, 933, 000	673, 225, 000	672, 225, 000	−1, 000, 000	−4, 708, 000
SPECIAL BENEFITS FOR DISABLED COAL MINERS					
Benefit payments	997, 549, 000	1, 088, 870, 000	1, 088, 870, 000		+91, 321, 000
Administration	7, 653, 000	8, 881, 000	8, 881, 000		+1, 228, 000
Total, black lung	1, 005, 202, 000	1, 097, 751, 000	1, 097, 751, 000		+92, 549, 000
Appropriation available from subsequent year	37, 451, 000				−37, 451, 000
Appropriation available in prior year		−37, 451, 000	−37, 451, 000		−37, 451, 000
Total adjusted appropriation including borrowing	1, 042, 653, 000	1, 060, 300, 000	1, 060, 300, 000		+17, 647, 000
SUPPLEMENTAL SECURITY INCOME					
Federal benefit payments	5, 567, 777, 000	6, 198, 423, 000	6, 198, 423, 000		+630, 646, 000
Hold harmless payments	45, 000, 000	45, 000, 000	45, 000, 000		
Beneficiary services	56, 158, 000	38, 200, 000	38, 200, 000		−17, 958, 000
Federal fiscal liability	39, 800, 000	4, 000, 000	4, 000, 000		−35, 800, 000
Administration	614, 701, 000	719, 494, 000	719, 494, 000		+104, 793, 000
Total, supplemental security income	6, 323, 436, 000	7, 005, 117, 000	7, 005, 117, 000		+681, 681, 000
Appropriation available from subsequent year	48, 423, 000				−48, 423, 000
Appropriation available in prior year		−48, 423, 000	−48, 423, 000		−48, 423, 000
Total adjusted appropriation including borrowing	6, 371, 859, 000	6, 956, 694, 000	6, 956, 694, 000		+584, 835, 000
ASSISTANCE PAYMENTS					
Maintenance assistance:					
AFDC benefit payments	5, 865, 532, 000	7, 273, 674, 000	7, 273, 674, 000		+1, 408, 142, 000
Adult categories	4, 474, 000	4, 446, 000	4, 446, 000		−28, 000
Emergency assistance	45, 568, 000	46, 200, 000	46, 200, 000		+632, 000
State and local administration and training	769, 852, 000	811, 500, 000	811, 500, 000		+41, 648, 000
Repatriation	1, 284, 000	1, 369, 000	1, 369, 000		+85, 000
Subtotal, maintenance assistance	6, 686, 710, 000	8, 137, 189, 000	8, 137, 189, 000		+1, 450, 479, 000
Child support enforcement:					
Collections	−308, 261, 000	−352, 000, 000	−352, 000, 000		−43, 739, 000
State and local administration	369, 261, 000	310, 000, 000	310, 000, 000		−59, 261, 000
Subtotal, child support enforcement	61, 000, 000	−42, 000, 000	−42, 000, 000		−103, 000, 000
Research and evaluation	3, 500, 000	3, 500, 000	3, 500, 000		
Administration:					
Maintenance assistance	30, 279, 000	31, 679, 000	31, 679, 000		+1, 400, 000
Child support enforcement	14, 721, 000	15, 321, 000	15, 321, 000		+600, 000
Subtotal, administration	45, 000, 000	47, 000, 000	47, 000, 000		+2, 000, 000
Total, assistance payments	6, 796, 210, 000	8, 145, 689, 000	8, 145, 689, 000		+1, 349, 479, 000
Appropriation available from subsequent year	2, 261, 553, 000	1, 913, 793, 000	1, 913, 793, 000		−347, 760, 000
Appropriation available in prior year	−1, 669, 436, 000	−2, 261, 553, 000	−2, 261, 553, 000		−592, 117, 000
Total, adjusted appropriation including borrowing	7, 388, 327, 000	7, 797, 929, 000	7, 797, 929, 000		+409, 602, 000
LOW INCOME ENERGY ASSISTANCE					
Payments to SSI recipients	400, 000, 000				−400, 000 000
Energy crisis intervention: Transfer to Community Services Administration	400, 000, 000	100, 000, 000	20, 000, 000	−80, 000, 000	−380, 000, 000
Special energy allowance	796, 000, 000	2, 088, 667, 000	1, 776, 000, 000	−312, 667, 000	+980, 000, 000
State incentive payments		4, 833, 000		−4, 833, 000	
Grants to the territories		2, 500, 000		−2, 500, 000	
Federal administration	4, 000, 000	4, 000, 000	4, 000, 000		
Subtotal	1, 600, 000, 000	2, 200, 000, 000	1, 800, 000, 000	−400, 000, 000	+200, 000, 000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
REFUGEE ASSISTANCE					
State administered programs	$340, 092, 000	$554, 030, 000			
Advance for 1981, new Cubans/Haitians	50, 000, 000				
Voluntary agency programs	20, 000, 000	24, 000, 000			
Educational assistance for children		44, 268, 000			
Applicants for asylum (Haitians)		12, 000, 000			
Cuban program phasedown	53, 308, 000	44, 800, 000			
Preventive health		7, 859, 000			
Federal administrative expense	3, 500, 000	6, 500, 000			
Undistributed funds	100, 000, 000		$690, 457, 000		
Total, refugee assistance	516, 900, 000	693, 457, 000	690, 457, 000	−$3, 000, 000	+$173, 557, 000
Advance for 1981, new Cubans/Haitians	50, 000, 000				
Limitation on administrative expenses	(2, 461, 700, 000)	(2, 660, 850, 000)	(2, 660, 850, 000)		(+199, 150, 000)
Limitation on research and statistics: Survey of income and program participation		(16, 000, 000)		(−16, 000, 000)	
Total, Social Security Administration, appropriations	17, 596, 672, 000	19, 381, 605, 000	18, 977, 605, 000	−404, 000, 000	+1, 380, 933, 000
ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT SERVICES					
Grants to States for social and child welfare services:					
Grants to States for social services	2, 691, 100, 000	2, 716, 100, 000	2, 716, 100, 000		+25, 000, 000
Child day care	222, 000, 000	200, 000, 000	200, 000, 000		−22, 000, 000
State and local training	95, 000, 000	130, 000, 000	75, 000, 000	−55, 000, 000	−20, 000, 000
Child welfare services	66, 150, 000	163, 550, 000	163, 550, 000		+97, 400, 000
Total, grants to States	3, 074, 250, 000	3, 209, 650, 000	3, 154, 650, 000	−55, 000, 000	+80, 400, 000
Appropriation available from subsequent year	680, 000, 000	715, 000, 000	715, 000, 000		+35, 000, 000
Appropriation available in prior year	−778, 136, 000	−680, 000, 000	−680, 000, 000		+98, 136, 000
Total adjusted appropriation included borrowing	2, 976, 114, 000	3, 244, 650, 000	3, 189, 650, 000	−55, 000, 000	+213, 536, 000
HUMAN DEVELOPMENT SERVICES					
Administration for children, youth, and families:					
Head Start	735, 000, 000	820, 000, 000	820, 000, 000		+85, 000, 000
Research, and demonstrations	14, 700, 000	12, 000, 000	12, 000, 000		−2, 700, 000
Child abuse	22, 928, 000	22, 928, 000	22, 928, 000		
Runaway youth	11, 000, 000	11, 000, 000	11, 000, 000		
Child welfare training	7, 575, 000	5, 600, 000	5, 600, 000		−1, 975, 000
Adoptions opportunities	5, 000, 000	5, 000, 000	5, 000, 000		
Subtotal	796, 203, 000	876, 528, 000	876, 528, 000		+80, 325, 000
Administration on Aging:					
State agency activities	22, 500, 000	22, 675, 000	22, 675, 000		+175, 000
Social services and centers	246, 970, 000	247, 000, 000	257, 000, 000	+10, 000, 000	+10, 030, 000
Grants to Indians	6, 000, 000	6, 000, 000	6, 000, 000		
Nutrition:					
Congregate meals	270, 000, 000	295, 000, 000	295, 000, 000		+25, 000, 000
Home-delivered meals	50, 000, 000	55, 000, 000	55, 000, 000		+5, 000, 000
Research, training, and special projects	54, 300, 000	45, 500, 000	45, 500, 000		−8, 800, 000
Federal Council on Aging	450, 000	581, 000	581, 000		+131, 000
National clearinghouse	2, 000, 000	2, 000, 000	2, 000, 000		
Subtotal	652, 220, 000	673, 756, 000	683, 756, 000	+10, 000, 000	+31, 536, 000
Developmental disabilities program:					
Basic grants and advocacy	50, 680, 000	50, 681, 000	50, 681, 000		+1, 000
Special projects	4, 757, 000	3, 500, 000	3, 500, 000		−1, 257, 000
University affiliated facilities	7, 000, 000	7, 000, 000	7, 000, 000		
Subtotal, developmental disabilities	62, 437, 000	61, 181, 000	61, 181, 000		−1, 256, 000
Administration for Public Services: Research	5, 000, 000	3, 750, 000	3, 750, 000		−1, 250, 000
Subtotal	5, 000, 000	3, 750, 000	3, 750, 000		−1, 250, 000
Native American programs	33, 800, 000	33, 800, 000	33, 800, 000		
White House Conference on Aging		3, 000, 000	3, 000, 000		+3, 000, 000
White House Conference on Children and Youth	3, 000, 000				−3, 000, 000
Program direction	61, 847, 000	67, 348, 000	63, 518, 000	−3, 830, 000	+1, 671, 000
Total, human development services	1, 614, 507, 000	1, 719, 363, 000	1, 725, 533, 000	+6, 170, 000	+111, 026, 000
WORK INCENTIVES					
Grants to States	351, 615, 000	372, 326, 000	352, 326, 000	−20, 000, 000	+711, 000
Program direction and evaluation	13, 385, 000	12, 674, 000	12, 674, 000		−711, 000
Total, work incentives	365, 000, 000	385, 000, 000	365, 000, 000	−20, 000, 000	
Total, Assistant Secretary for Human Development	4, 955, 621, 000	5, 349, 013, 000	5, 280, 013, 000	−68, 830, 000	+324, 562, 000
DEPARTMENTAL MANAGEMENT					
General departmental management:					
Federal funds	129, 557, 000	128, 737, 000	126, 468, 000	−2, 269, 000	−3, 089, 000
Trust funds	(8, 000, 000)	(8, 000, 000)	(8, 000, 000)		
Total, departmental management	137, 557, 000	136, 737, 000	134, 468, 000	−2, 269, 000	−3, 089, 000
Office of the Inspector General:					
Federal funds	66, 238, 000	53, 045, 000	53, 045, 000		−13, 193, 000
Trust funds	(4, 194, 000)	(6, 000, 000)	(6, 000, 000)		(+1, 806, 000)
Total, Inspector General	70, 432, 000	59, 045, 000	59, 045, 000		−11, 387, 000
Appropriation available from subsequent year	4, 500, 000	6, 000, 000	6, 000, 000		+1, 500, 000
Appropriation available in prior year		−4, 500, 000	−4, 500, 000		−4, 500, 000
Total adjusted appropriation including borrowing	70, 738, 000	54, 545, 000	54, 545, 000		−16, 193, 000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
DEPARTMENTAL MANAGEMENT—Continued					
Office for Civil Rights:					
Federal funds	$19,627,000	$20,081,000	$17,920,000	−$2,161,000	−$1,707,000
Trust funds	(2,350,000)	(2,350,000)	(2,350,000)		
Total, Civil Rights	21,977,000	22,431,000	20,270,000	−2,161,000	−1,707,000
Policy research	24,000,000	22,700,000	22,700,000		−1,300,000
Total, departmental management:					
Federal funds	243,922,000	226,063,000	221,633,000	−4,430,000	−22,289,000
Trust funds	(14,544,000)	(16,350,000)	(16,350,000)		(+1,806,000)
Total, Department of Health and Human Services:					
Federal funds	51,836,110,000	57,457,179,000	57,120,574,000	−336,605,000	+5,284,464,000
Trust funds	(3,324,855,000)	(3,592,424,000)	(3,562,340,000)	(−30,084,000)	(+237,485,000)
Unauthorized, not considered	(607,679,000)	(459,331,000)	* * *	* * *	* * *
TITLE III—DEPARTMENT OF EDUCATION AND SPECIAL INSTITUTIONS					
ELEMENTARY AND SECONDARY EDUCATION					
Grants for disadvantaged, title I:					
Regular grants: Grants to local educational agencies	2,630,022,000	2,844,168,000	2,822,022,000	−22,146,000	+192,000,000
State agency programs:					
Migrants	245,000,000	266,112,000	288,000,000	+21,888,000	+43,000,000
Handicapped	145,000,000	156,761,000	165,000,000	+8,239,000	+20,000,000
Neglected and delinquent	35,571,000	37,750,000	37,750,000		+2,179,000
Subtotal	425,571,000	460,623,000	490,750,000	+30,127,000	+65,179,000
State administration	47,000,000	50,731,000	47,000,000	−3,731,000	
Evaluation and studies	13,000,000	14,250,000	10,000,000	−4,250,000	−3,000,000
Subtotal, regular grants	3,115,593,000	3,369,772,000	3,369,772,000		+254,179,000
Concentration grants	100,000,000	150,000,000	145,000,000	−5,000,000	+45,000,000
State incentive grants		17,000,000		−17,000,000	
Subtotal, grants for disadvantaged, title I	3,215,593,000	3,536,772,000	3,514,772,000	−22,000,000	+299,179,000
Support and innovation grants:					
Consolidated programs	197,400,000				−197,400,000
Improving educational practices		50,000,000	91,400,000	+41,400,000	+91,400,000
State agency management		46,000,000	51,000,000	+5,000,000	+51,000,000
Bilingual education:					
Grants to school districts	107,263,000	124,800,000	112,913,000	−11,887,000	+5,650,000
Training grants	30,325,000	37,075,000	32,075,000	−5,000,000	+1,750,000
Support services	20,775,000	20,125,000	20,375,000	+250,000	−400,000
Bilingual desegregation grants	8,600,000	10,000,000	9,600,000	−400,000	+1,000,000
Subtotal, bilingual education	166,963,000	192,000,000	174,963,000	−17,0370,00	+8,000,000
Territorial assistance:					
General aid to Virgin Islands	3,000,000		3,000,000	+3,000,000	
Teacher training	2,000,000		2,000,000	+2,000,000	
Indochina refugee assistance	12,000,000				−12,000,000
Ellender fellowships	1,000,000		1,000,000	+1,000,000	
Total, elementary and secondary education	3,597,956,000	3,824,772,000	3,838,135,000	+13,363,000	+240,179,000
SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS					
Maintenance and operations:					
Payments for "a" children	399,000,000	240,000,000	428,000,000	+188,000,000	+29,000,000
Payments for "b" children	277,000,000	6,000,000	224,000,000	+218,000,000	−53,000,000
Special provisions	14,000,000	13,000,000	13,000,000		−1,000,000
Payments to other Federal agencies	70,000,000	75,000,000	75,000,000		+5,000,000
Disaster assistance	32,000,000				−32,000,000
Subtotal	792,000,000	334,000,000	740,000,000	+406,000,000	
Construction	33,000,000	8,000,000	50,000,000	−30,000,000	−52,000,000
Total, school assistance	825,000,000	414,000,000	790,000,000	+376,000,000	−35,000,000
EQUAL EDUCATIONAL OPPORTUNITIES					
Emergency school aid:					
State apportioned funds:					
General grants to school districts	107,800,000	118,800,000	107,800,000	−11,000,000	
Nationally-competed funds:					
Special programs and projects	92,019,000	83,583,000	83,583,000		−8,436,000
Magnet schools, pairing and neutral site schools	36,302,000	30,000,000	30,000,000		−6,302,000
Grants to nonprofit organizations	5,000,000	10,000,000	7,500,000	−2,500,000	+2,500,000
Educational television and radio	6,450,000	6,450,000	6,450,000		
Subtotal, nationally conpeted funds	139,771,000	130,033,000	127,533,000	−2,500,000	−12,238,000
Evaluation	1,000,000	2,510,000	1,000,000	−1,510,000	
Subtotal, emergency school aid	248,571,000	251,343,000	236,333,000	−15,010,000	−12,238,000
Training and advisory services	45,675,000	54,700,000	45,675,000	−9,025,000	
Women's educational equity	10,000,000	20,000,000	10,000,000	−10,000,000	
Total, equal educational opportunities	304,246,000	326,043,000	292,008,000	−34,035,000	−12,238,000
LIBRARIES AND LEARNING RESOURCES					
Public libraries:					
Services	62,500,000	62,500,000	62,500,000		
Interlibrary cooperation	5,000,000	12,000,000	12,000,000		+7,000,000
School libraries and instructional resources	171,000,000	171,000,000	171,000,000		
College library resources	4,988,000	4,988,000	4,988,000		
Training and demonstrations:					
Library career training	667,000	500,000	667,000	+167,000	
Library demonstrations	333,000	500,000	500,000		+167,000
Research libraries	6,000,000	7,000,000	6,000,000	−1,000,000	
Educational television programming	6,000,000	6,000,000	6,000,000		
Total, libraries and learning resources	256,488,000	264,488,000	263,655,000	−833,000	+7,167,000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
EDUCATION FOR THE HANDICAPPED					
State assistance:					
State grant program	$874,500,000	$922,000,000	$922,000,000		+$147,500,000
Preschool incentive grants	25,000,000	25,000,000	25,000,000		
Deaf-blind centers	16,000,000	16,000,000	16,000,000		
Subtotal, State assistance	915,500,000	963,000,000	963,000,000		+47,500,000
Special population programs:					
Severely handicapped projects	5,000,000	5,000,000	5,000,000		
Early childhood education	20,000,000	20,000,000	20,000,000		
Regional, vocational, adult and postsecondary programs	2,400,000	4,000,000	4,000,000		+1,600,000
Innovation and development	20,000,000	20,000,000	20,000,000		
Media and resource services:					
Media services and captioned films	19,000,000	19,000,000	19,000,000		
Regional resource centers	9,750,000	9,750,000	9,750,000		
Recruitment and information	1,000,000	1,000,000	1,000,000		
Subtotal, media and resources services	29,750,000	29,750,000	29,750,000		
Special education personnel development	55,375,000	58,000,000	58,000,000		+2,625,000
Special studies	1,000,000	2,300,000	2,300,000		+1,300,000
Total, education for the handicapped	1,049,025,000	1,102,050,000	1,102,050,000		+53,025,000
REHABILITATION SERVICES AND HANDICAPPED RESEARCH					
Rehabilitation services:					
Basic State grants	817,484,000	854,259,000	854,259,000		+36,775,000
Innovation and expansion	11,775,000				−11,775,000
Service projects	28,360,855	28,860,000	32,860,000	+$4,000,000	+4,499,145
Independent living	15,000,000	18,000,000	18,000,000		+3,000,000
Training	28,500,000	25,500,000	25,500,000		−3,000,000
Subtotal	901,119,855	926,619,000	930,619,000	+4,000,000	+29,499,145
National Institute for Handicapped Research	31,500,000	35,000,000	35,000,000		+3,500,000
National Council on the Handicapped		256,000	256,000		+256,000
Total, rehabilitation and handicapped research	932,619,855	961,875,000	965,875,000	+4,000,000	+33,255,145
VOCATIONAL AND ADULT EDUCATION					
Vocational education:					
State grants and innovative programs:					
Basic grants	562,266,000	474,766,000	562,266,000	+87,500,000	
Program improvement and supportive services	124,817,000	132,218,000	124,817,000	−7,401,000	
Programs of national significance	10,000,000	34,794,000	10,000,000	−24,794,000	
Subtotal	697,083,000	641,778,000	697,083,000	+55,305,000	
Special programs for the disadvantaged	20,000,000	20,000,000	20,000,000		
Consumer and homemaking education	43,497,000	43,497,000	43,497,000		
State advisory councils	6,500,000	6,500,000	6,500,000		
Bilingual vocational training	4,800,000	6,000,000	4,800,000	−1,200,000	
State planning	5,000,000	5,000,000	5,000,000		
Subtotal, vocational education	776,880,000	722,775,000	776,880,000	+54,105,000	
Adult education:					
Grants to States	100,000,000	120,000,000	120,000,000		+20,000,000
Demonstration, dissemination, and related activities		2,000,000		−2,000,000	
Indochina refugee program	2,500,000				−2,500,000
Cuban/Haitian refugees	17,600,000				−17,600,000
General immigrant program	2,500,000				−2,500,000
Subtotal, adult education	122,600,000	122,000,000	120,000,000	−2,000,000	−2,600,000
Career education incentive	15,000,000	10,000,000	15,000,000	+5,000,000	
Community schools	3,138,000	3,138,000	10,000,000	+6,862,000	+6,862,000
Consumers education	3,617,000	3,617,000	3,617,000		
Total, vocational and adult education	921,235,000	861,530,000	925,497,000	+63,967,000	+4,262,000
STUDENT FINANCIAL ASSISTANCE					
Basic opportunity grants	2,122,034,000	2,159,000,000	2,159,000,000		+36,966,000
Supplemental opportunity grants	370,000,000	370,000,000	370,000,000		
Work study	550,000,000	550,000,000	550,000,000		
State student incentive grants	76,750,000	76,750,000	76,750,000		
Subtotal	3,118,784,000	3,155,750,000	3,155,750,000		+36,966,000
Direct loans:					
Federal capital contributions	286,000,000		186,000,000	+186,000,000	−100,000,000
Teacher cancellations	14,800,000		14,800,000	+14,800,000	
Subtotal, direct loans	300,800,000		200,800,000	+200,800,000	−100,000,000
Total, student financial assistance	3,419,584,000	3,155,750,000	3,356,550,000	+200,800,000	−63,034,000
STUDENT LOAN INSURANCE					
Guaranteed student loan program:					
Interest subsidies	1,396,094,000	1,134,399,000	1,134,399,000		−261,695,000
Student loan insurance	213,250,000	256,591,000	256,591,000		+43,341,000
Total, student loan insurance	1,609,344,000	1,390,990,000	1,390,990,000		−218,354,000
HIGHER AND CONTINUING EDUCATION					
Student services:					
Special programs for the disadvantaged	147,500,000	159,500,000	159,500,000		+12,000,000
Veterans cost of instruction	14,380,000	12,039,000	12,039,000		−2,341,000
Educational information centers	3,000,000		3,000,000		−3,000,000
Subtotal	164,880,000	171,539,000	171,539,000		+6,659,000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
HIGHER AND CONTINUING EDUCATION—Continued					
Program development:					
Strengthening developing institutions	$110,000,000	$120,000,000	$120,000,000		+$10,000,000
Minority institutions science improvement	5,000,000	5,000,000	5,000,000		
Cooperative education	15,000,000	23,000,000	23,000,000		+8,000,000
International and foreign language studies:					
Centers, fellowships, and research	17,000,000	23,000,000	21,800,000	−$1,200,000	+4,800,000
Fellowships and research abroad	3,000,000	7,000,000	6,200,000	−800,000	+3,200,000
University community services and continuing education	9,000,000		9,000,000	+9,000,000	
State postsecondary education commissions	3,000,000		3,000,000	+3,000,000	
Subtotal, program development	162,000,000	178,000,000	188,000,000	+10,000,000	+26,000,000
Graduate support:					
Graduate/professional opportunities	8,850,000	13,000,000	11,000,000	−2,000,000	+2,150,000
Public service grants and fellowships	4,000,000		3,000,000	+3,000,000	−1,000,000
Mining fellowships	4,500,000		2,150,000	+2,150,000	−2,350,000
Subtotal, graduate support	17,350,000	13,000,000	16,150,000	+3,150,000	−1,200,000
Construction:					
Interest subsidy grants	29,000,000	26,000,000	26,000,000		−3,000,000
Architectural barriers removal	10,000,000				−10,000,000
Subtotal, construction	39,000,000	26,000,000	26,000,000		−13,000,000
Special endowments: National Academy of Peace and Conflict Resolution (ESEA sec. 1511)	500,000				−500,000
Law and education:					
Legal training for disadvantaged	1,000,000	1,000,000	1,000,000		
Law school clinical experience	4,000,000		4,000,000	+4,000,000	
Law-related education	1,000,000	1,000,000	1,000,000		
Subtotal, law and education	6,000,000	2,000,000	6,000,000	+4,000,000	
Undistributed reduction			−3,000,000	−3,000,000	−3,000,000
Total, higher and continuing education	389,730,000	390,539,000	407,689,000	+17,150,000	+17,959,000
Higher education facilities loan and insurance	2,189,000	1,656,000	1,656,000		−533,000
Loan authority			25,000,000	+25,000,000	+25,000,000
Total, higher education loan and insurance	2,189,000	1,656,000	26,656,000	+25,000,000	+25,467,000
College housing loans	12,117,000	14,271,000	14,271,000		+2,154,000
SCHOOL IMPROVEMENT					
Basic skills improvement	35,000,000	40,000,000	35,000,000	−5,000,000	
Followthrough	44,520,000	44,250,000	44,250,000		
Cuban/Haitian refugees	7,700,000				−7,700,000
Special emphases:					
National diffusion program	10,000,000	16,000,000	10,000,000	−6,000,000	
Biomedical sciences	3,000,000	3,000,000	3,000,000		
Gifted and talented	6,280,000	6,280,000	6,280,000		
Alcohol and drug abuse education	3,000,000	3,000,000	3,000,000		
Arts in education	3,500,000	3,500,000	3,500,000		
Metric education	1,840,000	1,840,000	1,840,000		
Ethnic heritage studies	3,000,000	3,000,000	3,000,000		
Special initiatives		5,000,000		−5,000,000	
Subtotal, special emphases	30,620,000	41,620,000	30,620,000	−11,000,000	
Communities and schools:					
Cities in schools	3,050,000	3,050,000	3,050,000		
PUSH for excellence	1,000,000	1,000,000	1,000,000		
Professional development:					
Teacher corps	30,000,000	37,500,000	30,000,000	−7,500,000	
Teacher centers	13,000,000	14,300,000	13,000,000	−1,300,000	
Administrators training		3,000,000		−3,000,000	
Precollege science teacher training	2,500,000	2,500,000	2,500,000		
Subtotal, professional development	45,500,000	57,300,000	45,500,000	+11,800,000	
Migrant education:					
High school equivalency program	6,160,000	6,345,000	6,345,000		+185,000
College assistance migrant program	1,173,000	1,268,000	1,208,000		+35,000
Total, school improvement	174,453,000	194,773,000	166,973,000	−27,800,000	−7,480,000
SPECIAL INSTITUTIONS					
American Printing House for the Blind	4,349,000	4,921,000	4,921,000		+572,000
National Technical Institite for the Deaf	17,349,000	20,305,000	20,305,000		+2,956,000
Gallaudet College:					
College programs	22,791,000	26,829,000	26,829,000		+4,038,000
Model Secondary School for the Deaf	9,681,000	10,565,000	10,565,000		+884,000
Kendall Demonstration Elementary School	5,139,000	5,780,000	5,780,000		+641,000
Construction	10,730,000	6,594,000	6,594,000		−4,136,000
Total	48,341,000	49,768,000	49,768,000		+1,427,000
Howard University:					
Academic program	89,787,000	101,637,000	101,637,000		+11,850,000
Howard University Hospital	22,106,000	22,106,000	22,106,000		
Construction	10,000,000	10,240,000	10,240,000		+240,000
Total	121,893,000	133,983,000	133,983,000		+12,090,000
OFFICE OF CIVIL RIGHTS					
SALARIES AND EXPENSES					
Office for civil rights	45,847,000	46,915,000	46,915,000		+1,068,000
Architectural and transportation barriers compliance board	1,626,000	2,300,000	2,300,000		+674,000
Total, Office of Civil Rights	47,473,000	49,215,000	49,215,000		+1,742,000

H.R. 7998—FISCAL YEAR 1981 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES AND EDUCATION AND RELATED AGENCIES—Continued

	Revised fiscal year 1980 comparable	Fiscal year 1981 budget	Fiscal year 1981 House bill	House bill compared to fiscal year 1981 budget	House bill compared to fiscal year 1980 appropriation
DEPARTMENTAL MANAGEMENT					
SALARIES AND EXPENSES					
Program administration	$230,542,000	$234,021,000	$233,630,000	−$391,000	+$3,088,000
Advisory committees	2,276,000	2,510,000	2,254,000	−656,000	−22,000
Planning and evaluation	2,558,000	6,250,000	+2,998,000	−3,252,000	
Analysis of 1980 census data		1,000,000		−1,000,000	
Total, departmental management, salaries and expenses	235,616,000	244,181,000	238,862,000	−5,299,000	+3,066,000
EDUCATIONAL STATISTICS					
National Center for Educational Statistics	9,947,000	11,793,000	9,947,000	−1,846,000	
RESEARCH AND RELATED ACTIVITIES					
National Institute of Education	74,114,000	79,050,000	74,114,000	−4,936,000	
Fund for the Improvement of Postsecondary Education	13,500,000	17,000,000	13,500,000	−3,500,000	
Total, research and related activities	87,614,000	96,050,000	87,614,000	−8,436,000	
EDUCATIONAL, RESEARCH, AND TRAINING ACTIVITIES OVERSEAS					
Research and demonstration	2,000,000	2,000,000	2,000,000		
Grants to American institutions	1,000,000	1,000,000	1,000,000		
Total, education, research and training	3,000,000	3,000,000	3,000,000		
Total, departmental management	336,377,000	355,024,000	339,443,000	−15,581,000	+3,066,000
Total, Department of Education	14,069,768,855	13,515,953,000	14,137,984,000	+622,031,000	+68,215,145
TITLE IV—RELATED AGENCIES					
Action (domestic programs):					
Volunteers in Service to America	32,850,000	41,876,000	36,850,000	−5,026,000	+4,000,000
VISTA	(29,800,000)	(37,544,000)	(33,800,000)	(−3,744,000)	(+4,000,000)
Service learning	(2,800,000)	(4,034,000)	(2,800,000)	(−1,234,000)	
Evaluation	(250,000)	(298,000)	(250,000)	(−48,000)	
Older Americans volunteer programs:					
Foster Grandparents program	46,900,000	46,900,000	48,400,000	+1,500,000	+1,500,000
Senior companion program	10,200,000	12,783,000	12,783,000		+2,583,000
Retired senior volunteer program	26,217,000	26,217,000	27,717,000	+1,500,000	+1,500,000
Subtotal, older volunteers	83,317,000	85,900,000	88,900,000	+3,000,000	+5,583,000
Citizen participation and volunteer demonstration programs	3,364,000	11,945,000	3,364,000	−8,581,000	
Program support	26,053,000	29,433,000	28,933,000	−500,000	+2,880,000
Total, ACTION	145,584,000	169,154,000	158,047,000	−11,107,000	+12,463,000
Community Services Administration:					
Community action operations:					
Community action agencies	381,800,000	394,300,000	394,300,000		+12,500,000
Senior opportunities and service	10,500,000	10,500,000	10,500,000		
State economic opportunity offices	7,500,000	3,750,000	3,750,000		−3,750,000
Community food and nutrition	27,000,000	26,000,000	26,000,000		−1,000,000
National youth sports program	6,000,000		6,000,000	+6,000,000	
Summer youth recreation	10,000,000				−10,000,000
Training and technical assistance	7,900,000	7,500,000	4,500,000	−3,000,000	−3,400,000
Subtotal, community action	450,700,000	442,050,000	445,050,000	+3,000,000	−5,650,000
Community economic development	44,500,000	48,500,000	48,500,000		+4,000,000
Demonstrations	9,600,000	6,600,000	3,600,000	−3,000,000	−6,000,000
Evaluation	1,000,000	1,000,000	1,000,000		
Program administration	41,500,000	40,650,000	39,650,000	−1,000,000	−1,850,000
Total, Community Services Administration	547,300,000	538,800,000	537,800,000	−1,000,000	−9,500,000
Corporation for Public Broadcasting:					
Fiscal year 1982 (advanced in fiscal year 1980)	172,000,000				−172,000,000
Fiscal year 1983 (current request)		172,000,000	172,000,000		+172,000,000
Total, Corporation for Public Broadcasting	172,000,000	172,000,000	172,000,000		
Federal Mediation and Conciliation Service	23,820,000	27,140,000	25,919,000	−1,221,000	+2,099,000
Federal Mine Safety and Health Review Commission	4,582,000	4,617,000	4,617,000		+35,000
National Commission on Libraries and Information Science	686,000	691,000	691,000		+5,000
National Labor Relations Board	112,617,000	116,635,000	116,635,000		−4,018,000
National Mediation Board	4,444,000	4,780,000	3,780,000		+336,000
Occupational Safety and Health Review Commission	7,450,000	7,860,000	7,860,000		+410,000
President's Commission on Ethical Problems in Medicine		2,041,000	1,500,000	−541,000	+1,500,000
Railroad Retirement Board:					
Payment to railroad trust funds	313,000,000	350,000,000	350,000,000		+37,000,000
Limitation on administration	(39,730,000)	(36,750,000)	(36,750,000)		(−2,980,000)
Milwaukee Railroad restructuring, administration	300,000				−300,000
Soldier's and Airmen's Home (trust fund appropriation): Operation and maintenance	19,516,000	20,326,000	20,326,000		+810,000
Total, related agencies	1,391,029,000	1,450,794,000	1,436,925,000	−13,869,000	+45,896,000
Federal funds	1,351,299,000	1,414,044,000	1,400,175,000	−13,869,000	+48,876,000
Trust funds	(39,730,000)	(36,750,000)	(36,750,000)		(−2,980,000)
SUMMARY					
Title I—Department of Labor:					
Federal funds	13,184,334,000	12,170,188,000	11,892,977,000	−277,211,000	−1,291,357,000
Trust funds	(1,959,051,000)	(2,170,172,000)	(2,170,172,000)		(+211,121,000)
Unauthorized, not considered: Federal funds	(325,000,000)	(150,000,000)		(−150,000,000)	(−325,000,000)
Title II—Department of Health and Human Services:					
Federal funds	51,836,110,000	57,457,179,000	57,120,574,000	−336,605,000	+5,284,464,000
Trust funds	(3,324,855,000)	(3,592,424,000)	(3,562,340,000)	(−30,084,000)	(+237,485,000)
Unauthorized, not considered: Federal funds	(607,679,000)	(459,331,000)		(−459,331,000)	(−607,679,000)
Title III—Department of Education: Federal funds	14,069,768,855	13,515,953,000	14,137,984,000	+622,031,000	+68,215,145
Title IV—Related agencies:					
Federal funds	1,351,299,000	1,414,044,000	1,400,175,000	−13,869,000	+48,876,000
Trust funds	(39,730,000)	(36,750,000)	(36,750,000)		(−2,980,000)
Grand total, direct appropriations all titles:					
Federal funds	80,441,511,855	84,557,364,000	84,551,710,000	−5,654,000	+4,110,198,145
Trust funds	(5,323,636,000)	(5,799,346,000)	(5,769,262,000)	(−30,084,000)	(+445,626,000)
Unauthorized, not considered: Federal funds	(932,679,000)	(609,331,000)		(−609,331,000)	(−932,679,000)

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GENERAL LEAVE

Mr. NATCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter, along with tables and charts on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 85, COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. BEILENSON, from the Committee on Rules, submitted a privileged report (Rept. No. 96-1261) on the resolution (H. Res. 772) providing for the consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 7020, HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. BEILENSON, from the Committee on Rules, submitted a privileged report (Rept. No. 96-1262) on the resolution (H. Res. 773) providing for the consideration of the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, which was referred to the House Calendar and ordered to be printed.

APPOINTMENT OF CONFEREES ON H.R. 1197, TONNAGE MEASUREMENT SIMPLIFICATION ACT

Mr. ASHLEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1197) to simplify the tonnage measurement of certain vessels, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. PERKINS. Mr. Speaker, reserving the right to object, it is my understanding that the unanimous-consent request is to seek a conference with the Senate on H.R. 1197, a House-passed measure dealing with vessel tonnage, to which the Senate has added a nongermane amendment affecting the regulation of the Surface Mining Act. The House should indeed agree to go to conference with the Senate on this and should accept the Senate amendment dealing with surface mining regulation.

Mr. Speaker, I think that the Office of Surface Mining has gone way beyond the intent of Congress and imposed unnecessary and unreasonable burdens upon the operator. In fact, if the Office of Surface Mining is permitted to go unchallenged, coal mine production in eastern Kentucky will be strangled to death.

Last September 11, the Senate passed S. 1403. This has been bound up in committee in the House and embodies the text of the amendment the Senate has made to H.R. 1197, the vessel tonnage bill.

If I had been drafting this provision, I would have made it stronger in preventing bureaucratic nitpicking, which does nothing to protect the environment, but is destroying the coal industry.

I would hope that the House could accept this amendment promptly so that the Nation could get on with the task of producing domestically the energy we need to eliminate our dependency on foreign oil. We will never be able to solve this crisis if we continue to strangle the industry which is capable of producing the energy for our domestic needs.

Mr. ASHLEY. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Ohio.

Mr. ASHLEY. Might I respond to the distinguished chairman by saying that he can be assured that the area of concern to him as he has described it will be a subject of intense consideration by the conferees. As a matter of fact, the Speaker has indicated that the conferees will be appointed representing not only the committee which I am acting chairman at the present time but, indeed, conferees from the Committee on Interior and Insular Affairs, all of this so that the matter that is not germane to the House bill can receive the kind of consideration the gentleman has indicated it should.

Mr. PERKINS. Mr. Speaker, I certainly will not object. It is my hope that nobody would object to this bill going to conference. It is much better for the bill to go to conference than go back to the Rules Committee.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. RAHALL. Mr. Speaker, reserving the right to object, I would ask the distinguished gentleman from Ohio the parliamentary situation. As I understand it, the merchant marine jurisdiction will be separated entirely from the Surface Mining Act that has amendments that have been tacked on by the other body?

Mr. ASHLEY. Mr. Speaker, will the gentleman yield?

Mr. RAHALL. I yield to the gentleman.

Mr. ASHLEY. I would say to my friend from West Virginia he described the situation with his customary accuracy. That is precisely what is going to happen. The conferees from the Merchant Marine and Fisheries Committee, being inexpert in the matter relating to the nongermane Senate amendment, will not be charged with responsibility of making decisions in that matter. Rather, the appropriate committee of jurisdiction conferees from the appropriate committee of jurisdiction will have that responsibility.

Mr. RAHALL. All conferees on the surface mining amendments which were passed a second time by the Senate in order to attach it to this merchant marine bill, all of the conferees on that part of the legislation will be appointed by the House Interior and Insular Affairs Committee chairman?

Mr. ASHLEY. The gentleman is right.

Mr. RAHALL. Further reserving the right to object, Mr. Speaker, and I shall not object, I want to associate myself with the remarks made by the gentleman from Kentucky, Mr. PERKINS, in regard to the operation of the Office of Surface Mining. The distinguished chairman of the Committee on Interior and Insular Affairs, Mr. UDALL, has held oversight hearings on this legislation. He has followed through on his commitment to hold those hearings. We found during that oversight process many problems that have developed in the implementation and followthrough on what I thought was the congressional intent when the Congress originally passed this legislation in 1977.

A nearly unanimous critique of the Office of Surface Mining's performance to date by engineers, industry, States, the Department of Energy, and the Council of Economic Advisors concludes that the final rules add unnecessarily to costs of production and, in some instances, actually preclude more appropriate engineering practices.

Congressional Research Service concludes:

Many of the regulations contained in the enforcement program are inconsistent with the spirit of the Surface Mining Act and some appear to be inconsistent with the actual language.

The National Governors Association criticizes OSM for frustrating State primacy and for making it virtually impossible to develop anything other than a "State-level clone" on OSM regulations because of impending deadlines and voluminous paperwork.

The Secretary of Energy, in his report to the President June 4, 1979, on increasing coal production and use, also concludes that OSM regulations may be setting a trend away from the act's intent. He recommends that:

DOI's surface mining regulations and unsuitable criteria be applied in a way that facilitates increased coal production.

Third. Eliminate the requirement that State regulations be identical to those of OSM thus allowing the States to tailor

their regulations to take into account the special needs and unique features of each State so long as those regulations conform to the strict standards of the act.

S. 1403 makes absolutely no substantive changes in the basic 1977 statute. All of the statutory environmental standards remain intact. And, very importantly, nothing in S. 1403 affects or diminishes the Secretary of the Interior's ultimate responsibility to review State program applications to determine whether State laws and regulations do in fact meet the requirements of the act. In other words, the Secretary continues to retain full authority as originally authorized by the statute to approve or disapprove State programs. If the State-proposed regulations are found lacking by the Secretary, he may and, in fact, must disapprove those regulations and reject the State program.

S. 1403, as reported, seeks to redress this abandonment.

The 1977 law finds that, and I quote:

The primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this act should rest with the States;

The Federal role is to, and I quote:

Assist the States in developing and implementing a program to achieve the purposes of this act.

The Federal role was to assist—to assist the States and to take over a program when a State did not meet the requirements of the act—restructure the thinking of bureaucrats.

As the act is now being administered, the only way for a State to insure compliance would be to enact the Federal regulations as State law.

The original 1977 bills in both Houses of Congress did require that State law conform to Federal law and regulations. The Congress dropped this but the OSM is seeking to achieve the same end in its administration of the program.

The Senate passed nongermane amendments to the Surface Mining Act unambiguously reaffirms the intent of Congress with respect to the role of the States in surface mining regulation. The 1977 act specifically declares that "the primary responsibility for developing, authorizing, issuing, and enforcing surface mining regulations rests with the States."

As the act has been implemented, the role of the States has been diminished. That policy shift is not fair to States that have consistently supported the goals and purposes of the Surface Mining Act. It demonstrates a lack of realistic planning. It is not a sound basis for our coal policy.

Mr. Speaker, I shall not take further time of the House, and withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. MURPHY of Pennsylvania. Mr. Speaker, reserving the right to object, I would like to associate myself with the remarks of both the gentleman from Kentucky and the gentleman from West Virginia. Had we had the opportunity to have the microphone first I believe we would have called the bill up, confirmed the Senate amendment and accepted the bill as is.

However, the motion being what it is by the gentleman from Ohio, acting chairman of the committee, we must reluctantly join in hoping to expedite this very serious matter to us in the surface coal mining States to a conference committee. I do urge my chairman, the gentleman from Ohio, to expeditiously bring this matter to consideration in a conference so that we can properly handle this matter.

It was our intent a year ago or 2 years ago when we adopted the Surface Mining Act that any State that would conform with the law alone as we drafted it here in this Congress would immediately establish primacy. Thus far Pennsylvania, the State that that law was patterned after, has been denied primacy by the Office of Surface Mining.

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That is why I certainly hope that our chairman on this very important measure will expedite the procedure before the conference committee.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of Pennsylvania. I will yield to the gentleman from Kentucky.

Mr. PERKINS. I thank the gentleman for yielding.

Let me state that the State of Kentucky in the last general assembly amended the Surface Mining Act and followed numerous suggestions that were suggested by the Department of the Interior in Washington. Now they have denied primacy in Kentucky. This is a serious situation, and I certainly hope that it will be resolved in the conference and the members of the conference committee will resolve this problem.

Mr. MURPHY of Pennsylvania. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio (Mr. ASHLEY)?

Mr. WAMPLER. Mr. Speaker, reserving the right to object—and I do not intend to object—I simply want to point out to the gentleman from Ohio (Mr. ASHLEY) and others that I concur fully in the remarks of the distinguished gentleman from Kentucky (Mr. PERKINS). As is known, I oppose the enactment of the 1977 Surface Mining Act because I believed then, and I think the record has since confirmed the fact, that this statute was too far reaching, that it did not allow flexibility among the differences in mining techniques in the several States, especially in my State of Virginia, where most of the surface mining occurs on steep slopes. As I understand it, the nongermane amendment that has been added in the Senate would give the States more flexibility in addressing the uniqueness of the reclamation procedures and practices.

I just hope that in the conference this amendment will be considered very carefully, because coal is the one hope we have to achieve self-sufficiency in energy in this country. It just seems to me that to permit the present Office of Surface Mining to operate the way they are in what I perceive to be an irresponsible way and contrary to the intent of Congress, that we could never hope to achieve the full potential of coal production. So I simply point this out and agree with what my other colleagues have said in having sublime faith and confidence in the gentleman from Ohio. I know he is going to do the best he can in the conference to see that those of us who want our industries to survive and be viable will be given every consideration.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio (Mr. ASHLEY)? The Chair hears none, and appoints the following conferees: Messrs. UDALL, BINGHAM, SEIBERLING, ECKHARDT, CARR, KOSTMAYER, MURPHY of Pennsylvania, RAHALL, VENTO, HOWARD, LUJAN, YOUNG of Alaska, SYMMS, MARRIOTT, and CHENEY, with respect to disagreement with matters contained in sections 4 and 5 of the Senate amendment and modifications committed to conference.

The Chair states further the Chair will appoint additional conferees on sections 1, 2, and 3 on tomorrow.

DEPARTMENT OF COMMERCE DEFERRAL OF $15.8 MILLION FOR INTERNATIONAL ENERGY EXPOSITION IN KNOXVILLE, TENN., AND REVISION TO PREVIOUSLY TRANSMITTED DEFERRAL FOR NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S COASTAL ENERGY IMPACT FUND—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 96-363)

The SPEAKER pro tempore (Mr. FARY) laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report a new Department of Commerce deferral of $15.8 million in funds for the International Energy Exposition in Knoxville, Tennessee. In addition, I am reporting a revision to a previously transmitted deferral for the National Oceanic

and Atmospheric Administration's Coastal energy impact fund increasing the amount deferred by $0.5 million.

The details of each deferral are contained in the attached reports.

JIMMY CARTER.

THE WHITE HOUSE, *August 27, 1980.*

JIM COMSTOCK, PUBLISHER OF THE FAMED WEST VIRGINIA HILLBILLY ADDRESSES ROTARY CLUB IN WASHINGTON, D.C.

(Mr. RAHALL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

● Mr. RAHALL. Mr. Speaker, today, the Rotary Club of Washington, D.C. had the distinct pleasure of hearing Jim Comstock, the publisher of the famed West Virginia Hillbilly.

Following its birth in 1956, and its rebirth in 1959, the Hillbilly, continues to be, as Jim has stated himself, "A paper for people who can't read, edited by an editor who can't edit."

He is a good friend and a delightful person. I know the Rotary enjoyed hearing him.

I find it interesting that Jim would come to the Nation's Capital, after all the things he has said about those, like us, who represent the public's interest.

Jim once noted in the Hillbilly:

> At the dedication of a bridge the other day in Harrison County I got to thinking about the prayer that the man of God made, and received revelation, which I suppose is the best test for the efficacy of prayer. He prayed for the "Governor, the Members of Congress, and the members of the State legislature." I got to wondering why he chose those whom the ballot blest, instead of other members of society, teachers, lawyers, physicians, and of course, editors. The idea came like that dove flying into the kitchen, that politicians perhaps stand most in the need of prayer.

I welcome him to Washington, and am sure he will enjoy his stay.●

THE PROCESSING AND MANAGEMENT OF REFUGEES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 60 minutes.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, as a Member of the House Committee on the Judiciary, and being from the State of Wisconsin, which contains one of the Cuban refugee camps, I have a special interest in the Cuban refugees and how the Federal Government has handled their entry into this country.

On August 8, Philip Kiko and Timothy Sheehy of my staff and I visited the Fort McCoy facility to become better acquainted with the resettlement procedures and operations of a refugee camp. This visit proved to be a real "eye opener" with regards to the lack of coordination, planning, and foresight by the Federal agencies that were, or are, involved at Fort McCoy.

I am taking the opportunity of this special order not to criticize the Refugee Act of 1980, which I opposed, or to criticize President Carter's handling of the Cuban refugee influx as I have done previously. Instead I am reporting my observations and making recommendations for a more efficient, coordinated approach toward the processing and management of refugees, both the Cubans we are accepting now and other groups that may come here in the future.

First, I will outline recommendations intended to improve the situation at Fort McCoy, which probably shares many of the same problems experienced at Fort Chaffee in Arkansas and Fort Indiantown Gap in Pennsylvania. Then, I will discuss in more detail the observations that led to these conclusions.

The recommendations I am submitting for consideration by Congress and the administration are as follows:

First. Better coordination and management of the processing and placement procedures by the Government agencies involved.

Second. Cutting the bureaucratic redtape in the placement of juveniles and transferring the successful youth program at Fort McCoy to Fort Chaffee, where the juveniles are to be transferred later this year.

Third. The establishment of a program of better cooperation between the Federal Government agencies at Fort McCoy and the law enforcement offices of the surrounding communities.

Fourth. An increase in the number of INS personnel, at the refugee compounds and the temporary deputization by Attorney General Benjamin Civiletti of sufficient numbers of State and local law enforcement officials to enable them to detain and return escapees from Fort McCoy.

Fifth. The establishment of mandatory education and culture assimilation programs for all age groups of refugees.

Sixth. The utilization of military transport aircraft, where practical and feasible, to transport refugees to their resettlement destinations.

Seventh. Full Federal reimbursement of State and local resettlement-associated costs, as provided by the Fascell-Lehman amendment to the fiscal year 1980 supplemental appropriations bill.

Eighth. Segregation of mentally retarded and mentally ill refugees from the criminal and homosexual element within the compounds.

Ninth. The establishment of better monitoring procedures for refugees placed with and in the custody of sponsors.

Tenth. The establishment of a permanent policy governing the transferral of refugees to Federal prisons, or other institutions in the case of those with special problems making them more difficult to resettle.

Eleventh. The development by the State Department or the INS of specific repatriation procedures for Cubans seeking to return to Cuba.

From day one, the administration's handling of the refugees at Fort McCoy was awkward and lacked direction. Since there were no specific guidelines for many situations, no one was sure who could or should do what, so we had a lot of bureaucratic wheelspinning.

First, the Federal Emergency Management Agency (FEMA) was given the responsibility for coordinating the various refugee programs at Fort McCoy. FEMA was established as a disaster relief agency to handle disasters created by floods, hurricanes, blizzards, and so forth. FEMA was not created to coordinate programs for 119,000 Cuban refugees unable to speak English, having limited knowledge of American customs, having a large percentage of criminals within their ranks, and unanimously needing to be resettled.

This mismatch was finally recognized and in July, coordination and management of the refugee compounds was taken over by the Department of State and the Department of Health and Human Services (HHS). Unfortunately, this stumbling about has fostered some of the problems now faced by the refugees at Fort McCoy.

For example, from conversations with Governor Dreyfus' office and Fort McCoy employees, I must conclude the internal government of the Cubans is out of control. The large number of criminal refugees at Fort McCoy, and the poor or complete lack of supervision there have created a situation in which the infrastructure of the refugee self-government appears to have been taken over by strong men and their gangs, like the Eagles and the Warhawks, vying for control of the remaining refugees in the camp.

I have also been informed there is a black market within the refugee compound for which these different groups are struggling for control. This black market, I am told, includes drugs, homosexual activity, prostitution, et cetera. Admittedly, part of the reason for the thugs taking control is these undesirables comprise a growing percentage of the refugee population at Fort McCoy that increases as the more desirable refugees are placed. However, it is still my opinion closer monitoring and stronger management of the situation by either FEMA, the State Department, or HHS could have prevented this from occurring.

Second, as for the handling of the Cuban juvenile population, bureaucratic redtape must be cut so certain types of unaccompanied juveniles can be resettled as soon as possible.

Two basic problems are cropping up in the resettlement of the 265 unaccompanied minors remaining at Fort McCoy of which only 60 to 80 have sponsors.

The first problem resolves around whether HHS or the State Department is responsible for a juvenile with a nonrelated guardian during the time the juvenile is in transit from Fort McCoy to the resettlement destination. The agencies involved do not agree on this point, and none of them are voluntarily assuming this responsibility.

The second, and more serious problem, is the question of agency responsibility for juveniles awaiting guardianship proceedings. Someone has to assume responsibility for the juvenile once he or she leaves the Fort McCoy compound, yet the States have been reluctant to assume this responsibility because of the costs they incur with no assurance of Federal reimbursement.

The "Catch 22" lies in the fact the Federal Government, on the other hand, will not transfer a juvenile to a State after a potential guardian has been identified as long as the juvenile has no official supervision. This problem could be resolved by having the appropriate Federal agency, whether it be HHS or the State Department, enter into agreements with the States providing for a guaranteed 100-percent reimbursement to the latter for any and all expenses they incur during this interim period if they take responsibility for the juvenile.

One of the most successful aspects of the Fort McCoy experience, I witnessed, was the dedication and commitment shown by the persons staffing the youth facility, headed by Mr. Noe Sanchez, director of the unaccompanied minor program. Mr. Sanchez and his staff have done an excellent job in providing the youth with English language and other educational programs, proper counseling, and a full range of recreational and athletic activities.

Presently, there are approximately 265 unaccompanied Cuban minors within the Fort McCoy compound, of which approximately 125 are segregated from the other refugees. I was told the reason for doing this is to prevent certain elements of the adult population from exploiting the juvenile population, such as the incidents of homosexual and heterosexual harassment of the youth which have been reported. In one instance, a sexually abused youth was smuggled out of the compound by camp officials and taken to a local judge so that he could be declared a ward of the State and thus not be forced to return to the camp.

□ 1950

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding. I think it should be pointed out that the gentleman's statement is very important from the standpoint of all of us who have experienced the refugee centers in their areas. Fort Indiantown Gap is close to my district, and I think many of the points the gentleman makes are points which apply equally for Indiantown Gap and I am sure some of the other centers around the country as well. The points the gentleman is making with regard to some of the corrections that should be taken at Fort McCoy in his State would also apply to things which should be done at Fort Indiantown Gap in my State and I assume at the other bases.

Let me ask the gentleman, since he has talked something about the language difficulties: Is the gentleman aware of the problem where many of the INS personnel put into these camps did not have Spanish-speaking ability, and thereby we had units acting as police forces in these camps or who were the law enforcement officials of record not being able to communicate with the refugees, which has led to some of the turmoil? Does the gentleman have any recommendations in that regard in the recommendations overall which the gentleman is making?

Mr. SENSENBRENNER. That is correct. Many of the INS, medical and State Department personnel do not have Spanish-speaking capability. FEMA initially hired a large number of college and university students from the various universities in the State of Wisconsin to act as interpreters. I have heard stories that including overtime some of these interpreters were making as much as $800 to $1,000 per week. That all comes out of the taxpayers' hide. It certainly is one of my recommendations that people who do have responsibility for interviewing and processing Cuban refugees be bilingual so that they can speak to the Cubans in their own native tongue, thus eliminating the necessity of hiring all these high-priced interpreters.

Mr. WALKER. I thank the gentleman for that and I think, also, it needs to be pointed out that it was that lack of communication which I think failed to ferret out some of the problems we had at these camps. The administration time and time again assured us that we had no real problems with most of the refugees, that their initial intelligence reports and the initial work they had done were such that they did not believe the people we were dealing with were any problems. Now we find out that as most of the refugees who have families in this country have been moved out of the camps and the people left in the camps are really very much of a problem element, I think that the lack of Spanish-speaking personnel at the camps made it impossible to determine that until later. It also contributed to the fact that we failed to recognize there were professional terrorists within these camps. I have to attribute some of the troubles that have been taking place, some of the rioting, to professional terrorists who I assume Castro has sent in here, but, nevertheless, they were the ones, I think, who fomented a great deal of trouble we had, at least at Indiantown Gap.

Mr. SENSENBRENNER. The gentleman from Pennsylvania is absolutely correct. Most of the Cubans who did not have criminal records, who did have relatives in the United States, who were the more desirable refugees for resettlement purposes, have already been resettled. Those that are remaining at the three camps, Fort McCoy in Wisconsin, Fort Indiantown Gap in Pennsylvania and Fort Chaffee in Arkansas, are more of the hard core criminals and professional troublemakers as well as agitators that Castro may have sent in.

The problems I have outlined and which the gentleman from Pennsylvania has experienced in his State I believe are going to increase because there are fewer and fewer sponsors available for refugees that do have criminal backgrounds and consequently are less desirable to be sponsored.

Mr. WALKER. As I said earlier, I think the gentleman is making a very important statement. It certainly denotes the need for this administration and any future administration faced with the same problem to come up with a rationalized kind of policy rather than simply dumping large numbers of refugees into sites which, first, were probably not prepared to accept them and, second, where the facilities were totally inadequate and, third, where the policies were totally inadequate.

□ 2000

There needs to be some kind of a rational policy from day one, when we announce that we are accepting a certain number of refugees, right on through the process. We certainly did not have it in this regard, and I think we are paying a terrible price for not having had a rational policy from the beginning.

I thank the gentleman for what he is doing.

Mr. SENSENBRENNER. I thank the gentleman from Pennsylvania for his remarks, and I wish to agree with all of what he has said.

When unaccompanied minors are transferred to Fort Chaffee as Fort McCoy is phased out, they should be segregated from the adult population. It would also be my recommendation that Mr. Sanchez be transferred to Fort Chaffee so he will be able to continue some of his more successful programs. It would be a shame if some of these programs were shelved, never again to see the light of day. Additionally, many of the minors look upon Mr. Sanchez as a father figure and trust him. Mr. Sanches and that trust should be there for them at Fort Chaffee when they are uprooted again.

The third recommendation, regarding better cooperation between the law enforcement officials of communities surrounding the Fort McCoy compound and the Federal agencies, is an important one. Sheriff Ray Harris, of Monroe County, expressed concern over the vola-

tile situation in his community created by the fears local residents have over the large number of "fence jumpers" and the markedly increased number of unsolved local burglaries—in which only the necessities of life, that is, food and drink were taken—they believe the fence jumpers are responsible. Sheriff Harris explained that the residents of Monroe County are arming themselves at an unprecedented rate and he is worried that innocent people, either Cubans or local residents, may be accidentally shot.

He cited an example where a person, who was not a refugee, was shot at while running across a field and he expressed the fear that similar incidents may occur.

There is also resentment among local residents over the property stolen or damaged by fence jumpers. The State Department officials at Fort McCoy should have been prepared from the beginning to work with area residents to ease tensions on this score and to help them seek compensation for their losses through official channels.

A community relations program by the Federal Government could, in my opinion, alleviate some of these fears and tensions among the residents of areas surrounding Fort McCoy and other refugee compounds.

The problem of cooperation between local law enforcement officers, INS officials, the military and U.S. marshals is crucial because of the lack of adequate INS personnel responsible for returning the escapees to Fort McCoy compound which leads to my fourth recommendation for more INS personnel there.

The majority of the refugees remaining at Fort McCoy have criminal records and need closer supervision than normal refugees. The insufficiency of the number of INS officers at the compound becomes more evident when considering it is their responsibility to handle disturbances, return fence jumpers, and patrol compound 800, where as many as 75 undesirable refugees with violent criminal backgrounds are detained while awaiting transfer to the Federal prisons in Fort Leavenworth or Atlanta. When I visited compound 800, the head INS officer, John Bailey, stated that on one occasion he was very happy that, by chance, the National Guard helped security by merely conducting maneuvers near the compound. Nevertheless, during one 3-day period, 14 refugees escaped from this compound and some are still at large.

Mr. Bailey also reported the staff problem is exacerbated in part by the employment contract that covers INS officers. Listing himself as an example, Mr. Bailey stated he actually is working without pay because the number of overtime hours he could work had been exceeded. Fortunately, out of personal commitment, Mr. Bailey continues to supervise compound 800.

This shortage of INS officers is compounded by the fact that only they have jurisdiction to return fence jumpers. Ambassador Victor Palmieri, President Carter's Coordinator for Refugee Affairs, in a meeting at my office in early July, informed me that State and local law enforcement officers would not have the authority to return refugees who escaped from Fort McCoy unless they were breaking a State or local law.

I was informed that when escaped refugees are discovered, State or local authorities are to inform the INS officers at Fort McCoy, who will then be dispatched to return the refugees to the camp. It is the opinion of Attorney General Bronson La Follette of Wisconsin that State and local law enforcement officers would be subject to false arrest and false imprisonment suits if they detain escaped refugees not violating State or local law.

In two letters to U.S. Attorney General Benjamin Civiletti, neither of which he ever responded to, I requested sufficient numbers of State and local law enforcement officers be temporarily deputized as U.S. marshals, to empower them to return refugees and to be ready for any disturbances like those happening at Fort Chaffee in Arkansas or Fort Indiantown Gap in Pennsylvania. The deputizations of local law enforcement officers would also free the already short supply of INS officers to handle internal security matters at Fort McCoy more effectively.

INS officers now utilized extensively to handle fence jumpers would be better utilized in guarding compound 800, the high risk area.

On the subject of fence jumpers, I would add there should be procedures to more closely monitor the number of fence jumpers. I am very doubtful all fence jumpers have been accounted for, based on my conversations with officials at Fort McCoy.

On a related matter, I have received reports that there has been animosity and a poor working relationship between the military personnel at Fort McCoy and the Federal, State, and local officials and employees involved in the camp's operation. I believe this ought to be investigated to determine how and why this has happened.

The fifth recommendation, there be mandatory education programs, is essential. A majority of the Cubans do not speak English and know little about our customs or practices. There have been no mandatory educational programs for either adults or the unaccompanied minors at Fort McCoy. This has serious consequences in that many of the refugees are resettling in such heavily Cuban areas as Miami. On Thursday, August 21, the Federal Government approved and began a $250,000 program to teach English as a second language, but this seems too little too late for all the refugees already resettled without the benefit of this training.

Many fear these Cuban refugees resettling in heavily concentrated Cuban neighborhoods may not learn the English language, and will not readily become assimilated into the U.S. culture. They will instead continue to operate within their own "barrio" subculture, which has suffered many economic and social problems. A mandatory education program could accelerate the process of assimilation.

As for my sixth recommendation, I believe military transport airplanes should be utilized for resettlement transfers where practical for budgetary and logistical reasons. Presently, when sponsors are found, the refugee is given a ticket on a commercial airline and given instructions on how to read his ticket, get through the airports, and arrive at his destination.

In reviewing the computer printout on the destinations of the resettled refugees, it became evident to me many refugees are resettling in Miami. It would seem to be cheaper and more efficient to use military transport planes when the refugees have common destinations. This method lessens the chances for refugees to become lost in an airport or to hijack an airplane if they wish to return to Cuba.

Regarding my seventh recommendation, the authorizing legislation for the amendment was contained in H.R. 6942, the International Security and Development Cooperation Act of 1980. However, it appears unlikely that the conference committee will report the bill out soon because of the controversial nature of many of the provisions. Legislation must be passed soon so States like Wisconsin can be reimbursed. Wisconsin is already paying more than its fair share for a problem that was and is the result of the Federal Government's policies and should be shared equally by all States.

The most depressing aspect of the tour was the facilities utilized for the mentally ill. It was nothing more than a caged-off area, staffed by highly qualified and dedicated, yet an insufficient number of, health professionals. I was shocked to learn mentally ill patients under treatment are not segregated from homosexuals and criminals among the population.

The presence of chronic mental health problems among the refugees is verified by the fact that during the month of July, 27 percent of all visits to the emergency room were for violent or self-destructive reasons. As implied in my eighth recommendation, these patients should not return to the compound with the other refugees, where they may be taken advantage of or where innocent refugees will become victims of the mentally ill. Additionally, the U.S. Government should establish a policy directed toward providing the institutional and psychological care needed for the refugees with mental problems. This long-term problem could be resolved immediately, not through the time-consuming passage of legislation.

Regarding my ninth recommendation for post-placement refugee followup, I believe there should be specific monitoring procedures to insure refugees are being properly cared for by their sponsors. The sponsors are under a moral obligation only, and I have heard scattered reports of some refugees being treated as slaves, prostitutes, or dependents for purposes of obtaining welfare benefits by the sponsor.

There should also be notification of local community and Government agencies of a refugee's placement within their jurisdictions, so they can assist in the follow up.

As for the tenth recommendation for policies governing placement of "difficult" refugees, I would like to share some statistics developed by Rachel M. Schwartz, a health researcher at Fort McCoy, who has made a report to the Alcohol, Drug Abuse and Mental Health Administration of the Public Health Service. These statistics graphically illustrate some of the types of people Castro released, in addition to raising some serious concerns about future U.S. policy toward the remaining refugees, who will be difficult to place.

It is my understanding INS has set up a computer databank of information on each refugee at Fort McCoy, including their resettlement destination, age, medical clearance, and sponsor, as well as information provided by the refugee in personal interviews by INS officials.

As of August 2, according to computer data, 75 percent of the 6,660 refugees still at Fort McCoy admitted they had been in jail for more than 2 weeks. Of this 75 percent, 33 percent had been imprisoned for crimes such as theft, murder, burglary, et cetera, 32 percent had been jailed for drug abuse, gambling, disorderly conduct, black market activities, antisocial behavior, et cetera, and 35 percent had been jailed for such crimes as being absent from the army, refusing to serve in the army, loitering, not going to work, or for political reasons.

While these figures are highly indicative of the magnitude of the criminal and security problems at Fort McCoy, a personal observation I made while there brings this point home even more vividly. While on my inspection tour, U.S. marshal Reggie Wilkinson showed me a closet full of over 900 homemade knives, pokers, machetes, and other weapons confiscated from refugees.

The presence of these weapons confirms the serious security problem that exists at Fort McCoy. Unfortunately, I must report that the security situation has deteriorated to the point where 450 additional military troops were called in just last night to supplement the 600 already there.

This data, which hopefully also is being compiled at Fort Indiantown Gap in Pennsylvania and Fort Chaffee in Arkansas, illustrates the future problem of placing undesirable refugees and the need for policies governing their placement—whether in homes, prisons, or other institutional settings appropriate to their special problems.

To aid in the formulation of a resettlement policy for these individuals, I shall request the State Department, the Department of Health and Human Services, and other appropriate agencies to provide a summary profile of the background of the Cuban refugees at the various camps. This should be useful in planning policies to deal with the remaining Cubans and for future refugee influxes.

As for my last recommendation, the startling number of airplane hijackings by Cubans seeking to return to Cuba clearly proves the need for permanent procedures for the repatriation of refugees seeking to return to their native lands. The lack of administration guidelines on these situations has forced us into a position of reacting to them on a piecemeal, inconsistent basis, and has prompted some disgruntled refugees to take matters in their own hands by hijacking airplanes.

In conclusion, I would hope the U.S. Government can learn from its mistakes. The mismanagement and lack of coordination must not be repeated in the future, if and when large numbers of refugees are allowed into the United States. I believe the recommendations I have made today will remedy those problems.

□ 2010

Mr. PETRI. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to my colleague, the gentleman from Wisconsin.

Mr. PETRI. Mr. Speaker, I wish to commend my colleague from Wisconsin, Congressman SENSENBRENNER, for his comprehensive list of detailed recommendations for improving the management of the Cuban refugee problem. As he has noted, it is particularly appropriate that he address these problems, as a Wisconsin member of the Judiciary Committee.

In a way, he is filling the leadership void being left by the chairperson of the Subcommittee on Immigration. Congressman HOLTZMAN, who is leaving the House. Despite passage of the Refugee Act earlier this year, there remain many serious issues of immigration and refugee policy that we simply must address. In fact, this whole area cries out for congressional leadership, and I am glad to see my colleague from Wisconsin providing that tonight.

I have previously stated to the House my belief that this year's special Cuban refugee problem stems initially from a gross failure of the Castro regime. Our overriding policy should be to focus attention on that fact, in this hemisphere and around the world. Our failures in supervising the boatlift and handling the Cubans after arrival detract from that effort.

As to the refugees themselves, aside from those we let Castro force upon us in order to embarrass us in return, most were voting with their feet and fleeing a failed regime. They should be treated not as permanent immigrants but as temporary political exiles, awaiting a change in government before returning eventually to their homeland. I have even suggested that if they wish to form a government in exile, we should look favorably upon it. If Fidel Castro wants to play games with us, I see no reason why we should not raise the costs to him where feasible.

Finally, it seems to me that this year's Cuban episode is just one more example of a serious double standard that afflicts our entire immigration and refugee policy. We have a strict policy standard for the Eastern Hemisphere and a loose policy or no policy at all for the Western Hemisphere. Eastern Hemisphere immigrants have quotas, health tests, screening procedures, sponsor requirements, and the like, while hordes of people from this hemisphere come in illegally or semilegally and are tolerated or even encouraged. The administration does not spend all the money appropriated for border surveillance and the Social Security Administration has not even done much of a job of preventing illegals from getting cards. The whole system breeds an unhealthy disrespect for the law.

Years ago we at least gave the equivalent of today's Mexican entrants a legal status through the Bracero program. This program was ended for various reasons, but that did not stop people from coming in; it just removed all controls and restraints. Surely our current policy of confusion and drift is far worse and cries out for reform.

Mr. SENSENBRENNER. Mr. Speaker, I would like to thank my colleague, the gentleman from Wisconsin (Mr. PETRI), for taking part in this special order. I recognize that he represents the part of Monroe County in which Fort McCoy is located.

I know that the people at the western edge of the gentleman's district are concerned about the problems because of the proximity of the Cubans to their own homes, and I look forward to working with him in coming up with legislation which will make sure that this unbelievable mess never happens again.

Mr. HAMMERSCHMIDT. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Speaker, I am very appreciative for our colleague Mr. SENSENBRENNER for arranging time to review and discuss this very important national concern. I share with him the apprehension he has expressed over this continuing problem and feel that he has made some valuable recommendations toward implementing future policy. I hope that this administration will pay heed.

Mr. Speaker, I am most grateful for the opportunity to address my colleagues on

the floor today on the problems associated with the administration's policies and procedures in handling those people who fled Cuba for the United States during the past few months and the particularly adverse impact they have had on Arkansas.

I think the only way a true picture of what has been happening can be presented is to review the entire sequence of events which has taken place over the past 4 months.

In April, as rumors began to circulate that Fort Chaffee might be used to process Cubans who had entered this country illegally, I was in touch on several occasions with administration officials to make known to them the opposition of the local community to any such action. I pointed out to these officials that Fort Chaffee had previously been used to process nearly 50,000 Vietnamese refugees and that the equitable thing to do would be to select a facility which had not previously been involved in any such operation. It should be noted at this point that the local people who lived in the vicinity of Fort Chaffee, as well as government officials at local through State level, had been very receptive and supportive of the Vietnamese refugees when they were being processed at that installation. However, the general feeling was that it was time "to share the wealth."

In early May President Carter announced that he had selected Fort Chaffee, which is in my congressional district, to serve as a processing center for those Cubans who were fleeing their native land. Since that time local citizens have been subjected to one after another glaring example of Government ineptitude, broken promises from the highest level, as well as arrogant disregard of the rights and wishes of the local populace.

On May 8, 1980, immediately following the announcement that President Carter had selected Fort Chaffee, I was in touch with him to identify specific concerns of the local people. These fell into the following areas: Employment impact, health, criminal records, economic impact, and internal security. At that time, I also expressed the belief that while the local people would do what they could to make this resettlement program work, massive Federal financial assistance and full Federal cooperation for the localities affected would be needed and I asked President Carter to make such help available immediately.

The first major disappointment came right at the beginning when the President designated FEMA—The Federal Emergency Management Agency—as the lead agency to coordinate the entire operation. This choice set the tone for what was to follow. FEMA is a new agency and is simply not staffed with sufficient people of a caliber or experience level which would permit them to run an operation of this size and complexity in an efficient manner. Based on my experience with the Vietnamese refugee operation, where the lead agency had been the Department of State, I made the same offer to FEMA officials as I had to State officials 5 years earlier: To arrange for them to be introduced to and meet with those local officials, businessmen, and civic leaders who could offer invaluable advice on how to involve the local community in the overall effort. Where State had accepted such offers eagerly and moved quickly to take advantage of them, FEMA never displayed the slightest inclination to do so. As a result the channels of communication were never opened by FEMA to the local community.

It also quickly became apparent that the administration had become bogged down as to what controls they had over these illegal aliens. This is best illustrated by the Posse Comitatus contretemps. Under the administration's interpretation of this century-old statute, Army personnel were deemed powerless to exercise any physical restraint against the Cubans. Needless to say, it did not take the Cubans very long to discover this and that they were able to leave the post practically at will. Just as obviously, the burden of restraining the Cubans then fell on the law enforcement departments of the small communities surrounding Fort Chaffee.

Starting on May 21, 1980, I directed inquiries to senior officials of the Department of Justice concerning the impasse over Federal control of the Cubans, particularly referring to the Posse Comitatus problems. One assistant attorney general advised that the Department of Justice only responded to such questions when they were submitted in writing. He did deign, however, to refer me to the Acting Commissioner of the Immigration and Naturalization Service who expressed disbelief that the jurisdictional problem outlined to him as existing at Fort Chaffee could actually exist.

□ 2020

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield at this point?

Mr. HAMMERSCHMIDT. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, on July 2, I posed this question in writing to Attorney General Civiletti, pointing out that we did not want a repeat happening at Fort McCoy of what happened at Fort Chaffee where the military were powerless to arrest or detain Cuban civilians and local law enforcement officers were powerless to arrest and detain illegal aliens who did not commit a violation of the State or local law. I received no response to that letter, not even acknowledgment of its receipt.

I sent a followup letter later during the month of July, and that still has not been responded to.

So as a result, local law enforcement agencies really do not have any power to do anything should they see a Cuban who has escaped from the compound running through the woods or walking down the road. They have to call up an INS official. It takes the INS official some time to get out. In the meantime, the Cuban has disappeared. So there has to be better cooperation. And I believe that the temporary deputization of local law enforcement officials as either border patrol agents or deputy U.S. marshals would help solve that glaring loophole in the law which the Cubans have taken advantage of in the gentleman's State as well as in mine.

Mr. HAMMERSCHMIDT. What the gentleman has just stated was a continuing pattern here, especially in the earlier days of Fort Chaffee.

The Acting Commissioner of the Immigration and Naturalization Service promised to check into this and be back in touch. Nothing further has been heard from him. The next contact was with an Associate Deputy Attorney General who, at least, was aware of the problem and willing to discuss it. However, it was his opinion that the post commander had all the authority he needed to control the Cubans and the Posse Comitatus issue was really not very important. In this conversation every attempt was made to make this senior official of the Department of Justice realize how seriously the local people were viewing the lack of control on the fort and the steps they were taking to protect their families from harm by those Cubans who were beginning to roam the countryside.

On May 22 a request was made to FEMA to transfer 30 U.S. marshals from Key West to Fort Chaffee in view of the Army's continued lack of authority.

On May 23 the U.S. marshal-in-charge at Fort Chaffee gave assurances he had sufficient personnel and they were doing "a good job."

On May 26 the first riot occurred at Fort Chaffee. With the Army still lacking authority to maintain law and order on the installation, it became necessary for the Governor to call out the National Guard to insure that the Cubans were kept on Fort Chaffee. From that point forward the guardsmen teamed with State police to patrol the perimeter of the base in an effort to insure the safety of the local residents.

On June 1 full scale rioting broke out at Fort Chaffee with resultant destruction of buildings and injuries to many people. At this point the Governor ordered in more guardsmen and State police. The Army, also, dramatically increased the number of soldiers it had on duty at the fort.

Only after these tragic events did the administration belatedly move to provide the Army with the necessary authority to keep the Cubans on the installation while they were being processed. Even this was not done easily or smoothly. I had flown to Fort Chaffee immediately after hearing of the riots on June 1 and toured the facility with city officials of Fort Smith. During this tour we were given assurances by a Presidential assistant that the Army now had been given the necessary authority to use reasonable force to restrain the Cubans. However, 5 minutes later in a conversation with the commanding general, whose office was about 100 feet from where the Presidential assistant was working, our group was told that he had not been given any new authority. Further investigation revealed that the new authority referred to was, in fact, just coming out of the typewriter in Washington.

Since the riots, literally thousands of my constituents have been in touch with me to express their indignation over happenings at Fort Chaffee and to demand that the Cubans be removed from there as quickly as possible. I might add that many media reports also carried

assurances from President Carter that no more Cubans would be sent to Fort Chaffee.

Now, earlier this month, President Carter announced his decision—an incredible decision in my opinion—to send several thousand more Cubans to Fort Chaffee from the three other military facilities being used to process the illegal aliens. I would like to point out also that the people who will now be sent to Fort Chaffee are those who are in the hard-to-place category insofar as sponsorship is concerned.

In yet another attempt to make the administration aware of the concerns of the local people, I wrote to President Carter once again, even though I was not consulted on this further use of Chaffee nor, for that matter, even informed officially of that decision. My concerns were pretty well summed up by the concluding paragraph in my letter to the President:

> I recognize that your spokesman has given assurances that a fully coordinated security plan will be adopted prior to the arrival of more Cubans at Chaffee. That is fine. However, we have seen too many promises broken about future happenings at Chaffee. On behalf of the citizens of the Fort Smith area, I urge you to give your personal attention and commitment to insuring that the necessary security is provided at Fort Chaffee so that the local populace will have no cause for concern for their own safety or that of their family.

Unfortunately, as with all other contacts with the White House on this sensitive subject, a form reply has been the only response.

The last point I would like to mention is the matter of reimbursement to the State and local governments for costs incurred by them as a direct result of the Cubans being at Fort Chaffee. From my fist contact with the President on May 8, 1980, concerning this matter, I have stressed the fact that this is a national problem and must be met with national resources and that States and localities in which resettlement centers are located should not be expected to shoulder the financial burden associated therewith. In spite of this urging by me and the two Senators, and disregarding the turmoil already created in the lives of thousands of our citizens, FEMA continues to nitpick the bill submitted by the State of Arkansas which, for the period starting with the arrival of the Cubans at Fort Chaffee until June 16, 1980, covered the expenses incurred by the State police, the National Guard, two cities, two sheriff's departments and the Governor's office, amounted to a grand total of $213,850.51. At this point they are arguing over a matter of approximately $12,000 in an operation which has already cost many millions. Where, I ask, is the perspective of those who are in charge? Where do the rights of our citizens fit into the overall scheme of things?

It is truly sad to see an act of human misery of epic proportions such as the Cuban migration turned into a comedy of errors. Instead of being a showcase for the compassion and understanding of the American people, the administration through sheer ineptness, lack of leadership at all levels, and bureaucratic bungling has succeeded in presenting our adversaries with a propaganda field day while, at the same time, demeaning the very persons they were trying to help.

In closing, let me present one final concern. Anyone who has visited the various camps and watched the Cubans being processed or watched them arrive in Key West in their small boats, as I have, can not help but be aware of the human side of this problem. Also, as a Nation we have always prided ourselves on opening our doors to receive those who have been victims of political persecution and who require sanctuary.

However, it now appears as if this administration is departing from the long held policy of limiting refugee admissions primarily to former political prisoners and their families, and to cases involving family reunification. Now, the doors appear to be opening to admit economic refugees on the same basis as political refugees. I simply must question the ability of this country, or any country, to continue to accept an ever increasing number of refugees from nearly every corner of the Earth.

As a specific example of this, the current Cuban migration figure is slightly over 120,000; however, the total figure of those who have fled the Castro regime to resettle in the United States is rapidly approaching 1 million. In this connection, it must be kept in mind that for many years this country had a very orderly immigration policy which permitted a specified number of immigrants to enter each year. This policy worked very well for the country and allowed us to control those entering to a number which could best be assimilated into our society. In recent years that orderly process has been changing rapidly. Now, in addition to the 270,000 immigrants who are allowed to come to this country under our normal immigration laws, the Immigration and Nationality Act of 1980 tripled the number of refugees permitted to enter annually to a figure of 50,000. I might add that the approximately 120,000 Cubans who have entered this year did not come in under the vastly increased quota but rather by a unilateral action of President Carter. In my opinion, it is time to take a long, hard look at our admissions policy with a view of determining just how far this country can go in helping the unfortunates of every nation on Earth without seriously interfering with the rights and welfare of our own citizens.

□ 2030

Mr. SENSENBRENNER. I thank the gentleman from Arkansas for his very perceptive comments, particularly as they relate to the situation in his own State.

I would concur with the observation of the gentleman from Arkansas that our immigration and refugee policy is haphazard and uncoordinated. I would hope that the 97th Congress would address itself to revising our immigration and refugee quotas so that the situation which we have experienced in 1980 will never happen again.

For my part, I think that there should be an absolute number of foreigners set by Congress that cannot be exceeded unless Congress should decide to amend that number either upward or downward, and within that number, the President would be limited in the number of foreign immigrants, refugees, applicants for political asylum or however else these legal immigrants are labeled.

So I certainly do thank the gentleman from Arkansas for his comments. I hope that the country is listening to what we have to report.

● Mr. McCLORY. Mr. Speaker, on June 4 of this year I took a special order to discuss with some of my colleagues on the House floor the serious problems resulting from the influx of Cuban refugees to this country. I rise today to reiterate the point I stressed then: That the President must consult with members of the House and Senate Judiciary Committees, as specified in the new Refugee Act signed into law in March of this year, concerning admission and treatment of refugees to the United States.

Under the new Refugee Act, a total of 19,500 Cubans were authorized to be considered for refugee admission during fiscal year 1980. Depending which figures you read, somewhere between 120,000 and 130,000 Cubans, or more, have arrived on these shores since April. Only in the case of the first 3,500 did the President consult with the Congress as prescribed by law.

Mr. Speaker, we are all familiar with the seriousness of the situation in Florida—the lack of housing for these people, the strain on the educational system posed by these many thousands of non-English-speaking children and adults, outbreaks of criminal violence, and the soaring costs, of course, borne by the suffering American taxpayer, associated with these conditions. In the best of times, the American citizen would have cause for concern in this situation, and these clearly are not the best of times.

Mr. Speaker, I salute my colleague from Wisconsin (Mr. SENSENBRENNER) for bringing this critical subject again to the attention of the Members of the House and of the American public.

Mr. Speaker, the main objective of the Refugee Act was to create a flexible and systematic procedure for the admission of refugees into the United States. Title II of the Refugee Act sets forth such a procedure. It eliminated the former seventh preference "conditional entry" provision of the Immigration and Nationality Act's immigrant visa preference system, replacing it with new provisions for the regular admission of refugees, as well as for their admission in emergency situations.

Through fiscal year 1982, a "normal flow" of up to 50,000 refugees may enter the United States annually. A number in excess may be admitted if, after consultation with the House and Senate Judiciary Committees, the President determines that the excess is warranted by humanitarian concerns or is otherwise in the national interest. Beginning in fiscal year 1983, no normal flow number is designated, and the President establishes the appropriate total number after consultation with Congress.

The President also decides the allocation of refugee admissions among refu-

gee groups annually, after consultation with Congress.

The Carter administration on April 15 announced that Cuban admissions for fiscal year 1980 would total 19,500.

Now the President may determine, after appropriate consultation with Congress, that an emergency refugee situation exists and admissions of refugees beyond those initially established for a given fiscal year are justified by "grave humanitarian concerns." He may fix a number of additional refugee admissions that may be allocated during the succeeding 12-month period or less among refugees of "special humanitarian concern."

President Carter used this emergency provision to allow the admission of 3,500 Cubans into the United States who were among the 10,000 who sought refuge in the Peruvian Embassy in Havana. Since this was before the 1980 totals were submitted to Congress, this number is included in the 19,500 admissions that will be made available for Cubans this year.

The procedure under which the President consults with Congress concerning refugee admissions is specifically prescribed by the Refugee Act. It includes discussions in person by Cabinet-level representatives of the President with members of the House and Senate Judiciary Committees. The President's representatives provide the committees with certain specific information, to be supplied at least 2 weeks in advance of the discussions.

The substance of the discussions regarding "excess" and emergency admissions must be printed in the CONGRESSIONAL RECORD, and was for fiscal year 1980 on April 21, 1980 (see CONGRESSIONAL RECORD: 8407–8420) and on June 10, 1980 (see CONGRESSIONAL RECORD: 13821–13833). A hearing must be held on proposed excess admissions and, if circumstances permit, on emergency admissions prior to the President's determination of the admissions number, unless public disclosure would jeopardize life or safety.

Mr. Speaker, in order not to consult with the Congress, the President has resorted to a technicality of dubious foundation, in my opinion, to accept the more than 100,000 Cubans who have come in in excess of the 3,500 on which he did consult the Congress. I believe the President's actions, however humanitarian his motives may be or claimed to be, are not within either the letter or the spirit of the new law, and the inconsistencies of his reaction to the Cuban refugee crisis have posed a problem of huge dimensions for the country. Cubans are now being held at various locations in the United States, including a military base not far from my district in the Midwest, where it has been reported that four out of five of the refugees being held in that camp have criminal records. The Cuban refugee problem has become a crisis in this and certain other localities and a burden for the whole U.S. citizenry, and it did not have to happen, at least in such proportions, had the new law been carried out as I believe it was intended to be enforced.

Mr. Speaker, I ask consent to have printed as a part of my remarks several stories in this week's news magazines about this subject and an editorial from the Waukegan, Ill., News-Sun about the Fort McCoy situation. Also, I am attaching a paper prepared by CRS analyst Barbara McClure on the subject of Federal assistance to State and local governments for expenses relating to Cuban-Haitian entrants under the Carter administration policy of giving parole status to Cubans who arrived in the United States during the period April 21 to June 19 and a similar status to a certain category of Haitians.

Mr. Speaker, I want to emphasize three points. The first, which I tried to get across in my special order on June 4, is that the President must consult with the Congress on the admission and treatment of refugees in compliance with the new Refugee Act. The language of the act is obligatory, not discretionary. We did not in passing the new Refugee Act hand to the President any carte blanche authority for the admission of refugees to the United States. It is not a question of the President's judgment, or the President's humanitarian feelings, or the President's wishes; the law clearly states that the President must consult with the Congress on the admission of refugees to this country.

Second, if there are deficiencies in the new law, that is something we need to look at in the Congress. If the new law provides a loophole through which hundreds of thousands of refugees can be dropped on our shores merely by being hauled in by the boatload, we need to do something about that.

Third, I want to state my position that all Cubans who wish to return to Cuba should be facilitated in their journey. I realize that talking is easier than doing on this last point, when the Castro regime refuses to take them back, but I feel something more can be done in that regard.

FOUR OF FIVE MCCOY CUBANS ARE EX-CONS: REPORT

WASHINGTON.—Four out of every five Cuban refugees interned at Fort McCoy in Wisconsin had prison records while in Cuba and an abnormally high number of them suffer from mental illnesses, National Public Radio reported Friday.

The radio network said a study conducted by a psychiatrist and a health researcher showed that 4,000 of the 5,000 Cubans at the Wisconsin base admitted to having served prison terms of at least 15 days in Cuba and that two-thirds of them were convicted for criminal offenses. The others were considered political prisoners.

The NPR quoted State Department official Paul Lane as disputing the figures and saying the number of refugees with criminal records or a history of mental illness is closer to 15 to 20 percent.

The two researchers, psychiatrist Peter Kramer and researcher Rachel Schwartz, conducted the study for the Department of Health and Human Services, according to the radio report.

CUBAN HIJACKERS—AND THOSE WHO STAY

Armed sky marshals began flying incognito aboard commercial jets again last week, behavioral profiles of potential hijackers were distributed to airline ground personnel and beefed-up security checks came into play at many of the nation's airports, especially in the South. The all-too-familiar state of siege that suddenly surrounded U.S. air travelers followed an unprecedented spree of skyjackings a fortnight ago—six planes diverted to Cuba in one week, three of them in a single day. All six successful plane heists, and several stymied attempts, were the work of recent Cuban refugees grown discontented with the United States and seeking a quick ride home.

The overwhelming majority of the 120,000 refugees from last spring's "Freedom Flotilla" would not dream of returning to Cuba, let alone stealing a plane to get there. But the renewed burst of air piracy did reflect a gnawing disillusionment in their ranks. Tantalized by tales of prosperity in the United States from relatives here who have visited the island, many of the new immigrants expected a world of silk shirts, Sassoons and Sonys. "They came here and woke up to reality," says Miguel Gonzalez Pando, director of Florida International University's Center for Latino Studies. Both work and housing have been hard to come by; a recent study of new refugees in Miami found that 73 percent had no permanent jobs and only 9 percent could pay for their own housing.

The latest spate of hijackings began when a Spanish-speaking man, toting a box he said was a bomb, commandeered an Air Florida flight between Miami and Key West and diverted it to Havana. His "bomb," it turned out, was simply a box of soap. Three days later, seven Cuban refugees threatening to ignite bottles of gasoline skyjacked another Air Florida flight en route from Key West to Miami. "It appears we may have the start of a new problem," said a Federal Aviation Administration official in Washington. He was right. In the next three days, National, Eastern, Republic and Delta planes were diverted to Cuba by hijackers brandishing gasoline bottles and, in one case, a "bomb" that was in fact a children's toy. In each case, the hijackers were arrested and all other passengers returned safely to the United States.

Stepped-up security thwarted two additional skyjack attempts last week, but the underlying problem of disillusioned refugees seems likely to remain. About 15,000 Cubans—the hardest to place—still languish in four camps around the country.

All the publicity about criminals, homosexuals, mental patients—and now potential hijackers among the Cubans—has had its effect on resettlement efforts. Some sponsors, impatient with supporting refugees who can't make it on their own, have abandoned them, and some immigrants have walked out on the jobs they finally did find. "The refugees sometimes expect huge-paying jobs," says the Rev. Jim Jamail of Catholic Charities in Houston. "If it's not exactly what they expected, they quit." Catholic Charities and other relief agencies have poured out hundreds of thousands of dollars to aid the Cubans, but most Federal and some state assistance has been withheld because the newcomers have not received official refugee status.

Disaffinity. The new refugees cannot always count on sympathy from Cubans who fled after Fidel Castro's revolution in 1959. The earlier refugees were largely middle class and professional; recent arrivals are often uneducated and unskilled. The disaffinity is sharp in Union City, N.J., a once-dying industrial town that was revived and transformed by the first Cuban wave, which now makes up 60 percent of the population. "I will never forget the feeling of disgust when I first greeted the new refugees," says one Union City Cuban. "It was the way they smelled, how dirty they were, how loud and crudely they spoke, and how many blacks there were."

Ironically, the homosexuals among the new refugees have fared better because of support from the U.S. gay community. The Universal Fellowship of Metropolitan Community Churches, a gay religious organization, took the lead in resettling homosexual Cubans. Along with the Dade County Coalition for Human Rights, the MCC has obtained sponsors for 1,500 refugees and expects to find homes for 5,000 more. "We decided we had to look after our own," says the Rev. Robert Falls of San Francisco. "Who else would?"

For all the problems, most of the new Cuban immigrants remain optimistic. Eighty-five percent have been released from refugee camps and resettled, most are receiving some form of aid from relatives, relief agencies or the government, and many have found jobs that hold at least a promise of future self-sufficiency. One example is Nicolas Gonzalez, 60, whose picture on Newsweek's May 26 cover illustrated the Cuban influx. After months of searching, Gonzalez recently landed a construction job. His wife works in a clothing factory and they live in a one-bedroom apartment in Miami's Little Havana with four other refugees. "I had moments when I questioned why we were here," Gonzalez admits. "I can understand how the hijackers feel, but I don't feel sympathy. They should have patience." The irony is that the refugees most likely to succeed in this country are those who understand just how slow and difficult the process will be.

FOR MOST CUBANS, U.S. A HAPPY HAVEN

Four months after leaving Fidel Castro's Communist stronghold, some Cubans are finding the promise of a better life in the U.S. only an illusion. But thousands more are glad to be in America.

Dramatic evidence of discontent came in mid-August, when homesick Cubans hijacked six airliners and ordered them flown to Havana. Several other refugees attempted suicide by drinking shampoo or slashing their wrists.

Despite such well-publicized incidents, evidence showed that a large majority of the 119,534 Cubans who left their homeland in last spring's sea lift still prefer America. Officials asked the most frustrated Cubans—those still in resettlement camps—if they would rather be back in Cuba. Only 77 of 5,131 at Fort Chaffee, Ark., said yes. Barely a dozen of 4,977 at the Indiantown Gap, Pa., camp wanted to return.

While many of the homeless have become despondent, a resettlement director at Fort Chaffee said the overall mood was one of quiet resignation. "They believe that what they can have here is better than what they had in Cuba," the official explained.

Five of every 6 Cubans who came here in the spring have been settled, while some 18,000 remain in camps. Half the refugees are in South Florida, many working in restaurants, picking vegetables or cutting sugar cane.

"The vast majority are like the earlier influx of Cubans," said a State Department official. "They are perfectly willing to start with what they have and build up from there."

The hijackings and wrist slashings, officials said, were done mostly by Cubans who either expected too much or had been misfits for years.

The process of resettling refugees still in the camps is expected to remain slow, despite millions of dollars being spent by federal and state governments. Most of those left unplaced are single males between 19 and 40 with poor educations and no English. Many are homosexuals, and some came from Cuban prisons or asylums.

In many instances, Cubans who found sponsors soon lost them. Some Floridians who sponsored young exiles turned them back to the state as unmanageable and mentally unstable.

Nearly 700 Cubans found sleeping in Miami's streets now live aimlessly in tents under a highway overpass. One said he preferred jail in Cuba.

Why don't those who want to go back to Cuba simply leave? The State Department has asked Havana five times that homesick Cubans be allowed to return. The answer each time: No.

[From Time magazine, Sept. 1, 1980]

THE WELCOME WEARS THIN: HOMELESS AND JOBLESS, MANY CUBAN REFUGEES ARE GETTING RESTLESS

Still they come, although no longer are the arrivals welcomed to the U.S. with "open heart and open arms," in Jimmy Carter's memorable phrase of May. Even so, Cubans continue to set sail from their homeland and arrive on the shores of Florida. Some 185 disembarked at Key West on a single day last week.

Still they come, despite a dismaying fact: the passage of time has not helped the U.S. to absorb the 120,000 Cuban refugees who have poured in since April. The problem endures stubbornly, disrupting life in Miami and southern Florida in particular, posing special difficulties of assimilation that have baffled and enraged local, state and federal officials.

Jobless and homeless in a strange country, some of the disillusioned Cuban refugees not only talk of wanting to go back home, a few have been driven to desperate measures. Two weeks ago, Cubans seized six airliners, three on Aug. 16 alone, and forced the pilots to fly to Havana; the skyjackings set records for the most in one week and the most in a single day. Stern security measures, augmented by reports that Fidel Castro has thrown the successful skyjackers into Cuban jails, appeared to be taking effect, however: there were no new skyjackings last week.

If anything, the basic problem of handling the Cuban refugees was getting worse. In Indiantown Gap Military Reservation, Pa., one of four camps where Cubans are held until sponsors can be found to give them homes, 1,000 troopers of the 82nd Airborne Division stood guard over 4,000 Cubans last week to prevent a repetition of the Aug. 5 riot in which 16 camp officials and 42 Cubans were injured, one fatally. In Fort McCoy, Wis., homosexual attacks and knife fights have broken out among the 5,300 Cubans housed in the camp; many are refugees under 18 who face continued idleness in what they view as a prison unless good Samaritans can be found who will assume legal guardianship as foster parents.

Nowhere, however, do the tensions and torments equal those in southern Florida, especially Dade County and its central city, Miami. More than half the Cuban refugees have been encamped there, joined by the vast majority of 30,000 black Haitians fleeing extreme poverty and the political repression of Jean-Claude ("Baby Doc") Duvalier. Thus Dade County confronts a challenge distinctive in American history: absorbing about 100,000 new residents, roughly equal to the population of Roanoke, Va., who for the most part are poor, unskilled, and unversed in the language of their new country, and doing it in just four months.

Superficially, the Miami area might seem to be the best place for Cubans to settle. Some 500,000 Cubans began arriving there shortly after Castro took over Cuba in 1959, and today Hispanics constitute 38 percent of Dade County's 1.6 million population. The early arrivals managed to get along with the area's non-Latin whites (47 percent) and blacks (15 percent); indeed, the Cubans' energies helped to transform Miami from a stagnating tourist town into a vibrant trade and financial center. And the Cuban advance guard created a cosmopolitan atmosphere in which the new arrivals can feel culturally at home: in Miami's Little Havana, Spanish is the predominant language, and at almost every corner there is a stand selling the dark, strong café cubano.

But there are important differences between the old and new refugees. Besides the fact that the earlier arrivals drifted in over a period of 20 years, giving the community time to assimilate them, many were middle- or even upper-class Cubans who arrived with some money and marketable craft or professional skills, and they came in family groups. The new refugees are predominantly penniless workers. A disproportionate number are single young men who grew up under a Communist system and have no idea of what life in a capitalist democracy is like. Though the established Cubans have been generous with donations of food, clothing and money, and have taken refugees into their homes, many are as apprehensive as their Anglo and black neighbors about the newcomers. Says Insurance Executive Leslie Pantin: "The undesirables are hurting the Cuban image of respectability."

The greatest problem is that the sheer numbers of new refugees have simply overwhelmed community facilities. Says Metro Dade County Commissioner William Oliver: "We're at the crisis level now." Examples:

HOUSING

There is very little for the refugees: the vacancy rate in Dade County rental houses and apartments is a mere 1 percent, and the county has received no federal public housing money in 14 years. Though Washington claims that 85 percent of the Cuban boat people have been placed with sponsors, many are stacked in crowded matchbox dwellings in Little Havana with distant relatives who have agreed reluctantly to let them stay for a while. Some 750 Cubans live in Campamento del Rio (River Camp), a group of Army squad tents nestled under the elevated highway Interstate 95. People wash at spigots; laundry flutters from wire fences; young, bare-chested men wander morosely among the tents. An ominous new note: the residents of the tent city include not only refugees who have been unable to find a home but some who lived with sponsors for a while and then were turned out onto the streets because their benefactors decided they no longer wanted to keep them.

JOBS

By one estimate, five of every six new refugees have failed to find employment. Says Lucas Perez, 32, a welder who came to the U.S. a month ago: "I've gone through two pairs of shoes looking for work. There is none." Adds Hilda Lisa, 29, watching over two children in the tent city, while her husband looks for work as an electrician: "We had been dreaming of getting out of Cuba for years. And now we are here—no jobs, no housing, nothing to do."

CRIME

In the first six months of 1980, crimes of all kinds in Dade County rose more than 20 percent over the previous year, compared with a statewide increase in crime of less than 15 percent. In normally placid Miami Beach, rapes, homicides, robberies and burglaries have risen almost 30 percent. There have been assaults by new refugees on each other, on whites, on blacks, and attacks by local toughs on the new immigrants. But most of the increase in crime in Dade County seems to stem from attacks by new refugees on established Cuban residents.

SCHOOLS

"No school system in the history of American education has had to absorb such a sizable non-English-speaking group in such a short time," says Paul W. Bell, associate superintendent of Dade County schools. Some 13,000 new Cuban and Creole-speaking Hai-

tian pupils—"a greater student population than in most school districts in the U.S.," as Bell notes—will begin classes in Dade County in September. The cost is staggering in a school district that had anticipated a $24 million deficit even without the influx of the new refugees.

WHITE FLIGHT

Though statistics do not exist, real estate agents agree that many white residents of Dade County are leaving for other parts of Florida, other areas of the South—anywhere. Dudley Hodges, 27, is planning to move to Palm Beach County, even though he will have to commute 65 miles one way to his job with the Hialeah fire department. His wife Christine fears that if they stay in Dade County the education of their two small children will suffer because of "the special attention given in the schools to those who don't speak English." Last week Jack Present quit his $30,000-a-year job as city manager of South Miami to accept a post as a job-safety supervisor for Boca Raton, though it pays $10,000 less. His explanation: "This refugee problem is out of hand, I don't feel safe on the streets here any more."

BACKLASH

Dade County's blacks fear that Cuban and Haitian refugees will crowd them out of jobs. That resentment helped touch off the riots that rocked Miami in May, killing 18 and causing $100 million worth of damage, although there were no documented attacks against the new Cuban refugees. Says Dade County Commissioner Oliver: "The refugee influx is intensifying pressures at the bottom of the ladder." But the blacks have plenty of company among whites. A group calling itself Citizens of Dade United is collecting signatures on a petition to repeal a 1973 law that made Dade a bilingual county and to deny public funding for "utilizing any other language than English, or promoting any culture other than that of the United States." Says Petition Leader Marion Plunske, a North Miami accountant: "Wouldn't it be nice to live in America? We're living in a foreign country. We're living in North Cuba."

Whatever they may think of the new refugees, Miamians—white, black and Hispanic—react with one emotion to mention of the word Washington: sheer fury. The Federal Government, they charge, has let them be swamped by a human tidal wave and has given them totally inadequate help to cope with it. Though Washington is committed to picking up the cost of housing and feeding the Cubans in the tent city, Dade County is still trying to collect $1.4 million that it spent to harbor refugees in the first days of the boatlift. Even Uncle Sam's own employees rage against their superiors. Three members of a State Department refugee task force in Miami quit three weeks ago in protest against what they considered Washington's indifference to the refugees. Task Force Director Paul C. Bell charged that he was "hitting my head against a stone wall" trying to get action to ease the Cubans' plight.

Paul Lane, a State Department spokesman in Washington, replies that help is now on the way. Indeed, last week the Government offered $6.8 million to community health centers in Miami and promised $10 million to Miami-area schools. Cynical residents of Dade County reply that they will believe it when they actually get the money.

More federal cash immediately certainly would help. But it would not cure the refugee problem; in both Miami and Washington, officials acknowledge that south Florida simply cannot take in any more refugees, if indeed, it has not already passed the limit it can accommodate.

Besides trying ineffectively to shut off the flow of refugees with a blockade, Washington asked Castro for the fifth time last week to discuss procedures for returning to Cuba in an orderly way any refugees who want to go back. At week's end Castro finally replied no. In any case, the number who want to return seems small. For example, some 70 Cubans in Miami's tent city have signed a petition asking to be allowed to go back, but seven times that many new refugees land at Key West each week.

The only long-range solution, says State Department Spokesman Lane, is to find sponsors for many of the Cubans in other areas—New Jersey, for example, which already has a large Cuban population, or California—where their numbers will not swamp communities. There is no time to lose. As boats continue to land anxious and penniless refugees on Florida's coast, the troubles are growing, day by day.

CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., July 29, 1980.

From: Barbara McClure, Analyst in Social Legislation, Education and Public Welfare Division.

Subject: Federal Assistance for State and Local Governments for Expenses Relating to Cuban/Haitian Entrants.

On June 20, 1980, the Carter Administration announced that Cubans who had arrived in the United States during the period April 21–June 19, 1980, and all Haitians who were in INS proceedings as of June 19, would have their parole into the country renewed for a 6-month period as "Cuban/Haitian Entrants (Status Pending)." This is in response to your request for information concerning the availablity of Federal funding to State and local governments for expenses related to these Cubans and Haitians. The following describes currently authorized assistance, as well as pending legislation.

I. Currently Authorized Assistance:

A. AFDC/Medicaid/SSI. Under their 6-month extended parole, the Cubans and Haitians are eligible, if they otherwise qualify, for participation in the SSI, Medicaid and AFDC programs. Normal Federal/State matching rules are applicable. In the case of Florida, for the AFDC and Medicaid programs the Federal share is 58.94 percent, and the State share is 41.06 percent. The Supplemental Security Income payments would be nearly totally Federal because Florida does not have a State SSI supplement other than for persons in foster or nursing home care.

B. Comprehensive Employment and Training Act (CETA). As parolees with the right to work, the Cubans and Haitians are eligible for participation, if they otherwise qualify, in CETA training and employment programs. These programs are supported entirely by Federal funds. According to a spokesman in the Labor Department's regional office in Atlanta, approximately $1.7 million in extra CETA funds has been channeled to the South Florida area (South Florida Manpower Consortium serving Dade and Monroe Counties) to provide additional services in connection with both the Cuban/Haitian situation and the recent civil disturbances in Miami. These additional funds have been used mostly for summer jobs and public service employment programs.

C. Fiscal 1980 Supplemental Appropriations. Supplemental appropriations legislation for fiscal year 1980 was approved on July 8, 1980 (P.L. 96–304). Several amounts relating to assistance for the Cuban/Haitian entrants were appropriated, as follows:

1. $36 million to the Department of Health and Human Services (HHS) for health services related to the recent arrival of Cubans and Haitians. The Senate report accompanying the supplemental appropriations legislation (S. Rept. No. 96–829) indicates that $3 million of this amount is designated, as requested by the Administration, to increase services at community health centers in South Florida. According to a spokesman for the HHS budget office, this money will be expended for outright grants for new or expanded community health and mental health centers in areas with high concentrations of Cuban/Haitian entrants. According to the spokesman, the Public Health Service is now in the process of determining how this grant money will be allocated.

2. $17.6 million to the Department of Education for section 318 of the Adult Education Act ("Adult Education Program for Adult Immigrants") to fund projects to increase educational and occupational skills, and to provide guidance and counselling to the Cubans and Haitians. Section 318 authorizes a program of grants to and contracts with State and local education agencies or other public or private nonprofit agencies. According to a spokesman for the Department of Education budget office, the announcement of awards of these funds is expected within the next 2 weeks. It is anticipated that all funds will be disbursed by the end of October or mid-November of this year. However, section 318 requires that at least 50 percent of all funds appropriated under the section be used for contracts with private nonprofit agencies. The Department prefers that the entire $17.6 million be used for grants, with no contract money, and at this time is attempting to determine whether the 50 percent contract requirement can be avoided. If it cannot, only the 50 percent grant money will be available by mid-November, with the remaining 50 percent contract money being made available by the end of January 1981. The Department has until the end of fiscal 1981 to expend these funds.

3. $7.7 million to the Department of Education for title III, part A, section 303 of the Elementary and Secondary Education Act (Secretary's discretionary fund) to provide instructional programs for school-aged children among the Cuban/Haitian entrants. According to a Department spokesman, these funds will be awarded to selected local education agencies (LEA's) for English-language training, bilingual instruction, counselling services, and staff training. It has been estimated that this $7.7 million represents approximately $300 per Cuban/Haitian child (see Education Daily, July 23, 1980, p. 5). According to another Department spokesman, the Regulations concerning the award of these funds will be published within a matter of days. It is anticipated that the funds will be expended in late December 1930 or early January 1981, but they will be retroactive for expenses incurred back to September 1980. Amounts awarded will be based on the October 1980 head count. The $7.7 million remain available for expenditure by the Department of Education through the end of fiscal 1981.

4. $245 million to the Federal Emergency Management Agency (FEMA) to reimburse Federal agencies and State and local governments affected by the recent influx of Cubans into the U.S. Of this total, $5 million is earmarked for reimbursement to Florida State and local governments for their "extraordinary" expenses resulting from the Cuban influx. According to a spokesman for FEMA, the agency is currently negotiating with the Florida State and local governments concerning which of their expenses the Federal government will reimburse.

5. $100 million for "Funds Appropriated to the President for Special Migration and Refugee Assistance" to be used to reimburse State and local governments for the cost of cash and medical assistance and social services to the recently arrived aliens from Cuba and Haiti. Of the $100 million appropriated, $50 million is for FY 1981 and will not become available until October 1, 1980. Availability of funds is contingent on the enactment of legislation authorizing such reimbursements for persons classified as "Cuban/Haitian entrants" (see discussion of International Security and Development Cooperation Act, below).

The President also requested an additional $39 million in supplemental funds for the State Department's Emergency Refugee and Migration Assistance Fund, to be used to provide assistance to voluntary agencies for processing, transportation and resettlement of recent Cuban and Haitian arrivals. However, this $39 million was not appropriated because Congress failed to approve any funds for foreign assistance and related programs in the fiscal 1980 supplemental appropriations.

II. Pending Legislation:

A. International Security and Development Cooperation Act (H.R. 6942). On June 5, 1980, the House agreed to an amendment to this legislation, introduced by Representative Fascell of Florida, which would authorize an additional appropriation of $100 million for fiscal 1980 for the State Department's migration and refugee assistance account to be used for the resettlement of foreign nationals who have fled their country and with respect to whom no other resettlement assistance is authorized. The amendment also would earmark $100 million in FY81 funds for the same purpose. Representative Fascell noted that his amendment was meant to apply to the recent Cuban and Haitian entrants, and that the funds could be used to reimburse State and local government for expenses incurred as a result of these immigration waves. Under a Rules Committee waiver, $100 million was included in the FY80 supplemental appropriations for this purpose contingent on passage of the authorizing legislation (see above).

The Senate considered its version of the same legislation (S. 2714) on June 17, and adopted an amendment offered by Senator Richard Stone of Florida. This amendment would provide that the Cuban emigres be designated as refugees solely for the purpose of qualifying State and local governments for assistance under the Refugee Act. Senator Stone stated that this amendment was intended to express the sense of the Senate regarding the assistance question without actually adopting the language of the Fascell amendment, thus allowing for a compromise in conference committee. The measure is now in conference.

B. Education Amendments of 1980 (S. 1839). Federal impact aid to school districts with refugee children was approved by the Senate in an amendment to this bill offered by Senator Williams on June 23, 1980. The amendment would add a new title XVIII, "Refugee Children Impact Aid Program," to the Act of September 30, 1950 (P.L. 81–874), the Act authorizing payments for Federally impacted areas. Funds would be authorized for school districts receiving at least 20 refugee children in a school year, including those children who have been paroled into the United States, are applicants for asylum, or who have been granted asylum after November 1, 1979. Payments would be according to the formula already established for Federally impacted school districts under P.L. 81–874. A conference with the House on this measure is expected soon.

C. Assistance to Education Agencies for Services to Cuban and Haitian Refugee Children (H.R. 7425). On July 22, 1980, the House Subcommitte on Elementary, Secondary and Vocational Education approved for full Committee action H.R. 7425, as amended. In general, as reported by the Subcommittee, the legislation would provide Federal payments to local education agencies equal to the local share of average per pupil expenditures multiplied by the number of Cuban/Haitian children enrolled in the school district. For heavily impacted areas (i.e., those with at least 500 Cuban/Haitian children, or with a number of Cuban/Haitian children equal to at least 5 percent of the average daily school attendance figures), the bill would provide an additional $1,500 per Cuban/Haitian pupil in the first year, $1,000 in the second year, and $700 for the third year. The bill also would provide an extra $600 for every Cuban and Haitian adult enrolled in education programs, including English language classes, vocational education and vocational skill certification. It has been estimated that if fully funded the legislation would cost the Federal government approximately $67 million (see Education Daily, July 23, 1980, p. 6). The full House Education and Labor Committee has scheduled a July 29 markup.●

● Mr. GOODLING. Mr. Speaker, there are presently 4,000 Cuban refugees at Indiantown Gap. Rumor has it that they are supposed to be out by October 15. Governor Thornburgh wrote President Carter more than 2 weeks ago requesting a written commitment that these refugees will be out of Indiantown Gap by October 15, before the winter season. As yet, he has not received a response to his letter.

There have been several disturbances at the Gap. Shortly after one of those disturbances, one individual died. State police were not informed of the death until 2 weeks after it occurred. At first the death was considered a civil rights case, then it was treated as a murder. State police were not very pleased at having to investigate a murder 2 weeks after it happened. The situation is still unclear and confusing.

When the disturbances occurred, our Governor responded to a request by Harry Johnson, director of the Cuban-Haitian task force headquarters, and sent in four Pennsylvania National Guard battalions which, of course, had disrupted their summer training program. The National Guard battalions have since been relieved by the 86th Airborne Battalion, and it is still there. State police have had to provide extra patrol services to take care of so many situations, including runaways. A shakedown of the population is necessary regularly. So far 60 weapons have been found. The local district attorney has refused to take any more refugees into the county jail, because they do not have the facilities.

Therefore some of the refugees are placed in the Lewisburg Federal Penitentiary. Two hundred fifty unaccompanied minors were placed at Indiantown Gap. Some of these were handled by Catholic relief organizations, but the State did not have the room nor the organizations to deal with this problem. The most disgusting part of this whole operation is the fact that the administration welcomed all of these people to our country and then placed the burden on three or four States to handle the problem, without providing the necessary financial reimbursement.

All the administration has come up with is proposed legislation which, except for children, does not involve full financial reimbursement. The State of Pennsylvania did not bring about these problems and, therefore, should not be expected to provide the tax dollars to cope with them. The administration must recognize that this problem is a national one and needs direction, coordination and funding from the Federal Government. The fact that it is no longer in headlines throughout the country, does not mean that the Cuban refugees no longer exist. These people still exist and need more Federal help than ever. To date it has not been forthcoming. Hopefully the administration will seek the funds and reimburse the States before the financial burden becomes unbearable and hurtful to not only the refugees, but the States residents as well.●

● Mr. RAILSBACK. Mr. Speaker, I have had the opportunity to review my colleague, JIM SENSENBRENNER's, report on refugee conditions at Fort McCoy, Wis., and his recommendations for change in our refugee policy. I would like to commend him for a job well done.

The report is very valuable for those of us who have not had an opportunity to visit a refugee camp, for in it JIM shares with us his own first-hand observations of the refugees' conditions at Fort McCoy. His report brings to light certain problems there—from the increasing percentage of criminals present as other refugees are resettled, to the problems of caring for and resettling the unaccompanied juveniles, to the special problems of the mentally ill, as well as the shortage of INS officers at the camp. These problems are not unique to the Fort McCoy camp, and they strongly indicate the need for a better and more efficient approach to handling and caring for refugees who arrive in our country.

Fortunately in his report JIM did not consider his job done after he described the problems he had found at the camp, but he went on to make specific recommendations on how our refugee policy could be improved. I feel that we could profit by examining our response to this year's influx of refugees, and that we should draw up a better plan based on this experience to be better prepared to handle the arrival of any future refugees. JIM SENSENBRENNER's report and his recommendations should prove most useful in accomplishing this task. I would like to thank him for taking the time to personally evaluate the refugee situation, and to share his findings with his colleagues in the House.●

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

CONGRESSIONAL CHAOS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. TAUKE) is recognized for 5 minutes.

● Mr. TAUKE. Mr. Speaker, periodically Members from this side of the aisle have been calling attention to the reasons for ending the 26 consecutive years of Democratic control in Congress. We have attempted to point out to the American public that the failure of Democratic leadership and policies has eroded the confidence of our Nation in its government.

Our message has now been underscored by a Federal commission established by Congress in 1959.

The Advisory Commission on Intergovernmental Relations has begun issuing a series of reports which state that Congress—more than any other entity—has precipitated, in the Commission's words, "the crisis of confidence" in America.

The reports indicate that the "increasing dysfunctional" state of our Nation's Government results, in part, from the decline of influence of the national political parties. There is no question that the blame for the falloff of support for the party system rests with both Republicans and Democrats.

However, it seems clear to me that the largest share of the responsibility falls squarely upon the shoulders of the Democratic leadership in Congress which has failed to recognize, much less shape, the realities of 1980.

The commission report states that the perception that the Federal Government can control this Nation "despite 14 years of repeated failures, is one of the 'pervasive myths' of Washington." A myth, it seems clear, which has been perpetuated by the Democratic leadership.

The failure of leadership is underscored by the Advisory Commission when it states that Members of Congress are "so preoccupied with such narrow concerns as potholes, libraries, rat control and policemen's pensions that they had little time to deal with such major responsibilities as foreign affairs and the economy."

Let me add to that list what the leadership apparently believes is the highest priority facing this Congress—the reelection of its Members.

As the Advisory Commission points out, parochialism is one sure-fire way to win elections. The Democratic majority couples that with efforts to avoid controversial and pressing issues before the fall elections.

Mr. Speaker, I believe that the ploys of the Democratic leadership will be seen by the American public for what they are—an abdication of responsibility.

The electorate is intelligent. The American people will realize the abdication of responsibility which is so apparent in delaying action on the fiscal year 1981 budget. They will realize that the Democratic leadership is ducking votes on spending cuts until 2 full months after the mandated legal deadline for passage of the second budget resolution.

Election year sleight-of-hand is no substitute for action to curb current Government spending and limit future spending.

But even before the lameduck flap, Americans were aware of the congressional leadership's ineffectiveness.

A recent survey in Iowa's Second Congressional District found that the economy ranked as our Nation's most pressing problem. But close behind, in the No. 2 position, was a perceived lack of effective leadership by this Congress and the present administration.

As the Advisory Commission so aptly titled its report, we are facing "A Crisis of Confidence and Competence."

Mr. Speaker, last week the Republican freshman class unanimously endorsed a resolution I offered opposing the proposed lameduck session. We are presently seeking bipartisan support to halt the calling of this unnecessary post-election gathering, the first post-Presidential lameduck session since Harry Truman's upset victory in 1948.

We will not simply stand by and watch the leadership of Congress replace our great national symbol, the American bald eagle, with the lame duck.

I would like to share with my colleagues an article which appeared in the August 25 edition of the New York Times, which summarizes the Advisory Commission on Intergovernmental Relations report.

CHAOS IN DOMESTIC AID PROGRAMS IS LAID TO CONGRESS IN U.S. STUDY

(By John Herbers)

WASHINGTON, August 24.—A Federal commission, ordered by Congress to conduct a thorough study of the state of American Government, has concluded that Congress itself is chiefly to blame for what it found to be an unmanageable, wasteful and unaccountable system of domestic aid programs.

The Advisory Commission on Intergovernmental Relations, created by Congress in 1959 to make seemingly innocuous studies in Federal-state relations, has come to the conclusion that the Federal system is simply out of control. It also found that the declining influence of political parties is contributing to the problem.

The panel has begun to publish its newest findings in a series of provocative reports and background papers that Congress commissioned in 1976 in response to rising public discontent with Government at all levels.

The 26-member commission is required by law to consist of six members of Congress, three officials from the Executive branch, four governors, four mayors, three state legislators, three elected county officials and three private citizens, each appointed for two-year terms. Former Mayor Abraham D. Beame of New York is the current chairman. The commission has a staff of about 37, headed by Wayne Anderson, the executive director.

A LACK OF UNDERSTANDING

"Neither public officials nor the general public comprehend fully the new complexities of domestic public policy, or adequately control—or even check—the myriad forces that have generated it," the commission said in its first printed volume, titled "A Crisis of Confidence and Competence."

Yet the language and conclusions in that volume are mild compared with some of its documents yet to be published. In some of those, the commission depicts the Federal Government as so overloaded with programs and issues that it cannot cope with need for reforms.

The myriad programs are so intertwined among the state, local and Federal Governments that no government can deal with them, according to the commission.

While all levels of government and the courts were found to have played roles in the failures of the last two decades, the commission singled out Congress as having had more to do with bringing about "the crisis of confidence" than any other entity.

"Our findings belie the notion that Congress acts as a great rubber stamp for Presidential, bureaucratic or interest group iniatives," the commission said. "In fact, in many instances the opposite would be far closer to the truth."

Congress was depicted as quick to take on minor new issues, but timid in drawing up such needed reforms as overhauling the welfare system. Members of Congress were found to be so preoccupied with such narrow concerns as potholes, libraries, rat control and policemen's pensions that they had little time to deal with such major responsibilities as foreign affairs and the economy.

STATES HEED CRITICISM

All this might have gone unnoticed—Congress has been ignoring the commission's advice for years—had not the group's findings and recommendations become the fulcrum for an incipient revolt by the states against the Federal Government.

The National Governors Association, with the support of the National Conference of State Legislatures, has formally called on the President and Congress to appoint a high-level commission next year to recommend reforms in the Federal system including the realignment of powers between the state and Federal Governments, through legislative or constitutional change.

That move, made at the governors' annual convention in Denver this month, was based on a similar recommendation that the commission made at a meeting in Washington earlier this summer.

The commission has suggested that reform could begin with a series of "trade-offs" that would give the Federal Government full responsibility in some areas while giving the states responsibility for other areas.

For example, the Federal Government could take over the full costs and responsibility for public welfare, including Medicaid, social services and food stamps. It would also assume responsibility for social insurance, including unemployment insurance, and housing programs.

The panel suggests that the states could then take over the responsibility for education, libraries, fire protection, police and correction, natural resources, hospitals and health services. While the commission maintains that there would be little difference in the costs that each would have to bear, it contends that the public would at least know who was responsible for what.

Many of the more than 500 grant programs could then be consolidated or phased out, according to the commission.

In documents supporting its recommendations for change, the commission said that much of the "increasingly dysfunctional" state of the Government stemmed from the decline in the influence of national political parties, which once served to keep "the bulk of domestic governmental issues and programs completely out of the Washington arena."

This situation, it said, leads to "a total confusion" in official role playing. "Presidents act almost as frequently in a mayoral or a gubernatorial role as a national Presidential one," the commission said, "and Congress plays municipal and county council almost as often as it acts as a national deliberative body. It has produced a situation where no level or set of officials is performing the functions it is best suited to perform."

PROBLEM IS DESCRIBED

The commission contends that Congress has refused to assume full responsibility for functions that should be purely national, such as income maintenance, health insurance and welfare. Nor has Congress been willing to relinquish matters that should be strictly local, such as urban parks, rural fire control and aquaculture, according to the commission.

"A rather fanciful form of federalism, then has emerged," it said. "Basic policies in most program areas appear to be made in Washington and their implementation achieved through decisions, orders, mandates, conditions, regulations and the lure of Federal loot for 12 million state and local civil servants."

"And, in the end, the fancy becomes caprice because the subnational governments, their elected officials and bureaucracies are capable of highly differentiated responses to all this—in terms of compliance, cooperation, participation and conflict," the commission said. "Equally fanciful is any notion that the Federal aid system as a whole protects the interests of the needy or equalizes levels of public services. Questions of equity are largely ignored in the scramble for benefits."

That the Federal Government is capable of controlling such a system, despite 14 years of repeated failures, is one of the "pervasive myths" of Washington, the commission said.

"Where does this leave the electorate?" the commission asked. "Frustrated, fearful, alienated and/or angry. The system has become highly incomprehensible even to those whose job it is to have an overall understanding of it."●

FARMER COOPERATIVES: THERE IS STRENGTH IN NUMBERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. GRASSLEY) is recognized for 5 minutes.

● Mr. GRASSLEY. Mr. Speaker, farmer cooperatives are a tremendously important factor in the continuing success of American agriculture, a system that consistently supplies U.S. citizens and the people of the world with an abundance of high quality, reasonably priced food and fiber. In a uniquely American fashion, members of farmer cooperatives democratically and voluntarily organize to help themselves, grouping together to market their commodities, purchase needed supplies, and secure credit. As the members help themselves, their increased production and efficiency also benefit the American consumer, the U.S. economy, and the hungry of the world.

Just how important farmer cooperatives are to the well-being of consumers across the Nation and worldwide can be illustrated by a few figures. It has long been recognized that the United States is the world's most efficient agriculture producer and is also the world's leading exporter of farm products. But it is not common knowledge that 99 percent of America's farms are family owned and operated, and that 4 out of 5 farm families belong to one or more of the 7,854 farmer cooperatives operating in the United States. The connection is undeniable. Many of the most efficient and productive farmers in the world, American farm families, find it in their best interest to be members of cooperatives. As consumers we enjoy the low prices and the plentiful supply of produce that are a result of these producers' profit maximizing decisions.

It is no surprise that the Iowa farmer, always a leader in efficiency and productivity, should also lead in the farmer cooperative figures. Iowa's cooperatives have some 373,385 members (with some people belonging to more than one organization). Iowa is also one of seven States in the Midwest who together account for 43 percent of cooperative membership nationwide. As a farmer myself, and a member of a farmer cooperative in New Hartford, I have always found co-op membership an invaluable aid to me in the operation of my farm.

What makes the cooperatives of such benefit to the farmer is their ability to combine the advantages of economies of scale with the equally important advantages of individual ownership and management. First, by associating together as consumers of the materials and services they need for production, members can buy as a group and assure themselves of a steady supply plus a lower price as they buy in larger quantities. Later, when they sell their commodities together, members create a larger bargaining base and hence have more power in the market. Farmer cooperatives allow the family farm to compete in an economy increasingly dominated by big business and big government.

Although the farmer may gain by joining a farmer cooperative, this does not mean the consumer loses. In fact, just the opposite occurs. Lower production costs to the farmers also mean lower prices for the consumer. The consumer, while seeing the price drop as a result of greater efficiency and competition, still finds the high-quality produce he has become accustomed to. Both producers and consumers, in the United States and abroad, benefit from the institution of farmer cooperatives.

Because I feel so strongly about the positive value of farmer cooperatives I firmly oppose any measure which would seek to weaken, penalize, or subject farmer cooperatives to any more government regulation than is absolutely necessary to protect the public health, safety, and environment. I particularly oppose any measures to weaken the Capper-Volstead Act of 1922, the landmark legislation which simply protects the right of farmers to join together in the cooperative marketing of their products. There are currently only three farmers in the Senate, and two are retiring. Naturally as a farmer myself I hope more farmers are elected to Congress. It is in the public interest to preserve that right, to preserve such beneficial institutions, and to preserve our successful agricultural system.

The strength of American agriculture depends in many ways on a strong underlying framework of individual initiative and efficient organization. Farmer cooperatives are built in this truly American spirit. Farmer cooperatives are built by individuals drawn together voluntarily in pursuit of profit, individuals not looking to the government but looking instead into their own communities for ideas and capital, individuals who strive for efficiency and productivity, and individuals who are willing to share their knowledge and expertise with their neighbors and the world. It is up to us as citizens to maintain a society where such individuals can be free to pursue such worthy goals.●

WE SHOULD REPEAL THE 1981–82 PAYROLL TAX INCREASES NOW

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. REUSS) is recognized for 15 minutes.

● Mr. REUSS. Mr. Speaker, I today introduce legislation, H.R. 8037 to eliminate the devastating impact of social security tax increases that, unless we act now, will go into effect next year, on January 1, 1981.

On January 1, 1981, America's workers and the Consumer Price Index will be in for a resounding slap in the face, unless we do something this session to stop it. If we do nothing, we are dealing a needless blow to the American economy, for it would be mid-1981 before relief could otherwise be obtained.

The culprits are the seemingly minor percentage increases in the social security tax withholding for employees, employers and self-employed persons, and a rise in the income base to which these taxes apply. Since 1971 the payroll tax rate has risen four times, from 5.2 percent to the current 6.13 percent for employees and employers. Next year the payroll tax will rise from 6.13 to 6.65 percent and again to 6.70 percent in each of the years 1982 through 1984. In addition, the wage base on which this tax applies will rise from $25,900 to $29,700 next January. When these tiny numbers get multiplied through the U.S. work force, the impact is a whopping $14.8 billion in new taxes in 1981, over $13 billion of which is attributable to the rate increase alone. In 1982, when the rate rises again, nearly $18.2 billion more in payroll taxes will come in than if the 1980 rates were held constant. In 1983, the taxes added by the new rates amount to $20.1 billion, and in 1984, $22.4 billion.

This means less money gets in the hands of hard-pressed American consumers already smarting from the sting of inflation, and the gloomy prospect of even more inflation as employers pass on their higher taxes in the form of price increases. This means a disincentive for labor-intensive employers to create jobs.

The title of H.R. 8037 explains its purpose: "to repeal the increases in social security taxes which are presently scheduled to go into effect in 1981 and 1982, with the social security trust funds fully protected, through appropriations in the general fund in the Treasury, against any income losses they might otherwise sustain as a result of such repeal."

The social security tax system, despite all its apparent virtues as a self-insurance scheme, is unfair in its application. Besides being a classically regressive tax, it also loads more of the burden on the poor in subtle ways. As Milton Friedman recently pointed out, the low-income laborer who begins work at age 17 pays into the system for as much as a decade before his wealthy counterpart completes college and graduate or professional school, and begins to earn a salary. And if our poor worker lives a shorter life than our wealthy worker, he will enjoy less of the fruits of the social security system as well. Under the guise of protecting everyone, we have created a system where too often the poor have become their rich brother's keeper.

The increases due in each of the next 2 years will only worsen this problem. The Social Security Subcommittee of the Ways and Means Committee recently held hearings on the dreary prospects we face when these massive tax increases take effect. One approach is to leave intact the tax increases, and instead rebate them to wage earners, companies, and self-employed persons either by an income tax credit or by a general income tax cut. A defect: Burdens and benefits do not match. Another approach is to take either the medicare or the disability programs, or both, out of the social security system altogether and fund them

with general revenues rather than from their trust funds. A defect: They impose a very steep drain on general revenues.

There is a commonsense approach that offers advantages over both of these methods. H.R. 8037 simply undoes the payroll tax and base increases scheduled for next year and the following year. The bill does not address the longer term increases in the payroll tax scheduled for later in the 1980's. Future Congresses certainly will consider them as those years approach.

The trust funds will be made completely whole under my bill by the Secretary of the Treasury, who must see to it that the general fund of the Treasury replenishes the trust funds in amounts equal to the lost revenues from the repealed tax increases. We will be replacing funds from the regressive payroll tax with those raised from the progressive income tax, based upon ability to pay. No person receiving old age, survivor, disability or medicare assistance will be disadvantaged by this bill; it simply changes the sources, but not the amount, of the funds available to pay claims under the system.

This approach avoids the two-step formula which takes away on the one hand (by letting payroll taxes increase) and gives back on the other (by rebating a fixed percent of the payroll tax).

It also makes no judgment about whether the medicare or disability programs ought to be removed entirely from the social security payroll tax system, as other bills have proposed. It would simply replace a portion of the total social security fund revenues with money from the general fund. The amounts replaced (roughly $14.8 billion next year) are far less than the total tax revenues that estimates show will go to just the medicare fund next year (some $34.8 billion based on the administration's 1981 budget). Nor does the bill make inroads into the concept that social security as an insurance system, ought to pay for itself. The likely debate about the long-term prospects for the entire social security system should continue, and should be resolved in due course. H.R. 8037 is far less ambitious, yet far more urgent. It is a temporary measure to relieve what would otherwise be an intolerable dose of more regressive taxation and higher inflation that Americans will otherwise suffer in the next few years.

We must recognize the immediacy of the problems we face and act now to deal sensibly and fairly with them. There is only one truly must piece of 1980 tax legislation, and this is it.●

PERSONNEL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri (Mr. GEPHARDT) is recognized for 5 minutes.

● Mr. GEPHARDT. Mr. Speaker, on rollcall No. 480, on August 22, my vote was recorded improperly. I was recorded as voting "nay" on final passage of H.R. 7262, the Housing and Community Development Act. My vote should have been record as "yea." ●

WESTERN RECLAMATION PROJECTS ARE OF GREAT BENEFIT TO FEDERAL GOVERNMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. JOHNSON) is recognized for 5 minutes.

● Mr. JOHNSON of California. Mr. Speaker, a recent analysis has come to my attention which I believe warrants wider attention. The analysis describes some of the very real benefits of reclamation, of which we all need to be reminded. We must continue to be concerned about our water resources and their role in the future development of our country. The value of western reclamation projects to our national economy cannot be overemphasized and I am pleased to share the following remarks of Mr. Ronald C. Fisher, secretary-engineer of the Colorado River Water Conservation District with my colleagues:

PORK BARRELS, PAY BACK AND PERSPECTIVE

(By Roland C. Fisher)

Western Reclamation projects have already returned more money to the federal treasury than they have taken out.

From 1902 to the start of 1980, some $8.75 billion has been appropriated for Western Reclamation projects. In only 38 years of that timespan, 1940 to 1978, those projects generated $25.6 billion in federal tax revenues.

Reclamation in the arid and semi arid West was and is a concept of turning desert into fertile fields, of settling and developing the nation's largest and dryest region to the benefit of that nation.

Let's see if the concept worked; if the nation benefited. Figures, rather than the ignorance and emotion often used to malign the program, offer a precise method of assessment. The following is based on the latest available figures, in most cases 1978, from the Water & Power Resources Service and other aegncies. (Formerly Bureau of Reclamation).

In 1978, western reclamation projects were responsible for $13.5 billion of the nation's economic activity. The projects generated $8.5 billion of income for people, $1.7 billion in corporate profits, $1.1 billion in state and local taxes and $2.2 billion in federal taxes. Though the program has generated $25.6 billion in federal tax revenue in the 38-year period ending in 1978, that money is not a consideration in project repayment.

Of the $8.75 billion spent on completed projects or projects under construction, $1.7 billion has already been repaid. No other federal program directly repays the treasury in this manner. In all, 85 percent of the total will be repaid; half of that amount with interest. Some recreation, flood control and other features of benefit to the nation generally are not reimbursable by the water users.

That portion to be repaid without interest is from agriculture, which has traditionally received special consideration based upon its ability to pay. The special consideration through interest rate subsidy for agriculture is not unusual. It totaled $782 million in 1978 while interest rate subsidies on municipal bonds in the same year was almost seven times that amount or $5.4 billion.

The subsidy diminishes further when viewing agriculture's production. In 1978, reclamation projects delivered 24.4 million acre-feet of water (an acre-foot is 325,851 gallons) to irrigated agriculture. As a result, irrigated lands served by the reclamation projects delivered a gross crop value to the nation of $4.99 billion in 1978. An estimated $1 billion of that exported thus reducing the nation's balance of payments.

The 9.6 million acres on 151,500 farms irrigated by water from reclamation projects produced 54.3 million tons of food, fiber and forage—enough to meet the annual food requirements of 34.1 million people. Gross crop value from Colorado lands irrigated by federal projects totaled $272 million in 1978.

Lands watered by federal reclamation projects in the 17 Western states produced more than 50 percent of the nation's olives, grapes and apricots; more than 30 percent of the nation's cantaloupes, honeydew melons, lettuce, almonds, onions, tomatoes, lemons, limes and pears; and more than 20 percent of the nation's asparagus, carrots, peppers, apples, cherries and walnuts.

Indeed, from 1906 to 1978, the total gross crop value as a result of federal reclamation projects exceeded $63.5 billion.

An additional 1.6 million acre-feet of water was delivered to 16.6 million persons for municipal and industrial purposes. The water amounted to 45 percent of their average daily requirements and is repaid with interest.

The list goes on: In 1978 reclamation projects provided $333 million in flood control benefits and 69.9 million recreation visitor days. The 50 hydroelectric units in the program produced 40.6 billion kilowatt hours of clean, renewable, hydroelectric power—enough to meet the residential power needs of 14 million people, and enough to displace 73 million barrels of foreign oil.

In the process of constructing the various projects and as a part of the cost, 1.9 million acres of land was acquired—land that now stands as an asset of the people of the United States.●

WHY I SUPPORT PRESIDENT CARTER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. SEIBERLING) is recognized for 5 minutes.

Mr. SEIBERLING. Mr. Speaker, one of the benefits that we are now enjoying from having the national political conventions over is that we can now sharpen our focus and look at the candidates and the issues with sharper perspective.

As we do that, I believe most will begin to see that there is only one choice in the Presidential election, and that is the reelection of President Carter and Vice President MONDALE.

The August 16 edition of the New Republic contains a very perceptive article by Mr. William Attwood, the former publisher of Newsday, who was also a speech writer for Adlai Stevenson and an Ambassador during the Kennedy and Johnson administrations. When I was a young lawyer starting out, I got to know him as one of the outstanding correspondents of the New York Herald Tribune.

Mr. Attwood in his article, which is entitled "Why I Support President Carter," concedes that there have been errors of judgment as well as form in the performance of President Carter. However, he points out that when we examine the record objectively and dispassionately, the Carter administration's record of achievement in these past 3½ years is an impressive one. He goes on to compare it with the record of some other recent Presidents, and I must say that he makes a compelling case, both as to foreign policy and domestic policy.

Many of President Carter's problems arose because of misperceptions that he and the people he brought with him from the State House in Georgia held before they arrived in Washington, particularly as to the stature of Congress and Members of Congress, and its role as a coequal branch of Government composed of many experienced, able and dedicated men and women.

After some initial flounderings, President Carter and his White House staff began to understand that while Congress, being composed of human beings, had its share of human imperfections, there are ways to work with the Congress and to use its expertise in promoting the Nation's welfare.

I think that the record shows that in terms of legislative achievement the last 4 years have shown some impressive results. The Carter administration not only has almost 4 years of on-the-job experience under its belt but has, since its first day, been able to point with pride to one of the most outstanding cabinets that any President has had in this century. President Carter, when he adopted the policy of "Why not the best," truly followed that policy in choosing the people whom he put in charge of the various departments and agencies of the Government.

We have benefited greatly from the advice and leadership of such outstanding members of the Cabinet as Cecil Andrus, Secretary of the Interior; Harold Brown, Secretary of Defense; the present Secretary of State, Edmund Muskie, and the former Secretary of State, Cyrus Vance; Patricia Harris, first as Secretary of Housing and Urban Development and now as Secretary of Health and Human Services; Douglas Costle, Administrator of EPA—I could go on and mention many more. Not only department heads but many of the second-, third-, and fourth-echelon executives are people of the highest caliber to be found anywhere in the United States.

Mr. Attwood in his article also points out that, in deciding how to vote in November, we must also take into account what Mr. Reagan, the person who proposes to replace Mr. Carter, would do if he becomes President. Attwood states, and I am going to read part of it, if you compare Mr. Carter's record with Ronald Reagan's positions,

as pieced together from cue cards, one-liners, and the Republican platform. Reagan would turn the oil companies loose to drill anywhere, even in our national parks, so as to get us all back into big cars; he would either tell the Russians to go to hell or cut off all discourse with them; he would add billions of dollars to military expenditures and more overkill capacity to our bulging nuclear arsenal—thereby heating up the cold war abroad and inflation at home; he would shelve SALT II, blockade Cuba, bury ERA, cut taxes, and balance the budget. (How? With mirrors, says, John Anderson.)

We have only this week had a graphic demonstration of Reagan's ignorance, ineptitude, and indecision with respect to our critically important relation with China.

He would also, for starters, abolish the Department of Education, scuttle the Office of Consumer Affairs, and hobble or downgrade the Federal regulatory agencies.

Now, we can imagine how a President Reagan would work with the Congress. Mr. Reagan is pursuing the same illusion that an outsider who has had no experience in Washington can come here as President and all of a sudden master the intricacies of this huge Federal Government and the complex and dangerous field off international relations. Neither of them fit the antiquated, simplistic images that Mr. Reagan is so fond of conjuring up in his television performances.

As to the kinds of people Mr. Reagan would put in charge of the various departments of the Government, all you have to do is to look at the kinds of people that backed him financially in the primaries and are backing him now. He would put the foxes in charge of the people's chickens in many of the most critical areas of our Government.

So I submit for the benefit of my colleagues the entire article by Mr. Attwood. I must say with him, I support President Carter and I am delighted that my Democrat colleagues, as well as growing numbers of my constituents, are beginning to see clearly that there is no other choice.

Mr. Speaker, the article follows:

WHY I SUPPORT PRESIDENT CARTER

(By William Attwood)

It has been four months since *The New Republic* published Arthur Schlesinger's scathing attack on Jimmy Carter's stewardship of what he called "an administration in ruins" ("The Great Carter Mystery," *TNR*, April 12). Today the primary season is over, the Republicans have a candidate, and, barring unlikely insurrection at the Democratic convention, Schlesinger probably will be joining me and other unabashed liberals—sooner or later—in supporting the man "whose record of ineptitude stands unmatched since Warren G. Harding."

He may of course join Stewart Udall and others in backing John Anderson, but I suspect the Anderson alternative will not prove viable; nor do I see Schlesinger out ringing doorbells for Ed Clark, the Libertarian, or for Barry Commoner. And so it behooves us both, along with other liberals, to reexamine Carter's record more objectively and dispassionately.

Taking foreign policy first, there is no defending the slips of the tongue, errors of interpretation, and clumsy overreaction that have emanated from the White House in the past year, from the phony flap over the Soviet brigade in Cuba, to a hostage rescue mission that was too little, too late, and too impulsive, to the president's gratuitous remarks about Secretary Vance following the latter's justified and graceful resignation. Schlesinger was right to criticize the foul-up over our UN vote on Israeli settlements, the bungled decision to admit the shah to the US, and Carter's overheated response to the Soviet power play in Afghanistan—which a cynic might equate, at least in motivation, with our own intervention in the Dominican Republic in 1965. But to suggest, as he does, that Carter "helped bring about" the hostage and Afghan crises is, well, stretching it.

Domestically, the administration's record is spotty, but not as black as painted by Schlesinger in his April article. Inflation, the big issue that no one quite understands, is down from his figure of 18 percent to about 12, and the interest rate from 20 to 11. Unemployment, contrary to popular belief, is no higher at 78 percent than it was when Carter took office. Of course it is too high, in light of his campaign promises, but the auto industry and Congress are in part to blame—the former for gambling disastrously on big cars and the latter for balking at public service jobs. For the rest, Schlesinger seemed to fault Carter mostly for favoring voluntary wage-price guidelines, which don't work, over mandatory controls, which don't work either.

As well as being selective in its criticism, Schlesinger's indictment was unbalanced in that it omitted mention of either the redeeming aspects to Carter's blunders (the appointment of Muskie to replace Vance; and that of a skilled professional like Don McHenry to replace Andy Young, perceptive, outspoken, but miscast at the UN) or what Carter tried to accomplish with little help from a lethargic and occasionally even reactionary Congress.

Also, it's only fair to point out that the failures and shortcomings of this administration have for the most part resulted less from flawed judgment than from a preoccupation with election-year politics; Carter's weakness—common to many contemporary politicians who watch the polls the way network executives watch the Nielsens—has been to react to public opinion rather than to educate or influence it. He often seems unduly concerned with appeasing right-wingers, not realizing that it's all but impossible to outflank the Reaganites without coming out for child labor, apartheid, and the Great White Fleet.

This tendency to tailor policies to the polls is behind much of the bungling that Schlesinger excoriated: the Soviet brigade pseudo-crisis, triggered by fears that Senator Frank Church would use it first to shed his dovish image; letting the shah in, a move urged by Henry Kissinger, among others, whose support was needed to get the SALT II treaty ratified; portraying the Afghan action as the first skirmish of World War III—and therefore a reason for rallying around the president; or yielding to public impatience over the hostage crisis by mounting the aborted rescue mission—ill advised but certainly more justifiable than the Bay of Pigs debacle of 1961.

Nor did Schlesinger concede that the bulk of Carter's foreign and domestic policies have been, on the whole, commendable from a strictly liberal perspective. This is the administration that signed SALT II; signed and got the Panama Canal treaties ratified in the Senate; supported the British solution to Zimbabwe against the advice of the Republican establishment, ranging from Kissinger to Senator Jesse Helms; pressed for aid to post-Somoza Nicaragua; recognized, at long last, the Peoples Republic of China; established a continuing dialogue with Cuba through low-level diplomatic missions, carrying forward Jack Kennedy's 1963 initiative for normalizing relations; and brought about an accord between Israel and Egypt at Camp David that offers some hope for peace in the Near East.

As for security adviser Zbigniew Brzezinski, liberals who routinely condemn his seeming hawkishness overlook his predecessors—Kennedy's Bundy, Johnson's Rostow, Nixon's Kissinger—who were no less pedantic but a lot less aware of the poor and populous nation's called the third world.

But the bottom line on Carter's foreign policy is the simple truth, seldom acknowledged by our Cassandras, that the global view from Washington in 1980 remains a great deal brighter than it does from the parapets of the Kremlin—in whatever direction you look.

At home, Carter has been the first president to challenge the wasteful pork-barrel water and defense bills so dear to congress-

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men and has shown more concern for the environment than any president since Theodore Roosevelt: he already has preserved more than 100 million acres of Alaskan wilderness, pushed strip-mining legislation through Congress, and implemented the Clean Air and Water acts.

On the energy front, while the appointment of James Schlesinger was a mistake, imports of foreign oil have been cut 12 percent since last year; decontrol of oil prices, hardly a popular move, was certainly a factor in cutting consumption. A $2.8 billion Conservation and Solar Bank has been created with the aim of using solar power for 20 percent of our energy needs by 2000. Urban development funding has more than doubled; the Humphrey-Hawkins Full Employment Act passed; more funds made available to cities, to the needy, and to mass transit; the Job Corps doubled; and more women, blacks, and Hispanics have been named to senior management positions in the federal government than ever before.

This administration also has sought welfare reform legislation that would provide 400,000 public service jobs, an independent Office of Consumer Affairs, health insurance legislation, and additional urban and youth employment programs—all of which have been blocked by an all too often self-serving and unmanageable Congress.

What else? Carter has moved to free the federal judiciary from political patronage, reorganized the Civil Service to reward merit and promote efficiency, consistently supported the Equal Rights Amendment, and curbed the excesses of the CIA and the FBI.

In short, on most domestic issues, Carter should be getting high marks from liberals who bother to look at the whole record, especially if they compare it with Ronald Reagan's positions, as pieced together from cue cards, one-liners, and the Republican platform. Reagan would turn the oil companies loose to drill anywhere, even in our national parks, so as to get us all back into big cars; he would either tell the Russians to go to hell or cut off all discourse with them; he would add billions of dollars to military expenditures and more overkill capacity to our bulging nuclear arsenal—thereby heating up the cold war abroad and inflation at home; he would shelve SALT II, blockade Cuba, bury ERA, cut taxes, and balance the budget. (How? With mirrors, says John Anderson.)

Reagan's naive and therefore dangerous global view is that there is a Soviet conspiracy behind all of the problems and unrest in the world, when in fact most of what happens is due to circumstances and historical imperatives quite beyond the control of either Moscow or Washington.

Arthur Schlesinger knows this and knows that Reagan, in four years, could set back the cause of progressive government a half century by his Supreme Court appointments alone. Yet, like many liberals, he finds it hard to support the man who has the best chance of keeping Reagan out of the White House.

Why? It is hard to explain the almost masochistic mindset of so many liberals who take delight in every embarrassment inflicted on the president by his friends and family, from the overblown Bert Lance affair to Billy's Libyan antics—which at this writing have not tarnished the White House except by inference. I suspect the current attitude of many liberals is compounded in part by their sense of alienation from the Carter entourage, in part by the pleasure derived from seeing a preacher taking pratfalls, and in part by nostalgia for the confident clarion calls of the New Deal, the Fair Deal, the Great Society, and the New Frontier.

Carter's performance admittedly has not matched our expectations; but has any president's? Consider the New Frontier, on which both Schlesinger and I served. Distill the inspiring rhetoric out of those thousand days and what will they be remembered for? The Peace Corps, the Nuclear Test Ban Treaty, the Bay of Pigs, and the subsequent Cuban Missile Crisis. In short and in retrospect, the New Frontier was an insubstantial pageant faded—a pageant we now dimly associate with a graceful style, a quickened pulse, a premonition of great deeds and new beginnings, a sparkle of memories, a lump in the throat.

Of course a second Kennedy administration no doubt would have achieved much more. But maybe, just maybe, Carter's performance will improve in the next four years once he no longer needs to worry about reelection. Maybe he will shed the arrogance of insecurity and listen to a wider circle of advisers; maybe, now that he has been tempered by experience and by failure, he will seek out more people of Ed Muskie's caliber. The very least we can offer the president at this point is the benefit of the doubt.

There are certainly no maybes discernible in a Reagan presidency. If Schlesinger still thinks Carter has chosen "to reject the role of government" as conceived by Democrats since the New Deal, what does he expect of a Reagan administration that, for starters, would abolish the Department of Education, scuttle the Office of Consumer Affairs, and hobble or downgrade the federal regulatory agencies?

That's why it's time, high time, for Schlesinger and Ted Kennedy's partisans to join forces with the Carterites to beat back, one again, the crusaders of illusion and nostalgia. And a reconciliation shouldn't be all that difficult. Schlesinger and I, who worked on speeches together before and during the 1960 Democratic convention, know there was no great mutual affection between Jack Kennedy and Adlai Stevenson. But despite their differences in style, philosophy, and temperament, Stevenson criss-crossed the country that fall, making more than 75 speeches to his own loyal legions on Kennedy's behalf. Richard Nixon was the man they both wanted beaten, and together they succeeded; unlike Eugene McCarthy, who parked his gypsy caravan on the sidelines eight years later and watched Nixon edge out Hubert Humphrey. Stevenson, for all of his reservations about Kennedy, didn't play coy when the latter became the candidate.

This year, Schlesinger's bitterness about Carter, while pardonable in April, is inexplicable in August. Ted Kennedy's primary campaign wisecrack about Carter being Reagan's clone is as silly and tasteless today as when he said it. The differences between the parties and the candidates are clear enough, for all the grumbling on the left side of center. Indeed, Reagan's nomination may turn out not to be so much a catastrophe as a catalyst for liberals who can see straight. But there's no time to waste.

"Reelect Jimmy Carter?" wrote Schlesinger in April. "Someone must be kidding."

No, Arthur, I kid you not. There's no longer an alternative.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. JEFFRIES) to revise and extend their remarks and include extraneous matter:)

Mr. TAUKE, for 5 minutes, today.
Mr. KEMP, for 15 minutes, today.
Mr. RAILSBACK, for 5 minutes, today.
Mr. HAMMERSCHMIDT, for 1 hour, today.
Mrs. SNOWE, for 5 minutes, today.
Mr. GRASSLEY, for 5 minutes, today.

(The following Members (at the request of Mr. RATCHFORD) to revise and extend their remarks and include extraneous material:)

Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. REUSS, for 15 minutes, today.
Mr. GEPHARDT, for 5 minutes, today.
Mr. JOHNSON of California, for 5 minutes, today.
Mr. SEIBERLING, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mrs. HOLT, following the statement of Mr. COLEMAN during general debate on H.R. 7998 in the Committee of the Whole today.

Mr. GILMAN, to extend his remarks in the body of the RECORD during general debate on H.R. 7998.

(The following Members (at the request of Mr. JEFFRIES), and to include extraneous matter:)

Mrs. SNOWE.
Mr. SOLOMON.
Mr. SHUSTER.
Mr. GRASSLEY in three instances.
Mr. ARCHER.
Mr. DANIEL B. CRANE in two instances.
Mr. DOUGHERTY.
Mr. DERWINSKI.
Mr. KEMP in three instances.
Mr. ROTH.
Mr. WYDLER.
Mr. BROOMFIELD.
Mr. RHODES.
Mr. DORNAN in four instances.
Mr. PAUL.
Mr. HINSON.
Mr. PORTER.
Mr. MCCLOSKEY.

(The following Members (at the request of Mr. RATCHFORD), and to include extraneous matter:)

Mr. HAMILTON in three instances.
Mr. PEPPER in two instances.
Mr. STOKES in two instances.
Mr. CONYERS.
Mr. LUKEN.
Mr. WALGREN.
Mr. DODD.
Mr. COELHO.
Mr. GEPHARDT.
Mr. STUDDS.
Mr. MURTHA.
Mr. BEARD of Rhode Island.
Mr. PATTEN.
Mr. BONKER in two instances.
Mr. LONG of Maryland.
Mr. LAFALCE.
Mr. BRINKLEY.
Ms. MIKULSKI.
Mr. OBERSTAR.
Mr. WOLFF.
Mr. MCDONALD in five instances.
Mr. DRINAN in two instances.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2680. An act to improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666).

ENROLLED BILLS SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 5168. An act to extend certain expiring provisions of law relating to personnel management of the Armed Forces, to provide a variable housing allowance for members of the uniformed services to reflect housing costs in different areas of the United States, to improve certain special and incentive pays for members of the uniformed services, and for other purposes;

H.R. 6974. An act to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, track combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes; and

H.R. 8010. An act to amend the Comprehensive Employment and Training Act to designate a Job Corps Center as the "Earle C. Clements Job Corps Center."

BILL PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on August 27, 1980, present to the President, for his approval, a bill of the House of the following title:

H.R. 507. An act to authorize Federal participation in stream rectification, Trinity River Division Central Valley project, California, and for other purposes.

ADJOURNMENT

Mr. SEIBERLING. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 42 minutes p.m.), the House adjourned until tomorrow, Thursday, August 28, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5166. A letter from the Secretary of Agriculture, transmitting a draft of proposed legislation to amend the Agricultural Foreign Investment Disclosure Act of 1978 to clarify the definition of agricultural land and to provide for reports when previously reported land is no longer agricultural or is held by a person who is no longer a foreign person; to the Committee on Agriculture.

5167. A letter from the Principal Deputy Assistant Secretary of Defense (Comptroller), transmitting notice of the proposed obligation of moneys from the Army and the Navy stock funds for war reserve stocks, pursuant to section 736 of Public Law 96-154; to the Committee on Appropriations.

5168. A letter from the Deputy Secretary of Defense, transmitting a report on the financial condition and operating results of working capital funds of the Department of Defense for fiscal year 1979, pursuant to 10 U.S.C. 2208; to the Committee on Armed Services.

5169. A letter from the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), transmitting a quarterly report as of June 30, 1980, on the Selected Reserve recruiting and retention incentive programs, pursuant to 10 U.S.C. 2134, 37 U.S.C. 308b, and 37 U.S.C. 308c; to the Committee on Armed Services.

5170. A letter from the Acting Assistant Secretary of the Army (Manpower and Reserve Affairs), transmitting a draft of proposed legislation to amend title 10, United States Code, to extend eligibility for advanced training in the Senior Reserve Officers' Training Corps to certain persons who have no military training, and for other purposes; to the Committee on Armed Services.

5171. A letter from the Principal Deputy Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice that a decision has been made to convert the transient aircraft maintenance function to contractor performance at Grissom Air Force Base, Ind., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5172. A letter from the Secretary of Housing and Urban Development, transmitting the second annual report on the urban development action grant program, pursuant to section 113(a)(3) of the Housing and Community Development Act of 1974, as amended; to the Committee on Banking, Finance and Urban Affairs.

5173. A letter from the First Vice President and Vice Chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with T.N.H. Leasing A.G., pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

5174. A letter from the First Vice President and Vice Chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with Commission Federal de Electricidad, Mexico, pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

5175. A letter from the First Vice President and Vice Chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with Hylsa, S.A. (Mexico), pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

5176. A letter from the First Vice President and Vice Chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with Transportes Aereos Portuguese (TAP), Lisbon, Portugal, pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

5177. A letter from the Chairman, Federal Deposit Insurance Corporation, transmitting the Corporation's annual report for calendar year 1979, pursuant to section 17(a) of the Federal Deposit Insurance Act; to the Committee on Banking, Finance and Urban Affairs.

5178. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on the furnishing of certain emergency defense services to Thailand; to the Committee on Foreign Affairs.

5179. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a copy of an international agreement to which the American Institute in Taiwan is a party, pursuant to section 12(a) of Public Law 96-8; to the Committee on Foreign Affairs.

5180. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of the Republic of Korea for permission to transfer certain U.S.-origin defense equipment to the Governments of the Republic of Philippines and Brazil, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5181. A letter from the Chairman, Advisory Council on Historic Preservation, transmitting a special report on a series of undertakings by the Veterans' Administration which would have an adverse effect on the Mountain Home Historic Complex, Johnson City, Tenn., pursuant to section 202(b) of Public Law 89-665; to the Committee on Interior and Insular Affairs.

5182. A letter from the Director, Office of Hearings and Appeals, Department of Energy, transmitting a report covering the third quarter of fiscal year 1979 on private grievances and redress, pursuant to section 21(c) of Public Law 93-275; to the Committee on Interstate and Foreign Commerce.

5183. A letter from the Secretary of Commerce, transmitting the fourth report on activities of the regional fishery management councils and the Department of Commerce concerning fishery management plans, regulations to implement such plans, and other activities in the conservation and management of fishery resources undertaken during 1979, pursuant to section 305(f) of the Fishery Conservation and Management Act of 1976; to the Committee on Merchant Marine and Fisheries.

5184. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease in Chicago, Ill.; to the Committee on Public Works and Transportation.

5185. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease in San Bernardino, Calif.; to the Committee on Public Works and Transportation.

5186. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease of space located at 1 Embarcadero Center, San Francisco, Calif.; to the Committee on Public Works and Transportation.

5187. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease of space located at 806 15th Street NW., Washington, D.C.; to the Committee on Public Works and Transportation.

5188. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease of space located at 1325 G Street NW., Washington, D.C.; to the Committee on Public Works and Transportation.

5189. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease of space located at 4228 Wisconsin Avenue, Washington, D.C.; to the Committee on Public Works and Transportation.

5190. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease of space located at 2211 Jefferson Davis Highway, Arlington, Va.; to the Committee on Public Works and Transportation.

5191. A letter from the U.S. Trade Representative, Executive Office of the President, transmitting a report covering the 6 months ended June 30, 1980, on reviews and hearings arising from complaints of un-

fair trade practices by foreign governments, pursuant to section 306 of the Trade Act of 1974, as amended; to the Committee on Ways and Means.

5192. A letter from the Comptroller General of the United States, transmitting a report on the Community Services Administration's internal financial controls (FGMSD-80-73, Aug. 22, 1980); jointly, to the Committees on Government Operations and Education and Labor.

5193. A letter from the Comptroller General of the United States, transmitting a report on the integration of special emphasis programs with the overall equal employment opportunity objectives of the Federal services (FPCD-80-55, Aug. 27, 1980); jointly, to the Committees on Government Operations and Post Office and Civil Service.

SUBSEQUENT ACTION ON A BILL SEQUENTIALLY REFERRED UNDER TIME LIMITATION

Under clause 5 of rule X the following action was taken by the Speaker:

[Omitted from the Record of August 26, 1980]

The Committee on the Judiciary consideration of the bill (H.R. 5615) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources, extended for an additional period ending not later than September 3, 1980.

SUBSEQUENT ACTION ON A BILL SEQUENTIALLY REFERRED UNDER TIME LIMITATION

Under clause 5 of rule X the following action was taken by the Speaker:

[Submitted August 27, 1980]

The Committee on Interstate and Foreign Commerce consideration of the bill (H.R. 7418) to establish a research, development, and demonstration program for the disposal of radioactive wastes, extended for an additional period ending not later than September 3, 1980.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 7418. A bill to establish a research, development, and demonstration program for the disposal of radioactive wastes; with amendments (Rept. No. 96-1156, pt. 2). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5769. A bill to reinstate and validate U.S. oil and gas leases Nos. OCS-P-0218 and OCS-P-0226; with amendment (Rept. No. 96-1260). Referred to the Committee of the Whole House.

Mr. LONG of Louisiana: Committee on Rules. House Resolution 772. Resolution providing for the consideration of H.R. 85. A bill to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes (Rept. No. 96-1261). Referred to the House Calendar.

Mr. LONG of Louisiana: Committee on Rules. House Resolution 773. Resolution providing for the consideration of H.R. 7020. A bill to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes (Rept. No. 96-1262). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ADDABBO:

H.R. 8031. A bill to amend title 13, United States Code, to correct for undercounting in the 1980 census; to the Committee on Post Office and Civil Service.

By Mr. FITHIAN:

H.R. 8032. A bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes; to the Committee on Ways and Means.

By Mr. GRASSLEY:

H.R. 8033. A bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes; to the Committee on Ways and Means.

By Mr. LEACH of Iowa:

H.R. 8034. A bill to amend title 5, United States Code, to establish a ceiling on Federal contracts for personal services, to extend the ceiling on the number of Federal employees under the Civil Service Reform Act of 1978, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. MONTGOMERY:

H.R. 8035. A bill to amend title 38, United States Code, to revise the provisions of such title relating to the construction and alteration of, and acquisition of land for, national cemeteries; to the Committee on Veterans' Affairs.

By Mr. PICKLE:

H.R. 8036. A bill to enhance tertiary oil recovery by amending the Internal Revenue Code relating to prepaid expenses in a tertiary oil project; to the Committee on Ways and Means.

By Mr. REUSS:

H.R. 8037. A bill to repeal the increases in social security taxes which are presently scheduled to go into effect in 1981 and 1982, with the social security trust funds fully protected, through appropriations from the general fund in the Treasury, against any revenue losses they might otherwise sustain as a result of such repeal; to the Committee on Ways and Means.

By Mr. RICHMOND:

H.R. 8038. A bill to amend the Internal Revenue Code of 1954 to allow a tax credit for certain contributions of literary, musical, or artistic compositions; to the Committee on Ways and Means.

By Mr. ST GERMAIN:

H.R. 8039. A bill to establish a commission to encourage, plan, develop, and coordinate the commemoration of the bicentennial of the Constitution; to the Committee on Post Office and Civil Service.

By Mr. SEIBERLING:

H.R. 8040. A bill to amend the Internal Revenue Code of 1954 to provide for the refunding of so much of a taxpayer's investment credit as exceeds his liability for income tax; to the Committee on Ways and Means.

By Mr. VOLKMER:

H.R. 8041. A bill to change the name of Clarence Cannon Dam and Reservoir; to the Committee on Public Works and Transportation.

By Mr. DOWNEY:

H.R. 8042. A bill to amend section 542(c) of the Internal Revenue Code to include a one-bank holding company among the exceptions to the tax penalty, facilitating the transfer of a bank from one independent ownership to another; to the Committee on Ways and Means.

By Mr. GUARINI:

H.R. 8043. A bill to amend title 13 of the United States Code to provide for adjusted and accurate decennial censucs figures; to the Committee on Post Office and Civil Service.

By Mr. LONG of Maryland:

H.J. Res. 601. Joint resolution making an appropriation for the International Monetary Fund for the fiscal year ending September 30, 1981; to the Committee on Appropriations.

By Mr. REUSS (for himself and Mr. KASTENMEIER):

H.J. Res. 602. Joint resolution to designate the 16th day of March of each year, the anniversary of the birth date of James Madison, as "Freedom of Information Day"; to the Committee on Post Office and Civil Service.

By Mr. STUDDS:

H.J. Res. 603. Joint resolution proposing an amendment to the Constitution of the United States to limit to 18 the number of years Senators and Representatives may serve; to the Committee on the Judiciary.

By Mr. WAMPLER:

H.J. Res. 604. Joint resolution designating October 19, 1980 through October 25, 1980, as "Appalachian Coal Awareness Week"; to the Committee on Post Office and Civil Service.

By Mr. RHODES:

H. Con. Res. 422. Concurrent resolution to designate the week of September 28-October 4, 1980, as "National High School Activities Week"; to the Committee on Post Office and Civil Service.

By Mr. ZABLOCKI (for himself, Mr. FASCELL, Ms. OAKAR, Mr. RITTER, Mr. WRIGHT, Mr. BRADEMAS, Mr. FOLEY, Mr. ROSTENKOWSKI, Mr. FOUNTAIN, Mr. ROSENTHAL, Mr. HAMILTON, Mr. WOLFF, Mr. FINGHAM, Mr. YATRON, Mrs. COLLINS of Illinois, Mr. SOLARZ, Mr. BONKER, Mr. IRELAND, Mr. PEASE, Mr. BARNES, Mr. GRAY, Mr. HALL of Ohio, Mr. WOLPE, Mr. BOWEN, Mr. FITHIAN, Mr. BEDELL, Mr. BROOMFIELD, Mr. DERWINSKI, Mr. FINDLEY, Mr. BUCHANAN, Mr. WINN, Mr. GILMAN, Mr. GUYER, Mr. LAGOMARSINO, Mr. GOODLING, Mr. PRITCHARD, Mrs. FENWICK, Mr. QUAYLE, Mr. BAILEY, Mr. GAYDOS, Mr. ANNUNZIO, Mr. FARY, Ms. MIKULSKI, Mr. KEMP, Mr. NEDZI, Mr. NOWAK, Mr. MINISH, Mr. MURPHY of Pennsylvania, Mr. VANIK, Mr. BROOKS, Mr. GIBBONS, Mr. BOB WILSON, Mr. YATES, Mr. BEILENSON, Mr. BOLAND, Mr. RANGEL, Mr. CAVANAUGH, and Mr. MURTHA):

H. Con. Res. 423. Concurrent resolution relating to the situation in Poland; to the Committee on Foreign Affairs.

By Mr. REGULA:

H. Con. Res. 424. Concurrent resolution expressing the sense of the Congress that the U.S. Constitution does not prohibit public schools from providing time for voluntary individual religious expression and prayer; jointly, to the Committees on Education and Labor and the Judiciary.

By Mr. OTTINGER:

H. Res. 774. Resolution providing that the President should continue certain measures which have been taken against the new regime in Bolivia until that regime takes certain corrective actions; to the Committee on Foreign Affairs.

By Mr. SCHULZE:

H. Res. 775. Resolution disapproving the President's recommendation to extend certain waiver authority under the Trade Act of 1974 with respect to Romania; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. HANLEY:

H.R. 8044. A bill for the relief of Rutherford K. Clarke and his wife, Ida T. Clarke; to the Committee on the Judiciary.

By Mr. LUJAN:

H.R. 8045. A bill to authorize and direct the Secretary of the Interior to reinstate oil and gas leases Idaho 016790, Idaho 016791, Idaho 016792, Idaho 016793, Idaho 016813 and Idaho 017371; to the Committee on Interior and Insular Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 365: Mr. COURTER.
H.R. 2033: Mr. HINSON.
H.R. 3258: Mr. ERDAHL.
H.R. 4897: Mr. LEACH of Iowa.
H.R. 5813: Mr. KRAMER.
H.R. 6171: Mrs. SPELLMAN, Mr. MAVROULES, Mr. SEIBERLING, and Mr. FORD of Michigan.
H.R. 6489: Mr. MARTIN.
H.R. 6866: Mr. FITHIAN and Mr. MOLLOHAN.
H.R. 6867: Mr. FITHIAN and Mr. MOLLOHAN.
H.R. 6978: Mr. BEREUTER.
H.R. 7046: Mrs. SPELLMAN.
H.R. 7254: Mr. VAN DEERLIN.
H.R. 7334: Mr. GUARINI and Mr. GARCIA.
H.R. 7461: Mr. ASPIN, Mr. MAZZOLI, Mr. IRELAND, Mr. PICKLE, Mr. MATTOX Mr. PASHAYAN, Mr. DAVIS of Michigan, Mr. WINN, Mr. COLLINS of Texas, Mr. WALGREN, Mr. ROE, Mr. BRODHEAD, Mr. HANCE, Mr. PETRI, Mr. LUKEN, and Mr. MURPHY of Pennsylvania.
H.R. 7479: Mrs. SPELLMAN.
H.R. 7563: Mr. WOLPE and Mr. EDWARDS of Alabama.
H.R. 7622: Mr. CARNEY.
H.R. 7663: Mr. BAILEY.
H.R. 7745: Mr. WILLIAMS of Montana, Mr. CARTER, and Mr. WALGREN.
H.R. 7749: Mr. COLEMAN, Mr. HUCKABY, Mr. DAVIS of Michigan, Mr. WAMPLER, and Mr. MYERS of Indiana.
H.R. 7773: Mr. HUCKABY, Mr. THOMAS, Mr. ARCHER, Mr. COELHO, Mr. PATTERSON, and Mr. PASHAYAN.
H.R. 7794: Mr. DASCHLE.
H.R. 7811: Mr. GRADISON and Mr. HEFTEL.
H.R. 7903: Mr. WINN.
H.R. 8027: Mr. ASHLEY, Mr. KEMP, and Mr. STANTON.
H.J. Res. 511: Mr. BRINKLEY, Mr. ZEFERETTI, and Mr. MINETA.
H.J. Res. 516: Mr. DICKS.
H.J. Res. 568: Mr. AKAKA, Mr. AMBRO, Mr. ANDERSON of Illinois, Mr. ANNUNZIO, Mr. AUCOIN, Mr. BAUMAN, Mr. BEILENSON, Mr. BLANCHARD, Mrs. BOGGS, Mr. BONKER, Mr. BOWEN, Mr. BRADEMAS, Mr. BROOMFIELD, Mr. BUCHANAN, Mr. JOHN L. BURTON, Mr. CARNEY, Mr. CARR, Mrs. CHISHOLM, Mr. CORRADA, Mr. PHILIP M. CRANE, Mr. DANIEL B. CRANE, Mr. COUGHLIN, Mr. PHILIP M. CRANE, Mr. DANIEL B. CRANE, Mr. DANIELSON, Mr. DE LA GARZA, Mr. DECKARD, Mr. DELLUMS, Mr. DICKINSON, Mr. DORNAN, Mr. DOUGHERTY, Mr. DOWNEY, Mr. DRINAN, Mr. FARY, Mr. FASCELL, Mrs. FENWICK, Mr. FINDLEY, Mr. FISH, Mr. FISHER, Mr. FLORIO, Mr. FUQUA, Mr. GAYDOS, Mr. GIAIMO, Mr. GIBBONS, Mr. GILMAN, Mr. GRADISON, Mr. GRASSLEY, Mr. GUARINI, Mr. GUYER, Mr. HALL of Ohio, Mr. HAMMERSCHMIDT, Mr. HANLEY, Mr. HARKIN, Mrs. HECKLER, Mr. HOLLENBECK, Mr. HUGHES, Mr. HYDE, Mr. JOHNSON of California, Mr. JONES of North Carolina, Mr. KASTENMEIER, Mr. KEMP, Mr. KILDEE, Mr. LAGOMARSINO, Mr. LATTA, Mr. LEHMAN, Mr. LENT, Mr. LEVITAS, Mr. LIVINGSTON, Mr. LLOYD, Mr. LONG of Maryland, Mr. LUNDINE, Mr. MADIGAN, Mr. MARKS, Mr. MATSUI, Mr. MAZZOLI, Mr. MCCLORY, Mr. MCDONALD, Mr. MCHUGH, Mr. MCKAY, Mr. MICA, Ms. MIKULSKI, Mr. MINISH, Mr. MOORHEAD of California, Mr. MOTTL, Mr. MURPHY of New York, Mr. MURPHY of Illinois, Mr. MURTHA, Mr. NEAL, Mr. NEDZI, Mr. NELSON, Mr. NOLAN, Mr. PATTEN, Mr. PEPPER, Mr. PEYSER, Mr. PRICE, Mr. PURSELL, Mr. RAHALL, Mr. RAILSBACK, Mr. RANGEL, Mr. RATCHFORD, Mr. RHODES, Mr. RICHMOND, Mr. RINALDO, Mr. RODINO, Mr. ROSENTHAL, Mr. RUDD, Mr. RUSSO, Mr. SCHEUER, Mr. SHARP, Mr. SHUSTER, Mr. SIMON, Mrs. SMITH of Nebraska, Mr. SOLOMON, Mrs. SPELLMAN Mr. ST GERMAIN, Mr. STAGGERS, Mr. STANTON, Mr. STARK, Mr. STRATTON, Mr. ULLMAN, Mr. VAN DEERLIN, Mr. WALKER, Mr. WAMPLER, Mr. WEISS, Mr. CHARLES WILSON of Texas, Mr. WINN, Mr. WON PAT, Mr. WRIGHT, Mr. WYDLER, Mr. WYLIE, Mr. YATES, Mr. YOUNG of Florida, Mr. ZABLOCKI, Mr. SOLARZ, Mr. DERWINSKI, Mr. HOWARD, Mr. JEFFORDS, Mr. MYERS of Indiana, Mr. HILLIS, Mr. STEED, Mr. D'AMOURS, Mr. ROUSSELOT, Mrs. SNOWE, Mr. MCEWEN, Mr. CLAUSEN, Mr. CLAY, and Mr. GRAY.
H.J. Res. 594: Mr. DAVIS of Michigan.
H. Con. Res. 395: Mr. TAUKE.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

416. By the SPEAKER: Petition of Legislature of Palau, Koror, Palau, Western Caroline Islands, relative to the Constitution of the Republic of Palau; to the Committee on Interior and Insular Affairs.

417. Also, petition of the Executive Committee, Small Tribes Organization of Western Washington, Sumner, Wash., relative to health care for non-federally recognized Indian tribes; jointly, to the Committees on Interior and Insular Affairs and Interstate and Foreign Commerce.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. BREAUX:

—Strike out all after the enacting clause and in lieu of the parts proposed to be inserted insert the following:

That this Act may be cited as the "Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act".

TITLE I—OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by title V of this Act;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States,

(B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue:

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel other than an inland oil barge;

(h) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (including a mobile drilling rig when in the drilling mode), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, (including, but not limited to, any motor vehicle or rolling stock) located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) "oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or on land within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 USC 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under section 103(b)(5) of this title;

(o) "navigable waters" means the waters of the United States, including the territorial seas;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or, in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(y) "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person;

(z) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(aa) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(bb) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(cc) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(dd) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is in the Treasury of the United States a fund known as the Comprehensive Oil Pollution Liability Trust Fund established in title V of this Act.

(b) In addition to the processing and settlement of claims under section 107, the fund is immediately available to pay those removal costs defined in section 101(bb)(1) arising out of or directly resulting from an oil pollution incident. The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) injury to, or destruction of, natural resources; and

(4) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the two-year period beginning on the date the claimant first suffered such loss.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(e)(1) or 104(e)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under item 2, by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 3, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(4) under item 4, by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(5) under items 2 through 4, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided, however*, That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port; and

(6) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (6) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

LIABILITY

SEC. 104. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 101(bb)(1) of this title, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the incident or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000;

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000 or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (5) of subsection (b), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (3) of subsection (b), taking into account the relative potential threat of oil pollution, but in no case shall such a limitation be less than $2,000,000 for any tank motor vehicle operated on highways and transporting oil in bulk with a water capacity of more than 3,500 gallons.

(e) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused—

(A) by an act of war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claimant, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) Except as provided in title V the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of this Act, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(bb), there shall be no liability under paragraph (1) hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(i) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons that uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability under this Act to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title and subsection (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) The owner or operator of each offshore facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title, or $50,000,000, whichever is less. These regulations shall take into account the size, type, location, arrangement and degree of consolidation of the structure, platform, well, or pipeline. The regulations shall also take into account the various groupings of multiple offshore facilities owned or operated by the same person or persons or under joint venture. In cases where the owner or operator owns, operates or leases more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such facilities.

(2) Where an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(3) The owner or operator of each tank motor vehicle operated on highways and transporting oil in bulk, with a water capacity of more than 3,500 gallons shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility in such amounts as the Secretary, by regulation, shall establish, but in no event less than $2,000,000.

(c) Any claim authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. He may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

DESIGNATION AND ADVERTISEMENT

SEC. 106. (a)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which

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claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a).

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (a).

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims for compensable damages under title V of this Act shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 106(b), or

(2) where the owner or operator may recover under section 103(b)(1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 106(a)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of claims for compensable damages under title V, to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim for compensable damages under title V presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsection (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 106(b), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(i)(1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 104 of this title is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 107(b)(1), or (where there has been a denial of liability) under section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the fund under section 107(c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), for the period specified in clause (1) of this subsection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount of the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 106, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district court wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss which is a compensable damage under title V, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

PENALTIES

SEC. 111. (a) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 105, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 105(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into acount the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(c) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

APPROPRIATIONS

SEC. 112. There are authorized to be appropriated for those fiscal years which begin on or after October 1, 1980 such sums as may be necessary to carry out the provisions of this title.

ANNUAL REPORT

SEC. 113. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of this title during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of, and the administration of the liability provisions of, this title.

TITLE II—EFFECTIVE DATES; SAVINGS PROVISION; CONFORMING AMENDMENTS

SEC. 201. (a) This section, section 101, section 112, section 203, and each provision of title I that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of title I, the regulations issued thereunder, and section 202 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: *Provided*, That the penalty prescribed by section 111 for failure to comply with the requirements of section 105 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

(c) Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 202 of this title, and in effect on the day immediately preceding the effective date of section 202 of this title shall remain in force until superseded by regulations issued under title I of this Act.

SEC. 202. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made.

(3) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment of taxes under section 541(d)(1)(A) of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been made had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and

amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 101 of that Act), taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (17) with a semicolon and adding a new clause (18) to read as follows:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence, by inserting after the word "person", the words "or his employer".

(3) Clause A of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,"; and

(B) in the third sentence, by striking "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Clause B of paragraph (6) of subsection (b) is amended in the first and second sentences by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,".

(5) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as appropriate,".

(6) Subsection (d) is amended by striking the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund established under subsection (k) of this section or the fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with this section.".

(7) Subsection (1) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances.". Such subsection (1) is further amended by striking out "subsections (c) and (i)" and inserting in lieu thereof "subsection (c)".

(8) Subsection (p)(1) is amended by inserting after "oil" each place it appears the following: "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(9) Subsection (q) is repealed, and subsection (r) is redesignated as subsection (q).

(e) Section 404 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(u) Notwithstanding any other provision of this section, the Secretary shall make any determination with respect to those navigable waters to which the provisions of this section shall apply."

(f) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(1) of this Act;" and insert in lieu thereof "section 105 of the Comprehensive Oil and Hazardous Substances Pollution Liability Compensation Act;".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(g) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 203. No part of any moneys in the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

SEC. 204. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

TITLE III—HAZARDOUS SUBSTANCE LIABILITY, COMPENSATION, AND FUND

HAZARDOUS SUBSTANCE LIABILITY

SEC. 301. (a)(1) Subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"(19) 'supplier' means, with respect to subsection (k) of this section, any person who produces, manufactures, or imports any substance identified in paragraphs (2), (3), (4), or (5) of subsection (k) of this section at a place or for removal to a place other than the site of production, manufacture, or importation, or a site that adjoins the site of production, manufacture, or importation, or uses those feedstocks or elements and compounds himself at a place other than the site of production, manufacture, or importation or a site that adjoins the site of production, manufacture, or importation.

"(20) 'United States claimant' means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

"(21) 'foreign claimant' means any person residing in a foreign country, a government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

"(22) 'guarantor' means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

"(23) 'removal costs' means—

"(A) costs incurred under subsection (c), (d), or (i) of this section; and

"(B) cleanup costs, other than those described in clause (A);

"(24) 'cleanup costs' means costs of reasonable measures taken, after a discharge has occurred, to prevent, minimize, or mitigate pollution from that discharge;

"(25) 'affiliated' means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person.".

(2) Paragraph (6) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(6)(A) 'owner' means any person owning title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) hold title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interests in the vessel or facility;

"(B) 'operator' means (i) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualling, and supplying of the vessel or (ii) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;".

(b) Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act are amended to read as follows:

"(f)(1) Claims for damages for economic loss, incurred on or after the effective date of title III of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act and arising out of or directly resulting from the discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substances, may be asserted for—

"(A) removal costs;

"(B) injury to, or destruction of, real or personal property;

"(C) injury to, or destruction of, natural resources; and

"(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the two-year period beginning on the date the claimant first suffered such loss

"(2) A claim authorized by paragraph (1) may be asserted—

"(A) under item (A) of paragraph (1), by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in a discharge may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (g)(5)(A) or (g)(5)(B) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (g): *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

"(B) under item (B) of paragraph (1), by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

"(C) under item (C) of paragraph (1), by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

"(D) under item (D) of paragraph (1), by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

"(E) under items (B) through (D) of paragraph (1), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

"(i) the discharge occurred (I) in the navigable waters, or (II) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

"(ii) the claimant is not otherwise compensated for his loss;

"(iii) the discharge was from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, et seq.); and

"(iv) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and

"(F) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

"(3) If the Attorney General fails to act under clause (F) of paragraph (2) within sixty days of the date on which the Secretary designates a source of discharge, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

"(g)(1) Subject to the provisions of paragraphs (2) (3), (4), and (5), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, or poses a threat of such a discharge in circumstances that justify the incurrence of removal costs, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under subsection (f).

"(2) Except when the discharge or threat of discharge is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the discharge or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under paragraph (1) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

"(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

"(B) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

"(C) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

"(D) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

"(E) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

"(F) in the case of a facility other than one described in clause (D) or (E) $50,000,000 or such lesser limit as is established under paragraph (4).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this paragraph.

"(3) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (E) of paragraph (2), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

"(4) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (D) and (E) of paragraph (2). These regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of discharges involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (C) of paragraph (2), taking into account the relative potential threat of pollution, but in no case shall such a limitation be less than $5,000,000 for any tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity of more than 3,500 gallons.

"(5) There shall be no liability under paragraph (1)—

"(A) to the extent that the discharge is caused—

"(i) by an act of war, hostilities, civil war, or insurrection; or

"(ii) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

"(B) to the extent that the discharge or threat of discharge is caused by an act or omission of a person other than—

"(i) the claimant,

"(ii) the owner or operator,

"(iii) an employee or agent of the claimant, the owner, or the operator, or

"(iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

"(C) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(D) as to a particular claimant, to the extent that the discharge or economic loss is caused by the negligence of that claimant.

"(h)(1) Except as provided in title V, the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to the extent that the loss is not otherwise compensated.

"(2) Except for removal costs (other than cleanup costs), there shall be no liability under paragraph (1) hereof—

"(A) where the discharge or threat of discharge is caused primarily by an act of war, hostilities, civil war, or insurrection;

"(B) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(C) as to a particular claimant, to the extent that the discharge or threat of discharge or economic loss is caused by the negligence of that claimant.

"(3) In addition to the damages for which claims may be asserted under subsection (f), and without regard to the limitation of liability provided in subsection (g), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which a source of discharge is designated, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

"(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

"(i)(1) No indemnification, hold harmless, or similar agreement shal be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (g), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

"(2) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (g), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

"(3) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, subsections (g), (h), and (i) supersede such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).".

(c) Subsection (k) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(k) There is in the Treasury of the United States a fund known as the Hazardous Substance Pollution Liability Trust Fund established under title V of the Com-

prehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

SEC. 302. (a) Subsection (o) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(o)(1) Except as provided in this title—

"(A) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in subsection (f)(1), a claim for which may be asserted under this title, and

"(B) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss which is a compensable damage under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

"(2) Nothing in paragraph (1) shall preclude any State from imposing a tax or fee upon any person or any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance in order to finance the purchase and prepositioning of any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance, pollution cleanup and removal equipment.

"(3) Nothing in paragraph (1) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.".

(b) Section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(r)(1) When the Administrator receives information of a discharge in violation of this section, he shall, where possible, designate the source or sources of the discharge and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

"(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Administrator, within five days after receiving notification of the designation, or his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Administrator, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Administrator shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

"(3) In a case where—

"(A) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of this subsection,

"(B) the source of the discharge was a public vessel, or

"(C) the Administrator is unable to designate the source or sources of the discharge under paragraph (1) of this subsection,

the Administrator shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

"(4) Advertisement under this subsection shall commence no later than fifteen days from the date of the designation made hereunder and continue for a period of no less than thirty days.

"(s)(1) Except as provided in paragraph (2), all claims shall be presented to the owner, operator, or guarantor.

"(2) Claims for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act shall be presented to the fund under subsection (k)—

"(A) where the Administrator has advertised or otherwise notified claimants in accordance with subsection (r), or

"(B) where the owner or operator may recover under subsection (f)(2)(A).

"(3) In the case of a claim presented in accordance with paragraph (1), and in which—

"(A) the person to whom the claim is presented denies all liability for the claim, for any reason, or

"(B) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (r)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to present the claim to the fund under subsection (k); that election to be irrevocable and exclusive.

"(4) In the case of a claim for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act presented in accordance with paragraph (1), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (g) or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund under subsection (k).

"(5) In the case of a claim which has been presented to any person, under paragraph (1), and which is being presented to the fund under subsection (k), under paragraph (3) or (4), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Administrator may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

"(6) In the case of a claim presented to the fund under subsection (k), under paragraphs (2), (3), and (4), and in which the fund—

"(A) denies all liability for the claim, for any reason, or

"(B) does not settle the claim by payment to the claimant within sixty days of the date upon which (i) the claim was presented to the fund or (ii) advertising was commenced under subsection (r)(3), whichever is later,

the claimant may submit the dispute to the Administrator for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under paragraph (2) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

"(7)(A) The Administrator shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund under subsection (k).

"(B) Except as provided in subparagraph (C), the Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this subparagraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Administrator that advertising is not reasonably practicable. The Administrator may make advance payments to a contractor for services and facilities, and the Administrator may advance to the contractor funds to be used for the payment of claims. The Administrator may review and audit claim payments made under this paragraph. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Administrator. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Administrator.

"(C) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Administrator may use Federal personnel to process claims against the fund.

"(8) Without regard to subsection (b) of section 556 of title 5, United States Code, the Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Administrator under paragraph (6). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

"(9)(A) Upon receipt of a request for decision from a claimant, properly made, the Administrator shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under paragraph (8).

"(B) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

"(C) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this paragraph, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Administrator. If a person fails or refuses to obey a subpena, the Administrator may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

"(D) A hearing conducted under this paragraph shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

"(E) The decision of the administrative law judge or panel under this paragraph shall be the final order of the Administrator, except that the Administrator, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund under subsection (k).

"(F) Final orders of the Administrator made under this paragraph shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

"(10)(A) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

"(B) The fund may intervene in the action as a matter of right.

"(C) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

"(D) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

"(E) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (g) of this section is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

"(11) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

"(12) No claim may be presented, nor may an action be commenced for damages recoverable under this section, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund under subsection (k), as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (f) of this section, or within six years of the date of the discharge which resulted in that loss, whichever is earlier.

"(t)(1) Any person or governmental entity, including the fund under subsection (k), who compensates any claimant for an economic loss, compensable under subsection (f), shall be subrogated to all rights, claims, and causes of action which that claimant has under this section.

"(2) Upon request of the Administrator, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this section. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

"(3) In all claims or actions by the fund against any owner, operator, or guarantor, under paragraphs (1) and (2), the fund shall recover—

"(A) for a claim presented to the fund (where there has been a denial of source designation) under subsection (s)(2)(A), or (where there has been a denial of liability) under subsection (s)(3)(A)—

"(i) subject only to the limitation of liability to which the defendant is entitled under subsection (g), the amount the fund has paid to the claimant, without reduction;

"(ii) interest on that amount, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

"(iii) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

"(B) for a claim presented to the fund under subsection (s)(3)(B)—

"(i) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) subject to dispute by the defendant as to any excess over the amount offered to the claimant in satisfaction of the claim the fund has paid to the claimant;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), for the period specified in clause (A) of this paragraph; and

"(III) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

"(ii) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) the amount the fund has paid to the claimant, without reduction;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this clause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this clause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under subsection (r), the defendant shall not be liable for interest for that period; and

"(III) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

"(4) The fund under subsection (k) shall pay over to the claimant that portion of any interest the fund shall recover, under subparagraph (A) and clause (i) of subparagraph (B) of paragraph (3), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

"(5) The fund under subsection (k) is entitled to recover for all interest and costs specified in paragraph (3) without regard to any limitation of liability to which the defendant may otherwise be entitled.

"(u) No part of any moneys in the fund shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

"(v) The owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain in accordance with regulations issued by the President evidence of financial responsibility in such amounts as the President determines necessary but not less than $5,000,000.".

SEC. 303. Nothing in this Act or the amendments made by this Act shall be construed to authorize any officer or employee of the United States or any department, agency, or instrumentality of the United States to prohibit, control, or otherwise regulate the use of any groundwaters.

SEC. 304. This title and the amendments made by this title shall take effect one hundred and eighty days after the date of enactment of this Act.

TITLE IV

SEC. 401. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of titles I through IV of this Act or of any amendment made by titles I through IV of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection

of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TITLE V—ENVIRONMENTAL REVENUE ACT OF 1980

SEC. 501. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Environmental Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes

SEC. 511. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"Chapter 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. TAX on petroleum.
"SUBCHAPTER B. TAX on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4601. Imposition of tax.
"Sec. 4602. Definition and special rules.

"SEC. 4601 IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4602. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY ONE TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section 4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4651. Imposition of tax.
"Sec. 4652. Definitions and special rules.

"SEC. 4651. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

"(2) 31 cents a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4652. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—The term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—

"(A) IN GENERAL.—The term 'specified petrochemical feedstock' means any of the following substances: ethylene; propylene; butylene; butadiene; butane; propane; benzene; toluene; xylene; naphthalene; methane; carbon black; ethane.

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is used as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4651(a), the person so using it shall be treated as the manufacturer thereof).

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potasium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potasium hydroxide, and sodium hydroxide; and

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4602(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

"(c) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4651 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced.".

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"Chapter 38—ENVIRONMENTAL TAXES.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Funds

Part I—ESTABLISHMENT OF TRUST FUNDS

SEC. 521. ESTABLISHMENT OF COMPREHENSIVE OIL POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Oil Pollution Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO OIL POLLUTION TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Oil Pollution Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(1) the amounts received in the Treasury under section 4601 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of the Oil Pollution Trust Fund under title I of this Act, and

(3) any penalties imposed under title I of this Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils).

(c) EXPENDITURES FROM OIL POLLUTION TRUST FUND.—

(1) IN GENERAL.—Amounts in the Oil Pollution Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under title I of this Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Oil Pollution Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

SEC. 522. ESTABLISHMENT OF HAZARDOUS SUBSTANCE POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Hazardous Substance Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO HAZARDOUS SUBSTANCE TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Hazardous Substance Trust Fund amounts determined by the Secretary to be equivalent to—

(1) the amounts received in the Treasury under section 4611 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of such Trust Fund under section 311 of the Federal Water Pollution Control Act, and

(3) any penalties imposed under section 311 of such Act (insofar as it relates to substances other than petroleum oils).

(c) EXPENDITURES FROM HAZARDOUS SUBSTANCE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Hazardous Substance Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under section 311 of the Federal Water Pollution Control Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Hazardous Substance Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

Part II—GENERAL PROVISIONS APPLICABLE TO TRUST FUNDS

SEC. 531. PURPOSES FOR WHICH TRUST FUNDS ARE AVAILABLE.

(a) DEFINITION OF COMPENSABLE DAMAGES.—

(1) IN GENERAL.—For purposes of this subtitle, the term "compensable damages" means damages asserted for—

(A) removal costs,

(B) injury to, or destruction of, real or personal property,

(C) injury to, or destruction of, natural resources, and

(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, but—

(i) only if the person asserting the claim meets the income requirements of paragraph (2), and

(ii) only to the extent that the damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(2) INCOME REQUIREMENTS.—For purposes of paragraph (1), a person meets the income requirements of this paragraph if—

(A) for the taxable year which includes the day on which such person first suffered the loss described in paragraph (1)(D), or for the preceding taxable year, such person's gross income from activities which utilize the property or natural resources referred to in paragraph (1)(D), exceeds

(B) 25 percent of his total gross income from all sources for the taxable year (or preceding taxable year, as the case may be).

(b) RESTRICTION ON INTEREST PAYABLE OUT OF TRUST FUNDS.—No amount in any Trust Fund established by this subtitle may be used to pay interest on any claim for any period before the 46th day after the day on which such claim is finally determined.

(c) CERTAIN INTERFUND LOANS PERMITTED.—

(1) IN GENERAL.—Amounts in any Trust Fund established by this subtitle (hereinafter in this subsection referred to as the "lending fund") may be loaned to the other Trust Fund established by this subtitle if—

(A) the Secretary (after consultation with the appropriate Federal official) reasonably expects that the amount to be loaned will not be needed by the lending fund for the period of such loan,

(B) interest is payable on such loan at a rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturities similar to that of such loan, and

(C) immediately after the making of such loan, the amount in the lending fund equals or exceeds $30,000,000.

(2) APPROPRIATE FEDERAL OFFICIAL.—For purposes of paragraph (1), the appropriate Federal official is—

(A) the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and

(B) the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund.

(3) AMOUNT IN TRUST FUND.—For purposes of this subsection and section 532(a), the amount in any Trust Fund shall be the sum of any cash in such Trust Fund and any public debt securities held by such Trust Fund.

SEC. 532. LIMITATION ON PAYMENT OF CLAIMS BY FUND.

(a) GENERAL RULE.—No amount in any Trust Fund established by this subtitle shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the amount in such Fund to an amount less than $30,000,000.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time any Trust Fund established by this subtitle is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 533. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim for damages filed against any Trust Fund established by this subtitle may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than a Trust Fund established by this subtitle.

(b) BORROWING FROM GENERAL FUND OF TREASURY.—

(1) PROHIBITION.—Except as provided in paragraph (2), nothing in this Act (or in any amendment made by this Act) shall be construed to authorize any Trust Fund established by this subtitle to borrow any money from the general fund of the Treasury.

(2) FIRST YEAR AUTHORITY.—

(A) IN GENERAL.—There are authorized to be appropriated to each Trust Fund established by this subtitle, as repayable advances, such sums as may be necessary to carry out the purposes of such Fund.

(B) LIMITATIONS.—

(i) The maximum aggregate amount which may be appropriated pursuant to subparagraph (A) to any Trust Fund may not exceed $75,000,000.

(ii) No advance may be made under this paragraph after September 30, 1981.

(C) REPAYMENT OF ADVANCES.—Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in section 534(b)(2) and shall be compounded annually.

SEC. 534. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 521(b) or 522(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUNDS.—

(1) REPORT.—The Secretary shall be the trustee of each Trust Fund established by this subtitle, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of each Trust Fund established by this subtitle as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investment shall be credited to and form a part of the Trust Fund.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 541. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of any Trust Fund created by this title,

(3) the levy or collection of any fee, or

(4) the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under this title (or under any amendment made by this title).

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title—

(1) any reference in titles I and II of this Act (or in any amendment made by either of

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such titles) to a fund shall be deemed to be a reference to the Comprehensive Oil Pollution Liability Trust Fund established by this title, and

(2) any reference in title III of this Act (or in any amendment made by such title) to a fund shall be deemed to be a reference to the Hazardous Substance Pollution Liability Trust Fund established by this title.

(c) CERTAIN LIABILITIES ARISING BEFORE OCTOBER 1, 1980.—If any provision of this Act provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to any Trust Fund established by this title (hereinafter in this subsection referred to as the "transferee fund"), any claim which arises before October 1, 1980 (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the transferee fund notwithstanding any of the limitations imposed by subtitle B of this title.

(d) ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND.—

(1) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(A) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4601 of the Internal Revenue Code of 1954 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination, or

(B) that there is a TAP fund deficit, the tax imposed by section 4601 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) TAP FUND SURPLUS.—The term "TAP fund surplus" means the excess (if any) of—

(i) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time of such transfer.

(B) TAP FUND DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(i) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title.

Subtitle D—Study

SEC. 551. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study—

(1) on the feasibility of—

(A) taxes which are based on the frequency of hazardous substances pollution and the degree of harm to the environment which results from such pollution, and

(B) adjustments in the amount of taxes on different modes of transportation to reflect different risks of pollution,

(2) an exemption from the taxes imposed by section 4651 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) on the impact of the taxes imposed by sections 4601 and 4651 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

H.R. 7020

By Mr. SOLOMON:

—Page 36, line 21, after "for" insert "(1)".

Page 36, line 24, before the period insert: ", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

Page 50, after line 11, insert the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

"ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulations shall provide for the annual allocation of grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.".

Page 50, after line 15, insert:

"Sec. 3012. Assistance for State or regional facilities.".

EXTENSIONS OF REMARKS

CHRYSLER AND AUTO TECHNOLOGY

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. WALGREN. Mr. Speaker, American auto technology is in a crucial state of transition. For a number of inescapable reasons we must change the size and design of new automobiles in order to deal with our energy shortage in an effective manner. Simply stated: "Necessity is the mother of invention." Such is the case for both the United States and the Chrysler Corp.

I would like to draw the attention of my colleagues to an article that recently appeared in Car & Driver magazine that describes the new Chrysler K car. I commend this article for reading because it shows the creativity our Nation needs for future automotive technology.

PLYMOUTH RELIANT SE

(By Don Sherman)

Will Chrysler survive? The whole country's been wondering, from Stasz's Bar and Grill in Hamtramck to the hallowed halls of Congress. Over the last six months, speculation has run rampant across the nation's newspaper headlines, with precious few affirmative answers. Lee A. Iacocca, Chrysler's chairman of the board and also the man who pulled off the most complex financial closing in history, insists the foundering giant must not be allowed to go down. Uncle Sam, through the federal loan-guarantee board, has reluctantly and half-heartedly agreed.

American car consumers don't seem to care one way or another. The lucky few with cash or credit for a new automobile are buying Japanese at unprecedented rates. The rest are having enough trouble just keeping the rent paid and gas in the old bus for the daily work commute. If there's one thing that could possibly shake buyers out of the doldrums and put Chrysler back into the black, it's brand, spanking new hardware. After all the rhetoric, the begging, pleading, and doomsday prognostications, any company lives or dies on the products it sells. In Chrysler's case, unsold New Yorkers, Cordovas, Ramchargers, and Aspens have been bleeding the very lifeblood from the corporation every day. Now, not a moment too soon, there's a chance for a vital transfusion, the K-car.

"K" is engineering lingo for the car that will become the Plymouth Reliant and the Dodge Aries the instant it touches down on showroom floors in three body styles—notchback two- and four-door sedans and a five-door wagon. Not only is the K-car the most "previewed" automobile in history—accurate photographs were dispensed months ago to the press, and every congressman was offered a prototype to test-drive—it also bears the weightiest responsibility of any product since the dawn of free enterprise. This car is the today and tomorrow of Chrysler, the very essence of the seventeenth largest corporation in the country.

Planners had little idea one design would be so crucial when they first set pen to paper four years ago. The Omni/Horizon line was almost ready for introduction at that time. Americans had just resumed their big-car buying habits after Energy Crisis I, encouraged by plentiful—albeit more expensive—fuel supplies. The K would replace the Aspen/Volaré, and, for the first time ever, Chrysler planners knew exactly what they wanted. The "blueprint" letter that set development in motion was seven pages long, whereas single-sheet descriptions had typically launched new Chrysler products in the past.

What they wanted was a downsized Aspen/Volaré with every bit of fresh technology Chrysler could afford. This wish jelled into a plan that has become the only accepted way to build a new sedan: a transverse front-wheel-drive powertrain; space-efficient, people-oriented bodywork; and maximum mpg through state-of-the-art emissions controls, small-displacement four-cylinder engines, lightweight engineering, and wind-tunnel aerodynamic tuning.

Four years is a long gestation period, and as the world turned topsy outside Chrysler's engineering center, product planners were tempted to bend the K-car blueprint here and there. The success of Malibous, Fairmonts, and later, X-cars suggested that perhaps a 99.6-inch wheelbase was too small; one faction was anxious for a stretch while there was still time. Likewise, V-6 engines became all the rage, and several planners wondered if the K-car's four-cylinder-only design might miss the ever oscillating market target.

The Ford gang as it turned out kept the K-car true to original concept. Harold K. Sperlich, Chrysler's new executive vice-president of engineering and product development in 1977, squeezed off one of those fabled hip shots in the face of conflicting market research. What he did was freeze the K-car small, as you see it here. It's history now, but the ayatollah proved Mr. Sperlich both right and prescient. By the time Iacocca came on board in 1979 (followed by another platoon of FoMoCo talent), the K was pretty much locked in place, needing only Washington-guaranteed cash to finance its way through development and into the marketplace.

World events as much as anything else made the K-car exactly what consumers and the Chrysler Corporation alike need right now. Preliminary fuel economy ratings run from 23 to 26 mpg. The four-cylinder is the engine of the times, as even V-6s are starting to seem "too big."And just as America feels ready and eager to get back to basic transportation, the K-car arrives as a very bread-and-butter sedan: no opera windows (or lights), no boudoir decor packages, no Continental kits, no two-tone paint jobs, and not even a hatchback to confuse the issue.

These are strictly mainstream, middle-of-the-market machines, so don't look for a Reliant RS or an Aries Rising just yet. Supposedly such iterations are on the drawing board—along with two-seaters, mini-trucks, and larger sedans using K-car components—but for now, the three basic body styles have been charged with the responsibility for 43 percent of Chrysler's 1981 business.

No small feat. The K-car does have a long bill of attributes that should help it blaze like a laser beam through Detroit's darkest hour. This is another of those genuinely small cars packed with an astonishingly roomy interior. SAE measurements (used by the EPA to categorize cars) spot the K-car just slightly smaller than an X-car in front, but a bit larger in both back-seat and truck roominess. Outside, the K rides on a five-inch-shorter wheelbase than the X-car, is six inches shorter overall, and is just a touch wider. Inside, Chrysler supplies seatbelts for five or six people (depending on whether the front seats are buckets or a bench), and the EPA has anointed this a "midsize" car (but just barely). After our preview rides at Chrysler's Chelsea proving grounds, we can add that a Reliant or Aries will carry four quite comfortably, with room for one or two more in a pinch. The trunk is a useful fifteen cubic feet because the spare tire lies flat and the fuel tank is tucked forward, under the rear seat.

The big-inside/little-outside trick was pulled off the usual way. Up front, there's a new 2.2-liter engine specifically designed for sidewinder duty. For Chrysler's first new powerplant in twenty years, the design seems a bit archaic: long of stroke, lacking a crossflow cylinder head, and stuck with a so-called "bath-tub, double-quench" combustion chamber. The good stuff does include an aluminum cylinder head (cast by Fiat), a belt-driven overhead camshaft jewel-like hydraulic valve-lash adjusters, and a sophisticated feedback carburetor wired to a three-way catalytic-converter emissions-control system. Weigh the good and the bad as you like, but every aspect of the design is at least justifiable. The long stroke produces the necessary displacement within a short overall engine length, a very important consideration in transverse layouts. The non-crossflow design locates both intake and exhaust systems to the back, where they package neatly over the transaxle (a la VW Rabbit). The early engines we tested were spunky for the job: reasonably smooth, competitive if not all-conquering in acceleration, and suprisingly thrifty with fuel if early EPA predictions are accurate. (See the performance printout and specifications that follow. We've held off bar graphs until we have production K-cars to compare with the competition.)

A Mitsubishi-made 2.6 Silent Shaft four-cylinder is the optional engine. It's available only with Chrysler's three-speed automatic transmission at the moment, so the combination is only a mite speedier than the four-speed 2.2 powertrain. The bigger engine is smoother and quieter, and both four- and five-speed boxes are under development for it. Right now, the little engine's four-speed shift linkage is what we'd call non-controversial: more direct-acting than an X-car's, not quite as positive as the new Ford Escort's.

The real surprise here is not under the hood, but rather under the fenders. The suspension hardware is similar to the Omni/Horizon's (some pieces are interchangeable), but the tuning came off like no Chrysler in the history of mankind. This one works. The damping is—dare we say—right up to European levels of firmness and rock-and-roll control. Understeer is well in check, and we measured a respectable 0.71 skidpad g on very skinny Goodyear Arriva tires. The steering actually feels attached to the

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● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

wheels all the way through Chrysler's notorious power assist. Actually, we heartily recommend the power rack-and-pinion in the K-car, because it not only feels firm and road-related, but also speeds up the steering ratio by a significant 20 percent.

Our preview tests revealed two more interesting tidbits. The brakes do their share in stopping, but the tires don't. Seventy-to-zero braking distances were lengthy, at 227 feet, even though the system was quite sensitive to modulation and had excellent front-to-rear balance. Secondly, our coast-down procedure showed the K-car to be an easy roller, with a low 14.0-horsepower requirement at a steady 50 mph (compared with 13.5 hp in a Buick Skylark). Drag coefficients for the three body styles are mediocre: they vary from a low of 0.45 for the five-door wagon to a high of 0.51 for the two-door sedan.

Inside, you'll find much less confusion than in your average pre-K-car Dodge or Plymouth. The options make sense. You need pick from only two trim levels, cloth or vinyl upholstery, and bucket or bench front seats. Buy the Custom Dodge or Plymouth and you get some wood-grain, buy the SE trim for either and you get more, but not much. (A magnificent, all-black instrument-panel overlay was killed at the last minute.) There really is no stripper, per se. The ventilation is excellent, with or without air conditioning. Full carpeting is standard; all seat trim is livable. The SE interior is plush without decadence. Instrumentation is painfully basic, with a fuel gauge and an 85-mph speedometer backed up by the usual array of sorry-about-that-it's-already-busted lights, no matter how you litter the order sheet with check marks. The most glaring oversight: no backrest adjuster is offered on any K-car seat.

To sum it up, we're surprised and happy to say we're surprised and happy about the K-car. Chrysler's crisis team—veterans tired of the old way of doing things, lots of Ford recruits, and a do-or-die top management—has clearly put together a car that's bound to kick hell, here and there. This is the first made-in-America little car with a sense of purpose strict enough to appeal to devout import buyers. And all those households across the heartland that have been postponing their inevitable move to efficient transportation now have one fewer excuse for waiting. So if there is a Chrysler Corporation left to build K-cars, there should be plenty of buyers ready to take the dare in Mark Russell's finale.●

MANAGEMENT MINUS INVENTION

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. LaFALCE. Mr. Speaker, the problem of declining productivity in this country is at long last receiving increasing attention from experts in economics and business management.

The attention from the latter group is particularly welcome, because managers of an individual enterprise can play a very important role in determining whether a given concern will be productive. That's the good news.

The bad news concerns the actual role and performance of American managers. Unfortunately, all too many managers and corporate executives are much more familiar with the ledger sheet and the stock market than with actual technical operation of their firms. This type of manager or corporate executive may be glamorous and appealing, but he or she may also be part of the reason for declining productivity in this country. Perhaps it is time for American companies to return to the practice of having managers from the production side of the company, rather than managers who jump from position to position or who come from the financial or legal sections of the company.

Professors William J. Abernathy and Robert H. Hayes from the Harvard Graduate School of Business Administration made an excellent case for that argument in an article in the August 20 edition of the New York Times, entitled "Management Minus Invention."

The article follows:

MANAGEMENT MINUS INVENTION

What is wrong with our economy and the competitive vitality of American business? The losses by United States auto companies, for example, are sobering not just because of their magnitude—more than $1.3 billion last quarter—or because General Motors reported its first loss since the Great Depression but because the situation in autos is just the tip of the iceberg.

The list of endangered industries, where foreign competition is fast taking business away from companies that once were dominant, is long and growing. Even in our vaunted electronics industry, many segments are crumbling. Computers and semiconductors are apparently still healthy, but the recent inroads that Japanese manufacturers have made into our semiconductor markets are ominous, and they have not really mounted a full-scale attack on computers yet.

A few decades ago, American management was renowned for its innovative competitiveness. What happened? The common reasons given—that foreign managers copied our methods and licensed our technology, that our Government meddled in business affairs and mismanaged economic policy, that there have been profound changes in the attitudes and work ethic of our work force and that foreign competitors have not "played fair"—are only part of the answer.

Probably even more significant is the fact that the climate of economic supremacy during the 1950's and 1960's fostered a new set of management attitudes and practices in the United States that have led us to downgrade our ability to compete technologically with other countries—that is, through superior products and superior manufacturing processes.

American companies increasingly turn to people with financial and legal backgrounds to fill their top positions. Today the percentage of chief executive officers of the 100 biggest corporations with these backgrounds is up 50 percent from its level of 30 years ago. As a result, correspondingly fewer have "hands-on" experience in the more competitively oriented functions such as marketing, production, engineering and research and development.

What kinds of philosophies and management practices has this new generation of managers swept in with it? These are just three of the bedrock principles so often espoused by this new breed of self-styled "professional managers":

The top corporate manager, first and foremost, must be a skilled strategist, able to cut through the complexities of messy problems while standing aloof from the details that are the lot of the line manager.

The primary job of the senior executive is to oversee the complex processes involved in managing a large organization: resource allocation, personnel assignment, compensation and control. Specific first-hand knowledge of an industry, of technology or of the competitive environment for specific products is less important.

Quickness and decisiveness are critical to success. As in managing a portfolio of stocks and bonds, the executive who can reposition his company's assets, getting into attractive businesses and out of "losers," who can orchestrate a takeover or a divestiture with equal aplomb, will be the most successful. Being identified as a corporate "raider," a "white knight" or a "gunslinger" in the financial press brings honor (and perhaps a higher stock price) to one's company.

As appealing as these ideas may sound, over the long term they can seriously degrade a company's ability to compete. A fallacy underlies them all: that there is no need to invent, build or develop anything yourself. They all assume that, given the capital and good financial management, anything of value can be bought and any problem can be sold. A sense of commitment—to one's workers, customers, suppliers, even one's fellow managers—is an impediment. If it doesn't work, do not try to fix it—get rid of it and buy something else "off the shelf."

Stated so blatantly, such a belief seems naive and callous. Yet it is an American characteristic, a heritage of a frontier movement: Take up new land and resources, use them up and move on. What this view fails to recognize, of course, is what our European and Japanese critics are now pointing out. When the frontier is gone, one must develop an environment that will nurture new technologies, open up new markets and develop more productive people.

Building dynamic, organically growing companies requires a different breed of manager. It requires not someone who views the petty world of products and processes with the Olympian detachment of the 40th floor, but a manager who knows his markets and technologies well enough that he can break the old rules through innovation; not an executive who is preoccupied with the process of management, but a manager who is immersed in the basic decisions that are essential to leading markets rather than simply reacting to them; not an executive who looks for "off-the-shelf" solutions to problems, but a management that is willing to sweat and bleed to make things happen.

If European and Japanese companies increasingly capture our markets, there is a growing suspicion that the new management philosophy, with its Olympian detachment and preoccupation with strategists, master strokes and organizational processes should bear a large share of the blame.●

NEW CITIZENS OF MARYLAND'S SECOND DISTRICT

HON. CLARENCE D. LONG

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. LONG of Maryland. Mr. Speaker, it is with particular pleasure that I congratulate 28 residents of Maryland's Second Congressional District who have chosen to become American citizens, accepting all of the responsibilities that freedom and citizenship entail. I hope that my colleagues will join me in congratulating these new Americans and extending to them our wishes for a happy and prosperous future in the land we love.

They are Chang Park, Young Joo, Kil Joo, Benedicta Lizardo, Taiyin Wei, Shobha Bharadwaja, Basilios Bilis, Virbala Patel, Harshad Patel, Edward Shechter, Gerardo Bove, Desire Hadiwinoto, Premnath Bhatia, Moussa Dabbah, Carmel Wogan, Soon Task Yoo, Ja Yul Yoo, Myung Ja Yoo, Francis Guerrero, Jadwiga Frazier, Elizabeth Ciezkowski, Fei-Wen Chiao, Jacqueline Grieve, Annie Grieve, Souraya Khafagy, You Coberly, and Mr. and Mrs. Christopher Carter in behalf of Andrea and Bruce Carter.●

CONGRESSIONAL TENURE

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. STUDDS. Mr. Speaker, during our Nation's first century, few Congressmen chose to serve more than two terms. Rotation in office was expected and encouraged. This was at least partly to free our new Republic from the elitist, monarchial system that had hastened the American Revolution. The principle was based on the desirability of new faces—and the refreshing ideas that presumably accompany them—in the Congress.

The next hundred years, however, saw a shift away from the citizen-legislator, the Congressman drawn from private life for a temporary civic-minded stint in public service. Now we are more accustomed to the professional legislator, better known as the career politician. I believe this is an unhealthy trend which is partially responsible for rampant public cynicism toward our national leaders and for the reluctance of many able citizens to consider campaigning for public office.

Meanwhile, career legislators suffer from Potomac fever, an insidious affliction aggravated by the prospect of chronic, insulated tenure in Washington, the only treatment for which seems to be undergoing a biennial rite that often conflicts with the responsibilities of legislating.

Of course, longevity in office is not necessarily an evil. An experienced Congressman may well develop professional expertise and practical know-how and become a better legislator in the process. I am wary, however, of a disturbing trend toward a Congress of legal technocrats, driven as much by personal career ambition as by public interest. A Congressman, by virtue of the system permitting unlimited eligibility for reelection, is encouraged to settle in for a long tenure in office. Continued service is contingent on reelection, but that prospect is enhanced by incumbency and nurtured by longer incumbency. At some point, reelection—and the special interests which seem inevitably to hover over political campaigns—becomes a primary goal. Along the way, the public interest can barely help but suffer. As one proponent of limited congressional tenure observed, a lifetime legislator is no longer "of the people."

Congressmen, like persons in other occupations, learn more as they become more familiar with their positions. However, Congressmen have a unique mandate and responsibility based on the public trust. Service in the Congress now offers what many consider an attractive career. It thus becomes dangerously easy at some point for a lifetime Member to begin to consider public policy matters as direct functions of considerations of political expediency and personal comfort. That prospect is an anathema to the American political tradition.

For these reasons, I have introduced legislation that would limit a Member of Congress to a maximum of 18 years in office: a maximum of nine terms for a U.S. Representative, three terms for a U.S. Senator or a total of 18 years combined in the House and Senate. Many proponents of limited congressional tenure may consider 18 years too long a period of service to uphold the principle of rotation of office. I would tend to agree. I believe the proper limit lies somewhere between 12 and 18 years.

However, by proposing an 18 year limit, I hope to stimulate debate within the Congress and within the American electorate on this important question, and to present the Congress with legislation politically palatable enough to warrant serious consideration.

A limited legislative career would systematically encourage Congressmen to get down—and to stay attuned—to legislative business. It might also help restore some integrity to the ebbing public perception of our national leaders. As careerism in the Congress has increased, especially during the last 25 years, so has the momentum for the modifications I am suggesting. I urge my colleagues to consider these proposals carefully.●

SPIRIT OF HELSINKI VIGIL FOR 1980

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. LUKEN. Mr. Speaker, today I rise to participate in the Spirit of Helsinki Vigil for 1980. I am proud to be able to join with other Members of Congress in addressing the plight of individuals residing in a country they wish to leave but cannot because their government will not allow them to do so.

The story of Mark Kovner, my adopted Soviet prisoner of conscience, is a typical one but nonetheless poignant. Professor Kovner is married and has three children, two daughters, Masha and Galya, and one son, Leonid. Both his wife and he worked as physicists in Russia for more then 20 years until they tried to emigrate.

In January of 1977, the entire Kovner family decided to apply for an emigration permit. However, shortly after this decision was made, the professor was warned that unless he withdrew his name from the application, no family member would be free to leave. In April of that year, the family, without the professor, actually applied for permission to relocate to Israel.

Following application for the emigration permit, the professor was abruptly dismissed from his position as a scientist specializing in the physics of the magnetosphere and the physics of plasma. In July, Anna, Masha, Galya, and Leonid finally received the much longed for permission to leave Russia. Shortly thereafter, they left for Israel leaving their loved husband and father behind not knowing what was to happen to him next.

Professor Kovner did not give up hope, and in April of 1978 he applied for permission to join his family in Israel. In October of that year he finally received an answer. However this answer was more like a stunning blow. Not only was permission denied but denied until 1985 for security reasons. Of course, the professor could not believe this and tried to appeal this unfair decision. This attempt proved to be very unwise for he was brought before the KGB and told that although his work and documents that he handled were not secret, he could have been in contact with some people who knew secrets.

This maneuver has become typical of the U.S.S.R., and it has happened countless times. It is most unfair that families have been divided with only an uncertain hope for an eventual reunion. Mark Kovner and his family need our encouragement. By participating in this vigil, I can bring his case to the attention of those who will care.

The Soviet Union has proven to be quite reticent in honoring the Helsinki agreement. As long as people wishing to emigrate are subjected to official harassment, loss of jobs, and restriction of personal liberty, I will continue to speak out against this repression as I have in the past. The right to live in the country of one's choice is granted in the Declaration of Human Rights of the United Nations. The Soviet Union confirmed this right in the Helsinki agreement of 1975. This right is even specified in the Constitution of the U.S.S.R. It is our duty to remind the Soviet Government of its obligations to Mark Kovner and others who are restricted from rejoining their families and colleagues in Israel.●

U.S. AID IN THE MIDDLE EAST

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. HAMILTON. Mr. Speaker, I would like to bring to the attention of my colleagues an editorial on Arab views of American economic aid programs in the Middle East written by Mahmoud A. Wahba, a professor at the Graduate Center of the City University of New York, and the rebuttal to it prepared by Douglas J. Bennet, Jr., Administrator of the Agency for International Development.

The editorial by Mr. Wahba appeared in the New York Times of August 23, 1980, and Mr. Bennet's reply in the August 27, 1980, issue.

The editorial and reply follow:

ARABS FAULTING U.S. AID

(By Mahmoud A. Wahba)

United States aid programs may be undermining our objectives in the Middle East rather than helping us attain them, and it may take a Congressional inquiry to determine their value.

During a recent lecture tour in nine Arab countries, I discovered that although my subject was Arab-American joint ventures, people really wanted to talk about American aid programs in general and the United States Agency for International Development, also known as A.I.D., in particular.

The Congress, using an instrument of foreign policy allocates billion of dollars annually to many poor Arab countries such as Egypt, the Sudan, Jordan, Yemen and, lately, Oman. Despite this generosity, many Arabs, including some who are pro-American, are disappointed, unhappy, even distraught. In the Arab oil countries, agency programs are compared unfavorably to their own aid programs. They describe A.I.D. as inept, irrelevant and suspect in motives and methods. In the poor countries, there is sourness and complaints. One complaint concerns the lack of visible A.I.D. achievements. In Yemen, for example, people point to one road built by the Russians and another built by the Chinese; they are at a loss to point to anything American. They also refer to projects jointly completed with Saudi Arabia, Kuwait, the United Arab Emirates, and even some multinational corporations. A completed American project, on the other hand, is either a rarity or a well-kept secret.

Americans can do without some projects. For instance, America gave the Egyptians 200 buses for badly needed public transportation. These buses are a headache for Cairo. The unbearable pollution and noise is a daily reminder of A.I.D. folly.

A second, more-damaging complaint concerns A.I.D. beneficiaries. The Arabs deny that the program benefits them. They also deny that it is useful for American foreign policy. They charge that the agency itself, together with a specially favored group, is the real beneficiary. They feel that the system is designed to recirculate American money back to "lubricate" an ever-growing aid machine.

There are more than 200 A.I.D. employees in the embassy in Egypt in addition to about 400 serving the Egyptian desk in Washington. The overhead and administrative cost of the program is unknown to the Arabs and the American taxpayer. The agency has attracted a special-interest group acting on demand as consultants, resident experts, professionals, commodity dealers, exporters, and even university professors. Only American firms can bid for contracts. Many take advantage of this rule and act as brokers who subcontract projects for tidy sums without making any real contributions. Further, American employees receive about eight times the pay of Arabs holding the same jobs.

A third complaint is about the criteria for selecting projects and establishing priorities. These are described as haphazard and incoherent at best and full of corruption and favoritism at worst. Projects are designed for the rich and connected, not the poor and disadvantaged. It is said that most projects are no more than one feasibility study after another. Few of these studies are implemented and most are outdated before their publication.

The contrast between American and Chinese foreign aid was demonstrated to me in Yemen. The Americans were busy setting up shop by purchasing four-wheel-drive vehicles to travel the unpaved roads of the capital, Saana. They were erecting a wall around their complex and preparing guest lists for parties to establish the "proper connections." Meanwhile, the Chinese were a few feet away from the gate repairing the road with shovels and their bare hands.

A fourth complaint is about the agency's administrative procedures. It is said that the A.I.D. bureaucracy is worse than the Egyptian Government's. A project requires almost two years of groundwork to gain approval. An Egyptian Cabinet minister counted 117 steps and 28 meetings with layers after layers of American officials to negotiate a project, only to have it disapproved after 19 months. He said that the agency's attitude is that of a rich uncle who knows that all you want is a handout—and treats you accordingly.

Many American officials privately admit to these problems. Some defensively note that all aid programs, even those in the United States, have problems. They blame Arab governments for not establishing their own priorities and for inability to negotiate better aid agreements. Many Arab countries cannot absorb what is allocated to them because of poor management and implementation. Thus, they lose a good portion of their allocation every budget year. I was also reminded that the agency is subject to strict Congressional rulings and regulations. Therefore, Congress has to take the initiative to effect any real change.

The A.I.D. image in the Arab world is battered. Unless some action is taken by Congress and the Administration, the program may be dysfunctional both for the welfare of the Arab poor and the success of American foreign policy. As one favored consultant declared: "What the U.S.A.I.D. really needs is a feasibility study of itself."

A.I.D.'S SCARRED IMAGE IN THE ARAB WORLD IS UNDESERVED

To the Editor:

Mahmoud A. Wahba's Aug. 23 Op-Ed article "Arab's Faulting U.S. Aid" is wildly inaccurate in its particulars. He mentions a road built by the Russians and another built by the Chinese in Yemen, but somehow missed the main road from Sana to Taiz originally built by Americans. He is concerned about incomplete projects, but somehow missed the A.I.D.-financed Taiz water works, named for President Kennedy.

The main irrigation canal in the Jordan Valley was built by us. Had he traveled along the canal, Professor Wahba would have seen roads, schools, clinics and housing built with U.S. aid and benefitting Jordan's poor.

The 200 buses in Cairo were built to Egyptian specifications. They may be overworked and a little noisy, but the fact remains that each day a million Egyptians travel to work in A.I.D.-financed buses.

The U.S.-financed Suez cement plant will produce a million metric tons of cement starting next year, for houses and industry throughout Egypt. A.I.D.-financed gas turbine electric power plants are producing 300 megawatts of peak power in Egypt today. A.I.D. is helping install 50 new public water outlets in Cairo each month. (Would it help Mr. Wahba if the water came out red, white and blue?) He says A.I.D. has 400 people working on its Egypt desk in Washington. The actual number is seven.

I do not doubt that Professor Wahba found criticism of A.I.D. among Arabs he talked to and those criticisms need to be considered seriously. It needs to be understood, however, that there will always be some tensions between A.I.D. and host countries as long as we are doing our job. We do not simply turn on the spigot without feasibility studies and careful planning. We want to know what a project is going to cost, who will benefit from it and how to avoid as many pitfalls in implementation as possible. Our procurement procedures take time, but that is because we want to open competition as broadly as possible to American suppliers and minimize opportunities for corruption.

A Swiss-based Business International Group, in the report of its 1980 Roundtable with the Egyptian Government, put it this way: "U.S. A.I.D. is doing Egypt an invaluable service by introducing its methodology. . . . If U.S. A.I.D. has ruffled feathers, it has also contributed to the vital process of systematizing performance."

Professor Wahba finds A.I.D.'s image somewhat battered in the Arab world. Scars earned in the cause of sound administration I don't regret. I also note that we continue to receive requests for assistance regularly from poor countries in the Middle East.

The U.S. has made it clear that our interest is to help developing countries everywhere create self-sufficient, self-reliant economies which benefit the poor. We and host governments do make mistakes in the uncertain business of development, but the U.S. is trying, and we are making a contribution of which we can be very proud. Particularly in the Middle East, the stakes are too high, resources too scarce and time too short to give anything less than our best effort.—DOUGLAS J. BENNETT Jr., Administrator, Agency for International Development.●

THE 1980 LEGISLATIVE QUESTIONNAIRE RESULTS

HON. BILL ARCHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. ARCHER. Mr. Speaker, as has been my custom every year that I have served in the Congress, I sent out a questionnaire to all of the residences in the Seventh Congressional District of Texas in order to obtain my constituents' opinions on important and timely national issues.

More than 33,500 people responded to this year's questionnaire and I would like at this time to share those results with my colleagues in the House. The results are also being sent

to the President so that he may review this sampling of public opinion.

The questionnaire follows:

1980 CONGRESSIONAL QUESTIONNAIRE

1. Do you support the U.S. boycott of the summer Olympics in Moscow? 86 percent yes. 14 percent no.

2. Should the U.S. supply weapons to the Afghan people who are resisting Soviet occupation of their country? 83 percent yes. 17 percent no.

3. Do you approve of the way President Carter has handled the American hostage situation in Iran? 18 percent yes. 82 percent no.

4. Do you favor reimposition of selective service registration? 84 percent yes. 16 percent no.

5. If a selective service registration program is reimposed, should it include women? 61 percent yes. 39 percent no.

6. Do you support President Carter's proposed oil import fee which would raise the price of gasoline by at least 10¢ a gallon? 19 percent yes. 81 percent no.

7. Should there be restrictions on the number of refugees admitted to the U.S.? 89 percent yes. 11 percent no.

8. Would you favor eliminating Saturday mail deliveries to cut Postal Service costs? 60 percent yes. 40 percent no.

9. Would you favor mandatory wage and price controls? 21 percent yes. 79 percent no.

10. Would you favor imposing fixed prison sentences (without parole) on persons convicted of violent federal crimes? 90 percent yes. 10 percent no.

11. Should tariffs and import fees be used to give domestic companies price protection over imported products? 51 percent yes. 49 percent no.

12. How would you rate President Carter's overall handling of foreign affairs? 5 percent good. 22 percent fair. 73 percent poor.

13. In relation to other federal spending programs, what is your assessment of the current level of defense spending? 6 percent to high. 17 percent about right. 77 percent too low.

14. Which of the following best describes your feelings about an income tax reduction this year? 8 percent there should be no tax reduction this year. 74 percent only if there are offsetting federal spending reductions. 18 percent there should be a tax reduction even without spending reductions.

15. Under what circumstances should a Congressman accused of committing a crime be expelled from Congress by a majority vote of that body? 3 percent when first accused. 15 percent when indicted by a grand jury. 72 percent only if convicted. 10 percent none of the above. The voters in a Congressman's District should be the sole judge of his fitness to represent them.●

EULOGY TO AB HERMANN AND DON HERZBERG

HON. EDWARD J. PATTEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. PATTEN. Mr. Speaker, I am pleased to have seen two good friends of mine eulogized in the press in the past few days and particularly appreciate the comments of David S. Broder in today's Washington Post (Aug. 27, 1980).

Albert R. (Ab) Hermann and Donald G. Herzberg meant a great deal to Middlesex County, to the State of New Jersey, and to our country. I know we have lost two outstanding friends who helped mold Middlesex County's growth in the post-World War II era. Both were stars in their own ways.

It was in 1953 that the Republican National Committee loaned Ab to the State Republican Committee and he ran the gubernatorial campaign for Paul Troast. I was the campaign manager for Bob Meyner. I could see Ab Hermann's work at every turn. He kept us on our toes and was particularly effective at lining up ethnic groups. Truthfully, we could not match his handiwork.

Ab and I often exchanged thoughts during that campaign since we had our headquarters in the Robert Treat Hotel in Newark. We frequently stopped for a cup of coffee together.

To nobody's surprise, Ab had a winner—until October 7, when some unfavorable publicity broke that made the Troast campaign very difficult. Bob Meyner received a tremendous break, and went on to be the winner, which was never anticipated in June.

Ab's father, incidentially, was also a great friend. He was mayor of North Brunswick for 20 years. I always admired him because he was never very partisan when it came to supporting what was good for North Brunswick and the county as a whole.

Those who knew Ab Hermann loved him and admired him. I am glad to see he has received fine recognition for the work he did for almost 30 years with the Republican National Committee.

We learned to respect Don Herzberg real early, when he came into the Eagleton Institute. I like to feel that I was full of energy and thoughts in my younger days, so being associated with Don was a real pleasure.

His work to help municipalities, counties, and the State is still valid. He had to be given high ratings. He would take the newly elected officials and hold courses for them.

The Eagleton grads have spread across our Nation, taking with them the training they got at a fine graduate center of politics. Their efforts are felt throughout our political system. I know public officials who always look good. I happen to know it was because a pupil of Don Herzberg's was doing the research and writing.

The Eagleton Institute shines today in no small part because Don Herzberg was a top man in his knowledge of politics and in his knowledge of what good public policy should be at every level.

I know that Georgetown University benefited when Don Herzberg came to Washington. Don was not all theory, and brought to Washington one of the best backgrounds that I have ever seen.

Through his schools—New Jersey and Washington—he brought a lot of fellows along, took off their rough edges and taught them plenty about practical politics. He had an insight as to the problems of the day and how to handle them.

The growth of Rutgers University—our State university—has the fingerprints of Don Herzberg on it. He foresaw the population growth and the need to increase our educational facilities. I feel that along with Mason Gross, Don had as much influence as anyone with the State legislature to make our Rutgers University fit to grow and fit to be the great university that it is today.

I am indebted to Don Herzberg personally, because he taught me a great deal. I hope I put it to good use. I am indebted to Ab Hermann for the things he taught me about partisan politics and getting along as a political leader.

I, and those who knew or learned from them, will miss them both.●

ESTATE AND GIFT TAX REFORM

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. ROTH. Mr. Speaker, almost everyone in America suffers today from excessive taxation. However, in the area of estate and gift taxes, the situation has dramatically damaging effects on individual taxpayers and creates far-reaching negative economic impacts.

The entire estate and gift tax structure is heavily slanted against passing down family farms and small businesses. In my view, it is a tragic situation that family farms and small businesses cannot be passed from generation to generation because the estate taxes are too high.

Moreover, these taxes serve as a real disincentive to productivity and innovation because there is little desire to create and build a productive business if it cannot be passed down to one's heirs.

The purpose of estate and gift tax laws has always been redistribution of wealth, not revenue-raising. In the name of redistribution, we are not facing the social problem of small businesses and family farms that cannot be passed down and yet the tax only amounts to approximately 1 percent of Federal revenue.

I recently introduced legislation designed to correct certain inequities in the estate and gift tax laws. My legislation H.R. 7749 would amend the Internal Revenue Code to increase the unified credit against estate and gift tax and to increase the gift tax exclusion from $3,000 to $6,000.

I urge the support of my colleagues for this much needed legislative reform.●

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HUMAN RIGHTS AND THE NATIONAL INTEREST

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. BONKER. Mr. Speaker, as the Presidential campaign rhetoric heats up, a lot of nonsense is being parroted concerning the President's human rights policy. As the President said in his eloquent address to the Democratic National Convention:

The new Republican leaders oppose our human rights policy. They want to scrap it. They seem to think it is naive for America to stand up for freedom and democracy. Just what do they think we should stand up for?

Jerome J. Shestack, our Ambassador to the United Nations Human Rights Commission, has written an outstanding article on the United States human rights policy for the Op-Ed page of the Philadelphia Enquirer of July 29, 1980.

Mr. Shestack, who is also one of the foremost authorities on human rights questions, states:

• • • In many places there has been an encouraging number of amnesties, release of prisoners, easing of restrictions and various other beneficial results. For those released, there can be no question of the benefit of human rights activism. Even for those who remain repressed, marshaling world opinion on their behalf gives them hope and comfort. That in itself is not a trifling benefit.

I commend his article to the attention of all of my distinguished colleagues.

The article follows:

PROGRESS IS MADE ON RIGHTS

Since the start of President Carter's administration, emphasis on international human rights has been a key element of United States foreign policy. Indeed, the President has called it the "soul" of our foreign policy.

Yet one increasingly hears a basic challenge to this policy: Does a human rights emphasis serve our national interest? I believe the answer is yes for a number of significant reasons.

One key reason is that emphasizing human rights is vital for America's continued relevance in world affairs. Human rights demands have become a central item on the global agenda with a response in expectations of people on every continent. As Zbigniew Brzezinski succinctly put it, human rights are "the genuine historical inevitability of our times."

The United States is regarded as having an immense potential to further individual freedom and the benefits that come from it.

A second reason arises from geopolitical concerns. There is an ideological competition for world leadership between Marxism and Western ideology. What does the West have to offer to counter Marxist promises and propaganda?

Armaments are viewed with suspicion. Enterpreneurism is often seen as exploitation, especially among developing nations. But human rights and individual dignity and development offer a vision which generates popular support among masses of people and support a valid claim for world leadership.

Pragmatically, such leadership serves our national interest, including the strengthening of beneficial international alliances and countering aggressive drives for influence by other powers.

A third benefit stems from the interrelationship between human rights and world peace. History teaches us that peace cannot be maintained in a world in which people, denied their individual rights, are impelled to rise up against their oppressors.

As we see in Afghanistan and Cambodia, human rights violations impair détente, causing tension and hostility between nations.

On the other hand, promoting a climate responsive to human rights values is likely to improve our national security and further peace.

Finally, but by no means the least consideration, is that this nation's own cohesion, commitment to its fundamental values and appreciation of its own liberties are strengthened by advancing human rights.

Human rights have long been a focus for shared purpose in the American tradition. Surely such a sense of shared purpose is in the national interest.

In the aggregate, these factors make a compelling case for inserting human rights in our foreign policy. Of course, other interests, such as national security, may sometimes override human rights concerns.

Still, President Carter has insisted that human rights concerns be in the forefront in determinations of foreign policy. And that is a significant advance over prior administrations.

Another question one often hears is whether the game is worth the candle. Is human rights emphasis productive? The answer must be a resounding yes.

It is true that repression remains rampant in the Soviet Union, Argentina, Czechoslovakia, Chile, Cuba, Iran, South Africa and many other places. Still, there is no doubt that there has been substantial progress which would not have taken place without the emphasis on human rights.

We have seen the fall of dictators, such as Amin in Uganda, Somoza in Nicaragua, and Bokassa in the Central African Empire. We have seen movement in Brazil, Ecuador and Peru away from military de facto regimes. We have seen an open electoral process in Portugal and the Dominican Republic. We have seen the return to civilian rule in Nigeria and Ghana.

Further, in many places there has been an encouraging number of amnesties, release of prisoners, easing of restrictions and various other beneficial results. For those released, there can be no question of the benefit of human rights activism. Even for those who remain repressed, marshaling world opinion on their behalf gives them hope and comfort. That in itself is not a trifling benefit.

The current outrages in Iran and Afghanistan should not detract our vision from the progress that has been made nor of the potential for further accomplishment. The cause of human rights is no sport for the short-winded. It is a slow, block-building process. President Carter's championing of human rights serves our national interest, gains respect for the United States and touches the yearnings and aspirations of people everywhere.●

TAXPAYERS FOOT THE BILLS

HON. DANIEL B. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DANIEL B. CRANE. Mr. Speaker, slavery is just around the corner for most Americans.

I refer to the fact that government on all levels presently takes about 47 percent of the average person's income. When that figure exceeds 50 percent, as it no doubt will in the near future, the American taxpayer will become a slave to government, working not for himself but for the bureaucrats.

To rectify this, I have cosponsored a variety of measures to reduce our taxes and to provide tax relief for those particularly hard hit by high taxes. But the bureaucrats cannot think of enough ways to turn the screws on taxpayers, as evidenced by the recent IRS regulation punishing those who rent to family members at the market rate.

Discriminatory tax treatment for foreign meetings is another area which needs reform. Richard J. Ferris, chairman and chief executive officer of United Airlines, makes the case well in the August 1980 issue of Mainliner, which it is my privilege to call to the attention of my colleagues.

The article follows:

WHOSE MONEY IS IT, ANYWAY?

The United States government sometimes shows a novel but dangerous attitude toward people's incomes. Sometimes the government acts as though all income belongs to the government, and that the government will decide how much it'll let us taxpayers keep and why.

It's as though we all work for the state, and the state will decide what each of us can have for ourselves. That seems backwards. I always thought we worked for ourselves, and we decided (through our elected representatives) how much the government can have and why.

One example of how the government tries to substitute its judgment of how taxpayers should spend their money for the taxpayers' own judgment is on the matter of attending conventions in foreign countries. Few taxpayers are directly affected by the government's tax penalties for attending foreign conventions, and relatively little tax revenue is at stake. But the precedent of the government's intruding into the details of private spending decisions is the real cause for concern.

Generally, taxpayers can deduct ordinary and necessary business expenses from their revenues in determining their federal income tax. But when it comes to attending foreign conventions, it's not enough that expenses be ordinary and necessary. Those expenses are subject to a whole list of detailed limitations and specifications. Among those limitations:

Expense deductions are limited for any individual to two meetings a year.

Expense deductions are limited to the per diem rate established for government employees, even though other travelers don't have access to the special rates available to government employees and may have legitimate expenses beyond just the meals and lodging that are the basis of the government allowance.

Now, nobody would argue that people should romp abroad on vacation disguised as conventions and then be allowed to deduct the cost of the holiday from their income tax. Any and all abuses should be stopped.

But abuses could be prevented simply by enforcing the law on foreign convention travel the same way the tax law is enforced for other types of business expense. Taxpayers should certainly be called on to show that all the business expenses deducted are just that—ordinary and necessary business expenses. That goes for travel to foreign conventions, travel to domestic conventions, office-decorating expenses, salaries—the whole gamut.

Businesspeople and other individuals go to meetings abroad expecting that the expenses incurred will be just as productive as other expenses—for salaries, equipment or anything else. Whether those travel expenses are wasteful or worthwhile is best left for the people who are spending their money to decide—not the government. After all, it's still those people's money—not the government's.

Besides, a good case can be made that the U.S. government should be encouraging—not discouraging—attendance at meetings abroad. Conventions in foreign countries are good places for American business to sell American goods. Export sales provide jobs for American workers and bolster our chronically unfavorable balance of payments. International competition is tough enough already, without putting artificial tax obstacles in the way of sales abroad.

Conventions and seminars in foreign countries are good places to obtain and exchange valuable information—scientific, medical, technical, educational, cultural and legal. The United States is no longer, if it ever was, the dominant source of progress in many fields. Access to professional symposia throughout the world is an important way for U.S. doctors, scientists, engineers and other professionals to stay on the leading edge of developments in their fields.

Meeting abroad with people from other countries helps build international understanding at a time when international understanding is more important than ever. Now is not the time for narrow, parochial restrictions on Americans' freedom to travel. Other countries don't discriminate against travel to the United States. But if we keep on discriminating against other countries, the potential for retaliation exists. That kind of retaliation would strain our international relations and further damage our balance of payments.

The U.S. government itself recognized the value of international travel when it signed the Helsinki Agreement. That agreement says countries should "encourage increased tourism on both an individual and group basis" and "facilitate the convening of meetings as well as travel by delegations, groups and individuals."

The Congress is now reconsidering discriminatory tax treatment for foreign meetings. There are encouraging signs that the Congress will act this year to remove at least some of the arbitrary restrictions on attending foreign conventions.●

H.R. 5192, REAUTHORIZATION OF THE HIGHER EDUCATION ACT—CONFERENCE REPORT

HON. JON HINSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. HINSON. Mr. Speaker, I support the conference report on H.R. 5192, the Higher Education Act reauthorization. After 2 years of hearings and debate, House and Senate conferees have produced a bill that deserves the same overwhelming support that H.R. 5192 received last November when it passed the House by a vote of 385 to 15. We need to commend the conferees on this excellent piece of legislation.

H.R. 5192 authorizes increases in grant assistance to help both middle income and needy students meet the constantly increasing costs of postsecondary education. It allows the students to choose private or public institutions and provides aid for developing institutions. There are important reforms in the loan program aimed at reducing default rates while extending the availability of loans on a continuing basis. Also, the bill establishes a parent loan program for those parents who wish to assist their children, but find themselves unable to do so.

As well as improvements in existing programs, H.R. 5192 provides legislative savings in the efforts of the Congress to balance the Federal budget and curb Federal spending. This legislation is supported by the entire higher education community, college presidents, faculty, students, and parents.

On behalf of the other members of the Committee on Education and Labor, I urge passage of the conference report on the Higher Education Act.●

VETERANS' ADMINISTRATION HEALTH CARE PERSONNEL ACT OF 1980

HON. THOMAS A. DASCHLE

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DASCHLE. Mr. Speaker, I was unable to participate and vote yesterday on the Veterans' Administration Health Care Personnel Act of 1980. Had I been present I would have voted "yes" to override the President's veto.

President Carter's action last Friday in vetoing this legislation was a grave disservice to America's veterans. Due to increasing competition, the VA has had continuing problems in retaining and recruiting quality medical staff for their medical system. In fact, the VA is already short 1,600 physicians and several thousand nurses.

This legislation would rectify this problem by raising special pay and instituting a scholarship program for doctors and nurses in exchange for service within the VA medical system.

President Carter in his message to the House stated that in addition to the bill being too expensive he preferred that funds be placed more directly on improving health care benefits and treatment for veterans. The fact of the matter is that the bill saves over $130 million on contracting costs for doctors alone over the lifetime of the program and $109 million will be saved by a better screening process designed to determine whether a nonservice-connected veteran's private health insurance is sufficient to meet the costs of his health care. Furthermore, I cannot think of a better way to provide quality care for veterans than to insure that the best doctors and nurses presently in the system are retained for the future.

I was delighted by the fact that the veto was overriden by such a large margin, 401 to 5. Passage of this legislation assures us that the VA will not be dominated by part-time physicians and that mediocrity will not be the standard of health personnel in the system. The House of Representatives and the Senate yesterday proved without a doubt that they are committed to the preservation of the VA medical system as it exists today and the promise that a veteran will be afforded the finest health care in the world.●

RESEARCH AND DEVELOPMENT: SOME POSITIVE INDICATORS

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. BROWN of California. Mr. Speaker, a key element in any long-term economic development program is the role of research and development. As most Members know, the United States has suffered a decline in support for R. & D. over the last decade, while our economic competitors have continued to increase their share. A recent article from Business Week indicates that at least in some sectors of our economy this situation is being reversed.

While there is not time to elaborate on all the nuances in the recent statistics, there are some important points to highlight. First, R. & D. continues to be almost pitifully low in those areas where our economy is the weakest—the automobile industry, the steel industry, and the energy industry. Second, even though there is a real growth in R. & D. in all industry,

there is no data on what is basic and what is applied research. In fact, there is very little agreement on even the definition of "research and development," which is a matter that grows in importance as we discuss ways to further encourage and subsidize R. & D. And, finally, in those areas where the United States is a world leader, R. & D. support continues to be strong and significant. All of these points are important for the Congress to consider as we review legislation to encourage innovation and productivity in the United States.

The article from the July 7, 1980, issue of Business Week, minus the extensive tables in that issue, follows:

BUSINESS WEEK'S R. & D. SCOREBOARD: 1979—MORE SPEED BEHIND R. & D. SPENDING

Industrial research and development expenditures continued to pull out of the doldrums in 1979. Spending by companies included this year in business week's annual R&D Scoreboard swung up strongly, to $23.8 billion, fully 18.9% over their 1978 levels and well above the inflation rate. That increase follows two years in which gains remained steady at about 16%.

"It's turning around and starting back up," says Roland W. Schmitt, vice-president of corporate R&D at General Electric Co., a company that raised its R&D outlays by nearly 23% in 1979. Indeed, a number of industrial categories substantially boosted their commitments to R&D in 1979. Aerospace, for example, led with a gain of 38.4% over 1978 and spent a total of $1.5 billion. The semiconductor industry posted gains of 33.2%, oil-service and supply spending forged ahead by 29.9%, and spending by instrument makers and fuel producers jumped by nearly 26%.

This year's Scoreboard surveys over 700 companies, compared with 683 last year, and includes those companies with sales of $35 million or more that spent at least $1 million or 1% of their annual sales on R&D. Expenditures as a percentage of sales have held remarkably constant: The 1.9% reported in the current all-industry composite has been unchanged for three years. Spending for R&D as a percentage of profits, however, has been declining steadily. In 1979 the companies listed on the Scoreboard devoted funds equivalent to 32.9% of profits to R&D, while in the preceding year the share was 34.4%. The companies included spent an average of $1,553 on R&D per employee, $182 more than in 1978.

The categories in the 1979 Scoreboard remain the same, but, as usual, some companies will be noticeably absent, and there are a number of new arrivals. Some companies on last year's survey may have cut their R&D spending to levels that no longer qualify them for inclusion. Others that should have been included may have been omitted because data, which are extracted from companies' 10-K forms filed with the Securities and Exchange Commission, were not available at deadline. And 20 companies that have been acquired—including Beech Aircraft, Eltra, Remington Arms, and Mostek—do not appear.

American Telephone & Telegraph Co., which ranked fourth in R&D spending last year, no longer appears in the top 10. In 1979, AT&T spent $362 million on R&D at its Bell Telephone Laboratories. The company's Western Electric Co. subsidiary contributed an additional $495 million to Bell Labs. But because that amount is reported separately, it is not included in the AT&T figure.

There are also significant additions to the survey. This year companies that provide computer and data processing services have been added to the "information processing—computers" category. These companies—including Applied Devices, Shared Medical Systems, System Development, and Tymshare—perform significant amounts of R&D in developing computer software. Otherwise, service industries are not counted.

Corporate R&D managers see the impressive gains in spending by many industries as a sign that top management is placing new emphasis on R&D. And they are encouraged that R&D expenditures ran well ahead of the 10 percent inflation rate in 1979 after slumping dangerously in the mid-1970s. In fact, some say that the driving force behind the increased spending is the fear that U.S. industry is losing its ability to innovate. "People in the R&D community have sounded all kinds of alarms," says William B. Truemmier, vice-president for technology at Hooker Chemicals & Plastics Corp. "And the system is responding."

The vigor in R&D is clearly illustrated by the aerospace industry. Not only did its total R&D commitment move ahead by nearly 40 percent, but the companies in that industry increased the share of their sales that they applied to R&D to 4.2 percent in 1979, compared with 3.7 percent the year before. And the amount they spent was equal to 102 percent of their 1979 profits.

Intensified foreign competition is a major influence spurring aerospace companies to step up R&D. The industry, and particularly Boeing Co., is scrambling to develop new models to compete with the European-built Airbus, which last year walked off with 30 percent of the orders for widebodied aircraft in the free world. As a result, Boeing boosted its R&D spending by a staggering 90 percent, spending an amount nearly equal to 104 percent of company profits.

The automobile industry, too, stepped up R&D in 1979 to meet foreign competition. With sales depressed to a mere 3.6 percent gain over 1978, the auto industry nonetheless increased its R&D spending by 16.6 percent, to $4.3 billion—or 124 percent of industry profits.

In high-technology industries such as information processing, electronics, and semiconductors, intense technological competition has traditionally been reflected in hefty R&D budgets. Not surprisingly, these categories racked up major gains in R&D in 1979. Information processing companies in the computer and office equipment businesses increased their R&D spending by 18.8 percent and 25.9 percent, respectively. Electronics companies stepped up R&D by 21.4 percent, and semiconductor manufacturers surged ahead by more than 30 percent. Two manufacturers of large computers—Cray Research Inc. and Amdahl Corp.—topped all companies in the survey for percentage of sales devoted to R&D and in dollars spent per employee.

A SHIFT TO BASIC RESEARCH

The fuel industry has one of the lowest ratios of sales to R&D—0.4%—but it, too, stepped up its R&D spending in 1979, adding 25.4% over the previous year. Most of that increase was devoted to aggressive programs underway at all the large companies to convert coal into gases, or, preferably, liquids. Some funds, too, were devoted to improved technology for finding oil and gas deposits, but these efforts were hampered by a shortage of qualified geologists and petroleum engineers—a problem that often bedevils rapid increases in R&D.

The oil-service industry boosted its outlays for energy-related R&D by 29.9%. These companies are working hard on improving drill bits; finding new ways to drill, such as down-hole motors; and developing ways to detect the presence of oil or gas even as a well is being drilled. Notable among these companies is Schlumberger, which spent $131 million for an increase of 45% over 1978.

Unlike those for the well-documented upturn in R&D spending, there are no numbers that track the share of corporate R&D budgets devoted to basic research. But there is a growing conviction among research directors that the dangerous movement toward short-term applied R&D projects may be reversing. "We are definitely devoting a higher percentage of our resources to the future" by doing fundamental research, says GE's Schmitt.

The food industry, for one, seems to be deepening its commitment to basic research. Concern over the effects of trace minerals, excess sodium, and fats in food is spurring food companies to divert research dollars into basic research on nutrition. "Clearly there is a fleshing out of our research in health and nutrition sciences," says Adolph S. Clausi, director of research at General Foods Corp. That company in 1979 increased its R&D budget, which at $70 million is the largest in the industry, by 20%, compared with 15% for the industry as a whole. Clausi estimates that basic research now accounts for 20% of the company's total R&D outlays, more than double the amount 10 years ago.

Even though research directors are elated at figures that seem to indicate that R&D spending is once more gaining in relation to the gross national product, they fear that other factors may seriously diminish the amount of actual work that can be accomplished. Samuel W. Tinsley, director of corporate technology at Union Carbide Corp., concedes that some increases are "pretty spectacular." But he points out that "some R&D costs go up faster than the GNP deflator—in some industries as high as 50%." In fact, some R&D managers believe that most of the 1979 increases can be accounted for by salary and equipment costs.

Government regulation takes a bite out of R&D budgets as well. A significant component of the cost of environmental and health regulation is the R&D required to figure out how to meet the regulation. "The technical basis of many regulations is nonexistent," says one research manager.

Estimates of the impact of regulation vary from industry to industry. In the chemical industry, research managers estimate that regulations account for 10% to 15% of R&D budgets. And such "defensive R&D" is also an important factor in the drug industry. "The largest component of the growth of our R&D budgets is toxicity testing," says Lewis H. Sarett, senior vice-president for science and technology at Merck & Co. Sarett explains that much of that testing "is work we would want to do anyway, but it wasn't possible without modern instrumentation."

SQUEEZING HARD

The requirement for more and more careful analysis in both the drug and other industries may well be a boon to the instrument makers. In fact, while drug companies included in the Scoreboard increased their R&D budgets by 15.7%, to $1.8 billion, in 1979, R&D budgets for instrument companies jumped by 25.9% to $500 million.

Whether current R&D spending trends will continue is clouded by the current recession. Managers point out that spending is likely to remain strong through 1980 and that the recession's impact will probably be felt in 1981 budgets, which are in preparation now. But another notes that during the past couple of months "R&D managers are squeezing hard" on their current budgets. "The momentum [in R&D spending] is strong enough to withstand a mild recession," says GE's Schmitt. "But if it is deep or long, every phase of business will have to be examined."●

MISCELLANEOUS OBSERVATIONS ON AMERICAN POLITICS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for Wednesday, August 27, 1980, into the Congressional Record:

MISCELLANEOUS OBSERVATIONS ON AMERICAN POLITICS

Now that the dust of the Republican and Democratic conventions has settled, this politician cannot resist making a few comments on American politics today.

It seems to me that the highest priority of a candidate for public office today is to give Americans hope. Never in my experience in public life have I seen the American people more concerned and less optimistic about the future of the country than they are at present. They genuinely need to believe that crises can be eased and problems solved. The politician's task—certainly not a simple one—is to lift Americans' confidence in the country and its institutions. To do this, the politician must not ignore the bad news, but encourage Americans to focus on the bright possibilities that the future holds. The dilemma for the politician is how to bring about this change of emphasis without worsening his already poor credibility. So, candidates in this election should be talking about the future, about where they want the country to go, and about what they think it ought to do to get there. Candidates must convey a sense of movement and purpose by telling Americans where we go from here and how we can reasonably expect to reach the destination we set for ourselves. Most politicians can list the nation's troubles; the better ones can suggest a few solutions; only the best ones can give the nation hope.

The most common thing I hear about the presidential campaign is an expression of dissatisfaction with all the candidates. No one would deny that the operation of government has been disappointing in recent years. Politicians can scarcely claim to have performed well. Presidents especially have had a rough time. In the past 20 years one was assassinated, another was destroyed by a war, yet another was forced to resign, and still another was beaten at the ballot box. The incumbent Chief Executive stands at the lowest point ever in the popularity polls. My own view is that the feeling of discontentment with political leaders may very well persist in American public life for some years to come. I doubt whether the election of one candidate or the other, of one party or the other, will eliminate the conditions that generate the feeling of discontentment.

The most mystifying performance of any politician in this eventful political year has been that of Senator Kennedy. I really do not understand why he continued in his quest for the Presidency after President Carter had won a majority of the delegates to the nominating convention. Perhaps Mr. Kennedy thought that anything could happen, that Mr. Carter's standing in the polls was so low that any adverse event—the Billy Carter caper, for example—could force the incumbent to withdraw. Mr. Kennedy has called on Democrats to put aside their differences and work together for victory in the fall, but even so his campaign has contributed to Mr. Carter's problems and certainly made it more difficult for Mr. Carter to win.

The polls have shown Governor Reagan running away with the election. In spite of the fact that Mr. Carter has edged up in the polls recently, some pundits are calling Mr. Reagan a "sure bet" for the White House in January. Democratic gloom and Republican glee are unmistakable. Mr. Reagan is in a formidable position, but it is much too early to make any hard and fast predictions. I find voters undecided, prepared to change their minds, and in no hurry to reach conclusions about the man they want to lead the country. Beyond a relatively small base of enthusiastic supporters, none of the candidates enjoys strong personal or ideological commitment. Moreover, American presidential campaigns are long, and many things can happen. My own guess is that when the votes are counted, it will be close.

I am always mildly amused by the intensity of party platform fights at the conventions. My own experience is that neither voters nor candidates pay much attention to the platforms. With rare exceptions, they simply do not change votes anymore, but they are important in that they may unify or divide a party. Mr. Carter's acceptance of several of Mr. Kennedy's platform planks probably helped to minimize divisions among Democrats.

A key question lies behind all the emotion of the Democrats' debate on an "open" convention: to what degree should the presidential nominating process be opened up to ordinary Americans who are largely outside politics and government? Since 1968 the reform movement has worked to take the process away from politicians and party leaders and put it into the hands of primary voters. This is a movement which I have favored. However, the process is still evolving. It is obvious to me that we have yet to answer several questions about it. Should we "bind" convention delegates so that they cannot deliberate? How should we assure that the wishes of primary voters are reflected in the balloting at conventions? Should we include more elected officials in the delegations? Should we rely so heavily on primaries and so little on forums where compromises are forged? What is the role of the convention in the presidential nominating process? Is it possible to devise a process which allows both convention delegates to deliberate and primary voters to participate?

Serious consideration of these questions will surely help us improve the way we select the nation's highest public official.●

GREATER MIAMI OPERA ASSOCIATION

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. PEPPER. Mr. Speaker, it was with great pleasure that I learned some time ago of the triumph accorded the Greater Miami Opera Association's production of the American premiere of Les Contes d'Hoffman in January 1980. The Metropolitan Dade County area holds a place of importance in many other meaningful areas, and it is with great pride that we are now witnessing the progress of the arts and the prospect of the Miami area assuming an ever greater role in this meaningful area. I would like to share with our colleagues and fellow citizens the success achieved through the hard work and talent of the members of the Greater Miami Opera Association under the able leadership of Robert Herman, general manager. I am pleased, therefore, to include in the RECORD the rave review from the New York Daily News of January 16, 1980, declaring that "great musical history has been made in Miami" and giving well-deserved national recognition to those talented, hard working, dedicated individuals who have made it all possible.

The article follows:

NEW "HOFFMANN" WARMS MIAMI; IT'S HEADED FOR MET IN '82

(By Bill Zakariasen)

MIAMI.—Original versions of operas have been in the spotlight the last few years. Just within the past few months Alban Berg's "Lulu" received its world and U.S. premieres with all three acts intact for the first time. On Monday, the Greater Miami Opera Association gave the American premiere of the original version of a considerably better-known work, Jacques Offenbach's "Les Contes d'Hoffmann (The Tales of Hoffmann)." The occasion was a triumph for the fast-growing company and certainly for the composer.

The background of this new version of an old favorite is fascinating. Offenbach, long the king of French operetta, had longed to write at least one great grand opera before his death, which by the late 1870s was fast approaching. "Hoffmann" was commissioned by the Opera-Comique, but this work was to be no mere lighthearted operetta with spoken dialogue. Complete seriousness was his intent, and he worked feverishly against death to complete his masterpiece before its 1881 premiere. But on Oct. 5, 1880, Offenbach died leaving what most people thought to be his thus-far completed sketches in the Comique library.

The "Hoffmann" premiere took place, but only after composer Ernest Guiraud filled in the gaps with some of his own music, added music from some of Offenbach's earlier works, and junked the Venetian scene as being too fragmentary for performance. Later revisions corrected the latter to a point, but a Comique fire in 1887 was thought to have destroyed anything else. But eight years ago over 1,000 pages of "Hoffmann" manuscript were discovered in the family home outside Paris. The new material filled in the missing portions, showed "Hoffmann" really to be a grand opera, and most importantly all of a piece, with a solid, firmly dramatic point of view throughout.

In this new version, the poet Hoffmann becomes a far stronger character, a man driven by his Muse to create. His Muse turns out to be alcohol most likely, since she appears from a wine keg at the beginning and transforms herself into Hoffmann's sidekick Nicklausse. The role of Nicklausse now becomes second only to his master in importance. The Venetian act with Giulietta is now played last as Offenbach intended, while the epilogue concludes with a majestic chorus (akin to the finale to "Faust") celebrating Hoffmann's artistic greatness.

All in all, this version of "Hoffmann" runs about a half-hour longer than the previous one, yet there are omissions of some famil-

iar music—for instance, Nicklausse's "Parrot" song and Dapertutto's "Scintille diamant"—interpolated from other Offenbach works—and the Venetian Septet, written by Guiraud anyway. Some listeners will miss these pretty moments, but their replacements—two more lovely arias for Nicklausse, a first-act trio, a big gambling scene ensemble, the glorious new finale, and so may incidentals impossible to enumerate—more than make up for the loss.

Miami's production did full justice to this discovery. The sets by Gunther Schneider-Siemmsen (well-known at the Met for his definitive "Tannhaeuser") are massively convincing, and together with the expectedly probing direction by Nathaniel Merrill, this presentation is one I can't believe the Met could improve upon when it does its new "Hoffmann" in 1982.

De Almeida conducted, and very well indeed, while the cast was as superb as any you could find in the world today. Nicolai Gedda, the greatest Hoffmann of modern times, outdid even his own standard, his burnished silver tenor in the best condition I can recall. Ashley Putnam (a short-notice sub for the ailing Pilar Lorengar) was a touching, full-voiced Antonia, Ruth Welting an absolute doll as Olympia, Rosalind Elias a powerfully magnetic Giulietta, Judith Forst show-stealing Nicklausse/Muse, while Jose van Dam gave each of the four villains (Lindorf, Coppelius, Dr. Miracle, Dapertutto) striking individuality and cannonball vocalism. There indeed was not a weak member of the huge cast.

One left this miraculous evening agreeing completely with Gedda, who after the premiere insisted, "I can't imagine Hoffmann being done the old way ever, ever again." He's right—great musical history has been made in Miami, and there's now no turning back.●

DESPITE WHAT LEADERS SAY, AMERICA'S FUTURE WILL BE BRIGHTER

HON. GERALD B. H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. SOLOMON. Mr. Speaker, some of our leaders have been parading up and down the land saying that Americans will have to learn to lower their expectations for the future, that America's period of greatness has passed. But the vast majority of Americans reject this idea.

Just ask our young people. After all, they have the most at stake in working for an America just as strong and prosperous as the one we have enjoyed.

Timothy North, a high school student from Kinderhook, N.Y., expresses this strong faith in our country's future in a speech he entered in the Voice of Democracy contest sponsored by the Veterans of Foreign Wars. Tim's speech was judged the best of all entries in the VFW's third district in New York, the Columbia-Greene County Council. I offer it to my colleagues as a sincere, hopeful statement of what our country is all about:

MY ROLE IN AMERICA'S FUTURE

America is a young country. A country with a short history but one of which we can be very proud. From the time we sought our independence, we have been a diverse but united people. We are a young country of individuals united by our common goals. For what is a country but people?

Each person is an important part of our country. The better the people, the better the country.

Outside attempts to break our unity have met only with an increase determination to remain united. As for our destruction coming from within, we have mended a complete split in the Union, and the future looks bright.

We can see, if we look back into our history, that ever since America was first settled, a spirit of pride has filled its people. The first people to settle America had to be bold enough to cross the Atlantic, fight for land, defend themselves against hostile Natives, and supply themselves with food to survive. Those that could not; perished. In a sense, only the best lived to enjoy the freedom of their own land.

Later, in our history, we see the westward movement. The bold settlers of the wild west. Their struggle helped settle this area. Many died in the attempt, but they did not die in vain.

Still later, we see Americans fighting for justice and freedom all over the world. We have even weathered one of the worst depressions the world has ever seen.

Some people say we have lost that spirit. But that could not be farther from the truth. Less than a decade ago, the United States became the first Nation in the world to put mankind on the Moon.

The challenge of the future is to keep this feeling alive. To not only help ourselves, but the whole world improve.

This challenge is not something we can leave to the government or the United Nations or even to America as a whole, but, rather it is a challenge each and everyone of us must meet as individuals. For what are governments and nations without people? . . . nothing.

So, the responsibility lies with us. America's future lies in our hands. We shape the mold. Our parents shaped America for us and we will shape America for our children.

As one great president said, "Ask not what your country can do for you, but rather, ask what you can do for your country."

We must not make demands of our country without helping it. We cannot take, without giving. Each and every person's input is needed to keep the American spirit alive and well in the future.

No one said it would be easy. Countless thousands have given their lives so that we may continue to enjoy freedom.

No one is asking us to lay our lives on the line now. The country is at peace. However, we are forever indebted to these people. We are asked to do small things that do not seem anywhere as glorious as holding the flag in battle, but things that are just as important. We are asked to participate in government and to help select our leaders.

In my opinion, if you do nothing else in government but help select a leader by your vote, you have done a great service to both yourself and your country. Voting is a privilege and when you take advantage of it, it shows that you care.

As I have said, the challenge is our challenge. How I meet this challenge as an individual will help both myself, and America, now, and in the future. I feel I must take an active role in America's future. As a student, I will be part of that future. America is my country. I want it to have the best future possible.

America is a land where dreams come true. Thousands of immigrants came to this country believing that. They found that dreams came true only with strong perseverance, just as did the early and western settlers. However, this spirit helped to build a better nation.

My role is to keep this spirit alive. To take advantage of the great educational opportunities and do for my country what my country asks of me.

The road will not be easy, it has never been easy in the past. The harder the task the better America seems to get. I, as an American, must keep the great American spirit alive.

Have confidence in America. We will come through. We have in the past. But, it would not have been possible without all the people who have helped make this nation great. All the people who have fought in battle. All who have served leading this nation, from teacher to President. All the people that built America, and most of all, the American citizen; that person, who, through participation and caring, makes America, the United States of America.

The marvelous thing is that these people do not only exist in the past, but also in the present. It is our job to make sure that they exist in the future.

The future is in my hands and I am going to do everything in my power to make sure that America keeps this great spirit, that America remains a free, just Nation.

I have a dream, . . . do you?●

PLAIN TALK ABOUT THIS ELECTION YEAR

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. MURTHA. Mr. Speaker, recently, Ron Stephenson of WJAC-TV in Johnstown, Pa., gave an editorial comment which I believe does as good a job of summarizing the Billy Carter affair and the present issues facing this country as any remarks I have heard. I insert it into the CONGRESSIONAL RECORD for the information of the members:

EDITORIAL BY RON STEPHENSON

The following is a WJAC-TV editorial.

In a televised news conference last night, President Carter handled himself admirably in providing details of brother Billy's Libya connection. The President stated emphatically that the facts will "show that neither I . . . nor any member of my administration had violated any law or committed any impropriety." And hard line questioning by some of the Nation's most experienced news people failed to shake the President's composure or reveal any serious flaws in what the President said in his prepared statement. An initial sampling of reaction following the Presidential news conference shows a lot of sympathy among Americans for the President's family problems. Many Americans can relate directly to embarrassing family situations over which they have no control. And it is clear that the Billy-Libya affair has no resemblance to Watergate. Any effort by Republicans or dissident Democrats to make Billy Carter an issue in this year's Presidential campaign will be an effort to skirt the real issues. And those issues include a devastating recession that has brought segments of our economy to the brink of bankruptcy and beyond. The issues are runaway inflation . . . unemployment . . . the shattered American dream of home ownership . . . a military that does not have the capability to respond to the aggressive behavior of some world nations . . . the hostage crisis . . . and the decline of American prestige, even among our staunchest allies.

This is no time to have faith in election year promises that we can spend more for defense . . . for social programs . . . increase employment . . . cut inflation and also cut taxes. That's utopia . . . and there is no utopia on this planet. Genuine sacrifice by everyone . . . not just the other guy, is the key to turning this country around. We must have an abrupt reversal from the philosophy of "what's in it for me" . . . to a no exception policy of "what's best for America as a whole" or we'll never recover.

This has been a WJAC-TV editorial. Equal time is available for responsible opposing viewpoints and copies are available upon request.●

CAPTIVE NATIONS WEEK

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DERWINSKI. Mr. Speaker, Mr. Tedis Zierins, a leading member of the Chicago Captive Nations Committee, recently directed my attention to the activities held in Park Ridge, Ill. During Captive Nations Week. I wish to insert a copy of the proclamation issued by the mayor of the city of Park Ridge, Hon. Martin J. Butler, on the occasion of Captive Nations Week, and an article which appeared in the Pioneer Press newspapers, which serve the Chicago suburban area, highlighting the week's events.

In addition, in view of the machinations and propaganda practices which the Soviet Union attached to the summer Olympic games, I wish to also include with my remarks an article which appeared in the Park Ridge (Ill.) Herald, reporting on the efforts by Illinois State representative Penny Pullen in directing attention to the imposed restrictions under which those countries held captive of communism must live. The Soviets attempted to hide this repression under the colorful spectacular of the Olympic games in order to enhance their global image. I would also like to insert a letter from 17 Latvian athletes which gives insight into their opinion of the Moscow Olympics. These reports follow:

CAPTIVE NATIONS WEEK PROCLAIMED BY MAYOR

Representatives of Park Ridge Latvian and Ukrainian communities visited city hall last week when Mayor Martin J. Butler proclaimed the third week of July as Captive Nations Week and urged citizens to support the desire of Communist enslaved nations to regain their freedom.

Since 1959 following the joint Resolution by the U.S. congress Captive Nations Week is observed annually.

The main event of Captive Nations Week observing in Chicagoland will be a Captive Nations Freedoms Race Olympic rally in the Richard Daley plaza, downtown Chicago at noon on Saturday, July 19.

Among the speakers will be state Rep. Penny Pullen of Park Ridge.

PROCLAMATION

Whereas, Captive Nations Week was inaugurated in 1959 by a joint resolution of the United States Congress; and

Whereas the cause of human rights remains a universal aspiration. Yet, in much of the world the struggle for freedom and independence continues; and

Whereas it is vital to the national security of the United States and other free nations that the desire for liberty on the part of the peoples of all conquered nations be kept alive; and

Whereas, each year Captive Nations Week has provided a fitting opportunity for the American people to show their concern for those whose governments do not permit the same freedoms taken for granted by so many of us;

Now, therefore, I, Martin J. Butlers, Mayor of the city of Park Ridge, do hereby proclaim the week of July 13 to 19, 1980, as "Captive Nations Week" and urge all citizens to support this annual observance of the desire of oppressed peoples to regain their freedom.

In witness whereof, I have hereunto set my hand and caused the seal of the city of Park Ridge to be affixed this 10th day of July, 1980.

[From the Park Ridge Herald, July 31, 1980]

REPRESENTATIVE PULLEN'S DISPLAY SHOWS TRUE OLYMPICS A RACE FOR FREEDOM

The Olympic display in State Rep. Pullen's (R-4th) office window at 22 Main St., Park Ridge, is unusual, but as she explains, the Olympics are also "very unusual."

"Never before have children, Christian and Jewish activists been banned from the Olympic city like the Soviets do it now," Rep. Pullen said.

"Never before have Olympics been held in a country, which during Olympics, is fighting to conquer another country like the Soviets are in Afghanistan. Never before have Olympic games taken place in an occupied country like the Olympic Yachting Regatta takes place in Tallin, the capital of occupied Estonia. The United States and many other countries do not recognize the Soviet Occupation of Estonia and its neighbors Latvia and Lithuania as legal," Rep. Pullen said.

"The pomp and glory seen in Moscow can not hide the true Moscow Olympics—five rings of barbed wire and pictures inside them tell us that the Communist style of Olympics is: a race for freedom every day. The mother and a child in a boat inside a barbed wire circle symbolizes not only thousands of boat people in Asia, but all those who by boats escaped from Baltic countries, Cuba and elsewhere. The picture in the other barbed wire circle shows that even the border guard races for freedom and jumps across the barbed wire fence to freedom," she explained.

"Race For Freedom started as soon as Communism came to power there, and continues every day," Rep. Pullen continued. "Every refugee from communism has participated in the communist style of Olympics—Race For Freedom. Every one of them has received an award—not a silver or gold medal, but something much better—freedom," she said.

[From the Park Ridge Herald, July 17, 1980]

ATHLETES SPEAK OUT

DEAR EDITOR: In these days when world attention is focused on the Olympic Games in Moscow, where they begin July 19, I hope you'll find space in your paper for the enclosed letter. It was written by 17 athletes in communist-ruled Latvia and tells their opinion on the Olympics and the world situation.

Thank you,

TEDIS ZIERINS.

We, 17 active and veteran sportists of Soviet-occupied Latvia, with great regret yet proud of our bretheren, sincerely greet the famous athletes who have refused to participate in the 1980 Olympics in Moscow.

How is it ever possible to combine the 40-year occupation of Latvia, Estonia and Lithuania, countless murders in Afghanistan, prosecution of dissidents who every day are exiled to inhumane slave labor camps in the far north or imprisoned in mental institutions with organizing such peaceful games? And what about the infiltration of Russians in Latvia in order to russificate the Latvians?

A proverb says that a sound body houses a sound mind. Where is the conscience, the sound mind of the athletes who with all their might force themselves to get an entry to the Moscow games? They are striving for an easy victory, knowing that many world-wide-acknowledged sportists, people with strong conscience, have declined to participate in Olympiad 80, denying themselves many gold, silver or bronze medals.

How will you, athletes of the free world, listen to the starting signal shot, if at the same moment in Afghanistan a shot will be fired to murder a student, a mother or senior citizen? They will collapse forever, they will never compete, run again. But you will be running, running to achieve a medal that will not honor, but shame you. We can only hope that, when returning to their homes, these athletes will not be welcomed with ovations or flowers.

Every child in our country knows that all our athletes are professionals, yet Lord Killian is not interested in this fact, nor cares about the situation in Afghanistan. Go ahead, stars, Moscow and other Olympic cities will be voided of freedom-loving and law-abiding people. Even young students will not bother you with their childish curiosity. The KGB and its henchmen will take care of everything. At your service will be the best chefs engaged throughout the Soviet Union. You will be wined and dined royally, yet for about two months now the shelves in grocery stores are empty to the public—every morsel is collected for the 1980 Olympics. Only, do not forget to observe the faces of people you will meet in the streets, especially, in occupied Estonia's capital, Tallin—there you will find endless contempt and regret for your foolishness.

THE 17 ATHLETES, RIGA.●

ECONOMIC STABILIZATION

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. GEPHARDT. Mr. Speaker, as we inch toward the question of when a tax bill should be considered or passed, let us remember that inflation is not an idle thief. John S. Atlee, who directs the Institute for Economic Analysis, feels as I do that there is only one sure way to stop the recession quickly and start a real recovery: An immediate small cut in personal

income payroll deductions. H.R. 7046, the Social Security Payroll Credit Act of 1980, could be incorporated into the withholding system with little difficulty or time lapse. I offer this legislation and Mr. Atlee's remarks that appeared in the New York Times on August 25, 1980, for your consideration.

Mr. Atlee's remarks follow:

ECONOMIC STABILIZATION

WASHINGTON.—To slow inflation, President Carter and Congress spent months struggling to balance the fiscal 1981 "wish budget"—which begins this October—and Mr. Carter still opposes a tax cut this year. Meanwhile, the real-world budget—which neither Congress nor the President can control directly—is diving deep into the red because the long-planned "anti-inflation" recession is causing unemployment benefits to skyrocket and tax receipts to nosedive. Each 1 percent increase in unemployment increases the real-world deficit by $25 billion.

However, with the economy diving and no credible plan for recovery, consumers and businesses have reduced their borrowing so much that even the "recession deficits" have not prevented a steep decline in total borrowing. As a result, key money-market interest rates—the price of credit—plummeted from 18 percent in April to 8 percent in June, and speculative "hot money" scurried to the higher interest rates in Europe, depressing the dollar exchange rate.

Unfortunately, our money supply, which controls our overall economic growth, can increase only when somebody borrows the "new money" that the banking system creates. With too little borrowing the Federal Reserve could not prevent the sharp April-May decline in the money supply, from which the money supply has not yet recovered, without further depressing interest rates.

There is only one sure way to stop the recession quickly and start real recovery; an immediate small cut in personal income tax payroll deductions. This would have two effects: It would immediately increase consumers' disposable income, to offset the loss of purchasing power caused by the reduced consumer borrowing and increased unemployment. Even more important, it would immediately cause a policy-induced increase in Federal borrowing, to offset the recession-induced shortage of consumer and business borrowing, so that the Federal Reserve Board could rebuild the money stock now, before the recession further increases the uncontrollable, recession-induced, component of the Federal deficit.

Such a tax cut should be made automatically, by previously legislated machinery for formula-controlled stabilization tax adjustments of payroll withholding, independent of the regular budget. The adjustment formula should be designed to stabilize interest rates at the lowest level that would avoid a flow of "hot money" to Europe.

When interest rates fall below the formula "target" level—as they would today if the money stock were increased enough to stop the recession—the tax stabilization adjustment would call for a tax cut, to increase Federal borrowing. When excessive borrowing causes interests rates to rise above the target level, as in 1977 and early this year, the adjustment would call for a tax increase, to reduce Federal borrowing and keep rising interests rates from feeding an inflationary spiral.

Today, a $50 reduction in everyone's September tax withholding—causing $5 billion more Federal borrowing—would probably be enough to stop the recession. Would $50 be enough, yet not too much? With our present crude financial statistics, no one can know for sure—and no one can predict now what the economy will need next year. The beauty of the stabilization tax adjustment is its automatic flexibility. If the $50 September tax cut were too much, causing interest rates to rise even with adequate money growth, the adjustment would be partly reversed in October—automatically. Normally, these tax changes would be small but frequent—like the hardly noticeable steering-wheel adjustments one makes on an open road, or those by an airplane's automatic pilot.

Congress could demonstrate real fiscal responsibility before the election by cutting September income-tax withholding by $50 and setting up a joint Congress-Administration-Federal Reserve commission to work out precise formulas for the stabilization tax adjustment and appropriate money growth, with full hearings on these next February.

Controlling interest rates by these automatic adjustments would permit the Fed to manage our money supply solely according to the economy's actual need for money—by a systematic formula that everyone could understand and rely on. This would give consumers and businesses more confidence that the economy is really "under control," so they could plan further ahead with less reliance on government and less "risk premium" in their prices, profit margins and wages.

If this stabilization tax adjustment worked for us, other countries would follow. That would facilitate international coordination of economic policies.

Putting the stablization aspect of our economic policy on "automatic pilot" would let us give more attention to the "political" aspects of the budget and the economy and maybe even to longer-run problems.●

CARTER'S REINDUSTRIALIZATION IS A BAND-AID

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. SHUSTER. Mr. Speaker, Mr. Joseph Kraft has written an excellent article entitled "Carter's Industrial Band-Aid," which appeared in the August 26 issue of the Washington Post.

I commend it to my colleagues:

CARTER'S INDUSTRIAL BAND-AID

(By Joseph Kraft)

The more the wraps come off President Carter's plan for industrial renewal, the less it looks like what it was cracked up to be. Certainly it is not an industrial policy, still less a program for reindustrializing America.

Instead, there emerges a bundle of measures to deal with the recession. Since the recession is largely regional, the package adds up to a depressed-areas program.

Industrial policy—to use the term exactly, as one should, given the prevailing confusion and obfuscation—refers to a selective promotion of some industries over others by government. That approach, though practiced in Japan and Western Europe, was never a serious possibility for this country. Administration officials, led by Chairman Charles Schultze of the Council of Economic Advisers, believe that the private sector does a much better job than government in picking winners and losers. Papers prepared for Assistant Secretary of Commerce Jerry Jasinowski show that industrial policy has not even worked particularly well abroad. The French have not been able to promote a computer industry, nor the Germans a strong nuclear power industry. The Japanese have been successful in shipbuilding and steel, but only in a limited way for a limited time. Their greatest successes have come in industries the government did not particularly push.

Reindustrialization refers to measures affecting the whole economy that are designed to rebuild this country's strong competitive position in the world of developed nations. As argued in this column and elsewhere, it envisions tax policies, loan guarantees and other incentives to promote modernization of such basic industries as autos and steel and more rapid advancement of such new industries as data processing and genetic engineering.

In the process, the arthritic nodes that now may make the economy unresponsive to challenge would be reduced or eliminated. To qualify for incentives, management and labor would have to cease inflationary price and wage increases and eliminate wasteful practices. Government would be obliged to make hard trades between environmental quality and economic growth, instead of constantly going for progressively more stringent environmental standards.

Inside the administration, only a handful of officials—Jasinowski at Commerce and Assistant Secretary of Labor Arnold Packer—ever pushed for reindustrialization. Schultze and most of the other leading economists in government felt that the play of politics would inevitably cause this country to sustain losers rather than promote winners. To clinch their argument, the tight budgetary policy adopted in March ruled out any program that would cost more money. So a full-blown reindustrialization policy went by the boards.

What remains is a determination to enlist existing government programs in the cause of fighting the recession. The big new program deals with the energy problem. The windfall profits tax is going to skim billions off oil company revenues. Congress has authorized the use of that money to develop alternate sources of energy and to foster conservation. The administration's economic renewal program would direct that money to the areas most afflicted by the recession.

As it happens, the recession has been highly regional in its impact. Autos, steel, rubber and glass have been the industries most under pressure. They are concentrated in the industrial states of the Middle West—Michigan, Ohio, Illinois, Indiana and Pennsylvania. The basket cases are the older industrial towns.

Inevitably, under the new program, the president is going to be shoving money into Detroit, and Gary, and Youngstown, and Cleveland, and Buffalo.

For my own part, I am disposed to quarrel with the program. It is important to ease the recession. Help should be gotten to needy people in the urban ghettos. And more so, if the money curbs racial tension.

But nobody should be under any illusions as to what is now shaping up. It is a regional aid program, limited in scope and duration. It will not create millions of new jobs. It will not significantly improve this country's ability to compete with other industrial nations. It will not speed up growth or slow down inflation or—most important of all—open the way for faster growth with less inflation. It is an industrial Band-Aid, not the road to a glorious future.●

FAMILY ENTERPRISE ESTATE AND GIFT TAX EQUITY ACT

HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. GRASSLEY. Mr. Speaker, I am introducing today the Family Enterprise Estate and Gift Tax Equity Act, a bill which has received extensive consideration in the Senate and deserves the immediate attention of the House. Senators BYRD, WALLOP, and NELSON are the sponsors in the other body and have done an excellent job in solving some of the major estate and gift tax problems of family owned small businesses and farms.

I have made one change in the Senate-introduced bill. S. 2967 provides for an increase from $3,000 to $6,000 for the annual gift exemption for an individual. My bill would increase the annual tax-free gift to $10,000. The Illinois Bar Association recommended this amount in their testimony before the Senate. While this is less than the $14,000 figure that would approximate the effect of inflation on the $3,000 since 1943, $10,000 is a fair compromise.

The other major features of the legislation are:

First. An increase from $175,000 to $500,000 in the amount of property that may pass free of Federal estate and gift taxes.

Second. A provision which exempts from estate and gift taxes all property inherited by or transferred to a spouse.

Third. A simplification of the so-called special-use valuation rule for farms and closely held businesses to take into consideration the problems of those who are disabled, receiving old-age benefits, elderly spouses, minors, and students.

The measure would provide estate tax relief to more than 95 percent of our Nation's family-owned farms and businesses, allowing them to continue their many contributions to the American economy, creating more jobs, advancing technology and innovation, and increasing productivity.

The following is a more indepth analysis provided by the Joint Committee on Taxation:

SEC. 2. CREDIT AGAINST ESTATE TAX

Description of current law

Current law provides for a unified credit for estate and gift tax purposes of $47,000. Only when the sum of estate and gift tax liabilities (determined without regard to this credit) exceeds $47,000, will estate or gift taxes be due. The effect of this credit is to permit transfers of property totaling $175,625, to go untaxed.

Changes the bill would make

The bill would increase the unified credit for estate and gift tax purposes to $155,800. This would permit transfers of property totaling $500,000 to go untaxed.

SEC. 3. UNLIMITED MARITAL DEDUCTION

Description of current law

For estate tax purposes a marital deduction is allowed for qualified interests in property passing to a surviving spouse. The amount of the marital deduction is limited to the greater of $250,000 or 50% of the adjusted gross estate.

A marital deduction is also allowed for gift tax purposes. For gift tax purposes the amount of the marital deduction is equal to (1) 100% of the first $100,000 of gifts; (2) zero for the second $100,000 of gifts; and (3) 50% of the gifts above $200,000.

Changes the bill would make

The bill would permit unlimited marital deductions for estate and gift tax purposes.

SEC. 4. INCREASE IN ANNUAL GIFT TAX EXCLUSION

Description of current law

A person can make gifts of up to $3,000 a year to another person without incurring any gift tax liability. The $3,000 maximum is a limitation with respect to a particular recipient from a particular donor. Therefore, a person can make 10 annual gifts of $3,000 each to 10 people each year (for an annual total of $30,000 of gifts) and still not incur any gift tax liability. Gifts are not eligible for the exclusion if they are for future interests in property.

Changes the bill would make

The bill increases the annual exclusion from $3,000 per year to $10,000 per year.

SEC. 5. CHANGES TO SECTION 2032A OF THE CODE RELATING TO THE VALUATION OF CERTAIN FARM AND OTHER REAL PROPERTY

General background

Current law generally requires that when a person dies, his property is valued at fair market value for purposes of the estate tax. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts. In determining the price that land would change hands between a willing buyer and a willing seller it is assumed that the price would be based on the highest and best use to which that land could be put rather than its actual use at the time of the decedent's death.

In 1976 Congress added section 2032A to the Code, which provides an exception to this general rule of valuation. It provides that certain real property may be valued based on its actual use rather than its highest and best use. In order to qualify for this treatment the real property must be used for either farming or any other trade or business. In addition the farm or other trade or business must be closely held. In order to be entitled to elect this method of valuation, certain additional requirements must be met. These requirements relate to the portion of the estate which consists of this real property, the extent to which the decedent participated in the business prior to his death and the extent to which his heirs participate in the business after his death.

Specific issues addressed in the bill

1. PROPERTY ELIGIBLE FOR 2032A TREATMENT

Description of current law

Current law provides that in order for real property to be valued based on its use, the decedent (or a member of his family) must have materially participated in operation of the business in which the property was used. This material participation must have occurred in at least 5 out of 8 years immediately preceeding the decedent's death. In determining whether material participation exists the two principal factors used by the IRS are physical work and participation in management decisions.

Changes the bill would make

The bill would make two changes to their rules. First, for persons who at the time of their death were eligible to receive old age benefits under the Social Security Act, or were disabled so as to prevent them from participating in the business, the rules would be modified. For these people the 5 out of 8 year material participation test would be applied with reference to the 8 years immediately preceding the year in which they became eligible for old age benefits or in which they became disabled, rather than the year of their death. The second change concerns farm land used for the growing of trees. With respect to businesses in which this land is used the material participation test would be abandoned in favor of a 10 year active management test. This test would require that the decedent must have actively managed the business during the entire 10 year period prior to his death. The notion of active management refers to a degree of involvement in the business which is less than that required for material participation. It would require the making of management decisions of a business (other than the daily operating decisions).

2. DISPOSITIONS OF PROPERTY

Description of current law

Current law provides that property which is valued under section 2032A must be held by the heirs and used in the business for 15 years after the decedent's death. If this post-death requirement is not met by the heirs, the estate will be required to pay an additional tax.

Changes the bill would make

The bill would change the period after the decedent's death, during which the property must be held and used by the heirs in the business from 15 years to 10 years.

3. FAILURE TO CONTINUE TO USE FOR QUALIFIED USE

Description of current law

Current law provides that the real property which is valued under section 2032A must continue to be used in the farming or other business for 15 years after the decedent's death. This test is not met if at any time during the 15 year period the heirs do not use the real property in the business. The test is also not met if during the 15 year period there is an 8 year period within which the heirs have failed to materially participate in the business for at least 5 years. If this post-death material participation requirement is not satisfied by the heirs, the estate is required to pay an additional tax.

Changes the bill would make

The bill would provide an alternative to the material participation rules for certain heirs. The heirs eligible for this alternative are the decedent's spouse, children under the age of 21, children in school, any heir disabled so as to prevent them from conducting the business, or any heir (otherwise qualified) in the case of property used for the growing of trees. If an heir elects the alternative to the material participation rules, they will be required to actively manage the business for 10 years.

4. MAXIMUM REDUCTION IN VALUE OF ESTATE

Description of current law

Current law provides that the maximum amount by which the value of an estate can be decreased due to the application of section 2032A is $500,000.

Changes the bill would make

Under the bill there is no such limitation.

5. EXCHANGE OF PROPERTY IN A NONTAXABLE TRANSACTION

Description of current law

Under current law, if real property which was valued under section 2032A is sold or exchanged in an otherwise nontaxable transaction to nonfamily members within 15 years of the decedent's death, the estate will be liable for an additional tax. The nontaxable transactions which this applies to are exchanges of property used in a trade or business for other property used in a trade or business (sec. 1031), and the sale of a principal residence and the purchase of a new one. (sec. 1034). There is an exception in current law which provides that if the nontaxable transaction is an involuntary conversion (such as destruction, theft, condemnation, etc.) under section 1033, there will not be an additional tax to the estate if the property is replaced by other real property of at least equal value to be used for the same use. Under this exception, if the value of the replacement property is less than that of the original property, the estate is required to pay a portion of the additional tax. In order for this exception to apply, the estate must make an election.

Changes the bill would make

Under the bill, the disposition of assets under sections 1031 (exchanges of assets used in business activities) and 1034 (sale of a principal residence and purchase of a new one) will not result in an additional estate tax unless cash or assets not used in the business are received. The bill treats these dispositions in manner similar to the current treatment of involuntary conversions. Under the bill this treatment is not elective but mandatory. In addition the bill repeals the election provision for involuntary conversions, and makes it mandatory also.

6. NET SHARE RENTALS

Description of current law

Section 2032A provides for two methods of determining the value of farm land based on its actual use. The more objective of the two tests looks to the average gross cash rental for comparable land (less real property taxes), divided by the interest rate for all new Federal land bank loans. If no comparable land exists, or the executor elects, the second method is used. It is the more subjective method which takes into account a number of considerations.

Proposed Treasury regulations prohibited use of the objective method if the comparable land does not receive cash rentals but instead receives crop shares in lieu of cash.

Changes the bill would make

The bill permits the use of crop share payments in determining value, if there is no comparable land from which gross rentals can be determined. Net share rentals is defined as the value of produce grown on the land and received by the lesser as rent over the associated expenses incurred by the lesser. The bill also provides that in determining the average net share rental, reference shall first be made to data published by the Department of Agriculture, State agencies, or educational institutions. If this information is not available, the net share rentals shall be determined by reference to comparable land located in the locality of the farm.

SEC. 6. TREATMENT OF TRANSFERS MADE WITHIN THREE YEARS OF DECEDENT'S DEATH

Description of current law

If a gift is made within three years of the decedent's death, it is brought back into his estate at its fair market value as of the date of his death, rather than at its fair market value on the date the gift was made. The effect of this is to increase the estate's tax liability for appreciation occurring after the gift was made. An exception to this rule exists for gifts (other than life insurance policies) which are the subject of the $3,000 annual exclusion, which are not brought back into the estate at all.

Changes the bill would make

The bill provides that if property not owned by the decedent is brought back into his estate solely because it was the subject of a gift made within three years of his death, it will be valued on the date the gift was made, not the date of death. If however, a gift is brought back into his estate for other reasons (such as the decedent having a beneficial interest during his life) current law will remain the same and the property will be valued as of the date of death, rather than the date of the gift.

SEC. 7. ELECTION TO PAY GIFT TAX

Description of current law

Under current law, lifetime gift tax liability is first applied against the $47,000 unified credit. When the credit is exhaused, the donor begins to pay gift taxes.

Changes the bill would make

The bill would permit a donor to make an election to defer the credit and pay a gift tax before the credit is exhausted. A donor might make this election to settle any question as to the value of the gift at an early date.

SEC. 8. COORDINATION OF EXTENSIONS OF TIME FOR PAYMENTS OF ESTATE TAX WHERE THE ESTATE CONSISTS LARGELY OF AN INTEREST IN A CLOSELY HELD BUSINESS

Description of current law

Current law contains two major provisions which provide relief to estates which consist largely of an interest in a closely held business. Section 6166 permits an estate to defer the payment of the estate tax on a closely held business for 5 years and thereafter to pay the tax in 10 annual installments. In order to be permitted to elect the payment provisions of section 6166, more than 65% of the adjusted gross estate must consist of an interest in a closely-held business. There are special rules defining a closely-held business. In addition, the first $345,800 of tax liability deferred under section 6166 accrue interest at the rate of 4%.

Section 6166A permits estate taxes to be payed in 10 annual installments. It does not contain a 5 year total deferral as does section 6166 nor is the 4% interest rate provision applicable. In order to be entitled to elect treatment under section 6166A, the value of the closely-held business must exceed either 35% of the value of the gross estate or 50% of the value of the taxable estate. Section 6166A contains a definition of closely held business which differs from that contained in section 6166.

Another provision, section 303, permits an estate to treat property received for the redemption of stock as capital gain rather than dividend. An estate is not entitled to this treatment unless the value of the stock held by the estate (prior to the redemption) exceeds 50% of the adjusted gross estate.

Changes the bill would make

The bill simplifies these sections by eliminating duplicative provisions and making the requirements for eligibility consistent in each instance. Sections 6166 and 6166A are combined into section 6166. An estate will be eligible for treatment under section 6166 if the value of the interest in the closely held business exceeds either 35% of the value of the gross estate or 50% of the value of the taxable estate. Because the two sections are combined, there will be only 1 definition of closely-held business. The one which is used is the one most favorable to the estate. Four percent interest treatment will be available to the first $345,800 of taxes deferred. Any amounts deferred in excess of $345,800 will be eligible for the special interest provision described in section 9.

The bill makes the eligibility requirement for section 303 consistent with section 6166. To quality under section 303 the value of the stock must exceed either 35% of the gross estate or 50% of the taxable estate. The bill would also liberalize the rules relating to the ownership of stock in two or more corporations, in order to make them consistent with the rules in section 6166.●

NATIONAL HISPANIC HERITAGE WEEK

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. PEPPER. Mr. Speaker, I would like to bring to your attention the wording of an invitation I recently received from the White House, to attend the swearing-in ceremony of Richard Rios, who will be the new Director of the Community Services Administration under President Carter.

Note that Hispanic people had been in this hemisphere half a century before the pilgrims landed at Plymouth Rock, that my State of Florida was settled by Hispanic soldiers and citizens in the 16th and 17th centuries, long before the coming of the American forces.

Bernardo de Galvez, who is now the motif of an American stamp, aided revolutionary forces significantly, when he led an exodus of ships under deadly cannon fire from shore. Jose Marti, the father of Cuban democracy, lived here in the United States and helped carry the torch of freedom to his people. But, most importantly, Hispanics permeate the everyday life of our Nation, and contribute in every way to our culture and the great achievements of our country.

I am proud and pleased to have been a cosponsor of bills honoring Bernardo de Galvez and Jose Marti, among other outstanding Hispanic people, and to have been a supporter of National Hispanic Heritage Week, as I will continue to be. You will be interested in the following proclamation by the President.

The proclamation follows:

NATIONAL HISPANIC HERITAGE WEEK

(By the President of the United States of America)

A PROCLAMATION

Hispanic peoples have played a distinguished role in the history of our Nation. They founded settlements in Florida and Georgia half a century before the Pilgrims landed in Massachusetts, and were homesteading in New Mexico more than 150 years before the War of Independence. The names of scores of American cities and towns—such as Los Angeles, Albuquerque, San Antonio, and Saint Augustine—remind us that many of the explorers and settlers who opened our frontiers were of Hispanic origin.

The Hispanic community has given us generals, admirals, philosophers, statesmen, musicians, athletes, and Nobel Prize-winning scientists. Hispanic Americans have contributed gallantly to the defense of our Nation, and many have received the highest decoration our country can bestow—the Congressional Medal of Honor.

Outstanding Hispanic men and women add daily to our Nation's accomplishments in science, technology, the arts, and politics. And Hispanic citizens contribute daily to the quality of our lives. Hispanics exhibit an eminent pride in our American heritage, a passionate love of family, a profound devotion to religion, and an energetic commitment to hard work.

As we enter the 1980s it is fitting that we pause to recognize and celebrate our Hispanic heritage.

Now, therefore, I, Jimmy Carter, President of the United States of America, do hereby proclaim the week beginning September 14, 1980, as National Hispanic Heritage Week. I call upon Federal, State, and local officials to observe this week with appropriate activities and to search out innovative ways for government to work in partnership with the Hispanic community. Hispanic immigrants were among the earliest and are now among the most recent to arrive in this haven of liberty and human rights, and I urge all Americans to reflect on the invaluable contribution they have made to the greatness, the diversity, and strength of this Nation.

In witness whereof, I have hereunto set my hand this thirty-first day of July in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.●

THE ALL-VOLUNTEER FORCE

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. HAMILTON. Mr. Speaker, I recently sent a letter to constituents of mine who had expressed an interest in the combat readiness of the All-Volunteer Force. I insert the letter into the CONGRESSIONAL RECORD for the benefit and use of my colleagues:

Questions about the combat readiness of America's All Volunteer Force (AVF) have been in the news since 1977. The volatile situation in Iran and the Soviet invasion of Afghanistan, however, have focused public attention on those questions more closely than ever before. Is the AVF prepared to do its job, or has it slipped to the point where we can no longer count on it to defend America's interests abroad? The answer we give is of critical importance to our security as a nation. Conventional forces, speedily projected and strongly supported, may stop an aggressor or determine the outcome of a conflict almost anywhere in the world.

Several factors complicate any attempt to assess how prepared the AVF is. Yardsticks that might have been useful in the past are not of much value today because the terms, the tools, and the territories of battle have changed. Our principal adversary, the Soviet Union, has built up its military strength steadily over the past 15 years. The technology of the battlefield is far more sophisticated and destructive than it was just a few years ago. Unrest in the Persian Gulf, Central America, Africa, and Southeast Asia demands that the AVF have a reach extending beyond the tradition regions of American military action. To be a first-rate fighting organization, the AVF must be fully manned, technically trained, well-equipped, and highly mobile.

THE PROBLEMS

Many critics have charged that the AVF is not equal to the tasks it faces. The reasons for the charges are many. The critics cite shortages of manpower in both the active forces and the reserves, low levels of education among recruits, difficulties in retaining experienced commissioned and noncommissioned officers, shortages of equipment, facilities to produce war materiel, and transport, and shrinking numbers of young men and women from which the AVF will draw its future members. Even those who favor the AVF over a force of conscripts see these problems as serious. They are problems which deserve our immediate consideration.

The manpower shortage

From the point of view of the active forces, the manpower shortage has been making itself felt since mid-1976 in all services except the Air Force. From the fall of 1976 through the first few months of 1980, the Department of Defense as a whole has fallen about 3 percent short of its recruitment objectives; 1979 was the first year during which all services, including the Air Force, failed to hit their goals. The worst problem at present is in the Army's ground combat arms.

There are indications that a higher rate of unemployment caused by the recession and a lowering of standards for recruits (especially in the Army) have combined to stabilize the situation at least temporarily, but it is apparent that the trouble may continue. After all, the strength of the active forces has slipped from an authorized level of about 2.1 million in 1977 to just over 2 million today despite downward adjustments in recruitment objectives and a concerted effort to sign up more women. The latest statistics show that the Department of Defense is still short 24,000 soldiers even though it has trimmed its goals by approximately 41,000 over the past three years.

The manpower shortage is far more serious in the reserves. The Selected Reserve, a corps of units trained to fight alongside the active forces in the event of mobilization, now counts some 818,000 among its members, a number 24 percent below the full peacetime requirement. The Selected Reserve has been recovering slowly in 1979 and 1980 due to new educational benefits and enlistment incentives, but it has not been able to make up for the losses it experienced in the years after the Vietnam War.

The ranks of the Individual Ready Reserve are also low. This pool of personnel, consisting of former members of the active forces, is intended both to fill out existing units and to replace battlefield casualties while conscripts are being readied for service. Because tours of active duty tend to be longer than before, and because the active forces are smaller than they were at the height of the Vietnam War, the Individual Ready Reserve has declined significantly to just over 400,000 today, some 300,000 to 500,000 fewer than might be needed to wage a war. The Individual Ready Reserve has been growing very slowly for the past few years, but even with more management attention it will remain too small until 1985.

Without doubt, the manpower shortage is the main reason why many critics believe the AVF to be unready. Our active forces, the first line of defense in a military emergency, are not manned quite as fully as they should be. Our reserve forces, those that would perform key misisons of combat, support, and supply in an extended conflict, are manned at levels that simply would not permit them to do their job well.

The quality of recruits

Closely related to the manpower shortage is the lack of education among many young people who are being accepted into the AVF today. When fewer well-educated young people volunteer, standards are lowered and room is made for the less educated. The lack of education tends to make training more difficult, yet training is more important than ever as weapons and tactics become more complex.

The exact dimensions of the problem are not clear, but statistics on the education of recruits give some indication of them. In the active forces, the number of new recruits who have high school diplomas has been falling since 1978 in all services. For the Department of Defense as a whole in 1980, 58 of 100 new recruits have finished high school; the proportion was 77 of 100 in 1978. The 1980 figures are lowest in the Army: 43 percent, down from 74 percent in 1978. The Selected Reserve fares even worse when the measure of education is taken. For all services, the proportion of high school graduates among young men who are new enlistees is 41 of 100, a sharp decline from the era of the Vietnam War. In 1970, for example, the proportion was 95 of 100. The biggest problem is in the Army Reserve: 30 percent of new male recruits have finished high school, compared to 97 percent in 1970. Fortunately, these statistics on the Selected Reserve have shown modest improvement over the past year or two in most of the services.

The high school diploma, of course, is not the only measure of intelligence and potential performance, but it may be the best one available to the AVF. The reason is that the test to measure the mental ability of new recruits yields faulty results. The Department of Defense has revealed that the number of new enlistees in below-average mental categories has been substantially understated due to widespread cheating and technical defects in the tests themselves. It is possible that the AVF has been taking in up to six times as many of the lowest-quality recruits as previously thought. If so, 30 percent of those volunteering are of the lowest quality. In the Army, the figure is 46 percent. The figures for the AVF overall may be even higher because estimates are not available for previous years.

The retention of experienced personnel

In addition to problems of manpower and education, the AVF is running into another serious obstacle in its effort to defend America: the exodus of experienced commissioned and noncommissioned officers on a scale that is already forcing some cutbacks in normal operations. Especially hard hit are the Navy and the Marine Corps. The retention rate for career Navy personnel, for example, dropped from 92 percent of those eligible in 1973 to 62 percent in 1979. The Navy has 20,000 fewer petty officers than it needs as a result, a fact which demands longer and more frequent tours of duty at sea and makes it difficult for the Navy to man its ships so that they can put to sea on schedule. Comparable figures for the Marine Corps show a drop from 82 percent to 52 percent over the same six-year period. Such a rapid outflow of training, talent, and leadership can only have a negative effect on the men and women who do duty as America's "shock troops." Among all the services, only the Air Force continues to retain its career personnel at acceptable overall rates.

Linked to these low rates of retention are more specialized difficulties that plague all the services. For the foreseeable future, no service will be able to recruit and retain enough physicians. The Air Force, the Navy, and the Marine Corps have had trouble keeping their pilots. The Air Force cannot attract and hold sufficient numbers of engineers. Some consequences of these trends are the loading of too much responsibility onto the shoulders of the experienced people who remain and the assignment of less experienced people to jobs above their rank and training. In a self-perpetuating cycle, these very consequences make career service in the AVF less desirable than alternatives that may be available in civilian life.

Defense analysts point to several factors to explain the problem of retaining career and specialized personnel. One is the possibility of high-paying private employment, which, given the excellent skills of many members of the AVF, persists even when the economy is weak. Another is the dissatisfaction of commissioned and noncommissioned officers with the shortage and lower quality of recruits. Still others are the hardship that career service works on family life and the low esteem accorded the military profession by many Americans in the aftermath of the Vietnam War. By far and away the most important factor, however, is inadequate compensation. Pay caps and inflation have led to a serious erosion in the living standard of military families. Military pay has lagged from 7 percent to 19 percent behind comparable civilian pay since 1973. During the same period, average disposable military income has declined by 11 per cent to 22 per cent. Personnel stationed overseas have seen their finances battered further by the slide of the dollar in relation to many foreign currencies. Moonlighting and dependence on food stamps have become common features of military life. When high-paying, skilled jobs beckon in the private sector, career personnel cannot be blamed for taking them.

Problems of equipment, production, and transport

The AVF is primarily an organization of people, but its people must have the necessary tools if they are to do their job well. Modern warfare requires large quantities of equipment of all kinds, well-placed storage facilities, and the capacity to keep the equipment working. The requirements are great because equipment would be consumed rapidly following the outbreak of hostilities. Such concerns fall under the general heading "logistics".

There has recently been some improvement in the "logistical posture" of the AVF. The problems that remain, however, cannot be ignored. For example, none of the services has adequate pre-positioned stocks of ammunition. Attempts to remedy the situation are being hampered by a lack of storage facilities in forward areas. Petroleum products and the facilities needed to store them are also in short supply. The unstable oil market has pushed reserves even lower over the past year. War reserves in Europe, which include all manner of equipment, are not sufficiently large. It is questionable whether those reserves would carry the AVF through a major European conflict until new equipment could be shipped in. The capacity to maintain equipment is deficient. In the Army, there are too few maintenance units above division level. The Air Force and the Navy do not have enough spare parts for their tactical air wings. Finally, America's industrial preparedness, a factor so important in sustaining the AVF through a lengthy fight, is not up to par. Just one example is the existence of only two foundries in which the turrets of tanks can be cast.

Just as the AVF must be well-equipped, so it must be highly mobile. In future conflicts where its presence might be needed, the AVF will very likely not be able to choose its theater of operations. It will have to go where it is called with sufficient power to meet the challenge of any aggressor. Although military tacticians have always emphasized the virtues of mobility, the conditions of modern warfare make it more probable than ever that the field will be won by those who get there fastest with the greatest force.

The airlift forces of the AVF are formidable by any standard. The backbone of these forces consists of 304 military and 373 civilian aircraft which are available to transport troops, ordnance, and other necessities to distant locations without refueling en route. The problems of the airlift forces are a lack of pre-positioned equipment with which airlifted troops could link up and a limited ability to move cargo. These problems mean that the airlift forces could deliver only lightly supported units to a conflict far from our shores.

The sealift forces of the AVF, slower and more vulnerable to attack but capable of carrying far bigger cargoes, are equally formidable. The Department of Defense itself owns 25 ships and has 35 more under charter. The American merchant fleet has 248 vessels suitable for sealift operations, some 200 of which could be called up for duty at the present time. In addition to these, 149 ships from World War II could be activated to provide extra mobility. By next year, 19 of them will be in a high state of readiness. Like their airborne counterparts, however, the sealift forces face limitations. For example, it is not clear that they could supply the AVF adequately in the European or Korean theaters without assistance from the fleets of allied nations. Also, civilian building of ships with sealift potential is not moving fast enough.

The demographic question

In order to fill its ranks successfully, the AVF must attract recruits from the population of young men and women across the nation. Consequently, the size of this population has a direct bearing on the ability of the AVF to get the people it needs. Since women comprise less than 8 percent of the AVF at present, the demographic question is one concerning young men primarily. Will there be enough young men in the population to make the AVF work in the years to come?

Because the birth rate began to decline in the mid-1960's, the number of young men reaching the age of 18 every year is also declining. From approximately 2.1 million last year, the number will fall by 20 percent to 1.7 million in 1987. At that time, the AVF will be required to sign up 22 percent of all 18-year-old males instead of the 18 percent that must be signed up today. Most experts believe that such a percentage cannot be attained given current policies and practices of recruitment.

THE SOLUTIONS

It is apparent that the AVF is encountering some serious problems, but those problems do not necessarily imply, as some critics have alleged, that the AVF is totally unprepared to defend America from aggressors. Critics of the AVF should recall that when the Soviet Union invaded Afghanistan, the United States, in an effort both to deter further aggression and to protect vital sea lanes, assembled in a matter of weeks the most awesome armada ever to sail the Indian Ocean. Such an accomplishment is not possible for a nation whose armed services are totally unready, nor is it possible for a nation whose fighting forces are second-rate. It seems to me that the key issue can be stated in simple terms: how do we make the AVF as ready as it can be? It also seems to me that there are several steps for us to take.

Raising military pay

Better military pay is perhaps the best way for the AVF to bring its manpower up to full strength, attract more qualified recruits, and retain experienced personnel. Consequently, I support initiatives now underway to increase compensation for the men and women who defend our country. The most significant action to date was taken recently by House and Senate conferees who were meeting to resolve differences on the 1981 defense authorization bill. The conferees included an additional $1 billion for military compensation, enough to provide for an 11.7 percent hike in basic pay and subsistence and quarters allowance, effective October 1. They also included fifteen other provisions relating to pay and benefits, among them increases in enlistment and reenlistment bonuses for active and reserve personnel and increases in per diem allowances. The report submitted by the conferees will soon be sent to the House floor for final consideration. Appropriations committees will make the final decisions on funding.

Improving the quality of recruits

Higher pay for armed forces personnel will undoubtedly bring better recruits into all services in the future. The effect of legislation now pending in Congress may not be felt for some time, however, so House and Senate conferees have chosen to establish mandatory standards for recruiters in the interim. The 1981 defense authorization bill would allow all services to draw only 25 percent of their recruits from the lower mental category during 1981 and 1982. The allowable level would be reduced to 20 percent in 1983 and all years thereafter. In addition, the Army would be able to meet only 35 percent of its recruitment needs in 1981 by signing up young men and women without high school diplomas. Yet another provision of the bill would supply $75 million for a one-year pilot program of increased educational benefits. Such benefits might make military service more attractive to talented people who wish to further their education. As I see it, such restrictions and programs may be helpful temporarily. They will probably continue to be necessary until the quality of recruits improves of its own accord.

Preparing for mobilization

No nation can hope to engage in a full-scale war relying on volunteers alone. To be an effective deterrent, the AVF must be backed up by the nation's capacity to mobilize quickly and completely should war break out. With my support, Congress recently approved the President's standby draft registration proposal to ensure that we could move to the draft without delay in the event of an emergency. Young men born in 1960 and 1961 now have their names and addresses filed in a data bank of the Selective Service System. Eighteen-year-old men will be adding their names and addresses to the file continuously in the months ahead. Although estimates vary as to how much time registration will save in getting men to training camps, it is probably safe to say that we have gained several weeks by avoiding serious interruptions that could have occurred under a plan to register after mobilization. My own view is that registration increases the effectiveness of the AVF as a deterrent and gives us much less reason to reinstate the peacetime draft.

Keeping the forces ready for combat

Funds to keep the AVF ready for combat come from the operations and maintenance category of the defense budget. Greater funding for operations and maintenance may be the fastest way to improve combat readiness because the new money can be used to expand training programs and upgrade equipment in a relatively short period of time. Such funding has climbed dramatically in recent years, and it continues to rise rapidly. The Carter Administration has asked for the authority to spend more than $51 billion for operations and maintenance in 1981, an increase exceeding 35 percent in just two years. That amount would be roughly double the amount spent for operations and maintenance in the period immediately after the Vietnam War. Moreover, operations and maintenance is slated to receive the largest annual increase among all the categories of the defense budget. Congress will very likely approve, and probably add to, the operations and maintenance funding called for by the President. I would support such action.

Deploying the forces rapidly

President Carter has already initiated a program which will permit the AVF to deploy its men and material rapidly in response to emergencies outside Europe and Korea. The so-called "rapid deployment force" is not a new military unit, but rather a composite of existing units that will be specifically organized, trained, and equipped to move with great speed to areas of combat in distant regions. When the force is fully ready, it may consist of more than 100,000 soldiers supported by long-range cargo aircraft and newly-designed cargo ships. Also, it may be able to take advantage of equipment and munitions positioned beforehand in potential trouble spots around the world. Defense analysts calculate that the cost of establishing the force may surpass $10 billion over the next five years, with as much as $1.3 billion being committed to it next year. The ability to deploy rapidly is becoming central to our global defense posture.

Keeping the ranks full

Among possible responses to the long-term problem of demographics, several are receiving attention: recruitment may have to be conducted more aggressively; more women may have to be signed up; manpower may have to be used more efficiently; enlistees may have to be retained for longer periods of service; the age group targeted for recruitment may have to be broadened; the draft may have to be reinstated. Precisely how the problem of too few young men is to be solved will be a matter of intense debate over the next few years. The demographic question, of course, is providing impetus to those who want to reauthorize compulsory military service in peacetime.

I will continue to assess the combat readiness of the AVF in the weeks and months ahead, identifying problems and pushing very hard for workable solutions to them. As in the past, I intend to support every reasonable expenditure to guarantee that the AVF remains second to none among the world's armed services. In my opinion, the defense of the nation from all adversaries must be at the very top of the public agenda.

Please do not hesitate to contact me if you have questions or comments on military affairs. I will do my best to be helpful to you.

With best wishes, I am

Sincerely yours,

LEE H. HAMILTON,
Member of Congress.●

H.R. 7993

HON. CHRISTOPHER J. DODD

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DODD. Mr. Speaker, today the House will consider H.R. 7998, the Labor-HHS-Education Appropriations bill for fiscal year 1981. Included in this legislation is a section on funding for this winter's low-income energy assistance program. It is imperative that the House oppose any amendments to alter the Appropriation Committee's formula for allocation of energy assistance.

The committee's formula insures that the States in greatest need of assistance receive adequate funds to offset increasing home energy costs and the probability of another cold winter. Expanded eligibility requirements will stretch fuel aid even further this winter, especially in Northeastern and Midwestern States where energy costs as much as 50 percent higher than in other parts of the Nation.

There has been a great deal of criticism of supposed regional bias in the distribution of fuel aid across the Nation. All regions in the country benefit from energy assistance, and warm weather States like Texas can attest to the need for this kind of aid in light of this summer's devastating heat wave. However, any energy assistance formula should take into account that of the 16 million households that use home heating oil, 12 million are in the Northeast and Midwest.

There is a need to distribute the $1.8 billion in energy aid equitably, and that will be accomplished if Congress supports the House Appropriations Committee formula that guarantees that every State will have the funds they need to combat rising energy prices that often cause families to make impossible choices.

The Department of Energy is predicting a 16-percent increase in energy costs over the next year and a 26-percent increase in the price of home heating oil. We must protect the neediest people in our Nation these kinds of cost increases that are beyond their control. Once again, I would urge my colleagues to support the committee bill and the committee formula.●

PROGRESSIVE LIBERALISM

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. CONYERS. Mr. Speaker, many Americans believe that the era of liberal politics has come to an end. Some regard the liberal agenda as out of step with the times. Others are skeptical of its record. My own view is quite the contrary. Liberal values are being tested today more than ever before. Yet it is difficult for me to understand how the Nation can possibly solve its most urgent problems without liberalism.

Our major domestic problems such as rebuilding the industrial economy, achieving full employment, revitalizing urban centers, addressing the needs of minority communities, broadening the base of political participation and creating a truly decent and just multiethnic society cannot possibly be solved without a liberal agenda.

The role of liberalism in the 1980's is the subject of a major analysis by Marcus Raskin that appeared in the May 17, 1980, issue of the Nation. A leading political and social theorist, Mr. Raskin was the founder of the Institute for Policy Studies in Washington and is the author of numerous works, including Being and Doing, the Federal Budget and Social Reconstruction, the Politics of National Security, and the Common Good—to be published next year. I urge my colleagues to read this article on "Progressive Liberalism" that follows.

PROGRESSIVE LIBERALISM FOR THE 1980'S

(By Marcus G. Raskin)

In a recent New York Times Magazine article, the distinguished historian Arthur Schlesinger Jr. correctly points out the importance of liberal thought and action to the development of a decent society in the United States. Schlesinger, however, merely offers a refurbished version of his old "Vital Center," claiming that the liberalism espoused during the cold war by Reinhold Niebuhr and reflected in the legislative programs of Lyndon Johnson can be updated and made popular in the 1980s.

It is my belief that liberalism will have to move to another level of theory and practice. This new liberalism is needed not only to accord with people's aspirations, their need for community, self-expression and economic independence but because it will have a better chance of bringing about a peaceful world. It can do this by renouncing the antipragmatic imperial discipline of geopolitics, which Schlesinger prefers over international law, and by formulating clear policies to deal with an economic system that is out of political and democratic control. The vital center is not the answer. For the right has become the center. And it has no interest in including liberals in it unless they genuflect to those very standards that have left American society in its present grievous condition.

In general terms, liberalism represents the fundamental constitutional purpose of this society: the pursuit of happiness and the establishment of justice for all. And contrary to fashionable belief, it can emerge victorious in the fierce struggle that will be waged in the 1980s between liberalism and conservatism. Nevertheless, a liberal victory will not be easy, for in a time of fear, conservatism sells stability and solidity (the traditional values), even though the contents of its ideological package are fraudulently labeled.

In our time, conservative thought and practice is shot through with antihumanist ideas and beliefs. One recurrent theme is an enthusiasm for discipline and a kind of social repression that forces a cap on people's feelings and thwarts their strivings to expand their sense of personhood. Despite their espousal of liberty in the marketplace

and their protests against "bureaucracy" and government, conservatives fear social and political liberty. They believe that there has been too much freedom, spontaneity, permissiveness and new social thinking in the United States. According to them, what the American people need most is a good authoritarian spanking like former Vice President Spiro Agnew used to prescribe.

The mean-spiritedness of conservative American politics has now permeated numerous sectors of the population. Perplexed by inflation and unemployment, but unable to control the corporate system, these people choose to vent their rage on government. They see inefficiency, corruption and futile wars as the fruits of their taxes. The right has learned how to manipulate the frightened, the penurious and the hopeless, as the defeats of Senators Dick Clark in Iowa and Thomas McIntyre in New Hampshire have shown. Whether the issue is the Panama Canal Treaty, abortion, welfare "cheats" or arms limitations agreements, the right has learned how to mold social resentment into conservative vendettas, orchestrated by computerized mailing lists and directed against the modest, humane advances made over the last generation.

As political scientist Alan Wolfe has said, "There is a systematic campaign to reverse the 1960s, to roll back, one by one, every single gain made by progressive and minority groups of that period and to re-establish the status quo ante of 1952 in the United States. Some do not even seem satisfied with this, preferring a more golden age like 1927. Rip Van Winkle woke up to find himself in the future. In the aftermath of Vietnam and Watergate, America is waking up to find itself in the past."

We must ask, how did this happen?

ESTABLISHMENT LIBERALISM

The twentieth century has seen two modes of American liberalism—establishment liberalism and progressive liberalism. To no small degree, the differences between them are most clearly drawn in their views on the economy and the cold war.

From the New Deal onward, virtually all liberals assumed that strong Presidential leadership would serve as a counter-weight to the rich and powerful. Establishment liberalism saw the President as a powerful champion of the people who would do battle with the privileged. The President would embody positive historical forces moving toward social equality and personal freedom within a system of Big Business capitalism. This arrangement was to be predicated upon a "deal." The President's style of liberalism, buttressed by a strong government, would act as the guarantor of the capitalist principle of socializing risk and privatizing gain. In exchange, the business classes, whom Franklin Delano Roosevelt called the "economic royalists," would accept a certain amount of taming through regulation. From the New Deal to the Lockheed Corporation bailout, the government was to serve as the nursing home of capitalism, administering to it lifesaving transfusions from the taxpayer.

This form of liberalism fostered a "partnership" theory of government in which government helped business thrive. People were encouraged to spend and borrow. Government was expected to prime the pump of consumerism. Liberals believed that the way to keep the domestic peace was "to throw money at problems." To pay for these programs, establishment liberals invented deficit financing and accepted a regressive tax structure. Liberals curried support for social welfare legislation in Congress, justifying it not as a matter of people's rights but as a way of keeping people loyal to the "system." The social welfare programs of the 1930s and the antipoverty programs of the 1960s were all promoted in Congress as the way to stop "the unruly classes" from burning down the cities. These Congressional liberals held that more of anything was better, so long as the economic pie kept growing. Borrowing against the future, unbalanced budgets and increasing the national debt were to be seen as positive goods. But by the late 1970s, even the supposedly liberal managers of large corporations made clear to unions and the government that the uneasy partnership between capital and labor was ending. Competition from abroad and the apparent acquiescence of the American public has revived the old-time religion of laissez-faire. According to the conservatives, the market system should be left to work its will, unchecked, as it did in the United States up until the 1930s, as it is doing now in Chile, Brazil and the poor urban areas of the United States: favoring the rich, expanding unemployment and depending upon military force to keep order.

The geopolitical bias of conventional liberalism set off an arms race that has grown to disastrous proportions, encouraged the development of sovereign oligopolistic corporations which the public is exhorted to trust as though they had a "corporate soul," and to endless geometric borrowing that increases the debt structure and generates inflation. The nostrums purveyed by the vital centrists are a human and political disaster. They have increased poverty, class stratification and reliance on an authoritarian police state to keep the poor and the wretched in their place while stifling protests about their plight. The politics of the neoconservatives, ranging from apostate liberals like Nathan Glazer to old-line conservatives like Barry Goldwater, are in the ascendant for the time being in both political parties. The difference between the two parties resembles the difference between Pepsi-Cola and Coca-Cola. The Republican Party may be called the Pepsi Party, since it was Nixon who got Pepsi into the Soviet Union; the Democrats are, perforce, the Coca-Cola Party because Carter paved the way for Coke's entrance into China. The establishment liberalism espoused by an Ed Koch is barely distinguishable from the brand vended by a Pat Moynihan or a Jack Kemp. Conventional liberalism, as exemplified by these men, has lost sight of equity and human needs.

PROGRESSIVE LIBERALISM

But there is another strand of modern liberalism which has been free of historical ties to Big Business capitalism. This is progressive liberalism, and it is liberalisms most vibrant form, suffused with the restless energy of Americans in pursuit of justice and happiness. It always stood for a dual-sector economy of cooperatives, public enterprise and small businesses. It also propounded a noninterventionist and independent foreign policy. Its proponents applauded President Roosevelt when he asked how civilization could be based on reason when it solved human conflict through war and militarism. But they deplored Roosevelt's decision to restore economic pre-eminence to the great banks and corporations during World War II. Progressive liberalism's philosophical roots are in the pragmatism of John Dewey, the politics of Robert LaFollette Sr. and the legal thought of William O. Douglas. It echoes the cry for economic justice that is heard in the works of Eugene Debs, Upton Sinclair, Walter Weyl, Charles Beard, Jane Addams and John L. Lewis, all of whom believed that workers should exercise control over their places of work, and evinced a deep suspicion toward unaccountable wealth privately held, unaccountable government and politicians who led their people into war or on imperial adventures.

Progressive liberalism, as a coherent program and vision, was washed out by the 1940s. By 1949, the left and humanist liberals, those who did not support the cold war or had doubts about the course of capitalism, were blacklisted and thrown out of virtually every institution of American life from the government to the film industry, journalism, unions and universities. And in the early 1950s, establishment liberals such as Hubert Humphrey began championing the national-security state, large defense budgets, covert operations abroad and anti-civil-liberties legislation at home.

After the demise of the New Deal, the failure to organize a national party of the left that challenged successfully the two-party cold-war and Big Business assumptions but was not naively pro-Soviet Union drove political activists to involve themselves in causes and single-issue groups. By the end of the 1950s, those who were not working in government or involved in electoral politics organized around civil rights, consumer rights, student rights, opposition to war and, later, women's rights, gay rights and protection of the environment. They sought answers to their problems in terms of their own immediate needs, interests and particular issues. But throughout the 1960s and 1970s there remained a gnawing perception that single-issue politics was self-defeating. Martin Luther King Jr., who understood the problems of those trapped in the single-issue ghetto, moved his constituencies beyond civil rights into the struggle for economic rights for the poor and working people and into the antiwar movement.

UP AGAINST THE SYSTEM

Then, the Vietnam War touched off a resurgence of progressive liberalism that challenged the objectives of U.S. foreign, military and economic policies. A variety of social movements were united in the belief that institutions also had to be analyzed and transformed where they were faulty. For the first time since the Depression of the 1930s, liberals and activists sought to define and describe the nature of "The System." A younger generation, for whom McCarthyism held no terrors, followed another McCarthy against the war in Indochina.

The antiwar movement was limited in its purpose but slowly broadened its base and began to win over the liberals who supported the cold war and the policies of the great corporations. Each of the Kennedy brothers, for example, began as a conventional liberal dedicated to the national-security state and went on to embrace the tenets of progressive liberalism. Liberals from Americans for Democratic Action who had once favored the Truman guns-and-butter prosperity—indeed, helped develop that policy with Leon Keyserling and Robert Nathan—were, by the early 1970s, questioning this dogma. On the other hand, some cold-war liberals, such as Daniel Patrick Moynihan, moved logically toward conservatism. Many of these new converts were, like Moynihan, one generation removed from the slums and had begun their political odyssey as New Deal liberals. They were proud of their personal upward mobility but they feared the growing demands by women and minorities to enter the labor market on terms of full equality rather than as wards. They became conservatives because they feared—and still do—that they would lose their tenuously held positions on the economic and social ladder.

The social movements that shook the American consciousness from the late 1950s

to the 1970s turned the Democratic Party into a battleground of conflicting definitions of liberalism. The emergence of George McGovern in 1972 seemed to unite the various factions that had been immersed in their separate issues, but this union proved premature. McGovern never found a way to talk effectively to labor union members or their leaders. And many of his followers were unable to find common ground with the labor movement on economic issues. While there was respect for labor among the various causes and public-interest groups, neither side had worked out a comprehensive agenda for dealing with the economic and social ills of American life. Nor did either labor or the left adequately gauge the strength of the right, comprehend the rapid decline of the American cities, or adequately understand how much their respective constituencies needed the others. Senator McGovern instead felt impelled to seek support from Wall Street and took an advertisement in The Wall Street Journal praising American Big Business and seemingly pledging his fealty to it.

The defeat of McGovern, a man who early on sensed correctly the innate corruption of Richard Nixon and his men, and his unwillingness to keep hold of the reins of the Democratic Party after his defeat, allowed the Democratic Party to choose a transitional figure as its candidate for President in 1976. In his successful drive for the Presidency, Jimmy Carter indiscriminately raided the ideological refrigerator while serving up the rhetoric of progressive liberalism. He called for substantial cuts in the defense budget and brought the 1976 Democratic convention to its feet when he said in his nominating speech that if this economic system could not bring full employment we had better develop a system that could. He sang "We Shall Overcome," praised populism, called for an end to foolish privilege among the Beverly Hills rich and played baseball with Ralph Nader. He appealed as well to a longing for roots and a yearning for the plain and unostentatious.

But while the packaging was populist and liberal, once he was in power, Carter's programs took a distinctly conservative turn, and now his Coca-Cola politics faces serious challenges from all sides. As Carter seeks to win new constituencies and friends by following conservative economic policies, liberals of all kinds have begun the slow and painstaking task of forming an alliance that would last beyond any single election.

TOWARD A NEW LIBERALISM

In October 1978, Douglas Fraser, president of the United Auto Workers, brought more than 100 labor unions and public-interest groups together in Detroit to talk about an alliance between labor and left-of-center groups. As each separate interest group voiced its needs, priorities and complaints, all those present experienced a growing awareness that so long as each cause and each union remained separate unto itself, it was isolated and lacking in purpose and momentum. They realized that their objectives were actually interdependent. Equal rights meant little without full employment. Full employment meant little if it was to be based on an unnecessary war economy that took the lion's share of the basic resources and talents of the society and fueled inflation. More schools meant nothing if children were harmed by how and what they were taught. What was needed, in short, was a comprehensive program for liberalism in the 1980s.

To formulate such a program, it is first necessary to define the values upon which it is founded. These values must say to the former liberals who have joined the conservative ranks that they should return to their roots, and convince conservatives that the values they now espouse do not conserve civilization but rather hasten its demise.

A special effort should be made to reach the middle class. Those who are fearful of losing their hard-won status should be told that they have been hoodwinked. They must abandon the illusions that have been foisted on them. Prominent among these illusions is the one that says that the American middle class is an independent class. On the contrary, it is a debtor class. Historically, the middle class was defined in terms of ownership of capital, its control over real property. Its status was derived from ownership of property or from a skill and a productive capacity that made a person independent. But in our day most of the people who think of themselves as middle class are salaried and are chronically in debt for consumer goods. Being a debtor class, without capital, they are vulnerable to the whims of creditors and the ups and downs of the economic system. The only way to break free from this dependency is for the middle class to champion values and programs that aim for the common good, which, I might add, does not mean "the vital center."

A CORE OF VALUES

Progressive liberalism seeks a "core of values" that will inform the daily choices made by government, institutions that operate in the public sector, and economic units that affect people's daily lives. These values are fairness, security, cooperation, dignity and participation. They are interrelated.

In a democracy, fairness means stringent limits on personal wealth and the abolition of poverty. Otherwise, political equality and citizenship are myths. If our laws and regulations in the political and economic sphere do not reflect this purpose, there will be increasing class stratification, malaise, decay, mean-spiritedness and inequity in the society. Without a clearly defined standard of fairness—translated into a progressive participatory tax structure, common ownership of natural resources and common tasks—people will not be citizens of one nation and there will be many "other Americas."

Economic security is crucial. It is achieved by formulating governmental and voluntary policies that encourage people to live productive lives freed of the whip of economic necessity. In part, this is accomplished through the adoption of a national-security system and a foreign policy that do not court war, or prepare for war—whether genocidal or limited—and call it peace. In people's daily lives it means the guarantee of creative work at all occupational levels. People should be encouraged to be inventive in their jobs and to engage in the kind of work that contributes to the good of the community as well as the worker. This is achieved by encouraging public-sector investment and democracy in the workplace.

Security cannot be created without cooperation. Cooperation rather than competition and selfishness is the fundament of America's future—a bonding system that rejects the extraordinary class privilege of a Rockefeller or the infantile selfishness preached by Ayn Rand. Cooperation means being responsible for one another as teacher and student, consumer and worker. It means developing technologies that foster participatory democracy in the economic and political system. It is grounded in a sense of individual dignity which sets limits to both governmental and corporate intervention in people's lives. There are rights of personhood which we expect from one another and from government in our social, economic and political intercourse. These rights—freedom of speech, assembly, association, among others—differentiate us from the beasts. Our laws must create the necessary conditions for dignity and respect—one to another, old and young, between the sexes and races, between the stronger and weaker. Finally, we know that these values cannot be accomplished without participation—the people judging and deciding through the political, productive and consuming process. It is the people who must have the sovereign power to assert these values in the political and economic spheres.

The progressive liberal political program starts with the spirit of cooperative responsibility for our own society and the realization that American well-being includes sharing its abundance and technical skill with the world. It means living as one nation among many, without threatening others or interrupting their own social processes. It means an end to the profound disparity between the rich and poor, domestically and internationally.

The objectives of progressive liberalism are easily understood: everyone is entitled to work; individual accumulation is secondary to the development of the common heritage and common wealth; citizenship must now extend to the workplace; we must reconsider and transform our defense policies and international purposes so as to achieve a truly secure society at home.●

APPEAL FOR HUMAN RIGHTS OF VIACHESLAV ROYAK

HON. CHARLES F. DOUGHERTY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DOUGHERTY. Mr. Speaker, the inhumane treatment and continual harassment of Viacheslav Royak, a Jewish citizen of the U.S.S.R., is a matter of grave concern to me and to all those who support the cause of human rights in the world.

"Slava" Royak, a mathematician, his wife Irana, his two daughters, and Irana's father and aunt were refused the right to emigrate to Israel in July 1977, 7 months after their initial application. Refused on the grounds of "secrecy," Slava's only "crime" seems to be his Jewish heritage. At work he has been threatened and abused, has been denied his premiums of pay, and, under official encouragement, his whole section has turned against him.

In addition, Slava Royak suffers from diabetes. Not only has he been forced to work the night shift from which diabetics are normally excused, but the Soviet Government often substitutes or completely withholds Slava's insulin. This is an intolerable example of disregard for humanity and life.

Mr. Speaker, 31 of my colleagues have joined me in sending the following letter to Chairman Brezhnev of the Soviet Union urging that the exit visa of Viacheslav Royak and his family be approved on humanitarian grounds:

Chairman LEONID BREZHNEV,
Presidium of the Supreme Soviets of the U.S.S.R., Moscow RSFSR, U.S.S.R.

DEAR MR. PRESIDENT: As members of the United States House of Representatives, we

are writing to express our distress over the treatment of Viacheslav Royak, whose family has been refused exit visas to Israel.

Viacheslav's basic human rights have been denied in many ways. Besides the denial of his right to emigrate, he has been harassed and abused at work because of his religion.

As a diabetic, Royak's health has also been endangered by the authorities. He has been repeatedly denied his insulin and often given substitutes. He has been forced to work the late night shift which has further deteriorated his condition.

We appeal to you on humanitarian grounds to approve the exit visa of Viacheslav Royak and his family. He has committed no apparent crime in his quest to join his relatives in Israel. In light of his failing health and his rights to join his relatives we urge you to reconsider his application for emigration. You have pledged your support of the Helsinki Accords, which includes the rights denied to the Royaks. This is also an appeal to the leaders of the Soviet Government to abide by the human rights provisions to which you have agreed.

Sincerely,

Charles F. Dougherty, Berkley Bedell, William J. Hughes, Robert T. Matsui, Howard Wolpe, James L. Oberstar, David E. Bonior, Bill Frenzel, Bill Archer, Allen E. Ertel, Robert J. Lagomarsino, John H. Rousselot, Marjorie S. Holt, Sidney R. Yates, William Lehman, Andrew Maguire, Pete Stark, Don Albosta, William M. Brodhead, Norman F. Lent, Robert A. Roe, Hamilton Fish, Jr., Jack F. Kemp, Michael D. Barnes, Mickey Leland, John Edward Porter, Robert W. Edgar, Bill Nichols, Daniel E. Lungren, Vic Fazio, Richard L. Ottinger, and Dale E. Kildee, *Members of Congress.*●

STANISLAUS RIVER AND THE NEW MELONES PROJECT

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. COELHO. Mr. Speaker, as you and many of our colleagues may be aware, hearings on Federal wild and scenic river designation proposals for the Stanislaus River in California and other rivers in this Nation were conducted earlier this week by Chairman PHILLIP BURTON and his Subcommittee on National Parks and Insular Affairs.

Much light was shed on the issue of whether the Stanislaus River should be declared wild and scenic, therefore precluding the filling, and full and intended use of, the New Melones Dam.

I strongly oppose any effort to incorporate the Stanislaus River into the Federal wild and scenic rivers system. To deny the general public the multiple benefits of its $341 million investment—which has already been made—is the height of folly and irresponsibility, and to do so under the guise of environmentalism and preservation of a wild river is sheer duplicity. The Stanislaus is not a wild river. It has been tamed for power generation for decades, and the New Melones project is the 13th project to be constructed on that river.

In my testimony before Chairman BURTON's subcommittee, I noted that even the press, while faithfully chronicling every attempt to kill the New Melones project on its front pages, has handed down the judgment on its editorial pages that it is time to fill the dam. Mr. Speaker, this is true not only of the press in my district, but of the press in San Francisco, Los Angeles, and Sacramento. Time after time, the press has objectively evaluated the issue and urged that the dam be filled for the benefit of the general public, while opposing wild and scenic designation for the Stanislaus which would benefit only a single special-interest group.

I insert into the RECORD a two-part commentary by Managing Editor A. Ray Nish, Jr., of the Modesto Bee. It is an excellent summary of the issue and it notes many of the most important factors my colleagues should be aware of regarding this issue.

The commentary follows:

BACK TO CONGRESS

How is it possible for a small special-interest group—a dozen or so commercial rafting companies—to hold the New Melones Dam and Powerhouse hostage, denying the public the multiple benefits the $351 million project was built to provide?

The "how" in this instance is the same as it always is in the case of special interests prevailing—influence over inside, highly-placed individuals carrying out their mission within the institutions, outside the reach of voters.

The "why" of the continual delays in the filling of New Melones with water—for flood control, irrigation storage, generating electricity, water quality control, recreation—has become rather obvious. The longer the delay, the more business the rafters can develop on a nine-mile stretch of Stanislaus River white water. Had the heavy storm waters of the past winter and spring runoff been stored behind New Melones—completed in 1978—some of the rapids would have been inundated. Most of that water has been lost, contributing to the heavy spring flooding of the delta as it ran out to sea.

After 36 years of planning, public debate and decisions geared to the public's interest, after numerous court decisions and appeals, after the state's voters put the question to rest six years ago, the special-interest group is about to make an end run around the public's will. The group's influence has moved an out-of-the-region congressman to try and sneak through Congress the wild and scenic river designation of that Stanislaus nine-mile stretch which California voters rejected in 1974.

On Capitol Hill, Rep. Phil Burton of San Francisco is credited with having the muscle and methodology for getting his way. He will open an umbrella any day now as Congress edges toward adjournment to campaign for re-election. By parliamentary sleight of hand and drawing upon the support of congressman from other regions and states, he will shake out some goodies and collect the votes needed to pass his omnibus bill.

Fortunately, Reps. Tony Coelho and Norman Shumway are awaiting this move with their own strategy to block the theft of the Stanislaus, and Rep. Harold T. "Bizz" Johnson has blown the whistle on some Interior Department insiders who have been carrying the banner for the dam opponents.

Additionally, since Jimmy Carter has stated he would sign the rivers bill, a group of state legislators and others from this region have reminded the president that California voters already have rejected the proposal in Burton's bill. On the heels of Carter's win against convention delegates trying to shed the mandate of their states' voters, the valley legislators—State Sen. John Garamendi and Assemblymen John Thurman and Norman Waters—put the question to the president: "Should the voters' will always be controlling, or just when convenient?" They asked him to veto any bill which would put the Stanislaus in the wild and scenic rivers system.

Johnson's demand that Interior Secretary Cecil Andrus direct his department's task force to correct its recent New Melones report to Congress focuses on the devious ways of the projects opponents. The report, for distribution to congressmen as background to the legislation, fails to make clear that the dam *already* has been built and fails to inventory its multiple benefits and note the environmental enhancements that have been incorporated into the project. Thus, Johnson points out, the report is inaccurate and useless to congressmen who are unfamiliar with the project and who will be voting on whether Congress shall undo what it has done, starting in 1944.

It is, as Sen. Alan Cranston said in the district last week, time to get on with the management of New Melones services. Noting the California voters' decision of 1974 and the upholding of U.S. District Judge E. Dan Price's June 20 ruling to allow the reservoir's filling to its 2.4 million acre-foot capacity by the Ninth U.S. Circuit Court, Cranston said the water service area should be established immediately so contracts can be signed.

For a project that has been 26 years in development from authorization to completion, further delays might not seem unreasonable to some. However, the opponents' next step is calculated to permanently prevent New Melones from being used as intended. To ignore the multiple benefits, the many environmental pluses of the project and the state voters will in the matter and give exclusivity to the rafters' exploitation of the river would be an unforgivable act by Congress.

WHEN WILL IT END?

After more than three decades of New Melones watching, we feel the Stanislaus River project has been more thoroughly analyzed, debated and revised than any other public project in this region. During that time, one can identify three major phases of public scrutiny which led to public dialogue, public input and improvements to the finished project.

The first came in the late '50s and was the most critical: Should New Melones, authorized by Congress as a flood control and irrigation storage dam in 1944, be built by local or federal agencies? Should it be a small dam or a large one? Public hearings drew healthy debates, with input from valley irrigation districts and government bodies, and proved the merits of the larger multiple-purpose dam over a smaller single-purpose structure. The issue raged several years, ending with President Kennedy's authorization of the multi-purpose New Melones Project in 1962. A smaller dam, in order to provide flood control, would have to be drawn down in volume each year to accommodate anticipated runoffs, eliminating the storage-for-irrigation benefit.

The next came in 1972 with sound environmental questions about upstream losses and downstream quality control needs. Army Engineers Col. James Donovan, in charge of the project's construction, wisely delayed the contract bidding proceedings to permit public input and thorough review of the dam's implications on the Stanislaus and the delta. Working with environmentalists, former Rep. John McFall and Donovan incorporated into the project many enhancements, notably a string of river park sites, access points and water quality measures. This challenge by the environmentalists proved responsible and constructive. Downstream parks now are coming into use and proving attractive to recreationists.

The third major public decision on New Melones came in November 1974, when Friends of the River—a group supported by raft companies, boaters, conservationists, students and others—placed Proposition 17 on the general election ballot. It proposed that the nine-mile section of the Stanislaus be designated wild and scenic and that no flood control structure be built or operated in a manner that would diminish the use of that stretch of the river. The state's voters rejected the proposal by a margin of 315,547 votes; 46 of the state's 58 counties defeated the measure, including densely-populated San Diego, Orange and Los Angeles Counties, from which the rafters drew heavily for their trade.

Thus, over a 20-year period, New Melones has survived penetrating scrutiny and continuing upgrading that has made it a stronger multiple-benefit project.

Now, the commercial rafters are strong oarsmen. Their influence in state and federal resource agencies has been only too evident. One can understand their blind zealousness in the matter.

It would be unconscionable of Congress, however, to seriously consider Rep. Phil Burton's wild and scenic rivers designation bill as long as it contains the Stanislaus River amendment—rejected by California voters in 1974—and especially as long as this country has an energy supply problem, considering the fact that the idle New Melones Powerhouse has a potential electricity production capacity that would save 827,000 barrels of oil a year.

Clearly, U.S. District Judge E. Dean Price's ruling prevails and should be implemented—as Interior Secretary Cecil Andrus has indicated he intends to do, although it is too late this year to benefit from last season's heavy runoffs. The basin's definition should be expedited—water needs hearings were held as long as 20 years ago—and delivery contracts signed. The generators should be fed enough water for full contract testing so they may be turned to power generation. All this can go forward while archaeological field crews complete their essential work.

How long will the public—and Congress—tolerate the tampering of its will by special-interest motivation?

When will it all end?●

HHS REVISED REGULATIONS

HON. DANIEL B. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DANIEL B. CRANE. Mr. Speaker, the much anticipated Department of Health and Human Services revised regulations, "Medicare and Medicaid Programs; Conditions of Participation: Hospitals," as published in the June 20 issue of the Federal Register contain a new rule that could seriously lessen the quality of health care in America. This new rule permits technicians and licensed practical nurses to circulate in the operating room.

Mr. Speaker, this new regulation is yet another example of the lessening of quality that inevitably results when Federal bureaucrats make decisions that should more properly be made by health care professionals who are committed to providing the best health care possible.

I commend two excellent articles to my colleagues that effectively present the case against this new rule: the first is from the Association of Operating Room Nurses Journal of August 1980; the second is an excellent letter to the editor from Lilia Peters, president of the East Central Illinois Chapter of the Association of Operating Room Nurses, that appeared in the Champaign, Ill., News Gazette of July 18.

HHS PUBLISHES REGS TO PERMIT TECHNICIANS TO CIRCULATE IN THE OR

It finally happened. The Department of Health and Human Services (HHS) has published the Medicare regulation that would permit technicians and licensed practical (vocational) nurses to circulate in the operating room. It is part of the total revised regulations, "Medicare and Medicaid Programs Conditions of Participation: Hospitals," published June 20 in the Federal Register.

The comment period ends Aug. 19. Although we had anticipated a 90-day period, a 60-day period was specified. This apparently reflects a trend in the government to shorter comment periods.

The regulation itself doesn't contain any surprises. As published in the Federal Register, it states:

Registered nurses, licensed practical (vocational) nurses, and surgical technologist circulators who are educated and trained in surgical (operating room) technology may be permitted to perform circulating duties if so specified in the medical staff bylaws. The circulator must have demonstrated supervisory capability and the knowledge and skills needed to ensure continuity of care and maintenance of a safe and therapeutic environment for the patient. In all cases a registered nurse must be immediately available in the operating suite to respond to emergencies.

The regulations also specify that the operating room service must be supervised by a registered nurse with training, experience, and competence in management of surgical services. This elaborates on the current wording and is supported by AORN.

The term surgical technologist circulator is new, it is defined in the regulations as an individual who:

(1) has successfully completed an educational program for surgical technologist (operating room technicians) that is accredited by the Committee on Allied Health, Education, and Accreditation (CAHEA) of the AMA in cooperation with the Joint Review Committeee on Education for Operating Room Technicians, Inc.; and (2) is certified by the Association of Surgical Technologists.

There are currently 75 accredited surgical technologist programs and about 20,000 certified surgical technologists. One does not have to attend an accredited program to take the examination.

Reflecting the controversy the regulation to circulate has generated the introduction to the regulations note that "a great deal of comment has been received on this proposal . . ." AORN members as well as others have been inundating Washington with letters since the change was first proposed in 1977.

The introduction also cites reasons for revising the Medicare regulations. "Changes in methods of health care delivery, the need to control the increasing cost of hospital care, and the Department's commitment to simplifying HEW regulations are the principal reasons for the proposed revisions." It mentions specifically that existing regulations are unnecessarily restrictive, especially for small, rural hospitals. It also notes that the regulations "recognize training and experience in lieu of purely academic credentialing.

FACT SHEET: MEDICARE PROPOSED RULE ON CIRCULATORS

Text: Registered nurses, licensed practical (vocational) nurses, and surgical technologist circulators who are educated and trained in surgical (operating room) technology may be permitted to perform circulating duties if so specified in the medical staff bylaws. The circulator must have demonstrated supervisory capability and the knowledge and skills needed to ensure continuity of care and maintenance of a safe and therapeutic environment for the patient. In all cases a registered nurse must be immediately available in the operating suite to respond to emergencies.

Citation: HSO-16-P, paragraph 482.41(a)(4) is part of the regulations for hospitals participating in Medicare. Refer to this in your letter.

Who would be covered? In effect, this applies to hospitals certified as Medicare/Medicaid providers who are not accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA). There are about 1,400 to 1,500 out of about 6,900 hospitals participating in Medicare/Medicaid. The government accepts JCAH and AOA accreditation in lieu of federal standards.

Whom to write: Address letters to Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17082, Baltimore, Md. 21235.

When to write: During the public comment period, which ends Aug. 19. Comments must be received on or before that date.

Suggestions for letters: Stress facts and avoid generalizations.

Include the date and your name and address.

Include your job title and hospital.

Type your letter.

Be positive—avoid threats and inflammatory language.

Do not send form letters, petitions, or post cards.

Stress facts: Explain how RNs in your hosptial perform nursing functions beyond what LPNs, LVNs and technicians are prepared to perform. Explain how RNs as circulators are cost effective. Explain how RNs in your hospital are involved in preoperative assessments and postoperative evaluations. Explain that patients in small, geographically isolated hospitals are entitled to the same quality of care as patients in larger hospitals.

PATRICIA PATTERSON.

In response to the publication of the regulations. AORN immediately sent a letter notifying each member. AORN supports the present wording of the regulation specifying that technicians are not permitted to circulate but may serve as "scrub nurses" under the supervision of a registered professional nurse. AORN has contacted selected Congressmen and notified other health care organizations of the regulations. It is preparing an extensive statement to submit during the comment period.

The battle against the proposed change has been going on for three years. The Health Care Financing Administration, part of the U.S. Department of Health and Human Services (formerly U.S. Department of Health, Education, and Welfare), initially notified AORN and other organizations of its intent to change the regulation in 1977. A meeting in November 1977 in Washington was attended by representatives of AORN, the American Nurses' Association (ANA), the Association of Operating Room Technicians (now Association of Surgical Technologists), practical nursing organizations, the American Medical Association, the American Society of Anesthesiologists, the American College of Surgeons, and the American Hospital Association.

At this meeting, both technicians and licensed practical nurses claimed they currently filed the role of circulator. AORN contended the appropriate role of the technician or practical nurse was to scrub and assist in circulating duties under the direct supervision of the registered nurse. It objected to the wording—"a registered nurse who is readily available to respond in emergencies." AORN asked that the wording be eliminated or changed to state the necessity for the physical presence of an RN in a specific operating room.

In its arguments, HEW contended that small rural hospitals had difficulty staffing the OR with nurses, and the proposed changes were designed "to allow a hospital greater flexibility in the utilization of its staff, equipment, and facilities." The change also reflected a general trend, encouraged by the government, to substitute performance and experience for educational credentials.

A major contention was: What was current practice? Who was really circulating? Of the three hospitals HEW cited as examples of technicians circulating, two denied the practice. In an effort to find the answer, the Health Care Financing Administration (HCFA), in March 1980, sent a survey to all hospitals in the country asking about circulating personnel. AORN alerted hospital administrators and supervisors to the survey in late June. HCFA officials reported a 96% return on the survey and said the final results should be available in mid-July. The questionnaire sent to the hospital asking whether operating room technicians and licensed practical (vocational) nurses were circulating routinely, in emergencies, or in relief situations. It also asked whether hospitals would use technicians and LPNs to circulate if the regulations were changed.

One of the questions constantly raised is whether the Medicare/Medicaid regulations apply to all hospitals or only those hospitals certified under this program rather than the Joint Commission on Accreditation of Hospitals (JCAH). HCFA official Irene Gibson recently elaborated on this. She explained that the federal regulations apply to all hospitals that apply for Medicare. However, the JCAH or the state can choose to promulgate higher standards. Many state licensing regulations require an RN as circulator, and the new JCAH nursing service standards state that the circulator must be an RN but that the "technician may assist in circulating duties under the direct supervision of a qualified registered nurse."

While waiting for publication of the regulations, AORN has communicated with many health care organizations and received official support from the ANA, the American College of Surgeons, and numerous specialty nursing organizations. At its recent convention, the ANA passed a resolution which appears in this issue, endorsing the operating room nurse as circulator. Through its Washington office and state nurses associations, ANA is actively supporting AORN's campaign against the change. The Federation of Specialty Nursing Organizations and ANA sent a Mailgram supporting AORN's position to the U.S. Department of Health and Human Services during its June meeting.

If you haven't written yet, there is still time to comment before Aug. 19. There is no question that the number of responses counts. Despite its survey on circulating, HHS has specifically asked for comments and information on current practices in assignment of licensed practical nurses and technologists to circulating duties and the impact on health and safety of patients. Do you know of incidents where the absence of an RN has had a negative effect on the safety of a patient? How often does this happen? Use facts and figures if you have them.

An important part of the rationale for the technician to circulate is cost savings. It is cited as such in the regulations. In your hospital how are registered nurses cost effective? Do preoperative assessments mean cost savings in planning of supplies and use of equipment? Do nursing care plans mean that care is directed toward specific identified problems? Many OR suites are going to an all-RN staff. What is the rationale, and what data supported this change?

How is quality affected? The introduction to the regulations states that the revisions are intended to hold down costs while maintaining an acceptable level of patient care. What does "acceptable" mean? AORN's philosophy is directed toward quality patient care. What will be the impact of "acceptable" care? Will it jeopardize the health and safety of the patient?

AORN defines circulating as one function of the preoperative role—a role that includes nursing during the preoperative and postoperative phases as well as the intraoperative phase. The role, which is based on the nursing process, includes assessment and evaluation as well as implementation. It goes beyond the functions of circulating. AORN believes a technician does not have the educational background and skills to perform the nursing functions of the preoperative role.

It is not too late to write: Address your comments to Administrator, HHS, Health Care Financing Administration, PO Box 17082, Baltimore, Md. 21235.

In your communication, refer to HSQ-16-P. The reference to the surgical circulator regulation is 482.41 (a) (4). In addition you might want to write to your congressmen in the House of Representatives and Senate. You can write to your senators at the Senate Office Building, Washington, DC 20510, and to your representative at the House Office Building, Washington, DC 20515.

Consumer response is also important. Many chapters had activities planned to inform the public and consumers of the possible impact of the surgical circulator regulation on quality patient care.

Don't expect to see the final regulations published as soon as the comment period is over. Depending on the debate and the nature of the comments, there may or may not be a hearing. Pressure on Congress, which is concerned about how regulations reflect legislation may be a factor. Before final publication, the regulations will again be revised, then travel through the bureaucratic maze—a process that may take months or longer.

But now is the time to make sure your voice is heard in Washington. Operating room nursing is your specialty practice. Protect it now.

ELINOR S SCHRADER,
Editor.

NURSES OPPOSE PROPOSAL

To the Editor: The East Central Illinois Chapter of the Association of Operating Room Nurses is protesting the proposed Medicare-Medicaid regulation that would permit lesser-trained personnel to perform a nursing function for patients having surgery.

This change would lower the quality of care of every surgical patient across the country, according to the Association of Operating Room Nurses, a national professional association representing more than 29,000 nurses.

The regulation published in the Federal Register would permit technicians and licensed practical (vocational) nurses to circulate in the operating room. Traditionally and legally, circulating in surgery is a nursing function. The registered nurse who circulates plans nursing care for the patient in the operating room. During surgery the circulating nurse is responsible for the patient's safety. For patients having surgery under local anesthesia, the circulating nurse monitors such vital functions as the heart, blood pressure, respiration and temperature.

This letter is not to downgrade operating room technicians, they are doing a good job and are needed in the OR. AORN's position is that technicians who are trained to perform technical functions in the OR, such as passing instruments to the surgeons, do not have a broad educational preparation to make nursing decisions and judgments.

The American Nurses' Association, the Federation of Specialty Nursing Organizations, and Individual Specialty Nursing Organization have backed the operating room nurses in their campaign to stop the change in the Medicare-Medicaid regulations. During the 60-day comment period, which ends August 19 nurses across the the U.S. are going to write or send a telegram to the Dept. of Health and Human Services protesting the change, to their respective senators and representatives to have their views known. I urge all nurses, former patients, and health care consumers for support.

Send comments before August 19, to: Administrator, Health Care Financing Administration, Department of Health & Human Services, P.O. Box 17080, Baltimore, MD 21235.

LILIA PETERS,
President, East Central Illinois AORN.●

FUNDING FOR CPB

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Ms. MIKULSKI. Mr. Speaker, this House is about to vote funding for the Corporation for Public Broadcasting. I wish to express my very strong concern for some of the politics advocated by CPB.

For example, this September four of the largest CPB-supported stations will begin issuing a monthly magazine which proclaims to potential advertisers that public television viewers are "the better half—better educated, higher income, more influential."

I find this announcement shocking in an institution which relies on tax dollars, the bulk of which have been collected from less well educated, lower-income taxpayers.

As a member of the communications subcommittee in 1977-78, I was assured by representatives of PBS and CPB that public television was aware of the need to broaden its viewing audience. I was skeptical then and I am even more skeptical now. There is an inherent conflict between public television's mandate to broaden its viewing audience and the commitment to advertisers to deliver the "better half."

This is just one of the serious questions raised by the decision by these CPB stations to use their nonprofit status to compete directly with general interest privately owned magazines. There is serious danger of mingling public funds; of using taxpayer-subsidized institutions to compete with taxpaying businesses.

I urge my colleagues to consider this matter very seriously.●

REORGANIZATION OF OFFICE OF HUMAN DEVELOPMENT

HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. GRASSLEY. Mr. Speaker, today in debate on the LHEW bill I raised the point of the illegal reorganization of the Office of Human Development of HHS by Secretary Harris. My remarks referred to a legal opinion by the Congressional Research Service. I would like to make that opinion available to all.

The opinion follows:

To: House Select Committee on Aging.
Attention: Charles Edwards.
From: American Law Division.
Subject: Authority of the Secretary of the Department of Health and Human Services to Approve the Transfer of Functions From the Commissioner On Aging.

I. INTRODUCTION

This memorandum is in response to your request for a legal analysis of the authority of the Secretary of the Department of Health and Human Services to approve the transfer of certain functions of the Commissioner on Aging to an office in the Department which does not report to the Commissioner. The functions in question are "financial management responsibilities," and for purpose of this memorandum we will assume that they are non-policymaking duties. However, even under this assumption, we conclude that the Secretary is precluded from approving such a transfer by Section 201 of the Older Americans Act, 42 U.S.C. § 3011.

As most recently amended, Section 201(a) of the Older Americans Act provides:

There is established in the Office of the Secretary an Administration on Aging (hereinafter in this chapter referred to as the "Administration") which shall be headed by a Commissioner on Aging (hereinafter in this chapter referred to as the "Commissioner"). Except for subchapter V of this chapter the Administration shall be the principal agency for carrying out this chapter. In the performance of his functions, the Commissioner shall be directly responsible to the Office of the Secretary. *The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner.* (Italics added).

Thus, on its face, this statutory provision appears to be a clear and unambiguous prohibition against the Secretary's approving the delegation of any functions, policymaking or non-policymaking, from the Commissioner to any other officer not directly responsible to the Commissioner.

The Department of Health and Human Services asserts, on the other hand, that the legislative history of a similar prohibition against the delegation of functions from the Commissioner of Rehabilitation Services[1] indicates that the prohibition was not intended to extend to routine administrative services and that therefore such functions may also be delegated from the Commissioner on Aging. In particular the Department refers to Senate Report No. 93-1297, 93rd Cong. 2d Sess. (1974), which states at page 32:

"* * * (T)he clarified language with respect to delegation of functions of H.R. 14225 and this identical original bill does not prohibit the centralized administration of certain routine administrative services by the Department of Health, Education, and Welfare in support of RSA functions and programs in the categories of budget formulation, grant administration, financial administration, and personnel administration. However, it is intended that the RSA Commissioner be responsible for all policy decisions in these four areas and that this policymaking responsibility not be delegated beyond persons directly responsible to him, both at headquarters and at regional offices * * *."

II. ANALYSIS

While the legislative history behind the use of a certain phrase in one statutory provision may provide some insight as to the intent of Congress when that, or a very similar phrase, is used in another statute, one must still establish that the statutory language itself is ambiguous before resort to any legislative history is justified, *United Air Lines, Inc.* v. *McMann*, 434 U.S. 192 (1977). And if legislative history is relied upon, it cannot be used to override the literal meaning of the statutory language, unless such a literal reading would lead to an absurd result or would thwart the obvious purpose of the statute. This point may be illustrated by the recent opinion of the United States Court of Appeals for the District of Columbia Circuit in the case of *National Small Shipments Traffic Conference, Inc.* v. *Civil Aeronautics Board*, No. 78-2163 (Feb. 11, 1980), where the court explains at page 16 of the slip opinion:

"A court interpreting a statute is bound by the 'literal or usual meaning of its words' unless this would lead to '"absurd results * * * or would thwart the obvious purpose of the statute" * * *.' * * * This case does not present an instance in which a literal interpretation of the language leads to an absurd result or conflicts with the obvious purpose of the Act * * *. 'We find no mandate in logic or in case law for reliance on legislative history to reach a result contrary to the plain meaning of a statute, particularly where that plain meaning is in no way unreasonable.'"

In the present case Section 201 of the Older Americans Act appears to be a clear and unambiguous prohibition against the approval, by the Secretary, of *any* of the functions of the Commissioner on Aging, and such a prohibition does not appear to be contrary to the purposes of the Act, which as will be explained in the next section of this paper, includes the establishment of a centralized and highly visible "Administration on Aging." Thus, it appears that resort to legislative history is not appropriate for purposes of interpreting Section 201, and that this Section should be given its plain and clear meaning, which is to prohibit Secretarial approval of any delegation of functions from the Commissioner. But even if resort is made to the legislative history of Section 201 of the Older Americans Act, that history also appears to support this conclusion.

III. LEGISLATIVE HISTORY OF SECTION 201

As noted, Section 201 of the Older Americans Act presently prohibits Secretarial approval of delegations from the Commissioner. However, prior to 1974 such delegations were permitted, if the Secretary first notified Congress and consulted with the appropriate Senate and House Committees. The Senate report associated with the 1974 legislation (Public Law 93-351), explains that the additional restriction upon Secretarial authority to approve delegations from the commissioner was in response to administration plans to transfer certain authorities to regional offices not directly responsible to the Commissioner. As stated at page 8 of the report:[2]

"DELEGATION OF COMMISSIONER'S FUNCTIONS

"Sec. 201(a) of the Older Americans Act assigns responsibility for carrying out the Act to the Administration on Aging, which is headed by the Commissioner on Aging. The Secretary of the Department of Health, Education, and Welfare is authorized to permit the delegation of the Commissioner's functions to officials not directly responsible to the Commissioner so long as the Secretary submits a plan for such delegation to Congress. The delegation becomes effective following sixty days of continuous session after submission of the plan to Congress. The committee amendment to H.R. 11105 repeals the Secretary's authority with respect to such delegation and has the effect of requiring that the functions of the Commissioner be carried out only by him or by officials directly responsible to him.

"For some time the Secretary has been seeking to implement a plan for delegating certain responsibilities for aging programs from the Commissioner on Aging—to whom they are assigned by law—to the HEW Regional Directors in the ten Federal regions. A plan for such a delegation was submitted to Congress on November 5, 1973, but was subsequently revoked by the Secretary, apparently because Congress adjourned prior to expiration of the statutorily-required sixty-day notice period. Thereafter, on March 26, 1974, another plan for delegation from the Commissioner to the Regional Directors was submitted to Congress by the Secretary. If this delegation should be in effect when this bill is enacted, the committee amendment would require the Commis-

[1] The prohibition may be found at 29 U.S.C. § 702(a), which states: "* * * The functions of the Commissioner of Rehabilitation Services shall not be delegated to any officer not directly responsible, both with respect to program operation and administration, to the Commissioner * * *." This provision was added in the 93rd Congress by Public Law 93-516.

[2] S. Rep. No. 93-932, 93rd Cong. 2d Sess. (1974).

sioner to modify the delegation so that none of his functions are delegated except to officers directly responsible to him."

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"By affirming the status of the Commissioner as the official responsible for carrying out programs authorized by the Act, and by seeking to enhance the status of the Administration on Aging with HEW, the Congress intended to remedy the fragmentation and lack of centralized purpose that was the case prior to 1973. It was expected that out of this would emerge a national policy for coordinating the delivery of services to the elderly, with responsibility for implementation of this policy to be clearly lodged in an official answerable to Congress.

The proposed delegation to HEW Regional Directors runs directly contrary to these goals of the 1973 legislation. It would again fragment responsibility. Rather than one national policy, we would surely find ten regional policies. And instead of one official clearly answerable to Congress for administration of programs under the Act, there will be a host of officials making decisions who are ultimately not directly responsible to the Commissioner, regardless of all the guidelines and policies he may attempt to impose on them."

• • • • •

During the debate on the floor of the Senate, this proposed restriction upon the powers of the Secretary was opposed by Senator Beall who argued in favor of the Administration's planned delegations: [3]

"I would like to make several * * * points as to why I believe Commissioner Flemming's approach to administering the older Americans program should be given a chance to operate before the Congress intervenes:

"First: The delegated authority "will be exercised pursuant to policies, regulations, and guidelines, promulgated by the Commissioner and subject to post-audit by him."

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Later in the debate, Senator Beall commented further: [4]

* * * (*We are not talking about delegating authority for making policy. The policymaking decisions and authority for establishing regulations will always remain with the Commissioner here in Washington.* What we are talking about is the flexibility that the Commissioner should have in delegating the administrative responsibility to people at the regional level who are constantly in contact with the Governors of the various states and the mayors of the various cities where these programs are placed. (Italics added)

Senator Beall's characterization of the Administration's planned delegation is directly supported by a letter from the Secretary of H.E.W. to the President of the Senate which was printed, at Senator Beall's request, in the Congressional Record.[5] Thus, one may conclude that the 1974 reorganization plan did not delegate policymaking responsibilities, but only attempted to delegate the authority to act within certain policy guidelines established by the Commissioner, and subject to his post-audit review. Yet Congress felt so strongly in 1974 that this proposed delegation was contrary to the purposes of the Older Americans Act that not only was the plan rejected, but the authority of the Secretary to approve additional plans was eliminated.

Based on this legislative history, it appears that the Congressional intent behind the 1974 amendments to the Older Americans Act was to foreclose all delegations of authority from the Commissioner on Aging to officers who do not report directly to the Commissioner, whether or not these delegations include policymaking responsibilities. This legislative history, being directly associated with the Older Americans Act, would override a contrary legislative history as to the meaning to be given a similar statutory provision in the Rehabilitation Act, at least with regard to the functions of the Commissioner on Aging.

In addition to these arguments, it should be noted that the basic concept of a limitation on the authority of the Secretary to delegate functions from the Commissioner on Aging does not stem from the 1974 amendments to the Older Americans Act, but instead may be traced back to Public Law 93-29, which provided that such delegations had to be first submitted to the Congress at least 60 legislative days prior to their effective date. The legislative history of Public Law 93-29 indicates that its provisions may in turn be traced back to H.R. 5657 which was passed by both Houses of Congress during the 2d Session of the 92nd Congress, but which was pocket vetoed by the President.[6] The operative language used in present law, i.e. "The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner," may be found in Public Law 93-29, and a similar clause was contained in H.R. 15657,[7] with these latter two provisions also containing qualifying language permitting an exception to this prohibition if Congress is given prior notification. The legislative history associated with these two provisions contains no indication that they were to be limited to policymaking functions or that an exception was to be granted for administrative duties.[8]

The legislative history noted by the Department in support of their position that non-policymaking functions may be delegated away from the Commissioner, on the other hand, is based on committee reports issued during the 2d session of the 93rd Congress.[9] Therefore, it appears that congressional consideration and use of the phrase in question limiting the authority of the Secretary to approve a delegation of functions from the Commissioner *antedates* the legislative history cited by the Department. Under these circumstances, it would not appear that the documents cited by the Department may be used as evidence as to the intent of Congress when it passed the language in question in the 2d session of the 92nd Congress, or enacted it into law in the 1st session of the 93rd Congress.

IV. CONCLUSION

Under Section 201 of the Older Amercians Act, the Secretary of the Department of Health and Human Services may not approve the delegation of any functions of the Commissioner on Aging. The Department citing legislative history associated with the Rehabilitation Act amendments of 1974, argues that this limitation does not apply to certain routine administrative non-policymaking functions. However, under well established rules of statutory construction, the legislative history of an enactment is not considered unless the statutory language is ambiguous. The statutory language in this case appears to be clear and unambiguous, and therefore resort to the legislative history does not appear to be justified in this particular instance. Moreover, even if the legislative history of the 1974 amendments to the Older Americans Act is consulted, it does not support the Administration's view. On the contrary, it indicates that the 1974 restrictions were enacted in response to an Administration proposal to delegate certain non-policymaking functions from the Commissioner. Furthermore, this legislative history establishes that the legally operative language in question was not added in 1974, but rather was enacted in the 1st session of the 93rd Congress, and that this legislation incorporated provisions of a bill which passed both Houses of Congress during the 2nd session of the 92nd Congress, but which was pocket vetoed. Therefore, the provision in question antedates the legislative history cited by the Department, and thus this legislative history would not appear to be an accurate indication of Congressional intent with regard to the Older Americans Act. Based on the above factors, we conclude that the limitation contained in Section 201 of the Older Americans Act should be applied to both policymaking and non-policymaking functions of the Commissioner.

RAYMOND NATTER,
Legislative Attorney.●

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[3] 120 *Cong. Rec.* 20002 (1974).

[4] *Id.* at 20003.

[5] *Id.* at 20001.

[6] 18 *Cong. Rec.* 37204 (1972).

[7] The clause in H.R. 15657 stated: "The Commissioner shall not delegate any of his functions to any other officer who is not directly responsible to him . . ."

[8] *See, e.g. H.R. Rep.* No. 92-1203, 92nd Cong. 2d Sess. (1972), which states at page 5: "* * * H.R. 15657 adds language * * * providing that the Commissioner on Aging would be directly responsible to the Secretary and would not be able to delegate *any of his functions* to any other officer who is not directly responsible to him * * * (Italics added).

[9] The Department appears to be relying primarily on Senate Reports 93-1297 and 93-1270, both issued during the 2d session of the 93rd Congress.

MARYKNOLL PRIESTS ARRESTED IN BOLIVIA

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. OTTINGER. Mr. Speaker, I rise today out of serious concern for two Americans who have been arrested in Bolivia. Father John C. Moynihan and Father William Coy are associated with the Maryknoll Mission in Ossining, N.Y. They were detained by Bolivian authorities 2 weeks ago, and are now in the residence of the papal nuncio. If they exit the residence, they fear further intimidation by Bolivian authorities.

Father Moynihan and Father Coy are dedicated to improving the lot of the poor. They have lived in poverty stricken areas in order to help alleviate the most degrading and miserable conditions. They are truly ambassadors of good will, and their only crime was a commitment to humanity and a dedication to decency. Perhaps this devotion is a crime to the repressive authorities in Bolivia. However, to the rest of the free world, this type of commitment is a gift. Clearly the arrest of these men is the result of the violent obliteration of democracy since the July 17 coup.

The new Bolivian regime has embarked on a cruel course involving continuous violations of human rights. Since the coup, the military has made mass arrests and executed political, labor, and religious leaders. According to the Committee in Defense of Democracy, which was formed in La Paz by a variety of political parties, church, and labor organizations to see the Bolivian elections through to a legitimate conclusion, radio stations have been attacked and destroyed, newspapers have been closed down, and entire towns have been attacked by the military. Journalists, both foreign and local, have been detained and mistreated.

In response to these tragic and dangerous developments, and in behalf of Fathers Coy and Moynihan, I am introducing a resolution which would resolve that the President maintain the current severance of military assistance, the curtailment of economic assistance, and refrain from return to normal diplomatic relations with Bolivia, until all American citizens in Bolivia have been offered safe release, a proper assessment has been made of reported Bolivian involvement in drug trafficking, and until human rights and democratic processes have been restored in Bolivia.

I believe that this is an important response to the volatile situation in Bolivia. It is a first step in encouraging Bolivia to return to the road toward respect for human rights and democracy, a road that was tragically sidestepped by the coup on July 17.

I include the text of the bill for the benefit of my colleagues and would welcome cosponsors.

H. RES. —

Resolution providing that the President should continue certain measures which have been taken against the new regime in Bolivia until that regime takes certain corrective actions

Whereas the military regime headed by General Luis Garcia Meza has reportedly interrupted Bolivia's progress toward democracy and constitutional government by forcefully overthrowing a civilian interim government on July 17, 1980;

Whereas the new Bolivian regime has reportedly engaged in mass arrests, torture, repression of civil rights, executions, censorship, religious harassment, and widespread violence inflicted upon the people of Bolivia;

Whereas the Bolivian regime has arrested without charges two American priests from the Maryknoll Mission in Ossining, New York, Father William J. Coy and Father John C. Moynihan, and although these men have been released to the papal nuncio, they fear further harassment if they leave the nuncio's residence;

Whereas the Bolivian regime has reportedly detained and harassed journalists from other countries, including correspondents from the United States;

Whereas the Bolivian regime has reportedly threatened by implication United States citizens in Bolivia;

Whereas the United States Department of State has already taken significant steps against the regime in Bolivia, including terminating military assistance and severely curtailing economic assistance to Bolivia and reducing the official United States presence in La Paz, the capital of Bolivia;

Whereas the United Nations International Labor Organization has asked the Bolivian regime for permission to investigate alleged violations of trade union rights;

Whereas the Bolivian regime is reported to have significant connections with well-established drug traffickers; and

Whereas Amnesty International has estimated that at least 1,000 arrests have been made in Bolivia since July 17, 1980, and has requested that the new Bolivian regime compile and release without delay a list of those persons imprisoned or killed since the regime assumed power on that date: Now, therefore, be it

Resolved, That the President should not reestablish at a normal level an official United States presence in Bolivia, and the President should not furnish any military or economic assistance to Bolivia which has been terminated since the new Bolivian regime assumed power on July 17, 1980, unless the President determines that—

(1) civil and other human rights have been restored to the people of Bolivia;

(2) the Bolivian regime has released all United States citizens in its custody who have been detained for political reasons, and has promised that no reprisals will be taken against such citizens;

(3) the Bolivian regime has restored the democratic process in Bolivia; and

(4) the reported involvement of the new Bolivian regime in international drug conspiracies has been properly assessed.●

GOVERNMENT, HEAL THYSELF

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. PAUL. Mr. Speaker, we certainly should know from the experience of Britain, Canada, and other countries that government-financed and government-controlled health care is costly and leads eventually to the rationing of health care and the loss of individual freedom of choice.

The Republican platform of 1980 cites the American health care system as an example of how Americans have taken care of their own needs with private institutions. It states opposition to socialized medicine and rejected the creation of a national health service and all proposals for compulsory national health insurance.

The Democratic platform of 1980 calls for a comprehensive, universal national health insurance plan. The services which it states should be included read like a laundry list for the ministry of health.

It is important that we learn the lessons of other countries before it is too late. We must avoid a national health care system with all of its problems.

I would like to call the attention of my colleagues to an excellent article on government intrusion in the health care field: "Government, Heal Thyself," by Donald J. Senese which appeared in the July 1980 issue of The Freeman.

GOVERNMENT, HEAL THYSELF

A belief is growing among supporters of free market economics: "There is nothing wrong with the American system of medical care that more governmental intervention could not make worse." As we examine governmental intervention in the health care field, we discover it has inflated health care costs to the patient and has failed to deliver a better medical product. If the advocates of more governmental control have their way, a program such as hospital cost containment or a program of nationalized health insurance (socialized medicine) will skyrocket health care costs, increase bureaucratic regulations, turn medical care into a "public utility" to be dispensed by government, and reduce the quality of health care.

The U.S. government uses the dollars of taxpayers to provide health care to the elderly (Medicare), to aid states via grants to provide aid for the poor (Medicaid), and to subsidize hospital construction (e.g., Hill-Burton). The federal government also operate hospitals to provide care to veterans, merchant seamen, military personnel, and American Indians.[1]

Advocates of government regulation in the health care field maintain that health care is a "unique good" and that the principles of the free market, especially the law of supply and demand, do not apply to it. Since it is "unique," only those wise and all-knowing government bureaucrats are qualified to plan and allocate health resources. These officials demean the free market and promise, through more governmental intervention, better health care services at lower costs. The performance, however, never meets the promises. As governmental regulations increase, a poor medical product is delivered at greater and greater costs to the patient, either directly through higher premiums or indirectly through higher taxes.

The health care field is not immune to the laws of the marketplace. Experience has shown that more governmental intervention leads only to chaos and confusion.

COST CONTAINMENT

The major effort of the current national administration to deal with rising health care costs was by placing government-mandated price restraints on the nation's hospitals. While outwardly rejecting controls for other sectors of the economy, the federal government imposes on one industry its "inflation control" program. Citing hospital costs as rising faster than the Consumer Price Index, these advocates of expanded centralized control would set an amount for cost increases before mandatory federal controls would go into effect.

The proposed solution, by ignoring certain economic facts in the health field, would create more problems than it would solve.

It is a fallacy to compare the hospital cost increases with the rate of increase of the Consumer Price Index. The comparison ignores two important factors in the health care field: (1) the provision of services to a growing population and (2) the growth in "service intensive" costs including capital investment in diagnostic and remedial equipment. The great advances in medical services in the United States such as kidney transplants, cardiac surgery, and coronary care and burn treatment units have come about because the incentive has been available to develop and produce new medical technology. Better and more effective treatment increases the cost of specialized care; such a climate of freedom to develop new medicines and better machines for health care prevents stagnation in the health care field and brings about greater advances for mankind.

The United States devotes about nine percent of its Gross National Product to health care, a percentage similar to that of other countries like Germany, Sweden, and the Netherlands.[2] Despite the claims of some politicians that the poor in the United States do not receive adequate health care, Dr. Harry Schwartz of the research depart-

Footnote at end of article.

ment of the Department of Surgery at the Columbia University College of Physicians and Surgeons has documented that the poor in the U.S. get on the average at least as much medical care from physicians in hospitals as do those in higher income groups.[3]

REGULATORY MEASURES

Restrictions on costs in patient care and on development of new health care equipment can lead to a rationing of health care. This rationing will place the best interest of free people secondary to the cost policies of government bureaucrats.

Even in the hospitals where waste and inefficiencies exist, government-mandated controls will only have a limited effect because relative cost cuts will look impressive on the surface. It will be the efficient and cost-conscious hospitals which will be forced to cut costs to meet governmental guidelines—and the area for the quickest cost cutting will be in the area of serving patients.

A large measure of the health cost increases comes not from deficiencies in the free market but as a direct result of governmental controls. Personnel costs occupy a significant part of a hospital's budget, and government-mandated increases in the minimum wage have significantly increased costs in the hospital industry. Increasing governmental regulations through Medicare and Medicaid have placed additional costs on hospitals through an abundance of new regulations. A two-year study by the Hospital Association of New York State revealed that government regulation was a major factor in increasing health costs. This study, focusing on hospitals in the State of New York, estimated that twenty-five percent of hospital costs were attributable to meeting government regulatory requirements at an annual cost of one hundred fifteen million man hours or over one billion dollars per year! The report noted that each of four hospital departments (administration, personnel, social services, and utilization review) devote over fifty percent of their costs to complying with government-ordered regulations.[4]

ADDITIONAL GOVERNMENT CONTROLS

A careful examination of the health care industry shows a myriad of government controls which hamper the operation of the free market in medical care—and drive up costs for the consumers.

The federal government adopted the certificate-of-need program as a control mechanism to prevent hospitals from putting resources into "excessive investment" in health care facilities. The passage of Public Law 93-641 in 1974 required states to establish certificate-of-need programs in order to qualify for federal subsidies for health planning and other federal grant programs. What has been the result of this government cost control program? The program did not reduce the total dollars for hospital investment but merely changed the direction from investing in hospital beds to investments in more sophisticated medical equipment. In addition, the certificate-of-need program failed to reduce substantially the rise in hospital costs per capita and to bring about any significant savings in health care costs.[5]

Government intervention in the medical market place brings decisions by government bureaucrats rather than medical experts. These government bureaucrats have added non-health criteria before even granting the certificates-of-need. In the District of Columbia, a private nonprofit hospital received approval for a renovation and modernization project only on the condition it would change the sexual and racial composition of its governing body. In New Jersey, an attempt was made to coerce a certificate-of-need applicant to allow an outside organization to select members of its governing body. In Colorado, a hospital was told its certificate-of-need would be granted only if the applicant reduced its number of obstetric and pediatric beds.[6] All of these examples, as well as others, show that the certificate-of-need program has been used by government bureaucrats to do certain things which are unrelated to the original purposes of the program. These bureaucrats practice political medicine by imposing arbitrary and unfair requirements on those hospitals which seek renovation, modernization, or additional facilities.

PROFESSIONAL STANDARDS REVIEW

Another government-promoted cost containment proposal led to the adoption of the Professional Standards Review Organization (PSRO) as part of Public Law 92-603 in 1972. The promoters of this reform sought to reduce unnecessary medical procedures while minimizing the length of stay in hospitals; they sought to encourage the use of outpatient and extended care facilities. The omnipotent government regulators aimed to accomplish this objective through a detailed review procedure in implementing the PSRO. However, studies by the Institute of Medicine and medical procedure experts concluded that PSROs had not appreciably reduced costs or brought about a significant improvement in the quality of care. In fact, the limited amount of savings appeared insufficient to cover the cost of the review process.[7] Even government promoted tax incentives to employers to encourage individuals to buy health insurance policies have had the effect of promoting the buying of packages of health insurance without any careful analysis of needs or costs since the program is government subsidized.

During the very time a major effort was underway to promote the adoption of a hospital cost containment program, another branch of the Health, Education and Welfare complex issued preliminary regulations for a new government regulatory measure—SHUR (System for Hospital Uniform Reporting) program. This totally new government-mandated method of keeping hospital records would have greatly increased administrative costs for all hospitals.

The other attempts to interfere with the free market in health care to contain costs have all been failures resulting in more regulations, additional costs, and a threat to the quality of medical care. It is assured that any hospital cost containment program will bring the same failure. One Congressman, Representative David E. Satterfield III of Virginia, predicted the failure of such a measure to his colleagues during debate on the bill on the floor of the U.S. House of Representatives.

It is not a bill which would contain hospital costs. It is a hospital revenue control bill, and the real growth in hospital revenues is not due to inflation. The only savings [this bill] could achieve would be through reduction in the amount and quality of hospital care made available to the American people.[8]

THE INTERVENTION RECORD

Those advocates of increased government power over the health field prefer to ignore the lack of accomplishment and the new problems such intervention brings.

Voluntary efforts by the hospital industry succeeded in limiting the increases in health costs—a decrease from 15.6 per cent in 1977 to 13 per cent in 1978 and 13.4 per cent in 1979. Yet, the hospitals operated by the federal government experienced in 1977 a cost increase of between 19 and 22 per cent.

The federal government has a poor record in estimating and controlling costs even in programs it directly controls The Department of Health, Education and Welfare estimated that the cost for Medicare hospitalization for the first year would be less than one billion dollars. The actual cost was three billion four hundred million dollars—more than three times the original estimated cost. The tenth year cost estimate was $1.7 billion but actually was $12.6 billion, or seven times the original estimate. The cost for Medicaid in 1977 was $17.1 billion or more than sixteen times the original estimate.[9] Viewing the Fiscal Year 1981 budget, the estimated outlays for Medicare are $37.3 billion and $15.9 billion for Medicaid.[10]

The evidence of experience with centralized medical systems such as those of Canada and Great Britain should be a lesson for Americans. While eliminating the price barrier by a government controlled system, the government has caused the following long-term results: a net reduction of resources channeled to health care, an increase in the maldistribution of doctors, no new doctors produced, and no new hospitals built or even financed.[11] The lessons are clear that further intervention will increase not decrease, health care problems J. Enoch Powell, who served the British government as Minister of Health for three years, has pointed out that under a government controlled medical system where demand is unlimited and where medical care is "free," there has to be a method to squeeze demand to equal supply:

In brutal simplicity, it has to be rationed; and to understand the methods of rationing is also essential for understanding Medicine and Politics. The task is not made easier by the political convention that the existence of any rationing at all must be strenuously denied. The public are encouraged to believe that rationing in medical care is immoral and repugnant. Consequently when they, and the medical profession too, come face to face in practice with the various forms of rationing to which the National Health Service must resort, the usual result is bewilderment, frustration and irritation.[12]

He noted that the people desiring medical care are put on the waiting list. If they are on long enough, they will die, usually from some cause other than that for which they joined the line. Or, they "frequently get bored or better, and vanish."[13]

CONCLUSION

Government attempts to intervene further in the health field will erode the quality of medical care and will substitute bureaucratic decisions which should be made by health experts in the market place. Cost containment will result in "price control," leading to a rationing of health care. Considering the past record of governmental intervention in the health (and other) fields, the results will be negative and individual choice will be narrowed as the power of government is expanded in the decision-making process. Controls will not curb inflation or bring beneficial results to the U.S. economy; the prospect of failure is the same even if they are only applied to the hospital industry.

Emphasis needs to be placed on expanding the opportunity for competition in the health care field, not expanding government controls. The free market solution is to increase competition through such initiatives as certification of health providers rather than occupational licensure, repeal of fair practice laws, more advertising of services, and greater use (and direct reimbursement) of health professionals (e.g., nurse practitioners) and emphasis on preventive care and the individual's responsibility to maintain his or her own health.[14] When government administrators come forth with a complex set of interventionist measures to "solve" the government-created health care crisis, advocates of freedom need to resist and give these government planners the admonition: "Government, heal thyself."

FOOTNOTES

[1] H. E. Frech III and Paul B. Ginsburg, *Public Insurance in Private Medical Markets: Some Problems of National Health Insurance*, Washington, D.C.: American Enterprise Institute for Public Policy Research, 1975, p. 1.

[2] Jack A. Meyer, *Health Care Cost Increases*, Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979, p. 9.

[3] "The Health Care Myth," *Indianapolis News* (editorial), March 2, 1980.

[4] John D. Lofton, Jr., "How Government Inflates Your Health Costs," *Conservative Digest* (February, 1979), p. 39.

[5] David S. Salkever and Thomas W. Bice, *Hospital Certificate-of-Need Controls: Impact on Investment Costs and Use*, Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979, pp. 4, 75.

[6] Representative David E. Satterfield III, *Congressional Record*, July 19, 1979, H6235-H6236.

[7] "A Policy Analysis of Hospital Cost Containment Programs," Center for Health Services and Policy Research, Northwestern University, Evanston, Illinois, 1978, p. 7.

[8] Representative David E. Satterfield III, *Congressional Record*, November 15, 1979, H10821.

[9] "Nationalized Catastrophic Health Insurance is a Trap," Association of American Physicians and Surgeons, Inc., p. 12.

[10] *The United States Budget in Brief, Fiscal Year 1981*, Washington, D.C.: Government Printing Office 1980, p. 48.

[11] Cotton M. Lindsay and Arthur Seldon, "More Evidence on Britain and Canada," in Cotton M. Lindsay (editor), *New Directions in Public Health: A Prescription for the 1980's*, San Franciso, California: Institute for Contemporary Studies, 1980, Third Edition, p. 76.

[12] J. Enoch Powell, *Medicine and Politics: 1975 and After*, London, England: Pittman Medical Publishing Ltd., 1976, pp. 37-38.

[13] *Ibid.*, p. 39.

[14] Rita Ricardo Campbell, "Your Health and the Government," in Peter Duignan and Alvin Rabushka, *The United States in the 1980's*, Stanford, California: Hoover Institution, 1980, pp. 300-337.

ARGUMENTS AGAINST SOCIALIZED MEDICINE

It is a mistake for the government to consider the problems of the sick apart from those of society as a whole. . . . The broader problem is, in a moral sense, one of promoting respect for the individual and the furtherance of initiative and self-providence; in an economic sense, one of increasing production for the benefit of *all* citizens; and in a political sense, one of removing government as a battlefield for special favor and substituting cohesion and solidarity for division and disintegration.—Darryl W. Johnson, Jr.●

THE TRAGEDY OF CYSTIC FIBROSIS

HON. JACK BRINKLEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. BRINKLEY. Mr. Speaker, I have the honor to share with you and my colleagues one of the most moving letters I have received in my 14 years in Congress. It comes from a family which has lost a loving child to the ravages of disease—but it speaks for untold numbers of families that even now experience this same pain.

Mr. Speaker, sometimes the quality and the faith of our constituents makes us feel inadequate to fully represent their needs. This is one of those times for me.

May we read and reread this eloquent letter and may it make a difference in our lives and the quality of our work. In that way, young Ricky and other children like him will not have died in vain.

The letter follows:

WARNER ROBINS, GA.,
August 25, 1980.

Congressman JACK BRINKLEY,
Rayburn House Office Building,
Washington, D.C.

DEAR Mr. BRINKLEY: I just wanted to let you know that Ricky passed away, July 28. He had been in the hospital for 2 months. He was very brave and never complained or cried. He went to sleep in my arms and woke up in the arms of Jesus who made him whole. The letters and gifts you sent him made him feel very important. He told everyone you called him. He even took your letters to school for show and tell. He was only 8 years old.

Please continue to help pass all bills before Congress to help with Cystic Fibrosis. This is a disease that kills children. People do not realize how serious it is. The emotional strain is bad enough, but the financial strain makes it even worse. The 2 months Ricky was sick was very expensive. We're fortunate enough to have good hospitalization. A lot of C.F. parents do not. My husband and I still had to pay for parking, 3 meals, and television. It got very expensive. We need your help with the bills that come through Congress. Please continue helping us. Every 5 hours a child is born with C.F. Every 8 hours, one dies.

Thank you again for the time you took to keep in touch. Ricky was proud to call you his friend and we are too.

Love in Christ,

LARRY, SANDRA, AND
STACEY THRASH.●

FREE BAILEY AND WHITE

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DORNAN. Mr. Speaker, two Americans are currently serving 24-year sentences in Communist Cuba.

On May 26, 1979, Mr. Melvin Lee Bailey and Mr. Thomas White flew over Cuba and dropped literature in defense of the Gospel. For this incident, they were arrested and kept in solitary confinement for several months before they were even charged with a crime. They were then brought before a magistrate and summarily sentenced without the semblance of due process of law.

Bailey and White are proponents of Christianity, not of any political system. They did not advocate the overthrow of the Castro government, and their continued apprehension is an affront to their universally recognized freedom of expression and religious liberty. I submit their joint letter, written last November, for the RECORD.

JOINT COMMUNIQUÉ—MELVIN BAILEY, WALTER WHITE, HAVANA, CUBA

[Note.—Melvin Lee Bailey and Walter Thomas White are two Americans who are serving a 24-year prison sentence at Combinado Del Este Prison, Havana, Cuba for distributing Christian literature. They are from Newport News, VA. and Glendale, CA., respectively.]

On the evening of May 26 at 7:45 p.m. Piper Cherokee, N5580J left Nassau Bahamas enroute for Montego Bay, Jamaica. The instrument flight plan had been registered in advance with Cuba for crossing. Nassau control turned us over to Miami Center who left us talking with Havana Center. We entered the established air corridor, the "Maya" crossing in constant communcation with and permission from Cuban authorities. I, Thomas White, began dumping Christian Literature out of the rear door as pilot, Melvin Bailey, flew the plane. Thousands of laminated tracts poured out of the plane and caught in a strong crosswind, floated down over several Cuban townships.

The theme of the tract was life after death. It proclaimed that neither Marxism nor capitalism offered the eternal hope that Jesus Christ offers. It did not advocate military, political or economic change. It did speak of the change that love, hope and sacrifice of Jesus could bring to the soul. Just as the gospel presentation was adapted differently to Jews, Romans and Greeks, so we introduced it especially to Marxists. The Cuban Constitution guarantees freedom of religion—Cuban reality guarantees oppression.

All literature was dropped over the corridor and we exited exactly at the southern radio beacon check point, on course for Jamaica. Over international waters, we entered a storm. Our navigation aids then functioned poorly. Jamaica had no radar. Montego Bay flashed the runway lights but we could not see them. We ran short of fuel and headed for some coastal lights to our left. Mel put out a mayday distress call as we made four passes over a coastal highway, the engine quitting three times on dry tanks. (We learned later that the U.S. Coast Guard heard the message.) About one a.m. on May 27 we landed hitting a waiting dump truck whose driver refused to get out of the way. The plane was totally destroyed but no one was even scratched. We were in Manzanillo, Cuba.

Some literature was found hanging on the tail so we were flown to Havana the same day. Handcuffed upon arrival we were taken to solitary confinement at the headquarters of G-2, the Cuban intellingence apparatus called "Internal Security". This organization makes sure that every person in Cuba is idealogically "secure". We had separate cells for three months, no trial, no lawyer, no communication, light bulb 24 hours a day, roaches, heat and a big solid steel door which would occasionally be struck. We were accused of being C.I.A.

My interrogation was lengthy. I was threatened to be beaten with a baseball bat and also had my food taken away at times. A few months before the flight, I had stomach surgery for cancer; now I was told my face was turning yellow (I had no mirror). I was told my family thinks I am dead and constantly had the names of my children mentioned to me. "Our religion is three times stronger than yours," they said. They flew into a rage when finding a cross made from two mop strings in my room and said "the United States will pay thousands for this". I felt sorry for them because they didn't realize that the blood of Jesus, shed for them, is priceless. They refused to believe that many Christians supported my employers—Jesus to the communist world.

But maintained that the C.I.A. controlled all religious missions like ours. The idea that love and compassion motivated us to make this trip was totally foreign to them, as they were immersed in their philosophy of Marxist hatred.

After two weeks of this light interrogation, in mid-June I had a black hood tied over my head, my arms handcuffed behind me and about midnight was taken outside, and thrown in a car. I was driven to another prison (actually the same building) with two men mashing me to the floor with their feet. Entering a different door, I was made to crawl, squat and jump, splashing in a wet cold hall. I was thrown into a totally dark cell with a large vent above the door, one-third open, blowing cold air into the room. The next week I got little sleep kicking the bed to stay warm, with no covers. I crawled, always with the hood, to a new interrogation room. When I told my same interrogator, Captain Antonio Santos, that I was praying for him, he nervously began wearing sunglasses so I could not see his eyes. He finally called in his muscle-man the major, who had me taken to a much colder cell, still wanting a C.I.A. confession.

This room was intensely cold with a fully open vent blowing my hair and clothes. I pulled my sleeveless, thin overalls over my head but with no underclothes it was useless. I couldn't bear to sit on the floor or touch the wall and had no bed or chair. I was in this blackness a few days and nights, sinking to the floor when my legs quit. I tried to stay warm by singing everything from "Jesus Loves Me" to "A Mighty Fortress." My body did not warm but my spirit surely did! The major stood outside saying "think-Thomas-think." I just kept singing, swinging my "sword." I was taken out twice, shown a blanket and put back in without it for a longer time. My voice gave out; the air kept pouring in. I was filthy, unshaven skinny and exhausted. I asked God to let me die. He thankfully had other plans.

The C.I.A. accusations were dropped. I answered questions about books, and films and what countries our christian missions were in—all public knowledge. I was back in the less cold room for a week, which now seemed warm. By comparing literature they learned that I had made another legal crossing over a different corridor, December of 1978, and a successful boat trip off their coast (international waters) dumping literature while a school teacher in 1973, satisfied that I am no super-spy or big organizer they moved me back to the third floor after another ridiculous "trip" in their car.

Mel had been suffering in his small cell from the heat with a skin infection and a rash. Mel is from the temperate zone and not used to the tropics. We both had dysentery. His interrogations concerned Vietnam, racial prejudice, politics and economics. After another week of questioning, I saw Mel on the night of July 3 as we arrived in separate cars to a television studio in Havana. He said my skin was deathly pale and my eyes were dark and sunk deep into my head. (I still had not seen a mirror). I was supposed to talk to their reporters or get 20 years in prison. Mel was told his future depended on what he said.

The "reporters" were stooges sitting in the studio. We were going to be taped and filmed concerning religious freedom in Cuba, never having seen a church or talked to a citizen. The questions were written previously by my interrogators. The answers had been rehearsed many times, so there was no free exchange. The U.S. was once criticized as having a plastic society, well, those who believe, they ought to compare it with a communist canned society. Plastic is a luxury.

Questions were asked over and over until two o'clock in the morning. I answered as diplomatically as possible, remembering threats of ice water baths, cancer, and 20 years in prison. We were given tea with lots of sugar to keep us going. Still they were not satisfied with our answers and stopped the interivew.

On Sunday, July 8, we had a two-hour tour of the churches of Havana, courtesy of the security police rarely leaving our separate automobiles. Their religious freedom trip was poorly planned if planned at all. The first church was an enormous Catholic cathedral near the ocean in West Havana. There were iron bars welded across the windows, entrance, and sidewalk with no gate. A side gate had been opened after we passed it and turned around. "It must not be time for the mass" Captain Santos said with a straight face, then angrily spoke to the perplexed driver. Mels police in his car said the church was open. Then the cars went back down the road to the "right" church. There were six or seven people inside and a policeman standing across the street watching the people go in. I had lost my glasses in the plane crash—the captain refused to give me more. "Wow, the church is full!" he said excitedly. Mel confirmed later that the church was nearly empty. We saw two more Catholic churches with about 20 people in each. One was a historical monument open for tourists who were taking pictures.

We went to see a Baptist church. "There are 56 Baptist churches in Havana," Captain Santos said earlier. He probably obtained this figure from the Russians—his bosses. Russians also claim 56 Baptist churches in Moscow. The captain cannot even lie creatively. We passed many prominent buildings on corners with chained gates. All had stained glass windows, large entrance ways and vaulted roofs—churches? The Baptist church sign had fallen off except for the missionary name of W. Carey on it. Again, we were not allowed out of our cars. I saw only two people in the building. Mel saw three. There was a stairway built in the middle of the former sanctuary. During the "service" a woman entered the building with some sacks and walked upstairs. It was an apartment house! The special tour was indeed poorly planned. The captain was so embarrassed he smiled awkwardly and said "It's big enough to be an apartment house". Mel later said the same.

The cars were lost several times. The Adventist church was closed naturally, as their services are held on Saturday. But, steel plates were welded over the doors and windows. A large lock was placed through the only opening on the door. I am thankful for Mels extra sharp pilots' eyes. I could see few of these finer details with no glasses. We were told there were many Pentecostal churches all over Havana, but never saw one even though they promised to show us one.

On July 9, back in the television studio, we admitted to having seen some churches but tried to be as non-committal as possible. I tried to interject various statements of faith but was cut short by the director. The major said if I mentioned Jesus again they would put my head under ice; I did and he did not. Melvin said that he felt that God had sent him on this trip. This made them mad. I felt at times as if I was in a vise. I had read for years of such pressure on christians in communist countries but experiencing them was something new.

We finally met with U.S. officials in August but were allowed to say very little. The last of August we left solitary and were moved to a new "Show Prison", Combinado del este, near Havana, and put in an international wing with over 20 other Americans. Many older, ugly prisons, such as La Cabaña, are still in use, full. Here in Combinado we encounter prisoners like Captain Bill Dawson and crew, Austin Householder and Douglas Miklos, who had their shrimp boat confiscated (piracy) in international waters, headed south. Robert Bennet and Walter Clark's plane accidentally grazed Cuban airspace after an equipment malfunction and were forced down by two migs. At present date we have heard that 12 new American arrivals are under interrogation including 4 women. We have also met Cuban pastors, such as Nobel Alexander, and christians of all denominations here.

We went to trial on October 25 after five months of interrogation and imprisonment. Our lady lawyer whom we never met, walked over to captain Santos and straightened his coat, saluting him affectionately. She asked us four questions: "How old are you? Are you married? Do you have children? What is your occupation?" That was our entire defense. Then the prosecutor and G-Z captain Santos had the next hour or so. The five judges relaxed; two of them actually dozed—incredible. This was not a comedy. It was real. A real joke.

I explained to the prosecutor that the issue was not political but spiritual, one of life after death. (I speak Spanish). He made jokes about Angels and Saints and tried to interrupt my answers. He finally launched into a tirade about Vietnam, Chile, and the C.I.A.

Mel was a helicopter test pilot in vietnam—a former captain, U.S. Army—and served also in Korea. He was questioned and lashed at for his experiences of ten years ago! He mentioned again that he felt that God had sent him on this trip. He received sarcastic, patronizing smiles. Captain Santos called him a fanatic. The entire time a guard with an AKM assault rifle stood behind us.

The prosecutor originally asked for a 12 year sentence, but we received 24 years each. There is no Cuban law against the dissemination of literature. To make such a law would show the world what a restrictive system communism is. Rather, there is a broad, moral-sounding "social defense code" which, like an octopus, attaches itself to any desirable thing passing by. I was sentenced for having been "dedicated to penetrating Cuban territory since 1973" (a lie). Mel was sentenced for his part in this trip and for serving in Vietnam over ten years ago (actually mentioned in his court documents).

We consider ourselves prisoners of war—a heart war which has lasted 2,000 years since the birth of Christ. The U.S. State Department has refused thus far to ask for us, stating that we are not political prisoners, but classify us and all Americans here as counter revolutionaries simply because Cuba classifies us that way. Thus, the United States is allowing Cuba to shape American foreign policy. "Counter revolutionaries" are not political? None of us here quite understand this type of political thought.

We are here with rats, flies, roaches, power failures, and water problems. I have had no more cancer tests. I am satisfied that I did my part in injecting spiritual medicine into a demonic, cancerous body; one that can cover itself with a beautiful religious skin for tourists and religious delegations; one which takes religious pills publically, hiding them under its tongue, then spits them out; one which has thousands of children taken from their religious parents and placed in schools called "pupilo potestades".

This flight and our experience is ripping the cosmetic mask from "humanitarian" Cuba and revealing the gaunt skull of spiritual, moral, and physical starvation. I pray that the medicine we had to abnormally inject, will heal as well as nourish.

Victory in Jesus. Luke 12:2-3.

WALTER THOMAS WHITE.
MELVIN L. BAILEY.●

STEALTH PLANE: A SECRET THAT'S BEEN OUT SINCE 1976

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. McDONALD. Mr. Speaker, there has been a great deal of interest stirred up in the recent announcement of the Department of Defense on the so-called new weapon—the stealth plane. However, as the Christian Science Monitor pointed out on August 25, 1980, this is not a really new weapon and work on it began under President Carter's predecessor. The best thing that can be said is that for the sake of America, at least it is one major weapon system that has not been cancelled or delayed by the Carter administration. It would appear to be a highly suspicious announcement at this time and the circumstantial evidence exists to show that the leaks were all from the Carter administration designed to play politics and show the President as a strong advocate of national defense.

The item from the Christian Science Monitor follows:

"STEALTH" PLANE: A SECRET THAT'S BEEN OUT SINCE 1976

(By Stephen Webbe)

WASHINGTON.—The Carter administration's disclosure that it has developed aircraft capable of streaking unobserved through Soviet air defenses was as politically motivated as it was unwise, claims Ronald Reagan's senior defense adviser, William Van Cleave.

"I think it essentially compromises whatever prospects of success the program might have," Dr. Van Cleave declares.

In confirming Aug. 22 that supersecret "Stealth" aircraft have developed a near-invulnerability to existing air-defense systems, Defense Secretary Harold Brown blamed regrettable press and television leaks for the need to make the announcement now.

"I think it is a fair question as to who started those leaks in the first place," retorts Van Cleave, director of the defense and strategic studies program at the University of Southern California.

"Stealth" rumors have been rife in Washington for the last few weeks. The authoritative magazine Aviation Week & Space Technology referred to the "advanced technology Stealth bomber" in its Aug. 11 issue, and Armed Forces Journal reported Aug. 22 that the United States has been test-flying several versions of "virtually invisible new aircraft for over two years," a story that CBS had earlier picked up on its evening news.

Calling it "a major technological advance," the defense secretary claimed that so-called "Stealth" technology now enables the US to build manned and unmanned aircraft that cannot be intercepted by existing air defense systems. "We have demonstrated to our satisfaction that the technology works" he added.

The secretary declined to comment on reports that three of the new aircraft have crashed.

According to Armed Forces Journal, the Stealth aircraft are virtually invulnerable to air defense radar and infrared, electronic, and acoustical detection. While only fighters have been tested so far (supposedly at Nellis Air Force Base, Nev.) a strategic bomber is being designed, the magazine added.

Dr. Van Cleave contends that the administration has revealed the Stealth program now to counter criticism of President Carter's "poor defense record" and specifically his cancellation of the B-1 bomber.

In his view, a bomber "that might emerge from this technology is still a decade off," and he brands the defense secretary's announcement of the Stealth technology "highly premature," asserting that its effectiveness "has yet to be demonstrated." He notes, moreover, that the project was launched under the Ford administration and observes: "President Ford certainly didn't divulge it."

It would be hard to overestimate the military utility of aircraft that are virtually undetectable to radar.

Ever since Britain used a rudimentary form of the technology to great effect during the Battle of Britain, radar has posed an increasingly serious threat to attacking aircraft.

"Subsequent to World War II, defensive missiles—both ground-launched and air-launched—were . . . married with radar fire-control systems," explains William Perry, undersecretary of defense for research and engineering. "This substantially increased the effectiveness of air-defense systems."

Currently, US aircraft rely on a combination of electronic countermeasures and low flying—through so-called "ground clutter," where radar cannot distinguish between them and other signals.

But the Soviet Air Defense Command poses a formidable challenge to assaulting aircraft.

With 10,000 surface-to-air missiles and 2,600 interceptor aircraft, it represents the largest air-defense system in the world. Its effectiveness was demonstrated in 1960 when a SA-1 missile shot down Francis Gary Powers' U-2 spy plane at a height of 65,000 feet.

According to Dr. Perry, a chief architect of the Stealth program, the Soviet Union continues to place heavy emphasis on air-defense missiles to offset US advantages in air power.

"They have built thousands of surface-to-air missile systems. They employ radars with high power and monopulse tracking circuits, which are very difficult to jam. And in the last few years they have developed air-to-air missiles guided by 'lookdown' radars, which are capable of tracking aircraft flying in 'ground clutter,'" Perry says.

Hence, Stealth technology—which, says Perry, does not involve "a single technical approach, but rather a complex synthesis of many." More he will not reveal.

According to Armed Forces Journal, the deception techniques involve the special shaping or contouring of aircraft; the use of nonmetallic materials that give a weak or undetectable radar return; infrared shielding of engine exhausts; special paints to absorb, deflect, and shroud radar signals; and electronic countermeasures to generate false returns.

While unwilling to discuss any of the techniques that render Stealth aircraft all but undetectable. Perry notes that "this technology—theoretically, at least—could be applied to any military vehicle which can be attacked by radar-directed fire."

Both Brown and Perry insist that the Stealth program was shrouded in the deepest secrecy until they revealed it Aug. 22. Perry even maintains that its very existence was classified information.

In fact, that existence was far from secret. On July 23, 1976, readers of Aerospace Daily were informed that Clarence L. (Kelly) Johnson, "the nation's premier aircraft designer" and architect of the U-2 and SR-71 spy planes, was building "a new 12,000-pound, one-man Stealth aircraft" at the Lockheed plant in Burbank, Calif.

The magazine claimed that the $90 million program, sponsored by the Defense Advanced Research Projects Agency, was designed "to reduce aircraft visibility—optical, acoustic, and radar signatures—through new technology."

Lockheed spokesman Dave Crowther declined to comment when asked whether the company is involved in the Stealth program. Johnson, a stickler for secrecy in such matters, has so far not commented on the disclosure of the program.

Whether or not the Soviets have begun devising countermeasures to combat the ghost-like Stealth machines is uncertain. If they were subscribing to Aerospace Daily four years ago, they may have a head start. At the least, Brown's announcement may not have overly surprised them.●

NATIONAL HIGH SCHOOL ACTIVITIES WEEK

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. RHODES. Mr. Speaker, I am today introducing a resolution to establish National High School Activities Week in cosponsorship with my colleague in the other body, the senior Senator from Kansas, Mr. DOLE. The resolution designates the week of September 28 to October 4 to recognize the importance of extra-curricular activities to the young people of this Nation. It is backed by the National Association of High School Associations.

The high school years are challenging for our young men and women. We hear much today about their problems, and the unfortunate path that some take to solve them in a self-destructive manner. A good program of activities has many advantages. It gives students an opportunity to work cooperatively together, in a common interest. It provides an introduction in many cases into community activities and a recognition of the importance of participation in civic affairs. By exercising their talents, they develop a sense of identity and confidence in themselves as individuals. They develop skills, take up new interests, and learn more about the communities in which they live.

The week also recognizes the key role played by teachers, coaches, and directors of youth activities. I urge my colleagues to support this resolution, which pays due recognition to an important part of the students' lives as they pass through the formative years of earliest adulthood.●

"MEDI-GAP" POLICIES

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. BONKER. Mr. Speaker, the figures surrounding the sale of supplemental insurance—also known as medi-gap policies—are sickening. Old people, living on fixed incomes, seek to prevent becoming a financial burden on their families if taken ill by purchasing insurance policies to supplement medicare coverage. The rub is that even these supplemental policies leave huge gaps. It is not unusual to find a senior with 7 or 8 of these policies—and I have heard of several instances where an old person had 13 or more policies. Yet if one policy pays off, the others will not. Senior citizens spend $4 billion each year on supplemental insurance and most of that is worthless.

The greatest misunderstanding comes in what costs are actually paid for by the private insurance. For example, the physician's bill for a given service is $100. Medicare's "reasonable fee" for that service may be $60. One misunderstanding comes at this point—medicare does not pay the $60, but rather pays 80 percent of that $60 or $48. Now enters the second area of misunderstanding. While it would be logical to assume that the supplemental insurance would pay the remaining $52, such is not the case. Supplemental insurance only covers the remaining 20 percent of the bill up to the medicare reasonable fee—in this case $12. The senior citizen is still responsible for the $40 that medicare would not cover in the first place.

There are other aspects to insurance coverage for senior citizens that you should be wary of. Many supplemental policies offer nursing home coverage. Yet in the fine print, the insured discovers that it is only good where medicare would cover the services. Current regulations surrounding medicare reimbursement for nursing home care are so stringent that less than 3 percent—the figure is actually closer to 2 percent—of medicare dollars go toward nursing home care reimbursement. Some policies state that they cover "custodial" or "extended" care. Yet, these catch phrases were written out of the law in 1972 and regulations were redesigned to cover "skilled" or "intermediate care" facilities. Therefore, if you see those words, you can be sure the policy will not cover the claims.

There is some good news on the horizon, however. In a recent conference committee, the House position prevailed and passage was secured for provisions which will regulate mail-order sale of these supplemental insurance policies. Provisions include voluntary certification of policies by insurance companies and stiff penalties for salesmen who purport to be representatives of medicare or any other Federal agency. It is a beginning.

I commend to the attention of my colleagues a letter from a constituent which articulately spells out some of the myriad problems encountered with medi-gap policies:

VANCOUVER, WASH.,
August 21, 1980.

Hon. DON BONKER,
U.S. Congressman,
Longworth Building 1531,
Washington, D.C.

DEAR CONGRESSMAN BONKER: Recently we had the sad experience of coming face-to-face with the inadequacies and not lived-up-to promises of private insurances. Part of this I am certain to due to inability to understand and not being contantly reminded of the contents of the policies from time to time.

My father-in-law, William A. Fleming (Sr.) who is 92 years old has been place in a nursing home. This after suffering small strokes rendering him unable to care for and live by himself. He has been hospitalized twice, once from a fall while living alone; and once after being placed in Woodland Convalescent Home, Woodland, WA, where he suffered a cracked pelvic bone.

Earlier (1978 I believe) my father-in-law subscribed to two additional private insurances which supposedly were to "supplement" Medicare. Now we find when Medicare (as described in their terminology "skilled") terminates that coverage, the insurances also cease, while we believed the policies to carry beyond Medicare. This places my husband and I in a serious financial position if we must pay any remaining balance due. This we are not able to do. My father-in-law's small retirement (Soc. Sec. and Clark Co. Retirement totals just over $400.00) barely covers a third of the cost of the Convalescent Home. Of course, we too would need to pay the soon due premiums on the above-mentioned private policies.

I applied to Washington State Department of Social and Health Services for aid in this matter. My father-in-law's application was denied based on the strength of the Counselor's interpretation of the private policies coverage beyond Medicare. We have been notified by the Convalescent Home that as of August 9 he is no longer covered by Medicare and I again have applied to DSHS for aid but time is important and their waiting list is long; therefore, if the claim is accepted it will be long after payment to the Convalescent Home is due. If the claim is denied, we are in deep financial trouble.

Also the insurance forms are extremely superfluous, wordy and require doctor's signatures, yet when I ask their insurance sections to have the doctor sign I am informed emphatically doctors do not need to sign, the insurance companies know the codes used in the billings.

When the representative of these insurance companies present their sales "pitch" to encourage a buyer, they promise the world and state how simple the forms are to complete, and how quickly claims are processed for payment (old people are gullible, you know) and what a disappointment when the need arrives and all these "good" promises dwindle. Recently, I had audience with one of the companies' representatives and he was less than courteous and had a "I'm sorry but that's the way it is" attitude.

The Woodland Nursing Home Administrator furnished me the information you have worked diligently in this very area and suggested I write you. Perhaps since I have written the companies to cancel the policies, thereby hoping DSHS will give us assistance, the impact will be lessened and is now "after the fact" but felt my letter may enforce your endeavors in this matter.

I have enclosed letters (copies) I have written the insurance cancelling the policies and my reasons.

Thanks for your time. Hopefully, somewhere down the line help for the aged will be simpler. At this point I feel private insurances should not be allowed to write supplemental insurance to Medicare unless the language were simple enough for anyone to understand and thoroughly comprehend. Much grief, time and financial burden would be alleviated.

Sincerely,

MARJORIE G. FLEMING.●

HAPPY BIRTHDAY, MOTHER TERESA

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DORNAN. Mr. Speaker, today marks the 70th birthday of a living saint.

Worse than leprosy or cancer, there is another, even more awful disease of our time—being unwanted.

With these words, Mother Teresa humbly accepted the Nobel Peace Prize.

Composing an introduction to the piece which follows about this remarkable woman was a most difficult task. How does one describe in words total love—this total selfless giving to the destitute and dying?

A body comes in, eaten by worms. I know when I touch it that I am touching the body of Christ. Otherwise, nothing could make me do it.

I know my colleagues will be happy to join with me in wishing Mother Teresa a very happy 70th birthday. We are indeed grateful to God for this ambassador of peace undoubtedly sent to witness to the kind of love He has for each of us—even amidst the violence, cruelty, suffering, and poverty of spirit in our modern society.

God bless you, Mother Teresa.

THE MAKING OF A SAINT

(By Curtis Bill Pepper)

Pope Paul VI ended his 1964 visit to India by giving his car—a white Lincoln convertible with read seats—to a nun who normally wears a 50-cent sari and sandals. He did it while speaking to a vast crowd at the Bombay airport.

"Before we leave dear India," he said, "we wish to give our white car to Mother Teresa, Superior General of the Missionaries of Charity, to assist her in her universal mission of love."

Mother Teresa was not on hand to pick up her $5,500 gift. She was, instead, on the outskirts of town, bent over a dying man—an act older than Christianity and a demonstration of why Paul had given her his car, rather than leave it with the Cardinal Archbishop of Bombay, who owns a bathtub once used by the Maharajah of Kashmir.

The dying man was old, with arms like broken sticks and a face that was a dark pool, motionless except for the eyes that every so often opened, as if to ask how much time was left. He came from the

north, and the nun spoke to him in Bengali, soft words of comfort and love, calling him by his name, which was Onil. He had been found in a roadside ditch. No hospital would take him. No one in the city of four million, with 3,000 officially designated slum areas, had the time to hold this hand while he died. There were too many.

So Mother Teresa had brought the old man to her home for dying destitutes. At that moment, after 14 years, she and her company of sisters had picked up over 21,000 dying from the streets and trash dumps of India.

Such a giant labor had left its mark on the woman holding the old man. The lifting of untold tons of human beings had bent her body beyond its 54 years. She had cheated against nature, too, denying herself rest, sleeping in the baggage racks of third-class trains as she shuttled about India establishing homes to help the sick and the poor. The pain of thousands had cut into her gaunt face, white as the mountain stones in Yugoslavia where she had once played as a girl.

"How do you feel now, Onil?" she asked.

It was not good. Sometimes, they got them in time. Half of those they brought in were returned to whatever life awaited them. But starvation had pushed this old man beyond the point of return. No food or medicine could save him. Clinically, he was almost dead, though he managed to speak:

"I lived like an animal and . . . now I'm dying like a human being . . . why?"

It was to widen such an embrace that Paul left behind his car. And then, a year ago, he asked the embrace to be extended to include his diocese. In a private note, he invited Mother Teresa to open one of her homes in Rome to minister to the poor: shanty dwellers ringing the city, families huddled under arches of Roman aqueducts, prostitutes walking the streets. To help out, he sent along a check for $10,000. No one could recall a modern Pope taking such action. Rome was packed with 22,000 nuns from 1,200 orders—many of them dedicated to helping the poor. Quite clearly, Paul felt the woman in India had something special.

At least one million people agreed with the Pope. In India, Mother Teresa already was a white angel in a sari who worked miracles. The drama was endless. To her Calcutta Nirmal Hriday, the home for dying destitutes, they brought a man with half his body consumed by cancer—one more hospital reject in what the late Prime Minister Jawaharlal Nehru had called "the nightmare city," where two million Pakistani refugees had moved in on top of four million Indians, and 30,000 sacred cows wandered the streets.

The stench of the cancer was so strong that other patients protested. A male attendant, cleaning worms from the untended flesh, was seized with a fit of retching. The sisters were thus forced to move the dying man into another room. Mother Teresa undertook to clean him herself and at first met curses and taunts.

"How can you stand my stench?" he asked.

"It's nothing compared to the pain you must feel," she replied.

After a bit, the man said: "You are not people here. People do not behave like you."

Later, dying, he said: "Glory be to you."

"No," said Teresa. "Glory be to you who are suffering with Christ."

This was the key to her life, the link that ran from man to God. Teresa explained it recently in Calcutta: "We see Christ under two forms. We see Him on the altar, as bread, and we see Him in the slums, as the broken bodies of forgotten people. A body comes in, eaten by worms. I know when I touch it that I am touching the body of Christ. Otherwise, nothing could make me do it."

Teresa said she also served those she could not save: "What makes death terrible is that we are made to face a future alone. Worse than leprosy or cancer, there is another, even more awful disease of our time—being unwanted."

She recalled a phone call in New Delhi, saying there was a woman in a trash bin.

"When we arrived, we could hear her crying beneath the rubbish. She was covered with sores, her hair matted with filth. She continued to cry. She cried all the way to the home—even after we had washed her and put her to bed. Finally she said, 'I'm not crying because I am dying. It's something else. It's because my son did it.'"

Standing inside the Calcutta refuge for the dying, Mother Teresa spoke of God as though He were somebody you met on the street. Above all, He could be relied on to come through in a pinch. Once, in 1962, a sister had phoned from the center at Agra, saying she urgently needed 50,000 rupees for a children's home.

"Sorry, Sister, but we can't do it," Teresa had answered. "We don't have the money."

After that, the phone had rung again. This time, it was a newspaper office. Mother Teresa had been given the Magsaysay Award by the Philippine Government. It included money.

How much? "About 50,000 rupees, Mother."

"I guess God wants a children's home in Agra," Teresa had muttered before hanging up.

Teresa has been listening to what God wanted since she was Agnes Gonxha Bojaxhiu, born August 27, 1910, daughter of an Albanian grocer living in Skoplje, Yugoslavia. "When I was 12," she says, "I got a call. It is a private matter. It was not a vision. I've never had a vision."

Two years later, some Jesuits, returning from India, described the work of the Loretto nuns in Calcutta. This gave Agnes a concrete goal, and at 17, she reached India as Postulant Sister Teresa. Her novitiate began May 24, 1928. Nine years later, she took final vows and began to teach at the Loretto Convent High School in Calcutta. Soon, she found herself peering out beyond the red-brick walls of her cloistered world, toward the city's slums. "I knew where I belonged," she remembers, "but I didn't know how to get there."

Her instructions came in a second call, on the train to the Loretto retreat house at Darjeeling. "The message was quite clear: I was to leave the convent and help the poor, while living among them. It was an order."

That night, September 10, 1946—now celebrated within the order as the Day of Inspiration—Teresa hardly slept. Upon returning to Calcutta, she hurried to ask support from her archbishop—and was rebuffed. Undaunted, she waited patiently for over a year and then wrote to the head of her order, Mother Gertrude, in Rathfarnham, Ireland.

"She told me I could go. They would miss me, but if I was called by God in this way, I should go. I wept, for she understood."

Gertrude's letter, with one from Teresa, was sent to Rome. It produced quick results. Pius XII gave Teresa the right to go into the world—yet remain with vows as a nun under obedience to Calcutta's archbishop. The order, dated April 12,1948, reached her August 7. She exchanged her Loretto habit for a white sari with a blue border and a small cross at the shoulder.

To learn medicine, she took three months' training at Patna with the Medical Missionary Sisters. By Christmas, she was back in Calcutta, exploring the slums of Tiljala and Motijhil. Three days later, with permission to open her first slum school, she found 23 children waiting for her in an open field. The next day, she found 41.

"We used the ground as a blackboard," she recalls, "but before anything else, I gave a few of them lessons in personal hygiene—with a good dunk in a tank!"

Michael Gomes, a government employee, gave Teresa a room on the top floor of his family home. Here, she wrote the rules for her future company—to be called Missionaries of Charity. The first candidate to climb the stairs of the Gomes home was a pretty, dark-skinned Bengali girl in a bright sari. She was Shubashini Das, 19, a former student of Teresa's. Teresa explained that anyone joining her would need four qualities: health of body and mind, ability to learn, abundant common sense and, most essential, a cheerful disposition. She told the girl to think it over.

Shubashini returned on St. Joseph's Day, discarding her bright sari for a simple white one like Teresa's and taking Teresa's Christian name, Agnes. Others quickly followed.

Since then, the order has grown to 350 sisters with 59 centers in Calcutta, plus 70 more in 20 other cities of India. Abroad, there are homes in Ceylon, Tanzania, Venezuela and Rome. Aided by lay co-workers, the sisters teach 5,400 children in 44 schools, treat 404,000 patients in 134 dispensaries, medicate 21,900 leprosy cases in 51 mobile clinics, and comfort over 2,000 in 12 homes for dying destitutes. This immense network is supported by doners in India and Mother Teresa committees in the U.S. and Europe. Schoolchildren in England send bread; those in Denmark, milk; and in West Germany, vitamins.

The nuns lead a hard life. Up at 4:40, they go all day, with only 30 minutes' rest, until 9:00 at night. Thursday is devoted mainly to reading. Except on rare occasions, there is no radio, cinema or television. The food is basic, eaten from a single enamel plate owned by each sister, without soft drinks or alcohol. Treats are handled as something precious. The Venezuelan house, for example, sent one pack of orange Life Savers for each of the 20 communities in India, which Teresa herself dutifully delivered during a recent tour.

It is not easy to join: Five years and nine months of school and hard work precede final vows. There have been few dropouts. Recruits have come mostly from India, with some 30 from Europe. Two from the U.S. returned—one because of illness, the other for personal reasons.

"Other companies," says Teresa, "have begun by helping the poor. Then, gradually, they service the rich-poor, and finally, the rich. For that reason, we accept no gifts, not even refreshments from those we visit. If we had electric fans, we'd soon find it hard to work without them. Our life of poverty is as necessary as the work itself."

This does not mean that poverty is the desired condition of man, and Teresa believes, with the Vatican Council, in spacing births to fit the pocketbook. But birth control is not the whole answer—not even in India, where 55,000 babies are born each day, adding 13 million every year to the nation's river of sorrow. Teresa does not approve, for example, of the government's sterilization program—even of leporosy patients, though they generally infect their children.

"If you take children away from them, what do they have? Who is going to smile at them, and help them get better by little bits?

"Those we find in the street are Christ in a distressing disguise. Our mission is to help

Christ—not destroy the multiplicity of his presence."

So believes, and lives, Mother Teresa. Many ask if she is indeed a saint. Thousands say yes. Church authorities, traditionally cautious in discussing possible saints—living or dead—have been silent. Yet even in the Church, those who have known Teresa quickly admit to her uniqueness.

Pope Paul's tribute was to call her to Rome. Last August, Teresa visited the slum area called Borgata Latina, beyond the Porta S. Giovanni, where over 3,000 people live in shacks beneath the ruins of old Roman aqueducts. She left behind five sisters to begin work.

Saint now or saint-to-be, Mother Teresa is a woman with that kind of total faith that has given others like her the strength to raise armies, to humble kings—and to generate in people a wonder and warmth many believe to be a love for God.●

MILITARY PERSONNEL AND COMPENSATION AMENDMENTS OF 1980

HON. THOMAS A. DASCHLE

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DASCHLE. Mr. Speaker, I was unable to be present for rollcall vote No. 490, the conference report on H.R. 5168, the Military Personnel and Compensation Amendments of 1980. Had I been present I would have voted "yes" on this report.

H.R. 5168, also known as the Nunn/Warner bill, addresses many of the manpower problems currently plaguing our Armed Forces. The greatest problem has been in retaining highly trained pilots in all branches of the service and midcareer petty officers in the Navy. This legislation addresses these specific problems by providing a 25-percent increase in flight pay for pilots and authorizing significant increases in sea pay for midcareer petty officers.

Another problem has been the high cost of certain areas where military personnel are stationed. H.R. 5168 addresses this problem by authorizing a variable housing allowance which will pay the full difference between the average cost of housing in a particular area and 115 percent of the person's basic allowance for quarters. This provision will especially help those personnel in the Washington, D.C., San Diego, and New York City areas.

The general subsistence allowance was also increased by 10 percent and the ceiling on the amount of reimbursement paid a person ordered to move will be eliminated as well.

All of the areas I have just mentioned have been a source of genuine concern and needed to be addressed. Overall, I believe the Congress has authorized an important and meaningful bill which will address the critical problem of retaining the highly trained personnel that have been most prone to leave the military due to the inequities which exist today.●

HUMAN RIGHTS FOR POLAND

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. McDONALD. Mr. Speaker, much attention has been focused on the subject of human rights around the world. Unfortunately, most of the attention has been given to friendly nations and not the Communist nations. If there ever was a time when the West and all free nations should be united in their efforts to support the present striving for human rights in Poland, it is now. It is high time that the United States take a strong and unequivocal stand in this regard. For too long our human rights policy has tended to focus only on small nations who are unable to oppose us. We should now draw the line and make certain that the Communist world understands there will be severe consequences if the flickering lights of freedom are now snuffed in Poland. To this end, 104 Members of the House of Representatives today dispatched the following letter to President Carter suggesting he take such a strong stand. The letter follows as well as the signatures of those who have signed to date. Additional signatures are being sought which will be forwarded to the White House at a later date.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 27, 1980.

President JIMMY CARTER,
The White House,
Washington, D.C.

DEAR PRESIDENT CARTER: On October 6, 1976, during your debate with then President Ford, you emphasized your sympathy and that of most Americans with the plight of the Polish people under the domination of communism and Soviet troops. Now is the time to prove that this was not just campaign rhetoric by responding positively to their present strivings for greater freedom in the light of the massive strikes. One news account said that considerably more than 100,000 workers are involved.

Among the basic human rights they are seeking are freedom of speech, freedom of worship, freedom to organize trade unions or associations, freedom to assemble peacefully and freedom of movement. No freedom-loving person in America could disagree with the hopes and aspirations of the people of Poland. Their courage in resisting and rebelling against the tyranny of communism cannot be questioned. Already several Polish dissident leaders have been arrested by the dread secret police in connection with the strike and their fate is unknown. I am further informed that the workers have 21 basic demands and that these include the evacuation of the Soviet troops presently stationed in Poland.

In compliance with your Administration's well-known policy of demanding "human rights" for all people, there is no doubt that a public expression of your personal support for the Polish workers would have considerable influence. Let us urge you to use your high office at this crucial time in history to encourage the people of Poland in their struggle for basic human rights. Also, there is little doubt that your insistence that the Soviets begin abiding by the Helsinki Accords would carry great weight since it is common knowledge that Poland's government is nothing but a Soviet puppet regime.

It would be most appropriate for the President of the United States to use his considerable influence and prestige to encourage publicly the Polish people to throw off their chains and to warn their Communist masters not to interfere or face severe economic and political sanctions such as withdrawal of official recognition of the Soviet regime and the ending of all credits and trade agreements with the Soviets and the puppet government of Poland.

As the world's last bastion of freedom, we cannot afford to allow the situation in Poland to become another Hungary of 1956.

Sincerely,

Bob Stump, Carroll Hubbard, Charles Stenholm, Marvin Leath, Glenn English, Richard H. Ichord, Lamar Gudger, Larry P. McDonald, Richard Shelby, G. V. Montgomery, David Satterfield, Kent Hance, Jerry Huckaby, Dan Daniel, Steven Symms, Robert E. Bauman, Philip M. Crane, Marjorie S. Holt, Doug Barnard, Jr., Robert J. Lagomarsino, Sam B. Hall, John M. Ashbrook, William E. Dannemeyer, Benjamin A. Gilman, James H. Collins, Floyd Spence, Donald J. Mitchell, Richard Kelly, Robert K. Dornan, Eldon Rudd, George M. O'Brien, W. Henson Moore, Bo Ginn, Jack Hightower, William Carney, Tim Lee Carter, Dan Marriott, Robert S. Walker, Henry J. Hyde, Tom Hagedorn, Paul S. Trible, W. G. Hefner, George Hansen, Robert W. Daniel, Jr., Gene Snyder, Thomas N. Kindness, Gerald B. H. Solomon, Bill Nichols, Robert E. Badham, Jerry Lewis, Bill Royer, Carlos J. Moorhead, G. William Whitehurst, James H. Quillen, Elwood Hillis, Bob Wilson, Daniel B. Crane, Ken L. Holland, Jim Jeffries, Daniel E. Lungren, William S. Broomfield, Samuel L. Devine, Edward J. Derwinski, Robin L. Beard, Samuel S. Stratton, Ron Paul, William L. Dickinson, Trent Lott, Walter B. Jones, John J. Duncan, Norman D. Shumway, John T. Myers, Larry Winn, Jr., Carl D. Pursell, Millicent Fenwick, Jack Edwards, James A. Courter, J. Kenneth Robinson, Lester L. Wolff, Norman F. Lent, Gary A. Lee, Tennyson Guyer, Carroll A. Campbell, Jr., Newt Gingrich, Clair W. Burgener, L. A. Bafalis, Delbert L. Latta, Mickey Edwards, Bob Livingston, Marilyn Lloyd Bouquard, John H. Rousselot, Mary Rose Oakar, John B. Breaux, Gene Taylor, Ken Kramer, William M. Thomas, Charles F. Dougherty, James G. Martin, Mendel J. Davis, Phil Gramm, Earl D. Hutto, Joe Wyatt, Jr., Bill Chappell, Jr., and Jack F. Kemp.

This is a continuing letter for which additional signatures are being sought, and these will be forwarded at a later date.●

THE GOVERNOR OF WEST VIRGINIA PROCLAIMS SUNDAY, SEPTEMBER 14, 1980, AS CONGRESSMAN HARLEY O. STAGGERS DAY IN WEST VIRGINIA

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DRINAN. Mr. Speaker, it is characteristic of the modesty of our beloved colleague, Congressman STAGGERS, that he made no announcement of the beautiful tribute paid to him by the people of the State of West Virginia as noted in the attached proclamation.

It is gratifying but not surprising that Gov. John D. Rockefeller of West Virginia proclaimed Sunday, September 14, 1980, as HARLEY O. STAGGERS Day in West Virginia.

The Governor urged all West Virginians to join together in Keyser, the hometown of Congressman STAGGERS, on September 14 to celebrate his many years of service to our party, our State, and our Nation.

Congressman STAGGERS will be missed by everyone in the House. We stand in admiration and appreciation of his 32 years of service to the Congress of the United States and to the people of the State of West Virginia.

The Governor's proclamation, dated August 23, 1980, is reprinted here in its entirety:

STATE OF WEST VIRGINIA, EXECUTIVE DEPARTMENT, CHARLESTON

A PROCLAMATION BY GOV. JOHN D. ROCKEFELLER

Whereas, for 32 years, the people of the State of West Virginia have been honored by the outstanding public service of a son of Mineral County, Congressman Harley O. Staggers; and

Whereas, since his election as a member of the United States House of Representatives in 1948, Harley O. Staggers has served with distinction as congressman from the Second Congressional District; and

Whereas, Congressman Staggers' warmth, graciousness and beliefs in public service and his devotion to the United States of America have been the trademark of his long and distinguished service; and

Whereas, Congressman Harley O. Staggers has been on the cutting edge of legislation pioneering new frontiers in energy development, coal use, the broadcasting industry and other aspects of interstate and foreign commerce; and

Whereas, as chairman of the Interstate and Foreign Commerce Committee, he has brought honor to his party and his state; and

Whereas, the people of West Virginia regret his decision to retire, but wish him a politically active retirement.

Now, therefore, I, John D. Rockefeller IV, Governor of the State of West Virginia, do hereby proclaim Sunday, September 14, 1980, as Harley O. Staggers Day in West Virginia and urge all West Virginians to join together in Keyser, the hometown of Congressman Staggers, on that day to celebrate his many years of service to our party, our state and our nation.

In witness whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed.●

REINSTATE OIL AND GAS LEASES

HON. MANUEL LUJAN, JR.

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. LUJAN. Mr. Speaker, I am introducing a bill to reinstate oil and gas leases in Idaho so that the commitments made by my good friend, Harold Runnels, will be honored.

Congressman Runnels had promised Supron Energy Corp. that he would introduce this bill on their behalf. The corporation lost its leases, not because it did not fulfill its obligations under them, but because of Government bungling. Supron was caught between the requirements of the U.S. Geological Survey application for permit to drill—which to be approved would require a road to the drilling site, and the Forest Service's RARE II intensive study, under which the Forest Service effectively banned the building of the needed road. By the time the Forest Service indicated that a road could be built, it was too late to have an APD approved and the leases expired.

I would hope that the Interior Committee will have time to look at this issue and that reinstatement of these leases will be permitted.

Thank you.●

CAPITAL INVESTMENT TAX INCENTIVE ACT OF 1980

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. PORTER. Mr. Speaker, I have introduced the Capital Investment Tax Incentive Act of 1980, H.R. 7994, to create a major incentive for increased investment by reducing from 40 percent to 30 percent the amount of net capital gain included in individual incomes and by reducing the alternative capital gains tax rate for corporations from 28 percent to 21 percent.

This is the same proposal introduced by Mr. CRANSTON, S. 2923, in the Senate. I offer this bill so that the Ways and Means Committee will have before it the appropriate legislation in the event the Senate acts on S. 2923, but I see no reason why the House cannot move forward independently and indeed, I urge the committee to do so with all deliberate speed.

Past economic history suggests a clear correlation between the capital gains tax rate and the available level of investment capital. In 1969, the Congress levied a punitive tax upon American business by increasing the capital gains tax rate from 25 percent to 49 percent. A more ill-advised action cannot be imagined. The result was inevitable—venture capital virtually dried up in our country.

The Congress eventually awakened to its error—if not to the error of its ways—and passed the Steiger-Hansen Investment Incentive Act of 1978. Steiger-Hansen reduced the capital gains tax rate to the present level of 28 percent. An editorial that appeared in the July 30, 1979 edition of the Wall Street Journal described the positive reaction of the economy to the passage of the 1978 act. I am including a copy of that editorial in my remarks so that the Members of this body may realize that the private sector will react positively when the Congress fashions wise economic incentive measures. Those have been so few and far between in recent years that perhaps the Members sometimes forget.

The economy today, of course, is caught in the dual throes of inflation and recession—a vicious circle of rising prices and declining levels of industrial output. As of the end of June the Consumer Price Index had risen 14.3 percent over the past year. Yet the gross national product decreased 9.1 percent in the second quarter of 1980 and industrial production declined 2.4 percent in June.

Insofar as investment and productivity is concerned, the rate of growth in real business spending for plant and equipment grew 10.5 percent in 1978. Yet, that rate declined dramatically to a level of only 1.7 percent from the fourth quarter of 1978 to the fourth quarter of 1979. Growth in labor productivity has also been stunted. The 1980 Economic Report of the President indicated that from 1973 to 1978 the actual rate of growth in output per man hour in the private sector was only 0.8 percent, a figure that contrasts sharply with the 2.5 percent growth in output from 1948 to 1955.

Under these conditions, I am convinced that a long-term, investment-oriented tax reduction is an important part of a series of supply-side tax measures that are desperately needed to turn the corner on the very serious economic problems that our country faces. A higher rate of capital formation will improve labor productivity. Increased productivity will enhance the opportunities for growth in real incomes and will lower the rate of inflation. Why does it take so long for the Congress to realize this? Why does it take so long for the Congress to act?

Mr. Speaker, I ask unanimous consent that the text of the bill along with the newspaper editorial mentioned previously be printed in the RECORD.

SNAPPING BACK

Anyone who might be wondering about the effects of last year's reduction in capital gains tax rates would do well to look at the venture capital revival that has since occurred. We particularly urge a look by those who argued tnen—and still do in some cases—that you can't improve capital formation by lightening the tax burden on it.

Venture capital is money raised by entrepreneurs whose only assets are their new ideas. Even if they turn out to be successful, investors must expect their capital to be locked up for 5 or 6 years. A decade ago venture capital was thriving. But along came the Tax Reform Act of 1969 which together with its subsequent revisions raised the maximum tax on capital gains from 25 percent to 49 percent, reduced the write-off of capital losses by 50 percent, and sharply curtailed the deduction of interest expense on borrowed funds used to make an investment. All in all, the rewards for success were cut in half, and the penalties for failure were doubled.

The effect on venture capital was devastating. The ability of small companies to raise equity capital by public stock issues declined drastically, and by 1973 small company issues had practically ceased. In 1977 when the maximum tax on capital gains hit 49 percent equity capital from all sources dried up.

The tax reformers who sold this bad bill of goods to the Congress said the purpose of it was "to make the rich pay taxes." Congress expected to score some easy political points, not to dry up important wellsprings of economic progress. New small companies account for a disproportionate amount of new products and technologies, and they contribute substantially to the growth of the economy as a result of their own rapid growth and the productivity gains that they introduce into the economy.

By 1978 Congress realized what it had done, and Rep. Bill Steiger found majority support in both houses for his proposal to reduce the capital gains tax. In November the rate was reduced to 28 percent.

The response from venture capital was instantaneous and began in May before the law was passed when Senator Hansen rounded up 60 Senate cosponsors of the Steiger bill. By the end of the year venture capital raised by firms specializing in the activity rose eleven-fold over the previous year. In 1979 venture capital is back where it was 10 years ago.

The snapback is easy to understand. In 1969 Congress began adding to the costs of failure on risky new ventures, while reducing the rewards of success. With risk taxed at the same rate as corporate salaries, fewer people left comfortable employment to go off on their own with the ideas they couldn't sell to their employers. Those still willing could find few financial backers. In 1978 Congress restored incentives for assuming risk, and people began assuming risk once more.

There is evidence that lowering the capital gains tax rate had wider ripple effects. The Dow Jones Industrial average rose 130 points from March to August last year as it became evident that there were enough votes in Congress to cut the capital gains rate. The market has since lost some of that exuberance but still is well above March 1978 despite rampant inflation and a recession threat.

Equally impressive, in light of recession fears, is the fact that corporate expenditures for new plant and equipment and for research and development are once again showing signs of life after a long period of stagnation. Shareholders can once again look with favor on managers plowing back earnings rather than paying them out in dividends.

These signs that the economy would like to get back on it's growth track are encouraging challenges to the gloomy predictions that the growth era is over. They indicate that the economy responds to incentives, and is not in the clutches of some inexorable process of decline. More encouragement of its inclinations to grow would no doubt produce further benefits.

We have in mind cutting tax rates on personal income in order to lower the high marginal rates on real income that a decade of inflation has brought about, altering taxes on interest and dividend income in ways to lessen the tax bias against saving and passing something like the Jones-Conable Capital Cost Recovery Act so that businesses can recover their investment capital before inflation eats up their depreciation allowances. A little good tax law and the economy as a whole will snap back as rapidly as venture capital.

H.R. —

A bill to amend the Internal Revenue Code of 1954 to reduce the rate of tax on capital gains for individuals and corporations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short Title.

This Act may be cited as the "Capital Investment Tax Incentive Act of 1980".

SEC. 2. Reduction from 40 percent to 30 percent in amount of net capital gain included in income of individuals.

(a) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1954 (relating to deduction for capital gains) is amended by striking out "60 percent" and inserting in lieu thereof "70 percent".

(b) TECHNICAL AMENDMENT.—Subparagraph (B) of section 170(e)(1) of such Code (relating to charitable deduction for contributions of capital gain property) is amended by striking out "40 percent" and inserting in lieu thereof "30 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1979.

SEC. 3. Reduction of alternative capital gain tax rate for corporations from 28 percent to 21 percent.

(a) IN GENERAL.—Paragraph (2) of section 1201(a) of the Internal Revenue Code of 1954 (relating to alternative tax on corporations) is amended by striking out "28 percent" and inserting in lieu thereof "21 percent".

(b) TECHNICAL AMENDMENTS.—

(1) Subparagraph (B) of section 170(e)(1) of such Code (relating to charitable deduction for contributions of capital gain property) is amended by striking out "28/46" and inserting in lieu thereof "21/46".

(2) Clause (iv) of section 593(b)(2)(E) of such Code (relating to addition to reserves for bad debts) is amended by striking out "18/46" each place it appears and inserting in lieu thereof "25/46".

(3) Clause (iii) of section 852(b)(3)(D) of such Code (relating to treatment by shareholders of undistributed capital gain) is amended by striking out "72 percent" and insert in lieu thereof "79 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1979.●

CONGRESSIONAL BUILDING CONTRACT UNDERCUTS LABOR MOVEMENT

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. OBERSTAR. Mr. Speaker, I rise to offer a sad Labor Day speech. It is a report on the use of funds here at the Capitol in a manner detrimental to the collective bargaining process.

The right of American workers to bargain for a fair wage was hard won. It has meant the difference between exploitation and equality for millions of Americans.

Congress, as a purchaser of goods and services, should not interfere in the collective bargaining process as recognized by both Federal and State laws. Unfortunately, and inadvertently, a rather substantial amount of funds approved for the new Senate building is being used in such a way as to alter the balance between management and labor at Alpana Aluminum Products, Inc., in my home State of Minnesota.

Alpana is a subcontractor in two phases of construction of the new Hart Senate Office Building. It is supplying 561 window units in the construction of the superstructure under contract to Baltimore Contractors. The value of that subcontract is approximately $1.4 million. Delivery of window units has already begun.

Alpana has also been listed as a subcontractor on the recently awarded contract to Charles Tompkins. The value of that subcontract for interior window work is approximately $2.3 million.

Since November 1979, 32 Alpana workers have been on strike. Since that time, the company has been using nonunion labor on the contract for the Senate building.

Alpana workers voted in June 1978, to affiliate with the International Association of Machinists, long known as one of the most progressive labor organizations in the United States.

In November 1979, just prior to the expiration of a 1-year contract, the union offered a 10-day extension to facilitate continued, good faith negotiations. Management rejected that offer, and the strike was on.

Strikebreakers are now manufacturing windows to be used in the construction of the new Senate office building. It is an affront to the memory of the late Senator Hart, a strong advocate of labor rights throughout his public career.

With Labor Day coming up next Monday, I thought my colleagues would want to know of this development.●

SENATOR STEWART'S FRIENDS AT THE FEDERAL ELECTION COMMISSION

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DORNAN. Mr. Speaker, in the other discrepancies I have inserted into the CONGRESSIONAL RECORD, I have concentrated on the west coast aspect of the Peck/Peck/Dennis/Stewart/FEC scandal.

I now enclose for the benefit of citizens and colleagues in the State where Bear Bryant lives, Alabama—the southern connection of the FEC's efforts to "turn the other cheek" in an effort not to discover wrongdoing.

Of course, all of the questions which I asked of the west coast recipient of illegal laundered corporate money, also apply here.

Following is additional evidence on the FEC's noninvestigation:

DONALD STEWART CAMPAIGN CLEARED OF ANY WRONGDOING BY THE FEC WITHOUT EVEN A SUPERFICIAL INVESTIGATION

According to an October 8, 1979 Montgomery Advertiser editorial, DONALD STEWART was cleared by the FEC of any wrongdoing. Yet, FEC regulations require candidates to report the receipt of contributions which appear to be suspicious in nature—sections 11 CFR 103.3(b)(1); 11 CFR 103.3(b)(2). And yet, 10 of the 22 $1,000 contributions STEWART received from Dennis are listed as coming from the same address, "Drawer S, Sumiton"—a very small Alabama town.

Now, my colleagues, have any of you ever received 10 maximum donations of $1,000 cashiers checks from persons you never solicited—all listed at the same post office box from a tiny town? "Once upon a time there was this tooth fairy."

Plus the addresses and occupations of some of the contributors had been changed on two occasions on the FEC disclosure forms. In addition, the FEC had denied matching funds to Presidential candidate Lyndon LaRouche, for accepting a total of 8 cashiers checks in sequential runs of 2-4-2, and 12 money orders in runs of 3-3-2-4—all of these under $50. Where is the equity in the treatment of these two campaigns, especially when Senator STEWART admits to receiving at least 23 $1,000 cashier checks, sequentially numbered?

DENNIS MAY HAVE VIOLATED THE MAXIMUM LIMITATION ON TICKET PURCHASE DONATIONS AND SENATOR STEWART MAY HAVE VIOLATED THE FEC LAW BY RECEIVING MORE THAN $1,000 FROM AN INDIVIDUAL FOR A SINGLE ELECTION, BUT THE FEC NEVER BROUGHT THIS UP

According to an article which appeared in the Montgomery Advertiser, by Peggy Roberson on June 20, 1980, Dennis apparently bought six $500 a plate tickets to STEWART's fundraiser where he met Gregory Peck in October 1978. The FEC has never raised the issue of this possible violation of 11 CFR 110.1(a)(1) and 2 U.S.C. 441(a)(1)(A) which limits the amount an individual can spend on behalf of a candidate to $1,000 per election.

One of the six tickets was for bank manager, Wayne Moore, Dennis' father-in-law, who was already a maximum "phantom" donor to Senator STEWART and about to become, within days, a maximum "phantom" donor to Peck the younger.

DISCREPANCY: DONALD STEWART CLEARED WITHOUT INVESTIGATION; NO XEROX EVIDENCE IN MUR 970 OF ALLEGED CHECK USED TO RETURN ILLEGAL MONEY TO DENNIS; FEC DOES NOT INVESTIGATE POSSIBILITY STEWART KNOWINGLY ACCEPTED DONATIONS

The FEC's General Counsel's Report of 5-31-79 finds "reason to believe" that James Dennis violated 2 U.S.C. 441(f). This code section prohibits giving and knowingly accepting donations made in the names of another. The report does not mention that Friends of Donald Stewart may have violated this section. The FEC suspected Dennis of giving the funds, but did not investigate the logical possibility that the illegal donations were knowingly received. How can a regulatory agency be confronted with an obvious possible violation of law and assume innocence without evidence? This FEC omission is inconsistent with evidence forwarded to the Commission by the Federal District Attorney for the Northern District of Alabama on April 20, 1979, denied to Congressman DORNAN after an FOI request. Recall that Senator STEWART of Alabama has a great deal to say as to who will fill the role of Federal prosecutor.

The FEC's General Counsel's report of 8-9-79, stated the Commission finds James Dennis violated 2 U.S.C. 441(f) and 2 U.S.C. 441(b). Both code sections state it is illegal to give and knowingly receive donations prohibited by the sections: 441(f) concerns donations made in the name of another, and 441(b) deals with corporate contributions. The report concludes that Dennis gave the illegal donations to the campaigns of DONALD STEWART and Carey Peck. It makes no mention of whether the money was or was not knowingly received. Why did the Commission investigate the donor only, and not the donees?

The FEC's General Counsel's report of August 9, 1979 states, as if they had proof, that STEWART repaid the illegal donations to James Dennis on May 11, 1979. Same M.O. with young Peck. However, there is no copy of a check from STEWART to Dennis in the FEC files. Congressman DORNAN in a witnessed conversation, had FEC Commissioner Thomas Harris tell him that the normal procedure would be to have a copy of the check, that was used to return the money, in the file. There is no physical evidence in either STEWART's or Peck's files to confirm that they actually refunded the money. Where are the original cancelled checks from Peck and STEWART to Dennis? Where is the investigation? Has the FBI subpenaed these checks? A bank vice-president from First National Bank of Birmingham said all checks from his bank were subpenaed in mid-1979.

STEWART'S IN-HOUSE INVESTIGATION OF POSSIBLE DENNIS CONTRIBUTIONS HAS FLAWS: STEWART CLAIMS TO HAVE RETURNED $22,000 TO DENNIS AFTER HEARING FROM TWO PHANTOM CONTRIBUTORS

On April 12, 1979, Senator STEWART asked his brother, James Stewart, to send a registered letter to each person on his list of contributors who had been identified as possibly not "actually" having made a contribution—see Birmingham Post Herald, August 9, 1979.

At this point, how did STEWART know to whom he should send the letters? Did he send registered letters to all of his thousand dollar donors, over a hundred? Didn't STEWART know where to begin, that is because of the names on the cashiers checks or because of the names initially supplied by Dennis for STEWART's campaign in connection with the possible cash contributions? How many letters were sent out? Where were they sent? The article continues, "The registered letters, which included a copy of the canceled check or money order bearing the recipient's name, asked the recipient if he or she made the contribution. Both said they did not make the contributions. The Senator then asked his campaign committee to contact Dennis to confirm the list. STEWART said his campaign committee has now complied with all Federal election requirements and is preparing to return the money to Dennis." Why all the haste to return the money when only 2 of 22 contributors had informed him the money did not come from them? Why did not STEWART wait until he had received confirmation from more than 2 of the 22 before deciding to return the money? Could it be that the quick return was prompted by the newspaper exposure of money which the Stewart campaign knew or should have had reason to know was illegal because of the sequential nature of the cashiers' checks or because cash was possibly given, as reported to the FEC by Mr. Brooks, the U.S. attorney for the northern district of Alabama?

I repeat, on April 12, 1979, STEWART asked his brother to send registered letters to those suspected of not being real donors. Again, I ask, how did STEWART and his brother know which people to contact? If the donations were that easy to identify as being illegal in April/May of 1979, why were they not investigated by STEWART in 1978 when he first received the donations? Why were they not reported to the FEC prior to May 1979 as FEC law requires the reporting of suspicious donations within 10 days to the FEC—see ii CFR 103.3(b)(1); 11 CFR 103.3(b)(2).

On May 15, Friends of Donald Stewart sent a letter to the FEC stating that the STEWART campaign had returned the money to Dennis on May 11, 1980. Why should he give $22,000 a man—Dennis—when he had not received verification that those 20 other people had not really contributed? Certainly this is a different standard from that which he used in first accepting the money. Did he hear from the rest of the people on May 10? Not likely.

Dennis had wired the names of 22 "contributors" to the FEC on May 8, 1980.

On May 11, 1979, STEWART claimed that he took out a signature note loan from the First National Bank of Anniston—his home town bank—and "donated" the money to Friends of Donald Stewart to cover the alleged $22,000 return to James Dennis. Yet, I recall that STEWART's FEC file for that period—the same as Peck's by the way—did not list the bank as the source of the loan until an April 25, 1980 hand-delivered letter from Friends of Donald Stewart was given to Ms. Mary Jo Mesner of the Reports Analysis Division, FEC in Washington, D.C. Senator STEWART's lawyer friend, Jack Vardeman warned James Dennis on April 24 or 25 that Congressman DORNAN might be coming down to his prison to see him. "Don't talk to the Congressman," Vardeman warned, "he

has no power." Gregory Peck wrote to Dennis on April 24: "I hear Congressman DORNAN may be coming to see you." Congressman DORNAN saw Dennis April 30, 1980.●

HERMAN PHLEGER, LAWYER FOR THE UNITED STATES

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. McCLOSKEY. Mr. Speaker, on September 5, one of the Nation's most distinguished active lawyers will celebrate his 90th birthday. Herman Phleger's services to the Nation, as Legal Adviser to the State Department in the Eisenhower administration, are well known. His leadership of one of California's finest law firms, Brobeck, Phleger & Harrison, is also well known.

But Herman Phleger's lifetime has included a whole series of services to country, State, community, and family which places him in the very front rank of Californians, living and deceased.

So that the record of his lifetime be a part of our permanent recorded history, I insert in the RECORD today a brief summary prepared by his son, Atherton, a distinguished attorney in his own right.

HERMAN PHLEGER

Herman Phleger was born in Sacramento, California, on September 5, 1890, the son of Charles W. Phleger and Mary McCrory Phleger.

His father died when he was two years old, leaving his mother with four children to support, which she did by teaching in the Sacramento grammar schools. All four children graduated from the University of California at Berkeley.

Phleger graduated from the University of California in the class of 1912. At the University he was active in student affairs and played on the rugby team.

He entered Boalt Hall, the University of California Law School, when a senior and attended it for two years. At the end of the second year he transferred to Harvard Law School and completed his third year of law school in 1914. As Harvard did not grant law degrees to students who attended for only one year, he has never received a law degree.

He received an LL.D. from Mills College in 1938 and an LL.D. from the University of California in 1957. He was University of California Alumnus of the Year 1958, received the Boalt Hall Citation Award in 1964 and was a Regent Professor at Berkeley in 1970.

In 1914 he commenced the practice of law in San Francisco, joining the law firm of Morrison, Dunne and Brobeck.

In 1917 Phleger enlisted in the United States Navy, attended Officers Training School, graduating as an Ensign. He served on the destroyer BEALE, based at Queenstown, Ireland, escorting troop transports coming from America through the submarine zone to Europe.

At the end of the war he returned to San Francisco to practice law with Morrison, Dunne & Brobeck. In 1925, he formed with Maurice Harrison and William Brobeck the law firm of Brobeck, Phleger & Harrison. In 1927 Mr. Brobeck died.

Phleger's practice has included representation of shipping, agricultural, industrial, banks and oil companies. Brobeck, Phleger & Harrison now is composed of over 50 partners and over 90 associates, with offices in San Francisco, Los Angeles and Palo Alto.

Phleger served as a trustee of Mills College from 1927 until 1939. In 1939 he became a trustee of Stanford University, and continues to serve as a trustee emeritus. He is a former trustee of Children's Hospital, San Francisco, and is a trustee of the Wm. G. Irwin Charity Foundation.

In 1945 Phleger was appointed Associate Director of the Legal Division of the U.S. Military Government of Germany. He participated in the organization of the Military Government of Germany, including drafting of the new laws governing post-war Germany, and participation in the Frankfurt Conference and the Nurenberg Trials.

In 1953 Phleger was appointed by President Eisenhower as Legal Adviser to the United States Department of State, and served from 1953 until 1957 under John Foster Dulles as Secretary of State. He attended various international conferences as a member of the United States delegation, including the Tenth Inter-American Conference at Caracas, Venezuela, the Indochina Conference in 1954, the Manila Conference in 1954 (the creation of SEATO) and the Geneva Summit Conference in 1955.

In 1956 he participated actively in negotiations arising from the Suez Crisis.

In 1957 he participated in the Bermuda Conference.

During his term as Legal Adviser, one of the important matters that arose was the so-called Bricker Amendment. He actively participated on behalf of the State Department in urging its defeat. The Amendment would have restricted the treaty-making power of the President.

In 1957 Phleger resigned from the State Department and returned to active private practice with Brobeck, Phleger & Harrison. He became counsel to the firm in 1977.

In 1957 he was appointed as a representative of the United States to the permanent Court of Arbitration of the Hague Convention and served to 1975.

In 1958 he was appointed as a representative of the United States to the Thirteenth General Assembly of the United Nations.

In 1959 he was appointed as the United States representative to the Antarctica Conference, and was elected Chairman of the Conference with the rank of Ambassador. The treaty drafted by the Conference and accepted by the participating nations prohibits the use of the Antarctica for military purposes, bans atomic use, permits inspections and restricts territorial claims. The Treaty, of which he is most proud, has served as a model for subsequent agreements relating to outer space and the law of the sea and sea bed.

In 1962 he participated in the European-American Assembly on Outer Space held in Brighton, England.

In 1962 he was appointed by President John F. Kennedy as a member of the Clay Committee to Strengthen The Security of the Free World.

Also in 1962 he was appointed by President Kennedy a member of the Arms Control and Disarmament Advisory Committee, upon which he served until 1968. The Committee met at least once a month for two days in Washington during the entire period, and advised the President and the Secretary of State on Arms Control and Disarmament matters.

In 1966 he was appointed by the President of the American Bar Association to the Commission on Electoral College Reform.

Phleger lives in Woodside, California, with his wife, Mary Elena Phleger. Next year they will celebrate their 60th wedding anniversary. They have three children, thirteen grandchildren, and two great grandchildren. On September 5, 1980 he will celebrate his 90th birthday.

CURRICULUM VITAE, HERMAN PHLEGER

Born Sacremento, California, September 5, 1890.

University of California, Berkeley, B.S. 1912, LL.D. 1957

Mills College, LL.D. 1938

Alumnus of the Year, University of California, 1958

Regent Professor, University of California, Berkeley, 1965

Boalt Hall Alumni Association Annual Citation Award, 1964

The Berkeley Citation, University of California, 1970

Legal Education: University of California, Berkeley, and Harvard Law School.

Lieutenant (J.G.) U.S. Navy, 1917-1918.

Associate Director Legal Division, U.S. Military Government of Germany, 1945

President Pacific-Union Club, 1952-1953

The Legal Adviser, Department of State, 1953-1957

U.S. Member Permanent Court of Arbitration under the Hague Treaties, 1957-1963, 1969-1975

U.S. Representative, 13th General Assembly United Nations, 1958

Chairman of Antarctica Conference and U.S. Representative with Rank of Ambassador, 1959

Member U.S. Arms Control and Disarmament Advisory Committee, 1962-1970. Appointed by President Kennedy and Johnson.

Member U.S. Delegations:

Tenth Interamerican Conference, Caracas, 1954.

Indo-China and Korean Conferences, 1954

Seato Conference, Manila, 1954

Summit Conference and Foreign Ministers Conference, Geneva, 1955.

Suez Conferences, London, 1956

Bermuda Conference, 1957.

Trustee: Stanford University, 1945-1965, Emeritus 1965. Mills College, 1927-1939. Irwin Charity Foundation, San Francisco. Roth Charity Foundation, San Francisco. President, Board of Trustees, Children's Hospital San Francisco, 1930-1950.

Member: Council on Foreign Relations. Links Club (N.Y.). Metropolitan Club (Washington, D.C.). Pacific-Union Club (President 1953). Bohemian Club. Burlingame Country Club.

1963—Committee to Strengthen The Free World (Clay Committee). Appointed by President Kennedy to prepare 1963 Program for Foreign Aid.

1965—Regents Professor, University of California, Department of Political Science.

1966—Member American Bar Association Commission on Electoral College Reform.

Partner: Brobeck, Phleger & Harrison, San Francisco, 1926-1976; Counsel 1977.

Member American Bar Association (Fellow); American Society of International Law, International Law Association.

Office: One Market Plaza, Spear Street Tower, San Francisco, California 94105

Residence Mountain Meadow, Woodside, California

Sometime Corporate Directorships:

Wells Fargo Bank—Wells Fargo & Co. (American Trust Company).

Fibreboard Corporation (Pabco Products).

Union Oil Company of California.

United States Petroleum Company.

The California-Oregon Power Company.

Matson Navigation Company.

Oceanic Steamship Company.

Moore Dry Dock Company (Moore Shipbuilding Company).

Cypress Lawn Cemetery Association.

The Newhall Land and Farming Company.

White Investment Company.

Gladding, McBean & Company.

Las Posas Orchard Company.

Crocker Hotel Company.

Tillman & Bendel Inc.

Parkside Realty Company.

Dumbarton Bridge Company.

California-Arizona Bridge Company.

Italian Swiss Colony.

Holly Sugar Company.

Moore Investment Company.

Moore Securities Company.

Empire Company (Roy N. Bishop).

Green Investment Company (C. E. Green).●

DEPARTMENT OF DEFENSE AUTHORIZATION ACT FOR 1981

HON. THOMAS A. DASCHLE

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DASCHLE. Mr. Speaker, I was unable to be present for rollcall vote No. 489, the conference report on H.R. 6974, the Department of Defense Authorization Act for 1981. Had I been present I would have voted yes on this report.

I wholeheartedly endorse this report. World events in the past year have forced a reevaluation of our national security needs and capabilities. The Soviet Union has again shown its willingness to use military force in its premeditated and brutal invasion of Afghanistan. To this effect, the inherent militaristic and imperialistic nature of the Soviet Union must be recognized and responded to. I believe that the Congress has formulated in this legislation a substantive response by authorizing the largest real peacetime defense budget in recent years. This action will signal the Soviets that they will pay a price for their actions in Afghanistan and elsewhere.

I especially approve of this budget because it focuses on many of the less glamorous items that nonetheless could greatly hinder our ability to field a strong army. These items include such essentials as spare parts and modification funds to make existing weapons systems last longer. Furthermore, a most necessary 11.7-percent pay increase was approved as well as additional education benefits. Enlistment and reenlistment bonuses round out a series of benefits designed to retain those personnel already in service.

This legislation also looks to the future by including funds for the rapid deployment force, and money for the development of a new multirole manned bomber to replace the venerable B-52's which have served us so well. This is a most necessary provision as many of the B-52's now in service are older than the pilots who fly them.

Procurement costs in this legislation totaled $37.9 billion which includes $16.6 billion for aircraft and helicopters, $8.4 billion for warships, and $2.3 billion for tanks and other armored vehicles. Research and development funds total $16.9 billion.

Recently, President Carter ordered the Department of Defense to commence a study regarding the possibility of reducing the current Navy shipbuilding plan. I question the wisdom of even considering such a proposal when there is strong evidence for the need for additional warships to patrol the Indian Ocean and when there is a growing Soviet worldwide naval presence. In my opinion the conferees decision to add a nuclear submarine and two guided missile frigates over the administration's request was most justifiable and appropriate.

I was also pleased that the conference report chastised our NATO allies for not meeting the 3-percent annual increase in defense spending which was a goal established recently by all NATO countries. I feel that this is a minimum obligation to be expected from our allies in the defense of Western Europe.

A DOD ceiling of 986,000 civilian employees was also reached which should allow more money to go into procurement items instead of salaries.

One provision of this bill does concern me, however, and that is the authorization of $1.6 billion for the MX missile and multiple protective basing system. I am not at all convinced of the efficacy of building this massive complex in the deserts of Nevada and Utah. My own feeling is that further studies need to be made in the area of submarine launched missiles, such as the shallow underwater missile concept (SUM). The cost of this or a similar proposal would be far less and would be much less vulnerable to enemy attack. I plan to soon followup on this concept by introducing legislation to authorize further studies in this area.●

THE MAKING OF A SAINT

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DRINAN. Mr. Speaker, today marks the 70th birthday of Mother Teresa of Calcutta. This extraordinarily dedicated woman has spent over 30 years ministering to the need of the poor, sick, and dying of India.

The unending devotion displayed by Mother Teresa serves as an inspiration to all the world. Her efforts were recognized most recently when she was awarded the 1979 Nobel Peace Prize. Her accomplishments and those of the Order of the Missionaries of Charity, which she founded in 1950, are widespread and far reaching. The order has grown to include 1,800 nuns and 120,000 coworkers in over 158 branches throughout the world. The facilities include medical centers for the treatment of over 53,000 lepers in Asia and Africa, food distribution centers, and schools for destitute children as well as her famed homes for dying destitutes.

Mr. Speaker, on the occasion of the birthday of this remarkable woman, I commend to the attention of my colleagues the following article from the March 4, 1969, edition of Look magazine entitled "The Making of a Saint." Unfortunately, in the 11 years since the publication of this article, conditions have not changed substantially for the poor. Luckily, Mother Teresa has not changed either:

THE MAKING OF A SAINT—TERESA OF INDIA, A WHITE ANGEL IN A SARI, LIVES FOR THE UNWANTED POOR

(By Curtis Bill Pepper)

Pope Paul VI ended his 1964 visit to India by giving his car—a white Lincoln convertible with red seats—to a nun who normally wears a 50-cent sari and sandals. He did it while speaking to a vast crowd at the Bombay airport.

"Before we leave dear India," he said "we wish to give our white car to Mother Teresa, Superior General of the Missionaries of Charity, to assist her in her universal mission of love."

Mother Teresa was not on hand to pick up her $5,500 gift. She was, instead, on the outskirts of town, bent over a dying man—an act older than Christianity and a demonstration of why Paul had given her his car, rather than leave it with the Cardinal Archbishop of Bombay, who owns a bathtub once used by the Maharajah of Kashmir.

The dying man was old, with arms like broken sticks and a face that was a dark pool, motionless except for the eyes that every so often opened, as if to ask how much time was left. He came from the north, and the nun spoke to him in Bangali, soft words of comfort and love, calling him by his name, which was Onil. He had been found in a roadside ditch. No hospital would take him. No one in the city of four million, with 3,000 officially designated slum areas, had the time to hold his hand while he died. There were too many.

So Mother Teresa had brought the old man to her home for dying destitutes. At that moment, after 14 years, she and her company of sisters had picked up over 21,000 dying from the streets and trash dumps of India.

Such a giant labor had left its mark on the woman holding the old man. The lifting of untold tons of human beings had bent her body beyond its 54 years. She had cheated against nature, too, denying herself rest, sleeping in the baggage racks of third-class trains as she shuttled about India establishing homes to help the sick and the poor. The pain of thousands had cut into her gaunt face, white as the mountain stones in Yugoslavia where she had once played as a girl.

"How do you feel now, Onil?" she asked.

It was not good. Sometimes, they got

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them in time. Half of those they brought in were returned to whatever life awaited them. But starvation had pushed this old man beyond the point of return. No food or medicine could save him. Clinically, he was almost dead, though he managed to speak:

"I lived like an animal and . . . now I'm dying like a human being . . . . why?"

It was to widen such an embrace that Paul left behind his car. And then, a year ago, he asked the embrace to be extended to include his diocese. In a private note, he invited Mother Teresa to open one of her homes in Rome to minister to the poor; shanty dwellers ringing the city, families huddled under arches of Roman aqueducts, prostitutes walking the streets. To help out, he sent along a check for $10,000. No one could recall a modern Pope taking such action. Rome was packed with 22,000 nuns from 1,200 orders—many of them dedicated to helping the poor. Quite clearly, Paul felt the woman in India had something special.

At least one million people agreed with the Pope. In India, Mother Teresa already was a white angel in a sari who worked miracles. The drama was endless. To her Calcutta *Narmal Hriday*, the home for dying destitutes, they brought a man with half his body consumed by cancer—one more hospital reject in what the late Prime Minister Jawaharlal Nehru had called "the nightmare city," where two million Pakistani refugees had moved in on top of four million Indians, and 20,000 sacred cows wandered the streets.

The stench of the cancer was so strong that other patients protested. A male attendant, cleaning worms from the untended flesh, was seized with a fit of retching. The sisters were thus forced to move the dying man into another room. Mother Teresa undertook to clean him herself and at first met curses and taunts.

"How can you stand my stench?" he asked.

"It's nothing compared to the pain you must feel," she replied.

After a bit, the man said: "You are not people here. People do not behave like you."

Later, dying, he said: "Glory be to you."

"No," said Teresa. "Glory be to you who are suffering with Christ."

This was the key to her life, the link that ran from man to God. Teresa explained it recently in Calcutta: "We see Christ under two forms. We see Him on the altar, as bread, and we see Him in the slums, as the broken bodies of forgotten people. A body comes in, eaten by worms. I know when I touch it that I am touching the body of Christ. Otherwise, nothing could make me do it."

Teresa said she also served those she could not save: "What makes death terrible is that we are made to face a future alone. Worse than leprosy or cancer, there is another, even more awful disease of our time—being unwanted."

She recalled a phone call in New Delhi, saying there was a woman in a trash bin.

"When we arrived, we could hear her crying beneath the rubbish. She was covered with sores, her hair matted with filth. She continued to cry. She cried all the way to the home—even after we had washed her and put her to bed. Finally she said, 'I'm not crying because I am dying. It's something else. It's because my son did it.' "

Standing inside the Calcutta refuge for the dying, Mother Teresa spoke of God as though He were somebody you met on the street. Above all, He could be relied on to come through in a pinch. Once, in 1962, a sister had phoned from the center at Agra, saying she urgently needed 50,000 rupees for a children's home.

"Sorry, sister, but we can't do it," Teresa had answered. "We don't have the money."

After that, the phone had rung again. This time, it was a newspaper office. Mother Teresa had been given the Magsaysay Award by the Philippine Government. It included money.

How much? "About 50,000 rupees, Mother."

"I guess God wants a children's home in Agra," Teresa had muttered before hanging up.

Teresa has been listening to what God wanted since she was Agnes Gonxha Bojaxhiu, born August 27, 1910, daughter of an Albanian grocer living in Skopije, Yugoslavia. "When I was 12," she says, "I got a call. It is a private matter. It was not a vision. I've never had a vision."

Two years later, some Jesuits, returning from India, described the work of the Loretto nuns in Calcutta. This gave Agnes a concrete goal, and, at 17, she reached India as Postulant Sister Teresa. Her novitiate began May 24, 1928. Nine years later, she took final vows and began to teach at the Loretto Convent High School in Calcutta. Soon, she found herself peering out beyond the red-brick walls of her cloistered world, toward the city's slums. "I knew where I belonged," she remembers, "but I didn't know how to get there."

Her instructions came in a second call, on the train to the Loretto retreat house at Darjeeling. "The message was quite clear: I was to leave the convent and help the poor, while living among them. It was an order."

That night, September 10, 1946—now celebrated within the order as the Day of Inspiration—Teresa hardly slept. Upon returning to Calcutta, she hurried to ask support from her archbishop—and was rebuffed. Undaunted, she waited patiently for over a year and then wrote to the head of her order, Mother Gertrude, in Rathfarnham, Ireland.

"She told me I could go. They would miss me, but if I was called by God in this way, I should go. I wept, for she understood."

Gertrude's letter, with one from Teresa, was sent to Rome. It produced quick results. Pius XII gave Teresa the right to go into the world—yet remain with vows as a nun under obedience to Calcutta's archbishop. The order, dated April 12, 1948, reached her August 7. She exchanged her Loretto habit for a white sari with a blue border and a small cross at the shoulder.

To learn medicine, she took three months' training at Patna with the Medical Missionary Sisters. By Christmas, she was back in Calcutta, exploring the slums of Tiljala and Motijhil. Three days later, with permission to open her first slum school, she found 23 children waiting for her in an open field. The next day, she found 41.

"We used the ground as a blackboard," she recalls, "but before anything else, I gave a few of them lessons in personal hygiene—with a good dunk in a tank!"

Michael Gomes, a government employee, gave Teresa a room on the top floor of his family home. Here, she wrote the rules for her future company—to be called Missionaries of Charity. The first candidate to climb the stairs of the Gomes home was a pretty, dark-skinned Bengali girl in a bright sari. She was Shubashini Das, 19, a former student of Teresa's. Teresa explained that anyone joining her would need four qualities: health of body and mind, ability to learn, abundant common sense and, most essential, a cheerful disposition. She told the girl to think it over.

Shubashini returned on St. Joseph's Day, discarding her bright sari for a simple white one like Teresa's and taking Teresa's Christian name, Agnes. Others quickly followed.

Since then, the order has grown to 350 sisters with 59 centers in Calcutta, plus 70 more in 20 other cities of India. Abroad, there are homes in Ceylon, Tanzania, Venezuela and Rome. Aided by lay co-workers, the sisters teach 5,400 children in 44 schools, treat 404,000 patients in 134 dispensaries, medicate 21,900 leprosy cases in 51 mobile clinics, and comfort over 2,000 in 12 homes for dying destitutes. This immense network is supported by donors in India and Mother Teresa committees in the U.S. and Europe. Schoolchildren in England send bread; those in Denmark, milk; and in West Germany, vitamins.

The nuns led a hard life. Up at 4:30, they go all day, with only 30 minutes' rest, until 9:00 at night. Thursday is devoted mainly to reading. Except on rare occasions, there is no radio, cinema or television. The food is basic, eaten from a single enamel plate owned by each sister, without soft drinks or alcohol. Treats are handled as something precious. The Venezuelan house, for example, sent *one pack* of orange Life Savers for each of the 20 communities in India, which Teresa herself dutifully delivered during a recent tour.

It is not easy to join: Five years and nine months of school and hard work precede final vows. There have been few dropouts. Recruits have come mostly from India, with some 30 from Europe. Two from the U.S. returned—one because of illness, the other for personal reasons.

"Other companies," says Teresa, "have begun by helping the poor. Then, gradually, they service the rich-poor, and finally, the rich. For that reason, we accept no gifts, not even refreshments from those we visit. If we had electric fans, we'd soon find it hard to work without them. Our life of poverty is as necessary as the work itself."

This does not mean that poverty is the desired condition of man, and Teresa believes, with the Vatican Council, in spacing births to fit the pocketbook. But birth control is not the whole answer—not even in India, where 55,000 babies are born each day, adding 13 million every year to the nation's river of sorrow. Teresa does not approve, for example, of the government's sterilization program—even of leprosy patients, though they generally infect their children.

"If you take children away from them, what do they have? Who is going to smile at them, and help them get better by little bits?

"Those we find in the street are Christ in a distressing disguise. Our mission is to help Christ—not destroy the multiplicity of his presence."

So believes, and lives, Mother Teresa. Many ask if she is indeed a saint. Thousands say yes. Church authorities, traditionally cautious in discussing possible saints—living or dead—have been silent. Yet even in the Church, those who have known Teresa quickly admit to her uniqueness.

Pope Paul's tribute was to call her to Rome. Last August, Teresa visited the slum area called Borgata Latina, beyond the Porta S. Giovanni, where over 3,000 people live in shacks beneath the ruins of old Roman aqueducts. She left behind five sisters to begin work.

Saint now or saint-to-be, Mother Teresa is a woman with that kind of total faith that has given others like her the strength to raise armies, to humble kings—and to generate in people a wonder and warmth many believe to be a love for God.●

MORE ON THE FEDERAL ELECTION COMMISSION'S NONINVESTIGATION

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 27, 1980

● Mr. DORNAN. Mr. Speaker, this Congress is appropriating over $9 million to pay for the operation of the Federal Election Commission. For this sum, one would expect that the FEC would be willing to ask tough questions and use their subpena power, especially to resolve this Peck/Peck/Dennis/Stewart scandal.

Please read for yourself the additional discrepancies which follow. I will ask my colleagues to join with me when I offer a number of amendments next year to attempt to resolve inequities such as these which linger without correction by the FEC. We need a stronger not a weaker FEC. We need even broader disclosure requirements. Less limitation on supporters, more disclosure, and more enforcement to stop the scofflaws.

PECK CLAIMS TO RETURN MONEY THROUGH DENNIS' ATTORNEY: ATTORNEY SALTER VEHEMENTLY DENIES EVER CAME TO LOS ANGELES

According to a January 10, 1980, Evening Outlook article by Will Thorne, the funds—Dennis' illegal contributions to young Peck—were returned through his own attorney—Radcliffe—to Dennis' attorney after the two lawyers worked out a formula under which the $13,000 would be reapportioned among the original donors. Peck already knew the money was dirty. Peck said there had been no attempt at that time to ascertain from Dennis whether the money was illegal. Dennis laughed at this assertion in front of FBI witness.

However, Salter—Dennis' attorney—in a witnessed phone conversation with Congresman DORNAN emphatically denied having anything to do with return of the money. "No, I had nothing to do with it". This was also confirmed by James Dennis to a Dornan aide on July 17, 1980 by telephone. Terry Pullen, Peck's campaign manager, disputes this by stating that Salter flew to California in order to get the $13,000. This statement was made to Dornan campaign manager Arnold Steinberg in person in June of 1980 and confirmed by phone a few days later.

ALTHOUGH MONEY WAS GIVEN TO PECK BY DENNIS IN THE NAMES OF OTHERS, PECK WORKED OUT A FORMULA FOR APPORTIONING REFUND AMONG THE PHANTOM DONORS

Why would Peck and his attorney, if they suspected the money had all originally come from Dennis—which is why it was illegal in the first place—ask that the $13,000 be apportioned out among the 13 phantom donors? If they felt there were 13 true donors, then there would be no reason to return the money. Or, did they know or suspect from the beginning that Dennis had given the $13,000? For example, did the "Peck insiders" speak by phone with Dennis, as he claims, immediately after the coast-to-coast TV broadcast of Dennis the "bagman" on ABC's "20-20" television program?

PECK CLAIMS HE FIRST BECAME SUSPICIOUS ABOUT THE MONEY THROUGH A NEWS CLIPPINGS SERVICE HIS FATHER MAINTAINS

The Pecks first discovered the accusations against Dennis in both the fraud case and the charge of illegal contributions through a clipping service the elder Peck maintains. We ask:

What is the name of the clipping service?

How long after an article appears does the service refer it to Peck?

Carey Peck claims that the money had been returned after he and his father discovered Dennis had been indicted—Santa Monica Evening Outlook, January 10, 1980. Yet, according to the Peck's FEC forms for the period April 1, 1979 through June 30, 1979 signed by treasurer Mike Gordon—Stanley Caiden had left unhappy in November—on June 6, 1979, it is claimed that $13,000 was returned to James Dennis on June 13, 1979.

However, the first public mention of James Dennis' indictment outside of a courtroom came in the Birmingham papers on July 7, 1979. The indictments came down on July 6, 1979. Even as of this month, August 1980, the Peck people do not have their stories straight.

There was no mention of Carey Peck or Gregory Peck in the articles until late May. Presumably, Gregory Peck's clipping service only concerns itself with the name Peck. How would the articles regarding Dennis' indictment or information pertaining to it come to Carey Peck's attention? That is, would the clipping service be sending anything to do with the Dennis matter? No, obviously. Not until now perhaps.

In any case, there is an obvious discrepancy in the two dates Carey Peck selects for the date on which he claims to have returned the money.

Dennis still insists to this day that he spoke with the Peck people about this in March 1979. In front of FBI and Justice people, Dennis told Congressman DORNAN that: "I told them I would not involve Carey or his father. I said I would be a good soldier."

WHILE SENATOR STEWART CLAIMS TO HAVE CONDUCTED AN IN-HOUSE INVESTIGATION BEFORE RETURNING THE ILLEGAL MONEY, NO SUCH INVESTIGATION WAS EVER MADE BY PECK

Unlike the Stewart campaign which claimed to have sent registered letters with copies of the cashiers checks to certain suspect individuals, we simply find that Carey Peck, in his own words, said he had immediately obtained a personal bank loan of $9,000—a $13,000 loan as reported in Jack Anderson's column—in order to pay back the funds—see January 10 Evening Outlook article by Will Thorne. If Peck did not suspect or know the money was illegal, why all the haste to return it?

In any case, on Mr. Peck's FEC form for the period April 1, 1979 to June 30, 1979, we find that Mr. Peck listed himself as the source of the loan money—not a bank. In the space on the FEC form where it states, "nature of obligation—detail of debt" all that anyone will find on Mr. Peck's form is "advance from campaign expenditure—from personal funds." So either Mr. Peck was lying to the above newspaper reporters or he was and still is lying to the FEC. All House Members I know would report a bank loan on their FEC forms. Why does the FEC let Mr. Peck, Jr., off the hook in this matter? I am told that the Jack Anderson columns were included in the FEC press clips and were passed around the FEC building. Certainly someone at the FEC saw the Anderson column citing the Peck loan. And certainly that same someone knows that Mr. Peck has never reported this loan as required by FEC regulations. Perhaps the FEC Democratic partisans do not want to lose the fundraising service of Gregory Peck.

I urge my colleagues, members of the press, or any interested citizen to walk over to room 1036 of the Longworth Building, or to the FEC building and look up Mr. Peck's forms and FEC file MUR-970, to investigate this aspect as I have done.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of

an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, August 28, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 3

10:00 a.m.
Energy and Natural Resources
Parks, Recreation, and Renewable Resources Subcommittee
To hold hearings on S. 1857 and H.R. 5048, bills designating certain areas for addition to the Manassas National Battlefield Park in Virginia; and H.R. 7217, to provide for certain provisions relative to units of the national park system in Hawaii.
3110 Dirksen Building

2:00 p.m.
Judiciary
Subcommittee, closed business meeting, to discuss matters relating to its investigation of individuals representing the interests of foreign governments.
457 Russell Building

4:00 p.m.
Rules and Administration
Business meeting, to resume consideration of S. 2, providing for a review of Government programs every 10 years.
301 Russell Building

SEPTEMBER 4

9:30 a.m.
Commerce, Science, and Transportation
Consumer Subcommittee
To hold hearings on the Federal regulatory reform policy of the Administrative Law Judge system, focusing on its operation within the agencies and departments under the Committee's jurisdiction.
235 Russell Building

Governmental Affairs
Intergovernmental Relations Subcommittee
To hold hearings on S. 2691, proposed State and Local Government Cost Estimate Act.
3302 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Energy Resources and Materials Production Subcommittee
To hold hearings on S. 2717, to facilitate and encourage the production of oil from tarsand and other hydrocarbon deposits.
3110 Dirksen Building

Judiciary
Subcommittee, to resume hearings on matters relating to its investigation of individuals representing the interests of foreign governments.
318 Russell Building

SEPTEMBER 5

8:00 a.m.
Labor and Human Resources
To resume hearings on the nomination of John C. Truesdale, of Maryland, to be a member of the National Labor Relations Board.
4232 Dirksen Building

9:00 a.m.
Judiciary
To hold hearings on S. 2216, improving the intelligence system of the United States and providing protection of certain national security information.
2228 Dirksen Building

9:30 a.m.
Commerce, Science, and Transportation
Consumer Subcommittee
To continue hearings on the Federal regulatory reform policy of the Administrative Law Judge system, focusing on its operation within the agencies and departments under the Committee's jurisdiction.
235 Russell Building

10:00 a.m.
Judiciary
Subcommittee, to continue hearings on matters relating to its investigation of individuals representing the interests of foreign governments.
318 Russell Building

SEPTEMBER 8

10:00 a.m.
Energy and Natural Resources
Parks, Recreation, and Renewable Resources Subcommittee
To hold hearings on H.R. 7105, to establish a national hostel system to encourage the development of hostels by State and local government agencies, and private, nonprofit groups; and S. 2263, to provide for the establishment of the Women's Rights National Historic Park in New York.
3110 Dirksen Building

SEPTEMBER 9

9:00 a.m.
Finance
International Trade Subcommittee
To hold hearings on S. 2721, to permit the granting of most-favored-nation treatment to products of a country which have not expropriated U.S. citizens' property without compensation therefor; on a proposed amendment, to provide for action regarding claims of U.S. citizens against the Government of Czechoslovakia, thereto, and on miscellaneous tariff bills.
2221 Dirksen Building

9:30 a.m.
Environmental and Public Works
Transportation Subcommittee
To resume hearings on S. 2913, authorizing funds through fiscal year 1983 for the Federal Aid Highway Program.
4200 Dirksen Building

Judiciary
Business meeting, to consider pending legislation and nominations.
2228 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Energy Resources and Materials Production Subcommittee
To hold hearings on S. 2858, to allow the Department of the Interior to lease additional lands for the purpose of oil shale mining.
3110 Dirksen Building

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
Business meeting, to mark up title II, providing financial assistance to meet basic and employment skills needs of secondary school youth of S. 2385, proposed Youth Act.
4232 Dirksen Building

SEPTEMBER 10

9:00 a.m.
Finance
Taxation and Debt Management Generally Subcommittee
To hold hearings on H.R. 6883, to revise certain provisions relating to the tax treatment of installment sales of realty and incidental sales of personal property.
2221 Dirksen Building

9:30 a.m.
Labor and Human Resources
Handicapped Subcommittee
To resume oversight hearings on the implementation of Education For All Handicapped Children Act (Public Law 94-142).
4232 Dirksen Building

10:00 a.m.
Rules and Administration
To hold hearings on S. 16 and 964, providing for changes in the Presidential primary system, and S. J. Res. 189, establishing a Commission on Presidential Nominations.
301 Russell Building.

SEPTEMBER 11

10:00 a.m.
Finance
To hold hearings on provisions of sec. 5, to establish in the Treasury of the United States a Hazardous Substance Response Fund, of S. 1480, proposed Environmental Emergency Response Act.
2221 Dirksen Building

SEPTEMBER 12

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
Business meeting, to resume markup of title II, providing financial assistance to meet basic and employment skills needs of secondary school youth of S. 2385, proposed Youth Act.
4232 Dirksen Building

SEPTEMBER 16

10:00 a.m.
Labor and Human Resources
To hold oversight hearings on the implementation of certain compensation programs for longshoremen.
4232 Dirksen Building

SEPTEMBER 23

10:00 a.m.
Labor and Human Resources
To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.
4232 Dirksen Building

SEPTEMBER 24

10:00 a.m.
*Labor and Human Resources
To hold oversight hearings on the implementation of the home energy assistance program.
4232 Dirksen Building

CANCELLATIONS

SEPTEMBER 11

9:00 a.m.
Special on Aging
To hold hearing to examine proposals for possible changes to the social security system.
5110 Dirksen Building

SEPTEMBER 17

10:00 a.m.
Labor and Human Resources
To hold hearings on S. 1608, 1609, and 2400, bills providing certain assistance to employees who suffer employment loss due to closings and relocations of business concerns.
4232 Dirksen Building

SEPTEMBER 18

10:00 a.m.
Labor and Human Resources
To continue hearings on S. 1608, 1609, and 2400, bills providing certain assistance to employees who suffer employment loss due to closings and relocations of business concerns.
4232 Dirksen Building

HOUSE OF REPRESENTATIVES—*Thursday, August 28, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We praise You, O God, for the ways You have shown Your love to humankind. From generation to generation Your word has been a light and a beacon to guide people in the way of faith and truth and life. Help us to remember Your mighty acts done for our deliverance and redemption and may we eagerly look to You as the Lord and giver of life. Bless our Nation with Your providence, and minister to the people with Your forgiveness. Grant to those who are burdened by any problem or concern the healing balm of Your presence. Be with us and remain with us always, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills and a concurrent resolution of the House of the following titles:

H.R. 1781. An act to amend title 5, United States Code, to provide that civilian air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes;

H.R. 7072. An act to amend sections 5702 and 5704 of title 5, United States Code, to increase the maximum rates for per diem and actual subsistence expenses and mileage allowances of Government employees on official travel, and for other purposes; and

H. Con. Res. 410. Concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of S. 2680.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate to a bill of the House of the following title:

H.R. 1967. An act to modify the boundary of the White River National Forest in the State of Colorado.

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5410. An act to amend title 5, United States Code, to require any Federal employee who elects at the time of retirement not to provide survivorship benefits for the employee's spouse to notify (or take all reasonable steps to notify) the spouse of that election.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1391. An act to amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981, 1982, and 1983;

S. 1953. An act to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Louis L'Amour;

S. 2483. An act to amend title 28 of the United States Code to request the Chief Justice of the United States to give an annual address to the Congress on the state of the judiciary; and

S. 2566. An act to authorize the Administrator of General Services to donate to State and local governments certain Federal personal property loaned to them for civil defense use, and for other purposes.

SOCIAL SECURITY: THE REAL OPTIONS

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, during this past week, I have described in a series of 1-minute speeches the dimensions and nature of our social security problems. These problems are real and serious, but we need not feel helpless if we are willing to look sensibly at the long-term options for stabilizing the system. Without getting into the details, these solutions fall into three main categories. They all involve some biting of the bullet. None are as painful in the long run, or as damaging to Government, as doing nothing. Some combination of these options should be considered, sooner rather than later.

First, we can suppress the growth of those benefits which are not strictly retirement related and thus are better financed from the General Treasury than by a payroll tax. Government cannot be all things to all people, and neither can an important part of the Government like the Social Security Administration. We all know there are welfare-related items currently included in social security benefits;

Second, a related option would adjust the payroll tax, giving a larger portion of it to social security and assigning such nonactuarial programs as medicare to the General Treasury. While this is no substitute for disciplining the future growth of benefits, it would take pressure off the most burdensome tax on labor we have and greatly improve the social security revenue balance; and

Third, we could give additional incentives for working beyond age 65, rather than forcing people to retire then by the economic penalties implicit in our present system. There are lots of ways of doing this other than raising the retirement age, and these incentives need not put additional demands on the system. They carry a big actuarial wallop, and seem appropriate to increasing longevity and a declining work force.

Mr. Speaker, we had better get at this important work. Old people and young people alike are losing confidence in this central element in our personal retirement plans, inflation is aggravating matters, and our responsibility as patternsetters is clear.

LAMEDUCK CYNICISM

(Mr. SHUSTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHUSTER. Mr. Speaker, yesterday you banned poor little Donald Democrat, our symbolic rubber lame duck from the floor because you said he cast ridicule on this body. Mr. Speaker, I would respectfully suggest that a rubber lame duck, symbolizing Democrat plans for a lameduck session can neither add nor detract from the ridicule that the majority party heaps upon this House when it refuses to deal with the important issues facing America before the election because they care more about getting reelected than about doing the job for which they were elected. The law requires that the Nation's budget be completed "not later than September 15 of each year" and by ignoring the law of the land, the majority party is giving the back of its hand to the American people. So if there is ridicule of this body, it is caused by the cynical, politics as usual, approach of the majority party. The majority leader paid a great compliment to the minority yesterday when he said that the minority was somehow responsible for the need for a lameduck session. If we have that kind of power with just one-third of the membership just think how effective we could be if we were the majority. If the majority cannot govern with a two-thirds majority it is time for a change.

MORE PROMISES FROM THE PRESIDENT

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, as I understand it, the President is going to announce, for the third or fourth time, today, his master plan for the economic salvation of the country.

I cannot wait to see it.

The press has informed us that while the public is being left with the impression our economic woes are over, the Congress, which must enact the program, will not see it until after the elections.

This has been the hallmark of the Carter administration. Some politicians make promises and then do something else. President Carter makes promises and does nothing. Those words he spoke to the Urban League are still ringing in my ears. He promised, and I quote, "millions and millions and millions of people back to work in new * * * exciting * * * and stimulating jobs," which will "restore growth, reduce unemployment without re-igniting the fires of inflation." His words. Incredible words are deceitful words.

President Carter will reap a bountiful political harvest from this 3-week long media binge which started with the Urban League. He knows how to make promises. We do not yet know, however, if he knows how to keep them. He has never tried.

RESOLUTION OF INQUIRY CONCERNING PENTAGON LEAKS

(Mr. COURTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COURTER. Mr. Speaker, today I will introduce a resolution of inquiry directing President Carter to provide the Congress with all pertinent information concerning the Pentagon leaks on the so-called stealth aircraft. Secretary of Defense Harold Brown claimed on August 22 in a news conference, at which he confirmed the existence of this new technology, that the press conference was necessary because of the leaks.

Yesterday in testimony before the House Armed Services Subcommittee on Investigations it became apparent that the administration may have orchestrated the leaks they are now using to justify the further dissemination of this information.

If these allegations are true and the Secretary of Defense and other high-ranking Pentagon officials are purposely releasing this information, it is a total outrage. I hope the resolution of inquiry will get to the bottom of this.

PENTAGON LEAKS OF INVISIBLE BOMBERS

(Mr. BEARD of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEARD of Tennessee. Mr. Speaker, for those of my colleagues who may not already be aware, the Investigations Subcommittee of the Armed Services Committee has begun its examination of what I think could prove to be a major political scandal.

You all know by now about those so-called invisible bombers that the Department of Defense says they were forced to disclose because of some "unfortunate" leaks.

You also know that those leaks could not have come at a more opportune time for a President in the heat of a campaign who has treated our national defense as though it were a stepchild.

You should also know that yesterday's testimony given to a committee by Ben Schemmer indicates what I suspected all along. There is a definite possibility that the administration leaked the story and then called its own press conference to confirm the leaks.

I have asked that Secretary of Defense Harold Brown and several of his top aides be called to testify under oath next week to deny—if they can—their part in all of this—an irresponsible compromise of one of our most sensitive national defense secrets.

To play such a heavyhanded political game with this Nation's premier defense secrets is unthinkable. If this investigation leads to positive identification of the parties responsible for these leaks, I will demand criminal prosecution.

□ 1010

CONSIDERATION OF BUDGET

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, yesterday, the House was in session 10¾ hours, and once again we failed to take up the budget. I would remind the leadership that it has now been 28 days since it indicated a lameduck session would be necessary this year. It is hard to imagine what legislation is so pressing as to delay consideration of the second budget resolution. Yet, we have seen no apparent attempt to rearrange the schedule to permit a vote on the budget prior to the election. Mr. Speaker, some of us have offered to work past the October 4 adjournment date, and right up to the election, if that is what it takes. The American people are paying us more than $60,000 a year to make the tough decisions that are needed to get this country back on the right track. The 1981 budget represents the blueprint of what we intend to do about inflation, taxes, defense spending, and unemployment. Surely, the public has a right to know how we vote on the budget before, not after, election day. When we get back from the Labor Day recess, let us not waste any more time; let us get going on next year's budget.

AMERICAN FOREIGN POLICY ON SUMMER VACATION

(Mr. SCHULZE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHULZE. Mr. Speaker, tomorrow will be the 300th day of captivity for 52 Americans in Tehran. Primary season is over, and with it have gone the prayerful litanies and strategically timed announcements of what used to be called "the hostage crisis." Are we to believe that the Carter administration thinks that this disgrace becomes less critical the longer it drags on?

Half the world depends on the strength of this Nation for its security. What are our allies to think as they watch us playing dead on Iran? Is American foreign policy on summer vacation?

Mr. Speaker, it only takes 295 days after the moment of conception for a child to be born. That is a miracle. I wonder how it can be that it takes more time for the United States of America to secure the release of 52 of its citizens from a small country in the midst of near civil war, and bring them back home where they belong.

NO NEED FOR A LAMEDUCK SESSION

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, I think that the debate over whether or not we will submit to a lameduck session this November demands something more than a consideration of whether or not it would be politically expedient. Let us consider whether or not it would be truly in keeping with the precepts of representative government.

When the issue was debated at length in 1932, in the context of the adoption of the 20th amendment to the Constitution, Representative Gifford of Massachusetts concluded, in pointed and very thoughtful terms, that such a lameduck session is patently undemocratic.

Almost a half century ago on this very floor, that man reasoned:

> Looking into the matter from my own standpoint, I would prefer not to come back here and legislate after having been defeated, because I suppose that I would have to continue my former frame of mind and sometimes vote directly against the exact wishes of my constituents as expressed in the election of my opponent.

If the same dose of intellectual honesty were applied here as it was in 1932, there would be no question that for the sake of representative government we must disallow the prospect of a lameduck session.

VETO OVERRIDE SETS NEW RECORD

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO Mr. Speaker, it is my distinct privilege to announce that the House set a new record earlier this week, in conjunction with the President.

By voting 401 to 5 to override the President's veto of the VA Health Care Amendments of 1980, the House smashed a 72-year record for the least number of votes in support of a Presidential veto of a public bill. It was in 1908, according to the Library of Congress, that the House voted 204 to 5 to override President Teddy Roosevelt's veto of the Raney River Dam bill. Then as now, the

override came at the hands of a House in the control of the President's own party. Maybe that is why he later quit the party.

This is a record that has stood for some 2,000-odd vetoes. Congratulations, Mr. President.

LET US START WORK ON THE BUDGET NOW

(Mr. ROYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROYER. Mr. Speaker, the session is drawing rapidly to a close and this Congress has yet to begin work on a second concurrent budget resolution which, according to the Budget Act, is to be completed by September 15. I am appalled by our obvious delay. Our country is economically floundering but no policy exists which deals with our current problems. We need to debate fiscal and budget policies if we are ever going to make the long-term structural changes that need to be made. By putting off the budget debate we put off making the spending and tax decisions that have to be made to make the American economy healthy again. I am also appalled because it seems to me that this delay is occurring in order to avoid admitting that the fiscal year 1980 budget is now $60 billion in deficit and the budget that we allegedly balanced for fiscal year 1981 is actually $30 billion out of balance. We do not need a lameduck session—we need to begin work on the budget now. Let us take up the budget, make the hard budgetary choices and play it straight with the American people.

THE PRESIDENT'S UNUSUAL PROGRAM

(Mr. FRENZEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, today at 2 p.m. the President will announce his new economic package. He seems to make one several times a year.

Part of that message is said to include a large tax cut for 1981. If this is true, it appears that President Carter, having surrendered to Senator KENNEDY on big spending in the Democratic platform, is now surrendering to Governor Reagan on the subject of tax cuts.

We all well recall the President said Senator KENNEDY was very dangerous, and that the tax cut suggested by Governor Reagan was inflationary—maybe it is immoral and fattening, too. Somehow, Senator KENNEDY's spending programs became less dangerous and Governor Reagan's tax cut became less inflationary.

That is a very unusual kind of program, even in a very unusual election year.

Mr. RITTER. Mr. Speaker, I am pleased that a majority of the Members of this body has been sufficiently impressed by the events taking place in Poland that they have become cosponsors to my resolution calling for a peaceful conclusion to the conflict between the Polish workers and their Government, without external intervention.

I am also pleased to note there have been some compromises made by the Polish Government in negotiation with the strikers and that, in principle, many of the strikers' requests have been met. It seems as though the expansion of the strike will be curtailed for several days as the situation evolves further and as the nation's food needs are met.

Mr. Speaker, everyone should be pleased that this extraordinary situation has continued thus far without violence or force applied by the Polish Government or foreign intervention. It is evident thus far that the principles embodied in the Helsinki accords are possible to achieve and that problems can be resolved peacefully, with mutual benefit to all.

Mr. Speaker, we in this Congress who signed my resolution of nonintervention in Poland are watchful and will continue to review and take account of the events unfolding in Poland.

□ 1020

MR. CARTER AND MR. MUGABE

(Mr. BAUMAN asked and was given permission to address the House for 1 minute.)

Mr. BAUMAN. Mr. Speaker, I am willing to withhold judgment on the government of the new African nation of Zimbabwe, but there has to be a line drawn somewhere. The comments made yesterday by President Carter about the leadership of this new nation are appalling to me.

This morning's Washington Post quotes President Carter, at an elaborately arranged ceremony last night in the White House, as saying that the principles and ideals expounded by Mugabe were "very similar, perhaps even identical" to those of this country.

Mr. Mugabe is a Communist, a self-professed Marxist, and has made no doubt about that, though in recent months he has toned down his claim to that title.

The President also quipped that he had asked Mugabe to come to the White House "to observe closely the techniques you have used in your successful political effort" as he himself gears for an uphill struggle in the forthcoming Presidential race.

Mr. Mugabe's tactics were the slaughter of innocent thousands of whites and blacks, including missionaries and the appointment to his Cabinet of his ally, Joshua Nkomo, a man who boasted that he shot down an unarmed civilian airliner, killing many people.

Any President of the United States ought to be very careful in what he says. If Jimmy Carter believes this trash, there is a serious question about his judgment or his fitness to serve in office.

WHO'S A COMMUNIST?

(Mr. JOHN L. BURTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHN L. BURTON. Mr. Speaker, I believe that if Thomas Jefferson, Thomas Paine, George Washington, and some of the others were alive today, there would be some gentlemen, not my good, intelligent friend from Maryland, but some other gentlemen who would call them Communists because they were revolutionaries at that time; because they believed in overthrowing governments by force and violence if the government did not represent them. And, I believe that any tactics that can help win an election, Ronald Reagan will use.

THE O'NEILL-DORNAN DEBATE

(Mr. DORNAN asked and ws given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN. Mr. Speaker, you are my political hero, and I mean this sincerely because we are both right-handed Irish-Americans, and by blood I should be able to match your unabashed political partisanship and dedication. However you are on a plateau; whereas I am on the way up. So, let us talk turkey about the mysterious "stealth" bomber. You were the leader in this body killing for at least 4 years the magnificent B-1 bomber built in my district. It cost us over 8,000 jobs in my beach cities, most of them hard-working, middle-class, blue-collar Democrats. You must remember that large, white, sleek model of the B-1 "Peacemaker" that I placed here on the desk. You said it was "oh so beautiful," you will recall. Then, you shot it down.

It was 1978, George Washington's birthday. Remember that irony.

Well, Mr. Speaker, you told me yourself you were coming out to my district to campaign for "Gregory" Peck. You recall that I politely corrected you, that you meant "Carey," and you chuckled and smiled warmly when I said, "No, really, Mr. Speaker, you were right the first time. The draw is big Gregory." Remember?

Well, let us, you and me, have a formal debate in my great beach cities aerospace district. I will get you a town hall and an audience of a thousand people—I can guarantee that—a thousand folks for you and me to debate the B-1 bomber versus the so-called stealth bomber which comes to us either by courtesy of the tooth fairy or by a god awful deliberate breach of national security. A frightening leak, as Members on both sides of the aisle have forcefully pointed out this morning.

I look forward to your exciting September 12 district visit, Mr. Speaker, and I promise you I will even have some lovely ladies to greet you singing lustily from the hit broadway show and film "Sweet Charity," "Hey, Big Spender."

The SPEAKER. The gentleman seems upset.

PERMITTING ENLISTMENT IN U.S. ARMED FORCES OF NORTHERN MARIANA ISLANDS CITIZENS

Mr. WHITE. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 4627) to permit citizens of the Northern Mariana Islands to enlist in the Armed Forces of the United States before becoming citizens of the United States upon the establishment of the Commonwealth of the Northern Mariana Islands, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, strike out all after line 2 over to and including line 6 on page 2 and insert:

That notwithstanding the provisions of section 3253 and 6253 of title 10, United States Code, and in accordance with a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved on March 24, 1976, by Public Law 94-241), a citizen of the Northern Mariana Islands who indicates in writing to a commissioned officer of the Armed Forces of the United States of America an intent to become a citizen, and not a national, of the United States upon full implementation of such Covenant, and who is otherwise qualified for military service under applicable laws and regulations, may enlist in the Armed Forces of the United States of America.

Amend the title so as to read: "An Act to authorize the enlistment of citizens of the Northern Mariana Islands in the Armed Forces of the United States of America."

Mr. WHITE (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mrs. HOLT. Mr. Speaker, reserving the right to object, and I shall not object, I would like to yield to the gentleman from Texas for an explanation.

Mr. WHITE. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speakcr, H.R. 4627 would permit citizens of the Northern Mariana Islands to enlist in the Armed Forces prior to the time the Commonwealth of the Northern Mariana Islands is established and they have the option of becoming citizens.

The Senate amendment simply requires citizens of the Northern Mariana Islands who seek enlistment to declare their intention to become citizens of the United States at the time the trusteeship terminates.

Mrs. HOLT. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Texas?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

RESERVE OFFICERS' TRAINING CORPS SCHOLARSHIPS

Mr. WHITE. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 5766) to amend title 10, United States Code, to authorize additional Reserve Officers' Training Corps scholarships for the Army, to provide a certain number of such scholarships for cadets at military junior colleges, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments with House amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause, and insert:

That (a) section 2107(a) of title 10, United States Code, relating to financial assistance for specially selected members of the Reserve Officers' Training Corps, is amended by striking out the period at the end of the first sentence and all of the second sentence and inserting in lieu thereof a comma and the following: "except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 29 years of age on such date.".

(b) Section 2107 of such title is further amended—

(1) by inserting "and" at the end of clause (4) of subsection (b);

(2) by striking out clauses (5) and (6) of subsection (b) and inserting in lieu thereof the following:

"(5) agree in writing that, at the discretion of the Secretary of the military department concerned, he will either—

"(A)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of that armed force and not resign before that anniversary; and

"(ii) serve on active duty for four or more years; or

"(B)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

"(ii) serve in a reserve component of that armed force until the eighth anniversary of the receipt of such appointment, unless otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as shall be prescribed by the Secretary of the military department, concerned

The performance of service under clause (5)(B) may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed."; and

(3) by striking out "6,500" the first place it appears in subsection (h) and inserting in lieu thereof "12,000".

(c)(1) Chapter 103 of such title, relating to Senior Reserve Officers' Training Corps, is amended by inserting after section 2107 the following new section:

"§ 2107a. Financial assistance program for specially selected members: military junior colleges

"(a)(1) The Secretary of the Army may appoint as a cadet in the Army Reserve or Army National Guard of the United States any eligible member of the program who is a student at a military junior college and who will be under 25 years of age on June 30 of the calendar year in which he is eligible under this section for appointment as a second lieutenant in the Army, except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 29 years of age on such date.

"(2) To be considered a military junior college for the purposes of this section, a school must be a civilian postsecondary educational institution essentially military in nature that does not confer baccalaureate degrees and that meets such other requirements as the Secretary of the Army may prescribe.

"(b) To be eligible for appointment as a cadet under this section, a member of the program must—

"(1) be a citizen of the United States;

"(2) be specially selected for the financial assistance program under this section under procedures prescribed by the Secretary of the Army;

"(3) enlist in a reserve component of the Army for the period prescribed by the Secretary of the Army;

"(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the Army to serve for the period required by the program;

"(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army Reserve or the Army National Guard of the United States; and

"(6) agree in writing that he will serve in such reserve component for not less than eight years.

Performance of duty under an agreement under this subsection shall be under such terms and conditions as the Secretary of the Army may prescribe and may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed.

"(c) The Secretary of the Army shall provide for the payment of all expenses of the Department of the Army in administering the financial assistance program under this section, including the cost of tuition, fees, books, and laboratory expenses which are incurred by members of the program appointed as cadets under this section while such members are students at a military junior college.

"(d) Upon satisfactorily completing the academic and military requirements of the program, a cadet may be appointed as a reserve officer in the Army in the grade of second lieutenant, even though he is under 21 years of age.

"(e) the date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets from the United States Military Academy in that year. The Secretary of the Army shall establish the date of rank of all other officers appointed under this section.

"(f) A cadet who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the Army to serve in his enlisted grade for such period of time as the Secretary prescribes but not for more than four years.

"(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service as a cadet or with concurrent enlisted service.

"(h)(1) The Secretary of the Army shall appoint not less than 10 cadets under this section each year at each military junior college at which there are not less than 10 members of the program eligible under subsection (b) for such an appointment. At any military college at which in any year

there are fewer than 10 such members, the Secretary shall appoint each such member as a cadet under this section.

"(2) If the level of participation in the program at any military junior college meets criteria for such participation established by the Secretary of the Army by regulation, the Secretary shall appoint additional cadets under this section from among members of the program at such military junior college who are eligible under subsection (b) for such an appointment.

"(1) Cadets appointed under this section are in addition to the number appointed under section 2107 of this title.".

(2) The table of sections at the beginning of chapter 103 of such title is amended by inserting after the item relating to section 2107 the following new item:

"2107a. Financial assistance program for specially selected members: military junior colleges.".

(d) Section 2108(d) of such title, relating to advanced training after receiving a baccalaureate degree or completing preprofessional studies, is amended by striking out the second sentence and inserting in lieu thereof the following: "If a member of the program has been accepted for resident graduate or professional study, the Secretary of the military department concerned may delay the commencement of that member's obligated period of active duty, and any obligated period of active duty for training or other service in an active or inactive status in a reserve component, until the member has completed that study. If a cadet appointed under section 2107a of this title has been accepted for a course of study at an accredited civilian educational institution authorized to grant baccalaureate degrees, the Secretary of the Army may delay the beginning of that member's obligated period of service in a reserve component until the member has completed such course of study.".

(e) The amendments made by this section shall take effect on October 1, 1980.

SEC. 2. (a) Chapter 101 of title 10, United States Code, relating to training, is amended by adding at the end of such chapter the following new section:

"§ 2005. Advanced education assistance: active duty agreement; reimbursement requirements

"(a) The Secretary of an armed force may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree—

"(1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement;

"(2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement,

"(3) that if such person, voluntarily or because of misconduct, fails to complete the period of active duty specified in the agreement, such person will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided such person as the unserved portion of active duty bears to the total period of active duty such person agreed to serve; and

"(4) to such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

"(b) The Secretary concerned shall determine the period of active duty to be served by any person for advanced education assistance to be provided such person by an armed force, except that if the period of active duty required to be served is specified under another provision of law with respect to the advanced education assistance to be provided, the period specified in the agreement referred to in subsection (a) shall be the same as the period specified in such other provision of law.

"(c) Subject to the provisions of subsection (d) of this section, the obligation to reimburse the United States under an agreement described in subsection (a) of this section is, for all purposes a debt owing the United States.

"(d) A discharge in bankruptcy under title 11 shall not release a person from an obligation to reimburse the United States required under the terms of an agreement described in subsection (a) of this section if the final decree of the discharge in bankruptcy was issued within a period of five years after the last day of a period which such person had agreed to serve on active duty. This subsection applies to a discharge in bankruptcy in any proceeding which begins after September 30, 1978.

"(e) In this section—

"(1) 'Advanced education' means education or training above the secondary school level but does not include technical training provided to a member of the armed forces to qualify such member to perform a specified military function, to workshops, or to short-term training programs.

"(2) 'Assistance' means the direct provision of any course of advanced education by an armed force, reimbursement by an armed force for any course of advanced education provided by another department or agency of the Federal Government, or the payment, in whole or in part, by an armed force for any course of advanced education provided by any public or private educational institution or other entity.

"(3) 'Cost of advanced education' means those costs which are, under regulations prescribed by the Secretary concerned, directly attributable to the education of the person to whom a course of advanced education is provided, including the cost of tuition and other fees (or, if none is charged, an amount determined by the Secretary concerned to be a reasonable charge for the education provided), the cost of books, supplies, transportation, and miscellaneous expenses, and the cost of room and board, but such term does not include pay or allowances under title 37 or a stipend under section 2121 of this title.".

(b) The table of sections at the beginning of chapter 101 of such title is amended by adding at the end thereof the following new item:

"2005. Advanced education assistance: active duty agreement; reimbursement requirements.".

SEC. 3. Effective only for the period beginning October 1, 1980, and ending September 30, 1981, section 7572(b) of title 10, United States Code, relating to accommodations in place of quarters for members on sea duty, is amended to read as follows:

"(b) Under such regulations as the Secretary prescribes, any member of the uniformed services on sea duty who is deprived of quarters on board ship because of repairs or because of other conditions that make the member's quarters uninhabitable, may be reimbursed for expenses incurred in obtaining quarters, in an amount not more than the basic allowance for quarters of a member of the same grade without dependents, if it is impracticable to furnish accommodations under subsection (a). A member entitled to receipt of basic allowance for quarters may not be reimbursed for expenses under this subsection when deprived of quarters aboard ship at a location at which the member can reside with such member's dependents. The total amount of such reimbursements for fiscal year 1981 may not exceed $9,000,000.".

SEC. 4. Section 3(a) of the Act of August 10, 1956 (33 U.S.C. 857a(a)), relating to the applicability of certain laws to the National Oceanic and Atomspheric Administration, is amended by adding at the end thereof the following new paragraph:

"(13) Section 7572(b), Quarters: accommodations in place of for members on sea duty.".

SEC. 5. (a) Sections 3686(2) and 8686(2) of title 10, United States Code, relating to service credit for service as members of the Army and Air Force National Guard, are each amended by striking out "sections 316 and 503–505 of title 32" and inserting in lieu thereof "sections 316 and 502 through 505 of title 32".

(b) The amendments made by subsection (a) shall apply with respect to full-time training or other full-time duty performed under section 502 of title 32, United States Code, on and after the date of the enactment of this Act.

SEC. 6. The second sentence of section 672(a) of title 10, United States Code, relating to authority to order members of the Standby Reserve to active duty, is amended to read as follows: "However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.".

SEC. 7. (a) Section 4818 of the Revised Statutes of the United States (24 U.S.C. 44), relating to funds for the support of the Soldiers' and Airmen's Home, is amended by inserting "or under authority of section 815 of title 10, United States Code" after "courts-martial".

(b) The amendment made by subsection (a) shall become effective on October 1, 1981.

Amend the title so as to read: "An Act to authorize additional Reserve Officers' Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an armed force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes.".

The Clerk read the House amendments to the Senate amendments, as follows:

Page 8, line 3, strike out "Secretary of an armed force" and insert in lieu thereof "Secretary concerned".

Page 10, lines 6, 7, and 10, strike out "an armed force" and insert in lieu thereof "the Secretary concerned".

Page 10, line 12, strike out the period and insert in lieu thereof ", but such term does not include the payment for any course of advanced education which is paid for under chapter 106 or 107 of this title.".

Page 12, line 4, strike out "(13)" and insert in lieu thereof "(14)".

In lieu of the Senate amendment to the title of the bill, amend the title so as to read: "An Act to authorize additional Reserve Officers' Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes.".

Mr. WHITE (during the reading). Mr. Speaker, I ask unanimous consent that the further reading of the amendments be dispensed with, and that they be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mrs. HOLT. Mr. Speaker, reserving the right to object, I yield to the gentleman from Texas for an explanation.

Mr. WHITE. Mr. Speaker, I thank the gentlewoman for yielding to me.

Mr. Speaker, H.R. 5766 deals with providing additional scholarships to the Army Reserve Officers' Training Corps (ROTC) program and providing scholarships to military junior colleges.

The Senate amended the House bill by increasing the age limit for eligibility for ROTC scholarships and providing a system for reimbursing the Government for such scholarships if an individual does not complete the program.

The Senate also attached four additional provisions to H.R. 5766. The first is an administration proposal to provide quarters allowances to Navy personnel on sea duty whose ship is in overhaul when no other quarters are available. The second provision would permit all fines imposed as a result of nonjudicial forfeitures under the Uniform Code of Military Justice to be applied to the support of the Soldiers' and Airmen's Home. The House passed a similar provision in the 94th Congress.

The final two provisions added by the Senate relate to crediting certain full-time training duty for members of the National Guard as active duty for training in the Federal service and deleting the requirement that the Director of Selective Service screen members of the Standby Reserve before they can be called to active duty. Mr. Speaker, both of these provisions have been passed by the House as separate pieces of legislation.

The House amendments are technical in nature.

I thank the gentlelady for yielding.

□ 1030

Mrs. HOLT. Mr. Speaker, I thank the gentleman from Texas (Mr. WHITE), and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 390, ANTITRUST PROCEDURAL IMPROVEMENTS ACT OF 1980

Mr. MAZZOLI. Mr. Speaker, I call up the conference report on the Senate bill (S. 390) to expedite and reduce the cost of antitrust litigation, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of August 20, 1980.)

The SPEAKER. The gentleman from Kentucky (Mr. MAZZOLI) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. MCCLORY) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 390, the Antitrust Procedural Improvements Act of 1980, is a bill to expedite and reduce the cost of antitrust litigation.

S. 390 is the product of recommendations made by the President's National Commission for the Review of Antitrust Laws and Procedures.

S. 390 was the subject of careful study by the Committee on the Judiciary and its Subcommittee on Monopolies and Commercial Law.

The Monopolies Subcommittee held 3 days of hearings on the legislation, receiving favorable testimony from the administration, judges, academics, members of the private bar, business, and industry.

The subcommittee and the committee amended the legislation reflecting recommendations of several witnesses to strike a better balance between the need to expedite and reduce the cost of complex antitrust litigation, and the need to fully protect the rights of the litigants.

The first provision of S. 390 amends the Antitrust Civil Process Act with respect to the application of civil investigative demands (CID's). This provision clarifies the authority of the Department of Justice's Antitrust Division to use CID's to obtain the summaries, analyses or other studies compiled from documents and materials produced in response to discovery orders issued in connection with another legal action.

The CID amendments provide adequate protections for the parties in the initial litigation, including extending the confidentiality protection of the act to the party from whom the discovered documents were originally obtained. Moreover, since both parties in the other action are formal recipients of a CID, each may seek a protective order against the Government to prevent its making a subsequent disclosure of this information to others.

The CID amendments will promote the efficient use of public resources by eliminating the need for costly and time-consuming discovery efforts by the Antitrust Division that duplicate discovery procedures already completed by a litigant.

The House and Senate versions of this provision were substantially identical. The lone significant disagreement centered on the definition of the term "product of discovery." The Senate bill said the discovery had to have taken place "in any litigation," whereas the House bill said "in any judicial or administrative litigation."

In an effort to clarify this language the managers agreed to the substitute language "in any judicial litigation or any administrative litigation of an adversarial nature."

The managers intend that the term "any administrative litigation of an adversarial nature" should apply only to those administrative proceedings that are adversarial in nature and format, and in which the agency or other party obtained the product of discovery by agency or civil discovery process that allowed the discovered party to raise objections and be heard on such objections.

It is not the House managers' intention that this term include rulemaking or licensing proceedings unless the parties against whom discovery orders issued were accorded formal procedural safeguards, such as the right to object and be heard on the objection.

Thus, "administrative litigation of an adversarial nature" does not cover information gathering programs or purely investigatory proceedings in which information is obtained by the United States or any governmental agency pursuant to laws of regulations providing for the filing or forms or reports.

The second provision pertains to sanctions against attorneys for dilatoriness and delay in connection with antitrust litigation.

The House took no position on the issue, while the Senate amended the existing law, 28 U.S.C. 1927 to charge excess costs, expenses and attorney fees to an attorney who intentionally engaged in conduct primarily for the purpose of delaying the litigation. Current law requires the attorney conduct, if sanctionable, to be solely for the purpose of delay and sanctions include only costs.

The managers of both Houses agreed that attorney sanctions complemented the other parts of S. 390 and helped provide a comprehensive approach to deterring unnecessary delays in antitrust litigation.

The managers on the part of the House were firm in their resolve to maintain the tough standard of current law so that the legislation in no way would dampen the legitimate zeal of an attorney in representing his client.

Under the agreement of managers, an attorney may be required to pay costs, as well as expenses and attorney's fees reasonably incurred on account of such attorney's dilatory conduct. But, the standard is that in current law, not the less-severe standard the Senate had agreed to originally.

The managers on the part of both the House and the Senate strongly agreed that judges who utilize section 1927 sanctions must make every effort to

safeguard the rights of an attorney who may be held in violation of that section. In so doing, it is imperative that the court afford the attorney all appropriate protections of due process available under the law.

The third provision is prejudgment interest, a mechanism which provides a significant disincentive for parties to engage in litigation tactics which unduly delay the disposition of antitrust litigation.

This legislation amends sections 4, 4A, and 4C of the Clayton Act to authorize the award of prejudgment interest, under certain circumstances.

A court may award simple interest on a successful claimant's actual damages computed from the date of service of the complaint, setting forth the antitrust claim, to the date judgment is entered or any shorter period included therein.

The court can award prejudgment interest only if it makes a finding that the award is just under the circumstances.

In determining what is just under the circumstances the court must consider whether the parties to the litigation: Acted intentionally or in bad faith to delay the proceedings; or, whether either party violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior; or, whether either party engaged in conduct primarily for the purpose of delaying or increasing the cost of the litigation.

In single damage actions brought by the United States—Clayton Act, section 4A—the court may also consider whether a prejudgment interest award would be necessary to adequately compensate the United States for the injury it sustained by reason of the antitrust violation.

The courts are limited to only these factors in determining whether to award prejudgment interest.

This provision of the Antitrust Procedural Improvements Act is prospective. Here the managers on the part of the Senate acceded to the House position.

The fourth issue is that of collateral estoppel.

S. 390 amends section 5(A) of the Clayton Act, which grants prima facie effect in subsequent civil proceedings to judgments obtained by the United States under the antitrust laws, by providing that the express use of "prima facie" in section 5(A) shall not be construed to preclude the application of the common law doctrine of conclusive collateral estoppel.

S. 390 does not create a special rule for antitrust law. Rather, this clarifying amendment to the antitrust laws will allow the courts to apply the equitable doctrine of collateral estoppel, just as it does in all other litigation, to eliminate the wasteful retrying of an issue and to reduce the cost of complex antitrust litigation to the courts and the parties.

During the Judiciary Committee's consideration of this legislation, there was concern over the breadth of the coverage of the collateral estoppel provision.

While there was little opposition to the application of collateral estoppel to judgments rendered by a court, there was concern over granting collateral estoppel effect to administrative and other agency findings which could give rise to claims for relief under the antitrust laws. This use of collateral estoppel was prohibited in the House version of S. 390.

The managers on the part of the House indicated during the conference that the primary concern of the House lay with the Federal Trade Commission and pointed out that Senate language could be construed to permit the application of collateral estoppel to FTC administrative findings.

Accordingly, the managers of both Houses agreed to the House provision on administrative findings, but limited its scope to the Federal Trade Commission acting under the antitrust laws or under section 5 of the FTC act.

The managers then agreed to a Senate provision which allows Government judgments to be given prima facie effect where they, for some reason, are denied full collateral estoppel effect.

This provision is prospective. As such, S. 390 does not affect pending private suits. It leaves existing law as it is. The collateral estoppel effect, if any, of Government judgments obtained prior to enactment of this act is to be determined according to the principles of law prior to enactment.

The fifth issue before the conference pertained to the amendments to section 7 of the Clayton Act which permits the Department of Justice and private parties to challenge anticompetitive mergers involving business entities or persons engaged in any activity in interstate commerce.

The Senate bill retained current law—the House bill amended current law to cover mergers "affecting" interstate commerce not just those of entities "in" interstate commerce.

Many of the witnesses, including the American Bar Association, who appeared before the Subcommittee on Monopolies and Commercial Law favored the "affecting" commerce amendment. In light of that strong support, especially that of the ABA, the managers agreed to adopt the House language.

Ladies and gentlemen, we can all agree that antitrust litigation tends to be very complex, yet complexity should not be an excuse for unnecessary delays and wasteful expenditures of time, effort and money.

S. 390 endeavors to provide significant disincentives for delay and eliminate unnecessary and duplicative work by private litigants, the Government and their attorneys. The bill is based on the recommendations of the President's National Commission for the Review of Antitrust Laws and Procedures. S. 390 accurately reflects a careful balance protecting the interests of both private litigants and the Government.

The Antitrust Procedural Improvements Act of 1980 has the support of representatives of the private and public sector, including the Department of Justice, the ABA and the Chamber of Commerce. On August 18, 1980, the Senate considered and unanimously passed the conference report on S. 390.

I urge my colleagues to support the conference report and pass S. 390.

Mr. MCCLORY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I want to commend the members of the conference committee, particularly the House Members, who sustained the House position on virtually every issue. As a matter of fact, on this conference the House won.

S. 390 contains six different antitrust bills, five of which have been acted on by the House. With respect to those five, the House version prevailed on virtually every significant issue. With respect to the sixth bill, the other body came more than half way in fashioning a compromise. And as a result of our successful efforts, former opponents of the legislation, such as the Chamber of Commerce and the National Association of Manufacturers, have withdrawn their opposition.

This legislation is largely the result of recommendations made by the National Commission for the Review of Antitrust Laws and Procedures, on which I was privileged to serve. This legislation, happily, should quiet those skeptics who feel that National Commissions only produce reports but never results.

The Members will recall that the House bills contained in the present package make clear the authority of the Justice Department to issue CID's for products of discovery and grant the Department authority to hire consultants to review CID materials. The bills also authorize the award of prejudgment interest in certain circumstances, extend the jurisdiction of section 7 of the Clayton Act to conform with that of the Sherman Act, and make clear that the prima facie evidence provision in section 5(a) of the Clayton Act will not preclude the application of collateral estoppel where appropriate. The sixth provision enacted by the Senate, but not considered in this body, amends current statutory law—section 1927 of title 28—regarding sanctions for attorney delay. Unlike the other five provisions, this provision is not limited to antitrust matters.

The most controversial issue committed to conference concerned the basis for awarding prejudgment interest. The House approach was to view such awards as a penalty for, and a disincentive to, dilatory conduct. The Senate approach was broader. It viewed such awards as compensating plaintiffs for the loss of the use of the money the plaintiff would have had absent the violation. This is a distinction with a difference. For I would assume that whereas prejudgment interest awards would have been the rule under the Senate version, they will be the exception under the House version, which was the version agreed to in conference.

Sharing the spotlight as a major issue in conference was the issue of collateral estoppel. While both bodies had agreed that the doctrine of collateral estoppel should be permitted application notwithstanding the prima facie evidence provision of current law, the House version imposed two conditions on the statutory authorization for collateral estoppel: First, that the effect of the amendment

be prospective only and, second, that the courts not give collateral estoppel effect to findings of the Federal Trade Commission in antitrust-related matters. In conference, the first House condition was accepted without change and the second condition was accepted with only minor language changes and no change in substance. It may appear to some that since the conferees deleted a provision excepting collateral estoppel application from administrative findings under the antitrust laws, the House made a serious concession. Not so.

The only administrative agency that makes findings under the antitrust laws is the Federal Trade Commission. While other agencies apply the principles of competition in performing their function, they do so under their own mandate and not under "the antitrust laws" as such, which is a narrowly defined term embracing only the Sherman and Clayton Acts. Since the Federal Trade Commission is expressly included under the prohibition in the bill, the change made in conference may look like a compromise of substance whereas, in fact, the House position was fully vindicated.

The issue that gave the House conferees the most difficulty was the Senate provision imposing personal liability on counsel who delay litigation. Since the House had not acted on this issue, the conferees were required to use their own judgment. In my opinion, our compromise is a good one.

The House conferees were unable to accept the Senate provision, as passed, for several reasons. First, it would have lowered the standard of dilatory conduct necessary to make out a violation and would have done so to such an extent that, in our opinion, the legitimate zeal of attorneys representing their clients would have been chilled. Second, it would have precluded the imposition of sanctions on attorneys—even those who violate the current provision—before the conclusion of the trial. Since some cases may take years to reach that stage—and many never do, the deterrent effect of the provision would have been largely nullified. Third, it would have absolved attorneys from all misconduct occurring before the receipt of a warning from the court. This would have, somewhat ironically, licensed the reprehensible conduct we are seeking to deter.

Our compromise, fortunately, contains none of these defects. Instead, we chose not to alter the standard of conduct required by present law. What we did change was the extent of liability to be imposed on attorneys who engage in clearly dilatory tactics. Our view is that when an attorney engages in delay for the sake of delay in order to wear down the opposition, such conduct is not only unethical but, in effect, tortuous. It thus should subject the attorney to personal liability. The extent of this liability cannot, in justice, be limited merely to filing fees and other nominal court costs as it is today. But it should extend to out-of-pocket costs that the opposition had to incur for legal fees and witness expenses because of the attorney's misconduct. This is what our compromise does—this is all it does, and I believe that it should be accepted by this body.

Mr. Speaker, as a result of our efforts, we have fashioned antitrust legislation that both serves the public interest and enjoys broad support from all sides of the issues. I urge adoption of the report.

□ 1040

Mr. Speaker, I reserve the balance of my time.

Mr. MAZZOLI. Mr. Speaker, I yield myself 1 minute simply to commend my colleague on the committee, the gentleman from Illinois (Mr. MCCLORY), for his hard work and cooperation on this bill.

I would also like to commend staff on both sides of the aisle for their excellent work in the preparation of the materials needed by the Members in the course of the consideration of this legislation at subcommittee, full committee, on the floor and for the conference committee. We were well briefed and well prepared. I think the gentleman will agree that we were substantially aided in carrying the House position by the excellent work of our staff. I would like to commend them publicly.

Mr. Speaker, I have no further requests for time. I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

EDUCATION AMENDMENTS OF 1980

Mr. FORD of Michigan. Mr. Speaker, I call up the conference report on the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes.

The SPEAKER pro tempore (Mr. DAN DANIEL). Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of August 25, 1980.)

The SPEAKER pro tempore. The gentleman from Michigan (Mr. FORD) will be recognized for 30 minutes, and the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report on reauthorization of the Higher Education Act which we now bring before the House, in my opinion, reflects the finest spirit of accommodation, conciliation and a true bipartisan cooperation among the Members of this body and between the Members of this body and the other body in putting together the conference report that we bring to you.

Mr. Speaker, I would like particularly to express my appreciation to the gentleman from Alabama (Mr. BUCHANAN), the ranking minority member on our committee, for his very hard work and for the amount of time that he has spent working with me, as chairman, in close and full partnership in the development of this legislation, as well as in shepherding it through the committee, the House and the conference committee.

Also, Mr. Speaker, I would like to extend a special thanks to the chairman of our full Committee on Education and Labor, Mr. CARL PERKINS of Kentucky, who once again lived up to his reputation as one of the greatest friends to education in the history of this House. I do not think that anyone who has had the opportunity, as I have had for the past 16 years, to observe the efforts of CARL PERKINS would doubt for 1 minute the validity of the suggestion that no person has given as many years and as much of his life to developing education legislation than CARL PERKINS. No person in the history of this body has a record that parallels that of CARL PERKINS, and we on the committee were very cognizant of his presence throughout the entire development of the legislation and the value of his prestige in moving legislation of this importance.

The gentleman from Ohio (Mr. ASHBROOK), the ranking minority member on the full Committee on Education and Labor, was also a very constructive and active participant in the development of this legislation. We are particularly grateful on the majority side for his constant cooperation.

I take pride, Mr. Speaker, in the fact that this bill is a product of an open process of hearings and consultations that included all Members with an interest in postsecondary education, as well as a complete cross section of the education community. This bill reflects a consensus which enjoys the support of the entire higher education community, students, parents, college presidents and faculty members. And I might say, that I doubt that any other piece of legislation has ever come from our committee with as much direct input from student groups.

□ 1050

No single interest group that appeared before our committee during the 2 years of developing this legislation appeared more often and with respect to more individual parts of the legislation than did the representatives of students who were and are in our colleges and universities across the country. They deserve our recognition for the very responsible way in which they have worked with our committee in informing us on a first hand basis with respect to the real impact of these programs on the people most directly affected by them.

Mr. Speaker, this bill reflects in many ways extraordinary individual effort by members of the committee who had a special concern and for that reason developed a special expertise and made special contributions.

The gentleman from Connecticut (Mr. RATCHFORD) is clearly that person most responsible, among all of us, for the development of the new title I of this legislation, which expands upon a number of ideas that have been around for some time, to make these programs more efficient and more effective in serving nontraditional students.

The gentleman from New York (Mr. BIAGGI), who has made a study of nontraditional students and the student data bank and has championed the supplemental education opportunity grant program for a long time, was primarily responsible for the improvements made in this part of the legislation.

The gentleman from Ohio (Mr. ASHBROOK) asked us to go to Ohio for hearings where we discovered the special problem of married students and the way in which they were treated for the purpose of receiving grants. This hearing led to an important change that will affect all married students in every institution in the country.

The gentleman from Iowa (Mr. TAUKE) is responsible in large part for the changes we have made in the administration of title III program and for the development of the supplemental educational opportunity grant trigger.

The gentleman from Illinois (Mr. SIMON), who is an expert, I might say, on the subject of international education and has succeeded our colleague, the gentleman from Indiana (Mr. BRADEMAS) in responsibility for keeping the National Institute of Education alive and kicking in Washington, contributed a great deal more than all of the rest of us in the field of international education.

I might say also that the ranking member of the committee the gentleman from New Jersey (Mr. THOMPSON), was very cooperative during the consideration of this legislation. Of course, the years of his experience show themselves in many years of the legislation, and I am sure that everyone in New Jersey is aware of the numerous provisions of the act which have special application to the institutions located in that State.

The gentleman from New York (Mr. WEISS) worked very hard on improvement of programs for schools of education and particularly with the idea of linking work study with educational goals.

The gentleman from New York (Mr. PEYSER) made great contributions with respect to title III administration, and it should be noted that one of the areas that we think is most important in the adoption of this legislation is the correction of problems that have been brought to our attention through a great deal of publicity in recent years with respect to administration of title III. We think that this legislation will put problems behind us.

The gentleman from Vermont (Mr. JEFFORDS) collaborated in the title I drafting and gave a perspective to the bill that might not otherwise be there, in that the gentleman from Vermont had us go to Vermont for hearings and demonstrated the need for changes to put emphasis on outreach to rural citizens of America.

He worked with the gentleman from Connecticut (Mr. RATCHFORD) in developing title I so that it reflected the interests of those States with large urban areas, while preserving and enhancing the activities that are directed toward rural populations.

The gentleman from Wisconsin (Mr. PETRI), a new member of the committee, has been particularly helpful in streamlining and modernizing the loan programs.

Mr. Speaker, during the consideration of this legislation, we lost an old and dear friend to all of us who participated in fashioning it when the chief staff member of the full committee, Bill Gaul, who has worked on higher education longer than anyone else on our staff, was taken by death during the time that we were in conference with this bill. The Members will see the unusual, but certainly fitting tribute to Mr. Gaul entered by the chairman of the committee, the gentleman from Kentucky (Mr. PERKINS) in the statement of the managers accompanying this conference report.

Mr. Speaker, all of us are deeply grateful to the staff, both majority and minority, and note that development of this legislation is an outstanding example of staff people who are not only competent, but capable of working past partisan considerations to develop legislation that ultimately had the approval of all of the majority and minority members on the committee. The staff, particularly Tom Wolanin, Pat Rissler, Bill Clohan, and Jenny Vance, are very largely responsible for it.

Mr. Speaker, H.R. 5192 authorizes balanced increases in grant assistance to help needy and middle-income students meet the increased costs of college at all types of institutions—private and public, 2-year and 4-year, small colleges and research universities. It extends eligibility to unserved part-time students, and establishes fellowship opportunities for graduate and professional school. It makes important reforms in the loan programs aimed at reducing default rates. While extending the availability of need-based loans, the bill establishes a loan program for parents who are hard pressed in assisting their child to attend college. It strengthens authorities for support of such priorities as continuing education, developing institutions, libraries, international studies, and urban universities.

I would like to stress that this is a fiscally responsible bill. The increased grant maximums and loan limits do not even keep pace with the inflation in educational costs that have occurred since the last reauthorization in 1976. When compared to the bill passed by the House, this conference report reduces the authorizations by a total of nearly $11 billion or about $2 billion for each year authorized.

I would like to describe in more detail the provisions of the conference agreement.

Part A of title I establishes a new Commission on National Development in Postsecondary Education. The function of the Commission shall be to review National, State, and institutional policies to examine the effectiveness of Federal financial assistance to students and institutions in conjunction with State and institutional aid policies: to consider the research capacity of institutions and the relationship between institutions and the public and private sector in promoting research; and to examine the resources of institutions and the effect of demographic changes which will impact on their ability to meet social and economic needs. At the initiative of the gentleman from New York (Mr. BIAGGI) the Commission will also conduct a study of the special needs of nontraditional and adult students in postsecondary education.

Part B of title I is renamed "Education Outreach programs." It combines the authorization for comprehensive State planning from section 1203, the authority for education information centers from title IV, the current title I (community service and continuing education), and some essential elements of title VI (financial assistance for the improvement of undergraduate instruction) and title X (establishment and expansion of community colleges).

The planning, information services and continuing education (including rural community education) activities are all focused on outreach to adults who have not been adequately served by postsecondary education.

Ninety percent of the funds are allocated to the States on an equal per State basis and on the basis of their adult population. The bill establishes a general allocation of the funds among the types of State activities authorized while leaving substantial flexibility for each State to set its own priorities. Each State is guaranteed a minimum of $187,500.

Ten percent of the funds are reserved for the Secretary to support projects and activities to expand access to education particularly for underserved adults.

The following authorization levels are established:

Fiscal year 1981, $20 million.
Fiscal year 1982, $40 million.
Fiscal year 1983, $60 million.
Fiscal year 1984, $80 million.
Fiscal year 1985, $100 million.

Title I substantially embodies and is built on H.R. 4531, the Lifelong Learning Act of 1979, introduced by Mr. RATCHFORD with 14 cosponsors. Title I also incorporates the longstanding interest of Mr. BIAGGI of New York in student data banks as embodied in H.R. 3513. A significant contribution to the title, particularly with respect to state planning, was drawn from H.R. 5051 which was introduced by Mr. JEFFORDS of Vermont with the cosponsorship of Mr. RATCHFORD.

Title II, college and research library assistance and library training and research, has been reorganized, by eliminating the supplemental grant, which has never been funded, and by transferring the special purpose grant program from part A into a more comprehensive part B. Assistance under part A will come in the form of resource development grants up to a maximum of $10,000, increased from the current $5,000, to institutions of higher education, combinations of institutions, branch campuses, or public and private nonprofit library institutions serving higher education.

The maintenance of effort provisions have been strengthened, permitting only very unusual circumstances to qualify institutions for waivers.

The funding for an expanded part B, library training research and development, would be divided between three functions on a one-third, one-third, one-third basis, reflecting the addition of special purpose grants to part B from part A.

No major changes have been made in the substance of part C, strengthening research library resources, except the addition of a provision prohibiting recipients of part C grants from receiving grants under either parts A or B.

The conference substitute authorizes the following amounts:

Part A: $10 million/fiscal year 1981, $30 million/fiscal year 1982, $30 million/fiscal year 1983, $30 million/fiscal year 1984, $35 million/fiscal year 1985.

Part B: $10 million/fiscal year 1981, $30 million/fiscal year 1982, $30 million/fiscal year 1983, $30 million/fiscal year 1984, $35 million/fiscal year 1985.

Part C: $10 million/fiscal year 1981, $15 million/fiscal year 1982, $15 million/fiscal year 1983, $15 million/fiscal year 1984, $15 million/fiscal year 1985.

An important change in the college library programs in Title II is the addition of a new part D, a study of the feasibility and advisability of establishing a national periodicals system. The authorization for this study is $750,000 for fiscal years 1981 and 1982 and such sums for fiscal years 1983 through 1985, to be funded only if parts A, B and C are funded at the fiscal year 1979 appropriations level.

The conference substitute creates a title III program which contains three parts. Part A, strengthening institutions, is derived from the provisions of the House bill. Part B, aid to institutions with special needs, contains provisions that were in part A of the Senate amendment. Fifty percent of the appropriation will go to each of these parts. Under both parts, the purposes of the program are clarified to focus on strengthening institutions which enroll large numbers of disadvantaged students, lack resources, and are taking steps to improve their chances for survival.

Under part B of the conference substitute, the institutions that historically have served substantial numbers of black students shall be assured that their sector will receive not less than 50 percent of the amount that the sector received in fiscal year 1979 under the current title III program. Community colleges are guaranteed a floor of 24 percent of the assistance under part A and 30 percent of the assistance under part B.

The conference substitute incorporates the provisions of the House bill pertaining to challenge grants to institutions eligible for assistance under part A or part B. An institution receiving a challenge grant will match Federal funds on a 50–50 basis. The institutional match must be new money and can be raised from alumni giving, foundation grants, increased State appropriations, et cetera.

The conference substitute modifies the provisions of the House bill establishing an application review process and a committee on review to provide only for an application review process.

The conference substitute authorizes the following amounts for Parts A and B: $160 million/fiscal year 1981, $185 million/fiscal year 1982, $210 million/fiscal year 1983, $245 million/fiscal year 1984, $280 million/fiscal year 1985.

The substitute provides the following authorizations for the challenge grant program: $25 million/fiscal year 1982, $35 million/fiscal year 1983, $45 million/fiscal year 1984, $50 million/fiscal year 1985.

TITLE IV, STUDENT ASSISTANCE

BASIC GRANTS

The basic grant is renamed the Pell grant in recognition of the contribution of the chairman of the Senate Subcommittee on Education, Arts, and Humanities, and the maximum award is increased. In addition, the limitation in the program that a student's basic grant may not exceed 50 percent of their cost of attendance is modified. The maximum grant amount is increased in steps from the current level of $1,800 to $2,600 in fiscal year 1985 and the percentage of cost limitation is also increased from the current level of 50 to 70 percent when the maximum grant reaches $2,600.

In the case of less than full funding, students whose eligibility for a basic grant is within $200 of the maximum grant will be paid the full amount of their grant first, then grants will be reduced according to a statutory schedule which gives the most protection to the lowest income students. The minimum basic grant award at less than full funding is increased from $50 to $200.

Students will be eligible for a grant during the period required to complete their first baccalaureate course of study. Current law provides for 4 years of full-time support.

The thresholds in current law requiring funding for the college work study, supplemental educational opportunity grant and national direct student loan programs are retained. The level of the college work study threshold is revised from $500 million to $550 million, and the SEOG threshold increases from $370 million to $480 million in step with increases in the maximum grant and percentage of cost limitation. A new threshold is established for the State student incentive grant program at $76.75 million—the current appropriation.

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT

The definition of student eligibility is simplified so that the program serves students with "need." The requirement that SEOG awards be matched at the camous with other forms of assistance is eliminated. Students are provided with the same eligibility as basic grants toward completion of their undergraduate studies.

The maximum yearly award is increased from $1,500 to $2,000. The $4,000 cumulative maximum in current law is repealed.

The conference substitute authorizes initial year appropriations of $400 million for fiscal years 1981 through 1985 and authorizes appropriations of such sums as may be necessary for continuing year SEOG awards for fiscal years 1981 through 1985.

The formula for the allocation of SEOG funds among the States is modified to be based on 'undergraduates" rather than "persons" since the program only serves undergraduates and not graduate students who are included in the term "persons."

The conference substitute determines institutional need for supplemental grant funds by subtracting from 75 percent of the total student expenses the sum of family and student contributions, Pell grants, SSIG assistance and 25 percent of grants and awards made by the institution from its own resources. The substitute further provides a declining institutional hold harmless related to increased availability of appropriations for the program.

For the purposes of determining each institution's need for SEOG funds, I believe that the conferees intend that SSIG funds be counted in each institution's SEOG application in a manner that reflects total State grants (the Federal SSIG contribution plus total State matching contribution) received for students at that institution. I have been advised that certain States, such as Missouri, maintain separate accounting procedures for distribution of Federal SSIG funds and State funds. Where this procedure is used, and given the manner in which the SEOG formula determines institutional need, certain institutions could be unfairly penalized. Thus, I think it important to emphasize that for the purpose of determining SEOG need, SSIG funds allotted to a State and the State contribution shall be considered proportionately utilized in each State student grant.

Institutions will be permitted to use up to 10 percent of their SEOG funds to make awards to less-than-half-time students.

With respect to the relationship between the basic educational opportunity grant, the supplemental educational opportunity grant and the State student incentive grant, a Federal policy objective is set of meeting 75 percent of a student's cost of education through a combination of family contribution and grant aid.

In sum, the SEOG program is simplified to make it a flexible source of campus-based grant assistance available to meet the diverse needs of students.

STATE STUDENT INCENTIVE GRANT PROGRAM

The distinction between authorizations for initial year and continuing year awards is removed and authorizations are provided as follows: fiscal year 1981, $100 million; fiscal year 1982, $100 million; fiscal year 1983, $150 million; fiscal year 1984, $200 million; fiscal year 1985, $250 million.

The maximum award to a student is increased from $1,500 to $2,000. Current law is clarified to permit State grant programs which serve less than half time students or graduate students to qualify. The requirement that eligible State programs serve students in all nonprofit institutions is modified to exempt State statutory restrictions enacted prior to October 1, 1978. The bonus allotment

for States with State guarantee agencies is repealed.

TRIO PROGRAMS

The authorization is increased to $400 million in fiscal year 1981 and at such sums authorization is provided for subsequent years. The staff development authority is clarified to provide for greater involvement by professionals in the field. The unfunded service learning center authority is repealed. The Secretary is required to consider the prior experience of applicants in making TRIO awards.

The talent search program is focused as a community-based program serving youth. The services to be provided to clients are enumerated and include tutorial services. Two-thirds of those served must be both low income (150 percent of poverty) and first generation in college (neither parent completed a baccalaureate degree).

The Upward Bound program is focused on junior and senior high school youth and the services to be provided are enumerated. Two-thirds of those served must be low income and first generation in college, and one-third can be either low income or first generation.

The special services for disadvantaged students program is focused on those enrolled in postsecondary education and the services to be provided are enumerated. Two-thirds of those served must be low income and first generation in college or handicapped, and one-third of those served can be either low income, first generation, or handicapped.

The educational opportunity centers are focused as a community-based program serving adults. Two-thirds of those served must be low income and first generation. The services to be provided are specified and language is included to prevent duplication between talent search and educational opportunity centers.

Statutory authority is provided for the special programs for students whose families are engaged in migrant and seasonal farm work. The authorization for this program is $9.6 million in fiscal year 1981, $12 million in fiscal year 1982, $14 million in fiscal year 1983, $16 million in fiscal year 1984, and $18 million in fiscal year 1985.

ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION

Current law is retained unchanged.

VETERANS COST OF INSTRUCTION PROGRAM

The program is modified to provide greater encouragement for institutions to serve handicapped and disabled veterans. Consortia arrangements among institutions serving veterans and coordination among programs serving veterans are also further encouraged.

GUARANTEED STUDENT LOANS

Seven days of hearings by the subcommittee were devoted to this program. These deliberations identified five major areas of concern: The need to enhance the ability of parents to obtain the liquidity to pay their reasonable share of the costs of educating their children, the lack of capital availability in some areas of the Nation, the need to provide a mechanism for the consolidation of multiple student loans, the need to provide for extended and income sensitive repayment terms for borrowers with a large student loan debt and the problem of further curbing loan defaults. These concerns and suggested solutions were brought before the subcommittee by Mr. SMITH of Iowa, Mr. MAGUIRE of New Jersey, and Mrs. FENWICK of New Jersey among others.

The first of these concerns is addressed by the creation of a parent loan program. Under the parent loan program, parents could borrow up to $3,000 per year and $15,000 total for any one student. Parents would begin repaying a loan at the earliest of the following dates: 4 years after disbursement of the loan; the student completes his or her studies; the student ceases to be enrolled at least half time; and a date set by the parent and the lender.

Parents who begin repaying on an installment basis within 60 days or less would pay 8-percent interest. Parents who begin repaying after 60 days would pay 11 percent. Thus, there is an incentive for parents to begin repayment within 60 days.

In all other respects, the parent loan would be identical to the current guaranteed student loan program.

The Student Loan Marketing Association (Sallie Mae) is given the authority to make loans directly to students and parents in areas where there is a severe shortage of student loan capital. In addition, State guarantee agencies may act as lenders of last resort using funds borrowed from Sallie Mae.

If a student or parent borrower has loans from more than one lender or under NDSL, GSL or another Federal student loan program the aggregate amount of which exceeds $5,000, Sallie Mae could make a single consolidation loan to the borrower. If the total indebtedness of a student or a parent exceeds $7,500, Sallie Mae could make a new loan to the borrower with graduated or income-sensitive repayment terms of up to 20 years' length. Sallie Mae is mandated to disseminate information on its consolidation and extended repayment loan options.

Incentives are also provided for State guarantee agencies to provide lender referral services to borrowers.

With respect to curbing defaults; making loans available to parents, providing for loan consolidation and providing for extended and income-sensitive repayment should effectively prevent defaults. In addition, a system is established for the Secretary to share information on defaulted loans with credit bureaus. Provision is also made for student borrowers to request lenders to report to credit bureaus their positive record of student loan repayment. The Department of Education is instructed to share information on student names and addresses with State guarantee agencies to facilitate the collection of defaulted loans. Lenders under the program are also required to provide thorough and accurate loan information to student borrowers.

Sallie Mae's dependency on Federal capital is reduced by prohibiting the Secretary of the Treasury from requiring that Sallie Mae raise funds through the Federal financing bank and by removing the guarantee of the full faith and credit of the United States in 1984. To complement these changes, Sallie Mae's ability to raise private capital is enhanced by permitting it to deal in debt obligations comparable to those offered by other secondary markets, to raise funds through the sale of nonvoting common stock and by removing the specification in the law of the par value of Sallie Mae's stock.

Finally, Sallie Mae's ability to effectively perform as a secondary market for student loans is enhanced by permitting Sallie Mae to advance to a lender up to 100 percent of the face value of a student loan in warehousing and in broadening the types of securities that Sallie Mae can accept in providing warehouse advances. Under current law, Sallie Mae can deal with lenders with assets of less than $50 million even if the lenders discriminate against borrowers on the basis of their banking relationship with the lender. This $50 million limit is increased to $75 million.

The annual loan limit for independent undergraduate students is increased from $2,500 to $3,000. The aggregate loan maximums for students are modified as follows:

	Current law	H.R. 5192
Dependent undergraduate	$7,500	$12,500
Independent undergraduate	7,500	15,000
Graduate student	15,000	25,000

The Secretary is given the authority to waive the aggregate maximum for graduate students enrolled in unusually expensive programs of professional studies.

The interest rate for new borrowers is increased from 7 to 8 percent, and the grace period before repayment begins is shortened from 9 to 12 months to 6 months for new borrowers.

Limitations are placed on the payment of the special allowance for loan funds raised through the issuance of tax-exempt bonds to prevent abuses in this practice.

The allocation of administrative allowances among specified purposes by State guarantee agencies is removed and the definition of allowable administrative expenses is clarified.

COLLEGE WORK STUDY

Authorization for the program is provided as follows: fiscal year 1981, $670 million, fiscal year 1982, $720 million, fiscal year 1983, $760 million, fiscal year 1984, $800 million, fiscal year 1985, $830 million.

Students employed under this program are required to be paid the minimum wage. Institutions are permitted to carry forward and carry backward up to 10 percent of their college work study funds. The job location and development program is expanded by permitting institutions to use up to $25,000 for this purpose rather than $15,000 in current law.

Institutions are permitted to use up to 10 percent of their work-study funds for

less than half-time students and are encouraged, at the suggestion of Mr. WEISS of New York, to provide employment that complements the educational program of a student. Institutions are also permitted to use part of their administrative allowance to establish community service learning programs.

NATIONAL DIRECT STUDENT LOAN PROGRAM

Authorization for new capital contributions is provided as follows: fiscal year 1981, $400 million, fiscal year 1982, $400 million, fiscal year 1983, $475 million, fiscal year 1984, $550 million, fiscal year 1985, $625 million.

The aggregate loan limits are modified as follows:

	Current law	H.R. 5192
First 2 years as an undergraduate	$2,500	$3,000
Undergraduate total	5,000	6,000
Undergraduate and graduate total	15,000	12,000

The interest rate for new loans is increased from 3 to 4 percent.

For both the national direct student loan program and the guaranteed student loan program four new circumstances under which borrowers can defer repayment of their loans are defined: First, periods of up to 3 years for temporary total disability (at the suggestion of the gentleman from New York (Mr. BINGHAM); second, service in the Commissioned Corps of the Public Health Service (at the suggestion of the gentleman from West Virginia (Mr. STAGGERS); third, service as a full-time volunteer with a nonprofit agency that engages in activities like the Peace Corps or VISTA; and fourth, internships required to begin professional practice.

Efforts to curb defaults will be enhanced by a system for the exchange of information on defaulted loans between the Secretary and credit bureaus and by providing for the sharing of names and addresses of defaulters with lenders. The conference substitute also requires the Secretary to attempt to collect defaulted loans for 4 years after they are assigned and requires institutions to provide thorough and accurate loan information to students.

The definition of handicapped students for purposes of teacher loan cancellation is conformed to the definition used in the Education of the Handicapped Act, at the initiative of the gentleman from Maryland (Mr. BAUMAN.) The law is clarified with regard to the treatment of loan cancellations as income.

The conference substitute also provides an alternative financing mechanism through borrowing by the Secretary to meet the student loan capital needs of institutions of higher education through a procedure by which existing campus revolving funds revert to the Federal Government.

GENERAL PROVISIONS—TITLE IV

INSTITUTIONAL ELIGIBILITY

Institutions are required to provide students and prospective students with information on their academic programs, costs, student financial aid programs, tuition refund policy, special services for the handicapped, accreditation status and standards of satisfactory progress.

NEEDS ANALYSIS

The development of a single system of needs analysis for eligibility for student assistance is mandated. Participation by the higher education community in the development of an annual schedule of expected family contributions is required, and congressional review of the schedule is provided for.

An assessment rate of 14 percent on discretionary income is specified for adjusted gross family incomes less than $25,000.

The criteria to be used in formulating the expected family contribution schedule are specified for all of title IV rather than just for the basic grant program. The criteria in current law applicable to the basic grant program are retained with the following exceptions and modifications:

Reasonable child care expenses are included in the student's budget;

All individuals are provided with an asset reserve of not less than $10,000. All equity in the family's principal place of residence is excluded from consideration as an asset at the initiative of Mr. DRINAN of Massachusetts. An additional asset reserve of not less than $50,000 is provided to those with farm or business assets;

The assessment rate on the income of independent students with dependents will be the same as the rate for the families of dependent students;

In calculating student cost of attendance separate commuter budgets are provided for students who live with their parents and those who do not;

Simplified data requirements from institutions by eliminating the requirement that "actual" cost of attendance be provided for every student;

Permits the calculation of student budgets on the basis of the costs of study abroad where such study is included in a formal program at the institution;

Requires that a married student will be considered independent and be permitted to use current year income information; and

Expenses for the special services or equipment needed by handicapped students are included in the student's budget.

SINGLE FORM

Requires that student eligibility for title IV programs be established through a single form without cost to the student or the student's family. Also requires that the processing of such application be decentralized to the maximum extent practicable.

The Secretary is also authorized to develop a system of preeligibility assistance to provide students with early notice of their potential eligibility for financial aid.

ADMINISTRATIVE ALLOWANCE

Provides institutions with an administrative allowance of $10 per each basic grant recipient and $10 per each holder of a guaranteed student loan. In addition, provides that from the campus-based programs each institution shall receive an administrative allowance equal to 5 percent of the amount of campus-based funds up to $2.75 million, 4 percent of the amount of campus-based funds greater than $2.75 million but less than $5.5 million, and 3 percent of the amount of campus-based funds in excess of $5.5 million. The ceiling on the amount of administrative allowance an institution can receive is removed, and institutions are required to use their administrative allowance solely for the purpose of administering the student financial aid programs.

CRIMINAL AND CIVIL PENALTIES

The criminal penalties for fraud which in current law apply only to the guaranteed student loan program are applied to all of the title IV programs. Institutions may be suspended or terminated from the program or civil penalties levied for substantial misrepresentation of educational programs, financial changes or the employability of graduates.

STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

The program is modified to provide for training services through contracts with the Secretary for those involved in student financial assistance programs.

A National Commission on Student Assistance is established to undertake a 2-year study of issues such as more effective means to curb defaults, capital availability, the most appropriate mix of gift aid and self help, the status of financial aid for graduate students, the appropriate level of public subsidy of student loans and the impact of student assistance on student career choices and educational prices. In addition, special 1-year studies of the following topics will be made: Insurance premiums charged to students, the method of determining the special allowance, the academic progress standards required for student eligibility for financial assistance and the recapture of interest subsidies paid on behalf of student borrowers by the Federal Government.

The President, the Speaker and the President pro tempore of the Senate each appoint one-third of the 12 members. It was evident in the hearings that a great many questions concerning student assistance generally cannot be answered and that radical changes in the current student loan programs cannot therefore be justified at this time. The Commission is created to provide answers to these questions so that Congress and the President will be better informed in future deliberations on these programs. An authorization of $10 million is provided.

TITLE V. TEACHER TRAINING PROGRAMS

The limitation on the salaries for teacher interns in the Teacher Corps programs is deleted. Cooperation between local educational agencies and inteacher center program is encouraged.

More emphasis is placed on updating teachers in the use of technology, telecommunications and testing. The pool of eligible grantees for teacher centers

is expanded with the inclusion of educational service agencies.

Direction is given to the Secretary to make at least one grant award for teacher centers in each State.

Grants to schools of education for upgrading their faculty and curriculum to meet current needs are authorized.

The conference substitute establishes an Office of Education Professional Development in the Department of Education to review professional development operations and to coordinate their activities among the various Federal education programs.

The conference substitute authorizes the following amounts for the Teacher Corps program: $45 million, fiscal year 1981; $55 million, fiscal year 1982; $65 million, fiscal year 1983; $75 million, fiscal year 1984; $85 million, fiscal year 1985.

The conference substitute provides for the following authorizations for teacher training programs: $20 million, fiscal year 1981; $30 million, fiscal year 1982; $40 million, fiscal year 1983; $50 million, fiscal year 1984; $55 million, fiscal year 1985.

The conference substitute authorizes a new program of training for elementary and secondary school teachers to teach handicapped children in areas where there is a shortage of such teachers. This training program is in the nature of fellowships to individual teachers who must within 5 years after completion of training teach for at least 2 years in a special education program or repay the stipend awarded to the individual.

The authorization levels for this new program are: $2 million, fiscal year 1981; $3 million, fiscal year 1982; $5 million, fiscal years 1983–85.

Title VI of the current law is replaced by a new title VI, foreign studies and language development. The new title VI incorporates title VI of the National Defense Education Act, language and area studies, some provisions from the International Education Act as well as the recommendations of the President's Commission on Foreign Language and International Studies. Mr. SIMON of Illinois, who served as a member of the President's Commission, provided the leadership for the development of this title.

The conference substitute provides the following authorizations: $45 million, fiscal year 1981; $55 million, fiscal year 1982; $70 million, fiscal year 1983; $80 million, fiscal year 1984; $85 million, fiscal year 1985.

The conference substitute authorizes a new part B of title VI, business and international education programs. This new part establishes a dollar for dollar matching grant program to postsecondary institutions which have entered into agreements with business enterprises, trade organizations or consortia of such organizations to establish or expand curricula to serve the international needs of the American business community.

There is authorized an annual appropriation of $7,500,000 for fiscal year 1981 through 1985 for the purposes of this new part.

TITLE VII. CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

The title is simplified but retains the current State allocation formula. New authority to support improvement of research facilities including libraries and for compliance with section 504 is provided.

Assistance for facilities in areas experiencing unusual increases in enrollments or requiring the detection or removal of asbestos hazards is also authorized. Part D, assistance in major disaster areas, is repealed. The interest rate for academic facilities loans is increased from 3 to 4 percent.

The conference substitute provides the following authorizations for part A, State grant program for the construction, reconstruction and renovation of academic facilities: $140 million, fiscal year 1981; $140 million, fiscal year 1982; $145 million, fiscal year 1983; $150 million, fiscal year 1984; $155 million, fiscal year 1985.

The substitute provides an authorization of $80 million per year for part B, institutional grants for construction, reconstruction and renovation of graduate academic facilities.

The substitute authorizes $110 million per year for part C, loans for construction, reconstruction and renovation of academic facilities.

TITLE VIII. COOPERATIVE EDUCATION

The conference substitute authorizes $30 million for fiscal years 1981 through 1985 for the basic program. The maximum grant to a single institution is increased from $175,000 to $325,000, and the maximum grant to each member of a consortium is increased from $120,000 to $250,000. Different approaches to cooperative education are encouraged by permitting programs to include alternate or "parallel" periods of work and study.

An authorization of $5 million for each of the fiscal years 1981 through 1985 is provided for grants and contracts for training and research.

TITLE IX. GRADUATE PROGRAMS

The title is updated by striking references to the "expansion" of graduate programs. Part A, grant to institutions of higher education, is extended through fiscal year 1985 at its current authorization level of $50 million.

Parts B, C, and D of current law are revised by the conference substitute to provide a program of campus based grant awards to graduate and professional students based on financial need. The maximum award to a student is $4,500 per year for 3 years.

The substitute also provides for the maintenance of the level of awards (including institutional allowances) for the public service, mining and graduate and professional opportunity fellowship programs. The substitute authorizes $60 million for fiscal year 1981 and for fiscal year 1982 and such sums as may be necessary for fiscal year 1983 through 1985 for this new part B.

The conference substitute also provides a new part C, national graduate fellowships. This part would provide 450 portable competitive fellowships each year in the arts, humanities, and social sciences. Selection of these fellowships would be based on merit, with the stipend awarded being related to the recipient's financial need. The national graduate fellows program fellowship board would be created to select the areas in which the fellowships are to be awarded and to appoint panels for the selection of recipients.

The conference substitute extends the program of assistance for training in the legal profession as a new part D of title IX with the following authorizations: $5 million, fiscal year 1981; $5 million, fiscal year 1982; $7.5 million, fiscal year 1983; $7.5 million, fiscal year 1984; $10 million, fiscal year 1985.

The conference substitute continues the authority for the law school clinical experience program as part E in title IX (deleting such authority from title XI). The following authorizations are provided: $5 million, fiscal year 1981; $8 million, fiscal year 1982; $8 million, fiscal year 1983; $9 million, fiscal year 1984; $10 million, fiscal year 1985.

TITLE X

The vacated parts of this title are replaced by transferring the authority for the Fund for the Improvement of Postsecondary Education from the General Education Provisions Act. The Board of the Fund is given a statutory base. The following authorizations are provided: $20 million, fiscal year 1981; $30 million, fiscal year 1982; $40 million, fiscal year 1983; $50 million, fiscal year 1984; $50 million, fiscal year 1985.

Part C of title X creating the bureau of occupational and adult education and the community college unit is retained in current law.

NEW TITLE XI. THE URBAN GRANT UNIVERSITY PROGRAM

This title is designed to provide assistance to urban educational institutions in developing, in conjunction with local officials, responses to needs and problems of the urban area. It builds on the idea that the urban university and the urban area in which it is located have a natural affiliation and that the institution can provide research and services to help address urban problems.

Under this program, grants will be awarded on a competitive basis to institutions to provide applied research and service projects for their cities. The application must indicate the degree to which the local government is involved with planning and is committed to a financial contribution to the project. The Federal share is limited to 90 percent of the project cost.

As defined in this title, an urban area is an SMSA with a 500,000 or more population (the State may designate an area in States where there is no such SMSA). An urban university is one which is located in an urban area, draws a substantial portion of its students from said area; has the capacity to provide the services authorized, and offers a sufficient range of graduate or professional programs to sustain its offerings of services. A consortium can qualify for this program as long as one member meets all the qualifications.

I would like to stress one point all the

supporters of title XI have made at one time or another, and which I believe the Department of Education must take very much to heart. Title XI is a simple concept, and one which requires a bare minimum of Federal intervention. Under the terms of title XI, the cities are to decide what their problems are, and the universities are to decide how they can contribute to meeting those problems. The Secretary of Education has broad discretion in deciding whether or not a given city-university linkage is well developed enough to justify approval of an application under title XI, but those of us who have worked on urban grant for over 3 years now do not look upon the provisions of the act as providing the Secretary with a lot of blank spaces crying out to be filled with detailed regulatory prescription.

The conference report authorizes the appropriation of up to $15 million for fiscal year 1981 under this title. This is not a large amount, but it is enough to get the program underway and to fund some projects, perhaps of a demonstration nature, during the initial program year.

There are, Mr. Speaker, some urban universities which have already developed the kind of ties with their cities and counties which title XI calls for. I hope the distinguished members of the Appropriations Committees will give careful consideration to the appropriation of some funds for title XI so that a few, carefully chosen projects can get under way in fiscal year 1981. The regulation writing and application process should be completed very soon, and there is no good reason why, given some funding for fiscal year 1981, we cannot embark on the implementation of the Urban Grant Act in the immediate future. Urban grant, it seems to me, is in close harmony with the times. It does not call for massive expenditures; it does not involve major Federal intervention in local decisionmaking, and it is intended to bring the resources of the city and the resources of the urban university together in order to make the most effective and economical use of both.

The authorization levels are: fiscal year 1981, $15 million; fiscal year 1982, $25 million; fiscal year 1983, $40 million; fiscal year 1984, $50 million; fiscal year 1985, $65 million.

I introduced this legislation in the last Congress with 57 cosponsors. Five days of hearings were held on the bill in 1978. The legislation was reintroduced in this as H.R. 3181, which simplified and clarified it on the basis of what was learned through the hearings. H.R. 3181 has 72 cosponsors.

TITLE XII. GENERAL PROVISIONS

The provision for State agreements are modified to simplify the mechanism through which States provide assurances to the Federal Government for their participation in programs authorized under the Higher Education Act.

The States are given more flexibility in establishing a structure through which to perform federally required planning under the Higher Education Act, but broad participation continues to be assured.

The conference substitute authorizes the Secretary to make such modifications of any program under the act as she deems necessary in order to adapt such programs to the needs of the territories, and requires the Secretary within 18 months after the time of enactment to conduct an analysis of the unique educational needs of the territories.

The conference substitute also authorizes $2 million for each fiscal year through 1985 to support the cost of postsecondary education programs in Guam for nonresident students from other Pacific territories.

The conference substitute establishes a National Advisory Committee on Accreditation and Institutional Eligibility to advise the Secretary.

NEW TITLE XIII. WOMEN'S WORKSITE DEVELOPMENT PROGRAM

The conference substitute authorizes a program to encourage and to support the efforts of all forms of postsecondary institutions to serve women in their workplaces with the collaboration of labor unions and employers. An authorization of $7.5 million is provided for each fiscal year 1981 through 1985.

TITLE XIV. MISCELLANEOUS PROVISIONS

The conference substitute amends the contingent extension provision of the General Election Provisions Act to authorize the contingent extension of any forward-funded program for 2 fiscal years.

The conference substitute amends the General Education Provisions Act to authorize the Congress to disapprove Department of Education regulations in whole or in part.

The conference substitute authorizes appropriations to the Secretary of Education for fiscal year 1981 of $2.5 million for the college science teacher program, and $5 million for the minority institution science program.

The conference substitute extends the life of the Commission on the Review of the Federal Impact Aid Program until September 30, 1981.

The conference substitute amends the General Education Provisions Act to provide that no regulation affecting any institution of higher education in the United States shall become effective unless the agency promulgating such regulation publishes in the Federal Register an educational impact assessment statement which shall identify what information specified by the regulation is available from another authority of the United States.

The conference substitute authorizes the Secretary to make a 1-year study of programs authorized by the Elementary and Secondary Education Act, the Vocational Education Act and the Education of the Handicapped Act in order to analyze if there are unnecessary duplications, conflicts and reporting requirements in these programs, while at the same time insuring the delivery of educational services and the ability of the Federal Government to monitor and evaluate the programs' effectiveness in serving the desired target populations.

The conference substitute adds, as a priority for research by the National Institute of Education, special problems of the nontraditional student. The authorization for the Institute is extended at the following levels: $125 million, fiscal year 1981; $145 million, fiscal year 1982; $165 million, fiscal year 1983; $190 million, fiscal year 1984; $215 million, fiscal year 1985.

The conference substitute establishes and advisory council to evaluate the needs of Native Hawaiians and the effectiveness of existing State and federally assisted educational programs in meeting such needs. A total of $500,000 is authorized for the period of fiscal years 1981 through 1983.

The conference substitute authorizes a 1-year provision amending the impact aid laws to provide special assistance to local school districts facing influxes of Cuban, Haitian, and Indochinese refugee children.

The conference substitute extends the authorization of appropriations for construction at Navajo Community College for 1 year and changes the authorization to an amount based on the actual cost of operation and maintenance of the institution.

The conference substitute makes the College of Micronesia a land-grant college.

The conference substitute authorizes an appropriation of $750,000 per year to be matched by funds from private sources for the Robert A. Taft Institute.

The conference substitute authorizes $6 million for fiscal year 1981 for a grant to establish the General Daniel James Memorial Health Education Center to be located in the Tuskegee Institute in Tuskegee, Ala.

The conference substitute authorizes $750,000 for fiscal year 1981 to establish the William Levi Dawson Chair of Public Affairs at Fisk University at Nashville, Tenn.

Mr. Speaker, sitting to my left is the most senior member of this committee who has contributed more to higher education legislation since the adoption of the act in 1965 than any other individual, and who was probably the most active member of the conference.

The name of the gentleman from Indiana (Mr. JOHN BRADEMAS) is synonymous with higher education legislation in this House.

Mr. BRADEMAS. Mr. Speaker, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Indiana.

Mr. BRADEMAS. Mr. Speaker, I rise to express my appreciation to our colleague, the gentleman from Michigan, the Honorable WILLIAM D. FORD, for his gracious remarks and to voice my strong support for the conference report on H.R. 5192, the Education Amendments of 1980.

Mr. Speaker, allow me both as one who has served on the House subcommittee with jurisdiction over higher education for nearly 22 years and as a member of the conference committee on the legislation now under consideration, warmly to commend the distinguished chairman of the Subcommittee on Postsecondary Education, BILL FORD, on his outstanding leadership on this important legislation.

BILL FORD is a legislator's legislator. He does his homework and understands his subcommittee and committee and knows how to work effectively with both majority and minority members in the House as well as in the other body.

So I want to congratulate him on the splendid job he has done on this legislation as well as to salute the other members of the subcommittee, both Democrats and Republicans. They have worked hard and cooperated effectively in bringing this legislation to the floor.

In particular, Mr. Speaker, I should like to acknowledge the valuable contributions of several distinguished members of the conference committee, the chairman of the Education and Labor Committee, the gentleman from Kentucky (Mr. PERKINS); the ranking minority member of the committee, Mr. ASHBROOK; and the ranking minority member of the subcommittee, the gentleman from Alabama (Mr. BUCHANAN).

Mr. Speaker, I should also cite Members of the other body for their contributions, in particular, the chairman of the Subcommittee on Education, Arts, and the Humanities, the distinguished senior Senator from Rhode Island (Mr. PELL), and the distinguished senior Senator from New York (Mr. JAVITS).

I want also, Mr. Speaker, to echo the tribute paid by Chairman FORD to William Gaul, who served as a principal staff assistant on the Committee on Education and Labor for so many years and whose own contributions to the shaping of Federal higher education policy will endure for many more years. All of us who knew and worked with Bill Gaul mourn his passing even as we are grateful for his life.

Mr. Speaker, this important measure, the conference report on H.R. 5192, seeks to advance the goal of achieving equal educational opportunity through continuing and strengthening our programs of Federal financial assistance to students.

The passage of this legislation will reaffirm the commitment of the Federal Government to help students attend colleges and universities throughout the United States whether those institutions are public or private.

Mr. Speaker, I believe the House and Senate conferees have worked out a fair compromise and that it is embodied in the conference report we are today considering. The measure on which we shall shortly act represents a genuine bipartisan effort in which Members of the House can take pride.

I shall not, Mr. Speaker, attempt to discuss all aspects of the conference report but I want to mention certain sections of the bill which, in my judgment, deserve particular attetnion.

I think it important to note, Mr. Speaker, that the conference report contains several new provisions to assist college students who need assistance.

First, under the conference report, the maximum basic educational opportunity grant that a student can receive would be increased step-by-step from the current figure of $1,800 to $2,600 by fiscal 1985. Moreover, that portion of a student's costs which the grant would cover would rise from half to 70 percent.

Second, the conference report would make basic grants available to students for the full time required to complete their undergraduate studies instead of, as in present law, limiting the availability of the grants to four academic years.

Third, the conference report would increase the supplemental educational opportunity grant, for students with extraordinary financial need, from $1,500 to $2,000.

These several changes, Mr. Speaker, obviously continue our policy of providing assistance to students primarily on the basiis of financial need. There are other provisions in the bill which preserve our commitment to recognizing not only the needs of poor students but of middle-income students and their families for some help.

The maximum guaranteed student loan available to independent students regardless of their income would, under the conference report, be raised from $2,500 to $3,000.

To enable parents more easily to contribute to the education of their children in college, the conference report establishes a new parent loan program permitting parents to borrow up to $3,000.

Further help is offered to families, regardless of income, by excluding the principal residence of a family from consideration as an asset in determining the resources a student's family has available to pay college costs.

Mr. Speaker, these provisions and others in the conference report aimed at expanding the several Federal student assistance programs will help low- and middle-income students meet the increased costs of college at all types of institutions—private and public, 2 year and 4 year, small colleges and large research universities.

I am especially gratified, Mr. Speaker, that the House conferees insisted on rejecting provisions in the Senate bill which would have seriously reduced the ability of many students to borrow funds for college. Members of the conference committee refused to accept Senate provisions that would have required students, after leaving college, to repay the interest they incurred while in college.

The conference committee also rejected a Senate provision that would have raised the interest rate on guaranteed student loans from 7 to 9 percent and reached a compromise on this matter. In addition, the conference rejected a Senate proposal to shorten from 9 to 4 months the grace period before repayment of loans must begin.

Let me mention as well, Mr. Speaker, that the conference agreement also contains provisions for the following purposes: To strengthen college libraries, assist institutions with high percentages of low-income students, simplify procedures for student-aid applications, expand programs in international education, provide fellowships to train teachers of handicapped children and continue support for educational research conducted by the National Institute of Education.

Mr. Speaker, as author of the original legislation that authorized the National Institute of Education, I was of course pleased to see the conference agree to continue the work of this significant institution.

I am gratified as well to see our distinguished colleague from Illinois, the Honorable PAUL SIMON, chairman of the Select Education Subcommittee, provide leadership in another area of longstanding interest to me, international education, and Mr. SIMON's influence is demonstrated by provisions contained in the conference report.

To reiterate, Mr. Speaker, this legislation has strong bipartisan support. The conference report deserves the approval of this body and I urge its adoption.

□ 1100

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, I, too, want to join the gentleman from Indiana (Mr. BRADEMAS) in complimenting the gentleman from Michigan (Mr. BILL FORD) for his leadership in bringing forth this monumental piece of education legislation. It was through his leadership and his ability and the amount of hours he has put in, he and the ranking Republican member, the gentleman from Alabama (Mr. BUCHANAN) and all the members of the committee that we are able to vote on this piece of legislation.

Mr. Speaker, I would like to ask a few questions of the gentleman from Michigan (Mr. FORD).

The gentleman will remember that at the request of the Speaker and myself, the gentleman's committee made a special provision under title VII for construction, reconstruction, and renovation of academic facilities for graduate libraries. I am delighted to see that the House and Senate conferees have agreed to these provisions.

Your committee recognized our request specifically in its report to the House. This provision was brought to the gentleman's attention because there are a few institutions who have not been able to add new library facilities for over 35 or 40 years because of financial restraints. Many institutions have constructed new library facilities under the provisions of this law. Is the gentleman aware of that?

Mr. FORD of Michigan. Yes. I understand that there is one such instance at Boston College.

Mr. CONTE. Well, that is right. This prestigious institution now has some funds available, but needs assistance under title VII.

In view of the need for funds for graduate facilities, two priorities, which are: Graduate facilities with unclosed loans, and research libraries as reported by the Senate and House conferees, prompted our Appropriations Committee, under the great leadership of the gentleman from Kentucky (Mr. NATCHER) to release $25 million from amounts available in the higher education loan fund for graduate facilities. The committee also provided authority to the Secretary of Education to provide funds in excess of campus loan limits to meet special and critical needs within these priorities.

Mr. FORD of Michigan. Mr. Speaker, I am delighted to say to the gentleman from Massachusetts that the committee took note, not only of the gentleman's request, but of the long and hard work of the gentleman from Massachusetts and his consistent efforts on behalf of appropriations for the legislation that comes from our committee and deemed it wise to follow the gentleman's counsel. If the gentleman sees the committee report, he will note that we specifically referred to the purposes the gentleman has just outlined. We are very pleased to note that the 1981 appropriations bill coming from the gentleman's committee takes into account the report language from our committee and we expect that these projects will, in fact, come into being very quickly and the gentleman from Massachusetts and the Speaker are to be complimented for bringing this to our attention.

I think the gentleman should recognize that it is a very strong compliment to the gentleman from Massachusetts, as well as to the Speaker, that when this was raised by my amendment on the gentleman's behalf in the committee, there was not a single dissenting vote.

Mr. CONTE. Mr. Speaker, I want to thank the gentleman from Michigan (Mr. FORD) very much. He is a good man and the gentleman's district is lucky to have him.

Mr. PERKINS. Mr. Speaker, will the gentleman yield to me?

Mr. FORD of Michigan. I yield to the distinguished gentleman from Kentucky.

Mr. PERKINS. Mr. Speaker, we are bringing betore the House today a landmark conference report on the continuation and revision of the Federal higher education laws. This bill, if adopted, will afford millions and millions of American citizens in the years ahead an opportunity they might not otherwise have to pursue a postsecondary education.

This conference report is the product of the efforts of many Members of Congress; but I would particularly like to acknowledge the diligent leadership of the chairman, BILL FORD, of the Subcommittee on Postsecondary Education and of its ranking minority member, Congressman JOHN BUCHANAN.

These gentlemen, along with their dedicated staffs, have invested 2 years of work in producing one of the most balanced and forward-looking pieces of legislation we have ever had in the area of postsecondary education.

Since all the members of the Subcommittee on Postsecondary Education worked so hard on this bill, it is only appropriate that we acknowledge their accomplishments at this time. In addition to BILL FORD and JOHN BUCHANAN, the following Members served with great distinction on that subcommittee: JOHN BRADEMAS, FRANK THOMPSON, JR., MARIO BIAGGI, PAUL SIMON, PETER PEYSER, JOSEPH GAYDOS, AUSTIN MURPHY, TED WEISS, WILLIAM RATCHFORD, JAMES JEFFORDS, MICKEY EDWARDS, THOMAS TAUKE, THOMAS PETRI, and JOHN ASHBROOK.

I am very pleased that the Senate-House conference committee was able to reach agreement on all of the difficult issues facing us during the course of our long hours of deliberation. But during these sessions, Mr. Speaker, I was constantly aware of, and saddened by, the absence of our longstanding counsel for higher education—Bill Gaul.

Bill worked for the committee for well over 17 years and developed extraordinary expertise in a wide number of areas—most particularly in the area of postsecondary education. I missed him dearly during our conference proceedings, and I know many of my fellow conferees felt likewise. As a tribute to him and his unique ability, the statement of the managers in this conference report contains a dedication to his fine work over the years and to his memory.

Because I know that BILL FORD and JOHN BUCHANAN will describe in great detail the many provisions of this conference report, I would like to only briefly touch on the highlights.

GRANTS

The keystone of Federal aid in the area of higher education involves the provisions of Federal student financial aid and the most essential ingredient of that assistance is the basic educational opportunity grant program.

I am very pleased to report to the House that the conference report before us today extends these grants through fiscal year 1985, and increases the grant limits over that period of time in order to provide for a more equitable payment to meet the rapidly increasing costs of higher education.

Beginning in fiscal year 1980, basic grants will be available to pay to the neediest student 50 percent of their costs of education, with a maximum grant of $1,900. This grant will increase by fiscal year 1985 to a maximum of 70 percent of the cost of education, with the dollar limit of $2,600.

These grants have very appropriately been renamed the "Pell Grants" by this conference report. The Senator from Rhode Island was the initiator of this concept back in 1972, and his steadfast support of these grants over the years has insured their being the most essential ingredient today in Federal student aid. Consequently, the conference committee readily adopted a provision renaming these grants in his honor as a tribute to his leadership over the years.

In addition to the strengthening of the "Pell Grants," the conference report also extends and increases the supplemental educational opportunity grants, and the assistance which is available under the TRIO programs for the disadvantaged. These programs are of vital importance to the poor of this country in their efforts to achieve a college education.

LOANS

The conference report also extends through fiscal year 1985 the second major ingredient of Federal student aid—namely, the Federal student loan programs. Both the guaranteed student loan program and the national direct student loan program are also extensively revised in order to more appropriately meet the needs of students seeking a higher education in today's world.

The guaranteed student loan program is modified by increasing the amounts which students can borrow, thereby acknowledging the rapidly increasing costs of a higher education. In addition, the interest rate for the guaranteed student loan program is increased from 7 to 8 percent.

I, as well as many other conferees, fought a long hard battle against increasing this interest rate on guaranteed loans. We lost out because the Senate was insistent on a higher interest rate. We were fortunate, however, in resisting demands to go to a 9 percent interest rate, as advocated by the Senate. Instead, we compromised at the 8-percent level which is in the report.

I myself believe that a root cause of today's economic problems in the country is the unconscionably high level of interest being charged for use of money. I strongly feel that until we make money available at more reasonable rates of interest, our economy will never recover from its present difficulties.

Consequently, I had a great deal of difficulty in accepting this higher interest rate, especially in light of the fact that we will be discouraging citizens from pursuing further education because they will have to pay more money for this training.

This seems to me to be just the opposite of what we should be doing if we want our country to grow and to prosper. However, regrettably, the essence of a conference committee is compromise and in order to secure agreement on this bill, we had to accept this somewhat higher interest rate.

I am pleased though that the conference committee rejected the so-called Metzenbaum amendment from the bill. This Senate amendment would have imposed a needs test for students borrowing from the guaranteed student loan program, and it would have required certain students to repay the interest which had been deferred on their loans while they attended school.

While many conferees felt attracted to the principles espoused by the amendment, prior experience with a needs test in 1972 has shown us that the introduction of such a device would serve to destroy the guaranteed student loan program. As it is, a delicate balance exists in trying to maintain certain Federal standards while also trying to encourage banks to make these loans which are sometimes inconvenient and cumbersome to them. A complexity such as a needs test would have destroyed that balance and severely hampered the program.

Similarly, the imposition of a requirement for the payback of interest deferred while attending school would have brought undue complexity to the program and would have further discouraged banks and students from participating.

Instead of adopting this amendment, a study has been ordered to be completed within 1 year on ways in which the principles of the Metzenbaum amendment

could be implemented without these deleterious effects.

As regards the national student loan program, the conference committee faced a situation concerning interest rates in that program similar to the problems faced with the guaranteed student loan program. The national direct loan program has been extended by the conference through 1985. However, the Senate sought to increase the interest rate for this program all the way up to 7 percent from the current 3 percent. We had to fight hard in order to retain a reasonable compromise, and I am very pleased to report that the interest rate for this program was increased only moderately to 4 percent.

I myself would have preferred to remain at 3 percent for the reasons I mentioned earlier. But given the fact that the Senate's bill had a 7-percent interest rate and that the Senate conferees were pushing hard for cost savings, I feel that we were fortunate in securing a 4-percent interest rate for this program.

In my opinion, the national direct student loan program is one of the finest investments which the Federal Government has ever made in the area of education. The availability of these loans has enabled thousands and thousands of citizens over the years to attend institutions of higher education, and I am gratified that the conference report extends this program essentially unchanged.

The only major modification made by the conference report was the adoption of an optional funding technique which was proposed by the Senate. This technique would permit the Secretary of Education to issue bonds in order to raise revenue to provide the same amount of loan capital on college campuses as is presently being provided through the institution's revolving funds and through annual Federal capital contributions.

The Senate had originally proposed that this alternative financing be made mandatory and that the entire national direct student loan program be operated by a new Federal association which would operate apart from the Department of Education. The conference rejected both the creation of the association and the mandatory nature of this revenue bond funding.

However, again in the spirit of compromise and in order to reach an accord, we did accept the idea of this type of funding as an alternative funding device available to the Secretary of Education.

I myself would hope that the situation would never arise where the Secretary of Education would feel the need to turn to this alternative funding technique. The program has served us well over the years as it is presently constituted, and I would hope that we would not jeopardize the benefits of the program through experimenting with this untried revenue raising procedure.

I am also pleased to report that the conference agreement continues the cancellation provisions for these Federal loan programs. These cancellation provisions only cost the Federal Government about $14 million annually, but they provide the incentive for many hundreds of students to enter the teaching profession in disadvantaged areas and in the education of the handicapped.

MISCELLANEOUS

In general, the conference report extends all of the other expiring Federal programs aiding higher education through fiscal year 1985. I am particularly pleased by the extension of the college library programs. Those programs have provided much needed assistance to institutions that are financially strapped in trying to bring adequate library resources to their campuses.

I am also happy to report that the cooperative education program has been extended and that its present focus remains unchanged. The Senate had sought to permit the Federal Administrators to shift funds in that program toward large demonstration programs at major universities. The adoption of that amendment would have been very harmful to small institutions which rely on these Federal grants for their basic cooperative programs. I am pleased that the conference report retains that approach.

Lastly, I would like to note that the conference report substantially reduces authorizations for these higher education programs from those contained in the House-passed version of H.R. 5192. As a general principle, the conference report reduces the House figures, by taking 60 percent of the difference between the two bodies. As an example of the real savings in authorization levels which have been accomplished by this action, the conference report reduced college library programs (title II) authorizations from $140 million in fiscal year 1981 to $30 million. Subsequent year authorizations reflect similar reductions for these programs. I myself do not agree with these reductions for the library programs, but the House conferees had to take this action because of the Senate's insistence.

Annual Teacher Corps authorizations amounted to $100 million in the House-passed bill; in the conference report that figure is reduced to $45 million for fiscal year 1981, rising to $85 million in fiscal year 1985.

Lastly, $300 million was recommended annually by the House-passed bill for grants for the construction and renovation of undergraduate higher education facilities. The conference report reduced that figure to $140 million for fiscal year 1981, going up to $155 million for fiscal year 1985.

CONCLUSION

In summary, Mr. Speaker, I believe we are bringing before the House a well-balanced piece of legislation which will permit the Federal Government to assist millions of our citizens during the first half of this decade to attend institutions of higher education.

The results of this education will certainly be of benefit to all of us, and I believe that the investment of these tax dollars contained in this bill will be returned to our country's benefit many times over, not only in terms of earned taxes returned to the U.S. Treasury, but also and more importantly, in terms of potential creativity and imagination which will be the result of the increased academic endeavor and education benefits made available to our citizens who, without the help and assistance contained in the program of this legislation, would not be able to attend college at all.

Mr. Speaker, I believe this conference report can be supported by every Member of this body.

H.R. 5192—EDUCATION AMENDMENTS OF 1980: CONFERENCE AGREEMENT

Title/item	Fiscal year— 1981	1982	1983	1984	1985
I. Education outreach:					
A. Commission of National Development in Postsecondary Education	[1] $3,000,000				
B. State planning and continuing education	20,000,000	$40,000,000	$60,000,000	$80,000,000	$100,000,050
II. College libraries:					
A. College library resources	10,000,000	30,000,000	30,000,000	30,000,000	35,000,000
B. Library training, research, and development	10,000,000	30,000,000	30,000,000	30,000,000	35,000,000
C. Strengthening research library resources	10,000,000	15,000,000	15,000,000	15,000,000	15,000,000
D. National periodical system	750,000	750,000	Such sums	Such sums	Such sums
III. Institutional aid:					
(Both part A, Strengthening Institutions; and part B, Aid to Institutions with Special Needs)	160,000,000	185,000,000	210,000,000	245,000,000	280,000,000
C. Challenge grants		25,000,000	35,000,000	45,000,000	50,000,000
IV. Student aid:					
Basid educational opportunity grants	Such sums	Such sums	Such sums	Such sums	Such sums
Supplemental educational opportunity grants:					
Initial year	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000
Continuing year	Such sums	Such sums	Such sums	Such sums	Such sums
State student incentive grants (initial and continuing grants)	100,000,000	100,000,000	150,000,000	200,000,000	250,000,000
College work-study program	670,000,000	720,000,000	760,000,000	800,000,000	830,000,000
National direct loan program	400,000,000	400,000,000	475,000,000	550,000,000	625,000,000
Student Aid Commission	10,000,000				
TRIO (special services for disadvantaged)	400,000,000	Such sums	Such sums	Such sums	Such sums
Migrant students	9,600,000	12,000,000	14,000,000	16,000,000	18,000,000
V. Teacher training programs:					
A. Teachers Corp	45,000,000	70,000,000	75,000,000	80,000,000	85,000,000
B. Teacher training	20,000,000	50,000,000	55,000,000	55,000,000	55,000,000
C. Teachers of handicapped	2,000,000	3,000,000	5,000,000	5,000,000	5,000,000

H.R. 5192—EDUCATION AMENDMENTS OF 1980: CONFERENCE AGREEMENT

Title/item	Fiscal year— 1981	1982	1983	1984	1980
VI. International education:					
A. International and foreign language studies	45,000,000	55,000,000	70,000,000	80,000,000	85,000,000
B. Business and international education program	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000
Sec. 605 (amendment to part N, ESEA III, International Understanding)	5,250,000	6,750,000	8,250,000	9,000,000	9,000,000
VII. Construction, reconstruction, and renovation of academic facilities:					
A. Grants for undergraduate facilities	140,000,000	140,000,000	145,000,000	150,000,000	155,000,000
B. Grants for graduate facilities	80,000,000	80,000,000	80,000,000	80,000,000	60,000,000
C. Loans for academic facilities	110,000,000	110,000,000	110,000,000	110,000,000	110,000,000
VIII. Cooperative education:					
Sec. 802—Grants	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000
Sec. 803—Research and demonstration	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
IX. Graduate programs:					
A. Grants to institutions	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000
B. Graduate fellowships	60,000,000	60,000,000	Such sums	Such sums	Such sums
C. National graduate fellows program	Such sums	Such sums	Such sums	Such sums	Such sums
D. Training in legal profession	5,000,000	5,000,000	7,500,000	7,500,000	10,000,000
E. Law school clinical experience	5,000,000	8,000,000	8,000,000	9,000,000	10,000,000
X. Fund for improvement of postsecondary education	20,000,000	45,000,000	45,000,000	50,000,000	50,000,000
XI. Urban grant university program	15,000,000	40,000,000	50,000,000	55,000,000	65,000,000
XII. General provisions: Territorial grant assistance	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
XIII. Women's worksite development demonstration program	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000
XIV. Part B, National Institute of Education	125,000,000	145,000,000	165,000,000	190,000,000	215,000,000
Part H(1) Robert A. Taft Institute	750,000	750,000	750,000	750,000	750,000
Part A, General Education Provisions	2,500,000				
Science education minority science education	5,000,000				
Part H(3) William L. Dawson Chair of Public Affairs	750,000				
Part D, Native Hawaiian Education Study	500,000				
Part H(2), General Daniel James Memorial Health Education Center	6,000,000				
Part F, Navajo Community College program	Such sums	Such sums	Such sums	Such sums	Such sums
Part E, Refugee Children Impact Aid	Such sums	Such sums	Such sums	Such sums	Such sums
Total	2,998,100,000	2,878,250,000	3,105,000,000	3,394,250,000	3,674,750,000
Grand total			$16,050,350,000		

[1] Available through Dec. 31, 1983.

Mr. Speaker, I would like to ask the distinguished chairman of the subcommittee, the gentleman from Michigan (Mr. FORD), a couple of questions.

I would like to correct an error which was made in the statement of the managers. This error concerns the effective date for a provision reducing the special allowance in the guaranteed student loan program.

Section 420 of the conference report amends section 438 of the Higher Education Act in order to modify the special allowance. However, the effective date for this modification in the conference report states that it "shall not apply to loans which were made or insured prior to October 1, 1980."

The statement of the managers in item 94 states this effective date differently. If I may quote from the statement of the managers.

The House recedes with an amendment that the revised special allowance shall apply only to loans made or purchased from proceeds of tax exempt bonds issued after October 1, 1980.

For the sake of legislative history, I would like to make clear that the provision in the conference report controls and that the description in the statement of the managers is incorrect. The description in the statement of the managers should say that this modification of the special allowance shall not apply to loans which were made or insured prior to October 1, 1980.

If I might, I would like to ask the floor manager of this conference report who is the chairman of the Subcommittee on Postsecondary Education whether he agrees with this interpretation.

Mr. FORD. I agree with Chairman PERKINS' description of the facts. The statement of the managers is not correct, and the conference report controls.

Mr. BUCHANAN. Mr. Speaker, I yield myself such time as I may consume.

□ 1110

Mr. Speaker, I rise in support of the conference report to H.R. 5192, Education Amendments of 1980. This conference report represents the interests and concerns of House Members as reflected in their overwhelming passage on November 7, 1979 of H.R. 5192 by a 385 to 15 vote in spite of the opposition to the bill by the administration.

We come before you with a conference report that has been trimmed in the size of its authorization to meet the concerns of the administration and the other body, but one that comprises a substantial new commitment to post-secondary education and to student assistance programs. We come before you today with a conference report that has the administration's support. I hope their support does not cost us too many votes.

Before relating the contents of the conference report, I would like to take this opportunity to compliment the chairman of the Education and Labor Committee, Mr. PERKINS, the ranking Republican on the committee, Mr. ASHBROOK, and other conferees for their outstanding work during this conference. In particular, I would like to commend the distinguished chairman of the Subcommittee on Post-secondary Education, Mr. FORD, for his outstanding leadership during the past 2 years in reauthorizing the Higher Education Act. The excellent conference report before us today can be largely attributed to Mr. FORD's thorough preparation and knowledgeable guidance throughout the reauthorization process. From the time almost 2 years ago when he urged the postsecondary community to make recommendations to him in writing until the last signature was placed on the conference report, his leadership has been an example that other legislators ought to emulate.

Mr. Speaker, I would say that BILL FORD has stood as tall as a man can stand and has done as much as one man can do to make certain that in this country we make the most of our most precious resources, our human resources, to make certain that every American who desires a postsecondary education shall have that education, and to make sure that every family that has the dream, the great American dream of sending a child to college, shall have that dream fulfilled.

I will say to every person involved in education in the United States that when BILL FORD enters the room they ought to stand up and cheer. Mr. FORD has done a magnificent job of leadership. We started out with no bill. We started out with letters he wrote to all of the interested groups seeking their counsel on what was right about existing programs and what needed to be changed. Then the staff compiled the responses and we held hearings based on those responses. BILL FORD then caused panels to be formed to talk about the differences and to iron out the problems. We saw throughout the process statesmanship on the part of many individuals and entities in the postsecondary education community as they themselves helped to resolve the problems and work out a consensus and bipartisan bill.

Last November, this body gave a mandate to the House conferees to stand firm on the positions taken by the House regarding Federal postsecondary education programs. I firmly believe that the report presented to the House today represents the best interests of the members of the House of Representatives and reflects those concerns expressed during the debate on the Higher Education Act here in the House. Despite the overwhelming support of H.R. 5192 last fall, some members were concerned that the cost of the reauthorized programs was too great. Since last November budgetary concerns have come to the floor in Congress and pressure has been increasingly placed on reducing the costs of Federal programs. The Senate bill reflected these increased budgetary concerns and the conference report moves in the direction of the Senate bill. Almost without exception, the final authorization levels for the programs in this bill are closer to the lower Senate figures, thus lowering the yearly authorized costs by over $1 billion per

year when compared to the House reported bill.

In spite of these reductions from the House bill, I can confidently say that this conference report expands the student assistance programs tremendously and, as in 1978 with the Middle-Income Student Assistance Act, heralds a new era for Federal support of access and choice in postsecondary education. We have kept our commitment made with the passage of MISAA to the middle-income taxpayer, and, most importantly, insured that the low-income student will be provided sufficient financial support to allow him or her to make the best of their mind and abilities. I am firmly convinced that an investment in the future of our young people is the single best investment for insuring that America will remain strong in the decades ahead.

As in current law, over 90 percent of the authorized program moneys are in the student financial assistance title (title IV). The conferees feel that the best way to provide educational opportunity to postsecondary students is to provide them the financial means to select the types of programs and institutions that will best supply their educational needs. One of the most difficult issues during the past 2 years was how to resolve the debate between the independent and the public sector regarding the basic educational opportunity grant program (BEOG). In an effort to increase the percentage of costs that could be covered by a BEOG, we made sure that in increasing that percentage the independent institutions would be protected by increasing our support of those programs that particularly are beneficial to students attending independent institutions.

At this point I would like to commend the various postsecondary education interest groups for the manner in which they dealt with the issue of the BEOG "half-cost" compromise. At the urging of the distinguished chairman from Michigan (Mr. FORD) the various interest groups worked cooperatively in drafting a compromise that was fair to all sectors of postsecondary education. Without this cooperation, our job would have been more difficult and the cleavages left by large scale disagreements in the grant area would be disastrous for support of Federal student aid programs in the coming years.

The conferees agreed to a half-cost compromise which set the fiscal year 1981 maximum BEOG at $1,900 covering 50 percent of a student's cost, with a minimum SEOG funding level of $40 million. By 1985, we authorize a maximum BEOG of $2,600 covering 70 percent of costs with a $480 million SEOG. The issue of how to deal with the thresholds for the BEOG program was a difficult one. The compromise finally struck would allow a basic grant to be funded up to $1,800 in fiscal year 1981 before SEOG funding of $400 million is mandated. The SEOG thresholds are then increased in proportion to the increases in future years of the BEOG maximum.

The most difficult issue to deal with in conference was the structure and financing of the national direct student loan program. The Senate sought to establish a totally new, off-budget national Direct Student Loan Association which would centralize the basic loan program and shift the loan volume from the current private sector to a Government-run program. The House last year very carefully studied this proposal and rejected it overwhelmingly. We wanted to retain the current NDSL program which requires direct appropriations and decentralization at the capital level, and at the same time emphasize the use of private capital in the guaranteed student loan program, GSL. The compromise presented today in the conference report is as follows:

The national direct student loans, NDSL, program is reauthorized to operate essentially as under current law. The interest rate is raised from 3 to 4 percent, and the option is added for the Secretary of Education to finance loans under the NDSL program through borrowings from the Federal Financing Bank as well as appropriations from the Congress and loan repayments. Centralization of NDSL program operations could occur at some point in the future, but only if sufficient loan capital is available from Federal sources to completely replace the total loan capital available from all the NDSL revolving funds.

The guaranteed student loan (GSL) program also is reauthorized to operate essentially as under current law. The interest rate is maintained at 7 percent for new borrowers. The provisions placed in the Senate version of the bill by Senator HOWARD METZENBAUM, which would add interest accrued during the in-school period to the repayment burden of many student borrowers, are not included in the conference report.

A new parent loan program is authorized to be established, with an interest rate of 8 percent for parents who choose to begin repayment within 60 days after origination of the loans, and 11 percent for those who choose to defer repayment.

Although the bulk of the Federal support of postsecondary education is through student assistance, the conference report reflects significant changes in many of the other institutional assistance programs. The educational Outreach (title I) program reflects the objective of both Houses in coordinating those programs of postsecondary planning, education information, and continuing education into one title so that we can maximize the Federal effort in insuring that all persons who want to attend college have the opportunity to do so.

Title II of the bill, the college and research library assistance and library training and research programs, reflects the conferees desire to expand support for college library programs while at the same time recognizing the potential for economies of scale in some type of centralized lending program. The conference document authorizes a study of the feasibility and advisability of establishing a national periodical system and, if found feasible and advisable, authorizes the preparation of a design for such a program.

Continued assistance to institutions of higher education is provided through title III. Conferees agreed to creating two parts to this institutional aid title which further focuses assistance to those institutions with special needs. Inclusion of the challenge grant program under title III promises to provide incentives to institutions to match Federal dollars with public or private funds to further strengthen their self-sufficiency.

Title V, teacher corp and teacher training programs, reflects the desire of both bodies to coordinate the existing teacher training programs that are scattered throughout the Federal bureaucracy.

The conference report section relating to title VI, international education programs, includes a Senate provision to encourage and support the education of business leaders in the cultural and language characteristics of foreign countries. The addition of this vital new program will hopefully assist the United States to be more competitive in the world market for goods and services. As a member of the Foreign Affairs Committee, I am convinced that our understanding of the world economy and our balance-of-payments status can be much improved by programs such as this. Title VII, construction, reconstruction and renovation of academic facilities and title VIII, cooperative education, are not drastically changed from the current law or the House-passed position.

The conference on title IX, graduate programs, provided a unique opportunity to establish a better program than was in either the House or the Senate bill. The conference substitute provides for a program of campus-based grant awards to graduate and professional students based on financial need. The substitute also provides for the maintenance of the level of awards (including institutional allowances) for the current public service, mining, and graduate and professional opportunity fellowship programs. I feel very strongly that this new program of graduate assistance and the coordination provided by consolidating some of the existing programs is a great step forward in Federal support of the vitally needed graduate programs in this country.

The creation of a new title XI, the urban grant university program is, in my opinion, a significant step toward beginning to bring universities and local governments into cooperative efforts to solve problems that plague our urban centers. The urban grant university program was a provision found in both the House and Senate proposals, in a form that showed very little difference. The absence of controversy in this program, I believe, is an indication of the overwhelming support for the establishment of this new and vitally needed program.

As ranking minority member on the Subcommittee on Postsecondary Education, I traveled to several cities across the country in addition to hearings here in Washington, observing and listening to witnesses describe the need for a program that would provide incentive for universities and local governments to join hands and minds in attempting to alleviate the problems which plague the cities today. I am convinced that there

is an underutilized reservoir of skills, talents, and knowledge in our urban universities that must be applied.

The Secretary of Education is authorized to make grants to urban universities to pay the Federal share of the costs for carrying out projects consistent with the purposes of title XI. Applications for such assistance must show that the local agency or agencies of general government within whose jurisdiction fall the needs to be addressed have been afforded a reasonable opportunitiy to review and comment upon the proposed projects. The Secretary is also required to achieve broad and equitable geographical distribution throughout the Nation. In the event that there is no urban area in a State with a standard metropolitan statistical area (SMSA) having a population of 500,000, the Secretary may designate an urban area for the purposes of this title. Authorization for each of the fiscal years 1981 through 1985 are $15 million/$25 million/$42 million/$50 million/$65 million.

The general provisions of the conference report reflect the desire of both the House and Senate to provide maximum flexibility to the States in doing their postsecondary planning. The conference document deletes the requirement for the establishment of a 1202 planning commission and instead provides that existing commissions, agencies, or other entities doing postsecondary planning in a State can be used to satisfy the requirements of postsecondary planning established by the Higher Education Act. At the same time, the conference report insures the representation of all interested parties, including students and representatives of institutions of higher education in the planning process.

One of the Senate provisions adopted by the conferees was the authorization of $600 million for fiscal year 1981 for a grant to establish the General Daniel James Memorial Health Education Center to be located in Tuskegee Institute in Tuskegee, Ala. As a representative from the State of Alabama and as an admirer of Chappy James, I am extremely pleased that the conferees decided to include this very important tribute to an outstanding American.

I am pleased that the House accepted the Senate proposal to establish a new title XIII which would provide for women's worksite demonstration programs. Authorized at the modest level of $7.5 million for each of the fiscal years title XIII would provide grants to institutions of higher education, either by themselves, or in contract with nonprofit community-based organizations, employers, and labor organizations to identify the most effective means to inform women of relevant postsecondary education opportunities.

Women make up 52 percent of the population, yet as a group, hold a much less significant percent of the meaningful jobs in this country. Title XIII provides a needed avenue whereby women will be able to learn more of employment and postsecondary education options available to them to enhance their productivity and fulfillment in life.

In closing, I would like to again urge my colleagues to pass this conference report overwhelmingly, and hopefully unanimously, to indicate to the Nation Congress deep support for the young people of this country. This bill represents a giant step forward in insuring educational opportunity and expanding the horizons of young people for years to come.

Mr. Speaker, I now yield such time as he may consume to a distinguished member of our committee, the Honorable JOHN ASHBROOK of Ohio.

Mr. ASHBROOK. Mr. Speaker, I rise in support of the conference report to H.R. 5192 and strongly urge its adoption. I believe that the report presented to the House today is one which can be supported by Republicans and Democrats, conservatives and liberals, and those concerned with protecting the various interests of both public and independent postsecondary education.

The spirit and consensus on the part of the conferees, in particular the unanimity with which the House conferees held their position, reflects, in large part, the outstanding leadership of the chairman of the Postsecondary Education Subcommittee, the gentleman from Michigan (Mr. FORD). Through his efforts and that of Chairman PERKINS and the ranking Republican of the subcommittee, the gentleman from Alabama (Mr. BUCHANAN), the document before us today is an outstanding example of consensus, conciliation, and compromise. The spirit of the conference and the desire to insure the protection of the best interests of those who are the ultimate consumers of education, the students, is laudable.

As in any conference, each side had to give a little bit on the positions taken by the respective congressional bodies. Several general observations can be made though about the final decisions made on the provisions in this agreement. First, the strong commitment made to middle-income families in the Middle-Income Student Assistance Act of 1978 was solidified in H.R. 5192. As the taxpaying group which is unfortunately overlooked in many of our Federal programs, the middle income group bears the heaviest burden both in terms of taxes paid and tuition paid from their own resources. The Education Amendments of 1980 continues the BEOG grant to the middle-income student and retains the important provision that allows a subsidized guaranteed student loan for any individual, no matter what his or her family income.

The second general observation that can be made is that the conference report reflects the desire of both the House and Senate to consolidate existing programs which need to be better coordinated and eliminate those programs which are no longer necessary. Title I, the education outreach title, reflects the desire of the conferees to place in one title education information, comprehensive planning, and continuing education outreach. The combination of these activities in one title will undoubtedly foster a more effective Outreach program and ultimately result in more students attending postsecondary classes.

The third general observation to be made is that the Federal Government's involvement in the activities of the State and the postsecondary education institutions has been minimized in this bill. For example, no longer will the Higher Education Act require that a specific postsecondary planning commission be established to do comprehensive planning in a State. Existing commissions or other entities would be sufficient to meet the requirements of this bill. The conferees were also very specific about the prohibition against the Federal Government being involved in the tuition refund policies of the institution. In an affirmation of self-regulation, the conferees applauded the efforts of the higher education associations in establishing their own tuition refund policy guidelines and a subsequent acceptance of those guidelines by the Department of Education.

A fourth observation that can be made about H.R. 5192 is that it simplifies the maze of Federal bureaucracy and paperwork that a student must go through in order to obtain Federal financial assistance. The requirement to have a single comment form and a single needs analysis will ease the burden of a student in applying for Federal aid. Study after study has shown that barriers to postsecondary education are primarily financial, but that many students are frustrated by the process of obtaining financial aid or if they do not know of the existence of the aid in the first place. This bill would greatly enhance the probability of receiving student aid in order to pay for one's education.

The final general observation I would make about the bill before us today is that it properly balances the interests of both the independent and the public sector of postsecondary education. With declining enrollments projected for the coming decade, it is essential that we insure the viability of the independent sector so that our national postsecondary education resource is fully diversified.

I want to take this opportunity to thank the chairman of the Postsecondary Education Subcommittee, Mr. FORD, for holding a hearing in my State of Ohio regarding the issue of the problems of private colleges. As many of you may know, Ohio has a valuable resource in its many small, independent colleges and, as is true throughout the country, they are concerned with what the future may hold for them during a period of declining enrollments. The current concerns expressed at that hearing, I believe, are provided for in the conference report we consider here today.

One of the most difficult issues with which the conference dealt was the increase in the basic grant maximum, the increase in the percentage of costs which could be covered by a basic grant and the thresholds which are tied to the basic grant appropriations to insure adequate funding of other programs such as the supplemental grant program, college work study program, and the national direct student loan program. By tieing the increases in the threshold for the supplemental educational opportunity grant program with the increases in the percentage of costs covered by a BEOG and the increases in the BEOG maxi-

mum, I believe that the compromise protects the independent sector of higher education. As a strong believer in fiscal constraint, I hope it is with some credibility I inform the members of the Appropriations Committee that the reason for tieing funding of the BEOG program with funding of the SEOG program is not to leverage increased appropriations in both programs. The purpose is to insure that the mix of Federal education assistance properly supports all sectors of education and provides a balance between work, loans, and grants.

The most controversial issue in the entire conference was whether to accept the Senate's new off-budget National Direct Student Loan Association. The centralization of the NDSL program in Washington was rejected by the conferees, and most of the current loan delivery and collection procedures now in current law were retained. The compromise agreement did provide that borrowing through revenue bonds instead of direct appropriations could be used for financing NDSLs if sufficient loan capital were made available through the borrowing. Interest rates in both the NDSL and the GSL program were increased to reflect the higher borrowing rates for commercial loans. The NDSL rate was increased from 3 percent to 4 percent and the GSL rate was increased from 7 percent to 8 percent. A new parent loan program was established and the interest rate was set at 11 percent except for those borrowers who began repayment within 60 days after making the loan.

As I noted earlier, the in-school interest subsidy which was established for borrowers from all income backgrounds in the Middle-Income Student Assistance Act was retained in H.R. 5192. The notorious Metzenbaum amendment to require repayment of the in-school interest subsidy was deleted by conferees, in spite of its strong support by members of the Senate Budget Committee because it was almost impossible to administer and would have been a retrenchment on the part of Congress from the position they took in 1978.

Members of Congress must realize that support for programs such as the Higher Education Act programs is only as strong as the base of its recipients. My colleague from Michigan (Mr. FORD) properly notes that the strong support for tuition tax credits is reflected by the number of its recipients and that an adoption of the Metzenbaum amendment would raise to new heights a cry for enactment of a postsecondary education tuition tax credit bill.

If I were to note one disappointment in the conference report before us today, it would be that it does not include a Senate provision that would require the Secretary of Education to make a comprehensive study of programs authorized by the Elementary and Secondary Education Act, the Vocational Educational Act and the Education of the Handicapped Act in order to analyze if there are any duplications, conflicts, and unnecessary reporting requirements contained in those laws or regulations. This provision would have authorized the Secretary to enter into agreement with not less than 4 and no more than 10 States for the conduct of study projects. Unfortunately the conferees decided to only retain a minor study of the issue of duplication in education programs. As the author of H.R. 7882, the Education Improvement Act of 1980, I believe that it is necessary to immediately review all educational programs and where they are duplicated or unnecessary they should be changed or eliminated. We took a step in that direction with H.R. 5192. I hope that we will continue to look at those programs and that with the reauthorization of the Elementary and Secondary Education Act several years from now we will consolidate many of those existing programs.

To my cost-conscious colleagues on the Republican side of the aisle, you should be aware that the conference report before us today costs approximately $1 billion less per year than H.R. 5192 as passed last year by a vote of 385 to 15. Where there were differences in the authorizations between the House and Senate bills, the lower authorization figure was adopted.

In summary, I urge my colleagues to support me and the conferees in passing the conference report to H.R. 5192. It is a document that I am proud to be a part of, and I believe your support of it will be justified in the coming years.

Mr. BUCHANAN. Mr. Speaker, I yield myself 1 additional minute.

Mr. Speaker, I think before we go any further in acknowledging the work that was done and the contribution made by so many different Members of Congress in arriving at this conference document, I would have to say a personal and special word of commendation for the committee staff on both sides of the aisle. Both the majority and minority staff have done excellent work on this bill. Their names may not appear as cosponsors, but I would say the excellence of their work is literally reflected on every page of this legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. I thank the gentleman for yielding. I can only echo the remarks made by my colleague in commending the chairman of the subcommittee.

I also want to commend the ranking member of the subcommittee because I know the joint work that the two individuals did at the subcommittee level which made it so much easier for all of us to come forward with a bill which reflects the needs of higher education. I must say that the tremendous work that went on in the committee, led by the chairman of the full committee and our ranking member, as well as the two individuals I named, wherein literally we brought back a position very, very close to the House position, and I think an excellent job was done in that respect. This bill is a bipartisan effort which received overwhelming support when it passed the House on November 7, 1979. The bill not only expands higher education opportunities for all students, but reduces bureaucratic redtape.

I also would like to join in commending the staff for their tremendous work. I have worked with many staff members, but I do not think I have ever seen any staff work as hard as the staff on both the minority and majority side. Their efforts, especially during the interim period in coming up with compromises and working out alternative language helped to make it possible to resolve some of the problems we faced.

One of our goals as we developed this legislation was to assist in the achievement of equal educational opportunity. We sought this goal by trying to reach a balance of support between all types of institutions of postsecondary education: urban rural; community colleges and 4-year degree-granting institutions; historically black institutions and developing institutions; and public and private colleges and universities. Balance was also sought through our efforts to provide access to all types of students: nontraditional, adult learners, the displaced homemaker, or the veterans, and the traditional high school graduate straight from school; full- and part-time students; minorities and disadvantaged; and dependent and independent students. I believe that with the compromises made during the conference on H.R. 5192, the Higher Education Amendments of 1980, the House did not compromise its basic goals, and that we did in fact remain firm in our goal of equal educational opportunity.

As a conferee, I was particularly concerned about the programs available to institutions in small and rural States, and about the access opportunities for students in such States. Critical to this concern is the ability to improve access for adults and nontraditional students whose educational needs have been inadequately served for reasons such as rural isolation. Under title I, continuing postsecondary education program and planning, it was necessary to assure that each State would receive sufficient funding to meet the needs of this population. Under this bill each State will receive a minimum of $187,500 so that at least a basic program can be provided.

It is particularly important in small States that adequate funding be available for the administration and coordination of these programs. I would like to clarify a portion of the report, regarding title I funding, so that the intent is clearly understood by all, including those staff in the Department of Education. On page H 7752 of the conference report the following language appears:

> Each state shall receive an allotment of funds available appropriations based 60 percent on relative state adult population and 40 percent on an equal basis, except that no state shall receive less than $187,500 in any fiscal year.

It was also my understanding, and I would like to check this out with the chairman, that in the event an appropriation is not sufficient to provide the minimum of $187,500 for each State, that each State's allocation would be reduced on a pro rata basis and not switched back to the formula, as happened recently. This switch created havoc throughout the program. I wonder if this intent was also the understanding of the chairman of the subcommittee?

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. FORD of Michigan. I believe the gentleman states very accurately my understanding of what the conference agreed to.

Mr. JEFFORDS. I hope that understanding will be reflected, and I will try to see that it is included by the Senate. I hope the problem of reduced appropriations never has to be faced but if it is that it will not have to be resolved as it was before—with the passage of emergency legislation.

I thank the chairman for this clarification.

Additionally, I was able to have included language that allows 5 percent of the sums available or $40,000, whichever is greater for the direct operation by the State of continuing education programs. It is essential to differentiate between those moneys competed for under these provisions and those moneys retained at the State level for program operation. This differentiation is necessary so that, for example in a State such as Vermont, the university, which houses the administrative offices for the continuing education programs over the State, would not be precluded from competing for funds through a different program in the university. In conference we were able to effect these requirements so that programs in rural States would not be penalized, and could operate to meet the needs of those students whose needs had been previously unserved.

Also critical to small States was the linkage between the BEOG and the SEOG and other campus-based assistance programs. BEOG's in excess of $1,800 may not be paid unless SEOG, work study, NDSL and SSIG programs are appropriated at specified levels. This balance expands the possible institutions a student may attend and does not restrict access to only low-cost institutions that may not provide programs or desired career training. A decreasing hold harmless for SEOG programs also protects these programs from the vagaries of "fair share" formulas developed by the Department of Education, which would have, over the long run, severely limited this program in small and rural States. I am concerned that this commitment to small States be maintained, and I will carefully review the regulations developed in this area.

I also find it encouraging to note that the bill contains provision under title V, that teacher center grants be made on a equitable geographic basis, and that under title XI, States that do not have a standard metropolitan statistical area can still qualify for the urban university grant program by designation of the Secretary. Each of these reflects a consideration of the special needs in rural States.

H.R. 5192 has the support of the entire higher education community and the administration. It received resounding support in the House and in the Senate. The conference provisions have resulted in a bill which reflects the priorities of the House, and strikes the balance for which we all worked so diligently. I strongly urge my colleagues to support this conference report in a manner similar to the support they gave to the bill as it passed the House in November.

Mr. BUCHANAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. PURSELL).

Mr. PURSELL. Mr. Speaker, I want briefly to compliment the Higher Education Subcommittee, both the majority and minority ranking members and leaders, Mr. FORD especially for his leadership in the last 2 years and in the Senate, Senator PELL, Senator JAVITS, and other Members. I think it was an excellent legislative support for our university and community colleges, postsecondary education programs throughout the United States.

I represent probably the largest student body in the Nation, about 86,000 students. I think with the community colleges and the universities, both public and private, this bill in the next 5 years in terms of its approximately $35 billion, will go a long way in giving every American person, young person and older person who aspires to a postsecondary education.

□ 1120

I would like to ask a question of the gentleman from Michigan (Mr. FORD). Before I do so I want to say that the preservation of academic freedom, I think, has been consistent throughout the thinking of all the members of the subcommittee. My question is pragmatic at this time, in point of the authorization bill and the Appropriations Subcommittee upon which I serve, dealing with Labor-HEW. What is the timetable now in terms of funding. The administration is now in agreement with Congress with regard to student funding, the various programs for scholarships, student tuition, work study, NDSL, the disadvantaged, basic opportunity grants—where does the gentleman see this in terms of funding this forthcoming 2 fiscal years 1980–81, 1981–82?

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. PURSELL. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Actually, this bill could be funded with supplementals in fiscal year 1981 but in reality we expect the bulk of the change in the bill will be funded in fiscal year 1982. We gave up earlier this year on being able to precede the appropriations process. We wanted to avoid the confusion that would happen if we would inject a change in the current school year so, as a matter of fact, people attending school this year will be attending on the basis of the provisions of the Middle-Income Student Assistance Act as we extended that last year for 1 year.

Mr. PURSELL. So the gentleman suggests we will have an orderly transition this year through a continuing resolution and supplemental to finish this fiscal year in 1981, but the full comprehensive changes and improvements that the subcommittee has made will be translated in the budget of the President in the 1982 budget year.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. PURSELL. Yes.

Mr. FORD of Michigan. A continuing resolution will not be necessary, because in August of 1979 we passed Public Law 96–49, which extended all the existing programs in this package for 1 additional year to keep us from being in a position of causing confusion in the event that we took as long as we have to reach this point. The appropriations process can go forward with the existing programs as they were modified by the Middle-Income Student Assistance Act through fiscal year 1981 without the need for a continuing resolution; and, in fact, supplemental appropriations would be appropriate. We may be coming to you to ask for those, particularly since yesterday we were not at all happy to see the cuts in the NDSL requests that our committee had made, but I am sure that, as has been the case in the past, the gentleman from Michigan and the other members of his committee will be sympathetic to our plea for a supplemental later in the year.

Mr. PURSELL. Mr. Speaker, I would like to thank the committee for its outstanding work. I fully support this conference report.

Mr. BUCHANAN. Mr. Speaker, I ask unanimous consent that the gentleman from New York (Mr. PEYSER) be permitted to speak out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, what is so important that we have to hear this out of order?

Mr. PEYSER. Mr. Speaker, if the gentleman will yield to me, this is a special statement we are making concerning the 300th day of captivity and an arrangement that has been made to deliver copies of the CONGRESSIONAL RECORD to the hostages.

Mr. ROUSSELOT. Does the gentleman refer to the hostages in Iran?

Mr. PEYSER. The gentleman is correct. Arrangements have been made to deliver copies of this RECORD to the hostages in Iran.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama (Mr. BUCHANAN)?

There was no objection.

THE 300TH DAY OF CAPTIVITY FOR AMERICAN HOSTAGES IN IRAN

Mr. PEYSER. Mr. Speaker, tomorrow, August 29, 1980, marks the 300th day of captivity for fellow Americans in Iran. It

has been said by some that we are downplaying this tragedy and the public is putting it out of its thoughts.

Mr. Speaker, nothing could be further from the truth. Certainly, among all of us in the House of Representatives, our thoughts and prayers continually go out to those 52 Americans still held hostage.

Mr. Speaker, I am now going to read for the RECORD the names of all those known to be held hostage at this time:

Thomas L. Ahern, William Belk, Robert Blucker, David Cooke, Donald T. Cortes, John Cross, William Daugherty, Lt. Cmdr. Bob Engleman, William Gallegos, Bruce German, John Graves, Joseph Hall, Joseph M. Hall.

Kevin Hermening, Donald Hohman, Lee Holland, Michael Howland, Charles Jones, Malcolm Kalb, Moorhead Kennedy, Jr., William F. Keough, Steven W. Kirtley, Kathcrine Koob, Frederick Lee Kupke, Stephen Laaterback, Bruce L. Laingen, Gary Lee, Paul E. Lewis.

John W. Limbert, Jimmy Lopez, Richard Metrinko, Jerry J. Miele, Michael Moeller, Bert Moore, Richard Morefield, Paul M. Needham, John D. Nickel, Robert Ode, Richard Owen, Jerry Plotkin.

David Roeder, Barry Rosen, Harry Rosen, Frank B. Schaeffer, Rodney Sickman, Joseph Subic, Elizabeth Ann Swift, Victor Tomseth, Phillips R. Ward, Westley Williams.

Mr. Speaker, I know if there were one message that all of us in the House of Representatives could send at this time, we would like these brave men and women to know that we here in Congress have not given up hope nor determination that they will soon be free and will be returned safely to their families and to their country.

Mr. Speaker, I have arranged for 52 copies of today's CONGRESSIONAL RECORD to be delivered to our Embassy in Iran so that each hostage might receive a copy so that they know they are certainly not forgotten by any of the Members of this House and that the whole country joins us in this wish for their freedom and safe return as soon as possible.

Mr. BUCHANAN. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I will be happy to yield to my friend from Alabama.

Mr. BUCHANAN. Mr. Speaker, I commend the gentleman for this effort and would like to say it is well the Nation be regularly reminded of those courageous persons who not only represented us in Iran and who have suffered so long and so much for their country there, but there are others like them all over the world who serve in places of difficulty and danger as civilians, as employees of the Department of State and related agencies, who day by day do a service to our country that is worthy of commendation. I know all of them share the sentiments the gentleman has expressed for their colleagues in Iran.

Mr. PEYSER. I thank the gentleman for requesting this time.

Mr. BUCHANAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. I thank the gentleman for yielding.

Mr. Speaker, and fellow colleagues, I rise in full and enthusiastic support of this conference report before us on H.R. 5192, a bill to reauthorize programs under the Higher Education Act for an additional 5 years, as well as other miscellaneous provisions. As a member of the conference committee which considered this legislation, as well as an original cosponsor of the bill, I am proud to say that I feel that we have constructed this important piece of legislation so that it is sensitive to the ever-changing needs of our postsecondary student body and institutions, as well as to the need to be cost-minded. In conference, the cost of this bill was reduced by approximately $1 billion, a total savings of over $5 billion from what this body approved last November.

I would like to pay tribute to the chairman of our Education and Labor Committee, Mr. PERKINS, and thank him for the cooperation he has shown us since we began consideration of this bill in September of 1978. His concern for and commitment to these programs has always been of the highest magnitude.

Most importantly, I want to express my deep admiration for the fine work which our subcommittee chairman, BILL FORD, has done in steering this complex piece of legislation through the House and through the conference. I know of no greater friend of students and institutions of higher education than BILL FORD. He has always been an advocate for their interests, in financial aid for middle-income students, for urban universities, for libraries, and for our disadvantaged, nontraditional student population. In these areas, and many more, we owe a debt of gratitude to BILL FORD for his ability to meld these interests together to produce a fine bill which I am proud to have my name upon. From the beginning to the end of this process, he has received nothing but high praise from everyone involved in this bill, our colleagues from both sides of the aisle as well as the entire educational community.

Hearings on this bill began on March 20, 1979, and testimony was received from all segments of the higher education community. A total of 33 hearings were held, including six field hearings, including one which I chaired in New York on the problems of the adult, nontraditional student. Our findings at that hearing formed the basis of many important legislative initiatives we took in H.R. 5192 which help to further eliminate barriers which these adults face in obtaining a postsecondary education. In all, we had 244 witnesses appear before our committee representing a broad array of concerned individuals, institutions and organizations. For the record, I wish to also note that of these 244 witnesses, 27 of them were students who are the direct beneficiaries of many of these programs.

As New York's ranking member of the House Education and Labor Committee, I wish to note my particular contributions to this bill which I feel will be of special benefit to New York students and the schools they attend:

A compromise proposal in conference which assured that the distribution of supplemental grant funds would not penalize States which make a larger than average effort in providing aid to students through both State and institutional means;

I authored an amendment to provide for a study of the remaining barriers which adults face in seeking a postsecondary education which will be of great importance to us in the next reauthorization;

I included a provision in title I, entitled "Educational Outreach programs" to emphasize the needs of displaced homemakers in programs operated under this title;

A provision tying increases in appropriations for our supplemental grant programs to increases in funding for basic grants to assure balanced growth between these two programs and so that students who rely upon the supplemental grant program will not be penalized in their grant awards due to moneys available;

The incorporation of my bill, H.R. 3513 into title I which provides for the creation and maintenance of student financial aid data banks which will be instrumental in providing this kind of information to students through fast, efficient and effective means;

An acknowledgment by the conferees that the College for Human Services, which has a campus in New York City, is eligible for funds under title III, "Institutional Aid," even though it does not meet the eligibility criteria for developing institutions but does meet the intent of this title in its activities.

In sum, this bill, H.R. 5192, provides for balanced growth and development of our higher education programs. It is particularly sensitive to our audit, nontraditional student population which most often attends school on a part-time or less than halftime basis. We have included a provision that institutions may use up to 10 percent of their SEOG moneys for less-than-half time students as well as to provide SSIG awards to graduate and less than halftimers. It is my sincere hope that we can address this issue even further in the next set of amendments to this legislation.

Most importantly in this bill, we have not faltered on our commitment to our middle-income students established in the 1978 amendments. Since that time, we have been able to proudly point to the fact that some form of Federal financial aid is available to any eligible student who wishes to apply for it, regardless of income. We have maintained that provision in this legisation in our guaranteed loan program, raising the interest rate from 7 to 8 percent for new borrowers, and establishing a parent loan program which allows for parents to also take out these same loans in order to assist their children in paying for their college education. In addition, the total amount of money that can be borrowed under this program for undergraduates has been raised to $12,500 and repayment schedules have been expanded in order to further reduce the default rate.

In conclusion, this bill offers an equitable approach in extending these programs for an additional 5 years. We not only have balanced increases in our grant

programs to help both low- and middle-income students at both public and private institutions, but have also expanded our loan and fellowship programs so that more students will be able to take advantage of these opportunities. I should not fail to mention the other important provisions of the bill which assist libraries, research universities, urban universities, international education, and language training as well as institutions which need aid in helping them get off the ground.

We have also included extensive language, authored by myself, and my colleagues Mr. MILLER of California and our distinguished majority whip, Mr. BRADEMAS, on the provisions extending the National Institute of Education. We included this specific language for several reasons. One reason was that we did not have the House bill in conference because the House did not have time to consider the bill before we went to conference. In the House bill I authored several provisions which would have expanded the activities of NIE to include greater and diverse numbers of individuals and organizations. These provisions also required NIE to provide data to Congress each year on the grant awards made by the Institute each year. The second reason for this extensive report language is that we truly feel that NIE, as the centerpiece of educational research in the new Department of Education should take appropriate steps to assure that its mission is consistent with the intent of Congress and its research activities will be of benefit to as many in the educational community as possible. With those two points in mind, I hope that we can look forward to close cooperation with NIE in the future so that our goals will always be directed toward similar ends.

Seldom in this body has anyone on our committee seen the kind of cooperation that has been a part of our deliberations on this bill. It is strongly supported by all segments of the higher education community as well as both the majority and the minority members of the Education and Labor Committee. I am proud to have been a part of this achievement. This conference report deserves the unqualified support of this body and I urge my colleagues to join me in approving this measure.

[From the Christian Science Monitor, Aug. 26, 1980]

OLDER, MINORITY STUDENTS WILL HELP FILL COLLEGE CLASSROOMS OF THE '80s

(By Paul Van Slambrouck)

HOUSTON.—Will the halls of higher education in the United States echo with fewer footsteps in the 1980s?

The number of 18-year-olds begins falling this year, and that has been expected to trigger substantial declines sometime this decade in enrollment at the nation's colleges and universities.

However, early indications are that enrollments for the 1980–81 school year may equal or exceed 1979–80. And a recent study by the American Council on Education, a nonprofit association, takes exception with the widely held view that enrollments will inevitably decrease sharply for the decade as a whole.

The study outlines a number of strategies for increasing the enrollment of adult men and women, minorities, low-income youths, and foreign students. An influx of these students, it claims, could "easily" result in only a nominal decrease or even a small increase in the total US student population in the 1980s. These new students would offset the projected enrollment decline among the traditional 18-to-24-year-old population, the study asserts.

It is a controversial conclusion. Fred Crossland of the Ford Foundation reflects the counterview when he says expecting stable enrollments is "hoping for the best, but not planning for what is most likely."

Mr. Crossland forecasts a 15 to 18 percent decline in the college student population from the early 1980s to the early 1990s, and asserts that higher enrollment of nontraditional, older students can at best offset one-third of the decline in 18-year-olds.

For its part, the National Institute of Independent Colleges and Universities projects a steep 15 to 26 percent drop in enrollments nationally this decade.

For the 1980–81 school year, however, there is little dispute that the enrollment picture looks bright. A major contributor is the national economic recession, which is expected to result in more students from the ranks of the unemployed.

"Education is always countercyclical. When people are out of jobs, they see school as a way to upgrade their skills," says Judith Spich, a research economist with the American Council on Education. She notes that during the 1973–75 economic downturn enrollment at community colleges jumped 10 percent.

Regardless of the state of the economy, older students already are signing up for college classes in increasing numbers. A report published last month by the National Institute of Independent Colleges and Universities shows that between 1969 and 1979 the number of graduate, professional, nondegree, and part-time students increased 41 percent at private colleges and universities in the U.S. That compares with an 11 percent rise in undergraduate enrollment at those institutions.

While projections for enrollment this fall vary, many foresee an increase. The Department of Education's National Center for Education Statistics is forecasting 11.6 million undergraduate and graduate students this year, compared with 11.5 million last year.

A national survey conducted in June by the Chronicle of Higher Education found that applications for admission to freshman classes at colleges and universities were higher at four out of five institutions. "If actual enrollment this fall follows the trends indicated in applications and deposits received, the total number of students on American campuses could reach another record high," a summary of the survey states.

The long-term enrollment picture is likely to be one of contrast between various regions of the country, say experts on enrollment patterns. Dr. Virginia Fadil, executive director of the National Institute of Independent Colleges and Universities, expects enrollment declines to be most pronounced in the Northeast and Midwest, where, in her view, there are an excess number of colleges compared to the population.

In the West and Southwest, however, she sees potential growth in enrollment as schools profit from the continuing migration of people to those areas.

□ 1130

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut (Mr. RATCHFORD).

Mr. RATCHFORD. Mr. Speaker, I too hail what appears to be the final step in this House of this landmark higher education legislation. I especially applaud the efforts and results of the House conferees because, as a result of their diligence, they have kept student loan interest rates low. They have preserved access to the student loan process to the middle-income student. They have prevented the initiation of interest charged from the day of entering into an institution and kept it to a point where it now will be assessed from the time the student graduates from the institution. Finally, they have opened up this system to the parents of middle-income students.

As a person actively involved in title I, I would applaud the passage of the Lifelong Learning Act because it provides new access to institutions of higher education for the nontraditional student—to the factory worker, to the housewife returning to school after raising a family, to the person pursuing a career change in midlife, to the retiree going to school after working for a lifetime. In every respect, Mr. Speaker, I think the result of the adoption of this conference report will be to improve the quality of life in all institutions of higher education.

I applaud the result, and as a member of the conference committee, I am very proud to have participated in the process.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, adding any words of praise to our colleague from Michigan for what he has done is like carrying coals to Newcastle, but let me simply add that there is a really significant contribution to higher education here that he, in large measure, is responsible for. In my years of legislative work in the State Legislature of Illinois and here in Congress, I have never worked with a finer legislative craftsman than BILL FORD. I want to commend my colleagues on the other side also on this.

Let me add one significant aspect, that is in the area of international education. For the first time, we are not simply letting universities at whim go out and say, "We are going to have an African studies program or an Asian studies program."

But, we call for a coordinated look by all the agencies of Government; the Department of Defense, the State Department and others.

Let me give the Members an illustration of the need. I read just the day before yesterday that in the area of studies of Albania we have not had a student of Albania—either the language or the country—in the United States since 1972, when we had one student. Now, maybe Albania will never be a security area of great significance for this Nation, or an area of great economic consequence, but it might be, and we should fill vacuums like this. For the first time now we will have a coordinated program and ask, "What really are the needs of this country and how can the higher education community contribute to those needs?"

Again, I commend my colleagues on both sides of the aisle for, I think, a very solid product.

Mr. FORD of Michigan. Mr. Speaker, I yield such time as I have remaining to

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the gentleman from New York (Mr. WEISS).

Mr. WEISS. Mr. Speaker, I appreciate the gentleman yielding to me.

Mr. Speaker, because of the constraints of time, I am going to make a fuller statement under the general leave provisions. I simply want to take this occasion to commend the distinguished chairman of the Postsecondary Education Subcommittee, the gentleman from Michigan (Mr. FORD), and the ranking minority member, the gentleman from Alabama (Mr. BUCHANAN), for the tremendous work they did, especially within the context of the very negative attitudes which have recently prevailed in this House. We have indeed seen some very, very grim days. Sometimes, we in this House seem to forget what our reponsibilities are.

This piece of legislation, with overwhelming support coming from both sides of the aisle, demonstrates that this House and the other body are capable of doing tremendous work for all the people of this country. I am proud to have been able to play a part in that effort.

Mr. Speaker, I support the conference report on the Higher Education Act.

The reauthorization of the Higher Education Act builds upon existing, successful education programs and expands the various financial aid plans. The changes that have been made in the grant, loan, and work-study programs insure access for a student regardless of his or her income, to almost any university, college, or community college. A new parent loan program will be made available to those parents who encounter difficulty in meeting the expensive burden of tuition. And while at the same time preserving the loan programs, important changes have been made to reduce defaults, and make repayment easier and income sensitive.

Pursuing an education will be made easier for the new type of population currently entering college, the so-called nontraditional student who may be older, independent, and have family responsibilities. Eligibility for the financial aid programs will no longer be restricted to 4 years but guaranteed for the completion of a degree. For those who wish to attend part time, or even less than half time, eligibility for many of the financial aid programs will be newly provided. In determining for financial aid purposes the cost of an education, child care expenses will be deducted, a married student will be considered as independent, and able to use current year income information.

As a member of the Subcommittee on Postsecondary Education, and the conference committee, I was pleased to play an active role in the passage of this legislation, and adoption of a number of provisions I authored. One, a new program of grants to some of the 1,150 schools of education across the country, will facilitate their modernization of faculty and curriculum. This will enable these schools to develop joint programs with other local colleges, promote efficient planning, and redirect schools to train personnel for service in areas of shortages, including training of the handicapped, and work in conjunction with employment programs such as CETA, the Comprehensive Employment and Training Act.

The conferees also agreed to adopt an amendment which I offered to enable college work-study recipients to be placed in positions which complement their education program, or vocational goals. The New York City Urban Corps provided for the committee an outstanding example of the potential of the work-study program to enhance the education of the eligible student.

The House already demonstrated its overwhelming support for the bill last November when it passed by a vote of 357 to 15. This legislation has emerged intact from the conference committee. I want to applaud Mr. FORD and his staff for their remarkable efforts on behalf of all students and their families. As a member of the subcommittee, and conference committee, I am pleased to have participated in the reauthorization of what I consider to be an exemplary piece of legislation.

Mr. FORD of Michigan. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FORD of Michigan. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 373, nays 16, not voting 43, as follows:

[Roll No. 503]

YEAS—373

Addabbo
Akaka
Alboste
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Applegate
Ashbrook
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Cheney
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Dixon
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Gleckman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hillis
Holt
Holtzman
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leach, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nolan
Nowak
O'Brien
Oakar
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Prever
Price
Pritchard
Pursell
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Rose
Rosenthal
Rostenkowski
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Selberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stokes
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Tribie
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, Bob
Winn
Wirth
Wolff
Wolpe
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—16

Archer
Bauman
Collins, Tex.
Conable
Crane, Daniel
Crane, Philip
Dannemeyer
Fenwick
Hansen
Holt
Kelly
McDonald
McEwen
Paul
Rousselot
Stump

NOT VOTING—43

Abdnor
Anthony
AuCoin
Bowen
Carney
Chappell
Conyers
Devine
Dodd
Donnelly
Dougherty
Hanley
Hawkins
Hinson
Holland
Holtzman
Ichord
Leach, La.
Lederer
McHugh
Mathis
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nichols
Oberstar
Obey
Pashayan
Quayle
Railsback
Roe
Roth
Shannon
St Germain
Steed
Stockman
Symms
Williams, Ohio
Wilson, C. H.
Wilson, Tex.
Wright
Young, Alaska

□ 1150

The Clerk announced the following pairs:

Mr. Anthony with Mr. Abdnor.
Mr. Nichols with Mr. Pashayan.
Mr. Murphy of New York with Mr. Quayle.
Mr. Chappell with Mr. Young of Alaska.
Mr. Roe with Mr. Williams of Ohio.
Mr. Wright with Mr. Symms.
Mr. Obey with Mr. Hinson.
Mr. Hanley with Mr. Devine.
Mr. Hawkins with Mr. Carney.
Mr. AuCoin with Mr. Railsback.
Mr. Bowen with Mr. Moorhead of Pennsylvania.
Mr. Mathis with Mr. Stockman.
Mr. McHugh with Mr. Dougherty.
Mr. Murphy of Illinois with Mr. Holland.
Mr. Myers of Pennsylvania with Mr. Leach of Louisiana.
Mr. St Germain with Mr. Steed.
Mr. Lederer with Mr. Charles H. Wilson of California.
Mr. Dodd with Ms. Holtzman.
Mr. Shannon with Mr. Ichord.
Mr. Conyers with Mr. Donnelly.
Mr. Oberstar with Mr. Charles Wilson of Texas.

Mr. DANNEMEYER and Mr. ARCHER changed their votes from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the bill, H.R. 5192, just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

REPORT ON A BILL MAKING APPROPRIATIONS FOR THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

Mr. DIXON. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on a bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes.

Mr. PURSELL reserved all points of order on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 3904, MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

Mr. THOMPSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, with Senate and House amendments thereto, disagree to the Senate amendments to the House amendment to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. ERLENBORN. Mr. Speaker, reserving the right to object, I yield to the gentleman from New Jersey (Mr. THOMPSON) for the purpose of explaining to the House the situation now facing the House relative to this multiemployer insurance bill, H.R. 3904, and the intentions of the gentleman relative to this request for a conference.

Mr. THOMPSON. I thank my colleague and friend, the gentleman from Illinois, for yielding.

Mr. Speaker, I greatly regret the necessity for this action. As my colleagues know I have done everything possible to expedite this legislation. Apparently certain Members of the other body have not taken seriously the statements made by Members of this body.

We are in disagreement with the Senate on two issues and two issues only. It is on these issues alone that we are requesting a conference.

The first issue is the special exemption for the Hawaii Health Care Act. Last week I informed my distinguished colleagues from the Hawaii delegation, and on at least two occasions have publicly explained that, notwithstanding my sympathy for their problem, I was obliged to firmly oppose the special Hawaii exemption. It has been necessary to do so to preserve the coalition of business support for this bill that enabled us to save the legislation from the antilabor amendments that threatened to kill it. I promised my colleagues a hearing on the issue at the earliest possible date.

Our colleagues in the other body apparently mistook my expressions of sympathy. Be that as it may, the other body has restored the special exemption. On this matter I have committed myself to going to conference and preserving the House position.

The other issue on which we are seeking a conference is the unemployment compensation offset. Regrettably the other body chose to reject our provision to protect social security benefits and have restored the Senate provision. I believe one of our distinguished colleagues from the Committee of Jurisdiction, the Ways and Means Committee, will speak to that.

Mr. Speaker, I expect the conference to be brief. I will reiterate the Hawaii exemption and the unemployment compensation offset are the only issues for conference.

I urge my colleagues support for this request.

□ 1200

Mr. ERLENBORN. Mr. Speaker, further reserving the right to object, let me ask my colleague, is it the gentleman's belief that if this unanimous-consent request is granted that the conference may be concluded as early as next week and this very important legislation may be sent to the President for signature possibly before we adjorn at the end of next week?

Mr. THOMPSON. It is indeed my belief and my fervent hope that that be the case.

Mr. ERLENBORN. Mr. Speaker, further reserving the right to object, I have said all along that this legislation was extremely necessary. I had hoped that it could have been enacted before now.

The situation presently is that the other body has recessed. They are not in session today and will not be until next week. We could not conclude our legislative consideration of this bill until next week, no matter what procedure we followed.

I am in agreement with the gentleman to limit the issues to just those two that he enumerated and to have this legislation disposed of most expeditiously, that it would be best to agree to this unanimous-consent request.

Therefore, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey (Mr. THOMPSON)?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, if I may inquire from the distinguished subcommittee chairman, I would inquire of the perimeters of the second point in dispute between the House and Senate versions.

The original House version contained no language on unemployment compensation. The Senate bill returned with the so-called Chafee amendment. The gentleman's amendment, which was accepted under a rule here, then modified the Chafee amendment, after which the Senate again passed the original Chafee amendment.

Now when we go into conference, are the conference boundaries going to be no law and the Chafee amendment, or are they going to be the nongermane unemployment compensation feature of the Thompson amendment and the Chafee amendment?

Mr. THOMPSON. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Speaker, I wonder if the gentleman would be kind enough to yield to the gentleman from California (Mr. CORMAN), a member of the committee responsible for this section of the act.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the distinguished gentleman from California (Mr. CORMAN).

Mr. CORMAN. I thank the gentleman for yielding.

It is my understanding that the House and Senate go to conference on the most recent action of each of the two bodies and would be the most recent action of the House, the most recent action of the Senate, and therefore be the Chafee amendment and the House-passed provision dealing with pension offsetting the unemployment compensation bill.

It is further my understanding, and I would ask on the gentleman's reservation, if that is the total sum of the differences that the Committee on Ways and Means will be dealing with?

Mr. THOMPSON. If the gentleman will yield, the answer is in the affirmative, yes, that is the total difference.

Mr. FRENZEL. Further reserving the right to object, Mr. Speaker, the House original bill included no unemployment compensation. And the extra provision, which I am now informed will be the House position, was adopted under a rule in which there was no debate on this subject. I think, only under the flimsiest of rationale can it be considered the House position, at least on this bill.

Mr. THOMPSON. If the gentleman will yield further, the Committee on Ways and Means, in another piece of legislation, had addressed itself to this subject. Otherwise, the gentleman's statement is correct.

Mr. FRENZEL. Yes, and I tried to be careful in my statement to say that on this bill, the original House position was as I stated it. It is true that the committee has taken another position on another bill. It is also true the House took a different position on the existing law, which was passed rather recently.

Mr. Speaker, because I do not think the House has had an appropriate time to consider the original position versus the later position versus the Senate amendment, it is my intention to object to the unanimous-consent request. And I do object.

The SPEAKER pro tempore. Objection is heard.

MOTION OFFERED BY MR. PERKINS

Mr. PERKINS. Mr. Speaker, I think we all know this is one of the most important pieces of legislation that has confronted the House of Representatives in many, many years.

Thousands of insurance plans throughout the Nation are in the balance. Hundreds of thousands of employees are losing out on their pension system, and in view of the gentleman's objection, I do want to state that the House Committee on Education and Labor has laid the foundation to make a motion.

Mr. Speaker, pursuant to the provisions of clause 1, rule XX, and by direction of the Committee on Education and Labor, I move to take from the Speaker's table the bill, H.R. 3904, with the Senate and House amendments thereto, disagree to the Senate amendments to the House amendment to the Senate amendment and request a conference with the Senate thereon.

● Mr. FORD of Michigan. Mr. Speaker, multiemployer pension plans are a vitally important mechanism for providing retirement income to millions of American workers, and the legislation before us today, which will protect and strengthen those plans, therefore deserves the support of every Member of Congress.

But this legislation is of particular importance to workers covered by pension plans in what have come to be called declining industries. For in certain industries, whether because of competition from foreign imports, massive automation, or drastically reduced consumer demand, the employment base—and therefore the contribution base—has declined to the point that serious financial difficulties have arisen for the multiemployer pension plans the workers are counting on for retirement security.

Once the employment base in an industry has begun to shrink, a snowball effect develops: Contributing employers can see that their contributions will have to increase to meet unfunded liabilities that grow at an accelerating pace. To avoid these growing liabilities the employers withdraw from the plan or go out of business and reorganize, leaving an even smaller contribution base to support the plan and making further withdrawals inevitable.

The current law encourages such a snowballing of employer withdrawals by making an employers' liability proportional to the length of time it sticks with a plan. If it withdraws more than 5 years before plan termination, an employer has no liability whatsoever.

I have followed with concern the problems of a multiemployer plan in my own district that has suffered because of the decline of the American auto industry and the migration of businesses to the Sun Belt. While this plan is well run and has no unfunded liabilities, its future has been jeopardized by the threat of employer withdrawals. Throughout my participation in the development of the legislation before us today I have worked to see that this bill strengthens the viability of plans such as the autoworkers' plans in my district—particularly by removing any incentives for employer withdrawals.

H.R. 3904 accomplishes this goal by holding each contributing employer accountable for the totality of unfunded liabilities attributable to it. Moreover, by giving plans added flexibility when their contribution base drops below the number of retirees, the bill lessens the burdens of maintaining a plan in a declining industry.

I am proud to have worked with the gentleman from New Jersey (Mr. THOMPSON) on this urgently needed legislation, and I know that the entire multiemployer pension community, both labor and management, are grateful for his untiring and capable leadership.●

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. PERKINS moves to take from the Speaker's table the bill H.R. 3904, with the Senate and House amendments thereto, disagree to the Senate amendments to the House amendment to the Senate amendment and request a conference with the Senate thereon.

The SPEAKER pro tempore. The gentleman from Kentucky (Mr. PERKINS) is recognized for 1 hour.

Mr. PERKINS. Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky (Mr. PERKINS).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 384, nays 1, not voting 47, as follows:

[Roll No. 504]

YEAS—384

Addabbo
Akaka
Alboita
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Bowen
Boland
Boling
Boner
Bonior
Bonker
Bouquard
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Dixon
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moore
Moorhead, Calif.
Motti
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nolan
Nowak
O'Brien
Oakar
Ottinger
Panetta
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Ranqel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Rose
Rosenthal
Rostenkowski
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolff
Wolpe
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—1

Frenzel

NOT VOTING—47

Abdnor
Anthony
AuCoin
Beard, Tenn.
Bowen
Breaux
Carney
Chappell
Chisholm
Clay
Convers
Davis, S.C.
Devine
Dodd
Donnelly
Hanley
Hinson
Holland
Holtzman
Ichord
Leach, La.
Lederer
McHugh
Mathis
Montgomery
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nichols
Oberstar
Obey
Pashayan
Railsback
Roe
Roth
Satterfield
Shannon
Sharp
Stanton
Steed
Symms
Vander Jagt
Wilson, C. H.
Wilson, Tex.
Wright
Young, Alaska

□ 1220

The Clerk announced the following pairs:

Mr. Chappell with Mr. Hinson.
Mr. Anthony with Mr. Pashayan.
Mr. Satterfield with Mr. Railsback.
Mr. Wright with Mr. Leach of Louisiana.
Mr. Murphy of New York with Mr. Vander Jagt.
Mr. Montgomery with Mr. Symms.
Mr. Breaux with Mr. Stanton.
Mr. Steed with Mr. Abdnor.
Mr. McHugh with Mr. Beard of Tennessee.
Mr. Murphy of Illinois with Mr. Carney.
Mr. Moorhead of Pennsylvania with Mr. Devine.
Mr. Nichols with Mr. Holland.
Mr. Oberstar with Ms. Holtzman.
Mr. Dodd with Mr. Young of Alaska.
Mr. Bowen with Mr. Conyers.
Mr. AuCoin with Mr. Davis of South Carolina.
Mr. Myers of Pennsylvania with Mr. Donnelly.
Mr. Lederer with Mr. Clay.
Mr. Mathis with Mrs. Chisholm.
Mr. Roe with Mr. Ichord.
Mr. Shannon with Mr. Charles H. Wilson of California.
Mr. Charles Wilson of Texas with Mr. Obey.
Mr. Hanley with Mr. Sharp.

So the motion was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. PERKINS, THOMPSON, BRADEMAS, CLAY, ASHBROOK, and ERLENBORN, on the Senate amendments designated Nos. 2 and 3, and modifications committed to conference; and

Messrs. ULLMAN, CORMAN, RANGEL, BRODHEAD, CONABLE, and FRENZEL, on the Senate amendment designated No. 1, and modifications committed to conference.

There was no objection.

PERMISSION ON CALL OF PRIVATE CALENDAR ON THURSDAY, SEPTEMBER 4, 1980

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that it shall be in order to call the Private Calendar on Thursday, September 4, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON S. 985, CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AMENDMENTS

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the conferees may have until midnight tonight to file Consolidated Farm and Rural Development Act amendments.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON S. 1125, FEDERAL CROP INSURANCE ACT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the conferees may have until midnight tonight to file a conference report on the Senate bill (S. 1125) the Federal Crop Insurance Act.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 7765, PROVIDING FOR RECONCILIATION OF FIRST CONCURRENT RESOLUTION ON THE BUDGET

Mr. DERRICK, from the Committee on Rules, submitted a privileged report (Report No. 96-1264) on the resolution (H. Res. 776) providing for the consideration of the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981, which was referred to the House Calendar and ordered to be printed.

HEALTH RESEARCH ACT OF 1980

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 765 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 765

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7036) to amend the Public Health Service Act to revise and extend the authorities under that Act relating to national research institutes, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, each section of said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI are hereby waived. At the conclusion of the consideration of bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the Committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 7036, the House shall proceed, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, to the consideration of the bill (S. 988), and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and to insert in lieu thereof the provisions contained in H.R. 7036 as passed by the House.

The SPEAKER pro tempore. The gen-

tleman from South Carolina (Mr. DERRICK) is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resoltuion 765 provides for the consideration of H.R. 7036, the Health Research Act of 1980. This is an open rule with 1 hour of general debate to be equally divided and controlled by the chairman and the ranking minority member of the Committee on Interstate and Foreign Commerce. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purposes of amendment under the 5-minute rule, and each section of said substitute shall be considered as having been read.

The rule waives points of order against said substitute for failure to comply with the provisions of clause 5 of rule XXI which prohibits appropriations in a legislative bill. The waiver is needed because section 474 of the substitute provides that the Secretary of the Department of Health and Human Services may accept conditional gifts for the National Institutes of Health, authority which constitutes an appropriation.

The resolution also waives section 402a of the Budget Act, which requires that new budget authority for a fiscal year be reported by May 15 preceding the beginning of such fiscal year, against consideration of H.R. 7036 and S. 988.

Finally, the rule provides one motion to recommit with or without instructions.

After the passage of H.R. 7036, the House shall proceed to the consideration of the bill, S. 988, and it shall be in order in the House to move to strike out all after the enacting clause of the Senate bill and to insert in lieu thereof the provisions of H.R. 7036 as passed by the House.

H.R. 7036 amends the Public Health Service Act to revise and extend the authorities under that act relating to the National Research Institutes. The bill establishes the National Institutes of Health as an agency of the Public Health Service and establishes the 11 existing National Research Institutes in law. For the first time, all of the National Research Institutes would be subject to an authorization of appropriations.

H.R. 7036 provides authorizations for the National Institutes of Health, which is the principal medical research arm of the Federal Government, of $4.076 billion for the fiscal years 1981, 1982, and 1983.

Mr. Speaker, NIH's accomplishments in biomedical research are recognized throughout the world and have contributed greatly to improving the quality of life and health of our American people. I am sure my colleagues will carefully consider this legislation which provides authorities for needed medical research. I urge the adoption of House Resolution 765 so that we may proceed to the consideration of this important legislation.

□ 1230

Mr. Speaker, I yield for purposes of debate only to the gentleman from Ohio (Mr. LATTA).

Mr. LATTA. Mr. Speaker, this rule could almost be described as routine. It contains two waivers of the Budget Act, and also, a waiver of the rule prohibiting appropriations on legislation. But unfortunately, there is nothing unusual about this procedure.

If anything, these waivers may be less objectionable than usual because they are essentially technical waivers.

The first waiver is of the Budget Act requirement that authorization bills be reported by May 15 before the fiscal year they become effective. The waiver is necessary because the bill includes certain indirect authorizations which could take effect this fiscal year and therefore, the bill should have been reported by May 15, 1979, which it was not. However, the Committee on Interstate and Foreign Commerce has agreed to offer an amendment making the effective date of the bill October 1, 1980, and this would cure the Budget Act problem.

The same Budget Act waiver is necessary to allow consideration of the Senate bill, after passage of the House bill. It is necessary to consider the Senate bill in order to insert the House-passed language in the Senate bill number, and thus, expedite going to conference.

Finally, the rule waives points of order because there is technically an appropriation included in this legislative bill. The problem arises because the bill allows certain donations to be used without going through the appropriations process, and technically, this constitutes an appropriation.

Mr. Speaker, other than the waivers this rule includes no notable provisions. It provides 1 hour of general debate for the consideration of H.R. 7036, the Health Research Act of 1980. There are no special restrictions on amendments included in the rule.

Mr. Speaker, the bill made in order by this rule eliminates the permanent authorization which has covered most of activities under NIH, and replaces it with specific 3-year authorizations for all NIH activities.

Looking at the amount of the authorizations, you would never guess that this is a time of austerity. The proposed authorization level for fiscal year 1981 is 23.7 percent higher than the appropriation for fiscal year 1980. The average annual increases in spending proposed for the fiscal years 1981 through 1983 comes to 19.2 percent.

Mr. Speaker, I have no requests for time and reserve the remainder of my time.

Mr. DERRICK. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 342, nays 28, not voting 62, as follows:

[Roll No. 505]

YEAS—342

Addabbo
Akaka
Alboszta
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.Dak.
Annunzio
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Chisholm
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
D'Amours
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holtenbeck
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Latta
Leach, Iowa
Lee
Lent
Levitas
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
McClory
McCormack
McDade
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moore
Moss
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nolan
Nowak
Oakar
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Rose
Rosenthal
Rostenkowski
Roybal
Rudd
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stark
Steed
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wirth
Wolpe
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zeferetti

NAYS—28

Bauman
Bereuter
Burgener
Clausen
Collins, Tex.
Crane, Daniel
Crane, Philip
Dornan
Hansen
Holt
Jeffries
Kindness
Lagomarsino
Lewis
Lungren
McDonald
Moorhead, Calif.
O'Brien
Paul
Petri
Quillen
Rousselot
Sebelius
Shumway
Shuster
Stump
Thomas
Winn

NOT VOTING—62

Abdnor
Andrews, N.C.
Anthony
AuCoin
Beard, Tenn.
Bowen
Carney
Chappell
Cheney
Clay
Conyers
Daniel, Dan
Daschle
Davis, S.C.
Devine
Dingell
Dixon
Dodd
Donnelly
Ford, Mich.
Fuqua
Hanley
Harsha
Hinson
Holland
Holtzman
Ichord
Leach, La.
Leath, Tex.
Lederer
Lehman
Leland
McCloskey
McEwen
McHugh
Mathis
Mikulski
Montgomery
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nichols
Oberstar
Obey
Pashayan
Pritchard
Railsback
Roe
Roth
Royer
Satterfield
Shannon
Stanton
Symms
Wilson, C. H.
Wilson, Tex.
Wolff
Wright
Wydler
Young, Alaska
Zablocki

Mr. Wright with Mr. Andrews of North Carolina.

Mr. Mathis with Mr. Holland.

Mr. Dixon with Ms. Holtzman.

Mr. Conyers with Mr. Ichord.

Mr. Clay with Mr. Leach of Louisiana.

Mr. Daschle with Mr. Leath of Texas.

Mr. Ford of Michigan with Mr. Leland.

Mr. Lehman with Mr. McCloskey.

Mr. Charles Wilson of Texas with Ms. Mikulski.

Mr. Shannon with Mr. Stanton.

Mr. Obey with Mr. Railsback.

Mr. Oberstar with Mr. Moorhead of Pennsylvania.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1240

Mr. WAXMAN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7036) to amend the Public Health Service Act to revise and extend the authorities under that act relating to national research institutes, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. WAXMAN).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7036, with Mr. WEISS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from California (Mr. WAXMAN) will be recognized for 30 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am asking the House to consider today H.R. 7036, the Health Research Act of 1980.

I am especially pleased to present this bill because it is a forceful statement of support for our Nation's biomedical research programs. I want to thank the members of the Interstate and Foreign Commerce Committee, and particularly Chairman STAGGERS and Dr. CARTER, for their extensive contributions to the development of this legislation.

H.R. 7036 is supported by the administration as well as many scientific and health groups. It was reported from the Subcommittee on Health and the Environment by a unanimous voice vote and from the Committee on Interstate and Foreign Commerce by a vote of 23 to 1.

As chairman of the Subcommittee on Health, I am firmly committed to an effective effort to prevent and cure cancer, heart disease, arthritis, diabetes, and all the many other diseases that afflict the American people. The National Institutes of Health are in the forefront of our commitment to this endeavor. The NIH is our Nation's finest biomedical research institution.

H.R. 7036 has four major features:

First, the bill extends the authorizations for the National Cancer Institute, the National Heart, Lung, and Blood Institute, as well as a number of the programs in the National Institute of Arthritis, Metabolism and Digestive Diseases. These programs all have authorizations which expire at the end of this fiscal year. This bill is, most fundamentally, a reauthorization bill.

Second, the bill mandates that NIH undertake more intensive efforts in the areas of arthritis, diabetes, and digestive diseases. These painful, chronic diseases afflict millions of our citizens. It is now time for our Nation's research effort to make greater progress in improving the lives of the many Americans suffering from these conditions.

Third, the bill makes a number of important changes to promote the more effective, efficient management of the National Institutes of Health. In particular, the National Research Service awards, NRSA, program is amended to encourage more young physicians to consider careers in biomedical research and research in the social sciences is exempted from review by local institutional review boards.

Fourth, the statutory authority for the National Institutes of Health is revised to set in law for the first time the NIH, its 11 individual institutes, and the institutes' advisory councils.

The provisions of H.R. 7036 were extensively debated and carefully designed by the Subcommittee on Health. The bill is the product of an in-depth 6-month review of the operation and statutory authority of the Federal biomedical research programs; 4 days of hearings and 5 days of markup sessions were devoted to the development of the bill. The markup of the bill was delayed three times to allow all interested individuals additional time to present their views to committee members. Due to the extent of these deliberations, the bill report was not filed by the committee until May 16, the last day allowed by the Budget Act.

This point should be emphasized. The committee deliberations on the renewal of the NIH authorities began with oversight hearings in November and continued until the last possible day.

During this long period of consideration, committee members and staff met with dozens of interested organizations and individuals. The bill was substantially revised by the subcommittee and additional amendments were adopted by the full committee at the specific request of various interest groups, including the Association of American Medical Colleges, and the administration.

A major issue during the deliberations was the provision of authorizations for the nine Institutes which do not now have authorizations. After careful review the committee favored providing

authorizations for these Institutes for three reasons:

First, the two largest Institutes of NIH—the National Cancer Institute and the National Heart, Lung and Blood Institute—have authorizations since 1972 and 1973 respectively. Under authorizations these two Institutes, which together comprise 45 percent of the budget of NIH, have performed exceptionally well. Over this period both of these Institutes have grown more rapidly than the nine smaller institutes which have not had authorizations. This natural experiment on the impact of authorizations on NIH research programs clearly shows that authorizations can be beneficial.

Second, the setting of authorizations for NIH is consistent with the usual approach to the review of general revenue programs by the committees of the House. The research programs managed by the Departments of Defense and Energy and the National Science Foundation all have annual authorizations. The setting of authorizations for expenditures—including expenditures for scientific research—is the current practice in the House.

Third, review of all of the programs in NIH will provide needed balance. Today, almost 50 percent of the expenditures of NIH are under authorizations while the other half are not. This situation leads inevitably to an imbalance in the review of the research activity by the committee. The cancer and heart/lung programs are reviewed every 3 years as part of the reauthorization process, while activities in other important areas such as neurology, infectious diseases, aging, and others are neglected. With almost $2 billion in expenditures these programs warrant greater attention.

In providing authorizations, however, the committee was sensitive to the concerns of the biomedical community. Two amendments were adopted to provide the additional safeguards sought by health researchers.

An amendment offered by Mr. PREYER allows for authorizations to be provided for an additional year automatically if program extensions are unavoidably delayed in 1983;

An amendment offered by Dr. CARTER provides an overall authorization of $100 million to assure that unexpected breakthroughs in research will not be impeded by limited authorization levels.

With these two amendments, authorizations for all of the Institute of Health will serve to protect and enhance the important work of the nine smaller Institutes. These authorizations will encourage adequate support for the full spectrum of biomedical research.

Mr. Chairman, support of the committee reported bill is important to the conquest of cancer, arthritis, diabetes, and the other serious diseases facing the American people. The 11 Research Institutes which constitute the National Institutes of Health are our Nation's finest Biomedical Research Institution. An effective biomedical research program will lead to a healthier more productive population. H.R. 7036 provides the statutory framework necessary to maintain a strong, accountable health research program.

I now yield to my distinguished colleague from Kentucky, Dr. CARTER. In addition to being the author of the key provision regarding breakthroughs in research, Dr. CARTER is the principal sponsor of sections of the bill encouraging greater efforts to understand and cure arthritis, diabetes, and digestive diseases. As always, Dr. CARTER's views have helped shape the bill from beginning to end.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am firmly convinced that biomedical research is tremendously important to the future health and well-being of the citizens of this country and of the people of the world. There is no doubt in my mind that the directions and priorities set by the Congress for ongoing and future federally supported research, particularly in the area of prevention, can significantly alter the nature of disease as we know it today. This is why I have strongly supported our biomedical research efforts in the past and will continue to do so in the future.

I believe that H.R. 7036 should be seen as a strong expression of continued support for biomedical research by the Congress. First, and most importantly, the bill follows the regular legislative process by providing authorizations for each of the Institutes at NIH. In this way, we have assured that a proper framework has been established for oversight of our Federal biomedical research effort. This is especially important in fulfilling our responsibility to set general biomedical research priorities and policies, and to insure that those priorities are reflected in the actual operation of the Research Institutes.

However, the committee has recognized that specific authorizations must provide flexibility in order to respond to possible research breakthroughs. For this reason—the committee agreed to an amendment which I offered to provide authority for appropriations for research breakthroughs where the specific authorizations for the National Research Institutes are insufficient to that end. In a further effort to insure flexibility and continuity in the operation of the Research Institutes, H.R. 7036 also provides for continued funding for NIH if Congress does not reauthorize research programs in a timely fashion. I believe that these two amendments should allay the fears of those who are concerned about flexibility and continuity in regard to our biomedical research programs.

In my view H.R. 7036 is a good bill and one which is worthy of support. I can assure you that in drafting this legislation we gave careful consideration to the concerns expressed by the biomedical research community and by the public. Moreover, as in the case of the amendments to the authorization section, several amendments were adopted to deal specifically with those concerns.

I am committed to strong support of biomedical research, a commitment I know I share with many others.

Mr. Chairman, in crafting this bill it has been my pleasure to have worked with the distinguished chairman of the full committee, who is responsible for many of the amendments in the legislation affecting the National Institutes of Health; really, I think it should bear his name. I want to commend the chairman for his valuable contribution.

Mr. Chairman, I want to thank the distinguished chairman of the subcommittee for his kindness and cooperation, and for his leadership over the years. I want to thank the staff, which has been so helpful.

Mr. Chairman, if we go back through this legislation, we find that it started in 1937 with legislation establishing the National Cancer Institute, and since that time it has been improved and has grown until now, there are 11 National Institutes of Health.

I see one of the proponents of the National Institutes on Aging here, one of the Institutes included in the legislation before us today; the gentleman who was most effective in getting this done is the gentleman from Florida, the Honorable CLAUDE PEPPER. I want certainly to commend him for his work and for his assistance over the years.

Mr. Chairman, sometimes we look at the funds that we spend, and we wonder what good they are doing. If we look at, for instance, in cancer, in leukemia, we will find that in cases of acute lymphocytic leukemia, just a few years ago the mortality was 100 percent. Now, at least 50 percent of the youngsters with the disease are going into remission. We owe some of the physicians in this country a great deal of credit for this.

□ 1300

One of them is Dr. Emil Frei of Harvard, and he is now a physician with the Farber Institute. Sidney Farber was a renowned cancer specialist over the years. Another physician prominent in the cancer field is Dr. Emil Freirich. It is an unusual thing that these two men, Emil Frei and Emil Freirich, were in the same class at Harvard, and both of them are well known and tremendously dedicated oncologists.

Mr. Chairman, I would like also to remind the Members of Dr. Holland of Mt. Sinai, who has been so helpful in this area also.

Just this morning we received a report that one of the cancers, acute myelogenous leukemia, which has been resistant to treatment, now is being treated successfully on an experimental basis. These cases are going into remission under treatment approximately 40 percent of the time, and soon they may well be cured.

I want to commend the appointment of Dr. Vincent DeVita as Director of the National Cancer Institute. Few people know that his son, although he did not suffer from cancer, suffered from an incurable disease, aplastic anemia, in which his body could not fight off any type of infection, and he had to live in a laminar flow unit for years and years, where the air always flows outward

and the inside must be kept absolutely sterile.

Mr. Chairman, I would say that if we ever had a man who has the right to be dedicated, it is a man who has had a family member under such treatment and suffering such a condition over such a long period of time. I know that Dr. DeVita will be a dedicated man.

With such men, I am sure, Mr. Chairman, that we can go forward. There will be breakthroughs in this area.

Mr. Chairman, we have also accomplished a great deal in diabetes. At the present time there is under production a battery-powered pump to inject insulin gradually as the body requires it. I am thankful for that. This instrument is not universally available at this time, but it will be within the near future.

Not only that, but we are transplanting the islet cells of Langerhans which produce insulin from one animal to another. We trust that in the future we will be able to transfer these cells from one human to another and in this way rid our people of this dread disease, diabetes, which is one of the greatest causes of blindness that we have.

What has the Heart, Lung, and Blood Institute done? In heart disease, heart attacks have declined 26 percent since 1968, and this is the leading cause of death in the United States. I think that is money well spent.

Deaths from stroke have declined over 38 percent since 1968, and so I commend, too, the people who are engaged in examining and treating people for hypertension.

Mr. Chairman, I strongly support this legislation, and I urge its passage.

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am happy to yield to the gentleman from Iowa.

Mr. LEACH of Iowa. Mr. Chairman, it is difficult in general to oppose the principle of periodic authorizations for any area of Federal spending. But I am deeply concerned with the implications of periodic authorizations in the field of medical research where the time frame of projects often exceeds the tenure of Members of Congress.

Specifically, H.R. 7036 breaks with long standing tradition by eliminating the general research authority of section 301 of the Public Health Service Act under which most of the health institutes now operate. For the past 35 years, under this arrangement of broad policy oversight, remarkable progress has been made in the understanding, treatment, and prevention of disease.

The Health Research Act of 1980 would radically change the basic arrangements undergirding this record of progress. Removing the current flexible authority, H.R. 7036 would place all of the institutes on a triennial authorization cycle, with specific expenditure ceilings.

Frequent reauthorizations carry with them the danger of politicizing what has been to date a noncontroversial, broadly supported program characterized by institutionalism rather than politics. The problem with periodic authorizations is reflected vividly in the amendments to be offered today on this bill.

Three of the four published amendments are concerned with highly specific research causes. Undoubtedly, each of these amendments addresses a most serious and worthy problem, but I am concerned that frequent reauthorization in the future will carry, not 3, but 30 or more such directives, in some cases regardless of scientific ability to address the problem and in all cases jeopardizing research priorities which today are largely set by scientists not politicians. There is already sufficient opportunity for Congress to oversee and direct biomedical research in this country without adding a new layer of opportunity for well intended but possibly mischievous political input.

Mr. Chairman, this bill is opposed by four former assistant Secretaries for Health, serving since 1965. It is opposed by the four living previous Directors of NIH, serving since 1955. It is opposed by the American Association of Medical Colleges, the Association of Professors of Medicine, the Joint Health Policy Committee of the Association of American Universities, the National Association of State Universities and Land Grant Colleges, and numerous individual professions in the field.

Finally, let me stress that congressional policy is effected by people as well as institutional arrangements.

As much as I respect the gentleman from California and the gentleman from Kentucky and their enlightened views on the need for responsible medical research, I fear that sometime in the future less enlightened people may take their places on this key subcommittee, in which case the great research institutions of America may be forced to come on bended knee to Congress instead of in the current spirit of cooperation and progress.

I would urge my colleagues to vote against this bill. But if it prevails it would be my hope that members of the House-Senate conference committee will resolve differences between the bills by preserving, not destroying, the general research authority of section 301 of the Public Health Service Act.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to point out to my colleague, the gentleman from Iowa (Mr. LEACH), that he is misinformed about the support for this legislation. We have sent out to our colleagues a letter which indicates the Surgeon General, Dr. Richmond, as well as the Director of the National Institutes of Health, Dr. Fredrickson, support the legislation.

There was some concern about the review of contract provisions and the intramural review that goes on in NIH. They now support the legislation.

There are some who disagree with the idea of authorizations. The gentleman raised the question of political interference. I believe the gentleman referred to actions he might not approve of by our colleagues in an appropriation bill as opposed to an authorization bill. I do not believe there are distortions. I think we have a responsibility, in spending the taxpayers' money, to oversee what is being done with that money.

Here we have a very sensitive area, because we do not want to substitute our opinions and judgments for those which are basically scientific judgments.

I have only asked the gentleman from Kentucky (Mr. CARTER) to yield on this point because it has been, I think, a very much misunderstood aspect of legislation. But this is the time for the gentleman from Kentucky to yield to those who might wish to speak on the bill. We have some Members on our side also who want to speak.

Mr. Chairman, I wanted to point that out, and perhaps later in the discussion of the legislation other questions might also be answered.

Mr. CARTER. Mr. Chairman, I thank the distinguished subcommittee chairman for his comments, and in reclaiming my time I would say that, on the idea of the politics of health, over the years the men in this House and the women in this House have seen my actions, and I do not believe they can say that on any occasion the word "politics" has ever entered my mind. I resent the implication of anyone saying that.

I will ask my good friend, the gentleman from Iowa (Mr. LEACH), on which committee he serves.

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I yield. I yield for an answer.

On what committee does the gentleman serve?

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Mr. LEACH of Iowa. Mr. Chairman, I serve on two committees, the Post Office and Civil Service Committee and the Banking Committee.

Mr. CARTER. All right, sir. On the gentleman's Banking Committee, my good friend, do you not authorize funds? Is that not right?

Mr. LEACH of Iowa. Yes; we do, sir.

Mr. CARTER. And on Post Office and Civil Service, do you not authorize funds?

Mr. LEACH of Iowa. Yes; we do, sir.

Mr. CARTER. Then the Appropriations Committee appropriates funds, does it not?

Mr. LEACH of Iowa. Yes; it does, sir.

Mr. CARTER. The gentleman has the two-tier system, of which he is complaining of us.

Mr. LEACH of Iowa. Yes, sir.

Mr. CARTER. Do you politicize yours? We are not going to politicize ours. We are very much interested in this legislation. We think it is good, and we think we should have the same oversight which the gentleman exercises himself on the Committee on Banking and Currency and also on the Committee on Post Office and Civil Service.

Mr. LEACH of Iowa. Will the gentleman yield for a clarification?

Mr. CARTER. I yield to the gentleman.

Mr. LEACH of Iowa. I will be very brief in responding. The politics I am

concerned with is the politics of too much heart and not too little. All of us have our favorite cause. This basic legislation adds a second layer of political input.

Mr. CARTER. I will reclaim my time and say that it has no more second layer than yours.

Mr. LEACH of Iowa. That is correct.

Mr. CARTER. Really, my friend, the pot should not call the kettle black. How can the gentleman say something to me when he does the same thing himself?

Mr. GRAMM. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am most pleased to yield to my good friend, the gentleman from Texas.

Mr. GRAMM. I would like to say that if Members of the House represent medical schools, as I do—and I represent two—they have all gotten these fiery telegrams saying, "Don't set up a procedure that sunsets health research."

First, it is very misleading. We are not sunsetting health research. We have provisions in this bill that stand in stark contrast with other legislation, where funds are automatically authorized if we do not act.

But at its very root here is the sheer arrogance of the National Institutes of Health to say, "We should not have to be authorized by the Congress. What we are doing is above the legislative process."

I certainly reject that. The Committee on Health and the Environment rejected it, and I think time is long overdue that we ask, "What are we getting for our health dollar?" I think we are getting a lot. I think it is high yield. But I want to look at it, I want to authorize it, I want to subject them to the test of fiscal responsibility and good yield on the dollar, like everybody else.

I associate myself with the remarks of the gentleman from Kentucky.

Mr. CARTER. I thank the distinguished gentleman for his remarks.

I see here in this august body one of my good friends, the distinguished Speaker, who recently, at the conventions held in Madison Square Garden, referred to those on this side as being right-wingers and possibly related to far-right groups, my good friend of years, that courtly, white-haired gentleman. You know, he got me down here. Since I have been here I have always tried to vote for what was right and what would benefit the people. I do wish my good friend would not be so hard on his friends on this side of the aisle.

I yield to my good friend, the gentleman from Illinois (Mr. O'BRIEN), and I will ask: How are things on the Ponderosa?

Mr. O'BRIEN. I thank my good friend for yielding. I speak not on behalf of any societies or associations or groups of physicians other than those who practice in the 17th District of Illinois, and for the deans of Lovola University and the University of Illinois Medical Schools. They have serious reservations about this bill and question whether in the long pull, it is in the best interest of biomedical research. I guess the area that most troubles me some is this: There will be something in the nature of 10 to 12 separate authorizations for the several National Institutes of Health. If we face the problem that occurs frequently, where the authorization committees are in dispute, and if spirited competition develops among the Institutes, we may find ourselves appropriating for the National Institutes of Health through the unsatisfactory means of continuing resolutions and based on previous noncurrent levels of funding.

My notion is that if we do anything well, we do it in the health area, and I am concerned that we are damaging something of very high quality by a bill designed to produce extremely questionable results.

Mr. CARTER. I thank the distinguished gentleman for his comments, and I will say that we have support for legislation from Dr. Frederickson, the Director of the National Institutes of Health, and also from the Surgeon General Dr. Richmond, and I am pleased to tell the Members that.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, two of our colleagues are retiring this year, and much of the great work of the National Institutes of Health, and so many other of our health programs, are due to their efforts. The first is Dr. TIM LEE CARTER. The other is the very distinguished chairman of the Interstate and Foreign Commerce Committee, the gentleman from West Virginia (Mr. STAGGERS). They have fought over the years for a strong and effective NIH program to conquer disease. I now yield to him such time as he may wish to consume.

Mr. STAGGERS. Mr. Chairman, I am pleased to speak this afternoon in support of H.R. 736, the Health Research Act of 1980.

I have long supported our Nation's biomedical research programs and the National Institutes of Health. This bill advances these research programs. It provides the basis for a renewed effort to conquer cancer, prevent heart disease and detect and cure all the other many disorders which afflict people in the United States and around the world.

H.R. 7036 is the product of more than 6 months work by the Committee on Interstate and Foreign Commerce and its Subcommittee on Health and the Environment. During this period, the many provisions of the bill were thoroughly reviewed by committee members. Innumerable meetings were held with individuals from interested organizations. This bill was extensively revised by the subcommittee and further amendments were adopted by the full committee.

As a result of the extensive deliberations, and the amendments which were adopted, the bill is broadly supported by committee members. It was reported from subcommittee on a unanimous voice vote and by the Commerce Committee on a vote of 23 to 1.

The bill merits the support of every Member of the House. It provides a strong foundation for our biomedical research programs in the eighties.

In particular, I would point out that the provisions of the bill establishing each of the nine smaller institutes in statute insures that the Congress will pay greater attention to these programs in future years. I am especially pleased that there will be additional interest in and support for the National Eye Institute. Just 2 years ago I had surgery for cataracts, and I am keenly aware of the contributions which can result from research into diseases of the eye.

Again, Mr. Chariman, I am pleased to speak in favor of H.R. 7036. It is the product of careful deliberations in the committee. It is strongly supported by committee members. It will provide for an effective, efficient biomedical research program in the years to come.

The chairman of the subcommittee, and all its members should be congratulated for bringing this bill to the floor; it is a very much needed bill. Mr. WAXMAN has done a good job all through the time that he has been chairman. I would also like to congratulate the staff on the work they are doing. Finally, I would especially like to congratulate the gentleman from Kentucky. I have served with him from the time he has been on our committee, from the time he has been here, and I have never seen him once be influenced by politics where the health of the people of America is concerned. His actions have always been for their betterment. He has been a gentleman with integrity. And no one, Dr. John Cooper or anyone else, could ever point to him and say he has ever put politics ahead of the good of the people. He has always, in my opinion, stood for what was good for America, whether it was in health, or whatever came before our committee. I would attest to that.

I will say this: I am the author of the first bill on heart, cancer, and stroke. Those Institutes have been authorized since 1973, and they have grown far more than the other Institutes have. So now why are opponents objecting to authorizations for the other ones? Let us provide specific authorizations, and then we can get adequate appropriations for them, and maybe they will grow a little bit. So far as heart, cancer, and stroke is concerned, as the gentleman from Kentucky (Mr. CARTER) has said, research in those areas has certainly reduced the incidence of death. Let us put more money into the other Institutes through the authorization process. We will not be playing politics. We will be working to solve the health-care problems that face the American people. I can say honestly that we have tried, and I know that the gentleman from California (Mr. WAXMAN) and all of the other members of the committee have tried, to do what is right for this country. That is our job to do it here. We have tried to do that with this bill. I think we have had interference from the outside. I think it should be resented and resented deeply. And I do resent it.

This is an important bill. It means so much to America. It needs to be passed now. Let us get on with our job and pass the bill. And let us do it in the next few minutes.

Mr. WAXMAN. Mr. Chairman, I now yield 2 minutes to a very distinguished member of our subcommittee, the gentleman from North Carolina (Mr. PREYER) who has made a great contribution to

this legislation with his amendment to allow authorizations for a fourth year if necessary. This amendment goes a long way toward alleviating the concerns that have been raised about the authorizations provided by this bill.

Mr. PREYER. Mr. Chairman, I rise in support of this legislation. I do want to call attention of the Members to the concern in the scientific community over some provisions of the bill. The committee made a real effort to address these concerns, and I think we have addressed them successfully. I hope and believe that the scientific community will find, as the bill works, that we have answered them successfully. But as the bill goes through conference, as it is administered by HHS, and as we conduct congressional oversight, I think it is important that we keep in mind these concerns of the scientific community to insure that the NIH remains the greatest biomedical research institute in the world.

Mr. Chairman, while I am supporting this bill to authorize funds for the National Institutes of Health, I do want to caution my colleagues about the concern which the scientific community has regarding the far reaching proposal which changes the way biomedical research has been administered by the National Institutes of Health.

In addition to extending the expiring authorities for the National Cancer Institute and the National Heart, Lung, and Blood Institute through 1983, the bill removes the permanent statutory authority under which the other nine Institutes have operated and replaces it with a 3-year time limiting authorization with specific appropriation ceilings. Four former Assistant Secretaries for Health have stated in a letter to the editor of the Washington Post in the August 25 edition that "We are convinced that a long-term Federal commitment to research is by far and away best served by permanent authority of the type contained in section 301 of the Public Health Service Act."

They are concerned about the impact that short-term authorities will have on the progress of biomedical research, which has been phenomenal in this country. Opponents in the scientific community also are convinced about the appropriations ceiling and the effect such a cap will have on any unexpected breakthroughs in research.

In committee we were successful in providing some protection against these concerns through amendments I offered which will provide for an automatic authorization for an additional year should the extension of the programs be delayed unavoidably in 1983. Another amendment provided for an overall authorization of $100 million to assure that unexpected breakthroughs would be allowed to go forward.

I think the committee has made a real effort to address these objections, and I cannot support efforts to eliminate these authorizing provisions for the National Institutes which currently make their treatment unique from all other aspects of Government. However, there are other aspects of the bill which do concern the scientific community and in view of the importance of biomedical research and of NIH, I think we shall carefully consider the impact such provisions may have on the future and progress of biomedical research. These include the provisions calling for advisory council discretionary authority to review any contract, regardless of cost, and to mandate such a review of contracts over $500,000. Councils will also be required to approve grants over $50,000. Serious questions are raised about the capability involved in these kinds of reviews and whether or not there is sufficient time for the councils to provide the kind of review that should be required. The reporting requirements in the bill may be overly burdensome and thus tend to take away from the basic research activity. The provision which establishes NIH in law and assigns duties and powers to the Secretary of DHHS, the Director of NIH, and the Directors and Advisory Councils of the various institutes are also new and are of particular concern to the scientific community. This would curtail the authority and managerial flexibility of the NIH Director and opponents feel that the NIH has functioned effectively without this explicit delineation of authorities and powers.

Over the past 50 years in which the Federal Government has been involved in the effort to eliminate disease from our midst we have seen phenomenal progress and success. It is my hope that the concerns of our scientific community which contributes so much to this effort of eradicating disease will be sufficiently addressed as we proceed to a Conference with the Senate on finalizing this important Health Research legislation. The National Institutes of Health have been synonymous with the progress of medical development in the world and I am certain the Secretary of DHHS is aware of the strong feeling of the scientific community on this important issue. It is my hope that proper attention can be given to these concerns within the Department as well, and that they be carefully monitored through congressional oversight, to ensure that the NIH remain the 'shining city on the hill" for all biomedical research.

Mr. WAXMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri (Mr. GEPHARDT).

Mr. GEPHARDT. Mr. Chairman, the Health Research Act, H.R. 7036, would make comprehensive changes in the authority of the National Institutes of Health. I am fully confident that the Interstate and Foreign Commerce Committee, in recommending these changes, is well-intentioned, that the committee's objective is to strengthen NIH. A number of experts in the field, however, have expressed concern to me that some provisions of the bill may frustrate rather than achieve that goal.

During its 50-year history, NIH has amassed an outstanding record. I am sure all of my colleagues are aware of the breakthroughs and progress that have been made in finding the causes and cures for many diseases with the help of the Institutes. With such a record, questions have been raised with respect to the wisdom of substantial changes in the authority for NIH. Would they improve the agency or merely tamper with it? In particular, a number of academic groups and representatives of medical schools have alleged the limited authorizations would undermine the quality of biomedical research sponsored by NIH, encouraging short-term result-oriented projects rather than those which pursue the fundamental causes of disease but take longer to produce results.

Furthermore, they believe frequent reauthorizations will make biomedical research policy susceptible to politics and special interests. With the whole program coming before the Congress every 3 years, will priorities be set according to the strength of an individual lobby or the health and medical needs of the Nation?

Certainly, the increased oversight and greater budget control these provisions are designed to achieve are desirable objectives and ones I have strongly supported in the past. Nevertheless, it would be unfortunate if they could be brought about only at the expense of advancements in medical research.

After careful consideration, I have concluded that inadequate safeguards have been built into the legislation to protect NIH from overpoliticization. In addition, to make sure the reauthorization process would be meaningful and not meddlesome, I believe it is necessary to establish criteria for evaluating the accomplishments of the various Institutes so that reasoned, objective decisions can be made with respect to reauthorization at the end of the 3-year period.

I am hopeful that conference with the Senate on legislation to authorize the National Institutes of Health will result in modifications leading to stronger protection of the agency against special interest influences and assurance of continued superior biomedical research.

Mr. WAXMAN. Mr. Chairman, I now yield 3 minutes to a very distinguished Member of the House who has been long concerned with biomedical research, the chairman of the Aging Committee, the gentleman from Florida (Mr. PEPPER), to speak on this bill.

Mr. PEPPER. I thank the able chairman and my friend for his kindness in yielding to me.

Mr. Chairman, other than the Nation's honor and its security, nothing is more important to the people of our country than health and nothing is more important to the health of the people of this country than the 11 Institutes in the National Institutes of Health, the preservation and continuity of which are involved in this bill that is before the House today.

□ 1320

I hope I am not being indelicate by saying that I personally have reason to be very grateful for the existence of these Institutes, not only because I was the principal author of five of the Institutes in the other body and coauthor of another one, the Cancer Institute, but because in 1976 I had a heart operation, the insertion of a synthetic aortic valve and a bypass of an artery

that I am sure saved and prolonged my life

The techniques that made possible that operation were developed by the National Heart Institute. How many more in America today are living, grateful for the National Heart Institute and for what it has made possible in their lives. A comparable compendium could be made about the achievements of the other Institutes in the National Institutes of Health.

So this is one of the greatest institutions we have, an institution dedicated to the betterment of health and the prolongation of happy lives for the people of this country.

I especially want to commend the distinguished chairman of the full committee, the gentleman from West Virginia, Mr. HARLEY STAGGERS, for he has been a dedicated chairman of the Committee on Interstate and Foreign Commerce, one of the great committees of this House. His inspiration, his dedication to the cause of the health of the people has immeasurably contributed to a greater and a better America. How fortunate we are to have as the chairman of this subcommittee and the ranking member of the subcommittee respectively, the gentleman from California (Mr. WAXMAN), and the gentleman from Kentucky, Dr. TIM LEE CARTER. No two Members in this body have served with greater distinction and dedication to their people, the people of America, than these two gentlemen.

This is not only a legislative matter, this is a matter of heart because they know what it means to America to prolong these institutions.

The CHAIRMAN. The time of the gentleman from Florida (Mr. PEPPER) has expired.

Mr. WAXMAN. Mr. Chairman, I yield 2 additional minutes to the gentleman from Florida.

Mr. PEPPER. I want to ask just a few questions and give an opportunity to the distinguished chairman of the subcommittee to answer those questions, because there is some concern, as was said by the distinguished gentleman from North Carolina, among some of the people in the country that for the first time we are authorizing or permitting the authorization by this committee and by the Congress of the funds that may be appropriated for all of the Institutes except Heart and Cancer, which have had authorizations for some time. That is what is disturbing.

As you know, Mr. Chairman, there is great concern in the biomedical research community over several aspects of the time-limited authorization for NIH in the bill.

First, many research projects are, of necessity, lengthy, and 3-year authorizations could jeopardize the stability of these projects, leaving researchers unsure of continued support or discouraging the undertaking of lengthy projects.

Can the gentleman respond on that?

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from California.

Mr. WAXMAN. That is an important aspect of biomedical research that we are talking about, a commitment that will give continuity to research projects over a number of years in order to achieve the success with those projects and in order to keep the commitment of the researcher to engage in those projects.

I think it is important to us to fully support biomedical research with that understanding. Authorizations for research in this area are similar to the authorizations and appropriations for the National Science Foundation and for research done in the area of defense. I do not think those research activities have been hindered in any way.

I expect this would also be the case for the NIH researchers, that we would keep that continuity for the research.

Mr. PEPPER. I thank the able chairman.

Second, some fear that the bill would encourage shortsighted mandates to explore applied uses of research at the expense of basic research, which can have ramifications for understanding many diseases.

The CHAIRMAN. The time of the gentleman from Florida (Mr. PEPPER) has again expired.

Mr. WAXMAN. Mr. Chairman, I yield 5 additional minutes to the gentleman from Florida.

Mr. PEPPER. How would the gentleman prevent this?

Mr. WAXMAN. I believe it is the responsibility of Congress to continue our commitment to biomedical research, particularly basic biomedical research. I believe that decisions regarding the kind of research and how it ought to be conducted are decisions to be made by scientists, not those in political office.

Our responsibility, as I see it, is only in establishing the overall priorities for using the taxpayers' money. In establishing those priorities, basic biomedical research should be continued both intramurally and extramurally by the National Institutes of Health.

Mr. PEPPER. I thank the able gentleman.

Third, I have been concerned that the authorization process, establishing ceilings for the Institutes, could restrict appropriations needed to pursue a scientific breakthrough. The gentleman's bill authorizes $100 million in discretionary funds to be used by the NIH Director should this happen. How would this work? Would it not mean considerable jockeying among the various institutes for this relatively small amount of money? What other steps would be available for making additional funds available should a promising breakthrough come about, for example, in cancer research?

Mr. WAXMAN. In the area of authorizations, I would expect the Policy Committee to give generous support, by way of authorizations, for each of the Institutes to indicate the relative priority we want placed on each. Insofar as there may be an area of research that shows great promise, that may well even lead to a breakthrough, we have authorized the Committee on Appropriations to appropriate an additional $100 million over and above the amount of money authorized for the Institutes. Should that not be sufficient, we in Congress would want to move immediately to take up whatever action may be necessary to continue to promote the research.

I think we have given a great deal of protection so that we can meet any situation that may arise that is not foreseen during that authorization period.

Mr. PEPPER. I thank the gentleman. All of the Institutes, except Cancer and Heart, Lung and Blood, have been authorized under the broad, permanent authority included in section 301 of the Public Health Service Act.

In the past, appropriations have been made without the necessity of an authorization, and the chairman of the distinguished Subcommittee on Labor Appropriations, the gentleman from Kentucky (Mr. NATCHER), and his subcommittee have done a very fine job in that area. When section 301 is so flexible and has worked so well, why is it desirable to bring the other nine Institutes under a limited 3-year authorization?

Mr. WAXMAN. I think it is desirable to authorize all of the Institutes for the same reasons we now have the Cancer Institute and the Heart, Lung and Blood Institute under authorizations. Those two alone constitute almost half of the total budget of NIH. When the Policy Committee, that is looking into how we are going to spend our taxpayers' money on medicaid and medicare and spiraling health costs, deals with the policy questions of health, it seems to me that we have to be concerned about preventing disease, doing research so that we can conquer these diseases, prevent them and control them.

In that way I think the Policy Committee, in authorizing funding for biomedical research, will be of help to the subcommittee of the gentleman from Kentucky (Mr. NATCHER), which has handled this area so well in the appropriations. We will help them by establishing levels of funding which will encourage them to be as generous as possible for needed biomedical research.

I thank the gentleman for these questions, because they allow clarification.

Mr. Chairman, I appreciate the concern about the provision of authorizations. Again, I would point out that the two largest Institutes—the Cancer, and Heart/Lung Institutes—have had authorizations for almost a decade. In addition, of course, almost all of the other Federal research programs—those sponsored by the Department of Defense and Energy and the National Science Foundation also have authorizations. The National Science Foundations programs, in patricular, have single year authorization bills.

This bill, by providing a 3-year authorizations is thus, not unusual. It is the typical congressional process with respect to all programs even research programs.

I appreciate your interest in these programs. I know how much you have done over the years to build NIH into the Institution that it is today. Your accomplishments are enormous.

This bill, and the current work of the subcommittee, builds on your foundation. I, and I am sure the other subcommittee

members, would not like to see harm come to our Nation's biomedical efforts. This bill provides the foundation for strengthening of these efforts in the decade to come.

Mr. PEPPER. As one who was deeply involved with establishing some five of the Institutes of Health, I share the concern expressed by many that this time-limited authorization process could make the NIH subject to the vagaries of changing political situations. I have proposed an approach which might alleviate some of these concerns—namely, that you maintain the 3-year authorizations included in H.R. 7036 at the levels you propose, and add, for each Institute, that such sums as may be necessary be authorized for the subsequent 7 fiscal years. This would carry us through the decade sure in the knowledge that the Institutes would indeed exist. It would give assurances to the biomedical research community that the Institutes would have stability. Moreover, at the time you would ordinarily reauthorize the Institutes under the current provisions of your bill, you could attach specific authorization levels for these out years. I have not offered this as a floor amendment but wish to express my hope that you will consider such an alternative in the course of conference with the Senate.

□ 1330

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New Jersey (Mr. MAGUIRE).

Mr. MAGUIRE. I thank the chairman for yielding.

Mr. Chairman, this is an important bill to reorganize and rationalize our Nation's health research efforts. I join with the chairman, the distinguished ranking minority member, the gentleman from Texas (Mr. GRAMM) who spoke a moment ago in believing that the National Institutes of Health could stand some more vigorous oversight and perform better if subjected to the authorization process.

Mr. Chairman, the Health Research Act of 1980 represents a landmark, cooperative effort on behalf of many members of the House Health and the Environment Subcommittee to reorganize and rationalize our Nation's health research efforts. There can be no doubt that health research is a very proper province for the wise expenditure of Government funds. But, as was made abundantly clear in our subcommittee's hearing sessions, the National Institutes of Health could stand some more vigorous oversight and perform better if subjected to the congressional authorization process. For understanding this issue and for dealing with it so effectively, I commend the efforts of Chairman WAXMAN, our dear colleague Dr. TIM LEE CARTER, and the work of their staffs. They have fashioned an excellent bill.

I am particularly pleased that the legislation retains some of the language which I added to the Public Health Service Act through the Biomedical Research Amendments of 1978. These amendments brought some much needed focus on the environmental causes of cancer to NCI's research. I would like to take some of the committee's time to discuss the need for NCI—and in fact all of our Nation's consumer protection agencies—to devote thought and action to environmental carcinogenisis.

Cancer is the only major cause of death that has continued to rise since 1900. It is now second only to heart disease as a cause of death and is responsible for the loss of 400,000 lives each year.

One of the most important cancer-related discoveries over the past few years is that perhaps 60 to 90 percent of all cancers may be induced by agents in the environment. The Environmental Protection Agency recently listed 43,000 chemicals in its inventory of chemicals subject to the Toxic Substances Control Act. About 500 new chemicals or compounds are introduced each year. Cancer affects all ages, all sexes, and is an expression of each individual's past exposures to carcinogens in air, water, food, drugs, other consumer products and the workplace.

Some progress in governmental policy is being made. The national toxicology program recently released a two-volume report which focuses on 26 human carcinogens to which Americans are exposed on a daily basis. This "First Annual Report on Carcinogens," which was mandated by one of my amendments, compiles an updated report on these carcinogenic substances, the nature of their human exposures, the toxicity of the agents, the degree to which they act synergistically, and other important data. The entire Department of Health and Human Services is to be congratulated for its efforts on the report.

But more must be done.

We must recognize that although we have spent billions on cancer research that the incidence of this disease still is on the upswing. The annual costs of cancer are about $30 billion, but the human cost can never be quantified and this is why our task in curing and preventing cancer is so urgent. That is why Congress must be very wary of arguments about "safe thresholds" or "acceptable exposures" to substances known to be carcinogenic. In the wise words of the Toxic Substances Control Committee:

> Methods do not now exist for determining a safe threshold level of exposures to carcinogens. Uncertainties in the dose response relationship between specific exposures and cancer risk, unknown factors that influence individual susceptibility to cancer, and unpredictable interactions among cancer-causing agents prevent determination of safe levels for human exposure to a carcinogen. Any exposure, however small, is regarded as an addition to the total carcinogenic risk.

Ideological cost-benefit analyses are no substitute for effective research and cancer prevention. By retaining the language pertaining to environmental carcinogenisis, the Health Research Act of 1980, will continue to direct our cancer rescarch efforts in a balanced direction that will truly benefit the citizens of our Nation.

Again, my thanks to Chairman WAXMAN and to Dr. CARTER—a true gentleman who has always written legislation as if people mattered.

● Mr. RAILSBACK. Mr. Chairman, I have grave reservations about H.R. 7036, the Health Research Act of 1980. Basically, the bill authorizes appropriations of funds for the 11 research institutes of the National Institutes of Health (NIH) and makes technical amendments to the Public Health Service Act of 1944. I am concerned about provisions subjecting biomedical research to a short-term authorization and placing a cap on research funds. I feel Members of the House should seriously reflect on the effects of such a change in policy before voting to pass the bill.

Now, 9 of the 11 institutes are under permanent authority rendered in section 301 of the Public Health Service Act of 1944. The exceptions are the National Cancer Institute and the National Heart, Lung, and Blood Institute. Authorizations are only needed for these institutes as well as for programs relating to diabetes, arthritis, and digestive diseases within the National Institute of Arthritis, Metabolism, and Digestive Diseases. However, the Subcommittee on Health and the Environment determined that all 11 institutes should be reauthorized periodically and not have access to fund appropriation under section 301, arguing that inequities and inconsistencies in funding and administration exist, 2 institutes—the National Institute of Allergy and Infectious Diseases and the National Institute of Environmental Health Sciences—have no statutory authority, and Congress—which represents taxpayers—must periodically review NIH programs.

While I cannot argue that the system is perfectly efficient, I do know that NIH scientists and scientists funded by NIH grants have made tremendous advances in the field of biomedical research. Secretary of Health and Human Services Patricia Roberts Harris, although now supporting the committee bill, sent a letter to the chairman of the Interstate and Foreign Commerce Committee, Representative Harley O. Staggers, on March 14, 1980, which stated in an attached critique that—

> While the organization of title IV [of the Public Health Service Act] may be confusing, there is no compelling need for a revision at this time.

It goes on to point out:

> It may seem peculiar that, while nine of the eleven research institutes are specified in statute, NIH as a whole has no explicit statutory foundation. It has been established within the Public Health Service under existing administrative authorities. As such, NIH has experienced and, in fact, has flourished to become the leading research institute of its kind in the world.

In the same critique, the Department stated that it "must strongly oppose any prohibition against the use of any other authority, particularly section 301, to authorize appropriations for the research programs of NIH * * * Authorizations with specific dollar limits would limit the flexibility to provide amounts thought best for biomedical research."

In other words, until recently the administration opposed section 410(c)(1)

of the bill which subjects biomedical research to the authorization process by not allowing appropriations under section 301 of the Public Health Service Act, and it also opposed setting specific dollar limits to NIH research institutes. One major reason for my concern and for the administration's earlier opposition is the fact that reauthorization bills are not always passed on schedule. In an example cited in the critique, the Department pointed out that funds for the national research service awards, a program for which section 301 funds are already prohibited, were delayed during the 95th Congress because the reauthorization bill was not passed on time and serious problems resulted.

In regard to congressional oversight, I would like to point out that the Appropriations Subcommittee on Labor, Health and Human Services, and Education must approve any appropriations for NIH and therefore, thoroughly studies NIH programs each year. I feel Congress already has adequate oversight opportunities in the appropriations process.

Finally, I understand that, although the Senate bill originally authorized all NIH Institutes on a short-term basis, committee members reconsidered and changed the provision before reporting it to the Senate. So, on June 29, the Senate passed its counterpart to H.R. 7036 with provisions retaining the permanent authority for the Institutes that have it and restoring the same authority to the National Cancer Institute and the National Heart, Lung and Blood Institute.

In conclusion, I have reservations about changing NIH's permanent authorization of funds to a short-term authorization, thereby restricting each research institute by time and spending ceilings. U.S. biomedical facilities are the best in the world, and I think everyone agrees that great advances have been made at NIH and through NIH research grants, contracts, and other support to universities, foundations, and private institutions. Because of the recognized need for Federal support, Congress mandated permanent authority for NIH in the Public Service Act, and I would recommend that all Members seriously consider the implications of changing that policy before voting.●

● Mr. FRENZEL. Mr. Chairman, biomedical research offers perhaps the greatest hope for discovering new ways to prevent disease, to reduce the enormous human suffering and economic losses from illness, and to improve the quality of life and health of the American people. Thus, the bill before us today, the Health Research Act of 1980 (H.R. 7036) offers hope for the future, through the continuation of the National Institutes of Health, which has supported biomedical research programs since its humble beginnings in 1887.

From a one-room Laboratory of Hygiene in 1887, the National Institutes of Health has evolved into one of the world's largest biomedical research centers. Today, NIH consists of 11 major national research institutes: the National Cancer Institute; National Heart, Lung, and Blood Institute; National Institute of Dental Research; National Institute of Arthritis, Metabolism and Digestive Diseases; National Institute of Neurological and Communicative Disorders and Stroke; National Institute of Allergy and Infectious Diseases; National Institute of General Medical Sciences; National Institute of Child Health and Human Development, National Eye Institute; National Institute of Environmental Health Sciences; and the National Institute on Aging. These 11 research institutes are our Nation's finest biomedical research institutions.

NIH currently accounts for 85 percent of all health research expenditures by the Department of Health and Human Services and 68 percent of federally-sponsored health research spending. In the past decade, the NIH budget has increased from less than $1 billion in 1970, to a budget of $3.4 billion in 1980.

The bill before us continues the financial support for biomedical research through a proposed authorization but, at a level that is 23.7 percent higher than for fiscal year 1980, and the average increase in spending proposed for the fiscal years 1981–83 comes to 19.2 percent. By contrast, the annual increase in spending by NIH for fiscal years 1979 and 1980 averaged 13.1 percent. Specifically, the bill authorizes some $13.982 billion over 3 years as follows: $4.076 billion for fiscal year 1981, $4.606 billion for fiscal year 1982, and $5.300 billion for fiscal year 1983. Finally, the bill allows a 15 percent automatic increase in fiscal year 1984, unless Congress authorizes a different amount in reauthorizing legislation.

Those large increases only mean that Congress cannot bring the appropriation reality up to the authorization asperations. I would prefer that the authorizing committee had been more priority conscious.

As a matter of fact, the body yesterday passed the 1981 appropriation that this bill authorizes. The appropriation bill reduced the increase we will authorize today by about one half. So much for our commitment.

In spite of Congress failure to balance the fiscal year 1981 budget, and considering that even the most worthwhile programs—as worthy as those included in this bill—are slated for severe budget cuts, I would have been happier to support a reasonable increase for vitally needed biomedical research.

I, too, place a very high priority on finding a cure for cancer, heart disease, kidney disease, arthritis, and other dreadful diseases that are responsible for so much human suffering and severe economic losses. However, I also place a very high priority on the losses and suffering that relate to double-digit inflation that Congress has forced upon the American people.

I will vote for this authorization, but again I do so with regret. We and our constituents know that Congress cannot achieve the spending levels in this bill. On some utopian date in the future, authorizing committees may want to set their own priorities, rather than passing dreams and allowing the Appropriations Committee to set the financial priorities.●

● Mr. BARNES. Mr. Chairman, over the last 35 years the National Institutes of Health has made extraordinary contributions to both the level of scientific knowledge, and to the treatment and prevention of diseases which affect the lives of millions of Americans. With the NIH's leadership, American researchers have emerged as the undisputed leaders in the world medical and scientific community.

The Health Research Act of 1980 would authorize almost $14 billion for the NIH over the next 3 years. I am supporting this particular bill, which embodies a new approach of specific congressional authorizations for NIH activities, with some reservations. I am aware of the concerns voiced by many in the biomedical research community that Congress should not take any action which might decrease the emphasis on basic scientific research. There is a real and legitimate role for congressional oversight of all Federal programs, but Congress should not intrude unnecessarily in scientific research or impede the creativity which leads to major breakthroughs.

Nevertheless, I am supporting H.R. 7036, because it provides vital funding increases for health research programs and provides a vehicle which allows the House to move to a conference with the Senate. I am hopeful that the conferees will produce a good compromise approach which will have one major goal—the improved future health of the American people.●

● Mr. BUCHANAN. Mr. Chairman, I rise in opposition to this bill. I am particularly concerned with changes proposed in this bill for section 301 affecting biomedical research. I represent Birmingham, Ala., which is proud to have an excellent biomedical research center at the University of Alabama in Birmingham. I have been contacted by many of the doctors and professors at this institute who, with their substantial expertise in the field of biomedical research, are very much opposed to changes in section 301.

This legislation will replace the permanent program authorities of nine NIH Institutes with short-term authorizations and ceilings for their appropriations.

Biomedical research requires continuous efforts by a wide variety of professionals as they seek new cures for diseases. Many of my constituents fear that the proposed changes in H.R. 7036 demonstrate a weakened commitment of Congress in supporting biomedical research and will politicize, and thus delay, action on future research projects.

I am a proponent of congressional oversight and would not be in favor of exempting an agency from such oversight. It is my understanding that the congressional committees with responsibility in the area of NIH hold various oversight hearings on the research being done and in addition the Appropriation Committee investigates the overall NIH goals.

Biomedical research has contributed, and will continue to contribute, to the health and welfare of the American people. I would certainly hate to see this progress impeded by unnecessary congressional interference.●

● Mr. CORRADA. Mr. Chairman, I rise

in support of H.R. 7036, the Health Research Act of 1980, cornerstone of the Nation's biomedical research program. I also support the amendment by Congressman YOUNG which would provide for increased attention to Reye's syndrome by the National Institutes of Health, and the amendment by Congressman HOPKINS which directs the National Institute of Arthritis, Metabolism, and Digestive Diseases to conduct a study of the safety and effectiveness of dimethyl sulfoxide and of its use by patients with arthritis.

Even if we agree with the statement that we Americans are healthier today than we ever have been, we are nonetheless in the dark when it comes to the cause, treatment, and cure of many life-threatening diseases. It was not until recently that the possible wonders of interferon were exposed to the public light. Now, scientists can even alter the genetic makeup of a cell to program it for certain tasks. The Federal Government has to undertake an even more active role in biomedical research to make possible more discoveries such as these. Therefore, the statutory authority of the Federal biomedical research programs should be strengthened.

In my district, Puerto Rico, the National Institutes of Health plays an important role in providing research grants for numerous programs at the medical science campus of the University of Puerto Rico. As a result of its location, this school has provided fertile ground for various research programs by NIH such as the Caribbean Primate Research Center, the cancer center, and heart disease program, and the Latin American Center for Sexually Transmitted Diseases, to name only a few.

The cancer center provides investigation and treatment facilities including the physiological effect of the disease, environmental diagnosis, and therapeutic and basic cancer research program. The center keeps a list of all cancer patients in the island which makes it easier for scientists to contact patients for research.

Among the major projects in this area are therapeutic treatment, cancer vaccine studies, and education programs. The center is affiliated with the national radiotherapy and southeastern chemotherapy cancer groups.

The heart disease program sponsored by the Lung and Heart Institute developed a special project by which data on 10,000 adults in Puerto Rico was gathered and a followup on their eating habits, physical characteristics, and so forth, were studied for 10 years or until their death. The data has been computerized and the results will be available within the next 3 or 4 years. It is estimated that the data collected will bring about interesting discoveries relating to heart disease.

The Caribbean Primate Research Center provides a unique program where the genealogy of the primates is traced and a study is made of the different social groups they have formed. These animals were brought to the island in the early fifties. They have aged in a controlled environment thus posing a tremendous potential for the study of the aging process. The center has three sites and is a very important program with a lot of potential for research.

Mr. Chairman, as you and my other colleagues can appreciate, the programs presently under the sponsorship of the NIH in Puerto Rico provide the means necessary for serious, scientific, and useful biomedical research not only for us, but for the whole Nation as well.

I have only mentioned three of the various other research programs now in effect in Puerto Rico. We should not overlook the importance of these programs. I am confident Puerto Rico will be considered in the near future as one of the most important centers for biomedical research in the Caribbean and the southeast part of the Nation.●

Mr. WAXMAN. Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

Mr. CARTER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Pursuant to the rule, it shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment, and each section of said substitute shall be considered as having been read.

The Clerk will designate section 1.

Mr. WAXMAN. Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The bill reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Health Research Act of 1980".

SEC. 2. Title IV of the Public Health Service Act is amended to read as follows:

"TITLE IV—NATIONAL RESEARCH INSTITUTES

"PART A—NATIONAL INSTITUTES OF HEALTH

"ORGANIZATION OF NIH

"SEC. 401. (a) The National Institutes of Health is an agency of the Service. The following national research institutes are agencies of the National Institutes of Health:

"(1) The National Cancer Institute.

"(2) The National Heart, Lung, and Blood Institute.

"(3) The National Institute of Arthritis, Metabolism, and Digestive Diseases.

"(4) The National Institute on Aging.

"(5) The National Institute of Allergy and Infectious Diseases.

"(6) The National Institute of Child Health and Human Development.

"(7) The National Institute of Dental Research.

"(8) The National Eye Institute.

"(9) The National Institute of Neurological and Communicative Disorders and Stroke.

"(10) The National Institute of General Medical Sciences.

"(11) The National Institute of Environmental Health Sciences.

"(12) Each national research institute established by the Secretary under subsection (b).

"(b)(1) The Secretary may establish in the National Institutes of Health one or more additional national research institutes to conduct and support research, training, health information, and related programs relating to any particular disease or groups of diseases or any other aspect of human health when the Secretary determines that an additional institute is necessary to carry out such activities.

"(2) Any institute established under paragraph (1) may be abolished and its functions transferred elsewhere in the National Institutes of Health upon a finding by the Secretary that a separate institute is no longer required for such purposes.

"(3) In lieu of the establishment under paragraph (1) of an additional institute with respect to any disease, diseases, or other aspect of human health the Secretary may expand the functions of any national research institute so as to include functions with respect to such disease, diseases, or other aspect of human health, and the Secretary may terminate such expansion and transfer the functions given such institute elsewhere in the National Institutes of Health upon a finding by the Secretary that such expansion is no longer necessary. In the case of any such expansion of an existing institute, the Secretary may change the title of the institute so as to reflect its new functions.

"(c) For purposes of this title, the term 'national research institute' means a national research institute referred to in subsection (a).

"APPOINTMENT AND AUTHORITY OF DIRECTOR OF NIH

"SEC. 402. (a) The National Institutes of Health shall be headed by the Director of the National Institutes of Health (hereinafter in this title referred to as the 'Director of NIH') who shall be appointed by the President by and with the advice and consent of the Senate. The Director of NIH shall perform functions as provided under subsection (b) and as the Secretary may otherwise prescribe.

"(b) The Secretary, and the Director of NIH pursuant to such delegation as the Secretary may prescribe—

"(1) shall be responsible for the overall direction of the National Institutes of Health and for the establishment and implementation of general policies respecting the management and operation of programs and activities within the National Institutes of Health;

"(2) shall coordinate and oversee the operation of the national research institutes and other administrative entities within the National Institutes of Health;

"(3) for the national research institutes and other administrative entities within the National Institutes of Health—

"(A) may—

"(i) after consultation with the National Institutes of Health Advisory Board, acquire and construct, and

"(ii) improve, repair, operate, and maintain,

laboratories, other research facilities, other facilities, equipment, and other real or personal property (including patents), and

"(B) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed ten years;

"(4) may secure resources for research conducted by or through the National Institutes of Health;

"(5) may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific peer review groups as are needed to carry out the requirements of this title and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive

additional compensation for service on such groups;

"(6) shall assure that research at the National Institutes of Health is subject to review in accordance with section 472;

"(7) may secure for the National Institutes of Health consultation services and advice on persons from the United States or abroad;

"(8) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

"(9) may, for purposes of study, admit and treat at facilities of the National Institutes of Health individuals not otherwise eligible for such treatment;

"(10) may accept voluntary and uncompensated services; and

"(11) may perform such other administrative functions as the Secretary determines are needed to carry out effectively this title.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

"(c)(1) The Secretary, after consultation with the National Institutes of Health Advisory Board, may obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than two hundred experts or consultants, with scientific or other professional qualifications, for the National Institutes of Health.

"(2)(A) Except as provided in subparagraph (B), experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, United States Code, for their travel and other expenses associated with their assignment.

"(B) Expenses specified in subparagraph (A) shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States.

"(d) There shall be in the National Institutes of Health an Assistant Director to whom the Director of NIH shall delegate the function of promoting the prevention, education, and health information programs of the national research institutes and coordinating such programs between the institutes and between the institutes and other public and private entities.

"NATIONAL INSTITUTES OF HEALTH ADVISORY BOARD

"SEC. 403. (a) The Secretary shall appoint a National Institutes of Health Advisory Board (hereinafter in this section referred to as the 'Advisory Board'). The Advisory Board shall advise, consult with, and make recommendations to the Secretary and the Director of NIH with respect to the functions under section 402 and with respect to the policies to be followed in the exercise of such functions.

"(b)(1) The Advisory Board shall consist of—

"(A) twelve members appointed by the Secretary from among the leading representatives of the health and scientific disciplines;

"(B) five members appointed by the Secretary from leaders in each of the fields of public policy, law, health policy, economics, and management and one member appointed by the Secretary from the general public; and

"(C) such nonvoting, ex officio members as the Secretary may designate to assist the Advisory Board in carrying out its functions.

Not less than four of the appointed members of the Advisory Board shall be experts in public health or the behavioral or social sciences.

"(2) Members of the Advisory Board who are officers or employees of the United States shall not receive any compensation for service on the Advisory Board. The other members of the Advisory Board shall receive, for each day they are engaged in the performance of the functions of the Advisory Board, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime.

"(c) The term of office of an appointed member of the Advisory Board is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and of the members first appointed to the Advisory Board—

"(1) five members shall be appointed for a term of three years,

"(2) five members shall be appointed for a term of two years, and

"(3) three members shall be appointed for a term of one year.

as designated by the Secretary at the time of appointment. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to the Advisory Board before two years from the date of the expiration of such term of office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than ninety days from the date the vacancy occurred.

"(d) The chairman of the Advisory Board shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of NIH to be the chairman of the Advisory Board. The term of office of the chairman shall be two years.

"(e) The Advisory Board shall meet at the call of the chairman or upon the request of the Director of NIH, but at least four times in each fiscal year. The Advisory Board may hold such hearings, take such testimony, and sit and act at such times and places as the Advisory Board deems advisable to carry out its functions.

"(f) The Director of NIH shall designate a member of the staff of the National Institutes of Health to serve as the executive secretary of the Advisory Board. The Director of NIH shall make available to the Advisory Board such staff assistants, information, and other assistance as it may require to carry out its functions. The Director of NIH shall provide orientation and training for new members of the Advisory Board to provide them with such information and training as may be appropriate for their effective participation in the functions of the Advisory Board.

"(g) In carrying out its functions the Advisory Board may appoint subcommittees, convene workshops and conferences, and collect data.

"(h) The Advisory Board shall prepare, for inclusion in the annual report under section 404, an annual report respecting the activities of the Advisory Board and including its recommendations respecting the program policies of the Secretary and the Director of NIH.

"ANNUAL REPORT

"SEC. 404. The Secretary shall transmit to the President and to the Congress an annual report which shall be prepared by the Director of NIH and which shall consist of —

"(1) a description of the activities carried out through the National Institutes of Health and the policies respecting the programs of the National Institutes of Health, a five-year plan for such activities and policies, and such recommendations respecting such policies as the Secretary deems appropriate;

"(2) without revision, the annual report of the National Institutes of Health Advisory Board; and

"(3) the annual reports of the Directors of each of the national research institutes and, without revision, the annual report of the advisory council for each such institute.

Each report shall be submitted not later than November 30 of each year and shall relate to the fiscal year ending on the preceding September 30.

"PART B—GENERAL PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

"APPOINTMENT AND AUTHORITY OF THE DIRECTORS OF THE NATIONAL RESEARCH INSTITUTES

"SEC. 407. (a) The Director of the National Cancer Institute shall be appointed by the President, and the Directors of the other national research institutes shall be appointed by the Secretary.

"(b)(1) With respect to the human disease or disorder or other aspect of human health for which the institutes were established, the Secretary, acting through the Director of each national research institute—

"(A) shall encourage and support research, investigations, experiments, demonstrations, and studies in the health sciences related to—

"(i) the maintenance of health,

"(ii) the detection, diagnosis, treatment, and prevention of human diseases and other disorders,

"(iii) the rehabilitation of individuals with human diseases, disorders, and disabilities, and

"(iv) the expansion of knowledge of the processes underlying human diseases, disorders, and disabilities, the processes underlying the normal and pathological functioning of the body and its organ systems, and the processes underlying the interactions between the human organism and the environment;

"(B) may, subject to the review prescribed under section 472 and advisory council review prescribed by section 408(a)(3)(A)(i), conduct the research, investigations, experiments, demonstrations, and studies referred to in subparagraph (A);

"(C) may conduct and support research training for which fellowship support may not be provided under section 461;

"(D) shall develop, implement, and support demonstrations and programs for the application of the results of the activities of the institute to clinical practice and disease prevention activities;

"(E) shall develop, conduct, and support public and professional education and information programs;

"(F) shall secure, develop and maintain, distribute, and support the development and maintenance of resources needed for research;

"(G) may make available the facilities of the institutes to appropriate entities and individuals engaged in research activities and cooperate with assist Federal and State agencies charged with protecting the public health;

"(H) may accept unconditional gifts made to the institutes for their activities, and, in the case of gifts of a value in excess of $50,000, establish suitable memorials to the donor;

"(I) may secure for the institutes consultation services and advice of persons from the United States or abroad;

"(J) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local

public agencies, with or without reimbursement therefor;

"(K) may accept voluntary and uncompensated services; and

"(L) may perform such other functions as the Secretary determines are needed to carry out effectively the purposes of the institutes.

The indemnification provisions of section 2354, title 10, United States Code, shall apply with respect to contracts entered into under this subsection and section 402(b).

"(2) Support for an activity or program under this subsection may be provided through grants, contracts, and cooperative agreements. The Secretary, through the Director of each national research institute—

"(A) may approve any contract for resources for research conducted at or through the institute, except that if the total cost of the contract to be approved exceeds $500,000 the contract may be approved only after the advisory council to the institute has recommended approval of the contract;

"(B) may approve other contracts under paragraph (1) for research or training, except that—

"(i) if the total cost of the contract to be approved does not exceed $500,000, the contract may be approved only after appropriate technical and scientific review in accordance with section 472, and

"(ii) if the total cost of the contract to be approved exceeds $500,000, the contract may be approved only after appropriate technical and scientific review in accordance with section 472 and recommendation for approval by the advisory council to the institute; and

"(C) may approve grants, and cooperative agreements under paragraph (1) for research or training, except that—

"(i) if the direct cost of the grant, or cooperative agreement to be approved does not exceed $50,000, such grant or cooperative agreement may be approved only after appropriate technical and scientific review in accordance with section 472, and

"(ii) if the direct cost of the grant, or cooperative agreement to be approved exceeds $50,000, such grant or cooperative agreement may be approved only after appropriate technical and scientific review in accordance with section 472 and recommendation for approval by the advisory council to the institute.

"(c) In carrying out subsection (b), each Director of a national research institute shall—

"(1) coordinate the activities of the institute with similar programs of other public and private entities; and

"(2) cooperate with the Directors of other national research institutes in the development and support of multidisciplinary research and research that involves more than one institute.

"ADVISORY COUNCILS

"SEC. 408. (a)(1) Except as provided in subsection (i), the Secretary shall appoint an advisory council for each national research institute which (A) shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the institute on matters related to the activities carried out through the institute and the policies respecting such activities, and (B) shall carry out special functions prescribed by part C.

"(2) Each advisory council for a national research institute shall recommend to the Secretary acceptance, in accordance with section 501, of conditional gifts for study, investigation, or research respecting the disease, diseases, or other aspect of human health with respect to which the institute was established, for the acquisition of grounds, or for the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) shall (I) on the basis of the materials provided under section 472(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research, and (II) periodically review the program of research which is being carried out at the institute and make recommendations to the Director respecting the program, (ii) shall review contracts and applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 407(b)(2) and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, (iii) shall review contracts proposed to be entered into for resources for research and for which advisory council approval is required under section 407(b)(2) and recommend for approval contracts that will effectively meet the needs of the institute, (iv) may review any grant, contract, or cooperative agreement proposed to be made or entered into and (v) may review the activities carried out under contracts and cooperative agreements referred to in clauses (ii) and (iii);

"(ii) may collect information as to studies which are being carried on in the United States or any other country as to such disease, diseases, or other aspect of human health by correspondence or by personal investigation of such studies, and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health profession personnel and scientists and for the information of the general public;

"(C) shall advise the Secretary and the Director of the institute respecting the portion of the funds appropriated for the institute which should be obligated for grants, contracts, and cooperative agreements; and

"(D) may appoint subcommittees and convene workshops and conferences.

"(4) Any advisory council established by the Secretary for a national research institute established under section 401(b) may be terminated by the Secretary when the new institute which occasioned such new advisory council is terminated.

"(b)(1) Each advisory council shall consist of nonvoting, ex officio members and eighteen members appointed by the Secretary. The ex officio members of an advisory council shall consist of the Secretary, the Director of NIH, the Director of the national research institute for which the council is established, the Chief Medical Officer of the Veterans' Administration, a medical officer designated by the Secretary of Defense, or the designees of such persons and such additional officers or employees of the United States as the Secretary deems necessary for the advisory council to effectively carry out its functions. The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Twelve members shall be appointed from among the leading representatives of the health and scientific disciplines relevant to the activities of the institute for which the advisory council is established.

"(B) Five members appointed by the Secretary from leaders in each of the fields of public policy, law, health policy, economics, and management and one member appointed by the Secretary from the general public.

Of the members appointed to each advisory council, not less than four shall be experts in public health or the behavioral or social sciences.

"(2) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime.

"(c) The term of office of an appointed member of an advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to stagger the terms of the members. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within ninety days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the institute for which the advisory council is established to be the chairman of the advisory council. The term of office of the chairman shall be two years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least three times each fiscal year. The advisory council may hold such hearings, take such testimony, and sit and act at such times and places as the advisory council deems advisable to carry out its functions.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff assistants, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

"(g) This section does not terminate the membership of any advisory council to a national research institute which was in existence on the date of the enactment of the Health Research Act of 1980. After such date—

"(1) the Secretary shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition prescribed by this section,

"(2) each advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section, and

"(3) the Director of each national research institute shall perform for such advisory council the functions prescribed by this section.

"(h) Each advisory council shall prepare for inclusion in the annual report made under section 404 an annual report (1) respecting the activities of the advisory council in the fiscal year respecting which the report is prepared (2) commenting on the progress of the national research institute for which it was established in meeting its objectives, and (3) making recommendations respecting the future directions and program and policy emphasis of the institute.

"(i)(1) This section applies to the National Cancer Advisory Board, the advisory council for the National Cancer Institute, except that (A) appointments to such Board shall be made by the President, (B) of the members appointed to the Board not less than five members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis involving occupational and dietary factors), (C) the

chairman of the Board shall be selected by the President from the appointed members and shall serve as chairman for a term of two years, (D) the ex officio members of the Board shall be the Secretary, the Director of the Office of Science and Technology Policy, the Director of NIH, the chief medical officer of the Veterans' Administration, the Director of the National Institute for Occupational Safety and Health, the Director of the National Institute of Environmental Health Sciences, the Secretary of Labor, the Commissioner of the Food and Drug Administration, the Administrator of the Environmental Protection Agency, the Chairman of the Consumer Product Safety Commission or the designees for such persons, and a medical officer designated by the Secretary of Defense, and (E) the Board shall meet at least four times each fiscal year.

"(2) This section applies to the advisory council to the National Heart, Lung and Blood Institute, except that the advisory council shall meet at least four times each fiscal year.

"ANNUAL REPORT

"SEC. 409. The Director of each national research institute shall prepare for inclusion in the annual report made under section 404 an annual report which shall consist of—

"(1) a description of the activities and program policies of the Director of the institute in the fiscal year respecting which the report is prepared; and

"(2) a five-year plan for such activities and policies and such recommendations as the Director of the institute deems appropriate.

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 410. (a) The following amounts are authorized to be appropriated for the national research institutes:

"(1)(A) For the National Cancer Institute (other than its programs under sections 413 and 415), there are authorized to be appropriated $400,000,000 for the fiscal year ending June 30, 1972, $500,000,000 for the fiscal year ending June 30, 1973, $600,000,000 for the fiscal year ending June 30 1974, $750,000,000 for the fiscal year ending June 30, 1975, $830,000,000 for the fiscal year ending June 30, 1976, $985,000,000 for the fiscal year ending September 30, 1977, $923,590,000 for the fiscal year ending September 30 1978, $924,500,000 for the fiscal year ending September 30, 1979, $927,000,000 for the fiscal year ending September 30, 1980, $1,074,000,000 for the fiscal year ending September 30, 1981, $1,220,000,000 for the fiscal year ending September 30, 1982, and $1,376,000,000 for the fiscal year ending September 30 1983.

"(B) There are authorized to be appropriated for the programs under section 413 $20,000,000 for the fiscal year ending June 30, 1972, $30,000,000 for the fiscal year ending June 30, 1973, $40,000,000 for the fiscal year ending June 30 1974, $53,500,000 for the fiscal year ending June 30, 1975, $68,500,000 for the fiscal year ending June 30, 1976, $88,500,000 for the fiscal year ending September 30, 1977, $84,560,000 for the fiscal year ending September 30, 1978, $90,500,000 for the fiscal year ending September 30, 1979, $103,000,000 for the fiscal year ending September 30, 1980, $80,500,000 for the fiscal year ending September 30, 1981, $91,500,000 for the fiscal year ending September 30, 1982, and $103,000,000 for the fiscal year ending September 30, 1983.

"(C) There are authorized to be appropriated for section 415, $90,000,000 for the fiscal year ending September 30, 1981, $108,000,000 for the fiscal year ending September 30, 1982, and $130,000,000 for the fiscal year ending September 30, 1983.

"(2)(A) For the National Heart, Lung, and Blood Institute (other than its programs under section 422) there are authorized to be appropriated $375,000,000 for the fiscal year ending June 30, 1973, $425,000,000 for the fiscal year ending June 30, 1974, $475,000,000 for the fiscal year ending June 30, 1975, $339,000,000 for fiscal year 1976, $373,000,000 for the fiscal year ending September 30, 1977, $426,320,000 for the fiscal year ending September 30, 1978, $470,000,000 for the fiscal year ending September 30, 1979, $515,000,000 for the fiscal year ending September 30, 1980, $570,700,000 for the fiscal year ending September 30, 1981, $648,320,000 for the fiscal year ending September 30, 1982, and $731,300,000 for the fiscal year ending September 30, 1983. Of the sums appropriated under this subsection for any fiscal year, not less than 15 per centum of such sums shall be reserved for programs respecting diseases of the lung and not less than 15 per centum of such sums shall be reserved for programs respecting blood diseases and blood resources.

"(B) There are authorized to be appropriated for the programs under section 422, $25,000,000 for the fiscal year ending June 30, 1973, $35,000,000 for the fiscal year ending June 30, 1974, $45,000,000 for the fiscal year ending June 30, 1975, $10,000,000 for fiscal year 1976, $30,000,000 for the fiscal year ending September 30, 1977, $30,000,000 for the fiscal year ending September 30, 1978, $40,000,000 for the fiscal year ending September 30, 1979, $45,000,000 for the fiscal year ending September 30, 1980, $45,000,000 for the fiscal year ending September 30, 1981, $45,000,000 for the fiscal year ending September 30, 1982, and $50,000,000 for the fiscal year ending September 30, 1983.

"(3)(A) For the National Institute of Arthritis, Metabolism, and Digestive Diseases (other than activities of or relating to the Institute for which appropriations are authorized under subparagraph (B)), there are authorized to be appropriated $393,798,000 for the fiscal year ending September 30, 1981, $447,355,000 for the fiscal year ending September 30, 1982, and $504,616,000 for the fiscal year ending September 30, 1983.

"(B)(i) For each of the advisory boards under section 435 there are authorized to be appropriated $300,000 for the fiscal year ending September 30, 1981, $300,000 for the fiscal year ending September 30, 1982, and $300,000 for the fiscal year ending September 30, 1983.

"(ii)(I) For grants for arthritis demonstration projects under section 436(a) there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1978, $4,000,000 for the fiscal year ending September 30, 1979, and $5,000,000 for the fiscal year ending September 30, 1980, and for each of the next three fiscal years.

"(II) For the arthritis data system under section 436(c) there are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1978, $1,250,000 for the fiscal year ending September 30, 1979, and $1,500,000 for the fiscal year ending September 30, 1980, and for each of the next three fiscal years.

"(iii) For multipurpose arthritis centers under section 437 there are authorized to be appropriated $11,000,000 for the fiscal year ending June 30, 1976, $20,000,000 for the fiscal year ending June 30, 1977, $18,700,000 for the fiscal year ending September 30, 1978, $19,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, $14,000,000 for the fiscal year ending September 30, 1981, $17,000,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983.

"(iv) For diabetes research and training centers and the diabetes data system under section 438 there are authorized to be appropriated $8,000,000 for the fiscal year ending June 30, 1975, $12,000,000 for the fiscal year ending June 30, 1976, $20,000,000 for the fiscal year ending June 30, 1977, $12,000,000 for the fiscal year ending September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, $14,000,000 for the fiscal year ending September 30, 1981, $17,000,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983.

"(4) For the National Institute on Aging, there are authorized to be appropriated $80,780,000 for the fiscal year ending September 30, 1981, $91,766,000 for the fiscal year ending September 30, 1982, and $103,512,000 for the fiscal year ending September 30, 1983.

"(5) For the National Institute of Allergy and Infectious Diseases, there are authorized to be appropriated $248,574,000 for the fiscal year ending September 30, 1981, $282,380,000 for the fiscal year ending September 30, 1982, and $318,525,000 for the fiscal year ending September 30, 1983.

"(6) For the National Institute of Child Health and Human Development, there are authorized to be appropriated $241,164,000 for the fiscal year ending September 30, 1981, $273,962,000 for the fiscal year ending September 30, 1982, and $309,029,000 for the fiscal year ending September 30, 1983.

"(7) For the National Institute of Dental Research, there are authorized to be appropriated $78,839,000 for the fiscal year ending September 30, 1981, $89,561,000 for the fiscal year ending September 30, 1982, and $101,025,000 for the fiscal year ending September 30, 1983.

"(8) For the National Eye Institute, there are authorized to be appropriated $163,000,000 for the fiscal year ending September 30, 1981, $180,000,000 for the fiscal year ending September 30, 1982, and $200,000,000 for the fiscal year ending September 30, 1983.

"(9) For the National Institute of Neurological and Communicative Disorders and Stroke, there are authorized to be appropriated $279,268,000 for the fiscal year ending September 30, 1981, $317,248,000 for the fiscal year ending September 30, 1982, and $357,856,000 for the fiscal year ending September 30, 1983.

"(10) For the National Institute of General Medical Sciences, there are authorized to be appropriated $360,600,000 for the fiscal year ending September 30, 1981, $409,642,000 for the fiscal year ending September 30, 1982, and $462,076,000 for the fiscal year ending September 30, 1983.

"(11) For the National Institute of Environmental Health Sciences, there are authorized to be appropriated $96,834,000 for the fiscal year ending September 30, 1981, $110,003,000 for the fiscal year ending September 30, 1982, and $124,083,000 for the fiscal year ending September 30, 1983.

"(b) For each national research institute and for each activity for which there is an appropriation authorization for the fiscal year ending September 30, 1983, under subsection (a) there is authorized to be appropriated for the fiscal year ending September 30, 1984, the amount authorized to be appropriated for the preceding fiscal year plus 15 per centum of such amount unless Congress by law authorizes a different amount.

"(c)(1) No funds appropriated under section 301(a) may be used for any activity undertaken by or through a national research institute listed in paragraphs (1) through (11) of section 401(a).

"(2) No funds appropriated under subsection (a) may be used for National Research Service Awards under section 461.

"(d)(1) If the authorization of appropriations under subsection (a) for a national research institute is not sufficient to enable the institute to accelerate research in an area of special promise or to pursue a breakthrough in research, the Director of NIH may, upon request, allocate, from funds appropriated under paragraph (2), to the institute such funds as may be necessary to accelerate such research or to pursue such a breakthrough.

"(2) There is authorized to be appropriated for the period ending September 30, 1983, to the Director of NIH to carry out paragraph (1) $100,000,000 to remain available for obligation in such period. The Director of NIH may not request an appropriation under this paragraph unless the request has been approved by the National Institutes of Health Advisory Board.

"(3) The Director of NIH shall report annually to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a description of the activities for which funds were provided under paragraph (1) and the amount provided for each such activity.

"PART C—SPECIFIC PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

"Subpart 1—National Cancer Institute

"PURPOSE OF INSTITUTE

"SEC. 411. The general purpose of the National Cancer Institute (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to the cause, diagnosis, prevention, and treatment of cancer.

"NATIONAL CANCER PROGRAM

"SEC. 412. The National Cancer Program shall consist of (1) an expanded, intensified, and coordinated cancer research program encompassing the research programs conducted and supported by the Institute and the related research programs of the other national research institutes and including an expanded and intensified research program for the prevention of cancer caused by occupational or environmental exposure to carcinogens, and (2) the other programs and activities of the Institute.

"CANCER CONTROL PROGRAMS

"SEC. 413. The Director of the Institute shall establish and support demonstration, education, and other programs for the detection, diagnosis, prevention, and treatment of cancer and for rehabilitation and counseling respecting cancer. Programs established and supported under this section shall include—

"(1) locally initiated education and demonstration programs (and regional networks of such programs) to transmit research results and to disseminate information respecting the detection, diagnosis, prevention, and treatment of cancer and rehabilitation and counseling respecting cancer to physicians and other health professionals who provide care to individuals who have cancer;

"(2) the demonstration of and the education of health professionals in—

"(A) effective methods for the prevention and early detection of cancer and the identification of individuals with a high risk of developing cancer, and

"(B) improved methods of patient referral to appropriate centers for early diagnosis and treatment of cancer; and

"(3) the demonstration of new methods for the dissemination of information to the general public concerning the prevention, early detection, diagnosis, and treatment and control of cancer and information concerning unapproved and ineffective methods, drugs, and devices for the diagnosis, prevention, treatment, and control of cancer.

"SPECIAL AUTHORITIES OF THE SECRETARY AND THE DIRECTOR

"SEC. 414. (a) The Secretary, acting through the Director of the Institute, shall establish an information and education center to collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to cancer patients and their families, physicians and other health professionals, and the general public, information on cancer research, diagnosis, prevention, and treatment (including information respecting nutrition programs for cancer patients and the relationship between nutrition and cancer). The Director of the Institute may take such action as may be necessary to insure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

"(b) The Director of the Institute in carrying out the National Cancer Program—

"(1) may establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for cancer research and set standards of safety and care for persons using such materials;

"(2) may, with the approval of the advisory council for the Institute, support (A) research in the cancer field outside the United States by highly qualified foreign nationals which research can be expected to inure to the benefit of the American people, (B) collaborative research involving American and foreign participants, and (C) the training of American scientists abroad and foreign scientists in the United States;

"(3) may, with the approval of the advisory council for the Institute, support appropriate programs of education (including continuing education) and training;

"(4) may encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

"(5) may obtain (with the approval of the Institute's advisory council and in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of such service) the services of not more than one hundred and fifty-one experts or consultants who have scientific or professional qualifications;

"(6)(A) may—

"(i) with the approval of the Institute's advisory council, acquire and construct, and

"(ii) improve, repair, operate, and maintain, such laboratories, other research facilities, equipment, and other real or personal property (including patents) as the Director deems necessary;

"(B) may make grants for new construction or renovation of facilities; and

"(C) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

"(7) may, with the approval of the Institute's advisory council, appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as he deems desirable to advise him with respect to his functions;

"(8) may, subject to section 407(b)(2), enter into such contracts, leases, cooperative agreements, or other transactions, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5), as may be necessary in the conduct of his functions, with any public agency, or with any person, firm, association, corporation, or educational institution; and

"(9)(A) shall prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for the National Cancer Program, after reasonable opportunity for comment (but without change) by the Secretary, the Director of NIH, and the Institute's advisory council; and (B) may receive from the President and the Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by the Institute.

"NATIONAL CANCER RESEARCH AND DEMONSTRATION CENTERS

"SEC. 415. The Director of the Institute, under policies established by the Director of NIH and after consultation with the Institute's advisory council, is authorized to enter into cooperative agreements with public or private nonprofit agencies or institutions to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for existing or new centers for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for cancer. Federal payments under this subsection in support of such cooperative agreements may be used for (1) construction (notwithstanding any limitation under section 473), (2) staffing and other basic operating costs, including such patient care costs as are required for research, (3) training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public respecting cancer, and (4) demonstration purposes. As used in this section, the term 'construction' does not include the acquisition of land, and the term 'training' does not include research training for which fellowship support may be provided under section 461. Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"PRESIDENT'S CANCER PANEL

"SEC. 416. (a)(1) The President's Cancer Panel (hereinafter in this section referred to as the 'Panel') shall be composed of three persons appointed by the President, who by virtue of their training, experience, and background are exceptionally qualified to appraise the National Cancer Program.

"(2)(A) Members of the Panel shall be appointed for three-year terms, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member who has been appointed for a term of three years may not be reappointed to the Panel before two years from the date of the expiration of such term of office. If a vacancy occurs in the Panel, the President shall make an appointment to fill the vacancy not later than ninety days from the date the vacancy occurred.

"(B) The resident shall designate one of the members to serve as the chairman of the Panel for a term of one year.

"(C) Members of the Panel shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Panel.

"(3) The Panel shall meet at the call of the chairman, but not less often than four times a year. A transcript shall be kept of the proceedings of each meeting of the Panel, and the chairman shall make such transcript available to the public.

"(b) The Panel shall monitor the development and execution of the activities of the National Cancer Program, and shall report directly to the President. Any delays or blockages in rapid execution of the Program shall immediately be brought to the attention of the President. The Panel shall submit to the President periodic progress reports on the Program and shall submit to the President, the Secretary, and the Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, and shall submit such other reports as the President shall direct.

"Subpart 2—National Heart, Lung, and Blood Institute

"PURPOSE OF THE INSTITUTE

"SEC. 421. The general purpose of the National Heart, Lung, and Blood Institute (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and other programs with respect to heart, blood vessel, lung, and blood diseases and with respect to the use of blood and blood products and the management of blood resources.

"HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASE PREVENTION AND CONTROL PROGRAMS

"SEC. 422. The Director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council for the Institute, shall establish programs as necessary for cooperation with other Federal health agencies, State, local, and regional public health agencies, and nonprofit private health agencies in the diagnosis, prevention, and treatment (including the provision of emergency medical services) of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis, and treatment of such diseases of children.

"INFORMATION AND EDUCATION CENTER

"SEC. 423. The Secretary, acting through the Director of the Institute, shall establish an information and education center to collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to patients, families of patients, physicians and other health professionals, and the general public, information on research, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases, the maintenance of health to reduce the incidence of such diseases, and on the use of blood and blood products and the management of blood resources. In carrying out this section the Secretary shall place special emphasis upon—

"(1) the dissemination of information regarding diet and nutrition, environmental pollutants, exercise, stress, hypertension, cigarette smoking, weight control, and other factors affecting the prevention of arteriosclerosis and other cardiovascular diseases and of pulmonary and blood diseases, and

"(2) programs designed to encourage children to adopt healthful habits respecting the risk factors related to the prevention of such diseases.

"NATIONAL HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASES AND BLOOD RESOURCES PROGRAM

"SEC. 424. (a) The National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program (hereinafter in this subpart referred to as the 'Program') may provide for—

"(1) investigation into the epidemiology, etiology, and prevention of all forms and aspects of heart, blood vessel, lung, and blood diseases, including investigations into the social, environmental, behavioral, nutritional, biological, and genetic determinants and influences involved in the epidemiology, etiology, and prevention of such diseases;

"(2) studies and research into the basic biological processes and mechanisms involved in the underlying normal and abnormal heart, blood vessel, lung, and blood phenomena;

"(3) research into the development, trial, and evaluation of techniques, drugs, and devices (including computers) used in, and approaches to, the diagnosis, treatment (including the provision of emergency medical services), and prevention of heart, blood vessel, lung, and blood diseases and the rehabilitation of patients suffering from such diseases;

"(4) establishment of programs that will focus and apply scientific and technological efforts involving biological, physical, and engineering sciences to all facets of heart, blood vessel, lung, and blood diseases with emphasis on refinement, development, and evaluation of technological devices that will assist, replace, or monitor vital organs and improve instrumentation for detection, diagnosis, and treatment of those diseases;

"(5) establishment of programs for the conduct and direction of field studies, large-scale testing and evaluation, and demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches to, and emergency medical services for, such diseases;

"(6) studies and research into blood diseases and blood, and into the use of blood for clinical purposes and all aspects of the management of its resources in this country, including the collection, preservation, fractionation, and distribution of it and its products;

"(7) the education (including continuing education) and training of scientists, clinical investigators, and educators, in fields and specialties (including computer sciences) requisite to the conduct of clinical programs respecting heart, blood vessel, lung, and blood diseases and blood resources;

"(8) public and professional education relating to all aspects of such diseases, including the prevention of such diseases, and the use of blood and blood products and the management of blood resources;

"(9) establishment of programs for study and research into heart, blood vessel, lung, and blood diseases of children (including cystic fibrosis, hyaline membrane, and hemolytic and hemophilic diseases) and for the development and demonstration of diagnostic, treatment, and preventive approaches to these diseases; and

"(10) establishment of programs for study, research, development, demonstrations and evaluation of emergency medical services for people who become critically ill in connection with heart, blood vessel, lung, or blood diseases.

The Program shall be coordinated with other national research institutes to the extent that they have responsibilities respecting such diseases and shall give special emphasis to the continued development in the Institute of programs related to the causes of stroke and to effective coordination of such programs with related stroke programs in the National Institute of Neurological and Communicative Disorders and Stroke. The Director of the Institute, with the advice of the advisory council to the Institute, shall revise annually the plan for the Program and shall carry out the Program in accordance with such plan.

"(b) In carrying out the Program, the Director of the Institute, under policies established by the Director of NIH—

"(1) may, after approval of the advisory council to the Institute, obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of such service) the services of not more than one hundred experts or consultants who have scientific or professional qualifications;

"(2)(A) may—

"(i) after approval of the advisory council to the Institute, acquire and construct, and

"(ii) improve, repair, operate, alter, renovate and maintain,

heart, blood vessel, lung, and blood disease and blood resource laboratory, research, training, and other facilities, equipment, and such other real or personal property (including patents) as the Director deems necessary; and

"(B) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

"(3) subject to section 407(b)(2), may enter into such contracts, leases, cooperative agreements, or other transactions, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5), as may be necessary in the conduct of the Director's functions, with any public agency, or with any person, firm, association, corporation, or educational institutions; and

"(4) may make grants to public and nonprofit private entities to assist in meeting the cost of the care of patients in hospitals, clinics, and related facilities who are participating in research projects.

"(c) There shall be in the Institute an assistant director to coordinate and promote the prevention, education, and health information programs of the Institute who shall be appointed by the Director of the Institute.

"NATIONAL RESEARCH AND DEMONSTRATION CENTERS FOR HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASES AND BLOOD RESOURCES

"SEC. 425. (a)(1) The Director of the Institute may provide, in accordance with subsection (b), for the development of—

"(A) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for heart and blood vessel diseases;

"(B) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for lung diseases (including bronchitis, emphysema, asthma, cystic fibrosis, and other lung diseases of children); and

"(C) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for blood diseases and research into blood, in the use of blood products and in the management of blood resources.

"(2) The centers developed under paragraph (1) shall, in addition to being utilized for research, training, and demonstrations, be utilized for the following prevention programs for cardiovascular, pulmonary, and blood diseases:

"(A) Programs to develop improved methods of detecting individuals with a high risk of developing cardiovascular, pulmonary, and blood diseases.

"(B) Programs to develop improved methods of intervention against those factors which cause individuals to have a high risk of developing such diseases.

"(C) Programs to develop health professions and allied health professions personnel highly skilled in the prevention of such diseases.

"(D) Programs to develop improved methods of providing emergency medical services for persons with such diseases.

"(E) Programs of continuing education for health and allied health professionals in the diagnosis, prevention, and treatment of such diseases and the maintenance of health to reduce the incidence of such diseases and information programs for the public respecting the prevention and early diagnosis and treatment of such diseases and the maintenance of health.

"(3) The research, training, and demonstration activities carried out through any such center may relate to any one or more of the diseases referred to in paragraph (1) of this subsection.

"(b) The Director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council to the Institute, may enter into cooperative agreements with public or nonprofit private agencies or institutions to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for existing or new centers for basic or clinical research into, training in, and demonstration of, the management of blood resources and advanced diagnostic, prevention, and treatment methods for heart, blood vessel, lung, or blood diseases. Funds paid to centers under cooperative agreements under this subsection may be used for—

"(1) construction (notwithstanding any limitation under section 473),

"(2) staffing and other basic operating costs, including such patient care costs as are required for research,

"(3) training, including training for allied health professions personnel, and

"(4) demonstration purposes.

Support of a center under this subsection may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"(c) As used in ths section, the term 'construction' does not include the acquisition of land; and the term 'training' does not include research training for which fellowship support may be provided under section 461.

"INTERAGENCY TECHNICAL COMMITTEE

"SEC. 426. (a) The Secretary shall establish an Interagency Technical Committee on Heart, Blood Vessel, Lung and Blood Diseases and Blood Resources which shall be responsible for coordinating those aspects of all Federal health programs and activities relating to heart, blood vessel, lung, and blood diseases and to blood resources to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

"(b) The Director of the Institute shall serve as chairman of the Committee and the Committee shall include representation from all Federal departments and agencies whose programs involve health functions or responsibilities relevant to the functions of the Committee, as determined by the Secretary.

"Subpart 3—National Institute of Arthritis, Metabolism, and Digestive Diseases

"PURPOSE OF THE INSTITUTE

"SEC. 431. The general purpose of the National Institute of Arthritis, Metabolism, and Digestive Diseases (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to arthritis and related musculoskeletal diseases, diabetes mellitus and endocrine and metabolic diseases, digestive diseases, and kidney, urologic, and hematologic diseases.

"INFORMATION AND EDUCATION CENTERS

"SEC. 432. The Secretary, acting through the Director of the Institute, shall establish—

"(1) an information and education center for arthritis and related musculoskeletal diseases,

"(2) an information and education center for diabetes mellitus and endocrine and metabolic diseases, and

"(3) an information and education center for digestive diseases,

to identify, collect, analyze, and disseminate information respecting the diseases and to serve as a national educational resource for patients with such diseases and their families, physicians, and other health professionals.

"ASSOCIATE DIRECTORS FOR ARTHRITIS, DIABETES, DIGESTIVE DISEASES, AND KIDNEY, UROLOGIC, AND HEMATOLOGIC DISEASES

"SEC. 433. In the Institute there shall be an Associate Director for Arthritis and Related Musculoskeletal Diseases, an Associate Director for Diabetes, Endocrinology, and Metabolic Diseases, an Associate Director for Digestive Diseases, and an Associate Director for Kidney, Urologic, and Hematologic Diseases who, under the supervision of the Director, shall be responsible for—

"(1) the coordination of the programs of the Institute respecting arthritis and related musculoskeletal diseases, diabetes mellitus and endocrine and metabolic diseases, digestive diseases, and kidney, urologic, and hematologic diseases, respectively; and

"(2) monitoring and reviewing expenditures and activities of the other national research institutes related to such diseases and the identification of research opportunities in Federal activities related to such diseases and recommendation of means to take advantage of such opportunities.

"INTERAGENCY COORDINATING COMMITTEES

"SEC. 434. (a) For the purpose of—

"(1) better coordination of the research activities of all the national research institutes relating to arthritis and related musculoskeletal diseases, diabetes mellitus and endocrine and metabolic diseases, and digestive diseases; and

"(2) coordinating those aspects of all Federal health programs and activities relating to such diseases to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities,

the Director of NIH shall establish an Arthritis Interagency Coordinating Committee, a Diabetes Mellitus Interagency Coordinating Committee, and a Digestive Diseases Interagency Coordinating Committee (hereinafter in this section individually referred to as a 'Committee').

"(b) Each Committee shall be composed of the Directors (or their designees) of each of the national research institutes and divisions involved in research involving the diseases with respect to which the Committee is established and shall include representation from all Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, as determined by the Secretary. Each Committee shall be chaired by the Director of NIH (or his designee). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

"(c) Each Committee shall prepare an annual report for the Secretary and the Director of NIH detailing the work of the Committee in the fiscal year for which the report was prepared in carrying out the coordinating activities described in paragraphs (1) and (2) of subsection (a). Such report shall be submitted not later than the sixtieth day after the end of each fiscal year.

"ADVISORY BOARDS

"SEC. 435. (a) The Secretary shall establish in the Institute the National Arthritis Advisory Board, the National Diabetes Advisory Board, and the National Digestive Diseases Advisory Board (hereinafter in this section individually referred to as an 'Advisory Board').

"(b) Each Advisory Board shall be composed of eighteen appointed members and nonvoting, ex-officio members as follows:

"(1) The Secretary shall appoint—

"(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialities and disciplines relevant to the diseases with respect to which the Advisory Board is established; and

"(B) six members from the general public who are knowledgeable with respect to such diseases.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in health education, nursing, data systems, public information, or community program development.

"(2) The following shall be ex-officio members of each Advisory Board: the Director of NIH or his designee, the Director of the Institute or his designee, the Associate Director of the Institute appointed under section 433 for the diseases for which the Advisory Board is established, and such other officers and employees of the United States as the Secretary deems necessary for the Advisory Board to carry out its functions.

"(c) Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

"(d) The term of office of an appointed member of an Advisory Board is three years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in an Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than ninety days from the date the vacancy occurred.

"(e) The members of each Advisory Board shall select a chairman from among the appointed members.

"(f) The Secretary shall, after consultation with and consideration of the recommendations of an Advisory Board, provide the Advisory Board with—

"(1) such support staff, and

"(2) such administrative support services and facilities, such information, and such services of consultants,

as the Secretary determines are necessary for the Advisory Board to carry out its functions.

"(g) Each Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

"(h) Each Advisory Board shall—

"(1) review and evaluate the implementation of the plan (referred to in section 439) respecting the diseases with respect to which the Advisory Board was established;

"(2) for the purpose of assuring the most effective use and organization of resources respecting such diseases, advise and make recommendations to the Secretary, the Director of NIH, the Director of the Institute, and the head of other appropriate Federal agencies for the implementation and revision of such plan; and

"(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan, the Coordinating Committee for such diseases, and with key non-Federal entities involved in activities affecting the control of such diseases.

"(i) In carrying out its functions the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data.

"(j) Each Advisory Board shall submit to the Secretary and to the Congress an annual report—

"(1) which describes the Advisory Board's activities in the fiscal year for which the report is made;

"(2) which describes and evaluates the progress made in such year in research, treatment, education, and training with respect to the diseases with respect to which the Advisory Board was established;

"(3) which summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in the fiscal year for which the report is made; and

"(4) which contains the Advisory Board's recommendations (if any) for changes in the plan referred to in subsection (h)(1).

"(k) Each Advisory Board shall expire on September 30, 1983.

"(l) The National Arthritis Advisory Board and the National Diabetes Advisory Board in existence on the date of the enactment of the Health Research Act of 1980 shall terminate not later than ninety days after such date. The Secretary shall make appointments to the Advisory Boards established under subsection (a) before the expiration of such days.

"ARTHRITIS DEMONSTRATION PROJECTS AND DATA SYSTEM

"SEC. 436. (a) The Secretary may make grants to public and other nonprofit entities to establish and support projects for the development and demonstration of methods for arthritis screening and detection and for referral for treatment, and for dissemination of information on these methods to the health and allied health professions. Activities under such projects shall be coordinated with (1) Federal, State, local, and regional health agencies, (2) centers assisted under section 437, and (3) the data system established under subsection (c).

"(b) Projects under this section shall include—

"(1) programs which emphasize the development and demonstration of new and improved methods of screening and early detection, referral for treatment, and diagnosis of individuals with a risk of developing arthritis, asymptomatic arthritis, or symptomatic arthritis;

"(2) programs which emphasize the development and demonstration of new and improved methods for patient referral from local hospitals and physicians to appropriate centers for early diagnosis and treatment;

"(3) programs which emphasize the development and demonstration of new and improved means of standardizing patient data and recordkeeping;

"(4) programs which emphasize the development and demonstration of new and improved methods of dissemination of knowledge about the projects and methods referred to in the preceding paragraphs of this subsection to health and allied health professionals;

"(5) programs which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information—

"(A) on the importance of early detection of arthritis, of seeking prompt treatment, and of following an appropriate regimen; and

"(B) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive treatment, and control methods for arthritis and unapproved and ineffective drugs and devices for arthritis; and

"(6) projects for the investigation into the epidemiology of all forms and aspects of arthritis, including investigations into the social, environmental, behavioral, nutritional, and genetic determinants and influences involved in the epidemiology of arthritis.

"(c)(1) The Director shall establish the arthritis data system for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with asymptomatic and symptomatic types of arthritis, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing arthritis.

"(2) The Director shall provide for the standardization of patient data and recordkeeping for the collection, storage, analysis, retrieval, and dissemination of such data in cooperation with projects under this section and centers assisted under section 437, and other persons engaged in arthritis programs.

"MULTIPURPOSE ARTHRITIS CENTERS

"SEC. 437. (a) The Director of the Institute may, after consultation with the advisory council to the Institute and consistent with the arthritis plan developed pursuant to the National Arthritis Act of 1974, provide for the development, modernization, and operation (including staffing and other operating costs such as the costs of patient care required for research) of new and existing centers for arthritis research, screening, detention, diagnosis, prevention, control, and treatment, for education related to arthritis, and for rehabilitation of individuals who suffer from arthritis. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1)(A) use the facilities of a single institution or a consortium of cooperating institutions, and (B) meet such qualifications as may be prescribed by the Secretary; and

"(2) conduct—

"(A) basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of arthritis and complications resulting from arthritis, including research into implantable biomaterials and biomechanical and other orthopedic procedures and in the development of other diagnostic and treatment methods;

"(B) training programs for physicians and other health and allied health professionals in current methods of diagnosis, screening and early detection, prevention, control, and treatment of arthritis, and in research in arthritis;

"(C) information and continuing education programs for physicians and other health and allied health professionals who provide care for patients with arthritis; and

"(D) programs for the dissemination to the general public of information—

"(i) on the importance of early detection of arthritis, of seeking prompt treatment, and of following an appropriate regimen; and

"(ii) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive, treatment, and control methods and unapproved and ineffective drugs and devices.

A center may use funds provided under subsection (a) to provide stipends for nurses and allied health professionals enrolled in training programs described in paragraph (2)(B).

"(c) Each center assisted under this section may conduct programs to—

"(1) develop new and improved methods of screening and early detection, referral, and diagnosis of individuals with a risk of developing arthritis, asymptomatic arthritis, or symptomatic arthritis,

"(2) disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping, and

"(3) develop community consultative services to facilitate the referral of patients to centers for treatment.

"(d) The Director shall, insofar as practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of children affected by arthritis.

"(e) The Director shall evaluate on an annual basis the activities of centers receiving support under this section and shall report to the appropriate committees of Congress the results of his evaluations on or before November 30 of each year.

"(f) Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"DIABETES RESEARCH AND TRAINING CENTERS; DIABETES DATA SYSTEM

"SEC. 438. (a) Consistent with applicable recommendations of the National Commission on Diabetes, the Director of the Institute shall provide for the development, or substantial expansion of centers for research and training in diabetes mellitus and endocrine and metabolic disorders. Each center developed or expanded under this section shall (1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Secretary; and (2) conduct (A) research in the diagnosis and treatment of diabetes mellitus and endocrine and metabolic diseases and the complications resulting from such diseases, (B) training programs for physicians and allied health personnel in current methods of diagnosis and treatment of such diseases and complications, and in research in diabetes, and (C) information programs for physicians and allied health personnel who provide primary care for patients with such diseases or complications. Insofar as practicable, centers developed or expanded under this section shall be located geographically on the basis of population density throughout the United States and in environments with proven research capabilities. A center may use funds provided under this subsection to provide stipends for nurses and allied health professionals enrolled in training programs described in clause (B).

"(b) Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"(c) The Director shall evaluate on an annual basis the activities of centers developed or expanded under this section and shall report to the Congress, on or before November 30 of each year, the results of his evaluation.

"(d) The Director shall establish the diabetes data system for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with diabetes, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing diabetes.

"ANNUAL REPORT

"SEC. 439. The Director of the Institute shall prepare for inclusion in the annual report made under section 404 a description of the Institute's activities—

"(1) under the current Arthritis Plan under the National Arthritis Act of 1974,

"(2) under the current diabetes plan under the National Diabetes Mellitus Research and Education Act, and

"(3) under the current digestive diseases plan formulated under the Arthritis, Diabetes, and Digestive Diseases Amendments of 1976.

"Subpart 4—National Institute on Aging

"PURPOSE OF THE INSTITUTE

"SEC. 441. The general purpose of the National Institute on Aging (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of biomedical, social, and behavioral research, training, health information, and related programs with respect to the aging process and the diseases and other special problems and needs of the aged.

"SPECIAL FUNCTIONS OF THE SECRETARY

"SEC. 442. (a) In carrying out the training responsibilities under this Act or any other Act for health and allied health professions personnel, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

"(b) The Secretary shall, through the Director of the Institute, conduct scientific studies to measure the impact on the biological, medical, and psychological aspects of aging of programs and activities assisted or conducted by the Department of Health and Human Services.

"(c) The Director of the Institute shall carry out public information and education programs to disseminate as widely as possible the findings of Institute-sponsored and other relevant aging research and studies and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

"Subpart 5—National Institute of Allergy and Infectious Diseases

"PURPOSE OF THE INSTITUTE

"SEC. 443. The general purpose of the National Institute of Allergy and Infectious diseases is the conduct and support of research, training, health information, and related programs with respect to allergic and immunologic diseases and disorders and infectious diseases.

"Subpart 6—National Institute of Child Health and Human Development

"PURPOSE OF THE INSTITUTE

"SEC. 445. The general purpose of the National Institute of Child Health and Human Development (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to maternal health, child health, human growth and development, including prenatal development, population research, and special health problems and requirements of mothers and children.

"SUDDEN INFANT DEATH SYNDROME

"SEC. 446. The Secretary shall, through the Director of the Institute, conduct and support research which specifically relates to sudden infant death syndrome.

"Subpart 7—National Institute of Dental Research

"PURPOSE OF INSTITUTE

"SEC. 447. The general purpose of the National Institute of Dental Research is the conduct and support of research, training, health information, and related programs with respect to the cause, prevention, and methods of diagnosis and treatment of dental diseases and conditions.

"Subpart A—National Eye Institute

"PURPOSE OF INSTITUTE

"SEC. 448. The general purpose of the National Eye Institute (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to blinding eye disease, visual disorders, mechanisms of visual function, preservation of sight, and the special health problems and requirements of the blind. The Secretary may, through the Director of the Institute and without regard to section 742, carry out a program of grants for public and private nonprofit vision research facilities.

"Subpart 9—National Institute of Neurological and Communicative Disorders and Stroke

"PURPOSE OF THE INSTITUTE

"SEC. 450. The general purpose of the National Institute of Neurological and Communicative Disorders and Stroke is the conduct and support of research, training, health information, and related programs with respect to neurological disease and disorders, stroke, and disorders of human communication.

"Subpart 10—National Institute of General Medical Sciences

"PURPOSE OF THE INSTITUTE

"SEC. 451. The general purpose of the National Institute of General Medical Services is the conduct and support of research, training, and, as appropriate, health information and related programs with respect to general or basic medical sciences and related natural or behavioral sciences which have significance for two or more other national research institutes or are outside the general area of responsibility of any other national research institute.

"Subpart 11—National Institute of Environmental Health Sciences

"PURPOSE OF THE INSTITUTE

"SEC. 452. The general purpose of the National Institute of Environmental Health Sciences is the conduct and support of research, training, health information, and related programs with respect to factors in the environment that affect human health, directly or indirectly.

"PART D—NATIONAL INSTITUTE OF MENTAL HEALTH

"ESTABLISHMENT OF INSTITUTE

"SEC. 455. (a) There is established the National Institute of Mental Health (hereinafter in this part referred to as the 'Institute') to administer the programs and authorities of the Secretary with respect to mental health. The Secretary, acting through the Institute, shall, in carrying out the purposes of sections 301 and 303 of this Act and the purposes of the Community Mental Health Centers Act (other than part C of that Act) with respect to mental illness, develop and conduct comprehensive health, education, training, research, and planning programs for the prevention and treatment of mental illness and for the rehabilitation of the mentally ill. The Secretary shall carry out through the Institute the administrative, financial management, policy development, and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

"(b)(1) The Institute shall be under the direction of a Director who shall be appointed by the Secretary.

"(2) The Director, with the approval of the Secretary, may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the programs and authorities to be carried out through the Institute.

"(c) The programs to be carried out through the Institute shall be administered so as to encourage the broadest possible participation of professionals and paraprofessionals in the fields of medicine, science, the social sciences, and other related disciplines.

"PART E—AWARDS AND TRAINING

"NATIONAL RESEARCH SERVICE AWARDS

"SEC. 461. (a)(1) The Secretary shall—

"(A) provide National Research Service Awards for—

"(i) biomedical and behavioral research at the National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration or under programs administered by the Division of Nursing of the Health Resources Administration, in matters relating to the cause, diagnosis, prevention, and treatment of the diseases or other health problems to which the activities of the national research institutes and Administration or Division of Nursing are directed.

"(ii) training at the National Institutes of Health and at the Administrations of individuals to undertake such research,

"(iii) biomedical and behavioral research at public and nonprofit private institutions (including a research center assisted under part C of this title),

"(iv) research at the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology,

"(v) training at such Centers to undertake such research,

"(vi) research on the matters set forth in section 304(a)(2) at public institutions and at nonprofit private institutions, and

"(vii) pre- and post-doctoral training at such public and private institutions of individuals to undertake biomedical and behavioral research and the research described in clause (vi), and

"(B) make grants to public and nonprofit private institutions (including a research center assisted under part C of this title) to enable such institutions to make to individuals selected by them National Research Service Awards for research (and training to undertake biomedical and behavioral research and the research described in subparagraph (A)(vi)) in the matters described in subparagraph (A)(i).

A reference in this subsection to the National Institutes of Health or the Alcohol, Drug Abuse, and Mental Health Administration shall be considered to include the institutes, divisions, and bureaus included in the Institutes or under the Administration, as the case may be.

"(2) National Research Service Awards may not be used to support residencies.

"(3) National Research Service Awards may be made for research or research training in only those subject areas for which, as determined under section 463, there is a need for personnel.

"(b)(1) No National Research Service Award may be made by the Secretary to any individual unless—

"(A) the individual has submitted to the Secretary an application therefor and the Secretary has approved the application;

"(B) the individual provides, in such form and manner as the Secretary shall by regulation prescribe, assurances satisfactory to the Secretary that the individual will meet the service requirement of subsection (c)(1); and

"(C) in the case of a National Research Service Award for a purpose described in subsection (a)(1)(A)(iii), (a)(1)(A)(vi), or (a)(1)(A)(vii), the individual has been sponsored (in such manner as the Secretary may by regulation require) by the institution at which the research or training under the award will be conducted.

An application for an award shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe.

"(2) The making of grants under subsection (a)(1)(B) for National Research Service Awards shall be subject to review and approval by the appropriate advisory councils within the Department of Health and Human Services (A) whose activities relate to the research or training under the awards, or (B) for the entity at which such research or training will be conducted.

"(3) No grant may be made under subsection (a)(1)(B) unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and

contain such information, as the Secretary may by regulation prescribe. Subject to the provisions of this section other than paragraph (1) of this subsection, National Research Service Awards made under a grant under subsection (a)(1)(B) shall be made in accordance with such regulations as the Secretary shall prescribe.

"(4) The period of any National Research Service Award made to any individual under subsection (a) may not exceed—

"(A) five years in the aggregate for predoctoral training, and

"(B) three years in the aggregate for postdoctoral training,

unless the Secretary for good cause shown waives the application of such limit to such individual.

"(5) National Research Service Awards shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances), adjusted periodically to reflect increases in the cost of living, for the recipients of the awards as the Secretary may deem necessary. A National Research Service Award made to an individual for research or research training at a non-Federal public or non-profit private institution shall also provide for payments to be made to the institution for the cost of support services (including the cost of faculty salaries, supplies, equipment, general research support, and related items) provided such individual by such institution. The amount of any such payments to any institution shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the institution for establishing and maintaining the quality of its biomedical and behavioral research and training programs.

"(c)(1)(A) Each individual who receives a National Research Service Award shall, in accordance with paragraph (2), engage in—

"(i) health research or teaching or any combination thereof which is in accordance with usual patterns of academic employment,

"(ii) if authorized under subparagraph (B), serve as a member of the National Health Service Corps or serve in his specialty, or

"(iii) if authorized under subparagraph (C), serve in a health-related activity approved under that subparagraph,

for a period computed in accordance with paragraph (2).

"(B) Any individual who received a National Research Service Award and who is a physician, dentist, nurse, or other individual trained to provide health care directly to individual patients may, upon application to the Secretary, be authorized by the Secretary to—

"(i) serve as a member of the National Health Service Corps, or

"(ii) provide services in his specialty for a medically underserved population (as defined in section 1302(7)),

in lieu of engaging in health research or teaching if the Secretary determines that there are no suitable health research or teaching positions available to such individual.

"(C) Where appropriate the Secretary may, upon application, authorize a recipient of a National Research Service Award, who is not trained to provide health care directly to individual patients, to engage in a health-related activity in lieu of engaging in health research or teaching if the Secretary determines that there are no suitable health research or teaching positions available to such individual.

"(2)(A) The requirement of paragraph (1) applies to an individual if the cumulative period of the award or awards received by the individual exceeds twelve months. Such requirement shall be complied with by any individual to whom it applies within such reasonable period of time, after the completion of such individual's award, as the Secretary shall by regulation prescribe.

"(B) The Secretary shall (i) by regulation prescribe (I) the type of research and teaching which an individual may engage in to comply with such requirement, and (II) such other requirements respecting such research and teaching and alternative service authorized under paragraphs (1)(B) and (1)(C) as he deems necessary; and (ii) to the extent feasible, provide that the members of the National Health Service Corps who are serving in the Corps to meet the requirement of paragraph (1) shall be assigned to patient care and to positions which utilize the clinical training and experience of the members.

"(C) The period of service required by paragraph (1) is computed as follows: For each month in excess of twelve for which an individual holds a National Research Service Award, such individual shall—

"(i) for one month engage in health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment, or, if so authorized, serve as a member of the National Health Service Corps, or

"(ii) if authorized under paragraph (1)(B) or (1)(C), serve for one month in the individual's specialty or engage in a health-related activity.

"(3)(A) If any individual to whom the requirement of paragraph (1) is applicable fails, within the period prescribed by paragraph (2)(A), to comply with such requirements, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula—

$$A=\Phi\left(\frac{t-s}{t}\right)$$

in which 'A' is the amount the United States is entitled to recover; 'Φ' is the sum of the total amount paid under one or more National Research Service Awards to such individual; 't' is the total number of months in such individual's service obligation; and 's' is the number of months of such obligation served by him in accordance with paragraphs (1) and (2) of this subsection.

"(B) Any amount which the United States is entitled to recover under subparagraph (A) shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States. Until any amount due the United States under subparagraph (A) on account of any National Research Service Award is paid, there shall accrue to the United States interest on such amount at a rate fixed by the Secretary after taking into consideration private consumer rates of interest prevailing on the date the United States becomes entitled to such amount.

"(4)(A) Any obligation of any individual under paragraph (3) shall be canceled upon the death of such individual.

"(B) The Secretary shall by regulation provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve substantial hardship to such individual or would be against equity and good conscience.

"(d) There are authorized to be appropriated to make payments under National Research Service Awards and under grants for such awards $207,947,000 for the fiscal year ending June 30, 1975, $165,000,000 for fiscal year 1976, $185,000,000 for the fiscal year ending September 30, 1977, $161,390,000 for the fiscal year ending September 30, 1978, $197,500,000 for the fiscal year ending September 30, 1979, $210,000,000 for the fiscal year ending September 30, 1980, $222,500,000 for the fiscal year ending September 30, 1981, $232,991,000 for the fiscal year ending September 30, 1982, and $262,814,000 for the fiscal year ending September 30, 1983. Of the sums appropriated under this subsection, not less than 15 per centum shall be made available for payments under National Research Service Awards provided by the Secretary under subsection (a)(1)(A) and not less than 50 per centum shall be made available for grants under subsection (a)(1)(B) for National Research Service Awards. In any fiscal year not more than 4 per centum of the amount obligated to be expended under this section may be obligated for National Research Service Awards for periods of three months or less.

"VISITING SCIENTIST AWARDS

"SEC. 462. (a) The Secretary may make awards (referred to as 'Visiting Scientist Awards') to outstanding scientists who agree to serve as visiting scientists at institutions of postsecondary education which have significant enrollments of disadvantaged students. Visiting Scientist Awards shall be made by the Secretary to enable the faculty and students of such institutions to draw upon the special talents of scientists from other institutions for the purpose of receiving guidance, advice, and instruction with regard to research, teaching, and curriculum development in the biomedical and behavioral sciences and such other aspects of these sciences as the Secretary shall deem appropriate.

"(b) The amount of each Visiting Scientist Award shall include such sum as shall be commensurate with the salary or remuneration which the individual receiving the award would have been entitled to receive from the institution with which the individual has, or had, a permanent or immediately prior affiliation. Eligibility for and terms of Visiting Scientist Awards shall be determined in accordance with regulations the Secretary shall prescribe.

"STUDIES RESPECTING BIOMEDICAL AND BEHAVIORAL RESEARCH PERSONNEL

"SEC. 463. (a) The Secretary shall, in accordance with subsection (b), arrange for the conduct of a continuing study to—

"(1) establish (A) the Nation's overall need for biomedical and behavioral research personnel, (B) the subject areas in which such personnel are needed and the number of such personnel needed in each such area, and (C) the kinds and extent of training which should be provided such personnel;

"(2) assess (A) current training programs available for the training of biomedical and behavioral research personnel which are conducted under this Act, at or through national research institutes under the National Institutes of Health and institutes under the Alcohol, Drug Abuse, and Mental Health Administration, and (B) other current training programs available for the training of such personnel;

"(3) identify the kinds of research positions available to and held by individuals completing such programs;

"(4) determine, to the extent feasible, whether the programs referred to in clause (B) of paragraph (2) would be adequate to meet the needs established under paragraph (1) if the programs referred to in clause (A) of paragraph (2) were terminated; and

"(5) determine what modifications in the programs referred to in paragraph (2) are required to meet the needs established under paragraph (1).

"(b)(1) The Secretary shall request the National Academy of Sciences to conduct the study required by subsection (a) under an arrangement under which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such an arrangement with such Academy for the conduct of such study.

"(2) If the National Academy of Sciences is unwilling to conduct such study under such an arrangement, then the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups

or associations under which such groups or associations will conduct such study and prepare and submit the reports thereon as provided in subsection (c).

"(3) The National Academy of Sciences or other group or association conducting the study required by subsection (a) shall conduct such study in consultation with the Director of NIH.

"(c) A report on the results of such study shall be submitted by the Secretary to the Committee on Interstate and Foreign Commerce of the House of Representatives and Committee on Labor and Human Resources of the Senate at least once every two years.

"PART F—GENERAL PROVISIONS

"INSTITUTIONAL REVIEW BOARDS; ETHICS GUIDANCE PROGRAM

"SEC. 471. (a) The Secretary shall by regulation require that each entity which applies for a grant or contract under this Act for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant or contract assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an 'Institutional Review Board') to review biomedical and behavioral research—

"(1) which is conducted at or sponsored by such entity,

"(2) which involves human subjects, and

"(3) which is supported by Federal financial assistance,

to protect the rights of the human subjects of such research. This subsection does not apply to research which, as determined under regulations of the Secretary, does not involve risk to human subjects.

"(b) The Secretary shall establish a program within the Department under which requests for clarification and guidance with respect to ethical issues raised in connection with biomedical or behavioral research involving human subjects are responded to promptly and appropriately.

"PEER REVIEW

"SEC. 472. (a) The Secretary, after consultation with the Director of NIH, and where appropriate, the Directors of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse, and the head of the Division of Nursing of the Health Resources Administration (or the successor to either such entity), shall by regulation require appropriate technical and scientific peer review of—

"(1) applications made for grants and cooperative agreements under this Act for biomedical and behavioral research (including research under programs of such Division of Nursing); and

"(2) biomedical and behavioral research and development contracts to be administered through the National Institutes of Health, the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the Division of Nursing of the Health Resources Administration (or the successor to any such entity).

"(b) Regulations promulgated under subsection (a) shall require that the review of grants, contracts, and cooperative agreements required by the regulations be conducted—

"(1) in a manner consistent with the system for scientific peer review applicable on the date of the enactment of the Health Research Act of 1980 to grants under this Act for biomedical and behavioral research, and

"(2) to the extent practical, by peer review groups performing such review on or before such date.

"(c) The members of any peer review group established under such regulations shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of the group and not more than one-fourth of the members of any peer review group established under such regulations shall be officers or employees of the United States.

"(d) The Director of NIH shall establish procedures for periodic, technical and scientific peer review of research at the National Institutes of Health. Such procedures shall require that—

"(1) the reviewing entity be provided a written description of the research to be reviewed; and

"(2) the reviewing entity provide the advisory council of the national research institute involved with such description and the results of the review by the entity.

"USE OF APPROPRIATIONS UNDER THIS TITLE

"SEC. 473. Appropriations to carry out the purposes of this title shall be available for the acquisition of land or the erection of buildings only if so specified. Such appropriations, unless otherwise expressly provided, may be expended in the District of Columbia for personal services, stenographic recording and translating services; by contract if deemed necessary, without regard to section 3709 of the Revised Statutes; travel expenses (including the expenses of attendance at meetings when specifically authorized by the Secretary); rental, supplies and equipment, purchase and exchange of medical books, books of reference, directories, periodicals, newspapers, and press clippings; purchase, operation, and maintenance of passenger motor vehicles; printing and binding (in addition to that otherwise provided by law); and for all other necessary expenses in carrying out the provisions of this title.

"SEC. 474. The Secretary may, in accordance with section 501, accept conditional gifts for the National Institutes of Health or a national research institute or for the acquisition of grounds or for the erection, equipment, or maintenance of facilities for the National Institutes of Health or a national research institute. Donations of $50,000 or over for the National Institutes of Health or a national research institute for carrying out the purposes of this title may be acknowledged by the establishment within the National Institutes of Health or institute of suitable memorials to the donors.".

SEC. 3. (a) The National Advisory Health Council established under section 217 of the Health Service Act is terminated.

(b) Section 217(a) of such Act is amended—

(1) in the first sentence—

(A) by striking out "National Advisory Health Council, the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council" and inserting in lieu thereof "National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism"; and

(B) by striking out "by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare" and inserting in lieu thereof "by the Secretary";

(2) in the second sentence—

(A) by striking out "in the case of the National Advisory Health Council, are skilled in the sciences related to health, and";

(B) by striking out "the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Heart Council, and the National Advisory Dental Research Council" and inserting in lieu thereof "the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism"; and

(C) by striking out ", alcohol abuse and alcoholism, and dental diseases and conditions" and inserting in lieu thereof "and alcohol abuse and alcoholism"; and

(3) by striking out the third sentence.

(c) Subsection (b) of section 217 of such Act is repealed and subsections (c) through (g) are redesignated as subsections (b) through (f), respectively.

(d) Section 222(c) of the Public Health Service Act is amended to read as follows:

"(c) Upon appointment of any such council or committee, the Secretary may delegate to such council or committee such advisory functions relating to grants-in-aid for research or training projects or programs, in the areas or fields with which such council or committee is concerned, as the Secretary determines to be appropriate.".

(e) Section 301(a) of such Act is amended—

(1) in paragraph (3), by striking out "as are recommended" through "for such fiscal year" and inserting in lieu thereof "as are recommended by the advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to the entity of the Department involved or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research";

(2) in paragraph (8), by striking out "recommendations of the National Advisory Health Council" through "such additional means" and inserting in lieu thereof "recommendations of the advisory councils to the entities of the Department involved or, with respect to mental health, the National Advisory Mental Health Council, such additional means", and

(3) by adding at the end of the section the following: "The Secretary may not carry out this subsection through a national research institute listed in paragraphs (1) through (11) of section 401(a).".

SEC. 4. The Comptroller General shall evaluate the National Research Service Awards program under section 461 of the Public Health Service Act to determine the effect of the program on the number of physicians who enter the various medical specialties. The Comptroller General shall report the results of such evaluation to the Congress not later than January 1, 1983.

SEC. 5. Section 327(j) is amended (1) by striking out "or (4)" in paragraph (5) and inserting in lieu thereof "(4), or (5)", (2) by redesignating paragraph (5) as paragraph (6), and (3) by adding after paragraph (4) the following new paragraph:

"(5) For the purpose of grants under subsection (a) for preventive health service programs for tuberculosis there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1981, $17,000,000 for the fiscal year ending September 30, 1982, and $19,000,000 for the fiscal year ending September 30, 1983.".

SEC. 6. The Comptroller General of the United States shall study—

(1) the performance of review functions by advisory councils to the national research institutes under section 408(a)(3)(A) of the Public Health Service Act; and

(2) the performance of review under section 472(d) of the Public Health Service Act of research at the national research institutes.

The Comptroller General shall, not later than January 1, 1983, complete the study under this section and report the results of it to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

AMENDMENTS OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered en bloc, considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The amendments are as follows:

Amendments offered by Mr. WAXMAN: Page 92, strike out lines 2 and 3 and insert in lieu thereof the following: "and subsections (c), (d), (e), and (g) are redesignated as subsections (b), (c), (d), and (e) respectively.".

Page 94, insert after line 18 the following:

SEC. 7. This Act and the amendments made by this Act do not authorize appropriations for the fiscal year ending September 30, 1980.

Mr. WAXMAN. Mr. Chairman, the two amendments that I have at the desk are technical amendments. One is required by the Budget Act. The provisions of the bill were never intended to take effect until October 1, 1980.

The other amendment is a clarification. It is a renumbering.

I ask that these amendments be approved.

Mr. CARTER. Mr. Chairman, I rise in support of the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California (Mr. WAXMAN).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. WALGREN

Mr. WALGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WALGREN: Page 71, insert after the period in line 12 the following: "Of the sums appropriated for any fiscal year under section 410 for research by the Institute, not less than $16,000,000 shall be obligated for basic and clinical research in the area of regeneration of the spinal cord.".

Mr. WALGREN. Mr. Chairman, I understand the gentleman from Florida (Mr. YOUNG) has a plane to catch and I do not want to interfere with that.

I will be very brief ultimately, but if the gentleman needs to go forward, I would withdraw the amendment.

Mr. Chairman, I withdraw the amendment at this point, and subsequent to the presentation of the gentleman from Florida (Mr. YOUNG), I would like to be recognized.

The CHAIRMAN. The amendment offered by the gentleman from Pennsylvania (Mr. WALGREN) is withdrawn.

AMENDMENT OFFERED BY MR. YOUNG OF FLORIDA

Mr. YOUNG of Florida. Mr. Chairman, I offer an amendment, and I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The amendment is as follows:

Amendment offered by Mr. YOUNG of Florida: Page 71, insert after line 12 the following new section:

"REYE'S SYNDROME PROGRAMS

"SEC. 451. (a) The Secretary shall establish, through the National Institute of Neurological and Communicative Disorders and Stroke, the Reye's Syndrome Coordinating Committee (hereinafter referred to in this section as the 'Committee').

"(b)(1) The Committee shall be composed of—

"(A) the Director of the National Institute of Neurological and Communicative Disorders and Stroke;

"(B) the Director of the National Institute of Allergy and Infectious Diseases;

"(C) the Director of the National Institute of Arthritis, Metabolism, and Digestive Diseases;

"(D) the Director of the National Institute of Child Health and Human Development;

"(E) the Director of the National Institute of General Medical Sciences;

"(F) the Director of the National Heart, Lung and Blood Institute; and

"(G) the Director of the Center for Disease Control.

"(2) The Director of the National Institute of Neurological and Communicative Disorders and Stroke shall serve as Chairman.

"(3)(A) The Secretary, acting through the Committee, shall make grants to and enter into contracts with public and nonprofit private entities to establish two comprehensive Reye's syndrome diagnostic and treatment centers. Each center shall be located in a single institution.

"(B) A center established under this paragraph shall—

"(i) conduct basic and clinical research relating to the causes, diagnosis, early detection, and treatment of Reye's syndrome;

"(ii) develop new and improved treatments for the detection, diagnosis, and treatment of Reye's syndrome;

"(iii) provide training programs for physicians relating to the early diagnosis, control, and treatment of Reye's syndrome;

"(iv) develop professional education programs and information for physicians relating to the treatment of Reye's syndrome, and disseminate such information;

"(v) develop and disseminate public information relating to Reye's syndrome;

"(vi) disseminate within the scientific and medical communities the results of the research and training conducted under this paragraph; and

"(vii) develop standardized methods of recordkeeping of patient data.

"(C) In considering applications for grants and contracts to establish Reye's syndrome diagnostic and treatment centers under this paragraph, the Committee shall consider among other factors—

"(i) the geographic distribution of reported Reye's cases;

"(ii) the work in progress in Reye's syndrome or similar childhood diseases;

"(iii) the number of persons to be served by the program; and

"(iv) the extent to which rapid and effective use will be made by such centers of funds under such grants and contracts.

"(D) No grant or contract may be made under this paragraph unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(E) The Secretary shall prescribe regulations for the operation of the Committee, and the centers shall report to the Committee from time to time as required by such regulations.

"(F) Grants under this paragraph shall be for no more than three years, except that the Secretary, acting through the Committee, may extend for two additional years the period for grants if he determines, upon review of the activities under the grants by the Committee and consideration of recommendations made by the Committee, that such extension is appropriate.

"(4)(A) The Secretary, acting through the Committee, shall make grants to and enter into contracts with public agencies, nonprofit private entities and individuals, not associated with the centers established under paragraph (3), to conduct research relating to the diagnosis, control, and treatment of Reye's syndrome. Such grants and contracts shall be for no more than three years.

"(5) The Secretary shall, not later than April 1, 1984, submit a report prepared by the Committee and approved by the Director of the National Institute of Neurological and Communicative Disorders and Stroke, to Congress. Such report shall account for the activities, accomplishments, and progress of the centers and research grants provided by this section, and shall recommend such further action relating to Reye's syndrome as the Committee determines appropriate.

"(6) Contracts may be entered into under this section without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(7)(A) For each center established under paragraph (3), there are authorized to be appropriated $750,000 for the fiscal year ending September 30, 1981, $750,000 for the fiscal year ending September 30, 1982, and $750,000 for the fiscal year ending September 30, 1983.

"(B) There are authorized to be appropriated for grants and contracts under paragraph (4), $500,000 for the fiscal year ending September 30, 1981, $500,000 for the fiscal year ending September 30, 1982, and $500,000 for the fiscal year ending September 30, 1983.

Page 71, line 16, strike out "451" and insert in lieu thereof "453".

Page 72, line 4, strike out "452" and insert in lieu thereof "454".

Mr. YOUNG of Florida. Mr. Chairman, I appreciate very much the gentleman from Pennsylvania accommodating me in this matter. I will be very brief.

I offer this amendment in behalf of myself and our distinguished colleague, the gentlewoman from New York (Mrs. FERRARO). This amendment seeks to create a coordinating committee within the National Institutes of Health. It does not create any more bureaucracy. Rather it deals with research relative to Reye's syndrome. Reye's syndrome is a vicious disease that attacks children without warning and in too many cases causes death within hours.

We seek to authorize the appropriation of about $1 million a year more than they are now spending, which is about $1 million, for the purpose of beginning some coordinated research on Reye's syndrome.

The report on the Labor-HEW appropriations bill that we passed yesterday spoke very strongly to the need for a coordinated effort in attempting to find the cause and hopefully a cure to this mysterious disease.

This amendment requests a total appropriation of $6 million over the next 3 years, $1,500,000 for the operation of two Reye's syndrome diagnostic and treatment centers for each fiscal year, and $500,000 for research grants for each fiscal year.

My amendment would provide for the establishment of a Reye's Syndrome Coordinating Committee to make grants to and enter into contracts with public and nonprofit private entities for a 3-year project to establish two comprehensive Reye's syndrome diagnostic and treatment centers.

The centers would serve four basic functions in helping doctors diagnose and treat Reye's syndrome patients. Those functions include: First, conducting basic and clinical research; second, developing new and improved treatments; third, providing physician training programs; and fourth, information services with respect to the detection, diagnosis, and treatment of the disease.

This amendment would also authorize the Reye's Syndrome Coordinating Committee to provide financial assistance to public agencies, nonprofit private entities, and individuals not associated with the centers, to conduct research on Reye's syndrome.

Reye's syndrome is a mysterious condition which follows outbreaks of influenza or other viral diseases, usually affecting children between the ages of 1 and 18 years of age. However, cases have been reported on young adults up to 22 years of age.

No cure or immunizations exist today for Reye's syndrome.

The mortality rate for Reye's syndrome is between 20 to 40 percent. Many children who do survive, however, can suffer severe brain damage, resulting in either a loss of IQ or serious brain malfunctions.

Patients with the best survival and recovery rate, are children who have received prompt and proper medical attention.

The key lies in the diagnosis of the disease. If more doctors were trained to immediately recognize the symptoms and diagnose the disease, which can often be mistaken for influenza complications, more patients would survive.

If the patient survives, the quality of medical care received determines the degree of brain damage that can result in the patient.

Since Reye's syndrome is not among those diseases which must be reported, statistics on its prevalence are difficult to obtain. However, some States, including Florida, have now required that Reye's syndrome cases be reported to the Center for Disease Control in Atlanta, Ga.

The Center for Diseases Control's preliminary figures on known Reye's syndrome deaths during the 1979–80 influenza season total 66 out of 400 reported cases in the Nation.

Reye's syndrome is the second most frequent cause of brain damage related deaths in individuals less than 19 years of age in the United States.

In all honesty, since so little is known about the disease, I really believe that there should be a first step in combating Reye's syndrome, and I believe my amendment is a good start.

I have discussed this at length with the chairman of the subcommittee and the ranking minority member and other members.

Mr. Chairman, I would like to yield at this point to the cosponsor of the amendment, the gentlewoman from New York (Ms. FERRARO).

Ms. FERRARO. Mr. Chairman, I thank the gentleman for yielding. I want to congratulate the gentleman on his leadership in sponsoring this amendment.

Mr. Chairman, I rise in strong support of the amendment. I want to congratulate the gentleman from Florida on his leadership in sponsoring this amendment. As a sponsor of legislation identical to Mr. YOUNG's, I wholeheartedly support incorporation of this amendment into H.R. 7036.

Reye's syndrome is a little-known and lesser understood disease which affects children ages 1 to 18 years. The disease, which often follows viral infections like influenza, chicken pox, or German measles, continues to puzzle the medical profession. Its causes and cures are unknown. Nonetheless, it can be successfully managed if the patient is under the care of a pediatrician, neurologist, neurosurgeon, and anesthesiologist familiar with the disease. Sadly, all too often Reye's is fatal because neither the parents nor the family doctor are aware of the disease and its symptoms.

In 1977, 337 suspected cases of Reye's were reported to the Center for Disease Control. Of those cases where CDC knew the outcome, 49 percent of the patients recovered completely, 12 percent suffered residual neurological damage, and 39 percent died.

The neurological damage, caused by the swelling of the brain, varies from slight IQ alterations to serious brain dysfunctions. The problem of this little known disease was brought to my attention by constituents of mine whose 17-year-old daughter died from Reye's 2 years ago. They have founded a chapter of the National Reye's Syndrome Foundation and are working diligently to educate parents of children who might be afflicted by Reye's. As the mother of three teenage children, I am grateful to them for enlightening me. In supporting this amendment, I hope that we can further the educational process and continue to bring Reye's under control.

Adoption of this amendment will mark a major step forward in this fight. Two diagnostic and research centers would be established to conduct research, train physicians, and develop professional education and public information programs. Each center would be funded at $750,000 a year for fiscal years 1981 through 1983. To assist in the research effort being made by physicians at private facilities, another $500,000 a year would be authorized for research activities not associated with the two centers. All these programs would be administered and coordinated by the Reye's Syndrome Coordination Committee within the National Institute of Health.

I want to stress one aspect of this amendment that I think is particularly important. Obviously there is a need for expanded research in the diagnostic and treatment areas. But perhaps as important in this case is the effort to inform parents of the dangers of Reye's. The disease usually strikes very quickly, and early recognition by parents can be critical in getting the intense, specialized professional care required to control the disease.

In recent months, public service ads on television have alerted many Americans to the dangers of this childhood killer. But more must be done. I am very pleased that one of the functions of the centers established by this amendment will be to develop and disseminate information on Reye's to the public. By alerting parents as well as medical professionals to this disease, we can take major strides towards eliminating the danger it poses.

Mr. Chairman, this amendment would cost a mere $2 million a year to combat a disease that robs us of our most priceless possession—our children. In these times of tight budgets, it is hard to imagine a better way to spend that money. Just 3 years ago, one out of every three children who came down with Reye's died. Today, that figure is down to 1 out of 10. I am hopeful that this amendment, once enacted into law, will eliminate these senseless and tragic deaths entirely. I urge all my colleagues to join me in supporting the gentleman from Florida in this most worthwhile effort.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. I yield to the chairman.

Mr. WAXMAN. Mr. Chairman, I want the gentlewoman to know that what she has said is an excellent reason why I do not oppose this amendment.

I would like to have the House consider this measure before the author has to leave.

I want to express my appreciation for the support of the gentleman for the work being done at NIH and to encourage them to continue their research on this serious disease.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman very much for his comment.

I yield to the distinguished gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I support the distinguished gentleman's amendment.

Mr. YOUNG of Florida. Mr. Chairman, I thank those who have taken part in this debate and for the support that has been offered for this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. YOUNG).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WALGREN

Mr. WALGREN. Mr. Chairman, I offer an amendment, and I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The amendment is as follows:

Amendment offered by Mr. WALGREN: Page 71, insert after the period in line 12 the following: "Of the sums appropriated for any fiscal year under section 410 for research by the Institute, not less than $16,000,000 shall be obligated for basic and clinical research in the area of regeneration of the spinal cord.".

Mr. WALGREN. Mr. Chairman, I will not take the 5 minutes; but subsequent to the markup of this bill in the House Health Subcommittee, the subcommittee held hearings on the status of spinal cord injury research. This amendment comes out of a consensus that I believe grew out of those hearings. I ask the House to support this amendment which would increase the level of research in spinal cord regeneration to $16 million per year. These funds would be used to train new investigative researchers and to fund research proposals that have been previously unfunded because of the lack of adequate funds within the NINCDS, which is the National Institute for Neu-

rological Communicative Disorders and Stroke.

This amendment calls attention to a disability which, by its catastrophic nature, devastates thousands of families every year.

At present, injury to the spinal cord invariably results in permanent paralysis. It is most commonly known as a broken neck resulting in quadriplegia where paralysis affects all four limbs or as a broken back resulting in paraplegia where paralysis affects both legs.

Over 300,000 people suffer from spinal cord injury in the United States. Twenty thousand more are injured each year, losing all sensation or ability to move below the level of their injury, primarily young people 16 to 35 years old, confined to wheelchairs for the rest of their lives.

Each of us has many constituents who are victims of this crippling condition. It results from car accidents, sports related injuries, like football, diving and skiing, wounds of violence like gunshots, as well as mundane accidents, like falling from a ladder or step. None of us is immune. At least 2 of our 434 colleagues have members of their immediate families with broken necks.

Personal and financial loss from spinal cord injury is immeasurable. If you set all personal suffering aside, NIH has testified to our subcommittee that the costs to the Federal taxpayer exceed $2.5 billion per year. This includes medical benefits, rehabilitation costs and social security payments. This $2.5 billion every year is at least doubled by private sector costs. Thus we are speaking of a disability that leads to a loss approaching $7 billion every year.

Where there is real hope, any reasonable person would invest in research to make this expenditure unnecessary.

Until recently, spinal cord injury was a permanent sentence of paralysis. Now there is hope within the medical community that nerve regeneration is possible. Researchers now indicate that major breakthroughs in nerve regeneration are close; not tomorrow, but within the foreseeable future.

It is that hope, small but real, that I ask us to make a reality by committing an additional $8 million per year. This amendment neither adds funds to the bill, nor takes money away from other programs. We ask to designate within the existing NINCDS budget under the bill the expenditure of at least $16 million a year.

I urge the House to act positively to relieve the suffering of spinal cord injury.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. WALGREN. I would be happy to yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I want to thank the gentleman for yielding and to point out to our colleagues the extensive work the gentleman from Pennsylvania has done in bringing to the attention of the committee the exciting possibilities we now see in the area of spinal cord regeneration.

□ 1340

The amendment the gentleman is offering is not an additional authorization of funds. It dedicates $16 million to research on regeneration, a modest amount which will not substantially reduce support for other areas of research.

I want to tell the gentleman I fully support the amendment he is now offering. I join him in urging our colleagues to adopt it.

Mr. WALGREN. I thank the gentleman for his support.

Mr. WHITTEN. Mr. Chairman, will the gentleman yield?

Mr. WALGREN. I am happy to yield to the gentleman.

Mr. WHITTEN. I wish to thank the gentleman for offering this amendment and I rise in support of the amendment.

Some years ago I was in Russia and at the airport there was a picture of a dog with a leg having been severed. They presented the story of having successfully replaced it. That was when we knew of nothing like that in this country. We, of course, doubted the accuracy of this story considering how the Russians sometimes exaggerate their accomplishments.

I think when we see the victims of this spinal destruction we certainly owe it to them to pursue any type of progress made in this area. When I saw this picture in Russia years ago about replacing severed limbs, it took our doctors time to catch up with the technique. We should not be afraid of where the expertise is developed but we should get busy and refine the technique. There are many miraculous things that have occurred in the last number of years in the way of transplants, putting back amputations and things of that sort, and I encourage this progress. This amendment goes in the right direction and we should have started this effort a long time ago.

Mr. WALGREN. I thank the gentleman.

Mr. MARLENEE. Mr. Chairman, will the gentleman yield?

Mr. WALGREN. I yield to the gentleman from Montana.

Mr. MARLENEE. Mr. Chairman, I rise in support of the amendment offered by Mr. WALGREN.

I have had a close and personal experience with the tragedy of spinal cord injury. I was the parent of a total quadriplegic. This was the result of a tragic senseless accident.

I can testify to the frustration and anger that is felt after an accident like this. In addition, the high costs of rehabilitation is enough to financially ruin most families. The Federal Government already has a financial stake in reducing the devastating effects of spinal cord injury. The No. 1 investment is paying for medical bills through medicaid. No. 2 is paying for rehabilitation. No. 3 is the cost of the loss of not one but three or four members of society, the injured party, the kids, the parents.

I believe that the investment contained in this amendment is inconsequential to the amount of suffering and the cost of rehabilitation and maintenance that results from spinal cord injury.

Congress should not be content to resign our Nation's thousands of quadriplegics to their wheelchairs. I urge your support of the Walgren amendment. It is like a pinhole of light seeping into a dark well at the bottom of which are the helpless, disabled victims of spinal injuries. Into this well we are pouring dollars for support. Let us put in dollars that add hope—support Walgren which will save dollars and hopefully disabled bodies.

Mr. WALGREN. I thank the gentleman for his support.

Mr. RICHMOND. Mr. Chairman, will the gentleman yield?

Mr. WALGREN. I am happy to yield to the gentleman from New York.

Mr. RICHMOND. Mr. Chairman, I rise in support of the Walgren amendment which will give the National Institute of Neurological Communicable Disorders and Stroke an additional $16 million for spinal cord regeneration research.

At least 10,000 Americans become wheelchair-bound each year. This not only causes immeasurable financial and emotional hardship to the victim and his or her family, but it also creates an enormous drain on the Federal Treasury, through subsidies for health care and rehabilitation services.

Other countries have made a concentrated effort to research ways to aid in spinal cord regeneration. This country, sadly, lags far behind in research in this area. It is ironic that the United States, which boasts of its medical superiority to the rest of the world—a country where people come to seek the most advanced medical treatment—is so ineffective in an area of such crucial importance to so many thousands of our fellow Americans.

The Walgren amendment is an essential first effort to bridge this gap in medical services for the victims of spinal cord injuries.

Recent studies have confirmed that massive injections of steroids into the spinal column immediately following an injury have successfully halted permanent nerve damage. For example: last year in Washington, D.C., a man injured in an automobile accident was paralyzed from the neck down by a spinal cord injury. Thanks to quick-thinking physicians using this new technique, the man's motor functions were restored and he was able to resume his life as before.

The Department of Defense is working on a similar chemical treatment for spinal cord injuries, but it, too, requires injections immediately following an injury. Because the success of these procedures depends on the immediate treatment of an injury, they may be effective for only 1 out of 100 spinal cord injuries, but they are a promising start.

The other area that these appropriations will affect is the field of research for chronic spinal cord injuries. The people who are paralyzed as a result of injuries that occurred 5 or 10 years ago are in desperate need of new medical procedures that will free them from their wheelchairs. The steroid treatments will be too late to be of help to them. However, there are several new methods for chronic spinal cord injuries in the developmental stages at New York University, George town University, and other research centers around the country—but, without additional funding, these methods will remain in the developmental stages.

The appropriations for spinal cord research provided by the Walgren amendment may lead to new breakthroughs

that will benefit the many thousands of people afflicted by spinal cord injuries.

I strongly urge support of the Walgren amendment.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

(By unanimous consent Mr. WALGREN was allowed to proceed for 3 additional minutes.)

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. WALGREN. I am happy to yield to the gentleman from California.

Mr. MINETA. Mr. Chairman, I would like to urge my colleagues to support the amendment offered by my good friend and colleague from Pennsylvania (Mr. WALGREN).

My congressional district is fortunate to have 1 of the 17 spinal cord injury rehabilitation centers. I have had the opportunity to visit the center at Santa Clara Valley Medical Center in San Jose and to witness the fine program they have established there. But the fact remains that even with rehabilitation the struggle these people face throughout the rest of their lives is overwhelming.

While the rehabilitation work must continue, we also need to direct emphasis to regenerative research on the spinal cord. We have provided funds to programs which seek to enable the spinal cord injured to live with their handicap. We also need to direct funds to a cure.

It is important to point out that this amendment does not increase the authorization level. It merely specifies that regeneration research on the spinal cord be allocated $16 million of the available funds.

Mr. Chairman, I hope my colleagues will agree that this priority should be given and will support this amendment.

Mr. RATCHFORD. Mr. Chairman, will the gentleman yield?

Mr. WALGREN. I yield to the gentleman.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. WALGREN. I am happy to yield to the gentleman.

Mr. FRENZEL. I thank the gentleman for yielding. I thank the gentleman for bringing this amendment to the House. I think it is an important one and I hope it will be supported.

Mr. WALGREN. I thank the gentleman for his support.

● Mr. BRINKLEY. Mr. Chairman, I rise in support of the amendment offered by our distinguished colleague from Pennsylvania (Mr. WALGREN) who has spearheaded the drive for spinal cord regeneration funding. Recent progress in the splicing of severed nerve endings offers great promise, and, as a cosponsor of H.R. 4358, I firmly believe that further research into spinal cord regeneration is absolutely vital.

Today, more than 250,000 Americans suffer spinal cord injuries, with a new injury occurring every 40 minutes. This year alone will see 15,000–20,000 new cases, and over 90 percent of the victims will be under 35 years of age. Every week hundreds of healthy, able-bodied Americans are severely maimed and often permanently paralyzed from tragic car wrecks and accidental falls across this country. I know the personal torment with which they must be faced.

The extreme handicaps endured by paralysis victims demand new treatment programs to ease their pain. I have been heartened to see, firsthand, the exciting programs now being offered to the spinal cord injured at Warm Springs Hospital, in my district. We have now before us, through passage of this amendment, the opportunity to fund crucial spinal cord regeneration research which may enable the lame to walk and to run as freely as each of us in this Chamber can today.

Dr. Donald Tower, Director of the National Institute of Neurological and Communicative Disorders and Strokes, said recently, on the promises of regeneration, "The view that there is no hope of restoring the nerve pathways—the view you would have heard from virtually every scientist not long ago—is no longer held."

Mr. Chairman, let us provide today the research funds that may dramatically decrease the number of victims forced to live a life of dependency, forever confined to Stryker frames and wheelchairs. In good conscience, we can do no less.●

● Mr. MURTHA. Mr. Chairman, I want to congratulate Congressman WALGREN and Chairman WAXMAN for the work they have done on this amendment concerning regeneration research on the spinal cord. I was very pleased to join as a cosponsor of Congressman WALGREN's original bill.

A couple weeks ago, Mr. Chairman, we had a terrible flood in the area of Bradys Bend, Pa. As I toured the area, I met a young man named Carl Stimac. Carl was a student at East Brady High School and a football player. In a game against Karns City High School on October 21, 1978, Carl received an injury that severed his spinal cord, leaving him permanently paralyzed. As difficult as it is for his family during regular times, on the night of the flood as the water rose in the family's basement and entered the kitchen, they had to carry Carl to the second floor and hope the rising water would subside. Finally, it did, but not before they had to use battery radios to keep his resuscitator going. Once the water cleared, they found it had moved the special van used for transporting him at least a quarter of a mile down the stream, and he later told one of my staff, that someone even stole the CB unit out of the van.

I greatly admire the effort by Carl to overcome his difficulties. And we also need to recognize the tremendous courage and dedication of his family.

But I am sure that this story—or a similar one—can be repeated by thousands of families across America whose families have unfortunately had someone incur a serious spinal cord injury. That is why this amendment today is so important—vital, in fact, to get the Nation moving toward finding ways to help these individuals recover.

I strongly support this amendment and urge its adoption.●

Mr. MARRIOTT. Mr. Chairman, I rise in support of the amendment of my distinguished colleague from Pennsylvania.

The total number of people in this country who have suffered spinal cord injuries is conservatively estimated at 200,000. It may well be closer to the estimate of 500,000 offered by the gentleman from Pennsylvania.

The annual national cost of care for persons with spinal cord injury is estimated by the Paralyzed Veterans of America to be in the neighborhood of $3 billion.

To the individual with the injury, the cost is just as great. The PVA estimates that a quadriplegic—a person paralyzed from the neck down—will incur lifetime medical costs of approximately $700,000 to $1 million. Let me emphasize the point that we are talking about the medical costs to a single individual.

To the individual paralyzed from the waist down, a paraplegic, lifetime medical costs are about $250,000 to $500,000.

To these costs must be added the cost of the potential permanent unemployment of the individual: There is an additional cost to the Gross National Product, the loss of personal income taxes, the expense to the Government of disability insurance payments, and additional expenses for other Government programs.

Next to these figures, the $16 million called for by the amendment of my friend from Pennsylvania is a small figure indeed.

I would like to suggest, however, that the cost to society of spinal cord injury is not the only reason to fund additional research in this area. A second equally important reason is that there is a promise of success. In other words, it will be a wise investment of taxpayers' dollars.

Dr. Franklin D. Collins, assistant professor of anatomy at the University of Utah Medical Center, told me—

> This is a very promising area of research. We are beraking ground toward answering questions which may well hold the key to ultimate success in spinal cord regeneration.

In Dr. Collins' words, it has become "almost routine" to restore severed limbs and to restore the functions in parts of the peripheral nervous system. He notes that for some reason, the nerves in the spine and brain, the central nervous system, do not work that way. Dr. Collins says finding the answer to why they do not work that way may hold the key to laying the foundation for an artificial process that will help them regenerate. As one writer put it, "The machinery seems to be there."

In the July 18, 1980, issue of Science magazine, the following observation was made about those attending a conference on spinal cord regeneration:

> The participants came away pleasantly surprised by the news that the potential for regeneration of the neurons of the mammalian central nervous system is greater than they had thought.

That was in 1970, 10 years ago, and we have come a long way since then.

Just last year Dr. Donald Tower, head of the National Institute of Neurological and Communicative Disorders and Stroke, noted—

> The view that there is no hope of restoring the nerve pathways—the view you would have heard from virtually every scientist not long ago—is no longer held.

Research is our only hope for comprehending the complexities of the central nervous system and for putting back to-

gether the lives interrupted by spinal cord injury. In very recent years technological advances have made improved and more promising research possible.

In short, the cost of funding spinal cord regeneration research in the amount proposed in this amendment is far from too high. In fact, if anything, given the cost both to society and to the individuals concerned, it may not be high enough.

Second, there is reason to hope the research will bear tangible, measurable fruit.

For these two very important reasons, as well as those stated so eloquently by the gentleman from Pennsylvania, I urge my colleagues to support this amendment.

● Mr. SANTINI. Mr. Chairman, I rise in support of my distinguished colleague, Mr. WALGREN's, amendment to H.R. 7036, the Health Research Act.

As the parent of a child born with spinal bifida, I have a personal knowledge of the tragedy caused by spinal defects.

Millions of Americans have spinal cords defects as a result of accident or birth. There is no better way to express our commitment to assisting these individuals than to authorize funds for research on spinal cord regeneration. I can think of no better commitment of government resources than to give someone the ability to walk again.

I am very proud of the efforts of a Nevada-based organization to further research into this area. "Help them walk again" has been instrumental in the search for a method of helping current and future victims of spinal injury. This organization was organized by JoAnne Toadvine of Las Vegas, who has devoted endless energy and personal commitment to this cause. This young organization has brought together some of the world's leading experts on spinal regeneration for international conferences. They have done a great deal to heighten the public's awareness of the tragedy of spinal injury. We all owe a debt of gratitude to Ms. Toadvine and all of the dedicated volunteers in help them walk again.

Mr. WALGREN's amendment is an important first step toward achieving this medical breakthrough for which help them walk again has been working with such great enthusiasm. Spinal regeneration is presently only a scientific hope and aspiration. Let us begin to make this dream a reality by passage of this amendment. Thank you.●

● Mr. GOLDWATER. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Pennsylvania. The importance of the amendment's cause cannot be underestimated. I would like, at this time, to share with my colleagues a few frightening statistics:

Every 40 minutes, someone will suffer a spinal cord injury; 300,000 spinal cord injured victims are estimated to live in the United States today, with over 10,000 new cases annually; and the cost to the American taxpayer to sustain SCI victims is over $6½ million per day.

Mr. Chairman, spinal cord injuries are a terribly debilitating handicap. The gentleman from Pennsylvania's amendment would require the National Institute of Neurological and Communicative Disorders and Stroke to set aside $16 million of its annual appropriations to study spinal cord regeneration.

I support this amendment. In southern California, a research project has been proposed which would evaluate the relation between sleep disorders and spinal cord injuries. Several of my colleagues and myself have been working hard to support funding for such research in an effort to one day find a cure for spinal cord injuries. This amendment would take one more step in that direction, and deserves the support of this House.●

● Mr. HARRIS. Mr. Chairman, I appreciate the opportunity to speak on behalf of the Walgren amendment, which authorizes $16 million for fiscal year 1981 to finance spinal cord regeneration research.

Mr. Chairman, a day does not pass, a newspaper is not published without an article describing a sporting accident which ends a fine athletic career or a devastating automobile accident which often cuts down a man, woman, or child in the prime of life. If the injury affects the spinal cord, the result usually is some type of paralysis. Although advanced technology allows the spinal cord victim to meet most of the demands of daily living, the human suffering is immeasurable. There is always the threat of deterioration of either physiological, sociological, or the psychological state—and the fear of this is constant. The human cost shows up in the high number of suicides that are reported of paraplegic victims.

Nevertheless, we are not here today to focus on the morbid. Those same newspapers which chronicle the multitudes of stories of spinal injuries are now beginning, with increasing frequency, to report the new discoveries of the possibility of nerve regeneration in spinal cord injury. Scientific papers on the subject have increased from only a few in 1970 to over 500 last year. Experts in the field are excited about new possibilities in finding cures. They, along with those who are suffering from paralysis are looking up to us for the funds necessary for research. The right step has been taken in establishing the interagency task force on spinal cord injury. Now we must act. When we consider the human cost as well as the economic loss to our paraplegics, commonsense as well as compassion demands that Congress support this funding.●

Mr. WALGREN. I would simply urge the support of this amendment, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. WALGREN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: Page 25, line 20, strike out "$1,074,000,000" and insert in lieu thereof "$1,051,600,000".

Page 25, line 21, strike out "$1,220,000,000" and insert in lieu thereof "$1,189,100,000".

Page 25, line 22, strike out "$1,376,000,000" and insert in lieu thereof "$1,345,600,000".

Page 27, line 5, strike out "$570,700,000" and insert in lieu thereof "$551,700,000".

Page 27, line 6, strike out "$648,320,000" and insert in lieu thereof "$630,000,000".

Page 27, line 8, strike out "$731,300,000" and insert in lieu thereof "$713,600,000".

Page 28, line 8, strike out "$393,798,000" and insert in lieu thereof "$350,600,000".

Page 28, line 9, strike out "$447,355,000" and insert in lieu thereof "$395,200,000".

Page 28, line 11, strike out "$504,616,000" and insert in lieu thereof "$446,500,000".

Page 30, line 8, strike out "$80,780,000" and insert in lieu thereof "$79,200,000".

Page 30, line 9, strike out "$91,766,000" and insert in lieu thereof "$89,600,000".

Page 30, line 11, strike out "$103,512,000" and insert in lieu thereof "$101,400,000".

Page 30, line 15, strike out "$248,574,000" and insert in lieu thereof "$243,700,000".

Page 30, line 16, strike out "$282,380,000" and insert in lieu thereof "$275,700,000".

Page 30, line 17, strike out "$318,525,000" and insert in lieu thereof "$312,100,000".

Page 30, line 21, strike out "$241,164,000" and insert in lieu thereof "$236,400,000".

Page 30, line 22, strike out "$273,962,000" and insert in lieu thereof "$267,400,000".

Page 30, line 23, strike out "$309,029,000" and insert in lieu thereof "$302,700,000".

Page 31, line 3, strike out "$78,839,000" and insert in lieu thereof "$77,300,000."

Page 31, line 4 strike out "$89,561,000" and insert in lieu thereof, "$87,400,000".

Page 31, line 5, strike out "$101,025,000" and insert in lieu thereof "$98,900,000".

Page 31, line 8, strike out "$163,000,000" and insert in lieu thereof "$127,800,000".

Page 31, line 9, strike out "$180,000,000" and insert in lieu thereof "$144,600,000".

Page 31, line 11, strike out "$200,000,000" and insert in lieu thereof "$163,600,000".

Page 31, line 15, strike out "$279,268,000" and insert in lieu thereof "$273,800,000".

Page 31, line 16, strike out "$317,248,000" and insert in lieu thereof "$309,900,000".

Page 31, line 18, strike out "357,856,000" and insert in lieu thereof "$350,600,000".

Page 31, line 22, strike out "$360,600,000" and insert in lieu thereof "$353,500,000".

Page 31, line 23, strike out "$409,642,000" and insert in lieu thereof "$399,900,000".

Page 31, line 24, strike out "$462,076,000" and insert in lieu thereof "$452,400,000".

Page 32, line 3, strike out "$96,834,000" and insert in lieu thereof "$94,900,000".

Page 32, line 4, strike out "$110,003,000" and insert in lieu thereof "$107,400,000".

Page 32, line 5, strike out "$124,083,000" and insert in lieu thereof "$121,500,000".

Mr. COLLINS of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas.

There was no objection.

Mr. COLLINS of Texas. Mr. Chairman, I have a very lengthy amendment. Basically there has been a change in this amendment situation since yesterday, but I wanted to tell my colleagues what was involved when our committee made our authorization in this bill. My amendment would simply authorize an increase in the 1980 appropriation of 13 percent rather than 21 percent, which is what we authorize for 1981 in the bill that we have before us. The 13-percent figure is based on the fact that President Carter next year anticipated 13-percent inflation, and also was based on the fact that 13 percent is about what we have been

maintaining in the normal appropriations of this type.

But what happened is this, and it is discouraging that we do it in our legislative process: We took up yesterday the appropriation bill before we got to this authorization bill. In other words, the House has already appropriated the money, and today we come in here and talk about authorizing it.

Yesterday was quite an appropriation. Most of the Members probably did not realize how much money we appropriated because we handled the bill so fast. But we appropriated in this one appropriation bill, we appropriated $274,398,000,000. We passed through $274 billion, and it was only later that I learned from my distinguished friend from Kentucky (Mr. CARTER) that this section had been part of it. Yesterday we had a most lengthy appropriation. I want to say this about the $274 billion appropriation because I commend them for the way they handled it. They came through with less of an appropriation on this section than we had authorized. In other words, in our authorization we were talking about increasing 21 percent, but in their overall appropriation they only had increased it by 11 percent.

Basically we are talking in this bill about a very, very serious issue. We are talking about legislating a 3-year authorization. What does it mean to have a 3-year authorization when we do not even pay any attention to the first year, and we go ahead and authorize and appropriate? It is just a mumbo-jumbo system.

The second thing we are talking about is health. The way to cover health by authorization is just the way the distinguished gentleman from Pennsylvania (Mr. WALGREN) did when he brought out this spinal cord issue and everyone here saw the value of it. They have the opportunity to discuss research and developments which is what authorizations are all about. It is to have a consensus viewpoint. But for Congress, for Congress, a bunch of laymen, to try and define what should be the medical research of the country, is just beyond my comprehension.

What we are doing in this authorization bill is going at it the wrong way. To prove how we go at it in the wrong way, we started out by asking for a 21-percent increase when Appropriations had not asked for that much themselves. Now when we talk about health, let us remember Congress is a very generous group. Our appropriations are most generous, our authorizations are always generous.

Today health makes up 50 percent, 50 percent of the budget of this country.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman.

Mr. STAGGERS. I appreciate what the gentleman is saying. I know he is very sincere. Does the gentleman know that during the Second World War, when we faced that crisis in the security of this Nation, every item that the military needed had to come before an authorizing committee for an authorization before it went to the Appropriations Committee. If we do not do that here in peacetime, if we do not take the time for such an important step, I think it would be a great mistake.

Mr. COLLINS of Texas. I would tell the chairman that I was over in France at the time that they were using that procedure. We won the war. Now let us help Congress maintain a sound peace.

Mr. STAGGERS. I was in the Pacific. I was injured in the Pacific. So I was a part of the war. I know that the military had to come every year to get an authorization and an appropriation. I think if we can do that in the time of war, then we can take the time to do that in a time of peace.

Mr. COLLINS of Texas. Of course in time of peace we have a different budget situation. At the time of the war most of the money was going for immediate war commitments.

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Now while we are spending so much on health, I would rather the doctors determine how we spend it on health instead of having technical medical decisions being made by Congressmen sitting here in the House.

Mr. Chairman, I yield back the remainder of my time.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to this amendment.

Mr. Chairman, I rise in strong opposition to this amendment which would reduce the amount of money that we are going to authorize for the work being done at the National Institutes of Health. The authorizations included in this bill indicate our commitment to biomedical research. It is at a higher level, as it turns out, for 1981 than the Committee on Appropriations has appropriated, but that is not unusual. Often the authorization committees authorize sums in excess of what the Committee on Appropriations is willing to spend. This is understandable because the Committee on Appropriations has the authorizations as their maximum ceiling. I think we ought to keep the committee authorization levels as an indication of our clear commitment to fight these dreaded diseases. We are talking about cancer, heart, lung and eye diseases. Let us keep our support clear and strong for that work that is being done.

I would hope that the Members would join me in opposing this amendment.

Mr. DANNEMEYER. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, in a perfect world, there would be little reason to object to anything in this bill. Everyone is for health research and all of us acknowledge the tremendous contribution the National Institutes of Health have made over the years in terms of medical research breakthroughs. But, sad to say, this is not a perfect world; 1980 is not a year in which we, as a nation, can financially afford anything and everything our governmental heart desires. Rather, 1980 has been a year when the weakness of our financial position has been all too evident; its susceptibility to inflationary spurts all too obvious. Moreover, succeeding years could be even worse if we do not correct the one thing that has been most responsible for 1980 having been a year of high inflation, high interest rates, higher unemployment, and recession. And, that one thing is excess Federal spending, authorized and then appropriated by the Congress.

The bill we have before us today is essentially a trade-off. In exchange for being subjected to the authorization as well as the appropriation process, the 11 National Institutes of Health are authorized even bigger increases in spending then they have enjoyed in recent years. Specifically, the authorization level called for in H.R. 7036 is 28.2 percent higher, for fiscal 1981, than the level of appropriations provided the Institutes in 1980. Then, for fiscal 1982, another 13-percent increase is contemplated, followed by a 12.9-percent increase in 1983.

While I am not sure how we can expect to reduce inflation by increasing spending to compensate for it, there is a certain degree of logic in the 13-percent and the 12.9-percent increases for fiscal 1982 and 1983. It is the 28.2-percent increase in fiscal 1981 that seems out of line, especially in view of the fact that appropriations for NIH only increased 9.3 percent in fiscal year 1980 and 15.5 percent the year before that.

Since the increase in spending by NIH increased 13.12 percent these last 2 years, the amendment I am supporting today would simply continue that trend. Rather than authorization increases of 28.2, 13, and 12.9 percent, it would provide that authorizations under section 410 of this bill would increase by 13.12 percent each of the next 3 fiscal years. Adoption of this amendment would result in a savings of $503 million over the 3-year period; $147.1 million the first year, $174.2 million the second year, and $182.6 million the third.

For past experience, I know the counter-argument will be—it is only half a billion—a mere drop in the bucket compared to total Federal spending—and the money is going for a cause near and dear to the hearts of all Americans—good health. But drops in the bucket add up. Just last week similar arguments were offered in support of a mental health bill that will triple authorization levels by fiscal year 1984. Next week, or the week after, it will be a health manpower bill calling for an authorization increase of 19.2 percent in fiscal 1981. And then it will be medicare and medicaid reform bills that will add almost a billion dollars to spending by 1985. Where do we draw the line? When do we start worrying about the financial health of the American taxpayer? And why is there no recognition of the fact that worry over how to raise a family in the face of rising taxes and inflation can, and does, cause both physical and mental health problems for a great many people. In fact, worry and strain are a major contributory factor to ill health in this country.

I could go on, but rather than do so, just let me add one final thought; the quicker we put the Nation's financial house in order, the more money will be available for health research—if not from public sources then from private

ones. After all, everyone benefits from a healthy economy, including the foundations that, along with NIH, have done so much to promote health research. What we are arguing here is not the end result, but the means of obtaining it, and I think this amendment offers a better way with less risk for all concerned. I urge its adoption.

Mr. CARTER. Mr. Chairman, I move to strike the last word. What I say on this will be extremely brief.

I strongly oppose the amendment offered by the distinguished gentleman from Texas (Mr. COLLINS). I believe the health of our country is much more important than the small authorization diminutions that the sponsors of this amendment recommend. Actually, we authorized more to give their appropriations more flexibility in case they need more funds for breakthroughs or to pursue possible promising research results. I would hate to oppose money which would help us to find the cause or the cure for cancer.

Some years ago we had appropriation legislation for HEW vetoed, and it was brought up here and overridden. At that time the statement was made that 1 in every 4 had the possibility of having cancer. Within that year, before the year was out, the Vice President's wife had cancer and the President's wife had cancer. You remember that. As it happens, fortunately, both of them are well as far as we know today.

We want to continue to improve our methods of treatment. We want to find the cause of these diseases, and we cannot do it without assistance. We cannot do it by cutting back. We have got to regard the poor and the sick and to do something for them, as I see it.

I strongly oppose the amendment, and I move the previous question.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS).

The question was taken; and on a division (demanded by Mr. ROUSSELOT), there were—ayes 4, noes 15.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. MOFFETT

Mr. MOFFETT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MOFFETT: Page 53, line 8, strike out "and"; insert "and" at the end of line 10; and insert after that line the following:

"(4) an information and education center for kidney, urologic, and hematologic diseases,".

Page 54, begining in line 17, strike out "and digestive diseases" and insert in lieu thereof "digestive diseases, and kidney, urologic and hematologic diseases".

Page 55, line 3, strike out "and" and in line 4 insert after "Committee" a coma and the following: "and a Kidney, Urologic, and Hematologic Diseases Interagency Coordinating Committee".

Mr. MOFFETT (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

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Mr. MOFFETT. Mr Chairman, I will not take a great deal of time with this amendment. It is fairly straightforward.

Before yielding to the chairman of the subcommittee, as I understand we spent $790 million on kidney dialysis last year and in about 20 percent of the cases, if we had early detection of the symptoms we could have avoided a great deal of expenditure.

This simply says that those information dissemination systems that the distinguished gentleman from Kentucky was speaking about earlier with regard to heart, lung, and blood and with regard to diabetes should also be instituted for kidney disease. Kidney disease affects more than 52,000 persons nationally and costs the Feds $791 million last year through the renal dialysis program. Twenty percent of patients on dialysis are there primarily because of high blood pressure problems which, had they been detected earlier, could have been treated and the need for dialysis averted. An education center for kidney diseases could publicize some of the symptoms of kidney disease and prevent perhaps millions of dollars of expenditures for treatment of the disease. As things are now, little is known about the disease or how to spot it, yet when it hits, it is brutal.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. MOFFETT. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

The amendment would focus greater attention on research on kidney disease. It is a conforming amendment to committee amendments on arthritis and diabetes.

Mr. Chairman, we do not object to the amendment.

Mr. MOFFETT. Mr. Chairman, I thank the gentleman for his support.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. MOFFETT. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, we support the amendment.

Mr. MOFFETT. Mr. Chairman, I thank the gentleman from Kentucky and I salute him on his service on the Committee on Interstate and Foreign Commerce.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. MOFFETT).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HOPKINS

Mr. HOPKINS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HOPKINS: Page 62, insert after line 20 the following:

"(d) The Secretary, acting through the Institute, shall conduct a clinical investigation of the safety and efficacy of dimethylsulfoxide as a drug to be used by persons with arthritis. The Secretary shall report to Congress not later than one year after the date of the enactment of this subsection the results of the investigation conducted under this subsection.

Mr. HOPKINS. Mr. Chairman, I am pleased to have the opportunity to offer an amendment of such significance to the health of older Americans, but I cannot take all the credit here. I am indebted to several of my colleagues, and I want the record to reflect that without their tireless efforts, we would not have this chance. The Select Committee on Aging first brought DMSO to national attention, and I want to thank the chairman of the committee, as well as the gentlewoman from Ohio, MARY ROSE OAKAR, and the gentleman from Illinois, MARTY RUSSO, who serve with me on the committee. Another one of our colleagues, the gentleman from Oregon, BOB DUNCAN, has supplied his support and encouragement. The efforts of these individuals should be noted by senior citizens all over this country.

Mr. Chairman, 31 million Americans of all ages suffer from the crippling disease known as arthritis. One in every seven Americans is a victim of arthritis, and someone new is added to this list every 33 seconds. While there is no known cure for arthritis, there are certainly no shortages of quack remedies and fake cures for arthritis sufferers.

There is, however, an inexpensive chemical compound which appears to offer significant relief from the nagging aches and pains which accompany this chronic disease. My amendment simply directs the National Institute of Arthritis to conduct a clinical study of this promising remedy, known as dimethylsulfoxide, or DMSO. The purpose of the study is to determine the safety and effectiveness of DMSO in helping to relieve some of the pain and suffering experienced by these 31 million Americans every day.

DMSO is not a new drug: It is not a rare drug: And it is not an expensive drug. DMSO costs about $4 a quart to produce and it is a byproduct of the manufacture of paper. The medicinal possibilities of DMSO first came to light in the United States in the early 1960's when it was discovered that DMSO is rapidly absorbed into the skin. Since that time it has been approved for human use in a dozen other countries. But in the United States DMSO is approved for only one rather rare bladder disease in humans, and for veterinary use.

Doctors have testified before the House Select Committee on Aging that DMSO significantly reduces pain, inflammation, and swelling, and helps promote healing in soft tissue injuries. Professional athletes have indicated that use of DMSO is widespread among their ranks. Yet for the average American suffering from arthritis, the drug is officially off limits, because the Food and Drug Administration is adamant in its refusal to approve DMSO and persistent in its attempts to discredit DMSO proponents.

Nor are future prospects very bright that DMSO will ever be available except in bootleg form. Again, DMSO is not rare and it is not expensive. But few firms are willing to devote their private resources to the testing and development of a substance commonly found in nature, cheap to produce, and in all probability not patentable. The income potential is simply not there to meet their investment criteria. Thus, there are no tests presently being conducted to determine the value of DMSO for use by patients with arthritis.

Mr. Chairman, I am not a doctor or a scientist, nor do I claim to be an expert. But I do know when it is time to turn a problem over to the experts for their study and analysis and at this time we need a study of DMSO.

The situation at present is that thousands of Americans are going abroad, primarily to Mexico, to obtain DMSO treatments at outrageous prices. Thousands more are treating themselves at home with DMSO that they obtain from their veterinarians in a concentration designed for horses, not humans; or DMSO that they obtain from their hardware store, where it is sold as an industrial solvent; or DMSO they obtain through the mails from Oregon or Florida, where it is legal, but again at prices a 100 times what it costs to produce, and with no guarantees as to quality.

Efforts on the part of the administration to discourage the use of DMSO by the public must, in my opinion, be combined with vigorous efforts to pursue research into its safety and effectiveness. Public demand and scientific doubts where DMSO is concerned will only be put to rest through efforts to establish the truth.

It is time for an objective, unbiased study to determine once and for all whether or not DMSO is the ray of hope 31 million arthritis suffers in this country are praying for. It is time to put to rest the false claims and false hope. For these reasons I ask my colleagues to vote for my amendment to direct the National Institute of Arthritis to conduct a clinical study of DMSO for use by patients with arthritis.

The research dollar will seldom be as wisely spent, nor will the potential rewards be as significant. By taking this step, we may be able to place a low-cost and effective pain reliever in the hands of millions who will otherwise continue to experience chronic pain.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

There have been many reports pro and con on the DMSO drug. I think it is important that the claims of both the proponents and opponents of the drug be scientifically examined.

Mr. Chairman, I have no objection to this amendment here today.

Mr. PEPPER. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I yield to the gentleman from Florida.

Mr. PEPPER. Mr. Chairman, I am pleased to support Congressman LARRY HOPKINS, an able member of the House Select Committee on Aging, concerning his amendment to H.R. 7036, the Health Research Act of 1980, to call upon the National Institute on Arthritis to undertake tests on the effectiveness of DMSO.

Dimethylsulfoxide (DMSO) is a liquid byproduct derived from the manufacture of paper. Its medicinal possibilities were first brought to attention in America in the early 1960's.

DMSO can reach the bloodstream within seconds when applied to the skin. It is commonly given in ointments to be used topically or sometimes by injection.

There is little doubt but that DMSO is effective in reducing pain caused by arthritis, that it is effective in helping to reduce swelling and promote healing in soft tissue injuries. It may have value in healing skin ulcers such as those produced by the disease, scleroderma. It may be useful in helping to promote healing in first- and second-degree burns, in limiting damage of spinal cord injuries, and in relieving intracranial pressure caused by head injuries. It is an open question as to whether it helps arthritics: It does relieve pain but no one knows whether it reduces the inflammation which is the underlying cause of the pain. In addition to its other properties, DMSO heightens the effect of other drugs and may be useful acting as a carrier of other substances through its absorption qualities through the skin.

The House Select Committee on Aging conducted an investigation and hearings which helped confirm the effectiveness of DMSO as an analgesic. Former team physicians with pro sports teams testified in generous terms about the drug's ability to help reduce swelling and promote healing of soft tissue injuries. In addition, literally thousands of letters and testimonials have been received by the committee since its March 24, 1980, hearings. Responses to committee questionnaires to veterinarians and rheumatologists also supplied a good deal of support for the use of the drug. Medical researchers testified about its potential in stroke victims, and in patients with scleroderma and intracranial pressure.

Witnesses at the committee's hearing, including representatives of the Food and Drug Administration, testified that DMSO is a relatively safe drug; garlicky breath and some minor skin irritations are the most common side effects; although a few people may be hypersensitive to the drug and may suffer allergic responses.

The FDA has approved the drug for use in animals for some time, and in 1978, approved its use in humans for treatment of a bladder condition known as interstitial cystitis. It should be noted that before the FDA can approve the use of a drug in man, they must reach the determination: First, that it is safe; and second, that it is effective. The safety question has not been in doubt, at least not since 1978.

In order to clear up any confusion, a recent statement by the FDA warns against the unsupervised use of DMSO. Many people have been buying industrial grade DMSO which may contain impurities. The combination of DMSO with impurities may cause harm. Since DMSO is a carrier which penetrates the skin, there is a danger that other drugs mixed with it may enter the bloodstream. It should be understood that DMSO is not a patent medicine; it must be prescribed and used under the direction of a physician.

The obvious question is: What is holding up FDA approval for the use of DMSO in humans for conditions other than cystitis? The answer is that the FDA must have objective double blind scientific studies which prove effectiveness. The problem is that the FDA does not initiate tests. The FDA must wait for major drug companies to come forward and ask to test a product for certain uses. Since DMSO is an agent commonly found in nature, and produced easily and inexpensively, it is not thought to be patentable. Drug companies ask why they should spend millions to get FDA approval when there is no assurance that they will have the exclusive right to market the drug if it is approved. Because of its status, DMSO has been included in a category of so-called orphan drugs.

Mr. Chairman, there is a significant amount of anecdotal evidence that DMSO may be helpful to older Americans and particularly to the 31 million U.S. citizens—most of them elderly—who suffer from the pain of arthritis. DMSO has been approved for use in about a dozen foreign countries. Two States, Oregon and Florida, have passed their own laws legalizing the use of DMSO by physicians. Physicians can not lose their licenses for prescribing DMSO in those States. Since DMSO has such a great potential for good and so few side effects associated with its use, I believe it is incumbent on Government to test the drug and to report to the American public on its value at the earliest possible date.

The bill I introduced with Congressman HOPKINS, H.R. 7023, which now has more than 100 cosponsors, and which is the substance of this amendment, would call upon the National Institute on Arthritis to undertake testing on the value of DMSO in arthritis and report back to the Congress within a year. The National Institute is certainly a highly respected organization whose results would gain immediate acceptance. We need the kind of professional judgment that they can bring to this issue and we need it fast. As I noted, there seems to be little doubt but that DMSO relieves the pain of arthritis. There also seems to be no doubt but that it relieves swelling associated with the disease. The remaining question is: Does it relieve the inflammation which is the underlying cause of the disease? Veterinarians are convinced that it does so. Rheumatologists see the potential and have suggested the kind of tests that our amendment would make possible.

Mr. Chairman, I hope the amendment will be adopted. I believe there will be tremendous benefit to the American people if it is enacted. I would like to commend Congressman HOPKINS for his work in this area as well as Mike Wallace and CBS "60 Minutes" who helped bring the matter to the attention of the public.

Mrs. HECKLER. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I will be delighted to yield to the gentlewoman from Massachusetts.

Mrs. HECKLER. Mr. Chairman, I rise in support of the Hopkins amendment to the Health Research Act, H.R. 7306.

It is unfair to millions of Americans who are in daily pain from arthritis to keep DMSO (dimethylsulfoxide) in limbo. The drug offers hope for relief from the anguishing pain of a crippling illness that strikes both young and old. Certainly DMSO should be tested. Sub-

stantial evidence indicates it will meet the standards of the medical profession. After these necessary hurdles, DMSO should be marketed.

An estimated 31 million Americans have arthritis: 5 million of them are disabled. Arthritis causes more prolonged pain to more Americans than any other disease. Since DMSO has the potential to relieve a great deal of that suffering, it could provide one more tool in the arsenal of pain relief.

This amendment directs that a clinical investigation of the safety and efficacy of DMSO as drug for arthritis sufferers be conducted through the National Institute of Arthritis, Metabolism and Digestive Diseases and that the Secretary of Health and Human Services report to the Congress no later than 1 year after the date of enactment the results of the investigation.

I believe the drug will be a standard form of relief for arthritis in the future. It has proven its potential. This amendment provides the vital first step of required testing. Let us take that step to make giant strides for millions of arthritis sufferers.

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I do yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, first I want to express my support for this legislation, H.R. 7036 and commend Chairman STAGGERS, Mr. WAXMAN, Mr. CARTER and the members of the Subcommittee on Health and the Environment for their work. I take this time to rise in support of Mr. HOPKINS' amendment to fund a study of the drug dimethylsulfoxide. Persons who have successfully used DMSO or worked with it maintain that it has some very beneficial properties. According to their reports, it can stop pain; aid in the healing of soft tissue injuries, such as bruises; and because it is quickly absorbed into the bloodstream, carry with it other drugs.

Because of the attention DMSO has received through the CBS television program "60 Minutes" and a hearing by the Select Committee on Aging, there is now widespread knowledge in our country about the existence of this drug. The hopes of millions of people suffering from musculo-skeletal diseases have been elevated. Indeed, I have heard from some 80 people in my own State of Arkansas, ranging from aged arthritis victims to a little 3-year-old girl suffering from myositis ossificans—a terrible condition which causes her muscles to become calcified. Some of these people have the means to travel to States or countries where they can get the drug and believe that it is helpful to them; others who are not so well off desperately want this drug to be accessible in the hope that it may alleviate their pain.

I am sure that some of my colleagues who are unfamiliar with the history of DMSO testing are questioning the need for an NIH study of the drug when a mechanism for the testing of drugs exists under the auspices of the FDA. The experience with DMSO illustrates a weakness in our drug certification system; because the agency does not initiate new drug studies but must wait for researchers to conduct them, the public is sometimes unnecessarily deprived of remedies and treatments which are badly needed. At the time of our hearing by the Aging Committee, the FDA had reached a real logjam in trying to certify DMSO for use by arthritis patients because all studies to date had not been of sufficient quality to offer definitive evidence and because no pharmaceutical companies or research organizations had applied to conduct new studies. A study by the National Institute of Arthritis would break this logjam and give us some quick and definitive answers about the potential of this drug.

It is wrong for persons suffering from chronic pain to be tantalized by the possibility that a substance which may bring them relief exists but is out of their reach. A well-controlled and responsible study on the drug by the National Institute of Arthritis could once and for all substantiate the claims about it or put persistent theories about it to rest.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I will be delighted to yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. Mr. Chairman, I assume this amendment is offered out of a sense of the gentleman's frustrations at the delay in getting protocols approved by the Food and Drug Administration. Is that correct?

Mr. HOPKINS. That is correct.

Mr. DUNCAN of Oregon. I share that same frustration that the gentleman feels. I have been working on this since about 1963. In the course of that 17-year period, FDA has approved this drug for use on a single disease, interstitial cystitis.

Now, Mr. Chairman, when they have approved it that means they have found it to be safe. They have also found it to be efficacious for this particular purpose. Once they found it safe for the interstitial cystitis it seems to me you are over that obstacle as to whether or not the drug has any substantial adverse impact on the patient, and it does not. It has been used as widely, I think, as almost any other drug in its particular stage of development and the only really substantial adverse impact that you find is the odor and sometimes a slight tingling of the skin.

While in the Senate hearings recently there were some suggestions made of ocular changes, those have never been verified in human beings. My colleague from Ohio (Ms. OAKAR) will introduce into the RECORD at the appropriate point a complete rebuttal from Dr. Scherbel of the Cleveland Clinic.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. DUNCAN of Oregon and by unanimous consent, Mr. HOPKINS was allowed to proceed for 2 additional minutes.)

Mr. DUNCAN of Oregon. The gentleman's amendment, as far as I can tell, does not take away from the Food and Drug Administration the ultimate resonsibility for determining safety and efficacy with respect to arthritis. Am I correct on that?

Mr. HOPKINS. The gentleman is correct.

Mr. DUNCAN of Oregon. I appreciate your answer. I do not believe that the Congress is the proper body to make decisions of a technical nature with respect to drugs and drug use. What we are hoping to do, and what the gentleman hopes to do, and I join in the gentleman's hope, is that a test devised by this Institute on the 2 questions of safety and efficacy, the vital questions that FDA must decide, will be very persuasive to the Food and Drug Administration and, in any event, by close cooperation in developing the test, between the Institute and FDA, a test may be devised that FDA will be willing to accept. Thus far, they have not accepted any.

I share the gentleman's frustrations, I congratulate him on his efforts. I hope his efforts are successful and that FDA will note that if the Congress can do this with arthritis they will also be able, willing, and anxious to do it with burns and bursitis and tendonitis and all of the other ailments in which there has been demonstrated some degree of hope for people suffering from an otherwise incurable disease.

Mr. HOPKINS. I appreciate the gentleman's remarks. I certainly want to note the contribution the gentleman has made over the years, bringing this along to where it is today.

Mr. GRASSLEY. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I yield to the gentleman from Iowa.

Mr. GRASSLEY. Mr. Chairman, I rise in support of the amendment. The drug dimethylsulfoxide (DMSO) has been used industrially as a solvent since the 1940's. Currently, it is also used for the treatment of a chronic bladder disorder. In addition, a good deal of evidence has been gathered by health professionals which suggests that DMSO might have further use as an effective treatment for pain and swelling of diseases of the connective tissue, such as arthritis. This discovery has given new hope to those members of our society who suffer from arthritis and, since many of these people are elderly, I have taken a great deal of interest in the drug in my capacity as ranking minority member of the Select Committee on Aging.

In March of this year, the committee held hearings on DMSO. In those hearings, a number of qualified medical professionals testified as to the efficacy of the drug. The consensus was that, while the evidence is not conclusive, there is a substantial body of evidence to suggest that DMSO is effective in the treatment of arthritis. However, further testing is needed before the drug can meet the efficacy standards of the Food and Drug Administration. As you are aware, this involves a long and costly process wherein a drug company is required to obtain an investigational new drug application and conduct a number of tests on the drug under application. In order for a drug company to undertake such an enterprise, it obviously must be able to assure itself of a reasonable return on its investment. In the case of DMSO, it would appear that this is not possible since the molecule is in wide use and not

considered patentable. Thus, progress has been slow and millions of Americans who suffer from arthritis have been denied what might prove to be an effective treatment.

Mr. Chairman, I feel that the study required by the amendment of the gentleman from Kentucky is fully justified.

Ms. OAKAR. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I will be delighted to yield to the gentlewoman, a member of the Select Committee on Aging.

Ms. OAKAR. Mr. Chairman, this disease affects millions of Americans with arthritis, bursitis, and so forth. This is a nontoxic drug. We have had countless doctors say it works.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Ms. OAKAR and by unanimous consent, Mr. HOPKINS was allowed to proceed for 5 additional minutes.)

Ms. OAKAR. Will the gentleman continue to yield?

Mr. HOPKINS. I yield to the gentlewoman from Ohio.

Ms. OAKAR. Dr. Scherbel, who is head of rheumatology at the internationally known Cleveland Clinic in my city, has done the tests that FDA wants. The problem is that they are absolute obstructionists. I hate to be cynical about the FDA because we like to think it is an objective asset of our Government However, I have come to the conclusion—I do not say this lightly, believe me—I think they are absolutely biased when it comes to this drug, I think that they have people who they have put on these research committees and they have not done the research. The people who have done the research who are Harvard Medical School graduates, heads of departments of internationally known hospitals, are the ones who can show the cases, and have tried to bend over backward to meet this criteria. Yet the FDA will not approve this drug for common ordinary diseases like arthritis.

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I have to say that I personally have come to the conclusion that the FDA may be unduly influenced by the very, very powerful drug lobbies around here who produce drugs such as aspirin and cortisone, which commonly is used—and sometimes effectively—to treat arthritis. They do not want to see an inexpensive drug that is nontoxic, that cannot hurt one at all, take the place of these more expensive drugs.

I want to quote at this point from a letter by Dr. Scherbel to the FDA Commissioner, who testified at the Kennedy hearing, and I have to say I was somewhat disappointed in the manner in which that was conducted, but nevertheless he says:

CLEVELAND CLINIC,
Cleveland, Ohio, August 7, 1980.

Dr. JERE GOYAN,
Commissioner, Food and Drug Administration, Rockville, Md.

DEAR DR. GOYAN: I am deeply concerned about the recent testimony that was presented by FDA officials at the Kennedy hearing last week regarding ocular toxicity resulting from the administration of DMSO. This is truly a gross misrepresentation of the facts. Several nationally known opthalmologists studied these patients and concluded that DMSO was not responsible for the cataracts. This information was sent to FDA before the Kennedy hearing.

Those few patients, who are considered by FDA to have cataracts resulting from DMSO administration, actually had myopic changes or cataracts prior to the administration of the drug. All patients were in the age group where cataracts are likely to occur. All patients had serious connective tissue disease and were treated with corticosteroids before and during DMSO administration. Some patients had inflammatory eye lesions as a complication of their connective tissue disease. It is well known that cataracts may appear in this situation.

As a result of the distorted testimony presented by FDA, DMSO is now receiving unwarranted, adverse publicity through the news media. This matter appears to me to be of such serious nature that I am requesting you to issue a statement of clarification. Another alternative would be to schedule an open hearing on the DMSO controversy at your earliest convenience. I would appreciate hearing from you as soon as possible.

Sincerely yours,
ARTHUR L. SCHERBEL, M.D.

Dr. Scherbel implies that the FDA has misrepresented the results of his research at a recent Kennedy hearing on DMSO. There are many other doctors who feel that the FDA is biased about this drug. The FDA has repeatedly withheld approval of this drug "for lack of sufficient data." Yet they do not question the harmful side effects of aspirin or cortisone. Mr. Chairman, DMSO could help millions of Americans with arthritis, bursitis, and scleroderma. It is a nontoxic, inexpensive drug which has one side effect—it produces a garlicy breath odor. I think the American people ought to know that the FDA is not serving their interests. It is a shame that we have to go to another objective group to do this kind of research when they, the FDA, are shirking their duties.

So, I want to commend the gentleman and certainly support this unfortunate but necessary amendment.

Mr. HOPKINS. I thank the gentlewoman.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I will be delighted to yield.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for yielding. I congratulate him on his amendment, and I do hope that it is universally supported.

I know it is getting redundant at this time, but I have to underscore the words of the gentleman from Oregon and the gentlewoman from Ohio—except that I do not share the conclusion of the gentlewoman from Ohio as to why the FDA does its work so poorly

There would be no need for this kind of an amendment if the FDA were an effective, efficient agency of the U.S. Government. Instead, they have totally failed their responsibilities, and denied millions of Americans a potential cure when all the facts would indicate that there is no harm from the use of this drug.

The FDA, I think, in its counterproductive and clumsy way, is about to reach the pinnacles of ineptitude previously achieved only by the FTC and the EPA. It is rapidly becoming the most counterproductive agency of the Federal Government.

I congratulate the gentleman from Kentucky, and I think the time is not far when the Members of this body are going to have to rise up and strike down some of these agencies which cannot do the people's work in a more effective manner.

I do not think there is any way the conduct of FDA can be justified in this particular instance, in the nitrite instance, and even in the saccharin instance. They have a repeated history of blunders which I believe are going to jeopardize the very existence of the agency of the future.

Mr. Chairman, I thank the gentleman for yielding.

Mr. PICKLE. Mr. Chairman, will the gentleman yield?

Mr. HOPKINS. I yield to the gentleman from Texas.

Mr. PICKLE. Mr. Chairman, some 10 years ago I was on the Commerce Committee. At that time, I attempted to get some kind of definite statement from the FDA regarding this DMSO drug. I was not successful then. For some 10 years at least they have ducked this issue. At least, the amendment the gentleman is offering is for a time certain, and making them do something of a definitive nature.

It is time we do it. None of us are saying that it has got to be the drug. We do not know that, but this vacillating has got to stop.

I thank the gentleman for yielding.

Mr. HOPKINS. Mr. Chairman, I thank the gentleman for his remarks, and I thank the many other colleagues who have spoken. I think it is just time for the FDA quit dragging its feet. They have done it for over 15 years. This amendment is straightforward. It gives them 1 year.

● Mr. MINISH. Mr. Chairman, I would like to compliment the gentleman from Kentucky on his amendment to the Health Research Act, which would initiate an immediate clinical investigation of the efficacy of dimethylsulfoxide, or DMSO, in treating arthritis and other painful diseases.

There has been a great deal of publicity lately some of it exaggerated or sensationalized, about DMSO. The hearings conducted by Select Committee on Aging earlier this year revealed that the medical community is somewhat divided in its opinion of this drug. Unfortunately, many people who are in real pain have had their hopes of relief raised by reports of this "wonder drug" only to be frustrated by its unavalaibility. The Government appears in their eyes to be keeping a drug they desperately want off the market for reasons of bureaucratic redtape.

Even if this perception may not be entirely accurate, we here have the responsibility to these many afflicted people to get the information we need to make an informed decision about DMSO. There is a vast body of medical literature about this subject, compiled over the years, yet no definitive conclusions have been reached. A 1-year study with a mandated reporting deadline can give us the information we need now; otherwise, the uncoordinated research efforts could drag on inconclusively for years. Although concentrating on applications

of DMSO to arthritis, this research may turn up information useful in relieving other conditions as well.

I have heard from my constituents who feel that this drug could free them from lives of daily suffering. When their Government is keeping DMSO off the market, we owe it to them to change this policy or tell them why we can not. This amendment will allow us to do just that. Thank you.●

● Mr. RATCHFORD. Mr. Chairman, I rise today to lend my support to the amendment to House Resolution 7036, which would direct the National Institute of Arthritis, Metabolism and Digestive Diseases to conduct a study of the safety and effectiveness of DMSO—dimethyl sulfoxide, for use by patients with arthritis.

Over 32 million citizens, including 20 million older Americans, suffer from arthritis. Presently the most frequently prescribed pain reliever for the treatment of this disease is aspirin. Arthritis sufferers have long sought a more effective treatment, and many health authorities believe that DMSO is that treatment.

Dimethyl sulfoxide—DMSO, is a low-cost, easily produced byproduct from the manufacture of paper, which can be rapidly absorbed into the bloodstream when applied to the skin. Advocates of DMSO have said it is a new "miracle drug," equal in importance to penicillin or aspirin; opponents argue that it is unproven and ineffective.

Doctors, researchers and DMSO-users who appeared before the House Select Committee on Aging, and the Senate Committee on Labor and Human Resources, described DMSO's effectiveness in reducing the pain, inflammation and stiffness associated with arthritis, bursitis, tendonitis and scleroderma. Despite these claims, there have been no ongoing studies to establish the possible effectiveness of DMSO, in the long term treatment of arthritic diseases. The Food and Drug Administration refuses approval of DMSO, because it has insufficient scientific data.

This situation is unacceptable to the millions of Americans, who suffer from arthritis, and the thousands who go abroad each year for DMSO treatments or pay exorbitant prices for DMSO here in the United States. However, within the United States the drug is already available legally in Oregon and Florida.

What is necessary is an objective evaluation so that the value of DMSO for use by arthritis sufferers can be established conclusively. This amendment, sponsored by Congressman CLAUDE PEPPER and LARRY HOPKINS, would require the National Institute on Arthritis to conduct appropriate tests and report back to Congress within a year. The cost involved in conducting such a study would be a fraction of the national research commitment, while the proportional benefits are enormous.

When this proposal was introduced as House Resolution 7023, more than 100 Members of the House cosponsored it. By funding this study we will learn definitely about the benefits of DMSO and we may be able to provide a low-cost, effective relief to the millions of Americans who now suffer from chronic pain due to arthritis.●

● Mr. RUSSO. Mr. Chairman, I would like to take this opportunity to speak in support of Mr. HOPKINS' amendment that would mandate the National Institute of Arthritis, Metabolism, and Digestive Disease to undertake clinical studies of the effectiveness of the drug dimethyl sulfoxide (DMSO) for use by patients suffering from the pain and discomfort of arthritis.

All of us know people who are suffering from aching joints caused by arthritis, rheumatism, and bursitis. These friends and constituents deserve relief so they can be free to live normal productive lives. There are some 20 million Americans who are in this position, yet there is a drug that may be readily available today, and no drug company is willing to test it—DMSO.

The situation is further complicated by the Food and Drug Administration's inability to sanction the marketing of a drug unless it has been proven safe and effective. The FDA cannot do this unless a pharmaceutical company is willing to do the testing. Unfortunately, to date, no drug company is willing to undertake the clinical studies because production of DMSO would produce little or no profit.

This situation is particularly unfortunate because all available data indicates that DMSO can relieve and cure arthritis and related ailments from between 70 to 90 percent of the time, and, yet, the side effects are minimal—only garlicky breath and some minor skin irritations.

As I see it, this dilemma between the needs of those ailing from arthritis and related diseases and the FDA and the pharmaceutical companies must be resolved. However, we must be cautious and not market DMSO before the necessary research is completed to determine if the drug is both safe and effective. It is for these reasons that I stand in support of Mr. HOPKINS' amendment. I strongly believe the National Institute of Arthritis, Metabolism, and Digestive Diseases should begin research on DMSO, immediately. Let us now act so that research on DMSO can go forth, and maybe someday soon many of those 20 million Americans suffering from arthritis can be relieved of the nagging pain. I ask my colleagues to support the Hopkins amendment to the Health Research Act.●

● Mr. BONKER. Mr. Chairman, for the past 18 years I have been hearing about DMSO. While I was a staff aid on the Senate Special Committee on Aging in the early 1960's hearings and investigations were being conducted. Now in the 1980's we on the House Select Committee on Aging and Senator KENNEDY are still holding hearings. The time for action is now. Further delay is unconscionable.

In the intervening 20 years, tens of thousands of people have lived with the aches and pain of arthritis, bursitis, and a variety of other ailments. And that suffering may have been unnecessary.

Definitive studies on the safety and efficacy of DMSO must be undertaken at once. Where there is a possibility, a probability, that pain can be relieved or lessened—we must follow up all the leads.

I have received several hundred letters on this subject—all of them requesting congressional action on DMSO. The writers are not just arthritis sufferers and senior citizens. In my State there is a Downs' syndrome child who—according to her mother, her teacher, her neighbors, and her doctor—has been helped enormously by DMSO treatments. Not only have some of the physical characteristics associated with Downs' syndrome abated, but her mental acuity and functioning have improved as well; scleroderma—a little known disease which results in ulcerated fingers and toes may also be responsive to DMSO. A staff member of mine addressed a conference in Seattle where one of the participants mentioned a critically ill mother. When it was clear that she was suffering from scleroderma my staff person said:

> If you had said "scleroderma" to me a week ago, it would have meant nothing. But last week the Aging Committee held hearings on an experimental drug, DMSO, that has been used with some success—maybe it could help your mother.

DMSO is a story of foot dragging by the FDA, of overzealous—at times—sales techniques by its proponents. It is a story of claims and refutations. But above all it is a story of people. We can do no less than support this amendment to insure that properly controlled and executed tests are carried out to establish the safety and efficacy of DMSO. As a cosponsor of H.R. 7023, I wholeheartedly urge passage of Mr. HOPKINS' amendment.●

● Mr. CARTER. Mr. Chairman, I believe it extremely important in regard to this amendment that we have the benefit of the views of FDA Commissioner Goyan. Therefore I am inserting in the RECORD at this point a press release regarding DMSO.

Food and Drugs Commissioner Jere E. Goyan today expressed concern about the widespread use of DMSO (dimethyl sulfoxide) for the treatment of arthritis and similar conditions.

Many people started treating themselves with DMSO following recent television reports about the drug.

Human use of DMSO is approved by FDA only for the treatment of a painful bladder condition called chronic interstitial cystitis. There is no generally accepted evidence the drug is either safe or effective in treating arthritis and bursitis.

Dr. Goyan said:

> People are taking a risk whenever they use a substance of unknown quality and effect on the basis of a TV show.
>
> FDA is eager for researchers to test DMSO to see whether it is safe and effective for conditions besides interstitial cystitis. We are working with the company marketing DMSO as a human drug to see that studies capable of yielding meaningful results are carried out.
>
> In the meantime, it's risky business to drink, inject or apply to the skin any substance not intended for that purpose.

Clarifying its own position on DMSO, the Arthritis Foundation recently said it "did not and does not 'endorse' DMSO for arthritis. What we do endorse is the idea that it might have limited usefulness as a pain reliever, and we are urging that the necessary testing of this possibility be carried out and an appropriate application be made to the FDA for approval for such limited use."

Since DMSO, a byproduct of the papermaking industry, is available as an industrial solvent, and also is approved for use in horses and dogs, people can readily obtain it. People apparently are using both types of DMSO to treat themselves. They are ingesting it as well as applying it to their skin; in some instances, it is being injected directly into the body.

Dr. Goyan said such use is risky for a number of reasons:

The industrial grade DMSO is not of the quality used for drug treatment of humans and is not made under conditions that are necessary for the production of human drugs.

The safety of DMSO in high concentrations and large amounts has not been established. Animal studies suggest that DMSO can affect the eyes and could cause loss of visual acuity or eye damage. Other side effects associated with its use include nausea, headache, and skin rash.

Since DMSO is a "carrier" chemical, it could also deliver harmful substances into the bloodstream if they are present in impure DMSO or are on the skin.

DMSO treatments are being offered in many facilities that were created solely to administer DMSO. It is sold through the mails and in stores as well. FDA is investigating to determine the scope of the problem and will take appropriate regulatory action if needed.

DMSO has been used industrially since the 1940's. Tests of DMSO as a human drug began in the mid 1960's and the drug has been tested for a number of purposes. An evaluation of DMSO in 1972 by the National Academy of Sciences concluded that it lacked scientific evidence of effectiveness for the treatment of any disease. NAS said further study was necessary.

In 1978, following the submission of studies, FDA approved it for treatment of interstitial cystitis. The agency is currently evaluating data on the use of DMSO in treating scleroderma, a crippling disorder involving the hands and other tissues in the body.

The Arthritis Foundation has said that DMSO does not appear to be the "wonder drug" it once promised to be. Dr. Goyan agreed, pointing out that the drug has been tested for a plethora of disease conditions, including mental retardation, retinitis pigmentosa, and genital herpes. Most of these studies, however, have been discontinued because of failure to prove effectiveness. Other conditions for which it is currently being tested include joint and spinal cord injuries.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky (Mr. HOPKINS).

The amendment was agreed to.

Mr. ALBOSTA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, in 1973 the fire retardant polybrominated biphenyl (PBB) was inadvertently mixed into livestock feed in Michigan. This contamination affected thousands of farm animals, resulting in their death or destruction.

Unfortunately, until the source of the contamination was determined, substantial amounts of PBB contaminated the meat and milk produced in those farms hit by PBB. The bloodstream of the people in Michigan, particularly in my area of Michigan and where farmers consume their own products, was infiltrated by this toxic chemical.

When I was in the Michigan Legislature, I served as chairman of a special committee that investigated the PBB incident in Michigan. I came away from those deliberations a very concerned man—concerned that the people I represented were not being protected from a hazardous situation they had no control over. It is with this concern that I came to the U.S. Congress in 1979. And, it is with this concern that I seek the chairman's clarification in this matter.

A study is currently being undertaken in the National Institute of Environmental Health Sciences into the effects of PBB on the human system. The results of this study, which are due within the year, will confirm my own thoughts as to the dangers of PBB. I have one problem with the study being undertaken, however. The current analysis includes people from all over the State of Michigan. Such a sample heavily favors those individuals who do not live on or near a farm that was contaminated by PBB. This suggests that such weighting would downplay the severity of the health ailments associated with PBB contamination. I would thus like to see a study of the people in two particular counties in Michigan that have been hit the hardest by this chemical. Comparing those two counties with two others in different areas of the Nation would provide a more accurate guide to the problems brought on by PBB.

Another study that I feel is vital would be of the environmental impact of PBB. Such a study, which I plan to request, would look into the toxicity level of PBB and the effect such contamination has on the land. In addition, the proper method of disposal and methods of clean-up of the chemical would be examined by the NIEHS under such a study.

I would like to ask the chairman of the subcommittee whether it would be in the spirit of the legislation before us today to authorize the two studies I referred to in my statement?

I would like to ask the chairman of the subcommittee whether it would be in the spirit of the legislation before us today to authorize the two studies I referred to in my statement?

Mr. WAXMAN. Mr. Chairman, I appreciate Mr. ALBOSTA's concern for the safety and well-being of the people in his congressional district and the State of Michigan. In my opinion as chairman of the subcommittee with jurisdiction over that agency I believe that the studies on the health effects of PBB which you mention in your statement would be well within the scope of authority of the National Institute of Environmental Health Sciences.

Mr. ALBOSTA. I thank the gentleman.

AMENDMENT OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WAXMAN: Page 94, insert after line 18 the following:

SEC. 7. (a) Whenever in this section (other than in subsections (k) and (l)(1)) an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

(b) The second sentence of section 1501 (b)(1) (42 U.S.C. 300k–1(b)(1)) is amended by striking out "in" and inserting in lieu thereof "including those in".

(c) Section 1513(g)(2) (42 U.S.C. 3001–2 (g)(2)) is amended by striking out "three years" and inserting in lieu thereof "five years".

(d) Section 1516(d)(3) (42 U.S.C. 3001–5(d)(3)) is amended (1) by inserting after "of subsection (c)(1)" the following: "(but without regard to the dollar limit prescribed by subparagraph (A)(ii))", and (2) by inserting before ", to the extent" the following: "no such agency shall receive a grant in excess of $3,750,000 and".

(e) The first sentence of section 1524(c)(6) (42 U.S.C. 300m–3(c)(6)) is amended by striking out "section 409" and inserting in lieu thereof "section 409 or 410".

(f) Section 1527(b)(3)(B) (42 U.S.C. 300m–6(b)(3)(B)) is amended (1) by striking out "that (i)" and inserting in lieu thereof "that", (2) by striking out ", which intends to acquire the controlling interest or which intends to use the facility is" and inserting in lieu thereof "which intends to acquire the controlling interest in or use the facility is (i)", (3) by striking out "and (ii)" and inserting in lieu thereof "and", and (4) by striking out "or the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (1)" and inserting in lieu thereof ", or (ii) a health care facility which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (B) of paragraph (1) and with respect to its patients meets the requirements of clause (iv) of such subparagraph".

(g) The last sentence of section 1531(3) (42 U.S.C. 300n(3)) is amended (1) by striking out "An individual" and inserting in lieu thereof "Notwithstanding subparagraph (B), an individual", and (2) by striking out "an entity" and inserting in lieu thereof "one or more entities".

(h) Section 1531(5) (42 U.S.C. 300n(5)) is amended by striking out "maintained or developed by the Department of Commerce and".

(i) Section 1531(6) (42 U.S.C. 300n(6)) is amended by adding at the end the following: "The term 'capital expenditure' does not include an expenditure made by or on behalf of a health care facility for health research at the facility if the obligation of the expenditure or the operating costs of the research will not affect the charges of the facility for the provision of medical or other health services, if the research will not involve the provision of such services to patients of any health care facility, and if the person making the expenditure files a notice with the State agency of the State in which the facility is located describing the nature of the research and providing assurances satisfactory to the State agency that the expenditure or operating costs will not affect such charges and the research does not involve the provision of medical or other health services to patients of any health care facility. A notice required by the preceding sentence respecting an expenditure shall be made in writing and filed with the appropriate State agency at least thirty days before

any contractual arrangement is entered into to make the expenditure.".

(j) Section 1532(b)(12)(D) (42 U.S.C. 300n-1(b)(12)(D) is amended by striking out "administratively".

(k) Section 124(c) of Public Law 96-79 (93 Stat. 627) is amended to read as follows:

"(c)(1) section 1524(b)(1)(C) is amended by striking out 'one-third' and inserting in lieu thereof 'one-half'.

"(2) Section 1524(b)(1)(D) is amended (A) by striking out 'two' and inserting in lieu thereof 'one', and (B) by striking out 'an ex officio' and inserting in lieu thereof 'a nonvoting, ex officio'.".

(l)(1) Section 129(b)(2)(A) of Public Law 96-79 (93 Stat. 630) is amended by striking out "Health Planning and Resources Development Amendments of 1979" and inserting in lieu thereof "Health Planning Technical Amendments of 1980".

(2) Section 1521(d)(1)(B)(i) (42 U.S.C. 300m(d)(1)(B)(i)) is amended by striking out "Health Planning and Resources Development Amendments of 1979" and inserting in lieu thereof "Health Planning Technical Amendments of 1980".

(m) Section 338(a) (42 U.S.C. 254k(a)) is amended (1) by striking out "and" after "1979;", and (2) by adding before the period a semicolon and the following: "and $94,000,000 for the fiscal year ending September 30, 1981".

Mr. WAXMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Chairman, my colleagues, this amendment is the text of the bill, H.R. 7911, which passed the House on Monday on the Suspension Calendar without objection by any Member. By including this bill as an amendment to the pending matter, we can expedite its passage by the Congress.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I strongly support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. WAXMAN).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. DAN DANIEL) having assumed the chair, Mr. WEISS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7036) to amend the Public Health Service Act to revise and extend the authorities under that act relating to national research institutes, and for other purposes, pursuant to House Resolution 765, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. COLLINS of Texas. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 292, nays 48, not voting 92, as follows:

[Roll No. 506]

YEAS—292

Akaka
Albosta
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.Dak.
Annunzio
Archer
Aspin
Atkinson
Bafalis
Bailey
Baldus
Barnes
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Boggs
Bolling
Bonior
Bonker
Brinkley
Brodhead
Broomfield
Brown, Calif.
Brovhill
Burlison
Burton, John
Burton, Phillip
Byron
Carr
Carter
Cavanaugh
Cheney
Chisholm
Clausen
Clay
Clinger
Coelho
Coleman
Conable
Conte
Corcoran
Corman
Coughlin
Courter
D'Amours
Daniel, Dan
Danielson
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Dixon
Dornan
Dougherty
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edwards, Calif.
Edwards, Okla.
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Fascell
Fazio
Ferraro
Findley
Fisher
Fithian
Florio
Ford, Tenn.
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Lee
Lehman
Leland
Lent
Lewis
Livingston
Lloyd
Loeffler
Long, Md.
Lowry
Lujan
Luken
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mattox
Mazzoli
Mica
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Moore
Moorhead, Calif.
Murphy, Pa.
Musto
Myers, Ind.
Neal
Nedzi
Nelson
Nolan
Oakar
Ottinger
Patten
Patterson
Pease
Pepper
Perkins
Porter
Preyer
Price
Pritchard
Quayle
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Rodino
Rose
Rosenthal
Roybal
Royer
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Sharp
Shelby
Simon
Skelton
Smith, Nebr.
Snowe
Snyder
Solarz
Spellman
Spence
Stack
Staggers
Stangeland
Stark
Steed
Stewart
Stockman
Stokes
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wirth
Wolff
Wolpe
Wyatt
Wydler
Wylie
Yatron
Zablocki

NAYS—48

Andrews, N.C.
Ashbrook
Badham
Bauman
Beard, Tenn.
Buchanan
Burgener
Campbell
Collins, Tex.
Crane, Daniel
Crane, Philip
Daniel, R. W.
Dannemeyer
Edwards, Ala.
Fenwick
Forsythe
Fountain
Hansen
Holt
Jeffries
Kazen
Kelly
Leach, Iowa
Levitas
Lott
McDonald
Michel
Montgomery
Natcher
O'Brien
Paul
Petri
Pickle
Pursell
Quillen
Roberts
Robinson
Rousselot
Rudd
Sabo
Schulze
Sensenbrenner
Shumway
Shuster
Solomon
Stenholm
Stump
Taylor

NOT VOTING—92

Abdnor
Addabbo
Alexander
Anthony
Applegate
Ashley
AuCoin
Barnard
Blanchard
Boland
Boner
Bouquard
Bowen
Brademas
Breaux
Brooks
Brown, Ohio
Butler
Carney
Chappell
Cleveland
Collins, Ill.
Conyers
Cotter
Davis, S.C.
Devine
Dodd
Donnelly
Downey
Early
Edgar
Emery
Evans, Ind.
Fary
Fish
Flippo
Foley
Ford, Mich.
Gephardt
Giaimo
Gibbons
Hanley
Harsha
Hinson
Holland
Hollenbeck
Holtzman
Ichord
Leach, La.
Leath, Tex.
Lederer
Long, La.
Lundine
McHugh
Mathis
Mavroules
Mollohan
Moorhead, Pa.
Motti
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Pa.
Nichols
Nowak
Oberstar
Obey
Panetta
Pashayan
Peyser
Railsback
Roe
Rostenkowski
Roth
Russo
Shannon
Smith, Iowa
St Germain
Stanton
Symms
Vanik
Whitehurst
Whitley
Wilson, C. H.
Wilson, Tex.
Winn
Wright
Yates
Young, Alaska
Young, Fla.
Young, Mo.
Zeferetti

□ 1430

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Railsback.
Mr. Zeferetti with Mr. Stanton.

Mr. Hanley with Mr. Young of Florida.
Mr. McHugh with Mr. Symms.
Mr. Cotter with Mr. Abdnor.
Mr. Boland with Mr. Cleveland.
Mr. Barnard with Mr. Harsha.
Mr. Brademas with Mr. Winn.
Mr. Breaux with Mr. Butler.
Mr. Murphy of New York with Mr. Whitehurst.
Mr. Nichols with Mr. Emery.
Mr. Mottl with Mr. Hollenbeck.
Mr. Russo with Mr. Young of Alaska.
Mr. St Germain with Mr. Brown of Ohio.
Mr. Wright with Mr. Carney.
Mr. Obey with Mr. Roth.
Mr. Panetta with Mr. Pashayan.
Mr. Mathis with Mr. Hinson.
Mr. Lederer with Mr. Fish.
Mr. Giaimo with Mr. Devine.
Mr. Dodd with Mr. Bowen.
Mrs. Bouquard with Mr. Myers of Pennsylvania.
Mr. Murtha with Mr. Vanik.
Mr. Whitley with Mr. Charles H. Wilson of California.
Mr. Yates with Mr. Nowak.
Mr. Young of Missouri with Mr. Moorhead of Pennsylvania.
Mr. Mollohan with Mr. Edgar.
Mr. Flippo with Mr. Leach of Louisiana.
Mr. Fary with Mr. Evans of Indiana.
Mr. Downey with Mr. Donnelly.
Mr. Foley with Mr. Shannon.
Mr. Ford of Michigan with Mr. Lundine.
Mr. AuCoin with Mr. Boner of Tennessee.
Mr. Anthony with Mr. Applegate.
Mr. Alexander with Mr. Ashley.
Mr. Brooks with Mr. Blanchard.
Mr. Murphy of Illinois with Mr. Peyser.
Mr. Roe with Mrs. Collins of Illinois.
Mr. Chappell with Mr. Conyers.
Mr. Davis of South Carolina with Mr. Smith of Iowa.
Mr. Ichord with Mr. Gephardt.
Mr. Long of Louisiana with Ms. Holtzman.
Mr. Mavroules with Mr. Leath of Texas.
Mr. Gibbons with Mr. Holland.
Mr. Rostenkowski with Mr. Oberstar.

Mr. PETRI changed his vote from "yea" to "nay."

Mr. COURTER changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 765, the Committee on Interstate and Foreign Commerce is discharged from the further consideration of the Senate bill (S. 988) entitled the "Health Sciences Promotion Act of 1980."

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. WAXMAN moves to strike out all after the enacting clause of the Senate bill, S. 988, and to insert in lieu thereof the provisions of the bill, H.R. 7036, as passed, as follows:

That this Act may be cited as the "Health Research Act of 1980".

SEC. 2. Title IV of the Public Health Service Act is amended to read as follows:

"TITLE IV—NATIONAL RESEARCH INSTITUTES

"PART A—NATIONAL INSTITUTES OF HEALTH

"ORGANIZATION OF NIH

"SEC. 401. (a) The National Institutes of Health is an agency of the Service. The following national research institutes are agencies of the National Institutes of Health:

"(1) The National Cancer Institute.

"(2) The National Heart, Lung, and Blood Institute.

"(3) The National Institute of Arthritis, Metabolism, and Digestive Diseases.

"(4) The National Institute on Aging.

"(5) The National Institute of Allergy and Infectious Diseases.

"(6) The National Institute of Child Health and Human Development.

"(7) The National Institute of Dental Research.

"(8) The National Eye Institute.

"(9) The National Institute of Neurological and Communicative Disorders and Stroke.

"(10) The National Institute of General Medical Sciences.

"(11) The National Institute of Environmental Health Sciences.

"(12) Each national research institute established by the Secretary under subsection (b).

"(b)(1) The Secretary may establish in the National Institutes of Health one or more additional national research institutes to conduct and support research, training, health information, and related programs relating to any particular disease or groups of diseases or any other aspect of human health when the Secretary determines that an additional institute is necessary to carry out such activities.

"(2) Any institute established under paragraph (1) may be abolished and its functions transferred elsewhere in the National Institutes of Health upon a finding by the Secretary that a separate institute is no longer required for such purposes.

"(3) In lieu of the establishment under paragraph (1) of an additional institute with respect to any disease, diseases, or other aspect of human health the Secretary may expand the functions of any national research institute so as to include functions with respect to such disease, diseases, or other aspect of human health, and the Secretary may terminate such expansion and transfer the functions given such institute elsewhere in the National Institutes of Health upon a finding by the Secretary that such expansion is no longer necessary. In the case of any such expansion of an existing institute, the Secretary may change the title of the institute so as to reflect its new functions.

"(c) For purposes of this title, the term 'national research institute' means a national research institute referred to in subsection (a).

"APPOINTMENT AND AUTHORITY OF DIRECTORS OF NIH

"SEC. 402. (a) The National Institutes of Health shall be headed by the Director of the National Institutes of Health (hereinafter in this title referred to as the 'Director of NIH') who shall be appointed by the President by and with the advice and consent of the Senate. The Director of NIH shall perform functions as provided under subsection (b) and as the Secretary may otherwise prescribe.

"(b) The Secretary, and the Director of NIH pursuant to such delegation as the Secretary may prescribe—

"(1) shall be responsible for the overall direction of the National Institutes of Health and for the establishment and implementation of general policies respecting the management and operation of programs and activities within the National Institutes of Health;

"(2) shall coordinate and oversee the operation of the national research institutes and other administrative entities within the National Institutes of Health;

"(3) for the national research institutes and other administrative entities within the National Institutes of Health—

"(A) may—

"(i) after consultation with the National Institutes of Health Advisory Board, acquire and construct, and

"(ii) improve, repair, operate, and maintain,

laboratories, other research facilities, other facilities, equipment, and other real or personal property (including patents), and

"(B) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adajacent to the District of Columbia for use for a period not to exceed ten years;

"(4) may secure resources for research conducted by or through the National Institutes of Health;

"(5) may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific peer review groups as are needed to carry out the requirements of this title and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service on such groups;

"(6) shall assure that research at the National Institute of Health is subject to review in accordance with section 472;

"(7) may secure for the National Institutes of Health consultation services and advice of persons from the United States or abroad;

"(8) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

"(9) may, for purposes of study, admit and treat at facilities of the National Institutes of Health individuals not otherwise eligible for such treatment;

"(10) may accept voluntary and uncompensated services; and

"(11) may perform such other administrative functions as the Secretary determines are needed to carry out effectively this title.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

"(c)(1) The Secretary, after consultation with the National Institutes of Health Advisory Board, may obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than two hundred experts or consultants, with scientific or other professional qualifications, for the National Institutes of Health.

"(2)(A) Except as provided in subparagraph (B), experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, United States Code, for their travel and other expenses associated with their assignment.

"(B) Expenses specified in subparagraph (A) shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the

assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States.

"(d) There shall be in the National Institutes of Health an Assistant Director to whom the Director of NIH shall delegate the function of promoting the prevention, education, and health information programs of the national research institutes and coordinating such programs between the institutes and between the institutes and other public and private entities.

"NATIONAL INSTITUTES OF HEALTH ADVISORY BOARD

"SEC. 403. (a) The Secretary shall appoint a National Institutes of Health Advisory Board (hereinafter in this section referred to as the 'Advisory Board'). The Advisory Board shall advise, consult with, and make recommendations to the Secretary and the Director of NIH with respect to the functions under section 402 and with respect to the policies to be followed in the exercise of such functions.

"(b)(1) The Advisory Board shall consist of—

"(A) twelve members appointed by the Secretary from among the leading representatives of the health and scientific disciplines;

"(B) five members appointed by the Secretary from leaders in each of the fields of public policy, law, health policy, economics, and management and one member appointed by the Secretary from the general public; and

"(C) such nonvoting, ex officio members as the Secretary may designate to assist the Advisory Board in carrying out its functions.

Not less than four of the appointed members of the Advisory Board shall be experts in public health or the behavioral or social sciences.

"(2) Members of the Advisory Board who are officers or employees of the United States shall not receive any compensation for service on the Advisory Board. The other members of the Advisory Board shall receive, for each day they are engaged in the performance of the functions of the Advisory Board, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime.

"(c) The term of office of an appointed member of the Advisory Board is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and of the members first appointed to the Advisory Board—

"(1) five members shall be appointed for a term of three years,

"(2) five members shall be appointed for a term of two years, and

"(3) three members shall be appointed for a term of one year,

as designated by the Secretary at the time of appointment. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to the Advisory Board before two years from the date of the expiration of such term of office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than ninety days from the date the vacancy occurred.

"(d) The chairman of the Advisory Board shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of NIH to be the chairman of the Advisory Board. The term of office of the chairman shall be two years.

"(e) The Advisory Board shall meet at the call of the chairman or upon the request of the Director of NIH, but at least four times in each fiscal year. The Advisory Board may hold such hearings, take such testimony, and sit and act at such times and places as the Advisory Board deems advisable to carry out its functions.

"(f) The Director of NIH shall designate a member of the staff of the National Institutes of Health to serve as the executive secretary of the Advisory Board. The Director of NIH shall make available to the Advisory Board such staff assistants, information, and other assistance as it may require to carry out its functions. The Director of NIH shall provide orientation and training for new members of the Advisory Board to provide them with such information and training as may be appropriate for their effective participation in the functions of the Advisory Board.

"(g) In carrying out its functions the Advisory Board may appoint subcommittees, convene workshops and conferences, and collect data.

"(h) The Advisory Board shall prepare, for inclusion in the annual report under section 404, an annual report respecting the activities of the Advisory Board and including its recommendations respecting the program policies of the Secretary and the Director of NIH.

"ANNUAL REPORT

"SEC. 404. The Secretary shall transmit to the President and to the Congress an annual report which shall be prepared by the Director of NIH and which shall consist of—

"(1) a description of the activities carried out through the National Institutes of Health and the policies respecting the programs of the National Institutes of Health, a five-year plan for such activities and policies, and such recommendations respecting such policies as the Secretary deems appropriate;

"(2) without revision, the annual report of the National Institutes of Health Advisory Board; and

"(3) the annual reports of the Directors of each of the national research institutes and, without revision, the annual report of the advisory council for each such institute.

Each report shall be submitted not later than November 30 of each year and shall relate to the fiscal year ending on the preceding September 30.

"PART B—GENERAL PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

"APPOINTMENT AND AUTHORITY OF THE DIRECTORS OF THE NATIONAL RESEARCH INSTITUTES

"SEC. 407. (a) The Director of the National Cancer Institute shall be appointed by the President, and the Directors of the other national research institutes shall be appointed by the Secretary.

"(b)(1) With respect to the human disease or disorder or other aspect of human health for which the institutes were established, the Secretary, acting through the Director of each national research institute—

"(A) shall encourage and support research, investigations, experiments, demonstrations, and studies in the health sciences related to—

"(i) the maintenance of health,

"(ii) the detection, diagnosis, treatment, and prevention of human diseases and other disorders,

"(iii) the rehabilitation of individuals with human diseases, disorders, and disabilities, and

"(iv) the expansion of knowledge of the processes underlying human diseases, disorders, and disabilities, the processes underlying the normal and pathological functioning of the body and its organ systems, and the processes underlying the interactions between the human organism and the environment;

"(B) may, subject to the review prescribed under section 472 and advisory council review prescribed by section 408(a)(3)(A)(i), conduct the research, investigations, experiments, demonstrations, and studies referred to in subparagraph (A);

"(C) may conduct and support research training for which fellowship support may not be provided under section 461;

"(D) shall develop, implement, and support demonstrations and programs for the application of the results of the activities of the institute to clinical practice and disease prevention activities;

"(E) shall develop, conduct, and support public and professional education and information programs;

"(F) shall secure, develop and maintain, distribute, and support the development and maintenance of resources needed for research;

"(G) may make available the facilities of the institutes to appropriate entities and individuals engaged in research activities and cooperate with and assist Federal and State agencies charged with protecting the public health;

"(H) may accept unconditional gifts made to the institutes for their activities, and, in the case of gifts of a value in excess of $50,000, establish suitable memorials to the donor;

"(I) may secure for the institutes consultation services and advice of persons from the United States or abroad;

"(J) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

"(K) may accept voluntary and uncompensated services; and

"(L) may perform such other functions as the Secretary determines are needed to carry out effectively the purposes of the institutes.

The indemnification provisions of section 2354, title 10, United States Code, shall apply with respect to contracts entered into under subsection and section 402(b).

"(2) Support for an activity or program under this subsection may be provided through grants, contracts, and cooperative agreements. The Secretary, through the Director of each national research institute—

"(A) may approve any contract for resources for research conducted at or through the institute, except that if the total cost of the contract to be approved exceeds $500,000 the contract may be approved only after the advisory council to the institute has recommended approval of th contract;

"(B) may approve other contracts under paragraph (1) for research or training, except that—

"(i) if the total cost of the contract to be approved does not exceed $500,000, the contract may be approved only after appropriate technical and scientific review in accordance with section 472, and

"(ii) if the total cost of the contract to be approved exceeds $500,000, the contract may be approved only after appropriate technical and scientific review in accordance with section 472 and recommendation for approval by the advisory council to the institute; and

"(C) may approve grants, and cooperative agreements under paragraph (1) for research or training except that—

"(i) if the direct cost of the grant, or cooperative agreement to be approved does not exceed $50,000, such grant or cooperative agreement may be approved only after appropriate technical and scientific review in accordance with section 472, and

"(ii) if the direct cost of the grant, or cooperative agreement to be approved exceeds $50,000, such grant or cooperative agreement may be approved only after appropriate technical and scientific review in accordance with section 472 and recommendation for approval by the advisory council to the institute.

"(c) In carrying out subsection (b), each Director of a national research institution shall—

"(1) coordinate the activities of the institute with similar programs of other public and private entities; and

"(2) cooperate with the Directors of other national research institutes in the development and support of multidisciplinary research and research that involves more than one institute.

"ADVISORY COUNCILS

"SEC. 408. (a)(1) Except as provided in subsection (i), the Secretary shall appoint an advisory council for each national research institute which (A) shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the institute on matters related to the activities carried out through the institute and the policies respecting such activities, and (B) shall carry out special functions prescribed by part C.

"(2) Each advisory council for a national research institute shall recommend to the Secretary acceptance, in accordance with section 501, of conditional gifts for study, investigation, or research respecting the disease, diseases, or other aspect of human health with respect to which the institute was established, for the acquisition of grounds, or for the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) shall (I) on the basis of the materials provided under section 472(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research, and (II) periodically review the program of research which is being carried out at the institute and make recommendations to the Director respecting the program, (ii) shall review contracts and applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 407(b)(2) and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, (iii) shall review contracts proposed to be entered into for resources for research and for which advisory council approval is required under section 407(b)(2) and recommend for approval contracts that will effectively meet the needs of the institute, (iv) may review any grant, contract, or cooperative agreement proposed to be made or entered into and (v) may review the activities carried out under contracts and cooperative agreements referred to in clauses (ii) and (iii);

"(B) may collect information as to studies which are being carried on in the United States or any other country as to such disease, diseases, or other aspect of human health by correspondence or by personal investigation of such studies, and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public;

"(C) shall advise the Secretary and the Director of the institute respecting the portion of the funds appropriated for the institute which should be obligated for grants, contracts, and cooperative agreements; and

"(D) may appoint subcommittees and convene workshops and conferences.

"(4) Any advisory council established by the Secretary for a national research institute established under section 401(b) may be terminated by the Secretary when the new institute which occasioned such new advisory council is terminated.

"(b)(1) Each advisory council shall consist of nonvoting, ex officio members and eighteen members appointed by the Secretary. The ex officio members of an advisory council shall consist of the Secretary, the Director of NIH, the Director of the national research institute for which the council is established, the Chief Medical Officer of the Veterans' Administration, a medical officer designated by the Secretary of Defense, or the designees of such persons and such additional officers or employees of the United States as the Secretary deems necessary for the advisory council to effectively carry out its functions. The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Twelve members shall be appointed from among the leading representatives of the health and scientific disciplines relevant to the activities of the institute for which the advisory council is established.

"(B) Five members appointed by the Secretary from leaders in each of the fields of public policy, law, health policy, economics, and management and one member appointed by the Secretary from the general public.

Of the members appointed to each advisory council, not less than four shall be experts in public health or the behavioral or social sciences.

"(2) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime.

"(c) The term of office of an appointed member of an advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to stagger the terms of the members. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within ninety days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the institute for which the advisory council is established to be the chairman of the advisory council. The term of office of the chairman shall be two years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least three times each fiscal year. The advisory council may hold such hearings, take such testimony, and sit and act at such times and places as the advisory council deems advisable to carry out its functions.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff assistants, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

"(g) This section does not terminate the membership of any advisory council to a national research institute which was in existence on the date of the enactment of the Health Research Act of 1980. After such date—

"(1) the Secretary shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition prescribed by this section,

"(2) each advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section, and

"(3) the Director of each national research institute shall perform for such advisory council the functions prescribed by this section.

"(h) Each advisory council shall prepare for inclusion in the annual report made under section 404 an annual report (1) respecting the activities of the advisory council in the fiscal year respecting which the report is prepared, (2) commenting on the progress of the national research institute for which it was established in meeting its objectives, and (3) making recommendations respecting the future directions and program and policy emphasis of the institute.

"(i)(1) This section applies to the National Cancer Advisory Board, the advisory council for the National Cancer Institute, except that (A) appointments to such Board shall be made by the President, (B) of the members appointed to the Board not less than five members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis involving occupational and dietary factors), (C) the chairman of the Board shall be selected by the President from the appointed members and shall serve as chairman for a term of two years, (D) the ex officio members of the Board shall be the Secretary, the Director of the Office of Science and Technology Policy, the Director of NIH, the chief medical officer of the Veterans' Administration, the Director of the National Institute for Occupational Safety and Health, the Director of the National Institute of Environmental Health Sciences, the Secretary of Labor, the Commissioner of the Food and Drug Administration, the Administrator of the Environmental Protection Agency, the Chairman of the Consumer Product Safety Commission or the designees of such persons, and a medical officer designated by the Secretary of Defense, and (E) the Board shall meet at least four times each fiscal year.

"(2) This section applies to the advisory council to the National Heart, Lung and Blood Institute, except that the advisory council shall meet at least four times each fiscal year.

"ANNUAL REPORT

"SEC. 409. The Director of each national research institute shall prepare for inclusion in the annual report made under section 404 an annual report which shall consist of—

"(1) a description of the activities and program policies of the Director of the Institute in the fiscal year respecting which the report is prepared; and

"(2) a five-year plan for such activities and policies and such recommendations as the Director of the institute deems appropriate.

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 410. (a) The following amounts are authorized to be appropriated for the national research institutes:

"(1)(A) For the National Cancer Institute (other than its programs under sections 413 and 415), there are authorized to be appropriated $400,000,000 for the fiscal year ending June 30, 1972, $500,000,000 for the fiscal year ending June 30, 1973, $600,000,000 for the fiscal year ending June 30, 1974, $750,000,000 for the fiscal year ending June 30, 1975, $830,000,000 for the fiscal year ending June 30, 1976, $985,000,000 for the fiscal year ending September 30, 1977, $923,590,000 for the fiscal year ending September 30, 1978, $924,500,000 for the fiscal year ending September 30, 1979, $927,000,000 for the fiscal year ending September 30, 1980, $1,074,000,000 for the fiscal year ending September 30, 1981, $1,220,000,000 for the fiscal year ending September 30, 1982, and $1,376,000,000 for the fiscal year ending September 30, 1983.

"(B) There are authorized to be appropriated for the programs under section 413, $20,000,000 for the fiscal year ending June 30, 1972, $30,000,000 for the fiscal year ending June 30, 1973, $40,000,000 for the fiscal year ending June 30, 1974, $53,500,000 for the fiscal year ending June 30, 1975, $68,500,000 for the fiscal year ending June 30, 1976, $88,500,000 for the fiscal year ending September 30, 1977, $84,560,000 for the fiscal year ending September 30, 1978, $90,500,000 for the fiscal year ending September 30, 1979, $103,000,000 for the fiscal year ending September 30, 1980, $80,500,000 for the fiscal year ending September 30, 1981, $91,500,000 for the fiscal year ending September 30, 1982, and $103,000,000 for the fiscal year ending September 30, 1983.

"(C) There are authorized to be appropriated for section 415, $90,000,000 for the fiscal year ending September 30, 1981, $108,000,000 for the fiscal year ending September 30, 1982, and $130,000,000 for the fiscal year ending September 30, 1983.

"(2)(A) For the National Heart, Lung, and Blood Institute (other than its programs under section 422) there are authorized to be appropriated $375,000,000 for the fiscal year ending June 30, 1973, $425,000,000 for the fiscal year ending June 30, 1974, $475,000,000 for the fiscal year ending June 30, 1975, $339,000,000 for fiscal year 1976, $373,000,000 for the fiscal year ending September 30, 1977, $426,320,000 for the fiscal year ending September 30, 1978, $470,000,000 for the fiscal year ending September 30, 1979, $515,000,000 for the fiscal year ending September 30, 1980, $570,700,000 for the fiscal year ending September 30, 1981, $648,320,000 for the fiscal year ending September 30, 1982, and $731,300,000 for the fiscal year ending September 30, 1983. Of the sums appropriated under this subsection for any fiscal year, not less than 15 per centum of such sums shall be reserved for programs respecting diseases of the lung and not less than 15 per centum of such sums shall be reserved for programs respecting blood diseases and blood resources.

"(B) There are authorized to be appropriated for the programs under section 422, $25,000,000 for the fiscal year ending June 30, 1973, $35,000,000 for the fiscal year ending June 30, 1974, $45,000,000 for the fiscal year ending June 30, 1975, $10,000,000 for fiscal year 1976, $30,000,000 for the fiscal year ending September 30, 1977, $30,000,000 for the fiscal year ending September 30, 1978, $40,000,000 for the fiscal year ending September 30, 1979, $45,000,000 for the fiscal year ending September 30, 1980, $45,000,000 for the fiscal year ending September 30, 1981, $45,000,000 for the fiscal year ending September 30, 1982, and $50,000,000 for the fiscal year ending September 30, 1983.

"(3)(A) For the National Institute of Arthritis, Metabolism, and Digestive Diseases (other than activities of or relating to the Institute for which appropriations are authorized under subparagraph (B)), there are authorized to be appropriated $393,798,000 for the fiscal year ending September 30, 1981, $447,355,000 for the fiscal year ending September 30, 1982, and $504,616,000 for the fiscal year ending September 30, 1983.

"(B)(i) For each of the advisory boards under section 435 there are authorized to be appropriated $300,000 for the fiscal year ending September 30, 1981, $300,000 for the fiscal year ending September 30, 1982, and $300,000 for the fiscal year ending September 30, 1983.

"(ii)(I) For grants for arthritis demonstration projects under section 436(a) there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1978, $4,000,000 for the fiscal year ending September 30, 1979, and $5,000,000 for the fiscal year ending September 30, 1980, and for each of the next three fiscal years.

"(II) For the arthritis data system under section 436(c) there are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1978, $1,250,000 for the fiscal year ending September 30, 1979, and $1,500,000 for the fiscal year ending September 30, 1980, and for each of the next three fiscal years.

"(iii) For multipurpose arthritis centers under section 437 there are authorized to be appropriated $11,000,000 for the fiscal year ending June 30, 1976, $20,000,000 for the fiscal year ending June 30, 1977, $18,700,000 for the fiscal year ending September 30, 1978, $19,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, $14,000,000 for the fiscal year ending September 30, 1981, $17,000,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983.

"(iv) For diabetes research and training centers and the diabetes data system under section 438 there are authorized to be appropriated $8,000,000 for the fiscal year ending June 30, 1975, $12,000,000 for the fiscal year ending June 30, 1976, $20,000,000 for the fiscal year ending June 30, 1977, $12,000,000 for the fiscal year ending September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, $14,000,000 for the fiscal year ending September 30, 1981, $17,000,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983.

"(4) For the National Institute on Aging, there are authorized to be appropriated $80,780,000 for the fiscal year ending September 30, 1981, $91,766,000 for the fiscal year ending September 30, 1982, and $103,512,000 for the fiscal year ending September 30, 1983.

"(5) For the National Institute of Allergy and Infectious Diseases, there are authorized to be appropriated $248,574,000 for the fiscal year ending September 30, 1981, $282,380,000 for the fiscal year ending September 30, 1982, and $318,525,000 for the fiscal year ending September 30, 1983.

"(6) For the National Institute of Child Health and Human Development, there are authorized to be appropriated $241,164,000 for the fiscal year ending September 30, 1981, $273,962,000 for the fiscal year ending September 30, 1982, and $309,029,000 for the fiscal year ending September 30, 1983.

"(7) For the National Institute of Dental Research, there are authorized to be appropriated $78,839,000 for the fiscal year ending September 30, 1981, $89,561,000 for the fiscal year ending September 30, 1982, and $101,025,000 for the fiscal year ending September 30, 1983.

"(8) For the National Eye Institute, there are authorized to be appropriated $163,000,000 for the fiscal year ending September 30, 1981, $180,000,000 for the fiscal year ending September 30, 1982, and $200,000,000 for the fiscal year ending September 3, 1983.

"(9) For the National Institute of Neurological and Communicative Disorders and Stroke, there are authorized to be appropriated $279,268,000 for the fiscal year ending September 30, 1981, $317,248,000 for the fiscal year ending September 30, 1982, and $357,856,000 for the fiscal year ending September 30, 1983.

"(10) For the National Institute of General Medical Sciences, there are authorized to be appropriated $360,600,000 for the fiscal year ending September 30, 1981, $409,642,000 for the fiscal year ending September 30, 1982, and $462,076,000 for the fiscal year ending September 30, 1983.

"(11) For the National Institute of Environmental Health Sciences, there are authorized to be appropriated $96,834,000 for the fiscal year ending September 30, 1981, $110,003,000 for the fiscal year ending September 30, 1982, and $124,083,000 for the fiscal year ending September 30, 1983.

"(b) For each national research institute and for each activity for which there is an appropriation authorization for the fiscal year ending September 30, 1983, under subsection (a) there is authorized to be appropriated for the fiscal year ending September 30, 1984, the amount authorized to be appropriated for the preceding fiscal year plus 15 per centum of such amount unless Congress by law authorizes a different amount.

"(c)(1) No funds appropriated under section 301(a) may be used for any activity undertaken by or through a national research institute listed in paragraphs (1) through (11) of section 401(a).

"(2) No funds appropriated under subsection (a) may be used for National Research Service Awards under section 461.

"(d)(1) If the authorization of appropriations under subsection (a) for a national research institute is not sufficient to enable the institute to accelerate research in an area of special promise or to pursue a breakthrough in research, the Director of NIH may, upon request, allocate, from funds appropriated under paragraph (2), to the institute such funds as may be necessary to accelerate such research or to pursue such a breakthrough.

"(2) There is authorized to be appropriated for the period ending September 30, 1983, to the Director of NIH to carry out paragraph (1) $100,000,000 to remain available for obligation in such period. The Director of NIH may not request an appropriation under this paragraph unless the request has been approved by the National Institutes of Health Advisory Board.

"(3) The Director of NIH shall report annually to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a description of the activities for which funds were provided under paragraph (1) and the amount provided for each such activity.

"PART C—SPECIFIC PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

"Subpart 1—National Cancer Institute

"PURPOSE OF INSTITUTE

"SEC. 411. The general purpose of the National Cancer Institute (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to the cause, diagnosis, prevention, and treatment of cancer.

"NATIONAL CANCER PROGRAM

"SEC. 412. The National Cancer Program shall consist of (1) an expanded, intensified, and coordinated cancer research program encompassing the research programs conducted and supported by the Institute and the related research programs of the other national research institutes and including an expanded and intensified research program for the prevention of cancer caused by occupational or environmental exposure to carcinogens, and (2) the other programs and activities of the Institute.

"CANCER CONTROL PROGRAMS

"SEC. 413. The Director of the Institute shall establish and support, demonstration, education, and other programs for the detection, diagnosis, prevention, and treatment of cancer and for rehabilitation and counseling respecting cancer. Programs established and supported under this section shall include—

"(1) locally initiated education and demonstration programs (and regional networks of such programs) to transmit research results and to disseminate information respecting the detection, diagnosis, prevention, and treatment of cancer and rehabilitation and counseling respecting cancer to physicians and other health professionals who provide care to individuals who have cancer;

"(2) the demonstration of and the education of health professionals in—

"(A) effective methods for the prevention and early detection of cancer and the identification of individuals with a high risk of developing cancer, and

"(B) improved methods of patient referral to appropriate centers for early diagnosis and treatment of cancer; and

"(3) the demonstration of new methods for the dissemination of information to the general public concerning the prevention, early detection, diagnosis, and treatment and control of cancer and information concerning unapproved and ineffective methods, drugs, and devices for the diagnosis, prevention, treatment, and control of cancer.

"SPECIAL AUTHORITIES OF THE SECRETARY AND THE DIRECTOR

"SEC. 414. (a) The Secretary, acting through the Director of the Institute, shall establish an information and education center to collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to cancer patients and their families, physicians and other health professionals, and the general public, information on cancer research, diagnosis, prevention, and treatment (including information respecting nutrition programs for cancer patients and the relationship between nutrition and cancer). The Director of the Institute may take such action as may be necessary to insure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

"(b) The Director of the Institute in carrying out the National Cancer Program—

"(1) may establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for cancer research and set standards of safety and care for persons using such materials;

"(2) may, with the approval of the advisory council for the Institute, support (A) research in the cancer field outside the United States by highly qualified foreign nationals which research can be expected to inure to the benefit of the American people, (B) collaborative research involving American and foreign participants, and (C) the training of American scientists abroad and foreign scientists in the United States:

"(3) may, with the approval of the advisory council for the Institute, support appropriate programs of education (including continuing education) and training;

"(4) may encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

"(5) may obtain (with the approval of the Institute's advisory council and in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of such service) the services of not more than one hundred and fifty-one experts or consultants who have scientific or professional qualifications;

"(6)(A) may—

"(i) with the approval of the Institute's advisory council, acquire and construct, and

"(ii) improve, repair, operate, and maintain, such laboratories, other research facilities, equipment, and other real or personal property (including patents) as the Director deems necessary;

"(B) may make grants for new construction or renovation of facilities; and

"(C) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

"(7) may, with the approval of the Institute's advisory council, appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as he deems desirable to advise him with respect to his functions;

"(8) may, subject to section 407(b)(2), enter into such contracts, leases, cooperative agreements, or other transactions, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5), as may be necessary in the conduct of his functions, with any public agency, or with any person, firm, association, corporation, or educational institution; and

"(9)(A) shall prepare and submit, directly to the President for review and transmitted to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for the National Cancer Program, after reasonable opportunity for comment (but without change) by the Secretary, the Director of NIH, and the Institute's advisory council; and (B) may receive from the President and the Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by the Institute.

"NATIONAL CANCER RESEARCH AND DEMONSTRATION CENTERS

"SEC. 415. The Director of the Institute, under policies established by the Director of NIH and after consultation with the Institute's advisory council, is authorized to enter into cooperative agreements with public or private nonprofit agencies or institutions to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for existing or new centers for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for cancer. Federal payments under this subsection in support of such cooperative agreements may be used for (1) construction (notwithstanding any limitation under section 473), (2) staffing and other basic operating costs, including such patient care costs as are required for research, (3) training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public respecting cancer, and (4) demonstration purposes. As used in this section, the term 'construction' does not include the acquisition of land, and the term 'training' does not include research training for which fellowship support may be provided under section 461. Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"PRESIDENT'S CANCER PANEL

"SEC. 416. (a)(1) The President's Cancer Panel (hereinafter in this section referred to as the 'Panel') shall be composed of three persons appointed by the President, who by virtue of their training, experience, and background are exceptionally qualified to appraise the National Cancer Program.

"(2)(A) Members of the Panel shall be appointed for three-year terms, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member who has been appointed for a term of three years may not be reappointed to the Panel before two years from the date of the expiration of such term of office. If a vacancy occurs in the Panel, the President shall make an appointment to fill the vacancy not later than ninety days from the date the vacancy occurred.

"(B) The President shall designate one of the members to serve as the chairman of the Panel for a term of one year.

"(C) Members of the Panel shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Panel.

"(3) The Panel shall meet at the call of the chairman, but not less often than four times a year. A transcript shall be kept of the proceedings of each meeting of the Panel, and the chairman shall make such transcript available to the public.

"(b) The Panel shall monitor the development and execution of the activities of the National Cancer Program, and shall report directly to the President. Any delays or blockages in rapid execution of the Program shall immediately be brought to the attention of the President. The Panel shall submit to the President periodic progress reports on the Program and shall submit to the President, the Secretary, and the Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, and shall submit such other reports as the President shall direct.

"Subpart 2—National Heart, Lung, and Blood Institute

"PURPOSE OF THE INSTITUTE

"SEC. 421. The general purpose of the National Heart, Lung, and Blood Institute (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and other programs with respect to heart, blood vessel, lung, and blood diseases and with respect to the use of blood and blood products and the management of blood resources.

"HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASE PREVENTION AND CONTROL PROGRAMS

"SEC. 422. The Director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council for the Institute, shall establish programs as necessary for cooperation with other Federal health agencies, State, local, and regional public health agencies, and nonprofit private health agencies in the diagnosis, prevention, and treatment (including the provision of emergency medical services) of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis, and treatment of such diseases of children.

"INFORMATION AND EDUCATION CENTER

"SEC. 423. The Secretary, acting through the Director of the Institute, shall establish an information and education center to col-

lect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to patients, families of patients, physicians and other health professionals, and the general public, information on research, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases, the maintenance of health to reduce the incidence of such diseases, and on the use of blood and blood products and the management of blood resources. In carrying out this section the Secretary shall place special emphasis upon—

"(1) the dissemination of information regarding diet and nutrition, environmental pollutants, exercise, stress, hypertension, cigarette smoking, weight control, and other factors affecting the prevention of arteriosclerosis and other cardiovascular diseases and of pulmonary and blood diseases, and

"(2) programs designed to encourage children to adopt healthful habits respecting the risk factors related to the prevention of such diseases.

"NATIONAL HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASES AND BLOOD RESOURCES PROGRAM

"SEC. 424. (a) The National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program (hereinafter in this subpart referred to as the 'Program') may provide for—

"(1) investigation into the epidemiology, etiology, and prevention of all forms and aspects of heart, blood vessel, lung, and blood diseases, including investigations into the social, environmental, behavioral, nutritional, biological, and genetic determinants and influences involved in the epidemiology, etiology, and prevention of such diseases;

"(2) studies and research into the basic biological processes and mechanisms involved in the underlying normal and abnormal heart, blood vessel, lung, and blood phenomena;

"(3) research into the development, trial, and evaluation of techniques, drugs, and devices (including computers) used in, and approaches to, the diagnosis, treatment (including the provision of emergency medical services), and prevention of heart, blood vessel, lung, and blood diseases and the rehabilitation of patients suffering from such diseases;

"(4) establishment of programs that will focus and apply scientific and technological efforts involving biological, physical, and engineering sciences to all facets of heart, blood vessel, lung and blood diseases with emphasis on refinement, development, and evaluation of technological devices that will assist, replace, or monitor vital organs and improve instrumentation for detection, diagnosis, and treatment of those diseases;

"(5) establishment of programs for the conduct and direction of field studies, large-scale testing and evaluation, and demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches to, and emergency medical services for, such diseases;

"(6) studies and research into blood diseases and blood, and into the use of blood for clinical purposes and all aspects of the management of its resources in this country, including the collection, preservation, fractionation, and distribution of it and its products;

"(7) the education (including continuing education) and training of scientists, clinical investigators, and educators, in fields and specialties (including computer sciences) requisite to the conduct of clinical programs respecting heart, blood vessel, lung, and blood diseases and blood resources;

"(8) public and professional education relating to all aspects of such diseases, including the prevention of such diseases, and the use of blood and blood products and the management of blood resources;

"(9) establishment of programs for study and research into heart, blood vessel, lung, and blood diseases of children (including cystic fibrosis, hyaline membrane, and hemolytic and hemophilic diseases) and for the development and demonstration of diagnostic, treatment, and preventive approaches to these diseases; and

"(10) establishment of programs for study, research, development, demonstrations and evaluation of emergency medical services for people who become critically ill in connection with heart, blood vessel, lung, or blood diseases.

The Program shall be coordinated with other national research institutes to the extent that they have responsibilities respecting such diseases and shall give special emphasis to the continued development in the Institute of programs related to the causes of stroke and to effective coordination of such programs with related stroke programs in the National Institute of Neurological and Communicative Disorders and Stroke. The Director of the Institute, with the advice of the advisory council to the Institute, shall revise annually the plan for the Program and shall carry out the Program in accordance with such plan.

"(b) In carrying out the Program, the Director of the Institute, under policies established by the Director of NIH—

"(1) may, after approval of the advisory council to the Institute, obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of such service) the services of not more than one hundred experts or consultants who have scientific or professional qualifications;

"(2)(A) may—

"(i) after approval of the advisory council to the Institute, acquire and construct, and

"(ii) improve, repair, operate, alter, renovate, and maintain,

heart, blood vessel, lung, and blood disease and blood resource laboratory, research, training, and other facilities, equipment, and such other real or personal property (including patents) as the Director deems necessary; and

"(B) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

"(3) subject to section 407(b)(2), may enter into such contracts, leases, cooperative agreements, or other transactions, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5), as may be necessary in the conduct of the Director's functions, with any public agency, or with any person, firm, association, corporation, or educational institutions; and

"(4) may make grants to public and nonprofit private entities to assist in meeting the cost of the care of patients in hospitals, clinics, and related facilities who are participating in research projects.

"(c) There shall be in the Institute an assistant director to coordinate and promote the prevention, education, and health information programs of the Institute who shall be appointed by the Director of the Institute.

"NATIONAL RESEARCH AND DEMONSTRATION CENTERS FOR HEART, BLOOD VESSEL, LUNG, AND BLOOD DISEASES AND BLOOD RESOURCES

"SEC. 425. (a)(1) The Director of the Institute may provide, in accordance with subsection (b), for the development of—

"(A) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for heart and blood vessel diseases;

"(B) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for lung diseases (including bronchitis, emphysema, asthma, cystic fibrosis, and other lung diseases of children); and

"(C) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for blood diseases and research into blood, in the use of blood products and in the management of blood resources.

"(2) The centers developed under paragraph (1) shall, in addition to being utilized for research, training, and demonstrations, be utilized for the following prevention programs for cardiovascular, pulmonary, and blood diseases:

"(A) Programs to develop improved methods of detecting individuals with a high risk of developing cardiovascular, pulmonary, and blood diseases.

"(B) Programs to develop improved methods of intervention against those factors which cause individuals to have a high risk of developing such diseases.

"(C) Programs to develop health professions and allied health professions personnel highly skilled in the prevention of such diseases.

"(D) Programs to develop improved methods of providing emergency medical services for persons with such diseases.

"(E) Programs of continuing education for health and allied health professionals in the diagnosis, prevention, and treatment of such diseases and the maintenance of health to reduce the incidence of such diseases and information programs for the public respecting the prevention and early diagnosis and treatment of such diseases and the maintenance of health.

"(3) The research, training, and demonstration activities carried out through any such center may relate to any one or more of the diseases referred to in paragraph (1) of this subsection.

"(b) The director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council to the Institute, may enter into cooperative agreements with public or nonprofit private agencies or institutions to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for existing or new centers for basic or clinical research into, training in, and demonstration of, the management of blood resources and advanced diagnostic, prevention, and treatment methods for heart, blood vessel, lung or blood diseases. Funds paid to centers under cooperative agreements under this subsection may be used for—

"(1) construction (notwithstanding any limitation under section 473),

"(2) staffing and other basic operating costs, including such patient care costs as are required for research,

"(3) training, including training for allied health professions personnel, and

"(4) demonstration purposes.

Support of a center under this subsection may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"(c) As used in this section, the term 'construction' does not include the acquisition of land; and the term 'training' does not include research training for which fellowship support may be provided under section 461.

"INTERAGENCY TECHNICAL COMMITTEE

"SEC. 426. (a) The Secretary shall establish an Interagency Technical Committee on Heart, Blood Vessel, Lung and Blood Diseases and Blood Resources which shall be responsible for coordinating those aspects of all Federal health programs and activities relating to heart, blood vessel, lung, and blood diseases and to blood resources to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

"(b) The Director of the Institute shall serve as chairman of the Committee and the Committee shall include representation from all Federal departments and agencies whose programs involve health functions or responsibilities relevant to the functions of the Committee, as determined by the Secretary.

"Subpart 3—National Institute of Arthritis, Metabolism, and Digestive Diseases

"PURPOSE OF THE INSTITUTE

"SEC. 431. The general purpose of the National Institute of Arthritis, Metabolism, and Digestive Diseases (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to arthritis and related musculoskeletal diseases, diabetes mellitus and endocrine and metabolic diseases, digestive diseases, and kidney, urologic, and hematologic diseases.

"INFORMATION AND EDUCATION CENTERS

"SEC. 432. The Secretary, acting through the Director of the Institute, shall establish—

"(1) an information and education center for arthritis and related musculoskeletal diseases,

"(2) an information and education center for diabetes mellitus and endocrine and metabolic diseases,

"(3) an information and education center for digestive diseases, and

"(4) an information and education center for kidney, urologic, and hematologic diseases,

to identify, collect, analyze, and disseminate information respecting the diseases and to serve as a national educational resource for patients with such diseases and their families, physicians, and other health professionals.

"ASSOCIATE DIRECTORS FOR ARTHRITIS, DIABETES, DIGESTIVE DISEASES, AND KIDNEY, UROLOGIC, AND HEMATOLOGIC DISEASES

"SEC. 433. In the Institute there shall be an Associate Director for Arthritis and Related Musculoskeletal Diseases, an Associate Director for Diabetes, Endocrinology, and Metabolic Diseases, an Associate Director for Digestive Diseases, and an Associate Director for Kidney, Urologic, and Hematologic Diseases who, under the supervision of the Director shall be responsible for—

"(1) the coordination of the programs of the Institute respecting arthritis and related musculoskeletal disease, diabetes mellitus and endocrine and metabolic diseases, digestive diseases, and kidney, urologic, and hematologic diseases, respectively; and

"(2) monitoring and reviewing expenditures and activities of the other national research institutes related to such diseases and the identification of research opportunities in Federal activities related to such diseases and recommendation of means to take advantage of such opportunities.

"INTERAGENCY COORDINATING COMMITTEES

"SEC. 434. (a) For the purpose of—

"(1) better coordination of the research activities of all the national research institutes relating to arthritis and related musculoskeletal diseases, diabetes mellitus and endocrine and metabolic diseases, digestive diseases, and kidney, urologic, and hematologic diseases; and

"(2) coordinating those aspects of all Federal health programs and activities relating to such diseases to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities,

the Director of NIH shall establish an Arthritis Interagency Coordinating Committee, a Diabetes Mellitus Interagency Coordinating Committee, a Digestive Diseases Interagency Coordinating Committee, and a Kidney, Urologic, and Hematologic Diseases Interagency Coordinating Committee (hereinafter in this section individually referred to as a 'Committee').

"(b) Each Committee shall be composed of the Directors (or their designees) of each of the national research institutes and divisions involved in research involving the diseases with respect to which the Committee is established and shall include representation from all Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, as determined by the Secretary. Each Committee shall be chaired by the Director of NIH (or his designee). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

"(c) Each Committee shall prepare an annual report for the Secretary and the Director of NIH detailing the work of the Committee in the fiscal year for which the report was prepared in carrying out the coordinating activities described in paragraphs (1) and (2) of subsection (a). Such report shall be submitted not later than the sixtieth day after the end of each fiscal year.

"ADVISORY BOARDS

"SEC. 435. (a) The Secretary shall establish in the Institute the National Arthritis Advisory Board, the National Diabetes Advisory Board, and the National Digestive Diseases Advisory Board (hereinafter in this section individually referred to as an 'Advisory Board').

"(b) Each Advisory Board shall be composed of eighteen appointed members and nonvoting, ex-officio members as follows:

"(1) The Secretary shall appoint—

"(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to the diseases with respect to which the Advisory Board is established; and

"(B) six members from the general public who are knowledgeable with respect to such diseases.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in health education, nursing, data systems, public information, or community program development.

"(2) The following shall be ex-officio members of each Advisory Board: the Director of NIH or his designee, the Director of the Institute or his designee, the Associate Director of the Institute appointed under section 433 for the diseases for which the Advisory Board is established, and such other officers and employees of the United States as the Secretary deems necessary for the Advisory Board to carry out its functions.

"(c) Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including travel-time) they are engaged in the performance of their duties as members of the Board.

"(d) The term of office of an appointed member of an Advisory Board is three years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in an Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than ninety days from the date the vacancy occurred.

"(e) The members of each Advisory Board shall select a chairman from among the appointed members.

"(f) The Secretary shall, after consultation with and consideration of the recommendations of an Advisory Board, provide the Advisory Board with—

"(1) such support staff, and

"(2) such administrative support services and facilities, such information, and such services of consultants,

as the Secretary determines are necessary for the Advisory Board to carry out its functions.

"(g) Each Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

"(h) Each Advisory Board shall—

"(1) review and evaluate the implementation of the plan (referred to in section 439) respecting the diseases with respect to which the Advisory Board was established;

"(2) for the purpose of assuring the most effective use and organization of resources respecting such diseases, advise and make recommendations to the Secretary, the Director of NIH, the Director of the Institute, and the head of other appropriate Federal agencies for the implementation and revision of such plan; and

"(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan, the Coordinating Committee for such diseases, and with key non-Federal entities involved in activities affecting the control of such diseases.

"(i) In carrying out its functions the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data.

"(j) Each Advisory Board shall submit to the Secretary and to the Congress an annual report—

"(1) which describes the Advisory Board's activities in the fiscal year for which the report is made;

"(2) which describes and evaluates the progress made in such year in research, treatment, education, and training with respect to the diseases with respect to which the Advisory Board was established;

"(3) which summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in the fiscal year for which the report is made; and

"(4) which contains the Advisory Board's recommendations (if any) for changes in the plan referred to in subsection (h)(1).

"(k) Each Advisory Board shall expire on September 30, 1983.

"(l) The National Arthritis Advisory Board and the National Diabetes Advisory Board in existence on the debate of the enactment of the Health Research Act of 1980 shall terminate not later than ninety days after

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such date. The Secretary shall make appointments to the Advisory Boards established under subsection (a) before the expiration of such days.

"ARTHRITIS DEMONSTRATION PROJECTS AND DATA SYSTEM

"SEC. 436. (a) The Secretary may make grants to public and other nonprofit entities to establish and support projects for the development and demonstration of methods for arthritis screening and detection and for referral for treatment, and for dissemination of information on these methods to the health and allied health professions. Activities under such projects shall be cordinated with (1) Federal, State, local, and regional health agencies, (2) centers assisted under section 437, and (3) the data system established under subsection (c).

"(b) Projects under this section shall include—

"(1) programs which emphasize the development and demonstration of new and improved methods of screening and early detection, referal for treatment, and diagnosis of individuals with a risk of developing arthritis, asymptomatic arthritis, or symptomatic arthritis;

"(2) programs which emphasize the development and demonstration of new and improved methods for patient referral from local hospitals and physicians to appropriate centers for early diagnosis and treatment;

"(3) programs which emphasize the development and demonstration of new and improved means of standardizing patient data and recordkeeping;

"(4) programs which emphasize the development and demonstration of new and improved methods of dissemination of knowledge about the projects and methods referred to in the preceding paragraphs of this subsection to health and allied health professionals;

"(5) programs which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information—

"(A) on the importance of early detection of arthritis, of seeking prompt treatment, and of following an appropriate regimen; and

"(B) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive treatment, and control methods for arthritis and unapproved and ineffective drugs and devices for arthritis; and

"(6) projects for the investigation into the epidemiology of all forms and aspects of arthritis, including investigations into the social, environmental, behavioral, nutritional, and genetic determinants and influences involved in the epidemiology of arthritis.

"(c)(1) The Director shall establish the arthritis data system for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with asymptomatic and symptomatic types of arthritis, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing arthritis.

"(2) The Director shall provide for the standardization of patient data and recordkeeping for the collection, storage, analysis, retrieval, and dissemination of such data in cooperation with projects under this section and centers assisted under section 437, and other persons engaged in arthritis programs.

"(d) The Secretary, acting through the Institute, shall conduct a clinical investigation of the safety and efficacy of dimethylsulfoxide as a drug to be used by persons with arthritis. The Secretary shall report to Congress not later than one year after the date of the enactment of this subsection the results of the investigation conducted under this subsection.

"MULTIPURPOSE ARTHRITIS CENTERS

"SEC. 437. (a) The Director of the Institute may, after consultation with the advisory council to the Institute and consistent with the arthritis plan developed pursuant to the National Arthritis Act of 1974, provide for the development, modernization, and operation (including staffing and other operating costs such as the costs of patient care required for research) of new and existing centers for arthritis research, screening, detection, diagnosis, prevention, control, and treatment, for education related to arthritis, and for rehabilitation of individuals who suffer from arthritis. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1)(A) use the facilities of a single institution or a consortium of cooperating institutions, and (B) meet such qualifications as may be prescribed by the Secretary; and

"(2) conduct—

"(A) basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of arthritis and complications resulting from arthritis, including research into implantable biomaterials and biomechanical and other orthopedic procedures and in the development of other diagnostic and treatment methods;

"(B) training programs for physicians and other health and allied health professionals in current methods of diagnosis, screening and early detection, prevention, control, and treatment of arthritis, and in research in arthritis;

"(C) information and continuing education programs for physicians and other health and allied health professionals who provide care for patients with arthritis; and

"(D) programs for the dissemination to the general public of information—

"(i) on the importance of early detection of arthritis, of seeking prompt treatment, and of following an appropriate regimen; and

"(ii) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive, treatment, and control methods and unapproved and ineffective drugs and devices.

A center may use funds provided under subsection (a) to provide stipends for nurses and allied health professionals enrolled in training programs described in paragraph (2)(B).

"(c) Each center assisted under this section may conduct programs to—

"(1) develop new and improved methods of screening and early detection, referral, and diagnosis of individuals with a risk of developing arthritis, asymptomatic arthritis, or symptomatic arthritis,

"(2) disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping, and

"(3) develop community consultative services to facilitate the referral of patients to centers for treatment.

"(d) The Director shall, insofar as practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of children affected by arthritis.

"(e) The Director shall evaluate on an annual basis the activities of centers receiving support under this section and shall report to the appropriate committees of Congress the results of his evaluations on or before November 30 of each year.

"(f) Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"DIABETES RESEARCH AND TRAINING CENTERS; DIABETES DATA SYSTEM

"SEC. 438. (a) Consistent with applicable recommendations of the National Commission on Diabetes, the Director of the Institute shall provide for the development, or substantial expansion of centers for research and training in diabetes mellitus and endocrine and metabolic disorders. Each center developed or expanded under this section shall (1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institution, meeting such research and training qualifications as may be prescribed by the Secretary; and (2) conduct (A) research in the diagnosis and treatment of diabetes mellitus and endocrine and metabolic diseases and the complications resulting from such diseases, (B) training programs for physicians and allied health personnel in current methods of diagnosis and treatment of such diseases and complications, and in research in diabetes, and (C) information programs for physicians and allied health personnel who provide primary care for patients with such diseases or complications. Insofar as practicable, centers developed or expanded under this section shall be located geographically on the basis of population density throughout the United States and in environments with proven research capabilities. A center may use funds provided under this subsection to provide stipends for nurses and allied health professionals enrolled in training programs described in clause (B).

"(b) Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director for additional periods of not more than five years each after review of the operations of such center by an appropriate scientific review group established by the Director.

"(c) The Director shall evaluate on an annual basis the activities of centers developed or expanded under this section and shall report to the Congress, on or before November 30 of each year, the results of his evaluation.

"(d) The Director shall establish the diabetes data system for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with diabetes, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing diabetes.

"ANNUAL REPORT

"SEC. 439. The Director of the Institute shall prepare for inclusion in the annual report made under section 404 a description of the Institute's activities—

"(1) under the current Arthritis Plan under the National Arthritis Act of 1974,

"(2) under the current diabetes plan under the National Diabetes Mellitus Research and Education Act, and

"(3) under the current digestive diseases plan formulated under the Arthritis, Diabetes, and Digestive Diseases Amendments of 1976.

"Subpart 4—National Institute on Aging

"PURPOSE OF THE INSTITUTE

"SEC. 441. The general purpose of the National Institute on Aging (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of biomedical, social, and behavioral research, training, health information, and related programs with respect to the aging process and the diseases and other special problems and needs of the aged.

"SPECIAL FUNCTIONS OF THE SECRETARY

"SEC. 442. (a) In carrying out the training responsibilities under this Act or any other Act for health and allied health professions personnel, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

"(b) The Secretary shall, through the Director of the Institute, conduct scientific studies to measure the impact on the biological, medical, and psychological aspects of aging of programs and activities assisted or conducted by the Department of Health and Human Services.

"(c) The Director of the Institute shall carry out public information and education programs designed to disseminate as widely as possible the findings of Institute-sponsored and other relevant aging research and studies and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

"Subpart 5—National Institute of Allergy and Infectious Diseases

"PURPOSE OF THE INSTITUTE

"SEC. 443. The general purpose of the National Institute of Allergy and Infectious Diseases is the conduct and support of research, training, health information, and related programs with respect to allergic and immunologic diseases and disorders and infectious diseases.

"Subpart 6—National Institute of Child Health and Human Development

"PURPOSE OF THE INSTITUTE

"SEC. 445. The general purpose of the National Institute of Child Health and Human Development (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to maternal health, child health, human growth and development, including prenatal development, population research, and special health problems and requirements of mothers and children.

"SUDDEN INFANT DEATH SYNDROME

"SEC. 446. The Secretary shall, through the Director of the Institute, conduct and support research which specifically relates to sudden infant death syndrome.

"Subpart 7—National Institute of Dental Research

"PURPOSE OF INSTITUTE

"SEC. 447. The general purpose of the National Institute of Dental Research is the conduct and support of research, training, health information, and related programs with respect to the cause, prevention, and methods of diagnosis and treatment of dental diseases and conditions.

"Subpart 8—National Eye Institute

"PURPOSE OF INSTITUTE

"SEC. 448. The general purpose of the National Eye Institute (hereinafter in this subpart referred to as the 'Institute') is the conduct and support of research, training, health information, and related programs with respect to blinding eye diseases, visual disorders, mechanisms of visual function, preservation of sight, and the special health problems and requirements of the blind. The Secretary may, through the Director of the Institute and without regard to section 472, carry out a program of grants for public and private nonprofit vision research facilities.

"Subpart 9—National Institute of Neurological and Communicative Disorders and Stroke

"PURPOSE OF THE INSTITUTE

"SEC. 450. The general purpose of the National Institute of Neurological and Communicative Disorders and Stroke is the conduct and support of research, training, health information, and related programs with respect to neurological disease and disorders, stroke, and disorders of human communication. Of the sums appropriated for any fiscal year under section 410 for research by the Institute, not less than $16,000,000 shall be obligated for basic and clinical research in the area of regeneration of the spinal cord.

"REYE'S SYNDROME PROGRAMS

"SEC. 451. (a) The Secretary shall establish, through the National Institute of Neurological and Communicative Disorders and Stroke, the Reye's Syndrome Coordinating Committee (hereinafter referred to in this section as the 'Committee').

"(b)(1) The Committee shall be composed of—

"(A) the Director of the National Institute of Neurological and Communicative Disorders and Stroke;

"(B) the Director of the National Institute of Allergy and Infectious Diseases;

"(C) the Director of the National Institute of Arthritis, Metabolism, and Digestive Diseases;

"(D) the Director of the National Institute of Child Health and Human Development;

"(E) the Director of the National Institute of General Medical Sciences;

"(F) the Director of the National Heart, Lung and Blood Institute; and

"(G) the Director of the Center for Disease Control.

"(2) The Director of the National Institute of Neurological and Communicative Disorders and Stroke shall serve as Chairman.

"(3)(A) The Secretary, acting through the Committee, shall make grants to and enter into contracts with public and nonprofit private entities to establish two comprehensive Reye's syndrome diagnostic and treatment centers. Each center shall be located in a single institution.

"(B) A center established under this paragraph shall—

"(i) conduct basic and clinical research relating to the causes, diagnosis, early detection, and treatment of Reye's syndrome;

"(ii) develop new and improved treatments for the detection, diagnosis, and treatment of Reye's syndrome;

"(iii) provide training programs for physicians relating to the early diagnosis, control, and treatment of Reye's syndrome;

"(iv) develop professional education programs and information for physicians relating to the treatment of Reye's syndrome, and disseminate such information;

"(v) develop and disseminate public information relating to Reye's syndrome;

"(vi) disseminate within the scientific and medical communities the results of the research and training conducted under this paragraph; and

"(vii) develop standardized methods of recordkeeping of patient data.

"(C) In considering applications for grants and contracts to establish Reye's syndrome diagnostic and treatment centers under this paragraph, the Committee shall consider among other factors—

"(i) the geographic distribution of reported Reye's cases;

"(ii) the work in progress in Reye's syndrome or similar childhood diseases;

"(iii) the number of persons to be served by the program; and

"(iv) the extent to which rapid and effective use will be made by such centers of funds under such grants and contracts.

"(D) No grant or contract may be made under this paragraph unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(E) The Secretary shall prescribe regulations for the operation of the Committee, and the centers shall report to the Committee from time to time as required by such regulations.

"(F) Grants under this paragraph shall be for no more than three years, except that the Secretary, acting through the Committee, may extend for two additional years the period for grants if he determines, upon review of the activities under the grants by the Committee and consideration of recommendations made by the Committee, that such extenison is appropriate.

"(4)(A) The Secretary, acting through the Committee, shall make grants to and enter into contracts with public agencies, nonprofit private entities, and individuals, not associated with the centers established under paragraph (3), to conduct research relating to the diagnosis, control, and treatment, of Reye's syndrome. Such grants and contracts shall be for no more than three years.

"(5) The Secretary shall, not later than April 1, 1984, submit a report prepared by the Committee and approved by the Director of the National Institute of Neurological and Communicative Disorders and Stroke, to Congress. Such report shall account for the activities, accomplishments, and progress of the centers and research grants provided by this section, and shall recommend such further action relating to Reye's syndrome as the Committee determines appropriate.

"(6) Contracts may be entered into under this section without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(7)(A) For each center established under paragraph (3), there are authorized to be appropriated $750,000 for the fiscal year ending September 30, 1981, $750,000 for the fiscal year ending September 30, 1982, and $750,000 for the fiscal year ending September 30, 1983.

"(B) There are authorized to be appropriated for grants and contracts under paragraph (4), $500,000 for the fiscal year ending September 30, 1981, $500,000 for the fiscal year ending September 30, 1982, and $500,000 for the fiscal year ending September 30, 1983.

"Subpart 10—National Institute of General Medical Sciences

"PURPOSE OF THE INSTITUTE

"SEC. 453. The general purpose of the National Institute of General Medical Sciences is the conduct and support of research, training, and, as appropriate, health information and related programs with respect to general or basic medical sciences and related natural or behavioral sciences which have significance for two or more other national research institutes or are outside the general area of responsibility of any other national research institute.

"Subpart 11—National Institute of Environmental Health Sciences

"PURPOSE OF THE INSTITUTE

"SEC. 454. The general purpose of the National Institute of Environmental Health Sciences is the conduct and suprort of research, training, health information, and related programs with respect to factors in the environment that affect human health, directly or indirectly.

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"PART D—NATIONAL INSTITUTE OF MENTAL HEALTH

"ESTABLISHMENT OF INSTITUTE

"SEC. 455. (a) There is established the National Institute of Mental Health (hereinafter in this part referred to as the 'Institute') to administer the programs and authorities of the Secretary with respect to mental health. The Secretary acting through the Institute, shall, in carrying out the purposes of sections 301 and 303 of this Act and the purposes of the Community Mental Health Centers Act (other than part C of that Act) with respect to mental illness, develop and conduct comprehensive health, education, training, research, and planning programs for the prevention and treatment of mental illness and for the rehabilitation of the mentally ill. The Secretary shall carry out through the Institute the administrative, financial management, policy development, and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

"(b)(1) The Institute shall be under the direction of a Director who shall be appointed by the Secretary.

"(2) The Director, with the approval of the Secretary, may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the programs and authorities to be carried out through the Institute.

"(c) The programs to be carried out through the Institute shall be administered so as to encourage the broadest possible participation of professionals and paraprofessionals in the fields of medicine, science, the social sciences, and other related disciplines.

"PART E—AWARDS AND TRAINING

"NATIONAL RESEARCH SERVICE AWARDS

"SEC. 461. (a)(1) The Secretary shall—

"(A) provide National Research Service Awards for—

"(i) biomedical and behavioral research at the National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration or under programs administered by the Division of Nursing of the Health Resources Administration, in matters relating to the cause, diagnosis, prevention, and treatment of the diseases or other health problems to which the activities of the national research institutes and Administration or Division of Nursing are directed,

"(ii) training at the National Institutes of Health and at the Administrations of individuals to undertake such research,

"(iii) biomedical and behavioral research at public and nonprofit private institutions (including a research center assisted under part C of this title),

"(iv) research at the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology,

"(v) training at such Centers to undertake such research,

"(vi) research on the matters set forth in section 304(a)(2) at public institutions and at nonprofit private institutions, and

"(vii) pre- and post-doctoral training at such public and private institutions of individuals to undertake biomedical and behavioral research and the research described in clause (vi), and

"(B) make grants to public and nonprofit private institutions (including a research center assisted under part C of this title) to enable such institutions to make to individuals selected by them National Research Service Awards for research (and training to undertake biomedical and behavioral research and the research described in subparagraph (A)(vi)) in the matters described in subparagraph (A)(i).

A reference in this subsection to the National Institutes of Health or the Alcohol, Drug Abuse, and Mental Health Administration shall be considered to include the institutes, divisions, and bureaus included in the Institutes or under the Administration, as the case may be.

"(2) National Research Service Awards may not be used to support, residences.

(3) National Research Service Awards may be made for research or research training in only those subject areas for which, as determined under section 463, there is a need for personnel.

"(b)(1) No National Research Service Award may be made by the Secretary to any individual unless—

"(A) the individual has submitted to the Secretary an application therefor and the Secretary has approved the application;

"(B) the individual provides, in such form and manner as the Secretary shall by regulation prescribe, assurances satisfactory to the Secretary that the individual will meet the service requirement of subsection (c)(1); and

"(C) in the case of a National Research Service Award for a purpose described in subsection (a)(1)(A)(iii),(a)(1)(A)(vi), or (a)(1)(A)(vii), the individual has been sponsored (in such manner as the Secretary may by regulation require) by the institution at which the research or training under the award will be conducted.

An application for an award shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe.

"(2) The making of grants under subsection (a)(1)(B) for National Research Service Awards shall be subject to review and approval by the appropriate advisory councils within the Department of Health and Human Services (A) whose activities relate to the research or training under the awards, or (B) for the entity at which such research or training will be conducted.

"(3) No grant may be made under subsection (a)(1)(B) unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe. Subject to the provisions of this section other than paragraph (1) of this subsection, National Research Service Awards made under a grant under subsection (a)(1)(B) shall be made in accordance with such regulations as the Secretary shall prescribe.

"(4) The period of any National Research Service Award made to any individual under subsection (a) may not exceed—

"(A) five years in the aggregate for predoctoral training, and

"(B) three years in the aggregate for postdoctoral training,

unless the Secretary for good cause shown waives the application of such limit to such individual.

"(5) National Research Service Awards shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances), adjusted periodically to reflect increases in the cost of living, for the recipients of the awards as the Secretary may deem necessary. A National Research Service Award made to an individual for research or research training at a non-Federal public or nonprofit private institution shall also provide for payments to be made to the institution for the cost of support services (including the cost of faculty salaries, supplies, equipment, general research support, and related items) provided such individual by such institution. The amount of any such payments to any institution shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the institution for establishing and maintaining the quality of its biomedical and behavioral research and training programs.

"(c)(1)(A) Each individual who receives a National Research Service Award shall, in accordance with paragraph (2), engage in—

"(i) health research or teaching or any combination thereof which is in accordance with usual patterns of academic employment,

"(ii) if authorized under subparagraph (B), serve as a member of the National Health Service Corps or serve in his specialty, or

"(iii) if authorized under subparagraph (C), serve in a health-related activity approved under that subparagraph,

for a period computed in accordance with paragraph (2).

"(B) Any individual who received a National Research Service Award and who is a physician, dentist, nurse, or other individual trained to provide health care directly to individual patients may, upon application to the Secretary, be authorized by the Secretary to—

"(i) serve as a member of the National Health Service Corps, or

"(ii) provide services in his specialty for a medically underserved population (as defined in section 1302(7)),

in lieu of engaging in health research or teaching if the Secretary determines that there are no suitable health research or teaching positions available to such individual.

"(C) Where appropriate the Secretary may, upon application, authorize a recipient of a National Research Service Award, who is not trained to provide health care directly to individual patients, to engage in a health-related activity in lieu of engaging in health research or teaching if the Secretary determines that there are no suitable health research or teaching positions available to such individual.

"(2)(A) The requirement of paragraph (1) applies to an individual if the cumulative period of the award or awards received by the individual exceeds twelve months. Such requirement shall be complied with by any individual to whom it applies within such reasonable period of time, after the completion of such individual's award, as the Secretary shall by regulation prescribe.

"(B) The Secretary shall (i) by regulation prescribe (I) the type of research and teaching which an individual may engage in to comply with such requirement, and (II) such other requirements respecting such research and teaching and alternative service authorized under paragraphs (1)(B) and (1)(C) as he deems necessary; and (ii) to the extent feasible, provide that the members of the National Health Service Corps who are serving in the Corps to meet the requirement of paragraph (1) shall be assigned to patient care and to positions which utilize the clinical training and experience of the members.

"(C) The period of service required by paragraph (1) is computed as follows: For each month in excess of twelve for which an individual holds a National Research Service Award, such individual shall—

"(i) for one month engage in health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment, or, if so authorized, serve as a member of the National Health Service Corps, or

"(ii) if authorized under paragraph (1)(B) or (1)(C), serve for one month in the individual's specialty or engage in a health-related activity.

"(3)(A) If any individual to whom the requirement of paragraph (1) is applicable fails, within the period prescribed by paragraph (2)(A), to comply with such requirements, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula—

$$A=\Phi\left(\frac{t-s}{t}\right)$$

in which 'A' is the amount the United States is entitled to recover; 'Φ' is the sum of the total amount paid under one or more National Research Service Awards to such individual; 't' is the total number of months in such individual's service obligation; and 's' is the number of months of such obligation served by him in accordance with paragraphs (1) and (2) of this subsection.

"(B) Any amount which the United States is entitled to recover under subparagraph (A) shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States. Until any amount due the United States under subparagraph (A) on account of any National Research Service Award is paid, there shall accrue to the United States interest on such amount at a rate fixed by the Secretary after taking into consideration private consumer rates of interest prevailing on the date the United States becomes entitled to such amount.

"(4)(A) Any obligation of any individual under paragraph (3) shall be canceled upon the death of such individual.

"(B) The Secretary shall by regulation provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve substantial hardship to such individual or would be against equity and good conscience.

"(d) There are authorized to be appropriated to make payments under National Research Service Awards and under grants for such awards $207,947,000 for the fiscal year ending June 30, 1975, $165,000,000 for fiscal year 1976, $185,000,000 for the fiscal year ending September 30, 1977, $161,390,000 for the fiscal year ending September 30, 1978, $197,500,000 for the fiscal year ending September 30, 1979, $210,000,000 for the fiscal year ending September 30, 1980, $222,500,000 for the fiscal year ending September 30, 1981, $232,991,000 for the fiscal year ending September 30, 1982, and $262,814,000 for the fiscal year ending September 30, 1983. Of the sums appropriated under this subsection, not less than 15 per centum shall be made available for payments under National Research Service Awards provided by the Secretary under subsection (a)(1)(A) and not less than 50 per centum shall be made available for grants under subsection (a)(1)(B) for National Research Service Awards. In any fiscal year not more than 4 per centum of the amount obligated to be expended under this section may be obligated for National Research Service Awards for periods of three months or less.

"VISITING SCIENTIST AWARDS

"SEC. 462. (a) The Secretary may make awards (referred to as 'Visiting Scientist Awards') to outstanding scientists who agree to serve as visiting scientists at institutions of postsecondary education which have significant enrollments of disadvantaged students. Visiting Scientist Awards shall be made by the Secretary to enable the faculty and students of such institutions to draw upon the special talents of scientists from other institutions for the purpose of receiving guidance, advice, and instruction with regard to research, teaching, and curriculum development in the biomedical and behavioral sciences and such other aspects of these sciences as the Secretary shall deem appropriate.

"(b) The amount of each Visiting Scientist Award shall include such sum as shall be commensurate with the salary or remuneration which the individual receiving the award would have been entitled to receive from the institution with which the individual has, or had, a permanent or immediately prior affiliation. Eligibility for and terms of Visiting Scientist Awards shall be determined in accordance with regulations the Secretary shall prescribe.

"STUDIES RESPECTING BIOMEDICAL AND BEHAVIORAL RESEARCH PERSONNEL

"SEC. 463. (a) The Secretary shall, in accordance with subsection (b), arrange for the conduct of a continuing study to—

"(1) establish (A) the Nation's overall need for biomedical and behavioral research personnel, (B) the subject areas in which such personnel are needed and the number of such personnel needed in each such area, and (C) the kinds and extent of training which should be provided such personnel;

"(2) assess (A) current training programs available for the training of biomedical and behavioral research personnel which are conducted under this Act, at or through national research institutes under the National Institutes of Health and institutes under the Alcohol, Drug Abuse, and Mental Health Administration, and (B) other current training programs available for the training of such personnel;

"(3) identify the kinds of research positions available to and held by individuals completing such programs;

"(4) determine, to the extent feasible, whether the programs referred to in clause (B) of paragraph (2) would be adequate to meet the needs established under paragraph (1) if the programs referred to in clause (A) of paragraph (2) were terminated; and

"(5) determine what modifications in the programs referred to in paragraph (2) are required to meet the needs established under paragraph (1).

"(b)(1) The Secretary shall request the National Academy of Sciences to conduct the study required by subsection (a) under an arrangement under which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such an arrangement with such Academy for the conduct of such study.

"(2) If the National Academy of Sciences is unwilling to conduct such study under such an arrangement, then the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study and prepare and submit the reports thereon as provided in subsection (c).

"(3) The National Academy of Sciences or other group or association conducting the study required by subsection (a) shall conduct such study in consultation with the Director of NIH.

"(c) A report on the results of such study shall be submitted by the Secretary to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate at least once every two years.

"PART F—GENERAL PROVISIONS

"INSTITUTIONAL REVIEW BOARDS; ETHICS GUIDANCE PROGRAM

"SEC. 471. (a) The Secretary shall by regulation require that each entity which applies for a grant or contract under this Act for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant or contract assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an 'Institutional Review Board') to review biomedical and behavioral research—

"(1) which is conducted at or sponsored by such entity,

"(2) which involves human subjects, and

"(3) which is supported by Federal financial assistance,

to protect the rights of the human subjects of such research. This subsection does not apply to research which, as determined under regulations of the Secretary, does not involve risk to human subjects.

"(b) The Secretary shall establish a program within the Department under which requests for clarification and guidance with respect to ethical issues raised in connection with biomedical or behavioral research involving human subjects are responded to promptly and appropriately.

"PEER REVIEW

"SEC. 472. (a) The Secretary, after consultation with the Director of NIH, and where appropriate, the Directors of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and and the head of the Division of Nursing of the Health Resources Administration (or the successor to either such entity), shall by regulation require appropriate technical and scientific peer review of—

"(1) applications made for grants and cooperative agreements under this Act for biomedical and behavioral research (including research under programs of such Division of Nursing); and

"(2) biomedical and behavioral research and development contracts to be administered through the National Institutes of Health, the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the Division of Nursing of the Health Resources Administration (or the successor to any such entity).

"(b) Regulations promulgated under subsection (a) shall require that the review of grants, contracts, and cooperative agreements required by the regulations be conducted—

"(1) in a manner consistent with the system for scientific peer review applicable on the date of the enactment of the Health Research Act of 1980 to grants under this Act for biomedical and behavioral research, and

"(2) to the extent practical, by peer review groups performing such review on or before such date.

"(c) The members of any peer review group established under such regulations shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of the group and not more than one-fourth of the members of any peer review group established under such regulations shall be officers or employees of the United States.

"(d) The Director of NIH shall establish procedures for periodic, technical and scientific peer review of research at the National Institutes of Health. Such procedures shall require that—

"(1) the reviewing entity be provided a written description of the research to be reviewed; and

"(2) the reviewing entity provide the advisory council of the national research institute involved with such description and the results of the review by the entity.

"USE OF APPROPRIATIONS UNDER THIS TITLE

"SEC. 473. Appropriations to carry out the purposes of this title shall be available for the acquisition of land or the erection of buildings only if so specified. Such appropriations, unless otherwise expressly provided, may be expended in the District of Columbia for personal services, stenographic recording and translating services; by contract if deemed necessary, without regard to section 3709 of the Revised Statutes; travel

expenses (including the expenses of attendance at meetings when specifically authorized by the Secretary); rental, supplies and equipment, purchase and exchange of medical books, books of reference, directories, periodicals, newspapers, and press clippings; purchase, operation, and maintenance of passenger motor vehicles; printing and binding (in addition to that otherwise provided by law); and for all other necessary expenses in carrying out the provisions of this title.

"GIFTS

"SEC. 474. The Secretary may, in accordance with section 501, accept conditional gifts for the National Institutes of Health or a national research institute or for the acquisition of grounds or for the erection, equipment, or maintenance of facilities for the National Institutes of Health or a national research institute. Donations of $50,000 or over for the National Institutes of Health or a national research institute for carrying out the purposes of this title may be acknowledged by the establishment within the National Institutes of Health or institute of suitable memorials to the donors.".

SEC. 3. (a) The National Advisory Health Council established under section 217 of the Public Health Service Act is terminated.

(b) Section 217(a) of such Act is amended—

(1) in the first sentence—

(A) by striking out "National Advisory Health Council, the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council" and inserting in lieu thereof "National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism"; and

(B) by striking out "by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare" and inserting in lieu thereof "by the Secretary";

(2) in the second sentence—

(A) by striking out "in the case of the National Advisory Health Council, are skilled in the sciences related to health, and";

(B) by striking out "the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Heart Council, and the National Advisory Dental Research Council" and inserting in lieu thereof "the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism"; and

(C) by striking out ", alcohol abuse and alcoholism, and dental diseases and conditions" and inserting in lieu thereof "and alcohol abuse and alcoholism"; and

(3) by striking out the third sentence.

(c) Subsection (b) of section 217 of such Act is repealed and subsections (c), (d), (e), and (g) are redesignated as subsections (b), (c), (d), and (e), respectively.

(d) Section 222(c) of the Public Health Service Act is amended to read as follows:

"(c) Upon appointment of any such council or committee, the Secretary may delegate to such council or committee such advisory functions relating to grants-in-aid for research or training projects or programs, in the areas or fields with which such council or committee is concerned, as the Secretary determines to be appropriate.".

(e) Section 301(a) of such Act is amended—

(1) in paragraph (3), by striking out "as are recommended" through "for such fiscal year" and inserting in lieu thereof "as are recommended by the advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to the entity of the Department involved or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research";

(2) in paragraph (8), by striking out "recommendations of the National Advisory Health Council" through "such additional means" and inserting in lieu thereof "recommendations of the advisory councils to the entities of the Department involved or, with respect to mental health, the National Advisory Mental Health Council, such additional means", and

(3) by adding at the end of the section the following: "The Secretary may not carry out this subsection through a national research institute listed in paragraphs (1) through (11) of section 401(a).".

SEC. 4. The Comptroller General shall evaluate the National Research Service Awards program under section 461 of the Public Health Service Act to determine the effect of the program on the number of physicians who enter the various medical specialities. The Comptroller General shall report the results of such evaluation to the Congress not later than January 1, 1983.

SEC. 5. Section 317(j) is amended (1) by striking out "or 4" in paragraph (5) and inserting in lieu thereof "(4), or (5)", (2) by redesignating paragraph (5) as paragraph (6), and (3) by adding after paragraph (4) the following new paragraph:

"(5) For the purpose of grants under subsection (a) for preventive health service programs for tuberculosis there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1981, $17,000,000 for the fiscal year ending September 30, 1982, and $19,000,000 for the fiscal year ending September 30, 1983.".

SEC. 6. The Comptroller General of the United States shall study—

(1) the performance of review functions by advisory councils to the national research institutes under section 408(a)(3)(A) of the Public Health Service Act; and

(2) the performance of review under section 472(d) of the Public Health Service Act of research at the national research institutes.

The Comptroller General shall, not later than January 1, 1983, complete the study under this section and report the results of it to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

SEC. 7. (a) Whenever in this section (other than in subsections (k) and (l)(1)) an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

(b) The second sentence of section 1501 (b)(1) (42 U.S.C. 300k–1(b)(1)) is amended by striking out "in" and inserting in lieu thereof "including those in".

(c) Section 1513(g)(2) (42 U.S.C. 3001–2 (g)(2)) is amended by striking out "three years" and inserting in lieu thereof "five years".

(d) Section 1516(d)(3) (42 U.S.C. 3001–5 (d)(3)) is amended (1) by inserting after "of subsection (c)(1)" the following: "(but without regard to the dollar limit prescribed by subparagraph (A)(ii))", and (2) by inserting before ", to the extent" the following: "no such agency shall receive a grant in excess of $3,750,000 and".

(e) The first sentence of section 1524(c)(6) (42 U.S.C. 300m–3(c)(6)) is amended by striking out "section 409" and inserting in lieu thereof "section 409 or 410".

(f) Section 1527(b)(3)(B) (42 U.S.C. 300m–6(b)(3)(B)) is amended (1) by striking out "that (i)" and inserting in lieu thereof "that", (2) by striking out ", which intends to acquire the controlling interest or which intends to use the facility is" and inserting in lieu thereof "which intends to acquire the controlling interest in or use the facility is (i)", (3) by striking out "and (ii)" and inserting in lieu thereof "and", and (4) by striking out "or the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (1)" and inserting in lieu thereof ", or (ii) a health care facility which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (B) of paragraph (1) and with respect to its patients meets the requirements of clause (iv) of such subparagraph".

(g) The last sentence of section 1531(3) (42 U.S.C. 300n(3)) is amended (1) by striking out "An individual" and inserting in lieu thereof "Notwithstanding subparagraph (B), an individual", and (2) by striking out "an entity" and inserting in lieu thereof "one or more entities".

(h) Section 1531(5) (42 U.S.C. 300n(5)) is amended by striking out "maintained or developed by the Department of Commerce and".

(i) Section 1531(6) (42 U.S.C. 300n(6)) is amended by adding at the end the following: "The term 'capital expenditure' does not include an expenditure made by or on behalf of a health care facility for health research at the facility if the obligation of the expenditure or the operating costs of the research will not affect the charges of the facility for the provision of medical or other health services, if the research will not involve the provision of such services to patients of any health care facility, and if the person making the expenditure files a notice with the State agency of the State in which the facility is located describing the nature of the research and providing assurances satisfactory to the State agency that the expenditure or operating costs will not affect such charges and the research does not involve the provision of medical or other health services to patients of any health care facility. A notice required by the preceding sentence respecting an expenditure shall be made in writing and filed with the appropriate State agency at least thirty days before any contractual arrangement is entered into to make the expenditure.".

(j) Section 1532(b)(12)(D) (42 U.S.C. 300n–1(b)(12)(D)) is amended by striking out "administratively".

(k) Section 124(c) of Public Law 96–79 (93 Stat. 627) is amended to read as follows:

"(c)(1) Section 1524(b)(1)(C) is amended by striking out 'one-third' and inserting in lieu thereof 'one-half'.

"(2) Section 1524(b)(1)(D) is amended (A) by striking out 'two' and inserting in lieu thereof 'one', and (B) by striking out 'an ex officio' and inserting in lieu thereof 'a nonvoting, ex officio'.".

(l)(1) Section 129(b)(2)(A) of Public Law 96–79 (93 Stat. 630) is amended by striking out "Health Planning and Resources Development Amendments of 1979" and inserting in lieu thereof "Health Planning Technical Amendments of 1980".

(2) Section 1521(d)(1)(B)(i) (42 U.S.C. 300m(d)(1)(B)(i)) is amended by striking out "Health Planning and Resources Development Amendments of 1979" and inserting in lieu thereof "Health Planning Technical Amendments of 1980".

(m) Section 338(a) (42 U.S.C. 254k(a)) is amended (1) by striking out "and" after "1979;", and (2) by adding before the period a semicolon and the following: "and $94,000,000 for the fiscal year ending September 30, 1981".

SEC. 8. This Act and the amendments made by this Act do not authorize appropriations for the fiscal year ending September 30, 1980.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the Public Health Service Act to revise and extend the authorities under that act relating to national research institutes, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 7036) was laid on the table.

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the bill, H.R. 7036, just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION FOR COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO HAVE UNTIL 4 P.M., THURSDAY, SEPTEMBER 4, 1980, TO FILE MINORITY OR ADDITIONAL VIEWS ON H.R. 7418, NUCLEAR WASTE RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1980

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs may have until 4 p.m., Thursday, September 4, 1980, to file minority or additional views to be printed as a separate part of the report, on the bill (H.R. 7418) to establish a research, development, and demonstration program for the disposal of radioactive wastes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION FOR PERMANENT SELECT COMMITTEE ON INTELLIGENCE TO FILE REPORT ON HOUSE RESOLUTION 745

Mr. ROBINSON. Mr. Speaker, on behalf of the gentleman from Massachusetts (Mr. BOLAND) and myself, I ask unanimous consent that the Permanent Select Committee on Intelligence have until midnight tonight to file a report on House Resolution 745.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. RHODES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I take this time to inquire of the gentleman from California (Mr. MINETA), the distinguished acting majority leader, as to the program for the balance of the week and next week.

Mr. MINETA. If the distinguished minority leader will yield, on Monday, September 1, and Tuesday, September 2, the Labor Day recess, the House will not be in session.

On Wednesday, September 3, the House will meet at noon and will first take up the District of Columbia appropriations bill for fiscal year 1981.

Following that, the House will consider H.R. 7201, health professions educational assistance and nurse training amendments, an open rule, with 1 hour of general debate.

On Thursday, September 4, and Friday, September 5, the House will meet at 10 a.m., and will take up the Private Calendar.

Following that, the House will consider House Resolution 745, resolution of inquiry directed to the President of the United States; then we will take up H.R. 7765, the omnibus budget reconciliation bill.

Then we will take up H.R. 7765, the omnibus budget reconciliation bill.

If time remains, we will then complete consideration of H.R. 7235, Rail Act of 1980;

H.R. 6790, Foreign Service Act of 1980, an open rule, with 1 hour of general debate;

H.R. 6721, Airport and Airway Improvement Act of 1980, a modified rule, with 2½ hours of general debate;

H.R. 7265, DOE authorizations of defense programs, an open rule, with 1 hour of general debate, the rule already having been adopted;

Complete consideration of H.R. 7115, National Science Foundation authorization, fiscal year 1981; and

H.R. 7244, increase U.S. quota in International Monetary Fund, an open rule, with 1 hour of general debate.

The House will adjourn by 3 p.m. on Friday, and adjournment times on Wednesday and Thursday will be announced.

Conference reports may be brought up at any time, and any further program will be announced later.

Mr. RHODES. I thank the gentleman.

AUTHORIZING THE CLERK TO RECEIVE MESSAGES FROM SENATE AND THE SPEAKER TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS DULY PASSED, NOTWITHSTANDING ADJOURNMENT

Mr. MINETA. Mr. Speaker, I ask unanimous consent that, notwithstanding any adjournment of the House until Wednesday, September 3, 1980, the Clerk be authorized to receive messages from the Senate and that the Speaker be authorized to sign any enrolled bills and joint resolutions duly passed by the two Houses and found truly enrolled.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

AUTHORIZING THE SPEAKER TO ACCEPT RESIGNATIONS, AND TO APPOINT COMMISSIONS, BOARDS, AND COMMITTEES, NOTWITHSTANDING ADJOURNMENT

Mr. MINETA. Mr. Speaker, I ask unanimous consent that, notwithstanding any adjournment of the House until Wednesday, September 3, 1980, the Speaker be authorized to accept resignations, and to appoint commissions, boards, and committees authorized by law or by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1440

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. MINETA. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California.

There was no objection.

APPOINTMENT OF CONFEREES ON SECTIONS 1, 2, AND 3 OF SENATE AMENDMENT TO H.R. 1197, TONNAGE MEASUREMENT SIMPLIFICATION ACT

The SPEAKER pro tempore. Without objection, the Chair appoints as conferees, solely on sections 1, 2, and 3 of the Senate amendment to H.R. 1197, to simplify the tonnage measurement of certain vessels, and modifications committed to conference, the following Members: Messrs. ASHLEY, MURPHY of New York, DINGELL, BIAGGI, DE LA GARZA, MCCLOSKEY, SNYDER, and LENT.

There was no objection.

DEATH OF GOV. JAMES B. LONGLEY

(Mrs. SNOWE asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Mrs. SNOWE. Mr. Speaker, I rise today in order to bring to the attention of my colleagues the sad news of the recent death of former Gov. James B. Longley of Maine.

I would like to take this occasion to share with the other Members of the House some thoughts about the late Governor, and to place in the record the eulogy written for Governor Longley by his former administrative assistant, and close friend, Jim McGregor.

This eulogy praising Governor Longley is most appropriate since it was with true sadness and regret that we learned of his death last week.

Governor Longley will be remembered as one of Maine's most outstanding public servants. He will be remembered not only for what he did but for what he

stood for as well. He will be remembered for his dedication to service, for his commitment to principle, and for his pursuit for those causes in which he so deeply believed.

As a Governor, Jim Longley placed principle ahead of politics. For those of us who served in the Maine Legislature during his tenure as Maine's chief executive, we can look with admiration and respect to the energy and dedication he brought to the office. Never once did he duck a tough issue. Never once did he pass the buck when he was faced with a difficult decision.

His accomplishments as Governor will surely be recorded in history as extraordinary. When others in such tough times may have thrown in the towel, Jim Longley stood up and fought with remarkable success for fiscal restraint, for government that was closer to the people, and for a government that tried to allow for new hope and opportunity for all people from all walks of life.

But Jim Longley will be remembered not merely for his accomplishments as Governor. He will be remembered as a truly fine and decent man, a man willing to lend a helping hand to a person in need, a man committed above all else to doing what he believed was right, and a man of total devotion to his family.

Jim Longley will be missed. We owe him our gratitude for making Maine a better place to live.

Mr. McGregor's eulogy follows:

EULOGY FOR AN UNCOMMON MAN, GOV. JAMES B. LONGLEY 1924–80

Jim Longley was a good man.

Ordinarily, that would be a sufficient eulogy for any individual. However, something more begs to be said about the former Maine governor.

Most of us are common men and although our passing might be mourned by family and a circle of close friends, our absence from the Earth usually won't leave a permanent scar. Although we might not like to admit it, any gaps we might leave behind will heal almost as quickly as the raw earth that will cover our graves. But, the death of an uncommon man leaves voids in society that will never be completely filled.

A few uncommon men are born each generation and they generally achieve success and greatness. That is because they possess qualities that would have made them leaders, no matter what time in history they appeared. Whether it be by fate or design, they come among us to lead, to establish standards for a quality of life, and to preserve and perpetuate the dignity of mankind.

Jim Longley was such a man.

Most Maine people and, indeed, many throughout the country know the Jim Longley story— the guy who defied the odds and won, no matter if it was a journey from rags to success in business or the taking of a 200-to-one shot in a governor's race and winning. Whether it was in high school, college, business or politics he was the leader; never the follower. He led the parade. He dared to be great. He prevailed against all odds.

He was, in a sense, a rare combination of Don Quixote and Sir Thomas More. Like the idealistic Don, he dreamed the impossible dream; but unlike literature's great crusader, Jim Longley left his path strewn with deeds. Yet, his visions were that of Don Quixote and, like that often perplexing Sir Thomas, he was moralistic to an exacting fault.

Jim Longley was driven to perform; to totally utilize the talents and gifts with which he had been anointed.

As a result, he planted far more flowers than he picked.

He wiped away more tears than he caused.

He had an innate sense for fairness and justice, and he practiced what he preached in that regard.

A final tally shows that he gave to the world far more than he took during his years upon this Earth. It is a far better place because he passed through.

Jim Longley obtained success, fame, and the respect and admiration of a nation of people because he was an uncommon man. He possessed uncommon intelligence, uncommon insights, uncommon drive, and uncommon ambitions. As a result, he was not always a patient man, and he was often demanding of people whom he felt were not performing to the best of their abilities. But, these traits were his working tools and they sometimes temporarily concealed from public view the compassion, caring and understanding which marked the real Jim Longley.

He was as tough as nails when it came to getting a job done. He gave 150 percent to every task, whether it was chairing a local United Way drive, building his business into one of the country's best, becoming Maine's first independent governor, or doing in political office what he told the people he would do.

Yet, he was an old softie when it came to people with problems. As governor, he didn't waste a lot of time on programs for people who had the ability to fend for themselves. Instead, he reserved his compassion, and many state dollars, for retarded children and adults at Pineland Center. He made more trips to Thomaston Prison than any governor ever had. He became personally involved in the lives of families who wrote or called the governor's office with a problem. He didn't take the easy out and buck them to an aide.

In his lifetime, he probably set a record for visiting the most people in hospitals and for attending the most funerals. He picked up hitchhikers, bought bus tickets for stranded wanderers, paid college tuitions for underprivileged youths, coached a hockey team for an orphanage, and bailed friends and strangers alike out of personal and financial crises.

I've considered myself very lucky because I had the opportunity to work closely for five years with Jim Longley . . . in his gubernatorial campaign and as his administrative assistant while he served as governor. I consider myself even more fortunate to have been his friend. I had the chance to stand in a very tall shadow.

Be that as it may, being a friend of and caring for an uncommon man is not purely a blessing. It also carries with it a curse.

The uncommon man will never be forgotten and the lives of those left behind will never be quite the same again. For the family members and friends who loved Jim Longley, the mourning will never completely end, no matter how many years pass. Time simply will not heal the wounds. Every day there will be a remembrance; hearts will feel heavy and ache a little; and an occasional tear will fall.

That is the curse of caring for an uncommon man.

The mark Jim Longley left on the government of Maine during the four years he served as governor will be a permanent and positive one. He utilized every minute he served to the fullest. He established benchmarks for performance, for service and for excellence.

He removed the appointment of judges from the partisan political process by establishing a system of making the judicial appointments on the basis of character and legal ability.

When Jim Longley assumed office in January of 1975, he was confronted with predictions by some political leaders that the state would need to raise 50-to-100 million dollars in additional taxes to keep pace with inflation and to accommodate the ever-increasing demands upon government for services. However, the independent from Lewiston had visited the mills, the factories and the small businesses throughout the state and he entered office with the knowledge that the working men and women of Maine were already having a difficult time surviving and that they could not shoulder a greater tax burden. By combining his unique talents as a businessman with his personal philosophy of fiscal conservatism and liberal humanitarianism he was able to not only hold the line on state budgets, but also to write new political history by giving the people tax rebates. He had the political courage to say no to programs that benefitted the bureaucracy more than they did the people and he had the compassion to increase government funding in areas where there was true need.

In the areas of industrial and economic development, Jim Longley became perhaps the most active and successful salesman this state has ever seen. He personally called on businesses and industries throughout the nation, telling them of the beauty of Maine and her people and the work ethic of the citizens here. His track record in this area has been well recorded. Literally thousands of new jobs were created because of his personal involvement and dedication.

These were tangible accomplishments, but the intangible gifts Jim Longley left may be even more important. At a time in American history when people in America were losing faith in government, he demonstrated that honesty and true public service could still exist. He demonstrated that the average citizen can still have an impact on government. He proved, for an entire nation to see, that one man can make a difference.

Jim Longley did not serve at an easy time. Indeed, the state not only was experiencing its biggest financial problems ever, but it was also beset by major social and economic conditions. The novice governor was confronted on an almost daily basis for four years with problems dealing with the Maine Indian Land Claims, the right-to-treatment suit at Pineland Center, the proposed closing of Loring Air Force Base, and unrest in our prisons. During Jim Longley's term, he fought to retain Loring Air Force Base, the Pineland right-to-treatment suit was settled out of court, the Indian land claims were modified where the people of Maine would not be required to pay a harsh penalty, and potentially explosive situations at the prisons were cooled time and time again because of the governor's personal intervention.

History will no doubt reflect that the State of Maine was very fortunate to have a man with Jim Longley's leadership capabilities at the helm during a time when Maine lost her innocence and moved into the mainstream of 20th century problems and issues.

Jim Longley can be remembered for many things. Indeed, his contributions to his community, his state and its government, and to business could fill many pages. However, I think he would want to be remembered, not for his successes or his accomplishments as governor, but for the simple fact that while in office he tried every single day to be exactly what he told the people of Maine he would be. Staying on that course was an obsession with him during the four years he served as governor. The fact that he accomplished that objective constituted his proudest and fondest memory after he left office.

But, the uncommon nature of Jim Longley may, in the final analysis, be best evidenced in the way he died. After he knew that his bout with cancer had been unsuccessful and after he had done everything he could to use his own illness to help doctors treat others, he accepted his own mortality with grace and dignity.

He wasted little time saying "why me" and immediately set about to put his affairs in order and to provide strength and encouragement to those who were crushed by his misfortune.

He played with the cards dealt him and complained not that someone else had received a better hand. "No matter what happens," he said over and over again in the final months, "I have been one lucky guy."

The world, the nation, and particularly the State of Maine, are better places to live because Jim Longley passed through; so are the individuals whose lives he touched, no matter how brief the encounter. The positive impact that having known him will have on our lives will far outweigh the curse we will suffer for having loved and cared for an uncommon man.

Since Jim Longley could have been a man for any time, Shakespeare could well have penned an appropriate epitaph when he wrote . . . in the final scene from Hamlet.

"Now cracks a noble heart. Good night, sweet prince,
And flights of angels sing thee to thy rest!"

THE SOCIAL SECURITY SOLUTION

(Mr. GEPHARDT asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. GEPHARDT. Mr. Speaker, some have argued in recent days against offsetting social security taxes through a refundable income tax credit. It is alleged that a proposal like this would postpone a confrontation with the really tough social security problems because it would take pressure off the Congress to remedy the same. It is implied, furthermore, that the social security system will suffer directly from passage of such legislation.

The truth is that H.R. 7046 in no way weakens the social security trust funds. Scheduled payroll taxes for the next 2 years will remain in effect. Revenue to the trust funds is unaffected by a credit against income taxes that takes payroll taxes into account.

Further, the truth is that H.R. 7046, if enacted, will heighten the pressure on the Social Security Subcommittee, on which I proudly serve, to confront the problems we all recognize do exist. If we fail to address the social security tax level we will continue to fail to address the underlying problems in social security which must be solved for the sake of generations to come.

The truth is, as explained in my extended remarks, that H.R. 7046 will stimulate employment, reduce inflation, counter the recession and hasten social security reform.

HOUSE OF REPRESENTATIVES,
Washington, D.C., August 27, 1980.

DEAR COLLEAGUE: Whether you are a Republican, a Democrat, or an independent, we all agree that the economy is in trouble and that we should do something about it. Inflation, recession, and unemployment haunt every legislative decision we make. What we disagree on is the solution.

Most people believe a tax cut should be part of the solution, but there is disagreement as to when a tax bill should be considered or passed. My purpose in writing is not to argue that question, but to concentrate on the merits of a Social Security tax credit as opposed to a general individual income tax cut.

In my opinion, our goal in terms of tax policy should be to take small but long range steps that will address inflation, the recession, and unemployment, preferably at one and the same time. In other words, a tax cut that would be non-inflationary, reduce unemployment, yet stimulate productivity as a key to ending the recession, would be the optimum. Can we agree on such a plan? I think we can.

I would offer to you the Social Security Payroll Credit Act of 1980. H.R. 7046 would provide employers, employees, and the self-employed with a refundable credit against income taxes equal to 10% of their payroll taxes. If enacted and made effective January 1, 1981, it would cost the Treasury approximately $10.4 billion in FY 1981.

WHY SOCIAL SECURITY TAXES?

You may ask why I focus on payroll taxes. One of my subcommittee assignments on Ways and Means includes Social Security. I participated in the 1977 debates that resulted in the payroll tax increases that we felt, and I still believe, are necessary to restore fiscal soundness to the Social Security trust funds. Long-term reform of the Social Security System is on our Subcommittee's agenda for the 97th Congress, but the payroll tax increases will still take place as scheduled. On January 1, 1981, payroll taxes will increase to 6.65 percent on employers and employees up to $29,700.

Yet, unlike local real property taxes or State income taxes, payroll taxes are not taken into account when figuring one's Federal income tax. I believe a universal tax system like the Federal income tax should take into account each taxpayer's total burden. This is true especially when taxes are increasing dramatically as they are. Federal income and Social Security taxes yielded an effective tax rate of 10.2 percent in 1964 for a typical family of four—in 1981, that rate will have risen to 17.8 percent.

In 1981, Social Security taxes for individuals will rise $6,936. A tax credit slightly over 8 percent would compensate for this. At 10 percent, the bill arguably looks back to the increases borne over the last three years that went unnoticed by Congress in the opinion of most taxpayers despite the tax cuts enacted in the Revenue Act of 1978. The concept in H.R. 7046, at whatever percentage, offers us a flexible opportunity to tell our taxpayers that we recognize the burden they bear and are doing something about it. This, in turn, will heighten the need to deal with the really tough Social Security problems next year.

WHY NOT THE SENATE FINANCE COMMITTEE APPROACH?

The Senate Finance Committee has taken one approach. For $11.1 billion in FY 1981, they have recommended increasing the personal exemption, the standard deduction (zero bracket amount), and the earned income credit; a new deduction to redress the marriage penalty in part; and tax rate reductions for all income categories. Admittedly, the Finance Committee feels that this package takes into account inflation and increases in the payroll tax. But I challenge you to explain to your constituents how a change in the "zero bracket amount" or the "earned income credit" balances out payroll tax increases. Does a tax cut of $1.468 billion for taxpayers making over $200,000 make sense to the unemployed? Does increasing the deficit by $20 billion in this manner hope to be anything but inflationary? Will $300 million for working couples increase their productivity? I think not.

WHY NOT THE BEST?

In this season of political alternatives, one might also ask, is the Social Security Payroll Credit Act the best tax cut available? I doubt seriously that we could ever agree on what is the best approach in this regard. A comparison of the allocation of revenues under a payroll credit to general rate cuts attached hereto is evidence enough for me as to the better approach. I submit that H.R. 7046 offers the following other advantages over what the Senate Finance Committee has produced:

H.R. 7046 STIMULATES EMPLOYMENT

Unemployment rose from 7.0% to 7.7% between April and May and is expected to rise to 8.5% by the end of 1980. This makes the employment-stimulation features of H.R. 7046 especially attractive. On the average it takes $40,000 in capital for the creation of each new job. H.R. 7046 lowers labor costs directly and thus could lead to the creation of as many as 250,000 jobs. CBO estimates it would reduce the unemployment rate by .2%.

Moreover, the payroll tax credit would have an especially favorable impact upon the service sector of our economy in which a high proportion of minorities and women are employed. A payroll tax credit will create jobs among those who have the most tenuous hold on employment and who are particularly hard hit by the recession.

H.R. 7046 REDUCES INFLATION

Because the payroll tax credit reduces the cost of labor, it will result in lower costs of goods and services. CBO estimates that the proposal would lower the Consumer Price Index by as much as .3% because employers will use the credit to hold back commodity price increases. CBO also estimates that real GNP would be almost $8 billion higher in FY 1982. A payroll tax credit is more than merely non-inflationary—it will have a positive impact on the inflation rate.

H.R. 7046 COUNTERS THE RECESSION

Because it will increase purchasing power, create more job opportunities, and lower the rate of unemployment, reduce labor costs and thus lower the cost of goods and services, and increase real GNP, this proposal is a particularly effective step towards easing the current recession.

Coupled with proposals for increased depreciation to favor the capital intensive sector of our economy, I believe the Social Security Payroll Credit Act provides the solution we are looking for. This tax credit complements those proposals because its benefits flow more to labor-intensive businesses, such as the service sector, which contribute the bulk of our GNP.

Yet a payroll tax credit also encourages investment in capital and training throughout the economy. By reducing labor costs and adding to business cash flow, the proposal would provide internally generated funds for investment. At a time when high interest rates discourage borrowing, this credit would have a positive impact on increasing productivity.

CONCLUSION

I am not the only person who endorses the payroll tax credit approach. The following endorsements speak for themselves:

"There is an easy alternative: Simply grant a refundable credit against income taxes for a specified percentage of payroll taxes paid. Congressman Gephardt, for example, has introduced a bill pegging the cut at 20 percent for both employers and employees. This would do the trick."

(Walter W. Heller, Regents' Professor Economics, University of Minnesota, August 2, 1979.)

"Social Security tax reductions work through a number of channels . . . While on balance the effects of payroll tax reductions work more slowly than income tax reductions, the effects are thought to be somewhat larger and last longer . . . The biggest attraction of Social Security tax reductions is that the reduced business costs tend to offset the effects of higher output on prices, giving a temporary assist to the tradeoff between unemployment and inflation."

(Board of Governors of the Federal Reserve System, Division of Research and Statistics, October 15, 1979.)

"Legislation has been introduced—H.R. 7046 by Representative Gephardt and S. 2920 by Senator Bradley—that would provide a refundable tax credit equal to 10 percent of the Social Security contributions of employees, employers and the self-employed . . . This type of tax cut would more than offset the scheduled increase for most wage earners, while not affecting the financial stability of the Social Security Trust Fund. Such a tax cut would meet the standards of fairness, targeted relief to those who need it and help in the fight against recession—standards we believe should be applied to every tax cut proposal."

(Lane Kirkland, President, AFL–CIO, July 30, 1980.)

The Social Security Payroll Credit Act of 1980, H.R. 7046, is no panacea to all our economic problems. But of all the proposals that have been offered in the last few weeks, it is the one which is best calculated to offer immediate benefits to individuals, provide a needed stimulus to business, encourage employment and counter the recession, and yet not be inflationary. Thus, I believe this proposal offers the most responsible way to keep faith with the American people. For that reason alone, it merits the support of Members on both sides of the aisle.

Yours very truly,

RICHARD A. GEPHARDT.

DISTRIBUTION OF INDIVIDUAL TAX CUT BY INCOME CLASS

[1979 income levels, in millions of dollars]

Income class	Tax increases under current law:				
	Social security	Inflation minus interest exclusion	Total	Tax reduction proposal including capital gains reduction	10 percent social security payroll credit
Under $5	286	176	462	270	349.7
$5 to $10	636	1,252	1,888	1,985	793.0
$10 to $15	852	1,196	2,048	2,237	1,066.2
$15 to $20	1,009	1,327	2,336	2,501	1,262.7
$20 to $30	1,946	2,615	4,561	4,857	2,366.6
$30 to $50	1,664	2,504	4,168	4,466	1,552.7
$50 to $100	446	1,435	1,881	2,073	360.7
$100 to $200	77	403	480	666	60.2
Over $200	20	135	155	1,468	15.7
Total	6,936	11,043	17,979	20,523	7,827.5

Joint Committee on Taxation, Aug. 22, 1980.

EXTENDING THE PROHIBITION ON ARBITRARY IRS AUDITS OF INDEPENDENT CONTRACTORS

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. PANETTA. Mr. Speaker, I am today introducing legislation to extend the ban on reclassification of independent contractors by the Internal Revenue Service as employees for tax purposes. My bill would extend the ban that was written into both the Revenue Act of 1978 and Public Law 96–167 until January 1, 1983. If we do not act, the ban will run out at the end of the year.

This entire program was precipitated, as my colleagues will remember, by the sudden decision by the IRS in the early 1970's to begin reclassifying independent contractors as employees.

There are crucial differences in tax status between employees and independent contractors. When an individual is classified as an employee, the employer is required to act as a collecting agent for the Federal Government, withholding and remitting to the Treasury both income taxes and the employees' share of social security taxes, while also paying unemployment taxes and the employer's share of social security taxes. If an individual is classified as an independent contractor, though, he is responsible for paying his own income tax and self-employment taxes.

In years past, the determination of independent contractor status was made under the common law test. This system worked smoothly and fairly, providing certainty to all parties involved.

Unfortunately, in the early 1970's the IRS arbitrarily decided to begin reclassifying as employees workers who previously had met the common law test for independent contractor status. This policy ran contrary not only to previous court decisions but also to published revenue rulings and private IRS letter rulings and tax audits of the very businesses whose independent contractors were being reclassified. Obviously, this was an extremely unfair and irrational situation. These reclassifications were retroactive, and they presented many companies with huge back tax assessments.

In addition, they removed the certainty upon which companies making use of independent contractors had relied in the past. Of course, the redesignations also hurt the individuals involved, since they suddenly lost their status as independent contractors and became subject to the strictures of employee status.

In 1976, reacting to what they saw as an obvious injustice, both Houses of Congress backed a statement in the conference report on the Tax Reform Act of 1976 which urged the IRS "not to apply any changed position or any newly stated position which is inconsistent with a prior general audit position in this general subject area to past, as opposed to future taxable years" until the completion of a study by the staff of the Joint Committee on Taxation. The IRS, though, ignored this judgment and continued to initiate audits and to assess businesses with taxes resulting from these reclassifications.

By reclassifying independent contractors in over 14 industries, the IRS was in effect reversing 50 years of past audit practices. Real estate brokers, insurance agents, direct sellers, beauticians, service station operators, loggers, and others were being asked to pay these back taxes on hundreds of individuals who had historically considered themselves independent contractors. It was clear that a legislative remedy had to be found.

In response to this need, I introduced, as did Congressman GEPHARDT and Senator DOLE, legislation to call an immediate halt to audits inconsistent with practices in effect as of January 1976. This legislation drew a great deal of support in the Congress, and the Revenue Act of 1978 included a provision prohibiting the IRS from applying any new or changed position with respect to an individual's tax status for employment tax purposes if the position was inconsistent with pre-1976 practices. This legislation also terminated any tax liabilities for taxpayers who had a reasonable basis for treating workers other than as employees. In December of last year, Congress extended the prohibition on IRS actions in this area until January 1, 1981. That date, needless to say, is approaching rapidly.

My bill would extend the ban on IRS activity for 2 years. Since it is clear that Congress needs a sufficient amount of time to consider this issue, a ban of this length is absolutely necessary. It will permit the 97th Congress to act rationally, without the need for yet another year-end rush to enact a 1-year extension, as happened last year and could happen this year.

I am a supporter of H.R. 3245, introduced by Congressman GEPHARDT, which would establish firm criteria to be met by independent contractors in order to qualify for the tax status which has made sense for them for so many years. Regardless of the final determination made by Congress on that legislation, though, it is important that we act now to stop any improper audit actions by the IRS. Congress, not the bureaucracy, must make tax law in this area.

Following is the text of my bill:

A bill to extend for an additional 2 years certain provisions relating to controversies involving whether individuals are employees for purposes of the employment taxes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (a) of section 530 of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before 1981) is amended—

(1) by striking out "January 1, 1981" in paragraphs (1)(A) and (3) and inserting in lieu thereof "January 1, 1983",

(2) by striking out "1981" in the subsection heading and inserting in lieu thereof "1983", and

(3) by striking out "1979 and 1980" in the heading for paragraph (3) and inserting in lieu thereof "POST-1978".

(b) Subsection (b) of section 530 of the Revenue Act of 1978 (relating to prohibition against regulations and rulings on employment status) is amended by striking out "January 1, 1981" and inserting in lieu thereof "January 1, 1983".

LAMEDUCK SESSION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. RHODES) is recognized for 60 minutes.

Mr. RHODES. Mr. Speaker, the proposal by the majority to hold a lameduck session in November is tacit admission that they have become legislatively musclebound, and unable to do the public's work. I am reminded of the words of the great Winston Churchill, who in similar circumstances described the fumbling opposition this way:

> They are decided only to be undecided, resolved only to be irresolute, adamant for drift, solid for fluidity, and all-powerful for impotence.

During the course of our history, lameduck sessions previously have been held only under extraordinary circumstances, events of national emergency and great demand for congressional action. This proposal simply represents the majority throwing down its tools, walking away from the job, admitting it has frittered away its time, and has failed the American people in responsibility.

It is not difficult to fathom the rationale behind calling a convocation of limping ducks into session after the election. The majority simply wants to duck having to vote on tough issues before the election. The majority has dilly dallied around, failed to establish or follow any priorities, and now finds itself with a long list of so-called must legislation that there is strong doubt is really necessary.

The 96th Congress has not distinguished itself either in quality or adequacy of its legislative output. It has compiled a record of copious procrastination, which has resulted in a legislative logjam. The plain fact is that the majority is trying to dodge establishing a record on key issues prior to facing the electorate. Rather than running on its record, it is running away from having a record, simply by ducking the issues.

The American people, in good faith, elected the Congress to do a job. Now the majority claims that it simply cannot finish its work load before its chosen adjournment date. It would seem to me to be more logical to stay here on the job, to take care of legislation that is important, to fulfill our obligation to the public, assumed when we were elected to the Congress.

By keeping at it until mid-October, much of the legislative backup could be cleared away. I do not know just what the majority believes the political advantage will be to spend more time at home explaining why Congress cannot perform, rather than keeping on the job long enough to do the work. We Republicans certainly are willing to remain at our posts, to meet often and long, to finish the session with important legislation considered and dealt with. We certainly intend to let the American people know that the self-declared deadline for a legislative cutoff is an arbitrary, and we believe irresponsible, choice made solely by the majority on the basis of political expediency.

The Congress changed the date of the beginning of the fiscal year so that it would have sufficient time to consider appropriations. Yet we find many of them unresolved as we go into the final month of this fiscal year. Consideration under the pressure of an adjournment deadline is not conducive to good legislation. But, again, perhaps that is by design, aimed at getting through dubious funding that would be weeded out under more careful consideration.

There is a great moral question concerning the appropriateness of a lameduck session, after the people have made their choice at the polls. There is the possibility, and I believe with the political machinations already exercised by the majority, the probability, that unwise legislation concerning appointive powers and spending measures could be railroaded through with the votes of those the public has rejected for service in the Congress. Particularly is this a possibility if Mr. Reagan is elected President.

As I travel around this Nation, I find a great deal of popular displeasure with the Congress, which indicates to me that there may well be sizable changes in the political alinement in November. It would be a travesty on responsibility for a lameduck session to enact legislation unwanted by the people.

I see nothing on the crisis horizon that would justify a lameduck session. One has not been held in a Presidential year since 1948, when it became necessary to swear in Members and extend the life of the Hoover Reform Commission. By any measure of national need, this proposed session represents a capricious decision by the majority to avoid its responsibility. There simply is no justification for failing to stick to it and get the job done before going home to campaign.

For the past 25 straight years we have had one-party rule of the Congress. The majority apparently has become so accustomed to running the show that they new feel they can ignore the public interest with impunity, work when and however they wish, and let the public's business go by the boards. I do not believe the American people are in the mood to be politically manipulated this year. I am certain that they will see through this grandstand play, that they will object to the sham, and will not buy the story that Congress is just so busy doing so much that it cannot get it done in 9 months. They will realize that this proposed postelection session has been arranged at the convenience of a callous majority, at the inconvenience of the national interest.

It is a sad culmination of a quarter of a century of gathering arrogance, and illustrates graphically the deterioration of Government when one party stays too long in the saddle. The majority may make its choice—and the public then will make theirs. I am betting that a late November session will be populated by a greater number of lameducks than the then former majority anticipates.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from New York.

Mr. CONABLE. Mr. Speaker, I would like to agree with the gentleman's remarks. My leader, as usual, has told it the way it is. It is a copout.

I have been turning over in my mind some of the things that should be done before this Congress goes to its accounting with the people. It is pretty apparent that they are the reasons more than anything else for the lameduck sessions, such things as the second budget resolution, such things as the more controversial appropriations, many of which will apparently not be completed by the time of our recess for the election period.

It is pretty obvious that the leadership wishes to avoid having to account for these votes to the American people and that that is the primary reason for the lameduck session, rather than a limitation on the time which is available to us precluding accomplishment of these various controversial measures.

I do think that if our democracy is to work properly, the people have a right to judge how their representatives are voting on the most controversial matters, usually the last things to come up at the time of election, rather than 2 years and a few months later, which is the effect if we put these controversial matters over.

I deeply regret that we are not performing our function and having our accounting with the American people in the way we should.

I personally think that a substantial part of this is a failure of leadership at the Presidential level. In the 16 years I have been in Congress I have concluded that our system does depend heavily on Presidential leadership. Many people seeing the disarray of the 96th Congress say to me, "Well, I suppose you're smacking your lips and rubbing your hands as a minority Member because the President, the administration, and the Democratic leaders of the Congress are failing to meet their obligations in such a notorious way."

But quite frankly, it has been my experience that this is not a satisfactory environment in which to work, that as a minority Member, I would much rather respond to policy than to dwell in the swamps of nonpolicy.

I would much rather react and on occasion follow good leadership than I would find myself trying to create some sort of positive leadership as a minority Member myself.

I deeply regret that the President has not projected his leadership, his concept of government and his obligation to generate policy into the Congress so that we can have the kind of response here that will give us a sense of accomplishment and permit the citizens branch here to follow the expertise that a good executive branch should be capable of in the type of system we have. So I blame him as much as I blame our own majority leaders here in the Congress.

I hope that we will find the public being aware of this, despite the failure to complete our legislative accounting before the election.

Mr. RHODES. Well, I thank the gentleman from New York. I could not agree with him more. I think he would agree also, however, that it would certainly be a more salutory situation if, indeed, the leadership of the majority of this party could face up to the fact that there is not a lot of leadership or a lot of stimulus from the executive branch, and in spite of that lack of leadership to rise to the occasion and to enact a legislative program on time which is required for the benefit of the country, instead of actually just saying, "Well, you know, there is nothing we can do about it. Therefore, let us do not do anything that might cause the voters to be any madder than they now are."

Mr. CONABLE. Well, that is a good point.

Mr. Speaker, it seems to me that in most situations of this sort where we have coequal branches of Government where there is a failure of leadership on one level, strong people come forward on another level and fill the vacuum. That has not happened in this Congress. We have wallowed. We have not had a strong policy line generated anywhere. The result is that it is an abysmal record of accomplishment in the 96th Congress, one that I think should, as the gentleman has stated, declare to the American people the bankruptcy of the current majority party leadership.

Mr. RHODES. Mr. Speaker, I would like to yield to the gentleman on my right.

Mr. CARR. Mr. Speaker, I would like to thank the distinguished minority leader for yielding and congratulate him on his efforts to shut Congress down before the election. All of us would like nothing better than to have little or nothing to do for the months of November and December, as has been the congressional tradition all these years.

I know that my taxpayers will aspire to his leadership in trying to figure out a way that you can get paid for 2 months without having to work for it.

Mr. RHODES. I think the gentleman has completely misunderstood the thrust of the minority leader's statement. What I was trying to do is to get the gentleman and his Democratic colleagues to work until the 18th of October instead of knocking off on the 4th of October, so that we can get the job done.

I do not see any reason why we should come back after the election with a lot of lameducks. We did away with lameduck sessions when the 20th amendment was adopted. I am sure the gentleman is too young to remember that, but I remember it very well, with my silver hair and hoary age.

Mr. CARR. Well, if the gentleman would yield further, I would be glad particularly in recognition to his giving me token opposition this year to work right up until election eve. I just would like to be there so I can cast my own vote for myself; but I would like nothing better than to do nothing and have a great old time and a vacation for the months of November and December. If that is the gentleman's will, I think most of my voters would aspire to the gentleman's leadership.

Mr. RHODES. I am pleased to have the gentleman's support.

Mr. Speaker, I yield to the distinguished minority whip, the gentleman from Illinois (Mr. MICHEL).

Mr. MICHEL. Mr. Speaker, I appreciate the distinguished minority leader yielding and I want to commend him for his leadership here in pointing out the sham that is being perpetrated upon members of the minority particularly, and the gentleman from New York who preceded me with pointing out those specific measures which should be enacted before a formal adjournment of this Congress and particularly before the election, but which will be delayed until afterward for obvious reasons.

I guess, Mr. Speaker, if I would make a contribution to this effort here, that it would be in this frame of reference.

When I retire from this body, I hope to take back to Peoria with me a few personal mementos of my years here and the friendship of the colleagues with whom I have served.

I will not take my desk or my equipment, my stationery or the carpet on the floor. They do not belong to me. They belong to the people. When I retire, they will be passed along to someone else. They will be passed along with a card that will give the Member who replaces me the right to vote on behalf of the people. The vote is not mine any more than are the desks and the chairs and the lamps.

When my successor is elected, under whatever circumstance, I will be the lameduck, and I sincerely hope that whenever that time comes I am not called back here to Washington to cast a vote that is, in theory no longer mine. I will come back, all right, and occupy the office and use the desk and the stationery. But I do not want to have to use the vote. The desks are a dime a dozen, piled high in warehouses all over this town. The vote, that is a different matter. It is a precious, rare and honored treasure that people of this Nation allow 1 of every 450,000 to use as they see fit. When they take it away it is for good reason. When it is relinquished, it is relinquished for good. As far as I am concerned we all have a moral obligation to respect the ownership of that vote. We have no right to rush back here like a herd of carnival goers on the last day of the fair and throw it around as though it was just another ring to be tossed at the milk bottles.

Rump sessions or lameduck sessions are a part of our history. That is true. But that part of our history has been written, sealed and put on the library shelves. Modern communication and transportation have eliminated the need for them. Lameduck sessions have their place in times of emergency. That is also true. But in times of emergency in this country, many laws, many traditions and many otherwise legitimate practices are put aside, but never lightly or without good reason.

This is not the 19th century, nor is it a time of national emergency. This is a time when the Congress of this land has neither the gumption, nor the will, nor the decency to do the people's work in the prescribed amount of time. This is a time when the Congress has to cower under the shadow of a national election and run and hide behind the protective cover of the days and weeks after the election. Only then can this Congress work its will without fear of being punished for working against the public will.

It is an embarrassment. The people know the calling of a lameduck session does not suggest that we in this House are working so hard and long that there just is not enough time. It does suggest that we, in a great democracy, are too weak to legislate in the light of day. It suggests that the Congress intends to openly repudiate the decisions the voters will make November 4.

A lameduck session is lame politics, it is lame government, and it is a lame attempt at deceit.

I am not new at this game. I have been around a long time and I know the reasons behind the calling of the session. However, you do not have to be a veteran of the House to understand what is going on. You know what is going on if you have been hanging around this floor for the past 2 years waiting and waiting and waiting for the leadership to call up the important bills, the budget bills, the appropriation bills, the reconciliation bills, and authorization bills. Delay has been the tactic. Confusion has been the strategy and subterfuge the ultimate goal. The leadership, as we know here, is caught in a time warp. They are stuck with a bushel full of bills, a pouch full of promises and a yellowed parchment full of principles straight out of one decade while the American people are living in another. The leadership has to catch up with the country, hope the country digresses back a decade or two, or do their legislating after the election, but before a whole new set of lawmakers from the 1980's enter. And those new Members will be here. That is what is going on. I just hope the American people do not buy it. If they do, they will pay later, and they will pay dearly.

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I appreciate the gentleman taking the initiative to point up to the American people what we are confronted with, and they are, too.

Mr. RHODES. I thank the gentleman from Illinois.

Mrs. SMITH of Nebraska. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentlewoman from Nebraska.

Mrs. SMITH of Nebraska. Mr. Speaker, I would like to commend our distinguished leader for calling this special order. I concur fully in everything that has been said. I think it is totally out of order for us to have a lameduck session just because we do not have the courage to vote on tough economic issues now.

One of the reasons for wanting to postpone this voting is the foreign aid

bill. I am on the Subcommittee on Foreign Operations of the Committee on Appropriations, and 7 weeks ago this bill was brought out for $8.6 billion of foreign giveaways. The folks who are promoting this realize that now the Congress would not vote this level of expenditure, so they want to wait until after the election when the White House thinks it can drum up support for this huge foreign aid program.

I think the people at home expect us to stay here and tend to business and complete our business before the election.

Mr. RHODES. Do I understand the gentlewoman correctly that the foreign aid appropriation bill has been voted out of the subcommittee and is ready for full committee consideration?

Mrs. SMITH of Nebraska. It has been voted out of the full Appropriations Committee for 7 weeks.

Mr. RHODES. And is ready for floor action?

Mrs. SMITH of Nebraska. And is ready for the floor, but we cannot get it up on the floor.

Mr. RHODES. It is not scheduled. Does that not possibly or probably mean after the election, after the voters can no longer be indignant at the majority for bringing this inflated bill up that they might even bring a more inflated bill in?

Mrs. SMITH of Nebraska. Yes, indeed. The fact is that the President is asking us for an even more inflated bill and I think we can lay this right at the door of the White House, this promotion for not voting on foreign aid.

In addition, we have not voted yet on the 1980 foreign aid bill.

Mr. RHODES. This is truly a reason why, then, a majority in this Congress does not want to complete its work. The voters would probably be rather angry at this time at them if they voted for such an inflated bill.

Mrs. SMITH of Nebraska. The voters in my district certainly would be mighty angry, and I think we have this sentiment all across the country. I thank the gentleman for yielding.

Mr. RHODES. Now we are making more sense. We are beginning to understand why and what the motivations are for this rather ludicrous situation.

Mrs. SMITH of Nebraska. Mr. Speaker, I must join my distinguished colleagues to oppose the leadership's stated intent to hold a postelection session of Congress this year.

Everybody knows that this lameduck session would be the leadership's ploy to avoid voting on the tough economic issues while the voters' eyes are upon them, while they can still be held accountable to the people.

Instead, the White House and its allies here on Capitol Hill want to put off consideration of big spending, controversial measures until after the polls close on Tuesday, November 4. Then, they can vote on them quietly, corraling votes for such incredible waste as the misbegotten programs of the foreign aid bill that seem to do little to help the world's poorest of the poor and gain us nothing but increased hostility of the very people and governments we are trying to assist.

As a member of the House Appropriations Subcommittee on Foreign Operations, I wish to inform my colleagues of the contents of the foreign aid appropriations bill for this year, H.R. 7854. This bill would commit $8.6 billion more to foreign aid at a time when Americans are seriously questioning this level of expenditure. With this substantial an increase, one can well understand the majority's desire to keep bills such as this "under wraps" until November 5.

Mr. Speaker, I think we ought to stay on the job in Washington and attend to the public's business until we complete work on all essential legislation. I plan to work actively for extending this session of Congress as far beyond the scheduled adjournment date of October 4 as is necessary.

I refuse to support any proposal that we stop working and go home to campaign. It is conceivable that as many as 20 percent of the Members participating in a lameduck session this year would no longer be representing the views of their constituents either because of retirement or election defeats.

The principle involved is bad. Historically, lameduck sessions have produced little of value and sometimes actions were in fact harmful to the national interest.

White House allies, the big spenders who lead the Congress, want a session after the election in the mistaken belief that they can ignore the broad and deep change of sentiment among the American people that is calling for a return to financial sanity in Government taxation, spending, borrowing, and regulating.

Mr. Speaker, the majority leadership in this Congress supposedly controls the House and Senate by large margins, nearly 2 to 1, in fact.

Yet, to turn again to the foreign aid bill as an example, this legislation cleared my Appropriations Committee long ago. After all this time, the bill still is not scheduled for action, and there is no sign that it will be.

The leadership knows that if put to a vote now, the foreign aid bill—and much other vital legislation—would be defeated because the Congress would be facing the demands of our Nation's voters.

By delaying these controversial votes until after the election, White House supporters plan to corral enough no longer representative votes to approve vast new funding totals, even though this would controvert the views of the people. This amounts to disenfranchisement.

This, all by itself, is reason enough to oppose any lameduck session this year. The American people must be told that they are in danger of being disenfranchised by the stalling tactics of the White House allies in the Congress.

Our people must be told that the leadership still clings to tired, big-spending programs that no longer have enough vitality to attract popular support.

Less than 3 months ago, these big spenders were telling the American people that they, like economy-minded Members of the Congress as I am, now believed in a balanced budget. For proof, they proudly pointed to the first concurrent budget resolution for fiscal year 1981 that called for a revenue surplus of $200 million.

They pointed to this, even though they knew it was a sham. That resolution, raising the tax burden on the American people by more than $90 billion, was balanced on paper only. It was balanced because it relied on economic assumptions that were blatantly unrealistic.

And now, the President has just abandoned that in favor of still another budget projection for fiscal 1981 in which tax cuts and a huge new deficit are to be accepted.

Mr. Speaker, no wonder the leadership is so anxious to get out of town as soon as they can. But I submit this is an abdication of responsibility to the betrayed and abused taxpayers of this Nation.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the distinguished minority leader for yielding. I want to offer a few thoughts in addition to what he has said.

I, too, would want to adjourn and get out of town as fast as I could if I were TIP O'NEILL, the Speaker of the House, because I know that he is confronted by not only the problem of avoiding votes on issues so his band can be reelected, but he now apparently has mutiny in the ranks.

Mr. Speaker, I would ask unanimous consent to include extraneous matter at this point in my remarks.

The SPEAKER pro tempore (Mr. HANCE). Is there objection to the request of the gentleman from Maryland?

There was no objection.

LETTER TO AN UNNAMED BUT COURAGEOUS DEMOCRATIC MEMBER OF THE HOUSE

DEAR ———: I was extremely disappointed to note that you voted against a motion to uphold the ruling of the Chair last week.

It is elementary to our procedural control of the House that the chair be supported by members of our party. That is basic to a parliamentary body. In other countries if such a vote were lost, the government would fall.

You should know that from 1937 to 1968, there were no recorded votes on the Chair's rulings. From 1968 until 1979, there were four votes. Now we have seen three roll call votes in seven weeks!

Members of the Steering and Policy Committee and the Whip's Organization have discussed these developments, some of them calling for disciplinary measures and meetings. I believe, however, that our best course is to call the above facts to the Members' attention.

I fully understand the pressures that are brought to bear by single-issue groups on such occasions, but I believe members have to be ready to support the orderly process when a member seeks to confuse procedure with issue.

I trust you will take all these facts into consideration in the future. We must work together to enact a legislative program.

Sincerely,

THOMAS P. O'NEILL, Jr.,
The Speaker.

Mr. BAUMAN. The extraneous matter

I am including is a letter that went to a number of Members of the majority party dated August 25, 1980, from the Speaker in which they are threatened, in effect, because they have not been going along with the Speaker and the majority leadership's wishes. I do not blame them. They, too, want to be reelected, and to follow the course laid down by the majority leadership is, we understand, the course of disaster.

So discipline is one reason to get out of town in a hurry and not to have to be here before the elections, and that allows the nervous Democrats not to have to vote on issues such as the budget and taxes.

But I would suggest one additional reason, and that has been revealed to us only within the last hour. The President of the United States, in an unprecedented and historic move, has submitted his third budget of the year. He had one in January with a deficit. Then he submitted one in February that was supposedly balanced. Today he has announced a whole new package of supposed tax cuts, and a $40 billion deficit. My colleagues will remember a few weeks ago he said Ronald Reagan's proposed tax cuts were poison. If that were so, now President Carter is gulping down an even larger amount of poison. He was for a balanced budget earlier this year and now he has abandoned that.

Here is what the dispatch from the wire service says about these new proposals the President has just laid before the country.

> Most of the tax and spending initiatives will not be formally proposed as legislation until after the November 4th election, Administration sources said.

So, in the lameduck session, the motto will be "Trust me." My colleagues remember that old phrase, "Trust me," from the 1976 campaign. So the President promises to do all of these things, but he will submit them later. Much later. So not only is the majority avoiding the duties they should be addressing here, not only are they not voting on issues they should be finishing up before the election, now we have a whole list of promises that James Earl Carter of Plains, Ga. is going to make in the campaign. Then when we come back after the election, folks, you can believe it, we will be voting on them.

I think the gentleman from Arizona has raised an important issue, one we will hear a lot about in this House in the next few weeks as the lameduck session draws near.

Mr. RHODES. The gentleman from Maryland (Mr. BAUMAN) has brought up a very important point. The first budget, as he says, was not balanced. The second budget was jiggered around a bit and it apparently had a fairly precarious balance with the assumptions made, many of which proved to be erroneous. Now we have a third one.

I wonder if the gentleman would agree with me that the track record of this administration for consistency is such that it is really impossible to tell what they really are for and what they are against. The only thing I am really sure of is that Jimmy Carter is for his own reelection and against his own defeat. If the gentleman can tell me anything else that he is sure the President is for or against, I would like to yield to him for that purpose.

Mr. BAUMAN. I would say you can believe that statement. Trust me.

Mr. LEACH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. My Republican colleagues have noted a number of things that Congress should do before the election but there is one thing above all else it should not do after the election, and that is change the election laws of the United States.

Right now the election laws are such that if by chance the electoral college does not determine the winner in the Presidential election, the next Congress will vote on the next President of the United States.

However, in that event a lameduck session meets, the possibility exists that the Democratic majority will exert muscle to change the law to allow this Congress, rather than the next one, to determine the next President. If that were to occur, the very legitimacy of our Government would be jeopardized. The greatest electoral sham ever propagated upon the American people would occur. And with regard to the previous conversations about the one principle the White House stands for—winning elections—it is clear that this principle is well understood by the majority party of this Congress as well.

I am personally convinced that there is a strong likelihood that Governor Reagan will achieve an absolute majority in electoral college, but in the event no candidate does, we should be prepared to demand that the next Congress determine the next President and not allow any sort of electoral shenanigans to occur in the lameduck session proposed by the majority party. It would be tragic to produce a President not sanctioned directly or even indirectly by the American people.

Mr. RHODES. The gentleman has made a very important point. The way the law of the country now is, in the event that a Presidential election were to be not decided by votes in the electoral college, it would be decided by a vote in the House of Representatives, which would be elected in the same election as the Presidential election occurred. What the gentleman is saying is that with a lameduck session there is a possibility that a party which had gone down in defeat could change the law to try to allow the outgoing, the lameduck Congress to select the next President of the United States. Is that what the gentleman is saying?

Mr. LEACH of Iowa. That is correct. I would certainly hate to see a lameduck Congress cause the creation of a lameduck administration.

Mr. RHODES. I think that is something the people of the country should be well aware of and if, as I feel is certain, the majority of them prefer Governor Reagan to be elected President of the United States, they should also vote for Republican Members of the House so they can cinch that election in the event that the unhoped for event occurs and the election should go to the House.

Mr. LEACH of Iowa. I thank the minority leader.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from California.

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Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman for yielding. First, I would like to congratulate the gentleman for bringing this special order. I would have to say in passing, however, I am very sorry to see that we do not have the press corps more in evidence here, because it strikes me as somewhat ironic that if we were discussing a constitutional amendment dealing with the right of the people to be represented, this place would be overflowing, and you would have the press, I think, on the edge of their seats to see exactly what we were going to do.

Yet in 1932 when this body finally decided that we were going to adopt a new amendment to the Constitution, the 20th amendment to the Constitution, to establish those times at which the President would take office and the Congress would take office, the major reason they went through that whole process was to eliminate the possibility of lameduck sessions.

You can read through the RECORD and see speaker after speaker after speaker talk about the tremendous problem we had with the lameduck sessions which were occurring up to that time, and there was debate on both sides of the aisle about that. In that particular year 1932 the Senate decided not to debate it since they had already dealt with it five times before, and instead they put a report in the RECORD to stand for the debate. I would like to cite just one thing from that report to show what the Congress had in mind at that time when they adopted the 20th amendment to the Constitution, which was later ratified by the States. I quote from that report of the Senate:

> The only direct opportunity that the citizens of the country have to express their ideas and their wishes in regard to national legislation is the expression of their will through the election of their representatives at the general election in November. During the campaign that precedes this election the great questions demand attention at the hands of the new Congress are discussed at length before the people and throughout the country, and it is only fair to presume that the Members of Congress chosen at that election fairly represent the ideas of a majority of the people of the country as to what legislation is desirable. In a Government "by the people" the wishes of a majority should be crystallized into legislation as soon as possible after these wishes have been made known. These mandates should be obeyed within a reasonable time.

So it is evident what they were trying to eliminate, and that is the possibility of a lameduck session. I think that is what we have been presented with here—

that very great possibility. We are not in an emergency situation. We have had the ability to deal with the second concurrent budget resolution for weeks; yet we have not even attempted to do it. There is talk of certain Members' wanting to make sure that certain pieces of legislation are not brought on the floor until after election so they will not have to deal with those issues when they face the electorate in November. Nobody is being fooled here. I think we know exactly what is going on.

It just seems in terms of representative government that we ought to try at least to follow the spirit of the Constitution, even though we do not violate the letter of the Constitution by having a lameduck session, and proceed honestly far more in keeping with what representative government suggests and what our constituents obviously want. So I thank the gentleman for presenting this.

Again, I must lament the fact that this does not appear to be an issue that is stirring the hearts and minds of the American press, but if there is anything that seems to me they ought to be more concerned about, and the American people ought to be more concerned about, it is with trying to adjust the institutions of government in such a way that we deny the rights of the people of this country to be represented in a timely fashion, and that message has to be brought forward.

I thank the gentleman for doing that.

Mr. RHODES. I thank the gentleman from California.

Mr. Speaker, I now yield to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. I appreciate our minority leader taking this time today to discuss this issue which I am sure, as my previous colleagues have mentioned, will probably not receive a great deal of attention, and that is, why are we having a lameduck session? It should receive more attention.

Many people are asking here in the House, why has the Democrat-controlled Congress decided to "duck" the major problems facing the American taxpayers today? Why do they seek to postpone the major issues until after the November election?

I can tell you why. They are a flock of "dead ducks"—avoiding votes on major controversial issues before November 4—just to insure their own reelection. If this is the case, Mr. Speaker, then this is obviously a "lame" excuse for a Congress to meet.

The Demo-ducks have 2 full months before the November election. One full month before the October 4 recess target date. September's floor schedule should be filled with debate and votes on reconciliation, appropriations, the budget, and above all—tax cuts. But no. Instead the Demo-ducks just quack about balancing the budget and flap their wings about fiscal restraint. They are just sitting on their nests without taking any action.

Is this flighty? I should say so.

The Democrats are side-stepping Republican attempts to create a wise-owl Congress, that not only gives a hoot about, but acts on legislation to benefit the hard-working American taxpayers. Republican actions are consistently blocked by the Democrats' attempt to hatch an inflated golden egg. While what they want is a golden egg, what we get is bound to be a goose egg. Protected by the security of a new 2-year term, they will have the opportunity to create even greater burdens for the American taxpayers.

Rather than soaring like an American eagle, the Demo-ducks are waddling through this next month like dead ducks only to "quack" down on the American taxpayer's pocketbooks as soon as they get reelected.

If this is the case, Mr. Speaker, I say the Congress and the American people are in the soup—duck soup.

I thank the gentleman for taking this time, because I think it is appropriate that we try to address this issue to the House and have more of our colleagues aware that we know what they are up to.

Mr. RHODES. I thank the gentleman from California for his contribution. This gentleman from California (Mr. ROUSSELOT) as well as the gentleman from California (Mr. LUNGREN) mentioned the fact that there appears to be an amazing vacancy in the press gallery. I think probably the press was possibly not well informed of our intention today. It is my hope, however, that as time goes by and as other Members, as I am sure they will, express themselves on the absolute futility, fraudulent futility, if you will, of an attempt to have a lameduck session rather than do our work, that the press corps will realize that this is an important issue. I am sure that their not being here is not the result of their disinterest. I am sure that they will become interested in this issue.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

I also thank the gentleman for taking this time to point out the legislative failure that the lameduck session represents. It struck me as I sat here a few minutes ago and heard the gentleman from the other side of the aisle, who is somewhat in opposition to the gentleman's point about the lameduck session, perhaps unwittingly let the cat out of the bag as to what is really going on here. He mentioned the fact that if we go ahead and complete our work, what we would end up with would be a 2-month vacation. It is my understanding from most of the Members that I know on this side of the aisle that they do not consider that time vacation time.

□ 1520

They would go back to their constituency and listen to the opinions of their constituents, building for the next session of Congress. That is as it always has been.

A couple of years ago, I wrote a book, a history of the Congress as seen from the perspective of one congressional seat. That time was always considered very valuable to Members of Congress. The time they spent back in their districts learning firsthand from the people because they were living among the people. The time over the years has drawn steadily closer and closer together and we only have a few weeks of that time any more.

Mr. Speaker, I think most of us work very hard in our districts during that time. We go back there to find out what the American people are thinking so that the new session of Congress can really reflect that thinking.

What it seems to me that the other side of the aisle is talking about is going home only to campaign. The only thing they want to do is to go back to their districts and be there in time to take their political case to their constituents. They do not really want to listen to the issues because I think they are afraid of what they hear. They want to come back to Washington, hold this lameduck session that we all know will be a legislative disaster and they will ignore once again the wishes of the American people as we move toward the 97th Congress.

Mr. Speaker, I think the gentleman has made a very valuable contribution here by allowing a number of us to point out this failure and I thank the gentleman for yielding to me.

Mr. RHODES. I yield to the gentleman from Illinois (Mr. O'BRIEN).

Mr. O'BRIEN. Mr. Speaker, my compliments to the distinguished Representative from Arizona for taking the lead in pointing out how flawed is the notion of a lameduck session.

Mr. Speaker, I would only add this: As I travel my district, it seems to me that the Congress as a body has not only lost the affection of the people but, indeed, the respect. I hardly see how we can bring that back by not facing up to the issues as they appear now before we go to the polls. I think if we cast votes that we can go back and defend, that is one thing. People may not agree with them. But if we duck those votes: the foreign aid bill, the rules for the possibility of an election in the House, then I think all we can say is that we must be ashamed of ourselves. We have no real excuse for it and I think our image simply descends further in the eyes of the public.

Mr. Speaker, I thank the gentleman.

Mr. RHODES. I thank the gentleman from Illinois. I now yield to the distinguished gentleman from Arkansas, the chairman of our freshman class, the gentleman from Arkansas (Mr. BETHUNE).

Mr. BETHUNE. Mr. Speaker, I think it is important that we continue this educational process. This sort of process is inch by inch. It does not dawn on the media that we are into something vitally important here until we lay out enough facts and enough evidence so that they will begin to see the importance of the lameduck session.

Mr. Speaker, I see it in a little larger sense perhaps than has been discussed here this afternoon. That is in this perspective: The lameduck session is just further evidence to me that there is something inherently wrong with the Congress. The people know that. Public opinion polls have the approval rating of Congress down somewhere in the low

teens. The people can sense something is wrong with the institution. I do not think they really think the individual Members who serve here are corrupt because public opinion polls show the public thinks very highly of their particular Congressman but they think lowly of the institution.

It, therefore, occurs to me that a sort of institutional corruption has occurred which has absolutely nothing to do with the quality of the individual to serve in the body.

I, as the gentleman in the well, have spent a lot of time thinking about that because, as the gentleman mentions I am a new Member here and I have a sort of fresh way of looking at things, I hope.

Having read the gentleman's book called "The Futile System," it occurs to me that perhaps the problem here is that one faction, one party, one group of people has controlled this place for 25 consecutive years. That is not good. That is not healthy. Everyone knows it is not good to leave your sheriff in place in the county for 15 or 20 years. It is good to change him from time to time. The same rule applies to State legislators, the same rule applies to Governors; however, here in this institution one political faction has held control for 25 consecutive years.

As Lord Acton says, power corrupts and absolute power corrupts absolutely. That was the point the gentleman made in his book. It is time for a change. Sweep out all of the committee chairmen who have been in place now for 25 consecutive years. Sweep out those committee staffers who grow in number each year and who perpetuate the mindset that grips this place and makes it so difficult for a new idea, a fresh idea, to give life.

I think the important point here today is to tie this lameduck session to that overall proposition. Let us make the point to the people that the lameduck session that we are about to have this year is just further evidence that those people who held control here for so long cannot govern and that they will not govern.

Mr. Speaker, I thank the gentleman for yielding.

Mr. RHODES. I thank the gentleman from Arkansas. The gentleman is absolutely right. The lameduck session is just the latest symptom of a malady which can best be described as one party in power too long. I am satisfied that the American people are getting the idea.

I now yield to the gentleman from Ohio, the ranking member of the very important Committee on the Budget (Mr. LATTA).

Mr. LATTA. Mr. Speaker, I thank the gentleman very much for yielding. I want to commend the gentleman for taking this time to point up the need for this Congress to stay here and do its job.

I can think of no better reason for the Congress to stay here and do its job than the proposal just put forth by the President, today, for tax cuts. Here is something that involves $27.6 billion according to his figures, and very hurriedly put together.

I think the Congress should stay here and examine it. The President says he wants something done about that after the election, to affect taxpayers in 1981.

I have had an opportunity very quickly to go through some of the main features of this piece of legislation he says we should consider after the election, and I think the American people ought to study it now and this Congress ought to study it now and consider it now and then lay it aside and do something about the real problem.

Speaking of a quick fix, there is no quick fix, here. He wants to put the solution off until 1981.

I think something has to be done. We have a problem now. All you have to do is go out into northwestern Ohio, for example, and visit some of my counties where you have 16-percent unemployment and in the entire State of Ohio you have unemployment at more than 10 percent. The President says put that off until 1981? Hogwash. We have got a problem now, brought on by his economic policies and we ought to do something about it. We ought to have this Congress study this in depth.

Mr. Speaker, I think the American worker should know something about his proposal. On our side of the aisle we have talked about delaying that increase and the tax on social security. It is going to take effect January 1.

Lo and behold in this proposal just put forth by the President he wants to give them a tax credit of 8 percent. Now, when would that be effective? That would be effective on their income tax return that they would file on April 15, 1982. So it means that the American worker would pay those higher social security taxes all through 1981 without any relief by this administration.

I do not know where the President dreamed up that idea but the American working man is not going to buy it and certainly this Congress would not buy it. We ought to be doing something about that now.

Furthermore, I think we ought to be doing something about tax relief to the person who has been paying the taxes. Lo and behold, I find nothing here where the President is going to take care of that great bulk of Americans who are paying income taxes. No rate reduction.

Can you imagine a tax bill not giving those taxpayers who are saddled with this high inflation plus recession, not giving any tax relief in a tax bill? I cannot.

Speaking about unemployment, you know, as we look at his proposal, all the President wants to do is repeat what they did during the Great Depression days: throw money at the problem.

All you have to do is take a look at the unemployment figures during the Great Depression years and you will find them in double-digit numbers, as high as 25 percent and they never even got down to 19 percent before World War II came on.

The record shows that the only thing that brought this unemployment rate down then was World War II. So what is he proposing? To throw money at this problem. It has been proven through the Great Depression years that it just does not work and we do not want to make the mistake of repeating what he is proposing now, the failure during that Great Depression period.

□ 1530

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, when I first came to Congress I served on a committee to which about 300 bills were introduced in my first session, and of that 300, about 5 were passed. Each one of those had in its title the word, "emergency." What the committee was doing, of course, was using the word "emergency" to cover up its own unbusiness-like operations as it passed bills which were overdue.

That is what we are looking at for this lameduck session. We have declared an emergency long before the emergency exists. Our majority leadership has said that because of the emergencies of the situation, we must have another session after the election.

I think most Members of this Congress would agree that if the Congress wanted to get down to business, it could easily conclude all the necessary business before election. A lameduck session can only be justified in the case of genuine emergency. But when you decide 3 months beforehand that you are going to have an emergency, the public and the Members have a right to be suspicious.

Their suspicions are that the majority in the Congress, and the Speaker, are afraid to deal with the problems that need to be dealt with; that they are afraid to be recorded on the problems that the public wants to see some answers to, and the questions on which the public want to see the responses of its elected representatives.

I share that suspicion. It seems to me that the emergency here for the lameduck session is simply a little attack of fear and cowardice.

Now, it has been my experience in my rather short political career that in this game one can run, but one cannot hide. My guess is that in attempting to duck the issues, to not be recorded, or to avoid being recorded on matters of budget and tax cut, the majority of this Congress will get themselves in far deeper trouble than if they had the willingness to stand up and be recorded.

I thank the minority leader for taking the time for this special order. I think it is an important issue, and I think it tells the people of the United States something about the difference between the two parties. The lameduck session bespeaks the lack of vigor and enthusiasm and initiative of a party that has been in power for a number of decades and has grown stale, grown flabby, and grown afraid of its own responsibility.

I hope that in the place of that obsolete party we are able to put a new and vigorous political party in power for the coming biennium.

Mr. RHODES. I thank the gentleman from Minnesota. I wonder if the gentleman from Minnesota would agree with me that if the Democratic majority gets by with this ploy—and that is all it is—that we will probably every election year see that the second session of the Congress really does not amount to very

much. It will be putting off votes every year, because why face up to a vote which may be difficult at the polls if you do not have to? It will be having lameduck sessions.

It is sort of like a brandnew security blanket that somebody dreamed up for beleaguered Democratic Members running for reelection.

Mr. FRENZEL. The gentleman points out a probable additional distasteful result of this session. We have seen how the leadership here reacts. When it could not control its own committees, it went for proxy voting; it modified the quorum requirement; it went to more gag rules; it increased the number of suspensions.

It did whatever enabled it to pass its program with the least amount of debate, with the least amount of amendment, with the least amount of public exposure. It has adopted any procedure that made its operations more convenient.

The precedents now are so heavy that one must conclude in this case that the minority leader is right. There is no question in my mind that once the cripple begins to use this crutch, the crutch will become standard procedure, too.

Mr. GRASSLEY. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the next Senator from the great State of Iowa.

Mr. GRASSLEY. Mr. Speaker, I thank the gentleman very much for yielding to me, our distinguished floor leader, the gentleman from Arizona.

I say first of all that the effort for a lameduck session is because of poor management of time. When we had time during the spring, when we were not having an election facing us, we hardly met on a Friday during the first 4 months of this year. It seems to me that with the problems we even then were facing, maybe it would have been a better use of our time then to be here working than to be taking long 3-day weekends, and in some instances, 4-day weekends.

But more importantly, I see the effort for a lameduck session as a last-ditch effort of the majority hanging on, grasping for success of their philosophy, trying to get that philosophy carried out in some legislation where next year they will not have the majorities to accomplish it with. It is a last-ditch effort to get that philosophy into law.

That philosophy the majority party is not realizing, I am sure, that it is now not the philosophy of a majority of grassroots people in this country. It has been reflected now for the last 2 years in referendums around the country, in elections for the Congress, and just generally.

In party platforms, even of their own platform, it seems to me to be a little bit of a reflection of that, not to the great extent that our party platform, which has always been consistently for sound Government, but it is a last-ditch effort by the majority to hopefully, after the election is over, maybe pass some of that legislation that they cannot get passed now because of poor management of time, and afterward because the majorities will not be there.

But, as sincere as they might be in their efforts to promote their political philosophy of big government and high taxes and budget deficits, there is only one way that changes are successfully made in this society of ours when one party believes, as sincerely as they do, that their bankrupt philosophy is still good for the country.

The only change that can be made is at the ballot box, and it will be made, and there will be changes for the better made as a result of it when we get to the next Congress of the United States. But, in the meantime, it surely is an effort to hold on, grasping for the last breath of success, which breath is not going to come. Death will come to that political philosophy, at least as it has been dominant in the last two decades in this country.

Mr. RHODES. I thank the gentleman from Iowa.

Does the gentleman from North Carolina desire me to yield to him?

Mr. MARTIN. I certainly do, I say to the distinguished minority leader, after first thanking him for his leadership in focusing the attention of the Congress this evening as we get toward the scheduled first adjournment of this session of the 96th Congress.

On the wires just this afternoon there are reports of yet another reason why a lameduck session is being fashioned for us, and that is to enable the Congress to duck another issue; that being the issue of a tax cut which many of us here in the Congress have proposed. The minority leader, with the distinguished gentleman from New York, Mr. CONABLE, who spoke a little earlier, the ranking minority member of the Ways and Means Committee, have introduced rather straightforward legislation to offset the tax increases that are already scheduled to go into effect next year, to reduce that and to provide some relief, spelled t-a-x-c-u-t.

Yet, that is another issue that this Democratic leadership wants to duck, and put it off with the appearance of putting it off to a lameduck session so that they will not have to vote for it before the election. Then, after the election, when the heat is off, when the pressure is off, they will not have to vote for it then, either.

I am referring to news accounts—I have a news summary here which I have just examined—a statement by the President of the United States in which he proposes in a rather curious reformation of his own commitment against tax cuts, in which he comes out with a proposal for a wide series of kinds of tax cuts along the lines in addressing some of the needs that we have addressed and have dealt with in previous proposals.

It is interesting that as one goes down this, it includes faster depreciation write-off for business investments. That is in the Senate Finance Committee bill as well as in the gentleman's bill; tax incentives for research and development; improved tax treatment for Americans working abroad; tax incentives for export trading companies; a 10-percent tax credit for businesses investing in areas of high unemployment, an initiative which has received considerable support on our side of the aisle and in our party platform.

□ 1540

I refer also to special deductions for families with two wage earners, a deduction designed to offset the present "marriage penalty" that keeps forcing people into higher tax brackets.

These and other proposals which are contained in legislation which the Senate Finance Committee has already brought out of committee and which stand ready to be acted on are proposals our committee can take a look at, although it has been refused an opportunity to do that thus far.

So I suggest that maybe this is another reason for a lameduck session, to allow a pretense of being able to duck this kind of proposal and duck the more straightforward proposals which the gentleman from Arizona (Mr. RHODES) and the gentleman from New York (Mr. CONABLE) have already introduced and which a lot of us have cosponsored.

I would suggest that it is rather pitiful leadership for the President, who has heretofore said he is going to veto any tax bill passed by the Congress, to then come out with the proposal which is essentially the bill that the Senate Finance Committee has already structured and which has already been endorsed by Governor Reagan, and claim it as his own initiative. That is a lame excuse for leadership, it seems to me.

He does provide a couple of additional features. There are additional Government programs. There is additional authority for loan guarantees such as the one we recently saw in the situation of Chrysler Corp., which suggests that in the future it is going to develop to the point where if anyone wants to get a loan, a company will not be able to get credit unless the Government has guaranteed its credit in the form of some kind of loan credit guarantee.

But the greatest incongruity of the whole thing is where the President stated:

> Now—in the heat of an election year—is not the time to seek votes with ill-considered tax cuts.

Does that apply to his own proposal? Is he labeling that as being an "ill-considered tax cut?" Is he suggesting that in the heat of an election year he is trying to seek votes with such an "ill-considered tax cut," or is he suggesting that this measure which he is proposing or this tax cut proposal that has already been drafted and endorsed by Gov. Ronald Reagan is not an "ill-considered tax cut" but a proper answer?

If it is not an ill-considered tax cut, why not vote on it in this election year and put the heat on Members of Congress and get it enacted?

If he does not accept a preelection bill, even his own, does that mean he is inviting us to take a tax cut measure up in the lameduck session when there is no remaining public pressure to get it enacted?

Mr. RHODES. Mr. Speaker, I think the gentleman from North Carolina (Mr. MARTIN) has made several important points. One of them is, of course, that the President and, I suppose later, the Democratic Members of Congress will seek to take the credit for a tax cut without really cutting taxes. They will not cut

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taxes before the election; they merely promise one, and then in the lameduck session, I would almost bet—in fact, I would bet—that they would find some reason then not to cut taxes.

Why? Because they do not believe in cutting taxes. They believe in having more and more money and more and more purchasing power from the people, from the private sector, channeled into the public sector where they have more control over it. They have had this philosophy for years and years, and I have not seen any convincing evidence that the leopard has changed his spots.

Mr. MARTIN. Mr. Speaker, the irony of it is that even if we do enact one or the other of these proposals on the order of a $30 billion tax cut, taxes will actually go up for the American workers next year, not down. They will go up because that will not be nearly enough to offset the tax increases that have already been enacted by this Congress last year, not considering the bracket creep effect, which is the result of inflation, putting people into higher and higher tax brackets.

Mr. RHODES. Mr. Speaker, the total, I believe, is $93 billion more that the people will pay next year because of the actions of this administration and this Congress.

Mr. MARTIN. Mr. Speaker, there is $70 billion that is already in effect, and there is another $23 billion or $24 billion they have asked for that I do not think they are going to get.

● Mr. FORSYTHE. Mr. Speaker, the announcement by the Democrat leadership regarding the likelihood of a postelection lameduck session is a feeble attempt to protect Democrat members from voting on tough issues before the November 4 election.

The Democrat leadership, which claims that a lameduck session is necessary because of the huge amount of legislative business, is the same group which granted itself 3- and 4-day work weeks throughout this Congress, and now plans a 5-day Labor Day recess. The chief reason for the postelection session is not the amount of legislative business, but rather the nature of that business.

Just 3 months ago, Democrats were telling the American people that they now believed in a balanced Federal budget. For proof, they proudly pointed to the first concurrent budget resolution for fiscal year 1981 which called for a revenue surplus of $200 million. They pointed to this resolution, which raised the tax burden on the American people by over $90 million, relying on economic assumptions which were clearly unrealistic. The Democrats are fearful that a vote on the second budget resolution, revealing their sham of a balanced budget, will cost them votes. It is these same Democrats who will go home this Labor Day weekend and explain to voters how they have tried to tackle the tough issues of the 96th Congress.

The talk of a postelection session by the Democrat leadership is an ignominious attempt to duck those issues which may prove unpopular back home. As Members of Congress we cannot afford to shy away from our fiscal and legislative responsibilities. I urge my colleagues to vote to remain in session through October and face up to those responsibilities without fear of recrimination.●

● Mr. SHUSTER. Mr. Speaker, last Tuesday the House Republican Policy Committee unanimously adopted a policy statement in opposition to the lameduck session of Congress proposed by the Democrat leadership. The majority party is using the lameduck session to duck the controversial issues remaining on the legislative calendar—issues such as the budget resolution, foreign aid, and other liberal, big spending bills. The American people have the right to know how their Representative would vote on these issues before the election when they can still exert their influence at the ballot box. I am including the full text of the Policy Committee statement so that my colleagues might better understand the ramifications of a lameduck session:

REPUBLICAN POLICY COMMITTEE OPPOSES LAMEDUCK SESSION

The House Republican Policy Committee strongly opposes the "lame duck" session of Congress proposed by the Democrat House Leadership. Such a Session, held after the national elections of November 4, would be fraught with the danger of having legislation being passed precipitously and by those who do not represent either the will or the philosophy of the American voting public.

To date, 38 Members of the House will not be returning to the House for the 97th Congress because of retirement or primary defeats. It is conceivable that as many as 20% of the Members participating in a "lame duck" session will no longer be representing the views of their constituents. This takes on added significance in light of the fact that many controversial issues are decided by far fewer votes.

This reason alone, the failure to reflect the choice of so many voters after November 4, would be reason enough to oppose a lame duck session and bring the issue before the American people for judgment.

But there is more.

The American people must be told that they are being disenfranchised today by the stalling tactics of the Democrat House Leadership. That Leadership still clings to tired liberal big spending programs that no longer have enough vitality to attract popular support. For example, the Foreign Aid Appropriation Bill, H.R. 7854, was reported out of Committee on July 29 but has not and most likely will not be scheduled for floor action before November 4. The bill commits $8.6 billion to foreign aid at a time when Americans are seriously questioning this level of expenditure. If put to a test before the election, these programs would be defeated because the Congress would be more accurately reflecting the will of the people. By delaying until after the election, the House Leadership plans to corral enough votes to enact these programs, despite the fact that they controvert the views of the electorate. Thus, by denying voters the right to exert their influence on legislation prior to November 4, the House Leadership is effectively disenfranchising them.

But there is more.

The American people must also be told that they are being governed by a Congress run so ineptly as to require a lame duck session. After 25 continuous years of being the majority Party and controlling this Congress with a 2–1 majority, the Democrats have shown themselves to be incapable of running the government. Democrat Leadership asserts that a lame duck session is necessary because of the press of legislative business. Yet, during the past 18 months it has used its preponderant majority to delay and prevent priority legislation from coming to the Floor of the House for final disposition and has allowed a congestion of legislation to develop.

But there is more.

The American people must also be told that the real reason for a lame duck session may be more cynical, more maleficent, then mere ineptitude. The American people must decide whether the Democrat Majority is avoiding being forced to vote on controversial issues before election day to insure their own re-election.

Less than 3 months ago, the Democrats were telling the American people that they, like Republicans, now believed in a balanced budget. For proof, they proudly pointed to the First Concurrent Budget Resolution for Fiscal Year 1981 which called for a revenue surplus of $200 million. They pointed to this budget resolution even though they knew it was a sham. That resolution, raising the tax burden on the American people by over $90 billion, was balanced on paper only. It was balanced because it relied on economic assumptions which were blatantly unrealistic.

And now, when facts have shown these assumptions to be false, the chickens are coming home to roost—only the Democrat Leadership wants to turn those chickens into "ducks."

Before election, they want to "duck" the fact that their profligate spending will once again result in a deficit budget.

Before election, they want to "duck" the fact that their budget priorities do not include a national defense superior to all.

Before election, they want to "duck" the issue that their fiscal policy is to "Tax, tax, tax" and to "Spend, spend, spend."

These are the facts. The American people will pass judgment on November 4 whether the Democrat majority has forsaken its duty to govern responsibly. They will decide whether in future Congresses, Democrats will again be able to replace the American Eagle with a Lame Duck.●

● Mrs. HOLT. Mr. Speaker, I find it very distressing that the majority party proposes to postpone major legislative decisions until after the November elections and then hold a lameduck session.

This means that many Members who lost their reelection bids will be voting on policy issues that will have a major impact on the Nation in the years ahead.

I have no doubt that most of these lameduck Members will belong to the Speaker's party, but that is beside the point. The point is that lameduck voting on major policy questions is a violation of the concept of representative government.

The Constitution wisely provides for 2-year terms for House Members so that their feet will always be held near the fire of the next election. This is representative government. And this is what the majority party in this House is trying to avoid.

It is afraid to face many tough issues before the elections, and it hopes the public will forget for the next 2½ months how it handled those issues in the past.

The majority party's decision to postpone consideration of the second budget resolution until after the elections is the classic example. The majority does not want to face the consequences of its actions.

It does not want to revise the 1980 budget to show the true deficit of $61 billion, and it wants to avoid adopting a 1981 budget with a deficit of $30 billion after all those promises about a balanced budget.

The majority party does not want to face a preelection budget battle in which the minority would offer an amendment to reduce the deficit and cut taxes.

That is what we on the minority side have been doing for years, and I believe our position represents the will of the people. The people are paying a heavy price in inflation and taxes for the policies pursued by the majority in this Congress, and we on the minority side are telling the story in this election year.●

● Mr. RITTER. Mr. Speaker, I rise in strong opposition to a lameduck session.

The lameduck session is clearly an attempt to "duck" the powerful issue of the Federal budget and other controversial legislation. By not voting on the key spending proposals before us until after the election, the Congress is going against the will of the people we are here to represent.

We are elected to represent our constituents; to vote openly for the benefit of our constituents and for the country. Avoiding the hard choices out in front of the electorate when a $630 billion budget is a stake is an attempt to avoid telling the voters where Congress stands in the fight on inflation. The majority in the House has already had 18 months of stalling tactics on key inflation-fighting legislation. They should not be handed 3 more months. Particularly, the Congress should not be hiding from the fight on inflation at election time, we should be leading it.

The American people are tired of campaign promises to fight inflation that go up in smoke after the first Tuesday in November. They are tired of being ignored by their elected officials when they plead for commonsense financial management of this Nation. I am hearing loud and clear from my district that Congress must do something now to help the American public through these inflationary times. This election year is no joke, but a lameduck session is. Do not think it will not be an issue to the voters. They will decide whether they want a Congress that has the courage to vote responsibly in the interest of all Americans, or one that takes the easy way out. Thank you.

They know the difference between a lameduck and a "turkey."●

● Mr. GILMAN. Mr. Speaker, I rise in support of the remarks of our distinguished minority leader, the gentleman from Arizona (Mr. RHODES), who is calling to the attention of the House and the Nation today the dangers of a lameduck session.

Mr. Speaker, we fully expect that on the first Tuesday in November, we will have a new President, and I am not without hope that the House and Senate will be organized by our side of the aisle. That being the case, I feel that we ought to wrap up the session as soon as possible, permitting the majority party to run on its record.

We should encourage the American people to review the full record of this Congress—not just some promises about what is hoped to be accomplished—before deciding whether or not a change in congressional leadership and the congressional majority is in order.

Mr. Speaker, along with many of my concerned colleagues, I am willing to stay in Washington as long as is necessary to finish the work of the House. Let us get on with the people's business.●

● Mr. HYDE. Mr. Speaker, Webster's Dictionary defines "lameduck" as "one that falls behind the achievement."

That definition aptly describes the failures of this Democratic controlled Congress, and emphasizes their inability to govern, an inability which the American voters are certain to recognize November 4.

The majority party in this great body has total power—a 2 to 1 majority, overwhelming control of committees and subcommittees, and burgeoning staff—everything needed to lead our Nation through these difficult times.

Leadership carries with it responsibility. The decision to defer the tough legislative decisions until after the November 4 elections is not leadership—it is a pathetic abandonment of even the pretense of leadership.

If we Republicans in Congress are unable to prevent the Democrat's lameduck session, our only alternative is to forcefully remind the American people of the failures of the Democrat dominated 96th Congress to effectively represent them.

In a column in the July 7, 1978, edition of the Chicago Tribune, our distinguished Speaker suggested that the Democratic Party deserved the "continued support" of the American people in the 1978 election, stating "2 years ago we promised that people would be working, and today they are." I remind my colleagues that the unemployment rate according to today's newspapers is 8.3 percent.

In his column, the Speaker praised the Democratic Congress for pulling "the economy out of recession and stimulating a strong recovery." His very next words should haunt the Democratic Party: "The record speaks for itself."

The Republicans in Congress and Republican candidates throughout the country intend to remind the Democrats of their record—rising unemployment, rampaging inflation, declining productivity—to mention only a few.

The proud symbol of the party of Jackson, Wilson, and F.D.R. used be the donkey. Now it is a frazzled lameduck.●

● Mr. SHUMWAY. Mr. Speaker, I am delighted to have this opportunity to express my opposition to the proposed lameduck session and, in light of the fact that the issue has been aired at length in recent days, I shall attempt not to reiterate the obvious. Instead, I would like to express my own perception of our responsibilities as elected representatives of the people.

Each week, I submit a column to my district newspapers, and last week's offering pointed out the evils of the lameduck session. I pointed out that asking the voters to gamble on postelection effectiveness is like asking them to sign a blank check. The lameduck session could easily make a travesty of the legislative process, and could result in unsavory legislation which denies the best interests of the people. The voters and taxpayers deserve far better.

Proponents of the lameduck session are fond of pointing out that we have a "contract" with the people which does not end until noon in January 3, 1981. However, in their righteous assertions, they fail to mention that we also have an obligation to be accountable to those who have placed us in office, and that such accountability is most certainly due and payable before the November election, not after. We cannot seriously expect the American public to consider us fine fellows if efforts are condoned which seek only to play down the true state of the budget. Can the majority leadership truly believe that our citizens will accept their attempt to conceal their failure?

Lameduck sessions invite the full participation of those who have been rejected by the voters, and the dictionary informs us that "lameduck" is described as "falling behind in achievement." This Congress is already far enough behind in achievement. If the leadership accepts its responsibility to portray itself with accuracy to the American people before the election, my personal belief is that there would be a great number of majority party ducks in need of assistance after the November election.●

● Mr. PORTER. Mr. Speaker, the history of our Republic has been one of constant striving to improve the democratic process, to extend the franchise, to democratize our institutions, and, in general, to make Government more responsive to the people. The high points of that history—what our people will look back upon—are those when Government has put partisanship aside and embraced the very highest of our ideals and principles.

So few are going to remember a hundred years from now that the Congress, under the control of the majority party, chose to abdicate its responsibilities to the people, to violate its own law and avoid coming to grips with the real problems of the day—the excesses of Government spending that have stoked the fires of inflation so strongly and led to the loss of jobs and the business malaise we are now experiencing.

Few, Mr. Speaker, will remember that the Congress, under that majority leadership, failed to address the second budget resolution and the need for reconciliation because of the dark political portends of another huge deficit and the real need to come to grips with Federal expenditures right before an election.

The gutlessness of the lameduck session the majority party proposes is not much different than the lack of political courage that has characterized their leadership in the Congress for the past 26 years—spend now, pay later.

But perhaps, just perhaps, this may be the final point at which the American people fully recognize what has been happening, the final point of determining where the majority party has taken our country—the point at which the American people say enough is enough, new leadership and new ideas and new forthrightness are needed if this country is to survive as strong and free, as the world's bastion of liberty with the

strength and will and courage to protect it.

Perhaps this postelection session, which violates every concept of democracy and representative government, will be the wake, the final laying to rest, of a national leadership grown old and stale and bankrupt of ideas. And perhaps it will mark the birth of a new leadership, willing to face the hard choices and turn America to a future of hope and fulfillment for all our people.●

● Mr. QUAYLE. Mr. Speaker, the Democratic Party has controlled the leadership and management of the Congress for more than 25 years. Today, the people of Indiana, and citizens across the country, are deeply concerned and affected by double-digit inflation, runaway Federal spending, overregulation, and high taxes. They have been waiting patiently for the Carter administration and the Democratic-controlled Congress to deliver on a balanced budget, less inflation, and less taxes.

Now we are 8 months into the 2d session of this 96th Congress and we are advised by the Democratic leadership that the final business of the Congress will have to wait until after the election. We are put on notice that a lameduck session is scheduled to begin November 12 for the purpose of dealing with the budget resolution and possible tax reduction.

The President today is delivering his fifth economic plan of 1980, and there probably will be a sixth and seventh before November 4.

Mr. Speaker, there is not a business or large corporation in the country that would stand for the kind of inefficiency and mismanagement that the country has experienced as a result of too many years of Democratic control of Congress. It is time for new leadership and new management in Congress if we are to address the real concerns and problems of the American people.●

● Mrs. SNOWE. Mr. Speaker, I would like to join my colleagues in expressing opposition to the prospects of a lameduck session of this Congress, the first such session since 1948.

It would be irresponsible and callous to postpone action on a number of major issues—the budget, fair housing, rail deregulation, and Alaska lands among others—until after the election. The American people certainly have a right to know how we stand on such issues before they vote in November, and it is our responsibility as a legislative body to act on such issues in a timely manner.

According to the Budget Act of 1974, Congress is supposed to complete action on the budget by September 25. This lameduck session would delay such action. With a balanced budget now a pipedream, with a budget deficit of $30 to $40 billion now a reality, it is no wonder some Members might prefer to postpone a vote on such an issue until after the election. Such may be wise politics, but it is certainly poor policy for our Nation.

As the majority party sets the schedule for the House, I would urge them to reconsider their "manana mind set" and get to work today to address the important issues that await our consideration. The American people deserve no less.●

● Mr. ROBINSON. Mr. Speaker, I rise to express my concern about the unfortunate consequences that are likely to flow from holding a postelection, lameduck session. Philosophically, it is poor public policy for those who have been defeated in an election to continue to make policy decisions on behalf of voters who have just repudiated their positions.

That is why lameduck sessions, since adoption of the 20th amendment to the Constitution, have become a rarity. If we hold such a session this year, it will be only the third in the House of Representatives in the last 26 years, and only the seventh of the House since 1933.

It can be deduced that a major reason we are faced with a lameduck session this year is due to the present uncomfortable political climate, in which too few are willing to stand up and be counted on difficult budget, defense, and spending decisions.

However, it is a deplorable abdication of responsibility to postpone key votes on measures that we all know are destined to play a large role in shaping the Nation's economy in the coming year, including crucial inflation and income tax rates. Moreover, the next fiscal year starts on this October 1. Government planners need to know what their budgets will be relatively soon, in order to make maximum effective use of Federal funds during 1981.

Mr. Speaker, I very much regret the prospect of a lameduck session. I believe it will give the big spenders in Congress the clear upper hand, even though the American people are demanding less Government and lower taxes.

I see no reason why we can not wind up essential business if we remain in session for a period beyond the October 4 target date for adjournment announced by the leadership, and I urge that this alternative be accepted.●

● Mr. LAGOMARSINO. Mr. Speaker, I agree with our minority leader and I would like to commend the gentleman on his special order on the proposed lameduck session.

A potentially serious—some might say ominous—situation is developing in Congress as the Nation heads into the Labor Day weekend. For the first time in over 30 years, House leaders are talking about coming back into session following the Presidential elections. If this "rump" or lameduck session materializes, it could pose serious threats to the soundness of the Nation.

Labor Day is the traditional kickoff for election campaigns, and with 435 seats in the House and 33 seats in the Senate at stake, many Members are anxious to get home and start active campaigning. The problem is, they have not finished their work.

Congress has not yet, for example, adopted a final national budget for the fiscal year which starts October 1—a scant month away. It has yet to send the President any of the 13 appropriations bills needed for funding Government operations. And, despite much rhetoric and posturing, it has yet to decide whether a tax cut will be forthcoming this session.

Citing the need to complete action on at least the first two items, the House leadership has advised Members they probably will be called back into session after the elections, the first such postelection session since 1948.

Such a session would be fraught with dangers, not the least of which involves defeated officeholders making important policy decisions—or attempting to feather their own nests. To date, 38 Members of the House will not be returning next year, due to retirements or primary election defeats. Given potential general election defeats, it's possible as much as 20 percent of the House would fall into the lame duck category at a postelection session.

It is precisely to forestall such after-the-fact legislating that the 20th amendment to the Constitution was adopted in 1933, moving the commencement of the Presidential term up from March to January, and setting January 3 as the date for beginning of new congressional terms.

Why would the House leadership want to flaunt this tradition? The most obvious reasons is the extreme reluctance of Members to cast unpopular votes just before an election. Only last June, the President and the Democratic majority in Congress were congratulating themselves on having put together a balanced budget for next year. The balance quickly tipped however, and it now appears we face a deficit of at least $30 billion next year. The final budget vote will acknowledge that failure.

Similarly, the President and House leaders have said they will consider the possibility of a tax cut * * * but only after the election, when of course the pressure would be off.

But the most disturbing purpose behind a postelection session may be the least obvious—the possibility that the Presidential election may be thrown into the House of Representatives. Under the Constitution, if no candidate gets a majority of the electoral votes, the newly elected House decides the winner. But the leadership may use the rump session as an opportunity to stack the deck in terms of the House rules and procedures before the new House is sworn in.

At the least, a lameduck session would be an opportunity to lay roadblocks in the path of a newly elected President, to ratify new court and other appointments, and generally make mischief.

There is no real reason why Congress cannot finish its work before November; the law clearly stipulates that the budget shall be adopted by September 15. But the leadership has scheduled the House to be in session on only 20 of the 67 days remaining before the election. It is hard to avoid the conclusion the House leadership is either dragging its feet or is incompetent.

The Democrats have controlled Congress for the last 25 consecutive years, and it appears they have become reluctant to relinquish their grasp. But they should take care. A lameduck Congress is like a loose cannon in a storm; capable of smashing everything on deck—and maybe sinking a ship.●

The SPEAKER pro tempore. The time of the gentleman from Arizona (Mr. RHODES) has expired.

GENERAL LEAVE

Mr. RHODES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include therein extraneous material, on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

FEDERAL COURT RULES THAT A SUBSTANTIAL PORTION OF UNION DUES ARE UNRELATED TO COLLECTIVE BARGAINING ACTIVITIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama (Mr. DICKINSON) is recognized for 5 minutes.

● Mr. DICKINSON. Mr. Speaker, last week, in a landmark decision—unreported in Washington newspapers, as far as I know—under the National Labor Relations Act, a Federal court special master in Baltimore, Md., found that four-fifths of compulsory fees paid by nonunion telephone employees to the Communications Workers of America had been spent illegally for political action and other noncollective bargaining activities.

Court Master Wilson K. Barnes, a former State court of appeals judge, was appointed by U.S. District Judge C. Stanley Blair—now deceased—after Judge Blair's determination last year in Beck against CWA that the spending of compulsory union fees—paid under an agency shop arrangement by nonunion telephone employees—must be limited to collective bargaining, contract administration, and grievance adjustments.

On August 18, the special master reported his findings that 81 percent of the nonunion employees' compulsory fees had been spent illegally by CWA officials and should be refunded to the plaintiff employees. He also recommended that a permanent injunction restrain the union from collecting future compulsory fees in excess of its costs of collective bargaining.

Now, for perhaps the first time, the record of a Federal district court will reflect, in great detail, how employees' compulsory union fees have been spent, in utter disregard of their individual preferences and constitutional rights, to finance the political and ideological activities of a major, militantly politicized labor union.

Mr. Speaker, as we approach Labor Day, 1980, that date set aside on which we honor America's working men and women, I think we ought to use this opportunity to publicize this flagrant misuse of hard-earned money extracted from our working force. Organized labor has served—and continues to serve—a vital function in our society and has made valuable contributions to the development of our great Nation. However, greedy and ruthless labor bosses have somehow lost sight of many of labor's goals and they have significantly contributed to producing America's goods out of world markets.

I would like to use this occasion to urge support for legislation I have introduced, H.R. 6637—cosponsored by over 50 of my House colleagues—to eliminate the use of union dues—and, I might add, corporation money as well—for political purposes.

I commend those 20 telephone company employees and the National Right to Work Foundation who brought the legal action under Beck against CWA. Their action emphasizes the abuses that have been taking place in the union movement.

I also insert at this point in the RECORD an article from the August 21, 1980, Baltimore Sun which reported on this action:

NONUNION DUES LIMITS SUPPORTED—COURT MASTER SAYS FEE MAY ONLY BE USED FOR BARGAINING COSTS

(By James A. Rousmaniere, Jr.)

WASHINGTON.—The court-appointed special master in a Baltimore labor case has recommended against requiring nonunion members to finance union activities away from the bargaining table.

At issue are "agency fees" which are the equivalent of union dues. These payments to unions are sometimes required of nonunion members on the theory that they, too, benefit from contract bargaining.

The case involves a suit brought by the National Right to Work Foundation. It is being watched by unions nationally for its potential impact not only on the fees, but perhaps on union membership as well.

The recommendation came in court papers filed this week by Wilson K. Barnes, a former state Court of Appeals judge. It deals with fees paid to the Communications Workers of America by employees at the Chesapeake & Potomac Telephone Company.

Mr. Barnes said these nonunion workers are entitled to an 81 percent reduction in the fees they are legally compelled to pay because their contribution should only cover basic union functions of contract bargaining, administration and grievance arbitration.

The master's recommendation, prepared for U.S. District Judge James R. Miller, Jr., who is considering the case, could encourage thousands of regular union members to resign from unions so they could qualify for the considerably lower fee payments, labor officials fear.

The master was appointed to help the judge arrive at a better understanding of union costs and how they relate to collective bargaining. Both sides now have 30 days from the filing of the report to reply to the master's report, after which the judge will make a final decision.

This court battle over union finances is at a well-advanced stage, and developments in it are bound to affect the outcome of at least 30 other similar challenges in other courts.

The National Right-to-Work Foundation is the legal arm of a well-financed organization whose ultimate goal is to win passage of "right-to-work" laws that let employees choose whether or not to join unions.

Only 20 states, not including Maryland, have such "right-to-work" laws on the books. In Maryland, under most circumstances where unions gain representation rights, workers pay dues to the union. If they choose not to join, the workers pay agency fees generally equal to the dues paid by regular union members.

Most labor organizations have taken on much wider charters in the last couple of decades, however, in the form of political work, community services, more sophisticated organizing practices, international exchanges and, most visibly, lobbying in government.

The foundation is charging that those functions are extraneous and that people who don't join unions shouldn't have to pay for them.

Others, such as Willard Wirtz, secretary of labor under Presidents John F. Kennedy and Lyndon B. Johnson, argue otherwise. Testifying on the union's side in the Baltimore case, Mr. Wirtz contended that these additional activities are "germane" to collective bargaining in that they "strengthen the hand" of unions when they sit down to bargain for contracts.

Mr. Barnes, however, drafted a much narrower definition of basic union bargaining functions, saying that nonunion workers can be forced to pay "agency fees" only if the activity they finance "directly relates to and is reasonably necessary for the proper effectuation of . . . collective bargaining, contract administration and grievance adjustment."

"For example," he wrote, "the [union's lawyers] earnestly contend that their charitable contributions not only, in themselves, advance the public interest, but create a favorable climate of public sympathy and support when collective bargaining time arrives and particularly when there is a strike.

"This result, while superficially plausible, has not been established by clear and convincing evidence," he added, saying that "charitable contributions do not directly relate to, and are not reasonably necessary. . . for the proper effectuation of collective bargaining, contract administration and grievance adjustment."

Mr. Barnes went on to recommend that nonunion C. & P. workers not be forced to pay fees that finance charitable contributions or which, in the union's 1978 fiscal year, helped raise the more than $21 million devoted to political activities, lobbying work, public relations, foreign studies, AFL–CIO dues and some strike funds.

The sum for these activities in the 1978 test year amounted to 81 percent of all spending by the union.

Mr. Barnes's recommendation would include refunds totaling nearly $6,500 for the 18 C. & P. workers who brought the suit.

Matthew A. Kane, the union's lawyer in the case, refused to comment on the finding. CWA leaders could not be reached for comment.

The Right-to-Work Foundation's lawyers were clearly pleased with the Barnes report to the court. Hugh Reilly, the chief foundation attorney on the case, was disgruntled only by the fact that Mr. Barnes kept union conventions as a "permissible" expense to be charged to nonunion workers.

WHAT DOES PRESIDENT CARTER HAVE AGAINST THE U.S. ECONOMY?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 30 minutes.

● Mr. KEMP. Mr. Speaker, the political rhetoric of the administration is depreciating almost as quickly as the U.S. dollar. I am referring, of course, to the mostly ridiculous economic package President Carter unveiled this afternoon.

Earlier this year, President Carter said:

I can guarantee you that we will have a balanced budget in the 1981 fiscal year beginning October 1.

He denounced the longstanding proposals of the Republican Party to restore incentives for both individuals and businesses through across-the-board cuts in marginal income tax rates and accelerated depreciation.

He repeated:

I will not consider any reduction in taxes

until I am convinced that the 1981 budget will be balanced.

Last month, however, the administration was forced to admit in its mid-year economic report that its own economic policy of slowing down the economy had made it impossible to balance the budget. Because of rising unemployment and dropping productivity, revenues are dropping and expenditures automatically climbing, widening the deficit by about $27 billion for each 1 percentage point rise in the unemployment rate.

President Carter's official position is that Congress is not competent to consider tax-rate reduction in an election year—although he is, apparently. Congress has held hearings, considered and debated the issue of tax-rate reduction for the past 4 years, but President Carter does not believe there has been enough time to study the issue.

This makes one wonder why President Carter found it necessary this afternoon to announce a thrown-together melange of rebates, subsidies and spending programs. President Carter has put together precisely the sort of demand-stimulus program against which the Joint Economic Committee warned last week in a bipartisan report. Parts of the President's plan, like the income tax credit against payroll taxes, were considered and rejected by the Senate Finance Committee, with the overwhelming agreement of both Democrats and Republicans. Instead, the Finance Committee supported across-the-board tax-rate reduction for individuals, reductions in the capital gains tax rate, accelerated depreciation for businesses and other measures to increase economic incentives for higher employment, productivity and growth.

Let us face it: Being a latecomer to tax-cutting and the idea of incentives, President Carter has gotten it all wrong. With the exception of a watered-down plan for accelerated depreciation, which is inferior to both the "10–5–3" plan or the measure approved by the Finance Committee, none of the tax and spending measures will favorably affect economic incentives at all.

Table I, Mr. Speaker, lists the tax provisions which the President says he will get around to proposing sometime next year. Among the tax cuts for business, only the 40-percent reduction in the asset depreciation range, and the reduction of the number of classes of assets to 30, will remove any of the existing disincentives. But the Finance Committee plan is only one-sixth as complicated as the administration plan, and the 10–5–3 proposal only one-tenth as complicated. These two plans also do more to reduce the overtaxation of profits caused by inflation and our outdated Tax Code.

The two refundable tax credits are sops to Senator KENNEDY. They are nothing but Federal subsidies to companies which are not turning a profit. Such an approach can only reduce, not improve, industrial productivity.

Proposed tax cuts for individuals include: a partial removal of the marriage tax penalty, a partial exemption of income earned by Americans abroad—but only in certain parts of the world—and an increase in the earned income tax credit. While these may be argued on the grounds of equity—and I support a complete removal of the marriage tax and complete exemption from taxation of foreign income earned abroad—these proposals do nothing, unfortunately, to increase incentives for individuals to work, to save, to invest, or to begin new enterprises.

Likewise, President Carter is resubmitting what amounts to his ill-fated $50 rebate of 3 years ago, only adjusted for inflation. His plan would provide a credit against income taxes equal to 8 percent of payroll tax liability. As I understand it, both the credit for individuals and for businesses would be made at least partially refundable, which would turn it into a spending program.

But the worst feature of this plan is that it does not affect the marginal tax rates which determine incentives. Neither the marginal income tax rate nor the marginal payroll tax rate are affected. This tax rebate is not even half as large as the tax increases on personal income which will take place under current law. And the rebate is not even permanent.

Turning to the spending programs, President Carter is including already-enacted programs in his grab bag of economic nostrums. He lists $744 million in spending to extend unemployment benefits from 39 to 52 weeks; but this extension is already on the books—and would not have been triggered except for the recession which Mr. Carter's economic policies have brought about. In his speech this afternoon, the President also made a great deal of the synthetic fuels subsidies which have already been approved. That pork barrel was described as public investment. It would be more accurate to describe that destructive program as massive disinvestment. What President Carter calls a "vast new synthetic fuels industry" really portends a vast new assault by the Department of Energy on the capacity of our country to produce energy cheaply and efficiently.

Of the rest, only the proposed spending on Federal research and development and job retraining has even the remotest connection with improving productivity. And as I have pointed out many times on the floor of this House, Federal R. & D. policies are killing innovation in this country by centralizing control over venture capital and driving individual intrepreneurs out of competition with captured nonprofits and established firms.

In short, Mr. Speaker, four-fifths of the President's program is either irrelevant to the problem of productivity, about which the President wrung his hands today, or else already on the books.

President Carter has succeeded only in making himself ridiculous: First, by criticizing longstanding Republican support of thoughtful initiatives to restore incentives through tax-rate reduction; and then by throwing together this half-baked and decidedly inferior program of his own.

The only thing to be said for President Carter's program is that even he says that it should not be enacted this year. It should not be enacted next year, either.

What Congress ought to do is build on the Senate Finance Committee's work, and enact a phased, across-the-board reduction in marginal income tax rates, beginning with 10 percent next year, together with accelerated depreciation of business assets. Further necessary reforms in taxation restoring a sound dollar, reforming Federal regulation, and restraining Federal spending will have to await a Republican administration, apparently. Only such a program, not President Carter's latest spending, subsidy and rebate scheme, will improve productivity and start our country toward full employment without inflation.

TABLE I.—*President Carter's economic proposals*

[Billions of current dollars]

	Calendar 1981
Tax cuts:	
(1) Refundable investment tax credit (30 percent of unused credits for items placed in service after Dec. 31, 1980)	$2.4
(2) Targeted investment tax credit (Additional 10 percent, refundable, for industries in distressed areas, EDA-determined case by case)	0.2
(3) Five-year amortization of business start-up costs	0.1
(4) Depreciation reform (40 percent reduction in ADR, 30 classes of assets)	6.3
(5) Increase in the number of Subchapter S participants to 25	0.0
(6) Marriage penalty amelioration (10 percent income tax credit for lesser earning spouse up to first $30,000)	4.7
(7) Exemption of foreign income (100 percent of first $25,000 and 60 percent of next $60,000 for those designated as living in hardship areas: e.g., Mideast but not Europe)	0.2
(8) Expand earned income tax credit (Increase from 10 percent to 12 percent of first $5,000; phaseout raised from $10,000 to $11,000 maximum)	0.9
(9) Income tax credit against payroll taxes (8 percent of payroll tax liability, 1981 and 1982 only)	12.8
Total	27.6
	Fiscal 1981
Spending increases:	
(1) Research and development	0.600
(2) Rail rehabilitation	0.200
(3) Highway rehabilitation and mass transit	0.600
(4) Weatherization of homes and buildings	0.975
(5) Anti-recession aid	1.000
(6) Job retraining	0.660
(7) Extension of unemployment benefits (from 39 to 52 weeks)	0.744
Total spending	4.779
Total spending and tax cuts	32.4

AMERICAN FARMERS HAVE GOTTEN A RAW DEAL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. BAUMAN) is recognized for 30 minutes.

Mr. BAUMAN. Mr. Speaker, I take this time today to call to the attention of my colleagues the serious plight of the American farm community. As a Member of Congress who has the honor to represent a large number of farmers and many thousands of people who depend on farms, either directly or indirectly, for their livelihood, I must share with you the serious economic problems that exist in my district in Maryland and all over the Nation.

In July farm prices received by farmers for products rose by 5.2 percent, the largest single monthly gain in 6½ years. Sounds good, does it not? But wait. Even with that dramatic 1 month gain, farm prices are only at a level where they were a year ago, while farm costs have gone up 12 percent. It does not take an expert in math to figure out that, at this rate, most American farmers will be out of business in short order.

Some projections I have seen indicate there may be a further increase in farm prices in the next 4 months that could produce an overall increase in net farm income during 1980 of about $18 billion. But even if that happens, and we cannot be sure it will, that is a full 45 percent drop in net farm from the $33 billion earned in 1979. These are in fact, the lowest farm prices in the last 40 years. And in 1940 we were still in the midst of the Great Depression.

WORST FARM PRICES SINCE GREAT DEPRESSION

One thing that seems to escape the politicians that run Jimmy Carter's Department of Agriculture, is the lesson of history. The 1929 stock market crash was preceded by historic lows in farm prices during most of the 1920's. Despite pleas from farmers for action, then as now, nothing was done.

Farm income has fallen greatly before, in the early 1970's and the 1930's. But under Jimmy Carter, farmers have had the steepest and fastest drop in any single year since the 55-percent collapse that occurred in 1921.

Mr. Speaker, what all this adds up to is that American farmers may work all year in 1980 for no net profit at all. If that happens it will be the first time in the 70 years of U.S. Department of Agriculture recordkeeping that farm profits have been a big fat zero.

To make matters worse, the situation of farm credit is at the crisis point. Earlier this year when farmers had to go to their banks for financing for their planting, interest rates were around 20 percent, another record high. Federal farm credit institutions tried to take up the demand, but badly needed revisions in farm credit laws were held up in the Democratic Congress and as of today they have still to be passed. Not since the Great Depression have farmers been less able to service their credit obligations and the result may well be wholesale farm bankruptcy.

Consider still further the individual farmer's economic situation. Farmers' debt to income ratio is also the highest since the Great Depression and their liquidity ratio is lower than it has ever been. While this indicates the need for more short term borrowing, most commercial banks are already over extended on farm loans. Thus since 1970 farm credit extensions have increased more than 400 percent while other private sector borrowing has only gone up 150 percent.

CARTER FARM EMBARGO

One major contributing factor to this enormous slide in farm prices and income was the Carter embargo on farm exports imposed last January. While the President said he was imposing the embargo as punishment for the Soviet invasion of Afghanistan, there is every evidence that the Soviets have suffered very little if at all. But immediately upon the imposition of the embargo farm prices for such products as corn and soy beans fell by huge amounts. At the same time the President announced commodity purchases of farm products which added easily $2 billion to taxpayers costs. And other exporters escaped the farm embargo.

All this from a President who promised during his 1976 campaign that he intended to "end embargoes once and for all."

Mr. Speaker, in spite of the fact that many of us have been warning about the farm problem for some time, little has been done by this Democratic Congress or President Carter to respond to this serious problem.

In early 1978 I addressed this House on this same topic and I would like to call attention to some of my comments at that time because my words still apply today.

Here is what I said then:

> Congress cannot ignore these clear signs that many in our agricultural economy are on the verge of financial collapse. There is not a man, woman, or child in this country who would not be seriously affected if such a collapse should occur sending shock waves throughout the rest of the economy. We in the Congress must provide some immediate and lasting relief for the farming community.
>
> Compare congressional reaction when other sections of our economy faced similar difficulties. When the aerospace industry was in trouble, there were those in Congress who rushed in to rescue it with Federal funds. When New York City spent itself into bankruptcy there was a deafening chorus by those who wanted the U.S. Treasury to finance the bail-out. Virtually any major group in this country would receive a generous helping hand from Uncle Sam if they were faced with this sort of crisis. No one group has done more for this country or its economy than the farmer.
>
> It has been the farmer and his exports that have kept this country afloat in the international markets. We have heard recently that the dollar has slipped to its lowest level in history in the international money exchange. The international economic situation is serious and it deserves our attention. But it would be much much worse if it had not been for the farmers' exports that balanced our international payments. Their exports kept the value of the dollar stable and allowed others to buy foreign products cheaply and improve their standards of living. Other domestic industrial and manufacturing groups dropped from an effective international competition when their labor agreements and executive salaries priced their products out of the marketplace abroad. Their wages and salaries increased and their dollar was secure because the farmer was productive and could export his product where they sometimes could not. I do not believe it would be an overstatement, in fact, to say that the rest of the country and the rest of our people have been riding high on the hog at the expense of the farmer and his family.
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> The time has come, though, when the farmer can no longer endure the burden he has been forced to carry. The price of his equipment has gone up, the price of his fertilizer has gone up, the price of everything he must use to grow the food we eat has gone up. He can no longer make a living. Other segments of our economy have not been as productive as he has been; others have been able to control the supply better than he has been. Still others have raised the price of what they produced and sold to him. Inflation has hurt everyone, but it is the American farmer who is now faced with bankruptcy. We must do everything we can to help.

And, I might add, this still describes the situation today, only it has gotten much worse.

FARMERS WANT A CHANGE

Mr. Speaker, I believe that the Federal Congress and the Government have an obligation to adopt policies which will promote American agriculture rather than inhibit it. That can be done by unleashing the great productivity of the farmer and getting Government off his collective back. The American farmer, by nature, wants to produce and sell his product. He does not want unnecessary regulations, subsidy, and a Federal dole.

I have consistently supported legislation that would allow farmers to produce and keep Government out of the marketplace. I have advocated flexible parity legislation which rewards reduced acreage with higher supports in an effort to guarantee full parity in the marketplace.

Whoever the next President may be, he must recognize and act on the farm problem before it is too late. President Carter and this Congress have not done so and show no intention of doing so.

American farmers, just as most Americans, I believe, are ready for a change and it cannot come too soon.

GREEN RAISES UNANSWERED QUESTIONS ON BILLY CARTER MATTER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. GREEN) is recognized for 10 minutes.

Mr. GREEN. Mr. Speaker, as one of the principal sponsors of the resolution of inquiry regarding the Billy Carter matter and as one of the Members of the House who has read through the materials supplied us—other than those furnished the Select Committee on Intelligence—I would like to express my thoughts on where the House should go from here.

I believe that the materials submitted, through omission and commission, call for further investigation by the Judiciary and Foreign Affairs Committees.

First. Included in the material was a Department of Justice letter to Senator BAYH making it clear that Justice was not providing documents relating to several pending cases. Justice appears also to have omitted these documents from the material provided to the House.

I do not wish to compromise any Department of Justice investigation, so I will mention only one of those cases, as its existence has been reported in the media, a grand jury investigation being conducted in the southern district of

New York. According to press reports, Billy Carter testified before that grand jury this week. In fairness to Mr. Carter, it was also reported that he was not a target of the investigation.

The Justice Department has offered to meet with Senator BAYH and Senator THURMOND to discuss the documents withheld. I believe that Justice should extend that same offer to the chairmen and ranking minority members of the Foreign Affairs and Judiciary Committees and that the offer should be accepted. All veils should be lifted.

Second. I am concerned about the proprietary and the professional zeal of the Justice Department handling of the Billy Carter case. On June 11, 1980, Billy Carter met with representatives of the Justice Department. After he was given a Miranda warning, he was asked if he had received anything of value from Libya other than two all-expense paid trips to Libya, four gold bracelets, a silver mounted saddle, a silver serving tray, and a scimitar. He said that he had not. This was not true. He had received $220,000, ostensibly as a loan. That fact was already known to the Justice Department. At that point the Justice Department could have sought to develop a case under title 18 United States Code, section 1001, which provides in part that—

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully . . . makes any false, fictitious or fraudulent statements or representations . . . shall be fined not more than $10,000 or imprisoned not more than five years or both.

Nevertheless, as far as one can tell from the materials supplied to us, this course was not even considered.

I think we ought to know why Justice suffered such a lack of prosecutorial zeal, and urge the Judiciary Committee to pursue the matter.

Third. I am concerned about the role of the Counsel to the President, not only because he met with Billy Carter, but also because he suggested Mr. Carter retain counsel and then specified which lawyers be contacted. I question the appropriateness of any lawyer in the executive branch recommending specific counsel to a person under investigation by Justice.

We need to come to an understanding of the proper role of the Counsel to the President when dealing with a member of a President's personal or official family, as it is almost inevitable that investigations will touch such persons in the future no matter who holds office. I suggest the Judiciary Committee address this role.

Fourth. Much of the material that was supplied to us raises serious questions as to whether there are major leaks in our system of controls on exports of military equipment. Not all of the material in question relates to Billy Carter, but I urge the Foreign Affairs Committee to investigate whether there are serious problems with regard to this system of controls.

Fifth. President Carter's choice of his brother as an emissary to the Libyans shortly after Iran seized the hostages also raises some serious questions. Ostensibly the Libyan Government at that time was interested in expanding its relationship with the U.S. Government. The President apparently was aware of this. Thus, it seems that someone from our State Department would have been a more logical and proper choice than Billy Carter for contact with Libya. I believe the Foreign Affairs Committee should explore the circumstances surrounding this unusual conduct of our foreign policy.

Sixth. Finally this whole incident raises concerns going far beyond Billy Carter. If Libya was willing to spend this kind of money on Billy Carter, then how much is Colonel Qaddafi spending in toto to influence American political and governmental processes? And what about other Arab countries and their petrodollars? These are serious questions indeed, and I strongly urge the Foreign Affairs Committee to pursue them and report to this body and to the American people about who is paying whom to twist U.S. foreign policy.

□ 1550

TEXAS MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 30 minutes.

Mr. GONZALEZ. Mr. Speaker, August is really a Texas month, from the standpoint of the preeminent Texans who have served on the national governmental level, who were born in the month of August. Yesterday we commemorated the birth date of a great Texan, President Lyndon Johnson; and earlier in this month of August, on the 6th, some of us recalled and commemorated in a great spirit of reverence and evoked the memory of another equally great Texan, the Honorable Wright Patman, who served at the time of his death as the Member from that particular district, Congressional District No. 1 from Texas, a district that he had served for many, many years. He had had a tremendously distinguished record as chairman of the then-called Banking and Currency Committee.

I wish to dwell for a few minutes only on these two great personalities, because I believe that as time passes and the years go by, those of us who had the great honor and privilege of not only knowing both of these great leaders, but having worked with them and having watched them over the course of the years, their actions and their role as public men in such a preeminent way, begin to get a more rational perspective of what their service has really meant to the country.

President Johnson, very much like every President we have had since Franklin Roosevelt, experienced the very tough situation encountered with respect to the national press or the media. He had high points and, of course, very low points and very vicious periods of time. But I do not think there was anything particularly singular about that because I think almost every President from the time of Franklin Roosevelt and particularly his era has had that as a modern-day ingredient in this great formula that operates in the case of the Presidential branch of the Government in its modern-day, 20th century role.

I still believe that Franklin Roosevelt had perhaps the most eloquent and the most accurate description of what a 20th century President really must afford, in the light of the role and the machine of the Presidency in this century. He said that he visualized the Presidency as that role of leadership in which the great army of the Amercian people would be summoned forth and led in a common attack on the common problems affecting Americans. But he said that that leadership was really in the 20th century more and more turning out to be more than the individual power or the personality or the inherent ability of the President, the President's ability to attract first-class minds and men and women of ability, surround himself with them, orchestrate them and marshal them into this great attack on the common problems confronting the American people.

I think that is very true. I think that if we were to use as an index for the net results of the leadership on the part of our Presidents in the 20th century, it would be that one factor, the ability to attract and surround himself with first-rate minds. The worst enemy of a first rater is a second rater. If we will look at the type of minds and personalities that Franklin Roosevelt was able to surround himself with, and then his ability to orchestrate them and work them in unison, and his tremendous leadership which successfully led this country through great thickets of the depression and the great hazards of war, global war, and successfully, and when we follow through and we recall President Kennedy and his unique ability in that respect, I think that by all indications the one thing that President Kennedy has not been criticized for was the nature, the stature and the composition of the men with whom he surrounded himself, the men and women, the Cabinet, the subcabinet level. In fact, two of his Cabinet Members were really reflections of a bipartisan effort. His Secretary of Defense McNamara was identified as a Republican, and his first Secretary of the Treasury, Mr. Dillon, was definitely a Republican. But he was able to attract them. They were able to come and serve the Presidency. So that when Mr. Johnson became President, he realized that, and contrary to some hard advice that was given to him by intimates, he refused immediately to discard the Kennedy Cabinet, including President John Kennedy's own brother, who was Attorney General.

I might say, by way of parenthesis, that there is a personal involvement here. At the time of the assumption of office by President Kennedy and Vice President Johnson, I was in the State Senate of Texas, and I had campaigned in 11 States in behalf of the Kennedy-Johnson ticket. And one day, after the election and before the swearing-in, I read in the newspapers, in my local press, that the President-elect had intended and was intending to appoint his brother Robert as Attorney General. I thought that was repugnant to good administration. It was antagonistic to what I felt was a wise decision.

So I sent a telegram to President Kennedy and his brother as well, Robert Kennedy, at Hyannisport, because I had had a fairly close relationship with the then-Senator ever since he had been a Member of the House in 1951. I felt that I could in good faith communicate my worry, my concern. I felt that there were several reasons why it would not be good policy for the President to appoint his brother as Attorney General. I explained some of those in this telegram I sent.

Well, I was criticized by some of the local Democratic leaders. In fact, I was accused of being the only critic of that notion other than Republicans who began to react adversely to the idea that the President-elect would appoint his brother.

I felt and feel to this day that it was probably one of the most singular errors of any magnitude, in my opinion, to this day, that President Kennedy made. I will not go into the reasons because that is beside the point today. What I do want to say is that I never thought at the time I sent the telegram that I would be serving in the House of Representatives about a year and a month later. And it was not until a year and a month later when I came up that I finally had an acknowledgment of that telegram from President Kennedy, and then he did it in a very humorous way. But I never did hear from Robert Kennedy, and I am afraid that he never quite felt very happy with me because of my original opposition to the thought that the President should appoint his own brother as Attorney General.

□ 1600

Lyndon Johnson would never have considered such a thing, not because of any moral implications of superiority, but because his way of working was strictly from one of the most efficient managerial methods that I have ever seen any man in business or in Government employ. I think that history will note that President Johnson was the best administrator, as President, that we have had in the 20th century. There was no such thing as confusion among his advisers or among his Cabinet. There was no such thing as one member of his Cabinet saying one thing in what would appear or was indeed in fact contradiction to official administration policy. There was no such thing as the President in a press conference, unlike his successor, telling this press conference that he had sent an education bill to the Congress weeks before and that the Congress had not acted on it, when, in fact, he had never sent such a bill to the Congress and had to be corrected by his own secretary at that time.

Lyndon Johnson could never have been faulted with that because Lyndon Johnson was one of the most prepared men to serve in the administrative capacity which the Presidency to date, from the domestic standpoint, really, really consists of in this 20th-century period in our national development.

Lyndon Johnson had several—one in particular—departments created during his Presidency, the Department of Housing and Urban Development, and I think that his first appointee as Secretary of that was very symbolic of the efficiency with which Lyndon Johnson selected the first-rate, the first minds of ability that were available and that he could attract to serve under him.

I believe that, like Lyndon Johnson, Wright Patman of Texas evoked as high level and high caliber of Texas representation, Texas skill, Texas managerial know-how and accountability above all. Wright Patman, it would be inconceivable for us today, to think would be anything but radically speaking out and protesting the conditions of the financial markets, the heavy concentration of credit resources in fewer and fewer hands in our country. He would be on top of the real issue that confronts us domestically on economic matters. He had to fight almost in an impossible manner during the time that he was chairman of the Committee on Banking.

Soon after my emergence of service into the House of Representatives, Patman became chairman. Immediately, what he did and what he performed as chairman of the Committee on Banking during that period of time, which lasted approximately from the years 1963 to about 1975, are written in the record. I do not have to establish them. I do not have to give him some praise in an exaggerated manner, because the record is there.

What I am saying is we should keep perennially in mind and evoke perennially the memory of such men and the into the House of Representatives, Patman and Lyndon Johnson for the great American leadership that they have given us, one in both the legislative, national legislative, as well as the national executive branch of the Government and the other in the preeminent ability as a legislator transcending the purely local connotations of this representation and reaching out to the great extent of national representation as chairman of the committee.

Mr. MILLER of Ohio. Mr. Speaker. I ask unanimous consent to address the House for 2 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. MILLER of Ohio. Mr. Speaker, the International Court of Justice has ruled unanimously that Iran must release the hostages and declared the inviolability of diplomatic envoys a fundamental basis of relations between nations. Also, the United Nations has called unanimously for the release of the hostages.

Over 50 American hostages are still held prisoners in Iran in peril of their lives and suffering greatly. This imprisonment is illegal and inhuman. Our diplomatic personnel are even threatened with a trial.

This is the first time in modern diplomatic history a nation has illegally seized and imprisoned diplomatic personnel of another country. The conventions and treaty which bind the United States and Iran to peaceful settlement of disputes and which Iran has flagrantly violated are: The 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the 1955 Treaty of Amity, Economic Relations and Consular Rights.

The terms of these international agreements and the principles of international law are clear. We call upon the Iranian Parliament and Ayatollah Khomeini to release the hostages. We continue to hold Iranian authorities responsible for the welfare and safety of our people.

THE 41ST ANNIVERSARY OF THE INVASION OF POLAND COMMEMORATED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, September 1, 1939, was a day of infamy, for it was on this day 41 years ago that the military forces of the Nazis invaded Poland and set off a series of events that led to World War II.

Poland was the victim in September 1939; the sacrificial lamb; because it was the sacrifice of Poland that led the free nations of Europe to make that final decision to stop Hitler from the conquest of the entire continent.

Within a very short time, the Nazi war machine destroyed the nation of Poland. The heroic, courageous, patriotic Polish people fought desperately to turn back the mighty enemy, but the power of Hitler's army was too much for the Poles.

When victory became certain for the Nazis, the Soviet Union decided to seize a share of the war booty and on September 17 sent the Red army across the Polish frontier, annexed huge areas of Poland into the Soviet Union, and joined in the final destruction of the Polish state.

It is, of course, one of the tragedies of history that the victim too must pay the price of the enemy's miscalculations. For Poland and her people endured the worst of World War II only to find that a new enemy had taken control of the country's destiny once liberation from the Nazis became a reality. The Communists quickly grabbed for power as the Nazi forces retreated, and ever since the people of Poland have been subjected to this brutal and all-consuming tyranny.

A cruel fate had befallen the Polish people, and once effective opposition was crushed, the Communist regime leaders set out to create in Poland a Communist state modeled after the one in the Soviet Union.

Political freedom was narrowly limited by the Communist Party, and freedom of religion no longer existed. The economic sector, particularly industry, was organized along inefficient and repressive party lines, and in the cultural realm, Communist control was total. No longer could the Polish artist, the playwright,

the composer create his art freely as his inner soul demanded.

It was only through subsequent bloodshed, struggle, and faith in their religious heritage that the Polish people through the years were able to win a few concessions from the Communist dictatorship. In 1956 and in 1970, they struggled for their human rights, and now again, in 1980, the Polish people are proving to the world that they fervently wish to live in freedom and independence without interference from foreign nations, particularly the Soviet Union.

I was honored to join with my good friend and colleague, the Honorable CLEMENT J. ZABLOCKI, chairman of the House Foreign Affairs Committee, in cosponsoring House Concurrent Resolution 423, urging the leaders of the Polish Government as well as the Polish people to resolve the issues raised by the striking workers through peaceful means, and also urging all signatories of the Final Act of the Conference on Security and Cooperation in Europe, which include the Soviet Union, to respect the inviolability of the Polish frontier and the principle of nonintervention in the internal affairs of Poland.

The text of this resolution follows:

H. CON. RES. 423

Whereas the Final Act of the Conference on Security and Cooperation in Europe commits the signatories to respect human rights and fundamental freedoms including economic rights;

Whereas Principles I and III of the Final Act guarantee that every state has the right to judicial equality, to territorial integrity, and to freedom and political independence; that each has the right to choose and develop its own political, social, economic and cultural systems; and that the frontiers of each state are inviolable, regardless of the political, social, economic or cultural systems chosen by that state;

Whereas Principle VI commits all participating states to abjure from military action, use of force, and coercion in order that peace, security and cooperation in Europe may be assured;

Whereas the signatory countries have pledged themselves to "fulfill in good faith their obligations under international law";

Whereas the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee to all the rights of freedom of thought, conscience, religion, opinion and expression;

Whereas the Universal Declaration of Human Rights provides that "Everyone has the right to form and to join trade unions for the protection of his interests";

Whereas Poland signed the Final Act of the Conference on Security and Cooperation in Europe, is morally bound by the Universal Declaration of Human Rights, and has ratified the International Covenant on Civil and Political Rights;

Whereas many thousands of Polish workers have peacefully organized themselves and have asked the Polish Government to negotiate in good faith with them;

Whereas the Polish Government has detained a number of its own citizens who have actively supported the workers in the exercise of their rights: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress:

(1) urges the Polish Government and people to resolve the issues raised by the workers through peaceful means and in accordance with the Principles of the Final Act of the Conference on Security and Cooperation in Europe, as well as other international agreements to which Poland is a party;

(2) requests the Polish Government immediately to release persons unjustly imprisoned during the recent worker unrest for their efforts to exercise their rights as guaranteed by the Universal Declaration of Human Rights, the International Convenant on Civil and Political Rights and the Final Act of the Conference on Security and Cooperation in Europe; and

(3) calls upon all signatories to observe the Declaration on Principles Guiding Relations between Participating States, particularly those relating to sovereign equality, inviolability of frontiers, and non-intervention in internal affairs.

SEC. 2. The Clerk of the House of Representatives shall transmit copies of this resolution to the President, the Secretary of State, and the Polish Ambassador to the United States.

In this anniversary of the beginning of World War II, our hearts go out to the Polish people. Their lives have been too full of tragedy, misery, and suffering. These fearless, hardworking, courageous people deserve a far better fate than what has befallen them since September 1, 1939. It is our hope that one day they shall have better times, and that they will be a part of the whole European community of nations enjoying fully the fruits of democracy and freedom.

As we again commemorate these sad events in the House of Representatives, I am proud to join the Polish Americans in the 11th District of Illinois, whom I am honored to represent, in Chicago, and all over this Nation in their hopes and prayers for the reentry of Poland in the community of free nations. Freedom-loving people the world over are watching and the Communists must never be allowed to forget this or to ignore the yearning for liberty and human rights in the hearts of the Polish peoples.●

SECRETARY OF EDUCATION SUGGESTS MORE COOPERATION BETWEEN BUSINESS AND EDUCATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BRADEMAS) is recognized for 5 minutes.

● Mr. BRADEMAS. Mr. Speaker, last month, in a speech before the National Alliance of Business, the distinguished Secretary of Education, the Honorable Shirley M. Hufstedler, discussed some of the problems facing education in the United States and made a number of suggestions for greater cooperation between business leaders and educators that would benefit both as well as the schools and the students themselves.

I commend Secretary Hufstedler for her innovative approach and include the text of her speech of July 17, 19[illegible], in the RECORD.

REMARKS BY HON. SHIRLEY M. HUFSTEDLER, SECRETARY OF EDUCATION, TO THE NATIONAL ALLIANCE OF BUSINESS

For many years leaders in education and business thought they had little in common. Today we know that, although we are in different boats, we are sailing the same choppy seas of economic, social and demographic change.

Actually, my being here with you is something of a role reversal. Rather than a secretary looking for work, I am a secretary looking for workers. My objective today is to pique your interest in the future of American education in a difficult time and to set you to thinking about what you can do to help.

I realize that in doing this, I am, to a certain extent preaching to the choir. Your very presence here this afternoon, and your individual records of involvement in NAB, and CETA, and private industry councils sets you apart as businessmen-and-women able to recognize the needs and the problems of our larger society and willing to do something about them. But while many of your companies are already actively at work in education, some are not. And every one of you has friends, associates and contacts who could be doing much more to help than they are. So, just as the Bible reminds us that the Lord "sendeth the rain on the just and on the unjust," I am going to solicit help from the involved and the not-yet-involved alike—one never knows whence the first sale of the day will come.

WHY GET INVOLVED?

Let's begin with the first and most obvious questions: Why should any of you—why should business people in general—get involved with education in America today? The answer is that you should get involved either because you are needed or because it is in your own self-interest to do so. Pick whichever reason appeals to the innermost you. Both are absolutely on target. There is a difference between doing good and doing well.

For the altruism in each of us, the simple fact is that the nation's school systems are reeling under a series of demographic and financial blows. During the late '60s, with the passing of the "baby boom," the number of young people in our population began to fall for the first time in history. As the demographic contraction moved inexorably through the educational system, it brought financial woes, teacher unrest and school closures at every level. Fewer children also meant fewer parents and grandparents among the voting and taxpaying public. Recession and inflation hit the schools hard and further weakened public support—as did uproars over such issues as integration, Vietnam, and declining standards.

Today the schools are caught in a difficult squeeze. While the absolute number of students continues to decline, the per capita cost of educating each one continues to rise. This means larger budgets for what is commonly seen as less service. It is not too surprising, therefore, that schools and teachers have come under heavy fire from the rest of the society in recent years. Every day brings new stories on television and in the press about a long list of familiar educational ills: from vandalism to declining test scores, from busing to teacher burn-out.

SCHOOL POPULATION CHANGES

This negative view of education, though common, is limned in exceedingly broad strokes; and, like all such renderings, it misses important details and subtleties. The over-all decline in the number of students for example, obscures dramatic growth in a number of key areas. Far from falling, the number of poor and disadvantaged youngsters is rising rapidly. The same is true for children who speak little or no English, and for those who suffer from physical, mental and emotional handicaps. Aside from growth, the common denominator of all of these groups of students is that their education requires greater than average expenditures of time, money and material.

In addition to their changing demography, schools must try to cope with such systemic problems as rapid technological change, reshaping of the family unit, the gender revolution, and television's dominance of the young. And, while coping, they must simultaneously perform a myriad of new social functions that were once the responsibility of other institutions. Immunization, driver training, dental care, job training, education in parenting—all of these worthy activities and many more are now performed at school rather than exclusively at home, at church, or at work.

None of us would suggest that these things are unimportant. Yet it cannot be denied that the cumulative result is both expensive and substantially different from the schools that most of us knew as youngsters. And because a progressively smaller proportion of the adult population has children in school, the general public's awareness of such problems is not high.

WHAT'S IN IT FOR YOU?

So much for altruism. The schools need help; you are in the position to offer that help. That alone would be reason enough to get involved. But let us now consider the question of self-interest or, in more colorful terms, what's in it for you? I can answer that in two words: Your future.

I do not mean only that the destiny of the Nation depends ultimately upon the quality of its public schools. That is true; but the stake of business people in education is much more direct, much more immediate. It touches everything you do, beginning with employees. I am fond of teasing people whose job it is to project the number and the quality of people who will be available for entry level jobs in the next 5 to 10 years. I remind them that they have one of the easiest jobs in America if they will only do it right. Rather than develop elaborate statistical models, they can simply walk down the street to any junior high school and interview the students. These are the same individuals who will be answering our want-ads in the next five to 10 years—if they can read them.

BETTER NOW THAN LATER

The caliber of work, the productivity level of each of your enterprises depends in a most direct way upon the skills and the education that these young people will bring to your personnel offices. It is easier and more effective to spend time and money now to make sure that they are well-prepared, than it will be to retrain them in 1990.

Your personnel needs, of course, will go beyond entry level workers. Technology is at the heart of profitability in today's business. The future prosperity of your enterprises will depend on the quality of research and development that you are able to sustain in the years ahead. And that in turn will depend directly upon the long-term viability of our colleges and research universities.

Let me just round off the topic of personnel by pointing out that tomorrow's middle management positions will also be filled by young people in school today. And even those of you who plan to purloin—uh, recruit—them from other firms will still be dealing with schools. Every young up-and-comer you try to lure to that plant in Gibbville is going to ask some pointed questions about the Gibbville schools he-or-she agrees to relocate.

None of this is new, of course. Every person in this room understands the need for a supply of well-educated labor. What may be new is the realization that the American educational system which we have always been accustomed to think of as the best in the world, and which has always operated with little or no direct input on the part of business, is now showing signs of serious difficulty. It is rather like the situation that prevailed with oil in 1974. We all understood that we were dependent, but it had never occurred to us that our supply might really be interrupted.

IMPLICATIONS ARE BROAD

Of course, the implications of a weakened educational system go far beyond personnel. They extend to markets both at home and abroad. It is self-evident that a better educated, more productive work-force is going to make more money and spend more money in the marketplace. Beyond that, however, many important aspects of local, national and international markets are intimately related to educational issues.

To take but one example, Hispanics will very probably pass Blacks to become the largest single minority group in America over the next 5 to 10 years. There is a widespread tendency to think of this as a change that is taking place somewhere else; but in reality, it is occurring all over the country. Few of you would be surprised, for instance, to learn that in my hometown of Los Angeles the school population is well over one-third Hispanic. I wonder how many of you realize, however, that the same statement can be made about John Filer's hometown of Hartford, Conn.?

The implications are obvious both for the marketplace and for the schoolhouse. Media buyers are going to have to start learning about Spanish language radio and television—not just in Los Angeles either. And every person in this room is going to have a much bigger stake in bilingual education than he or she might once have thought.

If you want to retain your markets both at home and abroad, your companies are going to have to learn to communicate in Spanish to sell your products. And that, of course, will involve having many people in your employ who are bilingual.

The ability of schools to cope with complicated questions of bilingualism will be high on the list of business concerns in the '80s and '90s.

LANGUAGE PROBLEMS

The same kinds of considerations arise with overseas markets. There was a time when American businesses operated at home and abroad with relatively little concern about foreign competition—back around the time of the penny postcard. Today, however, American firms have to struggle for important business abroad. And quite often they begin that competition a linguistic half-step behind. It is a rare Japanese or German or French young person who cannot speak at least two languages. By contrast, we are reaching the unhappy position of considering it a triumph when the average American student has a good command of English.

There is no way to be certain how much, if any, international business we lose by virtue of poor language capabilities. What is certain is that we will lose more tomorrow than we do today. The trend toward internationalization grows more pronounced with every passing year. If we do not adapt, it is only a matter of time before we put ourselves at a serious competitive disadvantage.

I could go on in this vein all afternoon; but I trust the point is made. Neither schools nor corporations can afford to continue the business as usual pattern in which the private sector lives exclusively in its own world and educators live in theirs. That is no longer possible amid the changing economic, demographic, and social conditions at home and abroad. In today's world, we have to understand that we need each other; and we have to understand how we can help each other.

KEY AREAS FOR SUPPORT

In that spirit, I would like to suggest some key areas in which a business partnership support for education could be particularly helpful.

First there is the broad stage of public opinion on which national attitudes are formed and social agendas set. On that level, it is extremely important that leaders in the private sector become advocates for the educational system.

Now, an advocate is not an apologist. There is nothing to be gained by turning a blind eye to the very real problems and shortcomings of our schools. Still, the need for advocacy is very real. In their weakened state, our schools stand vulnerable to sweeping, unreasonable attacks from many directions. Too often the fundamental importance of the educational system is forgotten in the heat of the moment. Education needs the support of respected, dispassionate leaders from every walk of life. No one is better able to give that kind of support than you in the private sector.

A second way in which business can and should be a major force is through cooperative efforts with Federal, state and local governments to strengthen schools at every level. The preeminent opportunity before us now is the President's Youth Act of 1980. I can think of no group in the country better situated to understand and appreciate the need for this program than NAB. Throughout its 10 year existence, this organization has done outstanding work on the problems of structural unemployment. You know better than anyone else that much of the severe unemployment among our youth stems from a failure to equip disadvantaged youngsters with basic literacy and computation skills—and failure to teach them anything at all about how to get and keep good jobs.

LOCAL CONDITIONS, NEEDS

By now most of you probably also know something about the Youth Act and how it proposes to attack the problem. Every participating junior and senior high school in the country will be responsible for designing its own plan to upgrade the academic and work-related skills of its students in light of local conditions and local needs. And every one of those schools will be required to have the advice and partnership of private businesses.

The basic premise is that collaboration with the private sector will enable the schools to do a better job of imparting the skills that local employers need. It is apparent to anyone who has read the Youth Act that its success or failure will depend almost entirely on a spirit of leadership and cooperation in the nation's business community.

I wish to announce today that I have formed a Department of Education Task Force on Youth Programs to be headed by Bob Schwartz under the direction of Deputy Under Secretary Mike Bakalis. Mike is a former chief state school officer for the state of Illinois and Bob is a former high school teacher, principal and education adviser to the Mayor of Boston. One of the chief responsibilities of this task force is to explore possible models for successful implementation at the school level—including methods for encouraging maximum cooperation between schools and businesses.

If good collaboration exists only on paper, then the Youth Act will simply be an expensive monument to our inability to pull together to face national problems. If, on the other hand, the collaboration is to be real, then the time to begin planning is now. Hopefully, the bill will soon be passed by Congress; but even if passage should be delayed, it is essential that both schools and businesses begin thinking now about how to make it work.

SPECIAL ROLE

There is a special role here for NAB as an organization and for each of you as members. You have channels for spreading the word about how and why to participate in this effort that are simply not available to the government, not available to the education system. I would hope that the Youth Act could find a place on the agendas of every business conference and every trade association meeting as well as in the pages of every trade publication and in-house publication throughout the country.

The final arena in which I hope that business people everywhere will be active is that of direct interaction with the nation's schools. Leave government out entirely. Match up your own resources and needs with

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those of universities, colleges, junior and senior high schools, and let your imaginations take you where they will. They will take you to some exciting places.

I hope you won't limit your involvements with colleges and universities, for example, to making contributions to general funds or donating new buildings in honor of corporate founders. These are worthy projects, certain to find eager recipients if that is your company's mood. But much more significant, I think, for the long term future of education in this country will be the willingness of businesses to enter into creative joint ventures with colleges and universities.

TEMPORARY PERSONNEL EXCHANGES

Consider the possibilities of just one arrangement: temporary personnel exchanges. Well-qualified college faculty members could gain some practical experience on the job while bringing some fresh thinking to your operations. Meanwhile, your own employees could do research, teach, or simply expand their skills on campus. Both faculty and executives would return to their jobs refreshed from contact with new people and new ideas. Just that kind of program is being tried with great success by innovative companies right now. And it is having the beneficial side effect of loosening up rigid tenure structures that tend to close out new ideas and new faculty on campus during times of retrenchment.

The same potential for creative cooperation exists on the secondary level. Again, it is not simply a matter of adopting a high school or junior high. I would urge you to do that, too; it's going to be more important than ever under the Youth Act. But there are other ways in which business can and should make available its expertise, its resources and its experiences in key areas.

JOINT VENTURES

For example, one of the greater strengths of American business is managerial skill—a commodity often in short supply among urban school districts. Around the country people are beginning to experiment with programs in which corporations donate the services of talented executives to assist school districts with some of the enormous complex management issues that they face on a daily basis.

One of the benefits of these kinds of joint ventures is the simple act of breaking out of those separate worlds that I talked about a little earlier.

I'm well aware that a major obstacle to cooperation between business and education is the general perception that educators are unsympathetic, not to say hostile, to business and its objectives. In part, this may be a residue of the Vietnam years. In part, it is simply a lack of familiarity. But another factor that I would urge each of you to consider is that no one reacts well to unremitting criticism. Too often, those in the schools, particularly the public schools, see private sector leaders as sources of very little support but lots of criticism—sometimes bordering on disdain. Under those conditions, it would be surprising if some barriers of defensiveness and distrust did not exist.

Educators have much to learn about the techniques and the capabilities of management in private industry—and about the skills and the simple humanity of the people involved. Those in the business community will find that they, too, have a good deal to learn about the talent dedication of educators, about the intractable problems that they face—and, again, about the skills and the humanity of the people involved.

As one who has been fortunate enough to move in both worlds, I am eager for the kinds of exchanges that will get the learning process underway; and eager, too, for the Department of Education to set an example. I hope, for instance, that NAB members will consider detailing to the Department some managerial and executive talent. We have many technical problems that could benefit from your considerable expertise. We could even use some assistance in areas that particularly concern and frustrate the private sector: such as Federal regulations, and over use of consultants in government work. Both are difficult problems that look somewhat different from inside than out.

SUCCESS IS UNSUNG

I would also hope that the Department of Education can lead the way not only in helping educators communicate their needs to business, but in giving business people the chance to make their case to those involved in education. After all, one of the things that education and business have in common is that our success stories are sure bets for the back page of the newspaper while our failures never miss the headlines or the evening news.

No one signs up for a cause or an institution that cannot demonstrate some successes and communicate a vision of where it's going and why it's going there—a vision, by the way, that goes beyond economics to encompass a moral and ethical view of the world. Education and business could do much to enable one another to communicate our successes and our visions to the American people.

There is a good deal of talk today about the fact that Americans are confronted with a more difficult world than we have been accustomed to: a world in which there are questions about our military capabilities, about our economic superiority, about the viability of our social and political institutions. It is a time for a national reexamination of assumptions, and I firmly believe that we will emerge from it a stronger and more prosperous country.

If we are to do so, however, we will have to make the kind of investment in our basic institutions that will allow us to reindustrialize, to regroup and attack the national problem of productivity, to move forward on every front. In my mind the single great prerequisite for success in all of these endeavors is a reinvigorated educational system. No one has more to gain by that than you in the business community and no one has greater potential to make it happen.

May I repeat that we need each other, we have it within our power to help each other, we have only to begin.●

YOUTH UNEMPLOYMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. RODINO) is recognized for 5 minutes.

● Mr. RODINO. Mr. Speaker, I was proud to vote for the Youth Act of 1980 which the House passed on Tuesday and I urge the Senate to act expeditiously on this important legislation. The bill addresses a most serious problem besetting our country at this time—the staggering rate of youth unemployment.

For the past 10 years the number of youngsters unable to find jobs has increased considerably. In many cities, like Newark and East Orange located in my congressional district, over 35 percent of young men and women are unemployed—and the rate is even higher among blacks and other minorities.

In fact, the job outlook in many cities has been so bad for so long that youngsters have grown up with no hope of ever finding jobs. Consequently, the hope for America's future has given way to a feeling of desperation which pervades all phases of our society. Without the prospect of finding a job, youngsters turn to lives dominated by drugs and crime—while families and neighborhoods disintegrate.

An important step in solving the problems of our cities and turning around the decline in our national economy is to put Americans back to work. That is what the bill sets out to do.

The Youth Act takes the initiative to reverse the trend of rising unemployment among our youngsters by making a national commitment to train young people for permanent jobs in private business.

By revising and consolidating CETA programs for disadvantaged youths, the bill provides a broad range of employment and training opportunities to those areas most in need.

I urge the Senate to resist all weakening amendments and approve this most important bill, so that we can begin building a better future for the youth of America.●

AMERICAN WINE LABELING EQUITY ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. PANETTA) is recognized for 5 minutes.

● Mr. PANETTA. Mr. Speaker, I am introducing legislation today to prohibit the Treasury Department from implementing wine ingredient labeling regulations until the Bureau of Alcohol, Tobacco and Firearms develops a plan to insure that foreign wine producers selling their product in the United States comply with the same standards and procedures required of American winemakers.

The history of wine ingredient labeling is a long and troublesome one to many Members from wine producing regions of the country. On a number of occasions over the past 2 years, I have organized meetings between the Secretary of the Treasury and members of the California congressional delegation to discuss our concerns about various wine labeling schemes that we believed to be unnecessary and excessively burdensome. After some 10 years of struggling with this problem, the Bureau of Alcohol, Tobacco and Firearms on Friday, June 13, 1980, published final regulations requiring American winemakers to implement a so-called voluntary ingredient labeling plan by 1983. Unfortunately, these regulations are seriously flawed.

While the Department of Treasury insists that ingredient labeling is to be implemented to provide consumers with accurate information about the content of wine, the regulations are wholly inadequate with regard to foreign imported wine. If we are to be true to the purpose of these regulations, we must insure that foreign wine producers comply with the same standards and procedures that American winemakers are subject to. It is doubly important that we do this to avoid placing our own Nation's wine industry at a serious competitive disadvantage in the marketplace in comparison to foreign winemakers.

The present regulations ask only that foreign wine producers obtain a certificate from their own government confirming that they have complied with the labeling regulations. There is no mechanism presently built into the regulations to validate these certificates and to insure that foreign wine producers are keeping the same records and conducting the same tests that will be required of American winemakers.

My legislation would prevent the implementation of these regulations until such time as a system is developed that will insure that labeling will not result in placing American winemakers at a disadvantage. It will further insure that all wine sold in the United States will carry a label that conforms to the same standards and procedures.

I urge your careful consideration and support of this important measure.

Mr. Speaker, I insert the text of my legislation:

AMERICAN WINE LABELING EQUITY ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds that—

(1) the wine ingredient labeling regulations promulgated by the Bureau of Alcohol, Tobacco, and Firearms pursuant to the Federal Alcohol Administration Act and published in the Federal Register of June 13, 1980, as a portion of T.D. ATF-66, places substantial burdens on American producers of wine.

(2) such regulations place a lesser burden on foreign producers of wine because—

(A) such regulations permit foreign producers to establish the accuracy of the ingredient listings by a certification from a foreign governmental official, and

(B) such regulations do not contain adequate provisions to ensure that the certifications are accurate, and

(3) the greater burden placed on American producers of wine could result in a severe competitive disadvantage.

(b) The wine ingredient labeling regulations shall not take effect earlier than 180 days after the day on which such regulations are amended

(1) to require foreign producers of wine imported into the United States to keep the same records, and otherwise comply with such regulations, in the same manner as American producers, and

(2) to provide procedures (in addition to any certification process) to ensure full compliance with such regulations by foreign producers.

(c) When used pursuant to the wine ingredient labeling regulations, the words "ingredient" or "ingredients" and the words "content" and "contents" may be used interchangeably.

(d) For purposes of this section, the term "wine ingredient labeling regulations" means the regulations which were prescribed by the Bureau of Alcohol, Tobacco, and Firearms pursuant to the Federal Alcohol Administration Act and published in the Federal Register of June 13, 1980, as a portion of T.D. ATF-66, to the extent that such regulations relate to the labeling and advertising of wine.●

JOHN GABRIEL RECOGNIZED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. DANIELSON) is recognized for 5 minutes.

● Mr. DANIELSON. Mr. Speaker, I rise on this occasion to bring to the attention of my colleagues to a man who has devoted much of his life and his money to aid his fellow citizen—John A. Gabriel, of Montebello, Calif.

On September 27, 1980, a testimonial dinner will be held in John Gabriel's honor, the proceeds of which will go to help finance the city of Hope, well known health and medical center in southern California.

John Gabriel is truly a self-made man and is now one of the most respected and prominent residents of my congressional district. Born of immigrant Armenian parents, he started himself in the paper and cardboard recycling business long before it became either a popular or a profitable venture. Later he became a manufacturer of other products and also entered into the fields of banking and finance. Through hard work and great wisdom, he has been successful in all of those lines of endeavor.

The city of Hope testimonial dinner is only one of the many awards that have been tendered to John Gabriel. His service to the community in civic, charitable, and business organizations is well known.

John Gabriel was born in East Los Angeles area and has spent his entire 63 years in and near that location. He is president and chairman of the board of the Garfield Bank, Gabriel Enterprises, Gabriel Container Corp., and a number of other local corporations.

He is a member of the board of directors of the Beverly Community Hospital Association and was, 2 years ago, selected as Man of the Year by the Beverly Hospital Foundation.

I want to congratulate John Gabriel on this occasion, and commend the city of Hope for recognizing him in this fashion. I know that John, as well as his wife Agnes and all of the members of his family must be very proud.●

RADIO JAMMING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. DERWINSKI) is recognized for 5 minutes.

● Mr. DERWINSKI. Mr. Speaker, I wish to direct the special attention of the Members to the issue of the Soviet Union's jamming foreign broadcasts of the crisis that is delevoping in Poland. This jamming of broadcasts beamed to its territory from abroad was not a spur-of-the-moment decision on the part of top Soviet leaders but must have been planned for several months, at least.

The measure was probably contemplated some time ago as a Soviet reaction to the world reaction to its invasion of Afghanistan. It was possibly held up, however, until the Moscow Olympics were over and the foreign visitors had gone home. It is now known, moreover, that the Soviets made their earlier decision to jam foreign broadcasts to coincide with the Warsaw Pact invasion of Czechoslovakia in 1968, 3 to 4 months before the event.

Radio jamming is extremely expensive. An estimate of costs for the Soviet jamming of Radio Free Europe/Radio Liberty (RFE/RL) is roughly $300 million a year, three times the cost to the United States of the broadcasting effort itself. A large increase in jamming, now including the Voice of America (VOA), the British Broadcasting Corp. (BBC), the Deutsche Belle foreign broadcasts to the Soviet Union, means large additional costs in electric power, radio equipment, and the diversion of engineers and technicians from other work—a "brain drain" if you will.

It takes a long time to marshal the resources and coordinate the jamming effort. Jamming shortwave signals must be on the same wavelengths, of course, as the broadcasts being interfered with. Inasmuch as the incoming programs are beamed on several frequencies, there is a good deal of coordination required on the part of the jamming effort, all of which takes considerable planning.

Local ground wave jamming is also expensive and of limited range with only a local effect. Ground waves, mere noise, have a range of 5 to 10 miles, thus requiring many small stations near the target areas. Airwave jamming, on the other hand, affects more listeners and is more common. The jammer signal is broadcast on the shortwave band from approximately the same distance from the audience as the transmitters broadcasting the offensive programs—England, Spain, and Germany, for example. These foreign stations, and thus the Soviet jamming transmitters are 1,200 to 2,000 miles from the intended audience groups. The Soviets must back off, as it were, between 1,000 and 2,000 miles to beam their jamming signals, which are incidentally largely music, from Radio Mayak in Eastern Russia.

Nonetheless, some of the foreign transmitters are very powerful—Deutsche Belle, for example, uses 500-Kw transmitters, broadcasting programs on several frequencies. The Soviet engineers must match the power of these signals, more or less, come on the air at the same time, and be on the correct frequency, all of which takes planning and preparation.

Solzhenitsyn has spoken of the irony wherein cities are considered the center of culture. In Russia, he has pointed out, foreign broadcasts are often so jammed they cannot be heard in the cities. If you want to hear their message, you often must leave the cities for the countryside. Muffled signals from abroad in the "muffled zone."

Additional information to ponder is that the Soviets are now jamming all eight languages in which VOA is broadcasting to the U.S.S.R. Nonetheless, about 50 percent of our programs are getting through. To counter this jamming, VOA has added three high frequencies, two of which are now getting through.

It is obvious that the massive support that the Polish people are giving the workers' strike constitutes complete repudiation of the Communist government. It is also apparent that the thirst for freedom behind the Iron Curtain remains strong and unquenchable.

JOHN W. McCORMACK DIRECTS A MESSAGE TO YOUNG AMERICANS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska (Mr. CAVANAUGH) is recognized for 5 minutes.

● Mr. CAVANAUGH. Mr. Speaker, throughout the history of this Congress

there have been few who have served the people here possessed of the quiet courage and moral strength of Speaker John W. McCormack. Speaker McCormack has been a leader and an inspiration to others because his entire life has been an example of how a human spirit committed to honesty and decency can serve and even triumph over the most severe challenges and the most extreme difficulties which life presents.

Speaker McCormack is still teaching us all but most especially he is directing his message to young Americans. He has always cared most for those who would come after him and in a recent article entitled, "With All Thy Might," published in the Boston Globe he presents a powerful lesson on faith and tenacity. Our Nation has been blessed to have John W. McCormack spend the time he has among us. The article is as follows:

"WITH ALL THY MIGHT": REMEMBER THIS WHENEVER YOU FEEL LIKE QUITTING

(By John W. McCormack, former Speaker of the U.S. House of Representatives)

The young student sat slumped before me, saying he was ready to give up. Struggling through law school, he was lamenting the long hours of study, the gloomy state of the economy and the difficulties of getting ahead in our overcrowded profession.

"What's the use?" he sighed. "It doesn't pay to knock yourself out for anything anymore."

I leaned back in my swivel chair and studied him for a moment. "I know how you feel, son," I said. "Sixty-six years ago I was in the same boat. Times haven't changed that much."

And then I told him a story. I told him how at age 22 I was preparing for the Massachusetts bar exam. Only difference was I couldn't afford law school. In those days, a would-be attorney could gain his education by "reading law." This meant studying legal tomes for years, hoping to assimilate enough knowledge to pass the rigorous, day-long examination.

I had been an errand boy in the law office of William T. Way, a prominent Boston attorney. A Protestant aristocrat, he gave me, an Irish Catholic lad, the opportunity to study in his law library between errands. I devoured those books.

I had had only eight years of schooling because my father died when I was 13, leaving my mother and my two younger brothers and me alone in South Boston. Those were hard times, too. We used to search the icy tidal flats of the harbor for pieces of coal that had fallen from barges.

Then, just three months before I took the bar exam, my mother died. It was terribly difficult going on without her counsel.

On the night before the exam, I was cramming. Many others taking the test with me, I knew, would have degrees from Harvard and Yale.

It was long after midnight in our little flat as I sat buried in books. It was quiet and lonely in the room. A strong wind off the harbor rattled the loose windowpanes and flickered the oil lamp. The room grew cold as the embers died in the cast-iron stove.

Resting my eyes for a moment, I remembered my mother's soft voice and sweet smile, and my heart ached for her. I thought of her constant advice to us. "I will pray for you and you must pray, but there is something else you must do. As the Good Book says: 'Whatsoever thy hand findeth to do, do it with thy might. . . .' (Ecclesiastes 9:10) So whatever you do, lads, don't be satisfied with doing just enough. There's always something extra you can give. Jesus called it 'going the extra mile.' It can make all the difference."

The old shelf clock chimed 4:00 a.m. And now the words in the heavy law book swam before my eyes. Fatigue had drained me. My body argued that I had studied long enough, and I looked longingly across the icy room toward my warm bed. I was about to close the book—it was the last volume and I had almost finished it—when those words ". . . with all thy might, Johnny" echoed in my memory.

Shaking myself awake, I focused my eyes on the lamp-lit pages and forced myself to complete the last chapter. As I read, I came to a section that I hadn't really studied before. It explained a certain legal item called a Bill of Particulars, pointed out that it was little used today and explained why. It didn't seem to be of much use, but I read it to the end. Then I fell into bed exhausted, feeling that I had done my work with all my might.

The next morning I walked downtown to the building where the examination was to be held. It was bitter and blustering outside. Other Bostonians stepped along briskly. They all seemed full of confidence, but I felt just the opposite. Inside the building, handed the thick sheaf of examination papers, I felt certain I would fail.

I sat down at the desk, conscious of other aspirants settling to work. I glanced out the window into a gray sky and said a quick prayer. Then I turned to the first page of the examination.

I could hardly believe what I saw.

The first question read: What is a Bill of Particulars? Why is it not now in general use? In a burst of confidence, I dipped the pen into the inkwell before me and began writing furiously.

I didn't know all the answers. But I knew enough of them to earn the right to practice law in the Commonwealth of Massachusetts.

That's the story I told the young law student, and that's the message I'd like to pass along to all young men and women today. The old adage about success being 99 percent perspiration and one percent inspiration is right. And you'll find the source of both—the inspiration, and the gumption for the perspiration—in the Bible.

Faith and working "with all your might" still count in this country. Don't let the cynics tell you otherwise.●

PRODUCTION OF SPECIAL NUCLEAR MATERIAL

(Mr. PRICE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. PRICE. Mr. Speaker, in the August 27 Washington Post, Evans and Novak report on plans for production of special nuclear material for our nuclear weapons program. This is an important subject for those charged with national security responsibilities.

The authors properly quote the House Armed Services Committee report on the Department of Energy's national security authorization bill for fiscal year 1981. In this report we expressed concern about the adequacy of plans for adding special nuclear material production capacity. We called for the completion of design studies and the selection of a reactor type for the next production reactor in fiscal year 1981. This schedule must be followed to permit the timely reactors.

I have not had access to the internal White House communications referred to in the article, although according to the authors, developments they report on efforts to restrict production capacity are disturbing.

You can be sure that the House Armed Services Committee will closely monitor developments in this national security area.

I am including the article at this point in the RECORD for the benefit of all my colleagues:

[From the Washington Post, Aug. 27, 1980]

(By Rowland Evans and Robert Novak)

THE OTHER FACE OF CARTER'S DEFENSE POLICY

While publicly taking a tough election-campaign stance on defense, President Carter has privately ordered a delay in one of the most sensitive areas of national policy: an overdue increase in the production of nuclear explosives for warheads to power America's expanding arsenal.

In response to Ronald Reagan's tough rhetoric, the president has given maximum publicity to the new "Stealth" aircraft and the new nuclear targeting policy to show progress against Soviet power. The delay over expanding nuclear fuel production suggests procrastination in hopes that the Soviet threat will somehow ease. That raises questions about how much the Carter team's view of the Kremlin really has changed.

This other face of the administration's defense policy also points to an election-year political dilemma. The delay in nuclear explosives production betrays a fear that expanded production would antagonize the anti-nuclear and environmental lobbies. But the delay itself generates fear about the reaction of defense-oriented congressmen.

That second fear was reflected in a "top secret" directive on Aug. 7 signed by Zbigniew Brzezinski, Carter's national security adviser. The tip-off was this instruction: "All responses to press inquiries about special nuclear materials should be low-key and . . . limited."

Brzezinski's memorandum went to the secretaries of state and defense, the CIA director and the Joint Chiefs of Staff. It informed them that "a formal . . . decision" to expand nuclear fuel production will be "deferred" until an international conference on nuclear proliferation in Geneva has ended. That will not be for weeks.

The decision to delay means the détentists have won the backstage debate between them and the defense community, a debate waged in Congress and within the administration. Their victory means in essence that there is a high probability of running out of nuclear explosives for the new weapons systems. The administration is authorizing rifles but not the bullets they can fire.

The "bullets" necessary were spelled out last spring in a classified document written by the Joint Chiefs of Staff for Secretary of Defense Harold Brown, setting production targets for new weapons-grade materials. These targets were required by Carter's recent decisions to build the MX mobile missile and the Trident II submarine-launched missile and—most important—to put warheads on new nuclear weapons for Europe to compete with existing Soviet systems.

"Carter has approved these new systems with much fanfare," one defense expert told us, "but the delay in new production of weapons-grade fuel does not give the Joint Chiefs a Chinaman's chance in hell to put warheads on them."

In its report on the authorization bill for the production of warhead fuels last May, the House Armed Services Committee said that Carter was planning major new nuclear weapons for which there would be no explosives. "Is there a commitment to a nuclear weapons program?" the committee asked.

Pentagon officials have tried to argue this case in congressional testimony short of publicly breaking with the White House. On June 18, James P. Wade, Brown's assistant for atomic energy, testified cautiously that "additional resources" are needed.

Congress has been unsuccessfully pressing Carter for several years to gear nuclear plants in Hanford and Richland, Wash., for production of modern, weapons-grade nuclear fuel. But when, after months of procrastination, Carter finally took the lead in modernizing NATO nuclear weapons and ordered full-speed on the MX and Trident missiles, defense-oriented congressmen believed the impasse was broken.

Brzezinski's directive makes clear they were wrong. It revealed that a July 24 session of the Presidential Review Committee formally decided to defer new production facilities.

The directive went on to warn that "responses to press inquiries . . . should be low-key and limited to the following points": present production is "adequate for the near term"; "long-term requirements are under review but are difficult to predict"; if higher production is needed, "appropriate programs will be requested.

In yet another gesture to politics, the directive orders that all responses to congressional inquiries "should be cleared" by the Defense and Energy departments, the NSC and the Office of Management and Budget. Having put the development of "Stealth" on the network news, Jimmy Carter wants to keep his other defense face shrouded from public view.●

FACTUAL INFORMATION CONCERNING THE NAVY F/A-18 AIRCRAFT PROGRAM

(Mr. PRICE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. PRICE. Mr. Speaker, on June 12, 1980, the gentleman from Minnesota (Mr. VENTO) addressed the House for 1 minute on the subject of the survivability of the Navy's F/A-18 aircraft. He also inserted in the CONGRESSIONAL RECORD (page 14544) a proposed letter to me dated June 11, 1980. I understand that the gentleman from Minnesota (Mr. VENTO) also issued a press release on the same day that was printed in the Washington Post, along with excerpts from the proposed letter. On June 27, 1980, I received an identical letter from the gentleman from Minnesota (Mr. VENTO) and 14 other Members of the House.

The letter expresses a concern for a strong national defense, and I congratulate the signers for their concern and welcome their support of defense authorizations and appropriations in the future. The letter also expresses a desire to insure that the military services have available modern and effective equipment. I join in that desire. The letter also states that a strong national defense is not "guaranteed" by an uncritical large expenditure of Federal funds. I agree with that statement, but I would also add that in this day and time the only way that we can guarantee a strong national defense is by large expenditures of Federal funds. The letter also states that the Members have become aware of serious questions about the Navy's F/A-18 aircraft after the passage of the Department of Defense Authorization Act by the House on May 21, 1980.

As a basis for this concern, the letter cited a February 1980 report of the General Accounting Office, based on work done by the GAO in 1979.

Based on the GAO report and an "independent investigation," the letter from Congressman VENTO and the other 14 Members of the House recites a litany of allegations concerning the F/A-18 aircraft program. The letter also alleges that "the F/A-18 has alluded congressional scrutiny."

I view the allegations contained in the letter as very serious, and I asked the Secretary of the Navy, the Honorable Edward Hidalgo, to provide the Committee on Armed Services with information concerning these allegations. In order to provide the Members of the House with a balanced view of this situation, I am requesting unanimous consent to insert in the RECORD at this time a copy of the letter to me from the gentleman from Minnesota (Mr. VENTO) and 14 other Members of the House, a copy of my letter to the Secretary of the Navy, and a copy of the response of the Secretary of the Navy to Mr. VENTO's allegations dated August 19, 1980, along with a listing of the briefings and hearings provide to the Members of Congress and staffs on the F/A-18 program since January of 1980.

As a result of personal investigations by Members and the staff of the House Committee on Armed Services into the allegations made by Mr. VENTO and others, appears that:

The cost increases in the F/A-18 program are primarily the result of compounded rates of inflation which could not be predicted at the time that development estimates were made;

Those technical problems that the testing program was designed to discover are being satisfactorily corrected;

The testing program is recovering its momentum and should be completed very close to its scheduled date of completion;

The F/A-18 should meet virtually all of its combat requirements;

There is no new information or problems involving the F/A-18 which requires additional hearings on that program during this session of Congress;

The Congress has been fully and currently informed with respect to the FA/18 program as evidenced by 18 separate hearings and briefings on that program since February 5, 1980, not including a flight in the aircraft by Congressman JIM LLOYD and other visits by Members and staff to F/A-18 production facilities.

I hope that the following factual information will provide a basis for a reasonable evaluation of the F/A-18 program:

HOUSE OF REPRESENTATIVES,
Washington, D.C., June 25, 1980.

Hon. MELVIN PRICE,
Chairman, House Armed Services Committee, Washington, D.C.

DEAR MR. CHAIRMAN: We are writing to you because of our concerns for a strong national defense. An integral factor in maintaining a strong defense is the adequacy of the equipment available to our forces. It is our responsibility to insure that the military has available modern and effective equipment. A modern military does require a significant investment of funds, but a strong national defense is not guaranteed by an uncritical large expenditure of federal funds. Obviously, any equipment that we procure must reflect the latest technological advances, as well as meet its specifications and cost limitations. If a program fails those criteria, it must be reassessed. Such a reassessment may result in a continued commitment to that project, modifications of the proposal or the development of alternatives. Regardless of the decision, we can expect an end product that is more effective and fiscally sound than if we allow a faulty, unmodified program to continue.

In the House-passed Department of Defense Authorization, $1.78 billion was authorized for the development of the F/A-18. Since consideration of this bill, we have become aware of serious questions about the efficacy of the aircraft, which demands Congressional review. This information gathered through the February, 1980, GAO Report, "F/A-18 Naval Strike Fighters: Its Effectiveness Is Uncertain" and independent investigation includes:

Information that cost overruns on the program are approaching $11 billion;

That the F/A-18, intended as an aircraft carrier fighter, cannot at present land on a carrier;

That the plane does not have the range to fill U.S. Navy needs for fighter and attack missions;

That flight tests and evaluations are 40 percent behind schedule;

That the Defense Systems Acquisitions Review Committee (DSARC III), the final production decision which was due this spring, has been delayed for two years;

That a complete computer analysis (war gaming) in the last few weeks by the staff of the Chief of Naval Operations (CNO) has cast new doubts on the ability of the F/A-18 to meet many mission needs;

That the Office of Management and Budget (OMB) has recently commissioned a restudy of the F/A-18 program because of cost explosion as well as technical and scheduling problems.

This information raises enough questions to justify the immediate attention of all Members of Congress. Both GAO and OMB have raised concerns about the program. Top Navy and Defense officials are aware of the problems. Yet thus far, the F/A-18 has eluded Congressional scrutiny.

It is our hope that your Committee will hold public hearings on the issue of the F/A-18. Before we commit more funds to this project, hard questions, such as the following, must be answered:

What are the cost overruns on the F/A-18? Is it true that the program cost growth in the last 15 months is about twice the total overruns for all Navy shipbuilding in the 10-year period from 1970–79?

Is the F/A-18 now prohibited from carrier landings because the landing gear collapses under the stress of such landings? What will redesign of the landing gear mean in time and cost?

How serious is the wing flutter problem during flight? Is it true that current aircraft are subject to a flight restriction of 400 knots and 3.5 g? What will redesign of a whole new wing mean in time and cost?

Was the acceleration specification reduced? Is it true that the plane is about 30 percent below even the reduced specifications?

Does the F/A-18 meet the specification range for fighter and attack missions? Does the minimal fighter range depend on non-use of the afterburner? Has this specification already been reduced and will it be reduced again?

Is the F/A-18 about 1,600 pounds overweight? Is the Navy trying to change the specifications for dry weight and take-off gross weight to match the current overweight levels?

Is it true that the F/A-18 is 40 percent behind the test schedule in flight hours?

Will the correction of major structural deficiencies ultimately mean total redesign of the aircraft?

In addition, we understand that on April 8, 1980, the F/A-18 Project Manager briefed the Chief of Naval Operations on the full scope and implications of problems with the F/A-18 program. A transcript of his report, as well as the complete results of the more recent war gaming by the CNO's staff, is essential for our consideration of this project.

As we stated earlier, hearings on this issue can only enhance our national defense. Congressional review can either reaffirm our commitment to the F/A-18; lead to needed modifications; or to the development of more effective alternatives.

We urge that the Committee hold public hearings into this matter as soon as possible.

Sincerely yours,

Bruce F. Vento, Fortney H. (Pete) Stark, Edwin B. Forsythe, Andrew Maguire, Berkley Bedell, Richard Nolan, Anthony C. Beilenson, Ted Weiss, Parren J. Mitchell, Paul Simon, James Weaver, David E. Bonior, John F. Seiberling, Thomas J. Downey, Elizabeth Holtzman, Members of Congress.

JULY 1, 1980.

Hon. EDWARD HIDALGO,
Secretary of the Navy, Department of the Navy, Washington, D.C.

DEAR MR. SECRETARY: I am enclosing a copy of a letter dated June 25, 1980 from Congressman Bruce F. Vento and other Members of the House of Representatives concerning the F/A-18 aircraft. Since the letter contains serious allegations concerning the effectiveness of the F/A-18, I am requesting that each of the allegations be commented on in the order contained in the letter. With respect to the allegation that "the F/A-18 has eluded Congressional scrutiny," I would appreciate your providing information on the numbers of briefings and hearings involving the F/A-18 aircraft that have been conducted before Congressional staffs and committees since January of 1980.

Your attention to this important matter will be most helpful to the Committee on Armed Services.

Sincerely,

MELVIN PRICE,
Chairman.

OFFICE OF THE SECRETARY,
Washington, D.C., August 19, 1980.

Hon. MELVIN PRICE,
Chairman, Committee on Armed Services, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of July 1, 1980, concerning the effectiveness of the F/A-18. I am enclosing a detailed list of briefings and hearings that we have presented on the program, as well as specific comments on each of Congressman Vento's allegations. The list indicates that the F-18 has, in fact, received close Congressional scrutiny.

I share Congressman Vento's concern for a strong national defense and concur that the adequacy of military equipment is vital to that end. Problems in the F/A-18 development program are being continuously monitored and solutions are being evaluated at all levels of DoD. As the development of this most important weapons system progresses over the next year and a half, it will continue to receive my personal attention.

We are ready to provide any additional assistance that you may require in this matter.

Warm regards,

Sincerely,

EDWARD HIDALGO,
Secretary of the Navy.

F/A-18 BRIEFINGS AND HEARINGS

Congressional briefings and testimony have been provided to members and staffs since January 1980 as follows:

2-5-80: SASC. Program testimony.

2-21-80: George Mohrmann, LA to Rep. Ichord (D-Mo) (Chairman of R&D Subcommittee, HASC). Program status prior to FY 81 R&D hearings.

2-20-80: HAC Defense Subcommittee. Program testimony.

2-22-80: George Foster, Staff, SASC. Costs, support, technical problems, radar, BIT.

3-13-80: SASC TACAIR Subcommittee. Current technical concerns.

3-26-80: Charles Murphy, Staff Rep. Edwards (R-Al), HAC, F/A-18 All Weather Capability.

3-27-80: SAC Defense Subcommittee. ANP hearing.

3-28-80: Bob Seraphin, Staff, HAC. Program status.

4-7-80: Sen. Goldwater. Program status.

4-16-80: HAC Defense Subcommittee. Program status/costs.

4-21-80: Sen. Cannon. Current program issues and status.

5-16-80: Charles Murphy, Staff, Rep. Edwards (R-Al), HAC. Cost increases reflected in Dec. 79 SAR.

6-3/4-80: HAC. Tactical aircraft, air-to-air missiles.

6-20-80: Adam Klein, Staff, HASC. Current program issues and status.

6-24-80: Charles Murphy, Staff Rep. Edwards (R-Al), HAC. Current program issues and status.

6-25-80: HAC.

6-26-80: HASC, Chairman Ichord, Congressman Lloyd, Mr. Battista, et al. Current program issues and status.

7-1-80: HAC. APN hearings.

F/A-18 DEVELOPMENTAL STATUS

1. Serious questions about the efficacy of the F/A-18 have recently been raised in a letter from Congressman Vento to other members of Congress. The following comments are relevant to the information in that letter attributed to a GAO Report and an independent investigation.

a. Cost overruns on the program are approaching $11 billion.

The F/A-18 FY-80 procurement estimate for the 1366 aircraft program was $21.8771 billion. The FY-81 estimate for the same program is $26.935 billion. Cost increase in the program over one year was $5.0579 billion. Of that increase, $3.8959 billion, approximately ¾ of the total, was due to escalation. The FY-82 procurement estimate for the total program will contain additional growth. The magnitude of the additional growth is not fully defined but is expected to be above $3 billion. The economic variables affecting the size of this growth include the increasing costs of material and labor, but the most significant factor is compound inflation (or program cost escalation) on the aircraft procured out to the 1990s. As an example, an aircraft that is procured in 1990 versus 1982, with a 10% yearly inflation factor, will cost 2.4 times as much. New pricing estimates are being developed at this time as a part of the POM process.

Projected F/A-18 cost through 1990 has increased substantially since the initial projections were made more than five years ago. Over the 15-year span of the program, inflation alone is projected to add 220% to the F/A-18 cost. This seriously affects the F/A-18 program image in the eye of the Congress and the public. The term "cost overrun" is most misleading in this context as it implies to many that the program is in jeopardy due to government mismanagement or contractor misfeasance. No one, including the Defense Department or the Congress, anticipated in 1975 the inflation rates that the nation is experiencing today. The impact of heightened inflation projections are compounded to a greater extent on the F/A-18 program because the F/A-18 program is longer lived (into the 1990s). The most recent fully developed program cost estimates were briefed to the House Appropriations Committee staff as late as May 1980.

b. That the F/A-18, intended as an aircraft carrier fighter, cannot at present land on a carrier.

Last fall, the F/A-18 underwent very successful sea trials. The demonstrated flight characteristics for carrier operations were exceptional. Following the sea trials, the F/A-18 experienced a shrink link lug failure in its starboard landing gear. To prevent reoccurrence of this incident in other F/A-18 aircraft, the air pressure in the main landing gear struts was lowered and those aircraft were prohibited from further carrier landings. Subsequently, a design refinement to the landing gear has been implemented. The first pilot production aircraft recently delivered is fully capable of all aspects of carrier operations, as will be all forthcoming aircraft.

c. The plane does not have the range to fill U.S. Navy needs for fighter and attack missions.

The range specification for the F/A-18, established in the mid-1970's, reflected the dual fighter/light attack mission requirement. The range specification for the fighter configuration of the F/A-18 is greater than the range of the fighter aircraft it will replace (the F-4); the range specification for the attack configuration is less than the A-7, and although the aircraft has not been tested in the attack configuration at this time, current projections are that the aircraft will exceed the attack range specification. Fighter configuration range, as measured in the early part of the flight test program, was below specification due to higher than expected drag. Aerodynamic drag has now been reduced, and the aircraft is fully expected to meet or exceed fighter range requirements. Information concerning the combat radius of the F/A-18 has been provided to Congress on numerous occasions.

d. That flight tests and evaluations are 40 percent behind schedule.

Total flight hours now stand at more than 1550; this is about 10 percent behind the flight hour schedule established in November 1978. Based on the accomplishments of test aircraft, the test program is more realistically about 4-6 months behind schedule when consideration is given to task accomplishments as well as test time. Part of the delay is due to late delivery of the airplane (2-3 months) and part is due to difficulties in start-up.

e. The Defense Systems Acquisition Review Committee (DSARC III), the final production decision which was due this spring, has been delayed two years.

Since DSARC II, conducted in December 1975, the F/A-18 review schedule has included provisions for conducting the DSARC III review in three phases. The following depicts the plan established following DSARC II and the current plan.

Previous Plan:
November 80, DSARC IIIB.
January 82, DSARC IIIC.

Current Plan:
September 80, DSARC III (fighter).
February 82, DSARC III (attack).

It is anticipated that the final DSARC III will be conducted after the OPEVAL is completed, estimated to be in April/May 1982.

f. A complete computer analysis (wargaming) in the last few weeks by the staff of the Chief of Naval Operations (CNO) has cast new doubt on the ability of the F/A-18 to meet many mission needs.

The complete computer analysis referred to is unknown. Therefore, a more specific answer to the above questions is not forwarded at this time, but will be forthcoming if additional identification is provided.

There are a number of other ongoing studies of many Navy mission areas. Each of these normally identify some deficiencies with systems and programs. As an example, the Maritime Air Superiority Study will identify a deficiency in the F/A-18, which does not have the Phoenix missile capability, in a mission scenario where any missile inferior to Phoenix will not meet the threat. The F/A-18, like all other systems, will not accomplish all conceivable missions. It will, however, contribute significantly more combat capability to more Navy and Marine missions than any aircraft in the inventory.

g. The Office of Management and Budget (OMB) has recently commissioned a restudy of the F/A-18 program because of cost explosion, as well as technical and scheduling problems.

Although aware of this study, Navy has not participated in it, nor are we aware of any results at this time. OMB traditionally reviews major programs as they develop to completion as part of their continuing analysis of national security.

2. The following comments are addressed to the specific "hard questions" asked in Congressman Vento's letter.

a. What are the cost overruns on the F/A-18? Is it true that the program cost growth in the last 15 months is about twice the total overruns for all Navy shipbuilding in the 10-year period from 1970-79?

The term cost overrun implies past performance; the F/A-18 cost increases are associated with projected future procurements out to 1990. For example, the major portion of the projected increases between the FY 80 and FY 81 budget is inflation (program cost escalation) in the amount of $3.9 billion with an additional $1.2 billion associated with actual program costs. New pricing estimates are being developed at this time as a part of the POM process.

There are three line items in the shipbuilding appropriation which fund the completion of prior year programs. These are called escalation, cost growth and claims. Over the period FY-70 to FY-79, a total of approximately $3.6 billion was appropriated to SCN for cost growth and claims which is roughly comparable to the $1.2 billion F/A-18 program cost increase. During the same period the SCN account also received approximately $1.9 billion for escalation.

It should be noted that there is no comparability between inflation (escalation) related figures. The F/A-18 numbers cover the entire production period through completion of delivery in FY 1994. The SCN funds cover the period from FY 1970 through delivery in FY 1982. Accordingly, the F/A-18 figures contain more years of compounded inflation (program cost escalation).

b. Is the F/A-18 now prohibited from carrier landings because the landing gear collapses under the stress of such landings? What will redesign of the landing gear mean in time and cost?

No. Limiting the F/A-10 to field landings for the short period of time that the aircraft was restricted from carrier landings cost nothing in terms of time as no carrier operations were scheduled. Monetary costs to the program were small as design refinements were handled within the normal full scale development structure. The F/A-18 is fully capable of carrier operations at this time.

c. How serious is the wing flutter problem during flight? Is it true that current aircraft are subject to a flight restriction of 400 knots and 3.5 g? What will redesign of a whole new wing mean in time and cost?

The F/A-18 is not experiencing wing flutter problems in flight. Earlier in the flight test program, flutter performance was good but less than optimally desired. That performance was improved by moving the Sidewinder missile five inches forward in its mounting on the wing tip. This modification was made to enhance already acceptable flutter performance.

The aircraft has performed to 6.5G's and nearly Mach 1.8. Its "flight envelope" is being continually expanded beyond these points as a normal part of the flight development program. The aircraft has achieved 50 degrees angle of attack in a stable flight condition, and has exhibited no engine problems throughout the flight envelope.

The wing is not being redesigned. There have been some modifications incorporated to correct problems encountered during flight test. Several layers of graphite composite material are being added to the outer wing panel for increased stiffness to improve the aircraft's roll rate. Modifications have been made to the leading edge flaps and ailerons to improve the aircraft's performance. Additional point papers discussing aileron sizing and other efforts to improve roll rate have been provided to Congress. This work is covered, both in terms of time and cost, under the existing F/A-18 contract and does not constitute redesign of the wing.

d. Was the acceleration specification reduced? Is it true that the plane is about 30 percent below even the reduced specification?

The Navy's threshold requirement for acceleration remains unchanged. A degradation in acceleration was exhibited on early test flights. Recently the aircraft has been modified to reduce aerodynamic drag and test flights with a modified aircraft have demonstrated an improvement in the acceleration above Mach 1.2. The Navy is continuing to investigate this area. Further improvement is available by increasing engine performance, but keeping engine performance at its current level is perceived at this time as crucial in maintaining the high engine reliability and maintainability characteristics we are attaining. Should any change to the acceleration specification be made, it will only affect aircraft performance in the high supersonic region. From an operational standpoint, the most critical need for superior acceleration performance is in the transonic range. The F/A-18 acceleration is superior to that of any chase aircraft available to either the contractor or the Navy (F-4, F-14, F-15) from any subsonic airspeed to speeds slightly above Mach 1.2.

e. Does the F/A-18 meet the specification range for fighter and attack mission? Does the minimal fighter range depend on nonuse of the afterburner? Has this specification already been reduced and will it be reduced again?

As discussed previously, the F/A-18 is expected to meet the fighter and attack ranges of 400 and 550 miles. The fighter specification range profile does include use of the afterburner. The fighter and attack ranges of 400 and 550 miles were established in the "Operational Requirement" dated 28 August 1974 and have not changed.

Range specifications were changed for Lot 3 production to require fuel for divert from a carrier to a shore airfield and to allow credit for range attained during operationally required descents.

f. Is the F/A-18 about 1,600 pounds overweight? Is the Navy trying to change the specification for dry weight and take off gross weight to match the current overweight levels?

The F/A-18 is approximately 1,600 pounds above the anticipated design weight. This was reported to Congress in 1978. Nearly half the weight increase was due to conscious, hard, tough decisions to attain new standards of reliability and maintainability in tactical aircraft.

The weight of the F/A-18 could be reduced, but only at great expense in terms of both money and reliability. The Navy will recommend at the next DSARC that the weight threshold be increased. It should be noted, however, that the payload for both the fighter and attack versions is the same as originally specified.

g. Is it true that the F/A-18 is 40 percent behind the test schedule in flight hours?

Total flight hours, which now stand at more than 1550, are about 10 percent behind the flight hour schedule established 19 months ago (see para 1.d.).

h. Will the correction of major structural deficiencies ultimately mean total redesign of the aircraft?

To test the structural integrity of the F/A-18, three full scale test articles are being used. The static load test model has been subjected to sustained loads in excess of 11 g's, which is in excess of the aircraft's specified "g" limit (7.5 g). The drop test model is used to test the structural integrity of the aircraft under high sink rate (high g-load) conditions. The fatigue test model subjects the aircraft to the dynamic loads encountered in flight. In this test, the imposed loads simulate all parts of the flight envelope and exceed the flight envelope out to 9 g's. Some structural problems have occurred during fatigue testing. The most significant problem has been a crack in the bulkhead of the fatigue test airframe. The cause of the crack was quickly determined, the bulkhead modified accordingly, and reinstalled in the fatigue-test airframe. Since then, the fatigue-test airframe has been subjected to forces equalling one-third of an F/A-18 flying lifetime. During this testing, cracks of a minor nature were discovered and fixes incorporated.

i. On April 8, 1980, the F/A Project Manager briefed the DNSARC in preparation for a DSARC Review on 18 April 1980. The issues covered at that review were flight test status, fatigue test status, program costs, and threshold changes. All have been summarized and, in some cases, updated in this paper.●

THE ARMS RACE IN SPACE

(Mr. BROWN of California asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. BROWN of California. Mr. Speaker, in recent months, I have become increasingly alarmed with the trend toward the militarization of space, and the implications this has for world peace. From time to time I have placed significant news articles in the CONGRESSIONAL RECORD for review by my colleagues and to generate greater public discussion. Recently I have seen a larger number of articles on this subject, in a wider variety of publications, which at least demonstrates the widespread concern about this issue. Clearly this is the time, before it is too late, for the arms race in space to be curtailed and the peaceful uses of space to be promoted.

The cover story on the September issue of Inquiry magazine, which I will insert in the RECORD at the conclusion of these remarks, is an excellent description of the trends in the U.S. space program and the nature of the space arms race between the United States and the Soviet Union. Another point clearly made by the author, David Ritchie, is the implication to world peace if we fail to develop an effective treaty to limit the emerging space war.

Mr. Speaker, I sincerely believe that

the effective use of military surveillance satellite systems are our best peacekeeping tool. Destruction of these space base systems would inevitably be the prelude to a global nuclear war. The expansion of these systems in both scope and access by all people would be an important step toward global stability. A new outer space treaty, protecting these surveillance systems, must be a priority matter for our Government and all governments sincerely interested in a stable world peace.

Mr. Speaker, I urge my colleagues to review the following article:

[From Inquiry Magazine, Sept. 1, 1980]

LASER-RATTLING IN OUTER SPACE

(By David Ritchie)

While Americans watch Luke Skywalker battle Darth Vader in the latest installment of Star Wars, the American and Soviet armed forces are preparing to wage real wars in space, possibly by the end of this decade.

The Carter administration, which came to Washington pledging a cutback in military spending and a "pacification" of the military buildup in space, has done a quick about-face and given its blessing to putting a costly new arms race into orbit. Plans for fantastic new spaceborne weapons systems are well on their way to becoming reality, and if the Department of Defense has its way the skies may soon be patrolled by orbiting "warships" armed with weapons out of a George Lucas movie. The cost of this military escalation in space will be astronomical, and no one can tell when—or how—it will end.

If this sounds like alarmist rhetoric, then consider the following:

The Soviet Union has been testing "hunter-killer" satellites for almost a decade and is said to be capable of knocking U.S. military and communications satellites out of the sky by ramming them or by setting off explosions nearby that riddle the satellites with shrapnel. Russian antisatellite (ASAT) weapons are thought to have scored more than a dozen "kills" on targets in orbit, though that number may be exaggerated. The latest Soviet test of a killer satellite took place in April. It was unsuccessful, but it gave DOD reason to worry; the test was an attempt to knock out a target within the first orbit of the attack spacecraft. "A Soviet antisatellite attack conducted within one earth revolution," said Aviation Week and Space Technology of the test, "would allow little time for the U.S. to recognize one of its spacecraft was in danger." To avoid getting caught by surprise, the United States has identified "threat windows"—times when our satellites might be in danger from Soviet ASAT systems.

DOD spent some $73 million last year to develop ASAT weapons comparable to those possessed by the Russians, and the Pentagon plans to spend close to half a billion dollars more on ASAT technology in the next few years. Aviation Weekly reports that $80.5 million is being spent in 1980 alone on a versatile ASAT weapons system that would knock out enemy satellites with a small homing missile. The planned ASAT device would be boosted into space by a two-stage rocket launched from an F-15 fighter plane flying twenty miles above the earth, and would use heat sensors to "sniff out" a target before destroying it.

The Soviets are thought to be making impressive progress in developing ASAT laser weapons. Several years ago there was a report, denied by the Pentagon, that the Russians had used a powerful laser to "blind" two U.S. satellites over Siberia. Not to be outdone, the Pentagon has so far spent more than a billion dollars on laser weapons that might be used against enemy missiles and satellites.

DOD plans to put a huge laser weapon in orbit in the next few years. This project, code-named Talon Gold, is a scaled-down version of Darth Vader's Death Star; it would use high-energy lasers to destroy enemy satellites and ICBMs. The Pentagon believes a multimegawatt laser could be put into orbit by 1983 and installed on a "D-sat," or "dedicated defense satellite" that would orbit above and at the same rate as the earth. The laser would employ a mirror ten to thirteen feet in diameter to focus on target, and its beam would burn through the hull of an ICBM, destabilize it, and make the rocket either explode or disintegrate.

The Pentagon seems rather fond of laser weapons, and several besides Talon Gold are in the planning stages. One weapon proposed in 1975 uses an orbiting array of mirrors to reflect a laser beam fired from the ground—the lasers might be mounted on aircraft in flight or on mountain peaks—and to direct the beam toward hostile space vehicles. Cost: $105 billion. DOD plans a laser test on one of the early space shuttle missions, scheduled to begin either late this year or in 1981. If early experiments prove promising, then laser-weapon platforms may be built in space by 1985.

Senate hawks, notably Malcom Wallop (R-Wyo.), have been agitating for a crash space-laser development program with a projected budget of $240 million—four times the amount requested by the Carter administration, which has been approved by Congress for this purpose next year. Wallop estimates it would take $2 billion to put one laser unit in orbit. A network of twenty-four such platforms has been proposed to cover the entire globe with laser power.

Department spokesmen have indicated that the DOD is thinking of setting up a whole new branch of the armed services—in effect a "Space Force"—to handle combat operations in outer space. The air force already has its own Space Division to coordinate all its activities in, and related to, outer space.

The air force set up a manned space flight support group at the Johnson Space Center in Texas in 1979, and some observers believe this group may be the first step toward development of a man-in-space capability for DOD. The department has wanted such a capability for years. The air force planned a military space station called the Manned Orbiting Laboratory (MOL) in the sixties, but had to abandon the project in 1969 because of budget constraints.

DOD, however, may get its orbiting laboratory yet. Similar to the MOL is the European Space Agency's Spacelab, an orbiting scientific laboratory designed to be carried aloft in the cavernous cargo bay of the NASA space shuttle. The Defense Department has understandably taken an interest in Spacelab because it would be a superb spy satellite. Spacelab could carry large cameras for spotting activity both in space and on the ground, and astronauts on board could give a whole new dimension to satellite reconnaissance by adding their "eyeball" observations to those of Spacelab's cameras—an invaluable combination because the eye sometimes sees things the best camera misses. (It's hard to believe, but some of the Gemini astronauts were actually able to see smoke coming from the chimneys of individual houses.)

The Pentagon now has a new Space Defense Operations Center in Colorado Springs, Colorado, to keep track of all major U.S. space systems and any threats to them. The facility is located at the North American Air Defense Command (NORAD) nerve center under Chevenne Mountain and for the first time provides a single site at which the U.S. military can monitor the status of all spacecraft connected with the Nation's defenses.

The Center is in the process of being tied in with all U.S. military satellites and also to civilian space systems, like weather and communications satellites, that might be targets for Russian ASAT weapons. Computers at Cheyenne Mountain receive data from all NORAD radar sensors (including one radar installation in North Dakota that can spot something the size of a cigarette lighter in low orbit) and can keep track of 8000 space vehicles at a time. These computers can also simultaneously follow some fifty "high-interest" targets—large satellites reentering the atmosphere, for example—whose positions have to be precisely known. The Space Defense Operations Center is scheduled to be upgraded in the next few years to handle operation of the new fighter-launched ASAT missile and will serve as the command point for any American antisatellite missions.

Among the objects tracked by NORAD are the twenty-ton Soviet Salyut space stations. These are launched at a rate of one per year and are roughly comparable to our Skylab missions. Some Salyuts are manned, others unmanned. And although the Salyuts are nominally part of a peaceful space project, there is every reason to think they have a military role. Salyut 2, an unmanned station launched in April 1973, transmitted signals back to earth on a frequency normally reserved for Soviet spy satellites. Salyut 3 went up in June 1974 and almost certainly had military capability: It carried a groundward-pointing camera far more powerful than needed for nonmilitary photography, and the mission was the object of a general news blackout that suggests a possible military purpose. A similar news blackout surrounded Salyut 5, in sharp contrast to the publicity photos and films released about Salyuts 1 and 4. Soviet silence as to certain Salyut flights has led Western observers to conclude that about half the Salyut missions are for the benefit of the Russian armed forces.

The Soviets have their own military "space city" at Plesetsk, in the northwestern part of the country. Most of the Soviets' military space missions originate here rather than from the older Tyuratam (also known as Baikonur) cosmodrome in Kazakhstan near the Aral Sea. With at least four major launch complexes Plesetsk is one of the world's biggest space facilities. It is served by its own airfield and highway system, and by the Moscow-Arkhangelsk railway. Plesetsk is also one of the world's busiest spaceports: In 1973, satellite launches from Plesetsk averaged one every four and a half days.

Although the Soviet government refuses to admit the existence of Plesetsk, the rest of the world has known about Russia's military space base for almost fifteen years. In 1966, amateur radio enthusiasts in Britain calculated the orbital paths of newly launched Soviet satellites from their telemetry signals, and followed the orbits back to a launch site somewhere in the northwestern USSR. The Soviets denied the existence of any launch facility in that area, but were caught in their lie a few years later, when the giant base appeared on photos taken by a U.S. civilian LANDSAT satellite launched in 1973. The satellite shots showed a large military airfield and scores of rocket launch pads. Rather than call attention to its military space center, the USSR let the discovery of Plesetsk pass without official comment.

America's military space program has had its budget doubled since 1976, while in recent years the civilian space agency, NASA, has seen its funding steadily whittled down by inflation and reduced appropriations. Funding for the U.S. military space program is now roughly equivalent—$4.1 billion for the 1980 fiscal year—to America's civilian space effort.

All Soviet space activities are ultimately under military control, and the same may

soon be true of America's space program. NASA is so deeply involved in Defense Department business that a 1978 Library of Congress study seriously discussed a plan to let the Pentagon take over NASA's launching activities altogether. NASA's independence of the military is under attack from other quarters as well. An Army War College study, made public recently under the Freedom of Information Act, referred to the U.S. government's separate civilian and military space programs as "expensive . . . luxuries" that the nation cannot afford much longer. That study called for an "integrated civil/military space technology program," thus suggesting that DOD all but swallow up the civilian space effort.

Though the armed forces' move into outer space seems to have happened almost overnight, it has been underway for two decades. America took the first step toward the military use of outer space by sending up its SAMOS (an acronym for Satellite Missile Observation System) spy satellites beginning in 1960. Designed to track Soviet ICBM deployment, SAMOS represented a quantum leap forward in photo reconnaissance.

From an altitude of a hundred miles, undisturbed by picture-blurring influences such as engine vibration, SAMOS took photos clearer than any then available from aircraft cameras. In 1962 SAMOS gave President Kennedy early warning of the Soviets' attempt to station missiles in Cuba.

After SAMOS the military use of satellites increased steadily on both sides of the Iron Curtain. About half the payloads sent into orbit by U.S. rockets since 1960 have been reconnaissance satellites, and three-fourths of all U.S. and Soviet satellites have been military in purpose.

There is now a bewildering variety of military satellites circling the Earth. These include photo reconnaissance satellites, like the air force's tank car—sized Big Bird, which take pictures of targets on the ground below and return the photos to Earth in a special reentry capsule that is plucked out in midair by "lasso"-equipped aircraft. There are electronic "ferret" satellites that monitor communications on the ground below and can eavesdrop on phone conversations between Soviet army commanders in the field. There are heat-sensing satellites that detect the telltale hot exhausts of missiles being launched. And there are communications satellites handling some 70 percent of U.S. military electronic communications with armed forces overseas.

These satellites have already been used by American troops in Vietnam. Syncom II and III satellites relayed high-priority communications between Southeast Asia and the United States. Later a more advanced system of eighteen communications satellites carried data and pictures from Vietnam to America almost instantaneously. Military weather satellites also played an important role in Vietnam, keeping watch over target areas before and during bombing missions.

Today the U.S. armed forces rely more heavily than ever before on satellites. The Defense Meteorological Satellite Program collects information about weather conditions. The NAVSTAR Global Positioning System, a satellite navigation system now being deployed, will allow precise positioning of aircraft in flight, ships at sea, and even soldiers on the ground. The Air Force Satellite Communications System carries messages to and from our armed forces all over the world. The Satellite Data System handles communications from one polar region to another and helps the air force track satellites.

General Alton D. Slay, commander of the Air Force Systems Command, underscored the importance of satellites to the U.S. military in a speech in Washington last year. "The Defense Satellite Communications System is the key element for worldwide long-haul communications," he said. "For the future, I see no diminishment of the utility of space for communications and data relay. I see only expansion."

Expanding our military satellite systems may do us little good, however, if the Soviets can knock them down at will. Pentagon officials are worried that if the Soviets could destroy American satellites at the outset of some future armed conflict, American armed forces would have a serious or even fatal disadvantage, since the Pentagon appears to have phased out many of the cable links that had also been kept available previously to provide a backup system for satellite communications. The Russians, by contrast, are thought to have kept both kinds of communications systems, cable and satellite, for added security. This is one reason why Russian ASAT capability worries the Pentagon, and why the United States is trying to match Moscow's space warpower within this decade.

The key to America's plans for war in space is the NASA space shuttle, the stubby-winged spaceship that is supposed to become the workhorse of the U.S. space program in the 1980s. The shuttle, about the size of a DC-9 airliner, is supposed to make its first voyage late this year or early the next. It will ride into space on strap-on rockets and then glide to earth at the conclusion of its mission. It can be relaunched—perhaps as many as a hundred times. DOD has a wide variety of jobs planned for the shuttle, as Defense Secretary Harold Brown told the Senate Committee, on Commerce, Science, and Transportation on February 7.

"Over the next five years, our dependence on the shuttle to support our space systems will become critical," Brown said. "Space systems are increasingly more important for support of our military forces in areas such as communications, navigation, early warning, surveillance, and weather forecasting." Brown added that the shuttle was expected to provide "the benefits of reduced launch costs, increased reliability, increased weight and volume of our payloads, and perhaps most important of all, increased flexibility."

In other words, DOD expects the shuttle will allow the Pentagon to send up more and bigger military hardware for less money per pound than ever before, and that it will make practical many military operations that were previously difficult or impossible.

DOD payloads will be among the first the shuttle will carry. On its first ten flights, the shuttle is scheduled to deploy air force DSCS-3 military communications satellites and DOD weather satellites, orbit a giant High Altitude Large Optics camera to spy on the Soviets, and test laser weapons. The shuttle will also be used to test the Inertial Upper Stage, a booster rocket that could be released from the shuttle to carry satellites into higher orbits where they would be safe from Russia's low-orbiting killer satellites. Indeed, the Pentagon is thinking of hiding "dark" or "silent" satellites in extremely high orbits, where they would be difficult to detect, and switching them on if other military satellites in lower orbits were destroyed.

Clearly, the shuttle will be busy with DOD projects. And just to make sure the Defense Department has all the shuttles it wants, the Pentagon has been pushing for a greatly expanded shuttle fleet. Defense Secretary Brown told a Senate committee recently that DOD may require more shuttle missions, and hence more shuttles, in the 1990s, and the department seems confident of getting what it wants: Earlier this year, Air Force Secretary Hans Mark said he expected the currently planned fleet of four shuttles to be increased to seven. Meanwhile, the next generation of space shuttles, armed space "battleships" that would take off and land using conventional runways, is on Pentagon drawing boards.

The shuttle's ever-expanding military role puts NASA in an uncomfortable position. Every new military mission slated for the shuttle increases the chance the space agency will be gobbled up by DOD. And NASA's close relationship with DOD makes it increasingly difficult for NASA to protect the image it wishes to project as a peaceful civilian agency. So NASA, to defend that image, and probably also to keep Defense at bay by encouraging public and congressional support for a civilian space program, has been waging a publicity campaign to sell Americans on the nonmilitary uses of the shuttle.

This "salesmanship," as Science magazine called it in an article about NASA's problems, scarcely ever mentions that the shuttle is working for DOD. In one widely distributed NASA publication concerning the shuttle, the only mention of the shuttle's military purposes is a single reference to "national security" near the end of the book.

NASA's public relations campaign has won over the media, which have nothing but praise for the "peaceful" shuttle. Writers and television commentators, always interested in a spectacular space story, see in the shuttle something of the old Apollo glamour and gush about the "new age in space" that the shuttle will supposedly inaugurate. Ordinarily hardheaded reporters go starry-eyed with visions of the shuttle turning out fantastic new products in the airless, zero-gravity environment of space, or building hotels in orbit to serve an interplanetary tourist trade.

Most magazine and newspaper articles about the shuttle are little more than rewrites of NASA promotional literature, and NASA is further assured of friendly coverage by the fact that many articles about the shuttle are written by present and former NASA employees. After all, who knows more about the space shuttle? As a result, the public tends to see only one side of the space shuttle project: its nonmilitary role.

The Soviets, however, are less easily fooled. They have recognized the military potential of the space shuttle since its inception, and last year expressed their concern about the shuttle's possible role in warfare.

The Russians accused the United States of planning to use the shuttle in ASAT activities. That suspicion is understandable. The shuttle is equipped with sophisticated radar for rendezvous with other spacecraft, as well as a manipulator arm that could be used to pluck Soviet satellites out of the sky and destroy them, or even bring them back to earth in the shuttle's cargo bay. The shuttle itself might hold some impressive ASAT weapons, including missiles or high-energy lasers.

The Defense Department denies it is actually planning to use the shuttle against Soviet satellites, but there is no doubt in anyone's mind that the shuttle could be used for that purpose, if DOD ever saw the need.

That prospect led the Russians to demand a halt to the American shuttle project as a step toward the Carter administration's announced goal of curbing ASAT weapons deployment in space. An administration spokesman called the Russian request "totally unacceptable" and added, "We would never agree to terminate the shuttle or even to slow it down." Three weeks later, Representative Ron Paul (R-Tex.) underscored that message to Moscow in a short speech on the House floor. "The space shuttle has tremendous defense applications, which is why the Communists want to get rid of it," Paul said. He urged the government to expand the shuttle project for military purposes, and had ominous words for the civilian space effort: "NASA's future, I believe, must lie in defense-related capabilities."

The Soviets are working on their own space shuttle, a miniature cousin of ours. A U.S. spy satellite caught a glimpse of the Russian shuttle during a glide test several years ago, and pictures published in the West show a delta-winged craft with a blunt nose and a chopped-off tail. The Soviet shuttle has

a much smaller payload capacity than ours and has a wingspan of only twenty-six feet, compared to seventy-six feet for the NASA shuttle.

Russia's space shuttle appears to be based on a twenty-year-old U.S. Air Force design, the X-20A "Dyna-Soar"—short for "Dynamic Soaring"—a glider that would have ridden into space at at least five times the speed of sound, atop a liquid-fuel rocket, and then flown back to earth under a pilot's control. Dyna-Soar was abandoned in the early 1960s while the United States was concentrating on reaching the moon instead. It was originally planned to resupply space stations, and the Soviets may plan to use their shuttle as a supply vehicle for their quasimilitary Salyut spaceships.

DOD seems unworried about the Soviet shuttle effort. Defense Secretary Brown has said the Russian shuttle may be a decade behind ours in development. The Pentagon is considerably more worried about setbacks in the American shuttle project; NASA shuttle has been plagued with serious problems that have repeatedly delayed the shuttle's initial flight. A balky engine has given engineers headaches. Solid fuel in the two rocket boosters has sagged out of shape and kept the boosters from being assembled. And the heat-resistant ceramic tiles that cover the shuttle's hull, insulation for reentry, have shown a distressing tendency to fall off. (The Johnson Space Center has given Martin Marietta Aerospace a $2.1 million contract to design and put together a repair kit that astronauts could use to patch up the shuttle if too many tiles came off during an ascent.)

Problems like these have forced the shuttle over budget as well as behind schedule. NASA now expects the shuttle will cost 20 percent more (about $1 billion in 1971 dollars) to get off the ground than previously estimated. The agency was given a $185 million increase in its 1979 budget to help with the shuttle. The following year NASA asked for and received $220 million more for the shuttle, plus a stern lecture from Congress about delays on the project. NASA is expected to get some $285 million more in bailout money for the shuttle in fiscal 1981.

President Carter seemed unconcerned about the shuttle's troubles until last November, when the Pentagon briefed him on the military importance of the shuttle. Carter at once spoke up in support of the project and asked Congress to approve NASA's request for more money. No decision illustrates more clearly the Carter administration's policy of pushing space-war projects while taking only a lukewarm interest in any civilian space program.

Where will this emphasis on military space projects lead? One person who should know is Paul Warnke, former head of the Arms Control and Disarmament Agency and leader of the American delegation to the SALT II negotiations at Helsinki in 1978. In discussions with the Soviets, Warnke brought up the prospects for war in space and later commented: "There is no doubt in my mind that we could have war in space within a decade unless we devise a treaty that will stop it."

No such treaty exists, nor is one likely to take shape in the present atmosphere of confrontation between the United States and the Soviet Union. The 1967 Outer Space Treaty, commonly thought to prohibit deployment of weapons systems in outer space, is hardly comprehensive. The treaty does forbid placement of weapons on other celestial bodies (the moon, asteroids, and so forth) and bans weapons of mass destruction—city-busting bombs and the like—from being put into earth orbit. But since an ASAT weapon would be aimed at only a few small targets and, in any case, has nothing like the destructive power of a nuclear bomb, it can be argued that the 1967 treaty permits the unchecked spread of ASAT systems into space. And while other international agreements oppose the building of antimissile systems, loopholes in those agreements may allow the deployment of virtually any kind of weapons in space.

The consequences could be tragic. As the amount of military hardware in outer space grows, so does the possibility of a military conflict. At first the prospect of unmanned satellites darting through space and firing lasers at one another seems unthreatening and perhaps even a bit on the spectacular side; after all, no one would be hurt—at worst some expensive hardware would be turned into junk.

But remember: Both sides now depend almost exclusively on their satellites for communications and surveillance of the enemy. The loser in an outer space gunfight will not be able to tell what's going on at the enemy's ICBM sites on earth. Under these circumstances, a preemptive nuclear strike will become not only plausible but even desirable to some minds in Moscow and Washington.

So outer space is legally wide open to nearly all military uses. The result is that we face a new, dangerous, and staggeringly expensive arms race that may make the $50 billion spent so far on military space projects seem like small change.●

CONFERENCE REPORT ON S. 1125

Mr. FOLEY submitted the following conference report and statement on the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes.

CONFERENCE REPORT (H. REPT. No. 96-1272)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Federal Crop Insurance Act of 1980".

TITLE I—FEDERAL CROP INSURANCE PROGRAM

CAPITAL STOCK

SEC. 101. (a) Effective October 1, 1980, section 504(a) of the Federal Crop Insurance Act is amended by striking out "$200,000,000" and inserting in lieu thereof "$500,000,000".

(b) Section 504 of the Federal Crop Insurance Act is amended by adding after subsection (c) a new subsection (d) as follows:

"(d) Within thirty days after the date of enactment of the Federal Crop Insurance Act of 1980, the Secretary of the Treasury shall cancel, without consideration, receipts for payments for or on account of the stock of the Federal Crop Insurance Corporation outstanding on such date of enactment and such receipts shall cease to be liabilities of the Corporation.".

BOARD OF DIRECTORS: MEMBERSHIP AND COMPENSATION

SEC. 102. (a) Section 505(a) of the Federal Crop Insurance Act is amended by—

(1) amending the second sentence to read as follows: "The Board shall consist of the manager of the Corporation, the Under Secretary or Assistant Secretary of Agriculture responsible for the Federal crop insurance program, the Under Secretary or Assistant Secretary of Agriculture responsible for the farm credit programs of the Department of Agriculture, one person experienced in the crop insurance business who is not otherwise employed by the Federal Government, and three active farmers who are not otherwise employed by the Federal Government."; and

(2) adding at the end thereof a new sentence as follows: "The Secretary, in appointing the three active farmers who are not otherwise employed by the Federal Government, shall ensure that such members are policyholders and are from different geographic areas of the United States, in order that diverse agricultural interests in the United States are at all times represented on the Board.".

(b) Section 505(b) of the Federal Crop Insurance Act is amended by striking out "three" wherever that word appears therein and inserting in lieu thereof "four".

(c) The second sentence of section 505 (c) of the Federal Crop Insurance Act is amended to read as follows: "The Directors of the Corporation who are not employed by the Federal Government shall be paid such compensation for their services as Directors as the Secretary of Agriculture shall determine, but such compensation shall not exceed the daily equivalent of the rate prescribed for grade GS-18 under section 5332 of title 5 of the United States Code when actually employed, and actual necessary traveling and subsistence expenses, or a per diem allowance in lieu of subsistence expenses, as authorized by section 5703 of title 5 of the United States Code for persons in Government service employed intermittently, when on the business of the Corporation away from their homes or regular places of business.".

GENERAL POWERS FOR THE CORPORATION

SEC. 103. Section 506 of the Federal Crop Insurance Act is amended by—

(1) in subsection (c), striking out "make contracts and";

(2) amending subsection (d) to read as follows:

"(d) subject to the provisions of section 508(c), may sue and be sued in its corporate name, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. The district courts of the United States, including the district courts of the District of Columbia and of any territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation. The Corporation may intervene in any court in any suit, action, or proceeding in which it has an interest. Any suit against the Corporation shall be brought in the District of Columbia, or in the district wherein the plaintiff resides or is engaged in business;";

(3) in subsection (f), striking out "free"; and

(4) at the end of subsection (j), striking out the period and inserting in lieu thereof "; and", and adding at the end of section 506 a new subsection (k) as follows:

"(k) may enter into and carry out contracts or agreements necessary in the conduct of its business, as determined by the Board, State and local laws or rules shall not apply to contracts or agreements of the Corporation or the parties thereto to the extent that such contracts or agreements provide that such laws or rules shall not apply, or to the extent that such laws or rules are inconsistent with such contracts or agreements.".

USE OF PRIVATE INSURANCE COMPANIES AND OTHER FEDERAL AGENCIES

SEC. 104. Section 507 of the Federal Crop Insurance Act is amended by—

(1) amending subsection (c) to read as follows:

"(c) In the administration of this title, the Board shall, to the maximum extent possible, (1) establish or use committees or associations of producers and make payments to them to cover the administrative and program expenses, as determined by the Board, incurred by them in cooperating in carrying out this title, (2) contract with private insurance companies and reimburse such companies for the administrative and program expenses, as determined by the Board, incurred by them, under terms and provisions and rates of compensation consistent with those generally prevailing in the insurance industry and (3) encourage the sale of Federal crop insurance through licensed private insurance agents and brokers and give the insured the right to renew such insurance for successive terms through such agents and brokers, in which case the agent or broker shall be reasonably compensated from premiums paid by the insured for such sales and renewals recognizing the function of the agent or broker to provide continuing services while the insurance is in effect: *Provided*, That such compensation shall not be included in computations establishing premium rates. The Board shall provide such agents and brokers with indemnification, including costs and reasonable attorney fees, from the Corporation for errors or omissions on the part of the Corporation or its contractors for which the agent or broker is sued or held liable, except to the extent the agent or broker has caused the error or omission."; and

(2) adding a new subsection (f) as follows:

"(f) The Board should use, to the maximum extent possible, the resources, data, boards, and the committees of (1) the Soil Conservation Service, in assisting the Board in the classification of land as to risk and production capability and in the development of acceptable conservation practices; (2) the Forest Service, in assisting the Board in the development of a timber insurance plan; (3) the Agricultural Stabilization and Conservation Service, in assisting the Board in the determination of individual producer yields and in serving as a local contact point for farmers where the Board deems necessary; and (4) other Federal agencies in any way the Board deems necessary in carrying out this title.".

FEDERAL CROP INSURANCE EXPANSION AND EXTENT OF COVERAGE

SEC. 105. Effective with respect to the 1981 and subsequent crops, subsection (a) of section 508 of the Federal Crop Insurance Act is amended by—

(1) striking out all that follows the subsection designation down through the end of the sixth sentence, which begins, "Reinsurance for private insurance companies . . .", and inserting in lieu thereof the following: "If sufficient actuarial data are available, as determined by the Board, to insure producers of agricultural commodities grown in the United States under any plan or plans of insurance determined by the Board to be adapted to the agricultural commodity involved. Such insurance shall be against loss of the insured commodity due to unavoidable causes, including drought, flood, hail, wind, frost, winterkill, lightning, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board. Except in the case of tobacco, insurance shall not extend beyond the period the insured commodity is in the field. For the purpose of the foregoing sentence, in the case of aquacultural species, the term 'field' means the environment in which the commodity is produced.";

(2) striking out the seventh sentence, which begins, "Any insurance offered against loss in yield . . .", and inserting in lieu thereof the following: "Any insurance offered against loss in yield shall make available to producers protection against loss in yield that covers 75 per centum of the recorded or appraised average yield of the commodity on the insured farm for a representative period (subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, which are subject to the same conditions, may be fair and just). In addition, the Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 per centum of the recorded or appraised average yield, as adjusted. The Corporation shall not make available to producers any level of coverage in excess of 75 per centum of the recorded or appraised average yield, as adjusted. One of the price elections offered shall approximate (but be not less than 90 per centum of) the projected market price for the commodity involved, as determined by the Board."; and

(3) striking out the ninth sentence, which begins "Counties selected by the Board . . .".

HAIL AND FIRE INSURANCE CREDIT, PREMIUM SUBSIDY, REINSURANCE, AND SPECIFIC RISK PROTECTION

SEC. 106. Effective with respect to the 1981 and subsequent crops, section 508 of the Federal Crop Insurance Act is amended by—

(1) amending subsection (b) to read as follows:

"(b)(1) To fix adequate premiums for insurance at such rates as the Board deems actuarially sufficient to cover claims for losses on such insurance and to establish as expeditiously as possible a reasonable reserve against unforeseen losses.

"(2) The producer may elect to have deleted from the Corporation's policy of insurance the coverage against losses caused by hail and fire and to obtain coverage therefor from other than a Federal insurer. Upon notice in writing of such election to the Corporation and submission of evidence of such substitute coverage on the commodities insured by the Corporation in a dollar amount not less than that provided by the Corporation's policy of insurance, the producer's premium, as calculated by the Corporation, shall be reduced by an amount equal to 40 per centum of the prevailing average county hail and fire insurance premium charged by other than Federal insurers for the dollar amount of the coverage provided by the Corporation's policy of insurance, as determined by the Corporation: *Provided*, That the producer's premium shall not be reduced by less than 15 per centum nor more than 30 per centum: *Provided further*, That, notwithstanding the preceding provisions of this sentence, the producer's premium shall not be reduced by an amount that exceeds the premium for the substitute coverage of a dollar amount equal to that provided by the Corporation's policy of insurance. Any premium reduction in excess of the amount of premium that the Corporation determines would have been necessary for the Corporation to charge in order to cover indemnities actually paid by other than Federal insurers for hail and fire coverage deleted from the Corporation's policy of insurance shall be regarded as premium paid by the Corporation.

"(3) For the purpose of encouraging the broadest possible participation in the insurance program, 30 per centum of each producer's premium (reduced, where applicable, for hail and fire exclusion, or State or State agency subsidy), as calculated by the Corporation on any coverage under the Corporation's policy of insurance up to a maximum of 65 per centum of the recorded or appraised average yield, as adjusted, shall be paid by the Corporation.

"(4) The producer's premium, or share thereof, shall be collected at such time or times, and shall be secured in such manner, as the Board may determine.

"(5) The Board may enter into agreements with any State or agency of a State under which such State or agency may pay to the Corporation additional premium subsidy to further reduce the portion of the premium paid by farmers in such State.

"(6) With respect to any crop insurance covering the 1981 crop of wheat, feed grains, upland cotton, or rice, a producer shall not be eligible for a partial payment of the premium by the Corporation under paragraph (3) of this subsection for such commodity if the producer elects to make the acreage of the commodity eligible for payments under the disaster payment provisions for wheat, feed grains, upland cotton, and rice of the Agricultural Act of 1949 (as amended effective for the 1981 crops): *Provided further*, That a producer who is not eligible for a partial payment of premium by the Corporation under this subsection because of the producer's election to make the acreage of the commodity involved eligible for disaster payments in 1981 shall remain eligible to purchase Federal crop insurance on the 1981 acreage of the commodity at the full cost of the premium.";

(2) amending subsection (c) to read as follows:

"(c) To adjust and pay claims for losses under rules prescribed by the Board. In the event that any claim for indemnity under the provisions of this title is denied by the Corporation, an action on such claim may be brought against the Corporation in the United States district court for the district in which the insured farm is located: *Provided*, That no suit on such claim may be allowed under this section unless it shall have been brought within one year after the date when notice of denial of the claim is mailed to and received by the claimant.";

(3) striking out subsection (d), and redesignating subsection (e) as subsection (d); and

(4) striking out subsection (f) and adding new subsections (e), (f), (g) and (h) as follows:

"(e) And directed, notwithstanding any other provision of this title, to provide reinsurance, to the maximum extent practicable, upon such terms and conditions as the Board may determine to be consistent with subsections (a) and (b) of this section and sound reinsurance principles, to insurers including private insurance companies or pools of such companies, reinsurers of such companies, or State or local governmental entities, including any political subdivisions thereof, that insure producers of any agricultural commodity under a plan or plans acceptable to the Corporation. A test program of such reinsurance shall be made available, to the maximum extent possible, to begin not later than with the 1982 crops. In order to provide equity among producers purchasing crop insurance, whenever the Corporation provides reinsurance under this subsection to any such insurers, the Corporation shall pay a portion of each producer's premium for such insurance so reinsured. Each such payment shall cover the same per centum of the premium, and be subject to the same restrictions regarding payments of premiums for crop insurance on commodities, as provided in subsection (b) of this section for Federal partial payments of Federal crop insurance premiums. The Corporation shall also pay operating and administrative costs to insurers of policies on which the Corporation provides reinsurance to the same extent that such costs are covered by the Corporation on the Corporation's policies of insurance. Insurers of policies on which reinsurance is provided shall make use of licensed private insurance agents and brokers on the same basis as provided for policies of the Corporation under section 507(c)(3) of this title, except that the provisions for compensating

agents and brokers from premiums paid by the insured shall not apply.

"(f) To provide insurance or reinsurance for production of agricultural commodities in the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands in the same manner as provided in this section for production of agricultural commodities in the United States.

"(g) To offer specific risk protection programs including, but not limited to, prevented planting, wildlife depredation, tree damage and disease, and insect infestation programs under such terms and conditions as the Board may determine: *Provided*, That no program may be undertaken if insurance for the specific risk involved is generally available from private companies.

"(h) To include appreciation (including interest charges) as an insurable cost of production in calculating premiums and indemnities in connection with insurance on yields of timber and forests.".

RESEARCH, SURVEYS, AND PILOT PROGRAMS

SEC. 107. (a) Section 506(h) of the Federal Crop Insurance Act is amended to read as follows:

"(h) shall assemble data for the purpose of establishing sound actuarial bases for insurance on agricultural commodities.".

(b) Section 508 of the Federal Crop Insurance Act is amended by adding a new subsection (i) as follows:

"(i) To conduct research, surveys, pilot programs, and investigations relating to crop insurance and agriculture-related risks and losses including, but not limited to, insurance on losses involving reduced forage on rangeland caused by drought and by insect infestation, livestock poisoning and disease, destruction of bees due to the use of pesticides, and other unique problems of special risk related to, but not limited to, fruits, nuts, vegetables, aquacultural species, forest industry needs (including appreciation), and other agricultural products as determined by the Board: *Provided*, That no such programs may be undertaken if insurance protection against such risks is generally available from private companies. Beginning in the 1981 crop year and ending after the 1985 crop year, the Corporation shall also conduct a pilot program of individual risk underwriting of crop insurance in not less than twenty-five counties. Under this pilot program, to the extent that appropriate yield data are available, the Corporation shall make available to producers in such counties crop insurance under this title based on personalized rates and with guarantees determined from the producer's actual yield history. After the completion of any pilot program under this subsection, the Corporation shall evaluate the pilot program and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report of the operations of the pilot program, including its evaluation of the pilot program and its recommendations with respect to implementing the program on a national basis.".

DELETION OF AUTHORITY FOR ADVISORY COMMITTEES

SEC. 108. Section 515 of the Federal Crop Insurance Act is repealed.

APPROPRIATIONS FOR OPERATING AND ADMINISTRATIVE EXPENSES

SEC. 109. Effective October 1, 1980, section 516(a) of the Federal Crop Insurance Act is amended to read as follows:

"SEC. 516. (a) There are hereby authorized to be appropriated such sums as may be necessary to cover the operating and administrative costs of the Corporation, including agents' and brokers' commissions, interest on Treasury notes and other obligations, partial premium payments by the Corporation, and the direct cost of loss adjusters for crop inspections and loss adjustments, which shall be allotted to the Corporation in such amounts and at such time or times as the Secretary of Agriculture may determine. Expenses in connection with agents' and brokers' commissions, interest on Treasury notes and other obligations, partial premium payments by the Corporation, and the direct cost of loss adjusters for crop inspections and loss adjustments may be paid from premium income and other Corporation funds, and any such payments may be restored by appropriations in subsequent years. The Corporation may not employ more than two hundred additional permanent full-time employees, in excess of the number of full-time employees employed by the Corporation on the effective date of the Federal Crop Insurance Act of 1980, to implement the provisions of this title, except in the case of, and only during, emergencies.".

EMERGENCY FUNDING IN CASE OF INSUFFICIENCY

SEC. 110. Effective October 1, 1980, section 516 of the Federal Crop Insurance Act is amended by adding new subsections (c) and (d) as follows:

"(c)(1) If at any time the moneys available to the Federal Crop Insurance Corporation are insufficient to enable the Corporation to discharge its responsibility of indemnifying producers for losses under this title, the Corporation may, upon majority vote of its Board of Directors, request the Secretary of Agriculture to use the funds of the Commodity Credit Corporation to make timely payment of indemnities to producers. Upon receiving such a request, the Secretary of Agriculture may use the funds of the Commodity Credit Corporation to meet obligations to indemnify producers for losses under this title. The Secretary's authority to use the funds of the Commodity Credit Corporation for the purposes of this subsection shall expire one year after the date on which the authority is first used.

"(2) The authority to make commitments under this subsection, in excess of funds available to the Commodity Credit Corporation under section 4 of the Commodity Credit Corporation Charter Act and the Act of October 11, 1978 (92 Stat. 1073), shall be effective for any fiscal year only to the extent provided by appropriation Acts.

"(d) Except as provided in subsection (c), if at any time the moneys available to the Federal Crop Insurance Corporation are insufficient to enable the Corporation to discharge its responsibility of indemnifying producers for losses under this title, the Corporation may issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Corporation from moneys available from premiums or the issuance of capital stock under section 504 of this title. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by the Secretary of the Treasury under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The borrowing authority provided for in this subsection may be exercised by the Corporation only to such extent or in such amounts as are provided in appropriation Acts.".

AGRICULTURAL COMMODITY

SEC. 111. Section 518 of the Federal Crop Insurance Act is amended to read as follows:

"SEC. 518. 'Agricultural commodity', as used in this title, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, aquacultural species (including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertbrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment), or any other agricultural commodity, excluding livestock and stored grain, determined by the Board under subsection (a) or (i) of section 508 of this title, or any one or more of such commodities, as the context may indicate.".

EFFECTIVE DATE

SEC. 112. Except as otherwise provided in this Act, the provisions of this Act amending the Federal Crop Insurance Act shall become effective on the date of enactment of this Act.

TITLE II—DISASTER PAYMENTS

PREVENTED PLANTING DISASTER AND FARM DISASTER PAYMENTS FOR 1981 CROPS

SEC. 201. (a) Section 101(h)(4) of the Agricultural Act of 1949, as added effective for the 1978 through 1981 crops of rice, is amended by—

(1) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of rice," and inserting in lieu thereof "Except as otherwise provided in subparagraph (D) of this paragraph, effective with respect to the 1978 through 1981 crops of rice,";

(2) in subparagraph (C), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of rice," and inserting in lieu thereof "Except as otherwise provided in subparagraph (D) of this paragraph, effective with respect to the 1978 through 1981 crops of rice,"; and

(3) redesignating subparagraph (D) as subparagraph (E) and inserting immediately after subparagraph (C) a new subparagraph (D) as follows:

"(D) With respect to the 1981 crop of rice, cooperators on a farm shall not be eligible for disaster payments under this paragraph if the cooperators elect to cover the rice acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act.".

(b) Section 103(f)(5) of the Agricultural Act of 1949, as added effective for the 1978 through 1981 crops of upland cotton, is amended by—

(1) in subparagraph (A), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of upland cotton," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1979 through 1981 crops of upland cotton,";

(2) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of upland cotton,"; and

(3) adding at the end thereof a new subparagraph (C) as follows:

"(C) With respect to the 1981 crop of upland cotton, producers on a farm shall not be eligible for disaster payments under this paragraph if the producers elect to cover the upland cotton acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act.".

(c) Section 105A(b)(2) of the Agricultural Act of 1949, as added effective for the 1977 through 1981 crops of feed grains, is amended by—

(1) in subparagraph (A), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of feed grains," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of feed grains,";

(2) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of feed grains," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of feed grains,"; and

(3) redesignating subparagraph (C) as subparagraph (D) and inserting immediately after subparagraph (B) a new subparagraph (C) as follows:

"(C) With respect to the 1981 crop of feed grains, producers on a farm shall not be eligible for disaster payments under this paragraph if the producers elect to cover the feed grain acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act.".

(d) Section 107(A)(b)(2) of the Agricultural Act of 1949, as added effective for the 1977 through 1981 crops of wheat, is amended by—

(1) in subparagraph (A), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of wheat," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of wheat,";

(2) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of wheat," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of wheat,"; and

(3) redesignating subparagraph (C) as subparagraph (D) and inserting immediately after subparagraph (B) a new subparagraph (C), as follows:

"(C) With respect to the 1981 crop of wheat, producers on a farm shall not be eligible for disaster payments under this paragraph if the producers elect to cover the wheat acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3), or 508(e) of the Federal Crop Insurance Act.".

NOTICE TO PRODUCERS OF RIGHT TO ELECT SUBSIDIZED CROP INSURANCE OR DISASTER PAYMENTS ON THE 1981 CROPS

SEC. 202. The Secretary of Agriculture, after consultation with the Board of Directors of the Federal Crop Insurance Corporation, shall, at least sixty days prior to the beginning of the planting of the 1981 crops of wheat, feed grains, upland cotton, and rice, or thirty days after the date of enactment of this Act, whichever is the later, notify producers of those commodities of their right to elect, with respect to the 1981 crop, between (1) declaring the farm acreage of the respective commodity eligible for disaster payments under the Agricultural Act of 1949, or (2) covering such farm acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act. Such notice shall include a statement of the percent of crop insurance premium that will be paid by the Corporation.

And the House agree to the same.

THOMAS S. FOLEY,
ED JONES,
TOM HARKIN,
JERRY HUCKABY,
DAN GLICKMAN,
GEORGE E. BROWN, Jr.,
FRED RICHMOND,
ALVIN BALDUS,
LEON E. PANETTA,
THOMAS A. DASCHLE,
BILL WAMPLER,
EDWARD MADIGAN,
JAMES M. JEFFORDS,
RON MARLENEE,

Managers on the Part of the House.

HERMAN A. TALMADGE,
GEORGE MCGOVERN,
WALTER D. HUDDLESTON,
DICK STONE,
EDWARD ZORINSKY,
JESSE HELMS,
DICK LUGAR,
THAD COCHRAN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report. The differences between the Senate bill and the House amendment and the substitute agreed to in the conference are noted in the following outline, except for conforming, clarifying, and technical changes:

(1) MEMBERSHIP ON THE BOARD OF DIRECTORS OF THE FEDERAL CROP INSURANCE CORPORATION

Both the *Senate* bill and the *House* amendment increase the membership of the Board of Directors (hereinafter referred to as the "Board") of the Federal Crop Insurance Corporation (hereinafter referred to as the "Corporation") from five to seven persons.

(a) The *Senate* bill provides that the Board will be composed of—

(i) three persons from the Department of Agriculture—the manager of the Corporation, the Under Secretary or Assistant Secretary of Agriculture responsible for the Federal crop insurance program, and the Under Secretary or Assistant Secretary of Agriculture responsible for the farm credit programs of the Department of Agriculture;

(ii) a person (not a Federal Government employee) who is experienced in the crop insurance business; and

(iii) three farmers who are not Federal Government employees.

The *House* amendment provides that the Board will be composed of—

(i) three persons from the Department of Agriculture—the manager of the Corporation and two employees of the Department (the *House* amendment does not specify their positions in the Department);

(ii) two persons (not Federal Government employees) who are experienced in the crop insurance business; and

(iii) two farmers who are not Federal Government employees.

The *conference substitute* adopts the *Senate* provision.

(b) The *House* amendment requires that the farmer members be active farmers and policyholders.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(2) SUITS BY OR AGAINST THE FEDERAL CROP INSURANCE CORPORATION

(a) The *Senate* bill deletes a provision in existing law generally authorizing suits by or against the Corporation in any State court having general jurisdiction. It also provides that any suit against the Corporation in the Federal courts must be brought in the District of Columbia or the district in which the plaintiff resides or is engaged in business.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(b) The *Senate* bill deletes a provision in existing law specifically authorizing persons to bring actions against the Corporation to recover indemnity claims denied by the Corporation in any State court of general jurisdiction sitting in the district or county in which the insured's farm is located, thereby limiting jurisdiction over such actions to the United States district court for the district in which the insured farm is located.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(3) AUTHORITY OF THE FEDERAL CROP INSURANCE CORPORATION TO ENTER INTO CONTRACTS AND AGREEMENTS

The *House* amendment provides that State and local laws or rules will not apply to contracts or agreements of the Corporation or the parties thereto to the extent that the contracts or agreements so provide or to the extent that State and local laws are inconsistent with such contracts or agreements.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(4) USE OF PRIVATE INSURANCE COMPANIES AND AGENTS

(a) The *Senate* bill provides that, in administering the Federal Crop Insurance Act, the Board *may*—

(i) establish or use committees or associations of producers; and

(ii) contract with private insurance companies.

The *House* amendment provides that, in administering the Act, the Board *shall*, to the maximum extent possible—

(i) establish or use committees or associations of producers;

(ii) contract with private insurance companies; and

(iii) encourage the sale of Federal crop insurance through licensed private insurance agents and brokers, and give the insured the right to renew the insurance for successive terms through such agents and brokers.

The *conference substitute* adopts the *House* provision. The *conferees* intend that the authority to contract with private insurance companies not be used to make any one insurance company the exclusive selling or servicing agent or underwriter for Federal crop insurance.

(b) The *Senate* bill provides that the Board may make payments to private insurance companies with which it has contracted to cover their administrative and program expenses.

The *House* amendment provides that the Board shall, to the maximum extent possible, reimburse private insurance companies for administrative and program expenses incurred by them under terms and provisions and rates of compensation consistent with those generally prevailing in the industry.

The *conference substitute* adopts the *House* provision.

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(c) The *House* amendment provides that the Board shall, to the maximum extent possible, provide agents and brokers reasonable compensation for sales and renewals of Federal crop insurance, recognizing their function to provide continuing service while the insurance is in effect.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision with a modification clarifying that compensation for agents and brokers will be made from premiums paid by farmers for crop insurance coverage, but that agent and broker compensation will not be included in computing premium rates.

(d) The *House* amendment requires the Board to provide agents and brokers indemnification (including costs and reasonable attorney fees) for errors or omissions by the Corporation or its contractors for which the agent or broker is held liable, except to the extent the agent or broker caused the error or omission.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(5) USE OF RESOURCES

The *House* amendment encourages the Board to use the resources of (1) the Soil Conservation Service in assisting in land classification of risk and production capability and in developing acceptable conservation practices; (2) the Forest Service in assisting in the development of a timber insurance plan; (3) the Agricultural Stabilization and Conservation Service in assisting in the determination of individual producer yields and in serving as a local contact point for farmers; and (4) other Federal agencies in any way the Board deems necessary.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision. It is the intent of the *conferees* that this provision not be used as authority for requiring the adoption of conservation measures developed by the Soil Conservation Service or other governmental agencies as a condition for obtaining Federal crop insurance coverage or receiving indemnities for losses. However, the *conferees* understand that, under existing law, losses due to the failure of a farmer to follow established good farming practices are not covered by Federal crop insurance and that the Corporation now considers, and will continue to consider the conservation measures present on a farm in determining the risk to be covered and the premium to be charged for the farm.

(6) EXPANSION OF THE FEDERAL CROP INSURANCE PROGRAM

(a) The *Senate* bill deletes, effective with respect to the *1980* and subsequent crops, the limitations in existing law on the number of commodities and counties that may be covered by the Federal crop insurance program and the limitation on the number of counties in which reinsurance of private insurance companies may be offered.

The *House* amendment deletes the same provisions effective with respect to the *1981* and subsequent crops.

The *conference substitute* adopts the *House* provision.

(b) The *House* amendment provides that insurance covering aquacultural species will be exempt from the requirement that Federal crop insurance not extend beyond the period that the insured commodity is in the field.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision by clarifying that, with respect to aquacultural species, the phrase "in the field" means in the environment in which the aquacultural species is produced.

(7) EXTENT OF FEDERAL CROP INSURANCE COVERAGE

(a) The *Senate* bill requires that any Federal crop insurance protecting against loss in yield must make available to producers (i) coverage for 75 percent of the recorded or appraised average yield for the farm on the commodity insured and, (ii) in addition, lesser levels of yield coverage.

The *House* amendment requires that a minimum of three levels of yield coverage be provided: 50 percent, 65 percent, and 75 percent of the recorded or appraised average yield; and in addition, the *House* amendment requires the Corporation to offer other levels of yield coverage (not in excess of 75 percent of average yield) to be selected by the producer.

The *conference substitute* adopts the *Senate* provision with a modification requiring the Corporation to offer coverage for 50 percent of average yield as one of the lesser levels of yield coverage (and making it clear that the Corporation could not offer coverage in excess of 75 percent of average yield).

(b) Both the *Senate* bill and *House* amendment retain existing law, which requires that yield coverage be based on the producer's yield for a representative period, subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, which are subject to the same conditions, may be fair and just.

The *House* amendment, however, adds a requirement that yield coverage also be offered based on the actual five-year production history for the farm, if available, and if not, on the average for the county in which the farm is located.

The *Senate* bill contains no comparable provision.

The *conference substitute* deletes the *House* provision.

(c) The *Senate* bill requires that Federal crop insurance make available coverage (per unit of production) equal to the highest of—

(i) the applicable target price for the commodity involved, if any;

(ii) the applicable loan rate for the commodity involved, if any; or

(iii) the projected market price for the commodity involved.

The Corporation would also be required to make available to producers lesser price selections per unit of production.

The *House* amendment requires that one of the price elections offered must approximate (but be not less than 90 percent of) the projected market price for the commodity involved.

The *conference substitute* adopts the *House* provision.

(d) The *Senate* bill provides that Federal crop insurance will not cover losses due to failure of the producer to reseed to the same crop *or an approved substitute crop* where it is customary to reseed.

The *House* amendment retains existing law under which the exclusion of coverage is limited to losses due to failure of the producer to reseed to the same crop.

The *conference substitute* deletes the *Senate* provision.

(8) FEDERAL CROP INSURANCE PREMIUMS

(a) The *House* amendment provides that producers may elect to have deleted from Federal crop insurance policies coverage against hail and fire risks and obtain equivalent hail and fire coverage from a private insurer; and that, for any producer who makes such election, the Federal crop insurance premium will be reduced by 25 percent, but not to exceed the premium for the substitute coverage.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision with a modification relating to the determination of the amount of the premium reduction.

Under the modification, the Federal crop insurance premium for a farmer who elects to obtain hail and fire coverage from a nonfederal insurer (including a State operated program) would be reduced by an amount equal to 40 percent of the prevailing average county insurance premium charged by nonfederal insurers for full coverage hail and fire insurance that provides the same amount of protection as would have been provided under the Federal crop insurance policy. However, a farmer's premium could not be reduced by less than 15 percent, nor more than 30 percent, of the full cost of Federal crop insurance coverage. In no event could the premium be reduced by an amount that exceeds the premium charged by the nonfederal insurer for comparable coverage. Any premium reduction in excess of the portion of the premium that the Corporation determines would have been necessary for the Corporation to charge in order to cover indemnities actually paid by nonfederal insurers for hail and fire coverage deleted from the Corporation's policy of insurance would be regarded as a premium paid by the Corporation.

(b) The *Senate* bill provides that the Corporation must provide a subsidy (of not less than 20 percent nor more than 40 percent, as determined by the Board) of each producer's premium, the amount of the subsidy to be applied uniformly among producers regardless of the percent of average production covered or price selection chosen.

The *House* amendment provides for a subsidy of 30 percent of each producer's premium on that portion of each policy insuring up to a maximum of 65 percent of yield.

The *conference substitute* adopts the *House* provision.

(c) Both the *Senate* bill and *House* amendment provide that any producer of 1981 crop wheat, feed grains, upland cotton, or rice shall not be eligible to receive a premium subsidy from the Corporation if he elects to make his acreage eligible for disaster payments under the Agricultural Act of 1949.

The *Senate* bill provides that any such producer who elects to make his acreage eligible for disaster payments may purchase Federal crop insurance for the commodity at the full cost of the premium.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(d) The *House* amendment provides that States and State agencies may provide additional premium subsidies to reduce further the cost of insurance to farmers.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(e) The *House* amendment provides that operators of small farms may receive an additional or graduated premium subsidy. Eligibility for classification as a small farm would be based on the maximum potential exposure of the Corporation on all commodities eligible for insurance at a limit determined by the Board.

The *Senate* bill contains no comparable provision.

The *conference substitute* deletes the *House* provision.

(9) PAYMENT AND ADJUSTMENT OF CROP INSURANCE CLAIMS

The *Senate* bill changes existing law under which indemnity claims may be paid either in cash or in the commodity by deleting authority for indemnity claims to be paid in the commodity. The *Senate* bill also deletes authority in existing law for determining the indemnity on the same price basis at which the premium is calculated.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(10) DELETION OF THE AUTHORITY OF THE FEDERAL CROP INSURANCE CORPORATION TO PURCHASE AGRICULTURAL COMMODITIES

The *Senate* bill deletes from existing law a provision that authorizes the Corporation to purchase, handle, store, insure, provide storage facilities for, and sell agricultural commodities.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(11) REINSURANCE

(a) The *Senate* bill authorizes the Corporation to reinsure private insurance companies and government entities that provide crop insurance to farmers under contracts acceptable to the Corporation.

The *House* amendment directs the Corporation to provide such reinsurance, to the maximum extent practicable, to private insurance companies, reinsurers of such companies, and State or local government entities.

The *conference substitute* adopts the *House* provision.

(b) The *House* amendment requires the Corporation to make available a test program of reinsurance, to the maximum extent possible, to begin not later than with the 1982 crops.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(c) The *House* amendment requires the Corporation to pay operating and administrative costs to insurers of policies that are reinsured to the same extent that such costs are covered by the Corporation's policies of insurance.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(d) The *House* amendment requires insurers of policies on which reinsurance is provided to make use of licensed private agents and brokers on the same basis as provided for the crop insurance policies of the Corporation.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(12) TRUST TERRITORY OF THE PACIFIC ISLANDS

The *House* amendment authorizes the Corporation to provide crop insurance or reinsurance of agricultural commodities in the Trust Territory of the Pacific Islands in the same manner as for producers in the United States.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(13) INSURANCE ON TIMBER AND FORESTS

The *Senate* bill provides that appreciation (including interest charges) may be included as an insurable cost of production in calculating premiums and indemnities for insurance on yields of timber and forests.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(14) PROGRAM FUNDING

(a) Effective October 1, 1980, the *Senate* bill deletes the provision in existing law limiting annual appropriations for the Corporation's expenses to $12 million, and, in lieu thereof, generally authorizes appropriations to cover the Corporation's operating and administrative expenses.

Effective on enactment of the bill, the *House* amendment also deletes the $12 million limitation and generally authorizes appropriations to cover the Corporation's operating and administrative expenses, but specifically includes, as an expense item to be covered by such appropriations, interest on Treasury notes and other obligations.

The *conference substitute* adopts the *House* provision with a modification making it effective October 1, 1980.

(b) The *Senate* bill provides that expenses in connection with agents' commissions and the direct costs of loss adjusters may be paid from insurance premium funds, which payments may later be restored to the Corporation by appropriations.

The *House* amendment provides that such expenses may be paid from premium income and other Corporation funds, and in addition, provides that expenses in connection with the purchase, transportation, handling, or sale of agricultural commodities, interest on Treasury notes and other obligations, and Federal premium payments may be paid from premium income and other Corporation funds. Payments for any such expenses may be restored by appropriations in subsequent years.

The *conference substitute* adopts the *House* provision with a modification deleting the authority for such payment of expenses in connection with the purchase, transportation, handling, or sale of agricultural commodities. The *conference substitute* deletes authority under existing law for the Corporation to purchase, transport, handle, and sell agricultural commodities (see item 10).

(15) LIMITATION ON ADDITIONAL FEDERAL CROP INSURANCE CORPORATION EMPLOYEES

The *House* amendment limits the number of additional permanent full-time personnel that the Corporation may hire to implement the bill (except in the case of emergencies) to not more than 200 personnel in addition to those employed by the Corporation on the effective date of the bill.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(16) BORROWING AUTHORITY

The *Senate* bill authorizes the Secretary of Agriculture to use funds of the Commodity Credit Corporation to indemnify producers for losses, and otherwise in discharging the responsibilities of the Federal Crop Insurance Corporation whenever the Federal Crop Insurance Corporation's funds are insufficient to cover other program expenses. The *Senate* bill provides that the authority of the Secretary to make commitments of Commodity Credit Corporation funds under the bill in excess of the $20 billion now available to the Commodity Credit Corporation to carry out its functions will be effective only to the extent provided by appropriation Acts.

The *House* amendment provides that, if Federal Crop Insurance Corporation funds are insufficient to discharge its responsibilities for indemnifying producers for losses, the Corporation must borrow from, and issue notes or other obligations to, the Secretary of the Treasury. The obligations will bear interest at rates not less than the cost of money to the Government (for obligations of comparable maturity) during the month preceding their date of issuance. The obligations would be redeemed with money available from premium funds or the issuance of capital stock of the Corporation. The *House* amendment provides that the authority of the Federal Crop Insurance Corporation to borrow from the Treasury may be exercised only to the extent provided for in appropriation Acts.

The *conference substitute* adopts both the *Senate* and *House* provisions with modifications.

Under the modification of the *Senate* provision, the Secretary of Agriculture could use the funds of the Commodity Credit Corporation only to meet obligations of the Federal Crop Insurance Corporation to indemnify producers for losses and only after the Federal Crop Insurance Corporation has, by a majority vote of its Board, requested the use of such funds to make timely payment of indemnities to producers. The authority of the Secretary to use Commodity Credit Corporation funds would expire one year after the date on which the authority is first used.

Under the modification of the *House* provision, the Federal Crop Insurance Corporation would be authorized, but not required, to borrow from, and issue notes and other obligations to, the Secretary of the Treasury as necessary to meet its obligations to indemnify producers for losses.

(17) SUNSET PROVISION

The *House* amendment provides that, effective October 1, 1983, appropriations and borrowings from the Treasury for the Federal crop insurance progam may not exceed such amounts as may be authorized by law after the date of enactment of the bill.

The *Senate* bill contains no comparable provision.

The *conference substitute* deletes the *House* provision.

(18) PILOT PROGRAMS

(a) The *Senate* bill requires the Corporation to conduct a pilot program of individual risk underwriting of crop insurance in at least 25 counties during the period beginning with the 1981 crops and ending with the 1985 crops. Crop insurance under the pilot program will be based on personalized rates and actual yield history, to the extent that appropriate yield data are available.

The *House* amendment authorizes the Corporation to conduct research surveys, pilot programs, and investigations relating to crop insurance and agriculture-related risks and losses, including insurance on losses from reduced forage on rangeland resulting from drought and insect infestation, livestock poisoning and disease, destruction of bees from pesticides, and other unique problems of special risk related to fruits, nuts, vegetables, aquacultural species, forest industry needs (including appreciation), and other agricultural products. Such programs could be undertaken only if insurance protection against such risks is not generally available from private companies.

The *conference substitute* adopts both the *Senate* and *House* provisions.

(b) The *Senate* bill provides that, upon completion of the pilot program of individual risk underwriting, the Corporation must submit to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture a report on the pilot program and make recommendations on implementing a program of individual risk underwriting on a national basis.

The *House* amendment requires the Corporation to report annually to Congress the results of each pilot program and prohibits the Corporation from expanding beyond a pilot program without approval of the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

The *conference substitute* adopts the *Senate* provision and makes it applicable to all pilot programs authorized under the bill.

(19) DEFINITION OF AGRICULTURAL COMMODITY

The *House* amendment changes the definition of "agricultural commodity" to exclude livestock and stored grain and to add to those commodities specifically included by name in the definition the following: tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, nursery crops, nuts, native grass, and aquacultural species.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(20) NOTIFICATION TO PRODUCERS OF THE 1981 CROP OF THEIR RIGHT TO ELECT BETWEEN DISASTER PAYMENTS OR SUBSIDIZED CROP INSURANCE

The *Senate* bill requires the Secretary of Agriculture, after consultation with the Board, to notify producers of wheat, feed grains, upland cotton, and rice, at least sixty days prior to the beginning of the 1981 crop year, of their right to elect, with respect to the 1981 crop, between declaring their acreage of the commodity eligible for disaster payments under the Agricultural Act of 1949 or covering their acreage with crop insurance part of the premium for which is paid by the Corporation. The notice must state the percent of premium to be paid by the Corporation.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision with a modification requiring that notification be given at least sixty days prior to the beginning of the planting of the 1981 crops of the respective commodities or thirty days after the enactment of the bill, whichever is later.

(21) SPECIAL DISASTER PROGRAM

The *Senate* bill authorizes a special disaster payment program for the 1979 crops for producers of wheat, feed grains, upland cotton, and rice. The Secretary of Agriculture would be required to make a special disaster payment under the program if the Secretary determined that, as a result of drought, flood, or other natural disaster, or other condition (including inadequate fuel) beyond the control of the producers on a farm (or, in the case of rice, persons involved in producing rice on a farm), the producers on a farm (1) were prevented from planting any portion of the acreage intended for the commodity to the commodity (or, in the case of rice, any portion of the acreage allotments of producers on the farm or the farm acreage allotment to rice) and (2) planted another nonconserving crop on such acreage.

Under the provisions of the *Senate* bill, each such special disaster payment would be in an amount calculated by multiplying—

(a) the number of acres so affected (but, in the case of wheat, feed grains, and upland cotton, not to exceed the acreage planted to the commodity for harvest in the 1978 crop year, including any acreage that the producers were prevented from planting to the commodity or other nonconserving crops in lieu of the commodity because of drought, flood, or other natural disaster, or other condition beyond their control), by

(b) 75 percent of the yield established for the farm under the price support program, by

(c) 15 percent of the target price for the commodity for the 1979 crop year.

The *House* amendment contains no comparable provision.

The *conference substitute* deletes the *Senate* provision.

JERRY HUCKABY,
DAN GLICKMAN,
GEORGE E. BROWN, Jr.,
FRED RICHMOND,
ALVIN BALDUS,
LEON E. PANETTA,
THOMAS A. DASCHLE,
BILL WAMPLER,
EDWARD MADIGAN,
JAMES M. JEFFORDS,
RON MARLENEE,
Managers on the Part of the House.

HERMAN E. TALMADGE,
GEORGE MCGOVERN,
WALTER D. HUDDLESTON,
DICK STONE,
EDWARD ZORINSKY,
JESSE HELMS,
DICK LUGAR,
THAD COCHRAN,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ANTHONY (at the request of Mr. WRIGHT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. CLINGER) to revise and extend their remarks and include extraneous material:)

Mr. DICKINSON, for 5 minutes, today.
Mr. KEMP, for 30 minutes, today.
Mr. BAUMAN, for 30 minutes, today.
Mr. GREEN, for 10 minutes, today.
Mr. PORTER, for 10 minutes, today.
Mrs. SNOWE, for 5 minutes, today.

(The following Member (at the request of Mr. GREEN) to revise and extend his remarks and include extraneous material:)

Mr. DERWINSKI, for 5 minutes, today.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks, and include extraneous material:)

Mr. GONZALEZ, for 30 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. BRADEMAS, for 5 minutes, today.
Mr. RODINO, for 5 minutes, today.
Mr. PANETTA, for 5 minutes, today.
Mr. LAFALCE, for 10 minutes, today.
Mr. DANIELSON, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. LUNDINE, prior to the vote on the conference report on H.R. 5192, Education Amendments of 1980.

Mr. RATCHFORD, to revise and extend following the amendment to be offered by Mr. PEPPER and the gentleman from Kentucky on DMSO.

Mr. SANTINI, immediately preceding the vote on the Walgren amendment to H.R. 7036.

Mr. BROWN of California, and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,179.

(The following Members (at the request of Mr. CLINGER) and to include extraneous matter:)

Mr. DUNCAN of Tennessee.
Mr. GREEN.
Mr. COUGHLIN in two instances.
Mr. BROYHILL.
Mr. DERWINSKI.
Mr. ROYER.
Mr. DOUGHERTY.
Mr. MICHEL.
Mr. FORSYTHE.
Mr. SHUSTER.
Mr. GILMAN in two instances.
Mr. BEREUTER.
Mr. EVANS of Delaware.
Mr. KEMP in two instances.
Mr. PORTER.
Mr. BEARD of Tennessee.
Mr. WYDLER.
Mr. DORNAN in three instances.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. DODD.
Mr. STOKES.
Mr. WOLFF.
Mr. MAZZOLI in two instances.
Mr. DINGELL.
Mr. BRADEMAS in five instances.
Mr. OTTINGER.
Mr. BENJAMIN in two instances.
Mr. FAZIO.
Mr. MUSTO.
Mr. SANTINI in two instances.
Mr. RAHALL.
Mr. GIBBONS.
Mr. BONKER.
Mr. BOLAND.
Mr. FORD of Michigan.
Mr. MINISH.
Mrs. CHISHOLM in two instances.
Mr. GUARINI.
Mr. CAVANAUGH in three instances.
Mr. DANIELSON.
Mr. FUQUA in six instances.
Mr. NOWAK.
Mr. LUKEN.
Mr. CHAPPELL in three instances.
Mr. SWIFT.
Mr. HAWKINS.
Mr. DUNCAN of Oregon in four instances.
Mr. FISHER.
Mr. MAVROULES.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1391. An act to amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981, 1982, and 1983; to the Committee on Science and Technology;

S. 1953. An act to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Louis L'Amour; to the Committee on Banking, Finance and Urban Affairs;

S. 2483. An act to amend title 28 of the United States Code to request the Chief Justice of the United States to give an annual address to the Congress on the state of the judiciary; to the Committee on the Judiciary and the Committee on Rules; and

S. 2566. An act to authorize the Administrator of General Services to donate to State and local governments certain Federal personal property loaned to them for civil defense use, and for other purposes; to the Committees on Armed Services and Government Operations.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 390. An act to expedite and reduce the cost of antitrust litigation, and for other purposes.

ENROLLED BILLS SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the

following titles, which were thereupon signed by the Speaker:

H.R. 1781. An act to amend title 5, United States Code, to provide that civilian air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes;

H.R. 1967. An act to modify the boundary of the White River National Forest in the State of Colorado; and

H.R. 7072. An act to amend sections 5702 of title 5, United States Code, to increase the maximum rates for per diem and actual subsistence expenses and mileage allowances of Government employees on official travel, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on August 27, 1980, present to the President, for his approval, bills of the House of the following title:

H.R. 5168. An act to extend certain expiring provisions of law relating to personnel management of the Armed Forces, to provide a variable housing allowance for members of the uniformed services to reflect housing costs in different areas of the United States, to improve certain special and incentive pays for members of the uniformed services, and for other purposes;

H.R. 5892. An act to provide for an accelerated program of wind energy research, development, and demonstration, to be carried out by the Department of Energy with the support of the National Aeronautics and Space Administration and other Federal agencies, and for other purposes; and

H.R. 6974. An act to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, track combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes.

ADJOURNMENT TO WEDNESDAY, SEPTEMBER 3, 1980

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER pro tempore. Pursuant to the provisions of Senate Concurrent Resolution 118 of the 96th Congress, the House stands adjourned until 12 o'clock meridian, Wednesday, September 3, 1980.

Thereupon (at 4 o'clock and 8 minutes p.m.), pursuant to Senate Concurrent Resolution 118, the House adjourned until Wednesday, September 3, 1980, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5194. A letter from the President of the United States, transmitting proposed amendment to the request for appropriations for fiscal year 1981 for the District of Columbia (H. Doc. No. 96–364); to the Committee on Appropriations and ordered to be printed.

5195. A letter from the Acting Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice that a decision has been made to convert the protective coating maintenance function to contractor performance at Sheppard Air Force Base, Tex., pursuant to section 806 of Public Law 96–107; to the Committee on Armed Services.

5196. A letter from the Assistant Secretary of State for International Organization Affairs, transmitting various United Nations Joint Inspection Unit reports, pursuant to section 301(e)(3) of the Foreign Assistance Act of 1961, as amended; to the Committee on Foreign Affairs.

5197. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b (a); to the Committee on Foreign Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LONG of Maryland: Committee on Appropriations. House Joint Resolution 601. Joint resolution making an appropriation for the International Monetary Fund for the fiscal year ending September 30, 1981 (Rept. No. 96–1263). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLLING: Committee on Rules. House Resolution 776. Resolution providing for the consideration of H.R. 7765. A bill to provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1981 (Rept. No. 96–1264). Referred to the House Calendar.

Mr. BROOKS: Committee on Government Operations. H.R. 6686. A bill to discontinue or amend certain requirements for agency reports to Congress; with amendment (Rept. No. 96–1268). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLAND: Permanent Select Committee on Intelligence. Report in the Matter of Billy Carter (Rept. No. 96–1269). Referred to the House Calendar.

Mr. HARRIS: Committee on the Judiciary. H.R. 2170. A bill to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government (Rept. No. 96–1270). Referred to the Committee of the Whole House on the State of the Union.

Mr. DIXON: Committe on Appropriations. H.R. 8061. A bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 96–1271). Referred to the Comimttee of the Whole House on the State of the Union.

Mr. FOLEY: Committee of Conference. Conference report on S. 1125 (Report No. 96–1272). Ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DANIELSON: Committee on the Judiciary. S. 1578. A bill for the relief of Dr. Halla Brown; with amendment (Rept. No. 96–1265). Referred to the Committee of the Whole House.

Mr. DANIELSON: Committee on the Judiciary. H.R. 4033. A bill for the relief of the Jefferson County Mental Health Center, Inc., and of certain current and former employees thereof; with amendment (Rept. No. 96–1266). Referred to the Committee of the Whole House.

Mr. HARRIS: Committee on the Judiciary. H.R. 5063. A bill for the relief of James R. Thornwell; with amendments (Rept. No. 96–1267). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

Mr. PANETTA:

H.R. 8046. A bill to extend for an additional 2 years certain provisions relating to controversies involving whether individuals are employees for purposes of the employment taxes; to the Committee on Ways and Means.

By Mrs. CHISHOLM (for herself, Mr. FAUNTROY, Mr. LELAND, Mrs. COLLINS of Illinois, Mr. WALKER, Mr. WOLFF, Mr. ROSENTHAL, and Mr. BROWN of California):

H.R. 8047. A bill to provide for adjustment to refugee admission status of certain Cuban and Haitian nationals presently in the United States; to the Committee on the Judiciary.

By Mr. DERRICK:

H.R. 8048. A bill to provide that topsoil declared to be surplus property in connection with the construction of a dam by the United States may be donated to local governments, local public agencies, and private, nonprofit organizations; to the Committee on Government Operations.

By Mr. DRINAN:

H.R. 8049. A bill to amend title 18 of the United States Code to provide penalties for threats against certain persons protected by the U.S. Secret Service; to the Committee on the Judiciary.

By Mr. DUNCAN of Tennessee:

H.R. 8050. A bill to provide for demonstration projects whereby medicare patients receiving chemotherapy or radiation therapy may be housed and boarded in setting other than inpatient hospital facilities; to the Committee on Ways and Means.

By Mr. FOLEY:

H.R. 8051. A bill to amend the Internal Revenue Code of 1954 to provide a reduction of individual income tax rates for 1981, 1982, and 1983; to the Committee on Ways and Means.

By Mr. JOHNSON of California:

H.R. 8052. A bill to prohibit the alteration or removal of batch identification numbers which are required to be placed on goods sold in interstate commerce; to the Committee on Interstate and Foreign Commerce.

By Mr. MATTOX (for himself, Mr. ECKHARDT, Mr. CHARLES WILSON of Texas, Mr. BROOKS, Mr. WYATT, Mr. WHITE, Mr. STENHOLM, and Mr. FROST):

H.R. 8053. A bill to provide general assistance and special impact aid to local educational agencies for the provision of educational services to undocumented alien children to whom State or local educational agencies are required, by order of any Federal court, to provide educational services or who are permitted under any such order to receive the benefits of State funds available for educational purposes; to the Committee on Education and Labor.

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By Mr. PANETTA (for himself, Mr. JOHNSON of California, Mr. MINETA, Mr. COELHO, and Mr. FAZIO):

H.R. 8054. A bill to provide that certain regulations relating to ingredient labeling and advertising of wine shall not take effect unless they are amended to insure compliance by foreign producers; to the Committee on Ways and Means.

By Mr. PICKLE:

H.R. 8055. A bill to amend the Fair Labor Standards Act of 1938 to raise the dollar volume test coverage of employees of enterprises engaged in commerce or the production of goods for commerce to $750,000; to the Committee on Education and Labor.

By Mr. ROSENTHAL:

H.R. 8056. A bill to amend title 13, United States Code, to correct for undercounting in the 1980 census; to the Committee on Post Office and Civil Service.

By Mr. SEIBERLING:

H.R. 8057. A bill to require aircraft manufacturers to remedy design and manufacturing defects in civil aircraft, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. STARK (for himself, Mr. CORMAN, and Mr. ROUSSELOT):

H.R. 8058. A bill to amend the Internal Revenue Code of 1954 with respect to the limitation on the acceleration of the accrual of taxes; to the Committee on Ways and Means.

By Mr. TAUKE:

H.R. 8059. A bill to amend the Internal Revenue Code of 1954 to provide that the maximum reduction in valuation under the special estate tax valuation for certain farm, small business etc., real property shall be increased to $1 million and to provide an inflation adjustment for such amount; to the Committee on Ways and Means.

By Mr. DIXON:

H.R. 8061. A bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes.

By Mr. FINDLEY:

H. Con. Res. 425. Concurrent resolution expressing the sense of the Congress that the Secretary of State should revoke the visas of aliens arrested for certain violent or illegal activities, and that the Attorney General should order the deportation of such aliens; to the Committee on the Judiciary.

By Mr. MINISH:

H. Con. Res. 426. Concurrent resolution expressing the sense of the Congress with respect to the prompt deportation or removal from the United States of aliens who have engaged in unlawful or disorderly activities in the United States; to the Committee on the Judiciary.

By Mr. WINN:

H. Con. Res. 427. Concurrent resolution expressing the sense of Congress in opposition to excessive violence in sports; to the Committee on Interstate and Foreign Commerce.

By Mr. COURTER (for himself, Mr. BURGENER, Mr. HOPKINS, Mr. BEREUTER, Mr. JEFFRIES, Mr. COLLINS of Texas, Mr. DANNEMEYER, Mr. ROUSSELOT, Mr. DERWINSKI, and Mrs. HOLT):

H. Res. 777. Resolution requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called "Stealth" technology for military aircraft; to the Committee on Armed Services.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. RITTER presented a bill (H.R. 8060) for the relief of Victoria Moge, Hind Moge, Merwan Moge, and Manale Moge, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 377: Mr. PORTER.

H.R. 466: Mrs. BOUQUARD.

H.R. 5225: Mr. GILMAN.

H.R. 5496: Mr. HOWARD, Mr. MINETA, Mr. BAUMAN, Mr. GORE, and Mr. STUDDS.

H.R. 6171: Mr. HARKIN and Mr. VENTO.

H.R. 6981: Mr. DOWNEY and Mr. SHUMWAY.

H.R. 7505: Mr. LUKEN.

H.R. 7773: Mr. LLOYD and Mr. PANETTA.

H.R. 7813: Mr. LOTT, Mr. BEVILL, Mr. GINN, Mr. ANDREWS of North Carolina, Mr. HUBBARD, Mr. HALL of Texas, Mr. JENRETTE, Mr. JEFFRIES, and Mr. WHITTAKER.

H.R. 7860: Mr. EDWARDS of Oklahoma, Mr. GRISHAM, Mr. BURGENER, Mr. WHITTAKER, Mr. ROYER, Mr. SYMMS, and Mr. COURTER.

H.R. 7885: Mr. COELHO, Mr. FORD of Michigan, Mr. PEPPER, Mr. NOLAN, Mr. OTTINGER, Mr. FROST, and Mr. SEIBERLING.

H.R. 7898: Mr. MURPHY of Pennsylvania and Mr. ROBERT W. DANIEL, JR.

H.J. Res. 502: Mr. GUARINI, Mr. BONIOR of Michigan, Mr. ZABLOCKI, Mr. CORRADA, Mr. SEBELIUS, Mr. HOLLENBECK, Mr. JOHNSON of California, Mr. MAZZOLI, Mr. GREEN, Mrs. CHISHOLM, Mr. ROYER, Mr. FARY, Mr. PERKINS, and Mr. WOLFF.

H.J. Res. 511: Mr. ATKINSON, Mr. PASHAYAN, and Mr. BEVILL.

H. Con. Res. 405: Mr. HUTTO, Mr. BENJAMIN, Mr. WHITEHURST, Mr. FLIPPO, Mr. LEE, Mr. WHITTAKER, Mr. BEREUTER, Mr. HIGHTOWER, Mr. DERWINSKI, Mr. ROUSSELOT, Mr. ROE, Mrs. SPELLMAN, Mr. COLLINS of Texas, Mrs. SMITH of Nebraska, and Mr. ROSE.

H. Con. Res. 411: Mr. FISH, Mr. ROBINSON, Mr. BOLAND, Mr. PETRI, Mr. MURPHY of Pennsylvania, Mr. FORSYTHE, Mr. PATTEN, Mr. CHARLES WILSON of Texas, Mr. SCHEUER, Mr. CONTE, Mr. DOUGHERTY, Mr. DRINAN, Mr. WINN, Mr. WILLIAMS of Montana, Mr. HORTON, Mr. MCDADE, Mr. WEAVER, Mr. CHAPPELL, Mr. CLEVELAND, Mr. ERDAHL, Mr. BALDUS, Mr. STUDDS, Mr. ERTEL, Mr. ALBOSTA, Mr. OBERSTAR, Mr. MOFFETT, Mr. DAVIS of Michigan, Mr. JENKINS, and Mr. MCEWEN.

H. Con. Res. 412: Mr. ANDREWS of North Carolina, Mr. BEDELL, Mr. BEREUTER, Mr. BETHUNE, Mr. BROYHILL, Mr. CAMPBELL, Mr. CORRADA, Mr. DERWINSKI, Mr. DUNCAN of Tennessee, Mr. EDWARDS of Oklahoma, Mrs. FENWICK, Mr. FORSYTHE, Mr. HORTON, Mr. HUTTO, Mr. GREEN, Mr. IRELAND, Mr. JEFFORDS, Mr. KRAMER, Mr. LAGOMARSINO, Mr. LEACH of Iowa, Mr. LEE, Mr. LOTT, Mr. MCCORMACK, Mr. MCDADE, Mr. MCDONALD, Mr. MARLENEE, Mr. MITCHELL of Maryland, Mr. MURPHY of Illinois, Mr. OTTINGER, Mr. PANETTA, Mr. PORTER, Mr. RAILSBACK, Mr. RATCHFORD, Mr. ROE, Mr. SAWYER, Mr. STANGELAND, Mr. VANDER JAGT, Mr. WALKER, Mr. WHITEHURST, and Mr. WINN.

H. Res. 729: Mr. BADHAM, Mr. EDWARDS of Oklahoma, Mr. ROBERT W. DANIEL, Jr., and Mr. WON PAT.

H. Res. 736: Mr. HARKIN, Mr. GILMAN, and Mr. SIMON.

PETITIONS, ETC.

Under clause 1 of rule XXII,

418. The SPEAKER presented a petition of Steven Louis Washington, Washington, D.C., relative to redress of grievances, which was referred to the Committee on Interstate and Foreign Commerce.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 6721

By Mr. YOUNG of Missouri:

—Page 73, lines 16 and 17, strike out "Administrator of the Federal Aviation Administration" and insert in lieu thereof "Secretary".

Page 73, line 18, strike out "(subject to the requirements of section 5(h) of this Act)."

Page 73, line 21, strike out "Administrator" and insert in lieu thereof "Secretary".

Page 73, line 25, strike out "Administrator" and insert in lieu thereof "Secretary".

Page 74, line 23, strike out "Administrator" and insert in lieu thereof "Secretary".

H.R. 6777

By Mr. HINSON:

—On the second page, after line 14, insert the following new section:

SEC. 2. Section 3(b) of the Council on Wage and Price Stability Act is amended—

(1) by striking out "(1)" and inserting in lieu thereof "(A)";

(2) by striking out "(2)" and inserting in lieu thereof "(B)";

(3) by inserting "(1)" after "(b)"; and

(4) by adding at the end thereof the following new paragraph:

"(2) As a precondition for any person to impose a price increase, no officer or employee of the United States may require any person to submit, before such price increase takes effect, a notification of such price increase."

EXTENSIONS OF REMARKS

CUBAN AND HAITIAN REFUGEES

HON. SHIRLEY CHISHOLM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mrs. CHISHOLM. Mr. Speaker, on June 20, 1980, after weeks of uncertainty and delay, the administration announced its intended policy regarding Cuban and Haitian refugees. A legislative package was sent to Congress in early August. Many knowledgeable observers agree, however, that the administration's proposal does not adequately address the issues presented, and that it is therefore necessary to propose an alternative approach.

I am also concerned with indications that the administration's proposal will be rejected by the relevant congressional committees, and that the currently untenable situation will continue indefinitely. I believe that the desperate needs of the Cuban and Haitians refugee populations, and the fiscal and social needs of State and local communities impacted by these refugees, must be immediately and fully resolved.

To this end, I am convinced that the national interest will best be served if, as expeditiously as possible, Congress enacts legislation authorizing the granting of political refugee status to up to 120,000 Cubans who entered the United States after April 21 and date of enactment, and up to 30,000 Haitian boat people who entered the United States in Florida after January of 1972 and date of enactment. Today I am introducing legislation which would provide that these persons are political refugees within the meaning of the Refugee Act of 1980, and are thereby eligible for rights and benefits accorded the Indochinese, Soviet Jews, and other refugees. The legislation would also provide for Federal assistance to States and localities pursuant to the provisions of the 1980 Refugee Act.

Problems mount day by day as the status of the Cubans and Haitians remains unresolved. I, therefore, which to stress my hope that this legislative initiative can be considered and enacted prior to congressional adjournment on October 4, 1980.

PRINCIPLES WHICH SHOULD GOVERN U.S. REFUGEE POLICY AND THE RESOLUTION OF THE CUBAN/HAITIAN REFUGEE PHENOMENA

I believe that appropriate resolution of the Haitian/Cuban refugee situation should be guided by the following principles:

First, U.S. refugee policy must be consistent, based upon objective fact and free of racial or ideological bias.

Second, the Refugee Act of 1980 expresses the will of Congress regarding equitable principles, benefit eligibility, and Federal fiscal responsibility for the cost of refugee resettlement. If the integrity of the act is to be upheld, Cubans and Haitians must be brought within its terms.

Third, refugee policy is set by the Federal Government and the financing of refugee policy and resettlement assistance is a Federal responsibility. States and localities extraordinarily impacted by resettlement of significant numbers of refugees should be relieved, to the greatest extent possible, of social and financial burdens associated with refugee resettlement. Therefore, consistent with past policies and practices and the Refugee Act of 1980, for the first 3 years of their residence Cuban and Haitian refugees should be fully eligible for Federal benefit programs with 100 percent Federal financing of these programs.

Fourth, the Federal Government should reimburse at a 100-percent rate costs incurred by States and localities arising prior to passage of the proposed legislation from the presence of Cuban and Haitian refugees in their communities.

SUMMARY OF JUSTIFICATIONS FOR LEGISLATION TO GRANT REFUGEE STATUS TO HAITIANS AND CUBANS

The United States has admitted millions of refugees in the last 20 years. The vast majority of these persons have fled Communist dominated regimes, and are not persons of color.

In enacting the Refugee Act of 1980, Congress recognized this country's humanitarian responsibilities to provide refuge to persons who have a well-founded fear of persecution if returned to their homeland. Congress also explicitly established that U.S. refugee policy must be free of racial, ideological, and geographic bias. The Refugee Act further recognizes that refugees are particularly in need of resettlement assistance, and that full refugee access to social services is necessary to accelerate assimilation and self-sufficiency and minimize long-term social and fiscal costs. The act also establishes that refugee policy is a Federal responsibility and that the costs of resettlement and social services for refugees should be borne 100 percent by the Federal Government during the first 3 years of a refugee's residence in the United States.

As described below, the record establishes that Cubans and Haitians are true political refugees within the meaning of the Refugee Act. The proposed legislation is necessary to preserve the integrity of this newly enacted legislation and preserve the confidence of States and localities that Federal refugee policy will not impose undue burdens upon them. Honestly classifying Cubans and Haitians as refugees is also in the national interest in order to distinguish legitimate policy for refugees from U.S. policy for aliens who, on the basis of objective facts, do not fall within the 1980 act's definition of refugees. In this regard, Cubans and Haitians who arrive in the future should also be presumptively classified as refugees.

Over the past 20 years, the United States has granted political refugee status to over 800,000 Cubans who have fled their homeland. Many of these refugees have settled in south Florida. They have enjoyed full access to virtually all Federal benefit programs. The Federal Government has assumed virtually full responsibility for financing these programs and other resettlement services. As a result, Cuban refugees have been able quickly to become active members of our society. They have made significant contributions to the social and economic revitalization of Miami and other communities. Increases in local taxes or cutbacks in services available to citizens were avoided which would have been inevitable absent full Federal financing of resettlement and other essential service needs. And, by granting refugee status to the Cubans the United States demonstrated its commitment to providing sanctuary to those fleeing oppression.

The administration, however, has announced a proposed policy which rejects the positive accomplishments of 20 years of Cuban refugee policy. No justification is offered and no reasons are given to explain why 800,000 Cubans have been admitted as refugees, but suddenly the most recent arrivals are to be denied refugee status. Further, virtually all affected parties agree that the administration's proposal portends human, social, and fiscal disaster for these newly arrived Cuban refugees and the communities into which they resettle.

In contrast to the success of a 20-year policy of granting refugee status to Cubans, the tragedy of south Florida's Haitian refugees represents a shameful experience. As is eloquently described by U.S. District Judge James Lawrence King in a 180-page opinion issued on July 2, 1980, in Haitian Refugee Center versus Civiletti, the Haitians and south Florida have suffered greatly as a result of the Federal Government's intentional racial and national origin discrimination. Moreover, after considering evidence from both the Haitians and the State Department regarding political conditions in Haiti, Judge King made findings of

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

fact which established beyond doubt that the Haitians are true political refugees. As his opinion states:

This case has forced the court to confront a profound set of questions: Why have so many taken such great risks? What do they flee? Why do they fear to return?

In reaching its conclusion the court has listened to a wealth of . . . testimony. Much of the evidence is both shocking and brutal, populated by the ghosts of individual Haitians—including those who have been returned from the United States—who have been beaten, tortured and left to die in Haitian prisons.

Returnees, particularly those who claim to asylum abroad, will be greeted with great suspicion upon their arrival. Given the Haitian legal system that status means they face a substantial danger. Many will go to prison, their sole offense having been an attempt to gain asylum. In prison many will be beaten, perhaps even tortured and some will die as a result. Even those who are not imprisoned will not be entirely free. They will undergo harassment and live with a continuing threat of a midnight visit from the Macoutes.

Mr. Speaker, in summary, an objective assessment of political conditions in Cuba and Haiti establishes the likelihood that Cubans and Haitians would suffer severe persecution if returned to their homeland. They are political refugees. Consistency and commitment to the fundamental principles that U.S. refugee policy must be free of racial and ideological bias requires that the Haitians and Cubans be granted refugee status.

The proposed legislation would accomplish this objective. It would not, however, prevent the United States from expelling common criminals or other undesirables who may seek to remain in the United States. Section 207(c)(3) of the Refugee Act of 1980 provides that refugee status may be denied persons excludable from the United States by reason of criminal conduct, security risks and other characteristics which pose a danger to society. Under the proposed legislation, Cubans and Haitians in the prescribed class would be presumptively eligible for refugee status. However, they would have to apply and would be subject to screening to determine if they are ineligible pursuant to section 207(a)(3). Those found excludable would be subject to expulsion.

ELIGIBILITY AND FEDERAL FINANCING OF RESETTLEMENT AND SOCIAL SERVICES PROGRAMS

The proposed legislation provides that those Cubans and Haitians granted refugee status shall be refugees for all purposes pursuant to the Refugee Act of 1980. Thus, like Indochinese, Soviet Jews, and other refugees, these Cubans and Haitians would be eligible for the full range of benefits the 1980 act authorizes for refugees. An intent will be stated that these programs would be 100 percent financed by the Federal Government. In this regard, the proposed policy is fully consistent with past and current refugee programs.

The legislation is also intended to reimburse, at a 100-percent level, costs incurred by States and localities prior to the granting of refugee status.

The foregoing benefit and fiscal package for Cuban and Haitian refugees is a critical component of the proposed legislation. As past policies and the Refugee Act recognize, refugees have extraordinary service needs which must be met to facilitate resettlement and accelerate self-sufficiency. Thus, in contrast to the administration's program for Cubans and Haitians, refugees enjoy eligibility for virtually all Federal programs. Experience indicates that meeting service needs early and fully best insures avoidance of acculturation problems and long-term social and fiscal costs. Further, 100 percent Federal funding of service expenses minimizes the potential and unfair impact of refugee resettlement costs on local taxpayers. Costs are spread over all taxpayers, not simply those residing in the limited number of communities where resettlement is concentrated. Full Federal funding also best insures that refugee resettlement does not result in cutbacks in local programs available to citizens, and thereby tends to alleviate potential tension between refugee and domestic communities.●

HANDICAPPED SENIOR CITIZEN REFUSES WELFARE

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. CHAPPELL. Mr. Speaker, in a time when many Americans appear to have lost the will to fend for themselves and the faith necessary to sustain that will, an outstanding black American and senior citizen is an inspiration to us all. James R. Robinson, 84, of Tallahassee, Fla., works a full 5-day week. That is perhaps not so remarkable except that Mr. Robinson, besides being 84 years old, had both legs amputated 15 years ago because of diabetes and his work is one of the hardest physical labors there is—chipping and cleaning bricks.

I would like to direct my colleagues' attention to this superb article by Tom Hillstrom of United Press International which was in the August 18, 1980, issue of the Florida Times-Union. It is an excellent story both for the example that Mr. Robinson sets for all of us and because of his eloquent philosophy which all of us should heed:

I work because it is right to work. That's what the Bible says. As long as you feel like work, then work. That way you stay off the welfare checks. Give welfare to the people who need it.

James Robinson is a shining example of humanity and I insert the newspaper article recounting this story of encouragement and hope in the body of the RECORD to be shared with our colleagues and fellow citizens, and to give well-deserved recognition to this great American:

LEGLESS, HE WORKS A FIVE DAY WEEK, ASKS NO HANDOUTS

TALLAHASSEE.—James R. Robinson sits on a pile of rubble at the base of the state's new 22-story Capitol eight hours a day, five days a week, the sun beating down on his nearly hairless head and the dust of the rubble pile coating his thick, graying moustache like snowflakes.

Occasionally, he takes a respite from the sun by maneuvering into an adjacent lean-to fashioned of stacked bricks and corrugated metal. The rubble makes movement difficult. Sometimes it's a struggle, especially when his hand slips from a brick and he lurches to the side.

But he props himself up again and keeps trying with the determination that comes to a person who's been without legs for 15 years—he's not sure of the year that he lost them.

Nearby, in the $45 million skyscraper Capitol, the state's power brokers talk of complex governmental problems. To the rear of the Capitol's sweeping plazas and fountains, Robinson also talks about these problems and proposes solutions inspired by 84 years of life and thorough familiarity with the Bible.

"The whole world is depending upon the government and the government is going down the drain-hole," he declares with authority.

His hands are in uninterrupted motion, the left reaching for an ancient brick in the pile on one side, the right chipping the mortar away with 10, 15, sometimes 20 strokes of a small pickax and the left then flipping the newly cleansed brick onto a stack in front of him.

Four of the fingers on Robinson's left hand are bandaged, the result of blows from the pickax miscalculated despite his 40 years of experience in using one.

"I work because it's right to work," he tells a visitor. "That's what the Bible says. As long as you feel like work, then work. That way you stay off the welfare checks. Give welfare to the people who need it."

The bricks come from dismantled sections of the state's old Capitol, which stands behind the new structure and is undergoing renovation for use as a museum. Once stripped of their clinging mortar, the bricks are returned to use inside the 135-year-old domed structure. Robinson is paid two cents for each brick he chips clean.

"I worked like hell yesterday and made $15. You've got to clean a whole hundred to get $2," he says, frowning.

Robinson lost his legs above the knees from the effects of diabetes. Eight years ago he suffered another loss with the death of his wife. But one son and two daughters remain close to him in Tallahassee.

"Everytime God looks at you, you ask him for a favor and when he does you a favor, you walk off from him," Robinson says, citing an appropriate passage from the Bible.

Robinson has the neck of a bull and the broad shoulders of someone who has worked hard at farming and construction most of his life. He receives Social Security from his earlier labors and supplements it with savings and his earnings at the brick pile.

"Welfare is for disabled persons. I don't need no damn welfare. I could be home sitting around, waiting for a check, but we're going to have to cut that off for them that can work," he continues.

"The taxpayers are getting tired of giving their money away to do-nothings sitting around on their ——. Work awhile and rest awhile. That's my philosophy."

A brick splits in half from the force of the pickax. Robinson tosses the two chunks behind him. When his pay is calculated, they won't be counted.

A fellow worker, Nathaniel Green, lights up a cigarette.

Robinson looks at him disapprovingly. "I don't drink and I don't smoke. All that beer kills you. And the caffeine in coffee is poison. God don't kill you; you kill your own self. You drink and those Milwaukee companies get plenty and you get nothing. Look how long you've got to work for a can of beer."

Robinson's wheelchair is parked next to the lean-to. The wheels wobble. The chair's lower carriage is reinforced with baling wire. The rubber of its tires is worn and muddied. Strips of old carpeting have been stretched to replace the long-shredded canvas seat and backing.

"The state sent a girl out here to tell me to rest one day but I didn't pay her no listen," he says, smiling. "And a man from Jacksonville said he'd buy me a new wheelchair but I never heard from him. A lady told me to go buy one and send her the bill but I don't have time to go shopping. Maybe someday I'll find a way to get one."

A roar comes from inside the old Capitol as another wall of bricks is sent tumbling.

"I was born a Democrat and I'll vote for Carter," he says. "Inflation's not his fault. Inflation was predicted in the Bible and that Republican setup is nothing more than sweet talk."

Robinson raises a battered jug-like picnic cooler to his lips and takes a sip of water. His brown hands are caked with white mortar dust so he runs his forearm across his month.

"God takes care of me," he says, looking the visitor directly in the eyes. "If you ask him, he'll take care of you."●

THOUGHTS OF OWEN STANLEY

HON. AL SWIFT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. SWIFT. Mr. Speaker, while back home recently I had a chance to meet with a long-time constituent of mine, Mr. Owen Stanley, of Edmonds, Wash. Mr. Stanley, now in the twilight of his years, has had a long and active history on behalf of senior citizens throughout his native Snohomish County. For example, he has long been a champion of low-cost housing for seniors. Now, sadly, Mr. Stanley is seriously ill. But Owen is using these days to collect his thoughts. He recently shared some of them with me. I would like to share them with my colleagues.

Let we of all phases and modes of living show concern for the dignity and integrity of our fellow men. No longer can we or should we rely on each faction seeking their special laws or special maneuvers to seek economic assistance without clarification of its enhancing the "General Welfare".

Only in the Senior Citizens do all people have potential of eventual participation in programs designed for Senior Citizens. No other program or faction of society encompasses the entirety of citizens in their waning years, from the sage to the less fortunate. They do not ask to be assuaged or placated. They do rightly ask for conditions to stimulate their ability to stand tall with head high, with dignity unimpaired.

What we need is a people united in an endeavor to perceive Right and Justice. What we need are representatives of the people to take time to meditate and conceive a means of affecting strong action to alleviate our bounding from extreme to extreme. A representative body dedicated to the preservation of individual freedom; rights and above all responsibilities. We need a government with foresight to adjust social justice to modern technology.

We have heard the cry of free enterprise for years, yet when enterprise fails in foresight to avoid financial ruin then our government guarantees loans to assist them. Thus enterprise is free to succeed but not free to fail. A one way street.

On the other hand government uses financial maneuvering to combat inflation causing financial distress to millions of workers and families. Does the government guarantee their prosperity?

How long before freedom's back breaks under such discrepancy.●

RAIL ACT OF 1980

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. DINGELL. Mr. Speaker, in the interest of providing you with the most factual and up-to-date information regarding the level of opposition to various provisions of H.R. 7235, the Rail Act of 1980, I urge that the following letter I received be seriously considered.

The letter articulates why the surcharge and cancellation of rates provision of H.R. 7235, even as amended by the proposed Lee amendment, would be disastrous for small railroads, their shippers, ports, and receivers of goods throughout the United States. To the 60 short lines and small rail carriers who endorsed the letter, 10 of which are members of the Board of Directors of the American Short Line Railroad Association, even a Lee amendment version of section 301 of the bill spells certain disaster.

I hope that my colleagues will not be misled by blanket endorsement of H.R. 7235. Cogent arguments have been presented, backed by solid support, that substantial changes must be made to provisions of the Rail Act of 1980 in order to make it acceptable to all parties concerned—particularly smaller railroads and shippers who stand to be hurt the most if the bill is adopted in its present form.

SMATHERS, SYMINGTON AND HERLONG,
ATTORNEYS AND COUNSELLORS AT LAW,
Washington, D.C., August 22, 1980.

Hon. JOHN DINGELL,
U.S. House of Representatives,
2221 RHOB, Washington, D.C.

DEAR CONGRESSMAN DINGELL: As you are aware from the urgent pleas of the many small railroads in Michigan, the surcharge and cancellation of joint rates provision of the Rail Deregulation Bill, Section 301 of H.R. 7235, even as amended by the proposed "Lee Amendment" presents the utmost danger for small railroads, their shippers, ports and receivers of goods throughout the United States.

Perhaps most revealing is the fact that the Chairman of the Subcommittee actually wrote to the Chairman of Conrail expressing the fear that the surcharge and cancellation powers would be abused by the large railroads. Unfortunately, Mr. Florio's response to that fear is a mere annual reporting requirement by the ICC to the Congress. Small railroads and small shippers could be forced out of business between the time a surcharge is imposed and the time that the Congress receives, reads and acts upon a report from the ICC.

The small railroads strongly object to the surcharge and cancellation power because it can be used in an extremely discriminatory fashion against them. While the alleged ceiling on a surcharge is 110 percent of variable costs and while cancellation of a joint rate can be nullified by giving the cancelling carrier 110 percent of its variable costs, in point of fact the economic leverage provided by Section 301 can be enormous.

Surcharges can be imposed on certain rates and withheld on competing rates even though the latter could be below 110 percent of variable costs. The dominant railroads could do this in order to favor certain shippers or certain areas of the country where in the long run they will make more money either through creating a monopoly or because they will be able to reduce their costs through increased traffic. Shippers, small railroads, ports and the communities in which they are located will suffer drastically. The minor increases in revenues to the large railroads will be greatly overshadowed by the costs to the state and federal governments in supporting these communities.

As you are aware there are endless examples of the methods by which large railroads can injure the smaller railroads using these powers. We would be most happy to describe them should you so request. An attempt to include them in this letter would make it unduly lengthy.

Attached is a list of railroads which are opposed to Section 301 even as it is proposed to be changed by the "Lee Amendment." You will note that the list includes nine members of the Board of Directors of the American Short Line Association which, when it stood alone without the support of the thousands of shippers and many ports now opposing Section 301, adopted the Lee Amendment. In addition we have been advised directly by at least ten other railroads located throughout the country that they oppose Section 301 as amended by Mr. Lee; that they are contacting their Congressional representatives to urge them to support Eckhardt's substitute; but that for very understandable reasons do not wish to be included in the attached list.

In closing, we wish to thank you for previous efforts on behalf of the small railroads on this issue and urge you to continue this most important effort.

Very truly yours,

GEORGE A. SMATHERS.

Attachment.

SMALL RAILROADS WHICH SUPPORT ELIMINATION OF SURCHARGE AND CANCELLATION PROVISION, SECTION 301

Green Bay & Western Railroad Co.,[1] Wisconsin; Ahnapee & Western Railway Co., Wisconsin; McCloud River Railroad, California; Hartford & Slocomb Railroad Co., California; Apalachia Northern Railroad Co., Florida; New York Dock Railway, New York; Hillsdale County Railway Co., Inc.,

[1] Members of the Board of Directors of the American Short Line Railroad Association.

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Michigan; Lenawee County Railroad, Michigan; Florida East Coast Railway Co., Florida; Chippewa River Railroad Co., Wisconsin; Ann Arbor Railroad System, Michigan; Minneapolis, Northfield & Southern Railway, Michigan; Brooklyn Eastern District Terminal Railroad, New York; Brillion and Forest Junction Railroad Co., Wisconsin; Chicago, Madison & Northern Railroad Co., Wisconsin; Nicolet, Badger & Northern Railroad, Wisconsin; Railroad Task Force Northeast Region, Inc., Pennsylvania; Little Rock & Western Railroad, Arkansas; Michigan Northern Railway Co., Michigan; Massachusetts Central Railroad Co., Massachusetts; North Louisiana & Gulf Railroad Co., Louisiana; Prairie Trunk Railway, Illinois; East Camden & Highland Railroad Co., Arkansas; Stockton Terminal & Eastern Railroad,[1] California; Roscoe, Snyder & Pacific Railway Co., Texas; Tulsa-Sapulpa Union Railway Co., Oklahoma; Transkentucky Transportation Railroad, Inc., Illinois; Toledo, Peoria & Western Railroad, Inc., Illinois; Canton Railroad Co.,[1] Maryland; La Salle & Bureau County Railroad, Illinois; Gettysburg Railroad Co., Pennsylvania; Mercersburg Railroad Co., Pennsylvania; Texas Central Railroad Co., Texas; Madison Railroad, Indiana; New Hope & Ivyland Railroad Co., Pennsylvania; Louisiana Midland Railway, Louisiana; Lamoille Valley Railroad, Vermont; the Vermont Railway, Inc., Vermont; Wisconsin & Southern Railroad, Wisconsin; Denver & Rio Grande Western Railroad,[1] Colorado and Utah; Green Mountain Railroad Corp., Vermont; Bath & Hammondsport Railroad Co., New York; Kansas City Southern Railway Co., Missouri; Port of Tillamook Bay Railroad, Oregon; Soo Line Railroad Co., Minnesota; South Buffalo Railway Co.,[1] New York; Longview, Portland & Northern Railroad, Oregon and Washington; Georgetown Railroad Co.,[1] Texas; Salt Lake, Garfield & Western Railway,[1] Utah; and Yancey Railroad Co., North Carolina.●

LITTLE LEAGUE CHAMPS

HON. RAPHAEL MUSTO

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. MUSTO. Mr. Speaker, I would like to direct our colleagues' attention to a champion ball team from Berwick, Pa., that has competed with the best and has deservedly earned its fine reputation. It is the Sam Balliet All-Star Senior Division Little League, winners of the district 13 and section 3 playoffs and eastern regional State champions.

The Sam Balliet all-star team went on to represent the Eastern United States in the world series at Gary, Ind. They finished in fourth place against teams from Taiwan, Western Europe, Canada, Venezuela, Western United States, Southern United States, and Central United States.

All who participated in this achievement is deserving of recognition, starting with the team members, Dave Gotchall, Carl Pruitt, Wade Prueitt, Keith Seeley, Keith Warner, Rich Bodwalk, Andy Thomas, Mike Dalberto, Dave Kishbach, Doug Collins, Todd Robbins, Scott Karchner, Chet Kempenski, and Al Steward. They were coached by Dave Kishbauch and managed by Chuck Robbins. Mr. Arthur Welch is president of the little league of Berwick and Mr. George Seeley is chairman; and the program is sponsored by the Berwick Athletic Booster Association.●

THE DEFECTIVE AIRCRAFT REMEDY ACT

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. SEIBERLING. Mr. Speaker, existing consumer laws provide reasonable redress for defective consumer products. If nothing else, they guarantee consumers a public forum for the resolution of conflicts with product manufacturers when questions of repairing or replacing defective merchandise arise.

However, for the owners of nonmilitary aircraft, there is little opportunity for such redress without resorting to lengthy and expensive litigation. A constituent of mine has forcefully brought to my attention the problems he has faced as the owner of a small aircraft. Aircraft owners must meet rigid safety requirements as administered by the Federal Aviation Administration, or else lose their airworthiness certification. Therefore, they face considerable expense in complying with routine airworthiness directives issued by the FAA. Privately owned aircraft are frequently covered by warranties for as little as 6 months from the date of purchase. Thus, it is very difficult for aircraft owners to recover even part of the cost of effecting repairs required by a Federal agency, even when those repairs may be necessitated by a manufacturer's design or manufacturing defects.

With this in mind, I am today introducing legislation designed to help nonmilitary aircraft owners recover some of the expenses incurred in complying with airworthiness directives in cases where the safety problem is the result of design or manufacturing defects. My bill, the Defective Aircraft Remedy Act, requires the Secretary of Transportation to determine whether an unsafe condition resulting in the issuance of an airworthiness directive is the result of a design or manufacturing defect. If so, my bill requires the manufacturer either to repair the defective part without charge to the owner within a period of time specified by the Secretary, or to reimburse aircraft owners who have had the repairs made at their own expense for the cost of the parts used in the repair. The bill requires owners who choose to make the repairs on their own to notify the manufacturer that they have done so not more than 30 days after receiving notification that a defect exists, and requires the manufacturer to reimburse owners—who have done their own repairs—within 90 days after receiving notice from the owner that repairs have been completed, or within 90 days after a final determination has been made that a safety problem is design or manufacturing defect related. The bill specifically excludes labor charges as a reimbursable expense, and limits a manufacturer's liability for reimbursement to 1 year from the finding that a defect exists.

The Defective Aircraft Remedy Act also requires aircraft manufacturers who have knowledge of a safety defect to notify the aircraft owner and the factory, provides for full public hearings on questions of defect, and sets penalties for failing to notify the Secretary of a design or manufacturing defect, or for failing to comply with the repair or reimbursement provisions at $1,000 per incident—to a maximum of $800,000. The bill also gives the Secretary the authority to reduce or eliminate the penalty, and requires the Secretary take into consideration such factors as the gravity of the violation and the size of the business when determining the size of the penalty, in order to help insure that small companies are not unduly penalized.

I believe that my bill will help provide aircraft owners with a reasonable means of redress when they are forced to make repairs because of design or manufacturing defects. Let me note that I do not consider this bill to be a finished product. I am introducing it now in the hope that interested individuals can give me their views and help in such redrafting as may be necessary to improve the bill. I welcome any comments my colleagues or other interested parties may have.●

GREEN PRAISES MANHATTAN RSVP

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. GREEN. Mr. Speaker, as a member of the Select Committee on Aging, and as one with a congressional district population of 23 percent senior citizens, I would like to take this opportunity to pay tribute to the retired senior volunteer program (RSVP) in Manhattan. Participation in this program will be honored at a ceremony on September 5, 1980.

The national program of RSVP is sponsored by ACTION on the Federal level and is supported locally by the Community Service Society. These volunteers, who are 60 years and older, contribute their time and energy in an effort to better their communities. Many schools, hospitals, and senior citizen centers benefit from the valuable service that these dedicated volunteers provide. Volunteerism plays an important function in today's society, and I thank RSVP for responding to

and fulfilling the needs of the people of Manhattan.●

TRIBUTE TO MRS. GEORGE M. "LIB" TROTTER

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. DUNCAN. Mr. Speaker, in the next few days, on September 8, 1980, to be exact, a large number of people in my hometown of Knoxville, Tenn., will gather to honor one of our community's most outstanding civil leaders. Unfortunately, the business of the Congress will prevent me from being present for the occasion, which is sponsored by the Citizen's Honor Committee. However, I would like to share with my colleagues a brief summary of the outstanding public service of Mrs. George M. "Lib" Trotter.

Mrs. Trotter has become known throughout the Southeast as a person always ready to help young people. She began volunteer work with the March of Dimes 20 years ago, and 14 years ago helped organize Knoxville's first March of Dimes Telerama. This highly-successful fundraising program has led the Nation for 3 of the last 4 years.

It was more than 20 years ago when Lib Trotter began working with Brownie and Girl Scout troops. In 1964, she began volunteer service with the Knoxville Teen Board. In 1966, she became chairman of the Teen Board of Knoxville Presentation Dance. Her service continues today as an adviser to the Teen Board.

Mrs. Trotter has also served as cochairman of the Medical Auxiliary Fashion Drama, a fundraising activity by the auxiliary of the Knoxville Academy of Medicine to benefit their nursing scholarship fund. She is also a member of numerous other philanthropic and charitable organizations, including Women's Guild of the Knoxville Symphony Society; Women's Circle of the First United Methodist Church; Alpha Omicron Pi Alumni; Dulin Art Gallery; United Daughters of the Confederacy; Daughters of the American Revolution, James White Chapter; the Blount Mansion Association; and the YWCA.

It would be hard for me to sum up the value of Mrs. Trotter to Knoxville and east Tennessee. If there is a person who has a greater love of her fellow man than she has, then I surely have not met that person. She is the kind of lady this city, State, and country could ill-afford to do without.

I ask my colleagues to join with me in extending our congratulations to Mrs. Trotter for her years of service and dedication to so many worthwhile causes and organizations. It is impossible to say how many lives have benefited from Mrs. Trotter's love and unselfishness and her special devotion to young people.●

THE MILITARY MANPOWER PROBLEM

HON. CHARLES F. DOUGHERTY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. DOUGHERTY. Mr. Speaker, the following letter to the editor of the Washington Star was written by Gunnery Sgt. Thomas G. Poulk, U.S. Marine Corps. Sergeant Poulk has aptly described some of the major causes of the manpower problem facing our military today and I share his letter with my colleagues:

THE DANGER LIES WITHIN US?

To the Editor:

If one believes the recent newspaper articles and news broadcasts about the draft and registration of 19- to 20-year-old men, one would think that the majority of the youth of America do not desire to serve in the armed forces of the United States. It is really saddening that this fact is true and that the young people feel that serving their country is beneath them, infringes upon their civil rights, hinders them in accomplishing future aspirations and is the first step towards another world war.

I would like to address these self-centered children of American democracy for they hold the destiny of this nation, and the entire free world, in their hands, whether they like it or not.

There are many problems with America's all-volunteer armed forces, ranging from low pay to shortages of equipment. We, the career service men and women, recognize these problems and try to cope with them so that we may accomplish our primary mission—to support and defend the Constitution and the people of the United States.

However, there is one major problem that the military establishment cannot deal with and that is the "I don't give a damn" attitude of the American people, especially young Americans, when it comes to national defense.

If the youth of America will not defend their country, who will? What is really appalling is how older Americans tolerate and at times even encourage the anti-draft attitude. The manpower problem facing our military today is the end result of the lack of concern, the misplaced values and the poor attitudes of the American people.

The problem of providing young Americans for military service goes beyond recruiting; finding qualified men and women to fill our ranks is just as important as the number of people in uniform. It is a shame that we are being forced to accept men and women who are so illiterate that the military has had to spend millions of dollars rewriting training manuals in the form of comic books and lowering the reading level of others so that these recruits can understand them. This can be done with some of the manuals but not all. How do you turn a technical manual on the jet engines, radar sets, satellite communication equipment or nuclear missiles into comic books? What a way to train an army!

The American military establishment is running very short of another important ingredient—experience. A lot of our experienced men and women are leaving the military after 10 to 15 years of service. Two of the most important reasons for this are low pay and the attitude of the American people. Many of us ask ourselves why we are in the military, working long hours, leaving our families and being paid just enough to put hamburger on the table while we lay our lives on the line for a people who are not willing to serve or defend themselves.

If today's youth is only concerned with themselves and are not willing to guarantee their own future, then why should we concern ourselves, make these sacrifices; why shouldn't we get out there and get some of those good-paying jobs and live the easy life, too? A hell of a lot of us are.

What the American military establishment needs is young, strong, well-educated men and women, dedicated to duty, honor and country. Without these good people, the American armed forces have no future, and neither have the American people.

As President Lincoln said in 1838: "If danger ever reaches us, it must spring up from amongst us. It cannot come from abroad. If destruction be our lot, we must, ourselves, be its author and finisher. As a nation of free men, we must live through all time or die by suicide."

The manpower crisis in our military establishment is at hand. The cause is simple: neglect, complacent attitudes, social ills, misplaced values and a lack of concern by the American people for their own future and security. The American people are allowing history to repeat itself for the third time in this century, and no one really seems to care, least of all our own youth.

The only thing your Army, Navy, Air Force and Marine Corps cannot do is protect the American people from themselves.

THOMAS G. POULK,
Gunnery Sergeant, U.S.M.C.

ARLINGTON, VA.●

THE CAPITOL—AN INSIDE LOOK

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. MURPHY of Pennsylvania. Mr. Speaker, a newspaper article written by an inspiring young journalist and former intern in my office presents an interesting view of our Government and its legislative process from an intern's perspective. Therefore, I submit this excellent article into the CONGRESSIONAL RECORD so that it may be shared by all.

THE CAPITAL—AN INSIDE LOOK

(By Doug Bell)

Power. Few get it, fewer can keep it and nearly everybody wants it.

Washington, D.C. is a city where the men who wield it to go about the daily task of governing the United States.

It is a city of startling beauty and horrifying ugliness. It is a city of enormous wealth and desperate poverty. It is a city where boundless power and hopeless impotence live side by side.

It is a city of contradictions.

But the common denominator in this city of contradictions is power. It is almost a part of the atmosphere, an ever-present force which touches the lives of the people who call this city home.

My four-week stay in Washington, D.C., as an intern in Congressman Austin J. Murphy's office was an eye-opening experience. It was a chance to see from the inside how the United States government really operates, a chance to learn what no political science course could ever teach.

The U.S. government has traditionally been described with terms like legislature, executive, administrator and committee. But abstract terms tend to remove the human element from a government "of the people, by the people and for the people." Jargon and abstractions have made us forget that government not only governs the people, but is, itself, composed of people.

And the people who live and work in this city are not so very different from those you might find anywhere else. But the world in which they live is a very unstable one. It is a world where jobs and lives can be only as secure as the next election, where fear and doubt coexist with the city's contradictions.

Perhaps the first thing noticed by any congressional intern is the hundreds of other interns on Capitol Hill. They are literally everywhere, in almost every office and agency.

And if you ask an intern why he has come to Washington, the answers you receive will be as different as the interns themselves. Some come for the experience, others to "make connections," still others want the feather in their cap—another entry for the all-important résumé. For many interns, their stay on the Hill is just a short stopover on the road to law school.

But the reasons which bring an intern to Washington are less important than the experience received when they get there. The life of an intern is filled with opening mail, answering it, chasing down information and generally doing whatever needs done.

Yet somewhere in this workday routine that every intern eventually falls into, an understanding of how our government really works slowly filters through. It is an understanding which can bring immense satisfaction—or intense frustration.

Ours is a government which can get things done quickly . . . or slowly . . . or not at all. It is a government of incremental change and compromise. Non-compromising interests rarely last long, or at least they don't get much accomplished.

After spending five days attending a bill mark-up session in the Committee of Interior and Insular Affairs, I came to the conclusion that the making of law is not unlike the buying and selling of used cars—the seller always asks for more than the car is worth; the buyer always offers less than he is willing to pay. And a lot of bickering goes on before the two come together.

A whole lot of bickering.

The bill in question was a revision of land reclamation laws, which affect irrigated lands in the West. At the outset it was evident that the committee was sharply divided on the issue. Several committee members were in favor of amendments that would impose acreage limitations and residency requirements on land irrigated by Federal water projects—measures which would protect the small family farmer.

Other members of the committee insisted that "the days of 40 acres and a mule" are over, and that large, corporate farms are a solution to the world's and the Nation's food shortages. At one point in the debate, the opposing sides became so enraged that they couldn't even agree on what time to break for lunch. Committee Chairman Morris Udall settled the issue and eased the tension by saying, with a hint of a smile, that the committee would break for lunch when he was good and ready.

The result of five days of furious debate, dazzling oratory and red-faced rebuttals was, or course, a compromise. And throughout the markup Udall kept reminding the committee that the bill they finally approved should have enough flexibility to give the committee a strong bargaining position when they went into conference committee with the Senate.

The compromising had just begun.

Washington's many contradictions are probably more evident to the intern than anyone else. On the House floor, millions of dollars are spoken of and allocated the way most of us talk about loose change. But on a quick trip to 14th Street to pick up a passport, you can see a half dozen old men literally living in the streets, their worldy possessions packed into easily-carried garbage bags.

But the ironies of this city do not end there. In a city where the past is preserved and the future carefully planned for, it is strange and somehow very sad that the present is hardly ever mentioned. Sometimes it seems as though today has been lost somewhere between the memories of yesterday and the plans for tomorrow.

Yet the most interesting thing about living and working in the nation's capital is the people. If the United States is a melting pot, then its capital is even more so. Nowhere else can you find such a diverse group of individuals as those assembled in Washington, D.C.

The interns are a reflection of this diversity. They come from all over the country, bringing their ideas and beliefs and hopes and dreams, still young enough and idealistic enough to believe they can turn the world upside down and set things right again.

Some interns are paid and others are volunteers, but all come away with a different view of the United States Government than they had upon arrival. Many interns secretly—or openly—hope to return to the Hill someday as Congressmen.

For some interns, frustration is the result of being so close to the policy-making process and yet so far from making the actual decisions. One discouraged intern described the experience as being "like a hungry lion with a piece of red meat hanging outside the cage."

Not all the interesting people in Washington work for the government, though. One of the most fascinating individuals I met in the city was an artist named Agnes, who had worked on the Hill for 20 years before quitting and making her hobby, painting, her career.

An afternoon in Agnes' gallery, located across the street from the Eastern Market, could be a memorable experience. People of all ages from all over the country and the city would wander in and out, browsing at the paintings and taking a short rest.

One day near the end of my stay I was talking with a local photographer who had come by to ask Agnes if she knew of a small studio that was for rent. After discovering that I was a congressional intern, he proceeded to ask me several questions about the job—what kind of work did I do, what were the hours, who I worked for.

And then he asked another question. It was a simple query, straight forward and direct—so much so, in fact, that I wondered why I had never heard anyone ask it before. I decided, with some regret, that it was the kind of question you could only hear in Agnes' gallery on a Sunday afternoon.

"Do you believe in what you're doing?" he asked.

And it was possibly the most enjoyable moment of my congressional internship when I was able to answer "Yes" without hesitation.●

TRICENTENNIAL CELEBRATION OF MANHASSET

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. WOLFF. Mr. Speaker, it is indeed with great personal pride that I bring to the attention of this Congress and our Nation the tricentennial celebration of Manhasset, a community that I have represented for 16 years.

The tricentennial celebration of Manhasset stands for more than the celebration of a community's longevity. It reflects the remarkable achievement of 300 years of excellence and commitment to its neighborhoods, town, county, and State. Manhasset has consistently demonstrated that the concept of "community" is not an antiquated phrase but can be, in fact, the backbone of the great standards of our Nation. Since Manhasset's beginnings in 1680, this community has grown and developed from its beginnings as a settlement in the new world to great leadership in the world today.

Throughout my tenure in the Congress, Mr. Speaker, I have held among my highest priorities the preservation of our neighborhoods, families, and spirit of community participation. Manhasset's tricentennial observance demonstrates these values, how important they have been in our history and how essential they are to our Nation's future.●

FATHER CARL M. REINERT

HON. JOHN J. CAVANAUGH

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. CAVANAUGH. Mr. Speaker, it is not often that the death of a single person affects an institution, a society, or a city as deeply as the August 13 death of Father Carl M. Reinert has moved Creighton University, the Jesuit Community, and the city of Omaha, Nebr. Father Reinert has touched the lives of many students, businessmen, and fellow clergy across the Nation in his different capacities as an educator, a fundraiser, and most importantly a Jesuit priest.

In his 30 years of service to Creighton University he is credited with adding 12 new buildings to the campus and raising some $200 million for the university's development. Father Reinert entered the priesthood, as did two of his three brothers, out of a deep sense of dedication and zeal for enriching the lives of students through the teachings of Christ. Father Reinert was loved by all who knew him and will be missed by many. In his honor I would like to include this tribute to Father Carl M. Reinert which appeared recently in the Catholic Voice newspaper of the Archdiocese of Omaha.

The tribute follows:

FATHER REINERT'S DEATH ENDS ERA

He had been dying for almost a year. Maybe that's why his death didn't seem like the sudden, shocking end of an epoch—it would have been had he been taken away while still in his vigorous prime.

Death for Father Carl M. Reinert was a release and a blessing. It came after long months during which this once poised, strong, dynamic leader suffered in body and spirit as an invalid without hope of recovery.

But on the rainy summer Saturday morning that his remains were buried, the throng of his mourners overflowed St. John's Church on the campus of the university which had been his life—right up to the day last September when recurrent chest pains sent him into surgery. For most of the throng, it would be hard, after an association of 30 years, to think of Creighton University without its Father Reinert.

That association began in 1950 when the 37-year-old priest was looking forward to another year as principal of Campion High School in Prairie du Chien, WI. As he himself told it, when he received a B'nai B'rith Americanism citation in 1962, "I might have spent my days in this work, or in the college classroom—both honorable and appealing occupations. But my superiors challenged me to embrace a broader scope."

That was putting it mildly. Creighton University in 1950 was in serious trouble.

Not only was enrollment down after a temporary resurgence following World War II. It faced a financial crisis. There was talk of closing at least one of its professional schools.

There hadn't been a new building in decades. Facilities were inadequate in many areas. Alumni still resented the recent decision not to resurrect intercollegiate football.

Worse yet, few seemed to recognize the full plight of the institution. A fund drive had fallen on its face—primarily because people couldn't believe that the university endowed by the wealthy Creighton family really needed money, some say.

When Carl Reinert received his new assignment at age 37—making him the youngest of Creighton's presidents—he wisely spent those first weeks and months learning as much as he could about the university. He had one distinct advantage—he knew Creighton and Omaha from his years (1938-41) as a Creighton Prep teacher, and he had friends here who could help him size up the situation.

The rest is history. He saw the university's plight, spoke about it frankly and credibly, won the enthusiastic support of influential business and community leaders, and led an effort which saw Creighton develop and grow into a strong independent urban university.

He was gracious, enthusiastic and positive. He was also confident, decisive and articulate. Sometimes his confidence led to action beyond the perimeters suggested by better informed advisers, and sometimes his decisions seemed heedless of the experience and wisdom of subordinates. Sometimes he drove his staff to distraction by telling too much too soon about the university's hopes and plans.

More often than not, this was a result of his enthusiasm and his love for the institution whose nurturing had become his life's work.

He was most widely hailed as a successful fund-raiser, sometimes deprecatingly. He made many key contacts personally, but he was also peerless in recruiting talent—both in his full-time staff and among the thousands of volunteers who carried out Creighton's major campaigns.

The first drive in 1955, led by Omaha advertising executive Morris Jacobs, raised more than $2 million. That became the first phase in an expansion program that was to reach the $14 million mark in the next few years.

In 1962 when, in a sense, he traded jobs with the late Father Henry Linn, Father Reinert guided a five-year $24 million program. By 1970 he was in the midst of a 10-year "Centennial Thrust" campaign that was to bring in more than $117 million.

Before 1956, the campus had seen little physical change for more than a quarter-century. After 1956 the sight and sound of construction were continuous.

Yet Carl Reinert was more than a dollars-and-bricks man. He was always approachable and accessible. He was constantly in contact with students and alumni—counseling, encouraging, and even interceding when asked to.

He also was recognized as a community leader. The list of his awards and citations more than proves that.

Through all this activity, he insisted that he was, above all, a priest.

Though he had grown up in Boulder, his parents had sent him and his four brothers to the Jesuit high school in Denver because of their belief in the importance of Catholic education. And it was at Regis High School that Carl Reinert at age 18 made his decision to become a priest.

He entered the Jesuit seminary in Florrisant, MO in 1931, continued his studies at St. Mary's College in Kansas, then spent the traditional three years as a scholastic (Jesuit high school teacher) before his ordination in 1944. For almost 36 years of his active priesthood he began each day by celebrating Mass—halted only when his crippled body became a prison for his soul.●

WILLIAM E. BURKE

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. FAZIO. Mr. Speaker, on August 31, 1980, William Edmund Burke retires as the fire chief for Yuba City, Calif. I would like to take this opportunity to commend this distinguished citizen for his outstanding service to the community.

Born on November 2, 1923, in Roswell, N. Mex., Chief Burke served his country in the U.S. Air Force from 1942 to 1945. In 1946 he began his career as a firefighter in Lynwood, Calif. and subsequently was promoted to the position of engineer captain, respectively. He also served as president of the Lynwood Firemen's Association and president of the Lynwood City Employees' Association. In 1957 Chief Burke joined the Downey Fire Department, again serving as president of both the Downey's Firemen's Association and the Downey Employees' Association.

In September of 1964 Yuba City was most fortunate to have Chief Burke accept the position of fire chief. In this capacity, Chief Burke worked to update department rules and regulations, develop and finalize new ordinances and enforcement procedures, and to improve fire protection equipment and fire prevention programs. Under the chief's leadership the Yuba City North Substation was dedicated on March 31, 1980.

The chief's professional capabilities were enhanced by his active participation in organizations such as the California State Board of Fire Services, the California State Firemen's Association, the National Safety Council, the California College Fire Advisory Board, the California Fire Chiefs' Association, the International Fire Chief's Association, the California Conference of Arson Investigators, and the California State Fire Educators.

Married to Marjorie and the father of William, Michael, Pamela, and Janet, Chief Burke found time in his daily life not only for his family and career but also to help better the lives of those around him. This includes such activities as serving as chairman of the American Red Cross, CPR chairman of the Yuba-Sutter-Colusa Heart Association, a director of the Midland District Boy Scout Council, a director of the Arroyo Grande Girl Scout Council, public education chairman of the American Cancer Society, and a director of the Rotary Club. He has also been involved with the March of Dimes, United Way, Muscular Dystrophy Association, YMCA, and the Lions Club.

Chief William Burke deserves to be honored by the community he has served so well for 16 years. He has been a competent leader of the fire department and his fine work reflects his dedication to the public. He has made unselfish personal contributions of his time to improve the lives of those in the community. I commend Chief Burke as an outstanding citizen and superb public servant.●

ASSURING ACCESS TO STRATEGIC MATERIALS

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BROOMFIELD. Mr. Speaker, assuring access to foreign energy and raw materials requires the harmonization of economic policy with our defense and foreign policy. In particular, a strong defense is vital not only to our physical security but also our economic well-being. In this regard, I commend to my colleagues the following article which appeared in the August 21, 1980, edition of the Washington Star:

THE STRATEGIC MATERIALS GAP

(By Daniel James)

Mention American dependence on shaky or hostile foreign sources for essential raw materials and most people think oil. But other strategic materials may turn out to be more important to our defense effort and ultimate national wellbeing.

Consider. The U.S. Bureau of Mines lists four minerals of prime concern in the manu-

facture of such weapons as fighter jets, tanks and other armaments. These are chromium, manganese, platinum and cobalt, all of which come from central and southern Africa.

The United States imports 98 percent of its manganese, 92 percent of its chromium and 91 percent of its platinum besides nearly all of its cobalt from Gabon, Zaire, Zimbabwe and South Africa. Manganese is essential to making steel. Platinum is a necessary catalyst in the automotive, electronic and petroleum industries. Jet engines require cobalt. Chromium is vital to aerospace weapons.

The United States is also over-dependent on foreign sources for less exotic but equally significant materials. Take bauxite, the basis for aluminum, which is, in turn, the basis for many defense and non-defense manufacturing needs in this country. Ninety-three percent of our supply comes from abroad, much of it from the conspicuously unstable and dubiously friendly country of Jamaica.

There is also rubber, which goes into the making of tank treads and aircraft tires as well as ordinary radials, for which synthetic substitutes are unsuitable. The United States, which does not grow rubber, is forced to import all its supplies. And these come from, of all places, Southeast Asia, whose rubber production was denied to America when the Japanese occupied the region in World War II. Forty years later, the United States has gone back to total dependence on the same unreliable source.

Happily, we are exploring the possibilities of producing a natural rubber substitute from a natural plant, guayule, in this country. But research has scarcely begun, and even if guayule proves feasible, it will take four or five more years to produce commercially.

Meanwhile, the Soviet Union is as independent of foreign sources of strategic materials as the United States is dependent on them. It needs to import only six of the 93 substances defined by the Strategic and Critical Materials Stockpiling Act of 1979 as critical. Soviet imports run no higher than 50 percent and that maximum applies to only two materials.

The most serious Soviet lack is of bauxite, of which it imports only one-third of its needs. In a conventional war, the Soviets would be virtually self-sufficient in strategic materials.

The Stockpiling Act, an update of a measure dating back to World War II, sets stockpiling goals for the 93 materials it has designated as strategic or critical. Under the act, the quantities to be stockpiled should be "sufficient to sustain the United States for a period of not less than three years in the event of a national emergency."

So far, though, only 50 materials have reached stockpiling goals. The remaining 43 fall short by as much as 100 percent. Among those lacking are cobalt, bauxite, platinum, cobalt and rubber.

The dangers are obvious. When are U.S. leaders going to start taking them seriously?●

INCREASE CONGRESSIONAL OVERSIGHT

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. MAZZOLI. Mr. Speaker, in his state of the Union address to the 96th Congress, and in many public statements since, President Carter has strongly endorsed the passage of legislation to provide a major overhaul of the Federal regulatory process.

However, the actions of the administration raise questions in my mind about how fervent, indeed, is its commitment to regulatory reform.

The House Judiciary Subcommittee on Administrative Law spent many long hours in hearings and markups on all the pending versions of regulatory reform bills—including the administration's. All viewpoints were given careful and thoughtful attention before a bill was reported to the full House Judiciary Committee.

The full committee has already held several markup sessions on this important bill. While the product of all this labor is not perfect it is, on balance, an excellent piece of legislation. It does not deserve the fate it seems to have been consigned: to be allowed to slip under the murky waters of the 96th Congress without a ripple.

Daily, I hear complaints from residents and business people of the Third Congressional District that they are driven to distraction by the flood of bureaucratic rules and redtape. They are pleading for relief.

Mr. Speaker, passage of legislation to increase congressional oversight of—and public participation in—the regulatory process should no longer be delayed.●

CONGRESSMAN FLOYD FITHIAN CARRIES THE MESSAGE OF GASOHOL

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BRADEMAS. Mr. Speaker, no Member of the House of Representatives has been more articulate or effective in urging the use of gasohol as an alternative to petroleum than our distinguished colleague from Indiana, Hon. FLOYD FITHIAN.

I insert at this point in the RECORD the text of a most thoughtful editorial from the August 22, 1980, issue of the LaPorte (Ind.) Herald-Argus, published in the district I have the honor to represent, concerning Congressman FITHIAN's leadership in this respect.

The editorial, "Carrying the Message," follows:

CARRYING THE MESSAGE

Second District Congressman Floyd Fithian, D-Lafayette, a prime pusher of gasohol as one means of stretching petroleum-based motor fuels, at least got the message on gasohol to a congressional committee during recent hearings on the Purdue University campus.

Fithian has been concerned that Congress and the federal Department of Energy (DOE) are among the hardest people to convince that gasohol can indeed contribute to the petroleum conservation, and that it is feasible economically. The most difficult to convince, of course, are leaders in the petroleum industry—with the notable exception of Texaco.

During recent House Government Operations subcommittee hearings arranged by Fithian on the Purdue campus, several of the university's most authoritative gasohol researchers assured subcommittee members that use of corn in fuel production would not significantly reduce world food supplies, and that Purdue's tests of biomass conversion processes definitely shows they develop more energy than they consume.

The most important point made at Purdue was that current technology permits use of agricultural starch and sugar to be developed into fuel while still leaving its protein products for the farm feed lots where a lot of the American corn crop is used.

At Purdue they pointed out that maybe in the long run it will not be corn anyhow but the "biomass" process that can best manufacture alcohol to stretch gasoline. Gasohol is about one-tenth alcohol and the rest is unleaded gasoline.

Biomass is a catch-all term for vegetation that can be converted to energy through fermentation, or possibly distillation. This vegetation may include cornstalks, wood chips and straw—essentially residuals. It is more difficult to ferment these materials than starch from corn kernels, but Purdue is one place where researchers are coming up with solutions to this sort of conversion.

We hope that the congressmen who have witnessed the immense possibilities for biomass development such as using feedlot wastes that we previously never dreamed were reusable can take this message back to Washington and convince political decision-makers there that gasohol can become a viable source of energy.●

FEDERAL GOVERNMENT SPENDING

HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. GRASSLEY. Mr. Speaker, at this time I would like to bring to the attention of my colleagues and readers of the CONGRESSIONAL RECORD a matter that in its own right needs no introduction. I am referring, of course, to Federal governmental spending.

I sincerely feel that it is time to take action. It is time to account for the billions of taxpayers dollars that, during the course of every year, are so recklessly spent on projects and programs of a questionable nature. It is no secret that excessive Federal spending has, in turn, led to an astronomical national deficit as well as a double digit inflation rate. Public awareness of the irresponsibly large amount of dollars spent each year by the Federal Government and agencies is on the upswing.

Fiscal sanity can be returned to the Federal Government by the overall realization that its spending cannot exceed its revenues. Much like the American taxpayer the Federal Government must be responsible in its spending ways. We cannot continue to spend more than we take in. It must also initiate its own "belt tightening" to maintain fiscal stability.

In light of this fact, I would like to share with my colleagues now, a resolution of special significance. Authored by Iowa City attorney, John T. Nolan, the resolution was adopted as part of the platform by Republicans of Johnson County, Iowa, and Iowa's First Congressional District. The resolution proposes to heighten voter awareness of the big spender problem by focusing on the diametrically opposite calendar dates of the April deadline for filing income tax returns and the November general elections. It is felt that the voter, still ripe from filing his returns, would give more thought to the candidate and his spending proposals when voting. The resolution text follows:

Be it resolved that the deadline for filing State and Federal income tax returns be moved to the Monday first preceding the general election Tuesday, and corresponding off-year dates.

The intended purpose of the Resolution is to achieve the heightening of voter awareness as to fiscal responsibility, and to provide artillery for candidates who are so inclined.●

REAGAN AND BUSH SPEAK OUT ON ASIA

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. GILMAN. Mr. Speaker, at a time when the Soviet Union is increasingly flexing its muscles throughout the world, our relationships with our friends and allies around the globe continues to gain importance. The recent report by Ambassador Bush of his mission to the Far East stressed the vital role that Japan plays as a pillar of our Asian policy, both militarily and economically. At the same time he noted that United States-China relations have developed far beyond trade and cultural ties as we share mutual concerns about the pace and scale of the Soviet military buildup.

Upon the return of Ambassador George Bush from his special mission to Japan and China, Gov. Ronald Reagan commented upon the importance of our role in Asia and in the Pacific area and the findings of Ambassador Bush's trip. In a series of high level meetings with the distinguished leaders of Japan and China, Ambassador Bush had an opportunity to hear their views firsthand and to discuss their recommendations concerning our future foreign policy.

Governor Reagan pointed out that the leaders of both China and Japan acknowledged to Ambassador Bush that the United States must be a strong and vigorous defender of the peace and they favor the bolstering of our defenses and alliances. In particular, he found the Japanese leaders unanimous in their view that the United States must be a strong, reliable and leading partner.

To overcome past inconsistencies and to avoid vacillation in our Far Eastern policies, Governor Reagan and Ambassador Bush, in their recent statement in Los Angeles, have outlined a strong, vigorous role for our Nation in Asia.

Mr. Speaker, in order to share their views with my colleagues, I ask that a full copy of the Reagan-Bush statement on Far Eastern policy be inserted at this point in the RECORD:

STATEMENT BY RONALD REAGAN

Ten days ago George Bush and I met with you here in Los Angeles on the occasion of his departure for Japan and China, a trip he undertook at my request. As we stressed at the time, the purpose of the trip was to provide for a candid exchange of views with leaders in both countries on a wide range of international topics of mutual interest. Ambassador Bush returned last evening, and has reported his findings in detail.

We are both very pleased with the results of his extensive discussions. In a series of meetings with distinguished leaders in Japan, including Prime Minister Suzuki, Former Prime Ministers Fukuda, Kishi and Miki, Foreign Minister Itoh and Minister of International Trade and Industry Tanaka, he had the opportunity to hear their views and recommendations concerning the future of U.S.-Japanese relations.

Our Republican Party Platform stresses that Japan will remain a pillar of our policy for Asia, and a Reagan-Bush Administration will work hard to insure that U.S.-Japanese relations are maintained in excellent condition, based on close consultation and mutual understanding.

Japan's role in the process of insuring peace in Asia is a crucial one, and we must reinforce our ties with this close ally. Japan is our second most important trading partner, and we are her first. We have close ties in other fields, too. A most important example is the U.S.-Japan Mutual Security Treaty which recently marked its twentieth anniversary.

Understanding the Japanese perspective is important for the success of American policy. As Ambassador Bush will tell you in detail, he found Japanese leaders unanimous in their view that the United States must be a strong, reliable, leading partner.

I appreciate receiving their views, and I am grateful to them for the courtesies extended to Ambassador Bush. I would also like to express my appreciation to, and regard for, U.S. Ambassador Mike Mansfield, who also extended many courtesies.

Of equal importance was Ambassador Bush's trip to China, where he held a series of high-level meetings. As I said on August 16, "we have an obvious interest in developing our relationship with China, an interest that goes beyond trade and cultural ties. It is an interest that is fundamental to a Reagan-Bush Administration."

The meetings in Beijing provided for extensive exchanges of views. George has reported to me in great detail the points of similarity and agreement, as well as those of dissimilarity and disagreement. Since the objective of the trip was to have just such an exchange without necessarily reaching agreement, I believe that the objective was reached.

We now have received an updated, first-hand of China's views, and the Chinese leaders have heard our point of view.

While in Beijing, Ambassador Bush and Richard Allen met at length with Vice Premier Deng Xiaoping, Foreign Minister Huang Hua, as well as with other top foreign policy experts and military leaders. I appreciate the courtesies which the Chinese leaders extended to our party, and I also wish to thank U.S. Ambassador Leonard Woodcock for his kind assistance.

We now maintain full and friendly diplomatic relations with China. This relationship began only a few years ago, and it is one which we should develop and strengthen in the years ahead. It is a delicate relationship, and the Reagan-Bush Administration will handle it with care and respect, with due regard for our own vital interests in the world generally, and in the Pacific region specifically.

China and the United States have a common interest in maintaining peace so that our nations can grow and prosper. Our two-way trade has now reached approximately $3.5 billion annually, and China's program of modernization depends in a major way on Western and U.S. technology.

Along with many other nations, we and China share a deep concern about the pace and scale of the Soviet military buildup. Chinese leaders agree with Japanese leaders that the United States must be a strong and vigorous defender of the peace, and they specifically favor us bolstering our defenses and our alliances.

It is quite clear that we do not see eye to eye on Taiwan. Thus, this is an appropriate time for me to state our position on this subject.

I'm sure that the Chinese leaders would place no value on our relations with them if they thought we would break commitments to them if a stronger power were to demand it. Based on my long-standing conviction that America can provide leadership and command respect only if it keeps its commitments to its friends, large and small, a Reagan-Bush Administration would observe these five principles in dealing with the China situation.

GUIDING PRINCIPLES FOR THE FAR EAST

First, U.S.-Chinese relations are important to American as well as Chinese interests. Our partnership should be global and strategic. In seeking improved relations with the People's Republic of China, I would extend the hand of friendship to all Chinese. In continuing our relations, which date from the historic opening created by President Nixon, I would continue the process of expanding trade, scientific and cultural ties.

Second, I pledge to work for peace, stability and the economic growth of the Western Pacific area in cooperation with Japan, the People's Republic of China, the Republic of Korea and Taiwan.

Third, I will cooperate and consult with all countries of the area in a mutual effort to stand firm against aggression or search for hegemony which threaten the peace and stability of the area.

Fourth, I intend that United States relations with Taiwan will develop in accordance with the law of our land, the Taiwan Relations Act. This legislation is the product of our democratic process, and is designed to remedy the defects of the totally inadequate legislation proposed by Jimmy Carter.

By accepting China's three conditions for "normalization," Jimmy Carter made concessions that Presidents Nixon and Ford had steadfastly refused to make. I was and am critical of his decision because I believe he made concessions that were not necessary and not in our national interest. I felt that a condition of normalization—by itself a sound policy choice—should have been the retention of a liaison office on Taiwan of equivalent status to the one which we had earlier established in Beijing. With a persistent and principled negotiating posi-

tion, I believe that normalization could ultimately have been achieved on this basis. But that is behind us now. My present concern is to safeguard the interests of the United States and to enforce the law of the land.

It was the timely action of the Congress, reflecting the strong support of the American people for Taiwan, that forced the changes in the inadequate bill which Mr. Carter proposed. Clearly, the Congress was unwilling to buy the Carter plan, which it believed would have jeopardized Taiwan's security.

This Act, designed by the Congress to provide adequate safeguards for Taiwan's security and well being, also provides the official basis for our relations with our long-time friend and ally. It declares our official policy to be one of maintaining peace and promoting extensive, close, and friendly relations between the United States and the seventeen million people on Taiwan as well as the one billion people on the China mainland. It specifies that our official policy considers any effort to determine the future of Taiwan by other than peaceful means a threat to peace and of "grave concern" to the United States.

And, most important, it spells out our policy of providing defensive weapons to Taiwan and mandates the United States to maintain the means to "resist any resort to force or other forms or coercion" which threaten the security or the social or economic system of Taiwan. This Act further spells out, in great detail, how the President of the United States, our highest elected official, shall conduct relations with Taiwan, leaving to his discretion the specific methods of achieving policy objectives.

The Act further details how our official personnel (including diplomats) are to administer United States relations with Taiwan through the American Institute in Taiwan. It specified that for that purpose they are to resign for the term of their duty in Taiwan and then be reinstated to their former agencies of the U.S. government with no loss of status, seniority or pension rights.

The intent of the Congress is crystal clear. Our official relations with Taiwan will be funded by Congress with public monies, the expenditure of which will be audited by the Comptroller General of the United States; and Congressional oversight will be performed by two standing Committees of the Congress.

You might ask what I would do differently. I would not pretend, as Carter does, that the relationship we now have with Taiwan, enacted by our Congress, is not official.

I am satisfied that this Act provides an official and adequate basis for safeguarding our relationship with Taiwan, and I pledge to enforce it. But I will eliminate petty practices of the Carter Administration which are inappropriate and demeaning to our Chinese friends on Taiwan. For example, it is absurd and not required by the Act that our representatives are not permitted to meet with Taiwanese officials in their offices and ours. I will treat all Chinese officials with fairness and dignity.

I would not impose restrictions which are not required by the Taiwan Relations Act and which contravene its spirit and purpose. Here are other examples of how Carter has gone out of his way to humiliate our friends on Taiwan:

Taiwanese officials are ignored at senior levels of the U.S. government.

The Taiwan Relations Act specifically requires that the Taiwanese be permitted to keep the same number of offices in this country that they had before. Previously, Taiwan had 14 such offices. Today there are but nine.

Taiwanese military officers are no longer permitted to train in the United States or to attend service academies.

Recently the Carter Administration attempted to ban all imports from Taiwan labeled "Made in the Republic of China," but was forced to rescind the order after opposition began to mount in the Congress.

The Carter Administration unilaterally imposed a one-year moratorium on arms supplies even though the Act specifies that Taiwan shall be provided with arms of a defense character.

The Carter Administration abrogated the Civil Aviation Agreement with Taiwan, which had been in effect since 1947, in response to demands from the People's Republic of China.

I recognize that the People's Republic of China is not pleased with the Taiwan Relations Act which the United States Congress insisted on as the official basis for our relations with Taiwan. This was made abundantly clear to Mr. Bush, and, I'm told, is clear to the Carter Administration. But it is the law of our land.

Fifth, as President I will not accept the interferences of any foreign power in the process of protecting American interests and carrying out the laws of our land. To do otherwise would be a dereliction of my duty as President.

It is my conclusion that the strict observance of these five principles will be in the best interests of the United States, the People's Republic of China and the people on Taiwan.

The specific implementation of these duties will have to await the results of the election in November, but in deciding what to do I will take into account the views of the People's Republic of China as well as Taiwan. It will be my firm intention to preserve the interests of the United States, and as President I will choose the methods by which this shall best be accomplished.●

ANNIVERSARY OF THE MOLOTOV-RIBBENTROP PACT OF 1939

HON. CHRISTOPHER J. DODD

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. DODD. Mr. Speaker, in America, freedom is the basis of our democracy and the essential principle of our Constitution. But freedom is only a distant memory and a future hope for the people of Lithuania.

August 23, 1980, marked the 41st anniversary of the Molotov-Ribbentrop Pact which meant the end of 20 years of independence for Estonia, Latvia, and Lithuania. In 1919, V. I. Lenin recognized the separation between Estonia, Latvia, and Lithuania and the Soviet Empire. And in 1923 this independence was written into law through peace treaties between Russia and these Baltic States. However, World War II soon changed this situation.

On August 23, 1939, the German Reich and the Soviet Union concluded a secret peace pact that divided Eastern Europe into separate spheres of influence. The essence of the pact was that the countries of Finland, Estonia, and Latvia were to come under the guidance of the Soviet Union, while the nation of Lithuania was to be controlled by the German Reich. In September of 1939, a formal treaty was announced that placed Lithuania under Soviet control as well. The treaty was known as the Molotov-Ribbentrop Pact.

On August 14, 1941, President Franklin Delano Roosevelt worked with Prime Minister Winston Churchill to produce the Atlantic Charter. Point 2 of this charter declared that both the United States and Great Britain would "not consent to any territorial changes which are not in agreement with the freely expressed wishes of the nations involved." Point 3 stated that the signatory nations would "respect the right of all nations to choose for themselves that form of government under which they want to live * * * and strive to reestablish the sovereign rights and self-rule of those nations which were deprived of these by means of force." The U.S.S.R. signed the charter on September 24, 1941, despite the fact that the Soviets had already annexed several Baltic nations as part of the Molotov-Ribbentrop Pact.

Soviet occupation in Lithuania has served to stifle the cultural, political, and religious heritage of a once free nation. The Lithuanian people may speak their own language, but they are still Soviet citizens. The Lithuanian people may have their own 1,000-year history, but they are still governed by the laws of Moscow. The Lithuanian people may have their own official interests abroad, but these interests are still handled by Soviet Embassies and Soviet consulates. The Lithuanian people have not been free for over 40 years.

But despite Lithuania's loss of independence, the Lithuanian people have never lost their national identity. Josephine Dauzvardis is a grandmother. On the wall behind her desk hangs the traditional emblem of the nation of Lithuania. Mrs. Dauzvardis is the Consul General for the Lithuanian Republic. For her and for so many other Lithuanian Americans, the struggle for freedom continues. In her own words: "We live in hope. We work in hope. One day Lithuania might be free again."

August 23 marked the anniversary of a pact which must be condemned by all nations which believe that justice, liberty, freedom, and equality are rights that should be shared by all people. The world must never forget the continuing struggle for independence by all oppressed nations.●

SHORTCOMINGS OF THE PRESIDENT'S NEW ECONOMIC PROGRAM

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. HAWKINS. Mr. Speaker, the President's new economic program deserves credit for recognizing that his existing policies and programs are not working. But the new policies are of peripheral significance in magnitude and nature, compared with the failed policies now in existence, and in addition are substantially misdirected, based upon experience and current analysis.

The President's new program, in essence, would attempt nothing by way of legislation until the next Congress. This is based upon the fashionable new idea that it is too late to do much about the current recession, but that we should not start long-range preparation for a qualitatively improved recovery that will stick. True, what the administration has done this far has been too shortsighted. But a long-range proposal to maintain good health cannot attempt to avoid and jump over the current illness. The President remains unfortunately committed to policies which in his own words will result in 8 percent or more unemployment by 1981, and this is consistent only with use of plant capacity not much better than 70 percent and an annual deficiency in total national production between $200 and $300 billion. This degree of neglect of human misery and economic forfeitures today cannot be assuaged by promises of how healthy we are going to be much later on. These promises are no more convincing than when the President asked the American people to overlook the mistakes in policies to date and what they are doing to us and instead to gaze ahead to the bright future which he claims for his policies in the sweet by-and-by.

There is nothing in the President's new program which swerves 1 inch from the continued commitment, both through budget policy and monetary policy, to defer economic recovery and prolong recession in the name of fighting inflation. This so-called tradeoff policy has been a disastrous failure whenever tried during the past quarter century, and especially in more recent years. For more than 1 year now, this has been recognized in almost unanimous reports of the Joint Economic Committee, and even to the extent not recognized, the facts are there. The reduction of consumer price inflation during recent months from 13 to 10 percent is at best an ambiguous undulation, and in any event 10-percent inflation in recent months is worse than 13-percent inflation earlier, because one is piled on top of the other and comes to more than 23 percent compounded. The President's still-maintained claim that it will take until 1988 to get inflation down to 3 percent is a sad admission that genuine programs to reduce inflation have not been undertaken, and that policies which have chronically augmented inflation are still the name of the game plan. That this is true is evidenced by administration approval or at least acquiescence in the renewed rise in the prime rate and in home mortgage interest rates.

Coming to the content of the President's new program itself, as already indicated it is a mere bagatelle compared with the need to correct existing policies whose misdirection is at the heart of the matter. But the new program is also misdirected in the economic reason which fundamentally underlies it. Considering what the Nation needs most and most immediately, it is not so much tax reduction and concessions as investment or spending for job creation, the latter being by common consent much more economical and efficient per dollar spent. And the nature of the proposed tax reduction, providing enormously more help to investors than to consumers, is discredited by a great deal of recent experience. This imbalance is aggravated greatly, because an even equal number of spendable dollars provided for investors and consumers would help investors six times as much on a percentage increment basis, because consumer spending is about six times as large in dollars as nonresidential fixed investment.

Moreover, investment by big companies is not held back by absence of funds, which they can obtain more easily than others, but by their conclusion that market demand on the part of consumers and Government is insufficient to justify more investment. Technically, productivity is still advancing rapidly, and the serious slowdown in actual productivity growth is the result of high plant disuse and underutilization of employed workers. The remedy for this is more business volume through sales, not excessive tax bonanzas to the wrong people. Coining a newfangled term like "supply management" solves nothing. We need to create a proper balance between supply and demand, and when there are 8 million unemployed representing a very slack economy the first approach is massively to reduce unemployment.

Recent experience confirms the view that the excessive emphasis upon the wrong method of stimulating investment in the President's program is not new, but tried and failed. Repeatedly it has been tried, and never has it worked. To take but one example which is typical, the 1971 tax cuts allocated almost three times as many dollars to investment as to consumption, and by the time this took much effect we were well on the way to the most severe recession to date. Tax concessions to investors are indeed necessary, but they should be selectively pinpointed, as when they were successful in the past, to help important shortage areas where the industries involved really need more working funds, and should be accompanied by meaningful quid pro quos that the concessions will be used for more investment. The President's proposals for the stimulation of investment are substantially helter-skelter, designed for where they will have dramatic appeal, and hardly related at all to a comprehensive and consistent program for real and sustained economic recovery toward a full economy. Chrysler may or may not have needed help from the Government, but it is dangerous to apply that principle, on a random basis, to more and more situations.

Observing the Humphrey-Hawkins Act, which is still being flagrantly ignored, would do more good within a year than the President's new program could do within a decade, and without the minuses as well as the pluses in the President's new program.●

HAPPY BIRTHDAY, U.S.A.

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. MAVROULES. Mr. Speaker, ringing the bells to extol the pride of the American people and the American tradition is an appropriate tribute on the Fourth of July and every other day of the year. Accept with qualified apologies, therefore, my late submission of this expression of patriotism from a constituent of mine, Maurice Goldsmith, of Swampscott, Mass.

HAPPY BIRTHDAY U.S.A. ON JULY 4TH

On July 4th, 1980, America will celebrate 204 years of independence. A simultaneous ringing of the bells on July 4th will herald America's march into the third century.

July 4th affords each one of us precious time to think about our nation's beginning, and the meaning of our American traditions, the historic importance of Massachusetts and its historic towns and cities.

On July 4th, 1776, liberty was proclaimed by the tolling of the Liberty Bell in Philadelphia's Independence Hall. On July 4th, 1980, Americans will pause and listen to the message from the bells all over the U.S.A. The bells will peal out a reminder of our freedoms, how hard they were won, and how easily they can be lost.

The July 4th story starts with those memorable words, "When in the course of human events . . . We hold these truths to be self evident, that all men are created . . . and endowed by their Creator . . . that governments are formed by the will of the governed."

On this July 4th we should rediscover and reread the rest of this great American historical document.

We might find greater inspiration and something more meaningful about Independence Day and our American heritage and tradition. July 4th is a sacred day in world history and the most important day in the U.S.A. In 1776 a determined group of citi-

zens affixed their names to a document that eventually changed the shape of the world.

On this July 4th let each one of us rededicate and rekindle a devotion to the principles and ideals upon which our great nation was founded. To love America is our right and privilege. To make America better is the responsibility of us all. God Bless America. Happy Birthday U.S.A.●

SPEECH TO DEMOCRATIC STATE CONVENTION

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. FORD of Michigan. Mr. Speaker, on August 23 and 24, I had the unique honor of chairing the 1980 Michigan Democratic State Convention, at Cobo Hall in Detroit.

One of the highlights of the convention was a stirring and hard-hitting speech by Michigan's senior Senator, Hon. DONALD W. RIEGLE, JR.

The message in Senator RIEGLE's speech, and his summary of our Nation's challenges, were so incisive, and so meaningful, I thought they deserved a wider audience.

For that reason Mr. Speaker, I insert in the RECORD at this point the text of Senator RIEGLE's truly outstanding speech before the Michigan Democratic State Convention:

SPEECH TO DEMOCRATIC STATE CONVENTION, DETROIT, MICH.

Let me ask you to remain seated and join me in a moment of silent prayer.

Dear God we ask you today to be with us and give us strength and wisdom as we reason and work together. We ask you to inspire our judgment and give us the courage to do the things we believe are right.

We ask also, Lord, that you guide and strengthen our brothers and sisters in Poland as they struggle for freedom and their rights as workers and individuals. Their courage is an inspiration to all the world.

Lord, we ask you to be with and strengthen our brothers and sisters in all the captive nations. Let our deliberations here always be aimed at bringing the freedoms we enjoy to all the people of the world. Amen.

We gather here at a moment of great pain and difficulty for our people.

With our party platform—our candidates—and our personal commitment of effort to serve the people—we are here for the purpose of responding to the needs of the people with a vision of the future. A vision of the possibilities of change for the better.

A vision of a better life for all our citizens.

It is a vision of justice, decency and a driving commitment to the fullest possible development of every man, woman, and child in America.

It is a vision that means to reach into the most remote corner of the Jeffries Housing Project to the most frail and troubled youngster there—and to say that that child is our child—is America's child—and is and will always be the child of this Democratic party.

And that vision reaches equally to the black child, the white child, the Hispanic child, the Indian Child—and all others across our land.

That human family bond of love and concern and commitment is the history of the Democratic party stretching from Jefferson to Jackson, and continuing forward through Roosevelt, Truman, Kennedy, Johnson and is found today in the stewardship of Jimmy Carter and Fritz Mondale.

It is a mightly wave of human energy and effort stretching across two centuries that has rebuilt both the foundation and the face of our nation.

In every critical fight—Civil Rights, Workers Rights, Senior Citizens Rights, Educational Rights, Health Rights, Womens Rights.

It has been this Democratic Party—our party—that has fought to remove the barriers and inequities and bring the promise of freedom, dignity and opportunity to all our people.

That is the lifting dream of our party—and we meet here today to re-affirm it—and apply it to the challenges that now, in 1980 are our responsibility to deal with.

A few weeks ago, the Republican Party held its national convention in this great city.

They wrote a platform—and selected a Presidential candidate that does not understand the needs of our people—and would cause Abraham Lincoln to hang his head with dismay and a heavy heart.

The Republican alternative in 1980 is not relevant to this nation's urgent problems and opportunities.

The Republican alternative in 1980 is perhaps best summed up by its cruel and misguided decision to walk away from the fight for equal rights for women—and it should hang its head in shame.

Sending a reactionary retired movie actor from Hollywood into our Nation's highest office would be a travesty of common sense—and bring new dangers to our country.

Just within this last week we have heard Ronald Reagan tell us that the Vietnam War was good for America. Any misguided person who believes that must never be given the power to send our nation into another Vietnam.

We need instead a Presidency that is wise enough and strong enough to both protect our strategic interests and avoid a foreign war.

And we have one.

We need, instead, a Presidency that will turn to the urgent task of confronting the economic war now occurring in this city—and in every community across our entire state.

And we have one that must do more—and will do more—and we have a role to play in making that happen—

We need jobs—and industrial revitalization. We need action to reduce the invasion of Japanese cars and trucks—we need expanded Trade Adjustment Assistance—and new efforts to retrain displaced workers. We need emergency help for our people.

Only one party in America understands this need—and is committed to action –and it is our Democratic Party.

Tomorrow, in Washington, Senator Kennedy and President Carter will meet together in The White House to begin work on an economic recovery program for America. This is what we have been fighting for—this is what we need.

The hard truth is that enough has not yet been done—and we must continue to press the fight for greater action within our party and our elected leadership.

But we must never confuse that valid fight for greater efforts and new priorities within our party—with the deadly dangers posed to all we believe in by the possibility of a Ronald Reagan presidency.

Whatever reservations any of us may have—we must understand the Reagan danger for what it is—and join together in the greatest election effort we have ever made. Everything we believe in is at stake—and I am here to ask you to respond accordingly.

I hope that no person within the reach of these words would allow the proper debates within our party to divert us from the immediate task that now faces us.

We must begin the hard work of electing our entire Democratic ticket—and that must begin with an all-out personal commitment to re-elect President Jimmy Carter—and Vice President Fritz Mondale—and we must start here and now.

It is their jobs and ours to keep Ronald Reagan and his reactionary camp-followers out of The White House.

We must re-elect all our Democractic incumbents in Congress: John Dingell, Bill Ford, Jim Blanchard, Dave Bonier, Dave Kildee, John Conyers, Bill Brodhead, Bob Traxler, Don Albosta, Bob Carr, Howard Wolpe. And we have other vital races to win.

We need George Crockett and Dennis Hertel sent to Congress.

We must give our Congressional challengers—Dan Dorrity, Kathleen O'Rielly, Dale Spick, Wayne Daniels, and Jerry Furst, the support they need to win.

We must work hard to elect our Democratic State Legislative candidates—who will draw the new political boundary lines for the next decade.

We must elect all the State Board and Supreme Court candidates we nominate today.

We must support and elect our local Democratic candidates at the city, county and township level.

We need a united effort for all Democrats—I am pledged to that effort—and I am asking for your pledge today.

In 1968—our party went throught a great struggle before we nominated Hubert Humphrey for President.

Because our party did not unite to elect that great man—we have had instead long years of difficulty and national damage.

We could have spared ourselves Watergate—if we had elected Hubert Humphrey when we had the chance.

The President we elect on November 4th—will soon be naming 3 or 4 people to lifetime appointments to the Supreme Court of our land.

Those Supreme Court justices—will likely serve until the year 2000 and beyond.

Can you imagine what would happen if Ronald Reagan were to be President and make those appointments?

Can you imagine what would happen on the great civil rights questions?

What would be the outcome of the struggles of women and minority persons to receive equity and equal justice under the law?

What would happen on the labor issues—and to the working men and women across our land?

Every person in this room today has the power to affect those decisions.

With the Nazi party and the Klu Klux Klan on the march again—here within our own state.

We must understand our duty and we must do it.

Our Democratic Party is not perfect—nor are those of us who make it up. Our great party is the sum total of our dreams and ideals—and yearnings for our country—and for the future. We are the party of the people—of all the people.

And my friends, there is no other.

So our task is clear. We must leave here—united as one—to fight with all our strength to carry Michigan for the Carter ticket and every other Democrat on the Ballot.

With God's help—and our best effort—we shall achieve that goal.

Thank you.●

RIGHTS OF LANGUAGE MINORITY CHILDREN THREATENED

HON. SHIRLEY CHISHOLM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mrs. CHISHOLM. Mr. Speaker, in adopting an amendment to the Labor-HEW appropriations bill yesterday which will effectively prohibit the Department of Education from requiring bilingual education, the House did a great disservice to the language minority children of this Nation. In the Lau versus Nichols decision, the U.S. Supreme Court mandated that language minority children had a right to an equitable education. Lau found that non-English-speaking students were being denied equal educational opportunities when educated in English-only classrooms. The major debate which surrounds bilingual education is whether children should be taught in their native language. The proposed guidelines by the Department of Education specify that bilingual education must be provided to children who have limited proficiency in English and greater proficiency in their native language. If a child is found to be more proficient in his native language, the new rules would mandate that he be offered bilingual education in required subjects as well as instruction to improve his English. The Department of Education has not overstepped its bounds and created a new Federal interventionist policy rather the Department is only continuing a policy which has existed for 10 years. Since 1970 the Federal Government has interpreted discrimination on the basis of national origin to include students with limited English proficiency. The House action yesterday ignores both the litigative and administrative history of the Lau regulations and violates the intent of title VI of the Civil Rights Act of 1964 which prohibits discrimination in federally funded programs on the basis of race, color, or national origin.

The House amendment, in effect, throws into complete disarray the hundreds of agreements entered into during the past 5 years between the Federal Government and school districts. The Department's efforts to provide clear guidance for protecting the rights of language minority children have been stymied before any public comment could be offered on the proposed rules. The Congress cannot continue to disallow regulations promulgated by Federal agencies before the public has an opportunity to give their views on these regulations. It should not be our job to determine the characteristics of a regulation, otherwise there would be no need for a public comment period.

I would hope that our companion body, the Senate, will act to remove this obstacle to educational equality for all our children. Let the public comment period determine the final rules for bilingual education.●

INTELLIGENCE COMMITTEE REPORT ON THE BILLY CARTER CASE

HON. EDWARD P. BOLAND

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BOLAND. Mr. Speaker, in the interests of providing the House with the report of the Permanent Select Committee on Intelligence dealing with the Billy Carter case, I ask permission that the report be printed at this point in the RECORD:

REPORT IN THE MATTER OF BILLY CARTER

(In relation to the matter requested in H. Res. 745)

The Permanent Select Committee on Intelligence has examined classified material touching on the relationship between the Government of Libya and Billy Carter and his affairs. The Committee received material of this nature from the White House, the Department of State, the Department of Justice, the Federal Bureau of Investigation and the entire intelligence community. The materials examined by the Committee date from February, 1978, until early August, 1980.

The Committee conducted a thorough review of all the classified material provided to it. The Committee decided to issue an unclassified report which responds to the questions raised by H. Res. 745, as reported by the Committees on the Judiciary and Foreign Affairs.

The Committee wishes to note at the outset that its report reflects examination of only the classified material dealing with Billy Carter and his affairs. Further, the body of the Committee's report does not draw conclusions or make judgments. It simply describes the substance of the classified material provided to the Committee in a way that protects sensitive intelligence sources and methods and ongoing government investigations.

This report does not represent an investigation of Billy Carter or his affairs. The Committee's endeavors were directed at securing and reviewing the classified material in the possession of the government concerning Billy Carter and his affairs. However, the Committee examination of the classified material provided to it raises a number of unresolved issues in the Billy Carter case. The committee is concerned that these matters receive attention and will communicate its concern by secure channels to appropriate investigatory bodies in the executive and legislative branches.

REPORT

(Numeric indicators refer to the questions in H. Res. 745.)

No classified material provided to the Committee responds to questions (1), (5), (9), (10), (11) or (13).

(2) Classified material provided to the Committee indicates that a White House staff member was kept routinely apprised by the State Department of developments relating to Billy Carter and that, after having been apprised of the paucity of information of a negative nature, this staff member advised an official of the State Department to follow routine procedures in responding to the Justice Department's request for all documents relating to Billy Carter's activities in Libya and U.S. aircraft sales to that country.

(3) and (6) Classified material provided to the Committee indicates that the White House made clear to the State Department, prior to Billy Carter's second (September, 1979) visit to Libya, that the visit was to be viewed as entirely private and that assistance was to be provided to Billy Carter only as appropriate for a private visitor, so as to maintain a low profile for the trip.

(4) Classified material available to the Committee indicates that Dr. Brzezinski learned in March, 1980 of Billy Carter's effort to secure an increased oil allocation for Charter Oil from Libya. This is the same information which Dr. Brzezinski has publicly stated that he summarized to the President.

(7) Classified material provided to the Committee indicates that throughout 1979 the White House and foreign policy officials were very aware of the unfavorable publicity from Billy Carter's first trip to Libya. Further, State Department officials were aware that the White House, in March, 1979, objected to senior level diplomats visiting Libya because of fears that such visits might be attributed by the press to Billy Carter's influence and that Libya might interpret any change in U.S.-Libyan relations to Billy Carter rather than the Libyans' own actions and conduct.

The classified material also reflects the belief of State Department officials that in March and April, 1979, the White House was concerned that the sale of Boeing 747s to Libya would be misinterpreted as the product of Billy Carter's influence; and the belief of Commerce Department officials that officials in the State Department believed that the White House might force cancellation of the sale for this reason.

Finally, the classified material reflects White House concern in July, 1979, when it was learned that Billy Carter would travel again to Libya.

(8) Classified material provided to the Committee from the Justice Department's file on Billy Carter's activities confirms contacts between Billy Carter and his representative, Randy Coleman, and the Libyan Government concerning oil allocations for the Charter Oil Company.

Classified material also indicates Billy Carter's receipt of sums of money from the Libyan Government but there are conflicts on the amounts involved. This classified material also suggests that some of Billy Carter's activities may have been undertaken on behalf of the Government of Libya.

(12) Classified material provided to the Committee indicates that meetings occurred involving the President and Dr. Brzezinski with a representative of the Libyan Government after Billy Carter helped arrange a meeting between the President and the head of the Libyan diplomatic mission in connection with the hostages in Iran, but this material makes no mention of Billy Carter.

CONCLUSION

The Permanent Select Committee on Intelligence believes that the Executive Branch's provision of classified material to the Committee has complied substantially with the requests of H.Res. 745 in this regard. Inasmuch as the material has been provided in several successive increments, however, the Committee recognizes the possibility that additional classified material may develop which may require the careful examination of the Committee.

The Committee also recognizes that the Department of Justice is continuing some

elements of its investigation of certain activities of Billy Carter, including an internal inquiry into how the matter was handled within the Department. In addition, the Committee notes that a special subcommittee of the Senate is inquiring into the matter of Billy Carter. As the Committee has identified a number of unresolved issues in this case, it encourages their resolution within the parameters of these ongoing investigations.●

AN AMERICAN HERO

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. FUQUA. Mr. Speaker, a legitimate American hero died August 19 in Tallahassee and I would like to commend his life and accomplishments to my colleagues today as exemplary of the courage and love for his fellow man that marked so much of the leadership of the civil rights movement in the South in the 1950's and 1960's.

The Reverend C. K. Steele, pastor of the Bethel Baptist Church of Tallahassee, was a peaceful man thrust by fate into the crucible of conflicting social passions as his black friends, neighbors, and parishoners justly sought the rights of citizenship guaranteed by the Constitution to all Americans.

As a southerner who lived through that period, I am intimately familiar with the inflammatory temper of the times.

Any individual willing to assume leadership in the face of the organized hostility of those who would deny others those rights by virtually any means—lawful or unlawful—deserves the description of hero even more than soldiers who face an armed and dangerous enemy across a bloody battlefield.

For weapons, all that C. K. Steele had at his command were laws often ignored by the white majority, compassion for his fellow human beings, reason, good will toward others, and the righteousness of a just cause.

That he persevered and succeeded in bringing social justice to his city is a tribute not only to him but to the cause for which he so valiantly fought.

The measure of his success can be judged by the significance with which his community—black and white—viewed his passing.

His death was noted in the lead article on the front page of the Tallahassee Democrat, his hometown newspaper, the city council of Tallahassee declared an official memorial day for Reverend Steele, and the Governor of Florida ordered flags flown at half mast in tribute.

The Tallahassee Democrat article I am offering for reprint in this RECORD, captures some of the feeling of the times in which Reverend Steele lived, as well as noting some of the changes his life has brought:

CANCER CLAIMS STEELE

(By LaNedra Carroll)

The Rev. Charles Kenzie "C. K." Steele, the man who since the 1950s led Tallahassee's march toward civil rights, is dead.

Cited at a recent testimonial as "a man who fought for the good, for the poor, for the powerless and the forgotten," the pastor of Bethel Baptist Church died at his home at 7:15 Tuesday morning after a long illness.

He was 66.

"There is no need to add laurels to make him larger in death than he was in life," said the Rev. Herbert Alexander, a close friend and neighbor. "He was a great man. As long as he lived, he gave himself up to a greater vindication of humanity."

City officials have set Sunday aside as a memorial day for Steele. The flags in front of the Capitol will fly at half-mast Monday in Steele's honor, Gov. Bob Graham said.

Steele's life was a mixture of preaching for justice and fighting for changes.

Born Feb. 17, 1914, in Bluefield, W. Va., Steele was the son of a railroad worker-turned-miner. By the time he was 15 he was preaching.

In 1938 he went to the big city—Atlanta—to attend Morehouse College. It was his first trip far from home.

In the following years he preached in Toccoa and Augusta, Ga., and Montgomery, Ala.

Then, at age 38, he came to Tallahassee.

He began preaching at Bethel Baptist Church, and for several years life in Florida's capital was relatively calm for the minister.

That calm was not to last.

It began with a bus boycott in 1956, at a time when black passengers were supposed to ride in the back of the bus.

Two black students refused to give up their seats to a white woman. They were arrested.

Steele and his followers boycotted the bus system, bringing it to a halt. Former Gov. LeRoy Collins said he had to order the temporary halt, to forestall violence at some bus stops.

"He was strong in his convictions as steel . . . ," Collins said of Steele. "(The boycott) hurt black people more that it did white people, in the sense that they needed that service more than white people did. But it showed the people of this community that they were very determined to right this wrong."

Steele was harassed by the Ku Klux Klan, snubbed by civic leaders and arrested several times. Later, he would refer to the bus boycott as the single most important event in shaping civil-rights activities in Tallahassee.

It was just the beginning. Steele was involved in other non-violent sit-ins, marches and boycotts as he and other civil-rights activists labored to achieve integration in the city's restaurants, theaters, airport and schools.

His focus was not just local. He marched side-by-side with such national luminaries as the late Dr. Martin Luther King Jr. and Ralph Abernathy in Montgomery, Selma and St. Augustine. In 1957 Steele helped King and others found the Southern Christian Leadership Conference, of which he was a vice president.

He carried the fight for equality through the '60s and '70s. The methods were different but the message was the same. In later years, he turned his attention to economic discrimination against blacks and other people.

"They have developed a more subtle way of depriving black people of their rights," he said in an interview with The Democrat two years ago, "but there will be a new group of leaders that will be able to cope with that, a group of leaders as sophisticated and subtle, yet as courageous in conflict, as in times past."

In that earlier interview, he acknowledged the progress that had been made in the struggle for civil rights. He also acknowledged, with a touch of regret, that the "surge for freedom" had its ups and downs.

"I know I have done a little something for Tallahassee over the years," Steele said then. "I've really tried to do my best to bring the Kingdom of God to the citizens of this community—both black and white—but it's not been an easy task."

It was three years ago that doctors discovered he had cancer of the bone marrow. They gave him only 22 hours to live.

Steele defied their predictions.

"Death didn't interest him that much," said one of his sons, C. K. Steele Jr. "He was not afraid of dying."

Steele remained optimistic. In the earlier interview, he looked ahead.

"Ten, 15 or 20 years from now," he said, "we'll be better able to cope with the situation than ever before. We won't have reached Utopia, but we'll be further along than we were.

"I'd like to see a day when we can bring black people and poor people together in a strong organization determined to obtain for all people an equal share of justice and equality."

Survivors include the Rev. Steele's wife, Lois Brock Steele; five sons, C. K. Steele, Jr. of New York City; the Rev. Henry Marion Steele of Orlando; and Clifford, Darryl and Derek Steele of Tallahassee; a daughter, Rochelle Steele Davis of Tallahassee; and his mother, Lydia Steele of Maybeury, W. Va.●

FEDERAL FIREARMS REFORM ACT

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. LUKEN. Mr. Speaker, I would like to express my strong support for H.R. 5225, the Federal Firearms Reform Act, and urge the Judiciary Committee's Subcommittee on Crime to act swiftly so that the House can have an opportunity to pass this much needed reform.

This legislation, introduced back in September 1979, would change the focus of Federal firearms law enforcement by providing for the development of a law enforcement strategy to replace the existing extensive bureaucratic regulation. It will remove from present gun control statutes provisions which have proven to be practically useless in combating crime or which have resulted in harassment of law-abiding gun owners. Nothing in this bill will aid criminals; nothing in this bill will impede law enforcement.

It is time that Congress put an end to the continued attacks by the Bureau of Alcohol, Tobacco, and Firearms upon peaceful citizens exercising their right to bear arms. This legislation will state explicitly Congress intent that the constitutional rights of law-abiding citizens to keep and bear arms shall not be violated by a Federal agency overstepping its authority in the name of law enforcement. We must put an end to BATF attempts at overregulation and fight crime by enforcing existing criminal codes and improving our often inefficient judicial system, not by badgering law-abiding citizens.●

FIVE-POINT PRODUCTIVITY PLAN

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BEREUTER. Mr. Speaker, for many months now, American economists have issued reports which chronicle the decline of the American economy. After such a seemingly endless stream of bad reports, we have almost become dulled to the critical nature of the sickness which pervades this Nation's economic system. We must not allow ourselves to be lulled into acceptance of this monster of inflation. We should be shocked by the intractable nature of such high inflation rates.

Furthermore, we should be appalled by the accompanying high unemployment that curses the American work force. Over 8 million people were out of work in June. That is more than the combined populations of Nebraska, Kansas, Iowa, South Dakota, and North Dakota. Experts predict that unemployment will climb even higher by the end of this year.

Such high unemployment represents a disgusting waste of precious human resources. Individual industriousness and productivity have been the backbone of this Nation. To allow so many people to become demoralized by unemployment is a disgrace and a national shame.

As recently as 1972, the U.S. standard of living was the highest in the world. Now is has slipped fifth. No one knows how much further it may fall.

No other information should be needed to prove the gravity of our Nation's economic decline. No other information should be needed to convince anyone that strong, effective policies must be adopted immediately in order to wrest this country from the grip of inflation, recession, and economic decline.

NATIONAL PRODUCTIVITY PROGRAM

For too long, our Nation's economic policies have resembled a patchwork quilt. First come actions to cure inflation, which bring on a recession and higher unemployment. Then, the Government acts to alleviate unemployment; those actions typically reactivate inflation. The endless cycle continues. To break it, the United States must adopt a bold, new strategy, designed to attack the core of our economic problems rather that address merely the symptoms.

In the past, there has been no cohesive, forward-looking, long-term economic policy—only short term, ad hoc, expedient actions that did not work. The problems are too great—their root too deep—to respond now to quick fix solutions.

Now is the time to set forth on an economic recovery plan, the heart of which is a national productivity program.

NEED FOR ENHANCED PRODUCTIVITY

Productivity is defined as the amount of output per unit of input. Reversal of the current decline in the growth of productivity is crucial to the economic recovery effort because of the inextricable relationship between productivity and the price level.

The relationship works in this manner. For example, labor productivity—that is the amount of output per unit of labor input—affects labor costs. These labor costs weigh heavily in the determination of total production costs and, therefore, in establishment of the final selling price. If increases in employee compensation outstrip the growth in labor productivity, inflation occurs. As a result, declining productivity helps breed inflation.

Due to this relationship, increased productivity growth represents one of the most potent remedies for fighting inflation and unemployment. Recent studies indicate that a 1-percent increase in productivity growth will produce more than a 1-percent reduction in the inflation rate. In contrast, experts estimate that 1 million people must be unemployed for at least 2 years in order to obtain a 1-percent reduction in the inflation rate. Furthermore, other studies demonstrate that industries with the highest growth in productivity also possess the highest growth in employment. Obviously, enhanced productivity will be the key to economic recovery.

An effective national productivity program must consist of five basic components. The program must:

One, promote investment in capital equipment and human resources and encourage savings;

Two, decrease the tax burden upon workers and businesses;

Three, encourage exportation of American goods and services;

Four, eliminate unnecessary or counterproductive regulations imposed upon the business community; and

Five, promote research in, and development of, new technological advances.

STEP 1. PROMOTE INVESTMENT AND SAVING

The key element of the national productivity effort will be the promotion capital investment for the purpose of rebuilding and expanding America's industrial base.

In recent years, the U.S. capital investment record has been dismal. During 1947-73, business investment grew at an annual rate of 3.9 percent. Over the subsequent 6-year period, that rate dropped to 1.4 percent annually. Currently, only 10 percent of our gross national product is devoted to investment purposes. By comparison, the booming economies of West Germany and Japan boast investment rates of 15 and 20 percent of GNP respectively.

To reverse the investment decline, Federal policies must be adopted which will remove impediments to investment or which will establish investment incentives, particularly incentives for investment in capital investment; therefore, this must be a focal point for Government policies.

Federal policies, however, must concentrate upon assisting the small business sector of the economy because the greatest potential for growth and employment still rests in that sector. Businesses with 20 or less employees created 66 percent of all new jobs during a recent 7-year period, 1969-76; those with less than 500 employees accounted for 87 percent of all new jobs added during the same period. Clearly, the best hope for producing a positive, immediate impact upon the economy comes through an early concentration of Federal actions upon the small business sector.

Capital investment: The existing, complex system of depreciation for plants and equipment retards investment because inflation undermines the ability of companies to recapture their investment dollars. An effective incentive to capital investment, therefore, would be enactment of a simplified, accelerated depreciation system. Small businesses, in particular, would benefit from simplified, accelerated depreciation because, unlike large corporations, they typically finance plant expansion and equipment purchases with their own profits—not through the sale of bonds or the issuance of stock.

Corporate income tax: Delegates to the White House Conference on Small Business recently designated as their top legislative priority the further graduation of the corporate income tax, particularly at the lowest income levels. Inflation now reduces the real value of profits; yet, the tax rates remain the same. As a result, businesses retain less money to finance investment activities. This adverse development must be corrected; therefore, the corporate income tax rates must be revised in order to increase the retained earnings available for reinvestment by the small business sector.

Tax credits for job creation: Not only must America strengthen its investment in capital equipment and buildings, it must enlarge its investment in human capital. Millions of Americans now stand unemployed and idle, their talents and energies wasted by the nationwide unemployment problem. This distressing situation must be corrected.

By 1990, the labor force in America will reach 120 million people. That represents a 28-percent growth between 1975 and 1990, a labor force growth which will lead the industrial world. Productive jobs must be found

for these individuals as they enter the labor market.

An expanded program of tax credits for job creation must be developed and implemented in order to encourage businesses in all parts of the country to draw these individuals into the productive stream of society.

Job training: Finally, a new program of education and vocational training must be adopted in order to assist individuals thrown out of work by economic factors beyond their control.

To people out of work, their solace is an unemployment check and a sometimes faint hope that this period in unemployment limbo will end before their unemployment compensation terminates. America must take positive steps to remove workers from this state of dependency and anxiety.

Countercyclical job training programs, such as those used successfully in Europe, attempt to retrain unemployed workers for new positions. Experiments with these programs must be tried here as well, in order to counter the growing problem of long-term unemployment which undermines our Nation's economic health and to counter the hopelessness and despair which attacks the jobless.

Fundamental changes in America's educational system and vocational training programs must be devised as well for the long-term benefit of our economy.

Illiterate or untrained individuals encounter almost insurmountable obstacles in attempting to penetrate the job market. To allow thousands of individuals annually to leave school even though they cannot read beyond a third-grade level, if at all, has been one of this Nation's gravest mistakes. Our educational system fails us unless it provides each individual with sufficient basic skills to enable that individual to function effectively in American society. America's sophisticated economy cannot flourish without the educated, trained workers necessary to operate its machines and perform its agricultural, commercial, industrial, and service activities.

Savings: Massive amounts of money will be needed to finance this investment and rebuilding effort. The best way to finance this buildup will be through savings. Other forms of financing, such as the issuance of bonds or the sale of stock, serve only to fuel the fires of inflation. Furthermore, if more money is available to finance industrial expansion through savings, the cost of funds will be lower, thereby reducing ultimate production costs and sales prices.

The level of personal savings within this Nation recently plunged to a dangerous level of 3.4 percent of disposal income. Japan's citizens, however, save 20 percent of their comparable income. West Germans save approximately 14 percent of disposable income.

To encourage individuals to save, Congress must reduce the marginal tax rate upon individual savings. Greater exemptions must be allowed for income earned on savings activities. The recently enacted $200 exclusion from taxation for interest income—$400 in the case of a joint return—is a step in the right direction. Much more needs to be done.

STEP 2. REDUCE THE TAX BURDEN UPON BUSINESSES AND INDIVIDUALS

In the 12-month period between October 1, 1980, and October 1, 1981, the Federal Government will increase the tax burden upon Americans by $85 billion. This increase will be attributable either to new taxes—for example, the new windfall profits tax on crude oil sales will account for $18 billion of the increase—or to higher tax rates—for example, the scheduled social security tax increases will cause $10 billion of the total increase. In addition, the failure of the tax system to adjust for artificially higher incomes—which result when individuals try to keep pace with inflation—will cause $13 billion of this unwarranted tax increase.

Federal spending restraint: In the 2-year period between October 1, 1979, and October 1, 1981, Federal Government expenditures will have grown by at least $120 billion. This intolerable trend must be halted. The Federal Government must control its destructive spending urges. Congress must stop routinely authorizing deficit spending. No longer can the American taxpayers be expected to shoulder the burden of spending levels which rise by the tens of billions of dollars annually. As long as the individual wage earner or businessowner takes home less real income for each additional hour worked, incentives to improve productivity will be worthless.

One promising ingredient in the battle against rising Federal spending would be passage of House Joint Resolution 395. This resolution would limit the annual growth of Government spending to an amount equal to the growth of the Nation's economy.

Indexation of income tax rates: Furthermore, income tax rates must be adjusted annually to reflect the impact of inflation upon the value of a worker's dollar.

STEP 3. INCREASE EXPORTS

Efforts to intensify America's exporting efforts will be another significant element of the national economic recovery program. The exorbitant cost of foreign oil—over $80 billion during the current year—has been a principal cause of the inflation gripping our Nation. An improved exporting performance will help balance this trade problem. Moreover, it will assist in the fight against domestic unemployment. Experts estimate that each $1 billion of exports means 40,000 domestic jobs; therefore, export programs must be intensified.

In 1960, America accounted for 18 percent of the world's exports. In 1970, that share dropped to 15.4 percent. Since 1970, the United States has lost its place as the No. 1 exporter of manufactured goods: West Germany has now displaced us. Japan's surge in foreign sales threatens to push the United States further down into third place. Only 7.5 percent of our gross national product is exported; this compares unfavorably with rates in other countries. For example, the Netherlands exports 38.3 percent of its gross national product. Our export percentage is now the lowest of all industrial nations. Obviously, America's international position has eroded. Unless immediate actions are taken, this slide may be irreversible. One of America's top economic priorities must be to establish the cooperative effort between Government and the private sector which will be necessary to make our Nation once again the world's foremost exporter.

Current export activity is now dangerously concentrated in a few companies. Just 2,000 companies provide more than 80 percent of all U.S. exports. More than 50 percent of the products exported are produced by approximately 100 companies. Only 25,000 of approximately 250,000 U.S. manufacturers export, although the Department of Commerce estimates that almost double that number could profitably engage in foreign sales ventures.

The expense of initially penetrating foreign markets, the lack of information about foreign sales potential, and some U.S. laws have acted to hamper export efforts. To improve our export potential, the Federal Government must take several steps.

Export trading companies: First, Congress must pass pending legislation which would allow the establishment of export trading companies. Lack of expertise in foreign marketing and insufficient financing to support export efforts now hinder many potential exporters, particularly small companies. The establishment of export trading companies, used successfully in Japan and Europe, would enable a number of sellers to pool their resources in order to obtain the marketing, transportation, and other services necessary to enter foreign markets. Passage of this legislation would also remove current antitrust barriers to the formation of these companies.

Corrupt Practices Act: Second, Congress must pass legislation designed to clarify the vagueness of the Foreign Corrupt Practices Act. America's attempt to inject morality into international business activities may be laudable, but the vagueness of current legislation curtails or unduly delays trading activities, thereby discouraging export efforts unnecessarily.

Funding of export promotion activities: Our Nation's leaders must make export promotion a national priority. The funds necessary to finance key Federal export promotion activities—for example the loan programs of the Export-Import Bank and the trade assistance programs of the Small Business Administration and the Department of Commerce—must be forthcoming.

The U.S. Department of Commerce received only $30.5 million during the current fiscal year to finance its export development programs. Only 150 domestic officers assist in export promotion. Japan, by contrast, appropriates $48 million annually and employs almost 600 people in its export related programs, even though their export trade volume is slightly more than half of the U.S. volume.

Money should also be appropriated to fund fully the Worldwide Information and Trade System, a computer information system designed to supply export related information to American businesses.

Establishment of priorities for Government assistance: Federal resources should be concentrated upon those products that possess the greatest possible export potential, not upon a haphazard group of products unlikely to be attractive to foreign purchasers.

Agricultural products, machinery, and high technology products are our chief exports—one-third of America's agricultural acreage produces products which are exported, a fact which demonstrates the importance of this segment of the economy to our export situation. Alternative energy sources, coal, machine tools, and food possess great potential in foreign markets. Efforts to target assistance to those products must be commenced immediately.

Removing foreign trade barriers: Finally, the Federal Government must be relentless in assuring American exporters that foreign doors to American products will be open. In particular, nontariff barriers now in place in Japan and France must be removed.

STEP 4. STREAMLINING THE GOVERNMENT'S REGULATORY PROCESSES

The decade of the 1970's saw an unprecedented rise in Government regulation of all segments of society, as America sought to achieve a number of desirable goals, including the goals of clean air, clean water, and a safe workplace.

Few people disagreed with the desirability of these goals. Yet, the Government's efforts to achieve these goals through regulation have been plagued by confusion, duplication, excessive delay, uncertainty, rigidity in application, and expense far beyond the expectations of any individual.

Cost-benefit tests: Congress must take positive steps to coordinate, streamline, and simplify the current regulatory system. Most importantly, cost efficiency must become a primary consideration in the development process. Regulations now impose tremendous costs upon individuals and businesses, yet, no one knows whether these costs are justified by the resulting benefits.

Remedial legislation must include special consideration for the impact of regulations upon small businesses. Compliance costs for small businesses are 7 to 10 times greater than those of larger enterprises.

Flexibility in achieving regulatory goals: Government agencies must no longer be allowed to mandate the methods by which businesses must comply with certain objectives. Performance standards, rather than rigid and overly specific regulations, must be adopted whenever possible. Businesses may then be able to select the most cost-effective way to meet the goals set by the agency.

STEP 5. RESEARCH AND DEVELOPMENT

America's preeminence as the world's leading industrial power can be attributed in large part to the inventiveness of her citizenry. Technological innovations accounted for 45 percent of the U.S. economic growth between 1929 and 1969. These advances generate improvements in productivity and enable us to maintain a high standard of living despite shortages in natural and human resources.

The recent downward slide in this segment of economic activity is apparent as well. Industrial research activities grew only 8 percent over the last 11 years. Overall expenditures for research and development once—1964—accounted for 2.1 percent of the gross national product. In 1978, that percentage fell to 1.6 percent.

Current economic conditions within this country, in particular inflation, have undermined industry's ability to devote the necessary financial and capital resources to research. Modifications of Federal tax policy, as well as a reduction in the rate of inflation and in the resources required to meet regulatory demands, could help counteract the disincentives and obstacles to research now imbedded within our economy.

Tax free innovation funds: Congress should enact legislation to allow companies to establish research and development funds similar in operation to an independent retirement account. Contributions to the fund and the earnings on it would be untaxed as long as the money remained within the fund. This system would help companies accumulate the amounts of money typically needed to finance research activities.

Targeting of assistance to small businesses: Special emphasis should be placed upon assisting small businesses in their research efforts. Businesses employing less than 1,000 employees accounted for one-half of the technological innovations developed in this country during the 1953–73 period. Efforts to direct a greater share of Federal research dollars to the small business sector, therefore, should be intensified.

PRIVATE ACTION NEEDED AS WELL

The Nation's productivity problems, however, will not be solved by Government action alone. Each and every worker and business within this Nation must undertake a productivity improvement program as well.

Japanese companies, unaided by the Government, have improved their productivity tremendously through individual effort. One key component of that individual effort has been the establishment of productivity circles, employee-employer discussion groups which meet regularly to identify and implement ways to improve efficiency and productivity. America's Lockheed Corp. estimates that it saved $3 million during a recent 4-year period by establishing a similar program. Businesses throughout the Nation should explore the value of adopting their own productivity circle program.

SUMMARY

Only a national effort—joining Government, business, and labor in a cooperative effort—can help cure our Nation's economic ills. Each and every citizen must do his or her part to promote the economic recovery which is essential to the future of this Nation. Hope—realistic hope—for a better future must be restored in the minds and hearts of every American. Jobs must be made available for each able-bodied person who wants to work.

A national economic recovery program will require short-term sacrifices. The benefits from this effort—reduced inflation, increased employment, economic stability, a higher standard of living, and improved public morale—will truly make the short-term sacrifices worthwhile.●

PRESIDENT'S REINVESTMENT STRATEGY WELCOME ON LABOR DAY

HON. ADAM BENJAMIN, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BENJAMIN. Mr. Speaker, I commend and congratulate the President on his thoughtful and innovative program and strategy announced today, which will certainly serve as a first step in the long process of reindustrializing America and the reinvigorating of our economy.

The conceptual aspects of the program allow further input and refinement by all Americans and their Congress. The program is not inflationary—not a quick fix—not an economic stimulus—not an election lure—but a bona fide blueprint for the improvement of America in the 1980's.

While there might be some who criticize for political gain—I am most hopeful that most Americans will join to offer constructive comments to improve our economic climate, social system, and lifestyle—the door has been opened for the intellectual and pragmatical support and shaping by all of us.

During a preview of the strategy, the executive committee of the Steel Caucus was promised that a steel sector policy would be developed and annexed within a month to the Presi-

dent's proposed "Investment Strategy for the 1980's."

Assistant Domestic Adviser Bert Carp told steel area legislators that they would be consulted and counseled in the development of a steel policy, some of which may be considered as a part of the general business and industrial investment strategy announced by the President today while other parts will be developed specifically for the steel industry and its workers.

While the investment strategy, calculated to employ a million more Americans by 1982, offers business and industry 56 percent of the proposed tax relief for 1981 and 60 percent for 1982, its initial centerpiece is the formation of an industrial revitalization board composed of labor, business and public representatives (not government) who will advise the Nation on productivity, targeted developments and consider the formation of an industrial revitalization authority to make direct investments in promising enterprises but not to prop up failing businesses. The specific policies for auto and steel may be referred to the board authority for implementation.

The business and industry tax features include a constant rate depreciation schedule which is expected to increase cash flow for modernization. The President favored a modification of the Benson proposal (constant rate depreciation) over the Jones-Conable plan (10-5-3) because of its focused advantages to important industrial sectors of the economy over general real estate investment and its not slicing into government revenue heavily.

It also includes a 30 percent refundable aspect of the 10 percent investment tax credit as well as an additional 10 percent investment tax credit for distressed areas which would be certified by the Commerce Department and limited to $1 billion. The depressed area credit will probably be applicable to most steel manufacturing areas.

On the spending side, the President proposed adding $5 billion of loan guarantees to the economic development programs. The program agency may be the Economic Development Agency which has an added $1.5 billion in the coming year, but whose authorizing legislation is still pending in conference, or the new revitalization authority.

The President also proposed an additional $300 million for job training, $1 billion for weatherization programs and $600 million for research and development.

The President's program supported Members of Congress working to cut off State level general revenue which will be replaced with countercyclical assistance to distressed State and local governments. This proposal is one of two to become effective immediately.

For individuals, the President included an 8-percent credit to offset scheduled 1981 social security tax increases which would be refundable to State and local governments as well as a liberalization of the earned income tax credit for low-paid wage earners.

Individual tax cuts also include mitigation of the marriage tax penalty which discriminates against families in which the husband and wife are wage earners.

The other program proposed for immediate enactment is a 13-week Federal extension of unemployment insurance triggered by local and State unemployment rates. This would extend benefits to 52 weeks in some instances.

The Carter tax program is expected to cost $27 billion in calendar year 1981 and $37 billion in calendar year 1982. However, most of the program (except for the countercyclical assistance and unemployment insurance extension) offered in the President's white paper (allowing for further input and refinement) is not scheduled until 1981 and will dent the fiscal year budget by $7 billion compared to the $40 billion and growing cost of tax measures being considered by the Senate Finance Committee and $25-$35 billion cost of the Reagan-Kemp-Roth tax proposal.

In essence, the strategy announced by the President today provides a framework within which the Steel Caucus may team with the administration to form and implement a long term steel sector policy which will assure the continuation of our U.S. steel manufacturing centers, guarantee the employment of steelworkers and assure the Nation that its defense will be maintained by a viable steel industry.

I am most hopeful that the Congress will work to adopt the program, specifically the tax proposals, this year for operation in 1981. While there certainly is the possibility of damage by politically motivated opposition, it is necessary that we advise business and industry of the rules as early as possible. Consequently, I urge that the program be moved and adopted before the conclusion of the 96th Congress—probably during the postelection session.

In conclusion, the President's program brightens this Labor Day period, offers new direction to the country and invokes a well-balanced approach to the future development of our economy. I urge support for the President's program and hail him for his foresight, courage, and commitment—to America and its economic strength.●

A TESTIMONIAL TO REV. AUSTIN R. COOPER, SR.

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. STOKES. Mr. Speaker, it is with a great sense of pride and admiration that I take this opportunity to note the 10th anniversary Celebration and Appreciation Day service for one of my good friends in Cleveland, Ohio—Rev. Austin Rellins Cooper, Sr. On Sunday, September 14, 1980, the Saint Andrew's Episcopal Church of which Father Cooper is the rector and the entire Cleveland community will honor him for 10 years of unfaltering service. I join them in this testimonial to a dynamic human being.

Mr. Speaker, Reverend Cooper has had a profound impact on the lives of the churchgoers in Clevaland as well as the nonchurchgoers; the rich as well as the poor; and whites as well as blacks. Through his active involvement with many diverse groups, he has emerged as a shepherd of some of the most important social, civil rights, and religious gains of the people in the great city of Cleveland.

Mr. Speaker, Rev. Cooper's philosophy about the responsibilities of the community to the less fortunate is deeply routed in his background. Born in Miami, Fla., to parents native of the Bahama Islands, Reverend Cooper was reared in what he often terms as a "separate and unequal" educational system in Coconut Grove, Fla. Many of us are familiar with this area as a result of the recent Miami riots. But, the racism he experienced in Florida has only made him cling to his principles and in turn made him a beacon of hope for the hopeless in Cleveland.

Father Cooper completed public school in Florida and went on to matriculate at St. Augustine's College. He received his master of divinity degree from the Seabury-Western Theological Seminary in Illinois. Reverend Cooper was ordained on May 13, 1961, as an Episcopal priest in Coconut Grove, Fla.

His work experiences with the Episcopal Church include positions throughout the country. He brought to St. Andrew's Episcopal Church in Cleveland 10 years of service and has in turn served that particular church for 10 years.

Additionally, Reverend Cooper has been an ardent worker in the community and has been duly recognized by many groups for his service. Included in these citations are the "Man of the Year" award from the Alpha Phi Alpha Fraternity and a citation by the Greater Cleveland Interchurch Council and the Call and Post Newspaper from community service. Additionally, he was listed in the 1976-77 edition of "Notable Americans" and was the Episcopal delegate to the National Council of Churches Conference on Racism in Cleveland in 1980.

As one of Cleveland's most distinguished residents, Reverend Cooper is a living sermon to many people. Through his daily activities he continues to teach that violence and the abuse of power are not the keys to exemplary living but rather respect and commitment to just principles are more important.

Mr. Speaker, I have observed how well the message of Reverend Cooper has been delivered to his congregation and to the people in the community. But perhaps nowhere is it more pronounced that in the words of his son, Austin Cooper II, who worked in my office this summer. I would like to quote Austin at this time:

> So often I have heard him say that I have an obligation to carry on the work of those who went before us. My father has taught me always to be least concerned about people liking me and to be more concerned about people respecting me.

Mr. Speaker, Reverend Cooper has indeed carried on the work of those who went before him. He, in turn, has received the respect of the entire community and probably most important the respect of his son.

Therefore, I would like my colleagues to pause and salute Rev. Austin Cooper, Sr., and not only on his anniversary celebration but also on the work he is doing in the community.●

JIM MATTOX STATEMENT ON ALIEN EDUCATION IMPACT AID ACT OF 1980

HON. JIM MATTOX

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. MATTOX. Mr. Speaker, I have today introduced a bill, the Alien Education Impact Aid Act of 1980, that would provide financial relief to school districts that are ordered by Federal courts to admit undocumented alien children as students.

On July 21, 1980, the U.S. District Court for the Southern District of Texas issued a decision requiring Texas school districts to admit undocumented alien children. The court's order has been stayed by the Fifth Circuit Court of Appeals.

Under our Constitution, States have no power to influence the flow of people across international borders. Immigration is a national responsibility. But the Federal Government has, in effect, failed to enforce its own immigration laws. This Federal inaction has resulted in the presence of large numbers of undocumented aliens in our country.

If we are realistic, we must admit that the children of undocumented aliens are likely to be here for a long time. It is only prudent that they be provided with an education. To ignore their educational needs would be to invite social problems in the future. But since these children are here as a result of national policy decisions—or, perhaps more precisely, as a result of the Federal Government's inability or unwillingness to enforce its own immigration policy—it seems only fair that the entire Nation, and not just specific school districts, share in the costs of educating these children.

Any program designed to assist school districts in educating undocumented alien children must recognize two facets of the problem. First, the undocumented alien population is likely to be unevenly distributed across the country and within a State. This means that some school districts are going to have major demands placed on their resources, while other school districts are going to have little or no pressure placed on their resources. Second, undocumented alien children are likely to have special educational needs, such as a need for special English language instruction. My bill takes into account these two aspects of the problem.

One title would provide aid to districts based on the number of undocumented alien children enrolled in a district's elementary and secondary schools. This title would authorize $450 per eligible child.

A second title is designed to assist those districts that experience a particularly heavy increase in their student population due to the court ordered admission of undocumented alien children. Any district in which the number of undocumented alien children equals 500 or 5 percent of the student enrollment, whichever is less, would be eligible for aid under this title. Funds provided under this title would be used to provide supplementary educational services. This title provides greater amounts for the first and second years of an eligible child's attendance than for the third year of his attendance. It authorizes $750 per eligible child for the first year of attendance, $500 per eligible child for the second year and $350 per eligible child for the third year.

This legislation addresses a problem that arose because of Federal inaction. Federal assistance in remedying that problem is surely warranted.●

GEORGE WILL'S ARTICLE

HON. THOMAS B. EVANS, JR.

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. EVANS of Delaware. Mr. Speaker, George Will's article deserves the attention of Members of this body and the American people:

NO HITS, NO RUNS—BUT ERRORS?

(By George F. Will)

The George Brett Trophy, for terrific batting by a presidential candidate in August, will not be awarded.

Ronald Reagan, who knows that Jimmy Carter's campaign consists almost entirely of charges that he is bellicose, antiquated and flip, managed in one week to praise American involvement in the Vietnam War, voice skepticism about the theory of evolution and use China to dramatize a ticklish problem of diplomatic recognition: would he—could he—should he—establish normalized relations with his running mate?

Reagan said, correctly, that our cause in Vietnam was noble. But that subject, like the subject of evolution, is large enough to deserve more than brief, off-the-cuff ventilation.

Our cause was the defense of a small ally from aggression: it was an attempt to prevent the horrors that have, in fact, followed our failure. Reagan understands that large events cast their shadows forward, and that reassertion of American strength depends, in part, on Americans' rejecting the shame they have been told to feel about Vietnam, an undertaking that actually was, in the words of Eugene Rostow, "legally, morally and strategically . . . identical with the Korean War."

Regarding Taiwan, Reagan's explication was careless, but his instinct is sound, which is more than can be said for the president. Reagan understands that Carter has acted as though Peking was doing us a favor by accepting normalized relations, a favor for which we should pay much and ask nothing. Such relations are at least as important to Peking as they are to us, so Peking can jolly well pay the price of tolerating decent relations between the United States and an old ally. Instead, Carter allowed Peking to dictate terms that made the United States party to a range of niggling humiliations of Taiwan.

Regarding Vietnam and Taiwan, Reagan has a better case to make than he has taken care to make. Regarding both, he has at least been more concerned with honor than politics. The reverse is true of Carter's campaign.

Many Americans, schooled in cynicism by Carter's manipulation and exploitation of the Iran tragedy and other foreign and defense matters for political gain, expect "October surprises"—foreign policy adventures timed to influence the election. Certainly Carter's August surprises were remarkably reckless.

His revised nuclear targeting strategy surprised Republicans: it plagiarizes page 55 of the Republican platform and concedes Reagan's point about the vulnerability of our land-based deterrent. It surprised the secretary of state, who would have liked an opportunity to shove his oar into the policy-making process. It surprised the Russians, who know Carter is not taking the procurement and other measures necessary to make this new "policy" more than a campaign maneuver.

Carter surprised the American Legion (and anyone else who knows the record he is struggling to obscure) when he said that "instead" of building the B1 bomber, he decided to "accelerate" development of air-launched cruise missiles. The truth is that after he killed the B1, he continued to retard the air-launched cruise missile program, and has delayed it at least two years.

Now the administration has leaked and wildly misrepresented information about some of the most closely kept defense secrets since the Manhattan Project. (For security reasons, some civilians working on the "invisible" aircraft technologies have had to agree to allow the government to tap their phones.) Actually, these new programs, some of which may enable aircraft to "absorb" or otherwise defeat radar detection, are not new. Carter did not start them, and their fruits are not imminent. But considerations of truth and national security must bow to the demands of the Carter campaign.

The useful life of any weapon is a function of the enemy's speed in devising countermeasures. In its desperation to blur its

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record by advertising hypothetical weapons, the administration may have shortened the useful life of any weapons utilizing the so-called "Stealth" technologies.

Had Carter not killed the B1, there would now be operational squadrons of B1s. Because he killed it, the United States can have nothing comparable until the 1990s. The administration may have contrived to give the impression that it has plans to utilize "Stealth" technologies for an aircraft that will fill the gap of vulnerability created by its B1 decision. It does not.

Still, Harold Brown, the compliant secretary of defense, says, preposterously, that "Stealth" technologies (for hypothetical aircraft that do not exist, cannot exist in this decade and probably will never exist if Carter is reelected) "alters"—Brown uses the present tense, for Pete's sake—"alters the military balance." It is exquisitely right that the Carter administration, which has killed or delayed every strategic program it inherited, and has initiated none, now brags about invisible aircraft.●

U.S. LEADERSHIP IN THE WORLD TODAY

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. DORNAN. Mr. Speaker, I have run across this excellent composition written by a young constituent of mine, Kenneth Petersen, 17, of Santa Monica, Calif. Ken won first prize for this work in the local Kiwanis Club essay contest in April of this year. The theme: "What Kind of Leadership Role Should the United States Play in the Turmoil of the World Today?" I urge all of my colleagues to take time to read this well-written essay:

WHAT KIND OF LEADERSHIP ROLE SHOULD THE UNITED STATES PLAY IN THE TURMOIL OF THE WORLD TODAY?

During the past decade, the military might of the United States has been hampered by a wide variety of events and public apathy concerning the maintenance of our national defenses. Congressional budget cuts along with the dishonor that accompanied the outcome of the Vietnam conflict have helped to create a weakened United States along with a pervasive foreign attitude that as a nation, we have once again reverted to the "Paper Tiger" state. Recent militaristic and political moves by foreign nations have only served to strengthen the premise that the United States of today is more bluster than brawn. The leadership role that the United States must assume in the current unstable climate must be a combination of military strength, economic stability, and diplomatic integrity.

The United States military forces must be equal to or stronger than those of any other nation if we are to achieve credibility as a world power. The weaponry in our arsenal has become extremely sophisticated and promises to become even more so in the future. This advanced equipment requires capable, intelligent, and well-trained personnel to operate it. At the present time, however, the Armed Forces are sorely lacking in trained personnel. Unfortunately, the quality of today's all volunteer services does not meet this challenge. Either the paid benefits of today's forces must be improved dramatically, or we must turn to a universal military service to rectify the personnel crisis that exists. If this level of man and machine can be obtained, our Armed Forces will provide us not only with the necessary military strength to meet any situation but also serve as a deterrent toward any agressive actions on the part of foreign powers.

America must also hold a position of economic leadership in the world. To do this, the United States must develop a consistent economic policy toward other nations. For example, we must pioneer the search for alternate forms of energy, thus alleviating the dilemma of being dependent on foreign oil. We must also share our advanced technology with those in the world who agree politically with our positions and not with those who could be viewed as formidable opponents in future conflicts. Stabilizing our currency at home and abroad would also contribute to our overall economic power. This process, however, must be started at home. Until our economic problems have been solved at home, the world as a whole, can never look to us for leadership.

Another aspect of the leadership role that the United States must play is in the area of international diplomacy. It is obvious that at the present time, our Nation lacks a definitive foreign policy. We must develop such a policy and adhere to it in order to gain respect and confidence in the eyes of the world. Such events as the recognition of Red China over Taiwan and our support of the various dictatorships around the world cause the world to wonder if we are really in favor of democracy. Other foreign nations are looking to us for some measure of consistency in our foreign policy.

The United States position in dealing with the problems plaguing the world today must be a blend of strength, integrity, and dependability. We must recognize that as a leading super power, we must be looked upon as a nation that can and will back up its words, treaties, and policies. We must help to maintain peace while at the same time remain powerful. The first step in achieving these goals, however, must come through the development of strong leadership at home.●

SAY SOMETHING GOOD ABOUT AMERICA

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. HUGHES. Mr. Speaker, the word "patriotism," too long out of vogue, is enjoying a much needed renaissance in our country.

Recently, one of my constitutents, Dr. Andrea Lippi of Somers Point, N.J., gave me a copy of his poem, "Say Something Good About America."

The thoughts expressed in Dr. Lippi's verse are good advice for all of us. Now is the time to reflect upon the good things in our country that we all take for granted.

The text of Dr. Lippi's poem follows:

SAY SOMETHING GOOD ABOUT AMERICA

Say something good about America,
Praise her every day.
Say something good about America,
For 'tis here we work and pray.
Say something good about America,
The land we love so true.
Say something good about America.
America I love you.●

IMPROVEMENTS IN MILITARY PAY AND BENEFITS

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. FISHER. Mr. Speaker, I would like to express my strong support for provisions in two conference reports approved by the House which make much-needed improvements in pay and benefits for military personnel. The Defense Department authorization for 1981 includes an 11.7-percent pay increase for active duty personnel, higher reenlistment bonuses, increases in per diem travel allowances, and new procedures for retired pay computation and adjustment. The military personnel and compensation amendments increases flight pay by 25 percent; advances the implementation date of new sea pay rates and raises them by 15 percent; removes the limit on the travel allowances for personnel being transferred to a new duty station, and authorizes a variable allowance to provide the difference between the average cost of off-base housing in high cost areas and 115 percent of the basic allowance for quarters. Both bills contain other provisions but these are the major improvements in pay and benefits.

I believe that the reduction in the share of the Federal budget going to defense spending in the years since the end of the Vietnam war has gone far enough and now needs to be reversed. The first priority that I would assign to increased defense spending should go to pay and benefits for military personnel. These increases are necessary to retain trained people already in the military and to attract qualified people in the future. No matter how sophisticated the weapons systems and other hardware the military is provided with, the defense of this country cannot be carried out without thousands of dedicated, hard-working, well-trained men and women to operate them. When I know that many enlisted personnel are working for pay that is below the minimum wage and that many military families are eligible for food stamps, then I know that the pay system is shamefully inadequate. The provisions in the bills which Congress has now approved will demonstrate a commitment to improving the compensation system for military personnel. These provisions give an across-the-board increase to all personnel immediately and special increases to those performing certain specialized functions. In a very important step, the legislation takes note of the high housing costs faced by personnel in areas like the Washington metropolitan region by providing a variable housing allowance. Together these steps should ease the financial burden for Armed Forces personnel in these inflationary times.

I was pleased to support and vote for these bills.●

LABOR, HHS, AND EDUCATION APPROPRIATIONS

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. VENTO. Mr. Speaker, the following two Washington Post editorials were published on August 27, 1980. In light of this body's action yesterday during the consideration of the Labor, HHS, and Education appropriation, these editorials are especially relevant.

Mr. Cooper accurately describes how the Supreme Court's recent benzene decision takes away from workers an important political victory and places unintentioned obstacles to OSHA's enforcement of occupational safety laws. Mr. Wolfe's editorial shows that some companies have withheld or failed to gather data that proves a need for stronger worker safety standards; yet these same companies oppose the stronger standards on the grounds that no evidence exists to prove a stronger standard is needed.

Yesterday's vote to "pull the reins in on OSHA" is a part of an attempt to cripple one of the most important functions this Government can provide. It is a sad day for the American worker when his and her elected representatives refuse to provide needed enforcement powers and funds to an agency chartered to insure job safety.

[From the Washington Post, Aug. 27, 1980]

WHAT THE COURT DECIDED

(By Richard M. Cooper)

Only the Supreme Court could have done it so stylishly.

In its most important toxic substances decision to date, the court recently overturned a new standard developed by OSHA to reduce workers' exposure to benzene, a human carcinogen. The case offers a fascinating view of the interactions of the Supreme Court, Congress and a regulatory agency. And it presents in sharp focus a conflict between the court's duty to carry out the express intent of Congress and its duty to decide in favor of sensible public policy.

The decision did what the four dissenters said it did: it took away from the labor movement a political victory it had won when the Occupational Safety and Health Act was enacted in 1970. The statute directed OSHA, when regulating a toxic substance in the work place, to set an exposure standard that would ensure, to the extent feasible, "that no employee will suffer material impairment of health" even if he is exposed to the substance during his entire working life. Strong language. OSHA was trying to carry it out.

But four justices held that OSHA erred by failing to make a specific finding that exposure to benzene under the previous standard presented a "significant risk." The term "significant risk" did not appear in the statute. In a magisterial feat of magic, the plurality found the requirement in a definitional provision.

There is something undeniably odd about that definitional section, however. It defines the term "occupational safety and health standard" as one that is "reasonably necessary or appropriate to provide safe . . . places of employment." The new benzene standard can't be reasonably necessary, the plurality reasoned, unless the current level of benzene permitted is unsafe, and it can't be unsafe unless it presents a significant risk. Ergo, before changing the standards, OSHA must find that benzene at current permitted levels presents a significant risk. OSHA, of course, did not make such a finding because nothing in the statute appeared to require it. Definitions don't ordinarily contain guidelines that modify the substantive provisions of a statute. There is no reason to think Congress intended to set up two different substantive standards (one of feasibility and one of significant risk) in two different provisions of the law.

The plurality noted that "the validity of an agency's determination must be judged on the basis of the agency's stated reasons for making that determination," and it expressly refrained from holding that the record in the benzene case would not support the new standard. Rather, the plurality overturned the new standard because it rejected OSHA's rationale for it, which was based on what the plurality held was an erroneous interpretation of the statute.

OSHA's position was extreme indeed, even though it had support in the words of the statute. OSHA argued that it had a statutory duty to eliminate the cancer risk presented by benzene in the work place, subject to only one constraint; that it not put the regulated industries out of business. That was the position the plurality rejected.

If you disregard the language of the statute, there is much to be said for the plurality's position, and it should not set back the cause of health protection in the work place. Under OSHA's view, an industry had to be forced to the brink of disaster, if necessary, to reduce the perhaps negligible risk from a single toxic substance; the industry would then have few or no resources left to reduce the risks from other toxic substances. Even if OSHA's reading of the statute were correct, it couldn't work overtime. Eventually OSHA would have had to alter its course.

The plurality's requirement of a funding of "significant risk" should not present serious problems—even where data are sketchy. The plurality did not dispute the principle used by all the health regulatory agencies that any exposure to a carcinogen presents some risk. It merely held that under the Occupational Safety and Health Act only significant risks are to be regulated by standards. Even in the heartland of cancer protection—world of the Delaney Clause—the U.S. Circuit Court of Appeals, in an opinion by the late Judge Harold Leventhal, recently reached an analogous conclusion about an important class of food additives.

The plurality made it clear that OSHA should decide in the first instance what is a "significant" risk and that the criteria for that judgment do not have to be quantitative and do not have to be based on scientific certainty. OSHA can rely on scientifically reputable opinion and conservative assumptions, and need not await evidence of actual human disease. Even the new benzene standard may be sustainable if the record supports a finding of "significant risk" under the plurality's broad view of that concept, an issue the court left open. The court also left for another day the question of whether OSHA must weigh the health benefits from a standard against the costs of complying with it.

Sometimes a loss is liberating. There is a limit to the amount of resources even our society will devote to protection of health and safety. OSHA has been freed from a policy that over time might have driven it to require vast misallocations of those limited resources. The result may well be more effective health regulations in the work place.

Whether it was appropriate for the court to have distorted the statute as it did is a question that will attract jurisprudential controversy for years to come. It was a bold step even for a Supreme Court.

WHAT THE COURT DIDN'T KNOW

(By Sidney M. Wolfe)

Last month 35,000 workers exposed to benzene—a chemical known to cause leukemia at higher doses—were told by the Supreme Court that the government (OSHA) had not provided enough evidence of significant risks to their health to justify reducing their exposure to benzene from the current standard of 10 parts per million down to 1 ppm. The Supreme Court decision was the result of a petrochemical industry lawsuit against OSHA to block the standard.

What OSHA and the Supreme Court did not know—because the industry had withheld important new evidence from the government—was that workers at Dow Chemical Co. exposed to less than 10 parts per million had been found by the company's own scientists to have a significant increase in damaged chromosomes.

The results of the study on workers in Freeport, Tex., by Dow genetic toxicologist Dr. Dante Picciano had been written up by June 1977 and sent to three outside Dow consultants who generally agreed with the findings. One consultant, Dr. Marvin Legator, director of environmental toxicology and epidemiology at the University of Texas Medical School at Galveston, has said that "because of the serious implications for worker health, there is no question that the study should have been immediately sent to the government." By July, Picciano's supervisor, Dr. D. J. Kilian, had sent the study to Dow's biomedical research director, Dr. Benjamin Holder, in Midland, Mich., with a memo that stated that the study "identifies an unsuspected occupational health hazard" and recommended forwarding the results to the government.

But in August 1977, when Dow testified at OSHA's benzene standard-setting hearings, the witnesses, including Dow Texas medical director, Dr. John Venable, who had reviewed the study in June, failed to mention anything about chromosomal damage at exposures below 10 ppm and concluded that the old standard "will continue to protect our employees against any ill effects from benzene exposure."

Not until March 1, 1978, after OSHA had published the final benzene standard and it was too late for inclusion of new data in the administative record or the subsequent court reviews, did Dr. Holder finally send the study to the Environmental Protection Agency, stating that Dow had found a "statistically significant increase in [chromosomal] aberrations" in 52 workers whose average benzene exposure the company said was between 2 and 10 parts per million. Twenty-three percent of these workers had chromosomal abnormalities in comparison with only 2.3 percent in comparable Dow workers not exposed to benzene. In other words, chromosomal abnormalities occurred 10 times more commonly in those workers exposed to less than 10 parts per million of benzene, the current "safe" standard that Dow had said would "protect against any ill effects."

Dow has told the government the reason it "delayed" sending in the study was because it did not know what amount of benzene the affected workers had been exposed

to, but the average levels it later reported to EPA in March 1978 were the same as those listed in Picciano's report of June 1977.

It is admittedly unclear how many workers with damaged chromosomes will get cancer or will have children with birth defects or mutations. But no worker, given an informed choice, would opt for damaged chromosomes instead of healthy ones, especially with the mounting evidence of increased rates of cancer in people with certain kinds of chromosomal abnormalities.

Given that critical evidence was withheld from OSHA, it is difficult to blame the agency for not doing a better job of quantifying risks under 10 ppm. But now that OSHA has the industry data it should have had much earlier, its director, Dr. Eula Bingham, has said the government will reinitiate the process of lowering the standard to one part per million in order to protect 35,000 workers from being harmed by benzene.

The example of benzene shows the conflicting roles industry plays in occupational regulation. Chemical companies have failed to gather or have withheld from OSHA evidence that would strengthen the case for a lower work place standard. Yet when the standard is finalized, industry usually has sued OSHA to block its implementation, arguing that there is inadequate evidence of risk. Ironically, while all this is occurring, industry continues to attack OSHA for not adequately protecting workers. Industry thus has both the ability to cripple the collection and prompt dissemination of important health data and the seemingly unlimited tax-deductible financial resources to sue OSHA to stop every standard.

As long as this death grip continues, industry will be able to make its allegation that OSHA is not adequately protecting workers a self-fulfilling prophecy.●

TUMOR RESEARCH

HON. GUNN McKAY

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. McKAY. Mr. Speaker, I rise to suggest to the committee that they support at a higher rate the large animal tumor research. It has been reduced from somewhere in the neighborhood of $300,000 to $150,000 in this present budget. That is damaging to a very vital research need for the following reasons.

Research in this field has reached its most critical phase. There are some who feel the only research you should have is with rats and mice when in fact we are getting much greater results in many cases from the large animal research than we are in that other respect. It has been demonstrated that immunotherapy increases cancer cures in large animals whose biochemistry in this regard most resembles that of human beings. We do not yet know why this reaction occurs.

The answer to that question will provide the breakthrough we need to apply the therapy to humans and to apply it to a variety of tumor types.

Therapy is presently being used in limited instances with human beings. The success rate is fair and looks very favorable even in so-called hopeless cases, which are the only kind in which the therapy is presently applied. If this is allowed to phase out, it will be years before the level of understanding can lead to the point of breakthrough with the success that is being experienced at the present time in this program.

This program must be funded at least at the $150,000 level this year and that will only maintain part of what is needed. It is my understanding that because of the language in the report it is the total intent of the committee to send a message to the National Institute that they should continue the program and not close it out.

I have discussed this with the chairman of the committee, Mr. NATCHER, for sometime and he has assured me that it is his and the committee's intent that that be so.

I thank the chairman for his support in this most vital research fight against cancer.●

A FRESH LOOK AT ENERGY STUDIES

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. WYDLER. Mr. Speaker, last fall several major energy studies were released, and there was considerable attention given to all three by the Congress and other interested parties in Washington. At that time, I wrote an entry in the RECORD critiquing the study on energy future and, I wrote a dear colleague letter on the study "Energy in America's Future—The Choices Before Us". At that time, I lamented the fact that the energy future study became the subject of faddish praise rather than solid evaluation. This spring, Paul L. Joskow of Harvard University and MIT reviewed the two studies I mentioned and "Energy: the Next Twenty Years", a Ford Foundation study. Professor Joskow's reviews were published in the spring 1980 edition of "The Bell Journal of Economics" and he deserves considerable praise for a solid analysis of all three studies. I thought it would be useful for my colleagues to read summaries of Professor Joskow's critiques in the context of my own perspective on two of these studies which appeared in the RECORD last fall.

On September 12, 1979, I noted in the RECORD:

There has been much attention given in the past few weeks to a recent publication of the Harvard Business School entitled, "Energy Future" edited by Robert Stobaugh and Daniel Yergin. I think it is important to highlight the shortcomings of the book since it has become extremely faddish to praise it at the other end of Pennsylvania Avenue. I believe that it should be recognized that the authors have clearly taken a position of strong advocacy for soft technology. Their energy approach is focused on conservation, particularly institutional aspects in the near term, and distributed solar systems in the long term.

The position is taken that "external costs" of coal, i.e., the environmental penalties, and of nuclear (societal costs) in terms of health and safety concerns are much too great to encourage these options in the near-term to lessen our dependency on foreign oil. This position is not taken on firm ground by measuring the comparative risks of these technologies but rather from a visceral "feel" on the part of the authors that such costs tangible and intangible are simply too great. It seems to me that the thrust of the National Energy Policy and its implementation can hardly be based on such tenuous grounds as is the case for this study. * * *

It seems to me that a much more quantitative study of energy technologies addressing all aspects of concern about various options e.g., from mining to disposal, would have been much more constructive. Also, a more objective approach without such demonstrated a priori bias would enhance the probability of acceptance by different camps leading to a genuine consensus on a reasonable energy strategy. I believe that Resources for the Future has completed such a study called "Energy in America's Future—The Choices Before Us" and I intend to comment on this document in the near future.

On October 11, 1979, I wrote the following dear colleague letter to all Members of the House, on the study entitled "Energy in America's Future—The Choices Before Us":

Last month, Resources for the Future produced "Energy in America's Future—The Choices Before Us," an objective perspective on energy issues firmly grounded on a factual basis for deciding energy policy. I found it particularly useful to have a document which strives to be a consensus paper rather than engaging in polemics toward the hard or soft technology advocates.

The following points struck me as particularly useful:

—A balanced effort is required to achieve U.S. energy self-sufficiency.

—Significant conservation can be achieved but we must increase energy supply unless we are to accept a considerably lower standard of living.

—A broad set of alternatives to our dependence on imports is necessary.

—Nuclear power can make major contributions to electricity supply provided we can assure the public of its safety. (I believe this is chiefly a problem of perception.)

Development of synthetic fuels will require environmental compromises but we can avoid serious environmental degradation.

I believe that there are certain conclusions of the study which I cannot support but, all in all, it is a realistic and constructive perspective on energy issues and policy and I strongly recommend it to all my colleagues.

The Joskow evaluation of the Harvard energy study, "Energy Futures" follows:

The book suffers generally from the lack of a clear and consistent analytical framework for effectively evaluating the ways in which all of the components of the energy supply and demand system can most effectively and efficiently play a role in adapting the U.S. economy to increasingly expensive and insecure foreign oil. The analysis that is presented is too often based on selective citations from secondary sources or, even worse, no analysis at all, quotations taken out of context, the burning of straw men, and the general tendency to be very pessimistic about the things the authors do not like (coal, nuclear, the free market, etc.), while being very optimistic about the things they do like (conservation and solar). In some cases political and institutional difficulties are taken as reasons for not counting on particular energy sources, while in other cases political and institutional barriers are viewed as being targets to be eliminated. Economic analysis and consideration of the tradeoffs among alternatives is at best casual.

The critical chapters on conservation and solar energy, which play such an important role in yielding the ultimate conclusions of the book, are especially disappointing in these dimensions. For example, in the chapter on conservation we find the following statement: "A number of analyses suggest substantial energy—over 20 percent of total industry use—could be saved in the United States through cogeneration investments that are economically sound." The problem is that most studies of cogeneration in industry apply to industrial uses of process steam only, and industrial process steam accounts for only about 35 percent of total industrial energy use. Even very optimistic assumptions about cogeneration penetration yield a reduction in total industrial energy utilization of less than 10 percent; and considerably less if we rely on some of the less optimistic studies. (For a more thoughtful analysis of cogeneration opportunities see Energy in America's Future, Chapter 6.)

Along with the quotation on page 182 cited above about overall conservation opportunities, perhaps the most widely cited statement in the entire book is made in the concluding section of the conservation chapter: ". . . in 1973, the same U.S. living standard could theoretically have been delivered with 40 percent less energy. These savings, in BTU's are almost as much as all the oil—not just imported oil—used that year" (p. 177). But what is this statement based on? One single study by Ross and Williams is cited as support for this conclusion. This study says nothing about living standards, nothing about timing, and nothing about costs. Rather, it is based on a hypothetical assessment of the maximum theoretical energy savings that could conceivably be achieved by doing such things as implementing cogeneration for half of direct heat applications in industry, reducing heat losses from buildings by 50 percent through better insulation, improved windows and reduced infiltration, using organic waste in urban refuse for fuel, installing heat pumps, and improving automobile efficiency by 150 percent over 1973 levels. Energy Future adopts these numbers uncritically and without independent analysis.

This kind of casual analysis represents the basic problem with the conservation chapter. The potential for improved energy efficiency is real, and energy efficiency is already improving. There may be good reasons to encourage additional conservation by correcting economic and institutional imperfections. But the qualitative opportunities for conservation are not really at issue here: the issue is what quantitative contribution conservation can economically make. This chapter draws very strong quantitative conclusions from selective citations of the most optimistic studies, misuse of existing studies, or no analysis. The general quantitative conclusion this chapter leads to is simply not sustained by any new analysis produced by the authors.

The chapter on solar energy has similar problems. We are led to believe that perhaps 20 percent of the nation's energy can be economically supplied by solar energy by the year 2000 if various economic and institutional barriers are overcome. As with most discussions of solar energy, solar energy is viewed as including everything from direct thermal applications to hydroelectric power and wood. There is essentially nothing new in this chapter. It is basically an uncritical discussion of the most optimistic assessments for the potential for the various sources of solar power. The chapter concludes that it is technically and economically feasible to produce 10 million barrels per day oil equivalent by the year 2000 (including 3 million barrels per day of wood and forest waste). Simultaneously, the chapter argues that substantial government subsidies and institutional changes involving the utility industry and the "system" for producing the various solar supplies will be required to stimulate this level of production. The source of the 10 million barrel per day figure is not documented and the costs of the proposed subsidy program are not presented. No effort is made to evaluate critically the various studies cited, and where costs do seem to be very high, the author of this chapter is happy to assume that there are very good prospects that they will be reduced substantially.

It is interesting to compare the solar energy chapter with the chapters on coal and nuclear power. The chapter on coal recognizes that coal is abundant and in many cases quite economical to utilize. It emphasizes the barriers to rapid expansion of coal utilization associated with transportation, labor problems, management problems, environmental controversies, utility financing problems, etc., but never considers the possibility that these are barriers to which public policy might direct its attention and try to resolve. These barriers are taken as given, and it is pessimistically assumed that they cannot be rapidly overcome. The authors will accept all the coal that the system will provide, but they believe that the rate of growth will be modest in the medium term and they implicitly assume that nothing can be or should be done to speed it up. Similarly, proponents of nuclear energy are roundly criticized for making a heavy commitment to an untried technology with unknown costs and for ignoring the full "system" (read waste disposal) associated with nuclear energy. Failure to consider the entire coal "system" also forms an important part of the critique of those "experts" who have been bullish on coal.

Whereas, on "Energy in the Next Twenty Years" Professor Joskow noted:

Unlike Energy Future, the Ford study does not try to argue that there are simple, costless solutions to our energy problems that can be achieved without any adverse effects on the environment. It does not try to give the impression that the problems associated with oil and natural gas price decontrol, nuclear energy, coal, etc., can be completely avoided by relying on conservation and solar energy. Rather, it gives a sober and detailed assessment of all important aspects of energy supply and demand (including conservation and solar energy) and argues that with appropriate public policies, the U.S. economy can adapt to higher energy costs and dependence on insecure foreign supplies of petroleum far more quickly and efficiently than would be the case if prevailing public policies were continued. The "balanced program" that cloaks Energy Future's brief for conservation and solar energy is a reality in the Ford study.

And finally, his comments on "Energy in America's Future" are very much in concert with my own.

"Energy in America's Future" is a thoughtful, comprehensive assessment of U.S. energy supply opportunities and consumption scenarios. It covers much the same ground as the Harvard and Ford studies do; however, the mode of analysis and the general policy conclusions are more similar to those of the Ford study. Although there is considerable overlap between the Ford study and the RFF study, the RFF study has a number of strengths that make it, at the very least, an essential complement to the other. As a general matter, I found the theoretical and conceptual analysis in the Ford study to be superior in terms of presentation and originality. However, the empirical analysis in the RFF study is more comprehensive and much better documented than in either of the other two studies. It is a useful and even an essential "source" document. In what follows, I shall direct my attention to the special strengths of the RFF study and to the differences between it and the two other books discussed above.

The RFF study places primary emphasis on the economic characteristics of alternative supply opportunities and the consumption decisions that residential, commercial, and industrial consumers can make and tries to identify barriers that lead to undesirable (primarily uneconomic) supply and demand decisions. When important barriers are identified, an effort is made to suggest alternative public policies for overcoming them. The RFF study uses sound analytical and empirical techniques to identify problems and to propose solutions. As with the Ford study, it does not offer the hope that we can solve our energy problems costlessly and without political controversy by turning almost entirely to conservation and solar energy. The general perspective is that there are various economical supply opportunities that must all be drawn on to contribute to future energy requirements as well as many opportunities to use energy economically and more efficiently. The key is to get the whole system working properly.●

THE 1980 CAPTIVE NATIONS WEEK

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. DERWINSKI. Mr. Speaker, the 1980 Captive Nations Week has passed, but the purpose of Public Law 86-90, continues to be realized as Americans raise their voices against Soviet imperialism and its long record of conquest of nations. As in previous observances, the recent one emphasized not only the past record of Moscow's exploitation of nations, but also the strategic importance of the captive nations for the future of our national security and that of the free world.

As examples of the support in the United States for those over 1 billion peoples held captive of communism, I insert several news accounts which report on the importance of Captive Nations Week. The first is an article in the Manchester, N.H., Union-Leader, which is followed by an article by Bui Anh Tuan of the New York News-

World. The Cincinnati, Ohio Enquirer reported on the formation of the Joint Committee of Soviet Occupied Nations in the city of Cincinnati.

The articles follow:

[From the Manchester, N.H., Union-Leader, July 19, 1980]

CAPTIVE NATIONS WEEK

(By Jim Finnegan)

Inasmuch as Ronald Reagan speaks with great sincerity when he expresses his desire to spread freedom throughout the world, whereas others might be accused of indulging in inflated campaign oratory, it is to be hoped that one of the former California governor's first acts, if he attains the presidency, will be to reinstitute the fine tradition initiated by another Republican President, Dwight David Eisenhower, and—in pursuance of Public Law 86-90 enacted by Congress and signed into law in 1959—issue a meaningful proclamation of Captive Nations Week, the third week in July.

On the other hand, if the proclamation is to be of the weasel-worded variety, out of fear of offending the Communist imperialists, it would be better if the Captive Nations Week commemoration in 1981 not be signaled from the Reagan White House at all.

Although the original proclamation requested future presidents of the United States "to issue a similar proclamation each year until such time as freedom and independence shall have been achieved for all the captive nations of the world," President Carter's proclamation in 1978, for example, didn't even refer to the captive nations other than in the designation of the occasion, let alone to those responsible for their captivity!

In our view, the original proclamation issued by President Eisenhower, with appropriate changes designed to modernize it without diminishing its impact on all freedom-loving people in the world, would be difficult to improve upon. We publish that original Captive Nations Week proclamation below.

PUBLIC LAW 86-90

ESTABLISHING CAPTIVE NATIONS WEEK

Whereas the greatness of the United States is in large part attributable to its having been able, through the democratic process, to achieve a harmonious national unity of its people, even though they stem from the most diverse of racial, religious and ethnic backgrounds; and

Whereas this harmonious unification of the diverse elements of our free society has led the people of the United States to possess a warm understanding and sympathy for the aspirations of peoples everywhere and to recognize the natural interdependency of the peoples and nations of the world; and

Whereas the enslavement of a substantial part of the world's population by Communist imperialism makes a mockery of the idea of peaceful coexistence between nations and constitutes a detriment to the natural bonds of understanding between the people of the United States and other peoples; and

Whereas since 1918 the imperialistic and aggressive policies of Russian communism have resulted in the creation of a vast empire which poses a dire threat to the security of the United States and of all the free peoples of the world; and

Whereas the imperialistic policies of Communist Russia have led through direct and indirect aggression, to the subjugation of the national independence of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania Idel-Ural, Tibet, Cossackia, Turkestan, North Vietnam, and others; and

Whereas these submerged nations look to the United States, as the citadel of human freedom, for leadership in bringing about their liberation and independence and in restoring to them the enjoyment of their Christian, Jewish, Moslem, Buddhist, or other religious freedoms, and of their individual liberties; and

Whereas it is vital to the national security of the United States that the desire for liberty and independence on the part of the peoples of these conquered nations should be steadfastly kept alive; and

Whereas the desire for liberty and independence by the overwhelming majority of the people of these submerged nations constitutes a powerful deterrent to war and one of the best hopes for a just and lasting peace; and

Whereas it is fitting that we clearly manifest to such people through an appropriate and official means the historic fact that the people of the United States share with them their aspirations for the recovery of their freedom and independence; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the President of the United States is authorized and requested to issue a proclamation designating the third week in July 1959 as "Captive Nations Week" and inviting the people of the United States to observe such week with appropriate ceremonies and activities. The President is further authorized and requested to issue a similar proclamation each year until such time as freedom and independence shall have been achieved for all the captive nations of the world.

[From News-World, New York, N.Y., July 13, 1980]

CAPTIVE NATIONS WEEK: TIME FOR RECOMMITMENT

(By Bui Anh Tuan)

Once again, Captive Nations Week (CNW)—July 13-19—is upon us.

Twenty-one years ago, by unanimous vote, Congress established the third week of July as CNW in an effort to focus world attention on the real imperialistic nature of the Soviet Union, and to emphasize continued, unwavering U.S. commitment to the principle of universal freedom and unalienable human rights. Since then and through 10 Congresses, not only presidents but governors, mayors and state legislatures have issued CNW proclamations.

The annual ritual has not changed. Because of election year pressures and the Soviet invasion of Afghanistan, there is less equivocality and even more resolve. It appears, however, that this strong display of vocal support is not able to dispel lingering doubts and concern. Instead of hope—the glimmering hope kindled by President Dwight Eisenhower's 1959 CNW proclamation, pointing a finger at the Kremlin as "the tyrant"—CNW is being observed with mixed feelings throughout the land.

Proclamations have been issued for the simple reason that this was required by law. Public Law 86-90 clearly states that the president is "requested" to issue a CNW proclamation each year "until such time as freedom and independence shall have been achieved for all the captive nations of the world."

Thus, it is not difficult to understand why for three years in a row President Carter's CNW proclamations included no reference to communist imperialism or to the Soviet Union as the only remaining colonial power which enslaves hundreds of millions of people. In 1977, adding insult to injury, Carter almost failed to issue a proclamation.

CARTER NOT ALONE

Nevertheless, it is not fair to shift all the blame on Carter. Declarations by President Johnson and Nixon were nothing more than administrative formality. President Ford once went as far as to recognize Soviet rule over Eastern Europe as an irreversible fact of history. As secretary of state, Henry Kissinger had equated the Captive Nations law with "cold war relic."

All these aberrations have turned CNW into one of the most celebrated anachronisms in modern times: On the one hand, our luminaries have complied with the law, but on the other, they have tried their best to stray as far as possible from its lofty spirit. The need to do what the other party has not done or to make a hit with an influential constituency has given rise to such abnormalities as detente, the East-West bridge building concept and the attempt to ridicule our "inconsiderate fear of communism."

Furthermore, the CNW law was conceived at a time when the plight of Eastern and Central European countries especially non-Russian peoples within the U.S.S.R., was still the dominant element. Ethnic prevalence has inevitably led to a geographical tendency—which fortunately, has shown signs of receding—to lump Czarist Russian imperialism together with present-day Soviet communist expansionism. This selectiveness, although justified, is not compatible with world realities, and more importantly, with the advent of the Russian-inspired human rights movement behind the Iron Curtain with such prestigious mentors as Andrei Sakharov.

Communist imperialism is no longer exclusively Caucasian, let alone Russian. It is also yellow. And black. Jesus Christ did not hail from the Vatican, capital of world Catholicism. In India, the home of Buddha, Buddhism has become a minority religion. Thus, the best way to commemorate CNW is to make a distinction between Soviet imperialism and Russia.

More significant than geographical coloration is the saddening fact that proclamations and celebrations alone could not turn the tide in the battle against communism. In 1959, there were 22 captive nations. Now, there are 30 of them. It is irrelevant, even cynical, to proclaim support for captive peoples and at the same time to sell them and their still-free friends down the river. Because of budget curbs, Radio-Free Europe, Radio Liberty and VOA have cut down programs intended for captive listeners in the Soviet Union and Asia. But the same budget curbs have not prevented communist dictators from Moscow to Managua from receiving U.S. taxpayer money.

WHO'S NEXT?

In 1960, after Cuba many asked, who's next? The same question was raised in 1975. Now, we have Afghanistan, Taraki, Amin and Karmal are a strong reminder that communism will stop at nothing in its effort to enslave the world.

Alarmed, Americans have resigned to believing that a militarily vigorous America may work miracles. Yet, Soviet troops were not in Havana when Castro took power. Castro's master was in Moscow, but his real allies and friends were in the United States.

Thus, the best way to commemorate CNW this week is to zero in on those Americans who continue to weaken our security and intelligence; who help communism with U.S. money and technology; and who use "human rights" as a pretext to throw our allies to the wolves.

[From the Enquirer, Cincinnati, Ohio, July 22, 1980]

CAPTIVE NATIONS DON'T WANT TO BE CALLED RUSSIAN

(By Ben L. Kaufman)

Don't call Andrew Zaplatynsky, Ignas Dudrys or Lew Melnyk "Russian."

Their homelands are unwilling republics in the USSR and they are not Russians and never will be.

They are the survivors of Russian occupation and the descendants of survivors.

They are Ukrainians and Lithuanians, and their cause with Estonians and Latvians is national and cultural survival under Soviet oppression and American insensitivity.

"We have an identity problem," Andrew Zaplatynsky, secretary of the new Joint Committee of Soviet Occupied Nations, said Monday. "People lump us all together as 'Russian.'"

Organized this year, the joint committee includes the Estonian Association of Cincinnati, the Latvian Group of Cincinnati, the Greater Cincinnati Lithuanian Council and the Ukrainian Society of Greater Cincinnati.

"Anyone who identifies himself or herself as a member of a national group is welcome," Zaplatynsky said.

Their "captive nations" cause and cultures are being celebrated this week in a display at the downtown public library.

The goal is public education about resistance to Russian "cultural genocide" and repression of Baltic and Ukrainian nationalism.

That they often are considered Russians is a victory for Soviet propaganda which strives to equate every national group within the USSR with Russia, although most are not, Zaplatynsky said.

As a result, "We have the same problem that the Jews face, survival as a cultural, national group. They are faced with possible extinction; we are faced with possible extinction."

But anytime Westerners distinguish between Russians and others under Soviet control, "the Soviets frown on it and we're very happy with it . . ."

Eight nations, including the Ukraine, came under Soviet domination in 1920; the Baltic States went under in 1940 and the problem is as fresh as Afghanistan.

But nationalism survives despite the carrot-and-stick of Soviet promises and repression.

This is clear from continued unrest behind the Iron Curtain and underground literature and stories of dissidents in the library display.

Ignas Dudrys, chairman of the joint committee, said the display seeks to acquaint Cincinnatians with what the Russians are doing "You have to do something about it if you acknowledge a problem."

Nationalists still hope for freedom from Russian rule, and today they concentrate on keeping "heat and pressure" on the Russians for abridgments of the Soviet Constitution, United Nation's Charter and Helsinki human rights agreements.

"We have no illusions that there will be a popular uprising next year," Zaplatynsky said.

And while trying to avoid the image of Cold War, right-wing crazies, he said, the nationalists want Western democracies to be more "vigilant about the aims and goals of the Soviet Union."

The Allies are in "grave peril," Zaplatynsky said, citing recent Soviet moves and President Carter's admission that "misunderstandings" led him to underestimate Russian aggressiveness.

There is a "direct connection" between occupying the Ukraine in 1920 and modern moves into Afghanistan, Zaplatynsky said. That it took 60 years is no proof that Russian policies have changed.

On the positive side, Zaplatynsky said the new Cincinnati joint committee is "novel" because most captive-nation groups elsewhere pursue their goals without close cooperation.

"We have really enjoyed working together," he said. "We find that we learn a lot from each other. We have already achieved so much more in a few months than I could ever have imagined."

The committee distinguishes between such nations as Poland and Hungary, where national identity survives under Communist rule, and the three Baltic States and the Ukraine where Kremlin leaders are in direct control and pursuing "cultural genocide" or "Russification."

Nations absorbed into the USSR by the Russians "have to fight for the right to national identity," Melnyk, head of the Ukrainian Society, explained.

Zaplatynsky said the joint committee's approach probably will not be "protest marches and flag-waving . . . By temperament, we're not inclined to sensationalism."

Another restraint is fear.

Threatened retribution against family members in the USSR often forces them to repress their "seething resentment" against the Russians, he said.

And in nationalist groups larger than Cincinnati's, Zaplatynsky said, there always is the fear of informers. "Something I am suspicious of is the super-super patriot." He said there may be 400 members of the four groups in the new joint committee.

A DEADLY GAME OF POLITICS

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. MICHEL. Mr. Speaker, the Carter administration has apparently decided to throw caution to the wind and engage in one of the most deadly games ever played in election year politics. It is a desperate attempt to win the political prize at the risk of giving away the national security in the process.

President Carter has forced into his lineup of surrogate speakers, to defend his indefensible record, a group of individuals who have no business on the campaign trail.

Among them, Secretary of State Muskie, Ambassador to the People's Republic of China Woodstock, Secretary of Defense Brown, and National Security Adviser Brzezinski.

Apparently, President Carter does not distinguish between partisan politics and the functions of Government. To him they are one and the same, even when our national security and our foreign alliances are on the line. To him government exists to serve his political ends, when for centuries we have always insisted that politics should serve the ends of government.

This is not a matter of Cabinet officers defending the record of their administration. This is a matter of Cabinet officers going full tilt into the fray, citing rumor as fact, distorting figures and using the respectability of Government, or what's left of it, as an expendable tool of the reelection campaign, however, and whenever it serves political purposes.

A vivid example of this gross abuse of power was provided recently in a newspaper article written by someone who knows what he is talking about, former Defense Secretary Melvin Laird.

Former Secretary Laird understood the sensitivity of his office and knew better than to play fast and loose with defense matters, for the sake of political gain. His comments appeared in the August 17 issue of the Washington Post and I insert the article "Defense Secretaries Shouldn't Play Politics," at this point in the RECORD:

DEFENSE SECRETARIES SHOULDN'T PLAY POLITICS

Four years ago, as a candidate, Jimmy Carter lambasted Republican defense planning and urged massive cuts in expenditures for the armed forces. He said multi-billion-dollar cuts were desirable, particularly in the personnel area. He was wrong then, and there's much wrong and misleading about current Democratic proclamation on defense issues.

With November approaching, the Carter administration has become increasingly strident in its criticism of the defense programs of the Nixon and Ford administrations. To hear the president, Zbigniew Brzezinski and Secretary of Defense Harold Brown tell it, their Republican predecessors let the defense budget fall sharply between 1969 and 1976, while the Carter administration, it is argued, has increased it substantially.

These partisan remarks allege that the Republicans were responsible for the present sorry state of our defenses, and were it not for Jimmy Carter and his national security team, things would be even worse. As Secretary Brown told it on the "Today" show in early July, defense spending fell by more than 35 percent during those years of Republican stewardship, while during the first four years of the Carter administration it rose 10 percent and will increase by more than 25 percent during a second Carter administration.

Brown's politically oriented assessment is distorted and cannot be substantiated by the facts. Moreover, by insisting that the secretary of defense become involved in campaign rhetoric, the administration risks politicizing an office that throughout its 35 years of existence has essentially remained above the political fray.

When I served at the Pentagon, I took the position that the secretary of defense should stay out of partisan politics, but always had the public responsibility of setting the record straight on defense issues.

As a private citizen, I still believe that is the correct procedure. Here, then, are the facts:

From FY71 through FY78, the Republicans submitted budgets to the Democratically-controlled Congress that increased defense budget authority from $71 billion to $115 billion, an increase of 62 percent. Measured in today's inflated dollars, however, that represents a decline from $140.5 billion in FY71 to $131.8 billion in FY78, a drop of 6 percent, not the 35 percent claimed by Brown. He ignores the fact that when Republicans took over the executive responsibilities of government in 1969, 37 percent of the defense budget was consumed by expenditures for an unpopular war in Southeast Asia. In today's dollars, that war was costing almost $70 billion a decade ago. The real decline in what is called the baseline budget is substantially less because $14.7 billion of the FY71 budget, or 20 percent, was spent on the war in Vietnam and bringing about the termination of U.S. involvement.

In today's dollars, the FY71 baseline budget was actually $118.6 billion; this is $20.6 billion or 17 percent less in real terms than President Ford's last proposal to Congress. During the FY71 to FY78 period, it must be noted, Congress cut more than $40 billion from the defense requests of Republican administrations, primarily in the investment area. For example, Nixon and Ford requested authority to build 171 ships, but Congress voted funds for only 130. Were it not for those Democractic reductions, eight years of Republican leadership in the White House would have led to real growth of almost 2 percent per year.

On the other side of the defense coin, Brown's claims about real increases in this administration are inflated. If one compares Carter's request for FY81 with the amount he requested three years ago, when he set out to slash defense spending, the real growth is about $5 billion, or 3 percent, not 10 percent. In contrast to its previous behavior, Congress has been urging the president to spend more for defense to correct deficiencies that have occurred during the past three years, notably with regard to attracting and retaining outstanding young men and women for military service.

If it has not been for Carter's veto of the FY79 authorization bill and his lobbying efforts against proposed increases in the defense budget, the real growth might have been closer to the 10 percent that Secretary Brown proclaims. Finally, of course, the international situation that has existed since Carter took office is much less favorable than that which existed during the Republican years. Those years saw more restraint by the Soviets.

In my view, the really unfortunate aspect of this unseemly episode in Department of Defense history is that Secretary Brown has chosen to become or has been pressured into becoming involved on the political battlefront. It is one thing for a president running for reelection to play games with defense numbers. It is quite another thing for a secretary of defense, who knows better, to lend the essential non-partisan quality of his office to political distortions.

If defense continues to be an issue in the 1980 campaign, as I believe it will, the secretary of defense, I hope, will heed the advice of Winston Churchill, which the secretary quoted in his most recent report to Congress: "You cannot ask us to take sides against arithmetic. You cannot ask us to take sides against the obvious facts of the situation."●

TRIBUTE TO DR. WAYNE McCALL

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. CHAPPELL. Mr. Speaker, I rise today in tribute to a dear friend, Dr. Wayne McCall, of Ocala, Fla. Wayne was a dedicated and intensely patriotic American, a strong supporter of youth athletics, and a devoted and energetic public servant. His recent death was a shock to his family and friends and all who knew him.

As the State representative of district 32 in Florida, Wayne McCall was a fiscal conservative and a man who truly cared about his constituents and their needs. Dedicated and responsive, Wayne always urged his constituents who had a problem to pick up the phone and call him rather than send letters. A quiet-spoken man, Wayne truly listened when people spoke and in his careful and kind way gave assistance.

On the political side, he was a strong supporter of the two-party system and would annually sponsor a fundraiser at his lake camp in the Ocala National Forest to benefit local Democratic candidates.

A family man and community booster, Wayne had seven sons who all participated in high school sports programs. He, himself, presided over the local booster club to raise funds for youth athletics.

A dentist, Wayne was a member of the dental society. He also served as a director on the National Governor's Board of College and Universities and served long and with distinction as a member of the board of regents.

All of us who knew Wayne—those of us who worked with him over the years, and the people of the 32d district who were recipients of his calm and responsive service—will sorely miss him. We have lost a great friend and the community of Ocala has lost an outstanding public servant. On behalf of the Fourth Congressional District, and all who knew him, I offer our expression of deep sorrow and sympathy to Dr. McCall's family.

He was my dear friend. I shall sorely miss his wise and devoted counsel. In remembrance, I have caused to be flown over the Capitol a flag in his honor.●

THE CARTER ADMINISTRATION RESORTS TO THE POLITICS OF HYSTERIA, AND THE FACTS BEHIND GOVERNOR REAGAN'S APPEAL TO LABOR

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. KEMP. Mr. Speaker, in this, the week before Labor Day, the Carter administration has launched a vitriolic campaign against his Repulican challenger, Gov. Ronald Reagan; that is, deliberately distorting the Governor's labor positions in an attempt to frighten voters away from the Republican ticket. The President's pollsters have apparently decided that President Carter's dismal labor record cannot stand on its own, so any administration campaign rhetoric must be concentrated on smearing the Republican candidate with lies and emotional diatribes.

Mr. Speaker, the American people are too smart for that. This election year, they are not looking for the best muckraking candidate. They are looking for a leader with the issues to bring them out of this deepening recession with hope and opportunity for the future.

The administration's strategy was brought to my attention by a speech that Vice President Walter Mondale gave before the New York State AFL-CIO. In that speech, according to the Buffalo Evening News, the Vice President stated that "Reagan favors busting up the American trade-union movement." In the same speech, the Vice President accused Governor Reagan of wanting to trash the social security system, "union security," and the Occupational Safety and Health Act. Mr. Mondale continued to accuse the Republican Party of hating the working men and women of America, and offered as a Carter defense the contention that "his administration has put more persons to work in 4 years than any administration in history."

Let us examine the facts.

In the first place, Ronald Reagan was elected president of his union, the Screen Actors Guild, six times, where he led its first strike. As far as I know, Ronald Reagan is the first union president ever to be a candidate for President of the United States. As one who knows what it is like to bargain from labor's side of the negotiating table, Governor Reagan strongly supports the collective bargaining system free from Government intervention. Claims to the contrary by would-be detractors are obviously attempts to distort the facts.

And let us look at the employment picture that Vice President Mondale so virtuously described. When President Carter took office in January 1977, the unemployment rate stood at 7.3 percent. There were 6,958,000 Americans unemployed at that time. Now, as of July 1980, the latest figures available, the unemployment rate stands at 7.8 percent, with 8,207,000 Americans unemployed—almost 1¼ million more unemployed working men and women in the work force than when he took office.

And where did most of this unemployment come from? From layoffs in the most heavily unionized industries in the country—the auto, steel, rubber, and maritime industries. Hundreds of thousands of workers have been laid off here—workers who have little hope that their factories will reopen in the near future. Surely Carter cannot claim that this has made him a friend of labor.

Or take the President's Council on Wage and Price Stability. This is an agency created by President Carter that believes labor's wages should be frozen at 7 to 8½ percent while the Democrat-led Government devalues their paychecks by 13 to 15 percent. The administration that supports these policies cannot believe in rendering a fair wage for an honest day's work. That administration is no friend of labor.

Let us take a look at some of Vice President Mondale's other claims.

The so called radical statement of Governor Reagan regarding social security on January 31 of this year was:

> The Social Security System must be reformed to guarantee that those depending on Social Security, and those looking forward to its protection in the years ahead, will continue to receive their payments, and that their payments will keep pace with the cost of living * * * such reform cannot come from increasing the already exorbitant taxes paid by workers to finance the system * * * the final answer, however, must be fiscally sound on a long-range basis.

Do you hear a attack on the social security system here? Not at all; Ronald Reagan's strategy for economic growth will save social security.

As to OSHA, Governor Reagan clearly is not calling for the dismantling of the Agency. He strongly feels that the way OSHA has been run has resulted in harassment and nitpicking to the detriment of real workplace safety. That this is true is obvious when one reads statistics verifying the increase in industrial accidents in this country since OSHA was enacted. As President, Governor Reagan would refocus on the real objectives of the OSHA Act rather than permit a perpetuation of the badgering and abuses which have been so counterproductive to its intent in recent years.

The bottom line is Governor Reagan's concern for the working men and women of America. The Democrats are now divided as to whether they want to stand for low unemployment and high inflation—Ted Kennedy—or low inflation with high unemployment—President Carter. Governor Reagan recognizes that surely the experience of the past decade is that such choices are unnecessary.

The combination of inflation and progressive tax rates has continuously widened the gap between what an employer pays and what a worker takes home. Inflation and the outdated tax code automatically raise the tax on profits, and at the same time this combination pushes the worker into higher tax brackets. Across-the-board tax rate reduction, such as Governor Reagan has proposed for both individuals and businesses, can increase the aftertax incentives for both workers and businessmen by narrowing the Government's wedge between them.

Governor Reagan plans to bring labor and capital together with a sound monetary policy. President Carter's whole inflation program has been based on the premise that inflation is caused by workers and businessmen, by consumers and producers. The wage guidelines explicitly blame inflation on workers' wage demands, just as 2 years ago, the administration blamed inflation on business profits. But Governor Reagan believes that inflation can only be caused by the Government.

Inflation is a decline in the value of the currency produced by Government. It is caused by a combination of too much money and too little production. The answer, therefore, is not to blame workers and businesses for inflation, or to slap on wage and price controls as a solution. The answer to inflation is to print less money and to restore incentives for higher employment and production.

The administration cannot match this vision for the 1980's, because President Carter says he will not change his basic economic policies. This time, it is President Carter who has triggered a recession, and Governor Reagan who offers a plan for prosperity.

It is time for American labor and the American people to recognize that they share a growing consensus of values with Governor Reagan about family, community, and country. It was because of Ronald Reagan that the Republican Party adopted a platform which states:

> We reaffirm our commitment to the fundamental principle of fairness in labor relations, including the legal right of unions to organize workers and to represent them through collective bargaining consistent with state laws and free from unnecessary government involvement.

It was because of Ronald Reagan's leadership that the 1980 Republican platform's section on "Fairness to the Worker" begins:

> The Republican Party is committed to full employment without inflation. We will seek to provide more jobs, increase the standard of living, and ensure equitable treatment on the job for all American workers by stimulating economic growth.

This year the working men and women of America will have a real choice—a choice between a President who has brought this Nation to its knees and abandoned his commitment to labor, and a candidate who knows what it is like to run a union, and to fight for the rights of workers. Governor Reagan offers a clear opportunity for the working people of America to choose jobs over unemployment, prosperity over recession, and hope over despair.

It is a choice over America's future. And the facts bear out that in this election, the true friend of labor is Gov. Ronald Reagan.●

THE ECONOMIC LIBERALS: IRONIES OF MANDATORY CONTROLS

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. PORTER. Mr. Speaker, many of the economic liberals have proposed mandatory wage and price controls as the solution for our inflationary woes.

There are many ironies in their taking this stance.

First, these economic liberals are those who pride themselves in the protection of individual liberties—the rights of the individual vis-a-vis the State—as I do. But here they are, saying that the individual choices of working men and women to seek higher wages and of individual business people to ask higher prices—in each case made necessary as a response to the inflationary flames fanned by the failure for so long a time for Congress to act with even a small measure of fiscal responsibility—ought to be denied. This anomaly of commitment to some individual rights and not to others by those who call themselves liberal is nothing new, but it is always fascinating.

Second, there is great irony in the fact that these economic liberals, who have consistently put themselves forward as deep thinkers on economic questions, have chosen to champion the ham-handed approach of mandatory controls. It evidences not economic intellectualism, but a total surrender of policy—a bankruptcy of innovative thinking—that most liberals normally would not admit to. Perhaps we have reached that point. Perhaps nothing else is, in fact, left to do. But it is interesting that the economic liberals are the first to give up and admit that their cupboard of ideas is absolutely bare.

Third, many of these economic liberals have prided themselves on being students of history. Yet few Americans would dispute that the history of the mandatory controls that the liberals propose is one of failure—that they don't work but merely create black markets and excessive and costly bureaucracies and when they are lifted, as after World War II and in the Nixon administration—the most recent examples—prices shoot up even higher than they would have without the controls. It is ironic that these students of history ignore history.

The final irony, however, is the most profound. It is the irony that the real culprit in the raging inflation that we are now experiencing is not the wage earner trying to keep up with rising costs by asking higher pay, nor is it the businessman adjusting his prices to reflect higher costs, both of whom mandatory controls are aimed to restrain. Rather, the culprit is the actions of these same economic liberals in the Congress, voting more and more

Federal spending year after year, spending far beyond available revenues, until after almost 26 years of this fiscal recklessness the average American family faces a double-digit inflationary tax on top of all the other taxes they pay. Those who have caused the problem—though they don't even seem to recognize their own complicity—now say they have the solution—mandatory wage and price controls—a bankrupt, end-of-the-line policy from those who pride themselves on their intellectual approaches, a policy that denies individual liberties from those who pride themselves on protecting them, a policy that history shows has always been a failure from those who call themselves historians. And those who promote it are the very ones who created the problem it seeks to solve in the first place through their unending spending and fiscal irresponsibility. What ironies.●

QUESTIONNAIRE

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BROYHILL. Mr. Speaker, each year, I actively solicit the views of my constituents by sending out a questionnaire to every household in the 10th Congressional District of North Carolina. The response this year has been good: Approximately 13,500 persons have shared their opinions with me, and the responses are still trickling in.

The answers to the specific questions have been helpful to me, but even more enlightening have been the comments which many have taken the time to write on the bottom of the form or in separate letters. Of particular interest to me were the respondents who wanted to know my position on each of the questions.

The most one-sided response came on the question of whether or not social security benefits should be taxed. Ninety-five percent oppose this unwise proposal. This is consistent with my belief, and as many of my colleagues are aware, I have cosponsored legislation to keep the proposal to tax social security benefits from being enacted. Hopefully, the issue is dead for this session.

Two changes in our Constitution were opposed by a majority of my constituents. The idea of limiting the Presidency to one 6-year term instead of two 4-year terms was opposed by 60 percent, with 38 percent in favor of the change and 2 percent undecided. With respect to the number of terms for a Member of Congress, 46 percent wanted to limit the service of congressional officeholders and 51 percent opposed this change in the Constitution. Frankly, I feel that we need more discussion of this issue. I am concerned that we are getting away from the traditional concept of citizen representation and moving toward full-time, professional representation. I am sure this is the proper direction and perhaps a change in the Constitution would be the only way to correct this.

On two environmental issues, my constituents overwhelmingly endorsed the further development of nuclear powerplants and the easing of Government regulations so that we could insure a greater use of coal to meet our energy needs. The use of nuclear power received a 68-percent approval, while a wider use of coal garnered an overwhelming 77-percent support. Personally, I favor continued use of nuclear power with a concurrent strong emphasis on safety. I agree with my constituents and support the greater use of coal to meet both current and future energy need.

The creation of a national health insurance program to help pay the costs associated with catastrophic illnesses only was opposed by 58 percent and supported by 39 percent of my constituents. I oppose and will continue to oppose the administration's comprehensive, mandatory national health insurance proposal because of its extremely high price tag and resultant burden to the taxpayers. However, I am a cosponsor of the Medical Expense Protection Act (MEPA), an alternative proposal to provide help for families severely affected by the costs associated with catastrophic illness; I term MEPA an alternative because, contrary to previous national health insurance proposals, MEPA makes maximum reliance upon utilizing the private sector for insurance protection, with a minimum of burden upon the Federal Treasury.

The subject of Saturday mail delivery has been of increasing concern to the Congress and the American people. Fifty-four percent of my constituents supported termination of 6-day mail service, while 43 percent were in favor of continuing present service. This was somewhat of a surprise to me, as most of the mail I have received has been in opposition to ending Saturday mail service.

While many respondents shared thought-provoking comments about the economy with me, only 38 percent favor strict Federal controls on wages and prices. I agree with the 59 percent who feel this approach would be ineffective. Past experience with Government wage and price controls has more than pointed out this fact.

The President's proposal to implement a costly gasoline rationing plan in the event of shortage received the strong opposition of 81 percent of my constituents. I voted in this body to disapprove the President's plan. As we all know, it has been adopted despite my objections and I am hopeful it will never be necessary to implement the plan.

Probably the response which was the most interesting to me, and the response which indicated no consensus opinion, was to the question of military service. Nearly half of those who answered my poll favor keeping the All-Voluntary Army, but improving benefits and conditions—20 percent—or requiring 1 or 2 years of public service as an alternative, 23 percent. Twenty-five percent feel the draft should now be restored, and 18 percent of that number support the draft of men only. It is interesting to note that 15 percent agree with the current system of registering males, while another 12 percent feel women should be included. The remaining 5 percent indicated they see no reason to change the current All-Voluntary Military.

These opinions will be of great assistance to me as I continue my work as a legislator, and I commend the results to my colleagues for their consideration:

QUESTIONS

1. Should Congress set up a national health insurance program to help pay for catastrophic illnesses only? The President is advocating a comprehensive national health insurance program to be paid for by government and business. Supporters of the catastrophic approach say this is the only additional area of health care in which government should become involved because of the tremendous hardships which hit a small number of American families. Opponents say we cannot afford even this modest proposal, and that it is just a step toward a national plan to cover everyone for all medical expenses.

2. Should there be a limit placed on the number of terms a Member of Congress can serve? Supporters of this constitutional amendment say it would result in a more responsive, more honest Congress composed of people willing to take unpopular, but necessary actions. Opponents say the present system has worked well, an increasing number are retiring voluntarily every two years, and voters should be able to re-elect their Congressman as long as they desire to do so.

3. Should the United States continue to move forward with the development of nuclear power plants? Proponents say we have no alternative now because of the time it will take to develop alternative sources of energy and that the dangers have been greatly exaggerated. Opponents feel the possible dangers of nuclear power outweigh the energy needs, and that its continued use will slow the drive to develop alternatives.

4. Should the U.S. ease environmental restrictions so that coal could assume a larger role in meeting our energy needs? Supporters cite the large reserves of coal we have in this country and indicate it is the only alternative source which is readily available now. Opponents cite the damage to the landscape and the resulting air pollution. They also see any easing of restrictions as a step backward in the drive to clean up the environment.

5. Should Saturday mail be ended? Proponents of a balanced federal budget advocate reducing or eliminating the federal subsidy going to the Postal System, with the system deciding how to implement the reduction. Those who support ending Saturday mail say it is no longer necessary in modern day society and would save approximately $588 million dollars during the first full year. Some opponents feel it could be ended for businesses, but not for homes, while still others feel it would not really save money because the same amount of mail would need to be processed.

6. Should strict Federal controls be placed on wages and prices? Inflation under President Carter has passed the 18 percent rate, nearly four times as high as the last year of President Ford's administration. Proponents say wage and price controls is the only way to halt inflation. Opponents argue the new bureaucracy to enforce the controls will be ineffective, exemptions will be granted, and controls have not worked in the past.

7. Should the President be limited to one six-year term instead of two four-year terms? Proponents say the change would enable the President to make difficult decisions without being concerned about re-election and that it would bring new ideas, new people, and new solutions to problems every six years. Opponents claim the present system has worked well and the people have the right to reward a good President with a second term in office.

8. Should the President put into effect a gasoline rationing system? Supporters argue this is the fairest way to distribute gasoline to the masses of people and that it is more equitable than having the price continue upward. Opponents claim such a system would require an expensive new bureaucracy, would be unfair to those who must use cars in their work, and would create a black market.

9. Should social security benefits for those who have retired or those who are on disability be taxed? Supporters see this as a way of raising more money for the social security system, and they argue that the benefits are the same as income and should be taxed as such. Those opposed to such a drastic change in policy cite such reasons as the relatively small amount of money which the people are receiving, along with the taxes which have already been paid by the recipients during their working years.

10. Should our military structure be changed? A growing number of people are expressing concern about the United States' ability to defend itself, should the occasion ever arise. Which of the following is your position?

A. Keep the all-volunteer military, essentially as it is now.

B. Keep the all-volunteer military, but improve the pay, fringe benefits, and conditions in an effort to attract and retain better personnel.

C. Standby registration, but not drafting, of all 18-year-old males and females.

D. Standby registration, but not drafting, of all 18-year-old males only.

E. Drafting of all 18-year-old males and females.

F. Drafting of all 18-year-old males only.

G. Require all 18-year-old males and females to give one or two years of public service, either in the military or non-military sector.

RESPONSES

	Yes	Percent	No	Percent	No response	Percent
No. 1	5,215	39	7,713	58	467	3
No. 2	6,112	46	6,888	51	267	3
No. 3	9,339	68	3,763	28	467	4
No. 4	10,160	77	2,701	21	396	2
No. 5	7,399	54	6,033	43	311	3
No. 6	5,580	38	8,458	59	475	3
No. 7	4,967	38	7,975	60	350	2
No. 8	2,232	17	10,733	81	394	2
No. 9	553	4	12,337	95	155	1
No. 10:						
A	848	5				
B	3,103	20				
C	1,928	12				
D	2,217	15				
E	1,154	7				
F	2,709	18				
G	3,563	23				

●

A SALUTE TO FATHER VICTOR R. YANITELLI, S.J., AN URBAN LEADER, AN EDUCATOR, AND A MAN OF GOD

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. GUARINI. Mr. Speaker, the city of Jersey City and, indeed, the entire State of New Jersey has lost the vital services of a great servant of God and man, the Reverend Victor R. Yanitelli, S.J.

Father Yanitelli served for 17 years in Jersey City, leaving a legacy of outstanding accomplishments. I wish to share a litany of his great work, which has been gathered with the assistance of Ray Martignoni, a mutual friend, who has served St. Peter's College for many years.

Father Vic, as he is affectionately known, understands the instrument of good that a Jesuit college can be in an old urban community and the force and energy that our young people could contribute in rebuilding a proud city. His venture beyond the college campus gave a new vitality, a new hope, and a new beginning to the many yearning for leadership.

With his departure, an era has ended in New Jersey.

The Reverend Victor R. Yanitelli, S.J., priest, educator, and community leader, left Jersey City 2 weeks ago to become pastor of St. Ignatius Loyola Church in Manhattan after 16 years as a dynamic force for good in New Jersey.

In 1963, Father Yanitelli came to St. Peter's as director of student personnel services and 2 years later became president of the Jesuit school.

He served as president for 12 years, stepping down in 1978 to become chancellor and engage in fund raising.

Father Yanitelli led St. Peter's through its period of greatest transition and growth. It was a time that saw St. Peter's double its student enrollment, complete a $13 million expansion of its physical plant, and develop an active involvement in the community which nearly resulted in Father Yanitelli's resigning as the school's president in 1971 to run for mayor of Jersey City.

When Father Yanitelli arrived in Jersey City, St. Peter's board of trustees had just rejected a proposal to relocate the college in suburban Monmouth County and were looking for a suitable new president who could direct the course of the school's reaffirmed urban commitment.

In 1965 they turned the job over to Father Yanitelli, and time has proven it was a match made in heaven.

In rather short order, the Jesuit priest showed he was indeed the logical choice to make St. Peter's really part of the city.

Through his encouragement, St. Peter's soon became one of the first colleges in the Nation to offer a major in urban studies, a program that aims the intellectual resources of the college's students and faculty at finding solutions to the unique problems of the cities.

Father Yanitelli also played a large hand in the formation of the institution's project 25, an academic outreach to inner-city students who show great promise, but otherwise would be denied admission to college because of academic deficiencies.

Under Father Yanitelli's leadership, St. Peter's also took an active part in the formation of the Hudson County Community College, a college without walls. The college offers postsecondary education to Hudson residents at a considerable savings to the county and its students by utilizing facilities of St. Peter's, Jersey City State College and Stevens Institute of Technology.

A look at St. Peter's urban commitment reveals that it is an extension of Father Yanitelli's own personal involvement in the community.

He has served 1½ terms as a commissioner of the New York-New Jersey Port Authority; was chairman of the Governor's Advisory Council on Project Upward Bound; and was a board member of the New Jersey State Scholarship Commission, the Youth Consultation Services of Jersey City, Christ Hospital, the Jersey City Boy's Club, the National Advisory Board for Veterans Affairs, and the Garden State National Bank.

Previously the priest had made significant contributions to the community as president of the Jersey City Board of Education, as chairman of the Hudson County narcotics rehabilitation program, the Jersey City chapter of the American Red Cross and as a member of the Hudson County Planning Board, the National Advisory Council on Economic Opportunity, the Jersey City Medical Center, the Jersey City Chamber of Commerce, the New Jersey Symphony Orchestra, and the National Conference of Christians and Jews.

Besides leading the college's external thrust in the community, Father Yanitelli also has exerted strong internal leadership at St. Peter's during his years as president.

As St. Peter's student body expanded in the 1960's, he realized the school would need to expand its physical facilities to meet the needs of its undergraduates.

With St. Peter's entering its second century, the priest helped launch a multi-million-dollar development campaign that enabled the college to build a new library-student center, academic building, and to renovate its science facilities.

A final jewel was added to his crown 4 years ago when the college completed construction of its recreational life center, which was named in Father Yanitelli's honor.

At the same time Father Yanitelli was helping to expand the college's facilities, he saw to it that St. Peter's improved its curriculum, added new academic departments, and increased student services.

And St. Peter's took another major step in education during his presidency several years ago by opening up a new campus in Englewood Cliffs, where nontraditional students are returning to the classroom after years away from formal education.

However, serving as president has not always been a bed of roses during Father Yanitelli's dozen years in that post.

In 1969, as student unrest swept the Nation's campuses, St. Peter's was rocked by a student strike which resulted in the arrest of some 41 student sit-ins and divided St. Peter's students, faculty, and alumni into political factions.

Among the more enduring memories of St. Peter's strike is a news photo taken of Father Yanitelli while he was trying to talk out differences with a strike leader marching on a picket line.

The photo, which appeared in newspapers throughout the country, symbolized the unique qualities that enabled Father Yanitelli to lead St. Peter's through the storm and reunite the college.

Those qualities include his remarkable humaneness and accessibility to others, which have helped Father Yanitelli to shatter all of the stereotypes of college presidents as distant and unapproachable.

His openness has been a trademark of his leadership in the community.

The Jesuit has retained the sensitivity to students that he developed as director of student personnel services. He has employed an open door policy with students who have continually arrived at his doorstep seeking advice and support.

Father Yanitelli, who is personally offended at the thought of a capable student being forced to drop out of college for financial reasons, has been known to award scholarships to scores of students over the years. And at times his generosity has caused the school's financial officers concern that one day he might give the college away.

Those human qualities are sure to remain a part of "Father Vic" as he enters a new phase of his vocation.

Father Yanitelli will be missed by the community at large and by the thousands of individuals whose lives he has touched.

The Jersey Journal, in an editorial that appeared shortly after the announcement that Father Yanitelli would be leaving Jersey City, capsulizes what he is and what he has meant to his college and his city.

It reads:

The Rev. Victor J. Yanitelli, S.J., is leaving Jersey City after 17 years and he will be missed.

He leaves more than a recreation center bearing his name. His contribution to St. Peter's College and to Jersey City will continue to benefit both in the years to come.

He came within a couple of hearbeats of being mayor of Jersey City and who knows what he might have accomplished in that office with his warmth, sincerity, considerable intelligence and his invaluable gift of inspiring the confidence and cooperation of others?

Honesty rubs off from Father Vic. When you think and talk about him you find yourself being more honest with him—and yourself—than you normally are. That makes it easier to say Father Vic had a lot of friends and there also are many who are not exactly friendly toward him.

Many, for example, considered him "a black vote" on the Jersey City Board of Education. Others say he has not been outspoken enough as a Port Authority commissioner. Think about it and you realize the first criticism means he helped minorities and the second, that he is a diplomat.

Nobody, however, has successfully questioned his motives or his conduct in public and community activity.

Losing Father Vic is like losing one of our natural resources.

He will be a difficult man to replace.

I am certain that my colleagues will agree that Father Yanitelli was a "doer" as well as a dreamer. His vision indeed has provided the opportunity for young and old and black and white and the rich and the poor he has touched to help to make a better life for all.

May God bless Father Vic and keep him for many years to come.

I urge him to:

HOLD FAST YOUR DREAMS

Hold fast your dreams!
Within your heart
Keep one still, secret spot
Where dreams may go,
And, sheltered so,
May thrive and grow
Where doubt and fear are not.
O keep a place apart,
Within your heart,
For little dreams to go! ●

DESIRE TO BEAT THE SHARPLY RISING CAPITAL COST OF NEW MACHINERY

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. NOWAK. Mr. Speaker, as chairman of the Small Business Subcommittee on Access to Equity Capital and Business Opportunities, I have made several recommendations to the 96th Congress on easing the capital formation burdens on small business. One of these recommendations is passage of H.R. 6171, the Used Machinery Investment Credit Adjustment Act of 1979.

The bill increases the amount of used equipment eligible for the investment tax credit from $100,000 to $200,000. The Congressional Research Service has indicated that the revenue loss for this proposal is $100 million in 1980, and nominally increases to $146 million by 1984. Currently, there are 81 cosponsors of H.R. 6171.

In substantiation of how used machinery can be both productive and cost effective for a business, and because of its importance to the American people, I am inserting in the RECORD an article entitled: "The Big Boom in Rebuilding" from the June 1980 issue of Dun's Review.

The article follows:

THE BIG BOOM IN REBUILDING

(By Lynn Adkins)

Ohio University Professor Charles Overby calls it "the invisible industry." Herbert Jamic, vice president of ARA Services, Inc., says it is a good potential money-maker for his company, and Daniel Baudouin, who heads the diaper service division of New Jersey-based Blessings Corp., says it is a terrific cost-saver.

What these people have in mind is the considerable saving in money, energy, raw materials, and, in some instances, time by rebuilding and remanufacturing old equipment and vehicles rather than buying new ones.

Of course, the rebuilding of locomotives and airplanes has been commonplace for years, but the phenomenon is spreading to other industries as well. Although there are no figures to indicate the extent of the practice, more and more companies, pressed by inflation and high interest rates, are joining the trend. And with the recession now squeezing profits still further, industry will be doing even more rebuilding over the next couple of years.

Jamic, whose company rebuilds its own vending machines as well as the step vans that deliver the coffee, candies and soda to those machines, cites the benefits to ARA.

"We have about 3,000 step vans, so it has become very economical for us to bring them in and rebuild them. Last year, we saved $1 million by rebuilding." Jamic notes that a new step van costs about $11,000 and that the old vans can be rebuilt for about $6,000. "That is a saving of $5,000 on each of the some 200 vans rebuilt last year. It reduced our capital investment and that saving either falls to the bottom line or gives us an opportunity to invest in something else."

In fact, ARA's van rebuilding, which began in 1978, has proved so successful that the company is now redoing step vans for other firms and is considering rebuilding truck cabs in the future. And Baudouin, who embarked on a program a little over a year ago to have Blessings' laundry equipment rebuilt, explains that "previously we could replace that equipment with new stuff, but we just can't afford to do that today."

NOT JUST MAINTENANCE

Rebuilding, it must be emphasized, is not just a stepped-up program of sophisticated maintenance or repairing. In rebuilding any machine or vehicle, it is completely stripped down so that all the parts can be examined and replaced if necessary. And a rebuilt piece of equipment can last as long—or longer—than a new one. Says Jamic: "The life-cycle of a rebuilt vending machine is as long as the original. And that's the whole purpose of the program." Concurs President Earl Ramsey of All State Manufacturing Co.: "When we rebuild a vending machine, it should last eight years, about the same as a new one."

The rebuilding idea is taking hold at such a pace that it is likely to continue even after the recession is over, according to many experts. Comments Robert Nesbit Jr., general parts and service manager at L. B. Smith Co., a distributor and rebuilder of heavy construction equipment: "This trend will

continue ad infinitum because the cost of equipment has just gotten out of hand." At 30%-to-40% of the cost of a new piece of equipment, Nesbit says, a rebuilt crane or loader "is a real bargain."

Still another example is that of a milling machine—a common piece of equipment in almost any manufacturing facility—that can be rebuilt for about 50% of the price of a new machine. With new millers now running over $100,000, the savings can be considerable, because it is not uncommon to find a dozen such machines in a medium-sized plant.

There are, however, advantages to rebuilding beyond cost. Baudouin says his company will have about 25 washing and drying machines rebuilt this year at about 50% of the cost of new machines which would run between $45,000 and $50,000 each. And those rebuilt machines will sport a new warranty. Moreover, says Baudouin. "The tax laws allow us to recapitalize remanufactured equipment. We can depreciate it according to our schedule, which on machinery is ten years."

Some companies are buying rebuilt equipment not so much for the cost saving, but because it is more readily available than new machines. Faced with a huge backlog, the machine tool companies are averaging two years or more on delivery of new equipment. A rebuilt machine tool, on the other hand, can be delivered in half that time. Kent Mathias, vice president of Cincinnati Milacron, Inc., one of the largest machine tool manufacturers in the country, says his company's rebuilding business is doing very well. "When a manufacturer gets a contract to produce parts, he has to start making those parts quickly. He wants to get the quickest delivery [on a machine tool] he can." Mathias attributes his company's brisk rebuilding business to the delivery problem rather than the lower cost.

SKILLED LABOR SHORTAGE

Vice President Robert Trecker of machine tool manufacturer Cross and Trecker Co. notes: "If I had more skilled people [to rebuild machine tools], I could do a lot more work. Our biggest restraint is the amount of skilled labor we can come by."

Professor Overby, who studied the ins and outs of rebuilding while at the Congressional Office of Technology Assessment, points out that beyond the considerable time and money saving to an individual company, advantages accrue to society in general through rebuilding. "If a product is remanufactured and reused . . . less materials and energy may be needed, less waste will need to be disposed of, less pollution will be created and the life-cycle of product ownership and use may well be reduced for the consumer," he maintains.

With the average American consuming 115 pounds of raw materials every day, excluding food, re-using just a small portion of those materials could prove a positive step toward solving some of the nation's pollution problems, points out Overby. "If all automobile passenger tires in the U.S.A. in 1973 had been recapped once, solid waste in terms of tire discards would have been halved," Overby contends.

If a company is considering rebuilding, it is important to buy high-quality equipment in the first place, Jamic points out; that's why he buys top quality aluminum-body vans from Grumman. They cost about $1,000 more than the steel body vans, but, says Jamic, "the steel vans were so corroded, we had to scrap the entire vehicle."

PROFIT POTENTIAL

Other companies rebuild equipment as profit-making operations, although the number of firms that do so is not large. Some original equipment manufacturers such as International Harvester Co. and Cincinnati Milacron offer rebuild services to their customers. But much of the rebuilding of heavy equipment is done by dealers, not manufacturers. As a heavy equipment distributor, L. B. Smith will rebuild cranes, loaders and the like for its customers. In fact, Smith is currently rebuilding for about $75,000 a mammoth industrial crane that would sell for between $250,000 and $300,000 new. "Rebuilding is a very valuable business for us," says Nesbit. "It is large dollar service work and we jump at the chance to do that kind of job."

One of the oldest industries involved in rebuilding is the truck and automobile aftermarket. Bruce Plaxton, Editor of Renews Magazine, which covers the after-market, believes "the automotive rebuilt engine market is just going to explode over the next few years." Plaxton explains that although Americans are switching from the big 8-cylinder engines to 4-cylinders, "the consumer is maintaining his car as if he were still driving a vehicle with a bigger engine, and those smaller engines are blowing up right and left as a result."

The fleets of trucks that retail, service and delivery companies must maintain are also big users of expensive rebuilt replacement parts such as engines and transmissions. Plaxton notes: "As recently as six years ago, most of the large commercial fleets were holding on to their vehicles somewhere in the neighborhood of three-to-four years, but a good number of those fleets now are five, six, sometimes seven years old." That's because the cost of buying new trucks has gone up exorbitantly in the past few years. "Fleet owners have to cut corners somewhere, so they are very heavily into rebuilding," he points out. "Every indication is that they are going to do more in the future."

Another aspect of the rebuilding boom are those companies that rebuild their own products and then sell—or more often lease—them out again to new customers. International Business Machines, Xerox and Minnesota Mining and Manufacturing have extensive facilities for rebuilding some of their products. Xerox started a rebuilding program in 1976 and today has five Centralized Refurbishing Centers scattered around the country to handle the company's copiers and one in Rochester, N.Y., that re-does telecopiers. "A customer doesn't know whether a piece of equipment on lease is brand new off the production line or whether it has been out at six different locations," says one Xerox executive. If Xerox sells a rebuilt machine, it of course informs the customer that it is not a brand new item.

Minnesota Mining and Manufacturing Co. also rebuilds leased office equipment such as copiers, telecopiers and microfilm machines. The ten-year-old program "has been quite a success and we have had a real savings in materials and parts," maintains Vice President Carl A. Kuhrmeyer. Most of the candidates for remanufacturing are sent to one of the company's three refurbishing centers, although some products do go back to the factory that made them. Kuhrmeyer notes that a plaque is placed on reconditioned products so the customer knows just what he is getting, because "we think that's important."

IBM has had a reconditioning program for more than twenty years. Most of the refurbished products had been leased, but the company will redo an owner's product on request. Unlike Xerox, which has separate refurbishing facilities, IBM sends its products to the plant that originally manufactured them. Highly sophisticated computer systems, which are comprised of components from a couple of plants, will spend refurbishing time in each of those plants.

With all of rebuilding's advantages, it is surprising that more companies are not engaged in it. A major reason is that Americans—consumers and businessmen alike—are enamored with styling and want the latest technology on most machines they use, according to Overby. But All State's Earl Ramsey contends that this should be no problem: "Not only do we rebuild, but we add new features to old vending machines. An old coffee machine that uses the fresh brew method for making coffee will come to us and we will remanufacture that machine to utilize freeze dried coffee. The machine gets a new front and it looks brand new."

ANOTHER DRAWBACK

A second drawback to rebuilding a machine is that often a company cannot afford to operate with reduced capacity while the machine is being rebuilt. But Blessings' Baudouin has found a way around the problem. "We have entered into a program with the Talley Laundry Machinery Co. whereby we will take some equipment out of one plant, and ship it to them for remanufacture. We then send that piece into another plant, which sends Talley a piece to be rebuilt. We just keep that cycle going." Baudouin had to buy a couple of rebuilt pieces of equipment to get his program started, but he says that the small added expense has already been recouped.

But perhaps the greatest resistance to rebuilding is that many manufacturers do not wish to have the cheaper rebuilt equipment compete with their newer, more expensive items. "Rebuilding may be a more efficient use of resources and energy," says Overby. "But it flies in the face of the glue that has held our society together. The driving engine of this society has been growth, and anytime you start looking at ideas that suggest less growth in the rate of consumption, it has ripple effects all over."

That may be true. But the businessmen who have opted for rebuilding surely agree with Blessings' Baudouin: "It just makes a lot of sense if you can save some money and have the equipment perform as if it were new."●

COMMUNITY SERVICES ADMINISTRATION TAXPAYER RIP-OFF

HON. EDWIN B. FORSYTHE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. FORSYTHE. Mr. Speaker, I would like to draw the attention of my colleagues to an abortion of a class action suit involving the Community Services Administration, which was revealed in an August 20, 1980, Wall Street Journal article. The article exposes a new wrinkle in how Federal Government agencies often deliberately misuse funds and circumvent the authority of the Congress to establish programs.

The continuation of this type of activity by CSA, or any other Government agency, diverts funds from useful programs and perpetuates unproductive ones, as well as placing an added burden on the already overburdened taxpayer. It's no wonder that

our citizens are mistrustful and skeptical of their Government.

The article follows:

A SWEETHEART OF A LAWSUIT?

(By Heather Stuart Richardson)

Elsie Simer is one of nine plaintiffs who recently won an $18 million settlement by suing the federal government's Community Services Administration. The 73-year-old resident of Melrose Park, Ill., received her $250 check in late July.

So did Hilda Beller, 61, who with her 81-year-old mother survives on an income of less than $200 a month in Breinigsville, Pa. The $250 checks also went to Arlene Whitehouse, a blind octogenarian who lives alone in Maine; Arthur Boucher, 70, another home-bound Maine resident; Hilda Spinney, 58; Rose and Robert Henderson of Lancaster, Pa., who struggle to support their family of five on about $600 a month; Debra Jones of Manheim, Pa., and the Gray Panthers, a private advocacy group for the elderly.

The nine plaintiffs whose names appear on the class-action complaint in Simer v. Olivarez collected a total of about $2,000. They are not likely to ask what happened to the rest of the $18 million, however. Of the six reached for comment, three professed no knowledge of the lawsuit and only one said he had been consulted in advance about the settlement.

In any case, the big winners in the settlement weren't the class of complainants who supposedly were doing the suing. Much of the rest of the $17,998,000 appears to have been divvied up among: government agencies (even the agency being sued was able to add four more bureaucrats to its rolls as a result); quasi-public community action groups with a good deal of political clout, and the so-called public interest lawyers of the type who launched the suit in the first place.

Indeed, a close look at Simer v. Olivarez suggests that it was one sweetheart of a lawsuit for nearly everybody except the complainants—and the taxpayer.

FILING A COMPLAINT

Various public interest law firms filed the complaint in federal district court in Chicago in September 1979 against the Community Services Administration, the successor agency to the Office of Economic Opportunity, which, you may remember, was the cornerstone of Lyndon Johnson's War on Poverty. The complaint alleged that the nine plaintiffs "and all others similarly situated" had been deprived of CSA energy crisis assistance payments because of arbitrary requirements. In particular, the suit said, $18 million of the $200 million appropriated for fiscal 1979 to help poor people cope with soaring energy prices had gone unspent. A provision that such unspent funds would have to be returned to the Treasury violated the Administrative Procedure Act and due process laws, the suit contended.

It was no accident, however, that a termination date for spending the $200 million had been inserted in the legislation for the program. The Office of Management and Budget insisted on the inclusion to make certain that the program would confine itself to winter emergencies. Also, CSA hadn't had much luck with two previous "energy crisis" programs. An investigative report by a congressional subcommittee considered it as having "achieved questionable results, beset by inadequate management practices, and leaving a sense of expectancy and dependency among the poor. . . ."

A specific appropriations bill for further energy crisis payments might not have survived this skeptical climate. Instead, the $200 million was wrapped in with the broad continuing resolution Congress passed in order to keep the CSA from folding. The subcommittee condemned this act as "presumptuous" because Congress had passed both previous programs with considerable reservation and specifically as one-shot affairs. Furthermore, in bypassing the normal route, CSA had "eliminated Congress' discretionary decision-making authority."

The OMB, in approving the CSA request, had stipulated that the $200 million couldn't be spent after June 30. When that date rolled around, $18 million remained unobligated and apparently doomed to be returned to the Treasury. Yet a previous lawsuit in a similar case against CSA had prevented that from occurring; a group of public interest law firms figured the trick could be repeated.

Of the claimants named in the suit who could be reached for comment, those who were aware of the suit at all insisted that they had been steered into the lawsuit by public interest law firms. The firms all receive grants of between $285,000 and $850,000 from the Legal Services Corp., an independent agency established by Congress, plus additional support from what used to be the Health, Education and Welfare Department.

Preliminary hearings led to a pre-trial settlement between CSA and the plaintiffs. The plaintiffs would each receive an amount equal to the maximum allowable under the energy crisis payment program, or $250, yet no attempt was made to identify "all others similarly situated"—the poor on whose behalf the class action was instituted.

CSA rationalizes this deliberate oversight by insisting that reopening the program for such a trifling amount would have caused no end of administrative headaches. In addition, since Congress had already allocated vast amounts for a similar 1980 program, CSA sought a settlement which would "have impact," according to Richard Saul, Chief of Energy Programs at the CSA.

In other words, CSA sought a settlement which would allow it to use the funds to finance pet projects which otherwise might have been terminated because of opposition or a lack of interest in Congress.

How will the $18 million (less $2,000) be spent? As outlined in the legal settlement, $4 million will go to a hypothermia program run by former CSA grantees to alert people to the dangers of freezing to death; over $2 million will be spent to subsidize solar power programs; and roughly $8 million will go to public advocacy and legal services. The remaining $4 million, originally intended for emergency energy conservation kits, will probably end up in the advocacy kits as well.

Here are some of the particulars of the distribution:

$150,000 will keep the Small Farm Energy Project, a CSA grantee, alive for an additional two years, despite a report by Rural Development Inc., an independent research and consulting firm, that was partly laudatory but also conceded that "the level of major energy innovation is less than what would be necessary to have a significant impact on energy use and income level on cooperating farms."

$1 million will be awarded to consulting firms and 15 Community Action Agencies, essentially to produce reports to inform us that energy is expensive.

$4 million will go to 23 of the CSA's Associations of Community Action Agencies that were due to be terminated. About $2 million of that sum will flow through to the existing legal service network for various contracts. The associations, such as Energy Alliance, act as consumer advocates, working for such things as utility rates, customer service regulation and challenges to utility projections of capacity needs.

The National Consumer Law Center will receive $1.8 million directly plus another $500,000 to distribute to Community Action Agencies, legal service organizations and consumer utility advocacy groups. The $700,000 grant the National Consumer Law Center received in 1979 from CSA was to have been its last; CSA didn't anticipate adequate appropriations to keep the NCLC going. Now it has $900,000 a year for the next two years.

$200,000 for the Associations of Community Action Agencies and Community Action Projects for "training and technical assistance in organizing and coalition building" under the auspices of the Citizens Labor Energy Coalition. These civic-minded experts concocted Big Oil Day last October and more recently participated in Big Business Day.

Finally, to administer the settlement, CSA created four new positions in its own offices, positions which Congress most probably would never have authorized.

MOOT INTENTIONS?

Thus CSA and the public advocacy and legal services groups may have hit upon a marvelous recipe to render Congress's intentions moot and feather their own nests: Leave money unspent, be sued and settle as thou and they can best profit.

"I can prove everything but intention," say Peter Metzger, who runs an internal think tank for the Public Service Co. of Colorado. "You have this friendly lawsuit where all these publicly funded legal services groups rush to court and distribute funds among the litigants."

Assuming CSA could have won the case, fiscal responsibility would seem to demand that it do so and return the $18 million to a government already under attack for excessive spending. And if, as CSA's lawyers assert, the judge gave them reason to believe they would lose the case, then shouldn't the funds have at least been used for the purpose for which they were intended—to alleviate the burden of rising fuel prices on the poor—instead of propping up pet priorities of a floundering agency?●

THE FEC, THE LAW, AND THE FACTS

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. DORNAN. Mr. Speaker, the following three discrepancies in the Peck/Peck/Dennis/Stewart scandal further illustrate the gap that exists between the Federal Election Commission's duty to investigate possible violations of the law as clearly revealed by their own records and the manner in which the FEC deals with such possible wrongdoing.

The questions raised by the facts below are questions that I have brought before Federal officials without receiving satisfactory answers. I am inserting these discrepancies into the RECORD in the hope that some light may be shed where certain Government officials have refused investigation.

The following material is presented for your consideration.

CAREY PECK DOES NOT REPORT SOURCE OF HIS BANK LOAN USED TO REPAY DENNIS, WHICH VIOLATES FEC LAW

Carey Peck claims he took out a bank loan to repay Dennis the $13,000. When he learned of Dennis' legal problems, Peck said he took a personal bank loan and returned the money—see Daily Breeze, Torrance, Calif., January 29, 1980, article by Rich Connell. Peck said he had immediately obtained a personal loan of $9,000(?) in order to pay back the funds—see Evening Outlook, Santa Monica, Calif., January 10, 1980, article by Will Thorne. On his father's advice, Carey Peck borrowed $13,000 from a local bank and returned the money Dennis had given him—see June 21, 1980, Jack Anderson column.

Carey Peck, who does not appear to be working, finds $4,000 from somewhere and claims to add this to a $9,000 loan from a bank. Or, Carey borrowed $13,000 if the Jack Anderson article is correct. On Daddy's advice instead of his own mature judgment.

Yet, on his FEC schedule C form for the period April 1, 1979, through June 30, 1979, Peck lists himself as the sole source of a $13,000 loan to the Carey Peck for Congress Committee for "advance for campaign expenditures from personal funds."

FEC regulations then in force did allow a candidate to make a loan made in accordance with applicable banking laws and regulations, and in the ordinary course of business—11 CFR 100.4(b)(13) provided that each endorser or guarantor is reported—11 CFR 104.

However, FEC regulation 11 CFR 104.2(b)(5)(i)(B)(ii)(A) requires that any loan to a candidate or a committee during the reporting period made for over $100 must be fully reported as to its source. Carey Peck has misrepresented to the FEC his loan regarding repaying Dennis the illegal money. Senator DONALD STEWART, until April of this year, 1980, also failed to list the real source of the $22,000 he gave to his campaign in order to cover the $22,000 check he claims he gave to James Dennis.

Furthermore, Carey Peck may have violated 11 CFR 110.0(a)(1) which prohibits any person from contributing or loaning a candidate more than $1,000 per election—primary, general. Carey Peck made his loan at the City National Bank of Beverly Hills, according to Bram Goldsmith who manages 25 branches of the City National Bank, and who had a personnal conversation with Congressman DORNAN on May 16, 1980.

In part, the conversation went approximately as follows:

DORNAN. You mean that you would loan an unemployed congressional candidate $13,000 on his own signature without any collateral or cosigners?

GOLDSMITH. Well, Congressman, Gregory Peck didn't cosign the loans (plural).

DORNAN. So you gave a 28-yr.-old lad, unemployed for over a year and a half, loans without any collateral? Is that intelligent or proper banking practice?

GOLDSMITH. Congressman, I said • • • Gregory Peck • • • didn't cosign the loans. (Given in a tone which implied that somebody had).

DORNAN. I'm sorry, I'm a little slow today. I see, you mean the Gervertz's (Carey Peck's in-laws) or someone else co-signed. Thanks, Bram.

GOLDSMITH. You're welcome, Bob.

FEC law—title 2, United States Code section 434(b)(3)(E), states that all loans must be reported with the identity of any endorser or guarantor of such loan, the date, and the amount of the value of such loan.

PECK CLAIMS A RETURN OF THE ILLEGAL $13,000 TO DENNIS, YET FEC DOES NOT ASK FOR ANY EVIDENCE OF THIS RETURN TO THIS VERY DAY, IN SPITE OF NATIONAL PRESS STORIES OF FELONY "U-TURNING" OF ILLEGAL FUNDS; FELON WHO CLEARED PECK AND STEWART "UNCLEARS" THEM BEFORE FEDERAL GRAND JURY

Fred Eiland, spokesman for the FEC in Washington, said that Peck's campaign apparently received the money not knowing it was donated illegally. They took the money in good faith and once they found out it was bad, they returned it—see Daily Breeze, January 29, 1980, by Rich Connell. How the hell would he know?

As to why Mr. Eiland should become a major apologist for Mr. Peck is still very unclear. For instance, there is no evidence in the FEC files—MUR 970—of the front and/or back of a canceled check from Peck to Dennis. And, Commissioner Thomas Harris of the FEC told Congressman DORNAN and Bob Marshall, a staff aide, in a personal meeting at the FEC that he was surprised to learn that no check was in the file, as it was normal FEC practice to obtain such evidence for the files. "We always have this," he exclaimed to Congressman DORNAN. Peck has never sent the FEC a copy of that check, cashed in Los Angeles, nor has the FEC asked for a copy. The only evidence of a return of the funds is a letter—in August—from Dennis' attorney, Steve Salter, claiming that Peck had returned the money and the unsubstantiated claim by Peck on his FEC form.

Also, Fred Eiland told Congressman DORNAN in a phone conservation on February 7, 1979, that the FEC called Peck to alert him about the illegal money. Commissioner Tiernan denied this by phone shortly thereafter on the same day. Then, later that same day, Eiland said, "Congressman, I misspoke."

FEC CLAIMS MUR 970 CANNOT BE REOPENED, YET FEC LAW STATES "UNLESS CONCILIATION AGREEMENT IS VIOLATED"

On June 6, 1980, Charles Steele said in a meeting with Congressman DORNAN and a Dornan aide that the MUR 970 was closed and would not be reopened—he said this with a deeply pained look on his face. At several points in the long meeting, Mr. Steele was literally speechless.

However, title 2, United States Code, section 437(g)(a)(4)(A)(i) states:

A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under Paragraph (6)(a).

James Dennis has not yet paid the fine—not a penny—levied by the FEC and the FEC has filed civil suit to collect the money, in May of 1980 after heavy Dornan criticism. This would seem to indicate that the conciliation agreement has in fact been violated, and therefore MUR 970 need not be closed, unless, of course, someone wants to continue a probable coverup of violations and omissions by the FEC and others, including Federal officials in Alabama.●

RECOGNITION OF HON. MORRIS K. UDALL AS OUTSTANDING LEGISLATOR

HON. JIM SANTINI

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. SANTINI. Mr. Speaker, our distinguished colleague, the Honorable MORRIS K. UDALL of Arizona, has just been recognized by a bipartisan group of Government professionals as the outstanding legislator of the 96th Congress, 2d session. Mo UDALL received this Outstanding Legislator Award at ceremonies held last night in Washington, D.C., from the Congressional Fellowship Association, an organization of professional men and women who have served Congress in varied staff capacities, under auspices of the congressional fellowship program of the American Political Science Association.

Mr. Speaker, I want to share with my House colleagues the accolades for Mo UDALL that were publicly given last night. Mr. Len Parkinson, speaking for the Congressional Fellowship Association, said:

Congressman UDALL is that rare public person who has earned the respect and admiration of his peers on both sides of the aisle, on both sides of Capitol Hill. His leadership is an unusual blend of compassion and kindness and principle that commands attention even from his most ardent critics. Mr. UDALL has become a leading spokesman in the Congress on matters concerning energy and the environment. But we do not honor him so much for his outstanding work in both of those fields as we do for his selflessness in working to see that whatever is done in Congress is done in the best interests of his Nation. He is a patriot in the very best sense of the word.

Mr. Speaker, those sentiments are well deserved and well earned by Mo UDALL. And they are widely shared. Members privileged as I have been to serve with Mo UDALL on the Committee on Interior and Insular Affairs, of which Mo is chairman, can all attest to his even-handed manner in conducting legislative deliberations, and to his

quick wit and warm sense of humor in defusing the tension that can rise during spirited debate over legislative differences among committee members. Mo UDALL proves the adage that laughter is the best medicine.

I am glad to endorse the Congressional Fellowship Association's selection of Mo UDALL as outstanding legislator. The congressional fellowship program, whose alumni constitute the association, has a distinguished 27-year record of service to the Congress, through its selection of promising political scientists, journalists, civil servants, and other professionals, for hands on education into the legislative process by working as congressional aides for 9-month terms. Following their staff assignments, congressional fellows typically return to their careers with Federal agencies, universities, and the media. Some join permanent professional staffs of Senators and Members of the House of Representatives, and of House and Senate committee staffs. A few continue in political life, and become officeholders in their own right. It is noteworthy that two former congressional fellows are currently serving in Congress: the Honorable RICHARD B. CHENEY of Wyoming, and the Honorable ARLEN ERDAHL of Minnesota.

Mr. Speaker, being named the year's outstanding legislator by such a diverse cross section of past and present congressional fellows is a fitting honor for our distinguished colleague MORRIS K. UDALL.●

HOOSIERS AID CARIBBEAN HURRICANE VICTIMS

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BRADEMAS. Mr. Speaker, the devastation left by natural disaster makes news, briefly commands our interest, and is soon forgotten. The challenge of rebuilding the homes and the livelihoods of disaster victims lasts much longer, though, and is often left to a few. That is why I call attention today, with pride, to the dedication of a group of people from northern Indiana who have given their time to help the hurricane victims on the Caribbean island nation of Dominica.

A year ago, after a hurricane had destroyed much of the island, the United Methodist Committee on Relief sent work teams to help Dominicans rebuild their country. The group of volunteers from northern Indiana answered the call for help under the leadership of Dr. Harold Neel, the former pastor of the United Methodist Church of Mishawaka, Ind., and his wife, Betty. Commitment like this often goes unnoticed. Yet all those who joined the team to work in Dominica have shown us the true meaning of brotherhood among nations. Their endeavor deserves our highest commendation.

At this point, Mr. Speaker, I insert in the RECORD a recent article from the South Bend Tribune by Lewis Mundell, who worked with the Dominican hurricane victims, describing the mission of these dedicated people from Indiana.

HOOSIER WORK TEAM HELPS HURRICANE-DEVASTATED ISLAND OF DOMINICA

MICHIANA POINT OF VIEW

The Island of Dominica, an autonomous country in the Leeward Islands, Eastern Caribbean, of the West Indies, was devastated by Hurricane David at the end of August, 1979. Out of a population of about 72,000, more than 80 percent of the population lost most of their livelihood. Roseau, the capital city, was 85 percent damaged by the 50 mile-an-hour winds which blew steadily for six hours and left a great number of homes without a roof.

UMCOR, United Methodist Committee on Relief, made an appeal for a series of "work teams" to come to the island to help families put their houses back into liveable condition (some are still living in tents). About three-fourths are without electricty, have little running water and practically no internal telephone and telegraph service. The water was contaminated and had to be boiled before it was fit for drinking purposes and for brushing our teeth. Extreme caution was exercised to guard against illness and injury while working on roofs. Help is also needed to repair and restore the Methodist and other churches badly damaged by the storm. The Anglican church was completely destroyed. Building materials (such as lumber, corrugated steel roofing and nails of all sizes, etc.) are in very short supply.

The medical situation is equally disastrous. Dr. Michael Watson, our medical consultant, was told by the chief medical officer, Dr. McIntyre, that there are only eight doctors in the country and seven of them live in Roseau. The hospital was badly damaged, and one wing needed for psychiatric service is still without a roof. Food is no problem. Large quantitites of food have been given by United States, Canada and Venezuela also helped with food and materials.

Sponsored by the Elkhart District, Northern Indiana Conference, the work team program is open to persons who are not afraid to "rough it," while being involved in helping other persons in need. The teams at the same time learn to know the wonderful people of another culture.

Dr. Harold and Betty Neel of Elkhart (the former pastor of the First United Methodist Church of Mishawaka) were the leaders of the work group that left Elkhart March 14, 1980. Other members of the group were Lew Mundell (retired pharmacist) of South Bend-Mishawaka; Mrs. Sarah Spreuer, Shipshewana; Mr. and Mrs. David Munson, Munster, Ind.; Mr. and Mrs. Thomas Harris, Corydon, Ind.; Mrs. Ester Baily, Goshen, Ind.; Raymond Rose, Wawaka, Ind.; Joe Evans, formerly of Mishawaka, now of Indianapolis; Mrs. Irene Fox, Elkhart; and Rev. Earl Sharp, Elkhart. Each of these participants in the work group has experienced a most enriching encounter with those in need.

I am most grateful for the opportunity of being a part of this work group, where one could serve those in need and demonstrate our caring by Christian love and labor.

This is not just a story about a man and his church, but an appeal to understand the need for individuals to become involved in missions, physically, financially and spiritually. Love and labor support one another, combining means and ends and blending aspects of our being and our doing. This is a time in which we as persons and as a nation can demonstrate to the world that we do care and are ready to help, without political and military implications.

The prime minister of Dominica, Oliver Seraphinn, said in speaking about hardcore poverty and the economic relations between the United States and the Caribbean. "The deep deprivation being experienced by our people in respect of the most basic necessities of life—food, clothing, housing, education and medical care—heightened by our proximity and constant exposure to North American living standards, forced us to place a major attack on Caribbean poverty." The Caribbean is a natural disaster-prone region. Hurricanes, volcanoes, cyclones, floods, landslides, earthquakes—you name it, they get it.

This work group of which I was a part did much in securing materials for other groups to follow. They also were able to set up a necessary tool and material center in order that their groups could more effectively proceed with rehabilitation. I am sure that other churches and groups are also involved in mission work, which we should recognize and encourage through the media. It is necessary that these efforts be co-ordinated through a central committee available to all churches and benevolent organizations to carry out more effectively work missions where they are needed most. The people of Dominica are warm, friendly and most grateful for the work we accomplished and will work with other groups. They need leadership, hope, understanding and material.

I am reminded of those young people in church youth groups and their adult chaperones who sacrifice a part of their summer vacations to serve in the Appalachian region. Their lives have been enriched by serving the needy through their compassionate work. Many of us can follow their example by giving of our time and love. When we give for the benefit of income tax deduction, we have lost the real purpose of our giving. We have become too materialistic.

I am relating my story to encourage those who can and should support amply the missions of their churches to reach more in their hour of need. Contributions to church missionary programs reach directly the areas in need and are not wasted in administrative costs.●

UNITED NATIONS IN ACTION TO PREVENT NEW AGRICULTURAL DISASTER

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BONKER. Mr. Speaker, during this period of growing congressional concern about the effectiveness of the United Nations and its affiliated organizations, it is refreshing to read the article I wish to submit for the RECORD regarding the coordinated efforts of several U.N. agencies to combat a potentially devastating locust problem in Africa. As Thomas Land points out in today's New York Times editorial, "In Africa, Locusts Again," the U.N. Food and Agriculture Organization and the U.N. development program have already taken steps to help drought-ridden countries in central and west Africa avert a major agricultural disaster.

This is but one example, Mr. Speaker, of the positive work performed by these international organizations, and I commend the article to my colleagues.

IN AFRICA, LOCUSTS AGAIN

(By Thomas Land)

A new locust emergency is looming in West Africa, at a time when food shortages are spreading across the continent.

The United Nations' global information and early-warning system on food and agriculture records the presence of yet unspecified numbers of swarms, presenting a grave threat to agricultural areas in northeastern Nigeria, northern Cameroon, northwestern Chad and possibly Niger, the Central African Republic and the Sudan. In the United Nations' view: "Provided that national and regional campaigns are carried out immediately and successfully, there should be a very substantial reduction in the African migratory locust populations and in the threat of serious crop damage in the area. Such action would in turn reduce the threat of a major plague."

During the last plague of the migratory locust, between 1928 and 1941, most African countries south of the Sahara were invaded by swarms. The insect feeds predominantly on grasses, wild and cultivated. Specialists of the United Nations Food and Agriculture Organization reckon that in the present emergency "major control efforts will be required to prevent the eruption of a major plague."

Aircraft, pesticides, communications and spraying equipment and trained staff are urgently being dispatched from many parts of the world to the affected areas, where the control operations are coordinated by the International African Migratory Locust Organization. More than $600,000 has been released already by the F.A.O. and the United Nations Development Program to meet the immediate expenses of the program, and a lot more may well be required before the emergency is over.

At stake is the harvest on a continent already suffering the effects of severe drought as well as war. Edouard Saouma, the F.A.O. Director General, has said: "We are on the verge of simultaneous human disaster in many countries of an unprecedented character, with all the terrible implications of the consequences of inaction."

The first signs of the locust emergency were apparent as early as 1979 when swarms of the migratory locust breeding in the Lake Chad basin moved southwest and reached eastern Nigeria and the Adamawa Massif in Cameroon. By last April, some swarms reached Benue and the Cross River States in Nigeria, about 625 miles away from the outbreak area. Being so far south, they encountered favorable breeding conditions and went through two generations in rapid succession.

Because of difficulties of ground access and restrictions of helicopter surveys, specialists failed to assess the total extent of the infestation area. Control operations were limited and hopelessly inadequate in terms of the developing emergency. By June, a new generation of adult insects appeared and started to breed, eventually moving further afield. Breeding has also commenced in the Baga area of northeastern Borno State in the Lake Chad basin.

Specialists at the world's foremost scientific-research institutions concerned with locusts have now been asked by F.A.O. to stand by ready to be called into the crisis area at a short notice. Nigeria, Cameroon and Chad are about to mount national control campaigns under a hastily organized regional plan of action supported by several international organizations. But such an operation is easier to run than to organize.

"Since other agricultural problems loom larger when recessions of the locust plague occur, it is easy for even the best-constituted control system to go rusty or to break down, especially in poor countries with small resources," explains the United Nations journal World Health. "Experienced operatives are recalled to attend to other tasks, vehicles and planes equipped for spraying deteriorate and are not replaced, stocks of expensive pesticide like dieldrin and malathion (the most effective locust killers) run down and, most important, the need for perpetual vigilance is sometimes forgotten."

Until recently, most of the specialist world's attention was focused on the desert locust, which less than two years ago threatened an immense area comprising 50 countries from the West Coast of Africa to the Himalayas. But the current emergency is potentially as serious as the last; and the populations of many countries that may be affected are totally unprepared for a new agricultural disaster.

Mr. Saouma of the F.A.O. says: "In addition to the famine in Uganda, prolonged drought continues in several Sahelian countries, Djibouti and southern Ethiopia. In southern Africa, Angola, Botswana, Malawi, Mozambique, Zambia and Zimbabwe have also suffered severe drought. Kenya and Tanzania, which were self-sufficient in recent years, now face shortages. Somalia faces the double crippling burden of delayed and erratic rains and the largest concentration of refugees in the world."●

ISRAEL'S NOBLE RECORD ON JERUSALEM

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. OTTINGER. Mr. Speaker, I am distressed about the U.S. abstention on the U.N. Security Council vote to censure Israel for its designation of Jerusalem as the united capital of Israel. The U.N. has been effectively manipulated by the Arab bloc, and it is time for the administration to stop appeasing the Arabs by acceding to their tactics in the U.N.

Not only most Arab nations, but virtually the entire international community has used the U.N. as a stage for its attack on Israel's Jerusalem resolution. Throughout the barrage of hostile statements and belligerent actions, few have thought to look at the record.

The facts are that only Israel has kept Jerusalem open to all worshipers. Only Israel has protected holy shrines of all religions. Similarly, only Israel has made true efforts to improve the economic lot of the Palestinian people, including absorbing them into the labor force and insuring their passage from the West Bank to the Gaza Strip. This is an impressive record which deserves attention.

The United States should be speaking out strongly to focus the world's attention on Israel's fine record in Jerusalem. We should not be silent about this record. President Carter ran on a platform committing the United States to recognize Jerusalem's historic position as capital of Israel and calling upon the United States to move its Embassy to Jerusalem. He should keep that commitment.

I believe that Rabbi Stanley Rabinowitz eloquently described the historic position of Jerusalem in his letter to the New York Times of August 24. I commend this letter to my colleagues' attention:

PEACE IN JERUSALEM DISTURBS THE U.N.

To the EDITOR:

The rehearsal of the history of Jerusalem (news story Aug. 1) suffers from the defect of its virtues: while concise and balanced, it ignores the important element of population data.

Ever since 1844, Jerusalem has been the one city in the Holy Land which has consistently had a Jewish majority in the population except for the heavy-handed Jordanian rule (1948-67). According to the 1844 Encyclopedia Britannica, of the 15,000 people living in Jerusalem, 3,390 were Christains, 5,530 were Moslems and 7,120 were Jews.

Jerusalem has yielded to many conquerors each of whom restructured both the architecture and the infrastructure of the city in its own image. Each conqueror exiled the vanquished and denied them rights of entrance to the walled city. Thus did Jordan treat the native Jewish inhabitants in 1947 when Jews were in the majority.

For the first time since the Roman period, Jerusalem is now open to all cultures, all faiths and all peoples, something that was not even true when the British were in charge.

During the 19 years of Jordan's control of Jerusalem, the Jews were promised certain visitation rights under the armistice agreement. These rights were denied them and the world was silent. If Jerusalem were returned to Arab or Moslem control, and if the access of the Jew to the Western Wall were to be denied, I doubt very much whether any government would lift a finger to secure or protect those rights.

There is peace in Jerusalem today embracing all its citizens regardless of faith. Apparently, peace disturbs the tranquility of the United Nations.

(Rabbi) STANLEY RABINOWITZ.

WASHINGTON, *August 8, 1980.*●

APPROPRIATION FOR INTERNATIONAL EDUCATION PROGRAMS

HON. LEON PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. PANETTA. Mr. Speaker, I rise to strike the requisite number of words.

Mr. Speaker, as a former member of the President's Commission on Foreign Language and International Studies, I want to take this opportunity to commend the distinguished chairman

of the Labor-HEW Subcommittee for his leadership in preparing an appropriation for international education programs which truly is a vast improvement over the previous year The report of the President's Commission delineated an alarming national deficiency in international studies and foreign language capability precisely at a time when our demands in these fields have increased. It is very important that the Congress provides sufficient support for international education programs which are vital to the Nation's future well-being.

Since the Commission filed its report in November of 1979, I have been working closely with Representatives SIMON and FENWICK, who were also members of the Commission, in trying to heighten the awareness of the Congress and the American people in the area of foreign languages and international studies. Together we have formed an international education group of House Members who are interested in cooperating to make improvements in Federal programs in this field. The international education group now has 35 Members, with a number of Senate offices keeping in close contact with our efforts.

The bill before the House today contains $21.8 million for foreign language training and area studies programs. It also contains $6.2 million for the Mutual Educational and Cultural Exchange Act programs—Fulbright-Hays. This level of funding is an improvement and a good step forward. I am particularly pleased that the committee's report highlights the need to extend assistance to undergraduate and precollegiate international programs. This reflects a high degree of support for the concept of providing assistance to contibute to the international awareness, cultural understanding, and foreign language capabilities of Americans—not only to produce experts in these fields. The thousands of students who have benefited from these programs have been able to contribute a broadened international understanding in their capacities as teachers, community and business leaders, local officials, lawyers, and responsible citizens. The committee report makes this point explicitly, and I want to emphasize that the United States has a severe need for experts in these fields, but that it also has an interest in supporting international education programs that can help Americans of diverse backgrounds and professions better understand the world in which we live.

Again, my sincere appreciation to the Appropriations Committee for supporting these programs and for emphasizing the undergraduate language and area centers and the undergraduate international studies programs. I look forward to working together with the committee in future years in support of these needed programs.●

TRIBUTE TO JEROME CHAPMAN

HON. HENRY B. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. GONZALEZ. Mr. Speaker, as commissioner of the Texas Department of Human Resources, Mr. Chapman has been responsible for all facets of the department; maintaining the department's relation with significant external agencies and groups which have influence and interest regarding the department's activities; administering a department of 12,500 employees; managing a department budget of $1.6 billion for fiscal year 1981; and organize extensive coordination with agencies on welfare programs, since 60 percent of the departments finances are federally funded.

Mr. Chapman who is nationally recognized for his knowledge of welfare programs became commissioner of the Texas Department of Human Resources in 1977, upon the retirement of Mr. Raymond W. Vowell.

He lead the first title XIX—medicaid—task force which designed the program of medical assistance in Texas. It is now considered one of the best administered medicaid programs in the Nation, and its provisions have been used as models for other States. Mr. Chapman also helped implement title XX—social services—program in Texas, benefiting the elderly, disabled, families and children.

His major accomplishment in 1976 was the leadership in compiling an entire new set of minimum standards as mandated by the Child Care Licensing Act of 1975. As a result, standards were developed protecting the safety and well being of children in the care of other than their parents or guardians.

Over the years, Chapman has been up through the ranks of the department of public welfare, serving in many capacities. In the process he gained the vast amount of program knowledge that has caused him to be sought out by the Department of Health, Education, and Welfare, for service on many advisory and policy committees at the national level.

Jerome Chapman has been with the Texas Department of Human Resources since 1950, and after 30 years of dedicated service, will retire this year. He has had assignments in every part of the State with varying responsibilities including those of caseworker, supervisor, regional director, adoption consultant, director of licensing, and assistant director of child welfare division.

He is a past president of the Texas Public Employees Association, has twice been a board member and presently is an officer of the American Public Welfare Association. He has been active in the Child Welfare League of America, Texas United Community Services, and various other professional organizations. He was appointed chairman of the council on early childhood development for Texas which generated the establishment of the council of early childhood development in the office of the Governor.

As a result of his extensive knowledge of State and national public assistance plans, Chapman in his executive capacity, has devoted much of his time to review of the department programs that combined reach the lives of one of every six Texans annually. Many of the programs were substantially shaped by his recommendations.

Although born in Kansas, Chapman calls Beeville, Tex., his hometown.●

MARY J. HEAD—NATIONAL BUSINESS AND CIVIC LEADER

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. PICKLE. Mr. Speaker, the city of Austin, Tex., is blessed with many capable leaders. In recent years, the number of elected women officials has gained national attention. But several other women are quite involved in other business and civic pursuits.

One of these outstanding leaders is Mary J. Head, who serves on the boards of several corporations. She began her career when President Nixon appointed her to the Board of Amtrak in 1974.

Sun magazine, published by the Sun Corp., on whose board Mrs. Head also serves, recently did a profile on this hard-working woman. Mrs. Head embodies the very spirit of equal economic and social opportunities for women in all facets of life. Her example can be useful for other women with dreams and ambitions, so I am glad to submit this article on Mary Head:

MARY J. HEAD—ONE OF THE BEST DIRECTORS I'VE EVER SEEN

(By Bob Finucane)

Ben Head looked at Mary and grinned. "You'll be okay," he teased. "After all, Austin does have an airport."

This moment in the lives of Mr. and Mrs. Ben T. Head, then of Newport News, Va., ticked away about two years ago, on the heels of Ben's announcement he'd been offered a bank presidency in Austin, Texas.

Ben's velvet needle was not without its point: Airports are Mary Head's support system. Without them, she's a Wyeth without canvas, a muzzled Streisand.

Today, Mary is flying in and out of Austin more frequently than Lyndon B. Johnson did when he was shuttling between the White House and his ranch, 60 miles west of the Texas capital.

Mrs. Head waits for baggage and taxis in dozens of cities but she waits more often in Chicago, Washington, Kansas City and Philadelphia, headquarters towns for six corporations she serves as a director—and only woman director.

"She's one of the best directors I've ever seen," says Ralph S. Saul, chairman and

president of INA Corporation. Mr. Saul is a director of Sun Company, Inc., to whose board Mrs. Head was elected early this year.

"Forget man . . . woman . . . that sort of thing," Ralph Saul suggests firmly. "She is one of the best directors I've ever seen, period."

Mrs. Head assumed her first directorship in 1974 when she was named by President Nixon to the board of Amtrak (National Railroad Passenger Corp.) and for four years served as its vice chairman. She is a director, also, of Household Finance Corporation, Butler Manufacturing Company, CertainTeed Corporation and the American Hospital Supply Corporation.

"Her business judgment is uncanny," says Mr. Saul of the 50-year-old mother of three who possesses neither corporate experience nor college diploma.

"I haven't entirely abandoned the idea of going back for my degree," she confesses.

If she takes that step, and enrolls at Mary Baldwin College in Staunton, Va., she'd be the first trustee/student in that institution's history. (She serves also on the board of visitors of the University of Pittsburgh Graduate School of Business.)

Mrs. Head spent one year at Wellesley College and one at the University of Oklahoma before becoming, at 19, the June bride of Ben Head, 29, a practicing attorney in Oklahoma City.

"I knew on our first date I would marry him. I told him his blue eyes did it, but wasn't it nice that he turned out to be trustworthy, loyal, kind, obedient, thrifty, brave and all those Boy Scout things?"

Mrs. Head spent the better part of the next two decades raising her family (one daughter, two sons) and allowing herself to be happily caught up in the social, cultural, religious and civic swirl of Oklahoma City.

There was hardly a charitable cause in the state capital that didn't catch her attention. Proof that her interest was not of the hit-and-run variety is provided by the record: Titles such as president, chairman, administrator, etc., are all there.

Her reputation as a motivator and achiever gradually spread statewide, then beyond, so none of her friends were surprised, in 1968, when she was named to the Citizens Advisory Committee on Transportation Quality, in Washington, D.C.

"It was a body representing the consumer viewpoint on transportation," Mrs. Head explains. The savvy she exhibited with this group resulted in her later appointment to the quasi-official Urban Transportation Advisory Council to the Secretary of Transportation.

Exposure to transportation problems and people, and her empathy for them, was responsible for her surprise appointment as a director, in 1974, to the board of Amtrak, on which she has served for six years.

If pressed to name the honors which have most pleased her, Mrs. Head would probably list her induction into the Oklahoma Hall of Fame, on which occasion she was presented by old friend U.S. Supreme Court Justice Byron R. White; her inclusion by Business Week several years ago among the "100 Top Corporate Women" in the U.S.; her address before the annual judicial conference of the Tenth Circuit Court, at Estes Park, Colo., the first woman ever invited to speak before that group, and a similar breakthrough before the Oklahoma City Economic Club.

Does this uncommon woman find herself tentative in dealing with male board members?

"That's not my nature," Mrs. Head says. "And, as a matter of fact, they're most gracious, helpful and not patronizing in any manner. I'm deeply indebted to them."

Mary Head rates 19 lines in Who's Who in America (Oscar-winning costume designer Edith Head gets only 12).

"My husband is my biggest supporter, my unofficial public relations man," Mary claims. "Sometimes I'm asked by young women, 'How do you do what you do?' and my stock answer is, 'Have a husband like mine.'"

Mr. Head is a retired colonel who served in the India-Burma Theatre during World War II. He switched from law to banking "because it looked like more fun" and was president of an Oklahoma City bank before taking a similar position in Newport News.

The Head family works out of, and in, an eight-room contemporary house whose glass walls make the swimming pool area a ninth. Son Eric, 20, is a freshman at the University of Texas, 10 minutes away. Daughter Marcy, 28, is probation training administrator at the Federal Judicial Center in Washington, D.C. Son Paul, 26, is married and in the banking business back in Oklahoma City.

In contrast to her community whirl as a young wife and mother, Mrs. Head projects a low profile in Austin, "I'm out of town so much I couldn't make a meaningful contribution," she explains.

When the local Rotary Club asked her to speak on any Tuesday of her choosing, she discovered her first open Tuesday was six months away.

For a woman who moves easily and often through executives suites, Mrs. Head keeps herself remarkably free of corporate gingerbread. She has no office and no secretary, handles her own correspondence, writes her own speeches and schedules her business trips from a corner of a spare bedroom.

When Eric's at school, there's just Mary and Ben—the way it all started 30 years ago. And they're this kind of folks:

The year after they were married, Ben was named "Oklahoma City's Outstanding Young Man." Mary knows he won the honor for his civic contributions; Ben figures he won it for winning her.●

FEDERAL COAL LEASING

HON. NICK JOE RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. RAHALL. Mr. Speaker, I have just received a copy of the General Accounting Office's report entitled: "A Shortfall in Leasing Coal From Federal Lands: What Effect on National Energy Goals?"

What this report states, in short, is that the Interior Department's attempt to implement the new Federal coal leasing program is a sham, loaded with insufficient data, bad planning, and downright incompetence.

Our efforts for energy independence have been likened to a "war" by many, and I agree with such an assessment. But if it is indeed a war, the Department of the Interior seems to be fighting it with popguns and peashooters.

GAO stated that the problems involve, "Not leasing enough coal, not selecting the best coal areas of lease, and not having the needed coal data."

The report goes on to point out, "Unless these problems are corrected early, Federal lands may not contribute significantly—as they could—to meet the Nation's need for more coal in years to come."

GAO recommends that assumptions be reviewed in establishing leasing targets, that more realistic time frames be followed,

That a margin of error for geological surveys be included, better planning, and the development of long-range plans.

In response, the Interior raised more questions, and the Energy Department, and I quote the report, "provided no substantial comments."

Mr. Speaker, our energy future is in the hands of agencies that are not carrying out the public will. I suggest that it may be time to oversee, not only the Federal leasing program, but the agencies in charge of the program as well.●

THE GIBBONS WORK AND SAVINGS INCENTIVE PLAN FOR 1981, H.R. 7870, 7871, 7872, AND 7935

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. GIBBONS. Mr. Speaker, in July of this year I announced my $35 billion tax cut plan for 1981 that is designed to strengthen our economy while providing needed and deserved tax relief for all individuals and businesses.

Provisions of the Gibbons plan include:

Increasing individual retirement savings incentives by substantially increasing the amount which can be contributed to individual retirement plans, by making these available to all workers, whether or not they are in a pension plan, and by permitting nonworking or low-earner spouses to have their own IRA's of an equal amount.

New incentives to encourage more low income workers to set up retirement accounts and to increase the availability of retirement savings at these lower income levels.

Elimination of the "marriage penalty" by allowing married workers the option of filing as if each were single.

Liberalization of the tax relief provisions directed at low-income families and an increase in the Earned Income Credit to offset the scheduled 1981 increase in social security payroll taxes for these families. Currently low-earner families receiving some public assistance benefits find themselves hit with marginal rates of 50 percent or more as soon as they begin paid employment. "The high marginal rates now imposed on such workers encourages welfare, not work."

Relief for Americans working overseas who can now be faced with tax bills from two nations, as well as extraordinary complexity in determining their potential U.S. tax liability.

Modification of business depreciation rules to allow a quicker write-off of capital assets and to reduce business taxes by up to $10 billion.

Mr. Speaker, today I am making available more detailed explanations

of the four bills I have introduced to implement this plan. Most importantly, H.R. 7870 would expand the incentives for individual retirement savings by providing a 50-percent tax credit for all workers and their spouses on contributions to IRA's of up to $3,000. This proposal is the centerpiece of my plan for stimulating greater long-term savings by Americans which in turn will increase the capital available to U.S. businesses and industries, laying the foundation for a strong economic recovery. The bill will be amended further in the near future to also allow the credit for voluntary employee contributions to their employers' plans, thereby strengthening private pension plans as well.

As for the other elements of my plan, H.R. 7871 would liberalize the earned income tax credit; H.R. 7872 would reduce taxes on Americans working abroad; and H.R. 7935 would eliminate the marriage penalty by allowing optional separate filing. These measures are necessary in terms of the tax relief they will provide and overdue on the basis of tax equity.

I urge your support of the Gibbons plan, in whole or in part.

SECTION-BY-SECTION ANALYSIS OF H.R. 7870 RELATING TO EXPANDED INCENTIVES FOR INDIVIDUAL RETIREMENT SAVINGS

Section 1.—Short Title: "IRA Work and Savings Incentive Act of 1980."

Section 2.—Allowance of Credit: This section provides a tax credit to replace the present law IRA deductions, which are based on a contribution limit of the lesser of $1,500 or 15 percent of compensation.

Subsections (a) and (b) of the new Section 44F allow any individual to contribute up to $3,000 of compensation to an IRA and receive a 50 percent nonrefundable tax credit on such contribution, for a maximum credit of $1,500.

Other rules added by Section 2 of the bill to Section 44F are as follows:

No credit is allowed for contributions to an IRA for any taxable year ending after an individual has attained age 59½. (Persons who have attained 59½ are still permitted to make tax deductible contributions to an IRA, up to the new $3,000 limit.) Section 44F(b)(3).

In the case of a simplified employee pension, the employee is allowed the credit for employer contributions to the SEP, but only to the extent of the employee's contribution limit as reduced by all other contributions made by or on behalf of the employee to an individual retirement plan. Section 44F(b)(4).

No credit is permitted for any rollover contribution to an IRA. Section 44F(b)(5).

The current spousal IRA rules are repealed and instead, each spouse may contribute up to $3,000 to a separate, independent IRA. The 50 percent credit is then allowed separately for each individual for contributions made to an IRA. Nonworking or low-earner individuals are permitted to make such IRA contributions based on the greater of their own or their spouse's compensation. Section 44F(c)(3).

Present law rules are retained which permit an individual to establish and make contributions to an IRA for a year up to the time for filing the individual's tax return for the year, including extensions. Section 44F(c)(4).

Present rules concerning excess contributions are retained; however, the phrasing of these rules is changed to reflect the new 50 percent nonrefundable credit available for certain IRA contributions. Section 44F(c)(5).

In order to maintain the present level of penalties for premature IRA distributions while reflecting the change in the level of tax subsidy to be provided IRA contributions, Section 2(b) of the bill also modifies the current rules on the taxability of premature distributions. If any portion of a distribution made prior to age 59½ is attributable to contributions for which the 50 percent credit was received, then such portion is not includible in gross income but is taxed at a special 50 percent rate to recapture the credit received. The portion of a distribution attributable to deductible contributions is includible in gross income, as per present law. In addition, the present 10 percent penalty tax is retained for all premature distributions, whether of creditable or deductible contributions.

Section 3.—Increase in Deduction for Plans for Self-Employed: This section increases the maximum deduction allowed for employer contributions to a qualified plan on behalf of self-employed individuals, i.e., for contributions to "Keogh" or "H.R. 10" plans. The maximum deductible amount is increased from $7,500 to $10,000. This section also provides an identical increase in the amount that may be excluded from gross income by a shareholder-employee in the case of a contribution by a Subchapter S corporation to a qualified plan on behalf of such shareholder-employee.

Section 4.—Revision of Section 219: This section increases from $1,500 to $3,000 the maximum annual deduction for contributions to an IRA. The IRA deduction is retained for those individuals who do not qualify for the 50 percent credit, namely, IRA owners who have attained age 59½ before the close of the taxable year. As under present law, contributions to an IRA are no longer deductible by the IRA owner starting with the taxable year in which age 70½ is attained.

This section also repeals the eligibility restrictions under present law. Thus, active participants in qualified plans, government plans and Section 403(b) tax-sheltered annuities are permitted to contribute to an IRA, up to the increased contribution limit of $3,000.

In the case of a simplified employee pension, this section increases the maximum deduction for employer contributions to $10,000. In addition the employee is allowed to contribute an additional $3,000 to the same or a different IRA and obtain the 50 percent credit with respect to the contribution if the employee is under age 59½, or a deduction if age 59½ or over. If the employee does not himself contribute the full $3,000, employer contributions in an amount equal to the unused balance are eligible for the 50 percent tax credit in the case of an employee under age 59½.

Section 5.—Technical and Conforming Amendments: This section makes a series of technical and conforming amendments necessary to accomplish the described purposes of the preceding sections.

Section 6.—Effective dates are established for taxable years beginning after December 31, 1980.

SUBSECTION-BY-SUBSECTION ANALYSIS OF H.R. 7871 TO LIBERALIZE THE EARNED INCOME CREDIT

Section 1(a) would increase the credit rate of the Earned Income Credit (EIC) from the present level of 10 percent of the first $5,000 of earned income to 11 percent. The maximum credit would be thus increased from $500 to $550.

Section 1(b) would delay the phaseout of the credit until either AGI or earned income exceeds $8,000, instead of the $6,000 level provided under present law. In addition, this sub-section would provide for a slower rate of phaseout of the EIC—7.86 percent instead of the present 12.5 percent rate of phaseout. As a result, the EIC would not be entirely phased out until AGI or earned income reached $15,000, rather than $10,000 as provided by present law.

Section 1(c) would provide that in determining eligibility and benefits under federal assistance programs such as AFDC, SSI and foodstamps, the earned income credit received by a potential beneficiary is to be disregarded. This change would reinstate the rule in effect prior to the Revenue Act of 1978.

Section 1(d) sets forth several technical and conforming changes necessary to effectuate the purposes of the preceding subsections, e.g., the advance payment of the EIC provided by present law would be calculated based upon the new EIC rates.

Section 1(e) provides that the changes made by H.R. 7871 in the computation of the EIC would be effective for taxable years beginning after December 31, 1980; the reinstatement of the disregard and the change in the advance payment would be effective for EIC payments or compensation paid after December 31, 1980.

SUBSECTION-BY-SUBSECTION ANALYSIS OF H.R. 7872 RELATING TO THE TAXATION OF AMERICANS WORKING ABROAD

Section 1(a) would amend Section 911(a) of the Internal Revenue Code so as to return to the law in effect prior to the passage of the Foreign Earned Income Act of 1978. Thus, this subsection reinstates both the "bona fide resident" test and the "17 out of 18 months" test to determine eligibility for the earned income exclusion as computed under Section 911(c).

Section 1(b) would amend Section 911(c) to provide that if either of the tests set forth in Section 911(a) is satisfied, the amount eligible for exclusion is computed on a daily basis at the annual rate of $75,000.

Section 1(c) would amend Section 911(c) to add the requirement that in order to be eligible for any exclusion, the earned income may not be received in foreign countries outside the foreign country or countries where the income was earned, if one of the purposes of the receipt in another country or countries is the avoidance of any tax imposed by the foreign country in which the income is earned.

Section 1(d) would repeal Section 913 (deductions for certain living expenses of living abroad).

Section 1(e) sets forth several technical amendments to the Internal Revenue Code the most significant of which amends Section 1034(k) (rollover of gains on the sale of a principal residence) to provide that the time periods would be suspended if the taxpayer has a tax home abroad after the sale of the old residence. However, the suspension is not permanent and would end after four years after the date of sale.

Section 1(f) sets forth several clerical amendments to the Internal Revenue Code.

Section 1(g) sets forth the effective date of H.R. 7872 as taxable years beginning after December 31, 1980.

SECTION-BY-SECTION ANALYSIS OF H.R. 7935 RELATING TO ELIMINATION OF THE MARRIAGE PENALTY

Section 1.—Short Title: "Marriage Penalty Relief Act of 1980."

Section 2.—Combined Return: Adds a new section to the I.R.C., Section 6013A, which provides married individuals with the additional option of filing a combined return where each spouse determines his/her own individual taxable income to which the unmarried tax rates apply. A married couple, filing under the provisions of the Act, would file one combined tax return. (Of course present Code provisions allowing married individuals to elect to file a joint return under Section 6013 and the tax rates imposed by Section 1 for married couples filing a joint return and for married individuals filing a separate return are retained.)

Treatment of Income: The new section 6013A(b) defines how income is to be attributed to each spouse for purposes of determining each one's gross income:

(1) personal service income, such as wage, salary, self-employment, pension, or annuity income, is allocated to the spouse actually rendering the personal service.

(2) income from property, such as rents, interest, dividends, and so forth, is allocated between the spouses according to their respective ownership interests in the underlying asset.

Treatment of Deductions: The new Section 6013A(c) describes the allocation of deductions between spouses for purposes of determining the taxable income of each, as follows:

Section 62 deductions, which are "above-the-line" subtractions to arrive at adjusted gross income, are generally allocated to the spouse having the income to which the deductions relate. Such deductions include trade and business deductions, certain employee expenses, the deduction for long term capital gains, and property-related deductions. Exceptions are provided for: Retirement savings where the deduction is allowed to the spouse for whose benefit the savings are maintained, and alimony where the deduction is allowed to the spouse who is liable for the alimony payments.

Personal exemption deductions, including additional exemptions for having reached the age of 65 or for being blind, are allowed to each spouse as applicable on a separate return.

All other deductions, including exemptions for dependents and itemized deductions, are to be calculated as under present law, aggregated, and then allocated to each spouse in the same proportion as that spouse's adjusted gross income bears to the couple's combined adjusted gross income.

This subsection also provides that each spouse shall apply the unmarried zero bracket amount of $2,300 to his/her share of itemized deductions for purposes of calculating excess itemized deductions and taxable income. Such an approach allows one spouse with more than $2,300 in itemized deductions to get the benefit of itemizing, at the same time that the other spouse with less than $2,300 in itemized deductions can get the benefit of the zero bracket amount.

Treatment of Credits: Section 6013A(d) provides that eligibility for and calculation of credit amounts shall be determined as under present law for married couples and applied against the couple's combined tax liability.

Other Provisions: Section 6013A(e) provides that present law rules applicable to married couples filing joint returns under Section 6013 apply to this Act, unless otherwise stated. Important rules of 6013 include rules on the eligibility for filing such returns and joint and several liability with respect to the taxes imposed. Section 6013A(f) provides that the Secretary shall prescribe regulations necessary for proper implementation of this Act.

Section 3.—Conforming amendments are specified.

Section 4.—Effective Date: Taxable years beginning after December 31, 1980.●

TRAGEDY IN BOULDER CITY

HON. JIM SANTINI

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. SANTINI. Mr. Speaker, recently, a constituent of mine sent me a series of articles by Paul Fisher which were printed in the Boulder City News, Boulder City, Nev. I was especially touched by this particular article. I can only hope that we, as Congressmen, can learn the important message included here, without experiencing the great tragedy that Mr. Fisher has had to go through.

My beautiful little twenty-six-year-old daughter, Caroleen, is legally dead. Doctor Hammargren told me last night that the Angiogram showed no blood circulation to the brain. She is still on the respirator and life support systems and will remain on them until they can salvage those vital organs that may help sustain the life of some other man or woman.

Her mind is gone from her body but I like to think that she will live on in the hearts and minds of those of us who knew and loved her. She has seemed very close to me since that accident, helping me write these important words. Words that I've known I should have been writing for a long time.

Life is for the living and true to my promise to her I shall try not to be sad but instead rededicate my efforts to help make this a better and happier world.

Our poor country is facing tremendous problems of inflation, unemployment and defense while our Government is bogged down in confusion with internal conflicts and a lack of any consistent plausible program for solving those problems.

It is election time but few of us believe that the election offers much hope for any great improvement.

Is the task of governing ourselves beyond our ability? Have we no alternative but a continued deterioration of the strength, the security and the happiness of our People?

My answer is: We can solve our problems. There is always a simple, best answer to any problem even the most difficult. First, we need Faith in God. Faith in Nature, and then faith in ourselves along with a dedication to seek honestly and accurately the best answers possible based on our past experiences. This is the scientific technique. The technique that has brought us such tremendous progress in the physical sciences. Progress and knowledge that is growing so fast that it is estimated that over fifty percent of all of our knowledge in physics, chemistry, and electronics has been discovered within the last fifty years even though Mankind has been seeking knowledge in these fields for tens of thousands of years.

This astounding progress is due to one thing: the Scientific Technique. It proves the ability of the human mind to solve problems.

Some thirty years ago, it occurred to me that if we understood the scientific technique well enough; we could apply it to any problem including our social problems: The problems of inflation, unemployment, defense, government, ethics, philosophy, religion, and Survival.

When we discover how to do this, we will usher in a new Renaissance, a new scientific age, a better and happier tomorrow that will help guarantee the future survival of that which is best and happiest.

And so in the weeks ahead I will explore with you the mysteries of the scientific technique and I will show you how you may apply it to almost any problem that troubles you. I will also show you how together we can apply it to the confusing problems confronting our Government and our People.

We will build a plan to restore our Country. We will build it carefully, piece by piece on a foundation of facts acquired by accurate observation of what our experiences teach us. It will be constructed like a mathematical equation and together we will find some answers upon which we can agree to end the baffling confusions which trouble us now.

So stay with me. We are on a grand and glorious adventure.

Next week, I shall tell you what the scientific technique really is, how it works, and how we can apply it to any and all problems.

See you next week. Same time—same place.

PAUL FISHER.●

REGULATORY REFORM MUST BE REVIVED

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. MAZZOLI. Mr. Speaker, in his state of the Union address to the 96th Congress, and in many public statements since, President Carter has strongly endorsed the passage of legislation to provide a major overhaul of the Federal regulatory process.

However, the actions of the administration raise questions in my mind about how fervent, indeed, is its commitment to regulatory reform.

The House Judiciary Subcommittee on Administrative Law spent many long hours in hearings and markups on all the pending versions of regulatory reform bills—including the administration's. All viewpoints were given careful and thoughtful attention before a bill was reported to the full House Judiciary Committee.

The full committee has already held several markup sessions on this important bill. While the product of all this labor is not perfect, it is, on balance, an excellent piece of legislation. It does not deserve the fate it seems to have been consigned: To be allowed to slip under the murky waters of the 96th Congress without a ripple.

Daily, I hear complaints from residents and business people of the Third Congressional District that they are driven to distraction by the floor of bureaucratic rules and redtape. They are pleading for relief.

Mr. Speaker, passage of legislation to increase congressional oversight of—and public participation in—the regulatory process should no longer be delayed.●

RIGHT ON RED

HON. ROBIN L. BEARD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 28, 1980

● Mr. BEARD of Tennessee. Mr. Speaker, last week I introduced H.R. 8000, which would require States to allow right turn on red (RTOR) after stopping at at least 70 per centum of stoplights in the State.

I would like to call the following article which appeared in the American Transportation Builder, to the attention of my colleagues. This article points out that RTOR will result in substantial fuel savings. Also, it refutes the argument that RTOR will result in more accidents; studies have proved that this is simply not true. There is no significant increase in the number of accidents after RTOR measures are implemented.

I commend this informative article to my colleagues' attention; and, I urge these legislators to demonstrate their support for RTOR by cosponsoring H.R. 8000.

The article follows:

RIGHT TURN ON RED—AFTER STOP

Since the 1974 Energy crunch, the demand for energy efficient policies have increased throughout the country. One such saving idea is Right Turn on Red (RTOR). Practiced in California since 1937, the eastern half of the United States was slow in passing this ruling. The majority of states have legislated the permissive rule which allows Right Turn On Red at intersections where the movement is not prohibited by signing, and all 50 states have adopted some form of RTOR. The District of Columbia finally granted RTOR in December 1979, but not without its limitations. Over 80% of all of the intersections in DC have signs posted that do not allow RTOR. The city cites the opposition based on its rank as 5th in the Nation for pedestrian fatalities.

Those doubters in DC and elsewhere against RTOR claim that it jeopardizes safety for the few pennies of fuel saved. But statistics are not in their favor! Based on a study done by the Highway and Transportation Research Council of the Commonwealth of Virginia, entitled "The Impact of General Permissive Right and Left Turn on Red Legislation in Virginia" by Martin Parker, Jr. Research Engineer, states "RTOR has had a significant impact on improving traffic flow at intersections and in saving motorists time and fuel. Accidents and pedestrian problems with RTOR appears to be minor, with the benefits of the legislation far outweighing any disadvantages. Because there are few signalized intersections of one-way streets in Virginia, LTOR has not had the statewide impact of RTOR. However, in the cities of Newport News and Richmond, which contain 85% of the LTOR approaches, LTOR appears to be working as well as RTOR.

"With the new legislation, RTOR maneuvers are permitted at 84% of the signalized intersection approaches. While there was a trend for localities to remove some prohibitive NO TURN ON RED signs during 1977, there still is considerable variation and inconsistencies in the manner in which RTOR is implemented.

"Since the general permissive rule has been in effect, there has been a significant increase in the number of motorists failing to come to a full stop before turning on red. The public should be reminded that stopping before turning on red is a safety measure and is required by law.

"The study data clearly indicate that the vast majority of Virginians, including the state's law enforcement officials and traffic engineers, strongly favor the new general permissive turn on red legislation."

In another study done by Hugh McGee, (now with Wagner-McGee Associates, Inc.) for the FHWA, U.S. Department of Transportation, he explains the types of accidents that could occur due to RTOR.

"Several distinct types of accidents appear to be associated with RTOR. Illustrated in Figure 1 are four prominent types of RTOR conflicts: rear end, opposing left turn, cross street, and pedestrian.

"The most common RTOR accident type occurs when an RTOR vehicle collides with a vehicle moving on green on the cross street. Sixty-five percent of the reported RTOR accidents in the studies could be categorized under this type, which usually occurs when a RTOR motorist either fails to see the approaching vehicle or perceives a wider gap than is required to make a safe maneuver. These accidents are usually caused by driver error, although limited sight distance can be a contributing factor.

"Another frequent type of RTOR accident involves an RTOR vehicle colliding with a vehicle making a left turn from the opposite approach on a left-turn phase. Of all RTOR accidents, 18 percent were of this type. In this situation, an RTOR-motorist looking to his or her left for oncoming cross-street traffic may not be aware of a conflict with left-turning vehicles moving on a separate phase. This conflict can be more serious if there is only one lane to turn into. Where there are multiple departure lanes, the turning vehicles can avoid collision. The accident forms, however, indicated that these types of accidents occurred with multiple lanes as well as with single departure lanes. Prohibiting RTOR at all locations with a left-turn phase should preclude these accident types from occurring. However, because of the randomness and infrequency of these accidents, it would not be practical to prohibit the movement at all such locations.

"The third type of RTOR accident is the rear end. These occur when a vehicle in the process of making an RTOR stops abruptly and is hit in the rear by the following vehicle. This type of accident accounted for 5 percent of all identified RTOR accidents. Because these typically result from driver error, there does not appear to be any way to eliminate them.

"The fourth major type of accident is an RTOR vehicle hitting a pedestrian crossing the intersection. As shown in Table 1, the percentage varied widely from 0 to 33 percent. In most cases, the pedestrian was hit while crossing on green in the crosswalk immediately in front of the turning vehicle. However, in a few instances a pedestrian was hit while crossing on a red signal (which is illegal in most states) in the crosswalk on the lane the vehicle is turning into.

"In addition to these four major types of RTOR accidents, there were two others that were very infrequent.

"1. Two RTOR vehicles sideswipe. Sometimes two vehicles collided while making an RTOR simultaneously when there were double right turn lanes, or when one of the vehicles used the shoulder.

"2. The RTOR vehicle induces an accident. In two cases the RTOR vehicle, although not involved in the accident, created a situation that resulted in an accident. Once the cross-street vehicle collided with another cross-street vehicle to avoid hitting the RTOR vehicle. In another case (which happened in Ohio and was brought to our attention), the RTOR vehicle apparently induced a following vehicle to cross the intersection on red resulting in an accident with a cross-street vehicle coming from the opposite direction. This latter accident resulted in a fatality, the only one during the whole course of study.

"From the results of our accident analysis and those reported by others, it appears that RTOR accidents are very infrequent. Shown in Table 1 are the overall RTOR accident statistics for 13 different locations using data developed in this study and reported by other researchers. The percentage of RTOR accidents (all types) to all accidents occurring at the specified number of signalized intersections for the generally permissive rule range from a low of 0.4 in San Francisco to a high of 3.0 for the 78 intersections in Chicago."

As demonstrated from these results, the record of accidents caused because of RTOR is insignificant, but what about the energy savings?

In the 1979 Annual Report by the Department of Energy, the planned 1980 State energy savings for RTOR measures 4.07 trillion BTUs. The reported 1979 State energy savings estimates for RTOR measures 4.66 trillion BTUs. Obviously, the fuel savings is surpassing the target amount!

It appears from the reports studied, RTOR is fuel efficient and is not a threat to safety. Areas like the District of Columbia will hopefully change their attitude about RTOR, as the need for fuel, and the statistical evidence proves RTOR is accomplishing its task!

TABLE 1—RTOR ACCIDENTS AT SEVERAL LOCATIONS

RTOR rule and location	Study year	Signalized intersection	Intersection accidents	RTOR accidents		Pedestrian accidents	RTOR pedestrian accidents		
				Number	Percentage		Number	Percentage of pedestrian accidents	Percentage of RTOR accidents
Generally permissive:									
Los Angeles	1973–74	3,235	41,316	287	0.70	1,487	54	3.6	18.8
Denver	1974	1,059	7,431	50	0.70	125	0	0	0
Dallas	1973–74	1,000	(1)	(1)	(1)	18	0	0	0
Chicago	1974	78	694	21	3.0	24	6	25.0	28.6
San Francisco	1953–55	75	3,328	12	0.4	14	4	29.0	33.0
Portland	(1)	(1)	52,677	253	0.5	(1)	20	(1)	7.9
Jacksonville	(1)	405	1,756	13	0.7	(1)	2	(1)	15.4
Dade County	(1)	29	700	9	1.3	(1)	0	0	0
Omaha	1971–72	26	497	11	2.2	(1)	0	0	0
Salt Lake City	(1)	24	600	8	1.3	(1)	0	0	0
Sign permissive:									
Chicago	1973	95	936	27	2.9	57	5	8.8	18.5
Columbus	1973	12	415	11	2.7	(1)	0	0	0
Virginia	1973	29	478	16	3.3	1	0	0	0

[1] Unknown

SENATE—*Wednesday, September 3, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. DAVID L. BOREN, a Senator from the State of Oklahoma.

PRAYER

The Reverend T. Mark Dove, pastor, Epworth United Methodist Church, Columbus, Ohio, offered the following prayer:

O Thou whom we experience as profound mystery in our lives, who plants within our spirits a deep sense of care about tomorrow, and gives us the freedom to use our brief span in whatever ways we deem responsible, we thank You for the times You have given us, the struggles that are ours, and for the mysterious inflow of strength that comes at the very times when we are most tempted to give up.

We confess to You that with all of our training and understanding, we cannot predict the future with any certainty, but we experience ourselves called to risk in creating the unknown future with our decisions and our lives. Grant us the grace to live out that responsibility in such a way that justice will roll down like life-giving waters to those in our world who have been in the desert of poverty and despair. May our decisions this day be ones that enhance the opportunities of local men and women to control their own destinies.

We pray this in the name of the one who came that we might all have life and have it in abundance. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 3, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID L. BOREN, a Senator from the State of Oklahoma, to perform the duties of the Chair.

WARREN B. MAGNUSON,
President pro tempore.

Mr. BOREN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader, the Senator from West Virginia, is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE PRESIDENT'S ECONOMIC PACKAGE

Mr. ROBERT C. BYRD. Mr. President, on August 28 President Carter announced the details of his plan for revitalizing the American economy.

The plan is broad in scope and long term in nature. It also addresses some of the short-term dislocations of the recession through modest, targeted initiatives on the spending side.

For example, the plan provides for a 13-week extension of unemployment insurance benefits for the long-term unemployed. This initiative will help those who have experienced an extended layoff, such as those in the auto and steel industries.

The President has asked the Congress to move forward with this reasonable extension, and it is my hope that we will enact it prior to the October 4 recess.

The package also includes targeted spending aimed at critical national priorities, such as energy conservation, coal exports, and scientific and technological development.

Like the spending side of the package, the recommended tax reductions are targeted to the areas of greatest need. The emphasis in the tax proposals is on investment in America's productive future, and offsetting the burden of increased taxation on moderate and lower income Americans.

It is not an across-the-board, blunderbuss, inflationary, election-year tax cut. It is moderately sized, and designed to lay the foundation for growth without inflation in the 1980's.

The package combines spending and tax proposals in addressing the economic problems of distressed regions and communities. It provides targeted investment tax credits for troubled areas, industrial development assistance through the EDA and a new industrial development authority, partially refundable investment tax credits for new and ailing companies, countercyclical revenue sharing for local government, and a pilot program to relocate and retrain workers receiving trade adjustment assistance.

These fiscally prudent tax and spending initiatives recognize obvious economic facts of life: All industries and regions have not been similarly impacted by the recession, and future economic prosperity and independence are not equally assured for all Americans.

I am particularly pleased by the inclusion of the Economic Revitalization Board and the Industrial Development Authority in the package. Cooperation and participation among labor, business, Government, and the public in charting our economic future is an approach which promises to overcome some of the stalemates and logjams which could hinder our competition in world markets in the 1980's. A publicly owned industrial development authority can serve as a vehicle for improving America's industrial infrastructure and revitalizing certain sagging sectors and regions.

Large challenges confront the Board in devising a cooperative and participatory economic strategy. The pitfalls are numerous. But failure to form a consensus through real cooperation and public participation will doom this Nation to economic stagnation, protectionism, and dangerous political backlash.

It will not be easy to marshal the country's resources in a coordinated fashion, and at the same time diffuse economic power more broadly. But this is the economic imperative of the 1980's. This imperative can be realized only through full and meaningful dialog among labor, business, Government, and consumers. A national economic consensus can be realized only if Americans from all walks of life participate equally in the decisionmaking, the benefits, and the sacrifices of the Nation's economic growth.

I hope that the Economic Revitalization Board will work closely with the Congress in formulating the blueprint for an economic strategy and the Industrial Development Authority.

Consultation with Congress should prove particularly helpful in the Board's development of initiatives requiring legislation, such as the Industrial Development Authority.

For fiscal year 1981, the program would cost about $10 billion. In calendar year 1981, the budgetary impact would approximate $30 billion. This is not a politically motivated election year bonanza. It is not an attempt to pump up aggregate demand by spending or tax-cutting our way out of the recession. It is a program to stimulate a more productive supply of goods and services, while targeting help to those most in need.

The President is to be commended for understanding the need to continue along the path of fiscal restraint. He recognizes that rapidly rising interest rates threaten the economy's natural recovery. Treasury bill rates have jumped from about 7 percent 2 months ago to well over 10 percent. The prime rate has started back up. Corporate debt issues were almost nonexistent last week. This is an ominous trend to which those en-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

trusted with leadership must respond responsibly.

Largely because of concern over interest rates, the President has recommended deferral of consideration of a tax bill until next year. While congressional will on the timing of a tax cut is mixed, it does appear as though enactment of a tax cut by Congress before the election is unlikely.

At this critical juncture in the economic recovery, we must continue to signal the financial community that our fiscal strategy will be consistent with the monetary policy set by the Federal Reserve System.

During an election season, Simple-Simon solutions to difficult economic problems are prevalent. However, the President and the Congress will continue on the responsible course.

ORDER OF BUSINESS

Mr. PROXMIRE. Mr. President, will the Senator yield 2 minutes?

Mr. ROBERT C. BYRD. Yes.

THE NECESSITY FOR THE INTERNATIONAL TREATY PROHIBITING GENOCIDE

Mr. PROXMIRE. Mr. President, conflict, and its companion, violence, have been present throughout civilization. There is not a single reason for conflict, but as many reasons as there are people. I will note three broad categories of conflict-causing differences.

First, there are religious differences: conflicting religious beliefs have historically been responsible for many of the bloodiest and most prolonged occurrences of violence. Second, there are economic disparities: people have always been divided on the basis of possessions, education and financial freedom. Third, there are ethnic and cultural distinctions: the characteristics and habits of the various groups are obvious and, therefore, frequently act as barriers or threats to those unfamiliar with them.

It is the hope of many that with the spread of education and commerce, differences among people will lessen and compassion and understanding will increase. Nevertheless, differences will continue to exist. Therefore, we must take action to prevent actions which violate humanity's common values. This can be accomplished through ratification of the Genocide Convention.

The Genocide Convention recognizes the differences among groups and is based upon the belief that dissimilarities are to be preserved rather than extinguished, respected rather than feared. This international treaty is aimed at protecting the unique traits and customs of everyone, from individuals who cannot tolerate them.

The treaty defines genocide as an international crime. However, the treaty is expressly ineffective until the nation signing it enacts implementing legislation. Thus, following ratification by this Senate, each Member of the Congress will have an opportunity to examine the proposed changes in the penal code and add whatever is deemed necessary.

The treaty was drafted under the direction of the United Nations, approved by the General Assembly, and endorsed by 86 nations. It is troublesome that this country has failed to support an endeavor to end the annihilation of human beings. The Genocide Convention deserves our immediate attention.

I earnestly hope that as soon as we possibly can that we ratify the Genocide Convention.

Mr. President, I thank my good friend, the majority leader.

ORDER OF BUSINESS

Mr. RIEGLE. Mr. President, will the Senator yield briefly for a unanimous-consent request?

Mr. ROBERT C. BYRD. Yes.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore Under the previous order, the minority leader, the Senator from Tennessee, is recognized.

THE SENATE SHOULD PASS A TAX RELIEF BILL THIS YEAR

Mr. BAKER. Mr. President, I listened with great interest to the remarks of the majority leader. I have not had an opportunity to consider them carefully and in detail, so I will reserve making any further remarks until later.

There is one point, though, that did draw my attention and on which I would like to elaborate. The statement, as I understood it, was that it seemed highly unlikely that the Congress would pass, before the election, a tax cut. I expect that assessment is probably true.

I think it is unlikely, based on newspaper accounts and the sketchy conversations I have had with Members of the other body, including the minority leadership on the other side, that the House of Representatives will consider and accept, or go to conference with and pass, a tax cut bill and present it to the President before the election. But even notwithstanding that, I would still hope—indeed, I would urge—that the Senate pass such a tax cut before we go out, before October 4. Our own Finance Committee has reported a bill that I think has much merit. Every aspect of that bill, of course, I do not agree with, but I think, on balance, it is an extraordinarily good job.

As I have done previously, I now reiterate my congratulations to the distinguished chairman of that committee, Senator LONG, the ranking Republican, Senator DOLE, and the members of the committee for a job well done.

I think, Mr. President, it would be an initiative worthy of the Senate's effort and time if we went ahead—notwithstanding the unlikely prospect of full passage and enactment into law before the election—and passed some sort of tax relief bill in the Senate this year.

Mr. President, I have no further need for my time. I see that my friend from Utah, Senator HATCH, who has a special order, is on the floor. If the majority leader has no need for the remainder of my time under the standing order, I will ask unanimous consent that any time that I have remaining may be added to the special order time heretofore allocated to the Senator from Utah.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I thank the minority leader for offering the time. I have no need for it.

Do I have any time remaining?

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that my 2 minutes may also be added, if the minority leader wishes.

Mr. BAKER. Mr. President, I thank the majority leader very much.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR HATCH

The ACTING PRESIDENT pro tempore. The Senator from Utah (Mr. HATCH) is recognized under the previous order.

SENATE JOINT RESOLUTION 200—AFFIRMATIVE ACTION VERSUS EQUAL PROTECTION: THE LEBANONIZATION OF AMERICA

Mr. HATCH. Mr. President, I thank my colleagues, the distinguished majority and minority leaders for their consideration.

Mr. President, Milton says somewhere that:

> Peace hath her victories
> No less renowned than war.

But she also has her defeats. One was inflicted by the Supreme Court on July 2. In a 6 to 3 decision, the Court upheld in the case of Fullilove against Klutznick (Docket No. 78-1007) the constitutionality of the "minority business enterprise" provision of the Public Works Employment Act of 1977, which set aside 10 percent of Federal funds granted for local public works to be spent with businesses owned by a variety of selected minority groups.

Such is the reverent silence that has greeted Fullilove that I almost hesitate to disturb it to point out that this disgraceful decision is a shattering blow for tyranny, discrimination and arbitrary government. It is aimed directly at the principles of equal protection and impartial justice upon which any open society must be based.

Essentially, the Supreme Court appears to be reinstituting the power of the Government to distinguish between citizens on the basis of race, ethnicity and so on. The only proviso is that these distinctions must be approved by the leaders of the minority groups benefiting from them, and acquiesced in by the apathetic leaders of the majority of Americans at whose expense they are enacted.

In 1964, the U.S. Congress passed the Civil Rights Act (Public Law 88-352; 78 Stat. 241), which was widely and explicitly held to end Government, public accommodations, and workplace discrimination. No sooner was it law, however, than the Federal bureaucracy began to insist upon an alternative system

of discrimination in favor of what it calls, in a significant departure from the egalitarian language of the American Revolution, the "protected classes." Indeed, it is now clear that there are no limits to the bureaucracy's imperial ambition, and that it intends to impose "affirmative action"—quotas—upon every area of American life. This will effectively replace the processes of freedom in our society with a pervasive politicization, to which all factions must apply for their subsistence. The United States will become a second Lebanon, with perquisites apportioned between contending ethnic and religious groups according to minute calculation of relative political power, a system not only repugnant in principle, but fatally inflexible and unjust.

One of the themes brought out by any study of the affirmative action issue is the extent to which the ideal of an open society, a liberal society in the 19th century sense, has simply vanished from the minds of many of our permanent government of civil servants. It has failed to take root in many of the current generation of academics and students. And it is just not understood by much of our press and many of our politicians. I will expand upon this theme later, but at this juncture I would merely ask my colleagues to ponder deeply the following item, from the editorial page of the July 15 Wall Street Journal. I should also add parenthetically here that the critics of affirmative action span the political spectrum, and that I do not necessarily endorse all the views I shall be quoting, although I believe that each makes a valuable contribution.

Mr. President, I ask unanimous consent that the article published in the Wall Street Journal on July 15, 1980, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, July 15, 1980]

THE PERIL OF IRONY

Some things seem doomed to be taken seriously even when intended as a joke. Add to that list a satirical idea for an equal opportunity lawsuit dreamed up by University of Chicago constitutional law expert Philip Kurland and floated at a luncheon meeting. He predicted that an affirmative action suit would be brought to invalidate the nomination and election processes in the current presidential contest on the ground that minority members have been under-represented. Word got out around the campus and the lawsuit idea began to attract supporters, forcing Mr. Kurland to remind everyone that the Equal Employment Opportunity Commission has not yet been given jurisdiction over presidential elections.

Mr. HATCH. Ridiculous of course. And yet hardly more improbable than the reemergence of the quota system, despite specific prohibition by the letter of the 1964 Civil Rights Act, its spirit as expressed in the colloquy in Congress at the time, and substantial legal precedent. Part of the reason affirmative action is such an important issue is that it represents not only a fundamental departure from American political ideals, but also a decisive break with the Anglo-American tradition of government under law, and its replacement by judicial legislation and bureaucratic fiat.

Why has the spread of affirmative action been received in such a deafening silence by America's public classes? To some extent, no doubt, because the Supreme Court by remarkable coincidence has three times in 3 years announced its successive capitulations—*Regents of the University of California* v. *Bakke* 438 U.S. 265 (1978); *Steelworkers* v. *Weber* 443 U.S. 193 (1978); and *Fullilove*—on the day Congress began a summer recess, although all were argued months before. Partly because affirmative action only marginally affects press and politicians, Congress having thoughtfully exempted itself from all civil rights laws; and everyone being terrified of accusations of racism. Federal bureaucrats have been operating in an atmosphere rather similar to that associated with the bands of smugglers roving the lawless England of the 18th century, whose passage through a village, according to Kipling, caused mothers to warn their children:

> Watch the wall, my darlings
> While the gentlemen go by!

And the silence exists perhaps also because affirmative action is typical of modern politics in that its partisans are organized and militant, while its opponents—I should more properly say victims—although vastly more numerous, are leaderless, intimidated, and ill-informed.

But I believe the basic reason for our relative quiescence on this issue is more subtle. I think there are many in this Chamber, and in the country at large, who have still not realized that affirmative action has nothing to do with the allowed cause of civil rights. It is not a matter of making a more perfect union by extending the benefits of quality before the law to all. It is exactly and precisely the contrary. It is a radical departure, as I have said, from the spirit and the genius of the American Constitution, because it denies that all are entitled to the equal protection of the laws, and instead says that what you get depends upon who you are. It is a return to the medieval notion of government by status.

There have been some honorable exceptions to this conspiracy of silence. One of the most perceptive and courageous students of affirmative action has been columnist George F. Will. His comments on the Fullilove decision appeared in the Washington Post of July 10, 1980.

Mr. President, I ask unanimous consent that the article by Mr. George F. Will entitled "Justice Blind-Sided" be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JUSTICE BLIND-SIDED

(By George F. Will)

The Supreme Court has closed for the summer, so the Constitution is safe until October. But before the brethren departed, they damaged it considerably by affirming, 6 to 3, the constitutionality of the first law by which Congress created a legislative classification for entitlement to benefits based solely on race.

Speaking for the majority, Chief Justice Burger said "appropriate deference" to Congress requires acceptance of the law reserving 10 percent of certain public works funds for contracting firms controlled by members of six government-preferred minorities ("Negroes, Spanish-speaking, Orientals, Indians, Eskimos, Aleuts"). This, even if the firms are not the lowest bidders and fail to satisfy other criteria that non-minority competitors must satisfy.

Burger says the constitutional power to provide for the "general welfare" gives Congress "latitude" to allocate special rights to certain racial or ethnic groups. This, in spite of the 14th Amendment's guarantee of "equal protection of the laws" for all persons. And in spite of the constituting doctrine of all open societies, on which the 14th Amendment rests—the doctrine that rights belong to persons, not races.

Burger recognizes that discrimination on behalf of the preferred minorities will injure some competitors who are entirely innocent of wrongdoing. Astonishingly, he says, complacently and wrongly, that this is an "incidental consequence of the program, not part of its objective." But injuring some of the competitive firms is not "incidental"; it is the essence of a program designed to give privileges to uncompetitive firms.

Justice Stewart, dissenting, noted that only twice before has the court found constitutional a government program imposing injury on the basis of race. That was during World War II, in the infamous Japanese-American curfew and exclusion cases. But when Stewart upholds forced busing, which involves assigning children to schools on the basis of race, he helps diminish resistance to official actions based on race.

Justice Powell sided with the majority, in spite of the fact that in his *Bakke* opinion he said: "It is far too late to argue that the guarantee of equal protection to all persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others." Now Powell seems to say that to be constitutional, a "race-conscious" program must at least be "temporary," so it "will not last longer than the discriminatory effects it is designed to eliminate." But Congress can renew such programs, thereby renewing its call on the court's "appropriate deference." There hardly can be criteria for determining when all ethnic groups have received recompense for all injuries inflicted by history on their ancestors.

By creating privileges based on race, the government reinforces—even teaches—the noxious habit of thinking of people as mere parts of classes. And as Justice Stevens asks in dissent. "What percentage of Oriental blood or what degree of Spanish-speaking skill is required for membership in the preferred class?" Now the government must devise its version of the Nazi laws that defined who is a Jew. Stewart says, "Our statute books will once again have to contain laws that reflect the odious practice of delineating the qualities that make one person a Negro and make another white."

This "slapdash" law (Stevens' description) is unlike, say, the Voting Rights Act. It is not designed to remove barriers to free competition. It is designed to curtail free competition. As Stevens says, "A comparable approach in the electoral context would support a rule requiring that at least 10 percent of the candidates elected to the legislature be members of specified racial minorities."

Powell says, incongruously, "The time cannot come too soon when no governmental decision will be based upon immutable characteristics of pigmentation or origin." But by joining the majority, he said: now would be too soon.

Eighty-four years ago, in a noble dissent against a ruling that segregation was constitutional, Justice John Marshall Harlan insisted that "our Constitution is color-blind." It wasn't then; it isn't now; and because of what the court has done, it may never be.

To the civil rights movement—when there was a civil rights movement; before it became just another movement maneuvering for economic redistribution—Harlan was a hero.

Burger concluded his opinion with a bromide from Justice Brandeis: "To stay experimentation in things social and economic is a grave responsibility." But the law the court has condoned just puts a different, "progressive" spin on the familiar evil of conditioning government favors on the basis of race. The chief justice bears grave responsibility for rationalizing, as Congress did not bother to do, congressional "experimentation" with racism.

Mr. HATCH. Another eloquent column on the decision was written by James J. Kilpatrick. It appeared in the July 22 Washington Star.

Mr. President, I ask unanimous consent that the article by Mr. James J. Kilpatrick entitled "The Inequality Doctrine" be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE INEQUALITY DOCTRINE

(By James J. Kilpatrick)

If nominations are in order for the worst Supreme Court decision of the term, let me propose *Fullilove vs. Klutznick*, decided on July 2. This was the case in which the court held that when it comes to equal access to federal contracts, some are more equal than others.

One of the oldest and most cherished doctrines of our constitutional law is that constitutional rights are individual rights. Another doctrine, not so old but just as precious, is that the Constitution is colorblind. The Fifth Amendment says that "no person" shall be treated unjustly, and the Fourteenth Amendment prohibits discrimination—implicitly, racial discrimination—against "any person."

But with its decision in *Fullilove*, a majority of the court cast these old doctrines to the four winds. The effect is to rule that some persons may be treated unjustly, that some persons may be excluded from federal programs solely because of the color of their skins.

We are talking, of course, of white persons.

These are the facts: Through the Public Works Employment Act of 1977, Congress appropriated $4 billion for projects across the country. The law contained this express provision: "Except to the extent that the Secretary of Commerce determines otherwise, no grant shall be made under this Act for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 percentum of the amount of each grant shall be expended for minority business enterprises."

The act went on to define acceptable minority group members as "Negroes, Spanish-speaking, Orientals, Indians, Eskimos and Aleuts."

The effect of this racially discriminatory provision was absolutely to bar non-minority contractors from even bidding upon $400 million in federal contracts. The provision precisely echoes the anti-Catholic notices that once were posted in parts of New England: No Irish need apply. The law is a racist law.

But, ah, said the court, the provision is benignly racist. It is remedially racist. It is temporarily and experimentally racist. Nothing in the Constitution prohibits Congress from enacting racially discriminatory laws if the laws are intended to assist minorities who have been socially or economically disadvantaged in the past.

And, besides, $400 million really isn't much. Barring non-minority contractors from this paltry sum is only "an incidental consequence" of the program. The burden imposed upon the barred contractors is "relatively light." And after all, the 1977 appropriation is limited in its scope.

Incredibly, these specious contentions were accepted by such ordinarily sound justices as Burger and Powell. Three members of the court—Stewart, Rehnquist and Stevens—emphatically dissented. Stevens said bluntly that the $400 million set-aside "creates monopoly privileges for a class of investors defined solely by racial characteristics." And he warned that the court was creating a precedent for racial quotas that will come back to haunt the law.

Stewart had the last word: "The equal protection standard of the Constitution has one clear and central meaning—it absolutely prohibits invidious discrimination by government . . . Racial discrimination is by definition invidious discrimination. The rule cannot be any different when the persons injured by a racially biased law are not members of a racial minority. The guarantee of equal protection is universal in its application."

In Stewart's view, the majority had abandoned a long line of decisions attempting to get away from racial classification. Now, the majority had placed an imprimatur "on the creation once again by government of privileges based on birth." Statutes will have to be drawn to define such terms as "Negro" and "Spanish-speaking." The result will be to foster notions of "racial entitlement"—a system of rewards and apportionments geared to racial criteria.

Thirteen times in his opinion for the court, Burger remarked upon the "limited" or "narrow" scope of the 1977 act. But in upholding this unjust and evil law, he opened broad doors to a return of discrimination by race. Sound law would slam them shut.

Mr. HATCH. As usual in affirmative action cases, Mr. President, there is great confusion in the wake of Fullilove as to what exactly the Supreme Court has said. There was no single majority opinion. Instead, there was an opinion by Chief Justice Burger, joined by Justices White and Powell, a separate concurring opinion by Justice Powell, and a separate concurring opinion by Justice Marshall, joined in by Justice Brennan and Justice Blackmun. All held that there was no constitutional impediment to the set-aside program, with the Marshall group further asserting that when such race-conscious programs benefit traditionally "stigmatized" groups, they should not even "be subjected to conventional 'strict scrutiny'—scrutiny that is strict in theory, but fatal in fact."

Justices Stewart and Rehnquist dissented on constitutional grounds. I believe their basic point is unanswerable:

The Equal Protection clause of the Constitution has one clear and central meaning—it absolutely prohibits invidious discrimination by government . . . the rule cannot be any different when the persons injured by a racially-biased law are not members of a racial minority.

I ask unanimous consent that this dissent be reproduced in the RECORD at this point.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

[Supreme Court of the United States,
No. 78-1007]

DISSENT

H. Earl Fullilove et al., Petitioners, vs. Philip M. Klutznick, Secretary of Commerce of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit, July 2, 1980.

MR. JUSTICE STEWART, with whom MR. JUSTICE REHNQUIST joins, dissenting.

"Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. . . . The law regards man as man, and takes no account of his surroundings or of his color. . . ." Those words were written by a Member of this Court 84 years ago. *Plessy v. Ferguson*, 163 U.S. 537, 559 (Harlan, J., dissenting). His colleagues disagreed with him, and held that a statute that required the separation of people on the basis of their race was constitutionally valid because it was a "reasonable" exercise of legislative power and had been "enacted in good faith for the promotion [of] the public good. . . ." *Id.*, at 550. Today, the Court upholds a statute that accords a preference to citizens who are "Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts," for much the same reason that *Plessy v. Ferguson* was wrong, and I respectfully dissent.

I.

The equal protection standard of the Constitution has one clear and central meaning—it absolutely prohibits invidious discrimination by government. That standard must be met by every State under the Equal Protection Clause of the Fourteenth Amendment. *Loving v. Virginia*, 388 U.S. 1, 10; *Hill v. Texas*, 316 U.S. 400; *Strauder v. West Virginia*, 100 U.S. 303, 307–308; *Slaughter-House Cases*, 16 Wall. 36, 71–72. And that standard must be met by the United States itself under the Due Process Clause of the Fifth Amendment. *Washington v. Davis*, 426 U.S. 229, 239; *Bolling v. Sharpe*, 347 U.S. 497.[1] Under our Constitution, any official action that treats a person differently on account of his race or ethnic origin is inherently suspect and presumptively invalid. *McLaughlin v. Florida*, 379 U.S. 184, 192; *Bolling v. Sharpe, supra*, at 499; *Korematsu v. United States*, 323 U.S. 214, 216.[2]

The hostility of the Constitution to racial classifictaions by government has been manifested in many cases decided by this Court. See, *e.g., Loving v. Virginia, supra; McLaughlin v. Florida, supra; Brown v. Board of Education*, 347 U.S. 483; *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337. And our cases have made clear that the Constitution is wholly neutral in forbidding such racial discrimination, whatever the race may be of those who are its victims. In *Anderson v. Martin*, 375 U.S. 399, for instance, the Court dealt with a state law that required that the race of each candidate for election to public office be designated on the nomination papers and ballots. Although the law applied equally to candidates of whatever race, the Court held that it nonetheless violated the constitutional standard of equal protection. "We see *no relevance*," the Court said, "in the State's pointing up the race of the candidate as bearing upon his qualifications for office." *Id.*, at 403 (emphasis added). Similarly, in *Loving v. Virginia, supra*, and *McLaughlin v. Florida, supra*, the Court held that statutes outlawing miscegenation and interracial cohabitation were constitutionally invalid, even though the laws penalized all violators equally. The laws were unconstitutional for the simple reason that they penalized individuals solely because of their race, whatever their race might be. See also *Goss v. Board of Education*, 373 U.S. 683; *Buchanan v. Warley*, 245 U.S. 60.[3]

This history contains one clear lesson. Under our Constitution, the government may never act to the detriment of a person solely because of that person's race.[4] The color of a person's skin and the country of his origin are immutable facts that bear no relation to ability, disadvantage, moral culpability, or any other characteristics of constitutionally permissible interest to government. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi v. United States*, 320 U.S. 81, 100, quoted in *Loving v. Virginia, supra*, 388 U.S., at 11.[5] In short, racial discrimination is by definition invidious discrimination.

Footnotes at end of article.

The rule cannot be any different when the persons injured by a racially biased law are not members of a racial minority. The guarantee of equal protection is "universal in [its] application, to all persons . . . without regard to any differences of race, of color, or of nationality." *Yick Wo v. Hopkins*, 118 U.S. 356, 369. See *In re Griffiths*, 413 U.S. 717; *Hernandez v. Texas*, 347 U.S. 475; *Truax v. Raich*, 239 U.S. 33, 39–43; *Strauder v. West Virginia, supra*, 100 U. S., at 308. The command of the equal protection guarantee is simple but unequivocal: In the words of the Fourteenth Amendment, "No State shall . . . deny to *any* person . . . the equal protection of the law." Nothing in this language singles out some "persons" for more "equal" treatment than others. Rather, as the Court made clear in *Shelley v. Kraemer*, 334 U. S. 1, 22, the benefits afforded by the Equal Protection Clause "are, by its terms, guaranteed to the individual. [They] are personal rights." From the perspective of a person detrimentally affected by a racially discriminatory law, the arbitrariness and unfairness is entirely the same, whatever his skin color and whatever the law's purpose, be it purportedly "for the promotion of the public good" or otherwise.

No one disputes the self-evident proposition that Congress has broad discretion under its Spending Power to disburse the revenues of the United States as it deems best and to set conditions on the receipt of the funds disbursed. No one disputes that Congress has the authority under the Commerce Clause to regulate contracting practices on federally funded public works projects, or that it enjoys broad powers under § 5 of the Fourteenth Amendment "to enforce by appropriate legislation" the provisions of that Amendment. But these self-evident truisms do not begin to answer the question before us in this case. For in the exercise of its powers, Congress must obey the Constitution just as the legislatures of all the States must obey the Constitution in the exercise of their powers. If a law is unconstitutional, it is no less unconstitutional just because it is a product of the Congress of the United States.

II

On its face, the minority business enterprise (MBE) provision at issue in this case denies the equal protection of the law. The Public Works Employment Act of 1977 directs that all project construction shall be performed by those private contractors who submit the lowest competitive bids and who meet established criteria of responsibility. 42 U. S. C. § 6705(e)(1) (1976 ed. Supp. I). One class of contracting firms—defined solely according to the racial and ethnic attributes of their owners—is, however, excepted from the full rigor of these requirements with respect to a percentage of each federal grant. The statute, on its face and in effect, thus bars a class to which the petitioners belong from having the opportunity to receive a government benefit, and bars the members of that class solely on the basis of their race or ethnic background. This is precisely the kind of law that the guarantee of equal protection forbids.

The Court's attempt to characterize the law as a proper remedial measure to counteract the effects of past or present racial discrimination is remarkably unconvincing. The Legislative Branch of government is not a court of equity. It has neither the dispassionate objectivity nor the flexibility that are needed to mold a race-conscious remedy around the single objective of eliminating the effects of past or present discrimination.[6]

But even assuming that Congress has the power, under § 5 of the Fourteenth Amendment or some other constitutional provision, to remedy previous illegal racial discrimination, there is no evidence that Congress has in the past engaged in racial discrimination in its disbursement of federal contracting funds. The MBE provision thus pushes the limits of any such justification far beyond the equal protection standard of the Constitution. Certainly, nothing in the Constitution gives Congress any greater authority to impose detriments on the basis of race than is afforded the Judicial Branch.[7] And a judicial decree that imposes burdens on the basis of race can be upheld only where its sole purpose is to eradicate the actual effects of illegal race discrimination. See *Pasadena City Board of Education v. Spangler*, 427 U.S. 424.

The provision at issue here does not satisfy this condition. Its legislative history suggests that it had at least two other objectives in addition to that of counteracting the effects of past or present racial discrimination in the public works construction industry.[8] One such purpose appears to have been to assure to minority contractors a certain percentage of federally funded public works contracts.[9] But, since the guarantee of equal protection immunizes from capricious governmental treatment "persons"—not "races," it can never countenance laws that seek racial balance as a goal in and of itself. "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids." *Regents of the University of California v. Bakke*, 438 U.S. 265, 307 (opinion of Powell, J.). Second, there are indications that the MBE provision may have been enacted to compensate for the effects of social, educational, and economic "disadvantage."[10] No race, however, has a monopoly on social, educational, or economic disadvantage,[11] and any law that indulges in such a presumption clearly violates the constitutional guarantee of equal protection. Since the MBE provision was in whole or in part designed to effectuate objectives other than the elimination of the effects of racial discrimination, it cannot stand as a remedy that comports with the strictures of equal protection, even if it otherwise could.[12]

The Fourteenth Amendment was adopted to ensure that every person must be treated equally by each State regardless of the color of his skin. The Amendment promised to carry to its necessary conclusion a fundamental principle upon which this Nation had been founded—that the law would honor no preference based on lineage.[13] Tragically, the promise of 1868 was not immediately fulfilled, and decades passed before the States and the Federal Government were finally directed to eliminate detrimental classifications based on race. Today, the Court derails this achievement and places its imprimatur on the creation once again by government of privileges based on birth.

The Court, moreover, takes this drastic step without, in my opinion, seriously considering the ramifications of its decision. Laws that operate on the basis of race require definitions of race. Because of the Court's decision today, our statute books will once again have to contain laws that reflect the odious practice of delineating the qualities that make one person a Negro and make another white.[14] Moreover, racial discrimination, even "good faith" racial discrimination, is inevitably a two-edged sword. "[P]referential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth." *University of California Regents v. Bakke, supra*, 438 U.S. at 298 (opinion of Powell, J.). Most importantly, by making race a relevant criterion once again in its own affairs, the Government implicitly teaches the public that the apportionment of rewards and penalties can legitimately be made according to race—rather than according to merit or ability—and that people can, and perhaps should, view themselves and others in terms of their racial characteristics. Notions of "racial entitlement" will be fostered, and private discrimination will necessarily be encouraged.[15] See *Hughes v. Superior Court*, 339 U.S. 460, 463–464; T. Eastland & W. Bennett, Counting by Race 139—170 (1979); Van Alstyne, Rites of Passage: Race, the Supreme Court, and the Constitution, 46 U. Chi. L. Rev. 775 (1979).

There are those who think that we need a new Constitution, and their views may someday prevail. But under the Constitution we have, one practice in which government may never engage is the practice of racism—not even "temporarily" and not even as an "experiment."

For these reasons, I would reverse the judgment of the Court of Appeals.

FOOTNOTES

[1] "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*, 424 U.S. 1, 93.

[2] By contrast, nothing in the Constitution prohibits a private person from discriminating on the basis of race in his personal or business affairs. See *Steelworkers v. Weber*, 443 U.S. 193. The Fourteenth Amendment limits only the actions of the States; the Fifth Amendment limits only the actions of the National Government.

[3] *University of California Regents v. Bakke*, 438 U.S. 265, and *United Jewish Organizations v. Carey*, 430 U.S. 144, do not suggest a different rule. The Court in *Bakke* invalidated the racially preferential admissions program that had deprived Bakke of equal access to a place in the medical school of a state university. In *United Jewish Organizations v. Carey*, a state legislature had apportioned certain voting districts with an awareness of their racial composition. Since the plaintiffs there had "failed to show that either the purpose or the effect of discriminating against them on the basis of their race," no constitutional violation had occurred. 430 U.S., at 179–180 (concurring opinion). No person in that case was deprived of his electoral franchise.

More than 35 years ago, during the Second World War, this Court did find constitutional a governmental program imposing injury on the basis of race. See *Korematsu v. United States*, 323 U.S. 214; *Hirabayashi v. United States*, 320 U.S. 81. Significantly, those cases were decided not only in time of war, but in an era before the Court had held that the Due Process Clause of the Fifth Amendment imposes the same equal protection standard upon the Federal Government that the Fourteenth Amendment imposes upon the States. See *Bolling v. Sharpe*, 347 U.S. 497.

[4] A court of equity may, of course, take race into account in devising a remedial decree to undo a violation of a law prohibiting discrimination on the basis of race. See *Teamsters v. United States*, 431 U.S. 324; *Franks v. Bowman Transportation Co.*, 424 U.S. 747; *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 18–32. But such a judicial decree, following litigation in which a violation of law has been determined, is wholly different from generalized legislation that awards benefits and imposes detriments dependent upon the race of the recipients. See text in Part B, *infra*.

[5] As Mr. Justice Murphy wrote in dissenting from the Court's opinion and judgment in *Korematsu v. United States*, 323 U.S. 214, 242:

"Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the

principles set forth in the Constitution of the United States."

See also *Defunis* v. *Odegaard*, 416 U.S. 312, 331–344 (Douglas, J., dissenting); A. Bickel, The Morality of Consent 132–133 (1975).

[6] See n. 4, *supra*. In *McDaniel* v. *Barresi*, 402 U.S. 39, the Court approved a county's voluntary race-conscious redrafting of its public school pupil assignment system in order to eliminate the effects of past unconstitutional racial segregation of the pupils. But no pupil was deprived of a public school education as a result.

[7] Section 2 of the Thirteenth Amendment gives Congress the authority to "enforce" the provisions of § 1 of the same Amendment, and § 5 of the Fourteenth Amendment provides that, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Neither section grants to Congress the authority to require the States to flout their obligation under § 1 of the Fourteenth Amendment to afford "the equal protection of the laws" or the power to enact legislation that itself violates the equal protection component of the Fifth Amendment.

[8] The legislative history of the MBE provision itself contains not one mention of racial discrimination or the need to provide a mechanism to correct the effects of such discrimination. From the context of the Act, however, it is reasonable to infer that the program was enacted, at least in part, to remedy perceived past and present racial discrimination. In 1977, Congress knew that many minority business enterprises had historically suffered racial discrimination in the economy as a whole and in the construction industry in particular. See H.R. Rep. No. 94–1791, pp. 182–183 (1977); H.R. Rep. No. 94–468, pp. 1–2 (1975); To Amend and Extend the Local Public Works Capital Development and Investment Act: Hearings before the Subcommittee on Economic Development of the House Committee on Public Works and Transportation, 95th Cong., 1st Sess., 939 (1977) (statement of Rep. Conyers). Some of this discrimination may well, in fact, have violated one or more of the state and federal antidiscrimination laws.

[9] See 123 Cong. Rec. 5325 (Feb. 24, 1977) (Rep. Mitchell) ("all [the MBE provision] attempts to do is to provide that those who are in minority businesses get a *fair share of the action* from this public works legislation") (emphasis supplied). Moreover, sponsors of the legislation repeatedly referred to the low participation rate of minority businesses in federal procurement programs. See 123 Cong. Rec. 5329 (Feb. 24, 1977) (Rep. Biaggi): 123 Cong. Rec. 5325–26 (Feb. 24, 1977) (Rep. Mitchell); 123 Cong. Rec. 5097–98 (Feb. 23, 1977) (Rep. Mitchell); 123 Cong. Rec. 7157 (Mar. 10, 1977) (Sen. Brooke).

[10] See 123 Cong. Rec. 5329 (Feb. 24, 1977) (Rep. Conyers) ("minority contractors and businessmen who are trying to enter in on the bidding process . . . get the 'works' almost every time. The bidding process is one whose intricacies defy the imaginations of most of us here.") That the elimination of "disadvantage" is one of the program's objectives is an inference that finds support in the agency's own interpretation of the statute. See U.S. Department of Commerce, Economic Development Administration, EDA Minority Business Enterprise Technical Bulletin (Additional Assistance and Information Available to Grantees and Their Contractors In Meeting The 10% MBE Requirement) 9–10 (Oct. 11, 1977) (Technical Bulletin) ("a [minority] subcontractor's price should not be considered unreasonable if he is merely trying to cover his costs because the price results from *disadvantage* which affects the MBE's costs of doing business *or* results from *discrimination*" (emphasis added)).

[11] For instance, in 1976, 83.4% of persons over the age of 25 who had not completed high school were "white," see U.S. Dept. of Commerce Bureau of the Census, Statistical Abstract of the United States 145 (1979), and in 1977, 79.0% of households with annual income of less than $5,000 were "white," see *id.*, at 458.

[12] Moreover, even a properly based judicial decree will be struck down if the scope of the remedy it provides is not carefully tailored to fit the nature and extent of the violation. See Dayton Board of Education v. Brinkman, 433 U. S. 406, 419–420; Milliken v. Bradley, 418 U. S. 717. Here, assuming that the MBE provision was intended solely as a remedy for past and present racial discrimination, it sweeps far too broadly. It directs every state and local government covered by the program to set aside 10% of its grant for minority business enterprises. Waivers from that requirement are permitted, but only where insufficient numbers of minority businesses capable of doing the work at nonexorbitant prices are located in the relevant contracting area. No waiver is provided for any governmental entity that can prove a history free of racial discrimination. Nor is any exemption permitted for nonminority contractors that are able to demonstrate that they have not engaged in racially discriminatory behavior. Finally, the statute makes no attempt to direct the aid it provides solely toward those minority contracting firms that arguably still suffer from the effects of past or present discrimination.

These are not the characteristics of a racially conscious remedial decree that is closely tailored to the evil to be corrected. In today's society, it constitutes far too gross an oversimplification to assume that every single Negro, Spanish-speaking citizen, Oriental, Indian, Eskimo, and Aleut potentially interested in construction contracting currently suffers from the effects of past or present racial discrimination. Since the MBE set-aside must be viewed as resting upon such an assumption, it necessarily paints with too broad a brush. Except to make whole the identified victims of racial discrimination, the guarantee of equal protection prohibits the government from taking detrimental action against innocent people on the basis of the sins of others of their own race.

[13] The Framers of our Constitution lived at a time when the Old World still operated in the shadow of ancient feudal traditions. As products of the Age of Enlightenment, they set out to establish a society that recognized no distinctions among white men on account of their birth. See U.S. Constitution, Art. I, § 9, cl. 8 ("No Title of Nobility shall be granted by the United States"). The words Thomas Jefferson wrote in 1776 in the Declaration of Independence, however, contained the seeds of a far broader principle: "We hold these Truths to be self-evident, that all Men are created equal. . . ."

[14] See Technical Bulletin, *supra*, at 1. Cf., Ga. Code Ann. § 53–312 (1937), Tex. Penal Code Art. 493 (1948).

[15] "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." *Olmstead* v. *United States*, 277 U.S. 438, 485 (Brandeis, J., dissenting).

Mr. HATCH. Mr. President, Justice Stevens' dissent is also interesting. He did not directly address the issue of whether a race-conscious statute is inherently unconstitutional. Instead, he criticized the numerous logical inconsistencies in the theory underlying the set-aside program. In particular, he objected to the idea that such programs were justified as a form of societal reparations to the black community, in words that may haunt us for the rest of the century:

If [American] history can justify such a random distribution of benefits on racial lines as that embodied in this statutory scheme, it will serve not merely as a basis for remedial legislation, but rather as a permanent source of justification for special privileges. For if there is no duty to attempt either to measure the recovery by the wrong or to distribute that recovery within the injured class in an evenhanded way, our history will adequately support a legislative preference for almost any ethnic, religious, or racial group with the political strength to negotiate "a piece of the action" for its members.

Justice Stevens dissented from the Fullilove decision because he concluded that the set-aside provision was insufficiently "narrowly tailored" to justify its obvious conflict with Congress fifth amendment duty to govern impartially.

We elected officials may find Justice Stevens' scathing comments about the inadequate scrutiny the measure received on its journey through Congress inappropriate. We may feel that the constitutionality of an act should be decided by looking at its language and that of the Constitution, not by second-guessing what we ourselves said at the time. But we must admit that his survey of the legislative history demonstrates beyond dispute, despite the contention of the Court majority, that the set-aside provision was not regarded by Congress as specifically remedial, or even temporary. It had nothing to do with repairing the effects of the Federal Government's discrimination in contract letting. There is no evidence whatever that the Federal Government ever discriminated in this way. The question just was not at issue at all in the debate. Congress saw set-asides as just another pork barrel, but this time on racial lines.

Mr. President, I ask unanimous consent that Mr. Justice Stevens' dissenting opinion be printed in the RECORD at this point. This concerns the Fullilove dissent.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

SUPREME COURT OF THE UNITED STATES
(No. 78–1007)

H. Earl Fullilove et al., Petitioners, *v.* Philip M. Klutznick, Secretary of Commerce of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[July 2, 1980]

Mr. JUSTICE STEVENS, dissenting.

The 10% set-aside contained in the Public Works Employment Act of 1977, 91 Stat. 116 ("the Act") creates monopoly privileges in a $400,000,000 market for a class of investors defined solely by racial characteristics. The direct beneficiaries of these monopoly privileges are the relatively small number of persons within the racial classification who represent the entrepreneurial subclass—those who have, or can borrow, working capital.

History teaches us that the costs associated with a sovereign's grant of exclusive privileges often encompass more than the high prices and shoddy workmanship that are familiar hand maidens of monopoly; they engender animosity and discontent as well. The economic consequences of using noble birth as a basis for classification in 18th century France, though disastrous, were nothing as compared with the terror that was engendered in the name of "egalite" and "fraternite." Grants of privilege on the basis of characteristics acquired at birth are far from an unmixed blessing.

Our historic aversion to titles of nobility[1] is only one aspect of our commitment to the proposition that the sovereign has a fundamental duty to govern impartially.[2] When government accords different treatment to different persons, there must be a reason for the difference.[3] Because racial characteristics so seldom provide a relevant basis for disparate treatment,[4] and because classifications based on race are potentially so harmful to the entire body politic,[5] it is especially important that the reasons for any such classification be clearly identified and unquestionably legitimate.

The statutory definition of the preferred class includes "citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts." All aliens and all nonmembers of the racial class are excluded. No economic, social, geographical or historical criteria are relevant for exclusion or inclusion. There is not one word in the remainder of the Act or in the legislative history that explains why any Congressman or Senator favored this particular definition over any other or that identifies the common characteristics that every member of the preferred class was believed to share.[6] Nor does the Act or its history explain why 10 percent of the total appropriation was the proper amount to set aside for investors in each of the six racial subclasses.[7]

Four different, though somewhat interrelated, justifications for the racial classification in this Act have been advanced: first, that the 10 percent set aside is a form of reparation for past injuries to the entire membership of the class; second, that it is an appropriate remedy for past discrimination against minority business enterprises that have been denied access to public contracts; third, that the members of the favored class have a special entitlement to "a piece of the action" when government is distributing benefits; and, fourth, that the program is an appropriate method of fostering greater minority participation in a competitive economy. Each of these asserted justifications merits separate scrutiny.

I

Racial characteristics may serve to define a group of persons who have suffered a special wrong and who, therefore, are entitled to special reparations. Congress has recognized, for example, that the United States has treated some Indian tribes unjustly and has created procedures for allowing members of the injured classes to obtain classwide relief. See, *e.g.*, *Delaware Tribal Business Committee* v. *Weeks*, 430 U.S. 73. But as I have formerly suggested, if Congress is to authorize a recovery for a class of similarly situated victims of a past wrong, it has an obligation to distribute that recovery among the members of the injured class in an evenhanded way. See *id.*, at 97–98 (Stevens, J., dissenting). Moreover, in such a case the amount of the award should bear some rational relationship to the extent of the harm it is intended to cure.

In his eloquent separate opinion in *University of California Regents* v. *Bakke*, 438 U.S. 265, 387, MR. JUSTICE MARSHALL recounted the tragic class-based discrimination against Negroes that is an indelible part of America's history. I assume that the wrong committed against the Negro class is both so serious and so pervasive that it would constitutionally justify an appropriate classwide recovery measured by a sum certain for every member of the injured class. Whether our resources are adequate to support a fair remedy of that character is a policy question I have neither the authority nor the wisdom to address. But that serious classwide wrong cannot in itself justify the particular classification Congress has made in this Act. Racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification. Quite obviously, the history of discrimination against black citizens in America cannot justify a grant of privileges to Eskimos or Indians.

Even if we assume that each of the six racial subclasses has suffered its own special injury at some time in our history, surely it does not necessarily follow that each of those subclasses suffered harm of identical magnitude. Although "the Negro was dragged to this country in chains to be sold in slavery," *Bakke*, opinion of MARSHALL J., *supra*, 438 U.S. at 387, the "Spanish-speaking" subclass came voluntarily, frequently without invitation, and the Indians, the Eskimos and the Aleuts had an opportunity to exploit America's resources before most American citizens arrived. There is no reason to assume, and nothing in the legislative history suggests, much less demonstrates, that each of these subclasses is equally entitled to reparations from the United States Government.[8]

At best, the statutory preference is a somewhat perverse form of reparation for the members of the injured classes. For those who are the most disadvantaged within each class are the least likely to receive any benefit from the special privilege even though they are the persons most likely still to be suffering the consequences of the past wrong.[9] A random distribution to a favored few is a poor form of compensation for an injury shared by many.

My principal objection to the reparation justification for this legislation, however, cuts more deeply than my concern about its inequitable character. We can never either erase or ignore the history that MR. JUSTICE MARSHALL has recounted. But if that history can justify such a random distribution of benefits on racial lines as that embodied in this statutory scheme, it will serve not merely as a basis for remedial legislation, but rather as a permanent source of justification for grants of special privileges. For if there is no duty to attempt either to measure the recovery by the wrong or to distribute that recovery within the injured class in an evenhanded way, our history will adequately support a legislative preference for almost any ethnic, religious, or racial group with the political strength to negotiate "a piece of the action" for its members.

Although I do not dispute the validity of the assumption that each of the subclasses identified in the Act has suffered a severe wrong at some time in the past, I cannot accept this slapdash statute as a legitimate method of providing classwide relief.

II

The Act may also be viewed as a much narrower remedial measure—one designed to grant relief to the specific minority business enterprises that have been denied access to public contracts by discriminatory practices.

The legislative history of the Act does not tell us when, or how often, any minority business enterprise was denied such access. Nevertheless, it is reasonable to infer that the number of such incidents has been relatively small in recent years. For, as noted by the Solicitor General, in the last 20 years Congress has enacted numerous statutes designed to eliminate discrimination and its effects from federally funded programs.[10] Title VI of the Civil Rights Act of 1964 unequivocally and comprehensively prohibits discrimination on the basis of race in any program or activity receiving federal financial assistance. In view of the scarcity of litigated claims on behalf of minority business enterprises during this period, and the lack of any contrary evidence in the legislative record, it is appropriate to presume that the law has generally been obeyed.

Assuming, however, that some firms have been denied public business for racial reasons, the instant statutory remedy is nevertheless demonstrably much broader than is necessary to right any such past wrong. For the statute grants the special preference to a class that includes (1) those minority owned firms that have successfully obtained business in the past on a free competitive basis and undoubtedly are capable of doing so in the future as well; (2) firms that have never attempted to obtain any public business in the past; (3) firms that were initially formed after the Act was passed, including those that may have been organized simply to take advantage of its provisions:[11] (4) firms that have tried to obtain public business but were unsuccessful for reasons that are unrelated to the racial characteristics of their stockholders; and (5) those firms that have been victimized by racial discrimination.

Since there is no reason to believe that any of the firms in the first four categories had been wrongfully excluded from the market for public contracts, the statutory preference for those firms cannot be justified as a remedial measure. And since a judicial remedy was already available for the firms in the fifth category,[12] it seems inappropriate to regard the preference as a remedy designed to redress any specific wrongs.[13] In any event, since it is highly unlikely that the composition of the fifth category is at all representative of the entire class of firms to which the statute grants a valuable preference, it is ill-fitting to characterize this as a "narrowly tailored" remedial measure.[14]

III

The legislative history of the Act discloses that there is a group of legislators in Congress identified as the "Black Caucus" and that members of that group argued that if the Federal Government was going to provide $4,000,000,000 of new public contract business, their constituents were entitled to "a piece of the action."

It is neither unusual nor reprehensible for Congressmen to promote the authorization of public construction in their districts. The flow of capital and employment into a district inevitably has both direct and indirect consequences that are beneficial. As Mr. JUSTICE BRENNAN noted in *Elrod* v. *Burns*, 427 U.S. 347, however, the award of such contracts may become a form of political patronage that is dispensed by the party in power.[15] Although the practice of awarding such contracts to political allies may be as much a part of our history as the employment practices condemned in *Elrod*, it would surely be unconstitutional for the legislature to specify that all, or a certain portion, of the contracts authorized by a specific statute must be given to businesses controlled by members of one political party or another. That would be true even if the legislative majority was convinced that a grossly disproportionate share had been awarded to members of the opposite party in previous years.

In the short run our political processes might benefit from legislation that enhanced the ability of representatives of minority groups to disseminate patronage to their political backers. But in the long run any rule that authorized the award of public business on a racial basis would be just as objectionable as one that awarded such business on a purely partisan basis.

The legislators' interest in providing their constituents with favored access to benefits distributed by the Federal Government is, in my opinion, a plainly impermissible justification for this racial classification.

IV

The interest in facilitating and encouraging the participation by minority business enterprises in the economy is unquestionably legitimate. Any barrier to such entry and growth—whether grounded in the law or in irrational prejudice—should be vigorously and thoroughly removed. Equality of economic and investment opportunity is a goal of no less importance than equality of employment opportunity. This statute, however, is not designed to remove any barriers to entry. Nor does its sparse legislative history detail any insuperable or even significant obstacles to entry into the competitive market.

Three difficulties encountered by minority business enterprises in seeking govern-

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mental business on a competitive basis are identified in the legislative history. There were references to (1) unfamiliarity with bidding procedures followed by procurement officers, (2) difficulties in obtaining financing and (3) past discrimination in the construction industry.

The first concern is no doubt a real problem for all businesses seeking access to the public contract market for the first time. It justifies a thorough review of bidding practices to make sure that they are intelligible and accessible to all. It by no means justifies an assumption that minority business enterprises are any less able to prepare and submit bids in proper form than are any other businessmen. Consequently, that concern does not justify a statutory classification on racial grounds.

The second concern would justify legislation prohibiting private discrimination in lending practices or authorizing special public financing for firms that have been or are unable to borrow money for reasons unrelated to their credit rating. It would not be an adequate justification for a requirement that a fixed percentage of all loans made by national banks be made to Eskimos or Orientals regardless of their ability to repay the loans. Nor, it seems to me, does it provide a sufficient justification for granting a preference to a broad class that includes, at one extreme, firms that have no credit problem[16] and at the other extreme, firms whose unsatisfactory credit rating will prevent them from taking advantage of the statutory preference even though they are otherwise qualified to do the work. At best, the preference for minority business enterprises is a crude and inadequate response to the evils that flow from discriminatory lending practices.

The question whether the history of past discrimination has created barriers that can only be overcome by an unusual measure of this kind is more difficult to evaluate. In analyzing this question. I think it is essential to draw a distinction between obstacles placed in the path of minority business enterprises by others and characteristics of those firms that may impair their ability to compete.

It is unfortunately but unquestionably true that irrational racial prejudice persists today and continues to obstruct minority participation in a variety of economic pursuits, presumably including the construction industry. But there are two reasons why this legislation will not eliminate, or even tend to eliminate, such prejudice. First, prejudice is less likely to be a significant factor in the public sector of the economy than in the private sector because both federal and state laws have prohibited discrimination in the award of public contracts for many years. Second, and of greater importance, an absolute preference that is unrelated to a minority firm's ability to perform a contract inevitably will engender resentment on the part of competitors excluded from the market for a purely racial reason and skepticism on the part of customers and suppliers aware of the statutory classification. It thus seems clear to me that this Act cannot be defended as an appropriate method of reducing racial prejudice.

The argument that our history of discrimination has left the entire membership of each of the six racial classes identified in the Act less able to compete in a free market than others is more easily stated than proved. The reduction in prejudice that has occurred during the last generation has accomplished much less than was anticipated; it nevertheless remains true that increased opportunities have produced an ever increasing number of demonstrations that members of disadvantaged races are entirely capable not merely of competing on an equal basis, but also of excelling in the most demanding professions. But, even though it is not the actual predicate for this legislation, a statute of this kind inevitably is perceived by many as resting on an assumption that those who are granted this special preference are less qualified in some respect that is identified purely by their race.[17] Because that perception—especially when fostered by the Congress of the United States—can only exacerbate rather than reduce racial prejudice, it will delay the time when race will become a truly irrelevant, or at least insignificant, factor. Unless Congress clearly articulates the need and basis for a racial classification, and also tailors the classification to its justification, the Court should not uphold this kind of statute.

This Act has a character that is fundamentally different from a carefully drafted remedial measure like the Voting Rights Act of 1965. A consideration of some of the dramatic differences between these two legislative responses to racial injustice reveals not merely a difference in legislative craftsmanship but a difference of constitutional significance. Whereas the enactment of the Voting Rights Act was preceded by exhaustive hearings and debates concerning discriminatory denial of access to the electoral process, and became effective in specific States only after specific findings were made, this statute authorizes an automatic nationwide preference for all members of a diverse racial class regardless of their possible interest in the particular geographic areas where the public contracts are to be performed. Just why a wealthy Negro or Spanish-speaking investor should have a preferred status in bidding on a construction contract in Alaska—or a citizen of Eskimo ancestry should have a preference in Miami or Detroit—is difficult to understand in light of either the asserted remedial character of the set-aside or the more basic purposes of the public works legislation.

The Voting Rights Act addressed the problem of denial of access to the electoral process. By outlawing specific practices, such as poll taxes and special tests, the statute removed old barriers to equal access; by requiring preclearance of changes in voting practices in covered States, it precluded the erection of new barriers. The Act before us today does not outlaw any existing barriers to access to the economic market and does nothing to prevent the erection of new barriers. On the contrary, it adopts the fundamentally different approach of creating a new set of barriers of its own.

A comparable approach in the electoral context would support a rule requiring that at least 10 percent of the candidates elected to the legislature be members of specified racial minorities. Surely that would be an effective way of ensuring black citizens the representation that has long been their due. Quite obviously, however, such a measure would merely create the kind of inequality that an impartial sovereign cannot tolerate. Yet that is precisely the kind of "remedy" that this Act authorizes. In both political and economic contexts, we have a legitimate interest in seeing that those who were disadvantaged in the past may succeed in the future. But neither an election nor a market can be equally accessible to all if race provides a basis for placing a special value on votes or dollars.

The ultimate goal must be to eliminate entirely from governmental decisionmaking such irrelevant factors as a human being's race. The removal of barriers to access to political and economic processes serves that goal.[18] But the creation of new barriers can only frustrate true progress. For as Mr. Justice Powell[19] and Mr. Justice Douglas[20] have perceptively observed, such protective barriers reinforce habitual ways of thinking in terms of classes instead of individuals. Preferences based on characteristics acquired at birth foster intolerance and antagonism against the entire membership of the favored classes.[21] For this reason, I am firmly convinced that this "temporary measure" will disserve the goal of equal opportunity.

V

A judge's opinion that a statute reflects a profoundly unwise policy determination is an insufficient reason for concluding that it is unconstitutional. Congress has broad power to spend money to provide for the "general Welfare of the United States," to "regulate Commerce among the several States," to enforce the Civil War Amendments, and to discriminate between aliens and citizens. See *Hampton* v. *Mow Sun Wong*, 426 U.S. 88, 101–102, n. 21.[22] But the exercise of these broad powers is subject to the constraints imposed by the Due Process Clause of the Fifth Amendment. That Clause has both substantive and procedural components; it performs the office of both the Due Process and Equal Protection Clauses of the Fourteenth Amendment in requiring that the federal sovereign act impartially.

Unlike Mr. Justice Stewart and Mr. Justice Rehnquist, however, I am not convinced that the Clause contains an absolute prohibition against any statutory classification based on race. I am nonetheless persuaded that it does impose a special obligation to scrutinize any governmental decisionmaking process that draws nationwide distinctions between citizens on the basis of their race and incidentally also discriminates against noncitizens in the preferred racial classes.[23] For just as procedural safeguards are necessary to guarantee impartial decisionmaking in the judicial process, so can they play a vital part in preserving the impartial character of the legislative process.[24]

In both its substantive and procedural aspects this Act is markedly different from the normal product of the legislative decisionmaking process. The very fact that Congress for the first time in the Nation's history has created a broad legislative classification for entitlement to benefits based solely on racial characteristics identifies a dramatic difference between this Act and the thousands of statutes that preceded it. This dramatic point of departure is not even mentioned in the statement of purpose of the Act or in the reports of either the House or the Senate Committee that processed the legislation,[25] and was not the subject of any testimony or inquiry in any legislative hearing on the bill that was enacted. It is true that there was a brief discussion on the floor of the House as well as in the Senate on two different days, but only a handful of legislators spoke and there was virtually no debate. This kind of perfunctory consideration of an unprecedented policy decision of profound constitutional importance to the Nation is comparable to the accidental malfunction of the legislative process that led to what I regarded as a totally unjustified discrimination in *Delaware Tribal Business Committee v. Weeks, supra*, 430 U. S., at 97.

Although it is traditional for judges to accord the same presumption of regularity to the legislative process no matter how obvious it may be that a busy Congress has acted precipitately, I see no reason why the character of their procedures may not be considered relevant to the decision whether the legislative product has caused a deprivation of liberty or property without due process of law.[26] Whenever Congress creates a classification that would be subject to strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment if it had been fashioned by a state legislature, it seems to me that judicial review should include a consideration of the procedural character of the decisionmaking process.[27] A holding that the classification was not adequately preceded by a consideration of less drastic alternatives or adequately explained by a statement of legislative purpose would be far less intrusive than a final determination that the substance of the decision is not "narrowly tailored to the achievement of that goal."[28] Cf. THE CHIEF JUSTICE's opinion, *ante*, at 28; MR. JUSTICE MARSHALL's opinion concurring in the judgment, *ante*, at 5. If the general language of the Due Process Clause of the Fifth Amendment authorizes this Court to review acts of Congress of the Fourteenth Amendment—a clause that cannot be found in the Fifth Amendment—there can be no separation of powers objection to a more tentative holding of unconstitutionality based on a failure to follow procedures that guarantee the kind of deliberation that a fundamental constitutional issue of this kind obviously merits.[29]

In all events, rather than take the substantive position expressed in Mr. JUSTICE STEWART's dissenting opinion, I would hold this statute unconstitutional on a narrower ground. It cannot fairly be characterized as a "narrowly tailored" racial classification because it simply raises too many serious questions that Congress failed to answer or even to address in a responsible way.[30] The risk that habitual attitudes toward classes of persons, rather than analysis of the relevant characteristics of the class, will serve as a basis for a legislative classification is present when benefits are distributed as well as when burdens are imposed. In the past, traditional attitudes too often provided the only explanation for discrimination against women, aliens, illegitimates, and black citizens. Today there is a danger that awareness of past injustice will lead to automatic acceptance of new classifications that are not in fact justified by attributes characteristic of the class as a whole.

When Congress creates a special preference, or a special disability, for a class of persons, it should identify the characteristic that justifies the special treatment.[31] When the classification is defined in racial terms, I believe that such particular identification is imperative.

In this case, only two conceivable bases for differentiating the preferred classes from society as a whole have occurred to me: (1) that they were the victims of unfair treatment in the past and (2) that they are less able to compete in the future. Although the first of these factors would justify an appropriate remedy for past wrongs, for reasons that I have already stated, this statute is not such a remedial measure. The second factor is simply not true. Nothing in the record of this case, the legislative history of the Act, or experience that we may notice judicially provides any support for such a proposition. It is up to Congress to demonstrate that its unique statutory preference is justified by a relevant characteristic that is shared by the members of the preferred class. In my opinion, because it has failed to make that demonstration, it has also failed to discharge its duty to govern impartially embodied in the Fifth Amendment to the United States Constitution.

I respectfully dissent.

FOOTNOTES

[1] "Such pure discrimination is most certainly not a 'legitimate purpose' for our Federal Government, which should be especially sensitive to discrimination on grounds of birth. 'Discrimination between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' *Hirabayashi* v. *United States*, 320 U.S. 81, 100. From its inception, the Federal Government has been directed to treat all its citizens as having been 'created equal' in the eyes of the law. The Declaration of Independence states:

" 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by the Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.' "And the rationale behind the prohibition against the grant of any title of nobility by the United States, see U.S. Const., Art. I, § 9, cl. 8, equally would prohibit the United States from attaching any badge of ignobility to a citizen at birth" *Mathews* v. *Lucas*, 427 U.S. 495, 520–521, n. 3 (STEVENS, J., dissenting).

[2] "The federal sovereign, like the States, must govern impartially The concept of equal justice under law is served by the Fifth Amendment's guarantee of due process, as well as by the Equal Protection Clause of the Fourteenth Amendment." *Hampton* v. *Mow Sun Wong*, 426 U.S. 88, 100.

See also *Harris* v. *McRae*,—— U.S. ——, —— (STEVENS, J., dissenting); *Craig* v. *Boren*, 429 U.S. 190, 211 (STEVENS, J., concurring).

[3] "As a matter of principle and in view of my attitude toward the equal protection clause, I do not think differences of treatment under law should be approved on classification because of differences unrelated to the legislative purposes. The equal protection clause ceases to assure either equality or protection if it is avoided by any conceivable difference that can be pointed out between those bound and those left free. This Court has often announced the principle that the differentiation must have an appropriate relation to the object of the legislation or ordinance." *Railway Express* v. *New York*, 336 U.S. 106, 115 (Jackson, J., concurring).

[4] "Habit, rather than analysis, makes it seem acceptable and natural to distinguish between male and female, alien and citizens, legitimate and illegitimate; for too much of our history there was the same inertia in distinguishing between black and white. But that sort of stereotyped reaction may have no rational relationship—other than pure prejudicial discrimination—to the stated purpose for which the classification is being made." *Mathews* v. *Lucas*, *supra*, 427 U.S., at 520–521 (STEVENS, J., dissenting) (footnote omitted).

[5] Indeed, the very attempt to define with precision a beneficiary's qualifying racial characteristics is repugnant to our constitutional ideals. The so-called guidelines developed by the Economic Development Administration, see the appendix to the opinion of THE CHIEF JUSTICE, ¶ 3, *ante*, at 43, are so general as to be fairly innocuous; as a consequence they are too vague to be useful. For example, it is unclear whether the firm described in n. 16, *infra*, would be eligible for the 10% set-aside. If the National Government is to make a serious effort to define racial classes by criteria that can be administered objectively, it must study precedents such as the First Regulation to the Reichs Citizenship Law of November 14, 1935, translated in 4 Nazi Conspiracy and Aggression 1417–PS, pp. 8–9 (1946):

"On the basis of Article 3, Reichs Citizenship Law, of 15 Sept. 1935 (RGB1. I, page 146) the following is ordered:

* * * * *

"ARTICLE 5

"1. A Jew is anyone who descended from at least three grandparents who were racially full Jews. Article 2, par. 2, second sentence will apply.

"2. A Jew is also one who descended from two full Jewish parents, if: (a) he belonged to the Jewish religious community at the time this law was issued, or who joined the community later; (b) he was married to a Jewish person, at the time the law was issued, or married one subsequently; (c) he is the offspring from a marriage with a Jew, in the sense of Section 1, which was contracted after the Law for the protection of German blood and German honor become effective (RGB1. I, page 1146 of 15 Sept. 1935); (d) he is the offspring of an extramarital relationship, with a Jew, according to Section 1, and will be born out of wedlock after July 31, 1936."

[6] In 1958, almost 10 years before the Act was passed, the Small Business Administration had developed a program to assist small business concerns owned or controlled by "socially or economically disadvantaged persons." The Agency's description of persons eligible for such assistance stated that such "persons include, but are not limited to, black Americans, American Indians, Spanish-Americans, oriental Americans, Eskimos and Aleuts. . . ." See opinion of THE CHIEF JUSTICE, *ante*, at 12. This may be the source of the definition of the class at issue in this case. See also id., at 36, n. 73. But the SBA's class of socially or economically disadvantaged persons neither included all persons in the racial class nor excluded all nonmembers of the racial class. Race was used as no more than a factor in identifying the class of the disadvantaged. The difference between the statutory quota involved in this case and the SBA's 1968 description of those whose businesses were to be assisted under § 8(a) of the Small Business Act is thus at least as great as the difference between the University of California's racial quota and the Harvard admissions system that MR. JUSTICE POWELL regarded as critical in *University of California* v. *Bakke*, 438 U.S. 265, 315–318.

[7] It was noted that the value of the federal contracts awarded to minority business firms in prior years had amounted to less than 1 percent of the total; since the statutory set aside of 10 percent may be satisfied by subcontracts to minority business enterprises, it is possible that compliance with the statute would not change the 1 percent figure.

The legislative history also revealed that minority business enterprises represented about 3 or 4% of all eligible firms; the history does not indicate, however, whether the 10% figure was intended to provide the existing firms with three times as much business as they could expect to receive on a random basis or to encourage members of the class to acquire or form new firms. An EDA guideline arguably implies that new investments made in order to take advantage of the 10% set aside would not be considered "bona fide." See appendix to the opinion of THE CHIEF JUSTICE, *ante*, at 41.

The 10% figure bears no special relationship to the relative size of the entire racial class, to any of the six subclasses, or to the population of the subclasses in the areas where they primarily reside. The Aleuts and the Eskimos, for example, respectively represent less than 1% and 7% of the population of Alaska, see The New Columbia Encyclopedia (Columbia University Press 1975), pp. 47, 59, 891, while Spanish-speaking or Negro citizens represent a majority or almost a majority in a large number of urban areas.

[8] Ironically, the Aleuts appear to have been ruthlessly exploited at some point in their history by Russian fur traders. See The New Columbia Encyclopedia, p. 59.

[9] For a similar reason, the discrimination against males condemned in *Califano* v. *Goldfarb*, 430 U.S. 199, could not be justified as a remedy for past discrimination against females. That case involved a statutory provision which relieved widows from the obligation of providing dependency on their deceased spouses in order to obtain benefits, but did not similarly relieve widowers:

"The widows who benefit from the disparate treatment are those who were sufficiently successful in the job market to become nondependent on their husbands. Such a widow is the least likely to need special benefits. The widow most in need is the one who is 'suddenly forced into a job market with which she is unfamiliar, and in which, because of her former economic dependency, she will have fewer skills to offer.' [*Kahn* v. *Shevin*, 416 U.S. 351,] 354. To accept the *Kahn* justification we must presume that

Footnotes at end of article.

Congress deliberately gave a special benefit to those females least likely to have been victims of the historic discrimination discussed in *Kahn*." 430 U.S., at 221 (STEVENS, J., concurring in the judgment).

[10] "The statute with the most comprehensive coverage is Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*; which broadly prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Since the passage of the Title VI, many other specific federal grant statutes have contained similar prohibitions against discrimination in particular funded activities. See, *e.g.*, State and Local Fiscal Assistance Amendments of 1976, 31 U.S.C. 1242; Energy Conservation and Production Act, 42 U.S.C. 6870; Housing and Community Development Act of 1974, 42 U.S.C. 5309; Comprehensive Employment and Training Act of 1973, 29 U.S.C. 991." Brief for Respondent 21, n. 7.

[11] Although the plain language of the statute appears to include such firms, as I have already noted *supra*, at 4–5, n. 7, the EDA guidelines may consider such newly formed firms ineligible for the statutory set-aside.

[12] See *University of California Regents* v. *Bakke*, *supra*, 438 U.S., at 418–421 (opinion of STEVENS, J.). See also § 207(d) of the Local Public Works Capital Development and Investment Act of 1976, 90 Stat. 999, 1007–1008.

[13] I recognize that the EDA has issued a technical bulletin, relied on heavily by THE CHIEF JUSTICE, *ante*, at 17–20, which distinguishes between higher bids quoted by minority subcontractors which are attributable to the effects of disadvantage or discrimination and those which are not. That is, according to the bulletin, if it is determined that a subcontractor's uncompetitive high price is not attributable to the effects of discrimination, a contractor may be entitled to relief from the 10% set-aside requirement. But even assuming that the technical bulletin accurately reflects Congress' intent in enacting the set-aside, it is not easy to envision how one could realistically demonstrate with any degree of precision, if at all, the extent to which a bid has been inflated by the effects of disadvantage or past discrimination. Consequently, while THE CHIEF JUSTICE describes the set-aside as a remedial measure, it plainly operates as a flat quota.

[14] See THE CHIEF JUSTICE'S opinion, *ante*, at 28.

[15] "Non-officeholders may be the beneficiaries of lucrative government contracts for highway construction, buildings, and supplies." 427 U.S., at 353.

[16] An example of such a firm was disclosed in the record of a recent case involving a claimed preference for a firm controlled by Indian shareholders:

"Based on the facts that were developed in the District Court, . . . the Indian community in general does not benefit from the [Bureau of Indian Affairs'] interpretation of [the Buy Indian Act].

"The facts that were developed in the District Court show that the beneficiaries of this interpretation were the owners of Indian Nations Construction Company. The president of the company is a one-fourth degree Indian who is an administrative law judge for the Department of Health, Education, and Welfare by occupation. The vice president of that company was a one-quarter blood Choctaw who is a self-employed rancher and who states his net worth at just under a half million dollars. The treasurer and general manager of that corporation is a non-Indian and he states his net worth at $1.3 million." Tr. of Oral Arg. in *Andrus* v. *Glover Construction Co.*, O. T. 1979, No. 79–84, pp. 26–27.

[17] See *United Jewish Organizations* v. *Carey*, 430 U. S. 144, 173–174 (BRENNAN, J., concurring in part): "[E]ven preferential treatment may act to stigmatize its recipient groups, for although intended to correct systematic or institutional inequities, such a policy may imply to some the recipients' inferiority and especial need for protection."

[18] The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized." *DeFunis* v. *Odegaard*, 416 U. S. 312, 342 (Douglas, J., dissenting).

[19] See *University of California Regents* v. *Bakke*, *supra*, 438 U. S., at 298 (opinion of POWELL, J.).

[20] *DeFunis* v. *Odegaard*, *supra*, 416 U.S., at 343 (Douglas, J., dissenting).

[21] In his *Bakke* opinion, *supra*, MR. JUSTICE POWELL stated:

"It is far too late to argue that the guarantee of equal protection to *all* persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others." 438 U. S., at 295.

In support of that proposition he quoted Professor Bickel's comment on the self-contradiction of that argument:

"The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society." *Ibid.*, n. 35.

[22] This preferential set-aside specifically discriminates in favor of citizens of the United States. See p. 4, *supra*.

[23] "When the Federal Government asserts an overriding national interest as justification for a discriminatory rule which would violate the Equal Protection Clause if adopted by a State, due process requires that there be a legitimate basis for presuming that the rule was actually intended to serve that interest." *Hampton* v. *Mow Sun Wong*, *supra*, 426 U. S., at 103.

* * * * *

"It is perfectly clear that neither the Congress nor the President has ever *required* the Civil Service Commission to adopt the citizenship requirement as a condition of eligibility for employment in the federal civil service. On the other hand, in view of the fact that the policy has been in effect since the Commission was created in 1883, it is fair to infer that both the Legislature and the Executive have been aware of the policy and have acquiesced in it. In order to decide whether such acquiescence should give the Commission rule the same support as an express statutory or Presidential command, it is appropriate to review the extent to which the policy has been given consideration by Congress or the President, and the nature of the authority specifically delegated to the Commission." *Id.*, at 105.

[24] See Linde, Due Process of Lawmaking, 55 Neb. L. Rev. 197, 255 (1976) (hereinafter Linde):

"For the last few years have reawakened our appreciation of the primacy of process over product in a free society, the knowledge that no ends can be better than the means of their achievement. 'The highest morality is almost always the morality of process.' Professor Bickel wrote about Watergate a few months before his untimely death. If this republic is remembered in the distant history of law, it is likely to be for its enduring adherence to legitimate institutions and processes, not for its perfection of unique principles of justice and certainly not for the rationality of its laws. This recognition now may well take our attention beyond the processes of adjudication and of executive government to a new concern with the due process of lawmaking." (Footnote omitted.)

[25] The only reference to any minority business enterprises in the Senate Report was a suggestion that Indians had been receiving *too great a share* of the public contracts. The Report stated:

"Some concern was expressed that Indians—with exceptionally high structural unemployment levels—were awarded projects at a per capita value far in excess of non-Indian communities." S. Rep. No. 95–38, 95th Cong., 1st Sess., p. 3 (1977).

The Court quotes three paragraphs from a lengthy report issued by the House Committee on small business in 1977, *ante*, at 13, implying that the contents of that report were considered by Congress when it enacted the 10% minority set aside. But that report was not mentioned by anyone during the very brief discussion of the set-aside amendment. When one considers the vast quantity of written material turned out by the dozens of congressional committees and subcommittees these days, it is unrealistic to assume that a significant number of legislators read, or even were aware of, that report. Even if they did, the report does not contain an explanation of this 10% set-aside for six racial subclasses.

Indeed, the broad racial classification in this Act is totally unexplained. Although the legislative history discussed by The Chief Justice and by Mr. Justice Powell, explains why Negro citizens are included within the preferred class, there is no absolutely discussion of why Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts were also included. See n. 6, *supra*.

[26] "It is not a new thought that 'to guarantee the democratic legitimacy of political decisions by establishing essential rules for the political process' is the central function of judicial review, as Dean Restow and Professor Strong, among others, have argued." Linde, *supra*, 55 Neb. L. Rev., at 251.

[27] See Sandalow, Judicial Protection of Minorities, 27 Mich. L. Rev. 1162, 1188 (1977): "[I]f governmental action trenches upon values that may reasonably be regarded as fundamental, that action should be the product of a deliberate and broadly based political judgment. The stronger the argument that governmental action does encroach upon such values, the greater the need to assure that it is the product of a process that is entitled to speak for the society. Legislation that has failed to engage the attention of Congress, like the decisions of subordinate governmental institutions, does not meet that test, for it is likely to be the product of partial political pressures that are not broadly reflective of the society as a whole."

[28] "Fear of legislative resentment at judicial interference is not borne out by experience where procedural review exists, any more than it was after the Supreme Court told Congress that it had used faulty procedure in unseating Representative Adam Clayton Powell. It is far more cause for resentment to invalidate the substance of a policy that the politically accountable branches and their constituents support than to invalidate a lawmaking procedure that can be repeated correctly, yet we take substantive judicial review for granted. Strikingly, the reverse view of propriety prevails in a number of nations where courts have never been empowered to set aside policies legitimately enacted into law but do have power to test the process of legitimate enactment." Linde, *supra*, 55 Neb. L. Rev., at 243 (footnotes omitted).

[29] The conclusion to THE CHIEF JUSTICE'S opinion states:

"Any preference based on racial or ethnic criteria must necessarily receive a *most searching examination* to make sure that it does not conflict with constitutional guarantees." *Ante*, at 39 (emphasis added).

I agree with this statement but it seems to me that due process requires that the "most searching examination" be conducted in the first instance by Congress rather than by a federal court.

[30] For example, why were these six racial classifications, and no others, included in the preferred class? Why are aliens excluded from the preference although they are not

otherwise ineligible for public contracts? What percentage of Oriental blood or what degree of Spanish-speaking skill is required for membership in the preferred class? How does the legacy of slavery and the history of discrimination against the descendants of its victims support a preference for Spanish-speaking citizens who may be directly competing with black citizens in some overpopulated communities? Why is a preference given only to owners of business enterprises and why is that preference unaccompanied by any requirement concerning the employment of disadvantaged persons? Is the preference limited to a subclass of persons who can prove that they are subject to a special disability caused by past discrimination, as the Court's opinion indicates? Or is every member of the racial class entitled to a preference as the statutory language seems plainly to indicate? Are businesses formed just to take advantage of the preference eligible?

[31] "Of course, a general rule may not define the benefitted class by reference to a distinction which irrationally differentiates between identically situated persons. Differences in race, religion, or political affiliation could not rationally justify a difference in eligibility for social security benefits, for such differences are totally irrelevant to the question whether one person is economically dependent on another. But a distinction between married persons and unmarried persons is of a different character." *Califano* v. *Jobst*, 434 U.S. 47, 53.

"If there is no group characteristic that explains the discrimination, one can only conclude that it is without any justification that has not already been rejected by the Court." *Foley* v. *Connelie*, 435 U.S. 291, 311–312 (STEVENS, J., dissenting).

Mr. HATCH. Mr. President, Fullilove represents the first instance in which the Supreme Court upheld the constitutionality of a statute that established explicit racial quotas. Astonishingly, Justices Marshall, Brennan, and Blackmun, in their concurring opinion, claimed that the set-aside did not "establish a quota in the invidious sense of a ceiling." This position is indefensible. The set-aside manifestly did fix a ceiling for the white majority. They can only bid on 90 percent of the available contracts. The rest are to be let as a guaranteed minimum only to a class of people whose sole distinguishing characteristic is their race. This class can also bid on the remaining 90 percent. Quotas are a zero-sum game. And the white majority loses.

Justices Marshall, Brennan, and Blackmun also attempted to draw distinctions between racial classifications that "stigmatize" and those which do not. There is a grim humor in this argument. It could fairly be described as "Son of Separate but Equal." Essentially, it is a hypocritical attempt by vice, in the shape of discrimination, to pay tribute to virtue, in the form of equal protection. A moment's thought exposes its utter worthlessness. It is an entirely arbitrary distinction, without any basis in the Constitution.

And who is to say when racial distinctions "stigmatize"? Clearly, Alan Bakke and Brian Weber felt "stigmatized," and they were in fact deprived of some substantial benefit because of their race, although neither apparently inspired the sympathy of Justices Marshall, Blackmun, and Brennan. In one sense, there must always be some element of "stigma" in ascribing to individuals the supposed characteristics of their racial group. Indeed, the fact that blacks, Aleuts, and so on are placed by the Government in a special and privileged position cannot fail to "stigmatize" them, in the eyes of many, as being otherwise incapable of competing successfully in American society.

Justice Blackmun is quoted by Justice Marshall to the effect that "in order to get beyond racism, we must first take race into account." Apart from its fundamental absurdity—do we tolerate theft by the robbed in order to "get beyond" crime?—this policy raises more problems than it solves. Who decides at what point racial consciousness is no longer necessary? Who decides which groups benefit, and who allocates the spoils between them? Who indeed decides who is a member of such groups, and how? As we have seen, Justice Stevens raised this point, and kindly reproduced a statute from the Third Reich as a possible guide. I shall return to this point later.

An excellent summary of the issues at stake in Fullilove was published in January by James H. Wentzel of the National Legal Center for the Public Interest. It also discusses the earlier affirmative action cases, Weber and Bakke. The original introduction by Prof. Sidney Hook put the matter in a nutshell:

The point of view expressed by Mr. Wentzel does not derive from a narrow or partisan political concern. It is a philosophy of free men and women in a free society in whose light the deliberations and decisions of our Courts and legislative bodies should be judged.

I ask unanimous consent that the article by Mr. Wentzel be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COUNTDOWN 1984: FEDERAL GOVERNMENT "MINORITY" GROUP PREFERENCE IN SMALL BUSINESS AND PUBLIC WORKS PROGRAMS

(By James H. Wentzel)

The comments and observations of Mr. Justice Rehnquist in his *Weber*[1] opinion regarding the early arrival of "1984" are also particularly applicable and appropriate with respect to recent Congressional enactments concerning governmental assistance for "preferred minorities." For despite the deeply-rooted and traditional dedication in this country to the proposition that the equal protection principles of the Constitution are personal and individual in nature,[2] Congress has of late enacted several statutes which have made a mockery of this dedication by mandating government preferential treatment and benefits to certain minority groups, to the exclusion of all other persons in the nation, who, ironically, are also members of minority groups themselves. And this has been done with little or no adequate legislative history to: (1) justify the particular need for the legislation; (2) demonstrate why certain minority groups should be given preferred status over all other such groups; or (3) explain how these enactments can be reconciled with the equal protection principles of the Constitution[3] and Section 601 of Title VI of the Civil Rights Act of 1964.[4]

Indeed, the plain and simple language of Section 601, together with the legislative history of the Act,[5] would seem to make it abundantly clear that the purpose of the legislation was to eliminate, once and for all, *any* discrimination on the basis of race, color, or national origin with respect to all federally financed programs or benefits. To be certain, Mr. Justice Stevens (joined by Mr. Chief Justice Burger, Mr. Justice Stewart, and Mr. Justice Rehnquist) in his opinion in the *Bakke* case, was quite definite in this interpretation of Section 601:

In short, nothing in the legislative history justifies the conclusion that the broad language of § 601 should not be given its natural meaning. We are dealing with a distinct statutory prohibition, enacted at a particular time with particular concerns in mind; neither its language nor any prior interpretation suggests that its place in the Civil Rights Act, won after long debate, is simply that of a constitutional appendage. In unmistakable terms the Act prohibits the exclusion of individuals from federally funded programs because of their race. As succinctly phrased during the Senate debate, under Title VI it is not "permissible to say 'yes' to one person; but to say 'no' to another person, only because of the color of his skin." 438 U.S. 265, 418 (1978).

Yet despite this, Congress, by enacting the Small Business Act Section 8(a) program[6] and the Minority Business Enterprise ten percent set aside provision of the Public Works Employment Act of 1977,[7] has dramatically discarded the fundamental concept traditionally paramount in this country of equal opportunity based on individual merit and excellence in favor of arbitrary government schemes of group preference for certain racial and ethnic minorities which cannot be administered in a fair or rational manner.

While these two enactments are the more prominent examples of this type of legislation, there are other such statutes, but they give added significance to this review only because government benefits have been bestowed to "minorities" rather than individuals, and because of the seemingly cavalier manner in which the term "minority" has been recently employed by the Congress.[8]

I.

The Small Business Act Section 8(a) Program:

As originally enacted by Congress, Section 8(a) of the Small Business Act[9] contained no references to socially or economically disadvantaged individuals or groups, nor was there any language with respect to contracting with minority-owned or operated small business enterprises. In 1967, however, the Small Business Administration used the general grant of authority in Section 8(a) to initiate a "test program," offering government contracts on a non-competitive basis to companies which agreed to locate in or near "ghetto areas" and to hire the unemployed and underemployed. This program was not successful and was soon phased out.

Then in 1969, by Executive Order 11458 (superseded by E.O. 11625, October 13, 1971) and administrative regulations, a program for minority business enterprise was established in the executive branch of the federal government. On December 5, 1969, this new program direction was announced by President Nixon:

"Minority business enterprise is a major concern of this Administration. For that reason, on March 5, 1969, I established by Executive Order the Office of Minority Business Enterprise in the Department of Commerce to coordinate the efforts and resources of federal departments and agencies and private enterprise in this field."

"One of the most important ways to promote the effort is to develop a program which will increase the involvement of minority group contractors in the multi-billion dollar federal procurement program. The Office of Minority Business Enterprise, the Small Business Administration, and the Federal Task Force on Procurement . . . are working closely with members of my staff to develop such a program."

Footnotes at end of article.

In response to these initiatives, the Small Business Administration used the Section 8(a) authority to set aside a certain portion of federal procurement contracts, exempt them from normal competitive procedures, and award these contracts to certain minority small business firms. These contracts were ostensibly reserved for socially and economically disadvantaged businesses, but in reality the program was purposely directed almost exclusively at specific minority groups.

The conversion of the original Section 8(a) program into an instrument for aiding certain racial groups was apparently based on two assumptions, neither of which was ever explicitly spelled out: (1) that certain racial or ethnic groups suffered from social and economic disadvantage in a way that all other groups did not, and (2) that there was a positive correlation between this disadvantage and the failure of members of such groups to become successful small business entrepreneurs. Yet a third assumption seems to have been widely, if for the most part silently entertained, namely, that some parity should exist between the percentage of successful small business concerns owned or operated by certain minority groups and the respective percentage of such minorities within the nation's population. Because of these assumptions, the Section 8(a) program has operated for the past decade as a device under which certain racial or ethnic small business concerns are accorded favored treatment in securing federal contracts. As of December 31, 1977, the profile of participating firms in the Section 8(a) program by the ethnicity of the owners was as follows:

Ownership by race/ethnic origin [10]

Racial Category	Number of Concerns	Percent by Racial Category
Black	974	65.7
Puerto Rican	24	1.6
American Indian	82	5.5
Spanish American	256	17.3
Asian	91	6.1
Eskimo and Aleut	3	.2
Undetermined	2	.2
Other (including white)	50	3.4
Total	1,482	100.0

Based on this record, the Section 8(a) program has the undeniable appearance of a racial or ethnic quota program, albeit one operating under the racially neutral guise of "social and economic disadvantage."

The development of the 8(a) program along these lines seems to have occasioned some discussion concerning its propriety and legality both at the Small Business Administration and among the agency's overseers in Congress. In a Report presented to Administrator Weaver by the Section 8(a) Review Board in January, 1978, for example, reference was made to "*the legal problems* inherent in a program focus on minorities, rather than on socially or economically disadvantaged persons . . ." (p. 17, emphasis added). It was further stated on page 33 of this report:

"The eligibility question dominated discussion with the Board seeking to suggest improvements, as had several bodies before them. *There were conflicting viewpoints on whether 8(a) is, or should be a minority program, with the constitutional aspect of this question forming part of the discussion.*" (Emphasis added.)

Then in 1978, in an apparent effort to provide a more adequate statutory base for the Section 8(a) program, Congress enacted Pub. L. 95–507, which in effect simply ratified past SBA practice while only indirectly addressing the legal and constitutional problems raised by that practice. For example, with respect to eligibility under the Section 8(a) program, Pub. L. 95–507 states in relevant part:

"(4) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern—

(A) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(B) whose management and daily business operations are controlled by one or more of such individuals.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual."

According to the Conference Committee Report (Report No. 95–1714), this final language regarding eligibility represented a compromise between the Senate and the House of Representatives. The House-passed bill had created a rebuttable presumption that Black Americans and Hispanic Americans were to be considered "socially and economically disadvantaged" unless the Small Business Administration, on the basis of substantial evidence, could establish that an individual applicant had not experienced business impediments as the result of being a member of these groups. The operative House-passed language on eligibility follows:

"(4) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern—

"(A) which is at least 51 per centum owned by a member or members of socially and economically disadvantaged groups or by a socially and economically disadvantaged individual or individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by a socially and economically disadvantaged group member or members or by a socially and economically disadvantaged individual or individuals; and

"(B) whose management and daily business operations are controlled by such person or persons.

"(5) *The Administration shall presume that socially and economically disadvantaged groups and group members include, but are not limited to Black Americans and Hispanic Americans.* The presumption established in the preceding sentence may be rebutted with respect to any individual if the Administration finds, on the basis of substantial evidence, that such individual has not experienced impediments to establishing, maintaining, or expanding a small business concern as a result of being a member of a group presumed by this paragraph to be socially and economically disadvantaged." [11] (Emphasis added.)

What the Conferees did, in effect, was to adopt the House provisions with an amendment. The amendment dropped the rebuttable presumption regarding Black Americans and substituted a general definition of social disadvantage to retain the special preferment for Black, Asians and Hispanic Americans and substantage, but one contrived in such a way as to exclude Hispanic—and now suddenly—Native Americans.[12] The relevant language of Pub. L. 95–507 follows:

"(e)(1) with respect to the Administration's business development programs the Congress finds—

"(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, and other minorities."

By "finding" that these three groups are socially disadvantaged Congress has, in effect, retained the questionable presumption in the legislation while at the same time neatly side-stepping the burden of demonstrating what kinds of particular disadvantages members of these groups have suffered that members of other groups have not. Congress, then, is trying to have it both ways. On the one hand, the operative criteria for eligibility purport to be racially neutral, that is, based on social and economic disadvantage. On the other hand, three racial or ethnic groups are singled out for preferential treatment by the government. It will perhaps be argued that the statute confers no special preferment because eligibility is not "limited to" members of the three specified groups. But if the program is supposed to operate on racially neutral grounds, one cannot imagine why three and only three racial or ethnic groups are relieved of the burden of having to demonstrate their "social and economic disadvantage."

Thus, what the Small Business Administration failed to do, the Congress failed to remedy as well. The Section 8(a) minority enterprise program is now codified, but it suffers under the burden of the same question which has haunted the program from the outset; namely, how to implement a program designed to benefit certain racial or ethnic groups without explicitly finding that these particular minority groups are in fact more socially and economically disadvantaged than other such groups. Indeed, one searches in vain the legislative history to Pub. L. 95–507 for any empirical data from which such a conclusion can be drawn. Further, we are not aware of any evidence developed by the Congress which attempts to correlate a general and undefined social and economic disadvantage with particular disabilities in the small business field.

It is apparent from the history of the Section 8(a) program that membership in certain minority groups confers a demonstrable advantage in obtaining benefits under the program. But both the Small Business Administration and the Congress have pulled up short of explicitly stating what is so obviously implicit. Both seek to perpetuate the 8(a) program under the guise of racial neutrality while at the same time preserving the program as an insulated enclave for the primary benefit of certain minority groups only. Congress and the Small Business Administration cannot continue to have it both ways, and should not underestimate the difficulty of trying to maintain the 8(a) program as currently structured.

Recent Developments:

Prior to codification by Congress, both Asians and Hasidic Jews had participated in the SBA 8(a) program. Congress, however, in enacting Pub. L. 95–507, did not specially "select" and designate these two groups as presumptively socially disadvantaged. Consequently, both minority groups have had to

Footnotes at end of article.

petition the Small Business Administration and attempt to "prove" their social disadvantage.

Until recently, the SBA had pending before it a petition on behalf of so-designated Asian Pacific Americans for certification of this group as a socially disadvantaged minority group for the purpose of eligibility under the 8(a) program.[13] Also pending before the agency is a like petition on behalf of the Hasidim. After inviting public comment on the Asian Pacific American petition, this group was certified by the SBA to participate in the 8(a) program. The Hasidic Jews, however, have not been granted certification, and indeed, the matter has not even been accorded the benefit of public discussion. What is particularly disturbing about this situation is that neither Congress nor the Small Business Administration has ever established intelligible or neutral standards by which social disadvantage may be determined. One finds it difficult to imagine, then, any rational basis to exclude from eligibility members of *any* minority group claiming such disadvantage. Yet the Hasidic group has not been certified for the 8(a) program benefits, and further, has not been given any adequate justification for this bureaucratic determination.

The evidence set forth in petitioners' (Japanese American Citizens League *et al.*) initial letter demonstrating the social and economic disadvantage of their group is neither more nor less convincing than evidence presented in the past regarding the three minority groups whom Congress has designated presumptively socially disadvantaged under Pub. L. 95–507. In their May, 1979 letter, they argue the following:

"A partial list of discriminatory legislation against Asian Pacific Americans is exemplified by the following examples:

1. In 1865, Chinese American children are denied the right to education in the California public schools.

2. In 1879, the California State Constitution prohibits employment of Chinese Americans by any private corporation or governmental agency.

3. In 1882, 1907, and 1930, Chinese, Japanese, and Filipinos respectively are excluded from immigration to the United States.

4. In 1913, Chinese and Japanese are prohibited from owning land.

5. In 1942, 110,000 Japanese Americans are sent to concentration camps in the United States depriving them of their jobs, their businesses, and their homes, based solely on race and without due process of law.

"Based on a study issued by the United States Department of Commerce using data from a special census of minority-owned businesses in the United States, the low status of Asian Pacific American enterprises can be seen from the following:

1. Asian American businesses are predominantly sole proprietorship without paid employees and have low annual receipts. Nearly fifty-two (52) percent of the Asian American proprietorships had less than $5,000 in gross annual receipts. Nearly ninety-five (95) percent had less than $25,000 annual gross receipts.

2. Asian American firms are only meagerly involved in the wholesaling, manufacturing, and construction industries. Of about 1,700 firms in manufacturing, fifty-eight (58) percent were of sole proprietorship, were without paid employees, and had annual gross receipts averaging only $15,000; these mostly are labor-intensive firms engaging in food manufacturing and the garment industry."

Implicit in this argument, of course, is the very assumption which has been implicit in the argument for preferred status in the 8(a) program for Black, Hispanic, and Native Americans, namely, that a series of de jure or de facto discriminations in the past accounts for a present disability to successfully compete as small business entrepreneurs. This is done on the basis of dubious statistical arguments which cite the want of proportional representation for such groups among certain types of successful small businesses, the silent assumption being that one would expect to find such proportional representation without the past racial discrimination. That assumption, so far as we are aware, has never been documented or demonstrated.

Indeed, there are many areas of social and economic activity where the want of proportional minority group representation is the order of the day—whether it be book publishing, athletics, membership in symphony orchestras, or in the American Society of Nuclear Physicists, to name just a few of the many examples—but it is clear neither (1) that this is necessarily a socially undesirable situation, nor (2) if it is, whether it results from past racial discrimination or from a more complex variety of social and cultural causes, including such a variant and unpredictable factor as individual freedom of choice.

But a failure of Asian Pacific Americans to demonstrate a nexus between past discrimination and present disadvantage in small business would not be unique. No such nexus has to our knowledge ever been demonstrated, either by Congress or the Small Business Administration, for any other racial or ethnic minority group. Yet the fact that Asian Pacific Americans, Hasidic Jews, and presumably all other minority groups, should now have to establish this correlation, when the other statutorily specified minority groups did not, further evinces how terribly unjust in principle and unworkable in practice the 8(a) program is.[14]

If perchance Hasidic Jews are not granted this preferential status, it is incumbent upon the Small Business Administration to demonstrate, in a way that it has thus far failed to do, what kind of disabilities or disadvantages afflict Black, Hispanic, Native—and now suddenly—Asian Pacific Americans that do not also afflict the Hasidim. In that case, perhaps the Small Business Administration will be able to remedy what we think is the central defect in the 8(a) program, namely, the lack of any systematic or detailed empirical data which show that some minority groups are now more socially and economically disadvantaged than other groups. Such may be the case, but we have thus far been deprived of its demonstration.[15] By the same token, since Asian Pacific Americans have been granted this preferential treatment, we think a similar presumption could and should be made in favor of a large number of other minority groups who have been discriminated against in some manner in the past.

Preferably, however, we believe that the 8(a) program should be administered in a way that it has not been in the past, that is, on a racially and ethnically neutral basis. Indeed, it is highly doubtful whether the program can withstand legal and constitutional challenge on any other basis. The presumption in favor of certain groups now contained in the legislation and regulations is irrational, arbitrary, and capricious. And we do not believe that this inherent arbitrariness can be remedied by admitting only certain "specially selected" new groups into the preferred class.

II.

The Minority Business Enterprise Ten Percent Set Aside Program:

Section 103(f)(2) of the Public Works Employment Act of 1977 (42 U.S.C. 6705(f)(2)) suddenly appeared on the floor of both the House and the Senate as an amendment to the Act, and was adopted with very limited discussion.[16] There was no Congressional committee consideration of the provision and, therefore, there could have been little appreciation of just how unworkable in practice, dubious in law, and unjust in principle the program would be.

Footnotes at end of article.

Section 103(f)(2) provides that "no grant shall be made under this chapter for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises." Minority business enterprise is defined as "a business at least 50 per centum of which is owned by minority group members or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members." The statute then defines minority group members in racial, geographical, and linguistic terms: "citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts."

The effect of this so-called Minority Business Enterprise (MBE) provision is to mandate that when prime contractors are selected through the normal competitive bidding procedures for local public work projects, the grantee (state or local government) must require that each bid include a commitment to set aside at least 10 percent of the contract funds for business concerns owned by the specially designated minority group members; this to the exclusion of all other minority groups. Thus, minority group members who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts are given preferential treatment by the government to the detriment of all other minority group members.[17] With this in mind, the Section 103(f)(2) MBE program has the unmistakable and undeniable appearance of a racial quota program benefiting certain minority groups to the exclusion and detriment of all others and, indeed, it is intended as such by its sponsors in the Congress.

Yet the MBE provision *on its face* offers no rational basis for the distinctions it imposes; it is *on its face* uncertain of the criteria to be used in determining business enterprise eligibility for its set aside preferments. The statute purports to employ two, perhaps three, different kinds of criteria for determining eligibility—one ostensibly based on race, or skin color and geography; one ostensibly based on language. But neither criterion can be rationally employed to achieve the apparent purpose of the statute. One thing is clear, however; neither the legislative history of the statute nor the regulations are of any assistance in this regard.

This entire MBE set aside program (and the 8(a) program) rests on a feckless and ultimately futile effort to divide the American citizen body into two classes, one silently assumed to be the "majority," the other denominated by the term "minority." The "minority" class is then in turn divided into two major subclasses, one obviously being a preferred group, the other—for want of a better term—not-so-preferred. But both attempts at classification are equally arbitrary. What these attempted classifications ignore, of course, is that the United States is almost wholly a nation of minority groups. Few such groups have ever been welcomed to our shores with open arms, and virtually all have suffered at one time or another severe social and economic disadvantage. Yet these other minorities (Jews, Italians, Armenians, Mormons, Turks, Portuguese, Irish, Arabs, Poles—to name just a few), which are excluded from participation in this set aside program, seem to have made it into the mainstream of the private enterprise system without any government paternalism and largess, and quite often in the face of open hostility. If Congress now believes that special adverse circumstances afflict some groups but not others, it should say so; but it should demonstrate this in such a manner as to convince or persuade the public, and especially members of other "minority" groups, that it is not engaged in an act of invidious reverse discrimination. This demonstration, so far

as we are aware, has never been made with respect to this legislation.

Racial Criteria:

The apparent purpose of the racial categories of the statute is to exclude all citizens who are members of groups normally thought of as "white" (except, of course, unless they speak Spanish), because the only racial groups specified by the statute as being eligible are those characterized by "non-white" skin color; that is, Negroes, Orientals, Indians, Eskimos, and Aleuts. But how is membership in one of these preferred groups to be determined? Self characterization and determination? Surely that would defeat the purpose of the statute. Determination by government bureaucracy? But what criterion would the agency employ to make the relevant judgment? Visual inspection? The number of parents, grandparents and great-grandparents considered to be members of the eligible group could also be inspected, but, if so, how many, and would their race be properly identified? One cannot help but wonder what the next step would be. There are many possibilities. A black person could be deemed to be anyone with "one-eighth or more of African or Negro blood" or even any "ascertainable" amount of Negro blood, although an American Indian was not considered a colored person in the State of Virginia if he had only one-sixteenth or less of American Indian blood.[18]

Indeed, what is meant by the term "Indian?" Does this mean American Indians only are eligible? Are all citizens of groups denominated by ethnographers or anthropologists as Indian to be considered? What about American citizens from India or who have ancestors from India, Pakistan, or Bangladesh? Further, what is an Oriental? Does this category include American citizens from India (assuming they are not already included under the term "Indian")? Are Indonesians and Filipinos eligible? How far "East" does one have to go in order to be considered eligible? Does the statute mean that all citizens of Hawaii and Alaska (other than those who are purely "white" and do not speak Spanish) can qualify? These are, of course, only a few of the many questions the mere asking of which shows how simplistic and foolish it is to classify Americans by minority group affiliation.

But as the great value of being a member of an officially preferred minority group becomes manifest, various factual questions will surely arise as to whether a particular citizen can or cannot rightly claim such a status. Indeed, this is precisely one of the reasons why some of the questions above are raised at all.

Perhaps, for the immediate future though, the bureaucrats who administer this program will be content with merely asking the race of the contractors without going into fractional parts of their ancestry. But as such programs eventually expand (as indeed they are expanding), there will be much desire on the part of many individuals to be recognized as "specially selected" minority group members and receive the government benefits flowing from such a determination. The decision-makers, at that point, will no doubt find it necessary to adopt more stringent and meaningful tests to determine just who is a member of which minority group.[19] Under the program's eligibility criteria, they have no other choice. Ironically, then, the program would devolve into a demeaning mess of racial verifications and indignities, denigrating to all concerned, and certainly the sort of degrading bureaucratic process that our government should surely avoid. But unless the present direction of these programs is halted now, we may find ourselves as a nation further embedded in the ugly morass remarked by Professor Nathan Glazer:

"There are already cases of individuals who redefine themselves in this country for some benefit—the part American Indian who becomes an Indian for some public purpose, the person with a Spanish-surnamed mother who now finds it advantageous to change his or her name; conceivably the black who has passed as white and who may reclaim black status for an educational or employment benefit. We have not yet reached the degraded condition of the Nuremberg laws, but undoubtedly we will have to create a new law of personal ethnic and racial status to define just who is eligible for these benefits, to replace the laws we have banned to determine who should be subject to discrimination."[20]

To classify citizens into bureaucratically convenient categories of "majority" and "minority" and then to single out some "minorities" for some special government preference, are inherently arbitrary actions at once mischievous and unenforceable. To further demonstrate this, one need only look to the SBA Section 8(a) legislation and compare it to the MBE ten percent set aside provision.

The minority groups statutorily denominated for preferred treatment under the 8(a) program are Black Americans, Hispanic Americans, and Native Americans, while Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts are specially singled out under the MBE set aside program.

What is so obviously and blatantly arbitrary, capricious, and irrational here is that "Orientals" (Asian Americans?) have not been specially selected by Congress for the 8(a) set aside preferments, but have been specifically included under the MBE program. This notwithstanding the fact that the two programs are extremely similar in approach, apparently intended to reach the same objectives, and were enacted by the same Congress.

The adoption by the 95th Congress of these two minority business programs was apparently based on the two assumptions referred to earlier in this discussion: (1) that certain racial or ethnic groups suffered from social and economic disadvantages in a way that all other groups did not, and (2) that there was a positive correlation between this disadvantage and the failure of members of such groups to successfully compete in certain business settings. But a search of the legislative history of these two enactments reveals no adequate empirical data from which such a conclusion can be drawn. Indeed, we are not aware of any evidence developed by the Congress which attempts to correlate a general and undefined social and economic disadvantage regarding the designated minority groups with particular disabilities in the specific business areas. For if such evidence did exist, it could most certainly then be demonstrated why there is some rational purpose to treat "Orientals" as disadvantaged and therefore deserving of the MBE program benefits, but not as such with respect to the 8(a) legislation. Apparently, "Orientals" are to be considered as part of the "majority" or perhaps the "not-so-preferred minority" with respect to the 8(a) legislation but as part of the preferred "minority" as to the MBE program. But why this is so can only be explained by the inherent irrationality and arbitrariness of the categories involved, and also by the capriciousness in their selection by the Congress.

Language Criteria:

As an alternative basis for eligibility in the MBE set aside program, the statute refers in one instance to "Spanish-speaking." But what rational basis is there for limiting eligibility to those citizens who speak the Spanish tongue? Is there really any social or economic disadvantage one assumes by speaking Spanish rather than by speaking any other language? Does Congress really intend that such a conclusion be drawn? But Congress has never demonstrated otherwise. So what is it about speaking Spanish then that these citizens should be treated preferentially by their government? Further, is there a difference between this category and the category employed by the Section 8(a) program, that is: "Hispanic Americans?" Indeed, what do these labels mean?[21] Anyone with a Spanish surname? Anyone raised or residing in a Spanish-speaking household? Anyone descended from Iberian Peninsula or South American ancestors? How many such ancestors does one have to have, and in what time period, in order to qualify? It is often pointed out, for example, that the majority of Hispanics or Spanish-speaking are "white." Does that not therefore make most members of this group members of the "majority?" If not, how then is one to tell whether he or she is a member of a "minority" at all? A recently published article by a critic of preferential treatment based on minority group designation discusses some of these very points:

"Puerto Ricans, Spaniards, Argentinians, and Mexicans are all 'Spanish surnamed.' It is hard to see what else they have in common, or why they should receive different treatment than Portuguese, Brazilians, or Arabs. And it is not obvious that various white 'ethnics' suffered less from discrimination than females did. Yet they are not preferentially admitted, or hired, by affirmative action. These remedies, then, are not only counterproductive and unjust most of the time, but also arbitrarily selective. Perhaps this is a minor defect compared to those already mentioned: if an idea is bad, arbitrary application does not make it much worse. Nonetheless, the inherent capriciousness of the scheme and the unavoidable arbitrariness in execution are psychologically repulsive."[22]

The distinctions that the MBE provision seeks to employ are not only arbitrary and irrational as demonstrated by the discussion above, but it may in fact be impossible to draw any statute on racial grounds without dangerously involving the government in discriminatory labeling of the sort it should surely avoid.

The differences among members of so-called "minority" groups are in fact as great as, if not greater than, the differences between so-called "minorities" and the so-called "majority".[23] What is happening here (and presumably with respect to the Section 8(a) program) is the conversion of a rough or colloquial distinction between "white" and "non-white" into a rigid statutory classification which cannot be intelligently or nondiscriminatorily implemented.

But even if it were possible to draft a statute that could satisfy the "equal protection" scrutiny that must be employed in this area, this statute cannot and does not suffice. It is *exclusory* in its definitional terms, but fails to provide either on its face or in its legislative history any rational guidance for determining eligibility. The ostensible purpose for including some groups, while excluding others, is to redress past racial discrimination and to bring victims of this past discrimination into the economic mainstream.[24] But that is not the way in which the MBE provision operates, because it *automatically* excludes from eligibility any citizen *not* a member of one of the specified groups even though the individual (1) may in fact have been the victim of racial or ethnic discrimination, or indeed may now be such a victim; and (2) may not as a consequence of such discrimination be in the economic mainstream of our society.

Thus, it will not be adequate, in order to save this legislation, to demonstrate that its purpose is benign: its purpose is benign only with respect to members of the specifically "selected" groups; it is most emphatically invidious with respect to any citizen not a member of one of the preferred groups. And this is so notwithstanding the fact that such a person may have suffered identical or worse harm than that suffered by a member of one of the preferred groups.[25]

Footnotes at end of article.

For such minority groups as Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts (assuming that each of these categories has rational meaning), certainly the right to be free from discrimination in a government-administered program is now a fixed, settled, immutable fact of legal life in this country. That is as it should be. But just as it is not permissible to try to solve social or economic problems by some method that will discriminate *against* these minorities, just as it is deemed disreputable even to suggest such a course of action, so the same principle should govern with respect to "solutions" for society's ills that discriminate against all others in this country who themselves are members of "minority" groups. But this is exactly one of the basic problems with the MBE program—the notion, namely, that discrimination which obviously cannot be visited on Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts can, with complete impunity, be inflicted upon members of other racial or ethnic groups.

Recent developments:

The MBE ten percent set aside provision is currently under legal attack, there being a split in the decisions of the lower federal courts.[26] The Supreme Court is presently considering the substantive issues raised by this legislation by reviewing the below referenced *Fullilove* case.[27]

Fullilove, and other plaintiffs from the construction industry, argue that the government required quota for certain minority groups inevitably means unconstitutional discrimination against all other minority group members, depriving the excluded group members of equal protection of the laws. Also at issue in the case is whether Title IV of the Civil Rights Act prohibits racial and ethnic discrimination against all persons in the country with respect to federally funded programs.

The issues presented in the *Fullilove* case are very similar to those issues involved in the *Bakke* case, the leading Supreme Court decision regarding the use of racial quotas where federal funding is also involved. In that case, Allan Bakke, who is white, and whose Medical College Admissions Test scores averaged at approximately the 90th percentile, was excluded from admission to the University of California at Davis medical school under its two-track admissions policy, while Asians, Chicanos and Blacks, whose test scores averaged at the 30th percentile, were admitted. After being refused admission twice, Bakke brought suit to compel his acceptance to the University under the Equal Protection Clause of the Constitution and Section 601 of the Title VI of the Civil Rights Act of 1964.

Mr. Justice Stevens, joined by The Chief Justice, Mr. Justice Stewart, and Mr. Justice Rehnquist, stated that it was not necessary to reach the equal protection issues in the case since Section 601 of the Civil Rights Act plainly and explicitly states that no person shall be subjected to racial discrimination under any federally funded programs, and a review of the legislative history of the Act left no doubt that Congress *intended* just that. Thus, the Stevens group held that the University's special admissions policy violated Section 601 by excluding Bakke from the school because of his race, and therefore, ordered him admitted to the University.

Justices Brennan, White, Marshall and Blackmun, on the other hand, passed over the explicit language of Section 601 and concluded that the *purpose* of the Civil Rights Act was to remedy disadvantages cast on minorities by past societal racial prejudices and that therefore Congress, in enacting Section 601, really did not *intend* to prohibit all use of race in federally assisted programs. They also concluded that Title VI goes no further in preventing the use of race than the equal protection principles of the Constitution, and that although the use of racial classifications call for strict judicial scrutiny, the University's benign purpose in employing racial quotas in its admissions policy—that is, to overcome the substantial, chronic minority group underrepresentation in the medical profession—was sufficiently important, and therefore, constitutional. Based on this rationale, then, the Brennan group would have denied Bakke admission to the Davis medical school.

Mr. Justice Powell, writing only for himself, concluded that Title VI proscribes only what is violative of the Constitution. He also states that racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny, and while the goal of achieving a diverse student consideration of race in admissions determinations under some circumstances, the University's special admissions quota system, which foreclosed consideration of individuals like Bakke, was unnecessary to the achievement of this goal, and therefore, unconstitutional. Thus, Justice Powell, while concluding that race may be a consideration in certain circumstances, joined with the Stevens group in ordering Bakke's admission to the University.

What is particularly disquieting about this decision, however, is that four Justices (the Brennan group) have now definitely concluded that group rights, and more specifically certain minority group rights, are now paramount to those rights of innocent individuals. This notion conflicts most dramatically, of course, with the traditional and jealously-guarded concepts that our Constitutional rights are personal in nature and that the Constitution is protective of individuals against unequal and unreasonable government action. Apparently the Brennan group is now prepared to discard these principles and the fundamental proposition in this country of equal opportunity based on personal excellence and merit in favor of a broad societal discrimination—reparations formulation with respect to certain minority groups only. As is discussed above, this notion bodes ill indeed for the country's future.

With this in mind, it is now necessary to address the Court's recent decision in the *Weber* case.[28] Very briefly, the case involves a racial quota plan in the allotment of on-the-job training opportunities, instituted by a management-union agreement. The plan provides in pertinent part that in filling apprentice and craft jobs "at a minimum not less than one minority employee will enter for every non-minority employee entering" and until the percentage of blacks in craft jobs equals the percentage of blacks in the local work force, approximately 39 percent at the facility employing Weber. Seniority at the plant was the basis upon which employees seeking admission to on-the-job training vacancies were ranked. Pursuant to the plan, however, two seniority lists were to be employed; one for whites and one for blacks.

Brian Weber, who is white, had approximately five years seniority at the plant but was refused admission to three different training programs, notwithstanding the fact that non-white employees having less seniority than Weber, were being admitted. Brian Weber brought suit against the company and the union alleging racial discrimination in violation of Title VII of the Civil Rights Act.[29]

The Chief Justice and Mr. Justice Rehnquist, writing separate opinions, again argued as in *Bakke* that the language of the operative sections of Title VII is extremely clear and unambiguous in prohibiting racial discrimination in employment, and the uncontradicted legislative history of the Act further demonstrates that the Congress intended that all *racial* discrimination be proscribed. Justices Powell and Stevens took no part in the consideration or decision of the case.

The Brennan group, also as in *Bakke*, again bypass the explicit language of the legislation and the overwhelming legislative history of the Act reflecting the intent of Congress to prohibit all racial discrimination in employment, and conclude that since the *purpose* of Title VII was to assist the Negro in opening opportunities in occupations which had been traditionally closed to them, Congress could not have really *intended* to prohibit all race conscious affirmative action efforts, and since this plan "does not unnecessarily trammel the interests of the white employees," it is permissible under Title VII.

Again here, as in *Bakke*, the *purpose* of Congress in enacting the Civil Rights Act is given precedence over the actual *intent* of Congress by the Brennan group, thereby judicially amending the statute, as The Chief Justice states, "to do precisely what both its sponsors and its opponents agreed the statute was *not* intended to do." (47 L.W. 4857). Indeed, the majority opinion is devoted almost entirely to their societal discrimination—reparations theory and why Title VII does *not* prohibit this employment related racial quota plan. Brian Weber is mentioned only briefly, almost as if his plight does not exist.

But the most disturbing aspect of the *Weber* case, however, is that Mr. Justice Stewart has now joined the Brennan group in the view that minority group rights are now in certain situations more important than those of the individual, who ironically, is the victim of racial discrimination. To be certain, the *Weber* decision is extremely narrow in its inquiry. The case involves a racial quota plan voluntarily adopted by private parties. It does not involve "state action" and therefore the equal protection principles of the Constitution. Further, the Brennan opinion acknowledges that Weber's argument is not without force, and Mr. Justice Blackmun seems to have reservations in joining the majority decision. Yet the fact remains that five Justices have now embraced the societal discrimination—reparations concept in displacing traditionally important individual rights, albeit in a very narrow decision where the equal protection principles of the Constitution were not in issue.

But what do the *Bakke* and *Weber* decisions foreshadow with respect to the *Fullilove* case? In all probability, Section 601 of the Civil Rights Act will not be dispositive in *Fullilove* since the case involves Congressional legislation enacted after Section 601 and the two statutes directly conflict with one another. Ultimately, then, the equal protection issues of the case must be addressed. The Court must either reject or validate the societal discrimination—reparations concept with respect to certain minority groups only. It must decide whether the racial classifications employed in the MBE set aside provision can withstand the strict judicial scrutiny that is required by the Constitution. As stated above, it is our opinion that the statute *on its face* offers no rational basis for the distinctions it imposes; it is *on its face* uncertain of the criteria to be used in determining business enterprise eligibility for its set aside preferments. Whether the Court applies the "compelling state interest" test, the "rational basis" test, or some hybrid judicial scrutiny test, none of these could be satisfied by the irrational and capricious quota program envisioned by the ten percent set aside provision. The statute is exclusory in its definitional terms, but fails to provide either on its face or in the legislative history any rational guidance for determining eligibility. It automatically excludes from eligibility any citizen not a member of one of the specified groups even though the individual (1) may in fact have been the victim of racial or ethnic discrimination, or indeed may now be such a victim; and (2) may not as a consequence of such discrimi-

Footnotes at end of article.

nation be in the economic mainstream of our society.

In conclusion, emphasis must be given to what we believe to be the heart of the problem with respect to both the 8(a) program and the MBE ten percent set aside program; government preferential treatment based on minority group status focuses on a person's group identification rather than on the individual, his unique talents and his inalienable rights. Few legislative measures have been so inimical to our nation's traditional dedication to individual merit and competition as these two enactments and the notion they implicitly incorporate; that is, the right of certain selected "minority" groups to a proportional share of *anything* be it government contracts or any other benefits. These programs, then, only further add to the Balkanization of our society.

Ironically, the programs perpetuate the very evil the effects of which they were designed to eliminate, namely, the institutionalization of racial stereotypes and the encouragement of the prejudice that some minorities lack the ability to succeed without preferential treatment. This would not be the first time that a governmental policy designed for a particular purpose actually achieved the opposite result from the one intended, but that will be the unhappy fate of these programs unless their present direction is soon halted. The government imposition of these racial and ethnic quotas should be resisted by all citizens. Until we learn to look at human beings as individuals, we will never have any hope of eradicating discrimination for all Americans as truly envisioned by the Civil Rights Act.

The Supreme Court now has the opportunity with the *Fullilove* case to bring a halt to this insanity before we are committed as a nation to an endless carrousel of government adjusted and loosely readjusted "minority" definitions, with the inevitably ensuing arbitrary group selections and rejections with respect to federally funded benefits. If the Court upholds the *Fullilove* decision, it will be validating the inherent irrationality and capriciousness of these programs, and in effect, will be telling all future Bakkes, Webers, and Fullilloves that all citizens are equal but some citizens are more equal than others.

FOOTNOTES

[1] *United Steelworkers of America* v. *Weber*, ——— U.S. ———, 47 Law Week 4851, 4858 (June 27, 1979). The references in his opinion, of course, are to George Orwell's book, *Nineteen Eighty-Four* (1949).

[2] Throughout his opinion in the *Bakke* case, Mr. Justice Powell is most insistent in this view: "The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit: 'No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.' It is settled beyond question that the 'rights created by the first section of the Fourteenth Amendment are by its terms, guaranteed to the individual. The rights established are personal rights.' (Citations omitted.) The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." *Regents of the University of California* v. *Bakke*, 438 U.S. 265, 289 (1978).

[3] Although the Equal Protection Clause appears only in the Fourteenth Amendment, which applies to the states, the Supreme Court has held that the equal protection principles of the Fourteenth Amendment are embodied in the Due Process Clause of the Fifth Amendment. *Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (per curiam), citing *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638n. 2 (1975).

[4] Section 601 provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. 2000d.

[5] The legislative history is replete with statements such as Senator Hubert Humphrey's (Senate floor manager of the Act) comment that the purpose of the legislation was to insure that Americans are treated as Americans, "not as fat ones, short ones, tall ones, brown ones, green ones, yellow ones, or white ones, but as Americans." 110 Cong. Rec. 5866 (1964).

[6] 15 U.S.C. 637(a), as amended by Pub. L. 95-507 (1978).

[7] 42 U.S.C. 6705(f)(2); Pub. L. 95-28 (1977).

[8] For example, 49 U.S.C. 1657a provides for the establishment of a Minority Resource Center within the Department of Transportation. One of the functions of the Center is to "design and conduct programs to encourage, promote, and assist minority entrepreneurs and businesses to secure contracts, subcontracts, and projects related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads." Although the meaning of "minority" is not defined, under Section 1657a(e) it is stated that the term "minority" includes women.

Also, Section 7 of the National Science Foundation Authorization Act of 1977, permits the funding for development of Minority Centers for Graduate Education in Science and Engineering. The Act requires that these Centers:

"(A) have substantial minority student enrollment;

"(B) are geographically located near minority population centers;

"(C) demonstrate a commitment to encouraging and assisting minority students, researchers, and faculty;

"(F) will serve as a regional resource in science and engineering for the minority community which the Center is designed to serve; and

"(G) will develop joint educational programs with nearby undergraduate institutions of higher education which have a substantial minority student enrollment." 42 U.S.C. 1873.

But here, as in the first example, the term "minority" is not defined. So how, then, is one to determine whether a particular individual is a "minority" group member or not;

[9] See 15 U.S.C. 637(a) (1958).

[10] Report and Recommendations on the Section 8(a) Program for A. Vernon Weaver, Administrator, SBA, submitted by the 8(a) Review Board, January 31, 1978, p. 23.

[11] The House Committee on Small Business recognized that adequate data regarding this approach had not been developed but recommended passage anyway: "The committee fully realizes that the eligibility criteria created pursuant to paragraphs (5) and (6) constitute an untried approach for program eligibility. Therefore, while we believe such an approach reasonable, we lack sufficient empirical data to fully assess the equity of its results." Report No. 95-949, p. 10.

[12] It should be pointed out here that although "Asians" had been participating in the 8(a) program prior to enactment of Pub. L. 95-507 (see chart on page 5), this group was not included as a "preferred minority" under the legislation. There is, of course, no explanation for this to be found anywhere in the legislative history, and it merely demonstrates once again the capriciousness of the selection process regarding minority group eligibility in these programs.

[13] See May 22, 1979 letter to William Clement, Associate Administrator of the SBA, from the Japanese American Citizens League, Organization of Chinese Americans, and Pacific/Asian Coalition.

[14] This immediately brings to mind that immortal parody of Socialist egalitarianism in Orwell's *Animal Farm:* "All animals are equal but some animals are more equal than others."

[15] With respect to the Asian Pacific American certification, the Small Business Administration simply states: "The data and information which was received by SBA was duly evaluated and is hereby found to be sufficient." *Federal Register*, Vol. 44, No. 141, July 20, 1979, p. 42832.

[16] *Congressional Record*, Daily Ed., 95th Cong. 1st Ses., p. H1436 (Feb. 24, 1977); *Congression Record*, Daily Ed., 95th Cong. 1st Ses., p. S3909 (March 10, 1977).

[17] Section 207 of the Public Works Employment Act provides in pertinent part:

"(a)(1) No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under this subchapter." 42 U.S.C. 6727(a)(1).

The internal inconsistency in the Public Works Employment Act between the MBE set aside provision in Section 103 and the nondiscrimination Section 207 makes it impossible in certain cases for a general contractor to comply with both provisions. A prime contractor who rejects a competitive bid from a nonminority subcontractor in favor of a higher bid from a minority owned enterprise which may not be qualified violates Section 207 with respect to the nonminority business. If the general contractor accepts the bid of the non-minority business, he is prevented from participation in the local public works project. Thus, the contractor must violate one federal statute in order to enjoy the benefits of another.

[18] *Loving v. Virginia*, 388 U.S. 1, 5 n. 4 (1967); *McLaughlin v. Florida*, 379 U.S. 184 n. 6 (1964). These cases provide excellent examples of how ludicrous it is for government to concern itself with determining whether a certain individual should be considered as a member of a particular racial group.

[19] Professor Thomas Sowell, employing Census Bureau surveys, has recently determinted that "about half of the American population cannot identify their ethnicity at all, presumably because of intermixtures over the generations." This leads one to wonder then how the government is able to make these identifications. Thomas Sowell, "Myths about Minorities," *Commentary*, Vol. 68, No. 2 (August, 1979), p. 33.

[20] N. Glazer, *Affirmative Discrimination* (1975), p. 200.

[21] At a hearing on H.R. 567, a predecessor bill to Pub. L. 95-507, Congressman Henry Gonzalez was also perplexed about these classifications:

Mr. GONZALEZ. I was thinking of H.R. 567. Anyway, you get into this definition. I happen to come from a particular social stratum particularly defined as minority or ethnic, but one of our problems is identification. There is no consensus as to what we ought to call ourselves.

In my part of the country it is Mexican American or Chicano, but my colleague, Mr. Badillo, would take exception to that because he is of Puerto Rican descent; so then the question is, shall it be as the word is used in H.R. 567, Spanish speaking, which won't cover because the majority of the Spanish surnamed don't speak Spanish any longer, so the question is definition there. That poses a problem for some of us here. (Hearings before the Subcommittee on Minority Enterprise and General Oversight of the Committee on Small Business, House of Representatives, 95th Cong. 1st Ses. (H.R. 567, H.R. 4960, and H.R. 2379), p. 26.)

[22] E Van den Haag, "Reverse Discrimination: A Brief Against It." *National Review*, April 29, 1977, p. 495.

[23] For an excellent study regarding the social, cultural, and economic differences within various ethnic "minorities" in the country, see Thomas Sowell, ed., *American Ethnic Groups* (The Urban Institute, 1978).

[24] It should be noted here that the United States Commission on Civil Rights in its Report on "Minorities and Women as Government Contractors" (1975) made no mention of discrimination against minority businesses as one of the "Ten Problems Encountered in Marketing for Federal Contracts:" Yet this particular business setting, traditionally governed by the nonracial bidding standard of the best quality product or service for the least amount of money, has been seized upon by Congress as a means to remedy a "perceived" social problem.

[25] In fact, Section 110 of the Public Works Employment Act (42 U.S.C. 6709) prohibits sex discrimination with respect to these projects, yet non-minority female entrepreneurs are barred from participation in the MBE ten percent set aside program, even though they may be both (1) socially and economically disadvantaged and (2) suffering the effects of some discrimination in the construction industry. Due to the racial focus of the Act, a particular minority contractor who is economically viable would be favored over an equally qualified disadvantaged non-minority female or male contractor in desperate need of work.

[26] See, for example, *Fullilove* v. *Kreps*, 584 F. 2d 600 (2d Cir. 1978) (constitutional); *Ohio Contractors Association* v. *Economic Development Administration*, 580 F. 2d 213 (6th Cir. 1978) (constitutional); *Montana Contractors' Association* v. *Secretary of Commerce*, 460 F. Supp. 1174 (D. Mont. 1978) (unconstitutional); *Associated General Contractors* v. *Secretary of Commerce*, 459 F. Supp. 766 (C. D. Cal. 1978) (unconstitutional).

[27] *Fullilove* v. *Kreps*, No. 78-1007.

[28] *United Steelworkers of America* v. *Weber*, 47 Law Week 4851 (June 27, 1979).

[29] Section 703(a), 42 U.S.C. § 2000e-2(a), provides: "(a) It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." Section 703(d), 42 U.S.C. § 2000e-2(d), provides: "It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training."

THE SLIPPERY SLOPE

Mr. HATCH. Mr. President, the second section of my remarks this morning is entitled, "The Slippery Slope."

I want now to recapitulate the process by which we arrived at the Fullilove disaster. After the 1964 Civil Rights Act, the bureaucracy began its attack on equal protection and the free society. The Supreme Court was not forced to confront the situation until 1974, in the case of *DeFunis* v. *Odegaard*, 416 U.S. 312 (1974). DeFunis was a Sephardic Jew who had been denied a place in the University of Washington Law School, although minority applicants with considerably worse records were accepted. By 1974, DeFunis was about to graduate, and the Court seized the opportunity to declare the case moot. The late Justice William O. Douglas dissented. He felt an effort had to be made to establish the merits of the issue, and his opinion shows graphically the dilemma in which the older liberals found themselves, eager to support minorities and yet unable, in conscience, to abandon a lifetime's striving toward a color-blind Government. Douglas was prepared to consider various methods of insuring that minority group members were competing on an equal footing. But beyond that, he concluded:

The State, however, may not proceed by racial classification to force strict population equivalencies for every group in every occupation, overriding individual preferences. The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized.

I ask unanimous consent that Justice Douglas' dissent be printed in the RECORD at this point.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

MR. JUSTICE DOUGLAS, DISSENTING

I agree with Mr. Justice Brennan that this case is not moot, and because of the significance of the issues raised I think it is important to reach the merits.

I

The University of Washington Law School received 1,601 applications for admission to its first-year class beginning in September 1971. There were spaces available for only about 150 students, but in order to enroll this number the school eventually offered admission to 275 applicants. All applicants were put into two groups, one of which was considered under the minority admissions program. Thirty-seven of those offered admission had indicated on an optional question on their application that their "dominant" ethnic origin was either Black, Chicano, American Indian, or Filipino, the four groups included in the minority admissions program. Answers to this optional question were apparently the sole basis upon which eligibility for the program was determined. Eighteen of these 37 actually enrolled in the Law School.

In general, the admissions process proceeded as follows: An index called the Predicted First Year Average (Average) was calculated for each applicant on the basis of a formula combining the applicant's score on the Law School Admission Test (LSAT) and his grades in his last two years in college.[1] On the basis of its experience with previous years' applications, the admissions committee, consisting of faculty, administration, and students, concluded that the most outstanding applicants were those with averages above 77; the highest average of any applicant was 81. Applicants with averages above 77 were considered as their applications arrived by random distribution of their files to the members of the committee who would read them and report their recommendations back to the committee. As a result of the first three committee meetings in February, March, and April 1971, 78 applicants from this group were admitted, although virtually no other applicants were offered admission this early.[2] By the final conclusion of the admissions process in August 1971, 147 applicants with averages above 77 had been admitted, including all applicants with averages above 78, and 93 of 105 applicants with averages between 77 and 78.

Also beginning early in the admissions process was the culling out of applicants with averages below 74.5. These were reviewed by the Chairman of the Admissions Committee, who had the authority to reject them summarily without further consideration by the rest of the Committee. A small number of these applications were saved by the Chairman for committee consideration on the basis of information in the file indicating greater promise than suggested by the Average. Finally during the early months the Committee accumulated the applications of those with averages between 74.5 and 77 to be considered at a later time when most of the applications had been received and thus could be compared with one another. Since DeFunis' average was 76.23, he was in this middle group.

Beginning in their May meeting the Committee considered this middle group of applicants, whose folders had been randomly distributed to Committee members for their recommendations to the Committee. Also considered at this time were remaining applicants with averages below 74.5 who had not been summarily rejected, and some of those with averages above 77 who had not been summarily admitted, but instead held for further consideration. Each Committee member would consider the applications competitively, following rough guidelines as to the proportion who could be offered admission. After the Committee had extended offers of admission to scmewhat over 200 applicants, a waiting list was constructed in the same fashion, and was divided into four groups ranked by the Committee's assessment of their applications. DeFunis was on this waiting list, but was ranked in the lowest quarter. He was ultimately told in August 1971 that there would be no room for him.

Applicants who had indicated on their application forms that they were either Black, Chicano, American Indian, or Filipino were treated differently in several respects. Whatever their averages, none were given to the Committee Chairman for consideration of summary rejection, nor were they distributed randomly among committee members for consideration along with the other applications. Instead, all applications of Black students were assigned separately to two particular Committee members: a first-year Black law student on the Committee, and a professor on the Committee who had worked the previous summer in a special program for disadvantaged college students considering application to Law School.[3] Applications from among the other three minority groups were assigned to an assistant dean who was on the Committee. The minority applications, while considered competitively with one another, were never directly compared to the remaining applications, either by the subcommittee or by the full Committee. As in the admissions process generally, the Committee sought to find "within the minority category, those persons who we thought had the highest probability of succeeding in Law School."[4]

In reviewing the minority applications, the Committee attached less weight to the Average "in making a total judgmental evaluation as to the relative ability of the particular applicant to succeed in law school." 82 Wash. 2d 11, 21, 507 P. 2d 1169, 1175. In its publicly distributed Guide to Applicants, the Committee explained that "[a]n applicant's racial or ethnic background was considered as one factor in our general attempt to convert formal credentials into realistic predictions."[5]

Thirty-seven minority applicants were admitted under this procedure. Of these, 36 had Averages below DeFunis' 76.23, and 30 had averages below 74.5, and thus would ordinarily have been summarily rejected by the Chairman. There were also 48 nonminority applicants admitted who had Averages below DeFunis. Twenty-three of these were returning veterans, see n. 2, *supra*, and 25 others presumably admitted because of other

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factors in their application making them attractive candidates despite their relatively low averages.

It is reasonable to conclude from the above facts that while other factors were considered by the Committee, and were on occasion crucial, the Average was for most applicants a heavily weighted factor, and was at the extremes virtually dispositive.[8] A different balance was apparently struck, however, with regard to the minority applicants. Indeed, at oral argument, the Law School advised us that were the minority applicants considered under the same procedure as was generally used, none of those who eventually enrolled at the Law School would have been admitted.

The educational policy choices confronting a university admissions committee are not ordinarily a subject for judicial oversight; clearly it is not for us but for the law school to decide which tests to employ, how heavily to weigh recommendations from professors or undergraduate grades, and what level of achievements on the chosen criteria are sufficient to demonstrate that the candidate is qualified for admission. What places this case in a special category is the fact that the school did not choose one set of criteria but two, and then determined which to apply to a given applicant on the basis of his race. The Committee adopted this policy in order to achieve "a reasonable representation" of minority groups in the Law School. 82 Wash. 2d, at 20, 507 P. 2d, at 1175. Although it may be perceived to be cultural or racial biases in the LSAT or in the candidates' undergraduate records, the record in this case is devoid of any evidence of such bias, and the school has not sought to justify its procedures on this basis.

Although testifying that "[w]e do not have a quota . . ." the Law School dean explained that "[w]e want a reasonable representation. We will go down to reach it if we can," without "taking people who are unqualified in an absolute sense. . . ." (Statement of Facts 420.) By "unqualified in an absolute sense" the dean meant candidates who "have no reasonable probable likelihood of having a chance of succeeding in the study of law. . . ." (*Ibid.*) But the dean conceded that in "reaching," the school does take "some minority students who at least, viewed as a group, have a less such likelihood than the majority student group taken as a whole." (*Id.*, at 423.)

"Q. Of those who have made application to go to the law school, I am saying you are not taking the best qualified?

"A. In total?

"Q. In total.

"A. In using that definition, yes." (*Id.*, at 423–424.)

It thus appears that by the Committee's own assessment, it admitted minority students who, by the tests given, seemed less qualified than some white students who were not accepted, in order to achieve a "reasonable representation." In this regard it may be pointed out that for the year 1969–1970—the year before the class to which DeFunis was seeking admission—the Law School reported an enrollment of eight Black students out of a total of 356.[7] (Defendants' Ex. 7.) That percentage, approximately 2.2 %, compares to a percentage of Blacks in the population of Washington of approximately 2.1%.[9]

II

There was a time when law schools could follow the advice of Wigmore, who believed that "the way to find out whether a boy has the makings of a competent lawyer is to see what he can do in a first year of law studies." Wigmore, Juristic Psychopoyemetrology—Or, How to Find Out Whether a Boy Has the Makings of a Lawyer, 24 Ill. L. Rev. 454, 463–464 (1929). In those days there were enough spaces to admit every applicant who met minimal credentials, and they all could be given the opportunity to prove themselves at law school. But by the 1920's many law schools found that they could not admit all minimally qualified applicants, and some selection process began.[9]

The pressure to use some kind of admissions test mounted, and a number of schools instituted them. One early precursor to the modern day LSAT was the Ferson-Stoddard Law Aptitude examination. Wigmore conducted his own study of that test with 50 student volunteers, and concluded that it "had no substantial practical value." *Id.*, at 463. But his conclusions were not accepted, and the harried law schools still sought some kind of admissions test which would simplify the process of judging applicants, and in 1948 the LSAT was born. It has been with us ever since.[10]

The test purports to predict how successful the applicant will be in his first year of law school, and consists of a few hours' worth of multiple-choice questions. But the answers the student can give to a multiple-choice question are limited by the creativity and intelligence of the test-maker; the student with a better or more original understanding of the problem than the test-maker may realize that none of the alternative answers are any good, but there is no way for him to demonstrate his understanding. "It is obvious from the nature of the tests that they do not give the candidate a significant opportunity to express himself. If he is subtle in his choice of answers it will go against him; and yet there is no other way for him to show any individuality. If he is strong-minded, nonconformist, unusual, original, or creative—as so many of the truly important people are—he must stifle his impulses and conform as best he can to the norms that the multiple-choice testers set up in their unimaginative, scientific way. The more profoundly gifted the candidate is, the more his resentment will rise against the mental strait jacket into which the testers would force his mind." B. Hoffmann, The Tyranny of Testing 91–92 (1962).

Those who make the tests and the law schools which use them point, of course, to the high correlations between the test scores and the grades at law school the first year. *E. g.*, Winterbottom, Comments on "A Study of the Criteria for Legal Education and Admission to the Bar," An Article by Dr. Thomas M. Goolsby, Jr., 21 J. Legal Ed. 75 (1968). Certainly the tests do seem to do better than chance. But they do not have the value that their deceptively precise scoring system suggests. The proponents' own data show that, for example, most of those scoring in the bottom 20 percent on the test do better than that in law school—indeed six of every 100 of them will be in the *top* 20 percent of their law school class. *Id.*, at 79. And no one knows how many of those who were not admitted because of their test scores would in fact have done well were they given the chance. There are many relevant factors, such as motivation, cultural backgrounds of specific minorities that the test cannot measure, and they inevitably must impair its value as a predictor.[11] Of course, the law school that admits only those with the highest test scores finds that on the average they do much better, and thus the test is a convenient tool for the admissions committee. The price is paid by the able student who for unknown reasons did not achieve that high score—perhaps even the minority with a different cultural background. Some tests, at least in the past, have been aimed at eliminating Jews.

The school can safely conclude that the applicant with a score of 750 should be admitted before one with a score of 500. The problem is that in many cases the choice will be between 643 and 602 or 574 and 528. The numbers create an illusion of difference tending to overwhelm other factors. "The wiser testers are well aware of the defects of the multiple-choice format and the danger of placing reliance on any one method of assessment to the exclusion of all others. What is distressing is how little their caveats have impressed the people who succumb to the propaganda of the testmakers and use these tests mechanically as though they were a valid substitute for judgment." Hoffmann, *supra*, at 215.

Of course, the tests are not the only thing considered; here they were combined with the prelaw grades to produce a new number called the Average. The grades have their own problems; one school's A is another school's C. And even to the extent that this formula predicts law school grades, its value is limited. The law student with lower grades may in the long pull of a legal career surpass those at the top of the class. "[L]aw school admissions criteria have operated within a hermetically sealed system; it is now beginning to leak. The traditional combination of LSAT and GPA [undergraduate grade point average] may have provided acceptable predictors of likely performance in law school in the past. . . . [But] [t]here is no clear evidence that the LSAT and GPA provide particularly good evaluators of the intrinsic or enriched ability of an individual to perform as a law student or lawyer in a functioning society undergoing change. Nor is there any clear evidence that grades and other evaluators of law school performance, and the bar examination, are particularly good predicators of competence or success as a lawyer." Rosen, Equalizing Access to Legal Education: Special Programs for Law Students Who Are Not Admissible by Traditional Criteria, 1970 U. Tol. L. Rev. 321, 332–333.

But, by whatever techniques, the law school must make choices. Neither party has challenged the validity of the Average employed here as an admissions tool, and therefore consideration of its possible deficiencies is not presented as an issue. The Law School presented no evidence to show that adjustments in the process employed were used in order validly to compare applicants of different races; instead it chose to avoid making such comparisons. Finally, although the Committee did consider other information in the files of all applicants, the Law School has made no effort to show that it was because of these additional factors that it admitted minority applicants who would otherwise have been rejected. To the contrary, the school appears to have conceded that by its own assessment—taking all factors into account—it admitted minority applicants who would have been rejected had they been white. We have no choice but to evaluate the Law School's case as it has been made.

III

The Equal Protection Clause did not enact a requirement that Law Schools employ as the sole criterion for admissions a formula based upon the LSAT and undergraduate grades, nor does it prohibit law schools from evaluating an applicant's prior achievements in light of the barriers that he had to overcome. A Black applicant who pulled himself out of the ghetto into a junior college may thereby demonstrate a level of motivation, perseverance and ability that would lead a fairminded admissions committee to conclude that he shows more promise for law study than the son of a rich alumnus who achieved better grades at Harvard. That applicant would not be offered admission because he is Black, but because as an individual he has shown he has the potential, while the Harvard man may have taken less advantage of the vastly superior opportunities offered him. Because of the weight of the prior handicaps, that Black applicant may not realize his full potential in the first year of law school, or even in the full three years,

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but in the long pull of a legal career his achievements may far outstrip those of his classmates whose earlier records appeared superior by conventional criteria. There is currently no test available to the Admissions Committee that can predict such possibilities with assurance, but the Committee may nevertheless seek to gauge it as best it can, and weigh this factor in its decisions. Such a policy would not be limited to Blacks, or Chicanos or Filipinos, or American Indians, although undoubtedly groups such as these may in practice be the principal beneficiaries of it. But a poor Appalachian white, or a second generation Chinese in San Francisco, or some other American whose lineage is so diverse as to defy ethnic labels, may demonstrate similar potential and thus be accorded favorable consideration by the committee.

The difference between such a policy and the one presented by this case is that the Committee would be making decisions on the basis of individual attributes, rather than according a preference solely on the basis of race. To be sure, the racial preference here was not absolute—the Committee did not admit all applicants from the four favored groups. But it did accord all such applicants a preference by applying, to an extent not precisely ascertainable from the record, different standards by which to judge their applications, with the result that the Committee admitted minority applicants who, in the school's own judgment, were less promising than other applicants who were rejected.

Furthermore, it is apparent that because the Admissions Committee compared minority applicants only with one another, it was necessary to reserve some proportion of the class for them, even if at the outset a precise number of places were not set aside.[12] That proportion, apparently 15% to 20%, was chosen because the school determined it to be "reasonable,"[13] although no explanation is provided as to how that number rather than some other was found appropriate. Without becoming embroiled in a semantic debate over whether this practice constitutes a "quota," it is clear that, given the limitation on the total number of applicants who could be accepted, this policy did reduce the total number of places for which DeFunis could compete—solely on account of his race. Thus, as the Washington Supreme Court concluded, whatever label one wishes to apply to it, "the minority admissions policy is certainly not benign with respect to nonminority students who are displaced by it." 82 Wash. 2d, at 32, 507 P. 2d, at 1182. A finding that the state school employed a racial classification in selecting its students subjects it to the strictest scrutiny under the Equal Protection Clause.

The consideration of race as a measure of an applicant's qualification normally introduces a capricious and irrelevant factor working an invidious discrimination, *Anderson* v. *Martin*, 375 U. S. 399, 402; *Loving* v. *Virginia*, 388 U. S. 1, 10; *Harper* v. *Virginia Board of Elections*, 383 U. S. 663, 668. Once race is a starting point educators and courts are immediately embroiled in competing claims of different racial and ethnic groups that would make difficult, manageable standards consistent with the Equal Protection Clause. "The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States." *Loving, supra*, at 10. The Law School's admissions policy cannot be reconciled with that purpose, unless cultural standards of a diverse rather than a homogeneous society are taken into account. The reason is that professional persons, particularly lawyers, are not selected for life in a computerized society. The Indian who walks to the beat of Chief Seattle of the Muckleshoot Tribe in Washington[14] has a different culture from examiners at law schools.

The key to the problem is the consideration of each application *in a racially neutral way*. Since LSAT reflects questions touching on cultural backgrounds, the Admissions Committee acted properly in my view in setting minority applications apart for separate processing. These minorities have cultural backgrounds that are vastly different from the dominant Caucasian. Many Eskimos, American Indians, Filipinos, Chicanos, Asian Indians, Burmese, and Africans come from such disparate backgrounds that a test sensitively tuned for most applicants would be wide of the mark for many minorities.

The melting pot is not designed to homogenize people, making them uniform in consistency. The melting pot as I understand it is a figure of speech that depicts the wide diversities tolerated by the First Amendment under one flag. See 2 S. Morison & H. Commagger, The Growth of the American Republic, c. VIII (4th ed. 1950). Minorities in our midst who are to serve actively in our public affairs should be chosen on talent and character alone, not on cultural orientation or leanings.

I do know, coming as I do from Indian country in Washington, that many of the young Indians know little about Adam Smith or Karl Marx but are deeply imbued with the spirit and philosophy of Chief Robert B. Jim of the Yakimas, Chief Seattle of the Muckleshoots, and Chief Joseph of the Nez Perce which offer competitive attitudes towards life, fellow man, and nature.[15]

I do not know the extent to which Blacks in this country are imbued with ideas of African Socialism.[16] Leopold Senghor and Sekou Toure, most articulate of African leaders, have held that modern African political philosophy is not oriented either to Marxism or to capitalism.[17] How far the reintroduction into educational curricula of ancient African art and history has reached the minds of young Afro-Americans I do not know. But at least as respects Indians, Blacks, and Chicanos—as well as those from Asian cultures—I think a separate classification of these applicants is warranted, lest race be a subtle force in eliminating minority members because of cultural differences.

Insofar as LSAT tests reflect the dimensions and orientation of the Organization Man they do a disservice to minorities. I personally know that admissions tests were once used to eliminate Jews. How many other minorities they aim at I do not know. My reaction is that the presence of an LSAT test is sufficient warrant for a school to put racial minorities into a separate class in order better to probe their capacities and potentials.

The merits of the present controversy cannot in my view be resolved on this record. A trial would involve the disclosure of hidden prejudices, if any, against certain minorities and the manner in which substitute measurements of one's talents and character were employed in the conventional tests. I could agree with the majority of the Washington Supreme Court only if, on the record, it could be said that the Law School's selection was racially neutral. The case, in my view, should be remanded for a new trial to consider, *inter alia*, whether the established LSAT tests should be eliminated so far as racial minorities are concerned.

This does not mean that a separate LSAT test must be designed for minority racial groups, although that might be a possibility. The reason for the separate treatment of minorities as a class is to make more certain that racial factors do not militate *against an applicant or on his behalf*.[18]

There is no constitutional right for any race to be preferred. The years of slavery did more than retard the progress of Blacks. Even a greater wrong was done the whites by creating arrogance instead of humility and by encouraging the growth of the fiction of a superior race. There is no superior person by constitutional standards. A De Funis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. Whatever his race, he had a constitutional right to have his application considered on its individual merits in a racially neutral manner.

The slate is not entirely clean. First, we have held that *pro rata* representation of the races is not required either on juries, see *Cassell* v. *Texas*, 339 U.S. 282, 286–287, or in public schools, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 24. Moreover, in *Hughes* v. *Superior Court*, 339 U.S. 460, we reviewed the contempt convictions of pickets who sought by their demonstration to force an employer to prefer Negroes to whites in his hiring of clerks, in order to ensure that 50% of the employees were Negro. In finding that California could constitutionally enjoin the picketing there involved we quoted from the opinion of the California Supreme Court, which noted that the pickets would "'make the right to work for Lucky dependent not on fitness for the work nor on an equal right of all, regardless of race, to compete in an open market, but, rather, on membership in a particular race. If petitioners were upheld in their demand that other races, white, yellow, brown and red, would have equal rights to demand discriminatory hiring on a racial basis.'" *Id.*, at 463–464. We then noted that

"[t]o deny to California the right to ban picketing in the circumstances of this case would mean that there could be no prohibition of the pressure of picketing to secure proportional employment on ancestral grounds of Hungarians in Cleveland, of Poles in Buffalo, of Germans in Milwaukee, of Portuguese in New Bedford, of Mexicans in San Antonio, of the numerous minority groups in New York, and so on through the whole gamut of racial and religious concentrations in various cities." *Id.*, at 464.

The reservation of a proportion of the law school class for members of selected minority groups is fraught with similar dangers, for one must immediately determine which groups are to receive such favored treatment and which are to be excluded, the proportions of the class that are to be allocated to each, and even the criteria by which to determine whether an individual is a member of a favored group. There is no assurance that a common agreement can be reached, and first the schools, and then the courts, will be buffeted with the competing claims. The University of Washington included Filipinos, but excluded Chinese and Japanese; another school may limit its program to Blacks, or to Blacks and Chicanos. Once the Court sanctioned racial preferences such as these, it could not then wash its hands of the matter, leaving it entirely in the discretion of the school, for then we would have effectively overruled *Sweatt* v. *Painter*, 339 U.S. 629, and allowed imposition of a "zero" allocation.[19] But what standard is the Court to apply when a rejected applicant of Japanese ancestry brings suit to require the University of Washington to extend the same privileges to his group? The Committee might conclude that the population of Washington is now 2% Japanese, and that Japanese also constitute 2% of the Bar, but that had they not been handicapped by a history of discrimination, Japanese would now constitute 5% of the Bar, or 20%. Or, alternatively, the Court could attempt to assess how grievously each group has suffered from discrimination, and allocate proportions accordingly; if that were the standard the current University of Washington policy would almost surely fail, for there is no Western State which can

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claim that it has always treated Japanese and Chinese in a fair and evenhanded manner. See, *e. g., Yick Wo* v. *Hopkins*, 118 U.S. 356; *Terrace* v. *Thompson*, 263 U.S. 197; *Oyama* v. *California*, 332 U.S. 633. This Court has not sustained a racial classification since the wartime cases of *Korematsu* v. *United States*, 323 U.S. 214 (1944), and *Hirabayashi* v. *United States*, 320 U.S. 81 (1943), involving curfews and relocations imposed upon Japanese-Americans.[24]

Nor obviously will the problem be solved if next year the Law School included only Japanese and Chinese, for then Norwegians and Swedes, Poles and Italians, Puerto Ricans and Hungarians, and all other groups which form this diverse Nation would have just complaints.

The key to the problem is consideration of such applications *in a racially neutral way*. Abolition of the LSAT would be a start. The invention of substitute tests might be made to get a measure of an applicant's cultural background, perception, ability to analyze, and his or her relation to groups. They are highly subjective, but unlike the LSAT they are not concealed, but in the open. A law school is not bound by any legal principle to admit students by mechanical criteria which are insensitive to the potential of such an applicant which may be realized in a more hospitable environment. It will be necessary under such an approach to put more effort into assessing each individual than is required when LSAT scores and undergraduate grades dominate the selection process. Interviews with the applicant and others who know him is a time-honored test. Some schools currently run summer programs in which potential students who likely would be bypassed under conventional admissions criteria are given the opportunity to try their hand at law courses,[21] and certainly their performance in such programs could be weighed heavily. There is, moreover, no bar to considering an individual's prior achievements in light of the racial discrimination that barred his way, as a factor in attempting to assess his true potential for a successful legal career. Nor is there any bar to considering on an individual basis, rather than according to racial classifications, the likelihood that a particular candidate will more likely employ his legal skills to service communities that are not now adequately represented than will competing candidates. Not every student benefited by such an expanded admissions program would fall into one of the four racial groups involved here, but it is no drawback that other deserving applicants will also get an opportunity they would otherwise have been denied. Certainly such a program would substantially fulfill the Law School's interest in giving a more diverse group access to the legal profession. Such a program might be less convenient administratively than simply sorting students by race, but we have never held administrative convenience to justify racial discrimination.

The argument is that a "compelling" state interest can easily justify the racial discrimination that is practiced here. To many, "compelling" would give members of one race even more than *pro rata* representation. The public payrolls might then be deluged say with Chicanos because they are as a group the poorest of the poor and need work more than others, leaving desperately poor individual blacks and whites without employment. By the same token large quotas of blacks or browns could be added to the Bar, waiving examinations required of other groups, so that it would be better racially balanced.[22]

The State, however, may not proceed by racial classification to force strict population equivalencies for every group in every occupation, overriding preferences. The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. The purpose of the University of Washington cannot be to produce Black lawyers for Blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. It should be to produce good lawyers for Americans and not to place First Amendment barriers against anyone.[23] That is the point at the heart of all our school desegregation cases, from *Brown* v. *Board of Education*, 347 U.S. 483, through *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1. A segregated admissions process creates suggestions of stigma and caste no less than a segregated classroom, and in the end it may produce that result despite its contrary intentions. One other assumption must be clearly disapproved, that Blacks or Browns cannot make it on their individual merit. That is a stamp of inferiority that a State is not permitted to place on any lawyer.

If discrimination based on race is constitutionally permissible when those who hold the reins can come up with "compelling" reasons to justify it, then constitutional guarantees acquire an accordionlike quality. Speech is closely brigaded with action when it triggers a fight, *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, as shouting "fire" in a crowded theater triggers a riot. It may well be that racial strains, racial susceptibility to certain diseases, racial sensitiveness to environmental conditions that other races do not experience, may in an extreme situation justify differences in racial treatment that no fairminded person would call "invidious" discrimination. Mental ability is not in that category. All races can compete fairly at all professional levels. So far as race is concerned, any state-sponsored preference to one race over another in that competition is in my view "invidious" and violative of the Equal Protection Clause.

The problem tendered by this case is important and crucial to the operation of our constitutional system; and educators must be given leeway. It may well be that a whole congeries of applicants in the marginal group defy known methods of selection. Conceivably, an admissions committee might conclude that a selection by lot of, say, the last 20 seats is the only fair solution. Courts are not educators; their expertise is limited; and our task ends with the inquiry whether, judged by the main purpose of the Equal Protection Clause—the protection against racial discrimination[25]—there has been an "invidious" discrimination.

We would have a different case if the suit were one to displace the applicant who was chosen in lieu of DeFunis. What the record would show concerning his potentials would have to be considered and weighed. The educational decision, provided proper guidelines were used, would reflect an expertise that courts should honor. The problem is not tendered here because the physical facilities were apparently adequate to take DeFunis in addition to the others. My view is only that I cannot say by the tests used and applied he was invidiously discriminated against because of his race.

I cannot conclude that the admissions procedure of the Law School of the University of Washington that excluded DeFunis is violative of the Equal Protection Clause of the Fourteenth Amendment. The judgment of the Washington Supreme Court should be vacated and the case remanded for a new trial.

FOOTNOTES

[1] The grades are calculated on a conventional 4.0 scale, and the LSAT is scored on a scale ranging from 200 to 800. A Writing Test given on the same day as the LSAT and administered with it is also included in the formula; it is scored on a scale of 20 to 80. The Admissions Committee combines these scores into the Average by calculating the sum of 51.3, 3.4751 × the grade-point average, .0159 × LSAT score, and .0456 × the Writing Test score. App. 24. For a brief discussion of the use of the LSAT in combination with undergraduate grades to predict law school success, see Winterbottom, Comments on "A Study of the Criteria for Legal Education and Admission to the Bar," An Article by Dr. Thomas M. Goolsby, Jr., 21 J. Legal Ed. 75 (1968).

[2] The only other substantial group admitted at this point were 19 "military" applicants. These were students who had previously been admitted to the school but who had either been unable to come, or forced to leave during their tenure, because of the draft. They were given preferential treatment upon reapplication after completing their military obligation. Since neither party has raised any issue concerning this group of applicants, the remaining consideration of the admissions procedure will not discuss them. Four minority applicants were also admitted at this time, although none apparently had scores above 77. App. 31. Their admission was presumably pursuant to the procedure for minority applicants described below.

[3] This was a Council on Legal Education Opportunities program, federally funded by the Office of Economic Opportunity and sponsored by the American Bar Association, the Association of American Law Schools, the National Bar Association, and the Law School Admissions Council.

[4] Testimony of the Chairman of the Admissions Committee, Statement of Facts 353.

[5] The Guide to Applicants explained:

"We gauged the potential for outstanding performance in law school not only from the existence of high test scores and grade point averages, but also from careful analysis of recommendations, the quality of work in difficult analytical seminars, courses, and writing programs, the academic standards of the school attended by the applicant, the applicant's graduate work (if any), and the nature of the applicant's employment (if any), since graduation.

"An applicant's ability to make significant contributions to law school classes and the community at large was assessed from such factors as his extracurricular and community activities, employment, and general background.

"We gave no preference to, but did not discriminate against, either Washington residents or women in making our determinations. An applicant's racial or ethnic background was considered as one factor in our general attempt to convert formal credentials into realistic predictions." 82 Wash. 2d 11, 18–19, 507 P. 2d 1169, 1174.

[6] The respondents provided the following table in response to an interrogatory during the proceedings in the state court:

Predicted First Year Averages	Number of Applications Received	Number Accepted
81	1	1
80	2	2
79	11	11
78	42	42
77	105	93
76	169	53
75	210	22

App. 34.

[7] Although there is apparently no evidence in point in the record, respondents suggest that at least some of these eight students were also admitted on a preferential basis. Brief for Respondents 40 n. 27.

[8] United States Bureau of the Census, Census of Population: 1970, General Population Characteristics, Washington, Final Report PC (1)—B49, Table 18.

[9] For a history of gradual acceptance among law schools of standardized tests as an admission tool, see Ramsey, Law School Admissions: Science, Art, or Hunch?, 12 J. Legal Ed. 503 (1960).

[10] For a survey of the use of the LSAT by American law schools as of 1965, see Lunneborg & Radford, the LSAT: A Survey of Actual Practice, 18 J. Legal Ed. 313 (1966).

[11] Rock, Motivation, Moderators, and Test Bias, 1970 U. Tol. L. Rev. 527, 535.

[12] At the outset the Committee may have chosen only a range, with the precise number to be determined later in the process as the total number of minority applicants, and some tentative assessment of their quality, could be determined. This appears to be the current articulated policy, see Appendix § 6, and we are advised by the respondents that § 6 "represents a more formal statement of the policy which was in effect in 1971 . . . but does not represent any change in policy." Letter to the Court dated March 19, 1974, p. 1. The fact that the Committee did not set a precise number in advance is obviously irrelevant to the legal analysis. Nor does it matter that there is some minimal level of achievement below which the Committee would not reach in order to achieve its stated goal as to the proportion of the class reserved for minority groups, so long as the Committee was willing, in order to achieve that goal, to admit minority applicants who, in the Committee's own judgment, were less qualified than other rejected applicants and who would not otherwise have been admitted.

[13] See n. 12, *supra*, and Appendix § 6.

[14] Uncommon Controversy, Report Prepared for American Friends Service Committee 29–30 (1970).

[15] See C. Fee, Chief Joseph, The Biography of a Great Indian (1936).

[16] See F. Brockway, African Socialism (1963); African Socialism (W. Friedland & C. Rosberg ed. 1964).

[17] See L. Senghor, On African Socialism (M. Cook ed. 1964).

[18] We are not faced here with a situation where barriers are overtly or covertly put in the path of members of one racial group which are not required by others. There was also no showing that the purpose of the school's policy was to eliminate arbitrary and irrelevant barriers to entry by certain racial groups into the legal profession groups. *Griggs* v. *Duke Power Co.*, 401 U.S. 424. In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16, we stated that as a matter of educational policy school authorities could, within their broad discretion, specify that each school within its district have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole, in order to disestablish a dual school system. But there is a crucial difference between the policy suggested in *Swann* and that under consideration here: the *Swann* policy would impinge on no person's constitutional rights, because no one would be excluded from a public school and no one has a right to attend a segregated public school.

[19] *Sweatt* held that a State could not justify denying a black admission to its regular law school by creating a new law school for blacks. We held that the new law school did not meet the requirements of "equality" set forth in *Plessy* v. *Ferguson*, 163 U.S. 537.

The student, we said, was entitled to "legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State." 339 U.S. 629, 635.

[20] Those cases involved an exercise of the war power, a great leveler of other rights. Our Navy was sunk at Pearl Harbor and no one knew where the Japanese fleet was. We were advised on oral argument that if the Japanese landed troops on our west coast nothing could stop them west of the Rockies. The military judgment was that, to aid in the prospective defense of the west coast, the enclaves of Americans of Japanese ancestry should be moved inland, lest the invaders by donning civilian clothes would wreak even more serious havoc on our western ports. The decisions were extreme and went to the verge of wartime power; and they have been severely criticized. It is, however, easy in retrospect to denounce what was done, as there actually was no attempted Japanese invasion of our country. While our Joint Chiefs of Staff were worrying about Japanese soldiers landing on the west coast, they actually were landing in Burma and at Kota Bharu in Malaya. But those making plans for defense of the Nation had no such knowledge and were planning for the worst. Moreover, the day we decided *Korematsu* we also decided *Ex parte Endo*, 323 U.S. 283, holding that while evacuation of the Americans of Japanese ancestry was allowable under extreme war conditions, their detention after evacuation was not. We said:

"A citizen who is concededly loyal presents no problem of espionage or sabotage. Loyalty is a matter of the heart and mind, not of race, creed, or color. He who is loyal is by definition not a spy or a saboteur. When the power to detain is derived from the power to protect the war effort against espionage and sabotage, detention which has no relationship to that objective is unauthorized." *Id.*, at 302.

[21] See n. 3, *supra*.

[22] In *Johnson* v. *Committee on Examinations*, 407 U.S. 915, we denied certiorari in a case presenting a similar issue. There the petitioner claimed that the bar examiners reconsidered the papers submitted by failing minority applicants whose scores were close to the cutoff point, with the result that some minority applicants were admitted to the Bar although they initially had examination scores lower than those of white applicants who failed.

As the Arizona Supreme Court denied Johnson admission summarily, in an original proceeding, there were no judicial findings either sustaining or rejecting his factual claims of racial bias, putting the case in an awkward posture for review here. Johnson subsequently brought a civil rights action in Federal District Court, seeking both damages and injunctive relief. The District Court dismissed the action and the Court of Appeals affirmed, holding that the lower federal courts did not have jurisdiction to review the decisions of the Arizona Supreme Court on admissions to the state bar. Johnson then sought review here and we denied his motion for leave to file a petition for mandamus, prohibition and/or certiorari on February 19, 1974. *Johnson* v. *Wilmer*, 415 U.S. 911. Thus in the entire history of the case no court had ever actually sustained Johnson's factual contentions concerning racial bias in the bar examiners' procedures. *DeFunis* thus appears to be the first case here squarely presenting the problem.

[23] Underlying all cultural background tests are potential ideological issues that have plagued bar associations and the courts. *In re Summers*, 325 U.S. 561, involved the denial of the practice of law to a man who could not conscientiously bear arms. The vote against him was five to four. *Konigsberg* v. *State Bar*, 353 U.S. 252, followed, after remand, by *Konigsberg* v. *State Bar*, 366 U.S. 36, resulted in barring one from admission to a state bar because of his refusal to answer questions concerning Communist Party membership. He, too, was excluded five to four. The petitioner in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, was, however, admitted to practice even though he had about 10 years earlier been a member of the Communist Party. But in *In re Anastaplo*, 366 U.S. 82, a five-to-four decision, barred a man from admission to a state bar not because he invoked the Fifth Amendment when asked about membership in the Communist Party, but because he asserted that the First Amendment protected him from that inquiry. *Baird* v. *State Bar of Arizona*, 401 U.S. 1, held by a divided vote that a person could not be kept out of the state bar for refusing to answer whether he had even been a member of the Communist Party; and see *In re Stolar*, 401 U.S. 23.

[24] See *Slaughter House Cases*, 16 Wall. 36, 81.

Mr. HATCH. Mr. President, an intriguing account of the Court's decision in DeFunis was given in Bob Woodward and Scott Armstrong's book "The Brethren": Inside the Supreme Court. According to the authors, the Court treated the affirmative action issue as a policy matter rather than a constitutional question. They decided that a dose of affirmative action would be good for the country, and adopted the easiest expedient to achieve this goal without having to face the moral issue or public protest. Needless to say, this is an entirely illegitimate way for a court of law to behave. But, in fairness, it should be noted that great controversy has surrounded the accuracy of some of the book's observations.

Although a little improbable in places, "The Brethren" is significant in itself in that it exemplifies the reluctance of the media and public people generally to think about affirmative action. The only criticism that the authors have toward quotas is that they might eventually result in restoring discrimination against minorities. Additionally, of course, "The Brethren" illustrates the failure to understand elementary principles of a free society that I mentioned earlier.

I ask unanimous consent that one page from "The Brethren" be printed in the RECORD at this point.

There being no objection, the page was ordered to be printed in the RECORD, as follows:

At the opening of the term, the press focused attention on the likelihood that the Burger Court might at last leave its imprint on the important race questions of the day. In mid-term the Court heard argument in their first reverse discrimination case (*DeFunis* v. *Odegaard*) which challenged the affirmative action programs designed to give minorities certain advantages. A white applicant to law school had been denied admission while blacks with lower test scores and grades had been admitted. Under the affirmative action program, a certain number of slots had been set aside for minority applicants. Since the applicant was white, he had no shot at them; he had been singled out because he was white, and that, he claimed, was racial discrimination.

At first, all nine Justices leaned toward holding that such fixed racial quotas were unconstitutional. Marshall considered special quotas an insult to minorities, but at the same time he knew better than anyone the difficulties posed by the remaining barriers for minorities in schools and in employment. Affirmative action programs—most of them only a few years old—would all be at stake. On the other hand, to uphold the fixed quota for minorities might create an unfortunate precedent which could be used eventually to exclude minorities.

At conference, several of the Justices indicated that they would not mind avoiding the issue by saying the case was moot; the law student had subsequently been admitted to the law school. The Court would have sev-

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eral more years before another reverse discrimination case worked its way up through the courts. In the meantime, affirmative action programs could continue to bring about more educational and employment equality. Stewart offered to write a *per curiam* declaring the case moot. Burger, Blackmun, Powell and Rehnquist agreed finally, but not before Douglas had first circulated an opinion ruling out affirmative action, withdrew it the next day, and then substituted a draft saying that race could be taken into account in selecting candidates.

Even the liberals breathed a sigh of relief that the case was gone. But there was another racial issue they could not avoid—busing.

Mr. HATCH. Mr. President, in 1978, the Court split badly over the similar case of the admission of Alan Bakke to the Medical School of the University of California at Davis. Rigid numerical quotas were declared illegal, and Bakke was admitted to the school by a vote of 5 to 4. But the vote was 5 to 4 the other way on the issue of whether universities receiving Federal aid could take any notice of race at all, *Regents of the University of California* v. *Bakke* 438 U.S. 265.

One year later, the Court voted 5 to 2 not to overturn a quota plan developed under Federal pressure by the United Steelworkers Union and Kaiser Aluminum Co. that had resulted in a white employee, Brian Weber, being refused entry to a craft training program in favor of blacks with less seniority, *Steelworkers* v. *Weber* 443 U.S. 193. This case ended any doubts as to the extremes to which the quota-supporters on the Court were prepared to go. They rejected the express wording of a statute, the Civil Rights Act of 1964, and they ignored the clear intent of Congress as expressed in its legislative considerations. The Court, in upholding the Kaiser plan, observed that it did not involve any "unnecessary trammeling" of the interests of white employees—just necessary trammeling, no doubt.

In neither Bakke nor Weber did the majority—plurality in Bakke—approach the Constitutional issues. Bakke was decided under title VI of the Civil Rights Act, relating to the obligations of institutions receiving Federal assistance; Weber under title VII of the same act which deals with discrimination by private employers. Apart from this, there is little difference between the two titles.

Not the least distressing aspect of the shameful saga of affirmative action litigation is that it is impossible to avoid the suspicion of class justice in the Supreme Court's differing treatment of Bakke and Weber. Not many Supreme Court Justices' sons want craft jobs in Louisiana refineries, but medical schools are something else.

The labor union's attitude, of course, is beneath contempt. Clearly, the approval of their political peer group in Washington was more important to the union leaders than defending their members' interests. With workers betrayed in this way, we need look no further for an explanation of the current relative decline or organized labor in America's economy and its political life.

Writing just after the Weber decision, Nicholas Capaldi, Professor of Philosophy at Queens College in New York, analyzed these developments from the perspective of the bureaucracy. His article appeared in the Spring 1980 issue of Policy Review magazine.

I ask unanimous consent that that article, "Twisting The Law," by Nicholas Capaldi, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TWISTING THE LAW

(By Nicholas Capaldi [1])

The moral that many would have us draw from the incident at Watergate is that government power can be abused, especially by unprincipled individuals. But there is another kind of abuse of government power: an abuse practiced by a group, not an individual, and based upon high principles.[2] Nowhere is such abuse more in evidence than in the development and application of the policy of affirmative action. We begin with two titles of the Civil Rights Act of 1964, known as Title VI and Title VII. Title VI prohibits discrimination in public accommodations and in federally assisted programs. This includes federally assisted education programs. Title VII prohibits discrimination by employers or unions, whether private or public.

In the most unequivocal fashion, the sponsors of the measure in the Senate made clear that this act was designed to foster equal opportunity, not preference and not racial balance. Listen to the words of Senator Hubert H. Humphrey: "Title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group." [3] Senator Harrison A. Williams reaffirmed this when he said: [Title VII] "specifically prohibit(s) the Attorney General or any agency of the government, from requiring employment to be on the basis of racial or religious quotas. Under (this provision) an employer with only white employees could continue to have only the best qualified persons even if they were all white." [4]

In the ensuing debate, the floor managers in the Senate, Senators Joseph Clark and Clifford Case, both stated that:

"It must be emphasized that discrimination is prohibited as to any individual. . . . The question in each case is whether that individual was discriminated against." Further, in response to the charge that the bill would ultimately require quotas, Senator Clark replied that: "Quotas are themselves discriminatory." [5] Two provisions were added to spell this out:

703(h) . . . it shall not be unlawful employment practice . . . for an employer to give and act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. . . .

703(j) Nothing contained in this title shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number of percentage of persons of any race, color, religion, sex, or national origin employed by any employer. . . .

Once a law is passed, it is the responsibility of the executive branch of government to see to its faithful execution. As the power of the federal government has grown, a vast bureaucracy has been established to aid in the administration of the laws. In addition to the potential conflict between a specific piece of legislation and the Constitution, there are two other kinds of conflict. The President may have his own understanding of the legislation in opposition to the Congressional understanding, and the bureaucracy may have its own understanding of the legislation in opposition to either the Congress or even to the President.

The President's interpretation of the law and his directives to the bureaucracy are found in so-called executive orders. In response to the Civil Rights Act of 1964, President Lyndon Johnson issued Executive Order No. 11246 in 1965, stressing the need for "affirmative action" [6] with regard to minorities. But the executive policy of affirmative action was not defined by the President; it was left to the bureaucracy. In May of 1968 the Department of Labor defined affirmative action in Order No. 4.

"A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time-tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in his affirmative action compliance program a table of job classifications. . . . The evaluation of utilization of minority group personnel shall include . . . an analysis of minority group representation in all categories.[7]

Additional guidelines were issued on February 5, 1970. Affirmative action was further defined as "a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith." Finally, the guidelines issued on December 4, 1971 spelled out the ultimate logic of the concept. It all turned on the key term "underutilization." [8]

"Underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability. . . .

In short, anything less than a racially balanced workforce would bring down the wrath of the government.

What needs to be emphasized here is that affirmative action originated in the executive branch of government, not the legislative branch; that affirmative action as formulated by the Department of Labor and enforced by HEW and EEOC (Equal Employment Opportunity Commission) is a direct violation of the legislative intent of the Civil Rights Act of 1964; that underutilization, goals, timetables, and quotas are not solutions to legislatively formulated problems but bureaucratic policies for which a problem must be fabricated. Affirmative action is a solution in search of a problem.

HOW THE BUREAUCRACY SEES ITSELF

From time to time various units of the federal bureaucracy concerned with administering the Civil Rights Act of 1964 issue statements in an attempt to explain their position. One such document was issued by the U.S. Commission on Civil Rights.[9] Its introduction begins with the statement of a problem. The problem, it seems, is the existence of a *gap* between blacks and whites, a gap reflected in statistics about income, income trends, and the proportional representation of blacks to whites in positions of high status.[10]

Why is this gap a problem? It is a problem for two reasons. First, it violates an operative ideal of our society. The ideal is supposed to be for a classless society in which no invidious comparisons could be made or found statistically. The second reason is that the gap is the effect of past injustice. It is presumed that it is coincidentally the case that the ideal reflects what would naturally have been the case in the absence of injustice.

The aspiration of the American people is for a "colorblind" society, one that neither knows nor tolerates classes among citizens [Justice Harlan's dissent in the *Plessy vs. Ferguson* case of 1896]. . . . the test of affirmative action programs is whether they are well calculated to achieve these objectives . . . we believe that affirmative action . . . including those where numerically based remedies have been employed, meets this fundamental standard. . . . affirmative action programs will help us to reach the day when our society is truly colorblind and nonsexist because all people will have an equal opportunity to develop their full potential and to share in the effort and the rewards that such development brings.[11]

Given the foregoing definition of the problem, we can see why the solution of affirmative action was adopted. Affirmative action is "any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future." [12] The solution will be considered a success when it will have placed "eligible minority members in the position which the minority would have enjoyed if it had not been the victim of discrimination." [13]

EEOC is telling us that whoever wills the end wills the means. The end is to terminate discrimination. But discrimination, says EEOC, cannot be terminated unless its effects are also terminated. One goal has here been substituted for another. Congress did not order the termination of the effects of discrimination: it outlawed discrimination *per se*. If anyone still doubts this, then listen to the words of Representative Celler, Chairman of the House Judiciary Committee and the congressman responsible for introducing the legislation:

It is likewise not true that the Equal Employment Opportunity Commission would have power to rectify existing "racial or religious imbalance" in employment by requiring the hiring of certain people without regard to their qualifications simply because they are of a given race or religion. Only actual discrimination could be stopped.[14]

Finally, nowhere does anyone specify how there can be an objective, non-ideological determination even of what the effects of discrimination were and are.

THE BUREAUCRATIC IMPERATIVE

How is EEOC going to justify its seeming distortion of the act of Congress? It will do so by appealing to the acts of the judicial branch of government. According to EEOC, what we are witnessing is "the evolution of equal employment law." [15] Now evolution by itself simply means change through time. But for EEOC the development is in a special direction, and that is what makes it teleological.[16] "What was not fully apparent in 1964 was the magnitude of the effort that would be required to create genuine equality of opportunity and the specific measures needed to accomplish the task." [17] I take it that equal opportunity is "genuine" when it achieves the ideal: racial balance, statistical parity, or realignment.[18] Finally, it appears to be EEOC's notion that law evolves in the courts and in the bureaucracy.

EEOC cites three main cases to support its interpretation. The first is the so-called "Philadelphia Plan." The construction trades in Philadelphia were all-white, largely the result of father-son practices in the union. The Department of Labor, in 1969, ordered an end to that practice and instituted goals and timetables for minority recruitment. This was the first major application of Order No. 4. The Contractors Association of Eastern Pennsylvania challenged Order No. 4 on the grounds that Title VII bans discrimination, and the goals and timetables of Order No. 4 are discriminatory quotas. In the federal court, the Third Circuit Court of Appeals, the Secretary of Labor was upheld. Moreover, Judge John Gibbons seemed to endorse the notion of realignment.

Clearly, the Philadelphia Plan is color-conscious . . . [in order to reject it we] would have to attribute to Congress the intention to freeze the status quo and to foreclose remedial action [to] overcome existing evils.[19]

The U.S. Supreme Court refused to hear an appeal. EEOC cites this case and others from the federal courts to establish that "goals and timetables [have] been repeatedly upheld by the courts." [20]

The Third Circuit Court handed down its decision in 1971. The other two cases were also in 1971. This explains the force of the 1971 guidelines and the use of the concept of underutilization. In the case of *Swann* v. *Charlotte-Mechlenburg Board of Education*, the U.S. Supreme Court concluded that local communities could voluntarily (that is, on their own initiative) assign students by race for educational purposes even where no prior *de jure* segregation existed. EEOC concluded from this that the Supreme Court was upholding realignment.

The Supreme Court has given broad scope to the States in taking voluntary action to promote equality, even when the action is race conscious and is not explicitly designed to remedy a constitutional wrong.[21]

The watershed case in EEOC's tale of the evolution of equal employment law is supposed to be the 1971 case of *Griggs* v. *Duke Power Company* wherein the U.S. Supreme Court interpreted Title VII as forbidding the use of an aptitude test and the requirement of the North Carolina power company that employees have a high school diploma even if there was no intent to use these as discriminatory. Minorities failed the test disproportionately, presumably because of previous educational deprivation. EEOC interprets this decision not only as endorsing its hypothesis of discriminatory effects but as endorsement of realignment. It is in their eyes an endorsement of realignment because the Supreme Court is allegedly rejecting any practice with adverse impact on minorities.

There is one important qualification in the decision, and it is one admitted by EEOC. The Supreme Court does not bar tests or other criteria if those tests and criteria are demonstrably and directly related to job performance. Fair enough. But behind this seemingly major concession are two ploys:

Ploy I: Are we talking about minimum standard performance or about best possible performance? If the former, almost everyone can have almost any job. Other government regulations make it impossible or impractical to dismiss or pressure the less or least able employees.

Ploy II: Any definition of a performance which has adverse impact can be attacked as discriminatory.

These two ploys explain why, from EEOC's point of view, the key test of discrimination is no longer intent to discriminate but an adverse impact. This is what is known as institutional discrimination, or covert discrimination. This concept also provides the missing link to past overt discrimination, since institutional discrimination is alleged to reflect the cumulative effects of past overt discrimination.

For EEOC these cases accomplish the following: First, affirmative action can deal with alleged covert discrimination; second, affirmative action need not confine itself to individuals but can deal with groups; third, affirmative action can seek to engineer realignment. These points are buttressed by an appeal to the Justice Department which has declared:

"The consequences of discrimination are too complex to dissect case-by-case . . . and a [school or employer] dealing with imponderables of this sort ought not to be confined to the choice of either ignoring the problem or attempting the Sisyphean task of discerning its importance on an individuals basis." [22]

We have now completed our survey of how the bureaucracy has taken Titles VI and VII—as well as executive orders on affirmative action and the actions of various courts and other bureaucratic agencies—and interpreted and implemented them solely from within the perspective of liberal social engineering. What are we to make of it? I want to argue, and I shall show in the next section, that this is a complete distortion of the law as well as the U.S. Constitution. For the moment I would characterize the operations of the bureaucracy as akin to a group of lawyers who have commandeered fire engines and rushed to a number of buildings. These buildings have been selected because an ethereal smoke is coming out of each. (I say ethereal because not everyone can see the smoke and the alarms have not sounded.) The lawyers then proceed to pour kerosene onto the buildings. When asked why, they respond that "where there's smoke there must be fire." When asked why the use of kerosene, we are told that it is the best they can do for they have no water.

THE ROLE OF THE JUDICIARY

Since *Marbury v. Madison*, the U.S. Supreme Court has claimed the power of judicial review: the power to determine whether laws are consistent with Constitution. This power is exercised with self-imposed restraints. *First*, the court operates with the assumption that the legislature did not "intend" to violate the Constitution. Hence, the burden of proof must rest with the party that sues. The court prefers not to rule on issues of constitutionality if any statute can be interpreted in a manner that will save appearances. *Second*, in order to avoid frivolous suits and constant disruption, the suing party must have a direct and substantial interest in the matter at stake. *Third*, in the name of the separation of powers, the court recognizes that some questions are political and therefore non-justiciable.

If the Court decides to review a case from a lower court it issues a writ of *certiorari*. The petition to grant such a writ must have the support of at least four Justices. In failing to issue a writ, the Court does not routinely provide an explanation. To provide an explanation would in effect be to rule on every case. If the Court fails to issue a writ of *certiorari*, that does not signify that the Court approves of the decision of the lower court. The ruling of the lower court, let us say a federal court, remains effective but only within the geographical limits of that circuit court. It is not national law. It is even possible that the majority of the Supreme Court may consider a lower court ruling in error and still not issue a writ. That is why the law of the land and the dictates of the U.S. Constitution may be determined only by looking to the actual and specific decisions of the U.S. Supreme Court, and not in what it refuses to decide.

We are now in a position to clarify EEOC's systematic distortion of judical action. The key is the definition of affirmative action as underutilization (as determined by statistical survey) and the introduction of goals and timetables to overcome the discrimination implicity measured in the under-utilization. These concepts emerged in 1971. It was in 1971 that the Supreme Court refused to

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overrule the decision of the Third Circuit Court in the Philadelphia Plan. EEOC took the denial of a writ of *certiorari* as establishing that court's decision in a specific case as law extending to all cases. Not only is this extension unwarranted in general, but the denial of *certiorari* is specifically claimed by EEOC as endorsing the policy "to grant preferential treatment simply because of racial imbalances that exist in the work force." [23] The statement by EEOC moves back and forth about cases and persistently uses the expression "the courts" almost indiscriminately for federal courts and the Supreme Court. But no decision by the federal courts is the same as a decision by the Supreme Court.

The next distorted case was the Swann decision of 1971. EEOC took the Supreme Court as making realignment the law of the land. On the contrary, if we read the dictum of Chief Justice Warren Burger we encounter the specific rejection of such a concept:

". . . a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of constitutional violation, however, that would not be within the authority of a federal court.[24]

There is a difference between what is permissible voluntarily and what the courts can order in the absence of specific proof of discrimination. Reading this back into the Philadelphia Plan we note that previous discrimination was a factor. Reading this forward to DeFunis and Bakke, we note that such assignments as the Court allows exclude no individual but merely concern assignment to a specific school. DeFunis and Bakke involved exclusions.

The other 1971 case used by EEOC to establish realignment was Griggs. In fact, rather than endorse realignment, the Supreme Court went out of its way to disclaim it and, in addition, to uphold the merit principle.

"Congress did not intend . . . to guarantee a job to every person regardless of qualifications . . . [Title VII] does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. . . . Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant." [25]

The most that EEOC could validly infer from Griggs was that employers would have to validate or justify any job requirements. Having to tread lightly, EEOC resorted to pressuring employers to institute voluntary goals and timetables. This raised the question of the constitutionality of self-imposed quota systems.

THE QUOTA SYSTEM: DEFUNIS

I use the expression *quota* system in this context because any employer who had validated criteria would not need any specific numerical target. We should recall that we are discussing cases where there is no history or evidence of previous deliberate discrimination.

The first challenge to this voluntarily imposed quota system came in university admissions, not in the job market. Marco DeFunis had been denied admission to the University of Washington Law School, which had a separate admissions procedure and different evaluation criteria for minority applicants. DeFunis raised the constitutional issue by appealing to the Fourteenth Amendment (not Title VI or VII) and claimed that he had been denied equal protection of the laws. A lower court upheld Mr. DeFunis, and the judge, Lloyd Shorett, instructed the University of Washington Law School to admit him. The University did so but appealed the case to the Washington Supreme Court. The latter court reversed the lower court decision. The case was then appealed to the U.S. Supreme Court, although Mr. DeFunis continued to attend the law school. Oral argument was held before the Court on February 26, 1974, but in late April a majority of the Court declared the case moot. That is, it decided not to decide. The reason is simple enough: Since the Court had assurance that Mr. DeFunis would be graduating from the law school, the Court could claim that there was no longer a party with a direct and substantial interest.

Many interested parties were disappointed by the failure of the Court to decide the issue involved. Many tried to make much of the failure to decide, just as others tried to capitalize on the fact that four justices (Justices Douglas, Marshall, White and Brennan) dissented on mooting the case. The latter wished the Court to arrive at some decision. So what did the decision not to decide mean?

Let us confine ourselves to what is purely objective. First, Mr. DeFunis had successfully challenged the University of Washington Law School. Second, one should reasonably infer that mooting was as technically based as it appeared to be. One of the mooters, Justice Blackmun, later voted for realignment in Bakke. Among the dissenters to mooting, Justice Douglas was opposed to realignment. In retrospect from the Bakke case, we can see that three of the mooters (Justices Stewart, Rehnquist, and Burger) would consistently maintain that the issues involved could be resolved without even appealing the U.S. Constitution but by reference to the laws themselves. Third, EEOC had originally issued a brief in support of the University of Washington and against Mr. DeFunis, but Solicitor General Robert Bork (under President Nixon) had requested the Court not to accept the brief. The Court complied.

EEOC could take small comfort in the DeFunis result. Its response consisted of two points: first to cloud the issue, and second to insist that special minority admittees were qualified. This represents an attempt to salvage some vestige of realignment by obscuring the difference between minimally qualified and best qualified. This is in line with the ploys developed in *Griggs*.

"While courts have differed in their view of the constitutionality of affirmative action programs, none has found reason to dispute the representation of the professional schools that the minority students admitted were qualified.[26]

Under the circumstances EEOC is forced to adopt a more defensive posture, arguing that affirmative action is overcoming past discrimination and that such discrimination is inferable from the statistics. Increasing use must be made of statistics because, with the passage of time and the objective working of the Civil Rights Act of 1964, overt cases of discrimination are harder and harder to find. That is why EEOC keeps referring to the Justice Department statement:

". . . it would be an extraordinarily difficult task to require professional schools to substitute for their present programs a case-by-case examination of the impact of discrimination on each minority applicant." [27]

No doubt universities will be heartened by the solicitous concern shown for them by EEOC. But the crux of the matter is that the Justice Department is just another government bureaucracy and not the Supreme Court. The Justice Department neither makes the law nor determines it. We may also question whether the task is difficult and "Sisyphean"—or is it just impossible to make the case? In order to make the case, one would have to prove that statistical underachievement is a direct casual result of previously segregated schools, etc. This is a hypothesis and not a fact. And the one thing that advocates of realignment want to avoid is an open challenge to their hypotheses or even to have them exposed as hypotheses.

The other obvious difficulty that EEOC faces is the explicit mention in Titles VI and VII of individuals and not groups. It is their endeavor to overcome this obstacle that leads to the greatest distortion. Repeatedly EEOC makes use of the 1977 case *International Brotherhood of Teamsters* v. *United States* to claim that the Supreme Court accepts the statistical argument as proof of discrimination. When we examine the actual case record we find, yes, that statistics are allowed, but the qualifications on the statistics are never mentioned by EEOC. Let us note them:

"The Government bolstered its statistical evidence with the testimony of individuals who recounted over 40 specific instances of discrimination . . . individuals who testified about their personal experiences with the company brought the cold numbers convincingly to life. . . . We caution only that statistics . . . like any other kind of evidence . . . may be rebutted. In short, their usefulness depends upon all the surrounding facts and circumstances" . . . statistical evidence was not offered or used to support an erroneous theory that Title VII requires an employer's work force to be racially balanced. . . . 703(j) makes clear that Title VII imposes no requirement that a work force mirror the general population. . . .

". . . figures for the general population might not accurately reflect the pool of qualified job applicants. . . ." [28]

In the part of its judgment that EEOC *fails* to quote, the U.S. Supreme Court has made clear that Title VII will *not* justify realignment. If this were not enough, we may cite an instance where EEOC does quote the exact words of the Court and then offers an interpretation of the words which is consistent with EEOC's own cherished support of realignment—but a ludicrous distortion of the Court's own view.

First the Court: ". . . *absent explanation*, it is *ordinarily* to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired. (Italics mine.)"

Then, EEOC: ". . . the most appropriate guide may be found in the Supreme Court's suggestion that absent discrimination, it is to be expected that work forces will be 'more or less representative of the population in the community from which employees are hired." (Italics mine.)

Then, EEOC: ". . . the most appropriate guide may be found in the Supreme Court's suggestion that absent discrimination, it is to be expected that work forces will be 'more or less representative of the population in the community from which employees are hired." (Italics mine.)[29]

Not only is there a very strong difference between "to be expected" and "ordinarily to be expected (for the latter implies all sorts of qualification), but the Court spoke of what might be in the absence of explanation, not in the absence of discrimination. There surely are all kinds of possible explanations for the lack of statistical parity. There are in fact many alternative hypotheses, perhaps some with more plausibility than the covert oppression one.

Footnotes at end of article.

THE SUPREME COURT ON BAKKE

In a case very similar to DeFunis, Alan Bakke sued the Medical School of the University of California at Davis on the grounds that his rejection was an instance of reverse discrimination. Davis had set aside 16 seats out of each class of 100 specifically for minorities. Bakke argued that this violated Title VI of the 1964 Civil Rights Act. He did not raise the constitutional issue but merely referred to specific statutes.

In July 1978, the Supreme Court ruled 5-4 in Mr. Bakke's favor. By the narrowest of margins, the Supreme Court had ruled in no uncertain terms that the Civil Rights Act of 1964 did not condone the interpretation of affirmative action given by EEOC, HEW, and various other government bureaucracies.

Some of the details of the ruling are worth noting. Although a majority ruled in Mr. Bakke's favor, not all members of the majority did so with the same explanation. Four of the justices (Justices Burger, Stewart, Rehnquist and Stevens) ruled on the narrow grounds that Section 601 of the Civil Rights Act of 1964 prohibits reverse discrimination. In their eyes, the statutory grounds were unusually clear. In effect, this bears out what we have so far said about Titles VI and VII. For these men, the mere technicalities of the law are totally at odds with the liberal reading.

The fifth justice who supported Mr. Bakke, Lewis Powell, went even further and decided that the Medical School of the University of California at Davis had violated Mr. Bakke's rights under the Fourteenth Amendment and had thereby denied him the equal protection of the laws.

Justice Powell then joined the dissenting minority (Justices Marshall, White, Blackmun, and Brennan) and formed a second but different majority ruling that a university could continue to take race into account in admissions decisions, even at the graduate level. This decision reversed the California Supreme Court, which had upheld Bakke but had forbidden the university to use its discretion on admissions.

Perhaps the most remarkable thing to emerge from this split was the attempt of the liberal elements in the media to present Justice Powell's moves as a compromise and to minimize the extent to which the Court's decision undercut affirmative action. Even a cursory reading of the opinions will show how untenable such a feat of legal engineering is.

The basic facts are:

(1) Justice Powell's support of Mr. Bakke was more sweeping than that the other justices because he anchored his support in the Constitution.

(2) Justice Powell's reasons for the second decision (taking race into account) is totally at odds with the reasons given by the "minority four" and provides no support whatsoever for a liberal reading.

(3) A careful reading of his decision will reveal that it is both a point-by-point rebuttal of the Brennan interpretation (for the "minority four") and an uncompromising and explicit rejection of realignment.

To begin, Justice Powell reiterated that the law and previous Supreme Court decisions were directed toward overt instances of oppression: ". . . we have never approved preferential classifications in the absence of proven constitutional or statutory violations. . . ." Moreover, the overt instances of discrimination can only be against individuals. "We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals. . ."

Justice Powell then goes on to reject the hypothesis of covert oppression as unsubstantiated. Here he makes clear his differences with the "minority four" in words that come close to accusing them of distorting the constitution.

". . . I disagree with much that is said in their opinion.

"They would require as a justification for a program such as petitioner's, only two findings: (i) that there has been some form of discrimination against the preferred minority groups 'by society at large' . . . and (ii) that "there is reason to believe" that the disparate impact sought to be rectified by the program is the 'product' of such discrimination. . . .

"The breadth of this hypothesis is unprecedented in our constitutional system. The first step is easily taken. . . . The second step, however, involves a speculative leap: but for this discrimination by society at large, Bakke 'would have failed to qualify for admission' because Negro applicants . . . would have made better scores. Not one word in the record supports this conclusion."

On the basis of the foregoing, Justice Powell concludes that anything like realignment is constitutionally unacceptable.

". . . the plurality offers no standards for courts to use in applying such a presumption of causation to other racial or ethnic classifications. . . .

"There is no principled basis for deciding which groups would merit 'heightened judicial solicitude' and which would not. . . . This kind of variable sociological and political analysis necessary to produce such rankings simply does not lie within the judicial competence even if they otherwise were politically feasible and socially desirable."

Finally, Justice Powell stresses that we must not sacrifice principle to expediency. To drive home this point in the most dramatic fashion, he quotes back in ironic fashion the very words of Archibald Cox (of Watergate fame) and the attorney for the anti-Bakke camp:

"In expounding the Constitution, the Court's role is to discern 'principles sufficiently absolute to give them roots throughout the community and continuity over significant periods of time, and to lift them above the level of the pragmatic political judgments of a particular time and place.'"

One other element in his position is worth stressing: the meaning of the Court's decision for the bureaucracy. The University of California at Davis Medical School did not carefully formulate its quotas but rather uncritically accepted them from HEW and EEOC, and the latter are acting unconstitutionally in formulating such quotas.

". . . isolated segments of our vast governmental structures are not competent to make those decisions at least in the absence of legislative mandates and legislatively determined criteria."

In words reminiscent of the old Anglo-Saxon legal principle that people are innocent until proven guilty, Justice Powell dwells on the meaning of EEOC's favorite phrase, "good faith":

"In short, good faith would be presumed in the absence of a showing to the contrary in the manner permitted by our cases." [30]

BUREAUCRATIC REACTION

And what is the bureaucratic reaction to this stunning defeat?

U.S. Attorney General Griffin Bell: "This is the first time the Supreme Court has upheld affirmative action, and it has done it in about as strong a way as possible." [31]

HEW Secretary, Joseph Califano: ". . . strongly supports this nation's continuing effort to live up to its historic promise—to bring minorities and other disadvantaged groups into the mainstream of American Society through admissions policies that recognize the importance of diverse, integrated educational institutions." [32]

EEOC head Eleanor Holmes Norton: "My reading of the decision is that we are not compelled to do anything differently from the way we've done things in the past, and we are not going to." [33] The following was reported in the Los Angeles Times:

"Mrs. Norton said the EEOC had found 'several indications' in the opinion by Justice Lewis Powell 'that we may continue to set numerical targets' for the hiring of women and members of minorities. . . . 'virtually everything we do falls under the rubric of congressionally authorized actions,' which Justice Powell's opinion appeared to uphold." [34]

The Bakke decision represents a temporary setback for those liberals who seek realignment. One vote would have completely changed the course of America. The "minority four" of Justices Brennan, White, Blackmum, and Marshall explicitly accepted the concept of realignment. When one recalls, that Justices Burger, Powell, Rehnquist, and Stevens were appointed by Presidents Nixon and Ford, all since 1969, it is easy to imagine that had Hubert Humphrey won election in 1968, the Court would have had a completely different complexion. There is yet hope for the future. After all, *Brown* v. *Board of Education* in 1954 reversed *Plessy* v. *Ferguson* (1896). A future court may reverse Bakke.[35] In the meantime, at the bureaucracies it is business as usual.

The amount of behind the scenes political pressure that was exerted on members of the Supreme Court in order to salvage some symbolic vestige of affirmative action in the Weber case came close to exceeding the traditional norms of propriety. Some would say that the pressure *did* exceed the bounds and was a kind of affront to the dignity of the Court. Some hint of this outrage is gained by reading Rehnquist's eloquent dissent, a dissent in direct line with the famous dissents of the Holmes & Brandeis tradition. It establishes beyond the shadow of a reasonable doubt that Justice Brennan and his concurring brothers have not a legal leg to stand on. Justice Rehnquist rightly ridiculed the pretext that Title VII does not require preference but permits it; and then went on to denounce this verbiage as more appropriate to Orwell's description of *1984* than to a Supreme Court decision.

How then do we explain or understand the decision? Justices Powell and Stevens withdrew from the case, and Justice Potter Stewart joined the "minority four." The wording of the decision was careful enough to avoid compromising Justice Stewart's position on Bakke. The Weber case did not deal with new jobs; the agreement was temporary; there was no commitment to maintaining racial balance; and no decision on defining what is permissible affirmative action. The original 5-4 split in the Court has resurfaced in the 1980 decision that faculty at private universities are not employees, but part of management. Finally, it occurs to me that Justice Burger is correct in suggesting that this issue could be best handled by the legislature, but enough has been said here to indicate why that will not happen.

What is important about Brian Weber is that he is a tragic, if ironic, casualty of problems indigenous to unionism. Under pressure from their own liberal attorneys, the union accepted the arrangement. As is typical of most unions, it operates with seniority, not merit, and enshrines the principle that the least productive worker is the common denominator. Under these circumstances it is difficult to make the case that it really matters who gets to this force, and too many academicians value peer review enough to blow the whistle on affirmative action. It is regrettable that blue-collar workers have no spokesman for the dignity of their skills.

FOOTNOTES

[1] This paper was written during my tenure as a national fellow of the Hoover Institution at Stanford University. I owe special thanks

to Sidney Hook, Jack Bunzel, Paul Seabury, and Miro Todorovich.

[2] Namely, the belief that oppressed peoples are victims of circumstances beyond their control, and this dictates that government must intervene to liberate them.

[3] Humphrey (110 *Cong. Rec.* 12723).

[4] Williams (*ibid.*, 1433).

[5] Clark and Case (*ibid.*, 7213, 7218).

[6] The very first use of the phrase "affirmative action" goes back to the Labor Relations Act of 1935. It required employers who had engaged in anti-union acts of intimidation to notify employees that those acts were illegal and discontinued. The first relevant executive order, No. 8802, was issued in 1941 by F. D. Roosevelt, ordering an end to discrimination in defense industries. In 1961, President Kennedy issued executive order No. 10925, prohibiting job discrimination among contractors doing business with the Federal Government. In that order he used the expression "affirmative steps" to direct contractors to actively recruit and encourage minority participation.

[7] Order No. 4 (Title 41, *C.F.R.*, 60-1.40).

[8] Underutilization (41, *C.F.R.*, 60-2.11).

[9] U.S. Commission on Civil Rights, *Statement on Affirmative Action*, Oct. 1977. Clearinghouse Publication 54. This document reflects the consensus among several departments, most notably EEOC and the Office for Civil Rights, U.S. Department of Health, Education, and Welfare.

[10] *Ibid.*, pp. 1–2.

[11] *Ibid.*, p. 12.

[12] *Ibid.*, p. 2.

[13] *Ibid.*, pp. 7–8. This is a quote from *Rios* v. *Steamfitters Local 608*, 501 F.2d at 631–32.

[14] Celler (110 *Cong. Rec.* 1518).

Two subsequent attempts were made in Congress to clip the wings of bureaucratic abuse. In 1976, the House passed an amendment to an education bill which specifically prohibited the HEW secretary from requiring "the imposition of quotas, goals, or any other numerical requirements on the student admission practice of an institution of higher education . . . receiving Federal funds." The Senate balked but went along with a compromise measure specifically addressed to the benign torture of holding up money.

In 1977, the House tried an even stronger provision but the Senate rejected it altogether. Congress has two houses, one of which (The House) is opposed to realignment, and one of which (The Senate) condones it. It is no coincidence that the more democratically representative House is opposed, while the less democratically representative Senate is in favor or at least not opposed. The moral of this story is that it is easier to make a law than it is either to unmake it or prevent its abuse. (123 *Cong. Rec.*, 6106).

[15] *Statement on Affirmative Action*, p. 2.

[16] In the first chapter of *Affirmative Discrimination*, Nathan Glazer discusses the problem of liberal disagreement over the "direction" of legislative history.

[17] *Statement on Affirmative Action*, p. 1.

[18] Thomas Hobbes introduced the idea that life is a race. This is the origin of liberal teleology. President Johnson's "Shackled Runner" speech (1965) expressed the notion that social engineering can restore each runner to the place he would have had, absent external constraint. This is what is meant by *realignment*. When running for the presidency in 1968 Humphrey also came out for "equal results" and "taking race into account."

[19] Quoted from Times, (July 10, 1978), p. 25.

[20] *Statement on Affirmative Action*, p. 5.

[21] *Ibid.*, p. 11.

[22] *Ibid.*, p. 5.

[23] *Ibid.*, p. 6.

[24] Burger, *Swann* 402 U.S. 1 (1971), p. 16.

[25] *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

[26] *Statement on Affirmative Action*, p. 8.

[27] *Ibid.*, p. 10.

[28] *International Brotherhood of Teamsters* v. *United States*, 97 S.Ct. 1843, 1856–57 (1977).

[29] *Statement on Affirmative Action*, pp. 2, 8.

[30] Powell, *New York Law Journal*, Thursday, June 19, 1978, pp. 21–26.

[31] *Time, op. cit.*, p. 23.

[32] *Ibid.*

[33] *Ibid.*, p. 24.

[34] *Los Angeles Times*, July 6, 1978.

[35] The Weber case does not constitute a reversal of Bakke. It does not in any way permit EEOC to impose quotas and it does not legitimate realignment. Technically, the case concerns the voluntary self-imposition of quotas by private business and unions.

Having said that much, I must agree with Justice Rehnquist's opinion that even that voluntary policy is inconsistent with Title VII.

Mr. HATCH. Mr. President, Prof. William Van Alstyne, professor of law at Duke University, recently published in the University of Chicago Law Review (vol. 46, p. 775) a commentary on the Supreme Court's long history of vacillation on racial issues. He described its progress through two "rites of passage," first condoning and then subsequently condemning race-conscious legislation. Now, he said, again writing before the Fullilove decision, it is apparently beginning a third transition, to a race consciousness benefiting powerful minorities. Professor Van Alstyne is a lawyer of the first distinction who was once an attorney concerned with civil rights in the Justice Department. He has been involved with the American Civil Liberties Union for many years, and has served on its national board of directors. His testimony that current affirmative action activity is an inversion of the philosophy of the civil rights movement is thus doubly valuable.

I ask unanimous consent that his article, "Rites of Passage," be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

RITES OF PASSAGE: RACE, THE SUPREME COURT, AND THE CONSTITUTION

(By William Van Alstyne†)

From 1619[1] to 1979, the regulation and allocation of rights according to race has been among the most troubling uses of government in the United States. Entrenched in the Constitution of 1787[2] and sustained by the Supreme Court in 1857,[3] the original uses of race proved to be nationally intolerable and were overthrown by the Civil War. The enormous alterations resulting from that War were partly memorialized in three amendments to the Constitution, between 1866 and 1870. These effectively overrode the still extant provisions from the "accommodations" of 1787. They also provided the new text, which, from that time to this time, has fixed the ground of controversy respecting regulation by race. They are, of course, the thirteenth, fourteenth, and fifteenth amendments.

The first of these amendments prohibits all forms of involuntary servitude and allows Congress an ample power to police that ban through federal law.[4] The fourteenth amendment is far more lengthy than the thirteenth, but in its most essential parts it establishes a constitutional definition of citizenship and forbids the states to abridge the incidents of national citizenship. It also forbids the states to deny equal protection to any person or to deprive any person of life, liberty, or property "without due process of law," and it vests in Congress an ample power to enforce these protections.[5] The last—the fifteenth amendment—is more limited: it more explicitly protects the right to vote from abridgement "on account of race, color, or previous condition of servitude," again concluding with a section vesting in Congress ample power to vindicate that protection.[6] The extent to which these three amendments enacted a color-blind restriction on the recurring temptation of government to regulate or allocate by race, however, was a question plainly not settled between 1866 and 1870. It remains unsettled even now.

At one level, the sheer stamina of the question, despite the passage of a century's opportunity for its resolution, is not surprising. The texts of these amendments are sufficiently unspecific that, even in the aggregate, with their obvious connections with one another and with the Civil War, they compel no single answer. Similarly, the welter of accompanying legislative history is amenable to more than one reasonable perspective. That people should disagree, and that mutually earnest scholars do disagree, is, therefore, rather to be expected even at this very late date.[7] The materials of enlightened constitutional interpretation permit us, I think, to treat the Constitution as repudiating the propriety of regulating people by race or allocating among people by race, but they do not compel that conclusion. It is oddly a matter of what we might wish to make of it. It has always been this way.

What is less explicable, at least to nonlawyers, is that after a century of periodic judicial review there is still no formal resolution of the question. And this seems very odd. Laws regulating on the basis of race were in existence before the Civil War amendments were adopted; many were judicially examined in litigation prompted by the passage of these amendments. Other laws regulating on the basis of race were enacted after ratification of all three amendments, and still others are tenaciously put forward today; many of these have similarly been tested in the Supreme Court.[8] One would surely suppose that, for judicial purposes at least, so old and so obvious an issue would long ago have been settled to provide us with some steady impression of the extent to which government may regulate or allocate by race. But it is not so.

Rather, the Supreme Court has itself gone through two quite distinct rites of passage. Now—in the "minority contractors" case,[9] before the Court this fall—it is considering still another. And what many had misled themselves into supposing had been the clear, best resolution of this matter during the last generation, is on the edge of turning over once again.

In the past, the consequences of admitting race-based laws as a proper constitutional foundation for regulating and allocating have been overwhelmingly dismal. Race-based laws have so generally tended to yield by-products and side effects so vastly more divisive and wretched than the benefits that were supposed to be forthcoming, moreover, that a Court originally not predisposed to veto racial experiments subsequently reversed itself—despite the popular anger and resentment that were certain to follow. Now, however, having virtually captured the public morality after twenty-five years of leadership on this question, the Supreme Court is being importuned to let loose of it once again.

On the confident assurance that there are still important uses for race-based laws in the more perfect ordering of this society, the Court is invited into yet another rite of passage. The suggestion, which is not new but

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which was always a feature of even the oldest race-based laws, is that it is not the regulating or allocating by race that is wrong or too risky per se; it is, rather, who is thus regulated, what is thus allocated, what motivates the arrangement, and what time frame should be followed.

My own view of the matter is that the Court is being asked to permit not racial rectification (in reviving the licitness of race as an explicit device of government) but racial repetition.[10] I think it likely, moreover, that if the Court yields once again to the Lorelei, racism, racial spoils systems, racial competition, and racial odium will be fixtures of government in the United States even into the twenty-first century. My reasons for feeling this way are not original. Generally, moreover, they are not shared by the majority of constitutional law professors who have written on this subject.[11] Even so, the sense of anxiety that what is now adrift before the Supreme Court deserves some added thought before it passes into history provides the occasion for these notes.

I. EARLIER RITES OF PASSAGE

"The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."

ALEXANDER M. BICKEL.[12]

This has been the lesson of "the great decisions" and of contemporary history. It is not the "holding" of a particular case; it is, as Alexander Bickel said, the lesson of the great decisions, a lesson it required nearly eighty years of temporizing for the Supreme Court itself to absorb.

A. The original interpretation

The first passage for the Court came with the immediate adjudication of race-related cases on the heels of the Civil War amendments. With the exception of a few notable cases striking down the most egregious race regulations,[13] the Supreme Court adopted a wholly tolerant and deferential rendering of all three amendments, imputing to them only the most modest consequences.[14] Federal statutes flatly forbidding racial discrimination by commercial enterprises were held to be excessive, as acts of an unwarranted colorblind zeal. The thirteenth amendment would not sustain them, because mere commercial refusals to deal with people on racial grounds were regarded by the Court as too far removed from involuntary servitude. The fourteenth amendment provided no basis for such legislation, moreover, because that amendment reached only the government's own denials of equal protection, not those of private, commercial parties. The fifteenth amendment was not useful, of course, as it dealt solely with voting. The cases so disposing of this matter, decided by the Supreme Court in 1883, were ironically entitled *The Civil Rights Cases*.[15]

When regulation by race was the government's own, rather than the practice of private parties, the Court's decisions were nearly as tolerant of legislative discretion as they had been of commercial discrimination in *The Civil Rights Cases*. Allocation by race was not per se forbidden by the Constitution, the Court held, as the consideration of race might be thought by many reasonable persons as sometimes germane to a variety of important social concerns. Thus, the question was not whether political bodies regulated on the basis of race; it was the different question whether the particular regulation by race was constitutionally "reasonable."

The Court's view—that the laws would be sustained if "reasonable"—genuflected to the wisdom of legislative bodies to sort out good from bad uses of race; the Court quite readily acquiesced in disclaimers that the fourteenth amendment meant no across-the-board foreclosure of such experiments. Regulation by race was not condemnable or censurable as such; only unfair, one-sided, or unevenhanded race regulation or allocation was forbidden. If individuals could be equally protected, albeit racially regulated, then nothing in the command or ethos of the fourteenth amendment was deemed to deny the use of racial classification to the body of American politics.

This view of the matter steadily developed between 1873 and the twilight of the 19th century. It was cemented in 1896 in the "separate-but-equal" decision of *Plessy* v. *Ferguson*.[16] The decision upheld a state law requiring separate passenger cars for white and for black riders:[17] neither was worse off than the other in the quality of accommodations to be furnished to each; neither was more or less protected than the other (rather, each was equally protected) by the racial regulation a legislative body deemed reasonable in the public interest.

There was but one dissent that took a less measured view and would have imposed upon the fourteenth amendment a more categorical imperative. Less flexible than others on the Supreme Court at the time, Justice Harlan was prepared to read into the Civil War amendments what was, to be sure, neither explicitly provided by their terms nor compelled by their compromised legislative history. Proceeding from a more basic premise than that either of these considerations necessarily controlled the matter, Harlan put his finger on the lessons of his own contemporary history. Prior to the Civil War amendments, race was the basis on which status had been determined, worth assigned, entitlements settled, and legal rights measured. It had been iniquitous from the very beginning, and it subsequently proved to be a disaster for the entire country. He believed the enactment of the Civil War amendments should therefore be construed by the Court as altogether disallowing it. Government could not determine worth, assign entitlements, or measure legal rights by race *at all*:

> The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. . . .
>
> . . . The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. . . .
>
> The sure guarantee of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, National and State, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States *without regard* to race.[18]

The point of emphasis here is fundamental. It is not that when race is used, all persons identified to each race must be as well regarded as all persons identified to some other race.[19] The thing condemned is not that members of each race must be "equally" protected under laws distinguishing them by their race, nor that they are assigned entitlements unequally on the basis of race. The thing condemned, rather, is the assignment of entitlements by race. It is the impropriety of the *basis* of assignment, not the modicum thus assigned, that constitutes the government's offense:

> These notable additions to the fundamental law [the thirteenth, fourteenth, and fifteenth amendments] were welcomed by the friends of liberty throughout the world. *They removed the race line from our governmental systems.*[20]

The Harlan opinion passed into history at the time, an artifact of mere dissent, discredited by the dominant view that the fourteenth amendment had not withdrawn from legislative bodies a political license to regulate by race. The outcome of the case was taken quite seriously, moreover, as legislatures enacted an ever-enlarging sprawl of race-based laws.[21] Indeed, a half-century later, the dominant legislative response to *Brown* v. *Board of Education*[22] was one of fury, precisely on this account. For however the Court might phrase the apologetics of that decision,[23] the message as it appeared from the outside was that what was not previously understood to be unconstitutional was now accused of being unconstitutional after all: the use of race to allocate—albeit equally—those facilities deemed most appropriate for persons of that race.

B. The second rite of passage

In the swift consecutive series of per curiam decisions issued by the Supreme Court during the two years following *Brown*, the Court made no further use whatever—indeed, it made no inquiry—as to whether the particular race regulation disadvantaged some more than others. Neither did it ask whether the law stigmatized some more than others, or whether the law was enacted by whites and opposed by blacks, enacted by consent of some of each and opposed by many of each, or whatever.[24] Rather, that line of per curiam decisions appeared more completely to enact Harlan's view that the Civil War amendments altogether "removed the race line from our governmental systems."

Between 1955 and 1976, moreover, virtually every other race-related decision by the Supreme Court appeared to convey this same message. To the reasonably discerning, this appeared true even in instances involving highly controversial judicial decrees that paired racially identifiable schools, redrafted attendance lines, or mandated busing. In each instance, the fulcrum of judicial leverage was an *existing governmental* race line, which the particular judicial order sought to remove.[25] The object was thus to dis-establish particular, existing uses of race, not to establish new ones. Indeed, decrees that would subsequently presume to require race-conscious decisions for any other purpose, for example, to maintain "proportions" or "balances" by race designation, were swiftly reversed.[26]

This second rite of passage was accompanied by consistent developments in the 1960s in the Supreme Court and then, encouragingly, in Congress and the Executive Branch as well. For the Court's part, long dormant Reconstruction statutes were revived and given a reinvigorated and uniformly race-blind application. An early Act of Congress had provided that all citizens shall have "the same" right as white citizens to acquire and to hold real and personal property.[27] It was applied to disallow race-based refusals to deal in real estate, even in the private sector.[28] A Related Reconstruction Act provided that all persons shall have the same right as white citizens to make contracts.[29] It was similarly read to disallow race-based refusals to contract.[30] In 1976, when a commercial employer treated an employee worse than another because of his race (this time the less favored employee was white and the more favored black), the Court held to the same view: "[T]he Act was meant, by its broad terms, to proscribe discrimination in the making or enforcement of contracts against, or in favor of, *any race*."[31]

Similarly, in adopting the omnibus Civil Rights Act of 1964, Congress appeared to regard the matter likewise: the race line was to be removed altogether. Title VI of that Act, applicable to all programs receiving federal financial assistance, states: "*No* person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under

Footnotes at end of article.

any program or activity receiving Federal financial assistance." [32] And Title VII, applicable to all large scale employers, provides:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge *any* individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . .[33]

Addressing the meaning of this provision in 1971, in the first case to come before it for review, the Court, in a unanimous opinion by Chief Justice Burger, said that "[d]iscriminatory preference for *any* group, minority or majority, is precisely and only what Congress has proscribed." [34]

Conformably, the Executive Branch of the national government appeared to understand matters in the same fashion. For in cutting and revising an Executive Order that regulated enterprises doing business with the federal government, the President framed the Order itself precisely and exclusively in terms of strict nondiscrimination. Federal contractors were advised to review their practices to determine whether, if even by neglect, racial discrimination figured in their businesses; if it did, the contractors would have to take affirmative action—*to eliminate* that racial discrimination and to insure that *no* racial favoritism was built into their operations. Thus, the revised Executive Order required the insertion of the following provision in most government contracts:

The contractor will not discriminate against *any* employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment *without regard to their race*, color, religion, sex or national origin.[35]

In light of these several developments, it should have come as no surprise that in 1974, in the first case that came before the Supreme Court involving race lines deliberately drawn to place a racial disadvantage on white applicants—drawn out of fear that if no such disadvantage was imposed upon them, then fewer non-white individuals might be admitted than the faculty of a state university preferred to have—the one Justice of the Supreme Court who addressed the merits of the case said this:

A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. . . .

* * * * *

. . . The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. . . .

. . . So far as race is concerned, *any* state-sponsored preference to one race over another . . . is in my view "invidious" and violative of the Equal Protection Clause.[36] Justice Douglas then directly addressed the law school's contention that the race-preferential admission of some students would be a salutary way of producing a larger complement of such racially identifiable professionals more likely to practice in racially identifiable communities; he rejected the propriety of the very idea underlying that contention: "The purpose of the University of Washington cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. . . . That is the point at the heart of all our school desegregation cases." [37] And neither was Justice Douglas persuaded that the deliberate selection of students by race, to produce a given cohort of racially identified students known to have been admitted with less excellent qualifications than the balance of the students, was by any means the gesture of generosity it purported to be. A segregated admissions process that seeks certain minimum proportions of racial cohorts, he said, "creates suggestions of stigma and caste no less than a segregated classroom, and in the end it may produce that result despite its contrary intentions." [38]

The refusal to permit rationing of opportunity according to the fortuity of racial proportion was not a novelty invented by Justice Douglas. In 1949, the Supreme Court had reviewed a case arising in California where public policy had already forbidden racial discrimination in private employment.[39] A racial group nonetheless brought economic pressure to bear upon an employer to disregard that policy and to hire employees "not on fitness for the work nor on an equal right of all, regardless of race, to compete in an open market, but, rather, on membership in a particular race." [40] The state supreme court granted an injunction to forbid picketing meant to induce racial hiring in proportion to the racial identification of customers. The court had observed: "If petitioners were upheld in their demand then other races, white, yellow, brown and red, would have equal rights to demand discriminatory hiring on a racial basis." [41] But the state supreme court said "it was just such a situation—an arbitrary discrimination upon the basis of race and color alone, rather than a choice based solely upon individual qualification for the work to be done—which we condemned" [42] in disallowing racial discrimination by employers in the first place. The Supreme Court unanimously affirmed the state court decision.[43]

Even when the sole use of race by government was to suggest that race is at least an important political datum—the government itself not presuming to say of what kind of significance—the Supreme Court disallowed the mere encouragement to be "race conscious." A case that expresses that view as well as any other case was *Anderson* v. *Martin*,[44] decided succinctly and unanimously in 1964.[45] The case involved a state statute that facilitated voter information respecting the racial identification of each candidate for local public office—by designating each candidate's race on each ballot accurately and truthfully. Voters who might think that datum germane (as a white person to vote white, a black to vote black, a white to vote black, a black to vote white—as each might see a different, but steadfast significance in the idea) could hardly be kept from using it even in the absence of such specific ballot information. As the ballot designation by state law was nonetheless thought objectionable, it could not have been because any candidate was exempt from it, since all were equally subject to it. It must have been, rather, that each was being *individually* disadvantaged insofar as the state thought it appropriate to encourage voters to attribute at least *some* significance to every candidate's race—and that the morality of the Civil War amendments was opposed to the very idea of such encouragement. And this, indeed, was the foundation of the decision in *Anderson* v. *Martin*: not that a black candidate in particular might be victimized insofar as the state's "truth in candidacy" statute would gratuitously stimulate white bloc votes, but that the state could not thus encourage such racial disadvantaging of *anyone*, white or black.

[B]y placing a racial label on a candidate at the most crucial stage in the electoral process—the instant before the vote is cast—the State furnishes a vehicle by which racial prejudice may be so aroused as to operate against one group because of race and for another. This is true because by directing the citizen's attention to the single consideration of race or color, the State indicates that a candidate's race or color is an important—perhaps paramount—consideration in the citizen's choice, which may decisively influence the citizen to cast his ballot along racial lines. Hence in a State or voting district where Negroes predominate, that race is likely to be favored by a racial designation on the ballot, while in those communities where other races are in the majority, they may be preferred. The vice lies not in the resulting injury but in the placing of the power of the State behind a racial classification that induces racial prejudice at the polls.

. . . We see *no relevance* in the State's pointing up the race of the candidate as bearing upon his qualification for office.[46]

Race has "no relevance"? That could not have been the Court's literal understanding, as the Court knew that vast numbers of people regarded the race of political candidates as being not merely "relevant" but conclusive. Rather, its meaning was that race has "no proper relevance" for the state. The connection with the original Harlan dissent in *Plessy* v. *Ferguson* seems self-evident: "[T]he Constitution of the United States," he had declared, "does not, I think, permit *any* public authority to *know* the race of those entitled to be protected in the enjoyment [of civil rights, common to all citizens]." [47] The state may neither use race in its own business nor may it encourage others to take it into account. Both are equally divisive and equally wrong.

Following almost at once on *Anderson* v. *Martin*, moreover, the Supreme Court had cemented its judgment that the fourteenth amendment foreclosed government from encouraging—much less compelling—individuals to treat some better than they treated others because of their race. It did so in *Reitman* v. *Mulkey*.[48] In that case, the court struck down a provision in a state constitution establishing the absolute right of each property owner to sell or lease his property as he might personally, "in his own absolute discretion," [49] choose. As thus enshrined in the California constitution, the personal right to consider the race of others was equally as available to a developer preferentially selling or leasing to blacks as to a developer preferentially selling or leasing to whites. It was equally available as well to one desiring to use race to develop and to maintain an integrated racial balance in a given group of apartments. It was also available to black owners who wished not to deal with whites at all but who were resolved to reserve disposition of their property for persons of other races whom they might think to be more deserving—as it was available for every other imaginable permutation of racial dealing. But the strict indifference of the state constitutional privilege—its perfect governmental "neutrality" toward all racially predisposed private landowners—failed to save it under the fourteenth amendment. Rather, the California and United States Supreme Courts both held it to be a constitutional wrong for a state to encourage persons to act on racial grounds at all:

The right to discriminate is now one of the basic policies of the State. The California Supreme Court believes that the section [of the state constitution guaranteeing that right] will significantly encourage and involve the State in private discriminations. We have been presented with no persuasive considerations indicating that these judgments should be overturned.[50]

In this twenty-year pattern of development, from 1954 to 1974, the Supreme Court's unambiguous "lesson" thus seemed to be that race was indeed constitutionally withdrawn from the incorrigible temptations of governmental use. The commitment was sufficiently strong, moreover, that the Court departed from its usual practice and struck

Footnotes at end of article.

down even surreptitious attempts by government to regulate or to allocate by race—though of course only when it was within the capacity of the judiciary to detect the matter.[51] The resolve to do so, despite the obvious difficulties, was a very old one. Even prior to *Plessy* v. *Ferguson*, furtive efforts by government to employ race impermissibly had been overturned by the Supreme Court.[52] The Court had readily recognized that any "irrebuttable presumption" of legislative good faith in these matters would be a disaster: the proclivity for race favoritism is so persistent that, unless the Court examined outside evidence that that proclivity did in fact account for the government's actions, the government would be encouraged to pursue its racial preferences in simple disguise. Thus, the Civil War amendments were held to nullify "sophisticated as well as simple-minded modes of discrimination." [53] As a consequence, if the metes and bounds of a municipal boundary were modified to enact the legislature's racial preferences, they would not stand.[54] And if ostensibly appropriate government employment standards could be shown to have been adopted because their application across-the-board would screen out larger numbers of racially identifiable persons than the law-makers desired to have from that race in their work force, the employment standard would be expunged.[55]

Thus the lesson of the great decisions is, as Bickel said, not merely that regulation and allocation by race are wrong. Rather, the message is commendably even stronger. Laws that divide and index people to measure their civil rights by race are unconstitutional. Laws that encourage others to do so are similarly invalid. And laws attempting to advance either policy even in disguise will likewise be struck down whenever it is within the capacity of conscientious courts to see beneath their cellophane wrappers.[56]

II. OF TELEOLOGY AND DEONTOLOGY IN CONSTITUTIONAL LAW: FLIMFLAMMING THE SUPREME COURT

"Now this is to be unlearned and we are told that this is not a matter of fundamental principle but only a matter of whose ox is gored. Those for whom racial equality was demanded are to be more equal than others. Having found support in the Constitution for equality, they now claim support for inequality under the same Constitution."

Alexander M. Bickel.[57]

"If discrimination based on race is constitutionally permissible when those who hold the reins can come up with "compelling" reasons to justify it, then constitutional guarantees acquire an accordionlike quality."

Justice William O. Douglas.[58]

"It seems trite but necessary to say that . . . our Constitution was designed to avoid these ends by avoiding these beginnings."

Justice Robert H. Jackson.[59]

At the time of *Plessy* v. *Ferguson*, the question before the Supreme Court in school segregation cases was whether state statutes requiring racially separate schools were constitutionally impermissible. For Justice Harlan, as we have seen, the question was easily answered. He insisted that the Civil War amendment had removed the race line as a basis of governmental action, and as the arrangement at issue—segregation—indubitably rested on the race line, it *was* constitutionally condemned. For the other Justices, however, as we have also seen, the question was by no means as readily answered. They did not suppose that the Civil War amendments had removed the race line as a predicate for governmental regulation or allocation; they asked, rather, whether the particular use of the race line was "reasonable." And, as we know, they concluded that it was.

Others, troubled by the frequency with which race lines were used deleteriously, have thought that the proper perspective is somewhere in between.[60] They could construe the Civil War amendments as evincing at least a rebuttable constitutional skepticism about the use of racial classifications. Thus, it has been suggested that the appropriate judicial attitude is one similar to that assumed with respect to prior restraints on speech: [61] laws utilizing the race line should be subject to a rebuttable presumption of unconstitutionality and nothing less than a compelling, or at least a very substantial, articulated public purpose should suffice to sustain them.[62] Despite Alexander Bickel's own notions respecting the lesson of the "great decisions," most who work with this subject think that, in fact, this is a more accurate description of the Supreme Court's current position.[63]

Suppose, however, we were to assume that this very formulation had itself been established and popularized prior to the date of *Plessy* v. *Ferguson*.[64] In that event, given the formulation of the question presented above, what would the Court's decision have been in our hypothetical *Plessy* v. *Ferguson* school case? Two approaches are possible. The first would interpret the Civil War amendments as requiring that laws using race lines not only be well connected to substantial (or even "compelling") public purposes, but that such purposes themselves be "articulated" on the face of the law in question.[65] Unless the legislature providing for racially separate schools declared such a purpose, then, the law must, a fortiori, be held invalid. But if, on the other hand, an articulated purpose is not required, then we are not yet in a position to determine whether the law using a race line overcomes the rebuttable presumption of unconstitutionality. Assuming that such a law must indeed be well connected to some very substantial public purpose, albeit the purpose need not be stated on the face of the law, it remains to be seen whether those called upon to explain the law will carry their burden of justification in court. If, but only if, the particular race line can be shown by them to be well connected with a very substantial public purpose is it to be sustained.

Under either view—that the law must on its face articulate the compelling public good it serves, or that those with the burden of justifying it must demonstrate its well-fitted connection with such an imperative public good—we may suspect that we already know the outcome of *Plessy* v. *Ferguson*: namely, that the law will most certainly be held invalid. But this conclusion may be incorrect; we must have supposed that no compelling public good *can* be well connected with such a law. Alternatively, we must have supposed that even if such a public purpose could (as an exercise in theory or imagination) be so connected, nevertheless it was not *in fact* connected with *that* law. Neither is necessarily correct. To act categorically on such suppositions is not to abide by the constitutional standard hypothetically formulated and popularized. Rather, it is to act on a fiat, per se rule, albeit of a rather limited kind, that "no law requiring racially separate schools is constitutional." But this, of course, our more sensitive, less dogmatic, and more judicious standard of constitutional review forbids—although, in fact, it is exactly what the Supreme Court did in virtually all of the post-*Brown* per curiam decisions invalidating "separate-but-equal" laws. Our commitment to the flexible standard requires that we consider the matter further.

If the standard required that a very substantial public purpose appear on the face of the law itself, we concluded in the first instance that this law would have failed because the statute in question contained no such recitation. Yet, if that standard of judicial review were already well established and popularized at the time, we may expect that legislatures, advised of it, would explicitly state their purpose. Suppose, then, that this had been done. Is the law now constitutional, or is it unconstitutional? The question cannot be answered, of course, until we turn to see what the legislature said.

Suppose, then, that the statute had required racially separated schools and had further provided that this requirement was enacted "in order to perpetuate white supremacy and to degrade black people"—the purpose many declare was, in fact, at the root of all such laws.[66] In that event, of course the law will fail. Indeed, the Justices in the majority in *Plessy* v. *Ferguson* declared that had such a purpose been established in that case, that law too would have failed: "every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion for the public good, *and not for the annoyance or oppression* of a particular class." [67] And they rejected the attack on the law in question as being insufficient because it rested on "the *assumption* that the enforced separation of the two races stamps the colored race with a badge of inferiority," rather than in proof that such a stigma was intended.[68]

But given the established and popularized constitutional "standard" such legislation must meet—a well-connected substantial public good articulated on the face of the law—it is unrealistic to suppose that the legislature enacting this law would have so declared itself, regardless of its actual motives. At least it is safe to suppose that no other legislature, observing the fate of this legislature's bill, would repeat the original error. Suppose, then, the face of the law articulated the very different purpose that fully equal but racially separated schools were to be established "in order to assure a historically disadvantaged racial minority an equal opportunity to develop educational curricula and programs more responsive to their needs, free from domination in schools in which their children might otherwise be overwhelmed by a racial majority." The "public good" is surely impressive, the expression of social contrition is moving, and the linkage between the compelling purpose of this law and the means chosen to advance it seems suitably tight. Is the law now to be upheld? Presumably it is, unless one suspects that the recitation is a fraud—that the recitation is for the benefit of anchoring its constitutionality, while the law is actually meant to perpetuate white supremacy.

One may suppose that if there is fraud here, it will easily be penetrated. But that assumption is remarkably cavalier. The Supreme Court has utilized "purpose" as one prop in its "test" in its administration of the religious establishment clause of the first amendment [69]—and since the inauguration of that test virtually *no* law has been held invalid for failure to meet the "purpose" part of the Court's own chosen test.[70] Even when few have doubted that the legislation in question was the product of sectarian self-interest, which the reigning "test" declares to be an improper purpose under the first amendment, recitations emphasizing other effects—"permitted" effects—have been taken as virtually conclusive in meeting the ostensible constitutional command that such laws have secular objectives as well as primary nonreligious effects. There is no reason to expect a different result here.

In the previous section of this article, we noted that under the constitutional standard that seems to have emerged during the past quarter century,[71] a law will not be sustained under any of the following three circumstances:

(a) if it overtly utilizes race as an index for determining civil rights;

(b) if it expressly encourages others to do so; or

Footnotes at end of article.

(c) if it tends to produce either of these effects and if the expectation of that tendency can be shown to account for the law's enactment even when the law, on its face, says nothing whatever about race.

This judicial resolve to remove the race line from our public life has been the most credible and admirable position for the Court steadfastly to maintain, so far as we are under a Constitution and so far as that Constitution is what the judges say it is. But under the more flexible "test"—which allows allocation by race when certain criteria are met—to strike down a statute it is not enough to show that the law itself explicitly treats the rights of one person differently from those of any other by making race itself a sufficient reason for that difference. Rather, one must also "decide," even in every case arising in each of the above categories two additional matters:

(1) what kinds of public purposes are sufficiently compelling to justify explicitly treating some people less well than others on racial grounds; and

(2) who is to say (and on what basis) that a law, which on its face is nominally very well connected with a sufficient public purpose so as to make its purposive racial discrimination "justifiable" under (1), was indeed enacted solely to promote that objective *rather than to enact some baser interest with which it is equally well connected?*

This is not, I think, a constitutional standard at all. It is, rather, a sieve—a sieve that encourages renewed race-based laws, racial discrimination, racial competition, racial spoils systems, and mere judicial sport. It is *Plessy* v. *Ferguson* all over again, in new and modish dress. In the revised *Plessy* case we have just been considering—facially rationalizing racially segregated schools for contrite, moral, and "minority-favoring" purposes—we have not yet noticed anything about the geographic, demographic, or political context in which the law appeared. Are such considerations germane, or are they to be ignored? Most plainly they must be treated as highly germane,[72] for otherwise our "test" becomes a farce and some atrocious uses of of the race line will be sustained by our courts—as I suppose we would agree would be the case if the school segregation statute, with its pious accompanying recitation, were the product of an all-white southern state legislature *circa* 1900. But as a different possibility, suppose that the law were not one from a state legislature at all, but rather one promulgated by a city Board of Education—in a predominantly black school district with a majority of the school board members themselves black? Is this, too, to make some difference? What difference shall it be?[73]

If it could be shown that the purpose was not as declared, but was rather to "degrade" black people, the statute must fall. Suppose, however, that it was a product of some of *each* purpose, so that some members of the state legislature supported it in fact and in good faith on the very grounds recited in the law, while others were pleased to go along because they simply wanted to separate black children from white children. Or, suppose that the "purpose" was nothing more sublime than the preoccupation of each legislator to retain his own elected position by voting for *whatever* measure seems most pleasing to the largest or most influential bloc of his constituents, some of whom, both black and white, favor this law (albeit not necessarily for identical reasons), some of whom oppose it (albeit for differing reasons as well).

All of these questions will recur, of course, even if it is not constitutionally required that the "substantial" or "compelling" public interest allegedly served by such race-line laws be recited on the face of the laws themselves. Indeed, assuming no such additional requirement, we may expect such recitations to appear anyway, insofar as they may be regarded by the Court as prima facie evidence of the law's actual purpose.[74] All this, and much more, awaits the Supreme Court once it leaves the lesson of the "great decisions" of the past twenty years and, indeed, the lesson not just of "contemporary" history, but of our whole history.

I have used in this particular exercise of flimflamming the Supreme Court variations on *Plessy* v. *Ferguson*. It is not necessary, however, to be so wholly hypothetical. An actual example was well provided last year in *Regents of the University of California* v. *Bakke*.[75] The Regents' Supreme Court brief treated the case as though the use of race itself to establish separate and unequal admission standards at the Davis medical school were really not the issue. Rather, the issue was better to be seen as a revised, updated version of *Plessy* v. *Ferguson*: that it is not the use of race as a means of assigning students to different schools that is at issue, but the reason for making such assignments. Thus, the question as set forth in the Regents' brief in *Bakke* was framed in the following self-congratulating and self-validating fashion:

When only a small fraction of thousands of applicants can be admitted, does the Equal Protection Clause forbid a state university professional school from voluntarily seeking to counteract effects of generations of pervasive discrimination against discrete and insular minorities by establishing a limited special admissions program that increases opportunities for well-qualified members of such racial and ethnic minorities?[76]

There was no impropriety in this framing of the question given the fact that even long after *Plessy* and notwithstanding *Brown*, dicta in Supreme Court decisions continued to encourage racial discrimination by government—that which might overcome a merely rebuttable presumption of unconstitutionality by being well connected with "compelling" public purposes.[77] Indeed, the joint opinion by Justice Brennan (writing for himself and for Justices White, Marshall and Blackmun) fulfilled those dicta in its treatment of the *Bakke* case itself.

After acknowledging that the effect of the equal protection clause is at least to reverse the usual presumption of constitutionality in instances where government presumed to regulate or to allocate by race, that joint opinion then went forward to explain how such actions might nonetheless be sustained. First, "an important and articulated purpose for its use must be shown."[78] "In addition," the opinion continued, "any statute *must* be stricken that stigmatizes any group *or that singles out those least well represented in the political process to bear the brunt of a benign program*."[79] If both of these "standards" are met—as they were met according to these four Justices in *Bakke*—then even separate and unequal ways of treating people by race are wholly constitutional. Given this kind of invitation to "accentuate the positive" benefits of racial discrimination, the Regents' attorneys would have been professionally derelict not to have rushed right in.

Yet there are obvious difficulties with the revised proposed "test." If a 16% additional[80] racial set-aside can be provided because it "counteracts" effects of "discrimination" by increasing "opportunities" for "well-qualified members of such racial and ethnic minorities," there is no reason to think that the good to be accomplished is less impressive or that the connection with the plan would be less snug though the additional set-aside were 20%, 50%, 60%, or whatever; neither should it make any difference whether it were keyed to California population statistics, local population statistics, national population statistics, or world population statistics. If the ends are sufficient and the means well connected, moreover, surely it ought make no difference that the plan was adopted by a predominantly black city council—approving a self-favoring race-based additional set-aside for municipal employees—rather than adopted by a predominantly white medical faculty at a state university.[81] Insofar as the racial complexion of the government unit is seen as furnishing some probative evidence as to the "real" purpose of the plan, surely it would be objected that it is the worst sort of racism to suppose that a plan inaugurated by a predominantly black elected body is more suspect than an identical plan inaugurated by a predominantly white one. Indeed, as we have already seen, there is no reason in any case to suppose that whatever the "recited" purpose of the plan may be, that such purpose bears any necessary correspondence at all to the dominant political factors actually accounting for its adoption. The *Bakke* case is itself quite sufficient to display all of these difficulties, with no need to do much more than to notice the facts and match them against the "requirements" of the joint opinion's test pursuant to which separate and unequal standards are constitutionally approved for persons identified by race.

The plan involved in the *Bakke* case was approved by a predominantly white faculty. The "brunt" of the plan was borne by individuals like Allan Bakke—white applicants with reasonably good application portfolios, but not among the very best portfolios. White applicants with the very best portfolios would of course be unaffected by the plan, as the faculty perfectly well knew.[82] Were persons in Allan Bakke's position thus well represented in "the political process" that singled them out to bear the brunt of the program? Four Justices evidently believed they were, as their opinion says that that kind of representation *must* be present in order for such a plan to be upheld, even when the plan otherwise meets their proposed constitutional standards. But on what conceivable basis could such an assumption be made? Just because Bakke was white—as were the majority of the medical school faculty? But the majority of the medical school faculty were themselves *not* likely to have been "representatives" of the Allan Bakkes, that is, reasonably good, *but not among the best* medical school applicants. If we should assume anything about that faculty—as the four Justices acted wholly upon unexamined assumptions of political and sociological stereotypes—we might more safety assume that the faculty "represented" not persons in Bakke's position at all but only outstanding students persons who do especially well in academic life, who do equally well in medical school, and thus are sufficiently outstanding to have been granted academic appointments in a great university. We might also assume that their concerns are not likely to place them in natural empathy with an Allan Bakke in any other sense either—that their interest, in a highly civil rights sensitive university campus and atmosphere, is to be counted as being "racially sensitive" people.

Given these very troubling facts, those who bore the brunt of the Davis program were not only not *well* represented in the political process that singled them out for its burdens—they were, rather, among "those least well represented." Yet this, the opinion of the four Justices declared, would be sufficient reason, entirely by itself, to regard the plan as constitutionally defective. Still, they failed to do so.

The plain point of all this will not, one trusts, be mistaken as an attack on the Davis medical school faculty. The point, rather, is that even as applied by those members of the Court most beguiled by the Lorelei of "right" racial uses by government, their own proposed standards of judicial supervision are not applied[83] and, in any serious fashion, are manifestly incapable of any useful applications. These "standards" will, rather, quickly reduce themselves to empty recitations that serve only to put the Supreme Court's own endorsement on new racial systems—many of which will doubtless be the spoils systems of pure racial politics—inviting persons again to "think racially," to "vote racially," and to band together in racial blocs as much from necessity as from any choice of their own.

In brief, this is the "accordionlike quality" of a Constitution construed to permit racial discrimination "when those who hold the reins can come up with 'compelling' reasons to justify it," anticipated and rejected by Justice Douglas.[84] Most certainly there is no feasible way of forestalling such consequences under the porous "standard" now beckoning the Supreme Court to its third rite of passage. Rather, as Justice Jackson declared in another context, "[i]t seems trite but necessary to say that . . . our Constitution was designed to avoid these ends by avoiding these beginnings."[85] And the only secure way to do that is to abide by the "lesson of the great decisions of the Supreme Court and the lesson of contemporary history . . . discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."[86]

III. THE NEXT TERM OF COURT

When Alexander Bickel expressed his point, insisting on what he described as the lesson of the great decisions, it was a most uncharacteristic utterance. To be sure, Bickel had clerked on the Court during *Brown* v. *Board of Education* and had published an extremely compelling article in defense of that decision.[87] Yet, Alexander Bickel was far better known as a scholarly exponent of judicial restraint, an advocate of judicial conservatism. Not for him were there many "fundamental" truths that the Supreme Court should apply. Rather, "balancing" was the usual best course for the Court, and the Court ought not lightly overturn the action of a legislature.[88]

As this was so, a fair question is raised about Bickel's seeming inflexibility in the particular instance of explicitly racial laws. Quite plainly he did not think that to get "beyond" racism, it is useful or helpful first to undertake a new generation of racially discriminatory laws.[89] But apparently others believe that it is, and surely their beliefs are entitled to *some* weight. When their view is reflected in an act of government, moreover, ought it not be counted heavily in some "balance," deferred to unless manifestly irrational—or unless, though rational, somehow simply not relevant to the constitutionality of the practice? There is no obvious accounting for the exceptional rigor of Bickel's commitment to a firm, unwavering, single constitutional standard on this subject. There is, however, an obvious practical reason why the usual virtues of judicial conservatism could be extremely ill-served by anything other than a very consistent, very firm position that leaves nothing to further misunderstanding.

We have had three hundred years of national experience to notice that *whenever* race has been an admissible criterion of governmental action, its licitness left people in public office without shelter against the organized efforts of those who would demand that they have a duty to act on that licitness: that they carry the alleged "merits" of race into appropriate legislation. We are also not without example of the inevitable necessity, the instant such regulation or allocation by race has been understood to be acceptable to the Supreme Court, for the Court ultimately to have to decide several other things as well. Among the more obvious issues, as additional groups, people, agencies, and parties are inevitably drawn in, are these: *which* races, *how much* to each race, *by what test* is each of us to be assigned "our" race? When these things were proper—as they were before *Brown* v. *Board of Education*—it was enough to be the government-designated member of a given "race" by being one-eighth of that "race." That, as the Supreme Court itself will recall, was the manner of imputing "race" to Mr. Plessy for the *Plessy* v. *Ferguson* experiments in racial designation and racial allocation.[90] The odiousness of these issues will be no less should the Court now reopen this governmental license than it was some years ago.

Should the government be upheld in its first unqualified efforts to revive its powers of regulation and allocation by race, in *Fullilove* v. *Kreps*,[91] before the Court for its consideration this fall, moreover, we may expect to be afflicted with this way of life for the balance of the century. Most certainly, once the Court admits the government's basic practice, it will be without any defensible ground to halt that practice or to roll it back within our own lifetime. Neither can it, I think, find any way whatever to police the inevitable cynicism and race politics explicit in our common future once the basic issue is decided, as evidently it shall be within a year.

By a very casually adopted amendment added to a bill, "Congress" has provided for a 10% strictly racial set-aside for certain kinds of federal contracts, exempting firms with appropriate racial "certification" from competing with other firms, and guaranteeing the certified firms that they need only compete among themselves for this share of the national business. The constitutional wisdom of sustaining this statute has been discussed almost entirely at an abstract level of compensatory jurisprudence. It has virtually left out of account entirely the more pedestrian realities. Once these inevitable realities are considered, it may not be in our common interest to urge the Supreme Court once more to pontiously pilot its ways through proposed heaps of federal, state, and local racial spoils systems, conferring the noblesse oblige of racial shares on the wretchedly shaky foundations of racial politics—deferring to "good faith" efforts, differing as they will (and as they already do) as to how big a share (10%, 20%, 50%), what groups to qualify for *their* "share" (blacks, Hispanics, women, Indians, Orientals, Aleuts), who comes within each group (all Hispanics or merely those from certain places, all blacks, or merely those from families of less than $15,000 annual income). There is not the slightest disrespect in confronting these matters in these terms, moreover, as they are the government's own way of confronting them, *its* ways of governing. I find it very difficult to accept that serious students of constitutional laws and of American history would truly desire the Supreme Court to approve these structures of government. I think Bickel understood all of this perfectly well and that that may be why, on this subject, for once he went to fundamentals and to absolutes.

The *Washington Post* of May 22, 1979, carries the following earnest report on the manner in which these matters run even now:

A highly unusual and controversial proposal under consideration by a city agency would eliminate a large number of local ethnic groups from eligibility for lucrative minority contracts with the District of Columbia government.

The proposal, by the staff of the Minority Business Opportunity Commission, would eliminate from minority status all Hispanics born in Europe and South and Central America, leaving only those Hispanics born in Mexico or Puerto Rico eligible for the contracts.

The proposal also would eliminate from minority status persons born in Vietnam, India, China, Korea and Africa.

Four major local Hispanic-owned companies have won a total of more than $20 million worth of the city's minority contracts in the last year. This represents 40 percent of the entire minority share of the local market.

The recommendation requires the approval of the commission and Mayor Marion Barry. One commission member, Peter Taylor, said he supports the change.

"Lots of people here are coming in with bags of money from Vietnam and other places and buying up corporations," Taylor said. "They are . . . killing the little guy."

A commission staff member said the proposed shift in guidelines is part of an effort by the commission to increase the number of city contracts going to blacks and "disadvantaged minorities."

"We just want to make sure that [blacks] who were supposed to benefit get their fair share," the staff member said.

A staff member who helped draft the proposed guidelines said individual companies owned by minority applicants will be considered on their merits "'[*sic*] whether or not the [company] was historically disadvantaged in the United States" before a final decision on certification is made.

The proposed change is not without precedent in federal minority programs. Congress recently dropped Asian Americans from the federal Small Business Administration program for minority contracting.

"Oh, my God," one influential Hispanic leader with ties to the Barry administration said when informed of the staff proposal. "If Marion agrees to do something like that, then it's really going to be a political war between Hispanics and blacks, and that would be terrible."

Carlos Rosario, acting director of the Office of Latino Affairs for the District, said he was not familiar with the proposal. But, he said, "I don't see why if they have Spanish heritage why they should lose their [eligibility for minority contracts]. If they are born minorities, they should have the same breaks as others."

"I've been working in the District of Columbia for 20 years," said Jose Rodrigues, who was born in Argentina and is co-owner of a major Hispanic company that does minority business with the District. "To be Rodrigues or black is the same thing. If there is [a minority program] in this country for blacks, it should be for Spanish people."

Rodrigues and his brother Francisco own Fort Myer Construction Corp. in Arlington, which he said does more than $3 million in minority business with the city. He said his business also does another $1.5 million in the regular competitive market.

Angel Roubin, who was born in Spain, said: "It appears to me that if the city takes that position, they are trying to discriminate against other minorities [*sic*]."

In support of the proposed change, Col. Milton Carey, president of Associated Minority Contractors of America, a District-based national organization representing primarily black contractors, said: "There are Spanish who have culturally lived as white persons all their lives and in recent years found it profitable to consider themselves [*sic*] minority to take advantage of business in the minority community.

"They are bringing in superior resources to bear so they are more competitive in the sheltered market."

The key question, Carey said, is, "Have you been culturally disadvantaged in the United States. Have you been forced to live in a cultural bag? If the answer is yes, I say welcome."

The original guidelines are spelled out in a 1976 D.C. law that entitles local minorities to 25 percent of the city's contracting dollars.

Footnotes at end of article.

Footnotes at end of article.

The law stipulates that minorities must be certified as such by the commission. Once certified, minorities only compete with minority firms when bidding on District contracts.

Commission staff members said the proposed changes in guidelines followed complaints by black contractors that many of those who were originally certified by the commission came from aristocratic classes of foreign countries.

Another staff member said, "We were being besieged by applicants from all over the world and we had to do something about it".[22]

The fecundity of administrative regulation and of invidious choices, once race itself is reintroduced as an additional index of governmental action, are all present here in microcosm. The concrete example is the use of racially separate and racially unequal standards in the award of government contracts. It might just as well be racially separate and racially unequal employment standards, racially separate and racially unequal educational admissions standards, racially separate and racially unequal voting rights, tax credits or some other: each contingent on race, racial authenticity to be ascertained and certified by government, with entirely earnest sorts of good faith controversy as to what one counts.

And so what, in all good faith, shall we say about these matters? Should it indeed be enough that one was born (distinguishably) into a "minority" race, or must one's race also have been "historically disadvantaged" as well? Is it insufficient that one be born of that race, however, unless people of that race were historically disadvantaged "in the United States" rather than merely in other places? If one qualifies by these standards, is he nonetheless to be disqualified from the reserved advantage of additional, racially designated shares if he is "Asian-American," Vietnamese, Indian, Chinese, or Korean? Must one not merely be a certifiable member of one of the remaining "races," but also be born in the United States itself (so that being born in Africa, being born in Latin America, or being born in Spain will not count)? Yet, though not born in the United States, if one is "Hispanic" and is also born either in Mexico or in Puerto Rico (but not otherwise), may one compete not only with "Anglos" but, aside from one's business derived from that competition, have access to a special racial setaside? In each instance, moreover, is the "appropriate" test of a company the determination of ownership of a majority of voting shares of the stock, or is it rather something else or something in addition (suppose the company is 51% "black" owned, yet the executives and majority of the employees are "white")? The necessity to make and to police fine distinctions is clear enough. The necessary consequences of encouraging racial competition and racial resentments are all quite manifest ("Oh, my God, . . . if [the mayor] agrees to . . . that, then it's really going to be a political war between Hispanics and blacks").

CONCLUSION

Nearly all who have urged the Supreme Court to readmit the legitimacy of race as an explicit basis of governmental regulation or allocation have done so with some reserve, some measure of diffidence, hedged about that, in any event, it should only be for a time.[23] But no means whatever have been forthcoming from this permissive jurisprudence to enable the Court, once it unlearns its own lesson of history, to avoid the resulting dilemma: either to attempt thereafter to superintend the products of the new learning with the considerable risk of being overwhelmed by the need to make distinctions so numerous and so rank as to find itself discredited, or to pronounce a benediction on the presumed rectitude of executive or administrative bodies, and the presumed superior capacity of legislative bodies to determine these matters, and retire from the field for another generation.

It has been very tritely observed that the Constitution is a "living" document. The observation is nearly always offered as a prelude for urging the Supreme Court to manipulate or disregard some rather unequivocal part of that document. In this instance, however, there is nothing in the Constitution that licenses the national government to establish racial shares, to legitimate measuring the worth of people by their race, or to tender entitlements by race. Keeping faith with the lesson of the great decisions of the Supreme Court during the past three decades, moreover, requires no new, manipulative use of any provision whatever. Quite the opposite is true: the novelty is in the explication of arguments to relicense governmental discrimination. The basic question before the Court is whether the Constitution shall again be "adjusted" to accommodate a new generation of racial spoils.

There is, even as the District of Columbia program illustrates, very little agreement in measuring racial eligibility for those spoils. There being no serious prospect for such agreement, and the Constitution itself providing no articulate basis for the Court simply to "declare" the proper eligibility, the natural expectation is that racial eligibility will simply be the product of racial competition in the political process.[24] Incentives to make out cases of racial "mine" and "thine" are thus supplied, and doctrine is to be arranged in a fashion most calculated to stimulate race politics.

Ironically, the basic suggestion to relicense racial discrimination by government is put forward not despite its intrinsic tendency to set race against race, but as a good, benign, and thoughtful way to get beyond racism. But "getting beyond" racism in this fashion, we have reason to believe, is as little likely to succeed as the now discredited idea that in order to "get beyond" organized government, it is first indispensable to organize a virtual dictatorship that, once it extirpates the evils that made organized government necessary, will itself just naturally wither away. We have not seen governments wither by the paradox of assigning them even greater power. We shall not now see racism disappear by employing its own ways of classifying people and of measuring their rights.

Rather, one gets beyond racism by getting beyond it now: by a complete, resolute, and credible commitment *never* to tolerate in one's own life—or in the life or practices of one's government—the differential treatment of other human beings by race. Indeed, that is the great lesson for government itself to teach: in all we do in life, whatever we do in life, to treat any person less well than another or to favor any more than another for being black or white or brown or red, is wrong. Let that be our fundamental law and we shall have a Constitution universally worth expounding.

FOOTNOTES

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[1] 1619 is a late, inaccurate date, symbolically selected more because it marks the original landing of slaves at Jamestown, Virginia, than because it marks the first uses of race in America.

[2] The framers carefully avoided using terms such as "slavery" and "race." Nonetheless, several provisions in the original Constitution manifestly grant recognition to the legal existence of slavery. *E.g.*, U.S. CONST. art. I, § 2, cl. 3 (defining state populations, for purposes of apportionment of Representatives and direct taxes, as the sum of "the whole number of free Persons" and "excluding Indians not taxed, three-fifths of all other Persons"); *id.* § 9, cl. 1 (forbidding Congress to prohibit "Importation of such Persons" as states choose to admit before 1808); *id.* art IV, § 2, cl. 3 (forbidding state law from altering the status of any escaping "Person held to Service or Labour" in another state, and requiring delivery of such persons on demand); *id.* art. V (forbidding amendment, before 1808, of the Senate representation formula or the importation-of-persons clause).

[3] Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857).

[4] SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

U.S. CONST. amend XIII.

[5] SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Id. amend. XIV.

[6] SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Id. amend. XV.

[7] *See, e.g.*, R. BERGER, GOVERNMENT BY JUDICIARY (1977); 2 W. CROSSKEY, POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES 1083–1118 (1953); H. FLACK, THE ADOPTION OF THE FOURTEENTH AMENDMENT (1908); W. GILLETTE, THE RIGHT TO VOTE (1965); R. HARRIS, THE QUEST FOR EQUALITY (1960); J. JAMES, THE FRAMING OF THE FOURTEENTH AMENDMENT (1956); J. MATHEWS, LEGISLATIVE AND JUDICIAL HISTORY OF THE FIFTEENTH AMENDMENT (1909); H. MEYER, THE HISTORY AND MEANING OF THE FOURTEENTH AMENDMENT (1977); J. TENBROEK, EQUAL UNDER LAW (1965) (orginally published as THE ANTISLAVERY ORIGINS OF THE FOURTEENTH AMENDMENT (1951)); Avins, *The Equal "Protection" of the Laws: The Original Understanding*, 12 N.Y.L.F. 385 (1966); Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1 (1955); Frank & Munro, *The Original Understanding of "Equal Protection of the Laws,"* 50 COLUM. L. REV. 31 (1950); Graham, *The Early Anti-Slavery Backgrounds of the Fourteenth Amendment*, 1950 WIS. L. REV. 479; Graham, *Our "Declaratory" Fourteenth Amendment*, 7 STAN. L. REV. 3 (1954); Van Alstyne, *The Fourteenth Amendment, The "Right" to Vote, and the Understanding of the Thirty-Ninth Congress*, 1965 SUP. CT. REV. 33.

[8] For Supreme Court cases considering laws regulating by race in the generation after the Civil War, see, for example, Plessy v. Ferguson, 163 U.S. 537 (1896); Pace v. Alabama, 106 U.S. 583 (1883); Strauder v. West Virginia, 100 U.S. 303 (1880). For a modern example of a law dictating race-based allocation, see Fullilove v. Kreps, 584 F.2d 600 (2d Cir. 1978), *cert. granted*, 99 S. Ct. 2403 (1979).

[9] Fullilove v. Kreps, 584 F.2d 600 (2d Cir. 1978), *cert. granted*, 99 S. Ct. 2403 (1979). It involves an equal protection challenge to section 103(f)(2) of the Public Works Employment Act of 1977, 42 U.S.C. § 6705(f)(2) (Supp. I 1977). This casually added provision—that is, added and hardly discussed on the floor of the House, and not even considered in committee debates—provides that at least 10% of federal public works grants under the Act be expended for "minority business enterprises." Such enterprises are defined as businesses owned principally by "Negroes, Spanish-speaking, Oriental, Indians, Eskimos, and Aleut." For further discussion of this type of plan, see text at note 91 *infra*.

The constitutional question should not be influenced by the Court's recent decision (mis)construing Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e–17 (1976), as not prohibiting a one-for-one minority quota for admissions to an on-the-job training program. United Steelworkers v. Weber, 99 S. Ct. 2721 (1979). Indeed, Justice Brennan declared for the Court: "We emphasize at the outset the narrowness of our inquiry. . . . [T]his case does not present an alleged violation of the Equal Protection Clause of the Constitution. . . . The only question before us is the narrow statutory issue. . . ." 99 S. Ct. at 2726.

Weber will, however, revive and challenge the four-one-four division of the Court in its review of a 16% racial minority minimum set-aside program at a state university medical school, under racially separate and unequal standards of admissions. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978). There, four Justices (Brennan, White, Marshall & Blackman) found the plan compatible with the fourteenth amendment; four (Burger, Stewart, Rehnquist & Stevens) declined to reach the question, finding the plan prohibited by 42 U.S.C. § 2000d (1976); the ninth Justice (Powell) concluded that the particular plan was not compatible with the fourteenth amendment. For discussions of the uncertainties arising from this case, see *A Symposium:* Regents of the University of California v. Bakke, 67 CALIF. L. REV. 1 (1979); Tribe, *Perspectives on Bakke: Equal Protection, Procedural Fairness, or Structural Justice?* 92 HARV. L. REV. 864 (1979); Van Alstyne, *A Preliminary Report on the Bakke Case*, 64 A.A.U.P. BULL. 286 (1978); *Controversy: More on the Bakke Decision*, 65 ACADEME 49 (1979).

[10] The point in using the term racial "repetition" is to stress that once the use of race becomes legitimate again, we shall repeat all of the problems that divided us before: solidarity collapses, consensus with respect to the impropriety of measuring by race dissolves, race becomes important once more, and all are diminished by the experience.

[11] The body of literature in this area is extensive. *See, e.g.*, B. BITTKER, THE CASE FOR BLACK REPARATIONS (1973); R. DWORKIN, *Reverse Discrimination*, in TAKING RIGHTS SERIOUSLY 223 (1977); T. EASTLAND & W. BENNETT, COUNTING BY RACE (1979); N. GLAZER, AFFIRMATIVE DISCRIMINATION (1975); REVERSE DISCRIMINATION (B. Gross ed. 1977); R. O'NEIL, DISCRIMINATING AGAINST DISCRIMINATION (1975); Baldwin & Nagan, Board of Regents v. Bakke: *The All-American Dilemma Revisited*, 30 U. FLA. L. REV. 843 (1978); Bell, Bakke, *Minority Admissions, and the Usual Price of Racial Remedies*, 67 CALIF. L. REV. 3 (1979); Blasi, Bakke *as Precedent: Does Mr. Justice Powell Have a Theory?*, 67 CALIF. L. REV. 21 (1979); Brest, *The Supreme Court, 1975 Term—Foreword: In Defense of the Antidiscrimination Principle*, 90 HARV. L. REV. 1, 16–22 (1976); Dixon, Bakke: *A Constitutional Analysis*, 67 CALIF. L. REV. 69 (1979); Ely, *The Constitutionality of Reverse Racial Discrimination*, 41 U. CHI. L. REV. 723 (1974); Fiss, *Groups and the Equal Protection Clause*, 5 PHILOSOPHY & PUB. AFF. 107 (1976); Greenawalt, *Judicial Scrutiny of "Benign" Racial Preference in Law School Admissions*, 75 COLUM. L. REV. 559 (1975); Greenawalt, *The Unresolved Problems of Reverse Discrimination*, 67 CALIF. L. REV. 67 (1979); Hastie, *Affirmative Action in Vindicating Civil Rights*, 1975 U. ILL. L.F. 502; Kaplan, *Equal Justice in an Unequal World: Equality for the Negro—The Problem of Special Treatment*, 61 NW. U.L. REV. 363 (1966); Karst, *The Supreme Court, 1976 Term—Foreword: Equal Citizenship Under the Fourteenth Amendment*, 91 HARV. L. REV. 1 (1977); Karst & Horowitz, *Affirmative Action and Equal Protection*, 60 VA. L. REV. 955 (1974); Morris, *Equal Protection, Affirmative Action and Racial Preferences in Law Admissions:* DeFunis 1. Odegaard, 49 WASH. L. REV. 1 (1973); Nagel, *Equal Treatment and Compensatory Discrimination*, 2 PHILOSOPHY & PUB. AFF. 348 (1973); O'Neil, Bakke *in Balance: Some Preliminary Thoughts*, 66 CALIF. L. REV. 143 (1979); O'Neil, *Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education*, 80 YALE L.J. 699 (1971); O'Neil, *Racial Preference and Higher Education: The Larger Context*, 60 VA. L. REV. 925 (1974); Posner, *The* Bakke *Case and the Future of "Affirmative Action"*, 67 CALIF. L. REV. 171 (1979); Posner, *The* DeFunis *Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 SUP. CT. REV. 1; Ravenell, DeFunis *and* Bakke . . . *The Voice Not Heard*, 21 HOW. L.J. 128 (1978); Sandalow, *Racial Preference in Higher Education: Political Responsibility and the Judicial Role*, 42 U. CHI. L. REV. 653 (1975); Sedler, *Racial Preference, Reality and the Constitution:* Bakke v. Regents of the University of California, 17 SANTA CLARA L. REV. 329 (1977); Seeburger, *A Heuristic Argument Against Preferential Admissions*, 39 U. PITT. L. REV. 285 (1977); Tribe, *supra* note 9.

[12] A. BICKEL, THE MORALITY OF CONSENT 133 (1975).

[13] *E.g.*, Strauder v. West Virginia, 100 U.S. 303 (1880) (exclusion of Negroes from juries unconstitutional). *Cf.* Virginia v. Rives, 100 U.S. 313, 319 (1880) ("denial of [equal protection] rights, or an inability to enforce them, resulting from the Constitution or laws of the State" allows removal of case from state to federal court) (dictum); *Ex parte* Virginia, 100 U.S. 339 (1880) (denying writ of habeas corpus to judge who was under indictment and in custody for excluding blacks from juries).

[14] *E.g.*, The Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873) (fourteenth amendment privileges and immunities clause reduced to a constitutional redundance).

[15] 109 U.S. 3 (1883). *See also* United States v. Harris, 106 U.S. 629 (1883) (section 5 of the fourteenth amendment, creating enforcement powers of Congress, very narrowly construed); United States v. Cruikshank, 92 U.S. 642 (1876) (same).

[16] 163 U.S. 537 (1896).

[17] In Louisville, N.O. & T. Ry. v. Mississippi, 133 U.S. 587 (1890), a similar statute survived an attack under the commerce clause, U.S. CONST. art I, § 8, cl. 3; the Court made no reference to the equal protection clause. The *Plessy* majority relied in part on a pre-Civil War Massachusetts school segregation case, litigated under a portion of the Massachusetts Constitution bearing some resemblance to the fourteenth amendment's equal protection clause. Roberts v. City of Boston, 59 Mass. (5 Cash.) 198 (Mass. 1850).

[18] Plessy v. Ferguson, 163 U.S. 537, 559–60 (1896) (Harlan, J., dissenting) (emphasis added). Harlan had similarly dissented in The Civil Rights Cases, 109 U.S. 3, 24–62 (1883) (Harlan, J., dissenting). *See also* Berea College v. Kentucky, 211 U.S. 45, 67–69 (1908) (Harlan, J., dissenting). *But see* Cumming v. Richmond County Bd. of Educ., 175 U.S. 528 (1899) (Harlan, J.). *See generally* Westin, *John Marshall Harlan and the Constitutional Rights of Negroes: The Transformation of a Southerner*, 66 YALE L. J. 637 (1957).

[19] *See* O'Fallon, *Adjudication and Contested Concepts: The Case of Equal Protection*, 54 N.Y.U.L. REV. 19, 34–38 (1979).

[20] Plessy v. Ferguson, 163 U.S. at 565 (1896) (Harlan, J., dissenting) (emphasis added).

[21] *See generally* C. WOODWARD, THE STRANGE CAREER OF JIM CROW (3d ed. 1974). *See also* Westin, *supra* note 18, at 706 & n. 13.

[22] 347 U.S. 483 (1954).

[23] *See* D. BELL, RACE, RACISM AND AMERICAN LAW 462 (1973); Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 31–33 (1959).

[24] The particular case overruling *Plessy* (sub silentio) was itself without an explanatory opinion, Gayle v. Browder, 352 U.S. 903 (1956), *aff'g per curiam* 142 F. Supp. 707 (M. D. Ala. 1956). One district court interpreted certain dicta in *Brown* as not disallowing per se governmentally-directed, racially separated schools, Stell v. Savannah Chatham County Bd. of Educ., 220 F. Supp. 667, 677–78 (S.D. Ga. 1963), but was speedily rebuffed on appeal, 33 F.2d 55, 61 (5th Cir.), *cert. denied*, 379 U.S. 933 (1964). Alternative interpretations of *Brown* are, of course, numerous. For but one listing, see H. HOROWITZ & K. KARST, LAW, LAWYERS AND SOCIAL CHANGE 203 (1969). For additional post-Brown decisions summarily dispatching other segregation laws, see, for example, State Athletic Comm'n v. Dorsey, 359 U.S. 533 (1959), *aff'g per curiam* 168 F. Supp. 149 (E. D. La. 1958) (athletic contests); Holmes v. City of Atlanta, 350 U.S. 879 (1955), *vacating per curiam*, 223 F. 2d 93 (5th Cir. 1955) (municipal golf courses); Mayor of Baltimore City v. Dawson, 350 877 (1955), *aff'g per curiam* 220 F.2d 386 (4th Cir. 1955) (public beaches and bathhouses); cases cited in W. LOCKHART, Y. KAMISAR, & J. CHOPER, CASES AND MATERIALS ON CONSTITUTIONAL RIGHTS AND LIBERTIES 840 nn. a&b (3d ed. 1970).

[25] *See, e.g.*, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971). *See also* Dayton Bd. of Educ. v. Brinkman, 99 S. Ct. 2971 (1979); Columbus Bd. of Educ. v. Penick, 99 S. Ct. 2941 (1979).

[26] *E.g.*, Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976). *See also* Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406 (1977); Milliken v. Bradley, 418 U.S. 717 (1974); Keyes v. School Dist. No. 1, 413 U.S. 189 (1973).

[27] Act of Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27 (current version at 42 U.S.C. § 1982 (1976)).

[28] Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

[29] Act of May 31, 1870, ch. 114, § 16, 16 Stat. 144 (current version at 42 U.S.C. § 1981 (1976)).

[30] Runyon v. McCrary, 427 U.S. 160 (1976); Johnson v. Railway Express Agency, 421 U.S. 454, 459–60 (1975) (dictum).

[31] McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 295 (1976) (emphasis added). *But cf. id.* at 821 n.8 ("Santa Fe disclaims that the actions challenged here were any part of an affirmative action program . . . and we emphasize that we do not consider here the permissibility of such a program, whether judicially required or otherwise prompted.").

[32] Title VI of the Civil Rights Act of 1964, § 2000d (1976) (emphasis added). Compare the several differing interpretations provided in Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

[33] Title VII of the Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C. § 2000e–2(a)(1) (1976) (emphasis added). This, of course, is simply what Congress said. *Compare* United Steelworkers v. Weber, 99 S. Ct. 2721, 2724–30 (1979) (Brennan, J.) *with id.* at 2734–35 (Burger, C.J., dissenting) *and id.* at 2736–53 (Rehnquist, J., dissenting).

[34] Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971) (emphasis added). And reiterat-

ing that view in 1976, the Court declared: "We . . . hold today that Title VII prohibits racial discrimination against the white petitioners in this case upon the *same* standards as would be applicable were they Negroes. . . ." McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 280 (1976) (emphasis added). *But see* United Steelworkers v. Weber, 99 S. Ct. 2721 (1979).

[35] Exec. Order No. 11246, § 202, 3 C.F.R. 339, 340–41 (1964–1965 Compilation), *as amended by* Exec. Order No. 11375, 3 C.F.R. 684, 685–86 (1966–1970 Compilation), *reprinted in* 42 U.S.C. § 2000e, at 1232, 1233 (1976) (emphasis added). This, too, is simply what the President said. *Compare id. with* 42 Op. Att'y Gen. 405 (1969).

[36] DeFunis v. Odegaard, 416 U.S. 312, 337, 342, 343–44 (1974) (Douglas J., dissenting) (emphasis added).

[37] *Id.* at 342–43 (Douglas, J., dissenting).

[38] *Id.* at 343 (Douglas, J., dissenting). *See also* Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 298 (1978) (Powell J.): "[P]referential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth."

Not all race-specific "preferential" government-utilized plans involve separate and *lower* standards of selection. Some (as illustrated by the Bakke case itself) plainly do. And these plans unquestionably impose a racial stigma on those who benefit by them, for reasons that cannot be avoided by the beneficiaries. This may be a cost that others would regard as utterly trivial when weighed against the benefits and overall good of such arrangements. Others may also say that this is a matter they do not wish to judge—that whether there is a stigmatizing effect and whether it renders such a plan undesirable is emphatically not for them to say. Such persons might feel that it is, rather, a matter to be determined by those eligible for the plan—and that these persons will show, by their participation, that they overwhelmingly regard the very material benefits, with whatever stigma may attach, to be vastly superior to the status quo ante. But the stigma is spread to others identified only by race, who are helpless to avoid it. Indeed, it will have been the government itself that fastened the stigma upon them, a new badge of implied inferiority, assigned as an incident of governmental noblesse oblige.

Explicit in state, local, or federal plans using separate and lower standards by race is a statement by government that certain persons identified by race are in fact being placed in positions they may be presumed not likely to hold but for their race (because they are presumed to be unable to meet standards the government itself otherwise requires to be met). The message from government is written very large when these plans proliferate: a double (and softer) standard for admission, a double (and softer) standard for hiring, a double (and softer) standard for promotion, a double (and softer) standard for competitive bidding, and so on. Without question, this is a systematic racial tagging by government—a communication to others that the race of the individual they deal with bespeaks a race-related probability, created solely by the government itself, of lesser qualifications than others holding equivalent positions.

With respect to some such persons, the supposition will be true, *according to the government's own usual standards of "qualifications."* With respect to others of the same race, the proposition will be false; but others dealing with them will not know it is false unless "affirmative action" beneficiaries are specially to be labelled as such—surely an unthinkable practice—and will, *solely because of the government's own practice*, be encouraged to subject them to a racial stereotype. In brief, the government's entrenched practices impose a label of inferior excellence that the government itself declares to be true of some persons; simultaneously, the government fastens a racial stereotype on all other persons of the same race holding similar positions, irrespective of their actual excellence. Whether this is unconstitutional remains to be seen. That it is not "stigmatizing" seems implausible.

[39] Hughes v. Superior Court, 389 U.S. 460 (1950). The earlier California case establishing the policy of nondiscrimination was James v. Marinship Corp., 25 Cal. 2d 721, 155 P.2d 329 (1944), recently extended and applied in Gay Law Students Ass'n v. Pacific Tel. & Tel. Co., 00 Cal. 3d 000, 595 P.2d 592, 606–09; 156 Cal. Rptr. 14, 28–31 (1979).

[40] Hughes v. Superior Court, 32 Cal.2d 850, 856, 198 P.2d 885, 889 (1948), *aff'd*, 339 U.S. 460 (1950).

[41] *Id.*

[42] *Id.*

[43] Hughes v. Superior Court, 339 U.S. 460 (1950).

[44] 375 U.S. 399 (1964).

[45] *Compare id.* with United Jewish Orgs. v. Carey, 430 U.S. 144 (1977) (redistricting to favor Hispanics held permissible).

[46] 375 U.S. at 402–03 (emphasis added).

[47] Plessy v. Ferguson, 163 U.S. 537, 554 (1896) (Harlan, J., dissenting) (emphasis added).

[48] 387 U.S. 369 (1967).

[49] Cal. Const. art. I, § 26 (adopted 1964, repealed 1974).

[50] 387 U.S. at 381.

[51] The awkwardness of this judicial superintendence is plainly very great. *See* Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205 (1970). The ascertainability of racial purpose in legislative proceedings is much more elusive than in adjudicative proceedings. An employer or administrative agent may be closely examined in court with some realistic hope of determining whether a decision that has on its face nothing to do with race was made because it was expected (and desired) to produce differential effects by race. But members of Congress are shielded by the speech and debate clause, U.S. Const. art. I, § 6 cl. 1, from any such examination, and ordinarily it is impractical to attempt to secure confrontation in court of other legislators. For the most recent case illustrating the protective scope of the clause, see United States v. Helstoski, 99 S. Ct. 2432 (1979). Indeed, for one brief moment the Court appeared to despair of permitting evidence to be admitted for the purpose of establishing that a legislative decision, nonracial on its face, was nonetheless taken precisely because it would produce racially differential effects. *See* Palmer v. Thompson, 403 U.S. 217, 224–26 (1971). *See also* United States v. O'Brien, 391 U.S. 367, 382–86 (1968).

[52] *E.g.*, Yick Wo v. Hopkins, 118 U.S. 356 (1886).

[53] *E.g.*, Lane v. Wilson, 307 U.S. 268, 275 (1939).

[54] Gomillion v. Lightfoot, 364 U.S. 339 (1960).

[55] Washington v. Davis, 426 U.S. 229, 239–44 (1976). *Cf.* Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 264–68 (1977) (zoning for the purpose of discriminating against blacks forbidden).

[56] The phrase is derived from the uncharacteristically aggressive dissent by Justice Frankfurter in United States v. Kahriger, 345 U.S. 22, 38 (1953) (Frankfurter, J., dissenting).

[57] A. Bickel, *supra* note 12, at 133.

[58] DeFunis v. Odegaard, 416 U.S. 312, 343 (1974) (Douglas, J., dissenting).

[59] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 641 (1943). While *Barnette* was a freedom of expression case, the principle enunciated by Justice Jackson seems applicable in this context as well. *See id.* at 638:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. . . . [T]hey depend on the outcome of no elections.

[60] There is, however, very considerable disagreement respecting the proper perspective on "in between." *See* authorities cited in note 11 *supra*.

[61] *E.g.*, Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963) ("Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity."). The utility of the comparison is reviewed in O'Fallon, *supra* note 19, at 44–46.

[62] *See* authorities cited in note 11 *supra*. The "test" dates from Korematsu v. United States, 323 U.S. 214, 216 (1944). It is full of irony. The Court, having erected this "protective" test, proceeded to apply it to the facts of the case and concluded that it was satisfied; in other words, the government met its burden of extraordinary justification. It turned out, however, that the government was pathetically mistaken in what it did. *See* E. Rostow, *The Japanese American Cases—A Disaster*, in The Sovereign Prerogative 193 (1962). *Korematsu* is significant additionally: it is the last case to sustain an explicit governmental race regulation as applied to the facts. It is now thirty-five years later and the "test" has not appreciated in value by the passage of time.

[63] *See* authorities cited in note 11 *supra*. *See also* Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 269–320 (1978) (Powell, J.); *id.* at 324–79 (Brennan, White, Marshall & Blackmun, JJ., concurring in the judgment in part and dissenting in part); Posner, *The Bakke Case and the Future of "Affirmative Action,"* *supra* note 11, at 173–74.

[64] The discussion in this section is a more developed statement of views touched on in Van Alstyne, *supra* note 8, at 292–94, and *Controversy: More on the Bakke Decision*, *supra* note 9, at 57–59.

[65] It is not quite clear from some suggesting this test whether the suitably justifying purpose(s) must be "articulated" on the face of the law, or whether a subsequent, credible "articulation" in court will do; for the moment, it is evidently the latter. *See, e.g.*, Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 361–62 (1978) (Brennan, White, Marshall & Blackmun, JJ., concurring in the judgment in part and dissenting in part); Hampton v. Mow Sun Wong, 426 U.S. 88, 103 (1976) ("When the Federal Government asserts an overriding national interest as justification for a discriminatory rule which would violate the Equal Protection Clause if adopted by a State, due process requires that there be a legitimate basis for presuming that the rule was actually intended to serve that interest.") *See also* Califano v. Goldfarb, 430 U.S. 199, 223 n.9 (1977) (Stevens, J., concurring in judgment); Craig v. Boren, 429 U.S. 190, 199 n.7 (1976). For a discussion of why this should influence the standard of judicial review, see Christie, *A Model of Judicial Review of Legislation*, 48 S. Cal. L. Rev. 1306 (1975).

[66] *E.g.*, Black, *The Lawfulness of the Segregation Decisions*, 69 Yale L.J. 421 (1960).

[67] Plessy v. Ferguson, 163 U.S. 537, 550 (1896) (emphasis added).

[68] *Id.* at 551 (emphasis added). *See also* Black, *supra* note 66; Cahn, *Jurisprudence, 1955 Annual Survey of American Law*, 31 N.Y.U.L. Rev. 182 (1966); *Cahn Jurisprudence, 1954 Annual Survey of American Law*, 30 N.Y.U.L. Rev. 150, 153–54, 157–68 (1955); Pollak, *Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler*, 108 U. Pa. L. Rev. 1, 24–31 (1959).

[69] U.S. Const. amend. I. The "test" was enunciated in School Dist. v. Schempp, 374 U.S. 203, 222 (1963) ("[W]hat are the purpose and primary effect of the enactment? If *either* is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution.") (emphasis added). For an illustrative "application," see Board of Educ. v. Allen, 392 U.S. 236 (1968). *See also id.* at 254–66 (Douglas J., dissenting); Note, *Sectarian Books, the Supreme Court and the Establishment Clause*, 79 Yale L.J. 111 (1969). Note also how the "purpose" part of the test was not applied in Lemon v. Kurtzman, 403 U.S. 602 (1971), and how mere legislative declaration of "purpose" effectively insulated statutes from meaningful review as to this part of the test in Wolman v. Walter, 433 U.S. 229 (1977); Roemer v. Board of Pub. Works, 426 U.S. 736 (1976); Committee for Pub. Educ. and Religious Liberty v. Nyquist, 413 U.S. 756 (1973); Tilton v. Richardson, 403 U.S. 672 (1971). *See generally* P. Kurland, Religion and the Law of Church and State and the Supreme Court (1962).

[70] *See* discussion and cases cited in note 69 *supra*.

[71] *See* text and notes at notes 24–56 *supra*.

[72] *Cf.* Ely, *supra* note 11, at 723 (arguing that majority discrimination against itself is per se legitimate). *But see* Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, *supra* note 11, at 19–26.

[73] For one view, see Bell, *Waiting on the Promise of* Brown, 39 Law & Contemp. Prob. 341, 360–63 (1975).

[74] Exactly as did happen once this type of test was publicized for the first amendment's establishment clause. *See* cases cited in note 69 *supra*.

[75] 438 U.S. 265 (1978).

[76] Brief for Petitioner at 2. Four members of the Court (Burger, Stewart, Rehnquist & Stevens) found it unnecessary to consider this question. It was plain to them that the use of racially separate and unequal admissions standards was forbidden by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1976); they therefore applied Title VI as forbidding *any* kind of racial discrimination and voted to affirm the California Supreme Court, which had held for Bakke on constitutional grounds. 438 U.S. at 408–21 (Stevens, J., joined by Burger, C.J., and Stewart and Rehnquist, JJ., concurring in the judgment in part and dissenting in part). Insofar as granting relief to Bakke was concerned, their votes were joined by that of Justice Powell. *Id.* at 271 (Powell, J.).

[77] For a discussion of how the presumption of unconstitutionality works in the analogous first amendment context, see text at note 61 *supra*.

[78] 438 U.S. at 361 (Brennan, White, Marshall & Blackmun, JJ., concurring in the judgment in part and dissenting in part).

[79] *Id.* (emphasis added). As to whether the Davis plan may have imposed such a stigma, see note 38 *supra*.

[80] Fourteen percent of the total regular admittees for the two years in which Bakke was rejected were of the minority groups favored *additionally* by the 16 percent racial set aside. See 438 U.S. at 276 n.6 (Powell, J.).

[81] *See also* Craig v. Alabama State Univ., 451 F. Supp. 1207 (M.D. Ala. 1978); Detroit Police Officers Ass'n v. Young, 446 F. Supp. 979 (E.D. Mich. 1978); Ely, *supra* note 11. *But see* text at note 72 *supra*.

[82] Insofar as the faculty withdrew 16 seats from the original freshman class total of 100 (reducing the number of openings to be filled by the regular admissions process to 84 and restricting eligibility for the 16 seats exclusively to disadvantaged nonwhites), the faculty certainly understood that applicants who would otherwise have been admitted pursuant to the regular admissions process but who would now be displaced would be white applicants with good—but not the best—portfolios. The "best" white applicants would be unaffected, as they would still be among the 84 best applicants within the regular admission process.

[83] For a recent case extending *Bakke's* rationale to sustain discriminatory race and sex standards in the hiring, promotion, transfer, training, and work assignments of public employees, see Minnick v. California Dept. of Corrections, 000 Cal. App. 3d 000, 157 Cal. Rptr. 260 (1979).

[84] DeFunis v. Odegaard, 416 U.S. 312, 343 (1974) (Douglas, J., dissenting).

[85] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 641 (1943).

[86] A. Bickel, *supra* note 12, at 133.

[87] Bickel, *supra* note 7.

[88] *See, e.g.*, A. Bickel, The Supreme Court and the Idea of Progress (1970); A. Bickel, The Least Dangerous Branch (1962); Bickel, *The Supreme Court, 1960 Term—Foreword: The Passive Virtues*, 75 Harv. L. Rev. 40 (1961).

[89] For the contrary view, see Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 407 (1978) (Blackmun, J., opinion of).

[90] Plessy was deemed to be "colored" (in the words of the state statute) for purposes of assigning him to a given car, although he was "of seven eighths Caucasian and one eighth African blood; . . . [and] the mixture of colored blood was not discernible in him . . . ." 163 U.S. at 538. The majority of the Court, once accepting the constitutionality of using the race line as a permissible way for legislatures to regulate and allocate, also recognized the sorts of decisions implicit in that determination: "The power to assign to a particular coach obviously implies the power to determine to which race the passenger belongs, as well as the power to determine who, under the laws of the particular State, is to be deemed a white, and who a colored person." *Id.* at 549. *See also* Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, *supra* note 11, at 12–14.

[91] 584 F.2d 600 (2d Cir. 1978), *cert. granted*, 99 S. Ct. 2403 (1979), briefly described in note 9 *supra*.

[92] Thompson, *City Agency Weighs Restricting Some Ethnics' Minority Status*, Wash. Post, May 22, 1979, § A, at 1, col. 1 (insertions in original).

[93] *E.g.*, Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 403 (1978) (Blackmun, J., opinion of).

[94] *See* note 90 *supra*. See also the conclusions reached on the same subject in B. Bittker, *supra* note 11, at 104.

Mr. HATCH. Mr. President, as usual, Weber was not extensively debated after it was handed down in mid-1979. What serious comment there was, however, focused on the decision's atrocious law. As George F. Will wrote, with his customary restraint, in his July 1 Washington Post column:

> The pertinent question is not whether this is a "conservative" court or a "liberal" court, but whether this is, properly speaking, a court at all.

I ask unanimous consent that Mr. Will's article, "Civil Rights, Turned Inside Out," be printed in the Record at this point.

There being no objection, the article was ordered to be printed in the Record, as follows:

Civil Rights, Turned Inside Out

(By George F. Will)

The Supreme Court's 5-to-2 decision in the Weber case completes the process of turning the civil-rights impulse inside out, and standing the 1964 Civil Rights Act on its head. The decision affirms, resoundingly, the right to discriminate racially.

Under federal pressure, Brian F. Weber's union and Kaiser Aluminum and Chemical Corp. designed a reverse discrimination plan to eliminate "racial imbalances" in Kaiser's craft work force. The plan reserved for blacks 50 percent of the places in certain training programs. Blacks with less seniority received preference over Weber, who charged that this violated Title VII of the 1964 act, which says:

> "It shall be an unlawful employment practice for an employer . . . to discriminate against any individual . . . because of such individual's race . . . to limit or classify his employees . . . in any way which would . . . adversely affect (any individual) . . . because of . . . race. . . ."

Having won in two lower courts, Weber lost in the Supreme Court, where the majority argued, incredibly, that a literal reading of Title VII must be inappropriate because it conflicts with what the majority insists is the "spirit" of the act. And because Title VII says it shall not be construed to "require" reverse discrimination, the majority says, against an ocean of contrary evidence, that Congress must have meant to "permit" such discrimination.

Justice Rehnquist's dissent, with Chief Justice Burger concurring, relentlessly demonstrates that the majority does violence to the court's previous construction of, and the unambiguous legislative history of, Title VII.

In 1971, in its first construction, the court held that "discriminatory preference, for any group, minority or majority, is precisely and only what Congress has proscribed." In 1978, in its most recent construction, the court said: "It is clear beyond cavil that the obligation imposed by Title VII is to provide an equal opportunity for each applicant regardless of race, without regard to whether members of the applicant's race are already proportionately represented in the work force."

Rehnquist demonstrates that what the court previously called Title VII's "uncontradicted legislative history" is unambiguous, and contradicts the majority's bizarre contention that Congress intended to "permit" reverse discrimination.

Rep. Emanuel Celler (D-N.Y.), who introduced the 1964 act in the House, said it would "prevent . . . employers from discriminating against or in favor of workers because of race." In 89 days of Senate debate, supporters of the act took pains to refute all other interpretations.

Sen. Hubert Humphrey (D-Minn.), the prime mover, said Title VII forbids actions "based on race.' It "provides that race shall not be a basis for making personnel decisions." It "would prohibit preferential treatment for any particular group."

Sen. Thomas H. Kuchel (R-Calif.), said: "Employers and labor organizations could not discriminate in favor of or against a person because of his race . . . The bill . . . is color-blind."

Sens. Joseph S. Clark (D-Pa.) and Clifford P. Case (R-N.J.), floor managers for Title VII: ". . . any deliberate attempt to maintain a racial balance, whatever such balance may be, would involve a violation of Title VII because maintaining such a balance would require an employer to hire or to refuse . . . to hire on the basis of race."

Sen. Harrison A. Williams (D-N.J.): "Both forms of discrimination are prohibited by Title VII. . . ."

Sen. Leverett Saltonstall (R-Mass.): Title VII "provides no preferential treatment for any group of citizens. In fact, it specifically prohibits such treatment." And so on.

Reverse discrimination may be the most direct way of building a black middle class. A black middle class is devoutly to be desired. Nevertheless, it should be promoted lawfully.

Perhaps the court majority has expressed what Congress should have intended in the 1964 act; or what Congress somehow "really" intended but for some reason gave no evidence of intending; or what Congress would intend were it to pass the 1964 act in 1979. But Justice Rehnquist's dissent is unanswerable on what is, or should be, the central point: What does the language of the act and the record of the debate show that Congress actually intended.

Neither the words of the statute, nor word's said about it, sustain the majority's social preferences. So the majority baldly asserts that the "spirit" of the act permits what the letter of the act forbids.

The majority opinion is reasoned, but there is precious little judicial reasoning in it. There is reasoning about social justice and how best to achieve it, there is the reasoning of well-intentioned legislators. But the reasoning is not discernibly grounded in a judicial responsibility.

The Weber decision suggests that the pertinent question is not whether this is a "conservative" or "liberal" court, but whether this is, properly speaking, a court at all.

Mr. HATCH. A more extended legal review of Weber, Mr. President, under the harsh but merited title of "The Weber Case: Double Talk and Double Standards" appeared in the September/October 1979 issue of Regulation magazine. The author was Prof. Bernard D. Meltzer, of the University of Chicago Law School. "* * * the Court's argument is so weak," writes Professor Meltzer, "that it is embarrassing to subject it to conventional legal analysis."

I ask unanimous consent that Professor Meltzer's article on the Weber case be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE WEBER CASE: DOUBLE TALK AND DOUBLE STANDARDS

(By Bernard D. Meltzer)

In its opinion in *United Steelworkers of America and Kaiser Aluminum & Chemical Corporation* v. *Weber*, the Supreme Court, dividing five to two, ruled that Title VII of the Civil Rights Act of 1964 permitted employers and unions in the private sector to adopt collectively bargained affirmative action plans for the purpose of eliminating manifest racial imbalances in traditionally segregated job categories. The majority declined to define the limits of such ostensibly voluntary quotas, or to deal with court-ordered quotas as a remedy for proven violations of the act, or to consider the effect of Executive Order 11246 (covering government contractors). Nevertheless, the opinion has been extravagantly hailed as an unqualified endorsement of "affirmative action" in employment. To appraise that assessment, it is necessary to examine the opinion and its background in some detail.

THE FACTS AND THE ISSUES

Kaiser opened its plant in Gramercy, Louisiana, in 1958. By the 1970s, blacks constituted approximately 39 percent of the labor force in the Gramercy area, but less than 15 percent of the plant's work force and less than 2 percent of its craft workers. Kaiser had hired only craftsmen (carpenters, electricians, and machinists, and so on) with five years industrial experience—experience rarely possessed by blacks, who had previously been excluded from craft unions. As a result, Kaiser's efforts to recruit trained black craftsmen—although apparently bona fide—had been largely ineffective.

In 1974, Kaiser addressed that recruitment problem in its collective bargaining agreement with the United Steelworkers of America. That agreement provided for a new in-plant craft training program at Gramercy (as well as at Kaiser's other aluminum and container plants). At least one black was to be admitted to the training program for every white until the percentage of black craft workers equalled the percentage of blacks in the Gramercy work force, or 39 percent (a goal that the company estimated would be reached in thirty years). Black and white applicants were to be chosen on the basis of their relative plant seniority within their racial group. Since the plant employed more whites than blacks and since whites had, on the whole, more seniority, the separate racial seniority lines appeared to discriminate against whites.

Kaiser, a contractor with the federal government, gave three reasons for adopting this program: (1) pressure from federal contract compliance officers, (2) fear of litigation by blacks, and (3) a belief that such programs advanced national policy.

In 1974, Brian Weber, a white man, was turned down for three skilled training programs at Gramercy even though he had more seniority than two successful black candidates. He then brought a class action challenging the 50 percent minority admission quota under Title VII. He won in the federal district court, which enjoined the use of race as a criterion for admission to the program, and in the Court of Appeals for the Fifth Circuit, with Judge Wisdom dissenting. That court emphasized and sustained the district court's finding that Kaiser had not been guilty of any past discrimination at its Gramercy plant. The case then came to the Supreme Court.

On the surface, *Weber* presented the question of how "equality" had been defined by Congress in the 1964 Civil Rights Act. But not far below the surface were larger and more contentious issues. Did intervening conditions, including the Supreme Court's own decisions, warrant a change in the mandate or the policy of Congress? If so, was it proper for the Court, rather than Congress, to make that change?

Justice William Brennan, who wrote the Court's opinion, purported to deal only with the narrow issue of construction. Chief Justice Warren Burger and Justice William H. Rehnquist (who wrote the principal dissent) objected that, under the guise of construction, the Court was rewriting the mandate of Congress. When basic clashes of values lie behind constructional problems, such protests are as familiar as "Kill the umpire." Nevertheless, in *Weber*, the protest has extraordinary power. Indeed, the Court's argument is so weak that it is embarrassing to subject it to conventional legal analysis. But such analysis is a necessary first step in an effort to understand the limitations and implications of the Court's decision.

THE OPINION OF THE COURT

Title VII outlaws all employment discrimination against an individual on grounds of race. Thus, the statute's central provision makes it unlawful for an employer—"to fail or refuse to hire or to discharge *any individual*, or otherwise to discriminate against *any individual* with respect to his compensation, terms, conditions, or privileges of employment, because of *such individual's race*, color, religion, sex, or national origin." [Emphasis added].

Another provision dealing specifically with on-the-job training programs also barred employers or unions from discriminating against any "individual because of his race. . . ." In the light of those provisions, the Court's opinion virtually conceded that Weber's position was supported by a literal interpretation of the Civil Rights Act. But it rejected such an interpretation as incompatible with the spirit of the act and the intention of its makers. Brennan supported this position with these reasons: Congress's primary purpose had been to open to blacks jobs from which they had traditionally been barred. *Weber's* proposed interpretation was unacceptable because it would prohibit effective steps by private firms to accomplish that purpose. Quoting from the late Senator Hubert Humphrey, the justice observed that it would "be ironic indeed if a law triggered by a nation's concern over centuries of injustice and intended to improve the lot of those who had been 'excluded from the American dream for so long' were also to be the first blanket prohibition of all voluntary private, race-conscious efforts to abolish old patterns of racial segregation and hierarchy."

Brennan found a central justification for his position in section 703(j) of the act, which provides that nothing in Title VII shall be interpreted to *require* any employer to grant any preferential treatment to any individual or to any group because of a racial (sexual, et cetera) imbalance in an employer's work force. He urged that Congress's use of "require" rather than the phrase "require or permit" shows that Congress "did not mean to prohibit all race-conscious affirmative action to redress racial imbalance." Such a blanket prohibition would, he continued, ignore the fact that section 703(j) had been prompted by the concern about excessive federal regulation expressed by some legislators.

Brennan explicitly declined to go beyond the case before the Court and to delineate the scope and limits of the governing principle. Nor did his listing of those aspects of the Kaiser-USWA plan that in combination made for its legality do much to dissipate the murkiness inherent in the Court's avowedly ad hoc approach. We will look at that list below and suggest that the Court has not yet explicitly endorsed all "affirmative action" preferences even for blacks, and has ostensibly reserved for the future decisions on preferences for women, Hispanics, and other groups.

In the Court's opinion, only a brief footnote was devoted to the troublesome case of *The University of California* v. *Bakke* (1978), which had held that Title VI of the Civil Rights Act outlaws the adoption of explicit racial quotas in federally funded medical schools. Brennan dismissed that case principally on the ground that Title VI and Title VII shed no light upon one another since the former had been enacted pursuant to congressional power to condition federal expenditures and the latter pursuant to the commerce power.

This suggestion—that a different constitutional basis for the two titles implies different substantive standards for each of them—is not supported by any functional consideration. Furthermore, it ignores the fact that both titles incorporated a broad antidiscrimination principle. It is odd indeed to learn from the Court's parimonious footnote that these two titles of the Civil Rights Act should be severed from each other, even though they had been integrally connected by the approach of all the justices in *Bakke* as well as by common language, purpose, and history. This oddity calls to mind the remark of Thomas Reed Powell (a distinguished law teacher at the Harvard Law School when Brennan was a student there) that a legal mind is one that can think about one subject while refusing to think about another subject inextricably tied to the first.

THE DISSENTS

The core of Rehnquist's dissent is reflected in his charge that "[t]he Court

eludes clear statutory language, 'uncontradicted legislative history' . . ., and uniform precedent in concluding that employers are, after all, permitted to consider race in making employment decisions." In his lengthy opinion he relentlessly documents each criticism he leveled against the majority. The power of his opinion is, in part, the power of repetition—especially the repetition of excerpt after excerpt from the legislative debates—all to the effect that under the act employers were not to be permitted (or required) to discriminate in favor of blacks or whites, that racial quotas, voluntary or involuntary, were to be forbidden. A summary cannot, accordingly, convey the force of this argument.

The power of Rehnquist's opinion came also from his clean craftsmanship in disposing of the Court's argument that the use of "required" in section 703(j) implied that some "voluntary" racial preferences were to be allowed. Rehnquist's response went like this: Section 703(j) had been designed to satisfy the bill's critics, who had urged that the act would be interpreted by courts and official agencies to require employers with racially unbalanced work forces to grant preferential treatment to minorities. There had been at that time no need to deal with truly voluntary, in addition to officially required, quotas. For the language of Title VII, as proponents and opponents of the bill both understood, plainly banned voluntary quotas. Indeed, never once during the eighty-three days of Senate debate did a speaker suggest that the bill would permit employers to adopt voluntary preferences in favor of blacks.

It was ironic, first to label Kaiser's plan as "voluntary," when it had actually been induced by pressure from federal agencies charged with enforcing Executive Order 11246 against government contractors, and then to uphold that plan by invoking section 703(j), which had been designed as protection against employers' being forced into quota systems by government pressures. Rehnquist added the final blow by pointing to the express provision in Title VII permitting firms on or near an Indian reservation to grant publicly announced preferences to Indians living close by. He urged that had Congress wished to permit such preferences for blacks it would have used similar language.

Rehnquist's persuasive textual and historical analysis, moreover, wholly compatible with the statute's primary purpose, as defined by Brennan—to help blacks get jobs. That end was, however, to be advanced by a particular means, by incorporating into law the equal opportunity for employment that had for so long been denied to blacks. It was clear in 1964, as it still is today, that ensuring such opportunity would help blacks enter the economic mainstream. But it was also clear that legal protection of equal opportunity for blacks could not have been enacted if whites had not expressly been accorded the same protection as blacks.

Furthermore, the broad sweep of the antidiscrimination principle had deep moral as well as political roots; equal opportunity for individuals and the irrelevance of their membership in particular racial groups—black or white—had been a classic but unrealized goal of American society. To be sure, equal opportunity, without concern for unequal conditions, could be an idle ritual. But the attack on unequal conditions was not to be based on race or to involve selective employment discrimination against "innocent whites." Instead, that attack was to be based on need or disadvantage—a criterion that cut across racial lines and that was both better measure of inequality of condition and less troublesome, morally and politically, than race.

Chief Justice Burger joined in Rehnquist's dissent, but disagreed with him on the ultimate policy question. Rehnquist had expressed distaste for racial quotas. Burger, however, endorsed as a citizen the end sought by the majority—legalization of action such as Kaiser's. His endorsement of the Court's end (without discussing the policy issues) underscored his disapproval of the Court's means, which, he suggested, were an intellectually dishonest assumption of legislative powers.

POST-1964 DEVELOPMENTS

None of the three opinions we have touched on covered in any detail developments—judicial and executive—following the passage of the 1964 act that had generated pressures on private employers to adopt employment practices of questionable legality. Justice Harry Blackmun, in his concurring opinion in *Weber*, emphasized those pressures. Although acknowledging his "misgivings" as to whether the pertinent legislative history supported the Court's result, Blackmun found that result supported by "additional considerations, practical and equitable only partially perceived, if perceived at all, by the 88th Congress."

Presumably those considerations were related to a series of judicial decisions under Title VII and executive decisions under Executive Order 11246 (covering government contractors) that purported to require color blindness in employment decisions while exerting great pressure on employers to achieve in their work force statistical proportionality for blacks, women, and other "protected" groups. Thus, the Supreme Court in *Griggs* v. *Duke Power Co.* (1971) had barred the use of professionally developed tests—even in good faith—if they had a disproportionately adverse impact on blacks, unless the employer proved "business necessity." The Court also deferred to and legitimated the stringent guidelines of the Equal Employment Opportunity Commission (EEOC) for validating tests in which blacks as a group do relatively badly. The resulting burdens of validation involved such expense and difficulties that they undercut the statutory proviso designed to preserve professionally developed tests used in good faith. These impediments to employers' relying on "objective" criteria complemented rules whereby proof of statistical imbalances in a work force could alone lead to back-pay liability to large classes of employees as well as to reputational injury to those found guilty of "discrimination."

The "moral" of all this was clear to employers: There was safety in numbers or in some kinds of numbers—that is, numbers tending to show statistical parity for blacks would not only reduce the risk of charges of or liability for statistical imbalances, but would also be helpful should an individual employee charge particularized and intentional discrimination by the employer.

While these pressures for race-conscious hiring were emerging, the Supreme Court continued to proclaim the color-free theme of Title VII. Indeed, in *Griggs* itself, the Court had announced that the statute outlawed all racial criteria and that it prescribed all "discriminatory preference for any group, minority or majority." Thus the Court purported to bar an employer from using race-conscious or quota hiring in order to avoid the statistical imbalances that might well be the road to costly litigation and liability.

A similar ambivalence regarding equal opportunity and equal outcomes for groups developed under Executive Order 11246. That order required government contractors to commit themselves both to "affirmative action" and to a comprehensive nondiscrimination obligation. But the administration of the order emphasized results. Equality of opportunity insofar as it meant race-free decisions was superseded by, or measured by, equality of outcome. An employer's performance and compliance were measured by the representation of minorities in his work force and in the population—or some population—or in some labor market. Compliance agencies pressed contractors for goals and timetables or "commitments" even without any showing of past or present discrimination. Despite the pressure for racially oriented decisions exerted by these ill-defined extrastatutory requirements, the regulations contained the usual contrapuntal disclaimer that the use of goals and timetables "is not intended to discriminate against any applicant or employee because of race, color, religion, sex or national origin."

These developments, despite their ambivalence, generated expectancies of, and constituencies for, continued "reverse discrimination." Furthermore, some disinterested observers supported such programs on the ground that individual blacks had suffered because of their race and that, accordingly, they should be helped by compensatory programs that were racially oriented. Still others dismissed any legal or moral problems involved on the "practical" ground that, in the real world, curtailment or dismantling of the policy of selective discrimination would threaten social peace.

BLACKMUN'S OPINION

In *Weber*, Blackmun scarcely mentioned such broad issues (some of which were discussed in *Bakke*). He emphasized the plight of business subject to contradictory commands from the government, stating:

The broad prohibition against discrimination places the employer and the union on . . . a high tight rope without a net between them. If Title VII is read literally, on the one hand, they face liability for past discrimination against blacks, and, on the other, they face liability to whites for voluntary preferences adopted to mitigate the effects of prior discrimination against blacks.

Stressing that alleged dilemma, the government in *Weber* argued that employers and unions "who had committed arguable violations of Title VII" should be free to make "reasonable responses" without fear of liability to whites. Blackmun favored that approach, which would have focused on the employment practices of a particular firm. Nevertheless, he joined in the Court's opinion because in the end he found that employers would have substantially the same leeway with respect to racial preference under both approaches. Moreover, he perceived "strong considerations of equity" supporting the majority's approach of permitting preferential treatment designed to remedy the effects of societal discrimination. Indeed, adding insult to injury, he protested that Mr. Weber seemed "unfair" in challenging Kaiser's efforts to rectify historic discrimination—even though the Court had upheld a similar protest in *Bakke*.

In any event, the "arguable violation" approach favored by Blackmun and the government suffers from fundamental and manifest difficulties. It is needed only if Title VII in general bars all employment discrimination—in favor of or against blacks. But if the statute is read in that way, it is not apparent why arguable discrimination against members of one group should justify actual and undeniable discrimination against members of another group. All of Blackmun's subsidiary arguments beg that question and seek to convert a broad antidiscrimination principle into a question of whose ox is gored (to use Alexander Bickel's phrase). This is not to deny that under Title VII—among other regulatory contexts—employers have been faced with the risk of being damned if they do (engage in reverse discrimination)

and damned if they do not. Such dilemmas are, of course, undesirable. Nevertheless, in resolving them in the Title VII context, the critical point is that that statute was designed to regulate employers and to protect employees. And if a choice must be made between a quieter life (or government contracts) for employers and the abrogation of statutory protection for some classes of employees, nothing in the statute suggests that the employees' interests should be sacrificed.

Finally, the employer's alleged dilemma is often a false one—because future affirmative action cannot wipe out liability for past violations. To be sure, affirmative action may divert attention from, and thereby avoid remedies for, past discrimination, but only at the expense of adequate relief for indentifiable victims of such discrimination. Indeed, Blackmun seems to endorse voluntary quotas in part because they fuzz things up in this way. Assume for example that, after the Civil Rights Act became effective, an employer engaged in discrimination against two black employees. In order to bolster his legal position the employer grants preferences to two other blacks, who were not directly affected by the employer's wrong. The equity of such results is elusive—and when, as in *Weber*, the employer has not even been found guilty of actual discrimination, the equitable support for racial preferences surely does not grow stronger.

Such indifference regarding a link between the victims and beneficiaries of particular wrongs and remedies contrasts sharply with the sensitivity to such relationships reflected in opinions of the Supreme Court or of individual justices in cases such as *Franks v. Bowman Transportation Company* (1975) or *Bakke* (1978). Those cases suggest, moreover, that substantial constitutional questions arise from a statute that permits an employer to grant voluntary preferences to blacks but prohibits such preferences to whites. The majority of the Court was wholly silent about these interrelated equitable and constitutional questions.

ADDITIONAL CONSIDERATIONS, PRACTICAL AND EQUITABLE

It is now useful to look more closely at Blackmun's general claim that "additional considerations, practical and equitable, only partially perceived, if perceived at all by the 88th Congress" support the Court's conclusion. It is worthy of emphasis that these unperceived considerations are not developments external to the structure of regulation; on the contrary they consist of the judicial decisions and executive practices that have generated great pressures for statistical parities and racial quotas, despite the resultant tensions with the statutory language and history. Blackmun's statement thus involves a reversal of roles, a painful failure to recognize whose perceptions—the judiciary's or the Congress's—should be respected in nonconstitutional cases. For Blackmun is implying that Congress failed to perceive that the judiciary and the executive would undercut the political and ethical bargain reflected in Title VII, and also failed to perceive that the judiciary, along with the executive, would generate pressures on employers to ignore the statute and to discriminate against members of some groups (including white males) in order to get protection against charges of discrimination against members of other groups (including blacks and females). Nevertheless, Blackmun finds that it is not the Court's inadequate perceptions but those of the Congress that now require a drastic and explicit narrowing of the antidiscrimination principle written into the statute. This change is necessary not to protect the original policy of the statute but rather to protect those whom it regulates from the conflicting pressures of contradictory policies that have been shaped by the courts, the EEOC, and the Office of Federal Contract Compliance (OFCC)—bodies that are supposed to implement the constitutional mandates of Congress.

The Court had another obvious alternative, namely, to seek to respect the language and history of the statute and to make clear that if doing so placed an innocent employer in an intolerable situation the Court would reexamine and, if need be, revise earlier decisions. For the change made by *Weber* is plainly not a response to a minor hitch, unforeseen by Congress, of the kind that often emerges as a statute is administered. On the contrary, that change goes to the roots of the bargain reached in the Eighty-eighth Congress and to the roots of our tradition. *Weber* is another important step in the transformation of the classic and widely supported liberal ideal of equal opportunity for individuals into a new program of equal outcomes for groups that is more divisive than the older ideal and fundamentally inconsistent with it.

AFFIRMATIVE ACTION AND THE COURT'S ROLE

It is not possible here to review the arguments over the relationship of these competing concepts of "equality" to equity and order. What merits emphasis here is that the resolution of such questions by the Court under the guise of statutory construction strains its institutional competence. Thus the Court's opinion does not even notice some questions relevant to a disinterested and informed choice between those two concepts. And one need not romanticize the process of legislative investigation or legislative decision to recognize that litigation is as ill-suited for informing the Court regarding the pertinent questions as the Court is for resolving them. It may be useful to mention some of the pertinent questions neglected by the Court.

Is official pressure for affirmative action a substantial factor in the location of plants away from the centers of black population, with a view to avoiding pressure for the quota hiring required to redress statistical imbalance? As a consequence, are the most disadvantaged blacks being hurt by regulation designed to help them? Will the shift from equal opportunity for individuals to equal outcomes for groups undermine the consensus that was, at last, achieved in 1964? Will those all too ready to exploit the grievances of innocent whites in order to promote bigotry now be able to march under a respectable banner—equal opportunity for all? Will the fallout from *Weber* further polarize our work forces and our communities? Will it obstruct important job training across racial lines—the spontaneous on-the-job instruction of one worker by another? Will the blacklash create further obstacles to legislative action necessary for programs designed to help all the disadvantaged, black and white? Will quota hiring result in significant inefficiencies, thereby retarding economic growth, to the particular disadvantage of minorities? Could a shift from individual to group "rights" be stabilized anywhere short of a transformation in the basic values of our society and in our political, legal, and economic institutions—short of a completely "quotified" society?

These illustrative questions are legislative and—in the best sense of the word—political. There is no indication that the Court even considered them. On the other hand, in answering the question presented by *Weber* without appropriate regard for Congress's mandate, the Court risks its future capacity to meet a deeply felt need for trustworthy neutrals. Finally, when the justices stray into the political thicket, it is more likely that the Court will fail a classic test for a Supreme Court opinion, that it give reasoned explanations transcending the case being decided.

Weber fails that test. Although it affects almost the entire work force, it fails to provide coherent guidance to government officials and private lawyers who must give day-by-day advice and to judges who must deal with a flood of litigation. The Court, as we have seen, emphasized that it was deciding only the case before it. This ostensible strategy of postponement adds still another ironic twist to a decision preceded by arguments that something had to be done to alleviate the uncertainties resulting from discordant regulations.

THE REACH OF THE COURT'S OPINION

The narrowness of the opinion may, however, be more apparent than real. The distinctive elements of *Weber* that the Court stressed are in the main so unrelated to the opinion's basic argument and basic purpose that if the Court persists in its fundamental position those elements are unlikely to have any importance. Moreover, those elements are in general so ill-defined by the Court that they provide no clear basis for a limiting rule.

First, *Weber* validated quotas only with respect to "traditionally segregated job categories"—in the private sector. Since the Court did not spell out those categories, there are many unanswered questions. Do jobs remain traditionally segregated and, if so, for how long after black representation has markedly increased? Does the Court's emphasis mean that quotas may not be established for relatively new job categories, such as computer programmers, if such categories have not involved any identifiable exclusion in the past but presently involve a racial imbalance? Does "traditionally segregated" mean anything more than current racial imbalance? How are the job categories to be defined for these purposes? If, for example, the relevant rubric were "white collar jobs," computer programmers might easily fit into areas of traditional segregation; and, contrariwise, if computer programmers were a separate category that had been free from segregation. Finally, is "traditional segregation" to be determined on a national, regional, or local basis?

Apart from the confusion inherent in the "traditionally segregated job category" test, the more important question is whether that test is compatible with the Court's basic reasoning. If, as *Weber* indicates, Title VII permitted some voluntary quotas in order to avoid overregulation, it is difficult to see why their legality should depend on their being directed at "traditionally segregated categories." From the standpoint of a black job applicant who has not been the direct victim of discrimination, it is not of primary importance whether there was job segregation in the past. Furthermore, whether a racial imbalance exists in a traditionally segregated occupation or in a new occupation free from prior discrimination would appear to be irrelevant to what the Court posits to be the overriding purpose of the statute—putting blacks into the economic mainstream. Indeed, measures directed at that purpose may be especially significant in areas where jobs are being created by new technologies.

A similar point arises from the potential limitation of the Court's approach to the private sector, since employment has recently been growing faster in the public sector than in the private. Conceivably that limitation might be explained on the grounds that racial quotas in the public sector would involve the government directly in racial discrimination and thus raise troublesome constitutional questions. But the Court's interpretation of Title VII as permitting "voluntary" preferences for some races attributes to the Congress the same kind of discrimination on grounds of race.

Another apparent potential limitation on the employer's freedom to adopt "voluntary" preferences may be implicit in the Court's repeated statements that the Kaiser quota

had resulted from collective bargaining. It is, however, difficult to find any basis for giving legal significance to that fact. Furthermore, to do so would run counter to *Alexander v. Gardner Denver* (1974) where the Supreme Court observed that Title VII protected individual rights against collective bargaining and the power of the majority. Finally, collective bargaining covers less than 25 percent of the work force. If the Court's approach is sound, it would be bizarre to confine it to such a small fraction of the economy.

The Court also noticed (1) that the Kaiser plan did not absolutely bar the admission of whites and (2) that the plan was a temporary one, operating only until blacks in craft jobs at Kaiser reflected the ratio of blacks in the local work force. Again, it is difficult to fit those factors into the Court's basic argument.

Although whites were not disqualified from Kaiser's training program, the places allotted to blacks—50 percent—exceeded their ratio in the local labor force. Even if one accepted the dubious and unhealthy premise that, without discrimination, employment in different plants would reflect ethnic proportionality, the Kaiser plan called for "overrepresentation" of blacks in the training program. Plainly, then, the plan was presented not as a prophylactic against future discrimination by Kaiser, but as a catch-up remedy for past discrimination by society. If such a "voluntary" remedy is favored or tolerated as a way of getting blacks into the economic mainstream, why should the law limit an employer who wishes to help blacks catch up even more quickly by barring whites altogether until a given statistical goal is reached? Similarly, if an employer can lawfully give blacks a quota higher than their ratio in the local labor force—without any consideration of relative skills—why should an employer who has achieved statistical parity in his own plant be barred from continuing his preference as a means of compensating for still unremedied "societal discrimination" elsewhere? Since the Court does not require guilt on the part of the employer as a condition of his granting racial preferences temporarily, the Court is allowing him to remedy societal discrimination. Why should his privilege end when he has achieved statistical parity but the rest of society has not?

The Court's emphasis upon the legislative history's focus on blacks and their economic plight may imply another limitation on voluntary quotas: that is, they may not be lawfully applied to white women, Hispanics, and members of other "protected groups." To be sure, the Court's emphasis on voluntarism and on traditionally segregated job categories, as well as Blackmun's emphasis on safety nets for employers, could be invoked to validate "voluntary" preferences designed to redress "underrepresentation" of such groups. Within the framework of *Weber*, one would expect that result. But such preferences could be "distinguished" on the basis of other themes in the Court's opinion.

Even if preferences to other groups are permitted, there will be a cluster of additional complexities arising from charges that blacks are being excessively preferred at the expense of Hispanics, women, or Vietnamese refugees—or from charges that run the other way. It is understandable that the Court, in its *Weber* opinion, did not attempt to illuminate those difficulties.

Only one more uncertainty can be mentioned here. What kind of an affirmative action plan will protect an employer in a *Weber* situation? Does the plan have to be in writing? How detailed and systematic must it be in order to distinguish lawful "reverse discrimination" under such a plan from ad hoc preferences for blacks previously forbidden by the Court? Finally, if the OFCC should openly order an employer to adopt specified affirmative preferences for blacks, would such a plan, because it was "involuntary," be beyond the protection of *Weber*?

CERTAINTY THROUGH UNCERTAINTIES—THE EEOC GUIDELINES

The uncertainties mentioned above might limit the use of "voluntary" preferences. But they will also in many instances protect employers who act in accordance with EEOC guidelines or affirmative action programs under the executive order. For Title VII seeks to insulate against damages liability firms that in good faith have conformed to and relied on any written interpretation by the EEOC. And under the EEOC's guidelines issued shortly before the Supreme Court's decision in *Weber* and embodying the government's position urged in that case, an employer is protected against damages liability if he engages in reasonable affirmative action in order to redress statistical disparities or to carry out an affirmative action plan pursuant to the executive order covering government contractors.

Given the looseness of the Court's rationale for "reverse discrimination," reliance on almost any official guideline sanctioning such discrimination would appear to be in good faith. Hence, the Court has not only rewritten Title VII but—as to damage actions—has by its temporizing facilitated further incursions on that act by the combined operations of the OFCC and the EEOC. Thus, the OFCC's pressures may propel employers into adopting "voluntary" quotas (for women as well as blacks) pursuant to affirmative action programs "suggested" by officials who have chosen to read the *Weber* opinion as a blanket endorsement of affirmative action (as that term is understood by agencies better known for their zeal for "results" than for their commitment to equal opportunity or their disinterested interpretation of Supreme Court opinions). *Weber* is thus likely to encourage "antidiscrimination" agencies to step up their pressures for discriminatory quotas. And *Weber* is likely to lead to the validation of many of those quotas. As to others, the guidelines—at least in damage actions—will tend to protect employers. Thus the Court, the EEOC, and the OFCC (despite doubts as to the constitutionality of the powers asserted by the OFCC) will interact to protect employers who are pressed into quotas on the ground, among others, that quotas are the voluntary result of self-study. The irony—noticed by Rehnquist—of labeling such quotas voluntary will increase if the club of the procurement power is wielded more vigorously. If it is wielded with more candor, or even less circumspection, the Court may, of course, reexamine its concept of voluntariness.

In *Weber*, only Blackmun suggested that intervening judicial and execution action made the issue before the Court more complex than what was the original meaning of Title VII of the 1964 act. Nevertheless, his answer, like the Court's, failed in my view to respect the clear mandate of Title VII and contravened what James Madison called the fundamental principle of our Constitution—separation of powers. That view will, of course, be challenged by those who see the Court as free to substitute its values and perceptions for those of Congress, especially when the Court goes their way. But even those more concerned with results than rationale are, I believe, likely to agree that *Weber* lacks the clarity, the candor, the coherence, and the convincing power that are appropriate for the work product of the Supreme Court of the United States. Those qualities are, indeed, usually the first casualties of judicial forays into the legislative thicket.

Mr. HATCH. Mr. President, the broader issues underlying Weber had already been extensively surveyed in the June 1979 issue of Commentary magazine, which has developed a remarkable record of courageous publication on this and many other taboo subjects.

The writer was Prof. Carl Cohen, professor of philosophy at the University of Michigan in Ann Arbor, former member of the American Civil Liberties Union and the author of such widely noted books as "Democracy" and "Civil Disobedience." Professor Cohen presciently devoted sections of his article to preemptive strikes on the argument that the "voluntary" and "benign" nature of the discrimination practiced against Brian Weber somehow exempted it from the force of the law. This of course was the very argument upon which the Supreme Court nevertheless shamelessly relied.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Why Race Preference Is Illegal and Immoral," by Carl Cohen, published in commentary, July 1979.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WHY RACIAL PREFERENCE IS ILLEGAL AND IMMORAL

(By Carl Cohen)

The role of race in assuring social justice is again squarely before the Supreme Court in a case whose full and revealing name is: *Kaiser Aluminum & Chemical Corporation and United Steelworkers of America, AFL-CIO v. Brian F. Weber, individually and on behalf of all other persons similarly situated.*

Weber, a white unskilled steelworker, is Bakke's analogue. The Steelworkers Union and Kaiser Aluminum are not the only forces against him. The United Auto Workers and the United Mine Workers, the National Education Association, the Coalition of Black Trade Unionists, and assorted other unions are against him. The American Civil Liberties Union is against him. Even the United States government is formally aligned against him. On Weber's side is the Anti-Defamation League of B'nai B'rith (with some associated non-Jewish ethnic groups) and, according to repeated surveys, an overwhelming majority of the American population, including a majority of the black population.

But the issues at stake here, touching the most fundamental rights of individual persons, are not to be decided by counting noses. The chief things going for Weber are the Fourteenth Amendment of the U.S. Constitution, the Civil Rights Act of 1964 as amended, and sound moral principles. Thrice is he armed who hath his quarrel just.

Weber has thus far been victorious, both in the Federal District Court, and in the Federal Court of Appeals (5th Circuit, New Orleans). His formidable opponents find it difficult to overcome the plain words of the law applied straightforwardly to the established facts of his case. The law (Title VII of the Civil Rights Act, Sec. 703) forbids flatly all discrimination in employment because of race.* Beyond any possible doubt

*Subsection (a) of Sec. 703 reads:

"It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privilege of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit segregate, or classify his em-

(as we shall see) Weber was discriminated against by his employer, and classified by his employer, and had his status as an employee adversely affected because of his race. That the employment practice through which this was done is a violation of this federal law is an ineluctable conclusion of any rational mind.

Is it not remarkable, then, that unions, industry, and government should now join in the effort to persuade the Supreme Court to evade this conclusion? Weber's opponents are neither foolish nor evil. They seek, somehow, to surmount the barriers to racially discriminatory treatment in order to achieve objectives they think good. Reflection upon this case will oblige the Supreme Court—and all citizens who would reach thoughtful judgment on these issues—to reconsider those objectives, and to appraise the means by which they have been pursued.

The *Bakke* case, and the *DeFunis* case before it, dealt with racially discriminatory practices in professional-school admissions—a matter for which the middle classes have, rightly, a tender concern. *Weber* deals with racial discrimination in blue-collar employment. The injury done Brian Weber was at least as great as that done Allan Bakke, and the class Weber formally represents is very much larger, if less articulate, than that directly affected by racially preferential school admissions. It is disturbing, therefore, that the voices raised in behalf of Weber's rights, and the rights of literally millions of individual citizens in like circumstances, are so painfully few. Silence now from quarters that were outspoken in opposition to racial preference in higher education may lead some to infer that self-interest, more than justice, was what motivated that earlier concern.

In both spheres—school admissions and industrial employment—the same issues arise: in the allocation of scarce goods, may one's race count in one's favor? If ever, when? In *Bakke* a racially preferential admission system at the University of California Medical School at Davis was struck down, but attention to race in the admissions process was there held permissible within certain very narrow limits: to advance the diversity of an entering class, or to remedy the condition of specific persons who had been discriminated against by the school using the racial instrument. *Weber* is in many important respects different. Here the factor of diversity does not enter; here matters pertaining to intellectual qualifications are replaced by matters pertaining to seniority. Here the stakes are greater and the underlying moral issues are presented more cleanly.

I

This is what happened. Kaiser (Kaiser Aluminum & Chemical Corporation) and the union (United Steelworkers of America, AFL-CIO) sought to increase the number of minority workers in the skilled crafts at Kaiser's Grammercy, Louisiana, plant. To this end, in a 1974 collective-bargaining agreement, they changed the system whereby employees would enter on-the-job training for craft positions. Prior craft experience was eliminated as a requirement, and entrance ratios, by race, were established for acceptance in the job-training program. For each white worker admitted one minority worker would be admitted, until the percentage of minority craft workers in the Grammercy plant roughly approximated the percentage of the minority population in the surrounding area, then about 40 per cent. Dual seniority lists were established, one black and one white, and each two vacancies filled with the persons at the top of the two racially distinct lists.

It was an inevitable result of this system that some employees would be favored because of their race, and some would be injured because of theirs. Brian Weber was refused admission to the job-training program although his seniority was higher than some employees from the other racial list who were admitted. Weber sued on his own behalf and on behalf of all non-minority employees who applied for on-the-job training at the Grammercy plant after that labor agreement was signed. A racially preferential scheme for allocating on-the-job training opportunities, he argues, is a clear violation of the Federal Civil Rights Act.

One portion of Title VII of that Act deals explicitly with on-the-job training programs. That portion (subsection (d) of Sec. 703) reads as follows:

"It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, *including on-the-job training programs*, to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training [42 U.S. Codes 2000e-2(d) (1970); emphasis added]."

Was it prescience that caused the Congress to formulate this ban with language so precisely and indubitably covering the case at hand? Not at all. Title VII had as its purpose the elimination of all ethnic favoritism in employment; there had been, at the time of its adoption, plenty of experience of the ways in which racial prejudice can be given effect—one of the commonest being in job-training programs. In that form as in all forms, said the Congress in effect, racial discrimination in employment is no longer permissible.

How can Kaiser and the union (and the U.S. Department of Justice) reasonably argue that such a scheme is indeed lawful or fair? They contend that the law, properly interpreted, does not forbid this variety of racial preference, which they think justified by our history of discrimination. They contend that if the pursuit of pressing social objectives now imposes incidental costs on individuals, Weber and his like are the right persons to bear those costs. They contend that they were ordered by the U.S. government, to introduce racial preference of precisely this kind. And they contend that Weber wasn't really injured by this program at all. I examine these arguments in turn.

II

"Kaiser and the union [the first argument begins] reached an agreement that was fully in accord with the spirit of Title VII. Theirs was a voluntary effort to bring a greater number of minority workers into the skilled crafts. Congress never intended to forbid such voluntary efforts. If now the product of such agreements, reached through collective bargaining, is struck down, the cause of racial justice will have been dealt a devastating blow.

"We must [this argument continues] permit management and labor to join, as in this case, to correct a racially unbalanced situation flowing from the historical and social realities of American life. Blacks have been discriminated against, cruelly and consistently, by industry and by unions. Now an effort is being made to give redress. It is an ironic inversion of the Civil Rights Act to use that Act to forbid the only instruments that may effectively achieve its own intended result.

"It is true [the argument proceeds] that Title VII specifies that preferential treatment of racial minorities is not required [Section 703 (j)]. But this is not to say it is forbidden. When its aim is precisely that of the Act itself, it must not be forbidden. Weber relies upon the narrowest construction of the words and misses—inadvertently or deliberately—the remedial spirit of the law and of the Kaiser program here in question."

The main pillar of Weber's opposition comes to this: "If the Court agrees that racial quotas such as this one are discriminatory, we will be kept from doing what many of us think it is necessary to do, and do quickly, in the interests of long-term justice. Let it be understood, therefore [the argument concludes], that this quota, although it does of course distinguish by race, and does, admittedly, give favor by race, does not 'discriminate' by race in the bad sense that the law condemns. When we come to realize that some plans for racial balance, while they may have adverse effects upon some white workers, are nevertheless justified by pressing societal needs, we will also see what interpretation of the law is required by justice."

To put the argument plainly is to see both its earnestness and its frailty. The requirements of the Civil Rights Act, which in turn were intended to give concrete meaning to the constitutional demand that no citizen be denied the equal protection of the laws, were aimed at bringing to a final halt all formal discrimination on the basis of race—and color, religion, sex, and national origin. It certainly was not intended, and it obviously was not formulated, to forbid only such racial discrimination as employers and unions thought objectionable, while permitting any racially discriminatory schemes that employers and unions might by agreement find worthy or convenient. What the employer and the union happen to prefer, whether their motives be honorable or crass has absolutely no weight, says the law in effect, against the *right* of each individual citizen to be dealt with, in matters pertaining to employment, without regard to race, religion, or national origin.

III

"But that cannot be the correct interpretation of the law," answer Kaiser and the union in chorus, "because the Supreme Court has several times, in the years since, recognized the lawfulness and wisdom of racially preferential employment schemes. Indeed, our federal courts have *ordered* the imposition of such racial preference in some cases! So it is clearly false that *all* racial preference has been forbidden. If that is so, then it is not obviously true that *this* scheme for racial preference has been forbidden."

This rejoinder brings us to the core, legal and moral, of the controversy in *Weber*. What kind of attention to race does the Civil Rights Act (and, indirectly, the Constitution) permit? And what should it permit? In the *Bakke* case, this question was complicated by the entry of First Amendment considerations pertaining to the robust exchange of ideas in the classroom; the holding in *Bakke* was tangled by the fact that Justice Powell's pivotal opinion, although condemning racial favoritism, permits attention to race to advance diversity among an entering school class. Here, in *Weber*, such First Amendment considerations are totally absent. What, if anything, remains to justify race-conscious employment practices?

There is a clear and honorable answer to this question, given forcefully by federal courts at every level. Title VII of the Civil Rights Act forbids all deliberate discrimination by race, save only in cases where racial classification is absolutely essential give redress to *identifiable persons* injured by racial discrimination *and where the injury done them was done by the same party upon whom the numerical program is imposed*. One purpose only may justify numerical schemes using racial categories: the *making whole* of those to whom redress for racial injury is specifically owed, by those who owe it.

For example: the known victims of racial discrimination by a trucking company have

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ployees or applicants for employment in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin" 42 U.S. Codes 2000e-2(a) (1970).

been held entitled, as a remedy, to a place in the seniority lists of that company that would have been theirs if they had not been so victimized. To put them now in as good a place as they would have been in but for the discriminatory employment practice from which they can be shown to have suffered, it may be necessary to attend to race. Only in that way can the victims be made whole; they would otherwise remain subordinate to persons who, had it not been for racial discrimination in that company, would now be their subordinates. (See *Franks* v. *Bowman Transportation Co.* 424 U.S. 747 [1976]. In such cases, the racially oriented remedy cannot be refused on the ground that the effect on other employees is adverse because, although the employees who suffer from the imposition of the plan are very possibly innocent themselves, they have clearly benefited, in seniority, from the specific discriminatory practice for which remedy is being given. Race-conscious remedies for the victims of illegal discrimination are lawful, consistent with Title VII, only in such circumstances.

Weber and Kaiser Aluminum are in no such circumstances. Upon examining the facts, the Federal District Court found that Kaiser had not been guilty of any discriminatory hiring or promotion at its Grammercy plant. Kaiser's industrial-relations superintendent at that plant testified that, prior to 1974, Kaiser had vigorously sought trained black craftsmen from the general community. Advertising in periodicals and newspapers that were published primarily for black subscribers, Kaiser found it very difficult to attract black craftsmen. The evidence established two key facts:

1. Kaiser had a serious, operational, no-discrimination hiring policy at its Grammercy plant from the day of that plant's opening in 1958.

2. Not one of the black employees who were offered on-the-job training opportunities over more senior white employees (pursuant to the 1974 Labor Agreement) had been subject to any prior employment discrimination by Kaiser.

From these facts it is an inescapable conclusion that the quota system at Kaiser's Grammercy plant was not an instrument for the specific redress of persons injured by racial discrimination there; it was unabashed racial preference aimed at numerical proportions having nothing to do with past conduct in that plant. Such preference Title VII outlaws. The distinction, between impermissible racial preference and permissible remedy for past discrimination, is put eloquently by the Circuit Court of Appeals in affirming Weber's rights:

"If employees who have been arbitrarily favored are deprived of benefits capriciously conferred on them in order that those who were arbitrarily deprived may receive what they should, in fairness, have had to begin with, no law is violated. This is so even if both the class whose rights are restored and the class required to "move over" are defined by race—if the original arbitrariness was defined in that manner. And the reason is that no one is being favored or disfavored, advantaged or injured, under these circumstances *because* of race; rather, those who have been unjustly deprived receive their due and those who have been arbitrarily favored surrender some the the largesse capriciously conferred on them. That these consequences end by race is a mere incident of the fact that they began that way.[1]

But those who were favored by race at Weber's expense were admittedly not the victims of such original arbitrariness. The Circuit Court's support of Weber is therefore categorical: [U]nless a preference is enacted to restore employees to their rightful places within a particular employment scheme it is strictly forbidden by Title VII" (p. 225).

IV

Since it is clear that the beneficiaries of this racial program were not victims of Kaiser's previous discrimination, and equally clear that the use of dual seniority lists is an explicit effort to favor blacks over whites, the defenders of this program are compelled to resort to a different justification—past "societal discrimination."

"We cannot deny [say the defenders in effect] that the two-list system deliberately favors one race over another. But we do deny that favoring this race at this time in this country is unfair. We contend that, in view of the historical discrimination against blacks (and other minorities), the racially preferential device now before us is entirely justifiable. It is justifiable not only because blacks have been so long oppressed, but because, as a corollary, whites have been unfairly *advantaged* by a race prejudice. The white employees of Kaiser who are passed over by this plan may indeed be innocent of any racial discrimination themselves, but they have been and are the beneficiaries of racial discrimination by others. This is the heart of our justification. Favor to blacks now is just because of the favor whites have enjoyed until now."

This is the principled argument by which many without selfish interests in these programs are persuaded that they are fair. One might have expected that the American Civil Liberties Union, for example, to spring to the defense of the rights of an almost defenseless individual. Instead it joins the forces against Weber because the ACLU has convinced itself that his rights have not really been infringed on, even though he suffers from deliberate disadvantage because of race. How can that be?

"Racial preference in employment is justified [the argument proceeds] when it is a response to the morally legitimate demand that the *lingering effects* of past racial discrimination be remedied. The lingering effects of historical oppression include the continuing losses of decent employment, together with the money and status that it brings. But the same historical race prejudice that has systematically blocked minorities from access to decent jobs has conferred an involuntary benefit upon whites because, while the number of desirable jobs remains roughly constant, the elimination of competition by minority workers results in the availability of desirable jobs for whites in generous disproportion to their numbers. This benefit is conferred even upon those whites who may, in fact, deplore the prejudice from which they gain. Yet they did gain. Now, with racial quotas favoring blacks, they lose. Their present loss is morally justified by their earlier gain. The primary target of racially preferential programs should be those guilty of past unlawful discrimination, of course. But where those guilty parties simply cannot be identified or are no longer available to make restitution, a secondary but legitimate target is the unjust enrichment attributable to that racial discrimination. Quota plans, like the one devised by Kaiser and the union, seek to redistribute that unjust enrichment. Seen in this light, their fairness—the moral rightness of racial preference for societal rebalancing—cannot be denied." So reasons the ACLU explicitly, and many other honest citizens implicitly, in giving pained approval to race quotas.

The argument fails utterly upon inspection. It relies upon a premise that is clearly and admittedly false in the *Weber* case and like cases. And were all its premises true, they could still not justify the racial preference here in question.

Consider the premises first. The adverse impact on Weber is held justifiable by his unjust enrichment resulting from the bad conduct of others. But if Weber were in any way the beneficiary of past discrimination, he certainly was not unjustly enriched by employment discrimination in the Grammercy plant. In that plant, it is agreed by advocates of the quota and by the courts, there had been no refusal to hire or promote blacks or other minorities, no racial discrimination from which Weber benefited. But the injustice done to Weber is manifested in the loss of entitlements he earned by ten years of work *in that plant*—not in the Kaiser Corporation or in the workforce at large. His entitlements in this matter cannot have been acquired as the result of the historical misconduct of others. Long before Weber came to work at that plant, blacks and whites received equal employment treatment there—so the claim that simply by virtue of his having the seniority that he did in the Grammercy plant Weber was enjoying an unjust enrichment is simply false. That false premise cannot justify "redistribution." The Circuit Court put the matter crisply: "Whatever other effects societal discrimination may have, it has had—by the specific finding of the court below—*no effect* on the seniority of any party here. It is therefore inappropriate to meddle with any party's seniority or with any perquisites attendant upon it, since none has obtained any unfair seniority advantage at the expense of any other" (p. 226).

But suppose *arguendo* (what is not true) that Weber had been unfairly enriched by past racial discrimination. What would follow? The enrichment thus identified might then be a target for redistribution. Among whom? To take from Weber and give to another because Weber got his seniority "unjustly" could conceivably be justified (if ever) *only* if those to whom the redistribution were made were the same persons from whom the spoils had been taken in the first instance. The appealing argument by which so many are persuaded makes the faulty supposition that, if *X* has gained fortuitously but undeservedly from some unidentifiable *Y*, we are morally justified in taking from him and giving to a wholly different Z who suffered no loss to *X*'s benefit, but who happens to be of the same *race* as that injured but unidentifiable *Y*. Buried in this reasoning process is the mistaken premise that the distribution of goods or opportunities is rightly made by racial categories. Z, the person now given preference over *X* because of race, has a right to get from him (this premise supposes) because Z is black, and blacks have been so long oppressed. But rights do not and cannot inhere in skin-color groups. Individuals have rights, not races. It is true, of course, that many persons have been cruelly deprived of rights simply because of their blackness. Whatever the remedy all such persons deserve, it is deserved by those injured and because of their injury; nothing is deserved because of the color of one's skin. This is the philosophical nub of the *Weber* case.

V

So long-lasting and self-perpetuating have been the damages done to many blacks and others by discrimination that some corrective steps must be undertaken. The moral anxiety created by this need for affirmative action accounts, in part, for the willingness

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[1] 653 F. 2d 216, 225 (1977); page references below refer to this decision. The Supreme Court has agreed. In a case arising from a plan devised to give remedy to school employees within a perviously discriminatory system, the Supreme Court declined review of a decision that, in view of the source and nature of that earlier injury, a minority worker may there be entitled to preferential treatment "not because he is black, but because, and only to the extent that, he has been discriminated against" *Chance* v. *Board of Examiners*, 534 F. 2d 993, 999 (1976); cert. denied 431 U.S. 965 (1977).

of some to tolerate outright racial quotas. In the passion to make social restitution, sensitive and otherwise fair-minded people have gotten the moral claims of living persons badly confused. The head of the Office of Federal Contract Compliance (by whom, as we shall see, Kaiser was threatened) epitomizes this confusion: "Society is trying to correct an age-old problem, and Weber is a victim of that process. There is nothing I can say to him. This is something that has to happen. The question is whether you give priority to a group that's been systematically deprived of opportunity while Brian Weber's parents and grandparents were not discriminated against. If someone has to bear the sins of the fathers, surely it has to be their children" (New York *Times Magazine*, February 25, 1979).

But deliberately visiting the sins of the fathers upon their innocent sons and grandsons, to the special advantage of persons not connected with the original sinning, is conduct neither lawful nor morally right. To suppose that both the beneficiaries of redress and those who are made to carry its burden are properly identified by race is, to be plain, racism. It is ethical racism because supposed with good will. It is simplistic because, on this view, race by itself—without consideration of the nature or degrees of past injuries, present advantages, or future pains—is sufficient to trigger the preferential device. The mistaken view in question is therefore properly entitled *simplistic ethical racism*.

Injuries are suffered in fact, claims made and burdens carried, by individual persons. Civil society is constituted to protect the rights of individuals, the sacrifice of fundamental individual rights cannot be justified by the desire to advance the well-being of any ethnic group. Precisely such justification is precluded by the Fourteenth Amendment of our Constitution, whose words—no state "shall deny to any person within its jurisdiction the equal protection of the laws"—express no mere legalism but a philosophical principle of the deepest importance. Explicating that clause, in a now famous passage, the Supreme Court wrote: "The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. . . . Equal protection of the laws is not advanced through indiscriminate imposition of inequalities (*Shelly* v. *Kraemer* 334 U.S. 1, 22 [1948]).

The nature and degree of the injury done to many Americans because they were black or brown or yellow varies greatly from case to case. Some such injuries may justify compensatory advantage now to those injured. But the calculation of who is due what from whom is a very sticky business; compensatory instruments are likely to compound injustice unless the individual circumstances of all involved—those who were originally hurt, those who benefit now, and those who will bear the cost—are carefully considered. Whatever compensatory advantage may be given—in employment or elsewhere—it must be given to all and only those who have suffered like injury, without regard to their race. What we may not do, constitutionally or morally, is announce in effect: "No matter that you, *X*, were innocent and gained no advantage; you are white and therefore lose points. No matter whether you, *Z*, were damaged or not; you are black and therefore gain points." If the moral ground for compensatory affirmative action is the redress of injury, the uninjured have no claim to it, and all those individuals of whatever ethnic group who have suffered the injury in question have an equal claim to it.

Racially based numerical instruments have this grave and unavoidable defect: they cannot make the morally crucial distinctions between the blameworthy and the blameless, between the deserving and the undeserving. As compensatory devices they are under-inclusive in failing to remedy the same damage when it has been done to persons of the non-favored races; they are over-inclusive in benefiting some in the favored categories who are without claims, often at substantial cost to innocent persons. Except in those cases where the discriminatory policy of the employer is established, and the identity of injured applicants or employees determinable, racial preference in employment is intolerably blunt, incapable of respecting the rights of individuals.

VI

This unsuitability of the racial means to the compensatory end partly explains the queasiness of language with which the advocates of "numerical instruments" defend their schemes. Although they believe their aims are good, there is yet widespread shame among them that they resort to racial preference to advance them. Hence the use of euphemisms like "disadvantaged" in identifying the beneficiaries of racial programs, when what is really meant is "black" or "minority." Not all minorities are disadvantaged, and not all those disadvantaged are minorities, obviously. But it is tempting to hide the racial character of a program which, if exposed, would be legally and morally intolerable.[2]

"Affirmative action"—a phrase that now pervades our language—has commonly been used in the same duplicitous way. Affirmative steps to eliminate racially discriminatory practices rightly win the assent of all. Affirmative efforts to recruit fairly (whether for on-the-job training programs or for professional schools), affirmative inquiry to determine whether testing is job-related and to insure that evaluation of performance is not racially infected—in such forms affirmative action is of unquestionable merit. But when, in the name of affirmative action for racial equality, the deliberately unequal treatment of the races is introduced, we suffer a national epidemic of double-speak. Employment advertisements everywhere exhibit this duplicity with an almost ritualized motto: "An equal opportunity affirmative action employer." The very term "affirmative action" has lost its honor and has become, for most, a euphemism for racial preference.

The unsavory character of their means is recognized by the advocates of racial instruments; that recognition is revealed by an inclination to be covert in conduct and to equivocate in language. Unsavoriness is tolerated here, however, even by organizations whose normal pride it is to expose immoral expedience in the body politic. Nothing is more indicative of the true spirit of a community than the character of the instruments it permits, and of those it precludes, in advancing public policy. Police surveillance to root out spies, the suppression of speech (radical or conservative) to protect the peace—all such instruments are rejected in a decent society. Civil libertarians wisely insist that we forswear instruments that invade the rights of individuals, even when forswearing proves inconvenient. The use of such instruments is precluded, forbidden not just to evil people but to all people. Preference by race is one of these forbidden instruments. The very high priority given to this exclusionary principle, and its applicability to all including the state itself, marks it as *constitutional* in the most profound sense.

Efforts to cut constitutional corners—however well-intentioned—corrupt a civil society. The means we use penetrate the ends we achieve; when the instrument is unjust, the outcome will be infected by that injustice. This lesson even civil libertarians have always to be relearning.

VII

The inconsistency between racially preferential means and the end of honestly equal treatment is exquisitely exhibited in one aspect of the *Weber* case upon which Kaiser and the union place much emphasis. "We are caught [say they] in a monstrous double bind. What will you have us do? Desegregate, you say. Integrate your workforce; show us that you mean to undo, affirmatively, the wrongs earlier done. We do it, making serious efforts to increase the number of minorities in craft jobs through advertisement, recruitment, encouragement. We get some results, but they are not dramatic. Then you—the nation speaking through your regulatory agencies—tell us that what we have done is not enough. You threaten us! Of course we take action in response to your threat—and having done so, we are threatened at law on the other side! Such inconsistency is unbearable. You, the body politic, must speak with one tongue!"

What is that first threat of which Kaiser complains? It came from the Office of Federal Contract Compliance whose regulations mandate "affirmative action" by all government contractors. The withdrawal of all federal contracts was the price Kaiser might have had to pay if, to avoid being found in "noncompliance," racial preference for minorities had not been introduced. Whence does the OFCC get the authority to make such threats? From an order of the President of the United States, say they, Executive Order 11246. This order requires federal contractors to take affirmative action to prevent low employment of women and minorities in their workforces, on the assumption that most disproportionately low employment is the result of discrimination. Since the racial instrument agreed upon was a direct response to federal authority exercised under that valid order, it is outrageous now, say Kaiser and the union, to attack us for violation of the Civil Rights Act.

This response to official inconsistency cannot help but evoke some sympathy. But as a defense of racial quotas it is worthless. The argument fails on two levels. First, Executive Order 11246 does not require and cannot justify racial quotas in cases like this one, in which the conduct of the employer has not been unlawfully discriminatory. The Order says nothing about numerical ratios. Indeed, its plain words *forbid* all racial preference. The relevant passage of that Order reads: "The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin" (30 Fed. Reg. 12319 [1965]).

Some numerical plans to protect employment for minorities have been upheld by the courts as valid executive actions—but they have been so uphel as responses to specifically identified violations by those upon whom the remedy was imposed. The so-called Philadelphia Plan was held permissible under Title VII, but that holding was explicitly tied to prior exclusionary practices by the six trade unions controlling the workforce in the construction industry in Philadelphia. Whatever tools the Office of Federal Contract Compliance may think itself entitled to employ, it has no authority in law, and certainly none in morals, to press for a racial quota in cases where, as here, those getting preference under the scheme had not been injured by that employer, and those injured by the scheme had not benefited from any misconduct of that employer.

The argument fails at a second level as well. If Executive Order 11246 be interpreted so as to authorize the OFCC to require racial quotas in cases like this one, the Executive Order itself is plainly unlawful, an illegitimate exercise of administrative authority in conflict with federal statute. The Civil Rights Act specifically prohibits racial classification in admission to on-the-job training programs (Sect. 703(d); cited above, p. 41). The quota plan devised by Kaiser and the union is, as we have seen, patently in violation of this section. When the law and an executive order clash, there can be no doubt of the outcome. Writes the Circuit Court: "If Executive Order 11246 mandates a racial quota for admision to on-the-job training by Kaiser, *in the absence of any prior hiring or promotion discrimination*, the executive order must fall before this direct congressional prohibition" (p. 227).

Only by resolutely enforcing the rights of citizens can the insolence of office be restrained. Individual workers, without power or money, need to be protected against civil servants who take it upon themselves to threaten in order to be able to report numerical ratios they think desirable, claiming only to be following the orders of their superiors.

VIII

Defenses of racial preference—by efforts to reinterpret the law, by confused arguments based on "social discrimination," by claim of executive order—all collapse. It is important to see why they *should* collapse. The defenders, conscious of their own righteous pursuit of racial justice, little doubt that the tools they wish to employ would have the good consequences they hope for. To question the merit of those tools is for them almost a betrayal of the oppressed in whose behalf they claim to battle. In their eyes the conflict is only over whether they are to be permitted to do a good deed—i.e., give preference to racial minorities—not whether it is a good deed, or whether its consequences will be good.

Decency of motivation, however, does not insure the goodness of the immediate object, or the goodness of its consequences. Racial justice is an aim that all share; it is distorted when transformed into formulas for ethnic proportionality in work forces and professions based (as in this case) upon ethnic populations in the surrounding area. What accounts for this transformation? Motives honorable in their general statement are blended with a vision of cultural homogeneity that is profoundly unhealthy. The objectives then sought in making that blend operational often prove inconsistent with the original aim. It is this inchoate vision of homogeneity—made concrete in numerical proportions—that lies behind racial instruments like the one at issue in *Weber*. Federal Appellate Courts have not been oblivious to the evils that ensue:

"There are good reasons why the use of racial criteria should be strictly scrutinized and given legal sanction only where a compelling need for remedial action can be shown. . . . Government recognition and sanction of racial classifications may be inherently divisive, reinforcing prejudices, confirming perceived differences between the races, and weakening the government's educative role on behalf of equality and neutrality. It may also have unexpected results, such as the development of indicia for placing individuals into different racial categories. Once racial classifications are imbedded in the law, their purpose may become perverted; a benign preference under certain conditions may shade into malignant preference at other times. Moreover, a racial preference for members of one minority might result in discrimination against another minority, a higher proportion of whose members had previously enjoyed access to a certain opportunity [*Associated General Contractors of Massachusetts Inc.* v. *Altshuler* 490 F. 2d 9,17–18 (1973)]."

In this spirit three Federal Circuit Courts have repeatedly refused to approve racial quotas in the absence of proved past discriminatory practice dictating that specific remedy.

Racial classifications have insidious long-term results: anger and envy flowing from rewards or penalties based on race; solidification of racial barriers and the encouragement of racial separatism; inappropriate entry of race into unrelated intellectual or economic matters; the indirect support of condescension and invidious judgments among ethnic groups—in sum, the promotion of all the conditions that produce racial *dis*harmony and racial *dis*integration. What Kaiser and the union defend is very far from an innocuous good deed. It is a plan having very damaging consequences to very many people.

Some of the damage, direct and substantial, is done to those, like Weber and Bakke, who bear the immediately resulting burden. "Society" does not pay; the "white majority" does not pay; individual citizens pay. The penalty to them is great and undeserved. One notable feature of the *Bakke* decision, almost entirely overlooked by commentators and the press, is the fact that all nine Supreme Court Justices there agreed that, as a result of the quota system used by the medical school at Davis, Allan Bakke was done a constitutional injury—that is, an injury he should not have to suffer unless it can be well justified. Even the four Justices who thought the injury could be justified took the hurt done to him very seriously. One of those four (that is, one of the group who did *not* side with Bakke), Justice Blackmun, refers to the injury done to Bakke as an "ugly" one. The other five Justices struck down that racially preferential program; Powell among them condemns the damage such programs do. The Washington Supreme Court, too, in deciding against Marco DeFunis in an analogous case, did not deny that he had been seriously hurt, and candidly rejected the claim that such quotas are "benign." A program giving special favor to racial minorities, say they, "is certainly not benign with respect to nonminority students replaced by it" (*DeFunis* v. *Odegaard* 507 P 2d 1182). *Reverse discrimination* is not an invention or a hypothesis yet to be confirmed; it is a sociological and legal fact.

IX

The reality of the evils flowing from racial instruments introduces one of the most intriguing aspects of the *Weber* case. A dispute arises betewen the District and the Circuit Court beneath which lies a momentous philosophical issue. Numerical remedies based on race do damage, the two courts agree; they further agree that this is a case in which the imposition of such a numerical remedy cannot be justified because there has been, in fact, no previous unlawful discrimination by the employer here. However, in those cases in which such remedy might prove justifiable (previous discriminatory practice in that setting being alleged), the following question arises: may that numerical instrument of redress be devised and executed on the authority of the employer and union acting jointly? Or is a racial quota permissible as remedy only on the express authority of the judiciary? The District Court not only found the remedy unjustifiable, but held in addition that such painful remedies would in no case be in the province of unions and management to impose. The Circuit Court, agreeing on the first point, did not agree on the second. Voluntary remedial action (said they) is preferable to court action; therefore, to insist upon judicial imposition of remedies would interfere unduly with reasonable private amelioration. The underlying issue here is the locus of authority in resolving questions of justice. Which court is the wiser?

In permitting numerical remedies to be imposed (if at all) only by the judiciary, the District Court, I submit, is deeply right. The reasons for this are several and complicated.

First, the question of whether the circumstances are such as to justify the imposition of a numerical remedy (a question that must be answered affirmatively if any such remedy is to be lawful) is precisely the kind of question that cannot be answered fairly by employers and unions acting in their joint interests. Individuals will bear the burden; if the case were of a kind to justify the imposition of that burden on Weber and his like, past discrimination by that employer in that context must be proved or admitted. No employer is likely to make that admission. To do so would invite a host of very expensive lawsuits in behalf of those injured. Employers will therefore enter such agreements only with the understanding that no past discrimination has been proved or admitted. That very understanding (however arguable it may be) on which an employer might be willing to enter an agreement with a union to give racial preference to minorities is precisely the understanding which, if reflecting the facts truly, shows that racial preference unjustly injurious and unlawful.

This peculiar feature of "voluntary" racial instruments is admitted—even emphasized, ironically—by the UAW, the NEA, and other assorted unions. If (they argue) voluntary racial preference is permissible only when the employer's past conduct would be found in violation of Title VII, there will be no voluntary race-conscious action. For, as they agree: "[I]t is usually difficult to predict whether or not [previous] discrimination would be found" (associated unions, brief *amici*, p. 13). Indeed! For this reason precisely it is a question of such a kind that no answer to it reached as part of a labor-management agreement could be trusted.

The aggregated unions continue: "Moreover, the employer would, by taking voluntary action, put itself in a no-win situation in a suit such as this. Either its past conduct will be determined to be unlawful, thereby inviting litigation by discriminatees, or the remedial action will be found unlawful, and liability to white employees will exist" (*ibid.*). Just so! But the authors of this candid statement apparently do not see where their argument leads. They would like the courts to conclude that, since the present standard (that "voluntary" racial quotas suppose the same finding of unlawful discrimination which alone might justify court-imposed remedies) effectively precludes "voluntary" quotas altogether, we should permit the introduction of a new standard, one that would allow "voluntary" quotas under some factual circumstances that—as they admit—would not justify a court in imposing them! What could serve as such a standard? The lone dissenting judge of the Circuit Court, pursuing the same line, is driven to propose an astounding answer: A "voluntary" quota plan should be upheld, he suggests, if it is "a *reasonable remedy for an arguable violation* of Title VII" (p. 230, emphasis added).

This standard is neither feasible in practice, nor morally acceptable if it were. As a practical matter, such notions as "reasonable remedy" and "arguable violation" have virtually no objective content. Only the courts could resolve, on a case-by-case basis, disputed claims about "arguable violations" and about the reasonableness of remedy. Endless litigation could not be avoided—but it is the elimination of time-consuming litigation that is alleged to be the great merit of "voluntary" racial instruments. The increase in court involvement that would result undercuts any proposed justification of "voluntary" quotas on grounds of efficiency.

More important than its inefficiency, how-

[2] In the original trial of the *Bakke* case, the University of California defended the racial quotas at the Davis medical school as being for all "disadvantaged" students. When the court noted that not a single disadvantaged person who was not of an ethnic minority had been admitted in all the years of that program's operation, the university in effect conceded the misdescription. Not a pretty business.

ever, is the fact that the proposed standard (that a voluntary quota plan should be upheld if it is "a reasonable remedy for an arguable violation of Title VII") is morally unacceptable. Just remedies presuppose some determinable wrongs for which they give redress and by which they are justified. It is confusion of mind to propose a *remedy* for an *arguable* violation, one cannot put right what might prove on more judicious examination to have been no wrong at all.

All "voluntary" quotas (i.e., those introduced without court imposition) presuppose reliance upon some standard that must encounter essentially the same problem. The philosophical dimensions of the dispute between the two courts here emerge. The Circuit Court's position exhibits irremediable moral defect: by permitting racially preferential programs without the backing of judicial authority, it permits the delegation of questions of justice to private hands that are neither equipped, nor disposed, nor authorized to resolve them fairly.

To resolve a matter of individual right the bargaining process between labor and management is almost the worst imaginable tool. The impartial determination of facts without regard to interest, and the honest application of principles without regard to advantage, are essential in adjudicating questions of right—but the elimination of regard for self-interest and advantage is precisely what is impossible at the bargaining table.

Even if the needed impartiality were possible there, it would be inappropriate, uncommon, and surely could not be relied upon. Union and management bargainers are duty-bound to press for the advantage of the units they represent. The process is designed to deal with issues of pay and working conditions, not with the protection of individual rights. Justice entails giving to each his due—whether or not he or others can negotiate for it successfully.

Most important, the authority to resolve questions of justice cannot lie in a labor-management bargain. Individual rights *may not*—as a matter of law or morals—be bargained away. As a matter of constitutional principle, the Supreme Court has spoken definitively on this issue. A union, they agree, may waive some of its rights of *collective* activity, such as the right to strike, in a bargaining agreement made with the aim of economic advantage for its members. The Court continues:

"Title VII, on the other hand, stands on plainly different ground: *it concerns not majoritarian processes, but an individual's right to equal employment opportunities.* Title VII's strictures are absolute and represent a congressional command that *each* employee be free from discriminatory practices. Of necessity, *the rights conferred can form no part of the collective bargaining process* since waiver of these rights would defeat the paramount congressional purpose behind Title VII. In these circumstances, an employee's rights under Title VII are not susceptible of prospective waiver (*Alexander* v. *Gardner-Denver Co.* 415 U.S. 36, 51–52 (1974), emphasis added."

Contracts reached through collective bargaining may, of course, introduce different terms of employment for different groups of employees in the light of the relevant conditions of those groups. Race, however, is never relevant in that sense. Because racial discrimination invariably touches the non-bargainable rights of all individuals adversely affected, race itself has been identified as an inappropriate criterion for the classification of employees.[3]

In sum: the courts have repeatedly held that, in compromising with an employer, a union may not take race into account. Programs like the one at issue in *Weber* explicitly take race into account. The conclusion of this syllogism is inescapable.

The unions take another tack. "You fail to note (they rejoin in effect) that this is a *voluntary* program. Weber and his fellows may be said to have relinquished their rights in this matter because, when the plan was devised, they were adequately represented by their union. The union has a duty to represent all of its members; its bargainers are selected democratically; and since white workers constitute a majority of the bargaining unit, the union process may be relied upon to reach no agreement that will violate the rights of individual white members."

It is hard to take this argument seriously. Union process is often genuinely democratic; negotiators for unions generally do seek to represent the interests of all the members of the bargaining unit. But the most sympathetic review of union process could not rationally conclude that the fairness of unions to their members over the long term has been such as to justify the delegation, to bargainers, of matters of fundamental individual right. The current flow of complaints about reverse discrimination in employment contracts in itself provides substantial evidence that the bargaining process, notwithstanding its general fairness, cannot be depended upon in this sphere. "Voluntary" is an appealing word. But its use here suggests what is not true—that those who were injured by the racial instruments devised in the contract did themselves volunteer to carry the burden. To call Weber's sacrifice "voluntary" is most inappropriate.

This defense of "voluntary" racial instruments (even if unions were invariably sensitive to matters of individual right) avoids the key question of legitimate authority. At stake here are the rights of individuals to the most fundamental of democratic conditions—equal treatment under the law—and moreover, their rights to that equal treatment as it bears upon the most suspect of all categorical distinctions, race. Even legislators, it may be argued, however powerful their assembly, honorable their election, and dutiful their conduct, may not take from individual citizens certain fundamental rights. With the noblest of intentions, it is not within their authority to pursue public policy at the cost of compromising the individual citizen's right not to be discriminated against because of his race or religion. Philosophers will differ about the grounds of legislative authority, but few will seriously deny that upon such authority there must be some hard limits. Unequal treatment because of race is as clear an example as there is of the violation of those limits.

If the principle here expressed were somehow mistaken, if it were sometimes just, in the cause of racial redress, to sacrifice the rights of some blameless non-beneficiaries to advantage others who had not been injured, even so it would at least be certain that no such decision could be properly made by any save the legislature of highest authority, subject to the review of the court of highest jurisdiction. The notion that, to encourage "voluntary affirmative-action plans," we may bypass the body politic, investing unions and management with the authority to bargain with fundamental human rights, makes the prospect of a reversal in the *Weber* case very distressing. Not substantive entitlements alone are at issue here, but also the procedural rights of working people to have questions of justice decided by legislatures and courts.

X

Weber and *Bakke* are closely analogous in this procedural regard. Weber's right to equal treatment was infringed on by a union-management agreement, Bakke's by a medical-school admissions committee. Legitimate authority was exceeded in both cases. When it was asked, in *Bakke*, for what purposes a university might consider race in admissions, Justice Powell replied, in his decisive opinion, that it may be considered for the sake of student diversity (to support the exchange of ideas in accord with First Amendment concerns), or, conceivably, as redress for the specific victims of specific injustices. "Societal discrimination" as a ground for racial preference he explicitly considered and rejected. Powell wrote:

"We [i.e., the Supreme Court] have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals, in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations [references omitted]. After such findings have been made, the governmental interest in preferring members of the injured groups at the expense of others is substantial, since the legal rights of the victims must be vindicated. In such a case the extent of the injury and the consequent remedy will have been judicially, legislatively, or administratively defined. Also, the remedial action usually remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit. Without such findings of constitutional or statutory violations it cannot be said that the government has any greater interest in helping one individual than in refraining from harming another. Thus the government has no compelling justification for inflicting such harm [*University of California Regents* v. *Bakke* 57 L. Ed 2d 750, 782–83 (1978)]."

But findings of constitutional or statutory violations it is not the business of private bodies—unions, or managements, or medical-school committees—to make. Powell continued:

"Petitioner [the Regents of the University] does not purport to have made, *and is in no position to make,* such findings. . . . [Even] isolated segments of our vast governmental structures are not competent to make those decisions, at least in the absence of legislative mandates and legislatively determined criteria [references omitted]. Before relying upon these sorts of findings in establishing a racial classification, a governmental body must have the authority and capability to establish, in the record, that the classification is responsive to identified discrimination (p. 783; emphasis added)."

Powell's point is that a medical-school admissions committee (even though indirectly an agent of the state) is entirely without the requisite authority. Kaiser and the union have a far weaker claim to the needed authority than did they. An admissions committee is not competent to make the findings that might justify racial preference, granted. But if the admissions committee had sought to present such findings of identified discrimination at the Davis medical school (discrimination that, in fact, the university specifically denies), they might conceivably contend that as one agent of one arm of one element of the state, it was within their province to do so—and thus might conceivably seek to justify their racial program as remedy. That claim must fail, the mission

[3] The Supreme Court has written: "[T]he statutory power to represent a craft and to make contracts as to wages, hours, and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious. Congress planly did not undertake to authorize the bargaining representative to make such discriminations" *Steele* v. *Louisville & Nashville R.R. Co.*, 323 U.S. 192, 203 (1944).

of the medical school and all its subsidiary elements being educative, not judicial. Any analogous claim made by Kaiser and the union—that they are authorized to make findings of "societal discrimination" that will justify inflicting harm on Weber and other blameless parties—is totally without warrant.

XI

In the absence of any showing or admission of previous illegal discrimination at the Grammercy plant, every defense of racially preferential remedy must prove unsatisfactory. Sensitive to this point, the American Civil Liberties Union argues at length that the factual circumstances of this case have been misunderstood, that Kaiser Aluminum *did* discriminate against minorities. The pattern of employment by Kaiser at other plants in earlier years is reviewed, and much is made of the racially disproportionate impact, at the Grammercy plant, of a "purportedly neutral criterion." Using the percentage of the minority population in the surrounding parishes of Louisiana as benchmark,[4] the argument concludes that Kaiser's workforce at the Grammercy plant in skilled-craft positions was "severely under-representative." Putting aside the question of how "representativeness" might rationally be established, or, if it had been established, what bearing that would have upon the lawfulness of Kaiser's previous conduct, it is important to note that the entire thrust of this argument is misdirected. The *Weber* case presents an appeal to our highest court on a matter of fundamental principle. That principle must be argued on the basis of a factual record properly established at trial in a responsible Federal District Court. Appellate Courts, and the Supreme Court, face the question of principle *given that record.* Even the District Court could analyze only the facts brought before it by the parties. Kaiser testified to its non-discriminatory practices at the Grammercy plant from its opening, and of its efforts to recruit black craftsmen from the general community. They would not and could not report otherwise. If (as some now claim) the record should have shown hidden unlawful conduct by Kaiser, such findings could only have entered the record at the trial level. At this point the issue is, supposing the record complete and accurate, whether, *without* such previous violations established, this racial quota is permissible.

To contend that the facts of the matter *could* be viewed differently is to blind oneself to the essence of the controversy. Had the courts found, after examining all testimony, that Kaiser had previously discriminated against minorities in its Grammercy plant, the issue now to be decided here would not even have arisen.[5]

XII

All arguments thus far explored incorporate the realization that individuals are indeed injured when disadvantaged solely because of their race. Brian Weber did not get the job-training opportunity he was entitled to. Most ordinary people, and most judges, have no difficulty in seeing that. So zealous are some of the advocates of racial preference, however, that they claim not to see it. Weber was never really hurt, say they. He has a legitimate complaint only if he was discriminated against unfairly. But he wasn't discriminated against at all! Hence he has no case.

Puzzling though this claim appears on its face, it is honestly defended, in two ways. First, it is argued, Weber has lost nothing more than seniority entitlements. But seniority systems may be altered by labor-management agreement, and in any event, seniority rights are not vested in the individual employee but in the collective-bargaining unit. Therefore, when a voluntary quota plan results in Weber's getting less than he expected in view of his greater seniority, he loses nothing that belonged to him in the first place. The injury done to him (it is contended) is apparent, not real.

This argument is twice faulty. It underplays the importance of individual seniority entitlements in the industrial context; and it does not face up to the discriminatory nature of the seniority deprivation in this case.

In allocating scarce opportunities and goods in the industrial world, seniority is critically important. For very many workers a host of matters—job security, opportunities for advanced training, vacation and retirement benefits—depend chiefly upon the number of years of service they have given. Nothing remains to them after years of service but their seniority claims. To deny that harm is done to an unskilled worker on an hourly wage when he is deprived of entitlements flowing normally from ten years' seniority shows gross moral insensitivity. Seniority does not insure qualification for positions demanding special talents, of course; but where qualifications are roughly equal, or not distinguishable, seniority above all other considerations will be relied upon in the interests of fairness.

Seniority entitlements are tied to individuals, not just to the bargaining unit. In matters of job assignment, transfer, layoff and recall, and job training, opportunities must be distributed among competing employees. Competitive-status seniority is therefore of great moral as well as practical importance, and directly affects individuals more importantly than it does the bargaining collective. Non-competitive benefits also—pensions, sick leave, paid vacations—are commonly determined in part by length of service and therefore must be tied to individuals. Seniority, the Supreme Court writes, "has become of overriding importance, and one of its major functions is to determine who gets or who keeps an available job" (*Humphrey* v. *Moore* 375 U.S. 335, 346–47 [1964]). The "who" in this passage refers to individual persons, not to groups.

Seniority systems are bargainable, true. It does not follow, however, that all seniority rights are bargainable. It is essential not to confuse the *system* of seniority with individual *entitlements* under a given system in force. Once a seniority system has become a reality in rule and practice, a worker's rights and expectations under that system are his and very precious to him. It is callous to minimize the injury done when such rights are not respected.

When the ground of that disrespect is race, the injury is particularly offensive. Entitlements in themselves minor (which an opportunity for on-the-job training is not) become matters of grave concern when manipulated for racial reasons. Where one must sit on a bus or go to the toilet understandably becomes a source of rage and an issue of constitutional proportions when the determination is made by race. Protests over segregated lunch counters had as their target not the culinary opportunities denied, but the immoral character of the ground of their denial. Even if Weber's seniority expectations be thought trivial the racial ground of the unequal treatment he received is very far from trivial.

Some who understand very clearly why Allan Bakke was injured when excluded from medical school in a racially discriminatory way fail to see that the injury done by Brian Weber is equally unjust. Applicants to a competitive program, they appreciate, have a right to evaluation on some set of relevant criteria—past performance, intellectual promise, character, or whatever—and if deserving on the basis of those criteria, ought not be deprived of place because of race. But if the performance qualifications of all applicants are roughly equal (as were those of Weber and the minority workers chosen in his place), where, they ask, is the injustice?

The injustice lies in the deprivation, on improper grounds, of what one is otherwise entitled to. The basis for the entitlement will be different in different contexts. Scarce places in medical or law schools are rightly allocated to persons best exhibiting the characteristics that have been determined relevant to the studies or profession to be pursued. Scarce on-the-job training opportunities are rightly allocated to those having certain seniority entitlements. The bases of Weber's and Bakke's claims to that of which they were deprived are very different; but both were wrongly denied what they would have received if the scarce available goods had been distributed in accord with established criteria in a morally just way. Both were the plain victims of racial discrimination, losing out because of the color of their skin.

Persons concerned about such injustice when done in the academic world ought seriously to consider the wisdom of remaining silent when essentially the same injustice (although with respect to different entitlements) is done in the industrial world. If preference by race should be found, in the *Weber* case, to justify the deprivation of what is fairly earned by a laborer, the security of what is fairly earned by anyone in any sphere is similarly threatened.

XIII

If the damage to Weber cannot reasonably be minimized, can it be wholly denied? This is the second line of defense to which Kaiser and the union fall back in the effort to show that Weber was not discriminated against at all. Weber's rights were not infringed on, they say, because he never had any seniority rights to job training here. The argument goes like this: "Where admission to a training program is properly a function of seniority, and seniority, like Weber's, is untainted by the employer's previous discrimination, he would be damaged if race were allowed to supervene. But Weber errs in thinking that seniority gives him any claim under *this* quota program, which was initiated in 1974, by Kaiser and the union, specifically to increase minority representation in the craft employments. New rights were then created, Kaiser and the union agreeing to use seniority only for the distribution of available slots *within* the two racial lists, black and white. If, in the new plan, they had agreed to use the lottery method—two separate lotteries, one for whites and one for blacks—it would be obvious that seniority was not the real issue here. They could have done just that. Weber's claim that he was deprived of seniority rights is a red herring, because the mode of selecting from each racial pool is irrelevant. So the Kaiser plan, as the dissenting judge wrote, 'stands or falls on its separation of workers into two racial pools for assignment to job training' (p. 235)."

This argument is a compound of perceptivity and blindness. Seniority was the system deliberately adopted by Kaiser and the

[4] ACLU and Society of American Law Teachers, brief *amici*, p. 11. The inappropriateness of such figures in estimating fairness with respect to employment in the skilled crafts is so obvious, and has been so often remarked, that one is embarrassed for the ACLU to find such an argument here pursued. See Thomas Sowell, "Are Quotas Good for Blacks?," COMMENTARY, June 1978.

[5] Might an appellate court not reverse an inferior court because of its mistaken interpretation of the facts as appearing in the record? Only in those rare circumstances in which the treatment of the facts by the inferior court was "clearly erroneous." That claim would be untenable in this case.

Union—but they did not make that choice at random. Years of past work in the very plant where those training opportunities were to arise was thought the fairest consideration in allocating scarce places to otherwise equally qualified workers. Seniority was adopted as a relevant and rational principle. To create two seniority lists, black and white, and then choose the top person from each list, even if he has less seniority than the fourth or twentieth person on the other list, is to override the seniority principle with race. If the basis chosen for the fair distribution of scarce opportunities had not been seniority, but (say) a lottery, then the just application of the lottery principle would require that it not be overridden by race. It is therefore perceptive to note that the real issue here goes beyond seniority—that the plan fails simply because it separates the workers into two *racial* pools—every such separation being necessarily invidious. Any system used to distribute opportunities among the members of each racial pool, even if of itself fair, must be distorted by that antecedent racial classification. Whatever besides seniority might prove just as a ground for the distribution of goods, skin color isn't it.

Is it correct to say, then, that Weber had no seniority rights here at all? No. When it is agreed by union and employer that, for allocating these job-training opportunities, length of service is the appropriate basis, employees acquire entitlements on that basis. The injustice of racial favoritism manifests itself, in this case, in the deprivation of those entitlements. Were a worker's entitlements based on some other features of his circumstances—his experience or his performance on a competitive examination—then the injustice of racial favoritism might be manifested in the deprivation of entitlements flowing from those. Weber has a right to non-discriminatory treatment. To contend that he never had any rights in this matter because the respect in which he was discriminated against isn't the only respect in which he might have been discriminated against is a last-ditch effort to obscure the wrong that was done him.

XIV

The villian of the piece—here, in *Bakke*, wherever it raises its head—is preference by race. The *Weber* case provides an opportunity to reaffirm the moral and constitutional commitment to govern ourselves without preference to any by reason of color, or religion, or national origin. If we undermine that commitment—even though it be in an honest effort to do good—we will reap the whirlwind.

Mr. HATCH. Mr. President, in the September 1979 issue of Commentary magazine, Professor Cohen inspected the majority's decision with understandable distaste. Since he had already exploded their rationale in his previous article, he now devoted himself to proving beyond doubt that Congress had specifically prohibited the practices that the Supreme Court had now endorsed. His conclusion is a challenge to us all, one which I believe will ultimately be taken up; although after what price must first be paid by the American body politic it is at this moment chilling to contemplate:

It may be that by egregiously misreporting the intent of Congress, and then boldly expressing their own willingness to sacrifice the interests of one race to advance the interests of another, the majority in Weber has taken one of those provocative steps that will lead eventually to more emphatic legislative insistence upon the equal protection of the laws.

Mr. President, I ask unanimous consent that the article entitled "Justice Debased: The Weber Decision," by Carl Cohen be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JUSTICE DEBASED: THE WEBER DECISION

(By Carl Cohen)

A racial quota in the allotment of on-the-job training opportunities among competing employees, instituted by management-union agreement, was held lawful by the Supreme Court in the recent case of *Steelworkers* v. *Weber*.* This was an important decision, and a very bad one. Its badness lies not only in the substantive result, upholding preference in employment by race, but also in the reasons given by the Court in defending that result, and in the abuse of judicial discretion manifested.

The precise question decided was this: does Title VII of the Civil Rights Act of 1964 forbid employers and unions in the private sector from adopting racially preferential employment programs like the one adopted by Kaiser Aluminum and the steelworkers union? The answer was no. The evaluation of that answer requires a brief description of the quota plan approved, and a brief review of the statute in question.

The plan, adopted as part of a collective-bargaining agreement between Kaiser Aluminum & Chemical Corporation and the United Steelworkers of America, provides that, in filling apprentice and craft jobs, "at a minimum not less than one minority employee will enter for every non-minority employee entering" until the percentage of blacks in craft jobs equals the percentage of blacks in the local work force—about 39 per cent at the Grammercy, Louisiana, plant where Brian Weber works. Seniority in the plant was the criterion on which employees competing for admission to on-the-job training vacancies were ranked. But two seniority lists were maintained pursuant to this agreement, one for whites and one for blacks; vacancies were filled alternately from the top of the two lists. Weber, a white employee with about five years' seniority in that plant at that time, was refused admission to three different training programs—although, because of the quota plan in force, some non-white employees having less seniority than Weber were admitted. Believing that he had been displaced only because he was white, Weber brought suit against Kaiser and the union, in behalf of himself and all white employees at that plant similarly situated. His target was the racial preference in that job-training scheme.

The law in question, Title VII of the Civil Rights Act of 1964, reads in pertinent part as follows:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

It seems hardly possible to deny that this statute does plainly prohibit racially preferential programs of the kind described above. Thus, as one would expect, Weber won his case in the Federal District Court, and won again, on appeal, in the Federal Circuit Court.

That result has now been reversed by the Supreme Court. The opinion of the five-member majority, delivered by Justice Brennan, is devoted almost entirely to an explanation of why, in their view, Title VII does not prohibit the plan in question. This explanation cries out for response. Response is given in two dissenting opinions, one by Chief Justice Burger which is crisp and condemnatory, a second by Justice Rehnquist which is scathing and detailed. Justice Rhenquist's tightly woven, thirty-seven page treatise, to which I will be referring, utterly demolishes the majority position. Its cogency is acknowledged by the majority itself.

On what grounds does the majority reach its result? The *intent* of Congress, say they, in enacting Title VII, was not to forbid racial preference having the wholesome purpose this program did. The key to the problem, says the majority, is not the "literal" meaning of the statute, but its "spirit." If, by studying the history of the Act, one can discover the purposes of Congress in its adoption, and if this plan advances those purposes, the plan will be, if not "within the letter of the statute," yet still "within its spirit," "within the intentions of its makers." Now the aims of Congress in passing this legislation can be readily discovered. In a nutshell, Congress aimed to counteract black unemployment, to protect and promote the opportunities of blacks to get decent jobs. In legislative debate Senators Humphrey, Clark, and others contended that without such a bill, discrimination against blacks would become a source of social unrest and intolerable injustice. The majority's defense of their interpretation of Title VII rests principally upon the fact that the proponents of the bill repeatedly insisted upon the importance of jobs for minority groups. That having been the goal, they continue, it cannot have been the case that Congress intended to prohibit private parties "from taking effective steps to accomplish the goal that Congress designed Title VII to achieve" (Brennan, p. 8).

The argument of the majority, in effect, is this: "We know the purpose of Congress; we know the purpose of this plan; they are fully consonant. It must be, therefore, that Congress did not intend to forbid this plan. If the literal language of Congress says otherwise, we must interpret that language to mean what it did not say, while saying what it did not mean."

What Congress really did intend with this statute is a matter about which I shall have much to say. Before turning to that historical question, however, I want to say something about the logic of the majority's argument. The majority blunders seriously by confusing *purpose* with *intent*. That the purpose of Congress was to promote employment opportunities for blacks is beyond doubt. It certainly does not follow that any special scheme having that purpose was intended to be permitted. Different persons, or different pieces of legislation, may share the same aim yet differ greatly in what are believed the wise or the just steps properly taken to achieve that aim. This simple but

* Decided June 27, 1979. Actually three cases were decided together: *United Steelworkers of America, AFL-CIO,* v. *Brian F. Weber et al.* (No. 78-432); *Kaiser Aluminum & Chemical Corporation* v. *Brian F. Weber et al.* (No. 78-435); and *United States et al.* v. *Brian F. Weber et al.* (No. 78-436). There are four opinions in all: that of the majority written by Justice Brennan; a concurring opinion of Justice Blackmun; a dissent by Justice Burger; and a second dissent by Justice Rehnquist with which Justice Burger joins. Because these opinions have not yet received their formal pagination, my references below will be to the printed sheets issued by the Court, identifying only the author and page number of that author's opinion.

important point is what underlies the common homily: "The end doesn't justify the means." The aphorism is imperfect, of course; ends do serve to justify means. But the moral point of the aphorism is sound: ends, even very good ones, don't justify *any* means that may be thought effective in achieving them. That ends are shared is no proof that there will be agreement on the justice or the desirability of particular instruments or programs for their attainment.

Consider this hypothetical example, also in the sphere of legislative action. Suppose funds were appropriated to explore alternative sources of energy, one of the major purposes of the appropriation being, in the minds of most members of Congress, to reduce dependence on foreign oil. By adopting some measures clearly having that objective Congress would not warrant the inference that every measure having the same tendency had thereby been permitted. Suppose the expenditure of the funds appropriated for the exploration of alternative energy sources, although having the larger aim of energy independence, were also restricted by the provision that these funds were not to be spent on the development of nuclear energy. It would not then have been rational to conclude that a plan to spend the funds on the development of nuclear energy was "within the intentions" of the legislature because (as Justice Brennan says of the racial quota in *Weber*) "the purposes of the plan mirror those of the statute" (Brennan, p. 12). To find out whether Congress intended to advance its larger purposes in that way we would have had to read the enacted statute. If they were to have said: "It shall be unlawful to expend any of these funds on the development of nuclear energy," we might or might not have thought them wise in that restriction. But it does not take great profundity to distinguish between their *purpose* in legislating and their *intent* in that law—between what they would have hoped to accomplish and what they would actually have proposed to do.

In seeking to advance employment opportunities for blacks in 1964, Congress adopted legislation forbidding *all* racial discrimination in employment. To argue, as the majority does, that they cannot have intended to forbid all discrimination because some racial discrimination might also serve their larger purposes, does not do credit to a high appellate court.

What opens the question of congressional intent? Under what circumstances is it appropriate for any court to inquire into the intent of a legislature in enacting the legislation being applied? When the applicability of the language of the statute is unclear, or its wording is ambiguous, that inquiry may be very much in order. Such circumstances commonly arise. New conditions, unforeseen by the legislature at the time of a law's enactment, may create issues of interpretation that cannot be resolved by its language alone. A court may then be obliged to construe what the legislative intent might most reasonably have been in order to determine fairly the bearing of the statutory language upon the new conditions. Sometimes, in a different vein, legislation may be formulated in deliberately ambiguous language for assorted political reasons. Courts may later be obliged to apply that language to cases treated equivocally in the statute, having then to construe some reasonable legislative intent to guide them.

Nothing like either of these circumstances arises in the present case. The language of Title VII, as Chief Justice Burger observes, exhibits "no lack of clarity, no ambiguity" (Burger, p. 2). The Kaiser quota plan, as all agree, discriminates against individual white employees seeking admission to on-the-job training programs simply because they are white. That, under the very plain language of the statute, is "an unlawful employment practice."

Could it be, perhaps, that the operative meaning of the language of the statute is unclear because it has been sometimes construed by the Court, in past instances, to prohibit discrimination against blacks, but not discrimination against whites? No, that was put out of the question by this Supreme Court in 1976, explicitly interpreting this Title of this statute. White employees who were dismissed after being charged with misappropriating company property brought suit under Title VII because black employees, similarly charged, had not been dismissed. This Supreme Court then concluded, from the "uncontradicted legislative history," that "Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they Negroes . . ." (*McDonald* v. *Santa Fe Trail Transportation Co.*, 427 U.S. 273, at 280).

So there is no doubt that Title VII does—or did—apply equally to all races. That is what the Supreme Court has repeatedly affirmed. Title VII, they earlier insisted, "prohibits *all* racial discrimination in employment, without exception for any group of particular employees" (*ibid.*, p. 283; emphasis in original). A few years earlier, in a landmark interpretation of Title VII, the Supreme Court had agreed unanimously on a definitive account of the legislative intent of Title VII: "The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunity. . . . Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed" (*Griggs* v. *Duke Power Co.*, 401 U.S. 424, at 429 and 431 [1971]). And just one year before *Weber* the very same point was hammered home by the same Court in the context of employment ratios. "It is clear beyond cavil that the obligation imposed by Title VII is to provide an equal opportunity for *each* applicant regardless of race, without regard to whether members of the applicant's race are already proportionately represented in the work force" (*Furnco Construction Corp.* v. *Waters*, 438 U.S. 567 [1978]; emphasis in original).

There is no vestige, no trace of ambiguity or unclarity, either in the language of the statute or in the interpretation repeatedly given to that language, respecting the question whether Title VII protects whites as well as non-whites. There is, therefore, no justification for entering the question of legislative intent. Justice Rehnquist, understandably infuriated, calls attention to the Court's oft-repeated principle applied in another case just as *Weber* was being decided: "Our duty is to construe rather than rewrite legislation" (Rehnquist, p. 3).

Beyond opening the question of legislative intent where that is not proper, and beyond the muddling of congressional intent with congressional purpose, the majority has given an unbelievably obtuse reading of that legislative intent. Though it is not appropriate in this case even to ask whether Congress intended to permit some racial discrimination with Title VII, the task of answering that factual, historical question is exceedingly easy. The lengthy debates in the House and the Senate are open to us in the *Congressional Record;* majority and minority committee reports of the House on the proposed bill are also open to us; a lengthy, scholarly study of the legislative history of precisely this Title of this Act is available to us.[1] There can be no genuine doubt—in the mind of one who has examined these materials—about the intent of the Congress in choosing the language they did choose. Democrats and Republicans *both*, conservatives and liberals *both*, insisted repeatedly and at great length, illustrating their explanations with detailed examples, that H.R. 7152 (which eventually became the Civil Rights Act of 1964) would forbid *all* racial preference for *any* race.

In the House of Representatives the bill was amended by the Committee on the Judiciary to include Title VII because no compulsory provisions to deal with private discrimination in employment had been included in its original form. It was added, the committee noted, "to eliminate . . . discrimination in employment based on race, color, religion, or national origin" (*H.R. Reports*, No. 914, p. 26). That title was further amended on the floor of the House to include a Section, 703(a), which specifically addressed the prohibition against discrimination (already formulated in 703(a) quoted above) to on-the-job training Section (d) of 703 reads as follows:

"It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, *including on-the-job training programs*, to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training" [42 U.S. Codes 2000e-2(d); emphasis added]

Included with the Report of the Judiciary Committee were the lengthy "Additional Views on H.R. 7152" of a group of its advocates, Representative McCulloch and others, which incorporated a passage referred to by Vaas as fairly stating the consensus of the civil-rights proponents as they guided the bill toward adoption. This representative passage includes these sentences:

Internal affairs of employers and labor organizations must not be interferred with [under Title VII] except to the limited extent that correction is required in discrimination practices. Its [the Equal Opportunity Employment Commission's] primary task is to make certain that the channels of employment are open to persons regardless of their race and that jobs in companies or membership in unions are strictly filled on the basis of qualification [*H.R. Reports*, No. 914, pt. 2, p. 29; Vaas, p. 437].

The major objection faced by Title VII in the House (and again later in the Senate) was the claim that under it racial proportionality in employment might subsequently be required by some federal agency, acting under color of that law. This fear was epitomized in the Minority Report which suggested, as one serious concern, that an em-

[1] The congressional debates appear in Volume 110 of the *Congressional Record* of 1964, extending intermittently over exactly thirteen thousand pages (p. 1,511 to p. 14,511) of ten massive tomes. The House reports appear in *House of Representatives Reports*, No. 914, 88th Congress, First Session, 1963. With the majority and minority reports are printed additional views of particular members of the committee, and views of groups of Representatives, on the bill being reported. The Senate having decided to take up the bill directly, it was not submitted to committee there, hence there are no Senate reports beyond the actual Senate debate, which was very long. The study referred to, used both by Justice Rehnquist and myself, is by Francis J. Vaas, "Title VII: Legislative History," in Volume 7 of the *Boston College Industrial and Commercial Law Review*, pp. 431–58. Vaas records the tortuous path of the Civil Rights Act through Congress with meticulous attention to detail, and makes this striking comment: "Seldom has similar legislation been debated with greater consciousness of the need for 'legislative history,' or with greater care in the making thereof, to guide the courts in interpreting and applying the law" (p. 444).

ployer, under Title VII, *"may be forced to hire according to race,* to 'racially balance' those who work for him in *every job classification* or be in violation of Federal law" (*H.R. Reports*, No. 914, p. 69; emphasis in original). That fear had to be allayed; proponents of the bill strenuously and repeatedly reassured their colleagues, that no such racial balancing was contemplated, and that none would be required or even permitted under this Title.

Representative Celler, one of the sponsors of the bill and chairman of the Committee on the Judiciary, at the opening gun of the debate in the House, made the intent of the language of 703 (a) unmistakable. The fear that it would require or permit hiring or promotion on the basis of race resulted, he said, from a description of the bill that was "entirely wrong." He continued:

Even . . . the court could not order that any preference be given to any particular race, religion or other group, but would be limited to ordering an end to discrimination. The statement that a Federal inspector could order the employment and promotion only of members of a specific racial or religious group is therefore patently erroneous . . . .

The Bill would do no more than prevent a union, as it would prevent employers, from discriminating against or in favor of workers because of their race, religion, or national origin.

It is likewise not true that the Equal Employment Opportunity Commission [established by Title VII] would have power to rectify existing "racial or religious imbalance" in employment by requiring the hiring of certain people without regard to their qualifications simply because they are of a given race or religion. Only actual discrimination could be stopped [110 *Cong. Rec.* p. 1518].

This theme was echoed repeatedly in the course of the debate in the House of Representatives. Representative Lindsay of New York, among others, took up the defense of Title VII:

This legislation . . . does not, as has been suggested heretofore both on and off the floor, force acceptance of people in schools, jobs, housing, or public accommodations because they are Negro. It does not impose quotas or any special privileges of seniority or acceptance. There is nothing whatever in the bill about racial balance. . . . What the bill does do is prohibit discrimination because of race . . . [110 *Cong. Rec.*, p. 1540].

With that clear understanding the bill passed the House, 290 to 130, on February 10, 1964.

7

In the Senate, the expression of legislative intent was voluminous and unequivocal. Again the fear of opponents was that some federal inspector might one day impose racial balance under color of this law. Again—and again and again and again—the defenders of the bill replied with reassurance, insisting vehemently that such fears were totally unfounded. The key term, "discrimination," appearing in Sections 703(a) and 703(d) and elsewhere in the bill, was examined minutely on the Senate floor. Could it be taken to mean (the critics asked) only numerical imbalance? Answer: definitely not. Could it have been, for the framers of the legislation, a technical term, whose hidden meaning was "discrimination against blacks" but not "discrimination against whites"? No, definitely not, Senator Humphrey put that suggestion permanently to rest: "[T]he meaning of racial or religious discrimination is perfectly clear. . . . [I]t means a distinction in treatment given to different individuals because of their different race, religion, or national origin" (110 *Cong. Rec.*, p. 5423). The only freedom of employers that the bill limits, he emphasized, is the freedom to take action based on race, religion, sex, or national origin.

When the Senate took up the substance of the Act directly, after deciding not to submit it to committee, it again became essential for the bill's advocates to answer the complaint that the bill would lead to racial preference. Not so, they insisted. Senator Humphrey again:

That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion.

In the same speech Senator Humphrey gives a series of examples that ". . . makes clear what is implicit throughout the whole title; namely, that employers may hire and fire, promote and refuse to promote for any reason, good or bad, provided only that individuals may not be discriminated against because of race, religion, sex, or national origin." He repeats himself so that even the deaf may hear: "The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about Title VII" (110 *Cong. Rec.*, p. 6549). Humphrey was majority whip and the floor leader for the Civil Rights Act in the Senate. In his support rose Senator after Senator to give the same explanatory assurances about the intent of the legislation.

Senator Kuchel, the minority whip, emphasized that the seniority rights of workers already employed would not be affected by Title VII. He said:

Employers and labor organizations could not discriminate in favor or against a person because of his race, his religion, or his national origin. In such matters, the Constitution, and the bill now before us drawn to conform to the Constitution, is color-blind [110 *Cong. Rec.*, p. 6564].

Senators Clark and Case were floor captains in the Senate for Title VII specifically. To them fell the task of explaining that Title, what it meant and did not mean, what it permitted and what it prohibited. Their chief task was to refute the charge that Title VII would result in preference for racial minorities. In a memorandum prepared for the Senate they expressed the intent of Title VII unequivocally:

[A]ny deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of Title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual [110 *Cong. Rec.*, p. 7213].

A different memorandum, prepared by the U.S. Department of Justice at Senator Clark's request, also makes the point that there is no need to fear employers' being required to maintain racial balance:

No employer is required to maintain any ratio of Negroes to whites, Jews to Gentiles, Italians to English, or women to men. The same is true of labor organizations. On the contrary, any deliberate attempt to maintain a given balance would almost certainly run afoul of Title VII because it would involve a failure or refusal to hire some individual because of his race, color, religion, sex, or national origin. What Title VII seeks to accomplish, what the civil rights bill seeks to accomplish is equal treatment for all [110 *Cong. Rec.*, p. 7207].

Senators Smathers and Sparkman, granting that the bill did not require the use of hiring quotas, put the attack against Title VII more subtly. Under it, they suggested, employers might be *coerced*, by federal agencies, into giving preference by race. Would that not be permitted under this law? The answer, this time from Senator Williams was an emphatic negative. Opponents, he replies, persist in opposing a provision which is not only not contained in the bill, but is *specifically excluded* from it. Those opposed to H.R. 7152 should realize that to hire a Negro solely because he is a Negro is racial discrimination, just as much as a "white only" employment policy. *Both forms of discrimination are prohibited by title VII of this bill.* The language of that title simply states that race is not a qualification for employment. . . . [A]ll men are to have an equal opportunity to be considered for a particular job. Some people charge that H.R. 7152 favors the Negro, at the expense of the white majority. But how can the language of equality favor one race or one religion over another? Equality can have only one meaning, and that meaning is self-evident to reasonable men. Those who say the equality means favoritism do violence to commonsense [1110 *Cong. Rec.*, p. 8921; emphasis added].

Still the fear that racially preferential hiring would somehow be encouraged or permitted under Title VII would not down. Once again the floor leader, Humphrey, took up the battle:

The title [Title VII] does not provide that an preferential treatment in employment shall be given to Negroes or to any other persons or groups. It does not provide that any quota system may be established to maintain racial balance in employment. *In fact, the title would prohibit preferential treatment for any particular group,* and any person, whether or not a member of any minority group, would be permitted to file a complaint of discriminatory employment practices [110 *Cong. Rec.*, p. 11848; emphasis added].

How could the majority of the Supreme Court, in *Weber*, escape the force of this parade of unequivocal accounts marching across the printed record of the process of its adoption? Could they contend, perhaps, that although racial preference was indeed prohibited, that prohibition did not bear upon efforts to overcome the effects of *past* discrimination upon the seniority rights of employees? At one point, conceding that it was the intent of the Senate to forbid the maintenance of racial balance, the majority grasps at a straw: the Kaiser quota plan was not introduced to maintain racial balance, they contend, but to "eliminate a manifest racial imbalance" (Brennan, p. 11 and p. 13). Can the net of clear congressional intent be thus eluded, by making the distinction between "maintaining" racial balance and "eliminating' racial imbalance, holding that Title VII forbids the former but not the latter?

Not a chance. Explicating Title VII, its most thorough congressional students, Senators Clark and Case, wrote in their joint memorandum:

Title VII would have no effect on established seniority rights. *Its effect is prospective and not retrospective.* Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—*or indeed, permitted*—to fire whites in order to hire Negroes, or *to prefer Negroes for future vacancies*, or, *once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier* [110 *Cong. Rec.*, p. 7213; emphasis added].

The Justice Department had earlier drawn the same conclusion: Title VII could not be used to alter seniority entitlements because of discrimination in employment before its adoption:

Title VII would have no effect on seniority rights existing at the time it takes effect. . . . This would be true even in the case where owing to discrimination prior to the effective

date of the title, white workers had more seniority than Negroes . . . [A]ssuming that seniority rights were built up over a period of time during which Negroes were not hired, these rights would not be set aside by the taking effect of Title VII. Employers and labor organizations would simply be under a duty not to discriminate against Negroes because of their race [110 *Cong. Rec.*, p. 7207].

The distinction between "maintaining" and "achieving" racial balance was, manifestly, ever part of the understanding of the legislature that adopted Title VII.

That distinction, moreover, would have been and is specious from the point of view both of advocates and critics of racial preference. If, after the achievement of racial balance through racial preference, craft jobs again were to become predominantly white, the advocates of racial preference would certainly not be content. Convinced that such imbalance is in itself wrong, they would, understandably, then insist that if racial preference be permitted for the achievement of racial balance, it must be permitted for its reachievement. The claim that such instruments are only "temporary" is a fiction. It will be of little consequence to its advocates that the majority in *Weber* leaned on a tenuous distinction which it will be in their interest to ignore. And the opponents of racial preference—including the 88th Congress of 1964—may rightly insist that if preference by race is in principle wrong, it is no less wrong in the one case than in the other. Indeed, both the Justice Department and the floor captains for Title VII in the Senate very carefully pointed out that maintaining racial balance would be forbidden *"because* it would involve a failure or refusal to hire some individual because of his race . . ." (see above, p. 47; emphasis added). The reference in these arguments is to the actual words of Section 703(a) cited on page 43 above. Adverse effects upon an employee or applicant because of race would result whether the goal had been the maintenance of racial balance or the achieving of it.

The argument that the Congress intended Title VII to permit racial preference in achieving racial balance, but forbade it for maintaining racial balance, and that therefore once proportionality is achieved all such preference will cease, is unworthy of the Supreme Court; it is a stop designed to placate critics with unreliable assurances that the instrument approved will be only "temporary." In fact ethnic preference, once ensconced, is likely to be nearly impossible to eradicate. To mitigate its unfairness more and different ethnic preferences will be introduced—as already they are being introduced.

Those who condemn racial favoritism condemn it both for achieving and for maintaining racial balance; those who support racial favoritism will not object to its use in either role. That distinction cannot serve to render plausible the majority's interpretation of congressional intent in enacting Title VII of the Civil Rights Act.

9

As debate over the Civil Rights Act continued in the Senate it became evident that the bill would have to be amended to make absolutely clear the fact that it could not later serve as the justification, by any federal agency, of the imposition of racial preference. Only thus might the repeated objections of its most implacable opponents be successfully met. A bipartisan coalition, made up of Senators Dirksen, Mansfield, Humphrey, and Kuchel, cooperating with leaders in the House of Representatives, devised the "Dirksen-Mansfield" amendment, ultimately adopted. Among the changes thus introduced was a clarifying addition, Section 703 (j), very specifically addressing the critics' fears of imposed racial balancing. This section provides that nothing in the entire Title shall be interpreted to require the giving of preferential treatment to any individual because of race. It reads:

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified by any employment agency or labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area or in the available work force in any community, State, section, or other area [42 U.S.C. 2000e—2(j)].

Now, in an ironic and extraordinary turn, the Supreme Court majority in *Weber* uses the language of this section to infer (relying upon what Justice Burger calls a "negative pregnant") that since it bars the requirement of racial preference, but does not specifically prohibit racial preference, it must have been the intention of Congress not to prohibit it! The majority writes:

The section does *not* state that "nothing in Title VII shall be interpreted to *permit*" voluntary affirmative efforts to correct racial imbalances. The natural inference is that Congress chose not to forbid all voluntary race-conscious affirmative action [Brennan, p. 10; emphasis in original].

This inference is either disingenuous or obtuse. The objection this added section was designed specifically to meet was that racial preference would somehow be required. No one thought it would or could be introduced voluntarily because "voluntary" racial preference precisely had been forbidden by the plain language of the earlier key section, 703 (a), cited above on page 43. Debate in the Senate went on for almost three full months. Never in that entire period was it argued, *by either side*, that employers could, of their own accord, give preference by race. Both proponents and opponents made perfectly clear their understanding that voluntary racial preference by employers, for blacks or for whites, was entirely precluded by the flat and unambiguous wording of those earlier passages, forbidding *any* employment practice that would 'discriminate against any individual" because of that individual's race. To add that prohibition yet again, in 703(j), would have been entirely redundant—and more importantly, it might have diluted the intended force of that particular passage, aimed narrowly at the objection that racial preference would otherwise someday be imposed by government.

That it was so aimed is made exquisitely clear by the difference in the phrasing of 703(j) from that of the earlier, central sections of the Title. The earlier sections, prohibiting racial discrimination in employment universally, are directed specifically at the employer, and therefore begin: "It shall be an unlawful employment practice for an employer. . . ." Section 703(j) is directed specifically *at possible federal enforcement agencies*, commissions, or courts, and therefore begins with language indicating that kind of target: "Nothing contained in this subchapter shall be interpreted. . . ." Now to infer, from the fact that this section does not repeat the prohibition already several times explicit in earlier sections, that it was the intention of Congress not to prohibit racial preference, is a transparently unsound defense of so grave a decision.[3]

Arguments relying false premises, even when valid in form, are not sound.

Lest there be any doubt, however, about the intent of the Congress *after* the addition of 703(j), we can return to the debate itself. Senator Saltonstall, defending the Dirksen-Mansfield amendment including 703(j), says of it, very plainly: "The legislation before us today provides no preferential treatment for any group of citizens. In fact, it specifically prohibits such treatment" (110 *Cong. Rec.*, p. 12691).

And yet again, in defending the amended bill against Senator Ervin's criticism that it "would make the members of a particular race special favorites of the laws," Senator Clark answers: "The bill does not make anyone higher than anyone else. It establishes no quotas." Employers, labor unions, employment agencies, remain free, Clark points out, to use normal judgment in their business activity—but:

All this is subject to one qualification, and that qualification is to state: "In your activity as an employer, as a labor union, as an employment agency, you must not discriminate because of the color of a man's skin. . . ." That is all this provision does. . . . It merely says, "When you deal in interstate commerce, you must not discriminate on the basis of race. . . ."

In the event this be somehow misunderstood, he repeats himself in that speech:

All it [Title VII] does is to say that no American, individual, labor union, or corporation, has the right to deny any other American the very basic civil right of equal job opportunity [110 *Cong. Rec.*, pp. 13079–80].

Senator Cooper, anxious to make the force of what was soon to become law unmistakably clear, also responds to Senator Ervin's concerns, saying:

As I understand Title VII, an employer could employ the usual standards which any employer uses in employing—in dismissing, in promoting, or in assigning those who work for him. There would be only one limitation: he could not discriminate, he could not deny a person a job, or dismiss a person from a job, or promote on the sole ground of his color, or his religion, other factors being equal [110 *Cong. Rec.*, p. 13078].[3]

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[3] The argument called a "negative pregnant" is technically described as one having the form *modus tollens:* if p entails q, and q is false, then p must be false. The form is valid, of course—but in this application of it the argument (in either of two possible reconstructions of it) is built upon a false premise.

Version A: "If Congress had intended to forbid all racial preference they would have said that explicitly. They did not say that explicitly. Hence they did not intend that." In this version the second premise is plainly false; the congressional ban against racial preference in Section 703(a) is prefectly explicit.

Version B: "If Congress had intended to forbid all racial preference they would have expressed that intention explicitly in Section 703(j). They did not express that intention there. Hence they did not have that intention." In this version the second premise is true but the first is false. There was no need for Congress to repeat, in Section 703(j), the ban it had already made explicit earlier, and there was good reason not to do so.

[3] That Congress intended its prohibition of racial preference expressed in 703(a) to be general, to ban preference for minorities as well as for the white majority, is strongly confirmed by the striking fact that in the case in which they did wish to make an exception, permitting one very special kind of

But how, one asks, can the majority not have been fully aware of all this? They must have seen the draft of Justice Rehnquist's dissent, which makes the same points vividly. Did they, perhaps, find other evidence within the record of the debates in Congress, evidence that has here been left unmentioned, which might somehow permit a reading of congressional intent to permit racial preference? No, no evidence has been suppressed here. Like Vaas and Justice Rehnquist, upon whose guidance I have relied, I have scoured the pages of the *Congressional Record*; like them I have registered only a fraction of the evidence against the majority's interpretation. If, in all those papers, there were evidence that *any* Senator or Congressman had the intent that the majority ascribes to the whole Congress, we may be certain it would have been dug up and registered within the majority opinion. No such evidence appears there. Here again we may indeed rely upon a negative pregnant. In this majority opinion, in which every quotation from the congressional debates is presented that might contribute, even with arguments far-fetched or unsound, to an excessively strained interpretation of congressional intent, the absence of any passages that actually express that intent is very revealing.[4]

The plainest proof that the members of the majority in *Weber* cannot have been in ignorance of the actual intent of Congress, and after searching could find no evidence of contrary intent, is given by Justice Marshall himself. In a 1976 opinion, writing for the Court, he presents a careful analysis of the intent of Congress in Title VII. He quotes Representative Celler, saying Title VII was intended to "cover white men and white women and all Americans" (110 *Cong. Rec.*, p. 2578). He cites Senator Humphrey, Senator Clark, Senator Case, and Senator Williams in passages like those quoted above. Justice Marshall concludes that "Its [Title VII's] terms are not limited to discrimination against members of any particular race." He then substantiates this judgment by extended reference to the interpretation of Title VII given by the Equal Employment Opportunity Commission:

preference in one very special setting, they identified that exceptional case and delimited it narrowly in Section 703(i), with carefully chosen words: "Nothing contained in [Title VII] shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian living on or near a reservation."

From the specific inclusion of that one exception it is manifest that only by such specific language did Congress intend exceptions to be justified. No other such exceptions appear. Here is a negative pregnant—a valid *modus tollens* argument—worthy of respect: "Where Congress intended an exception to the general ban on racial preference it identified the excepted case explicitly. It identified no exception for private employers or unions save that regarding Indians on or near a reservation. Hence it intended no exception but this one." In this case the premises are all true and the argument is sound.

[4] Again the valid argument is in the form of *modus tollens*, and again its premises are true: "If Congress had intended to permit private racial preference in employment there would have been clear expression of that intention by at least some defenders of the Act in the course of lengthy debate. No such expressions appear. Hence Congress cannot be supposed to have had that intent." There is nothing wrong with *modus tollens*; its effectiveness in argument, however, depends upon the truth of the premises relied upon.

The EEOC, whose interpretations are entitled to great deference, . . . *has consistently interpreted Title VII to proscribe racial discrimination in private employment against whites on the same terms as racial discrimination against non-whites*, holding that to proceed otherwise would "constitute a derogation of the Commission's Congressional mandate to eliminate all practices which operate to disadvantage the employment opportunities of any group protected by Title VII, including Caucasians.

Justice Marshall explains, representing the Court, that the history of legislative intent in adopting Title VII is "*uncontradicted*" (*McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273, at 278–80, 283; emphasis added).

Members of the House and Senate are quoted by the majority, to be sure. But the quotations serve to establish matters only tenuously related to the central point at issue. Repeated citations from the debates are given to establish that it was the larger purpose of Congress, in tackling this legislation, to promote employment opportunities for blacks. That, as we have seen, is not at issue, and does not speak to the question of what prohibitions were intended. Several citations are given to show, correctly, that one major concern in the Senate when introducing Section 703(j), which precludes the requirement of racial preference by the enforcers, was to reduce the likelihood of federal interference with private business. That was an aim of many Senators; but showing that does not prove, or even tend to confirm the thesis, that Title VII as a whole was designed to permit non-governmental racial preference.

One other citation by the majority deserves attention. To give credence to the claim that the distinction between private racial favoritism and federally required racial favoritism was before the congressional mind, the majority quotes from the House Committee report favoring the original bill. The passage says that "the enactment of Federal legislation dealing with the most troublesome problems [of social discrimination] will create an atmosphere conducive to voluntary or local resolution of other forms of discrimination." The majority fastens on this sentence, even adds emphasis to the final phrase, suggesting that it proves that a voluntary racial quota in employment is one of those "other forms" for which the Civil Rights Act had created the atmosphere (Brennan, p. 8).

Fallacious would be the gentlest way to describe this argument—in view of the failure, not likely to be accidental, to quote the lines immediately following the cited passage. An explanation is given there of the distinction between "the most serious types of discrimination" and those other varieties for which voluntary attention might be encouraged. The serious types, types this House report there suggests *will* be dealt with by this bill, specifically include voting, public accommodation, *and employment*. The omitted passage reads:

It is, however, possible and necessary for the Congress to enact legislation which prohibits and provides the means of terminating the most serious types of discrimination. This H.R. 7152, as amended, would achieve in a number of related areas. . . . It would prohibit discrimination in employment [*H. R. Reports*, No. 914, p. 18].

The forms of discrimination it was hoped might yield to voluntary action were those *other* than discrimination in employment, voting, and the like. Indeed, employment discrimination is mentioned repeatedly in the report as being of the most serious kind, the kind for whose prevention this legislation was specifically designed.

There is not a shred of evidence in this passage that the report actually envisaged voluntary racial *preference* of any kind, or that would have suggested to the House that such preference—especially in employment—was permissible under this Act.

11

One hates to flog a dead horse. But this horse came to life in an extraordinary opinion of a Supreme Court majority—so I report, finally, the understanding of the Civil Rights Act of 1964 as that understanding was registered in the final hours of debate on the Senate floor—after which it was returned to the House and approved as amended. The legislative decision was at hand. The advocates of the bill, now under cloture, had to give their final defenses and interpretations. On the point at issue here under their remarks were unmistakably clear.

Senator Muskie:

It has been said that the bill discriminates in favor of the Negro at the expense of the rest of us. It seeks to do nothing more than to lift the Negro from the status of inequality to one of equality of treatment [110 *Cong. Rec.*, p. 14328].

The bill does not accord to any citizen advantage or preference—it does not fix quotas of employment or school population—it does not force personal association. What it does is to prohibit public officials and those who invite the public generally to patronize their business or to apply for employment, to utilize the offensive, humiliating, and cruel practice of discrimination on the basis of race. In short, the bill does not accord special consideration; it establishes equality [110 *Cong. Rec.*, p. 14484].

Very self-consciously, aware that it was making history, the Senate passed the amended Civil Rights Act on June 19, 1964, by 73 to 27, every member voting. The struggle in that body, as Vaas describes it, had been "titanic and protracted." The meaning and force of every line, every phrase in the bill had been intensely scrutinized and explained with scrupulous care. The legislators knew precisely what they were prohibiting with this legislation, and we know exactly what they understood themselves to be doing because they took care, very deliberately, to put their explanatory accounts on record.

No impartial judge, properly attentive to the abundant evidence that establishes dispositively the true intent of Congress, could honestly conclude that its intent was to permit private racial preference in employment. Yet that is what the majority has concluded, in a decision that is, taken all in all, simply shocking.

Are there no redeeming features of the majority's decision? Yes, there are several—all respects in which the impact of the decision is explicitly limited. "We emphasize at the outset," writes the majority, "the narrowness of our inquiry" (Brennan, p. 4).

Although the impact of the decision will prove very substantial, it is, indeed, narrow in a technical sense. Its narrowness is a consequence of the explicit intention of the majority to decide the case entirely as one of statutory interpretation. What the majority decided about the Kaiser quota plan, it will be recalled, is no more than that Title VII of the Civil Rights Act does not forbid it. Restricting themselves to an interpretation of the statute was possible for the majority because, they said, "this case does not present an alleged violation of the Equal Protection Clause of the Constitution." It does not, they explain, because the racially preferential quota in question was entirely within "the private sector." The plan did not involve "state action" [*ibid*].

This view of the Kaiser plan is at once reasonable and ironic. It is ironic because although this racial quota surfaced only in a labor-management agreement, it had been introduced there as a result of threats of contract cancellation by a federal enforcement agency. Threats why? Because Kaiser's

work force was not racially balanced. In the language of the Office of Federal Contract Compliance, minorities were being "underutilized" by Kaiser. By devising job-training racial quotas in submission to that threat, Kaiser and the union showed how well-grounded were the fears of those who had wished to preclude not only the federal requirement of racial preference, but the federal coercion of it. The addition of Section 703(j) sought to guard against the first of these dangers. Now its very language is used to realize the second, accomplishing indirectly what that language was designed to prevent directly.

In a historical aside that would be amusing if it did not reflect upon the highest court in the land, Justice Rehnquist cites a remark by Senator Sparkman in projecting the uses to which Title VII may one day be put: "Certainly the suggestion will be made to a small business that may have a small government contract . . . that if it does not carry out the suggestion that has been made to the company by an inspector, its government contract will not be renewed" (110 CONGRESSIONAL RECORD, p. 8618).

Yet the Court's distinction between state action and private action remains reasonable. However pernicious racial discrimination may be, it is right to distinguish between immoral acts done by private parties (even when arguably coerced) and the same acts done directly by a representative government. To accept that distinction is not to suggest that the majority is correct in holding this private racism lawful. Under any plausible reading of the Civil Rights Act, it is not. But not all private nastiness is public business, and we are wise to agree that, where state action is clearly involved in racial preference, the problem rises to a different and higher level of gravity.

Because the majority puts substantial emphasis on the distinction, introducing it at several points in its opinion, it is reasonable to conclude not only that the majority opinion does not cover public employers, but that public employers—government agencies, public universities, etc.—cannot rely in any way upon the permission here being given to a private employer.

Private employers also, as a matter of morality, might reasonably refrain from engaging in practices believed to be forbidden to public employers. There is an odious quality in conduct narrowly held lawful but which, if pursued by government, would create at least a serious question of constitutional right. Sooner or later the fundamental question will arise again in a context obliging a full-blooded constitutional response by the full Court. When that happens we may hope for a wiser result.

What is the likelihood of an eventual constitutional reversal of *Weber*? No one can say with confidence. The present Court is deeply divided on this cluster of issues. *Weber* was decided by a vote of 5 to 2. Justice Stevens, author of the opinion in support of Allan Bakke in that analogous case, excused himself because he had once served as an attorney for Kaiser. Justice Powell was kept from presence at the oral argument by illness, and also took no part in *Weber*. In any later constitutional resolution in which Justices Stevens and Powell participate it is exceedingly likely that both would find racial preference of every kind unacceptable. Powell has vigorously expressed his condemnation of racial preference, rejecting any "two-class" theory of the Equal Protection Clause. Justices Marshall and Brennan, the most vigorous defenders of racial preference on the present Court, are not in good health. When this matter is faced afresh, in the context of the Fourteenth Amendment's demand that no state "deny to any person under its jurisdiction the equal protection of the laws," the complexion of the Court may well have changed.

The majority opinion is narrow in the further sense that it gives almost no guidance to those who might wish to expand racial preference. No principles of acceptability for racial preference are advanced. The majority explicitly refrains from defining in detail "the line of demarcation between permissible and impermissible affirmative-action plans." It holds only that this plan, which gives preference to blacks over whites for job-training opportunities but not for employment itself, "falls on the permissible side of the line" (Brennan, p. 12). Any racially preferential program, therefore, that goes in any way beyond this one might immediately lose the support of one or more of the five members of the majority, thus failing on subsequent test. What is learned in *Weber* is that the Supreme Court now holds this precise plan not to be forbidden by Title VII of the Civil Rights Act of 1964—no more than that.

13

Finally, there will be political repercussions from *Weber*, partly because they have been invited by the Court, and partly because the decision of the Court is very likely to provoke them.

Political response is invited by the fact that the majority opinion hangs entirely on its interpretation of the intent of Congress. It remains open to Congress to register its true intent so clearly that even this majority could not fail to perceive it. Justice Blackmun, exhibiting troubled reluctance in his concurring opinion, and reiterating his hopes for an early end to racial preference he had himself (in his *Bakke* opinion) called "ugly," concludes his opinion with an explicit invitation to the Congress: "And if the Court has misperceived the political will, it has the assurance that because the question is statutory Congress may set a different course if it so chooses" (Blackmun, p. 8).

That the intent of Congress to forbid all racial preference in employment already appears in the unambiguous words of Title VII, Section 703(a), quoted above (p. 43) is indisputable. Yet it is possible that formal congressional reemphasis of its intent would cause the Court to desist in its efforts to rewrite the legislation to its taste. Congressional efforts to accomplish just this objective are likely to be undertaken, but the success of any such legislative shoring-up of Title VII is doubtful.

There is a provocative aspect of the majority opinion in *Weber*, however, that may actually drive the Congress to underscore its earlier demand for equal treatment of the races. This is a feature of the decision which, upon reflection, appears even more insensitive than the misreading of congressional intent. I refer to the callousness, manifest in the majority opinion, toward the interests of ordinary working-class people. Allan Bakke was ordered admitted to the medical school at Davis; blatant racial discrimination against him was not tolerated. Brian Weber, a working man without skills or influence, and without the organized support of the intellectuals, can be left to bear the burden, even though his rights may be infringed upon. The majority is explicit on this point. To advance the racial balancing they think good it may be necessary, they say, to "*trammel the interests of the white employees*" (Brennan, p. 12; emphasis added).

Five members of the Supreme Court may find this a comfortable position in which to rest; most elected legislators will not. It may be that by egregiously misreporting the intent of Congress, and then boldly expressing their own willingness to sacrifice the interests of one race to advance the interests of another, the majority in *Weber* has taken those provocative steps that will lead eventually to more emphatic legislative insistence upon the equal protection of the laws.

Mr. HATCH. Mr. President, a number of the articles I have presented here make allusion to the brilliance of Justice Rehnquist's dissent in the Weber decision. This is, indeed, the only aspect of the decision that history will regard as adding in any way to the luster of the Court. Rehnquist's opinion is unanswerable, and I recommend it earnestly to my colleagues.

Mr. President, I ask unanimous consent that Mr. Justice Rehnquist's decision be printed in the RECORD at this point.

There being no objection, the decision was ordered to be printed in the RECORD, as follows:

REHNQUIST, J., DISSENTING

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

In a very real sense, the Court's opinion is ahead of its time: it could more appropriately have been handed down five years from now, in 1984, a year coinciding with the title of a book from which the Court's opinion borrows, perhaps subconsciously, at least one idea. Orwell describes in his book a governmental official of Oceania, one of the three great world powers, denouncing the current enemy, Eurasia, to an assembled crowd:

"It was almost impossible to listen to him without being first convinced and then maddened. . . . The speech had been proceeding for perhaps twenty minutes when a messenger hurried onto the platform and a scrap of paper was slipped into the speaker's hand. He unrolled and read it without pausing in his speech. Nothing altered in his voice or manner, or in the content of what he was saying, but suddenly the names were different. Without words said, a wave of understanding rippled through the crowd. Oceania was at war with Eastasia! . . . The banners and posters with which the square was decorated were all wrong! . . .

"[T]he speaker had switched from one line to the other actually in mid-sentence, not only without a pause, but without even breaking the syntax." G. Orwell, Nineteen Eighty-Four 181–182 (1949).

Today's decision represents an equally dramatic and equally unremarked switch in this Court's interpretation of Title VII.

The operative sections of Title VII prohibit racial discrimination in employment *simpliciter*. Taken in its normal meaning, and as understood by all Members of Congress who spoke to the issue during the legislative debates, see *infra*, at 231–251, this language prohibits a covered employer from considering race when making an employment decision, whether the race be black or white. Several years ago, however, a United States District Court held that "the dismissal of white employees charged with misappropriating company property while not dismissing a similarly charged Negro employee does not raise a claim upon which Title VII relief may be granted." *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 278 (1976). This Court unanimously reversed, concluding from the "uncontradicted legislative history" that "Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they Negroes . . . ." *Id.*, at 280.

We have never wavered in our understanding that Title VII "prohibits *all* racial discrimination in employment, without exception for any group of particular employees." *Id.*, at 283 (emphasis in original). In *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971), our first occasion to interpret Title VII, a unanimous Court observed that "[d]iscriminatory preference, for any group, minority or majority, is precisely and only what Congress has proscribed." And in our most recent

discussion of the issue, we uttered words seemingly dispositive of this case: "It is clear beyond cavil that the obligation imposed by Title VII is to provide an equal opportunity for *each* applicant regardless of race, without regard to whether members of the applicant's race are already proportionately represented in the work force." *Furnco Construction Corp.* v. *Waters*, 438 U.S. 567, 579 (1978) (emphasis in original).[5]

Today, however, the Court behaves much like the Orwellian speaker earlier described, as if it had been handed a note indicating that Title VII would lead to a result unacceptable to the Court if interpreted here as it was in our prior decisions. Accordingly, without even a break in syntax, the Court rejects "a literal construction of § 703(a)" in favor of newly discovered "legislative history," which leads it to a conclusion directly contrary to that compelled by the "uncontradicted legislative history" unearthed in *McDonald* and our other prior decisions. Now we are told that the legislative history of Title VII shows that employers are free to discriminate on the basis of race: an employer may, in the Court's words, "trammel the interests of the white employees" in favor of black employees in order to eliminate "racial imbalance." *Ante*, at 208. Our earlier interpretations of Title VII, like the banners and posters decorating the square in Oceania, were all wrong.

As if this were not enough to make a reasonable observer question this Court's adherence to the oft-stated principle that our duty is to construe rather than rewrite legislation, *United States* v. *Rutherford*, 442 U.S. 544, 555 (1979), the Court also seizes upon § 703(j) of Title VII as an independent, or at least partially independent, basis for its holding. Totally ignoring the wording of that section, which is obviously addressed to those charged with the responsibility of interpreting the law rather than those who are subject to its proscriptions, and totally ignoring the months of legislative debates preceding the section's introduction and passage, which demonstrate clearly that it was enacted to prevent precisely what occurred in this case, the Court infers from § 703(j) that "Congress chose not to forbid all voluntary race-conscious affirmative action." *Ante*, at 205.

Thus, by a *tour de force* reminiscent not of jurists such as Hale, Holmes, and Hughes, but of escape artists such as Houdini, the Court eludes clear statutory language, "uncontradicted" legislative history, and uniform precedent in concluding that employers are, after all, permitted to consider race in making employment decisions. It may be that one or more of the principal sponsors of Title VII would have preferred to see a provision allowing preferential treatment of minorities written into the bill. Such a provision, however, would have to have been expressly or impliedly excepted from Title VII's explicit prohibition on all racial discrimination in employment. There is no such exception in the Act. And a reading of the legislative debates concerning Title VII, in which proponents and opponents alike uniformly denounced discrimination in favor of, as well as discrimination against, Negroes, demonstrates clearly that any legislator harboring an unspoken desire for such a provision could not possibly have succeeded in enacting it into law.

Kaiser opened its Gramercy, La., plant in 1958. Because the Gramercy facility had no apprenticeship or in-plant craft taking program, Kaiser hired as craftworkers only persons with prior craft experience. Despite Kaiser's efforts to locate and hire trained black craftsmen, few were available in the Gramercy area, and as a consequence, Kaiser's craft positions were manned almost exclusively by whites. In February 1974, under pressure from the Office of Federal Contract Compliance to increase minority representation in craft positions at its various plants,[6] and hoping to deter the filing of employment discrimination claims by minorities, Kaiser entered into a collective-bargaining agreement with the United Steelworkers of America (Steelworkers) which created a new on-the-job craft training program at 15 Kaiser facilities, including the Gramercy plant. The agreement required that no less than one minority applicant be admitted to the training program for every nonminority applicant until the percentage of blacks in craft positions equaled the percentage of blacks in the local work force.[7] Eligibility for the craft training programs was to be determined on the basis of plant seniority, with black and white applicants to be selected on the basis of their relative seniority within their racial group.

Brian Weber is white. He was hired at Kaiser's Gramercy plant in 1968. In April 1974, Kaiser announced that it was offering a total of nine positions in three on-the-job training programs for skilled craft jobs. Weber applied for all three programs, but was not selected. The successful candidates—five black and four white applicants—were chosen in accordance with the 50 percent minority admission quota mandated under the 1974 collective-bargaining agreement. Two of the successful black applicants had less seniority than Weber.[8] Weber brought the instant class action[9] in the United States District Court for the Eastern District of Louisiana, alleging that use of the 50 percent minority admission quota to fill vacancies in Kaiser's craft training programs violated Title VII's prohibition on racial discrimination in employment. The District Court and the Court of Appeals for the Fifth Circuit agreed, enjoining further use of race as a criterion in admitting applicants to the craft training programs.[10]

II

Where Congress to act today specifically to prohibit the type of racial discrimination suffered by Weber, it would be hard pressed to draft language better tailored to the task than that found in § 703(d) of Title VII:

"It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training." 78 Stat. 256, 42 U.S.C. § 2000e-2(d).

Equally suited to the task would be § 703 (a)(2), which makes it unlawful for an employer to classify his employees "in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 78 Stat. 255, 42 U.S.C. § 2000e-2(a)(2).[7]

Entirely consistent with these two express prohibitions is the language of § 703(j) of Title VII, which provides that the Act is not to be interpreted "to require any employer . . . to grant preferential treatment to any individual or to any group because of the race . . . of such individual or group" to correct a racial imbalance in the employer's work force. 42 U.S.C. § 2000e-2(j).[8] Seizing on the word "require," the Court infers that Congress must have intended to "permit" this type of racial discrimination. Not only is this reading of § 703(j) outlandish in the light of the flat prohibitions of §§ 703 (a) and (d), but, as explained in Part III, it is totally belied by the Act's legislative history.

Quite simply, Kaiser's racially discriminatory admission quota is flatly prohibited by the plain language of Title VII. This normally dispositive fact,[9] however, gives the Court only momentary pause. An "interpretation" of the statute upholding Weber's claim would, according to the Court, " 'bring about an end completely at variance with the purpose of the statute.' " *Ante*, at 202, quoting *United States* v. *Public Utilities Comm'n*, 345 U.S. 295, 315 (1953). To support this conclusion, the Court calls upon the "spirit" of the Act, which it divines from passages in Title VII's legislative history indicating that enactment of the statute was prompted by Congress' desire " 'to open employment opportunities for Negroes in occupations which [had] been traditionally closed to them.' " *Ante*, at 203, quoting 110 Cong. Rec. 6548 (1964) (remarks of Sen. Humphrey).[10] But the legislative history invoked by the Court to avoid the plain language of §§ 703 (a) and (d) simply misses the point. To be sure, the reality of employment discrimination against Negroes provided the primary impetus for passage of Title VII. But this fact by no means supports the proposition that Congress intended to leave employers free to discriminate against white persons.[11] In most cases, "[l]egislative history . . . is more vague than the statute we are called upon to interpret." *United States* v. *Public Utilities Comm'n*, *supra*, at 320 (Jackson, J., concurring). Here, however, the legislative history of Title VII is as clear as the language of §§ 703 (a) and (d), and it irrefutably demonstrates that Congress meant precisely what it said in §§ 703 (a) and (d)—that *no* racial discrimination in employment is permissible under Title VII, not even preferential treatment of minorities to correct racial imbalance.

III

In undertaking to review the legislative history of Title VII, I am mindful that the topic hardly makes for light reading, but I am also fearful that nothing short of a thorough examination of the congressional debates will fully expose the magnitude of the Court's misinterpretation of Congress' intent.

A

Introduced on the floor of the House of Representatives on June 20, 1963, the bill—H.R. 7152—that ultimately became the Civil Rights Act of 1964 contained no compulsory provisions directed at private discrimination in employment. The bill was promptly referred to the Committee on the Judiciary, where it was amended to include Title VII. With two exceptions, the bill reported by the House Judiciary Committee contained §§ 703 (a) and (d) as they were ultimately enacted. Amendments subsequently adopted on the House floor added § 703's prohibition against sex discrimination and § 703(d)'s coverage of "on-the-job training."

After noting that "[t]he purpose of [Title VII] is to eliminate . . . discrimination in employment based on race, color, religion, or national origin," the Judiciary Committee's Report simply paraphrased the provisions of Title VII without elaboration. H.R. Rep., pt. 1, p. 26. In a separate Minority Report, however, opponents of the measure on the Committee advanced a line of attack which was reiterated throughout the debates in both the House and Senate and which ultimately led to passage of § 703(j). Noting that the word "discrimination" was nowhere defined in H.R. 7152, the Minority Report charged that the absence from Title VII of any reference to "racial balance" was a "public relations" ruse and that "the administration intends to rely upon its own construction of 'discrimination' as including the lack of racial balance. . . ." H.R. Rep., pt. 1, pp. 67–69. To demonstrate how the bill would operate in practice, the Minority Report posited a number of hypothetical employment situations, concluding in each example that the employer "*may be forced to hire according to race*, to 'racially balance' those who work for him *in every job classification* or be in violation of Federal law." *Id.*, at 69 (emphasis in original).[12]

Footnotes at end of article.

When H.R. 7152 reached the House floor, the opening speech in support of its passage was delivered by Representative Celler, Chairman of the House Judiciary Committee and the Congressman responsible for introducing the legislation. A portion of that speech responded to criticism "seriously misrepresent[ing] what the bill would do and grossly distort[ing] its effects":

"[T]he charge has been made that the Equal Employment Opportunity Commission to be established by title VII of the bill would have the power to prevent a business from employing and promoting the people it wished, and that a 'Federal inspector' could then order the hiring and promotion only of employees of certain races or religious groups. This description of the bill is entirely wrong. . . .

* * * * *

"Even [a] court could not order that any preference be given to any particular race, religion or other group, but would be limited to ordering an end of discrimination. The statement that a Federal inspector could order the employment and promotion only of members of a specific racial or religious group is therefore patently erroneous.

". . . The Bill would do no more than prevent . . . employers from discriminating against or in favor of workers because of their race, religion, or national origin.

"It is likewise not true that the Equal Employment Opportunity Commission would have power to rectify existing 'racial or religious imbalance' in employment by requiring the hiring of certain people without regard to their qualifications simply because they are of a given race or religion. Only actual discrimination could be stopped." 110 CONGRESSIONAL RECORD 1518 (1964) (emphasis added).

Representative Celler's construction of Title VII was repeated by several other supporters during the House debate.[13]

Thus, the battle lines were drawn early in the legislative struggle over Title VII, with opponents of the measure charging that agencies of the Federal Government such as the Equal Employment Opportunity Commission (EEOC), by interpreting the word "discrimination" to mean the existence of "racial imbalance," would "require" employers to grant preferential treatment to minorities, and supporters responding that the EEOC would be granted no such power and that, indeed, Title VII prohibits discrimination "in favor of workers because of their race." Supporters of H.R. 7152 in the House ultimately prevailed by a vote of 290 to 130,[14] and the measure was sent to the Senate to begin what became the longest debate in that body's history.

B

The Senate debate was broken into three phases: the debate on sending the bill to Committee, the general debate on the bill prior to invocation of cloture, and the debate following cloture.

1

When debate on the motion to refer the bill to Committee opened, opponents of Title VII in the Senate immediately echoed the fears expressed by their counterparts in the House, as is demonstrated by the following colloquy between Senators Hill and Ervin:

"Mr. ERVIN. I invite attention to . . . Section [703(a)]. . . .

* * * * *

"I ask the Senator from Alabama if the Commission could not tell an employer that he had too few employees, that he had limited his employment, and enter an order, under [Section 703(a)], requiring him to hire more persons, not because the employer thought he needed more persons, but because the Commission wanted to compel him to employ persons of a particular race.

"Mr. HILL. The Senator is correct. That power is written into the bill. The employer could be forced to hire additional persons. . . ." 110 CONGRESSIONAL RECORD 4764 (1964).[15]

Senator Humphrey, perhaps the primary moving force behind H.R. 7152 in the Senate, was the first to state the proponents' understanding of Title VII. Responding to a political advertisement charging that federal agencies were at liberty to interpret the word "discrimination" in Title VII to require racial balance, Senator Humphrey stated: "[T]he meaning of racial or religious discrimination is perfectly clear. . . . [I]t means a distinction in treatment given to different individuals because of their different race, religion, or national orgin." *Id.*, at 5423.[16] Stressing that Title VII "does not limit the employer's freedom to hire, fire, promote or demote for any reasons—or no reasons—so long as his action is not based on race," Senator Humphrey further stated that "nothing in the bill would permit any official or court to require any employer or labor union to give preferential treatment to any minority group." *Ibid.*[17]

After 17 days of debate, the Senate voted to take up the bill directly, without referring it to a committee. *Id.*, at 6455. Consequently, there is no Committee Report in the Senate.

2

Formal debate on the merits of H.R. 7152 began on March 30, 1964. Supporters of the bill in the Senate had made elaborate preparations for this second round. Senator Humphrey, the majority whip, and Senator Kuchel, the minority whip, were selected as the bipartisan floor managers on the entire civil rights bill. Responsibility for explaining and defending each important title of the bill was placed on bipartisan "captains." Senators Clark and Case were selected as the bipartisan captains responsible for Title VII. Vaas, Title VII: Legislative History, 7 B.C. Ind. & Com. L. Rev. 431, 444–445 (1966) (hereinafter Title VII: Legislative History).

In the opening speech of the formal Senate debate on the bill, Senator Humphrey addressed the main concern of Title VII's opponents, advising that not only does Title VII not require use of racial quotas, *it does not permit* their use. "The truth," stated the floor leader of the bill, "is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about title VII." 110 Cong. Rec. 6549 (1964). Senator Humphrey continued:

"Contrary to the allegations of some opponents of this title, there is nothing in it that will give any power to the Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance.

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, *the very opposite is true. Title VII prohibits discrimination*. In effect, it says that race, religion and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion." *Ibid.* (emphasis added).

At the close of his speech, Senator Humphrey returned briefly to the subject of employment quotas: "It is claimed that the bill would require racial quotas for all hiring, when in fact it provides that race shall not be a basis for making personnel decisions." *Id.*, at 6553.

Senator Kuchel delivered the second major speech in support of H.R. 7152. In addressing the concerns of the opposition, he observed that "[n]othing could be further from the truth" than the charge that "Federal inspectors" would be empowered under Title VII to dictate racial balance and preferential advancement of minorities. *Id.*, at 6563. Senator Kuchel emphasized that seniority rights would in no way be affected by Title VII: "Employers and labor organizations could not discriminate *in favor of or against* a person because of his race, his religion, or his national origin. In such matters . . . the bill now before us . . . is color-blind." *Id.*, at 6564 (emphasis added).

A few days later the Senate's attention focused exclusively on Title VII, as Senators Clark and Case rose to discuss the title of H.R. 7152 on which they shared floor "captain" responsibilities. In an interpretative memorandum submitted jointly to the Senate, Senators Clark and Case took pains to refute the opposition's charge that Title VII would result in preferential treatment of minorities. Their words were clear and unequivocal:

"There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual." *Id.*, at 7213.[18]

Of particular relevance to the instant case were their observations regarding seniority rights. As if directing their comments at Brian Weber, the Senators said:

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—*or indeed permitted*—to fire whites in order to hire Negroes, *or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier.*" *Ibid.* (emphasis added).[19]

Thus, with virtual clairvoyance the Senate's leading supporters of Title VII anticipated precisely the circumstances of this case and advised their colleagues that the type of minority preference employed by Kaiser would violate Title VII's ban on racial discrimination. To further accentuate the point, Senator Clark introduced another memorandum dealing with common criticisms of the bill, including the charge that racial quotas would be imposed under Title VII. The answer was simple and to the point: "Quotas are themselves discriminatory." *Id.*, at 7218.

Despite these clear statements from the bill's leading and most knowledgeable proponents, the fears of the opponents were not put to rest. Senator Robertson reiterated the view that "discrimination" could be interpreted by a federal "bureaucrat" to require hiring quotas. *Id.*, at 7418–7420.[20] Senators Smathers and Sparkman, while conceding that Title VII does not in so many words require the use of hiring quotas, repeated the opposition's view that employers would be coerced to grant preferential hiring treatment to minorities by agencies of the Federal Government.[21] Senator Williams was quick to respond:

"Those opposed to H.R. 7152 should realize that to hire a Negro solely because he is a Negro is racial discrimination, just as much as a 'white only' employment policy. Both forms of discrimination are prohibited by title VII of this bill. The language of that title simply states that race is not a qualification for employment. . . . Some people charge that H.R. 7152 favors the Negro, at the expense of the white majority. But how can the language of equality favor one race or one religion over another? Equality can have only one meaning, and that meaning is self-evident to reasonable men. Those who

Footnotes at end of article.

say that equality means favoritism do violence to common sense." *Id.*, at 8921.

Senator Williams concluded his remarks by noting that Title VII's only purpose is "the elimination of racial and religious discrimination in employment." *Ibid.*[22] On May 25, Senator Humphrey again took the floor to defend the bill against "the well-financed drive by certain opponents to confuse and mislead the American people." *Id.*, at 11846. Turning once again to the issue of preferential treatment, Senator Humphrey remained faithful to the view that he had repeatedly expressed:

"The title does not provide that any preferential treatment in employment shall be given to Negroes or to any other persons or groups. It does not provide that any quota systems may be established to maintain racial balance in employment. In fact, *the title would prohibit preferential treatment for any particular group*, and any person, whether or not a member of any minority group, would be permitted to file a complaint of discriminatory employment practices." *Id.*, at 11848 (emphasis added).

While the debate in the Senate raged, a bipartisan coalition under the leadership of Senators Dirksen, Mansfield, Humphrey, and Kuchel was working with House leaders and representatives of the Johnson administration on a number of amendments to H.R. 7152 designed to enhance its prospects of passage. The so-called "Dirksen-Mansfield" amendment was introduced on May 26 by Senator Dirksen as a substitute for the entire House-passed bill. The substitute bill, which ultimately became law, left unchanged the basic prohibitory language of §§ 703 (a) and (d), as well as the remedial provisions in § 706(g). It added, however, several provisions defining and clarifying the scope of Title VII's substantive prohibitions. One of those clarifying amendments, § 703 (j), was specifically directed at the opposition's concerns regarding racial balancing and preferential treatment of minorities, providing in pertinent part: "Nothing contained in [Title VII] shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the race . . . of such individual or group on account of" a racial imbalance in the employer's work force. 42 U.S.C. § 2000e-2(j); quoted in full in n. 8, *supra*.

The Court draws from the language of § 703(j) primary support for its conclusion that Title VII's blanket prohibition on racial discrimination in employment does not prohibit preferential treatment of blacks to correct racial imbalance. Alleging that opponents of Title VII had argued (1) that the Act would be interpreted to require employers with racially imbalanced work forces to grant preferential treatment to minorities and (2) that "employers with racially imbalanced work forces would grant preferential treatment to racial minorities, even if not required to do so by the Act," *ante*, at 205, the Court concludes that § 703(j) is responsive only to the opponents' first objection and that Congress therefore must have intended to permit voluntary, private discrimination against whites in order to correct racial imbalance.

Contrary to the Court's analysis, the language of § 703(j) is precisely tailored to the objection voiced time and again by Title VII's opponents. Not once during the 83 days of debate in the Senate did a speaker, proponent or opponent, suggest that the bill would allow employers *voluntarily* to prefer racial minorities over white persons.[23] In light of Title VII's flat prohibition on discrimination "against any individual . . . because of such individual's race," § 703(a), 42 U.S.C. § 2000e-2(a), such a contention would have been, in any event, too preposterous to warrant response. Indeed, speakers on both sides of the issue, as the legislative history makes clear, recognized that Title VII would tolerate no *voluntary* racial preference, whether in favor of blacks or whites. The complaint consistently voiced by the opponents was that Title VII, particularly the word "discrimination," would be *interpreted* by federal agencies such as the EEOC to *require* the correction of racial imbalance through the granting of preferential treatment to minorities. Verbal assurances that Title VII would not require—indeed, would not permit—preferential treatment of blacks having failed, supporters of H.R. 7152 responded by proposing an amendment carefully worded to meet, and put to rest, the opposition's charge. Indeed, unlike §§ 703(a) and (d), which are by their terms directed at entities—*e. g.*, employers, labor unions—whose actions are restricted by Title VII's prohibitions, the language of § 703(j) is specifically directed at entities—federal agencies and courts—charged with the responsibility of interpreting Title VII's provisions.[24]

In light of the background and purpose of § 703(j), the irony of invoking the section to justify the result in this case is obvious. The Court's frequent references to the "voluntary" nature of Kaiser's racially discriminatory admission quota bear no relationship to the facts of this case. Kaiser and the Steelworkers acted under pressure from an agency of the Federal Government, the Office of Federal Contract Compliance, which found that minorities were being "underutilized" at Kaiser's plants. See n. 2, *supra*. That is, Kaiser's work force was racially imbalanced. Bowing to that pressure, Kaiser instituted an admissions quota preferring blacks over whites, thus confirming that the fears of Title VII's opponents were well founded. Today, § 703(j), adopted to allay those fears, is invoked by the Court to uphold imposition of a racial quota under the very circumstances that the section was intended to prevent.[25]

Section 703(j) apparently calmed the fears of most of the opponents; after its introduction, complaints concerning racial balance and preferential treatment died down considerably.[26] Proponents of the bill, however, continued to reassure the opposition that its concerns were unfounded. In a lengthy defense of the entire civil rights bill, Senator Muskie emphasized that the opposition's "torrent of words . . . cannot obscure this basic, simple truth: Every American citizen has the right to equal treatment—not favored treatment, not complete individual equality—just equal treatment." 110 Cong. Rec. 12614 (1964). With particular reference to Title VII, Senator Muskie noted that the measure "seeks to afford to all Americans equal opportunity in employment without discrimination. Not equal pay. Not 'racial balance.' Only equal opportunity." *Id.*, at 12617.[27]

Senator Saltonstall, Chairman of the Republican Conference of Senators participating in the drafting of the Dirksen-Mansfield amendment, spoke at length on the substitute bill. He advised the Senate that the Dirksen-Mansfield substitute, which included § 703(j), "provides no preferential treatment for any group of citizens. In *fact, it specifically prohibits such treatment.*" 110 Cong. Rec. 12691 (1964) (emphasis added).[28]

On June 9, Senator Ervin offered an amendment that would entirely delete Title VII from the bill. In answer to Senator Ervin's contention that Title VII "would make the members of a particular race special favorites of the laws," *id.*, at 13079, Senator Clark retorted:

"The bill does not make anyone higher than anyone else. It establishes no quotas. It leaves an employer free to select whomever he wishes to employ . . .

"All this is subject to one qualification, and that qualification, is to state: 'In your activity as an employer . . . you must not discriminate because of the color of a man's skin . . .'

"That is all this provision does . . .

"It merely says, 'When you deal in interstate commerce, you must not discriminate on the basis of race . . .'" *Id.*, at 13080.

The Ervin amendment was defeated, and the Senate turned its attention to an amendment proposed by Senator Cotton to limit application of Title VII to employers of at least 100 employees. During the course of the Senate's deliberations on the amendment, Senator Cotton had a revealing discussion with Senator Curtis, also an opponent of Title VII. Both men expressed dismay that Title VII would prohibit preferential hiring of "members of a minority race in order to enhance their opportunity":

"Mr. CURTIS. Is it not the opinion of the Senator that any individuals who provide jobs for a class of people who have perhaps not had sufficient opportunity for jobs should be commended rather than outlawed?

"Mr. COTTON. Indeed it is." *Id.*, at 13086.[29]

Thus, in the only exchange on the Senate floor raising the possibility that an employer might wish to reserve jobs for minorities in order to assist them in overcoming their employment disadvantage, both speakers concluded that Title VII prohibits such, in the words of the Court, "voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy." *Ante*, at 204. Immediately after this discussion, both Senator Dirksen and Senator Humphrey took the floor in defense of the 25-employee limit contained in the Dirksen-Mansfield substitute bill, and neither Senator disputed the conclusions of Senators Cotton and Curtis. The Cotton amendment was defeated.

3

On June 10, the Senate, for the second time in its history, imposed cloture on its members. The limited debate that followed centered on proposed amendments to the Dirksen-Mansfield substitute. Of some 24 proposed amendments, only 5 were adopted.

As the civil rights bill approached its final vote, several supporters rose to urge its passage. Senator Muskie adverted briefly to the issue of preferential treatment: "It has been said that the bill discriminates in favor of the Negro at the expense of the rest of us. It seeks to do nothing more than to lift the Negro from the status of inequality to one of *equality* of treatment." 110 Cong. Rec. 14328 (1964) (emphasis added). Senator Moss, in a speech delivered on the day that the civil rights bill was finally passed, had this to say about quotas:

"The bill does not accord to any citizen advantage or preference—it does not fix quotas of employment or school population—it does not force personal association. What it does is to prohibit public officials and those who invite the public generally to patronize their businesses or to apply for employment, to utilize the offensive, humiliating, and cruel practice of discrimination on the basis of race. In short, the bill does not accord special consideration; it establishes *equality*." *Id.*, at 14484 (emphasis added).

Later that day, June 19, the issue was put to a vote, and the Dirksen-Mansfield substitute bill was passed.

C

The Act's return engagement in the House was brief. The House Committee on Rules reported the Senate version without amendments on June 30, 1964. By a vote of 289 to 126, the House adopted H. Res. 789, thus agreeing to the Senate's amendments of H.R. 7152.[30] Later that same day, July 2, the President signed the bill and the Civil Rights Act of 1964 became law.

IV

Reading the language of Title VII, as the Court purports to do, "against the background of [its] legislative history . . . and the historical context from which the Act arose," *ante*, at 201, one is led inescapably to the conclusion that Congress fully understood what it was saying and meant precisely what it said. Opponents of the civil rights bill did not argue that employers would be permitted under Title VII voluntarily to grant preferential treatment to minorities to correct racial imbalance. The plain language of the statute too clearly prohibited such racial discrimination to admit of any doubt. They argued, tirelessly, that Title VII would be interpreted by federal agencies and their agents to require unwilling employers to racially balance their work forces by granting preferential treatment to minorities. Supporters of H.R. 7152 responded, equally tirelessly, that the Act would not be so interpreted because not only does it not require preferential treatment of minorities, it does not *permit* preferential treatment of any race for any reason. It cannot be doubted that the proponents of Title VII understood the meaning of their words, for "[s]eldom has similar legislation been debated with greater consciousness of the need for 'legislative history,' or with greater care in the making thereof, to guide the courts in interpreting and applying the law." Title VII: Legislative History, at 444.

To put an end to the dispute, supporters of the civil rights bill drafted and introduced § 703(j). Specifically addressed to the opposition's charge, § 703(j) simply enjoins federal agencies and courts from interpreting Title VII to require an employer to prefer certain racial groups to correct imbalances in his work force. The section says nothing about voluntary preferential treatment of minorities because such racial discrimination is plainly proscribed by §§ 703 (a) and (d). Indeed, had Congress intended to except voluntary, race-conscious preferential treatment from the blanket prohibition of racial discrimination in §§ 703(a) and (d), it surely could have drafted language better suited to the task than § 703(j). It knew how. Section 703(i) provides:

"Nothing contained in [Title VII] shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation." 78 Stat. 257, 42 U.S.C. § 2000e-2(i).

V

Our task in this case, like any other case involving the construction of a statute, is to give effect to the intent of Congress. To divine that intent, we traditionally look first to the words of the statute and, if they are unclear, then to the statute's legislative history. Finding the desired result hopelessly foreclosed by these conventional sources, the Court turns to a third source—the "spirit" of the Act. But close examination of what the Court proffers as the spirit of the Act reveals it as the spirit animating the present majority, not the 88th Congress. For if the spirit of the Act eludes the cold words of the statute itself, it rings out with unmistakable clarity in the words of the elected representatives who made the Act law. It is *equality*. Senator Dirksen, I think, captured that spirit in a speech delivered on the floor of the Senate just moments before the bill was passed:

". . . [T]oday we come to grips finally with a bill that advances the enjoyment of living; but, more than that, it advances the equality of opportunity.

"I do not emphasize the word 'equality' standing by itself. It means equality of opportunity in the field of education. It means equality of opportunity in the field of employment. It means equality of opportunity in the field of participation in the affairs of government. . . .

"That is it.

"Equality of opportunity, if we are going to talk about conscience, is the mass conscience of mankind that speaks in every generation, and it will continue to speak long after we are dead and gone." 110 CONGRESSIONAL RECORD 14510 (1964).

There is perhaps no device more destructive to the notion of equality than the *numerous clausus*—the quota. Whether described as "benign discrimination" or "affirmative action," the racial quota is nonetheless a creator of castes, a two-edged sword that must demean one in order to prefer another. In passing Title VII, Congress outlawed *all* racial discrimination, recognizing that no discrimination based on race is benign, that no action disadvantaging a person because of his color is affirmative. With today's holding, the Court introduces into Title VII a tolerance for the very evil that the law was intended to eradicate, without offering even a clue as to what the limits on that tolerance may be. We are told simply that Kaiser's racially discriminatory admission quota "falls on the permissible side of the line." *Ante*, at 208. By going not merely *beyond*, but directly *against* Title VII's language and legislative history, the Court has sown the wind. Later courts will face the impossible task of reaping the whirlwind.

FOOTNOTES

[1] Our statements in *Griggs* and *Furnco Construction*, patently inconsistent with today's holding, are not even mentioned, much less distinguished, by the Court.

[2] The Office of Federal Contract Compliance (AFCC), subsequently renamed the Office of Federal Contract Compliance Programs (OFCCP), is an arm of the Department of Labor responsible for ensuring compliance by Government contractors with the equal employment opportunity requirements established by Exec. Order No. 11246, 3 CFR 339 (1964-1965 Comp.), as amended by Exec. Order No. 11375, 3 CFR 684 (1966-1970 Comp.), and by Exec. Order No. 12086, 43 Fed. Reg. 46501 (1978).

Executive Order 11246, as amended, requires all applicants for federal contracts to refrain from employment discrimination and to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin." § 202(1), 3 CFR 685 (1966-1970 Comp.), note following 42 U.S.C. § 2000e. The Executive Order empowers the Secretary of Labor to issue rules and regulations necessary and appropriate to achieve its purpose. He, in turn, has delegated most enforcement duties to the OFCC. See 41 CFR § 60-20.1 *et seq.*, § 60-2.24 (1978).

The affirmative action program mandated by 41 CFR § 60-2 (Revised Order No. 4) for nonconstruction contractors requires a "utilization" study to determine minority representation in the work force. Goals for hiring and promotion must be set to overcome any "underutilization" found to exist.

The OFCC employs the "power of the purse" to coerce acceptance of its affirmative action plans. Indeed, in this case, "the district court found that the 1974 collective bargaining agreement reflect less of a desire on Kaiser's part to train black craft workers than a self-interest in satisfying the OFCC in order to retain lucrative government contracts." 563 F.2d 216, 226 (CA5 1977).

[3] The pertinent portions of the collective-bargaining agreement provide: "It is further agreed that the Joint Committee will specifically review the minority representation in the existing Trade, Craft and Assigned Maintenance classifications, in the plants set forth below, and, where necessary, establish certain goals and time tables in order to achieve a desired minority ratio:

"[Gramercy Works listed, among others]

"As apprentice and craft jobs are to be filled, the contractual selection criteria shall be applied in reaching such goals; at a minimum, not less than one minority employee will enter for every non-minority employee entering until the goal is reached unless at a particular time there are insufficient available qualified minority candidates. . . .

"The term 'minority' as used herein shall be as defined in EEOC Reporting Requirements." 415 F. Supp. 761, 763 (ED La. 1976).

The "Joint Committee" subsequently entered into a "Memorandum of Understanding" establishing a goal of 39 percent as the percentage of blacks that must be represented in each "craft family" at Kaiser's Gramercy plant. *Id.*, at 764. The goal of 39 percent minority representation was based on the percentage of minority workers available in the Gramercy area.

Contrary to the Court's assertion, it is not at all clear that Kaiser's admission quota is a "temporary measure . . . not intended to maintain racial balance." *Ante*, at 208. Dennis E. English, industrial relations superintendent at the Gramercy plant, testified at trial:

"Once the goal is reached of 39 percent, or whatever the figure will be down the road, I think it's subject to change, once the goal is reached in each of the craft families, at that time, we will then revert to a ratio of what that percentage is, if it remains at 39 percent and we attain 39 percent someday, we will then continue placing trainees in the program at that percentage. The idea, again, being to have a minority representation in the plant that is equal to that representation in the community work force population." App. 69.

[4] In addition to the April programs, the company offered three more training programs in 1974 with a total of four positions available. Two white and two black employees were selected for the programs, which were for "Air Conditioning Repairman" (one position), "Carpenter-Painter" (two positions), and "Insulator" (one position). Weber sought to bid for the insulator trainee position, but he was not selected because that job was reserved for the most senior qualified black employee. *Id.*, at 46.

[5] The class was defined to include the following employees:

"All persons employed by Kaiser Aluminum & Chemical Corporation at its Gramercy, Louisiana, works who are members of the United Steelworkers of America, AFL-CIO Local 5702, who are not members of a minority group, and who have applied for or were eligible to apply for on-the-job training programs since February 1, 1974." 415 F. Supp., at 763.

[6] In upholding the District Court's injunction, the Court of Appeals affirmed the District Court's finding that Kaiser had not been guilty of any past discriminatory hiring or promotion at its Gramercy plant. The court thus concluded that this finding removed the instant case from this Court's line of "remedy" decisions authorizing fictional seniority in order to place proved victims of discrimination in as good a position as they would have enjoyed absent the discriminatory hiring practices. See *Franks* v. *Bowman Transp. Co.*, 424 U.S. 747 (1976). "In the absence of prior discrimination," the Court of Appeals observed, "a racial quota loses its character as an equitable *remedy* and must be banned as an unlawful racial *preference* prohibited by Title VII, §§ 703 (a) and (d). Title VII outlaws preferences for any group, minority or majority, if based on race or other impermissible classifications, but it does not outlaw preferences favoring victims of discrimination." 565 F. 2d, at 224 (emphasis in original). Nor was the Court of Appeals moved by the claim that Kaiser's discriminatory admission quota is justified to correct a lack of training of Negroes due to past societal discrimination: "Whatever other effects societal discrimination may have, it has had—by the specific finding of the court below—*no effect* on the seniority of any party here." *Id.*, at 226 (emphasis in original). Finally, the Court of Appeals rejected the argument that Kaiser's admission quota does not violate Title VII

Footnotes at end of article.

because it is sanctioned, indeed compelled, by Exec. Order 11246 and regulations issued by the OFCC mandating affirmative action by all Government contractors. See n. 2, *supra*. Citing *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952), the court concluded that "[i]f Executive Order 11246 mandates a racial quota for admission to on-the-job training by Kaiser, *in the absence of any prior hiring or promotion discrimination*, the Executive Order must fall before this direct congressional prohibition [of § 703 (d)]." 563 F. 2d, at 227 (emphasis in original).

Judge Wisdom, in dissent, argued that "[i]f an affirmative action plan, adopted in a collective bargaining agreement, is a reasonable remedy for an *arguable* violation of Title VII, it should be upheld." *Id.*, at 230. The United States, in its brief before this Court and Mr. JUSTICE BLACKMUN, *ante*, p. 209, largely adopt Judge Wisdom's theory, which apparently rests on the conclusion that an employer is free to correct *arguable* discrimination against his black employees by adopting measures that he *knows* will discriminate against his white employees.

[7] Section 703(a)(1) provides the third express prohibition in Title VII of Kaiser's discriminatory admission quota:

"It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. . . ." 78 Stat. 255, 42 U.S.C. § 2000e–2(a)(1).

[8] The full text of § 703(j), 78 Stat. 257, 42 U.S.C. § 2000e–2(j), provides as follows:

"(j) . . . Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area."

[9] "If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning.

". . . [W]hen words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subcontracted from by considerations drawn . . . from any extraneous source." *Caminetti* v. *United States*, 242 U.S. 470, 490 (1917).

[10] In holding that Title VII cannot be interpreted to prohibit use of Kaiser's racially discriminatory admission quota, the Court reasons that it would be "ironic" if a law inspired by the history of racial discrimination in employment against blacks forbade employers from voluntarily discriminating against whites in favor of blacks. I see no irony in a law that prohibits *all* voluntary racial discrimination, even discrimination directed at whites in favor of blacks. The evil inherent in discrimination against Negroes is that it is based on an immutable characteristic, utterly irrelevant to employment decisions. The characteristic becomes no less immutable and irrelevant, and discrimination based thereon becomes no less evil, simply because the person excluded is a member of one race rather than another. Far from ironic, I find a prohibition on all preferential treatment based on race as elementary and fundamental as the principle that "two wrongs do not make a right."

[11] The only shred of legislative history cited by the Court in support of the proposition that "Congress did not intend wholly to prohibit private and voluntary affirmative action efforts," *ante*, at 203, is the following excerpt from the Judiciary Committee Report accompanying the civil rights bill reported to the House:

"No bill can or should lay claim to eliminating all of the causes and consequences of racial and other types of discrimination against minorities. There is reason to believe, however, that national leadership provided by the enactment of Federal legislation dealing with the most troublesome problems *will create an atmosphere conducive to voluntary or local resolution of other forms of discrimination*." H.R. Rep. No. 914, 88th Cong., 1st Sess., pt. 1, p. 18 (1963) (hereinafter H.R. Rep.), quoted *ante*, at 203–204.

The Court seizes on the italicized language to support its conclusion that Congress did not intend to prohibit voluntary imposition of racially discriminatory employment quotas. The Court, however, stops too short in its reading of the House Report. The words immediately following the material excerpted by the Court are as follows:

"It is, however, possible and necessary for the Congress to enact legislation which prohibits and provides the means of terminating *the most serious types of discrimination*. This H.R. 7152, as amended, would achieve in a number of related areas. It would reduce discriminatory obstacles to the exercise of the right to vote and provide means of expediting the vindication of that right. It would make it possible to remove the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public. *It* would guarantee that there will be no discrimination upon recipients of Federal financial assistance. It would prohibit discrimination in employment, and provide means to expedite termination of discrimination in public education. It would open additional avenues to deal with redress of denials of equal protection of the laws on account of race, color, religion, or national origin by State or local authorities." H.R. Rep., pt. 1, p. 18 (emphasis added).

When thus read in context, the meaning of the italicized language in the Court's excerpt of the House Report becomes clear. By dealing with "the most serious types of discrimination," such as discrimination in voting, public accommodations, employment, etc., H.R. 7152 would hopefully inspire "voluntary or local resolution of other forms of discrimination," that is, forms other than discrimination in voting, public accommodations, employment, etc.

One can also infer from the House Report that the Judiciary Committee hoped that federal legislation would inspire voluntary elimination of discrimination against minority groups other than those protected under the bill, perhaps the aged and handicapped to name just two. In any event, the House Report does not support the Court's proposition that Congress, by banning racial discrimination in employment, intended to permit racial discrimination in employment.

Thus, examination of the House Judiciary Committee's report reveals that the Court's interpretation of Title VII, far from being compelled by the Act's legislative history, is utterly without support in that legislative history. Indeed as demonstrated in Part III, *infra*, the Court's interpretation of Title VII is totally refuted by the Act's legislative history.

[12] One example had particular relevance to the instant case:

"Under the power granted in this bill, if a carpenters' hiring hall, say, had 20 men awaiting call, the first 10 in seniority being white carpenters, the union could be forced to pass them over in favor of carpenters beneath them in senority but of the stipulated race. And if the union roster did not contain the names of the carpenters of the race needed to 'racially balance' the job, the union agent must, then, go into the street and recruit members of the stipulated race in sufficient number to comply with Federal orders, else his local could be held in violation of Federal law." H. R. Rep., pt. 1, p. 71.

From this and other examples, the Minority Report concluded: "That this is, in fact, a not too subtle system of racism-in-reverse cannot be successfully denied." *Id.*, at 73.

Obviously responding to the Minority Report's charge that Federal agencies, particularly the Equal Employment Opportunity Commission would equate "discrimination" with "racial imbalance," the Republican sponsors of the bill on the Judiciary Committee stated in a separate Report:

"It must also be stressed that the Commission must confine its activities to correcting abuse, not promoting equality with mathematical certainty. In this regard, nothing in the title permits a person to demand employment. . . . Internal affairs of employers and labor organizations must not be interfered with except to the limited extent that correction is required in discrimination practices. Its primary task is to make certain that the channels of employment are open to persons regardless of their race and that jobs in companies or membership in unions are strictly filled on the basis of qualification." *Id.*, pt. 2, 29.

The Republican supporters of the bill concluded their remarks on Title VII by declaring that "[a]ll vestiges of inequality based solely on race must be removed. . . ." *Id.*, pt. 2 p. 30

[13] Representative Lindsay had this to say:

"This legislation . . . does not, as has been suggested heretofore both on and off the floor, force acceptance of people in . . . jobs . . . because they are Negro. It does not impose quotas or any special privileges of seniority or acceptance. There is nothing whatever in this bill about racial balance as appears so frequently in the minority report of the Committee.

"What the bill does do is prohibit discrimination because of race . . . ." 110 CONGRESSIONAL RECORD 1540 (1964).

Representative Minish added: "Under title VII; employment will be on the basis of merit, not of race. This means that no quota system will be set up, no one will be forced to hire incompetent help because of race or religion, and no one will be given a vested right to demand employment for a certain job." *Id.*, at 1600. Representative Goodell, answering the charge that Title VII would be interpreted "to requir[e] a racial balance," *id.*, at 2557, responded: "There is nothing here as a matter of legislative history that would require racial balancing. . . . We are not talking about a union having to balance its membership or an employer having to balance the number of employees. There is no quota involved. It is a matter of an individual's rights having been violated, charges having been brought, investigation carried out and conciliation having been attempted and then proof in court that there was discrimination and denial of rights on the basis of race or color." *Id.*, at 2558. After H.R. 7152 had been passed and sent to the Senate, Republican supporters of the bill in the House prepared an interpretative memorandum making clear that "title VII *does not permit* the ordering of racial quotas in businesses or unions and does not permit interferences with seniority rights of employees

or union members." *Id.*, at 6566 (emphasis added).

[14] Eleven Members did not vote.

[15] Continuing with their exchange, Senators Hill and Ervin broached the subject of racial balance:

"Mr. ERVIN. So if the Commissioner . . . should be joined by another member of the Commission in the finding that the employer had too high a percentage, in the Commission's judgment, of persons of the Caucasian race working in his business, they could make the employer either hire, in addition to his present employees, an extra number of Negro employees, or compel him to fire employees of the Caucasian race in order to make a place for Negro employees?

"Mr. HILL. The Senator is correct, although the employer might not need the additional employees, and although they might bring his business into bankruptcy." 110 Cong. Rec. 4764 (1964).

This view was reiterated by Senator Robertson: "It is contemplated by this title that the percentage of colored and white population in a community shall be in similar percentages in every business establishment that employs over 25 persons. Thus, if there were 10,000 colored persons in a city and 15,000 whites, an employer wih 25 employees would, in order to overcome racial imbalance, be required to have 10 colored personnel and 15 white. And if by chance that employer had 20 colored employees, he would have to fire 10 of them in order to rectify the situation. Of course, this works the other way around where whites would be fired." *Id.*, at 5092.

Senator Humphrey interrupted Senator Robertson's discussion, responding: "The bill does not require that at all. If it did, I would vote against it. . . . There is no percentage quota." *Ibid.*

[16] This view was reiterated two days later in the "Bipartisan Civil Rights Newsletter" distributed to the Senate on March 19 by supporters of H.R. 7152:

"3. Defining discrimination: Critics of the civil rights bill have charged that the word 'discrimination' is left undefined in the bill and therefore the door is open for interpretation of this term according to whim or caprice.' . .

"There is no sound basis for uncertainty about the meaning of discrimination in the context of the civil rights bill. It means a distinction in treatment given to different individuals because of their different race, religion, or national origin." *Id.*, at 7477.

[17] Earlier in the debate, Senator Humphrey had introduced a newspaper article quoting the answers of a Justice Department "expert" to the "10 most commonly expressed objections to [Title VII]." Insofar as is pertinent here, the article stated:

"Objection: The law would empower Federal 'inspectors' to require employers to hire by race. White people would be fired to make room for Negroes. Seniority rights would be destroyed. . . .

"Reply: The bill requires no such thing. The five-member Equal Employment Opportunity Commission that would be created would have no powers to order anything. . . .

". . . The bill would not authorize anyone to order hiring or firing to achieve racial or religious balance. An employer will remain wholly free to hire on the basis of his needs and of the job candidate's qualifications. What is prohibited is the refusal to hire someone because of his race or religion. Similarly, the law will have no effect on union seniority rights." *Id.*, at 5094.

[18] In obvious reference to the charge that the word "discrimination" in Title VII would be interpreted by federal agencies to mean the absence of racial balance, the interpretative memorandum stated:

"[Section 703] prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or *favor*, and those distinctions or differences in treatment or *favor* which are prohibited by [Section 703] are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin." *Id.*, at 7213 (emphasis added).

Earlier in his speech, Senator Clark introduced a memorandum prepared at his request by the Justice Department with the purpose of responding to criticisms of Title VII leveled by opponents of the measure, particularly Senator Hill. With regard to racial balance, the Justice Department stated:

"Finally, it has been asserted that title VII would impose a requirement for 'racial balance.' This is incorrect. There is no provision . . . in title VII . . . that requires or authorizes any Federal agency or Federal court to require preferential treatment for any individual or any group for the purpose of achieving racial balance. . . . No employer is required to maintain any ratio of Negroes to whites. . . . On the contrary, any deliberate attempt to maintain a given balance would almost certainly run afoul of title VII because it would involve a failure or refusal to hire some individual because of his race, color, religion, sex, or national origin. What title VII seeks to accomplish, what the civil rights bill seeks to accomplish is equal treatment for all." *Id.*, at 7207.

[19] A Justice Department memorandum earlier introduced by Senator Clark, see n. 18, *supra*, expressed the same view regarding Title VII's impact on seniority rights of employees:

"Title VII would have no effect on seniority rights existing at the time it takes effect. . . . This would be true even in the case where owing to discrimination prior to the effective date of the title, white workers had more seniority than Negroes. . . . [A]ssuming that seniority rights were built up over a period of time during which Negroes were not hired, these rights would not be set aside by the taking effect of title VII. Employers and labor organizations would simply be under a duty not to discriminate against Negroes because of their race." 110 Cong. Rec. 7207 (1964).

The interpretation of Title VI contained in the memoranda introduced by Senator Clark totally refutes the Court's implied suggestion that Title VII would prohibit an employer from discriminating on the basis of race in order to *maintain* a racial balance in his work force, but would permit him to do so in order to *achieve* racial balance. See *ante*, at 208, and n. 7.

The maintain-achieve distinction is analytically indefensible in any event. Apparently, the Court is saying that an employer is free to *achieve* a racially balanced work force by discriminating against whites, but that once he has reached his goal, he is no longer free to discriminate in order to maintain that racial balance. In other words, once Kaiser reaches its goal of 39% minority representation in craft positions at the Gramercy plant, it can no longer consider race in admitting employees into its on-the-job training program, even if the programs become as "all-white" as they were in April 1974.

Obviously, the Court is driven to this illogical position by the glaring statement, quoted in text, of Senators Clark and Case that "any deliberate attempt to *maintain* a racial balance . . . would involve a violation of title VII because *maintaining* such a balance would require an employer to hire or to refuse to hire on the basis of race." 110 Cong. Rec. 7213 (1964) (emphasis added). Achieving a certain racial balance, however, no less than maintaining such a balance, would require an employer to hire or to refuse to hire on the basis of race. Further, the Court's own conclusion that Title VII's legislative history, coupled with the wording of § 703(j), evinces a congressional intent to leave employers free to employ "private, voluntary, race-conscious affirmative action plans," *ante*, at 208, is inconsistent with its maintain-achieve distinction. If Congress' primary purpose in enacting Title VII was to open employment opportunities previously closed to Negroes, it would seem to make little difference whether the employer opening those opportunities was achieving or maintaining a certain racial balance in his work force. Likewise, if § 703(j) evinces Congress' intent to permit inspection of race-conscious affirmative action plans, it would seem to make little difference whether the plan was adopted to achieve or maintain the desired racial balance.

[20] Senator Robertson's observations prompted Senator Humphrey to make the following offer: "If the Senator can find in title VII . . . any language which provides that an employer will have to hire on the basis of percentage or quota related to color . . . I will start eating the pages one after another, because it is not in there." 110 CONGRESSIONAL RECORD 7420 (1964).

[21] Referring to the EEOC, Senator Smathers argued that Title VII "would make possible the creation of a Federal bureaucracy which would, in the final analysis, cause a man to hire someone whom he did not want to hire, not on the basis of ability, but on the basis of religion, color, or creed. . . ." *Id.*, at 8500. Senator Sparkman's comments were to the same effect. See n. 23, *infra*. Several other opponents of Title VII expressed similar views. See 110 Cong. Rec. 9034–9035 (1964) (remarks of Sens. Stennis and Tower); *Id.*, at 9943–9944 (remarks of Sens. Long and Talmadge); *id.*, at 10513 (remarks of Sen. Robertson).

[22] Several other proponents of H.R. 7152 commented briefly on Title VII, observing that it did not authorize the imposition of quotas to correct racial imbalance. See *id.*, at 9113 (remarks of Sen. Keating); *id.*, at 9831–9832 (remarks of Sen. Allott); *id.*, at 10520 (remarks of Sen. Carlson); *id.*, at 11768 (remarks of Sen. McGovern).

[23] The Court cites the remarks of Senator Sparkman in support of its suggestion that opponents had argued that employers would take it upon themselves to balance their work forces by granting preferential treatment to racial minorities. In fact, Senator Sparkman's comments accurately reflected the opposition's "party line." He argued that while the language of Title VII does not expressly require imposition of racial quotas (no one, of course, had ever argued to the contrary), the law would be applied by federal agencies in such a way that "some kind of quota system will be used." *Id.*, at 8619. Senator Sparkman's view is reflected in the following exchange with Senator Stennis:

"Mr. SPARKMAN. At any rate, when the Government agent came to interview an employer who had 100 persons in his employ, the first question would be, 'How many Negroes are you employing?' Suppose the population of that area was 20 percent Negro. Immediately the agent would say, 'You should have at least 20 Negroes in your employ, and they should be distributed among your supervisory personnel and in all the other categories'; and the agent would *insist* that that be done immediately.

"Mr. STENNIS.

"The Senator from Alabama has made very clear his point about employment on the quota basis. Would not the same basis be applied to promotions?

"Mr. SPARKMAN. Certainly it would. As I have said, when the Federal agents came to check on the situation in a small business which had 100 employees, and when the agents said to the employer, 'You must hire 20 Negroes, and some of them must be employed in supervisory capacities,' and so forth, and so on, the agent would also say, 'And you must promote the Negroes, too, in

order to distribute them evenly among the various ranks of your employees.'" *Id.*, at 8618 (emphasis added).

Later in his remarks, Senator Sparkman stated: "Certainly the suggestion will be made to a small business that may have a small Government contract . . . that if it does not carry out the suggestion that has been made to the company by an inspector, its Government contract will not be renewed." *Ibid.* Except for the size of the business, Senator Sparkman has seen his prophecy fulfilled in this case.

[21] Compare § 703 (a), 42 U.S.C. § 2000e-2 (a) ("It shall be an unlawful employment practice for an employer . . ."), with § 703 (j), 42 U. S. C. § 2000e-2 (j) ("Nothing contained in this subchapter shall be interpreted . . .").

[22] In support of its reading of § 703(j), the Court argues that "a prohibition against all voluntary, race-conscious, affirmative action efforts would disserve" the important policy, expressed in the House Report on H.R. 7152, that Title VII leave "management prerogatives, and union freedoms . . . undisturbed to the greatest extent possible." H.R. Rep., pt. 2, p. 29, quoted *ante*, at 206. The Court thus concludes that "Congress did not intend to limit traditional business freedom to such a degree as to prohibit all voluntary, race-conscious affirmative action." *Ante*, at 207.

The sentences in the House Report immediately following the statement quoted by the Court, however, belie the Court's conclusion:

"Internal affairs of employers and labor organizations must not be interferred with *except to the limited extent that correction is required in discrimination practices.* Its primary task is to make certain that the channels of employment are open to persons *regardless of their race* and that jobs in companies or membership in unions are strictly filled on the basis of qualification." H.R. Rep., pt. 2, p. 29 (emphasis added).

Thus, the House Report invoked by the Court is perfectly consistent with the countless observations elsewhere in Title VII's voluminous legislative history that employers are free to make employment decisions without governmental interference, so long as those decisions are made *without regard to race.* The whole purpose of Title VII was to deprive employers of their "traditional business freedom" to discriminate on the basis of race. In this case, the "channels of employment" at Kaiser were hardly "open" to Brian Weber.

[23] Some of the opponents still were not satisfied. For example, Senator Ervin of North Carolina continued to maintain that Title VII "would give the Federal Government the power to go into any business or industry in the United States . . . and tell the operator of that business whom he had to hire." 110 CONGRESSIONAL RECORD 13077 (1964). Senators Russell and Byrd remained of the view that pressures exerted by federal agencies would compel employers "to give priority definitely and almost completely, in most instances, to the members of the minority group." *Id.*, at 13150 (remarks of Sen. Russell).

[27] Senator Muskie also addressed the charge that federal agencies would equate "discrimination," as that word is used in Title VII, with "racial balance":

". . . [S]ome of the opposition to this title has been based upon its alleged vagueness [and] its failure to define just what is meant by discrimination . . . I submit that, on either count, the opposition is not well taken. Discrimination in this bill means just what it means anywhere: a distinction in treatment given to different individuals because of their race . . . [a]nd, as a practical matter, we all know what constitutes racial discrimination." *Id.*, at 12617.

Senator Muskie then reviewed the various provisions of § 703, concluding that they "provide a clear and definitive indication of the type of practice which this title seeks to eliminate. Any serious doubts concerning [Title VII's] application would, it seems to me, stem at least partially from the predisposition of the person expressing such doubt." 110 CONGRESSIONAL RECORD 12618 (1964).

[28] The Court states that congressional comments regarding § 703(j) "were all to the effect that employers would not be *required* to institute preferential quotas to avoid Title VII liability." *Ante*, at 207 n. 7 (emphasis in original). Senator Saltonstall's statement that Title VII of the Dirksen-Mansfield substitute, which contained § 703(j), "specifically prohibits" preferential treatment for any racial group disproves the Court's observation. Further, in a major statement explaining the purpose of the Dirksen-Mansfield substitute amendments, Senator Humphrey said of § 703(j): "This subsection does not represent any change in the substance of the title. It does state clearly and accurately what we have maintained all along about the bill's intent and meaning." 110 Cong. Rec. 12723 (1964). What Senator Humphrey had "maintained all along about the bill's intent and meaning," was that it neither required *nor permitted* imposition of preferential quotas to eliminate racial imbalances.

[29] The complete exchange between Senators Cotton and Curtis, insofar as is pertinent here, is as follows:

MR. COTTON. . . .

"I would assume that anyone who will administer the laws in future years will not discriminate between the races. If I were a Negro, and by dint of education, training, and hard work I had amassed enough property as a Negro so that I had a business of my own—and there are many of them in this country—and I felt that, having made a success of it myself, I wanted to help people of my own race to step up as I had stepped up, I think I should have the right to do so. I think I should have the right to employ Negroes in my own establishment and put out a helping hand to them if I so desired. I do not believe that anyone in Washington should be permitted to come in and say, 'You cannot employ all Negroes. You must have somes Poles. You must have some Yankees.' . . .

"MR. CURTIS. . . .

"The Senator made reference to the fact that a member of a minority race might become an employer and should have a right to employ members of his race in order to give them opportunity. Would not the same thing follow, that a member of a majority race might wish to employ almost entirely, or entirely, members of a minority race in order to enhance their opportunity? And is it not true that under title VII as written, that would constitute discrimination?

"MR. COTTON. It certainly would, if someone complained about it and felt that he had been deprived of a job, and that it had been given to a member of a minority race because of his race and not because of some other reason." *Id.*, at 13086.

This colloquy refutes the Court's statement that "[t]here was no suggestion after the adoption of § 703 (j) that wholly voluntary, race-conscious, affirmative action efforts would in themselves constitute a violation of Title VII." *Ante*, at 207 n. 7.

[30] Only three Congressmen spoke to the issue of racial quotas during the House's debate on the Senate amendments. Representative Lindsay stated: "[W]e wish to emphasize also that this bill does not require quotas, racial balance, or any of the other things that the opponents have been saying about it." 110 Cong. Rec. 15876 (1964). Representative McCulloch echoed this understanding, remarking that "[t]he bill does not permit the Federal Government to require an employer or union to hire or accept for membership a quota of persons from any particular minority group." *Id.*, at 15893. The remarks of Representative MacGregor, quoted by the Court, *ante*, at 207–208, n. 7, are singularly unhelpful. He merely noted that by adding § 703(j) to Title VII of the House bill, "[t]he Senate . . . spelled out the [the House's] intentions more specifically." 110 CONGRESSIONAL RECORD 15893 (1964).

Mr. HATCH. Mr. President, Chief Justice Burger joined in Justice Rehnquist's dissent in Weber, and added a pithy dissent of his own. In it, he stressed the damage that the majority was doing to the principle of the separation of powers. It is a telling comment on the closemindedness on this issue prevailing among our public classes that the Chief Justice's parenthetical comment that he personally favored race-conscious methods was one of the few aspects of the Weber case to attract attention, although he also said they were incompatible with current law.

Mr. President, I ask unanimous consent that Chief Justice Burger's dissent in Weber be printed in the RECORD at this point.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

MR. CHIEF JUSTICE BURGER, DISSENTING

The Court reaches a result I would be inclined to vote for were I a Member of Congress considering a proposed amendment of Title VII. I cannot join the Court's judgment, however, because it is contrary to the explicit language of the statute and arrived at by means wholly incompatible with long-established principles of separation of powers. Under the guise of statutory "construction," the Court effectively rewrites Title VII to achieve what it regards as a desirable result. It "amends" the statute to do precisely what both its sponsors and its opponents agreed the statute was *not* intended to do.

When Congress enacted Title VII after long study and searching debate, it produced a statute of extraordinary clarity, which speaks directly to the issue we consider in this case In § 703 (d) Congress provided:

"It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training." 42 U.S.C. § 2000e-2(d).

Often we have difficulty interpreting statutes either because of imprecise drafting or because legislative compromises have produced genuine ambiguities. But here there is no lack of clarity, no ambiguity. The quota embodied in the collective-bargaining agreement between Kaiser and the Steelworkers unquestionably discriminates on the basis of race against individual employees seeking admission to on-the-job training programs. And, under the plain language of § 703(d), that is "an *unlawful* employment practice."

Oddly, the Court seizes upon the very clarity of the statute almost as a justification for evading the unavoidable impact of its language. The Court blandly tells us that Congress could not really have meant what it said, for a "literal construction" would defeat the "purpose" of the statute—at least the congressional "purpose" as five Justices divine it today. But how are judges supposed to ascertain the *purpose* of a statute

except through the words Congress used and the legislative history of the statute's evolution? One need not even resort to the legislative history to recognize what is apparent from the face of Title VII—that it is specious to suggest that § 703(j) contains a negative pregnant that permits employers to do what §§ 703 (a) and (d) unambiguously and unequivocally *forbid* employers from doing. Moreover, as MR. JUSTICE REHNQUIST's opinion—which I join—conclusively demonstrates, the legislative history makes equally clear that the supporters and opponents of Title VII reached an agreement about the statute's intended effect. That agreement, expressed so clearly in the language of the statute that no one should doubt its meaning, forecloses the reading which the Court gives the statute today.

Arguably, Congress may not have gone far enough in correcting the effects of past discrimination when it enacted Title VII. The gross discrimination against minorities to which the Court adverts—particularly against Negroes in the building trades and craft unions—is one of the dark chapters in the otherwise great history of the American labor movement. And, I do not question the importance of encouraging voluntary compliance with the purposes and policies of Title VII. But that statute was conceived and enacted to make discrimination against *any* individual illegal, and I fail to see how "voluntary compliance" with the no-discrimination principle that is the heart and soul of Title VII as currently written will be achieved by permitting employers to discriminate against some individuals to give preferential treatment to others.

Until today, I had thought the Court was of the unanimous view that "[d]iscriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed" in Title VII. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431 (1971). Had Congress intended otherwise, it very easily could have drafted language allowing what the Court permits today. Far from doing so, Congress expressly *prohibited* in §§ 703(a) and (d) the very discrimination against Brian Weber which the Court today approves. If "affirmative action" programs such as the one presented in this case are to be permitted, it is for Congress, not this Court, to so direct.

It is often observed that hard cases make bad law. I suspect there is some truth to that adage, for the "hard" cases always tempt judges to exceed the limits of their authority, as the Court does today by totally rewriting a crucial part of Title VII to reach a "desirable" result. Cardozo no doubt had this type of case in mind when he wrote:

"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains." The Nature of the Judicial Process 141 (1921).

What Cardozo tells us is beware the "good result," achieved by judicially unauthorized or intellectually dishonest means on the appealing notion that the desirable ends justify the improper judicial means. For there is always the danger that the seeds of precedent sown by good men for the best of motives will yield a rich harvest of unprincipled acts of others also aiming at "good ends."

Mr. HATCH. Mr. President, the reversal by the Weber majority of the intention of Congress as expressed in the Civil Rights Act was so total and flagrant that it could not have been prevented by writing the legislation more forcefully. The legislation could not be written more forcefully than it had been in 1964. This was the point I myself attempted to make, with some wryness, when I subsequently reintroduced the Civil Rights Act of 1964 with the amendment "we mean it this time," and further words to that effect, as noted by William A. Rusher, publisher of National Review, in his column of August 10. I can forgive Mr. Rusher his passing swipe at my grammar in his seventh paragraph because of the eloquence of his conclusion—preceded, however, by a regrettable cynicism about our willingness as lawmakers to face problems:

The court long ago arrogated to itself the last word in interpreting the Constitution, which is probably necessary, and assumed therewith the right to invalidate acts of Congress insofar as the conflict with provisions of the Constitution. But the court has never heretofore presumed to disregard so blatantly the plain words of a duly enacted statute whose constitutionality is not even challenged. Congress ought to tell it, in no uncertain terms, to back off.

Mr. President, I ask unanimous consent to have printed in the RECORD "Curbing the Court," by William A. Rusher; Universal Press Syndicate; August 10, 1979.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CURBING THE COURT

NEW YORK.—The Supreme Court's 5-to-2 decision in the Weber case, sanctioning "affirmative action" to include a black employee in a company training program in preference to a white with more seniority, is already becoming a classic.

Section 703(d) of the Civil Rights Act of 1964 squarely prohibits such a preference: "It shall be an unlawful employment practice for any employer . . . to discriminate against any individual because of race . . . in any program established to provide apprenticeship or other training." The so-called "legislative history" of the act, including the solemn assertions of some of the most liberal members of Congress at the time, make it clear that its sponsors firmly intended to prohibit not only discrimination against blacks, but "reverse discrimination" favoring blacks over whites, and believed they had succeeded.

They hadn't reckoned with the Supreme Court. Justice Brennan, speaking for a narrow but sufficient majority, chose to disregard the plain words of the law, let alone its legislative history, and to construe instead its "spirit." The Civil Rights Act was, after all, primarily intended to help blacks who were being discriminated against. It would be "ironic," he argued, if a law "triggered by a nation's concern over centuries of racial injustice" should be interpreted as prohibiting "all race-conscious affirmative action" rather than simply pro-white action.

Pro-black action, therefore, was OK, despite the law's language. Rarely, if ever, has the Supreme Court done such violence to a statute's plain intent.

Mulling over the concurring opinion of Justice Blackmun, however, Sen. Orrin Hatch, R-Utah, saw a sentence that seemed to offer Congress a way out: ". . . if the court has misperceived the political will, it has the assurance that because the question is statutory Congress may set a different course if it so chooses." In other words, Blackmun was offering to withdraw his crucial vote from the five-man court majority if Congress would reaffirm its intention to ban all preferences based on race.

Accordingly, Hatch has introduced a bill to add to Section 703(a) of the Civil Rights Act, which bars all job discriminations based on race, the words "and we mean it this time." Then, just in case the Supreme Court chooses to disregard even this exasperated exclamation, in favor of some inferred "spirit" of the act as a whole, Hatch's bill would add to Section 703(e) a further sentence, as follows: "The language of this subsection is designed to accurately and faithfully reflect the spirit in which Congress acts in approving it."

The good senator's agitation over the court's decision is no doubt responsible for the split infinitive in that last sentence, but his meaning ought to be clear to Justice Brennan—nay, even to Justice Thurgood Marshall.

Is Congress likely to pass the Hatch amendments? There is probably still a majority in Congress opposed to "reverse discrimination," but that is not quite the same thing as saying Congress will vote to renew its statutory commitment against it. The Supreme Court, by the Weber decision, has visibly transferred from Congress to itself the onus of permitting affirmative action. That puts congressmen in the happy position of being able to assure foes of affirmative action that "we did our best," while appeasing its supporters by not passing any clarifying legislation on the subject. As the recent failure of a constitutional amendment against forced busing to win even a bare majority in the House ought to remind us, strong public support for a measure does not ensure that it will prevail against the pressures that a determined minority can bring to bear.

Still, it would be a healthy thing if Congress administered a stinging slap to the court majority, along the lines proposed by Hatch. The court long ago arrogated to itself the last word in interpreting the Constitution, which is probably necessary, and assumed therewith the right to invalidate acts of Congress insofar as they conflict with provisions of the Constitution. But the court has never heretofore presumed to disregard so blatantly the plain words of a duly enacted statute whose constitutionality is not even challenged. Congress ought to tell it, in no uncertain terms, to back off.

Mr. HATCH. Mr. President, the stain from the Weber decision is now spreading through our judicial system. One of the earliest signs of it occurred in California, where the California Supreme Court reversed the lower court and held that the Civil Service Commission of Sacramento County could institute a quota program. *Price* v. *Civil Service Commission of Sacramento County*, 21 FEP 1512, 1527 (California Supreme Court, 1980).

Justice Mosk's dissent to this case was particularly instructive. First, he attacked the majority's attempt to reconcile its position with the 1964 Civil Rights Act in scathing terms, particularly given its ruling just 3 years in Bakke, which was essentially upheld by the U.S. Supreme Court. He then proceeds to show that the California Supreme Court's ruling is not even compatible with the U.S. Supreme Court's Weber decision, and to point out other conceptual problems with affirmative action, for example the invidious

necessity to have some official method of determining who is eligible for which privileges.

Mr. President, I ask unanimous consent to have printed in the RECORD the dissent in Price.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

DISSENTING OPINION

MOSK, Justice:—I dissent.

The wry observation of Justice Rehnquist in his dissent in Steelworkers v. Weber (1979) 443 U.S. 193, —, 20 FEP Cases, 1, 12,[6] applies to this case: "In a very real sense, the Court's opinion is ahead of its time; it could more appropriately have been handed down five years from now, in 1984, a year coinciding with the title of a book from which the Court's opinion borrows, perhaps subconsciously, at least one idea." That one idea is "doublethink," the tortured abuse of words and phrases so that their meaning and effect become inverted.[1] Thus here the majority purport to *eliminate* discrimination by means of *creating* discrimination; they construe *equality* of all persons regardless of race to mean *preference* for persons of some races over others; and a hiring program which *compels* compliance by a reluctant district attorney is described as *voluntary*. George Orwell is nodding complacently in his grave, as he wins vindication even before 1984 for his dire apprehensions about the misdirection of society.

Further adopting doublethink, the majority attempt to apply a semantic salve to their approval of the long-discredited racial quota. They seem to believe the leopard's spots can be changed by calling them stripes, that a quota is somehow less a quota if it bears the label of a "racial hiring ratio" or a "race-conscious hiring program." But the spots are still evident. "Quota" is an abbreviated version of the Latin "*quota pars*," meaning how great a part, or the share or proportion assigned to each member of a total body. One for two, as provided in the Civil Service Commission order involved herein, is purely and simply a racial quota.

Because of the emotion that often beclouds reason when the subject of race is involved, perhaps a disclaimer is appropriate at the outset of this dissent. No member of this court need apologize for his record in opposing racial and sexual discrimination. Over the years we have forthrightly condemned unfair and discriminatory treatment of all persons, regardless of racial or sexual origin, whether that bias was manifest in racial restrictive housing covenants, prohibition of miscegenous marriages, judicial proceedings, employment opportunity or school segregation. We have consistently viewed sympathetically every effort to promote the American dream of equality of rights, duties and opportunity.

That does not mean, however, that we must give carte blanche approval to every proposal, however undemocratic, made in the name of purportedly improving race relations. As Samuel Taylor Coleridge wrote a century and a half ago: "Every reform, however necessary, will by [some zealots] be carried to an excess, that itself will need reforming."

Respondents, now with the imprimatur of the majority, rely on a syllogism. Equality of opportunity is the goal of our society; affirmative action is a desirable method of enabling those who have been victims of prior discrimination to compete on a basis of equality; therefore in the name of affirmative action we must employ the discredited quota system, which is per se unequal and discriminatory, to achieve the goal. I agree with the major premise of the syllogism, and with the minor premise if all proponents can subscribe to one definition of affirmative action.[2] The syllogistic conclusion—calling for a resurrection of a racial quota—is no more acceptable now than it was when the concerted opposition of intellectuals caused its demise several decades ago.

Those who recall the *numerus clausus* of many prestigious American universities before and after the turn of the century have an uneasy feeling of *deja vu*. Now, however, the virus is spreading beyond the field of education into employment and public service. Those who propose to recast our nation into a representative society, in which ability is secondary to race and sex, are making progress. The progress is attributable to political and social pressures by aggressive exponents of the new racism, and to apathy by those who still adhere to the traditional American ethic of achievement on the basis of merit.[3]

It was not many decades ago that racial and religious quotas—the *numerous clausus*—governed admissions to a great number of universities, particularly in their professional colleges. An enlightened attitude, prodded by aggressive activity by persons devoted to promotion of democracy, ultimately prevailed: educational institutions became convinced that quotas are essentially undemocratic and unjust. Now the trend, particularly in employment, is being reversed under new demands created by a combination of guilt feelings for the sins of ancestors and overzealousness by those who insist upon reconstructing a merit society into a representative society.

As Professor Alexander Bickel pointed out in The Morality of Consent (1975), pages 132–133: "A quota is a two-edged device: for every one it includes it cuts someone else out. . . . If the Constitution prohibits exclusion of blacks and other minorities on racial grounds, it cannot permit the exclusion of whites on similar grounds for it must be the exclusion on racial grounds which offends the Constitution, and not the particular skin color of the person excluded.

"The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation; discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society. Now this is to be unlearned and we are told that this is not a matter of fundamental principle but only a matter of whose ox is gored. Those for whom racial equality was demanded are to be more equal than others. Having found support in the Constitution for equality, they now claim support for inequality under the same Constitution. Yet a racial quota derogates the human dignity and individuality of all to whom it is applied; it is invidious in principle as well as in practice. Moreover, it can as easily be turned against those it purports to help. The history of the racial quota is a history of subjugation, not beneficence. Its evil lies not in its name but in its effect. A quota is a divider of society, a creator of castes, and it is all the worse for its racial base, especially in a society desperately striving for an equality that will make race irrelevant."

But, argue exponents of the new race-consciousness, their scheme is different. They now propose to use the quota to include, not exclude, racial groups. The answer is obvious: for every person quota-ed in, another is quota-ed out. There is no way in which a numerical quota can be benign. If it favors one, it necessarily rejects another.

In the case at hand, the Civil Service Commission ordered the racial quota to remain in effect until "the percentage of minorities in the classes of Attorney I and Attorney II in the District Attorney's office is 8%."[4] Why the figure should be 8 percent, and not 4 percent, 16 percent, or 32 percent is not revealed. What is evident, however, is that merit is not the goal, but racial representation in a specific percentage probably related somewhat to that existing in either the community population or the work force.

The requirement of proportionality is inspired by an anachronistic vision of an ideal society, one pervaded by ethnic identification. In that society toward which we are being propelled, the numerical proportionality of races is the principal measure for distribution of society's benefits—not merit, not objective qualification, not competitive achievement.

The foregoing is not a fanciful observation. It can be read into the commission's order and also into Justice Brennan's separate opinion in University of California Regents v. Bakke (1978) 438 U.S. 265, 17 FEP Cases 1000, in which he wrote: ". . . States also may adopt race-conscious programs designed to overcome substantial, chronic minority underrepresentation where there is reason to believe that the evil addressed is a product of past racial discrimination." (Id., p. 366, 17 FEP Cases p. 1039.) In other words, race-conscious—read: discriminatory—programs are valid so long as "the evil addressed" is the result of racial discrimination; but "the evil" is used not to describe racial discrimination but "minority underrepresentation." It is minority underrepresentation that is considered evil per se. Implicit in this premise to which the Civil Service Commission, and now the majority of this court subscribe, is that it is not racial discrimination per se that is objectionable, but the fact that the social structure fails to conform to their concept of model representative employment practices.

This court should not approve the imposition of a racially representative utopia on the people of any political subdivision. As Justice Douglas insisted in his dissent in DeFunis v. Odegaard (1974) 416 U.S. 312, 342, such a concept runs counter to the very theory of equal protection: "The State, however, may not proceed by racial classification to force strict population equivalencies for every group in every occupation, overriding individual preferences. The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized."

It is now clear that undergirding much of the rhetoric supporting racial quotas, and preferential treatment in general, is a view of justice that demands not that the state treat its citizens without reference to their race, but that it rearrange and index them precisely on the basis of their race. The objective is not equal treatment but equal representation.

The majority here rely primarily on two recent Supreme Court cases: Bakke and Weber. Neither lends them any comfort; indeed, both support the conclusion of the trial court.

In our decision in Bakke this court manifested specific disapproval of racial quotas. (Bakke v. Regents of University of California (1976) 18 Cal.3d 34, 62.) We declared that no program "in history has been so thoroughly discredited in contemporary times as the use of racial percentages." The doctrine of stare decisis should dictate adherence to that elementary truth a bare three years after it was declared. Previous opinions, particularly when approved in substance by the United States Supreme Court, remain binding, even though, to use the words of Justice Marshall, "the composition of this Court has radically changed." (Lloyd v. Tanner (1972) 407 U.S. 551, 584 (Marshall, J., dis.).)

Since they cannot rely on a single prior decision of this court, the majority devote many pages of analysis in a futile effort to avoid the reality of the United States Supreme Court decision in Bakke. It can be argued that conclusions about individual justices' opinions lie in the eye of the beholder. But no matter how disingenuous the majority here become, they cannot escape the one undeniable result: the *Davis medical school 84–16 admission quota plan was declared invalid* and Allan Bakke, a white male who alleged racial discrimination because of the quota, was ordered admitted to the school.

If there be any doubt, here are the key holdings of Justice Powell in his lead opinion for himself and for Chief Justice Burger, Justices Stewart, Rehnquist and Stevens: "In summary, *it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court*. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. . . . *The fatal flaw in [the Davis] preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment*." (438 U.S. at pp. 319–320, 17 FEP Cases at p. 1022; italics added.) Therefore, held the Supreme Court (at p. 320, 17 FEP Cases at p. 1022), "that portion of the California court's judgment holding [the Davis] special admissions program invalid under the Fourteenth Amendment must be affirmed."[5]

Among the strange arguments advanced to justify racial quotas is criticism of Justice Powell's opinion in Bakke declaring that equal protection "cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." (Id. at pp. 289–290, 17 FEP Cases at pp. 1010–1011.) One would have thought that principle to be unexceptionable, but do not underestimate the guile of the prolific apologists for modern racism.

The Powell passage is "quotable" but "ill-considered," writes Kenneth W. Simons in *Philosophical Perspectives on Affirmative Action* (1979) 77 Mich.L.Rev. 513, 518–519. "Courts may treat the discriminations differently . . . blacks, but not whites, fall under it." In other words, equal protection depends upon skin pigmentation! I cite this as an illustration of the excesses and the obscurantism which permeate the drive to restructure ours into a wholly representative society. The majority fall into the same error: paradoxically they perpetuate elitism in order to preserve egalitarianism.

Parenthetically, I note that in his Bakke opinion and appendix Justice Powell referred with approval to the admissions policies of Harvard University. The history of Harvard on racial quotas is instructive. In 1922, then President Lowell made a public statement, declaring that racial quotas were under consideration, words that were ominous in the xenophobic post-World War I milieu. A Committee of Thirteen was appointed by the Overseers in 1922 and ultimately submitted a report firmly rejecting the notion of racial quotas. The faculty adopted the report, and it has remained university policy to this day. (See Dean Rosovsky, *From Periphery to Center*, Harv. Magazine (Nov.-Dec. 1979) p. 81 ff.)

Consistent with the views of Harvard on quotas, the court in Bakke not only did not approve, but specifically invalidated the 84–16 quota system used at Davis. Thus reliance on Bakke is clearly counterproductive to the majority. Next they lean heavily but with equal futility on Weber, a case in which five justices did uphold a racial classification program at the plant of the Kaiser Aluminum & Chemical Corporation, a private employer, which had entered into an employment contract with the United Steelworkers of America, a union representing the private employees. (Justices Powell and Stevens, who had been in the Bakke majority, did not participate in Weber.)

Weber, as stressed repeatedly by its majority, is factually inapposite to a compulsory program involuntarily imposed on and by a public agency. Justice Brennan, writing the lead opinion in which Justices Stewart, White, Marshall and Blackmun joined, declared over and over that the Kaiser plan "does not involve state action" and therefore he emphasized "the narrowness" of the inquiry (id., p. —, 20 FEP Cases p. 4). Indeed, on almost every page of his opinion, Justice Brennan spoke redundantly of the parties "voluntarily agreeing" (id., p. —, 20 FEP Cases p. 4), Congress "did not intend wholly to prohibit private and voluntary" efforts (id., p. —, 20 FEP Cases p. 6), Congress did not intend to prohibit acts by "the private sector" (id., p. —, 20 FEP Cases p. 6), there is no absolute prohibition against "all private, voluntary" action (id., p. —, 20 FEP Cases p. 6), there is no "legislative prohibition of all voluntary, private" efforts (id., p. —, 20 FEP Cases p. 6), legislators "resisted federal regulation of private business" (id., p. —, 20 FEP Cases p. 6), "Congress did not intend to limit traditional business freedom to such a degree as to prohibit all voluntary" action (id., p. —, 20 FEP Cases p. 7), Title VII "does not condemn all private, voluntary" plans (id., p. —, 20 FEP Cases p. 7), Title VII permits discretion for plans adopted in "the private sector voluntarily" (id., p. —, 20 FEP Cases p. 7).

If there is any other manner of expression by which the Supreme Court could have made it more clear in Weber that it approved the plan because it was *voluntary*, not involuntary as here, and in *private industry*, not in the public realm as here, it escapes me as it apparently eluded Justice Brennan. I am confident, in view of the obvious significance of its repeated and emphasized qualifications, that the Supreme Court would have reached a contrary result if racial preferences had been imposed *involuntarily* by a *public agency* and affected *public employment*.

In short, just as there is no California authority there is no persuasive rationale in United States Supreme Court cases supporting compulsory imposition of racial quotas in public employment.

Finally, the majority read Title VII of the federal Civil Rights Act as if it were designed to protect minorities only. This view offends the thoughtful opinion of Justice Marshall for a unanimous court in McDonald v. Santa Fe Trail Transp. Co. (1976) 427 U.S. 273, 12 FEP Cases 1577. He reviewed the congressional history of Title VII and concluded it "was intended to 'cover white men and white women and all Americans' " and it created an " 'obligation not to discriminate against whites' " (id., p. 280, 12 FEP Cases at p. 1580). A quota system that excludes whites from one out of three appointments to public employment solely on the basis of their race is manifestly discriminatory.

It is significant that in his Weber opinion Justice Brennan did not quarrel with McDonald. Indeed, he declared that an argument based on McDonald was "not without force" but he found it not to be controlling because the Kaiser plan in Weber was "voluntarily adopted by private parties." (Weber, at p. ——, 20 FEP Cases at p. 5) Once again the implication is clear that if a compulsory program for public employment was involved, McDonald would control.

Griggs v. Duke Power Co. (1971) 401 U.S. 424, 430–431, 3 FEP Cases 175, 177, another unanimous decision, clearly holds Title VII "does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification."

Under compulsion of Weber I would be required to agree with the majority that a voluntary program in private enterprise would not offend Title VII.[6] But that is not this case—I repeat: this is a *compulsory* program in *public* employment, an employment paid by the taxpayers of all races and both sexes. The majority nevertheless indulge in a travesty of retroactive myth to bend the history of Title VII, and its unequivocal language, to serve the very purpose the act was intended to prohibit. Justice Rehnquist reminds us of the congressional history in his devastating dissent in Weber. Senators Humphrey, Dirksen, Kuchel, Clark and Case, ardent proponents of the Civil Rights Act, assured their colleagues over and over that racial quotas were not contemplated and were unacceptable. To assert otherwise is flagrant history revisionism.

One illustration will suffice. On March 30, 1964, Senator Hubert H. Humphrey led the debate in the Senate on the Civil Rights Act. He analyzed the measure, section by section, in order to persuade the Senate to adopt the proposal, which had both bipartisan support and opposition. When Senator Humphrey came to Title VII, he reassured the Congress as follows:

"Contrary to the allegations of some opponents of this title, *there is nothing in it that will give any power to the Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance*. [¶] That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion. [¶] In Title VII we seek to prevent discriminatory hiring practices. We seek to give people an opportunity to be hired on the basis of merit . . ." (Italics added.)

Dr. John H. Bunzel, former President of San Jose State University, has concluded that "When the Civil Rights Act of 1964 was passed, Congress reflected the general normative consensus that Americans wanted not only to eliminate discrimination but to make employment opportunity independent of race, colour, religion, sex or national origins. The law intended to 'bring Americans together', not to separate them into categories. It was a sentiment expressed by individuals and groups from every walk of life who participated in the legislative process that gave political sanction *not* to racially preferential treatment, or special privileges for some, or the concept of statistical parity among groups, but to the *elimination of discrimination* against anyone." Bunzel, *Affirmative Action, Negative Results*, Encounter (Nov. 1979) 43, 51.)

The Supreme Court majority in Weber avoided the congressional history by drawing a distinction between *requiring* quotas and *permitting* quotas. The former is prohibited, the latter tolerable.

Accepting that rationale at face value, I would hold that the Civil Service Commission's quota must fall. There can be no question that its formula is compulsory, the District Attorney being compelled to adhere to it in all hiring. And obviously, the emphasis placed in Weber on private industry cannot be related to public employment which by law must be governed by merit selection.

Footnotes at end of article.

Footnotes at end of article.

(See, County Charter, art. XVI, § 71 F, subds. (a)–(c).) The majority try in vain to find authorization for racial quotas in country charter Sections 61 and 71–F, subdivision (f). But the sections, recited in footnote 7 of the majority opinion, pointedly prohibit discrimination on the basis of race, color, creed, sex, national origin or political affiliation. Some exception is provided for "economically, socially, physically or mentally deprived persons" *of all races*. The Civil Service order in this case does not involve any of such persons, only the prohibited categories of race and sex.

While I need not discuss the merits of the commission's program, or of rule 7.10 upon which it is based, I cannot resist observing that the scheme is hopelessly flawed and that it is unlikely to serve the purpose for which it is purportedly devised.

Rule 7.10 provides that minority personnel hall be appointed in a number "necessary to attain a fair approximation of minority representation in the classification consistent with the population mix in the County of Sacramento." Minorities are defined as "Blacks, Indians, Mexican-Americans, Spanish-Americans, Orientals, other non-Whites and women." Whoever drafted that definition obviously lacked knowledge of modern demography, for women, ever since World War II, have been a majority in our society, not a minority.

Under the rule, however, the district attorney could appoint one white female for every two white males and he would satisfy the commission. But would he satisfy the Blacks, Indians, Mexican-Americans, Spanish-Americans, Orientals or other non-Whites? I doubt it. The result would be what historians call the Law of Unintended Consequences. See, e.g., White, In Search of History (Warner Books ed 1979) p. 304.

Therein lies one of the numerous vices in compelling such artificial devices as racial quotas in employment. Inevitably one minority group will not be placated by the selection of a member of another group. Even if it were possible for representation to be predicated on population, a qualified Samoan or Eskimo would have no chance of employment because the numbers of his race in our state population total is infinitesimal.

There are innumerable other imponderables that emerge in the race-typing business. I suggest only a cursory sample. What percentage of blood makes one a Black or an Indian—75 percent, 50 percent, 25 percent? Does the term Indian apply to native Americans or to natives of India? The Spanish-American category would include a person from Argentina, but not one from Brazil because the latter would be a Portuguese-American. How long is a person deemed to be a Mexican-American before he loses the hyphenation—for one generation after his parents crossed the border, for two generations, forever? Why are only racial minorities enumerated and not religious minorities, when it is a fact of history that religious discrimination has been a pervasive element in American life from early colonial days?[7]

These defects are not endemic to the Sacramento program alone, they are the inevitable by-product of injection of race as an employment qualification. Thus they, or similar fatal flaws, would appear in any employment scheme that emphasized race, or group characteristics, rather than individual merit.[8]

The district attorney pointed out that he had practical difficulty in recruiting minorities because most of those who were well qualified preferred to accept appointment from the public defender or other governmental agencies. This problem of selecting qualified persons for professional employment was mirrored in comments about the judiciary by then Attorney General Griffin Bell in an address to the American Law Institute on May 18, 1979 (63 Judicature at p. 118): "The influx of women and minorities into the bar is still a recent phenomenon, and there is not yet a large pool of women and minority lawyers of sufficient maturity and experience . . . Thus, the process is fraught with tension. . . ." As to this tension, the President of the United States on Law Day, 1979, declared firmly that "Basing present discrimination on past discrimination is obviously not right." (47 LW 2726.)

In October 1977, the United States Commission on Civil Rights issued a formal statement on affirmative action. In it the commission urged removal of "institutional obstacles to *equal* employment opportunity" (italics added), and while it encouraged achievement goals, it time and again warned against fixed racial quotas. (See U.S. Com. on Civil Rights, Toward an Understanding of Bakke (1979), p. 183.) Its conclusion was, that although we are far from achieving our goal, the "aspiration of the American people is for a 'colorblind' society, one that 'neither knows nor tolerates classes among citizens'." Again in its November 1979 bulletin (Civil Rights Update) the commission reported that the Department of Health and Social Services has issued guidelines on college admission policies "without violating the ban on strict racial or ethnic quotas in the U.S. Supreme Court's Bakke decision." Thus it is clear that the federal agency directly concerned with eliminating discrimination understands, as a matter of administrative interpretation, that racial quotas are forbidden.

A few apologists for racial quotas are becoming somewhat restive at the excesses such programs spawn. Professor Bernhardt, while analyzing and approving Weber in 65 A.B.A.J. 1321, concludes by warning that "Allowing choice based on race admittedly is a dangerous step, and future developments should be watched to prevent affirmative action programs from becoming a new tyranny." We are, indeed, on the pathway to that new tyranny.

Justice Black once declared, "Great nations, like great men, should keep their word." (F.P.C. v. Tuscarara Ind. Nat. (1960) 362 U.S. 99, 142.) Our nation gave its word over and over again: it promised in every document of more than two centuries of history that all persons shall be treated *equally*. However it is rationalized, a preference to any group constitutes inherent inequality. Moreover preferences, for any purposes, are anathema to the very process of democracy. As Justice Murphy wrote, "We of this nation are one people undivided in ability or freedom by differences in race, color or creed." (Akins v. Texas (1945) 325 U.S. 398, 410.)

At the dawn of a new decade, this court has a rare opportunity to offer a ringing declaration in support of racial equality. Unfortunately the majority elect to approve a preferential and undemocratic program of expediency; the result is likely to convert the 1980's to a decade of disillusionment, an era in which "racism, racial spoils systems, racial competition, and racial odium will be fixtures of government in the United States even into the twenty-first century." (Van Alstyne, supra, 46 U.Chi. L.Rev. at p. 778.) We must, in the words of Justice Jackson, "avoid these ends by avoiding these beginnings." (West Virginia State Bd. of Educ. v. Barnette (1943) 319 U.S. 624, 641.)

In addition to all else, the revival of racial quotas tragically denigrates the eloquent words of the first Justice Harlan, dissenting in Plessy v. Ferguson (1896) 163 U.S. 537, words that have served as an inspiration to civil rights advocates for more than eight decades: "Our Constitution is colorblind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. . . . It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race."

Racism will never disappear by employing devices of classifying people and of thus measuring their rights. Rather, wrote Professor Van Alstyne, "one gets beyond racism by getting beyond it now: by a complete, resolute, and credible commitment *never* to tolerate in one's own life—or in the life or practices of one's government—the differential treatment of other human beings by race. Indeed, that is the great lesson for government itself to teach: in all we do in life, whatever we do in life, to treat any person less well than another or to favor any more than another for being black or white or brown or red, is wrong. Let that be our fundamental law and we shall have a Constitution universally worth expounding." (46 U.Chi.L.Rev. at pp. 809–810.)

There is no United States Supreme Court case upholding racial quotas in public employment. There is no California case upholding racial quotas in any employment. The majority opinion is wholly unsupported by precedent and worse, it is regressive in concept. Therefore, I agree with the Court of Appeal that the judgment of the trial court should be affirmed.

Clark and Richardson, Justices, concur.

FOOTNOTES

*Advance Report Citation: 47 LW 4851, 4858.

[1] In the "doublethink" and "Newspeak" of Orwell's 1984 a key word is "blackwhite." It means a "loyal willingness to say that black is white," but in addition: "the ability to believe that black is white, and more, to know that black is white, and to forget that one has ever believed the contrary." (Orwell, 1984 (1949) p. 175).

[2] If the affirmative action means preparation and training for the underprivileged so that they may have the skills to compete on a basis of equality, then it is an essential program. But if affirmative action is interpreted as justifying preferences in the actual competition for society's benefits, then it is undemocratic and violative of the *equal* protection clauses of the federal and state Constitutions.

[3] The aggressive proponents of the new racism are actually a small segment of the nation's population Only 11 percent of the people favor preferential treatment; even among non-whites, only 30 percent favor preferences over selection on ability. (Lipset & Schneider, *The Bakke Case: How Would it be Decided at the Bar of Public Opinion* (1978) 1 Public Opinion 38.

[4] This may give an impression of being a mere temporary expedient. But the French, with a cynicism born of experience, have an appropriate saying: *"rien ne dure comme le provisoire"* (nothing lasts like the provisional).

[5] The only portion of our Bakke judgment reversed was that which prohibited all consideration of race. The high court would permit an admissions program "involving the competitive consideration of race and ethnic origin." (438 U.S. at 320, 17 FEP Cases at 1022.)

[6] Racial quotas in private industry have never been approved by this court. Indeed, we specifically disapproved such hiring practices in Hughes v. Superior Court (1948) 32 Cal.2d 850, 856, 1 FEP Cases 1, 26 LRRM 2072.

[7] For a discussion of other insoluble dilemmas in assigning benefits; to which races, how much to each race, which test of race is to be used, see Van Alstyne, *Rites of Passage* (1979) 46 U.Chi.L.Rev. 775, 804–608.

[8] Verification of confusing and false ethnic claims for purposes of teacher assignment plagued the Los Angeles Unified School District in 1976 and 1977. To avoid being included in a compulsory program involving transfer to a distant school, some white teachers were declaring themselves black, some black teachers insisted they were white, others were asserting they were of American Indian origin.

The district thereupon created an Ethnic Designation Committee which promulgated a precise series of proof requirements to establish the ethnicity of teachers. The criteria employed by the district to determine the ethnic makeup of individual teachers included: verification of racial or ethnic ancestry to the grandparents' generation; birth certificates of the individual and his parents and grandparents; affidavits by a school administrator and a clergyman attesting to the teacher's racial identity. (See Los Angeles Unified School District, Memorandum No. 10, Feb. 2, 1977.)

This tracing of blood lines back to grandparents by a public agency bore remarkable similarity to the Nuremberg Laws of Nazi Germany, a fact that did not escape the attention of some civil rights groups in Los Angeles. After a public protest, on May 18, 1977, the district announced it would no longer implement Memorandum No. 10.

It will be recalled that the racial identification policies of Nazi Germany began with the civil service.

Mr. HATCH. Mr. President, studying the Bakke decision now, nearly 2 years later, is like trying to trace the contours of a battlefield largely obscured by the debris of subsequent engagements. The issues have been substantially dealt with in the discussions I have already entered into the RECORD. However, a particularly incisive summary of them appeared at the time in Inquiry magazine. The author was Dr. Judy Wubnig, a native of Washington D.C., who is now professor of philosophy at the University of Waterloo in Ontario, Canada.

Mr. President, I ask unanimous consent to have "A Minority of One," by Judy Wubnig, printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A MINORITY OF ONE
(By Judy Wubnig)

The Allan Bakke case should never have come up at all. The fact that it did indicates how far the United States has strayed from the principle of equality before the law since President Richard Nixon introduced the use of racial quotas by the government in 1969. It is crystal clear, as Justice John Paul Stevens says in his opinion, that the University of California violated Title VI, Section 601, of the Civil Rights Act of 1964: "No person in the United States shall, on ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." It is crystal clear that the university violated the Fourteenth Amendment to the U.S. Constitution: "No state . . . shall deny to any person within its jurisdiction the equal protection of the laws." And it is crystal clear that it also violated the precedents of court decisions, including those involving Authurine Lucy and the University of Alabama in 1955, Hamilton Holmes and Charlayne Hunter and the University of Georgia in 1961, and James Meredith and the University of Mississippi in 1962.

Yet it was only by a tenuous 5–4 margin that the Court decided the medical school of the University of California at Davis could not deny Allan Bakke admission because his skin is light and his last name not Spanish. Only four justices (Stevens, Warren Burger, William Rehnquist, and Potter Stewart) were willing to commit themselves to the position that the law can only take into account the actual deeds of individuals and not accidents of birth. Five justices (Lewis Powell, Harry Blackmun, William Brennan, Thurgood Marshall, and Byron White) held that universities may take race into consideration in admitting students.

How did the five justices manage to deny the obvious, that the law can take no cognizance of race? How did four of them manage to find it constitutional for a public university to deny someone admission because of his race and national origin? To deny the obvious requires confused thinking, and the opinions of these justices are indeed inaccurate, muddled, and self-contradictory.

The four justices who dissented from the Court's decision to uphold Bakke's suit were mired in a fundamental inconsistency. Along with Powell, they agreed that racial discrimination in admissions to public universities can be either constitutional or unconstitutional, sometimes right and sometimes wrong. The justices of course oppose discrimination against blacks. Yet the four agreed that the way to eliminate racial discrimination is to discriminate against people because of their race. Wrote Blackmun: "In order to get beyond racism, we must first take account of race."

This fundamental inconsistency led the dissenters into self-contradictions and blinded them to the meaning of their own words. Blackmun says, "We cannot—we dare not—let the Equal Protection Clause perpetrate racial supremacy." But, as we saw in the South in the days of Jim Crow, the legal superiority of one race over another is a sufficient condition for its racial supremacy. Blackmun's ringing words are in direct contradiction to what he intends them to support: the legal superiority—and thus racial supremacy—of Asian-Americans, American Indians, blacks, and people with Spanish surnames over whites without Spanish surnames.

Brennan says that we cannot let colorblindness become myopia "which masks the reality that many 'created equal' have been treated within our own lifetimes as inferior both by law and by their fellow citizens." He himself suffers so from logical myopia that he does not see that he is supporting precisely such treatment for whites by arguing for their legal inferiority under the Constitution. He asserts that whites as a class do not have any of the "traditional indicia of suspectness; the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment" which must be "compensated" for. Yet this very fact, according to him, constitutes the argument for saddling whites with precisely such disabilities and for subjecting them to unequal treatment.

Some of the justices discussions of legal precedents and of the Fourteenth Amendment could have come out of a satire by George Orwell. In order to uphold racial discrimination against Allan Bakke, Thurgood Marshall is driven to deny everything he fought for as a lawyer for the NAACP, even his own great victory in the 1954 school desegregation case, *Brown* v. *Board of Education*. He appeals to the precedents of all the old decisions made by the courts in support of racial discrimination against blacks, and he rejects all those of the past 40 to 50 years which overthrew those decisions:

". . . during most of the past 200 years, the Constitution as interpreted by this court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution acts as a barrier."

So, for Thurgood Marshall such decisions as those in the Dred Scott case, the late nineteenth-century civil rights cases, and *Plessy* v. *Ferguson* are authoritative. It would logically follow from his argument that racial discrimination against blacks, perhaps even slavery itself, is constitutional.

As in Orwell's *Animal Farm*, the dissenting justices find that the Fourteenth Amendment, when it commands equal protection, is really permitting unequal protection of the laws. Marshall argues that blacks should be legally superior, since it is difficult for him "to accept that Negroes cannot be afforded greater protection under the Fourteenth Amendment where it is necesary to remedy the effects of past discrimination." Blackmun argues that because the Fourteenth Amendment was passed to protect blacks from being denied equal protection—that is, to guarantee them protection equal to that of every American—the Fourteenth Amendment was passed in order to guarantee them *unequal* protection—that is, legal superiority. The old white supremacists at least paid vice's tribute to virtue by *saying* that the facilities segregated by law were equal; they never *said* that whites were *legally* superior to blacks.

The dissenters argue that Allan Bakke, who was subjected to racial discrimination, was not a victim of such discrimination, and that the students who were given preferential treatment because of their race or national origin were actually victims of racial discrimination. For this reason, the dissenters maintain that the racially preferred students deserve compensation. Brennan says that relief for societal discrimination ". . . does not require as predicate proof that recipients of preferential advancement have been individually discriminated against; it is enough that each recipient is within a general class of persons likely to have been the victim of discrimination."

The flaws in this position are threefold: it denies what it affirms, it assumes a dubious causal relationship, and it presupposes the value of a spoils system.

If racial discrimination in the past was unjust, then it is now unjust against Allan Bakke. If it is not unjust now to discriminate against Allan Bakke, then racial discrimination in the past was not unjust. Brennan's inconsistent "compensation" principle can only lead to racial discrimination forever. If Allan Bakke is now discriminated against, then he, and, according to the argument, his descendants, and other whites without Spanish surnames will have a "legacy of past discrimination." They will then have to be compensated by discrimination against Asian-Americans, Indians, blacks, and people with Spanish surnames; and so on ad infinitum.

Such discrimination, however, is no compensation for an injustice. It is individuals who suffer injustice and individuals who commit it. Only the victims of an injustice can be compensated for it, and only the perpetrator can do it. It would be no compensation to Allan Bakke if Davis medical school or any other school were to discriminate against Asian-Americans, Indians, blacks, or people with Spanish surnames. His only compensation is the one the Court awarded him—the order to Davis to cease discriminating against him and admit him.

The dissenters reject the "predicate proof" that Allan Bakke was discriminated against. Instead, they accept the probability that the students admitted under the special programs were victims of discrimination, since they belonged to groups whose members were likely to have been discriminated against. First, they argue, Bakke only experienced "benign" discrimination, because there was no intention to "insult" or "de-

mean" whites as a class. But what is most insulting about racial discrimination is the deed, not the intent of the doer. James Meredith was insulted when the University of Mississippi refused him admission because of his race. In just the same way, Allan Bakke was insulted when the Davis medical school refused him admission because of his race.

Secondly, the dissenters claim that the reason the students admitted under Davis's special program did not have as good a record as Bakke was that they were victims of "a legacy of past discrimination." But no causal relationship between such a "legacy" and lack of ability and accomplishment exists. Most Americans share an analogous history, yet many are admitted into medical schools on their merits.

Practically all Americans are descendants of people persecuted for religious, political, or racial reasons, of indentured servants, serfs, slaves, or convicts. Bakke's Norwegian immigrant ancestors may have had experiences like those described in O. E. Rolvaag's *Giants in the Earth*. Moreover, many who actually experienced discrimination or slavery itself have demonstrated their great abilities, from the great Stoic philosopher Epictetus, who was a slave, to Alexander Solzhenitsyn, a victim of the Gulag Archipelago, to those who, the dissenters imply, could not have succeeded by merit alone—American blacks like Frederick Douglass, Booker T. Washington, George Washington Carver, all born in slavery, and W. E. B. DuBois, Mary Bethune, Paul Robeson, and Thurgood Marshall. Davis medical school itself, in the years 1971–1974, let in members of "disadvantaged" groups on their own merit, through the regular procedures: 41 Asian-Americans, 1 black, and 6 with Spanish surnames.

Statistics cannot demonstrate the consequences of a "legacy of past discrimination" unless it is known what the statistics would be without past discrimination. It cannot be assumed that the percentage of people with certain abilities and interests is the same in each subgroup of the population. As is well known, the percentage of members of one particular minority group who are admitted to universities and graduate schools on their own merits is much greater than their percentage in the population. Nonetheless, for over 1000 years this group, the Jews, has been subject not only to discrimination and segregation, but to persecution and massacre. Davis's own statistics reveal that of the 252 students admitted through the regular program from 1971–1974, 41 or about 16 percent were Asian-Americans, even though Asian-Americans constitute much less than 16 percent of the population of the United States or of California. (This did not hinder the Japanese-American Citizens League from opposing Bakke and demanding preferential treatment, such being the lure of favoritism.)

At any rate, the only way to find out what any subgroup of the population would have done in the absence of discrimination is to stop discriminating and see what happens then. But this means judging individuals on their own merits.

Even if the reason for the inferior qualifications of students admitted under the special program at Davis was the "legacy of past discrimination," or "societal discrimination," or anything else, it does not follow that they should have been admitted over those better qualified. What might have been is not, and even if, under other circumstances, they would have had greater promise of becoming good doctors, they do not have that promise now.

Let us assume, as Davis medical school did, that on the average these students showed much smaller promise of becoming good doctors than Allan Bakke did. This means that with all the determination and hard work in the world many of these students will not become very good doctors but probably mediocre or poor ones. (Professor Bernard Davis of the Harvard Medical School reported on the poor performance of students admitted through Harvard's "special program" in the *New England Journal of Medicine* in 1976.) The value of a person's actual abilities and accomplishments is independent of the causes of those abilities and accomplishments. Davis medical school and the dissenting justices grant this by conceding that the students admitted through the special programs were less qualified than Allan Bakke; they go on to argue that this is the very reason they admit them over people like Bakke.

But this is the very reason *not* to admit them. Davis and the dissenting justices turn everything topsy-turvy by maintaining that applicants should be let in because they are *not* very promising. They see admission to medical school and getting jobs as doctors as part of a spoils system, where favoritism, not merit, rules. Marshall argues that programs like that at Davis are necessary because there should be more black doctors. What we need, however, is not doctors of any particular complexion or national origin or sex, but good doctors, the best available.

Five justices argue that a university can properly take the race of an applicant into account in admissions because of the need for diversity. Powell compares taking race into account with taking geography into account, as Harvard does; Blackmun says that universities "have given conceded preferences up to a point to those possessed of athletic skills, to the children of alumni, to the affluent who may dispose of their largesse on the institutions, and to those having connections with celebrities, the famous, and the powerful."

They forget, however, that Harvard is a private university not supported by the taxpayers except in special grants and aid to students. The University of California, on the other hand, is a public institution supported by the taxpayers of California. The only geographical preference it can give is to residents of California, and if it were openly to give preferences for the traits Blackmun mentions, there would be strong objection. Moreover, it is not a violation of the Civil Rights Act of 1964 for Harvard to take into account geography, athletic skill, wealth, or connections in admitting students, but it is a violation of that law for any institution using federal funds to discriminate on grounds of race. In addition, although it is not a violation of the Fourteenth Amendment for any state university to take athletic skills or many other traits into account, it is a violation for it to deny any citizen equal protection of the laws by taking race into account.

Powell cites Harvard's admissions policy as a model for considering race as a "factor" without using such rigid quotas as Davis did. As other justices point out, this is a distinction without a difference. It leaves entirely open how much race should count and which race should count for how much. Logically, it would allow the University of Alabama to give preferential treatment to whites, as it did in the past in pursuit of what it saw as a "substantial state interest."

But apart from the legal issues, ought race to be taken into account even by a private university like Harvard? As an ethical matter, the answer must be "no." As in any other field—learning physics, cooking, repairing cars—the test of a person's ability to learn medicine is his demonstration of that ability. Neither his name nor his complexion nor the shape of his nose nor his ancestry nor a myriad of other characteristics is relevant.

The Bakke decision indicates only one thing clearly—that the future is very uncertain for the American ideal of equality under law, the principle that "all men are created equal." That idea, first developed by the ancient Greeks, led to the abolition of slavery in Europe and later in America. It is embodied in the Fourteenth Amendment. That five justices of the Supreme Court were forced to maintain such self-contradictory and confused positions shows both its continuing power and the current threat to it.

The future consequences of the Bakke decision cannot be predicted. Who, after all, could have predicted that after George Wallace was compelled to allow blacks into the University of Alabama any public university in the United States would deny anyone admission because of his race? Who would have predicted government enforced hiring and promotion by race or national origin or sex when Title VI of the Civil Rights Act of 1964 forbids it? But it is possible to foresee the likely consequences of following the two opposing principles of inequality before the law or of equality before the law.

The first way leads to catastrophe. Laws are a means of regulating actions, and if the same actions are treated differently by reference to race or ancestry or sex or other accidents of birth, we have a situation characteristic of a caste society, like feudal Europe or the old South, where persons are imprisoned by the accidents of their birth. Such a caste system is already developing in the United States, with the future of many people at the mercy of government employees who decide whether or not they belong to favored groups. Congress also has been legislating favored castes; the Public Works Employment Act of 1977 stipulates that 10 percent must be paid to subcontracting companies owned or controlled by blacks, Spanish-speaking people, Orientals, Indians, Eskimos, or Aleuts. Already the juggernaut of a caste system is overriding contracts between employers and the labor unions, as the recent Supreme Court decision in the AT&T case shows.

Thus we are beginning to become, not a society of different individuals, but a collection of quarreling tribes, fighting for preferential treatment at the hands of the government. As the fighting worsens, there will be diminished incentive to do one's best, and we will all, individually and collectively, suffer thereby.

Other unpleasant consequences are possible. Those like the Reverend Jesse Jackson who argue for racial inequality before the law are destroying the shield that protects blacks along with all other Americans. If race can legally be taken into account, then the siren calls of white supremacists may not fall on deaf ears.

The other way is that of the American ideal. It is the only rational ideal, for only equality before the law can give us the rule of law, and, with it, freedom. Moreover, if merit is the standard of judgment, each of us will have the incentive to do his best. Everyone, regardless of ancestry or sex, has a profound interest in promoting economic well-being and a higher degree of civilization through individual excellence. We are all members of the human race, the race which Justices Powell, Blackmun, Brennan, Marshall, and White ignore. Each one of us, like Allan Bakke, is a minority of one, the only minority that the Constitution recognizes and the only one that law can rationally recognize.

Mr. HATCH. Mr. President, Dr. Wubnig has also published a formal philosophical defense of the merit criterion of employment against the various political attacks upon it from affirmative action supporters. It appeared in the September–October 1976 issue of the Humanist magazine. The ideal of rewarding merit, which in turn is to be determined through the processes of

freedom, has of course been virtually unique to the European and American civilizations that have in the last 300 years effectively created the modern world as we know it. Although the United States may have represented a more or less imperfect expression of that ideal, the ideal of rewarding merit has never been abandoned, and distinguishes us in the vast sweep of human history.

Affirmative action is steadily eliminating that ideal from our national life.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "The Merit Criterion of Employment: An Examination of Some Current Arguments Against Its Use," by Judy Wubnig; the Humanist, September–October 1976.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE MERIT CRITERION OF EMPLOYMENT: AN EXAMINATION OF SOME CURRENT ARGUMENTS AGAINST ITS USE

(By Judy Wubnig)

What are the proper criteria for employing people? Until recently, it was taken for granted that the only proper criterion was the ability to do a particular job. For example, it would have been assumed that the criterion for employing someone as an engineer was his ability as an engineer.

Practice that did not conform to this ideal was continually criticized. Such practices as denying blacks jobs because of their race were criticized by reference to this ideal, that is, these practices were criticized because a person's race is not a criterion of his ability to do a job. As a result of such criticism, legislation such as the U.S. Civil Rights Act of 1964 was passed to prohibit some of the practices that did not conform to this ideal, such as using criteria of race or sex for employment.

In recent years, however, in the course of apparently criticizing practices that did not conform to this ideal, such practices have been advocated. There has been a plethora of arguments to justify appointments on the basis of race, ethnic group, and sex. I propose here to examine several of these arguments: the compensation argument, the quota argument, and the biased-judgment argument.

THE COMPENSATION ARGUMENT

The compensation argument is that members of a given racial, ethnic, or sexual group X should be given preference in employment because members of group X in the past were denied such employment in the past because of their membership in group X. This is supposed to be compensation to members of group X for the past wrongs done to members of group X in denying them employment because of this membership. For example, the argument is that if in the past qualified women were not employed as engineers solely because they were women, therefore, now, in compensation, qualified women should be hired as engineers because they are women.

This argument suffers from several related defects. It is based on a confused notion of compensation; it implies an endless retributive feud principle; and it is inconsistent.

(*a*) *Compensation:* I can compensate someone, for example, Bill J., if I have done him some wrong and can make up that wrong. Suppose, for example, that I dislike redheads, and I have refused to employ Bill J. to tune my piano because he is a redhead. One can then argue that I have denied him employment for a bad reason and so have treated him unfairly (and have thereby lost the services of a piano tuner!). In this case, I could compensate Bill J. for this unfair treatment by hiring him, or perhaps by some other means.

The wrong to be compensated for is the wrong done to the individual wronged. Bill J. receives no compensation if I hire another redhead, Tom S., and Tom S. cannot receive compensation for the wrong done Bill J., because the wrong was not done to him; that is, Tom S. was not denied employment because of his red hair.

The current compensation arguments, however, make this elementary mistake. It is argued, for example, that blacks should be hired *because* they are blacks, in compensation for past unfair, racially discriminatory practices. But John P., a black, who suffered from such practices in the past, is in no way compensated by the present hiring of Paul R., also a black. And Paul R. deserves no compensation now, since he was not previously wronged by being denied employment because of his race.

(*b*) *Infinite Retributive Redress:* The compensation argument depends on the assumption that one does wrong to someone else if one refuses to employ a person because of his membership in some particular racial, ethnic, or sexual group. Hiring Paul R. now, because he is black, rather than hiring nonblack S because he is not black, is doing wrong to nonblack S, according to this assumption. So, according to the compensation argument, he or other nonblacks deserve compensation. Thus, in compensation, members of this group should be hired because they are nonblacks. This, in turn, will wrong blacks, who will then deserve compensation, and so on ad infinitum. Thus, the attempted compensation will not right wrongs but will continue the wrongdoing forever.

(*c*) *Inconsistency:* The compensation argument is inconsistent. It assumes both that it is wrong to hire people because of their membership in a given racial, ethnic, or sexual group and that it is right to do so. Employing members of group X now, because of such membership, in preference to members of group non-X, is to do precisely what is condemned. Using the word *positive* or *affirmative*, as in "positive (racial, ethnic, or sexual) discrimination" or "affirmative action," changes the fact not one iota. The condemned past policy could just as well have been termed *positive discrimination* or *affirmative action*, and the discriminatory policy presently advocated is just as "negative" against members of group X.

If policies of hiring people according to racial, ethnic, or sexual criteria were bad in the past, they are bad now. If they are not bad now, they were not bad in the past.

In summary: the compensation argument is confused about who gets compensated for what. It entails an infinite redress of wrongdoing and subsequent compensation. And it contradicts the principle of proper employment practices, whose violation is supposed to be compensated for.

THE PERCENTAGE-QUOTA ARGUMENT

The percentage-quota argument is that a quota of *K* percent of any given kind of job should be given to members of a given racial, ethnic, or sexual group *X* because members of group *X* makes up *K* percent of the total population. If everyone were treated fairly, according to this argument, then the percentage of people in any subgroup of employed, such as engineers or mathematicians, would be the same as in the population as a whole. For example, approximately 50 percent of the population are women. Therefore, if people were treated fairly, according to the argument, 50 percent of engineers and mathematicians would be women. The percentage argument is that if 50 percent of engineers and mathematicians are not women, it must be made to be the case by hiring on the basis of sex, so that 50 percent of engineers and mathematicians are women.

This argument assumes that what would have been is known, that theories of what would have been are a sounder basis for practice than knowledge of what is, and that it is fairer to treat people according to what they might have been rather than according to what they are.

(*a*) *What would have been:* The percentage argument assumes that fair employment policies are those that allow for the hiring of individuals according to their merits. The argument is that, if in the past all individuals had been hired according to their merits, then the percentages of people of different racial, ethnic, and sexual groups in any particular kind of employment would be the same as in the population as a whole. This is not, however, self-evident. There may be differences in interest, talent, education, and training in population subgroups, so that hiring by merit will not result in such percentages. For any or all of these reasons the percentage of mathematicians or engineers, for example, from a given racial, ethnic, or sexual subgroup may differ from the percentage of the population composed of members of that subgroup.

If this assumption were correct, of course, then the predicted percentages would occur within whatever span of time would be necessary for a policy of hiring by merit to take effect. But then, in order to get these percentages, it would not be necessary to hire according to percentages but only according to merit. Since the percentage argument advocates a policy that is intended to rectify policies of not hiring according to merit, it actually assumes that people should be hired only on the basis of their merit.

The percentage argument, however, often involves a different approach. It is that present hiring by merit is not adequate, because in some racial, ethnic, or sexual group *X*, whose members make up K percent of the total population, the number of people with the ability for a particular kind of employment is less than *K* percent of the total number of those with this ability. The reason for this, it is argued, is that the members of such group *X* did not have educational opportunities equal to those of members of other racial, ethnic, or sexual groups. The percentage argument then is that, since members of group X did not have educational opportunities equal to those of members of other groups, they were treated unfairly. Therefore, they should not suffer the consequences of their poorer education; that is, they should not be denied employment in jobs for which they are not the best qualified. They should be hired to make up *K* percent of those in a particular kind of employment even though they are not the best qualified.

Let us first examine the assumption that, if everyone had the same educational opportunities, the percentage of members of particular racial, ethnic, or sexual subgroups in any particular kind of employment would have been what it is in the population as a whole—that is, the percentage of individuals in any such subgroup with interest in and talent for, say, basketball, piano, engineering, or mathematics is the same as the percentage of individuals in the total population with such interests and talents. How can this assumption be justified? No one has yet seriously proposed that all talents are evenly distributed. For example, no one would argue that the talent for playing basketball is so distributed, since clearly tall men are better basketball players than short women and tallness and maleness are not distributed in each racial, ethnic, and sexual subgroup of the population in the same way.

Whatever method could be used to find out about the distribution of interest in and talent for a particular kind of activity would require examining individuals, individual by individual. That is, the evidence of distributions of characteristics in a given population

depends on the evidence about individuals of that population. Evidence of distributions derived from evidence of distributions in random samples of the population still ultimately depends on evidence about individuals, namely, the individuals in the random samples. The evidence about the interests and talents of individuals is thus stronger and more certain than the evidence about distributions of these interest and talents in the population and population subgroups to which these individuals belong, since the latter evidence is dependent on the former. It follows, then, that the policy of hiring people according to the percentage assumption is more dubious than that of hiring people according to their individual merits, since the evidence for the percentage assumption is weaker and more dubious than that about the individual merits of people.

The percentage argument, in other words, begs the question. Its validity depends on the assumption that people can be evaluated individually. To argue that the results of judging people individually must be wrong because these results do not conform to the hypothesized percentages is to reject the only possible basis for knowing these percentages. Thus the percentage argument refutes itself, for the only reason to accept the view that, for example, 50 percent of mathematicians should be women because 50 percent of those with the greatest interest in and talent for mathematics are women is that it has been discovered, by examining individuals, that 50 percent of those with the greatest interest in and talent for mathematics are women. It could be discovered only by examining individuals. The percentage argument thus presupposes that the most accurate way to judge individuals is to judge each individually.

(*b*) *If the hypothesized percentages would have been:* Suppose, by hypothesis, that with proper education and training, 50 percent of the best-qualified mathematicians would have been women. The percentage argument is that 50 percent of mathematicians should now be women, even if they are not, due to lack of training, 50 percent of the best qualified. But the hypothesis does not imply this conclusion—what would have been is not. A person without mathematical training is not qualified to be a mathematician, even though he would have been one had he had the necessary education. To take another example: suppose John G. would have been a great pianist, drawing record audiences, if he had learned to play the piano. However, he did not study the piano, and so he is not now a great pianist; he will not draw record audiences to his attempts to play the piano, nor will "would have been" arguments persuade potential audiences differently.

In summary: The percentage argument depends on the very ability to judge individuals on their own merits whose use it rejects. It advocates hiring people without regard for their qualifications and solely because of their membership in some racial, ethnic, or sexual group X, because these individuals would have been qualified, given different education. But the argument itself depends on the assumption that there are qualifications that these individuals would have had, given different education. And the justification of the percentage assumption must ultimately depend on the ability to judge the qualifications of individuals, the kind of judgment the percentage argument rejects.

THE BIASED-JUDGMENT ARGUMENT

It has been argued that evaluating individuals on the basis of merit, without regard to their racial, ethnic, or sexual characteristics, is impossible because only members of any such group X are capable of evaluating other members of group X and because present criteria of evaluation are biased in favor of members of group non-X. Therefore, members of group X must be chosen in order to hire other members of group X, and members of group X must be hired in order to compensate for the bias of present criteria for evaluating merit.

(*a*) *Who evaluates?* The argument that only members of racial, ethnic, or sexual group X should evaluate other members of group X is that only they can understand members of group X, by which is meant that only they can understand the thinking of members of group X. How can the policy based on this argument be implemented and how can the argument itself be justified?

The problem if implementing the policy of having members of group X evaluate other members of group X for potential employment arises only in the case when the employer is a member of group non-X. But, in precisely this case, in order to implement the policy, members of group X would have to be chosen (whether hired or not makes no difference to the argument) by members of group non-X do the hiring of members of group X. This, however, involves either an infinite redress or that members of group non-X choose members of group X according to some criteria of evaluation, which do not include the criterion of membership in group X. If the original argument is valid, that members of group non-X cannot evaluate members of group X, then members of group X cannot evaluate members of group non-X, and thus the policy cannot be implemented. On the other hand, if the policy can be implemented by members of group non-X choosing members of group X to implement it, then the original argument on which the policy is based is not valid, that is, it must be possible for members of group non-X to evaluate members of group X.

The validity of this argument cannot depend on being argued by a member of group X (or anyone else). That this person thinks the argument is valid is not evidence of its validity. If a person's thinking that an argument is valid makes it valid, then anyone else's thinking that the argument is not valid would make it invalid as well. For example, my belief that this argument is invalid, which I am now expressing here, would, according to this subjectivist criterion, be a sufficient refutation of the argument.

The validity of the argument thus does not depend on the argument's being believed to be valid. If the validity of the argument can be recognized by anyone, then all people have the same ability to think about and evaluate arguments. In other words, if members of both group X and group non-X are to recognize the argument as valid, members of group X must be able to evaluate the thinking of members of group non-X and members of group non-X must be able to evaluate the thinking of group X, namely, the thinking that is the argument itself. But, if this is so, then the argument refutes itself; its validity entails its own denial.

The very effort to persuade someone of the validity of the argument presupposes that it is invalid. If members of group X try to persuade members of group non-X of the validity of the argument, they are presupposing that members of group non-X can evaluate the reasoning of members of group X, that is, the argument that members of group X are offering. In the very act of using the argument, members of group X would show that they themselves do not believe it.

On the other hand, how could members of group non-X demonstrate to themselves that the argument is valid? They cannot do so by failing to evaluate the thinking of members of group X, since, in order to recognize that they have so failed, they would have to recognize the correct evaluation—that is, they would have to evaluate the thinking of members of group X correctly.

One might argue that one can indeed recognize one's own inability to evaluate the argument of another without presupposing that he has correctly evaluated it. For example, I might admit that I cannot evaluate Einstein's general theory of relativity without presupposing that I have indeed evaluated it correctly. This situation is not, however, that which is involved in the argument that members of given racial, ethnic, or sexual groups cannot evaluate the thinking of members of other racial, ethnic, or sexual groups. If I cannot evaluate the general theory of relativity, it is because my knowledge of physics is not adequate or my powers of reasoning are not powerful enough. The difficulties lie in the theory itself, the evidence presented and the reasoning used. They do not lie in the fact that I am not a German Jewish male.

On the contrary, the argument we are examining denies that knowledge of the relevant material and ability to reason are adequate to evaluate thinking. It asserts that, for example, only female mathematicians can evaluate the mathematical abilities of other female mathematicians. If male mathematicians try to evaluate the abilities of female mathematicians, according to this argument, they will only admit to their inability to do so because of an admitted lack of mathematical knowledge; they will, indeed, think that they can evaluate any mathematicians, including female ones, on the basis of their mathematical knowledge. But in order to prove to themselves that they can evaluate female mathematicians, they must in some way be able to recognize the correct evaluations of female mathematicians, which is only to say that they must be able to evaluate female mathematicians correctly.

The argument, therefore, that only members of group X can evaluate other members of group X, because only they can understand the thinking of members of group X, is self-refuting. If the validity of arguments depends on that being believed to be valid, then my not believing the argument to be valid is a refutation of it. If its validity is such that everyone can and ought to recognize it, then everyone has the ability to evaluate some of the thinking of others, namely, the argument itself. The barriers to evaluating the thinking of others are not that one is unable to understand and evaluate the thinking of those different from oneself, for example, of those in racial, ethnic, or sexual subgroups other than one's own; the barriers are lack of knowledge or inadequate reasoning ability.

(*b*) *The bias of present criteria of evaluation of merit:* The argument is that present criteria for evaluating merit are biased in favor of members or racial, ethnic, or sexual group non-X. Therefore, in order to correct this bias, members of group X should be hired because they are members of group X.

It is possible that present criteria for evaluating the abilities of individuals for particular jobs are unsound and racially, ethnically, or sexually biased. This must, however, be established, not merely presupposed. The percentage argument will not establish this, as previously argued. And it cannot be argued that the criteria must be biased in favor of members of group non-X because members of group non-X set them. One would first have to prove that the criteria are biased in order to argue that those who set them are biased, not vice versa.

In order to establish that the criteria are biased, then, one would have to demonstrate that according to the criteria the best-qualified people are sometimes passed over in favor of less qualified people in employment. Such a demonstration, however, would require criteria for evaluating the merits of individuals in order to establish that certain individuals are better qualified than others. This attempt to demonstrate that present criteria are biased would then actually establish what the

sounder, unbiased criteria are. Far from supporting the argument that members of racial, ethnic, or sexual group X should be hired because of their membership in group X, because the present criteria for evaluating merit are biased against group X, the demonstration of such bias would establish that it is possible to evaluate individuals properly on the basis of merit, by establishing how it is possible.

One might still try to defend the biased-criteria argument by arguing that all criteria must be biased, that hiring on the basis of merit alone is intrinsically impossible. But one could not demonstrate this without demonstrating the actual bias of criteria, and this can only be done by using the yardstick of the merit criterion. And if one were to deny that there is such a thing as individual merit, then one could not argue that any criteria are biased. It could not, therefore, be argued that present criteria of merit used in employment are biased and should thus be discarded. The biased-criteria argument then is a self-refuting one; it assumes what it denies, that one should hire a person because he is the best qualified for the job, not because he is a member of any particular racial, ethnic, or sexual group.

CONCLUSION

The arguments here examined for employing people because of their membership in some racial, ethnic, or sexual group—the compensation argument, the percentage-quota argument, and the biased-judgment argument—all deny the very principle they assume. They assume that people should be employed because of their individual qualifications, but they deny that the criterion of individual merit should be used in employment.

But the initial principle is, I believe, the only sound one. A person should be employed for a particular job because he is the best-qualified applicant. The only criterion for this is the ability to do the job. The best qualified person for a job is the person who can do it best. The best person for a job as a mathematician is the best mathematician; the best person for a job as a carpenter is the best carpenter; and the best person for a job as a pianist is the one who plays the piano best.

Mr. HATCH. Mr. President, the same issue of Inquiry magazine carried a discussion of Bakke by Prof. Thomas Sowell, who teaches economics at the University of California at Los Angeles. Professor Sowell is one of this country's leading black academics.

He has done some of the most valuable work on affirmative action, and I will be referring to it later. He is the author of a number of books, among which I particularly recommend "Black Education: Myths and Tragedies," his remarkable partly autobiographical account of the difficulties confronting blacks in American society today. It contains a particularly eloquent denunciation of the damage done to blacks by social engineering in the name of progress, and the pressure on blacks to fit into patronizable packages.

The first part of Professor Sowell's article deals with the erroneous empirical assumptions that lie behind affirmative action. The second part is an unusual analysis of the Supreme Court's decision, which has however turned out to be entirely accurate in its pessimism.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by T. Sowell entitled "Affirmative Action and Pious Fraud," August 21, 1978, Inquiry.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AFFIRMATIVE ACTION AND PIOUS FRAUD

(By Thomas Sowell)

From start to finish, "affirmative action" has been the most incorrigible kind of fraud—namely, fraud for a "noble" purpose. If the Bakke decision turns out to be the beginning of the end for quotas, it is perhaps fitting that it, too, has more than its share of disingenuousness. Since Bakke has been argued for and against as part of the whole controversy over affirmative action, it may be useful at this point to consider some of the basic premises or assertions associated with that policy, for most of which there is no evidence and all of which are, in fact false:

Minorities have improved their economic positions relative to whites since the government imposed quotas ("goals") on employers.

After quotas ("goals") were imposed, women have risen to greater representation in the professions than in generations past.

Minorities and women favor preferential hiring and college admissions.

Black-white differences in income are due to different employer treatment of similar individuals.

While European immigrant minorities were eventually able to achieve incomes and occupations comparable to the general population, nonwhite minorities cannot do so.

Let us take these claims in order.

The early thrust of the civil rights movement and equal-opportunity policy was that hiring and other decisions were to be made *without regard* to race, color, creed, or national origin. Even affirmative action in its early phrase referred to special efforts to bring previously excluded groups into the pool of applicants, after which the actual decisions on college admission or hiring were to be made on the basis of individual qualifications. Only slowly—and, indeed, stealthily—did this metamorphose into numerical "goals and timetables." In December 1971, these "goals and timetables" became mandatory for government contractors and subcontractors.

The 1960s equal-opportunity phase of these developments can be separated from the post-1971 "results-oriented" quotas. The earlier period saw the first substantial increase in black incomes relative to white incomes. Black income as a percentage of white income reached its peak in 1970. It has never been that high again, throughout the whole era of quotas, massive bureaucratic intervention, and bitter social divisiveness. For a program that puts so much emphasis on results, affirmative action has few results to show for all its sound and fury.

A well-known cigarette ad says to women: "You've come a long way, baby." Everybody from Gloria Steinem to the Equal Employment Opportunity Commission is lined up to take the credit. But, without being picky about it, it might be worthwhile to first find out if there is any credit to take. Have women in fact come a long way? And in what direction? It is amazing how many basic questions never get asked.

The proportion of people in various high-status occupations who were female reached its peak in the 1930s and declined over most of the next three decades. For example, the percentage of law degrees that went to women was twice as high in the mid-1930s as it was in the late 1950s. The same is true of doctoral degrees in chemistry, astronomy, and the biological sciences. The decline was even greater in mathematics and economics. For doctoral degrees in general, women's share fell from about 17 percent to about 10 percent. Parallel with this was a decline in female representation on college and university faculties (including colleges run by women). The percentage of females among those listed in *Who's Who* was more than twice as high in the 1902 edition as it was in the 1958 edition. For the economy as a whole, female income as a percentage of male income declined over a 20-year period from 1949 to 1969.

For those conditioned to look for evil intentions, or at least ideological explanations, for everything that goes wrong, it will come as a great disappointment to find that all of this is highly correlated with demographic trends. As educated women began marrying earlier and having more children, their representation in high-status positions declined. When these demographic trends began to reverse in the 1960s, women's representation in high-level positions began to rise—though still not yet back to the 1930s levels in some fields. The affirmative action quotas of the 1970s had as little to do with the trends as did male chauvinism.

The effect of marriage and child-bearing on women's careers is also apparent in comparisons by marital status at a given time. As of 1971, single women in their thirties who had worked continuously since high school earned slightly more than single men in their thirties who had worked continuously since high school. The substantial differences in income between men and women which are found in gross comparisons are largely differences between married women and all other persons. Some statistical studies conceal this fact by including as "single" those women who are widowed, divorced, or separated. Obviously a woman who reenters the labor force in her thirties or forties, after having been a housewife for many years, is unlikely to earn as much as a man of the same age who was there all the time. It is so easy to ignore simple realities in the quest for sources of moral outrage, political crusades, and—if successful—bureaucratic empires.

When the knight in shining armor rescued the damsel in distress, the two usually ended up living happily ever after. But when affirmative action programs try to come on like knights in shining armor, the damsels tell them to beat it. So do minorities.

The Gallup poll in 1977 found that 64 percent of nonwhites opposed preferential hiring or college admissions (even when the alternative was "ability as measured by tests"). Eighty percent of women were also opposed. Indeed, no matter how the Gallup people split up the population—by race, sex, region, income, or education—they could not find a single group that was in favor of affirmative action. No wonder proponents of affirmative action try to achieve their goals (and timetables) through nonelected officials in politically insulated institutions like administrative agencies and the federal courts. Put it to a vote and the whole game would be over.

Of course, we know that the "leaders" of minorities and women are gung-ho for quotas and the like. But the media determine who is perceived as a leader, and people with urgent demands to make are better material for the tube than people who say, "Oh, cut the crap." Leaders have their own vested interests, different from those of the people in whose name they confidently speak. From this point of view, affirmative action and similar crusades can be seen as a sort of activists' full employment act.

The civil rights movement is a classic example of the tendency of organizations to pursue their mandated goals right on past the urgent and the optional to the questionable and the counterproductive. At one time it was all the NAACP could do to try

to keep redneck sheriffs and the KKK (sometimes the same people) from terrorizing blacks. Once they had made some headway on that, they could give more attention to fighting Jim Crow laws. After shooting down segregation, it was on to school busing and then the fight against capital punishment (including trying to represent white murderers who didn't want to be represented). One NAACP lawyer candidly observed that the "golden days" of civil rights battles were over and that intellectual tools "had been developed which now threatened to collect dust," when he and his legal colleagues decided to lead the anti-capital punishment crusade.

It is especially necessary to distinguish sharply between the institutional interests of organizations and the interests of those in whose name these organizations choose to speak, when considering changes in black-white differences in income and the implications of those changes.

At one time—and not too long ago—it mattered little what skills, attributes, or education a black job applicant had or did not have. In many places, he could just forget it. Changes in public attitudes, and then equal-opportunity laws, made personal attributes matter. How much do they matter now? Gross black-white differences in income will not tell you, partly because older blacks who began their careers under heavier handicaps cannot make it all up at this late date. But among younger generation blacks and whites, by the late 1960s individuals with similar home backgrounds and the same education had the same income—regardless of race. Gross black-white differences had not disappeared, but the reasons for the remaining differences between young whites and blacks were factors at work before they ever set foot in an employer's office.

This was a landmark, indicating not only the progress blacks had made, but also what was most urgently needed for the future. There was now much more to be gained by hitting the books than by hitting the streets. However, organizations have their own skills and their own inertia, and civil rights organizations are geared up to fight discriminatory treatment, not reading (or nonreading) problems.

Easy phrases like "majority" and "minority" obscure the important fact that there is no single American ethnic group that comes close to being a majority. Half of the American population cannot identify their ethnicity at all, presumably because of intermixture. The largest identifiable group are people of British ancestry—just 15 percent of the population.

Sometimes all the people of European ancestry are lumped together as "whites" (or even "Anglos"—which must come as some surprise to those of Celtic, Semitic, Slavic, and other backgrounds). The theory is that only the various white groups have risen from poverty to income levels around or above the national average. Like so many other statements about race and ethnicity, it is a short step from theory to "well-known fact"—the distance in between being filled with repeated assertions. In reality, Chinese- and Japanese-Americans have higher incomes than most white ethnic groups—the Irish, the Italians, or the Poles for example—and blacks of West Indian origin or ancestry earn more than 90 percent of the average income of whites. The point is not that race doesn't matter. It is that visible genetic differences do not spell doom to economic advancement, or even parity, however plausible or ideologically satisfying it may be to say so.

Those who hoped that the *Bakke* decision would point some way out of the legal morass of affirmative action were doomed to disappointment. The case was not declared moot like *De Funis*, but four concurring justices came close to declaring it moot for everybody except Bakke and the officials at the Davis medical school. They declared that the case was neither a class action suit nor a constitutional precedent. It required some fancy legal footwork to reach that conclusion, and the ominous question is why they went through such maneuvers.

Justice Powell's official opinion for the Court was a meticulous and majestic survey of the issues raised by affirmative action. But it was just one man's opinion. The four concurring justices (Burger, Rehnquist, Stevens, and Stewart) concurred only in letting Bakke in and ordering the medical school to change its admissions program. They explicitly repudiated any support for anything else Powell had said. The four dissenting justices (Marshall, Brennan, White, and Blackmun) disagreed with the judgment but concurred in part of the decision repudiated by the concurring justices. In short, there was a different 5-4 majority for different sections of the opinion. It couldn't be closer than that.

The Bakke case is less of a precedent than it might be, not only because of its paper-thin majority, but because it is clear that the four concurring justices did not want it to be a precedent. They insisted on deciding it on the basis of Title VI of the Civil Rights Act, rather than under the Constitution. Title VI provided no explicit basis for Bakke to file a lawsuit, so the concurring justices created a basis by creative and imaginative interpretation. They claimed that this exegesis was necessary because the Congress that enacted the law was so preoccupied with direct discrimination that it never really considered the possibilities of "reverse discrimination." Actually, the 88th Congress, which wrote the Civil Rights Act, debated "reverse discrimination" and its ramifications repeatedly and at length. Why the fictitious history? Certainly the learned justices knew better. If they didn't, the dissenting opinion of Justice White told them better in no uncertain terms.

What the concurring opinions under the Civil Rights Act (instead of the Constitution) achieve is to keep the Court's options open to decide future affirmative action cases as it sees fit, unhindered by a constitutional precedent. The Court paid a high price, in candor and credibility, in order to keep that option. The ominous implication is that it intends to continue judicial policy-making instead of constitutional interpretation. It thereby raises to the Supreme Court level the tactics employed by administrative agencies in affirmative action (and other) cases. Rather than setting forth the law in advance, the justices say in effect, "Do what you want, and then we will tell you whether it is O.K."

A government of laws and not of men was supposed to mean something more than this. And the Supreme Court was supposed to mean something more than nine more politicians in Washington.

Mr. HATCH. Mr. President, I will leave the last word on Bakke to George F. Will, whose relentless stalking of this issue has been one of the outstanding, although least praised, aspects of his brilliant journalistic career. Will's point in his column following the Bakke decision that "reverse discrimination is a betrayal, not a fulfillment of American values," has also been established in some of the other items I have quoted here. But I especially wish to direct the attention of my colleagues to his insight into America's future under affirmative action:

If that policy succeeds, the United States will be less a nation than an angry menagerie of factions scrambling for preference in the government's allocation of entitlements.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Reverse Discrimination," by George F. Will, Newsweek, July 10, 1978.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REVERSE DISCRIMINATION

(By George F. Will)

You cannot spill a drop of American blood without spilling the blood of the whole world," Herman Melville wrote in 1849. ". . . Our blood is as the flood of the Amazon, made up of a thousand noble currents all pouring into one. We are not a nation, so much as a world." But government policy has been, increasingly, to divide the majestic national river into little racial and ethnic creeks. If that policy suceeds, the United States will be less a nation than an angry menagerie of factions scrambling for preference in the government's allocation of entitlements.

That policy was endorsed by the Administration's brief against Allan Bakke, a brief which urged that the nation should cultivate "race consciousness." The brief did not suggest how the government will decide, someday, that persons who have been "victims," personally or through "their forebears," have been "restored"—a strange choice of verb—"to the position they would have occupied" but for discrimination. The Bakke decision pleases the Administration.

Bakke won because a medical school, with no record of discrimination to rectify, adopted a numerical quota for certain minorities, and admitted some who were dramatically less qualified than he was. The Bakke decision has made little law. Therefore, most existing policies will continue, so the law can be riddled with racial considerations. With regard to higher education, the decision suggests broad tolerance for reverse-discrimination policies that are less raw than that which excluded Bakke. And Justice Powell's opinion for the Court can be read plausibly as somewhat permissive regarding considerations of race and ancestry in the allocation of other government benefits generally.

"SUSPECT" DISTINCTIONS

The opinion says racial and ethnic distinctions are "suspect" and require "exacting judicial examination." But when state distribution of benefits "hinges" on race or ethnicity, the racial and ethnic classifications are acceptable if they are "necessary" to promote a "substantial" state interest, such as diversity in enrollments. Four Justices even assert the constitutionality of programs like the one that excluded Bakke, programs that do not just use "minority status as a positive factor," but that "set aside a predetermined number of places" for minorities. These Justices say, not groundlessly: "For purposes of constitutional adjudication, there is no difference between the two approaches."

Powell says that the "equal protection" clause precludes "recognition of special wards entitled to a degree of protection greater than that accorded others"; he rejects a "two-class theory" of equal protection. But then he says there can be compelling state interests served by constitutional forms of discrimination which disadvantage whites for the benefit of preferred minorities. This necessarily means distinguishing two classes of citizens.

Powell says there is a distinction of constitutional dimension between an "explicit racial classification" that "totally" excludes members of some groups from full participation in a program, and "properly devised" racial considerations that are "flexible" in

treating race or ancestry as a "plus." But this can be a distinction without a significant difference. For most professional schools, the pool of qualified minority applicants is shallow. Schools that dip too deeply will produce striking disparities between the test scores and academic records of minorities and whites they accept. At some point such disparities must be *prima facie* evidence of a quota, whether it is acknowledged or surreptitious.

STATISTICAL PARITY

The Bakke decision does not necessarily mean the Court will say that reverse discrimination in employment and awarding contracts is "necessary" to a "substantial" state interest. But the Court may not seriously impede the bureaucratic drive to transform the core concept of American justice from "equal opportunity for individuals" to "statistical parity for government-approved groups." There is, indeed, a substantial state interest in broadening membership in the middle class, and especially in professions. But the Fourteenth Amendment guarantees equal protection to "persons," and any reverse discrimination grants special entitlements to preferred groups. Nevertheless, the Bakke decision will leave unscathed an array of programs by which the government encourages or compels public and private institutions to consider ethnic quantities more, and individual qualities less, when conferring benefits.

In 1954, the Court seemed on the way to saying what Congress subsequently seemed to say in the 1964 Civil Rights Act: race is an inherently unacceptable basis for state action. But now, in the Bakke case, the Court has refused to find that principle in the 1964 act, and the Court rejected that principle in cases before Bakke. For example, it held that states can tailor redistricting plans racially to create or preserve legislative districts that enhance the electoral power of preferred minorities (in the particular case, blacks and Puerto Ricans). The plan in question diluted the electoral strength of Hassidic Jews who do not enjoy government preference.

WARDS OF THE STATE

Reverse discrimination began as a means of ameliorating the condition of blacks, but it was quickly claimed as a "right" by groups defined by race, ancestry or sex. It is demanded in spite of the fact that it devalues the achievements of its beneficiaries and stigmatizes them as wards of the state, unable to compete. This taint is not disguised by tactical euphemisms, such as saying that employers must "differentially validate" employment tests when they are required to set lower passing scores for preferred minorities than for whites. Whether called "affirmative action" or (as in the 1976 Democratic platform) "compensatory opportunity," reverse discrimination, and the quest for statistical parity for "under-represented" groups, involve what Prof. Ben L. Martin calls the "sensory" theory of representation: "only personal qualities crude enough to be obvious to sense perception, such as skin color, language, or sex, are acceptable bases of representation." Martin explains reverse discrimination in terms of "the foot-race analogy":

"In a fair race, none is disadvantaged at the starting line. But if all begin with equal advantage, then all should finish together, because contemporary liberalism leaves virtually no personal quality—not character, personality, motivation, self-discipline, or any other personal trait—as the responsibility of the individual."

The premise behind reverse discrimination is this: an unfair start can be inferred from an unequal outcome. The traditional American premise is this: the equal status of citizenship is the basis on which a structure of inequality *should* be built by a population in which talents are neither equally distributed nor equally rewarded. Reverse discrimination is a betrayal, not a fulfillment, of American values.

III. AN ANGRY MENAGERIE?

Mr. HATCH. Mr. President, since 1976, as I have shown, we have slithered a long way down the slope from a free, self-regulating society to George Will's "angry menagerie," complete with a bureaucratic lion-tamer armed with a whip. In this section, I propose to examine what lies ahead.

Many of the developments which, after Fullilove, we may expect to flourish arrogantly throughout society, were already present in academe in 1978, when Dr. Joseph Adelson, professor of psychology at the University of Michigan and codirector of its Psychological Clinic wrote "Living with Quotas," which appeared in the May 1978 edition of the indefatigable Commentary magazine. Dr. Adelson's article is a particular favorite of mine. It is written with great grace, clarity, and sensitivity. When it was published, it was still possible to hope that quotas would "fade away to be remembered only as one of the many unpleasant episodes of the seventies." The Supreme Court, by its vacillation in Bakke and subsequent capitulation to interest groups, has ended this hope—but only for the moment. I will return to this point in my final section.

Another feature of Professor Adelson's paper that deserves praise is his courage and frankness in tackling the considerable deterioration in standards caused by the more brutal quota schemes. This is both more obvious and more alarming in so-called "hard" disciplines, like medicine, than in the "soft" ones like literature or politics (we may dispute that classification). Dr. Adelson's answer to his own question "Are The Students Qualified?" is masterly, and should be read with care. As to the courage this required, the story he relays of the assault on Dr. Bernard Davis of Harvard Medical School following his innocent comments on the subject would have deterred many people, including, I am afraid, most elected officials.

The final feature of Dr. Adelson's article I wish to note here is his point that affirmative action although ineffective, is a product—

Of the characteristic mind-set of the New Class of foundation executives, university presidents, bureaucrats and publicists who simply cannot bring themselves to understand that good things happen without benefit of their intervention. One would never suspect, in reading the reams of anti-Bakke writing, that minorities—and especially blacks—have during the last generation accomplished, partly through the vagaries of history and partly through their own exertions, an amazing series of transformations: from agrarian to urban, from poverty to the beginnings of economic stability, from dispossession to modernity.

Being naturally meaner and more suspicious than Professor Adelson, I personally would suspect that the New Class to which he refers has no intention of believing in any such explanation that might significantly hinder their imperial ambitions. This class conflict between taxpayers on the one hand and tax-consumers and administrators on the other explains much of current American politics.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Living with Quotas," by Joseph Adelson, Commentary, May 1978.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LIVING WITH QUOTAS

(By Joseph Adelson)

Several months ago, former President Gerald Ford spoke to a political-science class at my university. During the question period that followed he was asked for his views on the Bakke case, and replied that he was opposed to "arbitrary numerical quotas." Thereupon the class broke into what the local newspaper termed "vociferous applause."

A few days later I was interviewed by a young journalist who thought the story might be worth pursuing. He had himself been so disbelieving of the original press account that he had sought out and listened to the tape made during the former President's appearance. Sure enough, he told me, the applause had been enthusiastic, so much so that he would describe it as turbulent. He was dumbfounded. Is that what the students really felt? At Michigan—of all places—the founding campus of SDS? What did it mean? Was I as surprised as he was? I told him I would not have expected the students to have made public their private feelings, but was not at all surprised by the direction and intensity of those feelings; that most students in my experience have come to despise "affirmative action" because of the double standards it imposed, and which victimized them; furthermore, that most of the faculty I knew were equally scornful because of the duplicities these programs have come to involve; and that to my certain knowledge many in the administration hoped, in private, that the Court would hold for Bakke and thus rescue them from their own cant. And *that*, I said, was the story he ought to write.

He ought to reflect upon his own surprise, and recognize that the press had made almost no effort to discover whether racial-preference programs—after nearly a decade in place—had in fact fulfilled their promises, and what faculty and students now thought about them. Why such indifference to reality? What was at work, I suggested, was a strong wish not to know, to sustain a state of self-deception.

At this my interviewer became noticeably morose. He told me he felt very ambivalent about the problem. He had himself been in graduate school several years earlier, had been disturbed by the poor quality of minority students then enrolled; on the other hand, he could see no alternative except to admit many such students in the hope that some of them would make it. So he could not bring himself to write that story. Perhaps someone else could; perhaps I could. And with that we returned to the story he wanted to write, a "changing mood of the campus" piece.

Note the key term in this anecdote is *doubleness*. The journalist describes himself as ambivalent (of mixed or double feelings). The students resent the double standard, and the faculty feel themselves forced into duplicity (double dealing). The administration is troubled by its hyprocrisy (double facedness). These and other dualities dominate the history of affirmative action and in a sense fittingly, since these programs have from the beginning been haunted by an unacknowledged ambiguity or doubleness of purpose—whether to expand opportunity, or to compensate for prior injustice. The major means chosen has been a double-track system of admissions. Unable to confess to these contradictions, those in charge of racial-pref-

erence programs find themselves using deceptive or ambiguous language—that is, of mixed or double meaning: most commonly, the word "goal" when "quota" is meant, or, as will be evident later, the word "qualified" when in fact "marginal" or "unqualified" is correct. To sustain these deceptions, or to keep them hidden, other dualities come into play: the world is divided between insiders and outsiders, those who are and are not privy to secret information; or a schism develops between public and private discourse, the first tending toward blandness and boosterism, the second toward rumor and innuendo. The ultimate effect is a corruption both of language and conduct.

Does that seem overstated? Yet consider that in a milieu like the university, where one is customarily buried in statistics, it is generally difficult to obtain accurate information on the comparative credentials of majority and minority students, or on the relative attrition rates of the two groups, or on the costs—many of them hidden—that these programs entail. Since any good news is an immediate stimulus for publicity and self-congratulation, one tenth to assume, in most cases correctly, that no news is bad news. The subordinating of information to policy is something we have become accustomed to in other domains of public life, but it takes some getting used to at the university, and it has had a troubling effect on the way its members regard themselves and relate to each other.

An example: last summer a professor I know was called by a law firm and asked whether he could obtain some data on his university's medical school's admissions policies. The firm was preparing an amicus brief for the then-forthcoming Bakke hearing before the Supreme Court, and wanted to argue that objective credentials—test scores, grade point—were in fact valid predictors of achievement in medical school. Though it was generally held by expert sources that this was so, they had been unable to find enough published evidence, despite a thorough search of the literature, and were now fairly sure it was being suppressed. Perhaps as an insider he could obtain data pertaining to his own medical school. The professor thought he could; he remembered that an old friend of his had connections there and would no doubt have the information. He called upon the friend who first asked him, suspiciously, which side he was on, then told him, bitterly, that he did not think the data would be released, and that one ought to expect to get the runaround from the medical school. Not that one could trust the figures in any case, since the admissions dean was known to put the best face on things. There were only two sure ways to get the data—to threaten to sue if it were not released, but since that would take time, a more expedient means would be to find a Deep Throat, someone at the medical school who had access to the information and would be willing to steal it!

Finding both these alternatives too troubling to contemplate, the professor thereupon arranged an informal, off-the-record interview with the admissions dean, representing himself as sympathetic but concerned, and thus inducing the dean to unburden himself. The dean depicted himself as a beleaguered man, caught between the university administration, which kept urging him to keep the minority numbers up, and the medical-school faculty, which kept wanting him to keep the standards up. The trouble was that the administration was not being realistic about what level of intellectual quality was required to complete medical school these days. He had some serious questions about many of the minority students he was admitting, perhaps as many as half. Some of them he knew would not be able to make it through, and he felt sorry for what would happen to them. But he was even more worried about those who would just manage to get through and were, as he saw it, doomed to a career of marginal competence. Medicine became every day more technical, more demanding; and he doubted that they could keep up. It was not a matter of race. During the 50's the medical schools had so few really good applicants that they accepted and pushed through many white students of low quality. And what had happened to them? The dean was convinced that this was the group now giving medicine its rotten public image, through malpractice suits and Medicaid ripoffs. And at that point, he launched into what the professor later characterized as "lurid medical detail."

It is tempting to linger over those details, since stories of incompetence—real, imagined, or prospective—form a familiar genre of academic gossip; yet in doing so we would ignore what may be far more significant—the skewed relationships among colleagues which this anecdote reveals: false assumptions, misunderstood motives, an atmosphere of mistrust and paranoia which comes to infect everyone involved. It is the ambience of a novel of intrigue—Eric Ambler, let us say. The professor, an innocent, embarks upon what seems to be a simple enough errand of discovery, and is quickly drawn into the suspicions of the milieu. A friend, hitherto open, at first mistrusts him, then, assured of his loyalty, warns him to expect thwarting and deceit, and hence feels it legitimate to deceive in return. (The friend, it will later turn out, is deceived in another sense, in that he misunderstands the dean's public statements, thinking they reflect his actual sentiments, which turns out not to be quite the case.)

The professor, in hopes of evoking honesty from the dean, engages in some deceit of his own, simulating a sympathy he does not really feel. The dean reveals himself to be a deeply divided person, seeing himself compelled to offer entirely different messages to different audiences, telling the university administration one thing: "'We're doing the best we can'": the medical-school faculty another: "Do the best you can, and I'll try to limit the damages"; the outside world still another: "Standards are not going down, you can count on that"; and apparently sympathetic insiders yet another: "*Caveat emptor.*"

What are we to make of the admissions dean? We may think of him as a divided, indeed fragmented soul, but it is unlikely that he would agree. Though he sees himself as subjected to contradictory pressures, he probably does not recognize the degree of inner division he must maintain. Nor would he accept our judgment that such extraordinary differences between public and private disclosure amount to a form of fraud; he would be offended, or hurt, by that charge, since it does not take into account his sincere belief in racial equality. One is led ultimately to the idea that everyone is right—the dean is indeed divided, and to be so eases the practice of duplicity, itself in the service of an undeniable good.

In this sense, the dean's contradictions, internal and external, are no different from those experienced by anyone who must serve the inherently divided, confused, ambivalent aims of a racial quota system—they are merely more visible, more dramatic, because of the peculiarly salient position he occupies. What strikes me as more important is that similar divisions, similar deceptions have now become commonplace, almost a habit of mind, so taken for granted as to escape notice. Another example: we are now at a faculty dinner party and one of the guests, looking like the cat who swallowed the canary, announces that he has managed to secure from the dean of his college a "slot," that is, permission to appoint an assistant professor—a rare opportunity given the privations we share. He is head of the search committee and is overwhelmed by the range and depth of talent available. There are several hundred applicants, and at least fifty seem good enough to warrant a closer look. The problem the committee will have is narrowing that number down to the handful who will be invited to visit—no simple task since a number of them—all younger than thirty— already have substantial bibliographies and burgeoning national reputations.

At this point another guest asks him whether there were any minority candidates, and if so what did they look like. He is startled by the question, then recovers, and says something like: "Oh yes, there was I believe—uh—one—and she was—oh— somewhere well below the midpoint." As he tells us this his face breaks into an astonishing sequence of expressions—first a slight closing of the eyes, almost a wink; then a sardonic half-smile; then the sudden assumption of the most solemn gravity. It is over in a moment, so quickly that no one else there, I suspect, caught that quick sequence, and I imagine I would not have seen it myself had I not at that time been pondering whether to write this essay. The final phase of that sequence—the solemn expression of sincerity—will be seen again, and more than once, certainly when he informs the departmental meeting of the committee's search for a candidate, of its success, and of the *earnest efforts* to find suitable minority candidates. It may also be seen in a later colloquy with the dean, wherein those efforts are again described, and in that conversation several persons will be present—my friend addressing the dean, the dean nodding gravely, my friend half-winking, half-smiling, to signal his detachment from and acceptance of the ritual, and the dean winking back.

In that exchange they are signaling their submission to the improbabilities and absurdities of academic hiring in the era of affirmative action: the improbability that there is an undiscovered abundance of minority talent, that diligent search will uncover it, that bureaucratic monitoring (carried out by failed or mediocre academics) is necessary to insure the diligence of that search, because—*credo quia absurdum*—the modern university, that most liberal of American institutions, and beyond that devoted fanatically to the celebration of achievement, is nevertheless so steeped in racial bigotry that it cannot be trusted to recognize and overcome it independently.

In my view, it is the university's failure to resist that last, malicious idea, the idea of its bigotry, which is a major source of its current loss of dignity and self-respect.* But to return now to the professor and the dean, we may observe that the interchange between them, marked by acquiescence and inner disavowal, by a seeming acceptance of the forms and an aloof contempt for them: involves an internalization of dissent and thus its inhibition. Dissent is kept "inside," either inside the self, or inside the dialogue (as in the hinting and winking among "insiders") or within the "system," whatever that may be at the moment—the committee, the department, the college.

* What is worse, the university masochistically subsidizes its own defamation, in its sponsorship of affirmative-action *apparatchiks* whose sole métier is the propagation of witless charges of racism and the like. Here is one of our own, addressing the multitudes: "There is no way a white male professor will bring a minority person into his clan." Here is another: "The old-boy network has always worked . . . there is really no affirmative-action program." All this, mind you, at a university which submits—meekly, obsequiously—to the most outrageous demands made upon it in the name of affirmative action. We still await the day when the leadership of a major university defends itself or its faculty against such derogation. The failure to do so both reflects and contributes to the university's loss of self-confidence.

By keeping potential dissent confined to the family, one also keeps the secrets which occasion and sustain that dissent, in this case the illusions and falsehoods which have gathered around university quota systems. I have over time become convinced that this is not merely the effect of keeping dissent inside, but its unconscious intention. One is permitted to take a critical position about affirmative action as long as this is done on the grounds of high principle; but one produces consternation and panic through a descent to mere information. Several months ago I mentioned to a colleague of mine that I had collected some data which suggested the essential futility of our own well-regarded efforts in affirmative action, and that I was planning to bring these dolorous findings to the attention of our faculty. My friend looked at me in genuine horror and urged me not to do it, saying that many of our colleagues become agitated when confronted with unpleasant facts about our quota system.

I decided not to do it, no doubt prudently; but if you think my colleague's alarm overdone, consider the truly curious case of Dr Bernard Davis of the Harvard Medical School. To remind you: Dr. Davis is a distinguished medical scientist who was one day overcome by an aberrancy of candor. It led him to write an editorial for the *New England Journal of Medicine*, in which he worried about a possible erosion of standards due to affirmative action. Having read the editorial a dozen times, I can attest that there is nothing in the least provocative about it, that it is cautious and sober to a fault. But it was Dr. Davis's error to cite a specific example, involving the waiving of requirements for a minority student, and it was that concreteness, one may imagine, that led the press to pick up the story. From that moment on, all of Dr. Davis's scrupulosity of tone was of no avail, since he had "gone public" (however fortuitously) and had offered a datum. He was thereupon the object of demonstrations, denunciations and a motion of censure brought against him by the more thuggish elements of the Harvard medical faculty, many of them no doubt Life Members of the ACLU.[1]

The gravamen of the charge directed against Dr. Davis is not merely that his concerns found their way into the press, but that once made known they tended to mislead the public, who would mistake the part for the whole, and would be led to distrust all minority medical students and physicians because of statements—either true or false in substance—which apply only to some. It is certainly true that the public is uneasy about possible minority incompetence; and it is also true that the compenent—such as my own current group of minority students—are thereby unfairly burdened. But the distrust felt by the public is due not to the breaking of the silence, but to the silence itself. The unvarying diet of sanctimony and false reassurances purveyed by our educational leaders has in the end produced an almost complete synicism, not only in the university, but in the public at large. Those youngsters applauding Gerald Ford have parents and friends and neighbors living in the real world, and the word gets out that the official pieties are not to be believed. What *is* believed is hard to say: it seems to be the usual mixture of truths and exaggerations and some falsehoods; but on balance—and it grieves me to say so—the uninformed gossip of the public is far closer to the truth than all the press releases issued by all the law- and medical-school deans in all America.

[1] There is an excellent account of the Davis incident, by J. W. Foster, in the *New Republic*, July 17, 1976.

II

I spoke earlier about the illusions and falsehoods which have gathered around the topic of affirmative action. The vast outpouring of writing prompted by the Bakke hearing has made these more evident than before, in that the arguments offered for reverse discrimination have involved the reiteration of certain ideas about the quota systems—how they work, whom they work for, and what their long-range effects have been. We find that in particular three central statements recur: (1) that whatever one may feel about the moral worth of these programs, they enjoy the merit of success; (2) that those being helped are the disadvantaged; and (3) that those favored are fully qualified for the programs they enter and fall short only in modest and easily remedied ways. I want to take up these assumptions and show that each of them is open to serious question, that the realities are far more complex.

1. *Are quotas successful?* In the course of arguing with any proponent of racial preference systems, one is likely to find, sooner or later, that the trump card offered is the argument from results. Triumphantly: "Whether you like it or not, the fact is that it *works*!" Or beseechingly: "I don't see what else ye can do—it's the *only* thing that will work." Here is Father Hesburgh of Notre Dame, in a letter commending an article by McGeorge Bundy, telling us that the "embryonic effort of a decade has multiplied by a factor of ten or more the number of minority students now preparing nationwide to be doctors or lawyers." That is an inflated figure, as such figures often are, but let it stand. Let us accept that there has been a substantial rise in the number of minority students enrolled—from 2 to 3 per cent before affirmative action to about 9 per cent today.

That is indeed an impressive increase, if we can bring ourselves to believe it—that is, to believe not merely the numbers but also what they are meant to imply: that the increase in those preparing will translate into an equivalent increase in those being graduated; that those graduated are fully competent; that the rise is due to quotas themselves; and that nothing else will work.

Note first that these figures almost always tell us the proportions admitted or enrolled, and rarely the percentages who are graduated. We know how many are in the pipeline, but not how many emerge, and it is no longer quite the secret it once was that there is often a considerable gap between those numbers.

To take an example close to home: my own training program in clinical psychology adopted in the early years an ambitious one-third minority quota, and in order to meet it admitted students recklessly. The attrition rate has been extremely high: of those admitted in those early years, at most one in five will achieve the doctorate (compared with two-thirds of those admitted regularly). We brandish one statistic, the large percentage of minority students admitted and enrolled, and conceal, even from ourselves, the fairly complete failure to carry students through the doctorate. Nor do we comment on the cruel loss of time and self-esteem suffered by the students involved; all of them would have succeeded elsewhere, but were misplaced in our program, drawn there only to satisfy political demands and our own moral vanity. Somewhat similar patterns have been reported for many law schools where, at least in the past, the proportion of minority students graduating is substantially lower than those enrolling, and the percentage of those who pass the state bar exams is lower still, at times shockingly low.

Yet I would not want to lean heavily on these or other examples. To do so is only to add to the general mindlessness, wherein statistics when available are torn out of context, or otherwise used to dissemble and deceive. In particular one must take skeptically the news that things are going swimmingly at Harvard Law and Stanford Medical and MIT Economics and the like. Elite schools and programs, once they put their minds to it, can command the best of everything, and their successes in minority training tell us nothing at all about what is happening elsewhere. This country's educational institutions are so diverse, and so variously organized, that it is nearly impossible to discern what any given set of figures actually means. I know of two nearby law schools: one is elite, admits selectively, and fails hardly anyone. Another is non-elite, admits more generously, yet fails a large percentage. There is no easy way one can compare their statistics of "success" or aggregate them; nor do national statistics tell us much unless we have some sense of what levels of competence those figures represent. The only thing we can say with confidence is that the statistics of "success" bandied about are inflated to an unknown degree.

What is even more troubling than the inflation is the tacit assumption that all improvements in minority enrollment are due only to the quota programs. We have here the characteristic mindset of the New Class of foundation executives, university presidents, bureaucrats, and publicists who simply cannot bring themselves to understand that good things can happen without the benefit of their intervention. One would never suspect, in reading the reams of anti-Bakke writing, that minorities—and especially blacks—have during the last generation accomplished, partly through the vagaries of history and partly through their own exertions, an amazing series of transformations: from agrarian to urban, from poverty to the beginnings of economic stability, from dispossession to modernity.

One would never imagine that these profound demographic changes may account for the largest part of the increased representation of minority students in higher education. None of this is evident in Father Hesburgh's letter, which asserts that "for only ten years now have we provided a modicum of equal educational opportunity . . ." etc., etc. That is *de haut en bas*, the voice of the good Father tending a mute and faithful flock, or of the foundation chief dispensing largesse to those he deems worthy. It simply does not correspond to the realities of an energetic and clamorous democratic culture, in which *we* do not provide for *them*, but in which all of us strive, compete, negotiate, accommodate, succeed, fail, rise and fall and rise again.

2. *Do quotas help the disadvantaged?* One afternoon several years ago, while serving on our admissions committee, I came across the applications of two young women. One was an ambassador's daughter who had been educated in private secondary schools, and was attending a most prestigious Ivy League university. The other might have stepped out of a Harriet Arnow novel. She had been born in Appalachia, the daughter of a poor farmer. The farm failed, the family moved north, her father died, the family survived on welfare and odd jobs, she married young, bore a child, was divorced, began attending a municipal university and ultimately was graduated with an excellent record. With respect to objective measurements—test scores and the like—these two young women were more or less evenly matched. It was the ambassador's daughter who, being black, was offered an invitation (which she did not ultimately accept, having a surfeit to choose from); the welfare child, being white, was not admitted, did not come close.

This anecdote has been chosen to illustrate as succinctly as possible the moral prob-

lems inherent in any system which provides privileges by race alone, and which will not recognize other bases of disadvantage. Either one must argue that race is the only stigmatizing American condition, an argument sometimes made but not commonly accepted; or else one must assume that race and class are essentially identical, which is simply not the case. And it is least likely to be the case at the higher reaches of higher education, given the strong association between social class and scholastic competence, an association which seems to be universal. This past year our admissions committee decided to give some attention to the socioeconomic status of all plausible candidates. What we found was startling; of the five minority "finalists," three were attending elite private colleges, and two were at selective state universities. Only one had received scholarship help. Three of the five came from affluent—not merely comfortable—families, and one of these gave every evidence of being rich. The committee member who interviewed most of them reported back to our faculty, somewhat ruefully, that their average family income was considerably higher than that enjoyed by the faculty itself.

The luck of the draw that year may have given us an unusually well-to-do group—I suspect it did—but the fact remains that during the last few years almost all of the minority students in our program have appeared to be of middle-class background, to judge by dress, speech, and quality of sensibility. They are talented and likable and interesting; they are well-schooled; they will succeed in getting their degrees. But it is pointless to pretend that they are disadvantaged, or that their presence introduces any diversity to our program except in the most superficial fashion. Nor does one find them all that interested, as a group, in specifically minority problems (nor do I think they ought to be), especially after they have been admitted to graduate training, and can relax and discover what really interests them.

The interaction between class and race is an issue which has yet to be addressed seriously by most commentators on affirmative action, not to mention its bureaucrats. Any intelligent analysis of the issue will have to begin by recognizing the aforementioned relationship between being middle class and being competent scholastically. Hence a policy of preferential admissions which favors the disadvantaged—of any race or ethnic group—will involve a high rate of failure; conversely, any attempt to choose minority students likely to succeed means a preference for the middle class among them. What has happened, I think, is that the strong departments and schools—such as my own—having viewed the wreckage of their earlier efforts to favor the economically deprived, have now decided to recruit those more likely to succeed, which in practice means middle-class minority students. Hence a program which began as an effort to remedy disadvantaged has become increasingly a program which most helps those minority youngsters who least need help.

3. *Are the students qualified?* I have kept for last the most difficult question of all, the meaning and use of the term "qualified." The question is so difficult emotionally that only a genuinely self-confident minority scholar, like Thomas Sowell, can deal with it in a straightforward way. It is also difficult conceptually, since the term is intrinsically a matter of context—when we use the word we ordinarily specify when and how and for what purposes and compared to whom. Given these sources of ambiguity, it makes one uneasy to observe the shrilliness with which the idea is advanced that minority students chosen for professional training are "entirely qualified." A few nights ago I watched a television debate on the Bakke case in which an old warhorse of the old liberalism insisted that the minority students chosen ahead of Bakke were *qualified*—he stressed the word, almost shouted it. What made him think so, he was asked. Well, the doctors who chose them thought so, otherwise they would not have been chosen. And having uttered that tautology, he broke into a smile of seraphic self-satisfaction.

What lies behind all this blustering, all this shrilliness, is an intention to rewrite the common understanding of what it means to possess adequate academic qualifications. A subsidiary intention is to depict academics as rigid, hard-hearted pedants who for the sake of a few measly points on this or that meaningless test refuse to offer a helping hand to deserving minority students. Yet the differences are not trivial. Were they trivial there would be no issue, since it is hard to imagine many teachers or students becoming indignant or concerned about the difference between an A− or a B+ level of achievement, or between a Graduate Record Examination score of 650 as against 600. The differences we worry about are large and at times enormous, so much so as to raise issues which go beyond the issue of fairness to the larger question of whether the public is being responsibly served. It is rather ironic to note that the more sophisticated moral arguments in favor of reverse discrimination have emphasized "the common good," yet it is precisely that common good which a feckless reliance upon quotas is liable to injure.

One of the unexpected byproducts of the Bakke case is that it liberated data on medical-school admissions held closely or concealed. These findings are especially important in that they refer to the medical school Bakke sued—the University of California at Davis, a run-of-the-mill institution—rather than to Harvard or Johns Hopkins and the like, which can choose from among the very best minority applicants. The findings from the Davis medical school may in that sense be more representative, and what they tell us is simply distressing. Students admitted under a quota to the school had an undergraduate grade-point average in the B− to C range. You will not grasp what these figures say without being aware of the current level of grade inflation at American universities. For example, the typical student at my university graduates with a B+ average, and a good (though not brilliant) one will graduate with an A−. The minority students admitted to the Davis medical school were at the very bottom of the grade distribution; in an era of honest grading, most of them would have been at the D level or below. A friend of mine, deeply sympathetic to affirmative action, looked over the table of grades and test scores I provided for him, groaned, and said, "My Lord. If that's who they let in, whom do they keep out?"

These are painful matters to read and to write about, yet anyone confronting the Davis medical statistics for the first time, as I myself did a few weeks ago, and can construe from his own experience what they mean, will likely find himself overcome with dismay. It is deplorable that these data have received almost no attention in the press; that the university presidents and deans who have access to this information keep silent; that students so marginal are encouraged to enter medical training; and that as a consequence the able minority student inevitably comes under suspicion.

When quota programs in higher education first went into effect, thoughtful critics warned that the logic of the situation would ultimately compel an extension of quota-mindedness into all other areas of public life, and not merely by infection and example. They reasoned that marginal students, once recruited and enrolled, would tend to be passed through educational programs—at least in many cases—and then be unable to compete equally in an open market for talent. Hence new systems of preferment would be established and sustained. That is just what has happened. The emerging solution, which we see in faculty hiring and elsewhere, is to set aside, tactily, certain positions as "minority" slots. Thus we reach the final and most wretched duality of all—a two-tier system of categories, involving on the one hand "real jobs" for which serious candidates compete seriously, and on the other, "minority jobs" which are set aside as a sop either to conscience or, more often these days, to the demands of the government bureaucracies. The corrupt means chosen to achieve the virtuous aim of integration ends in imposing, for the first time, segregated statuses within the university.

At this writing, the ultimate fate of racial preference systems remains unclear, pending the Court's decision on Bakke. Most lawyers I speak to believe the Court will rule as narrowly as possible, and if it does we can expect the struggle to continue, even to intensify, and to be fought via legislation and popular initiative. On the other hand, the Court may hold for Bakke on broad constitutional grounds, and the quota issue will fade away, to be remembered only as one of the many unpleasant episodes of the 70's. Yet even so we would be left with the most disturbing questions about how social policy is made in this country.

The rapid conversion of "affirmative action" to bureaucratically mandated quotas has taken place despite specific congressional intentions to the contrary, despite its overwhelming rejection in public-opinion polls, despite the solemn disavowals of President Carter both before and after his election, and despite a body of legal doctrine presumably removing race as an acceptable criterion for preferment. None of this has made the slightest difference. Congress is paralyzed. The President, characteristically, waffles and then yields. Some of our most prominent legal theorists promptly discover that, on second thought, a little racial discrimination is just what the country needs, as long as it is understood to be for our own good, and carried out by high-minded folk. Those folk turn out to be revenants from the Great Society—McGeorge Bundy, Joseph Califano, and the like—who seem bent on repeating all of the errors of that era, who are still unable to grasp that sheer energy and mere good will do not in themselves accomplish wise policy, and that authoritarian means, however, well meant, will not achieve democratic ends. A thwarted and resentful public seems to understand this perfectly; it is only our leadership which cannot.

Mr. HATCH. Mr. President, the efficacy of quotas was a subject addressed by Prof. Thomas Sowell in a pamphlet entitled "Affirmative Action Reconsidered: Was it Necessary in Academia?" published by the American Enterprise Institute in 1975. Professor Sowell's work remains a model of incisive thinking about some of the factors other than discrimination that are actually responsible for the numbers of blacks, women or any distinct social group to be found in occupational categories relative to their numbers in the general population. An interesting aspect of this work is Professor Sowell's demonstration that women were much more, and more prominently, involved in the labor force in the 1930's, and that their numbers reduced in response to demographic and cultural changes.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Affirmative Action Reconsidered," by T. Sowell; AEI 1975.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AFFIRMATIVE ACTION RECONSIDERED: WAS IT NECESSARY IN ACADEMIA?

(By Thomas Sowell)

INTRODUCTION

Labels and images have become central in the controversies surrounding affirmative action. To some people, affirmative action means making equal opportunity concrete, while to others it means reverse discrimination. To some people, affirmative action is only a partial compensation for monumental wrongs, while to others it just means replacing competent whites with incompetent blacks. The reality of affirmative action is much more complex than the labels and images, both in concept and in practice.

To make these intricate and emotionally charged issues manageable, it is necessary (1) to distinguish the basic concepts and legal rationale of affirmative action from the many specific laws, regulations, and practices that have developed under the affirmative action label, (2) to measure in some general terms the magnitude of the problem that affirmative action programs were intended to solve or ameliorate, (3) to consider the actual results achieved and the general trends set in motion by these programs, and finally (4) to weigh the implications of affirmative action policies for those directly affected and for society in general.

This study draws upon the large general literature on race and sex differentials in employment, pay, and promotion prospects. In addition, it presents some original data specifically focused on academic employment, pay, and promotion. For many occupations, the fact that some of the factors determing individual qualifications for jobs are intangible makes it difficult to determine how much of the observed difference in end results is due to discriminatory treatment and how much to differences in the relevant capabilities. For the academic profession, however, many of the job qualifications that are either conceptually or statistically elusive in other occupations are spelled out—most bluntly in the "publish or perish" rule. For example, the possession or nonpossession of a Ph.D. is crucial to an academic career, and the quality of the department at which the Ph.D. was earned is of major importance at the outset of a career and exerts a continuing influence for years thereafter*. Comprehensive data available from the American Council on Education cover both the degree level of academic individuals and the respective disciplines' own rankings of the various university departments which issue those degrees, as well as the publication records and academic salaries of individuals by race and sex. In addition, the National Academy of Sciences has made available data collected by the National Science Foundation on holders of doctoral degrees (Ph.D.s, M.D.s, and other doctorates) in various fields by race and sex. In short, the academic profession offers a unique combination of known job requirements and salary data with which to determine to what extent group differences in pay represent group differences in job requirements rather than employer discrimination.

I. THE CONCEPT

Among the many distinctions that need to be made is the crucial distinction between the *general principle* of affirmative action and the specific actions taken by the courts and administrative agencies. The general principle behind affirmative action is that a court order to "cease and desist" from some harmful activity may not be sufficient to undo the harm already done or even to prevent additional harm as the result of a pattern of events set in motion by the previous illegal activity. This general principle of affirmative action goes back much further than the civil rights legislation of the 1960s and extends well beyond questions involving ethnic minorities or women. In 1935, the Wagner Act prescribed "affirmative action" as well as "cease-and-desist" remedies against employers whose anti-union activities had violated the law.[1] Thus, in the landmark *Jones & Laughlin Steel* case which established the constitutionality of the act, the National Labor Relations Board ordered the company not only to stop discriminating against employees who were union members, but also to post notices to that effect in conspicuous places and to reinstate unlawfully discharged workers with back pay.[2] Had the company merely been ordered to cease and desist from economic (and physical) retaliation against union members, the *future* effect of its *past* intimidation would have continued to inhibit the free-choice elections guaranteed by the National Labor Relations Act.

Racial discrimination is another obvious area where merely to "cease and desist" is not enough. If a firm has engaged in racial discrimination for years and has an all-white work force as a result, then simply to stop explicit discrimination will mean little as long as the firm continues to hire its current employees' friends and relatives through word-of-mouth referral. (Many firms hire in just this way, regardless of their racial policies.) Clearly the area of racial discrimination is one in which positive or affirmative steps *of some kind* seem reasonable—which is not to say that the particular policies actually followed make sense.

Many different policies have gone under the general label of affirmative action, and many different institutions—courts, executive agencies, and even private organizations—have been involved in formulating or interpreting the meaning of the label. The conflicting tendencies and pressures of these various institutions have shifted the meaning of affirmative action and produced inconsistent concepts as well. There is no way to determine the meaning of "affirmative action." All that can be done is to examine the particulars—the concepts, the intentions, and the actual effects.

In a society where people come from a wide variety of backgrounds and where some backgrounds have been severely limited by past discrimination, the very definition of equality of opportunity is elusive. For example, a seniority system in a company which previously refused to hire minority individuals means that present and future discrimination occur because of past discrimination. In 1969, the court of appeals struck down such a system on grounds of its current discriminatory effect.[3] In another 1969 case, the Supreme Court struck down a mental test for voters in a community with a long history of providing segregated and inferior education for Negroes.[4] Again the rationale was that the test represented present discrimination, considering the community's past behavior. This case touches the crucial question of what to do when the effects of past discrimination are reflected in current individual capabilities. Is equal opportunity itself discriminatory under such circumstances? If so, is anything more than equality of treatment justifiable under the Fourteenth Amendment and corollary statutes and court rulings? As important as the question of whether a legal basis exists for any compensatory or preferential treatment is the question of who should bear the inevitable costs of giving some citizens more than equal treatment. A question may also be raised as to whether compensatory or preferential treatment really serves the long-run interests of the supposed beneficiaries.

The legislative history of the Civil Rights Act of 1964 shows that many of these concerns and dilemmas were present from the outset. Senator Hubert Humphrey (Democrat, Minnesota), in helping to steer this legislation through Congress, attempted to meet criticism by pointing out that the act "does not require an employer to achieve any kind of racial balance in his work force by giving any kind of preferential treatment to any individual or group."[5] He said that there must be "an intention to discriminate" before an employer can be considered in violation of the law and that the "express requirement of intent" was meant to prevent "inadvertent or accidental" conditions from leading to "court orders."[6] Senator Joseph Clark (Democrat, Pennsylvania), another supporter, made it clear that the burden of proof was to be on the Equal Employment Opportunity Commission (EEOC) to "prove by a preponderance" that a "discharge or other personnel action was because of race"; Senator Clark added categorically: "Quotas are themselves discriminatory."[7]

Congress also faced the question of what to do about groups whose historic disadvantages left them in a difficult position when competing on tests with members of the general population. Senator John Tower (Republican, Texas) cited, as an example of what he was opposed to, a case in Illinois where a state agency had forced a company to abandon an ability test which was considered "unfair to 'culturally deprived and disadvantaged groups.'"[8] Senator Clifford Case (Republican, New Jersey) replied that "no member of the Senate disagrees" with Tower on this point, and Senator Humphrey affirmed that ability tests "are legal unless used for the purpose of discrimination."[9] Humphrey rejected Tower's proposed explicit amendment on this point because he considered it "redundant": "These tests are legal. They do not need to be legalized a second time."[10] Senator Case characterized the Illinois state agency's actions as an "abuse"[11] and insisted that the Civil Rights Act did not embody "anything like" the principle of the Illinois case.[12] Humphrey brushed aside the Illinois case as "the tentative action of one man," which he was sure the Illinois commission as a whole would "never" accept.[13]

Despite the clear intent of both the supporters and opponents of the 1964 Civil Rights Act, the actual administration of the law has led precisely in the direction which its sponsors considered impossible. The burden of proof has been put on the employer whose work force does not reflect the racial or sex proportions deemed appropriate by the federal agencies administering the law. The chairman of the Equal Employment Opportunity Commission has demanded of employer witnesses at public hearings what has been "the action taken to hire more minority people."[14] The commission's position is that "any discussion of equal employment opportunity programs is meaningful only when it includes consideration of their results—or lack of results—in terms of actual numbers of jobs for minorities and women. . . ."[15] Numbers and percentages are repeatedly invoked to show "discrimination"[16]—without any reference to individual cases or individual qualifications and with percentages below EEOC's expectations being characterized as "exclusions" or "underutilization." The notion of qualified applicants has been expanded to mean "qualified people to train"[17]—that is, people lacking the requirements of the job whom the employer would have to train at his own expense. Contrary to the congressional debates, the burden of proof has been put on the employer to show the validity of the tests used,[18] and the notion of "tests" has been expanded to include job criteria in general, whether embodied in

*Theodore Caplow and Reece J. McGee, *The Academic Marketplace* (New York: Basic Books, Inc., 1961), p. 225; David G. Brown, *The Mobile Professors* (Washington, D.C.: American Council on Education, 1967), p. 97.

Footnotes at end of chapter.

a test or not.[16] As for employer intentions, a poster prepared by the EEOC itself includes among ten true-false questions the statement, "An employer only disobeys the Equal Employment Opportunity laws when it is acting intentionally or with ill motive"[20]—and the answer to that question is *false*. Despite Senator Humphrey's assurances about "express requirement of intent," legal action can be taken on the basis of "inadvertent or accidental" conditions.

The EEOC is only one of many federal agencies administering the Civil Rights Act in general or the affirmative action programs in particular. There are overlapping jurisdictions of the Department of Labor, the Department of Health, Education and Welfare, the Department of Justice, the EEOC, and the federal courts.[21] There are also regional offices of all these agencies which vary significantly in their respective practices.[22] Moreover, when one federal agency approves—or requires—a given course of action, following such an approved course of action in no way protects the employer from being used by another federal agency or by private individuals because of those very actions.[23] Indeed, federal agencies have sued one another under this act.[24] In short, the meaning of the act is not clear even to those intimately involved in its administration.

The courts have not gone as far as the administrative agencies in forcing numerical "goals and timetables" on employers. Numerical specifications have typically been invoked by courts only where there has been demonstrable discrimination by the particular employer in question—not simply where there are "wrong" racial proportions. In this specific context, numerical goals are "a starting point in the process of shaping a remedy" for "past discriminatory hiring practices" by the employer to whom the court order applies.[25] In the landmark case of *Griggs v. Duke Power Company*, the Supreme Court included the company's past record of racial discrimination as a reason why the company could not use tests which (1) eliminated more black job applicants than white job applicants and (2) had no demonstrated relationship to actual job performance.[26] In general, the courts have rejected the notion that "any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. . . ."[27]

Legal remedies under the Civil Rights Act and related executive orders of the President range from cease-and-desist orders through individual reinstatement and group preferential hiring to the cutting off all federal contracts to the offending employer. The latter is a virtual sentence of death to any leading research university, whether public or "private," for they are all dependent upon federal money to maintain their competitive standing and will sustain a massive loss of top faculty without it.

FOOTNOTES

[1] Section 10(c) of the National Labor Relations Act of 1935.

[2] Harry A. Millis and Emily Clark Brown, *From the Wagner Act to Taft-Hartley* (Chicago: University of Chicago Press, 1950), p. 97.

[3] Local 189, United Papermakers and Paperworkers, AFL-CIO vs. United States, 416 F.2d 980 (1969).

[4] Gaston County vs. United States, 395 U.S. 285 (1969).

[5] U.S. Equal Employment Opportunity Commission. *Legislative History of Titles VII and XI of Civil Rights Act of 1964* (Washington, D.C.): U.S. Government Printing Office, n.d.), p. 3005. Hereafter referred to as *Legislative History*.

[6] Ibid., p. 3006.

[7] Ibid., p. 3015.

[8] Ibid, p. 3134.

[9] Ibid., p. 3160.

[10] Ibid.

[11] Ibid., p. 3131.

[12] Ibid., p. 3161.

[13] Ibid., p. 3131.

[14] *Hearings before the United States Equal Employment Opportunity Commission on Discrimination in White Collar Employment*, Hearings held in New York, New York, January 15–18, 1968 (Washington, D.C.: U.S. Government Printing Office, n.d.), p. 110. Hereinafter cited as *EEOC Hearings, New York, 1969*.

[15] *Hearings before the Equal Employment Opportunity Commission on Utilization of Minority and Women Workers in Certain Major Industries*. Hearings held in Los Angeles, California, March 12–14, 1969. Hereinafter cited as *EEOC Hearings, Los Angeles, 1969*.

[16] *EEOC Hearings, New York, 1969*, pp. 1, 4–13, 161, 169, 444.

[17] Ibid., p. 303.

[18] "Employment Discrimination and Title VII of the Civil Rights Act of 1964," *Harvard Law Review*, March 1971, pp. 1132–1139.

[19] Richard A. Lester, *Antibias Regulation of Universities* [New York: McGraw-Hill Company, 1974], p. 126n.

[20] G.P.O. 870–933.

[21] Lester, *Antibias Regulation*, pp 3–4.

[22] Ibid., pp. 89–91.

[23] Ibid., pp. 90, 117.

[24] Francis Ward, "U.S. Agencies Clash in Rights Lawsuit," *Los Angeles Times*, April 27, 1975, Part IV, p. 1 ff.

[25] Carter vs. Gallagher, 452 F.2d 315 [1971], as reported in 452 *Federal Reporter*, 2d series, p. 331.

[26] 401 U.S. 424 [1971].

[27] Ibid., pp. 430, 431.

II. THE PROBLEM

There is little real question that if one goes back a number of years one finds a pervasive pattern of discrimination against minorities in academic employment. This applies not only to blacks and other minorities regarded as "disadvantaged," but also to Jews, who were effectively excluded from many leading university faculties before World War II.[1] The situation of women is somewhat more complicated and so will be deferred for the moment. However, the question that is relevant to affirmative action programs for both minorities and women is, what was the situation at the onset of such programs and how has the situation changed since?

While colleges and universities were subject to the general provisions of the Civil Rights Act of 1964 and to subsequent executive orders authorizing cancellation of federal contracts for noncompliance,[2] the *numerical proportions* approach dates from the Labor Department's 1968 regulations as applied to academic institutions by the Department of Health, Education and Welfare.[3] More detailed requirements—including the requirement of a written affirmative action program by each institution—were added in Revised Order No. 4 of 1971,[4] which contains the crucial requirement that to be "acceptable" an institution's "affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women" and must establish "goals and timetables" for increasing such "utilization" so as to remedy these "deficiencies."[5]

For purposes of establishing a chronology, 1971 may be taken as the beginning of the application of numerical goals and timetables to the academic world. The question thus becomes, what were the conditions in academic employment, pay, and promotions as of that date? For minorities in general, and blacks in particular as the largest minority *virtually nothing* was known about academic employment conditions at that point. Assumptions and impressions abounded, but the first national statistical study of the salaries of black academics is that published in 1974 by Professor Kent G. Mommsen of the University of Utah.[6] In short, affirmative action programs had been going full blast for years before anyone knew the dimensions of the problem to be solved. Professor Mommsen's data for the academic year 1969–70 show a grand total of $62 per year salary difference between black Ph.D.s and white Ph.Ds.[7] An earlier study by Professor David Rafky found that only 8 percent of black academics in white institutions regarded themselves as having personally experienced discrimination in their careers.[8]

These data may seem to be sharply at variance with data showing numerical "underutilization" of minorities in the white academic world, and it is these latter data which HEW and other supporters of affirmative action rely upon. There are some rather simple and straightforward reasons why the percentage of blacks (or minorities in general) in the academic world (or at white institutions) is smaller than their percentage in the general population:

(1) Only a very small proportion of blacks meet the standard requirements of a Ph.D. for an academic career. Less than 1 percent of the doctorates earned in the United States are received by blacks and, despite many special minority programs and much publicity, less than 2 percent of graduate students are black.[9] Various surveys and estimates show less than 4,000 black Ph.D.s in the United States.[10] This is less than two black Ph.D.s for every American college or university—regardless of what goals and timetables may be set.

(2) Most black academics teach at black colleges and black universities,[11] and so do not show up in the predominantly white institutions where affirmative action data are collected. Nor are these black academics eager to leave and join white faculties elsewhere: the average salary increase required to induce black academics to move was over $6,000 a year in 1970.[12] The crucial element of individual choice is left out of the affirmative action syllogism that goes from numerical "underrepresentation" to "exclusion." One study (by strong supporters of affirmative action) showed that some black academics refuse even to go for an interview at institutions that do not have a black community nearby.[13]

(3) The career characteristics of most black academics do not match the career characteristics of white (or black) faculty at the leading research universities that are the focus of affirmative action pressures. This is particularly true of the two key requirements at research universities—the Ph.D. and research publications. A survey of the faculty at black private colleges and universities found that only 25 percent had a doctorate and only 4 percent had ever published in a scholarly journal.[14] None of this is surprising, given the history of blacks in the United States. Nor should it be surprising that academics with those characteristics prefer to remain at teaching institutions rather than move to research universities.

None of this disproves the existence of discrimination in the academic world. It merely indicates that numerical underrepresentation is not automatically equivalent to discrimination. More fundamentally, it makes discrimination an empirical question—not something to be established intellectually by sheer force of preconception or to be established administratively by simply putting a never-ending burden of proof (or disproof) on institutions. For both minorities and women, a distinction must be made between saying that there is discrimination in general and establishing the particular *locus* of that discrimination. Even the most casual

Footnotes at end of chapter.

acquaintance with American history is sufficient to establish the existence of discrimination against blacks. The question is whether the statistical end results so emphasized by HEW are *caused* by the institutions at which the statistics were gathered.

The extent to which the patterns of minorities can be generalized to women is also ultimately an empirical question. In some specific and important respects, academic women are quite different from minority academics:

(1) Women have not risen to their present proportions among college and university faculty from lower proportions in earlier eras, despite a tendency towards such fictitious parallelism in the literature.[15] Women constituted more than 30 percent of all faculty members in 1930, and the proportion declined over the next thirty years to about 20 percent in 1960. Women reached a peak of nearly 40 percent of all academic personnel (faculty and administrators) in 1879, with fluctuations, generally downward, since then.[16] Similar declines have occurred in the representation of women in other high-level professions over a similar span, both in the United States and in Europe.[17] It is not merely that much of the assumed history of women is wrong but, more important, that the *reason* for current female disadvantages in employment, pay, and promotion are misunderstood as a result. The declining proportions of female academics occurred over a period of rising rates of marriage among academic women,[18] and a period or rising birth rates among white women in general.[19] In short, there is at least prima facie evidence that domestic responsibilities have had a major impact on the academic careers of women over time—which raises the question whether domestic responsibilities should not be investigated further as a factor in current female career differences from males, rather than going directly from numerical "underrepresentation" to "exclusion" and "discrimination."

(2) Women have administered and staffed academically top-rated colleges for more than a century.[20] in contrast to the black colleges which have never had top-rated students or faculty.[21] Although women's colleges such as Bryn Mawr, Smith, and Vassar have been teaching institutions rather than research universities, their students have been quite similar academically to those in the research universities and their faculty typically has had training similar to that of the faculties of research institutions. In fact, in some instances, these women's colleges have been part of research universities (Radcliffe, Barnard, Pembroke, and so on). In short academic women have had both higher academic standing than minorities and readier access to faculty positions at research universities. Information barriers in particular have been far less important in the case of women than in the minority case, and word-of-mouth methods of communication among prestige institutions have included women for a longer time.

The point here is not to minimize women's problems but to point out that they are in some ways distinct from the problems of minorities. In other ways, of course, they are similar. For example, women academics also do not publish as much as academics in general,[22] and women academics do not have a Ph.D. as often as other academics.[23] But in the crucial area of salary, not only do women academics average less than men, [24] but also female Ph.D.s average significantly less than male Ph.D.s.[25] In short, women in academia face a different, though overlapping, set of problems from those faced by minorities in academia.

In addition to questions about the HEW "solution" for minorities, there may be additional questions about the simple extension of the minority solution to women by Executive Order No. 11375.

It must be emphasized that all the statistics cited thus far are for the academic world *prior* to affirmative action. They are intended to give a picture of the dimensions and nature of the problem that existed so as to provide a basis for judging the necessity of what was done under affirmative action programs. Now the results of those programs can also be considered.

FOOTNOTES

[1] Michael R. Winston, "Through the Back Door: Academic Racism and the Negro Scholar in Historical Perspective," *Daedalus*, vol. 100, no. 3 (Summer 1971), p. 695.

[2] Lester, *Antibias Regulation*, pp. 3–4.

[3] Ibid., pp. 62–63.

[4] Ibid., p. 76.

[5] Ibid.

[6] Kent G. Mommsen, "Black Doctorates in American Higher Education: A Cohort Analysis," *Journal of Social and Behavioral Science*, Spring 1974.

[7] Ibid., pp. 104, 107.

[8] David Rafky, "The Black Academic in the Marketplace," *Change*, vol. 3, no. 6 (October 1971) p. 65. A sharp distinction must be made between personal experience of discrimination and general opinions that discrimination exists. Both minorities and women report very little personal experience of discrimination and at the same time a widespread impression that discrimination is pervasive. See "Discrimination: A Cautionary Note," *Law and Liberty*, vol. 1, no. 3, p. 11. Similar inconsistencies are found in opinion surveys of the general population. See Ben J. Wattenberg, *The Real America* (Garden City: Doubleday & Co., Inc., 1974), pp. 196, 198.

[9] Kent G. Mommsen, "Black Ph.D.'s in the Academic Marketplace," *Journal of Higher Education*, vol. 45, no. 4 (April 1974), p. 253.

[10] Ibid., p. 256.

[11] Ibid., p. 258.

[12] Ibid., p. 262.

[13] William Moore, Jr. and Lonnie H. Wagstaff, *Black Educators in White Colleges* (San Francisco: Jossey-Bass Publishers, 1970), pp. 64–65.

[14] Daniel C. Thompson, *Private Black Colleges at the Crossroads* (Westport, Conn.: Greenwood Press, Inc., 1973), p. 155. See also Moore and Wagstaff, *Black Educators in White Colleges*, pp. 142–143.

[15] For example, the "remarkable record of women's progress through the professional ranks of a hitherto rigid academic system." *Change*, vol. 7, no. 4 (May 1975), back cover.

[16] Jessie Bernard, *Academic Women* (University Park: Pennsylvania State University Press, 1964), p. 39.

[17] John B. Parrish, "Professional Womanpower as a National Resource," *Quarterly Review of Economics and Business*, Spring 1961, pp. 58–59.

[18] Bernard, *Academic Women*, p. 206.

[19] Ibid., p. 74.

[20] Ibid., pp. 2–3, 31–32, 38n–39n.

[21] Christopher Jencks and David Riesman, "The American Negro College," *Harvard Educational Review*, vol. 37, no. 1 (Winter 1967), pp. 3–60; Thomas Sowell, *Black Education: Myths and Tragedies* (New York: David McKay Co., 1972), pp. 255–259.

[22] Lester, *Antibias Regulation*, p. 47.

[23] Ibid., p. 42

[24] Juanita Kreps, *Sex in the Marketplace* (Baltimore: Johns Hopkins Press, 1971), p. 52.

[25] Rita James et al., "The Woman Ph.D., A Recent Profile," *Social Problems*, vol. 15, no. 2 (Fall 1967), pp. 227–228.

III. THE RESULTS

The academic employment situation has been described in terms of rough global comparisons—black-white or male-female. Finer breakdowns are necessary in order for us to determine the effects of many variables which differ between the groups whose economic conditions are being compared. Some of these intergroup differences have already been mentioned—educational differences and differences in publications, for example—but there are others as well. If discrimination is to mean unequal treatment of equal individuals, then comparisons must be made between individuals who are similar with respect to the variables which generally determine employment, pay, and promotion. Only insofar as we succeed in specifying all these variables can we confidently refer to the remaining economic difference as "discrimination." One of the perverse aspects of this residual method of measuring discrimination is that the more determining variable that are overlooked or ignored, the more discrimination there seems to be. Since no study can specify all relevant variables, the residual pay differences between minority and female academics, on the one hand, and white males, on the other, must be understood as the upper limit of an estimate of discriminatory differences.

For both sets of comparisons, the data sources are the American Council on Education (ACE) and the National Academy of Science (NAS). The ACE data are based a sample of 60,028 academicians surveyed in 1969 and a sample of 50,034 academicians surveyed in 1972. The NAS data are from (1) a National Science Foundation survey conducted in 1973, based on a stratified sample of 59,086 doctorates in the social and natural sciences and engineering[1] and (2) a longitudinal compilation by NAS of biennial surveys of the same target population by the National Science Foundation during 1960–70.

Minorities

Existing studies of black faculty members show many ways in which their job-related characteristics differ from those of faculty members in general. All these differences tend to have a negative impact on employment, pay, and promotion for academics in general:

(1) A smaller proportion of black faculty than of white faculty holds a doctoral degree.[2]

(2) The distribution of black doctoral fields of specialization is biased towards the lower-paying fields—particularly education (roughly one-third of all black doctorates) and the social sciences (one-fourth)—with very few (about 10 percent) of the doctorates in the natural sciences.[3]

(3) The bulk of black faculty is located in the South[4]—a lower-paying region for academics in general,[5] as well as for others.

(4) Blacks complete their Ph.D.s at a later age than whites[6]—a reflection of both financial and educational disadvantages—and academics in general who complete their Ph.D.s at a later age tend to be less "productive" in research publications.

(5) Black academics, both at black colleges and at white institutions, publish much less than white academics.[7] Among the factors associated with this are much higher teaching loads and late completion of the Ph.D.

(6) Black academics are less mobile than white academics—and less mobile academics tend to earn lower salaries. Forty percent of the black professors in the Mommsen study had not moved at all, despite an average of three or four job offers per year,[8] and the median pay increase which they considered necessary to make them move was a $6,134 per year raise.[9] By contrast, among faculty in general, "the academic career is marked by high mobility,"[10] and "professors expect to switch schools several times, at least, during their careers."[11]

Footnotes at end of chapter.

(7) Women constitute a higher proportion (20 percent) of black doctorates than of doctorates in general (13 percent)[12]—and women earn less than men among both blacks and whites.

With all these downward biases, it is worth noting once again that the academic salaries of white doctorates averaged only $62 per year more than those of black doctorates in 1970. On a field-by-field basis, black doctorates were generally earning more than white doctorates in the same area of specialization and receiving more job offers per year[13]—all this before the affirmative action program under Revised Order No. 4 in 1971. In other words, the effect of the straightforward antidiscrimination laws of the 1960s and of the general drive toward racial integration had created a premium for qualified black academics, even before HEW's goals and timetables. Moreover, the improvements that have occurred since then need not be due to HEW pressures but may be thought of as a continuation of trends already evident before affirmative action programs began.

The data from the American Council on Education permit a standardization for degree level, degree quality, field of specialization, and number of articles published, so that the salaries of blacks, whites, and Orientals who are comparable in these respects may be compared. Table 1 omits field of specialization to give a general view of race and salary in the academic world as a whole. Degree rankings in the table are based on surveys conducted by the ACE to determine the relative rankings of Ph.D.-granting departments in twenty-nine disciplines, as ranked by members of those respective disciplines. (I have collapsed the two departmental rankings, "distinguished" and "strong," into one category in order to maintain a large sample size.) Articles published were selected as a proxy for publication in general, avoiding the problem of trying to convert books, monographs, conference papers, and articles into some equivalent.

My results for 1973 [Table 1] are generally not very different from those of Professor Mommsen for 1970: white faculty earned slightly more than black faculty in general ($16,677 versus $16,037). But when degree level and degree quality are held constant, blacks earned more than white with doctorates of whatever ranking, while whites had an edge of less than $100 per year among academics without a doctorate. The overall salary advantage of whites over blacks—$640 per year—is a result of a different distribution of the races among degree levels and degree qualities, as well as a different distribution among publication categories. For example, 11 percent of the white faculty members in the ACE samples had Ph.D.s from departments ranked either "distinguished" or "strong" by their respective professions, while only 4 percent of the black faculty came from such departments. Only 18 percent of the black academics in this sample had a doctorate at all, compared to 38 percent of the white academics. Thirty-one percent of the white faculty had published five or more articles while only 12 percent of the black faculty had done so. Blacks who had published at all had higher salaries than whites with the same number of publications.

Orientals present a somewhat different picture. Only those Orientals with "distinguished" and "strong" Ph.D.s received slightly higher salaries than their white counterparts ($18,235 versus $17,991), and even this difference was not uniform across publications categories. Among the lower-ranked doctorates, both white and blacks earned more than Orientals, and among those with less than a doctorate, considerably more. The overall salary average of Orientals was only slightly below that of blacks, but solely because Orientals were far more concentrated in the higher degree levels and higher degree qualities. Less than half of the Oriental faculty members lacked the Ph.D. and more than 40 percent of all Oriental faculty had published five or more articles. In short, just as group differentials do not imply discrimination, so an absence of such differentials does not imply an absence of discrimination. Orientals receive less than either blacks or whites with the same qualifications, and only the fact that the Orientals have generally better qualifications than either of the other two groups conceals this.

When field-by-field comparisons are made, very similar patterns emerge. In the social sciences, blacks have higher salaries than whites or Orientals, and especially so among holders of Ph.D.s from "distinguished" and "strong" departments (Table 2). In the natural sciences (Table 3) and the humanities (Table 4), whites lead, with blacks second in the humanities and Orientals second in the natural sciences. A comparison of overall sample size from one table to another reveals very different distributions of these racial groups among academic fields: 37 percent of all black faculty members were in the social sciences, 23 percent were in the humanities, and only 16 percent were in the natural sciences. By contrast, 44 percent of the Orientals were in the natural sciences, 28 percent in the social sciences, and only 16 percent in the humanities. Whites were distributed more or less midway between blacks and Orientals: 30 percent in the social sciences, 24 percent in the humanities, and 25 percent in the natural sciences. Again, the net effect of these distributions is to exaggerate the overall salary differences between blacks and whites and to understate salary differences between Orientals and whites.

Footnotes at end of chapter.

TABLE 1.—MEAN ANNUAL SALARIES OF FULL-TIME FACULTY, 1972–73

Race and articles published	Degree quality: Total		"Distinguished" and "strong" Ph. D.'s		Lower-ranked Ph. D.'s		Unranked doctorates		Less than Ph. D.	
	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size
Whites	$16,677	359,828	$17,991	39,603	$17,414	51,490	$18,179	44,224	$15,981	224,510
5 or more	19,969	111,160	20,073	22,741	19,334	28,014	20,008	24,886	20,376	35,519
1 to 4 articles	15,702	101,132	15,486	11,700	15,252	15,820	16,153	12,457	15,767	61,156
No articles	14,780	142,869	14,013	4,653	14,507	6,948	14,977	6,348	14,814	124,920
No response	17,488	4,667	18,918	509	18,323	709	18,285	534	16,889	2,915
Blacks	16,037	9,273	20,399	352	19,014	550	20,499	730	15,195	7,640
5 or more	22,583	1,115	21,211	181	21,877	293	28,783	249	19,797	391
1 to 4 articles	16,430	2,348	19,124	100	16,139	158	17,165	279	16,194	1,812
No articles	14,586	5,559	16,557	54	15,188	93	13,853	173	14,580	5,240
No response	15,403	251	31,000	18	14,000	6	20,896	29	13,244	197
Orientals	15,419	4,678	18,235	740	17,035	1,248	16,724	785	12,727	1,905
5 or more	17,190	2,029	17,485	467	18,158	740	18,035	503	13,182	319
1 to 4 articles	15,082	948	21,084	220	14,869	224	14,539	155	11,674	348
No articles	13,200	1,651	13,091	46	15,813	276	13,899	120	12,538	1,209
No response	23,176	50	13,000	7	15,909	7	19,131	7	28,679	78

Source: American Council on Education

TABLE 2.—MEAN ANNUAL SALARIES OF FULL-TIME FACULTY IN THE SOCIAL SCIENCES, 1972–73

Race and articles published	Degree quality: Total		"Distinguished" and "strong" Ph. D.'s		Lower-ranked Ph. D.'s		Unranked doctorates		Less than Ph. D.	
	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size
Whites	$16,872	108,733	$18,369	17,307	$17,192	16,680	$18,132	10,417	$16,182	64,329
5 or more	19,924	30,623	20,753	9,563	19,161	7,939	20,105	4,295	19,623	8,827
1 to 4 articles	16,117	34,213	15,618	5,339	15,620	5,930	17,508	3,362	16,165	19,582
No articles	15,263	42,216	14,413	2,141	14,618	2,579	15,770	2,626	15,325	34,870
No response	17,040	1,681	19,728	264	18,583	232	16,832	135	16,050	1,050
Blacks	17,527	3,373	20,451	186	20,344	222	20,487	326	16,718	2,639
5 or more	24,088	381	21,370	109	22,676	128	31,434	97	19,240	48
1 to 4 articles	15,162	977	19,688	66	17,919	54	18,176	103	14,154	754
No articles	17,793	1,914	15,813	11	16,232	40	13,324	121	18,152	1,742
No response	10,540	100					30,000	5	9,509	95
Orientals	15,089	1,313	18,844	203	16,449	324	13,338	70	13,581	717
5 or more	15,653	350	18,204	101	18,700	95	16,216	7	11,931	148
1 to 4 articles	17,042	253	22,897	69	14,836	96	12,445	22	15,649	67
No articles	14,115	710	12,317	33	16,004	134	13,351	41	13,793	502
No response										

Source: American Council on Education.

TABLE 3.—MEAN ANNUAL SALARIES OF FULL-TIME FACULTY IN THE NATURAL SCIENCES, 1972–73

Race and articles published	Degree quality: Total		"Distinguished" and "strong" Ph. D.'s		Lower-ranked Ph. D.'s		Unranked doctorates		Less than Ph. D.	
	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size
Whites	$17,225	91,411	$18,377	12,457	$18,130	25,282	$18,361	12,575	$15,972	41,098
5 or more	19,469	43,243	19,535	8,946	19,527	16,746	19,339	9,228	19,426	8,324
1 to 4 articles	15,735	22,667	15,442	2,863	15,259	6,446	15,342	2,739	16,203	10,619
No articles	14,618	24,571	14,268	487	15,206	1,774	16,030	427	14,551	21,882
No response	18,090	929	18,646	160	19,069	316	19,651	181	15,589	272
Blacks	15,176	1,474	20,436	78	17,950	243	18,383	167	13,535	986
5 or more	20,640	366	20,837	51	20,445	136	24,069	57	19,180	122
1 to 4 articles	14,562	410	18,023	16	14,560	76	16,444	70	13,817	248
No articles	12,051	639	22,000	11	15,672	25	13,779	41	11,572	562
No response	19,365	60			14,000	6			20,000	53
Orientals	16,797	2,035	18,145	490	17,709	754	17,132	441	12,520	349
5 or more	17,852	1,320	17,276	342	18,301	588	18,135	319	15,646	71
1 to 4 articles	16,417	415	20,672	137	15,793	101	14,568	84	12,498	93
No articles	12,466	281	15,000	4	15,344	61	13,311	31	11,333	186
No response	15,902	19	13,000	7	15,000	4	19,131	7		

Source: American Council on Education.

TABLE 4.—MEAN ANNUAL SALARIES OF FULL-TIME FACULTY IN THE HUMANITIES, 1972–73

Race and articles published	Degree quality: Total		"Distinguished" and "strong" Ph. D.'s		Lower-ranked Ph. D.'s		Unranked doctorates		Less than Ph. D.	
	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size	Salary	Population size
Whites	$15,572	85,904	$16,832	9,765	$15,659	9,084	$15,925	8,810	$15,293	58,242
5 or more	18,425	17,001	19,707	4,165	18,399	2,954	18,414	3,681	17,584	6,204
1 to 4 articles	15,419	23,923	15,315	3,490	14,573	3,381	14,776	3,048	15,789	14,009
No articles	14,497	43,751	13,530	2,025	13,920	2,594	13,059	1,943	14,667	37,140
No response	17,313	1,228	16,911	85	16,227	154	16,173	99	17,666	895
Blacks	15,034	2,177	20,259	89	16,743	74	17,650	99	14,590	1,910
5 or more	16,221	135	22,296	21	21,513	19	21,507	15	12,658	88
1 to 4 articles	21,354	604	18,000	18	16,972	28	16,172	61	22,348	498
No articles	11,869	1,347	14,955	32	13,201	27			11,764	1,289
No response	18,175	91	31,000	18			19,000	24	13,161	43
Orientals	13,005	757	16,561	47	14,860	146	16,003	90	11,509	479
5 or more	14,629	199	17,443	24	14,922	33	17,544	63	11,294	73
1 to 4 articles	10,317	239	16,110	14	11,557	27	11,738	15	9,579	183
No articles	13,000	306	15,000	9	15,487	82	13,000	12	11,753	209
No response	39,032	12			17,000	3			47,393	8

Source: American Council on Education.

The National Academy of Sciences data confirm some of these patterns and reveal some new ones. NAS data for full-time doctoral scientists and engineers (academic and nonacademic) show blacks earning slightly more than whites, with Orientals last—and a spread of only $1,500 per year over all three groups (Table 5). Publications data are not available for this survey but age was tabulated as a proxy for experience. Degree quality was again available, and again Orientals with given credentials quality had lower salaries than either blacks or whites in the same categories. In all three groups, salary rises with age, but the *relative* positions of blacks and whites are *reversed* in the oldest and youngest age brackets. Young black doctorates—under thirty-five—earn more than their white counterparts in either degree quality category, but older blacks—over fifty—earn *less* than their white counterparts in either degree quality category. These results hold up when the sample is broken down into natural sciences and social sciences. It is also consistent with a larger study by Professor Finis Welch of UCLA which showed a much higher rate of return to education for younger blacks than for older blacks—both absolutely and relative to their white counterparts.[14] Two important factors are involved here: (1) the older blacks were educated in an era when their public school education was inferior not only by various quality measures but also in sheer quantity (black schools had fewer days than white schools in their respective school years),[15] and this poorer preparation could not help affecting later capability, and (2) the level of job discrimination was also greater when the older blacks began their careers, and this too could not help affecting the later course of those careers, making it difficult for these blacks to exploit new opportunities as readily as the younger blacks just beginning their careers. A further implication of all this is that global comparisons of blacks and whites capture many existing effects of past discrimination, while an age-cohort breakdown of the same data permits a better look at the current results of current policies and the trends to expect in the future.

Footnotes at end of article.

TABLE 5.—MEDIAN ANNUAL SALARIES OF FULL-TIME SCIENTISTS AND ENGINEERS, BY RACIAL GROUP AND DEGREE QUALITY, 1973

Race and age group	Degree quality: Total		"Distinguished" and "strong" Ph. D.'s		Other	
	Salary	Sample size	Salary	Sample size	Salary	Sample size
Whites	$20,988	28,048	$22,146	8,589	$20,275	19,459
Under 35 yr	17,228	6,615	17,879	1,827	16,933	4,788
35 to 49	21,757	14,024	22,480	4,167	21,342	9,857
50 plus	25,357	7,409	26,333	2,595	24,704	4,814
Blacks	21,445	261	23,268	54	20,597	207
Under 35 yr	18,660	44	20,476	4	18,396	40
35 to 49	21,256	149	22,998	26	20,668	123
50 plus	23,460	68	24,307	24	22,770	44
Orientals	20,005	1,087	20,222	330	19,862	757
Under 35 yr	16,230	210	18,162	60	15,364	150
35 to 49	20,613	676	20,378	206	20,761	470
50 plus	23,261	201	22,429	64	23,660	137

Source: 1973 Survey of Doctoral Scientists and Engineers, National Research Council, National Academy of Sciences.

In summary, the salary differentials among these three racial or ethnic groups are small, both in the academic world and among holders of the doctorate in the social or natural sciences (academic and nonacademic). With such variables as credentials, publications, and experience held constant, blacks equalled or surpassed whites in 1973—but they also equalled or surpassed whites with fields held constant in 1970. Without these variables held constant, the overall black-white differential was $62 per year in 1970 and $640 in 1973. Given that these are different samples, it is perhaps best to say that there were negligible overall differences among black and white academics in both years—that affirmative action has achieved nothing discernible in this regard. But if an arithmetic conclusion is insisted upon, then it must be said that there has been a negative effect of affirmative action as far as black-white differences are concerned.

Women

The classic study Academic Women by Jessie Bernard described women as "overrepresented in college teaching." This was based on the fact that women were only 10 percent of the Ph.D's but constituted more than 20 percent of college and university facilities.[16] This was written in 1964—before affirmative action. Unlike HEW's crude "underutilization" measures, this study (by an academic woman) considered not only the number of women with the usual degree requirements but also "the large number of educated women—30.6 percent of those with five years or more of college—who are not in the labor force."[17] Withdrawal from the labor force is only one of many career characteristics which have a negative effect on the employment, pay, and promotion of academic women. Some others are:

(1) Female academics hold a doctorate less frequently than male academics—20 percent as against 40 percent in 1972–73.[18]

(2) Female academics publish only about half as many articles and books per person as do male academics,[19] and females are especially underrepresented among frequent publishers.[20]

(3) Academic women are educated disproportionately in lower-paying fields of specialization, such as the humanities,[21] and they prefer teaching over research more so than academic men, not only in attitude surveys,[22] but also in their allocation of time[23] and in the kinds of institutions at which they work[24]—which are the low-paying teaching institutions more so than the top research universities with high salaries.

(4) Academic women more frequently subordinate their careers to their spouses' careers, or to the general well-being of their families, than do academic men. This takes many forms, including quitting jobs they like because their husbands take jobs elsewhere,[25] interrupting their careers for domestic reasons,[26] withdrawing from the labor force (25 percent of women Ph.D.s),[27] doing a disproportionate share of household and social chores compared to their husbands in the same occupations,[28] and a general attitude reported by women themselves of putting their homes and families ahead of their careers much more often than do male academics.[29] All this goes to the heart of the question of the actual source of sex differentiation—whether it is the home or the work place, and therefore whether "equal treatment" as required by the Constitution and envisioned in the Civil Rights Act would eliminate or ensure unequal results by sex.

None of these factors disproves the existence of sex discrimination; but they do mean that attempts to measure sex discrimination must be unusually careful in specifying the relevant variables which must be equal before remaining inequalities can be considered "discrimination." Unfortunately, such care is not evident in HEW pronouncements or in much of the literature supporting affirmative action. Even the comprehensive studies by Helen S. Astin and Alan E. Bayer make the fatal mistake of holding marital status constant in comparing male-female career differences.[30] But marriage has opposite effects on the careers of male and female academics, advancing the man professionally and retarding the woman's progress. Not only do the men and women themselves say so,[31] but the Astin-Bayer data (and other data) also show it.[32] Therefore to treat as "discrimination" all residual differences for men and woman of the "same" characteristics—including marriage—is completely invalid and misleading.

Marriage is a dominant—and negative—influence on academic women's careers. A study of academics who had received their Ph.D's many years earlier showed that 69 percent of the total—mostly men—had achieved the rank of full professor, as had 76 percent of the single women but only 56 percent of the married women.[33] In short, many of the statistical differences between the broad categories "men" and "women" are to a large extent simply differences between married women and all other persons. It is an open question how much of the residual disadvantages of single academic women is based upon employer fears of their becoming married academic women and acquiring the problems of that status. One indication of the difficulty of successfully combining academic careers with the demands of being a wife and mother is that academic women are married much less frequently than either academic men or Ph.D's in nonacademic fields,[34] are divorced more frequently,[35] and have fewer children than other female Ph.D's.[36]

Much of the literature on women in the labor market denies that "all" women, "most" women, or the "typical" woman represent special problems of attrition, absenteeism and other characteristics reflecting the special demands of home on women. For example, the "typical woman economist" has not given up her job to move because of her husband's move, but 30 percent of the women economists do, while only 5 percent of male economists accommodate their wives in this way.[37] Similarly, while *most* female Ph.D.s in economics have not interrupted their careers, 24 percent had interrupted their careers prior to receiving the degree (compared to 2 percent of the men) and "another 20 percent" afterwards (compared to 1 percent of the men).[38] These are clearly substantial percentages of women and several-fold differentials between men and women.

The literature on women workers in general makes much of the fact that *most* women "work to support themselves or others," not just for incidental money.[39] However, this does not alter the facts (1) that women's labor force participation rates are substantially lower than men's[40] and (2) that married women's labor force participation declines as their husbands' incomes rise.[41] This is also true of academic women.[42]

In considering global male-female differences in career results, the question is not whether "most" women have certain negative career characteristics but whether a significant percentage do and whether that percentage is substantially different from that of men. Moreover, it is not merely the individual negative characteristics that matter but their cumulative effects on male-female differentials in employment, pay, and promotion. Nor can these differences in career characteristics be dismissed as subjective employer perceptions or aversions.[43] They represent in many cases *choices* made outside the work place which negatively affect women's career prospects. As one woman researcher in this area has observed: "One way of insuring that the academic husband's status will be higher than his academic wife's is to allow the husband's job opportunities to determine where the family lives."[44] But regardless of the wisdom or justice of such a situation, *it is not employer discrimination*, even though it may lead to statistical male-female differences between persons of equal ability.

One of the fertile sources of confusion in this area is the thoughtless extension of the "minority" paradigm to women. It makes sense to compare blacks and whites of the same educational levels because education has the same positive effect on black incomes and white incomes, though not necessarily to the same extent. It does not make sense to compare men and women of the same marital status because marital status has opposite effects on the careers of men and women. Minorities have serious problems of cultural disadvantages, so that faculty members from such groups tend to have lower socioeconomic status and lower mental test scores than their white counterparts,[45] and black colleges and universities have never been comparable to the best white colleges and universities,[46] whereas female academics come from higher socioeconomic levels than male academics,[47] female Ph.D.s have higher IQs than male Ph.D's in field after field,[48] and the best women's colleges have had status and student SAT levels comparable to those of the best male or coeducational institutions. Women have been part of the cultural, informational, and social network for generations, while blacks and even Jews have been largely excluded until the past generation. While minorities have been slowly rising in professional, technical, and other high-level positions over the past 100 years, women have declined in many such areas over the same period, even in colleges institutionally operated by women,[49] so that employer discrimination can hardly explain either the trend or the current level of "utilization" of women. Marriage and childbearing trends over time are highly correlated with trends of women's participation in high-level occupations, as well as being correlated with intra-group differences among women at a given time. In short, women are not another "minority," either statistically or culturally.

When male-female comparisons are broken down by marital status and other variables reflecting women's domestic responsibilities, some remarkable results appear. Although women in the economy as a whole earn less than half as much annually as men,[50] with this ratio *declining* from 1949 to 1969,[51] the sex differentials narrow to the vanishing point—and in some cases are even reversed—when successive corrections are made for

Footnotes at end of chapter.

marital status, full-time as against part-time employment, and continuous years of work. For example, in 1971 women's median annual earnings were only 40 percent of those of men, but when the comparison was restricted to year-around, full-time workers, the figure rose to 60 percent, and when the comparison was between single women and single men in the same age brackets (thirty to forty-four) with continuous work experience, "single women who had worked every year since leaving school earned slightly more than single men."[52] These are government data for the economy as a whole.

The severe negative effect of marriage on the careers of women is not a peculiarity of the academic world. Other nationwide data on sex differences show single women's incomes ranging from 93 percent of single men's income at ages twenty-five to thirty-four to 106 percent in ages fifty-five to sixty-four[53]—that is, after the danger of marriage and children are substantially past. For women already married, the percentages are both lower and decline with age—ranging from 55 percent of married men's incomes at ages twenty-five to thirty-seven to only 34 percent at ages fifty-five to sixty-four.[54] Apparently early damage to a woman's career is not completely recouped—at least not relative to men who have been moving up occupationally as they age while their wives' careers were interrupted by domestic responsibilities. In the early years of career development, single women's labor force participation rates are rising sharply, while those of married women are declining sharply.[55] Again, the data suggest that what are called "sex differences" are largely differences between married women and all others, and that the origin of these differences is in the division of responsibilities in the family rather than employer discrimination in the work place. The increasing proportion of married women in the work force over time[56] has been a major factor in the decline of the earnings of women relative to men.

Academic women show similar patterns. For example, the institutional employment of married women is "determined to a large extent" by the location of their husbands' jobs,[57] and this contributes to a lower institutional level for academic females than for male Ph.D.s. Academic women apparently find it harder than other women of similar education to combine marriage and a career. One study of "biological scientists receiving their degrees during the same time period" found only 32 percent of such academic women married compared to 50 percent of their non-academic counterparts, even though initially virtually identical percentages were married before receiving their Ph.D.[58] A more general survey of women holding doctorates found only 45 percent to be married and living with their husbands.[59] Although there were more married than single women among women doctorates in general,[60] in the academic world there were more single than married female doctorates.[61] Moreover, female academics had divorce rates several times higher than male academics.[62] Another study of college teachers found 83 percent of the men but only 46 percent of the women to be married.[63] Women in other high-level, high-pressure jobs requiring continuous full-time work show similarly low proportions married.[64]

Childbearing is also negatively associated with career prospects. Among Radcliffe Ph.D.s, those working full time had the fewest children, those working part time next, those working intermittently next, and those not working at all had the most children.[65] Various surveys show that "female Ph.D.s who are married are twice as likely to be childless as women in the same age group in the general population" and even when they do have children, to have fewer of them.[66] The husband's prospects also have a negative effect on women doctorates' careers: a woman married to a "highly educated man with a substantial income was less likely to work" or, if she did, was more likely to take a part-time job.[67] This parallels a negative correlation between married women's labor force participation and their husbands' incomes in the general economy.[68]

In research output, "the woman doctorate who is married and has children was less likely than the single woman doctorate or a childless married woman doctorate to have many scientific and scholarly articles to her credit."[69] It is not surprising that the married woman doctorate "tended to make a lower salary than the single woman, even if she was working full time."[70] Unfortunately studies of academic women have not simultaneously controlled for marital status, full-time continuous employment, publications, and degree level and quality.

The National Academy of Sciences data permit comparisons of the salaries of male and female doctorates who worked full time both in 1960 and in 1973 and who responded to all the biennial surveys of the National Science Foundation from 1960 through 1973 (see Table 6). This gives an approximation of full-time continuous employment, but does not show whether the respondent was employed full time in each of the years during which a survey was made or whether the respondent worked at all in the non-survey years. These data show female salaries at 83 percent of male salaries in 1970 (before affirmative action) and 84 percent in 1973 (after affirmative action)—a smaller proportion than in other data which controlled for other variables such as publications and degree quality. It also indicates no discernible effect of affirmative action programs.

TABLE 6.—MALE-FEMALE SALARY RELATIONSHIPS (1970 AND 1973) AMONG FULL-TIME DOCTORATES INCLUDED IN ALL 1960–73 NSF SURVEYS

Fields	Average annual salary 1970	Average annual salary 1973
Natural sciences:		
Men	$20,646	$24,854
Women	$17,061	$20,718
Ratio of women/men	0.83	0.83
Social sciences:		
Men	$21,442	$26,537
Women	$17,171	$21,027
Ratio of women/men	0.80	0.80
Total:[1]		
Men	$20,508	$24,851
Women	$17,073	$20,910
Ratio of women/men	0.83	0.84

[1] Includes miscellaneous fields as well as the natural sciences and the social sciences.

Source: National Academy of Sciences.

A 1968 study of full-time academic doctorates found women's salaries ranging from 89 percent to 99 percent of men's salaries in the same field, with similar length of employment, and in broadly similar institutions (colleges versus universities).[71] These higher percentages—as compared with the results in Table 6—suggest that the distribution of women by institutional type and ranking and by years of employment explains a significant part of the male-female salary differences among academics. Moreover, since women academics with Ph.D.s in this 1968 study earned 92.2 percent of the income of men academics with Ph.D.s (even without controlling for publications), these figures indicate how small the sex differential was for even roughly similar individuals before affirmative action.

Even more revealing patterns appear in our tabulations of ACE data by marital status (Table 7). In 1969, academic women who never married earned slightly more than academic men who never married. This was true at top-rated institutions and at other institutions, for academics with publications and for academics without publications. The male salary advantage exists solely among married academics and among those who used to be married ("other" includes widowed, divorced, et cetera). The male advantage is greatest among those married and with dependent children. Being married with children is obviously the greatest inhibitor of a woman's career prospects and the greatest incentive to a man's. The salaries of women who never married were 104 percent of the salaries of their male counterparts at the top-rated institutions and 101 percent at other institutions. For women who were married but had no dependent children, the percentages fell to 88 and 84 percent, respectively. For married women with dependent children, the percentages fell still further, to 69 and 70 percent. For women and men without publications and in nonranked—essentially nonresearch—institutions, the "never married" women earned 145 percent of the "never married" men's incomes—confirming a general impression that women prefer teaching institutions, and therefore a higher proportion of top-quality women than of top-quality men end up at such places by choice. It also suggests that employers are not unwilling to recognize such quality differentials with salary differentials in favor of women.

Footnotes at end of chapter.

TABLE 7.—ACADEMIC-YEAR SALARIES BY SEX AND MARITAL STATUS, 1968–69

Sex and marital status	Total: Top institutions Salary	Total: Top institutions Number	Total: Other institutions Salary	Total: Other institutions Number	With publications: Top institutions Salary	With publications: Top institutions Number	With publications: Other institutions Salary	With publications: Other institutions Number	Without publications: Top institutions Salary	Without publications: Top institutions Number	Without publications: Other institutions Salary	Without publications: Other institutions Numbe
MEN												
Total	$13,704	26,493	$13,245	307,323	$13,697	26,033	$13,230	301,251	$14,075	459	$13,965	6,071
Presently married	13,562	23,623	13,175	280,637	13,549	23,209	13,159	275,248	14,323	413	13,969	5,389
With dependent children	14,180	15,996	13,636	200,570	14,179	15,728	13,623	196,640	14,242	267	14,273	3,929
Without dependent children	12,266	7,627	12,018	80,069	12,223	7,481	11,997	78,607	14,472	145	13,150	1,459
Never married	11,070	142	10,525	3,737	11,070	142	10,569	3,629	0	0	9,027	107
Other	15,065	2,727	14,548	22,947	15,120	2,681	14,540	22,373	11,838	45	14,856	573
WOMEN												
Total	11,030	4,166	10,359	75,044	11,003	4,062	10,345	73,155	12,094	103	10,889	1,888
Presently married	10,264	2,839	10,021	60,484	10,213	2,753	10,012	59,016	11,875	86	10,403	1,467
With dependent children	9,727	1,255	9,645	17,246	9,626	1,207	9,640	16,734	12,255	48	9,809	511
Without dependent children	10,690	1,583	10,171	43,238	10,672	1,545	10,159	42,282	11,394	37	10,721	956
Never married	11,523	404	10,566	5,174	11,363	399	10,455	4,954	22,499	5	13,075	219
Other	13,176	921	12,419	9,384	13,236	909	12,427	9,184	8,633	11	12,045	200

Note: Data cover all races and all disciplines. Source: American Council on Education.

In the literature on sex differentials and in the pronouncements of governmental agencies administering affirmative action programs, sinister and even conspiratorial theories have been advanced to explain very ordinary and readily understandable social phenomena: (1) academic individuals who are neither aiding nor aided by a spouse make very similar incomes, whether they are male or female, (2) academic individuals who are aided by a spouse (married males) make more than unaided individuals, and (3) academic individuals who aid a spouse (married females) make less for themselves than do the other categories of people. The social mores which lead women to sacrifice their careers for their husbands' careers may be questioned (as should the high personal price exacted from academic career women, as reflected in their lower marriage and higher divorce rates). But social mores are not the same as employer discrimination. The fact that single academic women earn slightly higher salaries than single academic men suggests that employer discrimination by sex is not responsible for male-female income differences among academics. Moreover, even as regards social mores, it must be noted that academic women report themselves satisfied with their lives a higher percent ge of the time than do academic men[72]—a phenomenon which some explain by saying that women do not put all their emotional eggs in one basket as often as men,[73] and which others explain by treating high research creativity as a somewhat pathological and compensatory activity of the personally unfulfilled.[74] The point here is that the evidence is not all one way, nor the logic overwhelming, even as regards apparently inequitable social mores. On the basic policy issue of employer discrimination, such evidence as there is lends no support to this as an explanation of male-female career differences, and the slight but persistent advantage of single females over single males undermines the pervasive preconception that employers favor men when other things are equal.

FOOTNOTES

[1] National Academy of Sciences, *Doctoral Scientists and Engineers in the United States: 1973 Profile* (Washington, D.C.: National Academy of Sciences, 1974), p. 30.

[2] Lester, *Antibias Regulation*, p. 50.

[3] Mommsen, "Black Doctorates," pp. 103–104.

[4] Mommsen, "Black Ph.D.s," p. 258.

[5] David G. Brown, *The Market for College Teachers* (Chapel Hill: University of North Carolina Press, 1965), p. 83.

[6] Lester, *Antibias Regulation*, p. 49.

[7] Thompson, *Private Black Colleges at the Crossroads*, p. 155.

[8] Mommsen, "Black Ph.D.s," pp. 258–259.

[9] Ibid., p. 262.

[10] Caplow and McGee, *Academic Marketplace*, p. 41.

[11] Brown, *The Mobile Professors*, p. 26.

[12] Lester, *Antibias Regulation*, p. 48.

[13] Mommsen, "Black Ph.D.s," pp. 262, 259.

[14] Finis Welch, "Black-White Differences in Returns to Schooling," *American Economic Review*, vol. 63, no. 5 (December 1973), pp. 893–907.

[15] Ibid., p. 894.

[16] Bernard, *Academic Women*, p. 52.

[17] Lester, *Antibias Regulation*, p. 42.

[18] Alan E. Bayer, *Teaching Faculty in Academe: 1972–73* (Washington, D.C.: American Council on Education, 1973), p. 15.

[19] Frank Clemente, "Early Career Determinants of Research Productivity," *American Journal of Sociology*, vol. 79, no. 2 (September 1973), p. 414; Lester, *Antibias Regulation*, p. 47. See also Brown, *Mobile Professors*, p. 78, and Bernard, *Academic Women*, p. 148.

[20] Brown, *Mobile Professors*, pp. 76–78. See also Lester *Antibias Regulation*, p. 42.

[21] Bernard, *Academic Women*, p. 180; Brown, *Mobile Professors*, p. 81; Helen S. Astin and Alan E. Bayer, "Sex Discrimination in Academe," *Educational Record*, Spring 1972, p. 103; Helen S. Astin, *The Woman Doctorate in America* (New York: Russell Sage Foundation, 1970), pp. 20–21.

[22] Bernard, *Academic Women*, pp. 151–152.

[23] Astin, *The Woman Doctorate*, p. 73; Lester, *Antibias Regulation*, p. 42.

[24] Brown, *Mobile Professors*, pp. 79–80.

[25] Barbara B. Reagan, "Two Supply Curves for Economists? Implications of Mobility and Career Attachment of Women," *American Economic Review*, vol. 65, no. 2 (May 1975), pp. 102, 103. See also Astin, *The Woman Doctorate*, p. 102.

[26] Reagan, "Two Supply Curves," p. 104.

[27] Brown, *Mobile Professors*, p. 78.

[28] Bernard, *Academic Women*, p. 221; Lester, *Antibias Regulation*, p. 39.

[29] Reagan, "Two Supply Curves," p. 103. See also Bernard, *Academic Women*, pp. 151–152, 181–182; Astin, *The Woman Doctorate*, pp. 91–92.

[30] "The regression weights of the predictor variables that emerged in the analysis of the men's sample were applied to the data for the women's sample to assess the predicted outcome when the criteria for men were used. . . . To award women the same salary as men of similar rank, background, achievements and work settings . . . would require a compensatory average *raise* of more than $1,000. . . ." Astin and Bayer, "Sex Discrimination in Academe," p. 115.

[31] Bernard, *Academic Women*, p. 217.

[32] Astin and Bayer, "Sex Discrimination in Academe," p. 111; Lester, *Antibias Regulation*, pp. 36–37.

[33] Helen S. Astin, "Career Profiles of Women Doctorates," *Academic Women on the Move*, ed. Alice S. Rossi and Ann Calderwood (New York: Russell Sage Foundation, 1973), p. 153. 103.

[34] Lester, *Antibias Regulation*, p. 41.

[35] Bernard, *Academic Women*, pp. 113, 206.

[36] *Ibid.*, p. 216.

[37] Reagan, "Two Supply Curves," pp. 101–103.

[38] *Ibid.*, p. 104.

[39] U.S. Department of Labor, *Underutilization of Women Workers* (Washington, D.C.: U.S. Government Printing Office, n.d.), p. 1.

[40] William G. Bowen and T. Aldrich Finegan, *The Economics of Labor Force Participation* (Princeton: Princeton University Press, 1969), pp. 41, 101, 243.

[41] Ibid., p. 132.

[42] Astin, *The Woman Doctorate*, p. 60.

[43] Jerolyn R. Lyle and Jane L. Ross, *Women in Industry* (Lexington, Mass.: D. C. Heath and Co., 1973), p. 13; Reagan, "Two Supply Curves," p. 104.

[44] Quoted in Reagan, "Two Supply Curves," p. 102.

[45] Horace Mann Bond, *A Study of the Factors Involved in the Identification and Encouragement of Unusual Academic Talent among Underprivileged Populations* (U.S. Department of Health, Education, and Welfare, Project no. 5–0859, Contract no. SAE 8028, January 1967), p. 117.

[46] Sowell, *Black Education*, pp. 255–259; Jencks and Riesman, "The American Negro College."

[47] Bernard, *Academic Women*, pp. xx, 77–78; Alan E. Bayer, *College and University Faculty: A Statistical Description* (Washington, D.C.: American Council on Education, June 1970), p. 12; Astin, *The Woman Doctorate*, pp. 23, 25.

[48] Bernard, *Academic Women*, p. 84.

[49] Ibid., pp. 39–44.

[50] James Gwartney and Richard Stroup, "Measurement of Employment Discrimination According to Sex," *Southern Economic Journal*, vol. 39, no. 4 (April 1973), pp. 575–576; and "The Economic Role of Women," in the *Economic Report of the President*, 1973 Washington, D.C.: U.S. Government Printing Office, 1973), p. 103.

[51] Gwartney and Stroup, "Employment Discrimination," p. 583.

[52] "The Economic Role of Women," p. 105.

[53] Gwartney and Stroup, "Employment Discrimination," p. 582.

[54] Ibid.

[55] Kreps, *Sex in the Marketplace*, p. 32.

[56] Ibid., pp. 4, 19.

[57] Bernard, *Academic Women*, p. 88.

[58] Ibid., p. 113.

[59] Astin, *The Woman Doctorate*, p. 27.

[60] Ibid.

[61] Ibid., p. 71.

[62] Bernard, *Academic Women*, p. 216.

[63] Ibid., p. 313.

[64] Ibid., pp. 313–324.

[65] Ibid., p. 241.

[66] Lester, *Antibias Regulation*, p. 38.

[67] Astin, *The Woman Doctorate*, p. 60.

[68] Bowen and Finegan, *Labor Force Participation*, p. 132.

[69] Astin, *The Woman Doctorate*, p. 82.

[70] Ibid., p. 90.

[71] Bayer and Astin, "Sex Differences in Academic Rank and Salary among Science Doctorates in Teaching," *Journal of Human Resources*, vol. 3, no. 2 (Spring 1968), p. 196. "Science" in the title includes the social sciences.

[72] Bernard, *Academic Women*, p. 182.

[73] Ibid., p. 152.

[74] Ibid., p. 156.

IV. THE IMPLICATIONS

The academic profession has been chosen as an area in which to study the necessity and effectiveness of affirmative action programs, primarily because it is an area in which crucial career characteristics can be quantified and have been researched extensively over the years. The questions are: (1) What are the implications of affirmative action in the academic world? (2) To what extent is the academic world unique—or, to what extent are these research findings applicable to the economy at large? (3) Both for the academic world and for the economy at large, what alternative policies offer a better prospect of achieving the general goal of equal opportunity which provides much of the driving force behind the particular policies and practices summarized as affirmative action?

Academia

The central assumption of affirmative action programs is that "underrepresentation" of minorities or women represents employer "exclusion" rather than different career characteristics of groups or different choices by the individuals themselves. In the academic world, major intergroup differences have been found in degree levels, publications, and fields of specialization—all these differences being to the disadvantage of minorities and women. For minorities, holding such variables constant reduces, eliminates, or even reverses salary differentials as compared to white academics. Even without holding such variables constant, the pay differentials between minorities and other academics were less than $100 per year before affirmative action and less than $1,000 afterwards—indicating that both the necessity for such programs and the effectiveness of them are open to serious question. For women, holding the same variables constant does not eliminate salary differentials, but holding full-time employment constant comes close to doing so, and for those women without marital responsibilities, sex differentials disappear. Together with much other data, this suggests that marital status in general and an unequal division of domestic responsibility in particular explain both differential trends over time and the differences at a given time between male and female academics.

The term "career characteristics" has been used here, not simply to avoid the emotionally loaded word "qualified," but because it seems more accurate and germane. Given the enormous range of American colleges and universities, virtually anyone with graduate training is "qualified" to teach somewhere,

while only a small fraction of the Ph.D.s are "qualified" to teach at the very top institutions. The question of qualifications therefore amounts to a question of whether a particular individual matches a particular institution, rather than whether he or she belongs in the profession. An institution is not excluding a "qualified" applicant because it hires someone else whose career characteristics fit its institutional needs, even though those not hired have career characteristics which make them valuable to other kinds of institutions. Research universities—a major focus of affirmative action programs—offer a specialized environment which many academics do not want, as well as one for which many do not have the appropriate set of career characteristics. It is as unnecessary to denigrate either individuals or groups as it is to denounce as "irrelevant" the characteristics which research universities seek for their special purposes.

The crucial element of individual choice is routinely ignored in analyses and charges growing out of statistical distributions of people. Women choose to emphasize teaching over research, and this has implications for their degree levels (a Ph.D. is not as essential, the kind of institutions they prefer, and the lifestyle it permits—including part-time and intermittent careers that mesh with domestic life. Black faculty prefer being where they are to such an extent that it would take more than a $6,000 raise to move them, according to a survey of several hundred black academics.

One of the peculiarities of the academic market is its fragmentation or balkanization.[1] A particular department typically hires people trained at a relatively small number of other departments. This is due to the high cost of specific knowledge about specific individuals as they emerge from graduate school. At that point, the individual usually has no publications or teaching experience, and the only indications of his intellectual potential are the estimates of professors who taught him or directed his thesis research—and the value of those estimates depends crucially upon the reliability of those professors, which in turn means it depends on how well members of the employing department know members of the department where the applicant was trained.

The top departments in many field typically hire from other top departments in the same fields. This has led to charges of an "old boy network" among the top departments which excludes outsiders in general and minorities and women in particular. But despite loose talk about "recruitment procedures that tend exclusively to reach white males,"[2] the fact is that (1) most black Ph.D.s were trained in a very few *highly rated*, predominantly white departments[3] and (2) a slightly higher proportion of female doctorates than of male doctorates received their Ph.D.s from the top twelve universities.[4] In short, whatever the merits or demerits of the "old boy network," as high a percentage of minority and female Ph.D.s as of white male Ph.D.s are inside its orbit.

Affirmative action practices ignore both choice and career characteristics by the simple process of putting the burden of proof on academic institutions to explain why their percentages of minority and female faculty do not match the kinds of proportions preconceived by governmental authorities. Career characteristics are accepted as mitigating factors only when job criteria have been "validated"—which is virtually impossible. The statistical "validation" process, as developed for written tests in education, involves prediction for a very short span of time on a very limited number of variables, such as grades and graduation. To extend the "validation" concept to the whole hiring process for complex professions with many dimensions is to demand mathematical certainty in areas where good judgment is the most that can be expected. In such circumstances, where "validation" amounts to convincing government officials, it means convincing people whose own career variables—appropriations, staff, and power—depend upon not believing those attempting to convince them. General findings of reasonable hiring decisions would be a general sentence of death for the agency itself. More basically, this situation replaces the principle of prescriptive laws with ex post administrative determination of what should have happened combined with never-ending burdens of proof as to why it did not.

A mitigating factor (in the opinion of some) is that the ultimate sanction of contract cancellation is not actually invoked. But this means that the real penalty is having to repeatedly devote substantial institutional resources to producing the pounds of paper which constitute an affirmative action report—and this penalty falls equally on the just and on the unjust. Even aside from the disturbing moral implications of this, it means that the effectiveness of the penalty is reduced when a discriminating employer has little to gain by becoming a non-discriminating employer, in a society where the career characteristics of the target population ensure that he will never be able to fill affirmative action quotas anyway. There is truth in the bitter comments from both sides of the affirmative action controversy that (1) colleges and universities are under unremitting and unreasonable pressures and that (2) virtually nothing is actually being accomplished for minorities and women. An even weightier consideration is that the appearance of massive benefits being conferred on minorities and women undermines the very real achievements of minorities and women themselves, often made at great personal sacrifice—achievements whose general recognition would be a very healthy influence on society at large.

There are a number of ways in which affirmative action programs hurt the academic world without benefiting minorities or women:

(1) The sheer volume of resources required to gather and process data, formulate policies, make huge reports (typically weighing several pounds), and conduct interminable communications with a variety of federal officials is a large, direct, and unavoidable cost to the institution—whether or not it is guilty of anything, and whether or not any legal sanction is ever imposed.

(2) The whole academic hiring process is changed by outside pressures, so as to generate much more paperwork as evidence of "good faith" hiring efforts and in general to become slower, more laborious, more costly, and less certain—even where the individual eventually hired is a white male, as is in fact typically the case. It is not that it costs more to hire minorities or women, but that it becomes more costly to hire anyone.

(3) Faculty decision making on hiring, pay, and promotion is increasingly being superseded by administrative determination, in response to affirmative action pressures on academic institutions. The historic informal balance of power is being shifted away from those with specific expertise in their fields to those who feel outside pressures to generate either acceptable numbers or acceptable procedures, excuses, or promises. The bitterness and demoralization generated by this undermining of traditional faculty autonomy occurs whether or not any minority or female faculty members are eventually hired.

(4) The "up-or-out" promotion and tenure policies of top research universities have meant in the past essentially a "no-fault" termination of untenured faculty members, who typically go on to have successful careers at other institutions. Now the threat of "discrimination" charges based on nothing more than statistics forces an accumulation of evidence as potential "justification"—with both financial and morale costs to individuals and institutions.

In short, many—if not most—of the costs of affirmative action imposed by the government on academic institutions do not represent gains by minorities or women, but simply burdens and losses sustained by the whole academic community.

What is most lacking in the arguments for affirmative action programs is a detailed specification of who is expected to benefit, in what manner, with what likelihood, and at what risk of negative effects on net balance. The potential beneficiaries in the academic world might be existing minority or female academics, and the specific benefits might be financial or psychic, through working at more prestigious institutions. Of course, the possibility of financial or psychic loss should also be considered, but seldom is. Perhaps future minority or female academics might be expected to receive financial or psychic benefits—or to lose in either or both respects. Or perhaps minorities and females as groups are expected to benefit financially or psychically from any increase in the numbers or standings of the members of these groups or in the academic world—and again, this prospect of the reverse has to be considered. Some have argued that minorities or female students benefit from seeing "role models" or that white male students benefit equally from seeing minorities or women successful in spite of stereotypes. Let us briefly examine each of these possibilities, its likelihood, and the likelihood of the opposite.

First minority or female faculty as potential beneficiaries. Our data show no reason to single out these well-paid professionals as a "disadvantaged" group, either absolutely or relative to white males with the same career characteristics. But assume that we wish to do so anyway. The data show no evidence of any significant group-wide advance in pay after affirmative action. What of prestige? Most black faculty apparently think so little of it as to be unwilling to leave their present jobs—overwhelmingly at black institutions—without very large financial compensation for the move. Female academics have a long history of giving a low rating to academic prestige as a source of career satisfaction.[5] In short, the benefits expected to be conferred by affirmative action have not in fact been conferred, nor is there much evidence that they were much desired by the supposed beneficiaries. Perhaps future minority and female academics will be different—but they will enter an academic world where attitudes toward them will have been shaped by present policies on minorities and women, which means facing the resentment, doubts, and presumptions of incompetence spawned by the bitter controversy surrounding this basically ineffective program.

Second, as for general image upgrading for the benefit of the group as a whole or of society, this can hardly be expected in such an atmosphere. Indeed, the emphasis on the government's conferring a benefit on minorities and women amounts almost to a moratorium on recognition of achievements by such groups, for their achievements tend to be subsumed under the notion of conferred benefits. Certainly there is no clear-cut way to separate the two in practice. How can this upgrade images or improve intergroup relations? No small part of the very real benefits of working in a top research university consists of the voluntary cooperation and mutual interest of academic colleagues. Already there have been bitter complaints by minority faculty concerning their reception by colleagues,[6] indicating how little can be expected from merely shoe-horning someone into a given setting under government auspices.

Footnotes at end of chapter.

What is particularly ominous is that the affirmative action pressures are occurring during a period of severe academic retrenchment under financial stress. Many thousands of well-qualified people of many descriptions were bound to have their legitimate career expectations bitterly disappointed, whether there was affirmative action or not. Affirmative action, however unsuccessful at really improving the positions of minorities and women, gives these disappointed academics and would-be academics a convenient focus or scapegoat for their frustrations.

The Economy

To what extent can the patterns found in the academic profession be generalized to the larger society? That question can be answered only after applying a similar approach to the economy as a whole—that is, going beyond the global-black-and-white or male-female comparisons to comparisons of segments carefully matched for the relevant variables. For women, such matching eliminates sex differentials among continuously employed single individuals.[7] Among blacks, college-educated men had achieved starting salary equality by 1970,[8] with "virtually all of the improvements in relative income" occurring "after passage of the 1964 Civil Rights Acts" [9] but before affirmative action quotas under Revised Order No. 4 in 1971. For black male workers as a whole, firms with government contracts showed a larger increase in the earnings of black workers relative to the earnings of whites than firms without government contracts, but this difference "accounts for only about 6% of the overall change in the relative position of black workers." [10] In short, it was antidiscrimination or equal opportunity laws, not goals or quotas, that made the difference. Another way of looking at this is that blacks achieved when given equal opportunity, and were not passive beneficiaries of conferred gains.

While only segments of minority and female populations have achieved income equality with their white male counterparts, the differences between these segments and other segments of the same populations give clues as to the *causes* of the remaining inequalities. For example, as noted above, marital status is as crucial a variable among women in general as it is among academic women in particular. Among married women, labor force participation declines as the husband's income rises, both in the general economy and in the academic world.[11] Children have a negative effect on work participation for women in general as well as for academic women.[12] As for trends over time, there has been a generally declining trend in the proportion of women in various high-status occupations since around 1930, coinciding with earlier marriages and the baby boom,[13] but this trend began to reverse—*before* affirmative action. For example, the proportion of "professional and technical workers" who were female was 39.0 in 1950, 38.4 in 1960, and 39.9 in 1970.[14] The proportion of "college presidents, professors and instructors" who are female was 31.9 percent in 1930, falling to a low of 24.2 percent in 1960, and rising slightly to 28.2 percent in 1970.[15]

Among blacks, income parity has been achieved not only by college-educated men (and slightly more than parity achieved by college-educated black women) [16] but also by young (under thirty-five) intact husband-wife families outside the South.[17] For the latter, this parity was achieved in 1971, but this could hardly have been a result of goals and timetables formulated in *December* 1971 and implemented the following year. Another way of looking at the still substantial black-white income inequalities is that these inequalities exist among older blacks, blacks in the South, in "broken" families, and among the less educated. There remains a substantial agenda for further progress, but the record shows that the progress that has already occurred was the result of anti-discrimination or equal-opportunity pressures which allowed blacks to achieve sharply rising income relative to the income of whites in a few years, after decades of stagnation in the same relative position.[18] The ratio of black family income to white family income reached a peak in 1970—before affirmative action—and has *declined* slightly in 1971 and 1972.[19] It is unnecessary to blame affirmative action for the decline. It is enough that there is no evidence that goals and timetables produced any further advance, but only cast doubt on, and caused interracial bitterness over, what blacks had already achieved themselves without quotas.

Policy

The long and virtually complete exclusion of outstanding black scholars from all of the leading universities in the United States until the past generation [20] suggests that market forces alone were not enough to open up opportunities in this nonprofit sector. Indeed, economic principles would suggest that nonprofit sectors in general are less likely than other sectors to reduce discrimination in response to economic forces alone [21]—and this includes government, both local [22] and national.[23] The question is not whether there is a legitimate role for government to play in reducing discrimination, but how government should carry out its responsibilities. Affirmative action came along *after* a series of antidiscrimination laws and a change of public opinion. It must be judged against that background, not against a background of uninhibited discrimination in earlier eras, as its proponents like to judge it.

The crucial issue of principle is whether the focus of governmental efforts shall be statistical categories or individual rights. The crucial, practical issue is who shall bear the burden of proof—the government or those subject to its power?

Categories and statistics are a bottomless pit of complications and uncertainties. For example, an economics department with a job opening is not looking for an "economist," or even for a "qualified" economist; it is looking for an international trade specialist with an econometrics background or a labor economist familiar with manpower programs, et cetera. Statistics on how many "qualified" minority or female "economists" in general are "available" are meaningless. Neither minorities nor women are randomly distributed by field or within fields. Female economists, for example, are not distributed the same way as male economists among specialties.[24] Even to define the relevant pools for purposes of realistic goals and timetables is impossible, even if all the statistics on the profession are at one's fingertips and competely up to date—as they never are. No department can predict in which sub-specialty its vacancies are going to occur, for that involves predicting which particular members of its own department will choose to leave—and in an era of retrenchment, vacancies have more effect on hiring than does the creation of new positions.

Statistical "laws" apply to large numbers of random events. But universities do not hire large numbers of random academic employees; departments each hire small numbers of specialists within their respective fields. To establish numerical goals and timetables for such small-sample unpredictable events is to go beyond statistics to sweeping preconceptions. Nowhere can one observe the random distribution of human beings implicitly assumed by affirmative action programs. Mountains of research show that different groups of people distribute themselves in different patterns, even in voluntary activities wholly within their control, such as choice of card games or television programs, not to mention such well-researched areas as voting, dating, child-rearing practices, et cetera.

The American system of justice puts the burden of proof on the accuser, but this principle has been reversed in practice by agencies administering affirmative action programs. Those subject to their power must prove that failure to achieve the kinds of employment proportions preconceived by the agency is innocent in general, and in particular colleges and universities must "validate" their job criteria—even if the government administrators could never do the same for their own jobs. No proof—or even hard evidence—was necessary for the agencies to demonstrate that the academic situation involved individual discrimination rather than statistical patterns reflecting general social conditions outside the institution. Any policy which is to claim respect as a prescriptive law must put the burden of proof back on the government, where it belongs.

A change from categorical statistical presumptions to evidence on individual cases requires a knowledge of academic norms and practices going well beyond the expertise of nonacademic government officials. The lack of such knowledge by those administering "guidelines" for higher education has been a bitter complaint among academics.[25] Certainly it is revealing when J. Stanley Pottinger can refer to the university "personnel officer" as hiring agent,[26] when faculty hiring is in fact done by individual departments, with the candidates having little or no contact with "university" officials before being hired. In any event, if professional judgments are to be subject to review in cases where discrimination is charged, that review requires at least equally qualified professionals as judges. Since academic disciplines have their own respective professional organizations—the American Economic Association, the American Sociological Association, et cetera—these organizations could readily supply panels of experts to review the reasonableness of the decisions made in disputed cases. If academic freedom and faculty self-governance are to be maintained, such a review must determine whether the original hiring decision fell within the reasonable range, not substitute the choice of the panel for the choice of the department.

The great problem with individual case-by-case adjudication is the backlog that can be generated—to the detriment of all and perhaps fatally so for the effectiveness of the program. There are some countervailing factors in the case of judgments by a panel of experts. First of all, the panel can quickly dismiss frivolous claims—especially where the claim must be based on demonstrable evidence of superiority of the candidate rejected over the candidate actually hired. Second, to go before such a panel risks public confirmation of the opposite by leading scholars in one's field. Finally, the mere fact that such a program is based on professional criteria rather than nebulous presumptions must have an inhibiting effect on claims without substance.

Remedies for demonstrable discrimination must hit those responsible, not be diffused over a sprawling entity such as a large research university. A history department which discriminates against minorities or women is unlikely to be deterred by the medical school's possible loss of a government contract. But there is nothing to prevent the government from levying a stiff fine on the specific department or other academic unit that made a discriminatory hiring decision—and taking that fine out of that department's or unit's budget for salary and research, without interruption of contracts and the often vital work being produced elsewhere in the university. Indeed, such a fine is a more credible threat, for the government and the public would often lose heavily if some university contracts were cancelled. Contract cancellation is like a nuclear weapon that is too powerful to use in any but the most extreme cases and so loses much of its apparent effectiveness. Fines are a more conventional deterrent and can be invoked whenever the occasion calls for them.

Between the original concept of affirmative action and the goals and timetables actually imposed lies an ill-conceived mixture of unsupported assumptions and burdensome requirements which remain ineffective because of their indiscriminate nature—their failure to distinguish discriminators from nondiscriminators, or to give anyone an incentive to change from one of these categories to the other. Inescapable burdens do not cause change but only bitterness. That bitterness not only has been directed against those administering affirmative action programs, but has inevitably affected the perception and reception of minorities and women in the academic world—and beyond.

Footnotes at end of chapter.

FOOTNOTES

[1] Brown, *Mobile Professors*, Chapter 4.

[2] J. Stanley Pottinger, "The Drive Toward Equality," *Change*, vol. 4, no. 8 (October 1972), p. 24.

[3] At the Ph.D. level blacks tend to receive their degrees from large, prestigious, predominantly white institutions of higher learning outside the South Mommsen, "Black Ph.D.s," 256. Fifty percent of all black Ph.D.s come from just ten institutions (p. 257). By comparison, for academics in general, "the ten top-producing universities granted 35.8 percent of the doctorates. . . ." Brown, *Mobile Professors*, p. 45.

[4] Bernard, *Academic Women*, p. 87.

[5] Brown, *Mobile Professors*, pp. 79–80.

[6] Moore and Wagstaff, *Black Educators in White Colleges*, pp. 26, 131, 198–199; Richard L. Garcia, "Affirmative Action Hiring," *Journal of Higher Education*, vol. 14, no. 4 (April 1974), pp. 268–272.

[7] "The Economic Role of Women," p. 105.

[8] R. B. Freeman, "Labor Market Discrimination: Analysis, Findings, and Problems," *Frontiers of Quantitative Economics*, ed. M. D. Intriligator, and D. A. Kendrick (Amsterdam: North Holland Publishing Company, 1974), vol. 2, p. 508.

[9] Ibid., pp. 508–509.

[10] Orley Ashenfelter, "Comments," *Frontiers of Quantitative Economics*, vol. 2, p. 558.

[11] "The Economic Role of Women," p. 96; Bowen and Finegan, *Labor Force Participation*, p. 132; Astin, *The Woman Doctorate*, pp. 60, 61.

[12] Bowen and Finegan, *Labor Force Participation*, pp. 96–105; "The Economic Role of Women," pp. 93–95; Bernard, *Academic Women*, pp. 220–222.

[13] Bernard, *Academic Women*, pp. 62, 74, 215.

[14] "The Economic Role of Women," p. 155.

[15] Ibid., p. 101.

[16] Freeman, "Labor Market Discrimination," p. 506.

[17] Wattenberg, *The Real America*, p. 128.

[18] Freeman, "Labor Market Discrimination," pp. 504, 506.

[19] Wattenberg, *The Real America*, p. 125.

[20] Winston, "Through the Back Door."

[21] Armen A. Alchian and Reuben A. Kessel, "Competition, Monopoly, and the Pursuit of Money," in *Aspects of Labor Economics*, A Report of the National Bureau of Economic Research (Princeton: Princeton University Press, 1962), pp. 157–175; Thomas Sowell, *Race and Economics* (New York: David McKay Co., 1975), pp. 166–169.

[22] Freeman, "Labor Market Discrimination," pp. 549–555.

[23] Sowell, *Race and Economics*, Chapter 7.

[24] Myra H. Strober, "Women Economists: Career Aspirations, Education, and Training," *American Economic Review*, vol. 65, no. 2 (May 1975), p. 96.

[25] Lester, *Antibias Regulation*, pp. 103–107.

[26] Pottinger, "The Drive Toward Equality," p. 26. The same characterization was repeated by Mr. Pottinger at a conference of the Federal Bar Assocaition in September 1974.

Mr. HATCH. Mr. President, the two inserts I have just placed in the RECORD show clearly that if we are affirmatively acted into the angry menagerie George F. Will predicts, we can expect moral deterioration, inefficiency and little additional impact on the problems the policy was allegedly imposed to solve. Any such policy aiming at numerical quotas will immediately become a game played by businessmen and bureaucrats to achieve a satisfactory nominal result that fulfills the letter of the law. It will be neither edifying nor effective.

The overall economic impact of quotas, however, is an aspect that has received little attention. In the spring 1980 issue of Policy Review magazine, I attempted an estimate of their cost to the U.S. economy. I concluded that in the late 1970's, the direct cash outlay caused by State-mandated quota programs was somewhere around $5 to $7.5 billion a year—not quite the same size as the food stamps program, and probably growing equally fast. But affirmative action also has an indirect cost probably several times greater than that, because of opportunity costs, disruption in methods of working, productivity loss, and so on. Affirmative action is not simply a redistributive program. It is a redistributive program which actively retards society's ability to produce anything to redistribute.

Mr. President, I ask unanimous consent to have printed in the RECORD an article written by the Senator from Utah entitled "Loading the Economy," published in Policy Review, spring 1980.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LOADING THE ECONOMY

(By ORRIN HATCH)

"It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training."—Paragraph 703(d) of Title VII of the 1964 Civil Rights Act.

The spread of affirmative action since the passage of the Civil Rights Act of 1964 has been an event without precedent in American history. With astonishing speed, federal and state agencies have asserted the right to impose racial quotas on virtually every area of American life. Even a tiny academic institution like Hillsdale College in Michigan, with a faultless tradition of social progressivism and an established policy of refusing federal monies, is menaced on the ingenious grounds that, since some of its students get veterans' benefits, it is in receipt of federal funds.[1] All of this is in flagrant breach of the letter and the spirit of the Civil Rights Act, as specifically established in congressional debate at the time of its passage The legalistic casuistry indulged in by the liberal plurality on the Supreme Court in order to give at least limited endorsement of affirmative action in the *Weber* case has not unreasonably been described as "the most horrendous decision in U.S. Supreme Court history since the Dred Scott case" [2] (by Professor Sidney Hook), as a violation of the separation of powers (by Chief Justice Burger) and as "Orwellian" (by Justice Rehnquist)[3]. More significant still, affirmative action is a reversion to a society of status from the ideal of a society of free contract, equal protection and individual freedom which inspired the framers of the Civil Rights Act and ultimately of the American Republic itself.

The legality, or otherwise, of affirmative action will keep lawyers employed for many years. Cultural historians (and possibly psychologists) will make reputations explaining the reluctance of press and politicians to oppose its development, or really to notice that it was going on at all. However, since affirmative action is indeed going on, without benefit of law or legislators, a more immediate concern ought to be what its practical effect is likely to be. Typically, this turns out to be the least studied aspect of all.

Some economists have done work on the effects of affirmative action upon the relevant "protected class." [4] This has generally been pessimistic. Such evidence as is available suggests that the programs fail, either because of absolute lack of candidates, or extensive changes and other factors in the economy, or high attrition rates. Intuitively, we might suppose the effect would be similar to tariffs, inducing a local and relative prosperity at the expense of overall welfare. This prosperity would probably be less in absolute terms than might have been the case if the economic system had been permitted to work freely. But a recent survey by the Library of Congress was unable to discover anything substantial from academe on its overall or macroeconomic impact. In fact, the major empirical study was done as part of a survey of all government regulation by public accountants Arthur Andersen & Co. for the Business Roundtable,[5] and the most helpful theoretical discussion of regulation was published by an arm of the American Management Association.[6] As far as I can tell, all recent Ph.D. theses on the subject have concentrated on its sociological or educational aspects, or on the effect on the "protected class." Considering how large affirmative action looms on the campus (see below), this is a distinct case of the dog that didn't bark in the night. It can only darken the suspicions of those already depressed by such news items as the plans of Ohio State University officials to buy their own airliner, because enough of them make lobbying trips to Washington to fill three flights a week.[7] However, given this absence of academic interest, perhaps a U.S. Senator might at least growl in the direction of affirmative action's economic impact, and the questions such a study would raise.

QUOTAS BUST

Because most people would rather not think about affirmative action, there is considerable confusion about what it means, not unrelated to the frantic logic-chopping indulged in by its proponents when under pressure. For my present purposes, I want to emphasize that affirmative action means quotas or it means nothing. It means discrimination on the basis of race and sex. It does not mean remedial education, special programs for the disadvantaged, or any of the other methods by which we could, and to some extent do, help minorities. It has nothing to do with equal opportunity, although its chief enforcement agency is misleadingly called the Equal Employment Opportunity Commission (EEOC). Affirmative action is about equality of results, statistically measured. Its proponents have made great efforts of casuistry to distinguish between quotas and "goals," "targets," "timetables," and so on. All such distinctions dissolve in practice, particularly when the enforcers are feeling confident about the balance of power on the Supreme Court.[8]

Footnotes at end of article.

One example makes this point irrefutable. In 1973, American Telephone & Telegraph signed a consent decree including substantial affirmative action programs. This pioneer in the employment of women had been backed up against a wall by the EEOC solely because the paucity of women in its higher reaches was regarded as *prima facie* evidence of discrimination. A.T. & T. didn't agree, but it didn't want to take on the federal government in a long court battle either, so it tried to compromise. The targets it tried to meet were of a volume and complexity to delight a bureaucrat's heart. In 1975, the federal government announced A.T. & T. wasn't doing well enough, and made it sign a "supplemental order."

The sternness of the government's approach to the supplemental order convinced A.T. & T. that it was dealing not with goals, as it had previously assumed, but with quotas (a proposition some government people involved do not concede). Says Don Liebers [the A.T. & T. executive concerned]: "The order made it rather clear that the name of the game was achieving targets."

After that, A.T. & T. became a superachiever. . . .[9] Anyone temporarily confused by the affirmative action lobby's shell game should ask himself: Am I supposed to take notice of race, sex, etc.? Or not? He will find the answer (yes, on our terms) nowhere appears in the Civil Rights Act. It is the economic impact of this answer that is the subject of this article.

HOW THE MARKET ERODES DISCRIMINATION

The concept of a free market is valuable not simply as a description of reality, but as an analytical tool. It helps us put discrimination in context. In a system where all actors are free to pursue their own interests, there is an inexorable tendency for everyone to receive the marginal value of his labor. In other words, you will ultimately be paid approximately what your work is worth. The free market undermines all distinctions that are not based on this economic reality. If you belong to some unpopular group, employers may begin paying you less than average, as a matter of tradition. But precisely because they will make more money off you than off more popular but expensive groups, you will come into demand, and your wages will be bid up. Ultimately, you will be paid the average, or even more than that if you happen to be more efficient. The only way this can be prevented is if the state legislates unequal wages or bans you from certain occupations, as has happened in South Africa. Private employers cannot effectively do it, because their attempts at collusion are undermined by market forces just as their attempts to form cartels collapse, unless supported by public policy, tariffs or some other constraint on freedom. *Discrimination is costly.* That is why the South African business community is generally critical of *apartheid*.

Two qualifications must be made, however. First, there is no reason why your marginal value should be the same as that of anyone else. Even apart from any question of innate aptitude, different cultures have different attitudes to work and leisure. If you regularly spend the summer living on a beach in Yucatan, your earning capacity will be outpaced by your brother who works and goes to night school all year round, although you might be happier. Secondly, even when your marginal value is the same, it may take time to get paid it. Traditions do not dissolve overnight, although experience in America indicates that where money is concerned, they erode remarkably quickly.

In fact, the American experience is that relying on the market system has been enormously successful in integrating diverse groups, often historically hostile to each other. Groups frequently subjected to majority disapproval, such as Jews and Asians, have nevertheless emerged with incomes significantly above the average. The cash nexus is a noble thing. You don't have to like the man who mends your shoes, but you and he can exchange goods and services to your mutual advantage. The pursuit of material gain has so remorselessly worn down all social distinctions that, for example, the position of women in American life had already been revolutionized, seen in a longer perspective, before the EEOC sprang forth.

The point of the 1964 Civil Rights Act was merely to hurry this process along, particularly in the area of race, by forbidding certain types of public discrimination. The philosophy behind it was that, once entry to the market was freed of artificial constraints like institutionalized discrimination, it would solve this problem as it had all others.

If you leave people alone, they will tend to employ those who do the best job, and the overall production of wealth will be maximized. But if you don't leave people alone, they cannot do this, and inefficiencies will develop. Wealth will not be maximized. This is exactly the effect of affirmative action.

THE INDEPENDENT IMMIGRANT

Even Massachusetts Institute of Technology Nobel laureate Paul Samuelson, father of the famous textbook, missed this point in commenting on the Bakke decision. Professor Samuelson compared the arrival of blacks on the labor market with the arrival of immigrants in the nineteenth century. Immigration was opposed by "charter-member Yankees," he said, because they were afraid of losing their jobs. But in fact

. . . the economic system . . . is *not* a zero-sum game . . . When a country gains new manpower from the excess of births over deaths or from immigration and increased female participation, its same land and complement of capita assets can produce a larger pie . . . Neither the "poor whites" nor other groups in the community have to fear particularly that out of *their* economic hides will have to come any advance achieved by black Americans, native Indian Americans, Americans of Mexican descent or other minority groups.[10]

This is wrong, even on its own terms, as a defense of affirmative action. "Poor whites" had excellent reasons to fear that they would be undercut in the short run. In the long run, as Professor Samuelson might normally argue, echoing Lord Keynes, we are all dead—although overall welfare will indeed expand. But more important, the U.S. absorbed the great wave of immigration at the end of the last century because the immigrants were employed in the sectors of the economy that needed them—often concentrated at first in the least desirable areas. Under affirmative action, however, the newcomers would be inserted into each area of activity in proportion to their overall numbers, and not because of their skills or because they represent a more efficient use of resources. (This is literally what is happening with the Spanish-surnamed protected class, whose numbers are currently increasing through substantial legal and illegal immigration.) In these circumstances, we cannot be sure that "new manpower" would produce a "larger pie." It might, as we shall see, produce a smaller pie as well as denying some people jobs they might otherwise have occupied. It would be more accurate to look at affirmative action as a tax, whereby resources are transferred directly to the protected classes. But it is a peculiarly debilitating tax, because it interferes with the productive enterprise's ability to take decisions by reducing its internal efficiency. Most taxes are a burden to be shouldered. This one is also an enfeebling drug.

INEFFICIENCY IN TRIPLICATE

The true nature of affirmative action can be seen in one of the rare reports from the front line, which appeared in the *Washington Star*, albeit in the the Business & Finance section:

"Dante DiGaetano's business is so small that he has no office and no secretary—just one carpenter and two laborers.

"But the Labor Department has ordered him to take a series of 43 continuing administrative actions which could occupy a sizable office force because, under a recent government contract, 5% of the four laborers working for him and his subcontractors were not women."

As usual, Mr. DiGaetano had signed a conciliation agreement rather than abandon his contract or fight the government in court.

"As a result of signing the order, DiGaetano has been ordered to maintain a written equal opportunity policy, appoint an EEO officer with a written job description, include EEO policy in company manuals, maintain records of encouragement of minority and female employees to seek promotion and keep a record of annual reviews by those employees for promotional opportunities.

"He must also keep a current listing of recruitment sources for minority and female craft workers, copies of letters to employment opportunities, files of all responses to these letters and records of contracts with minority and women's community organizations, recruitment sources, schools and training organizations.

"Further, DiGaetano must have copies of newsletters and annual reports that include EEO policy, copies of letters to unions and training programs requesting assistance in meeting EEO duties, copies of letters sent at least every six months to all recruiting sources stating EEO policy and copies of advertising with EEO statements.

"In addition, the conciliation agreement stipulates that he must maintain records that parties and picnics have been posted and are open to all employees, have separate toilets and changing facilities for male and female employees and provide documentation that all foremen maintain a working environment free of harassment.

"On top of this, DiGaetano must submit a monthly 'employment utilization report,' a quarterly report on minority and female applicants, job offers, new hires, terminations and layoffs and a report stating the date upon which each of the other 42 requirements was met." [11]

My colleague, Senator Richard S. Schweiker of Pennsylvania, complained to Labor Secretary F. Ray Marshall about this situation. Mr. Marshall replied that Mr. DiGaetano had only himself to blame. He hadn't submitted his "monthly Employment Utilization Reports, Form CC257." Mr. Marshall added that although this case was unusual, it was too difficult on administrative grounds for his agents to take note of the size of their victims.

A society which allows this sort of harassment is, in an important sense, no longer free. Beyond that, it is not even efficient. Obviously, the heightened threshold of fixed costs is going to exclude smaller contractors from such fields. But the impact on the major contractors is perhaps worse. They survive, but waste much of their assets on bookkeeping, and other compliance activities. Additionally, they are no longer dedicated to the pursuit of profit, with its continuous, systematic pressure against waste and error. This is partly because they are now staffed by people who, by definition, are not the ones who would have been selected had the principle of merit been applied. Also, the whole ethos of the organization has been altered, from commerce to politics. We are witnessing a cultural conquest of the corporate sector by the bureaucracy. And for future developments, we need look no further than the bail-out last fall by Congress of the Chrysler Corporation. Congress here chose to support a failing corporation, and thus perpetuate a concomitant misallocation of resources throughout the economic system, in large part because the bureaucracy felt that the corporation had complied with its regulations and was a "good corporate citizen." One frequently-used argument was that Chrysler was a major employer of minorities. Thus we are intervening to foster inefficiency, and intervening yet further when its consequences become unavoidable. It looks ominously like what the Victorians called the Primrose Path.

Footnotes at end of article.

AN ECONOMIC IMPACT STATEMENT

Measuring the economic impact of affirmative action regulations is easier than that of (say) the Environmental Protection Agency's activities because they are clearly a form of consumption. The EPA is often justified on the grounds that its regulations merely bring home to the economic decision-maker the "social costs," or "externalities," that the price system fails to detect. These include the cost to the community of washing the soot from factories out of its hair and so on. The concept is debatable, but it does not concern us here. The EEOC has sometimes been credited with opening up new pools of labor that corporations somehow contrived to ignore, and occasionally with hastening the breakdown of traditional barriers to labor mobility. But in the context of the market's endless search for efficiency, these anomalies would have been eliminated anyway, leaving only the question of whether they were worth the expenditure compelled by law. Affirmative action is a net cost to the economy. On the whole, its advocates have defended their policies in terms of social injustice. And this is a more reasonable position. No one, after all, expects the state to profit from the money it expends on looking after the aged.

Measuring the costs of regulation is not an easy task. In the case of Dante DiGaetano, for example, it is possible to quantify the incremental expenditures he is now forced to make—hiring an EEO officer, secretaries, posting letters, and so on. It is more difficult to assess the changes in his way of working—including the time he himself must divert from other activities. And the true dynamic effects—the opportunity cost of all this expense and effort, the diminution of competition, inefficiencies due to the employment and promotion of marginal labor and the consequent demoralization of good workers—can only be a matter of conjecture, although they are clearly the most important of all. No measurement can be made, for example, of the cost to the entire economy of a decision not to terminate a bad worker because he or she belongs to some category required to satisfy government inspectors, a near-universal phenomenon in contemporary America. It is safe to say, however, that the dynamic effects of affirmative action are some considerable multiple of the static costs.[12]

UNEARNED INCREMENTS

The Arthur Andersen study resolved this problem by counting only such incremental costs as could be exhaustively documented. Under this minimal definition, the 48 companies which were examined proved to have spent some $217 million to comply with EEO regulations in 1977. The greater proportion of these, some 96%, were operating and administrative costs which recur annually. The companies noted that the full impact of treating the handicapped as a "protected class" had not yet been felt in 1977.[13]

Since these 48 companies represent only 5% of the U.S. workforce, excluding military, government and agricultural employees, it would be logical to conclude that costs across the entire sector are $217 million ×20=$4.34 billion. Any shortfall resulting from the crudeness of this measure is amply compensated by the fact that it does not include the effect of state and local government demands, or specialized federal activities such as the fair housing laws.

The figure is also not inconsistent with the estimate made by Robert DeFina of the Center for the Study of American Business at Washington University in St. Louis that compliance costs are approximately 20 times the cost of the regulatory agency concerned.[14] In 1979, the federal government estimated it spent $135.5 million overseeing "private sector equal opportunities" and a further $15.2 million in partial administration of the fair housing laws, suggesting a total compliance cost of at least $3 billion. Estimated expenditures for 1981 are some $210 million, for which compliance costs could be $4.2 billion.

The federal government's estimate of its 1979 expenditures on overseeing and complying with its own equal opportunity regulations was $170.4 million, with an additional $39.7 million for military equal opportunity. The figures for 1981 are expected to be $194.9 million and $42.9 million.[15]

This is substantially less than the estimate of affirmative action costs that the Congressional Research Service arrived at in 1976 by polling selected government agencies—$367 million.[16] These, of course, by now would be substantially higher. The reason for the discrepancy probably lies in accounting definitions, with the government now taking a far more restrictive view than did the individual agencies. An arithmetical exercise performed on the military budget, for example, appears to imply that the 5,000 persons, who have graduated from something called the Defense Equal Opportunity Management Institute in the last eight years, are serving their country at a cost, in salaries and support expenditures, averaging something less than $8,000 a year. Patriotism, clearly, is not dead. In fact, given the military's remarkably low estimate of its 1980–1981 increase in expenditure on Equal Opportunity—a mere $1,200,000—we can assume that civilian control at least over military statistics is pretty healthy, too.

The costs of affirmative action to state and local governments remain an unexplored continent. In 1976, the Congressional Research Service's intrepid analyst attempted to estimate the costs of federally-mandated programs in this area by asking selected states directly. Unsurprisingly, the results were rudimentary, but they suggested nationwide 1976 costs of approximately $185 million. This is a tribute to the impact of the Bureau of Intergovernmental Personnel programs, which produced this formidable effect for an outlay of only $325,000. No information is available on the cost to the states of their own regulations.

There seems to have been no estimate of the costs to colleges and universities since the American Council on Education published one in October 1975 for six selected institutions.[17] It said the cost was $1,800,000. Extrapolating across the 250 colleges and universities that, according to HEW, had affirmative action programs in April of 1975, the Congressional Research Service concluded that the total 1974–5 cost had been $75 million. In 1979, the federal government estimated that it had spent $14.8 million on "equal educational opportunity," which includes oversight of employment policies. Interestingly, this sum will rise to an estimated $40.7 million in 1981.

This still leaves areas of the economy unassessed. Perhaps the most notable is that of primary and secondary education, where random inquiries suggest affirmative action is at least as much a priority as in the federal bureaucracy. Still, what we have is enough for a consciously-low estimate:

[In billions]

Private sector—Arthur Andersen/ Hatch, 1977	$4.3
Federal govt.—Actual 1979	.35
State and Local govt.—CRS estimate, 1976	.18
Universities, Colleges—CRS/ACE estimate 1974	.08

Considering the partial and dated nature of these figures, the fact that inflation in the four years of President Carter's Administration seems likely to average nine percent a year and the dramatic proliferation of programs of affirmative action in recent years, its incremental cost must be clearly in excess of $5 billion—perhaps as much as $7.5 billion.

It is essential to remember at this point that $5–7.5 billion is only the tip of the iceberg. It is just the incremental cost of compliance—what Dante DiGaetano pays to satisfy his official tormentors. The full economic cost is the better use Mr. DiGaetano could have put his time and money to, the demoralizing effects on his workers and himself, the chances that workers hired under the new regime may not be as productive, the loss of wealth represented by the exclusion of skilled workers, the possibility that he may give up in disgust and apply for a job in the Department of Labor, and so on. This will be many times higher, if inherently less quantifiable.

Affirmative action is yet another wedge driven between the American worker and the fruits of his labor. The most obvious wedge is that proportion of the fruits commandeered in the shape of direct and indirect taxes. Affirmative action certainly contributes to this because of the expensive oversight apparatus that accompanies it. But a less obvious wedge is the inefficiency it induces in the productive base. This means that an hour of work yields less fruit. Instead it is spent getting wrong numbers on the telephone system, and hunting for lost mail. Where the worker faces a high marginal tax rate, quite small changes in return can make him decide to go fishing instead. This is exactly what is happening to the American economy.

Since 1973 particularly, there has been a drop in American productivity growth that cannot be explained in terms of the changing combination of capital and labor input.[18] In real terms, national income per person employed in the first half of 1979 was below that of 1973. The most obvious culprit is the distortion and misallocation effect caused by complying with federal regulations. Affirmative action is only a small part of this—Murray Weidenbaum estimates that total incremental cost of oversight and compliance in 1979 was some $102.7 billion.[19] But since it has such a personal impact on the labor force, its dynamic economic impact is probably out of proportion. One can work happily designing a pollution filter, but not if passed over for a promotion on the grounds of race. In any event, affirmative action is a symbol and a symptom of the regulatory socialism which, sprouting with the New Deal, has grown like a kudu vine until our institutions and their classical liberal inspiration are on the point of vanishing from sight.[20]

Perhaps the best way to look at affirmative action is to regard it as a "rent-seeking" activity, of the sort described by Gordon Tullock.[21] Rent-seeking is the process by which individuals and groups attempt to get society at large to pay them a subvention. Professor Tullock has demonstrated that most societies in history have been organized in this way. Government officials and their clients exact

Footnotes at end of article.

income in the form of salaries, bribes and the proceeds of government-sponsored concessions and monopolies. Everyone else invests time and money in evading them—"rent avoidance." Professor Tullock gives an example of an entrepreneur in a developing country who knew nothing of the production process in his factory because his time was best spent negotiating with, and paying off, various functionaries. Without (as yet) the venality, the same process is, according to him, under way here. It is significant that Du Pont Corporation has recently found it desirable to appoint as chief executive a lawyer specializing in government negotiations and public relations instead of a chemical engineer. Some of his time will probably be spent negotiating with EEOC officials about the amount of income to be redirected from Du Pont workers and stockholders to whatever groups are politically important enough to be designated "protected classes." The actual making and selling of chemicals somehow gets shuffled lower and lower in his In tray. From an economic standpoint, it would be better to pay the $5 billion out in undisguised grants.

FOOTNOTES

[1] "H.E.W.-ing at Hillsdale," *Regulation*, Jan./Feb. 1979. The case is currently under appeal.

[2] *Measure*, Sept./Oct. 1979, p. 1.

[3] Justices Burger and Rehnquist's dissents to *Weber*, both of unusual ferocity.

[4] Andrea H. Beller, "The Economics of Enforcement of an Antidiscrimination Law: Title VII of the Civil Rights Act of 1964," *Journal of Law and Economics*, Vol. 21, Oct. 1978; and the work of Thomas Sowell of UCLA.

[5] *Cost of Government Regulation*, "Study for the Business Roundtable: A Study of the Direct Incremental Costs Incurred by 48 Companies in Complying with the Regulation of 6 Federal Agencies in 1977," Arthur Andersen & Co., March 1979.

[6] Murry L. Weidenbaum, *The Future of Business Regulation: Private Action and Public Demand* (New York: American Management Assoc., 1979). Professor Weidenbaum, admittedly, is Director of the Center for the Study of American Business of Washington University in St. Louis.

[7] *Toledo Blade*, Feb. 16, 1980. Ohio State University receives some $63 million in federal aid each year.

[8] Which is pretty confident. Joseph L. Rauh, Jr., in "The Supreme Court: A Body Politic," *The Washington Post*, March 5, 1980, comments on the term " 'Equal protection of the laws.' . . . The issues of . . . preference of blacks in jobs . . . are hardly resolved by reference to those five little words, and the Justices quite naturally apply their own ideologies."

[9] Carol J. Loomis, "A.T.&T. in the Throes of 'Equal Employment,' " *Fortune*, Jan. 15, 1979.

[10] Paul A. Samuelson, "Economics of Discrimination," *Newsweek*, July 10, 1978.

[11] *Washington Star*, Feb. 21, 1980.

[12] This three-fold division follows Weidenbaum, *op. cit.*, pp. 11–33. Arthur Andersen combined the second and third category as follows:

Incremental costs, (measured in study). Costs of secondary effects not measured in study, Loss of productivity; Investment-disincentive; International competitiveness; Lost opportunity; Construction delays; Inflation; Resource misallocation; Shortage of supplies.

[13] *Cost of Government Regulation*, Arthur Andersen & Co., March 1979.

[14] Robert DeFina, *Public and Private Expenditures for Federal Regulation of Business*, Working Paper No. 22 (St. Louis: Washington University Center for the Study of American Business, 1977). Also, Weidenbaum, *op. cit.*, pp. 21–22.

[15] *Special Analysis: Budget of the United States Government, Fiscal Year 1918* (Washington, D.C.: Office of Management and the Budget).

[16] "Costs of Affirmative Action In Employment," Congressional Research Service, Library of Congress, April 1976.

[17] "The Cost of Implementing the Federally Mandated Social Programs at Colleges and Universities," *American Council on Education*, June 1976.

[18] Denison, "Explanation of Declining Productivity Growth," *Survey of Current Business*, August 1979.

[19] Weidenbam, p. 22.

[20] Theodore Lowi, *The End of Liberalism* (New York: W. W. Norton,.1969).

[21] Gordon Tullock, "Rent Seeking," Working Paper No. CE 78-2-8; and "The Backward Society: Static Efficiency, Rent Seeking and the Rule of Law," Working Paper No. CE 78–7–1, Center for the Study of Public Choice, Virginia Polytechnic Institute.

Mr. HATCH. Mr. President, a more recent story from the Nation's Capital illustrates further the costs of affirmative action, in this case to a city government that is embroiled in a serious financial crisis.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in the Washington Star, April 18, entitled "Minority Contracts Cost More."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MINORITY CONTRACTS COST MORE

(By Laura Murray)

District officials yesterday told the House D.C. Appropriations subcommittee that the city pays anywhere from 5 to 20 percent more on its contracts with minority businesses than it does on those with other firms.

The issue surfaced when Rep. Julian C. Dixon, D-Calif., who chairs the subcommittee, asked why a contract to provide meals to the D.C. schools cost more than it could have at a time when the District is financially strapped.

Kenneth E. Quinlan, an acting assistant director of the D.C. Department of General Services, said that that particular contract had been put on the "sheltered market," meaning only certified minority firms could bid for it.

And most minority firms simply cannot do business as cheaply as large, majority businesses which have more experience and easier access to credit, Quinlan said.

Recognizing the problems minority firms face, the city is willing to pay them more for goods and services than it might pay a majority firm, Quinlan said. "It's a bootstrap to minority contractors," he said. Quinlan said the city might pay a minority firm 5 to 12 percent over the prevailing majority market price.

Under D.C. Law 195, at least 25 cents of each dollar a city agency spends for contracted goods and services must go to a minority firm. Mayor Marion Barry Jr. has promised to vigorously enforce that law, and has said that the 25 percent minority-contract market should be considered a floor, not a ceiling.

Mr. HATCH. Mr. President, another Washington story provides a clear indication of the sort of society we are becoming. It is interesting to speculate what the Star's headline would have been if the selective offer of mortgages had been made to whites only.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in the Washington Star, June 11, 1980, entitled "Details of Minority Mortgage Offer Released by Montgomery Officials."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DETAILS OF MINORITY MORTGAGE OFFER RELEASED BY MONTGOMERY OFFICIALS

(By Philip Shandler)

Montgomery County housing officials yesterday released the contents of a brochure designed to help minority families apply for low-interest mortgage loans later this month.

The brochures, which were handed out this week, included not only details on how to apply for the mortgages but advance notice of what houses would be available under the program. That information was not to be made available to the public until this weekend.

On Monday and early yesterday, officials of the county's Housing Opportunities Commission and the group distributing the pamphlet—the Fund for an Open Society (OPEN)—refused to release the brochure when asked by a Washington Star reporter.

Employees of OPEN said commission officials had told them to hand out the brochure only to eligible minority families.

Late yesterday, however, Bernard Tetrault, the HOC executive director, directed that the booklet be given to The Star.

Joyce Siegel, spokesman for HOC, acknowledged later that some HOC officials had told OPEN not to respond to requests for the pamphlet.

"We were trying to have affirmative marketing, and they thought that releasing the brochure generally would work against that," she said.

Siegel insisted that the lower-level officials made the decision not to release the brochure on their own, and it was not a policy of the commission.

The "affirmative marketing" consists of mailing about 10,000 copies of the brochure to black, Hispanic and Oriental groups and churches. HOC is paying the Fund for an Open Society $10,000 to do the mailings and handle queries.

The commission decided to prepare the brochure for minority families because few of them took advantage of the bargain mortgages when they were first offered last year, officials said.

"We found that many just hadn't gotten the information last year," Siegel said. She noted only 120 of the 1,300 HOC mortgages offered last year went to minorities.

But Siegel emphasized that while the advance information would help the minorities look at the participating developments, and gather information needed to make a down payment, no one could buy a unit until June 17, when the developments originally were to have been publicly identified by HOC.

The pamphlet advises those interested in the bargain housing to "apply as soon as possible after June 17. All designated homes under this program may be sold within a few weeks."

The booklet tells readers to ask sales agents at the listed developments which homes are in the program, be prepared to provide certain information and a check or money order for $1,000 and appeal to OPEN if they are turned down and feel they are qualified.

HOC is selling nearly $29 million in bonds to raise money with which to provide about 460 mortgages at below-market interest rates.

Depending upon what interest selected underwriters offer to buyers of the bonds, HOC expects to charge mortgage interest of about 9.5 percent—well below the interest on home loans offered by private lenders and the federal government.

Individuals with incomes of up to $20,800, couples making no more than $23,600 and families of four whose income is not above $30,100 will be eligible. The houses will be priced from $45,600 to $65,000.

Most of the planned 460 units will be town houses, but some will be detached houses.

Mr. HATCH. Mr. President, a further report from the front lines appeared recently on the editorial page of the Wall Street Journal. This report is particularly significant because it makes plain the erosion of the rule of law that is being brought about by affirmative action, and the other forms of Government regulation of society that have been growing exponentially in the last few years.

In effect, private citizens are wholly at the mercy of the bureaucracy. Few have the resources to challenge it in the courts. And as for those who can, it is no secret that there is a pervasive belief among businessmen that Government agencies bear grudges, and punish those who resist them or their fellow-agencies by whatever means come to hand. Hence the affirmative action bureaucrats have been able to move light years from what the Wall Street Journal points out is ostensibly at issue: "Whether everyone who might want to work at Firestone's Orange plant and might be qualified to do so is being treated fairly."

Effectively, the bureaucracy has become judge, jury, and executioner—and legislator as well. This is no longer a Government of laws, but of men, faceless ones at that.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Stilling the Voice of Firestone"; Wall Street Journal, July 22, 1980.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STILLING THE VOICE OF FIRESTONE

Secretary of Labor Ray Marshall, a former college professor, offered the Firestone Tire & Rubber Co. a little lesson last week in modern government. The lesson: Business corporations should obey the orders of federal bureaucrats, even orders that are beyond human comprehension.

For failing to heed that lesson in connection with an affirmative action dispute involving a small Texas plant, Firestone was told by Mr. Marshall that it could no longer have federal contracts. The potential cost to Firestone if the order survives a court test is $40 million annually.

Secretary Marshall based his decision on Executive Order 11246, which prohibits race and sex discrimination by government contractors. But no actual discrimination by Firestone has been proved or even alleged. Of the 650 employees at its Orange, Texas plant, some 25% are women or members of "minority" groups. The problem, it seems, is that Firestone, the largest firm ever found in violation of the order, had the audacity to challenge an affirmative action rule put forth by the Labor Department's Office of Federal Contract Compliance Programs (OFCCP).

For years, a company wishing to do federal business has had to perform a "labor availability" study broken down into minorities and women. If it didn't employ a roughly proportional number of these workers, it had to establish goals for meeting the OFCCP requirements. The standard had been that a company could lose its federal contracts if it underutilized the available work force below a "reasonably expected" level. But the OFCCP later decided that this standard wasn't good enough and that from now on, a company must hire minorities and women at a precise ratio to the proportionate supply available. Among the gobbledygook in the new formula was something about "half-a-person" underutilization, which really does get things down to a fairly fine point.

Now this is all pretty silly when you stop to think about it. Orange, Texas (population 25,600), is not exactly Barracks A of the 3rd Marine regiment. While it may not be beyond the capability of some bureaucrat's imagination to design a means of counting all the blacks, Chicanos, Eskimos, Aleuts, or whatever in the available work force there on some given day, we wouldn't want to stake much on the exactitude of such an exercise. All this is aside from the fact that the bureaucrats have taken the inch of line the courts have given them for setting absolute racial quotas and stretched it a mile.

Firestone claimed that the new rule is capricious, since it is widely acknowledged the make-up of an availability pool is nearly impossible. More importantly, it argued that bureaucrats had deprived government contractors of any semblance of due process by unilaterally announcing the new standard.

In May an administrative law judge in the Labor Department agreed with Firestone, ruling that the change in standards was too significant to be adopted without at least the cursory public criticism to which agency proclamations are subject. The OFCCP, acting more as a legislative body than as mere interpreters, "substitutes for the flexible concept of reasonable expectation in the light of availabilities a compulsory mathematical formula for calculating underutilization," ruled the judge.

But for Secretary Marshall the lure of catching his biggest fish yet in the tangled web of affirmative action was too great, and he overruled his law judge. The OFCCP had not either promulgated a legislative rule, he ruled; it had only "interpreted" one. No more contracts for Firestone.

To give some idea of what Firestone was up against in trying to satisfy the dictates of OFCCP we have reprinted nearby the findings of fact in the case by the overruled administrative law judge. It will be noted that the company was not only coping with OFCCP but a "compliance officer" from a division of what is now the Department of Energy—one of the most rule-happy bureaucracies in the world. And its efforts were being aided by interpretation from yet another government department, HEW. The company was submitting compliance plans and being told that none of them met the standards set by the bureaucrats' intricate formulas for classifying and enumerating specimens of human flesh.

Firestone has taken its case to court in an attempt to have a federal judge overrule the Secretary of Labor's overruling of his own administrative law judge. The lawyers will wade through all that business about CFRs and AACPs some more, drawing their pay from taxpayers and consumers to split hairs about how many angels can dance on the head of a pin.

When all is said and done there still will be no honest solution to what supposedly is at issue: whether everyone who might want to work at Firestone's Orange plant and might be qualified to do so is being treated fairly. Quota rule-making has come a long way since the courts opened the door—toward total absurdity.

Mr. HATCH. Mr. President, I ask unanimous consent to have printed in the RECORD, an article entitled "Accordance With 41 CFR 60–2.23(A), But . . .".

There being no objection, the article was ordered to be printed in the RECORD, as follows:

". . . ACCORDANCE WITH 41 CFR 60–2.23(A), BUT . . ."

(The following is an excerpt from the "findings of fact" by U.S. Department of Labor Administrative Law Judge Robert J. Feldman in the case of *United States Department of Labor, Office of Federal Contract Compliance Programs vs. Firestone Tire & Rubber Co., Inc.* We reprint it here to give some idea of the sequence of events which led to a ruling by Secretary of Labor Ray Marshall last week barring Firestone from doing business with the government, on the ground that it had not fulfilled federal affirmative action requirements properly. An editorial discussing the Firestone case appears nearby.—Editor)

10. In 1977, ERDA conducted an on-site compliance review of defendant's Orange facility.

11. In the course of the on-site review and following discussions with the ERDA compliance officer, defendant submitted three separate written Affirmative Action plans: the original plan for the period from April 1, 1977 to March 31, 1978; the first revised plan for the period from January 1, 1978 to December 31, 1978, and the second revised plan for the period from January 1, 1978 to December 31, 1978.

12. In its first revised plan and second revised plan, defendant declared underutilization and set goals for those job groups in which minorities or females were underutilized at the five percent level of statistical significance.

13. Defendant's first revised plan and second revised plan contained a utilization analysis for all job groups, regardless of the number of incumbents in each.

14. Defendant's original and first revised plans did not include a utilization analysis and goals or timetables for organizational units, but its second revised plan included, at the request of the ERDA compliance officer, a utilization analysis and goals and timetables for organizational units regardless of the number of incumbents.

15. Defendant's second revised plan contained an analysis of all ten items required to be considered in identifying possible problem areas by organizational unit in accordance with 41 CFR 60–2.23(a), but identified none of the 19 items listed in subdivision (b) of that Section as requiring special corrective action.

16. In its first or second revised AAP, defendant did not specify what action-oriented steps it would take to attempt to correct underutilization of a person or more which it had identified in job groups, or to attempt to implement the goals that had been established for job groups or organizational units, or to attempt to eliminate any underutilization in organizational units.

17. On May 15, 1978 (more than two months after defendant had submitted its second revised AAP), plaintiff's Director of OFCCP denied a request by defendant for determination of substantial issues regarding the requirements of applicable regulation (41 CFR 2.11(b) and 2.12), enclosing with his denial letter a copy of Technical Guidance Memo No. 1, as well as a copy of a 1974 letter to the Undersecretary of HEW stating that underutilization occurs whenever there is a numerical disparity between availability and utilization.

18. On August 15, 1978, plaintiff issued a notice to show cause why enforcement proceeding should not be instituted for alleged deficiencies in the Affirmative Action Program for the Orange facility.

19. Among the Deficiency Findings attached to the notice to show cause was the statement that the second revised AAP does not acceptably identify minority or female

underutilization as is required by 41 CFR 60–2.11 (b), listing some examples of job groups where underutilization was not specifically identified and goals not established. The recommended corrective action was in pertinent part as follows:

"1. Firestone should identify minority and female underutilization as is required by 41 CFR 60–2.11 (b). The AACP must specifically state that underutilization exists for every job group where the percentage of the protected classes employed in that job group is less than the availability of them in such job group. This is accomplished by multiplying the number of incumbents in a job group by the percent of availability which was established by the required 8-factors analysis found in 41 CFR 60–2.11 (b) (1) & (2.)

20. None of the AAPs developed or maintained by defendant for 1978 at its Orange facility declared underutilization in accordance with the above formula.

Mr. HATCH. Mr. President, the bureaucracy replied in the form of a letter to the editor of the Wall Street Journal from Assistant Secretary Donald Elisburg of the Department of Labor. It was published on July 31.

Connoisseurs will note that the arrogance of the Department of Labor has now reached the point where they airily dismiss any suggestion that they should have to prove "actual discrimination" before they slap on the manacles. Mr. Elisburg's letter also marks the final abandonment by the bureaucracy of the pretense that there is any distinction between affirmative action and pure quotas. As he makes clear, affirmative action has evolved to the point where statistical discrepancies between actual and desired minority populations need not be large to justify government intervention. Any difference, however insignificant, is sufficient to trigger mandatory quota programs, even though, as we have seen, the assumptions this implies about population statistics are primitive to the point of crudity. Nor is this surprising. Once the element of discriminatory intent has been abandoned, who is to say what is a permissible and an impermissible statistical discrepancy?

Assistant Secretary Elisburg's final reference to a traditional saying among lawyers is particularly worth savoring. It is, after all, the Department of Labor that has neither the law nor the facts on its side. But instead of "pounding the table," it is pounding the head of an innocent part.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter to the editor by Donald Elisburg, published in the Wall Street Journal of July 31, 1980.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FIRESTONE'S OBLIGATION TO REACH OUT

WASHINGTON.—In light of the Journal's extensive editorial comment on the Firestone debarment ("Stilling the Voice of Firestone," July 22), I thought it would be useful to clearly set out the issue. The question is: "When must a federal contractor begin outreach efforts to find qualified minorities and women to fill jobs in the contractor's facility?"

The Labor Department's long-held position is that this outreach obligation begins when the percentage of minorities and women employed in a job make up is less than their availability in the labor force. Firestone's position was, in effect, that this obligation should begin only when the disparity between the availability of these groups in the labor force and their employment by Firestone was so great that a statistical case could be made that Firestone was engaging in actual discrimination.

We believe that it is well within the authority of the federal government to require outreach by federal contractors to find qualified minorities and women before the contractor's employment situation is so bad that actual discrimination could be demonstrated merely through the use of statistics. Indeed, thousands of federal contractors are engaging in these outreach activities without substantial cost or difficulty, but having the beneficial effect of providing job opportunities for many people who would not otherwise have them.

There is an old saying among lawyers that when the law is on your side you argue the law; when the facts are on your side you argue the facts; when you have neither the law nor the facts, you pound the table. I am confident that the judicial process will ultimately determine who has been arguing law and facts in this case, and who has been pounding the table.

DONALD ELISBURG,
Assistant Secretary,
Department of Labor.

Mr. HATCH. Mr. President, another recent item from the May-June issue of Regulation magazine, published by the American Enterprise Institute, illustrates the illusionary nature of the supposed distinction between affirmative action "goals" and racial and sexual quotas.

Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from Regulation magazine, May-June 1980.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

Goals+Sanctions=Quotas. For those who are in any confusion about the difference in coercive effect between lawful affirmative-action goals and unlawful affirmative-action quotas, the Justice Department's notion should be apparent from Attorney General Benjamin R. Civiletti's April 9 address at Howard University:

"When I became Attorney General, in August of 1979, a survey of the top positions in the Department of Justice showed 14 women, 16 Hispanics, 41 blacks, 3 native Americans, and one Asian American in those positions. I have made it clear since I took the job that I intend to double those figures before I leave, given some reasonable time. To accomplish that, I have taken a number of specific steps. I have instructed each component of the Department to develop by May 15, goals and time tables for increasing the number of minority, women and handicapped employees in each category of employee within the component.

"Senior Executives Service members . . . will be evaluated on their success in meeting their component's goals, and continued employment, promotion and raises depend on these evaluations."

Presumably the matter has been made just as clear to all employees, and prospective employees, of the Department of Justice.

Mr. HATCH. Mr. President, the affirmative action revolution in our system of Government has proceeded without real comment from press or politicians even when it casts an unmistakable shadow on the first amendment to the Constitution. This shadow was described by Bruce Alan Johnson in a "Point of View" column published by the U.S. Industrial Council in Nashville, Tenn. Mr. Johnson is international services assistant of the American Radio Relay League.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Pressures on Electronic Journalism," by Bruce Alan Johnson.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PRESSURES ON ELECTRONIC JOURNALISM

(By Bruce Alan Johnson)

"Minorities don't want special favors!" exclaimed the accomplished black UCLA economist Thomas Sowell recently on Milton Friedman's "Free to Choose" television series. He added that he had never met a black who favored so-called "Affirmative Action" programs inculcated by the federal government in an effort to reapportion America's labor force through unfair legislation.

Now the Federal Communications Commission has announced that radio stations must immediately meet tighter minority hiring requirements, or face automatic review of their entire operations when the time comes to renew their public licenses. (The only radio and television stations to be exempted are those having five or fewer employees.)

An article in the Feb. 14 Wall Street Journal reports that the new guidelines ". . . call for stations with staffs of 11 to 50 people to have a percentage of minority and female workers on their staffs that is at least half the percentage of them in the local work force." As usual, there are grand generalizations around which painful and time-consuming "interpretations" are bound to arise, as stations begin to test this vague formula against both the available work force in the local area and the station's own specific needs. (There are several stations in Fargo, North Dakota, for example. But how many minority and women candidates are there in Fargo who are qualified for a job in broadcasting?)

Capitol Hill has recently been focusing a good deal of attention on the FCC, as criticism of this federal bureaucracy continues to draw fire from both the executive and legislative branches in Washington (not to mention the private sector!). It is long overdue. With the present re-writing of the 1934 Communications Act by Congress, even more attention is finally being paid to the sound arguments for freeing the broadcast industry altogether from federal regulation.

In a time when the information industry itself is growing like topsy the world over, this latest move by the FCC should be publicized loudly and widely as a further encroachment into the rights of free Americans to hire the best qualified employees regardless of race, color, religion, or creed. It's time, in other words, to stand up for free communications unfettered by a federal agency claiming to play a watchdog role in an industry already being strangled by ever-increasing federal controls.

Mr. HATCH. Mr. President, and there are many other examples. It is bad enough to watch this fantastic army of regulators and their seige engines creaking off to do battle with the U.S. Constitution and economy, while remembering that it has not one shred of legal justification. It is even worse to realize that the fundamental tenet of its strategy—that discrimination is the root of all imbalance—is wrong. We simply do not know all the reasons why society takes the form it does. Professor Sowell has already delineated some of the com-

plications. More subtle ones may well exist.

A powerful statement of this sort of complication appeared in a recent *Washingtonian* magazine. The writer was James Webb, minority counsel to the House Veterans' Affairs Committee, and author of "Fields of Fire," one of the best war novels to come out of Vietnam.

Webb takes the position that there are fundamental differences between men and women that account for the universal division of labor in all cultures that assigns war to men. This is not a popular view. And many readers must have been distressed by the harshness with which Webb states his position, as well as the enthusiasm he displays for hazing in military academies.

I do not recommend his article in order to endorse his views, but merely to ask: What if he is right? What if there are these fundamental differences, and women simply cannot be integrated directly into the military without weakening it fatally? Normally, we could allow the question to be decided by practical experience. But affirmative action does not allow such experience. It claims it already has the answer. It asserts there are no such differences. And just as significant as Webb's statement of the case for the opposition on military affirmative action is his account of the ruthless way in which the discipline of the services is being used to suppress all honest professional opinion about this politically fashionable gamble. This is a perversion of what civilian control of the military is supposed to mean. It is an ominous comment on the state of our Armed Forces.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Women Can't Fight," by James Webb, published in the Washingtonian, November 1979.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WOMEN CAN'T FIGHT

(By James Webb)

We would go months without bathing, except when we could stand naked among each other next to a village well or in a stream or in the muddy water of a bomb crater. It was nothing to begin walking at midnight, laden with packs and weapons and ammunition and supplies, seventy pounds or more of gear, and still be walking when the sun broke over mud-slick paddies that had sucked our boots all night. We carried our own gear and when we took casualties we carried the weapons of those who had been hit.

When we stopped moving we started digging, furiously throwing out the heavy soil until we had made chest-deep fighting holes. When we needed to make a call of nature we squatted off a trail or straddled a slit trench that had been dug between fighting holes, always by necessity in public view. We slept in makeshift hooches made out of ponchos, or simply wrapped up in a poncho, sometimes so exhausted that we did not feel the rain fall on our own faces. Most of us caught hookworm, dysentery, malaria, or yaws, and some of us had all of them.

We became vicious and aggressive and debased, and reveled in it, because combat is all of those things and we were surviving. I once woke up in the middle of the night to the sounds of one of my machinegunners stabbing an already-dead enemy soldier, emptying his fear and frustrations into the corpse's chest. I watched another of my men, a wholesome Midwest boy, yank the trousers off a dead woman while under fire, just to see if he really remembered what it looked like.

We killed and bled and suffered and died in a way that Washington society, which seems to view service in the combat arms as something akin to a commute to the Pentagon, will never comprehend. And our mission, once all the rhetoric was stripped away, was organized mayhem, with emphasis on both words. For it is organization and leadership as well as the interdependence sometimes called camaraderie, that sustain a person through such a scarring experience as fighting a war.

This is the only country in the world where women are being pushed toward the battlefield. The United States also has one of the most alarming rates of male-to-female violence in the world: Rapes increased by 230 percent from 1967 to 1977, and the much-publicized wife-beating problem cuts across socioeconomic lines.

These are not separate issues, either politically or philosophically. They are visible peaks in what has become a vast bog. They are telling us something about the price we are paying, in folly on the one hand and in tragedy on the other, for the realignment of sexual roles.

Lest I be understood too quickly, I should say that I believe most of what has happened over the past decade in the name of sexual equality has been good. It is good to see women doctors and lawyers and executives. I can visualize a woman President. If I were British, I would have supported Margaret Thatcher. But no benefit to anyone can come from women serving in combat.

The function of combat is not merely to perpetrate violence, but to perpetrate violence on command, instantaneously, reflexively. The function of the service academies is to prepare men for leadership positions where they may someday exercise that command. All of the other accomplishments that Naval Academy or West Point or Air Force Academy graduates may claim in government or business or diplomacy are incidental to that clearly defined combat mission.

American taxpayers dip into their pockets to pay $100,000 for every Naval Academy graduate. They are buying combat leaders, men with a sense of country who have developed such intangibles as force, clarity of thought, command presence, and the ability to lead by example, who have lived under stress for four years and are capable of functioning under intense pressure. When war comes and the troops move out, our citizens can assume that the academies have provided a nucleus of combat leaders who can carry this country on their backs.

Other officer programs are capable of producing combat leaders, but the academies have traditionally guaranteed it, made it their reason for existence. Forty percent of West Point's class of 1943 died in World War II, and ten percent of the class of 1966 died in Vietnam. The POW camps of North Vietnam were packed with Air Force and Naval Academy graduates. The six midshipmen in my Naval Academy class of 1968 who served as liaisons between the Marine Corps and the Brigade of Midshipmen later suffered nine Purple Hearts in Vietnam, and one man killed in action. As Douglas MacArthur said in his "Long Gray Line" speech to the West Point graduating class of 1962, "Your mission remains fixed, determined, inviolable—it is to win our wars. Everything else in your professional career is but corollary to this vital dedication. All other public purposes . . . will find others for their accomplishment; but you are the ones who are trained to fight, yours is the profession of arms."

So it had been at the military academies since they were established—West Point in 1802, the Naval Academy at Annapolis in 1845, the Air Force Academy in 1954—and so it would have continued to be had not Public Law 94–106, passed in 1975, decreed that women be brought into the this quintessentially male world.

There is a place for women in our military, but not in combat. And their presence at institutions dedicated to the preparation of men for combat command is poisoning that preparation. By attempting to sexually sterilize the Naval Academy environment in the name of equality, this country has sterilized the whole process of combat leadership training, and our military forces are doomed to suffer the consequences.

Civilian political control over the military is a good principle, but too many people, especially those involved in the political process, have lost their understanding of what that principle means. The classic example of a military force beyond control of its country's political system occurred during World War II in the Japanese Imperial Army, which took over Manchuria on its own initiative, and informed the Japanese government after it had done so. The Japanese military machine was exercising its own judgment, not that of its nation. In attempting to avoid this extreme, the United States is dangerously near falling into the World War II German pratfall; a military system so paralyzed in every detail by the political process that it ceases to be able to control even its internal policies.

Civilian arrogance permeates our government, and during my two years on Capitol Hill was particularly strong on the staffs of the "consistent dissenters" of the Armed Services Committee. It was bad enough when the Vietnam war was being fought from Washington, D.C. It was worse when McNamara and his whiz kids began social experimentation by instituting "Project 100,000," whereupon 100,000 borderline intellects were dumped into the military, and the military was then faulted for having failed to make them good soldiers (Harvard and Yale at that time having decided to sit out the war, and Johnson choosing to go after the mental rejects rather than the draft-deferred leaders of tomorrow). But it has become absolutely intolerable during the 1970s. The military has become a politician's toy, a way to accommodate interest groups without losing political support in the home district, a test tube for social experimentation.

Nowhere is this more of a problem than in the area of women's political issues. Equal-opportunity specialists, women's rights advocates, and certain members of Congress have prided themselves on the number of areas of the military they have "opened up" to women. The Carter administration has come out in favor of "allowing" women to go into combat. These advocates march under the banner of equal opportunity.

Equal opportunity for what? They should first understand that they would not be "opening up" the combat arms for those few women who might now want to serve in them, but rather would be forcing American womanhood into those areas, en masse, should a future mobilization occur.

The United States is the only country of any size on earth where the prospect of women serving in combat is being seriously considered. Even Israel, which continually operates under near-total mobilization requirements, does not subject its women to combat or combat-related duty. Although some 55 percent of Israeli women—as opposed to 95 percent of the men—serve in the Israeli Defense Forces, the women have administrative and technical jobs that require little or no training. Their military function is to free the men to fight. According to a recent article by Cecile Landrum, a U.S. Air Force manpower analyst, Israeli women con-

scripts train for three and a half weeks, with only a minimal amount of that time dedicated to the handling of weapons. Israel has terminated flight training for women, reversing an earlier policy. When three Israeli women soldiers were killed during the 1973 Yom Kippur war, the nation went into shock. As Congressman Sonny Montgomery noted after a visit to Israeli military units, "When they go into combat, the women move to the rear."

Why? Because men fight better. We can try to intellectualize that reality away, and layer it with debates on role conditioning versus natural traits, but it manifests itself in so many ways that it becomes foolish to deny it. When the layerings of centuries of societal development are stripped away, a basic human truth remains: Man must be more aggressive in order to perpetuate the human race. Women don't rape men, and it has nothing to do, obviously, with socially induced differences. As Eleanor Maccoby and Carol Jacklin observe in *The Psychology of Sex Differences*, man's greater aggressiveness "is one of the best established, and most pervasive, of all psychological sex differences."

Man is more naturally violent than woman. Four times as many men are involved in homicides as women. You might not pick this up in K Street law offices or in the halls of Congress, but once you enter the areas of this country where more typical Americans dwell, the areas that provide the men who make up our combat units, it becomes obvious. Inside the truck stops and in the honky-tonks, down on the street and in the coal towns, American men are tough and violent. When they are lured or drafted from their homes and put through the dehumanization of boot camp, then thrown into an operating combat unit, they don't get any nicer, either. And I have never met a woman, including the dozens of female midshipmen I encountered during my recent semester as a professor at the Naval Academy, whom I would trust to provide those men with combat leadership.

Furthermore, men fight better without women around. Men treat women differently than they do men, and vice versa. Part of this is induced by society (for example, the tendency to want to help women who are, more often than not, physically weaker), and part is innate (the desire to pair off and have sexual relations). These tendencies can be controlled in an eight-hour workday, but cannot be suppressed in a 24-hour, seven-days-a-week combat situation. Introducing women into combat units would greatly confuse an already confusing environment, and would lessen the aggressive tendencies of the units, as many aggressions would be directed inward, toward sex, rather than outward, toward violence. A close look at what has happened at the Naval Academy itself during the three years women have attended that institution is testimony to this.

What are the advantages to us, as a society, of having women in combat units? I don't know of any. Some say that coming manpower shortages might mandate it, but this country has never come close to full mobilization, and we are nowhere near that now. During World War II, 16 million men wore the uniform. Today, the active-duty strength of the US military is only 2 million people, out of a much larger group of eligible citizens. Furthermore, bringing women into the military does not mandate bringing them into combat.

Some say men and women have a duty to share our country's burdens equally, that it is sex discrimination to require only men to fight. But history has shown the wisdom of this distinction, and the Israelis, who must do more than merely intellectualize about such possibilities, demonstrate its currency. Equal does not mean the same. Any logical proposition—sexual equality—can be carried to a ridiculous extreme—women should fight alongside men.

If Congress had considered these realities when it debated whether to open the service academies to women, and approached this as a national defense rather than a women's issue, it may have voted differently.

Two thirds of the House of Representatives voted for the measure, which appeared as a rider to the 1975 Defense Appropriations Bill. Those who argued in favor of the proposal dismissed the notion of women in combat, and instead maintained that the issue was mere sexual equality. Congressman Samuel Stratton of New York, who proposed the amendment, downplayed the prospect of women in combat billets, claiming it was irrelevant: "It's just a simple matter of equality. . . . All we need is to establish the basic legislative policy that we wish to remove sex discrimination when it comes to admissions to the service academies." Stratton's key statistic in establishing that the academies did not "train officers exclusively for combat" was that "only" 90 percent of current Academy graduates had served in a combat assignment.

That is a fascinating statistic to have been used on Stratton's side of the debate. The key point is not that "only" 90 percent of the Academy graduates to that time had served in a combat assignment, but that 100 percent had been equipped to do so, physically, mentally, and emotionally. By way of analogy, I would estimate that something less than 90 percent of my classmates in law school went out and practiced law, but that did not detract from the training they received, and I don't see many law schools deciding to add theology or journalism to their curriculum to accommodate the others.

So how do you teach combat leadership? You don't do it with a textbook; you do it by creating a stress environment. My academic education at the Naval Academy always took a backseat to my military education. During our first year, I and my classmates were regularly tested and abused inside Bancroft Hall, our living spaces. We were pushed deep inside ourselves for that entire year, punished physically and mentally, stressed to the point that virtually every one of us completely broke down at least once. And when we finished our first year, we carried out the same form of abuse on other entering classes. That was the plebe system. It was harsh and cruel. It was designed to produce a man who would be able to be an effective leader in combat, to endure prisoner-of-war camps, to fight this country's wars with skill and tenacity. And it is all but gone. They still call it Plebe Year at the Naval Academy. Freshmen still have to memorize certain facts called "plebe rates" and still have to call the upperclass "sir." But there it ends. Now you cannot physically punish a plebe. You cannot unduly harass a plebe. God forbid that you should use abusive language to a plebe. Plebes do not "brace up" in the mess hall or in the corridors of Bancroft Hall. It is now a punishment, limited to fifteen minutes maximum, to require plebes to do what they once did as a basic activity for a year: stand at attention.

"I like women at the Academy," one of my classmates who is still on active duty told me recently. "They've brought a measure of . . . refinement to the place."

If there was one thing that was irrelevant to my preparation for combat it was refinement, and if there was one thing that helped my combat preparation it was plebe year. I broke down plebe year. We all did. I went around to an upperclassman once with three M-1 rifles and held them in front of me—all 33 pounds—until it was physically impossible to do so. Then I held two, straight in front of me, straining until my arms hit my knees. Then one. Then seven books. Then six, five, four, three, two, one. Then a pencil. Then a toothpick, as the upperclassman gathered his friends and they surrounded me, talking about the irrelevance of pain as the toothpick hit my knees, demanding answers to questions, imploring me to resign and go home. The next night, after physically running me to exhaustion, he and three others took turns beating me with a cricket bat, telling me they would stop if I admitted it hurt. Finally they broke the bat on my ass. I returned to my room and stuck my head inside my laundry bag and cried for fifteen minutes, standing in the closet so my roommates wouldn't see me. I hated the upperclass and I hated the Academy. But I had reached a place deep inside myself, and when I got up at 5:30 the next morning and began preparing to enter that man's room yet another time, I knew something about myself that I could never have learned in any other way.

That may seem a sadistic and barbaric way to learn self-truths, and I would not suggest a reinstatement of plebe year to that extreme, but I will say this: When I watched 51 of my men become casualties over seven weeks in Vietnam, and when I sat down next to number 51 and cried like a baby, I'd been there before. It was a lot easier to pick up and keep going, and by then I was not merely Jim Webb, plebe trying to survive a morning of a malicious upperclassman; I was a Marine platoon commander.

I don't see anything at the Naval Academy anymore that can take a person deep inside himself. I see refinement. I see an overemphasis on academics at the expense of leadership. Harvard and Georgetown and a plethora of other institutions can turn out technicians and intellectuals en masse; only the service academies have been able to turn out combat leaders en masse, and they have stopped doing so.

The implements are there, as they always have been. Midshipmen and cadets remain stronger and more aggressive than their male counterparts at civilian schools. A few days of exposure to Academy routine will convince any skeptic of this. Midshipmen and cadets love contact sports; nearly every mid and cadet is an athlete. They play the traditional sports and they eagerly play others such as rugby, boxing, karate, lacrosse, and fieldball. They drive fast cars, usually sports cars. They play hard. They drink hard. They are physical, often comically abusive among each other. They are not trying to prove their manhood; they are celebrating their masculinity. They are competitive, often vulgar, and tough, and every citizen who may someday send a friend or relative into war should rejoice that these future professionals develop and retain such qualities, because combat is competitive, vulgar, and tough, and they will be leading men in combat.

The men are essentially the same; it is the institution that has changed. It has changed primarily because of female midshipmen, for the same reasons women would adulterate the performance of combat units themselves. Externally looking in, the system has been objectified and neutered to the point it can no longer develop or measure leadership. Internally, sexual attractions and simple differences in treatment based on sex have created resentments and taken away much of the institution's sense of mission.

Not long ago, Richard Gabriel and Paul Savage, two former Army officers, wrote the book *Crisis in Command*, examining the deterioration of Army leadership following World War II. The book had many flaws, but nonetheless struck at the jugular vein: that the American military attempted to employ corporate management techniques in essentially military situations, and as a result was predestined to have many of the leadership problems that became manifest in Vietnam, regardless of the political difficulties of the war. Management is not leadership.

Management can be approached as an academic discipline; one can be taught to analyze data, to weigh alternatives, and to make a decision. Leadership is something else. It is a subjective chemistry filled with human variables. It takes more than the ability to analyze data to make a leader, one must be able to motivate those who are being led, to reach their emotions through command presence, force, and example. It is much easier to educate a manager than to develop a leader.

Rather than react to this crucial distinction, the academies seem bent on perpetuating the crisis. On the one hand, plebe year has been eviscerated. As an example of how far stress indoctrination has deteriorated, one first-classman I spoke to was reprimanded by his company commander during the first week of academic year, traditionally the most rigorous week of the entire year for plebes, because he had "upset" a female plebe. After having corrected her table manners numerous times with no success, the upperclassman ordered her to eat with oversize utensils at the next meal, a ridiculously mild sanction. The woman returned to her room and wept in anticipation of her embarrassment at the coming meal, and her roommate then went to the company commander and protested such maltreatment. The upperclassman was told to stop harassing her. If this series of events had occurred in an all-male Academy, both plebes would have been disciplined, rather than the upperclassman.

On the other hand, leadership evaluations have become sterilized, thrown over to tangible measurements that "protect" women from possible bias. Until women came to the Naval Academy, midshipmen wrote "peer evaluations" on their classmates. This was an important measurement of leadership ability, one that our leadership instructors claimed was the most accurate measurement of leadership attributes in a closed environment such as the Academy. This anonymous and accurate evaluation process erected a buffer against the officers selecting out their favorites from above and pushing them for "stripes," or high leadership positions. It never to my knowledge boomeranged against minorities—a black man was brigade commander in the class of 1970. But Academy officials feared it would harm women.

The upshot has been that a lack of peer evaluations has favored women, made the leadership selection process capable of penetration by officer staff, and caused a heavier reliance on tangibles such as academics rather than the intangibilities of true leadership. Male midshipmen universally complain that a female with good grades and a modicum of professionalism will be "groomed" for stripes by the officers.

If academics were the test of leadership, Albert Einstein, who couldn't even work a yo-yo, would have been a general, and George Catlett Marshall, who graduated last in his class academicaly at VMI, but first in leadership, would have been a clerk. Yet this is the direction leadership evaluations have taken at the Academy. Academics are objective and tangible. Traditional leadership measurements are subjective, capable of discrimination, and thus not to be trusted.

The whole world awaits an outcome that will show whether women can compete for leadership positions with men in the traditionally grueling Academy routine. This year, as women become seniors for the first time, the whole world will see women in high "striper" positions, possibly even that of brigade commander. What the whole world may not know is that women did not attain these positions in the same way that men historically have, and that not one midshipman out of hundreds I talked to, either male or female, actually believes that women wil ever be accepted as comrades, in the traditional sense, by the men.

Women will not be leading men inside the brigade this year. They will be managing, buttressed by the officers who hurried them along. And the morale of the brigade will demonstrate this distinction far better than this article ever could.

From the inside looking out, all the problems I mentioned as probabilities if women were introduced into combat units have already surfaced at the Naval Academy. Men and women are different, they treat each other differently, and the ramifications of this different treatment permeate every aspect of the brigade. It is one thing to sexually sterilize a work environment during an eight-hour day. It is quite another to do so in a closed environment where males and females engage in forced interaction on a 24-hour basis, seven days a week.

Captain Jack Darby, the recently departed commandant of midshipmen, frequently mentioned that there had been only three cases of sexual fraternization in the three years women had been midshipmen. While there have been only three major conduct offenses of this sort, it is no secret that sex is commonplace in Bancroft Hall. The Hall, which houses 4,000 males and 300 females, is a horny woman's dream. Virtually every female midshipman who dates is seeing either a male midshipman or a recent graduate. Of the 25 women who have left the class of 1980 since induction day, 20 are married to former midshipmen. While this is a natural human phenomenon, it gets in the way of military indoctrination, and creates a very real resentment among males due to the evolution of a double standard of discipline. Furthermore, it is scarring many women in ways they may not comprehend for years.

Courage comes in many forms. And today at the Naval Academy, courage sometimes means simply stating your opinion, when it varies from prescribed policy.

The 55 women of the class of 1980, the first class with women, assumed striper positions last July. Journalists have descended on Annapolis from all over the world to cover this historic first. Their stories have had all the subtlety of a 1950 "Men of Annapolis" television show. A reporter spends one day at the Academy and watches a real, live woman firstclassman brace up a real, live male plebe, then returns to the typewriter and proclaims that the sytem is working.

Female midshipmen are interviewed like movie stars. I would not be surprised if Liz Belzer, who commanded the plebe summer program for half of its duration, has given two dozen interviews this year. But if a male midshipman, during an infrequent interview states a personal opinion about women that varies from official policy, his Naval Academy education could be on the line.

The *Washington Post* ran a front-page feature story last July that lionized one female midshipman, showing a picture of her bracing up a plebe. Late in the article, the reporter quoted two male midshipmen who had mentioned, while drinking in a bar, that they thought the presence of women at the Academy was debilitating, and that the women midshipmen were not of particularly good officer potential.

The two men were severely reprimanded for stating their beliefs. Both were invited to resign from the Academy, and one man did leave the summer detail program. I ate dinner in the mess hall that night with a plebe summer squad. As I watched the so-called indoctrination on the mess-hall tables, several first-classmen stopped to speak of their disgust both for the article and for the treatment their classmates had received. None would speak for attribution, however. The system had scared them silent.

I do not understand such censorship. It is as if one statement of dissent left unrepudiated might beget a tidal wave of agreement. From my conversations, I would estimate that easily two thirds of the males in the brigade, with political philosophies that run the entire gamut, believe women should not be at the Academy. Why should they not be allowed to say so, and to say so without fear of retribution? A citizen does not give up his First Amendment right to free speech when he puts on a military uniform, with small exceptions. And the presence of women at the Naval Academy hardly constitutes an exception.

"I'm in a continual state of anxiety about this." Brad Taisey is muscular and lean, a former enlisted Marine who has done exceptionally well at the Academy. Taisey talks tough. He is intense and direct, the kind of man I would want commanding one of my platoons if I were to take a company into combat again. "I've been enlisted. I know what a good leader can do for a unit, and I know what a bad leader can do to it. There isn't a woman here who's a military leader. Most of the midshipmen around here have only seen the Academy. They can only guess. I know. But what can I do about it? And look what it's done to this place. The word came down not to shout at the plebes anymore. Treat them with courtesy, they said. Yeah. You ask the enemy to do that in the next war, too."

Taisey served as Liz Belzer's subcommander on the plebe detail last summer. When he was initially assigned the position, he attempted to resign from the detail, which is a voluntary program. Taisey claimed that Belzer's appointment was political, and said that he wanted no part of it. His resignation was rejected.

"It was a token staff, from the word go. Belzer was the token woman, I was the token ex-enlisted Marine, we had a token ex-enlisted sailor, a token black, and a token high school product. That's just the way it is now."

Taisey and Belzer argued frequently over the summer about women at the Academy. When the detail was over, Belzer marked Taisey deficient in a number of areas, giving him two Ds on his leadership evaluation. Taisey, who had an exemplary two-year enlisted career, and is currently ranked first out of thirty midshipmen inside his own company, is amazed. "I'm going to frame the evaluation. She wrote that I would have scored higher if I could have gotten along better with women. Can you imagine what would have happened if things had been reversed, and I had written a chit like that on her for not being able to get along with men?"

Taisey is representative of, if perhaps more outspoken than, the majority of the men I talked to at the Academy. In fact, the men from the class of 1980 might have a theme song. I heard the quote so often: "I'd much rather have been in the last class with balls than the first class with women."

Taisey's objections are capsulized simply enough. "I used to look at officers who were Academy graduates and say, 'That man has been through hell. He's earned the right to lead me.' It's not true anymore. The whole place has been pulled down to the level of the women, and the most important area is grades."

Don Burlingham is not as intense as Taisey. "I want to say this just right," he began as we talked. He is a cautious man, who like Taisey has done extremely well at the Academy. He chooses his words carefully, and made clear his support of many of the goals of the women's movement. "It just doesn't work here, that's all. I could see it from the first few weeks of plebe summer. All summer we were lectured about the high standards we were expected to meet. Our squad leaders talked about honor, performance, and accountability. Then before you knew it, they were going after the women plebes, sneaking some of them away on weekends. How can you indoctrinate the women when you're breaking regulations to

date them? And how can you talk about integrity and accountability when you're doing those sorts of things? The attitude I've seen and practiced is turn the other cheek and bide my time until I can get back into the real military."

Burlingham is aware of the many inequities that relate to a double-standard discipline. "A male and female were convicted of the same honor offense at the same time. The man was thrown out. The woman was put on probation. That sort of thing has happened several times. It's almost impossible for a woman to be thrown out of here.

"The problem," notes Burlingham, "is that it's affected attitudes, and it will eventually affect our whole military. I'm not resentful of the women; I'm worried about the country."

So is Jeff Bush. A former enlisted Marine like Taisey, Bush spent time as a corporal with the elite First Reconnaissance battalion, and plans to return to the Corps upon graduation. But much of the Academy routine rolls off Bush's back. "I don't get too excited about much around here anymore. The place has lost a lot of its spark for me."

One thing Bush does get excited about, however, is the way he perceives women being forced down the brigade's throat. "When I first heard women were going to come, I didn't care that much. I was curious, if anything. I was a little worried that they might not get a chance to prove themselves. But it's been the other way around. The Academy has used a lot of pressure to establish women as stripers. Women are groomed from plebe year. The scary thing is that it's creating a presumption that women can command troops. I'm not kidding—there isn't a woman here who could have handled the platoon I was in when I was enlisted. The whole thing has become like a fairy tale. And it's the operating military that's in for the biggest hurt."

Jeff McFadden, a wide-shouldered, broken-nosed Irishman who served as the deputy brigade commander for the recently graduated class of 1979, sees it from a different perspective altogether. McFadden, who is currently at Nuclear Power school preparing to become a submariner, spent the greater part of his senior year as a prestigious Trident scholar, studying the notions of chivalry and the military officer. He is an encyclopedia of information on what makes combat units function, on good leadership and bad leadership, and especially on the special chemistry of camaraderie, the bonding agent of men under arms. And McFadden, like many of his classmates in '79 who watched the Naval Academy change with the addition of women, believes the institution is dying, and with it a part of our culture as a whole.

"Historically," notes McFadden, "the academies and a few other areas of the military—Marine Corps boot camp, airborne training—have provided a ritualistic rite of passage into manhood. It was one small area of our society that was totally male. Women now have a full range of choice, from the totally female—motherhood—to what was once the totally male—the academies, for example. Males in the society feel stripped, symbolically and actually. I wonder if that doesn't tie into the increase in rapes over the past decade. Rape is a crime of revenge, not passion. In any event, the real question isn't the women. The real question is this: Where in this country can someone go to find out if he is a man? And where can someone who knows he is a man go to celebrate his masculinity? Is that important on a societal level? I think it is."

What of the women themselves? There are now about 300 female midshipmen at the Naval Academy, surrounded by some 4,000 males. The women wear men's clothes, with slight variations. They live in a closed, pressurized environment where they are outnumbered almost fifteen to one by men, 24 hours a day. They are emerging into womanhood almost alone, in an isolation that resembles a tour of duty on a desert island. They study a man's profession, learn the deeds of men, accept men as role models. They seem spirited but confused, tolerated but never accepted. They are for the most part delightful women, trusting and ambitious and capable in many ways, and I admire them, more for who they are than for what they are doing. As for what they are doing, it would be unfair not to mention that no other group of women in this country has ever undergone such a prolonged regimen, however watered down. But I cannot escape a feeling that even the women are losing, that someday they will come to believe they lost more than they gained inside those walls.

It is a delicate balance for any Academy graduate, looking back on those four years and measuring what he received in return for pouring every last hot ounce of his youth into Annapolis. But part of the price, until now, has never been sexual identity.

I have a recurring vision when I watch these women on the Academy grounds in their sterile uniforms, making their way into adulthood inside a harsh, isolated man's world. I see them ten or twenty years from now, finally deciding that they did indeed lose something, something more intangible than mere feminity, which many of them yet retain. Perhaps it is something as simple as having had to find their womanhood inside a world of men, studying men's deeds, learning a man's profession, suffering taunts from men who feel they are invading a totally masculine world.

"I have never before had so few friends," wrote one woman, a high-school beauty queen, in a lengthy paper written last year for an Academy psychology class." Nor have I ever before had to prove my worthiness as a human being so many times. . . . Being a woman midshipman has made me doubt my usefulness, not only to the service, but to society as well. . . . I am tired of being different."

Another woman, tall and reserved, commented that men she does not know frequently come up to her and tell her, "You don't belong here, did you know that? Why don't you leave?"

"I tell them, 'That's tough. I'm here.' " In her next breath she speaks of wanting to wear the same hat that the males wear. "I'm a midship*man*, not a midshipwoman. I am the same. I'm tired of sticking out."

Many women appear to be having problems with their sexuality. Part of it comes from male scrutiny: What kind of a woman would seek out the Academy routine? Another part comes from the daily environment, which cannot help but create self-doubts and uncertainties. Part of it comes from what is left of the plebe system, which is designed to unsettle a person's self-image, and has the potential of cutting deeper into women, who are traditionally not verbally abused by males in our society.

It is easy to say these women are pioneers who are breaking barriers, moving along the fabeled cutting edge of social change, and perhaps they are, and I hope that sustains them. But there is a cost, and they, along with society and the men, are paying the price.

During the 1975 congressional debate on the amendment that allowed women to attend the service academies, one congressman offered a substitute amendment that would have required the Secretary of Defense to conduct a study on establishing a separate academy purely for women. Under this plan, one academy could train women to be commissioned in all of the services, much as Britain's Sandhurst does for men. The substitute amendment failed on the "yeas and nays," without a recorded vote. Perhaps, given the years of experimenting with the ideas that prevailed on that day, it is time Congress reconsidered, and mandated the Secretary to undertake his study.

The female midshipmen I interviewed unanimously resisted this possibility, claiming that it would not prepare them for leadership positions over men. My reaction is twofold: First, the present situation is not preparing anyone adequately for leadership positions over men in the combat arms, and second, all-male schools, such as the academies used to be, did not seem to hamper leadership preparations for those other areas in which men and women serve together.

What are the other alternatives? We could stop allowing women to attend the academies at all. ROTC scholarships and OCS appointments would remain available to women, as would career opportunities short of combat roles.

Or, if it is the consensus of Congress that the service academies no longer perform their historic function of preparing men to lead in combat, but are now primarily mere academic institutions, it would be logical and cost-effective to close them down. If the taxpayers, now spending $100,000 for each Academy graduate, want simply to buy a brain with military training, they can purchase that combination through an expanded ROTC program at a fraction of the cost. I don't recommend this alternative, but then, I view the academies quite differently than two thirds of the Congress did in 1975.

Command interest is growing in the operating military with respect to women problems. The commandant of the Marine Corps, General Robert H. Barrow, is reportedly deeply disturbed over the effect of sexual mixing in Marine Corps training programs. For instance, all the symptoms that are manifest at the Naval Academy also exist in the Officers Basic School at Quantico: the loss of camaraderie, the trivialization of combat preparation, the reduction of physical standards, and the elimination of peer evaluations in leadership markings. Barrow is said to believe this directly affects the evaluation of future combat officers, and thus the ability of the combat arms to perform.

Barrow should know. He is the only combat veteran of World War II, Korea, and Vietnam now serving on the Joint Chiefs of Staff. He is one of the most decorated Marines in history, a campaigner who led guerrilla troops in central China, a rifle company during the Chosin Reservoir breakout in Korea, and an infantry regiment in Vietnam, where he was known as one of the few "fighting colonels."

I told this to a woman friend of mine, a law school classmate who is now an attorney in Washington and with whom I frequently discuss sexual roles. She was unimpressed with Barrow's credentials.

She wanted to know what he knew about women.

Mr. HATCH. Mr. President, all discussions of the power of the affirmative action lobby have to be placed in the context of the astonishing popular resistance to the idea of quotas, which extends even to a majority of the members of the "protected classes." This of course makes the bureaucratic achievement all the more remarkable.

The latest manifestation of this broad disapproval of quotas appeared in a report by Victoria Sackett, an editor of Public Opinion magazine, on the results of a poll by Sindlinger & Co., commissioned by the Heritage Foundation and published in the spring of 1980 issue of Policy Review magazine. Ms. Sackett made the telling observation that this opposition to affirmative action exists

despite a growth of general racial tolerance in the population, and a desire to see the disadvantaged aided. "There is a definite cutoff point in support aimed at insuring equal opportunities for minorities and women," she says. "It appears where compensatory efforts cross swords with basic American values."

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled, "Ignoring the People," by V. Sackett; Policy Review, spring 1980.

There being no objection, the article was ordered to be printed in the RECORD as follows:

IGNORING THE PEOPLE

(By Victoria Sackett)

Affirmative action can be viewed, in many important ways, as an issue not concerned with race. Public attitudes toward specific programs aimed at correcting historical policies of discrimination differ widely from attitudes toward minorities in general. The public is much more inclined to acknowledge the general need for corrective action than it is to approve specific proposals which claim to remedy past injustices. There is a definite cutoff point in support for policies aimed at ensuring equal opportunities for minorities and women. It appears where compensatory efforts cross swords with basic American values. Belief in individualism, an antipathy to preferential treatement and devotion to the principle of achievement through merit rather than ascriptive privilege prove to be stronger influences on public opinion than dedication to affirmative action programs.

One of the most comprehensive analyses of attitudes toward discrimination and affirmative action was compiled by Seymour Martin Lipset and William Schneider in 1978. They looked at nearly one hundred public opinion polls which covered every aspect of the issue from 1935 to 1977. Recently, *Policy Review* commissioned its own survey, conducted by Sindlinger and Company, which attempted to probe some of these same questions. A single poll, of course, cannot be exhaustive. Nonetheless, the *Policy Review* survey seems to confirm Messrs. Lipset and Schneider's earlier findings. People approve the idea of eliminating discrimination through laws. They balk at the notion of preferential treatment.

The *Policy Review* survey does not assess general attitudes toward minorities. However, the Gallup Organization in 1978 provided a comprehensive collection of surveys which serve to update earlier findings. The Gallup surveys showed a steadily increasing liberalization of attitudes on the part of the public, even in some of the most volatile areas of race relations. From 1958 to 1978, willingness to vote for a black for president doubled.

Question: There's always much discussion about the qualifications of presidential candidates—their education, age, race, religion and the like. If your party nominated a generally well-qualified man for president and he happened to be a Negro, would you vote for him? (Question wording varied slightly over the years.)

[In percent]

	Yes	No	No opinion
1958	38	53	9
1963	47	45	8
1965	59	34	7
1967	54	40	6
1969	67	23	10
1971	70	23	7
1978	77	18	5

Source: Surveys by the Gallup Organization, latest that of July 21–24, 1978.

The increasing acceptance of a proposed black for president was accompanied by a commensurate growth in acceptance of the idea of a woman or a Jew for president, adding strength to the notion that tolerance was on the increase for all minorities.

Question: Between now and the time of the conventions in 1980 there will be more discussion about the qualifications of presidential candidates—their education, age, religions, race, and the like. If your party nominated a woman for president, would you vote for her if she were qualified for the job? . . . If your party nominated a generally well-qualified man for president and he happened to be a (Negro/Jew), would you vote for him? (Question wording varies somewhat over the years.)

[In percent]

	1937	1949	1955	1958	1961	1963	1965	1967	1969	1971	1975	1978
Woman for President:												
Yes	32	50	54	55	----------	57	----------	59	58	69	76	80
No	68	50	46	45	----------	43	----------	41	42	31	24	20
Black for President:												
Yes	----------	----------	----------	42	55	51	63	57	74	75	----------	81
No	----------	----------	----------	58	45	49	37	43	26	25	----------	19
Jew for President:												
Yes	----------	----------	----------	69	75	82	84	86	91	----------	----------	87
No	----------	----------	----------	31	25	18	16	14	9	----------	----------	13

Source: Surveys by the Gallup Organization, latest that of July 21–24, 1978 in Public Opinion, December/January 1980.

Over the same period, there had been a dramatic increase in tolerance expressed by whites toward blacks as neighbors—even when the question was weighted to elicit more negative responses by asking whether people would move if blacks came to live in the neighborhod in great numbers.

Question: If blacks came to live next door, would you move? (Among whites.)

[In percent]

	Yes definitely/ yes might	No
1963	45	55
1965	35	65
1978	16	84

Would you move if blacks came to live in great numbers in your neighborhood? (Among whites.)

[In percent]

	Yes definitely/ yes might	No
1963	78	22
1965	69	31
1978	45	55

Source: Surveys by the Gallup Organization, latest that of July 7–10, 1978.

Even on the sensitive issue of intermarriage between races, tolerance had grown. Approval among adults of marriages between whites and blacks from 1968 to 1978 increased from 20 percent to 36 percent. A majority still objected to intermarriage, but the "disapprove" response declined from 72 percent in 1968 to 54 percent in 1978.

Louis Harris and Associates conducted their own surveys between October and November of 1978. In the interim between the Gallup and Harris surveys, and following the Lipset/Schneider analysis, the Supreme Court had decided the Bakke case. On June 28, 1978, the Supreme Court ruled in favor of Allan Bakke who had charged reverse discrimination in his efforts to enroll in the University of California medical school at Davis. The Supreme Court ruled that a university could not reserve a set number of places for minority applicants, thus denying white applicants the chance to be accepted for those slots, irrespective of their qualifications. At the same time, the Court stated that it was permissible for schools to include race along with other factors in deciding which applicants to admit.

The decision itself does not appear to have had a negative effect on overall white attitudes toward minorities, as the Harris surveys revealed. The Harris surveys sampled whites separately from blacks, never presenting a response for the mixed population. In 1976, a Harris survey showed 12 percent of white respondents favoring "separation of the races" when presented with the question "Generally speaking, do you favor full racial integration, integration in some areas of life, or separation of the races?" Twenty-eight percent supported "full racial integration" and 48 percent opted for "integration in some areas of life." The 1978 Harris survey showed 35 percent wanting "full racial integration," 42 percent favoring "integration in some areas" and 16 percent favoring "separation of the races." The largest increase appeared in the desire for full integration, though there was also a slight upturn in the number preferring the more absolutist "separation of the races" alternative.

Among blacks, 66 percent wanted "full racial integration" in 1978, another 22 percent wanted integration in "some areas" and only 7 percent favored a "separation of the races." The Harris survey confirmed the Gallup 1978 survey concerning interracial dating and marriage. Though there was a large degree of white negativity toward such practices, there was also a steady easing of attitudes evident since the 1963 survey. Also, to quote from the Harris survey analysis "The biggest shifts downward in white aversion arise if 'a black family moves in next door to you' (24 points down), 'a close friend or relative marries a black' (24 points down), 'your child brings a black child home for supper' (22 points down), and 'a black tries on the same suit of clothes (or dress) before you do in a clothing store' (18 points down)."

Messrs. Lipset and Schneider found that "there can be no doubt that a large majority of white Americans have come to accept the proposition that discrimination in hiring is wrong and that government should guarantee operation of the competitive merit or achievement principle by outlawing such discrimination. But every major national study shows that a sizable majority of Americans are also opposed to remedying the effects of past discrimination by giving any special consideration in hiring or school admissions."

It is this broad conclusion that the *Policy Review* survey confirms, whilst deepening our

knowledge of public attitudes on this complex question. The Sindlinger summary of these findings interestingly states that this poll was "the most difficult survey ever undertaken by Sindlinger in recent years." Questions were pretested and pollsters received "high proportions of no opinions on questions where the response should have been clear-cut, and low proportions of no opinion when higher ratios were in order." As a result the questions underwent "numerous revisions." A special problem was presented by the topic, namely race relations, since on this "attitudes simply cannot be broken down by hard core pro- or anti-camps. There has to be room for variations." In all, the format of questions went through nine revisions.

Consequently, in the first group of questions, namely Questions 1(a) to 1(e), the Sindlinger poll provided a general introductory statement:

"In recent years, many people, including the U.S. Government, have endeavored to improve the social and economic status of minority groups such as Blacks or Hispanic-Americans—as well as women. Some of these activities on racial and sexual discrimination have become very controversial with some people—while other people have paid no attention or have not expressed themselves. I am going to read you some various positions being taken on the subject of minority or racial and sexual discrimination. As I read each position—will you please tell me your degree of agreement or disagreement. That is, where you agree—is your disagreement strong or mild? Conversely, when you disagree—is your disagreement strong or mild?"

The questions which followed were intended to be variations upon the general theme introduced in this statement and to offer respondents the choice of policies ranging from reliance on voluntary action to government enforcement of affirmative action quotas. The first question was worded as follows: "First is the position that government should take no action—instead we should rely on the people as citizens, business firms and universities to get rid of racial and sex discrimination on a voluntary basis. How do you agree or disagree on this?" The responses were distributed as follows:

[In percent]

Agree:	
Strong	32
Mild	22
Disagree:	
Strong	19
Mild	28
Total agree	53
Total disagree	46
No opinion	6

Source: Survey by Sindlinger and Company, Inc., conducted for *Policy Review* January 17–30, 1980.

The question itself reveals some problems. First of all, it is an extremely long and complicated question to be read over the telephone, requiring a rather sophisticated retentive capacity on the part of the respondents. Its complexity, reflecting the fact that affirmative action is a complex issue, makes it rather difficult to gauge with precision what elements in it elicited the response. For instance, does the figure of 53 percent overall support for leaving the private sector to solve discrimination voluntarily reflect a widespread American belief that voluntary action is in general superior to government compulsion? And would the respondents continue to support voluntary action to the same degree if over a period it failed to reduce significantly racial and sexual discrimination?

We can get some indication of the answers by examining the breakdown of opinion into strong and mild agreement or disagreement. As the Sindlinger summary puts it, only 31.5 percent strongly agreed with the position of no government action, representing the "hard core of people who are firmly opposed to government intervention in matters of bias." On the other side of the argument, less than a fifth of respondents were strongly in favor of government action. About half the respondents, however, were composed of those who either mildly agreed or disagreed with a proposition. Sindlinger argues that the data show this combined group holding not dissimilar views—which are that a proper combination of government and private sector activity is required to eliminate racial and sexual bias. This interpretation receives some confirmation, as we shall see, from the replies to Question 1 (b).

Accuracy in polling demands utter simplicity in question wording. Each question must be a controlled laboratory experiment, filtering out complicating influences like language inferences and multiple ideas. Question 1(b) provides a good example of reliable questioning. Its only drawback is the possibility that some people would not be able to remember accurately the long introductory statement read before the first question.

Question 1(b): Second is the position that there should be laws to prevent all discrimination of any kind on the basis of race or sex throughout the nation. What is your position on this?

[In percent]

Agree:	
Strong	48
Mild	30
Disagree:	
Strong	15
Mild	6
Total agree	77
Total disagree	22
No opinion	0.8

Slightly more than three-quarters expressed approval of the notion that there should be legal prohibitions against discrimination on the basis of race nationwide. Approximately two-thirds of that approval was in the area of "strong agreement." It is clear that some people who, in reply to Question 1(a), expressed support for voluntary action in preference to government enforcement to eliminate discrimination have crossed the floor in response to Question 1(b) and now favor anti-discrimination legislation. Strictly speaking, these two views are inconsistent. If we take this apparent contradiction in conjunction with the Sindlinger interpretation of Question 1(a) above, however, a possible interpretation emerges that a considerable majority of Americans, approximately 70 to 80 percent, favor the elimination of discrimination by voluntary action if possible, but by legal prohibition if necessary. But, as we will see, such strong favor of outlawing discrimination by no means constitutes a mandate in favor of affirmative programs as they have been anacted so far.

The *Policy Review* survey reveals a marked objection to the lowering of standards in employment and school admissions in order to benefit minorities and women. It also shows a decisive oppositon to the establishment of government-mandated quotas in these areas. Here we begin to see the conflict between American values and affirmative action.

Question 1(c): Third is the position that business firms, colleges and universities, and law and medical schools—as well as other institutions of learning—should have lower entry, hiring and promotion standards—especially for minority groups and women—who apply for entrance. What is your agreement or disagreement on this?

[In percent]

Agree:	
Strong	7
Mild	11
Disagree:	
Strong	65
Mild	16
Total agree	18
Total disagree	81
No opinion	2

Question 1(d): Fourth is the position that government should pass laws to compel all business firms and schools, colleges and universities to reserve a fixed percentage of entries—jobs—and management positions for minority groups and for women applicants. What is the degree of your opinion on this?

[In percent]

Agree:	
Strong	12
Mild	15
Disagree:	
Strong	51
Mild	20
Total agree	29
Total disagree	70
No opinion	1

For the purposes of comparison, we might refer here to an earlier Gallup question from 1977. It substantiates the hypothesis that Americans are reluctant to endorse a policy of preferential treatment.

Question: Some people say that to make up for past discrimination, women and members of minority groups should be given preferential treatment in getting jobs and places in college. Others say that ability, as determined by test scores, should be the main consideration. Which point of view comes closest to how you feel about this matter?

[In percent]

	Favor preferential treatment	Favor selection on ability	No opinion
Nationwide	11	81	8
By sex:			
Men	10	82	8
Women	12	80	8
By race:			
Whites	9	84	7
Nonwhites	30	55	15

Source: Survey by the Gallup Organization, Oct 21–24, 1977.

It is interesting and significant that nonwhites as well as whites reject preferential treatment in favor of selection on ability. Though it should be noted that preferential treatment and ability are not strictly mutually exclusive, as could be inferred from the question, the results leave no doubt that the public as a whole favors selection on merit rather than through special consideration. Nonwhites, by a smaller but still significant margin, agree with that configuration. Moreover, when presented with Question 1(e) in the Sindlinger poll, the respondents distinguished between "catch-up" educational programs and what they clearly regarded as unfair preferential treatment. Three-quarters favored government catch-up programs in order to compensate groups which had suffered discrimination in the past. This compensation option evoked relatively little objection, especially when opposed to the results of later questions on straight preferential treatment.

Question 1(e): Finally, there is the position that there should be special government sponsored job training and educational "catch-up" programs reviewed for minority groups which have suffered from past discrimination.

[In percent]

Agree:	
Mild	34
Strong	40
Disagree:	
Mild	9
Strong	16
Total agree	74
Total disagree	25
No opinion	*

*Less than 1 percent.

The picture of what the public wants in the way of government anti-discrimination programs that emerges from Questions 1(a) to 1(e) is very interesting. It appears that public opinion makes fine distinctions in the matter. Widespread support for anti-bias laws and government-sponsored "catch-up" educational programs is coupled with strong opposition to lowering of standards and quota systems to accommodate minorities. Four out of five people opposed the lowering of standards for the hiring of people by business and for admissions to higher education institutions and *two out of three were strongly opposed*. Seven out of ten people opposed a quota system for jobs and higher education admissions *with about half of all respondents expressing strong opposition*. In order to assist minority groups they regard as disadvantaged and suffering from the effects of past discrimination, Americans are prepared to diverge from stricter nondiscrimination—but only to the extent of providing special educational or training programs.

This impression is confirmed when the *Policy Review* survey turns to public knowledge of, and attitudes towards, existing affirmative action programs. Briefly, people objected to *de facto* reverse discrimination, that is, government programs which rebounded to the benefit of a lesser-qualified minority or female applicant at the expense of better-qualified non-minority applicants.

Question 2(a): Under some recent U.S. Government programs—which were designed to help minority groups in jobs management positions and for higher education—it has happened that a minority person or a female applicant has been hired, promoted or admitted to an educational program like law school—with lower qualifications than non-minority applicants who were excluded. Are you aware of this?

Seventy-seven percent of respondents were aware that reverse discrimination had occurred. Twenty-three percent were not aware of it.

Question 2(b): To get your response to this question—I am going to give you four choices. Let me read each one before you reply.

One—It is fair—2 percent.

Two—It is unfair—19 percent.

Three—It is unfair but it is necessary to make up for the victims of past racial and sexual discrimination—17 percent.

Four—It is unfair and the wrong way to make up for past unfairness—62 percent.

These are surprisingly conclusive figures. Only 2 percent regard such programs as simply "fair." A full 81 percent felt that it is "unfair" in some sense to allow the less able minority or female applicant an advantage over the better qualified. Only 19 percent of respondents expressed any support for the idea of remedying the ills wrought by past discrimination if it meant sacrificing the idea of advancement by merit. And 62 percent of respondents condemned such affirmative action programs as both unfair and inexpedient.

Not only do people think that programs resulting in preferential treatment for minorities are unfair and the wrong approach, however, they also believe that such programs could actually harm rather than help attitudes toward minorities. When asked whether such situations reflected badly on all minority groups, or were likely to stir up resentments, nearly three-fourths of the respondents answered in the affirmative.

Question 3: With the situation developing where minority groups have received especially favorable treatment—do you regard such programs as likely to stir up resentment against the minorities. That is, does this have a bad reflection on all minority groups?

[In percent]

Yes	73
No	23
Don't know	4

The Sindlinger summary added the interesting comment that monitoring of the interviews had shown, in addition to the overall 3 to 1 margin, that many members of minority groups had expressed the belief that resentment would be a by-product of especially favorable treatment. Moreover, there is no difference of opinion between women who are among the beneficiaries of special treatment programs, and men on this matter. Yet, despite such an overwhelming margin of agreement on the resentment question, still more people professed that *their own attitudes* had not been affected. When reminded that government programs had sometimes resulted in less-qualified minorities and women being admitted into professions and schools, overwhelming numbers nevertheless say that minority or female doctors/lawyers are worth as much as others and they would not elect to avoid dealing with them, even if the avoidance could be accomplished without offense.

Question 4(a): This is our last question on minority and sexual discrimination: As we said—under recent government programs—minority applicants have sometimes been admitted to places of higher learning with lower standards than other applicants—and also a fixed number of college entrances and promotions have sometimes been reserved for minorities. For these questions—answer as yes or no or maybe . . . Has this affected your own attitude toward minority and women doctors and lawyers?

[In percent]

Yes	20
No	76
Maybe	4

Question 4(b): Do you think the qualifications of a black lawyer or woman doctor are likely to be worth as much as those of other doctors and lawyers?

[In percent]

Yes	67
No	17
Maybe	11
Don't know	6

Question 4(c): If you could do so without offense, would you, yourself, avoid dealing with a black doctor or a woman lawyer?

[In percent]

Yes	11
No	84
Maybe	5
Don't know	*

*Equals less than 1 percent.

Again, these are remarkable findings. Despite their disapproval of apparent quotas and lower standards for minority admissions to professional school, three out of four Americans claim that their attitudes to minority and women doctors and lawyers have not been affected by these programs. Nearly seven out of eight respondents say that they would not avoid dealing with a black doctor or a woman lawyer.

Does the same favorable attitude extend to the professions themselves? When people were asked whether quota programs would damage the professions either in fact or in the eyes of the public, the majorities exonerating the professions from harm were slightly reduced but still substantial.

Question 4(d): Do you think that these programs will damage the legal and medical professions as a whole?

[In percent]

Yes	24
No	63
Maybe	10
Don't know	3

Question 4(e): Do you think that these programs will damage the reputations of the professions in the eyes of the public?

[In percent]

Yes	26
No	59
Maybe	13
Don't know	3

Perhaps there is no great significance in this comparatively small statistical difference. If we allow ourselves some speculative interpretation of Questions 3 and 4, however, we might guess that the majority of Americans will oppose affirmative action programs provided that they can do so without themselves expressing anything that seems like racial or sexist bias. Thus, more people are ready to criticize such programs as harmful to the professions than are willing to express doubts about the minority and women doctors and lawyers.

This brings us back to our starting point—namely, that affirmative action can be viewed as a subject not concerned with race. This gains considerable support from the *Policy Review* survey. Another important finding, which confirms the arguments of Messrs. Lipset and Schneider, is that there is substantial majority support for "catch-up" educational and training programs—in sharp contrast to the overwhelming rejection of quotas or preferential treatment through lowered standards. What is less clear from the survey is the exact degree to which the public objects to government programs as such and to what extent its opposition is to the *principle* of preferential treatment. But this becomes immaterial when we see how strong people oppose any guarantee of result other than simply opportunity.

So the government can find little encouragement in public opinion to embark on further activity which seems to conflict or interfere with meritocratic values. The results of the *Policy Review* survey confirm a public willingness to provide minorities with a starting point on the inside lane, but a belief that ultimately the race must go to the swift.

Mr. HATCH. Mr. President, no government can systematically ignore the values and experience of its people and expect to retain its authority. If established political leaders do not speak to the peoples' concerns, new ones emerge who do. Affirmative action poses a threat to the social compact upon which American political stability is based. It has been a characteristic of politicians in developed countries in this century to take for granted the precious gift of public order, although they need only look to the postcolonial world to see how rare it really is.

I will not attempt to dispel this complacency here. But for a glimpse of some of the other inhabitants of our angry menagerie, we should read and reflect upon the following analysis of the resurgence of the Ku Klux Klan, taken from the Washington Post of November 13, 1979. I am sure that no one here has much sympathy for the Klan or its activities. But a case can be made that the Klan, as much as the Miami rioters, is trying to "tell us something."

Mr. President, I ask unanimous con-

sent to have printed in the RECORD an article entitled "The New Klan," Washington Post, November 13, 1979.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE "NEW" KLAN: BACKLASH TO BLACK PROGRESS

(By Bill Curry)

LINCOLNTON, N.C.—They are almost stereotypes of the South's redneck good ol' boys:

Harold Dean Flowers, 32, living beside a railroad track, laboring at a J. P. Stevens cotton mill and taking home $141 a week to support a wife, four children and a $85 monthly payment on a 1970 Olds, with a "Right to Bear Arms" license plate.

Lawrence Gene Morgan, 27, a manufacturing company employee, single and living on $150 a week and making $100-a-month payments on his 1976 Ford van, the one police said they found filled with guns, ammunition, chains, staves and eggs after a fatal shootout in Greensboro Nov. 3.

Both men, and five others from this furniture-and-textile town of 6,000 were arrested that day and charged with murder. They—like a growing number of Southern whites—have affiliated, themselves with a newly energized Ku Klux Klan.

Not the Klan, but a seemingly unlimited number of klan groups are growing on a backlash among blue-collar and working poor whites to the advances made by blacks in recent years.

They have seen school busing, affirmative action give jobs to blacks instead of whites and blacks organize to support blacks charged with major crimes—Joan Little the Wilmington 10, Tommy Lee Hines.

Drawn by anticommunist and antiblack rhetoric, they are turning in small but nevertheless increasing numbers, to the Ku Klux Klan.

"The niggers got all the rights. We feel the effects of affirmative action." said a Decatur, Ala., city worker who declined to identify herself or her job and who spoke hours after the mayor praised his administration's progress in increasing black hiring last June.

"The black people have organizations," said Joe Grady, former Grand Dragon of the Federated Knights of the Ku Klux Klan in North Carolina. "The Klan is the only group helping the poor and working class white man."

"We got taken in by a lot of talk about the threat of communism and all that," said Karen Clinton, wife of Michael Eugene Clinton, one of the seven Lincolnton men charged in the killings of five Communist Workers Party members in Greensboro. "They put a lot of stuff in our heads. We joined. We didn't know what we were getting into."

Billy Joe Franklin, a 33-year-old unemployed furniture worker, joined too. So did other Lincolnton residents during a Klan organizing drive here last month.

All told, Klan membership nationwide is estimated at 10,000—up from 8,000 in March 1978, according to a new study by B'nai B'rith's Anti-Defamation League. Sympathizers, the ADL said, number 100,000—up from 30,000.

While noting that the resurging Klan still poses no threat to American society, the ADL observed an increased willingness among Klan members to use violence.

The Justice Department's community relations service has reported that in the year ended Sept. 30 it mediated 44 local racial disputes involving the Ku Klux Klan, a small number but up from eight the year before.

The new Klan—more public, more political, more active than its night-riding predecessors—is a Klan that marches through downtown Dallas as easily as it burns crosses in deserted fields.

It is a Klan that brandishes firearms, ostensibly for "defense," during marches. And with blacks and others more willing to challenge them openly, the risks of violent confrontation grow.

"Our very existence is threatened," said Gorrell Pierce, the articulate grand dragon and effective spokesman of the Federated Knights of the Ku Klux Klan, one of three major Klan organizations based in the South.

"Everything we believe in, we see government shaking the South apart—in the ground and in our pocketbook. People are becoming frightened of strong central government. We don't have the right of segregation anymore. We have no control—and if we don't like [government action] they send bayonets to enforce it.

"Part of the problem, there's not enough jobs to go around. But strong central government is telling us we must hire a black, a woman, a Vietnamese before a qualified white man gets it."

Pierce, 27, farms 28 acres of land owned by his family for more than 200 years. A wood-burning stove heats the house that his great grandfather built; he, his brother, two sisters and their mother and a nephew live there, in Belews Creek, north of Winston-Salem.

The cash crop is tobacco, and he feels threatened by government antismoking drives. He feels threatened by a federal government that dictates policies down to the schoolrooms of Forsyth County, N.C. He feels threatened by communism. And because he feels the major political parties offer candidates of personalities, not of issues and convictions, he has turned to the Klan.

It is not antiblack, he said, although he acknowledged many members are. The Klan is against race-mixing, and he detests racially integrated television coming into his home.

The Klan, Pierce said, is anticommunist and "we are the only enemies there are to communists. We are not killing in the streets. We are educating Americans to the communist threat."

Pierce disassociated himself from the violence in Greensboro, which had been preceded by a July 8 confrontation between the same communist group and his klansmen. Gunplay had been averted with strict discipline of the klansmen, he said.

A spokesman for the communists, Paul Bermanzohn, later singled out Pierce and former Grand Dragon Grady in laying down a challenge: "We invite these cowards to come out from under their rocks on Nov. 3."

It was not Grady and Pierce who crawled out, however, police say, but the men from Lincolnton, a few Nazis from Winston-Salem and several others. And Bermanzohn's five comrades were killed; he was seriously injured.

"Lot of communism's bad," said Kay Flowers, 30, while her husband sat in jail on murder and conspiracy charges. A roach crawled across the bare wood floor of the Flowers' brick home on Railroad Street here. "Everybody has concerns."

Mr. HATCH. Mr. President, I would not, needless to say, wish to assert that the students of Harvard are moved by the same unenlightened passions as North Carolina textile workers. So I will merely add without further comment the following report from the Washington Post of May 10, 1980. The full import of this piece is difficult to ascertain, because it is written in the hypercautious style most newspapers now adopt when covering race relations. But the first paragraphs are telling enough.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Harvard Study Finds Backlash Over Blacks," Washington Post, May 10, 1980.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HARVARD STUDY FINDS BACKLASH OVER BLACKS

(By Stacy Johna)

CAMBRIDGE, MASS., May 9.—Harvard University's affirmative action admissions program, commended by the Supreme Court in its 1978 Bakke decision on reverse discrimination, contributes to racial tension by casting doubt on the academic abilities of minorities, a two-year study says.

"These doubts represent a particularly serious problem in race relations at Harvard because they challenge the very right of minorities to be at Harvard and to be full members of the Harvard community," the report, released Thursday, says.

A comprehensive survey of 1,300 undergraduates here shows that 62 percent of the blacks interviewed said minority applicants at Harvard have not received enough consideration, while 86 percent of white students said blacks have gotten enough or too much special attention.

"It points out the limits and negative side effects of affirmative action," said Dean of Students Archie C. Epps III. "But these views are a legacy of the '60s admission policies when we admitted as many minorities as possible including 'risk' students."

"We're into a conservative swing of the pendulum and the country feels it's heard enough about affirmative action for minorities, that enough has been done and whites are getting hurt by it," said Adela Cepeda, a senior who participated in the committee that drafted the report.

"But minorities still have the least amount of education and the most amount of poverty," she said.

Interracial dating has occurred among 70 to 80 percent of minority students, while 41 percent of white students have dated persons of other races, the survey says. And interracial interaction among students in various campus settings has increased substantially, though blacks still tend to cluster together at campus dining hall tables.

"The preconceived stereotypes in discussions of campus race relations break down when you really study the problem," Epps said. "All whites are not racists and all blacks are not separatists."

The innovative study group began after a racial flareup over the February 1977 edition of the satirical Harvard Lampoon, renowned for its biding parodies.

The issue featured on its cover a black child shining the shoes of old John Harvard and it published an article considered particularly objectionable on a disease the magazine called "negrosis," as well as an arsenal of barbs aimed at blacks and black stereotypes.

Mr. HATCH. Mr. President, I do not insert these articles certainly to condone these developments—either in North Carolina or at Harvard—but simply to demonstrate the social disunities to which affirmative action has great potential to contribute.

The extent to which affirmative action leads to what can only be described as a less perfect union was neatly captured in an article in the March 15 issue of the National Journal. It detailed the plans of the Census Bureau, under pressure from the White House, to ask respondents for details of their ethnic background. An official is quoted as saying:

You can put a dollar sign in front of the

numbers generated on ethnic minorities . . . because of the aid those numbers will enable them to demand.

All elected officials should read this article with foreboding.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Hyphenated Politics," by Timothy Clark; National Journal, March 15, 1980.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HYPHENATED POLITICS

(By Timothy B. Clark)

When Vincent Pasquale Barabba was growing up in Chicago 40 years ago, his father, a first-generation immigrant from Italy, made it a point not to speak Italian in his home. "He was afraid we might grow up with an accent," Barabba recalled.

Times have changed, and today Barabba finds himself overseeing a decennial census designed to elicit information on Americans' ethnic backgrounds. Far from hiring their heritage in the nation's melting pot, Italian, Hispanic, Polish, Ukrainian and other groups have insisted successfully that the U.S. government help them find out how many they are and how they are doing in today's society.

It is a troubling development. Years ago, when Theodore Roosevelt deplored "hyphenated" Americans, he had a good point. So pronounced is the trend to hyphenation these days that the motto emblazoned on the Great Seal of the United States. *E Pluribus Unum*, one from many, might just as well read *Ex Uno Pluris*, many from one.

The movement is evident in the government, with more and more programs aimed at blacks, Hispanics, Asian Americans, women and other groups clamoring for special attention. It is a trend that has been encouraged by the Carter Administration. Last month, the White House established an Office of Ethnic Affairs, headed by an Italian politician from New York who works in the East Wing, alongside men whose jobs are to deal with blacks, Hispanics and Jews, and a woman dealing with women. In January, the Carter-Mondale campaign appointed a New York City attorney of Chinese extraction as deputy campaign chairman for Asian American affairs.

Perhaps one can dismiss these appointments as harmless election-year steps to enhance the President's standing with racial and ethnic groups. But the census, in which 85 million households and more than 200 million people will participate next month, is quite another matter.

For the first time in the census's history, all respondents this year will be required to list their race in one of 15 categories: white, black or Negro, Japanese, Chinese, Filipino, Korean, Vietnamese, Indian (American), Asian Indian, Hawaiian, Guamanian, Samoan, Eskimo, Aleut or other. The census instruction booklet asks individuals to choose "the category with which the person most closely identifies."

This question (No. 4) appears on both the short form and the long form, which will go to 20 per cent of the 85 million households. The long form includes another question (No. 11) on ethnicity: "What is this person's ancestry?" It offers these examples: "Afro-American, English, French, German, Honduran, Hungarian, Irish, Italian, Jamaican, Korean, Lebanese, Mexican, Nigerian, Polish, Ukrainian, Venezulean, etc."

"Print the ancestry group with which the person *identifies*," the instructions say. "Persons who are of more than one origin and who cannot identify with a single group should print their multiple ancestry (for example, German-Irish). . . . A religious group should not be reported as a person's ancestry."

You may have noticed that the examples do not include Spain, Cuba or Puerto Rico. That's because, again for the first time, there is a question (No. 7) asking: "Is this person of Spanish Hispanic descent?" This question is on the form because Hispanic groups two years ago persuaded Congress to require that it be asked. In turn, other ethnic groups demanded their own questions, and eventually the White House gave them questions 4 and 11.

The White House decision was not an easy one. In trial runs for the census, fully one-third of the respondents did not answer question 11, and even when the Census Bureau sent enumerators to follow up, the failure was 13 per cent.

In August 1978, James T. McIntyre Jr., director of the Office of Management and Budget (OMB), sent Vice President Walter F. Mondale a memo warning that such a low response rate "would severely threaten the credibility of any ethnic data collected." He attached a memo from deputy associate OMB director Stanley E. Morris arguing against the ancestry question "because of the over-all cost of the census (close to $1 billion), the need to minimize unnecessary expenses of follow-up for nonresponses and the importance of accurate counts."

Morris made a stronger case against the ancestry question in a memo to McIntyre on Jan. 23, 1979. "The proposed approach discourages the public from identifying themselves as Americans," he wrote. "The answers are entirely subjective and not subject to verification. The anticipated results have been labeled 'meaningless and misleading' by the House Select Committee on Population staff. There is no federal program need for these data. The question is proposed basically because of special-interest group support for some kind of item on family background."

Morris concluded reluctantly that higher OMB officials thought that "the strong interest of the Vice President's office and others in having the question on the census is sufficient reason for conceding on this issue" noting that "if deleted, this question could create an uproar from interest groups [that] think they can use this question in securing federal funds, resolution of affirmative action complaints, etc."

Barabba offered a more pointed comment on the motivation of the ethnic interest groups. "You can put a dollar sign in front of the numbers" generated on ethnic minorities, he said, because of the federal aid those numbers will enable them to demand.

The census includes other inquiries so difficult that some Members of Congress have predicted their constituents will not respond, and GOP presidential candidate Ronald Reagan has said it was his "instinct" to answer only questions about how many people live in the house. Question 12, for example, asks homeowners to list their utility and fuel costs; it had a 40 per cent nonresponse rate in dress rehearsals.

But this and other nosy questions that probably will generate unreliable data are not as disturbing as the questions requiring people to search their family trees. Would it be fundamentally un-American to allow one to report to the government, on question 11, that one is an American?

Mr. HATCH. Mr. President, one of the difficulties with "hyphenated politics" that is rarely addressed by its proponents is determining who is eligible for participation in each program. Once, of course, it becomes relevant as a matter of public policy whether or not an individual is a Negro or an Oriental or Jewish or an Aleut, there must be established some mechanism for making these determinations. As with most other repetitive determinations of this kind that must be made by government, there will likely have to be special bureaucracies, rules and regulations, and opportunities for judicial review.

I am in the process of preparing legislation that would amend the Public Works Development Act by establishing a "Racial Classification Review Board" to determine which individuals fall within the statutory descriptions used by that act, such as "Negro," and "Indian" and "Aleut." No doubt affirmative action proponents will be able to learn from the South African experience in developing proper procedures for classifying people by race to insure that the law is not enforced in an arbitrary or capricious manner.

At this point in the RECORD, I ask unanimous consent to have printed three items: one, a dissenting option in a recent Connecticut Circuit Court case, *International Brotherhood of Electrical Workers* v. *City of Hartford*, 22 FEP 1973 (1980), discussing the implications of race-conscious policies; two, a column from the Washington Post describing the present "eyeball" system of race classification used by the Federal Government; and three, another column from the Washington Post inquiring "Who's the Minority in the District?" I would also refer my colleagues to the price case placed earlier in the RECORD, 21 FEP 1512, 1531 fn.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DISSENTING OPINION

VAN GRAAFEILAND, Circuit Judge (dissenting):—In January 1977, the Mafco Electric Co. of West Hartford, Connecticut, laid off two of its employees. It discharged them, not because they were incompetent or derelict in their duties, but because they were white males. Had they been Spanish-Americans just immigrated from Cuba, Blacks recently arrived from Alabama, or white heiresses working for kicks, they would have continued to draw their paychecks. However, they were white males and so they lost their jobs. They were discharged in order that Mafco could comply with an "anti-discrimination" ordinance enacted by the City of Hartford.

Although official 1980 census figures have not yet been established, it is estimated that approximately 50 percent of Hartford's population are non-white and that at least 50 percent are women. This means that approximately 25 percent are white males. The Hartford City Fathers have decided nonetheless that, insofar as the City is concerned, the non-whites and women are the minority group and the white males are the majority group. They enacted an ordinance to ensure "equal employment opportunity" on city projects for the 75 percent of Hartford's citizens making up the "minority" group and to establish "reasonable minimum percentage goals" in the construction industry for that group. Although 15 percent was set as the basic minimum level for "minority" employment, the actual percentage goals are to be determined by the City Manager, using, among other criteria, the size of the qualified "minority" labor force in the Hartford Labor Market Area. Moreover, the adequacy of the goals so established is to be reviewed annually. As this Court proceeds to

put its stamp of approval upon this program, it is appropriate, I think, that we pause briefly to take a look at where we are and where we are going.

A LOOK AT HISTORY

We conclude, as we must, that affirmative action programs of this sort can no longer be justified as "deferred recompense for past injustices." There can have been no injustices against racial minority members who appeared on the scene no earlier than yesterday or against women whose interest in construction work is not of vintage character. Now, our support assertedly is based upon the desirability of bringing about what the majority describe as the "moral equality of the races." It is not too early—perhaps it is too late—to consider what is meant by "moral equality of the races" and to ask ourselves where the United States women fit into this "moral equality" picture. A look at history may furnish a helpful perspective.

In 1920, Hungary enacted a law known as Law XXV, 1920, which provided among other things that the student bodies in the universities should be proportioned by race so that the percentages corresponded with the racial percentages in the country as a whole. In effect, this law gave Magyar students priority over Jews in admission to universities. In 1941, Bulgaria enacted a Law for the Defense of the Nation (*Zakon za zashtitata na natsiiata*, ZZN) which limited the number of Jews in both schools and the outside economic world. Article 25 of the Statute, which limited the number of Jews in various occupations, empowered the Cabinet to decide on the distribution of occupations in the country's professions and trades. In 1887, a law was enacted in Russia limiting the number of Jews in various middle and higher schools to between two and fifteen percent. In pre-Nazi Germany, Jews were permitted to attend universities and practice certain professions only in proportion to their numbers in the population.

These European laws are well-recognized example of *numerus clausus* legislation. Translated freely as "limited numbers", *numerus clausus* describes a situation once prevalent in several European countries in which Jewish participation in schools and occupations was limited by numbers of percentages or by relating Jewish participation to that of other races. It now appears that in cities such as Hartford the white male is about to inherit the role of the European Jew. As a number of Bulgarian Jews self-employed in commerce, credit, and insurance dropped from 4,465 in 1926 to 761 in 1942, so will the number of white males employed in the Hartford construction industry drop if the *numerus clausus* of Hartford's affirmative action program continues in effect.

Moreover, with the adoption of affirmative action plans such as that of the City of Hartford, the day is not far off when *numerus clausus* will be applied not simply to white males but to all races, and to sexes as well Combining Blacks, Puerto Ricans, Spanish-Americans, Orientals, American Indians, and women into one "minority group" gives substantial statistical support to those who favor affirmative action for minorities. No prescience is needed, however, to predict that the homogeneity of this minority group will not long endure. Blacks will not sit idly by should all affirmative action jobs be given to white women. Spanish-Americans will not remain passive if a disproportionate number of jobs is given to Blacks. They will each demand recognition for their own race as a separate minority group, and the inevitable result will be a *numerous clausus* for all groups. An employer will need a computer to unscramble the conflicting quota demands of race and sex groupings and a lawyer at his right hand to defend him against error.

IMMIGRATION QUTOAS

Men of good will will look back with distaste upon the battle over immigration quotas that raged in Congress during the early 1920's. Those quotas, like affirmative action quotas, were concerned with racial balance. Immigration quotas were established to preserve racial balance in the country as a whole, affirmative action quotas are intended to create it in specific areas or occupations. The first immigration quota law, enacted in 1921, limited the number of any immigrating nationality to 3 percent of foreign-born persons of that nationality who lived in the United States in 1910. Prior to the expiration of this law in 1924, Congress set about enacting successor legislation, and a dispute arose as to whether the 1890 census rather than the census of either 1910 or 1920 should be used as a basis for the new 2 percent quota. The Congressmen who wanted to restrict immigration from southern and eastern Europe favored the 1890 census because most immigrants from those areas arrived at a later date. Those who favored immigration from southern and eastern Europe argued for the 1910 or 1920 census. The debate in Congress was acrimonious. Moreover, regardless of the facial arguments used, the fundamental issue was whether the quota of one nationality or another should be favored. It was a dark chapter in our country's history but a chapter that will surely be rewritten if the use of *numerus clausus* or racial quotas in affirmative action programs is not restricted.

Following the enactment of ZZN, Bulgarian Jews received an occupational allotment of 21 doctors, 20 lawyers and 7 dentists. When the day comes that similar allotments are made in this country, those who dream of an integrated society, free of racial controversy and animosity, will long since have had their dreams shattered. My brothers appear to take comfort in the fact that the present Hartford quota is only 15 percent. Apparently they believe that the "minority" which holds political power in Hartford will be content with that figure. However, that "minority" cannot help but know that, if a 15 percent quota is legal, so also is a 30 percent, a 50 percent, or a 75 percent quota. See United Steelworkers v. Weber, 443 U.S. 193, 208–09, 20 FEP Cases 1 (1979). Conceptually, there is no distinction in the figures. The only giant step has now been taken and judicially approved. From 15 percent to 75 percent is simply the continuance of a process already under way, and there is no logical stopping place in between.

The arguments against *numerus clausus* are not answered by saying that the framers of racial quota legislation are well-intentioned. The Inquisition itself was not evilly motivated. "If a religious, moral, or political purpose may exculpate illegal behavior, one might commit bigamy to avoid eternal damnation; steal from the rich to give alms to the poor; burn and destroy, not merely public records or perhaps buildings but even public servants as well, to implement a Utopian design." United States v. Cullen, 454 F.2d 386, 392 (7th Cir. 1971) (footnote omitted). It is by well-intentioned processes such as this, rather than by revolution, that individual rights and freedoms in a democracy are most likely to be lost.

U.S. MUST REVISE RACE, ETHNICITY KEY

(By Mike Causey)

Programs to attract more minorities into federal jobs will force the government to drop or sharply revise the complex system it now uses to identify and label—by race and "ethnicity"—each of its 2.6 million workers.

Administration officials are committed to making the federal establishment "more representative" of the nation's race and ethnic mix. Hispanics are the only ethnic group counted.

Efforts to find more minority job candidates are being spurred by changing federal recruiting efforts, new programs making it easier to bring "underrepresented" minorities into government, and boosting recruiting in Hispanic areas, through Spanish-language ads.

Minorities now make about 23 percent of the federal work force. Most are in the lower and middle pay grades.

The current program Uncle Sam uses to collect race and ethnic data on civil servants has produced a system that is controversial and has brought protests from organized groups of Jews, Italian-Americans and Polish-Americans who are not counted as minorities.

Developing new guidelines, borrowing old definitions and mixing them has created some interesting situations. Although persons of Spanish-descent or with Spanish surnames are considered an ethnic group, the government (using old HEW guidelines for another program) does not recognize persons of Portuguese or Brazilian descent as ethnics.

Individuals from the "Indian-subcontinent," that is, Indians and Pakistanis, now considered "white", may be put under the category of "Asian or Pacific Islanders" like Japanese, Chinese, Koreans, Samoans, etc.

Under existing guidelines that may have to be junked, the government asks many new job applicants to fill out separate "confidential" self-designation forms. They list race and whether the persons considers himself or herself as Hispanic or non-Hispanic.

Regular federal workers are racial-"eyeball" system. Supervisors, observe employees and report, using special forms, what they think is the employees' race, and ethnic background.

Data on race and ethnicity is used for a variety of purposes. One is to determine the percentage of minorities by agency, geographic location, job, grade and pay.

President Carter's new civil service reform act contains a provision—authored largely by Rep. Robert Garcia (D–N.Y.)—that requires agencies to make special efforts to recruit minorities that are "underrepresented" by occupation, location or in overall agency employment totals. Various methods are to be used to determine what the representative number or percentage will be.

The method of determining employe race and ethnicity may have to be changed because one of Carter's reorganizations shifted responsibility for setting those guidelines from one agency—the Office of Management and Budget—to another, the Commerce Department.

The government will be expected to use Commerce's guidelines. They list five racial groups—"American Indian or Alaskan Native; Asian or Pacific Islander; Black; White and Other." In addition, Commerce has two categories of "ethnicity". Hispanic and non-Hispanic.

Current guidelines, under which most of the 2.6 million federal workers have been identified are: "Employes in Guam or Hawaii; Negro; Spanish-surnamed; American Indian; Oriental; Aleut employment in Alaska; Eskimo employment in Alaska; none of these; non-Hispanic in Puerto Rico."

In an attempt at "linkage" between the two different classification systems, the Office of Personnel Management—the agency that manages civil service matters for the president—has developed the following links:

The category of "Oriental" may be revised to exclude persons of "Hispanic ethnicity." Experts say this will affect persons of Filipino extraction. The "Negro" category will be revised to exclude black Hispanics. The complex guidelines also say that "h and i" ("h is 'none of these' while i is 'non-Hispanic' in Puerto Rico") will be listed under the "white" category "minus those who marked Hispanic ethnicity.".

When the changes are made, officials hope

to get a complete accurate picture of the race and ethnic makeup of the government. That data will be used to determine new recruiting efforts to attract more minorities.

WHO'S THE MINORITY IN THE DISTRICT?

(By Wilcomb E. Washburn)

When should affirmative action in favor of a minority cease?

Glen DeRonde, who won a reverse discrimination case in January, has asked the California State Supreme Court whether the University of California's admission preference for some racial groups will "no longer be mandated when and if Caucasians become minorities within the state of California?" DeRonde's petition raises the question of whether the definition of a minority changes when the majority becomes the minority in a particular geographical unit.

Demographers predict, for instance, that Los Angeles will soon have a Hispanic majority. Will minority preference rules be shifted to favor whites when they become a minority there—or in any city or state or in the nation at large? Or will the preference cease only when the minority proportion in designated institutions, professions or occupational levels equals or exceeds their proportion in the total population?

The District of Columbia provides a potential laboratory for consideration of these questions. D.C. affirmative action plans are presently applied in favor of blacks and Hispanics, although whites (as well as Hispanics) now constitute the minority population of the District. Although the District Council on March 26, 1979, rejected a motion to eliminate racial designations before the names of candidates for appointment to the District's boards and commissions and indicated its expectations that the D.C. Human Rights Commission would keep track of such designations for affirmative action purposes, it is still impossible to determine the exact racial composition of the D.C. government. The prevailing impression is that blacks are overrepresented even in terms of their majority status within the District.

Could black preference within the District be successfully challenged by members of the white minority? Will the courts rule that blacks will continue to remain the preferred minority in the District so long as they remain a minority within the Washington metropolitan region or in the nation as a whole? Or will the measure be one of proportional representation in particular levels of the bureaucracy or the professions? If affirmative action in favor of preferred minorities is reversed, does the reversal mean reversion to a color-blind system or to one in which positive preference is given to the newly defined preferred minorities? Court rulings have left undefined the temporal and spatial limitations of affirmative action.

On May 28, Iris Kern, the only fulltime white professor in the seven-member department of social welfare at the University of the District of Columbia, won a default judgment against the university in the U.S. District Court on the grounds that she had been passed over for promotion and pay increases because she is white. Although the Kern case did not come to grips directly with the temporal and spatial aspects of affirmative action, one can expect an increasing number of court cases that will deal with these aspects.

The Supreme Court sidestepped the *DeFunis* case in the 1960s on the ground that DeFunis succeeded nevertheless in obtaining the education he had claimed was denied him because of the application of unequal standards to different races in the admissions procedure he challenged. When the Supreme Court finally ruled on the *Bakke* case in 1978 and on the *Weber* case in 1979, it set legal standards for affirmative action programs, but offered ambiguous interpretations of the moral and ethical aspects of racial preference. Affirmative action programs have not quickly solved the problems they were meant to eliminate and have in some cases exacerbated racial tensions.

Since preferential treatment in a democracy is fraught with popular emotion and political hazard, as well as with logical inconsistencies, the answer to be given by the courts in future cases will not be easy, but must be quick. Further delay in defining the temporal and geographical dimensions of racially defined programs of preference can only lead to more divisiveness and bitterness.

Mr. HATCH. Mr. President, another of the problems with "hyphenated politics" is that there are always several categories into which most people can be grouped, not always compatibly. A good example of this occurred in 1972 at the Democratic Presidential Convention. The organizers went to considerable trouble to achieve racial and sexual balance, only to discover they had massive overrepresentation of the small but noisy portion of the American people who have advanced degrees.

It is more than likely, to take another case, that current affirmative action in governments and businesses will reach its targets and still leave the Nation's Roman Catholics significantly underrepresented in top jobs, until this is pointed out; and even after further affirmative action, we would probably find that Irish rather than Eastern European Catholics might well predominate.

There are even more thorny problems. What is the right proportion of handicapped native Americans? Logically, the whole business is a mare's nest. On current form, this means the bureaucracy is approaching it with relish.

In reality, such disputes will not be decided according to logic, and much less according to justice, the Supreme Court having rendered that a contingent commodity. They will be settled according to political power. We will indeed be living in an "angry menagerie of factions scrambling for preference." In the melee, most of our values will be trampled underfoot.

Consider the case of the selection of a president for the University of California at Los Angeles as told by John Bunzel, former president of San Jose State University, senior research fellow at the Hoover Institution at Stanford University, and a leading student of affirmative action. The values that went underfoot at UCLA were the ideal of merit selection, and any pretense that a university should be other than a political toy.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Politics and Picking a College President," by J. H. Bunzel; the Chronicle of Higher Education, October 22, 1979.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

POLITICS AND PRESSURE IN PICKING A COLLEGE PRESIDENT

(By John H. Bunzel)

Last May, the trustees of the 19 California state universities and colleges met to select a new president for the Los Angeles campus. It turned out to be one of the most bitter and divisive meetings in the system's history.

The controversy centered around two of the three finalists presented to the board: James M. Rosser, a black educator and vice-chancellor of New Jersey's department of higher education, and Julian Nava, a Mexican-American and member of the Los Angeles board of education. Gov. Jerry Brown and Assembly Speaker Leo McCarthy, both *ex officio* trustees, participated in the meeting.

It was no secret that Governor Brown and Speaker McCarthy wanted the trustees to pick Mr. Nava and had supported him long before they arrived at the meeting in May. (Certain trustees had also phoned other members of the board in an attempt to get them to commit themselves—before the meeting—to vote for Mr. Nava.) Further, in the Mexican-American community in Los Angeles the appointment of Mr. Nava "was expected." As one of its leaders put it, "The appointment was assured since the necessary votes were promised."

Many of the trustees, including some of the governor's own appointees, were deeply offended by his undisguised attempts to put political considerations ahead of the traditional academic and merit criteria by which the board normally evaluates presidential candidates. The governor was attacked severly for having made up his mind to support Mr. Nava before the selection process was completed or he had had a chance to meet the other candidates and make a comparative judgment about their respective qualifications. One Brown-appointed trustee, not hiding her anger, told the governor she had not come to the meeting simply to endorse his prior commitments or to ratify a decision that had been pre-determined. Her sense of outrage was shared by other board members who had a different perception of their role as trustees.

Finally, in a written ballot, the trustees chose Mr. Rosser to head Cal State Los Angeles by an 8-to-7 vote. The governor tried to block the appointment by a series of parliamentary maneuvers, but failed.

Mexican-American leaders in Los Angeles immediately denounced the board's rejection of Mr. Nava. One called it "another humiliation for the Hispanic people" and "a symbolic blow to a community that continues to wait for promises not kept." A senior at Los Angeles State (and first cousin of Mr. Nava) wrote in the campus newspaper that "the appointment of Dr. Rosser, a Black . . . is an insult to Hispanics. The 1980's will testify against Dr. Rosser's appointment as Hispanic growth continues to overwhelm whites and Blacks in elementary schools as well as in the general population." The issue, she said, "is not whether Dr. Rosser is more qualified than Dr. Nava but rather the issue is that the board of trustees chose to be indifferent to the pressing need of Hispanic representation at the presidency level of California State University at Los Angeles."

State Senator Joseph B. Montoya (D-Los Angeles) spoke of "my own sense of betrayal" because of "commitments" to Hispanics which had not been kept. He said that members of the Sacramento based six-member Chicano caucus had been led to believe the appointment of Mr. Nava had been "sewed up" prior to the trustees' meeting. "Instead, they went and picked someone from the boonies in New Jersey to head a school in one of the most diverse cultural cities of the United States, which doesn't make sense." He called for the firing of the chancellor and said that unless the trustees reconsidered their vote or gave Mr. Nava an equivalent position, he would make a specific request for reductions in the budget of the state university system.

Several conclusions emerge from this extraordinary series of events.

First, the "political meddling" of Governor Brown (the words are those of the outgoing board chairman) and the willingness of some trustees to go along and "play the game" seriously compromise the board's autonomy and authority. The governor left no doubt in anyone's mind that his time and energies were directed not primarily to the interest of Los Angeles State but to the fixed purpose of serving a particular political constituency. A responsible and truly independent board will see its major role as one of protecting the university and everything it stands for from external group pressures and the intrusion of politics. The principal requirement is that the men and women who are trustees must themselves be independent.

Second, one of the costs of politicizing the board is the far-reaching cynicism that has polluted the climate of affirmative action. There are already signs of disingenuousness and, perhaps even more disquieting, self-deception. A veritable waterfall of words giving a false appearance of simple frankness insists that racial identity is only one factor taken into account in the trustee appointment of a president, when it is evident that such qualities as substantial and successful administrative ability and performance may be given less weight than race or ethnicity.

For example, it is one thing to say that the trustees want and must continue to seek a more cosmopolitan and diverse membership on the campuses. However, to argue that they should have picked a Chicano for president because "Hispanics comprise 16 per cent of the student body" (15 per cent are Asian-Americans and 14 per cent are blacks) or because they are the "fastest-growing minority in Los Angeles County" is to suggest that the selection of a university president should be an ethnic rather than an administrative appointment.

One wants to believe (and there is good reason to do so) that Mr. Rosser was chosen not because of his color but because he was judged the best person. (However, a measure of the bad temper and cynicism that grew out of the acrimonious meeting is the private comment of one trustee that if Mr. Rosser had been white, he would not have been picked.) The ability and resolve of the board to resist powerful political pressures and thereby preserve the integrity of the selection process will be tested again in December, when a new president is to be appointed at Fresno State.

As part of the required procedures of affirmative action, an advertisement has appeared in *The Chronicle of Higher Education*, inviting applications from around the country. But interested candidates should also know that there is more than a hint and a lot of open talk (eliciting the usual denials) of a "hidden agenda," which, one trustee has said, is "not that hidden." Some trustees are ready to vote for Mr. Nava in January; others have again been approached and asked to do the same. Put simply, some of the same pressures are already at work to make certain that this time he gets the job.

All of this is a terrible disservice to Mr. Nava. Furthermore, the pre-determination of those who want Mr. Nava to be made president of Fresno State—months before it is even possible to judge who, among the more than 100 candidates, is the most highly qualified—is completely standardless. It would seem that for some of the trustees the commitment to affirmative action has produced their finding that Mr. Nava is the "best-qualified candidate" rather than a finding of "best-qualified" based on a judgment free from favor or prejudice toward anyone, triggering affirmative action.

It comes to this: If Mr. Nava is truly the best-qualified person, he deserves to be appointed. But if he is not, are there reasons and ways to appoint him anyway?

The question and its ramifications go far beyond any one individual or appointment. Last winter an affirmative-action review committee recommended some revisions of present trustee policy. The term "merit," a central principle in the present policy, has been dropped. The statement that "quotas and preferential hiring are not in accordance with national, state, or trustee policy" has been eliminated. The present policy explicitly commands that "those judged to be the best-qualified" should be selected, retained, and advanced on the basis of "ability, knowledge, and achievement without regard to race, color, religion, sex, or national origin." In the review committee's draft, these carefully considered words have been deleted. Instead of "best-qualified," it proposes, "among the top candidates."

These suggested changes are not cosmetic. They would permit and encourage qualified (but not necessarily the best-qualified) members of certain preferred groups to be picked if they are simply "among" the final three or four candidates. Further, the committee's proposal would make it easier for a white male, even if he happened to be the best-qualified of all, to be passed over so that what are often called "real" affirmative-action results can be achieved.

It is unlikely that all of these recommendations will be accepted or that the trustees will depart from their unambiguous commitment to hire the best-qualified person. But as one top administrator observed, "The trustees don't have to make any formal policy changes. All they have to do when they get in executive session is place politics above meritocratic criteria, appoint whoever gets the most votes, and then simply announce publicly that the one they picked was the best-qualified."

Too cynical? Perhaps. It is worth noting, however, that some 500 faculty members at Fresno State, disturbed by the politically infected trustee meeting of last May, felt it necessary in August to take the unprecedented action of sending the board a resolution (passed overwhelmingly) stating that "political influence is looked upon with disdain" and calling for "merit only" to be considered in the appointment of Fresno's next president. The message to the trustees is clear: don't pick the best-qualified black or white or Mexican-American, but the best-qualified man or woman—period.

The question is whether "merit only" is now hostage to new and presumably more important imperatives. If so, affirmative action in practice will no longer mean an equality of actual opportunities for every individual and the selection of the best-qualified person in every instance.

Mr. HATCH. Mr. President, Dr. Bunzel's article drew an immediate response, which I find instructive in a number of ways. It is obvious, to begin with, that substantial numbers of individuals have now developed a direct class interest in affirmative action, either as beneficiaries, consultants, or administrators. And they react angrily to any criticism of it. The extremely bitter and personal nature of these responses should be noted.

The defensive rationale this class has evolved is at once striking and appalling. It consists in large part of a rejection of the concept of merit selection altogether, either as a logically possible ideal or as a fact in American history. Since all candidates, according to this theory, are indistinguishable, the selection can be made on the basis of politics, and the selectors can tell themselves that things have always worked that way. What students are being taught about the reason immigrants came here, or even about the American Revolution itself, can only be a matter for alarmed speculation. As for skepticism about merit itself, my own surmise is that it reflects affirmative action's origins in Government and university bureaucracies, institutions where output is not easily measured.

Another feature of the defensive rationale for affirmative action is an unsubtle disbelief in the ideal of impartiality. Once more, this means that proponents of this rationale can perpetrate any affirmative act they choose, since there is no higher standard against which to measure themselves or their actions. This raises deeper questions, however. Western civilization itself is intrinsically involved with the ideal of impartiality, for example, in the administration of justice and in the scientific method. Clearly there are many that would in the long run be affected if affirmative action prevails.

Along with the letters in the November 26 issue of the Chronicle of Higher Education, I include Dr. Bunzel's conclusive rebuttal from the January 14 issue.

Mr. President, I ask unanimous consent to have printed in the RECORD from the Chronicle of Higher Education, November 26, "Letters and Bunzel Rebuttal," January 14, 1980.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

LETTERS—PICKING A COLLEGE PRESIDENT: POLITICS, PRESSURE, AFFIRMATIVE ACTION

TO THE EDITOR:

John Bunzel in his Point of View, "Politics and Pressure in Picking a College President" (Oct. 22) raises a number of issues which, if left unchallenged, will lead the naive reader to conclude that the trustees of the California State University and Colleges have stumbled upon an innovative method of selecting a college president. . . .

"Merit only" has never been the sole criterion considered for selecting a college president. . . .

Mr. Bunzel refuses to see that this country has had affirmative action and preferential treatment for white males since its founding, so to claim that the now-called-for affirmative action for minorities and women is an attack on the meritocratic principle is totally irresponsible. Affirmative action, as it was practiced for white males, never meant "an equality of actual opportunities for *every* individual and the selection of the best-qualified person in every instance." Nor is that the meaning of affirmative action today. To claim that an institution will hire only the "best qualified" is patently false, if not an act of the greatest self-deception.

First, in no way can an average state college, or even a recognized elite institution, always hire the "best qualified." If that were the case, then all institutions would be "the best." And secondly, how is one able to determine who the *best* qualified is without stating clearly and precisely the objective criteria the applicants will be measured against? Those who always cryout for only the "best qualified" to be hired, when pushed for answers regarding by what objective criteria and processes the "best qualified" is to be determined, offer no clues.

The California State University and Colleges' Affirmative Action Policy Review Committee, which Mr. Bunzel has taken to task for recommending that the words "the best qualified" be deleted in favor of the words "among the top candidates," was merely attempting to approach the whole problem of personnel selection from a more realistic perspective.

As a member of that review committee, I recall that the discussion over this particular item centered around the combined experiences of all members of the committee who as a group have served on dozens of search committees. Each member expressed the idea that it is truly the rare situation that one applicant clearly stands out as the single "best-qualified" candidate. Most often after a thorough evaluation, a search committee arrives at a point where there is a group of candidates who could fall into a category of "top candidates," or, if you prefer, a group of "best qualified."

In those situations, then, the university should be free to offer the position to that candidate who would help the university reach an affirmative-action goal if, through the required utilization analysis, ethnic or sexual underrepresentation has been identified. There is nothing sinister about this approach and it is well within the Equal Employment Opportunity Commission's guidelines for voluntary affirmative action.

The continued attacks on affirmative action by academic critics serve no practical purposes than to fan the flames of racial divisiveness.—STEPHEN A. FAUSTINA, Affirmative Action Coordinator, San Jose State University, San Jose, Calif.

TO THE EDITOR:

John Bunzel criticizes Gov. Jerry Brown for putting "political considerations" over "traditional academic criteria" in the appointment of a college president in the California State system recently. I cannot refrain from noticing that such is not exactly a novelty in public higher education, even in California before Jerry Brown. Too often the use of the traditional academic criteria for high-level appointments has served to divert public attention from the politics actually at work.

Mr. Bunzel is a case in point. He was at San Francisco State University when appointed president of San Jose State University in 1970. The giddy making and unmaking of presidents in 1968-69 was overtly political. Mr. Bunzel was one of those made. Had he been even more abundantly endowed with academic merit than he was, in Ronald Reagan's California and Glenn Dumke's state system of the day, he would never have become a college president had he not been politically "right" in two senses of that term.

Education is inevitably political. There are high roads and low roads in the politics of education, and doubtless many levels in between, but the difference is not illuminated by expressing it as the mutual exclusion of the political and the academic. The latter has been too long the basis of deception.—JORDAN M. CHURCHILL, Durham, N.C.

TO THE EDITOR:

I recently served on an academic search committee to fill the vacancy in the position of president of a large, diverse state university.

After many meetings the committee drew up a profile of the ideal candidate for the position. The clearly "best-qualified" candidate for our institution, all agreed, was the Unicorn. This animal is often symbolic of chastity and purity, is capable of being tamed by a virgin, and is usually successful in evading capture. Imagine the wisdom, strength, and cunning of the beast! Since our campus is short on virgins we felt the Unicorn would never be co-opted by any political group but would serve all with a mythical devotion to fairness.

We later discovered that no Unicorns had applied for the job. . . .

The point to the tale is that there is no such thing as the "best-qualified" candidate for the job. The best that a search committee can do is to develop a short list of qualified candidates and to use affirmative action to insure that minorities and women are considered without bias. The fact that a white male is appointed should be no more proof that he is the "best-qualified" candidate than the selection of a minority-group member or woman should bring forth suspicions of political influence.—ARLENE CHATT, Principal, Hay Associates, Management Consultants, Los Angeles.

TO THE EDITOR:

Politics in picking a college president is an evil which should be lambasted, but instead of concentrating on that topic John Bunzel slides off his target and gives a gratuitous slap to affirmative action. His only justification for this shift of emphasis is that a black was picked over a Mexican-American. He also mentions a "private comment of one trustee" to the effect that if the successful candidate had not been black he would not have been chosen. By this last comment, Mr. Bunzel implies that better-qualified white candidates were passed over, but he gives no indication that such candidates were even available. This is followed by a long rant about hiring the "best-qualified" candidate. . . .

The problem is politics—not affirmative action. Mr. Bunzel is a political scientist and understands that well enough. He should also know that candidates who have been selected to be college presidents in the past were not always the "best qualified," and affirmative action had nothing to do with that.

Furthermore, Bunzel should learn the difference between equal opportunity and affirmative action before writing essays on the subject. The latter attempts to correct the inequities of the past. Some of the ways that affirmative action attempts to do that is by setting goals and timetables and by reviewing qualification requirements. The aim is to select minorities and women to serve in positions where they have previously been denied.—R. DEAN GALLOWAY, Library Director, California State College, Stanislaus, Cal.

BUNZEL RESPONDS: "BEST QUALIFIED"

TO THE EDITOR:

The four letters appearing in the November 26 issue of *The Chronicle* in response to my essay on "Politics and Pressure in Picking a College President" deserve a brief comment.

Arlene Chatt states flatly that "there is no such thing as the 'best qualified' candidate for the job." Besides being an absurd statement, her flat declaration will come as a surprise to many people (department heads, deans, president, trustees) who spend a lot of their time trying to find the best qualified person to fill important positions. After all, that is one reason why first-rank institutions are first-rank and why others constantly strive to raise their standards.

R. Dean Galloway, a college library director, writes that "college presidents in the past were not always the 'best qualified.'" He surely is right. His point may even apply to a library director here and there. It is frequently said that academic hiring often violates merit criteria—hence why get upset about affirmative-action hiring? The most honest answer is to acknowledge that the charge is sometimes true, but to insist that failure to act always according to a defensible principle does not discredit the principle. Instead of abandoning it, we should concentrate our efforts on making it more consistently honored.

Stephen A. Faustina, who is the affirmative-action coordinator at San Jose State University, says that "it is truly the rare situation that one applicant clearly stands out as the single 'best qualified' candidate" and that the idea that "an institution will hire only the 'best qualified' is patently false."

I disagree—and so did he not too many years ago. In my capacity as president of San Jose State, I hired him—and, as I told him at the time, I did so on the basis of merit, not on the basis of sex or because he was black (another leading candidate was a qualified woman), and because, out of more than 100 applicants for the job and, ultimately, from those who were the finalists, he was the best qualified candidate. This was not only my judgment but the opinion of others who had interviewed him and with whom I consulted.

Mr. Faustina said he was pleased to hear that and wanted me to know that the "best qualified" standard was the correct one for a university to uphold and that his efforts in behalf of affirmative action would strengthen, not compromise, that standard. So much for a conveniently short memory.

But Mr. Faustina has another lapse, this time of logic. He implies that it is hardly meaningful to speak of the "best qualified" person, but then goes on to say that a "group of candidates" can be found that is indeed "best qualified." If a group can be "best qualified," then certainly the concept is intelligible for individuals as well, even granting that its application may be more difficult in the latter case than in the former. Failure to grasp this is evidence of intellectual incoherence.

Jordan M. Churchill writes that I was made a college president because I was "politically right," by which he means acceptable to "Ronald Reagan's California. . . ." But I also had to be acceptable to the Board of Trustees, which at that time was a wild mixture of Democrats and liberals appointed by former Governor "Pat" Brown and a small but growing number of Republicans and conservatives appointed by Governor Reagan. That I was selected unanimously suggests to me that my politics—I had long been an active Democrat—had nothing to do with getting Reagan's vote. I've always suspected the appointment of me by the board was more desperate than political.

Education, of course, cannot be completely divorced from politics. Only a fool would pretend otherwise. My quarrel is with those who, in the name of affirmative action, are trying to make us believe that the merit principle is somehow only a minor conceit on the part of those who still feel it is worth defending, and that hiring the "best qualified" candidate for a faculty or administrative position should be subordinated to a politics of race and sex. That is bad politics. It leads to cynicism, demeans the academic process, and smacks of the worst kind of condescension.—John H. Bunzel, Senior Research Fellow, Hoover Institution, Stanford, Cal.

Mr. HATCH. Mr. President, similar tendencies can also be observed in the replies to questioners at a round table held as long ago as May 28, 1975, by the American Enterprise Institute. At this symposium, moderated by Prof. Ralph K. Winter of Yale Law School, affirmative action was broadly supported by Prof. Owen Fiss, also of Yale Law School, Vera Glaser, syndicated columnist for Knight newspapers, and William Raspberry, the Washington Post columnist. Prof. Richard Posner of the University of Chicago Law School and Prof. Paul Seabury of the University of California at Berkeley's political science department were more critical.

There is a certain grim amusement to be gained from the self-righteous indignation of the affirmative action supporters at the very suggestion that the bureaucracy would attempt some of the atrocities with which we have subsequently become familiar. (See particularly the response to Professor Winter's penultimate intervention.) Just plain grim, however, is the eagerness of questioners to spur the Government ever deeper into private lives. The purely political motivation behind this drive was naively revealed by Ms. Glaser:

Unless we can continue the upward movement of minorities, unless we can open it up—which means that some people are necessarily going to lose out, because we get a more competitive situation, with more women, more blacks, more other minorities—we are not going to have a change in the fabric of the leadership, of the leaders of thought and the political leaders of the country.

Combined with their typical suspicion of the merit criterion, dark view of our history and quick asperity, the proponents of affirmative action represent a formidable force seeking to put politics in command of American life.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Affirmative Action: The Answer To Discrimination?" AEI Roundtable, May 1975, pp. 26–40 (audience questions).

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AFFIRMATIVE ACTION: THE ANSWER TO DISCRIMINATION?

Professor WINTER. Thank you, members of the panel. Although we have in no way exhausted the subject, we will now turn to questions from the audience.

LUCY SELLS (University of California at Berkeley). I am a graduate student, doing research in sex and ethnic differences in educational achievement.

First, in what way does affirmative action, as it is currently being practiced and operated, address the problem of early filtering out of women and minorities from the availability pool of qualified Ph.D. candidates; that is, what happens in high school, and undergraduate school, and graduate school that keeps women and minorities out of the Ph.D. pool of qualified applicants for recruitment? Second, given the declining job markets and no foreseeable increase in enrollments at institutions of higher education over the next five or ten years, how can we seriously talk about affirmative hiring when there are no slots for hiring?

Professor POSNER. That filtering really worries me. I hope you're not suggesting that we should go back into the grade schools and start defiltration activities, designed to increase the number of X in Ph.D. programs.

Ms. SELLS. That's precisely what I'm saying.

Professor POSNER. That's what I thought. There must be a limit to our wish to press government intervention in private lives, in the name of affirmative action.

Ms. SELLS. I'm not talking about government intervention in private lives. I'm talking about an educational process that raises people's awareness to what some refer to as institutionalized racism and sexism.

Professor POSNER. Is it the role of government to operate a propaganda ministry that will try to make people change their views on bringing up their girls, or whatever the issue is?

Ms. SELLS. It's one of the most constructive things that government could be doing.

Professor POSNER. Well, I must say, I'm horrified at proposals for bringing government into the business of shaping people's opinions. It's unconstitutional anyway.

Mr. RASPBERRY. One of the things that helps to shape the kind of earlier choices that Ms. Sells was talking about is the opportunity enjoyed by those who have gone through the training process and are finding it possible to move into the employment market and make reasonable progress there.

What I'm saying is that one of the advantages of the affirmative action program is that it says to despised minorities and discriminated-against minorities that, yes, it's worthwhile doing the hard work of training, beginning in grade school and continuing through high school and undergraduate school; that there is some payoff at the end. I think that, in itself, sends a message back down the line.

Professor FISS. I think the harder problem is not the intervention by government at the earlier stages and the removal of the obstacles that exist, but your second question—what affirmative action means in either a stable or contracting economy.

Most of the proponents of affirmative action in its toughest sense—that is, preferential treatment for minorities or for women—have always operated on the assumption that openings would exist at the entry level to allow this preference to come into play as you choose among a pool of twenty-five people. Or, you're in a department, and you want to get promoted to a supervisor's position which is now vacant.

The harder question is the one in which there is an incumbent in the position. I think it would be very difficult to push the affirmative action concept to take care of that problem. It would be difficult politically; I think it would be difficult legally, given the legislative history of some of the operative laws. Some legislators spoke specifically to the problem of bumping. They said, whatever else you do with the antidiscrimination laws, you're not going to bump incumbent employees.

Mr. RASPBERRY. If you've got twelve people and ten chairs, there's no way to work out a fair seating plan. That's essentially what it comes to.

Professor FISS. No, but Ms. Sells's problem is different. There are ten chairs, and ten people sitting in them, and the question is, now that there are five people here who do not have jobs, and two are black, do you get one of those ten people out of a chair to give it to one who's waiting? That's the tough question.

Mr. RASPBERRY. Yes. I think it may be a tough theoretical question. It's so tough, as a matter of fact, that it becomes easy. It's simply politically unpalatable, and morally repugnant as well.

Ms. GLASER. And it's not envisioned under affirmative action as we are defining it now.

Professor FISS. I appreciate what you're saying, but I suspect that in 1964 some people said the same thing about affirmative action in the sense that it's being used in now. Looking at it today, such bumping seems like an impossible option that will never come into being. But in 1984?

Professor SEABURY. That's a good year.

Professor WINTER. The difficulty is not, as Mr. Raspberry suggests, theoretical. In fact, in theory, there is no reason at all why affirmative action programs shouldn't call for kicking people out of jobs to put other people in. It's totally practical, it's totally political, and the political complexion can change very quickly—every day.

DAVID RUFFIN (Equal Opportunity Subcommittee of the House Education and Labor Committee). So far, we've been talking about affirmative action and equal employment opportunity in terms of giving minorities and women jobs.

But I think there's another question involved—that is, having minorities and women actually participate in the operation and direction of the government, social institutions, and the economy of the country. They perform in servile positions in our institutions, instead of being in managerial positions and policy-making positions. At this point, minorities are often servants and cannon fodder. I was wondering if you could address that problem.

Mr. RASPBERRY. I mentioned at the beginning of the show that institutions tend to reproduce themselves. I think one of the goals of affirmative action programs is to change institutions almost on a one-time basis. There is a lot of argument about how to do this, but I think what one wants to do is to build an institution that one would be content to see reproduce itself over and over and over again.

Obviously, you can't do this by introducing affirmative action at the entry level only, unless you take great care to see that fairness, that affirmative action, in fact, permeates the institution. This kind of change in an institution need happen only once, really, because then that institution tends to continue to produce that kind of situation.

Ms. GLASER. May I speak to that also? It is quite true that minorities and women have been boxed into the lower-paying jobs, generally, and we can see some upward movement. But unless we can continue it, unless we can open up—which means that some people are necessarily going to lose out, because we get a more competitive situation, with more women, more blacks, more other minorities—we are not going to have a change in the fabric of the leadership, of the leaders of thought and the political leaders of the country. I believe such a change is needed. Under some of the arrangements that I have heard discussed here, the blacks, minorities, and women would not have access, or would not even be considered, and so, therefore, their access would be quite limited—

Professor POSNER. Well, I certainly don't accept that characterization of what I've been saying. I'm not proposing to deny access to anybody.

Ms. GLASER. Well, you say you're not, but—

Professor POSNER. I don't believe in denying access to people on racial grounds; quite the contrary.

Ms. GLASER. What about sex grounds?

Professor POSNER. Or on grounds of sex.

Ms. GLASER. I'm glad we have that clear.

Professor POSNER. Well, it seems to me it's a debasement of the debating process to suggest that if a person does not support affirmative action, therefore he supports discrimination. Can't you distinguish between them?

Ms. GLASER. I certainly don't distinguish it from what you're saying. You do not support affirmative action. Can you make some better suggestion for eliminating discrimination?

Professor POSNER. There are many laws forbidding discrimination, in all areas of life—public accommodations, employment, many others. These laws are enforced by a variety of public and private means. So long as there is vigorous enforcement, I assume that these laws will be effective in eliminating discrimination, in all areas of life—public accommodations.

Ms. GLASER. But, Professor Posner, there is no "vigorous enforcement." The Civil Rights Commission, over and over again has monitored the agencies of this government and has shown that, under many administrations, both Republican and Democratic, they were not enforcing the laws designed to protect individuals.

Professor POSNER. I do not think that is true today.

Ms. GLASER. I think that is true today.

The Civil Rights Commission very recently made another report indicating that. To assume that, because we have a law, it will be vigorously enforced is being extremely naive.

Professor POSNER. But you were the one who mentioned the thousands of legal complaints against discrimination.

Ms. GLASER. I said that there were thousands of complaints.

Professor POSNER. That implies enforcement activity. Many of those complaints take the form of federal court actions against universities, or unions, or what have you, and these actions——

Ms. GLASER. These complaints have not all reached the stage of court action.

Mr. RASPBERRY. May I suggest that the difficulty in the enforcement of antidiscrimination laws is, really, in any particular case, proving discrimination. That is to say, you've got twenty-five applicants for a job; four or five are black; six of them, women; the remainder, white males; and a white male is chosen. It is extremely difficult in every specific case to demonstrate that the hiring of that white male was a result of racial or sexual discrimination.

What is a little accessible is a pattern over time. If, in every case where an institution has twenty-five applicants, including minorities and women, it continues to hire only white males, then one raises some questions. The pattern, over time, suggest that the problem is precisely the difference between enforcing antidiscrimination laws and working through an affirmative action kind of plan—which is to say, if, over a long period of time, you keep hiring white males for whatever reasons, the weight falls on you to show that you are not discriminating against the remainder of that pool.

Professor WINTER. Mr. Raspberry, does that really follow? I mean, Mr. Seabury made a point in an article that, if one takes statistics in a pattern over time and looks at what groups are not hired, one would have to conclude that the University of California at Berkeley discriminates more against Republicans than it does against either blacks or women. Now, that follows as much from the statistics as does the conclusion of discrimination that you find.

Mr. RASPBERRY. I think it does not. What I said is that if, over a time, the pattern persists, the burden should reasonably fall on the employer to demontrate that he is not discriminating against those groups who are not selected. I'm not saying that the pattern proves discrimination against them. I'm saying it shifts the burden of proof, and it ought to shift the burden.

Professor SEABURY. Okay. Could I interject something from the world—the real world of Berkeley that I live in? [Laughter.]

Professor WINTER. Which is the unreal world for the rest of us.

Professor SEABURY. Berkeley is the mother of all things, as you know. It is possible, actually, to have procedures which demonstrate fairness. I say that because those procedures are in use at the University of California today. For example, our department is making one appointment this year of a young assistant professor. It will take two weeks of the time of the deputy of our department and one secretary to submit the proof on that one case to satisfy the Berkeley campus arrangements for affirmative action. In each personnel case, you have to prove in a document to the administration of the University of California not only that this fellow is very, very qualified, but that his qualities are wholly better than those of the other people you have considered. I have no idea what the total cost in energy is to the University of California. But I would roughly estimate that this administration's affirmative action in a time of tremendous scarcity of resources is probably consuming about 15 percent of Berkeley's operating expenses.

Now, I think one ought to begin to be aware of the gigantic problem of cost when this whole thing becomes bureaucratized, when all personnel matters must be dealt with as scrupulously as that.

Professor FISS. But depending on how much you value eliminating discrimination, it might be worth the price. You can't make your case just by pointing to the fact that it's a costly process.

Professor WINTER. Could we end this discrimination against members of the audience, and return to them for questions? I have no doubt that we'll resume this argument.

ROBERT MALSON (Senate Judiciary Subcommittee on Constitutional Rights). Professor Posner stated earlier that the basic question, if I can paraphrase him, was, does a person's race or sex entitle him or her to a better job? A few minutes later Mr. Raspberry asked, if I may paraphrase him, is it a fair criterion for the Sociology Department of the University of California at Berkeley, for example, to decide whether or not a potential professor in that department will fit in? Professor Fiss said later that if we find in retrospect that a certain group has been discriminated against, then it might not be at all inappropriate to grant a member of that group preferential treatment. Professor Posner then said that it doesn't follow necessarily that one who is opposed to discrimination is necessarily in favor of affirmative action. I've gone around the circle and missed the two in the middle, but not by much, I think.

I would suggest to Professor Posner the opposite—that it does mean affirmative action is the answer. Remedial action, as most of us who have had any experience in this field will tell you, is probably the worst solution to discrimination that could possibly exist. Professor Seabury talks about the costs involved, the time that it would take a secretary and a staff member of his department to present one case for one individual for remedial action following a charge of discrimination. It seems to me that unless we have an affirmative action program that is effective, we are not going to rid the country of discrimination, whether it be in employment or education or higher education.

I'm just not sure exactly whether the theme of this round table really makes sense. As I recall, it went something like, is affirmative action an answer to discrimination? Then we start talking about preferential treatment for minorities and women as an affirmative step, when it seems that what we really need to be talking about is, are we really serious about ending the preferential treatment of white males? Because, as I see it, if we are serious, the burden is upon all of us to determine whether or not white males occupy the position that they do because of their qualifications. If they do, then they should stay. If they don't, I see no problem whatsoever to making sure that the greater pool is adequately represented.

And if "Alice in Wonderland" were to be rewritten, I think the main chapter would be "Dancing the Line between Goals and Quotas." I don't think that makes any difference at all.

Professor Posner. But there is an intermediate position. It is possible that some white people owe their jobs to discrimination and that many do not. Affirmative action requires institutions that themselves have not discriminated to attempt to attain a more racially mixed composition. And that's a very radical remedy.

You see the problem here is no different from the problem you have in any other area of law. How big a price, in terms of radical remedies, are you willing to pay for the most effective enforcement of law? If you are concerned about antitrust violations—price fixing and the like—you may debate the question whether we should break up all the large companies in the United States into little companies to make it more difficult for them to engage in antitrust violations, which are costly to prosecute. It's the same issue here. As with enforcement of most laws, it is costly to prosecute discrimination cases and to prove discrimination. The question is whether discrimination is so prevalent and so intractable to conventional legal remedies that we should engage in fundamental surgery on our social, political, and economic system.

It is striking to me how often people like Miss Sells and one of the other questioners, who favor affirmative action, leap very quickly to remedies of extraordinary severity, such as a government information department to propagate views about child upbringing. These affirmative action programs are very radical responses to a problem which I think, first, significantly diminishing, and, second, amenable to the vigorous enforcement of the abundant conventional civil and criminal remedies that we now have, with large monetary rewards for the successful enforcers.

Ms. GLASER. Well, Professor Posner, radical is in the eye of the beholder. I think that there are some people who regard it as rather radical, given the distribution of our population, that the leadership positions and the economic and political power of this country are concentrated in one group, the white males. To them, that situation is perhaps as radical as an affirmative action program is to you.

Most of these things respond, as you pointed out earlier, to political pressures. And we are going to see political pressures building up on these things unless we take affirmative action. And I think "affirmative action" is a very good descriptive phrase for what we are trying to do here.

Professor SEABURY. I would like to inject a couple of points here, because in any matter of social policy there are side effects and there are costs, so that one is really juggling values against each other. Thus, a total focus upon one often leads to very costly results, sometimes results that are quite unexpected.

If one shifts the issue here from the universities to, say, a baseball team, it seems to me that the team manager has a very high incentive to hire the best baseball players he can get. The test here is winning, and it is very easy to see who wins, because at the end somebody wins in the World Series. You know, that's harder to do when you are choosing between people from Harvard and people from Berkeley, but still, one of the basic things that we are concerned about is excellent education, and that means really hunting for the best people for the best jobs.

One may say that that principle ought not to apply in the universities and colleges of lesser stature, although I think that's a very patronizing view to take of the matter. The question of excellence should apply in all sectors and it should be answered on the basis of the innate qualifications of the people being considered in exactly the same way that a baseball team operates.

Mr. RASPBERRY. The difficulty with that is that it presupposes that it's possible to rate a dozen applicants for a single job as one rates the batting averages from .347 down to .314. As a matter of fact, it is simply not possible in every instance to rate applicants for most jobs in that manner.

Athletic teams are a very, very special case. One runs the 100-yard dash in a fixed and measurable time, one competes against others in very accurately measurable kinds of ways. But the twelve applicants for a job as professor of English, for instance, may include a couple of really excellent prospects; in which case the other ten go by the boards, and you are choosing between those two. They may include a couple of idiots, in which case you are talking about the remaining ten, because

the idiots go by the board. But if that pool of a dozen people happens to include neither truly excellent prospects nor idiots, you are talking about twelve people who fit the criteria that you have set up, who meet your qualifications; and there are lots of ways then to choose among them.

Professor WINTER. Would you let HEW say that they have to pick the 5 percent superstars and there has to be a lottery for all the rest of the hierarchy?

Mr. RASPBERRY. What I am saying is simply that once you understand that in nearly every real-world case we are talking about choosing among qualified people, there are a lot of things that can be brought into play. A lottery is one reasonable way of doing it. Another is to use that opportunity to do some other things that you might consider right for the society to do—correct racial imbalance, for instance.

Professor POSNER. I think you are wrong in suggesting that people are so interchangeable. Incidentally, I think you are wrong about baseball.

Professor WINTER. You are absolutely wrong about baseball. It's highly discriminatory.

Professor POSNER. You cannot express a baseball player's skills arithmetically, because there are many factors in addition to one particular index, like the batting average or slugging average or fielding average, which go to make a successful baseball player. And I think it's true in virtually all human activities.

Our problem is in the universities. We don't know that much about building a house or running a factory, so we assume the people who do that are interchangeable cogs. But I think the truth is that in most activities you don't have an easily differentiable genius category, plus idiots, and then the fungible intermediates. You have a large range of skills, and what you try to do is get the very best people.

Your reference to competition is an important one, because one of the reasons that bigotry has diminished in this country is that competition between firms, or between academic departments, puts a premium on hiring the most able person and penalizes the institution which indulges its racial or religious preferences. And that is one reason why we shouldn't think that, without massive government action, we are condemned to a constant level of serious discrimination. Competition erodes it, just the way it eroded the color bar in baseball: the teams could not afford to exclude qualified people. The same is true of an English department, which would be foolish to pass up a qualified minority person who would give it a competitive edge over other English departments.

Someone in the audience and some members of the panel have the notion that this country is pervaded, permeated by bigotry, as if the most important thing about the United States was that there was discrimination.

Mr. RASPBERRY. Do you consider it unfortunate that there was massive government intervention in precisely this area—let's date it back to 1964, the 1964 Civil Rights Act, and the civil rights acts following that? Do you consider that the government intervention—which unquestionably accelerated the process that you say is going apace now—was unfortunate?

Professor POSNER. No, I think many of the civil rights acts were very much in the right direction——

Mr. RASPBERRY. But we don't need any more?

Professor POSNER. (Continuing) and especially the Voting Rights Act. I do not think that once you embark on a program of government regulation, you are somehow committed to follow that path, regardless of cost and regardless of the likely benefits from continuing it.

The fact of the matter is that there has been an enormous diminution in discrimination in this country, a diminution registered in the very sharp economic gains of minority groups in the last fifteen years. And it seems to me that there is momentum in that process, and that the need for government action, especially the disruptive restructuring of institutions to bring about racial and sexual balance, has reached the point of diminishing returns.

Professor FISS. But I think the question that was put to you, Dick, which you really haven't responded to, is this: If you believe that the competitive process is the one to correct the position of the minorities, why have a fair employment law at all?

Professor POSNER. The competitive process works very slowly.

Ms. GLASER. And also you must remember that many people do not get an even start in that competitive process. A number of groups will start from way behind.

Professor POSNER. No one starts even. I mean, you are born with some intellectual, health, characterological appearance, and coordination endowment, which obviously influences how you are going to do in society.

Ms. GLASER. Do you think the blacks started even in the competitive process that you want to reiv on?

Professor POSNER. Today I think they do start even.

Professor WINTER. Mrs. Glaser, let me ask you something. There really is an enormous amount of evidence about what has gone on in the universities. I'll read you one example, a letter which was received bv a person who was a candidate for a faculty position:

"I'm sorry to report that although our department saw you as top candidate, we will not be able to make you an offer for our new position.

"Our university is an affirmative action employer and the department must attempt to fill the new position with an individual from a recognized oppressed minority group. Although the department initially viewed your ancestry as satisfying the requirements of affirmative action, consultation with our institutional advisors on the affirmative action program indicated to us that your ancestry does not qualify you as an oppressed minority.

"I wish you the best of luck in your future."

Now, is that fair?

Ms. GLASER. I think it's a ridiculous question.

Mr. RASPBERRY. That's plain stupid. And I think that it's unfortunate that that gets introduced into a serious discussion of affirmative action.

Professor WINTER. But that's what's going on.

Mr. RASPBERRY. Then that's not only stupid, it's quite illegal, and plainly so.

Ms. GLASER. It is plainly illegal. Nobody in the government is forcing universities or any other units to hire unqualified people. If they do that is illegal, and I can only wonder why they are doing these illegal things.

Professor SEABURY. If I could raise a factual question which is rather intriguing. I wish we had an HEW person here who could answer it. There have been many, many cases like that described here. I would like to know whether HEW has made any effort to investigate specific cases of that sort. I have heard not a word of this. It seems to me that if HEW is going to do a balanced job on the question of discrimination, it's about time they began to think about doing something about the Pandora's box that they have opened.

Mr. RASPBERRY. I have heard that one letter so many times that, really, I find it offensive to hear it again.

Professor WINTER. Well, there are other letters. But, anyway, I think we should leave this with Mr. Seabury's attack on someone who is not here. (Laughter.)

Thank you members of the panel, and thank you very much, ladies and gentlemen, for joining us this evening.

Mr. HATCH. Mr. President, the true nature of life in the menagerie can be predicted from the ordeal of Dr. Bernard D. Davis at Harvard, mentioned above. As told by J. W. Foster in the July 17, 1976 New Republic, Dr. Davis' story has classic elements with which we will all become familiar if affirmative action continues unchecked.

First, there is the ludicrous disparity between the offense—Dr. Davis' discreet, entirely reasonable editorial comment—and the punishment: Instant hysteria, which makes it plain that the subject Dr. Davis raised is simply and absolutely taboo. So much for free inquiry and the search for truth. Second, the fact that Davis himself, evidently a liberal of the purest stripe, instinctively and reflexively apologized, and seemed totally incapable of defending himself. Third, the craven flight of his fellow-liberals on the faculty in the face of this obvious attack upon academic freedom and elementary liberties, a familiar story to anyone who remembers the history of the 1960's, or for that matter of the Weimer Republic.

You do not need to be a physician to recognize these symptoms. They are those of an exhausted liberalism, that once believed in freedom, but now is falling half in love with the politicized certitudes of an easeful authoritarian—I should perhaps say totalitarian—demise.

Mr. President, I ask unanimous consent to have printed in the RECORD articles entitled "Sounding Board" New England Journal of Medicine July 29, 1980; and "Race and Truth at Harvard," by J. W. Foster, May 13, 1976.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

SOUNDING BOARDS: ACADEMIC STANDARDS IN MEDICAL SCHOOLS

Since the consumer is particularly blind in purchasing medical care, and his vital interests are often at stake, those who are in a position to screen for aptitude and competence in medicine have a grave moral responsibility. In accepting this responsibility medical faculties have always taken into account qualities of character and motivation as well as scientific ability and knowledge. In addition, in recent years we have finally begun also to take into account long ignored social needs. But no one of these sets of qualifications can compensate for a gross deficiency in another. In particular, as the practice of medicine broadens its scientific base, it increasingly requires a reasonable level of competence in science, at least as long as the M.D. degree leads to an unlimited license to make life-and-death judgments. In this connection preclinical courses serve not only to provide a scientific background for practice but also to screen students for the ability to reason scientifically.

This screening has become more difficult in recent years. A variety of considerations have led medical schools to engage in innovations in admissions, curriculum, grading and criteria for promotion. Some faculties, no longer confident of their ability to maintain adequate minimal standards, have set an external standard by requiring candidates for the diploma to have passed Parts I and II of the National Board Examinations. But

for schools that have aimed at leadership this minimal national standard is an extraordinarily low one. Moreover, it has been further lowered in recent years: National Board grades are normalized for each year's population, and so the absolute norm for passing is necessarily lowered by any nationwide increase in admission of students with substandard academic qualifications.

It would be a rare person today who would question the value of stretching the criteria for admission, and of trying to make up for earlier educational disadvantages, to help disadvantaged groups. But how far faculties should also stretch the criteria for passing students is another matter. If a board licensing airline pilots allowed extraneous considerations to interfere with objectivity it would be considered criminal. The temptation to award medical diplomas on a charitable basis raises the same question, even though the consequences of fatal error in the two professions are not equally visible and dramatic.

Many faculty members have wondered whether the stretching of standards in their schools in recent years has not exceeded what is reasonable. The problem is illustrated by a distinguished school that recently waived its National Board requirement and awarded a diploma to a student who had been unable to pass Part I in five tries. The award of this degree was virtually inevitable, after five years of investment by the school and the student. But we must look at the erosion of internal standards, and the postponement of decision, that allowed this situation to develop.

Medical faculties can derive deep satisfaction from their success in recruiting and helping many able students from groups that were formerly excluded. But it has also become apparent that patience and sympathy cannot overcome the inability of some students to handle the material. It is cruel to admit students who have a very low probability of measuring up to reasonable standards. It is even crueler to abandon those standards and allow the trusting patients to pay for our irresponsibility.

Considerations of tact, and guilt over our history of enormous racial injustice, have made it difficult to face the problem. But there are dangers in a policy that fails to evaluate the results of our recent experiments objectively. If the public is given a romanticized view we can expect demands for the extension of quotas, rather than demands for strengthening the quality of the product. Thus, recent statements by Senator Edward M. Kennedy (*New York Times* letters to the Editor, March 21 and 31), calling attention to the unequal supply of medical students from different socioeconomic groups, could well be the first step toward quotas for admission from these groups.

It seems time for medical faculties to ask whether we have been properly balancing our obligation to promote social justice with our primary obligation to protect the public interest, in an area in which the public cannot protect itself.

BERNARD D. DAVIS, M.D.

RACE AND TRUTH AT HARVARD

(By J. W. Foster)

The pickets outside his office carried signs calling him a fascist and a racist. Later in the morning a crowd of 400 people gathered in the quadrangle to hear denunciations. One group, charging him with "blatant misuse of genetic theory," demanded that he be fired as director of the Center for Human Genetics. Another said he had made "an unfounded attack on all poor people." Still another noted that racism was not new at Harvard and demanded that he be prohibited from grading "students whom he already considers to be inferior." The authorities did not cringe from attack.

The Association of American Medical Colleges said he had "done a profound disservice . . . to the profession of medicine"; the National Medical Association said his "innuendoes are evidence of the inhumanity of some humans . . ." His colleague Professor Richard Lewinton said of him, "He thinks blacks are mentally inferior and incompetent"; Professor Leon Eisenberg said, he "has made an assault on all black physicians that nothing can undo"; the dean of the Harvard Medical School called his actions "irresponsible"; an assistant to Harvard's President Derek Bok described his remarks as "the return of Agnewism," "a defamation and a smear." The Boston Globe editorialized that he had "introduced a racial note to the controversy in a way that was certain to inflame prejudices."

The object of the assault was Dr. Bernard D. Davis, professor of bacterial physiology at the Harvard Medical School, a man known to his students as an exacting, old-fashioned scientist. He had organized antiwar demonstrations in the 1960s. He had been the first department chairman in the history of Harvard to preside over the appointment of a black man to tenure. In the May 13 issue of the New England Journal of Medicine, Davis had written a guest editorial in which he questioned the lowering of medical school passing standards, implying that they had been lowered in part "to take into account long ignored social needs." He cited the example of an unidentified medical school that had waived its requirement that students pass the standard national licensing examinations and had then awarded a diploma to a student who had been unable to pass part one of the national boards in five tries. He did not mention the words "black" or "minority." The tone was balanced. "It seems time," he said, "for medical faculties to ask whether we have been properly balancing our obligation to promote social justice with our primary obligation to protect the public interest, in an area in which the public can not protect itself."

The Times kicked off the fight in a headline that screamed, "Professor Contends Medical Schools' Standards Have Dropped Because of Rise in Minority Students." Within 48 hours organizers had called out the pickets and had drafted the broadsides. That the student was black and that the medical school was Harvard soon emerged. That Davis had coincidentally been straying into an explosive area of inquiry—the links among race, heredity and intelligence—was clearly one of the reasons for the attack. But his main sin was to make a public statement that could be used to malign black physicians. The technique of deliberate, gentle equivocation and suggestion had backfired; it laid Davis open to the charge that he had made snide innuendoes motivated by concealed racism.

The attack on Davis was not an exercise in paranoia. Without meaning to do so, he really had hurt blacks. After the Times and the Globe trumpeted his editorial, The Washington Post used the occasion for front-page articles, "Blacks Lag on MD Tests," "Low Standards Alleged," "Howard [University] Failures High." The Wall Street Journal in its long-headed way deplored "the price to be paid for attempting, by an artificial and discriminatory process, to correct deficiencies of the social order." On the day after the Times story, five consecutive patients refused to be examined by one black medical student.

Phil Pittman, who organized the medical school demonstration, is a stocky, quiet black man from Mississippi. His words come rapid and low, those of a doctor practiced in emergency. "The things Davis said will be used again and again on all of us—even on the ones who do well. Even on the ones who do better than white students. We had to nail that idea—that we weren't as good—and nail it hard, because it's wrong. He [Davis] has come between us and our patients." No one can talk to someone like Pittman and fail to value the pride in hard-won success or the anger at seeing that success tainted by hints of incompetence.

At the same time, no one can doubt that the issues Davis raised ought to be raised. How far racial balance should intrude on testable merit and what effect such policies have on those favored and those disfavored are questions that educators must discuss.

But the questions, as the Davis case shows, may not be discussed. Davis could not have avoided the attacks by being either more specific or more general. If he had named the failing student, the outrage would have been more intense. If he had described the HMS admissions procedure as one in which a separate, minority staffed subcommittee passed on all minority applications with a "target goal" of 20 percent of the class, as one which resulted last year in the admission of five minority students with MCAT scores in the mid-400s (out of a possible score of 800), the outrage would still have been complete.

Nor could Davis save himself by recanting. Soon after the controversy began, Davis apologized for the inferences drawn from his editorial, for the suspicion cast on successful minority students, for the implication of his colleagues, for the naming of Harvard by others, for the lay publication of a scholarly comment. None of these apologies could help him. Robert Ebert, dean of the Medical School, recently set down for Faculty Council vote the matter of Davis' dismissal as director of the Center for Human Genetics.

Without fault on either side both Davis and those attacking him had stumbled on a tragedy. As in all tragedies there was pain—Davis' reputation will never completely recover; nor will those of scores of black doctors from Harvard—and there was the making of the tragedy by people who were not hurt by it.

Something important happened to the civil rights movement on its way to success. Quietly at first, and then with increasingly righteous volume, white liberals began to step off the bus. Part of what made them leave was esthetic: the martyred struggle was now in the control of regular bureaucrats. Nobody wrote folk songs about the Equal Employment Opportunity Commission. But something else, a dilemma, had been there all along, disguised beneath the exquisite simplicity of the notion that black people should become free at last from their ancient, vicious burden. The dilemma was this: did the movement seek specifically to improve the condition of a few ethnically defined groups? Or did it seek to make race irrelevant, unknown to the law?

In the early days of the civil rights struggle there had been no need to resolve these questions, because in either case the course of action was clear: outlaw the legal, overt discrimination against minorities. But once that had been done, there was the problem of how to enforce the law, and there the conflict appeared. Some said that the proper course was to attack intentional discrimination against individuals, so that official America would be forced to be color blind; they argued that to favor some minority group member because of his race was to discriminate against the unfavored because of *their* face, and that was precisely what the Constitution and the civil rights laws prohibited. Those who opposed them said that the color-blind approach led to treating unequals equally, which was itself an inequality; they argued that intentions were irrelevant, and that the surest and fastest way to achieve equality was to require racial balance in jobs and education. They argued, in short, for what has come to be known as reverse discrimination.

And at least in the civil rights agencies, they have won. In June 1971, an HEW team examined racial proportions in the Brown University faculty. They noticed that there were no blacks teaching in the Department of Religious Studies and demanded an explanation. When told that a working knowledge of Hebrew or Greek and Latin were prerequisites to the fields in which the department concentrated, and that there were no black candidates with such knowledge, the HEW officials insisted, "Then end these old-fashioned programs that require irrelevant languages. And start up programs on relevant things which minority group students can study without learning languages."

In February 1972, the chairman of the Sociology Department of Florida State University wrote to a job applicant, ". . . all unfilled positions in the University must be filled by blacks or females. Since I have no information regarding your racial identification, it will only be possible to consider you for a position in the event that you are black."

Those who believe in the color-blind interpretation of the Constitution and the civil rights laws see such incidents as horror stories, and they point to the fact that neither the Fourteenth Amendment, which guarantees to all citizens the equal protection of the laws, nor the civil rights laws, which prohibit discrimination on the basis of race, say anything about racial balance. In fact, they argue, such policies are expressly prohibited by Title VII of the Civil Rights Act of 1964, which is the statutory basis for federal supervision of employment practices:

"Nothing contained in this title shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by an employer."

But others point out that the color-blind interpretation is simpleminded: where a school system or an employer has been discriminating against minorities, the discrimination can only be ended by ordering that the school or job category be racially balanced. And that remedy can only be accomplished by identifying the races of those involved. On the other hand those who oppose reverse discrimination claim that finding discrimination initially has now become so easy—essentially, a prima facie case is established once a simple imbalance is shown—that the remedy applies to almost every employer and school system, whether racist or not. Moreover federal agencies that are supposed to enforce "affirmative action" among federal contractors (that includes most universities and large business firms) apply these "remedial" measures without any initial showing of discrimination, as do universities in their own voluntary efforts to achieve racial balance.

The conflict between these two principles—that the law should be color blind and that the law should favor minorities as minorities—was never focused more sharply than in the case of De Funis v. Odegaard, which tested reverse discrimination in education. The University of Washington Law School denied admission to Marco De Funis, a Sephardic Jew, even though it admitted minority students with lower grades and test scores. The law school maintained separate admissions procedures for minority students in the systematic effort to increase their numbers.

After his rejection De Funis sued on the ground that he had been discriminated against by reason of his race, and carried his suit to the U.S. Supreme Court. No sooner had the matter been set down for hearing than the controversy began. The broader implications were immediately obvious; everyone seemed to have an opinion on the case, and they were not limited to those with an interest in law schools: among those filing friend-of-the-court briefs on behalf of the law school were the NAACP, the Association of American Law Schools, and Harvard; opposing the law school and supporting De Funis were the AFL–CIO, the Anti-Defamation League and B'nai B'rith, the American Jewish Congress, and Polish and Italian fraternal societies. In the end, the Supreme Court declined to rule on the merits of the case, since De Funis (whose admission had been ordered by a lower court) would graduate whatever its ruling. But the unsettling aspect was the unfamiliar alliances and conflicts caused by the case. Labor sided with the employers, and the venerable alliance between blacks and Jews seemed to be breaking up.

Only an issue of profound importance could stand American politics so dramatically on its head, and important it is—important economically because policies of reverse discrimination affect millions of workers and students, and important morally because such policies raise acutely difficult questions. The questions can not be decided easily, by merely referring to the "plain meaning" of statute or Constitution; they require an exacting analysis of fact and value. But that analysis places liberals in a painful dilemma, as the Davis case illustrates. Exposing the facts of minority achievement reinforces racism; ignoring those facts compounds the unfairness. One way to escape the dilemma is not only to ignore the facts but simply to deny that reverse discrimination exists at all.

The practices of the Harvard Law School are an apt example of this method and are typical of many universities. Moreover, the law school prides itself as a place where controversy can be resolved in the free marketplace of ideas. And it has a DeFunis-type suit on its hands, having rejected a 38-year-old white applicant named Kenneth Krohn. Krohn graduated from MIT with honors and from Harvard, where he received a Ph.D. in applied mathematics. On the Law School Admission Test he scored a perfect 800. In his early years he jointly devised the Krohn-Rhodes theorem, which is a mainstay of modern algebraic theory in computer science. As one Harvard professor put it, "Had Krohn been black, the dean of the law school and the president of the university would have been at his door begging him to sign up the day the application was received."

Krohn must prove that allegation and many others before he can win his suit, but one of the hardest things he must prove is that Harvard Law School *has* an affirmative action program. In its application materials the law school asks no race question. It allows that such non-measurable qualities as "energy, ambition, sound judgment and high ideals" may help a candidate, and declares, "Harvard Law School has long been committed to a policy against discrimination based on sex, race, color, creed or national origin." A West Coast law professor, who supports the effort to achieve racial balance, says of the declaration, "It's just wrong; that's a lie."

Harvard Law School fails to ask a race question, not because race is immaterial, but because it wants outsiders to believe it is immaterial. A supplementary part to the application invites candidates to state "qualities not otherwise revealed by the application." Minority applicants generally understand those code words and state their race. The director of admissions, Dean Patricia Lydon, explains what happens when the racial representation is ambiguous: "Usually the applicant or one of the people writing his or her recommendations states the applicant's race. If we still are unsure, we call up the college where the applicant was an undergraduate." If they were to call up the applicant himself, he might ask just why Harvard cares about his race.

But while law school officials admit that they find out the race of applicants, they emphasize that this trait is only one of many background factors to be subjectively considered. Dean Lydon explains this informal, minor preference: "Someone on the committee may note on an application something like, 'He's come a long way,' and that may help a little, but by no precise amount. We have a high percentage of intellectual superstars, but we also want diversity and in some cases diversity includes some kind of disadvantage, whether it be economic, cultural, racial, or some combination thereof, and we look for a variety of achievement from musicians to football players to politicians to scientists."

Alan Dershowitz, a professor at the Law School who defended the lawyers in the Chicago Seven case, and Sen. Gravel in the Pentagon Papers case, responds to Lydon's statement by saying, "That is just not an accurate statement of the policy of any major American university, including Harvard Law School. There is no question that they discriminate on the basis of race and race alone. Not all blacks are poor and not all whites are rich. Not all blacks come from the ghetto or return to it after their education. Where individuals have overcome individual hardship, they should be favored, but what offends me deeply is the shorthand we use, which is race. They're afraid to talk about standards because—Shhh!—someone might be listening. The hypocrisy is incredible. It's just a matter of simple cowardice."

Albert Sacks, dean of the Law School, agrees with Lydon's characterization of the policy. He adds, "We definitely do not have a two-track system."

On a wall in the admissions office, there are six signs below each of which applications are stacked. The signs read, To Committee, Admit, Deny, Hold, Women and Minority Applications. There are no signs for football players or musicians. Being lawyers, the members of the admissions committee are too clever to follow the medical school practice of having minority applications read by specially designated minority faculty members. Instead, whoever reads such an application stretches the standard of admission. Sometimes the stretch is considerable: in the past few years several applicants have been admitted with LSAT scores below 500.

The committee also uses different procedures to handle minority applications. When the applications of white students come into the office, the staff summarily rejects those that fall clearly below the standards of admission. They rarely do this in the case of minority applications. Some minority applicants are accepted in the rolling admissions process. The applications of the others are saved until the end of the admissions season, when the committee looks at the racial proportions of the incoming class. No one talks about a precise quota, but all the members of the committee know that minorities have constituted 12 to 14 percent of past classes. Conducting their discussion in terms of how far down the list to go, they accept enough minority applicants to reach the commonly understood target.

Those who believe that minority students as a class are unqualified or that many of them perform worse than others in law school are plainly wrong. But that kind of racism can be encouraged by a quota policy, as Professor Thomas Sowell, a black economist, has recognized in his book Black Education: Myths and Tragedies:

"[T]he actual harm done by quotas is far greater than having a few incompetent people here and there—and the harm that will actually be done will be harm primarily

to the black population. What all the arguments and campaigns for quotas are really saying, loud and clear, is that black people just don't have it, and that they will have to be given something in order to have something. The devastating impact of this message on black people—particularly black young people—will outweigh any few extra jobs that may result from this strategy. Those black people who are already competent, and who could be instrumental in producing more competence among this rising generation, will be completely undermined, as black becomes synonymous—in the minds of black and white alike—with incompetence, and black achievement becomes synonymous with charity or payoffs."

The quota policy may be patronizing. But occasionally, as at Harvard Law School, it is something worse. It is a lying policy.

IV: WHAT, THEN, IS TO BE DONE?

Mr. HATCH. Mr. President, what, then, is to be done? In order to answer Lenin's famous question, it is necessary to assess the current situation carefully. It could properly be described as hopeless but not fatal. It is hopeless in the sense that the courts and the bureaucracy are making it clear they will respect neither law nor common public morality in their zeal to enshrine factional privilege in the shape of quotas. It is not yet fatal, however, because this drive will require ever more extreme methods in the face of mounting legal and administrative difficulties, besides placing its proponents in fundamental opposition to the political tradition of America and the values of the great bulk of the American people of all races. To the extent that any partisan group identifies itself with this narrow, divisive power grab, their opponents can look forward to a generation of encouraging election results. But there will also be a serious strain upon the entire political system, and profound injustice to individuals and to groups.

This grand overview of the affirmative action war, however, does not appear to console the brilliant group of intellectuals who first called attention to the dangers of reverse discrimination, and who are now shocked by the Supreme Court's treachery in the early battles. Perhaps this is because being in other respects good liberals, they are unused to the bitter defensive campaigns that every American conservative has grown to know and love.

For example, Dr. Nathan Glazer, professor of sociology at Harvard University and author of the seminal work "Affirmative Discrimination" (1976), recently proposed "A Viable Compromise on Minority Admissions" (Washington University Law Quarterly, winter 1979). This consisted essentially of Justice Powell's fudge in the Bakke decision: No quotas, but some "notice" of race. Professor Glazer said, accurately, that this would not please any constitutional lawyer, who would be inclined to think that either the Constitution forbids discrimination or that it does not. He justified his compromise on the grounds that, with the Supreme Court in its present mood, further affirmative action cases might be lost even more damagingly—they have been, but nothing could avert this.

Professor Glazer added:

We might all consider with some trepidation what the reaction of blacks . . . would have been to the kind of decision that would have permitted no account of race, and would have taken us back to the understanding of nondiscrimination that was embodied in the Civil Rights Act of 1964.

This is, of course, not unlike blackmail, and an invitation for other groups to "react" in ways that inspire "trepidation" and "compromise."

Professor Glazer also pointed to a number of advantages of flexibility in considering the principle of race conscious policy. These are such refinements as the ability to lend a helping hand to minority individuals as they emerge from the ghetto or barrio, the ability to allow ethnic community activities to continue, and also to keep the Government at arm's length from private institutions like colleges. But this argument is really directed against attempting to legislate in such a delicate area at all. However, the legislation is already in place. And anyway, the proponents of affirmative action have already shown that there is no chance of "holding the line against quotas" as Professor Glazer hoped, while allowing "notice" of race. The option does not exist. The war must be fought to a finish.

It is a significant comment on the standard of judicial and political honesty regarding affirmative action that few observers believe the Supreme Court's repeated assurances about the temporary and remedial nature of the "race conscious" programs it has approved. There is some reason for this skepticism. As the Elisberg letter quoted above shows, the concept of "remediality" as an element of affirmative action has increasingly been abandoned, even as a matter of lip service. Justice Stevens pointed out, in his dissent to the Fullilove decision, that Congress never thought of set-asides as a remedial measure, but simply as a response to political pressure. There was no attempt, in Stevens' words quoted above:

To measure the recovery by the wrong or to distribute that recovery within the injured class in an evenhanded way.

If the Supreme Court is to regard the set-aside provision as being justified under the "remedial" theory, Stevens said:

It can hardly object to a legislative preference for almost any ethnic, religious, or racial group with the political strength to negotiate "a piece of the action" for its members.

Moreover, the definition of temporary may turn out to be equally perverse. How are we to know when affirmative action is no longer required? In recent years, civil rights enforcers have ceased to concern themselves with cases of deliberate discrimination—where there was actual intent. Instead, they have focused on so-called discriminatory effect or disparate impact, the idea that the presence of discrepancies between a specific situation and the makeup of the surrounding population indicates subtler and more sophisticated forms of discrimination. Obviously if this reasoning is accepted, nothing short of complete statistical equality will suffice to demonstrate that affirmative action is no longer needed. This, of course, was the ominous implication of Assistant Secretary of Labor Elisberg's letter. In an absurd echo of Mao's permanent revolution, the Federal bureaucracy may well be proposing a system of permanent "temporary" quotas. And no one can say that the Supreme Court will not acquiesce.

But no one can say that it will, either. The fact is that the legal possibility does exist that the whole apparatus of quotas could be overthrown as quickly as it has been thrown up. All it would need is for a conscientious Court to resolve reasonably the myriad questions arising from the decisions it has already made.

Was Kaiser's action in Weber truly "voluntary" (in anything other than the Orwelkan sense), being compelled, in fact, by bureaucratic threats? What about affirmative action plans that, unlike in Weber and Bakke, actually do "unnecessarily trammel upon the interests of white employees," 443 U.S. 193, 208? What if the Congress enacts statutory amendments of titles VI and VII? What—to use another of Justice Brennan's phrases—is meant by a "traditional pattern" of discrimination. 443 U.S. 193, 201? What is a "temporary" affirmative action measure?

The only certainty that has been bequeathed to us by the Court as a result of its affirmative action decisions is uncertainty. The issue will remain the subject of massive litigation and controversy in the years ahead. It is impossible to predict how such litigation will fare. One reason for pessimism is that nearly a third of Federal judges have been appointed by President Carter under the Omnibus Judgeship Act of 1978. The President had promised that his appointments would be distinguished by unusual adherence to the principles of merit selection. But he subsequently told a suitable audience that—

If I didn't have to get Senate confirmation of appointees, I could just tell you flatly that 12% of all my judicial appointments would be blacks, 3% would be Spanish-speaking, 40% would be women, and so forth. (Congressional Quarterly Weekly Reports, March 3, 1979, p. 190.)

It was this second promise that President Carter elected to try to keep, with the result that much of our judiciary is itself the product of affirmative action.

Nevertheless, the underlying point remains. Affirmative action is vulnerable, particularly if a new, hostile administration were to withdraw the Executive orders, like Executive Order No. 11246 (September 28, 1965) upon which much of the bureaucracy's authority depends.

The pendulum of race politics in America swings over periods of decades. But it is a pendulum and it always returns toward the national ideal of a truly free society. It was a generation from Reconstruction in the 1860's to the Jim Crow laws of the 1890's. It was another 60 years before Congress finally wrote official color blindness into the law; the bureaucracy has distorted that in 16 more years into something approaching an inverted Jim Crow. It will take time to exhaust the momentum of this swing, and get the pendulum mov-

ing back to the center again. Nevertheless, eventually it will happen.

Throughout this statement, I have unhesitatingly referred to the Supreme Court's affirmative action decisions as errors. It is important to realize that the ex cathedra pronouncements of the Supreme Court are not infallible. My colleague from New York, Senator MOYNIHAN, addressed this issue in a recent issue of Public Interest magazine. His excellent article was entitled "What Do You Do When the Supreme Court Is Wrong?" The answer: First, debate; second, litigate; and third, legislate. I consider it to be a fine statement of the situation, although I differ with it in certain respects such as on its observations on the school prayer issue. I also think constitutional amendments have sometimes provided the solution to Supreme Court errors, a point I address below. In the first extract, Senator MOYNIHAN begins by referring to Justice Blackmun's dissent in Gannett against DePasquale (1979), which appeared to limit the media's access to the courts.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point an article written by the Senator from New York (Mr. MOYNIHAN), entitled "What Do You Do When the Supreme Court Is Wrong?" published by the Public Interest, in the fall of 1979, parts II and V.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WHAT DO YOU DO WHEN THE SUPREME COURT IS WRONG?

(By DANIEL PATRICK MOYNIHAN)

II

It is difficult to avoid the judgment that Justice Blackmun was right and the majority of the Supreme Court was wrong. If so, the question arises: What to do?

This is a question for which we have no clear answer and little theory. The Court is not supposed to be wrong. Even *The Federalist*, much given to emphasizing the frailty of human judgment does not adequately treat this possibility. To be sure, the doctrine of judicial supremacy—of the Supreme Court's power to void acts of Congress by declaring them unconstitutional—is not explicit in the Constitution and was not generally assumed to be implicit until Chief Justice John Marshall established it in *Marbury v. Madison*. But Hamilton, who believed in it, and in *Federalist* paper Number 78 made a strong argument for it, had to deal with the charge that "the errors and usurpations of the Supreme Court of the United States will be uncontrollable and remediless." In Number 81, he suggests several reasons why this charge, upon examination, is "made up altogether of false reasoning upon misconceived fact," but all but one of his points are actually further arguments for the necessity and rationality of judicial supremacy. The sole check upon supremacy suggested by Hamilton, other than that of appeals to superior courts, is the power of Congress to impeach individual judges:

"This is alone a complete security. There never can be a danger that the judges, by a series of deliberate usurpations of the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations."

No other corrective is suggested. Rather, the argument is made with particular force that the judiciary is inherently and uniquely possessed of the necessary wisdom and disinterest to weigh the actions of the legislature and the executive on constitutional scales. But if the Court were wrong, what—short of impeaching its members—would be the remedy? *The Federalist* does not say.

It happens, however, that we have a considerable practical experience of just this situation. For long periods of American history the Supreme Court has been wrong about one or another of the principal constitutional issues of the day. It has been wrong in the specific sense that there later came a time when the Court reversed itself, and either directly or implicitly stated that it *had* been wrong.[1] Nor has this been without consequence. Charles Evans Hughes, in his 1928 volume, *The Supreme Court of the United States*, could refer to the Court's having suffered from a succession of "self-inflicted wounds."

Thus from the last decade of the nineteenth century into the fourth decade of the twentieth century the Supreme Court repeatedly declared that the due process clauses forbade labor legislation. Under the Fourteenth Amendment, it was held, for example, that the state of New York could not require that bakers work no more than 10 hours a day (*Lochner v. New York*, 1905). Under the Fifth Amendment, a District of Columbia Minimum Wage Act was held invalid (*Adkins v. Children's Hospital*, 1923).[2]

This was solemn nonsense, as Holmes pointed out in his acid comment in *Lochner* that "the 14th Amendment does not enact Mr. Herbert Spencer's *Social Statics*."[3] But the solemn nonsense persisted, thwarting for almost half a century the major social movement of the time. Then, as suddenly as it had begun, it stopped. Writing somewhat later, Mr. Justice Douglas declared in *Williamson v. Lee Optical Co.* (1955).

"The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."

Or, as Mr. Justice Black put it in 1963 in *Ferguson v. Skrupa*:

"The doctrine that prevailed in *Lochner, Coppage, Adkins, Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."

Of these episodes in American history, the most notorious was the *Dred Scott* decision of 1857 which held the Missouri Compromise to be unconstitutional, a matter in which the Court was, again, plainly wrong. The most pernicious was *Plessy v. Ferguson* (1896), which held that the Fourteenth Amendment permitted separate but equal public facilities segregated by race, a doctrine that persisted until *Brown v. Board of Education* (1954).

Apart from the *Dred Scott* decision which was, in effect, overturned by the Thirteenth Amendment, the essential fact in all these cases is, however, that the time came when the Court discovered its error and reversed itself.[4] This may appear much too optimistic, but there it is for those to refute who will. The question I would address is how these reversals have come about. It is a process not now described in political or juridical science. As a beginning contribution I would offer a simple hierarchy of response which in one or another combination has commonly led the Court to change its position in those instances in which it has been wrong. In ascending order: Debate, Litigate, Legislate.

(In theory the ultimate recourse of those who feel the Constitution has been misread is an amendment settling the issue. But this has *never* happened. It has never proved necessary. Apart from the evolving idea of Federalism that needed to correct *Chisholm*, the exceptional circumstances that followed *Dred Scott*, and the changed circumstances that caused a graduated income tax to appear more reasonable in 1913 than in 1787, sooner or later the Justices have rectified their mistakes. That is not the least ground for the loving fealty we owe the Court.)

As a "case history" I will first present in some detail the history of the issue of state aid to nonpublic schools. I will argue that the Supreme Court was wrong in its interpretation of the Establishment Clause in its decision *Everson v. Board of Education* (1947), but that after a generation the conditions are developing in which it may (will?) now reverse itself. That time is a considerable element in this process will be of small consolation to those now most distressed by the decision in *Gannett v. DePasquale*, but this also appears to be the general experience.

1. *Debate*. This is the first and in every way crucial response. When the Court is wrong there must be those who will say so. Often as not this will be a dissenting member of the Court itself. But to be effective the question must become a political issue of the day. In his grand study, *The Least Dangerous Branch*, Alexander M. Bickel described Lincoln's response to *Dred Scott*:

The principle that the Court proclaimed was that slavery was not only legal in states which had it but was constitutionally guaranteed in unorganized territories as well. In the debates with Stephen A. Douglas in 1858, Lincoln said that he was against this decision, that he thought it wrong, that he feared its consequences, that he deemed it altogether deplorable. Douglas, on the other hand, without admitting that he necessarily thought the decision right, dwelt heavily on the argument that "whoever resists the final decision of the highest judicial tribunal aims a deadly blow at our whole republican system of government." "I yield obedience," Douglas said, "to the decisions of that Court—to the final determination of the highest judicial tribunal known to our Constitution." To this Lincoln countered by deriding the notion that a decision of the Supreme Court is a "Thus saith the Lord." The Court he said, can be wrong. There is nothing sacred about the Court's decisions. Men may properly differ with them.

As the initial decisions regarding state and church involved Catholic schools, the first arguments in opposition to *Everson* and its progeny came, generally, from Catholics. This made for difficulties (as the press, perhaps, will now find), it being easy for others to dismiss or ignore arguments that are necessarily self-interested. It may be Catholics were deficient in the skills and the access needed to mount a debate of this sort; it may also be that an element of prejudice worked against them. Surely there are episodes in this generation-long history that raise this latter question. Consider the instances in which Mr. Justice Douglas supported his opinions in *Tilton v. Richardson* (1971) and *Lemon v. Kurtzman* (1971) with references to a book, *Roman Catholicism* by Loraine Boettner, published in Philadelphia in 1962. This volume has been characterized by Douglas Laycock of the University of Chicago Law School as an "elaborate hate tract." Mr. Boettner's views on Catholicism generally may be summarized in the following brief quote:

"Our American Freedoms are being threatened today by two totalitarian systems, communism and Roman Catholicism. And of the two in our country Romanism is growing faster than is communism and is the more dangerous since it covers its real nature with a cloak of religion."

That particular passage is not cited by Mr. Justice Douglas, but here is one he quotes in footnote 20 of his concurring opinion in *Lemon v. Kurtzman*:

"In the parochial schools Roman Catholic indoctrination is included in every subject. History, literature, geography, civics, and science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, *not to teach scripture truths and Americanism*, but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think." (Emphasis added.)

Ponder Mr. Boettner's charge that Catholic schools do not teach "scripture truths."

As it happens, a number of Catholic laymen and clergy pondered just that and at the time tried to draw attention to the peculiarity of such a tract being cited as a reference work in an opinion of a Supreme Court Justice. Had Douglas in some similar connection cited the Protocols of the Elders of Zion, or a Kommunication from the Grand Kleagle of the Ku Klux Klan, there would have been some notice taken. But there was no response whatever to these citations. There is a climate of presumption, and it must be worked against. (Thus, on April 3, 1979, reporting that the Supreme Court would hear a challenge to yet another state statute providing bits of aid to parochial schools, a New York law providing expenses for state-required testing, *The New York Times* noted that "The Federal Constitution specifically forbids state aid to parochial schools. . . .") The dynamic of scholarship, which is both truth-seeking and competitive, at length responds to this kind of imbalance. Already the time is at hand when law clerks will have learned as law students that the *Everson* decision is disputed. In time there will be judges who learned it as students also. Just as importantly, Presidents may come to office committed to change. Roosevelt made no secret of his desire to appoint to the Court Justices who would not block New Deal legislation on the basis of a flawed reading of the Fourteenth Amendment. It would be unthinkable today for a Justice to be appointed who held to the *Plessy* doctrine.

The same may come to be true of *Everson*. This is a constitutional check on the Court: Justices are appointed by the President. Already both major parties have endorsed aid to nonpublic schools. It is becoming a familiar position for Presidential candidates since Senator George S. McGovern endorsed tuition tax credits in his 1972 campaign. It remains for a President to come to office either committed to the proposition as a matter of justice, or able, as a matter of politics, to balance the claims of the nonpublic schools with the fears of the public schools that they will lose whatever the other system gains.

Opinion polls indicate that the great majority of American people believe that educational pluralism is a principle deserving of active governmental support. And it is well to bear in mind Robert G. McCloskey's observation, in his magisterial study, *The American Supreme Court* (1960), that "the Supreme Court has seldom, if ever, flatly and for very long resisted a really unmistakable wave of public sentiment. It has worked with the premise that constitutional law, like politics itself, is a science of the possible."

Debate on the *Gannett* decision began immediately, and soon became almost formal. The Associated Press, for example, distributed to its news staff a prepared statement to be read aloud to a judge who has announced the closing of a courtroom. The statement, described by Louis D. Boccardi, executive editor and vice president of the Associated Press as "concise and legalistic," objects to any closed proceedings, sets forth the reasons why, and asks for time for further argument before a decision is made. This would appear to be a model reaction, if the validity of the Debate, Litigate, Legislate model is assumed.

2. *Litigate*. The exemplar of litigation as a tactic for bringing the Court back to the Constitution is the prolonged but in the end triumphant effort of the National Association for the Advancement of Colored People to reverse the *Plessy* decision. This is more difficult with *Everson*, for the effect of that ruling is that things don't happen rather than do, and it is not easy to challenge a nonexistent regime. Still, experience argues that those who feel aggrieved need to take initiatives. A former United States Attorney, now teaching law, asks his class in constitutional law to explain why the United States government is *obligated* to provide financial aid to church- or synagogue-related schools. The answer, evidently, lies in the Free Exercise Clause of the First Amendment: an interesting thought, and worth a lawsuit. Harry J. Hogan, retired counsel to the House Subcommittee on Elementary, Secondary, and Vocational Education, has pointed to the potential inherent in the growing practice of teaching "values" in public schools. "The fascinating possibility is that as soon as public schools and universities are required to teach values, then church-related schools and universities will be able to demand equal access to state and federal tax funds."

The risk of litigation is that it divides. In the end no schools may receive support for ethics courses. But, as no other process, it educates the courts.

3. *Legislate*. Legislation is the most direct and open way for the Congress and President to advise the Court of their reading of the Constitution, views which have equal standing under the Constitution, albeit they do not have equal effect. This issue arose directly in the Lincoln-Douglas debates. Lincoln said: "If I were in Congress and a vote should come up on a question whether slavery should be prohibited in a new territory, in spite of the *Dred Scott* decision, I would vote that it should." Douglas was scornful, saying, "If you elect him to the Senate he will introduce a bill to re-enact the law which the Court pronounced unconstitutional. . . . I never heard before of an appeal being taken from the Supreme Court. . . ." Lincoln replied that Douglas "would have the citizen conform his vote to that decision; the member of Congress, his, the President, his use of the veto power. He would make it a rule of political action for the people and all the departments of the government. I would not." Commenting on this exchange, Bickel allows that while deference to the Court is surely in order from the other branches this cannot be absolute:

"The functions cannot and need not be rigidly compartmentalized. The Court often provokes consideration of the most intricate issues of principle by the other branches, engaging them in dialogues and "responsive readings"; and there are times also when the conversation starts at the other end and is perhaps less polite. Our government consists of discrete institutions, but the effectiveness of the whole depends on their involvement with one another, on their intimacy, even if it often is the sweaty intimacy of creatures locked in combat."

That Congress can abuse its power, should cause no surprise. Indeed it has. Reacting to the Supreme Court decision in *Engel v. Vitale* (1962) which forbade school prayer, the Senate on April 5, 1979 and again on April 9 by margins of 47 to 37 and 51 to 40, respectively, voted to deny the Supreme Court appellate jurisdiction in such cases. This can be done under Article III, Section 2, at least with respect to cases in federal court. (It is contended that the power was intended as Congress's restraint on the Court, corresponding to the President's power of appointment.) But in this case the power was surely misused. Publicly prescribed prayer, voluntary or not, is precisely what "an establishment of religion" is all about and that is what the First Amendment forbids. (In the course of the debate, one Senator rose "to speak as a Christian" about what he called the "secular humanism that abounds in our children's schools today." He did not like this and thought "we Christians" should do something about it. One is reminded, from time to time, that this is a Protestant country.)

For all this, legislation is unequaled as a means to influence the Court. Labor legislation was finally accepted by the Court only because state legislatures kept passing bills. Even the venerable Charles Evans Hughes at last was converted. Writing for the Court in *West Coast Hotel Co. v. Parrish* (1937) he derided the "freedom of contract" argument: "What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law."

Similarly, the Congress through legislation has commenced the undoing of the *Everson* decision. First, in the Elementary and Secondary Education Act of 1965, provision was made for the compensatory services in schools with high proportions of "deprived" children, of which denominational schools

[1] Strictly speaking, the Court could have been right the first time and wrong the second. Walter Berns contends, properly, that the standards against which we measure a decision in order to say whether the Court was wrong must be the Constitution itself, not what the Court says about it. Still, experience is the life of constitutional law also, and I would hold that where the Court has reversed itself it has almost always done so to correct an observable error.

[2] In *Erie R.R. Co. v. Tompkins* (1937) the Court reversed *Swift v. Tyson*, acknowledging that they were abandoning a doctrine widely applied " . . . throughout nearly a century. But the unconstitutionality of the course pursued has now been made clear and compels us to do so."

[3] Holmes' suggestion appears to be misleading. The Court was not trying to enact anyone's social theories but its own. In James Q. Wilson's phrase, the Court had an idea as to what a "good economy" would be, and it was against this standard that statutes were measured. A considerable body of labor legislation and business regulation was in fact upheld by the "Laissez-Faire Court." My point is simply that there was precious little constitutional warrant for any of this.

[4] To be sure, the Sixteenth Amendment, permitting a progressive federal income tax, had the effect of reversing the Supreme Court's five-to-four decision in *Pollock v. Farmers' Loan and Trust Company* (1895), which had struck down such a tax. But many commentators feel that in this instance the Court was accurately interpreting Article I, Section 9 of the Constitution, and that changing circumstances in fact called for a constitutional amendment. The contrary view, expressed by some members of Congress during debate on the Sixteenth Amendment, is that the Court *was* wrong but had recognized this and was already diluting the effect of the *Pollock* decision and that the proposed amendment was therefore superfluous.

The Eleventh Amendment, ratified in 1795, which denied the Supreme Court original jurisdiction in law suits brought by citizens against individual states, responded to the Court's decision in *Chisholm v. Georgia* (1793) that it had such jurisdiction. But this could reasonably be described as part of the completing of the Federal structure embodied in the Constitution itself.

have a more than sufficient share. (In New York City, nuns initially had to teach the children to operate the television sets thus provided, as they themselves were forbidden to touch them. But even such silliness makes its impact.)

Similarly, the Higher Education Act of 1965 provided federal funds for "strengthening developing institutions." These were understood to be, in the main, black colleges in the South. But federal administrators, in the manner of bureaucracies, found that denominational colleges in the North often met the criteria and they were given grants accordingly. Half the private colleges and universities in the nation have religious affiliations, and most seem to take part in the now considerably complex system of federal aid to higher education. Mild tensions persist. It was reported that at the First National Congress on Church-Related Colleges and Universities, held at Notre Dame in the summer of 1979, there were complaints of "federal officials who question whether theology should be taught in classrooms built with federally guaranteed loans." But this is the point. Federal officials are now merely nervous about support for activities which, if one were to read *Everson* and nothing more, it would be assumed are altogether forbidden. What is happening, of course, is that American practice is coming in line with that of the other English-speaking democracies where government support is provided to any *bona fide* educational activity, and the communal peace, on this score at least, is maintained.

Consider the Higher Education Facilities Act of 1963. In this law, Congress provided funds to build buildings on college campuses. In the course of events, Sacred Heart College (and several other church-affiliated campuses) in Connecticut received such funds. The familiar law suit followed. But the Court in *Tilton v. Richardson* (1971) held that this aid was constitutional on grounds that "There is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination." Now there is, of course, no susbtance whatever to this. It can only be a matter of time, albeit this could be another generation, before five Justices agree that what is constitutional for 19-year-olds is constitutional for 18-year-olds, whereupon the legal issue will be behind us. The Weis dissent is surely a harbinger of this.

There will remain the issue of public policy. *Should* 18-year-olds receive assistance? That is a different question altogether. It has never been satisfactorily resolved, mostly because opponents have always succeeded in interposing the constitutional question. But it is not a constitutional question.

Legislation is not always to be advised. The press, for example, will want to be cautious indeed before deciding that it wishes Congress to make a law respecting its freedom. On the other hand, it may find it useful for Congress to make laws protecting the Sixth Amendment right of the public to be present at trials. To those who say the Court has decreed that no such right exists, there is Lincoln's retort that a Supreme Court decision is not a "Thus saith the Lord."

Has this analysis any predictive power? The *Gannett* case will provide a test. As with most cases in which the Supreme Court would seem to be wrong, debate began promptly and it may be forecast that a good deal of litigation will follow. In the manner of *Everson*, one decision will lead to another: clarifying, adjusting, half-apologizing. Legislation will be contemplated: most likely dealing with the public's right to access to the courts, rather than that of the press as such. In the end the Court either will reverse itself, or set forth rules for the closure of courts so narrow and restricted in their application that the controversy will go away. It may be hoped that it does not require a generation for this to come about.

Mr. HATCH. Mr. President, unlike Senator MOYNIHAN, I believe that it is certainly not without precedent for a decision of the Supreme Court to have been met with a response by the people and their legislatures in the form of an amendment to the Constitution.

The action by the Court in accepting jurisdiction of a suit against a State by a citizen of another State, *Chisholm* v. *Georgia*, 2 U.S. 419 (1793) led to the adoption of the 11th amendment in 1798 prohibiting the exercise of such Federal judicial power.

The Dred Scott case, *Scott* v. *Sanford*, 60 U.S. 393 (1857), which limited the rights of U.S. citizenship of negro persons, was set aside in section 1 of the 14th amendment in 1868.

The 16th amendment, establishing the right of Congress to impose income taxes, was ratified in 1913 as a direct consequence of an earlier decision by the Supreme Court which had ruled unconstitutional an attempt by Congress to tax incomes, *Pollock* v. *Farmer's Loan & Trust*, 157 U.S. 429 (1895).

Finally, the 26th amendment to the Constitution, establishing the 18-year-old vote, was ratified in 1971 after the Court had ruled that the Voting Rights Act of 1965 was unconstitutional insofar as it had purported to lower the voting age qualification in State and local elections, as well as Federal elections, *Oregon* v. *Mitchell*, 400 U.S. 112 (1970).

It is also worth noting that the present effort to secure an antiabortion amendment to the Constitution has resulted directly from a Supreme Court decision, *Roe* v. *Wade*, 410 U.S. 113 (1973). Also the proposed equal rights amendment is at least an indirect result of the Court's refusal to read the 14th amendment as broadly as some would have liked in the area of women's rights, for example *Frontiero* v. *Richardson*, 411 U.S. 667 (1973) (opinion of Justices Powell, Blackmun, and Chief Justice Burger). Other serious efforts to amend the Constitution followed Supreme Court decisions in the area of child labor laws, *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918) (proposed amendment ratified by 28 States); and legislative apportionment, *Baker* v. *Carr*, 369 U.S. 186 (1962) (proposed amendment narrowly defeated in the U.S. Senate).

It seems to me that we can all agree upon the aim of restoring to the Civil Rights Act its original purpose: to ban discrimination. Of course, legislation is a crude and inefficient method of resolving such problems. In this context, it is worth pondering the remarks of William F. Buckley on the Weber decision. Buckley is the only commentator I have seen to remember the sincere constitutional questions raised by honorable people in 1964, and to point out that flexibility in the area had some wholly beneficial effects, whose difficulty of achievement under an antidiscrimination statute Professor Glazer, for example, was lamenting.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point an article by William F. Buckley, entitled "The Language of Title VII," published in the Washington Star on Friday, July 6, 1979.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE LANGUAGE OF TITLE VII

(By William F. Buckley, Jr.)

The Weber decision of the Supreme Court is classic in its confrontation between sociological engineering and law. The majority of the court, looking at the text of a law written only 15 years ago, rewrote the law to say that which it would like it to mean.

The dissenters (Burger and Rehnquist) reminded their brethren in tones of desperation of something called the separation of powers. Let us go back to 1964.

In 1964, the Great Civil Rights Act was passed. Title VII of which forbade any private employer from racial discrimination in handing out jobs.

Now that act was opposed by a minority, most prominently by Sen. Goldwater. His opposition was strictly constitutional. Just as the American Civil Liberty Union cannot be accused of endorsing Nazism when it defends the rights of the lunatic fringe in Skokie, Ill., Goldwater could not conscionably be criticized as a racist for maintaining the Constitution does not vest in Congress the right to tell employers they may not discriminate—on any grounds—though in fact Goldwater *was* thus criticized by the polemical opportunists.

Now the court has held that in saying employers cannot discriminate on account of race, what Congress really meant to say was that employers cannot discriminate on account of blackness. But if that is what they meant to say, the dissenters asked, why didn't they say it?

Rehnquist appealed to the meaning of language to the structure of thought.

"Were Congress to act today specifically to prohibit the type of racial discrimination suffered by Weber, it would be hard-pressed to draft language better tailored to the task than that found in Section 703(*d*) of Title VII." Rehnquist proceeded to quote the language of the statute, which is about as ambiguous as "John hit the baseball."

Ah, said the majority, to be sure. But don't you see, the whole purpose of the Civil Rights Act was to help the Negro population. And you can't do this without affirmative action, even though that means discriminating against people on account of—race.

Not all the civil rights folks were overjoyed by the decision. The black lobbies, of course, were; as also the AFL–CIO, which was the defendant in the case, Weber having sued alleging his seniority under the union rules entitled him to preference in hiring.

But Leonard Walentynowicz, an attorney for the Polish-American Congress, was quoted, "Our position has always been that we believe in affirmative action, but we believe it should be available to all minorities, not certain select groups."

An interesting point. Did your father flee Poland where he was persecuted? Did you grow up in a Polish ghetto, struggling to learn the English language? Come to the front of the line.

The Anti-Defamation League's Justin Finger expressed concern, as well he might, that the court may have given (in The New York Times' paraphrase) "a sweeping endorsement of racial quotas." If we get a sweeping endorsement of representative racial quotas, we will have nothing less than active-anti-Semitism, since the manifest intellectual qualifications of the Jewish minority result in such anomalies as registration in the better colleges at eight or 10 times the Jewish representation in the population the triumph of meritocracy.

The strain arises at two levels. The first is

this last decision, wherein the court picks up a law designed to forbid racial discrimination and turns it around so as to permit racial discrimination. The second strain arises from the dilemma posed by the original act.

There are those (I am one) who in fact believe in discreet affirmative action, as noblesse oblige rather than as constitutional duty. But in order to practice affirmative action, it is necessary to discriminate racially. And that—until the Weber case—was supposed to be unlawful.

Chief Justice Burger began his dissent by saying: "The Court reaches a result I would be inclined to vote for were I a member of Congress considering a proposed amendment of Title VII. I cannot join the court's judgment, however, because it is contrary to the explicit language of the statute and arrived at by means wholly incompatible with long-established principles of separation of powers."

What the chief justice didn't say, but which our creeping immersion in the quagmire of racial quotas is teaching us, is that the original act was misbegotten. Goldwater was right.

Mr. HATCH. Mr. President, whatever the merits of Buckley's observations on the original Civil Rights Act, I still hope that we can "hold the line," as Professor Glazer puts it, against quotas, and restore the colorblind ideals of that measure. I still believe that this policy is the best and the only truly workable policy for governing our heterogeneous society. Nothing flowing from the 1964 act implies the adoption of affirmative action policies that have been justified in its name. It is the failure to appreciate this fundamental point that has misled so many honorable citizens who are sincerely and dedicated to equal opportunity and equal treatment for all groups.

The great unacknowledged truth that overhangs contemporary politics is that affirmative action is a two-edged sword. If the principle of equal protection is foolishly cast aside, then the welfare of the minority ironically becomes totally dependent upon the majority. There is no longer any overriding principle of equal treatment upon which the security of the minority can rest. The share of the pie that will be enjoyed by the minority is then ultimately whatever the majority is prepared to grant.

This may not be as much as the present uncritical climate seems to suggest. Once the principle of equal protection is abandoned, there will be nothing in theory to prevent a lengthy period of dialectical conflict out of which new and emerging forms of unequal stability will develop. It is a process that can do nothing but work to the ultimate harm of minority groups who, in a democratic society, have no resort to anything other than the rule of law and the traditions of a society.

I will end this section with an eloquent statement of disgust with the current situation by Midge Decter, from the summer 1980 issue of Policy Review. Ms. Decter has emerged as one of our most incisive and far-sighted social critics. She and her husband Norman Podhoretz, editor of Commentary, have already had an influence on the intellectual climate of this country that has insured them not merely a footnote but a paragraph in any history of our times. As I have said, I do not agree with Ms. Decter's pessimism as to what can be done about affirmative action, although I do think that the struggle will be long, bitter, and costly. However, since she has been writing about the issue for several years only to see elected officials burying their heads in the sand with more desperation than when she started out, her cynicism is not surprising. Ms. Decter's conclusion shall be my own:

Difficult to weigh and measure with precision as these results may be, they are already being given unhappy expression among us. If nothing intervenes to break the grip of this policy—and it is hard to see what will—they will be given countless more, and even unhappier ones, in the years to come.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Benign Victimization," by Midge Decter, published in Policy Review; summer 1980.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BENIGN VICTIMIZATION

(By Midge Decter)

Despite the fact that the policy known euphemistically as "affirmative action" is held in disfavor by an overriding majority of the American people, it seems safe to say that racial and sexual quotas are solidly established in our midst and will remain so for the foreseeable future. Indeed, nothing less than a serious social upheaval or major constitutional crisis—certainly no mere change of administrations or shift in the balance of congressional power—is apt to dislodge them. For public disapproval of the kind that can be expressed at the ballot box has not only proven to be no hindrance to the policy, it has in some sense provided reinforcement to the very process of its institutionalization. Affirmative action after all has a double agenda. First, there is the open agenda, the securing of places in society—preeminently in schools and jobs—for the members of particular groups claiming to have been intentionally and unjustly excluded in the past. And second, there is the somewhat more hidden one, which is to remove a certain order of social decision from the political arena and give it over to such agencies as the courts and bureaucracies where it can be kept securely out of public reach. Thus the widespread opposition to affirmative action has been held in the first instance to be itself prime evidence for both the justice and the necessity of the policy; and in the second instance has provided a spur to the policymakers to take matters ever more firmly into their own hands. Such a vicious circle will not easily be broken.

We can expect, therefore, to be living with quotas for some time—even though their most dedicated proponents hasten on every possible occasion to assure us that they are only a temporary expedient, a means of giving the provably disadvantaged that first indispensable leg up, after which reparation will have been made and justice achieved. By the time that golden age will have descended upon us, it is unlikely that any policy in a policy-ridden age will have done more than affirmative action to unsettle the series of delicate balances—between democracy and republic, individuals and pluralities, private rights and public necessities—it was once the unique political talent of this society to have struck.

Much has already been observed (as, for example, only recently in these pages) about the harmful impact of quotas on such instruments for maintaining the balances I have referred to as the schools and universities, the political parties, the agencies of government, and the economy. Moreover, that quotas are themselves indisputably unjust—not a means for doing away with the arbitrary exclusions of the past but merely a new form of arbitrary exclusion enforced against a new and different set of victims—has been frequently and forcefully pointed out (albeit as far as the courts are concerned, to no avail). It is on this point, as we have seen, that public opinion has drawn the firmest line: "unfair" is the characterization of quotas for which pollsters have found the highest level of assent. One issue, however (and it may be the most important issue of all) has so far not been paid the attention it deserves. That is the question of the impact of quotas on those who are their intended beneficiaries. How does preferential treatment affect those who are, in actuality or even only potentially, its recipients? Beyond this, how does it affect the feelings of others toward them? And finally, how does it affect the attitude of everyone toward the society he is living in?

There is, to be sure, good reason why this issue has been scanted. It resides in a realm difficult to get at directly, and in which the most important hypotheses are impossible to "prove." Attitudes are not opinions. Whereas opinions are held, and can be offered with varying degrees of forthrightness by the holder, attitudes are more often than not betrayed—sometimes in very roundabout fashion and usually over a considerable passage of time. In addition, they do not, or let us say should not, openly enter into the construction of legal briefs, which has been the major forum of public argument about affirmative action. Yet the attitudinal, or psychic, or spiritual effect of this policy, both on individuals and on the nation as a whole, will undoubtedly prove to be the most lasting and by far the most destructive.

THE BENEFICIARY GROUPS

The two main groups at whose behest quotas have been instituted and on whose behalf they have been administered are, of course, blacks and women. True, their ranks have been swelled by American Indians and that mysterious entity, "Spanish Surname," but these latter groups have imposed themselves primarily through an extension of logic (as other ethnic groups are lately and on the whole feebly attempting to do). It seems highly unlikely that they would have devised such a measure, or could have succeeded at having it implemented, in their own right.

Now, leaving aside the whole question of the respective merits of the claims of blacks and women to recompense for past injustice, the two are entirely dissimilar groups. Their linkage under the common heading of disadvantaged minorities is, literally, an incongruous one. Blacks have had a shared history; women as such have not. Blacks have had a shared cultural and political experience; women as such have not. In fact, women can hardly be said to be a "group" at all, as that term is generally understood. For historical reasons that remain to be properly explicated, however, the "causes" of women and blacks came to be treated as one and dealt with in a single fashion. In examining the issue of attitude, we are consequently bound to find the two groups, with certain inevitable and interesting variations, in an ever more similar condition.

It would be impossible, as I have said, to test an idea about that condition with any degree of scientific authority, but a good deal of so-called soft evidence is all around us. And what this evidence points to is that recipients of preferential treatment tend to suffer from a serious, and no doubt in many

cases permanent and irrecoverable, decline in self-respect. The advantages gained in this fashion appear to be bringing little sense of either private or public satisfaction but only more strident assertions of grievances yet to be redressed. If a certain number of places are secured in this industry or that university, a large number is stormily demanded. For an outsider to remark upon any improvement in the situation of the aggrieved is for him to call down upon his head heated accusations of heartlessness and bigotry.

This otherwise anomalous behavior on the part of the beneficiaries of preferential treatment is often laid to the phenomenon known as the revolution of rising expectations. That is, we are told that more jobs and special opportunities lead to greater rather than lessened unrest among the affected minorities, because they provide a glimpse precisely of what full justice might look like and thus feed an ever more impatient desire to attain it. But this explanation is less than satisfactory, because what needs to be accounted for are not only the demands themselves but the increasingly sullen, surly, and bitter tone in which they are proffered. The tone is one not of people impatient for more but rather of people who have discovered that their sought-for special privileges, being unearned and therefore feeling unmerited, are doing them, spiritually speaking, no good.

So it is, for example, that large numbers of women who have been carried into the academy have devoted their teaching and research to the field of Women's Studies, which is to say, to the perpetuation of the anger and hostility responsible for their being there. So it is that large numbers of blacks who have been—almost, as it were, forcibly—hurled up the professional ladder have elected to make a profession of being black. So it is that in both cases individual as well as collective endeavor is frequently conducted with the kind of routine incivility that comes with the lack of a sense of self-worth. It is an open secret in this country, alluded to only in whispers but commonly recognized all the same, that students admitted to colleges and professional schools by virtue of helping to fulfill a racial or sexual quota tend quickly to feel defeated there. Even the qualified, insofar as they know themselves to have won a competition through the added benefits of a special allowance, sooner or later undergo crises which are crises of self-doubt. Nor for those employed can the nervousness and low expectations of employers, the all-too-evident and unavoidable response to a situation in which they have hired as they have in order to fend off lawsuits, union actions, and the like, contribute much to self-regard.

How could all this be otherwise? At the heart of affirmative action, no matter how the policy is defined—whether as specific numerical quotas or only as desirable goals—lies the simple proposition that the individuals being hired or admitted or promoted would not in their own individual right be so. In terms of at least one of the central areas of their lives, in other words, they are not looked at or seen as individuals at all. In short, no matter how passionately affirmative action is sought and defended by its client groups, its underlying proposition is one that in the end must breed a painful resentment.

A LEGACY OF RESENTMENT

But if self-doubt and resentment are the irresistible consequence of quotas for the beneficiaries, what can we imagine about the emotions of the rest of the people among whom they work and live? Polls, particularly the Sindlinger Poll undertaken for Policy Review (for which see the Spring 1980 issue), offer persuasive evidence that the opposition to affirmative action so widely found in the American public is not race- or sex-related. Plainly, people are against preferential treatment not because they are against blacks or women. Eighty-four percent of the people surveyed, to take an extremely significant example, answered No to the question of whether they would avoid dealing with black doctors or women lawyers. Their opposition is not to the groups but to the principle. But to repeat, opinions are not attitudes. In the daylight world where people actively and willfully make up their minds, Americans have undergone a massive diminution of racial prejudice. In the dark night of the soul, however, affirmative action itself is creating a new wave of racism and sexism. The new wave of racism and sexism differs from the earlier sort in that it is based not on fear, hatred, or guilt but on contempt. There is, of course, also a good deal of the kind of rage always engendered by the spectacle of unearned advantage, though in this case rage of this kind seems to be confined largely to the particular groups who are made to feel the immediate pinch on their own flesh—better qualified students who lose out in the competition with less qualified, white male academics, ethnics whose own minority status has been left out of consideration, and so on. On the whole, though, the more telling, and far more consequential, response is an involuntary, almost instinctive, inclination to patronize. Whatever people think about the justice or injustice of making special allowances for blacks and women, what they feel is that the objects of these allowances are somehow inferior.

Frequently, to be sure, this feeling is accurate. Affirmative action is not simply, and not even mainly, a legal or administrative arrangement; it is a frame of mind—a frame of mind best characterized by the term "double standard." If someone must be included on whatever list in order to fulfill a quota or for the sake of appearances, a lowering of expectations and standards follows naturally. Such a lowering of standards extends far beyond jobs and school admissions. It seeps into the whole fabric of the culture. Accordingly, we have seen works written by blacks and women being praised all out of proportion to their merits, if any. We have seen public honors being bestowed for trivial if not laughable achievements. Perhaps more meaningful has been the application of a double standard to the public conduct of these groups: everything from lapses of taste to violations of the norms of decency to outright criminality has, under the sway of the general atmosphere of affirmative action been condoned on the grounds that those who do such things are entitled by a history of inferiority to do no better. Just as the beneficiaries of affirmative action officially approve of the policy but necessarily feel demeaned by it, so the public at large may officially claim to feel no prejudice but cannot remain unaffected by the notion of group inferiority that is inherent in—indeed, that is the very determinant of—the double-standard system.

Eighty-four percent of the people polled may believe that in principle they would experience no inclination to avoid, say, black doctors; in practice they are likely as time goes on to assume that in the absence of powerful evidence to the contrary, any black doctor is underqualified. Before long, the irony will have escaped no one: by means of a policy intended to short-cut past discriminatory practice the American populace will have become subject to a kind of prejudice which, if more subtle, is also by the same token infinitely more difficult to overcome. This prejudice, moreover, will be no unforeseen accident. Affirmative action is in its very inception based on a racist (and, in its subsequent application to women, a sexist) idea, which is that blacks, or women, given the removal of all barriers to opportunity, could not ever fairly compete. The rhetoric of the policy's supporters focuses not, as might be supposed, on equality but on incapacity. And in this rhetoric lurks the real underlying truth of attitude.

EQUAL OPPORTUNITY OVERTHROWN

Finally, there is the problem of what affirmative action does to the attitude of everyone—those who benefit from it and those who do not—about the nature of the society in which he lives. The assault on the old idea that in America equality means equal opportunity has an impact on attitudes far wider than merely those toward race and sex. The message being daily hammered home by the arguments for a system of preferential treatment is, to put it bluntly, that society is a racket. There are no such things as standards of performance. Standards are a shibboleth; look how easily—with a stroke of the bureaucratic pen—they can be dispensed with. There is no such thing as achievement. Achievement is whatever the authorities in charge decree it to be. Above all, there is no such thing as justice. Justice is whatever happens to be dispensed by courts of law—malleable to current social conditions and fashioned to the humors of political and social convenience. To live in accordance with the belief that standards or achievements or justice have a reality that is to some extent objectively measurable, that they matter, and that they are worthy of aspiration is to be a sucker. All of these, too, are ideas difficult to resist in the dark night of the soul, no matter how earnestly or piously denied in the course of daylight inquiry.

A society cannot long remain vigorous and productive when so massive a cynicism about its principal beliefs is permitted to spread through the underground consciousness. A complaint frequently heard these days is that nothing works as efficiently as it used to, from telephones, banks, industrial products, all the way down to postage stamps. This is a serious charge against the United States, whose vitality is characteristically expressed in efficiency. No one has yet attempted—possibly no one has dared—to estimate the contribution of affirmative action to this decline. There is the direct contribution, in the form of the lowering of the standards of competence for employment in all sorts of areas. And there is the far more important indirect contribution made by the growing cynicism I have described: even those who are competent find it less and less compelling to take pride in what they do.

Here, then, we have the unmeasured, and in some sense unmeasurable, results of affirmative action. Blacks and women (and some few others) are learning in a new way to regard themselves of lesser account and being encouraged to hold themselves not accountable. Their fellow citizens are willy-nilly adopting a double standard toward them and being encouraged to pervert the sense of fair play into a virulent new strain of racism and sexism. The society as a whole is being undermined with respect to belief in the terms of its past achievements.

Difficult to weigh and measure with precision as these results may be, they are already being given unhappy expression in countless ways among us. If nothing intervenes to break the grip of this policy—and it is hard to see what will—they will be given countless more, and even unhappier ones, in years to come.

V. CONCLUSION: RETURNING THE PENDULUM

Mr. HATCH. Mr. President, my purpose in making this statement has not been merely to establish that affirmative action is wrong. It has also been to establish that it is unworkable and, quite

likely, counterproductive. It will collapse in chaos and confusion. It is incumbent upon us as legislators and as citizens to insure that the least possible damage is done, and that the strain which it will inevitably impose upon the American body politic does the least possible permanent harm. The pendulum must return, however long it takes to do so.

It will be recalled that Senator MOYNIHAN's prescription for healing injuries done by the Supreme Court was, first, debate; second, litigate; third, legislate. Thus far, there has been extensive debate, although primarily in the executive branch of the Federal Government. A new organization, the Equal Protection Foundation, with which I am associated, has been established to further outside debate. There has also been litigation, in the judicial branch of the National Government. I believe that it is long overdue for the legislative branch—Congress—to inject itself into the debate over affirmative action, by actually legislating. It is a commentary, of sorts, on our times that the concept of affirmative action has been initiated, developed, and institutionalized completely outside the lawmaking branch of the Government. The popular will on this issue (as already illustrated by Ms. Victoria Sackett's article) has been largely irrelevant on these matters.

EQUAL PROTECTION, CONSTITUTIONAL AMENDMENT

At this time, I am introducing an amendment to the Constitution—the "Equal Protection" amendment—that would address the issue of affirmative action. While I am always reluctant to offer amendments to the organic law of our land, I am convinced that there is no idea with any present currency that has more potential for undermining the foundations of our free society than does the idea of affirmative action.

It is unfortunate that I should have to introduce this resolution when there is an existing constitutional provision—the 14th amendment—that clearly states the principle in which I believe. Simply stated, it is that all persons within our Nation are entitled to the "equal protection" of the laws. There is little doubt in my mind, however, that the original intent and the clear meaning of this provision have been totally obliterated by our courts and by the bureaucracy in recent years. The Herculean task of transforming language guaranteeing equal protection into language tolerating laws which make distinctions among people on the basis of race has largely been achieved as a result of the Bakke, Weber, and Fullilove cases.

Let me briefly describe the provisions of the "equal protection" amendment. All are fully consistent with traditional notions of the equal protection clause of the 14th amendment and, I believe, with the views of the great majority of the American people of all races.

Section 1 of the proposed amendment establishes the basic principle that neither Congress nor the States are to make or enforce any laws which "make distinctions" on account of race, color, or national origin. It would insure that public policy in this country is pursued on a color-blind basis. This provision would clearly render unconstitutional laws such as the Public Works Employment Act of 1977 (Public Law 95-28, 91 Stat. 116) which established a 10-percent minority quota for Federal public works contracts. This law was upheld recently by the Supreme Court in *Fullilove* v. *Klutznick* (Docket 78-1007).

Section 2 would address the problem dealt with by the Court in the earlier case of *United Steelworkers* v. *Weber* (443 U.S. 193). In that decision, the Court purported to interpret title VII of the Civil Rights Act which made it an unlawful employment practice for an employer to hire, discharge, or otherwise discriminate against an individual because of race, color, or national origin. Through judicial sleight-of-hand, this was transformed into language excepting the adoption of preferential hiring programs for racial minorities if adopted "voluntarily" by employers.

What section 2 would clarify is that all laws adopted by the Congress or the States which prohibit racial discrimination by private employers shall not be construed to permit the establishment or maintenance by these employers, however "voluntary", of any program that "makes distinctions" on account of race, color, or national origin. Once Congress has chosen to limit the freedom of private individuals to make employment decisions on account of race, I do not see the propriety in allowing courts to carve out exceptions with respect to employment decisions for certain races. Nor does the concept of permitting "voluntary" programs of preferential hiring have any justification when we are dealing with laws that are expressly directed at limiting voluntarily adopted employment practices.

Section 3 of the amendment emphasizes that "goals, quotas, timetables, ratios, or numerical objectives" all fall within the scope of proscribed practices to the extent that they draw "distinctions" on account of race, color, or national origin. Such practices could neither be adopted voluntarily by the Federal Government or the States, nor imposed upon private individuals or enterprises. They would not be permitted to be adopted voluntarily by persons within the scope of laws that otherwise prohibit discrimination on account of race.

Section 4 would prohibit the adoption of laws which made illegal, actions that have a disparate "effect" on racial groups, where such actions were not adopted with an intent or purpose or motivation to discriminate. This is a policy in accord with the Supreme Court's interpretation of the equal protection clause of the Constitution in such recent cases as *Washington* v. *Davis*, 426 U.S. 229 (1976); *Arlington Heights* v. *Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977); and *City of Mobile* v. *Bolden*, (Docket No. 77-1844). As the Court noted in the Washington case, "a law neutral on its face and serving ends otherwise within the power of Government to pursue is not invalid under the equal protection clause simply because it may affect a greater proportion of one race than another", 426 U.S. 229, 242.

The need for this provision arises because the Court in the context of title VII has suggested that proof of discriminatory intent is not required, *Griggs* v. *Duke Power*, 401 U.S. 424 (1971), while lower Federal Courts have suggested in the context of title VIII that mere discriminatory "effects" may suffice to establish a violation, *Arlington Heights* v. *Metropolitan Housing Authority*, 558 F. 2d 1283 (7th cir. 1977); *Resident Advisory Board* v. *Rizzo*, 564 F. 2d 126 (3rd Cir. 1977;) *Contra Boyd* v. *Lefrak Organization*, 509 F. 2d 1110 (2d Cir. 1975); *Skillken* v. *City of Toledo*, 528 F. 2d 867 (6th Cir. 1975). It is the development of the so-called "effects" test, more than anything else in the area of civil rights law, that has transformed our legitimate antidiscrimination statutes into social engineering tools for HEW, HUD, the EEOC, and other Federal agencies.

Section 5 of the amendment clarifies that the proscriptions contained in it are not to be circumvented through the adoption of policies which do not make express distinctions on account of race, but which are intended to result in such distinctions. Whether or not such an intent exists is, of course, a question that surrounds an action. As with the concept of international discrimination required by section 5, intent for purposes of section 6 may be proved through resort to circumstantial evidence; there need be no overt expressions of prejudice or bigotry.

Thus, section 4 establishes that the basic standard for determining civil rights violations is an intent standard, not an effects standard. Section 5 establishes that this standard need not be satisfied by express statements or by express statutory language.

Section 6—the final substantive section of the amendment—would prohibit judicially imposed affirmative orders or decrees, that is, all that "make distinctions" on account of race, except where necessary to remedy the effects of earlier policies or actions that had been adopted in violation of this amendment. Such a remedy, however, would have to be directed toward persons who have themselves been the objects of such violation, not toward entire classes of persons.

Section 7 would invest authority within Congress and the States to enforce the amendment through appropriate legislation. This is similar to the standard enforcement clause for recent amendments to the Constitution.

Mr. President, I have found that this is an area in which it is extremely difficult to draft a thorough, yet succinct constitutional amendment. In part, I believe that this is attributable to the judiciary's and the bureaucracy's penchant for circumventing the plain language of other constitutional and statutory enactments. I have little doubt that improvements can be worked in the language of this provision. I would hope that there might be this opportunity during the next Congress. Whether or not this is the case, I can assure my colleagues that this is an issue that will not go away quietly.

Nothing, in my opinion, has more potential for becoming an explosive domestic issue during the next decade.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 200

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States:

"ARTICLE

"SECTION 1. Neither the United States nor any State shall make or enforce any law which makes distinctions on account of race, color, or national origin.

"SEC. 2. All laws of the United States or any State which prohibit discrimination on account of race, color, or national origin by private individuals or enterprises shall not be construed to permit the establishment or maintenance by such private individuals or enterprises of any program or policy that makes distinctions on account of race, color, or national origin.

"SEC. 3. Neither the United States nor any State shall establish or maintain, or require or permit any private individual or enterprise within the scope of section 2 to establish or maintain, goals, quotas, timetables, ratios, or numerical objectives which make distinctions on account of race, color, or national origin.

"SEC. 4. Neither the United States nor any State shall make any law which prohibits any person in the absence of intent to discriminate on account of race, color, or national origin, to take actions, otherwise lawful, which have a disproportionate impact or effect upon individuals on the basis of race, color, or national origin.

"SEC. 5. All limitations in this article upon laws, regulations, orders, programs, or actions which make distinctions on account of race, color, or national origin shall encompass laws, regulations, orders, programs, or actions which either make express distinctions on account of such race, color, or national origin or which are intended to result in distinctions on such account.

"SEC. 6. No order or decree shall be issued by any court of the United States or of any State that makes distinctions on account of race, color, or national origin (except to the extent that such order or decree is necessary to remedy the enforcement of a law by the United States or any State, or the establishment or maintenance of a program or policy by a private individual or enterprise, that is in violation of this article).

"SEC. 7. The Congress and the States shall have power to enforce this article by appropriate legislation".

Mr. HATCH. Mr. President, it is common when criticizing "progressive" schemes of reform to pay tribute to the good intentions of their framers, no matter how foolish their plans may be, or how unscrupulous their attacks upon oneself. This is part of our modern political culture, where loudly-proclaimed beneficial intentions toward the multitude are held to justify any number of atrocities inflicted upon the individual.

I am going to depart from that tradition here. I believe affirmative action is an assault upon America, conceived in lies and fostered with an irresponsibility so extreme as to verge upon the malign. If the Government officials and politicians who presided over its genesis had injected heroin into the bloodstream of the Nation, they could not have done more potential damage to our children and our children's children. We cannot look upon their work with equanimity; nor should we. It may take years, even decades, to redress this wrong. But the time to start is now.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business (S. 2718), which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 2718) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

The Senate resumed the consideration of the bill.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin (Mr. PROXMIRE) is recognized to call up amendment No. 2276, on which there shall be a 1-hour limitation, to be equally divided and controlled by the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from Illinois (Mr. STEVENSON), to be followed by an up-or-down vote thereon.

The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, in view of the fact that Senator STEVENSON is not here, I suggest the absence of a quorum, and I ask unanimous consent that the time not be taken out of either side until Senator STEVENSON arrives, at which time I will ask that the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Who yields time?

Mr. HEINZ. Mr. President, I ask unanimous consent to proceed for not to exceed 1 minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I want to call my colleagues' attention to an editorial in last Saturday's Chicago Sun Times. That editorial, I think, makes one of the strongest cases that can be made for the Export Trading Company Act of 1980. After acknowledging the risks which Senator PROXMIRE correctly pointed out of breaching the traditional separation of banking and commerce, it goes on the argument that these are risks well worth the gamble, because our trade deficits—and their attendant costs to our economy—are an economic problem which we must begin to address immediately. As I have argued elsewhere, if we try to live in a risk-free society we may also be creating the conditions for an opportunity-free society.

Mr. President, I ask unanimous consent to have that editorial printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PASS THIS TRADE BILL

The Senate this week, in a rush to recess for Labor Day, left untouched a bill by Sen. Adlai E. Stevenson (D-Ill.) to create export trading companies and new trade associations. Too bad. The bill can help the country escape the trade doldrums and expand U.S. exports.

Every day of delay hurts. Literally thousands of American products and services would be highly competitive abroad. Yet too many small and medium-sized companies lack the expertise and the funds they need to develop new markets overseas.

As a result, America's share of world exports is dropping. While exports account for nearly 23 percent of West Germany's gross national product, they make up less than 8 percent of this country's. That's shocking.

And it needn't be that way.

The trading companies Stevenson wants would be "export middlemen," or agencies to help smaller producers through the maze of regulations and unfamiliar conditions any new exporter faces. The idea isn't new. U.S. competitors in Europe, Japan, Hong Kong and Korea have used such companies for years.

The simple fact is that another maze—with too-tight banking rules and antitrust uncertainties—has discouraged the formation of trading companies here. Stevenson would lower some of the barriers and offer tax and financing incentives to create the companies.

And the bill wisely includes safeguards against abuses. For example, regulators could examine and supervise a bank's participation in a trading company and set conditions on its operation. Also, bank participation in trading companies would be limited.

So what's the problem? Sen. William Proxmire (D-Wis.) fears bank involvement in trading companies will warp their credit judgment. He wants stricter provisions, so strict that some experts say Proxmire's standards would prove impossible to meet.

The choice, then, is this: We can be so afraid to try something new that U.S. exports remain bottled up. Or the country can gamble on Stevenson's bill, with its safeguards.

That bill would benefit farmers and service companies as well as manufacturers. It would help cut trade imbalances. It would help create jobs. It would promote more competition and thereby help fight inflation.

That makes the bill worth the gamble. The Senate should bet on it when recess is over.

Mr. HEINZ. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be taken out of both sides equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 15 minutes, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

Mr. ROBERT C. BYRD. Mr. President, what is the business before the Senate?

The ACTING PRESIDENT pro tempore. The clerk will state the pending business.

The assistant legislative clerk read as follows:

A bill (S. 2718) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask that the time not be charged to either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered.

AMENDMENT NO. 2276

(Purpose: To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally)

Mr. PROXMIRE. Mr. President, pursuant to the order previously entered, I call up printed amendment No. 2276 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), for himself, Mr. TOWER, Mr. KENNEDY, and Mr. METZENBAUM, proposes an amendment numbered 2276.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike lines 19 to 25 on page 9; strike pages 10 through 15; and strike lines 1 through 9 on page 16; and insert in lieu thereof the following:

"(b) Notwithstanding any prohibition, restriction, limitation, condition or requirement of any other law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of it consolidated capital and surplus (25 per centum in the case of an Edge Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidence of ownership of one or more export trading companies. A banking organization may—

"(1) invest directly or indirectly up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency;

"(2) invest directly or indirectly in excess of an aggregate amount of $10,000,000 in one or more export trading companies only with the prior approval of the appropriate Federal banking agency. Any banking organization which makes an investment under authority of (1) above shall promptly notify the appropriate Federal banking agency of such investment and shall file reports on such investment as such agency may require.

"(c) The following limitations apply to export trading companies whose shares are held by one or more banking organizations and to the banking organizations holding such shares—

"(1) except as provided in subsection (d), no banking organization may acquire 20 per centum or more of the voting stock or otherwise control an export trading company;

"(2) except as provided in subsection (d), no banking organization may acquire voting stock of an export trading company if such acquisition would result in 50 per centum or more of the voting stock of the export trading company being owned by banking organizations;

"(3) neither an export trading company nor a banking organization that owns its shares shall make any representation that the export trading company and the banking organization are affiliated. For this purpose, the name of such export trading company shall not be similar in any respect to that of a banking organization that owns its shares;

"(4) the total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries shall not exceed 10 per centum of the banking organization's capital and surplus;

"(5) a banking organization that owns any voting stock of an export trading company shall divest such stock if the export trading company takes a position in commodities or commodities contracts other than as may be necessary in the course of its export business;

"(6) no banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(d)(1) With the prior approval of the Board of Governors a bank holding company may acquire 20 per centum or more or otherwise control an export trading company.

"(2) With the prior approval of the Board of Governors, a bank holding company may acquire voting stock of an export trading company if such acquisition would result in 50 per centum or more of the voting stock of the export trading company being owned by banking organizations.

"(3) The Board of Governors shall not approve an application under this subsection unless it determines on the basis of the record that—

"(i) the export trading company will limit its activities to exporting or facilitating the exportation of specific goods or services which would not be exported to any significant extent without the involvement of an export trading company;

"(ii) investment by a bank holding company in excess of the limitations in subsection (c) is clearly necessary in order for the export trading company to export or facilitate the export of goods or services;

"(iii) the export trading company will limit its activities to a level consistent with the need for minimizing the financial risk of the investing bank holding company and maintaining a separation between banking and commerce, as determined by the Board.

"(4) The Board, upon receiving an application under this subsection, shall provide a copy to the appropriate Federal banking agency of the subsidiary banks of the bank holding company and shall request the comments of that agency.

"(e)(1) In the case of every application under this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns, and to improving the competitiveness of United States exports in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under this section unless it finds that there are significant export benefits and that such benefits clearly outweigh in the public interest any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

"(2) In approving any application submitted under this section the appropriate Federal banking agency may impose such conditions which in the circumstances of the application it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices.

"(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company and the identity and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act.".

On page 17, line 19 "(e)(1)" should be changed to "(f)(1)" and on page 18, line 12 "(f)(1)" should be changed to "(g)(1)".

Mr. PROXMIRE. Mr. President, this is the so-called Federal Reserve amendment recommended by the Federal Reserve Board, and it is an amendment that they feel very strongly about because of the profound effect that this bill can have on banking.

For more than 100 years banking and commerce have been separated and I think that has served the country extremely well. There is no question that we damage effective competition when one competitor is owned by a bank and the other competitor is not, particularly in times of credit stringency.

For that reason we feel that the bill as proposed by Senator STEVENSON, in

substance, is good and constructive and can be very effective, but we wish to see a little more protection against having a willy-nilly ownership by banks of firms that are in commerce.

What the amendment does is not to prohibit banks from owning trading companies but simply requires that the Federal Reserve have an opportunity to act and make a decision for or against the trading company being owned by a bank and to do so on the basis of this criteria: is it necessary and would it significantly improve exports if the bank did own the trading company? If the Federal Reserve decides that these standards would not be satisfied, the Federal Reserve could then say no. But in any case a bank could hold a 20 percent minority position in the trading company.

Mr. President, this legislation is titled the Export Trading Company Act of 1980. While Congress has enacted various truth-in-advertising, truth-in-labeling and truth-in-lending statutes, it has never seen fit to enact a Truth-In-Short-Title Act. If such a law were on the books it would not be possible to clothe the wolf in sheeps clothing.

Under the Truth-In-Short-Title Act, this legislation would be required to be titled the "Mega Bank-Big Business Cartel Act of 1980." That is exactly what this bill is. But it seeks to clothe itself in the mantel of exports. Potentially, this legislation will curtail exports, not increase them. A handful of large money center banks are behind this legislation. They have teamed up with big business exporters who want to fix prices and allocate markets worldwide. I have no doubt that the mega-banks and big business will increase their profits when they raise their prices. But history teaches us that higher prices and bigger profits often result in lesser sales. This will mean less exporting—and more importing by these trading companies. And it derogates the world free-market economy that we work so hard to strive for.

Mr. President, I must say I am delighted to see the editorial that appeared yesterday, not in some liberal antibusiness publication but in the No. 1 probusiness publication in the country, the Wall Street Journal. It is headed "Export Gimmickry." This is what the editorial says:

EXPORT GIMMICKRY

If you want to know what's wrong with the way Washington policymakers and many American businessmen think about export promotion, take a look at a bill the Senate is scheduled to vote on tomorrow.

The bill is the Export Trading Company and Trading Association Act of 1980, sponsored by Sen. Adlai Stevenson of Illinois. It would permit banks to take limited equity positions in U.S. export trading firms. And it would broaden the antitrust exemptions, currently available under the Webb-Pomerene Act of 1918, for American firms that fix export prices, allocate foreign market shares or otherwise cooperate in joint selling operations overseas. In particular, the new bill would extend the antitrust exemptions to service as well as merchandise industries, and it would set up a certification procedure to assure exporters against antitrust prosecution if they operate within the scope of the law.

At best the Stevenson bill is mere gimmickry. It is being marketed under the false pretense that it will help encourage the development of American trading companies comparable to Mitsubishi, Mitsui, C. Itoh and the other companies that have been so effective in selling Japanese wares around the world. Since Japanese banks often have ownership positions in their country's trading companies, the Stevenson bill's proponents argue that investments by American banks will help this country develop similar institutions. And since Japan and most Western European countries exempt exporting from domestic antitrust laws, the bill's advocates argue that American trading firms need a similar dispensation.

All of which is so much hokum.

As I say, this is the Wall Street Journal, a newspaper whose editorial position has been quite critical of restraint by our antitrust laws in some cases. But in this case even the Wall Street Journal sees that it is hokum. They go on to say:

The success of Japanese trading companies lies not in their ownership structures or their antitrust freedoms, but in their detailed knowledge of production sources and market opportunities around the world, as well as their logistical skills in carrying through complicated international transactions. Nothing stops American firms from offering similar services, and indeed many already do. And there are hundreds of foreign sales agents, manufacturers' representatives and so on to serve the export needs of American industrialists.

But the Stevenson bill does pose some dangers. By endorsing and expanding the principle of export cartels, it undermines the U.S. commitment to an open international trading system. How can we complain about OPEC or Third World cartels if we encourage our sulphur or carbon black producers to form their own export cartels?

The Stevenson bill has been endorsed by some 60 Senators, the Carter administration, the National Association of Manufacturers, the U.S. Chamber of Commerce and many other business organizations. The attention of policymakers would be better directed at silly impediments to exports, such as the double taxation of U.S. citizens abroad. The attention of businessmen would be better directed to learning about foreign markets and selling there.

Higher prices, profits and economic power. That, Mr. President is why this legislation seeks to give administrative enforcement of the antitrust laws to the Commerce Department. Imagine that—enforcement over laws affecting competition to the Government agency whose job it is to cater to big business. That is also why there are no threshold standards in this legislation requiring the regulatory agencies to make positive findings relating to exports before they could approve an application under the bill.

Let us call a spade a spade. This bill is primarily designed to put the big American banks in the same position as their big British cousins. Helping exports is secondary to insuring the power of big banks in domestic as well as international markets.

Mr. President, the Federal Reserve and the Federal Deposit Insurance Corporation—the two agencies responsible for the safety and soundness of our financial system—oppose this legislation as it presently stands. The Independent Bankers Association—representing over half the banks in this country (predominantly the smaller banks)—testified in opposition to the legislation as it stands.

I will not oppose any reasonable effort truly aimed at increasing exports. I believe this legislation can be made workable by the adoption of the Proxmire-Federal Reserve amendment. It is offered in the spirit of compromise—to meet the concerns of those responsible agencies of Government and private enterprise who oppose the bill.

Mr. President, this amendment was drafted by the Federal Reserve and forwarded to me by Chairman Volcker.

First, let me say as clearly as I possibly can that I do not oppose the formation of export trading companies and bank participation in their ownership or even their control provided we go about it in a rational way. I think the bill, as drafted, presents too high a risk of undermining sound public policies that have been in effect for generations requiring a separation between banking and commerce in our economy. I do believe that the Federal Reserve amendment manages those risks in an acceptable way. I agree that we should make a greater effort to export—so I would take some risk; but like the Federal Reserve, I think we should do so prudently.

Let me describe the Proxmire-Federal Reserve amendment. The amendment would generally permit banks and bank holding companies to own up to a 20 percent noncontrolling interest in an export trading company. In special circumstances, the amendment would permit bank holding companies to control or own up to 100 percent of an export trading company upon prior approval of the Federal Reserve upon showing in an application that the export trading company's activities will be limited to goods or services which would not be exported without the involvement of the export trading company and that the bank holding company make a showing that it contributes to the export need by controlling the export trading company.

Mr. President, these are reasonable requirements. The power to control our export trading company—a company which will be permitted to engage in trading commodities and all manner of manufactured goods for its own account and marketing such goods—is a significant break of our historical policy of separating banking from commerce. Control carries with it a commitment to the enterprise which far exceeds the equity investment. Control also carries with it the ability to exert pressure in the marketplace against competitors of companies which do business with this export trading company.

It is altogether fitting, therefore, to reasonably scrutinize control situations.

The Chairman of the Federal Deposit Insurance Corporation said on the question of control:

Advocates of bank investment in export trading companies point to the expertise in foreign trade the banks could bring to such companies. We are not convinced that banks—other than a few money center or major regional banks—have any particular expertise in foreign markets". The Chairman goes on to say our particular concern with this portion of the bill is that it would allow banks to acquire control of export trading companies. If a bank's investment in a company is limited to a 20 percent share, and the bank does not manage the company's operations, there would be substantially less likelihood that a bank would feel legal business or moral obligations to divert substantial resources to the trading company should it encounter serious financial difficulties.

The Chairman of the Federal Reserve has stated that:

It continues to be my view that banking organizations should not generally be permitted to control export trading companies in view of the implicit commitments of bank resources, the increased financial risk that accompany control and the need to maintain the line between banking and commerce.

Governor Wallich of the Federal Reserve who is, as we all know, not only a distinguished Governor of the Federal Reserve, but an eminent economist, recognized worldwide, a former top professor at Yale University, and a man who, I recall, has testified before the Joint Economic Committee as one of the top economists we could get in areas of this kind, and who has served on the Federal Reserve Board now for a number of years, who is a seasoned expert in this area, and who has been more active in the area of international finance than any Governor I know, said this:

Extension of the investment powers of banking institutions to include companies that buy and sell goods and services for their own account would go far beyond existing financial facilities. Such an extension would raise basic questions regarding the traditional separation of banking and commerce. This tradition, which stands in sharp contrast to the practice in some countries abroad, helps ensure that banks will remain impartial arbiters of credit and contribute to a healthy competitive environment in the commercial sector.

Now let us match the standards for control in the Proxmire-Federal Reserve amendment—against what the authors of the bill seek to accomplish. The finding in the bill state that tens of thousands of American companies produce exportable goods or services but do not engage in exporting; that exporting requires skills for which smaller producers cannot realize economies of scale; that export trading companies in which banks participate can provide these skills; and that bank participation is necessary to reach the significant potential of U.S. exporters.

Mr. President, let us take the bill's findings at face value. All I ask—all that the Federal Reserve asks, all that the Federal Deposit Insurance Corporation asks, all that the small bankers of this Nation ask—is that before a banking organization be permitted to control an export trading company that it file an application which shows how it will achieve the stated purposes of the legislation, first that its activities will actually enhance markets not now served and second, that the bank actually contribute expertise to enhancing export markets not now served.

Mr. President, the Proxmire-Federal Reserve amendment is a reasonable amendment. The fact that the opposition to it is so fierce shows to me that something else is at stake. Let us not kid ourselves. We all know what it is. The big banks do not want any standards. They do not want to have to show how they will enhance exports.

What they will do is skim the cream and use these trading companies to compete unfairly for banking business.

Mr. President, the Proxmire-Federal Reserve amendment will surely result in a more competitive export industry than would result from the bill as drafted. We can all be sure that if this bill goes through as drafted, the banks will dominate the export trading company market. This will discourage new entry and diversification. On the other hand, if bank participation is limited to situations where they can provide a legitimate marketing expertise, they are not likely to be dominant, competition is likely to be enhanced, and exports increased.

Finally, the Proxmire-Federal Reserve amendment will permit only bank holding companies to control export trading companies. Without this amendment three separate banking agencies will administer the statute. The pressure toward permissive regulation will be uncontrollable. Chairman Burns said:

The present regulatory system fosters competition-in-laxity. Even viewed in the most favorable light, the present system is conducive to subtle competition among regulatory authorities, sometimes to relax constraints, sometimes to delay corrective measures. I need not explain to bankers the well-understood fact that regulatory agencies are sometimes played-off against one another.

Mr. President, that is exactly what will happen if this bill is not amended. Three bank regulators to be played off one against the other by the banks. I hope the Senate will not inflict this wound on the public interest. We are here about to give substantial new powers to the banking community. I hope we shall have the wisdom to see to it that it is administered rationally.

By limiting control situations to bank holding companies we also pay due deference to our Nation's dual banking system. The Bank Holding Company Act does not prevent a State from exercising its inherent powers. In contrast, the bill as now drafted permits national banks to control export trading companies even if a State specifically prohibited State chartered banks from controlling export trading companies. Since this legislation breaches a 100-year separation between banking and commerce, I believe we should give the States an opportunity to be heard on this important issue if they want to be heard.

The Proxmire-Federal Reserve amendment allows everything that the sponsors of the bill say they want without the great risk of harm we have in the existing bill.

Mr. President, I reserve the remainder of my time and yield the floor.

Mr. STEVENSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. STEVENSON. Mr. President, the only countries which enjoy high levels of growth and employment without unacceptable levels of inflation are those which compete and compete successfully in a newly competitive world. They go all out to produce efficiently, market aggressively, and pay the oil bill. Those nations do not include the United States.

The United States is losing its share of world markets. Its exports are not growing as rapidly as are the exports of other industrial countries.

Our current account has been in deficit for most of the past decade. Its improvement recently is owing to a recession at home, higher growth rates abroad, that is to say, and that will change as the recession becomes worldwide and decreases demand in foreign countries for U.S. products.

The current account deficit which has been cited in this debate has shown some improvement in recent years, largely as a result of a return on foreign investments, investments made by the United States abroad. Those investments, Mr. President, while they are reflected in the current account balance, are not reflected in increased employment for American workers.

There is a large question, in my mind, at least, as to whether the United States should expect to live off of its investment earnings forever. Those earnings reflect the former strength, not the current weakness, of the American economy. The competitiveness of the United States, which once made possible both exports and direct investment abroad, is now declining.

Much has also been said in this debate about the importance of productivity, the efficient production of goods and services. I agree entirely that it is essential that the United States improve the efficiency with which it does produce goods and services. But it is essential that we do both; that is to say, produce goods that are competitive in the world and then market them aggressively in the world. The marketing in itself, including this measure which will facilitate the creation of American trading companies, will enhance our productivity. Productivity is a factor of economic growth. Recession is not good for productivity. Our experience proves that.

It is growth and associated investments in R. & D. and in plant which, more than anything else, enhance productivity, and it is the markets of the world which offer us the chance for that economic growth.

Mr. President, the distinguished Senator from Wisconsin has proposed an amendment which is addressed to his concerns about the participation of banks in trading companies. It is to that amendment that I want to address most of my comments.

First, it should be made clear that participation by banks is already carefully circumscribed by this bill. U.S. banks could not invest more than $10 million or acquire a controlling interest in a trading company without prior regulatory agency approval. No bank would be permitted to invest more than 5 percent of its capital and surplus in the stock of a trading company. The aggregate amount of loans and investments by a bank in a trading company would be limited to 10 percent of the

Bank's capital funds, and no group of banks could acquire more than 50 percent of a trading company, of its equity, without the prior approval of the appropriate regulatory agency.

This legislation establishes numerous other restrictions on bank participation. The name of the trading company cannot be similar in any respect to that of the banking investor.

When we last met, numerous amendments adopted by the Senate to further restrict participation of banks. The trading companies in which they do participate, for example, would clearly be prohibited from engaging in nontrading activities. These restrictions are numerous and they have been carefully developed, in cooperation with the regulatory agencies, in order to facilitate the creation of the trading companies without impairing or running any risk of impairing the condition of the banks.

We have to oppose this amendment because it effectively prevents banks from having a controlling interest in trading companies. Without those controlling interest banks will be discouraged from participating. And without the bank's participation, you will not have many trading companies.

What is more important, the position of the banks themselves is in danger, as the Comptroller of the Currency has recognized, by this amendment. First of all, it confines participation by banks through controlling interests in trading companies to bank holding companies. That means that only the largest banks, those with holding companies, can participate in trading companies through controlling interests in the trading companies. It discriminates against the small banks.

By confining participation to the bank holding companies, it also transfers all control over such participation to one regulatory agency; that is to say, the Federal Reserve Board. That is the agency which is least enthusiastic about bank participation in the trading companies. So it cuts out altogether the small banks and then cuts in exclusively the one agency which is most negative toward the participation by banks in trading companies.

The participation of the banks, the importance of it, is recognized in other countries and it is probably even more important in the United States, because this country, unlike others, lacks the institutions with the worldwide experience in trade with which to launch and manage successfully these companies.

The American banks have extensive national and international networks comprised of branches, subsidiaries, affiliates, representative officers, and correspondent relationships.

These networks can provide the marketing and other services abroad. They can also extend into every community and reach every business, including the small- and medium-sized firms, in the United States.

The banks can provide a wide range of export-related financing as well as ancillary services through these networks. They can assist in the identification of foreign markets. They can provide advice with respect to foreign exchange, trade documentation, transportation and warehousing, and they can do so in a way that is unique in the United States.

They can provide export trading companies and exporters the financing necessary for export transactions.

This measure also gives some symmetry to the regulatory structure for bank participation in trading companies. Foreign banks are involved in export trading companies which provide a convenient single source service for exporters abroad and facilitate exports to the United States. This measure would permit U.S. banks to participate in trading companies and provide such services for exports from the United States.

U.S. banks can participate through their foreign branches in foreign trading companies and in trade between foreign countries, but they cannot now facilitate trade from the United States.

So the participation of banks is critical, and they should not be forced into minority positions. That was the problem with the real estate investment trusts. That is where the risk arises.

The Comptroller recognizes that it is preferable from the standpoint of bank soundness and the protection of depositors to permit banks to have controlling interests and be able to control and manage their investments, instead of putting them to the risk and mercy of others.

Many banks will not participate on any other basis because they want to be prudent.

Ironically, Mr. President, this amendment would discourage the creation of trading companies by discouraging the participation of banks, and would increase the risk to banks by forcing them into minority positions in trading companies.

It has been said that this breaks with tradition. We break with tradition with some regularity. We ought to break with the past more often in order to compete more effectively with nations more pragmatic than we are. We have permitted banks to have controlling interests in Edge Act corporations. We permit them to have controlling interests in small business investment companies. Now with the competitiveness of the United States at the top of our economic agenda, I suggest we ought to permit them to participate through controlling interest in trading companies.

Ultimately, the condition of the banks depends upon the condition of the economy. It depends upon the condition of the bank depositors and their borrowers. Inflation is not healthy for banks. Recession is not healthy for banks. Neither is the combination of both.

This bill is aimed at both. It is the beginning of a structural response to the underlying causes of economic weakness in this highly competitive, very interdependent and unstable world.

If this bill is approved without debilitating amendments, it will strengthen the banks. It will do so by helping to strengthen the entire economy. It will do that while safeguarding adequately against any improvident investments by banks in trading companies.

I remind my colleagues that no such controlling interest in trading companies can, under this bill as it now stands, be acquired by banks without the approval of the appropriate regulatory agency. If there is any risk, then, under this bill, with strict standards to follow, the regulatory agencies would turn down the applications of the banks.

The PRESIDING OFFICER. Who yields time?

Mr. HEINZ. Mr. President, how much time remains to the Senator from Illinois?

The PRESIDING OFFICER. Fourteen minutes remain.

Mr. HEINZ. Will the Senator from Illinois yield me 10 minutes?

Mr. STEVENSON. Mr. President, I am happy to yield 10 minutes to the Senator.

Mr. HEINZ. Mr. President, I rise to join my colleague, Senator STEVENSON, in opposition to this amendment. I remain very deeply concerned about our Nation's export performance. While some have indicated that looking at the period 1972 through 1979 our performance has been good, the fact is that if you choose 1972 as your base year, it shows American exports in an extremely favorable but fundamentally inaccurate light. After 1972 the growth of U.S. exports trailed that of both Germany and Japan. In the 1975–79 period, U.S. export growth averaged 14 percent per year while Japan's exports grew 16.6 percent annually, and Germany's rose at 17.5 percent.

The point of that, Mr. President, is if U.S. exports had grown as fast as Germany's since 1975, our exports last year would have been $23.5 billion higher than they actually were, and that would have been an amount nearly enough to offset the entire 1979 trade deficit which, as my colleagues will recollect, rivaled our budget deficit.

Apart from lagging export growth, however, a major concern regarding U.S. exports has been the declining U.S. share of world markets. Since 1972, the U.S. share of world exports declined from 15.6 percent to 14 percent, while the share of manufactures exports has fallen from 18.4 percent to 17.4 percent. Thus, while export growth has been rapid, we have lost ground compared to other exporters.

Although the trade shares of Germany and Japan have also fallen, with the exception of Germany's manufactured shares, their declines since 1972 were not as great as ours. Moreover, their share declines coincided with a general appreciation of their currencies while the U.S. decline occurred despite a very significant depreciation of the dollar.

Had the U.S. share of world trade been maintained at the 1972 level, last year's exports would have been more than $20 billion greater than the actual figure reported.

Mr. President, I cite these statistics to emphasize once again that our trade position is not nearly good enough. It does not measure up to the needs of an international economic power with the many responsibilities we have assumed worldwide. It does not permit our economy or our currency to show the strength needed, a strength that is essential if we are ever to achieve stable price levels once again in this country. Unless we are able to pay our way in the world, earning our way through exports to pay for what we import, we will continue to see our dollar erode, our international position decline, and our influence, such as it is, be further reduced and the world a lesser place for that.

Mr. President, as I said earlier, I oppose this amendment, as indeed, I expect most Members of the Senate will oppose it.

Although I cannot speak to its intent, I can speak in some detail about its effect. If adopted it would destroy this bill and with it everything we are trying to accomplish with the trading company concept.

This amendment does not represent the modest compromise which the distinguished chairman of the Banking Committee, the Senator from Wisconsin (Mr. PROXMIRE) has suggested. In fact, such a compromise has already been made—in the Banking Committee between the bill introduced by Senator STEVENSON and myself, S. 2379, and the views of the Federal Reserve Board. At that time, we added a number of additional protections the Fed had suggested, such as the prohibition on commodities speculation, the explicit ban on preferential loans, the dollar limit—in addition to the percentage limits—on bank investment without approval, and the requirement that the trading company avoid identification with a bank, by maintaining a different name, for example.

In addition to those protections, we further compromised with the Federal Reserve Board on the floor last week by adding an amendment that limits trading company activities to activities related to international trade, and which further prohibits them from involvement in the securities business or manufacturing or agricultural production if the trading company has a bank investment.

In fact, we compromised with the Fed on all but one of its proposals—the prohibition on a bank obtaining a controlling interest in a trading company. On that point we could not give in, just as we cannot now give in to an amendment that effectively does the same thing.

I go into this detail, Mr. President, to make clear that the sponsors of this bill have tried their best to accommodate the concerns of the Chairman of the Federal Reserve Board, and that we have done so with respect to all but one point. To suggest that the pending amendment is a compromise is to ignore this history. The compromise is already made and included in the bill. The Senator from Wisconsin, in fact, is talking about surrender, not compromise.

Now, Mr. President, let me examine the amendment before us in greater detail to explain why it will kill this bill. The amendment actually differs from the bill in only two significant respects. The rest of it contains protections that are already a part of the bill, as I noted above.

First, the amendment limits the right to even apply for a controlling interest in a trading company to bank holding companies. This means banks would not even be able to apply for control, which will be a serious limitation on the activities of the 10,000 smaller banks which are not now in holding companies. Ironically, this limitation would particularly discriminate against small- and medium-sized banks outside large commercial centers—the very institutions whose involvement is so critical if we are to involve small- and medium-sized businesses in exporting. It is this involvement of new firms, small firms, in the export business that is the central purpose of this bill. Adoption of the amendment would knock out the very people we are most trying to reach.

The second difference is the set of standards the amendment provides would have to be met before the Fed could approve an application to take control of a trading company, standards which, in my judgment, could not be met under almost any circumstances.

The amendment is apparently intended to permit control in a particular case Chairman Volcker referred to in his letters of July 23 and August 5 to Senator STEVENSON:

> The situation where a trading company with bank control is needed for a particular large and sophisticated project which would probably not be undertaken without bank involvement. This is a legitimate purpose for a trading company, though certainly not the only one.

But the restrictions in this amendment go far beyond Chairman Volcker's intent and would hardly even permit the establishment of such a single-purpose trading company.

Before the Fed could approve an application, the applicant would have to spell out precisely what goods or services it proposed to export; demonstrate that those goods or services would not be exported to any significant extent without a trading company, and prove that they would be unlikely to be exported without bank control of a trading company.

In my judgment, these findings, which must be clear and on the basis of the record, are practically impossible to make, and the result will be either no applications for control or no approvals.

The proponents of this amendment, Mr. President, seem to be under the impression that exporting is an easy, high-profit business, and that banks are clamoring to get into it. Unfortunately, that is not the case. If it were, we would probably have no need for this legislation. In the real world, however, it is a complicated, often marginal, business that banks, with their usual caution, are hesitant to get involved in. The whole point of this legislation is to create a climate where banks and smaller businesses will be willing to get into exporting. We are trying to tip the balance in favor of export trade, not add on even more restrictions and redtape than exist now, as the proposed amendment would do.

In trying to tip the balance, however, we are hardly creating an unacceptable risk for banks. In addition to the points I detailed earlier, the bill already contains statutory limits of 5 percent of a bank's capital that could be invested in a trading company and 10 percent that could be invested or loaned to a trading company.

In addition, any investment over $10 million or resulting in bank control must be specifically approved on a case-by-case basis by the appropriate bank regulatory agency; the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the Comptroller of the Currency. In granting such approval, the agency further has the discretion to impose additional restrictions, such as a leverage ratio, to minimize any perceived risk even further.

It seems to me, Mr. President, that the bill fully protects our banking system and any specific banks that choose to involve themselves in trading companies. To add the additional restrictions imposed by this amendment would destroy the bill's basic objective—increasing exports through the creation of trading companies. Admittedly, this is a new idea, but anyone who studies the bill carefully will see that the concerns that have been expressed about it are completely unfounded. We are not creating zaibatsu.

We are not building cartels. Neither are we providing opportunities for concentration of capital in a few banks. What we are doing is opening a door so that bank resources can be tapped in a controlled and measured way to contribute to exporting. This is a modest objective and by no means all that needs to be done to enhance this Nation's export competitiveness. Our broader policy goals are contained in S. 2773, the National Export Policy Act, of which the trading companies legislation is one important part.

Another part of that bill, improved tax treatment for Americans working abroad, has already been approved by the Finance Committee and is a part of the tax bill recently reported. Still other parts have had hearings but as yet no action. S. 2718 by itself is not the entire picture, but it is the first piece of it to come before the Senate. It is important that we act decisively on this measure to make clear to all concerned the Congress commitment to a strong export policy.

Mr. President, I shall not debate at any greater length the amendment of the Senator from Wisconsin. Senator STEVENSON, I think, has done that quite eloquently. The only point I emphasize here, Mr. President, is that that banking organizations have two resources that are absolutely essential to the establishment of an export trading company.

First, banks, through their U.S. offices, are able to reach large numbers of small- and medium-sized companies who are not now exporting but who may manufacture exportable products. Through their foreign branches and correspondent relationships, banking organizations are in an excellent position to identify potential foreign markets and customers. The finance component of an export transacton is often its most crucial element. Bank participation will expand an ETC's capability to provide its customers with realistic financing options and one-stop service. And where small- and medium-sized companies are involved, there has to be effective one-stop service.

If an export trading company has the ability either to finance or arrange financing of the transaction, it does take the largest possible step toward permitting such company to offer the one-stop service that is so desirable. Thus, a bank owner, Mr. President, can provide necessary expertise, necessary resources, and make for a much more effective approach to exports.

For these and other reasons, Mr. President, I am strongly opposed to the Proxmire amendment. I feel that it would have the effect, along with the Metzenbaum amendment, of gutting the bill, leaving our export competitors laughing at our inability to move ahead.

Some people seem to think that the only countries in the world that permit banks to have some kind of ownership in their trading companies are the Japanese. That, in fact, is simply not correct. The Hong Kong & Shanghai Banking Corp., which owns a rather large American bank now, the Marine Midland Corp., owns a 33-percent controlling interest in Hutchinson-Whampoa Ltd. The Midland Bank of England, not to be confused with the Marine Midland Bank—although the Midland Bank is now actively looking to acquire a very substantial interest in the Crocker Bank of California, as I recollect—owns at least three trading companies, or controlling interests in three trading companies.

Barclay's Bank International, scarcely a Japanese bank, owns 24.5 percent of Tozer, Kernsley, and Millbourn. The French company, Credite Lvonnaise, owns 30 percent of Essor PME, and Banco do Brasil owns 100 percent of Beke Co., a trading company.

So we see a pattern worldwide. It is a pattern of the pooling of resources, including financial resources, and it is a pattern of success and a pattern that we as a Nation, that must live by our success in international trade, ignore at our peril.

For all these reasons, Mr. President, I urge my colleagues to reject the Proxmire amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENSON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. STEVENSON. Mr. President, I yield 4 minutes to the distinguished Senator from Massachusetts.

Mr. TSONGAS. I thank the Senator from Illinois.

Mr. President, since the Senator from Pennsylvania just gave my speech, I do not think I need the 4 minutes. He was so inclusive in his remarks, expressing each point remarkably well.

Mr. President, I am opposed to the Proxmire amendment. The Senator from Wisconsin knows full well the implication of his amendment. The restrictions and requirements applicants would face under this amendment would by and large preclude most banks from participating in export trading companies. When we consider our Nation's urgent need to improve its world trading position, we can ill afford to forgo the opportunities for increased trade that ETC's promise.

The United States once fancied itself an independent economic entity. OPEC, however, removed that illusion. No one need be reminded that over $90 billion will be paid to OPEC countries for oil this year. Oil price increases alone added over $16 billion to the deficit last year—the seventh deficit year of that decade. Furthermore, with gasoline prices now beginning to reflect the world's limited supply of oil, U.S. car manufacturers are losing out dramatically to foreign producers of fuel-efficient cars—particularly the Japanese. Thus, the dollar flows for oil and auto imports are at record levels.

In addition, we must recognize that Japan is not the only Asian country that competes effectively with the United States. The economies of South East Asia—including Taiwan, South Korea, Hong Kong, Singapore, and Malaysia—are all coming of age. Consider the following statistics. From 1970 to 1978, the United States recorded a modest 10 percent annual rise in national income, of which 6.6 percent was due to inflation. During that same period, Taiwan recorded annual increases of exports to the United States of a staggering 34 percent.

Such outflows of funds command our attention. We can take either of two directions. We can retrench, attempting to forestall any further intrusions into our economy by imposing high tariffs and import quotas. Or, we can embrace our new role as a world trader in a world economic community, and take steps to improve our competitive position. I believe the latter is the only real choice. We are, like it or not, an integrated part of the world economic community. We must accept this role and begin to insure that U.S. business does not compete abroad at a disadvantage.

We must maintain and expand export markets throughout the world economic community—and export trading companies can play a vital role. With their international offices and their familiarity and concern with U.S. producers, U.S. banks promise export market access to thousands of small and medium sized firms.

This is not abstract theory. We are trying to learn from our more experienced trading partners. We have found that many large trading companies are owned by banks in Europe:

Hong Kong and Shanghai Banking Corp., owns 33 percent controlling interest in Hutchinson Whampoa Ltd.

Midland Bank Ltd. owns controlling interests in three trading companies.

Barclay's Bank International owns 24.5 percent of Tozer, Kernsley and Millbourn. And the list goes on.

Senator PROXMIRE's amendment states that applicants be granted controls only—

> If the applicant made a showing that such control was clearly necessary in order for the export trading company to export or facilitate the exportation of goods and services.

How can anyone expect a bank to be able to "clearly demonstrate" that without control such export activity would have been impossible? Export activity may be determined by Government regulators to be economically feasible without a bank's control of the ETC. Nonetheless, this economically feasible alternative may be unattractive to the banks.

I understand the concern of the Senator from Wisconsin regarding safeness and soundness of banks. But I am convinced that the agreement reached by the committee provides ample protection against these concerns.

While the legislation permits banks to acquire a controlling interest, banking participation is carefully limited.

Investment in ETC's is limited to 5 percent of the bank's capital and surplus.

Total bank exposure of both investments and loans is limited to 10 percent of capital and surplus.

Bank regulatory agencies must approve controlling investments of ETC voting stock, even if the interest is less than $10 million.

Bank regulatory agencies must approve acquisitions by consortia of banks for more than 50 percent of an ETC, even if individual bank investments are not equivalent to a controlling interest.

The name of an ETC may not be similar to that of a bank investor.

A bank must terminate its ownership of an ETC if the ETC takes speculative positions in commodities.

A bank is barred from making preferential loans to an ETC that it controls. This insures the availability of bank credit to competitors.

In addition, the banking regulatory agencies are given numerous powers and authorities regarding bank involvement in ETC's. These include power to deny applications where export benefits are outweighed by adverse banking factors, and conditions that limit financial exposure, possible conflicts of interest, and unsound banking practices.

With this litany of safeguards, carefully crafted over months of negotiations, we have gone as far as possible without threatening the goal of this legislation.

Mr. President, I have the deepest respect for my colleague from Wisconsin. I know he offered this amendment in good faith. But I believe its adoption would be a grievous error.

Mr. President, I only add one thought. And that is that I recognize that the amendment before us has a certain appeal. Having served on the Banking Committee, I am familiar with the chairman's efforts to safeguard both the consumer and the banking system from excesses. I think that record is well acknowledged.

The question before us today is really a question of risk.

In particular, given our situation internationally, given the need to compete, the need to export and to keep a sound dollar, can we afford to reject procedures, policies and practices that potentially can make us competitors in world trade markets? I think not. I believe that, for many small companies that America needs as exporters, this bill is necessary. Moreover, if we take out the potential for the banks to participate meaningfully, they will not participate at all. Once we have done that, we can write

off the bill in its entirety. There are a host of companies that need the expertise that this bill promises. We therefore must reject the Proxmire amendment.

One final point: There was some discussion before the break as to the position of small business on this bill. Let me emphasize that the National Small Business Association has endorsed the bill. That is consistent with what I have been told by the many small businesses which have export potential in Massachusetts.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require and I shall take very few minutes.

In the first place, Mr. President, I think we all ought to recognize that it is desirable for us to increase exports, and I think this bill does and Senator STEVENSON and Senator HEINZ deserve great credit for presenting the bill. Without their persistence, the bill would not be before us. I think it is good that it is, it is a good bill, though I think it can be improved a whole lot by the amendment I offer.

Nevertheless, we should not lose sight of the fact that this country is not in an export-import imbalance. The fact is that our balance on current account will be in surplus this year.

What is the current account? What the current account does is take our merchandise balance—the balance between exports and imports—and correct it for the effect of the investment we receive from abroad and the investment we pay out to foreigners. If we include that, which is all the payments made, we have a balance. We have a balance. We cannot do much better than that. We have a surplus, as a matter of fact. If we run too big a surplus, of course, then we create an unfortunate situation.

The Chase Manhattan Bank pointed this out very well in a newsletter only a few days ago, saying that those who say we have a disgrace on our hands because of the loss of exports on our part, because we have not exported enough, overlook the fact that the real figure that counts is the current account balance that takes in all of the payments—including our foreign aid, including our investment income, including our exports, our imports, and so forth—and on that, we are in surplus.

Mr. President, let me also point out that the fact is, as I said the other day, that since 1972, exports in this country have increased more rapidly than they have in Germany, more rapidly than they have in Japan, have increased twice as rapidly as our gross national product. We can do better. World trade is increasing and that is a fine thing for peace in the world and for the higher standards of living here and abroad. But, Mr. President, we should not, because of our feeling of crisis, forget about our antitrust laws.

We certainly should not forget about the traditional posture we have taken with respect to our banks, not having our banks get into commerce and compete unfairly with those competitors who do not have a bank owning them and, therefore, do not have access to credit.

Mr. President, let me conclude by pointing out what the Federal Reserve amendment which I am offering here would do.

It would permit banks to own, and bank holding companies to own, up to 20 percent noncontrolling interest in an export trading company. In addition to that, the amendment would permit bank holding companies to control or own up to 100 percent of an export trading company upon prior approval of the Federal Reserve, upon showing in an application that the export trading company's activities will be limited to goods and services which would not be exported without involvement of an export trading company.

What we are saying is "go ahead," but let the Federal Reserve, which has the greater expertise in this area, they know the banks, and I think we all acknowledge their competence to make an objective judgment in this respect, they are very interested in a healthy international financial system, let them decide whether ownership control by a bank or an export trading company is necessary to increase exports.

If it is, they say "yes." If it is not, they would deny it.

It seems to me this provides the strength that the bill would provide for our exports, help permit our exports, but would do so in a prudent way.

If the managers of the bill are ready to yield back their time, I am ready to yield back my time.

Mr. STEVENSON. Mr. President, I am prepared to yield back the remainder of my time.

Mr. PROXMIRE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Wisconsin.

So the amendment (No. 2276) was rejected.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DANFORTH. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending order is for the Senator from Ohio (Mr. METZENBAUM) to call up an amendment.

Mr. DANFORTH. Mr. President, it is my understanding that the Senator from Ohio does not intend to call up his amendment. However, I am not certain that is the case.

Mr. PROXMIRE. If the Senator will yield, that is my understanding. I discussed it with the staff of the Senator from Ohio and understand he will not call up his amendment.

Mr. DANFORTH. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, it is my understanding that Senator METZENBAUM does not intend to call up his amendment, which is directed to the antitrust title of this bill. I was prepared to debate the amendment with him. Of course, now, there is no amendment to debate.

I think the case against the Metzenbaum amendment is very well made by a letter from the Secretary of Commerce, Mr. Klutznick, dated August 26, 1980, together with an excerpt from a memorandum from Secretary Klutznick to Members of the Senate.

Mr. President, because this matter might come up in the House, I ask unanimous consent that the letter from Secretary Klutznick, together with the memorandum, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF COMMERCE,
Washington, D.C., August 26, 1980.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DANFORTH: I want to convey my strong opposition to the Proxmire-Kennedy-Metzenbaum amendments. The Administration has consistently supported both Titles I and II of S. 2718 and opposes the proposed amendments which could severely undermine both major portions of this bill and the underlying objective of enhancing U.S. exports.

The amendment directed at bank participation could effectively discourage a number of banks from attempting to become involved in export trading companies. I consider such bank participation an important element in the successful development of export trading companies in the United States. I believe there are strong reasons why banks should be given the option to control and manage those export trading companies which they might join. S. 2718's carefully constructed safeguards provide the necessary flexibility for the Federal supervisory agencies to control investments by banking organizations in export trading companies. Additional statutory restrictions are not needed.

The changes in the Webb-Pomerene antitrust portions of the bill are not at all necessary for the effective enforcement of our antitrust principles and would undermine the balance carefully worked out in S. 2718. The Justice Department maintains a major role in the revised certification process, and has the ability to take necessary further action against any proposals or activities it deems improper.

I urge your strong support for S. 2718 as carefully developed by Senators Stevenson, Danforth and Heinz and your opposition to these or any other crippling amendments.

Sincerely,

PHILIP W. KLUTZNICK,
Secretary of Commerce.

EXCERPT FROM MEMORANDUM FROM SECRETARY OF COMMERCE KLUTZNICK TO MEMBERS OF SENATE

II. Antitrust (Senators Proxmire, Kennedy, Church, and Metzenbaum):

The Administration *strongly supports* the antitrust provisions of S. 2718. The procedures have been carefully drafted to balance the needs of both export development and protection against restraint of trade. The Department of Justice is in full agreement with the certification system provided in S. 2718 (with certain technical amendments that are to be proposed on the Senate Floor). See attached copy of the Attorney General's letter of June 23.

The Administration *opposes* the proposed amendment.

The fundamental purpose of creating an

antitrust certification procedure is to encourage exports by assuring businesses that certain joint export activities will not give rise to antitrust liability. The certification process involves determination of a specified need for joint export activities, as well as whether substantial anticompetitive results in the U.S. would arise from these activities. As with most other antitrust exemptions, it is most appropriate to place basic authority for such determinations with an agency whose expertise lies in the area for which the exemption is created—in this case the export development expertise of the Commerce Department. The law enforcement orientation of the Justice Department and the Federal Trade Commission makes their most appropriate role one of consultation and advice, rather than the co-administrator's role proposed in the amendment. As a matter of administrative practice, the amendment unwisely derogates from the responsibility and effectiveness of all three agencies by making not one of them finally responsible for administration of the law.

As a practical matter, giving those charged with vigorous enforcement of the antitrust laws a simple veto over applications for the export exemption certificate would discourage plans for export associations and trading companies.

Rightly or wrongly, many businesses would conclude that the expense and time of an application were not worth the possibility of a simple veto by agencies with understandable skepticism towards any antitrust exemptions.

S. 2718 nevertheless insures against anticompetitive results within the United States both through its prescription of rigorous standards against which the Secretary of Commerce must judge application and the opportunity for decertification actions by Justice and the FTC in appropriate instances.

The problem created is enhanced because the only remedy for the veto of a certificate by Justice would be a costly court action. This would severely deter the small and medium companies that are the intended beneficiaries of this law from challenging any arbitrary or capricious decisions.

Mr. HEINZ. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, my colleague from Missouri has stated some of his interests and concerns regarding the amendment that the Senator from Ohio (Mr. METZENBAUM) might offer.

I have some background to the whole issue involved with S. 2718 regarding the antitrust portions that I would like to add briefly.

Mr. President, I appreciate the statement from the Senator from Wisconsin (Mr. PROXMIRE) that Senator METZENBAUM will not offer his amendment. It is my feeling that were the Senate to adopt the amendment of the Senator from Ohio, it would be a serious mistake and would do great damage to the bill.

Mr. President, this title of the bill is the product of extensive and prolonged negotiations between Senator DANFORTH and the Justice Department. Those negotiations have lasted more than a year and are detailed in a letter the Senator from Missouri sent me shortly before the Banking Committee marked up S. 2718 last May. I ask unanimous consent that the text of that letter with the accompanying correspondence be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., May 9, 1980.

Hon. JOHN HEINZ,
U.S Senate,
Washington, D.C.

DEAR JOHN: A year ago, along with other cosponsors, we introduced S. 864, the "Export Trade Association Act." The legislation proposed amendments to the 1918 Webb-Pomerene Act which were intended to encourage more American firms to market their goods and services abroad and enable them to compete more aggressively with their foreign counterparts. Because the Webb-Pomerene Act provides an exemption from the intitrust laws for joint exporting activities and S. 864 proposes substantial amendments to that Act, I have attempted to work with the Antitrust Division of the Department of Justice in structuring those amendments.

The reason for this letter is to outline for you the extensive negotiations and agreements reached between myself and the Antitrust Division at the Justice Department. I have set forth below the Department of Justice's testimony on S. 864 given by Mr. Ky P. Ewing, Deputy Assistant Attorney General, Antitrust Division. The testimony was given during hearings on September 17 and 18, 1979. Mr. Ewing, in summarizing his prepared remarks, commented on five aspects of S. 864:

"First, the Department of Justice would favor the imposition of a needs test in the Webb Act. Second, we would not object to the specific addition of services to the Act's coverage. Third, while in general the Justice Department has historically been concerned when promotion and regulatory functions are combined in one entity, we don't object to a transferring of the Webb-Pomerene licensing action away from an antitrust enforcement agency provided such is coupled with a needs test and with opportunity for the Department of Justice and FTC to take part in the development of the administrative regulations to be promulgated by the Secretary of Commerce. We note that Senator Danforth's bill seems to provide a start in the right direction on that.

"Fourth, we note that S. 864. . . . would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal, as we understand it, is to bring the Act into what we conceive to be the current state of antitrust laws interpreted by the courts. Thus we have no objection to this clarification of the legal standard even though it is perhaps redundant.

"Fifth, the Department of Justice is opposed to those portions of (S. 864) that would provide for exemption revocation proceedings to be managed by the Commerce Department and which would completely oust the Justice Department from Sherman Act enforcement during that proceeding.

"In short, we oppose the creation by (S. 864) of a novel adjudicative procedure which would add a new regulatory layer where, in our view, the legal standards to be applied are already well known and adequate remedies at law are available under the Sherman and Federal Trade Commission Acts."

(Testimony of Mr. Ewing, pp. 137–138, Hearing Record.)

Mr. Ewing's testimony specifically addresses the Antitrust Division's concerns with S. 864, as introduced. Of the five points mentioned, three of them—the addition of services to the coverage of the Webb Act, the shift of the regulatory oversight responsibility from the Federal Trade Commission to the Commerce Department, and the codification of judicial precedent into the substantive standards of the bill—were not objected to by the Antitrust Division. As to the remaining two concerns, they have been resolved after lengthy discussions and meetings between my staff and the staff at the Antitrust Division. I will explain.

After the hearings last September, my staff met with the representatives of the business community and attorneys from the Antitrust Division to draft amendments to S. 864 addressed to the concerns raised by each group during those hearings. As a result of these discussions held over a period of four months, I introduced an amendment to S. 864, Amendment #1674. Subsequent to the amendment's introduction, my staff continued to meet with officials of the Antitrust Division in order to obtain their support for the bill.

On March 17 and 18 of this year, hearings were held on Amendment #1674. These hearings were followed on April 3 with testimony from the Administration on its support for for S. 864 as amended. Immediately prior to these hearings, Mr. Kermit Almstedt from my staff, met on a number of occasions with Mr. Ewing and staff attorneys from the Antitrust Division. At these meetings Mr. Almstedt was informed that Amendment #1674 resolved most of their remaining objections with two principal exceptions. First, a needs test was still not incorporated into Amendment #1674. Secondly, the definition of "export trade activities" as proposed in the amendments was thought to be too broad if applied to trading companies (as opposed to Webb-Pomerene associations).

Prior to the April third testimony of Secretary Klutznick on behalf of the Administration, Mr. Almstedt and Mr. Ewing, with staff from the Antitrust Division, met both in person and over the phone to resolve what we were told at that time to be the only remaining obstacles to the Antitrust Division supporting S. 864. The result of these discussions was that an agreement was reached. Mr. Almstedt was informed by Mr. Ewing that Assistant Attorney General Litvack (head of the Antitrust Division) had accepted the agreement reached between them, and in turn Mr. Ewing was informed that I also accepted the agreement.

You can imagine my surprise, then, when Secretary Klutznick of the Commerce Department testified before this Committee on April 3 and indicated that the Antitrust Division had a new concern. The problem related to the question of whether the Justice Department was to play a consultation role or a participatory role during the certification process carried out by the Department of Commerce. During questioning, Mr. Klutznick admitted that the Department of Justice had changed its mind at the eleventh hour, notwithtsanding the fact that this issue had never before been raised by the Antitrust Division.

It now appears, based on the attached copy of correspondence between Assistant Attorney General Litvack and Under Secretary for International Trade Bob Herzstein, that the seemingly simple issue of "consultation" v. "participation" has expanded to five areas of disagreement.

It has been my position all along that in proposing amendments to the Webb-Pomerene Act—amendments which would expand upon that law's antitrust exemption for export trade activities—that the cosponsors of the legislation should work closely with those in the Administration whose responsibility it is to enforce the antitrust laws, specifically the Antitrust Division of the Department of Justice. I directed my staff to do that and we did so in good faith. We reached an agreement. Title II to the committee print is the agreed upon language between the Antitrust Division and my office. I would hope that

the Banking Committee would act upon that agreement and pass it out.

Thank you for your consideration.

Sincerely,

JOHN C. DANFORTH.

Enclosure.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., April 29, 1980.

Hon. ROBERT E. HERZSTEIN,
Under Secretary for International Trade, Department of Commerce, Washington, D.C.

DEAR BOB: Attached is suggested language for inclusion in pending export trade association legislation (the Danforth bill) to define the role of the Attorney General and the Federal Trade Commission in connection with the certification of export trade associations by the Secretary of Commerce. The language would be incorporated in new section 4(b)(1) of the Act, which appears on pp. 9–10 of the attached working draft of the bill. (This draft also reflects many other changes previously discussed with Senator Danforth's staff.) For your convenience, we have reconstructed the key subsection in a clean draft. Additional changes in various other sections of the bill are also required to conform those sections to the scheme of section 4(b)(1), and to delay the antitrust exemption for 30 days if the Attorney General or the FTC disagrees with the certification. These changes, also reflected on the attached working draft, appear on page 6 (line 21); page 7 (between lines 5 and 6 and line 24); page 10 (line 11); page 11 (line 7); page 12 (line 11, lines 15–19 and the last sentence of the language to be inserted on line 22); page 14 (line 5); and page 15 (lines 14–18 and 21–25).

We have also set forth changes in new section 2(a) of the Act (pp. 5–6 of the working draft), in line with our earlier discussions.

Sincerely yours,

SANFORD M. LITVACK,
Assistant Attorney General,
Antitrust Division.

Attachment.

U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., May 1, 1980.

Mr. SANFORD M. LITVACK,
Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, D.C.

DEAR SANDY: We have made several changes to the language for the export trade association legislation that you sent over yesterday. Our modifications are fully consistent with agreements reached during discussions between Secretary Klutznick, Ambassador Askew, and the Attorney General.

(1) FTC involvement. We have no problems with the FTC playing a role similar to that contemplated for the Justice Department. However, we do not feel that the Department of Commerce should have to deal with two separate enforcement agencies in any particular case. As in all other antitrust matters your preclearance procedures with the FTC could ensure that only one agency pursued a particular certification matter. We would like this point enunciated in the legislation so that we will not be required to wait the full forty-five day period for comments from the non-involved agency. We are receptive to your suggestions on how this point should be made clear.

(2) Thirty-day notice before filing an action for invalidation. You have proposed deleting the requirement on page 12 of the draft bill that the Attorney General or Commission provide a thirty-day notice to an association before bringing an action to invalidate the certification. Your suggested change goes beyond what is necessary to express our recent agreements and makes a harmful change in the basic Danforth Bill format. The thirty-day notice requirement is inappropriate for the immediate post-certification challenge provided for in our proposed procedure, because the period for challenge is only thirty days. However, the thirty-day notice requirement remains appropriate in other cases. We propose to amend the sentence as follows:

"Except in the case of an action brought during the period provided for in section 2(b)(2), the Attorney General or Commission shall notify any association, or applicable member . . ."

(3) Preliminary relief. We see no need for the sentence you have added on page 12 specifying that the court may grant a temporary restraining order. Nothing in the bill detracts from your opportunity to seek preliminary relief under normal judicial standards. There should not be any language suggesting that preliminary relief has special application to these cases. If you insist on including a statement on preliminary relief, we propose the following:

"Normal judicial standards shall apply to any request for preliminary relief during the pendency of such an action."

(4) Simultaneous filings with Justice and FTC. On pages 7, 11, 14, and 15 of the draft bill you propose to require that all applications and reports be filed with the Justice Department and the FTC simultaneously with their filing at the Department of Commerce. You also seek to change the provision on confidential information. These are new proposals not previously requested or discussed. We cannot insert them into the decision-making process at this late stage. Furthermore, requiring joint filings undermines the very nature of the agreement between our two agencies on the certification procedure. The Commerce Department will operate the certification procedure with the advice of the antitrust enforcement agencies. But the Commerce Department will be playing a distinct and important role in encouraging and assisting businesses to understand the opportunities available to trade associations and, where appropriate, to form such associations. Requiring simultaneous filings with the antitrust enforcement agencies will significantly affect the public perception of the procedure and will lead the public erroneously to conclude that the certification process is jointly operated. We will, of course, provide the appropriate enforcement agency with copies of the application in ample time for consideration and comment. These and other details can surely be worked out in a cooperative fashion between us once the process is in operation.

(5) Standards for eligibility. You propose to change the standards in sections 2(a)(2) and 2(a)(3) of the bill. You mentioned this issue to me the day before the subcommittee hearing. At that time I replied that we would consider such a change. However, I did not then know that the present language had been agreed upon in lengthy discussions between your staff and that of Senator Danforth. I understand that such changes would be unacceptable to the Senator. I was also unaware that the Antitrust Division had testified on this very language on September 18, 1979, in a hearing before this same International Finance Subcommittee. At that time, Mr. Ewing commented on the standards for certification:

". . . we note both S. 864 and S. 1449 would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal, as we understand it, is to bring the act into what we conceive to be the current state of antitrust laws interpreted by the courts. Thus we have no objection to this clarification of the legal standard even though it's perhaps redundant."

Finally, I would point out that if circumstances do eventually result in a "substantial lessening of competition," even if there was no such effect initially, you would be free to seek decertification. Accordingly, we cannot accept these proposed changes.

Secretary Klutznick, Ambassador Askew, and the Attorney General have agreed upon a reasonable and desirable Administration position on the certification process. With mark-up of the bill fast approaching, we simply cannot afford to have new issues raised, particularly on proposed language that has been under consideration for six months or more. The positions enunciated in this letter are fully consistent with the agreement of the three Cabinet officers, and we feel it is necessary to advance them as the Administration position without further delay.

Sincerely,

ROBERT E. HERZSTEIN,
Under Secretary for International Trade.

Mr. HEINZ. Mr. President, this correspondence, Mr. President, reveals not only the details of the discussions between Senator DANFORTH and the Justice Department but also provides some insight into the difficulty of obtaining the agreement with the administration that was finally reached shortly before the bill was reported.

The result of those negotiations was a compromise which involved a number of changes in S. 864, which was Senator DANFORTH'S original proposal. The Banking Committee adopted the compromise. The administration supports the compromise, as is evidenced by a letter every Senator has received from Secretary Klutznick and Ambassador Askew. In addition, on June 23 the Attorney General, Mr. Civiletti, wrote a detailed letter to the chairman of the House Foreign Affairs Committee expressing concern about several changes the House counterpart bill had made in the carefully constructed compromise and expressing his support for the antitrust provisions of S. 2718, the bill before us now. The Attorney General concluded his letter as follows:

I ask that you and the Committee on Foreign Affairs accept S. 2718 as the model for your consideration of the important export trading legislation now before you.

As with any compromise, Mr. President, both sides gave some ground and both sides probably believe the result is less than perfect from their respective points of view. It does not surprise me if some people in the Antitrust Division of the Justice Department would like to do this a different way. I have no doubts either that Senator DANFORTH would like to do it a different way as well. The point is, Mr. President, we have a compromise, arrived at in good faith, and it is the responsibility of the managers of the bill to defend this compromise, since any substantive change in it would cause the administration to withdraw its support and thereby probably kill the bill.

As is the case with the previous amendment, however, this one, if offered and adopted, would also kill the bill—both practically by destroying our hard-won compromise, and substantively by creating a certification system that will never produce any certifications.

Senator DANFORTH has explained the substantive problems in some detail. Let me simply point out that once again we have a "killer" amendment in terms of its effect. I am pleased that the Senator from Ohio has decided not to offer the

amendment, but I did want to make clear on the record the reasons why I would have opposed it had it been offered.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the part of the order for the Metzenbaum amendment be vitiated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Michigan.

Mr. HEINZ. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HEINZ. If the Senator from Ohio does not call up his amendment at this time, does his right to call it up continue to exist or does he lose his right?

The PRESIDING OFFICER. The right to call up his amendment has been vitiated by unanimous consent.

Mr. HEINZ. I thank the Chair.

UP AMENDMENT NO. 1543

(Purpose: To assist export expansion)

Mr. RIEGLE. Mr. President, I call up my amendment, which is pending.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Michigan (Mr. RIEGLE) proposes an unprinted amendment numbered 1543.

Mr. RIEGLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 20, between lines 12 and 13, insert the following:

SEC. 108. (a) The Secretary is authorized to make grants to subsidize the employment of export managers by small business manufacturing firms which have not previously been exporters in substantial amounts. The amount of such a grant may not exceed the lesser of (1) 50 per centum of the salary and other expenses related to the employment of a full-time export manager for a period of one year, or (2) $40,000.

(b) To be eligible under this section, each firm must submit to the Secretary an application which—

(1) demonstrates that the firm has not derived more than an average of 5 per centum of its sales volume (in monetary terms) from exports during the 5 most recent years and does not currently employ an export manager;

(2) demonstrates that the firm is a small business manufacturing firm, as defined by the Secretary after consulting with the Administrator of the Small Business Administration;

(3) describes the qualifications of a person proposed to be hired as the firm's export manager on a full-time basis for a period of at least one year, and describes the terms and conditions of that person's employment by the firm and the amount of the grant applied for to subsidize the costs of that employment; and

(4) describes the products and services considered by the firm to be suitable for export and the general outlines of the export program to be undertaken under the direction of the export manager.

(c) In selecting firms to receive grants under this section, the Secretary shall consider the desirability of determining the feasibility of this approach to export promotion in each of the regions of the Department of Commerce and in relation to a variety of products and services which, in the opinion of the Secretary, have export potential.

(d) There are authorized to be appropriated to the Secretary not to exceed $2,000,000 for each of the fiscal years 1981, 1982, and 1983, to carry out the program established by this section.

(e) The Secretary shall develop a plan to evaluate the cost-effectiveness of the program of export promotion established by this section and its effectiveness as compared with other export promotion programs, including the amount of export sales generated by small businesses assisted under this section. For the purpose of the evaluation the Secretary is authorized to require any firm receiving assistance under this section to furnish such information as is deemed appropriate to complete the required evaluation. The Secretary shall make recommendations concerning continuation or expansion of the program and improvements in the program structure. Such evaluation and recommendations shall be submitted to the Congress prior to October 1, 1982.

Mr. RIEGLE. Mr. President, this amendment, which I understand is acceptable to the bill's floor leaders on both sides of the aisle, will establish a pilot program of grants to small business manufacturing firms to help them absorb the first year costs of hiring a full-time export manager. Firms which are new to exporting and do not already have an export manager will be eligible to compete for grants of 50 percent of the export manager's salary and expenses or a maximum of $40,000. By new to exporting I mean that the firm has not previously exported more than 5 percent of its sales volume. The program will be funded at a level which will support 50 to 100 such grants each year for 3 years at a cost of $2 million per year.

The thought is that this would be a 3-year pilot program to enable small companies that have high potential for export, want to get in that business, to be able to hire a professional export manager. The grant would cover half the cost. Before the end of the 3-year period of time, the Commerce Department would review the results of grants made under this program to see whether they had really had the effect of substantially increasing the export business of those firms which were successful in this competition.

The program would be administered by the Secretary of Commerce, who would be required to report on the cost effectiveness of this approach at the end of the second year of the operation of the program.

Mr. President, we are living in a new international economic environment and we are not adjusting to it. The OECD estimates that the U.S. balance of trade deficit will reach $37 billion in 1980. We are not expanding our exports fast enough to pay for the increased imports brought about in part by oil price rises and in part by the greater economic strength and competitiveness of many of our trading partners. We simply cannot delay getting started on a much more aggressive effort at export expansion.

A major opportunity for export expansion lies in the 18,000 small businesses the Department of Commerce estimates could be exporting but are not. These firms are not selling abroad despite the fact that their products are competitive because it is difficult for smaller firms to gain the information and expertise and, generally, take the risks necessary to get started at exporting.

This amendment will enable us to test an approach which the Dutch Government is already using to promote exports by small firms. I believe it is an extremely promising approach because it is a front-end, one-time subsidy and because it is a direct attack on the problem.

A front-end subsidy is appropriate in this case because most of the impediments to small business exporting need one-time, front-end solutions. Once a firm has developed information about overseas markets, learned how to deal with such processes as international shipping and customs valuations, adapted to the unfamiliar business practices of foreign countries, and completed its first major export transaction, most of the barriers which kept that firm away from international trade will be down.

A direct subsidy is appropriate because it is likely to get results. A firm which accepts an export-manager grant will have made a commitment amounting to half the manager's salary and expenses for 1 year. It will have someone right there in the firm whose job it is to aggressively seek export business and whose job continuation depends on that particular firm's success. I think that firm is highly likely to begin to export.

There are other promising approaches to small business export promotion besides export-manager grants. Facilitating the establishment and operation of export trading companies is an important approach and one that has my enthusiastic backing. We should also be experimenting with intensive technical assistance programs for small business exporters. We need to test and carefully evaluate all these approaches to find out which are most effective for different types of potential exporters. We simply do not have the luxury of waiting while our balance of trade gets worse each year.

Mr. President, I hope that we can discuss this amendment and accept it at this time.

Mr. STEVENSON. Mr. President, the Senator from Michigan has been very active in the effort to develop an export policy for the United States. He has given a great deal of careful thought and attention to the subject, including this amendment; and I gather that there has been some successful experience in other countries with a program such as he proposes for this country.

We have not held hearings on this proposal; but before we get to conference, there should be an opportunity to do so—at least in the other body. Because it sounds like a sensible proposal and there will be that opportunity to give it further thought before we next consider it, presumably in conference with the other body, I am willing to accept it and take it to conference.

I yield to the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I accept

amendment on the same basis as does Senator STEVENSON.

The PRESIDING OFFICER. Is all time yielded back?

Mr. RIEGLE. Mr. President, before doing so, I should like to add one other comment, and that is that there has been experience abroad in this regard. This approach is designed to enable high potential small business firms that could move into the export business to have the opportunity to do so.

I yield back the remainder of my time.

Mr. STEVENSON. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. BAUCUS). All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 1543) was agreed to.

Mr. RIEGLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIEGLE. I thank the chairman and the ranking minority member for their support and leadership on this issue.

Mr. STEVENSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2286

(Purpose: To strike the separate Economic Development Administration and Small Business Administration authorization for export trading company financing)

Mr. HELMS. Mr. President, I call up amendment No. 2286 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2286.

Mr. HELMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 19, line 2, strike out "(a)".

On page 19, strike out lines 13 through 18.

Mr. TSONGAS. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. TSONGAS. Mr. President, I wish to make a parliamentary inquiry as to this amendment. Does the Senator prefer that I do it now or after he speaks?

Mr. HELMS. Whatever the Senator's pleasure may be. I have a short statement. If he wishes to do it after I make my statement, that will be fine, or if he prefers to do it now, that will be fine.

Mr. TSONGAS. Go ahead.

Mr. HELMS. I thank the Senator.

Mr. President, this amendment trims the authorization in this bill relating to assistance given to export trading companies by the Small Business Administration and the Economic Development Administration.

As Senators know, this bill authorizes $20 million per year for 5 years.

Mr. President, this amendment would cut this authorization for three reasons, all of which are valid in the judgment of the Senator from North Carolina.

First. The bill already contains a specific directive to EDA and SBA to "give special weight to export-related benefits, including opening new markets for U.S. goods and services abroad and encouraging the involvement of small- or medium-size businesses or agricultural concerns in the export market."

Mr. President, this amendment does not—I repeat—does not affect this provision.

Second. The Economic Development Administration and the Small Business Administration together have authority to expend approximately $6.4 billion in loans and administration next year.

I wonder if anyone will seriously contend that somewhere in that vast sum, $6.4 billion, there cannot be found sufficient funds to assist export trading companies?

Third. There is reasonable doubt as to whether EDA and SBA assistance will be needed or wanted by the new trading companies. Let us, parenthetically, remember that this bill is going to enable concentrations of American capital to compete with Mitsbishi and the like. If such competition can be mounted it will be by the private sector, and not through federally subsidized loans with their red-tape, strings, and time delays.

Mr. President, the logical question that my amendment raises is this: "Well, if Congress is not going to give $20 million more to EDA and SBA, where are you going to cut within those agencies' programs to make room for new export trading company loans?"

In other words, I am sure some Senators may raise the question, Whose ox are you going to gore?

The answer is this:

In the allocation of capital I have never known any government official to be a perfect judge. All the agencies can do is weigh the variables before them and act within the guidelines that restrict their action. In this case, it is my contention that SBA and EDA should follow the directive by Congress to give consideration to export trading company loans just as they would give consideration to a large number of other kinds of loans. They are, of course, also guided by the Appropriations Committee, by the Office of Management and Budget, and by the regulations within the given agency.

So, Mr. President, if I may use that old cliche of "the bottom line," the bottom line is this: Somewhere within that enormous $6.4 billion authorized for export trading companies if—and there are a few million dollars lying around somewhere that could be used for export trading companies if—and this is the big "if,"—the trading companies can come up with meritorious applications.

One final point concerning the use of congressional directives to make available Federal funding for export trading companies, and that point is this:

In the very next section of the bill, the Export-Import Bank is directed to set up a guarantee program for the new companies but makes no specific authorization to increase Export-Import loan guarantee authority.

Mr. PROXMIRE. Mr. President, will the Senator yield briefly?

Mr. HELMS. I am delighted to yield to my friend.

Mr. PROXMIRE. Mr. President, I commend the distinguished Senator from North Carolina. He is on exactly the right track. We should be very conscious of spending more of the public's money, particularly in a situation as that where the case is so weak. As the Senator from North Carolina I understand pointed out, the present budget is adequate and the SBA and EDA have very large sums. They do not need an additional $20 million a year for 5 years or a total of $100 million.

Furthermore, as he also argued, and I think this is absolutely right, the capital should come from the private sector.

Mr. HELMS. That is right.

Mr. PROXMIRE. They can then make a judgment based on whether or not they believe that this is a viable competitive company that can effectively sell abroad.

I wish to tell the Senator something that may surprise, shock, and even disappoint him. I do not know but I think he is fighting shoulder to shoulder with the administration on this, and it is refreshing to see HELMS and Carter fighting together, on the same side I should say, because on this point the administration did oppose the EDA provision. I think that wherever we get the support, we should be grateful for it. But I am delighted to support my good friend from North Carolina who I think is on the right track here and is offering an amendment that will save the taxpayers $100 million, and God bless him.

Mr. HELMS. I thank the Senator for his comments. He is right on track. I might say to him it is a pleasure to stand with any President when that President is right, and in this case President Carter is right.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, may I address the manager for time? May I inquire, is there any time remaining on the bill?

The PRESIDING OFFICER. On the amendment there are 15 minutes remaining to the Senator from Illinois and 8 minutes remaining to the Senator from North Carolina.

Mr. STEVENSON. Mr. President, there is no time remaining on the bill.

The PRESIDING OFFICER. There is no time remaining on the bill.

Mr. STEVENSON. Mr. President, I am happy to yield 2 minutes to the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I thank the Senator very much.

I do not want to discuss the pending amendment at this time, but I do want to say a few words, Mr. President, on the bill itself.

This is an important bill, Mr. President. It impresses me very much. It is not just another quick-fix or an effort to stick a band-aid on top of a problem. This is an innovation and a new approach designed to stimulate and increase our exports. If it is handled correctly, as I see it, it will fill a void which confronts us with reference to world trade, world competition, and our exports and imports.

We frequently hear debates on tax bills and on various other problems in this Chamber. There is an outstanding deficiency sometimes, as I see it, in that we do not always give full consideration to our imports and exports and to our balance of trade and balance of payments. This bill is an effort to correct the deficiencies in these areas.

In addition, we have not given the small and medium sized businesses and industries—and often they are highly competitive—the incentives and assistance they need to export their products efficiently and effectively. We have not given them enough inducement; we have not given them enough opportunity and encouragement within our trade policies.

It seems to me that this bill is a fine start, and I commend the Senators who worked on this bill, including, of course, the Senator from Illinois, and the Senator from Pennsylvania who has also been active. I hope that this legislation will be a first step toward solving our export and international trade problems.

As one who has to deal over and over with our military problems and the things that go to make them up, I see a light of hope here. Amendments may be required. It will require efficient and aggressive administration. But I believe it is a step in the right direction, and I think we should pass the bill and then follow it up with other action which may be necessary.

I again thank the Senator from Illinois.

Mr. STEVENSON. Mr. President, I thank the distinguished Senator from Mississippi for those kind and wise words.

Returning now to the Helms amendment, the bill, I remind my friends, is an authorization. The $20 million for EDA and SBA will still have to be appropriated.

I am a little reluctant to rely on a regular authorization for EDA because there is no such authorization. The Senator will remember it has been hung up in conference for a long time now, and there is no assurance that there is going to be a regular authorization for EDA. In any event, the final amount will require action in the usual course by the appropriations committees. The appropriations that would be authorized by the bill would support only loans and guarantees, not grants, and since the export trading companies are expected to be profitable, the loans will be repaid. So there is no likelihood, in fact I do not think there is any possibility, of any out-of-pocket expenditure by the taxpayers on behalf of the trading companies.

On the contrary, since the trading companies are going to represent all American industry and agriculture, small businesses, middle-sized businesses as well as large-sized businesses, in all the markets of the world, there is a strong probability that the effect of the legislation is going to be to increase revenues, not decrease revenues. That is the purpose of the bill, to strengthen American industry and, indirectly, to strengthen the Government with increased revenues.

This provision is in here to help these companies get off the ground. It is not intended to be a permanent authorization. It is intended to authorize appropriations for the startup costs of trading companies. These are new to the United States, and because they are new they could anticipate, we can anticipate, some difficulty in getting these companies off the ground and running. That is the reason for the EDA and the SBA support. It is to get them started.

Once started, they will not need any continuing support. If they do not need it during the startup period, the financing by these agencies, of course, would not have to be made available to the infant trading companies. Over the long run, this should mean more profit for American industry and agriculture, a stronger balance of trade, and also more revenues for the Federal Government.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. STEVENSON. I do yield to my friend from Pennsylvania.

Mr. HEINZ. Mr. President, I rise in opposition to the amendment, and I want to say to my good friend and colleague from North Carolina that this provision is in this bill for good reasons, some of which have been described by our colleague from Illinois, Senator STEVENSON.

The first intention, of course, is to insure that the $20 million does not come out of somebody else's pet project or important project in his area, something that is ongoing, and vitally needed for economic development.

An even more compelling reason, perhaps, is that, as you undoubtedly have heard people who are both for and against this legislation state, this is very far-reaching legislation. We are trying to do something that is new, at least for this country. It is something that many other countries, Mr. President, have been doing for quite some time.

The fact is though that the bureaucracies at EDA and SBA simply are not at all familiar with what we hope will come to be known as effective trading companies, and it is just human nature that such bureaucracies and bureaucrats, in the absence of any specific set-aside of funds, would be far, far too likely to ignore the needs of these new entities.

Indeed, the record of SBA's helping out firms that create the largest proportion of jobs in this country is very poor indeed.

It was about a year ago that Senator RANDOLPH and I engaged in a colloquy on some EDA legislation, and it was apparent to all of us that EDA shuns much more than they should smaller, perhaps riskier, but certainly when it comes to creating jobs, more productive, firms than they should. EDA—and even SBA—tend to want to make safe bets, and a safe bet, Mr. President, is a bet that minimizes your losses and minimizes your returns.

Well, we have had more than enough of minimal returns, whether it be to our taxpayers, to our exporters, or to the influence and respect of this country. So I believe that the specific authorization we have in this legislation regarding SBA and EDA is good. It is important, it is necessary, and I would add that I have just been informed that the administration happens to share this view and they, too, are opposed to the amendment now before us.

Mr. TSONGAS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Carolina has 8 minutes remaining.

Mr. HELMS. Mr. President, I am delighted to yield such time as the Senator may require, just so I have 2 or 3 minutes remaining and provided I will not be cut off.

Mr. HEINZ. Mr. President, I think the Senator from Illinois can yield to the Senator from Massachusetts.

Mr. HELMS. Mr. President, I do not want to detain the able Senator from Massachusetts from seeking the floor, so I will not seek recognition at this time.

Mr. STEVENSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. STEVENSON. Mr. President, I yield 2 minutes to the Senator from Massachusetts.

Mr. TSONGAS. Mr. President, if I might inquire of the Chair, the time agreement that we are operating under allows for an amendment by the Senator from North Carolina as to funding the EDA, is that not correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. TSONGAS. And the amendment before us goes beyond EDA and also includes SBA, is that not also correct?

The PRESIDING OFFICER. The Senator is also correct.

Mr. TSONGAS. Mr. President, the issue has been raised in discussions prior to this discussion that a point of order may or may not lie. Just to make the record clear, I am not going to raise the point of order for two reasons: One, even though I believe it would be sustained, I understand that there is some question as to intent of the amendment and the discussion that took place on the floor. Second, I am confident that the arguments against the amendment are strong enough that a motion to table will succeed.

For that reason, and also out of courtesy to the Senator from North Carolina, I will not pursue the point of order.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I say to my friend from Massachusetts that I am not aware of the wording of any time agreement in terms of the specific definition of my amendment. I am sure the majority leader, in entering a request for the time agreement, did not mean to exclude the reference to the EDA. But I thank the Senator from Massachusetts for his courtesy.

Mr. President, as I listened to the distinguished managers of the bill, Mr. STEVENSON and Mr. HEINZ, it seemed to me that they could very well be arguing in favor of my amendment.

But the point is this: When are we going to stop this business of throwing money at problems? It is just like having a big dart board and we throw a dart and if it hits on $20 million, fine, and if it hits on $200 million fine, or whatever sum the dart might hit.

I go back to my original point that there is plenty of money for these two agencies to trim here and trim there and then do the job that this Congress wants done. There is no necessity for adding $20 million a year.

As a matter of fact, in the committee's own report, on page 12, it has this to say:

> The Small Business Administration, according to President Carter's Export Policy statement of September 26, 1978 was to provide up to $100 million in assistance to small businesses getting started in exporting.

Well, there it is, Mr. President. Why do we have to tack on 20 more million of the taxpayers' dollars just to make something look good? I think the taxpayer is getting tired of this fiddle that we play up here, tired of seeing whatever arithmetic the bureaucracy says it needs is what it gets.

And, of course, the people who are paying the tab are the taxpayers. I believe that if a poll were taken around the country, taxpayers would be shown to understand what the Senator from North Carolina is getting at.

Let it not be interpreted that this amendment is against building our exports. That is not the point. The point is throwing more money when there is enough there to do the job.

What Congress needs to do is to perform more oversight and say to the Small Business Administration, the EDA, and all the rest of them: "You get this job done."

As the Senator from Wisconsin will agree, there is plenty of money in that $6,400,000,000 designated for these two agencies to do the job that Congress wants done and which needs to be done.

Let not the line be drawn or pretended to be drawn between those who favor increased exports and those who do not. The question here is: Are we going to continue to throw darts at that dart board and come up with $20 million again just by chance? And that is all it is.

Senators can vote against this amendment, if they wish. But I am saying that $6,400,000,000 is enough for these two agencies.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I ask for the yeas and nays.

Mr. HEINZ. Mr. President, I think we are all prepared to vote.

The PRESIDING OFFICER. The Senator from North Carolina has requested the yeas and nays.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HEINZ. Mr. President, has all time been yielded back?

The PRESIDING OFFICER. Not yet.

Mr. STEVENSON. Mr. President, I yield back the remainder of my time.

Mr. HELMS. Mr. President, I yield back the remainder of my time.

Mr. HEINZ. Mr. President, I move to table the Helms amendment.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from New York (Mr. MOYNIHAN), the Senator from Tennessee (Mr. SASSER), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. BAKER. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Delaware (Mr. ROTH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 64, nays 13, as follows:

[Rollcall Vote No. 385 Leg.]

YEAS—64

Baucus	Hart	Pressler
Bellmon	Hatch	Pryor
Bentsen	Hatfield	Randolph
Boren	Hayakawa	Ribicoff
Boschwitz	Heinz	Riegle
Bradley	Hollings	Sarbanes
Bumpers	Humphrey	Schmitt
Burdick	Inouye	Schweiker
Byrd, Robert C.	Jackson	Simpson
Cannon	Johnston	Stennis
Chafee	Laxalt	Stevenson
Chiles	Leahy	Stone
Cohen	Levin	Talmadge
Cranston	Matsunaga	Thurmond
Danforth	Melcher	Tower
Dole	Metzenbaum	Tsongas
Domenici	Mitchell	Weicker
Durenberger	Nelson	Williams
Exon	Nunn	Young
Ford	Packwood	Zorinsky
Garn	Pell	
Glenn	Percy	

NAYS—13

Armstrong	Heflin	Proxmire
Baker	Helms	Stafford
Byrd, Harry F., Jr.	Jepsen	Wallop
DeConcini	Kassebaum	Warner
	Lugar	

NOT VOTING—23

Bayh	Gravel	McGovern
Biden	Huddleston	Morgan
Church	Javits	Moynihan
Cochran	Kennedy	Roth
Culver	Long	Sasser
Durkin	Magnuson	Stevens
Eagleton	Mathias	Stewart
Goldwater	McClure	

So the motion to lay on the table Mr. HELMS' amendment (No. 2286) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENSON. Mr. President, I ask unanimous consent that I may have 30 seconds on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, this bill will not by itself restore U.S. competitiveness in a newly competitive world. But it could be a milestone. It signifies a recognition by the Senate that the United States must break with the past if it is to compete in the future. It could lead to the creation of American trading companies which represent American business, large and small, worldwide, spotting the market opportunities, meeting the price competition, absorbing exchange rate fluctuations, putting the package transactions together, handling the export details—day in and day out. Only history will tell how much this bill does. If the House and President approve, the final test will be up to American business and agriculture.

Mr. President, I thank all my colleagues in this endeavor for their heroic efforts over a long period of time. This effort began about 3 years ago. In particular, I thank and commend Senator HEINZ and Senator DANFORTH for their very skillful and persistent efforts throughout to bring this bill to its present position.

I add my thanks to the staff and all the others who have assisted.

I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

THE IMPORTANCE OF EXPORT TRADING COMPANIES TO OUR TRADE PROMOTION EFFORTS

● Mr. CRANSTON. Mr. President, the Senate will take a small but important step in our continuing fight against the national trade deficit when we vote today on final passage of S. 2718, the Export Trading Companies Act.

While I continue to have some reservations about the extent of bank participation in export trading companies permitted by this legislation, I support this bill, as amended, and welcome its passage by the Senate.

In combating our continuing trade deficit, the United States has many weapons. We have our unsurpassed technological capabilities, our abundant natural resources and our well-trained and hard-working labor force. But if we are to make great progress in the effort to balance our trade and promote American exports, I believe it is also important for us to bring American ingenuity and organizational creativity to bear on this task. To increase trade efficiency and to penetrate foreign markets with small- and medium-size business exports, we need to encourage trade associations and export trading companies to organize and enter the marketplace.

The bill we are acting on today will do this. It will clear away some of the red-tape and regulatory underbrush which has inhibited the development in the United States of such trade associations, which have long been successful in such countries as Japan and South Korea. This bill will simplify procedures for establishment of such trading groups and will promote their development by establishing pilot funding programs through the Small Business Administration and the Export-Import Bank.

The Department of Commerce has estimated that nearly 20,000 American agricultural producers and manufacturers produce goods and services which are readily marketable abroad. These products could be highly competitive in foreign markets, but the inexperience and small size of many American firms has to date prevented the export of these goods and services on any significant scale. Regulatory uncertainties have served as a deterrent against formation of trading companies capable of absorbing the front end costs and the risks involved in foreign trade.

Mr. President, I am confident that the measure the Senate is adopting today will help to improve this situation markedly by facilitating the introduction of superior American goods and services into the world marketplace through the establishment of export trading companies.●

● Mr. BENTSEN. Mr. President, when the Senate began its debate last week on the export trading company bill, the senior Senator from Wisconsin expressed certain reservations about this legislation.

Addressing the general problem of trade, Senator PROXMIRE made three basic points. He stated that declining productivity is the root cause of our trade problems. He produced figures suggesting that our exports over the past 8 years have increased more rapidly than those of Japan and Germany. And finally he pointed out that, despite huge and persistent balance of trade deficits, our transactions with the rest of the world are roughly in balance on a long-term current accounts basis. After making these observations the Senator expressed strong reservations about the need for new export incentives, particularly when they involve changes in traditional ways of doing things.

When he identifies lagging productivity as fundamental to our diminishing competitiveness in world markets, my friend from Wisconsin is right on the mark. Improve productivity in America, lower unit cost of production, increase output per man-hour, and American products will inevitably become more competitive throughout the world. Our exports will increase.

Senator PROXMIRE and I share the view that policies to increase rates of productivity are absolutely indispensable both for our domestic economy and for our performance in international trade. On this issue we are in complete accord. I also acknowledge that, despite the many merits of S. 2718, it will not do much to increase productivity in our economy.

However, Mr. President, in addressing our problems with trade, it does not necessarily follow that we should look only to the core issue of productivity. There are things that we can and should be doing now to enable our exporters to meet the terms of competition in world markets.

Productivity is a long-term problem; it will take time to turn it around. But while we undertake this effort—and I know the Senator from Wisconsin will be one of those leading it—we can also take immediate steps to improve our trade performance and eliminate unilateral disadvantages faced by American business. We can, for instance, strengthen our ability to export by passing the Export Trading Company Act.

And we can take a careful look at statistics such as the St. Louis Federal Reserve figures cited in support of the thesis that we do not need to eliminate export disincentives.

According to the figures used by the Senator from Wisconsin, U.S. exports increased at an annual rate of 20.5 percent during the period 1972–79, or more than the increase for Germany and Japan.

One need only turn to page 2 of the St. Louis Fed's August 7 report on international economic conditions to appreciate that this export success was purchased at the price of a devalued dollar. Any nation, Mr. President, can increase exports if it is prepared to devalue its currency. During the period cited the effective exchange rate of the U.S. dollar decreased from 103 to 93.2, for an effective devaluation of 10.5 percent. During the same period the effective exchange rate of the German mark increased by more than 50 percent, while the Japanese yen also increased in value, although far less than the mark. A cheapening of one's own currency is a short-term treatment of symptoms and a long-term cop out.

One could also cite and document figures that present a less rosy view of U.S. export performance in recent years:

The U.S. share of total industrial country exports has declined from 25.2 percent in 1960 to 18.3 percent in 1979. Our share of manufactured exports has declined from 22.8 percent to 15.5 percent in the same period.

In 1975 we had a $7.7 billion deficit in our trade in manufactured goods with Japan. That deficit increased yearly and reached $19.6 billion in 1979.

During the period 1976–79, our exports to Japan increased by a factor of three, from $2 to $6 billion. Our imports from Japan, however, increased by a factor of almost five, from $5.6 to $25.6 billion.

We are losing ground in the vital high technology sector, an area that will be critical to our competitiveness in the eighties. In 1962 our share of high technology exports to developing countries was 46 percent; it was down to 31 percent in 1970, and down again to 25 percent in 1977. For the same 3 benchmark years the Japanese increased their share of the market from 6 to 13 to 22 percent.

A decade ago only 14 percent of our manufactured imports came from LDCs. Today the figure has almost doubled to 26 percent. I cannot think of a clearer warning signal that we are going to face stronger trade competition in the future from countries like Brazil, Korea, Mexico, and Taiwan.

So, Mr. President, particularly in rapidly growing markets like east Asia, and in important sectors like high technology, there is good reason to be uneasy about our future competitiveness in world markets.

The current accounts ledger actually confirms the existence of these problems. In making the case for satisfactory U.S. export growth in the 1972–79 period, the Senator from Wisconsin maintains that our accumulated deficit on current accounts was about $3 billion, or some $377 million a year. His figures are correct.

However, he could have used the same figures to make an entirely different—and more alarming—case. He could have pointed out that, during the period 1972–76 the United States enjoyed a current accounts surplus that averaged about $5.22 billion a year. For the period 1977 to the present we have run a current accounts deficit that averages over $10 billion per year. Mr. President, if there is a trend in our current accounts figures, there it is. A $15 billion turnaround from comfortable surplus to substantial deficit. We can no longer rely on a current accounts surplus to rescue us from vast and consistent merchandise trade deficits. We can no longer talk about an historical deficit of minor proportions;

we are staring down the barrel of a 4-year deficit that could well total $40 billion.

No one, Mr. President, would pretend that the export trading company legislation pending before the Senate is going to "solve" our very real and very important problems of competitiveness in international markets. Senator PROXMIRE is correct when he says that the real key to improving our trade outlook is increased productivity and efficiency in our domestic economy.

But legislation like S. 2718 can and will help American exporters market American products overseas while we deal with the root causes of the problem. It will give the American exporting community access to the sort of efficient, effective trading companies that have long served the interests of our competitors in world trade.

Mr. President, we can no longer afford to turn our backs on this type of important legislation simply because it breaks new ground. When it comes to important issues like trade, I think we must be prepared to learn from the success of nations like Japan. I believe we have got to be ready to try some new ideas, because the old ones are not working very well.

As one Senator interested in both domestic economic policy and a strategy that will enable America to compete for international markets in the eighties, I am a strong advocate of S. 2718 and urge my colleagues to vote in favor of this important legislation.●

● Mr. BAUCUS. Mr. President, I want to take this opportunity to express my strong support for S. 2718, the Trading Export Company Act, which we are considering today.

I believe this measure is important as a symbol, and for the things that it seeks to accomplish. Its symbolic importance lies in the fact that it is the first major piece of recent legislation tied to our new efforts to improve our export competitiveness. Much more legislation is waiting to be considered. It will take much time before we have gone through it all. But here we have an item which actually has emerged after substantial debate, many hearings, and a recommendation from the Banking Committee. I believe we should act as soon as possible to demonstrate the importance we attach to our exports.

The bill should pass without any amendments limiting the banking or antitrust titles. I fully recognize and share the concern regarding the possibly difficult position in which banks might be placed should they become owners of export companies. Nonetheless, the arguments are convincing that the bill does provide safeguards to assure that any potential for trouble is greatly limited, and that there have been precedents where similar problems have been adequately handled.

At heart, however, I believe there is one overriding importance here: we must be prepared to experiment with new ways of handling our export programs even if they challenge our past way of doing things. That is what progress is, and that is how we will become more competitive in the world. We have to be very careful, but we also must be willing to try new methods.

Regarding the antitrust exemptions, I think that this legislation adequately protects our laws and will serve to make it easier for companies to compete in worldwide markets. Once again the issue is the same: are we ready to make some minor adjustments in past practices, knowing that there might be a risk, but knowing also that we must change to adapt in this situation?

My feeling is that we must be prepared to take such risks and try new methods. Not to do so means stagnation and loss of our competitiveness.

For this reason, I endorse this legislation. I hope enough Senators will think similarly to assure its passage.●

● Mr. ROTH. Mr. President, I strongly urge my colleagues to support S. 2718, the Export Trading Company Act of 1980 and the Export Trade Association Act of 1980, as amended by Senator STEVENSON and Senator DANFORTH. If approved, this bill would contribute importantly to an improved U.S. export performance by providing for the extension of more efficient export services to U.S. producers and suppliers. At a time when our trade imbalance is growing larger with each passing day and our businesses are finding it increasingly difficult to compete in the international marketplace, we should concentrate our efforts on passing measures that promote exports and remove unnecessary impediments to selling overseas.

Mr. President, I have spoken in numerous fora and on many occasions on the importance of increasing our competitiveness and hence our exports. We can accomplish this objective by improving our productivity, the quality of our goods and the reliability of our supply. Many of our domestic firms are willing to undertake that commitment; but they need our help. They need new laws that will promote or facilitate international sales. They need changes in laws that hinder exports. S. 2718 would achieve both these goals.

Title I of the trading companies bill is the export promotion title. Its most important provisions direct the Commerce Department's Economic Development Administration and Small Business Administration to provide special consideration of trading company loan applications. This title also directs the Export-Import Bank to provide loan guarantees to export trading companies, and allows U.S. banks to make limited investments in those entities. These provisions, as well as those authorizing appropriations, should encourage and concretely support the formation of trading companies that will, in turn, help our small- and medium-sized firms to sell in the world market.

Title II of the bill provides a mechanism for certification and antitrust clearance through the Department of Commerce. Such a provision, while maintaining the integrity of our domestic antitrust objectives, would allow trading companies to do international business, certain of being within the bounds of law. Such certainty can only add to our exporters' international strength and reliability.

I would like to applaud my colleague, Senator STEVENSON, for spearheading this most important effort to promote the establishment of trading companies. We must get behind him to pass this bill in the Senate and to insure that the House acts quickly to approve this legislation, as well.

Mr. President, I believe it is crucial that we enact S. 2718 into law as it now stands. Our small- and medium-sized firms, in particular, need the marketing, financing and other export services that these intermediaries can provide. With this kind of assistance, our producers will be able to compete more effectively in an international marketplace that is becoming increasingly difficult to conquer.●

Mr. ROBERT C. BYRD. Mr. President, I support legislation to create export trading companies capable of promoting the sale of American goods and services abroad. The bill before us today has been the subject of extensive hearings and discussion. It is a creative approach to the export imperative facing this Nation.

As with all innovation, this legislation is not without controversy. By permitting banks to invest in export trading companies, the bill breaks with a long-held American tradition that banks should not be directly involved, as owners, in the commerce of goods and services. As repositories of the public's savings, banks have always been regulated so as to make them risk averters. Additionally, because of their control of massive amounts of capital, concern over the impact on competition has caused us to prevent banks from entering the business of concern.

I raise these considerations because I hope that as this bill winds its way through the legislative process, every reasonable effort will be made to insure that bank safety and competition are properly protected.

S. 2718 addresses these issues in a constructive fashion. Nevertheless, there may be additional protections which, while not eliminating the concept of bank participation, could insure that this break with our traditional banking policies will not be regretted in the future.

There are many imperatives to increased exports. Our continuous merchandise trade deficit, largely due to increased oil prices, has resulted in considerable instability for the dollar in recent years. In 1979 our trade deficit was almost $25 billion.

World trade encourages international interdependence and peace. Exports provide a larger market for our factories, mines, and service sectors, thus permitting them to operate at full capacity, and more productivity.

American companies, largely because of the enormous markets which they enjoy in the United States, historically have not been as aggressive in promoting foreign sales as have their foreign competitors. Export trading companies could provide the means to market countless goods and services produced by

American companies which are either too small, or not equipped to develop foreign markets for their own products.

During a recent meeting with the West Virginia Chamber of Commerce, chamber members offered an example of the relevance of trading companies to my State. West Virginia has many small coal operators. The people who run these small mines know a great deal about mining, and some of them are experts in the domestic coal market, but few are experienced in international coal markets or in the intricacies of selling abroad.

One might envision the evolution of export trading companies which specialize in the marketing of American coal in Europe, thus permitting the small operator to concentrate on what he does best—mining coal.

Clearly, American coal can already be marketed by third parties, such as commodity dealers. This bill simply creates another legal vehicle for arranging and financing this activity.

Special note should be taken of Senator ADLAI STEVENSON's work on this bill. As he approaches the end of his service, rather than resting on the laurels of two successful terms as a U.S. Senator, ADLAI has become more involved than ever in the issues of U.S. economic development. His work on the International Finance Subcommittee of the Banking Committee, and the Science, Technology and Space Subcommittee of the Commerce Committee have made him a widely respected authority in the areas of worldwide economic competition and national policies to promote economic growth.

Senator STEVENSON has consistently argued the need for an industrial policy, long before it became fashionable to do so. His contributions to the work of the Democratic Task Force on Economic Policy have been salutory, providing the broad themes for the work of the task force subcommittees.

From deliberations involving ethics, to Senate reorganization, to economic policy, ADLAI STEVENSON will be remembered as a man of broad and clear vision. I shall miss his intellect. I shall not miss his friendship, because I shall continue to be his friend, and he will continue to be mine. But I certainly will miss seeing my friend often. I know that his public life is far from over, and I join all my colleagues in wishing him a future full of challenge and satisfaction.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from New York (Mr. MOYNIHAN), the Senator from Tennessee (Mr. SASSER), the Senator from Alabama (Mr. STEWART), and the Senator from Washington, (Mr. MAGNUSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), and the Senator from New York (Mr. MOYNIHAN), would each vote "yea."

Mr. BAKER. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Delaware (Mr. ROTH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER (Mr. BRADLEY). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 77, nays 0, as follows:

[Rollcall Vote No. 386 Leg.]

YEAS—77

Armstrong	Glenn	Pell
Baker	Hart	Percy
Baucus	Hatch	Pressler
Bellmon	Hatfield	Proxmire
Bentsen	Hayakawa	Pryor
Boren	Heflin	Randolph
Boschwitz	Heinz	Ribicoff
Bradley	Helms	Riegle
Bumpers	Hollings	Sarbanes
Burdick	Humphrey	Schmitt
Byrd, Harry F., Jr.	Inouye	Schweiker
Byrd, Robert C.	Jackson	Simpson
Cannon	Jepsen	Stafford
Chafee	Johnston	Stennis
Chiles	Kassebaum	Stevenson
Cohen	Laxalt	Stone
Cranston	Leahy	Talmadge
Danforth	Levin	Thurmond
DeConcini	Lugar	Tower
Dole	Matsunaga	Tsongas
Domenici	Melcher	Wallop
Durenberger	Metzenbaum	Warner
Exon	Mitchell	Weicker
Ford	Nelson	Williams
Garn	Nunn	Young
	Packwood	Zorinsky

NOT VOTING—23

Bayh	Gravel	McGovern
Biden	Huddleston	Morgan
Church	Javits	Moynihan
Cochran	Kennedy	Roth
Culver	Long	Sasser
Durkin	Magnuson	Stevens
Eagleton	Mathias	Stewart
Goldwater	McClure	

So the bill (S. 2718) was passed as follows:

S. 2718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1980".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-size and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods in the United States or services produced in the United States produced, and exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term "services produced in the United States" includes, but is not limited to accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance,

legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods and services produced in the United States; and

(B) facilitating the exportation of goods and services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 104. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons and by facilitating contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, BANK HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, or any bank (except a national bank) which is operating under the Code of Law for the District of Columbia (hereinafter referred to as a "District bank");

(3) the term "State member bank" means any State bank, including a bankers' bank, which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank, including a bankers' bank, which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent State law requires directors' qualifying shares) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any District bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank except a District bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company;

(10) the term "capital and surplus" means paid in and unimpaired capital and surplus, and includes undivided profits;

(11) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956; and

(13) for the purposes of this section, the term "export trading company" means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade, whether operated for profit or as a nonprofit organization: *Provided, however*, That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided, further*, That nothing in this Act shall be construed to permit any such company, for purposes of this section, (A) to engage in the business of underwriting, selling, or distributing securities, or (B) to engage in manufacturing or agricultural production activities.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any law applicable only to banking organizations, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization of which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency ninety days prior written notice before it makes such investment or engages in such activity:

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within a period of one hundred and twenty days, which period begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the sixty-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to ex-

port trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns (with special emphasis on small, medium-size and minority concerns), and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance, and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-sized and minority business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; or, (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law. Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

(g) Nothing in this legislation shall be construed to permit a State chartered bank to invest in an export trading company unless the State chartered bank is specifically permitted to do so by State law.

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 106. (a) The Economic Development Administration and the Small Business Administration are directed, in their consideration of applications by export trading companies for loans and guarantees, and operating grants to nonprofit organizations, including applications to make new investments related to the export of goods or services produced in the United States and to meet operating expenses, to give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small, medium-size and minority businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated as necessary to meet the purposes of this section, $20,000,000 for each fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts appropriated pursuant to the authority of this subsection shall be in addition to amounts appropriated under the authority of other Acts.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 107. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

EXPORT MANAGEMENT EXPANSION ASSISTANCE

SEC. 108. (a) The Secretary is authorized to make grants to subsidize the employment of export managers by small business manufacturing firms which have not previously been exporters in substantial amounts. The amount of such a grant may not exceed the

lesser of (1) 50 per centum of the salary and other expenses related to the employment of a full-time export manager for a period of one year, or (2) $40,000.

(b) To be eligible under this section, each firm must submit to the Secretary an application which—

(1) demonstrates that the firm has not derived more than an average of 5 per centum of its sales volume (in monetary terms) from exports during the five most recent years and does not currently employ an export manager;

(2) demonstrates that the firm is a small business manufacturing firm, as defined by the Secretary after consulting with the Administrator of the Small Business Administration;

(3) describes the qualifications of a person proposed to be hired as the firm's export manager on a full-time basis for a period of at least one year, and describes the terms and conditions of that person's employment by the firm and the amount of the grant applied for to subsidize the costs of that employment; and

(4) describes the products and services considered by the firm to be suitable for export and the general outlines of the export program to be undertaken under the direction of the manager.

(c) In selecting firms to receive grants under this section, the Secretary shall consider the desirability of determining the feasibility of this approach to export promotion in each of the regions of the Department of Commerce and in relation to a variety of products and services which, in the opinion of the Secretary, have export potential.

(d) There are authorized to be appropriated to the Secretary not to exceed $2,000,000 for each of the fiscal years 1981, 1982, and 1983, to carry out the program established by this section

(e) The Secretary shall develop a plan to evaluate the cost-effectiveness of the program of export promotion established by this section and its effectiveness as compared with other export promotion programs, including the amount of export sales generated by small businesses assisted under this section. For the purpose of the evaluation the Secretary is authorized to require any firm receiving assistance under this section to furnish such information as is deemed appropriate to complete the required evaluation. The Secretary shall make recommendations concerning continuation or expansion of the program and improvements in the program structure. Such evaluation and recommendations shall be submitted to the Congress prior to October 1, 1982.

TITLE II—EXPORT TRADE ASSOCIATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Export Trade Association Act of 1980".

FINDINGS; DECLARATION OF PURPOSE

SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

(1) the exports of the American economy are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every $7 of total United States goods produced;

(2) exports will play an even larger role in the United States economy in the future in the face of severe competition from foreign government-owned and subsidized commercial entities;

(3) between 1968 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well-being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(7) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities or agreements in the course of expert trade.

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(5) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(6) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations whether operated for profit or organized as nonprofit corporations, which are created under and exist pursuant to the laws of any State or of the United States.

"(7) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1980.

"(8) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12), sections 5 and 6 of the Federal Trade Commission Act (15 U.S.C. 45, 46), and any State antitrust or unfair competition law.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(10) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(11) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered into for the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade, export trade activities and methods of operation of any export trading company, that—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association or export trading company;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowhow, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members are exempt from the operation of the antitrust laws with respect to their export trade, export trade activities and methods of operation that are specified in a certificate issued according to the procedures set forth in this Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation or invalidation in whole or in part of such certificate shall not render an association or its members or an export trading company or its members, liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective until thirty days after the issuance of such certificate.".

AMENDMENT OF SECTION 3

SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.",

(2) by striking out "SEC. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing".

ADMINISTRATION: ENFORCEMENT: REPORTS

SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD. The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and, its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association or export trading company which have a significant impact on its export trade, make the 90-day period for application approval described in paragraph (1) of this subsection, or an amended application approval as provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and may receive expedited action on its application for certification.

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of April 3, 1980, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1980. Any such application must be filed within 180 days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.

"(3) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application or an amended application for certification, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company afford it an opportunity for a hearing with respect to that determination in accordance with section 557 of title 5, United States Code.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade, export trade activities, or methods of operation, of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate. If the request is filed within thirty days after a material change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which the certificate is in effect.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—After notifying the association or export trading company involved and after an opportunity for hearing pursuant to section 554 of title 5, United States Code, the Secretary, on his own initiative—

"(1) may require that the organization or operation of the association or export trading company be modified to correspond with its certification, or

"(2) shall, upon a determination that the export trade, export trade activities or methods of operation of the association or export trading company no longer meet the requirements of section 2 of this Act, revoke the certificate or make such amendments as may be necessary to satisfy the requirements of such section.

"(e) ACTION FOR INVALIDATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the grounds that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for invalidation thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order declaring the certificate invalid or any other order necessary to effectuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption is held in abeyance pursuant to section 2(c) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

"(f) COMPLIANCE WITH OTHER LAWS.—Each association and each export trading company and any subsidiary thereof shall comply with United States export control laws pertaining to the export or transshipment of any good on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within ninety days after the enactment of the Export Trade Association Act of 1980, the Secretary, after consultation with the Attorney General, and the Commission shall publish proposed guidelines for purposes of determining whether export trade, export trade activities and methods of operation of an association or export trading company will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have thirty days to comment on the proposed guidelines. The Secretary shall review the comments and, after consultation with the Attorney General, and Commission, publish final guidelines within thirty days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary shall periodically review the guidelines and, after consultation with the Attorney General, and the Commission, propose revisions as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rulemaking for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 6. ANNUAL REPORTS.

"Every certified association or export trading company shall submit to the Secretary an annual report, in such form and at such time as he may require, which report updates where necessary the information described by section 4(a) of this Act.

"SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE.

"The Secretary shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies through the use of provisions of this Act in a manner consistent with this Act. The Office of Export Trade in the Department of Commerce shall report to the congressional committees of appropriate jurisdiction on an annual basis, all East-West trade transactions requiring validated licenses, and any other relevant information on the role of U.S. export trading companies or subsidiaries thereof in the East-West trade.

"SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING ASSOCIATIONS.

"(a) ELIGIBILITY.—To be eligible for the antitrust exemption provided by this section, an association must have been registered with the Federal Trade Commission under this Act on April 3, 1980.

"(b) DURATION.—The antitrust exemption provided by this section shall extend only to the existence of an eligible association, and to agreements made and acts done by such association, prior to one hundred and eighty days after the date of enactment of the Export Trade Association Act of 1980, or, in the event that an eligible association files an application for certification pursuant to section 4 of this Act during such one hundred and eighty days, prior to the Secretary's determination on such application becoming final.

"(c) EXEMPTION.—Subject to the limitations in subsections (a) and (b), nothing contained in sections 1 to 7 of the Sherman Act shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United State or otherwise restrains trade therein.

"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Portions of applications made under section 4, including amendments to such applications, and annual reports made under section 6 that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such confidential information, obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.—Whenever the Secretary believes that an applicant may be eligible for a certificate, or has issued a certificate to an association or export trading company, he shall promptly make available all materials filed by the applicant, association or export trading company, including applications and supplements thereto, reports of material changes, applications for amendments and annual reports, and information derived therefrom, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. Such information may only be disclosed by the Secretary upon a prior certification that the information will be maintained in confidence and will only be used for such official law enforcement purposes.

"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes binding international obligations by treaty or statute, to the extent that the operations of any export trade association or export trading company, certified under this Act, are inconsistent with such international obligations, the Secretary may require the association or export trading company to modify its respective operations, and in so doing afford the association or export trading company a reasonable opportunity to comply therewith, so as to be consistent with such international obligations.

"SEC. 11. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

"SEC. 12. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1980, the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on United States international trade and to recommend either continuation, revision, or termination of the Webb-Pomerene Act. The task force shall have one year to conduct its study and to make its recommendations to the President.".

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "SEC. 6." in section 6 (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 13. SHORT TITLE.".

TITLE III—SENATE FUNDING

SEC. 301. In the fiscal year beginning October 1, 1980, the aggregate amount of funds made available to the Senate shall not exceed 90 per centum of the aggregate amount of the funds made available for such purposes for the fiscal year beginning on October 1, 1979.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISABLED VETERANS REHABILITATION ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, what is the next order of business?

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1188, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1188) to improve and modernize the vocational rehabilitation program provided service-disabled veterans under chapter 31 of title 38, United States Code, and for other purposes.

DEPARTMENT OF THE TREASURY INTERNATIONAL AFFAIRS AUTHORIZATIONS, 1981

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the pending bill be temporarily laid aside and that the Senate proceed to the consideration of Calendar No. 816.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2514) to authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal years 1981 and 1982, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs with an amendment to strike all after the enacting clause and insert the following:

That section 10(d) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(d)) is amended—

(1) by inserting after the word "provided" the words "to employees of the Department of State"; and

(2) by inserting before the period at the end thereof the following: ", and by section 5924(4)(B) of title 5, United States Code".

SEC. 2. (a) Section 5(a) of the Act of November 8, 1978 (92 Stat. 3092) is amended—

(1) by striking out "and" after "1979" and inserting in lieu thereof a comma;

(2) by inserting "and $23,671,100 for fiscal year 1981," after "1980,"; and

(3) by inserting before the comma after "representation expenses" the following: "and for payments under an agreement with the Asian Development Bank for a salary equalization program for United States nationals employed by the Bank who are subject to United States income taxes".

(b) Subsection (b) of such section is amended by inserting "and for fiscal year 1981 not to exceed $1,100,000," after "$800,000".

Mr. STEVENSON. Mr. President, this bill, S. 2514, provides an authorization for fiscal 1981 to meet the necessary administrative expenses of the Treasury Department and to make technical corrections in the statutes which authorize the Treasury's international activities. Annual authorization of these personnel expenses for its international activities is required by law. Such expenses formerly were paid from the Exchange Stabilization Fund, but Congress discontinued that practice 2 years ago.

This is the second annual authorization of appropriations to meet the personnel and related expenses associated with Treasury's international functions. The authorization request for fiscal 1981 is $24,271,000. That is about 8 percent more than was authorized for fiscal 1980. It is less than the rate of inflation, and the amount reflects a number of cost reductions achieved by the Treasury Department in the conduct of its international responsibilities.

I know of no opposition to the bill. In order to afford the Senator from Pennsylvania (Mr. HEINZ) an opportunity to be heard on this measure, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1544

(Purpose: To encourage the initiation of negotiations on steel export financing)

Mr. HEINZ. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 1544.

Mr. HEINZ. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add a new section, as follows:

SEC. 4(a). The Congress finds that—

(1) there is an accelerating trend among nations to construct new, government-owned or sponsored steelmaking capacity;

(2) such trend leads to economically unjustifiable excess capacity which will inevitably force those governments to dump their surplus production on world markets;

(3) the principal industrialized nations of the world are contributing to this problem through their government-subsidized financing of the construction of this excessive steel producing capacity;

(4) such financing is provided on far more generous terms than are available to domestic industry for its own capital investment needs;

(5) neither the Multilateral Trade Negotiations nor the International Arrangement on Export Credit provide any meaningful restraints on predatory financing practices; and

(6) to continue such financing without adequate restraints is self-defeating to the interests of the United States and other industrialized nations.

(b) Therefore, the United States shall promptly initiate, through its representative to the Organization for Economic Cooperation and Development Steel Committee, discussions leading to a multilateral agreement halting predatory government-subsidized export credits for steel plants and equipment.

(c) The Secretary of the Treasury shall report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs on the progress of this initiative six months after the date of enactment of this Act.

Mr. HEINZ. Mr. President, the amendment I offer today is based on Senate Concurrent Resolution 38 which I introduced almost a year ago, on September 20, 1979. The Banking Committee held hearings on the resolution in Pittsburgh last November 19.

Senate Concurrent Resolution 38, which I introduced along with 11 other Senators, calls on the administration to promptly initiate, in the Organization for Economic Cooperation and Development Steel Committee, discussions leading to a multilateral agreement halting predatory, Government-subsidized export credits for steel plants and equipment. I have been told not to expect too much from this effort, because multilateral negotiations often take on the characteristics of elephants making love: All the transactions are at a high level; a lot of dust is created; and it is years before the results are apparent.

Although negotiations of this sort are sometimes made light of, the problem is a deadly serious one. Intelligent analysis of and response to this issue may well determine whether the Nation has adequate economic growth and meaningful jobs for our growing work force in the 1980's. The industrialized nations must know that continued cutthroat credit competition benefits no nation in the long run. The inevitable result will be to create excess steel producing capacity, which in turn will lead to the dumping of steel on the American market by Europeans, Japanese, the developing world, and possibly all three.

What my colleagues and I are calling for in Senate Concurrent Resolution 38, and in this amendment, is a sort of MTN agreement on credit competition. If new steelmaking capacity needs to be built in the developing world, let it be financed at fair and free market rates. I have always believed that free trade should be just that—free and open. Predatory, cut-rate financing makes a mockery of open competition. But more importantly, for the Third World it distorts economic planning and decisionmaking. Our Western allies and our friends in the Third World must be convinced of that stark reality.

Negotiations on a general export credit agreement last spring made some small progress on an increase in rates and left hope for broader agreement later this year on a new more flexible rate scheme.

Nevertheless, with recession growing both here and in Europe there is good reason for skepticism that agreement will even be reached, as some nations will find it increasingly difficult to resist the temptation to increase their exports at any cost to maintain employment.

Indeed, there are many in Congress who believe that a unilateral U.S. withdrawal from the current credit competition is the proper course to take. I am decidedly not one of that group. In fact, along with a number of my Senate colleagues, notably the Senator from Utah (Mr. GARN) I campaigned long and hard to increase funding for the direct credit authorization of the Export-Import Bank from $4.1 billion to $6 billion for fiscal year 1980. We did that precisely because we believe that this is a multilateral problem for the industrial powers to deal with. Unilateral withdrawal from competition would merely leave the field open to our competitors to garner construction contracts through unlimited and unfair Government-backed credit offers.

That is also why I am sponsoring S. 2339 and S. 2340, two bills to expand the Ex-Im Bank's authority to match its foreign competition. All of these efforts are an essential part of the effort to keep American exports of goods and services competitive on world markets and to put the United States in a position of strength from which to renew comprehensive efforts to negotiate restraints on subsidized export credit financing. If that can be accomplished within the steel committee of the OECD

as a start, I am confident that, while less new steel capacity is likely to be built in the developing world, U.S. construction companies would be more likely to win the contracts to construct that new capacity. An end to predatory financing in this area is thus likely to be beneficial not only to the long-term viability of our domestic steel industry but also to the more immediate interests of our giant industrial construction companies, as well as a significant help in our efforts for a more comprehensive agreement on predatory financing practices.

Mr. President, this is a modest amendment designed to encourage greater assertiveness within the OECD steel committee on the part of the administration, and in doing so to restate our opposition to predatory financing practices.

For that reason, modest as this amendment may be, I feel it is important and necessary, and I hope my colleagues will join in supporting it.

Mr. STEVENSON. Mr. President, this amendment makes no recommendation or requirement for any unilateral cessation of exports or export credits by the United States. It urges negotiations to restrain predatory subsidized export credits, and Senator HEINZ has recognized that the success of such negotiations requires the United States to be armed with authority for credit. It must negotiate from strength.

So I support his amendment. Its objective is sound and so are the methods for achieving the objective which he contemplates.

I urge my colleagues to approve it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment (UP No. 1544) was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill (S. 2514) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2514

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10(d) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(d)) is amended—

(1) by inserting after the word "provided" the words "to employees of the Department of State"; and

(2) by inserting before the period at the end thereof the following: ", and by section 5924(4)(B) of title 5, United States Code".

SEC. 2. (a) Section 5(a) of the Act of November 8, 1978 (92 Stat. 3092) is amended—

(1) by striking out "and" after "1979" and inserting in lieu thereof a comma;

(2) by inserting "and $23,671,000 for fiscal year 1981," after "1980,"; and

(3) by inserting before the comma after "representation expenses" the following: "and for payments under an agreement with the Asian Development Bank for a salary equalization program for United States nationals employed by the Bank who are subject to United States income taxes."

(b) Subsection (b) of such section is amended by inserting "and for fiscal year 1981 not to exceed $1,100,000," after "$800,000."

SEC. 3. (a) The Congress finds that—

(1) there is an accelerating trend among nations to construct new, government-owned or sponsored steelmaking capacity;

(2) such trend leads to economically unjustifiable excess capacity which will inevitably force those governments to dump their surplus production on world markets;

(3) the principal industrialized nations of the world are contributing to this problem through their government-subsidized financing of the construction of this excessive steel producing capacity;

(4) such financing is provided on far more generous terms than are available to domestic industry for its own capital investment needs;

(5) neither the Multilateral Trade Negotiations nor the International Arrangement on Export Credit provide any meaningful restraints on predatory financing practices; and

(6) to continue such financing without adequate restraints is self-defeating to the interests of the United States and other industrialized nations.

(b) Therefore, the United States shall promptly initiate, through its representative to the Organization for Economic Cooperation and Development Steel Committee, discussions leading to a multilateral agreement halting predatory government-subsidized export credits for steel plants and equipment.

(c) The Secretary of the Treasury shall report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs on the progress of this initiative six months after the date of enactment of this Act.

The title was amended so as to read:

A bill to authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal year 1981, and for other purposes.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. EXON). Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 981 and 1000.

Mr. BAKER. Mr. President, reserving the right to object, I must tell the majority leader that both of these items had been cleared as late as the moment he made the request. I am now advised that the first of these two items, Calendar Order No. 981, has just been removed from our Consent Calendar. I should appreciate it if the majority leader would postpone consideration of that item until a later time so we can ascertain the status.

Mr. ROBERT C. BYRD. Very well, Mr. President, I withdraw my request.

MADELINE R. MILLER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1000.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 509), to pay a gratuity to Madeline R. Miller, was considered and agreed to, as follows:

Resolved, that the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Madeline R. Miller, widow of Donald S. Miller, an employee of the Senate at the time of his death, a sum equal to nine months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

CALENDAR ITEMS INDEFINITELY POSTPONED

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that both Calendar Orders Nos. 331 and 659 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENFORCEMENT OF DRUG IMPORTATION LAWS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2538.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate numbered 3, 6, and 7 to the bill (H.R. 2538) entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes."

Resolved, That the House agree to the amendment of the Senate numbered 1 to the aforesaid bill with the following amendment:

In lieu of the matter proposed by said amendment, insert: knowingly or intentionally

Resolved, That the House agree to the amendment of the Senate numbered 2 to the aforesaid bill with the following amendment:

In lieu of the matter proposed by said amendment, insert: knowingly or intentionally

Resolved, That the House agree to the amendment of the Senate numbered 4 to the aforesaid bill with the following amendment:

In lieu of the matter proposed to be inserted after line 12 on page 2 of the House engrossed bill, insert after line 11 on page 3 of the House engrossed bill, the following:

(h) *This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.*

Resolved, That the House agree to the amendment of the Senate numbered 5 to the aforesaid bill with the following amendment:

In lieu of the matter proposed by said amendment, insert: *or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of his duties,*

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask unanimous consent that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There is one 15-minute order for the senior Senator from Wisconsin to be recognized.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, has a meeting time been set for tomorrow?

The PRESIDING OFFICER. The Chair advises the majority leader that no time has been set for meeting on tomorrow.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR RECESS TO 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10:30 a.m. tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECRECY—EXECUTIVE P, 96TH CONGRESS, SECOND SESSION

Mr. ROBERT C. BYRD. As in executive session, I ask unanimous consent that the injunction of secrecy be removed from the treaty with the Cook Islands on Friendship and Delimitation of the Maritime Boundary (Executive P, 96th Congress, second session), transmitted to the Senate on September 2, 1980, by the President of the United States; and ask that the treaty be considered as having been read the first time, that it be referred with accompanying papers to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate, the Treaty between the United States of America and the Cook Islands of Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

This treaty is necessary to delimit the continental shelf and overlapping claims of jurisdiction resulting from the establishment of a 200 nautical mile fishery conservation zone off the coasts of American Samoa in accordance with the Fishery Conservation and Management Act of 1976, and the establishment of a 200 nautical mile zone by the Cook Islands.

In this connection, the status of four islands has also been resolved.

The treaty satisfies the interest of the people of the Cook Island that their claim to sovereignty over these four islands, inhabited by citizens of the Cook Islands and represented in the legislative and administrative branches of the Cook Island Government, will not be encumbered by a conflicting and largely unsupported claim by the United States. The treaty meets the United States interest in securing a maritime boundary in accordance with equitable principles. If furthers United States foreign policy interests in the area by establishing a basis for friendly relations with the Cook Islands and by furthering our interest in a peaceful, secure, and stable South Pacific.

I am transmitting for the information of the Senate a diplomatic note from the Government of New Zealand confirming that the Cook Islands has the competence to enter into this treaty and that New Zealand has no objection to its doing so and a separate exchange of letters between the United States and the Cook Islands, signed on June 11, 1980, setting forth the understanding of each side that United States flag fishing vessels and foreign vessels supplying the canneries in American Samoa will not be barred on a discriminatory basis from seeking licenses to fish in the Cook Islands' 200 mile zone.

I recommend that the Senate give early consideration to the treaty and give its advice and consent to ratification.

JIMMY CARTER.

THE WHITE HOUSE, *September 2, 1980.*

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, or the benefit of the distinguished minority leader, there will be no further business transacted today; none has been cleared for today.

The Senate completed its business on the legislation earlier today than had been anticipated. It may be that before the day is out the Senate might appoint conferees on the ERISA legislation.

So, for the benefit of the minority leader, other than that, that is the only transaction of business I know about for the remainder of today.

That being the case, and the hour still being early, I will take advantage of the opportunity to make my 21st statement on the U.S. Senate, and if anything arises that would require the attention of the distinguished minority leader, I will assure him that I will get in touch with him so he can come to the floor.

Mr. BAKER. I thank the majority leader.

I have a feeling that I have been disinvited to listen in person to this 21st presentation. But I am sure that is based on my previous representation on this floor that, when the majority leader finishes wtih his dissertation on the history of the Senate and the institution of Government, it is my firm intention to ask the Senate to order its printing as a Government document.

When that time comes, as I trust it will, I am certain I will read it with great interest, and I am sure every Member of the Senate will feel similarly inclined, as will scholars throughout the country.

In all sincerity, I wish to say that not only the diligence of the majority leader, but the quality of the presentation, has been extraordinary. I wish to thank him for the effort he has put into it.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

Mr. President, there will be no more rollcall votes today.

Mr. President, I say to the distinguished minority leader, that not for a moment was I disinviting his presence on the floor. I simply wanted to state for the record that there would not be any transaction of business without his being informed in advance of it. I just did not want to impose on his time. I know how busy Senators are in their offices, in the handling of constituents' mail, meeting with constituents, and so forth.

I merely wanted to make it possible for the distinguished minority leader, if he so chose, not to have to stay around the floor thinking that business might be transacted.

Mr. BAKER. Mr. President, I thank the majority leader.

I understood as much, and it is characteristically considerate of him to make that further statement.

Mr. ROBERT C. BYRD. I thank my friend.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 1 hour, and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from New Jersey (Mr. WILLIAMS).

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. WILLIAMS. Mr. President, I thank the majority leader.

JOYCE DANNEN MILLER: FIRST WOMAN ELECTED TO AFL-CIO EXECUTIVE COUNCIL

Mr. WILLIAMS. Mr. President, I invite the attention of my colleagues to a recent and most notable achievement. Ms. Joyce Dannen Miller, a fellow New Jerseyan, has been elected to the Executive Council of the American Federation of Labor and Congress of Industrial Organizations.

Ms. Miller's qualifications speak for themselves, and it is easy to see why she was selected for this important post. As the first woman ever to be elected to the executive council, Ms. Miller will certainly be the focus of some special attention in the weeks and months ahead. But I am confident that her work and, of course, her commitment, will bear up under scrutiny, and I look forward to the contributions Ms. Miller will surely make to the AFL-CIO and to the labor movement as a whole.

I ask unanimous consent that the New York Times article of August 22, 1980, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BELIEVER IN EQUALITY, ABILITY, SORORITY—JOYCE DANNEN MILLER

(By Damon Stetson)

Joyce Dannen Miller, who yesterday became the first woman to be elected to the Executive Council of the American Federation of Labor and Congress of Industrial Organizations, has been a champion of affirmative action in unions and in the workplace. But at the same time she has emphasized that ability to do the job should be the only criterion for employment and promotion.

She has long supported and strived for the organization of women who work, contending that union activity will help women achieve equal rights. "There is no greater road to equality than to be covered by a union contract," she has said.

She had no inkling that she had been elected to council membership, she said yesterday, until she received a call from Thomas R. Donahue, secretary-treasurer of the A.F.L.-C.I.O. She was vacationing near Aspen, Colo., but quickly flew to Chicago, where the council has been meeting.

A WONDERFUL MOVE

"I feel absolutely wonderful, not just for myself personally but for working women and union women," she said. "I think it's a wonderful move."

Mrs. Miller is also president of the Coalition of Labor Union Women, a nationwide organization of some 12,000 members that supports increased participation of women in politics and unions. She has been closely identified with the drive for approval of the proposed equal rights amendment, broadened child-care facilities, national health insurance and full employment.

A tall, dark-haired woman with a friendly manner, Mrs. Miller is described by some who have worked with her as assertive, "pretty gutsy" and "efficient but not officious." Associates emphasize that she is well liked and has worked harmoniously within the Amalgamated Clothing and Textile Workers Union, which she serves as a vice president and director of social services. Friends say that she is an excellent administrator, even though she travels much of the time and is away from her office in Union Square here and her home in Guttenberg, N.J.

A NATIVE OF CHICAGO

Mrs. Miller was born in Chicago on June 19, 1928. She attended the University of Chicago and received a bachelor's degree in 1950 and a master's in 1951. While a student she worked on an assembly line making gumballs for penny vending machines, then took a job as wrapper at Marshall Field & Company before enrolling as an intern at a summer camp of the United Automobile Workers.

Of her early experience, she once said, "I came to the labor movement with stars in my eyes. I saw it as vehicle for social change, and I've never changed my mind."

She worked in a variety of union, consumer and teaching jobs after marrying Jay Miller and while bringing up three children, Joshua, Adam and Rebecca. The problems of taking care of her children, especially after she was divorced in the mid-1960's, intensified her interest in improving child-care programs for working mothers.

HELPED SET UP A ROLLS-ROYCE

Her jobs with Amalgamated before it merged with the Textile Workers Union of America in 1976 included a stint as education director for the Pittsburgh Joint Board and as director of education and social services for the Chicago Joint Board. A day-care center that she helped set up in Chicago was characterized in a Government report as "the Rolls-Royce of day care."

As Amalgamated's social services director, she has been concerned with developing day-care centers, helping workers with alcoholism problems, assisting retirees and coordinating retiree centers throughout the country.

Lane Kirkland, the federation's president, said he thought the election of Mrs. Miller was "a good thing" and that he hoped women and blacks would become presidents of international unions and eligible for the council.

As for Mrs. Miller, she said at a news conference that she would be a spokesman for all workers, particularly women. "The appointment of a woman to the council at this point is just an example of the trade union movement responding to the needs" of women, she said. Then she hurried off to her first council meeting, saying, "I don't want to be late."

NUCLEAR POWER: WHO'S RIGHT?

Mr. HELMS. Mr. President, I have a friend in North Carolina—a longtime friend—who strongly favors nuclear power. When I identify him as a senior vice president of Duke Power Co., some may suggest that he is biased in his convictions about nuclear power.

That is true, Mr. President. John is biased. So am I. But so are the loud voices today who condemn nuclear power. So the question is not one of bias—every human being who is intelligent and well-informed is of necessity biased on various issues.

I am not offended when anybody disagrees with me on any issue. Neither is John Hicks. The question is: What are the facts, and who is right, and who is wrong?

Back in July, John Hicks addressed the Southeast Presbyterian Synod when it met at Clinton, S.C. Last week, a friend of mine, Jim Barnhardt of Charlotte, sent me a copy of the speech by John Hicks. As I read the text over the weekend, I was struck by the fact that John Hicks is so very much like his distinguished father, Ernest Hicks, who served many years in the North Carolina General Assembly.

But all of that is beside the point. The point, Mr. President, is that I hope many Senators and others will take the time to read the remarks of John Hicks at Clinton. Then, I hope, they will ask themselves: Who is right, and who is wrong, in the dispute over nuclear power? I believe John Hicks is right.

Mr. President, I ask unanimous consent that the text of the address by Mr. Hicks be printed in the RECORD.

There being no objection, the text of the address was ordered to be printed in the RECORD, as follows:

THE ROLE OF THE CHURCH IN ENERGY CONSERVATION

(By John D. Hicks)

It would be an honor for anyone to address so distinguished a body as the Synod of the Southeast. As a fellow Presbyterian from the Synod of North Carolina, I am especially pleased to be with you.

You may be interested to know that Duke Power Company's Chief Executive Officer and our President and our Executive Vice President, all three, are Presbyterian elders. As a matter of fact, five of the seven members of our Executive Committee, which is responsible for the management of our company, are elders in the Presbyterian Church. The other two are leaders in their Methodist and Episcopal Churches.

The general public, I fear, has a totally misguided view of public utilities They look upon these giant corporations as cold and inhuman, seeking to wring the last dollar out of the beleaguered customer and caring for the environment only to the degree forced by government. That simply is not so. My associates, as I believe is the case with most who operate the energy institutions of this nation, are honorable Christian men who are doing their best to be good stewards of the resources at their command, to bring ample, reliable energy to their customers at the lowest possible cost and at the same time protecting as best we can the environment of the area we serve—which leads me to our subject "The Role of the Church in Energy Conservation."

Until recently, conservation was not fully appreciated as an energy solution. Prior to 1969 electric utilities were a declining cost industry. Each new plant cost less per kilowattt of capacity and used fuel more efficiently than those already on the line. So each new plant brought lower costs to the rate payer. My own company had six major rate reductions during the 1960's. There seemed no reason to conserve in those days.

But the decade of the 70's brought a dramatic change. Utilities were finally caught up in this inflation spiral and no amount of engineering genius could improve efficiency—as it had in all years before—to match that inflation. The resulting rapid rise in energy costs has forced us as a nation to take a whole new look at energy supply.

We now do everything possible to avoid building new plants, for each at a higher cost means escalating bills to the consumer. We have instituted various load management techniques and are experimenting with others.

Our industrial customers are highly receptive to our suggestions for conservation. They can measure and see the result in the bottom line. We have, however, not been able to persuade residential customers to conserve to the degree we would like.

We need to reduce our peak loads—that is, shift some usage away from the period

when use now is the greatest. Doing this will mean that we will not have to build the high cost plant to meet an otherwise sharp spike in our load curve.

We have, with some success, instituted a special rate for those residential customers who insulate their homes to very high standards.

We are, on a voluntary basis, offering time-of-day rates, charging less for energy in off peak hours. So far there have been relatively few takers.

We, also, are experimenting with two systems that will allow us by radio or electric signal to interrupt the two highest residential uses of electricity—the water heater and the air conditioner. For allowing us to do this on peak, the customer is rewarded financially.

If energy prices continue to escalate and if we do not achieve really meaningful conservation, I predict that we will see the day when these techniques will be made mandatory for all consumers across the nation. To some degree this will be social engineering, as it will restructure life styles. This should be of concern to us.

Yes, we must conserve energy. But conservation has two aspects—using energy most efficiently, that is not wasting it, and on the other hand conserving our resources by producing it most efficiently. It is this latter that I spend the rest of my alloted time, addressing.

We must continue to do indepth research on all forms of alternative energy, and both the federal government and the private sector are doing so to a far greater degree than the public is aware. My own industry through the Electric Power Research Institute has, in the past 7 years, spent $775 million on research into solar, geothermal, oil recovery from shale, synthetic fuels and others. The Institute will continue to spend over $250 million annually on such research. As churchmen and women we should encourage and support these efforts.

But all of the studies I have seen, and I have reviewed many, indicate that these new sources, no matter how hard we press forward with research and development, can contribute little to our energy supply for the rest of this century. By the year 2000, even with good conservation, annual electricity production must increase by about two and one-half times, according to Dr. Chauncey Starr who heads the Electric Power Research Institute.

Since by law we are forcing utilities to cease burning oil and natural gas, this greatly expanded electric load can be met from only two sources—coal and nuclear.

The United States must play a leadership role in solving the problem of world hunger and upgrading the living standards of emerging nations. We cannot do this without an adequate energy supply. I think that we, as a church, should squarely and publicly recognize the role that coal and nuclear power must play in our immediate future and urge our elected officials to get on with assisting, rather than delaying, badly needed development.

All of us want to protect the environment. I am sure that you, as did I, applauded the awakening of our nation to our pollution problems and the early efforts to clean up our air and water. But as seems the nature the things, government has gone too far. Laws have been passed and air regulations written which can literally double the cost of producing electricity from coal and in many cases can prohibit it altogether.

As a specific example of perfectly ridiculous government regulation resulting in a tremendous waste of resources, I give you Duke Power's Catawba Nuclear Station located on our Lake Wylie in York County, South Carolina. All engineering and environmental studies by us and South Carolina officials concluded that no damage would be done to fish, the lake or the atmosphere by using the 13,000 acre like for condenser cooling water. And yet over our and the State of South Carolina's vehement objection, the Federal Environmental Protection Agency demanded that we put giant cooling towers on this plant. In order to get a permit to contruct, we had to knuckle under. These cooling towers, providing absolutely no benefit to the public, will over the life of the plant cost our customers an additional incredable $430 million in present dollars.

So much of the regulation we face today is to no public good and at great public cost. Once we are able to meet the standards of air and water quality that fully protect human, animal, fish and plant life, that is enough. We do society great harm when, at staggering cost, we go forward to attempt to make our air and water pristine pure. As a church, I think we should urge our government to make and adhere to careful cost/benefit studies of all regulations relating to environmental protection.

Let us turn to nuclear. The National Council of Churches and some church denominations have come out opposing nuclear power. They have done so out of a concern over plutonium and its possible weapons application across the world. If you approach nuclear power this way, I suppose we all might conclude the same.

Not as a utility executive, but as a Christian, I approach it from an entirely different angle, and I get a quite different answer. I approach the subject by first looking at world population and world hunger. Then I move to a consideration of food production and its relationship to energy availability.

One man tilling the soil with his own labor can raise enough food to feed his family with a small surplus to barter. The solution in times past for such cultures was to have more children to work.

One man with a beast can feed his family, the beast and two and a half more families.

But one man with a tractor can feed his family, pay for and operate the tractor and feed 40 more families.

There are today some 4 billion people on this earth. It is estimated that one-fourth to one-third of them are hungry. And I have heard an estimate that approximately 30 million die each year from starvation- or malnutrition-related deaths. If that is not serious enough, think of the year 2050, by which time according to the National Academy of Sciences world population will more than double to 9.2 billion.

In a recent very excellent address, Jay Van Andel, Chief Executive Officer of the Amway Corporation, reported a very remarkable statistic. Only three percent of the earth's surface is farmed. If just this land now cultivated were brought up to the standards of efficiency already achieved by American farmers, it is estimated the world could feed fifteen times its present population.

Another observation of Mr. Van Andel's I found quite significant. He noted that with 4 million farmers in American, we produce all we need for 220 million Americans and have a huge surplus to export. In socialist Russia, not 4 million but 34 million farmers cannot produce enough for their own needs, and the Russians import millions of bushels of wheat to keep their people from starving.

A seemingly unrelated fact I now report to you, but to me all this will tie together. We have got to be the most caring, most generous nation in all of history. Can you believe that since World War II, the United States has given away to other nations, in non-military aid, over $137.5 billion—and 60% of this, or $82.4 billion, in the past 17 years.

I cannot say what all this says to you, but I can tell you what it says to me as a Christian. It says we are a great nation, with the best system of government in the world, made up of basically good and caring people. It also says that if we are to do what I believe God has called upon us to do—that is make a valiant effort to improve the conditions of mankind—we must produce the tractors and have the where-withal to operate them.

This will require vast quantities of energy. Oil must be saved to operate the tractors and to manufacture the huge supply of fertilizer that will be needed. The energy to run the countless factories that will produce the components for the tractors must come from electricity and that electricity must come from coal and nuclear fuel.

While we are working on the long range goal of solving world hunger, we cannot forget our own. Last May, I heard an interesting speech by Peter Bommarito, International President of the United Rubber, Cork, Linoleum and Plastic Workers Union—who by the way is a strong advocate of nuclear power. He sees nuclear power as vital, not only to the future of his union, but the nation. Mr. Bommarito said that in the next ten years, our civilian labor force will increase by more than 15 percent, expanding from 103 million to 120 million workers. To properly house our people, we will need to increase the number of housing units by more than 25 percent, from 77 million to 97 million.

And hear this quote from Peter Bommarito:

"All of this will require an increase in available energy—it cannot be accomplished with a no growth economy. And let there be no mistake. If we do not have jobs for those 17 million additional men and women who will be entering the job market—if we do not have adequate housing at prices they can afford for the additional young families who will be needing their own homes—we surely will be sowing the seeds of social unrest."

In a recent speech, George Cunningham, Assistant Secretary of the U.S. Department of Energy, stressed the need for drastically increasing our coal and nuclear power capability during the rest of this century. He said he believed that we could meet the ambitious schedule he laid out, but I detected a note of uneasiness in his speech.

There is another aspect of energy in the United States that has distressed me greatly these past few years. We developed nuclear energy and yet the rest of the world has overtaken and passed us in its use. This is because we have not been making efficient use of our time and our resources—have not conserved them, if you will.

Let's look at how we have squandered time. Today with components manufactured in the United States, the Japanese are bringing a nuclear generating station on line in six years. In the United States, it now takes fifteen years to get the same plant in operation. Much of the time difference is due to the ponderous licensing proceedings of our Nuclear Regulatory Commission. In May 1974, my company applied to the NRC for a construction permit for our Perkins Nuclear Station. Now, six years later, we still do not have the permit.

And hear this—we have to date printed and submitted to the NRC over 90,000 pounds of documents in connection with this license application. That's 45 tons of paper! If we are concerned over meeting our energy needs for the rest of this century, I think we should, as a church, insist that our government officials act more efficiently and more expeditiously.

Turning to another serious concern of mine, we are in this country missing two great opportunities to enhance our supply of energy. These are the reprocessing of spent nuclear fuel and the development of the breeder reactor.

When fuel rods are used in a conventional reactor, only a small part of the energy they contain can be utilized. If reprocessed, this

fuel can be used again and again. But, by government edict, we have no reprocessing plants for commercial nuclear fuel in the United States. Why? Because in reprocessing the resulting fuel has in it not only uranium but the dreaded plutonium. And we fear that such plutonium might fall into the wrong hands and become weapons. The thought is that if we don't make it, others intent on doing evil in this world can't get it. This is simply not living in the real world, because other nations—England, France, Germany, Russia, and Belgium are and have been reprocessing nuclear fuel, and Japan soon will be, all with, I feel sure, far less security precautions than our safety-conscious nation would demand.

Reprocessing has another valuable feature. Today, we have to store the entire highly radioactive spent fuel assemblies as waste. Reprocessing of these assemblies reduces the residual waste to about three percent of its original volume, resulting in a far more manageable waste problem. The virtually completed fuel reprocessing plant at Barnwell, S.C. stands idle, as we turn our backs on this important source of energy.

But there is yet a greater source of energy that we have dragged our feet in developing. This is the breeder reactor, which I mentioned a moment ago.

The breeder reactor is a truly remarkable technology. As a by-product of generating electric power, the breeder will transform useless Uranium 238, which is placed in the reactor, into fuel, useful itself in reactors for generating power. The breeder actually generates more new fuel than it burns up. The breeder would be a tremendously valuable source of energy to a nation which faces potentially severe shortages in the years ahead. Let me tell you how valuable.

When uranium is mined, you get an ore that is a mixture of mostly useless Uranium 238, and a small amount of the useful Uranium 235. To become useful as reactor fuel the Uranium 235 must be enriched to three percent of the end mixture, which means separating out substantial amounts of Uranium 238.

Here is a photograph of a large number of metal tanks resulting from the uranium enrichment process. These tanks contain the useless Uranium 238. They are being held for the day when we do have breeder reactors to convert this material into useful fuel. You can't see the picture well, I know, but you can hear and I think be startled by the legend attached to it. Let me read it to you.

"Project Management Corporation is the nonprofit corporation organized in 1972 to conduct scientific research and to manage the design, construction and test operation of a Liquid Metal Fast Breeder Reactor Demonstration Plant at Oak Ridge, Tennessee. Officials at PMC estimate that if used in breeder reactors, the material held in these tanks in Paducah, Kentucky, and in similar tanks at Portsmouth, Ohio and Oak Ridge, Tennessee, could yield electricity worth some $20 trillion. The energy contained in the tanks, they say, is equivalent to a 700-year supply of coal or a 400-year supply of oil at 1975 U.S. consumption rates which is equivalent to two times U.S. coal reserves or five times Arab oil reserves."

Isn't that truly amazing?

The first electricity ever generated by splitting the atom was done by a breeder reactor, and it was done in the United States. On December 20, 1951, this took place at the Arco, Idaho Testing Grounds, and in 1955, the town of Arco was actually lighted with breeder reactor power.

Ironically, although we developed this technology, other nations have breeders in commercial operation, and we are a long way from having even a demonstration breeder.

France and Russia have full scale breeders generating power for their people. Japan has a commercial breeder near completition. West Germany and England have demonstration breeders. And France has announced plans to manufacture and market breeders to other nations. If we proceeded at break neck speed in breeder development, we could not in 10 years be where France is today.

You ask, why don't we have breeder reactors? Well, I left out one important fact as I have told you the breeder story. You see, the new fuel which the breeder creates out of U-238 is the feared plutonium. Our breeder program is caught up in the controversy over preventing the spread of plutonium around the world. But this is ridiculous, because as I have indicated, other nations are moving right ahead, and we are merely denying ourselves a vast source of new energy.

As church men and women, what should we do about reprocessing of nuclear fuel and breeder reactors? What I have done is engage in much study on these matters, verify the information I have given you and let the Senators and Representatives in North and South Carolina where we serve know these facts. I also tell everyone I can what I have learned.

Now, of course, there are risks in the things we have discussed. But there are risks in every aspect of life. The Nuclear Regulatory Commission, in a comprehensive safety analysis study concluded that the probability of a catastrophe taking 100 lives would occur by airplane crash once every 2 years, by fire every 2 years, by tornado every 5 years, by hurricane every 5 years, by earthquake every 20 years, but from 100 nuclear power plants, only once every 100,000 years.

The nuclear industry has, by far, the safest record of any industry in history. No one has been killed or injured from radiation in over 400 operating years of free world nuclear plants. I am thoroughly prepared to accept what scientists consider the very slight risk in order to have this essential source of energy available to us and to the world.

I have a summer place on Lake Wylie near Charlotte. It is directly across the lake about a mile from the Catawba Nuclear Station now under construction. After this plant is operable, I, my wife and children, and some day, grandchildren, will summer on the lake and swim in its waters without the slightest fear. I can do so because I have faith in our President, Presbyterian Elder Bill Lee, and the many others who were responsible for its design and construction and faith in those who will be operating it.

Yes, there are risks in all phases of a growing, industrial society. So it is comparative risks that we as Christians should consider, weighing the benefit to mankind of any device or technology against the risk associated with it. You may be interested to learn that the American Medical Association adopted on June 21, 1978, a study from its Council on Scientific Affairs which concluded, and I quote:

"A coal-fired power plant each year results in about 400 times more deaths than does an equivalent nuclear-powered generating station."

And yet, my friends, I have heard no one suggest that we cease building coal fired plants and shut down those which are operating. But we hear such suggestions with respect to nuclear from many quarters.

An interesting contrast to the safety record of nuclear power is that of coal-fired steam boilers. In 1838 alone, 500 Americans were killed by steam boiler explosions. It is frightening to contemplate what society would be like today if steam boilers had been eliminated as an energy source because they were dangerous back then.

Picture this scene, there is a mob—pickets carrying banners and placards of protest. They decry the company's reckless disregard for human safety. The media carry inflammatory reports of the protest and of the danger. Investors panic, the company's stock plummets and the New York Stock Exchange suspends trading in the company's stock. Sounds like a recent anti-nuclear protest, doesn't it? But it wasn't. The year was 1879—101 years ago—and the scene was Philadelphia. The company was Wannamaker's store which had just anounced that it would replace gas lights in its store with electric lights. And everyone knew that electric shock could be deadly. Today, a hundred years later electricity, although it kills hundreds every year is not only totally accepted as a risk, but is considered absolutely essential to life as we know it. Think where the world would be today, had electricity been banned because many feared it in 1879.

To sum up, what should be the role of the church in energy conservation? We as individuals should try to conserve all we can, although there may be inconvenience and even sacrifice in this.

We should inform ourselves on the many energy issues and carefully weigh the benefits and risks of each. Having reached conclusions satisfactory to ourselves, we should make a special effort to inform others in order to narrow the gap between the perceived risks and the real risks associated with any energy source. We should not hesitate to take a strong public position and let our elected officials (who, after all is said and done, control the energy future of this nation)—let them know our feelings. And we should pray that they make the right decisions. Unless they do, we will not have the homes and jobs for the emerging work force that Peter Bommarito spoke of. Unless they do, we will never build the tractors and produce the feed, seed and fertilizer necessary to feed the hungry millions of the world.

Oh yes, one more thing you can do to conserve energy. You can take a lesson from my church. We, at Covenant, have by careful management reduced our electric consumation by 30 percent since we started to work on it.

It has indeed been a pleasure to be with you.

MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of August 26, 1980, the Secretary of the Senate, on August 28 and August 29, 1980, received messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received on August 28 and August 29, 1980, are printed at the end of the Senate proceedings.)

TREATY

Under authority of the order of August 26, 1980, the Secretary of the Senate, on September 2, 1980, received a message from the President of the United States submitting a treaty.

FEDERAL PAY COMPARABILITY ALTERNATIVE PLAN—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 235

Under authority of the order of August 26, 1980, the Secretary of the Senate, on August 29, 1980, received the following message from the President of the United States, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

An adjustment in Federal white col-

lar pay is required on October 1 under the Pay Comparability Act of 1970.

As specified in that Act, my Pay Agent and the statutory Advisory Committee on Federal Pay have made their report to me on comparability findings for the next fiscal year.

Current law provides that the annual increase for the military be the same as the average of the civilian increase. The Department of Defense Authorization Act, 1981, which has passed both Houses of Congress provides for a larger military pay adjustment this year. The larger increases proposed under that Act will supersede the increases military personnel otherwise would receive under the Alternative Plan.

A decision on pay comparability for Federal civilian employees necessarily must be made in the broader context of the present economic situation in this country. Inflation is a continuing threat to the economy, and consequently we still have anti-inflationary pay standards for all pay increases, public or private. For the past two years, I have looked to those standards in determining the Federal pay adjustment just as I expected other employers to do in formulating increases for their workers. I have continued that approach for this year's Federal increase.

The Pay Act gives me authority to propose an alternative adjustment to full comparability if deemed appropriate in light of economic conditions. Under that authority, I have decided upon an alternative pay plan consisting of an across-the-board 9.1 percent increase, and a partial exemption from the full effect of that limitation for the lowest paid civilian employees. That increase is fully within the range of the current national pay standards.

A President must balance economic considerations against the fact that Federal employees face the same kinds of problems with inflation as other citizens. In so doing, I have concluded that the dedication of these loyal public servants deserves no less relief than we would allow for other workers.

For those reasons, I urge the Congress to support the Alternative Plan submitted with this message.

JIMMY CARTER.

THE WHITE HOUSE, *August 29, 1980.*

REPORT OF THE COMMODITY CREDIT CORPORATION—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 236

Under authority of the order of August 26, 1980, the Secretary of the Senate, on September 2, 1980, received the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Agriculture, Nutrition, and Forestry:

To the Congress of the United States:

In accordance with the provisions of Section 13, Public Law 806, 80th Congress, I transmit herewith for the information of the Congress the report of the Commodity Credit Corporation for the fiscal year ended September 30, 1979.

JIMMY CARTER.

THE WHITE HOUSE, *September 2, 1980.*

MESSAGES FROM THE HOUSE RECEIVED DURING THE RECESS

Under authority of the order of August 26, 1980, the Secretary of the Senate, on August 28, 1980, received a message from the House of Representatives, which reported that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 390) to expedite and reduce the cost of antitrust litigation, and for other purposes.

The message also reported that the House agrees to the amendments of the Senate to the bill (H.R. 4627) to permit citizens of the Northern Mariana Islands to enlist in the Armed Forces of the United States before becoming citizens of the United States upon the establishment of the Commonwealth of the Northern Mariana Islands.

The message further reported that the House agrees to the amendments of the mittee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes.

The message also reported that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 1442. An act to authorize the documentation of the vessel, Sara, as a vessel of the United States with coastwise privileges.

ENROLLED BILLS SIGNED

The message further reported that the Speaker has signed the following enrolled bills:

S. 390. An act to expedite and reduce the cost of antitrust litigation, and for other purposes;

S. 2680. An act to improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666);

H.R. 1781. An act to amend title 5, United States Code, to provide that civilian air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes;

H.R. 1967. An act to modify the boundary of the White River National Forest in the State of Colorado;

H.R. 7072. An act to amend section 5702 of title 5, United States Code, to increase the maximum rates for per diem and actual subsistence expenses and mileage allowance of Government employees on official travel, and for other purposes; and

H.R. 8010. An act to amend the Comprehensive Employment and Training Act to designate a Job Corps Center as the "Earle C. Clements Job Corps Center".

The enrolled bills were subsequently signed by the majority leader, by unanimous consent.

Under authority of the order of August 26, 1980, the Secretary of the Senate, on August 29, 1980, received a message from the House of Representatives, which reported that the House disagrees to the amendment of the Senate to the bill (H.R. 1197) to simplify the tonnage measurement of certain vessels; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; that Mr. ASHLEY, Mr. MURPHY of New York, Mr. DINGELL, Mr. BIAGGI, Mr. DE LA GARZA, Mr. MCCLOSKEY, Mr. SNYDER, and Mr. LENT were appointed as managers of the conference on the part of the House on sections 1, 2, and 3 of the amendment of the Senate and modifications committed to conference; and Mr. UDALL, Mr. BINGHAM, Mr. SEIBERLING, Mr. ECKHARDT, Mr. CARR, Mr. KOSTMAYER, Mr. MURPHY of Pennsylvania, Mr. RAHALL, Mr. VENTO, Mr. HOWARD, Mr. LUJAN, Mr. YOUNG of Alaska, Mr. SYMMS, Mr. MARRIOTT, and Mr. CHENEY were appointed as managers of the conference on the part of the House on sections 4 and 5 of the amendment of the Senate and modifications committed to conference.

The message also announced that the House disagrees to the amendments of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes; requests a conference with the Senate on the disagreeing votes of the two Houses thereon: that Mr. ULLMAN, Mr. CORMAN, Mr. RANGEL, Mr. BRODHEAD, Mr. CONABLE, and Mr. FRENZEL were appointed as managers of the conference on the part of the House on the amendment of the Senate numbered 1 to the amendment of the House to the amendment of the Senate and modifications committed to conference; and Mr. PERKINS, Mr. THOMPSON, Mr. BRADEMAS, Mr. CLAY, Mr. ASHBROOK and Mr. ERLENBORN were appointed as managers of the conference on the part of the House on the amendments of the Senate numbered 2 and 3 to the amendment of the House to the amendment of the Senate and modifications committed to conference.

The message further announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 3351. An act to amend chapter 55 of title 10, United States Code, to authorize dependents of members of the uniformed services serving on active duty to use CHAMPUS inpatient cost-sharing rates for certain surgery performed on an outpatient basis; and

H.R. 7998. An act making appropriations for the Departments of Labor, Health and Human Services, and Education. and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

MESSAGE FROM THE HOUSE

At 2:18 p.m. a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the bill (S. 988) entitled the "Health Sciences Promotion Act of 1980," with amendments in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 5766) to amend title 10, United States Code, to authorize additional Reserve Officers' Training Corps scholarships for the Army, to provide a certain number of such scholarships for cadets at military junior colleges, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, and for other purposes, with amendments in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 6711. An act to extend the authorization of youth training and employment programs and improve such programs, to authorize intensive and remedial education programs for youth, and for other purposes.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 3351. An act to amend chapter 55 of title 10, United States Code, to authorize dependents of members of the uniformed services serving on active duty to use CHAMPUS inpatient cost-sharing rates for certain surgery performed on an outpatient basis; to the Committee on Armed Services.

H.R. 6711. An act to extend the authorization of youth training and employment programs and improve such programs, to authorize intensive and remedial education programs for youth, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 7998. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1981, and for other purposes; to the Committee on Appropriations.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on August 28, 1980, he had presented to the President of the United States the following enrolled bill:

S. 2680. An act to improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666).

The Secretary of the Senate also reported that on September 2, 1980, he had presented to the President of the United States the following enrolled bill:

S. 390. An act to expedite and reduce the cost of antitrust litigation, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4514. A communication from the Principal Deputy Assistant Secretary of Defense (Comptroller), reporting, pursuant to law, the intention to obligate $8.7 million in the Army Stock Fund and $23.3 million in the Navy Stock Fund for war reserve stocks; to the Committee on Appropriations.

EC-4515. A communication from the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), transmitting, pursuant to law, a report concernings the Selected Reserve recruiting and retention incentives authorized by public law; to the Committee on Armed Services.

EC-4516. A communication from the Principal Deputy Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the transient aircraft maintenance function at Grissom Air Force Base, Indiana, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4517. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease for space located at 4228 Wisconsin Avenue, Washington, D.C.; to the Committee on Environment and Public Works.

EC-4518. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease of space located at 1325 G Street, N.W., Washington, D.C.; to the Committee on Environment and Public Works.

EC-4519. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease of space located at 2211 Jefferson Davis Highway, Arlington, Virginia; to the Committee on Environment and Public Works.

EC-4520. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes the acquisition of space by lease in San Bernardino, California; to the Committee on Environment and Public Works.

EC-4521. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes the acquisition by lease of 77,200 occupiable square feet of space in Chicago, Illinois; to the Committee on Environment and Public Works.

EC-4522. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease of space located at 806 15th Street, N.W., Washington, D.C.; to the Committee on Environment and Public Works.

EC-4523. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease of space located at One Embarcadero Center, San Francisco, California; to the Committee on Environment and Public Works.

EC-4524. A communication from the Assistant Secretary for Congressional Relations, Department of State, transmitting, pursuant to law, an agreement between the American Institute in Taiwan and the Coordination Council for North American Affair relating to exports of color television receivers, with annexes, signed at Taipei on June 28, 1980, and entered into force on June 28, 1980; to the Committee on Foreign Relations.

EC-4525. A communication from the Secretary, Council of the District of Columbia, transmitting, pursuant to law, a copy of Council Resolution 3,500, entitled "Transfer of Jurisdiction over Lots 820 and 822 in Square 562 Resolution of 1980," adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC-4526. A communication from the Assistant Secretary for Administration, Department of Commerce, transmitting, pursuant to law, a report on a new system of records; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES SUBMITTED DURING THE RECESS

Under authority of the order of August 26, 1980, the following reports of committees were submitted on August 27, 1980:

By Mr. HOLLINGS, from the Committee on the Budget, without amendment:

S. Con. Res. 119. Concurrent resolution revising the Congressional Budget for the United States Government for the fiscal years 1981, 1982, and 1983 (together with additional and minority views) (Rept. No. 96-921).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PELL, from the Committee on Rules and Administration, with an amendment:

H.R. 6702. An act to amend section 603 of title 18, United States Code, with respect to certain political contributions (Rept. No. 96-922).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Barbara S. Thomas, of New York, to be a Member of the Securities and Exchange Commission.

(The above nomination from the Committee on Banking, Housing, and Urban Affairs was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HEINZ:

S. 3077. A bill to amend the Internal Revenue Code of 1954 to provide that, whenever the United States international Trade Commission unanimously recommends action in an import relief case, the President shall take the action recommended; to the Committee on Finance.

By Mr. HATFIELD:

S. 3078. A bill to provide for the setting aside in special trust lands and interests within the Winema National Forest to Edison Chiloquin and for the transfer of moneys otherwise available to Mr. Chiloquin from the Klamath Indian Settlement to the Secretary of Agriculture for the acquisition of

replacement lands or interests; to the Committee on Energy and Natural Resources.

By Mr. TALMADGE:

S. 3079. A bill to exempt noncommercial educational broadcast stations from certain provisions of the Communications Act of 1934 with respect to access time for candidates for Federal elective office; to the Committee on Commerce, Science, and Transportation.

By Mr. HARRY F. BYRD, JR.:

S. 3080. A bill to amend the Internal Revenue Code of 1954 to provide for the annual imposition and payment of the gift tax; to the Committee on Finance.

By Mr. HATCH:

S.J. Res. 200. Joint resolution proposing an amendment to the Constitution of the United States relating to affirmative action; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEINZ:

S. 3077. A bill to amend the Internal Revenue Code of 1954 to provide that, whenever the U.S. International Trade Commission unanimously recommends action in an import relief case, the President shall take the action recommended; to the Committee on Finance.

IMPORT RELIEF ACTIONS

● Mr. HEINZ. Mr. President, last year when Congress wrote the legislation implementing the multilateral trade negotiations' results, we attempted to restructure our trade laws in a way that would insure prompt, fair, and equitable treatment for domestic manufacturers with grievances against foreign producers or governments. We wanted to provide a clear, well-defined procedure and timetable for investigating and resolving allegations made. We wanted petitioners to be clearly aware of their rights at every step of the process. We wanted cases resolved strictly on their merits and not on the basis of extraneous political considerations. And we wanted to make sure that if the petitioner was awarded relief, he in fact got in a timely and effective manner.

At the same time we made these procedural changes, we also clarified the intent of our laws by providing an injury test in certain cases where it was not previously required. As a result we assigned an even more prominent role to the International Trade Commission, the agency given responsibility for determining whether or not injury has occurred. This determination is essential, since no relief will be provided if there is no injury.

One area that remains a problem in terms of the above objectives, and which we did not change last year, is the safeguard section of the law, sections 201–203 of the Trade Act of 1974. This section of law is intended to deal with problems of rising imports. No allegation of subsidy or dumping is made. Petitioner must simply prove he is injured by imports. Relief is limited to no more than 5 years, with a possible further 3-year extension. The intent of this provision is to provide temporary relief to permit adjustment to new competitive conditions. It is not intended to provide permanent tariff or quota protection.

From the Commission's point of view, this section seems to be working. Investigations are timely, and decisions are rendered promptly. In the 3½ years since Jimmy Carter became President, the ITC has sent him 16 affirmative injury determinations with recommendations for relief. It is at that point, however, that the process is clearly breaking down and our goal of petitioners being provided timely and effective relief not being achieved; for in none of those 16 cases has the President acted in accordance with the ITC's recommendations. If one wanted to be charitable, one could say that in two of the cases the President's decision was close to what the Commission recommended, but in all the rest his decision was effectively a rejection of their advice and a denial of relief petitioners clearly merited by reason of their injury.

One of the most egregious examples of this denial occurred this spring in the leather apparel case. In that case, the Commisison agreed unanimously that the industry was being seriously injured by imports, and it agreed unanimously on a remedy—3 years of increased tariffs.

The injury case was clear. Domestic production was down sharply from 1975 to 1978 despite a near doubling in domestic consumption. Further declines in production and capacity utilization occurred in 1979. During the same 1975–78 period the value of imports increased 143 percent, and the quantity of imports rose 146 percent. This meant an increase in import penetration in terms of quantity from 62 percent in 1975 to 79 percent in 1979.

Employment has also been adversely affected. Jobs in the industry declined from 11,100 in 1974 to 5,500 in 1979, a drop of more than 50 percent. More than 3,100 of the laid off workers have been certified for adjustment assistance.

Equally clear was the need for relief—a tariff increase to equalize the price of imports with the price of domestic products. The Commission voted unanimously for such relief, although the amount of tariff increase recommended was smaller than the industry requested.

Despite this clear-cut case, and despite these unanimous findings, the President declined to approve any action at all, aside from expedited adjustment assistance, which has little or no meaning. Mr. President, there is presently on the Senate calendar legislation (H.R. 1543) to make the adjustment assistance program more viable, and I am working for its enactment. But to suggest at the present time that we have an effecive program on that it is an adequate solution to a problem as serious as that of the leather apparel industry is simply ridiculous.

The main reason for the President's action, or rather nonaction, appears to have been the need to fight inflation. While this is an argument that always sounds convincing—no one is in favor of inflation—a closer examination reveals its weakness in this situation. As is the case with other apparel items and footwear, retailers tend to take advantage of the lower wholesale price of imported goods by marking them up more than domestic goods, thus increasing their profit but minimizing any real gain to consumers. Naturally such a practice accounts for the popularity of imports with retailers and hence their increased market share, although it is difficult to show any savings to consumers or any real preference on their part for foreign goods. As a result, to simply mouth the word "inflation" as if it explains everything is to misunderstand the way this industry operates.

I cite this example of the leather apparel case at some length, Mr. President, in part because there is presently in the Senate a resolution to override that decision by the President which I hope will be adopted, and because it serves as an excellent example of how the 201 escape clause process has gone awry in the hands of an administration which has neither sympathy for nor understanding of industrial trade problems.

Mr. President, this is not simply a question of protectionism versus free trade. It is a question of whether we are going to even try to make GATT-sanctioned escape clause procedures work and give our industries a chance to recover. The relief provided is temporary and consistent with our international obligations. It can be implemented only after a finding of injury by the quasi-judicial independent agency we have created for that purpose, the International Trade Commission.

Unfortunately this administration has consistently rejected or ignored the work of this Commission and in the process has jeopardized the very existence of a number of American industries. If this attitude is an example of the kind of industrial policy the administration will soon be proposing, I shudder to think what lies in store for other import-impacted industries.

Mr. President, the only real solution to this unfortunate situation is to redesign the escape clause language to remove the President's authority to overrule the ITC. However, in the interest of compromise, I am introducing a more modest proposal designed to deal with only the most offensive examples. This legislation would simply require the President to follow the Commission's advice in those cases where it was unanimous, such as in the leather apparel case. The bill also incorporates two proposals I have made previously: that the President be permitted to propose reducing or eliminating import relief he had previously provided only once each year, subject to congressional override; and that Presidential decisions on 3-year extensions of import relief that had been provided also be subject to congressional override, just as the original decision is now.

Frankly, Mr. President, if President Carter had administered section 201 as Congress intended, this bill would not be necessary. The legislative history on this section of the Trade Act of 1974 includes the following language from the Senate report:

> With regard to the effect of relief on consumers, the Committee feels that the goals of the Employment Act of 1946 should be paramount. Unemployed persons are not happy consumers. The Executive should not confuse the effect on consumers with the effect on importers or foreign producers; they are not the same. If the choice is between (1) allowing an industry to collapse and thereby creating greater unemployment, larger Federal or state unemployment compensation payments reduced tax revenues, and all the other costs to the economy associated with high unemployment, or (2) temporarily protecting that industry from excessive imports at some marginal cost to the consumer, then the Committee feels that the President should adopt the latter course and protect the industry and the jobs associated with that industry. (Senate Report at p. 125).

Because the President has ignored this mandate, it is necessary that the Congress act to restore the ITC to its proper role and to reaffirm the basic fairness of our trade policy. It is too late for this bill to affect the leather apparel industry—it is not too late to save other import sensitive industries.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3077

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) Subsection (a) of Section 202 of the Trade Act of 1974 (19 U.S.C. 2252) is amended by adding at the end thereof the following new sentence: "If there were no Commissioners voting in the negative with respect to the finding, then the President may not make the determination described in paragraph (1)(A) of this subsection."

(b) Subsection (a) of Section 203 of such Act (19 U.S.C. 2253) is amended by adding at the end thereof the following new sentence: "If there were no Commissioners voting in the negative with respect to the recommendation under Section 201(d)(1)(A), then the President shall take the action recommended by the Commission."

SEC. 2. CONGRESSIONAL REVIEW OF IMPORT RELIEF REDUCTION OR TERMINATION DECISIONS.

Paragraph (4) of Section 203(h) of the Trade Act of 1974 (19 U.S.C. 2253(h)(4)) is amended to read as follows:

"(4) The President may reduce or terminate any import relief provided pursuant to this section if—

"(A) the President determines, after taking into account the advice received from the Commission under subsection (1)(2) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest;

"(B) within 30 days after the receipt of all of the advice specified in subparagraph (A), the President transmits to the Congress a document setting forth his intention to reduce or terminate such import relief and the reasons for such proposed action, as well as the advice received from the Commission, the Secretary of Commerce, and the Secretary of Labor, and

"(C) both Houses of Congress (within the 30-day period following the date on which the document referred to in subparagraph (B) is transmitted to the Congress) have not adopted, by an affirmative vote of a majority of the Members of each House present and voting, a concurrent resolution disapproving the action proposed by the President in such document.

The President may not request a review of a particular Section 201 decision more than once during any 12-month period."

SEC. 3. CONGRESSIONAL PROCEDURES.

(a) DISAPPROVAL RESOLUTIONS.—Paragraph (2) of Section 152(a) of the Trade Act of 1974 (19 U.S.C. 2192(a)(2)) is amended—

(1) by striking out "and" in subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) in the case of a resolution referred to in Section 203(h)(4), with the phrase 'the action proposed by the President under Section 203(h)(4) of the Trade Act of 1974'; and".

(b) SPECIAL RULES.—Section 154 of the Trade Act of 1974 (19 U.S.C. 2194) is amended—

(1) by inserting "203(h)(4)(B)," after "203(b)," in subsection (a); and

(2) by inserting "203(h)(4)(C)," after "203(c)," in subsection (b).

SEC. 4. The amendments made by Section 1 of this Act shall apply with respect to findings and recommendations of the United States International Trade Commission under Section 201 of the Trade Act of 1974 which are transmitted to the President after the date of enactment of this Act. The amendments made by Sections 2 and 3 of this Act shall apply after the date of enactment of this Act.●

By Mr. HATFIELD:

S. 3078. A bill to provide for the setting aside in special trust lands and interests within the Winema National Forest to Edison Chiloquin and for the transfer of moneys otherwise available to Mr. Chiloquin from the Klamath Indian Settlement to the Secretary of Agriculture for the acquisition of replacement lands or interests; to the Committee on Energy and Natural Resources.

● Mr. HATFIELD. Mr. President, today I am introducing a companion measure to H.R. 7960 sponsored by Congressman ULLMAN, which would set aside 300 acres in Winema National Forest in special trust for Edison Chiloquin, a Klamath Indian. The history which precedes the introduction of this bill begins when the Klamath Tribe of Oregon was terminated in 1954. At that time, 77 percent of the Klamath members elected to convert their tribal assets to cash and the remainder opted to participate in a trust which received 135,000 acres of prime timber land. Mr. Chiloquin joined the remaining members who retained the timber land. The balance of the reservation was sold and most of it was added to the Winema National Forest.

In 1969, the remaining members voted to terminate the trust and in 1974, the United States acquired by condemnation the 135,000 acres which were also added to the Winema National Forest; $49 million was paid to the remaining members. Edison Chiloquin, again wanting to keep the land, initiated a suit to enjoin the taking of the land and to force an option allowing individuals to acquire parcels in their own right. The suit failed and Mr. Chiloquin refused to accept the payment because of his belief that he cannot sell his ancestral lands.

Subsequently, a settlement was reached between the tribe and the Federal Government in which the remaining members will receive an additional $81.5 million, as the value of the land was underestimated. This brings the total amount due Edison Chiloquin to $275,000. Mr. Chiloquin remains steadfast in his belief that there is great spiritual and cultural significance to his ancestors' lands and will not associate himself with the land sale or the payment.

This bill provides that the money to which Edison Chiloquin is entitled will be paid to the Secretary of Agriculture, who will deposit it in a special fund in the Treasury. The money will be used to purchase land within the former Klamath Reservation boundaries deemed suitable by the Secretary to be added to the Winema National Forest.

It also provides, as I stated earlier, that approximately 300 acres will be placed in special trust for Mr. Chiloquin. This is the acreage estimated to be the amount that can be purchased with the $275,000. The United States would retain the legal fee to the land and its use must be consistent with its historic, cultural and archeological character. The land Mr. Chiloquin seeks to use was once occupied by his grandfather's Indian village. He intends to rebuild the village for Indian people to use and to teach the younger members of the tribe the traditional ways. It will also be made available to non-Indians to learn about the Klamath heritage and culture. If these lands are not set aside and protected now, the rich cultural and historical significance will be lost to all of us.

If the land is ever used for purposes other than those consistent with Indian traditions, it will revert to the United States to be held in perpetuity to protect the Indian traditions of the area.

Mr. President, Edison Chiloquin has never accepted the idea that the lands of his ancestors, steeped in cultural and religious significance, were his to sell. This man has stood firmly by the sacred values of his people. This legislation would allow him to keep his convictions and preserve the Klamath Indian heritage in a living museum from which we all will benefit.●

By Mr. TALMADGE:

S. 3079. A bill to exempt noncommercial educational broadcast stations from certain provisions of the Communications Act of 1934 with respect to access time for candidates for Federal elective office; to the Committee on Commerce, Science, and Transportation.

Mr. TALMADGE. Mr. President, today, I am introducing legislation to close a loophole in the Federal Communications Act which allows candidates for public office free air time on our public channels and educational networks.

Currently, under section 312 of the Communications Act of 1934, the so-called reasonable access" provisions, broadcasters are barred from denying time sought by candidates for Federal office. This act also states that time on public stations is not to be sold. It has recently been construed that this law therefore means that noncommercial public television must provide a reasonable amount of air time to candidates for Federal office free of charge if they request it.

I strongly believe that this loophole must be eliminated. I strongly oppose this freeloading on public television for political purposes. Under this interpretation, any candidate can get time on a public service station and also get free production of the program to be aired, while the taxpayers foot the bill. This certainly was not the intent of Congress when the public broadcasting system was established.

Rather, our public broadcasting system should be utilized for educational purposes. Educational broadcasting stations are a unique and valuable learning tool in the education of our children and also provide continuing education for adults as well. The public broadcasting system provides an important alternative to the programing provided by commercial networks and should not be invaded by political candidates seeking free time on the air.

Mr. President, I cannot think of anything more undemocratic than to use taxpayers' dollars to finance the campaign of someone whose views are repugnant to those a taxpayer may hold. If this law is not corrected, every candidate for Federal office, no matter how ridiculous his campaign may be or what platform he may profess, will be guaranteed free access to our Nation's public airways. This abuse of American tax dollars cannot be allowed to take place.

I encourage my colleagues to join me in cosponsoring this legislation to put an end to any further abuse of our public broadcasting stations which must remain noncommercial, nonpartisan, and nonpolitical if they are to continue to serve the American people as they were established to do.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3079

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection.

"(e) Nothing in this Act shall be construed to require a licensee of a noncommercial educational television broadcast station (as defined by the Commission) to furnish access time to any person who is a legally qualified candidate for any Federal elective office. The provisions of this subsection shall not be construed to exempt a licensee from the requirements of this section.".

By Mr. HATCH:

S.J. Res. 200. Joint resolution proposing an amendment to the Constitution of the United States relating to affirmative action; to the Committee on the Judiciary.

(The remarks of Mr. HATCH when he submitted the joint resolution appear earlier in today's proceedings.)

ADDITIONAL COSPONSORS

S. 2518

At the request of Mr. RIEGLE, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2518, a bill to provide a program of emergency unemployment compensation.

S. 2909

At the request of Mr. DOLE, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 2909, a bill to amend title XI of the Social Security Act with respect to nonprofit health care philanthropy.

S. 2987

At the request of Mr. BOREN, the Senator from Alabama (Mr. HEFLIN), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 2987, a bill granting the consent of Congress to the southern States energy compact, and for related purposes.

SENATE JOINT RESOLUTION 193

At the request of Mr. RIEGLE, the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Kentucky (Mr. HUDDLESTON) were added as cosponsors of Senate Joint Resolution 193, joint resolution authorizing the President to enter into negotiations with foreign governments to limit the importation of automobiles and trucks into the United States.

SENATE CONCURRENT RESOLUTION 119—ORIGINAL CONCURRENT RESOLUTION REPORTED REVISING THE CONGRESSIONAL BUDGET, 1981–83

Under authority of the order of August 26, 1980, Mr. HOLLINGS, on August 27, 1980, from the Committee on the Budget, reported the following original concurrent resolution, which was placed on the calendar:

S. CON. RES. 119

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby determines and declares, pursuant to subsection 310(a) of the Congressional Budget Act of 1974, that:

SECTION 1. The following budgetary levels are appropriate for the fiscal years beginning on October 1, 1980, October 1, 1981, and October 1, 1982—

(a) the recommended level of Federal revenues:

Fiscal year 1981: $615,100,000,000;
Fiscal year 1982: $698,700,000,000;
Fiscal year 1983: $792,100,000,000;

and the amount by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions:

Fiscal year 1981: $5,200,000,000;
Fiscal year 1982: —$13,300,000,000;
Fiscal year 1983: —$35,600,000,000;

(b) the appropriate level of total new budget authority:

Fiscal year 1981: $699,600,000,000;
Fiscal year 1982: $778,800,000,000;
Fiscal year 1983: $852,600,000,000;

(c) The appropriate level of total budget outlays:

Fiscal year 1981: $633,000,000,000;
Fiscal year 1982: $709,900,000,000;
Fiscal year 1983: $777,700,000,000;

(d) the amount of the deficit or surplus in the budget which is appropriate in the light of economic conditions and all other relevant factors:

Fiscal year 1981: —$17,900,000,000;
Fiscal year 1982: —$11,200,000,000;
Fiscal year 1983: +$14,400,000,000;

(e) the appropriate level of the public debt:

Fiscal year 1981: $961,800,000,000;
Fiscal year 1982: $1,003,000,000,000;
Fiscal year 1983: $1,021,600,000,000;

and the amount by which the statutory limit on such debt should be increased:

Fiscal year 1981: $40,900,000,000;
Fiscal year 1982: $41,200,000,000;
Fiscal year 1983: $18,600,000,000.

SEC. 2. Based on allocations of the appropriate levels of total new budget authority and total budget outlays as set forth in subsections (b) and (c) of the preceding section of this resolution, the appropriate level of new budget authority and the estimated budget outlays for each major functional category are as follows:

(a) National Defense (050):
Fiscal year 1981:
(1) New budget authority, $173,600,000,000;
(2) Outlays, $159,400,000,000;
Fiscal year 1982:
(1) New budget authority, $208,300,000,000;
(2) Outlays, $186,800,000,000;
Fiscal year 1983:
(1) New budget authority, $237,400,000,000;
(2) Outlays, $212,200,000,000;
(b) International Affairs (150):
Fiscal year 1981:
(1) New budget authority, $24,200,000,000;
(2) Outlays, $10,600,000,000;
Fiscal year 1982:
(1) New budget authority, $15,700,000,000;
(2) Outlays, $10,200,000,000;
Fiscal year 1983:
(1) New budget authority, $15,200,000,000;
(2) Outlays, $9,900,000,000;
(c) General Science, Space and Technology (250):
Fiscal year 1981:
(1) New budget authority, $6,600,000,000;
(2) Outlays, $6,200,000,000;
Fiscal year 1982:
(1) New budget authority, $7,000,000,000;
(2) Outlays, $6,800,000,000;
Fiscal year 1983:
(1) New budget authority, $7,100,000,000;
(2) Outlays, $7,000,000,000;
(d) Energy (270):
Fiscal year 1981:
(1) New budget authority, $6,300,000,000;
(2) Outlays, $7,400,000,000;
Fiscal year 1982:
(1) New budget authority, $7,100,000,000;
(2) Outlays, $10,200,000;
Fiscal year 1983:
(1) New budget authority, $9,500,000,000;
(2) Outlays, $11,300,000,000;
(e) Natural Resources and Environment (300):
Fiscal year 1981:
(1) New budget authority, $11,900,000,000;
(2) Outlays, $13,100,000,000;
Fiscal year 1982:
(1) New budget authority, $12,800,000,000;
(2) Outlays, $13,400,000,000;
Fiscal year 1983:
(1) New budget authority, $13,100,000,000;
(2) Outlays, $13,400,000,000;
(f) Agriculture (350):
Fiscal year 1981:
(1) New budget authority, $5,500,000,000;
(2) Outlays, $2,200,000,000;
Fiscal year 1982:
(1) New budget authority, $5,800,000,000;
(2) Outlays, $4,200,000,000;
Fiscal year 1983:
(1) New budget authority, $5,500,000,000;
(2) Outlays, $4,500,000,000;
(g) Commerce and Housing Credit (370):
Fiscal year 1981:
(1) New budget authority, $5,200,000,000;
(2) Outlays, $500,000,000;
Fiscal year 1982:
(1) New budget authority, $5,800,000,000;
(2) Outlays, $2,700,000,000;
Fiscal year 1983:
(1) New budget authority, $6,300,000,000;
(2) Outlays, $2,800,000,000;
(h) Transportation (400):
Fiscal year 1981:
(1) New budget authority, $20,700,000,000;
(2) Outlays, $19,300,000,000;

Fiscal year 1982:
(1) New budget authority, $20,200,000,000;
(2) Outlays, $20,000,000,000;
Fiscal year 1983:
(1) New budget authority, $20,800,000,000;
(2) Outlays, $21,000,000,000;
(i) Community and Regional Development (450):
Fiscal year 1981:
(1) New budget authority, $8,700,000,000;
(2) Outlays, $9,700,000,000;
Fiscal year 1982:
(1) New budget authority, $8,600,000,000;
(2) Outlays, $8,800,000,000;
Fiscal year 1983:
(1) New budget authority, $8,700,000,000;
(2) Outlays, $8,600,000,000;
(j) Education, Training, Employment, and Social Services (500):
Fiscal year 1981:
(1) New budget authority, $30,600,000,000;
(2) Outlays, $29,400,000,000;
Fiscal year 1982:
(1) New budget authority, $32,200,000,000;
(2) Outlays, $31,100,000,000;
Fiscal year 1983:
(1) New budget authority, $33,200,000,000;
(2) Outlays, $32,100,000,000;
(k) Health (550):
Fiscal year 1981:
(1) New budget authority, $70,000,000,000;
(2) Outlays, $63,600,000,000;
Fiscal year 1982:
(1) New budget authority, $81,500,000,000;
(2) Outlays, $75,000,000,000;
Fiscal year 1983:
(1) New budget authority, $92,400,000,000;
(2) Outlays, $84,700,000,000;
(l) Income Security (600):
Fiscal year 1981:
(1) New budget authority, $253,000,000,000;
(2) Outlays, $228,400,000,000;
Fiscal year 1982:
(1) New budget authority, $287,500,000,000;
(2) Outlays, $255,200,000,000;
Fiscal year 1983:
(1) New budget authority, $314,300,000,000;
(2) Outlays, $281,700,000,000;
(m) Veterans Benefits and Services (700):
Fiscal year 1981:
(1) New budget authority, $22,600,000,000;
(2) Outlays, $22,000,000,000;
Fiscal year 1982:
(1) New budget authority, $24,100,000,000;
(2) Outlays, $23,300,000,000;
Fiscal year 1983:
(1) New budget authority, $26,000,000,000;
(2) Outlays, $25,600,000,000;
(n) Administration of Justice (750):
Fiscal year 1981:
(1) New budget authority, $4,300,000,000;
(2) Outlays, $4,600,000,000;
Fiscal year 1982:
(1) New budget authority, $4,500,000,000;
(2) Outlays, $4,600,000,000;
Fiscal year 1983:
(1) New budget authority, $4,700,000,000;
(2) Outlays, $4,700,000,000;
(o) General Government (800):
Fiscal year 1981:
(1) New budget authority, $4,800,000,000;
(2) Outlays, $4,500,000,000;
Fiscal year 1982:
(1) New budget authority, $4,900,000,000;
(2) Outlays, $4,800,000,000;
Fiscal year 1983:
(1) New budget authority, $5,200,000,000;
(2) Outlays, $5,000,000,000;
(p) General Purpose Fiscal Assistance (850):
Fiscal year 1981:
(1) New budget authority, $6,200,000,000;
(2) Outlays, $6,700,000,000;
Fiscal year 1982:
(1) New budget authority, $6,400,000,000;
(2) Outlays, $6,400,000,000;
Fiscal year 1983:
(1) New budget authority, $6,500,000,000;
(2) Outlays, $6,500,000,000;
(q) Interest (900):
Fiscal year 1981:
(1) New budget authority, $70,100,000,000;
(2) Outlays, $70,100,000,000;
Fiscal year 1982:
(1) New budget authority, $73,800,000,000;
(2) Outlays, $73,800,000,000;
Fiscal year 1983:
(1) New budget authority, $76,400,000,000;
(2) Outlays, $76,400,000,000;
(r) Undistributed Offsetting Receipts (950):
Fiscal year 1981:
(1) New budget authority, —$24,700,000,000;
(2) Outlays, —$24,700,000,000; Fiscal year 1982;
(1) New budget authority, —$27,400,000,000;
(2) Outlays, —$27,400,000,000; Fiscal year 1983;
(1) New budget authority, —$29,700,000,000;
(2) Outlays, —$29,700,000,000.

CREDIT BUDGET

SEC. 3. The Congressional Federal Credit Budget for fiscal year 1981 is revised as follows:

(a) The appropriate levels of total Federal credit activity for fiscal year 1981 are:

(1) New direct loan obligations, $68,300,000,000;

(2) New primary loan guarantee commitments, $75,100,000,000; and

(3) New secondary loan guarantee commitments, $53,100,000,000.

(b) Based on allocations of the appropriate levels of total Federal credit activity as set forth in subsection (a) of this section, the appropriate levels of new direct loan obligations, new primary loan guarantee commitments, and new secondary loan guarantee commitments for each major functional category are as follows:

(1) National Defense (050):
(A) New direct loan obligations, $0;
(B) New primary loan guarantee commitments, $30,000,000;
(C) New secondary loan guarantee commitments, $0.
(2) International Affairs (150):
(A) New direct loan obligations, $7,500,000,000;
(B) New primary loan guarantee commitments, $6,600,000,000;
(C) New secondary loan guarantee commitments, $0.
(3) General Science, Space and Technology (250):
(A) New direct loan obligations, $0;
(B) New primary loan guarantee commitments, —$100,000,000;
(C) New secondary loan guarantee commitments, $0.
(4) Energy (270):
(A) New direct loan obligations:
(i) On-budget, $10,000,000;
(ii) Off-budget, $1,100,000,000;
(B) New primary loan guarantee commitments, $200,000,000;
(C) New secondary loan guarantee commitments, $0.
(5) Natural Resources and Environment (300):
(A) New direct loan obligations, $0;
(B) New primary loan guarantee commitments, $0;
(C) New secondary loan guarantee commitments, $0.
(6) Agriculture (350):
(A) New direct loan obligations, $11,800,000,000;
(B) New primary loan guarantee commitments, $2,000,000,000;
(C) New secondary loan guarantee commitments, $0.
(7) Commerce and Housing Credit (370):
(A) New direct loan obligations:
(i) On-budget, $12,600,000,000;
(ii) Off-budget, $30,800,000,000;
(B) New primary loan guarantee commitments, $38,400,000,000;
(C) New secondary loan guarantee commitments, $53,000,000,000;
(8) Transportation (400):
(A) New direct loan obligations:
(i) On-budget, $500,000,000;
(ii) Off-budget, $20,000,000;
(B) New primary loan guarantee commitments, $1,500,000,000;
(C) New secondary loan guarantee commitments, $100,000,000;
(9) Community and Regional Development (450):
(A) New direct loan obligations:
(i) On-budget, $2,300,000,000;
(ii) Off-budget, $200,000,000;
(B) New primary loan guarantee commitments, $800,000,000;
(C) New secondary loan guarantee commitments, $0.
(10) Education, Training, Employment, and Social Services (500):
(A) New direct loan obligations, $100,000,000;
(B) New primary loan guarantee commitments, $2,800,000,000;
(C) New secondary loan guarantee commitments, $0.
(11) Health (550):
(A) New direct loan obligations, $200,000,000;
(B) New primary loan guarantee commitments, $200,000,000;
(C) New secondary loan guarantee commitments, $0.
(12) Income Security (600):
(A) New direct loan obligations:
(i) On-budget, $300,000,000;
(ii) Off-budget, $5,000,000;
(B) New primary loan guarantee commitments, $13,100,000,000;
(C) New secondary loan guarantee commitments, $0.
(13) Veterans Benefits and Services (700):
(A) New direct loan obligations, $600,000,000;
(B) New primary loan guarantee commitments, $9,800,000,000;
(C) New secondary loan guarantee commitments, $0.
(14) Administration of Justice (750):
(A) New direct loan obligations, $0;
(B) New primary loan guarantee commitments, $0;
(C) New secondary loan guarantee commitments, $0.
(15) General Government (800):
(A) New direct loan obligation, $0;
(B) New primary loan guarantee commitments, —$9,000,000;
(C) New secondary loan guarantee commitments, $0.
(16) General Purpose Fiscal Assistance (850):
(A) New direct loan obligations, $200,000,000;
(B) New primary loan guarantee commitments, $300,000,000;
(C) New secondary loan guarantee commitments, $0.

(c) It is the sense of the Congress that the President and the Congress, through the appropriations process, should limit in fiscal year 1981 the off-budget lending activities of the Federal Government to a level not to exceed $32,100,000,000, the on-budget lending activities to a lebel not to exceed $36,200,000,000, new primary loan guarantee commitments to a level not to exceed $75,100,000,000, and new secondary loan guarantee commitments to a level not to exceed $53,100,000,000.

SENATE CONCURRENT RESOLUTION 120—SUBMISSION OF A CONCURRENT RESOLUTION CONGRATULATING THE PEOPLE OF POLAND

Mr. HEINZ (for himself, Mr. COHEN, Mr. WALLOP, Mr. GARN, Mr. WARNER, Mr. ARMSTRONG, Mr. PRESSLER, Mr. DANFORTH, Mr. PERCY, Mr. HELMS, Mr. HUMPHREY, Mr. HAYAKAWA, Mr. LUGAR, Mr. HATCH, Mr. YOUNG, Mr. MITCHELL, and Mr. LEVIN) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 120

Whereas the recent workers' strike in Poland has ended; and

Whereas the conclusion of the strike is due to an agreement between the Government and the workers; and

Whereas that agreement includes recognition by the Government of independent trade unions and the right to strike; and

Whereas this agreement has historic significance for the economic and political structure of the Polish People's Republic; and

Whereas this agreement also has implications for other Eastern-bloc nations: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress praises the workers of Poland for their courageous and successful action, congratulates the workers of Poland on this agreement with their Government, expresses the hope that it will lead to greater political freedom and economic progress for the people of Poland, urges the Polish Government to respect the agreement, and calls for continued noninterference by all nations in the internal affairs of the nation of Poland.

Mr. HEINZ. Mr. President, I am today submitting a concurrent resolution expressing the sense of the Congress that the workers of Poland are to be congratulated for their recent courageous actions, and for their apparently successful effort to gain significant, perhaps even historical, substantive concessions from the Polish Communist Government with respect to the institutions representing Polish workers, and the interaction of those institutions with the Polish Communist Party and Government.

Mr. President, the events of the past 3 weeks in Poland give all freedom-loving peoples in the West cause for hope and celebration.

After a prolonged strike and difficult negotiations, the Polish Government has apparently granted Polish workers the right to form independent trade unions and the right to strike, along with significant new economic benefits.

If this agreement is honored, it will represent a historic turn of events for a Communist state. For the first time there will be more than one center of power in the country, and workers' rights and interests will not be identified solely with the advancement of the totalitarian Communist state.

This turn to multiple centers of economic power holds promise, over time, of a turn to multiple centers of political power as well—which could eventually evolve into a form of democratic pluralism—a development to be welcomed by all freedom-loving peoples, and one which will hopefully spread to other Eastern bloc states still oppressed by Soviet troops and a Marxist economic system that does not work.

Obviously this has been a hard won victory for the Polish workers, and the battle, in fact, may not be over yet. The Polish Government could seek to take away with one hand what it has just granted with the other, and the Soviet Union, which thus far has acted with caution, could intervene.

The agreement having been reached, we and all other nations should do our part by welcoming this important step in the life of that country, by calling for all nations to refrain from interference in Poland's internal affairs, and by standing ready to help Poland deal with the short term economic consequences of the agreement if our help is requested.

This resolution I am introducing today Mr. President, expresses those sentiments. It congratulates the Poles on their success, expresses the hope that the agreement will be honored, and urges all nations to avoid interference in Poland's internal affairs. Mr. President, I hope the Foreign Relations Committee will act expeditiously on this resolution so we can send a timely and important message to the Polish people, and all others interested in this matter.

NOTICES OF HEARINGS

SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY

Mr. JACKSON. Mr. President, I wish to announce that the Subcommittee on Energy Conservation and Supply of the Committee on Energy and Natural Resources has scheduled a continuation of its oversight hearings on "international applications of renewable energy resources."

The hearings will be held on Friday, September 5, 1980, at 10 a.m. in room 3110 of the Dirksen Senate Office Building.

The subcommittee will receive testimony on the potential impacts of such renewable energy applications on the growth of the fossil-fuel consumption, the domestic solar industry, and global environmental problems.

If you have any further questions, please contact Veronica Kun at 4-7166.

SUBCOMMITTEE ON PARKS, RECREATION AND RENEWABLE RESOURCES

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Subcommittee on Parks, Recreation and Renewable Resources.

The hearing is scheduled for September 9, 1980, beginning at 2 p.m., in room 3110 of the Dirksen Senate Office Building. Testimony will be received regarding S. 3072, a bill to establish the Rattlesnake National Recreation Area and Wilderness in the State of Montana.

For further information regarding the hearing, you may wish to contact Thomas Williams at 224-7145.

Those wishing to submit a written statement for the record should write to the Subcommittee on Parks, Recreation and Renewable Resources, room 3106 Dirksen Senate Office Building, Washington, D.C. 20510.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. MELCHER. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of an open business meeting before the Select Committee on Indian Affairs.

An open business meeting is scheduled for September 5, 1980, beginning at 10:30 a.m., in room 1202 of the Dirksen Office Building. The following is to be considered for markup: S. 2829, a bill to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

For further information regarding the business meeting, you may wish to contact Peter Taylor or Timothy Woodcock of the committee staff on 224-2251.

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. HARRY F. BYRD, JR. Mr. President, I wish to announce that the Subcommittee on Taxation and Debt Management of the Senate Finance Committee, in a hearing set for Wednesday, September 10, 1980, will consider several bills in addition to the bills previously announced

The hearing will begin at 9 a.m. in Room 2221 of the Dirksen Senate Office Building as previously announced.

The bills for consideration are:

S. 3076, introduced by Senator DURKIN, which would provide that section 4942, relating to taxes on the failure to distribute income, and section 4943, relating to taxes on excess business holdings, of the Internal Revenue Code of 1954 shall not apply to a private foundation which meets several prescribed requirements. The principal beneficiary of the bill is the Belle Peabody Brown Foundation. It is believed that the bill would have no significant impact on federal revenues.

S. 3080, introduced by Senator HARRY F. BYRD, JR., which would provide that gift taxes be paid annually rather than quarterly as is currently required. The measure is of general application and would have a one-time revenue loss of $50 million with an annual loss thereafter of $11 million.

S. 3070, introduced by Senator DURENBERGER, which would revise section 904, relating to the limitations on the foreign tax credit, with regard to tax treatment on the gain from the sale of stock of a subsidiary.

Witnesses who desire to testify at the hearing must submit a written request, including a mailing address and phone number, to Michael Stern, staff director, Committee on Finance, room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by no later than the close of business on September 8, 1980.

WRITTEN STATEMENTS

Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statement should be typewritten, not more than 25 double-spaced pages in length, and mailed with 5 copies to Michael Stern, staff director, Committee on Finance, room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than September 12, 1980.

ADDITIONAL STATEMENTS

ECONOMIC PRODUCTIVITY

● Mr. BAUCUS. Mr. President, I would like to submit for the RECORD a recent article on productivity that appeared in the Washington Post. Written by Pat Choate, a visting fellow at the Academy for Contemporary Problems, the article describes one view of the costs and consequences of delay in the completion of private and public projects across the Nation. I found the article informative and provocative, especially in light of our Nation's falling rate of productivity.

The article follows:

THE GREAT AMERICAN DELAY

(By Pat Choate)

It may be difficult to believe today, but in 1931 the Empire State Building was completed and the first tenant occupied space less than 14 months from the day the ground was broken. In 1941 the Pentagon building was completed 16 months after construction begun. By contrast, the new Phillip Hart Senate Office Building, begun in 1976, will require at least 7 to 10 years to complete.

These are not isolated examples. They reflect the extraordinary increase in the time required to complete private and public projects across the nation. These delays are decreasing the value of investments, retarding technological advances, slowing American productivity, fueling inflation, aggravating unemployment and concentrating wealth and power in fewer hands by chasing away smaller companies that cannot afford to pay for them.

More ominously, they are hurting major new weapons systems critical for national defense. For example, the Army and the Chrysler Corp. took more than eight years to design, test and produce the first model of the new Abrams XM1 tank, a central part of the U.S. and NATO defense strategy for Europe. Though the Army and Chrysler repeatedly have testified before Congress that technical problems associated with the tank have been solved, last spring the Army announced that full Chrysler production was being delayed from June 1983 until February 1986. Thus, 10 years will be required to produce the 7,058 tanks the Army is buying.

This is all a massive, perilous and unnecessary waste. Government and business frequently have operated well under tight deadlines. President Kennedy's commitment to place an American on the moon before the end of the 1960s obviously was met. In 1975, construction of the Smithsonian Institution's Air and Space Museum was completed on schedule and under cost in less than 35 months from groundbreaking. The Pentagon has long had a relationship with the naval shipyards in Bath, Maine, under which that facility consistently has built, launched and delivered naval vessels under cost and on time.

In other words, Americans surely have a great deal of know-how, but lately we have been running short on "know-when"—and we have been suffering in many ways as a result. Consider some of the current and prospective consequences of The Great American Delay.

First, it costs to wait.

As much as a quarter or more of all new capital investment in the United States simply finances delay—going for accumulated interest payments plus inflation-boosted prices.

For example, in the public utility industry the time required to build a new coal or nuclear electric power plant has increased from less than five years in the 1960s to more than 10 years in the 1980s. The result: Approximately $40 billion of the U.S. $122 billion backlog of public utility capital construction projects is devoted to paying for delay.

Expanding delays have increased the costs of the Tennessee Valley Authority's seven new power plants alone from an estimated $6.8 billion to more than $17.6 billion. Most of this $10.8 billion increase is financing delay. Needless to say, these increased costs are passed on, in part or whole, to the consumer, thus feeding our inflationary cycle.

Second, delay reduces competition and its benefits.

The expenses of delay limit the firms that can participate in the development process. Only those with substantial assets can sustain projects over long, fallow gestation periods before they show returns. Only a few firms, for example, have the resources necessary to undertake projects similar to L'Enfant Plaza in Washington, Embarcadero Center in San Francisco or Quincy Market in Boston, or to develop a new-generation computer, a new aircraft or other major projects. Even these companies have limits on the number of projects they can undertake.

Third, delay retards development of advanced technology.

An increasing number of companies find themselves unable to participate in the creation and production of new technologies—even technologies with high profit potentials—because of their inability to sustain high delay costs. Since 1971 the number of patents issued to U.S. corporations has declined annually while those issued to foreign firms has increased steadily. Many U.S. firms are selling or licensing their best technology or even selling entire companies to foreign firms, and a growing number are moving some or all of their research, development and production facilities to other nations.

Fourth, as delay greatly increases government costs, it also obviously reduces its benefits.

For example, in the seven years since the beginning of fiscal year 1974, the Department of Housing and Urban Development's Community Development Block Grant Program has disbursed less than 70 percent of its cumulative $18.6 billion appropriations. At present inflation levels, HUD is losing almost $1 billion of purchasing power a year due to its $6.2 billion backlog.

The District of Columbia has used only two-thirds of the HUD Block Grant funds to which it is entitled. The $78 million unclaimed balance is losing its purchasing power at the rate of $12 million a year.

The Department of Commerce's Economic Development Administration has undisbursed funds for approved but uncompleted projects that date back to the 1960s. EDA's $6 billion accelerated public works program created to combat the joblessness created in the 1974-1976 recession entered fiscal 1980 with more than $600 million of undisbursed funds. The Environmental Protection Agency has an undisbursed backlog of almost $9 billion for previously funded community water and sewerage treatment facilities.

Fifth, the more delays in private and public projects, the more jobs lost.

In the current recession, with construction unemployment nationally at 17 percent and in places as high as 40 to 50 percent, the public works pipeline at the federal, state and local levels has a backlog of more than $100 billion of projects. Self-evidently, if spending of these funds could catch up with intent, hundreds of thousands of construction jobs would quickly be created. In turn, linked industries such as steel, concrete and mechanical controls would also benefit.

Sixth, delay-generated costs threaten the political viability of programs such as environmental protection, worker health and consumer safety.

Attention to these programs has focused generally in the direct costs, such as those created by requirements for firms to clean up their pollutants. But the larger expenses often result from the delay-costs created by inefficient time management in their administration.

For example, in 1979 the actual value of the environmental protection investments made by all businesses and by all units of government in the United States was approximately $42 billion. This is roughly equal to the delay-costs created in the public utility sector—only one of many sectors affected by delay.

If the delay-costs associated with these programs can be reduced, the basic aims of the programs clearly would become more economically and politically attractive.

Seventh, delay undermines national defense.

The design and production delays of the XM1 tank exist throughout the military. For example, the creation of the Army's new Infantry Fighting Vehicle was initiated in the early 1960s. Yet this weapons system will not become operational until October 1982—almost 20 years later. It need scarcely be said, moreover, that all this reduces the number of weapons we can afford.

For example, the PP3C aircraft procurement program will decline from 12 units in fiscal year 1980 to eight units in fiscal year 1981 and then resume production at 12 units a year in fiscal year 1982. Inflation and penalties will add costs of $31 million to the program.

Similarly, the F15 aircraft procurement program has been delayed by reducing production from 60 planes per year to 30 planes per year. This will add more than $381 million to the cost of this program. Or take production of the F16 aircraft. It is being reduced from 180 units to 120 units a year beginning in fiscal year 1982. This will delay completion by at least 22 months and add more than $1.6 billion to its costs.

The basic source of delay is the simple mismanagement of time. Although this mismanagement has many origins, including private industry, the principal source is government. As government has rapidly expanded the size and scope of its intervention in the economy over the past two decades, virtually all decision-making by entrepreneurs and corporate managers has become shared with multiple government agencies.

The issue here, it should be understood, is not the free-marketers' one of whether those interventions are justified. Indeed, many of them are cherished by private business itself. One need only note Chrysler, or the truckers begging Washington to keep regulating them, to remember that more than a few industries are eager to be protected by the federal government.

The issue, rather, is reducing the time taken to carry out these tasks. This is something that cannot be achieved by single, broad-brush strokes by government. It will involve hundreds, even thousands, of actions which may seem unimportant individually but which together can eliminate a great deal of delay.

The most basic reform needed is the creation of time limits for specific government decisions. These limits should not only be reasonable but well publicized and firmly applied. When the limits are exceeded, the associated costs should be calculated, made known and be considered part of remedial actions.

Congress must hold the executive branch to the task of creating and meeting these

deadlines. Its oversight function can serve as a regular means of identifying any laws, regulations and practices that require change to accomplish this.

In addition, beneficiaries of federal and state grant-in-aid programs need incentives for the timely use of grants and other funds. If changing programs and "de-obligation" of funds became a more common practice and well-managed programs were given bonus incentives, those receiving the money would be more inclined to improve their time management.

Mediation is an effective means of reducing delay-creating conflict in both the planning and development stages. For example, through mediation by a neutral third party, the Port of Everett, Wash., in 1977 broke a six-year port development stalemate between development and environmental advocates by creating a development plan acceptable to all.

Finally, unduly long court procedures play a significant role in delays. Many opponents of projects commonly use litigation delays (as others use stalling techniques in Congress) to raise the costs and thus kill projects. There are a number of ways to speed the appeals court review process without sacrificing the quality of any decisions.

Streamlined appellate review processes could be established. All appeals from permit or regulatory decisions connected with a single activity, such as land use, could be combined in a single appellate review process. This would not only speed up decisions, but the use of specialized staffs hopefully would result in better rulings as well. There is little doubt that streamlined judicial and appeals processes can be created that will assure access to all parties.

If we are serious about reversing the decline in American productivity, the rise in unemployment, persistently high inflation and the deterioration of our military position in the world, we can start by eliminating The Great American Delay. There's little time to lose.●

THE STRIPPER WELL EXEMPTION

● Mr. BELLMON. Mr. President, recently, the Senate passed by a vote of 72 to 23, an amendment which would exempt two barrels of oil produced by each stripper well from the windfall profit tax. The purpose of that amendment was to improve the economics of stripper oil production so that these wells can be kept in production as long as economically possible.

Prior to the passage of this amendment, the resources analysis and management group of the Interstate Oil Compact Commission had undertaken a study of the effect of the windfall profit tax on stripper well operation. The results of this study were published in the August 4 issue of the "Oil and Gas Journal."

This study concludes that the excess profits tax would reduce the amount of oil removable by stripper well production by the amount of 490 million barrels over the life of existing wells. This oil will have to be replaced by imported crude which at $35 a barrel would cost $17 billion.

It is important to remember that once a stripper well is plugged, it will never be redrilled because the expected production is too low to justify the large investment required. Therefore, this $17 billion worth of oil is lost forever to the Nation's economy.

The overwhelming vote for the stripper oil exemption indicates that Members of the Senate understand the importance of keeping these wells in operation. I believe the interstate oil compact study strongly supports this conclusion. So that Members can have additional information on that subject in anticipation of renewed debate, I ask that the text of the "Oil and Gas Journal" be printed in full in the RECORD.

The article follows:

IOCC: EXCISE TAX TO CUT RESERVES 490 MILLION BBL

The Crude Oil Windfall Profit Tax of 1980 will prevent recovery of at least 490 million bbl of U.S. crude—most of it from stripper wells—by reducing the economic life of producing oil wells.

So says the Interstate Oil Compact Commission in a report prepared by Resource Analysis & Management (RAM) Group, Oklahoma City.

The reduced recovery will translate into a production loss of up to 131,480 b/d of crude, mainly due to the plugging of more than 13,140 existing stripper wells and premature abandonment of an additional 10,730 wells before stripper status is reached.

This loss, IOCC says, must be replaced by imported crude at landed prices of $35/bbl or more.

Wellhead value loss due to the tax is estimated at more than $17.22 billion, assuming a crude price of $35/bbl.

And the tax is a tax on salt water production from stripper wells. IOCC says the tax most severely affects wells with high water/oil ratios. Salt water disposal costs range from $800–$2,400/month/well.

About half of the primary and secondary recovery stripper wells produce large volumes of salt water with crude, and operating costs for such wells are two or more times the costs of simple law water:oil ratio wells.

Furthermore, the tax will trim more than $637 million out of state tax revenues, mainly because of premature abandonment of stripper wells.

The Crude Oil Windfall Profit Tax, effective Mar. 1, 1980, levies taxes on producers' extra income resulting from crude price decontrol (OGJ, Mar. 17, p. 59).

RESERVES, REVENUE LOSS

Of the 490.13 million bbl of oil that will be lost because of the tax, IOCC says 355.69 million bbl will be from stripper wells. Wellhead value of this lost stripped crude would be about $12.44 billion.

IOCC says the tax amounts to a price rollback on stripper crude of 16.91 percent for independent and 33.93 percent for major companies. This would give the independent operator $4.75/bbl less per $35/bbl of crude and the major operator $9.50/bbl less on the same price crude. This is based on the operator receiving 80 percent of all revenue after "windfall" tax deductions from the wellhead price.

The tax on decontrolled revenue can reduce net revenue in constant 1970 dollars to levels below those received by major oil companies in 1979 and substantially below December 1979 levels received by independents, IOCC says (see table).

This price rollback will cut the economic operating life for stripper wells operated by majors by 8.08 years and 4.46 years for independents' stripper wells (see chart).

The RAM report points out that more than 72 percent of all producing wells in the U.S. are stripper wells. These wells account for 16.16 percent of the country's crude production.

About 18 percent of the Jan. 1, 1980, total U.S. crude reserves of 27.05 billion bbl are in stripper wells. Of the stripper well reserves, 42.15 percent are associated with enhanced recovery projects.

Importance of stripper well production has been reemphasized since the 1973 Arab oil embargo. Since that time each U.S. stripper well has produced the average equivalent of $63,830 of oil. Cumulative stripper production since 1973 has reduced U.S. payments for imported crude by more than $27.95 billion, IOCC says.

Stripper crude prices rose in current dollars and in 1970 dollars during 1970–75.

But a price rollback reduced the 1976 net revenue to the operator to less than the 1974 net revenue on a constant 1970 dollar basis. The rollback increased abandonments.

INCOME LOSS FOR STATES

Ten states will be hardest hit by the tax. They are Texas, Oklahoma, New Mexico, Louisiana, Michigan, Wyoming, Kentucky, Montana, Indiana, and Arkansas.

These states are expected to lose about $629.1 million of the nationwide $637-million state income loss.

Texas is expected to lose $331.84 million in state revenues, Oklahoma $215.47 million, New Mexico $26.28 million, Louisiana $24.66 million, and Wyoming $14 million.

The remaining six states will lose less than $6 million each.●

SOME THOUGHTS ON CONGRESSIONAL OVERSIGHT

● Mr. BAUCUS. Mr. President, last month the Washington Post published a series of articles chronicling abuses in the way the Federal Government handles its contracts with private firms.

These stories paint a picture of massive waste, favoritism, conflicts of interest, and violations of Federal rules. The authors contend that the Government's system for awarding contracts—competitive bidding—has "virtually collapsed."

The Senate Judiciary Subcommittee on the Limitations of Contracted and Delegated Authority, which I chair, will examine these charges in hearings scheduled for September 17 and 24.

The chore of making sure taxpayers money is spent wisely and judiciously is tough and often tedious. But if these kinds of abuses are going to be halted this process of congressional oversight is absolutely essential.

Federal rules mandate that contracts be awarded only after a competitive bidding process has taken place. Yet, all too often that rule is ignored.

A recent example discovered by the staff of my subcommittee illustrates this point.

Last year I chaired several hearings looking into charges of waste and abuse at the General Services Administration. During this investigation we discovered that the GSA was proposing a 5-year program to "update" the Federal Government's telephone system. Projected cost: $300 million.

This new phone system did not seem to offer substantial improvements to the Federal Government's existing phone system. But more important, GSA's Automated Data Telecommunications Service proposed to award a sole-source, noncompetitive contract for this project, which is called Metrex.

The 5-year contract was what was called an "interim" contract. An interim contract implies that another, more permanent contract will be awarded when the temporary one expires. Further examination indicated that even more expensive purchases could be involved in that award.

I raised questions about this proposal during one of the GSA hearings my subcommittee conducted. And, I ask other agencies, such as the Commerce Department's National Telecommunications and Information Administration, for their advice.

The result was a convincing case against the Metrex proposal. We succeeded in getting GSA to withdraw its plan.

Metrex is an example of the problems Congress faces in trying to oversee the activities of Federal agencies. And, Metrex is an example of what ails the Federal procurement process.

The Washington Post series has been a positive step in our efforts to curb abuses in the way Federal contracts are handled. Already the Office of Management and Budget has announced that it wants to tighten up administrative procedures. I hope our hearings will take another step in that direction.

Yet, although Metrex was halted, one can only wonder how many other contracts like Metrex slip through the cracks.●

LISBON: SHIFTING COALITIONS

● Mr. HEINZ. Mr. President, recently Michael Samuels, an executive director of Georgetown's Center for Strategic and International Studies, published a review of the developing political situation in Portugal entitled "Lisbon: Shifting Coalitions." Ambassador Samuels' brief article is an excellent primer on Portugal—a thorough overview of the current political situation and an incisive analysis of where current trends could lead. Mr. President, I commend this article to all Senators and ask that it be printed at this point in the RECORD.

The article follows:

LISBON: SHIFTING COALITIONS

(By Michael A. Samuels)

Nineteen eighty is not only an election year in the United States, it is also an election year for Portugal, a small but vital member of the Atlantic alliance, and because of U.S. bases in the Azores, one of importance to the U.S. military security system.

If the American atmosphere is charged with politics, the Portuguese one is even more so. The Portuguese have two elections in 1980—one in October for Parliament and prime minister, and one in December for president. The outcome of these elections will determine three major issues: First, whether Portugal's post-Salazar attempt at democracy has reached a point where politics move on to running the country smoothly; second, from what point on the political spectrum will Portugal be ruled; and finally, what will be the future political role of the Portuguese military, which has been an integral part of politics since the 1974 revolution?

The Portuguese political parties run a broad gamut from left to right. No party has majority electoral support, hence coalitions are necessary. The four largest parties, starting from the farthest left, are the Communists (PCP), headed by Alvaro Cunhal; the Socialists (PS), headed by Mário Soares; the Democratic Socialists (PSD), headed by Francisco Sá Carneiro; and the Christian Democrats (CDS), headed by Diogo Freitas do Amaral. Contention between these four large parties means that several smaller parties often have a political importance far beyond their popular appeal, since their support may be needed in coalition building. Only three types of coalitions are possible: a leftist coalition, a center-left coalition, and a center-right coalition.

The first legislative elections after the April 1974 revolution ending monolithic rule, opened Portuguese politics to competition and demonstrated an unwillingness to form any coalitions, either before or after the elections. When several attempts at coalitions failed to produce a prime minister and government with predictable parliamentary support, President Ramalho Eanes was forced to appoint first one and then subsequent nonparliamentary governments. Over time, each of these failed to gain the support of the parliament. Finally the center-right parties demanded and President Eanes called for a new parliamentary election last November, a full year earlier than was required constitutionally. Thus, when the October 1980 elections take place, the current government will have been in power only for eight months.

To contest last November's elections, the PSD and the CDS formed a center-right coalition called the Aliança Democrática (AD). The AD won a parliamentary majority, the second parliamentary majority gained by any party or coalition since the 1974 revolution. This majority surprised many observers and gave the AD and its leader and current prime minister, the PSD's Sá Carneiro, the opportunity to act decisively. The AD's victory convinced Sá Carneiro and many other AD leaders that the political mood in Portugal was center-right. Thus, the Sá Carneiro government has pursued policies with a style and ideology aimed at making his coalition a strong and permanent force in Portuguese politics. But the first goal for the coalition has been to stay together long enough to be reelected in the October parliamentary elections and to have its own candidate for the December presidential elections.

General Ramalho Eanes was a middle-level military officer who was chosen and supported by a noncommunist coalition, largely comprised of the PS, the PSD, and the CDS. Eanes received 61 percent of the popular vote and has felt a national mandate since. A major issue in political circles has been whether Eanes has personally maintained the large support, whether the center-left could gain a majority, or whether a center-right majority could be reproduced in the presidential election. In any case and for reasons that are not fully clear, Eanes has definitely decided to run for reelection.

Since Eanes' election, he has been perceived by the center-right as being sympathetic to leftist causes. One clear pattern that has emerged during the Sá Carneiro government has been his confrontation with President Eanes. Early on he was a supporter of Eanes, but the last few years have seen a major break between the two men.

The wounds are deep. Not least of these developed during the nearly two month delay between Sá Carneiro's election victory last November and Eanes' asking him to form a government in January. During this time, Eanes allowed his hand-picked, center-left prime minister, Maria Pintasilgo, a free rein in running the government. She pursued several policies that Sá Carneiro was known to oppose, and Eanes did nothing to inhibit her.

Soon after coming to power, Sá Carneiro directly opposed the president in several ways. In particular, he led Parliament to reject several Pintasilgo initiatives and to overrule several appointments of leading Portuguese known to be sympathetic to Eanes. In pursuing this independent policy, Sá Carneiro may have actually helped Eanes form a support structure of officials unhappy with Sá Carneiro and the AD that Eanes can use in the December 1980 presidential election.

Perhaps the major political question in 1980 Portuguese politics was whether the PSD would support Eanes again. In spite of a number of PSD officials who recommended such support in the belief that a center-left coalition would be viable, Sá Carneiro stood firm, even to the point of stating that he would not serve as prime minister if Eanes were reelected president. Having drawn the battle lines, the AD sought a candidate, eschewed selecting a civilian, and chose the relatively unknown Soares Carneiro, only recently promoted to general in the Portuguese army.

Soares Carneiro was not active in the 1974 revolution and is even considered by some to have been a full collaborator with the *ancien régime*. As the choice of the more right wing, he is known to have been opposed by sections of both the CDS and the PSD. Already the small Reformadores party of former PS foreign minister Medeiros Ferreira, which is now a part of the AD coalition, has announced it will not support Soares Carneiro and that he will support Eanes.

Meanwhile, other jockeying is taking place during this process of coalition building, and new center-left coalitions may be formed, with different components in each election. A key issue here will be whether the Communists, whose approximately 16 percent support seems constant, will try to join such a coalition and how the coalition will react, as Communist collaboration might be the kiss of death. Likewise, the Socialist party will insist on being the senior member of the coalition under the PS's former prime minister Mário Soares, even though several potential coalition partners feel he has been an unsuccessful leader.

The political atmosphere is not comprised solely of personalities. Issues play an important part in the national mood, and one of the most important issues is the need to revise the constitution.

The current Portuguese constitution was devised in the spirit of the revolution in April 1974 that toppled almost 50 years of strong-armed monolithic rule and brought about the withdrawal of Portugal from its colonial past. The constitution provides a significant division of power among three potentially conflicting sources: the prime minister who, in the context of a parliamentary system, is chosen by members of parliament; a president elected in a direct election; and a Revolutionary Council chosen from the military (particularly those youthful leaders of the 1974 revolution), that exercises its influence through the president who is chairman of the council.

The constitution thus provides fertile ground for frustration among civilian politicans who would like to eliminate the virtual veto power of the Revolutionary Council, as exercised by its Constitutional Tribunal. The past few months have witnessed a series of sparring matches between the "government"—Sá Carneiro and the AD—and President Eanes and the Revolutionary Council. Although electing a sympathetic president is desirable for the coalition that wins the September parliamentary election, there is widespread belief among politicians of diverse ideologies that the power of the Revolutionary Council must be ended. Only the Communist party seeks to transform, rather than end it.

The current constitution was intended as a transition document, one that was expected to be amended or revised in 1981. It was likewise widely assumed that the life of the Revolutionary Council would not be extended beyond 1981. But the members of the Revolutionary Council now realize that the control they have relished in the recent past may be fleeting, and have acted to consolidate their power. Recently, there have been signs that the council's demise is not a foregone conclusion and that it may wish

to become a permanent part of the political climate.

The two hotly debated aspects of the constitution are the need to open the nationalized sectors of the economy to private sector competition and the process for changing the constitution. The current constitution makes it impossible for private ownership in such industries as banking, brewing, steel-making, and others that were nationalized in the wake of the 1974 revolution. Sá Carneiro and the AD do not believe that a nationalized industrial sector is the most efficient way to run a country. After his election, Sá Carneiro attempted to revise the ownership pattern to allow private investors to start new corporations in the industrial sectors to compete with nationalized firms. But parliamentary efforts have been vetoed by the Revolutionary Council with the assent of President Eanes. Thus, denationalization will be possible only after the constitution has been changed.

As for the means for changing the constitution in 1981, there are two alternatives. The constitution provides for changes by a two-thirds majority of Parliament. But since the AD now senses that it could not achieve the two-thirds, it has suggested an extra-constitutional vehicle, a national referendum. Such a referendum has become a major political issue.

While politics is the name of the game in Portugal, the current actions of the AD government are worth some comment. Sá Carneiro has a clear set of policies. Portugal has serious economic problems: high unemployment, a high rate of inflation, dependence on imported oil, little opportunity for new jobs, the reputation of being an unsure environment for international investment (mainly because of the constant change of signals concerning foreign investment), and a heritage of labor disruptions of various kinds. One of Sá Carneiro's first moves in January and February was swiftly to take those economic measures that were sure to have negative political impact, reasoning that since those steps were necessary, the earlier they were taken, the less likely it was that the short-term negative impact would be felt about the time of the October election. But the balance of payments, much improved in 1979 from previous years, has slipped again this year.

Sá Carneiro began his tenure by adopting an image different from that of his predecessors and his leading political opponent Mário Soares, head of the PS and a well-known international figure. Soares was active internationally, constantly traveling and in the public press. In contrast, adopting a style similar to the long-time Portuguese leader António Salazar, Sá Carneiro first minimized international travel and sought to be perceived as a quiet, hard-working prime minister. He makes few public speeches and works constantly. Recently, he has begun to travel, ostensibly for specific purposes related to EEC entry or to NATO obligations. But his travels are increasingly viewed as due less to international necessities than to his competition with President Eanes.

Sá Carneiro may have felt that international travel was necessary to point out the difficult policies pursued by himself and Eanes. The latter has pursued a broad foreign policy beyond the traditional scope of Portugal's Atlantic alliance responsibilities, somewhat nonaligned, but less so than the so-called Third-Worldist approach that was common immediately after the 1974 revolution. Eanes has been particularly successful in gaining the credibility of its former African colonies, one area where the Portuguese connection is very important for the West. Still, the AD (both Sá Carneiro and the CDS, whose leader Freitas do Amaral is both deputy prime minister and foreign minister) has pursued an overtly pro-Western policy. Sá Carneiro was one of the most immediate and vocal critics of the Soviet invasion of Afghanistan. Portugal was the first European country to announce sanctions on Iran in support of the United States, and the Portuguese government strongly supported a boycott of the Moscow Olympics, although the Portuguese Olympic Committee subsequently defied the government. But Soares too called for a boycott of the Olympics and the PS condemned the Soviet invasion of Afghanistan.

Even more important, Sá Carneiro's major international political effort has been his strong commitment to getting Portugal to join the EEC as quickly as possible. There is widespread support across the political spectrum on this issue. But a major obstacle will be the tendency of EEC bureaucrats to lump Portuguese admission with the admission of Spain. And Spanish admission may be delayed as a result of French concerns. Portugal, however, is determined to become a member of the EEC as soon as possible, it is hoped by 1983. This eagerness results not simply from economic concerns. There is a major political reason: admission to the EEC requires a country to maintain a civilian political system, which would give Portugal additional insurance against another military coup.

The key question is whether Portugal will be able to devise a stable civilian political structure. Clearly, there has been little government stability since the 1974 revolution, a situation reminiscent of the 16 years during the First Republic (1910–1926) when there were 41 governments. Stability is not in the interest of the Communist party, whose power in the labor force makes it a group with prodigious economic and political power to be reckoned with in Portugal. The Socialist party, once thought to be the major political force, has declined in recent years. This election offers them a chance at revival. Will they become stronger and return to power or will they lose further ground, both to the AD and to the Communists?

In a country of shifting coalitions, it is just possible that a center-right coalition will win the parliamentary election and a center-left one will win the presidential election. If this is the case, the process of democracy will have passed two milestones, but little will have been resolved, and the Portuguese search for political stability will be postponed again.●

ANNOUNCEMENT OF POSITION ON VOTE TO OVERRIDE VETO OF VETERANS' ADMINISTRATION HEALTH CARE AMENDMENTS OF 1980

● Mr. BOREN. Mr. President, on August 26, 1980, the Senate, by a unanimous vote of 85 to 0, passed H.R. 7201 over the veto of the President. H.R. 7201 is the Veterans' Administration Health Care Amendments of 1980. I missed this vote because I was in Oklahoma exercising my responsibility to vote and participate in my State's primary election.

Had I been here, Mr. President, I would have voted with the majority in overriding the Presidential veto of H.R. 7201.

Oklahoma has one of the highest number of retired military personnel and veterans in our Nation. Pressure on our hospitals is increasing because of increasing patient loads. It will require a major effort to improve the quality of care. Currently, it is estimated that there are over 411,000 veterans who call Oklahoma home. Our two veterans' hospitals and one clinic, with their approximately 150 full- and part-time doctors, treated 18,907 veterans in 1978 alone. This figure will continue to rise. Our veterans deserve the best possible care through our veterans' hospitals. Recruiting and retaining top quality physicians and other health care providers in our veterans' hospitals is vital to insuring the health care for our Nation's veterans.

Mr. President, as you know, the House voted overwhelmingly by 401 to 5 to override this Presidential veto. Combined with the unanimous 85-to-0 vote of the Senate, this is ample evidence that the President was ill-advised on this bill.

Those who have faithfully served our country in the Armed Forces deserve the best that we can provide. H.R. 7201 will be a step in the right direction in recruiting and retaining top level health providers to insure that our veterans receive the kind of health care they deserve.●

SOME THOUGHTS ON GUNS

● Mr. BAUCUS. Mr. President, I am concerned today about a loss of perspective. The people of Montana are concerned about the perspective of the Senate of the United States.

I am referring to S. 1936 the so-called Saturday Night Special legislation which was introduced by the chairman of the Judiciary Committee on which I serve.

Perhaps it is because in much of Montana a Saturday Night Special is still a television program.

Perhaps it is because registration of firearms seems odd to people who know each other, face to face, and name by name, and family to family.

Perhaps the tax cost to American families of trying to account for 7 billion rounds of ammunition each year seems a little out of place to Montanans who are trying to protect herds from coyotes.

The Senate of the United States is again engaged in creating legislation just for the cities.

This body is engaged in protecting city dwellers from city dwellers. This proposed legislation does not address the causes of violent crime, but rather, attempts to retrace the crime after it has been committed. You do not prevent violent crime by taking away firearms from law-abiding citizens.

Clarence Darrow once observed that, "laws, like clothes, are meant to fit the people they are meant to serve." We are meant to serve all the people in these United States and I mean to serve the people of Montana.

This is my objection to S. 1936. It does not fit the people it was meant to serve. This is the lost perspective that disturbs me, personally, and the Montanans I represent. This is the lost perspective of national legislation written to solve regional and often local problems.

The law has been described as a "sort of hocus-pocus science that smiles in your face while it picks your pocket." S. 1936 attempts to reassure the American people with that hocus-pocus smile. The smile that picks your pocket gives only hollow reassurance.

One bit of magic in this hocus-pocus law, the so-called Handgun Crime Control Act of 1979, is the magic which creates new crimes and new criminals. The bill creates an entirely new set of

Federal gun crimes. The new criminal could be a man transferred by his company to a new city. The new criminal could be an honest firearms retailer. The new criminal could be a widow.

The widow who keeps her dead husband's handgun would be guilty of a Federal felony. She would be guilty of the felony whether she knew of the handgun or not.

If a citizen locating from one State to another violates any local law in the interstate transportation of firearms or ammunition, that citizen risks a felony charge.

The third example of the new criminal is the honest gun dealer. If a licensed dealer sells ammunition to a person discharged from the Armed Forces under dishonorable conditions, the dealer has committed a felony. The senior Senator from Massachusetts and his cosponsors have not told the gun dealer how to determine a man's discharge status from his appearance. To make such a guess would prove highly inaccurate and is a gross violation of the man's rights.

This is not all the bill does not explain. To give my colleagues an idea of the far-reaching implications of this legislation, more than three-quarters of the handguns currently in private ownership and half the handguns currently being produced would be immediately outlawed.

How can the authors of S. 1936 say that "the Handgun Control Act of 1979 seeks to find common ground between law-abiding responsible handgun owners and those Americans who do not wish to own handguns." This bill takes a determined step in the direction of prohibition. It outlines duties of a Handgun Criteria Commission that would be empowered to establish means for evaluating handguns to determine if they are "easily concealable, or are handguns with potential for criminal use, or are handguns particularly suitable for sporting purposes.

The bill does not explain what an "easily concealable weapon" is. The Supreme Court once contended that a 22-inch sawed-off shotgun was a concealable weapon.

The bill does not explain the intriguing phrase, "potential for criminal use." All guns have that potential, as do all of the knives in the kitchen drawer. How, precisely, does one distinguish between firearms with criminal potential and those without criminal potential.

As for the promise of finding a common ground between law-abiding handgun owners and those Americans who do not wish to own handguns, if the committee has been unable to distinguish between sporting use of handguns and street use of guns to this point, by what magic will that distinction be made by the new Federal Handgun Commission.

There is a sophistication in Washington by which we no longer throw money directly at a problem, we throw commissions at it. They in turn throw money at the problem. Money which might be more wisely spent on a more visible police force or public education on how to prevent crime.

The hocus-pocus smile of the law reaches even deeper into our pockets, for the bill calls for added consultants and researchers to study various firearms and report to the Attorney General periodically.

A second, and expensive portion of the bill calls for reimbursement of victims of crimes committed with handguns. It calls for reimbursement, however, the "program does not require as a precondition to payment that any person be apprehended, prosecuted, or convicted of the handgun crime that gave rise to the claim." We have here a different kind of crime, crime without an apparent perpetrator. I would question the appropriateness of this elaborate plan under a discussion of crime control.

One of the House sponsors of this legislation, Mr. DRINAN, has described the impact of S. 1936 in extremely clear terms: "Persons carrying handguns outside their homes or place of business should have a license to do so. Carrying a handgun without a license would be punished by a mandatory jail sentence." No longer are we talking about concealed weapons, we are talking about a citizen carrying a handgun off his personal property for whatever reason.

The gentleman reveals more about this proposed regulation when he talks about the process to "assign liability." He describes a hypothetical situation: "If a person illegally sells a handgun and it is subsequently used to kill or injure another person, the victim can hold the seller civily liable."

To be held responsible for the ultimate use of a weapon, which may have been somehow technically sold in contravention of a constitutionally dubious piece of legislation is simply an outrage.

There is no legal precedent for such a liability.

There is no moral precedent for such a liability.

S. 1936 extends the governmental infringement of the individual rights of the citizen. I cannot support a bill which promises to evolve into prohibition of the freedom to own a firearm. Prohibition of an individual right, guaranteed by the Constitution.

I do believe it is time for a change in the Gun Control Act of 1968. The needed changes are to reduce Government control over the law-abiding citizen.

S. 1862 which I have co-sponsored with Senator MCCLURE is designed to deter continued harrassment of gun collectors, dealers, and law-abiding users of firearms.

This bill provides that law-abiding citizens of one State, not forbidden by their home State to buy a firearm, may purchase firearms in any of the United States as long as there exists no violation of any State laws.

The Federal Firearms Law Reform Act of 1979 eliminates the requirement for ammunition records to be kept. Much rural ammunition is sold in convenience and general stores where guns are not even available. More than seven billion rounds of ammunition are sold in the United States each year and the Federal Government must have more effective ways of dealing with street crimes than to count bullets.

I do not support further inflation of the number of licensed handgun dealers by forcing the licensing of convenience store owners who deal in ammunition only. The expense of this inflation to the taxpayer would be outrageous.

Firearms collecters would also be better protected from Government harassment by S. 1862. The buying or selling of firearms for private collections would not constitute "engaging in the business." Many private collectors have no guidelines to go by in deciding whether or not they may collect without a "dealer's license." The licensing of collectors is another example of extended bureaucracy.

It is important to license those persons who deal in firearms as a regular business, with the intent of making a livelihood. And S. 1862 does provide for that licensing.

Agents of the Bureau of Alcohol, Tobacco, and Firearms would be able to make checks of dealer's records only when the agent has reason to believe that specific violations of the law have occurred. (This is in keeping with the spirit of the law governing protected substances.)

There has been much proof of Federal harassment of legitimate gun collectors. A recent example discussed in the December and January issues of Washingtonian magazine describes the plight of a 29-year-old Vietnam veteran and former county policeman who became entangled in complex Federal gun laws, at a cost to him of 11 felony convictions. Richard Boulin sold guns from a personal collection to an undercover informant of the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms.

Boulin naively interpreted the law to mean that he could, as the holder of a dealer's license, sell guns from his own, private collection without all the Federal paperwork required of his commercial sales.

The Federal judge who tried the case convicted Boulin after 11 months of studying the action. Judge Murray said he had "no choice."

The Boulin case became even more complex because of a document given to my colleague Senator HAYAKAWA. It was a letter which had been written by John G. Krogman, Acting Director of the Bureau of Alcohol, Tobacco, and Firearms.

The letter said that the Bureau "recognizes that a licensee may maintain a private collection of firearms independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the licensee records." Sale of such personal firearms need not be recorded in the business records and a form 4477 executed by the purchaser would not be required.

Further harassment by Federal agents raises a question of entrapment of gun collectors. In this same case, the undercover agent who was, incidentally, working for BATF to avoid a jail term for illegal possession of a machinegun, repeatedly called Boulin at home to request specific weapons.

As Boulin awaits the result of his appeal, BATF has yet to respond to Judge Murray's urging that $35,000 worth of

commemorative guns seized at the time of Boulin's arrest be sold so that Boulin could receive the money. BATF says only that the judge's suggestion is "under advisement."

This kind of harassment is the result of a bounty mentality which I do not wish to see converted to even more restrictive and confusing legislation.

I think the 2d and the 14th amendments are quite clear. Neither the Federal Government, nor the States may infringe upon the right of the people to bear arms.

Gladstone reminded us that "Good laws make it easier to do right and harder to do wrong." S. 1936 does not meet that test—it is not a good law.●

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. PRYOR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further morning business?

Mr. ROBERT C. BYRD. Yes, Mr. President. Shortly, there will be a bit more. For the moment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL BUSINESS EXPORT EXPANSION ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 858.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2620) to expand the opportunities for small business participation in exporting, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs with amendments as follows:

On page 4, line 22, after "subject," insert "however,";

On page 4, line 23, after "empowered" insert a comma and "only to such extent and in such amounts as are provided in appropriation Acts,";

On page 5, line 19, after "105." insert "(a)";

On page 8, beginning with line 5, insert the following:

(b) The amendment made by subsection (a) shall take effect on October 1, 1980, or the date of enactment of this Act, whichever occurs later.

On page 8, line 8, after "106." insert "(a)";

On page 10, beginning with line 3, insert the following:

(b) The amendment made by subsection (a) shall take effect on October 1, 1980, or the date of enactment of this Act, whichever occurs later.

On page 10, line 15, after the period, insert the following:

Nothing in this section shall be construed as authorizing the Secretary to enter into contracts or incur obligations except to such extent and in such amounts as are provided in appropriation Acts.

On page 12, line 18, strike "an additional amount (excluding any fees collected from receipts of such assistance)" and insert "a sum";

On page 12, line 20, strike "twice";

On page 13, line 20, after "thereof," insert "any";

On page 22, after "center," insert "any";

On page 22, line 22, after "business," insert "any nonprofit corporation, any regional commission,";

On page 14, beginning with line 1, insert the following:

(h) The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amount as are provided in advance in appropriation Acts.

On page 14, line 11, after "shall" insert a comma and "only to such extent and in such amounts as are provided in appropriation Acts on and after October 1, 1980,";

On page 16, line 13, after "appropriated" insert "on or after October 1, 1980,";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Export Expansion Act of 1980".

SEC. 2. (a) The Congress finds and declares that—

(1) a strong export policy is essential to the health and well-being of the United States economy;

(2) exports of goods and services account for one out of every six jobs in the manufacturing sector and 10 per centum of the gross national product;

(3) every billion dollars in new exports is estimated to provide forty thousand jobs;

(4) there is increased and fierce competition in international markets to United States goods and services;

(5) small businesses account for no more than 10 per centum of all United States export sales;

(6) Federal Government programs are not sufficiently responsive to the needs of small business for export education and development of overseas marketing opportunities necessary to insure that small business realize their potential; and

(7) it is in the national interest to systematically and consistently promote and encourage small business participation in international markets.

(b) It is therefore the purpose of this Act to encourage and promote small business exporting by—

(1) providing educational and marketing assistance to small businesses;

(2) insuring better access to export information and assistance for small businesses by upgrading and expanding the export development programs and services of the Department of Commerce and the Small Business Administration; and

(3) promoting the competitive viability of such firms in export trade and encouraging increased tourism in the United States by creating a program to provide limited financial, technical, and management assistance as may be necessary.

TITLE I—SMALL BUSINESS EXPORT FINANCING ASSISTANCE

SEC. 101. Section 5(b)(7) of the Small Business Act is amended to read as follows:

"(7) in addition to any powers, functions, privileges, and immunities otherwise vested in him, take any and all actions (including the procurement of the services of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this Act: *Provided,* That nothing herein shall be construed as authorizing the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions, in his discretion pursuant to regulations promulgated by him, to take such actions on his behalf, including, but not limited to the determination of eligibility and credit worthiness, and loan monitoring, collections and liquidation;".

SEC. 102. Section 7(a) of the Small Business Act is amended by inserting before the phrase "to finance plant construction," the phrase "to finance export assistance,".

SEC. 103. Section 7(a) of the Small Business Act is further amended by inserting before the phrase "The foregoing powers shall be subject, *however,*" the following new sentences: "The Administration is further empowered, only to such extent and in such amounts as are provided in appropriation Acts, to make or effect either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing: *Provided, however,* That no such extension or revolving line of credit may be made for a period of periods exceeding eighteen months. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable.".

SEC. 104. Section 7(a)(4) of the Small Business Act is amended by adding at the end thereof the following new sentence: "In the case of any deferred participation loan or extension or revolving line of credit made under section 7(a) for export purposes, the total amount outstanding and committed (by participation or otherwise) to the borrower from the revolving fund established by section 4(c)(1)(B) of this Act shall not exceed $750,000.".

SEC. 105. (a) The Small Business Act is amended by redesignating sections 16 through 21 as sections 17 through 22 respectively, and by inserting after section 15 the following new section:

"SEC. 16. (a) There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section.

"(b) The office shall promote sales opportunities for small business goods and services abroad. To accomplish this objective the office shall—

"(1) provide small businesses with access to current and complete export information by—

"(A) making available, at the Administration's regional offices through cooperation with the Department of Commerce, export information, including, but not limited to, the worldwide information and trade system and world trade data reports;

"(B) maintaining a current list of financial institutions that finance export operations;

"(C) maintaining a current directory of all Federal, regional, State and private sector programs that provide export information and assistance to small businesses; and

"(D) preparing and publishing such reports as it determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of small business exporting firms so as to insure that the maximum information is made available to small businesses in a readily usable form;

"(2) encourage through cooperation with the Department of Commerce, greater small business participation in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce; and

"(3) facilitate decentralized delivery of export information and assistance to small businesses by assigning full-time export development specialists to each Administration regional office. Such specialists shall—

"(A) assist small businesses in obtaining export information and assistance from other Federal departments and agencies;

"(B) maintain a current directory of all programs which provide export information and assistance to small businesses within the region;

"(C) encourage financial institutions to develop and expand programs for export financing;

"(D) provide advice to Administration personnel involved in granting loans, loan guarantees, and extensions and revolving lines of credit, and providing other forms of assistance to small businesses engaged in exports; and

"(E) within one hundred and eighty days of their appointment, participate in training programs designed by the Administrator, in conjunction with the Department of Commerce and other Federal departments and agencies, to study export programs and to examine small businesses' needs for export information and assistance.".

(b) The amendment made by subsection (a) shall take effect on October 1, 1980, or the date of enactment of this Act, whichever occurs later.

SEC. 106. (a) Section 5 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(f)(1) The Administrator, after consultation with the Secretary of Commerce, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, and the Director of the Internal Revenue Service, shall establish an export promotion center in each of two regional offices of the Administration where field offices of the Department of Commerce and the Internal Revenue Service exist.

"(2) The Export-Import Bank of the United States, the Internal Revenue Service, the Overseas Private Investment Corporation, the Department of Commerce and the Administration shall each designate at least one full-time employee to serve as such agency's full-time representative in each such center. Each person designated by the Administration shall be familiar with the needs and problems of small business exporting and shall serve without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Each export promotion center shall serve as a one-stop information center on Federal Government export assistance, financing programs available to small business, and other provisions of law governing exporting for small business.

"(3) Not later than six months after the enactment of this Act, the Administrator shall report to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives on the progress made in implementing the provisions of this section.

"(4) Within two years after the date of enactment of this Act, the Administration shall evaluate these export promotion centers, including, but not limited to, an analysis of the effectiveness of the center in developing and expanding small business exports, and a comparison of the effectiveness of the center in relation to regional offices of the Administration which do not have an export promotion center. Such evaluation shall be submitted to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives.

"(5) This section is repealed effective October 1, 1983.".

(b) The amendment made by subsection (a) shall take effect on October 1, 1980, or the date of enactment of this Act, whichever occurs later.

TITLE II—SMALL BUSINESS EXPORT EXPANSION ASSISTANCE

SEC. 201. (a) The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to make grants (including contracts and cooperative agreements) to a qualified applicant to encourage the development and implementation of a small business international marketing program (hereinafter referred to as "the program"). Each qualified applicant under this title may receive a Federal grant not to exceed $150,000 annually for each of three years. Nothing in this section shall be construed as authorizing the Secretary to enter into contracts or incur obligations except to such extent and in such amounts as are provided in appropriation Acts.

(b)(1) To be eligible for a grant under this section, an applicant proposing to carry out a small business international marketing program must submit to the Secretary an application demonstrating, at a minimum.

(A) the geographical area to be served;

(B) the number of firms to be assisted;

(C) the staff required to administer the program;

(D) the means to counsel small businesses interested in pursuing export sales, including providing information concerning available financing, credit insurance, tax treatment, potential markets and marketing assistance, export pricing, shipping, documentation, and foreign financing and business customs;

(E) the ability to provide market analysis off the export potential of small business concerns; and

(F) the capability for developing contacts with potential foreign customers and distributors for small business and their products, including arrangements and sponsorship of foreign trade missions for small business concerns to meet with identified potential customers, distributors, sales representatives, and organizations interested in licensing or joint ventures: *Provided, however,* That no portion of any Federal funds may be used to directly underwrite any small business participation in foreign trade mission abroad.

(2) Program services shall be provided to small business concerns through outreach services at the most local level practicable.

(3) Each small business international marketing program shall have a full-time staff director to manage program activities, and access to export specialists to counsel and to assist small business clients in international marketing.

(c)(1) Each small business international marketing program shall establish an advisory board of nine members to be appointed by the staff director of the program, nor less than five members of whom shall be business persons or representatives of small business associations.

(2) Each advisory board shall elect a chairman and shall advise, counsel, and confer with the staff director of the program on all policy matters pertaining to the operation of the program (including who may be eligible to receive assistance, ways to promote the sale of United States products and services in foreign markets or to encourage tourism in the United States, and how to maximize local and regional private consultant participation in the program).

(d) The Secretary shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section, that a sum equal to the amount of such grant be provided from sources other than the Federal Government: *Provided,* That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount.

(e) The Secretary shall develop a plan to evaluate programs approved under this section which shall only—

(1) determine the impact of small business international marketing programs on those small businesses assisted;

(2) determine the amount of export sales generated by small businesses assisted through such programs; and

(3) make recommendations concerning continuation and/or expansion of the program and possible improvements in the program structure. Such evaluation shall be submitted to the Congress by October 1, 1982.

(f) For the purpose of the evaluation under subsection (e), the Secretary is authorized to require any small business international marketing program, or party receiving assistance under this section, to furnish such information as is deemed appropriate to complete the required evaluation.

(g) As used in this section, the term "applicant" means any State government or agency or instrumentality thereof, any Small Business Administration—designated small business development center, any for profit small business, any nonprofit corporation, any regional commission, or any combination of such entities, which will carry out a

small business international marketing program.

(h) The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriation Acts.

SEC. 202. At least one small business international program shall be established within each region of the Department of Commerce. There are authorized to be appropriated to the Secretary $1,500,000 for each fiscal year 1981, 1982, and 1983, to carry out the program established in section 201.

SEC. 203. The Secretary, through the International Trade Administration, shall, only to such extent and in such amounts as are provided in appropriation Acts on and after October 1, 1980, maintain a central clearinghouse to provide for the collection, dissemination, and exchange of information between programs established pursuant to this title, sections 105 and 106 of this Act, and other interested concerns.

TITLE III—NATIONAL EXPORT COUNCIL

ESTABLISHMENT AND MEMBERSHIP

SEC. 301. (a) There is hereby created a National Export Council (hereinafter referred to as "the Council") which shall be composed of the following members:

(1) (A) the Secretary of State;

(B) the Secretary of the Treasury;

(C) the Secretary of Agriculture;

(D) the Secretary of Commerce;

(E) the Secretary of Labor;

(F) the United States Trade Representative;

(G) the President and Chairman of the Export-Import Bank of the United States; and

(H) the Administrator of the Small Business Administration;

(2) three Members of the United States Senate, designated by the President of the Senate and three Members of the United States House of Representatives designated by the Speaker of the House;

(3) three Governors of States or territories, designated by the President; and

(4) no more than eighteen private citizens representing business and industry, agriculture, international banking, and labor to be appointed by the President, including at least five small business persons who are actively involved in export trade.

(b) The President shall appoint a Chairman of the Council from among its private citizen members who shall preside over the meetings of the Council.

(c) The Secretary of Commerce, with the concurrence of the Chairman, shall appoint an Executive Director.

FUNCTIONS

SEC. 302. (a) The Council shall serve as a national advisory body on matters relating to United States export trade. In carrying out such functions, the Council shall—

(1) survey and evaluate the export promotion and development activities of the communities represented by the membership;

(2) identify and examine specific problems which business, industrial, and agricultural practices may cause for export trade;

(3) examine the needs of business, industry, and agriculture to expand their efforts; and

(4) recommend specific legislative and administrative solutions to these problems and needs.

(b) The Council shall—

(1) act as liaison among the communities represented by its membership and may provide a forum for those communities on current and emerging problems and issues in the field of export promotion and development, and

(2) encourage the business, industrial, and agricultural communities to enter new foreign markets and to expand existing export programs.

(c) The Council shall provide advice on Federal plans and actions that affect export promotion and development policies which have an impact on those communities represented by its membership.

(d) The Council shall establish an executive committee and such other subordinate committees it considers necessary for the performance of its functions including, but not limited to, committees on export administration, export expansion and domestic disincentives, small business and export promotion, the General Agreement on Tariffs and Trade and the Multi-lateral Trade Negotiations, and Agriculture and East-West Trade. The chairman and members of the executive and subordinate committees shall be designated by the Chairman of the Council from among the membership of the Council.

ADMINISTRATIVE PROVISIONS

SEC. 303. (a) The Secretary of Commerce shall provide the Council, including its executive and subordinate committees, with administrative and staff services, support and facilities as may be necessary for the effective performance of its functions.

(b) Each member of the Council, including its executive and subordinate committees, who is not otherwise paid a salary by the Federal Government, shall receive no compensation from the United States by virtue of their service on the Council, but all members may receive the transportation and travel expenses, including per diem in lieu of subsistence, authorized by law.

(c) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I) except that of reporting annually to the Congress, which are applicable to the Council shall be performed by the Secretary of Commerce.

ANNUAL REPORT

SEC. 304. The Council shall transmit to the President and the Congress, not later than March 31 of each year, a full report on its activities, and the activities of its subordinate committees.

AUTHORIZATIONS

SEC. 305. There are authorized to be appropriated on or after October 1, 1980, such sums as may be necessary to carry out this title.

TITLE IV—COMMERCE DEPARTMENT—COMMERCIAL OFFICERS OVERSEAS

GENERAL PROVISIONS

SEC. 401. In order to develop, maintain, and expand international markets for the products and services of the United States; to insure the promotion and protection of United States trade and commercial services abroad for United States trade and commercial interests around the world; to provide trade and commercial services abroad for United States firms and businesses and trade and commercial organizations; and to secure trade and commercial information useful for the expansion of exports of United States products and services, the Secretary of Commerce (hereinafter referred to in this title as the "Secretary") is authorized to appoint such commercial ministers, commercial counselors, and commercial attachés, who shall be employees of the Department of Commerce (and who shall report to the Under Secretary for International Trade), as the Secretary determines to be necessary to carry out the purposes of this title and to assign such commercial ministers, commercial counselors, and commercial attachés to service abroad.

TRAINING OF COMMERCIAL OFFICERS

SEC. 402. Upon appointment, commercial officers shall participate in training sessions designed by the Secretary, in cooperation with the Department of State, the Foreign Service Institute, and other Federal agencies, to study export and import programs and to examine the needs of United States businesses for export information and assistance. As part of this training program the Secretary shall assign each officer to a field office of the Department to work in conjunction with the Department's field personnel responsible for implementation of export programs.

RANK AND PRIVILEGES

SEC. 403. Commercial ministers, commercial counselors, and commercial attachés assigned to posts abroad shall be accorded the same rank and privileges as those of other ministers, counselors, or attachés in the United States embassies and consulates.

RELATIONSHIP TO DIPLOMATIC MISSION

SEC. 404. Upon the request of the Secretary, the Secretary of State shall regularly and officially attach the commercial ministers, commercial counselors, and commercial attachés appointed and assigned hereunder to the diplomatic mission of the United States in the country in which such commercial ministers, commercial counselors, or commercial attachés or other personnel are to be assigned by the Secretary, and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

FUNCTIONS AND DUTIES

SEC. 405. Commercial ministers, commercial counselors, and commercial attachés appointed and assigned abroad by the Secretary under the title, and other personnel employed under their direction, in furtherance of the purposes set forth in section 401 and in accordance with regulations prescribed by the Secretary, shall have the following functions and duties:

(a) trade and commercial services, including, but not limited to—

(1) protection and promotion of United States trade and commercial interests and investments, including industrial property rights, within their districts;

(2) current market oriented assistance to United States firms and businesses visiting or operating within their districts;

(3) appointments and introductions for United States business persons visiting within their districts;

(4) assistance in pursuing trade opportunities;

(5) assistance, when appropriate, in the adjustment of trade and commercial disputes involving United States firms or commercial and financial interest; and

(6) assistance to other United States Government agencies or State agencies, and to firms and businesses with respect to trade missions, trade fairs, and other international trade and commercial exhibitions;

(b) export promotion, including, but not limited to—

(1) the promotion of United States exports and commercial interests in their districts;

(2) the creation, within the scope of their duties and as appropriate, of a demand for United States products and services in such districts; and

(3) the promotion of tourism in the United States by residents of the districts to which they are assigned;

(c) semiannual reports to the Secretary including, but not limited to, the following information:

(1) market conditions, commercial developments, and the economic climate within their districts, emphasizing changes between reports;

(2) implementation of and compliance with the provisions of multilateral and bilateral trade agreements with the United States by the government, agencies, or instrumentalities of the country to which they are assigned;

(3) specific industry and commodity conditions;

(4) foreign law and business practices affecting United States trade and commercial interests; and

(5) trade opportunities on an industry basis;

(d) maintain and make available current data on the commercial standing and capacity of foreign firms within their districts; and

(e) such other functions and duties as the Secretary determines to be necessary and proper for achieving the purposes of this title.

ASSIGNMENT TO UNITED STATES

SEC. 406. Any officer or employee appointed and assigned to a post abroad pursuant to this title may, in the discretion of the Secretary, be assigned for duty in the continental United States without regard to the civil service laws (and without reduction in grade if an appropriate position at the employee's grade is not available in any agency of the Department of Commerce) for a period of not more than three years.

OFFICE SPACE, EQUIPMENT, AND ADMINISTRATIVE AND CLERICAL PERSONNEL

SEC. 407. The Secretary of State, upon request of the Secretary, shall provide office space, equipment, facilities, and such other administrative and clerical services as may be required for the performance of the functions and duties of the commercial ministers, commercial counselors, and commercial attachés appointed and assigned abroad under this title, and other personnel employed under their direction, appropriate to Foreign Service officers or other personnel of the same rank and salary. The Secretary is authorized to reimburse or advance funds to the Secretary of State for such services. The Secretary is authorized, in accordance with applicable law and regulations prescribed by the Secretary, to employ locally such United States nationals or other personnel, as the Secretary deems necessary to further the purpose set forth in section 401 of this title or to the exercise and carrying out of the functions and duties of the commercial ministers, commercial counselors, and commercial attachés and other personnel appointed and assigned abroad under this title.

AGENCY, SERVICES, PERSONNEL, AND FACILITIES

SEC. 408. Upon the request of the Secretary, each Federal agency may make its services, personnel, and facilities available to the commercial ministers, commercial counselors, and commercial attachés appointed and assigned to a post abroad under this title in the performance of their functions and duties. The Secretary is authorized to reimburse or advance funds to any such agency for services, personnel, and facilities so made available.

PERFORMANCE OF FUNCTIONS IN FOREIGN LOCALITIES

SEC. 409. Each commercial minister, commercial counselor, or commerical attaché appointed and assigned under this title to a United States diplomatic mission abroad, may carry out the functions and duties authorized hereunder in such other nations as the Secretary, in consultation with the Secretary of State, may determine to be necessary and proper in order to carry out the purposes of this title.

REPORTS AND DISPATCHES—AVAILABILITY TO INTERESTED GOVERNMENT AGENCIES

SEC. 410. The reports and dispatches prepared by the commercial ministers, commercial counselors, or commercial attachés appointed and assigned abroad under this title shall be made available to the Department of State, the Small Business Administration and to other interested agencies of the Government.

REPRESENTATIVE ALLOWANCES

SEC. 411. Any commercial minister, commercial counselor, or commercial attaché appointed and assigned by the Secretary to a post abroad under this title, under regulations prescribed by the Secretary, may be authorized to receive a representation allowance in an amount to be determined by considering—

(a) the extent to which such commercial minister, commercial counselor, or commercial attaché can effectively use funds to further the purposes of this title;

(b) travel and entertainment expenses customary in the private trade for persons of comparable rank and salary; and

(c) the customs and practices in the nation to which he or she is assigned.

ALLOWANCES AND BENEFITS

SEC. 412. The Secretary may, under such rules and regulations as may be prescribed by the President or his designee, provide to the commercial ministers, commercial counselors, and commercial attachés appointed and assigned under this title, allowances and benefits similar to those provided by title IX of the Foreign Service Act of 1946. Leaves of absence for commercial ministers, commercial counselors and commercial attachés appointed and assigned under this title shall be on the same basis as is provided for Foreign Service of the United States by the Annual and Sick Leave Act of 1951.

ADVANCE PAYMENT FOR RENT AND OTHER SERVICES: FUNDS FOR COURTESIES TO FOREIGN REPRESENTATIVES

SEC. 413. In any foreign country where customs or practices require payment in advance for rent or other service, such payment may be authorized by the Secretary in accordance with regulations prescribed by the Secretary, upon consultation with the Secretary of State. Funds available for the purposes of this title may be used for extending courtesies to representatives of foreign countries, when so provided in appropriation or other law.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the committee amendments are considered and agreed to en bloc.

UP AMENDMENT NO. 1545

(Purpose: To establish the Department of Commerce as the lead agency for the export promotion center program)

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a technical amendment by Mr. LEVIN.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. LEVIN proposes an unprinted amendment numbered 1545.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning with page 8, line 8, strike out all through page 10, line 5, and insert in lieu thereof the following:

SEC. 106. (a) The Secretary of Commerce, after consultation with the Administrator of the Small Business Administration, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, and the Director of the Internal Revenue Service, shall establish an export promotion center in each of two district offices of the International Trade Administration of the Department of Commerce which are located in metropolitan areas where district offices of the Small Business Administration and the Internal Revenue Service exist.

(b) The Export-Import Bank of the United States, the Internal Revenue Service, the Overseas Private Investment Corporation, the Department of Commerce, and the Small Business Administration shall each designate at least one full-time employee to serve as such agency's full-time representative in each such center. Each person designated shall be familiar with the needs and problems of small business exporting and shall serve without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Each export promotion center shall serve as a one-stop information center on Federal Government export assistance, financing programs available to small business, and other provisions of law governing exporting for small business.

(c) Not later than six months after the enactment of this Act, the Secretary of Commerce shall report to the Select Committee on Small Business and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Small Business and the Committee on Foreign Affairs of the House of Representatives on the progress made in implementing the provisions of this section.

(d) Within two years after the date of enactment of this Act, the Secretary of Commerce shall evaluate these export promotion centers, including, but not limited to, an analysis of the effectiveness of the centers in developing and expanding small business exports, and a comparison of the effectiveness of the centers in relation to district offices of the Department of Commerce which do not have an export promotion center. Such evaluation shall be submitted to the Committees of the Senate and the House of Representatives referred to in subsection (c).

(e) This section shall take effect on October 1, 1980, or on the date of enactment of this Act, whichever occurs later and shall expire on October 1, 1983.

Mr. ROBERT C. BYRD. Mr. President, I submit a statement by Mr. LEVIN on the amendment.

● Mr. LEVIN. Mr. President, today the Senate is considering S. 2620, the Small Business Export Expansion Act. It is an important piece of legislation and one

which will assist small businesses in developing overseas markets.

During Small Business Committee consideration of this bill, an amendment which I offered was adopted establishing two one-stop export promotion centers. As written, the Small Business Administration was to be the lead agency in an effort to provide a full range of services to a small businessperson interested in exporting. It has subsequently become clear that the Department of Commerce is the most appropriate agency to lead this effort. This amendment provides that the Secretary of Commerce, in consultation with the Administrator of the Small Business Administration, the President of the Export-Import Bank, the President of the Overseas Private Investment Corporation, and the Director of the Internal Revenue Service, shall establish two export promotion centers.

This is essentially a pilot program to determine if locating all these agencies under one roof will substantially assist small business wanting to be involved in overseas trade. A number of witnesses who testified before the Small Business Committee during hearings on export policy testified in support of this concept and it was one of the recommendations of the White House Conference on Small Business. We will be able to test this concept for several years under this amendment and the Congress and the business community will have an opportunity to see if it is the workable and sensible program it appears to be. Small business now accounts for about 10 percent of our annual exports. Most authorities believe the potential for small firms is much greater and that 20,000 to 30,000 small businesses could be exporting. We must develop policies and legislation that encourage additional exporting by small business It not only would be good for small business, it would also benefit the entire economy by reducing our trade deficit.

I believe my amendment and the provisions contained in the Small Business Export Expansion Act are a step toward providing small businesses with the assistance needed to become more active in developing overseas markets. I urge my colleagues to support this important piece of legislation.●

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1545) was agreed to.

UP AMENDMENT NO. 1546

(Purpose: To authorize the Secretary of Commerce to use certain authorities under the Foreign Service personnel system)

Mr. BAKER. Mr. President, I send to the desk an amendment on behalf of Mr. WEICKER.

The PRESIDING OFFICER. The amendment will be stated:

The legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for Mr. WEICKER, proposes an unprinted amendment numbered 1546.

Mr. BAKER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 18, line 19, strike out all through line 11 on page 19, and insert in lieu thereof the following:

SEC. 401. (a) The purposes of this title are—

(1) to develop, maintain, and expand international markets for the products and services of the United States;

(2) to insure the promotion and protection of United States trade and commercial services abroad for United States trade and commercial interests around the world;

(3) to provide trade and commercial services abroad for United States firms and businesses and trade and commercial organizations; and

(4) to secure trade and commercial information useful for the expansion of exports of United States products and services.

(b) In carrying out the purposes of subsection (a), the Secretary of Commerce (hereafter in this title referred to as the "Secretary"), with respect to those employees of the Department of Commerce performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, may use authorities under the Foreign Service personnel system not conferred by law exclusively upon the Secretary of State, including the appointment of commercial ministers, commercial counselors, or commercial attaches and the assignment of such ministers, counselors, or attaches to service abroad.

Beginning on page 19, line 23, strike out all through line 14 on page 20.

On page 20, line 16, strike out "Sec. 405." and insert in lieu thereof "Sec. 403.".

Beginning on page 23, line 4, strike out all through line 22 on page 26.

● Mr. WEICKER. Mr. President, I rise in support of passage of S. 2620, the Small Business Export Expansion Act of 1980. This bill represents a synthesis of export promotion bills introduced by the chairman of the Small Business Committee, Senator NELSON and myself last year, specifically S. 2104 and S. 2040. I am extremely pleased that this legislation which the Senate considers today incorporates three titles from the original bill I introduced.

Hearings held by the Small Business Committee in September of last year provided a clear picture of the frustrations encountering small businesses that attempt to gain entrance to export markets. They are confronted by a Government uninterested and unable to provide small businesses the very basic tools necessary to a successful export operation. Not only do they meet obstacles at every turn, they are confronted with export "assistance" programs that fail to provide needed assistance.

At the Small Business Committee's 1979 hearings, and at hearings held on this legislation this spring, small business exporters pointed out that one of the most pressing problems they face is access to accurate and complete export information.

Currently, the Department of Commerce is the Federal clearinghouse for export information. However, many small businesses are not even aware that information and assistance is available. Small businesses that are aware such information exists have experienced great difficulty in obtaining the information in a readily usable form.

In addition, the Small Business Administration, whose statutory mission is to assist small business, is unfortunately of little use to those small firms endeavoring to market their products and services internationally. In fiscal year 1979, SBA employed only two full-time experts and spent less than $200,000 or approximately one-tenth of 1 percent of its total salary and expense budget to promote small business exports.

Because of these inadequacies a small business person who today goes to SBA for export information usually gets no answers to his questions and, more often than not, is simply referred to another agency—referred and put off and given useless pamphlets and made a victim of our Government's inability to place an appropriate emphasis on export promotion.

Faced with these shortfalls and the reluctance on the part of the bureaucracy to address the needs of small exporters, the Small Business Committee reported out this legislation mandating significant changes in SBA and the Department of Commerce programs designed to promote exports. Subsequently, the Banking Committee considered and reported favorably on S. 2620.

Mr. President, title I of S. 2620 amends the Small Business Act to substantially upgrade the export promotion activities of the Small Business Administration. Specifically, title I statutorily establishes an Office of International Trade at SBA whose mission will be to coordinate the export promotion efforts of the agency's 110 field offices in conjunction with export activities of other Federal agencies.

Funding is currently available for the agency to hire export specialists for each of the 10 Federal regions. These specialists will counsel small businesses on exporting procedures and problems, assist them in their dealings with other Federal agencies and advise them concerning available export programs and resources. With these personnel in the field, SBA's network of offices can be used effectively for the delivery of export information.

Mr. President, for the past 2 years I have been endeavoring to increase the effectiveness of SBA's international trade efforts. Through appropriations and authorization acts the Congress has directed SBA to hire these regional export development specialists. The Agency, in defiance of this clear congressional direction has steadfastly refused to comply. In the past few months some progress has been made, but it has come slowly and is a minimal effort. It is this "go slow" attitude that typifies this administration's export promotion efforts.

Under provisions of title II of S. 2620, grants would be made available to States and other entities to establish small business export development programs. These programs would provide much needed indepth assistance in all aspects of export financing, marketing, and operations. During committee consideration of this legislation, a number of successful export assistance programs were examined including the Massachusetts Port Authority's small business export program and programs at the Universities of Georgia and Wisconsin. These programs, in a very short period of time, have resulted in large increases in the export sales of participating companies.

Through this grant program, requiring a matching contribution by the sponsor equal to the Government's share, a partnership will be created with State governments and private sector entities. By providing a financial incentive through the grant, States will be encouraged to promote exports and will have the flexibility to design a program that effectively meets the needs of their individual regional economies.

Title III of this bill establishes a National Export Council. This Council is modeled after and is meant to replace the current President's Export Council. As currently constituted, membership of the President's Export Council does not include the Administrator of SBA or adequate representation from the small business community. There is also no requirement that States be represented on the Council at a time when individual States as well as the National Governors' Association are becoming increasingly involved in the promotion of exports and the development of export policies.

Title III of S. 2620 corrects this situation by mandating that the SBA Administrator, at least five small business persons actively involved in export and three State Governors be added to the Council's membership. I believe this membership more accurately reflects the constituencies in this country which have a keen interest in international trade and a role to play in the formulation of export policies.

Title IV of S. 2620 statutorily establishes the Foreign Commercial Service at the Department of Commerce. Pursuant to the trade reorganization plan which took effect in January of this year, 162 positions for commercial officers and 487 local employees who work in the commercial sections of U.S. Embassies were transferred from the Department of State to the Department of Commerce to form the Foreign Commercial Service. As a result, for the first time both the domestic and international trade promotion organizations of the Federal Government are located in the same department. This is an important first step toward improving our Nation's export promotion efforts.

However, the transfer of personnel alone does not insure a much needed improvement in the quality of operations in U.S. commercial offices located in embassies overseas. Experiences to date have not indicated that a marked improvement in the quality of services provided to American exporters has occurred.

It is imperative that U.S. commercial personnel overseas have as their first priority increasing sales of American goods overseas.

Title IV of this bill provides the Foreign Commercial Service with the necessary statutory guidance and direction to insure an effective level of performance and places the highest priority on providing services to American exporting firms. Under provisions of this title overseas commercial personnel will provide U.S. businesses with a broad range of marketing information and assistance, information on the creditworthiness of potential foreign buyers, assistance in resolving trade and commercial disputes, and assistance in contacting potential foreign buyers through individual meetings, trade fairs, missions, and exhibitions.

Title IV also will insure that personnel serving in the Foreign Commercial Service will have the same stature and all the rights and responsibilities as members of the Foreign Service under the Department of State. The Secretary of Commerce is authorized to utilize the Foreign Service personnel system with regard to those individuals serving in the commercial service overseas. This statutory authority will assist the Secretary of Commerce in his efforts to increase the effectiveness of our overseas export promotion efforts.

The administration has strongly opposed titles III and IV stating that this legislation is unnecessary and that it duplicates administrative efforts currently underway. I am well aware of this administration's efforts through Reorganization Plan No. 3 and through Executive orders and interagency agreements relating to the President's Export Council and the structure of the Commercial Foreign Service.

Despite these positive steps, various estimates of the number of export capable firms which are not exporting run as high as 20,000. If we are to reach these firms, if we are going to get small- and medium-sized businesses exporting, the Federal Government must mount a wholesale outreach effort.

The enactment of S. 2620 will insure that export promtion becomes a priority item. It will insure a consistent level of performance by the Commercial Service and make the promotion and sale of U.S. goods overseas their highest priority. It will insure that a National Export Council will continue to exist and will provide adequate representation for small business exporters. The enactment of S. 2620 will insure that the SBA will be able to provide assistance to small businesses striving to export.

Only through statute can this consistency of effort and performance be assured. Executive orders and interagency agreements can readily be changed at the whim or pleasure of employees of the Executive. With our balance-of-trade deficit increasing and our domestic economy in its current condition, this Nation cannot afford to leave the development of export promotion policies to Executive fiat. We cannot afford to allow small business markets to end at our shoreline.

Mr. President, small business can account for a large part of U.S. exports and play a major role in improving economic conditions in this country. The contributions of small business to productivity, employment, and new technologies is well documented. We must not continue to rely on a few large firms to carry American products to the world.

S. 2620 provides the impetus for new, more positive and responsive Government programs to aid the small exporter. I urge my colleagues to act favorably on this legislation and hope our colleagues in the House, seeing our resolve to aid small exporters, will move expeditiously so that this legislation can be enacted prior to adjournment of the 96th Congress.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee.

The amendment (UP No. 1546) was agreed to.

● Mr. NELSON. Mr. President, for 4 years the United States has run a trade deficit which last year alone totaled $24.7 billion. Our Nation's terrible balance-of-trade position weakens the dollar, fuels inflation, and gives the jobs of American workers to workers in foreign countries. And, we are fighting an uphill battle to achieve a favorable balance of trade. This year U.S. oil imports will sap our economy of more than $90 billion. That problem, which is a major contributor to the trade imbalance, will only get worse as OPEC oil prices increase.

The following statistics are cited to emphasize the relative export performance of the United States by measuring exports as a percent of GNP:

Country:	Percentage
Japan	13.6
West Germany	27.4
France	19.9
South Korea	30.1
Italy	25.5
United States	9.0

We can and must do a better job of competing in the global marketplace. With a concerted effort, we can balance our trade deficit. But to do so, more U.S. companies, especially small businesses, must become active exporters in the years ahead.

The specific purpose of S. 2620, the Small Business Export Expansion Act, is to help those small businesses become exporters. Let me briefly explain the major problems of new-to-export small businesses and how S. 2620 addresses those problems.

At the outset, small businesses who want to export face severe financial constraints. A major problem is that small businesses are unable to obtain sufficient short-term working capital loans from commercial banks. These loans are necessary for production and marketing of a product or service. As Alfred Daiboch, assistant vice president of Bankers and Trust Co. said before the Small Business Committee on March 13, 1980:

I can assure you that some type of pre-export guarantee program for small business is necessary.

Thomas Rees, a former Member of Congress and chairman of the Export Task Force of the White House Conference on Small Business also suggested

the need for preexport financing when he told the committee:

Eximbank or the SBA should consider providing pre-export financing to small businesses who have "bona-fide" export contracts; or should consider guaranteeing commercial bank credit extensions for this purpose.

Title I of S. 2620 accomplishes that purpose by expanding SBA's 7(a) regular business loan program to permit the extension of up to a $750,000, 18-month, preexport revolving line of credit. These loans can be guaranteed up to 90 percent.

In addition, the bill authorizes SBA to utilize its bank certification program (BCP) to deliver the newly authorized credit line feature. Under the BCP program, which was authorized in S. 2698, banks are a loan administration responsibility. As a result of Public Law 96-302, the average loan processing time has been reduced from over 3 weeks to approximately 3 days—a significant time-saving for a small business which will be competing in the world marketplace.

It should also be noted that title I creates two pilot one-stop shop information centers where a business can go to one location and receive all the information it needs about Federal assistance, laws, and regulations regarding exporting. By putting the major Federal agencies responsible for international trade, including the Commerce Department, the SBA, the Export-Import Bank, and the Overseas Private Investment Company, in one location in two cities, the bill incorporates an innovative attempt to stop the small businessman from getting the bureaucratic shuffle when he asks the Government for export information or assistance.

Finally, title I strengthens the role of the Office of International Trade within the Small Business Administration. The purpose of this office is not to duplicate the functions and export services offered by the Department of Commerce. Rather the purpose is to augment those services, to work and coordinate with the Commerce Department to assure the widest possible dissemination of export market information and to provide the necessary assistance to U.S. exporters.

Although the availability of financing is a critical problem in exporting, an equally important problem is the multitude of barriers to entry into export markets which small business must overcome. In spite of good efforts and programs by the Department of Commerce, most firms do not know how to find or assess the size of overseas markets for their products. U.S. exporters face a labyrinth of U.S. and foreign regulations that must be contended or complied with; they face problems with fluctuating exchange rates and with product pricing; they face shipping and freight forwarding problems; and, they often face foreign language and cultural problems.

The Small Business Committee found that these barriers can be overcome successfully and small businesses can penetrate export markets if they receive "hands-on" guidance. Title II of the committee's bill would provide that guidance. It establishes a grant program administered by the Department of Commerce for States, private concerns, and local and public entities to establish an individualized international marketing program for small business. The maximum grant would be $150,000 per year for 3 years. Assistance would be provided in the following areas:

Analyzing markets to determine the nature of a company's export potential;

Training and advising on matters concerning export pricing, shipping, documentation, financing, and business customs;

Identifying and contacting potential foreign purchasers and establishing trade missions in which small business executives would meet with prescreened potential buyers who have indicated a desire to purchase a product.

This provision of the bill will give small businesses the direct assistance they need to export successfully. It is modeled after the extremely successful international trade program run by the Massachusetts Port Authority and the Smaller Business Association of New England. For an expenditure of less than $100,000 annually, more than $3 million of revenue have flowed into New England companies as a result of program participation. That is a fifteenfold return on a dollar expended.

Furthermore, Mr. President, similar "hands-on" assistance programs run by the State of New York and the small business development centers at the University of Wisconsin and the University of Georgia have also yielded positive results.

The last two titles of the bill addresses organizational problems within the Federal Government's international trade bureaucracy. Title III statutorily creates the President's Export Council and increases small business representation on it. Title IV of the bill statutorily creates a job function for commercial attachés.

Of the millions of U.S. businesses, it is estimated that only about 25,000 directly engage in the sale of their goods and services in overseas markets. Of the 25,000 organizations that export it is further reported that 250 firms account for 80 percent of U.S. exports. This seems to indicate that major corporations dominate the Nation's present export performance and that other firms, regardless of their size, are either not committed to or presently do not have the expertise to actively participate or seek sales in overseas markets. Many of those nonexporting firms are small businesses. The Department of Commerce estimates that at least 20,000 U.S. firms could become exporters and many of those are small businesses.

A fundamental problem with U.S. export policy is that it has failed to adequately assist potential exporting firms to be come exporters. A key element of U.S. export policy, and the focus of the Small Business Export Expansion Act, is to get those firms involved in international trade. We can help small businesses overcome the financial, technical, and bureaucratic problems they must contend with when they try to engage in international commerce. This in turn will expand U.S. exports, help shore up the dollar abroad, help tackle one of our Nation's toughest domestic problems—inflation—and increase employment at home.

I urge my colleagues to support the Small Business Export Expansion Act. It is a small but important bill in our effort to improve our Nation's export performance.●

● Mr. LEAHY. Mr. President, I am pleased to have the opportunity to speak today in support of the Small Business Export Expansion Act of 1980, S. 2620.

I believe this act will equip many small businesses wishing to export with the tools they need to overcome the formidable obstacles now facing them.

As a nation we can no longer afford to overlook and neglect our full export potential. The Small Business Export Expansion Act—by providing small businesses with educational and marketing assistance, better access to export information and assistance, and a program for limited financial, technical, and management assistance—represents a giant step forward toward the full realization of our national export potential.

I especially wish to commend the Select Committee on Small Business and the Committee on Banking, Housing, and Urban Affairs for their wisdom in including the "encouragement of increased tourism in the United States" among the purposes of S. 2620. This provision was added with my full support and encouragement, and I believe it significantly strengthens and broadens the act before us today.

Mr. President, foreign tourism—that is foreign travel to the United States—may well be the U.S. product with the greatest potential for expansion in the world market today.

In 1979, international tourism receipts for the United States were $10 billion, and those receipts sustained an estimated 300,000 jobs in travel-related enterprises. It is particularly appropriate that I mention this in connection with the Small Business Export Expansion Act, because a full 98 percent of travel-related enterprises are small businesses.

America itself is a product with tremendous international appeal at this time. It is easily obtainable, and it is being sold at a price which is considerably cheaper than the competition. As you know, Mr. President, travel expenditures by foreign visitors generate foreign currency gains for the United States. They should, therefore, be viewed as exports and included in all Government export promotion efforts. I am pleased that this act fully recognizes and capitalizes on this important fact.

In testimony in support of the Small Business Export Expansion Act, it has been stated repeatedly that an estimated 20,000 U.S. firms could export but do not. I believe another 20,000 of the 1 million firms within the U.S. travel industry share this same untapped export potential.

For these reasons I urge that the Senate favorably consider S. 2620 with the promotion of foreign tourism included among the purposes to be furthered by the act.●

The bill was ordered to be engrossed

for a third reading, was read the third time, and passed, as follows:

S. 2620

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Export Expansion Act of 1980".

SEC. 2. (a) The Congress finds and declares that—

(1) a strong export policy is essential to the health and well-being of the United States economy;

(2) exports of goods and services account for one out of every six jobs in the manufacturing sector and 10 per centum of the gross national product;

(3) every billion dollars in new exports is estimated to provide forty thousand jobs;

(4) there is increased and fierce competition in international markets to United States goods and services;

(5) small businesses account for no more than 10 per centum of all United States export sales;

(6) Federal Government programs are not sufficiently responsive to the needs of small business for export education and development of overseas marketing opportunities necessary to insure that small businesses realize their potential; and

(7) it is in the national interest to systematically and consistently promote and encourage small business participation in international markets.

(b) It is therefore the purpose of this Act to encourage and promote small business exporting by—

(1) providing educational and marketing assistance to small businesses;

(2) insuring better access to export information and assistance for small businesses by upgrading and expanding the export development programs and services of the Department of Commerce and the Small Business Administration; and

(3) promoting the competitive viability of such firms in export trade and encouraging increased tourism in the United States by creating a program to provide limited financial, technical, and management assistance as may be necessary.

TITLE I—SMALL BUSINESS EXPORT FINANCING ASSISTANCE

SEC. 101. Section 5(b)(7) of the Small Business Act is amended to read as follows:

"(7) in addition to any powers, functions, privileges, and immunities otherwise vested in him, take any and all actions (including the procurement of the services of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this Act: *Provided,* That nothing herein shall be construed as authorizing the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions, in his discretion pursuant to regulations promulgated by him, to take such actions on his behalf, including, but not limited to the determination of eligibility and credit worthiness, and loan monitoring, collections and liquidation;".

SEC. 102. Section 7(a) of the Small Business Act is amended by inserting before the phrase "to finance plant construction," the phrase "to finance export assistance,".

SEC. 103. Section 7(a) of the Small Business Act is further amended by inserting before the phrase "The foregoing powers shall be subject, however," the following new sentences: "The Administration is further empowered, only to such extent and in such amounts as are provided in appropriation Acts, to make or effect either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing: *Provided, however,* That no such extension or revolving line of credit may be made for a period or periods exceeding eighteen months. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable.".

SEC. 104. Section 7(a)(4) of the Small Business Act is amended by adding at the end thereof the following new sentence: "In the case of any deferred participation loan or extension or revolving line of credit made under section 7(a) for export purposes, the total amount outstanding and committed (by participation or otherwise) to the borrower from the revolving fund established by section 4(c)(1)(B) of this Act shall not exceed $750,000.".

SEC. 105. (a) The Small Business Act is amended by redesignating sections 16 through 21 as sections 17 through 22, respectively, and by inserting after section 15 the following new section:

"SEC. 16. (a) There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section.

"(b) The office shall promote sales opportunities for small business goods and services abroad. To accomplish this objective the office shall—

"(1) provide small businesses with access to current and complete export information by—

"(A) making available, at the Administration's regional offices through cooperation with the Department of Commerce, export information, including, but not limited to, the worldwide information and trade system and world trade data reports;

"(B) maintaining a current list of financial institutions that finance export operations;

"(C) maintaining a current directory of all Federal, regional, State and private sector programs that provide export information and assistance to small businesses; and

"(D) preparing and publishing such reports as it determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of small business exporting firms so as to insure that the maximum information is made available to small businesses in a readily usable form;

"(2) encourage through cooperation with the Department of Commerce, greater small business participation in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce; and

"(3) facilitate decentralized delivery of export information and assistance to small businesses by assigning full-time export development specialists to each Administration regional office. Such specialists shall—

"(A) assist small businesses in obtaining export information and assistance from other Federal departments and agencies;

"(B) maintain a current directory of all programs which provide export information and assistance to small businesses within the region;

"(C) encourage financial institutions to develop and expand programs for export financing;

"(D) provide advice to Administration personnel involved in granting loans, loan guarantees, and extensions and revolving lines of credit, and providing other forms of assistance to small businesses engaged in exports; and

"(E) within one hundred and eighty days of their appointment, participate in training programs designed by the Administrator, in conjunction with the Department of Commerce and other Federal departments and agencies, to study export programs and to examine small businesses' needs for export information and assistance.".

(b) The amendment made by subsection (a) shall take effect on October 1, 1980, or the date of enactment of this Act, whichever occurs later.

SEC. 106. (a) The Secretary of Commerce, after consultation with the Administrator of the Small Business Administration, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, and the Director of the Internal Revenue Service, shall establish an export promotion center in each of two district offices of the International Trade Administration of the Department of Commerce which are located in metropolitan areas where district offices of the Small Business Administration and the Internal Revenue Service exist.

(b) The Export-Import Bank of the United States, the Internal Revenue Service, the Overseas Private Investment Corporation, the Department of Commerce, and the Small Business Administration shall each designate at least one full-time employee to serve as such agency's full-time representative in each such center. Each person designated shall be familiar with the needs and problems of small business exporting and shall serve without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Each export promotion center shall serve as a one-stop information center on Federal Government export assistance, financing programs available to small business, and other provisions of law governing exporting for small business.

(c) Not later than six months after the enactment of this Act, the Secretary of Commerce shall report to the Select Committee on Small Business and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Small Business and the Committee on Foreign Affairs of the House of Representatives on the progress made in implementing the provisions of this section.

(d) Within two years after the date of enactment of this Act, the Secretary of Commerce shall evaluate these export promotion centers, including, but not limited to, an analysis of the effectiveness of the centers in developing and expanding small business exports, and a comparison of the effectiveness of the centers in relation to district offices of the Department of Commerce which do not have an export promotion center. Such evaluation shall be submitted to the Committees of the Senate and the House of Representatives referred to in subsection (c).

(e) This section shall take effect on October 1, 1980, or on the date of enactment of this Act, whichever occurs later and shall expire on October 1, 1983.

TITLE II—SMALL BUSINESS EXPORT EXPANSION ASSISTANCE

SEC. 201. (a) The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to make grants (including contracts and cooperative agreements) to a qualified applicant to encourage the development and implementation of a small business international marketing program (hereinafter referred to as "the program"). Each qualified applicant under this title may receive a Federal grant not to exceed $150,000 annually for each of three years. Nothing in this section shall be construed as authoriz-

ing the Secretary to enter into contracts or incur obligations except to such extent and in such amounts as are provided in appropriation Acts.

(b)(1) To be eligible for a grant under this section, an applicant proposing to carry out a small business international marketing program must submit to the Secretary an application demonstrating, at a minimum:

(A) the geographical area to be served;

(B) the number of firms to be assisted;

(C) the staff required to administer the program;

(D) the means to counsel small buisnesses interested in pursuing export sales, including providing information concerning available financing, credit insurance, tax treatment, potential markets and marketing assistance, export pricing, shipping, documentation, and foreign financing and business customs;

(E) the ability to provide market analysis of the export potential of small business concerns; and

(F) the capability for developing contacts with potential foreign customers and distributors for small business and their products, including arrangements and sponsorship of foreign trade missions for small business concerns to meet with identified potential customers, distributors, sales representatives, and organizations interested in licensing or joint ventures: *Provided, however*, That no portion of any Federal funds may be used to directly underwrite any small business participation in foreign trade missions abroad.

(2) Program services shall be provided to small business concerns through outreach services at the most local level practicable.

(3) Each small business international marketing program shall have a full-time staff director to manage program activities, and access to export specialists to counsel and to assist small business clients in international marketing.

(c)(1) Each small business international marketing program shall establish an advisory board of nine members to be appointed by the staff director of the program, nor less than five members of whom shall be small business persons or representatives of small business associations.

(2) Each advisory board shall elect a chairman and shall advise, counsel, and confer with the staff director of the program on all policy matters pertaining to the operation of the program (including who may be eligible to receive assistance, ways to promote the sale of United States products and services in foreign markets or to encourage tourism in the United States, and how to maximize local and regional private consultant participation in the program).

(d) The Secretary shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section, that sum equal to the amount of such grant be provided from sources other than the Federal Government: *Provided*, That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount.

(e) The Secretary shall develop a plan to evaluate programs approved under this section which shall only—

(1) determine the impact of small business international marketing programs on those small businesses assisted;

(2) determine the amount of export sales generated by small businesses assisted through such programs; and

(3) make recommendations concerning continuation and/or expansion of the program and possible improvements in the program structure. Such evaluation shall be submitted to the Congress by October 1, 1982.

(f) For the purpose of the evaluation under subsection (e), the Secretary is authorized to require any small business international marketing program, or party receiving assistance under this section, to furnish such information as is deemed appropriate to complete the required evaluation.

(g) As used in this section, the term "applicant" means any State government or agency or instrumentality thereof, any Small Business Administration—designated small business development center, any for profit small business, any nonprofit corporation, any regional commission, or any combination of such entities, which will carry out a small business international marketing program.

(h) The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriation Acts.

SEC. 202. At least one small business international program shall be established within each region of the Department of Commerce. There are authorized to be appropriated to the Secretary $1,500,000 for each fiscal year 1981, 1982, and 1983, to carry out the program established in section 201.

SEC. 203. The Secretary, through the International Trade Administration, shall, only to such extent and in such amounts as are provided in appropriation Acts on and after October 1, 1980, maintain a central clearinghouse to provide for the collection, dissemination, and exchange of information between programs established pursuant to this title, sections 105 and 106 of this Act, and other interested concerns.

TITLE III—NATIONAL EXPORT COUNCIL

ESTABLISHMENT AND MEMBERSHIP

SEC. 301. (a) There is hereby created a National Export Council (hereinafter referred to as "the Council") which shall be composed of the following members:

(1)(A) the Secretary of State;

(B) the Secretary of the Treasury;

(C) the Secretary of Agriculture;

(D) the Secretary of Commerce;

(E) the Secretary of Labor;

(F) the United States Trade Representative;

(G) the President and Chairman of the Export-Import Bank of the United States; and

(H) the Administrator of the Small Business Administration;

(2) three Members of the United States Senate, designated by the President of the Senate and three Members of the United States House of Representatives designated by the Speaker of the House;

(3) three Governors of States or territories, designated by the President; and

(4) no more than eighteen private citizens representing business and industry, agriculture, international banking, and labor to be appointed by the President, including at least five small business persons who are actively involved in export trade.

(b) The President shall appoint a Chairman of the Council from among its private citizen members who shall preside over the meetings of the Council.

(c) The Secretary of Commerce, with the concurrence of the Chairman, shall appoint an Executive Director.

FUNCTIONS

SEC. 302 (a) The Council shall serve as a national advisory body on matters relating to United States export trade. In carrying out such functions, the Council shall—

(1) survey and evaluate the export promotion and development activities of the communities represented by the membership;

(2) identify and examine specific problems which business, industrial, and agricultural practices may cause for export trade;

(3) examine the needs of business, industry, and agriculture to expand their efforts; and

(4) recommend specific legislative and administrative solutions to these problems and needs.

(b) The Council shall—

(1) act as liaison among the communities represented by its membership and may provide a forum for those communities on current and emerging problems and issues in the field of export promotional and development, and

(2) encourage the business, industrial, and agricultural communities to enter new foreign markets and to expand existing export programs.

(c) The Council shall provide advice on Federal plans and actions that affect export promotion and development policies which have an impact on those communities represented by its membership.

(d) The Council shall establish an executive committee and such other subordinate committees it considers necessary for the performance of its functions including, but not limited to, committees on export administration, export expansion and domestic disincentives, small business and export promotion, the General Agreement on Tariffs and Trade and the Multi-lateral Trade Negotiations, and Agriculture and East-West Trade. The chairman and members of the executive and subordinate committees shall be designated by the Chairman of the Council from among the membership of the Council.

ADMINISTRATIVE PROVISIONS

SEC. 303. (a) The Secretary of Commerce shall provide the Council, including its executive and subordinate committees, with administrative and staff services, support and facilities as may be necessary for the effective performance of its functions.

(b) Each member of the Council, including its executive and subordinate committees, who is not otherwise paid a salary by the Federal Government, shall receive no compensation from the United States by virtue of their service on the Council, but all members may receive the transportation and travel expenses, including per diem in lieu of subsistence, authorized by law.

(c) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I) except that of reporting annually to the Congress, which are applicable to the Council shall be performed by the Secretary of Commerce.

ANNUAL REPORT

SEC. 304. The Council shall transmit to the President and the Congress, not later than March 31 of each year, a full report on its activities, and the activities of its subordinate committees.

AUTHORIZATIONS

SEC. 305. There are authorized to be appropriated on or after October 1, 1980, such sums as may be necessary to carry out this title.

TITLE IV—COMMERCE DEPARTMENT—COMMERCIAL OFFICERS OVERSEAS

GENERAL PROVISIONS

SEC. 401. (a) The purposes of this title are—

(1) to develop, maintain, and expand international markets for the products and services of the United States;

(2) to insure the promotion and protection of United States trade and commercial services abroad for United States trade and commercial interests around the world;

(3) to provide trade and commercial services abroad for United States firms and businesses and trade and commercial organizations; and

(4) to secure trade and commercial information useful for the expansion of exports of United States products and services.

(b) In carrying out the purposes of subsection (a), the Secretary of Commerce (hereafter in this title referred to as the "Secretary"), with respect to those employees of the Department of Commerce performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, may use authorities under the Foreign Service personnel system not conferred by law exclusively upon the Secretary of State, including the appointment of commercial ministers, commercial counselors, or commercial attaches and the assignment of such ministers, counselors, or attaches to service abroad.

TRAINING OF COMMERCIAL OFFICERS

SEC. 402. Upon appointment, commercial officers shall participate in training sessions designed by the Secretary, in cooperation with the Department of State, the Foreign Service Institute, and other Federal agencies, to study export and import programs and to examine the needs of United States businesses for export information and assistance. As part of this training program the Secretary shall assign each officer to a field office of the Department to work in conjunction with the Department's field personnel responsible for implementation of export programs.

FUNCTIONS AND DUTIES

SEC. 403. Commercial ministers, commercial counselors, and commercial attachés appointed and assigned abroad by the Secretary under the title, and other personnel employed under their direction, in furtherance of the purposes set forth in section 401 and in accordance with regulations prescribed by the Secretary, shall have the following functions and duties:

(a) trade and commercial services, including, but not limited to—

(1) protection and promotion of United States trade and commercial interests and investments, including industrial property rights, within their districts;

(2) current market oriented assistance to United States firms and businesses visiting or operating within their districts;

(3) appointments and introductions for United States business persons visiting within their districts;

(4) assistance in pursuing trade opportunities;

(5) assistance, when appropriate, in the adjustment of trade and commercial disputes involving United States firms or commercial and financial interest; and

(6) assistance to other United States Government agencies or State agencies, and to firms and businesses with respect to trade missions, trade fairs, and other international trade and commercial exhibitions;

(b) export promotion, including, but not limited to—

(1) the promotion of United States exports and commercial interests in their districts;

(2) the creation, within the scope of their duties and as appropriate, of a demand for United States products and services in such districts; and

(3) the promotion of tourism in the United States by residents of the districts to which they are assigned;

(c) semiannual reports to the Secretary including, but not limited to, the following information:

(1) market conditions, commercial developments, and the economic climate within their districts, emphasizing changes between reports;

(2) implementation of and compliance with the provisions of multilateral and bilateral trade agreements with the United States by the government, agencies, or instrumentalities of the country to which they are assigned;

(3) specific industry and commodity conditions;

(4) foreign law and business practices affecting United States trade and commercial interests; and

(5) trade opportunities on an industry basis;

(d) maintain and make available current data on the commercial standing and capacity of foreign firms within their districts; and

(e) such other functions and duties as the Secretary determines to be necessary and proper for achieving the purposes of this title.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DISABLED VETERANS REHABILITATION ACT OF 1980

The PRESIDING OFFICER. The clerk will state the pending business.

The legislative clerk read as follows:

A bill (S. 1188) to improve and modernize the vocational rehabilitation program provided service-disabled veterans under chapter 31 of title 38, United States Code, and for other purposes.

THE UNITED STATES SENATE

Mr. ROBERT C. BYRD. Mr. President, when I last spoke on the subject of the United States Senate, I closed that statement by referring to the farewell speech to the old Senate Chamber by Vice President John Breckinridge.

The Senate had been meeting in the Chamber down the hall since 1810. From 1810 to 1859, the Senate met just down the hall here; and on the occasion after Breckinridge had delivered his farewell message, he led the Secretary and the Sergeant at Arms of the Senate and the Senators, as they solemnly marched down the corridor and into this Chamber, where we, their successors—the distinguished Senator from New Jersey (Mr. WILLIAMS) is here with me now, and the distinguished Senator from Nebraska (Mr. EXON) is in the Chair—continue to meet.

This is the Chamber in which Senators have met since 1859, and when they came to this Chamber, there were 64 Senators. The Union had grown to the point that there were 32 States and 64 Senators. I believe that when the distinguished Senator from New Jersey and I came to this Chamber, there were 96 Senators; there were 48 States. After he and I became Members, Alaska and Hawaii were admitted into the Union. We saw their Senators sworn in, and the number reached 100, what it is today. But in 1859, when the Members moved into this Chamber, there were only 64 Senators.

The *New York Times* of January 5, 1859, gave a detailed description of the beautiful new chamber that awaited the 64 senators, and of the marvel of a heating system installed to serve it:

> The general aspect of the new Senate Hall is light and graceful. In shape and dimensions it is similar to the new Hall of Representatives, but to the eye appears more finely proportioned. . . . The inner roof, or ceiling, of iron, is flat, with deep panels, twenty-one of which are filled with ground glass, having in the center of each pane a colored medallion representing the printing press, steam engine, cornucopia, and other symbols. The light is supplied wholly through this window in the roof. The gas apparatus is placed above the ceiling. The ceiling is 35 feet from the floor, but presents an appearance of greater altitude. It is incrusted with floral and other embellishments in high relief, and all of iron. The floor of the chamber is covered with 1,700 yards of tapestry carpeting, having a large pattern of flowers on a purple ground. . . .
>
> The heating and ventilation arrangements are said to be the largest in the world—those of the English House of Parliament not excepted. Every portion of the Capitol—that mountainous mass of marble—is at once ventilated and warmed by one apparatus. The air is graduated according to the atmospheric temperature without and the political excitement within—during a sectional debate never to exceed 90 degrees, and on ordinary occasions to range between 70 degrees and 73 degrees.

Carpets and color schemes have changed over the last 121 years but much about our chamber has remained the same. Our desks, for example, are the same style as those which Clay, Webster, and Calhoun used to write upon. All of the desks purchased from Thomas Constantine in 1819 followed the senators into this chamber in 1859, and new ones, copied after the old, were added with the admission of each new state.

The custom of dividing the Senate desks by Party is very old but not always rigidly followed. In the old Senate chamber, an equal number of desks were placed on either side of the aisle, without regard to party size. During the 1840's and 1850's, Democrats could be found sitting at random on the Whig side. And when the Senate moved into this chamber, the practice of dividing the desks equally continued for several years. In 1877, the practice developed of moving desks back and forth across the center aisle to permit all the members of each party to sit on the appropriate side.

Facing the Chair, the Democrats sit on the Chair's right, and the Republicans sit on the Chair's left.

Occasionally, however, one party has elected such an overwhelming majority that some of its members had to sit with the minority. For instance, during the Sixtieth Congress (1907–1909), ten Republicans sat on the Democratic side, while during the Seventy-fifth Congress (1937–1938), thirteen Democrats sat on the Republican side. Such seating became known as the "Cherokee Strip," in the sense that the overflow senators were off their reservation. The seating of the majority and minority leaders at the front row desks on either side of the center aisle is another relatively recent Senate tradition, dating back to 1927 for the Democrats, and 1937 for the Republicans.

I note for the RECORD that other majority leaders have inscribed their names in the Majority Leader's desk drawer, beginning with the name of Robinson of Arkansas, followed by Barkley of Ken-

tucky, Lucas of Illinois, McFarland of Arizona, Johnson of Texas as minority leader and then Johnson of Texas as majority leader, then Mansfield. As of this moment, I have not yet inscribed my name in the desk.

I take the liberty now of crossing over on the other side of the aisle and reading from the inscriptions in the minority leader's desk drawer. I read the following names: Frye, La Follette, Cummins, Capper, White, Jr., Wherry, Taft, Brewster, Knowland, Dirksen, Scott, and BAKER.

One of the few changes to our desks, in addition to the writing boxes I mentioned, has been the introduction, in 1969, of the inconspicuous apparatus for our public address system which enables us to be heard elsewhere on the floor, in the galleries, and in our offices.

There is now a quiet dignity and a rich tradition associated with this Senate chamber. Though renovated and redecorated over the last 121 years, its historical details have been preserved. Today, we conduct the nation's affairs against a background of cream and dark-red marble, gold silk damask walls, and the rich gleam of our carefully preserved mahogany desks.

As President of the Senate, the Vice President of the United States presides over the Senate from his mahogany desk on the rostrum before us. Dramatic red Levanto marble pilasters on either side of a heavy blue velvet drape fringed with gold provide an impressive backdrop. Carved in Hauteville cream marble about the rostrum is the motto, *E Pluribus Unum* (One Out of Many). Here stands the huge silk flag of the United States. Secretaries of the majority and minority sit on each side of the flag. The Secretary for the majority, Mr. Joe Stewart, sits in the chair to the right of the Presiding Officer. The secretary to the minority, Mr. Hildenbrand, sits in the chair to the left of the Presiding Officer. The Secretary of the Senate sits on the Vice President's left just in front of the secretary of the minority, and the Sergeant-at-Arms sits on the chair at the right just in front of the secretary for the majority.

At the long marble desk on the rostrum sit the Senate assistant secretary when he uses the chair, the legislative clerk, the Parliamentarian, and the journal clerk.

The two long mahogany tables in front of the rostrum are for the reporters of debates, although they seldom use those tables and especially during spirited debates, these tireless employees of the Senate rarely get a chance to sit down. The reporter of debates who is here taking down what I have to say is standing, as we can see.

As the usual thing, Mary Jane Checci, staff director of the Democratic Policy Committee staff and Howard Green, assistant to the minority and others sit at these mahogany tables to inform Senators as to what the vote count is, what the subject matter of a particular vote is all about, and what the issue is on which Senators are voting. These persons are seated at the mahogany table as the usual thing during votes to advise Senators as they come into the Chamber to cast their votes.

The current rostrum is relatively new to this chamber, being a product of the 1949–1950 restoration. During this refurbishing, a little part of the Senate chamber found its way to Kentucky. In 1950, the Senate resolved to honor Vice President John Breckinridge who first occupied the vice president's desk in the chamber, and Vice President Alben Barkley, who would be the last to use it, both being Kentuckians, by presenting this venerable relic to Mr. Barkley for his lifetime. Thereafter it was to become the property of their beloved State of Kentucky. And today it is on display in the Alben Barkley Collection at the University of Kentucky in Lexington.

In 1951, the Senate further resolved that the large clerk's desk, measuring 15 feet by 3 feet, which had matched the vice president's desk, should follow it to Kentucky. Until the 1970's, it was located in the Old Capitol Building in Frankfort. After that building was remodeled, the clerk's desk was moved to the Kentucky Building at Western Kentucky University in Bowling Green, where it is handsomely displayed.

Among the most revered articles in this chamber is the ivory gavel once used by vice presidents to call the Senate to order. The small, handleless gavel is of solid ivory, and measures 1⅜ inches in diameter and 2½ inches in length. According to tradition, this was the little piece of ivory with which the nation's first vice president, John Adams, called to order the first Senate session in New York City in 1789.

In 1947, after more than a century and a half of hard use, the gavel began to splinter. Silver disks were added to each face to try to strengthen and preserve it. But, alas, the ravages of time could not be halted. During a late night session in 1954, in the midst of a heated debate on atomic energy, the gavel, while being used to perform its proper function, suddenly began to disintegrate. The old gavel, wielded by some of the most venerable figures in the nation's history, had made its last demand for order. The pins securing the silver disks were broken; the ivory, yellow with age, had splintered.

A new gavel had to be found, and sentiment demanded that it be a similar weight and form as the old. When no piece of ivory large enough could be secured through commercial sources, the Sergeant-at-Arms appealed to the Indian Embassy for assistance. This sister republic not only furnished a piece of ivory but had a new gavel carved from a model of the old one, and sent her vice president to the United States to present it in person to the United States Senate. On November 17, 1954, the formal presentation was made in this chamber. In accepting the gavel, Vice President Richard Nixon, who had been wielding the old one when it fell apart, announced:

> For the benefit of those who have been in the galleries in the past, and those who will be there in the future, we shall place the old gavel . . . in a box which will be kept on the Senate Rostrum, while the Senate is in session. We shall use in its place the gavel of solid ivory, which has been presented to us, it seems to me quite significantly and appropriately, by the largest democracy in the world.

Moments before the opening of a Senate session, a page picks up the gavel case in the Office of the Sergeant-at-Arms, carries it to this chamber, and places it on the desk of the vice president.

I ask the Chair if he will for the moment put his hand on the gavel case. The Chair—Senator EXON of Nebraska sitting in the chair at the moment—is indicating the gavel case for the benefit of those who are listening, and that gavel case is picked up every day in the office of the Sergeant-at-Arms and carried by page to this Chamber and is placed on the desk of the Vice President where it now sits. In that gavel case is the old gavel which tradition has it was used by John Adams when he first opened the Senate in 1789. The new gavel is also daily placed in readiness. The old gavel remains at rest, a mute symbol of the first call to order 191 years ago.

Two other relics of the Senate's past, so small they are easily overlooked, rest here in the Chamber. They are two tiny lacquered snuff boxes resting on the marble ledges flanking the rostrum. Though I have never seen any of my colleagues take a pinch, the snuff boxes are kept filled by our pages. I am not sure that all Senators are aware of the presence of these lacquered snuff boxes, but for the benefit of Senators, pages, and others who may be watching and listening, there is one of the snuff boxes sitting here and it has in it some snuff which I will take a pinch of just now, and the other lacquered box sits in a similar place to the right of the Presiding Officer, and here it is and today it happens to be empty of snuff.

The pages will, before the day is over, see that the snuff supply is renewed in that box.

At one time, in the early 1800's, there was only one snuff box in the Old Senate Chamber. In his memoirs, former page Isaac Bassett, who, by the late 1800's had risen to the post of Senate Doorkeeper, recalled how the tradition of the two snuffboxes arose. It was always his custom, he said, to keep a snuffbox on the vice president's desk. The senators used to step up to the desk to get a pinch of snuff and they would stop to chat awhile with the vice president. Sometimes two or three senators would be standing at the rostrum, each with a pinch of snuff in his fingers, deep in conversation. One day in 1849, vice president Millard Fillmore complained to Bassett in desperation, "I want you to take this snuff box away from here. I can't understand what is going on in the Chamber because of the interruptions and the conversations of Senators who come here for snuff."

Mr. Fillmore suggested that boxes be placed on either side of the chamber and Bassett complied with the little boxes we see today and which I pointed out a moment ago.

I know of no Senator in the present membership who either sniffs or dips snuff. There is the sniffing kind and also

the dipping kind. There are two kinds of snuff. One is dry and the other is moist. The moist snuff in the can which is delivered to the Senate Sergeant at Arms and used in the Senate snuffboxes was first manufactured in 1911.

For the benefit of those who may not have ever tasted snuff, may I say that snuff is a pulverized form of tobacco that is either inhaled through the nose or chewed.

I visited with Chancellor Schmidt of West Germany some time ago. Chancellor Schmidt uses snuff. As I recall, he uses the dipping kind.

My foster mother used snuff. She used the dipping kind.

I used to sell snuff—sweet snuff, Scotch snuff, Copenhagen, and it used to be a greatly used item. I still get back to the stores in West Virginia, back in the rural areas now, and I always look on the shelves to see if they are selling any snuff, and I find they still sell some snuff.

Snuff is made mainly from heavy-bodied grades of dark, fire-cured tobacco leaves and stems. The preparation may be moist or dry, the former being known as rappee, and the latter as Irish, Scotch, or sweet snuff, among other names.

Today, while we have no Senators who use snuff, the assistant to the Secretary for the Majority, Mr. Patrick Hynes, is a user of snuff, so that those who read the history of this institution a hundred years from now may know that snuff was not something that was unknown entirely to this august body in the year 1980.

The habit of snuff-taking in the Senate Chamber is as old as the Senate. For any today who would cast a jaundiced eye at the use of snuff, we might pause to be reminded that during the first half of the 19th Century most Members of this body carried their own boxes of finely ground tobacco and some even kept two boxes on their person, one containing a mixture for personal use and another, usually a milder type, which was offered to friends. Washington's leading Presidential hostess, Dolley Madison, is reported to have carried as many as three snuff boxes at White House receptions.

So while the custom of taking snuff in the Chamber has all but disappeared, the boxes continue to be filled by the staff of the Sergeant at Arms.

Seven sets of double doors lead into this Chamber, two to the Presiding Officer's immediate left, two to the Presiding Officer's immediate right; two to the east, two to the west, and three to the south—to the Democratic Cloakroom, to the Republican Cloakroom, and a third set of which points toward the corridor leading south to the other body.

As I noted in my first statement in this series, we are surrounded by Latin inscriptions, all of which our citizens carry daily on the reverse side of the $1 bill.

The sculpture *Patriotism* and motto *Annuit Coeptis* (God Has Favored Our Undertakings) appear over the east entrance; *Courage* and the motto *Novus Ordo Seclorum* (A New Order of the Ages) are over the west entrance, and *Wisdom* and our national motto "In God We Trust" appear over the south-central entrance.

On the upper level of the chamber, above these doorways, are the galleries of the Senate which can seat over 600 people. The press gallery occupies the entire north side of the chamber, and the various other galleries are reserved for the public, staff, diplomats and their guests, and senators' families. This is where America comes to witness our deliberations. Here we are on view to those to whom we are accountable.

Some of our visitors may wonder why they are not permitted to sit in the front row or lean on the railings. Such precautions are security measures and date back to the suffrage movement in the early part of this century. Richard Riedel, a former page, recalls the incident that produced the ban. One day in 1918, the galleries were full, particularly the one east of center, with ladies intent upon the suffrage debate. Suddenly, one of the women quickly lowered a golden satin banner over the railing. Startled senators looked up to read, "What Will You Do For Woman Suffrage?" Consternation swept the chamber. Doorkeepers tried to reach the ladies only to find the aisle blocked by their fellow suffragettes. In a few moments, a page was sent to climb up on someone's shoulders, reach up and yank the banner from the ladies' hands. The ladies watched in disappointment as their banner disappeared from the chamber.

Highlighting the gallery walls above us are marble busts of 20 vice presidents, resting in marble niches. The Senate first authorized placing these busts in 1886, and by 1898 all available niches were filled.

Since that time, busts of vice presidents have been placed in the halls surrounding the chamber, as well as in the Senate Reception Room. The two most recently placed are those of Lyndon Johnson and Richard Nixon.

Mr. President, while I was speaking of the desks a moment ago, I meant to refer to the blotting salt. The blotting salt on the Senate desk is known as "pounce." From the Middle Ages to the present day, pounce was made from the ground-up bone of the cuttlefish. The limestone in the bone is the absorbent element. Cuttlefish is found on the European Mediteranean coast and is not found on the Atlantic Coast.

The cost of importing pounce probably led to the use of an alternative sand, either silicate or biotite. The Curator's office tested the sand on one of the Senate's desks and they say that the present blotting sand is indeed silicate.

It used to be, when I first came to the Senate, there was ink in the ink bottles and there were some pens, in that day, with which we used the ink and we would write on stationery and then use the silicate or the pounce as a kind of blotter.

Leaving the Chamber through either of its doors on the northern side under the press gallery, one enters the Senate lobby. The lobby is furnished with couches and offers teletype machines to bring us the latest news from around the Nation and the world.

That lobby is lined with seven beautiful chandeliers made of crystal. But the outstanding pieces of art there are the two large Sevres vases, placed on either end of the lobby.

These huge vases—near six feet high—of green, blue, and crystal on a light background were a gift of the French government in 1918 in "sisterly gratitude for America's timely help," in World War I.

At the west end of the Senate Lobby is a beautifully decorated room known as the President's Room. It is undoubtedly one of the most elaborately finished rooms in the Capitol. In the past, it was primarily used on the 4th of March every fourth year by presidents who had to sign bills that had passed Congress during the waning hours of the session. Their signatures were not only necessary for the act to become a law, but had to be subscribed during their term of office, which ended simultaneously with that of Congress. Since the 20th Amendment took effect in 1937, the term of a Congress and the term of a president no longer expire on the same day, and the room is no longer needed for its original function. It is now used occasionally for meetings and ceremonies.

It is also used for interviews between Members of the Senate and representatives of the press. Senators are often called out into the President's Room by the press to answer questions or to have pictures taken—especially after passage of controversial bills, when the principal participants will pose for press photographers.

Early in 1865, the President's Room was the scene of a dramatic event with far-reaching implications. On March 3, 1865, in the final days of the Civil War, General Grant received a message from General Lee asking for a meeting and interchange of views about the submission of "the subjects of controversy between the beligerents to a convention." Not empowered to seek a peace, Grant immediately telegraphed the Secretary of War, asking for instruction. His dispatch was sent to President Lincoln who, at the time, was in the President's Room signing eleventh-hour bills. Consulting with his Secretaries of War and State, Lincoln wrote a reply, dated midnight, and signed by Secretary of War Stanton, which read as follows:

> The President directs me to say to you that he wishes you to have no conference with General Lee, unless it be for the capitulation of General Lee's army, or on some minor and purely military matter. He instructs me to say that you are not to decide, discuss, or confer upon any political question. Such questions the President holds in his own hands, and will submit them to no military conferences or conventions. Meantime you are to press to the utmost your military advantages.

A century later, the President's Room was the site of the signing of the historic voting rights bill by President Lyndon Johnson on August 5, 1965.

Upon entering the President's Room, one's attention is immediately drawn to the enormous chandelier in the center of the room. It was originally purchased for $900 in 1864, and, when it was installed, it burned gas. In 1896, the President's Room was electrified, and, in 1915, the chandelier was enlarged with the addition of six arms holding 24 more globes, making it 23 feet tall by 21 feet

wide, and nearly filling up the small room.

A mahogany grandfather clock, decorated with gold, stands in one corner. It was purchased in 1887 and was long referred to as the "gold clock." However, the gold hands were carried off by a souvenir hunter and the replacements painted black. Leather couches and chairs are placed around the room, and in the center stands a large walnut table which has been available for the use of every president of the United States since James Buchanan.

The rich decorations on the wall are the work of Constantino Brumidi, the talented painter and muralist who fled political persecution in his native Italy in 1852. In 1855, Brumidi began the embellishment of the Capitol and his legacy includes not only the President's Room but the Senate Reception Room—to the northeast from where I stand—the beautiful "Brumidi corridor" on the first floor, and the Rotunda. In the President's Room, Brumidi decorated the ceiling with portraits of William Brewster, Elder of Plymouth Colony, Christopher Columbus, Benjamin Franklin, and Americus Vespucius. Four groups, depicting Religion, Executive Authority, Liberty, and Legislation also decorate the ceiling. About the walls are three tremendous gilt-framed mirrors and medallion portraits of the nation's first Cabinet: Thomas Jefferson, Alexander Hamilton, Henry Knox, Samuel Osgood, and Edmund Randolph.

Speaking of Brumidi, this year marks the 100th anniversary of his death at the age of 75. He was born in 1805 and came to this country in 1852. I believe he began painting in the Capitol in 1855.

He once said, "I no longer wish for fame and fortune. My only ambition and my longlasting prayer is to live long enough to make beautiful the Capitol of the only country on the face of the earth where liberty exists."

Brumidi did not live to finish his work in the Capitol, but he certainly made the Capitol beautiful.

Opening off the center of the lobby behind this chamber is the Marble Room, a private chamber reserved for senators only. The room earned its name by being constructed almost entirely of smooth, cool marble of various hues. The ceiling, pilasters, and fluted columns are of veined Italian marble, and the walls and wainscoting are of native, dark-brown marble from Tennessee. Two huge mirrors at each end reflect and re-reflect the room's magnificent crystal chandelier and give the illusion of endless halls and countless lights.

In the Marble Room, Senators may go and they will find newspapers from their respective States so that they may be able to read each day the news from back home. They also may see the dictionary and other volumes that are in the room, or they may open the doors and go out on the portico and in the summertime possibly read the newspapers outside the Marble Room.

They are not supposed to take their aides into that Marble Room. Only Senators are supposed to be in the Marble Room.

In 1869, *Harper's Magazine* reported that, "When the soldiers were quartered at the Capitol the enormity was committed . . . of hanging this white place full of flitches of bacon, slices of which our hungry sentinels toasted on their jack-knives at roaring fires in the chimney-place."

To the right of the Marble Room is the entrance to the Vice President's Room. Like the President's Room, the Vice President's Room is dominated by a large chandelier and huge gilt mirror. The chandelier was originally purchased for the White House by President Grant. It was removed from the Executive Mansion during the administration of President Theodore Roosevelt and moved to the Capitol. This was reportedly the chandelier under which President Grover Cleveland married Frances Folsom in their beautiful 1886 White House wedding.

In that room behind the lobby, just to the left of the Presiding Officer, one Vice President died and another took the oath of office as President. In November 1875, Vice President Henry Wilson caught a chill while bathing in the huge marble bathtubs in the Capitol basement. He was carried to the Vice President's room where he remained ill for several days. Finally, at 7:20 on the morning of November 22, 1875, the vice president died. His bust rests on the wall to one side of the massive wooden desk placed in the room in the late nineteenth century and used by every vice president until 1965. Below his bust is a plaque bearing the following inscription:

In this room, Henry Wilson, Vice President of the United States and a Senator for 18 years, died November 22, 1875.

The son of a farm laborer. Never at school more than 12 months, in youth a journeyman shoemaker, he raised himself to the high places of fame, honor and power, and by unwearied study made himself an authority in the history of his country and of liberty and an eloquent public speaker to whom Senate and people eagerly listened. He dealt with and controlled vast public expenditure during a great Civil War, yet lived and died poor, and left to his grateful countrymen the memory of an honorable public service, and a good name far better than riches.

In 1969, the desk was moved to the oval office of the White House where it remained until 1977, when it was returned to the Vice President's Room. On the other side of the desk rests a bust of Senator Lafayette Foster, president pro tempore of the Senate from 1865 to 1867.

On September 22, 1881, following the assassination of President James Garfield, Vice President Chester Arthur was sworn in as President of the United States in that room in the presence of former President Grant, Justices of the Supreme Court, and various senators and representatives.

At the east end of the Senate Lobby is the beautiful Senate Reception Room. Like the President's Room, this area owes much of its beauty to the brush of Brumidi. On the northern portion of the ceiling are four groups representing Peace, Freedom, War, and Agriculture. In the four corners of the southern half of the room are depicted the cardinal virtues, Prudence, Justice, Temperance, and Fortitude. On the south wall, we find George Washington in consultation with two members of his first Cabinet, Alexander Hamilton and Thomas Jefferson.

Brumidi left eleven blank spaces on the walls and ceilings of the Reception Room. The most prominent were the five "portholes" on the walls at eye level. In 1955, during the 84th Congress, the Senate created a Special Committee on the Reception Room and authorized it to select five outstanding senators from the past whose likenesses were to be placed in the five most prominent unfilled medallions. The selection of the five was fraught with peril. Each senator and almost every other prominent politician and historian had suggestions. The committee chairman was Senator John F. Kennedy, whose qualifications for the task were manifest in his Pulitzer prize-winning book *Profiles in Courage*. Other members were Senators Richard Russell from Georgia, Mike Mansfield from Montana, Styles Bridges of New Hampshire, and John Bricker of Ohio.

After much deliberation, the Committee reported its choices, selected artists to paint each portrait, and work began on the paintings. On March 12, 1959, in a historic dedication ceremony, which I remember, in the presence of many living relatives of these great men, America paid homage to the five selected senators. The men so honored were Henry Clay of Kentucky, Daniel Webster of Massachusetts, John C. Calhoun of South Carolina, Robert Taft of Ohio, and Robert La Follette of Wisconsin. There still remain six vacant spaces on the Reception Room Walls. Perhaps at some future date, the Senate will again convene a similar committee and select additional senators to be so honored by their successors.

Around the walls in the Reception Room are the busts of Vice Presidents Henry Wallace, John Nance Garner, Richard Nixon, and Senator Cordell Hull.

Except for four brief occasions, the Senate has met continually in this chamber, and used the rooms I have just described, ever since January 4, 1859. On those occasions when it did have to find a temporary home, the Senate returned to its old quarters, the chamber down the hall, which, from 1860 to 1935 had served as home for the Supreme Court.

In 1938, an engineering survey revealed that the supports of the 79-year-old glass and cast-iron ceiling over the Senate chamber did not meet even minimum safety requirements. Speedy improvements were urged to prevent the 90-ton ceiling and the roof over it from falling in on the heads of the senators assembled below. Reconstruction of the roof was authorized in 1940, but World War II interrupted and the planned improvements were suspended. Instead, steel supports were installed to forestall the roof's collapse. While they were being put in place, the Senate met in its old chamber. When the senators of the Seventy-seventh Congress returned to this chamber in January 1941, they found a spider-web of steel braces under which they and their successors met for the next nine years.

As long as extensive work was needed on the chamber anyways, collateral

studies were conducted on other aspects of life in the chamber. A subcommittee of the Committee on Public Buildings and Grounds was empowered to examine "acoustics, redecoration and better lighting systems" for the Senate. What emerged from these hearings was the senators' great reluctance to tamper with their historic chamber. Each post and lintel was precious to them. Time and again, Chairman Charles Andrews of Florida reminded the architects and engineers who came before his committee that their concern was safety and facilitation of debate only.

It became clear during the hearings that the old ceiling, though lovely with its stained glass panels of cornucopias, printing presses, and steam engines, was the source of much of the Senate's problems. It was through this glass ceiling and the skylight above it that sunlight filtered into the chamber. Unfortunately, after passing through the greens and blues of the stained glass, it imparted a murky glow to the chamber which made it look uncomfortably like an aquarium. Until 1888, the only artificial illumination in the chamber came from gas lights located above the ceiling. The electric lighting installed in 1888 cast an uneven, shadowy glare onto the desks below. The hearings revealed that the glass and iron ceiling was the source of many of the Senate's acoustical problems as well. Was the ceiling, asked Senator Andrews, the reason we "can hardly hear anyone speak a few yards away from us in the Senate today?" "Yes, it was, agreed the consulting engineers.

Not only would the proposed ceiling of plaster, with the beautiful eagle in its center and its indirect lighting, ease problems of hearing and seeing, it would incorporate an airconditioning system to relieve another chronic problem, heat. Ever since members had arrived in 1859, senators had been plagued by hot, stuffy air in the chamber. The only sure method of beating the summer heat was to adjourn in the spring.

During some renovation in 1896, the first serious attempts at primative airconditioning in the chamber were made. The broiled senators concocted a novel means of bringing fresh air into their sweltering hall. A white-tiled false cellar was built beneath the chamber floor and a conduit connected this area with a stone structure on the Capitol grounds. Air was forced through the cool stone building into the conduit and boosted into the chamber cellar, where a series of fans pushed the breeze through holes in the floor beneath the senators' desks. But, despite this innovation and the large palm fans resorted to by many senators, the chamber remained uncomfortable. Seizing the opportunity of the proposed renovation in 1940, the senators finally made provisions that would enable them to carry on through the summer months in comfort, a measure for which we are all profoundly grateful on these hot September days.

Construction work in the chamber finally began in July 1949, and once again the senators moved back to their old meeting place down the corridor. Four of my colleagues were members of the Senate then and perhaps Senators Magnuson, Young, Stennis, and Long recall those crowded sessions. While the old chamber had been ample space for the Senate of 1819, it was overwhelmed by the Senate of 1949. There was room for desks for only the Majority and Minority Leaders: the remaining 94 senators—there were only 96 senators at that time—were lucky to have even chairs. The marble gallery, jammed with air-conditioning equipment, hung precariously over Vice President Alben Barkley's head. In 1950, while work in their own chamber was being finalized, the Senate met once again in the old quarters.

The senators returned to their newly refurbished chamber, with the ceiling we see today, for the first session of the Eighty-second Congress on January 3, 1951.

The last occasion on which the Senate met in the Old Senate Chamber is one which many of my colleagues will well remember, for I know it made a great impression on me. On June 16, 1976, the Senate convened in its old chamber to mark the completion of its restoration. Sitting beneath that beautiful crimson balcony, under the watchful gaze of Peale's portrait of Washington, one got a sense of the majesty of the mid-nineteenth century Senate.

This current chamber is full of strong associations for all of us, I am sure. There are fondly remembered colleagues who, though gone now, once made these halls ring with their heart-felt words. For me, this is the chamber where I was first sworn in as a United States Senator on Wednesday, January 7, 1959.

I was the 1579th Senator selected and/or elected to serve in this body since its beginning in 1789. I remember it as if it were yesterday. As the clerk called our names, Senator J. Glenn Beall, Sr., of Maryland and Senator Harry Byrd, Sr., of Virginia, both old-timers in the Senate, and my colleague, Senator HOWARD CANNON of Nevada and a nervous ROBERT C. BYRD of West Virginia, both of us newly elected, were escorted to the front of this chamber by Senator John Butler of Maryland, Senator Alan Bible of Nevada, Senator A. Willis Robertson of Virginia, and my own escort, Senator Lyndon Johnson of Texas, and there we took our solemn oath of office.

Before January 1959, when I became a Member of this body, there had been 1,571 Members.

I took the following oath of office on January 7, 1959;

IN THE SENATE OF THE UNITED STATES
January 7, 1959.

I, ROBERT C. BYRD, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

ROBERT C. BYRD.

Subscribed and sworn to before me this 7th day of January, A.D. 1959.

RICHARD M. NIXON,
President of the Senate.

State West Virginia.

Mr. President, every Senator who becomes a Member of this body, before he enters upon the office of United States Senator, must take the same oath.

The Senators who entered that 1959 class with me were Stephen Young, Hugh Scott, Clair Engle, Kenneth Keating, Eugene McCarthy, Winston Prouty, Thomas Dodd, ROBERT C. BYRD, HARRISON WILLIAMS, E. L. Bartlett, Edmund S. Muskie, Ernest Gruening, Philip Hart, Vance Hartke, Frank Moss, Gale McGee, and HOWARD CANNON. I ask unanimous consent to insert the names of those Senators of the 1959 class and those who have subsequently become Members, including the latest, Mr. GEORGE J. MITCHELL of Maine.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Start of Service, name, and end of service:
1959:
January 3 (in order of seniority):
Young, Stephen M. (D-OH), January 2, 1971.
Scott, Hugh (R-PA), January 2, 1977.
Engle, Clair (D-CA), July 30, 1964.
Keating, Kenneth B. (R-NY), January 2, 1965.
McCarthy, Eugene J. (D-MN), January 2, 1971.
Prouty, Winston L. (R-VT), September 10, 1971.
Dodd, Thomas J. (D-CT), January 2, 1971.
Byrd, Robert C. (D-WV).
Williams, Harrison A., Jr. (D-NJ).
Bartlett, E. L. (D-AK), December 11, 1968.
Muskie, Edmund S. (D-ME), May 7, 1980.
Gruening, Ernest (D-AK), January 2, 1969.
Hart, Philip A. (D-MI), December 26, 1976.
Hartke, Vance (D-IN), January 2, 1977.
Moss, Frank E. (D-UT), January 2, 1977.
McGee, Gale W. (D-WY), January 2, 1977.
Cannon, Howard W. (D-NV).
August 21:
Fong, Hiram L. (R-HI), January 2, 1977.
Long, Oren E. (D-HI), January 2, 1963.
November 19:
Brunsdale, Norman C. (R-ND), August 7, 1960.
1960:
March 16:
Lusk, Hall S. (D-OR), November 8, 1960.
August 8:
Burdick, Quentin N. (D-ND).
September 23:
Long, Edward V. (D-MO), December 27, 1968.
November 9:
Neuberger, Maurine B. (D-OR), January 2, 1967.
December 27:
Smith, Benjamin (D-MA), November 6, 1962.
1961:
January 3:
Boggs, J. Caleb (R-DE), January 2, 1973.
Hickey, J. J. (D-WY), November 6, 1962.
Metcalf, Lee (D-MT), January 12, 1978.
Miller, Jack (R-IA), January 2, 1973.
Pell, Claiborne (D-RI).
June 15:
Tower, John G. (R-TX).
December 7:
Murphy, Maurice J., Jr. (R-NH), November 6, 1962.
1962:
January 31:
Pearson, James B. (R-KS), January 2, 1979.
July 9:
Bottum, Joe H. (R-SD), January 2, 1963.
August 6:
Jordan, Len B. (R-ID), January 2, 1973.
November 7:
Kennedy, Edward M. (D-MA).
McIntyre, Thomas J. (D-NH), January 2, 1979.
Simpson, Milward L. (R-WY), January 2, 1967.

November 30:
Mechem, Edwin L. (R-NM), November 3, 1964.
1963:
January 3:
Bayh, Birch (D-IN).
Brewster, Daniel B. (D-MD), January 2, 1969.
Dominick, Peter H. (R-CO), January 2, 1975.
Inouye, Daniel K. (D-HI).
McGovern, George (D-SD).
Ribicoff, Abraham A. (D-CT).
January 7:
Edmondson, J. Howard (D-OK), November 3, 1964.
January 8:
Nelson, Gaylord (D-WI).
August 20:
Walters, Herbert S. (D-TN), November 3, 1964.
1964:
August 4:
Salinger, Pierre (D-CA), December 31, 1964.
November 4:
Bass, Ross (D-TN), January 2, 1967.
Harris, Fred R. (D-OK), January 2, 1973.
Montoya, Joseph M. (D-NM), January 2, 1977.
December 30:
Mondale, Walter F. (D-MN), December 30, 1976.
1965:
January 1:
Murphy, George (R-CA), January 2, 1971.
January 3:
Fannin, Paul J. (R-AZ), January 2, 1977.
Kennedy, Robert F. (D-NY), June 6, 1968.
Tydings, Joseph D. (D-MD), January 2, 1971.
April 22:
Russell, Donald (D-SC), November 8, 1966.
November 12:
Byrd, Harry F., Jr. (I-VA).
1966:
May 11:
Griffin, Robert (R-MI), January 2, 1979.
November 9:
Hollings, Ernest F. (D-SC).
December 31:
Spong, William B., Jr. (D-VA), January 2, 1973.
1967:
January 3:
Baker, Howard H., Jr. (R-TN).
Brooke, Edward W. (R-MA), January 2, 1979.
Hansen, Clifford P. (R-WY), January 2, 1979.
Percy, Charles H. (R-IL).
January 10:
Hatfield, Mark O. (R-OR).
1968:
September 10:
Goodell, Charles E. (R-NY), January 2, 1971.
December 17:
Cook, Marlow (R-KY), December 27, 1974.
December 24:
Stevens, Ted (R-AK).
December 28:
Eagleton, Thomas F. (D-MO).
1969:
January 3:
Allen, James B. (D-AL), June 1, 1978.
Bellmon, Henry L. (R-OK).
Cranston, Alan (D-CA).
Dole, Robert (R-KS).
Gravel, Mike (D-AK).
Gurney, Edward J. (R-FL), December 31, 1974.
Hughes, Harold E. (D-IA), January 2, 1975.
Mathias, Charles McC., Jr. (R-MD).
Packwood, Robert W. (R-OR).
Saxbe, William B. (R-OH), January 3, 1974.
Schweiker, Richard S. (R-PA).
September 17:
Smith, Ralph T. (R-IL), November 16, 1970.
1970:
November 17:
Stevenson, Adlai E., III (D-IL).
1971:
January 1:
Roth, William V., Jr. (R-DE).
January 2:
Tunney, John V. (D-CA), January 1, 1977.
January 3:
Beall, J. Glenn, Jr. (R-MD), January 2, 1977.
Bentsen, Lloyd M. (D-TX).
Brock, William E., III (D-TN), January 2, 1977.
Buckley, James L. (C/R-NY), January 2, 1977.
Chiles, Lawton M., Jr. (D-FL).
Taft, Robert, Jr. (R-OH), December 28, 1976.
February 1:
Weicker, Lowell P., Jr. (R-CT).
Gambrell, David H. (D-GA), November 7, 1972.
September 16:
Stafford, Robert T. (R-VT).
1972:
August 1:
Edwards, Elaine S. (D-LA), November 13, 1972.
November 8:
Nunn, Sam (D-GA).
November 14:
Johnston, J. Bennett, Jr. (D-LA).
1973:
January 3:
Abourezk, James (D-SD), January 2, 1979.
Bartlett, Dewey F. (R-OK), January 2, 1979.
Biden, Joseph R., Jr. (D-DE).
Clark, Richard (D-IA), January 2, 1979.
Domenici, Pete V. (R-NM).
Haskell, Floyd K. (D-CO), January 2, 1979.
Hathaway, William D. (D-ME), January 2, 1979.
Helms, Jesse A. (R-NC).
Huddleston, Walter (D-KY).
McClure, James A. (R-ID).
Scott, William L. (R-VA), January 1, 1979.
1974:
January 4:
Metzenbaum, Howard M. (D-OH), December 23, 1974 (returned December 29, 1976).
December 18:
Laxalt, Paul D. (R-NV).
December 21:
Garn, E. J. (Jake) (R-UT).
December 24:
Glenn, John H., Jr. (D-OH).
December 28:
Ford, Wendell H. (D-KY).
1975:
January 1:
Stone, Richard (D-FL).
Wyman, Louis C. (R-NH), January 2, 1975.
January 3:
Bumpers, Dale (D-AR).
Culver, John C. (D-IA).
Hart, Gary (D-CO).
Leahy, Patrick J. (D-VT).
Morgan, Robert (D-NC).
September 18:
Durkin, John A. (D-NH).
1976:
December 27:
Danforth, John C. (R-MO).
December 28:
Zorinsky, Edward (D-NE).
December 29:
Chafee, John H. (R-RI).
December 30:
Anderson, Wendell R. (D-MN), December 29, 1978.
Riegle, Donald W., Jr. (D-MI).
1977:
January 2:
Hayakawa, S. I. (R-CA).
January 3:
DeConcini, Dennis (D-AZ).
Hatch, Orrin G. (R-UT).
Heinz, H. John, III (R-PA).
Lugar, Richard G. (R-IN).
Matsunaga, Spark M. (D-HI).
Melcher, John (D-MT).
Moynihan, Daniel P. (D-NY).
Sarbanes, Paul S. (D-MD).
Sasser, James R. (D-TN).
Schmitt, Harrison H. (R-NM).
December 10:
Wallop, Malcolm (R-WY).
Hodges, Kaneaster, Jr. (D-AR), January 2, 1979.
1978:
January 22:
Hatfield, Paul G. (R-MT), December 14, 1978.
January 25:
Humphrey, Muriel (D-MN), November 7, 1978.
June 12:
Allen, Maryon (D-AL), November 6, 1978.
November 8:
Durenberger, David F. (R-MN).
Stewart, Donald W. (D-AL).
December 15:
Baucus, Max (D-MT).
December 23:
Kassebaum, Nancy L. (R-KS).
December 27:
Cochran, Thad (R-MS).
December 30:
Boschwitz, Rudy (R-MN).
1979:
January 1:
Simpson, Alan K. (R-WY).
January 2:
Warner, John W. (R-VA).
January 3:
Armstrong, William L. (R-CO).
Boren, David L. (D-OK).
Bradley, Bill (D-NJ).
Cohen, William S. (R-ME).
Exon, J. James (D-NE).
Heflin, Howell T. (D-AL).
Humphrey, Gordon J. (R-NH).
Jepsen, Roger W. (R-IA).
Levin, Carl (D-MI).
Pressler, Larry (R-SD).
Pryor, David H. (D-AR).
Tsongas, Paul E. (D-MA).
1980:
May 9:
Mitchell, George J. (D-ME).

Mr. ROBERT C. BYRD. Sometimes we probably all take this chamber a little for granted. But we should never forget the scenes these walls have witnessed or the debates they have heard.

I remember Senators Richard Russell, Allen Ellender, John McClellan, Spessard Holland, Olin Johnston, Lyndon Johnson, Harry F. Byrd, Sr., Joseph O'Mahoney, Robert Kerr, all of whom were Members of the Senate when I came here, Senator Dirksen and many others, who have now gone on to their rewards.

Some of those Senators are still among us, Senators YOUNG, MAGNUSON, STENNIS, LONG.

But I very well remember some of the great debates that took place in this Chamber on my arrival in the early years of my service, the civil rights debates in particular, the debate on the test ban treaty.

So the halls rang with the voices of those great men.

The hopes and dreams of the nation were riding on the United States Senate when it moved to this chamber in 1859, 121 years ago. I was deeply moved by a passage in Senator Crittenden's inspiring speech on that January day, 121 years ago, and, in closing, I should like to read it to my colleagues:

Wherever we sit we shall be the Senate of the United States of America—a great, a powerful, a conservative body in the government of this country, and a body that will maintain, as I trust and believe, under all circumstances and in all times to come, the honor, the right, and the glory of this country. Because we leave this Chamber, we shall not leave behind us any sentiment of patriotism, any devotion to the country which the illustraous exemplars that have gone before us have set to us. These like our household gods, will be carried with us; and we, the representatives of the States of this mighty Union, will be found always equal, I trust, to the exigencies of any time that may come upon our country. No matter under what sky we may sit; no matter what dome may cover us; the great patriotic spirit of the Senate of the United States will be there; and I have an abiding confidence that it will never fail in the performance of its duty, sit where it may, even though it were in a desert.

Mr. MATSUNAGA. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield to my distinguished friend from Hawaii.

Mr. MATSUNAGA. I thank the majority leader for yielding.

I have been listening with keen interest and have been especially delighted to know that the distinguished majority leader is not only a great leader but a great historian, and I am sure as a historian he would like to keep history up to date.

As I have already pointed out to him on a previous occasion, up in the ceiling of this Chamber there are only 48 stars; which mean that the stars for Hawaii and Alaska are missing.

And here on the walls of this great Senate Chamber there are only 46 stars. So we have not only Hawaii and Alaska, but also Arizona and New Mexico missing.

So I plead with the distinguished majority leader to exert his influence in bringing the Senate Chamber up to date. The people of the four States not represented by their symbolic stars in this Chamber will be happy to learn that something is being done to rectify the omission.

Back in 1963, when I was a freshman Member in the House of Representatives I happened to look up at the ceiling and counted only 48 stars surrounding the American eagle.

I approached Speaker of the House John McCormack at that time and suggested that he put up the stars for Hawaii and Alaska. The response was not immediate, so whenever I had the opportunity in the House Chamber, I would good humoredly ask him, "Mr. Speaker, when are you going to put that star up there for Hawaii?" Whenever I asked him the question, he would respond with the same answer, "As soon as you tell me, SPARKY, who else but you would count the stars?" And for 2 years he gave me the same response.

So one day I thought to myself: maybe the Speaker means what he says. So, while I had Congressman Hanna and Congressman Leggett of California, who came to the Congress the same time I did, sitting next to me, I said to them: "Say, you guys, will you do me a favor? Will you count the stars up there?" And Congressman Hanna said, "Well, there's nothing else to do." And Congressman Leggett then said, "Hey, there are only 48." I said, "That's right, Hawaii is missing and so is Alaska."

Then I asked them, "Will you please come with me?", and I took them to the Speaker. I said, "Mr. Speaker, here are two other Members who counted the stars." The Speaker laughed and said, "Well, OK, SPARKY, you win. You win."

And that is how the stars for Hawaii and Alaska were finally installed in the House Chamber.

I learned subsequently that the Speaker was up against two problems. One was the cost: Just to install stars up on the ceiling, it would cost $2,000 because of the need to build a scaffolding all the way up to the ceiling. The second problem was how to put two stars in a circle of evenly spaced stars without having to move all 48. The Architect of the Capitol had a bright idea. Since the stars surrounded the American Eagle, he said, "Why don't we take the one at the head of the eagle and move that further in and put one there; then take the one at the tail of the eagle, move that further in, and put one there?"

And that is exactly what was done in the House Chamber. So they had to move but two stars to put in Hawaii's and Alaska's stars.

After the two brand new stars were put up, I approached Congressman Ralph Rivers of Alaska on the floor one day and said to him, "Ralph, do you see the two brand new stars up there?" He did not even know they were up there and asked me, "Well, when did they get up there?" I said, "During the recess. I want you to know" I told him, "that I was responsible for getting the stars up there. So I am telling you right now that the one at the head of the eagle is for Hawaii."

I thought this bit of history, although not of the Senate Chamber, might be of interest to my colleagues.

I once more plead with the distinguished majority leader to do all he can in his influence and power to put those stars for Hawaii and Alaska up on the ceiling, and on the walls for the four last States to be admitted into the Union.

I thank the majority leader for yielding.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Hawaii.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, on tomorrow, after the two leaders or their designees have been recognized under the standing order, Mr. PROXMIRE will be recognized for not to exceed 15 minutes under the order previously entered. The Senate will resume consideration of S. 1188, the veterans vocational rehabilitation bill.

Upon the disposition of that bill, and it is anticipated that it will not take too long, the Senate will likely proceed to the consideration of the conference report on the higher education bill.

At 4 p.m. tomorrow, the Senate will return to the consideration of the bill on domestic violence.

I would anticipate rollcall votes throughout the day, on the veterans vocational rehabilitation bill, on the higher education conference report, and on domestic violence legislation.

Mr. BAKER. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. I thank the majority leader

Mr. President, I might advise my friend, the majority leader, that the distinguished senior Senator from New York (Mr. JAVITS) has a special interest in the conference report on higher education. It is my understanding that he will not be back in the city until about noontime tomorrow.

Judging by the description the majority leader just gave us, I would assume we would not reach that conference report until that time or a little later.

But I wonder if the majority leader could agree to consider that factor if and when he might call up the conference report on tomorrow, in order to accommodate the requirements of the Senator from New York?

Mr. ROBERT C. BYRD. Yes, absolutely. Mr. JAVITS is one of the principals in the consideration of that measure and will be in the debate on the conference report.

As the distinguished minority leader has pointed out, I doubt that the Senate would get to the conference report before 12 noon anyhow, but that will be a consideration, certainly.

Mr. BAKER. Mr. President, I thank the majority leader.

Mr. ROBERT C. BYRD. Now, Mr. President, while I am talking about the program, there will not be any Saturday session this week. There will not be any Saturday session next week. So Senators can be assured that as far as Saturdays, September 6 and 13, are concerned, there will be no session.

What the outlook will be for the future Saturdays remains unintelligible for me at the moment, and unclear.

But for this week and next, there will be no Saturday session.

RECESS UNTIL 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I now move to recess under the order until 10:30 a.m. tomorrow morning.

The motion was agreed to; and at 3:41 p.m., the Senate recessed until tomorrow, Thursday, September 4, 1980, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate on August 28, 1980, under authority of the order of the Senate of August 26, 1980:

DEPARTMENT OF STATE

Fernando E. Rondon, of Virginia, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Madagascar.

THE JUDICIARY

Eugene H. Nickerson, of New York, to be U.S. circuit judge for the second circuit, vice Murray I. Gurfein, deceased.

Gerald B. Lackey, of Ohio, to be U.S. district judge for the northern district of Ohio, vice Don J. Young, retired.

Peter M. Lowry, of Texas, to be U.S. district judge for the western district of Texas, vice Jack Roberts, retired.

David G. Roberts, of Maine, to be U.S. district judge for the district of Maine, vice George J. Mitchell, resigned.

Executive nominations received by the Secretary of the Senate on August 29, 1980, under authority of the order of the Senate of August 26, 1980:

NATIONAL COUNCIL ON THE HANDICAPPED

Carl V. Granger, of Massachusetts, to be a Member of the National Council on the Handicapped for a term of 2 years (new position).

FOREIGN CLAIMS SETTLEMENT COMMISSION

Francis Leon Jung, of Virginia, to be a Member of the Foreign Claims Settlement Commission of the United States for the term of 3 years expiring September 30, 1983 (reappointment).

NATIONAL INSTITUTE OF BUILDING SCIENCES

The following-named persons to be Members of the Board of Directors of the National Institute of Building Sciences for the terms indicated:

For terms expiring September 7, 1981:

Alfred John Hofstede, of Minnesota, vice S. Peter Volpe, term expired.

Bennie S. Gooden, of Mississippi, vice Jasper S. Hawkins, term expired.

For terms expiring September 7, 1982:

Ralph M. Ball, of Oklahoma, vice O. M. Mader, term expired.

Robert A. Georgine, of Maryland (reappointment).

Bert D. Lee, of Michigan, vice David S. Miller, term expired.

Vivienne S. Thomson, of Massachusetts, vice Glen R. Swenson, term expired.

IN THE COAST GUARD

The following-named Reserve officers of the Coast Guard to be permanent commissioned officers in the grades indicated:

Lieutenant commander

Richard B. Harden
Glen C. Sicks
Malcolm J. Williams, Jr.

Lieutenant

Robert H. Cordz — Gary G. Poll
William J. Gottschalk — David M. Tucker
Robert A. Kuhn — Theodore A. Holloman

Lieutenant (junior grade)

Robert D. Allen — Alan L. Gabriel
James C. Burton — John H. M. Jones, Jr.
Robert C. Eccles — William L. Ross
Peter D. Eikenberry — Ruben H. Arredondo
Paul W. Fletcher

IN THE ARMY

The following-named officers for reappointment in the active list of the Regular Army of the United States, from the Temporary Disability Retired List, under the provisions of title 10, United States Code, section 1211:

To be colonel, Regular Army and colonel, Army of the United States

Zeleznikar, Louis J., 333-24-6657.

To be captain, Regular Army and major, Army of the United States

Pickard, Andrew D., 454-80-1625.

The following-named officers for appointment in the Regular Army of the United States, in the grade specified, under the provisions of title 10, United States Code, sections 3284 through 3294:

To be colonel

Bowen, Clotilde, 295-16-2029.

To be major

Bagnal, William K., Jr., 249-38-2220.
Lyons, Matthew, Jr., 121-34-3520.
Thornsvard, Charles T., 223-54-8437.

To be captain

Ball, Robert M., 276-50-7415.
Barszcz, Michael E., 217-48-6636.
Barth, Francis A., Jr., 408-72-1985.
Baze, Wallace B., 460-80-9122.
Begg, Irene, 183-36-4194.
Birdseye, Helen M., 215-52-9839.
Brennecke, Lucas H., 500-50-3118.
Brumett, Joan H., 116-32-0074.
Camp, Charles D., 450-62-7669.
Combs, Maureen W., 213-56-0950.
Conkright, Donald D., 365-42-9237.
Denno, Gordon J., 473-42-7678.
Dunn, Ronald J., 528-62-7619.
Edlefsen, Gregory, 470-48-2279.
Elfrink, Louis D., Jr., 521-72-4336.
Elkins, Estel E., Jr., 241-70-8026.
Ellis Dorothy A., 133-38-4001.
England, Thomas F., 414-82-3876.
Farris, Charles R., 444-46-5743.
Foley, Brian P., 057-40-6696.
Golson, Patricia S., 156-40-2277.
Goodwin, Bradford S., Jr., 005-42-5214.
Gosch, Larry E., 462-62-5100.
Hanchett, Donald G. 546-68-4021.
Hannah, Donald R., 172-32-8755.
Hannah, John R., 478-44-9022.
Hapner, Arthur W., 265-80-0143.
Hobbs, Timothy, 133-40-2327.
Injety, Jane H., 213-56-9789.
Keeler, Jill R., 261-96-8756.
Kraft, Gerald L., 344-34-1962.
Krause, Patricia A., 539-34-9653.
Kyzar, Carl T., 458-78-4848.
Leslie, David H., 115-38-3986.
Lucas, William R., 510-50-4313.
Marsella, Richard C., 020-30-0421.
McGuire, James R., 469-62-5985.
McMichael, Lee N., 156-38-1568.
McNeil, Marrian R. S., 338-42-2218.
Milhous, Wilbur K., 249-82-1400.
Miller, Joseph E., 224-56-2492.
Monroe, Anthony M., 247-62-3818.
Morrill, John C., 459-72-7379.
Morrison, John W., Jr., 227-48-2863.
O'Donnell, Jayne P., 039-30-9542.
Pallan, Charles W., 005-48-9852.
Palmer, Gerald A., 249-76-3153.
Parker, Merle H., 458-84-2577.
Platte, Richard E., 554-64-2037.
Price, Cecily B., 102-38-2381.
Renaud, Michelle T., 040-46-5816.
Rose, Madeleine S., 575-50-7276.
Ruehle, Donald J., 481-52-4896.
Smart, Stephen C., 432-02-9865.
Sturgis, Anne K., 205-40-4076.
Swenson, Karen M., 539-44-7316
Swingler, Ralph S., 495-46-6468.
Thiel, Brian P., 503-54-9076.
Thompson, Bruce H., 522-64-0362.
Threadgill, James M., 255-76-5257.
Tripp, Edwin A., Jr., 301-40-0690.
Vickers, Robert C., 402-60-4261.
Wiles, James R., 235-74-0401.
Yarbrough, Leslie W., 466-66-4536.

To be first lieutenant

Amato, Sandra A., 095-36-2231.
Biedsoe, Robert D., 455-90-5517.
Brettell, James R., 511-60-7528.
Brewner, Eric A., 320-52-2610.
Brookshire, Grail L., 401-84-0748.
Brzozowski, Philip C., 181-46-7534.
Bryant, Mary C., 442-56-7127.
Bullerman, Wayne A., 477-50-8317.
Burgess, Lawrence P., 164-46-7093.
Carroll, Bernard L., 512-52-1362.
Carroll, Naomi E., 557-64-4606.
Christian Herman, 446-42-0408.
Coffey, James A., 146-48-3380.
Cryder, Terry E., 330-42-3817.
Cuthbertson, Rand J., 026-46-8926.
Davis, Harry Q. III, 403-82-1338.
Davis, John W., 293-40-8588.
Denton, David D., 570-92-0369.
Dhane, John M., 517-64-7571.
Donahue, Michael J., 295-54-5302.
Dorsett, Cecil R., 420-80-6633.
Engle, Scott Robert W., 456-76-0334.
Fletcher, Linda L., 452-84-1538.
Gaither, Neal S., 047-52-4967.
Gillogly, Scott D., 093-44-0697.
Gilman, James K., 309-50-8308.
Granger, Elder, 430-04-1583.
Greenman, Peter H., 112-42-8815.
Griggs, Rosemary, 249-96-3683.
Hamilton, Jana L., 200-42-8446.
Harper, Dennis L., 529-66-8809.
Harrington, Gerald R., Jr., 492-64-6293.
Harts, John C., 170-40-3696.
Hicks, David H., 080-32-1012.
Hohmann, Edmund G.., 110-48-1896.
Howell, Judith, 187-44-6372.
Hume, Roderick F., Jr., 259-90-1056.
Jackson, William N., 454-80-9991.
Johnson, Catherine, 482-70-1410.
Johnson, James D., 357-40-7069.
Johnson, John B., 418-62-8597.
Kaigler, Timothy J., 057-40-6209.
Kautzman, Dennis J., 501-52-4991.
Kelly, Kevin J., 174-44-6772.
Kinsch, Nicholas L., 509-56-5939.
Kohler, Mary M., 139-40-7021.
Lutz, Teresa Y., 263-06-4317.
Malconian, Mark K., 032-44-4356.
McCrady, David B., 511-56-2522.
Mouritsen, Paul B., 528-66-2122.
Mussnug, Patricia L., 263-04-1316.
O'Hair, Kevin C., 448-58-7883.
Ostmann, Ronald B., 494-52-9903.
Przybelski, Robert J., 387-58-9007.
Pupa, Lawrence E., Jr., 143-48-1270.
Riley, Roslyn S., 433-70-3929.
Robbins, Randolph B., 414-84-1223.
Satterwhite, Janet L., 536-54-9520.
Saxon, Laurie K., 262-15-4103.
Spiegel, Robert H., 479-44-7521.
Taylor, Philip E., 446-46-3854.
Thompson, Ian M., Jr., 500-58-1781.
Tominey, Theresa M., 394-46-5253.
Vincent, Dale S., 451-08-6484.
Weber, Charles R., 252-76-9768.
Weber, James R., 317-54-4269.
Williams, John J., 227-72-7260.
Willis, Samuel M., 249-02-5026.
Zimmer, Bolko G., 277-44-5616.

To be second lieutenant

Emmerson, John S., 365-66-0028.
Holt, Gary L., 250-96-8820.
Jaques, Christian K., 263-15-5291.
Leblanc, Roger W., 011-44-3701.
Von Plinsky, Alexander H., 260-74-8138.

IN THE MARINE CORPS

The following-named Marine Corps enlisted commissioning education program graduate for permanent appointment to the grade of second lieutenant in the U.S. Marine Corps, pursuant to title 10, United States Code, section 5583, subject to the qualifications therefor as provided by law:

Doyle, Robert P.

HOUSE OF REPRESENTATIVES—*Wednesday, September 3, 1980*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. FOLEY).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
August 28, 1980.

I hereby designate the Honorable THOMAS S. FOLEY to act as Speaker pro tempore on September 3, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious Lord, we lift our hearts in praise for the heritage we have as a nation and as individuals. We thank You that leaders have been raised up to guide our country in times of turmoil and distress and to grant security to all citizens for the living of each day. We laud Your name that we have been blessed with family and friends who through example and concern have shown us the way of faith and love. To all those who by word or deed have witnessed to the way of truth and have helped us to understand the glory of Your world and our responsibility in it, we offer this our prayer. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

THE LATE HONORABLE JOSEPH EDWARD CASEY

(Mr. DRINAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DRINAN. Mr. Speaker, I note with sadness the passing of former Congressman Joseph Edward Casey, who occupied the seat in Congress which I have had the honor to hold during the past 10 years.

Mr. Casey was born in 1898, graduated from Boston University Law School in 1920, and served as a Democrat in Congress from 1935 to 1943. He was not a candidate for renomination to the 78th Congress. After his 4 terms in Congress, Mr. Casey practiced law in Washington, D.C.

The many friends of Joseph Casey in Massachusetts and in Washington lament his passing. We send our prayerful and profound compassion to his wife, Constance, to his three daughters, Jane, Constance, and Caroline, and to his sons, John and Joseph.

Joseph Edward Casey was a distinguished and devoted attorney, a veteran of World War I, and a very valued Member of this body. I thank him personally for all of the services which he gave to the people of the Third Congressional District of Massachusetts and on behalf of the Congress of the United States, I thank him for his many and significant contributions to the Congress and to the country.

DISTURBING DEVELOPMENTS IN CONSTRUCTION OF NATION'S FIRST COMMERCIAL SYNTHETIC FUEL PLANT IN NORTH DAKOTA

(Mr. FORD of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FORD of Tennessee. Mr. Speaker, we all know the terrible effect that unemployment is having on our economy. The President's recently announced program of industrial revitalization is a sound step in the direction of full employment. An important part of that program is the development of synthetic fuels. The vast amounts of money that will be spent for the development of synthetic fuels will contribute to greater employment. It is because of the promise of the synthetic fuels program that I have become very disturbed about recent developments in the construction of our Nation's first commercial synthetic fuels plant in North Dakota.

A letter of intent has been sent to a Japanese firm for the construction and delivery of 14 pressure vessels for this plant. The second lowest bidder for the construction of these vessels is an American company. This company has had massive layoffs in recent years and the contract for these vessels is needed to put these people back to work. It should also be pointed out that it will be Japanese rather than American steel that will be used if this contract goes to the Japanese firm.

This project is being supported by a $250 million loan guarantee from the Federal Government. In today's Washington Post it was pointed out that the project may be asking the Government for an additional loan guarantee of $1.4 billion. We should not allow the synthetic fuels program to be used to solve Japan's unemployment problems. It is the American people's tax dollar that is at risk in this project, it should be Americans that are employed on the project.

THE HEIGHT OF GALL

(Mr. RHODES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I note that President Carter has picked up the old line and is accusing Ronald Reagan of endangering the peace because he wants our Nation to have an adequate nuclear deterrent and wants us to negotiate only from a position of strength.

For the candidate of the Democratic Party to talk this way in the face of the Democrat peace record is the height of gall. Every war in this century began in Democrat administrations.

History has shown that strength does not lead to war. It has shown that weakness invites aggression, miscalculation, and reckless risks on the part of aggressor nations.

When Mr. Carter sent the SALT II treaty to Congress, he said that whether or not it was ratified, he would abide by it. Apparently he is doing so. He has systematically slowed down or scuttled improvements in our defenses. He scuttled the B-1 bomber. He has delayed the MX missile and the Trident submarine programs. He has cut back drastically the Navy's ship construction program.

The question that must be asked is: Does not this really constitute unilateral disarmament?

At Pearl Harbor, in Korea, and in Vietnam, we learned the tragic consequences of a weak America. We do not intend to let Mr. Carter's errors render us unable to defend our Nation and our interests around the world.

WHEELING-PITTSBURGH STEELWORKERS VOLUNTARY WAGE DELAYS

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. APPLEGATE. Mr. Speaker, I take the floor of the House at this time to commend the employees of the Wheeling-Pittsburgh Steel Corp. for their outstanding demonstration of loyalty to their company and to their country.

Last week the Steelworkers Union and employees voted to delay two cost-of-living increases and a $150 bonus in order to help their company, Wheeling-Pittsburgh Steel, to get through a rough economic period.

The cost-of-living increases will be de-

layed until some time in 1981. The $150 bonus was delayed until December of this year.

Support for these delays was overwhelming in both counts.

I applaud the employees of Wheeling-Pittsburgh Steel and I am particularly proud of the steelworkers, because they not only demonstrated exceptional loyalty to their company, but also to their country by the sacrifice they made in order to help our Nation to get back on the road to economic recovery.

A MATTER OF TIMING

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. CONABLE. Mr. Speaker, the President this past week announced his economic renewal program. It is not bad: as a matter of fact, it is surprising how much this moral, responsible and noninflationary proposal looks like the immoral, inflationary and irresponsible schemes the President has been denouncing right up until his own plan came out.

There are details I would change if I had my way, but I would not be alarmed if Congress started with the President's scheme as a beginning of the process of working its will on taxes. However, the President does not even want to have Congress consider economic renewal until next year. While he wants it to have an effective date of January 1981—except for an extension of unemployment insurance—the same effective date for which other tax proposals are being advanced, he evidently feels that it would be irresponsible to consider tax legislation in a political environment—before the election.

Mr. Speaker, it is the economic circumstances of the country and the content of the bill that determines its responsibleness, not the political environment in which it is considered. The President's proposal puts appropriate emphasis on business tax reforms which will encourage investment. If we delay enactment of depreciation reform until the middle of next year, we will also delay any beneficial effects of such an important measure until after that time, allowing for business planning. If we cut taxes for individuals, as the President proposes to do, we should do it when the economy is in decline rather than after it starts recovering, as most economists think it will by the middle of next year. Administratively, it would make much more sense to pass a bill now to become effective the first of the year, rather than making it retroactive to the first of the year 6 months later, with all the overwithholding and other problems that entails.

Beyond these considerations, I am skeptical that tax-cut promises made before election will be kept later, when the financing of our uncontrolled Government is already so difficult, and political memories are so short. To be moral, responsible and noninflationary, we should do it now, rather than postponing it to the middle of next year.

□ 1210

HOUSE OF REPRESENTATIVES SHOULD DEBATE ECONOMIC ISSUES

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, in reading the press in recent days, I have noticed that there seems to be some impediment to holding a debate at the Presidential level between the candidates of our two great political parties. This gives me great concern and alarm. I hope those matters get resolved and we have those debates.

However, of equal importance would be a debate between the leaders of this House of Representatives, Mr. O'NEILL and Mr. RHODES, or their designated representatives. We condemn Jimmy Carter for the sad state of the American economy, high inflation, and high credit, but this institution, the House of Representatives, is entitled to its equal share for the sadness of our economic status, because a President can only spend what the Congress appropriates.

The fiscal irresponsibility of the Congress in voting deficits is the basic cause of inflation. A national debate by leaders of the House of Representatives will turn the spotlight on this fact.

The duty is spelled out in the Constitution that the House of Representatives must originate any appropriation bill, and it is appropriate for those who have run this Congress for 25 years, the Democrats, to explain to the people of this country how they have caused the ridiculous status where if you want to buy a house you have to pay interest at 13 percent, the highest in the history in this century, and an inflation rate of 12 percent.

The people running this Congress should have the privilege of explaining that. A debate would throw the spotlight on it, and I ask the leaders of the House to perform this high calling.

SYRIA-LIBYA MERGER

(Mrs. HOLT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. HOLT. Mr. Speaker, it has been revealed that negotiations have taken place between the nations of Syria and Libya, resulting in a call for total constitutional merger of the two countries.

Both Colonel Qadaffi of Libya and President Assad of Syria seek to spread their brand of imperialism throughout Africa and the Middle East. A merger of the two would be a blow to self-determination in the area; would further threaten a tenuous peace; and would serve Soviet hegemony.

This latest in a long list of pan-Arab movements is not being taken to stabilize the Arab world, but to promote the warmaking capabilities of two radical mavericks. As has been the case for 3½ years, the United States can only respond after the fact. Mr. Speaker, where does the administration stand on this afront to peace? The world wonders.

A NOTE OF HAPPINESS AMONGST DESPAIR

(Mr. DANIELSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANIELSON. Mr. Speaker, I noticed as I came in here this morning, into the happy hour, that eight of our colleagues from the Republican side of the aisle were seated there in the front row, each with a neatly typewritten speech. Eight is the number of keys in an octave, and I thought I might hear them sing some kind of song of gladness. But all I hear is despair.

Perhaps that is why they are the longest permanent floating minority in political history. All we hear is despair.

But I think we should add one note of happiness, and for that reason I am here to say that it is a great day, I love everyone, and I wish you all well.

Mr. ASHBROOK. Mr. Speaker, will my colleague yield?

Mr. DANIELSON. Surely I yield.

Mr. ASHBROOK. I would say to my colleague that with the smiles on our faces, the only despair we have in our hearts is that the occupant of the White House for the last 4 years is running for reelection.

Mr. DANIELSON. I did not realize that they were smiles. I thought they were gas pains.

LAMEDUCK SESSION UNHEALTHY

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, there is a growing feeling among the Members of the House, about the inevitability of a lameduck session of this legislative body commencing November 12—a full 8 days after the voters have expressed their preferences at the polls.

I believe that the fact that a lameduck session is being considered is unhealthy in and of itself, because it gives Members of the House a built-in incentive to delay decisionmaking on pressing national issues until after the election. The hard decisions will not be made.

But perhaps more distressing is the fact that defeated lawmakers will be making important decisions at a later date.

This was an overriding fear of the Members of this legislative body in 1932 when this very issue was debated in the context of the 20th amendment to the Constitution. Representative Lozier of Missouri put forth this very succinct statement of the real issue in the lameduck debate:

> Under the present system, when a Representative has been repudiated at the polls, and another person chosen by the voters to succeed him, does the gentleman think the repudiated Congressman should be permitted to return to Congress and . . . speak for and represent the people who by their ballots have chosen another agent or Representative to speak for them?

That argument seemed eminently sensible in 1932 and it seems to me every bit as sound today.

CONTRAST IN U.S. FOREIGN POLICY TOWARD LIBYA AND ISRAEL

(Mr. PHILIP M. CRANE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PHILIP M. CRANE. Mr. Speaker, I would like to contrast our foreign policy toward Libya with our foreign policy toward Israel.

Libya's dictator has gained a well-earned international notoriety for exporting terrorism. Trained Libyan killers swept into Gafsa, Tunisia, in February of this year and left 200 dead in their wake. The American Embassy in Libya was stormed in 1979. Most recently, even the murder of a former Iranian diplomat in our own Capital City seems to have a Libyan link. These terrorist interventions in other nation's policies deserve the severest reprimand from every nation and international body. Yet these vile actions have stirred only weak reactions in international circles.

For all that has been said about the lack of success of the President's brother as a Libyan agent, the U.S. response to this terrorism has been mild. The U.S. diplomatic corps seems to shy away from censuring Libya for killing innocents in other nations.

Despite these despicable acts of international terrorism, no U.N. resolution has reprimanded Libya for international murder. Even the United States, with its much-vaunted human rights policy, has failed to call for such a U.N. resolution.

When Israel, on the other hand, passed laws regarding the city that has been its capital for 31 years, the U.S. delegation to the United Nations allowed its ally to be censured for tending to its own domestic business. Although the United States owes Israel a great debt for defending democratic principles and Western interests in a region threatened by terrorism and Soviet imperialism, those same foreign policy advisers who can accommodate Libyan terrorism still permit Israel to be censured.

Today I am offering a sense of the House resolution stating that the United States should repudiate its abstention on United Nations Security Council Resolution 478 (1980) and reaffirm Israel's right to choose its own capital city.

THE PRESIDENT'S LABOR DAY SPEECH

(Mr. MYERS of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MYERS of Indiana. Mr. Speaker, this past Monday our Nation celebrated Labor Day, a day traditionally we set aside to honor the labor force of our country, to show our appreciation to the men and women who contribute to manufacture and make the products for the needs of our country and for our exports. It is a day that usually our leaders show their respect and honor to the American labor force.

I was shocked to read and listen to the media account of what the President of the United States spoke about as his subject this past Monday. It was not about showing appreciation for our labor force or how we might solve the problems of inflation, reduce interest rates, or how we might solve the problems of high unemployment. He spoke only about the brave people in Poland that are on strike.

This does not mean that we are not concerned about those in Poland that are on strike today and trying to protect their human rights, but it seemed to me the President of our United States should also remember that the labor force in this country has a lot of problems, too. Evidently our President is not aware of that fact.

CONGRESS CAN PASS BUDGET WITHOUT LAMEDUCK SESSION

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, Groucho Marx once defined politics as "the art of looking for trouble, finding it everywhere, diagnosing it incorrectly and then applying the wrong remedies." This pretty well sums up the 25 years that the Democrats have controlled Congress. And, it describes why this fall people are going to be voting Republican for a change. Thus, you would think that the majority leadership would be anxious to pass the 1981 budget before we adjourn. After all, this will be the majority's last chance to offer the voters something more than rhetoric on what it intends to do about inflation, unemployment, taxes, and defense spending. Yet, as I look at this week's agenda, I do not see any mention of the second budget resolution. Could it be that the leadership does not have an economic game plan for the next year that is any different than what we have seen the last 25 years? Or, is it that the majority leadership is afraid the American people will reject another round of deficit spending after first being promised a balanced budget? Mr. Speaker, there is still time for Congress to complete work on next year's budget before we adjourn; a lameduck session is not necessary. But, let us not waste any more time.

□ 1220

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C.,
September 3, 1980.

Hon. THOMAS P. O'NEILL, JR.,
The Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: I have the honor to transmit sealed envelopes received from The White House as follows:

(1) At 4:10 p.m. on Friday, August 29, 1980 and said to contain a message from the President transmitting the Federal Pay Comparability Alternative Plan.

(2) At 12:35 p.m. on Tuesday, September 2, 1980 and said to contain a message from the President wherein he transmits the Annual Report of the Commodity Credit Corporation for Fiscal Year 1979.

With kind regards, I am,

Sincerely,

EDMUND L. HENSHAW, JR.,
Clerk, House of Representatives.
By W. RAYMOND COLLEY,
Deputy Clerk.

FEDERAL PAY COMPARABILITY ALTERNATIVE PLAN—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 96-367)

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Post Office and Civil Service and ordered to be printed:

(For message, see proceedings of the Senate of today, September 3, 1980.)

ANNUAL REPORT OF COMMODITY CREDIT CORPORATION FOR FISCAL YEAR 1979—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Agriculture:

To the Congress of the United States:

In accordance with the provisions of Section 13, Public Law 806, 80th Congress, I transmit herewith for the information of the Congress the report of the Commodity Credit Corporation for the fiscal year ended September 30, 1979.

JIMMY CARTER.

THE WHITE HOUSE, *September 2, 1980.*

CONSTANTINO BRUMIDI DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 594) to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day."

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. ADDABBO. Mr. Speaker, reserving the right to object, I take this time as a sponsor of this resolution to give special thanks to my fellow New Yorker, Mr. GARCIA, for giving us this timely opportunity to honor the "Michelangelo of the

United States Capitol"—Constantino Brumidi.

Brumidi's genius surrounds us, and there is not a visitor to these distinguished halls who has not joined in praise for the work which occupied the last 25 years of Brumidi's life. Arriving from Italy in the land he called the "only country on earth where liberty exists," Brumidi's love for his adopted country led him from New York to Washington where his only ambition was to make the Capitol beautiful. I believe it would be most unfortunate if we here in Congress, surrounded by this devotion, do not take this opportunity to recognize and show our appreciation for this great man and the contributions he has made to our Nation's heritage. In honor of the 100th anniversary of Brumidi's death, and the 128th anniversary of his arrival at New York Harbor, I urge all of my colleagues to to join me in this tribute.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. BIAGGI. I reserve the right to object, and I do not intend to object, Mr. Speaker. I just take this opportunity to congratulate the chairman and my colleague from the Bronx for reporting this legislation.

Mr. Speaker, during this, the 175th anniversary of the birth, and the 100th anniversary of the death of Constantino Brumidi, I rise in strong support of House Joint Resolution 594, a resolution designating September 18, 1980, as "Constantino Brumidi Day."

As an American of Italian heritage, I take special pride in the outstanding contribution this great artist—often referred to as the "Michelangelo of the U.S. Capitol"—made to his adopted American home in the name of liberty.

A brief review of Brumidi's life shows that he came to the United States as a renowned Italian artist on September 18, 1852—the date we are acknowledging with this resolution. In 1855, Brumidi was hired to decorate the Agriculture Committee room in the Capitol, and in so doing provided the first example of fresco in America.

After becoming a U.S. citizen in 1857, Brumidi spent the rest of his life serving his adopted home with artistic dedication. Using the Capitol as his canvas, he produced magnificent works of art in the Senate reception room, the Senate Appropriations Committee room, the President's room in the Senate extension, the Senate floor corridors, the House of Representatives Chamber, the House of Representatives committee room, and the Capitol rotunda.

Tragically, on February 19, 1880, Brumidi died after a fall from the dome of the Capitol rotunda while completing the final stages of what he considered the greatest work of his life—a scroll of American history, from the landing of Columbus to the present day.

While his life ended at the age of 75, his endeavors earned him a formidable place in art history, and the walls of the Capitol serve as a constant reminder of Constantino Brumidi's greatness. Truly, he was an inspired man, who was totally dedicated to the pursuit of liberty—the cause that originally brought him to America.

Recognition of his work has come slowly, and much more needs to be done. That is why I have joined a number of my colleagues in seeking a commemorative stamp to honor this memorable ethnic American. That is why I strongly urge that we unanimously approve this resolution aimed at providing Constantino Brumidi with the tribute he so richly deserves.

● Mr. GILMAN. Mr. Speaker, I commend the gentleman, my colleague from New York (Mr. ADDABBO), for bringing House Joint Resolution 594 before the House of Representatives today. As a cosponsor of this measure, I am pleased to join in honoring Constantino Brumidi, a most talented artist who has contributed immensely to the beauty of our Nation's Capitol and to the heritage of our country.

Constantino Brumidi arrived in this country 128 years ago as a political exile of Italy. His love for art was no greater than his love of liberty and his love for this Nation, which led him to seek citizenship 2 years after his arrival here.

His exceptional gift for art, which is evident today in the corridors of the Senate wing of the Capitol, the formal offices of the President and Vice President, the Senate reception room, and the present House and Senate Appropriations Committee rooms, earned him the tribute of the name, "The Michelangelo of the Capitol of the United States." His career ended tragically after a fall from a scaffolding during work on the fresco frieze encircling the top of the rotunda of the Capitol.

Constantino Brumidi was one of the thousands of immigrants who came to our country from Italy; as we honor him on September 18, we honor the many others of Italian descent who have played such a vital role in the development of our country and who have enabled our Nation to attain the level of freedom and prosperity we enjoy today.

Having agreed to honor this distinguished Italian-American, I now hope that my colleagues will also join with the gentleman from New York (Mr. WOLFF) and those of us who have cosponsored House Joint Resolution 568, proclaiming October 12 through October 19, 1980, as "Italian-American Heritage Week." The Italian-American community deserves our thanks and tribute, and I am hopeful that the Congress will see fit to honor the contributions this group has made by adopting House Joint Resolution 568, establishing "Italian-American Heritage Week." House Joint Resolution 568 pays tribute to the fact that the gifts of outstanding Italian Americans, their contributions to our heritage, their commitment to liberty, to freedom, and to our country have enriched not only our history but our present lives.

Our Nation is truly fortunate to have benefited from the legacy of a Constantino Brumidi and from the achievements and contributions of all those who arrived on our shores from their homeland in Italy. Accordingly, as we prepare to celebrate "Constantino Brumidi Day" on September 18, I urge my colleagues to join us in support of House Joint Resolution 568.

Mr. Speaker, I include the full texts of House Joint Resolution 594 and House Joint Resolution 568 in the RECORD at this point:

H.J. RES. 568

Whereas the Congress fully recognizes that it is essential for the people of the United States of America to understand and respect the rich heritage of all American ethnic groups if we are to maintain and foster the national unity; and

Whereas the many great contributions of Italian-Americans to our country must be recognized and the deep Western roots of Italian-American culture, history, and traditions must be appreciated; and

Whereas the long recognized American holiday of Columbus Day is celebrated on the second Monday of October to commemorate the discovery of America by the famous Italian geographer-navigator-explorer, and this day is of special significance to the Italian-American community as a symbol of their essential contributions to American society as courageous immigrants, hard-working citizens, and true American achievers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week" and calling upon the people of the United States, State, and local government agencies, and interested organizations to observe that week with appropriate ceremonies, activities, and programs.

H.J. Res. 594

Whereas Constantino Brumidi, born in Rome, Italy, on June 26, 1805, landed at New York Harbor on September 18, 1852, as a political exile, making his flight from Italy to the United States because of his love for liberty; and

Whereas Brumidi's love for his adopted country led him to seek citizenship two years after his arrival; and

Whereas the artist's love for liberty joined his love for art and his love for country as he spent the last twenty-five years of his life embellishing the United States Capitol, including the corridors of the Senate wing, the formal offices of the President and the Vice President, the Senate reception room, the present House and Senate Appropriations Committee rooms, and the rotunda; and

Whereas in 1877, at the age of seventy-two, Brumidi began his last work, the fresco frieze encircling the top of the rotunda, and fell from a slipped scaffolding three years later while attempting to complete part of the work, and though not injured, suffered a shock so great that he was never able to return to work; and

Whereas Brumidi died as a result of this experience three months later in February 1880; and

Whereas the Congress recognizes the artist's devotion and talent which earned him the nickname of the "Michelangelo of the Capitol of the United States"; and

Whereas the year 1980 marks the one hundred and seventy-fifth anniversary of the birth, and the one hundredth anniversary of the death of Constantino Brumidi: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day" and calling upon the people of the United States, State and local government agencies, and interested organizations to observe that week with appropriate ceremonies, activities, and programs.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

DISTRICT OF COLUMBIA APPROPRIATIONS, FISCAL YEAR 1981

Mr. DIXON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8061) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes, and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from Michigan (Mr. PURSELL) and myself.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MONTGOMERY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 308, nays 2, answered "present" 2, not voting 120, as follows:

[Roll No. 507]

YEAS—308

Addabbo
Akaka
Albosta
Ambro
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Anthony
Archer
Ashbrook
Aspin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Bolling
Boner
Bonker
Bouquard
Bowen
Brinkley
Brodhead
Brooks
Broomfield
Broyhill
Burgener
Burlison
Burton, Phillip
Byron
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Donnelly
Doucherty
Downey
Drinan
Duncan, Tenn.
Early
Eckhardt
Edwards, Ala.
Edwards, Calif.
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Garcia
Gaydos
Giaimo
Gibbons
Gingrich
Ginn
Glickman
Gonzalez
Gore
Gradison
Gramm
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hillis
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kelly
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Leland
Lent
Levitas
Lewis
Livingston
Loeffler
Long, Md.
Lowry
Luken
Lundine
Lungren
McClory
McHugh
Maguire
Markey
Marks
Marriott
Martin
Matsui
Mazzoli
Mica
Michel
Mikulski
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moffett
Montgomery
Moore
Moss
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nedzi
Nelson
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quillen
Rahall
Rallsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rosenthal
Roth
Roybal
Royer
Rudd
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spence
St Germain
Stack
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Wampler
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Williams, Mont.
Wilson, Tex.
Winn
Wolff
Wolpe
Wright
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—2

Lloyd
Wilson, Bob

ANSWERED "PRESENT"—2

Ottinger
Wyatt

NOT VOTING—120

Abdnor
Alexander
Anderson, Calif.
Anderson, Ill.
Applegate
Ashley
Atkinson
AuCoin
Bellenson
Bingham
Boggs
Boland
Bonior
Brademas
Breaux
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Butler
Campbell
Chisholm
Coelho
Collins, Ill.
Conyers
Corman
Cotter
Crane, Daniel
D'Amours
Davis, Mich.
Davis, S.C.
Dingell
Dodd
Dornan
Duncan, Oreg.
Edgar
Edwards, Okla.
Emery
English
Erdahl
Evans, Del.
Ferraro
Fuqua
Gephardt
Gilman
Goldwater
Goodling
Gray
Hanley
Hansen
Hawkins
Hinson
Holland
Holtzman
Huckaby
Ichord
Jenrette
Johnson, Colo.
Kazen
Kemp
Leach, La.
Lederer
Lehman
Long, La.
Lott
Lujan
McCloskey
McCormack
McDade
McDonald
McEwen
McKay
McKinney
Madigan
Marlenee
Mathis
Mattox
Mavroules
Miller, Calif.
Mitchell, Md.
Moakley
Mollohan
Moorhead, Calif.
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Neal
Nichols
Nolan
Patten

Pepper	Skelton	Watkins
Pritchard	Spellman	Whittaker
Quayle	Staggers	Whitten
Rodino	Steed	Williams, Ohio
Rostenkowski	Symms	Wilson, C. H.
Rousselot	Synar	Wirth
Satterfield	Tauzin	Wydler
Sebelius	Vander Jagt	Young, Alaska
Shannon	Walgren	Zeferetti
Shuster	Walker	

□ 1240

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 8061, with Mr. GORE in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the previous unanimous-consent agreement, the gentleman from California (Mr. DIXON) will be recognized for 30 minutes, and the gentleman from Michigan (Mr. PURSELL) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. DIXON).

Mr. DIXON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, at this time we present to the House the District of Columbia appropriation bill for fiscal year 1981. I am indeed privileged to serve as chairman of the District of Columbia Subcommittee of the Committee on Appropriations. I would like to take a few minutes to bring to the Members some of the highlights of the bill.

Mr. Chairman, the budget of the District of Columbia government is extremely complex to review. We held 16 days of hearings and received testimony from over 200 witnesses. We then reviewed the testimony before we made our decisions on the level of funding for the individual offices and agencies of the District government.

The bill we present to the House today is the result of careful consideration by our committee. Mr. Chairman, we recommend to the House a budget for the District of Columbia government that is balanced on the accrual basis, which means that anticipated revenues will equal the amount of obligations. This is the method that was proposed by District officials and is one additional step forward in the city's efforts to better control its finances.

FEDERAL FUNDS

Mr. Chairman, the bill that is now before the House includes a total of $515,702,600 in Federal funds for 1981, an increase of $72,762,300 above the current year level. We recommend a Federal payment of $296,645,500 which is 7.3 percent or $20.1 million above the fiscal year 1980 Federal payment of $276.5 million. In addition to the Federal payment, the bill includes the Federal contribution of $52,070,000 to the local pension funds, a special Federal payment of $1,330,100 for expenses of the Presidential inauguration in January 1981, a reimbursement of $8.1 million for water and sewer services furnished to Federal facilities, and Federal loans totaling $157,557,000 for the city's capital program. These loans will be repaid to the Federal Treasury at the prevailing interest rate over a 30-year period.

DISTRICT FUNDS

Out of the District of Columbia treasury, we recommend a total of $1.7 billion, an increase of $174.5 million above the amounts appropriated for fiscal year 1980. This $1.7 billion consists of $1.5 billion in operating expenses and $247.9 million for capital outlay.

WORK FORCE

From time to time Mr. WILSON, in particular, in last year's bill, indicated that the employment practices and employment levels here in the District were a little high. This year, I am pleased to report there are a total of 36,159 positions funded in this bill for the District government. This reflects a reduction of 2,946 positions or 7.5 percent below the fiscal year 1980 level of 39,105. Mr. Chairman, the District is making progress in trying to reduce its work force, while at the same time maintain the services that are expected by local citizens, and the Federal Establishment, as well as visitors to our Nation's Capital. If you take the total number of employees from all sources of funding, the city will have 42,545 personnel in 1981, which is 4,425 or 9.4 percent below last year. Mr. Chairman, this is indeed a reflection of the city's commitment to streamline its work force.

GOVERNMENTAL DIRECTION AND SUPPORT

The committee recommends a total of $82.2 million for the agencies and offices funded through this appropriation. We recommend four new positions for the Council of the District of Columbia, the District's legislative branch of government. Two of these positions are to assist the Council in its work of revising the criminal law titles of the District of Columbia criminal code. The other two positions are recommended to establish a central budget staff for the Council. For the Office of the Corporation Counsel, we recommend an increase of $426,000 which will fund 11 new positions and 9 existing positions that are currently unfunded.

Mr. Chairman, the District has an able Corporation Counsel and we feel it is essential that the city be adequately and properly represented if it is to minimize contract losses and avoid increased costs resulting from settlements of claims and lawsuits made under less than desirable conditions. We recommend $355,900 for the Office of Business and Economic Development. This office has been funded since its creation in 1978 with a portion of the city's community development block grant. There is some concern on our committee about this office, Mr. Chairman, a concern that the office will encourage so-called smoke stack industries to locate in our Nation's Capital. We have been assured by District officials that this will not happen. The principal efforts of this office are to centralize the economic development functions of the District government and to retain and attract service-type industries.

ECONOMIC DEVELOPMENT AND REGULATION

Mr. Chairman, we recommend $28 million for the 14 departments and agencies in this appropriation. A total of $3.1 million is included in the bill for the Office of Planning and Development. With the leadership of Mr. PURSELL, the ranking minority member of our subcommittee, the city is placing renewed emphasis on its comprehensive long-range planning and economic development, and we recommend an increase of $1.3 million in this bill which will allow the city to complete the first year of a planning process expected to take approximately 2 years. Mr. PURSELL, the ranking minority member of the committee, and the majority members of the committee have been very interested in not dealing with the budget on a year-to-year basis exclusively, but providing long-term planning and programing. And so this year the bill includes $3.1 million for that long-term program planning for the economic health of the District of Columbia.

Mr. Chairman, decent, affordable housing is needed in all urban areas and Washington, D.C., is no exception. As we travel about this District, I am sure that all Members of Congress are impressed with the displacement rate of high income living here, and housing in the District. It seems appropriate that the District make an effort with four programs to refurbish and purchase property for low and moderate income housing. In this bill, we recommend $13.1 million for the city's Department of Housing and Community Development. Of this amount, $5 million is included to establish four new housing programs aimed at low and moderate income families. This $5 million, Mr. Chairman, will generate additional private financing to rehabilitate and develop housing in the District.

We recommend $2 million to establish the rehabilitation financing program which will provide property owners with low-cost financing to bring their properties into standard code compliance. Housing officials estimate that 58,000 units, or roughly 1 out of every 5 in the city, are in need of significant rehabilitation.

Mr. Chairman, $1.9 million is included in the bill for the first right purchase assistance program which is designed to allow lower income renters to purchase their homes and thus avoid displacement. A one-time appropriation of $1 million is recommended to establish vacant building and land purchase program to provide for the acquisition of vacant buildings and land for reuse as low or moderate income housing. Priority will be given to purchasing vacant buildings and land which have a blighting effect on the surrounding neighborhood.

The fourth new housing program is the Capital Gateway Project for which we are recommending $115,300. Two separate fiscal impact analyses indicate that over a 20-year period the cumulative net revenue from this project should total $119 million. The cost of constructing the public infrastructures and improvements is expected to total $40 million over the anticipated 10-year development period with private development costs expected to exceed $200 million.

In addition to these new housing programs, we recommend $1.5 million for the section 5–313 building repairs program which permits the District government to correct housing code violations when property owners fail or refuse to do so after having been given notice of the violations. These costs are subsequently recovered through the tax collection procedure.

For the Rental Accommodations Office, two additional positions are recommended to expedite the processing of landlord petitions.

□ 1250

PUBLIC SAFETY AND JUSTICE

One of the areas of great concern to the subcommittee and to the full committee is the area of public safety and justice. We are recommending in this bill $342.7 million for public safety and justice.

In particular, the bill includes $113.5 million for the Metropolitan Police Department. Mr. Chairman, our recommendation reflects an increase of $6.4 million above the budget request to restore a proposed cut of 404 police officers, 204 by layoffs and 200 by attrition. It was the strong feeling of the committee that in an age and in an era when there is an upsurge in crime the District should not reduce its police department. The committee's recommendations will provide an on-board strength of 3,880 uniformed officers, the same as the 1980 year-end strength. We have also included language in the report which requires any proposal for reducing the employment level of uniformed officers to be submitted to our committee for approval. The request must be accompanied with statistical data justifying the reduction.

Mr. Chairman, disability retirements by police officers and firefighters are down from 44 percent of all retirements in 1978 and 55 percent in 1977, to 14 percent in 1979. This is by far the lowest reported level in decades, and the committee intends to pursue this subject next year to determine whether this trend toward reduced disability claims is continuing.

A total of $34.8 million is provided in the bill for the operation of the city's two courts—the Superior Court and the Court of Appeals—and the courts' administrative office. Our recommendation is $1.5 million above the 1980 appropriation and includes $1 million in jury fees and $911,000 for witness fees in 1981. Mr. Chairman, we have requested the Corporation Counsel to develop a comprehensive report addressing the present costs of witness and jury fees and possible modifications to these fees which might be desirable in civil or criminal proceedings.

For the Department of Corrections, we recommend $67.1 million which is $7.8 million above the 1980 level and includes funds to support an anticipated increase of 300 in the daily inmate population as well as higher operating costs in the areas of energy, food, clothing, and medicine.

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

Mr. Chairman, after several years of hard work, legislation reforming the District's pension systems covering police officers, firefighters, public schoolteachers, and judges was signed into law by the President on November 17, 1979, as Public Law 96–122.

This legislation commonly referred to as the District of Columbia Retirement Reform Act, is designed to bring about a comprehensive overhaul of current pension statutes and establishes an 11-member board to manage and control retirement funds. The act mandates major changes in police and fire retirement benefits particularly in the disability area which I referred to earlier, and also requires that improvements be made in financing practices leading to actuarially sound pension funds. The act also calls for the implementation of procedures to determine the amount of the city's contribution to each pension system as well as the development of policy and administrative mechanisms to govern the control and investment of pension funds.

Mr. Chairman, the legislation authorizes an annual Federal payment of $52,070,000 to the pension funds over 25 years, starting in 1980, for a total of $1.3 billion to help place the system on a sound actuarial footing. The District government is required to budget an amount sufficient to cover its net pay-as-you-go costs plus an amortization amount which prevents the unfunded liability of the system from growing faster than the rate of inflation.

PUBLIC EDUCATION SYSTEM

Mr. Chairman, we recommend a total of $392.2 million for the city's public education system for fiscal 1981. This includes $276.4 million for the public school system and reflects an increase of $2 million above the budget request to help offset potential teacher layoffs. An area of great concern to the subcommittee is that of public education. As I travel about this District, it seems to me that almost everyone is trying to avoid the public education system here in the District of Columbia, whether they be a Member of Congress or a clerk who works on the Hill.

It seems to me that public education is one of the strong points about the United States. One of the rationales that the committee offered in not cutting the District's budget in education, although there is a modest declining enrollment, is that there is a correlation between classroom size and the ability of young people to learn. So the classroom size at the present time is, on the average, 26 students to 1 teacher.

A few months back, there was a very real possibility that 1,300 teachers would be laid off but it now appears that these layoffs may be avoided through a combination of efforts, including passage of legislation by the City Council permitting early-out retirements which could save 600 jobs—300 actual retirements at high salaries allowing 300 others to stay on the job—negotiations with employee unions to allow unpaid holidays, which could save 500 jobs; redirecting administrative positions which may save 100 jobs and the additional $2 million added by the committee which should allow the system to retain 100 jobs. This should help school officials so they will not have to increase the pupil-teacher ratio next year.

Mr. Chairman, the committee takes particular note of recent reports of scholastic improvements by public school students for the second consecutive year, although past records have not been desirable from our point of view. With school officials placing emphasis on basic reading and math and a competency based curriculum, the committee is hopeful that the system has been turned around and that progress will continue. In fact, keeping the classroom size at 26 to 1 will certainly assist in that effort.

For the University of the District of Columbia, we recommend the fall budget request of $58.4 million which includes $100,000 to establish an Institute of District Affairs to provide technical assistance and research support to the executive and legislative branches of the District government.

HUMAN SUPPORT SERVICES

Mr. Chairman, the committee recommends a total of $375.1 million for the 10 agencies funded through this appropriation. We recommend $2.4 million for programs for the District's 125,000 elderly residents, and an increase of $405,000 for the purpose of placing an additional 100 persons in adult foster care homes. For the city's day care programs, we recommend the full budget request of $10.3 million which is $550,000 above the 1980 appropriation. We recommend $20.5 million for the care and treatment of the mentally retarded at Forest Haven which presently has 982 patients. Funds totaling $1.2 million are included to cover the cost of placing an additional 100 patients in the community.

Under the public assistance program, we recommend a total of $59.5 million which will provide increased funding for families with dependent children and for those receiving general public assistance. However, the Committee has included report language, at the request of the gentleman from Arizona (Mr. RUDD), urging District officials to reduce the error rate, which has decreased from 23.8 percent in March 1979 to 12.9 percent this past March. A further decrease in the error rate will provide additional funds for those who are truly in need of assistance. Certainly the District can do better in this area.

For the Commission on Women, we recommend the full budget request of $106,900 and four positions, which is $51,000 and two positions above the 1980 level. These two new positions should strengthen the Commission's capability at the professional level.

A total of $13.3 million is recommended for four jobs programs directed toward young people and adults with dependents. During our hearings, Mr. Chairman, District officials testified that while the average unemployment rate is 6.5 percent, it is 38 to 42 percent for youth. Through these four programs, the committee believes the city is taking a step in the right direction and the results will be evident not only in a reduced unemployment rate but in other

areas as well. The committee is hopeful that these programs will encourage students as well as those who have dropped out of school to obtain not only work experience but real job skills.

TRANSPORTATION

We recommend $147.2 million for transportation services and assistance. This is $21.7 million above the 1980 level. Our recommendation includes $100 million as the District's share of the Metro subsidy, an increase of $21.1 million above the amount available for 1980. Metro officials plan to open three additional stations and 3.5 miles of rail line during the year.

RIGHT TURN ON RED

Mr. Chairman, I know that Members of this House are very much interested in the right-turn-on-red situation here in the city. I am pleased to report that District officials, with assistance from the Federal Department of Energy, increased the number of approaches where right-turn-on-red is allowed full time from 18 percent to 41 percent in July 1980, and an additional 24 percent of the approaches allow right-turn-on-red between 7 in the evening and 7 in the morning. So, all in all, a total of 65 percent of the approaches permit right-turn-on-red, 41 percent full time and 24 percent between the hours of 7 p.m. and 7 a.m. A further effort to raise the level of compliance will be made this fall after District and Federal officials review the safety effects of the present policy. We have included report language to let District officials know that wherever possible and feasible we desire to have the right-turn-on-red policy in place.

ENVIRONMENTAL SERVICES AND SUPPLY

Mr. Chairman, the committee recommends $42 million from the general fund for the Department of Environmental Services and Supply. Our recommendation reflects an increase of $1.1 million above the 1980 level. This department is the focal point for environmental control activity within the District and is responsible for the distribution of a safe water supply throughout the city as well as the collection of residential refuse and the enforcement of environmental regulations for the protection of the health and welfare of District residents.

PERSONAL SERVICES

The committee recommends $25.3 million to fund a citywide 5-percent cost-of-living salary increase for all city employees. An additional $9.9 million is included in the public schools budget to cover a 5-percent increase for school system employees.

INAUGURAL EXPENSES

We recommend approval of the requested $1.3 million to cover the costs of support services to be provided by the District Government for the January 1981 Presidential Inauguration. Almost $1 million of this amount is for the Police Department.

WATER AND SEWER ENTERPRISE FUND

Mr. Chairman, a total of $81.1 million is recommended for the water and sewer operations of the Department of Environmental Services and the Washington Aqueduct. Our recommendation includes an increase of $13.6 million to improve the treatment of wastewater at the Blue Plains Sewage Treatment Plant to meet Federal standards required by the National Pollutant Discharge Elimination System permit issued to the District in July 1979. The program is designed to provide maximum treatment for wastewater so that the effluent will be of the highest quality and will have minimal impact on the receiving waterway, which in this case is the Potomac River. These funds will allow the region to move one step closer toward the goal of cleaning up the Potomac River.

CAPITAL OUTLAY

The committee recommends a total of $247.9 million for 51 construction projects. This allowance is $83.5 million above the 1980 level and $8.5 million below the request.

Mr. Chairman, we recommend the final appropriation of $26.7 million for construction of the Washington Civic Center in the Mount Vernon area between 9th and 11th Streets, NW., and between H Street and New York Avenue. Construction was started this past April and the facility is scheduled for completion in August 1982 at a total cost of $98.7 million. The civic center is expected to create 4,000 new permanent jobs in addition to construction jobs.

We recommend $32 million for the Department of Housing and Community Development. A total of $9.8 million will be used to make improvements at 10 public housing projects and $11.3 million is for the Capital Gateway Development project which is expected to attract more than $200 million in private development funds.

Mr. Chairman, we all know that the streets and bridges in the city are in need of repair, and we recommend $18.5 million for this purpose. In addition, $20.3 million is included as the District's share of construction costs and bus replacements for the Metro system.

The sum of $30.4 million is recommended to replace the present 100-year-old crosstown watermain. This is an essential project which will insure an adequate distribution of potable water throughout the city. We also recommend an increase of $14 million to cover the increased cost of replacing the 75-year old McMillan Water Treatment Plant. The committee was advised that the present plant is badly deteriorated and parts of it have been taken out of service because they have literally collapsed.

GENERAL PROVISIONS

Mr. Chairman, under section 119 of the general provisions, we have included language identical to that in the 1980 Act prohibiting the use of Federal funds to perform abortions except in cases of rape, incest, or where the life of the mother would be endangered if the pregnancy were carried to term.

CONCLUSION

I would like to thank the members of the committee in a true sense for their efforts and cooperation. This is my maiden voyage as chairman of this subcommittee. I received good cooperation and strong support from the gentleman from Arizona (Mr. RUDD), the gentleman from Kentucky (Mr. NATCHER) who was chairman of this subcommittee for many years and whose expertise in District affairs is clearly evident, the gentleman from Ohio (Mr. STOKES), the gentleman from Utah (Mr. MCKAY), and from the prior subcommittee chairman, the gentleman from Texas (Mr. CHARLES WILSON).

But in particular, Mr. Chairman, I would like to single out the ranking minority member, the gentleman from Michigan (Mr. PURSELL). He not only gave fine cooperation and advice but was really a mainstay in carrying through on some of the goals we would like to see accomplished in the near future, and that is long-term planning for the District rather than merely looking at this as a year-by-year budget.

Mr. Chairman, I have attempted to cover the highlights of the bill. The committee report is available to all members and explains our actions in greater detail.

This is a good bill, Mr. Chairman. Our subcommittee has worked long and hard trying to balance various competing needs with limited resources. We recommend this bill to the committee and respectfully request that it be accepted as reported.

Mr. PURSELL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to associate myself with the remarks of our subcommittee chairman, the gentleman from California (Mr. DIXON). I especially want to compliment our subcommittee chairman, our staff, the gentleman from Kentucky (Mr. NATCHER), the gentleman from Arizona (Mr. RUDD), and the other members who diligently attended meetings and sessions here in the Capitol and also participated in something new that we developed for the first time this year. In looking at long-range planning for the District of Columbia, the committee and its staff took some time to go down to the District building and the Capital City and meet with our long-range planning people in housing, transportation, and other areas.

We thought it was important to look at the long-range future of what we think is "the Capital of the Free World," the city that not only the people of Washington, D.C., as residents respect in terms of a place to live but that people who travel respect and come from all over the world to see. This is the fair city that we know as the Capital of the United States.

Mr. Chairman, I am not going to spend too much time on the appropriation line items, because I think essentially those of us who are supporters of home rule believe very basically and philosophically that the District of Columbia, like any other city in this Nation, should have its own council and its own executive body and should make its line item principal policy decisions dealing with the city itself.

But frankly, I do think that since we do not have actual home rule as it exists, we as members of the committee must not only look at short-range line item issues that are appropriate each year

during our congressional hearing process but, more importantly, we must address ourselves to the Federal policy of looking at long-range development of this particularly important city of the United States. We must look to long-range planning. We are looking at long-range planning in respect to housing, transportation, and the other issues that are fundamentally important for the growth and vitality of Washington, D.C.

As members of the committee, if we were to spend each day looking at line items and bickering back and forth with the Mayor and the City Council, I think we would not serve what I consider a constructive, useful purpose.

So this year, in a sort of further development of our efforts in the past, I would like to cite the gentleman from Kentucky, Mr. BILL NATCHER, as a good example, for he is one who is interested in the Convention Center as a new center for the development of convention activities and growth in the Washington, D.C., area, not only for the benefit of the Capital itself, but for the city itself. This is an effort to have people come in and attend conventions and to bring some vitality to the city with what I, as a former president of a chamber of commerce, used to call "the pitter-patter of feet," because without people attending events and without people coming into the downtown area and without people eating, buying, shopping, and living in the city, a city is not going to survive.

□ 1300

This Congress can spend a great deal of money on food stamps, on human needs, on bandaid solutions to our problems, and I think I have been generally a very good supporter in that area. But I think, more importantly, the Congress ought to address itself to the basic economic fundamentals of urban development, and that is good planning.

I would like to compliment the members of the City Council and the members of the executive body, especially the housing director, for taking a look at the decay of some of the areas on 14th Street and the Bates area, and some of the areas that I have toured personally, to see that we are using our Federal dollars and local dollars to revitalize the downtown and the essential living quarters of the citizens of the District of Columbia.

Now, that is an important principle in our development of this particular appropriation bill. So we have done two things, essentially. We have cut back the jobs, the basic slots, to I think about 2,600 jobs. Maybe some people will quarrel with that because jobs are important. But I think, in the long run, our dollars have been invested in capital outlay projects, because without good housing, without the redevelopment of the downtown, without cleaning up some of the areas of decay, it does not matter, in the long run, how many jobs are on the city payroll, on the public payroll, even though they are especially necessary in most cases.

The basic, primary purpose of our committee, in my opinion, my humble opinion, is that we address ourselves to those long-range capital outlay, economic growth projects. I would like to cite just one example which we took. A one-time appropriation of $1 million was recommended to establish a vacant building and land purchase program to provide for the acquisition of vacant buildings or land for reuse for low- or moderate-income housing. Now, this was a dual purpose, because it served here as providing housing and redevelopment of buildings and renovation in this particular land area, but also it has an effect of improving a blighted area in surrounding neighborhoods. So it has a trigger effect.

Aside from not only putting the $1 million of Federal money in this project, it triggered, in my opinion, approximately $310 million of private money. So here we can take a little investment on our side of the ledger, have it multiplied many times over through private development in the private sector, and you are going to get a rebirth of the city that I think is going to be second to none in this Nation.

So I think, in essence and in summary, I am very pleased with the committee in recognizing these important features of economic growth and development, in housing, transportation, public safety, and other public needs.

I want to thank the chairman, the gentleman from California (Mr. DIXON), because he is our new chairman this year, and I think he should be given outstanding praise, in my opinion, for not only being a good decision maker but, personally, in my opinion, he is a humanitarian, but more importantly, he is also a good listener. Sometimes Congressmen are not willing to listen, and we have taken the time this year as a committee—the gentleman from Arizona (Mr. RUDD) and myself on the minority side—to work with the majority to keep the budget down. It is only a 7.3-percent increase over last year, and that is really an outstanding achievement, in my opinion, when you look at other Federal projects and other Federal appropriation bills. And in light of those fiscal economic restraints that we have put into the bill, the aspect of capital planning and capital development for this city, I think it will get us into the right direction for this year and for the forthcoming years.

Mr. DIXON. Mr. Chairman, I yield 9 minutes to the distinguished representative from the District of Columbia (Mr. FAUNTROY).

Mr. FAUNTROY. Mr. Chairman, I rise to commend the chairman for his outstanding leadership in bringing to the floor this appropriations bill which will enable the District of Columbia to meet its obligations as the Nation's Capital. The amount of the Federal payment, $296,645,500 very nearly approaches the present $300,000,000 authorization. The increase in this bill over that which was provided for in fiscal year 1980 will go a substantial way in enabling the city to provide those services which are desperately needed by all of our citizens.

I must however, point out that the relationship of the Federal payment to the general fund appropriations has not increased in any substantial way. It remains at 19 percent which is considerably less than the 27 percent which was provided in 1972, 25 percent in 1973, 24 percent in 1974, and 26 percent in 1975. It is true that the city's general revenue collections have increased; but, it is only through the city's own efforts that the Federal payment has not been substantially larger. I must express my concern over this continuing trend and speak for a moment about the reasons we in the Congress have provided an authorization for a Federal payment.

The Federal payment is not a gift to the city. Let us be very clear about that. It is not a gift and it is not out of the largess of the Congress that the District Committee authorizes and the Appropriation Committee appropriates funds. These funds are provided to offset the loss of tax revenues from exemptions held by the United States and foreign governments as well as for the payment of services this city renders those interests. There should also be some compensation for the tight restrictions on development which are most notably seen in the Height Limitation Act but which are also seen in such things as the operation of the NCPC, the Fine Arts Commission, and the general land use and zoning scheme which has been historically developed with congressional input. The right of foreign governments, for example, to locate at virtual will has a decided impact on zoning and land use because we must provide full services to all areas and we must set land uses which would be compatible to those who are sent here to represent their governments.

Each time there is a demonstration, each time there are foreign dignitaries who come to visit, each time the President moves about, and each time an official requires special services from our police or from another branch of our government, the city provides them without any second thoughts or comment. That is the way it ought to be; that is the way it is. Tragically, however, the Federal payment does not fully compensate for losses of revenue or for the incurred costs. That is wrong. The short of the matter is that the city and its residents have, at least since 1972, been subsidizing the operations of the Federal Government in this city. For our efforts, we have accumulated a sizable deficit, continued complaints, and increasing amounts of Federal intervention in what ought to be local matters.

I point out, for example, the committee's decision to mandate the size of our police force. I do not object to the concern that this city maintain the force at a certain size to assure that its excellent and well-deserved reputation be continued. I do object, however, to the mandate when it is unaccompanied by sufficient resources.

I can give you another example. The committee has expressed its concern over the city's decision to eliminate 25 welfare investigator positions in the Office of Eligibility Review which has had substantial success in reducing the welfare payment errors. It is important to cut expenses by reducing errors. It is also important, however, to increase revenues. The fail-

ure to fully fund the Office of Business and Economic Development, the Department of Finance and Revenue and the 14 departments and agencies of economic development and regulations, will not aid in the development and creation of more revenues. It is particularly tragic when we seek only to cut expenses without increasing resources especially when we in this Congress know, from the historic figures which are published annually in the committee report, that this city is directly and very heavily subsidizing the operations of the Federal Government.

Let me make this point again. Since 1975, the time of the inauguration of home rule, prices have increased 49 percent. The value of the present appropriation, then, is less than $150 million in terms of 1975 purchasing power. No agency in the Federal Government is forced to undergo these kinds of real dollar cuts. Put another way, if the fiscal year 1980 Federal payment had kept pace with the growth of the Federal Government, instead of $237 million, the initial fiscal year 1980 payment, before the supplemental, would have been $416 million.

Clearly, something must be done to correct this inequity which is borne by the unrepresented taxpaying citizens of this city. Unfortunately, it cannot all be done this year. I would hope, however, that in the next year something more equitable can be done through adoption of a formula-based payment that would compensate the city for its losses and its costs. Mrs. FENWICK, Mr. DELLUMS and Mr. MCKINNEY, as well as myself, have all made proposals and I would hope that from these suggestions some equitable bill can be devised.

In the meantime, until that is accomplished, let me simply say that I would hope this House will adopt the bill as reported and without further amendments. It seems to me that it is the least which can be done for those who pay 81 percent of the costs of this city and who have neither full home rule nor any voting representation in the Congress.

□ 1310

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield for an inquiry?

Mr. FAUNTROY. I yield to the gentleman from Texas.

Mr. GONZALEZ. Since the gentleman is the distinguished representative from the District, I have had brought to my attention the fact that there is a new mandatory retirement, compulsory retirement for the city policeman, the metropolitan policeman, of 18 years, apparently occasioned by budgetary constrictions, but I did not have it explained too well to me.

The person telling me about it is a relative of a police officer and in a sense was asking me in a grieving way.

Can the gentleman explain what new policy has been announced or is in force now with respect to compulsory retirement or service limitation periods for police officers?

Mr. FAUNTROY. I am afraid I am not in a position to give the details of such a requirement because I assure the gentleman it is not the requirement.

Mr. DIXON. Mr. Chairman, will the gentleman yield?

Mr. FAUNTROY. I yield to the gentleman from California.

Mr. DIXON. It is my understanding that the early retirement legislation was enacted to alleviate a serious situation where there was going to be a reduction in the work force. In this case, the gentleman was referring to the Police Department, but the legislation would also apply to personnel in the education field or any other areas of the work force.

Second, although it allows early retirement with 18 years of service, there is an appropriate reduction in the benefits the retiree will receive. It is designed to keep on board those younger employees and avoid a reduction in the work force.

Mr. GONZALEZ. If the gentleman will yield for one further question: Is that a wise policy in the case of a police department where the experienced man who has reached that point, where he has really accumulated extensive experience, may find himself pushed out? Does the gentleman have any knowledge of any debates that were held by the City Council with respect to that?

Mr. DIXON. I really cannot say whether it is a wise policy or not, because there are conflicting interests, particularly when it involves law enforcement or peace officers. Many people believe that the early-in, early-out system is much better than the early-in, late-out method, because of the agility and physical demands required of police officers.

Most importantly, and I want to make this very clear, the early-out retirement is optional with the person. He or she does not have to retire at the end of 18 years of service. It is not mandatory in any way.

Mr. GONZALEZ. I thank the distinguished gentleman and the distinguished gentleman from the District of Columbia.

Mr. PURSELL. Mr. Chairman, I yield 8 minutes to the distinguished gentleman from Arizona (Mr. RUDD), a member of the subcommittee.

(Mr. RUDD asked and was given permission to revise and extend his remarks and to include extraneous matter.)

Mr. RUDD. Mr. Chairman, the city of Washington has experienced a steady decline in population since the District of Columbia was granted partial home rule by Congress in 1975.

In that year, according to the U.S. Bureau of the Census, the District's population was 723,000.

Today, according to the preliminary official population count for the 1980 census, the District's population has declined to 568,300—a 21.4-percent decline in just 5 years.

Yet during the same period, the District government's annual budget has increased 59.6 percent—from $1.1 billion in 1975, to $1.76 billion for 1981, the proposed appropriation contained in this bill today.

Welfare recipients—those receiving aid for families with dependent children (AFDC), general public assistance, food stamps, and medicaid—numbered 23.6 percent of the city's total population in 1975.

Today, welfare recipients number 138,328, or 24.3 percent of the total population.

As the District of Columbia's population has declined, so has its public school enrollment.

In 1975, there were 127,608 students attending the city's public schools.

The 1980–81 school enrollment is estimated by the city to be 97,900—a decline of 23.3 percent below the enrollment of 5 years ago.

Yet the city's school budget has increased steadily in real terms throughout this period.

The average per student expenditure to support the school system has risen from $1,470 in 1975, to $2,823 in 1980–81—an increase of 92 percent in the cost per student.

Mr. Chairman, I relate these facts by way of background to highlight my concern over the direction of the District government.

The direction has been and still is toward more and more governmental programs, at an ever higher cost year after year, to service a steadily declining population.

Moreover, many of the city's 75 government agencies, according to the Mayor's public statements, are this year overspending their 1980 budgets at a rate that will produce a $125 million or higher deficit by the end of the current fiscal year.

This is in direct contradiction to instructions from Congress last year that the D.C. government operate within the limits of its congressional budget allowance.

There has been a tendency on the part of some district officials to try to blame Congress for the city's budget problems, and to demand more Federal funds to finance the city's ever-expanding governmental services.

The real facts are that Congress and the various Federal agencies already provide about 43 percent of all revenues to support the city's annual budget, and in addition provide about $80 million worth of unreimbursed services to the district beyond the cost of unreimbursed city services to the Federal Government.

This is in direct contradiction to instructions from Congress last year that the D.C. government operate within the limits of its congresssional budget allowance.

There has been a tendency on the part of some district officials to try to blame Congress for the city's budget problems, and to demand more Federal funds to finance the city's ever-expanding governmental services.

The real facts are that Congress and the various Federal agencies already provide about 46 percent of all revenues to support the city's annual $1.76 billion budget.

I include at this point in the RECORD a table enumerating the sources of the approximately $817.8 million in Federal funds that will go to the District in 1981.

Federal funds to the District of Columbia, 1981

Item	*1981 amount*
Federal payment	$296, 645, 500
Retirement fund (police, firefighters, teachers, judges)	52, 070, 000
Water and sewer reimbursement	8, 100, 000
Demonstration expense (Inaugural)	1, 300, 000
Loans for capital outlay	157, 557, 000
General revenue sharing [1] (local and State)	26, 300, 000
Federal agency grants [1]	275, 879, 000
Total Federal funds	[2] 817, 851, 500

[1] Estimate.

[2] Federal funds to the District of Columbia in 1981 will be approximately 46.3 percent of recommended new budget (obligational) authority of $1,764,957,400 for the District under H.R. 8061.

In addition, Mr. Chairman, the Federal Government will provide about $80 million worth of unreimbursed services to the District beyond the cost of unreimbursed city services to the Federal Government.

Mr. Chairman, the local newspapers and broadcast media here in the Nation's Capital provide us with daily reminders of the financial and other problems of the District government.

I personally believe that the City Council and the Mayor must take much firmer control over D.C. government agencies, to guide them into living within their appropriated budgets, to set proper spending priorities, and to cut out unnecessary and unjustified programs and expenditures.

Otherwise, I fear that Congress will ultimately be forced to revoke the limited home rule charter that the District now has.

The problems being faced by the city will not be solved unless the District's government leaders live up to their solemn obligation to effective self-government and fiscal responsibility.

A more detailed overview of the District government's budget situation since home rule is provided in my minority views in the Appropriations Committee report accompanying this bill.

I would like to include those views at this point in the RECORD:

[From House Report 96–1271, accompanying H.R. 8061, District of Columbia appropriation bill, 1981]

MINORITY VIEWS OF HON. ELDON RUDD

A great deal of emphasis is placed by District of Columbia officials on the concept of "home rule." Congress bestowed partial home rule upon the City of Washington in 1975. However, under the limited home rule charter enacted at that time, Congress reserved its statutory responsibility to appropriate the City government's annual budget, as well as Federal funds to support District of Columbia government operations and capital improvements, in the belief that full home rule should not be granted until the City had established a track record of sound and effective self-government.

The City has not established such a record of effective government and fiscal responsibility. To the contrary, the District's government leadership has brought the City to the brink of financial crisis through refusal to operate within its appropriated budget and available revenues.

The Mayor publicly acknowledged on July 21 that the City government faces the prospect of a $125 million operating deficit during this year alone. This is stark evidence that the City has thus far been unable to live up to the expectations and responsibilities of home rule.

The City government has ignored this Committee's specific directive in the report accompanying its FY 1980 appropriation to operate on the basis of the Congressional allowance. The rate of obligations and expenditures for many District agencies is running millions of dollars beyond the budget allowance, which will result in the $125 million or higher operating deficit for 1980 reported by the Mayor.

The City has also failed to cut program costs wherever possible, to eliminate programs that have outlived their usefulness, and to find less costly alternatives for obsolete programs and under-used facilities with high overhead costs, as directed last year by the Committee.

POPULATION DECLINE AND BUDGET INCREASE

While the District of Columbia's population has declined 21.4 percent since 1975, according to the U.S. Census Bureau, its government budget over the same five-year period has increased 59.6 percent. Following is a table showing the District's population, number of city employees, budget requests and appropriations, and Federal funds since 1975:

DISTRICT OF COLUMBIA POPULATION AND GOVERNMENT EXPENDITURES, 1975–81

Year	Population [1]	City employees [2]	Federal payment		Total Federal funds appropriated [4]	Total new budget obligational authority	
			Estimate	Appropriated [3]		Estimate	Appropriated [3] [5]
1975	723, 000	44, 901	$230, 000, 000	$226, 200, 000	$425, 232, 000	[6] $1, 134, 886, 400	[6] $1, 105, 838, 927
1976	697, 000	43, 422	254, 000, 000	248, 948, 700	505, 468, 700	1, 243, 655, 173	1, 199, 654, 073
Transition quarter	697, 000	43, 422	66, 500, 000	66, 137, 000	107, 559, 600	248, 536, 400	248, 130, 200
1977	683, 000	42, 459	280, 000, 000	276, 650, 000	422, 981, 000	1, 168, 176, 400	1, 160, 251, 700
1978	671, 000	41, 095	300, 000, 000	276, 000, 000	399, 116, 000	[7] 1, 441, 967, 200	[7] 1, 389, 964, 700
1979	656, 000	37, 569	319, 565, 000	252, 565, 000	282, 997, 000	1, 556, 278, 600	1, 412, 961, 400
1980	568, 300	38, 080	317, 000, 000	276, 500, 000	449, 940, 300	1, 761, 053, 200	1, 590, 440, 800
1981	568, 300	35, 111	301, 000, 000	[8] 296, 645, 500	[6] 515, 702, 600	1, 776, 811, 900	[6] 1, 764, 957, 040

[1] Source: U.S. Bureau of the Census.

[2] Includes Metro employees, adjusted to reflect allocation in the District of Columbia only.

[3] Includes supplemental appropriations.

[4] Includes permanent appropriations, annual Federal payment, Federal loans for capital outlay, reimbursements for water and sewer service to Federal buildings, and funds for the Temporary Commission on Financial Oversight (1977, 1978, 1979, 1980). Does not include Federal agency grants or revenue sharing funds.

[5] Does not include Federal grants and reimbursements.

[6] Includes $20,792,400 in supplemental appropriations to cover operating deficits for fiscal years 1972, 1973, and 1974.

[7] Includes $7,378,500 in additional fiscal year 1977 supplemental appropriations.

[8] House Appropriations Committee recommendation.

WELFARE RECIPIENTS

A major reason for the inordinately high government expenditures in the District of Columbia, in spite of the City's steadily declining population, is the fact that 133,140 people—more than 23 percent of all District residents—are on welfare. Furthermore, according to the Department of Human Services, which administers the City's welfare programs, more than 68 percent of welfare recipients have been receiving welfare assistance continuously for more than two years, and more than 40 percent have been on welfare for more than five years.

Welfare and social service programs of the District government comprise 21.2 percent of the total budget, which does not include funds for food stamps and medicaid assistance going to 40,097 recipients at the present time.

Following is a table showing the District's budget for Human Support Services since 1975, including the number of welfare recipients each year and their percentage of the total population of the City:

SOCIAL WELFARE EXPENDITURES AND WELFARE RECIPIENTS, 1975–81

Year	Annual budget for human support services		Welfare caseload [1]	Total number of welfare recipients [1]	Percentage of total population on welfare
	Estimate	Appropriated			
1975	$228, 278, 000	$226, 442, 000	67, 999	170, 133	23.5
1976	265, 079, 400	264, 074, 500	63, 679	158, 100	22.7
1977	268, 288, 800	274, 675, 600	56, 744	141, 244	20.7
1978	289, 250, 100	291, 548, 300	60, 144	141, 344	21.1
1979	303, 828, 700	296, 569, 000	54, 901	127, 952	19.5
1980	374, 156, 900	356, 899, 500	58, 943	133, 140	23.4
1981	382, 017, 000	[2] 375, 082, 200	[3] 62, 983	[3] 138, 328	24.3

[1] Includes individuals receiving aid to families with dependent children (AFDC), general public assistance (GFA), food stamps (adjusted to exclude recipients of other public assistance), and medicaid (adjusted to exclude recipients of other public assistance).

[2] House Appropriations Committee recommendation.

[3] Estimate of District of Columbia Department of Human Services.

PUBLIC SCHOOLS

As in the case of the District's steadily declining population, pupil enrollment in the City's public schools has also been sharply reduced since 1975. Public school enrollment was 105,362 during the 1979–80 school year, compared to 127,608 during the 1974–75 school year—a drop of 22,246 students, or 17.4 percent.

Public school officials estimate the school enrollment during the 1980–81 school year will be 97,900, a further 7 percent drop below last year's student enrollment, and a total decline of 29,708, or 23.3 percent, in the past five years.

Despite this sharp reduction in the number of students attending D.C. public schools, school expenditures have continued to rise steadily in real terms, as shown by the following table:

SCHOOL ENROLLMENT AND EXPENDITURES, 1975–81

Year	Adjusted average daily student enrollment [1]	Annual appropriation for public schools	Real appropriations (1967 standard dollars)	Average annual per pupil expenditure
1974–75	127,608	$187,574,600	$124,966,400	$1,470
1975–76	125,871	203,580,600	126,225,600	1,620
1976–77	122,287	224,767,100	131,300,900	1,838
1977–78	119,068	243,259,600	132,566,500	2,043
1978–79	113,050	$253,289,100	$127,730,300	$2,240
1979–80	105,362	268,295,200	135,220,700	2,546
1980–81	97,900	[2] 276,349,700	139,280,200	2,823

[1] Source: District of Columbia public schools.

[2] House Appropriations Committee recommendation. (Includes $29,810,400 for debt service not reflected in previous years.)

In my judgment, there is no justification for the steady increase in the District of Columbia budget and the amount of Federal funds allocated to the City, in light of the foregoing facts concerning the sharp population decline and other associated factors, such as the substantial drop in public school enrollment.

Moreover, the failure of District government leaders and managers to chart a clear course towards effective self-government and fiscal responsibility stands out as the surest threat to continued or total home rule for the people of Washington, D.C.

Congress cannot and I am sure will not stand by as the District of Columbia follows New York City to the brink of financial collapse. It was to help the District government to implement sound management and budgetary practices that Congress established and funded the Temporary Commission on Financial Oversight.

However, the primary responsibility in this effort rests with the elected and appointed District government officials themselves—the City Council, the Mayor, the school board, and all department heads. There has been a tendency on the part of some District officials to try to blame Congress for the City's budgetary and management problems. But under home rule, even partial home rule, the responsibility cannot be shifted in this manner.

If home rule for the District of Columbia is to continue, it is up to the City to work out it own problems, and to establish firm guidelines by which the District government will set proper priorities, cut out unnecessary and unjustified programs and expenditures, and live within its own means rather than relying upon the Nation's taxpayers to support unlimited governmental programs.

□ 1320

Mr. DIXON. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Kentucky (Mr. NATCHER).

Mr. NATCHER. At this time, we submit for your approval the annual District of Columbia appropriations bill for fiscal year 1981. It is a distinct honor for me to serve on this subcommittee with our new chairman, the distinguished gentleman from California (Mr. DIXON). This is a difficult assignment and Mr. DIXON is making a good chairman. We have on our subcommittee Mr. STOKES of Ohio, Mr. PURSELL of Michigan, Mr. MCKAY of Utah, Mr. RUDD of Arizona, and Mr. CHAPPELL of Florida. Mr. Chairman, all of these members are outstanding Members of the House of Representatives and are making every effort to see that the bill we present today is a good one.

I served for a period of 16 years as chairman of this subcommittee and have been a member of the subcommittee for 27 years. I know of the many problems confronting our Capital City, but I, for one, believe Mr. Chairman, that all of these problems can be solved.

In our report on pages 31 and 32, we have the following recommendations and directions concerning the Metropolitan Police Department:

A total of $113,522,100 is included in the bill for Fiscal Year 1981 for the Metropolitan Police Department. This allowance is $1,980,000 above the fiscal year 1980 level and $6,436,600 above the proposed budget for fiscal year 1981.

The budget approved by the Congress last year included additional funds which provided the District with a police force of 4,120 sworn officers. However, action taken since that time by District officials is expected to result in the attrition of 240 officers and an on-board strength of 3,880 officers as of September 30, 1980. The amended budget submitted by District officials for fiscal year 1981 proposed a further cut of 404 officers, 204 by lay offs and 200 by attrition, which would reduce the force to 3,476 as of September 30, 1981, a total reduction of 644 uniformed officers over a 2-year period. The Committee finds that this action on the part of District officials unacceptable, especially with the recent upsurge in the crime rate.

Accordingly the Committee has restored $6,436,600 to the police budget for fiscal year 1981 so that the department can maintain an average strength of 3,880 uniformed officers during the year. The Committee is concerned that funds are removed from the department's budget and transferred or reprogrammed to other agencies. While this was denied by District officials during the hearings on the budget amendment, the Committee subsequently received a reprogramming request which sought to use "savings" from the police budget to fund programs in a different department. The Committee expects the funds appropriated for the Police Department to be used by the Police Department and does not approve of the use of police funds for other purposes.

Appropriations are provided in the bill to fund an average employment level of 3,880 sworn police officers and 543 civilian employees for fiscal year 1981. Any reduction, by attrition or otherwise, in the employment level of the Police Department is not to be made unless prior approval is obtained from the House and Senate Subcommittees on District of Columbia Appropriations. Requests for any reductions must be accompanied with a justification supported by statistical data.

Mr. Chairman, when I first was elected a member of the subcommittee, we had some problems that were of a serious nature in the Metropolitan Police Department. The Chief of Police at that time was Robert V. Murray, one of the best Chiefs of Police we have ever had in our Nation's Capital. A number of police officers were dismissed and some were indicted by virtue of crimes that had been committed. The Chief of Police made up his mind that we would have a clean, honest, efficient police department and he received the full support of the Commissioners and our Subcommittee on District of Columbia Budget.

In addition to problems within the police department, crime was on the increase and with the authorized strength of 2,900 police officers, we did not have the kind of police force that could handle the problems in our Nation's Capital. Starting at that time, we, each year for a number of years, increased the size of the Metropolitan Police Department until we had a total complement of 5,100. This increase was fully justified and each year we properly funded this Department. I recall back in the beginning that our crime rate was increasing from 17 to 25 percent each year.

Almost monthly we had marches and disturbances of some kind or another here in our Capital City and these events required additional police officers. I recall one time when there were threats issued that beginning on the following Monday, the bridges would be blocked, along with the parkway and streets leading to our Nation's Capitol Building. These threats to keep the Congress away from the Capitol were never carried out because the Chief of Police of our city and the Metropolitan Police Department knew exactly what to do and met this situation head on. I could name many events that have transpired during the past 26 years that clearly show that we have a good Police Department here in our city and one that all of us should be proud of.

We have some 20 million people who visit our Capital City every year from the 50 States and thousands from abroad. These people, along with the people who live in the District of Columbia and pay the taxes to maintain this

city are entitled to a system of law enforcement which will insure them the right to transact their business and tranverse the streets at any time without fear of assault. A well lighted city and the patrolman on the street are two of the best deterrents in the prevention of crime that I know anything about.

Like all large cities, our Nation's Capital has been confronted with serious crime problems all down through the years. For many years we had recruitment problems and throughout this country there was considerable competition for applicants among the many police departments. At one time, we recruited in a great many States and on two occasions we had to send out four teams of officials into the field to recruit new patrolmen for our Metropolitan Police Department. These four teams were sent into the States of Pennsylvania, Connecticut, New York, Virginia, West Virginia, Ohio, Indiana, Kentucky, Massachusetts, Rhode Island, and Maryland. In these States, the Labor Department statistics showed considerable unemployment and with the four teams working systematically throughout the States, we succeeded in obtaining a great many applications for employment and were able to meet our recruitment problems.

Down through the years, we had problems concerning the reporting of crimes here in our Nation's Capital. We developed a centralized control system over all crime reports and all crimes were reported to a central radio dispatcher's office which controlled the reporting of the crimes to make certain that they were reported. The system that we set up here in our Nation's Capital was set up in conjunction with the Federal Bureau of Investigation of the Department of Justice and was a system that was recommended by the International Association of Chiefs of Police. We thereby stopped once and for all the many rumors that seemed to float around our city that our system was wholly inadequate from the standpoint of the reporting of the crime situation here and in fact, was handled in such a manner as to make the people who live here believe the crime situation was well under control.

During this period of time, Mr. Chairman, notwithstanding how well our police department attempted to solve the crimes in our city, when apprehended and tried, a great many of the offenders were either turned loose or given sentences which were wholly inadequate for the crime committed. For a period of about 3 years, we, on every occasion when the courts appeared for their annual appropriation, stressed the importance of speedy trials, adequate sentences, and better cooperation with the Metropolitan Police Department.

These were difficult days, Mr. Chairman, and ones that I hope we never have to go through again. We must support our Police Department and be ever vigilant when anyone attempts to reduce the total complement when the facts do not justify such a move.

For many years now our Police Department has been known to be an excellent Department throughout our country. Our Chief of Police and all of the members of this Department work diligently to see that the law is enforced and that crimes are solved. Here in our Nation's Capital, you can follow through the newspapers the commission of major crimes and if you stay with it, you will find that these crimes, with the exception of a very few are solved and the offenders apprehended. I cannot make this statement, Mr. Chairman, about a lot of other police departments in this country, but I can insofar as our Department is concerned.

The drug situation is a serious problem now in our Nation's Capital, the same as it is in a number of other major cities throughout the country. Especially does this apply to the illegal sale and use of heroin. The Federal authorities have worked with our Police Department on many occasions during the past 10 years in apprehending those guilty of selling illegal drugs and it is now known throughout the other large cities that our Police Department will not, under any circumstances, permit the trafficking of illegal drugs to take place in our Nation's Capital.

This is not the time, Mr. Chairman, to make any reductions in the Police Department. The crime situation at this time would not justify such a move and with the number of visitors we have each year, we must continue to maintain a strong, efficient, well trained police department. Any deviation from the language set forth in our report concerning the Metropolitan Police Department would be a serious mistake on the part of the Mayor and the City Council. Our recommendation concerning the Metropolitan Police Department is for the best interest of our Nation's Capital and under no circumstances should any move be made to reduce the Department or to fail to spend necessary funds appropriated for the operation of this Department.

Mr. Chairman, we recommend this bill to the committee and respectfully request that the bill be accepted as reported.

Mr. PURSELL. Mr. Chairman, I have no further requests for time on this side.

Mr. DIXON. Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

The CHAIRMAN. All time has expired. The Clerk will read.

The Clerk proceeded to read the bill.

Mr. DIXON (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. Are there any points of order against the bill?

The Chair hears none.

AMENDMENT OFFERED BY MR. MILLER OF OHIO

Mr. MILLER of Ohio. Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For payment to the District of Columbia for the fiscal year ending September 30, 1981, $299,645,500, as authorized by the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93–198, as amended (D.C. Code 47–2501d); and $8,100,000 in lieu of reimbursement for charges for water and water services and sanitary sewer services furnished to facilities of the United States Government as authorized by the Act of May 18, 1954, as amended (D.C. Code 43–1541 and 1611).

For the Federal contribution to the Police Officers and Fire Fighters', Teachers' and Judges' Retirement Fund as authorized by the District of Columbia Retirement Reform Act, Public Law 96–122, approved November 17, 1979 (93 Stat. 866), $52,070,000.

For reimbursement for necessary expenses incurred in connection with inauguration activities as authorized by Section 737(b) of the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93–198, approved December 24, 1973 (87 Stat. 824; D.C. Code, sec. 1–827(b)), $1,330,100.

The Clerk read as follows:

Amendment offered by Mr. MILLER of Ohio: On page 2, after the period in line 12, add: "The appropriation in this paragraph for the payment to the District of Columbia for the fiscal year ending September 30, 1981, is hereby reduced by $6,000,000. This reduction shall not be applied to reduce fire or police services or fire or police personnel below the levels provided in this Act before the application of this reduction.".

Mr. MILLER of Ohio. Mr. Chairman, this is the same as an amendment that I offered in the full committee. It is to reduce the amount of the Federal payment to the District of Columbia by approximately 2 percent. This same amendment has been offered on most of the appropriation bills this year. On this bill the 2 percent would equal $6 million.

Now, we have heard several times about the problems that we have maintaining police and fire protection and services. This amendment exempts the police and fire personnel and services from this cut.

The Federal payment in the last 10 years has more than doubled to the city of D.C. We might refer to some of the newspaper articles that we have read for an indication of why the city has money problems. Almost everyone here has seen the headlines of what takes place in D.C. as far as wasting the Federal dollar is concerned. One of the items says: "Three million dollars a year wasted in errors in welfare programs."

Another reads: "D.C. foster care program mismanaged." The number of children has been unknown.

I read in the newspaper the other evening where someone in responsibility in the Washington, D.C., government had stated; "We thought we had a thousand more children." Well, to lose the dollars is not as bad, but we certainly should not lose the children.

Another headline is: "District has lost 300 refrigerators." These were new refrigerators.

□ 1330

"D.C. Deficit Overstated, GAO Finds."

"Audit Troubles Still Plague District Budget Agency."

"D.C. School Board Has Area's Largest and Costliest Staff."

Those are headlines. Those are reports that we read almost weekly in the Washington papers.

As far as the District of Columbia school board is concerned, I think we should take a little deeper look at that and compare it with Montgomery, and Prince Georges Counties in Maryland, and Fairfax County in Virginia. These three suburban school boards have an enrollment of about 102,000 to 128,000 children. School board budgets run from $160,000 to $249,000 for school board members and their staffs. But not in D.C. For the same amount of pupils we spend $1 million.

Where the board members in the counties are paid from $4,500 to $7,200 a year, in the District of Columbia the board members are paid $18,725. In D.C. they have a staff of 37 persons whereas these other school jurisdictions of comparable size have staffs of from 6 to 8.

We would still have $14 million of that $20 million proposed additional Federal payment left in if we passed this amendment of 2 percent, which is a $6 million reduction. The Federal payment would still be up $14 million over fiscal 1980.

I would request that we get a yea vote on the amendment.

Mr. DIXON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I have the greatest respect for the gentleman from Ohio (Mr. MILLER). He has served in this Congress for some seven terms, and I am in my first term.

But if my colleagues will listen closely to what the gentleman from Ohio (Mr. MILLER) says, the objective is to raise the biggest smokescreen one can and to raise emotions, but the cut that he is suggesting will do nothing to correct what he is talking about.

Let me give my colleagues an example. I could go through item by item, but for the sake of expediency I will only give one example. The gentleman from Ohio in the full committee and on the floor here today has raised the issue of a newspaper account of someone who is alleged to have stolen some number of refrigerators. I would ask my colleagues to ask themselves whether the cutting of this budget is going to stop a Government employee from stealing? The answer obviously is no.

But this amendment is geared to raise emotions, to raise a smokescreen, to throw out as much as the gentleman can in hopes of getting a vote.

Second, the gentleman from Ohio (Mr. MILLER) is a member of the Appropriations Committee. It seems to me that if he has some specific item in this budget that he is concerned about he owes it to the members of the subcommittee to come to them and discuss it. Our doors are open. He could come to the subcommittee at any point and inquire about something specific in this budget.

It seems to me that when a committee spends some 16 days in hearings, reviews some 60 or 70 agencies, cuts the level of spending for some 17 agencies, and allows no increase for 6 others, that it defeats the integrity of the subcommittee process to merely come in and say "there should be a cut someplace, so let us cut 2 percent."

Let me make clear, as the gentleman from the District of Columbia (Mr. FAUNTROY) pointed out, this Federal payment is not a gift to the District of Columbia. This payment is in lieu of property taxes that would normally be paid. Almost half of the land area in the District of Columbia is occupied by the Federal Government. So when the distinguished gentleman from Ohio (Mr. MILLER) raises the issue of some impropriety that may have occurred and that may be reported by the newspapers, the way to correct that is not necessarily to cut the budget. That is not going to do it. The way to correct the impropriety is through oversight and constant surveillance by the subcommittee. If he brings to our attention how we can better do that job, we will certainly listen to him and be glad to cooperate with him.

But to merely say, "Look, I am cutting the budget by 2 percent, and it is going to cure theft in the District of Columbia and it is going to cure mistakes that the District has made," is totally incorrect.

I ask my colleagues to vote against this amendment.

Mr. PURSELL. Mr. Chairman, I move to strike the last word and rise in opposition to the amendment.

I have a great deal of esteem and respect for my colleague on the full Appropriation Committee, the gentleman from Ohio (Mr. MILLER).

While discussing this in the full Appropriation Committee where the full committee turned down and opposed the gentleman's amendment, I suggested, as the ranking minority member, to the gentleman from Ohio (Mr. MILLER) and his staff, that I would be very pleased to work with his staff in the forthcoming budget process and look at specific items within the D.C. appropriation budget where we could get agreement, and there are some areas where we could make some reductions in particular areas in the D.C. appropriation bill.

But in terms of what the gentleman from California (Mr. DIXON) has just respectfully said to the Members of the House, the integrity of the subcommittee is the key to my presentation today. I think it is inappropriate to make across the board a 2-percent reduction or 5 percent. I know the dramatics are there, it looks good, it is good press. As a former State senator, obviously I have seen this same concept develop in legislative bodies and on the floor from time to time. Sometimes it has some impact.

But in terms of really narrowing in to specific selected line items, I think it is much more constructive, much more statesmanlike, in my opinion, for our colleagues, particularly on the same committee, to work with each subcommittee and say "I have some recommendation, Mr. Subcommittee Chairman, and Mr. Ranking Member and I would like to make some reductions here," and we would like to do our homework. That is the key, let us do some homework in these areas, and maybe we can find some additional reductions.

I would like to say, however, we have made those reductions. I think my colleagues should know as a full House that the authorization level from the authorization committee this year was $300 million. We have it down to $296 million. We have approximately a 7.3-percent which would affect schoolchildren, is consistent with other appropriation bills.

With respect to the school budget, having some experience in various appropriation subcommittees in my State legislature, the basic, fundamental idea of using reductions in budgets as the gentleman has proposed here today, which would affect school children, is how much does the District put behind each child, their per pupil ratio. The per pupil ratio is important. When we looked at the solution to declining enrollments in the District of Columbia, along with all other declining enrollments in the United States, and all urban cities practically in the United States, it is important to keep in mind what the per pupil ratio is to the dollars behind each child and each classroom.

In looking at the analysis of the District of Columbia, which we did, and which is reflected in our testimony, the committee report and committee documents, the District of Columbia does not have an excessive per pupil investment in the dollars per child in their classroom. Our classroom average here, if I recall, is 27 students per classroom. That is not excessive with the 32 or 35 per pupil class ratio that some cities now are bearing up under and have because of declining enrollments and loss of money. Also it is not a low per average classroom, which could be around 22 children for a particular average sized class. So the average per student for dollars invested in the average sized classroom in the District of Columbia is fundamentally somewhere in the middle. So we are not spending excessive dollars in the classrooms in trying to improve the quality of education in the District of Columbia.

For those reasons, Mr. Chairman, I, too, oppose this amendment.

Mr. RUDD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, with due deference to the distinguished chairman and ranking minority member who oppose this, I must rise in support of this amendment.

The Federal payment to the District of Columbia included in this bill is the largest Federal payment in history.

It is $20 million above the 1980 Federal payment.

If this amendment is adopted, the Federal payment to the District of Columbia in 1981 will still be the largest Federal payment in history.

It will be $14 million above the current 1980 Federal payment.

I do not believe that anyone could have missed the almost daily reports in the media this year of spending excesses, bureaucratic waste, and other problems of the District of Columbia government.

The Washington Post capsulized the problem with its headline on a March 13 story comparing Washington's government with that of San Francisco, "When It Comes to City Payrolls, D.C. Is a Big Spender."

Or there was this one in the Washington Star on May 29 at the outset of the District's current budget crisis, "Agencies' Overspending Threatens To Add Millions to District Deficit."

Certainly Congress does not help this situation by providing ever larger amounts of Federal funds to support District of Columbia government operations each year—especially when the population and student enrollment in the public schools have been on a steady decline for the past 5 years.

Some discipline has got to be imposed.

This amendment will not jeopardize any needed programs.

But it will signal the District of Columbia government that Congress expects some added fiscal responsibility.

It is the least that we can do.

□ 1340

The statistics that I outlined in debate on this indicate that according to the figures, the District of Columbia government is a big spender. One may look at newspaper articles, which show comparisons with various cities across the Nation, including San Francisco, and these figures do not lie. I sit on that committee, and I work as hard as I can to bring about changes that are reasonable, logical, and that are not abusive or hurtful. I feel that I have done that in the past. I will continue to do it in the future. But I think that the reported figures themselves tell us that the expenditures are much too high.

It is true that our Capital is a unique city, and it should be, but this amendment would not cause any problems. It has excluded fire and police. I can recall in my own career with the FBI that at one time this city was classified, and with great respect, as the most law-abiding city in this Nation. It has been some years since the District of Columbia has been able to claim that title.

I commend the gentleman from Ohio (Mr. MILLER) for inserting this exclusion because we do need good law enforcement in this city. We should have it. When millions of citizen visitors come here each year, they should be able to feel protected and be able to observe the sights that our city provides for them in the Capital, and the work that is done here, so they can better understand how they are represented and what their Government is all about. I do support this amendment, urge its adoption, and I think there will be no problem discerned as to where these cuts should come, excluding fire and police.

Mr. Chairman, I yield back the remainder of my time.

Mr. STOKES. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

First, I would like to point out as others have here today that the gentleman from California (Mr. DIXON) has done an extraordinary job as the chairman of the District of Columbia Subcommittee on Appropriations. As a new Member of Congress he has assumed a very real responsibility here in the Congress. He has done an excellent job, as the gentleman from Kentucky (Mr. NATCHER) and others have said.

In addition, I might point out that he and the members of his committee have spent 16 days and have heard over 200 witnesses in trying to bring before the House the budget that is before us today. This committee has worked just as diligently as other subcommittees in the House have in trying to bring in a budget that conforms with the strict type of budgetary restraints that are now imposed upon all of us.

One of the things I wanted to point out was the fact that the District of Columbia itself, realizing the tight monetary constraints we are all confronted with this year, brought in a revised budget that has 2,000 fewer positions than they had in 1980. That is, the 1981 budget proposes 2,000 fewer positions, and this is in the revised budget brought in by the District of Columbia themselves. That budget is also now $12.9 million below the revised figure brought before the subcommittee by the District of Columbia.

I would also like to point out, Mr. Chairman, that my distinguished friend and colleague, the gentleman from the State of Ohio, raised the question of the very high per-pupil expenditure for the District of Columbia Board of Education. He cited the fact that in 1978 and 1979 the per-pupil expenditure in the District of Columbia was $2,400. I would bring to the attention of my colleagues, Mr. Chairman, the fact that Milwaukee spends $2,700 per pupil, and if we look at our local community here, the District of Columbia in comparison to other local communities, Alexandria spends $2,800 per pupil; Arlington spends $3,100 per pupil; and Falls Church spends $2,900 per pupil. So the expenditure of $2,400 per pupil in the District of Columbia is substantially lower than that of other communities.

I would also like to point out that when we take the D.C. budget that has been brought before the House and compare it with the budget request of other agencies and the amount of the budget approved here by the House, we get some very significant figures. The Department of Agriculture, for instance, got 99.5 percent of their budget request; energy and water development, 98.9 percent of their request; HUD-independent agencies got 98.2 percent of their budget request; foreign operations, 94 percent of their budget request; Labor-HEW, which we passed last week, got 99 percent of their budget request. What we gave the District of Columbia was 97 percent of their budget request, so obviously the District of Columbia Subcommittee is right in line with other committees here in the House with reference to the budget they bring before the House.

I would hope, Mr. Chairman, that we would not act irresponsibly here today and just take 2 percent across the board from this budget. We do not know where it is going to come from. The end result is that it throws the budget of the District of Columbia out of line. The District of Columbia under the home rule provisions are required to balance their budget. A cut of 2 percent throws this budget out of line and certainly leaves them in a very irresponsible position. I would hope that we would vote down the Miller amendment.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, the question before us really is not whether we should cut 2 percent but whether we should cut more. As we look at this D.C. appropriation, we wonder if this is the most overstated amount that is coming before this session of Congress. The best way to review what is happening is just to compare year by year by year how D.C. funding has grown.

I just heard the gentleman from Ohio (Mr. MILLER) make the statement that this doubled in the past 2 years, and when we see so many increases that we vote here, we ask ourselves, is this excess funding being fair to all America? For instance, we have set up in this bill—and we did this last year, and I had serious reservations then, and I do now—$52 million for the pension fund for D.C. which we are going to pay this year and for 25 more years. We did not do that for your city back home, and we did not do that for my city back home. We do all types of things on a special basis for the District of Columbia, and there is no equity to it, because here in D.C. we already provide—as we just got through talking, for instance, about the police—Congress pays for the Capitol Hill Police, The Secret Service, Executive Security, and FBI are already funded. Congress also provides for the Park Police, and yet we turn around here and have to provide still additional amounts beyond that for added D.C. security funds. I think of the comparisons we talk about in terms of D.C. Let us turn our concern to compare D.C. for what we do in terms of our local school systems.

The last time we discussed this bill I asked, How many merit scholars came out of D.C.? As I recall it, there was just one. I do not know whether it has improved or not, but as big as the D.C. school system is, it is not a quality education system. It is just a big one, and it has been so inferior that as we study the number of pupils enrolled, we see that in 1968 they had 146,000; in 1974 they had 128,000; and today they are down to 98,000. Students are just drifting, drifting downward, and yet there is nothing that is being decreased in what they are asking Congress to do in the way of supplementing this educational fund.

When I read the different statements filed with this bill, I was particularly impressed with the minority report and the statement made by the gentleman from Arizona (Mr. RUDD). He emphasized that 21.2 percent of the total budget of the District government goes for welfare and social service programs. Advocates ask where are we going to cut? If there is anyplace here in America that would be well to cut, it is in welfare and, of course, the deadheads in Washington,

D.C., that are sitting around. You have asked about the cause of crime. If these people were out working hard for a living, if they put in 8 good solid hours each day, they would not be up to any meanness at night when they got off the job. It is people sitting around idle who are causing the crime problem. When we have 21.2 percent of the budget for people to sit on welfare, we have a discouraging problem. Mind you, that 21 percent does not include food stamps. It does not include medicaid. We provide for their health. We provide for their food. This is just D.C. supplementary welfare. Anybody in Washington, D.C., who wants to work on ditches, who wants to wash dishes, who wants to do any kind of a basic job can get a job tomorrow. He can get it this afternoon. We do not need all this welfare here in Washington, D.C. Look this big spending situation over and then remember that our country today is going to run a $69 billion increase in national debt. You all are not giving them money; you all are borrowing money from the taxpayers of America in order to furnish this excessive spending for D.C. The wisest thing we could do, the most constructive move we could make to move forward, would be to accept the excellent amendment that is introduced by the gentleman from Ohio (Mr. MILLER). Let us cut this 2 percent, and then we would also do better to go a step further and then recommit the whole D.C. bill back to the committee.

□ 1350

Mr. MYERS of Indiana. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the amendment. I do so somewhat reluctantly having formerly served on this subcommittee. I realize the difficult job that this subcommittee has. They have done a good job. That does not mean there is not room for improvement. The chairman has asked where cuts can be made and I am certainly not an authority on this but as one example the District of Columbia does have more District employees than about any State that I know, the entire State. We recognize that it has to provide all the services but it does have many employees.

Payment in lieu of taxes, this is true. This is what the original purpose of the money was, because the Federal Government does hold, as I recall, 31 percent of the land in the District of Columbia but we must recognize this appropriation does appropriate 43 percent from the Federal Government from all Federal sources. In this budget, 43 percent is from the Federal Government. I, therefore, believe the Federal Government is being generous with the District of Columbia and I think without any question the gentleman from Ohio's amendment of 2 percent is reasonable and its one this House should support because 2 percent of $300 million, does anyone really think any budget could not be cut this much without doing serious damage?

Mr. PURSELL. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the ranking member from Michigan.

Mr. PURSELL. Mr. Chairman, we must remember the District of Columbia does not have revenue sharing like the State of Indiana or the State of Michigan in recent years. Their Federal payment is, in effect, a corollary to what the gentleman gets in Indiana and what I am receiving in Michigan, about $95 million of revenue sharing which the Governor and the State legislature sends down to the cities and townships for municipal services.

The District of Columbia is unique in this sense that they do not get much revenue sharing. They have no State to go to for Federal service.

Mr. MYERS of Indiana. Does the gentleman know of any State or any community which receives 43 percent of its funds from the Federal Government? Any State, any city that receives that much, even the city of New York?

Mr. DIXON. Will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman from California.

Mr. DIXON. I know of no State that receives 43 percent of its budget from the Federal Government, but I know of no plot of land that is as unique as the District of Columbia. Washington, D.C. is not a State. It is a district.

The gentleman indicated, and I am not sure it is correct but I would accept the gentleman's word, that no State has more employees than the District. But certainly when one takes into consideration, as the gentleman indicates, the uniqueness of this District which has what we traditionally call city functions, county functions and State functions, and adds up the total employees in a State that had city, county, and State functions, certainly the District's employment of 36,000 would be a modest number.

Mr. MYERS of Indiana. I say this: I formerly represented a county which one-third of that county was Federal reservation. That county received nothing for that one-third of the land taken out. The only Federal funds it received were some impacted funds for school students.

I yield to the author of the amendment, the gentleman from Ohio (Mr. MILLER), for his comments.

Mr. MILLER of Ohio. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would like to clear up a couple of points. I heard that the city of Washington would not receive revenue sharing. If I am not mistaken, there is something like $26 million allocated to the city of Washington. Is that not correct?

Mr. MYERS of Indiana. I yield to the gentleman from California for his response.

Mr. DIXON. I am informed that the District expects to receive $26.3 million in revenue sharing in fiscal year 1981.

Mr. MILLER of Ohio. $26,300,000, as I recall.

I would like to complete my statement if I may, Mr. Chairman. The gentleman from California (Mr. DIXON) and the gentleman from Michigan (Mr. PURSELL), have worked hard on this particular bill. There is no doubt about that. I have heard about many hard hours and days that have been put in on it. I have not isolated the city of Washington for the reduction. My record shows that I have attempted to reduce every possible appropriation bill that I can, so it is not isolating one particular area. In this case I believe we could have the reduction.

Mr. Chairman, I heard the gentleman from Ohio mention a few minutes ago something about the items that were allocated and that HEW had been approved to the extent of 99 percent of the request, the budget request. It seemed that almost all of the sums that have been requested were allocated. It fell between 96 percent to 99 percent of budget requests, on the other bills.

What we have today is the budget request guiding us, not what we spent last year but the budget request. It is like this: If your wife asked for five fur coats and you buy her three, you are under the budget request. That is what it amounts to. The request is what it would be nice to have.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

(By unanimous consent, Mr. MYERS of Indiana was allowed to proceed for 2 additional minutes.)

Mr. MYERS of Indiana. Mr. Chairman, I continue to yield to the gentleman from Ohio.

Mr. MILLER of Ohio. Mr. Chairman, I thank the gentleman for yielding.

We have gone overboard in saying that we are not up to the budget request. That has been a part of our problem continuously and we must keep it in mind. Our payment last year should be a big guiding factor, but we seem to lose sight of what it was last year. We want to work on this year's budget request, which is absolutely wrong.

Mr. STOKES. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the genleman from Ohio.

Mr. STOKES. I thank my distinguished colleague for yielding to me.

The point I was attempting to make was that the budget request of the District of Columbia has been reduced and the amount we are actually giving them under the budget request is 97 percent of the request.

I then cited what we have done with reference to other committee budgets that have been brought before the House. I cited, for instance, Labor-HEW. We gave that Department 99 percent of their revised budget request.

Mr. Chairman, the point I was trying to make was that if we reduce this budget by more than we have already reduced it, we will be treating the District of Columbia different from the way we have treated the other agencies of Government and that was the point I was trying to make.

Mr. MILLER of Ohio. I understand, and I thank the gentleman for the clarification. Mr. Chairman, the point I was trying to make is that we are constantly going by that budget request and I think

even the other budget requests were too high to start with.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. MILLER).

The question was taken; and the chairman announced that the noes appeared to have it.

Mr. MILLER of Ohio. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The Chair will announce that this is a regular quorum followed by a 5-minute vote.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 508]

Abdnor
Addabbo
Akaka
Albosta
Alexander
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Ashbrook
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Bolling
Boner
Bonker
Bouquard
Bowen
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gialmo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Gore
Gradison
Gramm
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hamilton
Hammer-schmidt
Hance
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lowry
Luken
Lundine
Lungren
McClory
McCloskey
McHugh
McKinney
Maguire
Markey
Marks
Marriott
Martin
Mathis
Matsui
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rosenthal
Roth
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Wampler
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

□ 1410

The CHAIRMAN. Three hundred and forty-five Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The pending business is the demand of the gentleman from Ohio (Mr. MILLER) for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair will remind the Members that the time for this vote has been reduced to 5 minutes.

The vote was taken by electronic device, and there were—ayes 218, noes 144, not voting 70, as follows:

[Roll No. 509]

AYES—218

Abdnor
Albosta
Ambro
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Atkinson
Badham
Bafalis
Baldus
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bereuter
Bethune
Bevill
Boner
Bouquard
Bowen
Brinkley
Brooks
Broomfield
Broyhill
Burgener
Burlison
Byron
Campbell
Carney
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Coughlin
Courter
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Derwinski
Devine
Dickinson
Dicks
Dornan
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fenwick
Findley
Fithian
Flippo
Foley
Forsythe
Fountain
Frenzel
Fuqua
Gaydos
Gialmo
Gilman
Gingrich
Glickman
Goodling
Gore
Gradison
Gramm
Grassley
Grisham
Gudger
Guyer
Hagedorn
Hance
Harkin
Harsha
Heckler
Hefner
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lewis
Livingston
Loeffler
Lungren
McDade
McDonald
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Mica
Michel
Miller, Ohio
Mitchell, N.Y.
Montgomery
Moore
Mottl
Murphy, Pa.
Myers, Ind.
Neal
Nelson
O'Brien
Pancetta
Paul
Petri
Pickle
Porter
Preyer
Quillen
Railsback
Regula
Rinaldo
Ritter
Roberts
Robinson

NOES—144

Addabbo
Akaka
Alexander
Ashley
Aspin
Bailey
Barnes
Benjamin
Biaggi
Bingham
Blanchard
Bolling
Bonker
Brodhead
Brown, Calif.
Burton, John
Burton, Phillip
Carr
Carter
Cavanaugh
Clay
Collins, Ill.
Conte
Conyers
Dellums
Derrick
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edwards, Ala.
Edwards, Calif.
Evans, Ga.
Fascell
Fazio
Ferraro
Fisher
Florio
Ford, Mich.
Ford, Tenn.
Fowler
Frost
Garcia
Gibbons
Ginn
Gonzalez
Green
Guarini
Harris
Heftel
Howard
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kildee
Lehman
Leland
Lent
Levitas
Lloyd
Long, La.
Long, Md.
Lowry
Lundine
McClory
McCloskey
McHugh
McKinney
Maguire
Markey
Matsui
Mavroules
Mazzoli
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Murtha
Musto
Natcher
Nedzi
Nowak
Oakar
Oberstar
Obey
Ottinger
Pashayan
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Price
Pursell
Rahall
Rangel
Ratchford
Reuss
Rhodes
Richmond
Roe
Rose
Rosenthal
Roybal
Sabo
Scheuer
Seiberling
Simon
Solarz
Spellman
St Germain
Staggers
Stanton
Stark
Stewart
Stokes
Studds
Swift
Synar
Thompson
Traxler
Vanik
Vento
Walgren
Waxman
Weiss
Williams, Mont.
Wilson, Bob
Wilson, C. H.
Wolff
Wolpe
Wright
Yates
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—70

Anderson, Calif.
Anderson, Ill.
AuCoin
Bellenson
Boggs
Boland
Bonior
Brademas

Breaux	Hawkins	Myers, Pa.
Brown, Ohio	Hinson	Nichols
Buchanan	Holtzman	Nolan
Butler	Horton	Pritchard
Chisholm	Ichord	Quayle
Coelho	Jenrette	Rodino
Corman	Johnson, Colo.	Rostenkowski
Cotter	Leach, La.	Rousselot
Crane, Daniel	Lederer	Sebelius
D'Amours	Lott	Shannon
Davis, S.C.	Lujan	Smith, Iowa
Dingell	McCormack	Stack
Dodd	McEwen	Steed
Duncan, Tenn.	McKay	Symms
Edgar	Mattox	Tauzin
Fish	Mollohan	Vander Jagt
Gephardt	Moorhead, Calif.	Watkins
Goldwater	Moorhead, Pa.	Whitten
Gray	Murphy, Ill.	Wirth
Hanley	Murphy, N.Y.	Wydler
Hansen		Young, Alaska

□ 1420

The Clerk announced the following pairs:

On this vote:

Mr. Nichols for, with Mr. Brademas against.

Mr. Hinson for, with Mr. Rostenkowski against.

Mr. Horton for, with Mr. Rodino against.

Mr. Duncan of Tennessee for, with Mr. Corman against.

Mr. Butler for, with Mr. Lederer against.

Mr. Brown of Ohio for, with Mr. Jenrette against.

Mr. Daniel B. Crane for, with Mr. Hawkins against.

Mr. Lott for, with Mr. Gray against.

Mr. Rousselot for, with Mrs. Boggs against.

Mr. Young of Alaska for, with Mr. Dingell against.

Mr. Lujan for, with Mrs. Chisholm against.

Mr. Breaux for, with Mr. Stack against.

Mr. Symms for, with Mr. Mollohan against.

Mr. Hansen for, with Mr. Boland against.

Mr. Quayle for, with Mr. Nolan against.

Mr. Moorhead of California for, with Mr. Hanley against.

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. REGULA

Mr. REGULA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REGULA: On page 12, after line 21, add a new section as follows:

SEC. 101. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

And renumber the following sections accordingly.

Mr. REGULA. Mr. Chairman, I understand that the subcommittee has required an accounting by the D.C. government for outside consulting services in the past. I congratulate members of the subcommittee for their concern in this matter and for their diligence in requiring information from government officials in the District of Columbia on their use of consultants. I urge this body to adopt this amendment and make the reporting requirement part of the D.C. appropriations bill as we have done on all the appropriations bills that we have passed so far this year.

Mr. DIXON. Mr. Chairman, will the gentleman yield?

Mr. REGULA. I yield to the gentleman from California.

Mr. DIXON. Mr. Chairman, as I understand the amendment, the thrust of it is to say that, where the District hires consultants, those contracts be a matter of public record.

Mr. REGULA. Right.

Mr. DIXON. If that is the case, we on this side of the aisle have no problem with the amendment and will be glad to accept it.

Mr. REGULA. I thank the gentleman.

Mr. PURSELL. Mr. Chairman, will the gentleman yield?

Mr. REGULA. I yield to the gentleman from Michigan.

Mr. PURSELL. Mr. Chairman, we, too, on this side accept the gentleman's amendment. We think it is well done and we congratulate the gentleman from Ohio for his good work.

Mr. REGULA. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. REGULA).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DORNAN

Mr. DORNAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DORNAN: Page 19, insert after line 5, the following new section:

SEC. 120. None of the funds appropriated under this Act may be used to pay for abortions.

Mr. DORNAN. Mr. Chairman, there is one very real issue left undecided before us today, and that is the issue of abortion funding with U.S. taxpayers' dollars. There is one bogus issue before us today, and that is the issue of "home rule."

In the 19 pages of the D.C. appropriations bill, which I have just gone through, I have counted at least 53 congressional restrictions—count them, 53—placed on the moneys contained herein. So when I hear the "home rule" cry used against only one of these 53 congressionally proposed restrictions, I cannot consider this objection as the critical or real reason for opposition to my amendment.

There was no "home rule" cry when the Congress specifies in the same bill how may chauffeurs the mayor can have or what he can pay for mileage on official business, or on the prohibition on any court judgment ordering the District to pay more than 2 cents per kilowatt-hour for electricity consumed. Where is the "home rule" cry on the congressional prohibition on picking up ashes in alleys or installing taxicab meters or purchasing certain types of fire department vehicles?

The District is still a unique Federal City, as clearly specified by the U.S. Constitution, and the Congress still has the constitutional duty to appropriate moneys to the District. If this were not the case, this bill would not even be before us today. Therefore, no one can sidestep the abortion issue by invoking "home rule."

A similar sidestepping tactic was tried in 1862 by Senator Davis of Kentucky when he opposed a bill introduced by Senator Henry Wilson of Massachusetts which outlawed slavery in the District of Columbia. Speaking on March 4, 1862, Senator Davis said:

> Was there anything in British oppression upon the colonial inhabitants of this country at all comparable in grievance, in real wrong and outrage, to what you are endeavoring now to force upon the people of this District. Have they not as much right to say they will have slaves as you to say that you will not have slaves? If you will not allow them that privilege, will you not allow them the poor privilege of voting whether free Negroes shall stay here among them or not, a curse to the soil, a blight upon this small and poverty-stricken society?

That is, the District.

Abortion is the great moral issue of our day, as was chattel slavery in the last century. We all know of the great fire that passed through this Nation in that bloody conflict—double, more than double the number of young men and women and innocent people who were killed in the American efforts in World War II. This conflict has no less bloodshed. It is a national disgrace that the Nation's Capital, since our bicentennial year of 1976, actually the year preceding, has had more abortions than live births, and for some reason Mayor Barry was puzzled a few weeks ago that the population of the city is declining. It does not take much imagination to add 2 and 2 and figure out that you cannot have abortion and then wonder around why the population is going down. If the D.C. officials refuse to protect its unborn citizens, then I hope that this United States Congress will.

□ 1430

On the particular wording of my amendment which cuts off abortion funding plain and simple. First, the amendment I offered last year did have a mother's life exception in it, but it was ruled out of order. And, all the Members here know that an exception clause will be added in conference. Second, Hippocratic oath which had been the guide of medicine for centuries never had an exception clause. Third, in addition, Dr. Jasper Williams, a black physician who practices in the inner-city of Chicago, stated on the McNeil-Lehrer program, and he was brilliant:

> I have been in practice now since 1957. I have lost two patients who were mothers delivering babies . . . one from a pulmonary embolism, and one from amniotic fluid embolism. Neither of these patients could have foreseen that that was what was going to happen to them, nor could any physician have foreseen. I know of no condition at the present time where the true life endangerment with adequate care, from the kind of medical treatment that is presently available and the kind of physicians who are out there able to help, that would require abortion.

The CHAIRMAN. The time of the gentleman from California (Mr. DORNAN) has expired.

(By unanimous consent, Mr. DORNAN was allowed to proceed for 1 additional minute.)

Mr. DORNAN. But to tell us where the abortion advocates are really coming from, just take a glace at the arrogant and coldblooded calculations of the former head of the D.C. Department of Human Resources, Al Russo, who compared the cost of abortion, $356, to the cost of hospital care and delivery of a poor woman's baby, $1,200 plus $720 for "keeping a child of a city-financed live birth" on welfare for 1 year. It seems to be that this is the ultimate racist argument. Kill "them." And the Members will recall that I discussed on this House floor that that simple little plural pronoun changes from locality to locality. "Them" in New York means Puerto Ricans, usually. In the Miami area, it is Cuban Americans. In California it is other people of Latin extraction, and in any major city and given time, "them" is blacks. American blacks. And now we are told by the D.C. Department of Human Resources that killing them is cost effective.

The CHAIRMAN. The time of the gentleman from California (Mr. DORNAN) has again expired.

(By unanimous consent, Mr. DORNAN was allowed to proceed for 30 seconds.)

Mr. DORNAN. That type of arithmetic was not only appealing to Herr Adolph Eichman, but he used it ineffectively of course, in his Man in the Glass Booth trial in Israel a decade ago.

I urge adoption of the amendment.

Mr. DIXON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think my distinguished colleague from the district that adjoins mine in California is absolutely correct when he says there is a moral issue involved here.

As I understand the amendment that is before us, and I shall read it. It says, "None of the funds appropriated under this Act may be used to pay for abortions."

I interpret that to mean none of the funds under any circumstances.

If incest is involved, if rape is involved, or even if the life of the mother is at stake, no money—whether it be Federal money or local revenues from property and sales taxes—could ever be used in an abortion procedure under any circumstances.

Let us talk about the moral issue here. The gentleman immediately jumps to the home-rule issue. That tells me that he does think there is a serious issue involving the integrity of home rule. He brings on dignity with this tremendous moral issue in our society, and compares his amendment with whether or not we have regulated the District of Columbia in some appropriate way as it relates to chauffeurs or some other minor conduct in government.

The moral issue here seems to be the great controversy in our society over abortions.

People who can afford abortions are not a part of that controversy because of the right to do as they seek.

The amendment that the gentleman from California (Mr. DORNAN) is offering here, as a Congressman, could not be offered by him in the State of California, the State of Maryland, the State of Pennsylvania, or any other place in the United States except here in the District of Columbia, and the reason he can offer it here is because of the unique situation the District finds itself in.

So yes, I say to the gentleman from California (Mr. DORNAN), there is a moral issue here. It is whether we should let the local communities, as the courts have indicated, decide for themselves what they want to do in their own communities with the local taxes and revenues they raise.

Obviously, it is a controversial issue. But it seems to me that the appropriate forum, if we believe in the integrity of home rule, is not to fight this out on the floor of this Congress, but rather allow this issue to be resolved in the City Council and in the executive branch of this government.

Let me say once again—and I do not think the gentleman from California (Mr. DORNAN) could deny this—that strong as he feels about abortion, this is the only limited community where he could do this. He would not be able to do this in the community where he resides, or in a community that he represents, but he can in a community that is at the will of this Congress. There is a moral issue. It is morally wrong after passing home rule legislation to take advantage of it and superimpose on this community a principle; and that principle is deciding in your own community what you want to do about abortion and then imposing it on the District of Columbia rather than allowing their elected representatives to make the decision.

I ask and urge a "no" vote.

Mr. OBEY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I will not take the full 5 minutes.

I had not intended to get involved in this bill today, but I would suggest that the chairman of the committee is correct when he indicates this amendment ought to be defeated. There is the issue of local control. There is, of course, the issue of whether or not the Federal Government ought to be able to establish one rule for one community in this country and another rule for all other communities.

But I would simply suggest to the Members that there is another even more important problem with this language, and that is simply that it goes too far because it does not, as does the compromise language contained in the HEW bill, provide for an exemption in the case of life-threatening circumstances.

I want to make a point by telling the Members something that happened to me and my family a few months ago. Earlier in the year my wife became pregnant. And about 6 months into that pregnancy, she lost the baby. After she lost the baby, she developed phlebitis, and she developed some rather serious blood-clotting problems. The doctor said to her, "Hey, no more. As far as babies are concerned, you have had your last one unless you want to run an unacceptable risk."

Well, my wife could never have an abortion. If she became pregnant she would, not matter what the circumstances, insist on going through with the pregnancy. She said that to me many times. So what it means in plain English is if she does become pregnant, she would carry that pregnancy through to full term.

But the point that ought to be made on this floor today is that that choice in life-threatening situations ought to be hers. That choice should not be made by people on this floor, who know nothing about her medical condition, and who know nothing about her moral concerns.

I would suggest to the Members that the best way that we can resolve this problem is to adopt the language on all appropriation bills which we have on the Labor-HEW bill, because that at least makes exceptions in life-threatening circumstances.

□ 1440

But to ask the House to go so far as to impose this kind of no-exception limit on only one community in the country without regard to the medical facts of life is just nonsense.

Mr. CARTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have been up the hill and down the hill on this legislation for many years. We made a wise choice one time. I remember quite well when Chairman Mahon had this legislation before this body. At first it failed and then some of us got together and decided that if we would include language to save the life of the mother or in the case of incest or rape, the legislation would pass, and it did.

I submit, Mr. Chairman, that we are doing wrong if we do not give those people that particular right to save the life of the mother.

I want to tell you that any man, you can take him independently and you know what he is going to do right here if his wife is raped, if his daughter is raped. He is going to take her to a physician and he is going to have whatever is necessary done—Mr. Chairman, I ask regular order that the gentleman from California sit down. I do not wish to yield to him at this time.

That man is going to go to the doctor and he is going to have whatever is necessary done to see that his wife does not bear a youngster by some brute. That is a fact of life.

I hope that the people in this group will have grit enough or sand enough to stand up and do what is right.

Furthermore, if you deny the right of poor people in this community in the District of Columbia whose wives' lives are in danger because of pregnancy and say that they cannot have federally funded abortions to save the life of the mother, in my opinion, they are committing a sin. You are not facing up to what is right. It does not matter who says it.

Let us just get down to basics. Let us get down to the facts of life. I have been a physician since 1937. I have never intentionally committed abortion. I have had occasion to clear up from abortionists, people who were not skilled, in which women had bled half to death who came to me, and I will tell you, they will continue to do that, too, and it is a great problem when you have to strive to save the lives of these women who have gone to a quack so that they will not have to bear that stigma through life. Then someone comes up with this false assumption that we should not do anything

to save the life of the mother or in case of incest or rape, I say that he is morally wrong. He is not doing what is right.

I ask the people, I ask you men, for the ladies and gentlemen in this group to stand up and do what you would do if your own child were affected in this way. I hope you will have grit and sand enough to do it.

I want to tell you that when you go back home, there will not be "a one issue group" that will do anything to you. Those people will stand up and applaud you for doing what is right.

Mr. Chairman, I strongly oppose this amendment.

Mr. FAUNTROY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is with some reluctance that I rise in opposition to the amendment offered by the gentleman from California. I do so, however, because I believe that his amendment is very thoroughly in opposition to the premise of home rule in the District of Columbia. It is implicitly detrimental to the integrity of any State and local government process. It is discriminatory in its application; and it imposes a burden on the citizens of this city that is imposed nowhere else.

It is not necessary to support abortions or the choice of an abortion to recognize that this amendment is wrong. In the first place, this is not the bill on which such decisions ought to be made. That is a matter which should be made in this city first by the City Council and then by the legislative committee—the Committee on the District of Columbia—if events prove such a need to exist. Neither body has acted in this matter. Neither body has been asked to act. As a minimum proposition, it would seem to me that comity would mandate initial consideration be given first to the Council and then the committee.

If anyone thinks that the committee will merely rubberstamp what the Council does—and I do not pretend to know what the Council would do in this case—they need only to look at the very pointed veto resolution reported by the committee on a simple zoning matter concerning the placement of foreign chanceries. No one has discussed this matter with the Republican or Democratic caucuses of this committee. To my knowledge, no one has introduced a bill for us to consider and no one has introduced a bill and followed it with any comments to me or to any other Member of which I am aware. Action by this House without hearings, without a request for hearings, and without first seeking to determine what the Mayor and Council might do is simply unconscionable.

The amendment is discriminatory. It applies, by nature of the program, only to those persons who must look to Government for full medical services. It is one matter to hold that Federal funds should not be used to support an abortion program; it is quite another matter to hold that where such a medical practice is available it ought to be denied to the poor while available to the wealthy. Surely we do not intend such a result; but it is the factual result of this amendment. If abortions are wrong, they are wrong for everyone; if they are right for some, they must be right for everyone.

The amendment imposes a burden on the District of Columbia that is imposed on no other community. Not one person who is a citizen of the District voted for the gentleman who seeks to have the House impose, upon citizens of this city, this policy. Indeed, no one in the city can vote for anyone who can determine this policy. Like the gentleman from California, I am very much concerned about the number of abortions in this city. I do not, however, believe it right to impose a discriminatory policy upon these citizens which cannot be imposed upon any community. The fact that Congress can do anything it wants in the District of Columbia ought not give it license to do at a local interest level that which it would not do and cannot do elsewhere. That discipline by Congress is important not only to assure noninterference with local issues but to give sensitivity to the lack of voting representation in the House and the Senate by the citizens of this city.

The amendment is detrimental to the integrity of State rights and the decision-making process of local governments. Every time you elect to create or disband a program in which there has been any Federal support or any commingled funds, you run the risk that this amendment will be cited as a precedent for Federal intervention. Every dollar is fungible. Any dollar provided to one program has merely offset the dollar used in another program and therefore, so goes the argument, the dollar given was really transferred. Every program, then, is a program that exists because of Federal largess or Federal support through the thoroughly fungible dollars. You may not accept this theory; certainly you would not and should not like it. It is, however, implicit in the amendment. When you recognize it, you will want to reject it whether you believe abortions are right or wrong.

Finally, I would urge you to oppose this amendment because it is redundant of an antiabortion policy which is in line with existing Federal law—namely, that no Federal funds shall be used to support an abortion. This amendment is unnecessarily broad; it is not needed and it is not in line with existing law which so many have spent much time in fashioning.

Mr. McCLOSKEY. Mr. Chairman, I move to strike the requisite number of words.

I rise in opposition to the amendment.

Mr. Chairman, all of us may hold different views on the subject of abortion, but I would like to speak for a moment to my Republican colleagues on an issue where I believe all of us are in agreement. Whatever your personal views may be on abortion, I think we are united in seeking control of Congress for the first time since 1954 and in seeking a Republican administration. We are united on the concept that we want to minimize Federal involvement with local spending choices. When we passed the D.C. rule bill in 1973, we gave the District the right to control their own affairs. We have seen building up, fairly painfully and fairly slowly, a mutual respect between this city of nearly a million people and the Federal Government. In our framework of laws, we have allowed the States to generally spend federally appropriated moneys in the manner they choose. The Republican Party and the Republican platform stand squarely behind the enhancement of States rights to spend their money free of Federal controls as much as possible. Less than 20 percent of the District of Columbia's funds come from the Federal Government; perhaps 15 to 19 percent of the District's funds each year comes from the Federal Government. With respect to States, over 20 percent of the money spent in your State and mine comes from Federal revenues. There are nine States which have chosen voluntarily to spend those moneys for medicaid-type abortions under their laws and under their freedom of choice. It would be wrong from the States rights position of a party that stands for States rights to say to the District of Columbia, "You cannot do what nine States do, what the States of Maryland, Alaska, Colorado, Hawaii, Washington, New York, North Carolina, Oregon, and Michigan choose to do."

In building up this relationship with the District of Columbia, giving them the self-respect and the dignity of self-government, it would be dead wrong for us to impose on the District a rule that we do not choose to impose on the 50 sovereign States.

Mr. FAZIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, there is really not a lot to say about the abortion issue that has not already been said on the floor of the House many times. I do not intend to take all the time allotted, because I sense that there is no point in rehashing the moral arguments on both sides of the issue.

□ 1450

My reason for speaking is simple. I am troubled by the way the House continually deals with this issue, for we constantly place this one value ahead of all others no matter how compelling.

Recently, in the last few weeks, in fact, we have told Federal employees that while we are about to consider their total compensation in the manner in which we compensate them to be important, as we compare their wages and benefits with other people in the private sector of our society, that they cannot use the money they are given for the services they provide to their country for a private decision such as whether they or one of their dependents will have an abortion.

Last year, despite our concern for recruitment and retention of people in the military, we told people who serve our country as women in the Armed Forces and dependents of others who serve that they cannot make a private, personal decision along these lines because they are paid by the people, the Government they serve.

Now, one more time we are about to throw out another value that we all hold very close to our hearts, local control,

simply because we have another opportunity to do so here in the District of Columbia.

This committee has not picked a fight. It has written into the language that it brought to us today the simple language that exists in all other legislation. We have retained the prohibition against the use of Federal funds to perform abortions except for cases of rape, incest, or when a mother's life is in danger.

But we have this need, this constant need to engage in one-upsmanship politically whenever this issue of abortion can be invoked. The political payoff is so great to simply lie down and vote with those forces that constantly support those who take the most extreme position on this issue that we as a body cannot seem to allow the opportunity to pass to take one more cheap shot when the impact on our constituents is negligible.

That is what we are doing here today. We are trying to treat one limited, very subscribed element of our population differently than we would treat anyone else in our country, anyone else that we represent in any of the other 50 States. I think it is unconscionable. I think we ought to oppose this amendment. We ought to compromise as we have constantly on other issues related to abortion by agreeing to the language the committee has already taken care to place in the bill and to simply avoid this constant and counterproductive wrangling.

Mr. MAGUIRE. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman.

Mr. MAGUIRE. I compliment the gentleman on his statement and wish to associate myself with it.

I wonder if the gentleman knows and if, indeed, the sponsor of the amendment knows, that in 1979 there were 402 forceable rapes in the District of Columbia and that 23 percent of all pregnancies in the District of Columbia that year were among young people 19 years and younger with some 3,300 births. I wonder if the gentleman who offered the amendment, if the gentleman from California is inclined to yield, could answer if he is aware of those facts.

Mr. FAZIO. I am happy to yield to the gentleman for a response to the question.

Mr. MAGUIRE. I wonder if those facts disturb the author of the amendment (Mr. DORNAN) at all or how he would react to them and, indeed, how the other gentleman from California (Mr. FAZIO) would react to them.

Mr. DORNAN. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I am happy to yield.

Mr. DORNAN. Yes; of course, these facts disturb me.

May I first politely inform the gentleman that I could have had your words taken down with the inference or was it an innuendo, that somehow I offered this amendment for political reasons. The gentleman may be surprised to learn but my opponent has more pro abortion money in his campaign than anyone in the history of this Nation. And from a newspaper report I saw a so-called independent expenditure group—Voters for Choice—has had a contract with my opponent's campaign about a pledge of a $50,000 independent expenditure of pro-abortion money against me. So you are wrong, but I passed on it because you are trying to approach this reasonably.

Now, in response to the gentleman who is the chairman of this committee about rape and innocent life, I knew a young student who was going to a university in a Northern State. Her father is a close friend of mine. Last year the editor of one of America's sleaziest hardcore pornography magazines came to this campus and offered to pay money to anyone who could get information on this my friends young daughter. The father was and is outspoken against public immorality. The next day the young coed was raped at noon, dragged into the bushes by a university parking lot, severely beaten and brutally raped.

Two days later the parents and that courageous young lady said that if she were pregnant, and this is particularly in response to one or our three M.D.'s in the House, they announced that if she were to become pregnant she would have the child, that "if a child was conceived, the baby is innocent." You are wrong, Doc, about a lot of courageous young citizens in our fair land.

By the way, the term "brute" many times is used as a "code word" for an ethnic slur, though I know that the distinguished gentleman would never use it in that manner.

The innocent child conceived by a rape has nothing to do with guilt or violence. On these rape figures, how many resulted in pregnancy out of the 402? I have not heard the gentleman mention any, not one! What is your point?

The CHAIRMAN. The time of the gentleman from California (Mr. FAZIO) has expired.

(At the request of Mr. MAGUIRE and by unanimous consent, Mr. FAZIO was allowed to proceed for 3 additional minutes.)

Mr. FAZIO. I yield to the gentleman for the purpose of an answer to the gentleman's question. I would appreciate an answer.

Mr. DORNAN. To come back to the question, I do not concede of one shred of human sympathy or empathy to you over my own concerns as a father of five children, three of them daughters, that I do not understand the excruciating agony and the depth and horror of rape. I submitted antirape legislation and I hope everyone on this floor will willingly endorse this with me. It makes for a national rape center so that we can have some FBI investment and correlation of facts on professional rapers that rape in Florida and then go up into the State of Washington and kill girls in coed dorms. I think the bill's time has come and that we will all vote for it next year, because I cannot see a vote against it.

But I do not see the correlation on this floor that we are going to punish the innocent human life that we believe, and some of us with a God-ordained immortal soul, and some clinging, some kneeling around our feet, that we are going to punish the victim of the rape and show unbelievable mercy to the people who perform rape in the first place. It is a special argument and has nothing to do with it. I have 7,000 petitions here for the Reverend Delegate WALTER FAUNTROY, 7,000 petitions from District of Columbia citizens against abortion. Show me your petitions.

Mr. FAZIO. I would like to reclaim my time to yield to the gentleman from New Jersey (Mr. MAGUIRE).

Mr. MAGUIRE. I thank the gentleman. Another interesting breakdown of the data is that more than 1,000 teenage pregnancies occurred among young people 17 and under in the District of Columbia in 1979. I wonder if the gentleman in the well has any comments on those facts.

Mr. FAZIO. I think these facts are certainly the kind of facts that would move a local city council, as in the case of the District of Columbia, to make decisions. It is entirely inappropriate to be dropping petitions on the doorsteps of the Delegate for the District of Columbia, Mr. FAUNTROY. I think the appropriate place for this whole debate is in the city council which deliberates for the District of Columbia and so while all of this information is well taken by both sides of the aisle, it is the kind of data that ought to be given to the locally elected officials in their decisionmaking. It has no place in a debate here in the House of Representatives.

Mr. MAGUIRE. I thank the gentleman.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I want to associate myself with the gentleman's remarks. I think the House is taking a very dangerous and unfortunate step if we approve this amendment.

I agree with the gentleman totally, this is an amendment that goes far beyond the compromise language. It denies the victim of rape or incest the right to equal medical treatment.

Mr. FAZIO. I thank the gentleman for his comments.

Mr. McKINNEY. Mr. Chairman, I move to strike the requisite number of words, and I rise to speak against the amendment.

Mr. Chairman, I have never before spoken on abortion issues in this House. I sometimes feel it is rather obscene that this House discuss it. So I will not discuss the abortion issue.

Ten years ago I went to Jerry Ford and I said, "I want to be on the District of Columbia Committee." For the last 4 years I have been lucky enough to be ranking member. It has given some of my opponents great glee from the other side of the aisle who run against me by saying:

Stu McKinney cares more about the District of Columbia and New York City

than he does about the Fourth Congressional District in Connecticut.

A matter of opinion.

Jerry Ford turned around to me and he said:

Stewart, why would you possibly want to be on the District of Columbia Committee? I have to grab people kicking and screaming and put them on that committee.

I said, to use the words once more:

Mr. Minority Leader, the condition of the District of Columbia is a blotch, a smear, and an obscenity on the American democratic process.

I would suggest to my colleagues it still is. It is the most unbelievable, implausible, decadent part of our Nation that we sit here concerning ourselves so deeply with our own constituency that we do not pass a synthetic fuels bill for 5 years because we might hurt our oil interests, we do not do this or that because we might lose a vote. So for a spirit of something or other we take a great deal of time, effort, energy, and fun in kicking the living daylights out of 800,000 Americans who sent proportionately more kids to Vietnam, who pay proportionately more taxes than almost any other jurisdiction in this country, and who cannot even have their delegate vote in this Hall, who are truly taxed without representation. And I might add it is most obvious from our behavior that they cannot vote for us.

□ 1500

A friend of mine suggested that perhaps a petition should be dropped in front of the Delegate's door. Why bother? The Delegate cannot vote. He can pay taxes; he can send his kids to die; but he cannot vote because he is only a member of a colony around here. The last true slaves of the United States are right here in the District of Columbia.

Let me tell you about what I hear after 10 years of these fruitless fights. I said to myself, "Stewart, do not get up and do it. It is pointless. Do not waste your time. They will not listen." But look at what we have done. We criticize the Mayor and the City Council—and I have tremendous difficulty with both at various different times. We criticize them for the condition of the finances of this city. We put the city there. I used to listen to my good friend say, We cannot do this; we have got to get this straightened out. We ignored him, and we watched it happen. We watched the pension. We sat back. And President Nixon decreed that the city would have another 1,500 police whether we could afford it or not. And we said, "Do it." Now we blame them. The citizens of this city.

The Supreme Court made a very clear decision that we cannot require a jurisdiction or a political body to pay for an abortion, but they may of their own free choice decide to finance that. Would you once, please, let the citizens of this city, American citizens, despite the fact that we deny their franchise except when it comes to sending them to war and having to pay taxes—would we for once let these citizens run their own affairs.

It occurs to me sometimes that if we continue to heap the human and legal injustices on the people of the District of Columbia that we heap upon them, we will only awake some day to find those same injustices spread across the length and breadth of the 50 States of these United States, and that thought frightens me.

Mr. DOUGHERTY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I rise greatly disturbed by the comments that are made that the attempt by the gentleman from California is a foolish fight. We talk about moral issues and so on. Perhaps in a few moments we could just clarify the issue that is at stake here today. The issue at stake is not relevant to the special status of the District of Columbia. If you want to compare the moral issue, all right. The right of the District of Columbia to home rule versus the right of an unborn child to live—that perhaps is the emotional or the moral issue.

The gentleman, the chairman of the committee, says that if a local community wants to do something, it should be allowed to do it. He would not agree that if a local community wants to discriminate, they should be allowed to do it, and if there is discrimination in the District of Columbia, he would say that this Congress had an obligation to rise up and to strike down what the Congress saw to be wrong because of this special status we do have over the District of Columbia.

The gentleman from Kentucky, my distinguished friend, Mr. CARTER, comments that we should do what is right, and he is, indeed, correct. We should do what is right. It is no joke to anybody who happens to support the prolife position that in the District of Columbia, the Capital of the United States, more children are aborted every year than are born. That is an absolute obscenity. That is the greatest outrage. That is the greatest disgrace that could befall the city of Washington, a city that is our Nation's Capital.

You are being asked today to vote consistently. In Labor-HEW we voted to restrict abortions. We voted to protect the lives of unborn children. Last week we voted to say, "You Federal employees are not going to use taxpayers' money to kill unborn children." What we are saying today is, no funds, Federal or indirect, are going to be used in the District of Columbia to kill unborn children.

So all of the comments to the side about the poor status of the District of Columbia, and all the comments to the side about home rule, the issue is very, very clear. Abortion in the opinion of, I think, the majority of this body is the destruction of an unborn child's life. When you vote on the Dornan amendment, you are going to vote on that basic issue. Do you want to put up taxpayers' money to destroy the lives of unborn children? All the other arguments are irrelevant. That is the fact that we have to face.

You know that if we could, we would have a human life amendment and we would restrict abortion in all 50 States, but we cannot. We cannot because the leadership of this body will not allow the amendment to come to the floor and go to the people of America to take a position on it. It has been stymied. We are frustrated, just as perhaps some of the opponents are frustrated.

Mr. CARTER. Will the gentleman yield?

Mr. DOUGHERTY. I will not yield. I will not yield.

Mr. CARTER. I have a point of order, Mr. Chairman. The gentleman mentioned my name. According to the rules, he is supposed to yield to me.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. DOUGHERTY) will proceed.

Mr. DOUGHERTY. I thank the Chairman.

The fact of the matter is that if we could, we would have a human life amendment, and we would not be killing unborn children. But we do not have a human life amendment because the leadership of this Congress will not bring it to the floor.

So we have no other choice if we are going to do what we believe to be right, and what we believe to be right is that we have an obligation to protect the lives of innocent, unborn children. That is your vote, clear and simple—home rule or the life of an unborn child.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, it is a unique day today because we have made some great converts to the principle of States' rights whom I have never heard raise their voices before in support of this great principle. When 55 mile-an-hour speed limits were imposed on the States from "Mount Olympus" here in Washington, that was all right. When Washington tells local school districts how they are going to bus their kids around, that is all right. States' rights is not important. But today when it comes to the notion of abortion, which is killing by intention, by definition, which always happens over somebody's dead body, suddenly States' rights becomes a flag that we must wave and we must march behind and we must applaud. I find that interesting and encouraging.

The difficulty with abortion is simply this. What is an abortion? Is it a human life, or is it a growth, a tumor to be cut out and thrown away? If you do not think it is a human life, then, of course, the gentleman from California (Mr. DORNAN) is wrong. We should eliminate the inconvenience and the expense of bringing into the world unwanted children. On the other hand, if it is a human life, the fact that it was created through a crime, through a criminal act, through an act of rape, does not obviate the fact that an innocent human life is there. Now there are two victims. There is the poor woman who has been raped and

there is an unborn child. You are going to execute the wrong person.

You are going to execute someone who is not a criminal when you abort that unborn child. Our great Supreme Court has said you may not execute a rapist. That is cruel and unusual punishment. Imagine, the brute—as he has been well described—who perpetrates the crime, commits an assault, impregnates a woman—his life must be spared. But the innocent unborn child, who is there through no fault of his or her own, must be thrown away like a used piece of Kleenex. The fetus has committed no rape; why should it be executed? As to the life of the mother exception, I am going to tell you it is going to be put in in conference. It cannot go on now as that is legislating on an appropriation. Why go through the points of order that so many raise if it is going to be put in here anyhow? It will be put on in conference. So it is a false issue.

Let me just raise one more point. There was a letter to the editor in the Wall Street Journal a few months back about a couple that adopted a little baby whose head was misshapen, whose spine was malformed. This poor little monstrous baby they adopted.

□ 1510

They said to the doctor, "How did this happen?"

The doctor said, "It is interesting. The woman who bore this child had had two previous abortions. The inside of the uterus had been scraped in the two previous abortions and scar tissue had developed resulting in the third pregnancy getting improper, incomplete nourishment."

And so this poor little baby was born, misshapen, and his disabilities incapable of being corrected by surgery.

Now the letter writers who adopted that little baby said, "What about this baby's rights? Did he have a right to be born healthy and normal?"

Those rights were thrown away because of the two previous abortions and the scar tissue.

Yes, there are lots of rights involved. There is inconvenience, there is cost, there are unwanted children, there is the crime of rape. The bottom line, you are talking about an innocent human life. That is the clinical biology. Not the theology.

And so, it is unfortunate that the City Council of the District of Columbia does not respond to this but we have a duty and our duty is to protect innocent human life. The law exists to protect the weak from the strong. I am not swayed by arguments of home rule and States rights which are never uttered by their advocates except on this issue. I am swayed by the need to protect the vulnerable innocent human life that is an unborn child. They cannot escape, they cannot vote, they cannot rise up in the streets—they can only be killed and forgotten.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I would like to comment briefly in support of the amendment but also speak to the idea that this amendment is going against the States' rights issue and the D.C. government should be left to determine these matters on their own. I think if anybody would read the general provisions of the bill, they will find it is replete throughout with all types of restrictions on the D.C. government, everywhere from electric current for street lighting to how many chauffeurs they can have, who they shall be, how many policemen and everything else. I think that argument is completely invalid. It comes down to whether or not we wish to restrict further than the committee the funding of abortions, and that is the whole issue.

Mr. HYDE. Mr. Chairman, let us just get the Government out of the business of subsidizing killing preborn babies.

Mr. ALBOSTA. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Michigan.

Mr. ALBOSTA. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the Dornan amendment.

Under the home rule, the Congress still has a great deal of input and authority in District matters. In the past, and I imagine in the future, Congress has clearly stated its opinion on the abortion issue. I feel it is important that the Congress be consistent in its view and adopt this amendment now before us.

I am frustrated that I have no control over my own State of Michigan where the Governor and the legislature have agreed to fund abortions. The U.S. Congress, under current law, has no control over those actions, however. On the other hand, the Congress does have input in the operation of the government of the District of Columbia, and to be consistent with our past views, we must write the Hyde amendment language into the appropriations bill.

Mrs. FENWICK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I speak in opposition to this amendment.

Mr. Chairman, I think there are two things that need to be said on this sad subject. One is that obviously great passions are aroused and there is a great deal to be said on both sides. We have the highest clergy of all faiths, and doctors and lawyers, who are divided on the subject. No one can say that this is one-sided, that all the moral right is on one side and all the moral wrong is on the other. There is one thing, though, that I think is beneath the dignity of this House and that is to speak of such a tragic subject and compare it to a Kleenex or an inconvenience, which we have heard here at various times.

People do not kill themselves and tear themselves apart for something trivial. It does not make any difference what laws are passed. It does not make any difference. In every country of the world governments have tried it. Action has been brought against everybody—rich and poor—and, may I say, including the rich is better than just going after the poor.

However, what do we find? In Chile, it is completely illegal. Thirty-five percent of all the beds in the hospitals of Chile, when I was there, were filled with women dying or recovering from infection or hemorrhage from self-induced abortion.

Ten thousand women die every year in Mexico through self-induced abortions. They have not the money to go to special doctors who can do this. Neither have they the money to go abroad.

No one is not going to stop it. All you do with all your good intentions and your high words of morality—which obviously, you must admit, are divided with equally moral people on the other side—all of them are useless against the desperate feeling that no man perhaps understands. And this is something we are going to have to pay attention to.

Mr. CARTER. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to my colleague from Kentucky.

Mr. CARTER. I thank the distinguished gentlewoman for yielding. I commend the gentlewoman on her remarks.

One thing we have not thought about today, is the life of the mother. Your wife. Suppose her life is in danger. This amendment, if you did not have money in the District of Columbia, would prevent you from saving your own wife's life. I want to know, are you of the opinion—you talk about murdering an unborn child. What about letting your own wife die? What about killing her? What about killing her? Where are all these people who were talking so much? You have lots of things at stake besides just a youngster. Now, to get down to it, I am strongly opposed to abortion. I never engaged in it. As a physician I had to repair the work abortionists have done over the years. It is like the gentlewoman says, they will use any method; knitting needles, anything else, to rid themselves of rape or incest or things of this nature.

A vote in this case is a vote to preserve the life of the mother. I want to tell you, this has been the ethic we have observed throughout my area for my lifetime. I was taught that at my mother's bedside before I ever thought of going to medical school. But that is part of it.

Mr. Chairman, I want to thank the gentlewoman for yielding and commend the gentlewoman for what she has said. I think we should consider the life of the mother as well as the life of the child. Certainly, whenever they point at you as if they are the best men in the world and tell you you are a murderer, you are an abortionist, when that is not the truth, it is the furthest thing from the truth. You are trying to save the life of the mother in this case and that is what this is, that is what this bill is all about. It is not even about incest or rape. It is about your wife or about any wife in the District of Columbia.

I thank the distinguished gentlewo-

man, the kindly gentlewoman from New Jersey.

Mr. HYDE. Would my friend yield to me briefly?

Mrs. FENWICK. I yield to the gentleman.

Mr. HYDE. I would just like to reply if I may about a couple of the comments made by my good friend from Kentucky who is as sincere, forthright, and honest of anybody in this Chamber on this issue. I call nobody a murderer. First of all, the gentleman said that you are getting rid of the rape and incest. That is the tragedy, you are not getting rid of the rape and incest. You are getting rid of an innocent preborn child that has resulted from rape and incest.

The CHAIRMAN. The time of the gentlewoman has expired.

(At the request of Mr. DORNAN and by unanimous consent, Mrs. FENWICK was allowed to proceed for 3 additional minutes.)

Mrs. FENWICK. Mr. Chairman, no one pretends we can end rape and incest. Nobody says we are going to get rid of crime and punishment. Nobody should bring in matters of money, either. What this is, is a great human problem and it has to be accepted as such. It should be a moment of great happiness and it turns into a moment of despair and that is what needs to be recognized. You are not going to stop it because people are desperate. Women are desperate and you will not stop them. All you do is encourage the butcher in the back room, or drive women into self-induced abortion. It is as simple as that. There is nothing you can do. No country in the world has ever come near any kind of control of this very deep, human tragic problem. Nobody. I do not think we are going to succeed in the U.S. Congress either.

Mr. DORNAN. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman from California.

The CHAIRMAN. The gentlewoman will suspend.

The Chair will remind all persons in the gallery they are here as guests of the House and that any manifestation of approval or disapproval of proceedings here is in violation of the rules of the House.

The gentlewoman from New Jersey is recognized.

Mr. DORNAN. Mr. Chairman, I appreciate the gentlewoman yielding to me.

I appreciate the way my good friend has elegantly attributed solid moral motives to this side and I would like to return the compliment and say I have never heard anyone speak on either side of this issue, at least in this House—I cannot say this for outside the House—who did not have a sincere, ethical foundation motivating them. I have sat here searching for an analogy to make something clear to my friends and colleagues.

□ 1520

I cannot come up with a tamer analogy, so please hear mine out. If I were a German I would like to think—and I would probably be a Christian German—that if, in the early stages of the holocaust, Berlin was a federal city with some sort of home rule; and there was some legal nicety that only enabled me to stop the killing of Jews in Berlin and not in my home district of, say, Bavaria, I would still stop the killing of innocent life—wherever possible.

Mrs. FENWICK. If the gentleman will yield, the gentleman has a totally false analogy, and I am sure you must understand that. You would never find on that subject the divided people of high quality—clergymen of the highest integrity who have given their lives to the service of God and man; lawyers who have determined with the utmost probity and justice what the law says; and doctors on both sides——

Mr. DORNAN. Doctors in Germany went along with the killing.

Mrs. FENWICK. You do not find high moral and ethical and legal standards on both sides of the holocaust. You find people who were under fear of an authority that had the power to put them in prison, and saying things that they knew perfectly in their hearts they should not say.

Mr. PEYSER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I would not take the well again on this subject—we have been here many times—except the last vote that we took dealing with Federal employees which broke their health contract by taking away funds for abortion, for the first time showed an increase, a substantial increase, in the number of Members who voted against the abortion amendment because they realized, perhaps, that we were finally going too far. The amendment still passed, but I feel progress was made.

It is my hope that in this type of an amendment that treats this particular part of our country more unjustly than any other part of our country, we may gain a little more. We might even win because you have gone too far. It is a very interesting thing to me to note that every poll that I have seen—and I will be glad to be corrected on this by any of the people who feel otherwise—has shown that the majority, the overwhelming majority of the American public, support the concept of freedom of choice of women for an abortion. We are now talking about tax dollars. That is what the argument has been.

Now, we are carrying it a step further and saying that the District of Columbia shall not have the right of deciding itself, like any other area, how it is going to utilize its money even with the abortion restrictions that are built into the legislation itself.

I do not understand why the House, that is representing all the people of this country, when the overwhelming numbers of people support the freedom of choice for women, are continually voting against that interest. You know, one of the very obvious things is that, here we are, overwhelmingly men, voting on an issue that only affects women. It is very easy to do. None of us have to face the problem. However, it would appear to me that if this House were made up equally of men and women, this vote would no longer be the automatic vote it has been in the past.

There is something about abortion that every Member of this House, or a majority, seem to think they have to vote against, it is time for a change.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I yield to the gentleman from Illinois.

Mr. HYDE. The gentleman has cited as statistics, and I would like to fill in some of the blanks on the statistics. The most recent poll—I believe it is a Gallup poll, or it could be a Harris poll—but the most recent report, within the last 2 weeks, says that there are 56 percent of the people who support abortion under some conditions—not under all conditions—some conditions. It could be the saving of the mother's life, that sort of thing. There are 17 percent of the people who oppose abortion under any conditions.

Now, you add that 56 percent who are not for abortion on demand, freedom of choice, and the 17 percent under no conditions, and you have 73 percent of the people who are opposed to unrestricted freedom of choice.

Mr. PEYSER. I will have to take back my time, because we are not talking unrestricted. This bill, I believe, says that the life of the mother, rape, and incest—may I ask the committee chairman; may I ask a member of the committee, does this bill call for a restriction on how the money will be used on abortion?

Mr. DIXON. Yes; this bill as presently written adheres to the compromise of last year which indicates that money could only be used for abortion procedures in the case of incest, rape, or the life of the mother.

Mr. PEYSER. Then, based on the figures my friend from Illinois just gave us, restricted abortions, the overwhelming number of Americans as I stated, are supportive of freedom of choice. Why, then, do we as representatives of the people vote for this type of an amendment? You know, there is another interesting factor that concerns me very deeply when we deal with children.

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent, Mr. PEYSER was allowed to proceed for 2 additional minutes.)

Mr. PEYSER. Are all of the Members who vote for abortion willing to vote for more money for school lunch programs, more money for the protection of young children?

Are we willing to do all of these additional things when we force a woman, whether her life is in danger or not, to have this child?

I think Dr. CARTER put it so well, that the basic issue also comes down to the fact that you are substantially condemning, or we are condemning, somebody's wife to death on the basis of this amendment. I would hope that now we may not defeat the amendment. Let us get more Members that are willing to stand up and say that we are for the rights of the people on this issue, and we support the people.

Mr. WEISS. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I yield to my colleague.

Mr. WEISS. Mr. Chairman, I appreciate the gentleman yielding to me.

Mr. Chairman, I debated with myself as to whether I should get into this discussion at all. Most of the arguments I would have made have already been stated very, very eloquently. I rise at this point primarily because of a statement made by the author of the amendment, the gentleman from California, in the course of his dialog with the distinguished gentlewoman from New Jersey.

Although phrased in the form of an analogy it was a repeat of a reference, that I heard him make on local television sometime last week. He equates the right of women to make a choice, on the basis of medical consultation, of carrying a pregnancy through to term or not, to the most heinous, the most bestial, the most criminal course of conduct of this century and perhaps of all history; that is, the Hitlerian holocaust during which 6 million Jews and millions of others of other nationalities were murdered.

□ 1530

I for one, Mr. Chairman, find that kind of comparison, by analogy or any other way, to be totally reprehensible. I think it calls for an apology from the gentleman, and I think it is totally out of place in this or any other discussion of this subject.

The CHAIRMAN. The time of the gentleman from New York (Mr. PEYSER) has expired.

(On request of Mr. DORNAN, and by unanimous consent, Mr. PEYSER was allowed to proceed for 1 additional minute.)

Mr. DORNAN. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I will be glad to yield to the gentleman from California.

Mr. DORNAN. Mr. Chairman, I politely decline to apologize for the historical basis of my analogy.

The 12 million people killed by Adolf Hitler, the 40 million people who died in the war, the heroic Protestant saints like Dietrich Bonhoeffer, the Catholic saints like Maximillian Kolbv, all the other clergymen, and the 6 million Jews who died all had immortal souls. Please respect my belief that every innocent child who died in their mother's wombs in this country is a child given an immortal soul by a Supreme Creator. Even the late proabortionist Dr. Stan Guttmaker knew that human life began with the union of the male and female seed.

We have now killed in the United States since our bicentennial year more American citizens than Hitler killed German citizens. Any child conceived by one American parent is an American citizen, even if the delivery of the baby is in Iceland or on the Moon. Even if they go to Thule, Greenland, or the Moon, they are still American citizens when they are born. We have killed more American citizens in their mothers' wombs, innocent children with immortal souls, than Adolph Hitler slaughtered innocent Jews. And in just a few years we will pass the figure of all innocent people "exterminated in all of Hitler's death camps, 12 million. I, Mr. Chairman, find it reprehensible that someone would dare to question another Member's moral basis for analogy.

The CHAIRMAN. The time of the gentleman from New York (Mr. PEYSER) has again expired.

Mr. DORNAN. Mr. Chairman, I ask unanimous consent that the gentleman from New York (Mr. PEYSER) be allowed to proceed for 1 additional minute, and then, if he will yield to me, I will finish.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. DOWNEY. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. DORNAN. Mr. Chairman, I think it is reprehensible to lecture me in this matter.

The CHAIRMAN. The time of the gentleman from New York (Mr. PEYSER) has expired.

Mrs. CHISHOLM. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, may I say to my colleagues in this House that I know this becomes a very emotional and a very passionate issue.

I did not become involved in having to make some real decision as to where I was going to stand on this matter of abortion until I had an opportunity some 11 years ago to visit many hospitals and to see women destroyed for the rest of their lives on this planet called Earth as a result of what had happened to their bodies with the use of different kinds of instruments and mechanisms that were employed in order to abort.

How strange it is that in a country such as Uruguay and Brazil, where a majority of the population is a Catholic population, we still see a high percentage of abortions, disproportionate percentages of abortions. Why? Because we are living in a Western type of civilization in which we are not going to be able to get rid of abortions so long as people are living in this modern-day world, whether they are in Catholic countries or non-Catholic countries, and this is becoming a real problem in terms of the bishoprics of many countries around the world.

Mr. Chairman, I am here to say this: I hope that the day will really come when we will be able to have more women in our legislative bodies so that they will be in a position to speak on behalf of what happens to their sisters.

The United States of America is not a theocracy. It is a country in which we have more than 976 different types of religions and sects. A country that has all kinds of multifaceted philosophies and ideologies so that no one should impose on anyone else their deep intrinsic beliefs.

I want to say to the Members that I personally know of 40 women who have to go to the hospital each month during their menstrual cycles in order to be taken care of. You do not know that. Very few of us know about the statistics pertaining to middle-class and upper-class women in this country who go through numerous abortions.

But, of course, they never become a statistic because they are not a part of the lower rung of the economic ladder. They go away for a vacation. Oh, I wish I could assert certain things with respect to Members around here speaking about people getting abortions.

The time has come for us to recognize that we must stop being hypocritical about this particular issue. Let this be a concern between the woman and the doctor and her family.

I wish to God that I could see and understand the same kind of passion that the gentlemen in this body emote and come forth with and enunciate on this floor when we talk of programs for children who right now are dying in the Appalachian region and the black deltas of Georgia and Mississippi. Oh, I wish I could see the same kind of togetherness and marching in order to preserve the lives of the children who are already here on this planet called Earth.

Mr. Chairman, I say to the ladies and gentlemen of this body that each one of us—I will not yield, I say to my good friend; I have got to get it out—each one of us will have to do what we have to do, but I want the Members to realize that what the amendment seeks to do is not to say that we can have abortions willy-nilly. The Members know that as well as I do. We have made certain kinds of stipulations.

Maybe some day we will be able to get rid of all this discussion and get rid of this constant amendment being added to legislation. Maybe the direction in which we have to move is to no longer talk about abortions but maybe put in an amendment to begin to deal with vasectomies.

Mr. VOLKMER. Mr. Chairman, I move to strike the requiste number of words.

Mr. Chairman, I did not plan to take the floor at all, and I am not going to take a lot of time. But I do think that the House should realize that those of us who support this amendment fully understand and try to understand the emotions of the gentlewoman who just spoke and the reasoning of the gentlewoman who just spoke.

All we ask is, as the gentleman from California has mentioned—and you may disagree with this completely—all we ask is that you try to understand our viewpoint also. Those of us who firmly believe that that fetus is a human being are firm in our belief. We do not believe that that fetus, if it is a human being, should be killed. And that is where we are coming from. I want the Members to understand that.

We have empathy and we have sym-

pathy for all prospective mothers who have difficulties. We also believe that a country and a society that permits a practice such as abortion—we believe this, and firmly so—that they are on the wrong course and going in a wrong direction.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. Not at this time. As the gentlewoman knows, I would like to finish my point first.

Mr. Chairman, we feel, some of us, that they are going in the wrong direction.

As the gentleman from California said when he was relating this to what happened in Germany, maybe that seems far-fetched to some of the Members, but it really is not far-fetched to those of us who feel that this, too, is the taking of a human life, and if we add them all up, there are a heck of a lot of them. It goes into the millions, and that concerns us greatly.

The gentlewoman from New York (Mrs. CHISHOLM) says, and I agree, that we should take care of the children who are here. I think if the Members will look at my voting record, they will find that I agree with that.

□ 1540

As one who very strongly feels that we can take care of those children, and we should in this world, and it is our responsibility to do so—and I ask the gentleman, the colleagues on this side, to remember that—that is a firm responsibility, to see that every child is brought up with dignity and self respect.

I am willing to make that sacrifice if need be. All I ask you to do is, so we may cut back on other things we may want if necessary—and I will say this now to the gentlewoman from New York—if we need to increase funds to take care of those children, I am willing to do so. If it means that some of the privileges that our American people today so much enjoy, such as, of how much we spend on our pets and animals and things like that, and feeding them, surely we can take of our children.

So where are we on our values? So if you look at the whole thing on values, some of us feel that maybe those supporting abortion have their values turned around the wrong way and they should be going the other way, and so we ask you to look our other way also since it is the right way.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Illinois.

Mr. HYDE. I thank my friend for yielding, and I commend him as one of the staunchest defenders of the preborn child.

I just want to say to my dear friend, for whom I have tremendous admiration, the gentlewoman from New York, first of all, this is not a Catholic issue. Abortion was a crime in my State back in 1818 when the Catholics were not all that big back there. The Hippocratic oath, which goes centuries back, was not the product of the Vatican. Abortion has been a crime, a crime against humanity in all traditional societies.

Second, yes; I wish I could visit the hospitals with you and see these people. I wish I could. But I wish you could hear people tell me, "There are too many blacks, there are too many poor people, and why do you want them to bring more children into the world?"

Me, a middle-class white male, what do I care about more blacks in Harlem? I will tell you why I care. They are human beings. And we ought to look for human solutions to poverty rather than the Fascist solution of getting rid of poor people. I oppose that. And it is the minorities who suffer. They are the ones who have the abortions. "Too many people on welfare. Get rid of them." I am defending your people.

Mr. McKAY. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Utah.

Mr. McKAY. Mr. Chairman, I rise in support of the amendment.

I feel that the basic philosophy for civilization relates around the respect for life and the development of life, not the method to destruct it, and that we ought not in Government circles do anything that would tend to encourage the destruction of that life.

Mr. VOLKMER. I thank the gentleman for his remarks.

Mr. RUDD. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

As a member of the District of Columbia Appropriations Subcommittee, I want to emphasize that this amendment is quite consistent with the limited home rule charter enacted by Congress.

The District of Columbia's home rule statute—Public law 93-198—specifically reserved to Congress total fiscal responsibility over the D.C. government and all budget expenditures.

The home rule charter requires the Mayor's annual budget proposal to be approved by the City Council, and to be submitted to Congress along with the President's own budget request for final approval as part of the congressional budget and appropriations process.

The key section of the D.C. home rule charter statute delegating this responsibility to Congress is section 446, titled "enactment of appropriations by Congress."

That section states in part—

> No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.

Mr. Chairman, this provision of Federal law clearly requires the full Congress to approve or disapprove recommended programs and spending by the District of Columbia government, on a line-item basis.

That is exactly how the appropriations committee arrived at its recommendations in this year's appropriation bill, and in all former appropriations bills.

It should be noted that the provision in this bill prohibiting the use of Federal funds to finance abortions in the District of Columbia is included with no less than 10 other provisions designating how funds, including District of Columbia revenues, shall not be spent.

These provisions include the allowable compensation for government travel, a prohibition against taxicab meters, and restrictions against chauffeurs for District government employees.

Mr. Chairman, the fact that the District of Columbia is the only jurisdiction in the United States where abortions outnumber live births is, I believe, tragic in itself.

It would be unconscionable for Congress to sanction continued use of taxpayer dollars to finance this tragedy.

We cannot close our eyes to what is happening to human life here in the Nation's Capital.

I urge my colleagues to adopt this amendment, and to be firm in our instistence that no taxpayer's money be spent to subsidize abortion in the District of Columbia.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think an awful lot has been said about this issue, but I would like to just summarize where I think we are, because I think we have gotten off the track.

We are living in a different world than the one a lot of people have talked about here today. Let us talk about what the Supreme Court has said.

They have said that local areas can make this decision on abortion. We have the District of Columbia saying, "Why should we be treated different than other local areas in America?" That is issue No. 1.

Issue No. 2 is that in the bill we are talking about abortions to save the life of the mother or for rape or for incest is all that is allowed. It is the standard language. And this amendment would strike out that language and say "No abortion" period.

I think that one of the big problems about this afternoon's discussion is that we have gone off on all sorts of different tangents. But let us go back and stay right on target as to what this amendment is. I think we all know that there is a tremendous stigma in this society attached to a young woman who becomes pregnant, say, through incest or through rape. It is very hard to make a moral value judgment as to which is worse, abortion or being subject to such a stigma the rest of one's life. I am sure this is not the body where we make the final decision that women in the District of Columbia should have that illegitimate child or the incestuous child or should die rather than have an abortion. How can we make that kind of a decision for the District and not for any place else?

Many of the other issues that get thrown out here to compare abortion to other acts in this moral debate that has been raging emotionally for the last 2

hours are not analogous issues because they do not balance one life against another. Here we are talking about one life against another. Those are very, very, very difficult decisions, and I do not feel the Congress is qualified to make a flat-out prohibition and say that we are going to disregard the life of the mother, or we are going to say that young girls subjected to rape or incest must carry the pregnancy to full term, and that the District of Columbia is going to be treated differently than any other area in the country.

That is the issue that is being discussed here. I think we need to keep that focus. All of the other things are really ancillary. I hope we reject this amendment.

Mr. GARCIA. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I was not going to get involved in this debate because I do not believe there is a person on this floor who favors abortion for the sake of abortion. I listened to my colleagues as they spoke about abortion from a moralistic point of view. And I, too, stand here as a person who supports a woman's right, from a moralistic point of view. Yet those of us who stand before the people of this District (D.C.) and the people of this country, as it deals with this legislation, in due time we will be judged, not by each other, but by a power much more supreme than any of us, and we will be judged according to the actions we take here today. When we are judged, we are to be judged for what we do. Let us be judged in terms of our entire lives, in everything we do in regard to human life. I believe that that is the crux of what we are talking about. I believe that there are people who are antiabortionist, who are sincere in what they say, but they stand here and they judge those of us who believe that a poor woman is entitled to the same medical care as a woman who comes from Nassau or Westchester County in the affluent area's of New York. We want the best for all women. If a woman is to decide that she is not going to bear that child, whether it is incest or whether it is rape, or whatever the case might be, it is her judgment, and she, too, will answer. But let her answer; let not you and I.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. GARCIA. I yield to the gentleman from Kentucky.

Mr. CARTER. I thank the distinguished gentleman for yielding, and I wish to commend him on his remarks.

Mr. Chairman, I wish to return, really, to the problem that we face today, and that is whether we are going to save the life of the mother or not. That is the problem. This amendment would deny funds to save the life of the mother, even during the first 20 days of pregnancy. During the first 20 days of pregnancy there is no blood circulating, the heart is not beating actually, and this amendment today would make you take the choice of saving the mother or a child. Well, it is really a fetus. And I want to say strongly that, in my mind, all of us would put the mother first, at least I think so.

Mr. GARCIA. I thank the gentleman for his remarks.

Mr. Chairman, I would just like to add, if I may, in terms of morality, I was a member of the State Legislature. I have repeated that many times on this floor, because I was proud of the services that I was able to give to my State. I voted for the original abortion bill in the State of New York that passed by three votes. And I am the son of a minister. My dad was very much opposed to the bill, and when my father and I entered into a conversation as to whether in fact I was doing the right thing, I said to my father:

> Dad, there are times when a father and a son must understand that we have our own roads to go. Dad, I believe that I am right. I believe that I must afford all women an opportunity to seek the medical care that they need and deserve.

□ 1550

> I am not going to make their minds up for them. That is their decision. But I, who come from a community that is poor and we are dependent on public hospitals. If they had to depend on their spouses or themselves, they would never be able to get proper medical care. Many of these poor people have been forced to the second floors of lofts and abandoned buildings in my districts.

That is what you are asking poor people to do. Let them make the judgment. Let them be the ones who in the final analysis they will meet their Creator and they will have to deal with that, as I will have to deal with my decision on this floor today.

Let us not take this floor and judge each other. We will be judged in terms of our action. I feel confident that the person who is going to judge me is just, and he knows what I am doing.

● Mr. STOKES. Mr. Chairman, I rise in opposition to the Dornan amendment. This amendment would single out the District of Columbia for unusually harsh and discriminatory treatment. The language in the bill would place the District of Columbia under a different and more restrictive policy than applies to any of the 50 States. This language, if enacted, will prevent the District of Columbia from using local tax dollars to finance abortions under locally determined circumstances, in no State does this situation apply. Rather, every State currently has the option of using State funds to pay for abortions under a variety of circumstances and situations. To treat the District of Columbia differently is to blatantly disregard the Home Rule Act of 1973 and to blatantly disregard the lives of poor women who just happen to live in the District of Columbia.

The position of this body is clear with respect to the use of Federal funds for abortion. The bill before you conforms to the House position by maintaining the current law prohibitions against using Federal funds for abortions. The basic question here is whether the residents of the District of Columbia should have the right to determine the disposition of local tax dollars—the same right that is enjoyed by all other taxpaying citizens. I say that the answer is "yes."

Mr. Chairman, over half of the funds in this bill are raised by the citizens of the District of Columbia. These are revenues generated by local real estate taxes, local income taxes, local sales taxes, and local water taxes. Sure, the Congress has the power of the purse. But, this power should not be used to thwart the desires of local taxpaying citizens. If District residents, through their elected officials, decide that public payment for abortion is an appropriate use of local funds, then who are we to abrogate that decision? Just as you would oppose any proposition which would seek to dictate how locally raised funds would be used in your State, county, or city, I would hope that you will also oppose any attempt to dictate how the locally raised funds in this city are to be used.

Whatever your position on abortion might be, I urge you to consider the rights of the residents of the District of Columbia as you would your own constituents. I urge you to vote no on this amendment.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. DORNAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. DORNAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 182, noes 192, not voting 58, as follows:

[Roll No. 510]

AYES—182

Abdnor
Albosta
Ambro
Andrews, N.Dak.
Annunzio
Applegate
Archer
Ashbrook
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Benjamin
Bennett
Bereuter
Bethune
Bevill
Boland
Boner
Bouquard
Breaux
Brinkley
Broomfield
Burlison
Byron
Campbell
Carney
Cavanaugh
Chappell
Cheney
Coleman
Collins, Tex.
Conte
Corcoran
Cotter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Derwinski
Devine
Donnelly
Dornan
Dougherty
Duncan, Tenn.
Early
Edwards, Okla.
Emery
English
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fithian
Fuqua
Gaydos
Gore
Gradison
Gramm
Grassley
Guyer
Hagedorn
Hall, Tex.
Hammer-schmidt
Harsha
Heckler
Hightower
Hillis
Holt
Hopkins
Hubbard
Hutto
Hyde
Ireland
Jeffries
Jones, Tenn.
Kazen
Kelly
Kemp
Kildee
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Lewis
Livingston
Loeffler
Long, La.
Luken
Lungren
McClory
McDade
McDonald
McEwen
McKay
Madigan
Markey
Marriott
Mathis
Mavroules
Mazzoli
Mica
Michel
Miller, Ohio
Minish
Mitchell, N.Y.
Moakley
Montgomery
Moore
Mottl
Murtha
Musto
Myers, Ind.
Natcher
Nelson
Nowak
O'Brien
Oakar
Oberstar
Pashayan
Paul
Perkins
Petri
Quillen
Rahall
Regula
Rinaldo
Robinson
Roe
Roth
Royer
Rudd
Russo
Santini
Satterfield
Sawyer
Schulze
Sensenbrenner
Shelby
Shumway

Shuster
Skelton
Smith, Nebr.
Snyder
Solomon
Spence
St Germain
Staggers
Stangeland
Stanton
Stenholm
Stratton
Stump
Tauke
Taylor
Traxler
Trible
Volkmer
Walker
Wampler
White
Whitehurst
Williams, Ohio
Winn
Wyatt
Wylie
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOES—192

Addabbo
Akaka
Alexander
Andrews, N.C.
Anthony
Ashley
Aspin
Barnes
Bedell
Biaggi
Bingham
Blanchard
Bolling
Bonker
Bowen
Brademas
Brodhead
Brooks
Brown, Calif.
Broyhill
Burgener
Burton, John
Burton, Phillip
Carr
Carter
Chisholm
Clay
Cleveland
Clinger
Collins, Ill.
Conable
Conyers
Coughlin
Courter
Danielson
Daschle
Dellums
Derrick
Dickinson
Dicks
Dixon
Downey
Drinan
Duncan, Oreg.
Eckhardt
Edwards, Ala.
Edwards, Calif.
Erdahl
Evans, Del.
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Garcia
Giaimo
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Goodling
Green
Grisham
Guarini
Gudger
Hall, Ohio
Hamilton
Hance
Harkin
Harris
Hefner
Heftel
Holland
Hollenbeck
Horton
Howard
Huckaby
Hughes
Hutchinson
Jacobs
Jeffords
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Leach, Iowa
Lehman
Leland
Levitas
Lloyd
Long, Md.
Lowry
Lundine
McCloskey
McHugh
McKinney
Maguire
Marks
Marlenee
Martin
Matsui
Mikulski
Miller, Calif.
Mineta
Mitchell, Md.
Moffett
Mollohan
Moorhead, Pa.
Neal
Nedzi
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Peyser
Pickle
Porter
Preyer
Price
Pursell
Railsback
Rangel
Ratchford
Reuss
Rhodes
Richmond
Ritter
Roberts
Rose
Rosenthal
Roybal
Sabo
Scheuer
Schroeder
Seiberling
Sharp
Simon
Smith, Iowa
Snowe
Solarz
Spellman
Stack
Stark
Stewart
Stokes
Studds
Swift
Synar
Tauzin
Thompson
Vander Jagt
Vanik
Vento
Walgren
Watkins
Waxman
Weaver
Weiss
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, C. H.
Wilson, Tex.
Wirth
Wolff
Wolpe
Wright
Wydler
Yates

NOT VOTING—58

Anderson, Calif.
Anderson, Ill.
AuCoin
Bellenson
Boggs
Bonior
Brown, Ohio
Buchanan
Butler
Clausen
Coelho
Corman
D'Amours
Davis, S.C.
Dingell
Dodd
Edgar
Gephardt
Gingrich
Goldwater
Gray
Hanley
Hansen
Hawkins
Hinson
Holtzman
Ichord
Jenrette
Leach, La.
Lederer
Lott
Lujan
McCormack
Mattox
Moorhead, Calif.
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Myers, Pa.
Nichols
Pritchard
Quayle
Rodino
Rostenkowski
Rousselot
Sebelius
Shannon
Steed
Symms
Tauzin
Thompson
Vander Jagt
Watkins
Whitten
Wilson, Bob
Wright
Wydler
Young, Alaska

□ 1600

The Clerk announced the following pairs:

On this vote:

Mr. Nichols for, with Mr. Gray against.

Mrs. Boggs for, with Mr. Hawkins against.

Mr. Murphy of New York for, with Mr. Corman against.

Mr. Steed for, with Mr. McCormack against.

Mr. Hansen for, with Mr. Thompson against.

Mr. Hinson for, with Mr. Dodd against.

Mr. ECKHARDT and Mr. BROWN of California changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 19, after line 5, insert:

"SEC. 121. None of the funds appropriated by this Act shall be expended pursuant to any order or injunction of any court of the United States which would compel the expenditure of such funds for a purpose for which such expenditure is specifically prohibited by this Act."

□ 1610

Mr. DIXON. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN. The gentleman from California (Mr. DIXON) reserves a point of order.

Mr. ASHBROOK. Mr. Chairman, this is identical to the language adopted by the House on August 27 as an amendment to H.R. 7998, the Labor, Health and Human Services, Education Appropriations Act. The purpose of the amendment is simple and straightforward. It is a defense of the constitutional power of the Congress, and the Congress alone, to appropriate funds from the Federal Treasury.

Article I, section 9, clause 7 of the Constitution provides unequivocally:

No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law;

Only the Congress can make a law. That is the very essence of the legislative authority which the Constitution vests solely in the Congress. Article I of the Constitution begins with the declaration that—

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Yet we have seen a steady erosion of this unequivocal grant through incursions by the courts and by the executive branch bureaucracy.

The Congress has begun to strike back and assert its constitutional powers. My amendment is a proper and necessary means of doing just that. In essence, it protects against an abuse of process by the courts whereby they have ordered the expenditure of funds from the Treasury for a purpose for which the Congress specifically refused to appropriate funds. Often they have done so with underhanded support and acquiescence of the executive branch which wanted to spend money for the prohibited purpose.

The most recent and most flagrant example involves the application of the Hyde amendment to prohibit the expenditure of Federal medicaid funds for abortions other than those necessary to save the life of the mother. A single Federal district court judge—Judge Dooling of the U.S. District Court for the Eastern District of New York—found the Hyde amendment unconstitutional, ordered a compliant Secretary of HEW to spend Federal funds for elective abortions, and applied his order to the entire Nation. This was January 15, 1980. The U.S. Supreme Court on February 19 agreed to hear the case, but left the Dooling order standing. On June 30, the Court upheld the Hyde amendment as constitutional and vacated the Dooling judgment.

But between January 15 and June 30, thousands of abortions were financed by medicaid funds which were not appropriated by this Congress. Worse, due to a technicality in the rules of the Supreme Court—a technicality which the Carter administration could have sought to overcome, but refused to attempt to do so—Federal medicaid funds are still being used to perform abortions for which no such funds are appropriated. An article in the Washington Post of Saturday, August 30, estimates that 1,000 abortions a week are being funded by medicaid funds specifically prohibited by the Hyde amendment.

And let us make no mistake about the legal facts in this matter. The precedents and practice of the House of Representatives and of the Congress is that a prohibition on the use of appropriated funds is a deliberate refusal to appropriate funds for the prohibited purpose. The prohibition is an integral part of the act, so that even if a court struck it down, there would be no funds appropriated for the prohibited purpose.

Indeed, that was the central point of a defense of the Hyde amendment in a brief amici curiae filed by 238 Members of Congress in the Harris against McRae case. In that brief, filed with the Supreme Court on March 18, 1980, we described the action of Judge Dooling as one which "ignores the nature of the appropriations power, disregards the practice and the precedents of the Congress, and in the most fundamental way subverts the Constitution of the United States by making meaningless the reservation to the Congress of the right to determine when 'money shall be drawn from the Treasury.'"

Mr. Chairman, let me remind my colleagues that this brief was joined in by a majority of the Members of this House, including many who had opposed the Hyde amendment, and including both the distinguished majority and minority leaders of the House. The issue is not the Hyde amendment or any other prohibition contained in an appropriations act. The issue is the legislative power of the Congress.

There are at least 10 specific prohibitions on the use of funds contained in the bill before us as reported from the Committee on Appropriations. I have not even considered whether I favor each and every one of these prohibitions.

But I know that I do not want to have any court order the expenditure of funds appropriated by this act for a purpose which is specifically prohibited under this act, thus usurping the constitutional authority of the Congress. My amendment would prevent that from occurring.

There are those who may argue that such action might force a constitutional confrontation with the Federal judiciary. It might, but not unless the Federal judiciary first invades the sole power of Congress to appropriate funds.

There are those who may argue that in theory the Congress could carve out a clearly unconstitutional exception to an expenditure of funds, for which the courts could provide no remedy. That just is not the case. Prof. John T. Noonan, of the University of California Law School at Berkeley, has pointed out the obvious—that the courts could invalidate the entire act. Thus it would be up to Congress to then decide whether it wanted to appropriate any funds at all for functions covered by the act.

Mr. Chairman, as a matter of fundamental constitutional principle, I urge adoption of this amendment.

Mr. DIXON. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I am very glad to yield.

Mr. DIXON. Mr. Chairman, this side of the aisle will accept this amendment.

Mr. Chairman, I withdraw my point of order.

The CHAIRMAN. The point of order is withdrawn.

Mr. PURSELL. Mr. Chairman, I move to strike the last word.

We have looked at the amendment and the language is consistent with previous House action. We think it does put restrictions in where appropriate in the legislation and on this side we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was agreed to.

Mr. DIXON. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. FOLEY) having assumed the chair, Mr. GORE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, H.R. 8061, making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes, had directed him to report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PURSELL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 215, nays 158, not voting 59 as follows:

[Roll No. 511]

YEAS—215

Addabbo
Akaka
Albosta
Alexander
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
Atkinson
Bailey
Baldus
Barnes
Benjamin
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Bonker
Bowen
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Burgener
Burton, John
Burton, Phillip
Carr
Carter
Chisholm
Clinger
Collins, Ill.
Conte
Conyers
Corcoran
Cotter
Coughlin
Danielson
de la Garza
Dellums
Derrick
Dicks
Dixon
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edwards, Ala.
Edwards, Calif.
Erdahl
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frost
Fuqua
Giaimo
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Gore
Green
Guarini
Gudger
Hall, Ohio
Hamilton
Harkin
Harris
Heckler
Hefner
Heftel
Hollenbeck
Holt
Horton
Howard
Hutchinson
Hyde
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Kastenmeier
Kazen
Kogovsek
Kostmayer
Lehman
Leland
Lent
Lloyd
Long, La.
Long, Md.
Lowry
Lundine
McClory
McCloskey
McEwen
McHugh
McKay
McKinney
Maguire
Marks
Marlenee
Marriott
Matsui
Mazzoli
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Musto
Natcher
Neal
Nedzi
Nelson
Nolan
Nowak
O'Brien
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Porter
Preyer
Price
Pursell
Rahall
Railsback
Rangel
Ratchford
Reuss
Rhodes
Richmond
Rinaldo
Roe
Rose
Rosenthal
Roybal
Royer
Russo
Sabo
Scheuer
Seiberling
Sharp
Simon
Smith, Iowa
Snowe
Solarz
Spellman
St Germain
Stack
Staggers
Stanton
Stark
Stewart
Stokes
Studds
Swift
Synar
Thomas
Traxler
Udall
Ullman
Van Deerlin
Vanik
Vento
Walgren
Wampler
Waxman
Weiss
Whitley
Williams, Mont.
Williams, Ohio
Wilson, C. H.
Wirth
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Zablocki
Zeferetti

NAYS—158

Abdnor
Ambro
Applegate
Archer
Ashbrook
Badham
Bafalis
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bereuter
Bethune
Boner
Bouquard
Breaux
Broomfield
Burlison
Byron
Campbell
Carney
Cavanaugh
Chappell
Cheney
Clausen
Cleveland
Coleman
Collins, Tex.
Conable
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daschle
Davis, Mich.
Deckard
Derwinski
Devine
Dickinson
Donnelly
Dornan
Duncan, Tenn.
Edwards, Okla.
Emery
English
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Forsythe
Frenzel
Gaydos
Goodling
Gradison
Gramm
Grassley
Grisham
Guyer
Hagedorn
Hall, Tex.
Hammer-schmidt
Hance
Harsha
Hightower
Hillis
Holland
Hopkins
Hubbard
Huckaby
Hughes
Hutto
Ireland
Jacobs
Jeffries
Jenkins
Jones, Okla.
Jones, Tenn.
Kelly
Kemp
Kildee
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Loeffler
Luken
Lungren
McDade
McDonald
Madigan
Martin
Mathis
Mavroules
Michel
Miller, Ohio
Montgomery
Moore
Motti
Murphy, Pa.
Murtha
Myers, Ind.
Oakar
Oberstar
Pashayan
Paul
Petri
Pickle
Quillen
Regula
Ritter
Roberts
Robinson
Roth
Rudd
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snyder
Solomon
Spence
Stangeland
Stenholm
Stockman
Stratton
Stump
Tauke
Taylor
Trible
Volkmer
Walker
Weaver
White
Whitehurst
Whittaker
Wilson, Tex.
Winn
Young, Fla.
Young, Mo.

NOT VOTING—59

Anderson, Calif.
Anderson, Ill.
AuCoin
Bellenson
Boggs
Bonior
Brown, Ohio
Broyhill
Buchanan
Butler
Clay
Coelho
Corman
D'Amours
Davis, S.C.
Dingell
Dodd
Edgar
Garcia
Gephardt
Gingrich
Goldwater
Gray
Hanley
Hansen
Hawkins
Hinson
Holtzman
Ichord
Jenrette
Leach, La.
Lederer
Lott
Lujan
McCormack
Markey
Mattox
Moorhead, Calif.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nichols
Pritchard
Quayle
Rodino
Rostenkowski
Rousselot
Sebelius
Shannon
Steed
Symms
Tauzin
Thompson
Vander Jagt
Watkins
Whitten
Wilson, Bob
Wydler
Young, Alaska

□ 1630

The Clerk announced the following pairs:

On this vote:

Mr. Thompson for, with Mr. Maddox against.

Mr. Jenrette for, with Mr. Brown of Ohio against.

Mr. Shannon for, with Mr. Gingrich against.

Mr. Lederer for, with Mr. Goldwater against.

Mr. Nichols for, with Mr. Hansen against.

Mrs. Boggs for, with Mr. Hinson against.

Mr. Murphy of New York for, with Mr. Lott against.

Mr. Gray for, with Mr. Lujan against.

Mr. Hawkins for, with Mr. Moorhead of California against.

Mr. McCormack for, with Mr. Quayle against.

Mr. Dingell for, with Mr. Rousselot against.

Mr. Dodd for, with Mr. Sebelius against.

Mr. Garcia for, with Mr. Symms against.
Mr. Rostenkowski for, with Mr. Vander Jagt against.
Mr. Hanley for, with Mr. Young of Alaska against.

Until further notice:

Mr. Myers of Pennsylvania with Mr. Pritchard.
Mr. Anderson of California with Ms. Holtzman.
Mr. Rodino with Mr. Steed.
Mr. Tauzin with Mr. Markey.
Mr. Bellenson with Mr. Watkins.
Mr. AuCoin with Mr. Whitten.
Mr. Bonior of Michigan with Mr. Ichord.
Mr. Clay with Mr. Broyhill.
Mr. Corman with Mr. Leach of Louisiana.
Mr. D'Amours with Mr. Buchanan.
Mr. Davis of South Carolina with Mr. Butler.
Mr. Murphy of Illinois with Mr. Edgar.
Mr. Coelho with Mr. Gephardt.
Mr. Bob Wilson with Mr. Wydler.

Mr. LEWIS changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DIXON. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include pertinent and extraneous material on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California.

There was no objection.

PERSONAL EXPLANATION

Mr. GARCIA. Mr. Speaker, I have been notified today that on the District of Columbia appropriations bill, H.R. 8061, my vote was not recorded. I received a new voting card today, and I have been having some problems with it. I know that I voted, and had my vote been recorded, I would have voted in the affirmative on H.R. 8061.

PERMISSION FOR COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO FILE REPORT ON H.R. 7418, NUCLEAR WASTE RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1980

Mr. SHARP. Mr. Speaker, I ask unanimous consent that the Committee on Interstate and Foreign Commerce have until midnight tonight to file a report on the bill, H.R. 7418, Nuclear Waste Research, Development, and Demonstration Act of 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 601, INTERNATIONAL MONETARY FUND APPROPRIATIONS, 1981

Mrs. CHISHOLM, from the Committee on Rules, submitted a privileged report (Rept. No. 96-1273) on the resolution (H. Res. 778) providing for the consideration of the joint resolution (H.J. Res. 601) making an appropriation for the International Monetary Fund for the fiscal year ending September 30, 1981, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF S. 658, MAKING TECHNICAL AND CLARIFYING AMENDMENTS TO PUBLIC LAW 95-598, UNIFORM LAW ON BANKRUPTCIES

Mrs. CHISHOLM, from the Committee on Rules, submitted a privileged report (Rept. No. 96-1274) on the resolution (H. Res. 779) providing for the consideration of the Senate bill (S. 658) to correct technical errors, clarify and make minor substantive changes to Public Law 95-598, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 6777, INCREASING AUTHORIZATION AND EXTENDING TO SEPTEMBER 30, 1981, COUNCIL ON WAGE AND PRICE STABILITY

Mrs. CHISHOLM, from the Committee on Rules, submitted a privileged report (Rept. No. 96-1275) on the resolution (H. Res. 780) to increase the authorization for the Council on Wage and Price Stability, to extend the duration of such Council, and for other purposes, which was referred to the House Calendar and ordered to be printed.

HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE AND NURSE TRAINING AMENDMENTS OF 1980

Mrs. CHISHOLM. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 766 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 766

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7203) to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such Act for the education of health professions personnel, and other purposes, the first reading of the bill shall be dispensed with, and all points of order against the bill for failure to comply with the provisions of clause 5, rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule by titles instead of by sections, and each title shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentlewoman from New York is recognized for 1 hour.

Mrs. CHISHOLM. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 766 provides for the consideration of the bill H.R. 7203, the Health Professions Educational Assistance and Nurse Training Amendments of 1980. H.R. 7203 amends the Public Health Service Act, to revise and extend the programs for the National Health Service and programs of assistance under the act for the education of health professions personnel.

This is an open rule, Mr. Speaker, providing for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. The rule provides that the bill shall be read for amendment under the 5-minute rule by titles instead of by sections and provides for one motion to recommit.

In addition, the rule waives all points of order against the bill for failure to comply with the provisions of clause 5, rule XXI, which prohibits an appropriation in a legislative bill. Although there are no actual appropriations in the legislation, certain provisions of the bill could technically be construed as new appropriations; thus, the waiver was necessary.

Mr. Speaker, H.R. 7203 is an omnibus reauthorization of an extensive list of Federal programs supporting health education. Although there have been great strides in our efforts to insure more adequate and better distribution of health care in this country, many problems remain. I commend the Committee on Interstate and Foreign Commerce for recognizing the need to address the ongoing problems of medically underserved rural and urban areas, and the need to facilitate the entry of special populations into the medical professions.

Mr. Speaker, H.R. 7203 is a very important part of our Nation's commitment to insuring adequate access to health care for all Americans. I urge my colleagues to adopt House Resolution 766 so that we might proceed to the consideration of H.R. 7203, the Health Professions Educational Assistance and Nurse Training Amendments of 1980.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule is fairly routine. It provides 1 hour of general debate for consideration of health professions educational assistance and nurse training amendments. There are no restrictions on amendments in the rule.

There is one waiver of a House rule. The rule prohibiting appropriations on legislative bills is waived, because there are technically some appropriations in

this bill. For example, it establishes a revolving fund which allows money to go out of the fund without going through the formal appropriation process, and this constitutes an appropriation on a legislative bill.

Mr. Speaker, the purpose of the bill made in order by this rule is to revise and extend the programs for the National Health Service Corps and certain programs of assistance for the education of health professions personnel.

The bill authorizes $684 million for fiscal year 1981, $818 million for fiscal year 1982, and $931 million for fiscal year 1983.

Mr. Speaker, these may be good programs but annual increases of the magnitude proposed in this bill, if extended to other areas, will assure ever-increasing taxes or deficits, or both. The bill authorizes a 19.2-percent increase in authorizations for fiscal year 1981 over fiscal year 1980.

The following chart prepared by the Congressional Budget Office sets forth the estimated costs of this bill:

[By fiscal years, in millions of dollars]

Authorization level	1981	1982	1983	1984	1985
National Health Service Corps	94	145	205		
National Health Service Corps scholarships	92	101	109		
Health professions:					
Health facilities construction	15				
Loans for teaching facility construction (estimated)	4	4	4		
HEAL loans (estimated)	(1)	(1)	(1)	(1)	(1)
HPSL loans	20	22.5	25		
Exceptional need scholarships	30	40	50		
Capitation grants	67.952	48.631	29.316		
Departments of family medicine	15	20	25		
Area health education centers	21	28	30		
Physician and dental assistants	14	15	16		
General medicine and pediatrics—Training and traineeships	23	30	32		
Family medicine and general practice dentistry	50	75	80		
Disadvantaged individuals	30	33	36		
Institutions	10	12.5	15		
Financial distress	20	20	20		
Environmental and occupational health personnel study	1	1	1		
Public health traineeships	8	9	10		
Special projects—Public health	5	5.5	6		
Midcareer training	1.5	2.5	3		
Graduate programs in health administration	4	4.5	5		
Health administration traineeships	2.5	3	3.5		
Department of preventive medicine	2	3	4		
Residency training in preventive medicine	6	7	8		
Special curriculum development for health administration	3	4	5		
Faculty development programs	1	1	1		
Allied health project grants	9	9.5	10		
Allied health traineeships	1.3	1.4	1.5		
Allied health assistance to disadvantaged individuals	1	1	1		
Nurse training:					
Construction grants	1	1	1		
Capitation	25	27.5	30		
Special projects	15	17.5	20		
Advanced nurse training	12	13.5	15		
Nurse practitioner	17	18.5	20		
Advanced nurse traineeships	15	17.5	20		
Nurse anesthetists traineeships	2	3	4		
Student loans	15	17.5	20		
Scholarships (estimated)	31	55	66	40	16
Total	684.252	818.031	931.316	40	16
Estimated outlays	153	523	824	669	301

[1] Less than $500,000.

Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mrs. CHISHOLM. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1520

Mr. WAXMAN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7203) to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such act for the education of health professions personnel, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. WAXMAN).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7203, with Mr. BIAGGI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill will be dispensed with.

Under the rule, the gentleman from California (Mr. WAXMAN) will be recognized for 30 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today the House is considering H.R. 7203, the Health Professions Educational Assistance and Nurse Training Amendments of 1980.

I am especially pleased to present this bill because it insures that thousands of young health professionals will receive the financial assistance and training they need. I want to thank the members of the Interstate and Foreign Commerce Committee, particularly Chairman STAGGERS and Dr. CARTER, for their extensive contributions to the development of this legislation.

H.R. 7203 reauthorizes the Federal health professions and nurse training programs for 3 years. It is the first revision of the health manpower authorities since 1976. Since that time the Nation's health professions priorities have changed and Federal budget constraints have tightened. H.R. 7203 tailors our health training programs to fit the new priorities and constraints.

H.R. 7203 is the product of a careful analysis of the Nation's current supply of health professionals and the ability of our existing programs to meet projected needs. The Subcommittee on Health and the Environment held 5 days of hearings on this legislation. More than 50 witnesses appeared at those hearings. The subcommittee devoted 3 days to marking up this bill. The current authorities were extensively revised by the subcommittee and additional amendments were adopted by the full committee.

H.R. 7203 includes major provisions in six areas:

First, the bill extends the nurse training authorities for 3 years. This extension insures that the Federal Government will do its share to alleviate the shortage of nurses that we have recently heard so much about. In particular, the bill supports nurse training by:

Continuing direct support for schools of nursing with increased emphasis on assistance to the 2- and 3-year schools which train bedside nurses;

Authorizing special project grants to communities with the greatest shortage of nurses and;

Assisting working nurses to return to school to upgrade their skills and improve their professional status.

Second, the legislation provides financial assistance to health professions students. Student assistance is especially important at a time when the cost of education continues to increase. The bill extends the health profession student loan program, the exceptional financial need scholarship program, and the health education assistance loan—or HEAL—program. Together with the guaranteed student loan program recently extended and expanded by the higher education amendments these programs assure that adequate funds will be available to health students in coming years.

Third, the bill phases down capitation grants to health professions schools over the next 3 years. This reduction responds to concerns of the administration and the Budget Committee about the continued need for capitation support. Federal expenditures are thus reduced in an orderly manner while the schools are provided adequate time to make necessary financial adjustments.

Fourth, the bill maintains the current efforts to develop area health education centers and the National Health

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Service Corps. The geographic distribution of physicians and other health professionals continues to be an important problem. Many rural communities and inner city neighborhoods do not have adequate numbers of health care providers.

In revising the statutory authority for the corps, the bill assigns a greater role to physicians entering the private practice of medicine and allows professionals to be directly employed by local service programs. These provisions will both reduce direct Federal costs and increase the retention of professionals by these communities.

Fifth, the bill extends and revises assistance for primary care training. The number of family practice and other primary care residency programs has increased significantly over the past decade. Federal assistance has played a major role in this development. The bill continues the Nation's commitment to this important trend.

Sixth, the bill extends and strengthens the program of educational assistance to students from disadvantaged backgrounds. The number of these students enrolled in the health professions schools has not increased over the past 5 years, set in earlier years have not been met. The bill encourages further efforts in this area. It also continues assistance to Meharry Medical College and other minority health professions schools.

H.R. 7203 also revises and extends assistance to physician assistant, public health, health administration, and allied health training programs.

An important issue during the deliberations on this bill was the appropriate level for the authorizations for the health professions and nurse training programs for the next 3 years. The amounts provided in the committee bill are a reasonable balance between the sums necessary to maintain important existing programs and current budget constraints. Authorizations for fiscal year 1981 are only 62 percent of fiscal year 1980 authorizations and even fiscal year 1983 authorizations are less than current levels. The authorizations are the minimum necessary to accommodate inflation and still provide the Appropriations Committee with the flexibility it needs.

Mr. Chairman, support of the committee bill will insure that the Nation will have the health professionals it needs in the decades ahead. Thousands of future health professionals are dependent upon the programs authorized by this legislation. H.R. 7203 is a careful extension and revision of current efforts. It provides a strong foundation for our health professions and nurse training programs in the 1980's.

At this time, Mr. Chairman, I would like to yield such time as he may consume to the very distinguished chairman of the Committee on Interstate and Foreign Commerce, the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I thank the gentleman. I again rise to congratulate those who have had a great hand in making this program here possible to bring before the House; that is, our good friend and colleague, Mr. WAXMAN of California, and our great friend from Kentucky, Dr. CARTER. I have come in many times before on great legislation. This is important legislation to all Americans.

When we are in need of health, in need of care, we need doctors and we need nurses, and then we appreciate them. When we do not need them, we just sort of forget about them. But, we are trying to provide those doctors and nurses and other things for America.

I think it is one of the great fundamental benefits of our health program that is so necessary to carry on what we have started now, to make a better way of relief for all America. We are starting into the programs of prevention in medicine because we think that is so important, instead of just trying to heal somebody after they get sick. If we can prevent them from getting sick, we think that is one of the great things we might be able to do.

We are trying to do that in the Congress; we are trying to do that in this bill. It is a very necessary bill, and I just commend all who had a part in taking part in the bill, including the staff and all the subcommittee members.

Mr. Chairman, I am pleased to speak this afternoon in support of H.R. 7203, the Health Professions Educational Assistance and Nurse Training Amendments of 1980.

I have long been a supporter of our Nation's health manpower and nurse training programs. I am proud of the achievements of these programs over the past two decades. I am especially pleased that these programs have improved the supply of doctors and nurses in my State of West Virginia, as well as in every State across the Nation.

The most important accomplishments of these programs include:

A 50-percent increase in the number of doctors in the Nation since 1965;

An 85-percent increase in the number of nurses in the Nation over the same period;

The development of the new specialty of family medicine; and

The expansion of the National Health Service Corps to provide doctors to the most underserved communities and neighborhoods in the Nation.

These programs have accomplished a great deal. But there is still much to be done. We cannot stop now. H.R. 7203 carries these critical programs forward into the 1980's. In particular, this bill:

Continues and directs our nurse training programs in response to the continuing shortage of nurses in many areas of the Nation;

Maintains Federal support for family practice and other programs which train young doctors to provide the primary care our people need; and

Strengthens the National Health Service Corps to insure that more rural and inner-city communities now without doctors will have them in the near future.

The bill also extends and revises many other important health programs.

There is some concern about the authorization levels included in H.R. 7203. This concern is unwarranted. The authorizations in H.R. 7203 in each of the 3 fiscal years—1981 through 1983— are less than current levels. This bill carefully targets limited funds on high priority programs.

I would like particularly to acknowledge the good work on this legislation of the chairman of the subcommittee, HENRY WAXMAN, and of the ranking minority member, Dr. TIM LEE CARTER, who has contributed so much to our health programs over the years. All the other members of the subcommittee are also to be commended. Additionally, I would like to mention a former member of the Commerce Committee staff, Dr. George Hardy. Dr. Hardy was an outstanding member of the staff for more than 3 years before he left to become an Assistant Administrator of the Center for Disease Control. His knowledge and hard work were of great assistance to the committee in the development of this and many other bills.

Mr. Chairman, I support H.R. 7203. I believe this bill merits the support of every Member of the House. It is the product of months of careful work by the Commerce Committee. It insures that our health manpower and nurse training programs will continue to meet our Nation's needs.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, certainly I do not mean to consume too much time at this late hour.

Mr. Chairman, I strongly support this legislation—H.R. 7203—which continues for 3 years—the authorizations for our Nation's important health professions training programs. I am referring to our schools of medicine; osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, nursing, and allied health whose graduates provide the health care essential to protect and maintain the health of all our people. Clearly the quality of health services provided by these professionals depends directly on the quality of the training they receive and that is why I believe continued Federal assistance to support and enhance that education is necessary. In addition this bill contains provisions to improve the distribution of health personnel throughout the country.

Mr. Chairman, before I review the main features of this bill, I would like to mention briefly some of the background relating to this legislation and some of the accomplishments which have been achieved.

If we consider the role of the Federal Government in this area over the past 17 years I believe that the record shows clearly that this assistance has been beneficial to the Nation as a whole.

As some of the Members in this Chamber may recall the Federal Government began to provide direct financial assistance for health professions education in 1963 (although public health traineeships actually began in the late 1950's).

This original health professions legislation was developed in response to critical shortages of health manpower in the Nation—that had been documented in various studies.

For example, the Magnuson Commission report in 1951 predicted a shortage of 30,000 to 59,000 physicians by 1960.

The Bane report in 1959 recommended that the number of medical school graduates be increased 50 percent by 1975.

And not only was there concern about shortages in the supply of physicians, a study group appointed by the Surgeon General in 1961 documented serious shortages in the nursing professions. At that time 23 percent of the available nursing positions in hospitals were unfilled. Over half of the nursing positions in public hospitals in New York City were vacant. The study group reported that unless the supply of nurses was substantially increased, the Nation would face a shortage of nearly 300,000 nurses by 1970.

In response to the growing concern about shortages of health personnel—and the effect of such shortages on public health—the Congress enacted the 1963 health professions legislation and the Nurse Training Act of 1964—which was the first comprehensive program of Federal support for nursing education.

The initial focus of these acts was to increase enrollment through construction of training facilities and expansion of existing facilities.

However, over the years, various amendments were enacted which provided additional incentives to increase enrollment through formula grants which later were named "capitation grants."

Continuing concern about the shortage of physicians persisted in 1971 when the Carnegie Commission issued its report on medical and dental education.

At that time the physician shortage still was estimated to be 50,000.

The Carnegie Commission recommended that the number of first-year places in medical schools be increased to 16,400 by 1978.

Subsequent legislation continued and expanded incentives to health professions schools to increase enrollments. Separate programs of institutional support were included to provide emergency financial assistance to schools in special financial need—and student assistance programs were expanded and revised to focus especially on increasing enrollment of students from disadvantaged backgrounds.

As a result of these health professions programs we have witnessed significant increases in the numbers of schools and students.

For example, the number of medical schools has increased from 87 schools in 1965 to 126 schools today.

And over that same 15-year period—first-year enrollment in medical schools has almost doubled—increasing from 8,800 to 16,500. Total enrollment has gone from about 32,000 to 62,000.

We find similar success with the capitation program in stimulating nursing school enrollment over the years. For example from 1964 to 1970—prior to the inception of the capitation grant program nursing school enrollment increased by less than 18,000 students. However—from 1970 to 1976 the increase in enrollment nearly doubled to 34,000 students. Nursing capitation grants have also led to an increase in the number of primary care training programs for nurses and programs for recruiting disadvantaged students—since such efforts have been alternative requirements under the nursing capitation program.

Mr. Chairman, there have been many other accomplishments in this field that can be linked with various programs authorized under the health professions legislation. Just briefly—I would like to list a few:

The establishment of the National Health Service Corps program and its scholarship program—which have helped to improve the distribution of health personnel in medically underserved areas. When the program completed its first full year of implementation in 1972—there were 288 Corps personnel serving in shortage areas. Today there are over 2,000 Corps personnel serving in nearly 900 communities that were in need of health care.

The establishment and support of 21 area health education centers—known as "AHECS"—which have provided decentralized training programs in community-based settings—that have made health services available to approximately 58 million persons.

Support for various programs to increase the number of primary care practitioners—including assistance to 95 family medicine programs and 46 awards to general dentistry training programs.

Assistance to thousands of health professions students through various loan and scholarship programs with special emphasis on programs to increase participation of students from disadvantaged backgrounds.

Recognition of the need to increase the supply of public health personnel through Federal traineeships and later through capitation grants. Over the years—the number of accredited health schools has grown from 11 with an enrollment of about 1,000 in 1956 to 21 schools today with an enrollment or more than 7,000 students.

Assistance in increasing the supply and improving the training of allied health personnel—with special attention on recruitment of students from disadvantaged backgrounds.

Recognition of the need to insure financial stability of the Nation's minority health institutions through a program of financial distress grants.

Mr. Chairman, these are just a few of the important accomplishments which have been made possible because of Federal assistance under the health professions and nurse training legislation.

And although great success has been achieved in many areas—we have not reached the stage where Federal assistance is no longer needed. In fact, in some areas, particularly student assistance, the need is even greater than in the past. And in other instances—we find that new priorities require special attention—such as in the field of primary care and preventive medicine.

In contrast to previous proposals which have emphasized increasing enrollments—we now find that current predictions for 1990 show we should have enough providers in most fields, except nursing, podiatry, and public health, and that we may even have an excess of physicians. Yet despite the increased number of minorities in the health professions from an historical perspective the percent of total first-year minority enrollment in medical schools, for example, has actually declined in recent years.

The legislation we are proposing today, H.R. 7203, responds to these new priorities and yet continues Federal assistance under current programs where it is still needed.

I strongly support this bill and urge its favorable adoption by my distinguished colleagues.

Although I regret that an amendment was adopted to phase-down most of current law's capitation support—I am pleased that the committee rejected the administration's proposal that would have terminated this funding abruptly in fiscal 1981.

Such an abrupt termination of capitation support would have had severe effects on many of our health care training programs. Instead, our bill provides notice to these institutions that funds will be decreasing in the future and allows time for a more orderly adjustment to this situation.

I also strongly support the committee's decision to continue Federal support to schools of nursing and public health under the new term "institutional support" program.

In both fields considerable evidence was provided which documented the shortages in these areas and the need to continue Federal assistance for these training programs.

For example, we received testimony on the nurse supply issue which reported an additional 100,000 nurses were required as of March 1980 to fill existing institutional needs. Other empirical evidence pointed to shortages throughout the country in all States except Rhode Island and Delaware.

With respect to public health personnel there is also justification for Federal support. There is an increasing need for well-trained public health personnel to carry out Federal programs such as health planning, clean air legislation, safe drinking water programs, maternal and child health activities, as well as traditional State public health responsibilities. Also, the recent Surgeon General's report, "Healthy People," found that there is a need for prevention manpower especially in the fields of epidemiology, biostatistics, health administration, environmental health, occupational and health, nutrition, and others, all of which are taught in public health schools. Finally—because schools of public health train graduates to go into public service jobs—over 50 percent go into Federal, State, or local governmental service—I believe the Federal Government has a direct interest and responsibility to help assure that an adequate supply of such personnel is available.

Mr. Chairman, this legislation also continues and strengthens the National Health Service Corps program—which as I mentioned earlier—was established to improve the delivery of health care services to persons living in health manpower shortage areas.

From my own experience with this program I can confirm that it has been most helpful in bringing needed health professionals to communities in my district and other places thoughout the State where health care was sorely needed.

The modifications to the program contained in H.R. 7203 are designed to encourage greater use of private placement options—and should greatly enhance the program's effectiveness at the community level. Also, we have required that an evaluation be conducted by the Secretary with regard to the criteria used to designate shortage areas to insure the most effective use of the program and its personnel in the future.

Finally, Mr. Chairman, in addition to the other important student assistance programs and primary care training programs which this legislation continues I would like to mention one other area to which this bill gives special attenton—namely assistance for individuals from disadvantaged or minority backgrounds who are seeking to enter health careers. This area has received increased support under the aegis of several programs including increased funding for exceptional financial need scholarships and additional support for special recruitment programs. However, the one program of special interest to me is the financial distress authority.

In that regard I was pleased that an amendment I offered to increase funding for institutions in financial distress was adopted and thus the bill provides $20 million each year for the next 3 years.

And although this authority will continue to be available to any health institution in financial distress it is intended primarily for those minority health schools such as Meharry Medical College, Xavier College of Pharmacy, and Tuskegee Institute's School of Veterinary Medicine, which have served as national resources in the training of minorities and individuals from disadvantaged backgrounds.

Clearly these schools deserve the additional support that may be necessary to insure the viability of their programs and I believe a Federal commitment to these institutions is indeed worthy of our continued support.

□ 1650

Also, Mr. Chairman, as we look at our future health care needs, there will be two shortages, according to what I read. One of them will be in the field of nursing and we already have a shortage now. One of the reasons for that is not so much that we do not have enough nurses graduating but, rather, that they get married and make homes and raise families, which is indeed wonderful for them to do. But still we need more nurses, and almost all of us lack the cooling hand of the nurse on our sweating foreheads when we are ill.

Another part of the program which we are improving today is that in the area of nurse traineeships, in which are included nurse anesthetists. It is very difficult for us to have as many physician anesthetists as we need in this country, and for years we have had a number of nurse anesthetists. This legislation would help increase their supply.

Altogether, Mr. Chairman, I think this is excellent legislation. I have been working with it since 1965, and I have tried to improve it in every way possible since that time.

H.R. 7203 provides continued support for many important health programs which directly affect the quality of health care that all of us receive.

I strongly urge favorable consideration of this bill.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am happy to yield to the distinguished gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the distinguished ranking minority member of the subcommittee for yielding, and I compliment him and the other members of the subcommittee for bringing forth this very important and much needed piece of legislation.

I would like to ask the gentleman from Kentucky (Mr. CARTER), if I may, this question: I have recently become aware that people who are the recipients of artificial limbs oftentimes are fitted for those artificial limbs by people who have had very little training in the manufacture and fitting of artificial limbs.

It has also come to my attention that when surgical procedures are taught in various schools of medicine, there is no procedure taught that would enable a surgeon to in any way take into account the type of artificial limb for which the patient subsequently will be fitted.

It occurs to me that we might do well to have a study to determine whether or not medical schools ought to be more involved in teaching surgical practices that more closely ally the surgeon with the subsequent manufacturer and fitter of the artificial limb. I wonder if the gentleman would agree that such a study would be desirable.

Mr. CARTER. Mr. Chairman, I do agree that that study would be extremely helpful.

As it happened, in my experience I was associated with a group of doctors in Louisville, Drs. Fischer, Leatherman, and Kottcampe, and at that time they had a wonderful artificer who made the best prosthetic devices I have ever seen.

We do not have enough of those people in our country. Neither do we have enough people taking training to construct braces, limbs, and such devices as are needed. Neither do we have courses in our schools sufficient to train our physicians as to how to order correctly those prostheses which may be needed.

Mr. MADIGAN. Mr. Chairman, I wonder if the gentleman will yield to the chairman of the subcommittee so that we might have the benefit of his conclusions as to whether or not such a study would be desirable.

Mr. CARTER. I yield to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I thank the gentleman for yielding.

I want the gentleman from Illinois (Mr. MADIGAN) to know that I appreciate his interest in this subject. We think it would be most appropriate for our Subcommittee on Health and the Environment to request a General Accounting Office study of the most proficient way of handling prosthetic devices. With this study, we will be able to see whether Government programs are providing the most up-to-date technology available.

Mr. Chairman, I would be pleased to join in urging this GAO study as a background for legislative action we might want to take thereafter.

Mr. MADIGAN. Mr. Chairman, I would be most pleased if the gentleman from California (Mr. WAXMAN) and the gentleman from Kentucky (Mr. CARTER) would allow me as a member of the full committee to take this action and would join with me in sending such a letter to the General Accounting Office.

Mr. CARTER. Mr. Chairman, I will say to the distinguished gentleman in the well that I certainly will join with him.

Mr. Chairman, I now recall the name—and it has been many years ago—of that wonderful builder of prosthetic devices in Louisville to whom I referred. His name is A. C. Weil. Even in retirement, he came back later on to help me with braces. I admire the skill of these artificers, and I just wish that more of our youngsters were as adept in making prostheses and in using their hands as he was.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield further?

Mr. CARTER. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank both the gentleman from Kentucky (Mr. CARTER) and the gentleman from California (Mr. WAXMAN) for their contribution, and I thank the gentleman from Kentucky for allowing me to participate.

Mr. CARTER. Mr. Chairman, I thank the distinguished gentleman from Illinois (Mr. MADIGAN), who has really been an addition to the committee. As always, I certainly want to thank the chairman of my subcommittee and the chairman of my full committee.

In this legislation, of course, we are continuing to accentuate primary care, and in doing this we are assisting in the establishment of departments of family medicine in medical schools throughout the country.

We also support the training of physicians in the fields of general and internal medicine and general pediatrics. Also, this legislation supports the training of physicians and dentists and residents in training in family medicine and in the general practice of dentistry.

We also support, and the legislation supports, training in preventive medicine. It supports community dentistry departments and residents training in preventive medicine, as well as AHEC programs, which are "areas of health education centers."

For instance, under the AHEC programs, a university will be the center and will be the place to which patients are referred from satellite areas. Students, interns, and perhaps residents from the university go out to a satellite area to see patients, and if they find them needing referral, then they send them to the university. This helps a great deal in training physicians to become accustomed to practicing in rural areas and in ghetto areas as well. This applies to both areas.

Mr. Chairman, I strongly support this legislation, and I reserve the balance of my time.

Ms. MIKULSKI. Mr. Chairman, I am pleased to support the health professions education and nurse training amendments (H.R. 7203), because this bill extends the Federal programs which help provide our great Nation with needed health professionals and revises these programs to increase the responsiveness of these programs to the changing health care needs of our citizens.

This bill recognizes the needs of all Americans for qualified health professionals. In specific, the bill:

Extends the authority of the National Health Service Corps and revises it in order to increase the cost effectiveness of the program and improve the geographic distribution of students so they will work off their loans in those areas of the country where their services are needed most;

Revises the program of institutional support by phasing out capitation for most health professionals, and providing support for students who seek training in areas where health professionals are most needed—including primary care and family physicians, nurses, and public health; and

Calls for a study to determine this country's future needs for professionals whose expertise lies in dealing with environmental and occupational diseases.

One of the most important features of this bill is its recognition of this country's need for qualified nurses. Daily, we hear about the needs of hospitals for nurses, regardless of whether they are in the inner cities or the rural manpower shortage areas. This bill takes a major leap forward in addressing this problem by increasing support for:

Increasing training opportunities not just to young women who want to become nurses but also to older women who want to go parttime to school;

Increasing access of nurse training programs to disadvantaged students;

Providing continuing education courses to nurses who want to upgrade their skills and, most important; and

Providing advanced training as nurse practitioners, nurse midwives, nurse anesthetists.

The bill also recognizes the needs of Americans who want to become health professionals. The bill increases access to financial loans for members of the middle, and lower income groups, and provides additional money for students with exceptional financial needs. This bill recognizes the need of Americans to constantly upgrade their skills, and provides nurses, public health, and other allied health professionals with the opportunities to get advanced training while continuing in their jobs.

Best of all, this bill not only meets the needs of our country to have an adequate supply of health professionals, but does so with a realistic eye on the budget. In determining authorization levels our subcommittee took a careful look at what our current appropriations for health professions education and training were—not the higher levels of authorizations, and used them as guidelines for realistic spending limits for the future.

● Mr. BIAGGI. Mr. Chairman, I rise to add my support for the bill before us, H.R. 7203, Health Professions Educational Assistance and Nurse Training Amendments of 1980.

This bill extends our existing Federal health professions training programs for 3 years, programs which serve our future physicians, osteopaths, dentists, optometrists, podiatrists, pharmacists, veterinarians, public health personnel, nurses, and other health professionals. It also seeks to assure that our Nation's schools of health provide appropriate education and training for these professionals.

The provisions of particular interest to me are the student assistance programs which provide both loans and scholarships to student nurses to help them with their tuition costs. As New York's senior member of the House Education and Labor Committee which recently completed work on the Higher Education Act reauthorization, I can attest to the merit of these financial aid programs. They are an important component to our major student financial aid programs in the Higher Education Act. Since 1977, the nursing student loan program has provided over 100,000 student nurses with loans totaling almost $400 million and the nursing scholarship program, in that same time period, has assisted 32,000 nursing students with over $200 million in aid.

I know of few programs which provide such important long-term benefits as those programs which provide educational opportunities for our young people. Student aid programs such as these encourage those students to pursue postsecondary education which otherwise might not have done so. Such programs have also helped to alleviate the nursing shortage which has hit certain parts of this country. Hospitals and health care centers should not have to recruit personnel from overseas when there are many young people who anxiously look for career opportunities in this country. Health care facilities should be encouraged to promote programs, such as those provided for in this bill, so that more students could be afforded the opportunities in this legislation.

During hearings which we held during the reauthorization of the Higher Education Act, one of the problems that was heard from all segments of the educational community was the lack of information dissemination activities to interested students. One of the biggest barriers many students face is finding out how they can finance their education. We have provided for increased information dissemination activities in the higher education bill and it is my sincere hope that we will see the same kind of activity with these programs. No student should be deterred from pursuing a career because he or she could not find the information they need.

In short, this bill provides an essential component to our higher education programs and I urge my colleagues to join me in supporting it for final passage.●

● Mr. CORRADA. Mr. Chairman, I rise in support of H.R. 7203, the Health Professions Education Assistance and Nurse Training Amendments of 1980. This bill would authorize $2.27 billion distributed over fiscal years 1981–83, to fund activities under the Public Health Service Act, including the National Health Service Corps, nurse training and health professions education.

With the enactment in 1963 of Public Law 88–129, the Health Professions Educational Assistance Act, the Federal Government began its initiative to provide direct financial assistance to schools and students of the health professions. It began the involvement of the Federal Government in the education of health specialists. As you all know, traditionally the Federal Government's role had been somehow limited to the indirect support provided through biomedical research grants from the National Institutes of Health. The change in policy as a result of the enactment of Public Law 88–129 was significant in that the problem of manapower shortages in the Nation is addressed. As a result, a dramatic increase in enrollment at health professions schools took place. With the constant increases in population, increases in the number of health professionals is necessary as well.

We can say without exaggeration that this legislation was a major step in complying with the self-imposed mandate of the Federal Government to expand preventive services, primary medical care, and to make health care available to isolated, deprived, and disadvantaged areas around the Nation.

This legislation has undergone various changes throughout the years. Right now under H.R. 7203 we are considering the extension and revision of authority for the National Health Service Corps. The bill includes provisions to improve the geographic distribution of health professionals. This is particularly important in health manpower shortage areas.

My district, Puerto Rico, actively participates in this program. The NHSC approved 111 positions for Puerto Rico, 79 of which are currently filled. Most of its members are practicing at facilities operated or supported by the Department of Health of Puerto Rico which is the major provider of direct health care services from the primary to the extended care levels. Among the 58 physicians currently on duty or who will begin practice soon, 30 are board-eligible or board-certified family practitioners, internists, pediatricians, obstetricians, gynecologists, or psychiatrists.

We have to take into account, however, that our population is likely to increase to close to 4 million this year and that the number of professionals under the NHSC is insufficient. Therefore, I wholeheartedly support the portions of this bill which revise the procedure for designating health manpower shortage areas to make it more responsive to local conditions, permits assignment of NHSC members to public or private nonprofit health centers as employees of that center and allows HHS to supplement the financial resources of public and private nonprofit health centers so that they can have NHSC members assigned as their employees, to name only a few.

Title II, health professions programs, is also of utmost importance in Puerto Rico, where many talented students desiring to make their careers in the health field are faced with the ever-increasing cost of higher education, specifically in this field and with a low standard of living, in comparison to the States on the mainland. Even if we find a high concentration of health professionals in the San Juan metropolitan area, in Puerto Rico it is also true that in towns in the mountainous interior and rural coastal areas, there are fewer private health professionals. In order to continue to make vast improvements and gains in the health field, I feel it is imperative to continue to support this program. I strongly support the provision that would make health education assistance loans available to all eligible students and would increase to $20,000 the present single-year loan limit and to $80,000 the total loan limit for medical osteopathic and dental students. I also particularly support the section of the bill which extends through fiscal year 1983 the present programs of capitation grants to public health schools, health administration graduate activities, and health administration traineeships.

Finally I support title III of the nurse training program. We have nine accredited nursing schools throughout Puerto Rico which graduate numerous professionals in the nursing field each year.

Notwithstanding the number of schools on the island, it is also true that there is a shortage of nurses in Puerto Rico. I am sure the situation is also prevalent on the mainland. All of these programs receive direct financial help from the Federal Government through title III. For example, the School of Nursing of the University of Puerto Rico receives aid to subsidize scholarships for graduate and undergraduate programs, student loans for graduate and undergraduate studies, training and capitation grants. A shortage of nurses will result in a decline of the quality of health services. The preventive role of nurse professions is widely recognized, they are being trained in highly technical and sophisticated areas such as prenatal care, premature births, burns therapy, gerontology, to name only a few.

For its significance in providing the adequate mechanisms for the training of qualified health manpower professionals, I urge my colleagues to support H.R. 7203, the Health Professions Education Assistance and Nurse Training Amendments of 1980.●

● Mr. PEPPER. Mr. Chairman, I rise in support of H.R. 7203, the Health Professions Educational Assistance and Nurse Training Amendments of 1980.

This legislation, which has been brought before the House by my good friend and distinguished colleague, Mr. WAXMAN, chairman of the Subcommittee on Health and the Environment, includes a number of important provisions to maintain our national effort to train an adequate number of health professionals, to address the problem of maldistribution, and achieve other goals. It extends, through fiscal year 1983, authorities for the National Health Service Corps, health professions educational assistance programs, and nurse training programs.

I am particularly supportive of the provisions to extend and maintain the nurse training provisions.

On August 20, the Subcommittee on Health and Long-Term Care of the Select Committee on Aging, both of which it is my privilege to chair, conducted a hearing to examine the nationwide nurse shortage, with special emphasis on the threat it brings to the quality of care given to the elderly people of the country. This development in the health care field could have grievous consequences in the years to come. Indeed, it is a problem which has already shown itself to be one which will not simply go away.

About one-fourth of the 1.4 million trained and licensed registered nurses in the country do not practice nursing. There are between 90,000 and 100,000 vacancies in hospital nursing staffs; 88 percent of hospitals have unfilled slots for nurses, and about half the nursing jobs in nursing homes are unfilled.

The Labor Department reports that by 1985 there will be almost a quarter of a million new nursing jobs, but last year 2 percent fewer nurses were graduated, the first time in 10 years there were fewer than the year before.

Between 1977 and 1978, applications to nursing schools went down 16 percent, and this year, there were 500 vacancies. Many nursing schools have closed.

Bounties as high as $1,000 are being paid to fill jobs, and hospitals spend hundreds of thousands of dollars to recruit and replace nurses, as they leave at the rate of nearly one-third per year.

The older citizens of this country have a heavy stake in a solution to the nursing shortage problem, for they are likeliest to suffer when there is a shortage of care-givers. The elderly comprise over 86 percent of all nursing home residents. They are likelier to enter a hospital, likelier to stay longer, and likelier to require surgery than persons under 65.

Witnesses at the hearing included representatives of the American Nurses Association, the National League of Nursing, the American and Florida Hospital Associations, the American Association of Homes for the Aging, the American Health Care Association, the National Council of Health Centers, and the Bureau of Health Professions of the Health Resources Administration within the Public Health Service/DHHS.

Causes for the shortage are varied. Among them are low salaries, low job prestige, and poor working conditions; recruitment and retention; the complexity of modern-day nursing and the development of more critical care units; the expanding role of nurses; impact of the women's movement, which has brought changes in vocations which once were predominantly male or female: the growth of nurse registries, or nursing pools; maldistribution the issues related to foreign-trained nurses; and more.

Finally, considerable concern was expressed at the hearing over the controversy regarding extension of the Nurse Training Act.

I confess disappointment with our good friends in the administration who recommended, in the budget proposal for fiscal year 1981, that authorizations for nurse training programs be limited to $27.6 million, substantially below our previous effort. While program authorized under these provisions will not, in themselves, solve the nursing shortage problem, they are felt by many, myself included, to be a significant part of the solution. I hope the administration will reconsider its position in this matter.

H.R. 7203 authorizes levels of $102 million, $116 million, and $130.3 million for fiscal years 1981, 1982, and 1983 respectively. This compares favorably with the fiscal year 1980 appropriations of $100 million, providing only modest expansion.

The funds authorized under these provisions will provide continued support for nursing schools through capitation grants, makes available loans and scholarships to nursing students, especially those with lower and middle incomes, and authorizes special projects which have, in part, the goal of addressing the problem of maldistribution. Support is provided to train nurses in specialty areas such as geriatric nursing and provides increased opportunities in graduate nursing. Moreover, the bill reauthorizes special projects in continuing education and retraining of nurses, advanced nurse training programs, and nurse practitioner training programs. Finally, the bill includes limited construction authorizations, limiting those projects to health manpower shortage areas.

Mr. Chairman, the provisions of this bill address a number of concerns which were expressed by witnesses at the August 20 hearing. While I believe that much more needs to be done to address the current nurse shortage and prevent a worsening of the situation, I also believe it is necessary to continue those programs which have been of benefit to our health care system and the Nation as a whole. It is my hope that my colleagues will see fit to support this important legislation.●

● Mr. FRENZEL. Mr. Chairman, the Health Professions Educational Assistance and Nurse Training Amendments of 1980, essentially revises and extends programs of the National Health Service Corps; programs of assistance for health professions education and training and programs of assistance for nurse training. The bill, H.R. 7203, provides authorizations for fiscal years 1981–83, at a total authorization of $2.269 billion.

Few can argue with the success of many of these programs which date back to the 1960's. The purpose of providing educational assistance to health professions was to avert an anticipated shortage of health care personnel and to improve access to, and the quality of, medical services in America. The recently released HEW report indicates that the supply of doctors will be at least adequate, if not slightly in excess of need by 1990.

Thus, I applaud the committee's efforts to phase down, over a 3-year period, capitation support for most of the health professions schools, with the exception of schools of public health and nursing. In an effort to provide an orderly transition from existing Federal support, H.R. 7203 authorizes for the various types of health professions institutions approximately 75 percent—of the fiscal year 1980 appropriations—for fiscal year 1981, 50 percent for fiscal year 1982, and 25 percent for fiscal year 1983. Capitation support will be continued for these years for schools of medicine, osteopathy, and dentistry which received capitation grants in fiscal year 1980. In addition, schools of veterinary medicine, optometry, pharmacy, and podiatry, will receive 3 years of continued support, for those schools who received support in fiscal year 1980. In my judgment, this phase-down program is reasonable and responsible.

To date, there still remains a number of questions about the availability of nursing personnel. While we await the results of a study currently being conducted, the committee chose to continue, at a reasonable level, support for capitation grants to nursing schools and assistance to nursing students. With respect to nursing scholarship and loan programs, the bill places new emphasis on assistance to lower- and middle-income students.

The bill also extends support for training of nurse-midwives and other nurse-practitioners and strengthens the provisions requiring service within a health manpower shortage area. I am pleased with the committee's continued commitment to provide support to the nursing profession.

With the rising costs of medical education, H.R. 7203 extends and revises the existing student assistance programs: The health professions student loan program; the exceptional financial need scholarship program; and the health education assistance loan program. I do have some concerns about the increases in the level of support for these three programs, particularly in view of students' eligibility for National Health Service Corps scholarship programs, Armed Forces scholarships, the guaranteed student loan program, and many other Federal student aid programs.

From a nationwide shortage of physicians in the 1960's, we enter the 1980's with a possible oversupply of physicians in urban communities and, at the same time, a serious shortage of health personnel in many low-income and rural areas.

In 1972 Congress established the National Health Service Corps scholarship (NHSC) program to encourage health professionals to serve in health manpower shortage areas. To date, we have spent some $331 million in NHSC scholarships. In 1972, 181 Corps personnel served in 94 shortage sites. By 1979, 1,824 Corps personnel served 875 sites. That is progress, but our retention rates have been a dismal failure. A GAO study determined that, from 800 NHSC physicians recruited through July 1976, only 42 remained in shortage areas in private practice or planned to do so.

The committee has made few significant changes in the NHSH program, but has increased its authorization level substantially—$94 million in fiscal year 1981, $145 million in fiscal year 1982, and $205 million in fiscal year 1983. Those increases can be compared with a fiscal year 1980 appropriation of $70 million. The strange logic working here is that if a program does not work, we pour more dollars into it.

I also agree with many of my minority colleagues on the committee that if we continue to provide this level of support for the NHSC program, not only will we receive just temporary relief in shortage areas, we are going to wind up with too many physicians who work for the Federal Government, rather than their own patients. In my judgment, Congress needs to look for more ways to stimulate private, rather than Federal responses to the health care needs of our Nation.

I supported this bill, but I have grave concerns about making promises that we have no intention of keeping when it comes down to providing the actual dollars for these programs.●

Mr. WAXMAN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. CARTER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. There being no further requests for time, pursuant to the rule, the bill will be considered under the 5-minute rule by titles, and each title shall be considered as having been read.

The Clerk will designate section 1.

The Clerk proceeded to designate section 1.

Mr. WAXMAN (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The bill reads as follows:

H.R. 7203

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCE TO ACT; AND TABLE OF CONTENTS

SECTION 1. (a) This Act may be cited as the "Health Professions Educational Assistance and Nurse Training Amendments of 1980".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

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Sec. 401. Graduate Medical Education National Advisory Committee.

TITLE I—NATIONAL HEALTH SERVICE CORPS PROGRAMS

REVISION AND EXTENSION OF NATIONAL HEALTH SERVICE CORPS

SEC. 101. (a)(1) Section 331(a)(1) (42 U.S.C. 254d(a)(1)) is amended to read as follows: "(1) shall consist of—

"(A) such officers of the Regular and Reserve Corps of the Service as the Secretary may designate,

"(B) such civilian employees of the United States as the Secretary may appoint, and

"(C) such other individuals who are not employees of the United States and who the Secretary has designated under section 752 (b)(4) to serve in health manpower shortage areas as members of the Corps to satisfy the service obligation described in section 751(f)(1)(B)(iv),

(such officers, employees, and individuals hereinafter in this subpart referred to as 'Corp members'), and".

(2)(A) Section 331(d)(1) is amended by inserting after "each member of the Corps" the following: "(other than a member described in subsection (a)(1)(C))".

(B) Section 331(d) is amended by adding at the end the following:

"(3) A member of the Corps described in subparagraph (C) of subsection (a)(1) shall when assigned to an entity under section 333 be subject to the personnel system of such entity, except that such member shall be entitled to receive during the period of assignment the income that the member would be entitled to receive if the member was a member of the Corps described in subparagraph (M) of such subsection.".

(3) Section 331(h)(1) is amended by striking out ", Education, and Welfare" and inserting in lieu thereof "and Human Services".

(b)(1) Section 332(c) is amended by adding after paragraph (3) the following new paragraph:

"(4) Comments of the appropriate health professions societies in the area respecting the designation of the area. The Secretary shall give written notice of a proposed designation of an area to the appropriate health professions societies in the area and shall permit the societies to submit comments during the 90-day period beginning on the date of such notice.".

(2)(A) Section 333(b) is amended by adding at the end the following: "Each health systems agency and State health planning and development agency shall in conducting its review under this subsection of an application consider comments submitted to the Secretary under subsection (c)(4) respecting such application.".

(B) Section 333(c) is amended by adding after paragraph (4) the following: "At least 90 days before approving such an application, the Secretary shall provide the appropriate health professions societies in the area to which an assignment would be made under the application the opportunity to submit comments on the assignment.".

(c) Section 332(h) is amended (1) by inserting "(1)" before "to inform", and (2) by inserting before the period a comma and the following: "and (2) to inform such entities and other individuals and entities who may be interested in the availability of health professions personnel of the provisions of section 753 which allow an individual to satisfy a National Health Service Corps Scholarship Program service obligation through the private practice of the individual's health profession".

(d)(1) Subsection (a) of section 333 (42 U.S.C. 254f) is amended by adding at the end the following:

"(3) In approving applications for assignment of members of the Corps the Secretary shall not discriminate against applications from entities which are not receiving Federal financial assistance under this Act.".

(2) Effective October 1, 1980, section 333 is amended by redesignating subsections (d) through (h) as subsections (e) through (i), respectively, and by adding after subsection (c) the following new subsection:

"(d)(1) The Secretary may not approve an application for the assignment of a member of the Corps described in subparagraph (C) of section 331(a)(1)(C) to an entity unless the application of the entity contains assurances satisfactory to the Secretary that the entity (A) has sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in suoparagraph (B) of section 331(a)(1), or (B) would have such financial resources if a grant was made to the entity under paragraph (2).

"(2)(A) If in approving an application of an entity for the assignment of a member of the Corps described in subparagraph (C) of section 331(a)(1) the Secretary determines that the entity does not have sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in subparagraph (B) of section 331 (a)(1), the Secretary may make a grant to the entity to assure that the member of the Corps assigned to it will receive during the period of assignment to the entity such an income.

"(B) The amount of any grant under subparagraph (A) shall be determined by the Secretary. Payments under such a grant may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. No grant may be made unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.".

(3) Subsection (g) (as so redesignated) of section 333 is amended by adding at the end of paragraph (1) the following: "Assistance provided under this paragraph shall include assistance to an entity in (A) analyzing the potential use of health professions personnel in defined health services delivery areas by the residents of such areas, (B) determining the need for such personnel in such areas, (C) determining the extent to which such areas will have a financial base to support the practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice, and (D) determining the types of inpatient and other health services that should be provided by such personnel in such areas.".

(4) Subsection (g) (as so redesignated) of section 333 is amended by adding at the end the following:

"(4)(A) The Secretary shall undertake to demonstrate the improvements that can be made in the assignment of members of the Corps to health manpower shortage areas and in the delivery of health care by Corps members in such areas through coordination with States, political subdivisions of States, agencies of States and political subdivisions, and other public and nonprofit private entities which have expertise in the planning, development, and operation of centers for the delivery of primary health care. In carrying out this subparagraph, the Secretary shall enter into agreements with qualified entities which provide that if—

"(i) the entity places in effect a program for the planning, development, and operation of centers for the delivery of primary health care in health manpower shortage areas which reasonably addresses the need for such care in such areas, and

"(ii) under the program the entity will perform the functions described in subparagraph (B),

the Secretary will assign under this section members of the Corps in accordance with the program.

"(B) For purposes of subparagraph (A), the term 'qualified entity' means a State, political subdivision of a State, an agency of a State or political subdivision, or other public or nonprofit private entity operating solely within one State, which the Secretary determines is able—

"(i) to analyse the potential use of health professions personnel in defined health services delivery areas by the residents of such areas;

"(ii) to determine the need for such personnel in such areas and to recruit, select, and retain health professions personnel (including members of the National Health Service Corps) to meet such need;

"(iii) to determine the extent to which such areas will have a financial base to support the practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice;

"(iv) to determine the types of inpatient and other health services that should be provided by such personnel in such areas;

"(v) to assist such personnel in the development of their clinical practice and fee schedules and in the management of their practice;

"(vi) to assist in the planning and development of facilities for the delivery of primary health care; and

"(vii) to assist in establishing the governing bodies of centers for the delivery of such care and to assist such bodies in defining and carrying out their responsibilities.".

(e)(1) Section 334(a) (42 U.S.C. 254g (a)) is amended by inserting "for the assignment of a member of the Corps" after "section 333".

(2) Section 334(a)(3)(A) is amended by inserting "from the United States" after "received by such member".

(3) Section 334(a)(3)(C) is amended (A) by inserting "or a grant under section 333(d)(2)" after "section 335(c)", and (B) by inserting "or grant" after "loan" each time it occurs.

(4) Subsection (e) of section 334 is amended to read as follows:

"(e)(1) There is established in the Treasury of the United States a revolving fund to be called the National Health Service Corps Fund (hereinafter in this subsection referred to as the 'Fund') which shall be available to the Secretary, without fiscal limitation, to carry out this subpart.

"There shall be deposited in the Fund, subject to withdrawal by check by the Secretary—

"(A) funds received by the Secretary after September 30, 1980, under an agreement entered into under subsection (a), and

"(B) interest which may be earned on investments of the Fund.

"(3) If the Secretary determines that the moneys of the Fund are in excess of current needs, the Secretary may request the investment of such amounts as the Secretary deems advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary of the Treasury, in such other obligations or securities as it deems appropriate.

"(4) With the approval of the Secretary of the Treasury, the Secretary of Health and Human Services may deposit moneys in the Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Secretary of Health and Human Services and the Secretary of the Treasury may mutually agree.

"(5) The Fund and the funds credited to it shall not be subject to apportionment under section 3679 of the Revised Statutes (31 U.S.C. 665).".

(f)(1) Effective October 1, 1980, subpart II of part D of title III is amended by redesignating sections 336, 337, and 338 as sections 328, 338A, and 338B, respectively; by transferring section 755 to the subpart, inserting such section after section 335, and redesignating it as section 336; and by adding after section 336 (as so redesignated) the following new section:

"PREPARATION FOR PRACTICE

"SEC. 337. (a) The Secretary may make grants to and enter into contracts with public and private nonprofit entities for the conduct of programs which are designed to prepare individuals subject to a service obligation under the National Health Service Corps Scholarship Program to effectively provide health services in the health manpower shortage area to which they are assigned.

"(b) No grant may be made on contract entered into under subsection (a) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.".

(2) Subsection (a)(1) of section 336 (as so redesignated) is amended by inserting "at least two years of" after "completed".

(g) Section 338B(a) (as so redesignated) (42 U.S.C. 254k) is amended (1) by striking out "and" after "1979;", and (2) by adding before the period a semicolon and the following: "$94,000,000 for the fiscal year ending September 30, 1981; $145,000,000 for the fiscal year ending September 30, 1982; and $205,000,000 for the fiscal year ending September 30, 1983".

(h) Effective October 1, 1980, the Secretary of Health and Human Services shall—

(1) evaluate the criteria used under section 332(b) of the Public Health Service Act to determine if the use of the criteria has resulted in areas which do not have a shortage of health professions personnel being designated as health manpower shortage areas; and

(2) consider different criteria (including the actual use of health professions personnel in an area by the residents of an area taking into account their health status) which may be used to designate health manpower shortage areas.

Not later than 18 months after the date of the enactment of this Act, the Secretary shall report to the Congress the results of the activities undertaken under this subsection.

REVISION AND EXTENSION OF NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

SEC. 102. (a)(1) Paragraphs (1) through (4) of section 752(b) (42 U.S.C. 294u(b)) are amended to read as follows:

"(b)(1) If an individual is required under subsection (a) to provide service as specified in section 751(f)(1)(B)(iv) (hereinafter in this subsection referred to as 'obligated service'), the Secretary shall, not later than 90 days before the date described in paragraph (5), determine if the individual shall provide such service—

"(A) as a member of the Corps who is a commissioned officer in the Regular or Reserve Corps of the Service or who is a civilian employee of the United States, or

"(B) as a member of the Corps who is not such an officer or employee,

and shall notify such individual of such determination.

"(2) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is a commissioned officer in the Service or a civilian employee of the United States, the Secretary shall, not later than 60 days before the date described in paragraph (5), provide such individual with sufficient information regarding the advantages and disadvantages of service as such a commissioned officer or civilian employee to enable the individual to make a decision on an informed basis. To be eligible to provide obligated service as a commissioned officer in the Service, an individual shall notify the Secretary, not later than 30 days before the date described in paragraph (5), of the individual's desire to provide such service as such an officer. If an individual qualifies for an appointment as such an officer, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint the individual as a commissioned officer of the Regular or Reserve Corps of the Service and shall designate the individual as a member of the Corps.

"(3) If an individual provided notice by the Secretary under paragraph (2) does not qualify for appointment as a commissioned officer in the Service, the Secretary shall appoint such individual as a civilian employee of the United States and designate the individual as a member of the Corps.

"(4) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is not an employee of the United States, the Secretary shall as soon as possible after the date described in paragraph (5), designated such individual as a member of the Corps to provide such service.".

(2)(A) Subsection (c)(1) of section 752 is amended by striking out "or as a member of the Corps" and inserting in lieu thereof "or as a civilian employee of the United States or is designated as a member of the Corps under subsection (b)(4)".

(B) The second sentence of subsection (d) of section 752 is amended by inserting after "written contract" the following: "and if such individual is an officer in the Service or a civilian employee of the United States".

(b) Subsection (e) of section 752 is amended to read as follows:

"(e) Notwithstanding any other provision of this title, service of an individual under a National Research Service Award awarded under subparagraph (A) or (B) of section 472(a)(1) shall be counted against the obligated service which the individual is required to perform under the Scholarship Program.".

(c)(1) Section 753(b)(1)(B) (42 U.S.C. 294v(b)(1)(B)) is amended (A) by inserting "(i)" before "shall not", and (B) by inserting before the semicolon a comma and the following: "and (ii) shall agree to accept an assignment under section 1842(b)(3)(B)(ii) of such Act for all services for which payment may be made under part B of title XVIII and enter into an appropriate agreement with the State agency which administers the State plan for medical assistance under title XIX of such Act to provide services to individuals entitled to medical assistance under the plan".

(2) Section 753 is amended by adding the following new subsections:

"(c) If an individual breaches the contract entered into under section 751 by failing (for any reason) to begin his service obligation in accordance with an agreement entered into under subsection (a) or to complete such service obligation, the Secretary may permit such individual to perform such service obligation as a member of the Corps.

"(d) The Secretary shall, upon request, provide technical assistance to individuals who are considering entering into an agreement under subsection (a) or have entered into such an agreement to assist them in the establishment of their clinical practice under the agreement.".

(3) Section 751(c)(2) is amended by inserting "information respecting meeting a service obligation through private practice under an agreement under section 753 and" after "(2)".

(4)(A) Subsection (a) of section 753 is amended (i) by inserting "or under section 225 (as in effect on September 30, 1977)" after "section 752(a)", and (ii) by striking out "which (A)" and all that follows in that subsection and inserting in lieu thereof a period.

(B) Section 754(c) (42 U.S.C. 294w(c)) is amended (i) by striking out "(c) If" and inserting in lieu thereof "(c)(1) Except as provided in paragraph (2), if", and (ii) by adding at the end the following:

"(2) If an individual is released under section 753 from a service obligation under section 225 (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under section 753, subsection (f) of such section 225 shall apply to such individual in lieu of paragraph (1) of this subsection.".

(C) Section 735(c)(1) (42 U.S.C. 294h(c)(1)) is amended by striking out "clauses (A) and (B) of".

(d) Section 751(a) is amended by inserting "clinical psychologists," after "pharmacists,".

(e) Section 751(d) is amended by inserting after paragraph (2) the following:

"In considering applications and contracts for which a priority is required under paragraph (2), the Secretary shall give special consideration to the applications and contracts of individuals who intend to be primary care physicians in health manpower shortage areas (as defined in section 332), who have resided or been employed in such areas, or who meet such other qualifications as the Secretary may prescribe to assist in determining if an individual will become a primary care physician in such an area.".

(f)(1) The first sentence of section 756(a) is amended (A) by striking out "and" after "1979," and (B) by inserting before the period, the following: ", $92,000,000 for the fiscal year ending September 30, 1981, $101,000,000 for the fiscal year ending September 30, 1982, and $109,000,000 for the fiscal year ending September 30, 1983".

(2) The second sentence of such section is amended (A) by striking out "1981" and inserting in lieu thereof "1984", and (B) by striking out "1980" and inserting in lieu thereof "1983".

(g) The amendments made by subsection (a) shall apply with respect to contracts entered into under the National Health Service Corps Scholarship Program under subpart III of part C of title VII of the Public Health Service Act after the date of the enactment of this Act. An individual who before such date has entered into such a contract and who has not begun the period of obligated service required under such contract shall be given the opportunity to revise such contract to permit the individual to service such

period as a member of the National Health Service Corps who is not an employee of the United States.

TITLE II—HEALTH PROFESSIONS PROGRAMS UNDER TITLE VII

PART A—CONSTRUCTION ASSISTANCE

REPEAL OF ENROLLMENT INCREASE REQUIREMENT

SEC. 201. (a) Paragraph (2) of section 721(c) (42 U.S.C. 293a(c)(2)) is amended (1) by inserting "and" after "the facility,", and (2) by striking out ", and (D)" and all that follows in that paragraph and inserting in lieu thereof a semicolon.

(b) The amendment made by subsection (a) shall apply with respect to entities which received a grant under section 720 of the Public Health Service Act before the date of the enactment of this Act.

CONSTRUCTION ASSISTANCE FOR CONVERSIONS

SEC. 202. (a) Section 720(a) (42 U.S.C. 293(a)) is amended by adding at the end the following:

"(3) The Secretary may make grants to schools providing the first two years of education leading to the degree of doctor of medicine to assist in the construction of the teaching facilities which the schools require to become schools of medicine.".

(b) Subsection (b) of such section is amended to read as follows:

"(b) For the purpose of grants under subsection (a)(3), there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1981, to remain available until expended.".

(c) Section 721(b)(1) (42 U.S.C. 293a(b)) is amended (1) by inserting after "(1)" the following: "To be eligible to apply for a grant under section 720(a)(3) the applicant must be a public or nonprofit school providing the first two years of education leading to the degree of doctor of medicine and be accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.", and (2) by striking out "under this part" and inserting in lieu thereof "under paragraph (1) or (2) of section 720(a)".

(d) Subsection 721(g)(1) is amended by striking out "section 720(a)(2)" and inserting in lieu thereof "paragraph (2) or (3) of section 720(a)".

(e) Subsection (a) of section 722 (42 U.S.C. 293b(a)) is amended by adding at the end the following:

"(3) The amount of any grant under section 720(a)(3) shall be such amount as the Secretary determines to be appropriate after obtaining advice from the Council, except that no grant for any project may exceed 80 percent of the necessary costs of construction, as determined by the Secretary.".

(f) Section 723(a) (42 U.S.C. 293c(a)) is amended by striking out "section 720(a)(1)" and inserting in lieu thereof "paragraph (1) or (3) of section 720(a)".

LOAN GUARANTEES AND INTEREST SUBSIDIES

SEC. 203. (a) Section 726(a) (42 U.S.C. 293l(a)) is amended (1) by striking out "construction projects for" in the first sentence and inserting in lieu thereof "projects for the remodeling, renovation, or alteration of", (2) by striking out "1980" and inserting in lieu thereof "1983", and (3) by striking out "cost of the construction of the project" in the last sentence and inserting in lieu thereof "cost of the project, including architect fees and the initial equipment of the remodeled, renovated, or alterated teaching facilities".

(b) Section 726(b) is amended (1) by inserting "before October 1, 1980," after "loan has been made", and (2) by striking out ", during the period beginning July 1, 1971, and ending with the close of September 30, 1980,".

PART B—STUDENT ASSISTANCE

EXTENSION AND REVISION OF INSURED STUDENT LOAN PROGRAM

SEC. 205. (a)(1) The first sentence of section 728(a) (42 U.S.C. 294a(a)) is amended by inserting a comma before the period and the following: "and for each of the next three fiscal years".

(2) The second sentence of such section is amended by striking out "1982" and inserting in lieu thereof "1985".

(b) Section 729(a) (42 U.S.C. 294b(a)) is amended (1) by striking out "$15,000" and inserting in lieu thereof "$20,000", and (2) by striking out "$60,000" and inserting in lieu thereof "$80,000".

(c)(1) Section 731(a)(1)(A) (42 U.S.C. 294d(a)(1)(A)) is amended (A) by inserting "and" at the end of clause (iv), and (B) by striking out clause (v) and redesignating clause (vi) as clause (v).

(2) Section 731(a)(2) is amended (A) by striking out "installments of principal need not be paid, but interest shall accrue and be paid" in subparagraph (C) and inserting in lieu thereof "installments of principal and interest need not be paid, but interest shall accrue", (B) by striking out "three years" in subparagraph (C)(ii) and inserting in lieu thereof "four years", (C) by inserting "except as provided in subparagraph (C)," after "period of the loan," in subparagraph (D), and (D) by striking out "otherwise payable (i) before the beginning of the repayment period, (ii) during any period described in subparagraph (C), or (iii) during any other period of forbearance of payment of principal," in subparagraph (D).

(3) Section 731(a)(2) is amended (A) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), and (B) by inserting after subparagraph (D) the following:

"(E) offers, in accordance with criteria prescribed by regulation by the Secretary, a schedule for repayment of principal and interest under which payment of a portion of the principal and interest otherwise payable at the beginning of the repayment period (as defined in such regulations) is deferred until a later time in the period;".

(4) Section 731(c) is amended by striking out "The total" and inserting in lieu thereof "Except as provided in subsection (a)(2)(C), the total".

(d) Section 731(b) is amended by striking out "12 percent per annum on the unpaid principal balance of the loan" and inserting in lieu thereof "the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 2 percent".

(e) Section 739(b) is amended to read as follows:

"(b) The Secretary shall require an eligible institution to record, and to make available to the lender and to the Secretary upon request, the name, address, postgraduate destination, and other reasonable identifying information for each student of such institution who has a loan insured under this subpart.".

EXTENSION OF STUDENT LOAN PROGRAM

SEC. 206. (a)(1) The first sentence of section 742(a)(42 U.S.C. 294b(a)) is amended (1) by striking out "and" after "1979,", and (2) by inserting before the period a comma and the following: "$20,000,000 for the fiscal year ending September 30, 1981, $22,500,000 for the fiscal year ending September 30, 1982, and $25,000,000 for the fiscal year ending September 30, 1983".

(2) The second sentence of such section is amended (A) by striking out "1981" and inserting in lieu thereof "1984", and (B) by striking out "1980" and inserting in lieu thereof "1983".

(b) Section 743 (42 U.S.C. 294c) is amended by striking out "1983" each place it occurs and inserting in lieu thereof "1986".

EXTENSION OF SCHOLARSHIPS FOR STUDENTS OF EXCEPTIONAL FINANCIAL NEED

SEC. 207. (a) Section 758(d) (42 U.S.C. 294z(d)) is amended (1) by striking out "and" after "1979,", and (2) by inserting before the period a comma and the following: "$30,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, and $50,000,000 for the fiscal year ending September 30, 1983".

(b) Section 758(c) is amended (1) by striking out "distribute grants under this section among all schools of the health professions, but shall", and (2) by striking out "such grants" and inserting in lieu thereof "grants under subsection (a)".

(c)(1) Section 758(a) is amended by striking out "first year" and inserting in lieu thereof "first or second year".

(2) Section 758(b)(1) is amended by striking out "first year" and inserting in lieu thereof "first or second year".

(3) Section 758(b)(3) is amended (A) by striking out "first year of study" and inserting in lieu thereof "first or second year of study", and (B) by striking out "student's first year" and inserting in lieu thereof "student's first or second year."

PART C—INSTITUTIONAL SUPPORT

GRANTS

SEC. 211. (a) Effective with respect to fiscal years beginning after September 30, 1980, section 770(a) (42 U.S.C. 295f(a)) is amended to read as follows:

"SEC. 770. (a) GRANT COMPUTATION.—The Secretary shall make annual grants to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, and podiatry for the support of the education programs of such schools. The amount of the annual grant to each such school with an approved application shall be computed for each fiscal year as follows:

"(1) Each school of medicine, osteopathy, and dentistry shall receive—

"(A) for the fiscal year ending September 30, 1981, $2,000 for each full-time student enrolled in such school in the school year beginning in such fiscal year;

"(B) for the fiscal year ending September 30, 1982, $1,000 for each full-time student enrolled in such school in the school year beginning in such fiscal year; and

"(C) for the fiscal year ending September 30, 1983, $500 for each full-time student enrolled in such school in the school year beginning in such fiscal year.

"(2) Each school of veterinary medicine shall receive—

"(A) for the fiscal year ending September 30, 1981, $1,200 for each full-time student enrolled in such school in the school year beginning in such fiscal year;

"(B) for the fiscal year ending September 30, 1982, $600 for each full-time student enrolled in such school in the school year beginning in such fiscal year; and

"(C) for the fiscal year ending September 30, 1983, $300 for each full-time student enrolled in such school in the school year beginning in such fiscal year.

"(3) Each school of optometry shall receive—

"(A) for the fiscal year ending September 30, 1981, $700 for each full-time student enrolled in such school in the school year beginning in such fiscal year;

"(B) for the fiscal year ending September 30, 1982, $350 for each full-time student enrolled in such school in the school year beginning in such fiscal year; and

"(C) for the fiscal year ending September 30, 1983, $100 for each full-time student enrolled in such school in the school year beginning in such fiscal year.

"(4) Each school of pharmacy shall receive—

"(A) for the fiscal year ending September 30, 1981, $600 for each full-time student enrolled in the last four years of such school in the school year beginning in such fiscal year;

"(B) for the fiscal year ending September 30, 1982, $300 for each full-time student enrolled in the last four years of such school in the school year beginning in such fiscal year; and

"(C) for the fiscal year ending September 30, 1983, $100 for each full-time student enrolled in the last four years of such school in the school year beginning in such fiscal year.

"(5) Each school of podiatry shall receive—

"(A) for the fiscal year ending September 30, 1981, $600 for each full-time student enrolled in such school in the school year beginning in such fiscal year;

"(B) for the fiscal year ending September 30, 1982, $400 for each full-time student enrolled in such school in the school year beginning in such fiscal year; and

"(C) for the fiscal year ending September 30, 1983, $200 for each full-time student enrolled in such school in the school year beginning in such fiscal year.".

(b)(1) Section 770(b) is amended by striking out "public health,".

(2) Section 770(c)(2) is amended by striking out ", or to a graduate degree in public health or an equivalent degree".

(3) Subsection (d) of section 770 is repealed and subsection (e) is redesignated as subsection (d).

(4) Section 772(b)(1) is amended by striking out "public health,".

(c) Effective with respect to fiscal years beginning after September 30, 1980, section 770 (d) (as so redesignated) is amended to read as follows:

"(d) AUTHORIZATIONS OF APPROPRIATIONS.—

"(1) There are authorized to be appropriated $37,259,000 for the fiscal year ending September 30, 1981, $24,836,000 for the fiscal year ending September 30, 1982, and $12,418,000 for the fiscal year ending September 30, 1983, for payments under grants under this section to schools of medicine.

"(2) There are authorized to be appropriated $2,904,000 for the fiscal year ending September 30, 1981, $1,936,000 for the fiscal year ending September 30, 1982, and $968,000 for the fiscal year ending September 30, 1983, for payments under grants under this section for schools of osteopathy.

"(3) There are authorized to be appropriated $12,148,000 for the fiscal year ending September 30, 1981, $8,099,000 for the fiscal year ending September 30, 1982, and $4,049,000 for the fiscal year ending September 30, 1983, for payments under grants under this section for schools of dentistry.

"(4) There are authorized to be appropriated $2,700,000 for the fiscal year ending September 30, 1981, $1,800,000 for the fiscal year ending September 30, 1982, and $900,000 for the fiscal year ending September 30, 1983, for payments under grants under this section to schools of veterinary medicine.

"(5) There are authorized to be appropriated $794,000 for the fiscal year ending September 30, 1981, $529,000 for the fiscal year ending September 30, 1982, and $265,000 for the fiscal year ending September 30, 1983, for payments under grants under this section to schools of optometry.

"(6) There are authorized to be appropriated $4,538,000 for the fiscal year ending September 30, 1981, $3,025,000 for the fiscal year ending September 30, 1982, and $1,513,000 for the fiscal year ending September 30, 1983, for payments under grants under this section to schools of pharmacy.

"(7) There are authorized to be appropriated $609,000 for the fiscal year ending September 30, 1981, $406,000 for the fiscal year ending September 30, 1982, and $203,000 for the fiscal year ending September 30, 1983, for payments under grants under this section to schools of podiatry.".

(d)(1) The heading for part E of title VII is amended by striking out "PUBLIC HEALTH,".

(2) The heading for section 770 is amended to read as follows:

"INSTITUTIONAL SUPPORT".

GRANT REQUIREMENTS

SEC. 212. (a)(1) Effective with respect to grants made under section 770 of the Public Health Service Act for the fiscal year ending September 30, 1980, section 771(a)(1) (42 U.S.C. 295f-1(a)(1)) is amended by inserting after "first-year enrollment" the following: "(determined without regard to any increase in such enrollment made by the school to enable it to qualify for financial assistance under chapter 32 of title 38, United States Code)".

(2) Effective with respect to grants made under section 770 of the Public Health Service Act for fiscal years beginning after September 30, 1980, subsection (a) of section 771 (42 U.S.C. 295f-1) is amended to read as follows:

"SEC. 771. (a) IN GENERAL.—

"(1) The Secretary shall not make a grant under section 770(a) to any school in a fiscal year beginning after September 30, 1980, unless the application for the grant contains, or is supported by, assurances satisfactory to the Secretary that the applicant will expend in carrying out its functions as a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, as the case may be, during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which is at least as great as the amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the fiscal year preceding the fiscal year for which such grant is sought.

"(2) If in the fiscal year the amount appropriated under subsection (d) of section 770 for grants under subsection (a) of such section for a category of schools is less than the amount appropriated for the fiscal year ending September 30, 1980, for such grants, then in the fiscal year in which the appropriations are less, no grant may be made under subsection (a) of section 770 to any school in such category which did not receive such a grant in the fiscal year ending September 30, 1980.".

(b)(1) Subsection (b)(1) of section 771 is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph (2)".

(2) Paragraph (3) of section 771(b) is repealed.

(c) Subsection (g)(3) of section 771 is amended by striking out "(or 50 percent if the applicant is a nonprofit private school of optometry)".

(d) Subsection (e) of section 771 is repealed and subsections (f), (g), (h), and (i) are redesignated as subsections (e), (f), (g), and (h).

(e)(1) Subsection (b) of section 772 (42 U.S.C. 295f-5) is amended by striking out "or subsection (a) or (b) of section 788".

(2) Paragraph (2) of subsection (d) of section 772 is amended by striking out "under the section authorizing the grant for which the application is made" and inserting in lieu thereof "under section 770".

(3) The first sentence of section 788(a)(3) (42 U.S.C. 295g-8(a)(3)) is amended by inserting "and the applicant meets the requirements of subsection (b) of section 772" before the period.

(f)(1) The heading for section 771 is amended to read as follows:

"ELIGIBILITY FOR INSTITUTIONAL SUPPORT".

(2) The heading for section 772 is amended to read as follows:

"APPLICATIONS FOR INSTITUTIONAL SUPPORT".

PART D—PROJECT GRANTS AND CONTRACTS

DEPARTMENTS OF FAMILY MEDICINE

SEC. 215. (a) Section 780(c) (42 U.S.C. 295g(c)) is amended (1) by striking out "and" after "1979,", and (2) by inserting after "1980" the following: ", $15,000,000 for the fiscal year ending September 30, 1981, $20,000,000 for the fiscal year ending September 30, 1982, and $25,000,000 for the fiscal year ending September 30, 1983".

(b) Section 780(b)(1)(D) is amended by striking out "have control over" and inserting in lieu thereof "have control over or affiliation with".

AREA HEALTH EDUCATION CENTERS

SEC. 216. (a) Section 781(g) (42 U.S.C. 295 g-1(g)) is amended (1) by striking out "and" after "1979,", and (2) by inserting after "1980" the following: ", $21,000,000 for the fiscal year ending September 30, 1981, $28,000,000 for the fiscal year ending September 30, 1982, and $30,000,000 for the fiscal year ending September 30, 1983".

(b) The last sentence of section 781(c) is amended by striking out "paragraph (3)" and inserting in lieu thereof "paragraph (2) or (3)".

(c) Section 781(d)(2)(E) is amended by striking out "support services" and inserting in lieu thereof "educational support services".

(d)(1) Effective October 1, 1980, subsection (a) of section 781 is amended to read as follows:

"SEC. 781. (a)(1) The Secretary may enter into contracts with schools of medicine and osteopathy for the planning, development, and operation of area health education center programs.

"(2) The Secretary may enter into contracts with schools of medicine and osteopathy, which have previously entered into contracts under this section, to carry out under area health education center programs—

"(A) projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system;

"(B) projects to encourage the regionalization of educational responsibilities of the health professions schools; and

"(C) projects designed to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship Program to effectively provide health services in health manpower shortage areas."

(2) The first sentence of subsection (e) is repealed.

(3) The first sentence of subsection (f) is amended to read as follows: "For purposes of this section, the term 'area health education center program' means a program which is organized as provided in subsection (b) and under which the participating medical and osteopathic schools and the area health education centers meet the requirements of subsections (c) and (d).".

(4) Subsection (g) of such section is amended by adding at the end the following: "The Secretary may obligate not more than 10 percent of the amount appropriated under this subsection for any fiscal year for contracts under subsection (a)(2).".

(e) The authority to enter into contracts under section 781 of the Public Health Service Act is not authority to enter into cooperative agreements under that section.

PHYSICIAN ASSISTANTS AND DENTAL AUXILIARIES

SEC. 217. (a) Section 783(e) (42 U.S.C. 295g-3(e)) is amended (1) by striking out "and" after "1979,", and (2) by inserting after "1980" the following: ", $14,000,000 for the fiscal year ending September 30, 1981, $15,000,000 for the fiscal year ending September 30, 1982, and $16,000,000 for the fiscal year ending September 30, 1983".

(b) Section 783(c) is amended by striking out "830" and inserting in lieu thereof "822".

GENERAL INTERNAL MEDICINE AND GENERAL PEDIATRICS

SEC. 218. (a) Section 784(b) (42 U.S.C. 295g-4(b)) is amended (1) by striking out "and" after "1979,", and (2) by inserting after "1980" the following: ", $23,000,000 for the fiscal year ending September 30, 1981, $30,000,000 for the fiscal year ending September 30, 1982, and $32,000,000 for the fiscal year ending September 30, 1983".

(b) Section 784(a) is amended—

(1) by inserting ", public or private nonprofit hospital, or any other public or private nonprofit entity" after "osteopathy"; and

(2) by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting a semicolon, and by adding at the end the following:

"(3) to plan, develop, and operate programs for the training of physicians who plan to teach in general internal medicine and general pediatrics training programs; and

"(4) to provide assistance (in the form of traineeships and fellowships) to physicians who are participants in any such program.".

FAMILY MEDICINE AND GENERAL PRACTICE OF DENTISTRY

SEC. 219. (a) Section 786(d) (42 U.S.C. 295g-6(d)) is amended (1) by striking out "and" after "1979,", and (2) by inserting after "1980" the following: ", $50,000,000 for the fiscal year ending September 30, 1981, $75,000,000 for the fiscal year ending September 30, 1982, and $80,000,000 for the fiscal year ending September 30, 1983".

(b) Effective October 1, 1980, the Secretary of Health and Human Services shall conduct a study to determine the most effective and efficient means of providing financial assistance to graduate medical education programs in the United States in primary internal medicine, primary pediatrics, and family medicine. The Secretary shall complete such study and report, not later than one year after the date of the enactment of this Act, to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate the results of the study and recommendations, if any, for legislation.

ASSISTANCE TO INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

SEC. 220. Effective with respect to fiscal years beginning after September 30, 1980, section 787 is amended to read as follows:

"EDUCATIONAL ASSISTANCE TO INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

"SEC. 787. (a) For the purpose of assisting individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary) to undertake education to enter a health profession, the Secretary may make grants to or enter into contracts with schools of medicine, osteopathy, dentistry, nursing, veterinary medicine, optometry, pharmacy, podiatry, or public health, training centers for the allied health professions, institutions providing graduate programs in health administration, or other public or private nonprofit health or educational entities, to assist in meeting the cost of—

"(1) establishing secondary education programs designed to increase the number of students from disadvantaged backgrounds that pursue careers in the health professions;

"(2) strengthening the preprofessional curriculum of baccalaureate degree institutions predominantly attended by individuals from disadvantaged backgrounds;

"(3) establishing joint programs between baccalaureate degree institutions and health professions schools, training centers, or other appropriate entities designed to increase the number of students from disadvantaged backgrounds in health professions schools;

"(4) providing, for a period prior to the entry of such individuals into the regular course of education of health professions schools, preliminary education designed to assist such individuals in successfully completing such regular course of education at such schools, or referring such individuals to institutions providing such preliminary education;

"(5) identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession;

"(6) facilitating the entry of such individuals into such schools;

"(7) providing counseling, work-study opportunities in health service agencies, or other services designed to assist such individuals to complete successfully their education at such schools;

"(8) publicizing existing sources of financial aid available to students in the education program of such school or who are undertaking training necessary to qualify to enroll in such program; or

"(9) increasing the number of faculty from disadvantaged backgrounds in the health professions schools.

"(b)(1) There are authorized to be appropriated for grants and contracts under this section, $30,000,000 for the fiscal year ending September 30, 1981, $33,000,000 for the fiscal year ending September 30, 1982, and $36,000,000 for the fiscal year ending September 30, 1983. Not less than 80 percent of the funds appropriated in any fiscal year shall be obligated for grants or contracts to institutions of higher education and not more than 5 percent of such funds may be obligated for grants and contracts for activities described in paragraph (8) of subsection (a).

"(2) Funds provided under grants and contracts under this section may be used to provide traineeships to students receiving the education described in subsection (a)(4) if such students would not otherwise be able to receive such education.".

START-UP, FINANCIAL DISTRESS, CONVERSION, AND CURRICULUM GRANTS

SEC. 221. (a)(1) Section 788(a)(1) (42 U.S.C. 295g-8) is amended by striking out "medicine, osteopathy, dentistry,".

(2) The amendment made by paragraph (1) shall not apply with respect to a school of medicine, osteopathy, or dentistry which received a grant under section 788(a)(1) of the Public Health Service Act for the fiscal year ending September 30, 1980. Such a school may continue to receive grants under such section in accordance with the requirements in effect for grants under the section for such fiscal year.

(b) Effective with respect to fiscal years beginning after September 30, 1980, section 788(c) is amended to read as follows:

"(c)(1) The Secretary may make grants to schools which provide the first two years of education leading to the degree of doctor of medicine to assist the schools in accelerating the date they will become schools of medicine.

"(2) The amount of a grant under paragraph (1) to a school shall be equal to the product of $25,000 and the number of full-time, third-year students which the Secretary estimates will enroll in the school in the school year beginning in the fiscal year in which such grant is made. Estimates by the Secretary under this paragraph of the number of full-time, third-year students to be enrolled in the school may be made on assurances provided by the school.

"(3) No grant may be made under paragraph (1) unless an application for such grant is submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and shall contain such information, as the Secretary may by regulation prescribe. To be eligible to apply for a grant under subsection (a), the applicant must be a public or nonprofit school providing the first two years of education leading to the degree of doctor of medicine and be accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.".

(c) Section 788(d) is amended—

(1) by striking out "and" at the end of paragraph (20),

(2) by striking out the period at the end of paragraph (21) and inserting in lieu thereof "; and", and

(3) by adding at the end the following:

"(22) training of health professionals in the diagnosis, treatment, and prevention of diabetes and other severe chronic diseases and their complications.".

(d) Section 788(d)(6) is amended by inserting "dentistry," before "optometry".

(e) Section 788(e)(1) is amended (1) by striking out "and" after "1979,", and (2) by inserting after "1980" the following: ", $10,000,000 for the fiscal year ending September 30, 1981, $12,500,000 for the fiscal year ending September 30, 1982, and $15,000,000 for the fiscal year ending September 30, 1983".

(f)(1) Part G of title VII is amended by adding after section 789 the following new section:

"FINANCIAL DISTRESS GRANTS

"SEC. 789A. (a) The Secretary may make grants to schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, and podiatry which are in serious financial distress for the purposes of assisting in—

"(1) meeting the costs of operation of any such school,

"(2) meeting accreditation requirements if they have a special need to be assisted in meeting such requirements,

"(3) carrying out appropriate operational, managerial, and financial reforms on the basis of information obtained in a comprehensive cost analysis study or on the basis of other relevant information,

"(4) meeting the costs of maintaining the quality of their educational programs, and

"(5) meeting the costs of strengthening their academic resources and capabilities.

A grant under this subsection shall be made for such period as the Secretary may specify.

"(b)(1) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information as the Secretary may prescribe.

"(2) Any grant under subsection (a) may be made upon such terms and conditions as the Secretary determines to be reasonable and necessary, including requirements that the school agree—

"(A) to disclose any financial information or data deemed by the Secretary to be necessary to determine the sources or causes of the school's financial distress,

"(B) to conduct a comprehensive cost analysis study, and

"(C) to carry out appropriate operational, managerial, and financial reforms as the Secretary may require, except that the Secretary shall not require changes in the educational component of the school's program.

"(3) A recipient of a grant under subsection (a) must provide assurances satisfactory to the Secretary that the recipient will expend in carrying out its function as a school of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, or podiatry, as the case may be, during each fiscal year for which such grant is awarded an amount of funds (other than funds for construction, as determined by the Secretary) from non-Federal sources which is at least as great as the average amount of funds expended (excluding expenditures of a nonrecurring nature) by the recipient to carry out such functions in the two years preceding the year in which the grant is awarded.

"(c) The Secretary may provide to any school eligible for a grant under subsection (a) technical assistance to enable the school to conduct a comprehensive cost analysis study of its operations, to identify operational inefficiencies, and to develop or carry out appropriate operational, managerial, and financial reforms.

"(d) There are authorized to be appropriated for grants under subsection (a), $20,000,000 for the fiscal year ending September 30, 1981, $20,000,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983. Funds appropriated under this subsection shall remain available until expended.".

(2) Section 788 is amended—

(A) by striking out subsection (b); and

(B) by amending subsection (e)(2) to read as follows:

"(2) From the sums authorized to be appropriated under paragraph (1) not more than $5,000,000 may be obligated or expended for the purposes of subsection (a).".

(g)(1) Subsections (f) and (g) of section 788 are repealed and subsections (c), (d), and (e) are redesignated as subsections (b), (c) and (d), respectively.

(2) Subsection (d)(1) (as so redesignated) of section 788 is amended by striking out "(other than the provisions of subsections (f) and (g))".

(3) The heading for section 788 is amended to read as follows:

"START-UP, CONVERSION, AND CURRICULUM GRANTS".

PART E—PUBLIC HEALTH PERSONNEL

INSTITUTIONAL SUPPORT, TRAINEESHIPS, AND OTHER PROGRAMS

SEC. 230 Subpart I of part G of title VII is amended as follows:

(1) The following section is inserted at the beginning of the subpart:

"INSTITUTIONAL SUPPORT

"SEC. 791 (a) GRANTS.—The Secretary shall make annual grants in accordance with this section to public and other nonprofit schools of public health.

"(b) GRANT COMPUTATION.—The amount of the annual grant under subsection (a) to be made in a fiscal year to a school with an approved application for such fiscal year shall be an amount which bears the same ratio to the total amount appropriated for such fiscal year under subsection (d) as the sum of—

"(1) the total number of full-time students enrolled in such school in the school year beginning in such fiscal year, and

"(2) the number of full-time equivalents of parttime students in such school for such school year,

bears to the sum of the total number of full-time students enrolled in such school year and the number of such full-time equivalents for such school year in all schools of public health with approved applications for such fiscal year.

"(c) ENROLLMENT DETERMINATIONS.—For purposes of this section:

"(1) Section 770(c) shall apply to regulations of the Secretary under this section relating to the determination of the number of full-time students enrolled in a school eligible for a grant under subsection (a).

"(2) The number of full-time equivalents of part-time students in a school of public health for any school year is a number equal to—

"(A) the total number of credit hours of instruction in such year for which part-time students in such school, who are pursuing a course of study leading to a graduate degree in public health or an equivalent degree, have enrolled, divided by

"(B) the greater of (i) the number of credit hours of instruction which a full-time student in such school was required to take in such year, or (ii) 9,

rounded to the next highest whole number.

"(3) The term 'full-time students' (whether such term is used by itself or in connection with a particular year-class) means students pursuing a full-time course of study leading to a graduate degree in public health or an equivalent degree.

"(d) AUTHORIZATIONS OF APPROPRIATIONS.—For the purpose of making grants under subsection (a) there are authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1981, $8,000,000 for the fiscal year ending September 30, 1982, and $9,000,000 for the fiscal year ending September 30, 1983.

"(e) GRANT REQUIREMENTS.—The Secretary shall not make a grant under subsection (a) to any school in a fiscal year beginning after September 30, 1980, unless—

"(1) the application for the grant contains, or is supported by, assurances satisfactory to the Secretary that the applicant will expend in carrying out its functions as a school of public health during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which is at least as great as the amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the fiscal year preceding the fiscal year for which such grant is sought; and

"(2) the school maintains an enrollment of full-time first-year students, for the school year beginning in the fiscal year for which a grant under subsection (a) is sought, which exceeds the number of full-time students enrolled in such school in the school year beginning in the fiscal year ending September 30, 1978—

"(A) by 5 percent of such number if such number was not more than 100, or

"(B) by 2.5 percent of such number, or 5 students, whichever is greater, if such number was more than 100.

The Secretary may waive (in whole or in part) application of the requirements of paragraph (2) to a school if the Secretary determines, after receiving the written recommendation of the appropriate accreditation body or bodies (approved for such purposes by the Secretary of Education) that compliance by such school with such requirement will prevent it from maintaining its accreditation.

"(f) APPLICATIONS.—

"(1) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. The Secretary may from time to time set dates (not earlier than in the fiscal year preceding the year for which a grant is sought) by which such applications must be filed.

"(2) To be eligible for a grant under subsection (a) the applicant must be accredited as determined in accordance with section 772(b).

"(3) The Secretary shall not approve or disapprove any application for a grant under subsection (a) except after consultation with the National Advisory Council on Health Professions Education (established by section 702).

"(4) A grant under subsection (a) may be made only if the application therefor—

"(A) is approved by the Secretary upon his determination that the applicant (and its application) meet the eligibility conditions prescribed by subsection (e) and paragraph (2) of this subsection;

"(B) contains such additional information as the Secretary may require to make the determinations required of him under subsection (a); and

"(C) provides for such fiscal control and accounting procedures and reports, including the use of such standard procedures for the recording and reporting of financial information as the Secretary may prescribe, and access to the records of the applicant, as the Secretary may require to enable him to determine the costs to the applicant of its program for the education or training of students.".

(2) Section 748 is transferred to the subpart, inserted after the section 791 added by paragraph (1), redesignated as section 792, in subsection (a)(2) amended by striking out "749" and inserting in lieu thereof "794B", in subsection (b)(3)(A)(i) amended by striking out "postbaccalaurate" and inserting in lieu thereof "baccalaureate", and in subsection (c) amended (A) by striking out "and" after "1979;", and (B) by inserting before the period a semicolon and the following: "$8,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $10,000,000 for the fiscal year ending September 30, 1983".

(3) The section 792 entitled "SPECIAL PROJECTS FOR ACCREDITED SCHOOLS OF PUBLIC HEALTH AND GRADUATE PROGRAMS IN HEALTH ADMINISTRATION" is inserted after the section inserted by paragraph (2), redesignated as section 793, and is amended (A) in the section heading by striking out "AND GRADUATE PROGRAMS IN HEALTH ADMINISTRATION", (B) by striking out subsection (b) and redesignating subsection (c) as subsection (b), and (C) in subsection (b) (as so redesignated) by (i) striking out "and" after "1979;", and (ii) by inserting after "1980" the following: "; $5,000,000 for the fiscal year ending September 30, 1981; $5,500,000 for the fiscal year ending September 30, 1982; and $6,000,000 for the fiscal year ending September 30, 1983".

(4) The following section is inserted after section 793 (as so redesignated):

"MIDCAREER TRAINING AND EDUCATION

"SEC. 794. (a) The Secretary may make grants to and enter into contracts with public and nonprofit private entities for the establishment, operation, and administration

of centers to provide intensive, short-term, advanced training, to individuals with demonstrated expertise in health policy and management, in—

"(1) health systems management,

"(2) health policy, planning, and regulation,

"(3) environmental policy and management,

"(4) financial management and strategy in health care,

"(5) the management of collaboration between health care entities,

"(6) the management of small health care entities in inner cities and rural areas, and

"(7) other matters which will increase the capabilities of such individuals and broaden their perspectives in carrying out their functions.

"(b)(1) The amount of any grant or contract under subsection (a) shall be determined by the Secretary. No grant may be made or contract entered into unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(2) The Secretary shall, to the extent feasible, make grants and enter into contracts under subsection (a) for centers in such a manner that there is an appropriate geographic distribution of the centers.

"(c) For the purpose of making grants and contracts under subsection (a) there are authorized to be appropriated $1,500,000 for the fiscal year ending September 30, 1981, $2,500,000 for the fiscal year ending September 30, 1982, and $3,000,000 for the fiscal year ending September 30, 1983.".

(5) The section 791 entitled "GRANTS FOR GRADUATE PROGAMS IN HEALTH ADMINISTRATION" is inserted after the section added by paragraph (4), redesignated as section 794A, and is amended as follows:

(A) Subsection (c)(2)(A)(i)(II) is amended by striking out "$100,000" and inserting in lieu thereof "$150,000".

(B) Subsection (c)(2)(A)(ii) is amended—

(i) by striking out "1978" and inserting in lieu thereof "1981"; and

(ii) by striking out "1976" and inserting in lieu thereof "1980".

(C) Subsection (c)(2)(A) is amended—

(i) by striking out "and" at the end of clause (ii)(II); and

(ii) by redesignating clause (iii) as clause (iv) and by inserting the following new clause after clause (ii):

"(iii) contains assurances satisfactory to the Secretary that the program for which such application was submitted shall provide a concentration or special emphasis on one or more of the following:

"(I) health planning,

"(II) health policy,

"(III) ambulatory care services,

"(IV) long-term care,

"(V) home health care,

"(VI) multi-unit care systems,

"(VII) comprehensive prepaid service systems,

"(VIII) mental health administration, and

"(IX) any other health care delivery system determined by the Secretary to require special emphasis; and".

(D) Subsection (c)(3) is amended by striking out "Commissioner" and inserting in lieu thereof "Secretary".

(E) Subsection (d) is amended—

(i) by striking out "and" after "1979,"; and

(ii) by inserting after 1980 the following: ", $4,000,000 for the fiscal year ending September 30, 1981, $4,500,000 for the fiscal year ending September 30, 1982, and $5,000,000 for the fiscal year ending September 30, 1983".

(6) Section 749 is inserted after the section inserted by paragraph (5), redesignated as section 794B, in subsection (b)(3)(A) amended by striking out "postbaccalaureate" and inserting in lieu thereof "baccalaureate", and in subsection (c) amended (A) by striking out "and" after "1979;", and (B) by inserting before the period a semicolon and the following: "$2,500,000 for the fiscal year ending September 30, 1981; $3,000,000 for the fiscal year ending September 30, 1982; and $3,500,000 for the fiscal year ending September 30, 1983".

(7) The following sections are inserted after section 749B (as so redesignated):

"GRANTS TO DEPARTMENTS OF PREVENTIVE OR COMMUNITY MEDICINE OR DENTISTRY

"SEC. 794C. (a) The Secretary may make grants to schools of medicine, dentistry, and osteopathy for the costs of projects—

"(1) to establish, maintain, and improve academic administrative units in preventive or community medicine or dentistry;

"(2) to improve predoctoral and postdoctoral instruction in preventive, community, or occupational medicine or dentistry;

"(3) to plan, develop, and operate joint programs between academic administrative units in preventive or community medicine or dentistry and such units in other clinical specialties, which programs integrate the teaching of clinical preventive, community, or occupational medicine or dentistry within clinical programs for other medical or dental disciplines; and

"(4) to plan, develop, and operate special programs to train teachers and researchers in the fields of preventive, community, or occupational medicine or dentistry.

"(b)(1) The amount of any grant under subsection (a) shall be determined by the Secretary. No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(2) To be eligible for a grant under subsection (a), an applicant school must have, or demonstrate an intention to establish, an academic administrative unit in preventive or community medicine or dentistry or an academic or administrative unit which has the primary responsibility, within that medical, dental, or osteopathic school, for teaching the principles of preventive or community medicine or dentistry.

"(c) For the purpose of making grants under subsection (a), there are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1981; $3,000,000 for the fiscal year ending September 30, 1982; and $4,000,000 for the fiscal year ending September 30, 1983.

"TRAINING IN PREVENTIVE MEDICINE

"SEC. 794D. (a) The Secretary may make grants to schools of medicine and schools of public health to meet the costs of projects—

"(1) to plan and develop new residency training programs and to develop and expand accredited residency training programs in preventive medicine; and

"(2) to provide financial assistance to residency trainees enrolled in such programs.

"(b)(1) The amount of any grant under subsection (a) shall be determined by the Secretary. No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(2) To be eligible for a grant under subsection (a), the applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

"(c) For the purpose of making grants under subsection (a), there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1981; $7,000,000 for the fiscal year ending September 30, 1982; and $8,000,000 for the fiscal year ending September 30, 1983.

"SPECIAL CURRICULA DEVELOPMENT PROJECTS FOR GRADUATE PROGRAMS IN HEALTH ADMINISTRATION

"SEC. 794E. (a) The Secretary may make grants to assist education institutions with accredited programs in health administration to meet the costs of developing curricula designed to improve training in health care management. Such curricula may include—

"(1) finance (particularly as applied to health care);

"(2) marketing (particularly as applied to health care);

"(3) economics (including macro-economics and micro-economics, and with special emphasis on health economics);

"(4) epidemiology and health planning;

"(5) health policy, law, and regulation;

"(6) quality assurance and assessment;

"(7) information systems;

"(8) health services organization and management for students in health disciplines other than health administration; and

"(9) management of ambulatory care services.

"(b) For purposes of subsection (a), the term 'accredited program in health administration' means a graduate program which is accredited for the purpose of training individuals in health administration by a body or bodies approved for such purpose by the Secretary of Education and which meets such other standards as the Secretary of Education may by regulation prescribe.

"(c) For the purpose of making grants under subsection (a), there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1981, $4,000,000 for the fiscal year ending September 30, 1982, and $5,000,000 for the fiscal year ending September 30, 1983.

"FACULTY DEVELOPMENT PROGRAMS

"SEC. 794F. (a) The Secretary may make grants to assist accredited schools of public health and other education institutions with accredited programs in health administration to meet the costs of establishing and operating faculty development programs. Such faculty development program shall—

"(1) train individuals in management or other disciplines that are, in the judgment of the Secretary, underrepresented in programs of health administration and necessary to improve training in health care management; and

"(2) train individuals experienced in such disciplines with respect to health care issues relating to the teaching of health administration.

"(b) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, be submitted in such manner, and contain such information as the Secretary shall prescribe. The Secretary may not approve an application for a grant under subsection (a) unless such application contains assurances satisfactory to the Secretary that at least three individuals shall complete the program in such year for which an application is made.

"(c) Grant funds awarded under subsection (a) shall be used to provide 12 month fellowships to individuals who—

"(1) have received a doctoral degree or equivalent professional recognition in a discipline determined by the Secretary to be underrepresented in programs of health administration and necessary to improve training in health care management; and

"(2) agree to serve as a faculty member for a period of not less than two years in an accredited school of public health or other educational program with accredited programs in health administration.

"(d) For the purpose of making grants under subsection (a), there are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1981, $1,000,000 for the fiscal year ending September 30, 1982, and $1,000,000 for the fiscal year ending September 30, 1983.".

(8) The section 793 entitled "Statistics and Annual Report" is inserted after section 794F and redesignated as section 794G.

STUDY

SEC. 231. (a) The Secretary of Health and Human Services shall, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor and on an ongoing basis, assess and identify—

(1) current and projected personnel needs for the implementation of Federal, State, and local environmental protection and occupational health laws, and

(2) current and projected personnel needs of environmental and occupational health.

(b) The Secretary of Health and Human Services shall—

(1) study and assess the policies, programs, and activities of the Department of Health and Human Services, the Department of Labor, the Environmental Protection Agency, and other Federal departments and agencies for the education (including continuing education) and training of the personnel of such departments and agencies in environmental and occupational health and in the implementation of environmental protection and occupational health laws and the training programs of such departments and agencies (and their policies respecting such programs) under which persons engaged in the implementation of such laws would be able to receive training in environmental and occupational health and persons engaged in research or providing training in environmental and occupational health would be able to receive training in the implementation of environmental protection and occupational health laws;

(2) study and assess methods by which the Secretary and the Administrator of the Environmental Protection Agency may provide technical assistance to other Federal departments and agencies and to States and political subdivisions of States to assist them in the development of programs to identify their respective needs for personnel to implement their environmental protection and occupational health laws, methods of assisting States to plan to meet such needs, and methods of assisting States in meeting such needs;

(3) study and assess the efficacy of the establishment, jointly by the Federal Government and the States, of a register (A) of personnel with training or substantial experience in environmental health and in the implementation of environmental protection laws and of the types of positions available to such personnel, and (B) of personnel with training or substantial experience in occupational health and in the implementation of occupational health laws and of the types of positions available to such personnel;

(4) study and assess programs to encourage innovation in the curricula for education and training in educational institutions, including schools of medicine, osteopathy, and public health, in environmental and occupational health and in education and training in the implementation of environmental protection and occupational health laws;

(5) study and assess programs to encourage and enable individuals with training in environmental or occupational health or in the implementation of environmental protection or occupational health laws to undertake such additional education or training, such as specialized post-graduate education, as may be necessary to enable them to fill personnel needs in positions in environmental or occupational health or in the implementation of environmental protection or occupational health laws;

(6) identify geographical areas where training in environmental and occupational health or in the implementation of environmental protection and occupational health laws is insufficient and determine the most effective means of providing such training to individuals in such areas;

(7) determine the most effective and expeditious means of encouraging individuals to undertake education and training in environmental and occupational health and in the implementation of environmental protection and occupational health laws and encouraging individuals with such training and education to obtain positions in environmental or occupational health or in the implementation of such laws and to remain in such positions;

(8) determine if a requirement of service in an underserved area as a condition to the receipt of Federal financial assistance (A) affects the number of individuals applying for such assistance, (B) encourages individuals to undertake education and training in environmental and occupational health and in the implementation of environmental protection and occupational health laws, (C) encourages to remain in an underserved area, and (D) will be met by individuals receiving such assistance; and

(9) determine the extent of the cooperation and coordination between the Department of Health and Human Services, the Environmental Protection Agency, and the Occupational Safety and Health Administration in the performance of their respective functions relating to the education and training of personnel for the administration and enforcement of environmental protection and occupational health laws or for other positions in environmental and occupational health and identify areas where such functions and agencies are duplicative or conflicting.

(c) The Secretary shall report annually to the Congress respecting the activities undertaken pursuant to subsection (a). Within two years after the date of enactment of the first appropriation for the Secretary, the Secretary shall report to the Congress respecting the Secretary's activities under subsection (b). Each report under this subsection shall contain such recommendations as the Secretary determines appropriate for administrative actions and legislation to carry out the recommendations of the Secretary. The Department of Labor, the Environmental Portection Agency, and the Occupational Safety and Health Administration shall be provided copies of reports made by the Secretary under this subsection.

(d) There are authorized to be appropriated to carry out this section $1,000,000 for the fiscal year ending September 30, 1981, $1,000,000 for the fiscal year ending September 30, 1982, and $1,000,000 for the fiscal year ending September 30, 1983.

PART F—ALLIED HEALTH PERSONNEL

PROJECT GRANTS

SEC. 235. Section 796(d)(1) (42 U.S.C. 295h-5) is amended (1) by striking out "and" after "1979;", and (2) by inserting after "1980" the following: "; $9,000,000 for the fiscal year ending September 30, 1981; $9,500,000 for the fiscal year ending September 30, 1982; and $10,000,000 for the fiscal year ending September 30, 1983".

TRAINEESHIPS

SEC. 236. Section 797(c) (42 U.S.C. 295h-6) is amended (1) by striking out "and" after "1979;", and (2) by inserting after "1980" the following: "; $1,300,000 for the fiscal year ending September 30, 1981; $1,400,000 for the fiscal year ending September 30, 1982; and $1,500,000 for the fiscal year ending September 30, 1983".

ASSISTANCE TO DISADVANTAGED INDIVIDUALS

SEC. 237. Section 798(c) (42 U.S.C. 295h-7) is amended (1) by striking out "and" after "1979;", and (2) by inserting after "1980" the following: ", $1,000,000 for the fiscal year ending September 30, 1981, $1,000,000 for the fiscal year ending September 30, 1982, and $1,000,000 for the fiscal year ending September 30, 1983".

DEFINITION

SEC. 238. Section 795(2)(A) (42 U.S.C. 295h-4(2)(A)) is amended (1) by striking out "medical technology, optometric technology, dental hygiene, or in any of such other of" and inserting in lieu thereof "such of", and (2) in clause (ii) by striking out "optometric technology, dental hygiene, or such other curricula" and inserting in lieu thereof "such curricula".

TITLE III—NURSE TRAINING

CONSTRUCTION

SEC. 301. (a)(1) Section 801 (42 U.S.C. 296) is amended (A) by inserting "in health manpower shortage areas designated under section 332" after "nursing", (B) by striking out "and" after "1978,", and (C) by inserting after "1980" the following: ", $1,000,000 for the fiscal year ending September 30, 1981, $1,000,000 for the fiscal year ending September 30, 1982, and $1,000,000 for the fiscal year ending September 30, 1983".

(2) Section 802(b)(1) (42 U.S.C. 296a(b)(1)) is amended by inserting "in a health manpower shortage area designated under section 332" before the semicolon.

(b) Section 805(a) (42 U.S.C. 296d(a)) is amended by striking out "1980" and inserting in lieu thereof "1983".

INSTITUTIONAL SUPPORT

SEC. 302. (a) Effective with respect to appropriations under section 810(f) of the Public Health Service Act for fiscal years beginning after September 30, 1980, section 810(a) (42 U.S.C. 296e(a)) is amended by striking out paragraphs (1), (2), and (3) and inserting in lieu thereof the following:

"(1)(A) For the fiscal year ending September 30, 1981, each collegiate school of nursing shall receive an amount equal to the product of—

"(i) $200, and

"(ii) the sum of (I) the number of full-time students enrolled in each of the last two years of such school in the fiscal year for which the grant is to be made, and (II) the number of full-time equivalents of part-time students for such school for such fiscal year.

"(B) For the fiscal year ending September 30, 1982, each collegiate school of nursing shall receive an amount equal to the product

of $210 and the sum described in subparagraph (A)(ii).

"(C) For the fiscal year ending September 30, 1983, each collegiate school of nursing shall receive an amount equal to the product of $220 and the sum described in subparagraph (A)(ii).

"(2)(A) For the fiscal year ending September 30, 1981, each associate degree school of nursing and each diploma school of nursing shall receive an amount equal to the product of—

"(i) $200, and

"(ii) the sum of (I) the number of full-time students enrolled in such school in the fiscal year for which the grant is to be made, and (II) the number of full-time equivalents of part-time students for such school for such fiscal year.

"(B) For the fiscal year ending September 30, 1982, each such school of nursing shall receive an amount equal to the product of $210 and the sum described in subparagraph (A)(ii).

"(C) For the fiscal year ending September 30, 1983, each such school of nursing shall receive an amount equal to the product of $220 and the sum described in subparagraph (A)(ii).".

(b) Section 810(c)(2) is amended—

(1) in subparagraph (A), by striking out "June 30, 1975" and all that follows in that subparagraph and inserting in lieu thereof "September 30, 1979, by 15 percent or 10 students, whichever is greater.";

(2) by amending subparagraph (B) to read as follows:

"(B) In the case of a collegiate school of nursing, the school has provided reasonable assurances to the Secretary that it will carry out, in accordance with a plan submitted by the school to the Secretary and approved by the Secretary, in the school year beginning in the fiscal year in which such grant is to be made and in each school year thereafter beginning in a fiscal year in which such a grant is made, a program for the training of nurse practitioners (as defined in section 822).."; and

(3) by adding after subparagraph (B) the following:

"(C) The application of the school for such grant contains or is supported by reasonable assurances satisfactory to the Secretary that it will carry out, in accordance with a plan submitted by the school to the Secretary and approved by the Secretary, in the school year beginning in the fiscal year in which such grant is to be made and in each school year thereafter beginning in a fiscal year in which such a grant is made, a program to identify, recruit, enroll, retain, and graduate individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary) under which program at least 20 percent of each year's entering full-time students (or ten students, whichever is greater) is comprised of such individuals.

"(D) In the case of a collegiate school of nursing, the application of the school for such grant contains or is supported by reasonable assurances satisfactory to the Secretary that in the school year beginning in the fiscal year in which such grant is to be made and in each school year thereafter beginning in a fiscal year in which such a grant is made at least 20 percent of each year's entering full-time students (or ten students, whichever is greater) shall be comprised of individuals who have a degree from an associate degree school of nursing or a diploma or equivalent indicia from a diploma school of nursing.

"(E) In the case of an associate degree school of nursing or a diploma school of nursing, the application of the school for such grant contains or is supported by reasonable assurances satisfactory to the Secretary that in the school year beginning in the fiscal year in which such grant is to be made and in each school year thereafter beginning in a fiscal year in which such a grant is made at least 20 percent of each year's entering full-time students (or ten students, whichever is greater) shall be comprised of individuals who are licensed practical or vocational nurses.

"(F) The application of the school for such grant contains or is supported by reasonable assurances satisfactory to the Secretary that in the school year beginning in the fiscal year in which such grant is to be made and in each school year thereafter beginning in a fiscal year in which such a grant is made the number of part-time students enrolled in the school in its program leading to the degree or diploma or equivalent indicia which it awards will be at least 20 percent of all the students enrolled in the school in such program.".

(c) Section 810(d) is amended (1) by striking out "part D" each place it occurs and inserting in lieu thereof "part B", and (2) by adding after paragraph (2) the following:

"(3) The number of full-time equivalents of part-time students for a school of nursing for any school year is a number equal to—

"(A) the total number of credit hours of instruction in such year for which part-time students of such school, who are pursuing a course of study leading to a degree or diploma or equivalent indicia, have enrolled, divided by

"(B) the number of credit hours of instruction which a full-time student of such school was required to take in such year,

rounded to the next highest whole number, except that in the case of a collegiate school of nursing, only the credit hours of instruction in courses offered to students who are enrolled in the third or fourth year program of instruction of such school shall be considered in making the computation under subparagraph (A).".

(d) Section 810(f) is amended (1) by striking out "and" after "1978,", and (2) by inserting after "1980" the following: ", $25,000,000 for the fiscal year ending September 30, 1981, $27,500,000 for the fiscal year ending September 30, 1982, and $30,000,000 for the fiscal year ending September 30, 1983".

(e) The heading for section 810 is amended to read as follows:

"INSTITUTIONAL SUPPORT".

SPECIAL PROJECTS

SEC. 303. (a)(1) Section 820(a) (42 U.S.C. 296k(a)) is amended (A) by striking out paragraphs (1), (2), and (8), (B) by inserting "or" at the end of paragraphs (6), (C) in paragraph (7) by striking out ", nursing assistants, and other paraprofessional nursing personnel; or" and inserting in lieu thereof a period, and (D) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (1), (2), (3), (4), and (5), respectively.

(2) Notwithstanding the amendment made by paragraph (1), an entity which received a grant or contract under section 820(a) of the Public Health Service Act for the fiscal year ending September 30, 1980, for a project described in paragraph (1), (2), or (8) of such section (as in effect when it received the grant or contract) may receive one additional grant or contract under such section for such project.

(b) Section 820(d) is amended—

(1) by striking out "and" after "1978,", and by inserting after "1980" the following: ", $15,000,000 for the fiscal year ending September 30, 1981, $17,500,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983"; and

(2) by amending the last sentence to read as follows: "Of the funds appropriated under this subsection for any fiscal year beginning after September 30, 1980, not less than 20 percent of the funds shall be obligated for payments under grants and contracts for special projects described in subsection (a)(1) and not less than 20 percent of the funds shall be obligated for payments under grants and contracts for special projects described in subsection (a)(4).".

ADVANCED NURSE TRAINING

SEC. 304. (a) Section 821(a)(1) (42 U.S.C. 296l(a)(1)) is amended by striking out "to each" and inserting in lieu thereof "to teach".

(b) Section 821(b) is amended (1) by striking out "and" after "1978,", and (2) by inserting after "1980" the following: ", $12,000,000 for the fiscal year ending September 30, 1981, $13,500,000 for the fiscal year ending September 30, 1982, and $15,000,000 for the fiscal year ending September 30, 1983".

NURSE PRACTITIONER PROGRAMS

SEC. 305. (a) Section 822(b)(1) (42 U.S.C. 296m(b)(1)) is amended by striking out "who are residents of a health manpower shortage area (designated under section 332)" and inserting in lieu thereof a period and the following: "In considering applications for a grant or contract under this subsection, the Secretary shall give special consideration to applications for traineeships to train individuals who are residents of health manpower shortage areas designated under section 332.".

(b)(1) Section 822(b)(3) is amended by inserting before the period the following: "for a period equal to one month for each month for which the recipient receives such a traineeship".

(2) Section 822(b) is amended by adding after paragraph (3) the following:

"(4)(A) If, for any reason, an individual who received a traineeship under paragraph (1) fails to complete a service obligation under paragraph (3), such individual shall be liable for the payment of an amount equal to the cost of tuition and other education expenses and other payments paid under the traineeship, plus interest at the maximum legal prevailing rate.

"(B) When an individual who received a traineeship is academically dismissed or voluntarily terminates academic training, such individual shall be liable for repayment to the Government for an amount equal to the cost of tuition and other educational expenses paid to or for such individual from Federal funds plus any other payments which were received under the traineeship.

"(C) Any amount which the United States is entitled to recover under subparagraph (A) or (B) shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States.

"(D) The Secretary shall by regulation provide for the waiver or suspension of any obligation under subparagraph (A) or (B) applicable to any individual whenever compliance by such individual is impossible or would involve extreme hardship to such individual and if enforcement of such obligation with respect to any individual would be against equity and good conscience.".

(3) The amendments made by paragraphs (1) and (2) shall apply with respect to traineeships which are awarded under section 822(b) of the Public Health Service Act after the date of the enactment of this Act.

(c) Section 822(e) is amended (1) by striking out "and" after "1978,", and (2) by inserting after "1980" the following: ", $17,000,000 for the fiscal year ending September 30, 1981, $18,500,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983".

TRAINEESHIPS

SEC. 306. (a)(1) Subparagraph (C) of section 830(a)(1) (42 U.S.C. 297(a)(1)) is amended to read as follows:

"(C) to serve as nurse midwives, or".

(2) An individual who received a traineeship under section 830(a) of the Public Health Service Act for the fiscal year ending September 30, 1980, to receive training to serve as a nurse practitioner may, notwithstanding the amendment made by paragraph (1), receive additional traineeships under that section to complete the training to be a nurse practitioner.

(b) Section 830(b) is amended—

(1) by striking out "and" after "1978,", and by inserting after "1980" the following: ", $15,000,000 for the fiscal year ending September 30, 1981, $17,500,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983"; and

(2) by adding at the end the following: "Not less than 50 percent of the funds appropriated under this subsection for any fiscal year shall be obligated for traineeships described in subsection (a)(1)(A), except that if the obligation of that amount of the funds appropriated under this subsection will prevent the Secretary from continuing a traineeship to an individual who received a traineeship under subsection (a) for the fiscal year ending September 30, 1980, the Secretary shall reduce the amount to be obligated for traineeships described in subsection (a)(1)(A) by such amount as may be necessary for the continuation of traineeships first awarded in such fiscal year.".

NURSE ANESTHETISTS

SEC. 307. Section 831(b) (42 U.S.C. 297–1(b)) is amended by inserting after "1980" the following: ", $2,000,000 for the fiscal year ending September 30, 1981, $3,000,000 for the fiscal year ending September 30, 1982, and $4,000,000 for the fiscal year ending September 30, 1983".

STUDENT LOANS

SEC. 308. (a) Section 835(b)(4) (42 U.S.C. 297a(b)(4)) is amended by striking out "1980" and inserting in lieu thereof "1983".

(b)(1) Section 836(b)(1)(A) is amended by inserting after "(A)" the following: "is in exceptionally needy circumstances or is from a low-income or disadvantaged family (as those terms are defined by regulations under subsection (j)) and".

(2) The amendment made by paragraph (1) shall not apply with respect to any loan under subpart II of part B of title VIII of the Public Health Service Act to students who received such a loan before the date of the enactment of this Act.

(3) Section 836(b)(5) is amended by striking out "3" and inserting in lieu thereof "6".

(c) Section 837 (42 U.S.C. 297c) is amended (1) by striking out "and" after "1978,", (2) by inserting after "September 30, 1980" the following: "$15,000,000 for the fiscal year ending September 30, 1981, $17,500,000 for the fiscal year ending September 30, 1982, and $20,000,000 for the fiscal year ending September 30, 1983", (3) by striking out "1981" in the second sentence and inserting in lieu thereof "1984", and (4) by striking out "October 1, 1980" and inserting in lieu thereof "October 1, 1983".

(d) Section 839 (42 U.S.C. 297e) is amended by striking out "1983" each place it occurs and inserting in lieu thereof "1986".

SCHOLARSHIPS

SEC. 309. Section 845 (42 U.S.C. 297j) is amended (1) by striking out "next four fiscal years" in subsections (b) and (c)(1)(A) and inserting in lieu thereof "next seven fiscal years", (2) by striking out "1981" in subsections (b) and (c)(1)(B) and inserting in lieu thereof "1984", and (3) by striking out "1980" in subsections (b) and (c)(1)(B) and inserting in lieu thereof "1983".

TECHNICAL

SEC. 310. Section 851(a) (42 U.S.C. 298(a)) is amended by striking out ", and the Commissioner of Education, both of whom shall be ex officio members" and inserting in lieu thereof "and an ex officio member".

TITLE IV—GRADUATE MEDICAL EDUCATION NATIONAL ADVISORY COMMITTEE

GRADUATE MEDICAL EDUCATION NATIONAL ADVISORY COMMITTEE

SEC. 401. (a) Effective October 1, 1980, part A of title VII is amended by inserting after section 711 the following:

"GRADUATE MEDICAL EDUCATION NATIONAL ADVISORY COMMITTEE

"SEC. 712. (a)(1) There is established the Graduate Medical Education National Advisory Committee (hereinafter in this section referred to as the 'Advisory Committee'). The Advisory Committee shall consist of 23 members as follows:

"(A) A representative of the Public Health Service and a representative of the Health Care Financing Administration each designated by the Secretary, a representative of the Department of Defense designated by the Secretary of Defense, a representative of the Veterans' Administration designated by the Administrator of Veterans' Affairs, and the Chairman of the Coordinating Council on Medical Education shall each be ex officio members of the Advisory Committee.

"(B) The Secretary shall appoint 18 members from individuals who are representative of providers of health care, insurers and other payers of health care, and interested national and local organizations.

"(2)(A) Except as provided in subparagraph (B), the term of office of a member of the Advisory Committee shall be three years.

"(B) Of the members first appointed to the Advisory Committee after the date of the enactment of this section—

"(i) six members shall be appointed to serve for terms of one year, and

"(ii) six members shall be appointed to serve for terms of two years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office.

"(3) Members of the Advisory Committee who are officers or employees of the United States shall serve without pay. The other members of the Advisory Committee shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of the duties vested in the Committee.

"(4) The chairman of the Advisory Committee shall be designated by the Secretary from the appointed members of the Advisory Committee.

"(5) The Advisory Committee shall meet at the call of the chairman, except that the Advisory Committee shall meet at least once every calendar quarter. Notice of meetings of the Advisory Committee shall be made available to the public and such meetings shall be open to the public.

"(6) The Secretary shall provide the Advisory Committee such support staff and administrative services as may be necessary for the Advisory Committee to carry out its functions under subsection (b).

"(b) The Advisory Committee shall—

"(1) advise, consult with, and make recommendations to, the Secretary with respect to—

"(A) the need for and supply of physicians in the various medical specialties (including subspecialties) and with respect to the geographic distribution of physicians;

"(B) the factors which affect a physician's choice of graduate medical training and the location of the physician's practice;

"(C) the effect that—

"(i) the rate of reimbursement for health care services provided by physicians in the different medical specialties, and

"(ii) the availability of financial support for persons undergoing graduate medical education,

has on the selection of a medical specialty or subspecialty;

"(D) the proportion of health services provided by persons undergoing graduate medical education; and

"(E) such other matters relating to graduate medical education as the Secretary may specify;

"(2) recommend to the Secretary goals for (A) the distribution of physicians by medical specialties and subspecialties, and (B) the number of graduate medical education positions that should be available in each of the medical specialties and subspecialties; and

"(3) recommend to the Secretary policies and procedures to achieve such goals.

The Advisory Committee shall inform the Secretary of the data it will need to carry out its functions under this subsection.

"(c)(1) The Advisory Committee shall consult with appropriate entities, including the Coordinating Council on Medical Education and its constituent members, concerning appropriate actions to attain the goals recommended under subsection (b)(2).

"(2) The Secretary may enter into contracts with public and other nonprofit entities, including the Coordinating Council on Medical Education and its constituent members to provide assistance to the Advisory Committee in carrying out its functions under subsection (b).

"(d) The Advisory Committee shall consult with the Health Care Financing Administration and private health insurance carriers concerning any changes in the rates of reimbursements for health services provided by physicians in graduate medical education training programs and other practicing physicians necessary to provide incentives to achieve the goals recommended by the Advisory Committee for the distribution of physicians by medical specialties.

"(e) The Advisory Committee shall submit to the Secretary an annual report respecting the activities of the Advisory Committee. The Advisory Committee shall include in such report a description of the consultations undertaken under subsections (c) and (d).".

(b) A member of the Graduate Medical Education National Advisory Committee established by the Secretary of Health, Education, and Welfare on May 1, 1978, shall continue in office as a member of the Advisory Committee established under subsection (a) for the term of office prescribed for that member at the time of the member's appointment.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

Mr. WAXMAN. Mr. Chairman, I ask unanimous consent that the committee amendments be considered en bloc, and that they be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The committee amendments are as follows:

Committee amendments: Page 4, line 13, strike out "and who" and all that follows through line 17 and insert in lieu thereof a comma.

Page 5, insert after line 10, the following new paragraph:

(4) Section 331 is amended by redesignating subsections (g) and (h) as subsections (h) and (i), respectively, and by adding after subsection (f) the following new subsection:

"(g)(1) The Secretary shall, by rule, prescribe conversion provisions applicable to any individual who, within a year after completion of service as a member of the Corps described in subsection (a)(1)(C), becomes a commissioned officer in the Regular or Reserve Corps of the Service.

"(2) The rules prescribed under paragraph (1) shall provide that in applying the appropriate provisions of this Act which relate to retirement, any individual who becomes such an officer shall be entitled to have credit for any period of service as a member of the Corps described in subsection (a)(1)(C).".

Page 6, strike out lines 1 through 9 and insert in lieu thereof the following:

(b)(1)(A) Section 332(a)(1) (42 U.S.C. 254e(1)) is amended by striking out "which the Secretary determines" each place it occurs and inserting in lieu thereof "which as determined under this section".

(B) Section 332(c) is amended to read as follows:

"(c)(1) The Secretary shall refer a proposed designation of an area, population group, or facility (other than a Federal medical facility) to each health systems agency for a health service area which includes such area, group, or facility or if such an area, group, or facility is in a health service area for which a health systems agency has not been designated, to the State health planning and development agency for the State in which the area, group, or facility is located. Each health systems agency and State health planning and development agency to which a proposed designation has been referred shall be given a reasonable period to review the designation and approve or disapprove the designation. In making such a review the agency shall consider—

"(A) the criteria established under subsection (b),

"(B) the recommendation of the Governor of each State in which the area, population, or facility under consideration for designation is in whole or part located,

"(C) the comments of all interested persons and the comments of the appropriate health professions societies in such area or whose members serve such population or facility, and

"(D) the extent to which individuals who are (i) residents of the area, members of the population group, or patients in the facility, and (ii) entitled to have payments made for medical services under title XVII or XIX of the Social Security Act, cannot obtain such services because of suspension of physicians from the programs under such titles.

The reviewing agency shall give written notice to health professions societies described in subparagraph (C) of the review of a proposed designation, and the societies shall be permitted to submit their comments on a proposed designation to the reviewing agency during the 90-day period beginning on the date the agency notifies it of the review of the proposed designation.

"(2) Upon completion of its review of a proposed designation, the reviewing agency shall approve or disapprove the designation and submit to the Secretary a detailed statement in writing of the reasons for its decision. If an agency approves a proposed designation, the Secretary shall, within the sixty-day period beginning on the date the Secretary receives the decision of the agency, make the designation unless the Secretary, within such period, determines the decision of the agency is not supported by the criteria established under subsection (b) and the other matters considered by the agency in making its decision and submits to the agency a detailed statement of the reasons for such determination. If an agency disapproves a proposed designation, the Secretary may not make the designation unless the Secretary, within the sixty-day period beginning on the date the Secretary receives the decision of the agency, determines the decision of the agency is not supported by the criteria established under subsection (b) and the other matters considered by the agency in making its decision and submits to the agency a detailed statement of the reasons for such determination.".

(C) Section 332(d) is amended by adding at the end the following: "The revision of a designation shall be subject to the same review and approval and disapproval by health systems agencies and State health planning and development agencies as is prescribed by subsection (c) for designations.".

(D) Section 332(g) is amended by inserting "or the revision of a health manpower shortage area" immediately before the period.

(E) The amendments made by this paragraph shall take effect one year after the date of the enactment of this Act.

Page 14, insert after line 17 the following:

(4) Section 334(b) is amended by adding at the end the following:

"(4) In determining whether to grant a waiver under paragraph (1) or (2), the Secretary shall not discriminate against a public entity."

Page 14, line 23, strike out "(4)" and insert in lieu thereof "(5)".

Page 28, insert after line 11 the following:

(e) Paragraph (1) of section 737 (42 U.S.C. 294j(1)) is amended to read as follows:

"(1) The term 'eligible institution' means a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or public health within the United States which is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.".

Page 28, line 19, strike out "(e)" and insert in lieu thereof "(f)".

Page 44, beginning in line 3, strike out "training centers for the allied health professions,"; and in line 17 on page 44 strike out ", training centers,".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. LELAND

Mr. LELAND. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LELAND: Page 37, insert before the close quotation marks in line 22 the following: "For purposes of this paragraph, a school of pharmacy which did not receive such a grant in such fiscal year because accreditation requirements prevented it from meeting applicable enrollment requirements shall be considered as having received such a grant in such fiscal year.".

Mr. LELAND. Mr. Chairman, I am offering an amendment to H.R. 7203 with respect to grants made under section 770 of the Public Health Service Act.

This amendment seeks to correct a discrepancy between the necessity of meeting standards set by accrediting bodies and the ability of professional health programs, particularly in minority institutions, to acquire and maintain adequate Federal funding.

Presently, to be eligible for capitation funds, the law requires that schools of pharmacy must be accredited. The law also states that schools must maintain prior levels of enrollment. Unfortunately, accreditation bodies are requiring financially distressed institutions, such as Texas Southern University School of Pharmacy in my district, to reduce their enrollments in order to maintain accreditation, which, without my amendment, will cost the schools their capitation funding.

Current law prohibits the Secretary from waiving that requirement for pharmacy schools—but allows a waiver for dental and public health institutions. Therefore, pharmacy schools are caught in a catch-22 dilemma. If schools comply with the accreditation bodies and reduce enrollment, as TSU has for the coming year, then they will receive no capitation funds. On the other hand, if schools fail to comply with the accreditation requirements and do not reduce enrollment—they will still lose capitation funds because they will no longer be accredited. This catch-22 coupled with a triangular nightmare of meeting rigorous accreditation standards, maintaining required enrollment figures, and procuring adequate funding will place the schools in double jeopardy, which threatens the basic existence and survival of these important professional institutions.

Because this bill is so late coming to the floor, nothing can be done about capitation money for 1980. But, I am seeking to insure that institutions will not be penalized even after the new law is effective; that is, for fiscal years 1981 through 1983.

The provisions of H.R. 7203 require that for a school to receive capitation funds during its effective years—1981–83—institutions must have received capitation funds in 1980.

Therefore, unless this amendment is accepted, these pharmacy institutions, like TSU, will lose capitation money, not only for 1980, but also in 1981–83. At that point, there may be no need for these institutions to look for further funds, because their doors may be shut down.

Mr. Chairman, I do not believe that the present law was intended to include this "catch-22"; it was an oversight, and the schools of pharmacy should not be penalized.

This amendment will give pharmacy schools parity with the schools of dentistry and public health, and will in no way conflict with the authorization for the next 3 years, as the current bill contains no enrollment requirements whatsoever as a condition for future capitation funds.

I ask your support for my amendment.

□ 1700

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. LELAND. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, this amendment is a reasonable one. It provides that Texas Southern may receive capitation support in fiscal years 1981 through 1983, although it lost support in 1980. It is similar to language now in the statute, as the gentleman mentioned, for schools of dentistry. Under the committee bill, there will be no requirement for maintenance of enrollments for schools in 1981 or thereafter. We join in support of the amendment.

Mr. LELAND. I appreciate the chairman's support of this amendment.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. LELAND. I would be privileged to yield to my distinguished colleague, the gentleman from Kentucky (Mr. CARTER).

Mr. CARTER. Mr. Chairman, I certainly support the gentleman's amendment, and it has been a pleasure to serve with the gentleman.

Mr. LELAND. I thank the gentleman for his remarks.

Mr. Chairman, I ask for the support of this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. LELAND).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. DANNEMEYER

Mr. DANNEMEYER. Mr. Chairman, I offer amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request to the gentleman from California?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. DANNEMEYER:

Page 29, line 5, strike "$20,000,000" and insert in lieu thereof "$18,480,000".

Page 29, line 6, strike "$22,500,000" and insert in lieu thereof "$20,290,000".

Page 29, line 7, strike "$25,000,000" and insert in lieu thereof "$22,000,000".

Page 29, line 21, strike "$30,000,000" and insert in lieu thereof "$27,200,000".

Page 29, line 22, strike "$40,000,000" and insert in lieu thereof "$29,750,000".

Page 29, line 23, strike "$50,000,000" and insert in lieu thereof "$16,690,000".

Page 39, line 6, strike "$15,000,000" and insert in lieu thereof "$10,640,000".

Page 39, line 7, strike "$20,000,000" and insert in lieu thereof "$11,680,000".

Page 39, line 8, strike "$25,000,000" and insert in lieu thereof "$12,660,000".

Page 39, line 17, strike "$28,000,000" and insert in lieu thereof "$23,050,000".

Page 39, line 18, strike "$30,000,000" and insert in lieu thereof "$24,990,000".

Page 41, line 25, strike "$23,000,000" and insert in lieu thereof "$21,800,000".

Page 42, line 1, strike $30,000,000" and insert in lieu thereof "$23,940,000".

Page 42, line 2, strike "$32,000,000" and insert in lieu thereof "$25,950,000".

Page 42, line 23, strike "$50,000,000" and insert in lieu thereof "$45,360,000".

Page 42, line 24, strike "$75,000,000" and insert in lieu thereof "$49,800,000".

Page 43, line 1, strike "$80,000,000" and insert in lieu thereof "$53,990,000".

Page 45, line 20, strike "$30,000,000" and insert in lieu thereof "$20,800,000".

Page 45, line 21, strike "$33,000,000" and insert in lieu thereof "$22,830,000".

Page 45, line 22, strike "$36,000,000" and insert in lieu thereof "$24,760,000".

Page 48, line 10, strike "$12,500,000" and insert in lieu thereof "$1,980,000".

Page 48, line 11, strike "$15,000,000" and insert in lieu thereof "$10,980,000".

Page 51, line 2, strike "$20,000,000" and insert in lieu thereof "$10,000,000".

Page 53, line 25, strike "$8,000,000" and insert in lieu thereof "$7,690,000".

Page 54, line 1, strike "$9,000,000" and insert in lieu thereof "$8,330,000".

Page 57, line 2, strike "$8,000,000" and insert in lieu thereof "$7,840,000".

Page 57, line 3, strike "$9,000,000" and insert in lieu thereof "$8,610,000".

Page 57, line 4, strike "$10,000,000" and insert in lieu thereof "$9,330,000".

Page 57, line 16 strike "$5,500,000" and insert in lieu thereof "$5,490,000".

Page 57, line 18, strike "$6,000,000" and insert in lieu thereof "$5,950,000".

Page 57, strike out line 19 and all that follows through line 6 on Page 59.

Page 59, line 7, strike "(5)" and insert in lieu thereof "(4)".

Page 59, line 9, strike "(4)" and insert in lieu thereof "(3)".

Page 60, line 23, strike "$4,000,000" and insert in lieu thereof "$3,360,000".

Page 60, line 24, strike "$4,500,000" and insert in lieu thereof "$3,680,000".

Page 61, line 1, strike "$5,000,000" and insert in lieu thereof "$4,000,000".

Page 61, line 9, strike "$2,500,000" and insert in lieu thereof "$2,240,000".

Page 61, line 10, strike "$3,000,000" and insert in lieu thereof "$2,460,000".

Page 61, line 11, strike "$3,500,000" and insert in lieu thereof "$2,670,000".

Page 61, strike out line 15 and all that follows through line 5 on Page 72.

Mr. DANNEMEYER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANNEMEYER. Mr. Chairman, I offer this amendment not out of opposition to improving the delivery of physical health care services to the American people, but out of concern for the financial well-being of this Nation. No one can quarrel with the motives behind this bill; the problem is one of timing and the danger of excess Federal spending as it relates to inflation. Despite the reluctance of some people to face up to it, Federal deficits do produce inflationary pressures which, in turn, erode the value of programs such as those we are discussing here today. Compensating by increasing the funding levels for the next year may provide short-term relief, but over the longer term, such an approach makes the pressure worse. In short, a vicious cycle is created—a catch-22 if you will—which threatens not only potential beneficiaries of health care programs, but everyone else. Opting for a short-term "quick fix" may be politically expedient, but from a policy standpoint it is myopic. If we are really serious about our long-term commitment to both the physical and financial health of this Nation, we need to take a longer view.

The amendment just read would help us to do just that. What it does is take those programs within title II of the bill, exclusive of institutional support and, wherever applicable, reduces the fiscal 1981 authorization level for each to 12 percent above fiscal year 1980 appropriation levels. Then, for fiscal year 1982, a 9.8-percent increase above the fiscal year 1981 authorization level is permitted and in fiscal year 1983 an 8.4-percent increase over the fiscal year 1982 authorization level is provided for. The one exception to this general rule deals with programs that will primarily benefit minority students and minority medical schools; funding for financial distress to disadvantaged individuals is not cut until fiscal year 1983, construction money for Morehouse College will not be affected at all and exceptional financial need moneys are reduced far less than would have been the case had the general rule been applied. In short, this amendment takes into account historical prejudices at the same time it acknowledges the need for medical care providers and services in various low-income, minority-population areas.

All told, this amendment would save the American taxpayers $39.28 million in fiscal 1981, $89.25 million in fiscal 1982 and $135.28 million in fiscal 1983 for a total of $263.81 million over the 3-year life of this bill. I should also note that, in accomplishing this, new programs not previously funded have been dropped on the grounds that we simply cannot afford new endeavors in a year (fiscal 1981) when the total budget deficit—including off-budget items—is likely to reach $65 billion if not more. I might also note, by way of further explanation that, in cases where the program increase recommended by the committee was less than that permitted under the general rule controlling this amendment, the committee's recommendation was left standing. Likewise, titles I and III—the National Health Service Corps and the nurse training provisions of H.R. 7203—are not affected by this amendment.

Speaking of the general rule—that increases in authorizations be held to 12, 9.8, and 8.4 percent for the 3 fiscal years, respectively—I should point out that these percentages are not arbitrary figures. Rather, they are the same as the inflation rates being projected for the years 1980, 1981 and 1982 by the Office of Management and Budget in its mid-session budget review published in July. That being the case, the effect of this amendment is to compensate for the inflation rate predicted by the administration the previous year and no more. What with the producer price index having jumped 22 percent (on an annualized basis) last month, that is the least we can do. And if it turns out the inflation projections have been optimistically low, then this amendment will tend to discourage the advent of excess statistical optimism in the future.

It should be added, however, that OMB's inflation projections are similar to those being made by others. The Congressional Budget Office, for instance, has pegged inflation at 10.5–12.5 percent for 1980 and 8.3–10.3 percent in 1981. And the U.S. Chamber of Commerce is predicting inflation rates of 13.5, 9.1, and 8.9 percent for the years 1980, 1981, and 1982, respectively. Other predictions are in the same ballpark.

Some will argue, I am sure, that these cuts are too drastic, that programmatic increases are essential if the health care needs of this Nation can be met. I can understand, even sympathize with, such arguments. But, just like most every

American family, we cannot afford everything we might like—or even need. Sometimes we have to cut back on our aspirations a little; in other instances, we have to delay things a bit until our financial position improves. More borrowing is not the answer; it will only make things worse later on.

Also, it is not as if we have not been putting ever more money into health manpower programs in recent years. Take the exceptional financial need program—which this amendment reduces but not as much as with some other programs. In 1978–79, 14 percent of such students were assisted; in 1979–80, 44 percent of these students were helped; in 1980–81, 47 percent will be helped, and under this amendment an even higher percentage will be helped in the future. But there are limits, and I think it is high time we recognize them.

Mr. Chairman, the thrust of this amendment is simple, cut authorization levels to cover projected inflation rates and no more until these big budget deficits are a thing of the past. It may not be easy, but it will show we are serious about fighting inflation, and I urge its adoption.

□ 1710

Mr. WAXMAN. Mr. Chairman, I rise in opposition to this amendment.

The authorizations that are in the bill before us are greatly reduced from current levels. The 1981 authorizations are only 62 percent of those for 1980, $549 million in 1981 against $1.37 billion in 1980.

The increases in authorizations of the bill would barely cover inflation. The amount by which increases in authorization exceed inflation are necessary to give the Appropriations Committee the flexibility it needs.

Under the Dannemeyer amendment we would see cuts in the student loan program, the exceptional financial scholarship program, the family medicine training program, the educational assistance to disadvantaged students program, public health schools, and health administration programs. I do not believe that these areas ought to be cut below amounts that reflect their real needs.

These are programs that will affect the health of people for decades to come. They will mean, as a practical matter, whether students will decide to go to health professional schools or will decide that, because of their financial circumstances, they cannot afford to go to these schools. Students will not enter careers of great service to the community, but satisfying to themselves as well.

I would hope we would retain the authorization levels in the committee bill. Due to the amendment offered by the gentleman from Ohio (Mr. LUKEN), the authorization levels are greatly decreased from what has been the authorization level under present law. I believe that retaining the amounts that the committee proposed is a reasonable step.

Mr. LUKEN. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Ohio.

Mr. LUKEN. As our distinguished chairman indicated in the subcommittee, I did offer an amendment in subcommittee. I believe the figures should be reviewed. This is a compromise which was accepted by the subcommittee.

The 1980 authorization for capitation was $229 million. The appropriation was $71 million. Under the amendment which was accepted by the subcommittee and, is therefore included in the bill which is being offered, that $229 million was reduced to $60 million in 1981 and $40 million in 1982 and $20 million in 1983. This will result in savings of $166 million, $189 million and $209 million respectively for the next 3 years, a total savings of about $567 million.

Is that the chairman's understanding?

Mr. WAXMAN. The gentleman has correctly stated the reductions in the authorization levels due to this amendment.

Mr. LUKEN. I think that the committee fully considered the arguments and accepted a compromise here which results in a tremendous savings. I think therefore that the Committee compromise should be approved and that the amendment should be opposed.

Mr. WAXMAN. I thank the gentleman for his comments and want to point out to our colleagues the great role he played in the subcommittee deliberations on this bill. His amendment dramatically reduced the amount of money authorized for this program, particularly as we phase out the capitation grants to the medical and other health professional schools. As we phase these grants out, as we face the realities of fiscal constraints, I think the subcommittee handled this in a very responsible way. I want to commend the gentleman for the amendment that was offered in the subcommittee. I urge the House to support the work done by the committee and to reject this amendment.

Mr. COLLINS of Texas. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, this is a very reasonable and logical request. We should all be cognizant of the manner in the authorization process where we have been rapidly escalating the demands and even putting pressure on the Appropriations Committee, because we ask and authorize so much more than an appropriation eventually calls for. I want to pull out two sections of the bill in here that caught my eye.

The first one is the National Health Service Corps, which is title I. It has grown from 1971, when they appropriated $3 million, to $70 million in 1980. In other words, in 10 years the appropriation has grown 23 times over. What was interesting was that in 1980 in this section we authorized $82 million and they only appropriated $70 million, which is an example of how we overauthorize with our Commerce Committee.

Back several years there was a time when we were really pressing for doctors in this country. Of course, we always need more doctors. We always need more nurses, but we are not in the critical situation that the country once experienced.

Let me give the Members an example. Twenty years ago, on the physician per 100,000 population, we had 141 per 100,000. Today, we have 200. In 20 years we have grown from a ratio in the public of 141 to 200. That means we have much, much greater supply of medical doctors than we had back then. One thing we always need to remember is we cannot do everything for medicine or for the health of America we would like to, but Congress has certainly been generous.

In the past few years, we have gone from where we were giving 25 percent of the Nation's budget for health while today we are budgeting 50 percent. It is time we began to reappraise the entire fiscal appropriation.

Mr. Chairman, I yield back the balance of my time.

Mr. FORD of Tennessee. Mr. Chairman, I rise in opposition to the amendment offered by my colleague from California.

First, to point out when we talk about exceptional, the financial need, distressed schools, we are talking about in fiscal year 1981 a reduction of $30 million to $27.2 million. And fiscal year 1982, we are talking about $40 million, which is in the proposed bill and under this amendment would be cut to $29.7 million; and in fiscal year 1983, we are talking about $50 million being reduced to $16.6 million.

Mr. Chairman, the amendment offered by Representative DANNEMEYER proposes to cut title II of the health professions and nurse training amendments in order to keep the program encompassed in the whole bill in line with the projected inflation rate. That, at least, is the said purpose of the bill. Its effect is totally different.

The cutting of title II programs directly effects the education of black students. Two programs of major importance to black medical colleges and the students in them. The first program involves financial distress funds to schools with great need, and which serve minority students. The bill provides $20 million for all 3 fiscal years. This amendment maintains that amount for 2 years, and cuts it in half during the third. Little could be more cruel. With this amendment, we in Congress dangle a carrot—a carrot of survival—in front of the nose of black medical institutions, and, just as they are getting close to it, pull the carrot away.

Schools such as Meharry Medical College, in my home State of Tennessee, which have been working hard to stabilize themselves financially, will be forced to close. The financial distress program is the key to survival for Meharry. Without full funding, black students in medical and dental programs at Meharry, in the veterinary programs at Tuskegee, and in the pharmacy program at Savior will have no place to continue their education. These schools have been working to pull themselves up. Let us not push them down.

The other major program affecting black students to be cut is student assistance for those with exceptional financial need. The bill appropriates $30 million in fiscal year 1981; $40 million in fiscal year 1982, and $50 million in 1983. This amendment cuts those amounts to $27 million in fiscal year 1981, to $29.75 million in fiscal year 1982, and to $16.69 million in fiscal year 1983. These funds are critical for students attending black medical institutions.

The young people have worked hard, overcoming many obstacles, to join the medical professions. To adopt these amendments would be to deny these students the future for which they have striven.

As devastating as the cuts are to the two programs I have mentioned, they are the least affected. They were singled out as programs affecting black schools for a program increase of more than the 12.9 percent in fiscal year 1981, than the 9.8 percent in fiscal year 1982, and the 8.4 percent in fiscal year 1983. What is at stake here is the future of medical education, and good medical treatment for all people. Many areas of the country do not have sufficient numbers of trained personnel to meet their needs. The bill assists these communities through the education and provision of medical professionals.

The students involved in the black schools, and in other programs funded here, often enter the National Health Service Corps, giving themselves to assist those who otherwise would receive no medical attention. With this amendment, we are not just denying an education to qualified students. We are denying health care to Americans. It is imperative that we vote against this amendment.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. FORD of Tennessee. I yield to the gentleman from Kentucky.

Mr. CARTER. I only ask the gentleman to yield because actually the gentleman knows that Meharry is only 85 miles from where I live. I am quite familiar with Tuskegee and also Xavier. That was my amendment to increase financial distress funds that the gentleman referred to. I thank the gentleman for his statement.

□ 1720

Mr. FORD of Tennessee. I want to thank my distinguished colleague, who is also a physician and a distinguished Member of the House.

As I must continue and close, Mr. Chairman, I would like to point out that the students involved in the black schools and in other programs funded here often enter the National Health Service Corps giving themselves to assist those who otherwise would receive no medical attention whatsoever. With this amendment, we are not just denying an education to qualified students, we are denying health care to Americans. It is imperative that we vote against this amendment before the House now.

Mr. PURSELL. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the Dannemeyer amendment.

Mr. Chairman, this Manpower Training Act has been pending for some time. I rise in opposition to the amendment because we are talking about an authorization bill here and we are not sure what the Senate is going to do. In a fiscal year that is admittedly very tight, it will behoove the Appropriations Committee to look at and set some guidelines for the House that may not be consistent with different figures from the Senate.

Also a corollary to that is that those of us who serve on the Appropriations Subcommittee that funds this particular authorization bill will have to look at some hard dollars. But this amendment goes much, much too far to this issue of striking basic programs of preventive health and primary care.

I would like to briefly say on behalf of the nurses of America, you know, they do not have a big powerful lobby here as the M.D.'s, the dentists, and other professional groups. You do not see nurses here in the lobby lobbying on this bill because many cannot even afford to come into Washington.

Now, I realize the gentleman is going to say that his amendment does not affect the nurses. I think he has learned that since last year when his amendment was severely defeated on the House floor, so I appreciate that he has come a long way in his enlightened approach on this bill; however, beyond the gentleman's amendment, which I oppose, because of reductions in preventive care, primary care, and preventive health, this bill is essential to addressing access to preventive health measures by the people of the United States.

I think there are people on my side of the aisle who are very much opposed to national health insurance.

So what are the alternatives? Are they opposed to the alternatives too? This is an excellent alternative.

I just want to say in behalf of the nurses' program and this amendment, this amendment would be counterproductive to the bill as a whole. We are short over 100,000 nurses in the United States according to testimony by Dr. Davis from the University of Michigan who testified I believe before this authorization committee.

We have had several meetings with nurses all over the United States in various coalitions of one sort or the other that could be organized to come to Washington and present their point of view as a national health group.

I think 1 year ago, I remember, or 2 years ago when the President cut this out in revision, the gentleman from West Virginia (Mr. STAGGERS) got up and eloquently defended the nurses programs. We did bring nurses back to Washington. They came in buses, sleeping in various facilities here, and slept on the floor with sleeping bags to come to Washington and fight for the cause of additional nursing programs in the United States.

With a shortage of over 100,000 nurses in the United States, well documented, all you have to do is read an ad and look at the daily want ads in all the newspapers all over the United States. It is very obvious that his is not a power packed lobby organization, because they are underfunded. They do not have the finances; so some of us should speak out in behalf of the nurses and this bill.

I have come to the conclusion that one of the major reasons that we in Congress come to a far different position on this matter than do our counterparts in the executive branch is that we listen closer to those directly involved in nursing and more often observe firsthand the provision of health care in the hospitals and homes of our various districts. For example, it came to my attention last year that no nurses served on the management staff of the Health Resources Administration, or at any level above HRA where decisions in this area are made.

I am pleased to report that, since that time, a number of administration officials—at my request—have met with nurse leaders. In addition, it appears that a nurse will soon be appointed to the National Council on Health Planning and Development. These are small, but significant, first steps toward a truly comprehensive and cooperative approach to our health care needs.

In H.R. 7203, Congress, for the first time, combines the nurse training auhorization with that for other health care professions. That action is symbolic of this new approach, and I am hopeful that the reality of it can soon be achieved. For we have the better health of our Nation and its citizens to gain and nothing to lose. Mr. Chairman I oppose this amendment and support this bill, the Health Professions Educational Assistance and Nurse Training Amendments of 1980 (H.R. 7203).

Mr. CARTER. Mr. Chairman, I move to strike the requisite number of words.

I want to commend the distinguished gentleman from Michigan on his remarks.

Ms. MIKULSKI. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I will be brief in my remarks. I hope, however, the points that I make will have the impact of defeating this amendment.

The reason I oppose the Dannemeyer amendment is because it will have the impact of closing the hope people of ordinary backgrounds have of achieving an education in the health field.

Once again, we will make health opportunities in the health career field the monopoly of the rich, those with trust funds, those with big daddies who can afford to write the checks to the medical schools or to the nursing schools or to the dental schools. The people of the third congressional district that I represent, they will be excluded from having a career in nursing or medicine.

I know of two students right now who would be excluded. One is a young girl who would like to go to nursing school where the tuition is $4,000 a year. She is the daughter of an unemployed steelworker. She will not have the opportunity to be a bedside nurse or perhaps work in hospice care because they will say, "Too bad, we have other national priorities."

There is another young woman I met working as a checkout girl at a local food market whose father was a city employee. She is one of seven children. Her father has never made $12,000 a year. Her

mother works part time as a sales girl. Maybe their whole family income is $16,000 a year. She asked me, "Miss MIKULSKI, how can a girl like me afford the tuition of a medical school like Georgetown when it is $13,000 a year? I will never have a chance unless there are scholarships available."

This Health Manpower Act gives those two women the opportunity to provide public service and have meaningful careers. They should not be excluded because their fathers are unemployed or because their mothers are paid too little to send them to the kinds of schools that are necessary.

We have voted consistently in this Congress on the right-to-life, to save lives. If we are going to save lives, we need people in the health care professions who are dedicated and compassionate. That is not limited to one social class.

I, therefore, urge the defeat of this amendment so that we can embrace the American dream that the Presidential nominee of my colleague, the gentleman from California, advocated when he said he did not want any more broken promises for the constituency I represent.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California (Mr. DANNEMEYER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. DANNEMEYER. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 512]

Addabbo
Akaka
Albosta
Ambro
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Boling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Chisholm
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Cotter
Coughlin
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Heckler
Hefner
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lowry
Luken
Lundine
Lungren
McClory
McCloskey
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mavroules
Mica
Michel
Mikulski
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Pa.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nolan
Nowak
O'Brien
Oakar
Oberstar
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rosenthal
Roth
Roybal
Royer
Rudd
Russo
Sabo
Satterfield
Sawyer
Schroeder
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

The CHAIRMAN. 361 Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from California (Mr. DANNEMEYER) for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair will advise the Members that they will have 5 minutes to record their votes.

The vote was taken by electronic device, and there were—ayes 68, noes 303, not voting 61, as follows:

[Roll No. 513]

AYES—68

Archer
Badham
Bauman
Beard, R.I.
Beard, Tenn.
Bennett
Bereuter
Bethune
Broomfield
Broyhill
Burgener
Campbell
Collins, Tex.
Corcoran
Cotter
Courter
Crane, Daniel
Crane, Philip
Daniel, R. W.
Dannemeyer
Derrick
Derwinski
Devine
Dickinson
Dornan
Erlenborn
Fenwick
Frenzel
Gradison
Grisham
Hagedorn
Huckaby
Ireland
Jacobs
Jeffries
Johnson, Colo.
Kelly
Kindness
Kramer
Lagomarsino
Latta
Lungren
McDonald
Martin
Michel
Miller, Ohio
Moore
Nelson
O'Brien
Pashayan
Paul
Petri
Robinson
Roth
Rudd
Sensenbrenner
Shumway
Shuster
Smith, Nebr.
Stump
Thomas
Trible
Walker
Whitehurst
Wolff

NOES—303

Abdnor
Addabbo
Akaka
Albosta
Ambro
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
Bafalis
Bailey
Baldus
Barnard
Barnes
Bedell
Benjamin
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Brown, Calif.
Buchanan
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Chappell
Chisholm
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Conable
Conte
Conyers
Coughlin
Daniel, Dan
Danielson
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Dicks
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Goodling
Gore
Gramm
Grassley
Gray
Green
Guarini
Gudger
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Jeffords
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kogovsek
Kostmayer
LaFalce
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lowry
Luken
Lundine
McClory
McCloskey
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Mathis
Matsui
Mavroules
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Pa.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nolan
Nowak
Oakar
Oberstar
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quillen
Rahall
Railsback
Ratchford
Regula
Reuss
Richmond
Rinaldo
Roberts
Roe
Rose
Rosenthal
Roybal
Royer
Russo
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Seiberling
Sharp
Shelby
Simon
Skelton
Smith, Iowa
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Taylor
Thompson
Traxler
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Waxman
Weaver
Weiss
White
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—61

Alexander
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Ashbrook
AuCoin
Bellenson
Boggs
Bonior
Brown, Ohio
Cheney
Clay
Coelho
Corman
D'Amours
Davis, S.C.
Dingell
Dodd
Gephardt
Giaimo
Gingrich
Goldwater
Hanley
Hansen
Harsha
Hawkins
Hinson
Holtzman
Ichord
Jenrette
Leach, La.
Lederer
Lott
Lujan
McCormack
Mattox
Mazzoli
Moorhead, Calif.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nichols
Obey
Pritchard
Quayle
Rodino
Rostenkowski
Rousselot
Scheuer
Sebelius
Shannon
Steed
Symms
Tauzin
Vander Jagt
Watkins
Whitten
Wilson, C. H.
Wright
Wydler
Young, Alaska

□ 1750

Mr. LOEFFLER and Mr. SOLOMON changed their votes from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. CARTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise for the purpose of engaging in a brief colloquy with the distinguished chairman of the subcommittee, Mr. WAXMAN, about the committee's intent with respect to the provision in title IV of the bill—which would establish in statute the advisory committee known as GMENAC—or the Graduate Medical Education National Advisory Committee.

Frankly, Mr. Chairman, although I feel this group has been doing a fine job in studying the supply and distribution of physicians in various medical specialities—I have serious reservations as to whether it is wise to establish this body by statute—as our bill would do. Personally—I feel it would be preferable to continue GMENAC administratively—by charter—and I would urge that the administration move expeditiously to do so.

At this time, however, I would simply like to ask the chairman's assistance in clarifying our committee's intent with respect to the GMENAC provision as it is now written in the bill—to assure that

we do not intend for GMENAC to have any regulatory authorities. It is merely to be an advisory body, as I understand it. Is that correct?

Mr. WAXMAN. Mr. Chairman, I understand the gentleman has some concerns about the Graduate Medical Education National Advisory Committee—GMENAC. I know the gentleman is concerned that GMENAC may someday assume regulatory activities.

I want to assure the gentleman that the GMENAC provided in this bill is not a regulatory body. It is a committee to study the current patterns of graduate medical education. It is to consult with the AMA, AHA and other responsible bodies about training patterns. It is to talk with medicare and medicaid about more equitable payments for family doctors. But it is not our intent that it have any regulatory authority.

The GMENAC provided in the bill is the GMENAC that has worked well for the past 4 years. The language in the bill is, in fact, adopted from—and often identical to—the language of the current GMENAC charter.

Mr. CARTER. I thank the distinguished chairman.

Mr. MAGUIRE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as a cosponsor of the health manpower legislation, I am pleased to rise in support of several specific personnel sections which I had a hand in drafting. The funding provisions for disadvantaged persons and the study on environmental health manpower needs are important and forward looking and deserve special support by the committee today.

The sections of this bill dealing with the access of disadvantaged persons to health professions education are noteworthy. The ones about which I am specifically concerned are those providing financial support for institutions in financial distress, aid for students with exceptional financial need, assistance to individuals from disadvantaged backgrounds and construction and conversion assistance for 2-year schools converting to 4-year institutions. All of these provisions are directed toward improving the access of disadvantaged persons to a health professions education by relieving some of the fiscal uncertainty associated with the cost of that education, strengthening the educational programs designed to prepare them for professional school and ameliorating the budget problems of those institutions which are in financial distress.

We have a chronic maldistribution of health professionals especially in terms of care for the underprivileged. One remedy for this problem involves increasing the representation of disadvantaged persons in these occupations. The Association of American Medical Colleges set a goal 10 years ago of having the underrepresented populations reach at least 10 percent of the total student body in professional school by 1980. Current data not only shows that we have not reached that goal but the numbers also indicate that the rate of enrollments by disadvantaged persons may actually be dropping. While there may be many reasons for this drop, two important ones are the costs of a professional education and the difficulty some persons experience in gaining adequate preparation to make successful application to schools providing training. This bill addresses these problems by increasing support available for persons with severe financial need and by increasing the funds used for special programs designed to prepare the disadvantaged for health professions education. In addition, the section on financial assistance to institutions in distress will aid those schools which traditionally and historically serve disadvantaged students.

Section 231 of this act calls for the completion of a study by the Secretary of Health and Human Services of environmental and occupational health personnel needs. The committee has acted upon our request for this study out of a concern that there be a sufficient number of specialized and highly trained individuals to manage programs such as the Clean Air Act, TOSCA, and the Resource Recovery and Conservation Act. This concern was recently justified by a report prepared by the Bureau of Health Manpower which stated that "(L)ittle is known about requirements or shortages of manpower, and less about geographic and organizational distribution." This study will give us a chance to "look before we leap," to get a fix on the scope of the manpower training problem in this area before prescribing solutions.

The Harvard School of Public Health recently commented that in the drafting of legislation in the environmental health field, little attention is given to associated manpower needs and, that only when the backlog of educational needs reaches the crisis stage, will Congress likely pass ameliorative legislation. Although we probably have not reached that stage yet, there are indications that we may be approaching that point. Funding limitations are such that there is an erosion of the quality of graduate level programs which threatens the capability of the Federal Government and State and local agencies to meet their assigned air pollution responsibilities. EPA funding for manpower-related programs has decreased from approximately $12 million in 1973 to less than $3 million in 1977 and to a negligible amount for 1980.

Members of the Johns Hopkins environmental health sciences faculty cited the lack of comprehensive training in the vital educational areas as the motivation behind their belief that there are no more than 100 well-trained environmental toxicologists in the United States today. The PenJerDel Council, a tristate association of business, industry, and professionals from my area discussed "The Manpower Crisis in Toxicology," in their December 1979, monthly meeting of the Environmental Improvement Committee. The flyer advertising this forum stated:

> It is quite likely that there will be a crunch of some proportions as various types of institutions reach out to add toxicologists to their staffs.

So, I think that it is clear that the lack of information about manpower and the predominant assumption that our training is not keeping up with the demand for experts, is a concern shared by Government, industry, and academics alike.

Is this important? I think it is. The consequences of the crisis in manpower, funding for environmental health personnel are obvious. We get contracting-out as agencies turn to the "invisible government" for expertise they do not have in-house. We get maladministered programs or Federal officials who cannot defend the merits of environmental laws against baseless claims by groups who would damage the purity of our water or air. We get botched analyses like that performed for the citizens of Love Canal this spring which so needlessly terrorized the citizens there. The situation at Love Canal is convincing proof that we need to train our physicians to treat maladies caused by environmental contamination.

For all of these reasons, I believe that the knowledge that we can glean from a study of the factors and variables at work in shaping the dimensions and characteristics of the current work force will serve as a foundation for effective manpower projection capabilities. When we return to reauthorize these programs in the years down the line, we will be able to fine-tune our supply of epidemiologists, biomedical researchers and environmental health personnel in a manner which accurately reflects the data on supply, society's need and which utilizes our resources in a cost-effective manner.

I would urge support for the legislation generally and for this section in particular. I thank Chairman WAXMAN and Dr. CARTER for their help in adding it.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. FOLEY) having assumed the Chair, Mr. BIAGGI, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7203) to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such Act for the education of health professions personnel, and for other purposes, pursuant to House Resolution 766, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

□ 1800

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DANNEMEYER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 368, nays 8, answered "present" 2, not voting 54, as follows:

[Roll No. 514]

YEAS—368

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Chisholm
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Conable
Conte
Convers
Corcoran
Cotter
Coughlin
Courter
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lowry
Luken
Lundine
Lungren
McClory
McCloskey
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nolan
Nowak
O'Brien
Oakar
Oberstar
Ottinger
Panetta
Pashayan
Patten
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Robinson
Roe
Rose
Rosenthal
Roth
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—8

Collins, Tex.
Crane, Daniel
Crane, Philip
Dannemeyer
Jeffries
Kelly
McDonald
Paul

ANSWERED "PRESENT"—2

Gonzalez
Wilson, Tex.

NOT VOTING—54

Anderson, Calif.
Ashbrook
AuCoin
Bellenson
Boggs
Bonior
Brown, Ohio
Cheney
Clay
Coelho
Corman
D'Amours
Davis, S.C.
Dodd
Gephardt
Giaimo
Goldwater
Hanley
Hansen
Harsha
Hawkins
Hinson
Holtzman
Ichord
Jenrette
Leach, La.
Lederer
Lott
Lujan
McCormack
Mattox
Mazzoli
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nichols
Obey
Pritchard
Quayle
Roberts
Rodino
Rostenkowski
Rousselot
Sebelius
Shannon
Steed
Symms
Tauzin
Vander Jagt
Watkins
Whitten
Wilson, C. H.
Wydler
Young, Alaska

□ 1810

The Clerk announced the following pairs:

Mrs. Boggs with Mr. Ashbrook.
Mr. Lederer with Mr. Goldwater.
Mr. Rostenkowski with Mr. Hansen.
Mr. Murphy of New York with Mr. Pritchard.
Mr. McCormack with Mr. Quayle.
Mr. Mazzoli with Mr. Rousselot.
Mr. Giaimo with Mr. Lujan.
Mr. AuCoin with Mr. Symms.
Mr. Corman with Mr. Vander Jagt.
Mr. Steed with Mr. Watkins.
Mr. Whitten with Mr. Wydler.
Mr. Charles H. Wilson of California with Mr. Sebelius.
Mr. Jenrette with Mr. Lott.
Mr. Hawkins with Mr. Hinson.
Mr. Hanley with Mr. Harsha.
Mr. Murphy of Illinois with Mr. Young of Alaska.
Mr. Nichols with Mr. Brown of Ohio.
Mr. Obey with Mr. Cheney.
Mr. Roberts with Mr. Mattox.
Mr. Shannon with Mr. Myers of Pennsylvania.
Mr. Tauzin with Mr. Bonior of Michigan.
Mr. Rodino with Mr. Clay.
Mr. Coelho with Mr. Davis of South Carolina.

Mr. Dodd with Mr. D'Amours.
Mr. Ichord with Mr. Gephardt.
Ms. Holtzman with Mr. Bellenson.
Mr. Anderson of California with Mr. Leach of Louisiana.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 7203, the bill just under consideration.

The SPEAKER pro tempore (Mr. DANIELSON). Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 1177, MENTAL HEALTH SYSTEMS ACT

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes, with the House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia? The Chair hears none and, without objection, appoints the following conferees: Messrs. STAGGERS, WAXMAN, SATTERFIELD, PREYER, MAGUIRE, LUKEN, and WALGREN, Ms. MIKULSKI, and Messrs. BROYHILL, CARTER, DEVINE, and STOCKMAN.

There was no objection.

MORE THAN 100,000 VETERANS AND ELIGIBLE DEPENDENTS MAY NOT RECEIVE EDUCATION CHECKS IN SEPTEMBER BECAUSE OF OMB DILLYDALLYING

(Mr. ROBERTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROBERTS. Mr. Speaker, as incredible as it may be, the Veterans' Administration has apparently run out of money for the payment of education and training benefits for more than 100,000 veterans and eligible dependents due in September.

The Veterans' Administration has informed the committee that in July it recommended a supplemental request to the Office of Management and Budget for $75 million to meet the education and training payments through September 1980. The VA realized in July that they had not requested sufficient funds for fiscal year 1980.

OMB's attitude was predictable. Its response to the agency was that no supplemental was necessary in that a transfer of funds from the compensation and pension accounts could be made to correct any shortfall, if necessary. Although VA officials attempted to establish that this could not be done, OMB insisted there was no problem. Since July OMB has done nothing and word has gone out to all VA regional offices that many veterans and dependents will not be receiving checks in September because the Agency is now out of money.

It should be made clear, Mr. Speaker, that the problem is in no way the fault of the Appropriations Committees. To the contrary, Chairman EDWARD BOLAND and members of his Subcommittee on HUD-Independent Agencies have always demonstrated their willingness to provide the necessary funds for all veterans' programs authorized by the Congress. We know the Appropriations Committee and the House would have acted promptly on any reasonable request submitted by the Office of Management and Budget.

I felt I should explain the situation to all Members today because of the many inquiries the committee has received regarding the matter. To the best of my knowledge the overwhelming majority of veterans will receive their checks in September; however, those eligible to receive advance payments, work-study payments, retroactive and special payments for the month will not be receiving checks. I am told this will probably affect some 100,000 individuals.

Mr. Speaker, it is inconceivable that this has happened. As I said on the floor of the House a few days ago when we voted overwhelmingly to override the President's veto of H.R. 7102, I do not understand the attitude of some administration officials about veterans. Apparently the same OMB officials who advised the President to veto H.R. 7102 are responsible for this problem. One can only conclude that it is another case of extremely poor management by OMB or another demonstration of a total lack of sensitivity for veterans by the Office of Management and Budget and this administration.

I would strongly urge the Director of the Office of Management and Budget to make the proper request to the Appropriations Committees of the Congress and that we act immediately to resolve the matter.

FEDERAL AGENCY WOULD RUIN THIS MAN

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. HUBBARD. Mr. Speaker, I want to bring to the attention of my colleagues a situation involving the Federal Aviation Administration and my constituent, Mr. Donald Farrington, Jr., Farrington Aircraft Corp., Paducah, Ky.

The following editorial, written by Jack Paxton, editor of the Paducah Sun, relates this situation very clearly. I am sure this is not an isolated case. How many times must we be confronted with this kind of behavior before the Congress will act? We are faced with a runaway bureaucracy and need new tools to handle it. The choice before this body is between representative government, where laws are written by elected representatives of the people, and government by bureaucracy, where nonelected officials remain faceless, nameless, and unresponsive to the American public. Mr. Speaker, I submit the following:

FEDERAL AGENCY WOULD RUIN THIS MAN

(By Jack Paxton)

The man I'm writing about didn't want publicity. He feared it would hurt him with those who are trying to punish him. But the proposed punishment is so unjust, so outrageous, that I'm doing this on my own, hoping to God it helps him more than it hurts him.

For more than two years Don Farrington Jr., has been trying to start up a small general aviation airport on the south side of Paducah. It's the kind of airport that serves the little man who loves flying but can't really afford it, an airport which caters to the people who want to fly homebuilts or ultralights or gliders or do skydiving or buy 80 octane gas for their elderly airplanes because they were designed to run on it but almost nobody sells it anymore.

It's the sort of airport which is difficult to operate these days, much less start from scratch. The economics and government regulations of the day are of a nature to be challenged by only the most determined. These airports are going out of business by the score. Nobody builds them anymore.

But that's what Farrington has been doing every spare minute away from his full-time flying job with Pan American. I've watched him. The hours he's put in, the difficulties overcome, are staggering. I've been silently, unwillingly betting against him for two years. I just didn't see how he could make it.

But slowly he's been moving. In the last six months he reached a stage where meaningful money was coming in. Lately I've been thinking he might actually pull it off. Though I still wonder if it was worth it to him. He looks worn out. His customers joke about him having permanent, possibly terminal, jet lag. But while we joked we were admiring his grit. It's hard not to respect a man who's willing to work so hard for something he wants.

One of the things which has allowed Farrington to stay in business is a contract to make a nightly freight run around Kentucky and parts of the midwest. It adds to the revenue of such runs if one can get permission from the Federal Aviation Administration to also carry what are called hazardous materials. They're almost never in fact very hazardous but much paperwork is necessary to get the permission.

Farrington submitted the paperwork, went through the lengthy process, then was told by an FAA official that everything was OK. Farrington took it as verbal permission, believed he could begin carrying the additional materials. He began to do that and almost immediately was hit with a ramp check in which his plane was found to be carrying dry ice and some mildly radioactive pharmaceuticals, so-called hazardous materials though neither would have endangered anyone.

Farrington told FAA inspectors he's been given verbal approval but didn't yet have the official papers in hand. He since got them without submitting anything in addition to his original documents but that wasn't satisfactory to the agency.

A second charge against Farrington was that a pilot who made his freight run one night was unqualified. The basis for this was that the man had been checked out on the run by an "examiner" instead of a "check pilot." Both are designated by the FAA to test whether people can fly, but there is a technical difference. (The pilot in question is himself an examiner in Lear jets and flies big transports for Flying Tiger lines.)

Both Farrington's alleged offenses might seem, to the layman, on the technical side and slightly mild. Not so the punishment. The other day the FAA told Farrington he must close his entire air taxi operation for sixty days. That's all charter and freight service, his main revenue producers, for which he has invested in two very expensive twin-engine planes. Stop it all for two months.

That isn't just punishment. It could be capital punishment, as far as his business is concerned; tantamount, after years of grinding work and borrowing to the hilt, to putting the man out of business.

How can he close for two months and make it back? I'd bet he couldn't make payments on his loans for two months if he was shut down.

Almost anybody who's dealt with the FAA knows you need a specialized lawyer if it gets after you; someone who knows the intricacies, habits, inclinations and preference of this labyrinthine monster.

So Farrington called an FAA attorney in Washington who was recommended to him. The lawyer said yes, he'd take the case, but it would cost Farrington $1,500 to get in the door and $6,000 to $8,000 in legal fees if he carried the whole case through. In addition, the lawyer said, Farrington had better be prepared to spend the better part of the next two months on this matter—don't plan to do much flying for Pan American or much that is productive toward increasing, or even preserving, his business.

And oh yes, said the attorney, don't do the least thing to make the FAA angry. Don't go public. And have a real, nice, polite attitude, for as you have already had occasion to note, the FAA is not only lawmaker, enforcer, accuser, prosecutor and jury—it is also the judge and the punishment it can inflict is limited pretty much by its own whim.

A $1,000 fine, I feel certain would have been plenty to get Farrington's attention, given his present circumstances. And it would have been more in line with the seriousness of the charges. Plus he's got his papers and surely wasn't going to make this mistake again.

But now, at best, even if Farrington wins a total victory and the FAA levies no punishment (unlikely as that is), he'll be out $6,000 and two months of time he needs to keep his business going. At worst, of course, the punishment the FAA has already decided upon will stand and he won't have to worry about his business anymore.

I've taken it on my own to publish this because the punishment so grossly overshadows the offense. It is so wrong. I can't believe, if enough people know about it, that this will be allowed to happen. I can't believe this unfeeling, unaccountable federal mammoth will be allowed to routinely plow under an individual who has worked so hard.

This kind of outrage is not unheard of—in fact in recent years it's become increasingly frequent: the ruination of small businessmen by more or less routine regulations, inspections, paperwork and punishments inflicted by federal agencies which write their own rules and are held accountable to no one.

It's got to stop somewhere.

□ 1820

THE POUGHKEEPSIE RAIL BRIDGE—A VITAL RAIL LINK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. GILMAN) is recognized for 60 minutes.

Mr. GILMAN. Mr. Speaker, I wish to review with my colleagues a matter which should be of great concern to all of us.

In May 1974, the Poughkeepsie Railroad Bridge which spans the Hudson River in New York State was rendered impassable by fire which destroyed approximately 600 feet of roadbed and ties. The superstructure of the bridge was left intact.

Today, some 6 years after that fire, and 2 years after Congress authorized $9 million for the repair of the bridge, we are no closer to the reopening of this vital rail link than we were at any point in the past.

Conrail's continual refusal to repair and reopen this bridge is indicative of that agency's authoritarian attitude. It is as if that supragovernmental agency has decided to use this bridge as a symbol of their arrogance and lack of responsiveness. It is as if they are telling us that no one—not even the Congress of the United States—can tell Conrail what to do. And yet, Conrail keeps coming back to the Congress hat in hand, to bail them out of the ever-increasing deficits, much of which is attributed to their incompetence and arrogance.

This past month, the House Subcommittee on Transportation of the Appropriations Committee denied the request for a bridge repair appropriation which was urged by Representatives DODD, MCKINNEY, and MOFFETT of Connecticut, and by Representatives FISH of New York, and myself. Our amendment which was subsequently introduced on the floor of the House, called for an appropriation of $1 million in order to begin this long-delayed bridge reconstruction. Unfortunately, the committee's opposition prevailed.

In order to more fully acquaint our colleagues with the issues involved in this matter permit me to review the background of this issue which is not solely a bridge repair, but which has become a symbol of Conrail's inadequacies and unwillingness to meet the needs of our Nation and the Northeast.

Soon after the burning of the Poughkeepsie Bridge, on May 8, 1974, the Penn Central Co. sought funds for bridge repairs from the Federal Government under the Regional Rail Reorganization Act. Our rail administrators readily admitted that there was a vital need for this rail link and noted that they felt the Federal Government had a stake in helping to fund its restoration.

W. Gifford Moore, who at the time of the bridge fire was the president of the Lehigh & Hudson Railroad, received estimates stating that the total cost of the repairs would amount to less than $1 million. An insurance settlement provided a repair fund of $359,000 which is still being held in an escrow account. Mr. Moore, who is now a consultant with Genessee and Wyoming industries, informed me that the night the bridge burned the railroad was given an estimate of $600,000 and a projected 6 months for the completion of the repair work.

In January 1975, a proposed three-party bridge repair agreement was announced whereby the State of New York and the Penn Central would share the cost of the repair, with the Federal DOT picking up that portion of Penn Central's share that exceeded $350,000. While this contract apparently made several round trips among the parties involved without gathering a single signature, repeated statements were made by all concerned parties, that only minor problems remained to be ironed out and that the repairs would soon be commenced. Later, when Federal participation was eliminated from the agreement and Penn Central received its insurance settlement for the bridge damages, still another contract began another protracted meandering through the New York State bureaucracy and the Penn Central offices.

Please note that at about that time, the State of Connecticut offered to help subsidize the repair of the bridge in the amount of $450,000 because of the vital importance of the bridge to rail freight traffic to the State of Connecticut. A glance at any rail map readily discloses that, without the Poughkeepsie Railroad Bridge, Connecticut has no direct access to the West. All rail freight traffic must detour through Massachusetts to gain access to and from Connecticut. Thus the Poughkeepsie Bridge has been and remains vital to the interests of the State of Connecticut.

On January 8, 1975, Raymond T. Schuler, then commissioner of the New York State Department of Transportation, advised me that a basis for agreement for bridge repair had been reached and that the agreement would be signed within the next few days.

On March 26, 1975, in reply to my inquiry as to why that agreement had yet to gain a single signature, Commissioner Schuler advised me that—

> The only delay which occurred in drafting a written agreement resulted because the engineering staff of the Penn Central had to update their engineering cost estimates, and added that a meeting on March 14th had clarified those concerns, and that the review of the agreement was proceeding quickly.

Then abruptly, all references to this agreement ended. Rather, New York State began to argue for the Poughkeepsie Bridge as a non-Conrail freight route. I felt obliged, on April 10, 1975, to write to Commissioner Schuler asking him if he was now putting preconditions on the restoration of the bridge. His May 6, 1975, reply stated that there were no preconditions on the repair of the bridge and that New York State had decided to forego Federal participation in the repair contract in order to "hasten the preconstruction process."

Subsequently, in correspondence dated June 10, 1975, Commissioner Schuler advised me that the two-party idea was acceptable to the State and that the only cause of the current delay in forwarding this document to the Penn Central trustees for execution was the lack of an appropriation of funds by the State legislature from their 1974 rail transportation bond issue. Acting on this advice, I appealed to our State legislators to seek prompt passage of the necessary appropriation.

On December 23, 1975, Commissioner Schuler stated that—

> Within hours of gaining legislative and gubernatorial approval authorizing the financing of our rail program, a draft agreement was forwarded from his Transportation Department to Penn Central. The signed agreement was then transmitted to Penn Central who then had to petition the Federal Bankruptcy Court for permission to enter into the agreement to repair the bridge.

The court's approval was granted on November 10, 1975. On November 11, 1975, the Penn Central forwarded copies of this agreement to the appropriate State officials for their signatures.

On April 1, 1976, Conrail's conveyance date, the director of the budget was the only State official who had approved the execution of the agreement.

I was then informed that the execution of the agreement was then contingent upon the State's ability to market rail bonds. I could not understand this new excuse for the delay, since the New York State Legislature had apropropriated all of the necessary funds for the restoration of this vital span in the rail preservation bond issue of 1974.

And despite all those delays, the support for repairing the Poughkeepsie Railroad Bridge grew. The Governors of New York and Connecticut continued to urge its repair. The final rail systems plan, issued by the U.S. Railway Association in mid-1976, included the Poughkeepsie Railroad Bridge as a vital rail link that must be repaired.

In August 1977, in concert with my distinguished colleagues, the gentleman from New York (Mr. FISH), and the gentleman from Connecticut (Mr. MOFFETT), we conducted ad hoc congressional public hearings in Poughkeepsie regarding the future of the Poughkeepsie Bridge. Over 400 pages of testimony was taken from public officials and shippers from throughout southeastern New York and western Connecticut. All but one pleaded with us to restore rail service on the bridge. Almost every witness focused attention of the unbelievable 150-mile detour north to Selkirk and then south down the Hudson's east bank caused by the failure to reopen the bridge route into New England. All pointed to the increased cost of freight being incurred as a result of this detour, and all the wasted fuel and energy. All pointed to the unconscionable and substantial delays and losses being sustained because of the overcrowded railyards at Selkirk, noting that all rail traffic to and from New England could be paralyzed by inclement weather or by sabotage of the only intact bridge across the Hudson at Selkirk.

Armed with this data, we presented our case for the repair of the Poughkeepsie Bridge to the 95th Congress in 1978. The Senate approved an amendment introduced by the senior Senator from the State of Connecticut, Mr. RIBICOFF, authorizing $9 million for the repair and reactivation of the bridge. Later in that same session, the House passed an identical amendment which I introduced as part of the Railway Association Amendments Act of 1978 which was signed into law by the President as Public Law 95-265.

What had transpired prior to the adoption of that law was a dress rehearsal in Government procrastination; what transpired subsequently was a full-scale performance of "passing the buck."

Soon after the final adoption of the legislation, we were informed by both John M. Sullivan, Administrator of the Federal Railroad Administration, and by John L. Sweeney, Vice President for Governmental Affairs at Conrail, that "preliminary engineering feasibility studies" would be begun to determine the "condition of the piers supporting the bridge" and "to determine what part of the $9 million authorization is needed to reconstruct the bridge and the facilities needed to support it." It was further pointed out that 'we do not know precisely how long it will take to complete the preliminary engineering work."

This preliminary engineering work was delayed time after time. Despite several requests for status reports from the FRA by my office and by my colleagues, Mr. FISH and Mr. MOFFETT, the "preliminary engineering work" study was not released until April 14, 1980.

The results of the Deleuw, Cather & Co. report were astounding, projecting that "cost levels for restoration of the bridge itself would range from $19,762,000 to $26,938,000." A project that would have cost only some $600,000 in May 1974 had skyrocketed in a 6-year period to $26 million in April 1980.

That ridiculous cost estimate—which was inflated an additional $10 million to include a signal system and high speed trackage on either side of the bridge for a total of some 85 miles—was contradicted by a study completed at about the same time by the Providence & Worcester Railroad, which estimated a cost of $9,500,000 for the bridge repair.

It should be obvious to our colleagues, that Conrail is determined that it does not want to repair this bridge and is not going to cooperate in any manner in bringing it about.

And now we are confronted with a new argument. Suddenly Conrail officials are talking about demolition of the bridge, an exercise which the DeLeuw, Cather report estimates would cost in excess of $10 million—$1 million more than the repair estimate by the Providence & Worcester.

Since the official FRA report contends that demolition would cost more than the estimated $9 million cost of repair, why not repair and reopen this important rail route?

The recent inaction by Conrail and by Congress have not gone unnoticed by those professionals who follow the rails. On August 11, 1980, Traffic World, a magazine published in Washington, printed a full page editorial entitled "A Bridge Over the River Hudson," which stated in part:

> Hundreds of millions of dollars were voted for the component agencies of the DOT, and in the case of the Federal Aviation Administration and the Federal Highway Administration . . . the totals are in billions of dollars. But there was not much debate or discussion about those big expenditure items. One item that did generate lively debate was an amendment, offered by Representative Benjamin A. Gilman (R-NY) that would add to the bill an appropriation of $1,000,000 to enable the Secretary of Transportation to make payments for the reconstruction of the railroad bridge over the Hudson River at Poughkeepsie, N.Y., as authorized by section 6 of Public Law 95-265 . . .
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> It is of prime importance to the transportation needs of not only southern New England, but also southeastern New York, and for the coal-producing regions of Pennsylvania, Virginia, and Kentucky, Mr. Gilman said . . . The Poughkeepsie Bridge provides the shortest rail route between southern New England, southeastern New York, points on Long Island into metropolitan New York and the coal fields of Pennsylvania, Virginia, and Kentucky. At a time when we are considering our Nation's energy needs, when our utility companies are exploring methods of converting from gas-fired generation to coal generation, this could be an important supply route for the coal-burning power plants in the New England area. . . . Restoration of the bridge would avoid an unbelievable 150-mile detour through the overloaded rail yards up at Selkirk, New York . . .

The Traffic World editorial concluded:

> The arguments by proponents of the bridge repair project appear to us to be too strong to be ignored. We hope a way can be found, and soon, to make the bridge serviceable again. The fate of the Poughkeepsie Bridge should not be like that of the River Kwai bridge.

We proponents of the repair of the Poughkeepsie Bridge also feel that this argument has gone on much too long. Conrail refuses to repair the bridge, despite the dictates of commonsense, for no reason other than to flaunt its independence of Congress and to show that this supraagency takes orders from no one.

The time has come for the Congress to reassert its authority over this monster that we have created, and which we subsidize year after year to the tune of billions. The time has come for Congress to reject the facetious reports issued by the FRA which inflate this simple cost of construction three and four times above and beyond other reasonable studies and to consider the following saliant facts:

The Poughkeepsie Railroad Bridge offers the shortest and most fuel efficient route between the energy-starved industries and utilities of New England and the rest of the Nation.

The Poughkeepsie Bridge is the major gateway for coal and beef to New England.

The utilization of the Poughkeepsie Bridge is called for in the final rail systems plan of 1976.

The Poughkeepsie Bridge is the best way to slow down the march of freight shipping to the truck clogged highways of the Northeast.

The Poughkeepsie Bridge is an effective way of detouring the inclement weather which sometimes closes the Selkirk route.

The Poughkeepsie Bridge, the only extant rail route across the Hudson south of Albany, is vital to our national security.

The Poughkeepsie Bridge is structurally sound and should be repaired by its owners.

If not repaired, the Poughkeepsie Bridge will become a safety hazard to river traffic and to residents of the densely populated city below.

The Poughkeepsie Bridge avoids an unbelievable 150-mile detour through

Selkirk, providing ready access by rail to southern New England, southeastern New York, Long Island, and metropolitan New York.

The Poughkeepsie Bridge will shorten rail travel time from Washington, D.C., to New Haven, Conn., from the current 59 hours to 17 hours.

Some of our local editorialists have argued in support of the repair of this bridge:

The Newburgh, N.Y., Evening News:

It's hard to understand why ConRail stubbornly refuses to repair the fire-ravaged Poughkeepsie railroad bridge, despite offers of financial help from New York and Connecticut.

ConRail's approach is thought by some to be illogical. It says that improved rail service brought about by the repair of the Poughkeepsie Bridge would increase rail freight competition in the northeast.

Let's say that ConRail's attempts to jazz up the service once provided by Penn Central has been received with something less than enthusiasm. Wasn't ConRail supposed to end 1979 with a hugh profit? Now it is asking for $1.3 billion in federal subsidies.

Some day, when the span begins to deteriorate and fall apart, pieces will rain down on land and river. There will be a big hue and cry about removing it as a hazard to river navigation. And do you know who will pay for this? The taxpayer.

Efforts to get Congress off its legislative seat and force ConRail to repair the bridge failed, so it looks like the railroad seems to be able to determine its own destiny in all but one field: profit.

The Walden, N.Y., Citizen Herald:

Time is long overdue for ConRail to restore a vital freight link in the Northeast—the Poughkeepsie railroad bridge which is vitally needed for direct connections between New York and Southern New England.

ConRail's judgement has been questioned repeatedly in refusing to put the fire-damaged span back into service. Congressmen Ben Gilman of Middletown and Toby Moffett of Connecticut have ably pointed out the strategic importance of the bridge. But ConRail, the questioning of whose judgement may well become a national pastime, is adamant.

All western freight consigned to New England, and all New England freight consigned to the west, must pass through Selkirk, ten miles below Albany, into Massachusetts. There is no direct freight link with Connecticut, a highly important industrial state. Rail freight must be routed . . . fifty to a hundred miles south again to major cities such as Hartford, Waterbury, Bridgeport and New Haven. At least a day in time is lost. . . ."

All that is just and reasonable calls for the prompt repair and restoration of the Poughkeepsie Rail Bridge. Let us hope that Conrail will finally respond to our transportation needs.

Mr. FISH. Mr. Speaker, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from New York.

Mr. FISH. Mr. Speaker, I thank my distinguished colleague from New York (Mr. GILMAN) for his initiative, his tenacity in this issue, and for his fine assessment of the importance of the Poughkeepsie Railroad Bridge. I fully concur with my colleague that repair of this bridge is of the utmost importance.

The Poughkeepsie Railroad Bridge is the only rail link across the Hudson River south of Albany. Our energy-starved industries in southern New England are in dire need of coal from the mines of Kentucky, West Virginia, and Pennsylvania. Rail traffic over this bridge would go a long way toward fulfilling this need.

Our consumers in the Northeast need beef from the Midwest, wheat from the Great Plains, and produce from the Sun Belt. The Poughkeepsie Railroad Bridge is the shortest and the cheapest means of transporting vital goods to New England. This bridge avoids the current 150-mile detour through the already overburdened Selkirk rail yards south of Albany. The Selkirk route is now so overburdened that the shippers of the region are forced to endure unconscionable delays and losses.

In light of the current energy crisis, this bridge's restoration is more important than ever. Rail traffic should be encouraged as an alternative to the truck traffic which severely clogs the highways of the Northeast. Our air is polluted and an alternative is needed to the truck shipments which are now the lifeline of this region. This bridge is the only viable rail alternative to the highway corridor. The fact that only one rail bridge, the one at Selkirk, is now operable across the Hudson, fosters a national security threat in the event of a disaster of sabotage. The Poughkeepsie Railroad Bridge is vital to the health and safety of New England, the Northeast, and the Nation.

It is also essential for the health and safety of the residents of the city of Poughkeepsie, N.Y. The structure is deteriorating so rapidly that it is literally falling apart above the city of Poughkeepsie. It is endangering lives and property and presents a very real hazard.

For all of these reasons, I strongly urge the revitalization of this important rail bridge.

Mr. GILMAN. I want to thank the gentleman from New York (Mr. FISH) for joining this continual battle, for conducting hearings in his own district, for continual appeals to the Conrail agency to respond to the needs of our area and, hopefully, to the needs of the entire Northeast.

● Mr. OTTINGER. Mr. Speaker, I thank the distinguished gentleman from New York (Mr. GILMAN) for yielding his time to me, and I congratulate him for the outstanding leadership he has shown us all by keeping the Poughkeepsie Bridge issue alive.

I am vitally interested in the future of this bridge because of its importance to the economy of the entire Hudson River Valley.

My 24th Congressional District of New York encompasses a portion of Westchester County, an area just north of New York City. I find it ludicrous that shippers in my district who desire to ship by rail to, say, New Jersey, must send their cargo straight north for about 150 miles, to Albany, and then down the western bank of the Hudson for another 150 miles, to the rail yards of northern New Jersey. Mr. Speaker, a trip which is 20 to 30 miles by auto is 300 miles by rail.

This would be an intolerable situation if there was no intact rail structure crossing the Hudson south of Albany, but in fact there is such a structure.

The Poughkeepsie Bridge, if the several hundred feet of ties and roadbed were repaired, would cut the rail distance from my congressional district to New Jersey in less than half.

The fact that Conrail has refused to repair this minor segment of roadbed increases the costs to shippers in my congressional district and to consumers in the entire area.

The day is fast approaching when the utilities of New England are going to be dependent upon coal shipments from our coal producing sister States of Pennsylvania, West Virginia, and Virginia. The most cost-effective means of shipping coal is by rail, and yet, because the Poughkeepsie Bridge is out of commission, the Hudson River is as much of a barrier today as far as coal shippers are concerned, as it was to travelers 200 years ago. It is deplorable that such a major portion of our Nation as New England can remain completely cut off from rail traffic from the rest of the Nation.

I join with my distinguished colleagues in urging both Houses of Congress to take appropriate action to fund the repair of this vital link before it is too late. The loss of the Poughkeepsie Bridge is unforgivable, and is a mortal blow to the economy of our entire region.●

GREEN SPONSORS BILL CREATING HOLOCAUST MEMORIAL COUNCIL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. GREEN) is recognized for 10 minutes.

● Mr. GREEN. Mr. Speaker, on November 1, 1978, President Carter created his Commission on the Holocaust to make recommendations for an appropriate American memorial "to those who perished in the holocaust." The Commission, in its September 1979 Report to the President, recommended a "living memorial" to consist of a museum, an educational foundation, a Committee on Conscience, and annual National Days of Remembrance in order to make available to the people of this great Nation increased knowledge of the holocaust and to stimulate awareness of its far-reaching significance.

I was honored to be appointed to serve as a member of that esteemed Commission, and its successor body, the U.S. Holocaust Memorial Council. Today I join my congressional colleagues on the Council in introducing legislation to create a permanent Holocaust Memorial Council. I am pleased that so many of our House colleagues have joined in cosponsoring this legislation and hope that the full House will promptly pass this bill.

The holocaust signifies a watershed event in human history in which incalculable suffering was inflicted upon innocent human beings. Not only was there dreadful loss of life, but also an entire way of life was almost erased. The event challenged moral, spiritual, ethical, and political standards of the modern, civilized world with consequences of enormous significance for all humanity. By establishing a permanent Holocaust

Memorial, not only the agony and suffering of these innocent human beings will be commemorated, but also the memory will forever be preserved. And by remembering, we attempt to fulfill, at least in part, our moral obligation to deliver mankind "from apathy to evil, if not from evil itself."

I feel that it is imperative that we, as lawmakers of this Nation, provide the American people an opportunity to remember the holocaust in order that we, and all mankind, may dedicate our energies to the prevention of any other such atrocity.

Last year, we observed Days of Remembrance of the Victims of the Holocaust in a ceremony in the Capitol. At that time, Senator JOHN DANFORTH of Missouri delivered a thoughtful message on the meaning of the holocaust. I believe that the text of his address should be included in the CONGRESSIONAL RECORD, and hereby call it to the attention of my colleagues:

SERMON PREACHED BY THE REVEREND JOHN C. DANFORTH, A U.S. SENATOR FROM MISSOURI, ON THE OCCASION OF DAYS OF REMEMBRANCE OF THE VICTIMS OF THE HOLOCAUST, AT THE NATIONAL CATHEDRAL, WASHINGTON, D.C., SUNDAY, APRIL 29, 1979

It is a national observance and an interfaith congregation. We commemorate the death of six million Jews. Yet the message which follows is unmistakably Christian in its content. It is delivered by a minister of the Gospel in a Christian Cathedral with the intention of evoking in Christians a response to the Holocaust.

The resolution, enacted by Congress and signed by the President denominates this weekend "Days of Remembrance of the Victims of the Holocaust." Two days were selected, not one—the distinct days of religious observance for Jews and for Christians. The intention of the resolution was to encourage a consideration of the Holocaust from at least two points of view: Jewish and Christian. For if that hideous course of events is never to recur, it is the responsibility not only of Jews as victims to reflect on the meaning of the Holocaust; it is the responsibility of Christians as well. And so, the time has come for something more than generalized, non-sectarian good feeling. The time has come for an examination of the Holocaust in the light of what each of us professes as believing persons.

Yesterday, Jews throughout America had a special occasion to reflect on that set of events which has touched them and their families so tragically. Today is an opportunity for Christians to consider the most fundamental premises of their faith, and on that basis to assure that the Holocaust, and nothing like it, can be allowed to happen again.

The Holocaust must be considered the darkest single period of human history. It had its beginning in 1933 when Hitler came to power in Germany, and quickly proceeded with the burning of books by Jewish authors and the establishment of a concentration camp at Dachau. By 1938, synagogues were burned and Jewish shops and businesses were pillaged in Germany. In 1938 and 1939, German Jews were imprisoned, and Jews living in conquered eastern Europe were forced into labor camps and sealed into ghettos.

Then, the killing began in earnest and on a very large scale. It started in Russia, where highly efficient mobile units followed the advancing German army murdering some one million Jews. Then the death camps went into full operation. Throughout Germany and occupied Europe, Jews were herded into cattle cars and transported to teeming camps where they were exploited, starved and finally exterminated. At Auschwitz, four gas chambers, each capable of holding 2000 persons at a time, were kept busy. Throughout the war, the task of murdering Jews assumed a greater priority to the Nazis than fighting. Trains carrying Jews to concentration camps were deemed more important than trains carrying ammunition to the front. When fuel to incinerate corpses ran out, bodies were piled up in the open air.

In the end, six million Jews had been murdered. One million of them were children. Nearly 90 percent of the Jewish population of Poland was exterminated. It was true genocide. It was a systematic effort to destroy an entire people just because they were a people—they were Jews.

Christians often point out that some of their faith were also victims of the Holocaust, dissenting clergy in particular. This is true, but this was not genocide. Christians were not put to death because they were Christians. Jews were put to death because they were Jews.

There are those who would prefer to reconstruct history—to convince us that the Holocaust was the work of a few demented individuals whose deeds were hidden from the public. What strikes the reader of Holocaust literature is that such a reconstruction of history could not conceivably be true. The fact is that the Holocaust was not a brief and discrete episode carried on by a limited number of people. It was an enormous undertaking, spanning 12 years, and involving thousands, if not hundreds of thousands, of participants.

Consider, if you will, the enormous number of persons required to round up six million Jews. Consider the complex logistics of transporting them to death camps. Consider the policing of the ghettos, the mechanics of confiscating property, the building and manning of the camps, the supervision of forced labor. Those who participated in the liquidation of European Jews, those who witnessed it firsthand, and those who heard about it and countenanced it exceed our ability to estimate their number.

For some, the Holocaust has created a classic crisis of faith. Richard Rubenstein put the question very clearly when he asked, "How can Jews believe in an omnipotent, beneficent God after Auschwitz?" He stated that "A God who tolerates the suffering of even one innocent child is either infinitely cruel or hopelessly indifferent." Rubenstein's solution to this theological dilemma is to reject the God of History, the God of Abraham, Isaac and Jacob, and to embrace what he calls the "omnipotent nothingness" of existentialism.

But to blame or discredit the God of History for the events of the Holocaust, to dismiss Him as cruel or indifferent, misses the point entirely. The Holocaust was not the doing of God. We cannot escape responsibility by blaming it on Him. It was, instead, the doing of fallen man. Like sin everywhere and in all times, it was wholly inconsistent with God's scheme of things. The Holocaust was the quintessence of sin—the ultimate example of the abuse of human freedom.

It is as old as the beginning of Genesis. God created man good and also free. That is the story of Creation. And the story of the Fall is that we abuse that freedom, rebel against our creator, and war against our brother. The Holocaust testifies not to the cruelty or the indifference of God, but instead it testifies to the profound seriousness, the awful consequences of human sin. Our tendency to evil, yours and mine, is not a trivial matter. It is not a game to be taken lightly. It is an overturning of God's order, for which we are accountable, and which leads, in its extreme manifestation, to Holocaust.

The extreme to which sin was carried by the Nazis creates a sense of nightmarish unreality in our minds. It is difficult for us to comprehend the magnitude of the Holocaust. The vast number of victims and the size and duration of the undertaking tempt us to dismiss the Holocaust as an aberration, wholly unrelated to the world we know. Yet on closer inspection, each arrest, each beating, each confiscation was a separate act, committed at a single moment in time by a responsible individual. The Holocaust was the ultimate extension of sin, but it was sin—the same sin which has been part of human behavior since the fall of mankind—the same sin to which each of us will yield today.

Now let us on this Sunday observance face an uncomfortable fact squarely and frankly. The murder of six million Jews was accomplished by people who, while having reverted to paganism, had been raised in the Christian faith. Their ideology was, of course, hopelessly twisted and insane. But it sprang, somehow, from the traditions of Christianity—in a contorted, grotesque shape, wholly inconsistent with the tenets of our religion.

In the Jewish Historical Museum in Holland, a photograph shows SS officers celebrating Christmas, the birth of our Lord, in the grisly setting of a concentration camp. How, we ask, can it be possible for people to have even a passing acquaintance with the Christian faith, and at the same time participate in the extermination of Jews? There were, of course, Christian clergy who were imprisoned and killed because their witness to their Lord compelled them to condemn the actions of the Nazi regime. Yet others found no apparent conflict between their own religious tradition and the atrocities they were perpetrating.

It has been said that the most hideous sin is committed in the name of religion. The Holocaust was not the first time Christians have persecuted Jews. In her history of the Fourteenth Century, A Distant Mirror, Barbara Tuchman reports that, "Throughout the century, the church multiplied decrees designed to isolate Jews from Christian society."

In 1348, 11 Jews were burned alive in Savoy, allegedly for poisoning wells. A year later, in Basle, the entire Jewish community was burned to death in a wooden house especially constructed for the purpose. A month later, in Strasbourg, 2,000 Jews were taken to a burial ground where those who did not accept conversion to Christianity were burned at rows of stakes. That same year, flagellants killed 6,000 Jews at Mainz and 3,000 at Erfurt. In 1378 a mob of Christians rampaged through the Jewish quarter of Paris, to the cry of "Noel! Noel!", looting stores, throwing Jews in the river, and subjecting children to forced Baptisms.

Brutally antisemitic activity, perpetrated by persons thoroughly familiar with Christianity, or even worse, in the name of Christianity, is, therefore, not of recent origin. Its roots have been traced to the time of the early church.

Last month, in a lecture at Georgetown University, Cardinal Franz König said that "Anti-semitism . . . has no basis in theology."

That is the very least that should be said. But it is not sufficient to state the negative—to say that anti-semitism cannot be based on Christian theology. We must go further and recognize the positive—that the Christian faith excludes the possibility of religious persecution—that religious persecution of any kind is flatly contrary to the most fundamental beliefs of Christianity.

That is precisely why it is appropriate to reflect on the Holocaust in the light of the Christian faith. It is not simply a matter of exhortation to do good and avoid evil. It is not simply a matter of an emotional remembrance and an appeal to treat one another in

a more humane manner. Emotions are impermanent. They come and go. Exhortations are forgotten soon after they are made. A commitment not to persecute must be something more than a fleeting whim, emanating from the good feelings of the moment.

Elie Wiesel entitled his moving account of his own dreadful Holocaust experience simply Night. How descriptive that word is. It was, in fact, night. It was the blackest epoch of history, born in the darkest regions of the soul.

St. John said that Christ is the light of men, that the light shines out in the darkness, that the darkness has never been able to overcome that light. As light and darkness are mutually exclusive, so bigotry and persecution cannot coexist with the Christian faith. Those, then, who would celebrate Christmas in an SS quarters in Holland—those who would should "Noel, Noel" while rampaging through the Jewish quarter of Paris, do so not in the service of Christianity, but in blasphemous contempt for the faith of the church.

At the heart of the Christian ethic is a humble and dedicated acceptance of the relationship we are commanded to have with our neighbors and with our God. These basic principles of our faith were rejected in the 1930's and 1940's. If we are to avoid Holocausts of the future, you and I have an obligation to accept these basic principles today and to act in accordance with them.

First, we are compelled to recognize that all people, no matter who they are or where they are, are the children of God. If they are black or white, old or young, Jew, Christian or non-believer, American, Russian or Chinese, all people are God's people—created by Him and for his purposes, and entitled to our respect—no our love—because they are His. We cannot humiliate, we cannot destroy others because to do so is to destroy the people of God.

Second, we are expressly forbidden to judge or condemn other people. This is a point made not just once or twice, but over and over again in the New Testament. It is a message of humility. It is a recognition that we have not been commissioned to judge others, and that we who profess the Christian faith stand ourselves under the judgment of God. St. Paul put it very clearly: "There is no just man, not one . . . no human being can be justified in the sight of God." St. Paul was not speaking only of the other person—of those who do not believe what we believe. He was speaking of you and of me. The notion that we are somehow better than others and that we are vested with some special commission to impose what we believe on others contradicts the meaning of the New Testament.

Finally, the Christian faith proclaims that the establishment of the Kingdom of God is His work and His alone. The establishment of a new order—a Third Reich—with an idolized fuhrer as its leader is, in its essence, an act of rebellion against God. It is the attempted overthrow of the Kingdom of God and its replacement with another kind of kingdom, claiming absolute allegiance and asserting absolute power over its subjects—even the power to commit mass murder in the name of the state.

It was said by the Nazi war criminals, in apparent self-justification, that they were only following orders. That kind of allegiance to a fuhrer is not compatible with total allegiance to the Christ. Ultimate commitment cannot be shared. If such a commitment is made to God, it cannot simultaneously be made to any earthly power. That is why totalitarianism—the total claim of the state on the individual—is fundamentally incompatible with the Christian faith. Nazism, with its mass rallies and banners and twisted cross symbol was a parody of religion—a usurpation of the role of the church.

God establishes His own Kingdom by His own Son, with His own power. That is the faith of the church. To wrest that power from God, to claim allegiance to another kingdom, and to set oneself up as judge of others is to assume the role of antichrist.

What, then, can prevent the occurrence of another Holocaust? It cannot be a fleeting mood of kindness nor an exhortation from this or any other public rostrum. It can only be a faith which alone claims our total commitment, with which a holocaust cannot coexist, and which commands us that we are to love the Lord our God with all our hearts, our souls and our minds, and we are to love our neighbors as ourselves.●

WHO'S THE PRESIDENT TRYING TO KID?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Carolina (Mr. CAMPBELL) is recognized for 10 minutes.

Mr. CAMPBELL. Mr. Speaker, I have been deeply concerned lately as to the direction of the campaign for President in this country.

Mr. Speaker, President Jimmy Carter is kidding himself if he believes the American people will fall for his election year tactics of making personalities rather than the abysmal failure of his administration the issue in 1980.

Here is a President who has nearly quadrupled the inflation rate; who has raised taxes 75.6 percent to $628 billion; who has increased Federal spending over $230 billion, who has increased the national debt by $300.9 billion. And here is a President who is now trying to correct his imprudent and irresponsible budgetary policies by deliberately leading this Nation into a recession.

This is the same President who now says economy and jobs are not the issues, because he will somehow do better the next time. And this is the same President who is desperately trying to divert the attention of the American public from his record to unsubstantial, scurrilous and, frankly, irresponsible attacks on the Republican nominee.

Well, you cannot fool all of the people all of the time, and Jimmy Carter is going to find out the American people are a lot smarter than he thinks.

The American people do not like the dirty politics that Mr. Carter and his people excel at. They will not tolerate a President whose Secretary of State has adopted, with the President's blessing, an activist political role unprecedented for one in his position; whose Secretary of Defense likewise, in an attempt to disguise the Carter administration's anemic performance on defense, abandoned the secrecy of the stealth technology, putting political gain over national security; whose Secretary of Health and Human Services flies around the country at taxpayers' expense to mount direct, personal and irrelevant attacks on Ronald Reagan; whose Ambassador to the People's Republic of China makes dangerous allegations about the Republican nominee in clear violation of the nonpartisan traditions of professional foreign service officers.

The net worth of the average middle-income American family has declined more than 8 percent since Carter took office. Regardless of how hard he tries or how low he is willing to stoop, Jimmy Carter will never succeed in diverting the attention of the citizens of this Nation from the state of their pocketbooks.

Mr. WALKER, Mr. Speaker, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, I wonder if the gentleman, knowing the area of the country that he represents and his concern about remarks that have been made over the weekend about Klan activities and the linkage, and so on, is aware of a news flash that just came over the wires indicating that a Member of this body has now formed a committee in which he is hoping to get more black voter participation, he says, but he made this statement:

□ 1830

Ronald Reagan is a clear and present danger to black America. He has been embraced and endorsed by the Ku Klux Klan.

I would say to the gentleman I do not know whether he is aware of that particular article that came in, but I am extremely concerned about this. It sounds to me like exactly the kind of smear campaign that he has been referring to. I would think the President of the United States, if he is going to be true to his statement, the last couple of days would repudiate this effort that is being done on their behalf.

Mr. CAMPBELL. I am appalled by this. I did not know and had not heard the text of what the gentleman has said.

I, unfortunately, am not surprised, because a member of the Cabinet of the President of the United States has been traveling about this country at taxpayers' expense, making the same charges for quite some time, and it is time they were exposed and put behind us. It is time that the politics of fear, and the politics of racism are removed from the scene in America. I certainly hope the President will repudiate this.

Mr. WALKER. I thank the gentleman for his statement, because I think that is what we are witnessing, a smear campaign of the worst kind. It was the President himself who raised the subject of the Ku Klux Klan when he addressed an audience in Alabama the other day. To have this follow on immediately afterward, being done in his name, it seems to me is an example of a smear. It looks almost like the White House plan. I think it is highly demeaning to the Presidency and to the White House to have this kind of thing take place. I would hope the President would immediately repudiate it.

Mr. CAMPBELL. I agree with the gentleman.

I would like to point out once again the President has used the Secretary of State in a partisan manner, that he has used the Secretary of Defense in a partisan manner, that he has used the Ambassador to China in a partisan manner, unprecedented actions. The Secretary of State and the Secretary of Defense and our Foreign Service officials are supposed to maintain continuity in the foreign policy of this Nation. Mr. Carter has now stooped literally to revealing national security statements. I am appalled by that. I think the American public should know it.

Mr. WALKER. I thank the gentleman.

TAIWANESE BENEVOLENT ASSOCIATION OF AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 15 minutes.

Mr. GONZALEZ. Mr. Speaker, I wish to point out this last Sunday on August 31, I had the high privilege and honor of being invited to address the Third National Convention of the Taiwanese Benevolent Association of America. It had a tremendous outpouring of presence, more than 2,500 persons attending that national convention or meeting. The most impressive thing about it, quite unprecedented for me, was to see the nature and the caliber of the leaders and the members of this organization, consisting of mainland Taiwanese, of Chinese ethnic descent, native Taiwanese and others in reflection of one of the most interesting and one of the most meaningful countries to the United States and to us, not only economically, but securitywise.

The association reflects the presence of very great people who are contributing through their talents and their ability to the commonwealth of our own country, the United States.

Most everyone there was a professional, either an M.D., a doctor, or technicians working for the great American corporations ranging from data services, communications services, IBM, Sperry Rand Corp., and everyone there almost without exception, was some kind of a professional and most noteworthy and inspiring.

Mr. Speaker, I offer for the RECORD at this point the text of my address:

REMARKS OF U.S. REPRESENTATIVE HENRY B. GONZALEZ, TAIWAN BENEVOLENT ASSOCIATION OF AMERICA, SHAMROCK HILTON HOTEL, HOUSTON, TEX., AUGUST 31, 1980

My friends: You have given me a special honor and very great privilege in inviting me to be a part of this meeting. I am delighted to be here, and I thank you for the opportunity to join you tonight.

We are, it is truly said, a Nation of immigrants. For some of us, the United States is a new place; others have been on this continent for generations, and can trace a family history back hundreds of years; but there are very few citizens of the United States who can call themselves true natives, aborigines.

In this sense, the United States is not unlike Taiwan. Like the United States, the great majority of the population of Taiwan is a population of immigrants, who have found their way there over the course of hundreds of years, sometimes alone, sometimes in small groups, and sometimes in very large numbers.

The United States reflects the heritage of many nations—and so does Taiwan. The Western name, Formosa, itself came from the expression of Portuguese mariners (Ilha Formosa—beautiful island) of the 16th Century, and the name of the adjacent islands, the Pescadores, is an expression of my own native Spanish. I feel certain that only a little searching would produce traces of Dutch culture in Taiwan, just as there are traces of Dutch culture in our own New York, for the Dutch arrived on Formosa and Manhattan at almost the same time—1624 and 1626, respectively.

Ours is a small world, and the same seas wash upon the shores of all countries, bringing us a common bounty, a common heritage and a common concern.

As immigrants, we have heritages that may be different, but our experiences have been common.

We, or our parents, have at one time or another, and for one reason or another, had to make the great and painful decision to seek life in another country. For my parents, there was really no choice: they fled revolutionary turmoil in Mexico, because my father certainly would have been killed had he stayed on in his beloved country. It was not an easy thing for him to leave Mexico, even to save his own life, because he left behind a family heritage of four hundred years. And, indeed, although my father lived out his life here in Texas, his heart never really left Mexico; though he loved the United States, he longed for all that he had left behind, and could never return to.

I know that there are some among you who could relate the very same story—a life left behind, a heart in two places, a struggle for a secure future in a new and very different land.

In this Nation of immigrants, that is the common thread, a universal experience. But we are here, for a common reason: this is the land of refuge and hope. And, Taiwan itself, is a land of refuge and hope.

We recognize here that people from many different places can live together in peace and harmony, can enjoy freedom, and can taste the fruits of prosperity. If we are free to move and work, if we are free to think and act for ourselves, then we can make the most of opportunities we have. We recognize that success in life is not simply a matter of keeping others away from whatever wealth there is; success in life is creating new wealth. It is not a matter of concealing jewels, but a matter of making new ones.

Freedom makes it possible for us to fail, but freedom also makes it possible for us to succeed, to be all that we can, on the basis of our own merit and work. It is freedom that we enjoy in the United States, and freedom is also enjoyed in Taiwan. The blessing of individual freedom binds these lands together, and brings with it the flowering of hope.

There are human yearnings that no one can explain. For example, no one can say how far back in human history music goes. No matter how far back we search, we find that human beings have created music. Why should this be? Music is here and gone; it lasts only as long as it is heard—but it is remembered and cherished, and is always a source of consolation and joy. Music cannot be eaten, it cannot be stored, it cannot be seen—and yet it is essential to us, an inseparable part of life.

There is also the yearning for beauty—for art, for great vistas of mountains or oceans, for green fields to see, for pictures or sculptures to look at, for buildings that please the eye and lift the spirit. But why is this?

Objects of art have no practical use of their own; places of great natural beauty are not likely to be economically useful; and a building that lifts the spirit provides no better shelter than an ordinary one—and yet these are things that we human beings need, yearn for, and sacrifice to obtain.

So it is with the spirit of freedom. It is possible to live and work without freedom, but no human being can live or work well without freedom. It is possible to be happy without being free, but it is not possible to be fully happy without being free. There is no way of explaining this human need for freedom—but there it is, an inseparable part of our living and being, a spirit that we never lose, and a spirit that can never be crushed nor taken away.

We in the United States come from many lands, and from many circumstances: but we live here with a common hope and belief, a common faith in the worth and dignity of human beings, and a common understanding that the only complete person is a person who enjoys the blessings of freedom. For we know that the spirit, the longing for freedom, is as much a part of the human soul as music or beauty, or even intelligent thought, or hope itself.

As the son of an immigrant, I know the hardship that is an almost universal experience among new arrivals. I know the hardship that my father felt because of the necessity to leave the land that his family had lived in for centuries; I know the hardship of somehow feeling a stranger in my own land—an American by birth, a Mexican by heritage. I know at first hand how difficult it was for my father to accept the reality that my brothers, my sister and myself, had a new and different citizenship, a new and different outlook, and that we would not be Mexicans, but Americans. Our heritage was one we cherished, one that I honor, one that I take pride in. But while my father in a sense never left his Mexican community, I had to, because life demanded that I find my way in a larger community than his. His friends were all Mexican; but my friends were Mexicans and Americans, Germans and Italians, Catholics, Protestants and Jews. And with my children, this is the way it is: I grew up speaking Spanish, but they grew up speaking English. The process of growth and assimilation goes on, and it is never easy, but it takes place.

Yet as much as we grow into the larger American society, and as much as each succeeding generation moves more into the mainstream, the connection between ourselves and our heritage remains. Americans of Irish descent maintain a passionate interest in Irish affairs; Americans of Polish descent who have never seen Poland, and never will, take personal pride in the elevation of a Polish Prelate to Pope, and look with hope and anguish as the workers of Poland seek to liberate their lives from Communist oppression.

As a citizen of Mexican descent, I have special interest in the events in Mexico; and you have a natural and abiding concern about your own land. This is an amalgam of feeling that is almost impossible to explain—for it does not mean, as some would think, that this is a country torn with ethnic strife; it does mean that we are a country, that uniquely in all the world, truly cares about what is happening all around the world, truly hopes that the blessings we enjoy will come to be shared by others, living far away, beyond our reach but not beyond our sense of caring.

All Americans have an attachment to the principles of liberty—these are principles that we not only enjoy, but principles we recognize to be universal. We know that the human spirit seeks freedom just as it seeks music, just as it aspires to art, just as it

draws nourishment from nature's beauty. We know that anything threatening freedom anywhere is a threat to our own liberty here at home.

So it is that we can see that any threat to Taiwan is a threat to ourselves; for if freedom can be extinguished there, our own hopes are diminished, our future threatened.

If we love freedom, we cannot afford to see the world in simple geopolitical terms. We cannot view the globe with the cynical detachment of potentates and be true to ourselves or to our heritage as Americans. Neither can we view the world in simple terms of economic self-interest. After all, human beings do not exist as mere pawns in the service of conflicting and competing, blind-eyed powers. Human beings have worth in their own right, and are worthy of respect. A policy that ignores the value, the worth, the dignity of humanity is a policy that violates human rights, diminishes freedom, destroys faith.

In pure and simple economic terms, Taiwan is vitally important to the United States—it is, after all, our eighth biggest trading partner, and our trade is growing by vast amounts each year. If we looked at the world in terms of mere economic interest, we would simply say that the United States and Taiwan have mutual self interest. But there is more to it than that. We are places that have a free market, enjoy free enterprise, and give full reign to allow individuals to do all they are capable of achieving. These are economic systems that embrace and, in fact, require political and personal freedom, and they are also systems that serve as a shining light to the rest of the world. People do not flee economic and personal liberty; they flock to it. We cannot ignore the fact that there is more to this commerce than mere trade; this commerce between the United States and Taiwan reflects, and is part of, an economic system that recognizes, values, and gives the greatest emphasis to the worth and dignity of individual human beings. It is a system that liberates, not one that subjugates. It is a system that does not set up artificial economic goals, but one recognizing that human beings acting freely will surpass any goal that any state could devise, because they know of themselves what can be done and what cannot be done.

In cold geopolitical terms, Taiwan might not be the most important place in the world. It is small in size—maybe a third the size of the State of Ohio; its population is small; it is isolated politically. But no American could afford to look at the world in such brutal, callous and cold geopolitical terms. An island of freedom is an island of hope; a land of liberty is a land that is our friend and brother, our partner in faith, the faith of the dignity of man. That is not the kind of place we can ignore, for we ignore our brothers only if we do value our own lives; we forget our friends only if we do not value friendship.

Taiwan is a place that is not merely important to this country as a trading partner; it is not merely a piece on the world map of competing and conflicting power; it is a place founded on and dedicated to the ideas and ideals that we, ourselves, live by and are pledged to. We can abandon it only at the cost of betraying ourselves. I do not believe we will abandon Taiwan. We will stand by it.

I believe that if we stand strongly by Taiwan, it will survive. And I believe that if it survives, mainland China will grow more like Taiwan—will recognize, as all Communist countries have, that economic efficiency and human freedom are inseparable. I believe that mainland China will one day realize that individual human worth has to be respected, maintained and encouraged. It may take a long time for this to happen—but it will happen.

In the meanwhile, we have to keep faith—with ourselves and with our friends; with our own spirit and with the spirit of those who share the same hopes and beliefs we do.

The security of Taiwan is in the final analysis our own security. The growth and prosperity of Taiwan is our own growth and prosperity. We are separated by half the globe, but the same waters touch our shores; and we have to remember that just as Dutch soldiers arrived on Taiwan they also arrived on our own island of Manhattan. Three and a half centuries later, can life have changed so much? Not at all, for the same spirit that drove those invaders, in those tiny ships, from that tiny land of Holland, to seek empire here and on Taiwan three and a half centuries ago, still lives. The spirit and limitless ambition of the invader did not limit itself then, and does not limit itself today.

And so here we find ourselves, immigrants who care about America, but also care about the rest of the world—not because we are loyal to a past that cannot be brought back, not because we care about another place more than our own land, but because we, as human beings, have to care about anything that threatens what we came here to find—hope, freedom, a chance to live in dignity and peace—that, and the belief that what matters to us, also matters to those who happen to live elsewhere.

I thank you for the pleasure of being here, and I wish you happiness and good fortune.

STATEMENT BY HON. JOHN M. MURPHY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. MURPHY) is recognized for 30 minutes.

● Mr. MURPHY of New York. Mr. Speaker, I have today requested a special order so that I might share with my colleagues the statement which I issued yesterday regarding the so-called Abscam case in which I am a party. I intend to continue to make public all such statements so that the public record on this matter will be complete:

NEW YORK, N.Y.—Congressman John M. Murphy today responded to the Justice Department's leaks of the Abscam videotapes to Columnist Jack Anderson. "This is a blatant effort to deal a fatal blow to my candidacy for reelection," Murphy declared. "In an effort to present the other side of the story—the facts—and to challenge Mr. Anderson's transposed mishmash of incomplete quotations, I have attached my statement on the newspaper columns and the Justice Department leaks, as well as copies of the affidavits and memoranda of law submitted by my attorneys to the second circuit court of appeals in support of my request for full publication of all the tapes."

STATEMENT OF HON. JOHN M. MURPHY ON AN ABSCAM APPEAL MOTION, THE JACK ANDERSON COLUMNS, AND THE JUSTICE DEPARTMENT LEAKS, FEDERAL COURTHOUSE, FOLEY SQUARE, SEPTEMBER 2, 1980

As I stated on August 29, 1980, a handful of Justice Department employees have willfully and brazenly released portions of videotapes associated with the so-called Abscam affairs to Columnist Jack Anderson in an effort to deal a fatal blow to my candidacy for reelection. Needless to say, the released tapes—and the Anderson columns—tell only part of the story. The facts are these:

I agreed to meet with business agents of the bogus sheik on the strength of the representation that they were prepared to make massive investments in enterprises in my Congressional District and in the American Merchant Marine. It is common knowledge that I am an aggressive proponent of the economic revitalization of both the City of New York and the American Shipping Industry, both of which have stagnated or declined throughout the 1970's. I would have been delinquent had I turned my back on a prospective investor with assets such as those purportedly held by the bogus Arab sheik. Thus I consented to meet with his representatives.

At the first such meeting near Kennedy Airport, Howard Criden and I met and conversed with the FBI agents. Mr. Criden, I presumed, was acting in good faith as an attorney assisting in the startup of the sheik's hypothetical ventures. Mr. Criden was not acting on my behalf in any way whatsoever, then or at any time.

Two questions arise from that encounter and from the Anderson story: Did I promise assistance on immigration matters and did I suggest that Howard Criden accept money as my partner or agent?

In both instances, the answer is "no."

First of all, I have not introduced private immigration legislation for years for good reason: To avoid any possible appearance of imoropriety. It is often difficult or impossible to determine the background or affiliations of a foreign citizen who seeks such assistance, and I have preferred to avoid that problem by treating the immigration problems of constituents on an administrative basis through the Immigration and Naturalization Service.

Regardless, I neither promised nor undertook any action on behalf of the bogus Arab. In telling them on the tapes that I foresaw no problem, I simply meant that a person of the bogus sheik's stature should encounter little difficulty in entering the country if he had competent legal advice.

At the conclusion of the meeting I was offered a briefcase, the contents of which I was told were immigration papers. Presuming that Mr. Criden was acting in a professional business capacity, I said, "Howard you take care of that," referring the briefcase to him. After all, he had told me he was their lawyer and was to handle any immigration matters, facts that I had mentioned several times during the meeting.

Stripped of the rhetorical flourishes the facts, again, are both simple and stark: I promised nothing. I accepted nothing. Presuming the legitimacy and good faith of the men in that room and that the contents of the briefcase were what I was told they were, I had no cause or reason to think otherwise. I had been introduced to Mr. Criden by a congressional colleague and had no reason to question either his role or motives.

Acting on selected facts released by the Government, some of the press have sought to portray me as cleverly ambiguous in this meeting, with Mr. Criden playing the role of "bagman" to use their term. That interpretation flies in the face of the facts and is illogical.

During the years immediately prior to "ABSCAM," my performance as a public official has been studied, investigated, interpreted and attacked by a loose coalition of new left journalists and a few uncontrollable Federal employees acting in violation of the privacy act. During that period, I have grown accustomed to close scrutiny, surveillance, invasion of privacy and reputational assault by innuendo and canard. Disagreeing with my politics and unable to defeat me on the high road of electoral politics, they took to the low road.

Not once did these inquiries result in any formal charge—until ABSCAM. Prosecutor Puccio—unlike last week's trial where he said the defendants were "acting" in court and

not on the tapes—Puccio told the grand jury I was "acting" on the tapes, that my refusal to take a bribe or do anything illegal or unethical was simply because I was "too clever" and "too sly." I might add, by the way, this is the very same hypothesis advanced in the Anderson columns, that "I was being clever and sly". I don't think the similiarity in phraseology is a coincidence.

I ask reasonable citizens to judge whether someone who has served two decades in Congress, someone who has been under frequent politically motivated attack, and someone who has had his affairs under constant scrutiny would compromise himself with men whom he had never met? Of course he wouldn't—and I didn't. And if the matter were not so serious, it would almost be laughable.

The Jack Anderson columns maliciously claim that my remarks to Mr. Criden amount to me "instructing (him) . . . to accept" the briefcase. A fair interpretation of the conversation, I submit, must acknowledge that I had neither the power nor the inclination to "instruct" Criden and any other inference is the product of Mr. Anderson's vivid imagination and florid prose.

The Anderson columns go on to recount the details of meetings involving Lawrence Buser, a former president of American Export Lines and of Pacific Far East Lines, who has served in the past as a consultant to the Merchant Marine and Fisheries Committee. Mr. Buser is an acknowledged expert on maritime operations.

It is common knowledge that the American flag merchant marine has been in rapid decline throughout the 1970's. Indeed, my main preoccupation as chairman of the House maritime panel has been the reinvigoration of the country's merchant fleet. Facing a bleak situation and charged with overseeing the formulation of maritime policy, I joined with my Republican colleagues in introducing an omnibus maritime bill which subsequently attracted international attention.

That legislation focused on improving the international shipping posture of the United States and had nothing whatsoever to do with our so-called "domestic" fleet, that is, those ships which travel between points in the United States such as between Puerto Rico and the Mainland. Such domestic carriers do not receive government subsidies. Their sole government generated benefit lies in protection from foreign competition based upon laws which have been on the books since the continental Congress.

Early on in the legislative process, I publicly stated to maritime industry audiences that the omnibus maritime bill would not in any way benefit domestic carriers. The point ignored by Mr. Anderson and the prosecutors is that the bill discussed on the tapes, in fact, could in no way benefit domestic shipping companies such as Navieros, the company discussed on the tapes. Further, Mr. Buser was no longer a consultant to the Merchant Marine Committee but when he was, all of his connections and holdings with U.S. shipping companies were cleared by the committee's chief counsel with the House Ethics Committee. And although the Ethics Committee told Buser he could retain substantial stock holdings in four U.S. shipping companies, he sold these holdings at a substantial financial loss to avoid even the appearance of a conflict of interest. The companies included American export lines, Moore McCormack, Pacific Far East Lines and U.S. Lines.

In a private meeting with FBI agents which I did not attend Mr. Buser made a number of statements that only he can explain. It would be clear, however, to anyone who actually viewed the videotapes of this meeting that Mr. Buser is taken unawares by the question of whether I would be "a partner in this" and is merely speculating when he answers that I would be "a silent partner, I would imagine." I am informed that Mr. Buser has uncategorically told the government that I had no interest, financial or otherwise in this proposed matter and that if Mr. Anderson had given Mr. Buser the courtesy of contacting him before printing his columns, Mr. Buser would have informed him as well.

Indeed, at a later meeting Mr. Buser is at pains to state with regard to me, "he's not in this." Should there be any lingering doubt, let me state now that I have not and would not assent to such a relationship while acting as a member or chairman of the House Merchant Marine and Fisheries Committee. In addition, Mr. Buser asserts that legislation before my committee would be "manipulated" to advance a private transaction. This language is regrettable and undoubtedly does not convey Mr. Buser's precise meaning. What is clear and precise is that Mr. Buser made this statement without my knowledge and certainly without my approval which I would never have given him.

The American people and my constituents can rest assured as far as this Congressman is concerned that no legislation has ever been, or will ever be, influenced for such a purpose in the United States Congress. In fact, in the case of the omnibus maritime bill, this landmark measure was the subject of intense debate with any change or alteration requiring the approval of a bipartisan drafting group of congressmen and then only upon the recommendation of the committee's bipartisan legal staff, not to mention the requirement that a majority of the members of the 40 person committee approve any proposal.

As a matter of fact, I told the business agents of the phony sheiks that no legislation could conceivably benefit a transaction involving the Puerto Rican company, at the January 10, 1980, meeting which I did attend. Moreover, the government concluded that I had done absolutely nothing wrong and according to sources close to Jack Anderson, one government supervisor went so far as to call agent Amoroso to the phone during the January meeting to tell him, "Tony we don't have a case on Murphy, you have got to get him to commit himself." In a subsequent session involving me and agent Amoroso, I told him emphatically, "I never received any money from anyone and would not accept anything."

Maritime lobbyists or businessmen frequently enhance their standing with potential clients by claiming special access to, or friendship with, congressional figures—trying to create the perception of power. Such assertions are beyond the control of the public official and are a regrettable by-product of our political process. Such assertions are often unfounded, as was the case here.

Mr. Buser's objective—which he was pursuing without me as a beneficiary or partner—a fact which he told the FBI agents repeatedly on January 10, 1980—could have resulted in enormous benefit to the American merchant marine, had the company been routinely purchased and had it flourished. Indeed, if American mercantile shipping is to advance we must attract investment—including foreign investment—to our fleet for its expansion. Indeed, on its own commercial merits, the shipping purchase proposed by Mr. Buser would have had considerable merit in that it would have sustained an important American shipping company in the Caribbean where American interests face cutthroat competition from foreign operations. In fact, the proposal in any other context but abscam would have been an exciting and attractive one. I meet regularly with international shipping leaders to encourage and stimulate transactions which would prompt a resurgence of the American merchant marine. Those efforts, including the one by Mr. Buser, are undertaken for public benefit, and not for my own private gain.

My tax returns have been audited annually for a decade, and under the rules of the House of Representatives, I annually disclose all of my holdings. It would, therefore, be virtually impossible to hide a commercial interest in a shipping venture from public view—and, regardless, such an interest would amount to a conflict of interest.

Mr. Buser speculated without me in attendance that I would be, and I quote, "A silent partner, *I would imagine*. (emphasis added.) Concentrate on the word "imagine" and you have captured the essence of the case against me: a combination of expansive rhetoric, movie studio-like sets, and vigorous imaginations which amount to an aborted attempt to get me to incriminate myself. Even Jack Anderson admits in a forthcoming column that "one thing (that) is clear is that the FBI team failed to get Murphy to incriminate himself."

When all else failed, the government has had to piece together a series of unrelated remarks made in my absence in a desperate effort to shore up their fragile position. All-in-all, it is enough to make Fred Silverman envious.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. OBERSTAR) is recognized for 5 minutes.

● Mr. OBERSTAR. Mr. Speaker, on Thursday, August 28, 1980, I was absent from the House on official business in my district. Had I been present, I would have voted:

"Yea" on agreeing to the conference report on H.R. 5192, amendments to the Higher Education Act of 1965 (rollcall No. 503).

"Yea" on the motion to go to conference on H.R. 3904, amendments to the Employee Retirement Income Security Act of 1974 (rollcall No. 504).

"Yea" on agreeing to House Resolution 765, the rule providing for the consideration of H.R. 7036, Public Health Service Act amendments (rollcall No. 505).

"Yea" on passage of H.R. 7036 (rollcall No. 506).●

T. C. SELMAN ELECTED COMMANDER-IN-CHIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ROBERTS) is recognized for 5 minutes.

● Mr. ROBERTS. Mr. Speaker, a fellow Texan and longtime personal friend of mine has been elected to the highest office of the Veterans of Foreign Wars of the United States.

He is T. C. Selman of Freeport, Tex., who served with highest distinction as a U.S. marine in overseas combat during World War II.

T. C. Selman was elected commander-in-chief at the conclusion of the organization's 81st national convention which was held in Chicago, Ill., August 15–24, 1980. The membership of the VFW, which is at an all time high of approximately 1.9 million, is intensely interested in veterans' rights, benefits and programs.

T. C. brings a wealth of leadership experience to the office he now holds.

A native Texan born in Magnolia, October 6, 1920, he earned his battle stars and veteran status as a first sergeant during the U.S. invasion of the island of Guam in June 1944. His ability to get the job done was soon recognized following the Guam campaign when he was advanced to sergeant major—the highest noncommissioned officer rank—and supervised marines who had been first sergeants longer than he had been in the corps. He also saw action in the Solomon Islands, Saipan, and Marianas Islands campaigns and was discharged September 28, 1945.

A past Texas Department Commander (1957–58) and District 17 Commander, T. C. has served on the National Council of Administration (Texas, Oklahoma, Missouri) has been chairman or a member of the National Community Activities, Americanism, Loyalty Day and Security Committees. A life member of the VFW, the National Home and the MOC, he is also Past Commander of Post 4006, Navasota; Post 1799, Tyler; and Post 8576, Freeport.

A graduate of Palestine High School and the Nixon Business College, Palestine, Tex., prior to World War II, T. C. was employed in management positions with the J. C. Penney Co. in both Conroe and Navasota, Tex., before enlisting in the Marines in 1942.

Following his wartime service, he returned to the Penney Co. and was employed in the Navasota, Longview, Tyler, and Houston areas in Texas as well as a stint in Bastrop, La.

Actively engaged in chamber of commerce, civil projects and patriotic activities, T. C. ran for the office of mayor of Freeport, Tex., a position he won and held from 1964 to 1972.

T. C. and his lovely wife, the former Mildred E. Bohot, of Navasota, are the proud parents of three sons, all married. Both are members of the First Baptist Church of Freeport.

Mr. Speaker, under the great leadership of my good friend from Texas, I predict the Veterans of Foreign Wars will have a most successful year. He will be an outstanding Commander-in-Chief. Since I will retire from the House at the close of this session of Congress, I will not be able to greet T. C. when he appears before the Committee on Veterans' Affairs early next year to present his legislative proposals. But knowing him as I do, I know his recommendations to the Congress will be reasonable and I know our committee will seriously consider his views and the views of the 1.9 million members of the Veterans of Foreign Wars.

T. C. Selman is one of the finest men I have been privileged to know and we all wish him well as he leads his great organization during the next year.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CORMAN (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. HAWKINS (at the request of Mr. WRIGHT), for September 3 through 5, on account of official business.

Mr. RODINO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

Mr. TAUKIN (at the request of Mr. WRIGHT), for September 3 through 5, on account of a necessary absence.

Mr. THOMPSON, for September 4, on account of personal business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GILMAN) to revise and extend their remarks and include extraneous material:)

Mr. GINGRICH, for 60 minutes, September 4, 1980.

(The following Members (at the request of Mr. CAMPBELL) to revise and extend their remarks and include extraneous material:)

Mr. GREEN, for 10 minutes, today.

Mr. CAMPBELL, for 10 minutes, today.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. BINGHAM, for 15 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 15 minutes, today.

Mr. MURPHY of New York, for 30 minutes, today.

Mr. OBERSTAR, for 5 minutes, today.

Mr. ROBERTS, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Ms. MIKULSKI's remarks to be entered under general debate on this bill.

(The following Members (at the request of Mr. CAMPBELL) and to include extraneous matter:)

Mr. WYDLER.
Mr. ROTH.
Mr. DERWINSKI in two instances.
Mr. FINDLEY.
Mr. GRASSLEY in two instances.
Mr. MADIGAN.
Mr. GILMAN.
Mr. SENSENBRENNER.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. WAXMAN.
Mr. GORE in two instances.
Mr. CORMAN in five instances.
Mr. MAZZOLI in two instances.
Mr. DE LA GARZA in 10 instances.
Mr. MCHUGH.
Mr. HOLLAND in five instances.
Mr. FROST in three instances.
Mr. ANDERSON of California in 10 instances.
Mr. GONZALEZ in 10 instances.
Mr. ROSENTHAL in 10 instances.
Mrs. BOUQUARD in five instances.
Mr. HAMILTON in 10 instances.
Mr. BROWN of California in 10 instances.
Mr. ANNUNZIO in six instances.
Ms. HOLTZMAN in 10 instances.
Mr. JONES of Tennessee in 10 instances.
Mr. BONER of Tennesee in five intances.
Mr. CAVANAUGH in five instances.
Mr. CORRADA.
Mr. TRAXLER.
Mr. DRINAN.
Mr. RATCHFORD.
Mr. BONKER in three instances.
Mr. HARRIS.
Mr. PEPPER.
Mr. LEHMAN.
Mr. UDALL.
Mr. MCDONALD in three instances.
Mr. FORD of Michigan.
Mr. OTTINGER.
Mr. BROOKS in two instances.
Mr. ROBERTS.
Mr. SHELBY.
Mr. CHARLES H. WILSON of California.

BILLS PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on the following days present to the President, for his approval, bills of the House of the following titles:

On August 28, 1980:

H.R. 8010. An act to amend the Comprehensive Employment and Training Act to designate a Job Corps Center as the "Earle C. Clements Job Corps Center."

On September 2, 1980:

H.R. 7072. An act to amend sections 5702 and 5704 of title 5, United States Code, to increase the maximum rates for per diem and actual subsistence expenses and mileage allowances of Government employees on official travel, and for other purposes;

H.R. 1781. An act to amend title 5, United States Code, to provide that civilian air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes; and

H.R. 1967. An act to modify the boundary of the White River National Forest in the State of Colorado.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 35 minutes p.m.), the House adjourned until tomorrow, Thursday, September 4, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5198. A letter from the Principal Deputy Assistant Secretary of Defense (Comptroller), transmitting a report on the value of property, supplies, and commodities provided by the Berlin Magistrate, and under the German Offset Agreement, for the quarter ended March 31, 1980, pursuant to section 720 of Public Law 96–154; to the Committee on Appropriations.

5199. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting notice of the location, nature, and estimated cost of three construction projects proposed to be undertaken by the Army Reserve, pursuant to 10 U.S.C. 2233a(1); to the Committee on Armed Services.

5200. A letter from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), transmitting notice of the need to convert the laundry function at the Army Armament Research and Development Command, Dover, Del., to contractor performance, pursuant to section 806 of Public Law 96–107; to the Committee on Armed Services.

5201. A letter from the Assistant Secretary of the Army (Installation, Logistics and Financial Management), transmitting notice that a decision has been made to convert the food services function at Fort Lee, Va., to contractor performance, pursuant to section 806 of Public Law 96–107; to the Committee on Armed Services.

5202. A letter from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), transmitting notice that a decision has been made to convert the real property maintenance functions at Vint Hill Farms Station, Va., to contractor performance, pursuant to section 806 of Public Law 96–107; to the Committee on Armed Services.

5203. A letter from the Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice that a decision has been made to convert the commissary shelf-stocking and custodial services function at Charleston Air Force Base, S.C., to contractor performance, pursuant to section 806 of Public Law 96–107; to the Committee on Armed Services.

5204. A letter from the Acting Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice that a decision has been made to convert the military family housing maintenance function at Norton Air Force Base, Calif., to contractor performance, pursuant to section 806 of Public Law 96–107; ot the Committee on Armed Services.

5205. A letter from the Principal Deputy Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice that a decision has been made to convert the commissary shelf-stocking and custodial services function at Travis Air Force Base, Calif., to contractor performance, pursuant to section 806 of Public Law 96–107; to the Committee on Armed Services.

5206. A letter from the Principal Deputy Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice that a decision has been made to convert the military family housing maintenance function at Reese Air Force Base, Tex., to contractor performance, pursuant to section 806 of Public Law 96–107; to the Committee on Armed Services.

5207. A letter from the Director of Legislation, Department of the Navy, transmitting notice of the Navy's intention to sell certain naval vessels to Brazil, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

5208. A letter from the Director of Legislation, Department of the Navy, transmitting notice of the Navy's intention to sell certain naval vessels to Peru, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

5209. A letter from the Director of Legistion, Department of the Navy, transmitting notice of the Navy's intention to sell a naval vessel to the Coordination Council for North American Affairs, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

5210. A letter from the Acting Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment to Malaysia (Transmittal No. 80–89), pursuant to section 813 of Public Law 94–106; to the Committee on Armed Services.

5211. A letter from the Acting Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Army's proposed sale of certain defense equipment and services to Egypt (Transmittal No. 80–92), pursuant to section 813 of Public Law 94–106; to the Committee on Armed Services.

5212. A letter from the First Vice President and Vice Chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with Air Canada, pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

5213. A letter from the First Vice President and Vice Chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with the Republic of Nigeria, pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

5214. A letter from the Secretary of Education, transmitting proposed final regulations to govern the program of grants to State education agencies for educational improvement, resources, and support, pursuant to section 431(d)(1) of the General Education Provisions Act, as amended; to the Committee on Education and Labor.

5215. A letter from the Secretary of Education, transmitting notice of the closing date for applications for grants to State educational agencies to improve the interstate and intrastate coordination of migrant education program activities, pursuant to section 431(d)(1) of the General Education Provisions Act, as amended; to the Committee on Education and Labor.

5216. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of Israel for permission to transfer certain U.S.-origin military equipment, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5217. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Malaysia (Transmittal No. 80–89), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5218. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment and services to Egypt (Transmittal No. 80–92), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5219. A letter from the Assistanct Secretary for Health, Department of Health and Human Services, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 55a(o); to the Committee on Government Operations.

5220. A letter from the Assistance Secretary of Housing and Urban Development for Administration, transmittting notice of proposed changes in an existing records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5221. A letter from the Inspector General-designate, Department of Health and Human Services, transmitting the quarterly report of his office for the period April 1 through June 30, 1980, pursuant to section 204(b) of Public Law 94–505; to the Committee on Government Operations.

5222. A letter from the Comptroller General of the United States, transmitting a report on internal financial controls in 11 Federal agencies (FGMSD–80–65, Aug. 28, 1980); to the Committee on Government Operations.

5223. A letter from the General Counsel, Department of Energy, transmitting notice of various meetings relating to the international energy program to be held on September 4 and 5 in Ottawa, Canada, and on September 9 in New York, N.Y.; to the Committee on Interstate and Foreign Commerce.

5224. A letter from the Chairman, Federal Trade Commission, transmitting two proposed amendments to the trade regulation rule on games of chance in the food retailing and gasoline industries, pursuant to section 21(a)(1) of Public Law 96–252; to the Committee on Interstate and Foreign Commerce.

5225. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders suspending deportation under the authority of section 244(a)(1) of the Immigration and Nationality Act together with a list of the persons involved, pursuant to section 244(c) of the act; to the Committee on the Judiciary.

5226. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in the cases of certain aliens under the authority contained in section 13(b) of the act of September 11, 1957, pursuant to section 13(c) of the act; to the Committee on the Judiciary.

5227. A letter from the Chairman, National Transportation Safety Board, transmitting the Board's 1982 budget submission, pursuant to section 304(b)(7) of Public Law 93–633; jointly, to the Committees on Appropriations and Public Works and Transportation.

5228. A letter from the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), transmitting a directive of the Department of Defense on "Mutual Logistic Support Between the United States and Other NATO Forces," pursuant to 10 U.S.C. 2329; jointly, to the Committees on Armed Services and Foreign Affairs.

5229. A letter from the Comptroller General of the United States, transmitting a report on the need to improve the administration of the State energy conservation program (EMD–80–97, Sept. 2, 1980); jointly, to the Committees on Government Operations and Interstate and Foreign Commerce.

5230. A letter from the Comptroller General of the United States, transmitting a report on the international crude oil spot market (EMD–80–96, Aug. 21, 1980); jointly, to the Committees on Government Operations, Interstate and Foreign Commerce, and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. STAGGERS. Committee on Interstate and Foreign Commerce. H.R. 7418. A bill to establish a research, development, and demonstration program for the disposal of radioactive wastes with amendment (Rept. No. 96–1156, pt. 3). Referred to the Committee of the Whole House on the State of the Union.

Mr. RODINO: Committee on the Judiciary. Supplemental report on S. 658. A bill to correct technical errors, clarify and make minor substantive changes to Public Law 95–598 (Rept. No. 96–1195, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. ZEFERETTI: Committee on Rules. House Resolution 778. Resolution providing for the consideration of House Joint Resolution 601. Joint resolution making an appropriation for the International Monetary Fund for the fiscal year ending September 30,

1981 (Rept. No. 96-1273). Referred to the House Calendar.

Mr. MOAKLEY: Committee on Rules. House Resolution 779. Resolution providing for the consideration of S. 658. An act to correct technical errors, clarify, and make minor substantive changes to Public Law 95-598 (Rept. No. 96-1274). Referred to the House Calendar.

Mr. DERRICK: Committee on Rules. House Resolution 780. Resolution providing for the consideration of H.R. 6777. A bill to increase the authorization for the Council on Wage and Price Stability, to extend the duration of such Council, and for other purposes (Rept. No. 96-1275). Referred to the House Calendar.

Mr. FOLEY: Committee on Agriculture. H.R. 3765. A bill to provide that orders issued by the Secretary of Agriculture under the Agricultural Adjustment Act respecting development projects designed to assist, improve, or promote the marketing, distribution, and consumption or production of walnuts may provide for any form of marketing promotion, including paid advertising, and for crediting certain direct expenditures of handlers for such promotion; with amendments (Rept. No. 96-1276). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BENNETT:

H.R. 8062. A bill to establish controls on yearend expenditure practices of Federal agencies; to the Committee on Government Operations.

By Mr. BROOKS:

H.R. 8063. A bill to amend the Accounting and Auditing Act of 1950 to require ongoing evaluations and reports on the adequacy of the systems of internal accounting and administrative control of each executive agency, and for other purposes; to the Committee on Government Operations.

By Mr. CARTER:

H.R. 8064. A bill to amend the Foreign Assistance Act of 1961 and the Public Health Service Act to provide for the advancement of international cooperation and assistance in health, and for other purposes; jointly, to the Committee on Foreign Affairs and Interstate and Foreign Commerce.

By Mr. DRINAN:

H.R. 8065. A bill to amend title 18 of the United States Code to provide penalties for trafficking in stolen or forged U.S. checks, bonds, and securities, and for other purposes; to the Committee on the Judiciary.

By Mrs. FENWICK:

H.R. 8066. A bill to amend title 49 of the United States Code to make transportation by motor vehicle of food and other edible products intended for human consumption exempt from the jurisdiction of the Interstate Commerce Commission; to the Committee on Public Works and Transportation.

By Mr. FISH:

H.R. 8067. A bill to amend the Immigration and Nationality Act to provide for the deportation of certain nonimmigrant aliens involved in unlawful conduct in demonstrations and for the expediting of judicial review of deportation and exclusion orders; to the Committee on the Judiciary.

By Mr. JENKINS (for himself and Mr. GINN):

H.R. 8068. A bill to amend the Internal Revenue Code of 1954 to exempt from the manufacturers excise tax chassis primarily designed as feed, seed, or fertilizer equipment and chassis, and parts and accessories therefor, sold in connection with the first retail sale of trucks and trailers with feed, seed, or fertilizer bodies; to the Committee on Ways and Means.

By Mr. RODINO:

H.R. 8069. A bill to make technical corrections in Public Law 96-247; to the Committee on the Judiciary.

By Mr. STANGELAND:

H.R. 8070. A bill to amend the Internal Revenue Code of 1954 to increase the minimum accumulated earnings credit from $150,000 to $1 million; to the Committee on Ways and Means.

By Mr. VOLKMER:

H.R. 8071. A bill to amend the Agricultural Act of 1949 to increase to 100 percent the amount of the deficiency in the production of the 1980 crops of corn, wheat, and feed grains with respect to which farm disaster payments may be made; to the Committee on Agriculture.

By Mr. FISH:

H. Con. Res. 428. Concurrent resolution expressing the sense of the Congress with respect to the deportation of nonimmigrant aliens arrested for unlawful conduct in connection with demonstrations; to the Committee on the Judiciary.

By Mr. PHILIP M. CRANE:

H. Res. 781. Resolution relating to the Capital of Israel; to the Committee on Foreign Affairs.

SUBSEQUENT ACTION ON A BILL SEQUENTIALLY REFERRED UNDER TIME LIMITATION

Under clause 5 of rule X the following action was taken by the Speaker:

The Committee on the Judiciary consideration of the bill (H.R. 5615) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources, extended for an additional period ending not later than September 4, 1980.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. FISHER presented a bill (H.R. 8072) for the relief of Dr. David Pass, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1055: Mr. PANETTA.
H.R. 1738: Mr. GILMAN.
H.R. 2085: Mr. HYDE.
H.R. 3254: Mr. LOTT and Mr. PHILIP M. CRANE.
H.R. 3258: Mr. MOTTL.
H.R. 3263: Mr. MATTOX.
H.R. 4175: Mr. TAUKE and Mr. GRASSLEY.
H.R. 6074: Mr. SAWYER.
H.R. 6220: Mr. WOLFF.
H.R. 6461: Mr. LEACH of Iowa.
H.R. 6637: Mr. RHODES.
H.R. 6833: Mr. CARTER.
H.R. 6941: Mr. BURGENER, Mr. MONTGOMERY, Mr. STEED, and Mr. CHARLES WILSON of Texas.
H.R. 6977: Mr. DRINAN.
H.R. 7287: Mr. NEAL and Mr. DAVIS of Michigan.
H.R. 7424: Mr. BUCHANAN, Mr. EVANS of Georgia, and Mr. FITHIAN.
H.R. 7529: Mr. MURPHY of Illinois, Mr. FASCELL, Mr. MOTTL, Mr. MAGUIRE, Mr. BEDELL, Mr. MITCHELL of Maryland, Mr. BROWN of California, Mr. WEISS, Mrs. CHISHOLM, Mr. DIXON, Mrs. COLLINS of Illinois, Mr. KOGOVSEK, Mrs. SPELLMAN, Mr. LOWRY, Mr. CONYERS, Mr. CLAY, and Ms. FERRARO.
H.R. 7538: Mr. ANDERSON of California.
H.R. 7647: Mr. FLORIO and Mr. RINALDO.
H.R. 7749: Mr. FORSYTHE, Mr. BADHAM, Mr. JEFFERIES, Mr. LOTT, Mr. PETRI, and Mr. CARTER.
H.R. 7773: Mr. MATSUI and Mr. LEWIS.
H.R. 7793: Mr. GLICKMAN and Mr. MCKAY.
H.R. 7795: Mr. CARTER and Mr. YATRON.
H.R. 7839: Mr. CARTER and Mr. YATRON.
H.R. 8000: Mr. RAILSBACK, Mr. WHITEHURST, Mr. NOLAN, Mr. LAGOMARSINO, and Mr. FRENZEL.
H.R. 8024: Mr. PERKINS.
H.R. 8027: Mr. MOTTL.
H.J. Res. 435: Ms. FERRARO.
H.J. Res. 560: Mr. CARTER.
H.J. Res. 568: Mr. BEARD of Rhode Island, Mr. BEARD of Tennessee, Mr. BARNES, Mr. BEDELL, Mr. BENJAMIN, Mr. HARSHA Mr. BRODHEAD, Mr. BROOKS, Mr. BROYHILL, Mr. CARTER, Mr. CAVANAUGH, Mr. COELHO, Mrs. COLLINS of Illinois, Mr. CONTE, Mr. DINGELL, Mr. DONNELLY, Mr. EDGAR, Mr. ERTEL, Mr. EVANS of the Virgin Islands, Mr. FORD of Tennessee, Mr. GREEN, Mr. HOLLAND, Mrs. HOLT, Ms. HOLTZMAN, Mr. HORTON, Mr. JENRETTE, Mr. KAZEN, Mr. LEDERER, Mr. LEE, Mr. LELAND, Mr. LUJAN, Mr. MARKEY, Mr. MINETA, Mr. MOFFETT, Mr. MOLLOHAN, Mr. MUSTO, Mr. OBERSTAR, Mr. OTTINGER, Mr. ROE, Mr. ROSTENOWSKI, Mr. SHANNON, Mr. STACK, Mr. STOKES, Mr. THOMPSON, Mr. WALGREN, Mr. BOB WILSON, Mr. WAXMAN, and Mr. WOLPE.
H.J. Res. 580: Mr. FITHIAN.
H. Con. Res. 361: Mr. GINGRICH, Mr. GRAY, and Mr. SYNAR.
H. Con. Res. 414: Mr. DOUGHERTY, Mr. STUMP, Mr. HANCE, Mr. WHITEHURST, Mr. EDWARDS of Alabama, Mr. VAN DEERLIN, Mr. MONTGOMERY, Mr. BEVILL, Mr. DANNEMEYER, Mr. HUTTO, Mr. WON PAT, Mr. HINSON, Mr. WINN, Mr. FRENZEL, Mr. FROST, Mr. MICHEL, Mr. HALL of Texas, Mr. BADHAM, Mr. HUGHES, and Mr. RITTER.
H. Con. Res. 416: Mr. DONNELLY, Mr. DORNAN, Mr. HORTON, Mr. COELHO, Mrs. SCHROEDER, Mr. FORSYTHE, Mr. OTTINGER, Mr. BENJAMIN, Mrs. HOLT, Mr. BRODHEAD, Mr. ROE, Mr. LAGOMARSINO, and Mr. WEISS.
H. Con. Res. 423: Mr. ROUSSELOT.
H. Res. 292: Mr. HARRIS.
H. Res. 677: Mrs. SMITH of Nebraska.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 6721

By Mr. YOUNG of Missouri:

—Page 73, lines 16 and 17, strike out "Administrator of the Federal Aviation Administration" and insert in lieu thereof "Secretary".

Page 73, line 21, strike out "Administrator" and insert in lieu thereof" "Secretary".

Page 73, line 25, strike out "Administrator" and insert in lieu thereof "Secretary".

Page 74, line 23, strike out "Administrator" and insert in lieu thereof "Secretary".

—Page 83, lines 17 and 18, strike out "Administrator of the Federal Aviation Administration" and insert in lieu thereof "Secretary".

Page 83, line 21, strike out "the Secretary," and strike out the comma after "States".

H.R. 6846

By Mr. GILMAN:

—Page 25, after line 24, add the following new section:

SEC. 12. The Attorney General may not, after the date of enactment of this Act, promulgate, administer, or enforce any regulation, or enforce any policy, to the extent that such regulation or policy designates, determines, or fixes the maximum limit of age within which an original appointment may be made to a position as a law enforcement officer (as defined by section 8331(20) of title 5, United States Code) in the Federal Prison System at any age lower than 40 years.

EXTENSIONS OF REMARKS

RISK AND THE REGULATORY DECISION PROCESS

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BROWN of California. Mr. Speaker, over the past year, our Subcommittee on Science, Research, and Technology has been interested in risk assessment and its implications for the regulatory decisionmaking process. We have held two sets of hearings, and we are now considering legislation which will help to promote fundamental research into those areas of science which can contribute to better risk assessments. Furthermore, we hope to facilitate the applications of this research to the many complex problems now facing the various regulatory agencies. While the ultimate decisions on establishing regulations are political and social as well as scientific ones, it is certainly necessary to develop the best possible scientific component for these decisions. Even with the best scientific data, these decisions will still be difficult to make and will still be controversial, but as a society, we must insure that we have the best decisionmaking tools available.

Mr. Speaker, I wish to commend to my colleagues an article by the former Commissioner of the Food and Drug Administration which speaks to these difficulties and the role that risk assessment plays in the process.

The article follows:

COMMONWEALTH CLUB TALK

Let me begin with an assertion that is unlikely to surprise you: It is that the Food and Drug Administration—like the Environmental Protection Agency, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, and the other government agencies in the health regulation business—is controversial. I knew that before I went to run the Food and Drug Administration in April of 1977. But I must confess that it was borne in on me much more forcefully during my first week in office, when one of my new colleagues gave me a metaphor for what life in the Agency was like. "The FDA", he said, "is a slowly moving target that bleeds profusely when hit."

That rueful assessment, I'm glad to report, is not an evaluation of the people at FDA, who are capable and dedicated. It reflects, instead, the intensity of the social and political controversy in which the health regulatory agencies are embroiled. Today I want to give some background that may help explain the origins of that controversy, then analyze some of its contemporary elements, and finally suggest some ways in which we might, if we really wanted to, reduce its intensity.

I begin with a simple historical point: The situation is relatively new. The very first federal health and safety regulatory agency came into being in the mid-19th century. It was called the Steamboat Inspection Service, and its purpose was to address a specific problem: Exploding boilers on river steamboats. You might characterize this as an unequivocal problem. Boilers either exploded, or they did not. Given the explicit nature of explosions, the results were inescapable. There was noise, and then smoke and flames—usually followed quite rapidly by the sensation of water lapping about one's ankles. It is not unreasonable to assume that people *detested* having boilers on their steamboats explode. There was no constituency that favored, let's say from motives of overwhelming boredom, the excitement that followed your run-of-the-mill exploding boiler. History does not attest that anyone ever organized the survivors into a "committee of 100 for steamboat freedom of choice," dedicated to the promise of adventure between Memphis and St. Louis. Indeed, even private enterprise saw clearly that one might anticipate a larger passenger revenue if people were given some assurance that a trip to New Orleans might not terminate unexpectedly in the middle of the Mississippi River, causing one to miss all kinds of connections with the not unlikely exception of that with one's maker.

But modern hazards are very different from steamboat boiler explosions. Let me cite the major new elements that have made health regulation a more complex and a more controversial subject.

First, the hazards are different. There is an increased focus on the diseases of age, especially cancer and heart disease. These diseases have been "promoted" into prominence by the solution of other health problems and by the resulting changes in the demographic profile of the post-industrial nations. As we have reduced the traditional health hazards of older times—among which infectious diseases are actually a little more prominent than boiler explosions—we have increased the incidence of these two afflictions of older age. And cancer and heart disease challenge both the ingenuity of our researchers to solve them and the capacity of our society to pay for their cure.

Increasingly, we are coming to understand that cancer and heart disease are social diseases, in the sense that they are in significant degree the products of the behavior of people and of social institutions. As a result, much attention is now being given to disease prevention, or as the optimists prefer, health promotion. To the extent that individuals have made themselves vulnerable, and can reduce those risks for themselves, this strategy is politically popular and uncontroversial; it involves dietary goals for Americans, more stress on nutrition research, the social encouragement of jogging, and support for campaigns to reduce cardiovascular risk factors.

But the diseases we are talking about are also diseases that involve externally imposed risks. They are associated with the hazards of life in an industrial society—in the workplace, in the food supply, in the air and water, and even in the drugs and devices we deploy against other diseases. That brings me to the second source of controversy; the hazards often arise out of the private activities of others.

Much of this part of the burden is associated with the results of a remarkable revolution in synthetic organic chemistry. This revolution has produced an industry that has increased by ten-fold during each decade of the past half century. Its production now exceeds 150 billion pounds a year—of molecules that are often extraordinarily long-lived and stable, and not infrequently produce toxic effects long after the time at which people are first exposed to them. We cannot deal effectively with the "external costs" associated with this activity by reliance only on the judicial system. Cause and effect are too far apart, and there is too complex an array of risks to permit effective compensation for harm through lawsuits. So nearly all governments have chosen to deal with this problem by a system of regulation that is aimed at sources instead of consequences; and thereby hangs the controversy.

People have two kinds of difficulty with government regulation in the health area. First, it raises questions about the degree to which the State may appropriately intervene in the personal behavior of citizens, even in their own interest. The Boston Globe columnist Ellen Goodman described this issue eloquently, after reciting the history of a seventy year old woman named Mary Northern, who spent the final months of her life fighting off the good intentions of a large government effort to make her undertake medical treatment she did not wish to receive.

"Mary Northern" . . . Ms. Goodman said, "leaves us a legacy beyond the ramshackle old house she shared with her cats and family memories. She leaves a reminder of how often individuals, especially the weak, the sick, the elderly and the dependent, need protection from the powerful establishments—even the establishment of kindness."

To many, government regulation in the health area raises issues about "freedom of choice". During my time as Commissioner, this argument was applied with particular vigor to regulation in the area of cancer and its causation—as, for example, in the public debates surrounding saccharine and laetrile. I think there are special reasons for this.

We Americans have become used to a series of purchased triumphs over the major diseases—purchased, that is, with tax and private support of biomedical research. After expecting that a similar research investment would do to cancer what it did to poliomyelitis and earlier "killer diseases", Americans have been understandably disappointed by the failure of the science they supposed to achieve a victory. Now they are being told, in effect, "We have met the enemy, and he is us." It is entirely natural that people are impatient at the news that the research investment did not work out, and that self-denial is the answer instead!

But whatever its psychological causation, the important political element is a genuine concern about the invasiveness of regulation into areas that people would prefer to reserve for personal choice. There is a second and even more significant element in the controversy. Since the days of the good old Steamboat Inspection Service, the health and safety regulatory agencies of our Nation have been profoundly transformed. Once their main task was to police the market place against various visible abominations—in FDA's old law, those sins sub-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

sumed under the threatening terms "misbranding" and "adulteration". But now they have become regulators of technology transfer: That is, they are assigned by the Congress the task of making sure that new technologies are safe. That means that they must play the unpopular role of Cassandra in a go-go industrial society. Furthermore, they get asked an entirely reasonable question: "Are you not costing society more, in the form of foregone innovation, than you are actually saving by enhancing the public health?"

In examining the sources of this controversy, it is not surprising to find that some of them are scientific and some legal.

Among the scientific difficulties two are especially prominent. One has to do with a troublesome mismatch between the rates of advance of two critical scientific disciplines. The first is analytical chemistry; the second, toxicology. In the three and a half decades since World War II, analytical chemistry has advanced as dramatically as synthetic chemistry. In a good post-war laboratory, analyses at the level of parts per million were possible with the best available methods of optical spectroscopy. New methods of clean-up and the advent of mass spectroscopy moved that to parts per billion in the 1960's, and recently such modern techniques as radioimmunoassay and high-resolution mass spectroscopy have pushed the limits to parts per trillion in many cases.

But we still have to evaluate the toxicity of such substances in relatively time-consuming and expensive ways. To determine that an agent is cancer-causing, laboratory animals must be allowed to eat or breathe the substance over most or all of a lifetime, must be maintained under constant conditions in a way identical to a control group, and at the end of the experiment there must be complete and searching pathological examination of all the tissues. To do a single such test may require $300,000 and over three years. There is nothing wrong with such experiments; they are based on an entirely sound scientific rationale, and they have proven both repeatable and reliable. But we do not have the resources to perform as many of them as it would take to get the answers we need.

As a result of this mismatch, then, we find ourselves in an odd position: We can detect more prospective hazards than we can thoughtfully evaluate.

The second scientific difficulty is that, contrary to what many members of the public believe, science is not in a position to provide absolute, cut and dried quantifications of the level of risk, or even assertions about the certainty of risk. Conversely, where our society wants scientific evidence of benefit, as in the case of the process by which we evaluate and approve new drugs, science has also been less decisive than many would like it to be. Let me take a moment to explain the problem.

Experiments in this area, whether we are evaluating the clinical benefit of a new drug or the cancer-causing potential of a food additive, basically involve comparisons between the effect of the substance on experimental and control populations of people or animals. If all the people given an experimental drug get better, and all of the "controls" given sugar pills stay sick, the result is clear, and the regulatory decision is easy to make. But if the differences are small, we have to apply a statistical test to see whether they might be due to chance alone instead of the experimental variable. Scientists are accustomed to accepting a particular level of that probability as "proving" a result: If there is more than a one in twenty chance that the result is not due to the experimental variable, the result is usually said not be "statistically significant".

There is nothing magic about that number of one in twenty; it is a matter of scientific taste, based upon the well-worn tradition that since research builds upon other research it is important to be certain of each piece. But to say that a result is statistically significant does not mean that it is biologically significant. Let me give an example from the drug part of FDA's work, where law requires that a drug be proven effective by scientific test. FDA and the courts have interpreted this to mean that clinically significant benefits must derive from the drug's use.

Suppose we were to do an unimaginably large clinical trial for a new drug—one that has 50,000 subjects in the experimental group and 50,000 in the control group, if five people got better in the experimental group and none in the control group, the result would reach statistical significance because of the large sample size. Yet only one in 10,000 people taking the drug would have gotten better. I think none of us would want to pay much, in dollars *or* risk, for a one in ten thousand chance of improvement.

The same sort of judgments apply to the assessment of risk. In a necessarily small sample of laboratory animals subjected to safety tests for a food additive, the incidence of cancer in the experimental group sometimes falls just short of the magic level of 95% confidence. Suppose, in such a trial, that the experimental animals develop more cancers than the controls, but the difference is just sufficient to establish a 9 in 10 certainty, instead of the magic 19 in 20 certainty, that the result was due to the experimental variable instead of the chance. Is that the same as saying the risk is zero?

I hope these examples convince you that there are important areas in which we cannot count on science to provide decisive, yes-or-no answers. Yet there often is a tendency, on the part of people who make laws, to nurture the perennial hope that somehow it can. Since the people who make laws are almost never scientists, they perhaps believe in it too much. In short, we need to be a little more flexible in our view of what standard of proof we will accept. Society recognized long ago that for different settings it will accept different levels of evidentiary certainty. "Beyond reasonable doubt" may be required for certain purposes; "the preponderance of the evidence" suffices for others. The scientific community adopted a particular standard out of the need of the research system for extreme reliability. When the main point at issue is public risk or public benefit, there is every reason to consider a different standard. That brings me to the legal difficulties associated with the present health regulatory statutes, of which I will give only two examples to illustrate the points I have just made.

The well-known Delaney Clause of the Food Drug and Cosmetic Act prohibits the addition to food of any substance that has been shown, by appropriate tests on laboratory animals or humans, to cause cancer. That is a unique legal provision, because it actually codifies a scientific hypothesis: that there is no threshold concentration at which a chemical causes cancer, so that if you reduce the amount of a cancer-causing substance to which people are exposed, the resulting cancers just get rarer.

Now, it turns out that that hypothesis probably holds most of the time, and in fact I believe that the Delaney Clause is, in its intent and in its usual operation, a pretty good version of how society ought to deal with such risks. But it is in deep trouble because of its inflexibility; it leaves no room even for a convincing scientific demonstration that there is a safe level for some cancer-causing substance. I am as certain as I can be of any scientific prediction that some day, very soon, some compound will be demonstrated to have a threshold level for cancer causation; and I think that any law that purports to deal with science ought to leave room for scientific progress. For that reason, I favor altering the Delaney Clause and similar provisions to reflect presumption rather than certainty—a presumption of risk that could be rebutted by a scientific showing that a certain level is indeed safe, or that the use of a particular kind of experiment actually overstated the risk.

And I believe, furthermore, that the law ought to recognize that some level of risk is acceptable if there are significant benefits to be had—as long as the benefits accrue to the same people experiencing the risks. In the case of saccharine it was argued that there were health benefits for persons with diabetes or problems of obesity. The National Academy of Sciences panel that evaluated those claims was not convinced by them. But suppose they had been fully convincing. Should the law have recognized the validity of a demonstrable benefit of that sort? I think it should.

Having pointed to some of the sources of the controversy in which health regulators find themselves, I want to conclude by reemphasizing something that may sound a little strange to you, coming as it does from a scientist who ventured into the arena known to some as "political economy". It is that most of the controversies about health regulation, although it sometimes appears otherwise, have rather little to do with science, and a very great deal to do with politics. It would be nice if more scientific precision could, by relieving us of uncertainty, convert us to a clockwork universe in which political decisions would be easy and automatic. It sounds like exactly the kind of political system Thomas Jefferson had in mind. But even if we could do animal tests as easily and accurately as we can do analytical chemistry, even if we could assess human risk to the third decimal place, even if we could measure medical benefits with great precision, most of our difficulties would still remain. That is because there is an authentic public ambivalence about risk—not how much risk there is, but how much risk we want. Our citizens are uncertain about how much government intervention in the interest of their health they will tolerate, and they are also uncertain about how many other things—like new inventions, or creature comforts, or old habits—they are willing to trade in order to be safer.

Such doubts cannot be resolved merely by stating the risks more precisely. They can only be resolved by the political process, in which public views of such issues are accounted and the laws then changed to accord with them.

That is why, during my term as Commissioner, I came to lay great stress on the process of statutory reform and on the kind of public education that must accompany it. We took significant proposals to the Congress for reform of the new drug approval process; most of the major reforms were then embodied in a series of amendments introduced by Senator Kennedy and passed by the Senate this past year. And, following the instructions Congress gave us after the saccharin debate, we developed agency recommendations for changes in the food safety laws that should be delivered to the Congress by the administration later this year.

It has been over twenty years since there was a major congressional debate and review of these provisions. What the public furor about health regulation is telling us is that the time for that debate has come. In its resolution, science may clarify and inform the discussion, but cannot dominate it; for the great issues are political and not scientific.●

HEALTH MANPOWER BILL

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BROYHILL. Mr. Speaker, I appreciate this opportunity to address the House membership on a noteworthy subject—the Health Professions Educational Assistance and Nurse Training Amendments of 1980, otherwise referred to as the "health manpower bill."

The programs authorized by the health manpower bill are among the cornerstones of the health care foundation in our country. The various programs for assistance to students and to schools, for construction and for local projects and programs all contribute immeasureably to our efforts to insure a better health care delivery system in our country. As such, the legislation and the programs it authorizes reap benefits for those at all levels—for individuals—be it students who receive aid to study or individuals who are served by the Government-aided projects—for State and local projects, and for schools and health education centers.

I would like to take this opportunity to comment briefly on some of my special interests in relation to this bill.

First of all, title I of the bill extends and revises the National Health Service Corps program through fiscal year 1983. During consideration of this bill, I was among many Members who expressed the concern that the program is not living up to its intent. The intent of the NHSC program is to provide trained physicians, dentists, nurses, and other health specialists to areas which are medically underserved. What we believe is happening in some cases is that these health personnel are being sent needlessly to areas where shortages do not truly exist. These personnel are duplicating services which are already being provided to the community. A safeguard which my colleague Dr. TIM LEE CARTER was instrumental in inserting into the bill during Health Subcommittee consideration was an amendment which requires consideration of comments by health professions societies regarding the designation of shortage areas and the assignment of Corps personnel. Hopefully, this safeguard will insure a more thorough review than that which is provided under the current system and will insure that we place these health personnel in the most critically underserved areas.

Title II of the bill extends certain health professions programs. The phasedown in funding for many of the so-called capitation programs reflects a growing feeling in the Congress and the Government as a whole that our doctor shortage and maldistribution may be growing to an end in the not-too-distant future.

On the other hand, the continuation of most aid programs for nursing schools and students reflects a growing concern I, for one, have had that our nursing shortage is growing worse each day. Just the other day, I read in the newspaper that one hospital is offering free use of a car to prospective nursing employees. What lengths we are having to go to to attract skilled personnel.

North Carolina, in particular, is faced with a most critical shortage of nurses according to hospital and health care officials with whom I have conferred. One North Carolina board of nursing study has cited that almost one-third of licensed North Carolina nurses either do not work or work in non-nursing-related employment. A North Carolina Hospital Association survey quoted to me indicates that among 100 or so hospitals, there were 1,500 vacancies for registered nurses.

In this light, I feel it is most important that we continue our commitment to furthering the nursing profession and the valuable services nurses provide. It is necessary that we continue our support for the training of nurses in the United States. At the same time, I would suggest it may also be important for us to study ways in which we can encourage greater retention rates for nursing personnel, as the shortage is most certainly exacerbated by the number of nurses who leave the profession each year.

The legislation contains an authorization for continued project grants and contracts for physician and dental assistants. As my colleagues are aware, I am firmly convinced that the services of these physician and dentist extenders are one means of providing quality health care to our citizens at a reasonable cost. In fact, I was the original sponsor of a provision which was later enacted into law to reimburse physician assistants and nurse practitioners under medicare. We should continue to encourage these health professionals to provide their necessary and beneficial services.

Finally, I would like to take this opportunity to note that the bill extends and revises somewhat the Area Health Education Centers (AHEC) program, which have proven to be so instrumental in tying together educational and planning institutions to provide for manpower development. The North Carolina program, operating from the Area Health Education Centers program at the University of North Carolina at Chapel Hill, has been exemplary and has established a firm base for expansion. Without a doubt, the work carried out by the AHEC in Chapel Hill has contributed to the goal of decentralizing medical and health professions education.

The North Carolina AHEC has begun substantial work into investigating manpower needs and ways in which they can be addressed, and I could not let this opportunity pass by without commenting on the worthiness of this project in my home State.●

THE POISONED TRAIL OF AGENT ORANGE

HON. WILLIAM R. RATCHFORD

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. RATCHFORD. Mr. Speaker, some of the furor over the long-term effects of the defoliant agent orange on American servicemen of the Vietnam war era has died down in recent months. But the critical medical and psychological problems traceable to exposure to this powerful chemical have not disappeared or diminished.

It was my concern for the fate of Vietnam war and Vietnam era veterans that prompted me to consponsor H.R. 6377 this year—the Vietnam Era Veterans Agent Orange Act. I am disappointed in the slow progress this measure has made in the House, and I am hopeful the logjam will be broken in the 96th Congress. I am also encouraged by actions being taken in the Senate this week to amend S. 1188, the Disabled Veterans Rehabilitation Act, to provide a presumption of service-connected disability to those veterans suffering the insidious effects of agent orange exposure.

If this grave issue has not received the attention it warrants in this body, it has continued to attract the interest of the public. I commend to my distinguished colleagues the following editorial that appeared on August 21, 1980, in the News-Times of Danbury, Conn., and I hope that its message will prove persuasive:

QUESTIONS ABOUT AGENT ORANGE

The U.S. military made huge mistakes in Vietnam, one of the worse having been the employment of the defoliant named Agent Orange in an effort to render the Vietnamese countryside bare of leaves and other greenery so that North Vietnamese forces could not hide in the forests or live off the countryside.

One of the principal chemicals in Agent Orange was dioxin which has since been identified as a cancer-causing agent.

The Pentagon claims there is no conclusive link between the use of the herbicide and the high incidence of cancer, skin disease and other problems among veterans who were involved in the Agent Orange spraying.

The Veterans Administration takes a similar attitude, in spite of claims from Vietnam veterans suffering from cancers, the skin disease known as chloracne, impotence, weight loss, headaches and other medical problems. Additionally, there have been numerous cases of birth defects among children born to Vietnam veterans who had been exposed to Agent Orange.

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New studies have shown that a substantial number of Vietnam veterans are suffering similar problems due to exposure to other chemicals widely used during the fighting in Southeast Asia.

The VA, at the prompting of members of Congress, has grudgingly agreed to re-examine some of the veterans suffering from chloracne.

In fairness to Vietnam veterans, whether they were drafted or volunteered to fight there, the VA should do more. Questions about Agent Orange and other chemicals cannot be left hanging, not only over the heads of Vietnam veterans, but over the heads of their wives and children for years to come.●

NUCLEAR WASTE: STRONG STATE ROLE NECESSARY

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. MARKEY. Mr. Speaker, as three committees of the House of Representatives put the final touches on a national nuclear waste disposal program, it is apparent that the right of the States to exercise a meaningful degree of control over waste siting decisions has been given short shrift. It is extremely disturbing to note that none of the legislation reported out of the Commerce, Interior, and Science and Technology Committees allows the States even the limited right of blocking a Department of Energy decision to site a nuclear waste facility within their borders subject to a congressional override. Instead, the bills would allow a DOE siting decision to go forward over State objections unless the State could convince one or both Houses of the Congress to support, by resolution, its objections, or no role is provided for a State's objections to be heard at all.

These provisions will be the subject of intensive and extended debate when the waste proposals reach the House floor later this month. For the information of the Members, I am inserting in the RECORD a little bit of history in the nuclear waste disposal area.

The Department of Energy and its predecessors have an unenviable track record in their dealings with the States over the question of where to locate nuclear waste repositories. A case in point is what happened to Kansas in the early 1970's. The story of how the Atomic Energy Commission tried to force the selection of a nuclear waste dump in Lyons, Kans., is told in a book by Ronnie Lipschutz, "Radioactive Waste: Politics, Technology and Risk," Cambridge, Mass.: Ballinger, 1980. Excerpts from the Lipshutz book follow:

By 1971, preparatory work was considered complete, and the AEC announced that permanent disposal of both transuranic and high level wastes would soon commence in the Lyons mine. The agency claimed that research had shown the method to be fully developed and the site to be suitable. The wastes would be isolated from the biosphere for the requisite period of time, according to the commission's claims.

As of 1971, the AEC had spent 15 years and some $100 million studying bedded salt disposal. The Agency maintains that the radioactive waste problem was solved and that implementation of the solution could begin promptly. So confident was the AEC that Milton Shaw, Director of the AEC's Division of Reactor Development in testifying before the Joint Committee on Atomic Energy on the fiscal year 1972 budget for the Lyons project, * * * stated that the site was "equal or superior to the others (in the country)." But AEC confidence was, as things turned out, badly misplaced. The site was grossly unsuitable. The Kansas Geological Survey concluded that the Lyons site was not at all adequate for the purpose. Independent geologists concurred, for at the other end of the town of Lyons was another salt mine, and underneath the town, the galleries of the two mines came as close as 500 yards to the selected site. The operators of the second mine utilized a salt extraction process called hydraulic fracturing, in which fresh water is injected into one borehole and emerges from another as brine, which is then pumped to the surface. One of these operations unexpectedly produced no brine; over 180,000 gallons of water were pumped into a borehole and simply disappeared. It became clear that the geology of the site was inadequately known. Moreover * * * the location of many of these—oil and gas-boreholes was not known because the State of Kansas did not require the registration of dry wells. Dr. William Hambleton of the Kansas Geological Survey described the Lyons site as "a bit like a piece of Swiss cheese" * * *. The Kansas Geological Survey recommended abandonment of the site, and the citizens of Kansas showed strong resistance * * *. Under pressure from the Kansas congressional delegation, the AEC announced in 1973 that the Lyons site was being abandoned.●

IMPROVING SOILS WITH ORGANIC WASTES

HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. GRASSLEY. Mr. Speaker, in 1978, the U.S. Department of Agriculture issued a report entitled "Improving Soils with Organic Wastes." This report was issued in response to section 1461 of the Food and Agriculture Act of 1977—Public Law 95-113. In this report a team of USDA and other public-spirited agricultural scientists listed a series of eight recommendations for action relative to how we best proceed to protect and improve our Nation's most valuable natural resource, our soil, through the proper use of organic wastes.

The list of research topics which this report highlighted included:

First. Conduct a national survey to obtain a complete listing of the kind and amount of organic wastes available now and in the future.

Second. Assess the effects of various processing methods on the value of wastes for soil improvement.

Third. Conduct research to determine how organic wastes differ in their ability to improve soil tilth and fertility.

Fourth. Determine the effect on soil erosion and productivity of a major diversion of crop residues to energy-recovery systems.

Fifth. Conduct research on the utilization of organic wastes on small farms to improve soil productivity and control erosion.

Sixth. Conduct a thorough study of the economic, social, and environmental results of organic farming systems versus conventional agriculture.

Seventh. Develop educational programs to increase public awareness of the value of recycling organic wastes on soils.

Eighth. Collect more information on the extent to which the utilization of organic wastes could be improved through relaxation of regulatory restraints or establishment of incentives.

Mr. Speaker, with rising energy costs pushing up the costs of chemicals upon which many producers depend heavily to maintain high levels of crop production, it is becoming more and more important that all options and alternatives for lessening this dependence be explored. Unfortunately, the term "organic farming" has come to imply to many a sort of purist rejection of all farming practices involving manmade chemicals of any sort. In fact, organic farming in the true sense of the word is practiced to greater or lesser degree by nearly all farmers and ranchers, large and small.

Research into reduction of energy-related agricultural production inputs is important to our Nation's future, the future of agriculture in this country, the future use and conservation of our soils, and the future and nature of our Nation's food supply. I applaud the team of scientists for having enumerated these recommendations and having brought them to public attention. This type of information is needed to help move agriculture forward and keep our Nation's farmers the most productive in the world. This is an area of research we need to support and activate—research designed to improve America's agriculture for the future, while effectively using and conserving our national resources.

As a farm boy in Iowa, I recall how our family utilized animal wastes, plant stubble, and other agricultural wastes effectively in our farming operations. I am always anxious to find what new advancements have been made in this important area which relates to crop production and resource utilization.

Mr. Speaker, my office recently received a copy of a new report from the U.S. Department of Agriculture entitled "Report and Recommendations on Organic Farming." This report is dated July 1980.

My staff and I were pleased to receive this new report for we were aware of the recommendations made in the 1978 report.

Mr. Speaker, what concerns me today was what I read in this new 1980 report:

All of the research recommendations listed in the 1978 report Improving Soils with Organic Wastes directly support the goals and objectives of organic farming. Because of their relevance to the present report and because they have not yet been implemented (except for limited action on recommendations 2, 5, and 7), they are listed here as follows.

These scientists are telling us that the USDA has not yet moved to implement research recommended in 1978. These scientists are so concerned with the lack of attention by Secretary Bergland to the 1978 report, his lack of attention to the problems they outlined for him, that they feel compelled to reiterate the recommendations in this new report. I would ask, along with this distinguished group of experts, how many times do we need to study what needs to be done?

During the last 2 years the Secretary of Agriculture has reduced the number of employees engaged in agricultural research in his Department and has testified before the Congress how this is in the Nation's interest. We do not move our Nation ahead by failing to address our problems and work to provide solutions to them. We move forward through improved technology, resource conservation and management, and research that provides new and improved opportunities for our citizens to be productive and still not adversely affect the conservation of our Nation's natural resources.

It seems to me that the best public service the Secretary of Agriculture could perform in this case would be to initiate the research his scientists are proposing and let them spend their time doing the job that needs to be done rather than studying and restudying the question of what ought to be undertaken.

A few days ago the Des Moines Register published an editorial entitled "Organic Farming Endorsed," which concluded in this way:

Iowa farmers would be wise to take a long and serious look at their organic colleagues who are developing an intricate and workable system of organic recycling and pest control farming that frees them from the rising cost of chemical and fuel dependence and ensures a more stable and natural agricultural system.

A shifting of priorities is in order. Taking organic farming seriously is a sensible beginning.

I would respond to that editorial by saying I believe that a great many Iowa farmers do take organic farming seriously. What they have problems with are the righteous admonitions of the organic purists who contend that the solution to our ills lies in completely forsaking all agricultural chemicals. For all the problems they have brought, agricultural chemicals have done much to help increase the bounty of the land. As we learn more about the dangers of long-term use and abuse of chemicals, and as the economic future of chemical use grows more and more doubtful, we must be seriously looking at ways in which alternative farming practices can be effectively adapted to maintain the productively of U.S. agriculture. This is a job for the agricultural research community, both public and private, and it is clear that they are willing and eager to do the job if given the support to undertake it. They should be provided the support and the direction to proceed, rather than being asked to make up more new lists of what needs to be done.

The Des Moines Register editorial follows:

ORGANIC FARMING ENDORSED

Mention organic farming and many conventional, or chemical-intensive, farmers conjure up images of backyard gardeners who have discovered the joys of composting.

It was this type of misconception, and the need for alternatives in current farm practices, that prompted the U.S. Department of Agriculture to begin a study of organic farming in April 1979. The results of that study were released recently, and, for the first time, the USDA endorses organic farming as a "legitimate and promising" agricultural technique.

The USDA defines organic farming as that which "avoids or largely excludes the use of synthetically compounded fertilizers, pesticides, growth regulators and livestock feed additives," while also using mechanical cultivation, certified seed and sound methods of organic waste management and biological pest and insect control.

Chemical-intensive farming has been widespread since the 1940s for the continuous production of cash crops such as corn, soybeans and wheat. Severe problems have developed. Not only has the cost of fuel and chemicals shot skyward, but soil productivity has declined, primarily because of erosion and the depletion of natural soil nutrients. Fertilizer and pesticide runoff have created water pollution.

As more chemicals are found unsafe and subsequently banned and not replaced, farmers may find themselves shifting to organic methods. While the USDA does not advocate a total shift, it does encourage blending the practices of organic and conventional farming where feasible and economical.

"The greatest opportunity for organic farming," according to the report, "will probably be on small farms and on larger mixed-crop/livestock farms."

The USDA report notes that not enough is yet documented on organic farming's limitations and advantages. The report concedes that the minority of farmers who do use organic methods do not do so for "solely economic reasons. Rather, they are more concerned with protection of human and animal health, protection of the environment, energy conservation and preservation of soil resources and will, if necessary, accept some economic loss to achieve these objectives."

Iowa farmers would be wise to take a long and serious look at their organic colleagues, who are developing an intricate and workable system of organic recycling and pest control farming that frees them from the rising cost of chemical and fuel dependence and ensures a more stable and natural agricultural system.

A shifting of priorities is in order. Taking organic farming seriously is a sensible beginning.●

NEW RISK APPROACHES MAKE FOR BETTER REGULATORY SENSE

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. WYDLER. Mr. Speaker, the technique of risk assessment is becoming a widespread tool in analysis of the real benefits of technological fixes, particularly those mandated by regulatory agencies. The regulatory agencies, for example NRC and EPA, are becoming keenly aware of the fact that technologists are refining this tool, and in the future these agencies are going to have to look more carefully at the projected benefits that accrue for certain technological changes required by standard settings in these agencies. In the "Science and Technology" section of the Economist magazine—July 19, 1980, issue—there appeared a note on a study done recently by Mr. Richard Schwing of General Motors Research Laboratories in Warren, Mich. He looks at the benefits of increased life expectancy as a yardstick for measuring the effective risk decrease as a result of technological investments—for example, to reduce carbon monoxide emissions from the automobile. I would recommend that my colleagues read this note. It appears that certain fixes devised by the regulatory agencies are seen to stand out as having very minimal return when compared with other suggested fixes already in process such as sulfur scrubbing from powerplant emissions. I hope that the Nuclear Regulatory Commission will consider this approach carefully in assessing the advisability of future nuclear licensing modifications in terms of real promise for health and safety. The note on Mr. Schwing's study from the Economist follows:

A QUESTION OF LIFE OR DEATH

Industry's risk assessors are trying to come up with alternative ways of calculating the costs and benefits of the difficult choices that regulators face in deciding on new technologies, sharing out health-care money, responding to pressures for (and against) pollution controls and the like. The aim is to take some of the emotional heat and sheer political quackery out of debates on such issues as coal versus nuclear power. Or, at the very least, to alert decision-makers to the furore that some choices could unleash.

One new approach attempts to take into the equation the public's intuitive notions about benefits and costs. These notions may be dotty. For example, many people still doubt the benefits of water fluoridation (though these are well documented in statistics of tooth decay) and fear the alleged risks (though, after years of experience, none has been demonstrated). Still, policy-makers ignore such popular myths at their peril. Mr. Chauncey Starr, at the Electric Power Research Institute in Palo Alto, California, is looking for ways to present these subjective judgments mathematically for the guidance of legislators. As a result, rule-makers should at least have a better idea of

which risks the public finds acceptable or not.

Another tack is being taken by Mr. Richard Schwing at the General Motors Research Laboratories in Warren, Michigan. This approach seeks to replace the crude "lives saved/lost" criterion of risk assessment with the more accurate yardstick of changes in life expectancy. As Mr. Schwing points out, death does not involve chance; it is one of life's great certainties. The only uncertainty is in its precise cause and timing.

For example, on average, American men would live one year longer if any of the following causes of death were eliminated: influenza, pneumonia and bronchitis; degenerative diseases (like nephritis, cirrhosis, ulcers and diabetes); certain diseases of infancy; motor accidents; other accidents and violence. Eliminate the lot and the American male would live five years longer.

To allow policy-makers to compare alternative uses of funds and scarce personnel, Mr. Schwing has come up with a formula that measures benefits and costs of any programme in terms of added longevity per dollar spent. The chart shows his arithmetic for some policy choices.

It also shows how fashion can override common sense. Take the fashion for controls on pollution. America's Environmental Protection Agency (EPA) is proposing to reduce the carbon monoxide emitted by car exhausts from the 15 grams per mile allowed by present standards to just 3.4 grams per mile. On EPA's own estimate, that change could save two lives over the next 20 years; implementing it is likely to cost $1 billion. That works out at $500m a life or (on Mr. Schwing's criterion) $25m for one person to live one year longer.

By contrast, providing a specialised ambulance service to treat victims of heart attacks would cost less than $550 for one person to live a year longer. If implemented throughout the country, such a service would add six months to the average life expectancy of all Americans at a cost of just $100m a year. Mr. Reagan, please note. By all means, look hard at the economics of car emission standards. Look at cost-effective alternatives, too.●

THE FEDERAL MANAGER'S ACCOUNTABILITY ACT OF 1980

HON. JACK BROOKS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BROOKS. Mr. Speaker, I am introducing today legislation entitled "The Federal Manager's Accountability Act of 1980."

Newspapers regularly headline mismanagement and inappropriate use of Government funds. A review of such charges shows that much of this waste can be specifically linked to the lack of adequate systems of control in the departments and agencies. Without such control the managers and administrators holding positions of responsibility have inadequate means to maintain the necessary oversight of the units within their jurisdiction.

In attempting to explain this situation, head of the General Accounting Office, Comptroller General Staats has stated:

We believe that the reason internal control systems are in a state of disrepair is that top management has devoted most of its concern and emphasis to delivering funds and services and that effective controls over tasks and functions which lead to the delivery of these funds and services has had a low priority * * *.

General Accounting Office standards define internal control as a "plan of organization and all the coordinate methods and measures adopted to safeguard assets, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies." Such is the foundation of internal control—and such is necessary for accountability. Achieving effective Government accountability begins with the chief executive of each agency. If the chief executive accepts responsbility for administrative, financial, and programmatic performance, then the internal control and reporting mechanism needed to reduce fraud, waste, and abuse will be formulated promptly and effectively.

The bill I am introducing today requires that the head of the agency certify, by appropriate language over his signature, that the agency for which he or she is responsible has an adequate system of control. It is expected that he or she will have to instigate suitable inspections and audits to insure the accuracy of the certification. And it is expected that any lack in the control process will be promptly eliminated.

This bill will also require personal responsibility at the secretarial level for the provision of adequate resources for the Offices of Inspector General in the various agencies. This is of utmost importance. These offices cannot adequately meet their mandate without the resources necessary to pursue effective audit and investigation responsibilities.

I recognize that certification and reporting alone will not improve management performance. There is no substitute for good judgment, competence, and ethical behavior. However, the requirements mandated by this legislation will evidence a willingness on the part of Government managers to take responsibility for their actions—in other words, to be accountable to the public they serve. Such accountability will improve management performance and help restore the public's confidence in the Federal Government.

This legislation complements acts which created offices of Inspector General in 15 Federal departments and agencies during the past 4 years. It also complements the OMB's financial priorities program which was launched in 1979; the President's Executive Group to Combat Fraud and Waste, also established in 1979; and the GAO's administratively established special task force for the prevention of fraud, which has the responsibility to evaluate the adequacy of management control systems within the Federal agencies. This bill also reflects the efforts of the Association of Government Accountants, an organization of professional accountants dedicated to improving economy and efficiency in the Federal agencies through better fiscal management

The American taxpayer is not the proverbial "goose that laid the golden egg" and the Federal Government is not the keeper of the goose. By introducing the Federal Managers' Accountability Act of 1980, I am emphasizing my continuing concern and commitment to insuring that the Federal Government gets a fair return for tax dollars spent.●

BIRTHDAY FELICITATIONS TO CHAIRMAN CLAUDE PEPPER

HON. EDWARD P. BEARD

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BEARD of Rhode Island. Mr. Speaker, when our admired and respected friend, CLAUDE PEPPER, becomes an octogenarian on September 8, 1980, all can marvel at his amazing grit, durability, and tenacity. From President Franklin Roosevelt to President Jimmy Carter, his public service demonstrates his abiding commitment to people, his genuine accomplishments, and his personal popularity. I salute you, Chairman PEPPER, and wish you continued success.●

HOW TO END INTERNATIONAL CORRUPTION

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BONKER. Mr. Speaker, corruption in the practice of international business and trade is a problem that continues to plague the world community. Accounts of international dealings are replete with examples of such corruption: Aid and development funds diverted to the enrichment of an already comfortable few, governmental officials growing rich through industry payoffs, and contracts awarded not on the basis of merit or competitive bidding, but rather on the basis of bribes and kickbacks.

It is important to note, Mr. Speaker, that the practice of international corruption damages all of the parties involved. Business and industry can no longer hope to compete honestly for contracts on the basis of their expertise or the quality of their product. Development projects in Third World nations serve increasingly to benefit the rich without regard to the needs of the mass of the people. Even Third World governments which seemingly benefit from the payoffs and other practices of international corruption are hurt in the long run, as the needs of their people continue to go unmet and the legitimacy of their rule is eroded.

In recent years, the United States has taken extremely commendable steps to eliminate corruption in the overseas dealings of our business community. Unfortunately, this effort on our part has served to do little beyond hampering the ability of our Nation's businesses to compete abroad, due to the lack of cooperation from the other developed nations of the world and the continued shortsighted indifference of a number of Third World governments. Until the dangers of international corruption are recognized and addressed through a multinational approach, this critical problem will continue to stalk the globe, undermining the legitimacy of governments, blocking efforts to truly address pressing human needs, and hampering the honest practice of international business.

I recently received a brief memorandum, prepared by Mr. E. H. van Eeghen of the Netherlands, on the topic of international corruption. Mr. van Eeghen offers a succinct description of the problem and presents a five-point proposal for a multinational effort to end these insidious and destructive practices. I commend this memorandum to the attention of my distinguished colleagues in the hopes that it will serve as a first step toward the elimination of corruption in the practice of international business and international assistance.

MEMORANDUM ON INTERNATIONAL CORRUPTION

Definition: "International corruption" cannot be easily defined, but the following are the outstanding characteristics:

(a) Paying individuals in powerful positions in an illegal or unofficial manner in order to obtain special favours, treatment, or additional profit;

(b) Receiving secret money or goods in business by taking advantage of the power or influence attached to one's position;

(c) Channelling public funds or development aid into private accounts.

International corruption is a growing cancer. In the Third World, it benefits a very small number of national businessmen and/or government officials, resulting automatically in the rich becoming richer and the poor becoming poorer. In the capitalistic world, this corruption makes success in business no longer dependent on well-conceived, honest practices but increasingly on unscrupulous ones. The companies who are unwilling to go along with these unscrupulous practices are at a disadvantage and are sometimes altogether ruled out of the competition, one more factor contributing to the general destruction of an honest international business community. International corruption is therefore as disastrous for both sides.

Both the West and the Third World face a crisis situation at home because of this corruption. The credibility of a number of governments in the Third World is at stake, which means that giving development aid to these countries becomes at least partly questionable. At the same time the Western capitalistic system can be accused of having made this corruption possible, especially after the decolonisation of great parts of the world following World War II.

Almost nothing has been done to halt this disaster. The prevailing attitude in the capitalistic world is that these practices are an inevitable part of present-day international business and that if one does not participate, one will be left out of the competition. Unfortunately, there seems to be evidence to substantiate this attitude.

The fairly recent United States anti-corruption laws, which were certainly well meant and which continued to be honestly executed, have done very little to change the situation in the Third World or other parts in the Western World. Because of too little co-operation from other Western countries, the U.S.A. lost a rather large number of commercial orders to companies operating in countries without such legislation or control. Also, the force of corruption in developing nations remains unbroken.

It appears likely that unless a multi-national effort is made in which both the donor countries and the receiver countries participate together with the international financial or aid agencies, these self-destructive business practices cannot be stopped. The following five-part proposal offers possible guidelines for such an effort:

(1) A treaty is drawn up by participating Western World and Third World countries in which all signatories promise to do everything in their power to make corrupt practices difficult and punishable in their countries. This includes legislation, organisation and other means of legal control.

(2) All signatories become members of an international organisation with a small but effective permanent office where complaints can be lodged and investigated. All signatories agree to give this office every facility necessary to comply with its task.

(3) Private businesses within participating countries which engage in international trading are also required to submit to investigation by this office should serious complaints be lodged against them.

(4) This treaty is of the same nature as the non-proliferation treaty but, in this case, without exception. Countries unwilling to sign are exempt from bi-lateral aid, credit insurance and assistance from the World Bank, I.M.F., I.F.C., I.D.A., European Investment Bank and other agencies of the same kind. Therefore, contrary to the non-proliferation treaty, this treaty has for the most part the means to enforce its charter.

(5) The possibility of holding an international conference on this subject is discussed with all interested national and international agencies present.●

CAMBODIAN REPRESENTATION AT THE UNITED NATIONS

HON. MATTHEW F. McHUGH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. McHUGH. Mr. Speaker, I would like to call attention to a recent editorial in the New York Times which discusses the position the United States should take when the U.N. General Assembly considers the question of representation for Cambodia later this month.

As some of our colleagues may recall, the United States voted to seat the representative of the Khmer Rouge when this issue was debated last year. The Times questions whether the United States should take a similar stand during the forthcoming consideration of this issue.

As it points out, the Pol Pot/Khieu Samphan regime no longer governs Cambodia, and its atrocious behavior when it did rule has forfeited any moral claim to international backing. Thus, it concludes that continued U.S. support for the Khmer Rouge "would be a cynical betrayal of a ravaged people." I share that view.

At the same time, it is also clear that the United States should not endorse seating the Vietnamese-imposed Heng Samrin regime. The circumstances under which it was brought to power make it clear that it is not the legitimate representative of the Cambodian people, and its behavior since that time suggests that it is prepared to sacrifice the interests of the Cambodian people in order to enhance its own position.

For these reasons the Times concludes that the United States should use its influence to leave this seat vacant, a position advocated by the Government of India last year. While I share this view, I think that it is important to recognize that time is rapidly running out. If the United States does not throw its support behind such an effort soon, it is likely that the U.N. will eventually seat either the Pol Pot or the Heng Samrin delegations.

In my judgment, that would be a tragedy for the Cambodian people and would represent a failure of U.S. policy. Thus, after reading this editorial, I hope that our colleagues will share their own views on this subject with Secretary Muskie:

[From the New York Times, Aug. 29, 1980]

WHO IS CAMBODIA?

An awkward question will arise again next month in the United Nations: Who gets the chair labeled Cambodia? To Americans, both contestants are objectionable. The representative of Pol Pot's Khmer Rouge retained the seat last September even though Pol Pot had been deposed and his government had been revealed as monstrous. Yet most nations refused to seat his successors, the Cambodians installed in Phnom Penh by Vietnam. Although it never directly recognized Pol Pot's regime, the United States voted with the majority so as not to sanction the invasion of 1978–79.

Nothing has changed, but it is time for at least a slight change in the American posture. To keep championing Pol Pot's murderous gangs, who control only a few outposts in western Cambodia, would be a cynical betrayal of a ravaged people. It may please China, Thailand and other enemies of Vietnam, who support this desperate rear-guard faction with no concern for the welfare of Cambodians. But that is not a proper standard for membership in the United Nations.

To shift sides altogether would be equally wrong. The present regime in Phnom Penh, led by Heng Samrin, has done little to establish its independence of the Vietnamese or to build a government of genuine reconciliation. It has hampered the worldwide effort to relieve Cambodia's hunger, admitting food only when it could be used also to enhance its own power.

The right answer at the United Nations, therefore, is abstention, to leave Cambodia's seat conspicuously empty until a new regime can demonstrate a desire and capacity to govern without foreign troops.

The majority of the governments at the United Nations are hardly fit to pass on the humaneness or democratic legitimacy of another member. An institution that counts the Ukraine as an independent state and South Africa and Vietnam as representative of their inhabitants is reduced to some pretty shaky definitions. It can ask only that a regime be in effective command of a designated country.

Even the puppet rulers installed by Vietnam could rightly claim Cambodia's chair if they could manage to rule without an alien army of occupation. That is the deal that should be offered them, and it might, at least incidentally, evoke from them a greater concern for the plight of their people.●

THE CENTER FOR SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENT OF THE BEN-GURION UNIVERSITY OF THE NEGEV

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. WAXMAN. Mr. Speaker, I am pleased to bring to the attention of the House a very exciting development involving advanced education and research exchanges between the United States and Israel. Recently, the Center for Scientific and Technological Development of the Ben-Gurion University of the Negev, a private nonprofit institution in Los Angeles, has established a partnership with the University of the Negev, located in Be'er Sheva. The center will serve as an American school for applied research in energy, agriculture, and other fields of scientific and technological endeavor.

Several benefits are anticipated from this ambitious program. The challenges in these crucial areas of research are common not only to the United States and Israel, but to all the nations in the Middle East. It is hoped that the work of the center and the Ben Gurion University will help to build the bridges of peace in the area. Equally important, the center will maintain a strong relationship with U.S. educational institutions, providing exchange programs and other cooperative projects.

The center will therefore serve as a vast research laboratory, where innovative techniques, such as in energy generation and arid land agriculture, will be explored. As the American Southwest has a similar climate to the Negev, the lessons learned at Ben Gurion University have every potential of being effectively applied in this country.

It is my hope the goals of the center will be fulfilled, and that the peoples of several nations will benefit from these activities in the years to come.

Following is a detailed statement on these developments:

NEW AMERICAN SCIENTIFIC RESEARCH CENTER ESTABLISHED IN ISRAEL

The Center for Scientific and Technological Development of the Ben-Gurion University of the Negev, Inc., was recently established under the laws of California as a charitable, nonprofit corporation. The objective of the Center is to operate and maintain an American school of higher education for scientific research and technological development in Beersheva, Israel. The Center plans to construct a fully integrated facility in Beersheva, Israel. The facility is estimated to cost approximately three million U.S. dollars ($3,000,000.00).

The Center is most fortunate to have the full cooperation and support of Ben-Gurion University of the Negev ("BGU"). BGU is a leading academic and research institution, and is particularly well-known and respected for its accomplishments in many important areas related to the objectives of the Center—energy research, desert agriculture and new approaches to medical education. BGU's location in the Negev places the Center at the gateway to Egypt, and thus puts the Center's programs within reach of Egyptian scholars and students, as well as, of course, those from Israel.

The Center is committed to the furtherance and demonstration of American ideas and practices. Its control and direction is vested in a Board of Trustees of distinguished American citizens. It is committed to a close, working relationship with U.S. institutions of higher learning, particularly those located in California and the U.S. Southwest. The Center will serve as a unique vehicle for coordinating programs and pursuing projects and studies of common interest with such U.S. educational institutions and for exchanging students, professors and teaching and research techniques. Both the Center and these American institutions share a common concern for desert research, and other pressing problems arising out of shortages of water and energy—problems common to Israel, California, the U.S. Southwest and Egypt.

The Center will serve a unique role in providing an American founded institution through which Arab-Israeli participation and cooperation can be facilitated.

The Center has applied to the U.S. Government for assistance in the amount of one million U.S. dollars ($1,000,000.00) through AID's American Schools and Hospitals Abroad program.

Even though the Center does not yet have its own facilities, it has already moved forward, on a modest scale, with its programs. It recently appointed Dr. David Chipman, a distinguished educator, to its faculty; BGU facilities have been leased by the Center; and some Israeli students are enrolled in its programs.

By assisting the Center, the United States will not only further the goals and objectives of AID's American Schools and Hospitals Abroad program, but will, in a real sense, make a significant contribution to the stability and peaceful development of an area of the world of increasing political, economic and strategic importance to the United States.●

HANDGUN VIOLENCE CLAIMS 727 LIVES IN JULY

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. DRINAN. Mr. Speaker, the American handgun war continues. Another 727 lives have been lost during 1 month due to handgun misuse, bringing the total for 1980 to 4,429. Across the country, the unchecked transfer of dangerous handguns is responsible for these unnecessary fatalities.

As I have indicated in the past, the alarming growth in handgun deaths demands that the Congress examine this problem carefully and act on tough handgun control legislation. It is my hope that the Judiciary Committee will undertake this project soon.

I bring to the attention of my colleagues the roll of handgun dead for July 1980, as compiled by Handgun Control, Inc.

The list follows:

THE AMERICAN HANDGUN WAR DEAD—JULY 1980

ALABAMA (10)

W. Drinkard, W. Durden, S. Ewing, Jr., A. Mackey, C. Mackey, B. Morris, B. Morris, S. Palmer, F. Reese, W. Wyrick.

ARIZONA (12)

R. Barnes, E. Blackmer, R. Chaira, R. Evans, J. Finn, K. Furr, Z. Hopkins, G. Monsour, B. Poyson, J. Sharp, T. Vanegas, M. Wheadon.

ARKANSAS (12)

B. Allen, J. Bess, J. Burrage, A. Daniel, Jr., M. George, A. Mack, R. Meredith, P. Nickles, J. Oliver, W. Swift, R. Tatum, M. Young.

CALIFORNIA (77)

A. Alamaria, M. Altamirano, S. Arriaga-Lopez, W. Baird, D. Barry, D. Boardman, R. Bolbolan, C. Carranco, F. Cimino, J. Cordova, E. Crandall, F. Deciderio, C. Decker, K. Dillard, W. Emde.

H. Estes, W. Farley, A. Fong, L. Fong, S. Fong, S. Friou, C. Gramkow, D. Gregory, M. Harper, D. Hernandez, L. Hernandez, C. Holder, G. Ishiara, J. Johnson, R. Kelly.

E. Kitchen, S. Kitchen, C. Kriss, C. Kriss, V. Landayan, B. Levy, H. Lucio, J. Luna, K. Magee, C. Marchand, J. Mesa, C. Montgomery, L. Munoz, W. Nickerson, E. Perez.

K. Pickett, E. Pruett, E. Pruett, C. Rey, S. Rivera, F. Rodriguez, J. Sanford, C. Santiallano, C. Sheffield, R. Smith, J. Stevens, B. Stewart, L. Tareumotto, W. Tillman, R. Trujillo.

P. Tufilau, C. Turner, N. Valenzuela, L. Vasquez, J. Vidal, S. Vitolio, L. Willie, Unidentified male, Unidentified male, Unidentified male, Unidentified male, Unidentified male, Unidentified male, Unidentified male, Unidentified male, Unidentified female, Unidentified female.

COLORADO (23)

J. Armatas, L. Blake, R. Coyle, T. Evans, J. Fedderson, P. Gallegos, J. Garcia, S. Grady, C. Heavlin, C. Hecker, P. Hinshaw, R. Hogobom, R. Jaminez, S. Johnson, R. Kohn, G. Medina, G. Prien, J. Sanchez, R. Sanchez, R. Trujillo, A. Verdell, M. Wagnon, Unidentified male.

CONNECTICUT (6)

D. Avnayim, D. Betty, B. Flowers, C. Quintana, E. Sanders, M. Soloman.

DELAWARE (1)

L. Cruz.

DISTRICT OF COLUMBIA (3)

H. Brooks, J. Edmonds, J. Ross.

FLORIDA (43)

C. Ballard II, D. Balthaser, S. Beasley, J. Brannon, G. Carey, J. Dellamar, C. Dowling, V. Farrington, A. Garcia, G. Haeberle, B. Hamilton, J. Hernandez, B. Hill, K. Hood, D. James.

G. Johnson, W. Johnson, B. King, H. Klausner, G. Knight, L. Lynch, L. Magill, C. Moncau, R. Moncau, E. Murdock, M. Murdough, G. Oreno, G. Pitsch, P. Reburr, L. Reed.

R. Roberts, J. Robinson, M. Robinson, M. Siletta, R. Smith, G. Triana, E. Turner, J. Uptgrow, W. Williams, Unidentified. female, Unidentified. female, Unidentified. male, Unidentified. male.

GEORGIA (17)

C. Back, E. Baisden, M. Baisden, E. Campbell, M. Cook, J. Davis, D. Hardin, W. Hodges, M. Mangram, L. McDowell, J. Miller, N. Rakestraw, J. Russo, G. Sullivan, W. Walker, A. Watley, E. Williams.

HAWAII (1)

G. Chiu.

IDAHO (1)

O. de la Pena.

ILLINOIS (79)

S. Aguero, J. Allen, R. Anderson, J. Andrews, A. Anthony, D. Ashford, J. Balter, H. Billingslea, J. Capozzoli, M. Castro, K. Cherry, G. Chestnut, V. Cox, E. Currie, H. Dodd, A. Figueroa, A. Flores, M. Florez, R. Franklin, R. Frazier.

T. Gomez, J. Gonzales, L. Green, J. Harris, J. Harris, J. Hill, W. Hill, V. Hooks, D. Hunt, D. Hurst, M. Johnson, N. Johnson, J. Jones, J. Lipinski, E. Lofton, T. Lynch, R. Matos, P. McClary, C. McCullough.

E. McGlone, S. Medina, A. Mickey, C. Miller, M. Mirelez, C. Mitchell, W. Mitchell, K. Moore, W. Moore, D. Pearson, J. Pena, F. Perez, J. Peterson, W. Pickens, W. Porter, W. Price, E. Ramos, H. Randel, J. Reed, J. River.

R. Robbins, D. Robinson, F. Robinson, O. Roman, R. Saunders, D. Schrishuhn, Jr., L. Shepard, W. Spaulding, D. Swoboda, M. Tatro, A. Taylor, S. Tintera, R. Trevino, R. Watkins, W. Whitley, D. Williams, D. Williams, F. Williams, R. Williams, E. Young.

INDIANA (11)

C. Baldridge, K. Bowen, L. Farmer, R. Good, M. Greer, D. Hall, M. Perkins, M. Quillen, R. Salazar, J. Smith, E. Young.

IOWA (3)

G. Guthrie, Jr., W. Sandt, J. Sefton.

KANSAS (6)

J. Bradham, R. Capehart, S. Hersey, I. Keller, G. Newman, W. Simmons.

KENTUCKY (21)

F. Allen, O. Allison, R. Anderson, Jr., J. Barker, W. Barker, P. Cundiff, D. Dixon, J. Ferguson, M. Freeman, B. Hurley, E. Jackson, D. Johnson, K. Martin, D. Miles, R. Morris, D. Neylon, B. North, R. Pennington, G. Scott, B. Shelton, M. Witek.

LOUISIANA (32)

C. Bellard, N. Bullard, K. Collins, Jr., R. Crader, E. Evans, R. Freeman, H. Horton, Jr., S. Howell, R. Hull, N. Jackson, J. Johnson, R. Knight, J. Lawrence, D. Marcarelli, L. McCoy.

B. Monroe, R. Moran, D. Pelt, C. Pyle, R. Rainey, M. Rhea, B. Richard, R. Sebble, R. Simon, H. Smith, Jr., L. Smith, F. Thomas, T. Trahan, D. Williams, L. Williams, J. Wilson, Unidentified male.

MAINE (2)

R. Johnson, J. Lidiak.

MARYLAND (23)

J. Blanding, E. Cohen, O. Collins, H. Davis, M. Dela-Vega, R. Glover, M. Jackson, L. Johnson, P. Kennedy, S. Key, B. McCord, K. Pope, A. Rhyne, A. Richards, D. Sprouse, A. Steck, A. Tabatabai, T. Wall-El, D. Williams, Unidentified male, Unidentified male, Unidentified male.

MASSACHUSETTS (7)

P. Anderson, A. Cashin, K. Collins, B. Dinovo, C. Johnson, P. Mazac, M. Veligor.

MICHIGAN (13)

R. Ficaro, M. Greer, R. Guster, D. Hall, J. Myers, R. Reeves, J. Ryskamp, S. Thompson, R. Usiondek, M. Washington, C. Wills, J. Woodruff, E. Young.

MINNESOTA (2)

D. Bryan, M. McTighe.

MISSOURI (34)

G. Atkinson, J. Banks, L. Barton, W. Bell, S. Davenport, J. Drone, B. Durnil, M. Ellison, Jr., A. Gray, E. Griffin, R. Harris, T. Harris, C. Jackson, T. Kleiman, F. Lambeth.

R. Lanning, J. Malone, E. McDonald, R. Menaugh, I. Miles, H. Minor, C. Moore, J. Murphy, T. Nichols, A. Patterson, J. Paulette, J. Reding, W. Robinson, M. Sims, W. Smothers, M. Tatro, R. Welch, J. Wright, Unidentified female.

MONTANA (1)

R. O'Brien.

NEBRASKA (5)

A. Calabretto, L. Fitzgerald, G. Johnson, A. Mays, Jr., S. Reed.

NEVADA (6)

R. Haynes, D. Kinnamon, T. Sylvester, Unidentified male, Unidentified female, Unidentified female.

NEW HAMPSHIRE (4)

R. Day, S. Kelley, J. Lidiak, T. Lidiak.

NEW JERSEY (9)

J. Alston, R. Gonzalez, C. Iaconelli, L. Jackson, S. Kryszon, R. Lawrence, J. Moses, M. Sammel, S. Siman.

NEW MEXICO (10)

D. Fernandez, A. Gallegos, D. Klutke, R. Martinez, S. Millen, R. Ortega, B. Ramirez, J. Rodriguez, W. Uecker, E. Whatley.

NEW YORK (15)

R. Caggiano, J. Consilio, T. Edmundson, G. Hardwell, G. Horton, V. Lane, G. Matos, J. McGregor, S. Murray, G. Papa, O. Smith, A. Soleh, E. Tompkins, Jr., A. Walton, Unidentified male.

NORTH CAROLINA (22)

P. Autry, L. Buie, Jr., R. Creese, J. Davis, W. Elam, P. Griffin, S. Johnson, M. Kennerly, B. Leak, H. Liles, H. Miller, D. Morgan, R. Narcowicz, C. Pegess, M. Proctor, T. Sanders, J. Satterfield, L. Shoe, S. Smith, E. Williams, M. Wyatt.

OHIO (27)

C. Boggess, R. Brown, D. Byrne, G. Cobbs, R. Conrad, T. Conrad, W. Dillon, D. Estridge, E. French, J. Hanshaw, T. Hardnett, R. Harrison, J. Hawkins, M. Hill, F. Hilt, R. Humes, Jr., J. Johnson, E. Jones, W. Jufer, L. McGee, E. Pace, C. Scott, D. Sherry, V. Stanhope, G. Townsend, I. Voskuhl, T. Waldorf.

OKLAHOMA (16)

O. Adams, B. Cole, G. Cole, V. Endicott, L. Evans, A. Jones, B. Lofton, J. Louden, D. Martin, K. Mitchell, M. Nowlin, Jr., R. Peters, E. Pierce, S. Quinton, J. Shores, Unidentified male.

OREGON (12)

C. Cusick, M. Earle, R. Ellis, B. Henry, R. Jeffers, A. Kindred, D. Legler, D. Miller, R. Nees, Jr., L. Newingham, W. Rojas, D. Sivers.

PENNSYLVANIA (17)

J. Abney, A. Blake, L. Blake, N. Bunch, C. Butler, E. Davis, L. Evans, J. Fitzgerald, R. Knight, G. McLaughlin, S. Motton, B. Noble, L. Rowdenn, A. Scott, R. Sergeant, E. Small, S. Windbush.

SOUTH CAROLINA (7)

P. Lane, G. Sanders, Jr., T. Sanders, J. Satterfield, K. Waddell, R. Wheeler, M. Wyatt.

TENNESSEE (24)

G. Alcorn, H. Allen, L. Banks, C. Beene, R. Bell, Jr., J. Calloway, R. Carter, M. Coleman, A. Echols, R. Gray, C. House, L. Kiser, R. Knox, E. Jones, Sr., J. Moore, R. Newby, J. Riley, D. Rinderle, F. Smith, S. Thomas, J. Walker, K. Watson, M. Whitfield, B. Wilmoth.

TEXAS (89)

H. Alpha, M. Alzaldua, R. Avila, F. Bibian, B. Botello, M. Bowen, C. Brantley, A. Braswell, D. Brown, T. Burnley, R. Buyher, G. Carmon, W. Carroll, Jr., G. Cavarrubio, J. Cavarrubio, L. Cavarrubio, A. Coburn, W. Collay, C. Coronado, R. Creacy.

C. Dickerson, J. Dixon, M. Escobar, A. Esparza, R. Fawcett, A. Felsher, J. Finney, C. Flynt, D. Fowler, W. George, E. Gilford, F. Gipson, H. Goves, V. Green, W. Guerra, S. Harlow, J. Harris, D. Heathington, J. Heathington, W. Hicks.

J. Holt, G. Jensen, D. Jillson, S. Jillson, M. Johnson, V. Johnson, B. Jordan, C. Jordan, L. Kirkpatrick, J. Lester, W. Lindahl, W. Marshall, G. Mitchell, E. Ochoa, D. Patrick, N. Patrick, R. Payne, D. Pelt, H. Pyle, M. Pyle, T. Rainey.

L. Ramos, I. Rios, J. Rios, J. Rodriguez, G. Sanchez, I. Sanchez, L. Scott, W. Segura, T. Simmons, S. Sims, K. Smartt, A. Stiers, T. Temple, M. Thompson, R. Triplett, F. Vasquez, L. Villareal, Jr., H. Walker, C. West, T. Williams, J. Winters, J. Zuniga, Unidentified male, Unidentified male, Unidentified male, Unidentified male, Unidentified male, Unidentified female.

UTAH (4)

P. Black, L. Offenes, L. Osmus, C. Woodland.

VIRGINIA (5)

J. Bess, R. Dodson, T. Fitzgerald, B. Hill, I. Willis, Jr.

WASHINGTON (10)

D. Archer, R. Blyton, R. Britt, J. Bush, B. Knott, L. Linfor, W. Martinsen, R. Snyder, L. Tim, Unidentified male.

WISCONSIN (3)

D. Clark, F. Estrada, W. Harris.

WYOMING (2)

J. Campol, Unidentified male.●

CONGRESSMAN ROSENTHAL SPEAKS TO PANEPIROTIC FEDERATION

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. HARRIS. Mr. Speaker, earlier this summer, our colleague, Congressman BENJAMIN ROSENTHAL, addressed the Panepirotic Federation of America and Canada.

In his address, Congressman ROSENTHAL described the consistent efforts of the federation on behalf of the people of Northern Epirus, in Albania. These people of Greek heritage are struggling desperately to preserve their traditions, their language, and their religion in the face of ruthless oppression by the Albanian Government.

Congressman ROSENTHAL also spoke of the plight of the Greek population

on Cyprus, and the importance of resolving these international problems in order to strengthen the southeastern flank of NATO.

I urge all of my colleagues to read this address carefully. Those of us concerned about human rights, and about stability on NATO's flank, can learn a great deal from Mr. ROSENTHAL's insights.

The text of Congressman ROSENTHAL's speech follows:

SPEECH OF CONGRESSMAN BENJAMIN ROSENTHAL

Ladies, Gentlemen, my friends; I am honored to be here with you this evening on the occasion of the 21st Biannual Convention of the Panepirotic Federation of America and Canada.

Since July 1942, the Federation has been coordinating the activities of the many epirotic societies in the United States. With the avowed goals of cultivating brotherhood and working for the extension of human rights and freedom, the Federation stands as an important example of a humanistic fraternal organization.

It is an international tragedy that the people of Northern Epirus have been systematically denied the most basic of freedoms. The Albanian government has ruthlessly set about the cultural elimination of the Greek language, religion and spirit among the Epirotes within their border.

We in America prize our individual ethnic heritages and have created strength out of diversity. Albania has adopted the opposite approach. The Tirana government has as its explicit policy the elimination of tradition and the forced standardization of its population.

Although our information about internal Albanian affairs is meager, we do know that the government there has institutionalized a concentration camp system for dealing with dissent. There are currently over 33,000 prisoners; 20,000 are of Greek descent. Every prominent citizen of a Greek town or village has once passed through the Albanian prison system.

The calculated eradication of Greek culture has especially focused on the Greek Orthodox Church. Since 1967, when there were 670 Orthodox churches in Albania, 640 have been either destroyed or converted to commercial uses like grain storage and movie theatres. The remaining 30, have become non-religious museums. The Tirana government is publicly on record as opposed to all religions and for the forcible maintenance of a secular country.

The Albanian government has even mandated the eradication of what they call "inappropriate names." It is not enough that they imprison citizens of Greek descent, burn churches and attempt to outlaw the Greek Orthodox religion, they even proscribe childrens names if they have a traditional or religious origin. By law, all children in Albania must have their name chosen from a list of approved names prepared by the party organization. Even the most personal and private freedoms of choice are denied.

Approximately 300,000 people of Greek ancestry currently live in Albania. The country is the poorest in Europe, with a stagnant agrarian economy. The farmers and workers have no forseeable future, no hope for improvement. I do not have to further particularize, to this audience, the discrimination practiced upon them. We must continue to keep alive the issue of their human rights and their need for dignity in the future. We cannot let the hope of freedom fade.

The denial or limitation of human rights in Albania is a tragic symbol of repression everywhere. It is our moral obligation to combat discrimination and persecution. We in the United States must speak out and defend justice wherever it is imperiled. The very rights and freedoms we enjoy should be used and considered as a sacred trust—we who are blessed with liberty must forever fight for the basic human rights of those who are oppressed.

Unfortunately the situation in other parts of the Eastern Mediterranean is also grim.

After six years of armed occupation, the armed forces of Turkey still control 40% of the independent country of Cyprus. The intercommunal talks have disintegrated. The Turkish government has not seriously decided to resolve the stalemate and the United Nations Secretary General appears to be helpless.

The Congress of the United States foolishly removed its best and most effective lever when it voted to lift the Turkish arms embargo. The Administration claimed that as soon as the embargo was lifted, the Turks would be forthcoming on the Cyprus problem. That was nearly two years ago, and there are still as many as 200,000 refugees on that divided island, and no real progress or a real solution.

What many of us argued at that time, and still maintain today, is that the rule of law in the conduct of American foreign policy recognizes the Turkish invasion and occupation as a clear and continuing violation of American and international law. It is incumbent on people of conscience in a country like ours not to let the forcible partition of Cyprus continue.

The hoped for Greek reentry into the NATO military alliance also appears stalled. Current Administration policy claims that this is an internal affair between two allies and that the two principals and the NATO command should be the only parties involved. The Greek government has as it should, effectively made the continuation of the U.S. military bases in Greece contingent on a successful NATO military reentry. As a longtime supporter of NATO, I am convinced that the southeastern European flank, to remain viable, must include Greek military participation and every NATO member nation should be working to bring Greece's armed forces back into the alliance.

Most of this news of the international situation is discomforting. Yet we cannot allow that to weaken our resolve or our efforts. Our world has become increasingly small and interdependent. It is more necessary than ever to care about and express our position on international issues. I applaud the federation's past concern and activities and I look forward expectantly to your continued beneficial involvement.●

PERSONAL EXPLANATION

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. ROTH. Mr. Speaker, I was unable to be present August 28. Had I been present I would have voted as follows:

Rollcall 503, yea;
Rollcall 504, yea;
Rollcall 505, yea;
Rollcall 506, yea.●

GETTING OUR FAIR SHARE

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. MICHEL. Mr. Speaker, a recent study of where Federal dollars come from and where they go pointed to the fact that Illinois gets only about 70 cents for every dollar sent to the Federal Treasury by its residents.

The study revealed that Illinois got back less in defense contracts, transfer payments, and other spending in relation to the amount of taxes raised than any other State in the 1974–76 period.

The figures for Illinois hold true for most the northern industrialized States. New York, Pennsylvania, Ohio, Indiana, Wisconsin, Michigan, and New Jersey were all among those that contributed more than they got from Uncle Sam.

What is the point? Is it an indictment of the Members of Congress from these States who do not draw enough pork to their districts? I do not think so. I think it is an indictment of the entire Congress and the executive branch and the foolhardy manner in which Federal funds are disbursed.

It is a national tragedy that the Federal Government invests such massive amounts in areas where the investment is not needed, in cities and States where unemployment is low, but the temperatures are high, and in regions where the economies are strong, but so are the political power brokers.

Not every State in the Union is ever going to get its fair share, and I have some reservations about even wanting defense installations, which hold the false promise of employment only to be moved every few years. However, the implications of the present distribution system are clear. They are not based on need, but political opportunism. I think it is time we began concentrating more on needs and less on needless profiteering at the taxpayer's expense.

At this point in the RECORD, I insert an article by Paul Merrion of the Crain's Chicago Business, in the August 4 edition:

ILLINOIS' 70-PERCENT RETURN ON TAXES RANKS LAST IN FEDERAL OUTLAYS

(By Paul Merrion)

WASHINGTON.—The federal government giveth, the federal government taketh away—and in the case of Illinois it's been doing more of the latter for the last 25 years.

A new, state-by-state study of the sources of federal revenues and the distribution of expenditures shows that Illinois got back less in defense contracts, transfer payments and other spending in relation to the amount of taxes raised than any other state in the 1974–76 period.

Roughly speaking, Illinois received approximately 70 cents for every dollar it sent to Washington, according to the study, "Regional Growth: Flows of Federal Funds 1952–76," by the Advisory Commission on Intergovernmental Relations, a bipartisan government body that studies federal-state matters.

Although the study shows that many states have seen less of a discrepancy between taxes and expenditures in the last 25 years, as interstate differences in personal income narrowed, Illinois made only a negligible improvement that is probably statistically insignificant.

The study shows that the state's 70-cent return on the tax dollar in 1974–76 was practically the same as 25 years earlier, when it was 69 cents on the dollar. The ratio reached a high of .75 in 1959–61 and a low of .59 in 1965–67. However, because of many assumptions made in the study, interpretations "should be limited to broad comparisons . . . the quantitative expression of results gives them an appearance of much greater precision than can reasonably be claimed."

Looking at the data another way, expressing federal spending and revenues in relation to personal income in each state, Illinois contributes 101.2% of the national average to the federal coffers but receives only 70.5% of average expenditures for its level of personal income.

The study also shows that in 1974–76 Illinois contributed 6.11% of all federal revenues and received 4.26% of government spending. On a per capita basis, in 1974–76 Illinois residents contributed 116.0% of the national per capita average tax payment of $1,321 and received 80.8% of the national per capita federal expenditure of $1,398.

Federal deficits account for spending that is higher than revenues, which means the actual return on the tax dollar is less than the study states.

The shortfall in government spending in Illinois is most dramatic in military outlays, excluding personnel, where the state receives only 30% of the average federal expenditure per resident.

Illinois firms received only 1.6% of all military contracts in 1974–76, and only 1.4% of defense contracts in excess of $10,000.●

THE ALL-VOLUNTEER ARMY RECRUITS

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. MAZZOLI. Mr. Speaker, this country must have a strong and versatile military force. Its strength depends substantially upon the quality and ability of the men and women who comprise the Armed Forces.

For this reason I have been greatly distressed by recent disclosures that the Pentagon miscalculated—perhaps on purpose—the intelligence of its personnel as measured by the Armed Forces qualification test (AFQT). Instead of proposing some helpful steps, Secretary of the Army, Clifford Alexander, has decided to expunge all AFQT scores from the service records of all those who entered the Army since the draft ended.

I bring to the attention of my colleagues the following editorial which appeared in the Louisville Times on August 13, 1980. I cannot believe that a return to a draft is the answer, but I certainly believe it is the height of irresponsibility for the Army to hide the test scores of their enlisted personnel and leave it at that.

The article follows:

[From the Louisville Times, Aug. 13, 1980]

COULD SOMEONE BE CHEATING IS DISPUTE OVER ARMY TESTS?

Tests are the focal point of a major battle between the Army and critics of the all-volunteer force, and, as is so often the case with tests, it looks like someone is cheating.

There is fuel for suspicion that the Army's top leaders, including Secretary Clifford L. Alexander Jr., are going above and beyond the call of duty to make the Volunteer Army concept appear to be a success, even if it is not. If that's true, it is cheating and the victims include all Americans, especially if we are misled into believing that our armed services are stronger than they really are.

The tests around which the battle has raged are variations of those the Army uses to measure the intelligence of soldiers, particularly the Armed Forces Qualification Test. The AFQT is a 42-minute test designed to measure mathematical aptitude, reading skills and the ability to understand spatial relationships. Comparison of the dismally declining level of achievement in the AFQT with results of similar tests back to World War II has been a major weapon of critics of the all-volunteer Army.

The latest setback was the recent disclosure that the Pentagon greatly miscalculated, for all branches, the number of servicemen in the lowest acceptable AFQT level, Category IV, those who scored between the bottom 10th and 30th percentiles. A reassessment of the scores showed that one-third of all last year's military recruits, rather than the 5 per cent formerly reported, were in Category IV. The Army had the worst record of all the branches, with 46 per cent of its recruits in the lowest acceptable level, instead of the 9 per cent reported earlier.

The response of the Army, however, was not to acknowledge the corrected figures as evidence that either it or the all-volunteer concept has failed to attract enough qualified recruits to man the nation's defenses in the Missile Age. Instead, top-level officials now seek to discredit the tests used by the Army for more than 30 years as an indication of recruit suitability, and they quietly ordered the scores erased from the record of every soldier enlisted since the Volunteer Army began.

Mr. Alexander, in defense of that action, insists that the tests are not an accurate indication of military aptitude. The Defense Department reassessment study did not share that view, citing the experience of 30 years that those who score lowest are less likely to be successful and more likely to have disciplinary problems.

Mr. Alexander and aides also insisted that low test scores might stigmatize a soldier and unfairly hamper his career. When pressed they could cite no examples of this.

But shakiest of all was the fact that the brass ordered the test scores erased before it had anything else in place to help unit commanders assess the capabilities of the men they—and the rest of us—would have to depend on in case of war. Even if Mr. Alexander is right when he scoffs at mental tests as indicators of military virtue or a willingness to obey orders, a lot more than that is necessary. Today's soldier throws missiles, not spears.

Maybe higher pay and better benefits for the all-volunteer force are needed, or perhaps the answer is a return to the draft. But the one thing this nation doesn't need to strengthen its defenses is to wipe out records so we won't know how well, or badly, we're really doing.●

NATIONAL GRANDPARENTS DAY

HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. GRASSLEY. Mr. Speaker, on Sunday, September 7, America will observe National Grandparents Day. The occasion does not enjoy the recognition of Mother's Day or Father's Day, but a little reflection will reveal many reasons why it should.

Americans of 1980 owe a great debt to their grandparents. As a body, they embrace the generations which have endured the sacrifices of two world wars, and the war in Korea. They are a generation of unquenchable patriotism, national pride, and a strong sense of public duty.

Grandparents of today have witnessed and been a part of the great transition from the horse to the interplanetary rocket. In fact, it is mainly their vision, their labors, and their innovation that underlie the revolutionary technical progress of America over the past 50 years. In the fields of inventive science, they have made us the most mobile people the world has ever known. They have brought us the technology of jet airflight, nuclear power, space travel, television, computers, and fast foods. Their accomplishments in the fields of medicine, the laboratory sciences, and nutrition have added years to our lives. In an era when there were few geographical frontiers left to conquer, they became pioneers in new fields which have greatly improved the quality of human life throughout the spectrum of its social and economic aspects.

America's grandparents have been through a great depression and the crucible of disruptive challenge and change which marked the difficult years of the latter 1960's and the early 1970's. During those eras, as have other grandparents in other times, they represented the continuity, the linkage with the past, and the faith in the future which held America close to the traditional values responsible for its greatness.

Grandparents are a legacy. They build the platforms of scientific progress, of human values, of steadying institutions, and enlightened change that elevate each new generation to a better point from which to set forth in life.

Grandparents are love. They want a better life for their children and their grandchildren. Their pleasures are largely vicarious, derived from enriching the lives of others. They are an example of human love and caring which infects those who are near to them and is thereby perpetuated.

Grandparents are wise. They grow closer to God as they grow older in years. Life has taught them to distinguish between passing fancies and solid values. They have much to contribute and their wisdom provides an essential influence on the tiller of our great ship of state.

We are deeply indebted to America's grandparents, whether they be in government, in industry, or the quietness of well-earned retirement. I hope that the day set aside for them will bring them the recognition that they so richly deserve.●

GARDENA'S GOLDEN JUBILEE

HON. CHARLES H. WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. CHARLES H. WILSON of California. Mr. Speaker, September 13, 1980, marks the 50th year of incorporation for the city of Gardena, Calif. The residents of this remarkable city have reason to celebrate and proclaim with pride their accomplishments of the years gone by. The people of Gardena have constantly worked to improve upon the life they lead while celebrating and understanding the accomplishments of the past. The city has set aside September 2–14 to honor its success. It is a celebration that is well deserved.

The evolution of Gardena from the Spanish Rancho San Pedro land grant to the 30th largest city in the Los Angeles County is a history of development that has bound together multiethnic heritages into the pursuit of common community needs and individual fulfillment. It is a city that recognizes that the changes of the last 50 years has required constant innovation and adaptation. It is a community that recognizes that future changes will require a continued ability to act on their common interest. Gardena has always been capable of changing for the better because Gardena is a community in every sense of the word.

Gardena is a community which is based not only on an ability to build upon success, but on an ability to overcome hardship. The internment of the Japanese-American families of 40 years ago was a sad and difficult time for the community. While we as a nation are still coming to grips with this action, the city of Gardena has lived with and overcome this treatment of the Issei and Nisei Americans. It is a credit to the community and to every American that this city, once divided, has prospered and proven that citizenship and common goals are more lasting and beneficial than any other characteristic of American life. Every resident of Gardena has a heritage and history which is far richer as a result of this action than any other city in this country.

Congratulations to the city of Gardena.

The past has proven Gardena as a showcase for community responsibility. These past 50 years have shown that community development can effectively combine individuals, business, and government into a cohesive force for constructive changes. This last half decade of community improvement has placed individual diversity and pursuits in concert with collective goals. The foundation established by these last 50 years makes Gardena the "City of the Future." It is the next 50 years that the city of Gardena can look forward to with anticipation.

The Gardena "50th Anniversary Weeks" is a celebration of the past and the future.●

U.S. HOLOCAUST MEMORIAL COUNCIL

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. OTTINGER. Mr. Speaker, the passage of time must not diminish the horror and magnitude of the holocaust. Age will yellow the photographs of persecuted Jews, but if we ignore the atrocities of the past, we will invite them in the future.

Today I am cosponsoring a bill which would establish a permanent U.S. Holocaust Memorial Council. The Council would have the responsibility to plan and carry out the recommendations of the President's Commission on the Holocaust. The Council would plan and oversee the construction and operation of a permanent, living memorial to the victims of the holocaust. Also, it would establish and administer an educational foundation. The Council would designate 1 week in each year to be known as "Days of Remembrance" as a national civic commemoration of the holocaust. Of particular importance, the Council would establish a Committee on Conscience which will provide early warning of threats of genocide against any people throughout the world. Congress must exert every effort to insure that the planned program of atrocities carried out by the Nazis is never repeated. I believe this is a good way to attempt to prevent the holocaust from repeating itself in the future.

Mr. Speaker, besides creating a living memorial to the holocaust, there is another way in which America can honor the memory of the 6 million Jews who were killed. That is to remain unwaivering in our commitment to Israel, which has been a refuge of holocaust survivors and of persecution everywhere. We must protect these people by insuring that Israel is not pressured to jeopardize its security in accepting the terrorist PLO at its borders. We must pursue a forceful policy which stresses Israel's legitimacy as a nation and its purpose as a homeland.

I believe that we must continually strive for a world in which all people can live in peace and security. To achieve this, we must recognize the tragedies of the past and keep their memory burning bright as a reminder of man's most brutal capabilities. The hope for a humane world lives in our ability to grapple with yesterday and provide for tomorrow. This legislation is a step in that direction.●

POSTMASTER HERBERT W. WIPPERMAN RETIRES

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. SKELTON. Mr. Speaker, it has come to my attention that a long and illustrious civil service career is coming to an end. I have learned of the retirement of Herbert W. Wipperman as postmaster of Wellington, Mo. It has been my good fortune to know Mr. Wipperman and I want to take this opportunity to comment on his record of service.

It has been my belief that in most small towns in America, the post office is the closest and best manifestation of the Federal Government. If that is true, in Wellington, Mo., our presence has been a very positive one. Mr. Wipperman has served as postmaster for the past 27 years. During that time he has been truly a pillar of his community.

In addition to handling his duties for the Postal Service, Mr. Wipperman has held several positions of leadership in local and county organizations, including Boy Scouts, the Red Cross, March of Dimes, the Cancer Society, Lions Club, the Masonic Lodge, and Shrine Club. He is also an officer and devout member of the United Methodist Church.

I am proud to take this time to congratulate Herbert Wipperman on his distinguished record and to thank him for his efforts in behalf of his community.●

WHAT HELP IS AVAILABLE TO CREATE JOBS?

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. HAMILTON. Mr. Speaker, I insert my Washington report for Wednesday, September 3, 1980, into the CONGRESSIONAL RECORD:

WHAT HELP IS AVAILABLE TO CREATE JOBS?

A recession takes a heavy toll on Americans in the workplace. The unemployment rate has risen from 6.2 percent in March to 7.8 percent in July. The ranks of the jobless have grown by 25 percent since March, leaving more than 8 million people idle. Most forecasters see the unemployment rate peaking at 8.5 percent sometime early next year.

It is important to understand unemployment from a national perspective, but all too often the statistics hide the true meaning of not having a job. While impossible to state in terms of dollars, the social costs of unemployment are staggering. They include not only the loss of self-esteem, but also higher rates of crime, suicide, marital strife, and illness. Hoosiers talk to me about unemployment every time I am in the Ninth District. They have been asking me how jobs can be created in their communities. The best answer to their question is an economic policy that will unleash the productive capacity of the country, upgrade the skills of our workforce, and achieve long-term economic growth without inflation. It may also be useful to know what help is available from the federal government to create and protect jobs.

One source of funds for the creation of jobs is the Economic Development Administration (EDA). EDA makes grants for water projects, sewer systems, utilities, and roads. Loans and loan guarantees are available for other purposes. EDA also offers grants of technical assistance for economic development and grants for areas experiencing economic deterioration or dislocation. Projects funded by EDA must be of a kind that lead to permanent jobs in the community. Like EDA, the Department of Housing and Urban Development (HUD) has programs that create jobs. There are community development block grants for housing, conservation of neighborhoods, planning, urban renewal, social services, construction of commercial or industrial buildings, and rehabilitation of private property. HUD also makes grants to small cities and counties for community development and rehabilitation. Yet another source of funds in HUD is the program of urban development action grants. These grants go to cities and counties for land clearance, site improvement, development of infrastructure, and construction or rehabilitation of buildings. Many projects funded by HUD are intended to create permanent jobs. Other agencies of the federal government—the Small Business Administration, the Farmers Home Administration—have programs that can be used to create jobs.

The Comprehensive Employment and Training Act (CETA), administered by the Department of Labor, is a further source of funds that communities may tap for jobs. Block grants provide employment and training services to disadvantaged people. Activities include classroom and on-the-job training, assistance with job search, counseling, referral, and public service employment. Another program, trade adjustment assistance, does not create jobs directly, but it does help workers in industries where imports have caused unemployment. Workers totally or partly cut off from employment because of imports may petition to participate in the program. Benefits include wage and relocation allowances, training, employment services, and job search grants.

Employers and employees themselves can take action to combat unemployment. The targeted jobs tax credit, for example, gives employers an incentive to hire disadvantaged people. The credit is set at a maximum of $4,500 over two years for each certified employee hired. Job sharing is receiving more attention as an alternative to the layoff. Under a job-sharing plan, employees, in consultation with management, agree to work fewer days so that no one will have to lose his job. Local conditions, union contracts, and other factors may play a role in the decision. Legislation pending in Congress would encourage states to make prorated payment of unemployment compensation to job sharers, thereby helping them maintain most of their income.

The federal government is moving against unemployment on several other fronts. To assist ailing American industry, Congress approved loan guarantees for Chysler, an action that may have saved as many as 800,000 jobs nationwide. In addition, the President has announced a comprehensive plan to revitalize the sagging automobile industry. The steel industry has been the beneficiary of a similar plan. In the days ahead, the President will be arguing for his new program of economic renewal in which tax relief would be combined with spending for job retraining, economic adjustment, and research to spur industrial innovation. Governments may need help too, so Congress is considering special anti-recessionary fiscal assistance to states and localities. Spending under this program would be triggered by two consecutive declines in gross national product and real wages. The funds could be used to retain workers or do new hiring.

A bill under consideration in Congress would establish a new program to prevent unemployment through the teaching of basic skills to disadvantaged youth in the high schools. Under the program, funds would be channeled into high schools that submitted plans for appropriate education, work experience, training and services to ease the transition from school to workplace. Other legislation, now being examined in the Senate, would cut taxes. Although the merits and drawbacks of a tax cut are being weighed, the issue may not come to a vote until the close of the year. On the positive side, a tax cut could be the most forceful step congress could take to blunt the effects of the recession. On the negative side, it could increase the rate of inflation. To minimize the inflationary potential, any tax cut should be designed to boost the nation's productivity. Higher productivity means economic growth and more jobs.●

DEATH OF ROBERT KELLER

HON. JACK BROOKS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BROOKS. Mr. Speaker, I was saddened to read the other day of the death of Robert Keller, who served the Government and his country so long and so well as Deputy Comptroller General of the United States.

Over the years Bob Keller appeared before the Committee on Government Operations many times and always performed in a most professional manner. His message was always clear and concise and enabled Congress to understand the complex issues involved in the work of the General Accounting Office.

Having retired just last February, after a 45-year career in the Government, it is a great sorrow that he was allowed so brief a time to enjoy the years of leisure he had earned. My deepest sympathy goes out to his wife and family.●

EPIDEMIC OF TETANUS

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. McDONALD. Mr. Speaker, in the medical field the clinical problem of tetanus is caused by the anaerobic bacillus *Clostridium tetani*. The clinical manifestation of this dread disease, frequently associated with involuntary muscle spasm of the jaw muscles and hence, in the general public, the term lockjaw is sometimes used.

Shifting to the political world, we are currently witnessing a form of lockjaw by contemporary and would be leaders. Specifically I am referring to the silence by American leaders in view of the plight of the Polish people in their struggle for freedom. This was especially evident during the strike.

There are basic rights that come from a divine source and not government. In Russia, and in the Communist colonial empire, the rights of the people are held as coming from the dictatorship of the Communist party. The people of Poland today, like the people of Hungary in 1956 and the people of Czechoslovakia in 1968, are making initial efforts toward the reestablishment of the proper relationship of man and the state.

In spite of the epic proportions of the current struggle for freedom in Poland, President Carter seems to be preoccupied with the routine affairs of state and the fall campaign. The Reagan-Bush team has entangled itself in the China card—a card which has turned out to be a joker. Mr. Anderson is flailing away with the rhetoric of the campaign trail. If the free world is looking to the United States for leadership, it must be discouraged by the lack of vision and courage by our leaders. It is possible that in certain cases of Western leadership void, more sinister reasons exist.

It is indeed refreshing to note that the above described void is not total. On August 21, 1980, the wire services noted that the West German statesman Franz Josef Strauss has courageously and correctly noted the ritual of the West when forced with Soviet pressure. First there is insurrection and then we cry for sanctions. Various so-called and sometimes self-appointed leaders give warning of overreaction. This status is followed by decay of unanimity in the West and then worry over a danger to détente. The terminal phases include the abandonment of sanctions and finally the shameful transition back to normal activity.

It is unfortunate that more leaders do not have a clear vision of what must be done to insure liberty for the next generation; they are preoccupied with what must be done to gain the next election.

On August 21, the German wire service carried the following account. My own rough German translation follows, and I hope some of our would be leaders might gain insight and courage. For the interest of my colleagues the wire account follows:

Opposition leader Kohl hopes for along with the striking Polish workers understanding by the leadership of the country, that the business and trade union problems in Poland would only be solved completely

through reforms and more liberty not through terror from above or outside. On the morning of 20 August in Bonn, Kohl expressed the public support and great admiration of the CDU/CSU for the courage and self determination of the Polish workers. In the opinion of the CDU president those of their remaining demands show that once again with Poland a communist system is pushed up against their borders. Strauss explained, the situation in Poland brings to mind in depressing ways the Czechoslovakian incident of twelve years ago, when Soviet troops smothered "Spring in Prague." The ritual of the West over Soviet pressure is always the same. It is composed of insurrection, the cry for sanctions, the warning of overreaction, the decay of unanimity of/in the West, the worry over the "so-called" politics of detente, the abandonment of sanctions, and finally the transition back to normal activity.

The CDU member Norbert declared solidarity for the strikers in Poland. He outwardly seeks an explanation from Ig-Metal leader Eugen Loderer.●

WYATT EARP DIPLOMACY

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BONKER. Mr. Speaker, Tom J. Farer, a distinguished professor of law at Rutgers University and president of the Inter-American Commission on Human Rights, has written a thought-provoking article in Newsweek, August 11, 1980, entitled "Wyatt Earp Diplomacy."

He writes:

Today a host of influential citizens, intent on appropriating the direction of American foreign policy, hustle about retailing news of American defeats, like so many beggars in an Oriental bazaar exhibiting their children's deformities. In Angola, the Horn of Africa, Iran, Nicaragua, Panama and elsewhere, they say, the United States experienced defeat because our leaders lacked the passion for victory * * *. If misreading the past is a sure recipe for trouble, then trouble is coming our way. For these cases do not teach that the key to a more successful foreign policy is to hurl ourselves violently into every breach of the global status quo.

I commend this outstanding essay to all of my distinguished colleagues, especially those advocating reverting to the policy of embracing every unsavory dictator who spouts anti-Communist slogans to win our affections, while they imprison, torture, exploit, and repress their own people.

The article follows:

WYATT EARP DIPLOMACY

(My Turn/Tom J. Farer)

Today a host of influential citizens, intent on appropriating the direction of American foreign policy, hustle about retailing news of American defeats, like so many beggars in an Oriental bazaar exhibiting their children's deformities. In Angola, the Horn of Africa, Iran, Nicaragua, Panama and elsewhere, they say, the United States experienced defeat because our leaders lacked the passion for victory. Curiously enough, few of these honorable gentlemen stop to explain in what sense these were defeats or how they might have been averted by a diplomacy springing from the barrel of a gun. Much of their national audience seems equally uninterested in such pedestrian questions, as if the idea of defeat rooted in a craven pacifism strummed some deeply satisfying, masochistic chord.

If misreading the past is a sure recipe for trouble, then trouble is coming our way. For these cases do not teach that the key to a more successful foreign policy is to hurl ourselves violently into every breach of the global status quo. For exemplary purposes I will briefly consider three of these supposed defeats: Iran, Panama and the Horn of Africa.

Could a President weaned on the wit and wisdom of the late General Patton have, unlike Jimmy Carter, preserved our Pahlavian asset? One hears a good deal of sleazy innuendo about failure to encourage the Shah or his generals, as if they had not amply demonstrated an unflappable will to torture and slaughter just as long as they could deploy the necessary human instruments to that end. The late Shah needed not encouragement but troops whom he could count on to shoot until the bulk of his beloved subjects had submitted or died. And so far, no American politician has slunk out from behind this wall of innuendo to arraign Carter for not making Iran safe for the Shah by killing the Iranian people.

Even the most primitive advocates of a bellicose foreign policy seem to appreciate the staggering costs—if not the moral burden—of occupying a country of 36 million people. And an occupation it would have had to be, since in the process of pacifying Iran, we would have turned all but the Shah's palsied hands against us.

A volcanic political eruption that we could not hope to control at any tolerable cost catapulted the Shah out of Iran. Against the advice of our own experts on the scene, Washington chose to compound its earlier complicity with the Shah's regime by offering asylum, however temporary, to the tyrant, with consequences which continue to unfold. Thus, in the case of Iran, through moral confusion and political cowardice Washington played into the hands of America's adversaries.

ADVOCATES OF A MORE BELLICOSE FOREIGN POLICY EAGERLY SNATCH DEFEAT FROM THE JAWS OF VICTORY

Risk: In Panama, by brute force we could certainly have achieved a "victory" defined as maintaining in the Canal Zone all the insignia of imperial control. And if we were willing to post a significant proportion of our strategic reserves along that vulnerable waterway and to occupy much of Panama itself, we could probably have made the canal secure, although the risk of guerrilla attacks would have encouraged use of alternative routes by the commerical interests we were presumbaly protecting.

Since all over Latin America the canal was a brooding symbol of old-time "Yankee imperialism," the violence required to achieve Mr. Reagan's conception of victory in Panama would have made moving targets out of Americans in a host of other countries. Willingly or otherwise, some would have paid the price of "glory."

The tangible costs of force in Panama would have run into the billions. The intangible—among them the unraveling of relations with hitherto friendly Latin states, including oil-rich Mexico and Venezuela—might in the long run have hurt more. So the decision of successive administrations to negotiate for the preservaton of basic American interests in the security of the canal and in its effective operation—while surrendering the forms of control yleided much earlier by the European powers in their colonies—was hardly an act of unbridled altruism, or even of simple compliance with the prevailing norms of the rest of mankind. If the end of foreign policy is protection of real interests at minimum cost, the Panama Canal treaties were a diplomatic victory.

Alarms: Ethiopia, another case invoked by th Wyatt Earp School of Diplomacy, is equally a pseudo-defeat. In the early and middle '70s, the sort of experts now seeking the Promised Land aboard the good ship Reagan trumpeted alarms about Soviet air and naval facilities in Somalia which were said to threaten, even to control Western oil routes. No sooner did the Soviet Union propel itself out of those facilities by opposing Somali aspirations in Ethiopia than the same experts began celebrating another American "defeat." Now Washington is free to negotiate its own way into these facilities for a fraction of their cost to Moscow. Whatever Ethiopia's worth to the Soviets, the price to the United States to compete for influence was grossly disproportionate to the potential gains. The refusal to bid for overvalued assets is a defeat neither in business nor diplomacy.

Then why does an aura of loss nevertheless hang over American policy on the Horn of Africa and practically everywhere else in the Third World?

For a luminous moment we enjoyed an indisputable global pre-eminence. Vietnam and OPEC brought a sudden sensation of harsh limits on America's ability to dominate events. The requisite adjustment of perspective does not come easily.

Unlike the '40s, '50s and '60s when American muscle could be associated with an array of Soviet defeats, frustrations and retreats, the '70s were marked by events seen as victories for Soviet power—beginning with the American Mission's frantic departure from Saigon and culminating in the occupation of Afghanistan. Practically no one asks whether Moscow's acquisition of additional impoverished clients amounts to a costly misdirection of resources on the eve of an era of pronounced economic difficulties for the Kremlin. (Cuba alone consumes subsidies of $2.7 billion per year.) This disinclination to apply long-term cost-benefit analysis to Soviet "victories" in the global boondocks is at one with the simplistic vision of American defeats.

Influence and material gains secured by trade, investment and negotiation lack glamour. Intoxicated by images of raw power, Americans seem unaware that after all its supposed triumphs, the Soviet Union remains peripheral to developments in Africa, is frozen out of Asia's most economically dynamic states and has achieved nuisance status, if that, in the Western Hemisphere. And they are unimpressed by such triumphs as the full-scale incorporation of Egypt into the United States sphere of influence and the extraordinary transformation of our relations with China.

Winners: Defeat in other realms of policy—inflation and the dollar's weakness, our industrial decline, the persistence of poverty and racial conflict—helps to create a searing self-image of failure. And it does so when Americans particularly need the satisfaction of vicarious participation in victory. For in a time of stagflation, they cannot reach the normal benchmark of personal success: enhanced consumption.

Americans are inclined to transcend a sense of personal inadequacy through identification with winners. Geographic identity with victorious sporting teams offers one source of personal fulfillment. National identity with a victorious diplomacy offers another. Foreign policy thus becomes the moral equivalent of sport, with other countries as irredeemable competitors. Cooperation spoils the game, and defeat aches like a charley horse. For the ultimate canon of American sporting life is that winning isn't the most important thing; it is everything. Without conspicuous victories ripped by main force from the grasp of history, how can we bellow to the heavens: "We are number one!"? ●

W. W. "FOOTS" CLEMENTS

HON. RICHARD C. SHELBY

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. SHELBY. Mr. Speaker, although great honor has already been bestowed on the distinguished Alabamian of whom I speak—for he was recognized in May of this year as a much-deserved recipient of the Horatio Alger Award for 1980—I wish to further the recognition of his achievements on the floor of the U.S. House here today.

W. W. "Foots" Clements is a living, breathing Horatio Alger, and an exceptionally fine gentleman to boot. Born in Tuscaloosa County in 1914, the last of nine children in the family, Foots pulled his financial weight through odd jobs with the local butcher and dormitory janitor. Finally in 1935, Foots landed a real job as a route salesman for the Dr. Pepper Bottling Co. in Tuscaloosa, Ala., to meet the expenses of his college education at the University of Alabama.

It was at this early point in his Dr. Pepper career that the Horatio Alger steam roller began to move. After being a route salesman for 6½ years, Clements became a zone manager in 1942 representing Virginia, North Carolina, Pennsylvania, and West Virginia. In 1944, he was promoted to sales promotion manager; by 1948 he became assistant manager of bottler service. Just 1 year later, Clements was named general sales manager and was elected vice president-general sales manager in 1951. In 1957, that title became vice president-marketing and within 10 years Foots was elected executive vice president and a member of the board of directors.

In March 1969, Clements' Horatio Alger story had come true: He became president and chief operating officer of Dr. Pepper. In 1974, Clements was further elevated to the position of chairman of the board, president and chief executive officer. In February of this year, Clements relinquished the mantle of president and chief operating officer, while remaining as chairman and chief executive officer, as well as wearing the hats of chairman of the board and president of the Dr. Pepper Metroplex Refreshment Co., its bottling companies in Houston, Waco, and San Antonio, the Dr. Pepper Beverage Sales Co., and the Dr. Pepper Japan Co. and chairman and president of the Dr. Pepper Bottling Co. of Southern California.

Now 65, Foots could certainly rest on his laurels if he so chose. The Dr. Pepper Co. has, under his tutelage, became the fourth largest selling brand of soft drink with sales in 1979 reaching $292 million—up from $12 million in 1959 when he served as head of the marketing department. Clements set out to, and obviously succeeded in, building the strongest franchised bottler network in the soft drink industry. His ingenuity included shifting marketing strategy to consumers in the 13 to 30 age bracket and expanded to the introduction of Dr. Pepper in Japan, the first international marketplace penetration.

But this fine man is not one to ride his comfortable chariot off into the sunset. The list of his civic activities and business-related memberships is too lengthy to recount here; suffice it to say that Foots is an extremely busy and committed man. Moreover, from his position of chairman and chief executive officer, Clements intends to devote his Dr. Pepper time and energy to long-range planning and acquisitions. It goes without saying that he will leave an indelible mark on the company.

I am proud to say that this most exemplary recipient of the extraordinary Horatio Alger Award was born and reared in my home county which I now have the honor to represent in Congress. The example of W. W. "Foots" Clements is one for all Americans—young and old—to note. He really is a pepper.●

NOT THE SAME OLD MANURE

HON. ALBERT GORE, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. GORE. Mr. Speaker, as my colleagues will remember, this Congress made a major commitment to the development of alternative energy resources when it passed the Energy Security Act of 1980. I was pleased to serve as a conferee for the House-Senate deliberations on that legislation, as the support for the intent of the act was widespread.

A particularly important part of the act was title II, which provided financial incentives for biomass conversion projects. This technology embraces a number of energy-producing measures readily available to a wide range of potential individuals and companies.

One of these methods produces methane gas from animal manure, an age-old process which can accomplish several goals: Energy to burn directly or to power a generator, disposal of a caustic farming byproduct, creation of a high-quality fertilizer, among others.

The Washington Post, reporting on this process in the August 31 issue, revealed that this manure-to-energy technology is being virtually ignored by officials of the Departments of Agriculture and Energy. USDA, through its Farmers Home Administration, has principal jurisdiction for distribution of the funds we have made available for loans to start innovative onfarm energy programs such as the ones mentioned in the Post article, and I am distressed that the agency has reportedly turned its back on such promising projects.

I commend the Post article to my colleagues for their information:

NOT THE SAME OLD MANURE: USDA DOESN'T KNOW ENERGY FROM SHINOLA

(By Thomas Grubisich)

A growing number of American farmers think that Agriculture Secretary Bob Bergland's bureaucracy is full of it. They're mad because the bureaucracy won't practice what is preached and help farms, which are also full of "it," turn a lot of "it" into cost-effective energy.

The "it" is manure. By a relatively simple process, which involves no serious environmental hazards such as meltdowns, manure can be converted to a burnable gas. If 60 per cent of agriculture's waste could be so utilized, the energy benefit would be the equivalent of 155 million barrels of oil a year—enough to supply all the electrical needs of 15 million of America's 78 million homes.

On selected occasions, Dick Waybright, co-owner of the Mason-Dixon dairy farm southeast of Gettysburg, raises up a sign that shows a Holstein cow with a bolt of energy coming from the vicinity of its tail.

This is Waybright's way of advertising cow power. His farm, which straddles the historic boundary between Pennsylvania and Maryland, is converting 2.7 million tons of manure from its 700 Holstein cows into $30,000 worth of energy annually. The system works, and it is cost-effective.

If Waybright could get the help he needs to expand his operation, he could produce all the electricity he needs, use waste heat to run an alcohol still to produce fuel for his tractors, and export surplus current to the local utility, which happens to be Metropolitan Edison of Three Mile Island fame.

In his search for financial help, Waybright went to the federal government, which says it is committed to moving the nation toward energy independence. The Department of Energy, after many months, said no. The Agriculture Department said no. This is the same department which has been committed by its chief—Bergland—to bringing its "full range of authorities and resources . . . to help America become energy independent."

Recite those words to Waybright, and he will say wearily: "I can't understand why the government can recognize the process and yet not move on it."

Waybright is only one farmer who is learning the bitter lesson that the federal government isn't yet prepared to put its money where its press releases and speeches are and help farmers tap their enormous energy potential. In Illinois, one of the nation's biggest farm states, John W. Lehman, alternate fuels coordinator for the Illinois Agriculture Department, says Farmers Home Administration (FmHA, the main aid agency within USDA) "has not guaranteed a single dollar's worth of loans for alternate energy projects in this state."

Many forms of alternate energy involve high technology (squeezing gas or oil out of a lump of coal) or a touch of romance (windmills churning on the horizon). But there is nothing romantic or very technological about cow power. It is actually an age-old process that has been widely used on a

small scale in China and India and other countries that don't have huge, modern energy grids like the United States.

While not technologically imposing, the Mason-Dixon system is not exactly a Rube Goldberg contraption held together with baling wire and desperate hope. It is simple, but not simple-minded. Manure from about 700 cows is flushed to a pit where the solids are separated out and sent to a basin tightly covered by a big black plastic cover that keeps oxygen out. In the oxygen-free atmosphere under the bag, bacteria and other microbes devour the solids and then die, their decay produce a gas that expands the bag like a giant balloon. The gas is 60 per cent methane and 40 per cent carbon dioxide.

The gas is used as a fuel to run a generator which produces electricity. Converting the gas' BTUs into kilowatts is not as efficient as burning the gas directly, but Waybright wants to utilize the generator's considerable waste heat to make alcohol from corn grown at the farm. There is a big controversy about whether alcohol production is cost-effective when its operation requires a fuel such as petroleum. But when waste heat is used, there is a clear net gain.

The problem so far with alternate energy, which America is supposed to exploit so it can become less dependent on imported petroleum, is that what sounds wonderful on paper ("harnessing the endless power of the sun," etc.), in reality can be horrendously expensive and/or susceptible to frequent breakdowns.

When Waybright decided to try to make Mason-Dixon energy-independent, he cast a cold eye before he put up $100,000 for cow power. (He received not one dollar of federal help for the methane digester.) "There are a lot of pie-in-the-sky ideas," he says. "I wanted a system that worked. I'm not an altruist. I wanted to make a profit."

What is the evidence?

Since cow power went on line at Mason-Dixon on Oct. 2, 1979, there have been eight days of down time, but in no instance was there a problem with the methane operation. The bugs were in the conventional generator, which kept shorting out because of a poorly designed connection.

When a second digester is added to the present one, Waybright and his consultants, Sheaffer & Roland, Inc. of Washington, estimate that after 20 years the methane operation alone (not counting the yet-to-be-built alcohol still) will have produced an accumulated net gain of $1.8 million (subtracting total capital and operating costs from the benefits of reduced purchase of electricity).

In putting together their balance sheet, Waybright and Sheaffer & Roland estimated that the farm's electricity bill from Metropolitan Edison would increase on the average of 6½ percent over the 20-year period. A spokesman for the utility said that was a "conservative" estimate.

One of the interesting byproducts of converting manure to methane is a fluffy, odor-free material that cows prefer as bedding over sawdust. Since Waybright started putting this material in the barns, cases of mastitis (an udder disease) among his Holsteins has dropped dramatically, raising the cows' annual milk production. Waybright estimates that the bedding change results in direct and indirect savings of $36,000 annually, but this too is not calculated in the benefits column, nor is the value of the more stable form of fertilizer left behind after the methane extraction.

There is yet another benefit that is kept out of the balance sheet. Because the manure at Mason-Dixon is totally utilized as methane, fertilizer and cow bedding, none of it contributes to what is being recognized as a major source of pollution—animal wastes that are washed off farmland into streams and rivers. Billions of dollars have been spent on new and improved sewage treatment plants, but none of that money can clean up water polluted by agricultural wastes. The federal Environmental Protection Agency estimates that the total cost of the cleanup would be about $9 billion.

But the main attraction of cow power is that, coupled with alcohol production, it can help turn farms into energy producers instead of consumers (and wasters). As Waybright says, "Food production all depends on the next boatload of oil coming in. If we could make the farmer energy independent, that would be worth a couple of missiles in the silo."

But unless the federal government, and especially USDA, gets moving, American food production will remain dependent on the next boatload of oil.

To tap their energy potential, farmers need information as much as money. "The government has not sought out the proper experts in financial operations administered by Farmers Home Administration (which can make and guarantee loans to farmers)," says John T. Breuere, a lawyer in Missouri who is an expert in agricultural economics. "That's the biggest problem—there's no drive in the FmHA to seek out technical information so it is well-equipped to deal with small farmers and small business people."

But even if the farmer comes before FmHA technically well prepared, his odds of success are slim in getting help for an alternative-energy project.

Earlier this year, Rushville, Ill., farmer C. DeWayne Bond, who had hired Breuere as a consultant, was able to get approval of $350,000 in loans from two banks for construction of an alcohol still—on the condition that FmHA would provide a guarantee. The farmer proposed using a design from which successful stills had already been built. Several experts in alcohol production told him his project would work.

Yet FmHA turned down Bond's application.

Whatever shortcomings there are in present programs, FmHA officials say, a lot of new help will be available in fiscal 1981, beginning Oct. 1, when the office will have $525 million to make or guarantee loans for projects that would tap agricultural energy.

But after looking at the more than 50 pages of draft regulations covering the loan money, Illinois' alternate energy chief, Lehman, says they are hopelessly complicated and restrictive, and will discourage all but big agricultural operations controlled by major corporations. "The new program will be a fiasco," he predicts.

It's hard to find anybody—outside of the Agriculture Department's headquarters on Independence Avenue NW—who has any hope that farmers will get substantial federal aid in helping America to move toward energy independence.

Recently Sen. Charles H. Percy (Ill.), ranking Republican on the Senate Permanent Subcommittee on Investigations, held hearings in Springfield, Ill., on farm-based energy. The testimony was uniformly dismaying.

"FmHA will not take risks in an area that demands risk taking," says committee investigator Howard Marks. "The Small Business Administration has a very high rate of failure. It's willing to take the heat to get loans out to small business and minority business people."

Or as John Lehman says, "We didn't drill for oil with proven technology."

Most of the critics of FmHA and other government agencies that could provide help for developing farm-based energy are worried that big businesses, not small farmers, will benefit from the new loan guarantees totaling $525 million. They say the government will go to big energy operations as a sure way of meeting goals on alternate energy production.

Pat Ledford, an analyst for Sheaffer & Roland Inc., the consulting firm that designed the Waybrights' methane facility, says: "Government, by its funding policies, creates large-scale operations. Those like Mason-Dixon would be small ones, and I just don't think the government likes things on a small scale. So it goes to the big companies, who end up calling the tune."

But it is the rapidly disappearing small farms that need to move toward energy independence most urgently, for they have the least ability to absorb steep rises in the cost of fuel. Energy costs—direct and indirect—can include as much as 25 percent of a farmer's expenses, and more than 90 percent of the power he uses is derived from petroleum.

Help will be coming, says the Agriculture Department. But down on the farm, whether it's in Pennsylvania or Illinois, no one believes that will happen.●

STATEMENT OF REPRESENTATIVE CLAUDE PEPPER, CHAIRMAN, HOUSE SELECT COMMITTEE ON AGING, REGARDING LOW-INCOME ENERGY ASSISTANCE OUTREACH

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. PEPPER. Mr. Speaker, I am pleased to note that yesterday's passage of H.R. 7998, the Labor-HHS appropriations bill, included $1.8 billion for the low-income energy assistance program authorized by the Windfall Profit Tax Act. As every Member of this body is painfully aware, we have not begun to devote our attention to the upcoming winter a moment too soon. Over 2,000 Americans, most of whom were elderly and poor, lost their lives to the killer heat wave which gripped much of the Nation for 2 months. Many additional thousands will die, however, should our upcoming winter be a severe one.

To prevent such tragedies from occurring, the House of Representatives has agreed to expend $1.8 billion for energy assistance to the poor. This assistance will take the form of direct cash benefits, vendor payment, and other in-kind assistance, such as packages of blankets, warm clothing, and footwear.

This program has received such widespread support because it literally means the difference between life and death to the millions of the low-income elderly who are particularly vulnerable to intense heat and cold. In the past, however, many of the disabled and homebound poor have been cut off from assistance. Although their isolation places the disabled and homebound in the most desperate of circumstances, it is precisely this isolation which cuts them off from assistance.

Congress cannot sit idly by when such grave consequences are at stake. We must undertake every effort humanly possible to insure the full participation of poor families and elderly in the energy assistance program. All those who are eligible and can possibly be reached, must be reached. All those who are in need of assistance and can be helped, must be helped. All those who are the disabled, homebound and isolated poor who face high energy costs, must be assisted to the fullest extent that this program allows. To inform, to make an application process simple and prompt, and to provide assistance to those in need is our mandate and our pledge to the poor and the elderly.

I call the attention of my colleagues to the report language of H.R. 7998, which would transfer $20 million to the Community Services Administration for special outreach efforts to native Americans, migrant workers and other special populations who traditionally are not as well served by the States. Perhaps the most underserved group in America has been the low-income, homebound, disabled, and isolated elderly population. The low-income energy assistance program must not ignore these people. I hope that this special set-aside will be utilized to conduct a national outreach effort through national aging organizations, as provided in the 1980 Crude Oil Windfall Profit Tax Act. Spending a small amount for an extraordinary outreach effort to the elderly poor and their families will go a long way to meeting our pledge.●

UNITED STATES TOO WEAK: REAGAN ADVISER

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. DERWINSKI. Mr. Speaker, I would like to direct the attention of the Members to an interview which appeared in the July 21 edition of the News-World of New York. In the following interview with the News-World Washington Bureau Chief, Ted Agres, Dr. Lev Dobriansky, chairman of the National Captive Nations Committee, discusses U.S. policy toward the Soviet Union and the challenges this Nation faces abroad in the 1980's:

The material follows:

[From the News-World, New York, N.Y., July 21, 1980]

UNITED STATES TOO WEAK: REAGAN ADVISER

While many of the advisers to President Carter are now household names, little is known about the men and women who may help lead the nation if Republican presidential candidate Ronald Reagan is elected. The following article is one in an occasional series of News World interviews with the people Reagan has chosen to be his top advisers in the areas of foreign policy, defense, economics and domestic politics.

Dr. Lev Dobriansky, a professor of economics at Georgetown University and chairman of the Captive Nations Committee, was named last month as one of a group of foreign policy advisers to Reagan.

Q: What are three main problems that are facing the United States today in terms of foreign policy?

A: The major problem, as I see it, is a lag in the military field which is unexcusable and quite foolish. The Soviet Union, as far back as the end of the 50's, proceeded on a military buildup, especially in the naval area and after the Cuban crisis into missilery. While we were preoccupied in Vietnam, they continued the buildup. In the conventional area they have definite superiority, no doubt about it.

In the nuclear area I suspect that they're close to superiority. If you look at all the statements coming out of DOD, the analyses from CIA and the private research projects, there is the same general conclusion: We tend to depend heavily on our technological margin and I think there is a growing opinion that that has contracted.

When you talk about relations with the Soviet Union, you have to act from strength, and not increasing weakness.

The second problem is our incapacity to meet them on a level I call psycho-political warfare. This, of course, entails quite a number of operations, particularly propaganda. We have not been skillful enough with regard to Voice of America, Radio Liberty and Radio Free Europe. We have no Free Cuba broadcasts to concentrate on an area only 90 miles from our own border, whereas the Soviet Union has been consistently pouring resources into its propaganda efforts. This is a problem of reaching the various peoples and it's an important thing because the Soviet Union itself is highly vulnerable. Without the Soviet Union there are diverse peoples. What's interesting is the sudden interest in the Muslim nations within the Soviet Union simply because of Afghanistan.

Yet those who have studied this in terms of captive nations ideology have been stressing this point since 1957, 1958.

The third problem is the matter of a national strategy, or consistency in foreign policy instead of the constant vascillations. A case in point is human rights application of the administration.

Human rights can be the centerpiece of U.S. foreign policy. It's a natural type of foreign policy—one with morality, one with humanity, one with cultural warmth. But the administration has failed to even define the human rights policy adequately. Cyrus Vance and even the president have failed in that respect, seeing it more in terms of "civil rights" activity, rather than in connection with our struggle against the Soviet Union, Russian imperialism and ideological communism, and stressing national human rights.

The Soviet Union has built up itself by conquest of nations. And they are using that as a base, having proceeded into Central Europe and now into Afghanistan and, of course, previously Cuba.

Q: Could you describe your world view?

A: I look at the world in two areas, which we used to call the communist world and the free world. But because many people feel an authoritarian government cannot be placed in the cloak of free world, I've been using the distinction between totalitarian and non-totalitarian worlds. There's a vast difference between totalitarianism and authoritarianism.

To be sure there are many parts of free world, noncommunist world, or better still the non-totalitarian world, where you have more authoritarianism than anything in democracy as we know it in the United States and elsewhere.

The best way of viewing it is like the Soviet Union: There is nothing over the communist party, not even God. And if it were necessary to go ahead and incarcerate people en masse as they have done, deportations and so on, they will do it. In the case of authoritarian governments, I do admit you have abuses, social injustices and the like and these things should be addressed, but not in the way the Carter administration has done it. It can be done recognizing that they are our allies and are important to our national security interests.

Q: What should be U.S. policy toward the Soviet Union?

A: I believe in genuine detente. But in this sense: We don't brush truths under the rug and the first important thing is a general recognition that the Soviet Union is not a nation, it's not a genuine multinational state as they claim to be. It is an empire. Unless you perceive the importance of that premise, which is based on history, on current developments and the like, then you can't proceed along other lines of constructive policy.

I'm saying there has to be a recognition that it is an empire and that it has a two-tiered type of operation, namely government to government and systemic warfare. And they have been continually in systemic warfare against the West and against developing countries that tend to democratise as much as possible.

Does that foreclose the matter of interchange and detente? No. I've always claimed that we should talk to them. We should even go beyond Moscow through various media and even through economic media to be able to affect the peoples within—a recognition of the various nations within the Soviet Union.

Q: How practically might that be carried out? With Afghanistan, Carter attempted to impose economic sanctions: a ban on strategic trade, grain and so on. Are these the types of economic measures you mean?

A: Yes, but these are reactive. In 1966 I testified before the Senate Foreign Relations Committee and advanced what I call the "pol-trade" concept, which essentially is a policy to engage in economic transactions with them but oriented toward the extraction of cultural and political concessions.

Now the implementation of that came a little later in connection with Jewish emigration from the Soviet Union. But there are other things with regard to technology, in particular, which they have sought. I have always felt that that cannot and should not be simple commercial transactions. We should operate in the same way they do and have that additional value put on by way of cultural and political concessions.

Q: Do you feel that SALT II and the SALT process is workable?

A: The concept of SALT is workable provided that we are able to obtain a position in both conventional and strategic areas of power. In other words you can't negotiate on this favorable to yourself and to them unless you have comparable power.

Q: Why do you support Gov. Reagan?

A: It's absolutely necessary to have an alternative to the "no policy" of the present administration. Also I think he's very competent. He comes from California and was a governor just as Mr. Carter was a governor, but he demonstrated his ability to have highly competent people about him manage government.

I have a deep feeling that he has the firmness and solid instincts with regard to the values of this nation and its potential for the future. He won't be saying he can't do anything because there's a "malaise" in the country, which we've heard. The point is that anyone in that position of leadership should be able to dispel it, and guide the country in a proper direction. And in a democratic way be responsive to Congress and responsive to the people.

Q: Some say that Reagan's policy to the Soviet Union is a much harder stance than yours. This issue of detente, using the eco-

nomic card against the Soviets is something President Carter used but is something Reagan might not favor. How do you see his views in this foreign policy issue compared to your views?

A: Actually I don't see any fundamental difference. I've read his column and the many articles he's written since 1976 and I find that he's been on track. He certainly has taken up the captive nations idea and has a keener appreciation of it. He's not one to be caught in the situation to say, "Up until two weeks ago I hadn't thought the Russians were as bad as this . . ."

I think there's more background in the case of Reagan than in the case of Carter. Quick characterizations and appellations, particularly on the part of the media, say that he is possessed with Cold War, that he is a Cold Warrior and that therefore there's a threat that U.S.-U.S.S.R. relations won't go well. But whether you're aware of it or not, we've been in a cold war all along. It may not have been in the direct relationship of Washington to Moscow but it certainly is in other areas of the world, and certainly in the Third World. The Soviets continue with their subversive activities, infiltrations, furnishing of arms—all entirely in line with their concept of peaceful coexistence. This means that Moscow exists peacefully with Washington, they won't berate each other and the like, but in the meantime, underground, surreptitiously, they'll work us over as they work even more intensively in the other areas that can affect our interests.

Q: How should the U.S. woo Eastern Europe? How should we try to draw them more into our sphere? Should we give aid? Should we take any active stance as far as Eastern Europe goes?

A: The first thing we have to recognize is what is Eastern Europe. This came up in the '76 campaign and both Ford and Carter would speak of Eastern Europe, but their conception of Eastern Europe would be the western border of Soviet Union. I don't buy that, I go along with historians and scholars; namely, that Eastern Europe is roughly from the Danube all the way to the Ural Mountains.

The same policies that we apply to the Soviet Union should be applied to other parts of Eastern Europe or what some people call the satellite areas. But with variations. There has to be a recognition of this diversity within the totalitarian scheme and it behooves us to employ various techniques that are adaptable to the situation and that would maximize benefits that we would receive from it.

Q: Is there a China card? And how should the U.S. play it?

A: There's been a denial that there is a China card but I think there is one. Of course one is speaking of mainland China. I think we have to be very cautious of not going through a period very similar to previous periods in which we helped the Russian communists. Without our help I'm certain there would not be any Soviet Union today. The Lenin regime was really on the brink of overthrow and we helped them with American aid. U.S. corporations such as International Harvester and Occidental Petroleum went in and set up [concessions]. And I fear there may be a repetition with China. The fact is that if we go at it in an accelerated way, especially in the military area, helping them to modernize their arms, it would not be beneficial to the U.S. and it would jeopardize one of our closest friends—the people of Taiwan, the Republic of China.

In the global framework and particularly in terms of our relations with the Soviet Union, I hold that we should pursue a two-China situation very similar to recognition of East Germany and West Germany and to maintain it along those lines.

I would say there should be an increase in pressure for re-recognition of Taipei. And that is going to cause great deal of furor.

It is essential that we keep Taiwan well armed, because there isn't much room for them to make any withdrawal from the Pacific Ocean.

Q: How strong is the movement toward democracy within Eastern Europe? How strong is the dissident movement?

A: Concerning the first, you have to think of it in historical framework and that illuminates to the significance of the Czechoslovak affair in '68. Remember in Eastern Europe there is hardly any island of democracy. Yet Czechoslovakia was in the forefront. Then the experience of the three Baltic countries is a thing to bear in mind; they did have democratic governments between the two wars and they were independent states. But aside from that if you look into Poland, East Germany, Hungary, Bulgaria, and Romania, you can't call them democracies although you had authoritarian governments there. So the democratic movements were in the right direction but developed at a slow pace. One would say that there are seeds if you will, or preludes, ephemeral as some have been, for democratic government.

How strong at this moment? I don't think very strong simply because the opportunities have not presented themselves for them to attempt anything along these lines. My feeling is that, if there were opportunities for liberalization of the area, very likely you'd see a strong democratic movement in Czechoslovakia and in Poland, which could overspill into the other Slavic areas.

With regard to dissidents, in all of these countries you've had dissidents all along. The only problems is that dissidents under Stalin didn't last long. They were incarcerated, they were annihilated. And the same, more or less, in these other satellite areas. Now on this the Helinski accords helped a great deal to fan this dissidence.

Q: What presently is happening with the captive nations movement?

A: There will be a large captive nations gathering in Detroit before the Republican National Convention. The main point here is because of the invasion of Afghanistan, which we have declared as a new captive nation, there is observed among the press, academia and the like, a sudden interest in the Muslims within the Soviet Union. That is a very essential thing because it could have a great impact on the Islamic world from Morocco to Indonesia. And I think it's important to begin concentration, to have adequate VOA transmitters and have them broadcast each into an area that on the captive nations list I call Turkistan and to the Muslims in the area.

There are many avenues, especially the religious. There is a matter of resurrecting the mosques, or converting them from museum pieces to institutions that could produce a great deal of trouble for Moscow.

The Soviet Union can never be a nation. But the Soviet Union is an area that has the sixth largest body of Muslims in the world. The estimate there is 30–45 million.

At the rate of their demographic growth it's estimated you may have doubling by the end of the '90s. The point is you have 40–45 million now and over 80 million by the end of the '90s. It's significant.

Somewhere along the line, hopefully in the Reagan administration, there must be a recognition of the captive nations ideology and that has to be incorporated to play a definite role in our foreign policy. Remember the basis of our own country, which is Judeo-Christian, the religious bases upon which our country is founded. And then the tradition of democracy, recognition of sacredness of the person, really the whole development of the republic, institutional pluralism, where you have autonomous bodies, and the meaning of America—there is no country in the world that has representations from every corner, and is becoming even more so that way.

The point is that the U.S. has to present itself not merely as a model, but actually as a vigorous leader among nations and extend hope and vision to all nations and peoples, especially to those of totalitarian area.●

CRITICAL MINERAL SHORTAGES

HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. UDALL. Mr. Speaker, I want to take this opportunity to bring to the attention of the Members of the House the work that Representative JIM SANTINI, chairman of the Subcommittee on Mines and Mining, has been doing on the very obvious, yet neglected, critical shortage of certain minerals that are so necessary to this Nation's military independence and economic future. The Washington Star of September 2, 1980, carried a thoughtful editorial showing the vital relationship of scarce and critical minerals of southern Africa to this Nation's future welfare. That editorial follows. I commend it to your attention:

[From the Washington Star, Sept. 2, 1980]

BULLETIN FROM THE RESOURCE WAR

People given to worrying about the United States' position in a world of hostile or dubiously friendly govenments tend to focus their anxieties on either oil or nation-destroying nuclear weapons. Now, however, there is a growing awareness that these are by no means the only threats to American security.

The most recent reminder of this uncomfortable truth is the report on strategic materials issued on Thursday by Rep. James Santini, D-Nev. Rep. Santini, who is chairman of the Mining and Minerals subcommittee, based his report on a January trip to southern Africa to investigate American sources of such critical materials as chromium, platinum, industrial diamonds and cobalt.

He was not happy about what he found. Ever since his return, he has been trying, in and out of the Capitol, on television and off, to alert Congress and the public to the dangers of shortfalls. He blames the administration for not following through on the nonfuel minerals policy he helped to formulate two years ago.

The dangers he is talking about are not only the military crisis kind. Rep. Santini points out that much of American industry can be brought to a standstill by the lack of materials such as those we get from Zaire, Zimbabwe and South Africa.

Rep. Santini is by no means the first observer to be alarmed at American vulnerability in strategic materials. In June, the National Strategy Information Center, a private organization headed by a retired rear admiral, William C. Mott, put out a white paper on the "resource war" calling attention to the way Soviet geopolitical strategies were working to make it possible to cut off this country from access to a considerable list of materials for which there are no adequate substitutes and no other adequate sources of supply.

Inquiries by congressional committees in the last few months have reinforced the perception. And, as Daniel James pointed out in *The Star* earlier this summer, failures to carry out the requirements of stockpiling legislation long on the books have denied the United States even the fragile defense of, for example, manganese and titanium inventories big enough to keep aircraft and armaments production going for a few years.

Critics of the Carter administration call it one more indictment of a foreign policy that has refused to recognize the importance of the Soviet Union's old-fashioned approaches to international power. While the Kremlin has been trying to advance its interests via buildups of well-positioned bases and client states in such areas as Africa, the United States has concentrated on human rights and hopes of coming out "on the right side of history" by forbearing to press material or geopolitical interests against revolutionary regimes.

There is still time for us to protect ourselves in the area of strategic materials. But it will take a rethinking of priorities in the way we define allies and adversaries abroad as well as in domestic stockpiling policies.●

REPRESENTATIVE MARKEY'S STATEMENT BEFORE THE DEMOCRATIC CONVENTION

HON. ANTHONY TOBY MOFFETT

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. MOFFETT. Mr. Speaker, the Democratic platform contains important language stressing the benefits of using conservation, renewable resources, and clean-burning coal technologies to reduce our present dependence on imported oil.

At the convention, Representative EDWARD J. MARKEY gave an excellent speech discussing the Democratic energy platform and the need to emphasize and develop conservation and solar energy strategies. His statement, however, quite properly recognizes that words and platform provisions alone are not adequate unless they are backed up by meaningful and effective actions.

I urge all of my colleagues to read Congressman MARKEY's statement and to join in actively working toward implementation of the objectives contained in the Democratic platform.

The statement follows:

EDWARD J. MARKEY'S STATEMENT BEFORE THE DEMOCRATIC CONVENTION

Thank you Mr. Chairman, I am honored to be here tonight to address the Democratic Convention on the issue of nuclear power . . . the issue of solar power . . . and a new, safe energy future for America.

The Democratic Platform—which we adopted this week—now calls for the phase-out of all nuclear power plants in the United States . . .

And a phase-in of a non-nuclear energy future. Energy conservation. Clean coal. And solar power in all its forms.

As Senator Kennedy declared last night: and I quote: "We can be proud that our Party stands for investment in safe energy . . . instead of a nuclear future that may threaten the future itself . . ."

I stand here tonight for the tens of millions of Americans who want this energy message to resound all across this land.

Americans know that a new energy vision will not emerge from the Republican Party. The Republican Platform short changes solar power and energy conservation.

Instead, the Party of Ronald Reagan trumpets the policies of the big oil and nuclear companies. These are the same discredited energy policies and mistakes that have been repeated for years.

They ignore the promise of a safe energy future. They promote nuclear power as a panacea. They disregard the environment. They put profit before the public interest.

In November, there will be a clear choice between Democrats and Republicans on the issue of a new energy future for America. Republicans will lose that battle in November, because the American people want their future based on solar power, not on nuclear power.

The American people know—after Three Mile Island—that nuclear power is not fail safe. Because people are not fail safe.

Accidents do happen. A single accident could kill thousands, and poison a land area larger than the State of Pennsylvania.

The American people know there is no real solution to the problem of radioactive waste, a threat to the health of this and future generations. As the nuclear waste keeps piling up . . . scientists scratch their heads, and wonder what to do.

And nuclear power is not cheap. Even Wall Street knows it's a financial disaster. Reactors that cost 200 million dollars to build a few years ago now cost well over one billion dollars.

Furthermore, nuclear power is not needed. Demand for electricity has dropped sharply. Most of the country has excess capacity.

And we are learning that nuclear power does not significantly reduce our dependence on foreign oil. Only 10 percent of our oil is burned to generate electricity.

Perhaps most alarming of all, nuclear power guarantees the spread of atomic arms around the world—as country after country takes the fuel from their reactors and uses it for weapons.

For the same nuclear reactor that boils water to create electricity also creates plutonium, the stuff of atomic bombs. Plutonium from which the next Ayatollah can roll the dice and hold the entire world hostage.

For all these reasons, millions of Americans will cheer the fact that the Democratic Party endorses an orderly phase-out of every nuclear power plant in America. And the fact that the Democratic Party endorses an energy future based on conservation and solar power.

In the five years after the 1973 oil embargo, energy conservation and energy efficiency alone delivered two and one half times the energy of all other sources combined. From the Alaska pipeline, offshore drilling, nuclear power, all of them

If we saved only 15 percent of our energy today, it would equal all the oil we now import from OPEC.

If we launched a crash energy productivity program, we could save millions of barrels of oil every day by 1990.

By weatherizing our homes and offices and factories;

By tough new appliance and automobile fuel efficiency standards;

By Industrial innovation and co-generation.

Not by sacrifice of our living standard. Not by loss of jobs. But simply by investing in the steps—already within our reach—to use our energy more wisely.

But saving energy is not enough. We must produce new energy as well.

We must accelerate clean coal technologies, compatible with environmental quality. We must drill for new oil and gas.

And we must depend upon the sun.

For our nation is not running out of energy. Bountiful resources lie all around us, waiting to be tapped. Clean, safe, inexhaustible solar energy—in all of its forms.

Solar is not only the promise of tomorrow. It's here today.

300,000 homes in America now have solar equipment on their roofs. Thousands have wood burning stoves in their dens and living rooms. Thousands of farms are turning crops into gasohol. Dozens of cities are burning their trash to produce electric power. Hundreds of streams and rivers have been harnessed to produce electricity. Thousands of businesses produce wind machines and solar collectors to draw power from the sun.

Power from the sun that is immune to boycotts and embargoes.

Power from the sun that will leave our earth unravaged.

Within twenty years, renewable resources could deliver more than one quarter of the nation's energy. Within 50 years, we could be a truly solar society.

Americans will pitch in. They will roll up their sleeves. Like the people of Davis, California. Like the people of Fitchburg—in my own state of Massachusetts—where everyone last year from senior citizens to school children launched a campaign to weatherize every one of Fitchburg's 14,000 homes.

Like the delegates who came to this convention, working with the Campaign for Safe Energy and the Solar Lobby, to demand that the Democratic Party take an important first step towards charting this new energy vision for America.

In our Platform, we have promised to phase out—as alternatives are ready—all nuclear plants in this nation.

We have promised to fight for more dollars to speed the arrival of a solar tomorrow. To bring it within reach of every American.

But we need more than just words in our Platform. Words can be a sop to the discontented. We must leave this Convention determined to go the full distance. To ensure that these pledges are fulfilled.

History will record that the challenge of shaping a new and safer and more secure energy future was the great challenge of the 1980's.

The Republican Party Platform points in one direction. But it is the discredited direction. A direction of the past. For they are the Party of nostalgia.

But for the people of this country, the past is only a memory. The future is their hard reality.

The decisions before us are as urgent as any that have faced us in our 200-year history. The United States can no longer tolerate the course of its energy destiny being set by the oil tankers of OPEC. Our nation's survival hangs in the balance.

We can meet this challenge.

Let us join together.

Let us shape—together—a new energy destiny for America: Breaking our addiction on foreign oil; phasing out nuclear power; And committed to leading America and the world into the solar age.

Thank you very much.●

H.R. 7230—EXPORT TRADING COMPANIES

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BONKER. Mr. Speaker, I would like to commend to the attention of my distinguished colleagues a recent survey conducted by the Wall Street Journal and the Gallup organization. The survey, which appeared in the Wall Street Journal of August 27, 1980, indicates:

Most small company owners said they favor greater restrictions on imports, and most said they believe business community support for tougher curbs is increasing . . . . Although two-thirds of the heads of medium-sized firms and more than three-fourths of large-company chiefs said they personally oppose more curbs, about two-thirds of all executives said they believe support for such action is growing in the business community.

The House Foreign Affairs Committee recently approved H.R. 7230, which I introduced and which is designed to foster the creation of trading companies to boost exports from the United States. We in the Congress must act now to promote exports before the protectionist fever overwhelms us.

With the passage of H.R. 7230, the new export trading companies would become formidable competitors, with the incentive and means to create new markets and turn thousands of small- and medium-sized businesses into exporters.

Commerce Department studies show that these new companies have the potential to ultimately lift overall U.S. exports by as much as 30 percent. Export success can often depend on intermediaries which take the actual risks and can easily develop economies of scale in marketing, transportation, financing, and other export services.

Congress needs to act this session to establish a coherent and effective export policy. I hope all of my distinguished colleagues will join me in this effort to correct our trade imbalance and improve the economy.

The article follows:

EXECUTIVES SAY IMPORTS POSE SERIOUS THREAT

(By Frank Allen)

The American economy's competitive edge needs honing.

That is the view of chief executive officers of U.S. corporations of all sizes, most of whom believe foreign competition is a serious economic problem. More than half consider it very serious, but there isn't much consensus on what to do about it.

The solution chief executives propose most often is to become more competitive by increasing productivity. Another popular idea is greater cooperation from government, specifically by relaxing regulations.

A typical chief executive's comment: "We need the same kind of cooperation from our government that the foreign country governments give their industries." And the head of a large chemical company says, "In no other country in the free world is there such an adversary relationship between government and business."

PRODUCE QUALITY PRODUCTS

The Wall Street Journal/Gallup survey of business opinion that produced these results also found that small-company chief executives are more willing than their large-company counterparts to impose stiffer trade restrictions on foreign competitors. As another solution, small-company heads suggest producing quality products; large-company chiefs advocate changing the tax structures.

The survey, conducted jointly by the Journal and the Gallup Organization, is based on interviews with 306 chief executives of the country's largest corporations (including 100 of the Fortune 500 companies), 276 heads of medium-sized companies and 198 small-firm owners.

Asked to name the most important action that could be taken to alleviate the problem of foreign competition, respondents offered more than 20 answers. Some called for tougher enforcement of existing trade laws (including antidumping laws); others stressed encouraging capital investment to upgrade factories and mills; several criticized organized labor.

UNIONS ARE CITED

"Labor is very demanding on salaries, but produces very little for the money," said a company chief. Added another: "Unions have to start realizing they must help their companies by lessening their scale of demands. Wages are getting out of hand."

In large companies, many bosses said they strongly opposed import curbs. "I am a free trader," said the head of one corporation. "If someone can do it cheaper, fine." Another large-company chief said, "Protection is terrible. Get the tariff laws equalized between major partners. Charge the same amount for an incoming Toyota as an outgoing Chevy."

But chief executives of larger companies may be better informed about their own attitudes on the import issue than about the views of their peers. Although two-thirds of the heads of medium-sized firms and more than three-forths of large-company chiefs said they personally opposed more curbs, about two-thirds of all cxecutives said they believe support for such action is growing in the business community.

MORE CONSISTENT VIEWS

In small companies, the views seem more consistent. Most small-company owners said they favor greater restrictions on imports, and most said they believe business-community support for tougher curbs is increasing.

The survey also found that the degree of opposition to trade barriers depends to a significant extent on how serious the business executives believe the foreign-competition problem is. Among those who see competition as very serious, support for curbs is much greater. But a majority in large firms oppose stiffer curbs.●

BELIEFS AND PRINCIPLES OF THE JOHN BIRCH SOCIETY

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. McDONALD. Mr. Speaker, many of my colleagues have questioned me concerning the beliefs and principles of the John Birch Society.

The John Birch Society was founded in December 1958. It is an educational organization that believes strongly in its motto of, "Less government, more responsibility, and with God's help, a better world."

The society does not endorse or contribute to political parties or candidates and in the strict sense is not a political organization. Individual members are active in education/action programs concerned with sound economics, proper values of government, and an appreciation of the lessons of history. The society, in short, is active in the building of an informed electorate and by so doing restore the values that made the country great. The members hope to play a major role in halting this Nation's retreat from greatness.

In my opinion, the John Birch Society is the finest body of men and women in the world today, and I appreciate the interest of my colleagues. For their improved understanding, I insert those beliefs and principles into the CONGRESSIONAL RECORD:

GENERAL BELIEFS AND PRINCIPLES OF THE JOHN BIRCH SOCIETY

I

With very few exceptions the members of the John Birch Society are deeply religious people. A member's particular faith is entirely his own affair. Our hope is to make better Catholics, better Protestants, better Jews—or better Moslems—out of those who belong to the society. Our never-ending concern is with morality, integrity, and purpose. Regardless of the differences between us in creed and dogma, we all believe that man is endowed by a Divine Creator with an innate desire and conscious purpose to improve both his world and himself. We believe that the direction which constitutes improvement is clearly visible and identifiable throughout man's known history, and that this God-given upward reach in the heart of man is a composite conscience to which we all must listen.

II

We believe that the Communists seek to drive their slaves and themselves along exactly the opposite and downward direction, to the Satanic debasement of both man and his universe. We believe that communism is as utterly incompatible with all religion as it is contemptuous of all morality and destructive of all freedom. It is intrinsically evil. It must be opposed, therefore, with equal firmness, on religious grounds, moral grounds, and political grounds. We believe that the continued coexistence of communism and a Christian-style civilization on one planet is impossible. The struggle between them must end with one completely triumphant and the other completely destroyed. We intend to do our part, therefore, to halt, weaken, rout, and eventually to bury, the whole international Communist conspiracy.

III

We believe that means are as important as ends in any civilized society. Of all the falsehoods that have been so widely and deliberately circulated about us, none is so viciously untrue as the charge that we are willing to condone foul means for the sake of achieving praiseworthy ends. We think that communism as a way of life, for instance, is completely wrong; but our ultimate quarrel with the Communists is that they insist on imposing that way of life on the rest of us by murder, treason, and cruelty rather than by persuasion. Even if our own use of force ever becomes necessary and morally acceptable because it is in self-defense, we must never lose sight of the legal, traditional, and humanitarian considerations of a compassionate civilization. The Communists recognize no such compulsions, but this very ingredient of amoral brutishness will help to destroy them in the end.

IV

We believe in patriotism. Most of us will gladly concede that a parliament of nations, designed for the purpose of increasing the freedom and ease with which individuals, ideals, and goods might cross national boundaries, would be desirable. And we hope that in some future decade we may help to bring about such a step of progress in man's pursuit of peace, prosperity, and happiness. But we feel that the present United Nations was designed by its founders for the exactly opposite purpose of increasing the rigidity of Government controls over the lives and affairs of individual men. We believe it has become, as it was intended to become, a major instrumentality for the establishment of a one-world Communist tyranny over the population of the whole earth. One of our most immediate objectives, therefore, is to get the United States out of the United Nations, and the United Nations out of the United States. We seek thus to save our own country from the gradual and piecemeal surrender of its sovereignty to this Communist-controlled supergovernment, and to stop giving our support to the steady enslavement of other people through the machinations of this Communist agency.

V

We believe that a constitutional Republic, such as our Founding Fathers gave us, is probably the best of all forms of government. We believe that a democracy, which they tried hard to obviate, and into which the liberals have been trying for 50 years to convert our Republic, is one of the worst of all forms of government. We call attention to the fact that up to 1928 the U.S. Army Training Manual still gave our men in uniform the following quite accurate definition, which would have been thoroughly approved by the Constitutional Convention that established our Republic: "Democracy: A Government of the masses. Authority derived through mass meeting or any form of direct expression results in mobocracy. Attitude toward property is communistic—negating property rights. Attitude towards law is that the will of the majority shall regulate, whether it be based upon deliberation or governed by passion, prejudice, and impulse, without restraint or regard to consequences. Results in demagogism, license, agitation, discontent, anarchy." It is because all history proves this to be true that we repeat so emphatically: "This is a Republic, not a democracy; let's keep it that way."

VI

We are opposed to collectivism as a political and economic system, even when it does not have the police-state features of communism. We are opposed to it no matter whether the collectivism be called socialism or the welfare state or the New Deal or the Fair Deal or the New Frontier, or advanced under some other semantic disguise. And we are opposed to it no matter what may be the framework or form of government under which collectivism is imposed. We believe that increasing the size of government, increasing the centralization of government, and increasing the functions of government all act as brakes on material progress and as destroyers of person freedom.

VII

We believe that even where the size and functions of government are properly limited, as much of the power and duties of government as possible should be retained in the hands of as small governmental units as possible, as close to the people served by such units as possible. For the tendencies of any governing body to waste, expansion, and despotism all increase with the distance of that body from the people governed; the more closely any governing body can be kept under observation by those who pay its bills and provide its delegated authority, the more honestly responsible it will be. And the diffusion of governmental power and functions is one of the greatest safeguards against tyranny man has yet devised. For this reason it is extremely important in our case to keep our township, city, County and State governments from being bribed and coerced into coming under one direct chain of control from Washington.

VIII

We believe that for any people eternal vigilance is the price of liberty far more as against the insidious encroachment of internal tyranny than against the danger of subjugation from the outside or from the prospect of any sharp and decisive revolution. In a republic we must constantly seek to elect and to keep in power a government we can trust, manned by people we can trust, maintaining a currency we can trust, and working for purposes we can trust (none of which we have today). We think it is even more important for the government to obey the laws than for the people to do so. But for 30 years we have had a steady stream of governments which increasingly have regarded our laws and even our Constitution as mere pieces of paper, which should not be allowed to stand in the way of what they, in their omniscient benevolence, considered to be "for the greatest good of the greatest number." (Or in their power-seeking plans pretended so to believe.) We want a restoration of a "government of laws, and not of men" in this country; and if a few impeachments are necessary to bring that about, then we are all for the impeachments.

IX

We believe that in a general way history repeats itself. For any combination of causes, similar to an earlier combination of causes, will lead as a rule to a combination of results somewhat similar to the one produced before. And history is simply a series of causes which produced results, and so on around cycles as clearly discernible as any of the dozens that take place elsewhere in the physical and biological sciences. But we believe that the most important history consists not of the repetitions but of the changes in these recurring links in the series. For the changes mark the extent to which man has either been able to improve himself and his environment, or has allowed both to deteriorate, since the last time around. We think that this true history is largely determined by ambitious individuals (both good and evil) and by small minorities who really know what they want. And in the John Birch Society our sense of gratitude and responsibility (to God and to the noble men of the past), for what we have inherited makes us determined to exert our influence, labor, and sacrifice for changes which we think will constitute improvement.

X

In summary, we are striving, by all honorable means at our disposal and to the limits of our energies and abilities, to bring about less government, more responsibility, and a better world. Because the Communists seek, always and everywhere, to bring about more government, less individual responsibility, and a completely amoral world, we would have to oppose them at every turn, even on the philosophical level. Because they are seeking through a gigantically organized conspiracy to destroy all opposition, we must fight them even more aggressively on the plane of action. But our struggle with the Communists, while the most urgent and important task before us today, is basically only incidental to our more important long-range and constructive purposes. For that very reason we are likely to be more effective against the Communists than if we were merely an ad hoc group seeking to expose and destroy so huge and powerful a gang of criminals. In organization, dedication, and purpose we offer a new form of opposition to the Communists which they have not faced in any other country. We have tried to raise a standard to which the wise and the honest can repair. We welcome all honorable allies in this present unceasing war. And we hope that once they and we and millions like us have won a decisive victory at last, many of these same allies will join us in our long look toward the future.●

TRIBUTE TO MRS. DORIS WESTERN

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. TRAXLER. Mr. Speaker, it is a great pleasure for me to call the attention of this Congress and our Nation to the overwhelming accomplishments of Mrs. Doris Western. I have had an opportunity to personally witness Mrs. Western's work for many years now, and I want to take this opportunity to offer her my heartiest congratulations and gratitude.

For the past 41 years, Doris has given unselfishly of her life and energies to the Agricultural Stabilization and Conservation Service in her own county, the State of Michigan, and the country as a whole. She is now retiring, having served a career of distinction and dedication.

Doris began her career as a part-time office assistant in the Huron County ASCS office in 1937. The following year she became a full-time employee as an office clerk. Since then she has received continuous promotions to secretary-treasurer and county office manager, and in 1970 she was made the Huron County Executive Director.

During her years of service, Doris performed at such an outstanding level that she received individual performance awards in 1959, 1965, 1969, 1972, 1974, 1978, and 1980. She also received the outstanding newsletter award for 1968 and five awards for developing new methods of increasing office efficiency.

Her efforts also reflected on the office as a whole, and the Huron County ASCS office was named the outstanding office in the State in 3 separate years. In 1957, the Huron County office was chosen as the first

training center for new county executive directors. Most of the directors currently serving in Michigan were trained by Doris.

Her expertise and effective administrative abilities have brought Doris respect from all her colleagues, not only in the State of Michigan, but also at the national level. I know that her leadership has been a constant source of inspiration and guidance for all her fellow employees throughout her years of service.

As Congressman of the Thumb area of Michigan, I have had many opportunities to speak on the floor of the House of Representatives on behalf of the interests and concerns of my congressional district. Today, it has been a special pleasure for me to speak of the contributions of one of our leading citizens. Her lifetime of service is most greatly appreciated and I know we will all miss her when she retires.●

CHRISTIANITY AND POLITICS—PART I

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. McDONALD. Mr. Speaker, there has been a growing concern about the involvement of Christians in political affairs. This trend seems to be polarizing the Christian community. However, there is increasing realization that the moral basis of our laws are biblical. So, if Christians elect to remain inactive, they stand not only to lose their country, but also their freedom of worship. Rev. Joseph C. Morecraft of Atlanta, Ga., has written an excellent analysis entitled "The Counterproductivity of Not Linking Christianity and Politics: A Reply to Senator Mark Hatfield." I commend part I of two parts to the careful attention of my colleagues.

The analysis follows:

THE COUNTERPRODUCTIVITY OF NOT LINKING CHRISTIANITY AND POLITICS: A REPLY TO SENATOR MARK HATFIELD

Before Christians today can hope to make any contribution to the solution of the social and political ills afflicting our nation this is an imperative: they must dispose of the humanist myth of the neutrality of politics so far as religion is concerned. (E. L. Hebden Taylor, "The Myth of Religious Neutrality in Politics.")

What is religious neutrality in politics? Hebden Taylor answers, "According to this neutrality principle Christians may participate in the political process only as citizens but never as believers. Thus in his book "The Christian in Politics" Walter James argues: "The Christian is called upon to act beside other men and no assurance is given him that he will sense God's purpose better than they. He can no more aim to be a Christian statesman than a Christian engineer. Politics has at any one time its own techniques, aims and standards, vary though they may, and in the light of them as they are in his lifetime, the Christian's effort must be to make a good politician and no more. He stands on a par with the non-christian, just as there are no denominations in the science of physics. His religion will give him no special guidance in his public task, as it will do within his personal relationships with close neighbors." In thus advocating that Christians must abide by the prevailing doctrine of neutrality which seeks to exclude religion from politics and in suggesting that Christians should restrict their religion to the field of personal relationships, James has neatly fallen right into the secular liberal humanist trap which tries to place religion alongside man's other activities and interests, whether these be academic, social, economic, political, or artistic. This modern idea of "religion" is one which the secular apostate world around us today loves to have Christians accept. Secular humanists have no objection to our Christian faith at all, provided we reserve it strictly for ourselves in the privacy of our homes and church buildings, and just so long as we do not try to live up to our Christian principles in our business and public life.

On no account must the Spirit and Word of the Lord Jesus Christ be allowed to enter the ballot booth or the market place where the real decisions of modern life are made, nor must religion interfere with such vital matters as education, politics, labor relations, profits and wages. These activities are all supposed to be "neutral" and they can therefore be withdrawn from sectarian influences so that the secular spirit of the community may prevail. This is the spirit of reason, science and pure technique of the practical pragmatist. For him truth is only what works out in practice and for whom the God of the Bible is thought to be the projection of the father image or at least a being concocted out of man's image of himself or of the society in which he lives. (Hebden Taylor, "The Myth of Religious Neutrality in Politics.")

Bernard Zylstra has well spoken in "Challenge and Response," "Neutralism is the view that man can live wholly or partly without taking God's Word into account. Those who pay homage to the fiction of neutrality maintain that many segments of modern culture are merely technical. It is then thought that a corporation, a union, a school, a government can be run by making exclusively factual, technical decisions which have no relation to one's ultimate perspective on the basic issues. . . . This 'technalism' is the result of a pragmatic philosophy. The defenders of 'technalism' are among the most dangerous guides to a wholly secular world. For it is inevitable that the realm of the 'neutral' and the 'factual' will constantly increase until it has swallowed all of human morality and faith."

Religious neutrality in politics has been advocated in a recent CONGRESSIONAL RECORD (Vol. 126; No. 66) by Sen. Mark Hatfield, who espouses "evangelical" Christianity. The title of this article (pg. S4271) reveals its main thrust, "The Counterproductive Linking of Religion and Politics." In this speech, which is a response to the "Washington for Jesus" rally on April 29, 1980, Sen. Hatfield commends the leadership of that rally for not "linking their religious concerns with so-called political issues." He says "I want to commend them for seeing the danger in such a strategy and putting aside an organized lobbying effort on issues which people of goodwill have a difference of opinion." Bear in mind that those attending the rally were fellow "evangelical" Christians.

Sen. Hatfield included in his speech an article by Stanley Mooneyham, entitled, "United We Fall." In this article, Mooneyham misinterprets and misapplies several biblical texts to make his point: "I am as scared of an evangelical power bloc as I am of any other . . . Although it is not impossible to harmonize the two in some situtations, there is actually a basic conflict between christian commitment and political power. The strength of faith is in its avalanche of powerlessness, its tidal force of love. If politics is the art of achieving the possible, faith is the art of achieving the impossible. Politics says, 'Destroy your enemies.' Christian faith says, 'Love your enemies.' Politics says, 'The end justifies the means.' Christian faith says, 'The means validates the end.' Politics says, 'The first shall be first.' Christian faith says, 'The last shall be first.' "

Mooneyham's redefining of faith and dichotomyzing of faith and politics is tantamount to making faith irrational, contentless and irrelevant and to making politics autonomous, pragmatic, and sovereign. It sounds like he found his definition in Karl Marx or some other advocate of secular pragmatism. Furthermore, man-as-individual or man-in-society is dependent upon Almighty God, Who alone is autonomous and sovereign—so believes the Christian.

Sen. Hatfield refers to a second article written by Charles Bergstrom entitled, "When the Self-Righteous Rule, Watch Out!" This article is an attack on "evangelicals" who believe the Bible is to be used as a political textbook, as our founding fathers believed. Mr. Bergstrom sets up a man of straw and then proceeds to knock him down. His exaggeration of the position he is opposing shows that he does not really understand that position. He identifies those Christians who "read the Bible without a sense of mystery and ambiguity" with those who gave us "the Crusades, the Spanish Inquisition and the Salem witchcraft trials." He goes on to intimate that these Christians are self-righteous, because they hold this position. I thought only God could see the heart?

There are two fundamental weaknesses with this position held by Sen. Hatfield concerning religious neutrality in the political arena. First, there is a misunderstanding of the relationship of religion to culture (life, including politics). And, second, there is an (unintentional) denial of two basic principles of Christianity: (1) the lordship of Jesus Christ over all of life; and (2) the all-embracing authority of the Law of God.

What is the relationship of religion to culture (life), according to the teachings of the Bible, and recognized by many christians and non-christians alike? This is not an irrelevant theological debate. It is central to the whole discussion of the role of the Christian and of Christianity in American politics. A misunderstanding here can be, and has been, devastating for Americans.

What do we mean by the word, "religion"? It is "the binding tendency in every man to dedicate himself with his whole heart to the true God or an idol," according to F. Nigel Lee. In this sense all men are religious because no man can escape being a man in the image of God created to worship and serve God, rebellious and unregenerate though he be. Romans 1:25 says, "For they (mankind) exchanged the truth of God for a lie, and worshipped and served the creature rather than the Creator. . . ." Man is inescapably religious.

What do we mean by the word, "culture"? It is religion externalized. Culture "is the unavoidable result of man's necessary efforts to use and to develop the world in which he lives either under the guidance of the Lord or under the influence of sin, in accordance with whichever of the two controls his heart. As such, culture includes all of man's works—his arts, his science, his agriculture, his literature, his language, his astronomical investigations, his rites of worship, his domestic life, his social customs, (his politics)—in short, the cultural products of the whole of man's life stand either in the service of God or in the service of an idol," writes Lee. Man was created by God for culture, i.e., to "cult-ivate" the garden (Gen. 2:15); to multiply and have dominion over the earth (Gen. 1:28). He cannot escape his calling, although unregenerate man perverts it, while regenerate man does it for the glory of God and in submission to God's command.

Now concerning the relationship of religion to culture. It bears a similar relationship as "faith" does to "works". Works grow from the root of faith and are expressions of that faith. "Faith without works is dead," according to James 2:26. Culture is religion externalized. It is the outgrowth and expression of the religion of the people. All cultures, then, are thoroughly religious and never can be a-religious. (That is not to say that they are all theistic. For instance, humanism, as recognized by the U.S. Supreme Court (Torcaso vs. Watson), is a non-theistic religion, believing only in man.) Every aspect of a nation's life will reflect, and cannot help but reflect, the religion of the citizenry, whatever that religion may be. Religious neutrality in politics, and in every facet of a nation's culture and life, is a myth. Because religion (faith) is all-inclusive, all human activity will be colored by the religion (faith) one holds. There are no neutral cultural activities, as there are no neutral "works"; they are either "good works" or "evil deeds", done either to the glory of the God of the Bible or to the glory of an idol (non-god). Van Til writes on this subject, that:

"Culture is not something neutral, without ethical or religious connotation. Human achievement is not purposeless but seeks to achieve certain ends, which are either good or bad. (For the Christian, the one standard of morality, public and private, is the Bible.) Since man is a moral being, his culture cannot be a-moral. Because man is a religious being, his culture, too, must be religiously oriented. There is no pure culture in the sense of being neutral religiously or without positive or negative value ethically. Although the realization of values in a culture may seem on the surface to be concerned merely with the temporal and the material, this is appearance only, for man is a spiritual being destined for eternity, exhaustively accountable to his Creator-Lord. All that he does is involved in the whole of his nature as man.

"Culture, however, does not include religion. The notion that it does is the basic error of practically all our cultural anthropologists, which fact may be ascertained by perusing casually any standard work on anthropology by such authors as Vander Leeuw, Malinowsky and others. But the basic assumption underlying this position negates Christianity and is thoroughly naturalistic. For the position of the cultural anthropologist is that religion is simply a projection of the human spirit, an attempt to manipulate the unseen by magic, or, in any case, that man creates the gods of his own image, thus making it a cultural achievement. This is also the general attitude of the religious liberal, who uses religions for achieving man's ideal goals such as world peace. . . .

"The reason religion cannot be subsumed under culture is the fact that whereas man as a religious being transcends all his activities under the sun, culture is but one aspect of the sum total of these activities and their results in forming history. To divide life into areas of sacred and secular, letting our devotions take care of the former while becoming secular reformers during the week, is to fail to understand the true end of man."

We need to understand that a man never can lay down his religion and act as a religionless person. He can have his religion changed, but he cannot act or think in a religionless manner, because religion is the governing principle of all he does, is and says. Religion is like the "heart", out of it flow the issues of life, prejudicing all areas of human experience and thought, (Proverbs 4:23). This is re-affirmed by Jesus, when He taught that it is the heart that influences the thinking and behavior, and not vice versa, (Mark 7:20). The implication, then, is clear: The Christian may never think or live as anything other than a Christian governed by the Word of God. He is never his own person, being "bought with a price." He may not claim sovereign rights over his own opinion or behavior. He is a person under authority, who is striving to "bring every thought captive to Christ," even his political thoughts.

To attempt to act "neutrally" in any field of endeavor is to make the mistake of Eve, who assumed, that after God had spoken ("Don't eat!") and after Satan had spoken ("Do eat!"), she had to take a neutral position and decide for herself and by herself who spoke the truth. Thus, in a fallen condition, she, as the first humanist, pretended to have the autonomous ability and responsibility to determine for herself "good and evil." (Genesis 3:5) The Christian asks, "Who is man ever to take a neutral position to the command of the living God?" Neutrality is disobedience.

The other side of this should be obvious also. Since religious neutrality is a myth, those who profess to be such, have, in fact, laid aside their Christian presuppositions and have (unintentionally) taken up another religion. The humanists will not lay down their presuppositions, goals, and objectives. And when the Christian does so, he falls into the humanists' well-laid trap. He, in reality, joins the humanist in striving for his goals and objectives. He adopts, in the political arena, the humanist's presupposition, which is the belief that man-in-community can solve his problems without reference to God or to His written revelation.●

YOU CANNOT BUY FREEDOM

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. DERWINSKI. Mr. Speaker, an article has crossed my desk written by Baron Alex Ostoja Starzewski, an American born in Poland, who tells a familiar but rarely accepted story. Baron Starzewski has seen one nation after another slip into the "muffled zone" behind the Iron Curtain while Western leaders temporize and pretend that they can buy their freedom. Read what a man who fought both the Nazis and the Communists had to say. Reprinted from the Manchester Union Leader of June 19, 1980, the article appears below:

YOU CANNOT BUY FREEDOM WITH MONEY

As an American born in Poland, I recall how I came to realize only too dramatically, when I was but 18 years old, how important it is to speak out in defense of the basic values of one's society—rather than in support of mere political slogans.

It was in August, 1939, during the night of the 20th day of the war—the war which was to become World War II—but, at that time, all of the Polish people were already fighting against both Germany and its ally, the Soviet Union with its Red Army.

I was sitting behind a tree on a hill overlooking the cemetery of the city of Lwow—the Orleta Cemetery (the "Eagles Cemetery") where the defenders of the city in 1919 and 1920 had been put to rest. (The majority of those buried in Orleta had been boys of only 12, 14 and 16 years.

(And buried there, also, were American volunteers who had joined the Polish defenders against the Lenin-sponsored and Lenin-instigated Ukrainian attacks.)

Now, as a young cadet officer, I was one of 90 Polish soldiers defending this position against the Red Army surrounding the city of Lwow. (The Red Army had replaced the German Army which had pulled out of the territory in accordance with the 1939 Ribbentrop-Molotov treaty dividing Poland in two.)

I was hungry and thirsty and very much exhausted. The Soviets had cut our water supply four days before. We had eaten all our horses and we were told that the civilian population of Lwow had begun to eat the rats. Dogs and cats had disappeared long before.

Nevertheless, and although we were expecting another Red attack at any moment, our spirits were high because we were sure England, France and possibly the mighty United States surely would not let us down. It surely could not be, we felt, that England and France, which had signed a mutual defense pact with Poland in 1939 against third-country aggressors, would stand by and let the barbaric forces take over not only Poland but also Europe and, possibly, the whole world.

Although the Red Army was near, I kept on dreaming—we were all dreaming—dreaming about brave Polish soldiers fighting shoulder-to-shoulder with French, English, Dutch and Norwegian troops against the evil forces of Germany and the Soviet Union. And, in that dream, we saw our victorious allied forces marching through the Brandenburg Tor (Berlin), and, after liberating the Ukrainians, Cassocks, Armenians and Tartars—all Soviet-enslaved nations—we finally marched in our dream through the Red Square in Moscow.

And then we dreamed a picture of a new Europe—free from terror and a place where liberties flourished and where there was human dignity and real justice for all.

Because of this vivid dream, even the fact that our forces, especially at our position, had lost 80 percent of the men in the last six days without replacement, that we had not tasted warm food for 10 days and were eating only carrots or whatever we found in the fields, that we had not had water—all this could not discourage me from believing that, ultimately, we would win this war.

Suddenly, the roaring of artillery fire broke the silence of the night and the shells began exploding over our position. The time had come and the dream was over.

For some, it was a long road indeed from that cemetery hill in Poland—through Soviet Russian prison camps, escaping through the endless snow-covered Soviet land, then through German prison camps and, finally, to liberty with the American forces which had at last landed on the European continent.

As the road to the West became shorter, however, it had grown much more painful, for the recognition was growing that all our dreams had been betrayed, that all the de-

struction, all the deaths, all the total sacrifice had been in vain—because we began to see that the victory was not the victory of freedom, human dignity and human rights, but it was the victory of the forces of darkness—the victory of those who have manipulated whole peoples, whole nations simply in the thirst for power and dirty profit, for the God of Mammon.

Somehow, the terrible recognition was emerging, but the ugly truth was so incredible, the injustice so overwhelming, and the pain so intense, that decent minds recoiled from accepting it.

And so, out of desperation, our resistance against this ugly truth grew stronger and with it came the awful realization that it would take even more sacrifice, more pain, and more fighting to defeat the despicable forces which had betrayed truth, justice and the established order.

Then I remembered from my school days the story that when the Persian Army was approaching Greece, one of the leaders of Athens said to the people of that city, "And those who want to live can go and live, but they will put the chain of slavery around their necks—but the rest of us will stay and fight, and we shall either win as a free people or die as a free people!"

It was then that the small band of 500 Spartans challenged the Persians at Thermopylae. All 500 died bravely but, in dying, they had alerted others to the fact that freedom and justice have to be defended with one's own life.

Today, history is repeating itself and it does not matter that the forces now surrounding the last bastion of the free world, our beautiful country, are not the Persian armies. The values for which the Spartans fought at Thermopylae are again in danger.

Around the world today, country after country has fallen into enemy hands—just as nations fell when the Persians were on the march. We, as the supposed last bastion of liberty, in most cases, did nothing to help those nations as they fell, nothing to stop the victorious armies of the modern enemy. We, in our time, have also chosen to "live" instead of fighting, have chosen to allow the chain of slavery to be placed around the neck of other countries and, now, we have reached the point where the silvery chain is dangling dangerously close to our own necks.

In our time, the modern Spartans have been the Poles, the Hungarians, the Czechoslovakians, the East Germans, the South Vietnamese, the Angolans, the Cubans, the Nicaraguans and many others—courageous nations which sent their own brave warriors to challenge the advancing enemy armies at the entrance to their own Thermopylaes.

All of them fought bravely and most of them were killed in the belief that their struggle would mean something. Alas, however, their heroic deaths somehow have not alerted you to the fact that you have to defend your liberties, your human rights, your claim on justice and your personal dignity with your own life.

There is no substitute for it in the long run. You cannot buy it with money. Like the ancient Greeks, you have only two alternatives: to "live" with the chain of slavery around your neck, or to fight—perhaps even to the death—to remain free men and women.

There are only a few Spartans left in our nation with the courage to challenge the forces of darkness, in defense of your rights and the values you cherish.

Are you going to watch them being crushed and then turn your back on them—or are you going to fight?●

U.S. HOLOCAUST MEMORIAL COUNCIL

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. LEHMAN. Mr. Speaker, I am very pleased to report that I am today joining with many of my distinguished colleagues in introducing legislation to establish, as a permanent body, the U.S. Holocaust Memorial Council.

The Holocaust Memorial Council will have the responsibility to plan and carry out the recommendations of the President's Commission on the Holocaust. The Commission was established by the President on November 1, 1978, to recommend a fitting memorial to all those who perished in the Nazi holocaust as well as other victims of persecution. The Commission recommended to the President that a permanent living memorial/museum to the victims of the holocaust be established, that an educational foundation be established, and that there be created a Committee on Conscience to provide early warning of threats of genocide against any people throughout the world. In addition, the Commission recommended that 1 week each year be designated "Days of Remembrance" to be marked by a national, civic commemoration and appropriate private and public observances.

Private contributions, Mr. Speaker, will provide most of the funding for these projects. The Holocaust Memorial Council, which was itself established by Executive order as a temporary body, has already established the U.S. Holocaust Remembrance Foundation, Inc. for the purpose of accepting private contributions.

Mr. Speaker, the establishment of a permanent Holocaust Memorial Council to plan and oversee the construction and operation of a memorial museum and to oversee the implementation of the other recommendations is of great importance, not only to the memory of the victims of the holocaust but to all people who have been persecuted and those who may perhaps escape persecution in the future. While the Council will be concerned with commemorating the holocaust, its work will be dedicated to seeking to prevent genocide directed against any people, anywhere in the world.

For these reasons, I would like to urge my colleagues to join with the 100 Members on the House side who have already sponsored this legislation to establish a permanent U.S. Holocaust Memorial Council.

Mr. Speaker, I would also like at this time to share with our colleagues the letter from President Carter to Hon. Elie Wiesel requesting Mr. Wiesel to serve as Chairman of the Holocaust Memorial Council, and the text of an address presented by Hon. Monroe Freedman, Director of the U.S. Holocaust Memorial Council, at the May 1980 meeting of B'nai B'rith International in Washington, D.C.

The two articles follow:

THE WHITE HOUSE,
Washington, April 18, 1980.

Hon. ELIE WIESEL,
239 Central Park West,
New York, N.Y.

TO ELIE WIESEL: I want you to know once again how greatly I have valued your distinguished service as Chairman of the President's Commission on the Holocaust. Under your guidance and leadership, the Commission has made an invaluable contribution to our country and to the memory of the six million Jews who perished in the Holocaust, and the other victims of Nazism in World War II.

I have been gratified by our developing friendship, and deeply touched by the opportunity to broaden my awareness and perception of the Holocaust—a period of darkness that revealed the most profound evil and the highest spirituality that the human soul is capable of achieving.

In order to carry out the Commission's recommendations, I have now established the United States Holocaust Memorial Council. Specifically, the Council will be responsible for the establishment of an appropriate memorial museum, an educational and research foundation, and a Citizens Committee on Conscience to commemorate the Holocaust.

I think it is essential that these projects recognize the distinctively Jewish nature of the Holocaust. As you so eloquently wrote in submitting the Commission's report, while not all victims were Jews, *all* Jews were victims, destined for annihilation solely because they were born Jewish. Of course, it is also important to take into account, as the Council's work proceeds, that there were Nazi atrocities committed against other nationalities and ethnic groups in all of the occupied countries of Europe.

Although the Holocaust took place in Europe, the event is of fundamental significance to Americans for at least three reasons. First, it was American troops who liberated many of the death camps, and who helped to expose the horrible truth of what had been done there. Also, the United States became a homeland for many of those who were able to survive. Secondly, however, we must share the responsibility for not being willing to acknowledge forty years ago that this horrible event was occurring. Finally, because we are humane people, concerned with the human rights of all peoples, we feel compelled to study the systematic destruction of the Jews so that we may seek to learn how to prevent such enormities from occurring in the future.

I am pleased to invite you to serve as Chairman of the Holocaust Memorial Council. In view of your previous service and your extraordinary record as a survivor, witness, author, scholar, and teacher, it is uniquely appropriate that you once again assume the responsibilities of leadership in this vital mission.

As always, you will have my strongest personal support.

Sincerely,

JIMMY CARTER.

THE PARTICULAR HOLOCAUST

(By Monroe Freedman)

Two years ago President Carter established the President's Commission on the Holocaust, under the chairmanship of Elie Wiesel. In September 1979, that Commission fulfilled its responsibilities by presenting to the President its Report and Recommendations. The Commission recommended a permanent memorial/museum to the victims of the Holocaust, an educational foundation, and a Committee on Conscience, to monitor and provide early warning against threats of genocide worldwide. Funding is to be primarily through private contributions. The present body, the United States Holocaust Memorial Council, was established by a second Executive Order to seek legislation to carry out the Commission's recommendations.

In forming the Holocaust Memorial Council, President Carter noted the reasons that the Holocaust is of fundamental significance to Americans, and why there should be an American commemoration of its victims. It was American troops who liberated many of the death camps and exposed the horrible truth of what had been done there. Also, the United States subsequently became the homeland of many survivors. The President noted further that Americans must bear responsibility for not being willing to acknowledge 40 years ago that the tragedy was occurring. Thus, thousands of refugees were turned away from our shores, and countless thousands of lives were lost that otherwise could have been saved. Further, Americans are a humane people, concerned with the human rights of all peoples. In studying the systematic destruction of the Jews by the Nazis, the President added, we can seek to learn how to prevent the recurrence of genocidal threats against any national or ethnic group.

The original Commission recognized at an early point, however, that the Holocaust could not be appropriately memorialized—historically, logically, or morally—as an event unrelated to Nazi atrocities throughout the occupied countries of Europe. In addition, the earlier annihilation of one and one-half million Armenians is a relevant, significant precedent for genocide unrestrained by a community of nations claiming to be civilized.

Moreover, just as the Armenian genocide should have become an object lesson to the world, rather than a precedent for brutality unrestrained, so the Holocaust must provide lessons to humanity of the individual, national and international moral responsibility for such catastrophes as we have subsequently witnessed in Bangladesh and Nigeria, and are witnessing today in Cambodia.

Just as it would be illogical, unhistorical, and immoral to commemorate the Holocaust unrelated to historical precedent and context, and without regard to the continuing confrontation with genocide, so too would it defy logic, history, and morality to deny what the Holocaust itself was. As recognized in literature, philosophy, and theology (and even on television), the Holocaust was the annihilation of six million Jews as a formal, systematic act of state, pursuant to what the Nazis referred to as the Final Solution of the Jewish question. The event was all the more ghastly because it was committed by a modern European country with an extraordinary history of achievement in science, the arts and philosophy. Indeed, those very achievements, which might have been expected to provide a civilizing bulwark against bestiality, were put to work to expedite the mass slaughters, to ease the consciences of the slaughterers and even to attempt to rationalize and to justify the evil. And through the years of anti-Semitic race laws, persecution and extermination, the world acquiesced in its silence and inaction.

To say, therefore, that the Holocaust was unique, and that its victims were Jews who died as Jews because they were Jews, is to recognize a horrible historical truth. Surely, however, that observation does not denigrate in the least the sufferings of other peoples. For just as each person is unique, so is each people, and the calamities of each people, unique. To say that is to emphasize, not to deny, our common humanity.

It has been suggested, however, that a commemoration of the Holocaust—even in its historical context and with full recognition of its universal implications—is somehow inappropriate, unless the Holocaust is to be redefined as an event involving not six million Jews, but eleven million civilians. That is, the Holocaust, it is suggested, should be universalized, not only in its implications, but also in such a way as to deny that it was, fundamentally, the policy and execution of genocide against the Jewish people. As the universalist view has been expressed rhetorically, are Jewish lives more precious, or more deserving of commemoration, than are those of other civilian victims of Nazism?

Of course not. And, as I have already emphasized, other victims of Nazi atrocities will, unquestionably, be a significant part of any United States Holocaust Memorial. Accomplishing that, however, does not require either a redefinition of the Holocaust, or a falsification of the historical fact of the Final Solution, or a denial of the uniqueness of the Jewish experience that the Holocaust represents.

That suggests no lack of compassion, much less disrespect, for others who have suffered. Indeed, the extreme universalist position succumbs ineluctably to the logic of its own rhetoric. If commemoration of the Holocaust is somehow ethnocentric, and implies lack of compassion for others, then where, rationally or morally, is the stopping point? How can we be so callous as to exclude the civilian victims of the Nazi firebombings of London? And indeed, why should a memorial be limited to civilians? Are their lives somehow more precious, or are they more worthy of being commemorated, than are the young men who were drafted into military service to be killed before their time? Moreover, what of the civilians on the other side? Are we to deny, for example, the humanity of those who perished so horribly in the destruction of Dresden? Indeed, why are those who died during World War II more worthy of remembrance than those who died in other wars—or in peacetime, for that matter?

Where, indeed, is the rational or moral stopping point? Once one starts trying to impose a sense of guilt for commemorating a particular group of victims, there is no valid justification to stop short of all humankind.

For the reasons stated earlier, it is clear to me that the Jewish victims of the Holocaust are entitled to particular recognition. Moreover, they died as Jews, because they were Jews. I am offended, therefore, by efforts to strip them of their Jewishness. I understand that there are religious groups who posthumously convert people to their faith. In a sense, the insistence of referring to six million Jews as an indistinguishable part of eleven million civilians is a similar effort—if not of conversion, then of posthumous assimilation.

If we are to have a philosophical objection to commemorating the Jews of the Holocaust, then I am afraid we must also rethink other particularist causes, such as our support of Soviet Jewry. What, for example, if one were to argue as follows:

People say to me, "We must help the Jews in the Soviet Union," and I reply, "You can't improve the lot of Jews in the Soviet Union until you improve the lot of the whole (Soviet) population."

That is another aspect of universalism. Nor have I fabricated an argument *ad absurdum* to make the point. That quotation is from a statement by Simon Wiesenthal. As a further example of Mr. Wiesenthal's universalism, we have a full-page ad from the Wiesenthal Holocaust Center. Nowhere on that entire page does the word "Jew" appear, even once. Although I admire much of what Mr. Wiesenthal has done, I cannot concur in his apparent compulsion to assimilate every Jew, living and dead, into the non-Jewish community.

Let me state as a fact, without expressing either pride or apology, that I rarely have been involved previously with particular Jewish causes, although I have always been involved with a sense of Jewish identity and obligation. Whether black civil rights, the anti-war movement, the rights of indigent criminal defendants, prisoners' rights, women's liberation, affirmative action, homosexuals' rights, the handicapped, union democracy, institutionalized children—even the rights of Nazis to march in Skokie—each was a particular cause. And each, in my mind, has had universal implications.

It is in that spirit that I speak for the integrity of our remembrance of the Holocaust. It was a uniquely Jewish event, and it cannot be understood if we deny that fact. It occurred, however, in a historical context of suffering of millions of others, who cannot, who should not, be ignored. And its implications are, awesomely, frighteningly universal.●

H.R. 7235—RAIL ACT OF 1980

HON. EDWARD R. MADIGAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. MADIGAN. Mr. Speaker, tomorrow the House will resume consideration of H.R. 7235, the Rail Act of 1980. On July 24, the House, by a vote of 204 to 197, adopted the Eckhardt amendment. At that time Mr. FLORIO, the majority floor manager of the bill, and I withdrew the bill from further floor consideration. We took that action because the Eckhardt amendment severely limited the ratemaking freedom contained in the committee bill. Quite frankly, we believed that it would be better to let the Interstate Commerce Commission continue their policy toward deregulation under existing law than to pass a bill which froze Government regulation of railroads for at least 3 years.

Further study of the Eckhardt amendment by the Chairman of the Interstate Commerce Commission confirmed our belief that no rail bill was preferable to a rail bill containing the Eckhardt amendment. I ask unanimous consent that a copy of a letter from Chairman Gaskins to Chairman FLORIO be printed in the RECORD immediately following my remarks.

When it became clear that the committee leadership could not support the rail bill with the Eckhardt amendment, a number of members, railroads,

shipper interests, and the administration sought out a compromise between the bill as reported from committee and the bill with the Eckhardt amendment. I am pleased to report that the search for a compromise has been successful.

When the House resumes consideration of H.R. 7235 tomorrow, Mr. STAGGERS will offer the Staggers-Rahall-Lee-Loeffler compromise amendment. Mr. FLORIO, Mr. BROYHILL, and I have worked closely with the sponsors of the compromise amendment and are convinced that it is a good compromise. As in the Eckhardt amendment, the compromise amendment focuses mainly upon the ratemaking provisions of the committee bill. The compromise amendment affords those interest groups who supported the Eckhardt amendment greater protection than contained in the committee bill without sacrificing the principle of substantial rate deregulation.

For example, agricultural interests in my own State and throughout the Nation were principally concerned about the demand-sensitive rate provision of existing law and the contract rate provision of the House bill. They expressed a preference for repeal of the existing law relating to demand-sensitive rates. The compromise amendment does just that.

On contract rates, a preference was expressed for the provision contained in the Senate bill, S. 1946, as opposed to the contract rate provision in the committee bill. The compromise amendment adopts those features of the Senate provision preferred by agricultural shippers. In addition, it is my understanding that there will be an amendment to a subsequent title of the bill which will establish a Shipper Needs Board to make certain that the Department of Agriculture and others monitor the workability of the new rail law to make certain that rail service to agricultural shippers is improved.

Large shippers and electric utilities were concerned about both the level and timing of the rate freedom contained in the committee bill. Their concern in this regard has been met in the compromise amendment by putting a cap on the jurisdictional threshold for rate freedom and by phasing such rate freedom in over a period of 5 years. The Committee of Rail Shippers, the coal industry, the Chemical Manufacturers Association, and the National Industrial Traffic League have all devoted long hours to the legislative process involving this bill. It is my understanding that each of those groups finds the compromise amendment acceptable.

Finally, Mr. Speaker, the compensatory joint rate title of the bill caused concern for many short line railroads, ports, and shippers. That section of the committee bill is in title III and was not addressed at the time the managers of the bill removed it from floor consideration. Had we considered title III, Congressman LEE of New York would have offered an amendment which addressed the concerns of short line railroads. The compromise amendment contains those provisions which were worked out by Mr. LEE in order to protect short line railroads. It has the endorsement of the American Short Line Association and nearly every one of the short line railroads in the country. In addition, the compromise amendment contains a number of shipper safeguards against the unwarranted use of the surcharge provision which is used to assure compensatory joint rates. This provision has the specific endorsement of the Committee of Rail Shippers.

The compensatory joint rate or surcharge provision is further amended by the compromise to protect ports by preserving their rights to challenge surcharges on the basis of discrimination. This represents a further extension of the amendment offered by Congresswoman MIKULSKI and adopted on the House floor prior to the Eckhardt amendment.

Mr. Speaker, I ask unanimous consent that a detailed explanation of the compromise amendment be printed in the RECORD immediately following my remarks.

Mr. Speaker, the Rail Act of 1980 is a necessary piece of legislation. It is necessary because our Nation needs a strong railroad system. Under existing law we do not have a strong railroad system. We have been plagued by failing railroads and progressively poorer rail service. The need for legislation is so apparent that Members on both sides of the aisle have been careful not to make this bill a political issue. In my judgment we should keep it that way.

I sincerely hope that Members on both sides of the aisle will wholeheartedly support the Staggers-Rahall-Lee-Loeffler compromise so that we may proceed with further consideration and eventual passage of this necessary legislation.

The letter and explanation follow:

INTERSTATE COMMERCE COMMISSION,
Washington, D.C.

Hon. JAMES J. FLORIO,
Chairman, Subcommittee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for my views on the Eckhardt amendment to H.R. 7235, the "Harley O. Staggers Rail Act of 1980." As you know, I believe it imperative that the rail industry be brought into the mainstream of modern American business if the industry is to survive without massive and continuing federal assistance and if it is to realize its potential for efficient service to the Nation. In my view, this cannot be done unless we place maximum possible reliance on the marketplace to establish rates and conditions of service. Consequently, I am concerned about specific provisions of the Eckhardt amendment that seem to work against this goal, and about its impact on the thrust of the bill generally.

The Eckhardt amendment addresses three areas: rate reasonableness; contract rates; and demand-sensitive rates. In the ratemaking area, the amendment would for three years limit Commission jurisdiction to rates above 160 percent of variable cost, while retaining the market dominance provision of the current statute. This appears to provide rail carriers greater ratemaking flexibility than the current statute. However, in effect, it merely freezes existing Commission practice. It does not, therefore, represent a step forward, I believe crucial to the ability of the rail industry to compete successfully with other carriers, regain lost traffic, and earn sufficient revenues to attract adequate private investment.

Further, the revised market dominance standards, which were deleted from the bill by the Eckhardt amendment, were extremely useful. By explicitly recognizing source and product competition as factors to be considered, the bill (before the amendment) would have allowed the Commission to focus its resources on those situations where shippers really cannot rely upon the marketplace for protection.

The demand-sensitive rate section of the Eckhardt amendment represents, in my view, a significant step backward. That section prohibits the application of demand-sensitive rates to a broad category of agricultural commodities. It is important to remember that any demand for rail service that varies substantially at different times of the year will cause the rail industry to incur greater costs. The exempted commodities have in the past and will continue to place such demands on the rail system since they move in greater volume when commodity prices are high no matter how much elevator capacity is constructed or how short rail car supply is. Demand-sensitive rates aid the railroads in reducing such costs in some circumstances by encouraging shippers to smooth the level of demand for rail service. When demand does peak, such pricing assures that the railroads at least recover their costs. Demand-sensitive pricing has a further positive feature in that it permits the marketplace to better allocate transportation resources by rationing cars on the basis of price during peak demand periods to those for whom it has the greatest importance. Railroads are specifically permitted such flexibility under the current statute. Their truck and barge competitors have enjoyed such flexibility for many years when transporting such commodities, and shippers have, therefore, grown accustomed to accommodating themselves to fluctuating rates. Loss of such flexibility for almost any major category of traffic would, therefore, in my view, seriously inhibit the railroads in their efforts to earn adequate revenues.

In summary, I am concerned that the Rail Act with the Eckhardt amendment does not give railroads sufficient pricing flexibility. In my previous comments on the bill, I have expressed the opinion that H.R. 7235 provided a balanced approach to solving the railroads financial problems while at the same time guaranteeing shippers protection from abuses of the marketplace. The rate flexibility given rail carriers was, however, balanced by a clear mandate to the Commission to substantially eliminate collective ratemaking as well as a clear mandate to encourage contract rates. The bill thus gives shippers greater and effective access to marketplace alternatives. Such access will help to assure fair regulation of rail pricing. Congressional guidance in these areas is of great importance as a legal matter, as well as in establishing the policy framework for future regulation. For these reasons, I conclude that the "Harley O. Staggers Rail Act of 1980," is far better balanced without the Eckhardt amendment, and hence will be more successful in achieving its objectives without it.

Sincerely,

DARIUS W. GASKINS, JR.,
Chairman.

OUTLINE OF PROPOSED RAHALL, STAGGERS COMPROMISE AMENDMENT TO H.R. 7235

I. MAXIMUM RATE REGULATION

A. Jurisdictional threshold to exclude ICC review, rail carrier would bear the burden of showing the rate is below the revenue cost ratio set forth below or the shipper would bear the burden of showing there is market dominance, as in present law. (Strike (c) (i) and (ii) of H.R. 7235.)

October 1, 1980: revenue-variable cost ratio 160 *or* market dominance.

October 1, 1981: revenue-variable cost ratio 165 *or* market dominance.

October 1, 1982: revenue-variable cost ratio 170 *or* market dominance.

October 1, 1983: revenue-variable cost ratio 175 or C.R.P. whichever is lower (no lower than 170 or higher than 180) *or* market dominance.

October 1, 1984 and subsequent years: revenue-variable cost ratio C.R.P. (no lower than 170 to higher than 180) *or* market dominance.

B. Zone of rate flexibility for rates subject to ICC jurisdiction:

1. Date of Enactment to October 1, 1984: Inflation plus 6 percent annually (18 percent cumulative: Carryover up to 6 percent permitted if 6 percent not taken in the past year).

2. After October 1, 1984: Inflation plus 4 percent for Carriers without adequate revenues. (No carryover if 4 percent not taken; no cumulative limit.) By October 1, 1983, ICC to submit report to Congress recommending whether to limit 4 percent increase only to participants not earning adequate revenues when such participants have only a small portion of the haul. Unless Congress changes law to the contrary, all joint rate participants are entitled to 4 percent unless all are earning adequate revenues.

3. Inflation to be computed quarterly.

C. Limit On rates Within The Zone Of Flexibility: Rate increases in excess of inflation which are subject to ICC jurisdiction and are within the zone of flexibility nevertheless would be subject to investigation (but not suspension) if and to the extent the increase brings the revenue cost ratio more than 20 percent points above that year's threshold level. If the Commission decides to investigate the burden of proof, as under existing law, would be on the carrier. If the increase does not bring the rate more than 20 percent points above that year's threshold level, there would be no suspension or investigation, but rate increases could be challenged on complaints.

D. No Presumption Of Unreasonableness: Rates subject to ICC jurisdiction or above any zone shall not be presumed to be unreasonable.

E. ICC Proceeding On Product Competition: The ICC shall institute and conclude a proceeding to determine if, and to what extent, geographic and product competition should be included as a test of reasonableness. The ICC's determination in this proceeding may not extend geographic and product competition beyond the definition of "same commodity" and other limits imposed by the provisions of H.R. 7235 as amended by Mr. Madigan. The legislative history would make it clear that, if the ICC determined to make this a reasonableness factor, the specific limitations of H.R. 7235 would not be exceeded, and the ICC would consider how existing long-term contracts are to be considered in this proceeding. The legislative history would explain the term "consignee's needs", and address cases such as the transportation between two facilities owned by the same shipper.

F. Studies: ICC to study whether either the cost recovery percentage, a new market dominance test, return on investment or some other standard should be instituted as a jurisdictional threshold, and the extent to which geographic product competition should be a determinant of reasonable transportation alternatives and report to Congress the results by the end of the third year.

II. ADEQUATE REVENUES

The ICC shall annually determine whether a rail carrier has adequate revenues based upon a uniform procedure to be promulgated. Within 90 days following enactment, the ICC shall institute a proceeding on uniform methodology for determining whether a rail carrier has adequate revenues and shall establish such methodology within 270 days after enactment.

III. SUSPENSION AND INVESTIGATION OF RATES SUBJECT TO ICC REVIEW

Rates subject to ICC jurisdiction could be suspended for 5 months if a protestant met the tests under the House bill. This period could be extended up to 8 months if the Commission sent a report to Congress. A shipper would be liable for any undercharge if it loses.

IV. DEMAND SENSITIVE RATES

Repeal existing law.

V. CONTRACT RATES

House provision but for agricultural shippers Senate language about holding out same contract to similarly situated shippers ready, willing, and able to enter into contract at a time essentially contemporaneous.

Grandfather provision will be added for existing contracts, and the statute will clearly state that enforcements of the terms of the contract lies with the courts. The provision will make it clear that contracts are not subject to challenge under the Interstate Commerce Act after ICC approval and redefine the grounds for pre-approval challenge to ensure that the common law common carrier obligation will not frustrate the formation of contracts.

VI. PORTS

A specific provision will be added to the bill indicating that nothing in the legislation shall be construed to affect the existing law or the authority of the Commission with respect to rate relationships between ports or to affect the authority and responsibility of the Commission with regard to equalization of rates within the same port.

VII. INTRASTATE RATES

Follow provisions of Broyhill amendment with two changes: Allow 4 months for submission of procedures to ICC and delete annual review. In lieu thereof, certification shall be reviewed every 5 years. ICC and state jurisdiction under Broyhill shall be exclusive.

VIII. RATE BUREAUS

House provision.

IX. GENERAL RATE INCREASES

House provision.

X. CARRIER OBLIGATION

Subject to review of the language, amend Carmack Act to expedite claim filing processes and to eliminate claims for special damages except where provided for in carrier shipper agreements.

XI. DISCRIMINATION

Section 208 of the House bill with port amendment.

XII. SURCHARGES AND CANCELLATIONS (SECTION 301)

1. Clarify that the maximum rate provisions of Title II apply to surcharged joint rates; surcharge may remain if sucharged division qualifies under Section 301, but ICC can require that the surcharge revenue be supplied by connecting carriers where overall rate (with the surcharge) is above jurisdictional threshold and is unreasonable.

2. Section 301(a) surcharges not available for main line movements of carriers who have achieved revenue adequacy; otherwise, surcharge provisions remain.

3. Cancellation provisions of H.R. 7235.

4. Amendments to Section 301 of H.R. 7235 as proposed by Mr. Lee.

5. Include the following protective provisions for shippers in Section 301:

A. Surcharges shall be free from regulation only to the extent that such increases of the surcharging carriers' divisions yield the surcharging carrier a division equal to 110 percent of its variable cost of providing the service;

B. Subsection (b) of section 301 should be amended so that surcharges on light-density lines are subject to the cancellation provisions of section 301(a);

C. Shippers who request cost information for purposes of challenging a surcharge shall, like connecting carriers in similar situations, be given access to such information within five days;

D. Shippers shall have an immediate right to challenge the application of a surcharge (instead of the current provision which requires shippers to defer challenges to surcharges until the connecting carriers have failed to challenge the surcharges;

E. Shippers shall be allowed to challenge a surcharge where they have no competitive alternative to the surcharged route (sec. 301 currently permits surcharges even when the only available alternative routes a shipper could use are priced at rates well above the proposed rate as surcharged);

F. Shippers, as well as connecting carriers, have the right to challenge rate cancellations.

6. Surcharges and cancellations cannot unreasonably discriminate against ports.

7. ICC proceeding to determine if additional protections are needed for Class III and Class II carriers and ports with a report of its findings to the Congress 12 months from date of enactment.

XIII. EXEMPTION

Change standard "not needed to protect shippers from abuse of market power" to "not needed to protect shippers and receivers where there is an absence of effective competition".

XIV. COMPENSATION FOR SHIPPER-OWNED CARS

House provision.

XV. SAFE RAILROAD REINVESTMENT

House provision with Glickman amendment added.

XVI. ROCK ISLAND AND MILWAUKEE

Attempt to make Rock Island Act constitutional so employees will receive $75 million in benefits provided under that Act. Clarify that Tucker Act, applies, and establish an expedited appeal.

Forgiveness of $60 million of debt owed by Milwaukee to the U.S. which is already in default when:

1. Milwaukee is successfully reorganized; or

2. Substantially all is purchased with more than 50 percent of employees.

$15 million for the Milwaukee, which has already been appropriated contingent upon an authorization, is authorized.

$13 million additional in loan guarantees for those, including shippers, who take over Rock Island lines is authorized.

$9 million additional in loan guarantees for those, including shippers, who take over Milwaukee lines is authorized.

XVII. POWDER RIVER BASIN

Requires a DOT decision within 45 days on CN & W's loan application. Waives a portion of the DOT Act which requires findings by the Secretary on such things as the only available route.

XVIII. DELAWARE & HUDSON

Waives requirement that USRA find that loans will be repaid. Assures the D. & H. that funding will continue.●

CONFERENCE REPORT ON H.R. 5192, HIGHER EDUCATION ACT REAUTHORIZATION: A FISCALLY RESPONSIBLE BILL

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. FORD of Michigan. Mr. Speaker, last Thursday the House adopted, by an overwhelming vote of 373 to 16, the conference report on H.R. 5192, the Education Amendments of 1980. Some concerns about the cost of this measure which were not raised during the floor debate on the conference report have been expressed. In response to these concerns, I would note that the conference report reduces the total authorizations of the House-passed bill by a total of nearly $11 billion or about $2 billion for each year authorized. With respect to the loan programs, which include the only entitlement program contained in the bill, the Congressional Budget Office estimates that this bill will reduce the cost of these programs in fiscal year 1981 by $280 million below the House passed bill and by $284 million below current policy. In addition, over the length of this reauthorization, fiscal years 1981–85, this bill will reduce the cost of the loan programs by $2.8 billion below the House-passed bill and by $2.2 billion below current policy.

I include following my remarks a memorandum from the Congressional Budget Office, "Estimates of the Costs and Effects of Student Loans Under the Conference Agreement on H.R. 5192."

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., August 27, 1980.

MEMORANDUM

To: Tom Wolanin and Pat Rissler.
From: Deborah Kalcevic and David Longanecker.
Subject: Estimates of the costs and effects of student loans under the conference agreement on H.R. 5192.

This memorandum examines the costs and effects of the student loan components in the conference agreement on H.R. 5192, a bill to amend and extend the Higher Education Act of 1965. The memorandum also provides estimates for the current Guaranteed Student Loan (GSL) and National Direct Student Loan (NDSL) programs and for the student loan components of H.R. 5192 as passed by both Houses. All estimates are based on CBO's mid-year economic assumptions.

STUDENT LOAN PROVISIONS OF H.R. 5192

The conference agreement on H.R. 5192 does not appreciably alter the GSL program. Interest rates are raised from 7 percent to 8 percent, eligibility for borrowing at less highly subsidized rates is extended to parents, maximum borrowing levels are increased, and default collection procedures are improved—but these changes are not expected to significantly change the program.

The conference agreement also retains the basic structure of the NDSL program, but provides an alternative funding option that, if implemented, would affect both the NDSL and GSL programs. Currently, the federal government provides an annual capital contribution to revolving funds at each participating institution. These revolving funds, which include the federal capital contribution, institutional contributions, and collections from loans in repayment, may be used only to provide loans to students with assessed need. At present, however, the NDSL program provides only about $800 million, whereas the estimated assessed need for loans is greater than $3 billion. To allow greater access to need-based loans, the conference agreement, under an "alternative source of funds" provision would allow the Secretary of Education to request authority to borrow more than is provided through existing institutional revolving funds. Once this borrowing authority is appropriated, the revolving funds would be dissolved and collections from old NDSL notes would be distributed to the federal government and participating institutions. Expanding the NDSL program would allow many needy students currently borrowing GSLs to borrow under more attractive terms through the NDSL program, thus reducing the demand for GSLs.

COSTS AND EFFECTS OF H.R. 5192

To estimate the costs of the loan components in the conference agreement, we have assumed maximum authorization levels. Therefore, the estimate for the NDSL component assumes that the Secretary of Education requests and receives appropriations act authority in fiscal year 1981 to borrow an amount sufficient to meet the estimated assessed need for NDSL loans (approximately $3.4 billion). The full effect of this increase in NDSL capital, however, would not be reflected in fiscal year 1981 costs. Because the NDSL program is forward funded, the expanded availability of loans would not occur until the 1981–1982 academic year—that is, NDSL funds appropriated for fiscal year 1981 would not become available for obligation until the summer of 1981. As a result, only a portion of the anticipated reduction in the demand for GSLs resulting from increased availability of NDSL capital could actually occur in fiscal year 1981, with the full effect occurring for the first time in fiscal year 1982. The loan components of the conference agreement would cost approximately $300 million less in fiscal year 1981 than either current policy or H.R. 5192 as passed by the House (see Table 1). The reduced cost occurs primarily because the Secretary is allowed to recoup collections from outstanding NDSL notes amounting to approximately $220 million in fiscal year 1981. These receipts would offset both budget authority and outlays in 1981. The conference agreement would result in costs approximately $400 million more than the Senate passed bill primarily because the combined borrowing in both programs would be considerably higher (see Table 2).

To allow comparison with other options, the long-term cost estimate of the conference agreement's loan component assumes that the NDSL and GSL programs overlap for the full year. Thus, borrowers with assessed financial need including those who previously would have had to rely solely on the GSL program, are assumed to borrow through the expanded NDSL program. Some students are assumed to remain as borrowers under both programs. Both the overall long-term cost and the long-term cost per dollar loaned of the conference agreement are appreciably higher than either the House or Senate passed bills. The long-term costs exceed those of the House bill principally because the conferees incorporated an expanded NDSL program (assuming action by the Secretary of Education) without changing the GSL program substantially, thus significantly increasing the overall amount of student borrowing. The costs exceed those of the Senate bill primarily for two reasons: (1) because the conferees did not incorporate Senate provisions that would have virtually eliminated in-school interest subsidies for non-needy students, thus reducing the demand for GSLs, and (2) the conferees only increased the NDSL interest rate from 3 percent to 4 percent and the GSL interest rate from 7 percent to 8 percent, rather than to the respective 7 and 9 percent rates included in the Senate bill.

As previously mentioned, these estimates assume that the Secretary of Education requests and receives authority to borrow an amount sufficient to meet the full assessed need for NDSLs. Because sufficient funds would be available for student borrowing, we have assumed that recouped collections from old NDSL notes would be available to the Secretary to offset program costs. The conference report language is vague on precisely how these funds should be used, but both House and Senate authorizing committee staff have assured CBO that the intent of the conferees was to allow the Secretary to use collections to offset program costs in the event that student need for NDSLs has been met with borrowed federal funds.

TABLE 1.—1981 AND 5-YEAR FEDERAL LOAN COSTS OF: (1) CURRENT POLICY, (2) H.R. 5192 AS PASSED BY THE HOUSE, (3) H.R. 5192 AS PASSED BY THE SENATE, AND (4) THE CONFERENCE AGREEMENT ON H.R. 5192

[By fiscal year, in millions of dollars]

	1981 total cost		1981-85 total cost	
	BA[1]	O	BA[1]	O
Current policy	1,870	1,892	13,391	12,936
H.R. 5192—House passed[2]	1,868	1,888	14,000	13,507
H.R. 5192—Senate passed[3]	1,208	[4] 1,353	8,017	[4] 8,018
Conference agreement on H.R. 5192[5]	1,591	1,608	11,735	10,733

[1] Assumes carryover of $100 million from fiscal year 1980.
[2] Assumes current policy funding of NDSL program, not full level of funding authorized in House passed bill.
[3] Much of the fiscal year 1981 and 1981–1985 cost savings from current policy result from assuming that NDSL collections offset program costs.
[4] Assumes that 1980 appropriations for current NDSL program would not outlay.

TABLE 2.—LOAN VOLUME AND FEDERAL COST OF NDSL AND GSL PROGRAMS UNDER: (1) CURRENT POLICY, (2) H.R. 5192 AS PASSED BY THE HOUSE, (3) H.R. 5192 AS PASSED BY THE SENATE, AND (4) H.R. 5192 AS REPORTED FROM CONFERENCE

	Direct loans		GSL program		Long-term cost[1] (millions)	Long-term cost per dollar loaned	Fiscal year 1981 costs (In millions of dollars)					
							NDSL		GSL		Total	
	Number (thousands)	Dollars (millions)	Number (thousands)	Dollars (millions)			BA	O	BA[4]	O	BA[4]	O
Current policy	900	765	2,500	5,880	3,151	0.47	334	300	1,536	1,592	1,870	1,892
H.R. 5192 House passed[2]	900	765	2,631	6,379	3,267	0.46	334	300	1,534	1,588	1,868	1,888
H.R. 5192 Senate passed	2,180	3,280	1,099	1,957	2,244	0.43	6	[4] 5	1,214	1,358	1,208	[4] 1,353
H.R. 5192 conference agreement[5]	2,000	3,345	2,236	5,076	3,735	0.49	158	84	1,433	1,524	1,591	1,608

[1] Full-term cost of loans provided in fiscal year 1981, with future costs discounted to 1981 dollars.
[2] Assumes carryover of $100 million from fiscal year 1980.
[3] Assumes current policy funding of NDSL program, not full level of funding authorized in House passed bill.
[4] Assumes that 1980 appropriations for current NDSL program would not outlay.
[5] These estimates assume that the Secretary of Education requests and receives authority to borrow enough to meet the full assessed need for NDSLs in fiscal year 1981 ($3.4 billion). It further assumes, except in the case of long-term costs, that these funds would first become available to students for the 1981–82 academic year, due to forward funding of the NDSL program. To allow comparison with other options, however, the estimate of long-term costs assumes immediate implementation of the expanded NDSL program, which reduces the demand for GSLs to 1.860 loans amounting to $4.009 billion dollars.

Program costs could vary considerably from these estimates, however, if the program evolves differently than we have assumed in this analysis. For example, if the Secretary did not request authority to borrow funds for the NDSL program, the existing program would remain intact; program costs and effects would be similar to those projected for the House passed bill. On the other hand, if the Secretary received authority to borrow more than currently provided in the NDSL program, but less than full assessed need, the campus revolving funds would be dissolved, but the collections from old NDSL notes would have to be used as NDSL capital, rather than to reduce program costs as would occur if the Secretary borrowed full need. This would appreciably increase budget costs in the first few years, but would have virtually no effect on long-term program costs.

If you have any questions, please feel free to contact us.●

CHARLOTTE'S WEB—1980 STYLE

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. BIAGGI. Mr. Speaker, I wish to call to my colleagues' attention an article in this week's Newsweek magazine entitled "Aunt Charlotte's Reward." It deals with the elderly aunt of the author, Bernard Sloan. According to Mr. Sloan, his Aunt Charlotte seems to be the victim of a new form of double jeopardy—being old but not being very poor.

The article points to an unintended but increasingly obvious shortcoming in a number of Federal programs designed for the elderly. These programs, while reaching those most in need are practically ignoring thousands if not millions of other seniors who might be considered among the "near poor."

In my service as an original member of the House Select Committee on Aging, I have worked diligently on such legislation as the Older Americans Act, and the title XX program I fought to insure that these programs did not impose individual means tests on individuals seeking benefits and services. In the case of the Older Americans Act—the law stressed that those in the greatest economic and social need were to receive a priority in receiving services. However, it must be noted that it did not say only those people could obtain these services.

My point in inserting this article into the RECORD is to advise my colleagues that in our efforts to serve the elderly—let us not be overly rigid in who we serve. While it is easier to characterize younger Americans into certain economic strata such as poor middle class—upper middle class and rich—it is far more difficult to do so with older people. Yet certain Federal programs approach the elderly in a very arbitrary fashion—and people like Charlotte—with legitimate needs are lost in the shuffle. It is very wrong.

AUNT CHARLOTTE'S REWARD

(By Bernard Sloan)

My wife's Aunt Charlotte lives in Brooklyn, A tiny, soft-spoken woman of 74, she could easily pass for 60 with her relatively unlined face and undyed brown hair that is just beginning to break out in gray flecks. Only her diminished hearing gives her age away, and the cautious steps she takes in her orthopedic shoes. Her mind and her vision are sharper than those of many 40-year-olds. A shy woman, Charlotte never married. When she telephones us she says, "It's only me."

In 1923, when she was 17, Charlotte went to work for the telephone company, eventually attaining the position of customer-service representative, a role she performed with pride, skill and dedication for nearly a half century. She responded with patience and courtesy to every customer, even to those whose complaints were voiced in somewhat questionable language. Charlotte, who would commit hara-kiri before permitting an unlady-like word to slip through her lips, never displayed a hint of anger or disapproval, although she confided to us that some of her clients should have their mouths washed out with soap. The days she was out sick could be counted on her fingers, it took a transit strike to make Charlotte late.

As a reward for her dedication, the U.S. Government forced Charlotte to retire. She was given a luncheon, a subscription to a retirement magazine, free home-telephone service and a pension and sent home. Two women in their 20s replaced her. Since the government made it difficult for them to be fired no matter what their attitude or degree of competence, neither felt compelled to duplicate Charlotte's conscientiousness. Or productivity, as we say today.

Distress Call: Several months afterward the telephone company sent out a distress call for retired workers. Temporary help was needed in the Upper West Side of Manhattan to handle the surge of problems arising from the minority groups in the area, many of whom either did not know English or were baffled by the complexities of maintaining telephone service—problems the new employees displayed no interest in solving. Giving up her social-security checks, Charlotte set off each day to a part of the city considered dangerous for the young and fit, let alone a woman of Charlotte's age. Before long she had added an extensive Spanish vocabulary to her store of black English and was being presented with gifts by her clients. Unable to change old habits, she arrived early, stayed late and quickly worked herself out of a job.

The government was not finished with Charlotte. Now it was the city's turn to take a whack at her. It moved welfare families by the score into her neighborhood, many into her building, which was like moving the fox into the hen yard. For many of these families consist of a mother and unsupervised children—children who often stand 6 feet tall and carry knives or worse. Soon mailboxes were found ripped open social-security checks stolen. The once neat hallways are now filled with beer cans, softdrink and liquor bottles and the smell of marijuana. Groups of youths, radios blaring, congregate on the front steps late into the night, making obscene remarks and giggling as people pass. There are purse snatchings and muggings in the once quiet neighborhood. An elderly couple were found tied to their bed, beaten and robbed. Charlotte has stopped going out at night. When she ventures out during the day she conceals cash in varous places on her person, leaving a carefully calculated amount in her purse to placate an attacker. Visiting Charlotte requires driving past miles of burnt-out apartment buildings; fires are set either by landlords for the insurance or by welfare tenants for the hardship money. (Everyone has been given an equal opportunity to profit by the system.) Although Charlotte remains outwardly cheerful, she knows she will have to do something soon. But what?

The neighbors who drive her to the market (the nearby one has been boarded up since the blackout riot) are moving to New Jersey. Others have fled to upstate New York and Florida. It is easier for couples to move to new areas, the widowed have moved in with their children. We have suggested that Charlotte move near us, but that would mean tripling her rent and being a stranger in a new community, as well as being dependent on us. Charlotte is not comfortable imposing on people.

Mistake: She found something that would have answered her needs beautifully. In a group of buildings clustered around a senior center, there were apartments with safety features designed for seniors, including buzzers to summon aid; meals were available in the center. Unfortunately, the government limited it to people with little or no money, and Charlotte had made the mistake of saving hers. There are other such places to which she might be admitted if she moved away from the city, leaving her entire life behind. But if welfare people don't have to move, she wonders, why should she?

When she decided to call on different government agencies for guidance, she learned that not one of the myriad programs for the aging she had heard about over the years, and which her taxes helped support, was for her. They were reserved for the penniless.

The other day she visited a sick woman in her building, a woman on welfare for whom the city provided a homemaker, a nurse and a cab to and from free medical attention. If Charlotte were ill, she would have to fend for herself. No government department would rush to her rescue.

Perhaps the time has come to reconsider which of our citizens are entitled to first claim on our resources. In our haste to better the lives of the lowest economic level of our society we have betrayed another, far larger and more deserving group. People who have worked hard, paid their taxes, contributed to the country. Shouldn't their needs be met first? Their housing, their neighborhoods, their security?

If a choice must be made, shouldn't first choice be given Aunt Charlotte? She has earned it.

Or doesn't that count anymore?●

INTERNATIONAL HEALTH

HON. TIM LEE CARTER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 3, 1980

● Mr. CARTER. Mr. Speaker, today I am introducing the International Health Act of 1980, a bill to amend the Foreign Assistance Act and the Public Health Service Act to provide for the advancement of international cooperation and assistance in health. I am doing so because I believe that promoting the cause of health for all the citizens of this world is one of the single, most effective approaches available to us to encourage world peace

and understanding. I would submit that our foreign assistance programs should emphasize cooperative efforts which seek to improve the physical and mental health of other peoples less fortunate than ourselves so that we might reaffirm the traditional humanitarian concerns of the American people.

Mr. Speaker, it is a fact that lack of decent health care, poor nutrition and sanitation, and unneeded exposure to disease place a heavy burden on most of the developing countries of the world. Forty percent of the children in those countries die before they reach 5 years of age—of those who do survive, many are sick and malnourished. Severe tropical diseases and a wide range of infectious diseases, many of which can be controlled if proper medical care were available, afflict staggering portions of the world population. Susceptibility to these diseases is exacerbated because exploding levels of population often exceed the agricultural and economic capacity of these countries with widespread malnutrition and marginal levels of subsistence the inevitable result.

Unfortunately, the population explosion is overwhelming all available resources and thus the twin problems of poverty and disease are becoming worse. The staggering burden of illness made more severe by inadequate resources is sapping the productive energy of developing societies, trapping them in a vicious cycle of despair leading to less effective responses to the problems they face. Most urgently, the competition for ever-scarcer resources will undoubtedly promote greater social and political instability while providing fertile ground for those who would disrupt and destroy peaceful relationships between the nations of the world.

Given the overriding importance of international health problems, I believe that the United States must play a leading role in finding cooperative solutions to those problems. Unfortunately, we have not paid sufficient attention to these efforts, and as a result they have become mired in inefficiency, bureaucratic turf wars, and excessively complicated and uncoordinated management. I would submit that we cannot continue to allow the improvement of health in developing countries and the resulting potential for mutual benefits to be smothered or fall between the bureaucratic cracks due to lack of leadership or poor Government organization.

Mr. Speaker, no less than 23 different departments and agencies of the Federal Government spend over one-half billion dollars a year on international health, even if we exclude the substantial expenditures of the Defense Department; 325 private organizations contribute a still larger amount. In spite of this large expenditure, responsibilities are not clearly defined, Government-wide priorities and coordinated planning is lacking, and most importantly, no single agency is vested with the clear responsibility for leadership.

Specifically, U.S. ability to participate in international health programs is impaired because three agencies—the Department of State, the Agency for International Development, and the Department of Health and Human Services—share responsibility for international health. HHS and AID are vested with the bulk of this responsibility with AID having the largest budget. Unfortunately, AID has allowed the number of health specialists to decline, while HHS, with substantial expertise in the health sciences, lacks an overseas presence or an international mission.

There is no existing organizational arrangement for planning and coordination of international health activities. Existing management is excessively complicated because there is no simple set of priorities or goals to which all the agencies involved can relate nor is there any mechanism for periodic evaluation of the effectiveness of our international health efforts.

Cooperation and coordination between public and private efforts and expertise in the international health field is inadequate. The expertise of the American health science community is widely appreciated throughout the world, yet this resource is not being effectively used to further our efforts in international health.

Perhaps most importantly, there is no single spokesman for this area to which the Congress could look for reports on the amount of money spent, the effectiveness of that expenditure, and the priorities for further effort. Without mandating new organizational arrangements to deal with the problems I have enumerated, Congress will not be able to examine adequately the impact of moneys appropriated or participate in the setting of priorities for international health.

The major objective of the legislation I am introducing today is to increase the return on our current expenditures by insuring that the estimated $528 million a year now spent is effectively managed. The bill provides for the modest expenditure of $43 million over a 3-year period—a sum less than the cost of one F-14 jet. It is my belief that on a cost-benefit ratio basis, this expenditure will pay great dividends in the form of effective planning, programing, and coordination of international health activities and will yield a much greater return on existing public and private efforts. Most importantly, strengthening and enhancing these efforts will pay immeasurable dividends through improvements in the health status and the well-being of all the citizens of the world.

I should also point out that this legislation is strongly grounded in increasing domestic interest in international health. The White House recently published an extensive report, including analysis and program recommendations, entitled "New Directions in International Health Cooperation." The Institute of Medicine published its report "Improving Health Care in Developing Countries" in April 1978. My bill is based largely upon the directions for U.S. international health activities indicated by these reports.

The increasing interest in international health here at home is complemented by an increasing awareness in the developing world of the crucial impact of health and health care. My proposal is based upon the philosophy endorsed by the developing countries at the recent International Health Conference held at Alma Ata in the U.S.S.R. in late 1978, a philosophy which emphasizes collaborative, "people to people," efforts in health.

Mr. Speaker, my bill is designed to improve and enhance our international health efforts through the following specific steps:

First, the bill will improve the management of our current international health expenditures. It will establish an interagency coordinating committee of the agencies most involved in international health activities—AID, HHS, State, DOD, and so forth. This interagency group will be established as a subcommittee of the existing Development Coordination Committee. The chairman will be appointed by the President.

This subcommittee would coordinate international health programs in relationship to an overall U.S. international health policy. The subcommittee would provide strong and visible leadership in determining Government-wide international health policy and for initiatives that involve several agencies resources. It would support and initiate multidonor projects with other governments and multilateral organizations and in this way encourage the positive trend toward multilateral development cooperation.

Private sector membership on the subcommittee is provided in order to further facilitate the utilization of the best talent in the field, whether in Government or out.

The subcommittee will also prepare an annual report on the President and Congress which describes and evaluates the nature, objectives, and expenditures relating to the international health activities of all U.S. agencies.

The subcommittee mandated by law will also elevate international health in importance. The highest ranking international health official in the two main agencies—AID and HHS—are buried below layers of bureaucracy. In AID, the senior health official with expertise in the area is five levels below the Administrator. In HHS, the Office of the Deputy Assistant Secretary for International Health is one of the lowest priorities in the Department. The bill proposes to remedy this by statutorily establishing the Office of International Health in HHS.

The second part of the bill is designed to develop the necessary resources for enhanced efforts in international health and the collaborative application of those resources to the health problems of the developing world. My proposal would provide three mechanisms for the achievement of these purposes. First, the bill authorizes a modest fellowship program—to be known as the "Paul G. Rogers international health fellowship program." Fellowships would be awarded to students in the various health professions as well as mid-career and senior health professionals for study and work experience in developing countries. Second, the bill provides for the establishment of an International Health Service Corps which would be a small-scale program to place U.S. health professionals in short-term service abroad for projects designed to enhance the capabilities of these countries to develop needed health care services. Third, the bill proposes a small grant program to provide support to U.S. universities, medical centers, and private voluntary organizations for international health projects in developing countries.

I believe that the three modest efforts which I am proposing will strongly benefit both our own country and the less fortunate countries of the world. The fellowship program and the International Health Service Corps will serve to enhance the interest of U.S. health professionals in the health problems of the developing world—problems that are often not dissimilar to problems found in the inner cities and rural areas of our own country. Moreover, these two programs coupled with the grant program will insure that the expertise of the academic community in the health sciences as well as the private voluntary organizations involved in international health projects will be brought more directly to bear upon the health problems of the developing countries. Clearly, a continuous flow of individuals and organizations with interest and understanding of international health programs will strengthen and enhance our efforts in this area.

I would also like to emphasize strongly an important feature of my proposal and that is the bill's emphasis on collaborative efforts with less-developed countries. Under the bill's requirements, a fellow or an International Health Service Corps member may not be placed in a positon abroad unless that position has been developed in cooperation with the country involved. Similarly, a grant may not be made to a university or private voluntary organization unless the university or organization has established a relationship with a health professions school or public health program in a developing nation. In this way my bill insures that this program will not replicate the outdated aid concept but will instead emphasize a collaborative, give-and-take process truly appropriate to relationships in the modern world.

Mr Speaker, in conclusion I would like to reiterate why I am committed to a greater involvement in international health activities, and why I believe my colleagues should support this legislation. First, as part of the overall international and diplomatic efforts of the United States, history has shown that medical diplomacy is more readily acceptable to the nations of the developing world than are more traditional foreign aid efforts. In the words of the distinguished Dr. Kevin Cahill, "medicine is our untapped resource" it can be called neither political nor military. This aid is necessarily provided by a new kind of diplomat, a white coat diplomat, who is much more readily accepted than the traditional striped pants diplomat.

Second, the United States has a great humanitarian tradition which has been strongly expressed through a long commitment to international health. This commitment was exemplified by U.S. leadership in forming the Pan American Sanitary Bureau, a landmark endeavor now succeeded by the Pan American Health Organization. Mindful of our stature in medical research and technology, we must continue to build upon this historic leadership role.

Third, international health is an area where a small investment can make a great difference. The improvement in effectiveness and efficiency of the use of existing resources will insure that we are receiving the greatest benefit from the dollars invested in this effort. The United States maintains the greatest store of health resources and knowledge in the world—we must not ignore our responsibility to use this store to extend a hand to those less fortunate than ourselves. I urge my colleagues to join with me in cosponsoring this important legislation.

Thank you, Mr. Speaker.

A summary of my legislation follows:

SUMMARY—"THE INTERNATIONAL HEALTH ACT OF 1980"

I. INTERNATIONAL HEALTH SUBCOMMITTEE

Amends the Foreign Assistance Act to establish the International Health Subcommittee of the Development Coordination Committee with the following membership: Secretaries of State, Health and Human Services, Treasury, Commerce, Defense, Agriculture; head of the Peace Corps, Director of the Office of Management and Budget, and the Administrator of the Agency for International Development; provides for appointment by the President of four public members especially qualified to serve on the Subcommittee.

Requires the Subcommittee to develop a comprehensive Federal International Health Plan. In developing the plan the Subcommittee is to: 1) develop a consistent and coordinated Federal international health policy; 2) develop a comprehensive inventory of Federal international health activities; 3) identify all proposed Federal international health activities; 4) develop a coordinated mechanism by country or region for addressing international health needs; and 5) identify all aspects of the Federal budget which involve international health activities and prepare an evaluation of such budget. The initial plan will cover a period of five years and will identify the activities required of each agency and Department in implementing the plan. $1 million per year is authorized for fiscal years 1982, 1983, and 1984 for activities of the Subcommittee.

II. REPORT TO CONGRESS AND THE PRESIDENT

The International Health Subcommittee is required to report to the appropriate Committees of the Congress and to the President annually on the International Health Plan and on Federal international health activities.

III. OFFICE OF INTERNATIONAL HEALTH

Amends the Public Health Service Act by adding a new title entitled "International Health." Establishes within the Department of Health and Human Services an Office of International Health headed by a Deputy Assistant Secretary for International Health, appointed by the Secretary, to be responsible for international health activities including relations with W.H.O. and other international health agencies. $2 million per year is authorized for fiscal years 1982, 1983, and 1984 for the activities of the Office.

IV. PAUL G. ROGERS INTERNATIONAL HEALTH FELLOWSHIPS

Establishes the Paul G. Rogers International Health Fellowship program to provide competitive fellowships to health professions students for study and work experience in developing countries and to health professionals for teaching, research, and clinical positions in developing countries. The period and amount of the award is at the discretion of the Secretary but no award may be made to an individual unless an appropriate position exists in a developing country and the position has been developed in collaboration with a public health program or health professions school in the developing country. There is authorized $3.5 million for fiscal year 1982, $4.5 million for fiscal year 1983, and $5 million for fiscal year 1984 for the fellowship program.

V. INTERNATIONAL HEALTH SERVICE CORPS

Establishes the International Health Service Corps to consist of officers of the Commissioned Corps of the Public Health Service and such civilian personnel as the Secretary may designate. The Corps will be used by the Secretary to enhance the capabilities of developing countries in public health, the delivery of health care, and health care research. Assignment of members of the Corps to a developing country may only be made upon request of the country and shall be subject to the approval of the International Health Subcommittee. $2 million per year is authorized for fiscal years 1982, 1983, and 1984 to operate the Corps.

VI. GRANTS FOR HEALTH CARE RESEARCH, TRAINING, AND DELIVERY

Authorizes the Secretary to make grants to public and nonprofit private entities for research and training in the health care delivery problems of developing countries. The Secretary may not make a grant to an entity unless the entity has formed a collaborative relationship with a public health program or health professions school in a developing country.

Authorizes the Secretary to make grants to public and nonprofit private entities for the development of resources for the delivery of health care in developing countries.

Authorizes $4 million for FY 1982, $5 million for FY 1983, and $6 million for FY 1984 for the two grant programs.

VII. EVALUATION

Requires the Secretary to evaluate annually the activities carried out under the Department's International Health Program and report the results of the evaluation to the President and the Congress.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 4, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 5

8:00 a.m.
Labor and Human Resources
To resume hearings on the nomination of John C. Truesdale, of Maryland, to be a member of the National Labor Relations Board.
4232 Dirksen Building

9:00 a.m.
Judiciary
To hold hearings on S. 2216, improving the intelligence system of the United States and providing protection of certain national security information.
2228 Dirksen Building

9:30 a.m.
Commerce, Science, and Transportation
Consumer Subcommittee
To continue hearings on the Federal regulatory reform policy of the Administrative Law Judge system, focusing on its operation within the agencies and departments under the Committee's jurisdiction.
235 Russell Building

10:00 a.m.
Energy and Natural Resources
Energy Conservation and Supply Subcommittee
To resume oversight hearings to study the potential impact of international applications of renewable energy resources on the growth of fossil-fuel consumption, the domestic solar industry, and global environmental problems.
3110 Dirksen Building

Environment and Public Works
Water Resources Subcommittee
Business meeting, to continue consideration of a proposed committee amendment to authorize additional water resources and supply project studies, and navigation, flood control, beach erosion, and dam safety projects to S. 1641, Water Resources and Development Act (pending on Senate calendar).
4200 Dirksen Building

Judiciary
Subcommittee, to continue hearings on matters relating to its investigation of individuals representing the interests of foreign governments.
318 Russell Building

Joint Economic
To hold hearings on the employment-unemployment situation for August.
6226 Dirksen Building

10:30 a.m.
Appropriations
Military Construction Subcommittee
Business meeting, to mark up H.R. 7592, appropriating funds for fiscal year 1981 for military construction programs of the Department of Defense.
S-126, Capitol

SEPTEMBER 8

10:00 a.m.
Energy and Natural Resources
Parks, Recreation, and Renewable Resources Subcommittee
To hold hearings on H.R. 7105, to establish a national hostel system to encourage the development of hostels by State and local government agencies, and private, nonprofit groups; and S. 2263, to provide for the establishment of the Women's Rights National Historic Park in Seneca Falls, New York.
3110 Dirksen Building

Finance
Taxation and Debt Management Generally Subcommittee
To hold hearings on the substance of H.R. 6721, to revise airport development and planning funding, focusing on the Airport and Airway Trust Fund extension and the aviation-related excise taxes transferred to that trust fund which expires on October 1, 1980 (pending in House committee).
2221 Dirksen Building

SEPTEMBER 9

9:00 a.m.
Finance
International Trade Subcommittee
To hold hearings on S. 2721, to permit the granting of most-favored-nation treatment to products of a country which have not expropriated U.S. citizens' property without compensation therefor; on a proposed amendment, to provide for action regarding claims of U.S. citizens against the Government of Czechoslovakia, thereto, and on miscellaneous tariff bills.
2221 Dirksen Building

9:30 a.m.
Environmental and Public Works
Transportation Subcommittee
To resume hearings on S. 2913, authorizing funds through fiscal year 1983 for the Federal Aid Highway Program.
4200 Dirksen Building

Judiciary
Business meeting, to consider pending legislation and nominations.
2228 Dirksen Building

10:00 a.m.
Appropriations
Interior and Related Agencies Subcommittee
To hold hearings on H.R. 7724, appropriating funds for fiscal year 1981 for the Department of the Interior and related agencies.
1114 Dirksen Building

Energy and Natural Resources
Energy Resources and Materials Production Subcommittee
To hold hearings on S. 2858, to allow the Department of the Interior to lease additional lands for the purpose of oil shale mining.
3110 Dirksen Building

*Labor and Human Resources
Education, Arts, and Humanities Subcommittee
Business meeting, to mark up title II, providing financial assistance to meet basic, and employment skills needs of secondary school youth of S. 2385, proposed Youth Act and H.R. 7859, to provide assistance to state and local agencies for the education of Cuban and Haitian refugees.
4232 Dirksen Building

SEPTEMBER 10

9:00 a.m.
Finance
Taxation and Debt Management Generally Subcommittee
To hold hearings on H.R. 6883, to revise certain provisions relating to the tax treatment of installment sales of realty and incidental sales of personal property, and on miscellaneous tax bills, S. 2512, 2900, 2915, and 2916.
2221 Dirksen Building

9:30 a.m.
Labor and Human Resources
Handicapped Subcommittee
To resume oversight hearings on the implementation of Education For All Handicapped Children Act (Public Law 94-142).
4232 Dirksen Building

Veterans' Affairs
To hold hearings to review current studies conducted by certain Government agencies on the long-term health effects of agent orange.
412 Russell Building

10:00 a.m.
Rules and Administration
To hold hearings on S. 16 and 964, providing for changes in the Presidential primary system, and S.J. Res. 189, establishing a Commission on Presidential Nominations; and to consider other legislative and administrative business.
301 Russell Building

SEPTEMBER 11

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate calendar).
235 Russell Building

10:00 a.m.
Finance
To hold hearings on provisions of sec. 5, to establish in the Treasury of the United States a Hazardous Substance Response Fund, of S. 1480, proposed Environmental Emergency Response Act.
2221 Dirksen Building

SEPTEMBER 12

9:30 a.m.
Commerce, Science, and Transportation
To continue hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate Calendar).
235 Russell Building

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
Business meeting, to resume markup of title II, providing financial assistance to meet basic and employment skills needs of secondary school youth of S. 2385, proposed Youth Act.
4232 Dirksen Building

SEPTEMBER 16

10:00 a.m.
Labor and Human Resources
To hold oversight hearings on the implementation of certain compensation programs for longshoremen.
4232 Dirksen Building

*Special on Aging
To hold hearing to examine proposals for possible changes to the social security system.
5110 Dirksen Building

SEPTEMBER 17

10:00 a.m.
Rules and Administration
Business meeting, to consider Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee; and other legislative and administrative business.
301 Russell Building

SEPTEMBER 19

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold oversight hearings on the scope of science and technology policy.
235 Russell Building

SEPTEMBER 23

10:00 a.m.
Labor and Human Resources
To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.
4232 Dirksen Building

11:00 a.m.
Veterans' Affairs
To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion.
318 Russell Building

2:00 p.m.
Office of Technology Assessment
The Board to meet and discuss pending business items.
EF-100, Capitol

SEPTEMBER 24

10:00 a.m.
* Labor and Human Resources
To hold oversight hearings on the implementation of the home energy assistance program.
4232 Dirksen Building

CANCELLATIONS

SEPTEMBER 17

10:00 a.m.
Labor and Human Resources
To hold hearings on S. 1608, 1609, and 2400, bills providing certain assistance to employees who suffer employment loss due to closings and relocations of business concerns.
4232 Dirksen Building

SEPTEMBER 18

10:00 a.m.
Labor and Human Resources
To continue hearings on S. 1608, 1609, and 2400, bills providing certain assistance to employees who suffer employment loss due to closings and relocations of business concerns.
4232 Dirksen Building

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SENATE—*Thursday, September 4, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Thou Giver of every good and perfect gift, shape our lives into instruments of service for Thy coming kingdom. Deliver us from the unconsecrated drives and the undisciplined instincts which impair doing Thy will. Cover our sins with Thy forgiveness and apply divine grace to all our weaknesses. Lift us up, set our feet upon a high place, and guide us to the goals which belong to a people whose God is the Lord.

O Thou who art the Light of the world, be Thou with us today, that whatever light may shine or shadow fall, we may ever live and work as children of the light, through Him who is the Light of the world. Amen.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore (Mr. BOREN). Under the previous order, the Senator from West Virginia, the majority leader, is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NATO MISSILES

Mr. ROBERT C. BYRD. Mr. President, recently Soviet President Leonid Brezhnev delivered a major foreign policy address in Alma Ata, Kazakhstan, in the Central Asian region of the Soviet Union. In that address, the Soviet President proposed that talks begin soon on limiting medium-range nuclear missiles in Europe. Brezhnev implied that the United States has been stalling in response to a similar Soviet proposal last July. Before his address in Alma Ata, he had delivered the same message in letters to President Carter and other Western heads of state.

In fact, it was NATO and the United States which first proposed European arms limitation talks to the Soviets, last December. It took the Soviets until this July to respond to the NATO invitation on the terms NATO had set. The Soviets previously had rejected the NATO conditions. But during German Chancellor Schmidt's state visit to Moscow in July, the Soviets did meet our conditions. These recent communications only reiterate the Soviet acceptance of July.

The condition we attached was a reasonable one. It was that the talks are not to be considered as a substitute for the NATO modernization program; and that the modernization program should be able to proceed simultaneously with the talks. The modernization program, which was agreed to by the NATO allies last December, is to begin deployment in 1983 of 572 medium-range nuclear missiles at U.S. bases in Europe.

The reason for our condition is clear: The European nuclear scale is out of balance because the Soviets are in the process of deploying 200 SS-20 medium-range ballistic missiles. The NATO position is that the deployment of missiles in NATO countries should not preclude any arms limitation discussions, but neither should the discussions forestall what has become a necessary modernization program.

By this latest communication, the Soviets apparently have tried to take a propaganda offensive, perhaps because their actions have put them on the defensive in other parts of the world. And, the Soviets may be trying to cause dissension among the NATO allies by singling out the United States as the cause of delay.

In response to the Soviet acceptance in July, the NATO allies are having consultations as preparation for exploratory arms limitation talks. The next scheduled meeting on the preparations among the NATO allies is on September 15, in Brussels.

It is important that there be careful preparation for the proposed talks. The Soviets want the discussions to begin with a whole range of theater nuclear weapons. We have said that the first step is to deal solely and directly with the land-based nuclear weapons. It is these weapons, after all, that have caused much of the current tension in the European theater; that have caused the current imbalance; and that have sparked the current miniarms race in Europe.

Furthermore, it is important that these talks do not range so widely and loosely that they add further delay to the mutual and balanced force reduction (MBFR) negotiations in Vienna. Those negotiations deal primarily with the reduction of military personnel in the European theater. Those talks should proceed on their own, unhampered by the simultaneous occurrence of other theater talks.

Finally, the proposed European nuclear arms limitation talks should be recognized as being part of a larger strategic arms limitation process. The European talks should not be allowed to jeopardize other parts of the arms limitation process. Thus, while the potential European talks have correctly been described as part of an eventual SALT III treaty, the talks should not be allowed to place the SALT II treaty in further jeopardy.

President Brezhnev implied in his Alma Ata speech that the United States had somehow forced the decision to deploy the NATO missiles on the other NATO members. To the contrary, the decision was freely made, after full and constructive public debate. If there has been any pressure on NATO, it has been caused by the Soviet decision to deploy the SS-20 in central Europe.

The NATO medium-range missile deployment program envisions deployment of the Tomahawk and Pershing missiles in Europe, with deployment beginning in 1983. Deployment sites already have been picked in England. Both Germany and Italy have indicated a desire to have the missiles deployed on their soil. Other NATO nations have the deployment option under consideration.

In the meantime, we can expect more propaganda from the Soviet Union on this subject. They may repeat the line that they are prepared to begin European missile limitation talks immediately, and that we are not. This tactic is just another of the irritants that the Soviet Union has resorted to in the wake of the diplomatic chill caused by their invasion of Afghanistan. If the Soviets were genuinely interested in reducing international tensions at this time, they would give serious consideration to withdrawing their military forces from Afghanistan now, thereby removing one of the major causes of this new and unnecessary tension between our two nations.

THE PRESIDENT'S AND VICE PRESIDENT'S ACCEPTANCE SPEECHES

Mr. ROBERT C. BYRD. Mr. President, at the Democratic Convention a few weeks ago President Carter and Vice President MONDALE presented to the American people their perspectives on this year's election. I found both speeches to be constructive and informative contributions to understanding the Democratic candidates and their campaigns. I commend these speeches to the attention of my colleagues.

I ask unanimous consent that they be printed in the RECORD.

There being no objection, the speeches were ordered to be printed in the RECORD, as follows:

CARTER ACCEPTANCE SPEECH: SHAPE OF THE 21ST CENTURY IS A 1980 CHOICE

Fellow Democrats, fellow citizens:

I thank you for the nomination you've offered me. And I especially thank you for choosing as my running mate the best partner any president ever had—Fritz Mondale.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

With gratitude and with determination, I accept your nomination.

And I am proud to run on a progressive and sound platform that you have hammered out at this convention.

Fritz and I will mount a campaign that defines the real issues—a campaign that responds to the intelligence of the American people—a campaign that talks sense—and we're going to beat, whip the Republicans in November.

We'll win because we are the party of a great president who knew how to get reelected—Franklin D. Roosevelt. And we're the party of a courageous fighter who knew how to "give 'em hell"—Harry Truman. And as Truman said, he just told the truth and they thought it was hell.

And we're the party of a gallant man of spirit—John Fitzgerald Kennedy. And we're the party of a great leader of compassion—Lyndon Baines Johnson.

And the party of a great man who should have been president and would have been one of the greatest presidents in history—Hubert Horatio Hornblower—Humphrey. I have appreciated what this convention has said about Senator Humphrey, a great man who epitomized the spirit of the Democratic Party, and I would like to say that we're also the party of Governor Jerry Brown and Senator Edward M. Kennedy.

SALUTE TO SEN. KENNEDY

I'd like to say a personal word to Senator Kennedy. Ted, you're a tough competitor and a superb campaigner and I can attest to that. Your speech before this convention was a magnificent statement of what the Democratic Party is and what it means to the people of this country—and why a Democratic victory is so important this year. I reach out to you tonight and I reach out to all those who have supported you in your valiant and passionate campaign.

Ted, your party needs—and I need—you and your idealism and dedication working for us. There is no doubt that even greater service lies ahead of you—and we are grateful to you and to have your strong partnership now in the larger cause to which your own life has been dedicated.

I thank you for your support. We'll make great partners this fall in whipping the Republicans.

We're Democrats and we have had our differences, but we share a bright vision of America's future—a vision of good life for all our people—a vision of a secure nation, a just society, a peaceful world, a strong America—confident and proud and united.

And we have a memory of Franklin Roosevelt forty years ago when he said that there are times in our history when concerns over our personal lives are overshadowed by concern for "what will happen to the country we have known." This is such a time—and I can tell you that the choice to be made this year can transform our own personal lives and the life of our country as well.

During the last presidential campaign, I crisscrossed this country and I listened to thousands and thousands of people—housewives and farmers, teachers and small-business leaders, workers and students, the elderly and the poor—people of every race and every background and every walk of life. It was a powerful experience—a total immersion in the human reality of America.

"NO EASY ANSWERS" IN WHITE HOUSE

And I have now had another kind of total immersion—being president of the United States of America. Let me talk for a moment about what that job is like—and what I have learned from it.

I've learned that only the most complex and difficult tasks come before me in the Oval Office. No easy answers are found there—because no easy questions come there.

I've learned that for a president, experience is the best guide to the right decisions. I'm wiser tonight than I was four years ago.

And I have learned that the presidency is a place of compassion. My own heart is burdened for the troubled Americans. The poor and the jobless and the afflicted—they've become part of me. My thoughts and my prayers for our hostages in Iran are as though they were my own sons and daughters.

The life of every human being on Earth can depend on the experience and judgment and vigilance of the person in the Oval Office. The president's power for building and his power for destruction are awesome. And the power is greatest exactly where the stakes are highest—in matters of war and peace.

And I have learned something else—something that I have come to see with extraordinary clarity. Above all, I must look ahead—because the president of the United States is the steward of the nation's destiny.

He must protect our children—and the children they will have—and the children of generations to follow. He must speak and act for them. That is his burden—and his glory.

And that is why a president cannot yield to the short-sighted demands, no matter how rich or powerful the special interests might be that make those demands. And that is why the president cannot bend to the passions of the moment, however popular they might be. And that is why the president must sometimes ask for sacrifice when his listeners would rather hear the promise of comfort.

The president is a servant of today. But his true constituency is the future. That is why the election of 1980 is so important.

Some have said it makes no difference who wins this election. They are wrong.

CHOICE OF TWO FUTURES

This election is a stark choice between two men, two parties, two sharply different pictures of what America is and what the world is. But it is more than that.

It is a choice between two futures. The year 2000 is just less than 20 years away—just four presidential elections after this one. Children born this year will come of age in the 21st century.

The time to shape the world of the year 2000 is now. The decisions of the next few years will set our course, perhaps an irreversible course—and the most important of all choices will be made by the American people at the polls less than three months from tonight.

The choice could not be more clear—nor the consequences more crucial.

In one of the futures we can choose—the future that you and I have been building together—I see security and justice and peace.

I see a future of economic security—security that will come from tapping our own great resources of oil and gas, coal and sunlight—and from building the tools, the technology and factories for a revitalized economy based on jobs and stable prices for everyone.

I see a future of justice—the justice of good jobs, decent health care, quality education, and the full opportunity for all people, regardless of color or language or religion; the simple human justice of equal rights for all men—and for all women, guaranteed equal rights at last—under the Constitution of the United States of America.

And I see a future of peace—a peace born of wisdom and based on the fairness toward all countries of the world—a peace guaranteed both by American military strength and by American moral strength as well.

That is the future I want for all people—a future of confidence and hope and a good life. It is the future America must choose—and with your help and with your commitment, it is the future America will choose.

REPUBLICAN FUTURE

But there is another possible future.

In that other future, I see despair—the despair of millions who would struggle for equal opportunity and a better life—and struggle alone.

And I see surrender—the surrender of our energy future to the merchants of oil; the surrender of our economic future to a bizarre program of massive tax cuts for the rich, service cuts for the poor and massive inflation for everyone.

And I see risk—the risk of international confrontation; the risk of an uncontrollable, unaffordable, and unwinnable nuclear arms race.

No one, Democrat or Republican leader, consciously seeks such a future. And I do not claim that my opponent does. But I do question the disturbing commitments and policies already made by him and by those with him who have now captured control of the Republican Party.

The consequences of those commitments and policies would drive us down the wrong road. It's up to all of us to make sure America rejects this alarming, and even perilous, destiny.

The only way to build a better future is to start with realities of the present. But while we Democrats grapple with the real challenges of a real world, others talk about a world of tinsel and make-believe.

Let's look for a moment at their make-believe world.

In their fantasy America, inner-city people and farm workers and laborers do not exist. Women, like children, are to be seen but not heard. The problems of working women are simply ignored. The elderly do not need Medicare. The young do not need more help in getting better education. Workers do not require the guarantee of a healthy and a safe place to work.

In their fantasy world, all the complex global changes of the world since World War II have never happened. In their fantasy America, all problems have simple solutions. Simple—and wrong.

It is a make-believe world. A world of good guys and bad guys, where some politicians shoot first and ask questions later.

No hard choices. No sacrifice. No tough decisions. It sounds too good to be true—and it is.

The path of fantasy leads to irresponsibility. The path of reality leads to hope and peace. The two paths could not be more different. Nor could the futures to which they lead.

REBUILDING MILITARY STRENGTH

Let's take a hard look at the consequences of our choice.

You and I have been working toward a secure future by rebuilding our military strength—steadily, carefully and responsibly. The Republicans talk about military strength—but they were in office for eight out of the last 11 years—and in the face of a growing Soviet threat they steadily cut real defense spending by more than a third.

We've reversed the Republican decline in defense. Every year since I've been president, we've had real increases in our commitment to a stronger nation—increases which are prudent and rational. There is no doubt that the United States of America can meet any threat from the Soviet Union.

Our modernized strategic forces, a revitalized NATO, the Trident submarine, the cruise missile, Rapid Deployment Force—all these guarantee that we will never be second to any nation. Deeds, not words—fact, not fiction.

We must and we will continue to build our own defenses. We must and we will continue to seek balanced reductions in nuclear arms.

NUCLEAR ARMS CONTROL

The new leaders of the Republican Party, in order to close the gap between their rhetoric and their record, have now promised to launch an all-out nuclear arms race. This would negate any further effort to negotiate a strategic arms limitation agreement.

There can be no winners in such an arms race—and all the people of the Earth can be the losers.

The Republican nominee advocates abandoning arms control policies which have been important and supported by every Democratic president since Harry Truman and also by every Republican president since Dwight D. Eisenhower. This radical and irresponsible course would threaten our security—and could put the whole world in peril.

You and I must never let this come to pass.

It's simple to call for a new arms race. But when armed aggression threatens world peace, tough-sounding talk like that is not enough. A president must act—responsibly.

KEEPING THE PEACE

When Soviet troops invaded Afghanistan, we moved quickly to take action. I suspended some grain sales to the Soviet Union. I called for draft registration. We joined wholeheartedly with the Congress. And I joined wholeheartedly with the Congress and with the U.S. Olympics Committee and led more than 60 other nations in boycotting the big propaganda show in Russia—the Moscow Olympics.

The Republican leader opposed two of these forceful but peaceful actions and he waffled on the third. But when we asked him what he would do about aggression in Southwest Asia, he suggested blockading Cuba. Even his running mate wouldn't go along with that.

He doesn't seem to know what to do with the Russians. He's not sure if he wants to feed them or play with them or fight with them.

As I look back on my first term, I'm grateful that we've had a country with a full four years of peace. And that's what we're going to have for the next four years—peace.

It's only common sense that if America is to stay secure and at peace, we must encourage others to be peaceful as well.

As you know, we've helped Zimbabwe-Rhodesia, where we stood firm for racial justice and democracy. And we have also helped in the Middle East. Some have criticized the Camp David accords and they've criticized some delays in the implementation of the Middle East peace treaty.

Well, before I became president there was no Camp David accord and there was no Middle East peace treaty. Before Camp David, Israel and Egypt were poised across barbed wire, confronting each other with guns and tanks and planes. But afterward, they talked face-to-face with each other across a peace table—and they also communicated through their own ambassadors in Cairo and Tel Aviv.

Now that's the kind of future we're offering—of peace to the Middle East if the Democrats are re-elected in the fall.

AID TO ISRAEL

I am very proud that nearly half the aid that our country has ever given to Israel in the 32 years of her existence has come during my administration. Unlike our Republican predecessors, we have never stopped nor slowed that aid to Israel. And as long as I am president, we will never do so. Our commitment is clear: security and peace for Israel; peace for all the peoples of the Middle East.

HUMAN RIGHTS

But if the world is to have a future of freedom as well as peace, America must continue to defend human rights.

Now listen to this: The new Republican leaders oppose our human rights policy. They want to scrap it. They seem to think it's naive for America to stand up to freedom and—for freedom and democracy. Just what do they think we should stand up for?

Ask the former political prisoners who now live in freedom if we should abandon our stand on human rights.

Ask the dissidents in the Soviet Union about our commitment to human rights.

Ask the Hungarian-Americans, ask the Polish-Americans. Listen to Pope John Paul II.

Ask those who are suffering for the sake of justice and liberty around the world.

Ask the millions who've fled tyranny if America should stop speaking out for human principles.

Ask the American people. I tell you that as long as I am president, we will hold high the banner of human rights, and you can depend on it.

Here at home the choice between the two futures is equally important.

ENERGY FUTURE

In the long run, nothing is more crucial to the future of America than energy—nothing was so disastrously neglected in the past.

Long after the 1973 Arab oil embargo, the Republicans in the White House had still done nothing to meet the threat to national security of our nation. Then, as now, their policy was dictated by the big oil companies.

We Democrats fought hard to rally our nation behind a comprehensive energy program and a good program—a new foundation for challenging and exciting progress. Now, after three years of struggle, we have that program.

The battle to secure America's energy future has been fully and finally joined. Americans have cooperated with dramatic results.

We've reversed decades of dangerous and growing dependence on foreign oil. We are now importing 20 percent less oil. That is one and a half million barrels of oil every day less than the day I took office.

And with our new energy policy now in place, we can discover more, produce more, create more, and conserve more energy—and we will use American resources, American technology, and millions of American workers to do it with.

REPUBLICAN ENERGY PROGRAM

Now what do the Republicans propose?

Basically their energy program has two parts.

The first part is to get rid of almost everything that we've done for the American public in the last three years.

They want to reduce or abolish the synthetic fuels program. They want to slash the solar energy incentives, the conservation programs, aid to mass transit, aid to the elderly Americans to help pay their fuel bills.

They want to eliminate the fifty-five mile speed limit. And while they're at it, the Republicans would like to gut the Clean Air Act. They never liked it to begin with.

That's one part of the program.

The other part is worse.

To replace what we have built, this is what they propose: to destroy the windfall profits tax, and to "unleash" the oil companies and let them solve the energy problem for us.

That's it. That's the whole program. There is no more.

Can this nation accept such an outrageous program? No! We Democrats will fight it every step of the way, and we'll begin tomorrow morning with the campaign for re-election in November.

NEW ECONOMIC AGE

When I took office, I inherited a heavy load of serious economic problems besides energy—and we've met them all head-on. We've slashed government regulation and put free enterprise back into the airlines, the trucking and the financial systems of our country—and we're now doing the same thing for the railroads. This is the greatest change in the relationship between government and business since the New Deal.

We've increased our exports dramatically. We've reversed the decline in the basic research and development. And we have created more than 8 million new jobs—the biggest increase in the history of our country.

But the road's bumpy, and last year's skyrocketing OPEC price increases have helped to trigger a worldwide inflation crisis.

We took forceful action, and interest rates have now fallen, the dollar is stable and, although we still have a battle on our hands, we are struggling to bring inflation under control.

We are now at a critical turning point in our economic history. Because we made the hard decisions—because we guided our economy through a rough but essential period of transition—we have laid the groundwork for a new economic age.

Our economic renewal program for the 1980s will meet our immediate need for jobs by attacking the very same long-term problems that caused unemployment and inflation in the first place. It will move America simultaneously towards our five great economic goals—lower inflation, better productivity, revitalization of American industry, energy security and jobs.

It is time to put all America back to work—not in make work, but in real work.

There is real work in modernizing American industry and creating new industries for America.

Here are just a few things we will build together:

New industries to turn our coal and shale and farm products into fuel for our cars and trucks, and to turn the light of the sun into heat and electricity for our homes;

A modern transportation system for railbeds and ports to make American coal into a powerful rival of OPEC oil;

Industries that will provide the convenience of communications and futuristic computer technology to serve millions of American homes, offices and factories;

Job training for workers displaced by economic changes;

New investment pinpointed in regions and communities where jobs are needed most;

Better mass transit in our cities and between cities;

And a whole new generation of American jobs to make homes and vehicles and buildings that will house us and move us in comfort—with a lot less energy.

This is important, too: I have no doubt that the ingenuity and dedication of the American people can make every single one of these things happen. We are talking about the United States of America—and those who count this country out as an economic superpower are going to find out just how wrong they are.

We are going to share in the exciting enterprise of making the 1980s a time of growth for America.

REPUBLICAN TAX PROPOSAL

The Republican alternative is the biggest tax giveaway in history. They call it "Reagan-Kemp-Roth." I call it a free lunch Americans cannot afford.

The Republican tax program offers rebates to the rich, deprivation for the poor and fierce inflation for all of us. Their party's own vice presidential nominee said that "Reagan-Kemp-Roth" would result in an inflation rate of more than 30 percent. He called it "voodoo economics." He suddenly changed his mind toward the end of the Republican convention, but he was right the first time.

Along with this gigantic tax cut, the new Republican leaders promise to protect retirement and health programs, and to have massive increases in defense spending.

And they claim they can balance the budget.

If they are serious about these promises—and they say they are—then a close analysis shows that the entire rest of the government would have to be abolished—everything from education to farm programs, from the G.I. Bill to the night watchman at the Lincoln Memorial. And the budget would still be in the red.

The only alternative would be to build more printing presses to print cheap money. Either way the American people lose. But the Americtn people will not stand for it.

The Democratic Party has always embodied the hope of our people for justice, opportunity and a better life. And we've worked in every way possible to strengthen the American family, to encourage self-reliance, and to follow the Old Testament admonition: "Defend the poor and fatherless: give justice to the afflicted and needy." (Psalms 82:3)

We have struggled to assure that no child in America ever goes to bed hungry, that no elderly couple in America has to live in a substandard home, and that no young person in America is excluded from college because the family is poor.

What have the Republicans proposed? Just an attack on everything we have done in the achievement in social justice and decency that we've won in the last 50 years—ever since Franklin Delano Roosevelt's first term. They would make Social Security voluntary. They would reverse our progress on the minimum wage, full employment laws, safety in the work place and a healthy environment.

Lately, as you know, the Republicans have been quoting Democratic presidents, but who can blame them? Would you rather quote Herbert Hoover or Franklin Delano Roosevelt? Would you rather quote Richard Nixon or John Fitzgerald Kennedy?

The Republicans have always been the party of privilege, but this year their leaders have gone even further. In their platform, they have repudiated the best traditions of their own party.

Where is the conscience of Lincoln in the party of Lincoln? What's become of that traditional Republican commitment to fiscal responsibility? What's happened to their commitment to a safe and sane arms control?

DEMOCRATIC DECISIONS

Now I don't claim perfection for the Democratic Party. I don't claim that every decision that we have made has been right or popular. Certainly they've not all been easy. But I will say this:

We've been tested under fire. We've neither ducked nor hidden. And we've tackled the great, central issues in our time, the historic challenges of peace and energy which had been ignored for years.

We've made tough decisions and we've taken the heat for them. We've made mistakes and we've learned from them. So we have built the foundation now for a better future.

We've done something else—perhaps even more important. In good times and bad, in the valleys and on the peaks, we've told people the truth—the hard truth—the truth that sometimes hurts.

One truth that we Americans have learned is that our dream has been earned for progress and for peace. Look what our land has been through within our own memory—a great depression, a world war, the technological explosion, the civil rights revolution, the bitterness of Vietnam, the shame of Watergate, the twilight peace of nuclear terror.

Through each of these momentous experiences we've learned the hard way about the world and about ourselves. For we've matured and we've grown as a nation. And we've grown stronger.

We've learned the uses and the limitations of power. We've learned the beauty and responsibility of freedom. We've learned the value and obligation of justice—and we have learned the necessity of peace.

Some would argue that to master these lessons is somehow to limit our potential. That is not so. A nation which knows its true strengths, which sees its true challenges, which understands legitimate constraints—that nation, our nation—is far stronger than one which takes refuge in wishful thinking or nostalgia.

The Democratic Party—the American people—have understood these fundamental truths.

All of us can sympathize with the desire for easy answers. There's often the temptation to substitute idle dreams for hard reality.

The new Republican leaders are hoping that our nation will succumb to that temptation this year. But they profoundly misunderstand and underestimate the character of the American people.

Three weeks after Pearl Harbor, Winston Churchill came to North America—and he said:

"We've not journeyed all this way across the centuries, across the oceans, across the mountains, across the prairies because we are made of sugar candy."

We Americans have courage.

CARTER'S HOPES FOR FUTURE

Americans have always been on the cutting edge of change. We've always looked forward with anticipation and confidence. I still want the same thing that all of you want—a self-reliant neighborhood and strong families; work for the able-bodied and good medical care for the sick; opportunity for our youth and dignity for our old; equal rights and justice for all people.

I want teachers eager to explain what a civilization really is—and I want students to understand their own needs and their own aims, but also the needs and yearnings of their neighbors. I want women free to pursue without limit the full life of what they want for themselves.

I want our farmers growing crops to feed our nation and the world, secure in the knowledge that the family farm will thrive and with a fair return on the good work they do for all of us. I want workers to see meaning in the labor they perform—and work enough to guarantee a job for every worker in this country.

And I want the people in business free to pursue with boldness and freedom new ideas. And I want minority citizens fully to join the mainstream of American life, and I want from the bottom of my heart to remove the blight of racial and other discrimination from the face of our nation, and I'm determined to do it.

I need for all of you to join me in fulfilling that vision. The choice—the choice between the two futures—could not be more clear. If we succumb to a dream world, then we'll wake up to a nightmare. But if we start with reality and fight to make our dreams a reality—then Americans will have a good life, a life of meaning and purpose in a nation that's strong and secure.

Above all, I want us to be what the founders of our nation meant us to become—the land of freedom, the land of peace, and the land of hope.

Thank you very much.

MONDALE ATTACKS RONALD REAGAN

Mr. Speaker, fellow Americans, fellow Democrats.

I am honored to accept your nomination. I am proud to be running with Jimmy Carter, and I am proud to be running on our party's progressive platform. And we're going to win!

This has been an extraordinary week in American politics. We have just held the most representative and the most open political convention in American history.

Last month in Detroit another convention was held, isolated in a bubble of privilege from the city that hosted it.

A comfortable convention composed of America's wealthy told us they symbolized the nation.

A malapportioned convention where the cities were denied their share of the delegates told us they symbolized democracy.

A token convention, whose workers and women and minorities sat at the back of the bus, they told us they symbolized the people.

They spoke of realism and cheered the gold standard. They spoke of truth and said Franklin Roosevelt caused World War II. They spoke of modernization and vindicated Barry Goldwater. They spoke of justice with a script by Phyllis Schlafly, and they spoke of fairness with a text by Jesse Helms.

MIRROR OF AMERICA

This Democratic convention is a mirror of all America—all of it, black and white, Asian and Hispanic, native and immigrant, male and female, young and old, urban and rural, rich and poor.

When we speak of peace, the voice is Ed Muskie's. When we speak of workers, the voices are Lane Kirkland's and Doug Fraser's. When we speak of freedom, the dream is Coretta King's. When we speak of compassion, the fire is Ted Kennedy's.

And when we speak of courage, the spirit is Jimmy Carter's. When we in this hall speak for America—it is America that is speaking.

Tonight, at this Democratic convention, let us openly declare our faith. We believe in the fundamental decency of the American people. And we believe in strong, efficient and compassionate government. We believe that America's greatest strength is its values—our love of freedom, our sense of fairness, our spirit of service.

These beliefs have been passed in every accent that America speaks, in Polish, in Italian, in Yiddish, in Greek, at the kitchen tables in Boston, on family farms in my own Midwest.

We Democrats believe that government can serve those values. No government can guarantee a perfect life for anyone, no government can substitute for our families, our

churches, our synagogues, our neighborhoods or our volunteers. But a progressive government must do two things. It must create the conditions to help all people build better lives for themselves. And it must do so efficiently, honestly and fairly.

Those are the beliefs that we share together as Democrats. But the Republican nominee for president has a different view of government. He tells us instead—and let me use his own words—that "the best thing that government can do is nothing." We disagree.

Let him tell the auto workers in Detroit that the right to collective bargaining is nothing. Let him tell the senior citizen in Philadelphia that the Social Security index for inflation is nothing. Let him tell the freshman in Chicago that student assistance is nothing. Let him ask the family in Boulder [Colo.] if clean air and pure water and protected wilderness are nothing. And let him ask the people of Selma, Ala., if the right to vote is nothing.

These rights and these programs are the work of Democrats and were fiercely opposed by the Republicans. The Republican Party has been out of step with America for 50 years, and their nominee is out of step more than any of them.

BUT NOT RONALD REAGAN

Today, most Americans, indeed most Republicans, believe that the Constitution of the United States should incorporate an Equal Rights Amendment for the women of this country. But not Ronald Reagan.

Most Americans today believe that we should have strong federal aid to education and a Department of Education to support it. But not Ronald Reagan.

Most Americans believe that no family should be impoverished in medical debts because of tragic illness. But not Ronald Reagan.

Most Americans believe in labor law reform to protect the rights won by workers in the Thirties. But not Ronald Reagan.

Most Americans believe that workers' health and safety should be protected on the job by federal law, but not Ronald Reagan.

You're getting better.

Most Americans believe that we need energy conservation to cut out dependence on foreign oil, but not Ronald Reagan.

Most Americans, including the American Bar Association, believe in a judiciary free from right-wing loyalty tests, but not Ronald Reagan.

And yet, the Republican nominee wants us to forget all that, forget 40 years of extreme positions. All of a sudden, that party is for jobs. The party that gave us the Great Depression and four years ago the highest unemployment since then, would have us believe that they're now for working people and for leaving no one behind.

Well, I've been in politics many years, and I've noticed that the closer the Republican oratory moves toward Franklin Roosevelt, the closer their policies move to Herbert Hoover.

REAGAN-KEMP-ROTH

This year's version of prosperity's just around the corner is called "Reagan-Kemp-Roth." It's simple and it goes like this:

Cut taxes by one trillion dollars. That's it. Their entire strategy. Every one of their promises, your next pay check, your grocery bills, your home, they all hang on that slender thread.

It's a trillion-dollar tax cut based on a two-cent theory. Every leading economist rejects it. Most Americans disbelieve it and for a good reason.

First of all, it is obviously, murderously inflationary. Even Business Week said it would touch off an inflationary explosion that would wreck the country.

Second, it's the most regressive tax proposal in history. It is the stalest Republican idea of all. Tax cuts for the wealthy trickle down for the rest of Americans. If you're earning $200,000 a year, you save enough money to buy a new Mercedes. But if you're a teacher, you save enough money to buy a hubcap.

And if you're unemployed or on Social Security, you don't even get your bus fare back.

Kemp-Roth is an insult to the American people. The only way to cut taxes by a trillion dollars, add billions to defense and balance the budget all at the same time, as they propose, is to destroy everything that Roosevelt and Truman and Kennedy and Johnson and Humphrey and Carter and every delegate in this room has worked for all our lives.

Only if Mr. Reagan repealed Medicare and Medicaid and all of our programs for schools and cities and veterans and the unemployed. Only then could he finance that tax scheme. Only if he destroyed the Social Security system and all who depend on it, only then would the job be done.

RONALD REAGAN SAID . . .

It's hard to believe, I confess, it's hard to believe that Ronald Reagan would do that. After all, what kind of a person would try to wipe out every program since Roosevelt. Well, he'd have to be a person who'd believe, and I quote, "Fascism was really the basis for the New Deal."

Now who would say something like that?

Ronald Reagan would.

He'd have to be a person who calls the weak and the disadvantaged, and I quote, "a faceless mass waiting for handouts."

Who on earth would say something like that?

Ronald Reagan did.

He'd have to be a person who would call programs that help blacks and Hispanics "demeaning and insulting."

Who on earth would say that?

Ronald Reagan did.

He'd have to be a pearson who believes, and I quote, get this, "the minimum wage has caused more misery and unemployment than anything since the Great Depression."

Who on earth would say anything like that?

Ronald Reagan.

He'd have to be a person who thinks antitrust suits should bust up trade unions in America. Who would propose anything like that? Ronald Reagan.

He'd have to be a person who would wreck the Social Security system by making it voluntary. Who would ever suggest anything like that? Ronald Reagan.

He'd have to be a person who would destroy the family farm programs because they're, quote, "subsidizing the inefficient." Who would propose anything like that? Ronald Reagan, of course.

He would have to be a person who called the Civil Rights Act of 1964 "a bad piece of legislation." Who would say anything like that? Ronald Reagan.

One of the finest student bodies I've ever lectured to in my life.

Now get this one: Who on earth would call the League of Women Voters "Rhine Maidens." Who would say anything like that? You guessed it, Ronald Reagan.

PROGRESSIVE RECORD OF DEMOCRATS

That negative-thinking, I must say, was not a part of that small town of rural Minnesota where I grew up. That tone of resentment was never heard in my father's church. That cynicism was not what I felt in the high schools, the farms, the factories and the homes that I visited all over this nation in the last 30 years.

The fact of it is that the people of this country want to work together; they want to build, they are confident, and as the Republican nominee will learn in November, the American people do not and will not turn back. They want to move forward, and moving forward is what we're doing under President Carter.

This administration has a good, solid, progressive record, and we're going to run on it and we're going to win with it. In 1976, I will remind you, from this podium, we said we believed in jobs.

And today there are over 8 million more people at work than on the day that President Carter was inaugurated. A higher percentage of working age Americans are on the job today than ever before. We have added more jobs to the workforce than any administration in American history.

That is a good—the best record of producing jobs in American history and Jimmy Carter deserves credits for that accomplishment.

But we all know there are still too many unemployed in America, and I pledge to you, I pledge to every delegate in this convention hall and to the American people that this administration and this Democratic Party will not stop until everybody who needs and wants a job in America has one.

In 1976, we promised Americans that we would support education. And after eight years of Republican vetoes and impoundment, President Carter has added more funds to education than any president in American history. President Carter goes down as the most pro-education president in the nation's history.

We said we believed in the dignity of our seniors. We rescued the Social Security system from the brink of bankruptcy where the Republicans left it, and we made sure the benefits kept on growing. We increased health care programs for the elderly by 50 percent, doubled housing aid, eliminated the cash downpayment for food stamps. We proposed and passed the nation's first program to help older Americans pay their fuel bills, and up and down this progressive agenda, this administration has delivered.

And I would point out that President Carter has appointed more women, more blacks and more minorities to the federal bench than all the previous presidents in American history combined.

We created the first farmer-held reserves and each year we built an all-time record in farm exports, we passed the biggest increase in minimum wages, we doubled legal services for the poor, we built the most effective across-the-board, procity policy in our history. Every mayor and county executive, practically, in America is supporting President Carter because he's done more for the cities than any president in American history.

We did this within a tight budget to bring down inflation. It is a good, solid record, by Democrats. It is a good, solid record. Let's be proud of it, let's work for it, and let's fight those who wish to destroy it. Let's stick with this good president and this political party and the platform that we've developed.

Let us not go for this quick-fix tax cut for the rich. The American people do not want to wipe out a half-century of progress in the know-nothing season of resentment. The American people do want their government to be efficient and honest, and I am confident they also want their government to fight for social and economic justice. And on that belief I will stake this election.

NATIONAL STRENGTH

We will also stake the contest on the paramount issue that the Republicans tried to raise in Detroit—the question of national strength. We gladly accept the challenge. The president of the United States has an enormous job. He's charged with the most powerful responsibility and most sober responsibility to be found in the world—the burden of nuclear power. He is the leader of the civilized world. He must defend its freedom, he must grasp the complexities of our difficult world, he must protect our security by freeing our dependence on foreign oil. And to do all of that we must have a strong president.

Yet last month, Ronald Reagan spent two days on national television drawing up a plan to divide the presidency and weaken its powers. Anyone who seeks the presidency and in his first serious act convenes a constitutional convention in his hotel room to weaken the office he's seeking does not understand the Constitution, the presidency, or what national security is all about.

The first responsibility of a strong president is to defend our nation. For the eight years of Republican rule while the Soviets were building up their power, real American defense spending dropped 35 percent. That's the Republican record.

We not only have increased real defense support by 10 percent, we also have invested in the most sophisticated weapons in the world. No American general or admiral would dream of exchanging our forces for any on Earth. But Mr. Reagan scolds us for having canceled an outmoded bomber that would be obsolete and vulnerable the day it was launched.

President Carter chose instead the modern cruise missile which renders the whole expensive Soviet air defense system obsolete. Up and down the defense system agenda the Republicans repeat the same mistake. They want to resurrect decommissioned ships. They want to revive the ABM system, which even Nixon junked. With obsolete missiles, mothballed ships, vulnerable bombers, and petrified ideas, they would waste billions on defense relics that would drain and weaken us.

President Carter does not want to mimic the Soviets' bulk. He has chosen to offset it with the greatest resource we have—genius of American technology. And as a result, this nation today is building security, not for yesterday, but for the rest of the century.

National strength requires more than just military might, it requires the commitment of the president to arms control. If there is one thing that bothers me more than anything else, and I think bothers you, it is the fear that someday, somehow, for reasons that do not matter, the world will resort to the final madness of a nuclear holocaust.

Reason, common sense and a decent respect for humanity demand that we stall this nuclear arms race before it bankrupts and destroys us all.

Without arms control, everything is out of control. Without the SALT treaty, we would be forced to waste billions on weapons that buy us nothing. And even though it took seven years to negotiate this treaty, and even though our president and our secretary of state and all the Joint Chiefs of Staff and every NATO ally wants this treaty ratified, Mr. Reagan for the life of him cannot understand why.

Well, let me say, Mr. Reagan, we must have arms control for the life of all of us. And we need a President Jimmy Carter who believes in controlling the madness of controlling nuclear arms.

HUMAN RIGHTS

Above all, America's strength depends on American values. Every time we have a foreign policy that reflects American beliefs, we strengthen this nation. Last month I was in Nigeria, the world's most powerful black nation and the second largest source of American oil. A few years ago the secretary of state under the Republicans was told he was not welcome in Nigeria because they did not stand up for the principle of human rights and majority rule.

But when I went to Nigeria I was welcome because the United States has a president, President Carter, who in his first act in office said from here on out the United States is going to stand for human rights and majority rule all over this Earth.

And now, and now, in Rhodesia, we see the same developments, a new democracy based on democratic institutions and the Soviets suffering another reversal. Today, our human rights policy is drawing the nations of Africa and the world together like a magnet and toward us.

The Republicans say a strong nation is one that never apologizes to any one. I say it's a nation whose leaders who are not doing things for which we must apologize. That's the difference.

A foreign policy that reflects American values advances American interests.

When President Carter saw through the ratification of the Panama Canal treaties, not only did we rid ourselves of the last vestiges of colonialism, we also strengthened our influence in Latin America.

When the president normalized relations with China, he not only told one-fourth of the human race that they exist, he also established a powerful counterforce to Soviet aggression.

And when the president denounced the persecution of Andrei Sakharov, he not only affirmed individual liberty, he also unmasked the Kremlin to other nations.

FOUR YEARS OF PEACE

Today, my fellow Democrats, thank God, for four years, our nation is at peace. Our armed forces are engaged in combat nowhere in the world. But I want you to note this. In the years of preparing to run for the presidency, Mr. Reagan suggested that American forces be sent—now listen to this—Mr. Reagan said that we should send American forces to Equador, to Angola, to Rhodesia, to Panama, to Cyprus, to Pakistan, to North Korea, to the Middle East; and I don't think the American people stand for that for a moment.

They want a president who is steady, who's sober, who's experienced, and who has demonstrated that he knows how to keep the peace. And that's why they're going to reelect President Carter.

They want a president, who like Jimmy Carter, took Egypt and Israel, that had fought four tragic wars in 30 years, brought them together, got them talking, caused a peace treaty to be signed. And tonight they are exchanging ambassadors and not bullets between Israel and Egypt because of Jimmy Carter's courage and leadership.

And let me say a special word about Israel, Israel is our friend, our conscience, our partner. Its well-being is in our moral, our political and our strategic interest. And I stand before you tonight and say that the people of the United States, the president of the United States will stand by Israel in this term, in the next term and always.

SERVICE AS VICE PRESIDENT

In the last three-and-a-half years, you permitted me to serve you as your vice president. I've been privileged to represent you to the people of every continent on this Earth, and every time I've traveled abroad, the more I've loved my home.

I spent my whole life in the struggle for civil rights, but when I heard the president of Senegal invoke the words of Martin Luther King, seldom have I loved our conscience more. My whole life, I've been proud of the refuge we've been to exiles, but when I saw the men of the USS *Midway* who had saved both people from the sea, seldom have I prized our compassion more.

I have been my whole life an advocate of family farming in America, but when I spent a week in China answering questions about our triumphs, seldom have I respected and admired our genius more. All my life I believed that America must be strong, but when I met the people of Norway, whose independence our strength protects, seldom have I been more thankful for our power.

Like every American, I value freedom above all else, but when the U.S. Olympic Committee and American athletes sacrificed for an Afghan nation half a world away, seldom have I loved our people more.

We are blessed to be Americans. We are an example to the world. Don't let anyone tell you that we're less than we've been. And don't let anyone make us less than we can be.

Mr. ROBERT C. BYRD. Mr. President, I have no further need for my time. If the minority leader needs some of it, I would be glad to yield to him.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader, the Senator from Tennessee, is recognized.

Mr. BAKER. Mr. President, I thank the majority leader. I have no need for additional time.

GOVERNOR REAGAN'S SPEECH TO B'NAI B'RITH

Mr. BAKER. Mr. President, few issues are more fundamentally important to the United States than peace in the Middle East. The process of seeking peace in the Middle East is, and will remain, a fundamental element of the foreign policy of the United States.

I was pleased, therefore, to read the account and then the text of Governor Reagan's address last night before the annual convention of the B'nai B'rith. In that address, he demonstrated a sensitive and comprehensive understanding, not only of the interests of the United States in the Middle East, but of the issues that fuel that volatile conflict. Most importantly, he understands the necessity of our unrelenting efforts to diminish the risks of war and seek finally a just and permanent peace.

As demonstrated by the address last night, Governor Reagan knows full well that the commitment of the United States to the existence and security of Israel is neither altruistic nor philanthropic, it is critical to our own self-interest. As the Governor said last night, a safe, secure, and democratic Israel is the "cornerstone of our effort and of our interest" in the stability of the Middle East. Moreover, the undoubted continuance of our commitment to Israel's security is fundamentally important in one

other respect and that is the credibility of our own Nation: Unlike any previous administration, the Carter administration has, by the combined effects of its defense and foreign policies, led ally and adversary alike to question whether the commitments of the United States are truly commitments. Our credibility must be restored—militarily, economically, and politically—and Governor Reagan understands the dimensions of that undertaking.

Governor Reagan also understands full well the dangers of inconsistency and of the difficulties that the failure to chart and maintain a steady course have brought us over the past 4 years. He noted last night that this is the administration that began its endeavors by inviting the Soviet Union to continue on an officially sanctioned basis its disruptive meddling in the region. Fortunately, President Sadat rejected that approach. This is an administration that has reversed itself on the votes in the United Nations, consulted with the PLO and toyed with the revision of the one enduring element in the search for peace, Security Council Resolution 242. To be fair, it is also this administration that achieved the Camp David accords, which continue to represent a significant achievement in the search for peace in the region. But as the Governor so correctly observed, it is Resolution 242 that remains the guiding principle to which we must look as the Camp David negotiations continue.

The Governor's statement is an excellent and comprehensive description of the prospects and problems we face in the Middle East over the coming years. He is sensitive to the issues involved in the search for peace and the necessity for the United States to remain a credible, consistent and honest partner in that search. I invite the attention of all my colleagues to the thoughts that he expressed last night and ask unanimous consent that his remarks be printed at this point in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

SPEECH BY GOVERNOR REAGAN

I know it will come as no surprise to you that I have chosen to speak to you tonight about the state of Israel, its importance to our own nation and world peace.

But in a sense when I speak of Israel, I speak as well of other concerns of B'nai B'rith and of the entire Jewish community in the United States. Israel is not only a nation—it is a symbol. During my campaign I have spoken of the values of family, work, neighborhood, peace and freedom. I made a commitment to see to it that those values would be at the heart of policy-making in a Reagan administration. Israel symbolizes those values. What is Israel if not the creation of families, working together to build a place to live and work and prosper in peace and freedom?

In defending Israel's right to exist, we defend the very values upon which our nation is built.

The long agony of Jews in the Soviet Union is, of course, never far from our minds and hearts. All these suffering people ask is that their families get the chance to work where they choose, in freedom and peace. They will not be forgotten by a Reagan administration.

But, I must tell you this:

No policy, no matter how heartfelt, no matter how deeply rooted in the humanitarian vision we share, can succeed if the United States of America continues its descent into economic impotence and despair.

Neither the survival of Israel nor the ability of the United States to help dissidents resist tyranny can become realistic policy choices if our American economy continues to deteriorate under the Carter policies of high unemployment, taxes and inflation.

The rhetoric of compassion and concern becomes just that, mere words, if not supported by the vision—and reality—of economic growth. The present administration does not seem to realize this. It seems to believe that if the right kind of words are chosen and repeated often enough, all will be well. Can those who share our humanitarian concerns ignore the connection between economic policy, national strength and the ability to do the work of friendship and justice and peace in our own nation and world?

The theme of this convention, "A Covenant with Tomorrow," speaks directly to the question of American interests and the well-being of Israel. There is no covenant with the future which is not firmly rooted in our covenant with the past. Since the rebirth of the State of Israel, there has been an ironclad bond between that democracy and this one.

That bond is a moral imperative. But the history of relations between states demonstrates that while morality is most frequently given as a motive for actions, the true and abiding motive is self-interest. Well, the touchstone of our relationship with Israel is that a secure, strong Israel is in America's self-interest. Israel is a major strategic asset to America.

Israel is not a client, but a very reliable friend, which is not something that can always be said of the United States today under the Carter administration.

While we have since 1948 clung to the argument of a moral imperative to explain our commitment to Israel, no Administration has ever deluded itself that Israel was not of permanent strategic importance to America. Until, that is, the Carter administration, which has violated this covenant with the past. Can we now have confidence it will honor a covenant with tomorrow?

The interests of all the world are served by peace and stability in the Middle East. To weaken Israel is to destabilize the Middle East and risk the peace of the world, for the road to world peace runs through the Middle East.

How do we travel that road?

We cannot positively influence events at the perimeters of our power if power—including economic power—at the center is diminished.

The conduct of this nation's foreign policy in the last four years has been marked by inconsistency and incompetence.

We must have a principled, consistent foreign policy which our people can support, our friends understand, and our adversaries respect. Our policies must be based upon close consultation with our allies.

We require the defensive capability necessary to ensure the credibility of our foreign policy, and the security of our allies and ourselves. There can be no security for one without the other.

Today, under Jimmy Carter, our defensive capability has been so seriously eroded as to constitute not a deterrent but a temptation.

This is not a campaign issue, it is a matter of grave national concern; indeed so grave that the President considers it a liability to his personal political fortunes. He has tried to give the appearance of responding to it. But the half-hearted measures he proposes are clearly inadequate to the task.

We must restore the vital margin of safety which this administration has allowed to erode, maintaining a defense capability our adversaries will view as credible and that our allies can rely upon.

As an ally of the United States, Israel must have the means to remain strong and secure. Over the years, the United States has provided economic and defense assistance, and a Reagan Administration will maintain this traditional commitment.

In 1976, Candidate Jimmy Carter came before this convention and said: "I have called for closer ties with our traditional allies, and stronger ties with the State of Israel. I have stressed," he said, "the necessity for a strong defense—tough and muscular, and adequate to maintain freedom under any conceivable circumstances."

One wonders, did the candidate listen to his own call? Today we have fewer real allies and, among those, we speak with diminished authority. Our relations with Israel are marked by doubt and distrust. Israel today is in grave danger, and so is freedom itself.

In 1976, Jimmy Carter declared that he would seek what he called a "comprehensive settlement" in the Middle East. What this might mean for Israel and how this might be achieved were questions neither asked nor answered.

The comprehensive agreement which Mr. Carter sought required, first, a reconvening of the Geneva Conference. Israel was amenable to this step. Her adversaries agreed conditionally. But, the conditions were that the Palestine Liberation Organization be represented and that Israel effectively agree in advance of negotiation to withdraw to the pre-1967 borders, which were in fact armistice lines resulting from the first effort to destroy the State of Israel. Israel rightly refused these conditions and was promptly accused of intransigence. Can we believe that Mr. Carter is not still in favor of dealing with the P.L.O. and desirous of forcing the terms of a settlement?

Mr. Carter invited the Soviet Union to join him in his effort to force Israel to accept the mockery of negotiations in Geneva. Before that, it had required a major effort to keep the Soviets out of the Middle East peace process. In October, 1977, Mr. Carter invited them back in free of charge, and they graciously accepted. The Carter administration presented as a major achievement the conclusion of a joint Soviet-American accord which would have given the Russians a stranglehold on negotiations, as well as a convenient calling card for inserting themselves more deeply into the Middle East.

This seriously disturbed President Sadat. The President of Egypt did not share Mr. Carter's appreciation of the Soviets, and he came to the conclusion which other world leaders, including Mr. Brezhnev, have now reached: Mr. Carter is incapable of distinguishing between his own short-term political interests, and the nation's long-term foreign policy interests. Mr. Carter professed not to understand what all the fuss was about.

The result was that the United States Government, for the first time in the history of the rebirth of Israel, found itself on the outside looking in. President Sadat made his courageous trip to Jerusalem at the invitation of Prime Minister Begin, and a bilateral peace process began. Without, let me reemphasize, the participation of Mr. Carter. The quick foreign policy success that Carter had hoped to achieve turned instead into another major foreign policy blunder.

What we do or fail to do in the Middle

East is of vital importance not only to the peoples of the region, but also to the security of our country, our Atlantic and Pacific allies, Africa, China, and the Asian subcontinent.

Because of the weak and confused leadership of Jimmy Carter, we are approaching a flashpoint in this tragic process, with Soviet power now deployed in a manner which directly threatens Iran, the Persian Gulf and Arabian Sea; with Soviet forces and proxy forces building up again in the region; with Soviet fleets and air bases emplaced along the sea lanes on which we and our Allies and the entire free world depend.

In spite of this I am confident that if we act with vigor, vision and practical good sense, we can peacefully blunt this Soviet thrust. We can rely upon responsible Arab leaders in time to learn what Anwar Sadat learned, which is that no people can long endure the cost of Soviet patronage.

How we deal with Israel and her neighbors in this period will determine whether we rebuild the peace process or whether we continue to drift. But let it be clear that the cornerstone of our effort and of our interest is a secure Israel, and our mutual objective is peace.

While we can help the nations of that area move toward peace, we should not try to force a settlement upon them.

Our diplomacy must be sensitive to the legitimate concerns of all in the area. Before a negotiated peace can ever hope to command the loyalty of the whole region, it must be acceptable to Israelis and Arabs alike.

Most important, we must rebuild our lost reputation for trustworthiness. We must again become a nation that can be relied upon to live up to its commitments.

In 1976, candidate Jimmy Carter said: "I am concerned with the way in which our country, as well as the Soviet Union, Britain and France have poured arms into certain Arab countries—five or six times more than Israel receives."

But it was Mr. Carter who agreed to sell 60 F-15 fighters to Saudi Arabia. To get the Congress to go along, he assured these aircraft would not have certain offensive capabilities. Now, the Secretary of Defense tells us he cannot say whether this commitment to Congress will be honored.

It was Mr. Carter who agreed to sell 100 main battle tanks to Jordan.

It was Mr. Carter who agreed to provide U.S. licensed turbine engines for Iraqi warships.

Meanwhile, Israel is being increasingly isolated by international terrorism—terrorism by bullets and terrorism by U.N. resolutions, while Carter stands by and watches.

I was appalled to see the Carter administration abstain from voting on, rather than veto, the Resolution passed by the United Nations Security Council two weeks ago, totally disregarding the Democratic Platform promises of 1976 and 1980. As I stated then, that Resolution not only undermines progress toward peace by putting the United Nations on record against Israel and on one side of the sensitive issue of the status of Jerusalem; it also presumes to order other nations—including our Dutch ally—to move their embassies from Jerusalem.

I believe this sorry episode sheds some new light on an earlier action by Jimmy Carter concerning another U.N. resolution, voted on in March this year. On March 1st, the Carter administration failed to veto a mischievous U.N. Resolution condemning Israel's presence in Jerusalem, calling it an "occupation". That was the position of the Carter administration on Saturday. Two days later, on a Monday, reacting to the public outcry, Jimmy Carter put the blame for this outrage on his Secretary of State and reversed the position of the administration.

The man who asks "trust me," zigzags and flip-flops in ever more rapid gyrations, trying to court favor with everyone: Israel, the PLO, the voting bloc in the United Nations and the voters at home. On March 1st, it took the Carter administration three days to switch positions. On August 20th, it took only three minutes. Secretary of State Muskie condemned the U.S. Resolution on Jerusalem in a long speech that was for the voters in this country. Minutes later, he abstained instead of vetoing the U.N. Resolution. That was for the PLO and their friends.

This is the Carter record on the Middle East. Arab leaders are persuaded that we don't say what we mean. Israel is persuaded that we don't mean what we say. How do we build productive relations with either side on such a basis?

Before we can act with authority abroad, we have to demonstrate our ability to make domestic policy without asking permission of other governments.

Mr. Carter sent an emissary to Saudi Arabia to ask for permission to store petroleum here in our own country—a strategic reserve vital to our national security and long demanded by Congress. The Saudis, predictably, said no. Mr. Carter halted the stockpiling.

Can we have relations with our friends in the Arab world if those relations are built on contempt for us?

Clear away the debris of the past four years, and the following issues remain to test the good faith of the Arab nations and of Israel, and to challenge our national will and diplomatic skill in helping them to shape a peace.

There is the unresolved question of territorial rights resulting from the 1967 war.

There is the status of Jerusalem which is part of the first question.

There is the matter of refugees.

There is the matter of the PLO, which I consider distinct from the matter of the refugees.

The question of territory, putting aside Jerusalem for the moment, must still be decided in accordance with Security Council Resolutions 242 and 338. We will tolerate no effort to supersede those resolutions. We must weigh the future utility of the Camp David accords against that position.

There are basic ambiguities in the documents Camp David produced, both in the links between the Israeli-Egyptian peace, and in the provisions for an autonomous regime in the West Bank and the Gaza Strip. These ambiguities have now brought negotiations to a dangerous impasse.

Let us remember that an autonomous Palestinian Arab regime for the West Bank and the Gaza Strip was an Israeli proposal—a major concession on Israel's part in the interest of progress toward peace.

Negotiations between Israel and Jordan could result in long and creative steps toward resolving these problems. Israel and Jordan are the two Palestinian states envisioned and authorized by the United Nations. Jordan is now recognized as sovereign in some 80 percent of the old territory of Palestine. Israel and Jordan are the parties primarily authorized to settle the future of the unallocated territories, in accordance with the principles of the Mandate and the provisions of Resolutions 242 and 338.

Thus, the autonomy plan called for in the Camp David Agreements must be interpreted in accordance with the two Security Council Resolutions, which remain the decisive and authoritative rules governing the situation. The Camp David Agreements cannot and should not lead to fundamental changes in the security position, or to the withdrawals of Israeli troops, until Jordan and other neighbors make peace.

Jerusalem has been a source of man's spiritual inspiration since King David founded it. Its centrality to Jewish life is known to all.

Now it exists as a shared trust. The holy places of all faiths and protected and open to all. More than this, each is under the care and control of representatives of the respective faiths. Unlike the days prior to 1967, Jerusalem is now and will continue to be one city, undivided, with continuing free access for all. That is why I disagree with the cynical actions of the Carter administration in pledging to preserve the status of Jerusalem in its party platform and its undercutting Israel and Jerusalem by abstaining on a key U.N. vote. I believe the problem of Jerusalem can be solved by men of good will as part of a permanent settlement. The immediate problem is to make it easier for men of good will to come to the peace table.

President Carter refuses to brand the PLO as a terrorist organization.

I have no hesitation in doing so.

We live in a world in which any band of thugs clever enough to get the word "liberation" into its name can thereupon murder school children and have its deeds considered glamorous and glorious. Terrorists are not guerillas, or commandos or freedom-fighters or anything else. They are terrorists and they should be identified as such.

If others wish to deal with them, establish diplomatic relations with them, let it be on their heads. And let them be willing to pay the price of appeasement.

The PLO is said to represent the Palestinian refugees. It represents no one but the leaders who established it as a means of organizing aggression against Israel. The PLO is kept under tight control in every state in the area except Lebanon, which it has effectively destroyed. As for those it purports to represent, when any Palestinian breathes a word about peace to Israel, he is an immediate target for assassination. The PLO has murdered more Palestinians than it has Israelis.

This nation made an agreement with Israel in 1975 concerning its relations with the PLO.

This administration has violated that agreement.

We are concerned not only with whether the PLO renounces its charter calling for the destruction of Israel, we are equally concerned with whether it is truly representative of the Palestinian people. If we can be satisfied on both counts, then we will not be dealing with the PLO as we know it, but a quite different organization, one truly representative of those Arab Palestinians dedicated to peace and not to the establishment of a Soviet satellite in the heart of the Middle East.

Finally, the question of Arab Palestinian refugees.

My analysis of this tragic situation begins with the Declaration of the Establishment of the State of Israel, May 14, 1948. Let me read the relevant paragraph:

"We appeal—in the very midst of the onslaught launched against us now for months—to the Arab inhabitants of the State of Israel to preserve peace and to participate with us in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions."

Tragically, this appeal was rejected. People left their land and their homes confident Israel would be destroyed in a matter of days and they could return. Israel was not destroyed and the refugee problem is with us today.

One solution to this refugee problem could be assimilation in Jordan, designated by the U.N. as the Arab Palestinian state.

The Psalms speak to our concerns, for they encompass all that we strive for. They are a vision of our ideals, of the goal to which we strive with constancy, dedication and faith. They embrace our hopes for a just, lasting peace in the Middle East and our hopes that

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the works of justice and mercy be done at home:

. . . May our garners be full,
affording every kind of store; . . .
May there be no breach in the walls,
no exile, no outcry in our streets.
Happy the people for whom things are thus;

It is given to us to see that this vision is never lost, its message never forgotten, that the work of peace and justice and freedom goes on, inspired by our values, guided by our faith and made permanent by our commitment.

Let us hope during these Holy Days of Rosh Hashanah and Yom Kippur that this next year will bring peace and justice to all the peoples of the Middle East; and to all of you I wish a Happy and Healthy New Year.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I have no requests for time, and I am prepared to yield back my time unless the majority leader or another Member has some need for additional time.

Mr. ROBERT C. BYRD. I thank the minority leader. I yield back my time, too.

Mr. BAKER. I yield back my time.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin (Mr. PROXMIRE) is recognized for not to exceed 15 minutes.

SENATOR BOREN IS COMMENDED FOR HIS PRESIDING OVER THE SENATE

Mr. PROXMIRE. First, Mr. President, I would like to commend the distinguished Presiding Officer, the Senator from Oklahoma (Mr. BOREN). I think few people realize that while presiding over the Senate is an honor—and I have been honored to do that—it is also a chore. It takes time, and takes time from busy Senators who have a great deal to do.

The Senator, the Presiding Officer, is not only a distinguished Senator, he was an outstanding Governor of Oklahoma. He has done a brilliant job since he has been in the U.S. Senate. I think our colleagues, all of our colleagues, should recognize that this young man has devoted more time to presiding than any other Member of the Senate this year, I might say, including the Vice President of the United States, whose job it is to preside.

I just wanted to call attention to that fact because I have such respect and affection for the distinguished Presiding Officer.

HOW DO WE COMPARE THE MILITARY POWER OF THE SOVIET UNION AND THE UNITED STATES?

Mr. PROXMIRE. Mr. President, how does the United States compare with our prime potential adversary in the world, the Soviet Union in military power? Consider the vast number of decisions that affect the life of all Americans that depend on the answer to that question.

Virtually all Americans agree we should match or surpass the Soviet Union. If in fact the Soviet Union does, indeed, surpass us we suffer a danger so serious that we should sharply increase our military effort to assure that we have a deterrent sufficient to prevent the U.S.S.R. from starting a nuclear war they might think they could win.

Even if we assume the Russians would not start a nuclear war if we feel the Russians have a preponderant military advantage over this country, we have the economic power to build our forces to a point where we equal or surpass the U.S.S.R. and we should do so.

Soviet military preponderance could force this country to cave in the Middle East where we have a vital stake in preserving our oil supply. If Soviet military force could cut off this supply, the United States would suffer an economic catastrophe.

In Europe our stake looms even greater. A successful Russian invasion of Western Europe would give the Soviet Union the economic domination and very quickly the certain military domination that would spell the end of freedom in this country.

So, if, indeed, the Soviet Union surpasses this country in military power, this country must build up its military force to overcome that advantage.

On the other hand if this country already enjoys at least parity or superiority in military strength over the Soviet Union, a further massive multibillion dollar buildup would feed inflation, deepen the deficit, increase the tax burden and accomplish no useful economic or social end.

So a great deal hinges on whether or not the Soviet Union does, in fact, own an advantage over the United States in military power. Does it?

How do we determine which nation has the biggest military power?

In some areas we lead. In some kinds of power this country swamps the Soviet Union. In some the U.S.S.R. sports a huge advantage.

CATEGORICAL COMPARISONS

Take the simplest element in any military force—old or new, ancient or modern—manpower. More than 4 million men and women serve in the Soviet military. About 2 million serve in the American military. A hundred years ago that difference would have concerned us very deeply. But today in 1980, no one judges military power just from the number of troops. If they did, the Chinese would have by far the most powerful military force on the face of the Earth and would enjoy greater military power than the Soviet Union and the United States combined. Except for an ability to defend China in a conventional war—not in a nuclear war—no one would rate the Chinese military as an important international factor. Their nuclear strength: primitive. Their naval power: puny. Their airpower: relatively feeble. In artillery, tanks, antitank weapons, mobility they just do not play in the same ball park as either the United States or the U.S.S.R.

So clearly we cannot accept the 2-to-1 advantage the Soviet Union now sports over the United States in military manpower as indicating by itself any military advantage over the United States. Power in a modern military force depends on the weapons the manpower has ready to use. So how do we compare with the U.S.S.R. in weapons?

Again, the issue becomes much more complex. Just as we cannot measure the strength of a military force based on the number of troops their generals and admirals can command, we cannot measure the strength of a military force by the sheer number of weapons each side may have. For example, the Russians have more naval ships—more fighting naval ships than the United States. But do the Russians really enjoy more naval power? First, consider firepower. By far the most powerful conventional naval vessel in the world is the aircraft carrier and the planes that use the carrier as their landing field. How do the two superpowers compare in aircraft carriers? The U.S.S.R. has two small carriers. We have 13 attack carriers—some of massive size and awesome power. But in sheer firepower our carrier fleet probably enjoys at least a 50-to-1 advantage over the Soviet Union and it may be that the advantage goes even higher.

In submarines the Soviet Union may have 30 or 40 percent more nuclear powered and nuclear armed submarines. But the U.S. submarines have several vital advantages. The U.S. subs move faster. They also move more quietly, so they appear to be far less vulnerable to antisubmarine attack than the Soviet submarine fleet. Also our ships spend about three times as much time at sea. That gives our naval ships a clear readiness advantage over the Soviet Union. We know the ships are ready to move because they are constantly moving in training exercises. Our American naval personnel also enjoys the skill that only constant practice can provide. Accuracy and reliability make a critical contribution to power. Here again the United States enjoys sharp advantages. Our nuclear missiles seem to have greater reliability and accuracy according to our best intelligence estimates.

So how would you rate the power—the side that has the great number by 30 or 40 percent or the side that has the ships with greater speed, quietness, accuracy, and reliability and with crews that have enjoyed far more practice at sea to work out the bugs?

I know what side I would bet on in the event of a conflict. I would bet on the U.S. Navy.

The comparison of U.S. and U.S.S.R. planes poses an equally tough problem. By and large the Russians have a greater number of planes. Again ours seem to be more advanced. Our pilots fly far more hours than the Soviet pilots. Our planes generally deliver more firepower. They seem to have an advantage in armor protection. Again we have every reason to bet on American airpower because our qualitative advantage matches their advantage in numbers.

In the strategic area—nuclear power—again the comparison becomes mixed. The Soviet Union certainly has more megatonnage. If we add up the destructive power of every nuclear weapon they possess, the Russians do, indeed, have a clear numerical advantage. At the moment we have more nuclear warheads—almost twice as many as the U.S.S.R. It is true, however, that the advantage may be fading.

Three or four years from now the Soviet Union may match the number of nuclear warheads we have. Will we then suffer a strategic disadvantage because their megatonnage will be much bigger? No. Our nuclear weapons now possess a much greater degree of accuracy than the Russians. Whose weapons will fire most reliably—on time, on target, without breakdowns? The evidence tells us this country enjoys the advantage. Much of that advantage will continue.

Some argue that anyone who would compare nuclear capability must suffer from insanity. Both nations would lose. A nuclear war means a double suicide and a probable knockout for civilization if not for mankind. That view may be correct. It lies behind Churchill's observation 30 years ago that:

> Then it may well be that we shall, by a process of sublime irony, have reached a state in this story where safety will be the sturdy child of terror, and survived the twin brother of annihilation.

If Churchill observed the strategic balance accurately then when both sides were prepared to fire little, what by today's standards would be, nuclear popguns, consider how much more true his observation has become when 4 short years from now the U.S.S.R. can deliver four nuclear warheads into every single county in the United States and we can retaliate with the same destruction in the Soviet Union.

The notion that nuclear war can only result from insane madness that has little or no relation to whether this country or the Soviet Union has half as much or twice as much power as they have now—does not impress me. We cannot and should not unilaterally disarm. We can and should match or surpass the Soviet Union. Deterrence does, indeed, depend on maintaining the balance of terror. Until we can develop a Strategic Arms Limitation Treaty—that is, a SALT treaty that genuinely reduces nuclear arms on both sides, peace ironically depends on matching or surpassing the U.S.S.R. in strategic as well as conventional capability.

DOLLAR COST METHOD OF COMPARISON

So how do we compare the Russian military strength with American military strength? So very much depends on this comparison. Has the President asked for too big a defense budget? Not big enough? Should we cut it? Should we increase it? With inflation, our overwhelming economic problem. With defense spending an absolute dead weight economically, how do we determine whether or not overall we match or even surpass the U.S.S.R. militarily on the one hand or permit them to forge ahead on the other?

Obviously, it is very hard to take an overall comparison when we have these very sharp differences.

THE UNITED STATES AND U.S.S.R.

Because we differ in quantity, in technology, in readiness, in so very many respects, some have suggested that we should compare how much we spend on our military effort and how much the U.S.S.R. spends on their military effort. Advocates of this basis of comparison argue that if one side spends much more money on the military than the other side, the side spending the largest amount of money must be buying the stronger military power.

That proposition should concern any budget watcher who has seen the Federal Government throw money at problems for years with heartbreaking results. The more money we have spent on our schools, our cities, our poor—the worse the problem seems to get. Obviously if the United States is spending its military money more wisely than the U.S.S.R., we may be buying greater military power while spending less. Or we may not. The quantity of money poured into the military will not tell us which country generates the most military power.

But we suffer a more serious problem using the money comparison. The advocates of this comparison rightly say that we cannot simply take the amount the U.S.S.R. spends on their military and compare that with how much we spend. They make sense. The Russians pay their troops far less. The Russian worker in a tank factory earns far less than an American worker. Most of the raw materials the Russians use for their military probably cost the Russians less than they cost our military. So if we construct a budget of actual Russian spending on the military we would understate by billions of dollars the amount of resources they put into the military.

HOW DO WE CORRECT THIS?

What the advocates of the comparison propose is that we estimate how much it would cost this country to reproduce the Russian military force, using American dollars, assuming that Russian military personnel were not—as they are—drafted and paid very little, but paid as much as our Volunteer Army, Navy, and Marine Corps and civilians earn. They assume the tank factory workers and the aircraft factory workers and the technicians and mechanics who construct Soviet missiles, electronics, and other military gear are paid what Americans earn. On those assumptions they conclude that the U.S.S.R. now spends at least 50 percent more than this country spends. They argue that whatever differences there may be in efficiency and whatever technical defects there may be in the comparison, we have here at least a rough and ready basis for comparing the effort each country puts into their military and a rougher but not unreliable or deceptive measure of the actual military power of the two countries.

In doing that, they make a serious mistake. So serious that this calculation may well be the underlying basis for having turned the Congress and the country around and persuaded us to waste literally billions on military spending on the mistaken assumption that we have a rough but reliable proof that the Soviet Union spends more and in the process builds a more powerful military force than the United States.

FALLACY OF EXAGGERATED MANPOWER COSTS

For the simplest way to see the gross fallacy in this reasoning consider again the Chinese military. Let us suppose we apply the same method of comparing military resource use for China and the United States of the Soviet Union. We have reliable reports that the People's Republic of China has a 7½-million-man military force. Let us apply precisely the same yardstick to the Chinese military force that the Defense Department has applied to the U.S.S.R. military force. Suppose the Chinese paid their military personnel in U.S. dollars at the same rate we pay our military personnel. Obviously by this comparison the Chinese would have the most costly and by far the most powerful military force on the face of the Earth—far more powerful than the Soviets and way ahead of the United States. They would be spending not 50 percent more than the United States spends but more than twice as much. And yet, as we have seen earlier, the Chinese military force would have the power of a butterfly's hiccough in any conventional conflict more than a few hundred miles from the Chinese border.

PRODUCTIVITY LOWER IN U.S.S.R.

If the comparison with the Soviet Union overstates the Soviet as well as the Chinese strength because of the equation of sheer numbers of troops with military power, that marks just the beginning of it. Every indication of economic efficiency has shown us that Russian industry trails far behind the United States in efficiency or productivity. In recent years the United States has failed to increase its productivity at its historic pace. But American worker productivity still matches the productivity of German and Japanese workers. That may change dramatically in the next 10 years unless we can find ways to resume our historic productivity gains. But no one can question that our productivity as well as the productivity of workers throughout Western Europe far surpasses the relatively crude productivity of Soviet workers.

This lower Soviet productivity explains why we make such a gross error when we flatly apply U.S. pay to Russians working on military contracts. When we bring the Russian worker in an aircraft plant up to the pay of American workers we do not determine how much it would cost us to build the Russian tank or plane. We determine how much it would cost us to build such a plane if we were working with Russian equipment, Russian management, and using materials mined and refined by Russians who in turn are using Russian equipment and operating under Russian management.

If we know anything about this country's economy and the economy of the Soviet Union, we know that our equipment operates far more efficiently, and we know our management has some and probably a very great advantage over Soviet management.

What does this all mean? It means that Russian industry simply does not produce the quantity or quality of weapons we could produce using the same amount of manpower and materials. And

it certainly means that our calculations grossly overstate the cost of this country reproducing the military force of the Soviet Union.

As I have said, all this has the most profound implications. It means that the Members of Congress and the administration as well as our very influential kibitzers in the press have been persuaded to favor increasing spending by billions based on a gross exaggeration of defense spending by the U.S.S.R.

Mr. President, I am making this speech this morning based not simply on observations as a Senator from Wisconsin but because, for some 10 years now, every year I have conducted hearings in executive session, because much of the information is classified, with the CIA and the DIA testifying on the military and economic power of the Soviet Union, United States, and also China.

The CIA unfortunately, has been badly misinterpreted in this matter.

A man named Arthur Macy Cox wrote an article—a remarkably important article, in my judgment—in the Washington Post on this subject a couple of weeks ago. That article appeared on August 17. Cox served as a CIA official. He specializes in Soviet affairs. He now works as a policy consultant to the American Committee on East-West accord.

Mr. President I challenge members of the Senate Armed Services Committee to read that article. I am sending the article to the Secretary of Defense, and to Admiral Turner, the head of the CIA, to secure a response.

Mr. President, listen to what this article has to say and I quote:

> Congress recently authorized the largest U.S. defense budget in history because most members of Congress also have come to believe that the Soviets have doubled their defense spending during the decade of the 1970's. But the facts are very different. At no time has the Soviet defense budget been increased by more than 3 percent a year.

Mr. President, let me repeat that:

> At no time has the Soviet defense budget been increased by more than 3 percent a year.

Mr. President, none of us change our minds easily, but I do hope that if the military and defense officials of this country cannot answer Mr. Cox, we will take a more critical and careful look at military spending than we have taken in recent years.

Let me conclude this speech by quoting further from Mr. Cox and specifically from his explanation of how the news that the CIA had doubled its estimates of Soviet defense spending. and how no one in the Government or in the press has ever corrected that error. Cox explains:

> During the period from 1973 to 1976 as CIA analysts refined their methodology and obtained better intelligence, they made an important breakthrough. In costing Soviet defense production they had been crediting the Soviets with efficiency which was close to that of the United States. What they discovered was that Soviet defense production, in fact, was not very efficient. Thus, the Soviet defense effort was absorbing a greater share of the GNP than previously believed.

Here is what the published 1978 CIA report said:

> The new estimate of the share of defense in the Soviet GNP is almost twice as high as the 6–8 percent previously esitmated. This does mean that the impact of defense programs on the Soviet economy has increased—only that our appreciation of this impact has changed. It also implies that Soviet defense industries are far less efficient than formerly believed.
>
> The CIA increased the percent of GNP from 6 to 8 percent to 11 to 13 percent but there has been no doubling of the rate of actual Soviet defense spending. There was merely an increase in the CIA's estimate of the share of GNP expended for defense. What should have been cause for jubilation was never adequately explained to the Congress and the public. Instead, for the past four years, a misperception that there has been a great surge in Soviet defense spending has gone uncorrected. In fact, there have been no dramatic increases in Soviet defense spending during the entire decade.

Mr. President, I ask unanimous consent that the article to which I referred by Mr. Cox be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WHY THE SOVIETS "DOUBLED" ARMS SPENDING

(By Arthur Macy Cox)

In 1976, the CIA made what appeared to be an astounding discovery about Soviet defense outlays. News outlets throughout the country headlined the story, "CIA Doubles Estimate of Soviet Defense Spending." The media were very poorly briefed. Nobody at CIA thought the Soviets had suddenly increased their defense spending by 100 percent. But the impression was allowed to stand and has not been clarified.

A recent study published by the U.S. Air Force and prepared by the U.S. Strategic Institute said: "Estimates prepared by the Central Intelligence Agency, as well as by U.S. academic economists, have been in error by as much as 100 percent. The CIA estimates were accepted without question until 1976, when they were acknowledged to be grossly in error and doubled. Economists have not yet recovered from the shock of that experience."

Former President Richard Nixon in his new book, "The Real War" says: "In 1976 the CIA estimates of Russian military spending for 1970–1975 were doubled overnight as errors were discovered and corrected . . . When the first concrete steps toward arms control were taken, American presidents were being supplied by the CIA with figures on Russian military spending that were only half of what the agency later decided spending had been. Thanks, in part, to this intelligence blunder, we will find ourselves looking down the nuclear barrel in the mid-1980s."

Congress recently authorized the largest U.S. defense budget in history because most members of Congress also have come to believe that the Soviets have doubled their defense spending during the decade of the 1970s.

But the facts are very different. At no time has the Soviet defense budget been increased by more than 3 percent a year.

The CIA has an admittedly difficult job estimating what the Soviets spend on defense because so much is secret. The figure which the Soviets publish in their annual budget doesn't come close to approximating Soviet defense totals. The CIA tries to estimate the dollar cost of the Soviet military by determining what it would cost the United States to duplicate the Soviet defense establishment. This is obviously subject to considerable error because there are such vast differences in the costs of U.S. and Soviet defense programs.

The most glaring difference is in military manpower. The Soviets have about 4.4 million military personnel compared to a U.S. figure of 2.1 million.

The CIA makes an estimate of the dollar cost of the 4.4 million Soviet force multiplied by U.S. military pay and allowance rates. This results in a significant distortion because U.S. military personnel are volunteers with relatively high levels of pay and allowances. The Soviet forces, on the other hand, are drafted and paid about one-fifth the U.S. rate.

When this method of costing Soviet defense began in the early 1970s, the CIA concluded that the Soviets were spending between 6 and 8 percent of their gross national product (GNP) for defense. At the time, the United States was expending about the same percentage of its GNP for defense. Today, the U.S. figure is closer to 5 percent. However, it is often forgotten that the U.S. has a GNP which is about double that of the Soviets.

During the period from 1973 to 1976, as CIA analysts refined their methodology and obtained better intelligence, they made an important breakthrough. In costing Soviet defense production they had been crediting the Soviets with efficiency which was close to that of the United States. What they discovered was that Soviet defense production, in fact, was not very efficient. Thus, the Soviet defense effort was absorbing a greater share of the GNP than previously believed.

Here is what the published 1978 CIA report said: "The new estimate of the share of defense in the Soviet GNP is almost twice as high as the 6–8 percent previously estimated. This does not mean that the impact of defense programs on the Soviet economy has increased—only that our appreciation of this impact has changed. It also implies that Soviet defense industries are far less efficient than formerly believed."(Emphasis added.)

The CIA increased the percent of GNP from 6–8 to 11–13, but there had been no doubling of the rate of actual Soviet defense spending. There was merely an increase in CIA's estimate of the share of GNP expended for defense. What should have been cause for jubilation was never adequately explained to the Congress and the public. Instead, for the past four years, a misperception that there has been a great surge in Soviet defense spending has gone uncorrected.

In fact, there have been no dramatic increases in Soviet defense spending during the entire decade. There is what the CIA paper published in January 1980 said for the 1970–79 period: "Estimated in constant dollars, Soviet defense activities increased at an average annual rate of 3 percent." In other words, the Soviets have indeed been increasing their defense budget, each year, at about the same rate as the United States and most of its NATO partners. The U.S. defense budget for next year calls for an increase, in real terms, of about 5 percent.

From the standpoint of weighing the essential defense burden of the United States and Russia, there are several factors that should be given much greater emphasis when the executive branch is presenting the facts to Congress.

The first is the great difference between the defense contribution made by the European allies of the United States and the Warsaw Pact allies of the Soviet Union. In 1978, the European NATO members expended $75 billion for defense and France, a non-NATO ally, spent $16 billion—a total of $91 billion. The Warsaw Pact members, other than the U.S.S.R., expended $23 billion, or one-fourth of the defense spending of our European allies.

Perhaps even more important in considering the relative defense burdens is the cost shouldered by the U.S.S.R. in defending against China. The U.S. Defense Department says: "At least 22 percent of the increase in the Soviet defense budget during these 13 years [1964–1977] has been attributed to the buildup in the Far East . . . The high construction costs in Siberia suggest that the intelligence estimates may understate the cost of the Soviet buildup in the Far East substantially." In addition, according to the Defense Department, the Soviets "station as much as 25 percent of their ground forces and tactical air power on their border with China."

The Soviet burden of defense against China comes more sharply into focus when note is made of the fact that the Soviets have 44 divisions facing China and 31 divisions facing NATO. Of the 31 divisions in Central Europe, four are standing guard in Hungary and five have remained in Czechoslovakia since the invasion of that country in 1968. In other words, there are about twice as many divisions committed to the China front as to the West German front.

Furthermore, the U.S. does not have to match the Soviet forces facing China. Those forces are at the end of a long and tenuous line of communication that can be severed, in time of war, by missile strikes. These are not forces that can be readily transferred to combat in a European war. On the other hand, if it is argued that the U.S. defense budget should provide forces to counter the Soviet threat to China, then the Chinese defense budget should be included on our side—a total of $35 billion.

The combined NATO defense budgets are greater than the combined Soviet-Warsaw Pact defense budgets, and if the China factor is included, the Soviet proportion of defense facing the U.S. and its allies is less than 75 percent of that of the NATO powers.

These are facts which Congress should have before it when it weighs the budget appropriation decisions in the next few weeks. The Soviets have an ample defense budget, but it still does not equal its potential adversaries. The perception of Soviet military superiority is an illusion based, in large part, on a misunderstanding of the facts.

MEMORIES

Mr. PROXMIRE. Mr. President, last week Mrs. Eric Meier presented the Yad Vashem Museum with a photo album full of personal memories. But they are not pleasant memories. They are not memories of vacations in the sun or picnics in the park. They are memories of unthinkable horror: rows upon rows of pajama-clad inmates silently freezing to death in sub-zero calls of the roll, mounds of still-warm corpses being covered with quicklime, and the sight of Mrs. Meier watching her own family being prodded toward the gas chamber.

These are the images which have haunted Mrs. Meier's mind for more than 30 years, Mr. President.

Hopefully, with last week's gesture, she can exorcise them from her memory. But they must not be erased from our memory. Unthinkable horrors, yes, but we must think of them. We must grit our teeth and confront the gruesome reality of genocide, so that our children and grandchildren will never have to experience genocide. Mrs. Meier lived this horror; we were lucky enough to be spared it. Does this mean we should forget about it? Does this mean we should shove the memory of it into obscurity, as we have attempted to do with the Genocide Treaty?

The answer should be clear to every one of my colleagues: the answer is no, no, no.

When Mrs. Meier made her photographs public, they became our photographs. Her memories became our memories. And they must haunt us day after day until we take the step that our consciences tell us we should take—the ratification of the Genocide Treaty.

Mr. President, this body has an opportunity to pass on this horror, this genocide that took place. As we know, every President since President Truman, every Republican President, every Democratic President, the American Bar Association, and every religious organization has called on us to ratify this Genocide Convention.

Every other developed country in the world has ratified the Genocide Convention. Only the United States, which conceived the convention and pushed it through the United Nations, has failed to ratify it.

Mrs. Meier and her fellow inmates at Auschwitz felt the horror of genocide firsthand over 30 years ago; unless we be men and women without souls, we feel it still today. In the words of John Dunne:

> Never send to know for who the bell tolls; it tolls for thee.

I appeal to my colleagues: hearken to the bell which Mrs. Meier rang so courageously last week—ratify the Genocide Convention without delay.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DISABLED VETERANS REHABILITATION ACT OF 1980

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, which the clerk will state by title.

The assistant legislative clerk read as follows:

> A bill (S. 1188) to improve and modernize the vocational rehabilitation program provided service-disabled veterans under Chapter 31 of Title 38, United States Code, and for other purposes.

The Senate resumed consideration of the bill.

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I ask unanimous consent that Garner Shriver of the staff of the Committee on Veterans' Affairs may have the privilege of the floor during consideration of the veterans legislation and all votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, on the amendment by Mr. PRESSLER, there be a 90-minute time limitation, to be equally divided in accordance with the usual form, and that there be, on any amendment to the amendment, 30 minutes, to be equally divided in accordance with the usual form.

Mr. STAFFORD. Mr. President, reserving the right to object, the minority manager is not here. I am not sure whether he has been consulted on this agreement. I respectfully suggest that the request be withheld. I think it will be agreed to when he gets here.

Mr. ROBERT C. BYRD. Mr. President, I withdraw my request temporarily. I yield the floor.

Mr. STAFFORD. Mr. President, it is the understanding of the Senator from Vermont that opening statements on S. 1188, the Disabled Veterans Rehabilitation Act, were printed in the RECORD last week. The Senator from Vermont does have an opening statement and it is his intention to proceed with that statement at this time.

A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. STAFFORD. It is the understanding of the Senator from Vermont that there is no time agreement pending at the present time, either on the bill or amendments.

The PRESIDING OFFICER. The Senator is correct.

Mr. STAFFORD. I thank the Chair.

Mr. President, I support S. 1188, the Disabled Veterans Rehabilitation Act of 1980. One of the most pleasant and rewarding features of service on the Committee on Veterans' Affairs is to spend time and effort in behalf of veterans disabled as a result of wartime service in our Nation's Armed Forces. Consistent with this feature of contribution and satisfaction, our committee unanimously recommends the bill we are now considering—S. 1188—which improves and modernizes the disabled veterans rehabilitation program.

The first legislation to provide vocational rehabilitation for service-con-

nected disabled veterans was in 1917, when Congress enacted the War Risk Insurance Act. Then, in 1918, the Vocational Rehabilitation Act was passed to provide for service-connected disabled veterans' vocational rehabilitation. Under this act, the veteran had to demonstrate inability to carry on gainful employment or reenter the occupation he left when entering service. This program for World War I disabled veterans ended in 1928.

Congress has, from time to time since 1928, enacted various laws expanding and improving the VA's rehabilitation program. A Veterans' Administration study and an extensive study by the General Accounting Office have recommended various administrative and legislative changes in the rehabilitation program.

As a result of these studies and of careful consideration by the Committee on Veterans' Affairs and its staff, S. 1188 has been drafted to provide a more effective and improved program of assistance in the rehabilitation of service-connected disabled veterans.

This bill proposes a principal change from the current rehabilitation program in the purpose—a change from the purpose of achieving employability to helping the veteran to find and maintain employment in a suitable job with emphasis on employment assistance, including postplacement service, and the bill includes pretraining services to help improve the ability of severely disabled veterans to participate in vocational training.

The General Accounting Office's study recommended the implementation of the case-manager concept whereby one person would be assigned the responsibility and held accountable for the veteran's case from point of application through employment placement, including followup services to be provided the veteran. Our committee agreed with this recommendation and has included the case-manager concept in the bill we are now considering.

Mr. President, S. 1188 would enlarge and expand the scope of service offered under chapter 31, including pretraining services to help improve the ability of severely disabled veterans to participate in vocational training.

The existing VA program under chapter 31 stresses vocational training and relies on other programs to meet basic needs in connection with the veteran's ability to function. This bill emphasizes a unified program of vocational, prevocational, nonvocational, and posttraining services and assistance. Management and counseling personnel are responsible for the success of the entire rehabilitation program.

Our bill makes provision for the furnishing of independent living services to seriously disabled veterans in need of this kind of assistance to achieve a maximum level of independent, self-sustaining life in their families and communities. The bill also creates a 4-year pilot program of independent living services, limited to 500 new participants each year. This pilot program is for those who are determined to be too severely disabled to pursue a vocational goal.

For many veterans with serious disabilities which impair their abilities to care for themselves, to move about in their homes and communities, and to communicate and deal effectively with others, these socalled "independent living services" are needed to enable them to achieve a maximum level of independent living, and indeed, in finding and maintaining gainful employment. Members of our committee feel that the VA's rehabilitation program should offer the seriously disabled veterans the very best opportunity possible for the best possible life.

S. 1188 provides for a 10-percent cost-of-living increase in chapter 31 subsistence allowances for institutional training, for farm cooperative and on-job training, and establishes new rates to correspond with the provisions of the committee bill that would establish extended evaluation and a pilot program of independent living services and assistance. The full-time rate for each of these new types of programs would be equal to the full-time rate for institutional training as part of a vocational rehabilitation program.

Our bill would establish a Veterans' Advisory Committee on Rehabilitation to coordinate VA resources devoted to rehabilitation efforts and to serve as a go-between between the VA and other Federal agencies. It would also assist in evaluating veterans' needs in the field of rehabilitation to make sure those needs are being met.

No less than one-half of the membership of the Advisory Committee shall be disabled veterans.

The employment provisions of the committee bill would establish a new veterans' employment and training outreach program, called "VETOP." This new program is based on the current highly successful disabled veterans' outreach program, called "D-VOP," now conducted by the Department of Labor under CETA. VETOP specialists would have a variety of responsibilities and duties designed to promote employment and training opportunities for veterans, especially those who have service-connected disabilities—both within local employment service offices and at locations such as the new Veterans' Readjustment Counseling Centers.

The committee bill requires that the Secretary of Labor make sufficient funds available in each State to support a level of approximately 2,000 VETOP specialists throughout the country. These specialists would carry out functions and duties as the DVOP staff now does—reaching out to eligible veterans and making job development contracts with employers. Their priorities would be with disabled veterans who have participated in a program of vocational rehabilitation; other disabled veterans; and other eligible veterans taking into account the needs of categories of veterans with high rates of unemployment, such as young Vietnam-era and minority group Vietnam-era veterans.

S. 1188 also contains provisions to improve the VA's program of training on the job under the GI bill to make the program more attractive to both employers and eligible trainees.

Mr. President, a comprehensive revision of the chapter 31 veterans' rehabilitation program is necessary to serve the rehabilitation needs of this country's service-connected disabled veterans. In addition to the need for more comprehensive service, there is the need to enlarge the purpose of the vocational rehabilitation program from the attainment of employability to include the attainment of suitable employment, to improve outreach efforts to seriously disabled veterans, to place greater emphasis on meeting the counseling needs of veterans throughout the rehabilitation process and to increase the availability and use of on-job training under chapter 31.

Mr. President, I do not intend to discuss all of the changes proposed by this bill; however, I am hopeful that an improved program of rehabilitation for veterans will result during the closing days of this Congress. I commend S. 1188 to my colleagues as worthy of the support of the entire Senate.

Mr. THURMOND. Mr. President, I support S. 1188, the Disabled Veterans Rehabilitation Act of 1980.

S. 1188, as reported by the Senate Committee on Veterans' Affairs, will overhaul chapter 31 of title 38, United States Code. Prior legislative action in the area of the Veterans' Administration's vocational rehabilitation program has been addressed only in piecemeal fashion since 1943. Although the VA has become a leader in vocational rehabilitation, I believe S. 1188 will be a great improvement to this VA program and will enhance the rehabilitation opportunities of our disabled veterans.

Mr. President, S. 1188 would expand the purpose and effective operation of the VA's rehabilitation program beyond the achievement of a veteran's employability to that of obtaining and maintaining suitable employment. The VA would take a greater role in not only training a disabled veteran for a particular occupation but the agency would expand its function in assisting the veteran in obtaining employment.

The VA would be given authority to provide a broader range of services and assistance than is provided under current law. Due to the great advances that have been made in the past few years in the field of rehabilitative medicine, the VA's authority to provide these services pursuant to existing law has been questioned. Therefore S. 1188 provides greater latitude for the VA to utilize a full range of rehabilitative and employment services.

Mr. President, the Administrator's responsibility to seek and insure that veterans participating in chapter 31 programs obtain employment will be expanded. The Administrator will be greatly involved in all Federal veterans employment efforts and programs. These would include the Comprehensive Employment Training Administration (CETA) program within the Department of Labor; the veterans cost of instruction program (VCIP) conducted by the Department of Education; and provisions mandating preference for veterans under the Small Business Act, and other similar programs.

Mr. President, I am pleased that S. 1188 contains a provision that would provide, by statute, a clerical secretary for each of the 52 State representatives of the Veterans' Employment Service. Thus, these secretaries will become an integral part of the Veterans' Employment Service and its effort to assist veterans to obtain employment in each State.

I believe, Mr. President, that S. 1188 as reported will provide the VA with the needed statutory authority to render service and training to those veterans who have been disabled while serving our Nation. I urge my colleagues to support S. 1188.

Mr. CRANSTON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mr. CRANSTON. I renew the request of the majority leader, to a time agreement on the Pressler amendment.

Mr. STAFFORD. Mr. President, reserving the right to object——

Mr. CRANSTON. That has been cleared.

Mr. STAFFORD. I understand that would be 45 minutes a side on the Pressler amendment, 90 minutes equally divided, with 30 minutes on any secondary amendment, motion, or appeal. Am I correct?

Mr. CRANSTON. That is correct. And in the regular order.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. PRESSLER. Mr. President, reserving the right to object, and I do not intend to object, I wish to thank the majority for agreeing. As I understand it, I will get an up or down vote on the amendment.

Mr. CRANSTON. That is not included in the time agreement. But that is the intent.

Mr. PRESSLER. Then I would have no further objection.

Mr. STAFFORD. Mr. President, on my reservation, on the right to object, I do not object.

The ACTING PRESIDENT pro tempore. Without objection, the request is agreed to.

AMENDMENT NO. 1906

(Purpose: To provide for a program of career development, advancement, and training and for outreach and supportive services for veterans of the Vietnam era and for certain other veterans)

Mr. PRESSLER. Mr. President, I have a printed amendment at the desk numbered 1906, which I would like to call up.

The ACTING PRESIDENT pro tempore. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. PRESSLER) proposes an amendment numbered 1906, as modified:

On page 71, between lines 3 and 4, insert a new title as follows:

"TITLE III—VETERANS CAREER DEVELOPMENT, ADVANCEMENT, AND TRAINING ASSISTANCE

"ESTABLISHMENT OF CAREER DEVELOPMENT, ADVANCEMENT, AND TRAINING ASSISTANCE PROGRAM USING EDUCATIONAL ASSISTANCE ENTITLEMENT

"SEC. 1001. (a) Part III is amended by adding at the end thereof the following new chapter:

"Chapter 45—VETERANS CAREER DEVELOPMENT, ADVANCEMENT, AND TRAINING ASSISTANCE

"Subchapter I—Purpose; Definitions

"Sec.
"2101. Purpose.
"2102. Definitions.

"Subchapter II—Eligibility and Entitlement

"2103. Establishment of program.
"2104. Eligibility; entitlement; duration.
"2105. Time limitations for completing a program of career development or training.
"2106. Occupational and vocational counseling.

"Subchapter III—Enrollment

"2111. Selection of program.
"2112. Applications; approval.
"2113. Disapproval of enrollment in certain program.
"2114. Discontinuance for unsatisfactory conduct or progress.

"Subchapter IV—Payments to Eligible Employers

"2121. Career development and advancement and career development and training allowances.
"2122. Computation of career development and advancement and career development and assistance allowances.
"2123. Payment of career development and advancement or career development and training assistance allowances.

"Subchapter V—Approval

"2131. Approval of programs.
"2132. Authority for approval.
"2133. Approval of career development and training programs.
"2134. Notice of approval of programs.
"2135. Disapproval of programs.
"2136. Overpayments to eligible employers.
"2137. Discontinuances of allowances; examination of records; false or misleading statements.
"2138. Change of program.
"2139. Compliance surveys of employers.
"2140. Duties of the Secretary of Labor.
"2141. Veterans information and outreach.
"2142. Termination dates.

"Suchapter I—Purpose; Definitions

"§ 2101. Purpose

"The Congress hereby declares that the career development, advancement, and training program created by this chapter is for the purpose of—

"(1) extending the benefits of a meaningful career to qualified and deserving veterans who might otherwise be unable to attain a meaningful career opportunity;

"(2) providing vocation readjustment and restoring lost career opportunities to those individuals whose careers have been interrupted or impeded by reason of active military service after August 4, 1964;

"(3) aiding such individuals in attaining the vocational and occupational status which they might normally have aspired to and obtained had they not served their country; and

"(4) providing an opportunity for such individuals to attain their full employment capability, to increase their earned income, and to attain their economic selfsufficiency.

"§ 2102. Definitions

"For the purposes of this chapter—

"(a)(1) The term 'eligible veteran' means a veteran who—

"(A) served on active duty for a period of more than one hundred and eighty days, any part of which occurred after August 4, 1964, and before January 1, 1977, and was discharged or released therefrom under conditions other than dishonorable;

"(B) contracted with the Armed Forces and was enlisted in or assigned to a Reserve component prior to January 1, 1977, and as a result of such enlistment or assignment served on active duty for a period of more than one hundred and eighty days, any part of which commenced within twelve months after January 1, 1977, and was discharged or released from such active duty under conditions other than dishonorable; or

"(C) was discharged or released from active duty, any part of which was performed after August 4, 1964, and before January 1, 1977, or following entrance into active service from an enlistment provided for under clause (B) of this paragraph, because of a service-connected disability.

"(2) For purposes of paragraph (1)(A) of this subsection and section 1661(a) of this title, the term 'active duty' does not include any period during which an individual (A) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (B) served as a cadet or midshipman at one of the service academies, or (C) served under the provisions of section 511(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve, Marine Corps Reserve, or Coast Guard Reserve unless at some time subsequent to the completion of such period of active duty for training such individual served on active duty for a continuous period of one year or more (not including any service as a cadet or midshipman at one of the service academies).

"(b) The term 'eligible employer', when used with respect to the employment of a veteran, means any public or private employer who meets the criteria set forth in this chapter and such other criteria as the Administrator considers necessary and appropriate.

"(c) The term 'dependent' means—

"(1) a child of an eligible veteran;

"(2) a dependent parent of an eligible veteran; and

"(3) the spouse of an eligible veteran.

"Subchapter II—Eligibility and Entitlement

"§ 2103. Establishment of program

"(a) The Administrator shall establish a program in accordance with this chapter to assist eligible veterans in selecting and pursuing career development and advancement programs and career development and training programs.

"(b) A career development and advancement program is a program under this chapter that will assist an eligible veteran to acquire full-time permanent employment or to advance in such veteran's chosen career and to increase such veteran's earned income and economic self-sufficiency through a partial subsidy of such veteran's wages and benefits.

"(c) A career development and training program is a program under this chapter that will assist an eligible veteran to acquire full-time permanent employment, to advance in such veteran's chosen occupation, and to increase such veteran's earned income and

economic self-sufficiency through a subsidy of training costs and partial subsidy of such veteran's wages and benefits.

"§ 2104. Eligibility; entitlement; duration

"(a) Subject to section 2122 of this chapter, an eligible veteran is entitled to a career development and advancement allowance or a career development and training allowance under this chapter in an amount equal to the amount of the entitlement of such veteran, and for the period of the entitlement of such veteran, remaining under the provisions of section 1661 or section 1631 of this title, as the case may be.

"(b) Entitlement under this chapter in the case of any eligible veteran may not exceed the number or months specified in section 1622(a) of this title.

"(c) A veteran described in clause (A) or (B) of paragraph (1) of section 2122(a) of this title whose annual income exceeds $13,000 at the time of application for assistance under this chapter may not participate unless the Administrator determines that the participation of such veteran is necessary and appropriate for such veteran's readjustment, rehabilitation, or productive employment.

"§ 2105. Time limitations for completing a program of career development or training

"Notwithstanding the provisions of section 1662 of this title, an eligible veteran may pursue a program of career development and advancement or a program of career development and training under this chapter if such veteran otherwise meets the eligibility criteria set forth in this chapter.

"§ 2106. Occupational and vocational counseling

"The counseling to be made available under section 1663 of this title shall include such occupational skills assessment counseling and assistance as the Administrator determines to be necessary and appropriate for the effective implementation of this chapter.

"Subchapter III—Enrollment

"§ 2111. Selection of program

"Subject to the provisions of this chapter, an eligible veteran may select a program of career development and advancement or a program of career development and training with an eligible employer for the purpose of assisting such veteran in attaining an occupational, professional, or vocational objective or advancing in such veteran's chosen career field (approved in accordance with the provisions of this chapter) selected by the eligible veteran, if such eligible employer hires such veteran into its regular workforce with the expectations by the employer of permanent employment of the veteran after the training and career development assistance ends.

"§ 2112. Applications; approval

"An eligible veteran who desires to undertake a program of career development and advancement or career development and training under this chapter shall submit an application for such program to the Administrator in such form and containing such information as the Administrator may prescribe. The Administrator shall approve such an application unless the Administrator finds that the veteran is not eligible for or entitled to the career development and advancement or career development and training assistance applied for, that the veteran's program of career development and advancement or career development and training applied for fails to meet the requirements of this chapter, that the veteran is already qualified, or that such veteran's readjustment or employment would not be assisted or advanced by participation in such program.

"§ 2113. Disapproval of enrollment in certain program

"The Administrator may not approve the enrollment of a veteran in a program for employment—

"(1) which consists of seasonal, intermittent, or temporary jobs, except that the Administrator may approve enrollment in a program for employment on a seasonal basis if the Administrator determines such action appropriate under all the circumstances;

"(2) which pays less than $4 per hour (exclusive of benefits and other nonmonetary remuneration) unless the Administrator determines in a particular case that this clause shall not apply;

"(3) which is outside the United States or its territories or possessions;

"(4) under which commissions are the primary source of income;

"(5) which involves political or religious activities;

"(6) which is in an industry in which a substantial number of experienced and able workers are unemployed;

"(7) under which the job is above entry level, except when applicable personnel procedures and collective bargaining procedures regarding the advancement of currently employed workers are complied with;

"(8) which would result in the displacement of any currently employed worker (including partial displacement such as a reduction in the amount of nonovertime work); or

"(9) in a job which if filled would replace any worker who is on layoff or on strike.

"§ 2114. Discontinuance for unsatisfactory conduct or progress

"(a) The Administrator shall discontinue the career development and advancement allowance or the career development and training allowance of a veteran if the Administrator finds that, according to the standards that the Administrator may prescribe or the regularly prescribed standards of the eligible employer, the conduct or progress of the veteran is unsatisfactory. Unless the Administrator finds there are mitigating circumstances, progress will be considered unsatisfactory at any time the veteran is not progressing at a rate that will permit the veteran to complete training, retain such employment, or advance in such career field according to criteria set forth in this chapter or in agreements certified to the Veterans' Administration or within such other length of time (exceeding such approved length) as the Administrator determines to be reasonable in accordance with regulations.

"(b) The Administrator may renew the payment of a career development and advancement allowance or the career development and training allowance suspended under subsection (a) of this section only if the Administrator finds that—

"(1) the cause of the unsatisfactory conduct or progress of the veteran has been removed; and

"(2) the program which the veteran now proposes to pursue (whether the same as the program originally pursued or revised) is suitable to the aptitudes, interests, and abilities of the veteran.

"Subchapter IV—Payments to Eligible Employers

"§ 2121. Career development and advancement and career development and training allowances

"The Administrator shall, in accordance with the applicable provisions of this title, pay to each eligible employer on behalf of each eligible veteran pursuing a program of career development and advancement or career development and training under this chapter with such employer a monthly allowance (computed under section 2122 of this title) to meet, in part, the expenses of such veteran's wages, benefits, and training and other necessary or appropriate costs.

"§ 2122. Computation of career development and advancement and career development and assistance allowances

"(a)(1) Subject to the provisions of subsections (b) and (c) of this section, the amount of a career development and advancement or career development and training allowance to be paid under section 2121 of this title may not exceed the applicable amount provided under section 1682(a)(1) of this title in the case of a veteran whose eligibility is derived under chapter 34 of this title and who is pursuing a full-time program of institutional training as determined by the veteran's dependency status. Such assistance shall be paid for a period of—

"(A) twelve months, for an eligible veteran with a service-connected disability who served on active duty during the Vietnam era and is entitled to disability compensation under laws administered by the Veterans' Administration;

"(B) nine months, for an eligible veteran who served on active duty in the Indochina theater of operations or Korea during the Vietnam era.

"(2) Assistance under this chapter shall be paid for a period of eighteen months in the case of an eligible veteran who, after counseling under section 1663 of this title, is found to be experiencing serious rehabilitation, readjustment, or employment problems that require an extension of the time period authorized under the second sentence of paragraph (1) of this subsection in order to allow the veteran to pursue and satisfactorily complete a program of career development and advancement or a program of career development and training under this chapter.

"(b) The amount of a career development and advancement allowance paid to an eligible employer on behalf of an eligible veteran—

"(1) may not exceed one-third of the gross wages and benefits paid by such employer to such eligible veteran; and

"(2) may not exceed the amount of increased gross wages and benefits of any eligible veteran whose career has been advanced under this program.

"(c) The amount of a career development and training allowance paid to an eligible employer on behalf of an eligible veteran—

"(1) may not exceed the actual cost of training as provided in section 2133 of this title plus an amount equal to one-fourth of the amount in wages and benefits paid by such employer to such eligible veteran, except that the total amount may not exceed an amount equal to 50 per centum of the wages and benefits paid by such employer to such eligible veteran, unless intensive training or additional training arrangements are necessary for veterans with severe employability problems, particularly for disabled veterans; and

"(2) may not exceed by more than twice the annual amount of increased gross wages and benefits of any eligible veteran whose career and income have been advanced through training under this program.

"(d) A career development and advancement allowance or career development and training allowance paid under this section shall be charged against the period of entitlement of the eligible veteran under section 1661(a) or section 1631(a) of this title, as appropriate.

"§ 2123. Payment of career development and advancement or career development and training assistance allowances

"(a) Payment of a career development and advancement allowance on behalf of a veteran for any period may not be made to an eligible employer employing such veteran until the Administrator has received—

"(1) from such veteran, a certification as to such veteran's actual employment with such employer and attendance during such period; and

"(2) from the employer, a certification (or an endorsement on the eligible veteran's certification) that such veteran was satisfactorily employed and pursuing a program of career development and advancement during such period.

"(b) Payment of a career development and training allowance on behalf of a veteran may not be made to an eligible employer employing such veteran until the Administrator has received—

"(1) from such veteran, a certification as to such veteran's actual employment, attendance, and training with such employer during such period; and

"(2) from the employer, a certification (or an endorsement on the veteran's certification) that such veteran was employed and progressing satisfactorily while pursuing a program of career development and training during such period.

"Subchapter V—Approval

"§ 2231. Approval of programs

"An eligible employer may be paid a career development and advancement allowance or a career development and training allowance on behalf of an eligible veteran participating in a career development and advancement program or a career development and training program offered by such employer only if such program is approved in accordance with this subchapter.

"§ 2132. Authority for approval

"Subject to the provisions of this title and such regulations the Administrator may prescribe, a program of career development and advancement or career development and training may be approved—

"(1) by the Administrator, the Secretary of Labor, by a prime sponsor designated under section 101 of the Comprehensive Employment and Training Act or, in the case of a program of career development and training involving apprenticeship, by an approving agency meeting the standards of apprenticeship published by the Secretary of Labor pursuant to section 2 of the Act of August 16, 1937 (commonly referred to as the 'National Apprenticeship Act') (29 U.S.C. 5a); or

"(2) by such other means as the Administrator may consider appropriate.

"§ 2133. Approval of career development and training programs

"(a) Any entity having authority under section 2132 of this title to approve programs under this chapter (hereinafter in this chapter referred to as an 'approving agency') may not approve a program of career development and training (other than a program of apprenticeship) unless it finds that the career which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training (including cooperative training, as defined in section 1682(a)(2) of this title), and not on factors such as length of service and normal turnover, and that the provisions of subsections (b), (c), and (d) of this section are met.

"(b) The employer or training establishment offering training which is desired to be approved for the purposes of this chapter must submit to the appropriate approving agency a written application for such approval which, in addition to furnishing such information as is required by the approving agency, shall contain a certification that—

"(1) the wages and benefits to be paid to veterans participating in a program under this chapter are not less than the wages and benefits normally paid for the job for which the veteran is to be trained;

"(2) the amount of the career development and training allowance to be paid to such employer on behalf of a veteran does not exceed the actual cost of the training plus an amount equal to one-fourth of the amount in wages and benefits paid to the veteran, except that the total amount may not exceed an amount equal to 50 per centum of the wages and benefits paid to the veteran, unless intensive training or additional training arrangements are necessary for veterans with severe employability problems, and particularly for disabled veterans; and

"(3) there is reasonable certainty that the career or position for which the veteran is to be trained will be available to such veteran at the end of the training period.

"(c) Before approving a program of career development and training (other than a program of apprenticeship), the approving agency must find (upon investigation) that the following criteria are or will be met by the employer applying for approval:

"(1) The training content of the course is adequate to qualify a veteran participating in the program for appointment to a position in the career field for which such veteran is to be trained.

"(2) The career field or position customarily requires full-time training for a period of not less than four months.

"(3) The length of the training period under the proposed program is not longer than that customarily required by employers and training establishments in the community to provide a person with the required skills and to arrange for the acquisition of job knowledge, technical information, and other facts which a veteran will need to learn in order to become competent in the career field or position for which the veteran is being trained.

"(4) Provision is made for related instruction for individual veterans who may need related instruction.

"(5) There is in the training establishment or place of employment adequate space, equipment, instructional material, and instructor personnel to provide satisfactory training on the job.

"(6) Adequate records will be kept to show the progress made by each veteran participating in the program toward such veteran's career objective.

"(7) The course of training will not be given to veterans who are already qualified by training and experience for the career or position.

"(8) A signed copy of the training agreement for each eligible veteran, including the training program and wage scale as approved by the approving agency, will be provided by the employer to the veteran, the Administrator, and the approving agency.

"(9) Reasonable efforts will be made to provide special training and employment opportunities and working conditions for disabled veterans.

"(10) The program meets such other criteria as may be established by the approving agency.

"(11) There is a reasonable certainty that a position for which a veteran was hired, or a position to which a veteran is intended to be promoted, will be reasonably available for the veteran at the end of the period for which a career development and advancement allowance was paid to the eligible employer.

"(d) Before approving a program of career development and advancement, the approving agency must find (upon investigation) that the following criteria are or will be met by the employer applying for approval:

"(1) The program offered by the employer is not one described in section 2113 of this title.

"(2) The selection of eligible veterans for hiring, upgrading, promotion, or advancement will be based upon the potential and qualifications of such veterans for the career or advancement the veterans are seeking.

"(3) The program will provide eligible veterans with reasonable progression, resulting in qualification for a recognized position of greater skill, responsibility, remuneration, or career advancement in the employment of such employer.

"(4) Adequate personnel, attendance, and progress records will be maintained.

"(5) The program is designed so that to the extent feasible, additional vacancies will be created for new entry level employment and training opportunities for women and members of appropriate minority groups (as determined by the Administrator in consultation with the Director of the Office of Personnel Management).

"(6) Compensation will be paid by the employer at rates, including periodic increases, considered by the approving agency to be reasonable, considering such factors as industry practice, skill requirements, individual proficiency, geographical region, and a veteran's dependency status, age, and previous work experience.

"(7) The employer is financially sound and capable of fulfilling its commitments.

"(8) A comprehensive job description is available for each job or position for which approval is requested.

"(9) The employer will not exceed enrollment limitations as established by the approving agency.

"(10) If a career development and advancement program is for or from positions covered by a collective bargaining agreement, arrangements with the employer to carry out the program have the concurrence of labor organizations representing employees in such positions.

"§ 2134. Notice of approval of programs

"The approving agency, upon determining that an eligible employer has complied with the requirements of this chapter, shall issue a certification to such employer setting forth the jobs or positions which have been approved for a program of career development and advancement or a program of career development and training for the purposes of this chapter and shall furnish a copy of such certificate and any subsequent amendment of such certificate to the Administrator and to the Secretary of Labor. The certificate of approval shall be accompanied by a copy of a catalog or bulletin of the eligible employer, as approved by the approving agency, and shall contain the following information:

"(1) The date of certification and the effective date of approval of programs.

"(2) The name and address of the employer.

"(3) The authority for approval and the conditions of approval, referring specifically to the approved catalog or bulletin published by the eligible employer.

"(4) The name and description of each job, career, position, or advancement opportunity approved.

"(5) If applicable, limitations with respect to enrollment, hiring, and advancement.

"(6) The signature of responsible official of the appropriate approving agency.

"(7) Such other provisions as are con-

sidered necessary by the appropriate approving agency.

"§ 2135. Disapproval of programs

"Any program of career development and advancement or career development and training approved for the purposes of this chapter which after such approval fails to meet any of the requirements of this chapter shall immediately be disapproved by the appropriate approving agency. An eligible employer which has its program disapproved by an approving agency under this section shall be notified of such disapproval by a certified or registered letter of notification, and a return receipt shall be secured.

"§ 2136. Overpayments to eligible employers

"Whenever the Administrator finds that an overpayment has been made to an eligible employer under this chapter as the result of (1) the willful or negligent failure of such employer to report, as required by this chapter and applicable regulations, to the Administrator excessive absences from work or discontinuance or interruption of a program of career development and advancement or career development and training by such veteran, or (2) false certification by an eligible employer, the amount of such overpayment shall constitute a liability of such employer and may be recovered in the same manner as any other debt due the United States, and such employer shall be suspended from further participation in any program under this chapter. This section shall be notified of such disapproval by a cercivil or criminal liability under any other law.

"§ 2137. Discontinuances of allowances; examination of records; false or misleading statements

"(a)(1) The Administrator may discontinue a career development and advancement or career development and training allowance paid to an eligible employer on behalf of an eligible veteran if the Administrator finds that the program of career development and advancement or career development and training or any job, career, or position in which such veteran is enrolled or employed fails to meet any of the requirements of this chapter or applicable provisions of this title, or if the Administrator finds that the employer offering such program or employment has violated any provision of this chapter or fails to meet any of the requirements of this title.

"(2) Any action by the Administrator under paragraph (1) of this subsection to discontinue (or suspend) assistance provided to an eligible employer on behalf of an eligible veteran under this chapter shall be based upon evidence that the eligible employer or eligible veteran is not or was not entitled to such assistance. Whenever the Administrator so discontinues any such assistance, the Administrator shall immediately provide written notice to such employer and such eligible veteran of such discontinuance, including a statement of the reasons therefor.

"(b) Notwithstanding any other provision of law, the records and accounts of eligible employers pertaining to eligible veterans who have received career development and advancement or career development and training assistance under the provisions of this chapter or applicable provisions of this title, as well as other records which the Administrator determines necessary to ascertain compliance with the requirements of this chapter, shall be available at a reasonable time for examination by authorized representatives of the Government.

"(c) Whenever the Administrator determines that an eligible employer has willfully submitted a false or misleading claim, or that a veteran, with the complicity of an employer, has submitted such a claim, the Administrator shall make a complete report of the facts thereof to the appropriate approving agency and, if considered advisable, to the Attorney General of the United States for appropriate action.

"§ 2138. Change of program

"(a) Except as provided in subsections (b) and (c) of this section, an eligible veteran may make not more than one change of program of career development and advancement or career development and training under this chapter, but an eligible veteran whose program has been interrupted or discontinued due to the veteran's own neglect, or the veteran's own lack of application, shall not be entitled to make any such change.

"(b) The Administrator may approve one additional change in program (or an initial change in the case of a veteran not eligible to make a change under subsection (a) of this section) if the Administrator finds—

"(1) that the program of career development and advancement or career development and training which the veteran proposes to pursue is suitable to the veteran's aptitudes, interests, and abilities; or

"(2) in any instance where the eligible veteran has interrupted, or failed to progress in, the veteran's program due to the veteran's own misconduct, the veteran's own neglect, or the veteran's own lack of application, that there is a reasonable likelihood with respect to the program which the eligible veteran proposes to pursue that there will not be a recurrence of such an interruption or failure to progress.

"(c) The Administrator may also approve additional changes in the program if the Administrator finds such changes are required by circumstances beyond the control of the veteran.

"(d) As used in this section, the term 'change of program of career development and advancement or career development and training' shall not be considered to include a change from the pursuit of one program to pursuit of another when the first program is a prerequisite to, or generally required for, entrance, promotion, or advancement into pursuit of the second.

"§ 2139. Compliance surveys of employers

"The Administrator shall periodically conduct compliance surveys of employers offering one or more programs of career development and advancement or career development and training approved for the enrollment of eligible veterans under the provisions of this chapter. Such surveys shall be made to assure that the eligible employer and the approved programs are in compliance with applicable provisions of this title.

"§ 2140. Duties of the Secretary of Labor

"(a) The Secretary of Labor shall provide for the participation of eligible veterans in career development and advancement and career development and training programs authorized under this Act and under section 12(b)(2)(A) of the Comprehensive Employment and Training Act. In carrying out this responsibility, the Secretary of Labor shall consult with and solicit the cooperation of the Administrator. Actions by the Secretary of Labor under this section shall include the development of career development and advancement and career development and training programs, supportive services, technical assistance and training, support for community-based veterans programs, and other programs as are necessary to serve the unique readjustment, rehabilitation, and employment needs of eligible veterans.

"(b) The Secretary of Labor shall make special efforts to acquaint eligible veterans with the career development and advancement and career development and training opportunities available under this chapter and to coordinate such opportunities with those job opportunities authorized under chapters 41 and 42 of this title and other similar job opportunities offered by other public agencies and organizations.

"(c) Entities which are prime sponsors under the Comprehensive Employment and Trainnig Act shall provide such arrangements (to include program approval) as may be necessary and appropriate to promote maximum feasible development and use of career development and advancement and career development and training programs and opportunities authorized under this chapter.

"§ 2141. Veterans information and outreach

"The Administrator (in consultation and cooperation with the Secretary of Labor and the Secretary of Health and Human Services) shall provide for an outreach and public information program utilizing, to the maximum extent feasible, the facilities of the Department of Labor to carry out efforts to develop career development and advancement and career development and training programs and opportunities for eligible veterans and to inform such veterans about employment, job development, advancement, and training opportunities under this title and other provisions of law and to inform prime sponsors, Federal contractors and subcontractors, Federal agencies, labor unions, educational institutions, and employers of their legal responsibilities and opportunities with respect to such veterans and to provide them with technical assistance and training in meeting those responsibilities.

"§ 2142. Termination dates

"A veteran may not apply for a program of career development and advancement or career development and training under this chapter after the end of the eighteen-month period beginning on the effective date of this chapter. A career development and advancement or career development and training allowance may not be paid to an eligible employer on behalf of an eligible veteran after the end of the thirty-six-month period beginning on the effective date of this chapter.".

(b) The table of chapters preceding part I and the table of chapters at the beginning of part III are amended by adding after the item relating to chapter 43 the following new item:

"45. Veterans Career Development, Advancement, and Training Assistance.. 2101.".

On page 71, line 4, strike out "III" and insert in lieu thereof "IV".

On page 71, line 6, strike out "301" and insert in lieu thereof "401".

On page 71, line 10, strike out "302" and insert in lieu thereof "402".

On page 71, line 12, strike out "303" and insert in lieu thereof "403".

On page 72, line 14, strike out "304" and insert in lieu thereof "404".

On page 72, line 20, strike out "305" and insert in lieu thereof "405".

On page 73, line 14, strike out "306" and insert in lieu thereof "406".

On page 74, line 5, strike out "307" and insert in lieu thereof "407".

On page 74, strike out lines 22, 23, and 24, and insert in lieu thereof the following:

"SEC. 408. (a) Except as provided in subsections (b), (c), and (d), the provisions of this Act shall become effective on October 1, 1980.

"(b) In the case of veterans who are participating in a program of vocational rehabilitation under chapter 31 of title 38, United States Code, on September 30, 1980, the Administrator of Veterans' Affairs—

"(1) shall formulate individualized written plans of vocational rehabilitation under section 1507 of such title (as amended by section 101(a) of this Act) for such veterans to the extent that and at such times as the Administrator of Veterans' Affairs determines that the formulation of such plans is feasible, and shall formulate such plans on the basis of such priorities as the Administrator of Veterans' Affairs shall prescribe; and

"(2) may extend the eligibility of any veteran under section 1503(c) of title 38, United States Code (as amended by section 101(a) of this Act), or the period of vocational rehabilitation under section 1505(c) of such title (as amended by section 101(a) of this Act) without regard to the requirements for a determination of a serious employment handicap.

"(c) The amendments made by title III of this Act shall become effective on March 1, 1981, in the case of veterans who have service-connected disabilities and who have serious readjustment, rehabilitation, or employment problems, and in the case of veterans who served in the Indochina theatre of operations or Korea during the Vietnam era (as defined in section 101(29) of title 38, United States Code) unless sufficient funds are made available before such date to carry out the provisions of chapter 45 of title 38, United States Code, as added by title III of this Act, in which event the effective date in the case of such veterans shall be the first date on which such funds become available for such purpose (as determined by the Administrator of Veterans' Affairs).

"(d) The amendments made by sections 210, 211, and 212 shall become effective on December 1, 1980, unless sufficient funds are made available to carry out such amendments before such date, in which event the effective date shall be the first date on which such funds become available for such purpose (as determined by the Administrator of Veterans' Affairs).".

UP AMENDMENT NO. 1547

Mr. PRESSLER. Mr. President, I have an amendment which I send to the desk.

The ACTING PRESIDENT pro tempore. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. PRESSLER) proposes to an unprinted amendment numbered 1547, to amendment numbered 1906.

The amendment is as follows.

On page 1, line 8, strike out "Sec. 1001" and insert in lieu thereof "Sec. 301".

On page 2, below line 2, in the item relating to section 2112, strike out the period at the end of such item and insert in lieu thereof a semicolon and the following: "issuance of voucher.".

On page 8, line 15, insert "; issuance of voucher" after "approval".

On page 8, line 16, insert "(a)" before "An".

On page 9, between lines 5 and 6, insert the following new subsection:

"(b) Upon approval of the application of a veteran for a program of career development and advancement or career development and training, the Administrator shall issue such veteran a voucher certifying such veteran's eligibility for such program and the amount of the entitlement under such program. The voucher issued to any veteran under this subsection shall be in such form as may be necessary to enable the veteran to whom it is issued to market the career development and advancement or career development and training program to potential employers and to develop initial employment, advancement, and training opportunities for the veteran.

On page 15, between lines 14 and 15, insert the following new subsection:

"(c) Payment of a career development and advancement allowance or a career development and training allowance shall be paid to an eligible employer on behalf of an eligible veteran at the end of each ninety-day period of employment or training satisfactorily completed by such veteran.

On page 29, after line 23, add the following new section:

SEC. 302. (a) The Secretary of Labor may transfer, to the extent authorized in appropriation Acts, to the Administrator of Veterans' Affairs funds available to carry out the Help Through Industry Retraining and Employment (HIRE) program during fiscal year 1981 for the purpose of carrying out during such fiscal year the career development and advancement and career development and training programs provided for under chapter 45 of title 38, United States Code, as added by section 301 of this Act.

(b) The Secretary of Labor may also transfer to the Administrator of Veterans' Affairs in any fiscal year such amounts from funds appropriated to the Department of Labor to carry out employment and training programs as the Secretary of Labor considers necessary or appropriate to carry out the programs provided for under chapter 45 of title 38, United States Code, as added by section 301 of this Act, or such amounts from such funds for such purpose as may be specified from time to time in appropriation Acts.

On page 32, line 3, strike out "Affairs)." and insert in lieu thereof "Affairs).".".

On page 32, strike out lines 4 through 10.

Mr. PRESSLER. Mr. President, I ask that the amendment (UP No. 1547), being a modification of amendment No. 1906, be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1547) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1906, as modified.

AMENDMENT NO. 1906, AS MODIFIED

Mr. PRESSLER. Mr. President, I have a number of remarks to make in regard to this amendment. I would like to cover the recent changes made in the amendment.

The first change involves the cost. Originally, we had intended to fund our amendment by deferring the cost-of-living increase in the GI bill benefits. However, the Senate Veterans' Affairs Committee included such a delay in the reconciliation bill as a cost savings measure. As a result, this technical amendment will provide the authority for the Secretary of Labor to transfer unspent HIRE funds to the Veterans' Administration for the purpose of paying for the 1981 costs. This money would otherwise revert back to the Treasury at the end of this fiscal year.

The second change is only a technical change which will make the program more workable.

Most of the Members of this body are familiar with the provisions of this amendment. Senator HEINZ and I offered similar amendments when S. 780, the GI Bill Amendments Act of 1979, was debated here in January of this year. At this time, on the behalf of its 12 cosponsors, I would like to bring this amendment up for consideration again.

The career development, advancement and training program amendment would permit disabled and Vietnam theater veterans to use their earned readjustment entitlement to provide direct financial incentives to employers to hire, train, and advance them in permanent and productive private sector careers.

We bring this amendment before the Senate again for three reasons:

First, members of the Senate Veterans' Affairs Committee had expressed concerns that hearings had not been held on this amendment. Since that time, hearings have been held. Testimony at the hearings brought out a clear need for a career development advancement and training program.

Second, this amendment is an improved version of the amendments that were offered in January to the GI bill amendments of 1979. The revised amendment includes technical corrections, additional safeguards, and legislative clarifications sought by the VA.

The third and most important reason, however, is the unemployment rate. In January, Vietnam veterans faced an unemployment rate of 5.7 percent. Today, they face an unemployment rate of 7.1 percent. This factor alone provides the need for the passage of our amendment. Had it not been for their service to and sacrifice for their country in Vietnam, many of these unemployed veterans would have the seniority and the skills to retain employment in our present troubled economy. The fact that they are so sensitive, as a group, to the pressures of the economy shows that, for the most part, too many are employed in short term, dead-end jobs. This makes them prime targets for being layed off when a recession strikes.

Mr. President, let me put this third point in perspective. Historically, veterans have enjoyed an unemployment rate much lower than that of the general populace. They are generally in good physical shape, as they must pass a comprehensive physical examination in order to be in the service. The unique nature of the Vietnam war and its veterans has reversed this trend, however. Today, Vietnam veterans face an unemployment rate of 7.1 percent while nonveterans of the same age group are unemployed at a rate of 6.4 percent. In the past year alone, the unemployment rate for Vietnam veterans has doubled.

This can lead us to only one conclusion: Too many Vietnam veterans are employed in short term dead-end jobs. When the economy suffers, these veterans are the first ones to lose their jobs. Passage of our amendment would allow these veterans to establish meaningful careers. The Vietnam veterans career development advancement and traning program would allow veterans to use their earned GI bill entitlement to reimburse employers who provide them with substantive career opportunities.

To date, the employment programs that Congress has provided the Vietnam veteran have been ineffectual, short-term welfare programs such as CETA. As a veteran who served in the military in Vietnam, I find it appalling that we offer our veterans temporary, social welfare employment programs. The unique nature of the problems faced by Vietnam veterans demands a program able to deal with the problems. Our amendment would do that. By allowing the veteran to use GI bill entitlement to provide training and employment in a substantive career, this program adapts itself to the special needs of the individual veteran, especially those that have fallen outside of the scope of past programs.

Our amendment authorizes the same level of funding for employer reimbursement as is presently offered to veterans using the GI bill for educational purposes.

The career development, advancement and training program will cost approximately $3,000 per veteran. This is far less than the cost of institutional training under the GI bill which is $10,000 per veteran or CETA Public Service Employment, which is $7,800.

So I think the cost effectiveness of this program is well established.

The 1981 cost of our amendment is $19.3 million. The total 5-year cost is $246.6 million. Both of these are estimates made by the Congressional Budget Office on July 15 of this year.

Mr. President, I am very aware, as a member of the Senate Budget Committee, of the limitations imposed upon veterans programs by the budget resolution. We had intended to fund our amendment by deferring the cost-of-living increase in GI bill benefits. However, the Senate Veterans' Affairs Committee included such a delay in the reconciliation bill as a cost-saving measure.

As a result, our amendment will provide the authority for the Secretary of Labor to transfer unspent HIRE funds to the Veterans' Administration for the purpose of paying for the 1981 costs. This money would otherwise revert back to the Treasury on October 1, 1980. Congress appropriated HIRE funds in 1977 for a private sector on-the-job training program, which is what the career development program is.

No money whatsoever will be taken away from a service-connected disabled veteran or a survivor of one who died of service-connected disabilities, and no money will be taken away from a GI bill recipient. In fact, veterans will be given a new opportunity for a meaningful readjustment program at no first-year cost to the VA.

In order to participate in the Vietnam veterans career development, advancement, and training program, employers must agree that the employment will continue once the funding has ended. Because the program is designed to provide a meaningful, long-term career opportunity, it removes the structural inadequacies in past training and educational programs: The career continues after the Government funding expires. It allows Vietnam veterans who choose not to use their earned GI bill entitlement for educational purposes to provide themselves with a readjustment tool. It offers businessmen an incentive to hire Vietnam veterans. This lack of incentive has been the downfall of past employment programs. In testimony before the House Veterans' Affairs Committee in 1979, the Veterans' Administration endorsed the concept of employer subsidies as a means of providing incentives. They said:

> A very significant factor in the low usage rates for job training programs has been employer resistance. The typical employer, when asked to participate in the VA's job training program is inclined to ask, "What's in it for me?" Although our outreach personnel can point out the advantages to the employer, such as maturity and reliability of the veterans, the lack of tangible benefits to the employer has been a major deterrent to greater use of the job training program.
>
> To counteract this tendency on the part of employers, we recommend that in the case of vocational rehabilitation trainees, consideration be given to providing a direct financial incentive in individual instances to the employer-trainer in the form of a subsidy. This subsidy would help cover the cost of training.

In recent testimony before the House Veterans' Affairs Subcommittee on Education, Training, and Employment, Dennis R. Wyant, Deputy Assistant Secretary of Labor for Veterans' Employment, said:

> The Department of Labor is willing to coordinate with the VA to help develop regulations authorizing payment to employers for on-the-job training in individual instances when the Administrator determines such payment is necessary to obtain the training or to begin employment. In the labor market of recent years, the VA's on-the-job training programs have suffered from a lack of employer incentive. By comparison, reimbursements to employers for the cost of training have been a feature of many of the Department of Labor's on-the-job training programs for a number of years.

This is exactly what the career development, advancement, and training program does. It provides a direct financial incentive in individual instances to the employer/trainer in the form of a subsidy. The subsidy would help cover the cost of training. It would provide the incentive necessary for this program to work.

Payment under the career development program would be authorized after the veteran has been in his or her job and/or training for 90 days. Payment then can be made only for employment and training completed and only after both the veteran and employer sign separate certificates that the employment and training was actually completed.

The program utilizes almost entirely existing delivery systems and approval mechanisms and thus would not require expanding the bureaucracy or increasing Government regulations.

This amendment is strongly supported by Vietnam Veterans of America.

In both this instance and January when this amendment was before the Senate, the Vietnam Veterans of America have supported this legislation strongly. It is one of the cornerstones of their legislative package. We sincerely appreciate their support.

Mr. President, it is past the time when we should make an objective assessment of our debt to Vietnam veterans. The Vietnam war ended over 7 years ago. We committed 8 million of our young people to a war that was unpopular by all standards. When the war was over, Americans attempted to remove all reminders of a conflict that had no resolution. Because few people wanted to talk about Vietnam, few wanted to talk with its veterans. When the country ignores problems, so does Congress. A recent study done by Louis Harris and Associates, Inc. for the Veterans Administration entitled, "Myths and Realities: A study of attitudes toward Vietnam Era Veterans" shows that the American people are ready to deal with the continuing problems of Vietnam veterans. In chapter 10, page 243, the study states:

> Vietnam Era Veterans, particularly those who are under 35 and who served in combat, feel that certain obligations to them have not been met by the country they served. Most feel that they have received the same benefits as veterans of World War II and Korea. They also feel, however, that they have suffered more serious problems than those faced by veterans of earlier wars. Hence, a majority of Vietnam Era Veterans feel that they, as a group, have not received all the benefits they deserved. Moreover, nearly three-quarters of VEV's feel that the federal government should be doing more for veterans of the Vietnam era.
>
> The American public agrees with these veterans of the Vietnam era. A two-thirds majority of the public feel that the federal government should do more to help the Vietnam Era Veteran.

The most severe problem confronting today's Vietnam disabled and theater veteran is unemployment and underemployment. The country is ready to deal with those problems. Congress must also do so.

In summary, this amendment is directed toward the theater veterans of Vietnam and disabled veterans. Preliminary studies indicate that the greatest employment need is with those veterans who actually served in the Vietnam theater. This also reduces the cost considerably.

Earlier this year, I had an amendment which provided that the statistics on employment and education be broken out separately for Vietnam theater veterans as opposed to Vietnam era veterans. Most of the psychological damage was suffered by those who actually served in Vietnam, as opposed to those who served in the military during the Vietnam era. This amendment, to meet some of the requirements and to meet the greatest need, is limited to those Vietnam era veterans who served in the theater.

Since World War II, our main emphasis in veteran programs has been educational in nature. However, many of those veterans who actually served in Vietnam have not chosen to go on to college and have not used their GI benefits. They also have not chosen to go on to vocational school.

Part of the reason is a result of the draft at the time. The draft and the system we had of bringing people into the Vietnam war was such that those with the lowest educational backgrounds and the lowest income ended up serving in Vietnam.

Indeed, as I have stated in the past on the Senate floor, if we have a draft in the future, I hope it is not as unfair as that draft.

As one who served in the Army in Vietnam during the conflict, I saw firsthand that most of the persons who ended up serving in Vietnam came from our lowest socio-economic groups and from our lowest educational achievement groups. The result has been that they have not responded to the educational programs in the GI bill.

That is why an amendment such as this is necessary. It allows those who wish to work to have on-the-job training in a very positive program—training that will increase their skills in a vocational sense and will result in greater productivity.

The Congressional Budget Office did a study earlier this year, which I understand may be referred to on the floor, in which they established that there was evidence that those who served in the theater had no greater needs.

I dispute that. I have asked the various governmental agencies to break out the figures, and it will be very easy to do—it will not cost much at all—on a computer and find out for sure if the theater veterans did suffer greater psychological damage.

All related studies have shown that fact to be true. The recent Harris study showed that.

I have written to the agencies responsible for accumulating labor data and they have written back saying that they do not wish to break it out at this point. That is very much taking the line of the old-line veterans organizations which incidentally are not opposing this amendment.

But let me say that I think it is time that we recognize that those who served in the Vietnam theater have a unique situation because of the attitudes they ran into when they came back to the United States.

It is a war of which they are not proud and of which our society is not proud. World War II soldiers are very proud of their service.

Also, I think, that even in conversations that I have had about service in Vietnam, people think that a veteran did something wrong, that he did not respond properly if he served in Vietnam. It is not a war that our country is proud of and the people who served in it are sort of, in an intellectual fashion, browbeaten on a daily basis by any mention of their service and what their activities may have been in Vietnam.

I also might say we have continuing problems with matters such as agent orange. I am also cosponsoring an amendment dealing with this dioxin which I feel very strongly about. Our Government and the bureaucracy and indeed some of the traditional veterans organizations have been resisting some of the progress that we should be making in areas such as these.

But this career development amendment is a very cost-effective amendment. In the first year it would use funds that already exist. It would actually increase taxes paid by increasing the training levels and the skills of many of our veterans, and it is one of the more positive programs that I think we have to offer the Vietnam veterans.

Mr. President, I ask that my colleagues give this amendment their favorable consideration. I have circulated to every office a statement on its cost and a statement of its purpose. I thank the Vietnam Veterans of America and other organizations who helped in contacting various Senators' offices on this issue.

Mr. President, I wish to reserve the remainder of my time for a rebuttal if there are speeches against this amendment. I am concluded in presenting the amendment at this time, and I wish to reserve the remainder of my time.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. LEVIN). The Senator has 27 minutes remaining.

Mr. CRANSTON. Mr. President, I yield such time as may be required to my distinguished colleague from Wyoming.

Mr. SIMPSON. Mr. President, I express my appreciation to Senator CRANSTON again. I enjoy my working relationship with him and with members of his fine staff.

I rise in objection to the amendment of Senator PRESSLER. I do that reluctantly, but after very careful consideration of the amendment I can only conclude that it is crafted, I think, on some inaccurate assumptions and, if enacted, I think it could be subject to widespread abuse. In the final analysis, I think it would be far too expensive when it is weighed against the benefits to be gained.

Vietnam veterans do, indeed, suffer perhaps higher than average unemployment rates. Yet the Congressional Budget Office in a recent study concludes that these unemployment rates are not indicative of the true portrayal. Indeed, this CBO analysis finds that if other factors, such as educational levels, race, and age are controlled in the equation these veterans of the Vietnam era enjoy a better rate of employability than do similarly situated nonveterans.

Therefore, I think it is inappropriate to assume that the Vietnam-era veterans suffer a disproportionate level of unemployment for reason alone of their military service.

It is, therefore, difficult to justify this amendment as a readjustment effort, especially when we consider that the veteran achieves a level and a quality of employment higher than that of a similarly situated nonveteran.

That is not to imply, Mr. President, that I am resisting initiatives which are designed to enhance the employability of Vietnam-era veterans. Indeed, there are programs within CETA and targeted jobs tax credit provisions which are specifically designed to afford the Vietnam-era veteran enhanced employment opportunities, and there are many others also.

Many of the existing programs are quite workable and have proven to be so and will, I think, for the indefinite future continue to provide the means necessary to assist the Vietnam-era veteran who is seeking employment.

The proposed amendment will in large measure be, I think, very duplicative of those efforts and far, far more costly.

Let me share with my colleagues a very interesting article from the Stars and Stripes which I recall I used to read when I was laboring in Germany in 1955 and 1956 near the end of the Army of Occupation. This is a report of the remarks of Max Cleland, the head of our Veterans' Administration, before the American Legion Convention in Boston. This is a quote of Thursday, August 21, 1980, in the Stars and Stripes of Darmstadt, Germany:

> Vietnam veterans are taking better advantage of more benefits than did their World War II counterparts, the head of the Veterans Administration told the American Legion convention Tuesday.
>
> "The current GI Bill for Vietnam veterans has been the most successful, by any standard," and Max Cleland, who lost both legs and an arm while serving in the Army in Vietnam.
>
> Cleland said some 65 percent of eligible Vietnam-era veterans have participated in the GI Bill program, compared to 50 percent of those who saw duty during World War II.
>
> "The 4.5 million Vietnam-era veterans who have trained at the college level exceed by more than one million the combined total of 3.4 million World War II and Korean conflict veterans who trained at the college level," he said.
>
> Cleland's appearance before the 62d annual American Legion convention . . .

The synthesis of these comments is that the VA has undertaken all manner of programs to aid Vietnam veterans, to include the pending legislation which will create a 2-year delimiting date extension on GI bill benefits for the educationally disadvantaged.

There have been numerous legislative accomplishments on behalf of the Vietnam veterans, and I see my good colleague from South Dakota with slight trace of smile crossing his face as he has heard this from me before. We should not say, even in a moment of emotionalism, that we are doing very little for the Vietnam-era veteran. That is just not the case.

I could describe a litany of programs that have been presented to this Congress and passed in the past 10 years that provide a level of assistance and support to the Vietnam veteran that far exceeds that provided to any other veteran of any war in our Nation's history.

If there is one group of veterans that has not been properly taken care of, then certainly it is the World War I veteran.

I ask unanimous consent to have printed in the RECORD the legislative accomplishments of the past 10 years on behalf of Vietnam-era veterans.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEGISLATIVE ACCOMPLISHMENTS ON BEHALF OF VIETNAM-ERA VETERANS

Beginning 10 years ago the Veterans' Affairs Committee of the Senate conducted an extensive congressional investigation into the adequacy of VA medical care for veterans wounded in Vietnam to explore the special problems confronting the VA in caring for veterans of the Vietnam conflict. These hearings led to dramatic improvements in VA hospital staffing, facilities, and services. Since 1970, six new VA hospitals have been built; the staff-patient ratio has been increased from 157 FTEE's to 100 patients in 1974, 50 more than 200 FTEE's to each 100 patients; the health-care staff has been increased by 50,000 since 1970; the number of outpatient clinics has been increased from 209 to 219 in the last 5 years; and special pay for physicians and dentists was authorized in 1975 to improve the retention and recruitment of these health-care professionals.

Also, in 1970, the Veterans' Affairs Committee of the Senate reported the Veteran's

Education and Training Amendments Act of 1970 (Public Law 92-219). This legislation included provisions to:

First. Increase rates of GI bill benefits by 34.6 percent. During the first year after this rate increase took effect, there was a 56-percent increase in GI bill participation.

Second. Establish a program of "special assistance for the educationally disadvantaged" under which veterans without high school diplomas or in need of refresher or remedial courses could—without charge to entitlement—use GI bill benefits for pursuit of appropriate programs or education. Since this program was established, more than 407,000 veterans have received benefits under it.

Third. Establish a program for tutorial assistance under the GI bill. Almost 200,000 veterans have used tutorial assistance—receiving $17.7 million in benefits—through this program.

Fourth. Establish the "predischarge education program" to provide an opportunity for service personnel to pursue high school, remedial, or refresher courses—while on active duty. More than 304,000 Vietnam-era personnel participated in this program.

Fifth. Provide for a greatly expanded "veterans' outreach service program" designed to search out recently discharged veterans, to advise them of benefits, and to assist them in obtaining them. Since enactment of this expanded authority, the VA has communicated with over 6.2 million Vietnam-era veterans shortly after release from service, established 72 "one-stop" USVAC centers to provide complete benefit information and assistance to veterans, conducted job interviewing classes for those needing guidance in order to obtain meaningful employment, and provided veterans in rural areas with service by use of mobile vans.

At the same time, the Veterans' Affairs Committee of the Senate supported an increase of rates of service-connected compensation—which raised the rate of compensation for "total disability" by 12.5 percent (Public Law 91-376). Since that time, nine additional rate increases have been approved.

In 1970, the Veterans' Affairs Committee of the Senate reported the Veterans' Housing Act of 1970 (Public Law 91-507) which provided for VA loan guarantees for veterans who wish to purchase mobile homes. From the inception of the mobile home loan program, the VA has guaranteed 33,684 loans. It is estimated that over 60 percent of these loans—totaling almost $396 million—were made to Vietnam-era veterans.

In 1971, the Labor and Human Resources Committee of the Senate reported the Emergency Employment Act of 1971 (Public Law 92-54) to require that veterans who served in the Indo-China area be given special consideration in filling public employment program (PEP) jobs. Under this authority, such veterans constituted 13 percent of all participants.

In 1972, the Senate passed the veterans' cost-of-instruction (VCI) program legislation as part of this Education Act Amendments of 1972 (Public Law 92-318). This authority was designed to provide incentives and supporting funds for colleges and universities to recruit veterans and to establish special programs and services necessary to assist GI bill veteran-students in readjusting to an academic environment and to reach out to surrounding communities to get more veterans back to school under the GI bill, with special emphasis on educationally disadvantaged veterans.

Also in 1972, the Senate passed the Veterans' Compensation and Relief Act of 1972 (Public Law 92-328), which included provisions to provide an annual clothing allowance for service-connected disabled veterans whose prosthetic devices or wheelchairs tend to tear or wear out their clothing.

In 1972, the Veterans' Affairs Committe of the Senate reported the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (Public Law 92-540). This legislation included provisions to:

First. Increase GI bill benefits by 25.7 percent and increase assistance rates for VA apprenticeship and OJT programs by 48 percent.

Second. Provide for advance payment of GI bill benefits at the start of a school term.

Third. Establish the VA work-study program for veterans attending school under the GI bill. An average of 50,000 GI bill students have benefited annually from participation in this program receiving about $20 million each year in assistance.

Fourth. Set up the VA education loan program as a means of supplementary assistance. Since its inception, 65,761 loans have been made under this authority, totaling $63.9 million.

Fifth. Revised chapter 41 of title 38 setting forth the basic veterans employment responsibilities of the Department of Labor as administered by the Veterans Employment Service, stressing the needs of recently separated veterans.

Sixth. Add a new chapter 42 to title 38 to require Federal contractors to give emphasis to employment of Vietnam-era and disabled veterans and provide for mandatory listing of job openings with local employment service offices and priority in referrals to disabled and Vietnam-era veterans. This requirement has led to the employment of more than 540,000 disabled and Vietnam-era veterans.

In 1973, the Senate passed Senate Concurrent Resolution 51, to express the gratitude of the Congress to the Vietnam veteran for his efforts to make it possible for our Nation to observe Veterans' Day, 1973, in peace, and to commend the Vietnam veteran for his valor, courage, loyalty, and devotion to duty as an American serviceman.

In 1973, the Comprehensive Employment and Training Act of 1973 (CETA) (Public Law 93-203), was drafted to require CETA prime sponsors to give special consideration to certain unemployed veterans in filling public service employment jobs. Almost 2 million Vietnam-era veterans have been served by CETA programs since 1973.

In 1974, the Veterans' Affairs Committee of the Senate reported legislation, ultimately enacted as Public Law 93-337, to extend the delimiting period under the current GI bill from 8 years to 10 years. It is estimated that this extension has benefited more than 2 million veterans.

In 1974, the Senate passed the Emergency Jobs and Unemployment Assistance Act of 1974 (Public Law 93-567) which among other things provided for the conduct, by the Secretary of Labor, of a special outreach and public information program to promote maximum effort to produce job and job training opportunities for Vietnam-era veterans.

In 1974, the Veterans' Affairs Committee of the Senate reported the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (enacted as Public Law 93-508). This measure included provisions to:

First. Increase rates of GI bill benefits by 25.7 percent. During the first year after this rate increase took effect, there was a 25-percent increase in GI bill participation.

Second. Add an additional 9 months of GI bill entitlement for a total of 45 months of maximum entitlement to be earned by a veteran.

Third. Authorize refresher training under the GI billl.

Fourth. Establish the veteran representative on campus (Vet-Rep) program. Under this program more than 1,327 "Vet-Reps" were assigned to 3,320 colleges across the Nation to assist veterans in obtaining GI bill benefits.

Fifth. Require the Secretary of Labor to establish definitive standards for determining compliance with the employment assistance programs mandated by chapter 41.

Sixth. Strengthen chapter 42 to require Federal contractors to take affirmative action to employ Vietnam-era and disabled veterans.

Seventh. Establish the authority for veterans' readjustment appointments (VRA) under which certain disabled and Vietnam-era veterans could receive noncompetitive appointments (up to a GS-5) in the Federal civil service. Since its inception, more than 125,000 veterans appointments have been made throughout the Federal Government.

Eight. Extend the protections of veterans' reemployment rights to persons who prior to military service had been employed by State or local governments and otherwise improve the veterans reemployment rights program.

In 1974, the Veterans' Affairs Committee of the Senate reported the Disabled Veterans' and Servicemen's Automobile and Adaptive Equipment Amendments of 1974 (Public Law 93-538) to liberalize eligibility requirements for Vietnam-era service-connected disabled veterans to receive automobile assistance grants, to increase the grant by 17.8 percent, to add the provision of adaptive equipment to this benefit as well as driver training in the use of the adaptive equipment, to require the promulgation of quality and safety standards for adaptive equipment, and specifically to authorize research relating to improvements in such adaptive equipment.

In 1975, the Veterans' Affairs Committee of the Senate reported legislation (Public Law 94-482) to extend for 3 years the authority for the VCI program, require increased emphasis on educationally disadvantaged veterans, and provide for offsetting the impact of the May 31, 1976, GI bill delimiting date in the formula for determining which colleges were eligible for and the size of their grants.

In 1976, the Veterans' Affairs Committee of the Senate reported the Veteran's Education and Employment Assistance Act of 1976 (Public Law 94-502). This legislation provided an 8.0 percent increase in GI bill benefits and contained provisions to: First, repeal the restriction on graduate study during the last 9 months of a veterans' entitlement; second, increase the maximum amount of a VA education loan; and third, establish a Deputy Assistant Secretary of Labor for Veterans' employment issues.

In 1977, the Veterans' Affairs Committee of the Senate reported the GI Bill Improvement Act of 1977 (Public Law 95-202). This measure included provisions to:

First. Increase by 6.6 percent the rates of GI bill benefits.

Second. Extend the delimiting period during which a veteran or eligible spouse may use GI bill benefits when the veteran has a mental or physical disability which prevents initiating or completing a course of study. More than 2,700 veterans have received extensions of their delimiting periods as a result of this provision.

Third. Extend for 2 additional years the period of time a veteran is able to receive direct education loans when enrolled full time at the time the delimiting period expires. More than 1,400 veterans have received $1.5 million in assistance under this authority.

Fourth. Require more extensive VA educational and vocational counseling and outreach services.

Fifth. Provide for a Federal-State matching program of accelerated tuition assistance for veterans enrolled in high-cost institutions of higher learning. To date, Louisiana has enacted legislation to establish a mechanism for participating in this program.

Sixth. Require the VA to conduct a study

into the extent to which Vietnam-era veterans use GI bill entitlements, complete programs of education under the GI bill, and achieve job satisfaction and readjustment.

In 1978, the Veterans' Affairs Committee of the Senate reported the Veterans' Housing Benefits Act of 1978 (Public Law 95-476). This legislation included provisions to:

First. Increase from $25,000 to $30,000 the maximum amount of grants for specially adapted housing to assist severely disabled veterans. Because of the proportionately greater number of Vietnam-era veterans who have suffered the severe disability requirement for eligibility for specially adapted housing, this increase is particularly beneficial to veterans of that era.

Second. Extend entitlements to VA home, condominiums, and mobile home loan guarantees and loans to additional Vietnam-era veterans by reducing from 161 days to 90 days the length of service requirement.

In 1978, the Veterans' Affairs Committee of the Senate reported the VA Programs Extension Act of 1978 (Public Law 95-520). This measure included provisions to:

First. Extend for 3 years (until September 30, 1981) the VRA appointments authority and expand the VRA program by removing all limitations based on the date of the veteran's discharge, raising the maximum civil service grade appointment from GS-5 to GS-7, and making any service-connected disabled veterans rated at 10 percent or more eligible for an appointment regardless of years of education completed.

Second. Give service-connected disabled veterans the right to file with the Veterans Employment Service in the Department of Labor a complaint that he or she has been discriminated against because of handicap by a Federal contractor.

In 1978, the Senate passed the Comprehensive Employment and Training Act Amendments of 1978 (Public Law 95-524) which included provisions to:

First. Require that, with respect to public service jobs, prime sponsors give special consideration to disabled and Vietnam-era veterans (with special emphasis on Vietnam theatre veterans).

Second. Require the Secretary to take appropriate steps to provide for increased participation of disabled and Vietnam-era veterans (with special emphasis on theatre veterans) in all CETA job and job training opportunities.

Third. Promote maximum arrangements by CETA prime sponsors for utilization of apprenticeship and other OJT opportunities available under the GI bill.

Fourth. Require the Secretary of Labor to coordinate with the Administrator of Veterans' Affairs in carrying out all of the Department's responsibilities with respect to veterans under CETA.

Fifth. Add veterans' organization representatives as permanent members of local, State, and national planning councils. As of October 1, 1979, 365 prime sponsors had veterans' representatives serving on their planning councils.

Sixth. Include as a special Federal responsibility of the Secretary the conduct of the veterans' outreach and public information program enacted by Public Law 94-567.

In 1978, the Senate passed the Revenue Act of 1978 (Public Law 95-600) which included provisions to authorize the targeted jobs tax credit program designed to promote increased employment of seven "target groups" including low-income Vietnam-era veterans under 35 years of age and disabled veterans participating in vocational rehabilitation programs. The program was implemented in May 1979, and, as of July 31, 1979, 3,152 Vietnam-era veterans have been certified as eligible for the credit and 880 have been employed.

Last year, the Veterans' Affairs Committee of the Senate reported the Veterans' Health Care Amendments of 1979, signed into law as Public Law 96-22 on June 13, 1979. This measure contains a number of important new VA health-care programs. Most directly targeted to Vietnam-era veterans is the readjustment counseling program, under which the VA is finally authorized to provide readjustment counseling for those Vietnam-era veterans who have not made a successful transition from their military service to civilian life.

The agency is establishing 85 store-front facilities across the country, staffed by outreach teams that will go into the community to locate and assist Vietnam-era veterans. The emphasis of the program will be on peer counseling in a nonformal setting so as to encourage the participation of those veterans distrustful of normal VA and other governmental efforts. It is estimated that 1,970,000 Vietnam-era veterans will participate in this program in the first 2 years.

Three other improvements in VA's health-care programs enacted in Public Law 96-222 will also benefit Vietnam-era veterans; new authority for the VA to enter into contracts with halfway houses and other community facilities for the treatment of veterans suffering from alcohol and drug abuse dependencies; authority for the VA to provide preventive health-care services for veterans with service-connected disabilities rated at 50 percent or greater and veterans receiving care for service-connected disabilities; and extension of dental care benefits to all veterans with 100-percent service-connected disabilities and to those who were prisoners of war for at least 6 months.

In this year, the Senate Veterans Affairs Committee has reported legislation that improves provisions of the GI Bill and provides for a much needed cost of living increase. Additionally, the Committee has reported out legislation that streamlines and much improves the vocational rehabilitation available to our service-disabled veterans. We have also reported legislation revising the incentive pay system for VA physicians and dentists in order to attract and retain quality health care professionals in the VA hospital system. And of course as we do each year, we have adjusted the rates of compensation for the service-disabled to compensate for the rate of inflation over the past twelve months.

Anyone who claims that the Congress had not afforded the Vietnam-era veteran consideration above and beyond that provided to the veterans of earlier conflicts is obviously misinformed or for his own reasons chooses to ignore the legislative accomplishments of the past decade.

Mr. SIMPSON. Mr. President, the Senator from South Dakota also asserts that the necessary safeguards have been incorporated into this amendment in order to alleviate the very real problem of abuse. But as far as I am able to determine in my review of it, there is very little in that amendment that would prevent an unscrupulous employer or unscrupulous veterans from thoroughly gimmicking the system, and that causes me a great deal of concern.

Employers can and will raise a veteran's salary or afford unemployed veterans an employment opportunity to only lay off the veteran when his eligibility under the program terminates, and I see no effective way of preventing such abuse.

The necessary bureaucratic safeguards against such widespread abuse would be both inappropriate and prohibitively expensive. I can not envision how the Congress could craft the kind of safeguards to control the abuse which, I think, could and would take place.

I think it is not beyond reason to expect that 50 percent of the costs of this amendment could easily be absorbed by the abuses and the efforts to combat those abuses that would naturally follow. We know that has happened when we have used this on previous occasions in an employer-employee relationship where we paid the employer to hire the employee.

You may be assured that there will always be abuses in that type of intrusion into the normal marketing and social system of employer-employee relationships.

Mr. President, the Senator from South Dakota has also indicated that we can find the necessary funding for the program in certain unobligated accounts within the Department of Labor. That causes me to prick up my ears a bit. I have never found in my time in Washington a Federal bureaucracy worth its salt that would ever have unobligatd funding available in the amounts that would be required by this program.

That is just not going to happen. I do readily admit that the VA could administratively delay the implementation of this program and, thereby, perhaps control first-year costs. But I doubt that even then the necessary moneys could be found to effect even a minimum first year effort. I am absolutely convinced, Mr. President, that funding beyond the first year would be tremendously expensive and would require the very drastic alteration of other benefit programs in order to keep this one program alive.

Mr. President, I must respectfully request that my colleagues reject this proposal of the very able Senator from South Dakota.

At this time I yield to my colleague from Oklahoma.

Mr. PRESSLER. Mr. President, will the Senator yield for two or three questions?

Mr. SIMPSON. I yield for a question to the Senator from South Dakota on his time.

Mr. PRESSLER. Fine.

The Senator said the study by the Congressional Budget Office offered some conclusions. Did those carrying out the study have the statistics to delineate between theater and era veterans, which our amendment does?

Mr. SIMPSON. Would the Senator please restate his question?

Mr. PRESSLER. Yes. The Senator said a study by CBO, in his remarks, was involved. As far as we can tell those who carried out that study did not have statistics to delineate between theater and era Vietnam veterans. This amendment is limited to theater veterans.

Our contention has been that the greatest psychological damage and the greatest problems exist among theater veterans. Indeed the various statistics prove that. As far as we can tell, CBO did not have statistics to back up their rather sweeping statement. Is the Senator aware of any statistics and could he produce them?

Mr. SIMPSON. I can share with the Senator from South Dakota that in the study it was the statistics of the use of resources that 85 percent of those in the study are theater veterans of Vietnam.

Mr. PRESSLER. Yes. But as far as employment problems are concerned, did the CBO have statistics distinguishing theater veterans from era veterans?

Mr. SIMPSON. Not specifically, but the age groups of veterans studied had a high proportion of individuals with Vietnam theater service, approximately 55 percent of those in the study population. I also believe, if I correctly recall, that the Senator proposed amendments to legislation requiring the study of the problems of Vietnam-era veterans that would require separate statistical analysis of Vietnam theater veterans.

Mr. PRESSLER. That is correct.

First of all, we have a copy of the study here, and I do not want to spend a lot of time on this, and perhaps our staffs can work this out here, but we cannot find that 85-percent figure. We have the study here. Also I have been trying to make a point of it, and it is still grinding through the legislation, to have the agencies distinguished in terms of employment and need between those theater veterans as compared to era veterans, and that is what this amendment is directed to.

Many of the fine remarks by my colleague from Wyoming were directed in general to Vietnam-era veterans. This amendment focuses down on those with the sharpest problems, those who are theater veterans, who were, first of all, almost selected from the lowest economic and educational classes in America to go into the theater, and since then have suffered the greatest psychological problems.

We are searching here through this study which the Senator has cited, and which I believe will be cited by my friend from Oklahoma, but we cannot find, at least maybe the staff can show us, where that 85-percent figure comes from.

Mr. SIMPSON. Mr. President, we will certainly provide that information for the Senator, and on reflection I believe that the figure is probably too high. I will provide you the figure, if one can be accurately determined, at the earliest opportunity. Both I and Senator Cranston will also be pressing for a study which will investigate the specific problems of theater veterans in any general study with regard to Vietnam-era veterans.

I am one of those—and I speak only for myself in this instance—and I made these comments at the national convention of VFW in Chicago several days ago—who considers appropriate a more specific targeting of benefits for veterans than we have done in the past, and that distinctions may well be warranted in awarding benefits to theater veterans versus era veterans.

There may not be others who share that view, but to me that becomes important that we begin to assess the needs of different groups of veterans, separately. Granted there are those who, through no fault of their own and without the ability to control it, served only within the United States or served only in an administrative capacity versus those who served in combat areas and in combat duties. I can assure the Senator that I will personally join him in calling for the necessary studies to address the differences in needs and circumstances between theater and nontheater veterans.

Mr. PRESSLER. We have the study over here, and perhaps our staffs can get together. We cannot find the 85-percent figure that the committee has repeatedly referred to.

Mr. SIMPSON. I have been informed, Mr. President, that the age groups used in the study had as high as an 85-percent composition of theater veterans but the Senator may be assured that I will check that figure closely since it seems inordinately high.

Mr. BELLMON. Mr. President, will the Senator yield?

Mr. SIMPSON. Mr. President, I yield to the Senator from Oklahoma (Mr. BELLMON).

Mr. BELLMON. Five minutes.

Mr. SIMPSON. I yield 5 minutes.

Mr. BELLMON. Mr. President, first, I would like to commend the distinguished floor manager and the ranking member of the Veterans' Affairs Committee for the fine job they have done over the years in looking at the needs of American veterans.

I also appreciate the interest the distinguished Senator from South Dakota has in the Vietnam-era veteran, and I readily accept the fact that there are special problems that Vietnam veterans have been faced with that were not necessarily faced by veterans of other wars, although I think it is a mistake to feel that those of us who served in World War II all came back as conquering heroes and had no problems to face. I think any veteran has a certain period of adjustment to go through.

While the Vietnam veterans' problems may have been somewhat more severe, they are certainly not totally different from those that have been faced by veterans throughout our history.

Mr. President, as much as I appreciate the good intentions of the Senator from South Dakota and Senator HEINZ, I feel that the amendment should be defeated. I would like to give some reasons for my conclusions.

In the first place, this amendment would establish two career development and advancement programs for Vietnam-era veterans, and both of them, Mr. President, would be entitlements. It is the entitlements programs that are causing us to have such an enormous problem in managing the fiscal affairs of this Nation.

The first program that this amendment would establish would permit such veterans to use their GI bill entitlements to subsidize up to one-third of their wages in public or private sector employment. The second program would permit such veterans to use their GI bill entitlements to reimburse public or private sector employers for training costs and to subsidize a portion of their wages. Under the proposed program, GI bill entitlements could only be used for a maximum period of 18 months, but there is also the possibility, of course, that that could be extended. I understand and commend my colleagues' efforts to ease the problems of Vietnam-era veterans because they, as I have said, do have difficulties sometimes in adjusting to civilian life.

The impression, Mr. President, that has been given by numerous reports in the press is that many Vietnam-era veterans are unable to readjust to civilian life. I do not accept that impression totally. In particular, many difficulties cited are in the area of employment and career development. Combat veterans especially are often described as having the worst problems in getting and keeping jobs.

However, the fact is that the Federal Government has provided a number of ways to help veterans resume their civilian careers. These include the GI bill which provides both institutional and on-the-job training, rehiring rights to jobs previously held, additional points on civil service exams and subsidies to employers who hire veterans under certain circumstances.

Mr. President, Congress in the Revenue Act of 1978 created a targeted jobs tax credit to offer businesses of any size the incentive in the form of tax credits to hire hard-to-employ individuals. The Pressler-Heinz amendment would largely duplicate that program. Economically disadvantaged Vietnam veterans under the age of 35 are one of the targeted categories eligible for this program. Businesses can qualify for a tax credit of up to 50 percent of the first year's wages (up to $6,000) and 25 percent of the second year's wages (up to $6,000) for each eligible employee hired. So that is a program that is very closely paralleled to the program that would be established by the Pressler-Heinz amendment.

Analysis performed by CBO does not corroborate the assumption that those who are veterans are subject to either low earnings or to higher unemployment. Variation in the proportion of persons with low income and variation in unemployment rates are generally correlated with education, age, and race, but not with whether one is a veteran. There are two exceptions to this. First, young veterans have a higher unemployment rate than nonveterans of similar age. This probably results from the short period since discharge which they have had time to look for work. Second, there is some indication that veterans who served in combat have psychological problems that may or may not turn into employment related problems. Again, however, no definitive statistical evidence demonstrated that career adjustment was impeded by military service in Vietnam.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. BELLMON. Mr. President, could I have an additional 2 minutes?

Mr. SIMPSON. Mr. President, I yield such time as the Senator from Oklahoma may require.

Mr. BELLMON. I thank my friend from Wyoming.

Mr. President, statistical evidence from a recent CBO study memorandum (dated June 4, 1980) indicates that in general Vietnam-era veterans do as well in career readjustment as their nonveteran counterparts. A comparison of median personal income—and I have it as part of my statement in table 1—shows that their incomes are well above those of comparable nonveterans within each relevant age group. Although there are not quite so many college graduates among veterans as nonveterans, a far greater percentage are high school graduates than nonveterans and a slightly greater percentage have at least some higher education (table 2). Finally, overall unemployment statistics show very little difference between veterans and nonveterans (see table 3). Comparisons in tables 1–3 are made for males only, because nearly all (99 percent) Vietnam-era veterans are male. I believe this CBO study documents the success of our earlier efforts to ease the readjustment problems of Vietnam-era veterans.

Furthermore, the Pressler-Heinz amendment is bad from a budget standpoint. It creates an entitlement program which will preclude congressional control of spending through the appropriations process. In other words, the amendment would commit the Federal Government to pay the bill, no matter how much the costs grow in the future. CBO's current estimate is that the amendment would cost $20 million in fiscal year 1981, $99 million in fiscal year 1982, and $76 million in fiscal year 1983. These are sizable amounts, but we cannot be at all certain that the costs will not be considerably higher. The experience generally with entitlements programs is that the costs wind up much higher than anyone anticipates. We can be certain, if we adopt this amendment, that we are making an open-ended commitment which we will have to pay the cost of later on.

Mr. President, because of the fact that this amendment duplicates existing programs and because it is an entitlements program with a very high cost both now and in future years, I urge that the amendment be rejected.

Mr. President, I ask unanimous consent that the tables referred to be printed in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

TABLE 1.—COMPARISON OF VETERANS' AND NONVETERANS' MEDIAN PERSONAL INCOMES, BY AGE GROUP

[In dollars, 1977]

Age group	Veterans	Nonveterans
20 to 24	6,750	5,860
25 to 29	11,380	10,810
30 to 34	14,470	13,780
35 to 39	16,680	15,290

Source: Veterans' Administration, "Educational and Income Characteristics of Veterans," Reports and Statistics Service, Office of the Controller (March 1978).

TABLE 2.—COMPARISON OF VETERANS' AND NONVETERANS' EDUCATION LEVELS, BY AGE GROUP [1]

[In percents, March 1978]

Education level	Veterans	Nonveterans
Less than high school	8.1	21.2
High school diploma	38.5	28.5
Some college	32.0	20.4
College diploma	21.3	29.9

[1] Excludes those still in school.

Source: Current Population Survey for March 1978.

TABLE 3.—COMPARISON OF THE UNEMPLOYMENT RATES OF VETERANS AND NONVETERANS AGED 25 TO 39

[In percents, August 1979]

	Veterans	Nonveterans
July 1978	3.9	3.4
July 1979	3.5	3.7

Source: U.S. Department of Labor, Bureau of Labor Statistics, "Employment and Earnings" vol. 26, No. 8 (August 1979).

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, how much time do I have remaining? I would like to have about 2 or 3 minutes at the end.

The PRESIDING OFFICER. The Senator has 22 minutes remaining.

Mr. HEINZ. Mr. President, will the Senator yield me 10 minutes?

Mr. PRESSLER. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

Mr. HEINZ. I thank my colleague from South Dakota for yielding.

Mr. President, I rise in support of the Pressler amendment. It is manifest to me that, notwithstanding the objections of the committee to this amendment, the merits of the case clearly rest with Senator PRESSLER and this amendment.

Mr. President, let me simply cite two statistics that should be of great concern to every single one of our colleagues. We should look, I think, at the most vulnerable group of Vietnam-era veterans, and that is the group of somewhat younger veterans, about 2 million in number, age 25 to 29, a group of veterans who are at a critical period of their development, both as individuals and as wage earners.

What do we find when we look at that very significant group among Vietnam-era veterans? We find that they have an unemployment rate better than 50 percent higher than their nonveteran counterpart.

In July of this year, their nonveteran counterpart had an 8.2-percent unemployment rate. The Vietnam-era veterans, some 2 million of them in that age group of 25 to 29, suffered a 12.4-percent unemployment rate.

If you look a little deeper into the numbers for that same group, you find that among the employed veterans, only one-third of that group, 33 percent, are in the white collar jobs; whereas, some 46 percent of their nonveteran counterparts in that same age group—and, again, we are talking in comparison about some 2 million Vietnam-era veterans—46 percent of the nonveterans have white collar jobs.

Mr. President, why is that significant? It is significant because these are jobs with a future. If you can make it into that wonderful category of professional, technical, managerial, administrative, sales, and clerical workers, you have likely entered into one of the industries of the future, one of the jobs of the future. Your earnings potential in the future will be substantially enhanced because of the laws of labor supply and demand.

And yet our Vietnam-era veterans in the age group I mentioned, 25 through 29, some 2 million of them, have a 50-percent higher chance of simply not being in that class of opportunity.

I want to remind everyone that we are talking about a large class of people here because of the shortcomings in the statistics of Vietnam-era veterans. Were we to look at the people who simply served in Vietnam, the theater veterans, we would find, if we had those statistics in detail before us, much more grievous horror stories.

It is no secret that their unemployment problems, whether it is underemployment or unemployment directly, are far, far worse than the Vietnam veterans as a whole.

That, of course, is what the amendment of Senator PRESSLER is targeted on. It is targeted on the disabled veterans, the theater veterans, and especially on those 40 percent of the theater veterans who are still, 10 years after in many cases, experiencing serious readjustment problems.

I believe the Senator's amendment is terribly important, and it is very carefully and correctly drawn.

There are some who have argued that this career development advancement training program would be subject to some abuses. I strongly disagree with that contention. This amendment is structured upon existing laws and regulations to preclude abuse and to insure ease of implementation. I must say that it bothers me somewhat that the people who take this point of view are essentially suggesting that Vietnam veterans are likely to go around the corner in some way and cheat the taxpayers in some way. I disagree with that entirely.

I think the Senator from South Dakota put it extremely well in some recent remarks. I will quote from his remarks:

> I am especially concerned about this example because it casts unwarranted, negative images on the character, motivation and integrity of Vietnam veterans. Just because a veteran is unemployed or underemployed and seeking to further his career does not motivate him to abuse his benefits. Just the contrary is true. These veterans are seeking a worthwhile place in the labor force.

Mr. President, he is right. We are talking about veterans who want to be a part of our society. They are a group who did a very difficult thing. They went and fought and gave of themselves

in a tremendously controversial and, to many, unpopular war. It is some measure of their patriotism, dedication, and commitment to this country that notwithstanding all those difficulties they did their duty. I hope nobody will cast aspersions upon them.

Mr. President, nobody has been able to substantiate a case for abuse of taxpayer dollars in the case of this amendment. The career development advancement and training program's approval and safeguard provisions are drawn entirely from existing VA practices, regarding on-the-job training. In fact, they are tighter than existing laws. No payments would be authorized to be made under our amendment until the veteran has been in his or her job and/or training for 90 days. Payment could then be made only for completed employment and training, and only after both the veteran and the employer sign separate certificates that the employment and training was actually completed. The program utilizes almost entirely existing delivery systems and approval mechanisms and thus would not require an expanded bureaucracy or increased Government regulations.

I might add that the Veterans' Administration has had employment monitoring experience with the OJT programs. The veteran would be a principal monitor of his own program. A veteran would not authorize payment of his benefits to an employer if he were not satisfied with the job or the training.

Employers would also be making a great investment in the veteran, so it would be in their self-interest to see that the veteran is a well-trained and productive employee.

For these reasons, Mr. President, I find the arguments of those who claim that there may be some potential for abuse frankly misleading, inaccurate, and without any merit whatsoever.

Mr. President, how much time remains to me?

The PRESIDING OFFICER. The Senator has 15 seconds left of the 10 minutes yielded to him.

Mr. HEINZ. Will the Senator yield 2 additional minutes?

Mr. PRESSLER. I yield 2 additional minutes.

Mr. HEINZ. I thank my colleague.

Mr. President, we have been working very hard for literally months if not years to try to get a program that is more responsive to the needs of our Vietnam-era, and particularly our Vietnam theater, veterans with respect to their job opportunities.

On several occasions, at least three on this floor, we have argued back and forth about whether or not Vietnam veterans are underemployed.

I know they are underemployed. In my State of Pennsylvania, in order to try to do something in anticipation of Vietnam Veterans' Week in May a year ago, I wrote to 5,000 employers in the State of Pennsylvania and said, "Look, we are not getting anywhere in the Congress. They have turned a blind eye to the Vietnam veteran. Let us do something about it ourselves by our own bootstraps."

Those 5,000 Pennsylvania employers wrote back and said, "Here are 5,000 job slots that we promise, and if you will simply send veterans to those 5,000 job slots we will give them jobs." So we arranged this through the State bureau of employment security, helping the State to set up a Vietnam veterans employment program.

As of today, over 4,000 Vietnam veterans have been successfully placed through that program. There was a need; there was a response; and there was success.

What people are telling us here today, Mr. President, is that there is no need to respond. Let me guarantee that if we do not respond, there will be no success, especially for our Vietnam veterans.

This amendment does a very simple thing. All it says is that the world is changing, that education, important as that is, may not be the very best way for somebody who is 28 or 32 or 35 to get ahead in the world. Maybe it is better for him to get some meaningful on-the-job training. Maybe the kind of education he needs is best found in the workplace. Maybe it is best for that particular veteran not to quit what he is doing and go to school for 4 years and lose whatever progress or momentum he has had in his occupational field or career. That is precisely what we who offer this amendment seek to accommodate: the different needs of a different era of veterans at a different time—now.

I do not believe that confining ourselves to a narrow educational appoach is what is required. Those other approaches that people cite—the hire program, the large number (an excessively large number, I might add) of so-called OJT programs—the very fact that we have so many of those programs should tell us one thing: That they are not working. And we need something, Mr. President, that will work.

I urge my colleagues to support this amendment.

Mr. PRESSLER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7½ minutes remaining.

Mr. SIMPSON. What was the review of the time, Mr. President?

The PRESIDING OFFICER. The Senator from South Dakota has 7½ minutes remaining; the Senator from Wyoming has 25 minutes remaining.

Mr. SIMPSON. Mr. President, let me first ask a question, if I may, of Senator HEINZ, then yield to Senator STAFFORD for his remarks.

The Senator from Pennsylvania has based the premise of his remark upon employment statistics which involve the present age groups of 25- to 29-year-old veterans. I believe that we must agree that, although the Vietnam era did not officially end until 1975, the vast majority of all of the troops in Vietnam were withdrawn from 1969 through 1972. I think, consequently, it is unlikely that a very significant percentage of veterans now aged from 25 to 29 ever served in Vietnam. I ask if those statistics could be provided. It need not be at this time. I would certainly appreciate that.

Mr. HEINZ. I should be pleased to provide these statistics to the Senator and for the RECORD.

Mr. President, I ask unanimous consent that these statistics and the citations for them be printed in the RECORD at the appropriate place.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE A.—JULY 1980: EMPLOYMENT STATUS OF VIETNAM ERA VETERANS

1. Number of Unemployed Vietnam Era Veterans

Age	Total Viet vet population (thousands)	Viet vets unemployed (thousands)	Percent unemployed
20 to 24	548	55	17.3
25 to 29	1,945	200	12.4
30 to 34	3,613	207	5.9
35 to 39	1,582	94	4.8
Over 40	863	25	2.9
Total	8,541	581	7.1

TABLE B.—COMPARISON BETWEEN VETERAN AND NONVETERAN UNEMPLOYMENT RATES

Age	July 1980	June 1980	July 1979
1. Unemployment rates (percent):			
Vietnam era veterans:			
20 to 24	17.3	13.7	11.6
25 to 29	12.4	11.1	5.1
30 to 34	5.9	5.4	3.0
35 to 39	4.8	4.9	2.5
Over 40	2.9	3.3	2.1
Total	7.1	6.5	3.5
Nonveterans:			
20 to 24	NA	NA	NA
25 to 29	8.2	7.9	4.1
30 to 34	5.9	5.4	3.6
35 to 39	3.8	3.7	3.1
Over 40	NA	NA	NA
Total	6.4	6.2	3.7

	June 1980 to July 1980		July 1979 to July 1980	
	Veterans	Nonveterans	Veterans	Nonveterans
2. Percent change in unemployment:				
20 to 24	26.3	NA	49.1	NA
25 to 29	11.7	3.8	143.1	100.0
30 to 34	9.2	8.3	96.7	63.9
35 to 39	−2.0	2.7	91.0	22.6
Over 40	−12.1	NA	38.1	NA
Total	9.2	3.2	102.9	73.0

TABLE C.—EMPLOYED MALE VIETNAM ERA VETERANS AND NONVETERANS, BY AGE, RACE, OCCUPATION, AND INDUSTRY, 1978 ANNUAL AVERAGES [1]

[Percent distribution]

Occupation and industry group	Total, 20 to 34 yr	20 to 24 yr	25 to 29 yr	30 to 34 yr	Black and other, 20 to 34 yr
VETERANS					
Total employed (thousands)	5,858	592	2,100	3,166	527
White-collar workers (in percentages)	[3] 38.7	[3] 20.4	[3] 33.0	45.9	29.2
Professional and technical	14.8	5.7	11.9	18.4	9.5
Managers and administrators	11.6	4.1	9.0	14.7	6.1
Salesworkers	5.3	3.7	4.9	5.9	2.7
Clerical workers	6.9	6.9	7.2	6.8	11.0
NONVETERANS					
Total employed (thousands)	15,744	6,567	5,490	3,687	1,773
White-collar workers (in percentages)	[3] 39.8	[3] 29.3	[3] 45.7	49.7	30.0
Professional and technical	17.0	10.0	20.7	23.8	12.4
Managers and administrators	10.3	5.8	12.1	15.5	5.6
Salesworkers	6.0	5.8	6.3	5.9	3.3
Clerical workers	6.6	7.7	6.5	4.6	8.4

[1] Results taken from charts presented by John F. Stinson, Jr. and entered into the Record, Jan. 23, 1980, at S. 236.
[2] It should be noted that the total figures are not very different, however.
[3] The amendment addresses the large disparity between these age groups.

TABLE D.—UNEMPLOYED MALE VIETNAM ERA VETERANS AND NONVETERANS AGE 20 TO 34 YR, BY REASON FOR UNEMPLOYMENT AND DURATION OF UNEMPLOYMENT, 1978 ANNUAL AVERAGE [1]

[Percent distribution]

Reason and duration	Total		20 to 24 yr		25 to 29 yr		30 to 34 yr	
	Veterans	Nonveterans	Veterans	Nonveterans	Veterans	Nonveterans	Veterans	Nonveterans
REASON								
Total unemployed (thousands)	314	1,033	80	619	133	280	101	134
Job losers	62.2	57.5	56.3	52.0	63.2	64.6	65.7	67.9
On layoffs	[2] 20.6	[2] 15.0	15.0	13.4	20.3	17.1	25.5	17.9
Other job losers	41.8	42.4	41.3	38.6	42.9	47.5	40.2	50.0
Reentrants	[2] 16.9	[2] 20.4	17.5	23.9	17.3	16.1	15.7	13.4
Job leavers	17.5	17.3	17.5	17.6	18.0	17.1	17.6	16.4
DURATION								
Total unemployed (thousands)	314	1,033	80	619	133	280	101	134
Less than 5 weeks	37.8	41.6	43.8	43.0	34.6	40.5	37.3	36.8
5 to 14 weeks	[2] 34.9	[2] 32.3	33.8	33.0	39.1	30.8	30.4	32.3
15 weeks and over	27.3	26.1	22.5	23.9	26.3	28.7	32.4	30.8

[1] Results taken from table 5, as presented by John F. Stinson, Jr. and entered into the Record, Jan. 23, 1980, at S. 237.
[2] Significant differences between veteran and nonveteran results.

Mr. PRESSLER. Mr. President, on my time, may I respond to that question?

Mr. SIMPSON. I would appreciate that, Mr. President.

Mr. PRESSLER. We have some statistics we would like to supply. Indeed, the Senator from Wyoming based his earlier remarks on a CBO study which we questioned one part of. Did I not understand the Senator from Wyoming to base his earlier arguments on the CBO study which, indeed, is based on that same group which the Senator seemed to question Senator HEINZ' using—if, indeed, he did use it?

Mr. SIMPSON. Mr. President, I want to be sure that the remarks of the Senator from South Dakota are on his time and not that of the Senator from Wyoming.

Mr. PRESSLER. I requested that, Mr. President.

Are not the very same years—was not the CBO study based on those same years; therefore—I do not know if Senator HEINZ' remarks were based on those years. Would that not disqualify the CBO study in the same manner?

Mr. SIMPSON. No, these are not the same figures. The CBO study concentrated on the veterans who served in the height of the conflict. They are not the same.

Mr. PRESSLER. The CBO study was of the age group 20 to 34, which encompasses the very same years from which the Senator has raised an objection to Senator HEINZ using statistics.

Mr. HEINZ. Mr. President, will the Senator from Wyoming yield on his time for a brief response to what I take to be the thrust of the Senator's point?

Mr. SIMPSON. I prefer not to. I have two more members of the minority who wish to speak on this issue.

Mr. HEINZ. Well, I am frankly a little puzzled about the mathematics of my good friend from Wyoming. The fact is that the last American did not leave Vietnam until 1973. In 1972, we had one heck of a lot of men still there; 1972 was 8 years ago. If we subtract 8 from 29, I get 21. Most of the young men who went there were drafted at age 18. I know; that is when I got my draft notice.

That gives a number of years to work with. It means that, in fact, we could have had a lot of people there in Vietnam, at a much earlier period than 1970 or 1971, who were 18 or 19. That was the age of the dogface, the private, the people just out of basic training that were sent to fill the gaps to fight that war. So I am not entirely sure what the Senator from Wyoming has in mind.

There are certainly many people in this age group who were in Vietnam, fought there. Some of them may not have returned, either. I am puzzled by his remark.

Mr. SIMPSON. Mr. President, let me state for the record that in 1972 in Vietnam, we had 100,000 soldiers at the most in that country, down from a figure of 500,000 in 1968, and that we stopped sending replacement troops in 1972 because the demand was down. I am simply stating that if we are using the 25- to 29-year-old veteran as typical of the Vietnam theater veteran we are not using the correct statistics.

In answer specifically to Senator PRESSLER's question, the statistics used in the CBO age group study that I remarked about are now 30 through 39 in age. That is the figure. I believe the Senator has a copy of the study.

I yield to Senator STAFFORD.

Mr. STAFFORD. Mr. President, with some reluctance, I have to rise in opposition to the amendment of my distinguished colleague (Mr. PRESSLER). I remind my colleagues, Mr. President, that the Senate has previously voted on a similar amendment to that being offered now by Senator PRESSLER when the Senate was considering the GI Bill Amendments of 1980, on January 23, 1980. At that time, unprinted amendment numbers 917 and 921 were offered by Senators PRESSLER and HEINZ and the amendments were defeated by votes of 56 to 38 and 53 to 37, respectively. So we are, once again, considering adopting a new program that has previously this year been discussed on this floor and rejected by the Members of this body.

It should also be noted that the Committee on Veterans' Affairs of the House of Representatives has rejected the proposed program as included in the amendment now being considered.

The Pressler amendment would permit Vietnam-era veterans to utilize their GI bill educational entitlement to pay employers a "subsidy" to train them.

Under the career development and advancement program the subsidy could be part of the veteran's wages whereas under the training program the VA would pay the employer the cost of the training and subsidize up to 50 percent of the individual's training and wages. Payments would be made directly to the employer—not to the veteran. It is an objectionable feature of this amendment. It has great potential for abuse. Unless such a subsidy program is tightly controlled and closely watched with considerable governmental redtape, it will likely result in failure.

When our Committee on Veterans' Affairs held hearings on the issue before us in March of this year, the Veterans' Administration said this and I emphasize that this is a quote from the Veterans' Administration and not the sentiment, necessarily, of this Senator from Vermont:

> Contrary to its expressed intention of addressing employment problems of Vietnam-era veterans, enactment of this measure would result in a vague, ill-defined program which would convert veterans educational entitlements into substantial employer subsidies at considerable cost to the taxpayer. These subsidies would be highly subject to abuse and there is no assurance that the Federal resources expanded would be effectively directed to providing meaningful training and job training opportunities for those veterans who need them.

At the same hearing the Labor Department said:

> A job subsidy program for Vietnam-era veterans would be difficult to administer. Further it proposes to duplicate veterans assistance programs currently operated by DOL, by establishing a major new employ-

ment-related program within the Veterans' Administration.

On March 6, 1980, our Senate Committee on Veterans' Affairs heard testimony in support of a career development, advancement, and training program for certain disabled and Vietnam theater veterans. Senator PRESSLER testified in behalf of the proposed program, the concept included in the amendment we are now considering. Forrest Lindley, a Vietnam veteran with Stars and Stripes newspaper, also presented his views on readjustment and employment for Vietnam veterans and in behalf of S. 1872, Senator PRESSLER's bill.

On the other hand, the major veterans' organizations and the VA testified in opposition to the Pressler proposed career development, advancement, and training assistance program. The following quotes are some of those positions on the issue.

The Disabled American Veterans at the March 8 committee hearing said:

[We] are opposed to the concept of "paying" employers to hire veterans. Rather, Mr. Chairman, we believe that the Department of Labor should be expending its emphasis on enforcement of existing laws passed by Congress over the last several years—laws which are designed to enhance the employment opportunities of all veterans and which, if properly and aggressively implemented, could make a significant impact upon the high rate of unemployment among Vietnam era veterans.

The very idea that we should have to pay employers to hire those who served our country during a period of armed conflict is extremely distasteful to the Disabled American Veterans.

The American Legion said on March 6:

[We] are quite concerned with the specific guidelines under which this program would operate in that there is a general lack of substantive controls to ensure accountability and preclude fraud and abuse on the part of the veterans and/or the employer. Without adequate controls built into such a program, we would question whether or not those veterans participating would, in fact, receive meaningful employment opportunities.

The Senate Veterans' Affairs Committee rejected the subsidy program—the proposal of the Pressler amendment. There is no enthusiasm from the 10 members of our committee for this program.

One of the reasons for rejection of the proposal within the committee is that there are a number of ongoing programs to meet the employment needs of veterans—especially Vietnam veterans.

First, the GI bill provides for a program of on job and apprentice training opportunities for eligible veterans. More than 500,000 Vietnam-era veterans have participated in this program. In fiscal year 1979, approximately 84,000 received benefits from this program.

Second, there are several programs available under Comprehensive Employment and Training Act (CETA) including help through the industry retraining and employment (HIRE) program. Under the law providing for this program, the Secretary of Labor is required to take special steps under CETA to maximize the opportunities for Vietnam-era veterans and disabled veterans in all programs conducted by prime sponsors such as job training, upgrading and retraining, public service employment, and private sector initiatives. About 3 million of these veterans have been served by this program.

Third, we have the targeted jobs tax credit program authorized in 1978. Employers receive a tax credit of up to $3,000 for hiring certain low-income Vietnam-era veterans. Senator BELLMON spoke of this tax credit a few minutes ago. He reminded us that it would be a duplication.

Fourth, the purpose of the bill we are considering—S. 1188—includes other positive assets in the area of employment and advancement of Vietnam-era veterans.

All in all, Congress has not been inactive in striving to meet the needs of Vietnam veterans. Senator SIMPSON has previously inserted a list of legislative accomplishments on behalf of Vietnam-era veterans.

Mr. President, I conclude by reminding my colleagues once again that the substance of the pending amendment has been rejected by this body this year, on January 23, by votes of 56 to 38 and 53 to 37.

So, Mr. President, it is with regret that I must urge my colleagues to vote against the Pressler amendment at this time.

Mr. President, I yield the floor to Senator SIMPSON.

(During the preceding remarks, Senator BUMPERS assumed the chair.)

Mr. SIMPSON. Mr. President, I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the hour of 1 p.m. today, the vote occur on the amendment by Mr. HEINZ, to be followed immediately by the vote on the amendment by Mr. PRESSLER, to be followed immediately, without further amendments, motions, or debate, by third reading, and then to be followed immediately, without further debate or motion, by final passage, with paragraph 4 of rule XII being waived, and with the additional proviso that the vote on the second and third matters, to wit, on the amendment by Mr. PRESSLER and on final passage, each be 10-minute rollcall votes.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it may be in order to order the yeas and nays now on these three votes by one show of seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CRANSTON. Mr. President, how much time remains on the Pressler amendment on my side?

The PRESIDING OFFICER. The Senator from California has 12 minutes remaining.

Mr. CRANSTON. Mr. President, I oppose the amendment offered by the junior Senator from South Dakota (Mr. PRESSLER), which would establish a veterans' career development, advancement, and training assistance program. Although I appreciate and share the concerns of the Senator which have prompted him once again to put his proposal before the Senate, I cannot support its adoption by the Senate.

Mr. President, Amendment No. 1906 would establish a "career development, advancement, and training program" for certain disabled and Vietnam-theater veterans. The amendment would provide financial incentives—essentially what amounts to wage subsidies—to employers to hire, train, or promote certain veterans. The thrust of this amendment is identical to the thrust of those—unprinted Nos. 917 and 921—offered by Senators PRESSLER and HEINZ during the Senate's consideration in January of S. 870, the proposed GI bill amendments of 1980. Those amendments were defeated by votes of 56 to 38 and 53 to 37, respectively.

In essence, I oppose this amendment because I believe that funds for veteran's benefits should be used for direct payments to veterans not for incentive payments for private firms, and because I have grave reservations about whether this approach would really produce jobs for the veterans involved.

I believe, Mr. President, that it is most important to stress that the program proposed by the Senator is in reality a wage-subsidy type program. The proposal does provide for some rather standard safeguards to curb misuse, but the vast potential for rip-offs and abuses still is inherent in its structure. Historically, wage subsidy programs, unless very tightly structured and monitored—through a process which involves enormous amounts of redtape, Federal regulations, investigations, and Government intervention creating its own administrative monstrosity—result in situations where there is substitution, dead-end jobs, and exploitation of those who are intended to be helped by such programs.

Mr. President, how much time does the other side have remaining on this amendment?

The PRESIDING OFFICER. The Senator from South Dakota has 3 minutes remaining.

Mr. CRANSTON. I remind my colleagues of the years of experience we have had with employment and training programs conducted by the Department of Labor—first under the Manpower Development and Training Act of 1964 and then under CETA. As a long-time member of the Employment Subcommittee of the Labor and Human Resources Committee, I can personally attest to the hundreds of long hours and hard work that have gone into trying to design an "abuse-proof" program. Yet those efforts are undermined daily by reports of outrageous abuses and rip-offs, and the Department of Labor, an agency with extensive experience in administering job and job-training programs, spends millions of dollars and hundreds of employee hours in attempting to remedy these problems.

The program proposed by the Senator from South Dakota would establish this brand new, untested program in an

agency with no such employment-monitoring experience in this area—the Veterans' Administration. In my opinion, this substantially compounds the potential for abuse and misuse.

Mr. President, since Senator PRESSLER first proposed this approach, we have taken a close look at it and received testimony on it. Here is what the VA said about it at hearings held by the Committee on Veterans' Affairs on March 4:

Contrary to its expressed intention of addressing employment problems of Vietnam-era veterans, enactment of this measure would result in a vague, ill-defined program which would convert veteran educational entitlements into substantial employer subsidies at considerable cost to the taxpayer. These subsidies would be highly subject to abuse and there is no assurance that the Federal resources expended would be effectively directed to providing meaningful training and job training opportunities for those veterans who need them.

Here is what the Labor Department said about it:

A subsidy program for Vietnam-era veterans would be difficult to administer. Further, it proposes to duplicate veterans assistance programs currently operated by D.O.L., by establishing a major new employment-related program within the Veterans' Administration.

Here is what the Disabled American Veterans said about the approach at hearings held by the House Veterans' Affairs Committee on March 6:

We are opposed to the concept of 'paying' employers to hire veterans. Rather, Mr. Chairman, we believe that the Department of Labor should be expanding its emphasis on enforcement of existing laws passed by Congress over the last several years—laws which are designed to enhance the employment opportunities of all veterans and which, if properly and aggressively implemented, could make a significant impact upon the high rate of unemployment among Vietnam-era veterans.

The very idea that we should have to pay employers to hire those who served our country during a period of armed conflict is extremly distasteful to the Disabled American Veterans.

Here is what was said about the approach by the American Legion at the House Committee's March 6 hearing:

We are quite concerned with the specific guidelines under which this program would operate in that there is a general lack of substantive controls to ensure accountability and preclude fraud and abuse on the part of the veteran and/or the employer. Without adequate controls built into such a program, we would question whether or not those veterans participating would, in fact, receive meaningful employment opportunities.

Finally, as Dr. Sar Levitan, the highly regarded and well-known labor market economist, testified at our Senate committee hearings:

Neither the veterans' administration nor the labor department have the capability to monitor the employers who hire veterans, nor is it desirable to provide such a capability to the government agencies. In the absence of such an army of inspections, there is little assurance that the beneficiaries of the proposed program would be veterans, and the program may result in a bounty to employers.

Dr. Levitan went on to state that with respect to the approach taken by the Senator's amendment "the costs of monitoring the subsidized employers would be prohibitive and intolerable."

Mr. President, over the years, Congress and the Federal Government have developed, enacted, and implemented a myriad of programs designed to meet the employment needs of veterans.

The current GI bill—in section 1787 of title 38—provides for a program of apprenticeship and other on-job-training opportunities for eligible Vietnam-era veterans. In a 1978 study, the General Accounting Office found that this program had an outstanding record of success with almost 90 percent of those who participate in the program being placed in permanent jobs upon the completion of training.

Currently, under the VA-OJT program, a married veteran with two dependents may be paid by the VA a training assistance allowance of $226 a month for the first 6 months of apprenticeship or other on-job-training. This is in addition to the salary he or she would receive directly from the employer. Those OJT benefits are available for up to 2 years at a declining rate during the veteran's employment. Under the provisions of H.R. 5288 as passed by the Senate in January, the period of time in which Vietnam-era veterans have to participate in this program would be extended for 3 years. Also, under provisions contained in S. 1188 as reported, the criteria and approval process for VA-OJT slots would be streamlined and improved—resulting in increased participation in this valuable program.

Other provisions in S. 1188 as reported are designed to increase the VA's responsibility and effectiveness in employment-related areas. First, the measure would require the Administrator to take increased responsibility for active advocacy and promotion of effective implementation, enforcement, and application of all laws and regulations relating to employment, training, and other opportunities for veterans. It would also require the Administrator, in cooperation with the Secretary of Labor, to seek actively to promote the development and establishment of employment, training, and other employment-related opportunities for veterans. Finally, the Administrator, and the Secretary of Labor, would be charged with responsibility of promoting the development of VA-OJT opportunities for eligible veterans.

Cumulatively, through fiscal year 1979, nearly half a million Vietnam-era veterans have trained under the VA's OJT program. This year, it is estimated that more than 74,000 Vietnam-era veterans will receive OJT benefits under the current program. If the modifications I have noted are enacted, it is estimated that an additional 15,300 veterans would find employment through this program.

There is also the targeted jobs tax credit—TJTC—enacted in October 1978 in Public Law 95-600. Under this authority, employers may receive a tax-credit of up to $3,000 for hiring individuals who are members of certain mandated target groups, including low-income Vietnam-era veterans under 35 years of age. Since the enactment of this program, more than 10,500 Vietnam-era veterans have benefited from it. The removal of the age limitation applicable to this program—as proposed by S. 2838, which Senator MATSUNAGA and I introduced on June 17, would permit additional Vietnam-era veterans to be served by this initiative. That measure is now pending before the Finance Committee, and I hope action will be taken on it soon.

In addition, there is, of course, CETA. Under CETA, the Secretary of Labor is required to take special steps to maximize opportunities for Vietnam-era and disabled veterans in all programs conducted by prime sponsors, such as job-training, upgrading, and retraining, public service employment, and private sector initiatives. In addition, the Secretary is required to conduct a public information and outreach program to promote maximum job opportunities for veterans. Almost 3 million Vietnam-era veterans have been served by CETA since its enactment in 1973. An age limitation in CETA similar to that now applicable to TJTC, would be removed by my amendment No. 1964 to S. 2708 which I introduced on August 5.

Further, Mr. President, under the authority in section 2012 of title 38, as it would be amended by H.R. 5288 as passed by the Senate in January, all eligible Vietnam-era veterans regardless of the length of time they have been out of service, would be covered for at least 2 years by the affirmative action and mandatory listing requirements imposed by law in connection with Federal contracts. Under those requirements, any firm with a contract with the Federal Government involving more than $10,000 must have an approved affirmative action plan for Vietnam-era veterans and disabled veterans and is required to list job openings with the local employment service which in turn is required to give eligible veterans priority in referral to jobs. Over 540,000 Vietnam-era veterans have found jobs as a result of this initiative.

Finally, Mr. President, there is the highly successful disabled veterans outreach program—D-VOP—conducted by the Department of Labor. Under the D-VOP program, nearly 1,500 disabled veterans are currently working in State and local employment security agencies and offices, providing employment assistance to disabled and Vietnam-era veterans through counseling, job development, and placement services. Since the inception of this program, D-VOP staff have contributed to the successful placement in jobs of more than 135,000 disabled Vietnam-era veterans.

Mr. President, S. 1188 as reported would establish, on a permanent basis, a program modeled on the D-VOP program—the veterans' employment and training outreach program—V-TOP. Under the committee bill, V-TOP would expand the current D-VOP initiative and increase the emphasis on job development and placement in the private sector—particularly in terms of small- and medium-sized employers.

Mr. President, throughout this session of the Congress, the Veterans' Affairs Committee has held a series of five hearings focusing on the continuing read-

justment needs of Vietnam-era veterans. We have attempted to discover where we are and what still remains to be done in this area. Throughout these hearings the committee has received very compelling testimony to the effect that what is not needed is new programs and new initiatives. There are good and effective programs and laws already in existence. What is needed is forceful and vigorous implementation of those programs and laws.

Mr. President, let me stress that neither I nor my colleagues on the Veterans' Affairs Committee, nor many of the Members of this body who joined in defeating the very similar proposal made by the Senator in January, believe that enough has been done in the area of veterans' employment—particularly for younger veterans, disabled veterans, and minority group veterans. Certainly, there is no disputing the statistical evidence published monthly that shows unacceptably high rates of unemployment for certain categories of veterans.

The latest available labor force data indicate that the employment situation of male Vietnam-era veterans has deteriorated in recent months along with the rest of the population. However, the data show that for the most part, Vietnam-era veterans are fairing about as well as their nonveteran contemporaries.

In July, the number of unemployed Vietnam-era veterans totaled 581,000 and their unemployment rate was 7.1 percent, up from a year ago. However, the jobless rate for veterans in the 30 to 34 year age group, who comprise over 35 percent of all Vietnam-era veterans was 5.9 percent—the same as it was for nonveterans of the same age and 23 percent better than the unemployment rate generally.

In sum, the situation is not good, but much has been done and much more can be done under existing programs. I am continuing my efforts to seek effective implementation of current laws and ongoing initiatives designed to assist veterans. Evidence of my very deep concerns in this area are reflected in the many employment-related provisions of S. 1188 as reported as well as the provisions of the proposed GI Bill Amendments Act of 1980 passed by the Senate in January.

Mr. President, under the amount assigned for veterans' entitlement programs to the Senate Veterans' Affairs Committee in the first concurrent resolution on the budget for fiscal year 1981—amounts I believe are totally inadequate—the committee is working very hard to assure the enactment of important legislation designed to meet the very real needs of our Nation's veterans. As it stands now, however, there are barely sufficient funds available for the provision of a badly needed 10-percent cost-of-living increase in GI bill benefits—the first since 1977—and an appropriate cost-of-living increase in veterans' service-connected disability compensation, and the Senate has already unanimously voted, in approving by an 89 to 0 tally on June 30, title VIII of S. 2885, the proposed Reconciliation Act of 1980, to defer that GI bill increase until January 1981.

Mr. President, I should like now to respond to some of the remarks made by the junior Senator from South Dakota (Mr. PRESSLER) in the CONGRESSIONAL RECORD for August 21 and today. These remarks were made in response to my statement regarding the pending amendment in the CONGRESSIONAL RECORD of August 6.

First, I would challenge the Senator's assertion that this is the last opportunity we will have to provide for meaningful and productive rehabilitation and employment for Vietnam veterans. I have been working and fighting for initiatives designed to meet the needs of these very deserving veterans since I came to the Senate in 1969 and I will continue to do so. Much has been done, but clearly more remains to be done. I will urge the Senate to defeat the pending amendment, but I reject wholeheartedly the suggestion, Mr. President, that this amendment is any such last-ditch effort to assist those who served in our Nation's longest war. Indeed, I am working right now to get two provisions enacted to improve the CETA and targeted jobs tax credit provisions for Vietnam-era veterans.

Second, Mr. President, the Senator from South Dakota has stated that "no payments are authorized to be made under the career development program until the veteran has been in his or her job and/or training for 90 days." He seems to assert that this is one of the means by which abuses could be curbed and the needs of veterans further served. I am not sure what particular vulnerability to abuse such a 90-day provision might be intended to avoid. So far as I can see, such a lag in payments would serve only to frustrate employers and add no safeguards against abuse.

Third, the Senator has stated that "if anyone were to be cheated under the career development program it would be the employer." Mr. President, I think that is a fairly damaging admission with respect to the design of this provision. Frankly, I do not want to see any of the parties cheated—the veteran, the employer, or the taxpayer. It seems most unfair to me to suggest, as the Senator from South Dakota has suggested, that a small businessman or women who in good conscience hires and trains—at significant cost—an eligible Vietnam veteran, should then be denied reimbursement because the veteran feels he is not satisfied with the training or simply did not like the job. In such situations—if the veteran arbitrarily withholds certification of the training—the employer would be stuck with the cost of the training provided in good faith.

Quite frankly, Mr. President, I know of few businesses or employers who would participate in such programs if the full nature of the "risk" was made clear, and I assume no one would suggest we hide this risk.

Fourth, Senator PRESSLER has suggested that the recent survey by Louis Harris and Associates, entitled "Myths and Realities: A Study of Attitudes Toward Vietnam-era Veterans," reinforces his assumption that Vietnam veterans are experiencing severe unemployment and underemployment difficulties resulting solely from their military experience in Vietnam. I find no such data in that survey report.

Mr. President, there is no disputing the fact that unemployment rates among Vietnam-era veterans are unacceptable. However, the correlation between these indicators of labor market experience and military service is not firmly established. The Lou Harris survey tends to suggest that employers are favorably disposed to employing the Vietnam veteran. In particular, 60 percent of the employers surveyed responded that service in Vietnam helps an applicant's chances for employment. Only 1 percent said that service in Vietnam hurts an applicant's job chances. Seventy-two percent of the employers questioned had hired Vietnam-era veterans in the last 3 years. Of the 16 percent who had not hired Vietnam-era veterans during that period, 52 percent responded that the reason was that none had applied.

Fifth, the Senator stated that 2 years ago, the employment responsibility for veterans was passed from the Deputy Assistant Secretary of Labor for Veterans Employment to the White House Veterans' Federal Coordinating Committee, and that I now—by virtue of a provision for a targeted delimiting date extension in H.R. 5288 as passed the Senate in January—want to "put the burden on the VA."

Mr. President, first of all, as far as I am aware, veterans employment responsibility still rests where it belongs and has never left there—in the office of the Deputy Assistant Secretary of Labor for Veterans' Employment. Indeed, the same measure—the Senate-passed version of H.R. 5288—would elevate the Deputy Assistant Secretary to the assistant secretarial level so as to help further assure that veterans receive the priority and special consideration that Congress has mandated in so many employment programs.

Further, Mr. President, I am not suggesting that the VA usurp those responsibilities. On the contrary, it is the Senator from South Dakota who suggests this by proposing to shift employment responsibilities to the VA under his amendment to establish a wage-subsidy-type program in the VA.

Finally, Mr. President, there is the issue of cost. Senator PRESSLER has suggested his proposal is acceptable because he has "found" the money to fund it for fiscal year 1981. He would give the Secretary of Labor the authority to transfer unexpended veterans employment program funds to the VA for the purposes of funding a career development program.

Mr. President, there is only $30 million of unexpended funds and although it is enough to fund the first few months of a career development program—costing only $17.9 million in fiscal year 1981 because it is phased in slowly near the end of the fiscal year—I would ask where the second- and third-year costs—$182.8 million would come from. And I would question that the Secretary of Labor or OMB—or the appropriations committees

in Congress—would agree to make such a transfer of funds to the VA for this type of discredited wage-subsidy program even if the authority to do so were provided. And if such a transfer is not made by the Secretary or is not approved by the appropriations committees, then the funding for this program would need to be found within the VA budget, and we would find this new program once again competing with funds reserved for veterans' compensation and GI bill benefits in fiscal year 1981, and in any event in fiscal year 1982–83.

Mr. President, the Senator has stressed the high rates of unemployment among Vietnam-era veterans, and on that point, we have no disagreement. However, let us examine for a moment exactly who would benefit from the career development program—other than the employer who receives a wage subsidy—and whether his proposal would have a substantial impact on these veterans' unemployment rates.

In assessing the cost of this proposal, Mr. President, CBO has estimated that of the more than 71,000 participants expected to take advantage of the program, only 7,500—or slightly more than 10 percent—would not have obtained jobs without the subsidy and only 4,000 of those would be collecting unemployment insurance prior to participation in the program.

Spending more than $200 million to provide jobs to just 4,000 veterans—a cost of $50,000 per veteran actually placed in a job he would otherwise not get—is a most cost-ineffective way of assisting those Vietnam veterans looking for work. It would have a very unsubstantial effect on reducing unemployment.

Senator HEINZ has stated that he contacted Pennsylvania employers and asked them to hire veterans in recognition of Vietnam Veterans Week and that as a result 4,000 Vietnam-era veterans were placed in jobs. No subsidy went to those employers. They hired those veterans without the Federal Government paying them to do so.

I congratulate the Senator on his highly effective, most economical outreach activities.

With respect to the concept of career advancement, I believe that the Senator's proposal would be very wasteful. What evidence is there that Vietnam veterans are not getting the promotions, raises, and advancements in their careers that they merit? Veterans make good employees, and employers know this. The recent Lou Harris survey illustrates this. If the veteran is deserving of an increase or promotion, what evidence is there that he will not receive one? If they are receiving them as a matter of course and justice from their employers, why should the Federal Government now start to underwrite them? On the other hand, if they are not earning them on the basis of their job performances, why should the Federal Government "bribe" employers to give them raises, and why should the Federal Government pay for raises for employees who have not earned them?

Mr. President, I must contradict the Senator from South Dakota with respect to the position of the veterans organizations on his amendment. The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans are all opposed to the approach in the Senator's amendment and all are working against it. So is the Non-Commissioned Officers Association. I had printed in the RECORD letters in opposition to the amendment from the DAV and the VFW on August 6. I wish now to have printed in the RECORD a similar letter from the NCOA at this point and ask unanimous consent to do so.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 3, 1980.

DEAR SENATOR: Tomorrow, you will be asked to vote on S. 1188, the "Disabled Veterans Rehabilitation Act of 1980," and Mr. Pressler's amendment No. 1906. The amendment seeks the establishment of a "career development, advancement and training program."

The more than 211,000 members of the Non-Commissioned Officers Association of the USA (NCOA) strongly opposes passage of amendment No. 1906.

NCOA believes greater emphasis should be placed on making existing veteran training and employment programs work to their potential. There are a number of programs within the Department of Labor, the nation's employment agency, that can fill the employment placement needs of veterans. Among them are the Help Through Industry Retraining (HIRE) and Targeted Jobs Tax Credit (TJTC) programs. Both offer financial incentives to employers who hire veterans.

We believe it is shameful for government to have to entice employers into hiring veterans by providing financial incentives. Nevertheless, we are willing to support such a program if it is administered and funded by the Labor Department.

Herein lies the greatest fault with Amendment No. 1906. It seeks to create a new program, administered and funded by the Veterans Administration, yet providing direct payments to employers. We believe that such a program is not needed but should be a function of the Labor Department if it is created.

Senator Cranston has articulated his opposition to Amendment No. 1906 very well in his Congressional Record remarks of August 6, 1980. We agree with the Chairman and have included his remarks for your use.

While you and I may agree that Mr. Pressler's goal is a laudible one, I urge you to vote "No" on amendment No. 1906.

Thank you for your kind attention to this issue.

Sincerely,

RICHARD W. JOHNSON, Jr.,
Assistant Director for Legislation.

Mr. CRANSTON. Mr. President, as I noted, the Senate rejected this approach twice in January and should do likewise now. I strongly urge the Senate to defeat the amendment.

The PRESIDING OFFICER. All time of the Senator from California has expired.

The Senator from South Dakota has 3 minutes remaining.

Mr. PRESSLER. Mr. President, to bring this debate to a conclusion, let me again say that this program is directed and targeted to those veterans who served in Vietnam in the theater, and it is a program that would respond to the greatest needs and to the group that has the greatest needs.

Although we have had some disagreement here which still exists about numbers from the CBO study, we have a copy of the study here. It reads as follows:

> Analysis performed by CBO does not corroborate the assumption that those who are veterans are subject to either low earnings or to unemployment . . . There are two exceptions to this. One, young veterans have a higher unemployment rate than nonveterans of similar age . . . Two, there is some indication that veterans who served in combat have psychological problems that may or may not turn into employment-related problems. Again, however, no definite statistical evidence demonstrated that career adjustment was impeded by military service in Vietnam.

Mr. President, the study says that analysis performed by CBO does not show that veterans are subject to unemployment. In July of this year, a month after this study was published, the unemployment rate for Vietnam veterans was 7.1 percent, double that of a year ago. This compares with 6.4 percent for nonveterans in the same age group. As I stated earlier, had it not been for their service to and sacrifice for their country in Vietnam, many of these unemployed veterans would have the seniority and the skills to retain employment in our present troubled economy. The fact that they are so sensitive, as a group, to the pressures of the economy shows that, for the most part, too many are employed in short-term, dead-end jobs. This makes them prime targets for being layed off when a recession strikes.

The study also states that "there is some indication that veterans who served in combat have psychological problems that may or may not turn into employment related problems." Mr. President, although "definite statistical evidence" does not exist, experts over the years have determined that combat exprience has a definite effect on readjustment. This finding was reinforced by the recent study done by Louis Harris on Vietnam veterans. Our amendment is specifically targeted to help the combat veteran.

It is also targeted to assist the disabled veteran. In recent testimony before the House Veterans' Affairs Subcommittee on Education, Training, and Employment, Dennis R. Wyant, Deputy Assistant Secretary of Labor for Veterans Employment stated the following:

> While we do not have data on employment and unemployment of disabled veterans, employment service indicators continue to show evidence of their severe problems in finding employment.

To reinforce the scope and severity of the unemployment problem, I would like to read you statistics from the recent VA commissioned Harris study of attitudes toward Vietnam-era veterans. When asked, "As of today, what would you say are the two or three serious problems, if any, facing veterans who actually served in Vietnam?" employment problems were cited by 48 percent of Vietnam veterans and 49 percent of Vietnam-era veterans. The Harris study was based on statistical evidence while

the CBO study was based on "analysis performed by CBO" and admittedly not on statistical evidence. I ask my colleagues to weigh their merits accordingly.

Hearings before the Senate and House Veterans' Affairs Committees brought out the need for career development. Existing programs are fragmented, uncoordinated, and largely irrelevant to the employment and training needs of the Vietnam veteran. Only one in five unemployed veterans qualifies for existing programs such as CETA and targeted tax credit. The HIRE program will end in October. Career development is not so much a new program but rather a workable codification and improvement of existing programs. It combines the employer incentives offered by the HIRE programs with the training opportunities offered by the VA on-the-job training program.

Mr. President, Vietnam Veterans of America, in a recent letter to each Member of the Senate, put the entire question in perspective very well. A portion of the letter reads as follows:

The proposed amendment seeks, simply, to give Vietnam veterans the same break we give nonveterans. Its first year's cost is only $19 million.

In a sense, such a limited goal hardly seems debatable. But yet, the amendment will surely be hotly debated. And that goes directly to the second need for the program. The country—not just the Vietnam veteran—needs this program.

The very fabric of our national defense is woven in a bond between the government and its citizens. Those who serve their country are, in turn, served by it. A country that abandons that bond endangers its military manpower policy.

The spectacle of a government that after nearly a decade still needs to fight over $19 million to address the sky-rocketing unemployment among the veterans of our last war is not the drama we should be enacting before the 19 and 20 year olds we are now asking to serve . . .

Vietnam veterans overwhelmingly feel that the greatest problem facing them today, is employment. The American public, as the Harris study showed, feels that more should be done to help the Vietnam veteran. The passage of our career development program would enable us to carry out the wishes of the American people while also dealing with the employment problems of Vietnam veterans.

I urge my colleagues to give this amendment their favorable consideration.

The PRESIDING OFFICER. The time of the Senator from South Dakota has expired.

UP AMENDMENT NO. 1548

(Purpose: To modify the Post-Vietnam Era Veterans' Educational Asistance Program, to modify the termination date of the current GI Bill, to facilitate VA debt-collection efforts, to clarify the Veterans' Administration's authority to recover certain health-care costs, and for other purposes)

Mr. CRANSTON. Mr. President, on behalf of the Committee on Veterans' Affairs and joined in by our distinguished ranking minority member, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) for himself and Mr. SIMPSON, proposes an unprinted amendment numbered 1548.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 71, between lines 3 and 4, insert the following:

SEC. 213. Section 1622 is amended by—

(1) amending subsection (a) by—

(A) striking out in the first sentence "Each" and inserting in lieu thereof "Except as provided in subsections (c) and (d) of this section, each"; and

(B) striking out in the second sentence "$50" and "$75" and inserting in lieu thereof "$25" and "$100", respectively;

(2) inserting after "Forces" in subsection (c) a comma and "including contributions in lieu of, or to reduce the amount of, monthly deductions under subsection (a) of this section"; and

(3) adding at the end the following new subsection:

"(d) Subject to the maximum contribution prescribed by subsection (a) of this section, a participant shall be permitted, while serving on active duty, to make a lump-sum contribution to the fund. A lump-sum contribution to the fund by any participant shall be in addition to or in lieu of monthly deductions made from such participant's military pay and shall be considered, for the purposes of paragraph (2) of section 1631(a), to have been made by monthly deductions from such participant's military pay in the amount of $75 per month or in such lesser amount as may be specified by such participant pursuant to regulations issued jointly by the Secretary and the Administrator.".

SEC. 214. Section 1662 is amended by—

(1) amending subsection (a) by—

(A) inserting after "1955" in paragraph (1) a comma and "and before January 1, 1980"; and

(B) adding at the end the following new paragraph:

"(3) An eligible veteran whose last discharge or release from active duty occurs after December 31, 1979, shall not be afforded educational assistance under this chapter after (A) the expiration of the five-year period following the date on which such veteran first begins to pursue a program of education under this chapter after such discharge or release if such date occurs no later than two years after such discharge or release from active duty or (B) December 31, 1989, whichever is the later."; and

(2) striking out subsection (e) in its entirety.

SEC. 215. Section 1712(a) is amended by—

(1) striking out "and" at the end of clause (4);

(2) redesignating clause (5) as clause (6); and

(3) inserting before clause (6), as so redesignated, the following new clause (5):

"(5) if the person becomes eligible by reason of the provisions of section 1701(a)(1)(A)(iii) of this title after the person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless clause (4) of this subsection applies) such period shall end eight years after the date upon which the person thus becomes eligible; however, in no event shall such period be extended beyond the person's thirty-first birthday; and".

TITLE III—VETERANS' ADMINISTRATION DEBT COLLECTION AMENDMENTS

SEC. 301. (a)(1) Chapter 53 is amended by adding at the end the following new sections:

"§ 3113. Indebtedness offsets

"(a) Notwithstanding any other provision of this title or of any other law, where an individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, the amount of the indebtedness concerned shall, under regulations which the Administrator shall prescribe, be deducted from future payments made under laws administered by the Veterans' Administration to such individual if—

"(1) such individual has been provided with reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title and with a reasonable opportunity to exercise such rights;

"(2) the Administrator has made a determination with respect to any such challenge or request, unless the Administrator determines that the passage of the time required to make such determinations prior to making deductions would have the effect of jeopardizing the Administrator's ability to recover the full amount of such indebtedness through deductions from such payments; and

"(3) the Administrator has made reasonable efforts to notify such individual about the proposed deduction from such payments and the provision of subsection (c) of this section and the regulations prescribed thereunder.

"(b) Notwithstanding any other provisions of this title or of any other law, the authority of the Administrator to make deductions under this section or to take other administrative action authorized by law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for determining the credit worthiness of the individual who owes such indebtedness, shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

"(c) Upon application by the individual concerned and under such regulations, the Administrator may, in order to avoid undue hardship to such individual to the extent consistent with recovering the full amount of an indebtedness described in subsection (a) of this section, set the rate at which the amount of such indebtedness shall be deducted from future payments at a rate less than that which would otherwise be required.

"§ 3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States

"(a) Notwithstanding any other provision of this title or of any other law, and subject to section 3102 of this title, interest and administrative costs (as described in subsection (b) of this section) shall, under regulations which the Administrator shall prescribe, be charged on an amount owed to the United States—

"(1) for an indebtedness to the United States resulting from a person's participation in a benefits program administered under this title by the Veterans' Administration, other than a loan, loan-guaranty, or loan-insurance program;

"(2) for the provision of care or services under chapter 17 of this rule; or

"(3) to the extent permissible under the loan instruments concerned, for an indebtedness resulting from an individual's participation in a program of loans, loan guaranties, or loan insurance administered by the Veterans' Administration under this title,

if a reasonable period of time, as determined under such regulations, has expired following the initial notification of the amount due to the person owes such amount of the amount due and the fact that such amount has not been paid. Interest shall accrue on such amount after the expiration of such reasonable period of time, but not for any period prior to the date (A) of the enactment of this section, or (B) on which the Administrator has mailed to the individual concerned, at such individual's most currently available address, notice of the Administrator's intention to charge interest on the indebtedness.

"(b)(1) The administrative costs to be charged under this section shall be so much of the costs incurred by the United States in collecting an indebtedness as the Administrator determines, under such regulations, to be reasonable and appropriate.

"(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Administrator, in consultation with the Secretary of the Treasury, under such regulations.

"§ 3115. Authority to sue to collect certain debts

"(a) Not later than ninety days after the date of the enactment of this section, the Administrator shall take appropriate steps to authorize attorneys employed by the Veterans' Administration to exercise the right of the United States to bring suit, subject to the direction and supervision of the Attorney general and upon such terms and conditions as the Attorney General may prescribe, in any court of competent jurisdiction to recover any indebtedness that is owed to the United States by an individual by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, if the Administrator has determined, under regulations which the Administrator shall prescribe, that such individual has failed to respond appropriately to reasonable administrative efforts to collect such indebtedness.

"(b) Not later than one hundred and twenty days after the date of the enactment of this section, the Administrator and the Attorney General shall submit to the appropriate committees of the Congress a joint report that describes and explains the actions taken by the Administrator and the Attorney General to implement subsection (a) of this section.

"(c) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28, United States Code, to direct and supervise all litigation to which the United States or an agency or officer thereof is a party.".

(2) Not later than October 1, 1980, the Administrator shall prescribe the regulations required to be prescribed under sections 3113 and 3114 of title 38, United States Code, as added by paragraph (1) of this subsection.

(3) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new items:

"3113. Indebtedness offsets.

"3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States.

"3115. Authority to sue to collect certain debts.".

(b) Section 3301 is amended by—

(1) inserting "or in preparation for" after "In" in clause (5) of subsection (b);

(2) amending subsection (c) to read as follows:

"(c)(1) The amounts of any monetary payments made by the Veterans' Administration to a beneficiary of a benefits program administered by the Veterans' Administration under this title shall be made known to any person who applies for such information, and the Administrator, with the approval of the President, upon determination that the public interest warrants or requires, may, at any time and in any manner, publish any or all information of record pertaining to any claim.

"(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Veterans' administration in connection with any loan program authorized under chapter 37 of this title shall be made available to any person who applies for such report or certificate.";

(3) redesignating subsection (g) as subsection (i) and inserting after subsection (f) the following new subsections (g) and (h):

"(g)(1) Subject to the provisions of this paragraph, the Administrator may, pursuant to regulations which the Administrator shall prescribe, release the name and address of an individual to a consumer reporting agency when necessary for the purpose of—

"(A) locating such individual when (i) such individual is administratively determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, or (ii) the Administrator determines under such regulations that (I) it is necessary to locate such individual in order to conduct a study pursuant to section 219 of this title or a study required by any other provision of law, (II) such individual's inclusion in such study and the cost of such inclusion, in light of any other alternatives reasonably available to develop information necessary for such study and the costs of such alternatives and any possible consequences for such individual resulting from such release, clearly warrant such release, and (III) the release of such information and the fact that the Administrator has inquired as to such individual's present address (in order that any such study may be conducted) will not create a substantial risk of being construed as indicating that such individual is indebted to the United States or of otherwise having an adverse effect on such individual's credit worthiness, credit standing, or credit capacity; or

"(B) obtaining a consumer report in order to assess the ability of an individual so indebted to the United States to repay the indebtedness when the Administrator determines under such regulations that such individual has failed to respond appropriately to administrative efforts to collect such an indebtedness;

and may so release to such agency for either such purpose such other information as the Administrator determines under such regulations is reasonably necessary to identify such individual, but not including any information indicating expressly or implicitly any indebtedness to the United States or any other information reflecting adversely on such individual. Prior to making any such release, the Administrator shall, to the maximum extent practicable and under such regulations, determine that such agency (including any consumer reporting agency described in paragraph (4)(B)(i) of this subsection) maintains and reports information of the character involved in such release in such a manner as not to indicate in its file on such individual or in any consumer report issued or other disclosure made by it that an inquiry by the Veterans' Administration pursuant to this paragraph indicates the existence of an indebtedness to the United States or otherwise reflects adversely on such individual. A consumer reporting agency to which the Administrator releases information under this paragraph may not, on the basis of such information, indicate by any such recording or notation in such file or in any consumer report issued or disclosure made by such agency the existence of such indebtedness or any other information reflecting adversely on such individual's credit worthiness, credit standing, or credit capacity. Any willful failure of such consumer reporting agency or of any employee of such agency to comply with the requirements set forth in the preceding sentence shall be punishable in the same manner prescribed for the violation described in the last sentence of subsection (f) of this section.

"(2)(A) When the Administrator determines under such regulations that an individual has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness described in paragraph (1)(A)(i) of this subsection, the Administrator may release information relating to such indebtedness and the identity and address of such individual to one or more consumer reporting agencies for the purposes of making such information available for inclusion in consumer reports regarding such individual and, if necessary, of locating such individual if—

"(i) the individual has been provided reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title, has been provided with a reasonable opportunity to exercise such rights, and the Administrator has made a determination with respect to any such challenge or request; and

"(ii) sixty calendar days have elapsed following the mailing to such individual at such individual's most currently available address of notice of the Administrator's intent to release such information for such purposes, notice of the name and address of each consumer reporting agency to which such release will be made by the Administrator, and the specific information intended to be released.

"(B) Following the release of information under subparagraph (A) of this paragraph—

"(i) the Administrator shall notify each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which such information has been released by the Administrator of any substantial change in the status or amount of such indebtedness by the end of the calendar month following the calendar month during which such change occurs and shall, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly provide verification or correction, as appropriate, of such information; and

"(ii) if the Administrator determines that the individual concerned had not, prior to such release of information, received a communication from the Veterans' Administration providing such individual with actual notice of the indebtedness and the rights

and the opportunity described in subparagraph (A)(i) of this paragraph, any information in the possession of a consumer reporting agency indicating that such indebtedness is delinquent or past due shall, notwithstanding any other provision of law, be deemed to be inaccurate for purposes of section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), and the Administrator shall immediately advise such individual and each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which the Administrator has released information relating to such indebtedness that any such indication is inaccurate for purposes of such section and advise such individual of the provisions of such section.

"(3) No contract entered into for any of the purposes of this subsection or subsection (h) of this section and no action taken pursuant to any such contract or either such subsection shall result in the application of section 552a of title 5 to any consumer reporting agency or employee thereof.

"(4) For the purposes of this subsection and subsection (h) of this section—

"(A) The terms 'consumer report' and 'file' shall have the meaning provided in subsections (d) and (g) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a (d) and (g)), respectively.

"(B) The term 'consumer reporting agency' (i) shall have the meaning provided in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and (ii) shall also mean any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit information or other information on consumers from consumer reporting agencies (as defined in subsection (f) of section 603 of such Act) for the purpose of furnishing such information to third parties, or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such agencies.

"(h) The Administrator may, pursuant to regulations which the Administrator shall prescribe and which shall not become effective until 30 days following publication in the Federal Register, release the name, address, and other information relating to the identity of an individual, to any person in a category of persons that is described in such regulations and specified as a category of persons to whom such information may be released, if the release of such information is necessary for the purpose of—

"(1) determining the credit worthiness, credit capacity, income, or financial resources of an individual who has (A) applied for any benefit under chapter 37 of this title, or (B) submitted an offer to the Administrator for the purchase of property acquired by the Administrator under section 1820(a)(5) of this title;

"(2) verifying, either before or after the Administrator has approved an individual's application for assistance in the form of a loan guaranty or loan insurance under chapter 37 of this title, information submitted by a lender to the Administrator regarding the credit worthiness, credit capacity, income, or financial resources of such individual;

"(3) offering for sale or other disposition by the Administrator, pursuant to section 1820 of this title, any loan or installment sale contract owned or held by the Administrator; or

"(4) to the extent not otherwise authorized by this paragraph, providing assistance to any applicant for benefits under chapter 37 of this title or administering such benefits if the Administrator promptly records the fact of such release in appropriate records pertaining to the person concerning whom such release was made."; and

(4) amending subsection (i), as redesignated by clause (2) of this section, by striking out "Any" and inserting in lieu thereof "Except as provided in subsection (g)(3) of this section, any".

TITLE IV—VETERANS' ADMINISTRATION HEALTH-CARE COST RECOVERY PROVISIONS

SEC. 401. (a) Subchapter III of chapter 17 is amended by adding after section 628 the following new section:

"§ 629. Recovery by the United States of the cost of certain care and services

"(a) In any case in which a veteran is furnished care and services under this chapter for a non-service-connected disability and such disability was incurred—

"(1) incident to such veteran's employment and the disability is covered under a workers' compensation law or plan which provides reimbursement for or indemnification of the cost of health care and services provided to the veteran by reason of the disability,

"(2) as the result of a motor vehicle accident covered under the law of a State which requires the owners or operators of motor vehicles registered in such State to have in force automobile accident reparations insurance, or

"(3) as the result of a crime of personal violence that occurred in a State or subdivision thereof in which a person injured as the result of such crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime,

the United States shall have the right to recover, subject to the limitations, conditions, and procedures prescribed in subsections (b) and (c) of this section, the reasonable costs of such care and services from the State or subdivision thereof, employer, employer's insurance carrier, or automobile accident reparations insurance carrier, to the extent that such veteran, or the provider of care and services to such veteran, would be eligible to receive reimbursement or indemnification for such care and services if such care and services had not been furnished by a department or agency of the United States.

"(b) The amount that may be recovered by the United States in exercising the right provided under subsection (a) of this section may not exceed the lesser of (1) an amount equal to the reasonable cost of the care and services furnished such veteran under this chapter, as determined by the Administrator pursuant to regulations which the Administrator shall prescribe after notice and opportunity for public comment, or (2) the maximum amount specified by the law of the State or subdivision thereof concerned or by any relevant contractual provision to which such veteran was a party or was subject.

"(c)(1) The United States shall, as to the right provided in subsection (a) of this section, be subrogated to any right or claim that such veteran or such veteran's personal representative, successor, dependents, or survivors may have against a State or subdivision thereof, an employer, an employer's insurance carrier, or an automobile accident reparations insurance carrier.

"(2) In order to enforce any such right or claim to which it is subrogated under paragraph (1) of this subsection—

"(A) the United States may intervene or join in any action or proceeding brought by the veteran or such veteran's personal representative, successor, dependents, or survivors against a State or subdivision thereof, an employer, an employer's insurance carrier, or an automobile accident reparations insurance carrier, or

"(B) if—

"(i) no such action or proceeding has been commenced within one hundred and eighty days after the first day on which care and services for which recovery is sought were furnished to such veteran by the Veterans' Administration under this chapter, and

"(ii) the United States has sent written notice by certified mail to such veteran at such veteran's last-known address, or to such veteran's personal representative or successor, of the United States' intention to institute legal proceedings,

the United States may, sixty days after the mailing of such notice, institute and prosecute legal proceedings against such State or subdivision thereof, employer, employer's insurance carrier, or automobile accident reparations carrier.

"(d) A veteran eligible for care and services under this chapter may not be denied such care and services by reason of this section.

"(e) No law of any State or of any subdivision thereof, and no provision of any contract or agreement entered into, renewed, or modified pursuant to any State law shall operate to prevent recovery by the United States under (1) subsection (a) of this section for care and services furnished under this chapter to any veteran for a non-service-connected disability, or (2) subsection (b) of section 611 of this title for care and services furnished as a humanitarian service in emergency cases under such subsection to any individual.".

(b) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 628 the following new item:

"629. Recovery by the United States of the cost of certain care and services.".

On page 71, line 4, strike out "III" and insert in lieu thereof "VI".

On pages 71 through 74, redesignate sections 301 through 308 as sections 601 through 608.

On page 74, between lines 21 and 22, insert the following new sections:

SEC. 609. Section 502 of Public Law 96-128 is amended by adding at the end the following new sentence: "Disclosures of information made under this section shall for all purposes be deemed to be disclosures authorized in title 26, United States Code.".

of 89 to 0 and which included a 10-Health Programs Extension and Improvement Act of 1979, Public Law 96-151 (93 Stat. 1092, 1096), is amended by—

(1) inserting "(a)" before "Section"; and

(2) adding at the end the following new subsection:

"(b) The amendment made by subsection (a) of this section shall take effect with respect to appointments made on or after the date of the enactment of this Act.".

SEC. 611. Notwithstanding the provisions of section 5072(b), 5073(a)(2), or 5082(b) of title 38, United States Code, in cases in which the Administrator has approved an application for a grant or supplemental grant under subchapter I of chapter 82 of such title (for the establishment of a new State medical school), amounts appropriated pursuant to section 5072(a) or 5082 of such title that are approved for such a grant or supplemental grant shall remain available for, and may be paid during, a period of twelve months in addition to the periods provided for in such sections, respectively, and any funds made available by this section for payments, or authorized to be paid, under such grant or supplemental grant for faculty salaries may not exceed the amount provided for under section 5073(a)(2)(G) of such title.

SEC. 612. Section 4107(c)(3) is amended by

striking out "section 4507" and inserting in lieu thereof "sections 4507 and 5384".

On page 74, line 22, strike out "309" and insert in lieu thereof "613".

On page 74, line 22, strike out "subsection (b)" and insert in lieu thereof "subsections (b) through (f)".

On page 75, after line 16, insert the following new subsections:

(c) The provisions of sections 210, 211, and 212 shall take effect on January 1, 1981.

(d) The provisions of sections 213, 214, and 215, titles III and V, and section 610 shall take effect on the date of the enactment of this Act.

(e) The amendments made by title IV shall be effective with respect to care and services furnished under chapter 17 of title 38, United States Code, after September 30, 1980.

(f) The provisions of section 609 shall take effect as of November 28, 1979.

Mr. CRANSTON. Mr. President, the committee amendment would add to S. 1188 provisions of other measures that have already passed the Senate earlier this session so that the resolution of differences with the House of Representatives regarding these provisions will be facilitated by taking place in the context of this bill. Those provisions are three sections of S. 2649, originally passed by the Senate as part of H.R. 7511 on August 6—section 402, relating to the disclosure of certain information for purposes of administering the VA home-loan program; section 503, modifications in the post-Vietnam-era veterans' educational assistance program; and section 504, modifications of the 1989 termination date of the current GI bill—and section 805 of S. 2885, relating to the enhancement of VA debt-collection efforts, passed by the Senate on June 26.

For my colleagues' reference, Mr. President, these provisions were described in detail during the Senate's previous consideration and approval of the measures cited above, and I would refer those who wish to review them to pages 21426 through 21445 of the RECORD for August 6 and pages 17078 through 17083 of the RECORD for June 26.

Mr. President, the committee amendment would also amend the provisions of S. 1188 relating to the 10-percent GI bill cost-of-living increase to delay the effective date from October 1, 1980, to January 1, 1981. This is consistent with section 801 of S. 2885, the proposed "Reconciliation Act of 1980," which passed the Senate on June 30 by a vote of 89 to 0 and which included a 10-percent GI bill rate increase, effective January 1, 1981. I am proposing this provision of the committee amendment with the utmost reluctance and solely because of the budgetary constraints imposed by the first concurrent resolution on the budget for fiscal year 1981. I believe that it is very unfair that the Congress must consider such a substantial postponement of this GI bill increase—the first in 3 years—in order to make it possible, within the inadequate levels for veterans' programs in the first budget resolution, to meet our commitments to our Nation's service-connected disabled veterans and the survivors of those who have died in the service of our country.

Further, the committee amendment would modify the age criteria for receipt of educational assistance under chapter 35 of title 38 in the case of dependents of individuals serving on active duty in the military who are listed by the Department of Defense for more than 90 days as missing in action, as prisoners of war, or as being forcibly detained or interned in the line of duty by a foreign government so as to apply generally the same age criteria applied under current law to chapter 35—eligible dependents who themselves enter service in the military. In this regard, the amendment would provide that a dependent who—as the result of his or her parent being missing in action or taken captive—becomes eligible for chapter 35 assistance after turning 18 but prior to attaining 26 years of age, would have 8 years or until his or her 31st birthday, whichever comes first, in which to utilize entitlement under chapter 35. Mr. President, this amendment is based on the provisions of H.R. 8007, which was introduced on August 22 by Representative MOTTL, of Ohio in response to the case of a dependent of one of the Marine guard hostages being held in Iran.

The committee amendment would also add to S. 1188 certain provisions from title III of H.R. 7102, originally passed by the Senate on June 5, 1980, strengthening and clarifying the Veterans Administration's authority to recover the costs of veterans' non-service-connected care, in appropriate cases, from workers' compensation carriers, auto no-fault insurers, and States that pay for the costs of health care provided to victims of crimes of personal violence. The House of Representatives did not accept these provisions, and they are thus not contained in H.R. 7102 as enacted over the President's veto on August 26. By adding these provisions to this bill, we will be extending to the House a further opportunity to consider them.

In addition, Mr. President, the committee amendment includes a provision to make a technical amendment in section 502 of Public Law 96-128, the Veterans' Disability Compensation and Survivors' Benefits Amendments of 1979, to clarify, what was clearly the intent of Congress in enacting that law in December of last year, that disclosures of information made pursuant to the authority provided in section 502 are not in technical violation of the criminal provisions of title 26 of the United States Code.

Mr. President, section 502 of Public Law 96-128 requires that the Director of the National Institute of Occupational Safety and Health—NIOSH—request from the Internal Revenue Service under section 6103(m)(3) of the Internal Revenue Code of 1954—title 26 of the United States Code—and supply to the VA the mailing addresses of individuals whom the VA Administrator has certified as having experienced a possible occupational hazard exposure during military service. This section authorizes the VA to use addresses solely for the purpose of locating these individuals as part of an activity being carried out by or on behalf of the VA to determine the status of the health of such individuals or to inform them that they may need medical care or may be entitled to VA benefits. This provision was intended to facilitate the ability of the VA and its contractors to conduct epidemiological followup studies of the long-term health effects of exposure to radiation, agent orange, and other hazardous substances. Section 502 gives the same authority to other Federal agencies.

Mr. President, section 6103(m)(3) of title 26 authorizes the IRS to disclose the mailing addresses of taxpayers only to officers and employees of NIOSH solely for purposes of locating individuals who are, or may have been, exposed to occupational hazards. However, neither that provision nor any other provision of title 26 authorizes NIOSH to disclose these IRS-provided addresses to the VA, or the VA to disclose them to a contractor carrying out an epidemiological study.

In addition, section 7213(a)(2) of title 26 provides that it shall be unlawful for any Federal employee or former Federal employee willfully to disclose to any person, "except as authorized in" title 26, any Federal tax return information. Section 7213(a)(2) further provides that any violation of this provision shall be a felony punishable by rather severe penalties.

Because the disclosures authorized under section 502 of Public Law 96-128 are not authorized "in" title 26, NIOSH employees who disclose IRS-provided addresses to the VA and VA employees who further disclose those addresses to a VA contractor or other Federal agencies may be considered technically in violation of section 7213(a)(2) of title 26.

Thus, in order to correct this situation, the committee amendment would amend section 502 of Public Law 96-128 to provide that disclosures made under that section shall be deemed to be disclosures authorized "in" title 26, United States Code.

Mr. President, the committee amendment also includes a provision that would make a technical, clarifying amendment in paragraph (3) of section 4107(c) of title 38, relating to nonphysician VA hospital directors, to add a cross-reference to a provision in title 5, section 5384, which relates to the award of performance bonuses to employees in the Senior Executive Service.

This amendment is necessary because section 105(c) of Public Law 96-330, the recently enacted Veterans' Administration Health Care Amendments of 1980, which added paragraph (3) to section 4107(c), by inadvertence included only a cross-reference to section 4507 of title 5 and the further reference to section 5384 of such title is needed to fulfill the congressional intent—set forth in the explanatory statement inserted in the CONGRESSIONAL RECORD during consideration in both bodies, July 31, 1980, in the House, and August 1, 1980, in the Senate—of insuring that nonphysician VA hospital directors remain eligible for SES bonuses once they are transferred, pursuant to other provisions in Public Law 96-330, from title 5 personnel system to the VA's Department of Medicine and Surgery title 38 personnel system.

Mr. President, another provision in the committee amendment would amend section 303 of Public Law 96–151, the Veterans' Health Programs Extension and Improvement Act of 1979, to clarify that that section—which reduced from 3 years to 2 years the probationary period for certain employees hired under the authority of title 38 in the VA's Department of Medicine and Surgery—applies only to appointments made on or after December 20, 1979, the date of the enactment of that law. This is the way that the VA has implemented this provision—a sensible approach that avoids the confusion and administrative impracticalities that could result from any retroactive application of a reduced probation period in the cases of employees who were well into their probationary service when the law was enacted, especially those in the third year of probationary status. Thus, this provision of the committee amendment would provide specific clarification confirming the validity of the VA's implementation of the provision reducing the probationary period.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the text of VA Circular 00–80–24, the document by which the VA is, as I have just described, implementing section 303 of Public Law 96–151.

There being no objection, the circular was ordered to be printed in the RECORD, as follows:

CIRCULAR 00–80–24

Public Law 96–151, "Veterans' Health Programs Extension and Improvement Act of 1979," and change in probationary period for title 38 employees.

1. Purpose: This circular implements the provision of P.L. 96–151, approved December 20, 1979, which amended 38 U.S.C. 4106 (B). This amendment has the effect of changing the required period of probationary service from three to two years for title 38 employees given probationary appointments in DM&S on or after December 20, 1979, the effective date of the law. This does not affect title 38 probationary employees who were appointed on or before December 19, 1979, who will complete the required 3-year period of probationary service for which they were appointed.

2. Probationary period: All persons indicated in par 1 above appointed on or after December 20, 1979, are required to serve a period of two years of probationary service in DM&S.

3. Creditable service while on leave without pay: The amounts of service creditable toward completion of the probationary period while on leave without pay prescribed in MP–5, part II, chapter 4, paragraph 5D, will apply to all probationary employees, irrespective of the length of the probationary period.

4. Documentation: Paid instructions for documenting records of affected employees appointed on and after December 20, 1979, were issued by teletype to ALVAMC on January 15, 1980.

5. The provisions of chapter 4, "Probationary Period," MP–5, part II, and the DM&S supplement thereto are modified insofar as they are affected by the provisions of this circular. Appropriate changes to chapter 4 will be issued later.

6. A confirming issue of this teletype will not follow.

7. A copy of this circular should be furnished exclusively recognized labor organizations representing employees covered by its provisions. Management should meet in advance with such labor organizations concerning its implementation procedures and its impact on affected unit employees. Also, existing negotiated agreements should be reviewed for applicable provisions.

8. Rescission: This circular expires February 28, 1981.

Mr. CRANSTON. Finally, Mr. President, the committee amendment contains a provision to modify the VA's program of grant assistance to new State medical schools under chapter 82 of title 38. Under subchapter I of chapter 82, the VA operates a program for assistance in the establishment of new State medical schools, under which 5 medical schools—Marshall University in Huntington, W. Va.; the Quillen/Dishner Medical School in Johnson City, Tenn.; Texas A. & M. University in Temple, Tex.; the University of South Carolina in Columbia, S.C.; and Wright State University in Dayton, Ohio—have received grants to assist these institutions to extend, alter, remodel, improve, or repair buildings to make them suitable for use as medical school facilities and to help pay the faculty salaries at such schools. Each of these schools is affiliated with at least one nearby VA medical center.

No new schools may any longer be established under this program, but the authorization of appropriations extends through fiscal year 1982, and funds previously appropriated remain available—by virtue of sections 5072(b) and 5082 (b)—for 6 years after the year for which they were appropriated. Under section 5073(a)(2), a grant made under this subchapter for the payment of faculty salaries may be used for that purpose only during the first 7 years of the school's operation and only up to specified percentages of total faculty salary costs—declining from 90 percent in the first 3 years of operation to 50 percent in the 7th year.

Wright State was the first of these schools to receive a subchapter I grant, and it has just begun its 7th year of operation, as defined in the VA's implementing regulations. My distinguished colleague from Ohio (Mr. GLENN) has brought to my attention that Wright State may be unable to use effectively by the end of the 7-year period the full amount of the grant money it has received under this program for faculty salaries.

To resolve this problem, and to prevent the other four schools from facing similar problems with respect to grants for salaries or for other authorized purposes, section 510 in the committee amendment would provide for an additional 12-month period—beyond the periods prescribed in sections 5072(b), 5082(b), and 5073(a)(2)—in which these new State medical schools could obligate the funds which have been committed to them under subchapter I. This amendment would not provide for the authorization of appropriations for any additional funds for the schools in the eighth year and would limit the amount of the remaining funds which could be used to pay faculty salaries in the eighth year to 50 percent of the cost of such salaries, the same limit that currently applies in the seventh year. Thus, the amendment is designed to permit the schools to make appropriate, efficient use of the funds that the VA has already committed to them under this grant program.

I wish to thank the Senator from Ohio (Mr. GLENN) very much for his excellent work on this amendment and for bringing this problem to the committee's attention. We believe that this program has been most successful and hope that this amendment will allow these five new medical schools to use the grant money they receive under subchapter I for the intended purposes.

Mr. President, I know of no objection to this amendment which I offer along with the distinguished ranking minority member in behalf of the committee, and urge its adoption.

Mr. SIMPSON. Mr. President, I wish to join my esteemed colleague and chairman of the Veterans' Affairs Committee in calling for adoption of this committee amendment.

Senator CRANSTON has adequately and very clearly summarized the text of this amendment, and I should wish to point out to our colleagues that the basic purpose of the amendment is to facilitate our conferring with the House of Representatives on those legislative items which were passed by this body at an earlier date.

I know of no objection to this committee amendment, and I urge my colleagues to adopt it.

Thank you, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment (UP No. 1548) was agreed to.

UP AMENDMENT NO. 1549

(Purpose: To authorize expansion of the scope of an epidemiological study regarding veterans exposed to Agent Orange to include additional factors)

Mr. CRANSTON. Mr. President, on behalf of the distinguished ranking minority member, Mr. SIMPSON, and myself, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON), for himself and Mr. SIMPSON, proposes an unprinted amendment numbered 1549.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 71, between lines 3 and 4, insert the following new title:

TITLE V—AMENDMENTS TO AGENT ORANGE STUDY PROVISIONS

SEC. 501 Section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979, Public Law 96–151 (93 Stat. 1097), is amended by amending subsection (a)(1) to read as follows:

"(a)(1)(A)(i) The Administrator of Veterans' Affairs shall design a protocol for and conduct an epidemiological study of the long-term adverse health effects in humans of service in the Armed Forces of the United States in the Republic of Vietnam during the period of the Vietnam conflict as such health effects may result from exposure to phenoxy herbicides (including the herbicide known as 'Agent Orange') and the class of chemicals known as 'the dioxins' produced during the manufacture of such herbicides.

"(ii) In conducting the study provided for by division (i) of this subparagraph, the Administrator may, as the Administrator deems appropriate, expand the scope of such study to include an evaluation of the adverse health effects in humans of such service as such health effects may result from other factors involved in such service, including exposure to other herbicides, chemicals, medications, or environmental hazards or conditions.

"(B)(i) The Administrator shall also conduct a comprehensive review and scientific analysis of the literature covering other studies relating to whether there may be long-term adverse health effects in humans from exposure to phenoxy herbicides (including the herbicide known as 'Agent Orange') and the class of chemicals known as 'the dioxins' produced during the manufacture of such herbicides.

"(ii) In conducting the review and analysis of the literature provided for by division (i) of this subparagraph, the Administrator may, as the Administrator deems appropriate, expand the scope of such review and analysis of the literature to include a review and analysis of the literature covering other studies relating to whether there may be long-term adverse health effects in humans from other factors involved in service in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam conflict or in other comparable situations involving one or more of the factors described in subparagraph (A)(ii) of this paragraph.".

Mr. CRANSTON. Mr. President, this amendment, which relates to the issue of the adverse health effects in Vietnam veterans that may be associated with exposure to the herbicide agent orange during their service in Vietnam and the Government's response to this issue, would amend a provision—section 307—in Public Law 96–151, the Veterans' Administration Health Resources and Programs Extension Act of 1979, that requires the VA to "design a protocol for and conduct an epidemiological study of" persons exposed to agent orange while serving in the Armed Forces of the United States during the Vietnam conflict. As my colleagues will recall, last December, during consideration of H.R. 3892—the legislation that was ultimately enacted as Public Law 96–151—the Senate adopted a provision I proposed to mandate this study. The amendment that I am offering today would amend that study provision in three ways. First, it would authorize—although not mandate—the VA Administrator to expand the scope of the statutory study—along lines recommended by the scientific panel of the interagency work group to study the possible long-term health effects of phenoxy herbicides and contaminants, the so called IAC. This recommendation was included in the panel's July 30, 1980, "herbicide orange status report," that I inserted into the August 6 CONGRESSIONAL RECORD.

Thus, the amendment would expand the study to include an evaluation of the possible adverse health effects of factors other than agent orange related to service in Vietnam. Second, the amendment would add a provision to section 307 to authorize expressly the Administrator to carry out the statutory study through a contract with a public or private entity so as to clarify the congressional intent in this regard; and, finally, my amendment would make certain technical amendments to the description of the scope of the agent orange study mandate.

On the issue of the expanded scope of the study, the recommendation of the IAG's scientific panel seems to me to be highly significant. In making the recommendation that any study of adverse health effects in Vietnam veterans be expanded beyond agent orange, the panel seems to suggest that a combination of chemical, physical, environmental, and emotional factors peculiar to service in the war in Vietnam might be responsible for a host of health problems now being blamed on agent orange alone. Further, the scientific panel indicated that, because of the difficulties inherent in identifying a population of ground troops who were exposed to agent orange in Vietnam and the uncertain scientific data available on the health effects of dioxin exposure, it would be more appropriate to design a study that would recognize other factors as possible bases for any ill-health effects that are shown to exist in the Vietnam veteran population.

Mr. President, agent orange may be only the tip of an epidemiologic iceberg, or it may not. Either way, the sooner we know the truth, the better. An expansion of the study could help resolve this question.

Should the Administrator exercise the option in the amendment and expand the focus of the study, the broader study should lead to a more reliable, and possibly faster, result. The results of such a study could do much to reassure veterans and their families who are presently experiencing so much anxiety.

Mr. President, as I noted earlier, our amendment would expressly authorize the VA to carry out the mandated study through a contract with a public or private entity. Earlier this year, on June 3, because of my concern that many of those most concerned about the agent orange issue no longer believe that the VA can by itself fairly study and evaluate the merits of the issue, I called upon the Administrator to contract with an outside entity of high scientific repute for the management of the mandated study, a recommendation that the VA is still evaluating, and I continue to believe that having an outside body—beyond the Office of Technology Assessment which already has a statutorily mandated monitoring role—actively involved in the management of the study would improve the likelihood that the study results will be viewed as credible. Indeed, the VA has already requested bids from outside entities on designing the protocol for the study. The provision in the amendment would make clear that the VA has the authority to contract for the management of the study, and I hope that such clarification will remove any concerns on this point.

Whether the study's scope is broadened or not—and I want to stress that the decision on whether to broaden the study would be left solely to the Administrator's discretion under the amendment—the law would continue to require the focus on agent orange. Indeed, the study mandate, as my amendment would slightly revise it, would still place primary emphasis on the adverse health effects of exposure to dioxin as contained in agent orange by requiring the VA to study the effects of exposure to dioxin while giving the Administrator the discretion to study the effects of other factors related to Vietnam service.

In order to assist the Administrator to make an informed decision on the possible expansion, the Committee on Veterans' Affairs will hold a hearing on September 10 to receive an update on agent orange-related matters, especially activities by the Federal Government, and specifically to explore in more detail the IAG scientific panel's July 30 report and its recommendation regarding expansion of the study.

Because of the continuing emphasis on agent orange, whether the scope of the study is expanded or not, our amendment would make some technical adjustments to the study description set forth in Public Law 96–151 so as to remedy some problems that VA scientists and others have noted in the existing study mandate.

The result of the proposed technical amendment would be to change the study from a study of "persons who, while serving in the Armed Forces of the United States during the period of the Vietnam conflict, were exposed to any of the class of chemicals known as the dioxins produced during the manufacture of the various phenoxy herbicides (including the herbicide known as agent orange)" to a study of "the long-term adverse health effects in humans of service in the Armed Forces of the United States in the Republic of Vietnam during the period of the Vietnam conflict as such health effects may result from exposure to phenoxy herbicides (including the herbicide known as agent orange) and the class of chemicals known as the dioxins produced during the manufacture of such herbicides." By this change, the threshold problem of identifying a population exposed to dioxins is removed and, instead, the VA—or an outside contractor, if one is utilized—can begin the mandated study by identifying a population with service in Vietnam and then focus on dioxin exposure among those in that population.

Mr. President, I believe that the impact of the various provisions in our amendment will be to define properly and emphasize the existing agent orange study mandate and this should result in the study moving forward in a more expeditious and effective manner. As I have stated on a number of occasions, we cannot resolve the many very difficult, very complex issues related to agent orange without valid data on the effects of dioxin exposure in general and on the current health of Vietnam veterans as a group, and I believe that the Public

Law 96-151 study is a key method by which this data can be gathered.

I urge my colleagues to adopt this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

Mr. CRANSTON's amendment (UP No. 1549) was agreed to.

UP AMENDMENT NO. 1550

The PRESIDING OFFICER. The Senator from Pennsylvania (Mr. HEINZ).

Mr. HEINZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) for himself and others proposes an unprinted amendment numbered 1550.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 71, between lines 3 and 4, insert the following new section following section 501:

SEC. 502. Section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979, Public Law 96-151 (93 Stat. 1097), is further amended by amending subsection (b)—

(A) by amending paragraph (2) by inserting "for administrative or legislative action, or both," after "recommendations";

(B) by adding at the end the following new paragraph:

"(3)(A)(i) Not later than ninety days after the submission of each report provided for in paragraph (2), the Administrator shall, based on the results described in each such report and the comments and recommendations thereon and any other available pertinent information, develop and publish in the Federal Register, for public review and comment, proposed regulations containing proposed guidelines, standards, and other criteria (together with an explanation of the bases for such proposed guidelines, standards, and criteria) for resolving claims for benefits administered by the Veterans' Administration based on exposure to Agent Orange during service in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam conflict.

"(ii) If the Administrator expands the scope of the study provided for in subsection (a)(1)(A)(i) (as provided for in subsection (a)(1)(A)(ii)), such proposed regulations shall contain proposed guidelines, standards, and other criteria for resolving such claims based on one or more factors described in subsection (a)(1)(A)(ii) related to such service.

"(iii) Proposed regulations developed and published pursuant to division (i) of this subparagraph (and, if proposed regulations are developed and published pursuant to division (ii) of this subparagraph, pursuant to such division) shall include specification of any presumptions (including any presumptions regarding service and exposure) to be applied to the resolution of the claims to which such proposed guidelines, standards, and criteria in such proposed regulations apply.

"(iv) Notwithstanding any other provision of law, the public review and comment process required by division (i) of this subparagraph shall be conducted in accordance with the provisions of sections 553(b) and (e), 556, and 557 of title 5, United States Code.

"(v) On the same day as such proposed regulations are published as required by division (i) of this subparagraph, the Administrator shall submit to the appropriate Committees of the Congress any recommendations for legislative action that the Administrator considers appropriate in light of such proposed guidelines, standards, and criteria, the report submitted pursuant to subsection (b)(2), and any other available pertinent information.

"(B) Not later than ninety days after the completion of the public review and comment process provided for in subparagraph (A)(i) and (iv), the Administrator shall publish in the Federal Register final regulations containing the guidelines, standards, and other criteria (together with an explanation of the bases for such guidelines, standards, and criteria) for resolving the claims involved.

"(C) Nothing in subparagraphs (A) or (B) shall be considered to limit in any way the discretion and authority of the Administrator to promulgate or prescribe regulations, guidelines, standards, or other criteria for resolving any claims described in subparagraph (A)(i) or (ii) at any time earlier than the time prescribed in subparagraph (A) for the publication of the proposed regulations described in such subparagraph.

"(D) The Administrator's compliance with the provisions of, and any regulations promulgated pursuant to, this paragraph shall be subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.".

Mr. HEINZ. Mr. President, I offer the amendment on behalf of myself, Senator CRANSTON, Senator SIMPSON, Senator PRESSLER, Senator HATFIELD, Senator DURKIN, Senator PERCY, Senator BIDEN, Senator RANDOLPH, and Senator MATSUNAGA.

Mr. President, the purpose of this amendment is really quite straightforward. It is very similar to an amendment I offered in January of this year. It quite simply requires the VA to promulgate regulations containing guidelines to resolve the claims of veterans' benefits based on exposure to agent orange.

This addresses, in other words, one of the most serious problems still confronting Vietnam veterans and their families, the toxic effects of the herbicide agent orange. In the last few years over 10,000 veterans have gone to the VA for treatment of agent orange-related problems resulting from skin and nervous disorders to malfunctions of internal organs and cancer.

Nor is this problem restricted to veterans. Among alleged effects are birth defects in offspring.

In recognition of the serious nature of this problem, Congress has directed the VA to conduct a wide-ranging epidemiological study of those Vietnam veterans who were exposed to agent orange. This study is just beginning and it will be at least a year before the initial findings are reported to Congress.

Mr. President, it has already been 13 years since agent orange was identified as a hazard to humans, and considerable scientific evidence exists indicating its harmful effects. It is understandable, therefore, when many Vietnam veterans express frustration and hostility toward the efforts of their Government to respond to their pleas for help.

It is the purpose, therefore, of my amendment to remove obstacles that could block compensation to veterans for agent orange, and to insure the timely consideration by the VA of findings causally linking agent orange to diseases in humans.

Since the Vietnam veteran is being told that there are insufficient data to rule on his claim for compensation, it is important that he be given assurance that every effort will be made to evaluate new evidence obtained from the VA study just as soon as possible. To accomplish this objective my amendment requires the VA to develop regulations which define what conditions of service establish exposure to agent orange and what symptoms medical research has shown to be caused by agent orange. I would like to point out that the amendment does not prejudge the findings of the VA epidemiological study and does not compel the VA to take any action which is not justified by the existing scientific evidence at the time.

Mr. President, I worked very hard with the committee to structure this amendment so that the committee could be supportive of it at this time. I believe this amendment, on which I worked very closely with Senator CRANSTON and others, is the minimum we should be doing to insure that our Nation's veterans are awarded the benefits they are owed and, I believe, the minimum required to restore the Vietnam veteran's faith in the Government's efforts to address this problem thoroughly and expeditiously.

Mr. President, I would add one other observation on the amendment. Although the amendment that we offer today does not include a specific mandate that the VA's final regulations include a particular presumption framework, it is my understanding that if the VA determines that there are disabilities casually related to exposure, then the VA will have to adjudicate individual claims for those disabilities through a presumption framework. Any other approach would result in massive and unacceptable inequities.

There is no way that individual veterans can prove that their disabilities are specifically and individually related to exposure that occurred one to two decades ago. My belief that the VA must proceed this way is reinforced by a belief that the VA will in fact proceed through a presumption framework because that is both consistent with the statutory framework for adjudicating claims which itself proceeds through presumptions and is also consistent with the VA's administrative practice of giving veterans the benefit of the doubt. Indeed, in the VA's recent decision to grant service-connection status to certain cardivascular disabilities that developed after service in veterans with certain service connected amputations, the VA adjudicated claims through a presumption framework. Accordingly, at this time I can understand that it is not necessary to include a specific requirement, but I remain convinced that the final regulations must include a presumption framework of some sort.

Mr. President, I mentioned earlier that the Senator from California (Mr. CRANSTON) and I worked long and hard to try to bring about a compromise solution to this problem. There are three points about my amendment that I want to highlight and on which I would like the views of the Senator from California (Mr. CRANSTON) for the purpose of establishing a legislative history.

First, Mr. President, I want to note my understanding that, although our amendment calls for action by the VA Administrator to issue proposed regulations not later than 90 days after the submission of the first report, and not later than 90 days after each subsequent report, on the VA's epidemiological study, the amendment does not expressly preclude, and is not intended to prevent, the Administrator from taking such action at any earlier time, and indeed the text makes this point explicitly. In fact, I believe that the Administrator should develop and promulgate regulations providing guidelines for the resolution of agent orange-related claims at any earlier point at which he has information warranting specific guidelines for one or more specific types of claims for VA benefits based on exposure to agent orange.

In this regard, I would also note that our amendment is not restricted to requiring action on the study results alone but also on other available pertinent information at the time the proposed regulations are issued. It seems to me that this is a clear recognition that other information may be developed on the basis of which the Administrator could act and that such information is not limited to information available at the time of the study. By including a reference to other pertinent information, the amendment makes the important point that although the results of the study are important, those results will not and should not be the only basis for action.

Mr. CRANSTON. Mr. President, I agree completely with my colleague from Pennsylvania (Mr. HEINZ) about the pending amendment. The time frame incorporated in our amendment is appropriate in light of the expectation that the Public Law 96-151 study should yield some information regarding Vietnam veterans on which action could be taken and that this information will likely be the first good information on those veterans. However, at any point that the VA has adequate information on which to base specific guidance for resolving agent orange claims, it should do so. I assure my friend from Pennsylvania and all of my colleagues that, in my capacity as chairman of the Committee on Veterans' Affairs, I will work to insure that the VA takes such action at all appropriate points.

Mr. HEINZ. Mr. President, I thank the Senator from California.

Let me also stress that the purpose of the amendment is to require the VA to conduct rulemaking once reliable results of the study are available. As we have just indicated, the amendment is not intended to prohibit or preclude any agency rulemaking action before the results of that study are available. I am aware that the VA has yet to conduct public rulemaking on the rules it now uses to decide claims for agent orange-related disabilities. Indeed, I encourage the VA to allow public participation in all agency decisions made before the study is completed. And I understand that such action is the subject of a lawsuit filed in Federal District Court in Washington, D.C., White against Cleland. This amendment is not intended to affect or influence in any way the outcome of this litigation or any rules that may or should be promulgated before the study is completed.

A second point about my amendment that I want to highlight is the absence of any specific mention of genetic damage or birth defects in the amendment itself. In the amendment that I had originally planned to offer, I had included specific reference to this issue and provided a mechanism by which birth defects in the children of Vietnam veterans might be compensated for, should such a health problem be linked to their parent's exposure to agent orange. Such reference is not included in the pending amendment because, in my discussions with the distinguished chairman, I have become convinced that it would be more appropriate for the Congress to fashion any suitable legislation needed to provide compensation and health-care benefits for a child of a veteran only after Congress would have before it definitive data indicating that the birth defects do result from genetic damage due to exposure to a particular chemical during service—if that should prove to be the case. Once any such data is provided, I am confident that the Veterans' Affairs Committee and the Congress would respond promptly and properly to the need for such legislation in light of the particular facts shown to exist.

Nevertheless, I remain very concerned about this aspect of the agent orange issue, and stress that the study itself will include a focus on the question of genetic damage—as one of many alleged "long-term adverse health effects" to be investigated—and that the provisions requiring the Administrator's recommendations on any study findings or other data to include recommendations "for administrative or legislative action, or both" would provide a firm basis for the consideration of legislative action, as indicated, to address problems related to genetic damage.

Mr. CRANSTON. Mr. President, my colleague is again correct. As he notes, the Public Law 96-151 study calls for an evaluation of adverse health effects. There is no question but that this term includes any genetic damage that may be shown to have resulted from exposure to agent orange or from other aspects of service in Vietnam. I believe that the study—along with other studies, such as that which the Center for Disease Control, utilizing its birth defects registry, is preparing to undertake in the Atlanta area—will shed light on this most troublesome facet of the agent orange problem, on which some important reassurance has recently been provided by the male mouse study. Should such studies demonstrate a clear link between dioxin exposure and genetic damage in humans, I would do all that I could to insure prompt legislative action recognizing such a connection and providing appropriate relief. I would also expect the Administrator of Veterans' Affairs to recommend such a legislative change pursuant to the provision in the pending amendment.

I believe it is preferable, however, that the legislative language not undertake to begin to laundry list a whole variety of adverse health effects that some veterans are concerned might be linked to their exposure to agent orange, and I thank the Senator from Pennsylvania for his cooperation in this respect in the drafting of the pending amendment.

Mr. HEINZ. Finally, I wish to stress that this amendment is not intended to affect or influence in any way litigation in connection with the VA's initial notice regarding the contracting process on the original request for proposal issued pursuant to Public Law 96-151, which is also the subject of a GAO investigation requested by several Members of Congress. I do not intend by this amendment to interfere with the orderly processes of the courts and the investigating arm of Congress.

Mr. CRANSTON. Once more, Mr. President, I concur with the Senator regarding the concern he has expressed.

Mr. HEINZ. Mr. President, I thank all my colleagues, and I urge support of this amendment.

Mr. CRANSTON. Mr. President, I am pleased to cosponsor the amendment of the Senator from Pennsylvania (Mr. HEINZ). I have worked closely with the Senator in the development of this amendment—a modification of printed amendment No. 2274, submitted by the Senator last month—and I believe that it is an entirely appropriate amendment. I am extremely grateful to the Senator for his excellent work and his cooperation with me in the development of his amendment.

Mr. President, I believe that this amendment can make a contribution to alleviating the concerns of Vietnam veterans and their families about the health effects of exposure to the dioxin in agent orange. I believe that the approach contemplated by this amendment—setting specific time frames within which the VA must take specified action to develop and issue appropriate guidelines pursuant to which agent orange claims can be resolved—is a useful way to proceed at this point.

Let me stress, however, that this amendment in no way prejudges what the studies and data will show, scientifically, legally, or practically. It does not establish any presumptions of service connection or exposure; nor does it require the VA to take any action in these respects other than what all the evidence suggests should be done at particular points in time.

Mr. President. I know the Senator from Pennsylvania (Mr. HEINZ) agrees with me that, first and foremost, the Government needs valid information on agent organge—information on the effects in humans of dioxin exposure and on the

present status of the health of Vietnam veterans—before there can be any meaningful response to the agent orange issue, and our amendment recognizes that we do not now have the needed information. I also note that our amendment would not in any way alter the provisions of my amendment that was just adopted that would permit the Administrator to expand the scope of the mandated study to include an evaluation of the effects of elements other than agent orange to which Vietnam veterans might have been exposed during their service in Vietnam.

Mr. President, I urge my colleagues to support our amendment.

Mr. SIMPSON. Mr. President, I want to commend my fine friend, the Senator from Pennsylvania for his willingness to work with the Veterans' Affairs Committee in the development of this amendment. I want to emphasize to the Senator from Pennsylvania that he joins every single member of this committee in our concern to effectively and honestly settle the tough issue of agent orange. I thank the Senator for his courtesy and cooperation—always evident traits of his.

Mr. MATSUNAGA. Mr. President, will the Senator from California yield?

Mr. CRANSTON. I yield.

Mr. MATSUNAGA. Mr. President, I rise in support of the Heinz amendment. I congratulate the Senator from Pennsylvania and the Senator from California for having worked up an acceptable compromise.

Mr. President, I rise to join the distinguished chairman of the Committee on Veterans' Affairs, the Senator from California (Mr. CRANSTON), in opposition to the amendment offered by the junior Senator from South Dakota (Mr. PRESSLER) which would establish a veterans' career development, advancement, and training assistance program. As a member of the Veterans' Affairs Committee, I strongly believe that the approach taken in S. 1188, as reported by the committee, is the correct approach that we must take in order to address the continuing employment and other readjustment needs of Vietnam veterans.

Mr. President, as Chairman CRANSTON has indicated, the thrust of the Pressler amendment, which would provide financial incentives, or what could be called wage subsidies, to employers to hire, train, or promote Vietnam veterans, is identical to the amendments offered by the Senator from South Dakota and the Senator from Pennsylvania (Mr. HEINZ) last January during the Senate's consideration of S. 870, the GI Bill Amendments of 1980. I would remind my colleagues that those amendments were resoundingly defeated by the Senate.

In the case of the Pressler amendment to S. 870, a strong argument was made by Chairman CRANSTON in opposition to the amendment that the members of the Veterans' Affairs Committee had not yet had the opportunity to analyze or consider the merits of the career development training proposal. The chairman also argued very forcefully that, over the years, the Congress and the Federal Government have enacted, developed, and implemented a number of important programs designed to meet the unique and sometimes difficult employment needs and problems of veterans.

Mr. President, since last January, the Veterans' Affairs Committee has taken the time to carefully review and evaluate the Pressler proposal, which is embodied in the pending amendment, and other approaches to the veteran, particularly Vietnam veteran, unemployment problem. The committee held hearings on these proposals on March 4 of this year and received critical testimonies from the Veterans' Administration, the Department of Labor, and the Disabled American Veterans which expressed serious reservations about the feasibility and desirability of the Pressler career development training legislation.

The Veterans' Administration was of the view that, contrary to its expressed intention of addressing employment problems of Vietnam veterans, the Pressler legislation would "result in a vague, ill-defined program which would convert veterans educational entitlements into substantial employer subsidies at considerable cost to the taxpayer." The VA further testified that these subsidies would "be highly subject to abuse" and that "there is no assurance that the Federal resources expended would be effectively directed to providing meaningful training and job training opportunities for those veterans who need them."

Mr. President, I believe that the VA's testimony struck at the heart of what is wrong with the approach taken in the amendment of the Senator from South Dakota. I oppose the amendment because I believe, as does Chairman CRANSTON, that funds for veterans benefits should be used only for direct payments to veterans and not for incentive payments to private firms. Senators should realize that what is being proposed here is, in reality, a "wage subsidy" program. While the proposal outlines standard safeguards to curb misuse, the Veterans' Affairs Committee, the Veterans' Administration, and the Department of Labor see vast potential for abuse in the structure of the proposed program.

It is a well-known fact, Mr. President, that such wage-subsidy programs, unless very tightly structured and monitored, many times result in situations where there is substitution, dead end jobs, and exploitation of those who are intended to be helped by such programs. As the committee chairman has indicated, we have had a difficult time with employment and training programs conducted by the Department of Labor. No matter how well we thought we designed employment and training programs, no matter how tightly we drew the program regulations and safeguards, the Department of Labor, the agency in our Federal Government with the most expertise and experience in job training programs, has had to struggle to correct problems and remedy abuses.

Mr. President, my colleagues should note that the Pressler amendment would establish a new, thus far untested program in the Veterans' Administration, an agency which has no employment monitoring expertise or experience in this area. Surely, in view of these circumstances, there is even more reason to believe that there is great potential for abuse of this program.

In testimony before the Veterans' Affairs Committee, the Department of Labor indicated that the VA would have difficulty administering the program envisioned in the Pressler amendment. According to the Department of Labor, the Pressler proposal "proposes to duplicate veterans assistance programs currently operated by the Department by establishing a major new unemployment-related program within the VA."

Not only would the new career development training program duplicate the Department of Labor's veterans employment efforts, which are substantial and are expanded under S. 1188, as reported by the Veterans' Affairs Committee, but, as I have said, there are already a number of programs in existence designed to meet the employment needs of veterans, particularly those of the Vietnam era.

First, and most importantly, there is the VA program of apprenticeship and on-the-job training for eligible Vietnam era veterans. This program, which has been rated outstanding in terms of the success of participants being placed in permanent jobs, has been streamlined and improved under the provision of S. 1188.

And under other legislation passed by the Senate this year, the period of time in which Vietnam-era veterans have to participate in the VA–OJT program would be extended for 3 full years. Let me just add that throughout the life of the VA–OJT program, nearly half a million Vietnam-era veterans have received on-the-job training, 74,000 during fiscal year 1980 alone. It is estimated that if the modifications in the VA–OJT program contained in S. 1188 are enacted, including provisions designed to mandate an increase in the VA's responsibility and effectiveness in employment-related areas, an additional 15,300 veterans would find employment through the program.

Second, the Department of Labor administers employment and job training programs for veterans under the Comprehensive Employment and Training Act. Some 3 million veterans, many of them Vietnam-era veterans, have been served by CETA over the past 7 years.

Third, the Congress, in 1978, enacted a targeted jobs tax credit under which employers may receive a tax credit of up to $3,000 for hiring individuals who are members of certain targeted groups, including low-income Vietnam-era veterans under 35 years of age. As a member of the Senate Finance Committee, I strongly supported the enactment of this tax incentive program and, most recently, have introduced legislation along with Chairman CRANSTON to improve the eligibility requirements for Vietnam-era veterans.

Finally, the Department of Labor administers the disabled veterans outreach program, known as D–VOP. Under this highly successful program, nearly 1,500 disabled veterans are working in State and local employment agencies providing

employment assistance to disabled and Vietnam-era veterans.

Mr. President, it is my view, and that of the Veterans' Affairs Committee, that in order to address properly the very serious veterans employment problem we are now experiencing, we need not begin new, untested programs, but should, instead, seek effective implementation of the current laws and ongoing veterans' employment initiatives, some of which I have just described.

Mr. President, there is no denying that the Veterans' Affairs Committee has this year taken significant steps toward this important goal under the provisions of the pending bill and the GI Bill Amendments of 1980.

Mr. President, as I have earlier observed, the Senate earlier this year rejected the proposal embodied in the Pressler amendment. I urge my colleagues once again to vote to defeat this amendment and support the veterans employment initiatives contained in S. 1188, as reported by the Veterans' Affairs Committee.

Mr. HEINZ. Mr. President, will the Senator from California yield for two unanimous-consent requests?

Mr. CRANSTON. I yield.

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator from West Virginia (Mr. RANDOLPH) be included as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. I would also like to yield 1 minute, if there is going to be enough time, to the Senator from South Dakota (Mr. PRESSLER).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. I yield 1 minute to the Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, as a cosponsor, I rise in strong support of the amendment offered by the Senator from Pennsylvania.

This amendment will require the Veterans' Administration to publish the assumptions, standards, and criteria used in claims for disability to agent orange.

Having served in the Army in Vietnam, I am especially concerned about the effects of agent orange. This chemical, which was used as a defoliant between 1962 and 1970 in Vietnam and surrounding countryside, has been thought to cause health problems for Vietnam veterans exposed to it. I have been in touch with several veterans who feel that they have been exposed to the chemical, which has caused them great problems.

In the last 2 years, several thousand veterans have come to the VA with agent orange related diseases. Almost all veterans expressed similar symptoms, liver disorders, numbness in the extremities, and cancer. Many veterans have attempted to establish a link between birth defects in their children and exposure to agent orange. In my estimation, the VA has not dealt fairly with those who have claimed damages for exposure to the dioxin. The VA must meet its obligations in this matter: It must determine whether the agent orange claims are valid, and if they are, what compensation will go to the victims.

As previously stated, this amendment will require the Veterans' Administration to publish the assumptions, standards, and criteria used in claims for disability to agent orange. This is a good first step in coming to terms with this problem. It certainly will not solve the problem entirely, but it is a step forward.

Mr. President, I ask unanimous consent that the testimony of Christopher H. Johnson, president of Vietnam Veterans of South Dakota, Inc. be printed following my remarks. This testimony was delivered before the Veterans' Affairs Subcommittee on Medical Facilities.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF CHRISTOPHER H. JOHNSON

Mr. Chairman, I am privileged to appear before the Veterans' Affairs Subcommittee on Medical Facilities and Benefits to discuss the devastating effects and problems the Vietnam Veterans are dealing with on a daily basis.

At nineteen I was a machine gunner on an Armored Personnel Carrier with the 11th Armored Cavalry. I served in the Tay Ninh Province which was heavily concentrated with herbicides. At nineteen I was killing people for what I naively believed in. In March of 1970 I lost my right leg and sustained multiple fragment wounds to my left foot, left hip, right arm and also have a hearing loss all due to a confrontation with the North Vietnamese Army. I spent thirteen months at Fitzsimons Army Hospital in Denver.

Ten years later I find that while I was fighting for what I believed in, government agencies were experimenting with us and everything around. Today I can no longer be the naive person I was at nineteen years old. I can still be a patriot but I can not approve of some of my country's thoughtless actions. You took the cream of the crop for that war, look around you today, look at what has been done to that crop. The hard fighting men that were in Vietnam are withering away like the defoliated Vietnam.

While I was in Vietnam I had a respiratory problem which I reported to the medical unit. Unsurprisingly to me it is not in my medical records. I still have reoccurring respiratory problems, when I was at Fitzsimons I very vividly remember the chlor-acne like retention cysts that I developed. I remember the other patients lying around pulling them out of their arms and legs. I still have this embarrassing problem. At that time we made no connection.

About three years ago I weighed 175 pounds, a short time later I weighed 130 pounds after having intestinal problems, loss of appetite and flu type symptoms which I still have. I went to doctors at the VA and the Air Force only to have them say nothing is wrong and send me home. Not once did they mention Agent Orange. I had to tell them and show them an article in December of 1979.

During my weight loss we conceived our second child. Nicholas was born with chromosome damage, which they tested my wife and I for, with negative results.

Nicholas had every imaginable deformity, about twenty-six in all. To list a few: club feet, deformed hands and face, a hole in his heart, his intestines were outside of his body along with his liver, cysts on his kidneys, etc. My wife and I believe in natural child birth so I was present in the delivery room. When he was delivered the nurse said, "Hurry, get the doctor" to the other nurse. Nicholas was flown four hundred miles to Denver to try to save him. What a blessing he is not here today to struggle for life as many Vietnam Veterans' children do. When I go to the VA hospital the only way to get there is to go past the National Cemetery where my son is buried. What a strange feeling to know my son is also a victim of war. The doctors can not explain why, they only say he is the worst case they have seen as they send me the medical bills.

I have started Vietnam Veterans of South Dakota to work with all the other service organizations such as the DAV, VFW, American Legion and the Vietnam Veterans organizations. The South Dakota DAV is covering my expenses out here so that I can help represent us. We are all working with veterans, helping them where the VA has failed. We are reaching out to them and letting them know someone is there who cares and will not label them a hypochondriac because my symptoms are just as real as theirs. We let them know what to expect on an Agent Orange Exam at the VA. Many veterans think they will find out if chemicals are ruining their bodies. Many find out that they are subjected to a questionnaire of nonsensible questions. Also the VA Central Office sent out memos to hospitals instructing them to only give simple reassurance that their problems are not connected to herbicides and also to make no relationship between the veterans' symptoms and Agent Orange in their medical records. It's working—they put it that way in my records.

How can the VACO even expect to learn from the Agent Orange Exam registry about our problems when the VACO instructs the local VA to discredit what a veteran complains of?

The United States sent these same questionnaires to the Repatriation Commission in Australia for their use on veterans over there. They discontinued its use because of the complaints about the questions. They report the same exact symptoms along with the same types of birth defects. But yet the U.S. government agencies and Australia are trading information so that they can keep on trying to discredit all veterans claims.

In Australia at Sydney's Royal Alexandria Hospital for Children, Dr. David Walsh, a biochemist on fetal deformities, said regarding limb deformities, "Something stinks. There is obviously something wrong. At this stage we can't say whether it is linked with Agent Orange, but to say that there is no scientific evidence showing a link is to say nothing. It just plain means we haven't done the work." Dr. Walsh examined veterans' children free of charge. Their complaints are identical to ours.

You can no longer look the other way. Our health problems are real and won't go away just as we won't go away. The men who fought in Vietnam joined in brotherhood because then it was survival that brought us together, today it is survival again.

April 15, 1970 the Surgeon General appeared before the Energy Subcommittee and announced governmental actions aimed at limiting the use of 2,4,5-T in the United States. The same day the Deputy Secretary of Defense, David Packard announced that the military would stop using Agent Orange in Vietnam. With those actions doesn't that tell you that the risks were greater than the benefits?

Also during 1970 the chemical companies were fighting the Department of Agriculture to keep the use of 2,4,5-T on rice crops on the grounds that it brought larger food yields. At the same time in 1970 the military used this chemical to destroy one-half million acres of rice crops on Vietnam. Doesn't this

tell you that the severe concentrations used in Vietnam were harmful?

In pointing out concentrations I make reference to: Army TM 3-216 page 14 Section III 107 dated 1964. "These compounds are effective in killing plants when used in concentrations as low as 0.5 pounds per acre. This concentration is generally non-toxic to man and animals. There are no proven defensive measures against these compounds. By the time symptoms appear nothing can be done to prevent damage."

In reference to the: Minnesota Department of Veterans Affairs Study, Section II Application procedures used in South Vietnam. "Agent Orange was sprayed undiluted at the rate of three gallons per acre. (12 pounds of 2,4-D and 13.8 pounds of 2,4,5-T per acre.) "That is 13.3 pounds per acre more than the Army manual recommended. The Herbs Tapes show that some areas were sprayed as much as twenty-five times in just a few short months. Doesn't that sound very harmful to human health at such heavy concentrations? On one occasion there were one thousand gallons dumped on a delegation office.

If Agent Orange is so non-toxic to us, why then did the Air Force draft an Environmental Impact Statement on how to get rid of existing stocks of Agent Orange without danger to human health or the environment?

If it is no threat to man, why then in Feb. of 1972 did the Mississippi Air and Pollution Control Commission request that Agent Orange be removed from storage at Gulfport, Mississippi immediately?

The USAF OEHL Technical Report, TR-78-92 page I-2 table 4, Acres Treated shows that between 1967 and 1969 were the years when the most acres were treated.

The Agent Orange organizations who are taking questionnaires are finding that most of the men complaining of health problems, served during 1967 to 1970. That should show some relationship. Isn't it odd how the layman can find disturbing similarities? Yet part of the scientific community can not? Maude DeVictor is a layperson who could see a relationship among men and their service in Vietnam. I find it very hard to believe that anyone could write such an accurate memo without help from someone in the scientific community.

Referring back to te USAF OEHL report page I-3: In April 1970 the Secretaries of Agriculture: Health, Education and Welfare and the Interior jointly announced the suspension of certain uses of 2,4,5-T. These suspensions resulted from studies published indicating that 2,4,5-T was a teratogen.

It also appears that Vietnam was a proving ground for herbicides. From the same report page I-2 and I-3, Brown reported "that the first shipments of Herbicides Purple and Blue was received in Vietnam the 9th of January 1962." Also the report says "Two additional phenoxy herbicide formulations were received in Vietnam in limited quantities and evaluated during the first two years of Operation Ranch Hand." These were Pink and Green. Then in 1965 two more were brought in, Orange and White. Orange replaced, Purple, Pink and Green. The Air Force also conducted an experiment in Vietnam along with National Forestry Department called Pink Rose. Pink Rose was an operation where Orange and Blue were applied to kill off an area of vegetation followed with a burning off process.

If TCDD is the result of a heating process then it is possible that there was a lot of smoke filled with TCDD around from this and other fires?

In 1977 the World Health Organization's International Agency for Research on Cancer studied research papers going back twenty years. Their results were that TCDD could create serious health effects on humans:

Dermatological: Chloracne—a severe skin disease of follicular and sebaceous glands, causing skin lesions, sebaceous cysts, blisters and pustules and eventual scarring of the skin. Susceptibility to bruising. Hyperpigmentation of the skin and abnormal body hair growth.

Internal: Liver damage-inflamed tissues, fatty changes, specialized cell degeneration, abnormal liver function, disorders of fat metabolism, disorders of carbohydrate metabolism. Heart and blood vessel disorders. Urinary tract disorders. Respiratory disorders. Pancreatic disorders.

Neurological: Polyneuropathies—a number of disease conditions of the nervous system. There may be polyneuritis, abdominal pain and mental disturbance. Lower extremity weakness. Sensorial impairments—sight, hearing, smell and taste.

Psychiatric: Depressive syndromes—a state of general debility, both physical and mental. Taken from:

World Health Organization, International Agency for Research on Cancer. Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man. Vol. 15, Lyon, August 1977.

The Armed Forces Institute of Pathology (AFIP) had a monthly report from August 15, 1979 on cases submitted from veterans and labeled, Possible Exposure to Herbicides During the Vietnam War. Page 4.

"d. of particular interest are the following:

(1) unusual or unique tumors occurring in an organ or organ system.

(2) an unusually high incidence of a tumor for a particular anatomic site.

(3) a tumor occurring at an unusually young age."

This was included in the VACO Steering Committee minutes on Herbicide Toxicity, November 15, 1979.

Why doesn't the VA print some of these results in their Public Opinion Digest? Instead they print about everything they can find to sour the VA staff on the Agent Orange issue. This type of one sided point of view effects the staff all the way down to the scheduling workers that greet you at the front doors. If you insist that the jury is still out on the Agent Orange issue then what do you think this type publicity does to effect the veteran seeking medical attention?

In an Air Force report by Young and Thalken was the following table 16:

NUMBER OF FETUSES FOUND PER FEMALE MOUSE IN TEST AND CONTROL AREAS

Year of capture	Fetuses, control group I	Fetuses, test group II	Percent difference, groups I and II
1973	2.4	1.4	−46.6
1974	1.1	.7	−36.4

But yet Young and Thalken concluded "TCDD encountered in the field failed to induce observable developmental defects."

You can clearly see that like Barry Commoner and Robert E. Scott of the Center for the Biology of Natural Systems point out in their evaluation that, "The Air Force data include striking evidence of either a decline in fertility or an increase in fetal deaths in the TCDD exposed mouse population."

There are many animal tests in the scientific community that show numerous health effects and fetal problems. Such laboratory testing is usually accepted. It seems that many do not want to accept these results concerning herbicides. Are we going to wait for another body count of men who fought in the Vietnam War?

It is easy to see why no one will own up to the fact that we were over exposed to chemicals that are harming our health. First of all the chemical companies have too much to lose since they depend so much on all the revenue that they receive. As an example: Dow Chemical's sales of Agricultural Chemicals was $398 million in 1978 and $171 million in 1979. The majority of it being herbicides. There are chemical plants worldwide, including Australia. If the Australian government were to decide that their men were seriously effected then that would set a precedent for us in the United States or vice versa. Some members in the timber industry think they could not live without its use also. It seems that the thought pattern is that it would cost too many dollars. Does this mean that I am still naive in believing that human life is far more precious than money?

What does the veteran end up with? We wonder what happened to the phrase, "life, liberty and the pursuit of happiness." The suffering men who were once healthy and fighting hard battles are now fighting the hardest battle of all, life. Now we say, "liberty, little happiness and the pursuit of life."

In conclusion I must give you some of my very deep feelings, but these feelings apply to almost every veteran, especially those of us who face life threatening health problems from chemical exposure.

We are the men who went to fight a very complicated war and the suffering and dying was just as real as in all wars. You asked us to go and we went. We are the ones who were fighting on foreign soil so we could keep the United States such a freedom loving country. You must not turn your backs on us now that we are in real need of help. We are not the ones who went to Canada for awhile, who were allowed to come back home with a guaranteed work program. They are the men that you see smiling and healthy today. We are the men who made this country such a great place to swim to, along with the other war veterans. You are not turning your backs on the Vietnamese refugees or the Cuban refugees. You are still sending monetary aid to Vietnam and allowing Cubans to take up bed spaces in VA hospitals. I do not mind them coming to our country, I would in no way want to live in their countries either.

Don't you think that it is only right to take care of the American men who supported you, first. We are natural born citizens of the United States of America. We have been reaching out for years for help. Now is the time for you to step forward and take the responsibility and appropriate action. Don't leave us with the only benefit remaining, which is the burial benefit. A lot of Vietnam Veterans have already used it much too early in life. The Vietnam Veteran never had the chance to enjoy growing into adulthood, now I can't enjoy growing old. The evidence and facts have been in for years, Agent Orange is a killer.

● Mr. BELLMON. Mr. President, I rise in support of the Heinz, Pressler, Cranston amendment to S. 1188. This amendment will establish an administrative mechanism for resolving claims by veterans for disability based on exposure to agent orange.

Because of the problems in data collection pertaining to agent orange, determining the number of veterans who might be affected by agent orange, and the extent of diseases associated with agent orange, it is my opinion that this amendment, if approved, is a reasonable response to this issue.

The black lung program bears some

disturbing similarities to the program proposed by an earlier version of this amendment. In 1977, Congress amended the Federal Coal Mine Health and Safety Act of 1969. One effect of these amendments was to require the person claiming eligibility for benefits to provide medical or other relevant evidence to show that the miner is or was totally disabled from black lung and that it resulted from coal mine work. Where there is no medical or other relevant evidence, the act permits the use of affidavits and years of coal mine employment as evidence in establishing disability.

In a recent review (dated July 28, 1980) of the effects of the 1977 amendments, GAO reported that:

GAO's review of a random sample of 200 SSA reviewed and approved black lung claims indicated that, in 88.5 percent of the cases, medical evidence was not adequate to establish disability or death from black lung. SSA approved claims on the basis of affidavits, inconclusive medical evidence, and presumptions based on years of coal mine employment—all of which were legal under existing legislation. Projecting the results of its sample, GAO estimated that successful claimants received retroactive lump-sum payments of about $353.6 million, of which $312.9 million was for claims that were not based on adequate medical evidence of disability or death from black lung. The same claimants also receive about $79 million annually in monthly payments, of which $69.8 million was not supported by adequate medical evidence of disability or death by black lung.

No one should doubt our commitment to aid those who have been adversely affected by either black lung disease or the effects of agent orange. We must, however, be careful in the manner in which we draft such legislation. Clearly the 1977 amendments were too broadly written, allowing, it appears, almost unlimited access to this program for coal miners and their surviving dependents. Mr. President, I believe that this amendment avoids the problem of presuming the connection between an illness and exposure to agent orange.

Mr. President, on my own farm in Oklahoma, I have used and continue to use 2,4,5-T, one of herbicide orange's components. 2,4,5-T is available for such use in this country with EPA approval. I realize the amount of 2,4,5-T I use is less than one-third of the amount used in Vietnam per acre sprayed. However, the amount of 2,4,5-T actually reaching ground level in what I use in Oklahoma due to the dense jungle growth on which it was sprayed. I have seen no evidence of any diseases such as those claimed to be caused by agent orange among my family or my farm employees.

Steps are now underway in the executive branch to determine the degree of the agent orange problem:

VA is now developing a list of all Vietnam veterans who have been treated for herbicide related health problems.

The Air Force has initiated a health effects study of Air Force personnel involved in spraying agent orange in Vietnam.

The Secretary of Health and Human Services (HHS) has been directed by the Senate to perform an epidemiological study of the long-term health effects of exposure to dioxins such as agent orange.

HHS, the Environmental Protection Agency and industrial groups are studying the effects of agent orange.

Mr. President, I believe these efforts should soon provide a basis for determining whether certain diseases are caused by exposure to agent orange or not. At that time, if there is a causal connection, the administration of the Veterans' Administration can publish regulations providing disability benefits to those who meet scientifically established criteria.●

● Mr. DECONCINI. Mr. President, I would like to record my vote as present on this amendment and on final passage of S. 1188 inasmuch as it has come to my attention that my family law firm in Tucson Ariz., DeConcini, McDonald, Brammer, Yetwin & Lacy, is handling a number of agent orange cases.●

The PRESIDING OFFICER. All time has expired on the amendment.

Mr. CRANSTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CRANSTON. What do we vote on first?

The PRESIDING OFFICER. The first vote will be on the amendment offered by the Senator from Pennsylvania (Mr. HEINZ).

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator from Hawaii (Mr. MATSUNAGA) be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment offered by the Senator from Pennsylvania (Mr. HEINZ). The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DECONCINI (when his name was called). Present.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I also announce that the Senator from New Jersey (Mr. BRADLEY) is absent because of death in family.

I further announce that if present and voting, the Senator from New Hampshire (Mr. DURKIN) would vote "yea."

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER (Mr. HEFLIN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 387 Leg.]

YEAS—86

Baker	Hatch	Packwood
Baucus	Hatfield	Pell
Bayh	Hayakawa	Percy
Bellmon	Heflin	Pressler
Bentsen	Heinz	Proxmire
Biden	Helms	Pryor
Boren	Hollings	Randolph
Boschwitz	Huddleston	Ribicoff
Bumpers	Humphrey	Riegle
Burdick	Inouye	Roth
Byrd, Harry F., Jr.	Jackson	Sarbanes
	Javits	Sasser
Byrd, Robert C.	Jepsen	Schmitt
Cannon	Kassebaum	Schweiker
Chafee	Laxalt	Simpson
Chiles	Leahy	Stafford
Cochran	Levin	Stennis
Cohen	Lugar	Stevenson
Cranston	Magnuson	Stone
Danforth	Mathias	Talmadge
Dole	Matsunaga	Thurmond
Domenici	McClure	Tower
Durenberger	Melcher	Tsongas
Eagleton	Metzenbaum	Wallop
Exon	Mitchell	Warner
Ford	Morgan	Weicker
Garn	Moynihan	Williams
Glenn	Nelson	Young
Hart	Nunn	Zorinsky

ANSWERED "PRESENT"—1

DeConcini

NOT VOTING—13

Armstrong	Goldwater	McGovern
Bradley	Gravel	Stevens
Church	Johnston	Stewart
Culver	Kennedy	
Durkin	Long	

So Mr. HEINZ' amendment (UP No. 1550) was agreed to.

AMENDMENT NO. 1906

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENSON. Mr. President, on this vote, I have a live pair with the Senator from New Hampshire (Mr. DURKIN). I have voted "nay." If he were present and voting, he would vote "yea." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN) and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I also announce that the Senator from New Jersey (Mr. BRADLEY) is absent because of death in family.

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 35, nays 51, as follows:

[Rollcall Vote No. 388 Leg.]

YEAS—35

Baker	Hayakawa	Mitchell
Baucus	Heflin	Morgan
Biden	Heinz	Pell
Boren	Helms	Pressler
Boschwitz	Kassebaum	Riegle
Bumpers	Laxalt	Sarbanes
Chafee	Leahy	Schweiker
DeConcini	Levin	Tsongas
Dole	Magnuson	Warner
Garn	Mathias	Weicker
Hatch	Melcher	Young
Hatfield	Metzenbaum	

NAYS—51

Bayh	Glenn	Pryor
Bellmon	Hart	Randolph
Bentsen	Hollings	Ribicoff
Burdick	Huddleston	Roth
Byrd, Harry F., Jr.	Humphrey	Sasser
	Inouye	Schmitt
Byrd, Robert C.	Jackson	Simpson
Cannon	Javits	Stafford
Chiles	Jepsen	Stennis
Cochran	Lugar	Stone
Cohen	Matsunaga	Talmadge
Cranston	McClure	Thurmond
Danforth	Moynihan	Tower
Domenici	Nelson	Wallop
Durenberger	Nunn	Williams
Eagleton	Packwood	Zorinsky
Exon	Percy	
Ford	Proxmire	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stevenson, against.

NOT VOTING—13

Armstrong	Goldwater	McGovern
Bradley	Gravel	Stevens
Church	Johnston	Stewart
Culver	Kennedy	
Durkin	Long	

So the amendment (No. 1906) was rejected.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

● Mr. GLENN. Mr. President, I want to commend the committee and its chairman, Senator CRANSTON, for the effort that has gone into this legislation to improve and expand upon the vocational rehabilitation program for veterans with service-related disabilities.

This is important legislation. It is important because there is no better measure of a nation than how it treats those who bear the wounds of service. It is important for these veterans to be able to achieve a maximum degree of employment and independence.

Mr. President, I also want to commend Senator CRANSTON and the committee for including in the committee's amendments to S. 1188 my suggestion to permit new, State-supported medical schools receiving assistance from the Veterans' Administration under Public Law 92–541 an additional 12 months in which to expend currently existing and awarded grants used to support faculty salaries. This amendment, which does not involve any additional authorization, is going to be most helpful to the School of Medicine at Wright State University in Dayton, Ohio—the first such college to benefit from the program for the establishment of new, State medical schools.

Dr. John R. Beljan, vice president for health affairs of Wright State University and dean of the school of medicine, has assured me that this simple authority to carry over remaining grant programs beyond the presently scheduled June 30, 1981, termination date for the school's award will significantly lessen the impact of the loss of the grant funds on its operating budget.●

● Mr. HUMPHREY. Mr. President, I urge my colleagues to support S. 1188, the Disabled Veterans Rehabilitation Act of 1980. This bill contains an overdue cost-of-living adjustment for the GI bill as well as provisions to strengthen the vocational rehabilitation programs for veterans. Needed revisions of the GI bill's on-the-job training program and the creation of an outreach employment program are also included.

The Senate Veterans' Affairs Committee recognizes that while great strides have been made in assisting the disabled veteran through vocational rehabilitation programs, training alone does not make a disabled veteran employable. This bill provides for the followthrough necessary to help the disabled veteran complete the transition to useful civilian employment.

Testimony before the Veterans' Affairs Committee has confirmed that many disabled veterans are enrolling in GI bill programs even when vocational rehabilitation programs are more appropriate to their needs. This occurs simply because the GI bill subsistence rate is higher. S. 1188 addresses this problem of disincentives by equalizing the rates.

Since October 1977, the cost of living has jumped 30 percent while GI bill benefits have remained stationary. It is time to restore those well-deserved benefits that inflation is stealing away. The modest 10 percent COLA begins to do that.

Passage of this bill will demonstrate to the veteran that the Senate has not forgotten the commitment made by a grateful Nation to those who have given so much in the service of their country. I trust my colleagues will join me in support of this bill.●

Mr. LEVIN. Mr. President, I support Senator PRESSLER's amendment to S. 1188. There seems to be little question as to the difficulty that many Vietnam theater veterans have in becoming a permanent part of the work force. This amendment will provide these veterans with a program which will provide financial incentives to private sector employers to hire, train, and advance these veterans.

In January 1980, during the consideration of the GI bill amendments, Senators HEINZ and PRESSLER offered separate, but similar amendments to aid the Vietnam veteran. At that time I supported Senator HEINZ' amendment because the assistance it furnished was less costly on a per veteran basis. At this time the Senate only has one amendment before it and Senator HEINZ has cosponsored it.

There were 2.7 million Americans who served in Vietnam. Many of them have taken advantage of the GI bill, but many have not. Some of those who have not used the GI bill would be able under this amendment to use their entitlement to get needed training and employment. In Michigan, the unemployment rate is over 14 percent and among those unemployed are countless young people who served in Vietnam and have had problems getting training and employment. This measure will encourage employers to give these persons an opportunity.

I encourage my colleagues to support this amendment.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is: Shall the bill (S. 1188), as amended, pass? The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. DECONCINI (when his name was called). Present.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN) and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I also announce that the Senator from New Jersey (Mr. BRADLEY) is absent because of death in the family.

I further announce that, if present and voting, the Senator from New Jersey (Mr. BRADLEY) and the Senator from New Hampshire (Mr. DURKIN) would each vote "yea."

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 389 Leg.]

YEAS—86

Baker	Dole	Javits
Baucus	Domenici	Jepsen
Bayh	Durenberger	Kassebaum
Bellmon	Eagleton	Laxalt
Bentsen	Exon	Leahy
Biden	Ford	Levin
Boren	Garn	Lugar
Boschwitz	Glenn	Magnuson
Bumpers	Hart	Mathias
Burdick	Hatch	Matsunaga
Byrd, Harry F., Jr.	Hatfield	McClure
	Hayakawa	Melcher
Byrd, Robert C.	Heflin	Metzenbaum
Cannon	Heinz	Mitchell
Chafee	Helms	Morgan
Chiles	Hollings	Moynihan
Cochran	Huddleston	Nelson
Cohen	Humphrey	Nunn
Cranston	Inouye	Packwood
Danforth	Jackson	Pell

Percy	Sasser	Thurmond
Pressler	Schmitt	Tower
Proxmire	Schweiker	Tsongas
Pryor	Simpson	Wallop
Randolph	Stafford	Warner
Ribicoff	Stennis	Weicker
Riegle	Stevenson	Williams
Roth	Stone	Young
Sarbanes	Talmadge	Zorinsky

ANSWERED "PRESENT"—1

DeConcini

NOT VOTING—13

Armstrong	Goldwater	McGovern
Bradley	Gravel	Stevens
Church	Johnston	Stewart
Culver	Kennedy	
Durkin	Long	

So the bill (S. 1188) was passed, as follows:

S. 1188

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Disabled Veterans Rehabilitation Act of 1980".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—REHABILITATION AMENDMENTS

SEC. 101. (a) Chapter 31 is amended to read as follows:

"CHAPTER 31—TRAINING AND REHABILITATION FOR SERVICE-CONNECTED DISABLED VETERANS

"Sec.
"1500. Purpose.
"1501. Definitions.
"1502. Basic entitlement.
"1503. Periods of eligibility.
"1504. Scope of services and assistance.
"1505. Duration of rehabilitation programs.
"1506. Initial and extended evaluations; determinations regarding serious employment handicap.
"1507. Individualized vocational rehabilitation plan.
"1508. Allowances.
"1509. Entitlement to independent living services and assistance.
"1510. Leaves of absence.
"1511. Regulations to promote satisfactory conduct and cooperation.
"1512. Revolving fund loans.
"1513. Books, supplies, and equipment.
"1514. Vocational rehabilitation for hospitalized members of the Armed Forces and veterans.
"1515. Vocational rehabilitation outside the United States.
"1516. Rehabilitation resources.
"1517. Employment assistance.
"1518. Personnel training, development, and qualifications.
"1519. Rehabilitation research and special projects.
"1520. Pilot program of independent living services and assistance.
"1521. Veterans' Advisory Committee on Rehabilitation.
"1522. Evaluations after individual unemployability adjudications.

"§ 1500. Purpose

"The purposes of this chapter are to provide for all services and assistance necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living, and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

"§ 1501. Definitions

"For the purposes of this chapter—

"(1) The term 'independence in daily living' means the ability of a veteran, without the services of others or with a reduced level of the services of others, to live and function within such veteran's family and community.

"(2) The term 'medical condition' means a disability, including an alcohol or drug dependence or abuse disability, or combination of disabilities of a veteran.

"(3) The term 'program of education' has the meaning provided in section 1652(b) of this title.

"(4) The term 'program of independent living services and assistance' includes both (A) the services provided for in this chapter that are needed to enable a veteran to achieve independence in daily living, including, but not limited to, such counseling, diagnostic, medical, social, psychological, and educational services as are determined by the Administrator to be needed for such veteran to achieve maximum independence in daily living, and (B) the assistance authorized by this chapter for such veteran.

"(5) The term 'rehabilitated to the point of employability' means rendered employable in the occupation for which a vocational rehabilitation program has been provided under this chapter.

"(6) The term 'rehabilitation program' means (A) a vocational rehabilitation program, or (B) a program of independent living services and assistance for a veteran for whom a vocational goal has been determined not to be reasonably feasible.

"(7) The term 'serious employment handicap' means a significant impairment of an individual's ability to prepare for, obtain, or retain employment consistent with such individual's abilities, aptitudes, and interests.

"(8) The term 'vocational goal' means a gainful employment status that is consistent with an individual's abilities, aptitudes, and interests.

"(9) The term 'vocational rehabilitation program' includes both—

"(A) the services provided for in this chapter that are needed for the accomplishment of the purposes of this chapter, including, but not limited to, such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Administrator to be needed—

"(i) in the case of a veteran for whom the achievement of a vocational goal has not been determined not to be reasonably feasible, (I) to determine whether a vocational goal is reasonably feasible, (II) to improve such veteran's potential to participate in a program of services designed to achieve a vocational goal, and (III) to enable such veteran to achieve maximum independence in daily living, and

"(ii) in the case of a veteran for whom the achievement of a vocational goal is determined to be reasonably feasible, to enable such veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment, and

"(B) the assistance authorized by this chapter for a veteran receiving any of the services described in clause (A) of this paragraph.

"§ 1502. Basic entitlement

"An individual veteran shall be entitled to rehabilitation under the terms and conditions of this chapter if such individual—

"(1) is a veteran who has a service-connected disability which is, or but for the receipt of retirement pay would be, compensable under chapter 11 of this title and which was incurred or aggravated in service on or after September 16, 1940; or

"(2) is, pending discharge or release from active military, naval, or air service, hospitalized in a hospital over which the Secretary of Defense has jurisdiction.

"§ 1503. Periods of eligibility

"(a) Unless a longer period of eligibility is authorized pursuant to subsection (b), (c), or (d) of this section, educational assistance or rehabilitation may not be afforded to a veteran under this chapter after the end of the ten-year period beginning on the date of such veteran's discharge or release.

"(b)(1) If the Administrator determines that a veteran has been prevented from entering or completing a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a medical condition made it infeasible for such veteran to participate in such a program, the ten-year period of eligibility shall not run during the period of time that such veteran was so prevented from participating in such a program.

"(2) If the Administrator determines that a veteran has been prevented from entering or completing a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because (A) such veteran had not met the requirement of a discharge or release under conditions other than dishonorable before (i) a change, correction, or modification of a discharge or dismissal made pursuant to section 1553 of title 10, (ii) a correction of the military records of the service department concerned under section 1552 of title 10, or (iii) other corrective action by competent authority, or (B) such veteran's discharge or dismissal was, under section 3103 of this title, a bar to benefits under this title before the Administrator made a determination that such discharge or dismissal is not a bar to such benefits, the ten-year period of eligibility shall run from the date on which such veteran's discharge or dismissal was so changed, corrected, or modified or the Administrator made such determination, as appropriate.

"(3) If the Administrator determines that a veteran has been prevented from entering or completing a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because such veteran had not established the existence of a service-connected disability which is compensable under chapter 11 of this title and such veteran has a serious employment handicap, vocational rehabilitation may be afforded such veteran during the ten-year period beginning on the date on which notification is mailed to such veteran that it has been determined that such disability exists.

"(c) A veteran who is in need of services to overcome a serious employment handicap may be afforded a vocational rehabilitation program after the expiration of the period of eligibility otherwise applicable to such veteran if the Administrator determines that an extension of the applicable period of eligibility is necessary for such veteran based upon such veteran's particular employment handicap and need for such services and if—

"(1) such veteran had not previously been rehabilitated under this chapter;

"(2) such veteran had previously been rehabilitated under this chapter but (A) such need for such services has developed from, or as a result of, a change in such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran previously received vocational rehabilitation under this chapter, or (B) the occupation for which such veteran had been so rehabilitated was not appropriate in view of such veteran's employment handicap and abilities; or

"(3) the Administrator determines, under regulations which the Administrator shall prescribe, that an extension of the period of eligibility of such veteran is necessary to carry out the purposes of this chapter.

"(d) A veteran whose disability or disabilities are so severe that the achievement of a vocational goal by such veteran is determined not to be reasonably feasible may be afforded a program of independent living

services and assistance under this chapter after the expiration of the period of eligibility otherwise applicable to such veteran if the Administrator determines that an extension of the period of eligibility of such veteran is necessary for such veteran to achieve maximum independence in daily living.

"§ 1504. Scope of services and assistance

"(a) Services and assistance which the Administrator may provide under this chapter, pursuant to regulations which the Administrator shall prescribe, shall include—

"(1) evaluation, including periodic reevaluations as appropriate with respect to a veteran participating in a rehabilitation program, of the potential for rehabilitation of a veteran, including diagnostic and related services (A) to determine whether such veteran's disability or disabilities cause a serious employment handicap and whether a vocational goal is feasible for such veteran, and (B) to provide a basis for planning a suitable vocational rehabilitation program or a program of services to improve the vocational rehabilitation potential or independent living status of such veterans, as appropriate;

"(2) educational, vocational, psychological, employment, and personal adjustment counseling;

"(3) an allowance and other appropriate assistance, as authorized by section 1508 of this title;

"(4) a work-study allowance as authorized by section 1685 of this title;

"(5) placement services to effect suitable placement in employment, and postplacement services to attempt to assure satisfactory adjustment in employment.

"(6) personal adjustment and work adjustment training;

"(7) vocational and other training services and assistance, including individualized tutorial assistance, tuition, fees, books, supplies, and licensing fees, and equipment and other training materials determined by the Administrator to be necessary to accomplish the purposes of the rehabilitation program in the individual case;

"(8) loans as authorized by section 1512 of this title;

"(9) treatment, care, and services described in chapter 17 of this title;

"(10) prosthetic appliances, eyeglasses, and other corrective and assistive devices;

"(11) services to a veteran's family as necessary for the effective rehabilitation of such veteran;

"(12) for the most severely disabled veterans requiring homebound training or self-employment, or both homebound training and self-employment, such license fees and essential equipment, supplies, and minimum stocks of materials as the Administrator determines to be necessary for such a veteran to begin employment and are within the criteria and cost limitations that the Administrator shall prescribe in regulations for the furnishing of such fees, equipment, supplies, and stocks;

"(13) travel and incidental expenses under the terms and conditions set forth in section 111 of this title, plus, in the case of a veteran who because of such veteran's disability has transportation expenses in addition to those incurred by persons not so disabled, a special transportation allowance to defray such additional expenses during rehabilitation, job seeking, and the initial employment stage;

"(14) special services related to blindness and deafness, such as—

"(A) language training, speech and voice correction, training in ambulation, and one-hand typewriting;

"(B) orientation, adjustment, mobility, reader, interpreter, and related services; and

"(C) telecommunications, sensory, and other technical aids and devices; and

"(15) services necessary to enable a veteran to achieve maximum independence in daily living.

"(b) A program of independent living services and assistance may include the types of services and assistance described in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796).

"(c) A rehabilitation program (including individual courses) to be pursued by a veteran shall be subject to the approval of the Administrator.

"§ 1505. Duration of rehabilitation programs

"(a) The period of extended evaluation under section 1506(b) of this title for a veteran for whom the reasonable feasibility of achieving a vocational goal is undetermined may not exceed twelve months, except that such period may be extended for additional periods of up to six months each if the Administrator determines that, during the extended period concerned, it is reasonably likely that a determination can be made with respect to such veteran as to whether the achievement of a vocational goal is reasonably feasible.

"(b) Except as provided in subsection (c) of this section, the period of a vocational rehabilitation program for a veteran under this chapter following a determination of the reasonable feasibility of achieving a vocational goal may not exceed forty-eight months, except that, in the case of a veteran who is determined to have a serious employment handicap, the counseling and placement and postplacement services described in section 1504(a) (2) and (5) of this title may be provided for an additional period not to exceed eighteen months.

"(c) In the case of a veteran who has been determined to have a serious employment handicap, the Administrator may extend the period of vocational rehabilitation for such veteran to the extent necessary to enable such veteran to achieve a vocational goal if—

"(1) such veteran had previously been rehabilitated to the point of employability under this chapter but (A) such veteran's need for further vocational rehabilitation has developed from, or as a result of, a change in such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran had been so rehabilitated, or (B) the occupation for which such veteran had been so rehabilitated was not appropriate in view of such veteran's employment handicap and abilities; or

"(2) the Administrator determines, under regulations which the Administrator shall prescribe, that such an extension is necessary to carry out the purposes of this chapter.

"(d) Unless the Administrator determines that a longer period is necessary and likely to result in a substantial increase in a veteran's level of independence in daily living, the period of a program of independent living services and assistance for a veteran under this chapter following a determination that such veteran's disability or disabilities are so severe that the achievement of a vocational goal is not reasonably feasible may not exceed twenty-four months.

"§ 1506. Initial and extended evaluations; determinations regarding serious employment handicap

"(a) A veteran with a service-connected disability who applies for benefits under this chapter shall be provided with an initial evaluation consisting of such services described in section 1504(a)(1) of this title as are necessary to determine whether such veteran has a serious employment handicap and to determine, if reasonably feasible without extended evaluation, whether the achievement of a vocational goal is reasonably feasible for such veteran.

"(b) Where the Administrator has determined that a veteran has a serious employment handicap and that the achievement of a vocational goal is reasonably feasible for such veteran, such veteran shall be provided counseling in accordance with an individualized written plan of vocational rehabilitation developed under section 1507 (a) of this title.

"(c) Where the Administrator has determined that a veteran has a serious employment handicap but the Administrator is unable to determine, in an initial evaluation pursuant to subsection (a) of this section, whether or not the achievement of a vocational goal is reasonably feasible, such veteran shall be provided with extended evaluation consisting of the services described in section 1504(a)(1) of this title, such services under this chapter as the Administrator determines necessary to improve such veteran's potential for participation in a program of services designed to achieve a vocational goal and enable such veteran to achieve maximum independence in daily living, and assistance as authorized by section 1508 of this title.

"(d) As expeditiously as possible (and, if applicable, not later than the end of the period of extended evaluation for a veteran under subsection (c) of this section, including any extensions under section 1505(a) of this title), the Administrator shall determine whether the achievement of a vocational goal by such veteran is reasonably feasible. In determining whether the achievement of a vocational goal is reasonably feasible, the Administrator shall resolve any reasonable doubt in favor of determining that such achievement is reasonably feasible.

"(e) In connection with each period of extended evaluation of a veteran and each rehabilitation program for a veteran who is determined to have a serious employment handicap, the Administrator shall assign a Veteran's Administration employee to be responsible for the management and followup of the provision of all services (including employment assistance under section 1517 of this title) and assistance under this chapter to such veteran.

"§ 1507. Individualized vocational rehabilitation plan

"(a) The Administrator shall formulate an individualized written plan of vocational rehabilitation for a veteran described in section 1506(b) of this title. Such plans shall be developed jointly with such veteran, and shall include, but not be limited to (1) a statement of long range rehabilitation goals for such veteran and intermediate rehabilitation objectives related to achieving such goals, (2) a statement of the specific services (which shall include counseling in all cases) and assistance to be provided under this chapter, (3) the projected date for the initiation and the anticipated duration of each such service, (4) objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (5) the name and business address and telephone number of the Veterans' Administration employee assigned responsibility for the management and followup of the provision of such services and assistance to such veteran.

"(b) The Administrator shall review at least annually the plan formulated under subsection (a) of this section for a veteran, and such veteran shall be afforded the opportunity to participate in each review of such plan. Based on such review, the Administrator shall, jointly with such veteran, redevelop such plan as appropriate.

"(c) Prior to agreeing to a plan under subsection (a) of this section or to any redevelopment or denial of redevelopment of a plan under subsection (b) of this section, a veteran shall be informed of such veteran's opportunity for a review as set forth in the following sentences. If a veteran does not agree to such plan, redevelopment, or denial of redevelopment, such veteran may submit to the person described in subsection (a)(5) of this section a written statement, prepared by or for such veteran, containing such veteran's objections to such plan and requesting a review of the plan as proposed. The Administrator shall review such statement and the plan as proposed and render a decision on such review not later than ninety days after the date on which such veteran so submits such statement, unless a longer period, not to exceed one hundred and fifty days, is allowed for rendering such decision in certain cases under regulations of the Administrator.

"§ 1508. Allowances

"(a)(1) Except for a veteran who makes an election under subsection (f) of this section, each veteran shall be paid a subsistence allowance in accordance with this section during a period determined by the Administrator to be a period of such veteran's participation under this chapter in (A) extended evaluation, or (B) a rehabilitation program.

"(2) A veteran who is determined to have a serious employment handicap and who is determined, at the conclusion of such veteran's pursuit of a program of vocational rehabilitation under this chapter, to be rehabilitated to the point of employability shall be paid a subsistence allowance, as prescribed in this section for full-time training for the type of program that the veteran was pursuing, for two months following the conclusion of such pursuit.

"(b) Except as otherwise provided in this section, the subsistence allowance paid to a veteran under this chapter shall be determined in accordance with the following table, and shall be the monthly amount shown in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the appropriate type of program being pursued as specified in column I:

"Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$265	$328	$386	$29
Three-quarter-time	199	246	289	21
Half-time	132	164	194	14
Farm cooperative, apprentice, or other on-job training:				
Full-time	231	279	322	21
Extended evaluation:				
Full-time	265	328	386	29
Independent living training:				
Full-time	265	328	386	29
Three-quarter-time	199	246	289	21
Half-time	132	164	194	14"

"(c)(1) If the vocational rehabilitation program for a veteran includes training on the job by an employer in any month, such employer shall be required to submit to the Administrator a statement in writing showing any wage, compensation, or other income paid by the employer to such veteran for such month, directly or indirectly. Based upon such written statement, the Administrator is authorized to reduce the subsistence allowance of such veteran to an amount considered equitable and just in accordance with criteria which the Administrator shall establish in regulations which the Administrator shall prescribe.

"(2) A veteran pursuing on-job training or work experience as part of a vocational rehabilitation program in a Federal agency under the provisions of section 1516(a)(1) of this title without pay or for nominal pay shall be paid the appropriate subsistence allowance rate provided in subsection (b) of this section for an institutional program.

"(d)(1) The Administrator shall, in accordance with regulations, which the Administrator shall prescribe, not inconsistent with regulations governing the determination of full-time status and part-time status under chapter 34 of this title, define full-time and each part-time status for veterans participating in rehabilitation programs under this chapter.

"(2) A veteran participating in extended evaluation on less than a full-time basis may be paid a proportional subsistence allowance in accordance with regulations which the Administrator shall prescribe.

"(e) In the case of a veteran pursuing a rehabilitation program on a full-time residential basis in a specialized rehabilitation facility, the Administrator may, upon the request of such veteran, (1) pay to such facility the cost of such veteran's room and board in lieu of payment to such veteran of the subsistence allowance (not including any portion payable for any dependents) payable under subsection (b) of this section, and (2) pay to such veteran that portion of the allowance for dependents payable, as determined by such veteran's dependency status, under subsection (b) of this section for a full-time institutional program.

"(f) To the extent that a veteran who is determined to be entitled to rehabilitation under this chapter has remaining eligibility for and entitlement to educational assistance benefits under chapter 34 of this title, such veteran may elect, as part of a vocational rehabilitation program under this chapter but in lieu of the services and assistance described in section 1504(a)(3) (other than an allowance and other assistance under this subsection) and section 1504(a) (7) and (8) of this title, to pursue an approved program of education and receive allowances and other forms of assistance equivalent to those authorized for veterans enrolled under chapter 34 of this title, if the Administrator approves the educational, professional, or vocational objective chosen by such veteran for such program. In the event that such veteran makes such an election, the terms and conditions applicable to the pursuit of a comparable program of education and the payment of allowances and provision of assistance under such chapter shall be applied to the pursuit of the approved program of education under this chapter.

"(g)(1) Notwithstanding any other provision of this title, the subsistence allowance for a veteran who is pursuing a rehabilitation program under this chapter while incarcerated in a Federal, State, county, or local prison or jail, shall be paid as follows:

"(A) If such a veteran has no dependents, the Administrator shall withhold such allowance while such veteran is so incarcerated and pay such allowance to such veteran upon such veterans' release from prison or jail or, at the request of such veteran, purchase with such allowance, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(B) If such veteran has one or more dependents, the Administrator shall pay such allowance to such veteran's dependent or dependents (or the legal guardian or guardians thereof) designated by such veteran to receive such allowance, but only to the extent that both the veteran and the designated dependent or dependents (or the legal guardian or guardians thereof) so request. To the extent that such veteran does not request the Administrator to pay to a particular dependent of such veterans an amount payable on account of such dependent or such dependent does not join in such request, the amount involved shall not be paid to or accrued by such veteran. The Administrator shall, while such veteran is so incarcerated, withhold any amount of such allowance, not payable on account of a dependent or dependents, that is accrued by such veteran and shall pay such amount to such veteran upon such veteran's release from prison or jail or, at the request of such veteran, purchase with such amount, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(2) The provisions of paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a rehabilitation program under this chapter while placed and residing in a halfway house or while participating in a work-release program.

"(h)(1) Notwithstanding any other provision of this title, the allowance for a veteran who has made an election under subsection (f) of this section and who is pursuing an institutional program of education under this chapter while incarcerated in a Federal, State, county, or local prison or jail, shall be computed and paid as follows:

"(A) If such veteran is pursuing a program of education on a half-time or more basis and has no dependents, the Administrator shall pay such veteran such amount, not in excess of the appropriate rate, as is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans pursuing the same program. The Administrator shall withhold any amount in excess of such cost and pay such amount to such veteran upon such veteran's release from prison or jail or, at the request of such veteran, purchase with such excess amount, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(B) If such veteran is pursuing a program of education on a half-time or more basis and has one or more dependents, the Administrator shall pay such veteran such amount, not in excess of such appropriate rate, as is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans pursuing the same program; and the Administrator shall pay any amount in excess of such cost to such veteran's dependent or dependents (or the legal guardian or guardians thereof) designated by such veteran to receive such excess amount, but only if both the veteran and the designated dependent or dependents (or the legal guardian or guardians thereof) so request. To the extent that such veteran does not request the Administrator to pay to a particular dependent of such veteran an amount payable on account of such dependent or such dependent does not join in such request, the amount involved, if not payable to such veteran under the first sentence of this subparagraph, shall not be paid to or accrued by such veteran. The Administrator shall pay any excess amount accrued by such veteran to such veteran upon such veteran's release from prison or jail, or, at the request of such veteran, purchase with such excess amount, and hold for such veteran, United States Government securities and deliver them to such veteran upon such veteran's release from prison or jail.

"(2) The provisions of paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of

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education under this chapter while placed and residing in a halfway house or while participating in a work-release program.

"(i) Notwithstanding any other provision of this title, in the case of a veteran pursuing a rehabilitation program while receiving care in a Veterans' Administration hospital, nursing home, or domiciliary facility, or in a facility with which the Administrator, under the provisions of chapter 17 of this title, has contracted for such veteran's care at Veterans' Administration expense, the subsistence or (if such veteran has made an election under subsection (f) of this section) other allowance appropriate for the type of training pursued shall, after such veteran has been receiving such care for thirty days, accrue and be withheld (and converted to securities), paid to dependents, and paid to such veteran upon discharge from such facility under the same terms and conditions set forth in subsection (g) or (h) of this section, as appropriate, except that the Administrator shall, upon the request of such veteran, pay to such veteran all or part of such monthly allowance payments as are determined to be necessary to meet continuing financial obligations of such veteran.

"(j) Payment of a subsistence allowance may be made in advance in accordance with the provisions of section 1780(d) of this title.

"§ 1509. Entitlement to independent living services and assistance

"Where the Administrator has determined under section 1506(d) of this title that the achievement of a vocational goal by a veteran is not reasonably feasible, such veteran shall be entitled, pursuant to the provisions of section 1520 of this title, to a program of independent living services and assistance designed to enable such veteran to achieve maximum independence in daily living.

"§ 1510. Leaves of absence

"The Administrator shall prescribe such regulations as the Administrator determines necessary for granting leaves of absence to veterans pursuing rehabilitation programs under this chapter. During authorized leaves of absence, a veteran shall be considered to be pursuing such program.

"§ 1511. Regulations to promote satisfactory conduct and cooperation

"The Administrator shall prescribe such rules and regulations as the Administrator determines necessary to promote satisfactory conduct and cooperation on the part of veterans who are pursuing rehabilitation programs under this chapter. If a veteran fails to maintain satisfactory conduct or cooperation, the Administrator may, after determining that all reasonable counseling efforts have been made and are not reasonably likely to be effective, discontinue services and assistance unless the Administrator determines that mitigating circumstances exist. In any case in which such services and assistance have been discontinued, the Administrator may reinstitute such services and assistance only if the Administrator determines that—

"(1) the cause of the unsatisfactory conduct or cooperation of such veteran has been removed; and

"(2) the rehabilitation program which such veteran proposes to pursue (whether the same or revised) is suitable to such veteran's abilities, aptitudes, and interests.

"§ 1512. Revolving fund loans

"The revolving fund established pursuant to part VII of Veterans Regulation Numbered 1(a) is continued in effect, and may be used by the Administrator, under regulations prescribed by the Administrator, for making advances, not in excess of twice the amount of the full-time institutional monthly subsistence allowance for a veteran with no dependents, as set forth in section 1508(b) of this title, to veterans pursuing rehabilitation programs under this chapter. Such advances, and advances from such fund made before the effective date of the Disabled Veterans Rehabilitation Act of 1980, shall bear no interest and shall be repaid in such installments, as may be determined by the Administrator, by proper deductions from future payments of compensation, pension, subsistence allowance, educational assistance allowance, or retirement pay.

"§ 1513. Books, supplies, and equipment

"Any books, supplies, or equipment furnished a veteran under this chapter shall be deemed released to such veteran, except that if the Administrator determines that, because of fault on such veteran's part, such veteran has failed to complete the course involved, the Administrator may require such veteran to return any or all of such books, supplies, or equipment not actually expended, or to repay the reasonable value thereof. Such books, supplies, and equipment may be turned in to educational or training institutions for credit under such terms as may be approved by the Administrator, or may be disposed of in such other manner as the Administrator may determine.

"§ 1514. Vocational rehabilitation for hospitalized members of the Armed Forces and veterans

"(a) Services and assistance may be provided under this chapter to an individual who is hospitalized pending discharge from active military, naval, or air service if such individual would be eligible for such services and assistance except for the fact that such individual has not been discharged or released from such service. In such cases, no subsistence allowance shall be paid.

"(b) Services and assistance may be provided under this chapter to a veteran who is receiving care in a Veterans' Administration hospital, nursing home, or domiciliary facility or in any other hospital or medical facility.

"§ 1515. Vocational rehabilitation outside the United States

"Pursuant to regulations which the Administrator shall prescribe, a program of vocational rehabilitation under this chapter may be provided outside the United States if the Administrator determines that such training is (1) necessary in the particular case to provide the preparation needed to render a veteran employable and enable such veteran to obtain and retain suitable employment, and (2) in the best interest of such veteran and the Federal Government.

"§ 1516. Rehabilitation resources

"(a) Notwithstanding any other provision of law, for the purpose of providing services under this chapter, the Administrator may—

"(1) use the facilities of any Federal agency (including the Veterans' Administration) to provide training or work experience as part or all of a veteran's vocational rehabilitation program without pay or for nominal pay when the Administrator determines that such training or work experience is necessary to accomplish such veteran's rehabilitation;

"(2) use the facilities, staff, and other resources of the Veterans' Administration;

"(3) employ such additional personnel and experts as the Administrator considers necessary; and

"(4) use the facilities and services of any Federal agency, agencies maintained by joint Federal and State contributions, private institutions and establishments, and private individuals.

"(b)(1) While pursuing on-job training or work experience under clause (1) of subsection (a) of this section, a veteran shall be considered to be an employee of the United States for the purposes of the benefits of chapter 81 of title 5, but not for the purposes of laws administered by the Office of Personnel Management.

"(2)(A) Use of facilities, staff, and other resources of the Department of Medicine and Surgery under clause (2) of subsection (a) of this section, to provide rehabilitation services under this chapter, including hospital care and medical services described in chapter 17 of this title, shall, as provided for in a veteran's individualized written plan under section 1507 or 1520(a) of this title, be procured through contract with such department; and the amounts of payments for such services shall be determined in accordance with current accounting principles used within such department, subject to review and modification by the Administrator with respect to the reasonableness of proposed charges.

"(B) Except as provided in chapter 17 of this title, hospital care and medical services provided under this chapter shall be furnished in facilities over which the Administrator has direct jurisdiction.

"(3) Use of facilities and services under clause (4) of subsection (a) of this section, shall be procured through contract, agreement, or other cooperative arrangement.

"§ 1517. Employment assistance

"(a) A veteran with a service-connected disability who has participated in a vocational rehabilitation program under this chapter or a similar program under the Rehabilitation Act of 1973 and who is determined to be employable shall be furnished assistance (including any assistance necessary to assure that such veteran receives the benefit of any applicable provisions of law or regulation providing for special consideration or emphasis or preference for such veteran in employment or training) in obtaining employment consistent with such veteran's abilities, aptitudes, interests, and employment handicap. Such assistance may include (1) direct placement of such veteran in employment, (2) utilization of the services of United States employment and training outreach program specialists under section 2003A of this title, and (3) utilization of the job development and placement services of (A) programs under the Rehabilitation Act of 1973, (B) the State employment service and the Veterans' Employment Service of the Department of Labor, (C) the Office of Personnel Management, and (D) any other public or nonprofit organization having placement services available. To the extent that resources are available, a veteran without a service-connected disability who has participated in such a similiar program and who is determined to be employable may be furnished the assistance described in the preceding sentence.

"(b)(1) If a veteran has completed vocational rehabilitation for self-employment in a small business enterprise under this chapter, the Administrator shall cooperate with the Small Business Administration to assist such veteran to secure a loan for the purchase of equipment needed to establish such veteran's own business and to assure that such veteran receives the special consideration provided for in section 8 of the Small Business Act (15 U.S.C. 633(b)).

"(2) The Administrator may, under the terms and conditions set forth in clause (12) of section 1504(a) of this title, furnish a veteran described in such clause who has trained under a State rehabilitation program with the objective of self-employment in a small business enterprise such supplementary equipment and initial stocks and supplies as are determined to be needed by such veteran if such supplementary equipment and initial stocks and supplies, or assistance in acquiring them, are not available through the State program or other sources.

"(c) The Administrator shall prescribe regulations, with the concurrence of the Secretary of Labor in light of the provisions of title V of the Rehabilitation Act of 1973 (29 U.S.C. subch. V) and section 2012 of this title, and regulations prescribed thereunder, to authorize payments to be made to employers for providing on-job training to veterans who have been rehabilitated to the point of employability in individual instances where the Administrator determines that such payment is necessary to obtain the needed on-job training or to begin employment. Such payments shall not exceed the direct expenses incurred by such employers in providing such on-job training or employment opportunity. If any such veteran participates in such on-job training that satisfies the criteria for payment of a training assistance allowance under section 1787 of this title, such veteran shall, to the extent that such veteran has remaining eligibility for and entitlement to such allowance, be paid such allowance.

"§ 1518. Personnel training, development, and qualification

"(a) The Administrator shall provide a program of ongoing professional training and development for Veterans' Administration counseling and rehabilitation personnel engaged in providing rehabilitation services under this chapter. The objective of such training shall be to assure that rehabilitation services for disabled veterans are provided in accordance with the most advanced knowledge, methods, and techniques available for the rehabilitation of handicapped persons. For this purpose, the Administrator may employ the services of consultants and may make grants to and contract with public or private agencies (including institutions of higher learning) to conduct such training and development.

"(b) The Administrator shall coordinate with the Commissioner of the Rehabilitation Services Administration in the Department of Education and the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor in planning and carrying out personnel training in areas of mutual programmatic concern.

"(c) Notwithstanding any other provision of law, the Administrator shall establish such qualifications for psychologists providing evaluation and rehabilitation services to veterans under this chapter and for employees performing the functions described in section 1506(f) of this title as the Administrator determines are necessary and appropriate to assure the quality of rehabilitation programs under this chapter. In establishing such qualifications, the Administrator shall take into account the provisions of section 4105(a)(10) of this title and the qualifications established for comparable personnel under the Rehabilitation Act of 1973 (29 U.S.C. ch. 16).

"§ 1519. Rehabilitation research and special projects

"(a) The Administrator shall carry out an ongoing program of activities for the purpose of advancing the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans. For this purpose, the Administrator shall conduct and provide support for the development or conduct, or both the development and conduct, of—

"(1) studies and research concerning the psychological, educational, employment, social, vocational, industrial, and economic aspects of the rehabilitation of disabled veterans, including new methods of rehabilitation; and

"(2) projects which are designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.

"(b) For the purpose specified in subsection (a) of this section, the Administrator is authorized to make grants to or contract with public or nonprofit agencies, including institutions of higher learning.

"(c) The Administrator shall cooperate with the Commissioner of the Rehabilitation Services Administration and the Director of the Institute of Handicapped Research in the Department of Education, the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor, and the Secretary of Health and Human Services regarding rehabilitation studies, research, and special projects of mutual programmatic concern.

"§ 1520. Pilot program of independent living services and assistance

"(a) During fiscal years 1982 through 1985, the Administrator is authorized to contract with public or nonprofit agencies (including contracting for services under section 1516(b)(2) of this title) with a demonstrated capacity to conduct programs of independent living services for severely handicapped persons to provide, under regulations which the Administrator shall prescribe, programs of independent living services and assistance under this chapter in various geographical regions, to veterans as to whom it is determined that the achievement of vocational goals is not reasonably feasible, who are selected pursuant to criteria prescribed in such regulations, and who have remaining entitlement and periods of eligibility for rehabilitation under this chapter. The Administrator shall, to maximum extent feasible, include in such program substantial numbers of such veterans receiving long-term care in Veterans' Administration hospitals and nursing homes and in nursing homes with which the Administrator contracts for the provision of care to veterans. A program of independent living services and assistance for a veteran shall consist of such services described in section 1504 (a) and (b) of this title as the Administrator determines necessary to enable such veteran to achieve maximum independence in daily living. Such veteran shall have the same rights with respect to an individualized written plan of services and assistance as are afforded veterans participating in vocational rehabilitation under section 1507 of this title. Any contract for services that are initiated with respect to any veteran prior to the end of fiscal year 1985 may be continued in effect after the end of fiscal year 1985 for the purposes of providing services and assistance to such veteran in accordance with the provisions of this chapter. Programs of independent living services and assistance shall be initiated for no more than five hundred veterans in each of the fiscal years 1982 through 1985, and the first priority in the provision of such programs shall be afforded to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of a service-connected disability.

"(b) Not later than September 30, 1984, the Administrator shall submit to the Congress a report on the programs of independent living services and assistance provided for in subsection (a) of this section. Such report shall include—

"(1) the results of a study which the Administrator shall conduct of the accomplishments and cost-effectiveness of such programs, including the extent to which (A) such programs have met needs for comprehensive independent living services that would not otherwise have been met, (B) severely disabled veterans have achieved and maintained greater independence in daily living as a result of participation in the programs, and (C) costs of care in hospital, and nursing home, and domiciliary facilities have been and may be avoided as the result of such services; and

"(2) the Administrator's recommendations for any legislative changes with respect to the provision of independent living services and assistance to veterans for whom the achievement of a vocational goal is not feasible.

"§ 1521. Veterans' Advisory Committee on Rehabilitation

"(a) The Administrator shall appoint an advisory committee to be known as the Veterans' Advisory Committee on Rehabilitation (hereinafter in this section referred to as the 'Committee'). The members of the Committee shall be appointed by the Administrator from the general public and shall serve for terms to be determined by the Administrator not to exceed three years. Service-connected disabled veterans shall constitute not less than one-half of the membership of the Committee, and the Committee shall also include individuals who have distinguished themselves in both the public and private sectors in the fields of rehabilitation medicine, vocational guidance, vocational rehabilitation, and employment and training programs. The Administrator may designate one of the members of the Committee as the chairperson of the Committee. The Committee shall also include representatives of the Department of Medicine and Surgery and the Department of Veterans' Benefits, of the Commissioner of the Rehabilitation Services Administration and of the Director of the National Institute for Handicapped Research in the Department of Education, of the Deputy Assistant Secretary for Veterans' Employment in the Department of Labor, and of the Secretary of Health and Human Services.

"(b) The Administrator shall advise and consult with the Committee on a regular basis with respect to the administration of veterans' rehabilitation programs under this title.

"(c) The Committee shall submit to the Administrator and the Congress an annual report on the rehabilitation programs and activities of the Veterans' Administration, and shall submit such other reports or recommendations to the Administrator and the Congress as the Committee determines appropriate. The annual report shall include an assessment of the rehabilitation needs of veterans and a review of the programs and activities of the Veterans' Administration designed to meet such needs.

"§ 1522. Evaluation after individual unemployability adjudications

"Following the adjudication of a claim under chapter 11 of this title of any veteran for total disability on the basis of such veteran's individual unemployability resulting from service-connected disability, the Administrator shall provide for a comprehensive diagnostic evaluation by Veterans' Administration employees responsible for such evaluations under this chapter when, in the opinion of the Administrator, there exists a potential for the vocational rehabilitation and employment of such veteran.".

(b) The items relating to chapter 31 in the table of chapters at the beginning of title 38, United States Code, and at the beginning of part III of such title, are amended to read as follows:

"31. Training and Rehabilitation for Service-Connected Disabled Veterans... 1500".

TITLE II—EMPLOYMENT AND EDUCATION AMENDMENTS

SEC. 201. Section 220 is amended by—

(1) amending the catchline by inserting "and promotion" after "Coordination";

(2) inserting after "title" a comma and "and shall actively promote the effective implementation, enforcement, and application of all provisions of law and regulations providing for special consideration, emphasis, or preference relating to employment, training, and other related opportunities for veterans, with particular emphasis on the needs of

veterans with service-connected disabilities and other eligible veterans; taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title"; and

(3) amending the table of sections at the beginning of chapter 3 by amending the item relating to section 220 by inserting "and promotion" after "Coordination".

SEC. 202. Section 244 is amended by inserting after "Administration" in clause (1) a comma and "and, in cooperation with the Secretary, actively seek to promote the development and establishment of employment, training, and other opportunities for veterans, with particular emphasis on the needs of veterans with service-connected disabilities and other eligible veterans, taking into account applicable rates of unemployment and the employment emphasis set forth in chapter 42 of this title".

SEC. 203. Section 1652 is amended by—

(1) inserting after "chapter" the first time it appears "and chapter 36 of this title";

(2) striking out in subsection (e) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The";

(3) striking out in subsection (f) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The"; and

(4) striking out in subsection (g) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The".

SEC. 204. Section 1701(a) is amended by—

(1) inserting after "chapter" the first time it appears "and chapter 36 of this title";

(2) striking out in paragraph (9) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The";

(3) striking out in paragraph (10) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The"; and

(4) striking out in paragraph (11) "For the purposes of this chapter and chapter 36 of this title, the" and inserting in lieu thereof "The".

SEC. 205. Section 1772 is amended by adding after subsection (c) the following new subsection:

"(d) The Administrator shall be responsible for the approval of all programs of training on the job other than those described in subsection (c) of this section (including apprenticeship programs), and shall exercise this responsibility directly or through agreements with non-Veterans' Administration sources, including those described in section 1771(a) of this title. Pursuant to regulations jointly prescribed by the Administrator and the Secretary of Labor, the Administrator shall actively promote the development of programs of training on the job (including programs of apprenticeship) for the purposes of sections 1777 and 1787 of this title and shall utilize the services of veterans' employment and training outreach program specialists under section 2003A of this title to promote the development of and, as appropriate, approve such programs.".

SEC. 206. Section 1777 is amended by—

(1) amending subsection (a) by—

(A) striking out "Any State approving agency may approve a" and inserting in lieu thereof "A";

(B) inserting "may be approved" after "apprenticeship)";

(C) striking out "it finds that"; and

(D) striking out "subsections (b) and (c)" and inserting in lieu thereof "subsection (b)";

(2) amending subsection (b) to read as follows:

"(b) The Administrator, after consultation with the Secretary of Labor, shall prescribe regulations specifying criteria for the approval of programs of training on the job (including registered and nonregistered apprenticeship training meeting the standards of apprenticeship published by the Secretary pursuant to section 50a of title 29) in order to carry out the provisions of subsection (a) of this section and to assure the appropriateness of the training provided in meeting the purposes of chapters 34 and 35 of this title. Such criteria for a program of training on the job (other than a program of apprenticeship) shall include a certification that—

"(1) the training content and procedures of the course are adequate to qualify the eligible veteran or person for appointment to the job for which such veteran or person is to be trained:

"(2) the wages to be paid the eligible veteran or person (A) upon entrance into training are not less than wages paid nonveterans in the same training position and are at least 50 per centum of the wages paid for the job for which the veteran or person is to be trained, and (B) will be increased in regular periodic increments until, not later than the last full month of the training period, they will be at least 85 per centum of the wages paid for the job for which such veteran or person is being trained;

"(3) there is reasonable certainty that the job for which the eligible veteran or person is to be trained will be available to such veteran or person at the end of the training period; and

"(4) the job customarily requires full-time training for a period of not less than three months and the length of the training period is not longer than that customarily required by training establishments in the community."; and

(3) striking out subsection (c) in its entirety.

SEC. 207. Section 1787(a) is amended to read as follows:

"(a) An eligible veteran or an eligible person shall be paid a training assistance allowance as prescribed by subsection (b) of this section while pursuing a full-time program of training on the job (including a program of apprenticeship) approved under section 1777 of this title, subject to the conditions and limitations set forth in chapters 34 and 35 with respect to educational assistance.".

SEC. 208. Section 2003 is amended by inserting after "veterans' employment representative" the first time it appears "(and shall assign full-time clerical support to each such representative)".

SEC. 209. (a) Chapter 41 is amended by inserting between sections 2003 and 2004 the following new section:

"§ 2003A. Veterans' Employment and Training Outreach Program

"(a)(1) The Secretary of Labor shall make available to each State, directly or by grant or contract, such funds as may be necessary to support a program of employment and training outreach designed to meet the employment needs of veterans, especially disabled veterans of the Vietnam era. Funds provided to a State shall be sufficient to support the assignment of one veterans' employment and training outreach program specialist for each 5,300 Vietnam-era and disabled veterans residing in such State. Such specialist shall be a veteran, and shall be a disabled Vietnam-era veteran or disabled veteran unless the Secretary finds that a disabled Vietnam-era or disabled veteran is not available, and shall be compensated at a rate not less than the rate prescribed for an entry level professional in the State concerned. Such additional funds as may be necessary to support the reasonable expenses of such specialists for training, travel, supplies, and fringe benefits shall also be made available by the Secretary to the State.

"(2) Specialists assigned pursuant to paragraph (1) of this subsection shall be in addition to and shall not supplant employees assigned to local employment service offices pursuant to section 2004 of this title.

"(b) Pursuant to regulations prescribed by the Secretary, veterans' employment and training outreach program specialists shall be assigned only those duties directly related to meeting the employment needs of eligible veterans, with priority for services as follows: to disabled Vietnam-era veterans who are participating in or have completed a program of vocational rehabilitation under chapter 31 of this title; to other disabled veterans; and to other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title. Maximum emphasis shall be placed on assisting economically or educationally disadvantaged veterans. Not more than three-quarters of the veterans' employment and training outreach program specialists in each State shall be stationed at local employment service offices in such State. Specialists not so stationed shall be stationed at centers established by the Veterans' Administration to provide a program of readjustment counseling pursuant to section 612A of this title, veterans assistance offices established by the Veterans' Administration pursuant to section 242 of this title, and such other sites as may be determined appropriate in accordance with regulations jointly prescribed by the Secretary and the Administrator.

"(c) Each veterans' employment and training outreach program specialist shall carry out the following functions for the purpose of providing services to eligible veterans in accordance with the priorities set forth in subsection (b) of this section:

"(1) Develop job and job training opportunities for such veterans through contacts with employers, especially small- and medium-size private sector employers.

"(2) Pursuant to regulations jointly prescribed by the Secretary and the Administrator, promote, develop, and, as appropriate, approve apprenticeship and other on-job training positions pursuant to section 1787 of this title.

"(3) Carry out outreach activities to locate such veterans through contacts with local veterans organizations, the Veterans' Administration, the State employment service agency and local employment service offices, and community-based organizations.

"(4) Provide appropriate assistance to community-based groups and organizations and prime sponsors under the Comprehensive Employment and Training Act in providing services to such veterans.

"(5) Provide appropriate assistance to local employment service offices employees with responsibility for veterans in carrying out their responsibilities pursuant to this chapter.

"(6) Consult and coordinate with other appropriate representatives of Federal, State, and local programs for the purpose of developing maximum linkages to promote employment opportunities for and provide maximum employment assistance to such veterans.

"(7) Carry out such other duties as will promote the development of entry-level and career job opportunities for such veterans.

"(d) Individuals serving as staff in the Disabled Veterans Outreach Program conducted under title III of the Comprehensive Employment and Training Act on the date of enactment of this section shall be appointed as veterans' employment and training outreach program specialists in the State in which such individual is so serving, unless

the Secreary for good cause shown determines that such individual is not qualified for such appointment.

"(e) The Secretary shall administer the program provided for by this section through the Deputy Assistant Secretary for Veterans' Employment.".

(b) The table of sections at the beginning of chapter 41 is amended by inserting after the item relating to section 2003 the following:

"2003A. Veterans' Employment and Training Outreach Program."

SEC. 210. Chapter 34 is amended by—

(1) striking out in the last sentence of section 1677(b) "$288" and inserting in lieu thereof "$317";

(2) amending the table contained in paragraph (1) of section 1682(a) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Type of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional:				
Full-time	$342	$407	$464	$29
Three-quarter-time	256	305	349	21
Half-time	172	204	232	14
Cooperative	276	323	367	21";

(3) striking out in section 1682(b) "$311" and inserting in lieu thereof "$342";

(4) amending the table contained in paragraph (2) of section 1682(c) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$276	$323	$367	$21
Three-quarter-time	207	243	276	17
Half-time	139	162	184	11";

(5) striking out in section 1692(b) "$69" and "$828" and inserting in lieu thereof "$76" and "$911", respectively; and

(6) striking out in section 169(b) "$311" and inserting in lieu thereof "$342".

SEC. 211. Chapter 35 is amended by—

(1) striking out in section 1732(b) "$251" and inserting in lieu thereof "$276"; and

(2) striking out in section 1742(a) "$311", "$98", "$98", and "$10.40" and inserting in lieu thereof "$342", "$108", "$108", and "$11.40", respectively.

SEC. 212. Chapter 36 is amended by—

(1) striking out in section 1786(a)(2) "$311" and inserting in lieu thereof "$342";

(2) amending the table contained in paragraph (1) of section 1787(b) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Periods of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months	$249	$279	$305	$13
Second 6 months	186	217	243	13
Third 6 months	124	155	180	13
Fourth and any succeeding 6-month periods	62	92	119	13";

and

(3) striking out in paragraph (3) of section 1798(b) "$311" and inserting in lieu thereof "$342".

SEC. 213. Section 1622 is amended by—

(1) amending subsection (a) by—

(A) striking out in the first sentence "Each" and inserting in lieu thereof "Except as provided in subsections (c) and (d) of this section, each"; and

(B) striking out in the second sentence "$50" and "$75" and inserting in lieu thereof "$25" and "$100", respectively;

(2) inserting after "Forces" in subsection (c) a comma and "including contributions in lieu of, or to reduce the amount of, monthly deductions under subsection (a) of this section"; and

(3) adding at the end the following new subsection:

"(d) Subject to the maximum contribution prescribed by subsection (a) of this section, a participant shall be permitted, while serving on active duty, to make a lump sum contribution to the fund. A lump-sum contribution to the fund by any participant shall be in addition to or in lieu of monthly deductions made from such participant's military pay and shall be considered, for the purposes of paragraph (2) of section 1631(a), to have been made by monthly deductions from such participant's military pay in the amount of $75 per month or in such lesser amount as may be specified by such participant pursuant to regulations issued jointly by the Secretary and the Administrator.".

SEC. 214. Section 1662 is amended by—

(1) amending subsection (a) by—

(A) inserting after "1955" in paragraph (1) a comma and "and before January 1, 1980"; and

(B) adding at the end the following new paragraph:

"(3) An eligible veteran whose last discharge or release from active duty occurs after December 31, 1979, shall not be afforded educational assistance under this chapter after (A) the expiration of the five-year period following the date on which such veteran first begins to pursue a program of education under this chapter after such discharge or release if such date occurs no later than two years after such discharge or release from active duty or (B) December 31, 1989, whichever is the later."; and

(2) striking out subsection (e) in its entirety.

SEC. 215. Section 1712(a) is amended by—

(1) striking out "and" at the end of clause (4);

(2) redesignating clause (5) as clause (6); and

(3) inserting before clause (6), as so redesignated, the following new clause (5):

"(5) if the person becomes eligible by reason of the provisions of section 1701(a)(1)(A)(iii) of this title after the person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless clause (4) of this subsection applies) such period shall end eight years after the date upon which the person thus becomes eligible; however, in no event shall such period be extended beyond the person's thirty-first birthday; and".

TITLE III—VETERANS' ADMINISTRATION DEBT COLLECTION AMENDMENTS

SEC. 301. (a)(1) Chapter 53 is amended by adding at the end the following new sections:

"§ 3113. Indebtedness offsets

"(a) Notwithstanding any other provision of this title or of any other law, where an individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, the amount of the indebtedness concerned shall, under regulations which the Administrator shall prescribe, be deducted from future payments made under laws administered by the Veterans' Administration to such individual if—

"(1) such individual has been provided with reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title and with a reasonable opportunity to exercise such rights;

"(2) the Administrator has made a determination with respect to any such challenge or request, unless the Administrator determines that the passage of the time required to make such determinations prior to making deductions would have the effect of jeopardizing the Administrator's ability to recover the full amount of such indebtedness through deductions from such payments; and

"(3) the Administrator has made reasonable efforts to notify such individual about the proposed deduction from such payments and the provision of subsection (c) of this section and the regulations prescribed thereunder.

"(b) Notwithstanding any other provisions of this title or of any other law, the authority of the Administrator to make deductions under this section or to take other administrative action authorized by law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for determining the credit worthiness of the individual who owes such indebtedness, shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

"(c) Upon application by the individual concerned and under such regulations, the Administrator may, in order to avoid undue hardship to such individual to the extent consistent with recovering the full amount of an indebtedness described in subsection (a) of this section, set the rate at which the amount of such indebtedness shall be deducted from future payments at a rate less than that which would otherwise be required.

"§ 3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States

"(a) Notwithstanding any other provision of this title or of any other law, and subject to section 3102 of this title, interest and administrative costs (as described in subsection (b) of this section) shall, under regulations which the Administrator shall

prescribe, be charged on an amount owed to the United States—

"(1) for an indebtedness to the United States resulting from a person's participation in a benefits program administered under this title by the Veterans' Administration, other than a loan, loan-guaranty, or loan-insurance program;

"(2) for the provision of care or services under chapter 17 of this title; or

"(3) to the extent permissible under the loan instruments concerned, for an indebtedness resulting from an individual's participation in a program of loans, loan guaranties, or loan insurance administered by the Veterans' Administration under this title,

if a reasonable period of time, as determined under such regulations, has expired following the initial notification of the amount due to the person owes such amount of the amount due and the fact that such amount has not been paid. Interest shall accrue on such amount after the expiration of such reasonable period of time, but not for any period prior to the date (A) of the enactment of this section, or (B) on which the Administrator has mailed to the individual concerned, at such individual's most currently available address, notice of the Administrator's intention to charge interest on the indebtedness.

"(b)(1) The administrative costs to be charged under this section shall be so much of the costs incurred by the United States in collecting an indebtedness as the Administrator determines, under such regulations, to be reasonable and appropriate.

"(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Administrator, in consultation with the Secretary of the Treasury, under such regulations.

"§ 3115. Authority to sue to collect certain debts

"(a) Not later than ninety days after the date of the enactment of this section, the Administrator shall take appropriate steps to authorize attorneys employed by the Veterans' Administration to exercise the right of the United States to bring suit, subject to the direction and supervision of the Attorney General and upon such terms and conditions as the Attorney General may prescribe, in any court of competent jurisdiction to recover any indebtedness that is owed to the United States by an individual by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, if the Administrator has determined, under regulations which the Administrator shall prescribe, that such individual has failed to respond appropriately to reasonable administrative efforts to collect such indebtedness.

"(b) Not later than one hundred and twenty days after the date of the enactment of this section, the Administrator and the Attorney General shall submit to the appropriate committees of the Congress a joint report that describes and explains the actions taken by the Administrator and the Attorney General to implement subsection (a) of this section.

"(c) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28, United States Code, to direct and supervise all litigation to which the United States or an agency or officer thereof is a party.".

(2) Not later than October 1, 1980, the Administrator shall prescribe the regulations required to be prescribed under sections 3113 and 3114 of title 38, United States Code, as added by paragraph (1) of this subsection.

(3) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new items:

"3113. Indebtedness offsets.
"3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States.
"3115. Authority to sue to collect certain debts.".

(b) Section 3301 is amended by—

(1) inserting "or in preparation for" after "In" in clause (5) of subsection (b);

(2) amending subsection (c) to read as follows:

"(c)(1) The amounts of any monetary payments made by the Veterans' Administration to a beneficiary of a benefits program administered by the Veterans' Administration under this title shall be made known to any person who applies for such information, and the Administrator, with the approval of the President, upon determination that the public interest warrants or requires, may, at any time and in any manner, publish any or all information of record pertaining to any claim.

"(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Veterans' Administration in connection with any loan program authorized under chapter 37 of this title shall be made available to any person who applies for such report or certificate.";

(3) redesignating subsection (g) as subsection (i) and inserting after subsection (f) the following new subsections (g) and (h):

"(g)(1) Subject to the provisions of this paragraph, the Administrator may, pursuant to regulations which the Administrator shall prescribe, release the name and address of an individual to a consumer reporting agency when necessary for the purpose of—

"(A) locating such individual when (i) such individual is administratively determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, or (ii) the Administrator determines under such regulations that (I) it is necessary to locate such individual in order to conduct a study pursuant to section 219 of this title or a study required by any other provision of law, (II) such individual's inclusion in such study and the cost of such inclusion, in light of any other alternatives reasonably available to develop information necessary for such study and the costs of such alternatives and any possible consequenecs for such individual resulting from such release, clearly warrant such release, and (III) the release of such information and the fact that the Administrator has inquired as to such individual's present address (in order that any such study may be conducted) will not create a substantial risk of being construed as indicating that such individual is indebted to the United States or of otherwise having an adverse effect on such individual's credit worthiness, credit standing, or credit capacity; or

"(B) obtaining a consumer report in order to assess the ability of an individual so indebted to the United States to repay the indebtedness when the Administrator determines under such regulations that such individual has failed to respond appropriately to administrative efforts to collect such an indebtedness;

and may so release to such agency for either such purpose such other information as the Administrator determines under such regulations is reasonably necessary to identify such individual, but not including any information indicating expressly or implicitly any indebtedness to the United States or any other information reflecting adversely on such individual. Prior to making any such release, the Administrator shall, to the maximum extent practicable and under such regulations, determine that such agency (including any consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which such information is to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) maintains and reports information of the character involved in such release in such a manner as not to indicate in its file on such individual or in any consumer report issued or other disclosure made by it that an inquiry by the Veterans' Administration pursuant to this paragraph indicates the existence of an indebtedness to the United States or otherwise reflects adversely on such individual. A consumer reporting agency to which the Administrator releases information under this paragraph may not, on the basis of such information, indicate by any such recording or notation in such file or in any consumer report issued or disclosure made by such agency the existence of such indebtedness or any other information reflecting adversely on such individual's credit worthiness, credit standing, or credit capacity. Any willful failure of such consumer reporting agency or of any employee of such agency to comply with the requirements set forth in the preceding sentence shall be punishable in the same manner prescribed for the violation described in the last sentence of subsection (f) of this section.

"(2)(A) When the Administrator determines under such regulations that an individual has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness described in paragraph (1)(A)(i) of this subsection, the Administrator may release information relating to such indebtedness and the identity and address of such individual to one or more consumer reporting agencies for the purposes of making such information available for inclusion in consumer reports regarding such individual and, if necessary, of locating such individual if—

"(i) the individual has been provided reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title, has been provided with a reasonable opportunity to exercise such rights, and the Administrator has made a determination with respect to any such challenge or request; and

"(ii) sixty calendar days have elapsed following the mailing to such individual at such individual's most currently available address of notice of the Administrator's intent to release such information for such purposes, notice of the name and address of each consumer reporting agency to which such release will be made by the Administrator, and the specific information intended to be released.

"(B) Following the release of information under subparagraph (A) of this paragraph—

"(i) the Administrator shall notify each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which such information has been released by the Administrator of any substantial change in the status or amount of such indebtedness by the end of the calendar month following the calendar month during which such change occurs and shall, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly provide verification or correction, as appropriate, of such information; and

"(ii) if the Administrator determines that the individual concerned had not, prior to such release of information, received a communication from the Veterans' Administration providing such individual with actual notice of the indebtedness and the rights

and the opportunity described in subparagraph (A)(i) of this paragraph, any information in the possession of a consumer reporting agency indicating that such indebtedness is delinquent or past due shall, notwithstanding any other provision of law, be deemed to be inaccurate for purposes of section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), and the Administrator shall immediately advise such individual and each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which the Administrator has released information relating to such indebtedness that any such indication is inaccurate for purposes of such section and advise such individual of the provisions of such section.

"(3) No contract entered into for any of the purposes of this subsection or subsection (h) of this section and no action taken pursuant to any such contract or either such subsection shall result in the application of section 552a of title 5 to any consumer reporting agency or employee thereof.

"(4) For the purposes of this subsection and subsection (h) of this section—

"(A) The terms 'consumer report' and 'file' shall have the meaning provided in subsections (d) and (g) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a (d) and (g)), respectively.

"(B) The term 'consumer reporting agency' (i) shall have the meaning provided in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and (ii) shall also mean any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit information or other information on consumers from consumer reporting agencies (as defined in subsection (f) of section 603 of such Act) for the purpose of furnishing such information to third parties, or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such agencies.

"(h) The Administrator may, pursuant to regulations which the Administrator shall prescribe and which shall not become effective until 30 days following publication in the Federal Register, release the name, address, and other information relating to the identity of an individual, to any person in a category of persons that is described in such regulations and specified as a category of persons to whom such information may be released, if the release of such information is necessary for the purpose of—

"(1) determining the credit worthiness, credit capacity, income, or financial resources of an individual who has (A) applied for any benefit under chapter 37 of this title, or (B) submitted an offer to the Administrator for the purchase of property acquired by the Administrator under section 1820(a)(5) of this title;

"(2) verifying, either before or after the Administrator has approved an individual's application for assistance in the form of a loan guaranty or loan insurance under chapter 37 of this title, information submitted by a lender to the Administrator regarding the credit worthiness, credit capacity, income, or financial resources of such individual;

"(3) offering for sale or other disposition by the Administrator, pursuant to section 1820 of this title, any loan or installment sale contract owned or held by the Administrator; or

"(4) to the extent not otherwise authorized by this paragraph, providing assistance to any applicant for benefits under chapter 37 of this title or administering such benefits if the Administrator promptly records the fact of such release in appropriate records pertaining to the person concerning whom such release was made."; and

(4) amending subsection (i), as redesignated by clause (2) of this section, by striking out "Any" and inserting in lieu thereof "Except as provided in subsection (g)(3) of this section, any".

TITLE IV—VETERANS' ADMINISTRATION HEALTH CARE COST RECOVERY PROVISIONS

SEC. 401. (a) Subchapter III of chapter 17 is amended by adding after section 628 the following new section:

"§ 629. Recovery by the United States of the cost of certain care and services

"(a) In any case in which a veteran is furnished care and services under this chapter for a non-service-connected disability and such disability was incurred—

"(1) incident to such veteran's employment and the disability is covered under a workers' compensation law or plan which provides reimbursement for or indemnification of the cost of health care and services provided to the veteran by reason of the disability,

"(2) as the result of a motor vehicle accident covered under the law of a State which requires the owners or operators of motor vehicles registered in such State to have in force automobile accident reparations insurance, or

"(3) as the result of a crime of personal violence that occurred in a State or subdivision thereof in which a person injured as the result of such crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime,

the United States shall have the right to recover, subject to the limitations, conditions, and procedures prescribed in subsections (b) and (c) of this section, the reasonable costs of such care and services from the State or subdivision thereof, employer, employer's insurance carrier, or automobile accident reparations insurance carrier, to the extent that such veteran, or the provider of care and services to such veteran, would be eligible to receive reimbursement or indemnification for such care and services if such care and services had not been furnished by a department or agency of the United States.

"(b) The amount that may be recovered by the United States in exercising the right provided under subsection (a) of this section may not exceed the lesser of (1) an amount equal to the reasonable cost of the care and services furnished such veteran under this chapter, as determined by the Administrator pursuant to regulations which the Administrator shall prescribe after notice and opportunity for public comment, or (2) the maximum amount specified by the law of the State or subdivision thereof concerned or by any relevant contractual provision to which such veteran was a party or was subject.

"(c)(1) The United States shall, as to the right provided in subsection (a) of this section, be subrogated to any right or claim that such veteran or such veteran's personal representative, successor, dependents, or survivors may have against a State or subdivision thereof, an employer, an employer's insurance carrier, or an automobile accident reparations insurance carrier.

"(2) In order to enforce any such right or claim to which it is subrogated under paragraph (1) of this subsection—

"(A) the United States may intervene or join in any action or proceeding brought by the veteran or such veteran's personal representative, successor, dependents, or survivors against a State or subdivision thereof, an employer, an employer's insurance carrier, or an automobile accident reparations insurance carrier, or

"(B) if—

"(i) no such action or proceeding has been commenced within one hundred and eighty days after the first day on which care and services for which recovery is sought were furnished to such veteran by the Veterans' Administration under this chapter, and

"(ii) the United States has sent written notice by certified mail to such veteran at such veteran's last-known address, or to such veteran's personal representative or successor, of the United States' intention to institute legal proceedings,

the United States may, sixty days after the mailing of such notice, institute and prosecute legal proceedings against such State or subdivision thereof, employer, employer's insurance carrier, or automobile accident reparations carrier.

"(d) A veteran eligible for care and services under this chapter may not be denied such care and services by reason of this section.

"(e) No law of any State or of any subdivision thereof, and no provision of any contract or agreement entered into, renewed, or modified pursuant to any State law shall operate to prevent recovery by the United States under (1) subsection (a) of this section for care and services furnished under this chapter to any veteran for a non-service-connected disability, or (2) subsection (b) of section 611 of this title for care and services furnished as a humanitarian service in emergency cases under such subsection to any individual.".

(b) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 628 the following new item:

"629. Recovery by the United States of the cost of certain care and services.".

TITLE V—AMENDMENTS TO AGENT ORANGE STUDY PROVISIONS

SEC. 501. Section 307 of the Veterans Health Programs Extension and Improvement Act of 1979, Public Law 96-151 (93 Stat. 1097), is amended by amending subsection (a)(1) to read as follows:

"(a)(1)(A)(i) The Administrator of Veterans' Affairs shall design a protocol for and conduct an epidemiological study of the long-term adverse health effects in humans of service in the Armed Forces of the United States in the Republic of Vietnam during the period of the Vietnam conflict as such health effects may result from exposure to phenoxy herbicides (including the herbicide known as 'Agent Orange') and the class of chemicals known as 'the dioxins' produced during the manufacture of such herbicides.

"(ii) In conducting the study provided for by division (i) of this subparagraph, the Administrator may, as the Administrator deems appropriate, expand the scope of such study to include an evaluation of the adverse health effects in humans of such service as such health effects may result from other factors involved in such service, including exposure to other herbicides, chemicals, medications, or environmental hazards or conditions.

"(B)(i) The Administrator shall also conduct a comprehensive review and scientific analysis of the literature covering other studies relating to whether there may be long-term adverse health effects in humans from exposure to phenoxy herbicides (including the herbicide known as 'Agent Orange') and the class of chemicals known as 'the dioxins' produced during the manufacture of such herbicides.

"(ii) In conducting the review and analysis

of the literature provided for by division (i) of this subparagraph, the Administrator may, as the Administrator deems appropriate, expand the scope of such review and analysis of the literature to include a review and analysis of the literature covering other studies relating to whether there may be long-term adverse health effects in humans from other factors involved in service in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam conflict or in other comparable situations involving one or more of the factors described in subparagraph (A)(ii) of this paragraph.".

SEC. 502. Section 307 of the Veterans Health Programs Extension and Improvement Act of 1979, Public Law 96-151 (93 Stat. 1097), is further amended by amending subsection (b)—

(A) by amending paragraph (2) by inserting "for administrative or legislative action, or both." after "recommendations";

(B) by adding at the end the following new paragraph:

"(3)(A)(i) Not later than ninety days after the submission of each report provided for in paragraph (2), the Administrator shall, based on the results described in each such report and the comments and recommendations thereon and any other available pertinent information, develop and publish in the Federal Register, for public review and comment, proposed regulations containing proposed guidelines, standards, and other criteria (together with an explanation of the bases for such proposed guidelines, standards, and criteria) for resolving claims for benefits administered by the Veterans' Administration based on exposure to Agent Orange during service in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam conflict.

"(ii) If the Administrator expands the scope of the study provided for in subsection (a)(1)(A)(i) (as provided for in subsection (a)(1)(A)(ii)), such proposed regulations shall contain proposed guidelines, standards, and other criteria for resolving such claims based on one or more factors described in subsection (a)(1)(A)(ii) related to such service.

"(iii) Proposed regulations developed and published pursuant to division (i) of this subparagraph (and, if proposed regulations are developed and published pursuant to division (ii) of this subparagraph; pursuant to such division) shall include specification of any presumptions (including any presumptions regarding service and exposure) to be applied to the resolution of the claims to which such proposed guidelines, standards, and criteria in such proposed regulations apply.

"(iv) Notwithstanding any other provision of law, the public review and comment process required by division (i) of this subparagraph shall be conducted in accordance with the provisions of sections 553 (b) and (e), 556, and 557 of title 5, United States Code.

"(v) On the same day as such proposed regulations are published as required by division (i) of this subparagraph, the Administrator shall submit to the appropriate committees of the Congress any recommendations for legislative action that the Administrator considers appropriate in light of such proposed guidelines, standards, and criteria the report submitted pursuant to subsection (b)(2), and any other available pertinent information.

"(B) Not later than ninety days after the completion of the public review and comment process provided for in subparagraph (A)(i) and (iv), the Administrator shall publish in the Federal Register final regulations containing the guidelines, standards, and other criteria (together with an explanation of the bases for such guidelines, standards, and criteria) for resolving the claims involved.

"(C) Nothing in subparagraphs (A) and (B) shall be considered to limit in any way the discretion and authority of the Administrator to promulgate or prescribe regulations, guidelines, standards, or other criteria for resolving any claims described in subparagraph (A)(i) or (ii) at any time earlier than the time prescribed in subparagraph (A) for the publication of the proposed regulations described in such subparagraph.

"(D) The Administrator's compliance with the provisions of, and any regulations promulgated pursuant to, this paragraph shall be subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.".

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. Section 612(f)(2) is amended by inserting "any veteran for whom medical services are provided pursuant to an individualized written plan for rehabilitation developed under chapter 31 of this title" after "more".

SEC. 602. Section 1781 is amended by inserting "or subsistence allowance granted under chapter 31" after "36".

SEC. 603. Section 1795 is amended by—

(1) amending clause (4) to read as follows:

"(4) chapters 32, 34, 35, and 36 of this title, and the former chapter 33";

(2) striking out the comma immediately following "thereof)" and inserting in lieu thereof a period; and

(3) striking out "but this section shall not be deemed to limit the period for which assistance may be received under chapter 31 alone." and inserting in lieu thereof a period and the following new sentence: "No person may receive assistance under chapter 31 of this title in combination with assistance under any of the provisions of law cited in clauses (1), (2), (3), and (4) of this section for a period in excess of forty-eight months (or the part-time equivalent thereof) unless the Administrator determines that additional months of benefits provided for by such chapter are required to accomplish the rehabilitation purposes set forth in such chapter.".

SEC. 604. Section 1631(a)(1) is amended by adding at the end thereof the following new sentence: "The 36-month maximum shall be subject to the provisions of section 1795 of this title limiting the aggregate period for which any person may receive assistance under two or more programs of education administered by the Veterans' Administration.".

SEC. 605. Section 1682 is amended by adding at the end the following new subsection:

"(h) Notwithstanding any other provision of this title, in the case of an eligible veteran pursuing a program of education while receiving care in a Veterans' Administration hospital, nursing home, or domiciliary facility or in a facility with which the Administrator, under the provisions of chapter 17 of this title, has contracted for such veteran's care at Veterans' Administration expense, the educational assistance allowance appropriate for the type of training pursued shall, after such veteran has been receiving such care for thirty days, accrue and be withheld (and converted to securities), paid to dependents, and paid to such veteran upon discharge from such facility, as appropriate, under the same terms and conditions set forth in subsection (g) of this section, except that the Administrator shall, upon the request of such veteran, pay to such veteran all or part of such monthly allowance payments as are determined to be necessary to meet continuing financial obligations of such veteran.".

SEC. 606. Section 1624(a) is amended to read as follows:

"(a)(1) If a participant dies, the amount of such participant's unused contributions to the fund shall be paid to the living person or persons first listed below:

"(A) The beneficiary or beneficiaries designated by such participant under such participant's Servicemen's Group Life Insurance policy.

"(B) The surviving spouse of the participant.

"(C) The surviving child or children of the participants, in equal shares.

"(D) The surviving parents of the participant, in equal shares.

"(2) If there is no such person living, such amount shall be paid to the participant's estate.".

SEC. 607. The authority to make loans in the increased amounts authorized under sections 1512 and 1798(b)(3) of title 38, United States Code, as amended by sections 101(a) and 211(3) of this Act, respectively, shall be effective only to such extent or in such amounts as are provided in appropriation Acts. The preceding sentence shall be effective only if, on the day a bill containing amendments substantively identical to the amendments made by sections 101(a) and 211(3) of this Act to increase the amounts of loans authorized by sections 1512 and 1798 (b)(3) of such title is passed by the House of Representatives or the Senate, there is in effect in such body a rule which provides that it shall not be in order in such body to consider a bill containing such amendments unless such bill provides that the authority to make such loans in such increased amounts shall be effective only to such extent or in such amounts as are contained in appropriation Acts.

SEC. 608. The Veterans' Administration Medical Center in Topeka, Kansas, on and after the date of enactment of this Act, shall be known and designated as the "Colmery-O'Neil Veterans' Administration Medical Center", in honor of the late Harry W. Colmery and Ralph T. O'Neil. Any reference to such center in any law, regulation, map, document, record, or other paper of the United States shall after such date be deemed a reference to the Colmery-O'Neil Veterans' Administration Medical Center.

SEC. 609. Section 502 of Public Law 96-128 is amended by adding at the end the following new sentence: "Disclosures of information made under this section shall for all purposes be deemed to be disclosures authorized in title 26, United States Code.".

SEC. 610. Section 303 of the Veterans Health Programs Extension and Improvement Act of 1979, Public Law 96-151 (93 Stat. 1092, 1096), is amended by—

(1) inserting "(a)" before "Section"; and

(2) adding at the end the following new subsection:

"(b) The amendment made by subsection (a) of this section shall take effect with respect to appointments made on or after the date of the enactment of this Act.".

SEC. 611. Notwithstanding the provisions of section 5072(b), 5073(a)(2), or 5082(b) of title 38, United States Code, in cases in which the Administrator has approved an application for a grant or supplemental grant under subchapter I of chapter 82 of such title (for the establishment of a new State medical school), amounts appropriated pursuant to section 5072(a) or 5082 of such title that are approved for such a grant or supplemental grant shall remain available for, and may be paid during, a period of twelve months in addition to the periods provided for in such sections, respectively, and any funds made available by this section for payments, or authorized to be paid, under such grant or supplemental grant for faculty salaries may not exceed the amount provided for under section 5073(a)(2)(G) of such title.

SEC. 612. Section 4107(c)(3) is amended by striking out "section 4507" and inserting in lieu thereof "sections 4507 and 5384".

SEC. 613. (a) Except as provided in section 612 of this Act and subsections (b) through (f) of this section, the provisions of this Act shall become effective on October 1, 1980.

(b) With respect to veterans who are participating in a program of vocational rehabilitation under chapter 31 of title 38, United States Code, on September 30, 1980—

(1) individualized written plans of vocational rehabilitation shall be formulated under section 1507 of such title (as amended by section 101(a) of this Act) for such veterans to the extent that and at such times as the Administrator determines that the formulation of such plans is feasible and on the basis of such priorities for the formulation of such plans as the Administrator shall prescribe; and

(2) extensions may be granted a veteran under sections 1503(c) and 1505(c) of such title (as amended by section 101(a) of this Act) without regard to the requirement for a determination of a serious employment handicap.

(c) The provisions of sections 210, 211, and 212 shall take effect on January 1, 1981.

(d) The provisions of sections 213, 214, and 215, titles III and V, and section 610 shall take effect on the date of the enactment of this Act.

(e) The amendments made by title IV shall be effective with respect to care and services furnished under chapter 17 of title 38, United States Code, after September 30, 1980.

(f) The provisions of section 609 shall take effect as of November 28, 1979.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I send to the desk an amendment to the title of S. 1188.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an amendment to the title as follows.

Mr. CRANSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend the title so as to read:

To amend title 38, United States Code, to improve and modernize the rehabilitation programs for service-connected disabled veterans under chapter 31 of title 38, United States Code, to increase the rates of rehabilitation, educational assistance, and special training allowances paid to eligible veterans and persons, to enhance employment opportunities for eligible veterans, to establish a veterans' employment and training outreach program, to modify the Post-Vietnam Era Veterans' Educational Assistance Program, to modify the termination date of the current GI Bill, to facilitate Veterans' Administration debt-collection efforts, and to clarify the Veterans' Administration's authority to recover health-care costs; to authorize expansion of the scope of an epidemiological study regarding veterans exposed to Agent Orange to include additional health factors and require the issuance of guidelines for resolving claims based on exposure to Agent Orange; and for other purposes.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT ON H.R. 5192

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the conference report on H.R. 5192, the higher education bill, which will be laid before the Senate shortly, there be a time agreement as follows: 3 hours overall—1½ hours to be controlled by Messrs. PELL and STAFFORD in support of the report; 1½ hours to be controlled by Messrs. HOLLINGS and BELLMON in opposition to the report.

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object, could the Senator from Virginia have 20 minutes?

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senator from Virginia (Mr. HARRY F. BYRD, JR.) have 20 minutes under his control, outside the 3 hours.

The PRESIDING OFFICER. Without objection, it is so ordered.

EDUCATION AMENDMENTS OF 1980—CONFERENCE REPORT

Mr. PELL. Mr. President, I submit a report of the committee of conference on H.R. 5192 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes. Having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 25, 1980.)

Mr. ROBERT C. BYRD. Mr. President, if the Senator from Rhode Island will yield to me 1 minute, there will be no session tomorrow. The time agreement on the higher education conference report assures that the action will be completed today and, therefore, there will not be any need for a session tomorrow. There will be no session Saturday, as I have already indicated.

So, with completion of the action on the higher education conference report and on the domestic violence bill today and any other measures that can be cleared for unanimous consent today that will be the end of the business for today and there will be no session tomorrow and no session Saturday.

I thank the Senator for yielding.

Mr. PELL. Mr. President, that was one of the nicest introductions or interpositions that one can hear in the Chamber.

Mr. President, the conference report on the reauthorization of the Higher Education Act represents the culmination of 2 long, hard years of work. It is a bill that reflects the cooperation, accommodation, and a willingness to compromise that is what makes our system of government work the way it does.

At the outset, I thank my fellow conferees who worked long and hard to arrive at this conference agreement. The conference lasted for several days, and most of those days we worked well into the evening hours. Without the support of Senators JAVITS, STAFFORD, SCHWEIKER, RANDOLPH, WILLIAMS, EAGLETON, and KENNEDY, this agreement might never have been reached.

This conference represents, as most conference reports do, a true compromise. Neither the House nor Senate got all that it wanted. Each side had to give a little, but I think the outcome has been an excellent agreement that provides much needed student assistance benefits to American students, while at the same time recognizing the fiscal realities that confront us. In the loan programs, which are the only entitlement programs in the bill, the conference agreement saves $300 million in fiscal year 1981, compared to continuing current law unchanged. Over the 5-year life of this authorization, $2.2 billion is saved, compared to extending existing law. The bill is $300 million less than the cost of the loan programs in the House bill for fiscal year 1981 and $2.8 billion less than the House bill over the 5-year life of the bill. So I think we have been fiscally responsible. We recognize we had to save money, and we did.

All of the other authorizations in the agreement are subject to the appropriations process. Each year, the Appropriations Committee can take a look at the existing economic condition and decide how much money should be appropriated for each program. And the Senate conferees emphasized in the conference report that these authorizations are not binding on the Appropriations Committee; they are merely advisory guidelines to that committee.

Mr. President, let me briefly touch on a few highlights of this legislation. It authorizes increases in student grant assistance to help poor and middle-income students meet the increased cost of college at all levels. It maintains the promise and the spirit of the Middle Income Student Assistance Act, which we enacted in 1978, that makes some form of Federal student assistance available to every American student. It extends program eligibility to unserved part-time students, recognizing that these students too would like to pursue the dream of a college education.

It establishes fellowship opportunities for graduate and professional school, realizing that the future of our country in many ways is tied to the continued viability of these types of institutions. It makes important reforms in the loan programs aimed at reducing default rates and improving the administration of the loan programs. While the bill ex-

tends the availability of need-based loans, it also establishes a loan program for parents who are hard pressed in finding ways to finance their children's college education. And the legislation strengthens authorities for support of such national priorities as continuing education, developing institutions, libraries, international studies, research programs and urban universities.

Mr. President, I should point out that many of my colleagues added amendments to this bill when it originally was considered on the floor of the Senate. We had to fight very hard for these amendments, but we have retained a substantial number of them in one form or another. We were able to retain assistance to the Robert A. Taft Institute, which was a proposal of Senator BELLMON. We kept the Chappie James Memorial sponsored by Senators STEWART and HEFLIN, and the Dawson Chair sponsored by Senator SASSER. We kept a study of the special needs of nontraditional and adult learners sponsored by Senator CHILES. We kept the amendment creating the information clearinghouse for handicapped individuals, which was sponsored by Senator BOSCHWITZ. Amendments which were authored by Senator DECONCINI to the Navajo Community College Act were retained. An amendment to create new land-grant colleges in American Samoa and Micronesia, sponsored by Senator INOUYE, was retained, along with a modified study of the education opportunities available to Native Hawaiians. A provision requiring an education impact statement sponsored by Senator HELMS, was retained, and a modified version of Senators BELLMON and DOMENICI's administrative simplification study was also retained.

I would also like to point out the additions that Senators LONG and JOHNSTON made with respect to the State legislative grant program in Louisiana. We adopted their suggestions before we took the bill to the Senate floor, and kept that provision in conference. We did the same thing with a recommendation from Senator BENTSEN concerning State revenue bonds for student loan purposes. Senator BENTSEN's suggestions were also retained in conference.

In summation, Mr. President, I believe the Senate conferees retained many of the Senate provisions. We kept the cost of the bill to a minimum, saving $300 million from current policy in fiscal year 1981. And we did not renege on our previous commitments to the future of this country, our young.

Mr. President, I urge my colleagues to adopt this conference report.

Mr. President, I shall describe in more detail the provisions of the conference agreement.

Part A of title I establishes a new Commission on National Development in Postsecondary Education. This Commission was authorized at the suggestion of Senator JAVITS of New York. The function of the Commission shall be to review national, State, and institutional policies to examine the effectiveness of Federal financial assistance to students and institutions in conjunction with State and institutional aid policies; to consider the research capacity of institutions and the relationship between institutions and the public and private sector in promoting research; and to examine the resources of institutions and the effect of demographic changes which will impact on their ability to meet social and economic needs. At the initiative of Senator CHILES of Florida, the Commission will also conduct a study of the special needs of nontraditional and adult students in postsecondary education.

Part B of title I is renamed education outreach programs. It combines the authorization for comprehensive State planning from section 1203, the authority for education information centers from title IV, the current title I (community service and continuing education), and some essential elements of titles VI (financial assistance for the improvement of undergraduate instruction) and title X (establishment and expansion of community colleges).

The planning, information services and continuing education (including rural community education) activities are all focused on outreach to adults who have not been adequately served by postsecondary education.

Ninety percent of the funds are allocated to the States on an equal per State basis and on the basis of their adult population. The bill establishes a general allocation of the funds among the types of State activities authorized while leaving substantial flexibility for each State to set its own priorities. Each State is guaranteed to a minimum of $187,500.

Ten percent of the funds are reserved for the Secretary to support projects and activities to expand access to education, particularly for underserved adults.

The following authorization levels are established:

FY 1981—$20 million; FY 1982—$40 million; FY 1983—$60 million; FY 1984—$80 million; FY 1985—$100 million.

Title II, college and research library assistance and library training and research, has been reorganized, by eliminating the supplemental grant, which has never been funded, and by transferring the special purpose grant program from part A into a more comprehensive part B. Assistance under part A will come in the form of resource development grants up to a maximum of $10,000, increased from the current $5,000, to institutions of higher education, combinations of institutions, branch campuses or public and private nonprofit library institutions serving higher education.

The maintenance of effort provisions have been strengthened, permitting only very unusual circumstances to qualify institutions for waivers.

The funding for an expanded part B, library training research and development, would be divided between three functions on a one-third, one-third, one-third basis, reflecting the addition of special purpose grants to part B from part A.

No major changes have been made in the substance of part C, strengthening research library resources, except the addition of a provision prohibiting recipients of part C grants from receiving grants under either parts A or B.

The conference substitute authorizes the following amounts:

Part A—$10 million/FY 1981; $30 million/FY 1982; $30 million/FY 1983; $30 million/FY 1984; $35 million/FY 1985.

Part B—$10 million/FY 1981; $30 million/FY 1982; $30 million/FY 1983; $30 million/FY 1984; $35 million/FY 1985.

Part C—$10 million/FY 1981; $15 million/FY 1982; $15 million/FY 1983; $15 million/FY 1984; $15 million/FY 1985.

An important change in the college library programs in title II is the addition of a new part D, a study of the feasibility and advisability of establishing a national periodicals system. The authorization for this study is $750,000 for fiscal years 1981 and 1982 and such sums for fiscal years 1983 through 1985, to be funded only if parts A, B and C are funded at the fiscal year 1979 appropriations level.

The conference substitute creates a title III program which contains three parts. Part A, strengthening institutions, is derived from the provisions of the House bill. Part B, aid to institutions with special needs, contains provisions that were in part A of the Senate amendment. Fifty percent of the appropriation will go to each of these parts. Under both parts, the purposes of the program are clarified to focus on strengthening institutions which enroll large numbers of disadvantaged students, lack resources and are taking steps to improve their chances for survival.

Under part B of the conference substitute, the institutions that historically have served substantial numbers of black students shall be assured that their sector will receive not less than 50 percent of the amount that the sector received in fiscal year 1979 under the current title III program. Community colleges are guaranteed a floor of 24 percent of the assistance under part A and 30 percent of the assistance under part B.

The conference substitute incorporates the provisions of the House bill pertaining to challenge grants to institutions eligible for assistance under part A or part B. An institution receiving a challenge grant will match Federal funds on a 50-to-50 basis. The institutional match must be new money and can be raised from alumni giving, foundation grants, and increased State appropriations.

The conference substitute modifies the provisions of the House bill establishing an application review process and a committee on review to provide only for an application review process.

The conference substitute authorizes the following amounts for parts A and B:

$160 million/FY 1981; $185 million/FY 1982; $210 million/FY 1983; $245 million/FY 1984; $280 million/FY 1985.

The substitute provides the following authorizations for the challenge grant program:

$25 million/FY 1982; $35 million/FY 1983; $45 million/FY 1984; $50 million/FY 1985.

TITLE IV, STUDENT ASSISTANCE

BASIC GRANTS

The basic grant is renamed the Pell grant and the maximum award is increased. In addition, the limitation in the program that a student's basic grant may not exceed 50 percent of their cost of attendance is modified. The maximum grant amount is increased in steps from the current level of $1,800 to $2,600 in fiscal year 1985 and the percentage of cost limitation is also increased from the current level of 50 to 70 percent when the maximum grant reaches $2,600.

In the case of less than full funding, students whose eligibility for a basic grant is within $200 of the maximum grant will be paid the full amount of their grant first, then grants will be reduced according to a statutory schedule which gives the most protection to the lowest income students. The minimum basic grant award at less than full funding is increased from $50 to $200.

Students will be eligible for a grant during the period required to complete their first baccalaureate course of study. Current law provides for 4 years of full-time support.

The thresholds in current law requiring funding for the college work study, supplemental educational opportunity grant, and national direct student loan programs are retained. However, the Senate conferees point out that these funding levels are merely advisory and serve as guidelines to the Appropriations Committee. The level of the college work study threshold is revised from $500 to $550 million, and the SEOG threshold increases from $370 to $480 million in step with increases in the maximum grant and percentage of cost limitation. A new threshold is established for the State student incentive grant program at $76.75 million.

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT

The definition of student eligibility is simplified so that the program serves students with "need." The requirement that SEOG awards be matched at the campus with other forms of assistance is eliminated. Students are provided with the same eligibility as basic grants toward completion of their undergraduate studies.

The maximum yearly award is increased from $1,500 to $2,000. The $4,000 cumulative maximum in current law is repealed.

The conference substitute authorizes initial year appropriations of $400 million for fiscal years 1981 through 1985 and authorizes appropriations of such sums as may be necessary for continuing year SEOG awards for fiscal years 1981 through 1985.

The formula for the allocation of SEOG funds among the States is modified to be based on undergraduates rather than persons since the program only serves undergraduates and not graduate students who are included in the term "persons."

The conference substitute determines institutional need for supplemental grant funds by subtracting from 75 percent of the total student expenses the sum of family and student contributions, Pell grants, SSIG assistance and 25 percent of grants and awards made by the institution from its own resources. The substitute further provides a declining institutional hold-harmless related to increased availability of appropriations for the program.

For the purposes of determining each institution's need for SEOG funds, I believe that the conferees intend that SSIG funds be counted in each institution's SEOG application in a manner that reflects total State grants (the Federal SSIG contribution plus total State matching contribution) received for students at that institution. I have been advised that certain States, such as Missouri, maintain separate accounting procedures for distribution of Federal SSIG funds and State SSIG funds. Where this procedure is used, and given the manner in which the SEOG formula determines institutional need, certain institutions could be unfairly penalized. Thus, I think it important to emphasize that for the purpose of determining SEOG need, SSIG funds allotted to a State and the State contribution shall be considered proportionately utilized in each State student grant.

Institutions will be permitted to use up to 10 percent of their SEOG funds to make awards to less-than-half-time students.

With respect to the relationship between the basic educational opportunity grant, the supplemental educational opportunity grant and the State student incentive grant, a Federal policy objective is set of meeting 75 percent of a student's cost of education through a combination of family contribution and grant aid.

In sum, the SEOG program is simplified to make it a flexible source of campus-based grant assistance available to meet the diverse needs of students.

STATE STUDENT INCENTIVE GRANT PROGRAM

The distinction between authorizations for initial year and continuing year awards is removed and authorizations are provided as follows:

FY 1981—$100 million; FY 1982—$100 million; FY 1983—$150 million; FY 1984—$200 million; FY 1985—$250 million.

The maximum award to a student is increased from $1,500 to $2,000. Current law is clarified to permit State grant programs which serve less than half time students or graduate students to qualify. The requirement that eligible State programs serve students in all nonprofit institutions is modified to exempt State statutory restrictions enacted prior to October 1, 1978. The bonus allotment for States with State guarantee agencies is repealed.

TRIO PROGRAMS

The authorization is increased to $400 million in fiscal year 1981 and as such sums authorization is provided for in subsequent years. The staff development authority is clarified to provide for greater involvement by professionals in the field. The unfunded service learning center authority is repealed. The Secretary is required to consider the prior experience of applicants in making TRIO awards.

The talent search program is focused as a community based program serving youth. The services to be provided to clients are enumerated and include tutorial services. Two-thirds of those served must be both low income (150 percent of poverty) and first generation in college (neither parent completed a baccalaureate degree).

The Upward Bound program is focused on junior and senior high school youth and the services to be provided are enumerated. Two-thirds of those served must be low income and first generation in college, and one-third can be either low income or first generation.

The special services for disadvantaged students program is focused on those enrolled in postsecondary education and the services to be provided are enumerated. Two-thirds of those served must be low income and first generation in college or handicapped, and one-third of those served can be either low income, first generation, or handicapped.

The educational opportunity centers are focused as a community-based program serving adults. Two-thirds of those served must be low income and first generation. The services to be provided are specified and language is included to prevent duplication between talent search and educational opportunity centers.

Statutory authority is provided for the special programs for students whose families are engaged in migrant and seasonal farm work. The authorization for this program is $9.6 million in fiscal year 1981, $12 million in fiscal year 1982, $14 million in fiscal year 1983, $16 million in fiscal year 1984, and $18 million in fiscal year 1985.

ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION

Current law is retained unchanged.

VETERANS COST OF INSTRUCTION PROGRAM

The program is modified to provide greater encouragement for institutions to serve handicapped and disabled veterans. Consortia arrangements among institutions serving veterans and coordination among programs serving veterans are also further encouraged.

GUARANTEED STUDENT LOANS

This program is the major vehicle through which middle-income families find the necessary resources to send their children to college. And these resources are expanded by the creation of a parent loan program. Under the parent loan program, parents could borrow up to $3,000 per year and $15,000 total for any one student. Parents would begin repaying a loan at the earliest of the following dates: 4 years after disbursement of the loan; the student completes his or her studies; the student ceases to be enrolled at least half time; a date set by the parent and the lender.

Parents who begin repaying on an installment basis within 60 days or less would pay 8 percent interest. Parents who begin repaying after 60 days would pay 11 percent. Thus, there is an incentive for parents to begin repayment within 60 days.

In all other respects, the parent loan would be identical to the current guaranteed student loan program.

The Student Loan Marketing Association (Sallie Mae) is given the authority to make loans directly to students and parents in areas where there is a severe shortage of student loan capital. In addition, State guarantee agencies may act as lenders of last resort using funds borrowed from Sallie Mae.

If a student or parent borrower has loans from more than one lender or under NDSL, GSL, or another Federal student loan program the aggregate amount of which exceeds $5,000, Sallie Mae could make a single consolidation loan to the borrower. If the total indebtedness of a student or a parent exceeds $7,500, Sallie Mae could make a new loan to the borrower with graduated or income-sensitive repayment terms of up to 20 years length. Sallie Mae is mandated to disseminate information on its consolidation and extended repayment loan options.

Incentives are also provided for State guarantee agencies to provide lender referral services to borrowers. Curbing defaults was a major goal of the conference; making loans available to parents, providing for loan consolidation and providing for extended and income-sensitive repayment should effectively prevent defaults. In addition, a system is established for the Secretary to share information on defaulted loans with credit bureaus. Provision is also made for student borrowers to request lenders to report to credit bureaus their positive record of student loan repayment. The Department of Education is instructed to share information on student names and addresses with State guarantee agencies to facilitate the collection of defaulted loans. Lenders under the program are also required to provide thorough and accurate loan information to student borrowers.

Sallie Mae's dependency on Federal capital is reduced by prohibiting the Secretary of the Treasury from requiring that Sallie Mae raise funds through the Federal Financing Bank and by removing the guarantee of the full faith and credit of the United States in 1984. To complement these changes, Sallie Mae's ability to raise private capital is enhanced by permitting it to deal in debt obligations comparable to those offered by other secondary markets, to raise funds through the sale of nonvoting common stock and by removing the specification in the law of the par value of Sallie Mae's stock.

Finally, Sallie Mae's ability to effectively perform as a secondary market for student loans is enhanced by permitting Sallie Mae to advance to a lender up to 100 percent of the face value of a student loan in warehousing and in broadening the types of securities that Sallie Mae can accept in providing warehousing advances. Under current law, Sallie Mae can deal with lenders with assets of less than $50 million even if the lenders discriminate against borrowers on the basis of their banking relationship with the lender. This $50 million limit is increased to $75 million.

The annual loan limit for independent undergraduate students is increased from $2,500 to $3,000. The aggregate loan maximums for students are modified as follows:

	Current law	H.R. 5192
Dependent undergraduate	$7,500	$12,500
Independent undergraduate	7,500	15,000
Graduate student	15,000	25,000

The Secretary is given the authority to waive the aggregate maximum for graduate students enrolled in unusually expensive programs of professional studies.

The interest rate for new borrowers is increased from 7 to 8 percent, and the grace period before repayment begins is shortened from 9 to 12 months to 6 months for new borrowers.

Limitations are placed on the payment of the special allowance for loan funds raised through the issuance of tax-exempt bonds to prevent abuses in this practice.

The allocation of administrative allowances among specified purposes by State guarantee agencies is removed and the definition of allowable administrative expenses is clarified.

The conference agreement calls for prompt action by the Federal Government in determining whether a lending institution has exercised due diligence in the processing of student loans and prompt insurance payments to lending institutions pending completion of the due diligence investigation.

The conference committee adopted this amendment to remedy the severe hardship which has been experienced by certain lending institutions under the Federal insured student loan program. It has been brought to our attention that the Federal Government has withheld millions of dollars in insurance payments from some lenders without any finding of wrongdoing or lack of due diligence on the part of the lenders. The conference agreement is intended to remedy this situation by requiring prompt payments to lending institutions upon the filing of insurance claims.

COLLEGE WORK STUDY

Authorization for the program is provided as follows:

FY 1981—$670 million; FY 1982—$720 million; FY 1983—$760 million; FY 1984—$800 million; FY 1985—$830 million.

Students employed under this program are required to be paid the minimum wage. Institutions are permitted to carry forward and carry backward up to 10 percent of their college work study funds. The job location and development program is expanded by permitting institutions to use up to $25,000 for this purpose rather than $15,000 in current law.

Institutions are permitted to use up to 10 percent of their work-study funds for less than half time students and are encouraged to provide employment that complements the educational program of a student. Institutions are also permitted to use part of their administrative allowance to establish community service learning programs.

NATIONAL DIRECT STUDENT LOAN PROGRAM

Authorization for new capital contributions is provided as follows:

FY 1981—$400 million; FY 1982—$400 million; FY 1983—$475 million; FY 1984—$550 million; FY 1985—$625 million.

The aggregate loan limits are modified as follows:

	Current law	H.R. 5192
First 2 years as an undergraduate	$2,500	$3,000
Undergraduate total	5,000	6,000
Undergraduate and graduate total	10,000	12,000

The interest rate for new loans is increased from 3 percent to 4 percent.

For both the national direct student loan program and the guaranteed student loan program four new circumstances under which borrowers can defer repayment of their loans are defined: First periods of up to 3 years for temporary total disability (at the suggestion of Mr. BINGHAM of New York); second, service in the Commissioned Corps of the Public Health Service (at the suggestion of Mr. STAGGERS of West Virginia); third, service as a full-time volunteer with a nonprofit agency that engages in activities like the Peace Corps or VISTA; and fourth, internships required to begin professional practice.

Efforts to curb defaults will be enhanced by a system for the exchange of information on defaulted loans between the Secretary and credit bureaus and by providing for the sharing of names and addresses of defaulters with leaders. The conference substitute also requires the Secretary to attempt to collect defaulted loans for 4 years after they are assigned and requires institutions to provide thorough and accurate loan information to students.

The definition of handicapped students for purposes of teacher loan cancellation is conformed to the definition used in the Education of the Handicapped Act, and the law is clarified with regard to the treatment of loan cancellations as income.

The conference substitute also provides an alternative financing mechanism through borrowing by the Secretary to meet the student loan capital needs of institutions of higher education through a procedure by which existing campus revolving funds revert to the Federal Government.

This financing mechanism will permit more money to be made available for need-based loans on campus, while at the same time controlling the costs of student loan programs. By using this new financing mechanism, it is estimated that $300 million will be saved in fiscal year 1981.

GENERAL PROVISIONS—TITLE IV

INSTITUTIONAL ELIGIBILITY

Institutions are required to provide students and prospective students with information on their academic programs, costs, student financial aid programs, tuition refund policy, special services for the handicapped, accreditation status and standards of satisfactory progress.

NEEDS ANALYSIS

The development of a single system of needs analysis for eligibility for student assistance is mandated. Participation by the higher education community in the development of an annual schedule of expected family contributions is required, and congressional review of the schedule is mandated.

An assessment rate of 14 percent on discretionary income is specified for adjusted gross family incomes less than $25,000.

The criteria to be used in formulating the expected family contribution schedule are specified for all title IV Federal student assistance programs rather than just for the basic grant program. The criteria in current law applicable to the basic grant program are retained with the following exceptions and modifications:

Reasonable child care expenses are included in the student's budget;

All individuals are provided with an asset reserve of not less than $10,000. All equity in the family's principal place of residence is excluded from consideration as an asset. An additional asset reserve of not less than $50,000 is provided to those with farm or business assets;

The assessment rate on the income of independent students with dependents will be the same as the rate for the families of dependent students;

In calculating student cost of attendance separate commuter budgets are provided for students who live with their parents and those who do not;

Simplified data requirements from institutions by eliminating the requirement that "actual" cost of attendance be provided for every student;

Permits the calculation of student budgets on the basis of the costs of study abroad where such study is included in a formal program at the institution;

Requires that a married student will be considered independent and be permitted to use current year income information; and

Expenses for the special services or equipment needed by handicapped students are included in the student's budget.

SINGLE FORM

Requires that student eligibility for title IV programs be established through a single form without cost to the student or the student's family. Also requires that the processing of such application be decentralized to the maximum extent practicable. The Secretary is also authorized to develop a system of pre-eligibility assistance to provide students with early notice of their potential eligibility for financial aid.

ADMINISTRATIVE ALLOWANCE

Provides institutions with an administrative allowance of $10 per each basic grant recipient and $10 per each holder of a guaranteed student loan. In addition, provides that from the campus-based programs each institution shall receive an administrative allowance equal to 5 percent of the amount of campus-based funds up to $2.75 million, 4 percent of the amount of campus-based funds greater than $2.75 million but less than $5.5 million, and 3 percent of the amount of campus-based funds in excess of $5.5 million. The ceiling on the amount of administrative allowance an institution can receive is removed, and institutions are required to use their administrative allowance solely for the purpose of administering the student financial aid programs.

CRIMINAL AND CIVIL PENALTIES

The criminal penalties for fraud which in current law apply only to the guaranteed student loan program are applied to all of the title IV programs. Instiutions may be suspended or terminated from the program or civil penalties levied for substantial misrepresentation of educational programs, financial changes or the employability of graduates.

STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

The program is modified to provide for training services through contracts with the Secretary for those involved in student financial assistance programs.

A National Commission on Student Assistance is established to undertake a 2½-year study of issues such as more effective means to curb defaults, capital availability, the most appropriate mix of gift aid and self help, the status of financial aid for graduate students, the appropriate level of public subsidy of student loans and the impact of student assistance on student career choices and educational prices. In addition, special 1-year studies of the following topics will be made: insurance premiums charged to students, the method of determining the special allowance, the academic progress standards required for student eligibility for financial assistance and the recapture of interest subsidies paid on behalf of student borrowers by the Federal Government.

The President, the Speaker, and the President pro tempore of the Senate each appoint one-third of the 12 members. An authorization of $10 million is provided.

TITLE V. TEACHER TRAINING PROGRAMS

The limitation on the salaries for teacher interns in the Teacher Corps programs is deleted. Cooperation between local educational agencies and institutions of higher education in the Teacher Center program is encouraged.

More emphasis is placed on updating teachers in the use of technology, telecommunications, and testing. The pool of eligible grantees for teacher centers is expanded with the inclusion of educational service agencies.

Direction is given to the Secretary to make at least one grant award for teacher centers in each State.

Grants to schools of education for upgrading their faculty and curriculum to meet current needs are authorized.

The conference substitute establishes an Office of Education Professional Development in the Department of Education to review professional development operations and to coordinate their activities among the various Federal education programs.

The conference substitute authorizes the following amounts for the teacher corps program:

$45 million—FY 1981; $55 million—FY 1982; $65 million—FY 1983; $75 million—FY 1984; $85 million—FY 1985.

The conference substitute provides for the following authorizations for teacher training programs:

$20 million—FY 1981; $30 million—FY 1982; $40 million—FY 1983; $50 million—FY 1984; $55 million—FY 1985.

The conference substitute authorizes a new program of training for elementary and secondary school teachers to teach handicapped children in areas where there is a shortage of such teachers. This training program, sponsored by Senator RANDOLPH of West Virginia, is in the nature of fellowships to individual teachers who must within 5 years after completion of training teach for at least 2 years in a special education program or repay the stipend awarded to the individual.

The authorization levels for this new program are:

$2 million—FY 1981; $3 million—FY 1982; $5 million—FY 1983–85.

Title VI of the current law is replaced by a new Title VI: Foreign Studies and Language Development. The new title VI incorporates title VI of the National Defense Education Act, Language and Area Studies, some provisions from the International Education Act as well as the recommendations of the President's Commission on Foreign Language and International Studies. Senators STAFFORD and JAVITS provided the leadership for the development of this title.

The conference substitute provides the following authorizations:

$45 million—FY 1981; $55 million—FY 1982; $70 million—FY 1983; $80 million—FY 1984; $85 million—FY 1985.

The conference substitute authorizes a new part B of title VI, business and international education programs. This new part establishes a dollar-for-dollar matching grant program to postsecondary institutions which have entered into agreements with business enterprises, trade organizations or consortia of such organizations to establish or expand curricula to serve the international needs of the American business community.

There is authorized an annual appropriation of $7,500,000 for fiscal year 1981 through 1985 for the purposes of this new part.

TITLE VII, CONSTRUCTION, RECONSTRUCTION AND RENOVATION OF ACADEMIC FACILITIES

The title is simplified but retains the current State allocation formula. New authority to support improvement of research facilities including libraries and for compliance with section 504 is provided. Assistance for facilities in areas experiencing unusual increases in enrollments or requiring the detection or removal of asbestos hazards is also authorized. Part D, assistance in major disaster areas, is repealed. The interest rate for

academic facilities loans is increased from 3 to 4 percent.

The conference substitute provides the following authorizations for part A, State grant program for the construction, reconstruction and renovation of academic facilities:

$140 million—FY 1981; $140 million—FY 1982; $145 million—FY 1983; $150 million—FY 1984; $155 million—FY 1985.

The substitute provides an authorization of $80 million per year for part B, institutional grants for construction, reconstruction and renovation of graduate academic facilities.

The substitute authorizes $110 million per year for part C, loans for construction, reconstruction and renovation of academic facilities.

TITLE VIII, COOPERATIVE EDUCATION

The conference substitute authorizes $30 million for fiscal years 1981 through 1985 for the basic program. The maximum grant to a single institution is increased from $175,000 to $325,000, and the maximum grant to each member of a consortia is increased from $120,000 to $250,000. Different approaches to cooperative education are encouraged by permitting programs to include alternate or "parallel" periods of work and study.

An authorization of $5 million for each of the fiscal years 1981 through 1985 is provided for grants and contracts for training and research.

TITLE IX, GRADUATE PROGRAMS

The title is updated by striking references to the "expansion" of graduate programs. Part A, grants to institutions of higher education, is extended through fiscal year 1985 at its current authorization level of $50 million.

Parts B, C and D of current law are revised by the conference substitute to provide a program of campus based grant awards to graduate and professional students based on financial need. The maximum award to a student is $4,500 per year for 3 years. The substitute also provides for the maintenance of the level of awards (including institutional allowances) for the public service, mining and graduate and professional opportunity fellowship programs. The substitute authorizes $60 million for fiscal year 1981 and for fiscal year 1982 and such sums as may be necessary for fiscal year 1983 through 1986 for this new part B.

The conference substitute also provides a new part C, national graduate fellowships. This part would provide 450 portable competitive fellowships each year in the arts, humanities and social sciences. Selection of these fellowships would be based on merit, with the stipend awarded being related to the recipient's financial need. The National Graduate Fellows Program Fellowship Board would be created to select the areas in which the fellowships are to be awarded and to appoint panels for the selection of recipients.

The conference substitute extends the program of assistance for training in the legal profession as a new part D of title IX with the following authorizations:

$5 million—FY 1981; $5 million—FY 1982; $7.5 million—FY 1983; $7.5 million—FY 1984; $10 million—FY 1985.

The conference substitute continues the authority for the law school clinical experience program as part E in title IX (deleting such authority from title XI). The following authorizations are provided:

$5 million—FY 1981; $8 million—FY 1982; $8 million—FY 1983; $9 million—FY 1984; $10 million—FY 1985.

TITLE X

The vacated parts of this title are replaced by transferring the authority for the Fund for the Improvement of Postsecondary Education from the General Education Provisions Act. The Board of the Fund is given a statutory base. The following authorizations are provided:

$20 million—FY 1981; $30 million—FY 1982; $40 million—FY 1983; $50 million—FY 1984; $50 million—FY 1985.

Part C of title X creating the Bureau of Occupational and Adult Education and the Community College Unit is retained in current law.

NEW TITLE XI, THE URBAN GRANT UNIVERSITY PROGRAM

This title is designed to provide assistance to urban educational institutions in developing, in conjunction with local officials, responses to needs and problems of the urban area. It builds on the idea that the urban university and the urban area in which it is located have a natural affiliation and that the institution can provide research and services to help address urban problems.

Under this program, grants will be awarded on a competitive basis to institutions to provide applied research and service projects for their cities. The application must indicate the degree to which the local government is involved with planning and is committed to a financial contribution to the project. The Federal share is limited to 90 percent of the project cost.

As defined in this title, an urban area is a SMSA with a 500,000 or more population (the State may designate an area in States where there is no such SMSA). An urban university is one which is located in an urban area, draws a substantial portion of its students from said area; has the capacity to provide the services authorized, and offers a sufficient range of graduate or professional programs to sustain its offerings of services. A consortium can qualify for this program as long as one member meets all the qualifications.

The conference report authorizes the appropriation of up to $15 million for fiscal year 1981 under this title. This is not a large amount, but it is enough to get the program under way and to fund some projects, perhaps of a demonstration nature, during the initial program year.

The authorization levels are:

FY 1981—$15 million; FY 1982—$25 million; FY 1983—$40 million; FY 1984—$50 million; FY 1985—$65 million.

TITLE XII, GENERAL PROVISIONS

The provision for State agreements are modified to simplify the mechanism through which States provide assurances to the Federal Government for their participation in programs authorized under the Higher Education Act.

The States are given more flexibility in establishing a structure through which to perform federally required planning under the Higher Education Act, but broad participation continues to be assured.

The conference substitute authorizes the Secretary to make such modifications of any program under the act as she deems necessary in order to adapt such programs to the needs of the territories, and requires the Secretary within 18 months after the time of enactment to conduct an analysis of the unique educational needs of the territories.

The conference substitute also authorizes $2 million for each fiscal year through 1985 to support the cost of postsecondary education programs in Guam for nonresident students from other Pacific Territories.

The conference substitute establishes a National Advisory Committee on Accreditation and Institutional Eligibility to advise the Secretary.

NEW TITLE XIII, WOMEN'S WORKSITE DEVELOPMENT DEMONSTRATION PROGRAM

The conference substitute authorizes a program to encourage and to support the efforts of all forms of postsecondary institutions to serve women in their workplaces with the collaboration of labor unions and employers. An authorization of $7.5 million is provided for each fiscal year 1981 through 1985.

TITLE XIV, MISCELLANEOUS PROVISIONS

The conference substitute amends the contingent extension provision of the General Election Provisions Act to authorize the contingent extension of any forward-funded program for 2 fiscal years.

The conference substitute amends the General Education Provisions Act to authorize the Congress to disapprove Department of Education regulations in whole or in part.

The conference substitute authorizes appropriations to the Secretary of Education for fiscal year 1981 of $2.5 million for the college science teacher program, and $5 million for the minority institution science program.

The conference substitute extends the life of the Commission on the Review of the Federal impact aid program until September 30, 1981.

The conference substitute amends the General Education Provisions Act to provide that no regulation affecting any institution of higher education in the United States shall become effective unless the agency promulgating such regulation publishes in the Federal Register an educational impact assessment statement which shall identify what information specified by the regulation is available from another authority of the United States.

The conference substitute authorizes the Secretary to make a 1-year study of programs authorized by the Elementary and Secondary Education Act, the Vocational Education Act and the Education of the Handicapped Act in order to analyze if there are unnecessary duplications, conflicts, and reporting requirements in these programs, while at the same time insuring the delivery of educational services and the ability of the Federal Government to monitor and evaluate the programs' effectiveness in serving the desired target populations.

The conference substitute adds, as a priority for research by the National Institute of Education, special problems of the nontraditional student. The authorization for the Institute is extended at the following levels:

$125 million—FY 1981; $145 million—FY 1982; $165 million—FY 1983; $190 million—FY 1984; $215 million—FY 1985.

The conference substitute establishes an advisory council to evaluate the needs of Native Hawaiians and the effectiveness of existing State and federally assisted educational programs in meeting such needs. A total of $500,000 is authorized for the period of fiscal years 1981 through 1983.

The conference substitute authorizes a 1-year provision amending the impact aid laws to provide special assistance to local school districts facing influxes of Cuban, Haitian, and Indochinese refugee children.

The conference substitute extends the authorization of appropriations for construction at Navajo Community College for 1 year and changes the authorization to an amount based on the actual cost of operation and maintenance of the institution.

The conference substitute makes the College of Micronesia a land grant college.

The conference substitute authorizes an appropriation of $750,000 per year to be matched by funds from private sources for the Robert A. Taft Institute.

The conference substitute authorizes $6 million for fiscal year 1981 for a grant to establish the General Daniel James Memorial Health Education Center to be located in the Tuskegee Institute in Tuskegee, Ala.

The conference substitute authorizes $750,000 for fiscal year 1981 to establish the William Levi Dawson Chair of Public Affairs at Fisk University at Nashville, Tenn.

Mr. STAFFORD. Mr. President, first, before I go into some prepared remarks, we had a long and generally pleasant but very hard-fought conference with the conferees from the House of Representatives over this legislation, and it was obviously necessary for both the House of Representatives and the Senate conferees to compromise their differences on some important matters to get a conference report that we could bring back to our respective bodies.

It is the very strong hope of this Senator that our colleagues in the Senate will accept the conference report we have been able to work out after many difficult bargaining sessions because it is my personal fear that if we cannot adopt this conference report, in the light of the strong positions the House of Representatives took on some matters, it may be difficult to get any conference report before our two bodies that can be adopted and sent to the President in 1980.

Mr. President, having said that, I rise to express my appreciation to the chairman of the Education Subcommittee, my distinguished colleague, Senator PELL, for his continued leadership in the field of higher education and for his leadership in securing the conference report before us at this time.

This is an important measure in that it seeks to advance the goal of achieving equal opportunity for education by continuing and strengthening our programs of Federal assistance to students. Passage of this legislation will reaffirm the commitment of the Federal Government to help students attend colleges and universities of their choice throughout the United States, whether those institutions are public or private.

The keystone of Federal aid to higher education is set in the provisions of Federal financial aid to students, and the most essential portion of that assistance is the basic educational opportunity grant (BEOG) program. The conference report extends those grants through the 1985 fiscal year, and increases the grant limits over the period of that time in order to provide for a more realistic payment to meet the skyrocketing costs of higher education.

The maximum basic educational opportunity grant that a student can receive would be increased step-by-step from the current figure of $1,800 to a new maximum of $2,600 by 1985. In addition, that portion of a student's costs which the grant would cover would rise from 50 to 70 percent by fiscal year 1985.

I must note that these grants have very appropriately been renamed the Pell grants by this conference report. The Senator from Rhode Island developed this concept back in 1972 and his unshaking support of these grants then and over the years since then has guaranteed their being the most essential ingredient of student aid from the Federal Government. I think it is extremely appropriate, therefore, that they be known henceforth as Pell grants. The conferees from both Houses and of both political parties joined in unanimously adopting the provision that names the grants in Senator PELL's honor as a tribute to his leadership over the years.

The conference report contains other provisions designed to continue the Federal policy of providing assistance to students primarily on the basis of need in continuation of our goal that no qualified youngster in this Nation be denied equal educational opportunity because of economic condition.

The distinguished chairman of the Education Subcommittee, Mr. PELL, has given full details of the provisions of the conference report.

I want to join with him in commending this report to you for your support, and in noting that various provisions of this legislation are designed to assure that small, rural States, like my own State of Vermont, stand on equal footing with larger, urban States in their ability to participate fully in the programs authorized.

In that regard, I must commend the efforts of my colleague from Vermont in the House of Representatives, Mr. JEFFORDS, who also served on the committee of conference, and who played such an active role in producing the conference report before the Senate today.

Additionally, I am compelled, as usual, to remind my colleagues in the Senate of the extraordinary contribution to this report by the senior Senator from New York, Mr. JAVITS, who is also the senior member of the minority on the Committee on Labor and Human Resources.

Mr. JAVITS and I joined in offering a new title to this legislation—a title dealing with international education, and one designed to help all Americans broaden our knowledge of other nations and of other people of this world.

This new addition to the Higher Education Act will serve our national security, diplomacy and business relations by improving our language and analytical capabilities for international affairs.

In this new initiative, as in so many other portions of this legislation, Senator JAVITS inspired all the conferees by the freshness of his ideas, the buoyancy of his spirit and the stamina of his flesh. But, then, that is nothing new. He has been doing all that for a long time and continues to do so with an ease that inspires the admiration of all of us.

This conference report recommends a continued investment in our most precious national resource—the youth of our Nation.

Mr. President, I urge our colleagues to adopt the conference report.

I yield the floor.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER (Mr. MITCHELL). Who yields time?

Mr. PELL. I am glad to yield, on the proponents' side, as much time as the Senator needs.

Mr. JAVITS. Mr. President, may I explain to Senator BYRD that I am under a great time exigency, so I will not take more than 10 minutes.

Mr. President, first, I am very grateful to Senator STAFFORD for the very fine things he said about me, which I may deserve somewhat, but not as warmly as he has uttered them, and to thank him for his collaboration in that amendment and for the additions to the totality of higher education which it represents. I join him in my congratulations to Senator PELL, for there are few things that are noted when we are gone that we have done here. I was personally delighted with the idea broached by one of our Members, I think it was TOM EAGLETON, that these grants, which are so much his creation, might be called Pell grants.

This bill, which I must say I regret to see opposed in terms of a conference report by my colleagues, who are the principal factors on the Budget Committee, represents the end of an effort, of a magnificent effort, to do two things: First, to make higher education availability a matter of consumer responsibility, that is, to equip the student to go shopping with the financial abilities, which are so

heavily attributable to the Federal Government, and to pick the best institution for that particular student.

Second, we have also provided a sure course for the moderate-income student, even at the lower end of that scale, and for the poor student and for the family to find the route for the young member of that family to go to an institution of higher education.

Mr. President, the manpower needs of this country are such that higher education ought to become, as time goes on, as usual as a high school diploma. Indeed, we are still far from an optimum position in respect of a high school diploma. But this bill will help put us on a higher course so urgently required by the security of our Nation as well as by the advancement and enlightenment which make every American so proud to be an American.

One point that has not been emphasized enough, I say to my colleagues, was the grave difficulty at arriving at a conference agreement. It should be noted there were 300 points of difference between the two bills, and Senator PELL kept the conferees' feet to the fire, working morning, noon, and very much into the night in order to bring about a conference result. It was an almost lock-the-door-and-throw-away-the-key technique that produced this result and, therefore, it is with special concern that I look at the opposition which is based, I understand with great respect, upon budget factors. I, too, realize and support the maintenance of fiscal restraint in this and other legislation, and in achieving a balanced budget.

But really one would have had to sit in on the conference to realize how far it may set us back if this conference report is not approved.

Finally, Mr. President, one other important factor or two, rather: One, these are authorizations. Senator PELL has made that very, very clear. What will impinge upon the budget, if it be an impingement, will come, if there are appropriations, on what they are, and that can be adjusted to economic conditions.

The outlines of this bill, however, will be the channels through which the money will flow to given objectives, and those objectives are very sound, and that really ought to be the only criterion on the approval of the conference report.

Finally, Mr. President, a very strong effort was made here, for which I have the highest respect, by Senator METZENBAUM in an effort to approach a rather special way of dealing with the question of interest on guaranteed student loans.

The House was absolutely adamant and dug in, and I have been around here a while, and I have been in a lot of conferences, including education conferences. But I have not seen them before dug in as deeply on many propositions as they were on this one. That was just flatly out, and I believe in providing for the study and in providing for the direction which interest payments shall take, by increasing interest all across the board, the committee did everything humanly possible to save what was the Senate's view respecting the Metzenbaum amendment.

I really think the greatest respect and attention was paid to it, and I, as a conferee, and the other conferees, had it constantly on our minds so that we could do the right things about it.

Mr. President, for all of those reasons I hope very much that the Senate will approve this conference report. These authorizations expire September 30, and whereas the authorizations do not bind appropriations, the authorizations do bind a continuance of these absolutely indispensable programs to millions of young people who are matriculating in our colleges and universities.

Most importantly, for the Senate, the conference agreement retains the structure and direction of the Senate bill with respect to the student loan programs, which were a principal focus of disagreement between the House and Senate positions.

Mr. President, H.R. 5192 has been a painstakingly constructed bill which sets the tone for Federal higher education policy as we enter the 1980's, a period of considerable uncertainty for both students and institutions. It responds to the need to continue the principal Federal responsibility with respect to higher education—to provide all students who wish to participate an equal opportunity, through the means of the basic educational opportunity grant, to do so and, through the instrumentality of the campus-based programs and the guaranteed student loan, to afford students a choice in the selection of an institution at which to matriculate. In this regard, H.R. 5192 retains and enhances the promise of the 1978 Middle Income Student Assistance Act, which provided opportunities for thousands more students to reap the benefits of higher education by expanding eligibility for the BEOG and removing many of the administrative barriers which restricted the availability of student loan capital.

Simultaneously, the conferees were extremely circumspect in keeping the cost of the student aid, institutional assistance, and other programs in this reauthorization within reasonable and achievable limits. Over the 5-year period of this reauthorization, the maximum BEOG—the principal mechanism of Federal student assistance—would be increased by an average of approximately 7.5 percent per year, from $1,800 to $2,600, this at a time when the annual rate of inflation at institutions of higher education, in part passed on to the students in the form of tuition increases, will exceed 10 percent.

Increases in the campus-based programs, particularly the supplemental educational opportunity grant (SEOG), are commensurate with and linked to the increase in the BEOG entitlement. Costs in the student loan programs have also been reduced, by raising interest rates to the student in the NDSL program from 3 to 4 percent and in the GSL program from 7 to 8 percent, to reflect more clearly the cost of money at current and projected rates of inflation. Finally, authorization increases for the nonstudent aid programs—direct aid to institutions, State program and planning assistance, direct categorical assistance to other entities—have been kept at responsible levels which take into account realistically reachable levels of funding over the next 5 years.

Title IV, the student aid title, is the crux of this bill, and is based upon two fundamental principles which have characterized the Federal role and responsibility in higher education during the last decade: First, that any student admitted to an institution of higher education have the opportunity to do so, regardless of his or her financial means; and second, that a student wishing to attend college should be afforded the opportunity to choose, through a combination of parental contribution, Federal, State, and institutional assistance, which institution to attend.

Mr. President, the conferees viewed with extreme seriousness the dictates of the Senate with respect to this legislation and the budget reconciliation targets attendant to this bill. We have generated, according to the Congressional Budget Office, fiscal year 1981 savings of approximately $300 million in the loan programs relative to current policy, and savings over the 5 years of the bill approximating $2.2 billion. These savings are achieved, consistent with the structure of the Senate bill, by establishing a new national direct student loan program financed by direct Federal borrowing, which will provide substantially greater amounts of loan capital for the neediest students. Under the conference agreement, more than 3.8 million loans, with a total volume of $7.3 billion would be available to help students meet the cost of attendance, relative to 3.4 million loans and a total volume of $6.5 billion under current policy. The increased availability of loan capital is directly attributable to the new, more highly targeted, NDSL mechanism.

This method of targeting to the neediest students is consistent with the basic principle of the Metzenbaum amendment to S. 1839—to direct Federal subsidies for student loans to those who most require them. Thus, while the conferees from the other body were adamant in their opposition to the Metzenbaum amendment, its direction has been retained in the conference agreement. Furthermore, the conference agreement includes a provision that the National Commission on Student Financial Assistance established by H.R. 5192 shall conduct a special analysis of so-called "convenience borrowing" and interest subsidies under the GSL program, in the absence of accurate existing information regarding this problem and in response to the thrust of the Metzenbaum amendment.

I would like to highlight briefly at this time, Mr. President, certain other important elements of the conference agreement. First, title I of H.R. 5192 includes a new part, which I proposed, to establish a Commission on National Development in Postsecondary Education, to review the range of Federal policies toward students, States, and institutions with respect to higher education, as we enter a period of declining enrollments of traditional age students.

Second, the conference agreement

provides for a study of the feasibility and advisability of establishing a national periodical system as a means of promoting access to increasingly costly periodical literature. It is expected that the corporation established to conduct a feasibility study and design for a national periodical system carefully review and consider policies which provide access to periodicals, indexes, and abstracts, such as the National Library of Medicine, to insure that such existing programs are consistent with the system. In designing any such prospective system, it is not intended that the Federal Government duplicate or compete with activities in the private sector, either in the United States or abroad. Furthermore, it is not intended that the legislation modify in any way the Copyright Act of 1976.

Third, H.R. 5192, in title IV, strikes a critical balance between the public and private sectors of higher education and among the various student aid programs by gradually increasing the percentage of cost of education which may be covered by the BEOG from 50 to 70 percent and tying the changes in the "half-cost" provision of BEOG to proportionate increases in the BEOG floor funding level.

The agreement includes my amendment to remove the administratively imposed penalties in SEOG awards to institutions by disallowing the deduction of State and institutional assistance to students from the institutional allocation formula. Thus, States and institutions which have been in the forefront of providing aid to students such as New York State and its colleges and universities, will no longer be penalized in the Federal allotment formula for SEOG, and students receiving such assistance will be able to receive their fair share of SEOG funds.

Fourth, H.R. 5192 provides for three new critically needed programs—one, in title II, to promote through programs of language and other international training, our export and international economic performance; two, to provide, in title IX, through a modest program of grants to exceptional graduate students in the humanities and social sciences, a critical mass of qualified representatives in these fields; and three, in title XI, a program of aid to urban universities, to tap their unique capacity to promote solutions to urban needs, as did the land grant colleges for agriculture in the last century.

Mr. President, the conference agreement is a balanced proposal which will result in effective programs for students and the institutions which serve them. I commend heartily the work of the chairman of the Education Subcommittee, Senator PELL, the ranking member Senator STAFFORD, the chairman of the full Labor and Human Resources Committee, Senator WILLIAMS, the ranking member, Senator SCHWEICKER, and of course, the House conferees, particularly Chairman FORD, Chairman PERKINS, and ranking members BUCHANAN and ASHBROOK, in painstakingly developing this conference agreement.

I hope very much that in time—and this day of September 4 is in time—the Senate will approve this conference report.

Mr. HARRY F. BYRD, JR., addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, will the distinguished floor manager of the bill yield for a question?

Mr. PELL. Certainly.

Mr. HARRY F. BYRD, JR. Will the Senator from Rhode Island tell the Senate something about the college in Micronesia? No. 1, where is it located; No. 2, what is the enrollment?

Mr. PELL. The simple answer is that it is in Micronesia, but I am not sure on which island. This is a floor amendment that we kept in conference. I do not believe the island was specified. It was to be in Micronesia.

Mr. HARRY F. BYRD, JR. The college has not yet been established?

Mr. PELL. The Senator from Hawaii, I believe, informed us by coming before us, that it was a small college in its initial stages of development. Perhaps the similarity here is to the college in the Virgin Islands, which 10 years ago was in rudimentary form. My recollection is that we gave it a little Federal assistance and that college is going great guns.

Mr. HARRY F. BYRD, JR. Is this a new college?

Mr. PELL. It is a college that is in existence, but not in a very stalwart form. What we have done is to designate this college and make it eligible for designation as a land-grant college, which gives it a boost.

Mr. HARRY F. BYRD, JR. But it is now existing?

Mr. PELL. It is existing, but not in a stalwart form.

Mr. HARRY F. BYRD, JR. Not in a what form?

Mr. PELL. Stalwart; strong. In other words, it is small.

Mr. HARRY F. BYRD, JR. If it exists, where does it exist?

Mr. PELL. It exists in Micronesia.

Mr. HARRY F. BYRD, JR. But where in Micronesia? Micronesia is spread over a million square miles.

Mr. PELL. I am going to ask my staff to immediately call Senator INOUYE's office and find out which one of the islands it is located on.

Mr. HARRY F. BYRD, JR. Does it involve islands other than those which have been given commonwealth status?

Mr. PELL. I cannot give the Senator the answer to that at this time. I can get it for him later on as the debate goes on.

Mr. HARRY F. BYRD, JR. I would appreciate that.

While I am asking a couple of questions about it, maybe I could ask a couple more and then we could discuss it a little later on.

The cost of this program, the enrollment——

Mr. PELL. Mr. President, I hate to interrupt. I see the Senator from Hawaii (Mr. INOUYE) is here. Maybe he could help me answer Senator BYRD's questions.

Where is the College of Micronesia supposed to be located? Which island is it on?

Mr. INOUYE. It is on Ponapei.

Mr. PELL. I thank the Senator. It is on Ponapei.

Mr. HARRY F. BYRD, JR. I thank the Senator from Hawaii.

May I ask another question at this point?

Mr. PELL. Certainly.

Mr. HARRY F. BYRD, JR. Does it exist only to serve the Marianas or does it serve the Marshalls and the other islands of Micronesia?

Mr. INOUYE. If the Senator will yield, this special college will serve the people of the area that was once referred to as the Trust Territory.

Mr. HARRY F. BYRD, JR. The entire Trust Territory?

Mr. INOUYE. So that would mean the federated states of Micronesia, the commonwealth of the northern Marianas, and the remainder.

Mr. HARRY F. BYRD, JR. Although most of that area is not involved in the commonwealth.

Mr. INOUYE. That is correct. It will serve—eventually, we are hoping, by our negotiations, all of the islands there will somehow join hands with the United States in some sort of relationship.

Mr. HARRY F. BYRD, JR. Does the Senator from Hawaii know what the enrollment is?

Mr. INOUYE. At the present time, I have no idea. It is still new. But the potential is great.

Under the trusteeship arrangement, I think we have a very solemn obligation there. But, more important than that, I am certain the Senator is well aware of the strategic importance of these islands. I am certain many countries are looking upon these islands with rather envious eyes.

Mr. PELL. Before the Senator came in the Chamber, not knowing as much about it as he did, I said that it was not presently in a stalwart form as a college but that by having this amendment, the Senator's amendment, in the bill it meant that it would get land-grant-college status, which would give it the strength that it really needs.

Mr. INOUYE. That is correct. Right now the college is spread all over the island; some in Quonset huts and some in shacks. I think the people there deserve a little better than that.

Mr. HARRY F. BYRD, JR. I think all of this is fine. But I am just wondering whether we are in a position financially to be branching out and establishing a new college for an area which has no real connection with the United States—other than the Marianas, of course, which now have commonwealth status.

Mr. INOUYE. I think, to the contrary, these islands are extremely important to the well-being and the national interest of the United States. If only from the standpoint of defense, it is priceless.

Mr. HARRY F. BYRD, JR. As one who served on many of those islands during World War II, I am not certain that I can agree with the great strategic value of the islands. But, nevertheless, I would like to get—not now, because the staff is looking it up—the amount of money involved.

Mr. PELL. I have checked into that. This does not add any additional amount of money. It merely diminishes, I guess to a tiny degree, the amount of money available to other land-grant colleges by designating this university a land-grant college. I hope, incidentally, the next time this bill is up for authorizations—and I hope we three are still here then—that we will be considering it for sea grant college status as well as land grant. If ever a college was suitable, as the University of Hawaii is, for sea grant college status, this one in Ponapei would be.

Mr. INOUYE. I think the situation in Ponapei would be quite similar to that in Hawaii. As you know, when land-grant colleges are established, they receive title to certain lands that are in the Federal jurisdiction from that area. In the case of Hawaii, there was not much Federal land to give away and the people of Hawaii were not quite ready to take some land from Alaska, which now they should have. So, in lieu of land, the University of Hawaii received a small sum of money which is now held in trust by the U.S. Treasury. So what the arrangements will be as to this college, no one can tell at this time.

Mr. HARRY F. BYRD, JR. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, a commencement address was once started by addressing the group as: "My fellow students, as long as we continue to learn, we continue to live."

I emphasize that because I believe in education. In fact, I believe so much in education that I have made the statement so many times that you just really cannot waste money on education. At least that is what I have been saying for the last 30 years.

But, again, as a student, I am learning something new here this afternoon—that you can waste it. You can waste it. The Senator from New York says that the conferees were in a room in the morning and evening and locked the door and threw away the keys. They did not only throw away the keys. They threw away all fiscal judgment.

You have to study this bill. All you have to do is just look at this bill. In anyone's opinion who would look at it dispassionately, they would have to agree on the one hand, it is outrageously expensive and, on the other hand, it violates the sentiment the Senate expressed on three different occasions.

It is $2 billion over what the Senate passed. Then it is over what we agreed to in the budget resolution, and again when the Senate bill passed and again when we unanimously passed that reconciliation.

So they went about it with complete abandon to enrich those who are able to pay for their education.

As Ms. Quinn says—and we have that enclosure, I think, in the letter that we sent around—Jane Bryant Quinn says that there is no reason any longer for anyone to have to save up their money in order to pay for a college education.

So let us, in the very beginning, while we stand up here to many as robots just babbling all kinds of figures, percentages, budgets, and everything else, let us talk about education here in a few minutes and let us try to educate ourselves to some kind of discipline in trying to hold the line on inflation, so when they do get a college education they cannot only earn the living but hold their earnings. That is the whole trouble that we have at this particular moment.

We are still fighting inflation. We have to borrow every dime we provide for in these programs. We are in a $63 billion deficit now, and all the gimmickry programs are coming forward to get into capital investment. If we will just balance the budget. If we just hold to what we promised to hold to in June, we have $63 billion less to borrow. Then we could get out of the capital investment markets and they could get money for the colleges, for the students, and they could finance education.

But here in the name of trying to let them go shopping, as the distinguished Senator says, I will tell you where they go shopping. They do not go shopping to the colleges of their choice but to the savings and loans. Just across the river in Dominion Federal a new savings program comes to Roslyn, with a 12.37 percent certificate of deposit on $100, earning 12.37 percent yield.

Under this bill, you can get any kind of money for 8 percent and go over and start making yourself a good living. You do not have to get inside a college. In fact, one of the bad things to do would be to graduate. Then you would start cutting yourself off. I would flunk a little while and keep on going, or attend graduate school.

Let us get to the conference agreement, because it is outrageously expensive. It would cost the taxpayers $51 billion over the next 5 years: $37 billion of this is virtually uncontrollable, including $11 billion in entitlement spending.

The conferees added back, Mr. President, several features which the Senate had rejected and which will force the appropriations committees to provide minimum funding for certain programs. These provisions will limit Congress ability to control spending for the programs.

The conference agreement would cost $2 billion more than the Senate-passed bill in fiscal 1981, and $13 billion more over the next 5 years.

It will cost $2.5 billion more than the President's higher education request next year, and almost $19 billion more over the next 5 years.

Can you imagine that? Now we have a bunch of bills coming along and they are going to give more than the President wanted. The taxpayers cannot tolerate this excess.

For example, take the basic educational opportunity grant, the BEOG's program. That started prior to 1978 with a $15,000 earned income and then for the guaranteed loans they topped it off at $25,000 in income per family. Then in the 1978 amendments they jumped that $15,000 to approximately $25,000, but on guaranteed loans they just removed the ceiling. So everybody, Bunker Hunt, can come not to find silver but to find gold in Washington, with this conference report right here.

The President requested $2.2 billion. The conference agreement authorizes $3.2 billion for BEOG's, a $1 billion increase, and a lot of that would go to the students with family incomes over $15,000. The distinguished Senator was talking about moderate and low income students.

Look at the entitlement cost of the student loan programs. The Senate voted three times in the last 3 months to make significant savings, because it is a well conceived program and should not be eliminated. We have supported student loans. Ever since we have been in the Senate we have supported higher education. But just like the food stamp program, which, instead of feeding America's hungry poor, those on retirement, without a capital net worth test, can come down and buy a magnificent home in South Carolina and Florida and go ahead with their minimal retirements and then enjoy food stamps.

So you have people making $10,000 a year coming up to the food stamp window, instead of holding it where we were—around 3 million Americans.

If the Senator from Virginia will remember from both the New Frontier and Great Society in 1969, we have it up to 23 million. Instead of solving hunger, we are having a hard time retrenching and getting back to the original intent.

We want to continue higher education for everybody in America. For those who can afford it, they are glad to pay for it because it is the best investment they will make. For those who cannot, we have had the BEOG's program and other grant and loan programs. But this is an adulteration, an abuse, and will wreck the whole, well-conceived program. That is why we speak out this afternoon.

We passed the first budget resolution in which we assumed large savings. We instructed the Labor and Human Resources Committee to report savings in these programs of $350 million in budget authority and $450 million in outlays.

Next we passed the higher education bill, and the Senate would have saved $700 million in budget authority and $600 million in outlays.

Then on the third time, by unanimous vote, we adopted the Senate-passed savings in the reconciliation bill.

How much entitlement savings do they have in this conference report after those three votes? They say they were locked in a room and they threw away the key.

Out of $700 million the Senate had endorsed two times, in as many as the last 2 months, they came out and thought they had worked day and night and threw away the key.

They threw away the key to keep us from coming in to see what is going on.

The costs of the guaranteed loan program have skyrocketed. This conference agreement fails to bring it under control. In 1978 it cost $650 million, and in

1980 it will cost us $1.4 billion, a 100-percent increase.

With no change in existing law it will grow still further to $1.6 billion in fiscal year 1981 and $2.6 billion in fiscal year 1985, for a total increase over that period of 400 percent. These are costs which are beyond the control of the Appropriations Committee, Mr. President, because this is an entitlement program.

What does the conference agreement do to control the runaway program? It cuts the program cost in 1981 all of $0.2 billion, 1 percent. By 1985, the savings will amount to $0.1 billion, or 4 percent.

But let us just look to see who is benefiting the most from this shockingly expensive program. My friends, the taxpayers of this counrty, which means the working people, too, will be helping to send the children of the wealthiest men and women in America to college. These privileged families will benefit no less than the neediest families in America.

Take, for example, the child of your average millionaire. If his or her college expenses equal at least the $5,500 per year, under this conference report he or she can get a guaranteed student loan of $2,500 at 8 percent interest, and the Federal Government will make payments on the interest while the student is in school. The student pays nothing.

Since that is not enough to cover the full year's cost, the conference agreement would establish a new program which will allow the student's parents to take out a federally guaranteed loan of $3,000 at 8 percent, or 11 percent if the parents choose to wait 4 years before making any payments.

Compare these interest rates to the 14, 15 percent interest that the student would have to pay under an unsubsidized loan program. But the benefits do not stop there Under an unsubsidized loan, you have to start making payments on interest and principal right away. If you are smart enough to be a subsidized loan, you do not have to make any payments for the 4 years in college. The taxpayers will pick up the tab.

That is the inflation. That is why you have the 14-, 15-percent interest. Where do you think it comes from? Is there any mystery to this? We are operating now borrowing down into that capital market for $63 billion. You tell your committees, you tell yourselves, you have a balanced budget in June. We held in the second conference. We were ready to debate that and we cut it down some $45 billion to $18 billion. We hope we can pass that. But this bill goes up, up, and away, as if we never had any budget process and we never voted to hold down costs the three times.

For example, in the case of our millionaire family, the taxpayers would pay almost $1,600 to support their $5,500 in student and parent loans.

And what would this family—or any sensible investor—do?

I am not against them; I am for them. I like to have rich friends. What will they do with the low-priced loans? One thing they might do is check out the newspapers for the current yields offered on certificates of deposit at local savings and loan associations. I pointed out that yesterday's Post, for example, was full of ads for CD's yielding as much as 12.37 percent.

The rich student could take his 8-percent loan, for $2,500 and with his own money buy one of these CD's. He would make no payments on the loan interest for 4 years, because the taxpayer would pick up that cost. At the end of the 4 years, he could repay the loan principal and pocket the $1,400 earnings from the certificate of deposit.

You cannot blame him. He would be stupid to save, as Jane Bryant Quinn said. Get the kids through college. Many a grandparent, many a parent in America worked and saved to send their sons and daughters through college—that is what they really pride themselves on. That is a successful family, a mother or father, grandparent or otherwise, who can get a child through college by saving.

What else are you saving for? I shall tell you—you are saving for the interest and the wheelbarrows to carry the money in. We shall be like Germany, the way this Government is going.

Mr. PELL. Will the Senator yield?

Mr. HOLLINGS. If the Senator will let me get through this, I shall be glad to yield.

All this generosity is in addition to the basic benefit inherent in any guaranteed loan—the Federal guarantee. If the student—or the parents—decide not to repay the loan for whatever reason, who picks up the tab? No one else but the American taxpayer—as usual.

I was just told, because this only came to my attention last evening, trying to check where I was, down in my own State, that we have a poor record of paying back those loans in my home State. I think it is one of the worst in the country. We have to try to do something about that. But you cannot blame them if everybody gets the attitude that we as Senators approach a particular problem with the idea, just send the money, whoopee, it is great for America, it improves the national security. We did a great job; we held it down so the moderate- and low-income people can go to college. I can tell now we have waste in this one.

On yesterday's edition of the CBS morning news show Wednesday morning, business columnist Jane Bryant Quinn summarized the overabundance of this conference report perfectly. She said:

> It makes it almost unnecessary for anyone to save money for a college education. . . . Even if you don't need a loan, it pays to use the government's free money and keep your own money in the bank earning interest.

I ask unanimous consent that the transcript of Ms. Quinn's remarks be printed in the RECORD at this point.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

TRANSCRIPT

JANE BRYANT QUINN. Thank you, Bill. I have some news for parents who are sending children to college. Congress is putting the finishing touches on an amazing new student aid bill. It makes it almost unnecessary for anyone to save money for a college education. Furthermore, if you are old-fashioned enough to save anyway, you may even be penalized for it. The Carter Administration has opposed this bill, but Congress felt that it's what the American people want. For the school year starting next September, there is a brand new taxpayer-subsidized parent loan program. These loans are open to everyone, even the rich. Parents can now borrow up to $3,000 a year at participating banks. You're charged only eight percent interest if you start repaying right away. Or you can pay nothing at all for four years, and then repay at 11 percent. Students themselves can still get subsidized student loans. The interest rate is up one point to eight percent, for a new maximum of $2,500 a year. Counting both loans, a family can now borrow as much as $5,000 a year for college and pay back nothing at all for four years. Even if you don't need a loan, it pays to use the government's free money and keep your own money in the bank earning interest.

Moving right along, Congress has also enlarged the free grant program for needy students. And it has stretched the meaning of needy to cover people of greater wealth. If you own a house, no matter how valuable it is, it will no longer be counted in figuring what you ought to pay for your child's education. What this means is that a parent with a big house but no money in the bank may be considered needy by the government, but a parent who saved money and lived in a smaller house might not get a grant, because of the size of his bank account.

You know, in this election year, we keep hearing that people want government to do less. But on student aid, Congress is definitely getting the message that people want more and more and more.

Mr. HOLLINGS. Mr. President, student loan programs under this conference report are shamelessly biased toward upper income families. The higher income benefits are guaranteed through the entitlement structure of the guaranteed loan programs—well insulated against pressures to cut the budget.

But the benefits for lower-income people are provided primarily through grant programs, over which the Congress has more control. So when pressure occurs to cut the budget, these programs are more susceptible to reductions than the loan programs.

We just saw an example of how this works. The 1980 supplemental appropriations bill included a $50 cutback in the basic grant provided to each student for this school year. This reduction will save $130 million in fiscal year 1981.

The supplemental bill could not cut back the student loan programs because of their entitlement nature; instead, it added $650 million for the 1980 costs of the guaranteed student loan program. We were waiting for this reauthorization bill to cut back that program.

Now the bill is before us, and how much does it save for the rich people's loan programs? Twenty million dollars, compared to the $140 million we just cut out of the poor people's grant program.

We all went moaning and groaning, we had to tighten our belts, we were going to discipline them all. So we cut back on the poor. But when the rich got in through the closed doors and threw away the key, they saved all of $20 million on that program.

It is no secret what the driving force is behind this bill, Mr. President. It is the colleges and universities. We have to be realistic. They need more money. They are faced with rising costs and declining numbers of students.

And this bill gives them money in every possible way. That is why their lobbyists have been all over each of us and our staffs for weeks now, telling us that we have to support this conference report.

I want to help the colleges, and students—the Senate-passed bill would have helped both.

But I also want to help the taxpayer, and help the Government help us all—college, student, Senator, taxpayer, everyone, poor, rich, everybody, every American who is watching helplessly as inflation is stealing the paycheck. That is what is happening.

The Senate—and the Congress—have repeatedly made a commitment to cut back on Federal spending so we could do something about inflation.

If we reject the conference report, we would ask them to go back into conference and see if they can get back within the confines of what we have voted three times on this side, and the House agreed to. This is over $2 billion above the first budget resolution.

Mr. President, are we so weak in our resolve that we fold our tents and run at the first attack from the special interests? Are our election-year jitters so strong that we will completely renege on the promises we made just 1 month ago? I hope not.

We must remain firm. We must defeat this conference report and insist that the conferees bring us back a responsible bill.

Mr. President, I reserve the remainder of my time and yield to the distinguished Senator from Oklahoma.

Mr. BELLMON. Mr. President, I thank my friend, the distinguished Senator from South Carolina, who is doing such an outstanding job in chairing the Senate Budget Committee. He shares the same concern I have about the impact this conference report would have on inflation and bringing a responsible fiscal policy to reality.

Mr. President, I strongly oppose this conference report both on the basis of its substance and on budgetary grounds. This report costs too much and, what is worse, this exorbitantly costly piece of legislation does not address the critical problems which presently exist in our student loan programs. First, let me discuss the budgetary aspects.

This conference report would add $0.5 billion to the budget for entitlement spending in fiscal year 1981, and $7 billion over the next 5 years. These add ons cannot be accommodated in either the first budget resolution—or in the second budget resolution as reported.

This conference agreement scorns reconciliation. Congress voted to cut $11 billion from the fiscal year 1981 deficit, when we adopted reconciliation in the first budget resolution. The reconciliation instructions in the budget resolution assumed savings in student loan programs. The Senate-passed version of this bill included savings that satisfied reconciliation. The reconciliation savings bill, which passed the Senate unanimously—and I emphasize that we agreed on it unanimously—included provisions identical to those in the Senate-passed version of H.R. 5192. The House-reported reconciliation bill also includes savings in student loan programs.

So both the House and Senate agreed that we are going to save money in student loan programs. Now we have before us a conference report that scorns the actions that the House and Senate have already taken and adds to the cost of these programs.

This conference report includes neither the savings the Senate has endorsed four times, nor even the lesser savings in the House-reported reconciliation bill.

Let me further point out that no one is suggesting that we "kill" this legislation.

I believe every Member of the Senate wants us to have a workable and adequate student loan program. It is the intention of those of us who oppose the conference report to ask for a further conference with the House and we are confident that this Congress can agree on a strong affordable program of student assistance. We passed such a bill through the Senate. What we are insisting is that the House and Senate conferees work out a bill that is closer to the Senate version.

Mr. President, how many times have we been told, "The Senate must accept this result because the House will accept nothing else"? I have also been a member of many conferences and I have never seen an easy conference with the House. But the fact that the House is intractible is no reason for the Senate to lie down and play dead and give the House whatever it wants. What we are trying to do here is strengthen the backbone of our conferees and insist that they stand firm on the Senate position.

Senator HOLLINGS already referred to a CBS news transcript which was broadcast recently, calling attention to the inequities and the costly provisions of this conference report.

Senator HOLLINGS and I sent a copy of a CBS News transcript to all of our colleagues, when we sent a "Dear Colleague" letter expressing our opposition to this conference report. Jane Bryant Quinn, of CBS in reporting on this bill, says:

> You know, in this election year, we keep hearing that people want government to do less. But on student aid, Congress is definitely getting the message that people want more and more.

I am not going into that again except to say that I believe this CBS broadcast, this transcript, puts this matter into sharp focus. I urge my colleagues to read the article which the Senator from South Carolina has had printed in the RECORD.

I would agree with the conclusion which Ms. Bryant reached in this broadcast.

Mr. President. Ms. Bryant is unquestionably right that—should we pass this conference report it would appear that the message we are hearing from our constituents is that people want more. But I don't think that is what people want at all, but that our constituents want not only some fiscal policy, but that they also want better student aid programs which the Senate bill would provide and which this conference report has not called for.

I believe our country desperately needs programs that take into account the dangers of inflation and that give us a chance to bring our budget into balance.

As far as student programs are concerned, I believe our taxpayers would be grateful, should Congress enact programs that better meet student needs if we could also save billions of dollars of the taxpayers' money as did the Senate-passed bill.

Mr. President, I said at the outset that the real tragedy is that this bill not only costs much more than we can afford, but as costly as this conference report is, it fails to meet some of the pressing needs of students across the country.

I have a deep interest in strong student assistance programs.

As a matter of fact, I was one of those who borrowed heavily to get through college, myself.

Senator KENNEDY and I introduced a bill, S. 1600—with 19 cosponsors—which sought to address three critical problems in existing student assistance programs. Those problems are: capital availability for student loans; I call the Senate's attention to the fact that now, in many cases, banks refuse to make loans to students unless the families are substantial bank customers; duplication and overlap in existing programs that creates administrative nightmares, leads to unacceptably high default rates, and confuses students; and cost. This conference report does not address those problems.

Thousands of students across the country cannot now get student loans. Many banks will not make the loans—even with the Government paying them 15 percent interest. Some States have no State loan program at all. Some States have student loan programs, but severely proscribe the amounts a student can borrow, and the conditions on which they will make student loans. The Senate-passed version of this bill not only would have cost far less than this conference report; it would have insured capital availability to all students in all States. This conference report would not accomplish this objective. While the Senate-passed bill established a new direct loan program to insure that all students everywhere would be able to borrow the money they need to go to school—this conference relegates that important objective to a program that may or may not be implemented, at the discretion of the Secretary of Education.

Going into this reauthorization cycle, we had seven Federal student loan programs. The bill Senator KENNEDY and I introduced would have reduced the number to two. The Senate-passed bill created a new direct loan program—but that program replaced an existing system of seven programs. This conference agreement envisions a new program, which may—but probably will not—replace anything. It actually adds to the number of Federal student loan programs, so that if we adopt this conference report we may wind up with nine—rather than seven—loan programs.

Think of the additional confusion this will cause.

In addition, that will add to the cost of the program and I doubt any of us believe students will be well served by such a proliferation of student assisted options.

Is anyone surprised that this could be very costly? Does anyone really believe students will be well served by such a proliferation of student assistance options? The profusion of new programs will increase the default problems we have now, which the Senator from South Carolina alluded to.

Finally—and obviously—this conference will not achieve the savings we all know can be achieved without short-changing students who need help.

What does the conference report do? It continues the costly practice of providing deep subsidies to all students who borrow—without respect to need. The wealthiest families in the United States can qualify for these deeply subsidized loans. The wealthy are taking advantage of student loans now. They will do so more under the terms of the conference report. The administration, and the CBO, have said time and again that all the evidence indicates that many parents are taking advantage of these loans and putting the money into certificates of deposit. Why should they not? After all, the money costs the borrower nothing while the student is in school—and under this conference agreement the student would only pay 8 percent interest after graduation, which is far less than can be earned now on a certificate of deposit. Needless to say, CD's are bringing a high enough return now to make this kind of activity very attractive—particularly to parents who do not need to borrow to send their children to school.

Therefore, it works a hardship on those who do really need these funds in order to educate their children.

Mr. President, I know that many of our colleagues have heard from schools and banks in their States that we must adopt this legislation. Is it any surprise that those institutions which reap the benefits of this bill avidly support it? But what about the student? And what about the taxpayer who foots the bill for these costly programs that benefit no one except the institutions and the wealthy families who do not need the help?

Mr. President, if the Senate is serious, and I hope we are serious about taking actions that restrain inflation and produce a responsible fiscal policy, I hope we are not going to cave in to the pressures that special interest groups can bring at the suggestion we are going to reduce unnecessary spending. I hope Members never believe we can cut back on spending, control inflation, and balance the budget, without any complaints from somebody. Obviously, when we make changes like this, some groups are going to feel threatened and will do all they can to stir up opposition.

I hope the Senate has enough backbone to recognize that these kinds of pressures are going to exist and go ahead and stand up to them.

I believe we can produce a program that will adequately meet student needs, make administrative sense, and wind up saving the taxpayers substantial amounts of money.

I strongly urge my colleagues to vote against the conference report, to send this legislation back to conference with the House, and under those circumstances, I believe the conferees can produce legislation which accomplishes the objectives of the Senate-passed bill.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER (Mr. MITCHELL). The Senator from Rhode Island.

Mr. PELL. Mr. President, we have heard some arguments for the conference report. We have heard some arguments against it. I think we see the overall question of priorities involved here.

I am among those who believe that the true wealth and strength of our Nation is not measured by weapons of destruction or means of production, but, basically, by the strength, or the character, of the education of its people.

Feeling that way, I do not have quite the same concerns about a strong educational budget and actually would choose moving in that direction of a budget more than the direction of supporting weapons of destruction.

That is the broad philosophical point which we are talking about in the report before us.

I would like to answer a couple of points that have been raised in specific terms.

It was stated earlier that youngsters were borrowing money, or their parents were, and using that money to go out and buy a certificate of deposit to make money.

If they do that, they will not only get the benefit of the additional money, but 5 years of free lodging, courtesy of the criminal act they are performing.

Doing that makes them liable to a fine of up to $10,000 or 5 years in jail. I agree that some people probably are getting away with it, but if they are actually doing what was said, they are eligible for the extra 5 years of lodging.

With regard to what the bill does and does not save, there is a difference of view. It is said that statistics say what you want them to say, but I believe that the Congressional Budget Office has proved very responsible. In a memorandum put out by the CBO in August 1980, they say:

> The loan components of the conference agreement would cost approximately $300 million less in fiscal year 1981 than either current policy or H.R. 5192 as passed by the House.

In this regard, too, if the conference report is rejected, the House, in all likelihood, would prefer present law. We may be left with present law, which is more expensive than the present conference report.

We should recognize, too, that the conference report was agreed to by the House by the overwhelming vote of 373 to 16. The conference report also is supported by the administration. Secretary Hufstedler specifically said that she supports it. Mr. Eizenstat, at the White House, supports it. It has a good deal of support, not only from banks, universities, and colleges.

We tried to get the Metzenbaum amendment, or a version of it, adopted by the conference three times. We made three offers. Each time, the House unanimously rejected the offer. One time, as chairman of the conference, I recessed the conference for a couple of weeks, hoping that they would come to our viewpoint in that period of time. They did not.

I appreciate what the Senator from New York said, that we almost had to lock the door to keep going. However, the compelling physical element was not locking the door but the fact that the air conditioning is turned off at 8 o'clock, which spurs compromise.

I yield the floor.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. PELL. I yield.

Mr. JAVITS. One fact should be stated: We took the cap off the student loan eligibility in 1978, and it should be stated why we did. We took it off because the banks had to run a means test, and that made it impossible to get loans.

So while we realized that somebody might abuse it, we realized that that was a risk we had to take or see the whole program bogged down. Therefore, the criminal penalties were affixed with respect to conversion of the individual student loan.

It seems to me, therefore, that considering the purpose to be served, we are justified in that policy, rather than to be criticized for it.

Mr. PELL. That is correct.

Mr. STAFFORD. Mr. President, I have listened carefully to our two distinguished colleages from the Budget Committee. Throughout this year, as a born-again budget balancer, after years of being one who has been willing to spend more for some of our programs than a balanced budget would justify, I have supported the efforts of Senator BELLMON and Senator HOLLINGS—and, earlier, Senator Muskie—to bring us a balanced budget this year. I have supported the reconciliation moves in the first budget resolution.

So it is with some difficulty that I find myself at this moment asking our colleagues in the Senate to adopt the conference report which is before us today. The reasons why I feel we should are these, beyond those which Senator PELL and Senator JAVITS have expressed:

First, I believe sincerely that the conference report before the Senate at the present time is the best conference report the conferees can obtain. As our chairman, Senator PELL, has said, we had more than 300 differences to resolve in the conference with the House. After we had successfully resolved a number of them, down to about four of the most difficult, we were unable to make any progress with the House conferees, and Chairman PELL then wisely recessed the conference for a couple of weeks in order to permit the staff to work and tempers in the conference to cool off somewhat. This was after some late night sessions in which, as Senator PELL said, the air-

conditioning was turned off about 8 o'clock; so they were hot in every sense of the word.

It is my opinion that if the Senate sends this back for another conference with the House, we simply will stalemate and, in the time constraints that face us this year, will not be able to obtain another conference report.

Not only did we give somewhat—because compromise is the name of the game in writing legislation in Washington, and always has been and always will be—but also, House Members made some major concessions to us in the course of working out the conference report that is before the Senate this afternoon.

So if we do not accept this conference report, which has been supported very heavily in the House, it is the fear of the Senator from Vermont that there will be no higher education bill this year; that the conferees will not be able to agree; and that means that we will be facing, I say to my colleagues, a continuing resolution based upon present law.

If my figures are correct, the conference report we are asking the Senate to adopt would be, as Senator PELL has indicated, $300 million lower than the continuing resolution would leave us at existing law for fiscal year 1981, and overall over the 5-year period, $2.2 billion under existing law, if we stay with it.

So I hope our colleagues in the Senate will join us in supporting the conference report that is before us today.

As I indicated at the outset, the Senator from Vermont has supported the Budget Committee thus far this year and intends generally to do so in the future. But as I heard the figures bruited about of $2 billion over this year and $13 billion over the 5-year period, it occurred to me that I was not sure which budget resolution we were talking about—the one we have adopted or the second budget resolution, which, as I understand it, is up a very substantial amount over the first budget resolution and has not yet been adopted on the part of the Senate.

For all these reasons, I hope we can adopt the conference report as pending before the Senate this afternoon.

I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. I yield time to the Senator from Ohio.

Mr. METZENBAUM. I thank the Senator from South Carolina.

Mr. President, I wish to preface my remarks with a word of commendation for the Members of the Senate who served on the conference committee. I was not one of those conferees and appropriately should not have been one of the conferees. However, members of the conference committee from the Senate who were not in accord with respect to an amendment I had offered fought zealously, they fought hard—they fought as hard as I possibly could have expected them to fight—in order to support an amendment that had been adopted by the Senate, which I had offered, having to do with cutting back on some of the costs of the student loan program.

So none of my remarks here should in any way be interpreted as any criticism of the distinguished Senator from Rhode Island, the distinguished Senator from Vermont, the distinguished Senator from New York, the distinguished Senator from New Jersey and others who served on that conference committee and others as well.

But I do rise in support of my colleagues on the Budget Committee because I think that no matter how we slice it, the action of the House of Representatives in remaining adamant and in remaining determined not to accept certain of the Senate amendments that would have effected cost savings was irresponsible.

Some of those people who sat on that very committee, and that committee stood as a solid block, are the same people who make the best speeches in the country talking about balancing the budget. One of them, in fact, is from my own State of Ohio and he prides himself on being one of the great conservatives of America and he prides himself about balancing the budget and cutting out excessive spending. But the fact is that with respect to the amendment that I had offered and the Senate had accepted he was as adamant and maybe stronger than some of the others on that committee.

The New York Times on July 21, 1980, summarized this situation very well. In an editorial entitled "Austerity Begins with Student Aid," they state as follows:

> There's plenty of cheap talk now in Congress and elsewhere about cutting Government spending. Taxpayers will soon find out if the House is serious, or if it remains determined to subsidize loans for college students who don't need the help.
>
> Income ceilings for these loans were abolished in 1978. Since then, Government outlays have soared. Last November, before budget-balancing became so popular on Capitol Hill, the House passed legislation enlarging the student assistance program. But the Carter Administration's pleas to curb costs were finally heeded when the bill reached the Senate this summer. The measure it adopted is variously estimated to be $600 million to $5 billion cheaper over five years than the House version. We urge the Senate to stick to its cost-cutting guns in conference.
>
> The extravagant House bill leaves intact the liberalized limits and unbeatable borrowing rates authorized two years ago by the Middle Income Student Assistance Act. These terms have drawn thousands of new students into the programs. Children from affluent families would continue to qualify for interest-free, Government-guaranteed loans while in college: on graduation, they could repay them at rates considerably below market rates. Direct Government loans, which are dispensed according to need, would be available, as before, at 3 percent.
>
> The Senate has parted company with the House by raising rates on both kinds of loans. Borrowers who aren't needy would no longer get a free ride while in college; interest charges incurred during that period would have to be paid later. The Senate also wants the Government to become a much more active lender, through a new corporation to be called the National Direct Student Loan Association.
>
> The tougher Senate proposals would unburden the Federal budget in several ways. The higher rates coupled with interest charges while in college would dissuade some borrowers who don't really need Government loans. And they would shrink the subsidies for those who do need help without imposing an intolerable repayment burden. The Congressional Budget Office estimates that the monthly payments of the typical borrower would rise by only $12, from $46 to $58. An enlarged direct loan program spares the Government the expense of underwriting more costly market-rate loans for the same students.
>
> The Senate approach is appealing also because it reasserts the principle, which once governed such student assistance programs, that scarce public resources should be allocated according to the greatest need. Although the Senate opted not to reimpose income limits on guaranteed loans, its new emphasis on direct loans that do have ceilings is a step in the right direction.
>
> College costs are undeniably straining family incomes. But so, too, are taxes for programs that benefit those who don't require Government help. On student loans, the House could practice the austerity it so often preaches.

Mr. President, my colleagues on the Budget Committee, both in the majority and the minority, have already addressed themselves to the issues that this bill presents us with. It is very difficult for anyone to stand on this floor to oppose legislation dealing with higher education. All of us, with no exceptions, support efforts to assist our home State colleges, universities, and the students as well.

My own State of Ohio has an outstanding university program, both private and public, that benefits greatly from Federal higher education programs.

We are all familiar with students who have been assisted by the variety of grant and loan programs, and I am proud that many of them live in my own State.

Our offices have all been contacted by banks and other lending institutions who benefit greatly from the loan programs authorized in this bill.

Mr. President, as a supporter of higher education I must question the cost of the programs authorized in this conference agreement.

I am not opposed to higher education, and no Member of the Senate that I know of is opposed to higher education.

The question is whether or not we are going to support legislation which ignores the budget process and which attempts to exempt certain programs from the constraints faced by every other Federal program.

The question is how much is enough and is there too much proposed in this legislation?

There are two fundamental questions here.

The first involves the issue of next year's budget. Does this conference agreement meet the instructions passed by the Budget Committee and affirmed by the full Senate which required the education function to cut fiscal 1981 costs by $350 million in budget authority and $450 million in outlays?

According to the Congressional Budget Office, the agreement does not meet those reconciliation instructions, even under the best cost-saving scenario.

I wish to say that I really was not in favor of making that kind of cut. I fought in the Budget Committee against cutting funds for education and while at the same time we increased funds disproportionately for our defense establishment. But the fact is I was overruled and the fact is that the Senate has an obligation to live up to the budgetary process.

The second question involves the long-term costs of programs authorized under this legislation. Does this agreement include provisions passed in June by the Senate that will bring the escalating student loan programs under control? Clearly it does not.

Mr. President, the legislation reported out of conference is a very, very expensive bill. According to the Congressional Budget Office, student loan programs in the conference bill would cost a minimum of $800 million for each cohort of loans, or a minimum of $4 billion in this 5-year authorization bill, compared to the Senate-passed bill.

I emphasize that those are the long-term costs for each cohort of loans, not costs that would show up in next year's budget. But even those costs may be conservative. If the NDSL program is fully implemented, the GSL program volume would be reduced, but the overall loan costs to the Government would be increased dramatically.

The CBO estimates that under such a scenario of full implementation of the NDSL program, each cohort of loans would cost $1.5 billion more than the Senate bill. When multiplied times the five cohorts authorized in this bill, we are talking about a piece of legislation that would cost $7.5 billion more than the legislation we originally passed in the Senate.

Again, it is an extremely expensive piece of legislation.

Let me explain that a cohort refers to that group of loans made in each calendar year and that repayment of those loans and the continuation of those loans extends out over a period of years and somehow it has picked up the description of being a cohort, but we are not talking about the cost on an annual basis, but rather the cost extended out.

As CBO states:

> Both the overall long-term cost and the long-term cost per dollar loaned of the conference agreement are appreciably higher than either the House or Senate passed bills.

As a matter of fact, one could say they took the most expensive of each and kept them in.

The conference bill is more expensive than the Senate bill for two primary reasons. First, the conference agreement retains lower interest rates for the NDSL and the GSL programs, requiring the Federal Government to pay a greater subsidy on loans issued.

Second, the conference agreement fails to incorporate an amendment, which I had previously mentioned as having been sponsored by me in the Senate, that would require a student to repay the in-school interest subsidy he currently receives under the GSL program.

Let me make it clear that there is no suggestion that he or she pay that interest while he or she is in college. It is a question of whether or not the individual who got the loan was going to repay that loan plus the interest, or whether we are going to look to the American taxpayer to subsidize him or her, notwithstanding the fact that after they have graduated from college they may have a very substantially higher income than the average citizen.

I recognize that there has been intense opposition to the amendment I sponsored to recover the interest subsidy under the guaranteed student loan programs.

We have heard from the bankers, from the universities, from the student organizations. But I believe that the amendment is sound public policy, and I was disappointed to learn that the conferees failed to include that provision.

Mr. President, the American Bankers Association came in to talk about this amendment because there was considerable comment being made that the banks would withdraw from the program, that the banks would no longer make student loans, and I am pleased to report that upon further consideration the banks have indicated they will continue to make the loans and they withdrew their opposition to the amendment. So that any suggestion that the loan program will no longer be extant by reason of the banks' operations is not in accord with the facts.

I commend my colleagues on the Senate Education Committee who stood by that language in the conference, and I thank them for their support.

Throughout the conference there seemed to be a basic unwillingness on the part of the House conferees to admit there is a need to scale back the GSL program at all. But the GSL program is escalating at an alarming rate. I have used these numbers in the past, but they bear reapeating:

In the past 3 years, the guaranteed student loan program has tripled from $546 million in outlays to $1.5 billion in outlays. The loan volume under GSL has gone from $3 billion in 1979 to over $5.3 billion in 1980—it has almost doubled in 1 year alone.

Surely our student population has not increased that much. Certainly higher education costs have not increased that much. As CBO has pointed out, the GSL loan has expanded so rapidly because many eligible students are turning to guaranteed student loans—loans that are interest-free for the period the student remains in school—to borrow for both educational purposes and, increasingly, to borrow for noneducational purposes.

Mr. President, I came to the floor of the Senate, and I heard my good friend from Rhode Island commenting on this question of borrowing for noneducational purposes, and he rightly pointed out that under the law one who does that and is prosecuted could gain a seat in the penitentiary for up to 5 years.

But the facts are that students are doing it, have been doing it, and no student has been prosecuted, no students will be prosecuted, and it is an inoperable penal provision. Nobody denies the fact that it has been done and will continue to be done as long as students can borrow at less than the going rate more money. That kind of discretionary borrowing is expected to continue so long as interest-free money is available to eligible students at a time when other money is being charged interest rates of 15 percent and higher.

Our amendment, passed by the Senate by a vote of 56 to 41, was intended to bring the long-term costs of the GSL program under control. According to CBO, this amendment, which I am proud to say was cosponsored by Senators ARMSTRONG, DOLE, BELLMON, and others, would have $3 billion in long-term costs. It simply says that students must repay the interest subsidy to the Government once they have graduated and are in the workplace. As a matter of equity, that is fair to the general taxpayer who now subsidizes the student loan programs. And it is fair to the student. According to CBO, this amendment would cost the average borrower of $4,000 only $7 per month during the repayment period of the loan. Yet that incremental increase would be enough to discourage borrowing under the GSL program unless it is truly necessary for school purposes.

That amendment would not hurt the GSL program. I believe it would improve it by directing federally assisted programs to people who truly need it for their college education. That amendment has been criticized as being administratively unworkable, but we have addressed that criticism.

We have said that the conferees, if they desired, could streamline the amendment to eliminate modifications which make it cumbersome. I, as a principal sponsor of the amendment, had said, "Tell me what you need to have changed in order to make it more workable if you claim it is unworkable." But that was not the real issue. The real issue is that the educational lobby does not want to scale back on this program even though it is being misused by many borrowers and even though the expenses of the program are rising at a troublesome rate.

I believe it is high time that the educational lobby ought to be advised that they may win on this issue, they may win on another issue, but the day is far distant when there will be a reversal. It is as much a part of their obligation to keep down the cost of educational programs as it is to fight for those very same programs. That, to me, is elementary; that, to me, is an indication of responsibility.

While long-term costs are technically not a part of the reconciliation issue, it is an extremely important part of the budget process. Time and again members of the Budget Committee are faced with the problem of trying to cut costs in the next year from programs that have been authorized several years earlier. Unless we control long-term costs, we will be facing the same reconciliation fight year after year.

The guaranteed student loans and the national defense student loans authorized under this program will be issued

over the next year to students who are now in school. Repayment of those loans will not even start for a couple of years on this first cohort of loans. Loans authorized in the fifth year of this legislation will not even start repayment for at least 7 years from today. But once those loans are authorized under this legislation, they are available as needed in future academic years. They become uncontrollable expenses. Banks and universities will be authorized to make loans under these loan programs, and the Budget Committee and the Senate will be frustrated in the effort to bring the costs of loan programs under control. Obviously, if we are going to keep the out-year costs in line, we must do so in this authorizing legislation.

I would like to add that returning this legislation to conference will not harm the loan programs available to students during the new academic year.

It has been suggested if the conference committee gets it back, there will be no program. It is a well-known fact that, everyone is talking about that, we are coming back after the election, and it would give the conferees plenty of time to deal with the issue. The GSL program has another year left under its current authorization, and the NDSL program has already been funded for the new year. Therefore, delay is not going to create an insurmountable problem. There is no reason why we must pass this 5-year bill under the heat of election-year pressures. We should take our time and insure that the legislation is sound and fiscally responsible.

Mr. President, the basic question is not whether we support higher education. I support higher education, and I believe most of my colleagues do as well. The real issue is whether the education program will be allowed to expand at a rapid rate at a time when other programs are being forced to cut back. I support higher education programs, but I do not believe they are sacrosanct. They must be brought into line, just as we must bring other programs under the constraints of our congressional budget process. We should provide assistance to students who need funds to go through college; I have always supported that concept. But the conference report has failed to address the key issues of meeting the short-term reconciliation mark and the long-term cost savings that were included in the Senate-passed bill. It is for that reason that I support my colleagues on the Budget Committee. We can improve the loan programs by targeting them and keeping them fiscally sound. I urge my colleagues to join in defeating the conference report and to instruct the conferees to retain those important cost-saving provisions that were in the Senate bill.

I thank my friend from South Carolina for having yielded me the time.

The PRESIDING OFFICER (Mr. FORD). The Senator from Rhode Island.

Mr. PELL. I appreciate very much the remarks of the Senator from Ohio, and I am glad he realizes that we worked for it as hard as we could and as vigorously as we could—I am referring to his amendment.

As you know, we have—it is not perhaps a 50-50 compromise—a vestigial portion of his amendment left in the conference report. We call for a study to come back, within 1 year.

But we come to this basic question of the Metzenbaum amendment. We argued this out on the floor at a time a while back, and I am not sure there is any reason to go over the same ground again except to say that the cost savings of the Congressional Budget Office, which they made for fiscal 1981, was $61 million. The reason for those savings, the main reason, is because 425,000 fewer loans would have been made if the Metzenbaum amendment had been retained in conference.

There is no question that if you want to save some money, we can have fewer loans. The question is what is national policy. But I think we have covered that ground some months ago or weeks ago and there is no point in going over that again.

I believe Senator BYRD still has some time. He should be notified if he wants to speak. Otherwise, I am prepared to vote.

Mr. HOLLINGS. Mr. President, the Senator from Tennessee will be in momentarily and perhaps some others.

Let me emphasize something that was appropriately emphasized by the Senator from Ohio, and that is the work done and the respect we have for the distinguished Senator from Rhode Island and his counterpart, the distinguished Senator from Vermont.

The Senate-passed bill was supported by the Budget Committee. The Senate bill was supported by the Senate and was supported by this individual Senator.

By way of commendation, the Senate-passed bill liberalized the basic grant program by increasing the size of that grant from $1,800 to $1,900. We are very very much aware of the inflation problem. But the conference goes further and makes more students eligible for the program.

The Senate-passed bill on basic grants, we increased the cost from $2.5 billion to $2.7 billion. And we support these increases.

It is not a situation of who is for and who is against higher education. On the contrary, we have been in the posture of supporting increases to higher education. The trouble with the conference agreement is it just ripped the lid off of it. It just went right up from $2.7 billion to $3.2 billion. That just got too expensive.

Additionally, the Senate bill shifted funds from guaranteed loans to direct loans, which currently makes about $800 million in loans. The direct loan program under the Senate-passed bill expanded that to $3 billion and targets the loans to the needy kids. But the conference agreement likes the guaranteed loan program, with its entitlement for the banks, not to the students. I think we ought to emphasize that.

So the conference agreement does not insure that the poor kids will get the loans, because they have to go to the banks and the banks have so many other students wanting loans, and, necessarily, they are bankers and they are not, like they say, socialists. They believe in the capitalistic free enterprise system, and what have you. That means profits. That means the best loans. So they will take, if nothing else, the business from that particular affluent family. It just makes better banking sense to finance the affluent. So the poor kids are not necessarily going to get the loans. Now, the Senate bill made sure that loan capital was available to poor students.

So we are not being formalistic in commending Senator PELL and Senator STAFFORD. We believe they did their job and they did a good job and they provided for those increases and we supported those increases.

In that context, I am somewhat envious of the Senator from Rhode Island, because he is remembered for Pell grants. I can tell from his discourse that when they see me, they think of a gun or missile or somebody in uniform, because we immediately got into some kind of defense discussion and that the wealth and strength is measured by education rather than weapons of destruction.

Mr. PELL. And character.

Mr. HOLLINGS. And character?

Mr. PELL. Education and character.

Mr. HOLLINGS. Well, that is very good. We believe in that, too.

Let us go to the defense budget, to the actual facts and figures. Since 1965, I say to the Senator from Rhode Island, and I am talking about after inflation now, after inflation, the defense annual average of 0.2 percent growth in the defense budget from 1965 to 1980—I see the Senator is thinking that is a 15-year period—that is 3.4 percent growth during that 15-year period.

Higher education grew at an annual average of 12 percent, for a total of 448 percent. And that is important.

And, bless us all, I wish we could all beat our souls into plowshares and go back to the boards of higher education. The first public college, the University of South Carolina, I served there and served as chairman. I served on a church school. I served on a medical university board. I served on several boards around. If you want to hear my talk on the policy of education, that would be a nice talk, that would be a nice talk to emphasize about the quality of education.

Let me yield for the moment now, because my distinguished colleague from Tennessee is here. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I thank my friend from South Carolina.

Mr. President, I really would prefer not to oppose this conference report. In doing so—and I do oppose its passage—I do so without any criticism of or diminution of the contribution made by the distinguished Senator from Rhode Island or the distinguished Senator from Vermont, who have dedicated so much of their time and effort to this subject and this bill which is returned to us now in the form of a conference report.

The House and Senate committees have labored long and hard to draft a bill which responds to the diverse needs of the American education community.

And there can be no doubt that American education needs help. I am deeply

disturbed by the continuing decline in the levels of competence in basic skills. Demographic changes are putting our public education systems under extraordinary pressures. In our increasingly technical society, the skills and knowledge acquired at the postsecondary level are fast becoming a prerequisite for successful participation in the mainstream of the American economy.

So it is with great reluctance that I rise to express my disagreement in the conclusions reached by the conferees of the two Houses.

I have been informed by Senators HOLLINGS and BELLMON, the chairman and the ranking minority member of the Budget Committee, that this bill exceeds the Senate passed version of the bill and fails to incorporate the cost savings required by the first concurrent budget resolution and reconciliation bill.

The Budget Committee is doing its job by calling the Senate's attention to the conflict between H.R. 5192 and our earlier decisions on spending. I have no reason to doubt the accuracy or integrity of the Budget Committee's computations.

Mr. President, I have consistently supported the maximum possible funding for Federal assistance to postsecondary students and institutions. But, unfortunately, I believe the higher education conference report now being considered by the Senate far exceeds the maximum desired amount of money available at this time. Under these circumstances, I feel compelled to vote against it.

This bill, like many others that will come before us in the closing days of the session, demands that we honor our long-standing commitment to control Federal spending. It is always easy to denounce excessive Federal spending in the abstract; it is more difficult when the purposes are good and the programs are dear to the heart. I believe we should not undo the savings that we have directed in those measures in one fell swoop in this conference report.

Mr. President, I am confident that we will proceed with further legislation to reauthorize the programs for higher education during this Congress, but I urge that we do so in a fiscally responsible manner and that we request a further conference with the House by declining to accept this conference report.

Mr. President, it has been my purpose in the years I have served in the Senate to advance public education at the primary, secondary, and postsecondary levels at every opportunity. I have steadfastly supported almost every effort to fund to the maximum extent the programs that have been adopted to further that purpose.

So it is with special reluctance that I express my misgivings and reservations about this measure and announce that I will vote against the conference report and I urge my colleagues to do the same.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from Tennessee. He and I both support higher education.

The fact is that the projected real growth in the defense budget during the next 5 years will be a sum total of 21 percent. Higher education is projected to grow at 7 percent under the Senate-passed bill, and under the conference agreement at 40 percent. But the Budget Committee is put into the unfortunate posture from time to time of opposing programs because we are trying to support them all. We are trying to arrest this inflation. In order to arrest inflation we have to hold the line generally, which means all of them. But even with that zeal of trying to hold the line, do not look upon the Budget Committee process as a non- or anti-educational force in the society or in the Congress.

We must have a balance. If we want to talk about education we will gladly talk about education but we must emphasize that the greatest social service that can be rendered the individual citizen is to be kept alive and free. That is the Department of Defense.

I am constantly asked in these various get-togethers, since they look at me and think of defense, how can you balance the budget; how can you increase defense; which is more important? I cannot look at them singularly. In the last instance, you have to have a strong economy. I guess that is what we approved when we reported our second concurrent resolution. We held the line there and did not go for any increases above the programs approved by the Senate in the first resolution. We are still at 5.1 percent in national defense, 5.1 percent of our GNP.

But here, again, let us talk sense. Everyone knows, and the Senator from Rhode Island must know, that the guaranteed loan program needs reshaping. If I was a millionaire, I am going to borrow the money and send my kid to college, taking the other moneys that I would have expended and use those to buy the savings and loan certificates of deposit and make my $1,400 cash, just indirectly banking the Government's money. That is what occurs. You do not get a criminal offense on that and you do not get a trip to the jail.

Other and more important Senators have reached the floor who want to speak on this measure. We are on limited time. I will yield first to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I will match my record in support of higher education against any other Senator. I supported higher education vigorously, not only while in the Senate but also while Governor of my State where we vastly increased the appropriations for higher education and, indeed, started the entire junior college system in our State to give greater opportunities for college education to our young people.

Mr. President, I think there are few groups which are suffering more from inflation than parents who are seeking to send their children to college. Every year the cost of higher education increases $200, $300, $500. That comes about nearly entirely due to inflation. There are few institutions in our Nation which have been harder hit by inflation than our institutions of higher learning. Indeed, the very existence of some of those institutions is in peril as a result of inflation.

This Congress and this Senate repeatedly have stated through its individual Members and through actions on the floor, that we will do everything we can to arrest inflation. The way you arrest inflation is to hold down Federal spending to the greatest extent possible.

As has been pointed out in this Chamber this afternoon, the bill that we passed in the Senate for higher education was a generous bill, and it went a long way to take care of our young people who wish to go to college and to graduate school.

Now, Mr. President, the bill that we passed went to conference and there, despite the valiant efforts on the part of our conferees, the bill was vastly increased. There can be argument over whether it is vastly increased for the budget year 1981, but it seems to me that there is no argument whatsoever that it is vastly increased for the out-years.

Indeed, in the letter that has been circulated by the members of the Budget Committee, the distinguished senior Senator from Oklahoma and the distinguished senior Senator from South Carolina, it states:

> The conference agreement exceeds the cost of the Senate bill by almost $13 billion over the next 5 years. It exceeds the cost of the President's higher education proposal by $2.5 billion in 1981, and $19 billion over the next 5 years.

Mr. President, if we are going to do anything about inflation, we have to bite the bullet in a whole series of programs. We have expanded higher education programs significantly in recent years. But enough is enough.

As has been pointed out, there are abuses that can exist and do exist under this program where wealthy parents, instead of paying their children's tuition, can go out and get these low interest rate loans and then invest their money at much higner rates.

Certainly, there is a penalty, but it has also been pointed out that nobody has been punished under that penalty and there is little chance that anybody will be.

Mr. President, I think this conference report should be rejected and that the conferees should go back and reconsider this bill. As has been pointed out, the immediate damage will be none. I think it is worth an additional effort because the key effort we must make, Mr. President, is to try as best we can to reduce the horror of inflation so that more young people will be able to go to college without these increases in costs every single year, and so that the very existence of our educational institutions, particularly the private ones, will not be in the dangerous situation that they currently are.

It is for those reasons that I support

the Budget Committee, as I supported the Budget Committee time and time again on this floor. I thank you, Mr. President.

The PRESIDING OFFICER (Mr. EXON). Who yields time?

Mr. PELL. I am willing to yield back the remainder of my time, Mr. President, if that is the will of the Senate.

Mr. HOLLINGS. Mr. President, I yield to the Senator from Florida.

Mr. CHILES. Mr. President, I happened to have occasion to be listening to the news last night, a local newscast. I was amazed to hear the newscaster, a lady, describing this bill and what we were doing. She said, in a year in which there is very tight money and in which Congress has wrestled with a reconciliation motion for the first time and even attempted to balance the budget, we are now getting ready to adopt this higher education conference report. She was pointing out that under this bill, one would be able to borrow up to $5,500 a year, the parents would for the accommodation of the child, at an interest rate of 8 percent regardless of what your means were, and one would be able to borrow all this money toward a college education and not have to pay anything back for 4 years. She said it was the best deal around, especially when you think that the rate now is 11¾ if you happen to be fortunate enough to borrow at the prime rate. I suspect that most people who are sending kids to school cannot borrow exactly at the prime.

But here one can borrow at three and three-quarters points below prime, no repayment due for 4 years, and we are talking about setting up a program with no means test on it, that is going to allow you to borrow up to $5,500 a year for each of 4 years. At some stage, I think we really ought to be looking at ourselves and determining, are we really operating with sanity when we talk about what we are doing toward balancing a budget and now trying to get control over inflation? We have been working very hard, I think, to try to set up some loan programs, and I think the Senate had a strong strategy. I think that strategy made sense, to try to go toward the guaranteed loan program away from the grant—rather, we elected to go in the other direction, to try to go into one loan program and to see that there was some means test within that loan program, especially where we are making the difference up.

Mr. President, if these loans were arms-length, market transactions, that is one thing. But when the Federal Government is paying the difference between what the rate is and what the bank is going to lend at, plus the guarantee—and we really do not know that we have all the bugs out of the loan program yet until we see what the losses were under the loan program we had before. They are astronomical, because people are not paying back.

It seems to go now to this conference bill which is both an expanded guaranteed loan program and an expanded direct loan program, instead of streamlining and putting in the savings of the Senate version, this just adds on extra programs. I do not think it makes any sense at all. I think it goes directly contrary to the thrust of what we have been trying to do to make some sense out of the program.

Mr. President, I think it is time we said to a conference that wants to bring this back to us, we are not going to accept this; it destroys the reconciliation and the savings we are trying to provide in the reconciliation. It destroys the thrust that we are trying to build some credibility into this program.

I hope we turn down the conference report.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, the Senator from South Carolina, to meet the requirements of one of our colleagues who has an engagement, is ready to yield back the time. I have the CBO estimates of the H.R. 5192 conference report by way of analysis and table 1. I ask unanimous consent that this be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CBO'S ESTIMATES OF H.R. 5192 CONFERENCE REPORT

The CBO has done two separate cost estimates of the conference-agreement on H.R. 5192, the higher education amendments.

The first estimate, dated August 27, 1980, the one that is being touted by the conferees and the higher education groups, included a table which shows the conference report costing $0.3 billion less than current policy. A copy of this table is attached (Attachment A).

This estimate is not a valid reflection of the true cost of this bill.

Under current law, the National Direct Student Loan Program (NDSL) is administered by colleges and funded through annual appropriations. Repayments of loans are collected by the colleges and re-lent to new borrowers.

The conference agreement would continue the present arrangement unless the following events occur:

The Secretary of Education chooses to request Congressional approval to use authority provided in the conference report to fully fund the NDSL program by borrowing from the Federal Financing Bank.

The Congress approves the Secretary's use of this borrowing authority through the annual appropriations process.

Should both these discretionary actions occur and the NDSL program is funded through FFB borrowing, the Department of Education would begin administering the NDSL program, and not the colleges.

All repayments from prior loans would then go not to the colleges but to the federal government. They would be applied against the program costs that would be still appropriated on-budget (such as interest and administrative costs), lowering the budget spending totals by $220 million in FY 1981.

Furthermore, if the direct loan program is fully funded, CBO assumes that the demand for guaranteed loans would drop because students would rather get a direct loan from the government at 4 percent than a guaranteed loan from a bank at 8 percent. The ensuing outlay reduction in guaranteed student loan costs would be $68 million in FY 1981.

Thus, the savings in the conference report would be increased by a total of $288 million—but only if the discretionary steps described above by the Secretary and the Congress are taken.

However, because the bill does not require that these actions be taken, these savings are by no means insured and cannot count as legitimately meeting the savings assumed in the budget resolution and required through the reconciliation instructions to the Labor and Human Resources Committee.

The second CBO estimate, dated September 2, (Attachment B) shows that the actual savings in the conference report are only $[illegible] million. This estimate does not assume that the discretionary borrowing authority will be invoked by the Secretary and approved by the Congress.

TABLE 1.—THE 1981 AND 5-YR FEDERAL LOAN COSTS OF: (1) CURRENT POLICY, (2) H.R. 5192 AS PASSED BY THE HOUSE, (3) H.R. 5192 AS PASSED BY THE SENATE, AND (4) THE CONFERENCE AGREEMENT ON H.R. 5192

[By fiscal year, in millions of dollars]

	1981 total cost		1981–85 total cost	
	Budget authority [1]	Outlays	Budget authority [1]	Outlays
Current policy	1,870	1,892	13,391	12,936
H.R. 5192—House passed [2]	1,868	1,888	14,000	13,507
H.R. 5192—Senate passed [3]	1,208	[4] 1,353	8,017	[4] 8,018
Conference agreement on H.R. 5192 [3]	1,591	1,608	11,735	10,733

[1] Assumes carryover of $100,000,000 from fiscal year 1980.
[2] Assumes current policy funding of NDSL program, not full level of funding authorized in House passed bill.
[3] Much of the fiscal year 1981 and 1981–85 cost savings from current policy result from assuming that NDSL collections offset program costs.
[4] Assumes that 1980 appropriations for current NDSL program would not outlay.

Mr. HOLLINGS. Mr. President, to emphasize the job we have done, we believe that the distinguished Senators from Vermont, Rhode Island, and New York did an outstanding job on the Senate bill. They aimed the BEOG and loan program directly to the needy and moderate income people of America. But in essence, the conference report really, like Bossie the cow, having given a full pail, kicks it all over.

What this conference agreement does is put us in a defensive posture, trying to maintain the money necessary for the deserving in the country with respect to a college education. This is not being appreciated by the college administrators and presidents who have been on the phone, calling around the clock. It is not that we are against higher education. We are trying to take a good and valid program, that has been built and supported and embellished and bringing fruit, to streamline that program and maintain its credibility and its progress. So I hope that we will defeat this report, and ask the House to go back to conference to produce a more responsible bill.

Is it agreeable that I yield back my time?

Mr. PELL. Mr. President, I ask unanimous consent that the time of Senator

HARRY F. BYRD, JR., be yielded back. He sent word that he will not need his time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. As a conferee, I was particularly concerned about the programs available to institutions in small and rural States, and about the access opportunities for students in such States. Critical to this concern is the ability to improve access for adults and nontraditional students whose educational needs have been inadequately served for reasons such as rural isolation. Under title I, continuing postsecondary education program and planning, it was necessary to assure that each State would receive sufficient funding to meet the needs of this population. Under this bill each State will receive a minimum of $187,500 so that at least a basic program can be provided.

It is particularly important in small States that adequate funding be available for the administration and coordination of these programs. I would like to clarify a portion of the report, regarding title I funding, so that the intent is clearly understood by all, including those staff in the Department of Education. On page 22938 of the August 25 issue of the CONGRESSIONAL RECORD the following language appears:

> Each state shall receive an allotment of funds from available appropriations based 60 percent on relative state adult population and 40 percent on an equal basis, except that no state shall receive less than $187,500 in any fiscal year.

It was also my understanding, and I would like to check this out with the chairman, that in the event an appropriation is not sufficient to provide the minimum of $187,500 for each State, that each State's allocation would be reduced on a pro rata basis and not switched back to the formula, as happened recently. This switch created havoc throughout the program. I wonder if was this intent also the understanding of the chairman of the subcommittee?

Mr. PELL. I believe the Senator states very accurately my understanding of what the conference agreed to.

Mr. STAFFORD. I hope that understanding will be reflected. I hope the problem of reduced appropriations never has to be faced but if it is that it will not have to be resolved as it was before—with the passage of emergency legislation.

I thank the chairman for this clarification.

IN SUPPORT OF HIGHER EDUCATION ACT CONFERENCE REPORT

● Mr. DOLE. Mr. President, I am pleased to extend my support to the conference report on the Higher Education Act Amendments of 1980. The Senator from Kansas believes that the bill which has emerged from the lengthy sessions between the House and Senate embodies reasonable compromises between the original House and Senate versions, even though its funding levels exceed those previously endorsed by the Senate. I congratulate those who participated in the conference for their efforts in trying to keep spending at a minimum, while simultaneously encouraging one of the most worthwhile programs of Federal assistance for our citizens that we have in existence today.

This legislation will mean increased opportunities for all Americans to participate in the learning process, while pursuing courses of study that interest them and will make them better equipped for the working world upon completion of their studies. Higher education is one of the most valuable long-term investments that the Federal Government can make in the future well-being of this country.

CONCERNS FOR FUTURE EDUCATION TRENDS

Mr. President, it is my feeling that H.R. 5192, as it now exists, addresses future concerns in higher education. We are currently confronting an unprecedented decline in enrollments, increases in educational costs due to the impact of inflation, and decreases in research activity that have been projected during the course of the eighties.

For some time now, we have all been trying to cope with the side effects of spiraling inflation, which brings with it accompanying reductions in the discretionary income of families, making it even more difficult than in the past for them to come to terms with increased educational costs for their children's college and postgraduate study. In addition, the demographic composition of the Nation is changing in that the baby boom which followed World War II seems to be over, and consequently, we will see fewer and fewer students enrolled in our colleges and universities. At the same time, there is an increase in the number of older people who are going back to complete their college educations or who are seeking graduate study in professional areas.

STUDENT LOAN PROGRAMS

The provisions for so many student loan programs serving different financial needs for students and their families are perhaps the most important part of this legislation. These programs have been carefully balanced to fulfill diverse educational funding needs for students who have the ability to pursue higher education objectives, but demonstrate financial need.

Title IV represents a valiant attempt to satisfy the needs of students in both public and private institutions of higher education. Independent colleges and universities have been assisted by the integral way in which the supplemental education opportunity grant program (SEOG's) has been constructed to complement the basic education opportunity grant program.

While concentrating funding benefits on low-income students and their families, financial strains on the middle-income taxpayer have not been ignored in this legislation. The new parental loan program bridges a necessary cash-flow gap for middle-income parents who are becoming increasingly burdened by the eroding effects of inflation on their income and asset capabilities in combination with rising tuition costs.

INCREASES IN INTEREST RATES

While inflation has had its deleterious effects on almost every economic aspect of the world in which we live, the student loan programs have continued to be blessed with low interest rates. Although the Federal Government has done much to assist students in the pursuit of higher educational endeavors for many years, the interest rates on the loans provided have simply not kept pace with economic realities on a larger scale. While commercial interest rates have soared under the impact of our out-of-control economy, only 3 percent and 7 percent interest rates were in effect for the direct student loan and guaranteed student loan programs, respectively. Although the Federal Government should remain generous in its support of a very worthwhile investment in our citizen resources, it should also exercise a realistic approach in carrying out this support. Increases in the interest rates on student loans are entirely justified at this time, and H.R. 5192 makes an equitable adjustment in these rates to correspond with economic necessity.

FOCUS ON CURRENT EDUCATIONAL NEEDS

There are several provisions in S. 1839 which seek to address current needs in higher education for our society. At a time when the complexities of international relations are overwhelming, and we live with the everyday knowledge of world events, our educational system has not kept pace with the demand for more specialized knowledge of other countries that share our hemispheres. Several months ago, I was pleased to cosponsor a bill that the distinguished Senator from Vermont, Mr. STAFFORD, introduced, which has become the new title VI of the Higher Education Act amendments. The international study programs outlined in the title VI provisions do much to provide support for areas in our academic institutions that have required strengthening for some time.

As we watch the young people in our country graduate from colleges and universities, we are struck with another blatant need within our society: So many of these graduates are finding it extremely difficult to find jobs that suit their skills, because they have not been trained for any specific career path. This legislation provides for continuing education opportunities, as well as for a policy that will address the needs of students after they enter the working world.

THE GIFT OF OPPORTUNITY

Mr. President, one of the greatest contributions that Government can make to the society it protects and enhances is that of insuring equal educational opportunity for all its citizens. For centuries, America has represented to the rest of the world a land of possibilities, where talent and intelligence and diligence could go far toward achieving success within our society. We have always been careful to guard our freedoms, while pursuing our goals of progress. Somewhere along the path toward accomplishment, education plays an important role—this education can be either formal or informal based upon experience in the world around us. However, the goal of achieving a high level of learning goes hand in hand with what has made our country great. We have always encouraged the

development of the minds of our citizens, which remain our most valuable natural resources.

The Senator from Kansas extends his support to the Higher Education Act conference report. If we do not vote in favor of this legislation, we will be forced to continue the existing programs at higher cost than this bill calls for. There are $300 million savings projected for fiscal year 1981, and, over the 5-year life of this legislation, the Federal Government will spend $2.2 billion less than current law.

As we vote on the Higher Education Act conference report, let us keep in mind that, through the programs authorized by this legislation, we are making the most constructive investment in our country's future well-being by encouraging the development of American minds and making opportunities available to students who otherwise would find the doors closed to their progress in the world.●

Mr. RANDOLPH. Mr. President, I hope the Senate-House conference report on the Higher Education Act Amendments of 1980, which is before us today, can be given approval.

As a Senate conferee, I assure my colleagues that throughout the many days, and the late hours, of conference meetings on this legislation, we were constantly aware that these are times of fiscal restraint, and of the urgent need to report a bill that could be called "cost effective."

Fiscal responsibility has two sides to it. If we are too restrictive in our authorizing process, in our effort to reduce the cost of higher education in this country, we will reauthorize programs of higher education that do not meet the needs of our college-bound youngsters. Our adult learners are returning to places of learning to improve and enhance their ability to advance in the workplace, and to stay in the mainstream of their community life.

A reauthorization bill that has earned the name "cost effective" but deprives students of an equal opportunity to attend a college of his or her choice, is not truly "cost effective," we may have locked out a future leader in business, in industry, in government, in research, and in education.

Mr. President, our colleague Senator CLAIBORNE PELL, chairman of the Senate Subcommittee on Education, has worked diligently to bring this legislation to the Senate, to report it out of the joint conference committee, to continue our vitally important mission of assisting millions of our citizens—young and old—traditional and nontraditional students—who will hopefully attend institutions of higher education over the next 5 years.

There are thousands of students who will testify that they could not have entered college had it not been for Senator PELL's concept of providing basic grants to low-income students having the greatest financial need for tuition assistance.

The grants authorized in the conference agreement can be funded to $1,800 maximum before the advisory triggers for funding the other campus based programs go into effect. This balance between the Pell grant, and the supplemental grant, college work study, and the national direct student loan program in the appropriations process, students will not have access to a "student aid package" that will amount to the total required for their annual tuition needs. I stress that the so-called triggers, or funding thresholds, are advisory in nature and express the strong belief of the authorizing committee that those levels of funding are necessary to meet the needs of students nationwide, and create the right "balance" between the four needs based programs.

Mr. President, if we provide educational opportunities for students beyond high school, we improve their future ability to earn higher salaries or wages and, consequently, help to assure that they become taxpayers—taxes on which our current, and certainly our future, will depend.

My able colleagues on the Budget Committee would like the general public to believe that we have now reached a "point of no return" and that investing Federal dollars in education is no longer a good business investment.

Mr. President, we live in a time when a family with an annual income of $35,000 to $40,000 cannot afford to send a child to college.

The reconciliation agreement requires us to save $350 million in fiscal year 1981. Estimates from the Congressional Budget Office show a $300 million savings in fiscal year 1981 from current policy in student loans contained in this conference report. In 5 years of the bill's authorization, the cost of loans is $10.7 billion, which is $2.3 billion below current policy, and $2.8 billion below the proposals in the original House bill.

This is September, our desk is covered with letters from students and parents seeking information on the availability of tuition assistance from Federal programs. Many of those students are low-income, forced to seek loans because this body approved a rescission of $140 million in Pell grants intended to serve students entering college this year.

In West Virginia, we have a newly established State Student Loan Guarantee Agency, and has $1.2 million in loans promised to students for this academic year—provided this conference report is adopted. They cannot loan those dollars until and unless the Higher Education Act Amendments of 1980 are enacted.

Many of us worked our way through college. We do have high unemployment rates among college age youths. This conference report, if accepted, will provide college work study programs so students can earn part of their tuition needs.

I am a realist. If this conference report is recommitted to conference, we will have seriously jeopardized, and placed in doubt, the chance of its enactment by this Congress.

We should not provide fewer incentives and opportunities for students to go to college in a time of declining enrollments, and then call it "cost effective" when colleges close their doors.

I believe that a vote in favor of the report today will be justified in later years by your constituencies.

Mr. President, I remind my colleagues that the House of Representatives passed this conference agreement on August 28 by a vote of 373 to 16.

My compliments go to the Senate Subcommittee on Education Chairman, Senator CLAIBORNE PELL, and to our able chairman of the Committee on Labor and Human Resources, Senator HARRISON WILLIAMS. I also genuinely thank our distinguished ranking minority Members, Senator JACOB JAVITS, Senator RICHARD SCHWEIKER, and Senator ROBERT STAFFORD for their contributions toward conciliation and final agreements worked out between the Senate and House of conferees in the conference on the Higher Education Act.

Mr. THURMOND. Mr. President, when this legislation was considered by the Senate several weeks ago, I supported it. I have always considered higher education to be one of the best investments an individual could make, whether viewed from a career, economic, or personal development standpoint. This legislation reauthorizes a number of worthwhile programs that will help insure that all those who truly desire a college education can obtain it, and it will help insure continued improvements in the institutions which provide these educational opportunities.

Unfortunately, Mr. President, the total cost of these higher education assistance programs is rapidly leaping out of control. The bill passed by the Senate several weeks ago imposed much-needed fiscal restraint on a number of these programs whose costs threatened to get completely out of hand. This conference report, however, fails to maintain this fiscal discipline, adding some $2 billion to the cost of the Senate-passed bill in fiscal year 1981 and some $13 billion over the next 5 years. If a balanced Federal budget is ever to be achieved, Congress must make the hard, often unpopular, decisions necessary to control the cost of these programs.

Mr. President, I recognize and appreciate the strong interest and support for this bill among the institutions of higher education, college students and their parents, teachers, and other education groups. There are many worthy programs contained in this legislation which have been demonstrated to be effective and deserve to be reauthorized. At the same time, I feel it is imperative that the cost of these programs—particularly those which are of an open-ended, entitlement nature—be brought under control. If the Senate will stand firm for fiscal responsibility, I believe the House will see the wisdom of the Senate's position and support steps to control the future cost of higher education programs. Accordingly, Mr. President, I hope the Senate will defeat this conference report and request a new conference with the House for the purpose of effecting further cost savings.

Mr. MORGAN. Mr. President, I rise in reluctant opposition to the conference report on H.R. 5192, the Higher Education Act Amendments of 1980. Mr. President,

my reluctance is based on several factors. We need to reauthorize the Higher Education Act, and it needs to be done by October 1. In addition, there are a number of good provisions in this bill, especially those relating to title III, the strengthening developing institution program. Finally, I believe that the senior Senator from Rhode Island has done yeomanlike work on this bill and should be credited with having done an excellent job.

But, Mr. President, the student aid provisions (title IV) of this bill are out of line with the budgetary realities facing the Federal Government and have failed to deal with some of the most serious ongoing abuses allowed under current law. As a result, I feel I have no choice but to oppose this conference report.

The cost of this conference report is estimated to be $51 billion over the next 5 years, $13 billion more than the Senate approved less than 2 months ago and $19 billion more than the President has requested. For fiscal year 1981 alone, the cost exceeds the Senate bill by $2 billion and the President's budget request by $2.5 billion. At a time when the public clearly wants Federal spending reduced and the budget brought in to balance, legislation carrying this type of price tag should not be enacted.

But, quite frankly, the problem with the student assistance provisions go deeper than that. I have always argued that the primary responsibility for providing for a student's education belongs to the student and his family. The role of the Federal Government should be one of last resort—to insure that students can obtain the funds to attend a good school, public or private, after he and his family have done everything they possibly could to raise the money on their own.

But, increasingly, the thrust of Federal student aid programs has been that the Government has an obligation to provide the necessary funds to everyone wanting to go to college. Thus, one finds that this bill allows everyone to get subsidized loans from the Government, regardless of need. High-paid corporate executives, multimillionaires, and Members of Congress will be able to borrow $5,500 a year at subsidized interest rates.

Mr. President, that money is not going to be used to finance a college education. It is going to be invested in the private sector, and the Federal Government will, in effect, be providing a subsidized loan to somebody so they earn money off a profitable investment.

Another example of what is wrong with this bill is how eligibility is established for the grant programs. Ownership of a home is not counted, regardless of how valuable the home is or what kind of equity the person has in it. I do not want to force a person to sell his home to finance his child's college education, and to exempt, say, the first $20,000 of equity seems reasonable. But, does the Congress really want to say a person owning a $100,000 home, free and clear, has no obligation to find financing for college tuition.

These are the kinds of things in this conference report that worry me, made me decide to vote against it. The Senate showed great courage 2 months ago when it turned a fiscally irresponsible House bill into a good piece of legislation. The conference report can hardly be called a compromise; rather, it is really the House bill with a few minor modifications and the Senate is now being called upon to vote on a bill that would have been overwhelmingly rejected not too long ago.

If this conference report is rejected today, the Senate will not be killing this needed bill. A new conference will be convened, and I am certain a more fiscally responsible bill shall emerge. Accordingly, I urge my colleagues to follow the lead of the Budget Committee on this matter, and vote against the conference report.

I would like to make one final comment. The mood of this country today on Federal spending is one that is clear and responsible. The people—not only in North Carolina, where fiscal responsibility is a way of life, but throughout the country—want Federal spending brought under control in a reasonable and responsible manner. But, more and more, they want spending controlled. If the Congress cannot find the discipline to do this, the people will do it for them. There will be a constitutional convention for the purpose of writing an amendment requiring a balanced budget and limiting spending, something no Member of Congress would like and many are afraid of. And people will be elected to this body who will, in order to reduce the size of Government, destroy programs, many of them valuable, wholesale. The continued failure to act in a fiscally responsible manner will force a desperate counter-reaction, much in the way the refusal of King George III and the English Parliament to be reasonable led to a revolution most Americans did not want.

Mr. PELL. I am prepared to yield back my time.

Mr. HOLLINGS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PELL. I yield back my time, Mr. President.

Mr. STAFFORD. I yield back my time.

Mr. HOLLINGS. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I also announce that the Senator from New Jersey (Mr. BRADLEY) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Louisiana (Mr. LONG), the Senator from New Hampshire (Mr. DURKIN) and the Senator from New Jersey (Mr. BRADLEY) would each vote "yea."

(Mr. BRADLEY) would each vote "yea."

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 43, nays 45, as follows:

[Rollcall Vote No. 390 Leg.]

YEAS—43

Baucus	Heflin	Pressler
Bayh	Heinz	Pryor
Boschwitz	Huddleston	Randolph
Bumpers	Inouye	Ribicoff
Burdick	Jackson	Riegle
Byrd, Robert C.	Javits	Sarbanes
Cranston	Leahy	Sasser
Danforth	Levin	Schweiker
DeConcini	Magnuson	Stafford
Dole	Mathias	Stevenson
Durenberger	Matsunaga	Tsongas
Eagleton	Meicher	Weicker
Ford	Moynihan	Williams
Hatch	Nelson	
Hatfield	Packwood	

NAYS—45

Baker	Hart	Percy
Bellmon	Hayakawa	Proxmire
Bentsen	Helms	Roth
Biden	Hollings	Schmitt
Boren	Humphrey	Simpson
Byrd, Harry F., Jr.	Jepsen	Stennis
Cannon	Johnston	Stone
Chafee	Kassebaum	Talmadge
Chiles	Laxalt	Thurmond
Cochran	Lugar	Tower
Cohen	McClure	Wallop
Domenici	Metzenbaum	Warner
Exon	Mitchell	Young
Garn	Morgan	Zorinsky
Glenn	Nunn	
	Pell	

NOT VOTING—12

Armstrong	Durkin	Long
Bradley	Goldwater	McGovern
Church	Gravel	Stevens
Culver	Kennedy	Stewart

So the conference report was rejected.

(During the foregoing rollcall, the following occurred:)

The PRESIDING OFFICER. The Chair calls the clerk's attention to the Senator from West Virginia, who is about to cast his 9,000 rollcall vote.

[Applause.]

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate? May we have order in the galleries? The rules require there will be no demonstration in the galleries.

The PRESIDING OFFICER. The Senate will suspend until there is order.

Mr. METZENBAUM. Regular order.

The PRESIDING OFFICER. Regular order has been called for.

(Conclusion of earlier proceedings.)

Mr. PELL. Mr. President, I move to reconsider the vote by which the conference report was rejected.

Mr. CRANSTON. I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Regular order, Mr. President.

Mr. JEPSEN. Mr. President, I move to

lay that motion on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, regular order. Regular order is that we have the other vote at 4 o'clock.

DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT

The PRESIDING OFFICER. Under the previous order, the hour of 4 p.m. having arrived, the Senate will now resume consideration of H.R. 2977, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2977) to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there shall be 1 hour of debate on the bill, to be equally divided between and controlled by the Senator from California (Mr. CRANSTON) and the Senator from New Hampshire (Mr. HUMPHREY).

The Senate will be in order. Senators will please take their seats and clear the well, so that we may resume consideration of the matter at hand. The Senate will be in order.

The Chair requests his colleagues to dispense with the several conversations that are going on and requests that Senators retire to the cloakroom for their discussions. The work of the Senate will not proceed until the Senate is in order.

The Senate will be in order.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Chair will not recognize the Senator from California until in the Chair's opinion the Senate has come to due order.

Conversation continues on the floor of the U.S. Senate. The Chair is hesitant to mention any of the Senators by name who are involved in conversation, but the Chair will advise that unless order is maintained in the Senate, we may have to take some measure that we generally do not take in this body.

Will the body please come to order?

That also goes for the people in the front desk.

The Chair recognizes the Senator from California.

Mr. CRANSTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CRANSTON. The vote was scheduled for 5 p.m. after 1 hour of debate. At what time will the vote now occur?

The PRESIDING OFFICER. The vote under the previous order will occur at 5 p.m.

The Senator from California.

Mr. CRANSTON. Mr. President, on behalf of both sides of the aisle, having consulted with the Senator from New Hampshire, I ask unanimous consent that the vote be held at 5:13 p.m. rather than at 5 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mr. CRANSTON. Mr. President, the Senate will be voting 1 hour from now on H.R. 2977.

The PRESIDING OFFICER. With apologies to the Senator from California, the Senate is not in order, and we will not continue until it is in order.

I ask once again that Senators retire to their seats or the cloakrooms so that we can proceed with the business of the Senate in an orderly fashion. If we have any more discussion with staff, the Chair might take the option of clearing the staff from the room.

The Chair is going to insist that we have order in the Senate.

With my apologies, I recognize the Senator from California.

Mr. CRANSTON. I thank the Presiding Officer.

Mr. President, the Senate will soon be voting on H.R. 2977, which now contains, with several acceptable amendments, the text of S. 1843, as reported by the Labor and Human Resources Committee. The domestic violence provisions of this measure have had broad support in the Senate with 22 cosponsors from both sides of the aisle.

The House passed its companion measure last year by a 2 to 1 margin.

The legislation is supported by a broad range of groups from religious organizations and churches to police and law enforcement organizations.

Last week, the Senate debated this legislation at length, and a number of reasonable changes were made in the domestic violence provisions to accommodate the concerns of some of my colleagues. Indeed, one of my colleagues, the Senator from Utah (Mr. HATCH), stressed several times during last week's debate the extent to which we went to accommodate in a very reasonable fashion the concerns that he and others had raised.

I believe that the provisions of this legislation that the Senate will vote on shortly, offer a truly efficient and effective program to deal with the problem of domestic violence. Throughout the debate last week, there appeared to be a consensus that domestic violence is a very real and serious problem. I hope that as a result of the many changes and compromises which have been reached during the course of our consideration of this measure, my colleagues who have expressed some reservations about this bill will be able to give this measure their support.

Mr. President, I would like to review briefly for my colleagues exactly what this legislation would accomplish, why it is important, and finally, why the arguments made against the bill cannot withstand scrutiny.

WHAT THE LEGISLATION DOES

The Senate substitute for H.R. 2977 would accomplish the following four things:

First, the major component of this legislation—title I—would authorize the Secretary of Health and Human Services to administer a program of assistance and services for victims of domestic violence. The Secretary would be authorized to approve applications from States to establish programs designed to assist the State itself, units of local government, and/or private nonprofit organizations to operate programs offering shelter and related assistance to victims of domestic violence and their dependents, or programs to train persons who come in contact with these victims. These projects would be required to meet a certain match requirement—including private funding—and would only be allowed to receive Federal assistance for 4 years, not exceeding $50,000 in any one year or $150,000 over 4 years.

Second, title II would establish a commission to study various proposals on national service. Many people strongly believe that we have not made full use of our greatest national resource in this country—the American people themselves—and that greater opportunities should be available to allow persons to make a contribution to their society. The range of ideas about how such opportunities for service could be provided are many and varied. The title II commission would help us understand the pros and cons of not only the various models for national service, but the viability of the entire concept.

Third, as amended by the Senator from Wyoming (Mr. WALLOP) with my strong support, this legislation contains provisions based upon S. 105, the proposed Parental Kidnaping Act of 1980, to authorize the use of the existing parent locator system in the Department of Health and Human Services to help locate missing children, give full faith and credit to custody determinations entered by State courts, and make parental kidnaping a Federal offense. This title, cosponsored by a bipartisan group of 24 Senators representing a wide political spectrum, is an important response to the very serious and alarming problem of child stealing.

Finally, the Senate substitute contains a provision, sponsored by the Senator from Hawaii (Mr. MATSUNAGA), to permit the U.S. Commission on Proposals for the National Academy of Peace and Conflict resolution to continue its activities and submit its final report to Congress not later than January 31, 1981.

WHY THIS LEGISLATION IS IMPORTANT

Mr. President, let me outline a few of the reasons why this legislation is so important. First as I mentioned earlier, there seems to be unanimous agreement—even from the opponents of this legislation—that there is a great need for a response to the problem of domestic violence. As the Senator from Utah (Mr. HATCH) said during the debate last week, "I think we are united in recognizing the

severity of the problem of domestic violence; that it affects all kinds of families; that its principal victims are usually without resources; and that we ought to do something about it."

The Senator from Kansas (Mrs. KASSEBAUM) stated:

The controversy over the legislation before us today is not the need to address the problem of domestic violence itself. We all agree that this is a problem—indeed, a serious one. Even the most conservative estimates of the extent of domestic violence in our nation are sufficient to cause alarm. It is equally obvious that many victims in need of assistance are not able to obtain it.

Thus, as both the proponents and opponents of this legislation have repeatedly said, the problem of domestic violence is severe. Witnesses before the Child and Human Development Subcommittee have indicated that between 1.8 and 3.5 million women are abused each year by their husbands, and that one out of every six couples in the country experience some violence in the year. Testimony has also indicated that large numbers of children and elderly persons are also suffering from serious physical abuse in the home.

A second serious cause for concern is the phenomenal numbers of police injuries and deaths which are the direct result of domestic violence and the inability—resulting from lack of training—of law enforcement personnel to deal with domestic violence. Forty percent of all police injuries and one-fifth of all police deaths arise in domestic violence situations.

A third important fact to evaluate in considering this legislation is that most victims of domestic violence are victims of repeated violence. They are revolving-door users of expensive government services such as police personnel, hospital personnel, and social service agencies. Offering domestic violence victims and their families options for learning to cope with their difficulties in nonviolent ways should certainly decrease the tremendous drain on resources that this problem now places on other, already strained government programs.

Fourth, we should be concerned about the evidence indicating an intergenerational pattern for domestic violence. Children from families where violence is the rule tend to become abusers themselves as adults. This cycle can be broken with some preventive effort today. The social and emotional costs which this problem inflicts upon its victims may be irreparable.

But we do not have to stand by and watch the beating and killing continue.

We can begin to lessen the pain for victims today by voting "yes" on this measure and thus increasing the likelihood that tomorrow's children will not become tomorrow's abusers and abused.

WHY OPPONENTS' ARGUMENTS ARE FAULTY

Mr. President, I firmly believe that the arguments made by the opponents of this legislation are unsound. I would like to take a couple of minutes to respond to some of the concerns raised during last week's debate.

The first, and perhaps most fundamental, argument made against the domestic violence legislation amounts to an alleged difference in philosophy of approach. Mr. President, I call the philosophical difference "alleged" because the lengthy debate we have had on this matter makes me feel confident that there is not truly such a difference between the proponents and opponents of the approach presented in this measure. Those who oppose this legislation say they do so not because domestic violence is not a problem, but because they think it is a family matter which is private in scope and which should not be dealt with through a Federal solution. Proponents of the bill say the problem of domestic violence is a private family matter which can ultimately only be solved privately, but, which touches community and human life to such an extent that it cannot conscionably be ignored by any level of government.

The bill has been carefully drafted, however—and let me stress this again—to keep the control of domestic violence programs in the hands of local communities. The amendments adopted last week strengthen that local control even more. This bill just does not, Mr. President—does not—provide a "Federal" solution to the problem of domestic violence; what it does is provide a supportive and stimulative role for Federal Government to play.

The second argument which has been raised is the allegation that we are already doing enough in this area. A number of Federal agencies have become peripherally involved with the problem of domestic violence. But these activities have been fragmented and have not focused upon the greatest need in the area of domestic violence—the need for immediate shelter for domestic violence victims and their defendants. The former acting Secretary of the Office of Human Development Services of the Department of Health and Human Services, Manuel Carballo, in testimony before my subcommittee stated:

While Federal programs support bits and pieces of services needed . . . no Federal agency is able to support emergency . . . shelter for battered women and their children. . . .

He also stated that the lack of emergency shelter is "the major gap in services needed." Ironically, it is believed that perhaps the most effective way of providing a long-term solution to the problem of domestic violence is to provide the abuser and the victim with the opportunity to be apart during the crisis in order to get feelings sorted out and be able to understand the dangerousness of the battering experience.

Presently, Federal funds are available to support a limited number of research and demonstration projects, technical assistance programs, and some volunteers and staff working in local programs. Some domestic violence victims have found longer-term help from some social service programs, such as job training or legal services programs.

However, Mr. President, although a number of Federal agencies have been involved in domestic violence, none of them focuses on the need for emergency shelter. For example, LEAA has funded 25 demonstration projects in the last 2 years. These programs, however, are chiefly designed to improve the responsiveness to the domestic violence problem of the criminal justice system—the police, the prosecutors, and the courts. No new local projects are planned for this year.

HUD community development block grant funds can be used to acquire or renovate a building to be used as an emergency shelter, and some 25 communities have been able to obtain a shelter facility through this program. However, this program does not provide funds to maintain or operate a shelter.

The Legal Services Corporation, a private, nonprofit corporation funded by the Federal Government to make grants to programs providing legal assistance to low-income individuals, does offer domestic-violence related legal assistance. These services, however, are unrelated to the needs for emergency shelter of many domestic violence victims.

The CETA program, conducted by the Department of Labor, is often utilized as a source of staff for shelter programs, and some programs rely heavily on CETA employees to answer hotlines, provide information and referral, and assist with the operation of shelters. However, eligibility for shelters to obtain CETA employees is limited, and CETA workers are available for only a limited time period.

ACTION agency volunteers, through VISTA, the foster grandparent program, and RSVP, are another source of personnel to help staff shelters. However, neither CETA workers nor ACTION volunteers can operate a program without other support.

CSA has supported a limited number of research and demonstration projects related to domestic violence, but CSA, as the other agencies and departments I have mentioned, does not itself have a specific program to support direct shelter services to those in need of them.

Title XX of the Social Security Act, which is most frequently thought of as a source of funds for shelter support, has assisted providers in only a dozen States. Until June and the enactment of H.R. 3434, title XX funds could not be used for shelter care for adults. Although I authored a provision in H.R. 3434 to eliminate the prohibition against the use of title XX funds to support shelter care for domestic violence victims, there will not be any new moneys provided under title XX for shelter support. In fact, H.R. 3434 actually cuts very sharply the level of title XX funds for fiscal year 1980—by $200 million from their 1979 level.

The Senate rejected the title XX approach last week in defeating the amendment of the Senator from Missouri (Mr. DANFORTH).

A telling illustration of the tremendous need for an increased Federal effort in this area is the fact that when the Office of Human Development Services recently announced plans to award three grants of $100,000 in the area of domestic violence, it received over 250 applications.

Mr. President, I do not mean to imply by my statements that the limited cur-

rent activities of the Federal Government are not useful. They most certainly are. However, there are serious drawbacks and limitations in the existing effort. The primary drawback results from the fact that current Federal funding of domestic violence activities is haphazard and has left substantial gaps—the lack of assistance for emergency shelters being the most serious problem. Since there is no legislative mandate for the involvement of Federal programs in assisting shelters, their few, uncoordinated discretionary efforts are very difficult to hold accountable for the effective use of Federal moneys.

Mr. President, I continue to reiterate the lack of support for emergency shelter because the local public and private organizations trying to deal with the domestic violence problem are struggling to survive. Many shelters, with very limited resources and capacities, are forced to turn away more domestic violence victims than they actually serve.

This legislation would provide assistance in this area of greatest need—the need for emergency shelter—a need which is just not being met under current programs.

Mr. President, to summarize, there is virtually unanimous agreement that domestic violence is a serious problem about which something must be done. Although we do have some differences about which approach is the best, a number of accommodations have been made to address the concerns of the opponents of this legislation. The costs of domestic violence are heavy, and this legislation offers a modest approach to dealing with the short-term and long-term impact of this terrible problem. Finally, this legislation has other important provisions—principally, the National Service Commission, and the parental kidnaping provisions—which should be enacted.

For all these reasons, I urge my colleagues to support this measure.

Mr. President, before I close, I want to acknowledge the contributions of four Members of the House of Representatives—GEORGE MILLER of California, BARBARA MIKULSKI, of Maryland, LINDY BOGGS, of Louisiana, and PAUL SIMON, of Illinois—and their able staffs in moving this legislation through the other body. Without their tremendous efforts on the domestic violence legislation, it is doubtful congressional approval could have been achieved during this Congress. Finally, I want to thank all the countless individuals and organizations who have supported and worked for passage of this measure, and express my gratitude again to the staff of the Child and Human Development Subcommittee for all of their outstanding work on behalf of this legislation.

I yield 5 minutes to the Senator from Michigan.

Mr. RIEGLE. I thank my colleague, the Senator from California, for his kindness in yielding to me.

Mr. President, let me say to my colleague from South Carolina before he leaves that I hope in listening to the ensuing debate that his mind will be changed. I think this legislation is important legislation, good for the country, good for his State and good for mine. I hope as he has a chance to hear some of the points that those of us who favor the legislation will make, that, perhaps, just perhaps, he will decide to change his thinking and vote for this legislation.

As an original cosponsor of S. 1843, I want to express my strong support for this legislation. The bill is a result of years of hard work by the Subcommittee on Child and Human Development, specifically, Senator CRANSTON and many other concerned Americans across the country, and I am pleased it is before us today.

I just want to begin by commending those who have been given the leadership in reaching this final version of the bill we will shortly be voting on.

There has been much discussion about the problem of domestic violence during the recent debate. The consequences affect the whole of American society, as well as individual family members. The chairperson of the domestic violence prevention and treatment board in my own State of Michigan stated in his testimony to the White House Conference on Families in Detroit last December:

> Domestic violence occurs in one-third of American homes without regard to race or ethnic origin, education, religion, or socioeconomic status. This violence against mates results in an annual economic loss to the nation of $3 billion to $5 billion; medical bills easily add another $100 million to these totals; it takes 30%–40% of police officer time and 15%–35% of court dockets. While undocumentable, it also relates to juvenile delinquency, child abuse, educational problems, and is a behavioral model that perpetuates the cycle of intrafamily violence.

Families affected by domestic violence share a feeling of humiliation and all too often bear their fear and physical and emotional pain in silence. The silence perpetuates a destructive cycle that is passed on through generations and may lead to disaster and even death.

H.R. 2977 is a commitment by the Federal Government to assist those families caught in this cycle. Victims of domestic violence, their children, and the assailants who were often victims themselves or who witnessed family violence in their homes as children, need support and help to learn healthy ways of coping with feelings of frustration and anger. With the assistance of H.R. 2977, States can do what my colleague from South Carolina suggested he would support. That is, the States will be better able to provide the appropriate kind of needed help.

H.R. 2977 offers an incentive for States to develop domestic violence programs on State and local levels. With amendments already accepted, all of the funds authorized by this bill will be distributed to States and local communities for emergency shelters for victims of domestic violence and counseling programs for victims and assailants. Strict limits on the size of grants and requirements for matching funds insure that projects will seek outside funding sources.

We are all aware that these are times of economic instability and recession. As unemployment increases, stress levels, alcoholism, drug abuse and family violence also increase. I have been gravely concerned about my own State of Michigan where unemployment has reached 14 percent and tensions are rising. But Michigan is not alone in experiencing severe economic distress. National unemployment is now 7.9 percent and is expected to average 9 percent through fiscal year 1981. Unemployment at these levels exacerbates family tensions and it is therefore particularly important that H.R. 2977 be enacted this session.

Michigan has an excellent domestic violence program coordinated and administered by a State Domestic Violence Prevention and Treatment Board. There are currently 31 emergency shelter programs in the State which operate at 100 percent capacity and are forced to turn away or find alternative temporary shelter for many individuals and families.

For example, in Michigan, 12 shelters reporting services for July–September 1979 were unable to provide emergency housing to 478 victims of domestic violence because their shelters were full to capacity. Shelters provide specific services to women and children who have left their homes as a result of violence or the threat of violence, often with only the clothes they are wearing. These services include crisis and support counseling, emergency medical care, legal assistance, housing assistance, financial support to help with immediate necessities, transportation, child care services and employment assistance.

The Michigan State Board also supports prevention and treatment services for assailants, promotes research, and provides State-wide educational programs to increase public awareness and remove the stigma from those involved in family violence.

As chairperson of the Subcommittee on Alcoholism and Drug Abuse, I have a special interest in the problem of domestic violence. The Committee on Labor and Human Resources in its report on S. 1843 noted the significant correlation between alcohol and drug abuse and domestic violence. Statistics have indicated a large percentage of domestic assaults involve the excessive use of alcohol or drugs.

At hearings I chaired in February of last year, I was deeply moved by witnesses who shared personal and family experiences with alcohol abuse and the harmful affects it had on their families. After those hearings, I learned that a domestic violence project in Ann Arbor, Mich., found that 58.9 percent of the spouse abusers also abused alcohol, and 20.7 percent abused drugs. For these reasons, the subcommittee included a provision in S. 440, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act amendments of 1979, authorizing the National Institute on Alcohol Abuse and Alcoholism to provide emergency assistance to individuals and their families who require immediate counseling and shelter as a result of alcohol-related domestic violence.

Since the House had passed their domestic violence bill, H.R. 2977, and it appeared that the Senate would soon follow suit, I agreed in conference—with considerable reluctance—to drop some

of the domestic violence provisions in S. 440.

Domestic violence is a widespread problem which, if left untreated, is passed on through generations. The damage it does will have effects for years to come unless we begin the process of change now.

So I would hope that my colleagues had a chance to study what this legislation can do to be helpful. This is by no means an invasion of States' rights. It preserves States' rights in every way, shape, and form. It is designed to see that the work is done and is done at the State and local level.

I know from my experience as chairman of the Subcommittee on Alcoholism and Drug Abuse, the problem of family violence is often alcohol and drug connected. We must make a greater effort to try to remedy these difficult problems.

I hope that by passing this long overdue initiative today we can prevent more damage from being done that will otherwise perpetuate itself through future generations. I hope that when my colleagues have a chance to weigh this issue, that they will decide with a large majority to vote today in favor of H.R. 2977.

Mr. CRANSTON. I thank the Senator from Michigan for those very fine remarks.

I yield 1 minute to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, the bill before the Senate today, the Domestic Violence Prevention and Services Act, poses a recurring problem for the Congress and the Federal Government.

Violence between spouses and within families is a tragic part of life for many Americans. Those abused frequently find themselves the objects of contempt, as much as of neglect. And the toll on our law enforcement agencies underlines the very real extent of this problem. Forty percent of police deaths and injuries occur in the course of domestic altercations. Thirteen percent of murders each year occur between spouses. Surveys have found that in these murder cases, police have frequently been called to the secene before.

Understandably, police reluctance to intervene in domestic argument—and other demands on police time—have meant that women and children facing physical violence most frequently have nowhere to turn for help, for shelter or for counseling to enable them to avoid recurrences of abuse.

Growing public awareness of this aspect of the problem—and increased public understanding of the fact that violence is not a phenomenon limited only to the very poor, the out-of-work, the habitual drunkard or drug-taker—has led to the creation of some 250 shelters around the country, principally in our major urban centers. These shelters care for the immediate needs of the victims and provide at least one avenue of escape for women and children exposed to the continuing threat of brutalization. This community response to a perceived need is one that can be strengthened and improved through additional Federal funding, but one which would be weakened by central direction from Washington.

For the congressional quandary is that the ability of the Federal Government to do more than simply provide money is minimal. Our ability to develop and operate programs which effectively protect the victims of domestic violence can only be pursued through the erection of Federal requirements, Federal regulations and Federal direction which frequently hinder rather than help the direct delivery of services to those who need them.

For that reason, the traditional and appropriate governmental involvement in domestic matters remains today—as it should—at the State and local level.

The Federal Government is incapable of dealing appropriately with the individual needs of family members who are driven to inflict physical harm on each other, or who repeatedly endure such abuse. Domestic violence occurs in a context where counselling services are needed, not only by the victim, but also by the abuser, and the children who may be victims of abuse or bystanders, forced to witness repeated acts of brutalization. The only governmental agencies capable of developing an appropriate response to this syndrome—and the only governments capable of involving the entire structure of medical, spiritual and and psychological service providers—are the governments at the State and local levels.

For that reason, I believe the involvement of local governments in the provision of grant funds is essential if the necessary support services are to be provided effectively and without duplication of cost or effort.

I am pleased that this bill includes a provision to channel funds through State and local governments for disbursement to providers. States can more effectively assess their local needs and their resources to provide services if they have control over the grant funds provided for this program.

I am pleased that the legislation has been structured to assure that 95 percent of the funds will be devoted to direct services. And I believe the best way to make certain the victims of domestic violence receive maximum benefit from that financing is to make certain that shelters are established and followup and counselling services provided to complement other State service programs, not to duplicate them.

At a time when every Federal program is being subjected to the most severe fiscal scrutiny, it is essential that limited Federal resources be used as efficiently as possible. In this instance, that clearly means that as large a proportion as possible of these funds should be channeled for the direct services envisaged.

I do not believe that the provision of $15 million will insure an end to the violence some women and children face in their own homes. But if the use of these Federal funds can arouse local interest in the problems faced by people in the community, and if they can encourage the growth of community-based services and help, they will have been well spent.

It is only through the supportive efforts of friends, neighbors, and churches that the pressures which drive some to inflict physical abuse on their wives and children will be curbed. I would not support the erection of a Federal barrier to increased community involvement in this problem. And I believe that with appropriate safeguards, this Federal seed money can help build the basis for community involvement and community help.

Accordingly, I will vote for the measure on final passage.

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. Mr. President, will the Senator from California yield me 1 minute?

Mr. SIMPSON. I yield 1 minute to the Senator from Wyoming.

Mr. WALLOP. Mr. President, I thank the Senator from California.

Mr. President, stress is a byproduct of our complex society which makes many tangible and intangible demands on all of us. Families, which in simpler days provided refuge from the demands of everyday life, unfortunately are no longer immune from the adverse effects of stress. Peaceful communication and harmony have given way in thousands of households to physical and mental abuse between spouses. Domestic violence threatens the well-being of millions of people. Congressional witnesses indicated that between 1.8 and 3.5 million women are abused each year by their husbands, and that one out of every six couples in the country experience some violence during the year. A large number of children and elderly persons are also victims of serious abuse in their homes. Family violence is not an isolated occurrence or restricted to any particular locale or group of people. It is a phenomenon that knows no boundaries.

Like other social diseases, domestic violence can be treated. The primary victims of domestic violence—most often women and their children—need safe places to go for short periods of time so that they can make plans either to begin new lives or to return to their homes to work out their interspousal problems. Many of these women also need counseling and other assistance to help them make the transition out of the family or to help them return to their homes. The physically abused woman is not the only victim of violence; the person inflicting pain and misery is the other victim. This person—most often the husband—needs help in understanding why he takes his tensions and aggressions out on his loved ones so that he can control this behavior. Help for both victims of domestic violence will make it possible for husbands and wives to restore domestic tranquility. This in turn will rescue marriages that may otherwise have failed and save countless families along the way.

While I would like to be able to report that the people of my own State have not experienced family violence, this simply is not the case. A recently formed statewide coalition on family violence and

sexual assault presented the case of some 4,000 to 6,000 families afflicted by chronic misdemeanor or felonious battery in the family to the Wyoming Conference on the Family. The coordinator of the coalition informed me that the conference responded by passing their only unanimous resolution citing the need for a State shelter and treatment system for the perpetrators of family violence. While eight sexual assault-family violence projects have recently been undertaken throughout the State, each one of these programs needs a secure source of funding to get through its initial phase of operation. The legislation before us will provide support from the Federal Government for these and other programs like them and will enable them to provide services to victims of family violence while developing independent funding sources for their future operation.

Mr. President, I support the Domestic Violence Prevention and Services Act before us now and intend to vote for it. Title I of the bill, as amended, will provide needed funds for State, local and community activities to prevent domestic violence and to provide immediate shelter and other assistance to the victims of family violence.

The legislation has been improved through a series of constructive amendments offered on the floor during consideration of the measure. These amendments resolve many concerns I had, and which have been expressed by people across this country who did not want a bill that would thrust the Federal Government on the family.

Some concerns were raised about the Federal Government imposing domestic violence programs on unwilling States or communities. The bill does not give the Federal Government the right or the power to intrude uninvited into State or local affairs.

If a State wishes to participate in the Federal grant program, it can submit an application to the Secretary of the Department of Health and Human Services. It is not required to participate. In addition, a floor amendment adopted by the Senate provides that the State legislature must be given written notice of any grant to the State under this program. Thus, even after a State has voluntarily submitted a plan, the State legislature can take steps to prohibit participation in the program if it so desires.

Importantly, the bill was also amended to prohibit direct Federal grants to private nonprofit local organizations. According to the amendment, the Secretary can make grants only to the State or to units of general local government—cities and counties—and not to private entities.

Another amendment insures that the programs or projects that receive Federal funds will not become dependent upon Federal funding for their existence. In addition to the provisions of the bill which limit the size and duration of grants, this amendment requires the recipient of funds to match Federal dollars with local dollars. The provision calls for a sliding local share under which the non-Federal share would be 25 percent in the first year, 33⅓ percent in the second year, and 50 percent in the third year. In addition, one-half of the non-Federal match would have to come from private sources. This amendment will guarantee local community and private support for the programs that receive Federal dollars and will facilitate transition to full local funding.

Concerns were also raised about the creation of a bigger bureaucracy. The bill has been amended to prevent this from happening. The Senate agreed to delete from the bill the provision creating a National Center on Domestic Violence. Instead, the functions that would have been carried out by this center will be carried on in-house at the Department of Health and Human Services.

Another amendment was adopted which requires shelters receiving financial assistance to comply with any licensing requirements that the State might impose on the operation of shelter facilities.

In addition to title I of the legislation, the domestic violence program, title II of the bill authorizes the establishment of a Presidential commission to study the need for and the desirability of establishing a national service program to meet a broad range of human and societal needs.

The Senate also adopted as a new title III to the bill an amendment I offered to reduce the heartbreaking and all-too-frequent problem of childsnatching. My amendment is nearly identical to a bill that I introduced which has broad bipartisan support in both houses of Congress. The bill, S. 105, and this amendment are designed to assist States in the enforcement of their child custody laws, to assist parents in locating their abducted children, and punish parents who, without regard to the safety or well-being of their children, and in violation of enforceable custody or visitation rights of the other parent, deny these children access to or communication with, their other parent. This provision should alleviate another manifestation of family violence—the tug of war between feuding parents which leads to devastating psychological injuries for the innocent children who get caught in the middle.

In conclusion, Mr. President, let me say that I am satisfied that the amendments to title I of the bill have greatly improved the legislation. These amendments have assured that Federal assistance will be limited in amount and duration, and focused on projects and programs with local community support. I am also very pleased that the Senate has adopted the parental kidnapping prevention proposal. This marks the second time the Senate has taken favorable action on this legislation. Now we must turn our attentions to the House to impress our colleagues there with the need to enact this important proposal.

Mr. BELLMON. Mr. President, will the Senator from New Hampshire yield me 1 minute for a unanimous-consent request?

Mr. HUMPHREY. Mr. President, I yield 1 minute to the Senator from Oklahoma.

Mr. BELLMON. Mr. President, the Senate is about to vote on the Domestic Violence Prevention and Services Act which addresses a problem that is widespread. Economists have estimated that the cost of domestic violence is $3 billion a year. The loss of jobs, hospitalization costs, welfare and food stamps to victims and their dependents all contribute to this cost. More policemen are killed in the line of duty while responding to "domestic" calls than in any other aspect of their jobs. Conclusive evidence demonstrates that domestic violence often contributes to child abuse and repeated patterns of violence when the child grows up. There is no question that appropriate remedies for this problem must be found.

Many local and community groups in Oklahoma as in other States are providing services to battered wives and children. The majority of shelters in Oklahoma are located in urban areas. I am concerned that such shelters are not available to residents of more rural areas. The major reason for this is a lack of community organization and funding for such programs. Even our urban shelters are having a difficult time coping with finding adequate funding to meet the high costs of operation. There is a limit to the amount of community funding available to groups providing shelter and counseling to victims and their dependents.

Mr. President, there is reason to be concerned that this legislation will mean more Federal intervention into local and family relationships. I am concerned that there is a potential for Federal regulators to meddle in such programs when they would be more aptly run by local groups.

It is ironic to me that we find ourselves in the position of establishing a new categorical program. My colleague, Senator DANFORTH, was right when he proposed an amendment to make such funds available through title XX rather than establishing a new program. Unfortunately, his amendment failed.

Mr. President, I feel that the proper authority to operate domestic violence programs lies with local governments and organizations rather than the Federal Government. Already these officials have available general revenue sharing funds as well as title XX funding. I cannot support a new categorical grant program which will bring Federal involvement into a local and family relationship.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Will the Senator from California yield me 1 minute?

Mr. CRANSTON. Only with the consent of the Senator from New Hampshire, because we agreed on the time.

Mr. HUMPHREY. The difficulty is we are racing the clock. I do not want to see our side bumped into.

Mr. CRANSTON. Mr. President, we are using our time. I yield 30 seconds to the Senator from Arizona.

Mr. DECONCINI. I thank the distinguished Senator from California.

Mr. President, because of my concern about the growth in the incidents of domestic violence I chose to cosponsor the Domestic Violence Prevention and Services Act. The preponderance of evidence indicates that domestic violence

has grown to near epidemic proportions. For example, a 1979 Harris poll found that 1 wife in 10 had experienced some kind of violence from her husband within the last 12 months. The recipients of such violence are not limited to wives—the committee report for the bill states that in any given year as many as one-quarter of a million husbands might be battered.

Many of the victims of domestic violence do not have the means to seek assistance whether it is in the form of counseling or an overnight shelter. Further, if the victim possessed the necessary means to get away from the abuser in many instances there is no emergency shelter available.

Although there is an obvious lack of services available to victims, valiant efforts have been made by private nonprofit organizations to alleviate this situation. During the last few years over 350 shelters have been established by such groups. However, these shelters operate on a hand-to-mouth budget, and are able to accommodate only a fraction of the victims seeking shelter. Few of these shelters receive any State or local public funds.

Available Federal funding for family violence is extremely limited. It is my understanding that except for a few shelters funded as part of LEAA demonstration projects, no Federal agency provides funding for operation of shelters for battered women.

The purpose of this bill is not to encourage intervention in family matters—if the bill did encourage such intervention I would not have cosponsored it, or support it. The purpose of the shelters that will be provided assistance when this bill is enacted is to assist law enforcement officials in protecting victims of family violence from further abuse. The ultimate goal is to save lives.

In conclusion, funds provided by this bill will help local agencies to assist victims of domestic violence who in a crisis situation seek refuge in a shelter. Further, it will help prevent domestic violence through counseling services to those individuals who request it.

Mr. President, I urge my colleagues to support this measure.

Mr. HUMPHREY. Mr. President, I yield 1 minute to the Senator from North Carolina.

Mr. HELMS. Mr. President, on August 18 an article appeared in the Washington Post which in a very direct fashion bears on many of the issues concerning domestic violence in general and this legislation in particular.

The article was headed: "Courts Increasingly Asked to Rule on Affairs of Heart." Fred Barbash, the Washington Post reporter who wrote the story, began as follows:

Tom Hansen, a lonely and troubled young man, sued his parents in 1978 because he didn't like the way they brought him up.

It was a unique case then. Now it seems rather ordinary, compared with other cases in recent months. A woman sued her husband for not carrying out his household chores. A rejected suitor sued his ex-fiancee to recover expensive tokens of love. A man sued his former lover—after the baby was born—because she had assured him she was on the pill.

A lot of these cases, including Hansen vs. Hansen are thrown out of court eventually, but they attract attention and more lawsuits like them. They are the kind of stories you overhear on the bus or read about in The National Enquirer: the freak case, kid sues mom and dad, a joke.

But the frequency of these lawsuits is mounting, and the doors to the courthouse are slowly beginning to open for them. Serious questions are being asked about the portents for the law.

Can the courts, which often fail to resolve less subtle issues, settle disputes of the heart? Even if judges can assess who was at fault and award money, can they do it without further damaging an already injured family or personal relationship? Must every problem facing humanity be brought to the courts just because someone has been hurt?

Supreme Court Justice William H. Rehnquist warned in a speech recently that the response of courts to these cases "has not generally been to bounce these individuals out of the courtroom and back into their livingrooms. . . ."

This trend, he said, "cannot but endanger even further the vitality of the family as an institution in our society."

Mr. President, I ask unanimous consent that the remainder of the article be printed in the RECORD at this point.

There being no objection, the remainder of the article was ordered to be printed in the RECORD, as follows:

Tom Hansen, the man who sued his parents for $350,000 in Boulder, Colo., is now 26. His case is over. Hansen has hardly seen his parents since the suit was filed. He says he doesn't know where they are. His mother and father say they don't know where he is.

A sad and strange outcome Hansen acknowledges now. For what he really wanted from his lawsuit, he says, "was love from them. I wanted attention."

If his case had been heard by a court Hansen would have centered it on the physical workload—backyard labor—his father made him carry as punishment for his problems in school at the age of 13, on the fact that his parents sent him away to boarding school in Italy, how these and other actions damaged his ability to work and to function emotionally.

The suit, he said, was originally suggested by his psychiatrist as a form of therapy. "The suit was to be my treatment," Hansen said.

For Hansen's lawyer, Boulder attorney John Taussig, the legal theory was simple and should have been accepted by the Colorado courts, which refused to hear the complaint.

"It was an extension of the battered-child syndrome," Taussig said. "If a kid is physically abused, we have precedent allowing a suit for damages against the parents.

"Here you had emotional rejection, rejection that screws up a child for life. Isn't it a small difference between this and physical abuse?"

The family heard about their son's suit before it was filed, said Shirley Hansen, the mother, but, like everyone else, they regarded it as a joke.

She was "devasted" and "humiliated," she said. "Being a parent is the most important thing you can do. Your kids are just fundamental to your existence. Something like this just doesn't belong."

"I thought the parents were really held up to public ridicule," said E. Gregory Martin, the parents' lawyer. "I think they love him, but they're just beside themselves as to what to do."

Tom Hansen is equally uncertain about his future. "I'm going out to California," he said in an interview from Colorado. "I think I'm going to try to connect with some consciousness groups."

"This is the problem," said Jay Folberg, a professor at Lewis and Clark Law School in Portland, Oreg., and an official of the Association of Family Conciliation Courts.

"Litigation only fans the flames," Folberg said. "The adversary process—by definition—pits people against one another and results in a winner and a loser. Whenever you have a relationship that should continue, having a winner and loser only creates further friction."

That is just one reason, Folberg says, that many of these personal cases may not belong in court, or belong there only as the final resort, after efforts at conciliation.

"You have people dealing with each other without any written contract," he said. "They never anticipated being where they are now. Lawyers, judges and others in the adversary system are trained for a type of precision. And precision may be the antithesis of what we want to help parties resolve matters so sensitive."

Lawyers who approve of such personal cases understand the difficulties courts have with the nuances and the undefinables. They also say they understand the damage that can be done by going into the harsh adversary climate of the courts.

But they argue that the damage has already been done.

If a child cannot sue his or her parents for psychological damage, can a wife sue her husband for failing to shovel snow off the front walk?

Most states have prohibited such lawsuits between spouses in order to protect the integrity of marriages and to prevent collusion between husbands and wives who want to defraud insurance companies by collecting damages for household injuries.

But during the past decade, more than half the states have either eliminated or sharply modified this concept. Massachusetts did so last month in the case of Brown vs. Brown.

William Brown, of Wakefield, Mass., allegedly had responsibility for shoveling ice and snow off the walk and driveway in front of the family's home.

One winter morning in 1978, according to his wife, Brown had to leave home in a hurry, and neglected to do the shoveling. She slipped, broke her pelvis and sued him for $35,000.

The Massachusetts Supreme Judicial Court had already eliminated a ban on suits between husbands and wives stemming from automobile accidents. The court ruled last month that eliminating it for other kinds of damages is the next logical step.

The ban on such suits is based on the idea that the husband and wife are legally one person, the Massachusetts court said, but it is time to change those "antediluvian assumptions concerning the role and status of women in marriages . . . Mrs. Brown should at least get a chance to prove her case in court."

Mrs. Shirley Brown seems confident that her marriage can survive the upcoming lawsuit. "She loves her husband," her lawyer, Charles Blumsack, told reporters. "This has not created any problems."

The Florida Supreme Court reached an opposite conclusion in a similar case now before the U.S. Supreme Court, involving a suit between husband and wife (Raisen vs. Raisen) stemming from an auto accident.

The Florida court would not allow the suit. "There have been many changes in Florida since 1829 [when the ban on husband-wife suits originated] but the reasons for it still exist," the court said.

The suits "can have an upsetting and embittering effect upon domestic tranquility

and the marital relationship," the Florida court ruled.

The Florida judges were also wary of collusion, warning:

"We expect too much of human nature if we believe that a husband and wife who sleep in the same bed, eat at the same table and spend money from the same purse can be truly adversary to each other in a lawsuit when any judgment obtained . . . will be paid by an insurance company and will ultimately benefit both spouses."

Another avenue for new litigation is lawsuits over broken promises. Marie Hajus, a Connecticut teacher, was engaged for two years to an airline pilot, Robert Piccininni. He says he bought gifts for her and her children and paid for substantial improvements to her home.

Then she told him the wedding was off. Their relationship dissolved and, eventually, each married someone else.

Last year, Piccininni sued. He asked the court to award him the value of all the gifts and home improvements, which he estimated to be $40,000. "Every salad bowl that was purchased," according to Diane Ruben, a New attorney who is defending Hajus.

The Connecticut Supreme Court decided in April that such cases should be heard, even though the state has a legal prohibition against "breach of promise to marry" suits.

The law was designed to prevent the courts from adjudicating confused feelings, sentimental bruises, blighted affections, wounded pride and mental anguish.

Called a heart-balm law, it was also designed to prevent such suits from becoming a club to be held over the head of a reluctant bride or groom.

But it is possible, the Connecticut court said, to weed out those factors and concentrate on purely legal elements. Was property exchanged? Was it exchanged under fraudulent circumstances? The courts can handle such questions, Connecticut's judges decided, and allowed the case to proceed to trial.

It becomes "a dry economic claim," said lawyer Ruben. "It has to do with the economic intentions of the parties. It is not inappropriate for a court."

Because few of these cases have reached the testimony stage, Ruben's view is untested. But the possibilities for confusion are clear, if not in this specific case, then certainly in others.

Was the couple really engaged to be married? How did he ask her? What did she say when she accepted? Was it a fraudulent engagement? Did she really intend to marry? Did she really love him? Did he love her?

Piccininni vs. Hajus is, in some respects, an extension of the "palimony" suit brought to notoriety in Michele Triola Marvin's case against actor Lee Marvin. But there is an important difference: the couple in Connecticut never lived together.

The potential, many lawyers believe, is mind-boggling.

Mr. HELMS. Mr. President, I attended the meeting at which Mr. Justice Rehnquist delivered the remarks quoted by the Washington Post. Mr. Justice Rehnquist spoke to the increasing intrusion into family matters by both Government and the legal system under the pretext of resolving ordinary family disputes. He observed that this steady imposition of adversarial laws and processes upon the family has contributed to its disintegration. He concluded that the integrity and autonomy of the family are "best retained by a government which provides for no intervention except in extreme cases."

Mr. President, I have not discussed the pending legislation with Justice Rehnquist, nor am I suggesting that he has a particular opinion on its merits one way or the other. But, Mr. President, the thrust of Justice Rehnquist's remarks are essentially correct and completely applicable to the legislation the Senate is now considering.

We could quickly and easily reach a consensus regarding some of those "extreme cases" of domestic violence which clearly fall under the responsibility of Government to address. But that is not what this legislation does. Instead, this bill proposes the authorization by Congress of the expenditure of millions of taxpayers' dollars while allowing Government bureaucrats, through Federal regulations, to determine at what point domestic unhappiness becomes domestic violence. We may well ask: "What is domestic violence?" S. 1843 defines "domestic violence" as "any act or threatened act of violence * * * which results or threatens to result in physical injury." Is it limited to physical abuse, or does it include psychological and emotional abuse? How about spanking, for example, or nagging? This bill is unclear. It is open to the whim and caprice of Federal bureaucrats.

In the State of Washington we witness the spectacle of a 15-year-old girl being granted a "divorce" from her parents solely on the grounds that the parents disagreed with her over her friends, her dating practices and her desire to smoke. The parents, by the way, were found by the court to be "fit" as that term is used in the juvenile court statutes. To what degree will the federally funded domestic violence centers contemplated by this legislation become havens for teenagers and others who resent family discipline?

The extent to which these centers will encourage or discourage the disintegration of thousands of American families will depend in great part on the regulations concerning their operation adopted by Government agencies and the attitudes of those involved in the centers' operation.

In this regard we have extraordinary examples as to the way these projects may be administered. In 1978, the U.S. Commission on Civil Rights sponsored a "consultation" on the subject of "Battered Women: Issues of Public Policy." These hand-picked experts in the area of domestic violence detailed at length their views of the causes of and solutions to domestic violence.

I hope my colleagues will take the time to consult this report before voting. On page 419 of the report, readers will find the following analysis of the causes of domestic violence:

> Bryant's crusade against homosexuals under the misleading banner of "Save the Children" is the panicked cry of powerless women who see their sexuality threatened by the assertiveness of male and female gays seeking their own personhood rights; her crusade arouses fears and anxieties concerning the viability of traditional heterosexual marriages and the continuation of the power system of the heterosexual family model, a system that has historically accorded full power to the male partner on the basis of legal tradition, physical superiority, and the domestic enslavement of women whose housewifely chores have not been compensated. Schlafly's pose as the defender of orthodox family values and the protector of the rights of married women is by now a cliche; indeed the classic appeals of the anti-ERA groups in American society, as well as those of opponents elsewhere to women's equality movements, rest on the disruptive and destructive impact of equality to the "rights" of married women. The illogicality and indeed mendacity of these arguments is easily established in the rare instances where coherent debate is possible, but for many American citizens—male as well as female—the institution of marriage seems synonymous with a rigid symbiotic power distribution between the sexes so that a redistribution of power appears an ominous threat to the stability and continuity of the institution of marriage. This equation between marriage and the perpetuation of male power rests on ancient historical foundation; but given the tremors which have surrounded that foundation on many social and economic fronts, it seems clear that a permanent Andreas fault underlines the past definitions of marriage, and that a redefinition of that institution must be part of an effort to eliminate the abuses which women have suffered within its framework.

On page 479, under the heading: "A Sociological Perspective on the Prevention of Wife Beating," and "Summary of Policy Implications for Prevention Derived from Analysis of Six Social Structural Causal Factors" we find the following recommendation:

> Eliminate the husband as "head of the family" from its continuing presence in the law, in religion, in administrative procedure, and as a taken-for-granted aspect of family life.

This type of social engineering does not command the support of the majority of the American people and I suspect this is the primary reason why these centers have not been able to generate sufficient financial support within their local communities and now seek Federal tax dollars.

Mr. President, if there is any doubt that such views of the nature of the family are unrelated to the bill we are now considering, I suggest a review of appendix D of the Commission's publication which includes three bills introduced during the last Congress regarding domestic violence including an earlier version of the pending legislation.

Mr. President, I cannot support legislation which gives every indication of supporting activities which can only further undermine the ability of many families to resolve their problems while preserving their unity.

The PRESIDING OFFICER. Who yields time?

Mr. HUMPHREY. Mr. President, I yield 5 minutes to the distinguished Senator from Missouri.

Mr. DANFORTH. Mr. President, I plan to cast my vote against the passage of H.R. 2977. I support public and private efforts aimed at preventing child abuse, wife abuse, and other forms of domestic violence, and aimed at helping victims of such violence. What I oppose is an inefficient, wasteful, bureaucratic new Federal program which centralizes decisionmaking in Washington when a more efficient block grant program, which reinforces decisionmaking at the State and local level, is already in place.

Mr. President, a lot of speeches have been delivered on the floor of the Senate

opposing more control in Washington, and supporting local decisionmaking; opposing duplicative, overlapping programs; and generally opposing additional, narrow, categorical grant programs. Notwithstanding all that rhetoric, if Congress enacts H.R. 2977, it will be expressing its will clearly and decisively in favor of centralized control in Washington, in favor of an expanded Federal bureaucracy, and in favor of overlapping programs with duplicative and expensive paperwork and redtape.

H.R. 2977 authorizes a new, narrow categorical program of Federal grants to public and private agencies for domestic violence prevention and assistance services. As with other categorical programs, it imposes new requirements on States. States must designate a State agency to administer the State program, assure active citizen participation, file the reports required by the Secretary of Health and Human Services, allocate two-thirds of their formula grants to nonprofit organizations, and comply with a whole series of other burdensome, expensive requirements.

In addition, the bill provides for an expanded Federal bureaucracy to oversee and administer the new program in Washington. It specifies that 5 percent of the appropriated funds would be spent by the Federal Government.

In contrast, we have already enacted a program of grants for domestic violence programs but without the strings, without the paperwork, and without the expanded Federal bureaucracy. The program is title XX of the Social Security Act.

Title XX provides substantial funds to the States for providing social services to its citizens. In addition to other kinds of social services, title XX expressly authorizes the use of its funds for the kinds of services contemplated in H.R. 2977.

Unlike H.R 2977, though, the States are free to design their own mix of services to meet, in their best judgment, the needs of their own citizens. One State might allocate more funds to alcoholism and drug abuse problems and relatively less to day care; another might emphasize domestic violence shelters with fewer funds for foster care. Washington does not have the power to direct that a certain percentage of funds must be used for homemaker services for the elderly and another percentage for family planning services. Rather, each State designs its own program.

Title XX funds are currently used to help victims of domestic violence. In fiscal year 1978, title XX expenditures for protective services for children totaled $266 million or 8 percent of total program expenditures. Title XX expenditures for protective services for adults totaled $96 million or 3 percent of total expenditures.

The issue with respect to H.R. 2977 is not whether Federal funds should be spent on services with respect to domestic violence—they already are—but rather how many strings are attached to the funds and how much redtape is associated with their distribution. I do not believe all compassion and all wisdom reside in Washington. The expenditures of funds under title XX for protective services demonstrates a nationwide concern for those in our society who are vulnerable and unable to protect themselves. The expenditures do not indicate to me a callous attitude by the States.

Even if Washington did have a preponderance of the Nation's wisdom, our Nation would still be better served by local decisionmaking. Our Nation is too diverse to be well-served by centralized decisionmaking. Our entire system of government, with its checks and balances and Federal/State divisions, is geared to maintaining a diversity of decisionmaking authority. In the 1979 State title XX plans, for example, Indiana estimated it would spend 6.9 percent of its title XX money on protective services for children; New Mexico, 11.5 percent; and New York, 15.2 percent. Who are we to say which State's mix of services is right?

I oppose narrow, categorical programs because I believe they are too inflexible to meet adequately the local circumstances across this Nation. They cannot adapt to local variations.

In contrast, a block grant by definition is flexible. It provides funds to States and communities with relatively few strings, so the funds can be used most efficiently for local needs.

Further, in the name of accountability, narrow, categorical programs are expensive and burdensome to administer. H.R. 2977 contemplates that 5 percent of the appropriated funds will be used for Federal administration of the program and 10 percent of the funds for developing and administering the State plans. If the additional funds were distributed through title XX, there would be no additional administrative costs.

Finally, to the charity desiring to assist its community, the plethora of narrow, categorical programs each with its own set of rules, reports, methods of accounting, and other redtape, must be confusing, time-consuming, and expensive.

At present, an organization that wishes to assist victims of domestic violence can seek funding from title XX, from the Community Action Agency, and from LEAA; it can seek HUD funds for acquiring and renovating buildings for emergency shelters; it can apply to ACTION and CETA for volunteer help; and if H.R. 2977 is enacted, it can seek funding there as well. It is no wonder that more and more charities are hiring individuals to spend all of their time seeking grants.

I believe the best way for the Federal Government to assist the States and local communities is through general block grants rather than through a whole series of separate pots of money.

Our system is a system of federalism. Its strength lies in its diversity of decisionmaking. It depends on mutual trust. A block grant approach fits into this system. It is a partnership approach. A categorical grant approach is a "Big Brother" approach—with Washington as "Big Brother." Every time we establish a program which increases the control in Washington, we weaken local initiative and government, and, as a consequence, weaken our entire system of government.

Because I believe additional, narrow, categorical programs which overlap existing authorities are ultimately self-defeating, I plan to vote against H.R. 2977. I believe it is well-intentioned but very ill-advised.

Mr. HUMPHREY. Mr. President, I yield 5 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, we can certainly all agree that there is a cause for just concern about the increasing abuse within families around the country. It is not just wives, but also children and the elderly. It could be husbands as well. I think we can all agree that we certainly need to counsel and aid the victims of family abuse.

Therefore, Mr. President, it is with the greatest of reluctance that I have decided to oppose the domestic violence legislation that is before us today. As the distinguished Senator from Missouri has said, I feel that we are heading in the wrong direction with this program. As we look to the next 5 years, or the next 10 years, we are tying ourselves to a program that will seem to be a panacea. In reality, it will offer a single rigid approach which will not allow us the adaptability and flexibility needed to meet the unique problems of different States.

I have been strongly supportive of the shelter programs in Kansas, and I will continue to be. However, I have also felt very strongly that this is an issue that could best be dealt with on the State and community level.

My decision to oppose this measure is the product of many hours of thought and extensive conversations with individuals holding widely divergent views on the bill. Throughout my deliberations, I have been torn by conflicting feelings about this measure.

Domestic violence is a family and community problem; and I seriously question the effectiveness and propriety of involving the Federal Government. As I stated earlier in the debate over this bill, if I could feel secure in believing that a one-time infusion of Federal funds would stimulate an effective local response to domestic violence, I could support this measure without reservation. However, I fail to see how a new pool of Federal funds will encourage others to add to it. My fear is that creation of this program—limited as it is—will foster an attitude that there is a Federal program to deal with domestic violence, so we at the State and local levels do not need to worry about it any longer. Even though the life of the bill is limited to 3 years, it will inevitably be extended.

I am also puzzled by the perceived need to create an entirely new program to address domestic violence, particularly when so many other potential administrative mechanisms are already in place. I joined many others in supporting the alternative offered by Senator DANFORTH and am disappointed that the majority of this body chose to reject it. The Danforth substitute held the advantage of using an existing program, title XX, to administer new Federal funds.

Acceptance of this amendment would also have placed decisionmaking authority at the State level where problems such as domestic violence are most properly addressed. Although it is true that States would not be required to allocate title XX funds toward domestic violence projects, I have no reason to believe that officials at the State level are any less sensitive to this problem than any of us here today.

More and more we are realizing that the involvement of the Federal Government does not assure the resolution of a problem In fact, my constituents are indicating that we would do well to get rid of a few we already have, returning some of their tax dollars in the process. I am confident that the generosity and good will of the American public is sufficient to address many of the problems facing us—including domestic violence. Our role should be to free individuals to assume greater responsibility for dealing with situations which affect their families and their communities. Our continued insistence on determining private behavior has grave consequences in the long term—perpetuating and expanding reliance on external forces to deal with deeply personal problems. Unless this trend is curbed, we will reach a point where individuals totally lose confidence in their own ability to deal constructively with any situation.

Attempts by Government to regulate almost every aspect of personal relationships and responsibility is one of Alexander Solzenitsyn's heaviest indictments of our society. His words are worth remembering:

> When the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses.

Mr. HUMPHREY. Mr. President, how much of my time remains?

The PRESIDING OFFICER. Ten minutes and 56 seconds remain to the Senator from New Hampshire.

Mr. HATFIELD. Mr. President, will the Senator yield me 2 minutes?

The PRESIDING OFFICER. Who yields time?

Mr. CRANSTON. Mr. President, I yield 2 minutes to Senator HATFIELD.

Mr. HATFIELD. Mr. President, I do not think it necessary for me to dwell on the very frightening statistics of spouse abuse. The facts have been well-cited by my colleagues, and dramatize a most desperate situation faced by many women in our country.

I do think it necessary, however, to respond briefly to the criticism voiced by opponents of the legislation we have before us, which deals with the human tragedy resulting from spouse abuse: The Domestic Violence Prevention and Services Act. A number of religious groups, and others involved in the "pro-family" movement, have begun a campaign attempting to defeat this legislation. I regret that their efforts often have been fueled by wrong perceptions, misinformation, and an attitude which ignores the seriousness of domestic violence in our Nation. I am religious. I am profamily. And I support this bill as being consistent with my beliefs, and supportive of the family.

The prominent claim of these organizations is that as a result of S. 1843, the Federal Government will intrude into the family, that it will regulate relations between husband and wife, and that it will break down the traditional family. Others even have claimed that the legislation allows Federal agents to enter the home and remove husbands from their families.

I should like to make two brief points. First, if I believed any of these accusations to be true, I could not support this legislation, for I, too, support the concept that the Federal Government must not intrude into matters of the family. But S. 1843 does not violate this concept. It simply provides funding assistance to local organizations which elect to establish shelters for women who have been beaten by their spouses. The sponsors have worked diligently and carefully to assure that this intent is not open to misinterpretation. The matching requirement provides that there must be local concern and support in order for these shelters to survive.

Second, I sincerely urge the opponents of this legislation to take a look at their own commitment to the resolution of this problem. Those with the best interests of the family at heart should work to establish shelters in their own communities, or provide other innovative solutions to help meet this significant need. Evidence suggests that those who are most vocal in their opposition to this bill have done the least to provide alternatives of a nonpublic nature. Many have misdirected their criticism at the Government, which is simply attempting to fill a void that exists.

Mr. President, this problem cannot be ignored. I urge my colleagues to vote in favor of legislation which will enable individuals who seek help to receive it. Ultimately, this opportunity for shelter may provide spouses the time and assistance they need to deal with these problems, and perhaps return to a strong and healthy family unit.

I thank the Senator from California for yielding me time.

The PRESIDING OFFICER. Who yields time?

Mr. HUMPHREY. Mr. President, we have 11 minutes, approximately, remaining, is that correct?

The PRESIDING OFFICER. The Senator has 7 minutes and 55 seconds remaining. The Senator from California has 6 minutes and 49 seconds.

Mr. HUMPHREY. A parliamentary inquiry: The last time I inquired, I believe it was around 11 minutes. I do not believe anybody has spoken for our time.

The PRESIDING OFFICER. I believe a mistake was made at the desk in that the Senator from New Hampshire did not yield to the Senator from Oregon. That was done by the Senator from California. We shall correct the time.

Mr. HUMPHREY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Chair advises the time of the Senator from New Hampshire is 11 minutes remaining, the Senator from California had 6 minutes and 49 seconds. We will have to cut that down to about 2 minutes for the Senator from California.

Mr. HUMPHREY. Mr. President, those of us who oppose this bill, which we view as dangerous and costly, do not favor wife beating, of course. Although we may be accused of that. What we oppose is another beating for taxpayers and another beating for States rights. We oppose creation of another power-grabbing bureaucracy, a program controlled by Government officials in Washington, D.C., and operating without regard to needs as perceived by State and local governments or local public sentiment.

Who can believe that the Federal Government, which will be providing these funds, will not insist that certain standards be met as always and will, in large measure, control the direction of these programs.

Domestic violence is a great tragedy, but the Federal Government has no business running the new set of programs and services described in the bill. Such services should be tightly connected with the communities they serve. They should arise from and be funded by private and local government sources. They should most certainly not be imposed on local communities by any Federal agency.

Federal programs dealing in these social issue areas are often run by social service ideologues far from the mainstream of the American public.

Most voters now realize that not every problem can be properly or practically addressed with Federal money or new Federal programs.

Already there are 274 shelters across America which are involved in efforts against domestic violence. At least another 204 service agencies offer help to domestic violence victims. The social service staffers who run these existing programs think they do not get enough local support, so they are running to Washington.

I suppose anyone who opposes this bill runs the risk of being linked with wife beaters, just as anyone who opposes funding, for instance, a new Federal rat control program, may be accused of being prorats.

Not all newspapers view S. 1843 favorably. The often liberal Washington Star in its editorial June 30 gave another view of my opposition to this bill. The Star wrote:

> Senator Humphrey's sentiment does not represent indifference to domestic violence, though the special-interest groups supporting the bill will attempt thus to portray it. If domestic violence is a pervasive problem, then it properly should be a priority for the state or locale where the abuse has become apparent. If the lobbying groups seeking federal legislation and funds were to besiege a legislature or city council with the energy they bring to Capitol Hill, there can be little doubt that the issue would be promptly addressed.
>
> But the statists have little patience with incremental approaches to social or political problems. They prefer a federal blanket big enough to cover every bed and cot in the land.

Mr. President, I have done my best to resist the demands of those who want to place another expensive, ill-defined program on the backs of the Nation's taxpayers. I am confident most taxpayers would support my position.

Mr. President, I would advise Senators who may hear my voice over the intercom that when they come to the floor in another 10 minutes to vote, to bring with them a napkin and a fork because we have before us here another piece of apple pie legislation.

With respect to my colleagues from Vermont, where they are in the habit of eating their apple pie with a piece of their delicious cheese, they might bring some of that Cheddar cheese, as well.

This is apple pie legislation. But voting for a euphemistically named bill, for the Domestic Violence Act, is not going to prevent domestic violence.

I am incredulous, after all the horribly expensive social programs which have been near or total failures over the last 20 years, that we, in this hour of financial and fiscal crisis, find ourselves faced with the proposal to undertake a new program which encompasses an area we have never before claimed responsibility for, a program which will authorize, over the next 3 years, $65 million.

That, perhaps, is not a great deal of money in the total scheme of things, considering the size of the Federal budget.

In any case, it is a lot of money back home.

Millions of dollars add up into billions of dollars. We just cannot afford this. It is not as though the intent is wrong. It is fine. I would love to see States, communities, counties, cities, towns, private organizations, singly and in concert, develop domestic violence programs. But, instead, we see a proposal for the Federal Government to do it.

It will not work. No matter how much is claimed by the proponents, no matter how euphemistically named, no matter how apple pie in the nature of this legislation, it will more than likely fail.

I urge my colleagues to vote against it.

Mr. HUMPHREY. Mr. President, I yield 10 minutes to the Senator from South Carolina and if it is possible for him to finish sooner, I shall be grateful.

Mr. THURMOND. Mr. President, I rise to voice my strong opposition to S. 1843, the Domestic Violence Prevention and Services Act and National Service Commission Act. This bill represents a further intrusion by the Federal Government into an area which should be within the authority of the individual States. Over the years, I have expressed my concern over the steady growth of Federal Government programs designed to serve our social needs. Then, as now, I argued that the Federal Government has no jurisdiction in matters of this kind, including domestic violence. Who can seriously argue that the Federal Government is better suited than family and friends, churches and community groups to cure this social ill? I cannot stress strongly enough that the Federal Government has no business intruding into this area of vital State concern. Moreover, I am disturbed that the initial $65 million authorization over 3 years will expand into another costly, inefficient bureaucracy, which will spawn a lobby which each year asks for more and more money.

Mr. President, the legislation before the Senate follows a pattern that has become all too common in Congress in the last two decades. It is a pattern which I believe, if allowed to expand unchecked, will ultimately destroy the Federal Republic that the Founding Fathers envisioned as the governmental structure for the United States.

The pattern of which I speak, Mr. President, is one in which a serious social problem—in this case, spouse and child abuse—is perceived by Congress. Congress declares it to be a nationwide problem of substantial proportions; and, then, Congress creates a new program in Washington (where, of course, the superior wisdom and understanding is implicitly thought to reside) to cope with this social dilemma. Then, according to this philosophy of governmental problem solving, if the particular societal "illness" persists, it is because we have not devoted sufficient resources (that is, Federal spending) to the program.

Mr. President, I know my distinguished colleagues join me in my abhorrence of this ill that affects many families of our great Nation. There is no doubt—and the statistics will bear me out—that domestic violence is widespread and gnaws away at the very core of the family unit, the very fabric that binds our country together. I do not rise to dispute these statistics, nor do I want to attempt to minimize the effect that domestic violence has on our family life. I agree with the Senator from California that something must be done to eliminate this terrible ill, but I do not agree, Mr. President, that this ill can be or should be cured by the Federal Government.

NO FEDERAL JURISDICTION

Mr. President, my principal objection to the Domestic Violence bill is that I do not believe the Federal Government has any business interjecting itself into these matters. Violence in the home between spouses and child abuse are indisputable frequent occurrences with substantial social costs. There are a wealth of statistics, which I am sure the proponents of this bill have or will bring forth, which clearly document the seriousness of the domestic violence problem.

However, in my opinion, Mr. President, these statistics and the serious nature of the problem depicted do not translate into Federal Government jurisdiction over the matter. These problems exist in every State, but they are not inherent in the nature of problems between States. I fundamentally disagree with the notion that every problem of national dimension is automatically a problem to be dealt with by the Federal Government especially where, as in this instance, the problem is one involving intrafamily relationships. The rising frequency of divorce may be a nationwide problem, but I do not believe the Federal Government should institute or fund programs aimed at reducing the incidence of broken marriages or child abuse.

The point is, Mr. President, the Federal Government must stop intervening in the affairs of the States. Uncle Sam must be prevented from trying to regulate further the private lives of our citizens. I believe that we must draw the line somewhere on what the Federal Government can and should do to cure the various social ills plaguing our Nation. We should have drawn this line years ago. We must recognize that Washington simply cannot and—perhaps more importantly—should not solve all the domestic problems that exist among our people. Moreover, I think that it is important that my colleagues be made aware that there are efforts presently being made by State, local, and volunteer organizations to address the problem of domestic violence. These efforts should not be "federalized" or duplicated.

FUNDING

Mr. President, the economic status of this Nation is at best strained. At a time when we find ourselves under severe budgetary restraints, I find it incomprehensible that we should enact legislation which is designed to achieve the same purpose for which other programs already have been created. The committee estimates initial authorization will be $15.750,000 in 1981 and increased to $30 million in fiscal year 1983. I am reluctant to endorse any new Federal spending at this time because of the urgent national priority of balancing the budget.

Mr. President, there are existing Federal programs in this area of domestic violence. The administration has established an interdepartmental committee on domestic violence which reviews and coordinates domestic violence programs on a governmentwide basis. Additionally, under existing law, State social services programs can be funded under the Social Security Act. A Congressional Research Service study shows that a minimum of $11.5 million went to support some form of domestic violence research or services in fiscal year 1979.

Mr. President, it is beyond me why the Congress continues to establish program on top of program without any real control or coordination.

INTRUSION ON PRIVATE FAMILY MATTERS

Mr. President, one of the things that frightens me most about this legislation is the liberty that it grants to the Federal Government to intrude into private family matters. This argument goes hand-in-hand with the States right to govern their citizens.

Many of my colleagues may remember several months back when S. 10 was before this body for debate. This bill, which was later signed into Public Law by President Carter, allows the Attorney General to intervene on behalf of citizens in problem institutions. I was opposed to that bill for many of the same reasons that I am opposed to S. 1843. The individual States have the responsibility of insuring the domestic peace of their citizens through the exercise of the police power. S. 1843 would involve the Federal Government in arbitrating family disputes and thereby in imposing values upon families. Mr. President, I fear this legislation would result in dividing the family rather than uniting the family and curing domestic violence.

Where do we draw the line on Federal intervention into private family matters? I can foresee the time when the citizens of this great Nation come to expect the Federal Government to assist them at any time the whim strikes. Mr. President, we all know that complaints of the past have stemmed from the Federal Government's creeping into the private matters of its citizens. I cannot help but feel that this legislation would give rise, once again, to criticism from our citizens.

Mr. President, I wish to recognize the efforts of several Senators who successfully amended this bill to lessen the degree of Federal involvement in matters of marital disputes and child abuse which, in my view, are better handled by State and local governments. The amendment worked out by Senator HUMPHREY and Senator CRANSTON which would require matching funds at the local level is a step in the right direction because it would demonstrate that there is concrete local support for the establishment of domestic violence shelters.

Moreover, I favor the amendments offered by Senator HATCH to: First, require State licensing of domestic violence shelters in order to guarantee safe, clean, habitable housing, nutritious meals, and competent personnel; second, provide State legislatures with the power to veto grants approved by the Secretary of Health and Human Services; and third, permit direct grants only to units of general local government.

Additionally, Mr. President, I am pleased that the Senator from Wyoming (Mr. WALLOP) successfully offered as an amendment to this bill the text of S. 105, the Parental Kidnaping Prevention Act of 1980, of which I am a cosponsor. On January 30, 1980, I testified before the Subcommittee on Criminal Justice of the Judiciary Committee and the Subcommittee on Child and Human Development of the Labor and Human Resources Committee expressing my support for this measure. This legislation would make it a Federal crime to restrain a minor child in violation of another's right of custody or visitation arising from a court order entitled to interstate enforcement. The need for this legislation arose because of the current judicial interpretations of the full faith and credit clause of the Constitution whereby child custody orders are rendered almost unenforceable throughout the Nation. It should be noted that the approach taken by S. 105 preserves the traditional State control over child custody determinations. It is my belief that this legislation will help prevent kidnaping in violation of a bona fide child custody decree and preserve the role of the States in overseeing marital and family disputes.

Mr. President, although I approve of these desirable amendments to S. 1843, the Domestic Violence Prevention and Services Act, which are designed to reduce the degree of Federal involvement in areas which have traditionally been within the jurisdiction of State and local governments, I remain opposed to this bill. Because this bill creates a new Federal effort in an area where I strongly believe no Federal jurisdiction exists, I intend to vote against the measure.

I wish to thank the able Senator from New Hampshire for his kindness and the Senator from California for his courtesy.

Mr. CRANSTON. I thank the Senator.

The PRESIDING OFFICER. The Senator from California.

Mr. HATCH. Mr. President, will the Senator from California yield?

Mr. CRANSTON. I am delighted to yield.

Mr. HATCH. Mr. President, after all the debate on this bill, at least one thing becomes clear. Everyone here recognizes the problem of domestic violence. It is real. It is growing. It deserves our attention, demands our solution and we are obligated to seek every proper and effective means in providing one.

When any Senator has worked as long and hard on legislation as Senator CRANSTON has on S. 1843, he or she deserves our respect and admiration. Our California colleague gets it, both here and in the Labor and Human Resources Committee on which I serve with him. I offer an additional word of appreciation for the spirit of compromise and the genuine effort to reach a common accord on this bill which has characterized Senator CRANSTON'S effort and that of his staff. My modified amendments which were accepted to the bill on August 25 will preserve the ground we have gained to improve what I think were some serious weaknesses in the legislation.

Now that we are about to vote on the final passage of the Domestic Violence Prevention Act, I believe the problem becomes a broader one. That is, addressing provisions in the legislation like how domestic should be licensed or how much money should be spent per fiscal year, do not answer the fundamental question asking whether the Federal Government should be directly involved at the expense of the States and local civil authorities.

I believe now, as I believed before and during the debate on this measure, that we can legislate the most effective domestic violence remedy without further arming a Federal bureaucracy which by tradition works to make matters worse.

I have spoken at length on this legislation and in this Chamber four separate times. I would like to lend whatever additional time given to me during the remaining minutes of discussion on S. 1843 to those of my colleagues who have expressed a renewed desire to speak on the matter. I only wish to reaffirm my earlier opposition to this bill. I wish to repeat that the good intentions of the bill's sponsor and supporters and amended improvements in the bill are not weighty enough trade-offs to offset what in a very short time would become a Federal OSHA on the family.

As I have in the past, I will continue to work with any and all of my colleagues to draft legislative relief for domestic violence victims, and to assist the States in constructing and maintaining effective antiabuse programs. I just do not believe that this bill is the right way to do the job, and I urge my colleagues to vote against it as I will.

Mr. RANDOLPH. Mr. President, as ranking majority member of the authorizing committee, the Labor and Human Resources Committee, I have worked on, and support, this legislation. As a cosponsor of S. 1843, the Domestic Violence Prevention and Services Act, I believe an urgency exists to address the widespread incidence of domestic violence and to eliminate the enormous social costs of this pervasive national problem. Existing programs have been unable to meet the need for assistance and emergency shelter of domestic violence victims and their dependents.

I was also, Mr. President, a cosponsor of the legislation, S. 2159, the National Service Commission Act, contained as title II of this measure. Introduced by Senators TSONGAS, CRANSTON, myself, and others, it authorizes the establishment of a Presidential commission to examine the need for, and the desirability of, establishing a national service program to meet a broad range of human and societal needs.

In this connection, Mr. President, I believe a system of national service would provide our people, young and old, with structured opportunities to express their acceptance of the responsibilities of citizenship. I support such a purpose.

This concern is widely shared. This past May, a number of organizations, drawn from the business, labor, and education sectors of our Nation and sharing an interest in citizenship, emphasizing citizenship education, met at the Wingspread Conference Center in Racine, Wis. Sponsors included the Center for Citizenship Education, the American Federation of Teachers, the Close-Up Foundation, the Combined Insurance Co. of America, the Council of Chief State School Officers, the education commission of the States, the National School Boards Association, the National 4-H Council, the National Education Association, and the national PTA. Many other groups and individuals participated. They agreed to undertake the formation of a coalition for the advancement of citizenship. The participants were particularly concerned about relating citizenship service opportunities to the high school and college experience of our young people and to the continuing education of older people. The members of this coalition should be able to provide valuable service and serve as a resource for the Presidential commission in defining alternative service opportunities.

Mr. JAVITS. Mr. President, as an original cosponsor of similar legislation, I am pleased to support the pending bill, the Domestic Violence Prevention and Services Act, which will begin to provide necessary Federal support to State and local programs and activities to prevent domestic violence and to assist victims of such violence.

The bill establishes within the Department of HEW a National Center on Domestic Violence to coordinate Federal prevention and research efforts, and to act as a clearinghouse for information and technical assistance for domestic violence prevention and treatment programs throughout the United States. Building upon the concepts and experience of the Child Abuse Prevention and Treatment Act, Public Law 93-247, this bill will assist the States to direct protection and treatment services toward actual and potential victims of domestic violence, regardless of age. Perhaps most

importantly, the structure of this bill's State and private grant mechanism enables support to be targeted primarily to local public and private nonprofit programs which most closely serve the needs of domestic violence victims in local communities.

This bill is a refinement of legislation introduced in the 95th Congress by Senator CRANSTON, myself, and 17 cosponsors, which passed the Senate unanimously on August 1, 1978. Unfortunately, the other body did not act favorably on similar legislation, thus postponing the critical enactment of a domestic violence prevention measure. I am hopeful that the Congress will realize the devastation of families caused by domestic violence, and will act apace to pass appropriate legislation. The House has already so acted in this 96th Congress.

Until recently the problem of domestic violence in the United States has been largely hidden or ignored, its proportions unknown, its victims faceless and mute. We have begun to recognize, however, that domestic violence in the United States is not only widespread, but wreaks terrible damage to individuals, families, and to society as a whole.

Domestic violence is not restricted to any one sector of our society, but affects the whole spectrum of American social and economic life. Previous efforts to combat this grave wrong have been minimal or largely inadequate in relation to its vast dimension. State social service programs provide funds for shelters and supportive services to victims of domestic violence, through titles IV-B and XX of the Social Security Act, yet these efforts are sporadic and underdeveloped.

In my own State of New York, private nonprofit organizations such as the Coalition for Abused Women, and the Victims Information Bureau of Suffolk have begun innovative programs for comprehensive crisis intervention, advocacy, and counseling for victims of domestic violence. The New York State Department of Social Services has established a task force to develop programs for victims of domestic violence. These local and State efforts can and must be encouraged, expanded, and improved by appropriate Federal help.

The time is at hand for a concerted program of Federal assistance to encourage and support such State and local prevention and treatment services. This bill will establish a first, yet nonetheless comprehensive, Federal effort to assist States and localities to help thousands of people affected directly or indirectly by the tragic consequences of domestic violence, and I urge my colleagues' support of the measure.

Mr. HEINZ. Mr. President, I rise to express my concern about the tragic, and all too pervasive, problem of domestic violence in our Nation. It is horrifying to learn that somewhere between 1.8 and 3.5 million women each year are victims of spouse abuse. I know that all of my colleagues here in the Senate share my concern and my desire to address the problem. However, what divides us is the approach that we should take to best help the individual victims and avoid family violence.

Mr. President, I am concerned about the approach to the problem embodied by S. 1843, the Domestic Violence Prevention and Services Act, and would like to take a brief moment to delineate my reservations.

First, Mr. President, the bill is entitled "The Domestic Violence Prevention and Services Act". I have studied it closely, and devoted a great deal of thought to it, and I have yet to understand how this legislation can be construed to prevent domestic violence. Rather, it will provide a band-aid for the symptoms—shelters for abused spouses. The illness, the root of the problem of domestic violence, is not addressed by this legislation.

A wide body of evidence suggests that most domestic violence is triggered by alcohol or drug abuse. We also know that in times of adverse economic conditions, there is an increase in the incidence of spouse abuse. And I suspect that there are a number of other underlying causes of a swelling statistic of incidence of family violence. But this bill does not address these underlying problems, and consequently, the real ills will go untreated, and we will witness an ever-growing need for this symptomatic response—shelters for battered spouses.

Mr. President, this leads me to my second concern. Because of the symtomatic nature of this approach, and because of the funding levels that would be authorized by this legislation, I am afraid that passage of S. 1843 would falsely raise the expectations of the American people.

Because the bill fails to address the root problems that trigger family violence, those Americans who are desperately hoping that the Government's assistance will arrest the swell of abuse will be disappointed to learn that this response—a band-aid—cannot reduce the incidence of abuse.

They will also be disappointed to learn that the band-aid is not large enough to cover the entire wound. Although $15 million, and $20 million, and even $30 million are significant sums in the aggregate and to our taxpayers, this money would fall far short of providing adequate services to all abused spouses. Again, we will disappoint many hopeful Americans.

My third concern, and related, Mr. President, is a serious question mark that presents itself regarding the proper role of the Federal Government in dealing with the problem of domestic violence. I am not convinced that establishing a program in which localities must meet Federal guidelines, standards, and regulations in order to secure Federal funds to address a problem that must be dealt with by people at the local government level is the most efficient or effective way to address this real problem. It seems to me that the most appropriate response of this problem should be determined at the local or State level. Instead, under this legislation, the localities would be bound to establish shelters, and furthermore to meet with Federal standards in doing so.

Mr. President, I must reiterate that I sincerely believe that the growing problem of domestic violence in our Nation is a tragic one, and that we as national legislators, must address this problem. However, I believe that we must do so in ways that are more appropriately within our jurisdiction. We must adopt the measures necessary to stabilize our sagging economy. We must work to increase employment opportunities for husbands and wives. And we must arrest the skyrocketing inflation that is taking a tragic toll on the American family.

I am more than willing to work with my colleagues on these and other alternative measures that will get to the root of the family violence problem. I commend Senator CRANSTON and his committee for all of their hard work on this bill. Whatever the fate of this bill, I hope that we can mount a concerted effort to truly arrest the problem of domestic violence in our Nation.

Mr. TSONGAS. Mr. President, I wish to thank my distinguished colleagues for their support of my proposal for the establishment of a Presidential Commission on National Service, which is now title II of S. 1843, the Domestic Violence Prevention and Services Act.

Mr. President, we have reached a point in the history of this great Nation that makes it necessary for the American people to begin to face up to the harsh realities of the world situation. We can no longer sit back and wait. Today millions of capable young people are alienated from American society. Their lives lack goals and a feeling of self-worth. This Nation needs a program that will bring youth back into the mainstream of American life. We can use their talents, their energies, and their trust. A national service program will fortify these qualities.

In addition to helping our youth, national service has the potential to meet many other human needs at home and abroad. A national program of service by Americans can also help make ours a more cohesive, caring society.

Today, I would like to share with you some of my personal feelings about service. Then I will discuss the unresolved problems surrounding this issue. Without answers, we will not be able to achieve the consensus necessary for a program of national service to succeed. This is why a Presidential commission is vital.

SERVICE AS LEARNING

The benefits of service to others are shared between the recipient and the provider. This fundamental aspect of the service experience has been proven to me—and to thousands upon thousands of volunteers—powerfully and personally. My 2 years as a Peace Corps volunteer in a small Ethiopian town were a learning experience that surpassed any formal study before or after it. There I lived and learned with students whose lives had been vastly different from my own. I was a Peace Corps teacher, but I hope my Ethiopian friends know how much they taught me.

We had a very personal sense of depending on each other, so it was natural for us to know that nations also must depend on each other. Nothing before or after that time has shaped my view of the world so deeply.

The experience of service puts us in

touch with problems on a human scale. Too often, public policy is made in a bureaucratic dreamworld. The real impact on people's lives is lost. But living in and learning about culture, whether in Ethiopia or in Appalachia, brings understanding and an approach which embraces the human element. Volunteers do not forget their experiences with VISTA or the Peace Corps. They carry the experience with them into future careers.

National service would help young Americans understand the complexity of chronic problems. A new, national commitment to service could be the right medicine for our ailing national spirit. It might help turn our society away from the extremes of the "me generation" of the 1970's when many young Americans have grown up to be fashion conscious, but unconscious—apparently unaware—that other Americans are struggling for basic needs.

It is an astonishing irony that, while many young people feel their lives lack meaning, many unmet social needs are crying for help. Daycare centers go unstaffed. Elderly citizens are shuffled away to inadequate homes because there is no one to care for them. Local communities have many projects—energy conservation and neighborhood cleanups—which desperately need manpower.

The list of human needs could go on. But in analyzing how participants in a national service program might be apportioned among potential recipients, we must look at both the benefit to the so-called recipient and the benefit to the person who serves. In service, all the participants gain. The education that the service provider gets is a fundamental reason why I support a program of national service for America's youth.

SERVICE'S POTENTIAL AND PROBLEMS

It is clear that the idea of national service has tremendous potential for the United States in the 1980's and beyond. Despite limited opportunities for full-time volunteer service at present, young people participate effectively in public and private programs.

With the potential for greatly expanding the opportunities for service so impressive, we owe it to ourselves and future generations to confront the unanswered questions that surround national service.

What types of service would be most beneficial?

What should be the duration of service?

What incentives for participation would be used?

How can involvement of youth from all ethnic, economic, and regional backgrounds be assured?

How much would it cost?

How could existing programs be used to offset the costs of national service?

How would coordination among different levels of government and with the private sector be managed?

Should national service be limited to youth?

Two of the most fundamental issues are voluntary service versus mandatory service program's relationship to military service.

I personally favor a volunteer service plan. I feel that the benefits derived from the national service experience would be seriously compromised by compulsory service, whether civilian or military. The idealism of Peace Corps volunteers, for example, has a major bearing on the quality of their work. The wonderful learning, sharing process that providers of service to others experience cannot be expected for an unwilling worker in national service.

Regarding the military aspect, there is much confusion and much dissent. I oppose mandatory service, and I oppose the draft. The All-Volunteer Army is working adequately, despite some shortfalls in the Reserve component of the military. But even Secretary of the Army, Clifford Alexander, believes the voluntary system is working well. I do not feel we should revert to a compulsory system when it is not necessary.

Many facets of national service deserve thorough analysis and debate. Whatever our opinions on specific features, it would be senseless to establish a Presidential Commission with preconceived conclusions. The Commission's mandate should be an open-minded, comprehensive inquiry into the range of national service possibilities.

SEARCHING FOR CONSENSUS

Mr. President, this legislation would establish a 25-member Presidential Commission to study this issue and report its findings within 18 months. At least seven of its members would be young people between the ages of 16 and 25. We should not, however, attempt to specifically mandate the Commission's membership beyond the seven youths.

This legislative approach is preferable to introducing legislation for a full-scale national service program at this time. If national service is to be successful, it will require a wide base of support. It must be well received by the intended participants, and by Federal, State, and local officials and members of private agencies who run the programs with volunteers. I fear that to go full steam ahead with a national service program could alienate many of these same people. They might see the program as an infringement of their territory rather than as the provider of expanded programs and services that it really is. A Presidential Commission will make contact with these people during the study and involve them in the evolution of the idea.

Excellent groundwork has been laid for a Presidential Commission by the Committee for the Study of National Service. Last year the committee issued its report, "Youth and the Needs of the Nation." It is a valuable contribution to the debate. But it has raised more questions than it has answered.

Another factor arguing for a Presidential Commission is the tremendous interest among young Americans. The Gallup Youth Survey on National Service has found that an overwhelming majority of 13- to 18-year-olds—71 percent—favor a voluntary service system of national service. When asked whether they would be interested in participating in such a program, 22 percent said they definitely would, and another 32 percent said they might.

Mr. President, I held a conference in Massachusetts on the subject of national service this past February, in conjunction with the Massachusetts Department of Education. We invited high school students from throughout the State to participate in the day-long event. There were speeches, films, seminars and panel discussions. At the conclusion of the conference, my staff distributed a questionnaire to the 250 participants. We were somewhat astounded by the results, because throughout the day, many people had spoken out against a national service program. Of those who responded to the questionnaire, 164 favored a system of national service and 26 were opposed. Twenty-five people thought national service should be mandatory, and 142 thought it should be voluntary. I will admit that this was not a scientifically designed poll. However, it does clearly demonstrate that when people, especially young people, are provided with a clear understanding of what we mean by national service, they support it overwhelmingly. We therefore must provide many more citizens in this country with an explanation of our ideas. I am hopeful that a Presidential Commission on National Service holding regional conferences, taking testimony, and talking with our young people, could do just that.

The idea of national service has widespread support among young Americans now—nearly 70 years after William James first wrote in favor of it. James predicted that young Americans would get "the childness knocked out of them, and would come back . . . with healthier sympathies and soberer ideas." As a new decade begins, our situation cries out for the values inherent in national service.

I strongly encourage my colleagues to facilitate this educational process, and to support S. 1843.

Mr. President, I wish to thank my distinguished colleague from California (Mr. CRANSTON) for his continued support of this proposal.

● Mr. PACKWOOD. Mr. President, it is time the issue of domestic violence be allowed out of the closet. I ask my colleagues to consider the following facts:

The FBI estimates that one incident of wife beating occurs somewhere in the United States every 18 seconds.

More than one-quarter of all murders occur in the family. Nearly half of these are husband-wife killings.

According to FBI statistics, 20 percent of police officers killed in the line of duty die while answering family disturbance calls.

Add to these already disturbing statistics the fact that thousands of spouse and child abuse cases are never reported, and we have a problem of epidemic proportions.

Mr. President, family violence exists in all segments of our society. Instances of wife beating and child beating, as well as abuse of the elderly, occur in families of college-educated persons, as well as the less educated, among the middle class, as well as the poor, in high-rise apartments and suburban neighborhoods, as well as in ghettos. The problem is with us, and has been with us for years.

It is time we recognize the problem, admit that hundreds of thousands of individuals are abused in families—by family members—each year, and look for remedies.

The domestic violence bill we are considering today is a significant step toward correcting this problem. It will help provide the most critical assistance needed by victims of family violence—temporary shelter.

When a woman or child is being beaten, abused, or otherwise threatened by a violent family member, their first concern is physical safety. In almost all cases of domestic violence, when tempers are calmed and the immediate crisis has passed, family members can be counseled to face their problems, and look for solutions. But when family members are in imminent danger of physical abuse, or are injured by a violent family member, they need a place to turn to. They need shelter, and temporary shelters for victims of violence is what this bill will provide.

No one is really sure how many families in Oregon have experienced instances of violence. We now have 10 or so temporary shelters available for victims of family violence. These shelters operate full to capacity, on shoestring budgets, and always with the knowledge their services could be curtailed at any time because of lack of funds.

The domestic violence bill will provide grants for these independent shelters, insuring they can continue to operate, and provide the services so desperately needed by victims of family violence.

Oregon needs the services which will be made available as the result of this bill. Indeed, the several million women, children, and elderly victims of family violence in our country desperately need the services which will result from this legislation. I wholeheartedly support this bill, Mr. President, and urge my colleagues to join me in voting for its passage today.●

DOMESTIC VIOLENCE: THESE OUTRAGEOUS ACTIONS SHOULD NOT BE A PART OF "TRADITIONAL FAMILY LIFE"

● Mr. BAYH. Mr. President, today the Senate has taken a courageous step to provide Federal stimulation of State, local, and community activities to prevent a travesty in our American families—domestic violence—to assist these victims of domestic violence and provide coordination of Federal programs and activities pertaining to domestic violence. I am pleased to be a cosponsor of S. 1843, the Domestic Violence Prevention and Services Act" and welcomed the opportunity to cast my vote in favor of this long-needed legislation. The distinguished senior Senator from California (Mr. CRANSTON) has worked long and hard on this legislation for a number of years and he deserves the credit for sheparding this dynamic act through the Senate to final passage today. It is my hope that the President will sign this act as soon as possible and that the Appropriations Committees in both Houses will provide the necessary resources to begin these programs; $10 million is being requested by the administration for the domestic violence programs and the funds will be well worth our efforts here today.

This legislation has grown out of the desire of many Members of this body to address an ever-expanding problem in our Nation—the problem of spouse abuse, child abuse by parents, and parents' abuse by children. Through the leadership of Senator CRANSTON, we have before us today a comprehensive response to the inadequacy of our present system in combating the growing epidemic of domestic violence.

Manuel Carballo told the Senate Subcommittee on Child and Human Development that the major gap in services to victims of domestic violence is the lack of emergency shelters.

A national survey funded by the National Institute of Mental Health found that some 1.8 million women are abused each year by their husbands and that one out of every six couples in the United States experiences some violence during the survey year. This does not begin to touch the millions of children that are abused by their parents each year, nor the numbers of older persons who are abused by their children each year. Of course, even this violence does not account for the number of men who are abused by their wives each year, but who are frightened, ashamed, or embarrassed to report the violence. When we discuss domestic violence, most assume that it is the wife who is abused, but this problem affects all age groups, rural, suburban, and urban people of both sexes and is not confined to any race, religion, or social economic class of persons. Colleagues, unfortunately spousal abuse of women is just the tip of the iceberg.

A 1979 Louis Harris survey in Kentucky showed that 10 percent of wives interviewed had been abused by their husbands during a prior 12-month period, while only 2 percent reported physical assaults outside the home.

While various Federal agencies are supporting some activities to alleviate the problem of domestic violence, and about one-third of the States have taken steps to support emergency shelters, my State of Indiana being one of those States, the new legislation will be an incentive to States to move more quickly to improve services to victims of domestic violence.

Last spring, the administration established an Interdepartmental Committee on Domestic Violence to review and coordinate Federal Government activities.

An Office of Domestic Violence, established by the Department of Health and Human Services (HHS) last April, has started to coordinate the many separate Federal programs that can assist battered women and men with health, social, legal, employment, and other services. The new office located in the Administration for Children, Youth and Families, also provides information and technical assistance to local organizations dealing with spouse abuse and supports a limited number of demonstration projects.

In my own State of Indiana the new office is handled by region V, Domestic Violence Technical Assistance Project Community Crisis Center, Inc., located at 600 Margaret Place, Elgin, Ill. 60120, telephone 312-697-2380. The Women's Shelter Advisory Committee of the YWCA in South Bend (219-232-3344) and the Women's Center (219-233-9491) also provides legal aid, counseling, referral, and hotline assistance. The YWCA Shelter for Women Victims of Violence in Fort Wayne (219-424-2554-Crisis) also provides counseling, referral, 24-hour hotline services, child care, and housing for approximately 30 women and children.

In addition, Mr. President, I was extremely pleased to announce recently that the Law Enforcement Assistance Administration had continued to fund the Gary, Ind., family violence program, which began in 1978. This project is a comprehensive approach to reduce the incidence of intrafamily violence in Gary. It features four components: The police component; the prosecution component; the court component; and the shelter component. Major project objectives include the coordination of the police, prosecutor, city court, protective services, welfare, hospitals, community mental health services, shelter facilities, other relevant public and private agencies, and community organizations to respond more effectively to the crime of domestic violence; increased prosecution of cases of repeat domestic violence; and the establishment of a city court pretrial diversion program that is specifically designed for defendants and their families involved in domestic cases.

Mr. President, I am very proud of Indiana State Representative Jim Jontz, who has been a leader in the State house of representatives for domestic violence legislation. I congratulate him for his strong support of these programs in Indiana and assure him that I will do my part at the Federal level to support these worthwhile programs. I also wanted to assure my Indiana constituents that they can refer any of their domestic problems to the following programs, some with and some without Federal funding:

Family Service Agency of Tippecanoe County, Lafayette; Gary Commission on the Status of Women; Mental Health Association in Indiana and Allen County, Fort Wayne; Middleway House Inc., Bloomington; Salvation Army Family Service Department, Indianapolis; Southlake Community Mental Health Center, Merrillville; Women's Center of Columbus; YWCA of St. Joseph County-The Shelter, South Bend; and the YWCA Shelter for Women Victims of Violence, Fort Wayne, and the YWCA of Evansville.

It is appalling that in my own State of Indiana the YWCA-sponsored Shelter for Women Victims of Violence estimates that there are from 5,000 to 7,000 cases of spousal assault a year in Allen County, Ind., alone. No matter what the actual number is, all authorities who have studied the problem of battered men and women agree that the present system provides no adequate answers for these unfortunate victims of violence.

What recourse does a battered person have at the present? The answer is, not much. She or he can appeal to the local police who are frequently unwilling to intervene in what they determine is a "family matter" (danger to police is a very real concern—one-fifth of all deaths to police officers and 40 percent of all injuries to them occur when on duty investigating domestic violence cases). She or he can seek restraint on the spouse through the courts; most fre-

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quently to be admonished by a family court judge that she or he has provoked the attacks themselves. They can run away provided they have the economic independence to sustain themselves or their children. Finally they can turn to local shelters for battered persons which have been springing up in localities all over the Nation.

Mr. President, I was a cosponsor of this legislation in the last Congress, when the Senate passed the bill the first time. However, the House failed to act on the bill before the close of that session, when they failed to get the two-thirds vote margin needed to pass the bill under suspension of the rules. The failure to pass the bill in the House in the 95th Congress was a major shock to all associated with the subject. Some of the reasons the House failed to pass the bill were reluctance to spend more Federal money on a new HHS program, especially one that may be handled on the local level, and a charge that this bill was antifamily. Both charges clearly miss the mark. First, most States and local communities do not have the resources to initiate domestic violence programs and have called on the Federal Government to assist them with their growing problems of domestic violence. The Federal Government has encouraged the States to take the lead and provide the majority of the resources. Second, this measure is designed to save families who are in desperate trouble and reunite families who have been torn apart by serious daily conflicts. This is a voluntary program, the respective abused persons would have to seek out help. The local, State and Federal governments involved would provide the resources, but by no means become involved in initiating any interference in the traditional family.

Mr. President, preventing violence is far more cost-effective to the Federal, State, and local governments. But, most importantly, prevention is far more constructive for the men, women, and children who are the victims of domestic violence.

Mr. President, I call on all my colleagues in this body and that of the House to congratulate Senator CRANSTON and his able staff of the Subcommittee on Child and Human Development of the Senate Committee on Labor and Human Resources for their persistence in providing us the opportunity to vote on this legislation today and more importantly to pass this legislation with a strong majority of the Senate in support of the Domestic Violence Prevention and Services Act. ALAN, thanks for your efforts on behalf of Hoosiers and other citizens throughout this Nation.

Mr. President, at this point I submit for the RECORD a basic list of those organizations which support this legislation.

The list is as follows:

LIST OF ORGANIZATIONS SUPPORTING THE DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT—1980

General Federation of Women's Clubs.
American Association of University Women.
American Home Economics Association.
B'nai B'rith Women's International.
Business and Professional Women's Clubs, Inc.
Criminal Justice and the Elderly—National Council of Senior Citizens.
National Association of Colored Women's Clubs.
National Organization of Women.
Young Women's Christian Association.
Center for Women Policy Studies.
Federally Employed Women.
National Association of Social Workers.
National Council on Crime and Delinquency.
National Coalition Against Domestic Violence.
WEAL (Women's Equity Action League).
Planned Parenthood.
Intercollegiate Association of Women's Studies.
American Jewish Congress.
Parents Without Partners.
Rural American Women, Inc.
Council on Family Relations.
National Association of Counties.
National Organization of Victim Assistance.
American Association of Marriage and Family Therapy.
American Public Health Association.
American Nurses Association.
American Psychiatric Association.
American Speech and Hearing Association.
Family Services Association.
National Citizens Committee for Broadcasting.
American Baptist Churches, USA.
American Baptist Women.
Board of Church and Society of the United Methodist Church.
Board of Global Ministers of the United Methodist Church.
Catholic Women for the ERA.
Christian Church (Disciples of Christ).
Church of the Brethren.
Christian Feminist.
Episcopal Church, Executive Council Diocesan Office.
Leadership Conference of Women's Religious.
Lutheran Council of the USA.
Mormons for ERA.
Congressional Women's Caucus.
National Association of Women Business Owners.
National Urban League.
National Women's Party.
National Women's Political Caucus.
Rural America, Inc.
National Council of Jewish Women.
Florida—Association of Junior Leagues.
American Federation of Government Employees.
American Sociological Association.
International Association of Chiefs of Police.
International Brotherhood of Police Officers.
National District Attorneys Association.
National Federation of Business and Professional Women's Clubs.
National Student Education Fund ●

Mr. MORGAN. Mr. President, the Domestic Violence Prevention and Services Act is an understandable attempt to remedy a widespread problem by providing shelter and aid to battered wives. I do not believe anyone could disagree that victims of such awful violence within the family need and deserve assistance. The incidence of physical abuse of wives by husbands is well known, and I am sure that each Senator is acquainted with instances of it in his own community.

Yet after agreeing in principle with the need for the kind of shelters that this legislation would fund, I have not been persuaded to vote for this bill. In fact, I have been persuaded there are some reasons to oppose it, and I urge my colleagues to think them over before yielding to their good intentions and passing this measure.

To begin with, shelters are already being funded with Federal tax dollars. I note that in North Carolina, funding for some of the existing shelters comes from such diverse sources as LEAA and the Higher Education Act. And in other States, Federal funds come from CETA, from the title XX block grant program, and from revenue sharing.

It seems to me that Senator DANFORTH made several superb speeches last week on why title XX funds can and should be used for shelters of this kind, if, in the judgment of the States, that funding is justified. After all, title XX is the existing Federal block grant program for social services, and the funds can be used for the very purposes this bill has. So why set up an entirely new grant program so narrow in its purposes? Why should we set up a brandnew Federal bureaucracy with brandnew Federal rules that the States must meet? Why should the States be required to generate new State plans for the use of categorical grants when they can already make use of the block grants they now receive without additional work? I do not think these questions can really be answered by the advocates of this legislation.

Let me state another strong reservation that I have with this bill. Why should we begin an entirely new Federal program in a year when we are trying to balance the budget, in a year when we are trying to hold down spending? The Federal deficit for this year is going to approach $60 billion. Does anyone doubt that next year's deficit will also be larger than we now anticipate? In a year when we are cutting back on other social programs, why are we in the process of starting another? I do not believe we should.

It seems to me that the States themselves ought to be wary about the financial implications of this bill, because they will be drawn into spending more and more of their own money for this program. Do they really comprehend what is going on in this legislation? I doubt it.

Let me put a more general inquiry to my colleagues. Why should the Federal Government be so heavily involved in services for battered wives? Is this not an area more for private associations, for communities themselves, and for States that feel a particular obligation for such services? Is it the case that shelters funded largely by the Federal Government and meeting requirements set by the Federal Government will be up to the delicate task of trying to keep families together? Is the Federal Government, although with the best of intentions, trying to enter an area better served by churches and community organizations? I suspect so.

There are many citizens in my State who fear Federal involvement in family matters. And the fear may be justified in this case. We can expect too much from government at this level, and well laid plans can go awry. I would much rather see the support for the shelters now existing in North Carolina and across the country come from the communities of which they are a part.

In summary, Mr. President, I cannot support this bill. I cannot support it because a mechanism already exists for assuring that some Federal money can be applied to shelters for battered wives. I cannot support it because we should not establish new Federal programs when we so desperately need to balance the Federal budget and stop fueling the inflation that is the enemy of every American family. I cannot support it because the family problems that need treating will not be cured through a new Federal bureaucracy and new Federal rules, but rather through the delicate counseling and aid best generated within the communities where these shelters are located.

I urge my colleagues to think again about this legislation. This is not the way to reach the goal we are all seeking.

The PRESIDING OFFICER (Mr. TSONGAS). Who yields time?

The Chair will state that time will be charged equally if time is not yielded.

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The time remaining does not allow for a quorum call. The Senator may yield back his time and request a quorum at that point.

Mr. CRANSTON. Mr. President, I am prepared to yield back my time so that we can have a vote at this time.

I would like to urge that all Senators vote for this measure. I think it is very important to help victims of family violence. And it is to be done at the local level. Thus, it is not Federal intervention. It is Federal assistance to local people who are seeking help in regard to a very serious American problem.

Mr. President, I yield back the remainder of my time.

Mr. HUMPHREY. Mr. President, briefly, I say in closing, if I have remaining time, that there are already in operation some 274 domestic violence shelters across the country. If they truly had lost support, why are they running to Washington, demanding Congress use the Federal Government as an agency to collect money from those who would not give voluntarily?

There is not sufficient lost support for these organizations. If there were, they would not be here, using us in the fashion they are.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question recurs on the bill, as amended. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Missouri (Mr. EAGLETON) are necessarily absent.

I also announce that the Senator from New Jersey (Mr. BRADLEY), is absent because of death in the family.

I further announce that, if present and voting, the Senator from New Jersey (Mr. BRADLEY) and the Senator from New Hampshire (Mr. DURKIN) would each vote "yea."

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 46, nays 41, as follows:

[Rollcall Vote No. 391 Leg.]

YEAS—46

Baker	Hart	Packwood
Baucus	Hatfield	Pell
Bayh	Huddleston	Pryor
Bentsen	Inouye	Randolph
Biden	Jackson	Ribicoff
Boschwitz	Javits	Riegle
Bumpers	Leahy	Sarbanes
Burdick	Levin	Stafford
Cannon	Magnuson	Stevenson
Chafee	Mathias	Stone
Chiles	Matsunaga	Tsongas
Cranston	Metcher	Wallop
DeConcini	Metzenbaum	Weicker
Durenberger	Mitchell	Williams
Ford	Moynihan	
Glenn	Nelson	

NAYS—41

Bellmon	Heflin	Pressler
Boren	Heinz	Proxmire
Byrd, Harry F., Jr.	Helms	Roth
Byrd, Robert C.	Hollings	Sasser
Cochran	Humphrey	Schmitt
Cohen	Jepsen	Schweiker
Danforth	Johnston	Simpson
Dole	Kassebaum	Stennis
Domenici	Laxalt	Talmadge
Exon	Lugar	Thurmond
Garn	McClure	Tower
Hatch	Morgan	Warner
Hayakawa	Nunn	Young
	Percy	Zorinsky

NOT VOTING—13

Armstrong	Eagleton	McGovern
Bradley	Goldwater	Stevens
Church	Gravel	Stewart
Culver	Kennedy	
Durkin	Long	

So the bill (H.R. 2977) was passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. RIEGLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. CRANSTON. Mr. President, I send to the desk an amendment to the title of the bill and move that the title of the bill be amended accordingly.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an amendment to the title.

Amend the title so as to read: "A bill to provide for Federal support and stimulation of State, local, and community activities to prevent domestic violence and provide immediate shelter and other assistance for victims of domestic violence, and provide for coordination and evaluation of programs and activities pertaining to domestic violence; to establish a Presidential Commission on National Service; and for other purposes."

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move that the Senate insist upon its amendments to the House bill and request a conference with the House of Representatives thereon and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. CRANSTON, Mr. WILLIAMS, Mr. NELSON, Mr. RIEGLE, Mr. HUMPHREY, Mr. HATCH, and Mr. SCHWEIKER conferees on the part of the Senate.

EDUCATION AMENDMENTS OF 1980—CONFERENCE REPORT

The Senate resumed the consideration of the conference report.

The PRESIDING OFFICER. The Senate is not in order.

Could we have the well cleared, please?

The pending question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the conference report was rejected. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I also announce that the Senator from New Jersey (Mr. BRADLEY), is absent because of a death in the family.

I further announce that, if present and voting, the Senator from New Jersey (Mr. BRADLEY) would vote "nay."

Mr. BAKER. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber desiring to vote who have not already done so?

The result was announced—yeas 44, nays 43, as follows:

[Rollcall Vote No. 392 Leg.]

YEAS—44

Baker	Garn	Morgan
Bellmon	Glenn	Nunn
Bentsen	Hart	Percy
Biden	Hayakawa	Proxmire
Boren	Helms	Roth
Bumpers	Hollings	Simpson
Byrd, Harry F., Jr.	Humphrey	Stennis
Cannon	Jepsen	Stone
Chafee	Johnston	Talmadge
Chiles	Kassebaum	Thurmond
Cochran	Laxalt	Tower
Cohen	Lugar	Wallop
Domenici	McClure	Warner
Exon	Metzenbaum	Young
	Mitchell	Zorinsky

NAYS—43

Baucus	Huddleston	Pryor
Bayh	Inouye	Randolph
Boschwitz	Jackson	Ribicoff
Burdick	Javits	Riegle
Byrd, Robert C.	Leahy	Sarbanes
Cranston	Levin	Sasser
Danforth	Magnuson	Schmitt
DeConcini	Mathias	Schweiker
Dole	Matsunaga	Stafford
Durenberger	Melcher	Stevenson
Ford	Moynihan	Tsongas
Hatch	Nelson	Weicker
Hatfield	Packwood	Williams
Heflin	Pell	
Heinz	Pressler	

NOT VOTING—13

Armstrong	Eagleton	McGovern
Bradley	Goldwater	Stevens
Church	Gravel	Stewart
Culver	Kennedy	
Durkin	Long	

So the motion to lay on the table the motion to reconsider was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate? We cannot hear what the Senator is saying.

The PRESIDING OFFICER. The Senate is not in order. The Senate is not in order. The Senate will not proceed until there is order. Senators wishing to converse will kindly retire to the cloakroom.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield to the distinguished majority leader.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator.

Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond 30 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ALIENS

Mr. THURMOND. Mr. President, the American people are deeply upset about the events surrounding the tremendous influx of Cuban refugees. Riots and skyjackings have followed in the wake of this massive exodus from Cuba as our Government has ineptly handled this problem from beginning to end.

We have been a sympathetic Nation in the past, and we may be compelled to take political refugees in the future; however, we cannot become the home for the millions of people who want to come to America.

Mr. President, a recent editorial by WSPA radio and TV in Spartanburg, S.C., deals with this problem and offers some interesting observations. In order that I may share it with my colleagues, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

ALIENS

The recent influx of Cubans and Haitians poses a challenging problem for the United States. This country has a long tradition of welcoming both immigrants seeking economic opportunity and political and religious refugees. It will be difficult to shift to a new policy, nonetheless, in WSPA's opinion that is what must be done.

We can no longer afford to accept indiscriminately all people who wish to reside in the United States. The 130,000 Cubans and Haitians who have entered this country in the past months are a tremendous financial burden and during a period of rising unemployment are a threat to American jobs. The government is supplementing contributions of private groups which are aiding the Cubans and Haitians to the tune of $300 per immigrant. And for the current fiscal year alone training and relocation will cost the United States $485 million.

Moreover, the current spate of skyjackings by refugees wanting to return to Cuba poses a safety problem for American air travelers. Fortunately, none of these incidents has led to the injury of any passengers, but as a spokesman for the F.B.I. said, "the potential for violence seems to be increasing." This development shows how unsound it is to adopt an open door immigration policy without the proper guidelines for and screening of applicants.

Most of these refugees will probably be able to stay in this country permanently. The question then is when will we formulate a policy to handle this problem properly. West Germany has had similar difficulties, with thousands of persons from a dozen Third World countries taking advantage of Germany's liberal political asylum laws to enter that country to look for jobs. Their legislature is moving to tighten laws to protect the German economy while keeping the door open to bona fide political refugees. We must do the same.

CONTINUED SOVIET MILITARY ACTION AGAINST PEOPLE OF AFGHANISTAN

Mr. THURMOND. Mr. President, the American people need to be informed as to Soviet actions in Afghanistan. Based upon my observations the U.S. Government and the public media in this country have not reported a great deal on this subject in recent weeks and months.

We should not forget that U.S. policy has been impacted to a considerable degree by the Soviet invasion and subsequent military attacks on the people of Afghanistan. Therefore, I believe it in the best interests of our Nation that maximum coverage of events in Afghanistan take place. Hopefully, continued exposure in the free press and protests from our Government could increase pressure on the Soviet Union to end or reduce their military attacks in that nation.

Mr. President, articles on recent Soviet actions in Afghanistan appeared in two area newspapers. However, I have seen little on TV news reports or in other sections of the media. I ask unanimous consent that an article entitled "Stiff Fighting Reported in Afghanistan" in the September 4, 1980 issue of the Baltimore Sun and an article entitled "Soviets Reported Rotating Afghanistan-Based Units" which appeared in the September 4, 1980 issue of the Washington Star, be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

STIFF FIGHTING REPORTED IN AFGHANISTAN

NEW DELHI.—Soviet forces in Afghanistan have been engaged in heavy fighting with rebels in widespread areas of the country in recent weeks, Western diplomatic sources said in New Delhi yesterday.

Soviet planes had bombed the Western city of Herat, and clashes were reported in the southern province of Kandahar, the sources said.

The highway from Kabul to Jalalabad had been open only sporadically since August 18, with parts of the road destroyed by rebels in the last 10 days, the sources said. One report had a bridge being blown up and another said the highway had been closed by landslides set off by the rebels.

In Wardak province, west of Kabul, rebels reportedly set off road mines when a small Soviet convoy passed.

Kabul itself was quiet, but reports persited that minor government and police officials had been assassinated, the sources said.

They said heavy Soviet traffic was seen at Kabul airport from August 29 to August 31, with some Soviet troops being sent home and fresh replacements coming in.

An increased number of Soviet MI-24 helicopter gunships were seen during this period flying between Kabul and the countryside. Fresh fighting was reported in the Panjsher valley northeast of Kabul, the sources said.

They said there were reliable reports that several Foreign Ministry officials in Kabul had been transferred abroad or dismissed.

The Afghan government was again refusing passports to many people wishing to leave, the sources added.

SOVIETS REPORTED ROTATING AFGHANISTAN-BASED UNITS

NEW DELHI, INDIA.—The Russians airlifted new soldiers into Afghanistan and withdrew others in a three-day "troop rotation" amid widespread fighting against rebels in the countryside, a Western diplomatic source said yesterday.

Russian transport planes "roared overhead" during the airlift as fresh uniformed troops arrived from the Soviet Union at Kabul International Airport and drove toward the city in trucks.

Dressed in civilian clothes, Soviet troops could be seen arriving at the airport in the same military trucks and then departing for the Soviet Union in the same transport planes, he said.

The Soviet transport planes used in the "heavy" Soviet airlift were AN-12s, AN-22s and 11-76s which ferried the troops in and out of Afghanistan Friday, Saturday and Sunday, he added.

The three-day Russian airlift apparently was a "troop rotation" and not a build-up by reinforcements or a simple withdrawal, he said.

The troop maneuvers came amid reports of "heavy Soviet bombing in Herat" city and scattered fighting by Soviet and Afghan forces against Moslem rebels throughout the countryside, the diplomatic source said.

"Continued heavy fighting" rocked Herat, Afghanistan's major western city near the Iranian and Soviet borders, he said.

The source was unable to give details of the fighting but the Soviets have had a difficult time controlling the border town.

Guerrillas often hold sections of the old part of Herat and demand money, food, weapons and shelter from residents.

Increased Soviet helicopter gunship activity in recent days out of Kabul has been directed towards fighting north, south, and southwest of the Afghan capital, he added.

U.S. POLICY ON AFGHANISTAN

Mr. THURMOND. Mr. President, almost every day we read in the press about Soviet helicopter attacks on Afghanistan villages and the massive force being used to suppress the people of this war-torn nation.

Although the Afghans are equipped with only rifles and other small weapons, many are conducting a courageous fight to preserve their freedom and independence.

These forces have not called upon any nation for troops to aid them in this fight, but they have issued continuous pleas for armaments with which to defend their freedom.

The United States should provide such aid, and I urge the administration to do so at once. This aid can be given through third nations or other means, but it must be accomplished without delay. To do otherwise would deny the Afghan people the means with which to fight for their independence.

The open and brutal attacks mounted against the Afghan people by the military force of the Soviet Union cannot be allowed to succeed. Our obligation as the leader of the free world is clear.

Mr. President, an editorial on this subject entitled, "Give Us Weapons" appeared in the August 10,1980, issue of the Richmond Times-Dispatch. I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GIVE US WEAPONS

A college-educated Afghan villager visited 10 refugee camps in Pakistan to interview her countrymen who have been forced to leave their homes because of the Soviet invasion. Writing in The Christian Science Monitor under the pseudonym Mina Herati, she reported one simple but compelling message from the refugees: "Give us weapons!"

On many occasions in history, the people of Afghanistan have been able to resist successfully the efforts of foreigners to dominate them. The best evidence is that Afghan freedom fighters have given Moscow's storm-troopers far more of a battle than the Soviets bargained for when they went into Afghanistan last Christmas. But to go with their boundless courage and determination they desperately need something to offset a bit the Soviets' enormous advantage in destructive technology.

Let one of the young freedom fighters interviewed by Mina Herati make the case:

"We don't want sympathy. We don't need fancy blankets . . . We need something to fight with . . . We need modern weapons to stop the airplanes and helicopters which massacre our people by the thousands.

"We have men. We don't want anyone else to fight for us. We want to have the honor for ourselves of destroying the criminals who have murdered our innocent people, destroyed thousands of our villages, and forced millions of us to be refugees in other countries. We want to be the ones to defeat the traitors and the invaders."

What an eloquent plea! In the words of Mina Herati, America is the symbol of freedom so highly valued by her countrymen and "the Afghan people's only hope against the Russians." Can Americans have become so wrapped up in themselves as to ignore such a cry for help from a freedom-loving people about to be forced into communist slavery?

From time to time, there have been news reports suggesting that some American weapons have slipped across the Pakistani border into the hands of the Afghan fighters. But judging from the Afghans' evaluations, these have been few and far between and of little value.

President Carter's grain embargo, Olympic boycott and partial ban on technological trade with the Soviet aggressors have been only partially effective at best because America's allies seem only too willing to fill in the gaps these measures have created for Soviet planners. But arming the fiercely independent Afghans would be a way to impose a sure penalty on the Soviets and perhaps make them think twice before trying to swallow up another country.

It should be done.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE FEDERAL LABOR RELATIONS AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 237

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

I am transmitting herewith the First Annual Report of the Federal Labor Relations Authority for the Fiscal Year ended September 30, 1979, in accordance with the Civil Service Reform Act of 1978 (P.L. 95-454, Sec. 701) (5 U.S.C. 7104(e)).

As the independent agency set up to resolve union-management disputes in the Federal sector, the Authority oversees the creation of bargaining units, supervises elections, rules on the scope of negotiations, hears complaints of unfair labor practices, and interprets the labor-management statute. These activities have greatly enhanced the credibility and effectiveness of the Federal personnel system in resolving union-management disputes.

JIMMY CARTER.

THE WHITE HOUSE, *September 4, 1980.*

MESSAGES FROM THE HOUSE

At 4:12 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House insists upon its amendments to the bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. WAXMAN, Mr. SATTERFIELD, Mr. PREYER, Mr. MAGUIRE, Mr. LUKEN, Mr. WALGREN, Ms. MIKULSKI, Mr. BROYHILL, Mr. CARTER, Mr. DEVINE, and Mr. STOCKMAN were appointed as managers of the conference on the part of the House.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 4627. An act to authorize the enlistment of citizens of the Northern Mariana Islands in the Armed Forces of the United States of America.

The enrolled bill was subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 5:40 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2538. An act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro temporе (Mr. BOREN).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4527. A communication from the President of the United States, transmitting a proposed amendment to the request for appropriations for the fiscal year 1981 in the amount of $113,800,000 for the Department of Housing and Urban Development; to the Committee on Appropriations.

EC-4528. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to amend the Agricultural Foreign Investment Disclosure Act of 1978 to clarify the definition of agricultural land and to provide for reports when previously reported and is no longer agricultural or is held by a person who is no longer a foreign person; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4529. A communication from the Principal Deputy Assistant Secretary of Defense (Comptroller), reporting, pursuant to law, the value of property, supplies and commodities provided by the Berlin Magistrate, and under German Offset Agreement for the quarter January 1, 1980 through March 31, 1980; to the Committee on Appropriations.

EC-4530. A communication from the Acting Assistant Secretary of the Army (Manpower and Reserve Affairs), transmitting a draft of proposed legislation to amend title 10, United States Code, to extend eligibility for advanced training in the Senior Reserve Officers' Training Corps to certain persons who have no military training, and for other purposes; to the Committee on Armed Services.

EC-4531. A communication from the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), transmitting, pursuant to law, a directive on Mutual Logisic Support Between the United States and Other NATO Forces; to the Committee on Armed Services.

EC-4532. A communication from the Acting Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Malaysia for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

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EC-4533. A communication from the Acting Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Army's proposed Letter of Offer to Egypt for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4534. A communication from the Acting Assistant Secretary of the Air Force (Research, Development and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the protective coating maintenance function at Sheppard Air Force Base, Texas, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4535. A communication from the Assistant Secretary of the Air Force (Research, Development and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the commissary shelf-stocking and custodial services function at Charleston Air Force Base, South Carolina, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4536. A communication from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), reporting, pursuant to law, that a cost study has been conducted with respect to converting the food services function at Fort Lee, Va., resulting in a tentative decision that performance under contract is the most cost-effective method of performance; to the Committee on Armed Services.

EC-4537. A communication from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), reporting, pursuant to law, that a cost study of selected real property maintenance functions at Vint Hill Farms Station, Va., has resulted in a tentative decision that contracting would be the most cost-effective method of performance; to the Committee on Armed Services.

EC-4538. A communication from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), reporting, pursuant to law, that in early April 1980, prior to completion of a cost study with respect to the laundry function at the Army Armament Research and Development Command (ARRADCOM) at Dover, N.J., to determine the most effective method of performance, ARRADCOM determined the laundry facility to be structurally unsound, the local commander closed the facility and detailed the five full-time permanent employees to other positions within ARRADCOM, and since that time the laundry workload has been performed by support agreement with Fort Dix and purchase order with a local commercial firm; to the Committee on Armed Services.

EC-4539. A communication from the Principal Deputy Assistant Secretary of the Air Force (Research, Development and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the military family housing maintenance function at Reese Air Force Base, Tex., and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4540. A communication from the Acting Assistant Secretary of the Air Force (Research, Development and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the military family housing maintenance function at Norton Air Force Base, Calif., and a decision has been made that performance under contract is the most cost-effective method of acomplishment; to the Committee on Armed Services.

EC-4541. A communication from the Principal Deputy Assistant Secretary of the Air Force (Research, Development and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the commissary shelf-stocking and custodial service functions at Travis Air Force Base, Calif., and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4542. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on three construction projects to be undertaken by the Army Reserve; to the Committee on Armed Services.

EC-4543. A communication from the First Vice President, Export-Import Bank of the United States, reporting, pursuant to law, that Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $247,503,000 to the Republic of Nigeria, acting by and through its Federal Ministry of Finance (Borrower); to the Committee on Banking, Housing, and Urban Affairs.

EC-4544. A communication from the First Vice President, Export-Import Bank of the United States, reporting, pursuant to law, that Eximbank is prepared to make available to Air Canada financing in the form of loans and guarantees (Eximbank Financing) of $460,173,000 to facilitate the purchase in the United States by Air Canada of 12 Boeing 767-200 jet aircraft with related spare engines, spare parts and service; to the Committee on Banking, Housing and Urban Affairs.

EC-4545. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report on restrictions on exports to Afghanistan; to the Committee on Banking, Housing, and Urban Affairs.

EC-4546. A communication from the First Vice President, Export-Import Bank of the United States, reporting, pursuant to law, that Eximbank is prepared to make available financing in the form of a financial guarantee of a commercial loan of $223,550,000 to be extended by a United States private lender to T.N.H. Leasing A.G.; to the Committee on Banking, Housing, and Urban Affairs.

EC-4547. A communication from the First Vice President, Export-Import Bank of the United States, reporting, pursuant to law, that Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $150,000,000 to Transportes Aereos Portuguese (TAP), Lisbon, Portugal; to the Committees on Banking, Housing, and Urban Affairs.

EC-4548. A communication from the First Vice President, Export-Import Bank of the United States, reporting, pursuant to law, that Eximbank is prepared to make available financing to Hylsa, S.A. in the form of loans and guarantees (Eximbank Financing) of $178,110,000 covering U.S. costs of $151,393,500 and local costs of $26,716,500; to the Committee on Banking, Housing, and Urban Affairs.

EC-4549. A communication from the First Vice President, Export-Import Bank of the United States, reporting, pursuant to law, that Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $111,387,400 to Comision Federal de Electricidad (CFE); to the Committee on Banking, Housing, and Urban Affairs.

EC-4550. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on possible modifications to the Title I Mobile Home Loan Program, August 6, 1980; to the Committee on Banking, Housing, and Urban Affairs.

EC-4551. A communication from the Chairman, Federal Deposit Insurance Corporation, transmitting, pursuant to law, its annual report for calendar year 1979; to the Committee on Banking, Housing, and Urban Affairs.

EC-4552. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the second annual report on the Urban Development Action Grant Program; to the Committee on Banking, Housing, and Urban Affairs.

EC-4553. A communication from the Secretary of Commerce, transmitting, pursuant to law, the fourth report on activities of the Regional Fishery Management Councils and the Department of Commerce concerning fishery management plans, regulations to implement such plans, and other activities in the conservation and management of fishery resources that were undertaken during 1979; to the Committee on Commerce, Science, and Transportation.

EC-4554. A communication from the Chairman, National Transportation Safety Board, transmitting, pursuant to law, the board's budget for 1982; to the Committee on Commerce, Science, and Transportation.

EC-4555. A communication from the Chairman, Federal Trade Commission, reporting, pursuant to law, that the Commission has approved two amendments to the Trade Regulation Rule on Games of Chance in the Food Retailing and Gasoline Industries; to the Committee on Commerce, Science, and Transportation.

EC-4556. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The United States Exerts Limited Influence on the International Crude Oil Spot Market," August 21, 1980; to the Committee on Energy and Natural Resources.

EC-4557. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Delays and Uncertain Energy Savings in Program To Promote State Energy Conservation," September 2, 1980; to the Committee on Energy and Natural Resources.

EC-4558. A communication from the United States Trade Representatives, transmitting, pursuant to law, a report reviewing all actions taken with respect to investigations pending during the period January 1, 1980, through June 30, 1980; to the Committee on Finance.

EC-4559. A communication from the Assistant Secretary for International Organization Affairs, Department of State, transmitting, pursuant to law, documents from United Nations organizations containing information on actions taken relating to U.N. Joint Inspection Unit reports; to the Committee on Foreign Relations.

EC-4560. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days of the execution thereof; to the Committee on Foreign Relations.

EC-4561. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "How to Make Special Emphasis Programs an Effective Part of Agencies' EEO Activities," August 27, 1980; to the Committee on Governmental Affairs.

EC-4562. A communication from the Assistant Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on a new system of records; to the Committee on Governmental Affairs.

EC-4563. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Continuing Widespread Weaknesses in Internal Controls Results in Losses Through Fraud, Waste, and Abuse," August 28, 1980; to the Committee on Governmental Affairs.

EC-4564. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Audit of the Majority Printing Clerk, House of Representatives, For the Fiscal Year Ended August 31, 1979; to the Committee on Governmental Affairs.

EC-4565. A communication from the Inspector General (Designate), Department of Health and Human Services, transmitting, pursuant to law, a quarterly report covering the activities of the Office of Inspector General for the period April 1 to June 30, 1980; to the Committee on Governmental Affairs.

EC-4566. A communcation from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Audit of the Minority Printing Clerk, House of Representatives, for the Fiscal Year Ended September 30, 1979," August 28, 1980; to the Committee on Governmental Affairs.

EC-4567. A communication from the Assistant Secretary for Health and Surgeon General, Department of Human Services, transmitting, pursuant to law, a report on a new system of records; to the Committee on Governmental Affairs.

EC-4568. A communication from the Assistant Attorney General for Administration, U.S. Department of Justice, transmitting, pursuant to law, a report on a new system of records; to the Committee on Governmental Affairs.

EC-4569. A communication from the Deputy Assistant Secretary of Defense, transmitting, pursuant to law, a report on a new system of records; to the Committee on Governmental Affairs.

EC-4570. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled "President's Reorganization Project, Report on Strengthening Federal Cash Management," August 1980; to the Committee on Governmental Affairs.

EC-4571. A communication from the Assistant Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on a new system of records; to the Committee on Governmental Affairs.

EC-4572. A communication from the Staff Director, United States Commission on Civil Rights, reporting, pursuant to law, the availability of the recently published proceedings of the U.S. Commission on Civil Rights' consultation on "The Civil Rights Issues of Asian and Pacific Americans: Myths and Realities"; to the Committee on the Judiciary.

EC-4573. A communication from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders entered under the authority contained in Section 13(b) of the Immigration and Nationality Act of 1952, as amended; to the Committee on the Judiciary.

EC-4574. A communication from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders suspending deportation as well as a list of persons involved; to the Committee on the Judiciary.

EC-4575. A communication from the Secretary of Education, transmitting, pursuant to law, notice for grants to State Educational Agencies to Improve the Interstate and Intrastate Coordination of Migrant Education Program Activities; to the Committee on Labor and Human Resources.

EC-4576. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for Grants to State Educational Agencies for Educational Improvement, Resources, and Support; to the Committee on Labor and Human Resources.

EC-4577. A communication from the Assistant Secretary of Labor for Occupational Safety and Health, reporting, for the information of the Senate, relating to an amendment to H.R. 3904, the Multiemployer Pension Plan Amendment Act, which would amend the Occupational Safety and Health Act to exempt certain firms from programmed OSHA safety inspections; ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, with an amendment and an amendment to the title:

H.R. 2255. An act to amend the Bank Holding Company Act of 1956 to limit the property and casualty and life insurance activities of bank holding companies and their subsidiaries (Rept. No. 96-923).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment and an amendment to the title:

S. 2. A bill to require authorizations of new budget authority for Government programs at least every ten years, to provide for review of Government programs every ten years, and for other purposes (Rept. No. 96-924).

By Mr. GLENN, from the Committee on Governmental Affairs, with amendments:

S. 1938. A bill to ensure adequate protection of workers, the general public, and the environment from harmful radiation exposure, to establish mechanisms for effective coordination among the various Federal agencies involved in radiation protection activities, to develop a coordinated radiation research program, and for other purposes (Rept. No. 96-925).

By Mr. PROXMIRE, from the Committee on Appropriations, with amendments:

H.R. 7631. An act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 96-926).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry:

The following-named persons to be Members of the Federal Farm Credit Board, Farm Credit Administration:

Ralph Raikes, of Nebraska; and
William D. Wampler, of Virginia.

(The above nominations reported from the Committee on Agriculture, Nutrition, and Forestry were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HUMPHREY:

S. 3081. A bill for the relief of Edwin S. Greble; to the Committee on the Judiciary.

By Mr. TOWER:

S. 3082. A bill to reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated asset account as they existed prior to issuance of Revenue Ruling 77-85; to the Committee on Finance.

By Mr. PRESSLER (for Mr. McGOVERN (for himself and Mr. PRESSLER)) (by request):

S. 3083. A bill to deauthorize the Oahe Unit, James Division, Missouri River Basin Project, South Dakota; to the Committee on Energy and Natural Resources.

By Mr. BENTSEN (for himself, Mr. BOREN, and Mr. CHILES):

S. 3084. A bill to provide that a Federal agency may not require that any person maintain records for a period in excess of five years, and a Federal agency may not commence an action for enforcement of a law or regulation or for collection of a civil fine after five years from the date of the act which is the subject of the enforcement action or fine, and for other purposes; to the Committee on Governmental Affairs.

By Mr. NELSON:

S. 3085. A bill to amend the Internal Revenue Code of 1954 to allow a refundable income tax credit for the purchase of new automobiles manufactured by certain companies which have substantially increased their average fuel economy; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 3086. A bill to amend the Internal Revenue Code to provide that certain research and development expenditures will not be taken into account for purposes of the "small-issue exemption" from the industrial development bond rules; to the Committee on Finance.

By Mr. SASSER (for himself, Mr. MOYNIHAN, Mr. ROTH, Mr. NUNN, and Mr. DANFORTH):

S. 3087. A bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to order of August 4, 1977.

By Mr. MOYNIHAN:

S. 3088. A bill to amend the Internal Revenue Code to permit foreign pension plans to invest in the United States on a nontaxable basis; to the Committee on Finance.

By Mr. KENNEDY (for himself and Mr. METZENBAUM):

S. 3089. A bill to amend or disapprove certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence proposed by the Supreme Court; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself, Mr. NELSON, Mr. BOREN, and Mr. BAUCUS):

S. 3090. A bill to amend section 6427(e) of the Internal Revenue Code of 1954; to the Committee on Finance.

By Mr. DOMENICI:

S. 3091. A bill to authorize certain revisions to the boundary of Chaco Canyon National Monument, to provide for the protection of archeological sites of the Chacoan Culture, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. TSONGAS (for himself, Mr. JACKSON, Mr. MAGNUSON, Mr. BRADLEY, Mr. JAVITS, Mr. NELSON, and Mr. GRAVEL):

S. 3092. A bill entitled the "National Hostel System Act of 1980"; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN:

S. 3093. A bill to amend the Social Security Act to provide that the Federal Government will gradually take over the local share of

welfare and medicaid costs, and for other purposes; to the Committee on Finance.

By Mr. HATCH:

S. 3094. A bill to reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated asset account as they existed prior to issuance of Revenue Ruling 77–85; to the Committee on Finance.

By Mr. CRANSTON (for himself, Mr. BAYH, Mr. DANFORTH, Mr. DECONCINI, Mr. GARN, Mr. GOLDWATER, Mr. HAYAKAWA, Mr. JACKSON, Mr. MOYNIHAN, Mr. NELSON, Mr. PACKWOOD, Mr. STAFFORD, Mr. STEVENSON, and Mr. WILLIAMS):

S.J. Res. 201. Joint resolution to provide for the designation of a week as "National Lupus Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TOWER:

S. 3082. A bill to reinstate the tax treatment with respect to annunity contracts with reserves based on a segregated asset account as they existed prior to issuance of Revenue Ruling 77–85; to the Committee on Finance.

● Mr. TOWER. Mr. President, I am today introducing legislation to rectify an injustice caused by the Internal Revenue Service's sudden departure from longstanding procedure in the taxation of investment annuities. This bill, identical to H.R. 6287, introduced earlier this year in the House by Congressman BARBER CONABLE, would reinstate the tax treatment of annuity contracts with reserves based on a segregated asset account as they existed prior to the issuance of Revenue Ruling 77–85. This ruling was subsequently held unlawful by the U.S. District Court, District of Columbia, on the ground that it constituted an illegal, arbitrary, and capricious act beyond the statutory authority of the IRS, based on an unreasonable interpretation of the Internal Revenue Code. The appellate court, while not addressing the merits of the district court's decision, did invite Congress to provide relief, which this bill is designed to accomplish.

From 1963 to 1965, when the IRS issued basic rulings on the subject of variable, or investment annuities, all relevant departments of the national office of the IRS insisted that an innovative form of annuity upon which the Service had been asked to rule was purely and simply a variable annuity pursuant to the separate account laws that had previously been enacted in 1962.

During the ensuing 12 years after 1965, the IRS reaffirmed its basic position over 70 times, including the issuance of Revenue Ruling 68–488 pertaining to deferred annunities. On March 9, 1977, the IRS issued Revenue Ruling 77–85, which completely reversed its longstanding rulings upon which an important segment of the life insurance industry had relied. The result was, and continues to be, devastating to this segment of the industry.

Several Members of Congress protested this action to the Treasury and the IRS. On April 29, 1977, the Senate passed, by a vote of 57 to 26, an amendment to H.R. 3477, the Tax Reduction and Simplification Act of 1977, which would have deferred the effective date of Revenue Ruling 77–85 for 1 year in order to permit Congress to study the matter and to consider any appropriate legislation. Unfortunately, this amendment was not adopted in subsequent negotiations on H.R. 3477 by the House-Senate conference committee.

Immediately after the conference committee completed its work, one insurance company, the originator of the investment annuity and whose entire business was destroyed by the IRS's sudden flip-flop of position on this matter, sued the Internal Revenue Service in Federal District Court for the District of Columbia for arbitrary, illegal and capricious acts.

On November 9, 1977, the Court ruled that Revenue Ruling 77–85 was indeed unlawful and beyond the statutory authority of the IRS. Judge Charles R. Richley expressed the "confident assumption" that the IRS would proceed to rectify its error without the need for the issuance of an injunction.

However, the IRS refused, stating that it would appeal any injunction issued and would retroactively tax any annuities sold during the interim of the appellate process, should the IRS prevail on appeal.

The President's 1978 tax program proposed the taxation of all nonqualified deferred annuities in the same way as that imposed upon the investment annuity by Revenue Ruling 77–85, which, of course, had been declared unlawful by Federal district court.

The President's 1978 tax proposals relating to all annuities were wisely rejected by the House Ways and Means Committee during its consideration of H.R. 12173, to override Revenue Ruling 77–85, which was approved by committee by a vote of 22 to 14. Due to a procedural constraint at that time, however, H.R. 12173 was not incorporated in the tax bill reported by the committee.

The appellate court declared that it did not have jurisdiction and, therefore, reached no decision on the merits of the case. The appellate court added language, however, inviting Congress to fashion appropriate relief:

> This is not a situation where there are no remedies, however. Congress keeps a watchful eye on developments in the tax field, and will listen to citizens with a grievance or plea.

Mr. President, the entire matter, quite frankly, is a clasic case of the will of Congress being frustrated and subverted by agency action in influencing the legislative process. The advocates of the investment annuity have a serious grievance which, in my mind, requires a prompt congressional remedy. I believe that the action by the IRS in issuing the manifestly unreasonable and unsupportable Revenue Ruling 77–85 deserves the attention of the Senate before adjournment this year in order to restore the investment annuity to its proper place, tax-wise, under the law and to resolve the severe inequities which have resulted from the internal revenue service's arrogant disregard for sound judicial authority.●

By Mr. BENTSEN (for himself, Mr. BOREN, and Mr. CHILES):

S. 3084. A bill to provide that a Federal agency may not require that any person maintain records for a period in excess of 5 years, and a Federal agency may not commence an action for enforcement of a law or regulation or for collection of a civil fine after 5 years from the date of the act which is the subject of the enforcement action or fine, and for other purposes; to the Committee on Governmental Affairs.

LIMITATION ON GOVERNMENT RECORDKEEPING REQUIREMENTS ACT OF 1980

● Mr. BENTSEN. Mr. President, I think it is indeed ironic that much of the criminal element in this country—our forgers, embezzlers, thieves and extortionists—are protected by a statute of limitations. If they can perpetrate a crime and remain undetected for a specified number of years, they can be assured of immunity from prosecution for that deed, no matter how strong the case against them.

But there is no statute of limitation for the honest, hardworking small businessman or entrepreneur who unwittingly violates one of the rules or regulations that spew forth from this city like volcanic ash from the summit of Mount St. Helens. The innocent taxpayer who happens to violate a dictate of DOE or the EPA is liable forever; and he would be well advised to maintain records that go back years and years just in case he is called to account by a Federal agency for an alleged misdeed sometime in the distant past.

I can really see no good reason, Mr. President, to accord the professional criminal element in this country a greater measure of protection than we offer to our law-abiding citizens. I am therefore introducing legislation today with Senators BOREN and CHILES that would place a 5-year statute of limitations on the enforcement of rules and regulations promulgated by Federal agencies. This legislation would also limit to 5 years the time period required for individual recordkeeping.

Mr. President, at a time when compliance with Federal rules and regulations creates a $100 billion annual drag on our economy, it is obvious in our national interest to reduce whenever possible and appropriate the crushing burden of Federal interence.

We should understand that this burden falls most heavily on the shoulders of small and medium-sized enterprises—those segments of our economy least able to afford it. The fortune 500 corporations can afford the lawyers, the trade associations and the accountants required to keep abreast of and in compliance with all Federal regulations. They can afford to microfilm their records and keep them indefinitely as insurance against a change, however ill conceived, that they violated a Federal regulation a decade ago.

But the small company frequently lacks the resources for this sort of monitoring and recordkeeping. These corporations are more likely to put their scarce resources into the sort of R. & D. or new

equipment that our economy needs so desperately. And these are the companies that would benefit most from a statute of limitations on the enforcement of Federal regulations and at the same time a limit on recordkeeping requirements.

Let me emphasize that this 5-year statute of limitations will not apply in cases of fraud or willful or knowing violation. In addition, actions and records relating to dangerous material are also exempted from the 5-year rule. The legislation is designed to protect against harassment for inadvertent violations far in the past and to reduce the cost involved in recordkeeping.

Mr. President, if enacted into law, this proposal will be favorably received by millions of small businessmen in America; it will free up scarce resources and put them to more productive use. It will not diminish the force of effectiveness of necessary regulations, but it will protect honest businessmen all across this country from the lingering fear of prosecution for an alleged violation more than 5 years in the past.

Mr. President, I hope the Senate will move promptly to approve this legislation and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3084

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Limitation on Government Recordkeeping Requirements Act of 1980".

SEC. 2. (a) Except as otherwise provided by the Internal Revenue Code of 1954 or any regulations promulgated under such Code and Subsection (b)—

(1) an agency may not require, or enforce any law or regulation to the extent that such law or regulation requires, that any person maintain, prepare, or produce any record (other than a record relating to a dangerous material), after the expirtaion of five years after the date of the transaction or event which is or is to be the subject of such record; and

(2) an agency may not commence an action, suit or proceeding against any person for enforcement of a law or regulation or for the collection of any civil fine, penalty, or forfeiture (other than action, suit, or proceeding relating to a dangerous material) after five years from the date of the act or failure to act which is the subject of such action, suit or proceeding, or fine, penalty or forfeiture.

(b) Subsection (a) shall not apply in any case involving—

(1) fraud;

(2) a willful or knowing violation; or

(3) an untrue statement of material fact made to an agency, or the omission of any material fact necessary to make a statement to such agency not misleading

(c) For the purposes of this section—

(1) "agency" has the meaning given such term in section 551(1) of title 5, United States Code;

(2) "Dangerous material" means—

(a) hazardous waste as defined in section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903); and

(b) byproduct, source, or special nuclear material, as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014);

(3) "Person" includes an individual, corporation, partnership, and an association; and

(4) "Regulation" means the whole or part of a statement by an agency regarding the applicability or enforceability of a provision of law.●

By Mr. MOYNIHAN:

S. 3086. A bill to amend the Internal Revenue Code to provide that certain research and development expenditures will not be taken into account for purposes of the "small-issue exemption" from the industrial development bond rules; to the Committee on Finance.

● Mr. MOYNIHAN. Mr. President, we have heard a great deal recently about venture capital firms and how the United States needs more of them if we are to compete with the Japanese and West Germans. These are small companies, set up by individuals who have worked for high-technology giants like IBM and ITT, but who have ideas of their own that they want to develop and market. Venture capitalists started the microchip boom in the 1970's. They are already heavily involved in the next growth industry, biotechnology. In short, they are terribly important to the American economy.

That this is the case is well understood. But what is not generally known is that the Federal tax laws discriminate against venture capitalists. We let cities borrow money, at tax-exempt rates, for small stores and small factories, but not for venture capital firms or, for that matter, for any small business that spends a large part of its budget on research and development.

This difference in treatment arises because of the way the Internal Revenue Service has interpreted section 103 of the Tax Code. I am, therefore, proposing legislation that would change the code. If cities can borrow for small manufacturers, they should also be able to borrow for venture capital firms.

Technically, the question is how two words used in the "small-issue exemption" for industrial development bonds should be defined. IDB's are a type of municipal bond, but they have certain distinctive features. For one, a city issues a municipal bond to borrow money for itself to build a hospital, school, or other public project. But it issues an IDB to borrow for someone else, usually a private company. In this way, the city can induce a company to set up shop nearby and to provide jobs for local workers.

Another difference is that municipal bonds are tax exempt. IDB's are not, although there are exceptions, one of which is the "small-issue exemption." The exemption is very complicated. Unfortunately, it can be stated only in mathematical terms. I will say it slowly. IDB's issued by a city are tax exempt if the face amount of the bond issue plus the "capital expenditures" of the company in the 3 years preceding and the 3 years following the issue date do not exceed $10 million.

Venture capital firms rarely, if ever, can take advantage of the exemption. Other small businesses can. The reason is the IRS has defined the term "capital expenditures" in a way that excludes venture capitalists. "Capital expenditures" are obviously such items as the cost of land, buildings, machinery, and other depreciable assets. But the IRS maintains that research and development expenses also are covered.

This makes it difficult, if not impossible, for companies in rapidly changing, high-technology fields to take advantage of IDB financing. It is not unusual for even small venture capital firms to spend millions of dollars in research over a period of several years. These companies must develop their own products. Companies that merely buy their inventory from others have no problem. Since they can ignore the money invested in product development by others, they are less likely than venture capital firms to exceed the $10 million limit on "capital expenditures."

Surely this is an oversight by Congress. If not, it is appalling economic policy. My bill would correct for it by making clear that research expenses are not "capital expenditures." I ask unanimous consent, Mr. President, that the measure be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3086

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(a) Paragraph (6) of section 103(b) of the Internal Revenue Code of 1954 (relating to exemption for certain small issues) is amended by adding at the end thereof the following new subparagraph:

"(J) RESEARCH AND EXPERIMENTAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—For purposes of applying subparagraph (D)(ii), research and experimental expenditures (within the meaning of section 174) shall not be taken into account."

(b) The amendment made by subsection (a) shall apply—

(1) to obligations issued after the date of the enactment of this Act in taxable years ending after such date, and

(2) with respect to capital expenditures made after December 31, 1979.●

By Mr. SASSER (for himself, Mr. MOYNIHAN, Mr. ROTH, Mr. NUNN, and Mr. DANFORTH):

S. 3087. A bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to order of August 4, 1977.

STATE AND LOCAL GOVERNMENT FISCAL NOTE ACT OF 1980

● Mr. SASSER. Mr. President, today I am introducing the State and Local Government Fiscal Note Act of 1980. I am pleased to be joined as cosponsors by Senators MOYNIHAN, ROTH, NUNN, and DANFORTH on this important legislation.

The Senate Intergovernmental Relations Subcommittee is holding hearings today on this bill and on S. 2691, the State and Local Government Cost Esti-

mate Act of 1980 which was introduced earlier this year by my distinguished colleague from New York, Senator MOYNIHAN.

Both the Fiscal Note Act and S. 2691 would require the Congressional Budget Office to estimate the costs which would be incurred by State and local governments in carrying out or complying with Federal legislation. These estimates would be made only for those bills or resolutions which are reported by congressional committees, not for all bills which are introduced. The CBO already undertakes these estimates, commonly known as fiscal notes, to determine such costs to the Federal Government itself.

The rationale for both bills is straightforward. The costs of many activities undertaken to further Federal policies are not always borne exclusively by the Federal Government. On the contrary, significant costs may be assigned to State and local governments, sometimes with accompanying Federal assistance, but sometimes without.

By extending the fiscal note process to include the costs to State and local governments, the Congress would be better able to evaluate whether the total benefits of a given program are justified by the total costs and to decide just how the costs should be apportioned among the three levels of government.

In hearings before the House Budget Committee last year, H.R. 3697, the House equivalent of S. 2691, received unanimous support of the State and local public officials who testified.

The State and Local Fiscal Note Act differs from S. 2691 in three areas. First, the effective date would be October 1, 1981, thus providing ample time for the CBO to develop appropriate methodologies for the analysis. Second, the bill would require State and local fiscal notes only for bills or resolutions which would result in an annual cost of $200 million or more to State or local governments—or which would have exceptional fiscal consequences for a particular level of government or geographic region. And third, it inludes a sunset provision by which the act will expire on September 30, 1984.

The second change would reduce the potential workload of the CBO. Rather than requiring the BOC to do fiscal notes on all the approximately 100 bills reported annually which affect the lower levels of government, the CBO would only develop fiscal notes for those which would impose significant costs. Should a bill or resolution not exceed the $200 million cost floor, but still have exceptional fiscal consequences for a particular level of government or geographic region, the CBO would prepare a fiscal note anyway.

I would like to call the State and Local Government Fiscal Note Act of 1980 to the attention of the Senate and I recommend its swift passage.

The passage of this measure would provide a strong and a clear signal to State and local governments that we realize that no one level of government has infinite resources, that we are prepared to carefully weigh the total costs of national goals against the total benefits, and that we are prepared to cease to ignore some of the costs by merely passing them along to other levels of government.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3087

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "State and Local Government Fiscal Note Act of 1980."

SEC. 2. (a)(1) Section 403 of the Congressional Budget Act of 1974 is amended by inserting "(a)" before "The".

(2) Clause (1) of Section 403(a) of such Act (as redesignated by paragraph (1) of this Subsection) is amended by striking out "costs which would be incurred in carrying out such bill or resolution" and inserting in lieu thereof "the costs which would be incurred by the Federal Government in carrying out such bill or resolution, and an estimate of the costs which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution".

(3) Section 403(a) of such Act (as redesignated by paragraph (1) of this Subsection) is further amended by striking out "estimate" each place it appears in clause (2) and in the last sentence, and inserting in lieu thereof "estimates".

(b) Section 403 of such Act is further amended by adding at the end thereof the following subsection:

"(b) For purposes of Subsection (a)(1), the term 'local government' has the same meaning as in Section 103 of the Intergovernmental Cooperation Act of 1968."

"(c) For purposes of Subsection (a)(1), the term 'significant bill or resolution' is defined as any bill or resolution which in the judgment of the Director of the Congressional Budget Office is likely to result in an annual cost to state or local governments of $200 million or more or to have exceptional fiscal consequences for a particular level of government or geographic region."

SEC. 3. The amendments made by Sec. 2 of this Act shall apply with respect to significant bills or resolutions reported by committees of the Senate and the House of Representatives after September 30, 1981.

SEC. 4. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 5. The authorization granted under the terms of this Act shall expire on September 30, 1984.●

● Mr. ROTH. Mr. President, I am pleased to cosponsor the State and Local Government Fiscal Note Act of 1980 with my colleague and chairman of the Subcommittee on Intergovernmental Relations, Senator JIM SASSER.

In the years since the passage of the Congressional Budget Act in 1974, the Congress has been receiving better information on the economic effects of proposed policies and programs. The act contains a requirement that the Congressional Budget Office supply the Congress with a 5-year estimate of the fiscal impact on the Federal Treasury of all legislation reported from the committees to the Congress. This requirement, while far from perfect, has, in many instances, provided better information to the Congress on the potential effects of proposed legislation.

Unfortunately, we know little about the economic effects of proposed legislation on State and local governments, our supposed partners in the Federal system. Over 15 percent of the 1980 Federal budget went to pay for grant programs administered by the States and localities. Almost 80,000 units of State and local government participate in the various Federal programs. Nearly two-thirds of the Federal budget is used to finance shared functions in which other levels of government or individuals have roles as partners or beneficiaries. It is clear that the Federal Government has a large, if often ignored, effect on States and localities.

Congress must reform its legislative procedures so that questions relating to federalism are considered by the members and committees. For example, one requirement recently mandated by Congress as a part of the conditions attached to many grant programs, may wind up costing States and local entities up to $6.8 billion nationally to implement. The requirement was never the subject to hearings, its economic effects were never considered, and its wording and meaning were vague and unclear.

To prevent such legislating, Congress should enact a fiscal note process which would require a careful analysis of the economic effects of all major bills upon States and localities. Such a fiscal note requirement is standard procedure in over 30 State legislatures and has helped to reduce the amount and cost of State requirements and rules heaped upon local governments. At a minimum, a Federal fiscal note requirement would force Congress to consider questions related to federalism in its deliberations, something which has rarely been done in the recent past.

I believe the legislation we are introducing today will give us the tools we need to carefully assess the potential results of our enactments on the Federal system. I commend Senator SASSER for his leadership on this issue and hope my colleagues will give this legislation careful consideration.●

By Mr. MOYNIHAN:

S. 3088. A bill to amend the Internal Revenue Code to permit foreign pension plans to invest in the United States on a nontaxable basis; to the Committee on Finance.

● Mr. MOYNIHAN. Mr. President, I am introducing legislation today that would exempt from U.S. taxation the investment income earned by certain foreign pension plans in the United States.

Under present law, a U.S. pension plan does not pay tax on its investment income, provided the plan meets certain Federal standards. It must be "qualified," in the language of the Internal Revenue Code. The same rule applies to foreign pension plans. This may seem fair but it is not.

In effect, we are forcing other countries to conform to our philosophy of what makes a pension plan safe, when their own may make just as much sense within their system. For example, in the United States, we require that a pension plan be "fully funded." That is to say,

an employer must set aside enough money each period to pay all of the benefits that have been promised. In West Germany, on the other hand, the government actively discourages employers from fully funding their plans. The German Government wants capital that will be needed in the future to pay benefits reinvested in the employing companies and not tied up in trusts.

Why should we require that a West German plan be "qualified" under U.S. law before it is given favorable tax treatment? The answer simply is that we should not. It should suffice that the plan is considered sound by the West German Government. After all, the plan covers West German workers. We have no business ordering such plans to conform to our standards before they may invest here on favorable terms.

Not only does the present practice offend foreign countries, but it also penalizes us by preventing American industry from tapping a potential source of investment capital. Few foreign plans buy U.S. stock or bonds now. But I predict that many would do so if U.S. tax law were changed. Foreign pension fund managers are eager to diversify their portfolios and reduce their dependence on the economies of their home countries. The United States has a long history of political and economic stability, making it a much more desirable place to invest than most other nations.

My bill would retain the general rule that a pension plan must be "qualified" before it is exempt from tax on its investment income. But for foreign plans, qualification would be determined by looking to the laws of the foreign country. Is the income of the plan exempt from tax or subject to a reduced rate of taxation in the country where the plan is maintained? That would be the test.

The bill would also establish a framework for reviewing whether other countries discriminate against U.S. pension plans. Pension plans in countries that do discriminate could be denied the benefits of the bill. The proposal should result in little or no revenue loss, since there is practically no investment by foreign pension plans now.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3088

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(a) Section 501(c) (relating to organizations exempt from tax under section 501(a)) is amended by adding the following new paragraph:

"(22) A trust or corporation which is formed pursuant to, or as part of, a foreign pension plan which satisfies the following requirements—

"(A) the plan is maintained primarily to provide retirement or similar benefits to employees who are primarily nonresident alien individuals;

"(B) the assets of the plan are segregated from the assets of the employer or employers maintaining the plan pursuant to the laws of the foreign country in which such plan is maintained; and

"(C) under the laws of the foreign country in which the plan is maintained, the income of the plan is exempt from tax or is subject to a reduced rate of taxation than is generally imposed on other residents of such foreign country.

The exemption provided by this paragraph shall be subject to adjustment under section 896 (relating to the adjustment of tax of nationals of foreign countries), and no later than January 1, 1984, the President shall report to Congress on the extent to which he has exercised the authority under that section with respect to relief from foreign income taxes for plans described in section 401(a)."

(b) Section 512(a)(2) (relating to the unrelated business taxable income of certain foreign organizations) is amended by inserting "or section 501(c)(22)" immediately after "section 511".

(c) Section 805(d) (relating to pension plan reserves of life insurance companies) is amended by adding the following new paragraph:

"(7) purchased by a foreign pension plan (within the meaning of section 501(c)(22))."

(d) The amendments made by this section shall become effective on January 1, 1981.●

By Mr. KENNEDY (for himself and Mr. METZENBAUM):

S. 3089. A bill to amend or disapprove certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence proposed by the Supreme Court; to the Committee on the Judiciary.

● Mr. KENNEDY. Mr. President, today, together with my colleague Senator METZENBAUM, I am introducing legislation to address a number of amendments to the Federal Rules of Criminal Procedure which are currently pending before the Congress. Last year, on April 30, 1979, the Chief Justice of the United States sent to the Congress a number of amendments to the Federal Rules of Appellate Procedure, Federal Rules of Criminal Procedure, Federal Rules of Evidence, and rules governing habeas corpus (House Doc. No. 96–112). All but eight of these rules went into effect automatically at the expiration of the applicable time periods.

Congress, however, delayed the effective date of eight rules relating to plea agreements—rules 11(e)(6) of the Federal Rules of Criminal Procedure and 410 of the Federal Rules of Evidence—criminal discovery—rules 26.2 and 17(h) of the Federal Rules of Criminal Procedure—probation revocation—rules 32.1, 32(f), and 40(d) of the Federal Rules of Criminal Procedure—and multiple codefendant representation—rule 44(c) of the Federal Rules of Criminal Procedure. The effective date of these rules was delayed until December 1, 1980, because of a number of issues—both legal and constitutional—which were raised.

The legislation which we are introducing today disposes of those rules which are still pending before Congress. Briefly, this legislation provides that the rules relating to plea agreements and criminal discovery will not take effect; the rules relating to probation revocation and multiple codefendant representation will take effect as modified.

I would like to point out, Mr. President, that the decision that certain rules shall not take effect is not a rejection of these rules on their merits. Rather, it should be viewed both as a request as well as an opportunity for the Advisory Committee to reexamine these rules in light of both the issues which have been raised by members of the bar and legal scholars, and the case law which has developed while these rules have been pending before Congress which the Advisory Committee has not had the opportunity to review and analyze.

In fairness to the excellent work which the Advisory Committee has done in the past—and which we urge it to continue to do in the future—the committee sent out over 7,000 copies of the proposed rules, but received very few responses to them. The issues which have been raised before the Congress were not presented to the Advisory Committee for consideration or debate. We would strongly urge that, when these rules come again before the Advisory Committee for discussion, the members of the bar who have raised the issues before us participate fully in their consideration before the committee.

The provisions of this legislation relating to plea agreements and criminal discovery should in no way be interpreted as an effort to influence the Advisory Committee which will address these issues in the future. Nor is this legislation an attempt directly or indirectly to influence the expansion or limitation of developing case law in the courts.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3089

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding the provisions of—

(1) sections 3771 and 3772 of title 18, United States Code;

(2) sections 2072, 2075, or 2076 of title 28, United States Code; and

(3) the Act entitled "An Act to delay conditionally the effective date of certain rules of procedure and evidence proposed by the United States Supreme Court, and for other purposes", approved July 31, 1979;

the amendments to the rules proposed by the United States Supreme Court, transmitted by the Chief Justice on April 30, 1979, and specified in subsection (b) of this section shall take effect only as provided in such subsection.

(b)(1) Rule 11(e)(6) of the Federal Rules of Criminal Procedure as amended by the amendments so proposed and transmitted shall not take effect, but rule 11(e)(6) of the Federal Rules of Criminal Procedure as in effect on April 30, 1979 shall remain in effect.

(2) Rule 410 of the Federal Rules of Evidence as amended by the amendments so proposed and transmitted shall not take effect, but rule 410 of the Federal Rules of Evidence as in effect on April 30, 1979 shall remain in effect.

(3) Rules 17(h) and 26.2 of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall not take effect.

(4) Rule 32.1 of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall take effect as proposed and transmitted, except that—

(A) paragraphs (1) and (2) of subsection (a) shall be redesignated as paragraphs (2) and (3); and

(B) the following new paragraph shall be inserted after "(a) REVOCATION OF PROBATION.":

"(1) Institution of Proceeding. If there is cause to believe that a probationer has violated a condition of probation—

"(A) a probation officer may issue a summons for such probationer to appear at a preliminary hearing under paragraph (2);

"(B) the court may issue a warrant to retake the probationer; or

"(C) the probation officer may arrest the probationer pursuant to the provisions of section 3563 of title 18, United States Code.".

(5) Rules 32(f) and 40(d) of the Federal Rules of Criminal Procedure as added or amended by the amendments so proposed and transmitted shall take effect as proposed and transmitted.

(6) Rule 44(c) of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall take effect as proposed and transmitted, except that the second sentence thereof shall be amended by striking out "Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court" and inserting in lieu thereof "The court".

SEC. 2. This Act and the amendments made by this Act shall take effect on December 1, 1980.●

By Mr. MOYNIHAN (for himself, Mr. NELSON, Mr. BOREN, and Mr. BAUCUS):

S. 3090. A bill to amend section 6427 (e) of the Internal Revenue Code of 1954; to the Committee on Finance.

● Mr. MOYNIHAN. Mr. President, taxicab operators have not had to pay the 4-cent-a-gallon Federal excise tax on gasoline since January 1, 1979. Or, more precisely, they have paid the tax, but they have then had it refunded to them by the Federal Treasury.

This arrangement was prescribed by Congress in the 1978 Surface Transportation Assistance Act. But authority for the refunds is scheduled to expire at the end of 1980. The bill I am introducing today would extend it for another 12 months, through next year.

We need an extension because there has not been sufficient time to judge whether the taxicab rebate program has been a success and should be made permanent. First, the IRS has been slow to implement it. Forms for refund applications were not printed until the summer of last year and they were not available in all district offices until last June. In July, a survey of 350 cab companies showed that two-thirds of those eligible for refunds still had not received them.

Second, while we have very clearly in mind what the rebate program must do to succeed, we lack the data we need to evaluate it. Congress directed that gas taxes be refunded to cab operators for two reasons. It wanted to encourage cab companies to buy more fuel-efficient automobiles. We did this by denying refunds to cabbies who buy 1978 or later model-year taxis that do not meet Federal fuel-economy standards.

The International Taxicab Association says that in 1978, before the refunds, the average taxicab got 11.8 miles per gallon, while in 1979, it got 12.6 miles per gallon, a 7-percent increase. The fuel efficiency of the average passenger vehicle was up by only 1.5 percent during the same period. These are impressive statistics, but we need more time to determine whether the improvement was due to the rebate or to other factors.

Congress also wanted to encourage cities to let drivers carry more than one passenger, or more than one group of people going to a single destination, at a time. This was done by limiting the refunds to cabs in jurisdictions where State or local law does not prohibit shared rides. The conference report on the 1978 act said:

> The conferees expect that the Treasury Department and the taxicab industry will determine, and report to the tax-writing committees before the end of the two-year exemption, the extent to which government (and other) barriers to ride sharing have been removed. . . .

The industry has already made its report. According to it, ride-sharing programs stimulated by the rebate have caused the average number of passengers carried per trip to increase from 1.2 in 1975 to 1.8 in 1980:

> When these figures are viewed in terms of gasoline consumed to passenger trip, the taxicab industry has reduced its fuel consumption per passenger trip by 38 percent since 1975.

But the Treasury Department has made no presentation of its own. And the Department of Transportation has not yet finished a study that it undertook with the cooperation of the cab industry earlier this year.

The rebate program should neither end nor be made permanent until Congress has had a chance to evaluate it properly.

Mr. President, three of my colleagues on the Finance Committee are joining me today as cosponsors. I ask unanimous consent that our bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3090

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph 3 of section 6427(e) of the Internal Revenue Code of 1954 (relating to refunds of Federal excise taxes paid on gasoline used in certain taxicabs) is amended by striking out "1980" and inserting in lieu thereof "1981".●

By Mr. DOMENICI:

S. 3091. A bill to authorize certain revisions to the boundary of Chaco Canyon National Monument, to provide for the protection of archeological sites of the Chacoan culture, and for other purposes; to the Committee on Energy and Natural Resources.

CHACOAN CULTURE PRESERVATION ACT

● Mr. DOMENICI. Mr. President, I introduce today, a bill to establish the Chaco Culture National Historical Park. This legislation will authorize certain revisions to the boundary of Chaco Canyon National Monument and redesignate the monument as a national historical park. It will provide for the protection and maintenance of certain outlying archeological sites representative of the prehistoric Chacoan culture in the San Juan basin of New Mexico.

The San Juan basin is a major geological feature, roughly 150 miles across, encompassing the entire northwestern portion of New Mexico and parts of Arizona and Colorado. The San Juan basin forms the setting of the Chacoan, Mesa Verdean, and Chuskan Anasazi cultures dating from A.D. 500 to A.D. 1300 when these cultures flourished.

Archeological research of the past decade has provided evidence that the prehistoric Chacoan culture may have been the most highly organized and far-reaching culture of its time on this continent north of Mexico. The Chacoan cultural system grew to include at least 80 communities spread throughout a 30,000-square-mile region. All of these communities may have been linked by an extensive road system emanating from the massive masonry structures of Chaco Canyon.

Today the San Juan basin is a major center of the Nation's energy development. Over 77,000 acres of the basin have existing or pending coal leases. New recovery techniques are being developed to increase the production of oil and gas in the San Juan basin, which already supplies 6 percent of the oil and 44.5 percent of the gas produced in New Mexico. There are over 100 uranium mines and an estimated 30,000 uranium claims throughout the basin.

In conjunction with development of energy resources in the basin, other resource values must be considered. The areas' paleontological resources compose a unique and fairly complete fossil record of the period when mammals succeeded dinosaurs as the dominant life form. The record of the ancient Anasazi civilization found in Chacoan communities cannot be ignored.

Development of the San Juan basin's important natural resources will not be hindered by the preservation of the archaeological integrity of the area. The sites under consideration include less than 0.2 percent of the San Juan basin, and techniques exist for extraction of energy resources without immediate damage to the archaeological sites. The Chacoan resources of the San Juan basin can be protected and preserved, while at the same time the rights of current landowners to the traditional use of their properties can be respected.

Cooperation of all agencies, individuals and commodity producers within the basin is needed to insure a balance among uses to assure environmental protection and resource availability. This cooperation is already in evidence today. A major Chacoan archaeological research effort has resulted in the publication "Anasazi Communities of the San Juan Basin." This effort was equally funded by the Public Service Company of New Mexico, and the State of New Mexico with the Heritage Conservation and Recreation Service, Department of the Interior.

This legislation will provide a firm foundation for continuing this cooperation among the diverse interests of the archaeological and academic communities, the energy producing interests, the involved Federal and State agencies, the Navajo Nation, and individual New Mexicans.

I anticipate this bill will result in a national model of what can be achieved by diverse interests working together for mutual benefit.

I urge the rapid consideration of this bill.●

By Mr. TSONGAS (for himself, Mr. JACKSON, Mr. MAGNUSON, Mr. BRADLEY, Mr. JAVITS, Mr. NELSON, and Mr. GRAVEL):

S. 3092. A bill entitled the "National Hostel System Act of 1980"; to the Committee on Energy and Natural Resources.

NATIONAL YOUTH HOSTEL SYSTEM ACT OF 1980

● Mr. TSONGAS. Mr. President, today I am introducing the "National Hostel System Act of 1980," a bill to plan for the development of a national youth hostel system. I am pleased that Senators JACKSON, MAGNUSON, BRADLEY, JAVITS, NELSON, and GRAVEL have joined with me as sponsors of the bill. It is the intent of this legislation to establish a commission for the purpose of developing a national hostel system plan. The commission shall consider such factors as existing hostel facilities and their locations; an assessment of the demand for hostel facilities; the identification of locations conducive to hostel development such as national parks, historic and recreation sites; minimum standards for management; and an assessment of the applicability and feasibility of incorporating existing State and Federal employment programs such as the young adult conservation corps, the Comprehensive Employment and Training Act program and summer youth programs. The commission will also examine the role of the Federal Government in such a system.

Currently there are over 5,000 youth hostels located in 50 nations around the world, including the United States. The international youth hostel system promotes low-cost, energy efficient travel for people of all ages. Hostels provide low-cost, usually dormitory style accommodations for national and international travelers throughout the world. Because of their dormitory-like bedrooms and open lounges, hostels provide unique opportunities for travelers to share their experience with travelers from many nations. Recently President Carter praised American Youth Hostel, Inc. for "its dedicated and highly successful efforts in the field of low-cost youth travel accommodations * * * (and for its) outstanding work (which has) greatly advanced international understanding and goodwill and strengthened our efforts to maintain peace in the world."

While in the United States we have only 240 hostels, Japan has over 563 hostels, West Germany over 550, and Great Britain over 269. These nations have recognized the important economic and cultural values of youth hostels and thus have actively participated in planning and developing hostel systems within their respective countries. Great Britain pays 50 percent of construction costs for approved hostels and Japan pays up to 90 percent. The economic spin-offs derived from the availability of these low-cost accommodations should not be underestimated. The savings on the cost of lodging can be spent in other sectors of the economy, in local restaurants, markets or cultural attractions.

Low-cost tourist accommodations in Europe, combined with the inflated dollar and low airfares, made European travel more accessible to east coast residents than cross-country travel in the United States. However, now that foreign currencies buy more in America, we must take advantage of the foreign tourist market available to us. We need to cultivate this market and one of the best means available is to provide a familiar youth hostel system.

Not only are low-cost accommodations important to encourage foreign travel in the United States: We can encourage greater use of our recreational, historic, educational, and cultural facilities by Americans if we have a well-developed national youth hostel system. Camp Fire, Inc., a national nonprofit youth organization, has written endorsing this legislation because it—

> Will enhance opportunities for youth to travel across this Nation by increasing the number of facilities that are affordable, where youth can build friendships and find safety when taking rest . . . (it) will result in learning experiences for young people in settings that encourage the study of nature and conservation of natural resources.

It is the intention of this bill to promote the development of a national youth hostel system in order to encourage increased use of our existing national resources, our parks, and historic sites, while promoting recreation and energy efficient travel. Hiking and biking groups support the bill as well as conservation and preservation groups.

One of the very attractive aspects of the bill is that it encourages the use of existing structures at historic sites, structures designated as part of the National Register of Historic Places. This contributes to the cultural and educational value of hosteling, furthers our goal of preserving architectural structures of historic and cultural value, and provides constructive use of these structures. The rehabilitation of these sites contributes to local revitalization efforts and is energy and resource efficient as well as labor intensive. One of the provisions of the bill directs the commission to evaluate the feasibility of using employment programs like Young Adult Conservation Corps and CETA to participate in the rehabilitation efforts. Skills learned in rehabilitating historic structures can prove valuable as our urban revitalization efforts expand. One need only look at Washington to see the market for workers skilled in housing rehabilitation.

Conservation, preservation and recreation groups, hiking, biking, airline, and railroad interests, national and international groups, young and old, all support the development of a national youth hostel system. Obviously there is a need for this program: Government financing of the development plan will provide the stimulus for private sector development and management of the Nation's hostels.

I am pleased to introduce this legislation today and appreciate the support of my cosponsors Senators JACKSON, MAGNUSON, BRADLEY, JAVITS, NELSON, and GRAVEL. Also I ask unanimous consent that three newspaper articles be included in the RECORD regarding hosteling. I urge my colleagues to carefully consider this legislation and join with me in sponsoring the National Hostel System Act of 1980.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, July 13, 1980]

CONGRESS MAY MODESTLY HELP MODEST TRAVEL

(By Jill Smolowe)

Long associated with backpacking youngsters hitchhiking across Europe, hostels may soon be gaining popular support, and Government aid, in the United States. Granted, hostlers must be willing to sleep in bunk beds, share bedrooms and bathrooms with as many as seven others and sometimes perform housekeeping chores, including sweeping floors. But at an average cost of $3 to $5 per night, the budget-minded nowadays may be willing to overlook inconvenience and even adhere to occasional prohibitions against liquor, cigarettes, mixing of the sexes and staying out after midnight.

The trouble with hostels in the United States, say enthusiasts fresh from their European adventures, is that they are too few and far between. West Germany, for example, boasts more than 550 facilities and children are introduced to hostels as part of their schooling. In London, four facilities provide 1,000 beds on any night, while may of the 269 hostels dotting the English and Welsh countrysides are only a day's hike or bike trip from each other.

Vast distances separate America's 240 hostels, and this country is unique among Western nations in having no Government subsidies for them. Only about 20 percent are in cities, the areas most attractive to foreigners: New York City has none at all.

This could now change. In May, the House of Representatives passed legislation calling for a two-year national plan to develop model hostels. While not financing construction of new facilities, the bill does call for the Government to grant up to $200,000 for each existing building that would be renovated for use as a hostel. This month, the Senate Subcommittee on Parks, Recreation and Renewable Resources received the amended House measure. If it meets the subcommittee's approval and that of the parent Committee on Energy and Natural Resources, the bill will come before the full Senate in August.

Members of American Youth Hostel, Inc., the sole hostel system in the United States, are hoping that their two years of planning and lobbying for Congressional action will pay off as these residences become a way-of-American-life. "And without creating a new ward of the state," says Toby Gearhart, assistant manager of the only hostel in Washington, D.C.

Mr. Gearhart said that some American facilities belong to and are operated by the American youth hostel organization, which, as a member of the International Youth Hostel Federation, links them with an international network of 5,000 hostels in 50 member nations on six continents. But the majority, he said, are owned and operated by private citizens, who receive occasional financial assists from A.Y.H. "And most of these," he said, "are profitable enough to support themselves."

Thus passage of the legislation and enactment of subsidies, Mr. Gearhart said, would

mean a net increase of units in a fairly self-sufficient system. "And more hostels in the United States would promote travel," said Tom Newman, executive director of the American hostel organization. "If you get people out to travel, even if they take low cost accommodations," he added, "they are still going to spend a lot of money in the cities that they visit."

Mr. Newman said that the rising costs of fuel and transportation and the shrinking purses people can spend on leisure activities are making hostels an increasingly appealing option for Americans of all ages. School groups, families and individuals are discovering that they need not pay an average of $35 to $40 a night for a hotel room when they can stay in a hostel for less than $6.

"People who are traveling on a shoestring budget come to cities without hostels and are floored by the prices," said Ralph Lusich, who directs the American Youth Hostel facilities in New York State. Contending that such experiences discourage tourism, he noted that "European governments are very interested in establishing hostels not only to encourage their own young to travel but as a spin-off. They know that a foreigner who travels to their country at 18 on a low budget will return when he's 25 or 30 years old traveling first class."

Though documentation is hard to find, this notion is shared by people expert in the travel and tourist business. Officials at the United States Travel Service, in the Department of Commerce, and the United States Travel Data Center in Washington, D.C., for example, agree that traveling inexpensively at an early age encourages people to continue traveling throughout their lives.

Mr. Gearhart suggested that a national hostel system could also encourage a certain American boosterism. "Even though hostels are international, they are in some ways very nationalistic," he said. "In Uruguay and Bolivia, for example, they are a source of national honor, like a famous soccer team."

As in those countries, the new hostels in the United States would be intended for use by both native and foreign travelers. Existing American hostels already enjoy diverse clientele. In Washington, about 50 percent of the guests are foreigners. In Boulder, Colo., Americans constitute about 75 percent of those spending the night.

And the possibility for significant increases in visitors and natives hosteling their way across the United States is high. More than three million people, from toddlers to retirees, already are members of the International Youth Hostel Federation. The annual fee for a membership card—$7 to $14 depending on the applicant's age—allows them to use any facility in any part of the world at special rates. (Non-members can stay at the hostels, though they pay slightly more.)

Many people, particularly students, find the physical layout of the buildings, with their common meeting rooms, convivial. The curfews, uncommon in the United States, and the drinking and smoking prohibitions do not faze most early-to-bed, early-to-rise types and the opportunity for sharing information and perhaps picking up road companions is a boon.

"The beauty is sitting in a recreation room and hearing four languages spoken," Mr. Newman said. "It's the best of what the United Nations is supposed to have been: people discovering their own and other lands through the eyes of a foreigner."

[From the Christian Science Monitor, Aug. 19, 1980]

AMERICAN HOSTELS: SIMPLE, FRIENDLY, INEXPENSIVE LODGING

(By Denise Rea)

In the front yard the group may be playing duck-duck-goose; in the back, sitting around a bonfire exchanging stories; and before the day ends, some of these strangers may become friends.

These travelers are hostelers exploring the American countryside, discovering places others only dream about. They come in all ages and backgrounds, families or singles, from every part of the world.

They may be in the Rockies for the weekend, bicycling across the U.S., or walking the Florida beaches. But all have one thing in common—the desire to get out and see what's over the next hill.

At night they converge on hostels—safe, clean places to spend the night without spending a fortune. Overnight fees average $3.50 per person, slightly more during the winter due to heating costs. Hostelers bring their own food and cook their own meals.

On the outside, these American hostels may be farmhouses, mansions, barns, or private homes; on the inside they are converted into dormitory-style sleeping accommodations with kitchen facilities and a common living-room.

Simplicity is the rule. There are no servants, so hostelers share in domestic duties, washing dishes and sweeping floors. They are supervised by resident houseparents who are volunteers or hired at small salaries.

Hostels, open to all who carry a valid American Youth Hostel membership pass, are usually closed during the day and have some type of curfew varying from 10 p.m. to 1 a.m. Maximum stay is usually three nights. Many of them are open year round; most encourage reservations.

In the US, hosteling means traveling under your own steam—biking, hiking, canoeing, skiing, or by horseback—but since many hostels are located in isolated areas, public transportation or private cars can be used as long as travelers plan to engage in outdoor activities during their stay at a hostel.

"Hostels bring people together," explains Art Olson, a co-houseparent with his wife Lucy, in Durango, Colo. "It's like organizing a family. Even the chores—especially dishwashing—become a good time."

Hostelers usually arrive in Durango by bus, but participate in outdoor activities during their stay, visiting prehistoric cliff dwellings at Mesa Verde National Park, the melodrama Abbey Theater, or they go snow-skiing, hiking, rafting, or fishing. Discount coupons are available through the hostel for many activities.

The Durango hostel has already had visitors from 36 countries and 45 states so far this year. Art Olson says it's like "bringing the world to us."

Star of the Sea Hostel in Nantucket, Mass., an island off Cape Cod, was originally a lifesaving station built in 1883. It is listed in the National Register of Historic Places.

Nantucket houseparents Becky Buck-Leaman and Jeff Leaman first became enthused about hosteling during their travels in Europe and were tour leaders for many AYH-sponsored trips in the United States.

"We enjoy interacting with people who share our interest in the out-of-doors," says Jeff Leaman. "I can't think of another way I'd rather spend my time." Star of the Sea, with accommodations for 70, is booked for 90 percent of the summer, an indication of the way hosteling in the US is skyrocketing.

At this hostel, rise and shine is 7 a.m., allowing two hours for wakeup and breakfast. From 9 to 9:30 a.m., everyone does chores and then hits the road.

Hostelers start arriving for the night at 5 p.m. and spend a few minutes registering and settling in. The rest of the evening may be spent at the beach, playing volleyball or horseshoes, but mostly just getting to know everyone. Lights are out by 10:30 p.m.

Hostels can be owned privately or by AYH councils and other groups such as the YMCA and church and outdoor organizations.

In Carnation, Wash., Darcy and Don Newman have opened their private home to hostelers. "It doesn't tie us down," says Darcy Newman. "It's really a neighborhood hostel. If we're booked up or out when a hosteler arrives, they can just go next door."

Most Carnation hostelers arrive by car or bus. The area is a great bike riding, swimming, and hiking area, with four ski resorts only 30 minutes away.

"We have had many hostelers from Australia and Germany," says Mrs. Newman. "House parenting has been great. It's like traveling without going anywhere."

The first US hostel was opened in 1934 by two American schoolteachers, Isabel and Monroe Smith, in Northfield, Mass. Today, there are 250 hostels in 40 states and the District of Columbia and more than 82,000 AYH members.

AYH is part of the worldwide International Youth Hostel Federation. Memberships cost $7 to $14 annually, depending on age. Special discount rates are available for families and nonprofit organizations. Introductory cards for $1 are available for first-time visitors who want to try the experience before joining.

Members receive the "American Youth Hostel Guide" listing all US hostel locations, prices, maps, and suggestions for tours including the popular "chains" in California, Colorado, and the New England states where many hostels are clustered together.

AYH hopes to add coastal chains on the Atlantic, Pacific, and Gulf shores; the area of western Montana between Yellowstone and Glacier National Parks; and the Great Lakes area.

Because the US is so vast, youth hostels have not yet developed in all areas of the country. "We need a hostel in Concord or Manchester, N.H., to fill in a chain between Boston and Montreal," explains Ron Gallagher, office manager for the Greater Boston AYH Council.

He emphasizes that hostels try to promote international goodwill. "It's one of the biggest reasons I'm involved with AYH. People on international travels get to know and make friends with people in other countries, so we're less likely to go to war with each other."

For information contact: American Youth Hostels, Inc., Delaplane, Va. 22025.

[From the Los Angeles Times, June/July 1980]

HOSTELS CUT ACROSS CULTURAL EXCHANGE BARRIERS

(By George Geyer)

WASHINGTON.—I was bad that night, I admit it. With Mary McDermott, the other half of the friendship that reinforced our distinct dereliction. I went to see The Tarantella Champion of All Sicily dance in a little Sicilian tavern. And it was well worth it.

What was not worth it that warm and innocent Sicilian night was being locked out—and eventually thrown out—of the Youth Hostel at Taormina. Even though the other students gamely jimmied the lock at 2 a.m. to sneak us back in, we were found out and, in the morning, Mary and I were solemnly told that, having broken the 11 p.m. curfew, we must go.

Sadly we moved on, waving farewells to those good friends who would have covered us. Our tails were between our legs but we were not, in truth, sorry—after all, how many nights can you see The Tarantella Champion of All Sicily dance only for you?

It would be easy this time of year to reminisce over and over, now that another summer is upon us with its sticky nights, which so readily germinate memories in ways that cool nights do not.

There was a Youth Hostel grapevine all over Europe in those days, and you soon heard about the prizes: Florence's hostel was an old palace complete with bar and barman; Stockholm's was a graceful white sailing ship, and each bed had its own reading light; Carcassonne, the magnificent old walled city in southern France, had its hostel in an old church, where we ended up sleeping in the choir loft.

And it all cost only 20 cents a night! It was enough to make of you forever a happy and very continental cheapskate, and there have been those who have malevolently suggested that this is indeed what came about.

But I am not only, now, reminiscing. It is a time of quintessentially bad news in the world, and yet there are all sorts of good things happening underneath. One of them is the fact that, finally, a comprehensive American Youth Hostel system is getting closer to reality.

The bill to develop a national system of hostels here passed the U.S. House of Representatives on May 19 and has been sent to the Senate for what we hope will be prompt action. Because, although there already are some 240 Youth Hostels, Inc., this is the first time the country itself will create a real structure. There are even plans to convert some historic trust properties into living monuments by making them into hostels.

But—and I can testify from my own experience roaming all over Europe those 20 years ago—youth hosteling is much, much more than just having inexpensive places to lodge with other genial cheapskates.

It is much more than a movement that allows you to "see the world." It is a kind of other wave length, which permits people, living by their own choice at a minimal cost and in a special way, to cut across the barriers that more formal ways of living place in the way of real cultural exchange.

And this brings to mind a real worry of mine—that, in the harsh exigencies of all the difficult and cruel things that have been happening in the world recently, we are forgetting the utterly crucial ingredient of culture. Yet there has never been a time when we more truly need (even for our own sanity) to know and appreciate other cultures and to reinforce our own.

There are clearly negative ways to react to the events of the world today: with fear, with withdrawal, with more exchanges of brutality. And there are positive ways: by reinforcing the strong points of cultures, by more exchange, by precisely programs like the Youth Hostel one, which will encourage Americans and visitors even to meet problems of energy and inflation in new and creative ways.

And unless the world and mind of the Youth Hostelers have changed, I remain confident that if there is a Tarantella dancer out there, they will find him.●

● Mr. JACKSON. Mr. President, I want to take just a moment to join with Senator TSONGAS in highlighting the merits of the bill we are introducing today—The National Hostel System Act of 1980.

The measure is intended to set in motion a systematic approach for the development of a plan for a network of American hostels which will serve millions of traveling youth in the decades ahead by providing them with a clean and habitable environment at an affordable cost. It will also assist an already burgeoning American hostel movement by providing limited funds for the renovation of existing buildings so that they may accommodate budget-minded and energy-conscious travelers with a safe and supervised overnight dwelling.

In this regard, European countries have long supported hosteling as a way of promoting inexpensive travel among their young people so that they will continue traveling throughout their lives, and have an established system which is remarkable for its growth and self-sufficiency. For instance, West Germany boasts of more than 550 hosteling facilities which are within an easy day's hike or bike trip from each other, and Britain has 269 hostels dotting the English and Welsh countrysides for the benefit of British youth. In my own home State of Washington, Mr. President, the hosteling movement is gaining great momentum as Sea Haven Hostels, a nonprofit organization, has established 7 hostels and is planning expansion of its recreational program to 30 more facilities. The cost for acquisition and renovation, however, is enormous and often inhibits or slows systematic growth. But with enactment of the bill we are introducing today, we can help to expand America's hosteling system to complement its European counterpart, and thereby help to insure that all in America who appreciate our great cultural and natural heritage, and who enjoy traveling and actively partaking in such activiites as backpacking, hiking, skiing, and bicycling, can afford to do so.

Mr. President, the House of Representatives has already passed a similar measure, and therefore I urge all Members of the Senate to join us today in support of the National Hostel System Act of 1980 so that we may begin to establish a coherent youth hosteling system across America to serve America's youth in their travels and development.●

By Mr. HATCH:

S. 3094. A bill to reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated asset account as they existed prior to issuance of Revenue Ruling 77–85; to the Committee on Finance.

● Mr. HATCH. Mr. President, this proposed legislation is very important not only because it rights a tremendous injustice in the administration of our tax laws, it is important to the authority and integrity of the U.S. Senate and the laws of our country. It is a matter of tax laws, but more importantly, also a matter of who makes the law. The Internal Revenue Service has in the specific instance pertaining to this matter usurped that authority in the face of opposition of the U.S. Senate, a U.S. district court decision and the expressed will of the House Committee on Ways and Means.

The specific matter at hand pertains to IRS Revenue Ruling 77–85 that reversed over 70 consistent public and private rulings that covered a time span of more than a decade. This ruling not only strangled an innovative annuity industry to the detriment of the well-being of our Nation's citizens. This ruling, and the IRS actions related thereto, constitute a documentable case of arbitrary, capricious and illegal acts that cannot be acceptable nor tolerable to the Senate.

The merits of this proposed amendment are clearly reflected in the various courts pronouncements. The U.S. District Court, District of Columbia declared that: Revenue Ruling 77–85 is an erroneous and unreasonable interpretation of this Internal Revenue Code; the ruling was unlawful and beyond the IRS' statutory authority; and that substantial deference to the IRS' expertise is unwarranted in this matter. While the appellate court never addressed the merits of this matter, because it based its findings upon a jurisdiction question, the appellate court stated:

> This is not a situation where there are no remedies, however. Congress keeps a watchful eye on developments in this tax field and will listen to citizens with a grievance or plea.

The true victims of these illegal, unreasonable IRS actions are our Nation's citizens who are being illegally denied a most innovative and useful annuity that was developed in the public interest. Thus, this is a situation that warrants remedial action by the Senate; action that will also restore the authority of the Congress in the writing of our tax laws—a most important matter that commands our immediate and resolute action.●

By Mr. CRANSTON (for himself, Mr. BAYH, Mr. DANFORTH, Mr. DECONCINI, Mr. GARN, Mr. GOLDWATER, Mr. HAYAKAWA, Mr. JACKSON, Mr. MOYNIHAN, Mr. NELSON, Mr. PACKWOOD, Mr. STAFFORD, Mr. STEVENSON, and Mr. WILLIAMS):

S.J. Res. 201. Joint resolution to provide for the designation of a week as "National Lupus Week"; to the Committee on the Judiciary.

NATIONAL LUPUS WEEK

● Mr. CRANSTON. Mr. President, today I am introducing, on behalf of myself and a bipartisan group of 13 other Senators, a resolution providing for the designation of the week of October 19 through 25, 1980, as "National Lupus Week." This resolution has been introduced each of the last 3 years. Once again, I am happy to provide my assistance to focus national attention on the serious nature of the disease lupus erythematosus.

Mr. President, I would like to explain briefly the nature of lupus erythematosus and the intent of the resolution.

Lupus erythematosus is a disease of the connective tissue of the body including the skin. Its causes are unknown. It is essentially a disorder of the body's immune system, which is the first line of defense against infection and inflammation anywhere within the body. Its main target is women in the early and young adult age bracket—age 14 to 40. There may be as many as 500,000 cases in the United States with approximately 50,000 new cases diagnosed each year. The majority of the cases can be effectively treated; however, tragically, lupus causes 5,000 deaths annually.

The intent of the resolution is to help the American Lupus Society, the volunteer organization, make the public aware of the tragedy of lupus erythematosus. The American Lupus Society is a nonprofit organization originally founded in 1973 in California. The purpose of the organization is to assist lupus patients and their families in their fight against the disease, to develop and engage in programs aimed toward making the public aware of lupus, and to raise

funds for lupus research and patient care. With a nationally proclaimed week, the effectiveness of the voluntary organization's efforts would be considerably enhanced due to the increased public awareness of lupus.

President Carter has designated a National Lupus Week in 1977, in 1978, and in 1979. This resolution calls on him to make that designation again in 1980.

I urge my colleagues to support this joint resolution.●

ADDITIONAL COSPONSORS

S. 1945

At the request of Mr. BOREN, the Senator from Nebraska (Mr. ZORINSKY) was added as a cosponsor of S. 1945, a bill to increase the accountability of, policy coordination by, and management of priorities by agencies through an improved mechanism for congressional oversight of the rules of agencies.

S. 2111

At the request of Mr. TALMADGE, the Senator from North Carolina (Mr. HELMS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Indiana (Mr. LUGAR), the Senator from Michigan (Mr. LEVIN), and the Senator from Maine (Mr. MITCHELL) were added as cosponsors of S. 2111, a bill to incorporate the National Federation of Music Clubs.

S. 2732

At the request of Mr. PACKWOOD, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of S. 2732, a bill to direct that a clinical investigation of the safety and efficacy of dimethyl sulfoxide as a drug to be used by persons with arthritis be conducted through the National Institute of Arthritis, Metabolism and Digestive Diseases.

S. 2818

At the request of Mr. TALMADGE, the Senator from Oklahoma (Mr. BOREN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Kentucky (Mr. FORD), and the Senator from Georgia, Mr. NUNN) were added as cosponsors of S. 2818, a bill to amend the Internal Revenue Code of 1954 with respect to the treatment of mutual or cooperative electric and telephone companies.

S. 2890

At the request of Mr. LEVIN, the Senator from Michigan (Mr. RIEGLE), the Senator from Maryland (Mr. SARBANES), the Senator from Texas (Mr. BENTSEN), and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 2890, a bill for the relief of Maria and Timofei Chmykhalov, and for Lilia, Peter, Liubov, Lidia and Augustina Vashchenko.

S. 2906

At the request of Mr. DANFORTH, the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of S. 2906, a bill to amend the Internal Revenue Code of 1954 to provide a credit against tax for certain research and experimental expenditures, and for other purposes.

S. 2923

At the request of Mr. CRANSTON, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 2923, a bill to reduce the capital gains tax rate and for other purposes.

S. 2937

At the request of Mr. MORGAN, the Senator from Utah (Mr. HATCH) and the Senator from Tennessee (Mr. SASSER) were added as cosponsors of S. 2927, a bill to prescribe an interest rate differential on deposits and accounts in insured banks and savings institutions.

S. 3030

At the request of Mr. DURENBERGER, the Senator from Alabama (Mr. HEFLIN) was added as a cosponsor of S. 3030, a bill to amend the Internal Revenue Code of 1954 to provide a credit against income tax for the purchase of a commuter highway vehicle, to exclude from gross income certain amounts received in connection with the provision of alternative commuter transportation, to provide employers a credit against tax for costs incurred in ridesharing programs, and for other purposes.

SENATE JOINT RESOLUTION 176

At the request of Mr. INOUYE, the Senator from Florida (Mr. CHILES), the Senator from Arkansas (Mr. BUMPERS), the Senator from New York (Mr. JAVITS), the Senator from Delaware (Mr. ROTH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Kansas (Mr. DOLE), and the Senator from Texas (Mr. TOWER) were added as cosponsors of Senate Joint Resolution 176, a joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week," and for other purposes.

SENATE CONCURRENT RESOLUTION 109

At the request of Mr. GLENN, the Senator from Nevada (Mr. LAXALT) was added as a cosponsor of Senate Concurrent Resolution 109, a concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569.

SENATE CONCURRENT RESOLUTION 120

At the request of Mr. HEINZ, the Senator from South Carolina (Mr. HOLLINGS), the Senator from New York (Mr. MOYNIHAN), the Senator from Maryland (Mr. MATHIAS), the Senator from Michigan (Mr. RIEGLE), the Senator from Florida (Mr. STONE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from South Carolina (Mr. THURMOND), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Oklahoma (Mr. BOREN), the Senator from Florida (Mr. CHILES), the Senator from Nebraska (Mr. ZORINSKY), and the Senator from Ohio (Mr. GLENN) were added as cosponsors of Senate Concurrent Resolution 120, a concurrent resolution congratulating the people of Poland on the successful conclusion of the strike.

AMENDMENT NO. 1906

At the request of Mr. PRESSLER, the Senator from Nevada (Mr. LAXALT) and the Senator from New Hampshire (Mr. DURKIN) were added as cosponsors of amendment No. 1906 proposed to S. 1188, a bill to improve and modernize the vocational rehabilitation program provided service-disabled veterans under chapter 31 of title 38, United States Code, and for other purposes.

AMENDMENT NO. 2274

At the request of Mr. HEINZ, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of amendment No. 2274 intended to be proposed to S. 1188, a bill to improve and modernize the vocational rehabilitation program provided service-disabled veterans under chapter 31 of title 38, United States Code, and for other purposes.

AMENDMENTS SUBMITTED FOR PRINTING

SUNSHINE ACT OF 1980—S. 2

AMENDMENT NO. 2287

(Ordered to be printed and to lie on the table.)

Mr. HART submitted an amendment intended to be proposed by him to S. 2, a bill to require authorizations of new budget authority for Government programs at least every 10 years, to provide for review of Government programs every 10 years, and for other purposes.

FEDERAL EMPLOYEE PAYCHECK PROTECTION

● Mr. HART. Mr. President, last October, disagreements in Congress over amendments to appropriations bills seriously threatened to delay the regularly scheduled paychecks of millions of military personnel and Federal employees. With 13 appropriations measures still to be acted on by the Senate, we may face a similar situation in the next few weeks.

Last year I introduced legislation to prevent such intolerable situations by providing that appropriations for payment of pay to Federal employees shall be enacted separately from other bills. The objective is to insulate Federal paychecks from the kind of legislative controversies we experienced in October of 1979. Today I am filing this legislation as an amendment to S. 2, the sunset bill now pending in the Rules Committee, to improve its chances for consideration this year.

I ask unanimous consent that the amendment be printed in the RECORD at this point. I urge my colleagues to study it and to support it.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 2287

On page 73, after line 7, add the following new section:

"SEC. 808. (a) It is the purpose of this amendment to insulate Federal employees from the kind of legislative controversies over appropriations bills that have left some Government employees with less than full pay or uncertain as to when their next payday will be.

"(b) No bill or joint resolution carrying an appropriation for any agency for payments by such agency or any pay to employees of such agency shall be in order in either the House of Representatives or the Senate unless such bill or joint resolution, or each section of such bill or joint resolution, reads after the enacting or resolving clause only as follows: 'There is appropriated for ——— out of any money in the Treasury not otherwise appropriated, for payment of pay to employees thereof, for the period ———, $———.'; the first blank being filled only with the name of the agency for which a sum is appropriated, the second blank being filled only with the period of time for which the sum is appropriated, and the third blank being filled only with the monetary amount of the sum appropriated.

"(c) An amendment to any bill or joint resolution described in subsection (b) shall not be in order in either the House of Representatives or the Senate unless such amendment only strikes out the monetary amount of any sum to be appropriated by such bill or joint resolution and inserts in lieu thereof another monetary amount.

"(d) The provisions of the first section of this amendment are enacted by Congress—

"(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

"(e) The provisions of the first section of this amendment shall apply only with respect to bills or joint resolutions appropriating funds for periods beginning on or after October 1, 1980." ●

FOUNDRY UNITED METHODIST CHURCH—H.R. 5829

AMENDMENT NO. 2288

(Ordered to be printed and referred to the Committee on Finance.)

Mr. JAVITS (for himself, Mr. NELSON, Mr. DOMENICI, Mr. WILLIAMS, Mr. HEINZ, Mr. METZENBAUM, Mr. DURKIN, Mr. COHEN, Mr. PERCY, Mr. SCHWEIKER, and Mr. PELL) submitted an amendment intended to be proposed by them, jointly, to H.R. 5829, an act for the relief of Foundry United Methodist Church.

● Mr. JAVITS. Mr. President, I send to the desk an amendment designed to alleviate a potential injustice suffered by one-person, low-income households in need of fuel assistance and ask unanimous consent that it be printed in the RECORD.

Mr. President, when the House and Senate passed the Oil Windfall Profit Tax Act it included a fuel assistance program for low-income persons which was originally reported by the Senate Labor and Human Resources Committee as a separate bill and was adopted on the Senate floor to the windfall tax legislation. Chairman WILLIAMS, Senator SCHWEIKER, the distinguished ranking member of the Labor and Human Resources Committee, and I were graciously invited by the distinguished chairman of the Senate Finance Committee to serve on the House-Senate conference for the purposes of this section. The program that was agreed upon was designed to expand and improve upon the $1.6 billion program for fiscal 1980. It expanded the program eligibility from the 13.7 million households eligible for assistance in last year's program to a maximum of 20 million households, depending on the available funding. It also clarified the standards that each State's program will have to meet so that prompt assistance is delivered to as many families in need as possible.

The amount of $3.1 billion was authorized, the minimum sum we estimated should be spent from windfall profit tax receipts in order to meet the rising costs of fuel to a larger number of persons.

Unfortunately, inflationary changes in our economy have meant that certain low-income persons, particularly elderly persons, who were eligible and received assistance last year will not be able to do so under the eligibility standards for this year's program. Inflation has changed the budget levels used to calculate when a household is in poverty. Last year a single person, or widow or widower, with $4,250 in income was eligible for the program because this income level was the equivalent of 125 percent of the poverty level established by the Office of Management and Budget. This year, that figure has risen to $4,740, still a pitiably small sum of money for an individual trying to heat a home while still eating and paying rent.

When we sought to broaden eligibility in the windfall profit tax bill, we did so by using the lower living standard of the Bureau of Labor Statistics, a figure which at the time was more generous than the poverty-level standard. But this measure has not yet been revised upward to reflect 1980 inflation and therefore is more restrictive in some regions of the country than the poverty standard. Thus, inflation and the slow pace of getting statistics have combined to make elderly and other single persons who were eligible for help last year ineligible this year, although in real dollar terms they are still just as poor. This is contrary to the intent of the legislation which sought to implement a more inclusive program.

Mr. President, information on the poor collected by the Government is so inadequate that there is no single reliable estimate of the numbers of low-income persons who fall in gaps between last year's eligibility and the levels authorized this year. I am submitting for the RECORD an estimate by the Congressional Research Service based on Department of Health and Human Services, showing that those affected may number as few as 30,000 or as many as 300,000 persons. The wide variation depends in part on the estimates of how many of those persons would be automatically made eligible because they receive SSI payments or food stamps. However, the Social Security Administration and the USDA have no reliable estimates of how many of the potential eligibles actually participate in these programs. Field experience tells us the elderly are least likely to participate in any assistance programs for which they may be eligible.

My own staff has estimated, by assuming that the proportion of one-person households at each relative income level is approximately the same as in the 1976 census estimates, that the number of persons affected is 240,000. From this group should be subtracted several thousand single persons who live in institutions and are not eligible for fuel assistance. Their number is also not known.

This problem does not affect all parts of the country. In some regions the Bureau of Labor Statistics lower living standard is still higher than 125 percent of poverty. However, the BLS lower living standard average for urban areas of the United States is $4,530 for one person, compared to the $4,740 which represents 125 percent of poverty. In some areas the disparity is greater. In rural Louisiana, one person with income of over $4,020 would be ineligible unless our amendment is enacted; in Dallas, Tex., the analogous figure is $4,210.

My own State of New York Office of Aging estimates that 35,000 households eligible last year could be disqualified for fuel assistance this year. Nearly two-thirds of these persons are elderly. I ask unanimous consent that a letter from Mrs. Lou Glasse, the director of the NYS Office of Aging to the U.S. Social Security Commissioner William Driver be printed in the RECORD following my remarks.

Mr. President, passage of our amendment adds no additional cost to the fuel assistance program. It simply assures that, while the program is expanded no one who's poverty status would have qualified them last year will be disqualified this year. It has been suggested that the Appropriations Committees could resolve this matter by report instructions to the Secretary of Health and Human Services. While this could be very helpful, it is clearly better legislative practice to amend the authorizing legislation and, in any case, the legislative prognosis for fiscal year 1981 appropriations is clouded. This fact should not be permitted to override the needs of low-income elderly persons.

On July 23, in floor debate over S. 2939, I brought this matter to the attention of the distinguished chairman of the Senate Finance Committee and he graciously agreed to work with us on this matter of great concern to my colleagues and to those who represent the concerns of senior citizens and other low-income persons. I look forward to achieving together these needed changes before the October startup of the new fuel assistance program.

There being no objection, the amendment and material were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 2288

At the appropriate place, insert the following:

SEC. . ELIGIBILITY FOR FUEL ASSISTANCE.—

Sec. 305(a)(2) of the Crude Oil Windfall Profit Tax Act of 1980, is amended by inserting before the period a comma and the following: "except that, in the case of a one-individual household, the income may be equal to or less than the lower living standard income level or equal to or less than 125 per centum of the federal poverty level, whichever is higher."

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., September 3, 1980.

To: Honorable JACOB JAVITS.

From: Kenneth Cahill, Analyst in Social Legislation, Education and Public Welfare Division.

Subject: The FY 1981 low-income energy assistance program: Exclusion of single person households from energy assistance.

This memo is in response to your request for information on the possible exclusion of single person households with incomes below 125 percent of the OMB poverty line from eligibility for assistance under the FY81 Low-Income Energy Assistance Program.

The Home Energy Assistance Act of 1980 (title III of the Crude Oil Windfall Profit Tax Act) uses household income of less than 100 percent of the Bureau of Labor Statistics' Lower Living Standard as its income eligibility standard. The most recently published U.S. average Lower Living Standard (LLS) for an urban family of four is $12,585 (autumn, 1979); the autumn 1979 LLS will be used for the FY81 program. This is substantially higher than 125 percent of the current family of four OMB poverty line, which is $9,310 (spring, 1980). However, as family size decreases the decrement in the LLS is greater than that in the poverty guidelines. For families of two and three persons the LLS is still higher than 125 percent of poverty. This is not the case for all single person families. The current U.S. average LLS for a one-person household is approximately $4,530, while 125 percent of the OMB poverty line for a single person family is $4,740.

How does this affect eligibility for energy assistance? Several factors need to be considered.

First, the LLS makes adjustments for both regional cost of living differences and metropolitan—nonmetropolitan status; the OMB poverty guidelines do not (with the exception of separate higher poverty levels for Alaska and Hawaii). The LLS figures presented above are U.S. averages. In the highest cost of living areas (primarily the metropolitan northeast and Pacific west) the LLS cutoff for a single person household would be greater than the $4,740 OMB cutoff. (For example, in the Boston Massachusetts metropolitan area the single person LLS is approximately $4,900.) In the lowest cost-of-living areas, the single person LLS is even lower than the $4,530 reported above. (For example, in the Atlanta Georgia metropolitan area the single person LLS is approximately $4,180.)

The attached table lists the family of four Lower Living Standard for the various regions of the country. Also included is a copy of the LLS household size adjustment procedure and the most recent OMB Poverty Guidelines. The breakeven point is approximately $13,170. Below this level an area may have some single person households with incomes below 125 percent of poverty who would be income ineligible for energy assistance in FY81. It should be remembered that only single person households with income between the LLS and 125 percent of the poverty line may be excluded.

Another consideration is that income is not the only eligibility criterion used by the Home Energy Assistance Act. Households receiving SSI, AFDC, Food Stamps, or Veterans pensions are categorically eligible for energy assistance. It is probable that many of the single person households with income below 125 percent of poverty receive SSI, Food Stamps or Veterans pensions, and therefore would not be adversely affected by the Lower Living Standard income cutoff.

Therefore, the group you were concerned about which may not be eligible for energy assistance benefits in FY81 consists of single person households in non-high cost of living States, with incomes between the LLS and 125 percent of the OMB poverty guidelines, who do not receive SSI, Food Stamps, or Veterans pensions.

It is difficult to estimate the number of these people. This is due primarily to the lack of income and program data for 1980 and 1981 (the years in which the LLS and poverty guidelines apply). It is also due to the lack of adequate information on program participation by the categorically eligible. However, the Department of Health and Human Services has made an estimate that the number of these people is between 30,000 and 300,000. The upper and lower bounds were made using very extreme assumptions as to categorical eligibility and income distribution, so that the actual number is more likely in the 125,000 to 225,000 range.

HHS has estimated that there will be 20.7 million persons eligible for energy assistance in FY81. The range of 30,000 to 300,000 represents between .15 and 1.5 percent of the total pool of eligibles.

APPENDIX A.—LOWER LIVING STANDARD INCOME LEVELS

The lower living standard income level varies by location and size of household. First, on Table 1 find the Standard Metropolitan Statistical Area (SMSA) or non-SMSA area for which you want the living standard. That gives the living standard for a household of 4. To find the income level for a household of other than 4, identify the line on Table 2 which contains, in the column for a family size of 4, the standard you found in Table 1. Then track across that line to the desired family size column.

TABLE 1—*Family of 4*

A. Northeastern States (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont), and Virgin Islands:

Boston SMSA	$13,620
New York SMSA	12,950
Other SMSA's	12,630
Non-SMSA	12,420

B. North Central States (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin):

Chicago SMSA	$12,890
Milwaukee SMSA	12,890
Minneapolis-St. Paul SMSA	12,790
Other SMSA's	12,600
Non-SMSA	12,240

C. Southern States (Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia), American Samoa, Northern Marianas, Puerto Rico, and Trust Territory of Pacific Islands:

Baltimore SMSA	$12,770
Houston SMSA	12,100
Washington, D.C.-Maryland-Virginia SMSA	13,630
Other SMSA's	11,960
Non-SMSA	11,180

D. Western States (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming):

Los Angeles-Long Beach SMSA	$13,400
San Francisco-Oakland SMSA	13,910
Seattle-Everett SMSA	13,910
Other SMSA's	13,240
Non-SMSA	13,540

E. Alaska:

Anchorage SMSA	$19,690
Non-SMSA	18,510

F. Hawaii and Guam:

Honolulu SMSA	$16,510
Non-SMSA	15,520

TABLE 2.—ADJUSTMENT OF LOWER LIVING STANDARD INCOME LEVEL BY HOUSEHOLD SIZE

1	2	3	4	5	6[1]
$4,020	$6,600	$9,060	$11,160	$13,190	$15,430
4,310	7,050	9,690	11,950	14,110	16,500
4,350	7,140	9,800	12,100	14,280	16,700
4,410	7,720	9,910	12,240	14,440	16,890
4,470	7,330	10,060	12,420	14,860	17,140
4,540	7,430	10,210	12,600	14,870	17,390
4,570	7,490	10,260	12,690	14,970	17,510
4,600	7,530	10,340	12,770	15,070	17,620
4,630	7,550	10,360	12,790	15,090	17,650
4,640	7,600	10,430	12,880	15,200	17,770
4,660	7,610	10,440	12,890	15,210	17,790
4,650	7,640	10,490	12,950	15,280	17,870
4,770	7,910	10,720	13,240	15,620	18,270
4,620	7,910	10,850	13,400	15,810	18,490
4,670	7,990	10,970	13,540	15,990	18,620
4,960	8,040	11,030	13,620	16,070	18,800
4,910	8,040	11,040	13,630	16,080	18,810
5,010	8,210	11,270	13,910	16,410	19,200
5,590	9,160	12,570	15,520	18,310	21,420
5,940	9,740	13,570	16,510	19,480	22,780
6,660	10,920	14,990	18,510	21,840	25,540
7,090	11,020	15,950	19,690	23,230	27,170

[1] For each household's member over 6 persons add to the 6-person level an amount equal to the difference between the 6-person level and the 5 person level.

Source: Department of Labor, Employment and Training Administration, Office of Comprehensive Employment Development.

APPENDIX B.—GENERAL ADMINISTRATIVE REQUIREMENTS FOR THE LOW INCOME ENERGY ASSISTANCE PROGRAM

A. SINGLE STATE AGENCY RESPONSIBILITY

The single State agency designated to administer the State's low income energy assistance program under Pub. L. 96-223, accepts responsibility for the administration of the program. The State agency must administer the program in accordance with the requirements of 45 CFR Part 74 and § 260.50. This includes responsibility for eligibility and administrative policy, and for operational procedures, including: 1. Outreach; 2. Intake process; 3. Methods of eligibility determination; 4. Maintenance of adequate records supporting the eligibility decisions, including a consideration of income and energy increases; 5. Method of payment or issuance of vouchers and cash flow; 6. The accounting system; 7. Procedures for monitoring agency performance; 8. Staffing and plans for staff training related to the energy program; 9. Procedures for handling complaints and review process; and 10. Remedial methods for correction of errors.

B. AGENCY DELEGATION

If the single State agency uses one or more other agencies to perform any operational function of the energy program, the agencies must enter into an agreement which must specify, at a minimum—

1. The division of responsibility among or between the agencies;

2. The manner in which the single State agency retains control and supervision of the program with respect to—a. Eligibility policy; b. Operational implementation; c. Payment process and methods of reporting; d. Recording and accounting procedures; e. Monitoring of agency performance; f. Handling of complaints and review processes including fair hearings; g. Staffing and staff training plans; h. Administrative cost reimbursements; and i. Benefit calculations.

The agreement must also specify remedial methods for the correction of administrative errors, if the agency or agencies providing operational support fail(s) to carry out the provisions of the agreements.

Agreements entered into must be submitted to us as an attachment to the State Plan and are subject to review and approval by us.

C. EXPENDITURES NOT REIMBURSABLE UNDER THE ENERGY ASSISTANCE PROGRAM

The following expenditures are not subject to Federal reimbursement and must not be claimed—

1. Energy assistance payments to or on behalf of households not meeting the eligibility and payment requirements under the State plan;

2. Tax credits which are not in accordance with the State plan;

3. Any portion of an energy assistance payment which exceeds the amount set forth in the State plan;

4. Allowable administration and planning costs in excess of the limitations in 45 CFR 260.88;

5. Allowable assistance payments, tax credits, and administration and planning costs in excess of the amount we allot to the State;

6. Administrative costs which do not meet the requirements of 45 CFR Part 74 (Administration of grants), 45 CFR 205.160 (Cost allocation), and 45 CFR 205.160 (Non-expendable personal property);

7. Energy assistance payments made to or on behalf of eligible households or tax credits after September 30, 1981; and

8. Any expenditures which are not in accordance with the approved State plan.

We will determine the allowability of costs claimed for reimbursement under the energy assistance program. A State may appeal our determination that expenditures are not reimbursable under the energy assistance program. We will establish procedures for such appeals.

D. ALLOWABLE ADMINISTRATIVE COSTS

Costs charged to the administration of the energy assistance program will meet the requirements set forth in 45 CFR Part 74 (Administration of grants), 45 CFR 205.150 (Cost allocation), 45 CFR 205.160 (Non-expendable personal property), and the following criteria—

1. For costs which do not require allocation—those costs that result directly from carrying out the State plan;

2. For costs which must be allocated—those costs incurred for common or joint purposes; not readily assignable to a process, function, or activity; and allocated to the administration of the State Plan in accordance with an approved cost allocation plan.

Any State agency having administrative costs chargeable to the energy assistance program must have a cost allocation plan for allocating costs to the administration of the energy assistance program. That plan must be approved by the Regional Director, Division of Cost Allocation, before any allocated costs can be allowed for Federal reimbursement.

Any local agency having administrative costs chargeable to the energy assistance program must have a cost allocation plan available for review. That plan must show the methods used for allocating the costs to the energy assistance program, except when the local agency has an approved cost allocation plan or indirect cost rate. In these cases, the local agency must execute an amendment to its approved plan.

NEW YORK STATE
OFFICE FOR THE AGING,
Albany, N.Y., June 24, 1980.

WILLIAM J. DRIVER,
Commissioner of Social Security, Department of Health and Human Services, Baltimore, Md.

DEAR COMMISSIONER DRIVER: During the winter of 1979–80, the New York State Office for the Aging actively participated in the operation of the Energy Crisis Assistance Program (CAP). Area Agencies on Aging throughout New York State provided outreach, escort, transportation, information and referral, and counseling services to help older persons apply for the program benefits. As of this date, over 212,920 households have received fuel assistance, of which 50.62 percent or 107,780 elderly households have been provided this benefit during the 1979–80 heating season. However, without changes in the current regulations issued by your office, it is unlikely that the 1980–81 Fuel Assistance Program will be as successful in serving the older population of New York.

After reviewing the Low Income Energy Assistance Program, Interim Final Regulations of the Home Energy Assistance Act of 1980, we are very concerned about two issues: the use of the Lower Living Standard Income Levels for the one-member household and the use of an AFDC verification process for determination of an older person's eligibility.

First, I would like to address my concerns regarding the use of the Lower Living Standard Income Levels (LLSIL) for the one-member household. The proposed regulations place a one-member household's income eligibility criteria below last years ECAP eligibility criteria, while the LLSIL income criteria for multi-member households have dramatic increases ranging from 21.2 percent to 44 percent. Our office calculates that these income levels will result in an increase of over 300,000 additional multi-member households who will be eligible for the 1980–81 Fuel Assistance Program. Yet, it will result in a decrease of 35,000 one-person households, 21,000 of which are estimated to be headed by older persons. The situation for the one-person household will be further aggravated on July 1, when a 14 percent Social Security cost of living increase will disqualify many households which were eligible for ECAP last year. It is clearly evident that the inequity of the LLSIL for one-member households will have a significant negative impact on the older population of New York State.

Each winter, New York State's older citizens face increasing difficulty in meeting their fuel and energy needs. These problems emanate from deteriorating housing, mounting inflation, and poor health. Our programs must be developed recognizing the unique needs of our older citizens and not developed to exclude them from participating in benefit programs they surely deserve. The New York State Office for the Aging strongly recommends that the regulations be technically amended to raise the income eligibility levels for the one-member household by at least the lowest percentage increase experienced by the multi-member households of 21.3 percent. This increase would protect persons who were eligible last year and those who are going to receive a Social Security increase and it would also increase slightly the number of older persons eligible for the program.

In adopting the LLSIL standard, the Congress clearly intended to raise eligibility standards for this year's program in comparison with last year's ECAP. The law should therefore be interpreted as mandating the use of the LLSIL standard as compiled for 4-person households, with appropriate adjustment for households of other sizes. As you know, 1-person households are particularly subject to the burden of higher energy costs, so the New York State Office for the Aging suggests that an appropriate adjustment of the 4-person LLSIL standard would result in no less than a 21.3% increase for 1-person households (the lowest percentage increase experienced by multi-person households).

Secondly, the regulations indicate that, "special treatment relating to assistance, such as certifying the elderly and handicapped persons by home visits or by mail." However, the regulations also state that "States must verify household income eligibility. In verifying income, the Senate must apply verification standards and verification procedures consistent with those it uses for A.F.D.C." Last winter, in New York State, over 62 thousand elderly households were reached and assisted in applying for fuel assistance by using the mail. The elderly have historically been reluctant to apply for benefits and entitlements that might aid them. However, through the use of the mail-in procedures, the program was successful in reaching the older population without sacrificing their pride and integrity. If the AFDC verification standards are applied in New York State this winter, the practice of accepting applications for older persons through the mail would be discontinued. Not only would the use of AFDC procedures for the elderly be more costly, but the process would establish one more barrier to discourage the older person from applying for benefits.

It is evident that your office intended to allow the elderly and handicapped to apply for benefits through the use of special mechanisms. However, we believe that the regulations should be modified to clarify this particular difference by specifically stating that certifying the elderly and handicapped through the use of a mail-in procedure under the special treatment clause of the regulations is allowable. If clarification of the regulations is not possible, the New York State Office for the Aging will request that the New York State Department of Social Services submit with their application a request that you approve a waiver of the AFDC verification procedure for the elderly and handicapped of New York State.

It is truly with much concern that we request that you take positive action on making these necessary changes. The success of the 1980–81 HEAP program in reaching the elderly households in New York State is dependent on the development of reasonable Federal Regulations which take into consideration the unique needs of our older population.

I am sure that you will give our recommendations careful consideration. If I can be of any assistance to you or your staff, please feel free to contact me.

Sincerely,

LOU GLASSE,
Director.

NOTICES OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, on behalf of the Committee on Labor and Human Resources, I wish to announce that the committee will hold hearings on the role of the worker in the evolving economy of the eighties.

The coming decade will see a rapidly evolving industrial base to meet the challenges of foreign competition, shifting energy sources, and domestic demographic changes. Meeting these challenges will speed the development of new technologies, accentuate market demand changes, and result in structural adjustments in many of our basic industries. Sound national policies must be developed now to assure full worker participation in this period of economic growth and to improve the quality of employment and industrial production.

During these hearings, the committee will explore whether policies can be developed to facilitate occupational mobility, including how traditional collective bargaining mechanisms may be strengthened, to deal more effectively with work force dislocation and, as necessary, to encourage the rational transfer of workers from less to more productive employment. A key part of this in-

quiry will be to examine how we can foster better labor-management communication about the massive changes that will be taking place in our industries.

The first 2 days of hearings, September 17 and 18, 1980, will focus on work force displacement situations, particularly those caused by the cessation of business activity on a plantwide or product-line basis. The committee's interest in these situations encompasses methods for maintaining continuity of employment in these situations, as well as ways of enhancing work force mobility and worker retraining in cases where employment continuity cannot be maintained. The hearings will commence each day at 9:30 a.m. in room 4232 of the Dirksen Senate Office Building.

Anyone desiring further information about these hearings, or wishing to testify, should contact Jerry Lindrew, Labor Counsel, U.S. Senate Committee on Labor and Human Resources, Washington, D.C. 20510, (202) 224-3674.

COMMITTEE ON VETERANS' AFFAIRS

Mr. CRANSTON. Mr. President, I announce, for the information of the Senate and the public, the hearing schedule of the Committee on Veterans' Affairs for the month of September.

On Wednesday, September 10, the committee will conduct a hearing for the purpose of receiving an update on the current state of scientific knowledge on the long-term health effects in humans of exposure to agent orange and the status of other agent orange-related activities currently being conducted by various Government agencies that are involved in this issue. The hearing will begin at 9:30 a.m. in room 412 of the Russell Senate Office Building.

Persons wishing additional information should contact Cheryl Beversdorf, professional staff member of the Committee on Veterans' Affairs, at (202) 224-9126.

On Tuesday, September 23, beginning at 11 a.m. in room 318 of the Russell Senate Office Building, the committee will receive the American Legion legislative recommendations for 1981.

SUBCOMMITTEE ON ANTITRUST, MONOPOLY, AND BUSINESS RIGHTS

Mr. METZENBAUM. Mr. President, the Judiciary Subcommittee on Antitrust, Monopoly, and Business Rights will hold a hearing on S. 2798, the Small Business Motor Fuel Marketer Preservation Act of 1980, and on S. 2828, the Small Business Motor Fuel Market Preservation Act of 1980, on Wednesday, September 10, 1980. The hearing will begin at 9 a.m. in room 5110 of the Dirksen Senate Office Building.

SUBCOMMITTEE ON PARKS, RECREATION, AND RENEWABLE RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Subcommittee on Parks, Recreation, and Renewable Resources.

The hearing is scheduled for September 11, 1980, beginning at 10 a.m., in room 3110 of the Dirksen Senate Office Building. Testimony will be received regarding S. 2630, a bill to establish the Martin Luther King, Jr., National Historic Site in the State of Georgia, and S. 3091, a bill to designate the Chaco Culture National Historic Park in New Mexico.

For further information regarding the hearing, you may wish to contact Mr. Thomas Williams at 224-7145.

Those wishing to submit a written statement for the record should write to the Subcommittee on Parks, Recreation, and Renewable Resources, room 3106 Dirksen Senate Office Building, Washington, D.C. 20510.

SUBCOMMITTEE ON FOREIGN AGRICULTURAL POLICY

Mr. STONE. Mr. President, I wish to announce that the Foreign Agricultural Policy Subcommittee of the Committee on Agriculture, Nutrition, and Forestry will hold a hearing at 9:30 on September 18 to examine ways of encouraging further increases in our agricultural exports in the 1980's. The hearing will be in room 324 RSOB, and anyone desiring further information should contact Nancy Foster (224-3041) of my staff or Nelson Denlinger (224-2035) of the committee staff.

Our agricultural exports have grown by leaps and bounds during the 1970's. At the start of the 1970's, U.S. agricultural exports were $7 billion, last year they reached $32 billion, and this year we expect the total to exceed $40 billion. These exports are important for our agricultural producers, and they also are vital for the Nation's balance of payments.

While there clearly is room for further growth in years ahead, there is concern as to how best to proceed. We will be hearing from invited witnesses at this hearing in order to receive new ideas or approaches on how to proceed during the decade ahead. This hearing should be viewed as a prelude to the development of the 1981 farm bill.

Various ideas have been proposed including the establishment of a revolving credit fund, increased funding for market development and the cooperator programs, greater emphasis on the export sale of finished or processed products and the negotiation of further bilateral trade agreements. I would also anticipate a review of the Agricultural Trade Act of 1978 and its usefulness in furthering our agricultural export sales.

This hearing will concern itself with the broad issues of our agricultural trade policy. I would anticipate that farm organizations and commodity groups would provide additional views as we develop the 1981 farm bill.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE TO INVESTIGATE INDIVIDUALS REPRESENTING INTERESTS OF FOREIGN GOVERNMENTS

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Judiciary Subcommittee to Investigate Individuals Representing Interests of Foreign Governments of the Committee on Judiciary be authorized to meet during the session of the Senate today to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WATER RESOURCES

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Water Resources Subcommittee of the Committee on Environment and Public Works be authorized to meet during the session of the Senate today to hold a markup session on the Omnibus Water Resources Amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

POLITICAL ABUSES AT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

● Mr. SCHMITT. Mr. President, I have recently become very concerned by abuses that have been detailed by Mr. Lewis Helm, a former Assistant Secretary for Public Affairs of the Department of Health, Education, and Welfare in the Federal Times. The abuses and possible illegalities described by Mr. Helm have been occurring at the Department of Health and Human Services under the Carter administration in its desperate quest for reelection.

Mr. President, I realize that a Cabinet officer may be permitted to have some leeway in campaigning for the reelection of the President at taxpayers expense. The actions described in the article by Mr. Helm however far exceed what is permissible.

As described by Mr. Helm political appointees at the Department of Health and Human Services have:

Sought to use confidential student loan records against Republican William Janklow in his succesful 1978 race for Governor of South Dakota.

Used career employees to assist in campaign speeches; and

Used Government travel funds to allow political appointees to keep in touch with their home areas.

Mr. President, these articles show that Secretary Harris used career employees to draft and disseminate a speech that was political. In speeches to the Black Congress on Health and Law in Dallas, Tex., and to the United Steelworkers of America in Los Angeles, Secretary Patricia Harris attacked the candidacy of Ronald Reagan because he had been endorsed by the Ku Klux Klan, carefully omitting Governor Reagan's repudiation of that endorsement. In asking the Black Congress members to support the President, Secretary Harris stated:

> As he (Reagan) speaks to a black group today, many will see the spectre white sheet behind him.

Mr. Helm reported that when he presented the facts of the situation to a staff attorney he was informed that:

> If schedule C and career employees are involved putting together media coverage and contacts for a political speech, it is clearly a violation of the Hatch Act.

Mr. President, I think that the behavior by Secretary Harris and other departmental employees, if occurred as alleged by Mr. Helm, is so violative of the law as to require a thorough investigation.

These incidents also raise questions as to whether the law is restrictive enough in preventing campaign activities by career Federal employees.

I submit the articles I have referred for the RECORD at this point.

The articles are as follows:

THE DEVIOUS CRAFT OF SHADING TRUTH

(By Lewis M. Helm)

More than 100 former appointees of the Eisenhower administration were helping in the 1968 Republican presidential campaign.

When it appeared that Republicans would gain control of the White House, one senior member of Ike's team passed along some advice to me based on his years as the head of public information at the Department of Commerce.

"From the day you join the government, everything must be directed toward re-electing the President. You can do this best by doing a good job.

"Never tell people what a great job the administration is doing. Give accurate information about policies and programs. People can face bad news. They'll never forgive or forget a snow job. And be sure to hire good experienced people."

We discussed other government public affairs problems.

There was Congress' historic fear that the Executive Branch would create a propaganda machine to extol the administration's virtures, the media's focus on news coverage and disregard for government's need to reach specific audiences with understandable messages, the public's abhorrence of the use of tax money for publicity unless it is publicity about services they agree with or use themselves, and the information officer's isolation from the decision-making process.

We felt then, and I believe even more firmly now, that the purpose, structure and definition of public affairs must be clearly defined if government ever is to re-establish its credibility. (In this and subsequent columns, the term "public affairs" will be used in the broad sense of communications with various publics. It will not refer to a public information office.)

Most public affairs people have the same concerns and follow basically the same philosophy that my friend passed along to me. This philosophy has served well during the times when White House occupants often destroyed their own credibility. Despite strong pressures through the years, the government public affairs system has performed at an acceptable level, basically because of the integrity of the people who work in it.

Now, however, even this underlying strength is being strained beyond the breaking point in the government's most massive department, Health and Human Services. The strain comes from a combination of inexperience, ineptness, arrogance and a disregard for the basic rules of government on the part of some of the department's top officials.

When I left Health, Education and Welfare in March, 1976, I was determined to avoid second-guessing of the department's future leadership. But some things, like preservation of a system of government that works, are more important than silence.

The erosion that has taken place is so widespread that disregard of what is happening in itself would be a crime of omission. Because the erosion no longer can be ignored, I have talked with the department's public affairs people and scrutinized its records to see what is happening.

The results are deeply distressing for anyone who is concerned about the government's mandate to communicate. A comparison is required with the past to see the present.

From 1973 through much of 1975, Secretary Caspar Weinberger steered HEW free from the erosion of credibility that was taking place in the White House. The department's controversies were confined to those dealing with cuts in the staff, whether equal publicity was given to competing health insurance proposals and why we opened congressional correspondence to public scrutiny.

There were never any stories about misrepresenting facts, misuse of public funds, cronyism, illegal use of information.

Secretary David Mathews succeeded Weinberger. He assiduously avoided bureaucratic strife unless it directly involved him. Personal image, not departmental public affairs, became his focus. No improvements were made in mission, structure or personnel but he did not disrupt activities except through passive resistance to needed decisions.

One of our major achievements was the development of a strong career public affairs staff in ten regional offices. These administered the Freedom of Information Act, worked with state and local officials, special interest groups and the press and provided information about the billions of dollars in HEW funding in those areas.

This structure has now been decimated. Positions have been downgraded and politicized. Inexperienced people replaced some of government's best career public affairs officers.

Instead of building on the sound structure that existed to convey needed information to the public, thereby helping the President as my friend had suggested, the tack was just the opposite. As HEW changed its name to Health and Human Services, it took with it a pattern of performance in public affairs that cannot be shed. It is a pattern that has eroded confidence to a point that the governor of one state told regional HHS officials to stay out of his state.

Here are some of the actions which careerists attributed to HHS political appointees. They:

Sought to obtain the aid of career employees in political campaigns.

Attempted to use confidential HEW files to defeat a Republican candidate and then lied about the reason for seeking his file.

Violated the Whitten amendment against jumping salaries too high and too quickly, then violated consultancy regulations.

Abused a system created to lend key people to help state and municipal offices.

Added more than one-quarter million dollars for three deputies and four "experts" to do the job of one deputy in the Nixon/Ford administrations.

Used travel funds to keep political appointees "in touch with" home areas where they might seek elective office.

The erosion of the public affairs system at HHS through these actions and others will be examined in the columns that follow. There also will be specific recommendations on how the system should be altered to improve the government's ability to communicate.

My purpose in exposing present abuses is to help restore the system to a level where it can function at least sufficiently to meet public needs. At that point an intelligent discussion must occur to give a sound direction for the future.

There must be an awareness that government communications with the people it serves are as important as the programs themselves. Improvement in both is necessary for government to become credible again.

HHS POLITICS EVIDENT IN S. DAKOTA SAGA

(By Lewis M. Helm)

The Department of Health & Human Services has done more than restructure its regional offices that administer billions of dollars to people and states throughout the country.

If the saga of the governor of South Dakota is an example, HHS regional offices have begun political surveillance of opposition candidates in an effort to defeat their election efforts.

As a result of a bungled attempt in 1978 to obtain the nonexistent confidential student loan file of Republican gubernatorial candidate William Janklow, and sloppy coverup attempts afterward, HHS officials have been asked to stay out of the state.

"I told them I won't do business with them," the governor said. "This kind of politics is unacceptable whether it occurs in the Nixon or Carter administrations. What will they do to me for saying what I think? Cut off money for the old folks of South Dakota?"

The governor was still fuming when he talked with me about the use of the HHS federal regional office in an attempt to defeat his election bid . . . and what he termed the lies that followed when regional officials were questioned.

"One of my campaign people called me shortly before the election after he got a phone call from a banker in my hometown, Flandru. Someone from HEW's Denver office had asked for my student loan file to see if I ever defaulted on a student loan.

"I'd never borrowed any money from that bank and never took out a student loan from them. It was obvious that they were trying to get something on me to use in the campaign against me."

At the time Janklow was attorney general of South Dakota.

"I called the person who had contacted the bank and demanded to know who was in charge of political surveillance for the Carter administration. I asked who wanted to know about the loan and he wouldn't say.

"I told him that if I didn't get a reply in 30 minutes, I was going to file suit against him and HEW the next morning. He then said that it was a congressional inquiry . . . that he would let me know who the member was.

"He called back, this time very embarrassed saying that he had been wrong. The requestor was Grace Mickelson, who was in charge of HEW government affairs in Denver. He apologized and said that this would never happen again."

The governor said he knew Mickelson and that she had been a state senator who was defeated in 1976 when running for Congress against James Abnor, a Republican. She joined HEW with the new administration a while later.

Departmental regulations and statutes, including the Privacy Act, forbid arbitrary perusal of personal documents provided to the government, such as student loan files. Only government officials who need to review the files for an authorized purpose may have access.

Guaranteed Student Loan Program officials normally review a student loan file at the time of decision as to whether to guarantee the loan. If a student defaults, a review takes place within several months, not years later as would have been the case with the governnor.

A review of the files by any official other than those directly administering the GSL program rarely occurs. There is little reason to do so. GSL officials cannot recall ever providing a member of Congress with a file or the information contained in one.

"In January or February, the HEW principal regional official (Wellington E. Webb) paid a courtesy call on me as governor. I told him the bottom line was that I didn't trust him or his people and that I wanted to know more about the student loan incident." (Webb, a former Colorado state representative, had been a campaign manager for

Jimmy Carters' presidential race in Colorado in 1976.) Janklow continued.

"He promised to check into it fully but I never heard from him. So I called him and told him again that it was a congressional inquiry . . . that it was Senator James Abourezk, who asked. I knew that was a lie because Jim and I are personal friends. We went to the University of South Dakota Law School together.

"Jim just laughed when I told him . . . and said there was no way he would have done that."

Almost a year later, the governor said that he and other heads of the 50 states attended a White House briefing by President Carter. The President took a question from Governor Janklow:

"Some of us in states that don't have primaries before June 3 are afraid that there won't be any funds left for our states [alluding to heavy federal expenditures in states with important primaries]. Will there be anything left?"

The President replied in this way, Janklow said.

"I can assure you that it would be improper to use federal money to do things like that and it won't happen in my administration."

Janklow's reaction was this:

"He's my President so I have to give him the benefit of the doubt about lying. If he's not lying, then he sure doesn't know what's happening in his administration . . . at least in the Department of Health & Human Services."

"GANG THAT COULDN'T SHOOT STRAIGHT"

(By Lewis M. Helm)

Grants, special projects, presidential visits and lots of praise have become standard ways for an administration to help members of Congress from the same party win re-election.

But there is a line which administrations and members of both parties agree must not be crossed in political campaigns. It is the line between helpfulness and stupidity.

That's one reason why career employees in the Denver regional office of the Department of Health and Human Services were amazed when told by a new congressional liaison specialist from Washington headquarters that he and others had been hired quickly before the personnel freeze this year "to help re-elect some Democrats who are in trouble at home."

Concerned about such a potential blatant violation of the Hatch Act and other laws, I phoned Thomas S. McFee, HHS assistant secretary for administration. The next day McFee told me that the congressional liaison specialist involved denied the charge and that he could do nothing further without the names of witnesses.

The department's inspector general's office later phoned me to say that they would guarantee anonymity to witnesses in order to obtain candor. Three days later they said no investigation would be taken. They denied making earlier comments.

I was told that McFee's office "found no violations of staffing regulations or the Hatch Act," by the HHS public relations office.

Here's what this writer was told by Denver careerists:

"Grace Mickelson, the second ranking HHS regional official, told her intergovernmental affairs staff that a new congressional liaison person from Washington, responsible for the Rocky Mountain area, would be here April 9, 1980. He would want to discuss what was happening in each state. So, everyone in IGA pulled together reports about the status of projects that members of Congress had been interested in."

Robert H. Maloney arrived in Denver, talked with top regional officials and then met with career employees of IGA.

"He got right to the point in the meeting," one careerist said. "Maloney told the small meeting, 'I understand that Senators Hart, D-Colo., McGovern, D-S.D., Reps. Schroeder, D-Colo., McKay, D-Utah and Kogovsek, D-Colo., are in trouble this election. We want to do everything we can in this department to help re-elect them. I'm here to see how you can help'.

"No one knew what to say. The four career employees present looked at their boss Mickelson, to straighten out Maloney about the rules against political activity with federal funds by employees."

Normally, a few political zealots float through every department during election years. The more senior political appointees straighten them out about the rules of the game and how that type of overt campaign activity is counterproductive.

But Mickelson did nothing to stop Maloney. She apparently had learned nothing from the investigation by the department IG into her violation of the Privacy Act. As noted in this column last week, she had sought to obtain the student loan file of the Governor of South Dakota to use against him in his 1978 election campaign.

The careerists told themselves during the luncheon break that surely even Mickelson would realize the stupidity of the discussion and stop Maloney. But she didn't.

"After lunch he said that he was one of five congressional liaison employees hired to help the department campaign for Democrats. He even boasted that they had been hurried through the civil service process just three days before the President's hiring freeze so they'd be available."

The careerists didn't know whether to walk out of the meeting or just laugh to themselves. They knew that there was little HHS could do to help members of Congress, except to expedite service of inquiries and several pending projects. HHS doesn't have much discretionary money that it can spend.

It was another case of the 'gang that couldn't shoot straight,' just the same as the Mickelson quest for the South Dakota Governor's student loan file from a bank where he didn't bank. And what member would want that kind of help, anyway?

Later Mickelson drove Maloney to the office of Rep. Timothy Wirth, D-Colo., who was not on the Maloney "in trouble" list.

"This was the part of the Maloney visit that really ticked her off," a careerist said. "Maloney told her to wait in her car while he talked with the congressman."

When I talked to Maloney, he claimed total innocence:

"I categorically deny saying those things. I'm in charge of regions eight and nine. It is my responsibility to get to know the people I deal with and the problems of the region. That's why I went to Denver and San Francisco . . . to visit the office of members."

He couldn't explain the careerists' version of his visit. Nor could he say why South Dakota Governor William Janklow had received a telephone call from an employee in the Denver office warning that HHS had been instructed to spend everything possible in South Dakota to help re-elect Sen. McGovern.

Maloney said that he visited three congressional offices before going on to San Francisco. These were the offices of Sen. Hart, Rep. Schoeder and Rep. Wirth. When asked if he called on any Republican offices, his response was:

"There weren't any on that block where I was. But I understand that one of our people who handles Region ten went to a Republican office in Seattle." Maloney didn't know the name of the Republican member.

He then explained that he and four others were visiting congressional offices in all ten regions "to see how we can be helpful." He added that HUD, he knew, has the same program as does at least one other department.

This HHS activity, according to Maloney, is supervised by Michael Kerr within the office of assistant secretary for legislation, William Welsh. Welsh also has responsibility over intergovernmental activities in regional offices, including the activities of Mickelson. He participated in the HHS decision to keep her on HHS's payroll even though she had violated the Privacy Act.

HHS records show that Maloney was hired as a GS-14(6), at a salary of $40,498, on March 23, 1980. Two other congressional liaison specialists Maloney identified as visiting congressional offices in the regions were hired on the same day at GS-13(1) at a salary of $29,375. They were Linda Wray and Thomas Hipple.

The Office of Personnel Management affirmed that the hiring freeze was announced on March 14, 1980, and was retroactive until February 29, 1980.

The additional congressional liaison specialists who Maloney said were contacting regional congressional offices were Susan Lubick GS-14(2), $35,870, and Marion Troyer-Merkel, GS-12(3), $26,349.

HHS travel records show that Maloney's fellow workers all took trips to regional offices at the following costs:

Maloney, April 8-13 to Denver and San Francisco, $1,028.

Wray, April 10-11, Flint, Mich., at the "request of Congressman Dale Kildee to meet with members of his district staff," $331.

Lubick, May 8 to New York City, $133.

Lubick, April 10-11 to Boston, $239.

Hipple, April 9-11 to Dallas, $553.

Hipple, April 20-22, to Philadelphia, $161.

Troyer, April 7-14 to Seattle and Spokane, $632.

Troyer, May 19-20 to Kansas City, $448.

Before joining HHS, Maloney was executive director of a health association and a legislative aide on Capitol Hill for Rep. Louis Stokes, D-Ohio. He was a law clerk under a District of Columbia Superior Court judge for a year after graduating from Harvard Law School.

Maloney refused to say if he had passed the bar exam to practice law.

Thomas McFee said that Maloney's hiring had not been rushed through to avoid the freeze. "We had been recruiting to fill those positions for some time," McFee said, "and Maloney had appeared as an applicant in ample time for regular processing. He was hired to do case work, filling a position that normally is non-career."

Based on these contacts with HHS, it is easy to understand why the department's reputation has deteriorated so rapidly. It is the result of a deep and pervasive fear that candor will bring problems if it reflects on the political leadership.

One top HHS official said, "If an investigation is conducted through normal channels, everyone who talks is in trouble. That's the way it is now."

HATCH ACT FAILS TO DAUNT HARRIS

(By Lewis M. Helm)

Secretary of Health and Human Services Patricia Harris has caused her staff to violate at least one law and possibly others as she traveled across the country to give two speeches, which I consider racist, in behalf of President Carter just before the Democratic convention.

To support her political swing, Harris used 11 HHS employees and spent more than $10,000 in money that had been appropriated to help fight the poverty and discrimination which she discussed in her speeches.

This misuse of tax money by a government official is the most blatant in the public affairs area that I have seen in recent years.

Even during the most trying times of government from 1976 through 1975, former

HEW Secretary Caspar W. Weinberger studiously avoided any use of federal funds for purposes other than authorized by Congress. Other secretaries have followed the spirit of the law that Harris flaunts.

On August 5, Harris, accompanied by three aides, flew to Dallas to deliver a speech to the Black Congress on Health and Law.

For this trip, Jake Sullivan of her staff acted as advance man to make certain that she got maximum exposure. The Dallas HHS regional office notified the press that she would deliver an important speech.

An editorial board meeting with The Dallas Times Herald was held and a taping with KDFW-TV was made to be aired that Sunday.

No copies of her speech had been sent to Dallas so the regional officials could review it in advance. Normally the secretary's speechwriter, Jeff Kelly, developed her words early.

The regional public affairs chief and the principal regional official joined Harris and her entourage which consisted of Dr. George Lythcott, administrator of the Health and Human Services Administration; Randal Kinder, executive assistant; and Ken Lopez, her bodyguard.

Copies of the speech, brought with them on the plane, were distributed at the Dallas Convention Center where the 6000 black professionals were meeting.

Harris said: "Our nation is about to embark on an election campaign which may be a watershed in American history.

"Fifty years ago, President Hoover spent a full term in the White House without speaking to his black servants. Today, Republicans do talk to black people. Fifty years from now, they may even listen to black people."

Harris then said Republican presidential candidate Reagan had been endorsed by the Ku Klux Klan. She never pointed out that Reagan had immediately repudiated the endorsement of the Klan.

"As he speaks to a black group today, many will see the spectre white sheet behind him," she said, calling on the assembled to support Carter.

Harris is not prevented by law from making this totally political speech. She is not deterred, as often proven, from making the most inflammatory, racist and misleading comments.

But it is against the law for any career or non-career government employee to write, promote, and disseminate campaign material and appearances.

In other words her speechwriter, advance man, regional officials and, perhaps the aides accompanying her were instructed by the secretary to violate the law.

I talked with the special counsel's office about the situation, without giving names. The attorney replied:

"If Schedule C and career employees are involved in putting together media coverage and contacts for a political speech, it is clearly a violation of the Hatch Act."

Justice Department's Criminal Division Election Crimes Branch, added that a violation of the Hatch Act is covered by administrative, not criminal remedies. That means that the department may take administrative actions against those employees.

"It would be highly doubtful that a department head who gave that kind of speech would do so," they added.

The HHS Hatch Act violators apparently are safe, since it is obvious Pat Harris will not act, having ordered the violations herself.

"The use of appropriated funds is a different issue," I was told. "The degree of misuse becomes the principal criterion for whether there is a violation of statutes dealing with stealing government property. There occasionally are prosecutions under this criminal statute, but rarely, because the laws do not address this issue specifically."

There are stipulations in most appropriations acts forbidding departments to use funds to lobby in behalf of legislation . . . but none related to campaigning.

From Dallas that afternoon, Harris and company flew to Los Angeles, leaving Dr. Lythcott to talk with the conventioners. This time, advance copies of her speech before the United Steelworkers of America at the city's convention center had been telexed for distribution.

Two public affairs officers from HHS San Francisco went to Los Angeles to work with her aide, Rick Rosen, an advance party for the trip. Speech copies were distributed and a press conference arranged.

Harris waxed racist again before the 8,000 conventioners. But this time, they paid little attention as they milled around the convention floor.

The press was interested, though. Wire services moved pieces nationally, quoting her comments about Reagan and the KKK. Again, no mention was made of Reagan's repudiation of the endorsement.

To compile figures to show the cost of these racist speeches to the government, I requested from the department's Freedom of Information officer, Russell Roberts, copies of the travel vouchers, travel requisitions and forms 171 of all of the participants in the trip.

This inquiry now is getting "special handling." Roberts' boss, the deputy assistant secretary for public affairs, Clifton Session, has removed the request from the FOIA office and is handling it personally. This is permitted under HHS rules since Roberts works with "delegated" authority from the assistant secretary for public affairs.

It will be interesting to see the result of this "special handling." I also requested similar information about who paid for trips Harris and her aides made to the Democratic convention in New York.

My query was received by HHS on Friday, August 8. A response is due by law, ten working days later, August 22. Full details about the handling of this inquiry and the data it reveals will be discussed in a later column.

TRAVELIN' TO SUCCESS

(By Lewis M. Helm)

During most of his 30 years on earth, Frederick Durrie "Rick" Barton of Maine has been busy punching all the tickets of political success . . . and the Department of Health and Human Services is doing everything possible to assist in his rise.

As one veteran career employee said, "It sure looks like a full political scholarship to help out a bright young guy on the way up."

Here's what HHS is doing to help Rick:

A capable career employee was moved into another job to make room for Rick as public affairs director of Region I.

Instead of receiving the $30,000 a year salary he sought, Rick started at $40,000 a year and was raised recently to $43,554 (GS-15-3).

He is assigned to work with media and interest groups in his home state where he once ran for Congress and probably will do so again.

Even though there are six states in the New England region, Barton has made 32 of his 53 trips on expense account to Maine.

He has ample opportunity to be advance man for trips for the White House and the HHS secretary, not only in New England but elsewhere providing top contacts with party leaders for the future.

The political leadership of HHS felt Rick was ideally suited for a top job in Region I. He won a respectable 43 percent of the vote in a 1976 Maine congressional race against an incumbent Republican. This followed a job as district administrator for then-Sen. William D. Hathaway.

Rick had other qualifications. He was graduated from Harvard University and nominated for a Rhodes scholarship. He is an athletic 6 feet, 3 inches tall, 180 pounds, articulate and outgoing.

Based on this, Rick was initially tabbed to be deputy regional director for the New England states. But Tip O'Neill had someone else in mind for that job. Kevin Boyle was appointed on the House Speaker's recommendation.

Barton agreed to accept the public affairs director's post which previously had been designated for a friend of the then-under secretary, Hale Champion. The friend, Gail Rotegard, and her Champion helped to arrange for her to be placed on loan from her job with the Boston city government to Region I, with HHS paying for the assignment with federal funds.

Although Rick had never worked in public affairs or studied it at Harvard, it was felt that on-job training would make up for the shortcoming.

That solved everything . . . almost.

What could be done with the guy who already held the job? He was capable, experienced, educated and a proven public affairs officer who, just several years before, led the Boston office to be picked as the most effective in the United States. He was offered, and accepted, another career position.

Rick went to work with a speed that surprised even the critics of his selection. In just one year on the job he reeled off more than two dozen trips with 15 of them to Maine. Then he settled down to a steady pace of at least two a month. By this July he had returned to the scene of his political affairs 32 times.

A check of his travel vouchers shows a large number of the trips either starting or ending on the first or last day of the week in Maine, near his home of Portland. He alternately uses Portland and Boston as the terminus of trips.

Federal Times talked with Rick about his activities as public affairs director, his trips and his aspirations. His personality and seeming candor can dispel notions of potential boondoggling that might easily be read into the travel vouchers.

Here are some of his comments:

"I have been living in both Portland and Boston throughout my time with the department. It's been the only way to do this job.

"Whenever I go on a trip, I charge the department whichever is less . . . from Portland or Boston. I even try to save the government money during trips by staying with friends and then not charging that per diem.

"Take a look at my trips to Washington. I don't even remember charging a hotel. I always stay with friends," he said. (Federal Times did check and he was right.)

He explained his numerous visits to Maine this way:

"People in our regional office recognize that I know most of the leaders in Maine. So, when it's necessary to do something there, I normally am asked to go. It's the same with the Boston area. Kevin (Boyle) normally handles that.

"The public affairs staff also shares responsibility. One person handles Connecticut and Rhode Island and another covers New Hampshire and Vermont. Much of our business is generated through local contacts."

When asked why there were so many trips, he responded that it was a good way to make the department more open and accessible. "As a politician, you must be more out front about everything. I've kept that in mind."

Rick was asked about his plans for future offices.

"I really don't have any specific plans," he replied. "There might be circumstances in which I could run for Congress again."

The Republican who beat Rick in the 1976 race for Congress now is thinking about seek-

ing the seat Sen. Edmund S. Muskie left when he became Secretary of State. If he does, insiders say, Rick would be well positioned to make a major race for that congressional seat. He has maintained, through his HHS office, a very high profile among Down Easters.

And so, the saga of Rick Barton raises some serious questions about the responsibility of government . . . and the specific actions of the political appointees of HHS. What should the function of a federal department be in the selection of top schedule C appointees? Should the development and encouragement of career talent be forsaken to provide an opportunity for bright, energetic, and unqualified young men and women?

Should the career public servants be subjected to periodic purges as an expendient to bring in political aspirants? The Rick Barton case, by itself, is not important in the scheme of things. It is important because it reflects an attitude by HHS that has led to politicizing of the three top jobs in each of ten regions, a disregard for the career service that helped to carry the country through the tough years of Watergate, and a return to "the end justifies the means."

And as a practical matter, it is stupid. As previously expressed in this column, the electorate supports an administration that does a job for the people. It resents one that does a job on the people!●

COMMUTER TRANSPORTATION ENERGY EFFICIENCY ACT OF 1980

● Mr. HEFLIN. Mr. President, I am delighted to say that I have been added as a cosponsor of S. 3030, the Commuter Transportation Energy Efficiency Act of 1980. This is an excellent, timely piece of legislation, and I support it wholeheartedly.

The facts concerning our addiction to foreign oil are depressing. They also serve as strong reminders that America is becoming more and more vulnerable to imported oil dependency and internal, economic disorder. Unfortunately, Mr. President, these alarming facts are the result of our gluttonous oil appetites.

If war occurred today in the Middle East, the United States could be drawn into armed conflict in order to insure a continuous flow of oil throughout this country. As we well know, the President has firmly committed the United States to protect its vital, strategic interests in the Middle East.

It is most regrettable that our American economy bordered on the brink of ruin throughout the seventies partly because of our great dependence on foreign oil. The energy crises during the past decade caused two recessions in this country and double digit inflation. It is no wonder then that strong, but inexpensive solutions to our energy problems are desperately needed. It is undisputed that energy conservation is our cheapest way to reduce our dependence on foreign oil.

The Commuter Transportation Energy Efficiency Act of 1980 contains an excellent proposal for energy conservation. The act would create no costly programs, no counterproductive bureaucracy, and no waste or inefficient squandering of the taxpayers' money. Instead, the legislation proposes a simple, time-proven solution of rewarding the energy-thrift.

There are several provisions in the Commuter Transportation Energy Efficiency Act of 1980 that are also so logical and simple that they form a very wise and much needed bill. This legislation encourages the use of car pooling, van pooling, buses and other forms of mass transportation as energy conservation measures.

Our highways are choked with numerous motor vehicles. Millions of Americans waste gas and pollute the environment by using an astronomical number of single passenger cars. In so many of these cases, multi-passenger vehicles could easily substitute for them, but old habits are very tenacious creatures. Without some incentives, massive car and van pooling will never become a reality.

Mr. President, S. 3030 creates several different types of incentives. It provides a 15-percent tax credit to individuals purchasing vans for van pooling, increases the investment tax credit for employers who purchase vans for van pooling to 20 percent, excludes employer subsidies for ride-sharing programs from the taxable income of the employee, provides a tax credit to the employer for the administrative costs of ride-sharing programs, and restores the gasoline tax deduction for motor fuels used in ride-sharing vehicles.

Mr. President, imagine the results if all employees were to take advantage of the ride-sharing programs outlined in this magnificent piece of legislation. Imagine the money and gasoline that would be saved, the pollution that would be curtailed, and the highway congestion that would be sizably reduced by participating in these various ride-sharing programs. The results would, indeed, be profound.

Mr. President, such results would do enormous good for this Nation and would put it back on the road to continuing progress for the benefit of all. In my mind, this bill is one of the most important pieces of energy legislation to come up during the 96th Congress. Its potential is enormous and its contributions are vast.

Mr. President, I urge all of my colleagues to support this bill. We must show our Nation and the world that the U.S. Government is determined to reverse its present decline due to energy inefficiency and neglect. We must demonstrate to the world in general and to our country in particular that energy waste and inefficency will no longer be tolerated. We must prove that this Nation will do everything possible to free itself from being a hostage to foreign oil. For these reasons, Mr. President, I urge speedy passage of the Commuter Transportation Energy Efficiency Act of 1980.●

PRESIDENT CARTER'S DECEPTIVE STATEMENT ON SOCIAL SECURITY

● Mr. DOLE. Mr. President, over the weekend Mr. Carter has leveled another of his deceptive attacks on Governor Reagan, this time for a 16-year old statement that the social security system should be voluntary. This, he says, would "destroy the system." A brief review of a far more recent period—the last 4 years—reveals that Carter has done more to undermine retirement security in this country than any president since the Social Security program was initiated.

CARTER SOCIAL SECURITY TAX INCREASE

During his 4 years in the White House, Carter has recommended massive social security tax increases and numerous significant benefit cuts. In 1977 Carter recommended and the Congress passed the largest tax increase in the history of this country. Carter broke his own record last year when he signed the even larger windfall profit tax. Next year alone the social security tax is due to increase by $16 billion. Carter's 1977 act will increase social security taxes by $150 billion through 1985.

CARTER BENEFIT CUTS

Mr. President, at the same time Carter has proposed numerous benefit reductions every year that he has been in the White House. Among the benefits that Carter has tried to wipe out are:

First. Post-secondary student benefits;

Second. Lump-sum death benefits;

Third. Minimum benefits for future retirees; and

Fourth. Parent's benefits when the youngest child reaches 16 instead of 18.

He also has proposed increasing the age of eligibility for social security retirement by 1 month and reducing social security benefits by $1 for every $3 of a Federal pension.

In addition to proposing benefit cuts he has opposed constructive changes designed to eliminate inequities. For example, he opposed modifying the monthly earnings test that has been denying earned benefits to self-employed farmers, teachers, salesmen, and others.

CARTER BREACHES CONTRACT WITH AMERICANS

Mr. President, social security is a solemn contract between American workers and their Government. It is a serious breach of faith to reduce benefits after workers have spent their whole lives contributing to their retirement and planning on certain benefits.

It is incredible that Carter should criticize anyone for damaging the retirement security of our citizens. Before he attacks, let him defend. Let him tell the woman who has lost her husband that he tried to take away the death benefits that are intended to help bury him. Let him tell the child who is trying to go to college after his father has died that he would take away his student benefits. Let him tell the low-income worker who has paid into social security his or her whole life that he would eliminate minimum benefits.

GENERAL FUND FINANCING

The Carter record on social security is not a good one. He has consistently proposed tax hikes and benefit reductions. His most recent so-called "economic recovery" plan contains another broadside on the social security system. He has proposed a tax credit that, in effect, amounts to back door general fund financing of social security. This proposal would drive a wedge between a worker's contributions and his benefits. If anything will undermine the viability of our social security system, general fund financing will do it.●

SUPERFUND: FEDERAL CAUSE OF ACTION IS NOT NOVEL STATUTORY APPROACH

● Mr. MITCHELL. Mr. President, I want to congratulate the Senate majority leader Mr. BYRD for his wise insistance that S. 1480, the Environmental Emergency Response Act, be designated as priority legislation for the remaining days of the 96th Congress. It certainly is priority legislation.

I am proud to be a cosponsor of this legislation and to be associated with a bill inspired by Senator CULVER and my predecessor Edmund Muskie.

My support for the superfund legislation is strong and centers on the important liability provisions contained in S. 1480.

The committee markups, in which I participated, convinced me that without a strong Federal liability scheme, few victims of toxic contamination would be compensated for their harm and few producers and users of toxic chemicals would have the incentive to prevent such occurrences in the first place. It is only right that the risks imposed upon society by the manufacture, transport, use and disposal of hazardous substances should be tempered by the often-used legal instrument of liability—which places the responsibility for harm at the point from which it derives.

There are those who argue that the strict liability provisions of S. 1480 are not only punitive but that the legislation would change existing common law by creating a Federal cause of action. In fact, this was the major reason given for the only dissenting vote cast to report this bill from the Committee on Environment and Public Works.

I must take issue with those who believe there is something novel or wrong with this approach. S. 1480 would indeed create a Federal cause of action which would allow for private rights of action to be created at the Federal level. But, there is ample precedent for such legislation.

A Federal cause of action has been created in at least 36 other laws—dealing in such areas as labor relations, protecting citizens against securities and credit fraud, civil rights violations, and patent infringement. There is no reason why the same avenue of redress, which has been made available to the citizens of this Nation in these areas of concern, should not be made available on the same level to those who have been detrimentally affected by the spread of ultrahazardous chemicals into the environment.

In essence then, S. 1480 builds upon the foundation of existing statutory approaches and seeks only to make those who are truly responsible for harm liable for its specific consequences.

There is no greater question concerning the health of our people and environment today then the unabated spread of hazardous chemicals into the environment. There is no better vehicle in law to turn this problem around, in my opinion, than the strict liability provisions in the Environmental Emergency Response Act.

Mr. President, the Library of Congress has compiled an initial list of some of the Federal statutory provisions which provide Federal cases of action that offer some parallel to the cause of action created by S. 1480. I ask that this inexhaustive list be printed in the RECORD.

The information follows:

FEDERAL CAUSE OF ACTION

EMPLOYEE-RELATED

Labor-Management Relations Act (Taft-Hartley Act)

Section 301, 29 U.S.C. 185, provides that labor organizations and employers shall be bound by the acts of their agents, and allows suits for violation of labor-management contracts to be brought in Federal district court. Any doubt that this provision created a new cause of action not available at common law was eliminated by the decision in *Textile Workers Union of America* v. *Lincoln Mills*, 353 U.S. 448 (1957).

Section 303, 29 U.S.C. 187, gives persons injured by a labor organization's unfair labor practice a cause of action to recover for injuries sustained.

Labor-Management Reporting and Act (Landrum-Griffin Act)

Section 102, 29 U.S.C. 412, allows any person whose rights under the Act have been infringed to sue "for such relief (including injunctions) as may be appropriate."

Federal Employers' Liability Act

Section 1, 45 U.S.C. 51, makes every common carrier by railroad (while engaged in interstate commerce) liable in damages to employees injured through the negligence of officers, agents, or employees of the carrier.

Section 2, 45 U.S.C. 52, is a similar liability provision for railroads operating in the District of Columbia, territories, or Panama Canal Zone—i.e., with no requirement that the railroad be engaged in interstate commerce.

(Section 3, 45 U.S.C. 53, imposes a comparative negligence rule, and section 4, 45 U.S.C. 54, bars an assumption of the risk defense.)

Merchant Marine Act of 1920

Section 33, 46 U.S.C. 688, more commonly known as the Jones Act, declares that any seaman injured in the course of employment may maintain an action for damages.

Longshoremen's and Harbor Workers' Compensation Act

Section 4, 33 U.S.C. 904, imposes strict liability on employers of such persons for medical care, disability, and death in connection with employment.

Employee Retirement Income Security Act

Section 502, 29 U.S.C. 1132, allows participants or beneficiaries of employee pension plans to bring civil actions for up to $100 per day where the plan administrator refuses to supply information required under the Act to be furnished, or for benefits owed under the terms of the plan.

BANKING/CREDIT

National Bank Act

12 U.S.C. 86 states that where interest beyond that allowed under the Act has been paid, the person who paid may sue to recover twice the amount of the interest paid.

Savings and Loan Insurance Corporation Act

Section 412, 12 U.S.C. 1730e, is a provision similar to the above for savings and loan institutions.

Bank Holding Company Act

Section 106(e), 12 U.S.C. 1975, allows any person injured in his business or property by certain prohibited bank tie-in arrangements to sue for three times the damages sustained.

Fair Credit Reporting Act

Section 617, 15 U.S.C. 1681o, makes a consumer reporting agency that negligently fails to comply with the Act liable to the consumer for actual injuries resulting from the failure and, if the action is successful, the costs of the action and attorneys' fees.

Equal Credit Opportunity Act

Section 706, 15 U.S.C. 1691e, subjects a creditor who discriminates against a credit applicant on the basis of race, religion, sex, etc., to liability for any actual damages sustained by the applicant, and, if the action is successful, for litigation costs and attorney's fees.

Truth in Lending Act

Section 130, 15 U.S.C. 1640, makes creditors liable for violations of the Act in the amount of any actual damages sustained by the plaintiff as a result of the violation, plus costs of the action and reasonable attorneys' fees.

SECURITIES

Securities Act of 1933

Section 11, 15 U.S.C. 77k, gives a cause of action to any person acquiring a security because of false representations in the registration statement.

Section 12, 15 U.S.C. 77, creates liability for the selling of a security without a registration statement in effect for that security, or by means of a prospectus containing untrue statements.

Section 15, 15 U.S.C. 77o, provides that every person who, through stock ownership or otherwise, controls a person liable under the above two sections, shall also be liable jointly and severally with such controlled person to any person to whom the controlled person is liable.

Securities Exchange Act of 1934

Section 9(e), 15 U.S.C. 78i(e), declares that persons who willfully participate in any of various specified securities transactions shall be liable to persons who buy or sell any security at a price that is affected by such transactions for the damages sustained.

Section 18, 15 U.S.C. 78r, allows any person who buys or sells a security in reliance upon a false statement filed under the Act to sue the maker of the statement for damages caused by such reliance.

Section 20, 15 U.S.C. 78t, is a counterpart to 15 U.S.C. 77o above as regards persons found liable under the instant Act.

COMPETITION

Clayton Antitrust Act

Section 4, 15 U.S.C. 15, authorizes persons injured by violations of the antitrust laws to sue for triple damages (plus costs of suit and attorneys' fees).

Unfair Competition Act

Section 201, 15 U.S.C. 72, makes it unlawful to systematically import articles into the United States at a price substantially lower than the actual market value. Any person injured in his business or property by violation of this prohibition may sue for three times the damages sustained, plus litigation costs and attorneys' fees.

Agricultural Unfair Trade Practices Act

Section 6(c), 7 U.S.C. 2305(c), authorizes any person injured in his business or property by various practices of agricultural produce handlers to sue for damages sustained.

TRADEMARK/PATENT

Trademark Act

Section 32, U.S.C. 1114, authorizes the registrant of a trademark to bring a civil action against an infringer for damages where the infringing acts have been committed with knowledge that the limitation is intended to cause confusion or mistake.

Section 35, 15 U.S.C. 1117, states that when a violation of any right of a registrant shall be established, the registrant shall be entitled, with exceptions, to recover defendant's profits, damages sustained by the registrant, and litigation costs.

Section 38, 15 U.S.C. 1120, provides that any person who procures registration of a mark by false representations shall be liable to persons injured thereby for any damages sustained.

Patent Infringement

35 U.S.C. 281 creates a remedy by civil action for infringement of any patent. See also 35 U.S.C. 284 governing the amount of damages to be awarded.

35 U.S.C. 291 states that the owner of an interfering patent may have relief against the owner of another by civil action.

CIVIL RIGHTS

Fair Housing Act (Title VIII, Civil Rights Act of 1968)

Section 812, 42 U.S.C. 3612, authorizes suits for damages by persons who have been discriminated against on the basis of race, religion, sex, etc., in the sale or rental of housing. (An older provision of the Civil Rights Act of 1875, 42 U.S.C. 1982, has been held to impliedly create the same cause of action as regards racial discrimination.)

Civil Rights Act of 1871

Section 1, 42 U.S.C. 1983, states that every person who, under color of State statute or custom, deprives a citizen of the United States of rights secured "by the Constitution and laws," shall be liable to the injured party in an action at law.

Section 2, 42 U.S.C. 1985, establishes personal liability for conspiracy to interfere with the civil rights of another, where the other person is injured in his person or property or deprived of any right of a U.S. citizen.

Section 6, 42 U.S.C. 1986, provides that any person who knows of an imminent interference with the civil rights of another (per 42 U.S.C. 1985) and who refuses to aid in preventing same despite the ability to do so, shall be liable to the party injured for all damages caused by the wrongful act which such person by reasonable diligence could have prevented.

MISCELLANEOUS

Magnuson-Moss Warranty Act

Section 110(d), 15 U.S.C. 2310(d), provides that a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under the Act, or a warranty or service contract, may, with limited exceptions, bring suit for damages.

Packers and Stockyards Act

Section 308, 7 U.S.C. 209, makes violators of the livestock-related provisions of the Act liable to persons injured thereby for the full amount of damages sustained in consequence of the violation.

Jewelers' Liability Act (Gold and Silver Articles)

Section 5, 15 U.S.C. 298, provides that competitors and customers of persons who overstate the fineness of gold or silver alloy shall have an action for damages against such person.●

BILINGUAL EDUCATION

● Mr. DANFORTH. Mr. President, I wish to bring to the attention of my colleagues an amendment which was added to the Labor-HHS-Education appropriations bill by the House of Representatives. The amendment prohibits the Department of Education from using appropriated funds to enforce regulations requiring a State or local school board to teach basic courses in languages other than English.

I strongly support the amendment, not because of my views I hold with regard to bilingual education, but because I believe strongly that decisions about curriculum should remain the responsibility of the State government and local school boards.

In 1979, when the Department of Education Organization Act was before the Senate, I cosponsored an amendment with Senator ROTH to insure that the Department of Education did not turn into a national school board, exercising control over curriculum, teacher qualifications and other areas of responsibility traditionally reserved to States and local governments.

Notwithstanding this amendment, the Department of Education published proposed regulations on August 5, 1980, regarding students with limited proficiency in English, which usurp the traditional areas of responsibility of State and local governments.

I was pleased to see the House of Representatives take action to block the proposed regulations. I have written to the chairman and ranking minority members of the Appropriations Committee and the Appropriations Subcommittee on Labor, Health, Education, and Welfare expressing my support for the House amendment and my desire that it remain in the appropriations bill when it is reported to the Senate.

For the information of my colleagues, I ask that the text of my letter be printed.

The letter is as follows:

COMMITTEE ON FINANCE,
Washington, D.C., September 3, 1980.

Hon. WARREN G. MAGNUSON,
Chairman, Appropriations Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to alert you to my support for an amendment which was added to the Labor-HHS-Education Appropriations bill when the bill was considered by the House of Representatives on Wednesday, August 27, 1980. The amendment prohibits the Department of Education from using appropriated funds for enforcing regulations which would require a state or local school board to teach basic courses in languages other than English.

When the Department of Education Organization Act was considered by Congress, I cosponsored an amendment with Senator Roth to ensure that the Department of Education would not exercise control over the curricula of local schools.

The amendment was agreed to by Congress and was a part of the final legislation signed by the President. The amendment provided, in part, that:

"No provision of a program administered by the Secretary (of Education) or by any other officer of the Department (of Education) shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational installation, school or school system . . . except to the extent authorized by law."

At the time the above language was included in the enabling legislation, I believed it was written clearly and specifically. I believed it would prevent the new Department from telling the school boards of our nation what subjects to teach and what teachers to hire.

I continued to believe that until I reviewed the proposed regulations of the Department of Education with respect to students with limited proficiency in English, which were published in the Federal Register on August 5, 1980.

The proposed regulations are detailed and specific. They tell the schools what language tests must be administered and when; which students must receive bilingual instruction and in what subjects; it defines what constitutes a qualified instructor; it specifies how long a school must continue to offer a student intensive-English instruction or bilingual courses, and so on. In my view, these regulations constitute "control over the curriculum, program of instruction, administration, or personnel of any educational institution, school or school systems."

I have consistently opposed a legislative veto over regulations, arguing that the appropriate response to overly broad and intrusive regulations are statutes which are more clearly and narrowly drafted. In this case, I believe the intent of the statute was clear and narrow; nevertheless, the Department has chosen to issue proposed regulations which ignore the clear legislative intent.

I recognize that those students in our country who have limited English proficiency need extra help if they are to receive the full benefits of our educational system. However, I do not believe the best way to provide for these students is through a centralized, rigid set of rules devised in Washington. Even the Supreme Court, in the landmark case on the subject, *Lau* v. *Nichols*, simply directed the Board of Education to apply its expertise to the problem of teaching students with limited English but did not mandate a particular course of action.

For these reasons, I was pleased to see the House of Representatives take action to block the proposed regulations in this area. I urge you to follow the direction of the House and report the legislation to the full Senate with the House amendment.

Sincerely,

JOHN C. DANFORTH.●

THE FAMILY RENTAL TAX

● Mr. WILLIAMS. Mr. President, in enacting the Tax Reform Act of 1976 the Congress closed a number of tax loopholes which had been abused by some taxpayers to unjustifiably shelter income; including that which permitted a taxpayer to take various deductions on second vacation homes. While the elimination of this shelter was quite proper, it has come to my attention that the Internal Revenue regulations which will implement this change in law will have the unanticipated and undesirable effect of discouraging family members from assisting each other in providing housing.

Mr. President, on July 24 I introduced S. 2969, the Real Estate Construction and Rehabilitation Incentives Act of 1980, for the purpose of making necessary revisions in the code's treatment of realty and, in particular, to provide incentives for new rental housing construction. I am very gratified that the Finance Committee, swayed by the strong advocacy of Senator BENTSEN, adopted the depreciation proposal for structures set forth in S. 2969 as a major part of the tax cut bill they recently reported. It is my hope that, as the Senate continues to develop its tax legislation, an additional provision of S. 2969, designed to eliminate this family rental tax, will receive the same favorable response. Quite simply, I have proposed to amend section 280(A)(d)(2) of the IRS Code to make it clear that, where a property is rented to a relative for use as his or her principal residence, at a fair market rent, the taxpayer-landlord is entitled to the same deductions as if he had rented to a stranger.

Mr. President, in the August 23 Washington Post, Mr. Kenneth Harney, one of our leading journalists in the real estate field, described the proposed IRS regulations that are at issue. I commend this article to the attention of my colleagues, and ask that it be printed at the conclusion of my remarks. At a time when Congress is becoming more sensitive to the impact of our actions on the family, and in particular is moving to eliminate the discriminatory effects of the so-called marriage tax, I believe we should clarify the law lest we discourage family members from assisting each other in coping with a very tight and high-priced housing market.

The article follows:

COMING SOON FROM IRS: A "FAMILY RENTAL TAX"

(By Kenneth R. Harney)

The Internal Revenue Service has issued a list of proposed regulations on real estate that could shock even the most fervent tax reformer.

The eight-page IRS bombshell appeared in the Aug. 7 Federal Register.

Among other things it said that:

Americans who rent property to close relatives—such as an elderly mother or a young son or daughter just out of college—will be penalized at tax time, even if the relative was charged rental for the property at the full market rate.

Homeowners who have a legitimate secondary source of income, and who set aside a small portion of their home as an office, will not be able to deduct business-related expenses on that office—despite a 1980 decision by the top Federal tax court that says they can.

Vacation property owners who rent their units will be charged with a full day of "personal" use of the property every time they visit it without spending virtually every minute repairing it. Even if a parent who owns a cabin in the woods does spend eight hours each day fixing it up, he or she will get tagged with personal use if, for example, an accompanying 17-year-old child was not forced to work on the house for eight-hours also.

The suggested regulations affect far more than real estate, by the way; they apply to any type of nonhotel accommodation that is rented, including houseboats, recreational vehicles, trailers and mobile homes.

These are just a few of the surprises awaiting taxpayers who learn about the tough new IRS proposals.

The proposals derive from a law passed by Congress in 1976, during the waning moments of the last push for reform to plug the loopholes in our labyrinthine tax code. The IRS was supposed to issue regulations within a year of that law but only now has gotten around to publishing them in proposed form.

The rules will go into effect this fall—and could trigger thousands of tax audits on returns beginning next year—unless the Treasury Department is convinced by public outcry to postpone them. The IRS is taking "comments" in the form of letters and telegrams from the public through Oct. 6, so it is not too late for you to make your feelings on the subject known to the IRS.

You've heard of the "marriage tax" in the current IRS code that penalizes couples who marry but rewards those who live together unmarried. Now the country is about to get a "family rental tax"—a penalty for providing shelter to members of the family and in-laws!

This rule, penalizing anyone who rents property to a close relative, undoubtedly is the most hard-nosed of the proposed regulations. It prohibits the owner of a house, a condominium or other dwelling unit rented to a relative—at full market rates—from taking the normal tax benefits associated with rental property.

Under the new IRS rules, an owner will not be allowed to deduct any more on such a property than he or she receives in rental income. The owner will be able to deduct property taxes and mortgage interest but will not be allowed to add the full extent of depreciation, routine maintenance and other customary deductions if total writeoffs exceed rental income.

The amount at stake could involve several thousand dollars a year in lost deductions in the case of a rental house or condominium in a typical U.S. metropolitan market.

In practical terms, this means that a person, who normally would be able to take a paper "loss" for tax purposes on a house rented to a stranger, would have to pay higher taxes for renting it to a close relative.

If the IRS meant to restrict its rule only to rentals to family members at less than the going market rate, that would be tough enough. But to discourage taxpayers from renting either full-time residences or vacation space to relatives, paying the same rate that a stranger would be charged, is downright mean.

The IRS explains that it's merely following the sense of Congress on this whole issue—a Congress that dates back to 1976. The law clearly distinguished rentals to relatives from rentals to others, IRS maintains. Rentals to family members are considered personal use by the property owner, even if the owner never sets foot on the place.

If you rent out property of any type, or were thinking about doing so, get a copy of IRS's Aug. 7 proposals and show them to your accountant or attorney. The rules could cost you a lot of money. They could also cost some innocent renters a family roof over their heads.●

WHAT NEXT, MR. PRESIDENT?

● Mr. DOLE. Mr. President, the Senator from Kansas would like to comment on the curious timing of a White House announcement about a diplomatic nonevent. In another political cheap-shot, Mr. Carter made a so-called dramatic announcement that Egypt and Israel had agreed to resume the crucial Palestinian negotiations just as Ronald Reagan was scheduled to appear before a cheering and receptive national B'nai B'rith Convention. Mr. Reagan's speech outlined his strong commitment to our traditional ally, Israel, recognizing not only the strategic importance of Israel but the moral imperative that has been the bedrock of our support for the past 32 years.

Yet, even as Mr. Reagan's speech was interrupted thirty times by applause, President Carter was attempting to undercut those remarks with his puffed-up piece of demagogic statesmanship. Sitting on the sidelines, Mr. Carter timed the announcement to take the media spotlight away from the Republican candidate in a tactic increasingly recognized as typical of the Carter-Mondale campaign—using critical diplomatic issues for his own personal and political gain. President Carter is abusing his office and his authority in a desperate attempt to revive his standings in the polls and win reelection.

PHONY PEACE PROGRESS

President Sadat and Prime Minister Begin are unwilling accomplices dependent on an American good will vital to their security amid a sea of enemies. This good will is dispensed by the most political U.S. President in recent years, yet, realistically there is little the Egyptians and Israelis can do without undercutting their future support from Mr. Carter.

What was actually accomplished in this "dramatic" bit of statemanship? No timetable was indicated. The Egyptian foreign minister reported that the agreement referred only to "preparatory talks" and "cannot be considered the resumption of negotiations." Mr. Begin, meanwhile, claimed he had not changed any of his positions on the key issues which caused the negotiations to originally break off. This "dramatic" progress caused the President's special Middle East envoy, Sol Linowitz, to announce the results in Cairo yesterday claiming sanctimoniously:

> We are dealing with issues of war and peace. I am not here on a political mission.

Shortly thereafter, half a world away, Mr. Carter was announcing this piece of political fluff as a significant step forward.

WHAT NEXT, MR. PRESIDENT?

This kind of tactics may help Mr. Carter politically in the short run, but they will undermine any attempts to build a lasting Middle East peace structure. The American public is more sophisticated than the President thinks. But, these political cheap shots are typical of Mr. Carter's campaigns. This is just the beginning. We can expect sudden developments on the hostage crisis in Iran, although perhaps a little closer to November.

We can look forward to a timely resumption of serious arms reduction talks with the Soviet Union, and perhaps new trade understandings with Japan limiting imports or increasing exports. Perhaps we may hear of new agreements with Mr. Carter's chief supporter in China, Deng Xiaoping.

Whatever these dramatic events are, we can be sure of one thing: Like last night's revelation, 6 months from now they will signify little and few will remember them. What will be the new storm in a teacup, Mr. Carter? What will be next, Mr. President?●

U.S. POPULATION

● Mr. PACKWOOD. Mr. President, I would like to report that, according to the latest U.S. Census Bureau approximations, the total population of the United States on September 1, 1980 was 223,558,075. This represents an increase of 297,436 since August 1, 1980. Since this time last year, our Nation's population has increased by 2,378,050 persons.

During the past month we have added

enough people to our population to more than fill the city of Norfolk, Va. Over the past year, our population has increased enough to fill the entire city of Portland, Oreg., more than six times.●

THE PLIGHT OF THE U.S. SHRIMP INDUSTRY

● Mr. STONE. Mr. President, I would like to bring to the Senate's attention the plight of the shrimp industry in the United States.

Quite simply, the industry is on the verge of bankruptcy. The combination of soaring fuel prices, unfair competition from subsidized foreign vessels and high interest rates is bringing about the end of the American shrimp industry.

In my travels throughout Florida I have been impressed with the shrimpers' willingness to compete with any other country in the world so long as the competition is fair and just; however, this is currently not the case. For example, the shrimpers in Mexico are purchasing diesel fuel at about 17 cents per gallon, while our people are forced to run on fuel which costs about $1 per gallon.

It does not take long to understand that the American shrimp industry will not last without some protection by the Federal Government in the form of a differential tariff on imported shrimp, revitalization of the Fisheries Loan Fund to help boats refinance mortgages or refit their boats for combination fishing and a new, aggressive marketing strategy.

I, for one, will not quietly witness the shrimp industry fade away from neglect. I urge the administration to propose a package which will help to revitalize the industry and allow these people to compete on an equal basis with foreign fisheries. And I stand ready to help in any way with this effort. For if we fail to act, and act soon, it may be too late to save many of the boats, and this will only increase our imports of shrimp and increase our balance of trade deficit.

I ask that the following article from the August 8, 1980 Christian Science Monitor, which details the urgent problems facing the shrimp industry, be printed in the RECORD.

The article follows:

GULF SHRIMP BOATS SAIL INTO TROUBLE ON ECONOMIC EBB TIDE

(By Gil Klein)

TAMPA, FLA.—With the price of fuel up, the demand for shrimp down, and international restrictions on where they can fish, many Gulf Coast shrimpers say they may be out of business within a year.

"We're in pretty much of a scrape," said Jimmy Loeb, owner of the shrimp boat Rachel Lyn and a shrimper since he was 12. "We've got higher operating costs and lower market values for the shrimp. Some of the boats are already tied up."

Four factors are working together to make life difficult for the shrimpers:

Fuel costs have more than quadrupled in the past five years. Catching a pound of shrimp takes a gallon of diesel fuel, and many shrimpers complain they work mostly to pay the fuel man.

A recessionary economy dampens the appetite for shrimp, and as the demand for the pink crustaceans drops, the price the shrimpers can get for them drops, too. The American shrimp fleet was able to sell only 336 million pounds of shrimp in 1979 compared with a five-year average of 405 million pounds. The price the shrimpers got for their product dropped by about a third.

The Mexican government squeezed American shrimpers out of Mexican waters. The Mexicans imposed a 200-mile territorial limit in 1974, and during the next five years issued fewer and fewer permits to American shrimpers. By December 1979 no Americans were allowed to fish for shrimp in Mexican waters, which meant more shrimp boats were competing for shrimp in American waters.

An oil-rich Mexico has been able to hold down the price of its diesel fuel. While American shrimpers are paying 87 cents a gallon for their fuel, Mexicans are still getting theirs for 18 cents a gallon. Therefore, Mexicans are able to sell their shrimp in the American market at a lower price which helps keep shrimp prices down.

"I think there's a lot of shrimpers about to go out of business," said Robert Jones of the Southeastern Fisheries Association. "How this year's season goes off Texas will have a big bearing on who does go out of business. If it's a bad season, I think hundreds will go out of business."

Shrimpers are groping for answers, but the only solution Mr. Jones's association has devised is a proposal for Congress to roll back the price of diesel fuel for farmers and fishermen to January 1978 levels. That would mean diesel fuel would cost shrimpers about 43 cents a gallon, and Jones said the oil companies would be allowed to make up the difference in price through a reduction in the windfall profits tax.

Mr. Jones concedes the plan has a slim chance of passing through Congress, and most shrimpers are not counting on it.

"Everyone knows what the problem is, and there's nothing we can do about it," said an angry Ernie Donini, who has been in the shrimp business since 1954 and is president of the Superior Seafood Company. "If we're lucky, we're hoping to pay the bills we already have and float through to next year and see what happens."

The hundreds of shrimp boat owners who ferried Cuban refugees to Key West weren't actually making any money, Mr. Donini claimed. They were just trying to pay off some of their bills.

"I don't believe the government should support me," he said, "but if the government is going to support everyone else, then I'm worse off."

Clark Rodgers, owner of the shrimp boat Beverly R., clasped his hands together as he leaned against the rail of his boat and looked at the other shrimp boats tied up in Tampa's port.

"If it weren't for the fuel and the imports we could make it," he said.●

THE DEATH OF ROBERT KELLER

○ Mr. GLENN. Mr. President, the United States lost one of its most dedicated public servants when Robert F. Keller, former Deputy Comptroller General of the United States, died on August 28 of a heart attack. Mr. Keller had retired from the General Accounting Office earlier this year, after a career that spanned 45 years with the GAO. He was one of the few employees at the agency who had worked under all five Comptrollers General and played a central role in transforming the GAO into an agency emphasizing the evaluation of programs utilizing Federal funds and paying increased attention to the needs and requirements of Congress.

Mr. Keller was the recipient of a number of prestigious awards during his career, including the Rockefeller Public Service Award in the field of law, legislation, and regulation in 1965, the National Civil Service League Award in 1976, and the Benjamin Franklin University Alumni Award in 1972.

Mr. President, the Subcommittee on Energy, Nuclear Proliferation and Federal Services, which I chair, took over the jurisdiction of GAO oversight more than 2 years ago. I and my staff have had continuing close contact with the top level officials at the GAO since that time. Mr. Keller's good offices enabled this relationship to prosper and the result was the passage of two comprehensive pieces of legislation last year dealing with the GAO—legislation that will enable the GAO and the Congress to improve oversight over the activities of the legislative branch in the future.

Mr. President, it has become fashionable in recent years to denigrate the professionalism and dedication of the Federal worker. Robert Keller was the shining counterexample to any negative characterization of Federal employees. His entire career, beginning with his first job as a GS-3 clerk, up to and including his Presidential appointment to GAO's second highest position, was marked by selfless dedication, high performance, and rigorously applied standards. Although we will miss him, his career will stand as an inspirational monument to anyone who wants to understand the true meaning of Federal service.●

RESOLUTION HONORING REPRESENTATIVE JAMES C. CLEVELAND

● Mr. HUMPHREY. Mr. President, on June 9, 1980, I introduced legislation to name the Federal Building in Concord, N.H., after retiring Congressman JAMES C. CLEVELAND.

One of New Hampshire's most distinguished public servants, JIM CLEVELAND has served the people of the Granite State for over 30 years. His 19 years in Congress stand as a measure of service and dedication. It is fitting and proper that we should honor Congressman CLEVELAND in this way.

The citizens of New Hampshire have shown their widespread support for this action. Indeed, the City Council of Concord, N.H., unanimously passed a resolution this month urging Congress to approve the renaming of this building. I request that my colleagues give prompt consideration to this request by the people of New Hampshire. I ask that the full resolution be printed in the RECORD.

The resolution follows:

RESOLUTION HONORING UNITED STATES REPRESENTATIVE JAMES C. CLEVELAND, "THE CONSTITUENT CONGRESSMAN"

Whereas, James C. Cleveland has served the people of New Hampshire for 30 years, first as a State Senator from New London (1951–1963), and then as a United States Representative for New Hampshire's second Congressional District in the United States House of Representatives (1963–1981), and

Whereas, James C. Cleveland's strong emphasis on constituent service to both individuals and communities in New Hampshire is a model to his colleagues in the Congress and to those who aspire to public office, and

Whereas, James C. Cleveland, as a ranking member of the House Public Works and Transportation Committee, has been instrumental over the years in assuring the development of New Hampshire's interstate highway system and water pollution control projects, and

Whereas, United States Senator John Durkin, United States Senator Gordon Humphrey, and United States Representative Norman D'Amours are co-sponsoring resolutions (H.R. 7588 and S. 2803) before the Congress to name Concord's Post Office and Federal Court Building the "James C. Cleveland Building", in honor of his 30 years of public service,

Therefore, the Concord City Council joins with New Hampshire's Congressional Delegation in urging Congress to approve the naming of the building and expresses its appreciation to Congressman Cleveland for his years of constituent service to Concord and its citizens.●

HURRY-UP SPENDING

● Mr. LEVIN. Mr. President, an article recently appeared in the September issue of the Reader's Digest that typifies the national attention being devoted to wasted tax dollars by Federal agencies. Specifically, the article, entitled "Washington's Year-End Spending Spree," addresses the "use-it-or-lose-it" mentality that has plagued the Federal Government for at least 60 years.

Hurry-up spending, an agency practice of rushing to spend unobligated funds before the end of each fiscal year to avoid having those funds revert to the Treasury, is costing the taxpayers at least $2 billion each year. The Senate Governmental Affairs Subcommittee on Oversight of Government Management, which I chair, recently has issued its report on hurry-up spending that documents wasteful spending practices in 10 Federal agencies. The report identifies fundamental deficiencies in budget planning and management within Federal agencies and deficiencies in the Federal procurement process that lead to excessive year-end buying.

Senator COHEN recently introduced legislation which would address these fundamental deficiencies. S. 3051, the "Government Management and Year-End Procurement Control Act of 1980," would tighten the Federal procurement process and provide added checks to control wasteful year-end spending, specifically with respect to the excessive number of noncompetitive procurement practices that have become so common in the waning months of each fiscal year.

I have expressed my support for Senator COHEN's legislation in this Chamber, and I will continue to support my colleague in his efforts to bring a halt to wasteful Government spending.

Mr. President, I ask that the Reader's Digest article be printed in the RECORD.

The article follows:

WASHINGTON'S YEAR-END SPENDING SPREE

(By Eugene H. Methvin)

It happens every August and September. The baseball pennant races heat up. Mothers scour the back-to-school ads. And all across America federal bureaucrats hurry to spend every last dollar of their budgets. Why the rush? Because, when the fiscal year ends on September 30, any unspent funds must be returned to the Treasury. And since Congress allocates money to an agency largely on the basis of how much the agency spent during the previous year, bureaucrats naturally fear that funds unspent now will be funds unbudgeted next year.

One result of this attitude, says former Treasury Secretary W. Michael Blumenthal, is that "more money is wasted in the federal government in the last two months of the budget year than in the previous ten."

This last-minute spending spree has inflicted these all-too-typical atrocities on the taxpayer:

The Department of Health, Education and Welfare issues $135 million in contracts on the last three days of fiscal year 1979—Friday, Saturday and Sunday. This is more than ten percent of HEW's entire contract budget.

In one fiscal year, the Community Services Administration awards 32 contracts; 70 percent are given out in the last month; 64 percent in the last week.

An Office of Education official, by handwritten note, orders hundreds of thousands of dollars of additional cash showered on six colleges whose grant applications happen to be pending. He neither knows nor cares where the money will go. As he later tells a Senate subcommittee, he was "embarrassed that we may have to give $1.2 million back to the Treasury."

The Department of Housing and Urban Development spends $65,280 for hundreds of unneeded desks, chairs, couches, filing cabinets and other office furniture, then spends thousands more to store it, in the original cartons, in four Denver warehouses.

Federal-budget directors have exhorted government agencies to avoid wasteful spending at the end of the fiscal year, but these warnings have been "a paper exercise," says Assistant Comptroller General Harry S. Havens of the Congressional watchdog General Accounting Office. More examples:

In the last week of fiscal 1979, the Veterans Administration dispensed millions of dollars for computers to manage its patient-scheduling and drug-prescription operations. Five contracts totaling $3 million went out on the last four days—with no competitive bids, no negotiations on price, none of the usual advance audits on contractors' proposed costs and profits.

In late August 1978, the Office of Family Assistance at the Social Security Administration found itself with several million unspent dollars. A small consulting firm was promptly offered a $161,245 contract to study the nation's welfare system. Two of the consultant company's officials spent a few hours throwing together a formal proposal. As one later explained to the Washington Post, "It was obvious the government officials did not know exactly what they wanted. This was end-of-the-year money they had to spend so they could use up their budget. So we wrote a couple of pages that didn't say anything. We knew they'd accept it."

At boarding schools run by the Bureau of Indian Affairs in Oklahoma, year-end sprees have pushed per-pupil costs as high as $10,281 a year. One school with 113 students possessed more than a dozen washers and dryers. As September 30, 1977, neared, it ordered two more of each, plus $8000 worth of clothing to add to large existing stockpiles. Another school with 168 students bought two popcorn machines, four hair dryers and five electric typewriters, even though it already had popcorn machines in each dormitory, unused hair dryers in storage and 14 typewriters for four typists.

On September 8, 1978, a deputy notified Commissioner of Education Ernest L. Boyer that his agency had saved more than $2 million in payroll and data-processing costs. "These funds can be made available to you to allocate as you see fit," the deputy advised. "We need to move quickly as these funds lapse at midnight on September 30."

Three weeks later, just hours before the fiscal year was to end, the Office of Education handed the Rand Corporation $123,006 to analyze "the effects of post-secondary schooling on one's attitudes to the self," a bit of educational leaf-raking that earlier had been labeled "marginal."

One consequence of all this hurry-up spending is sharply higher costs for civil-service overtime as harried contracting officers, auditors and clerical employees put in extra hours shoveling out the money. Last September, for example, the Department of Interior spent four times as much for overtime work on contracts as it had averaged for each of the preceding 11 months. The ultimate irony: on the last working day of the fiscal year, the department awarded a $145,322 contract to a management consultant to tell it how to avoid having to award contracts on the last day of the fiscal year.

This 11th-hour orgy of spending persists because nobody is ever held responsible for waste. And voters share the blame. Says Sen. William S. Cohen (R., Maine), whose Subcommittee on Oversight of Government Management has spotlighted the August-September spending scandal: "At election time, the voters tend to judge us in Congress by how many bills we have introduced or passed, not on how well we oversaw the spending bureaucracies or how many programs we eliminate. There are no rewards or incentives for saving dollars, for either bureaucrats or elective officials. The system is common sense turned upside-down."

But the system can be changed. By October, the new Senior Executive Service created under the Civil Service Reform Act will have a performance-appraisal system operating for senior executives in all government agencies. (A similar system will be in effect for all mid-level managers by 1981.) Pay and promotions should be tied directly to sound management, and managers at every level held accountable for the efficiency of the organizations they direct.

It's up to the nation's voters to let the President, Congress—and candidates for office—know that we want those who return dollars to the Treasury rewarded for promoting efficiency in government.

After all: it's your money.●

THE U.S. DEFENSE BUDGET

● Mr. HAYAKAWA. Mr. President, the U.S. defense budget continues to be a major source of political debate. The defense budget is the foundation of our national security policy. The amount we spend on defense directly determines our ability to cope with the military power of the Soviet Union in both a diplomatic and military sense. Our inability to respond to events in Afghanistan and Iran clearly indicate that our defense investment must be improved upon. I would submit for the RECORD remarks made by Adm. U. S. Grant Sharp (retired) at a meeting at the Military Order of the World Wars. Admiral Sharp, a distinguished constituent, spent 41 years in the Navy, reaching 4-star rank in 1963. He was Commander in Chief of the Pacific from 1964 to 1968. Admiral Sharp outlines the serious situation that we face in the years ahead.

Mr. Sharp's remarks are as follows:

I am sure that all of you are as pleased as I am to hear that President Carter is taking a new approach to foreign policy.

It appears that he may finally be coming to recognize the Soviet menace. After three years of attempting to appease the Russians, he has apparently become a realist. The myth of détente is exposed. In grave tones the President has warned the nation of the seriousness of the Soviet invasion of Afghanistan, calling it the greatest crisis since World War II!

In his State of the Union Address to the Congress, the President said he would propose a strong defense budget for fiscal year 1981 because of our serious National Security situation and to counter the growing military threat from the Soviets.

It would seem then that the dual crises of the Iranian hostages and the Soviet invasion of Afghanistan may have had some beneficial aspect. Perhaps the President, recognizing that the American people have become aroused, will get on with the task of restoring this country's power. But I am skeptical—I want to see those words backed up by concerted action!

We can be sure that the Soviets are listening to Carter's strong words. We can also be sure that they are skeptical—they will be very attentive to the actions that follow. A strong buildup of our defense budget would indicate that we really mean business. That is the action that would impress them.

Now for a brief look at the international situation: To begin with, we cannot afford to minimize the dangers inherent in the Soviet invasion of Afghanistan. The Red Army could now move into Pakistan or to the Strait of Hormuz. Air bases in Afghanistan give their fighter bombers the capability to cover the strait.

More importantly, they have generated apprehension of further aggression in all countries of the Middle East, thus facilitating subversive moves in those nations. I believe it is apparent that the Kremlin's ultimate objective is to control Middle East oil and the strategic mineral resources of Africa. They will move toward that objective, using subversion and proxy forces by preference, with their own ground, air and naval forces poised and ready to be employed if necessary.

It is important to remember, moreover, that the Soviet power play in Afghanistan does not lessen the threat in other areas. On the northern and central European front, for example, they have such a preponderance of force that they could probably overrun the area in 15 to 30 days—before our reinforcements could get into the battle.

But most significantly, a comparison of the strategic forces of the United States and the Soviet Union gives them a clear superiority, in the opinion of most analysts. In a year or so the Soviets will have the capability to make a disarming first strike on the United States!

With that kind of superior force the Soviets could just threaten to use it and coerce the United States into accepting an unfavorable situation. In my opinion, that is the objective of the Soviet military buildup—not to wage a nuclear war, but to win political predominance without having to fight. When that happens we will no longer survive as a free nation!

With those sobering thoughts in mind I have examined the fiscal year 1981 defense budget and Carter's new five year defense plan. As a result of my examination I can only view with alarm the continuing failure of the Administration and the Congress to produce a defense budget which makes any significant progress toward restoring a favorable balance of strategic and conventional forces between the Soviet Union and the United States.

Our budget for defense is estimated to be 5.2 percent of the Gross National Product. In contrast, the Soviets have been spending between 11 percent and 15 percent of their GNP for arms buildup. The Soviet military budget is currently 40 to 80 percent more than ours in real terms.

Both houses of the Congress are now in the process of adding to the defense budget. The White House says that the current effort to achieve a balanced budget in fiscal year 1981 will leave the defense budget intact, but they are also talking about a reduction of about $1 billion. The "bleeding hearts" in Congress will be looking at the defense budget as fair game when their favorite give-away programs are up for a cut!

I told you earlier that I was skeptical—I want to see all the tough words emanating from Washington backed up by some actions which indicate that Carter is going to prepare the Armed Forces for the confrontations he keeps talking about. Such action is not apparent to date.

What the Carter fiscal year 1981 budget and the new five year defense plan really say is that the President is willing to concede military superiority to the Soviet Union! And you can be sure that the Soviets have reached the same conclusion. So they will press forward with their plan for world domination, assuming that the United States will continue to make concessions—continue with a policy of appeasement. The Russians believe that we lack the will to oppose them when the chips are down! ●

MARSHALL SPACE FLIGHT CENTER

● Mr. HEFLIN. Mr. President, NASA's Marshall Space Flight Center celebrated its 20th anniversary recently, and I shall take a moment to consider the remarkable work that goes on there in Huntsville.

The Center's first director was Dr. Wernher von Braun, and the original staff corps came for the most part from the U.S. Army, where rocket research was conducted. During its first years of existence, Marshall's pioneer team developed the largest rocket ever built, the Saturn V. It was this rocket that propelled America's Apollo astronauts to the Moon. And, in fact, Marshall's traditional specialities as a NASA field center have been in rocket research and in transportation systems. Today, the Marshall Space Flight Center is managing the development of the Space Shuttle main engines, the most advanced rocket engines in the world.

In addition, Marshall manages a variety of scientific and technical projects, including a series of satellites that are changing our understanding of the universe. These are the high energy astrophysical observatory (HEAO) missions.

HEAO–1, launched in August 1977, did an unprecedented survey of the entire X-ray sky. In addition to finding five times more X-ray sources than were previously known, HEAO–1 discovered unexpectedly strong emissions from certain classes of stars and from active galaxies.

HEAO–1 found the diffuse sky background radiation to be consistent with that expected from a hot (400 million degrees) tenuous gas. The observed intensity implies that this material constitutes a significant fraction of the mass in the universe; alternatively, if this radiation represents the unresolved emission of very faint, discrete sources, the measurement provides important information relevant to their physical nature and evolution.

The HEAO–2 mission, launched in November 1978, was built on HEAO–1 observations. Designed as a pointing mission for high-resolution imaging and spectral measurements of X-ray sources over a limited fraction of the sky, HEAO–2 has contributed a wealth of valuable, and frequently unexpected, information on astrophysical phenomena ranging from the nearest stars to the most distant quasars. One of the entirely unexpected initial results from HEAO–2 was the discovery of substantial X-ray emission from the atmospheres of stars.

HEAO–2 has also provided information on the dynamic state of the universe, one of the leading questions of present day astrophysics. HEAO–2 results support the hypothesis of an "open" universe, a universe which will continue to expand indefinitely.

The third spacecraft in the HEAO series, launched in September 1979, broadens the scope of the program to include gamma-ray astronomy and cosmic ray astrophysics.

The success of HEAO is changing our understanding of the universe. NASA's HEAO missions are among those that keep this country a leader in space. I am proud that the men and women at Marshall Space Flight Center have added this particular accomplishment to a lengthy list of spaceflight contributions from Alabama over 20 years.●

THE CASE FOR SUPPLY-SIDE ECONOMICS

● Mr. HATCH. The term "supply-side economics" is circulating widely in political circles nowadays as various prescriptions are put forward to cure our economic ills. The widespread use of the term is presumably due to the popularity of the proposal to which it was originally applied—significant across-the-board reductions in individual income tax rates designed to increase incentives to work and produce, save and invest.

However, the term has been abused and misused. It is often confused as a synonym for any type of business tax cut. Recently it has been so abused that the President of the United States used to describe the economic package he unveiled last Thursday, which is really a proposal to redistribute income, channel capital away from productive uses through the Government to less productive uses, and award Government handouts to industries and regions of the country that are politically sensitive and uncertain in this election year. The President's package destroys incentives for private market activity, and creates an even larger role for the Federal Government in managing the economy. There is nothing supply-side about it.

I doubt that the public will be fooled into believing that a proposal for more Government intervention is the way to get the productive, private economy growing again just because the accompanying rhetoric includes the word "supply-side." But for those who might be confused, a recent article in Policy Report by Bruce Bartlett entitled "The Case for Supply-Side Economics" will

set the record straight. Mr. Bartlett makes clear that supply-side economics calls for economic policies designed to give the maximum stimulus to investment, savings, and work incentive, and that this may best be accomplished through reductions in marginal tax rates which affect rates of return on these activities. I commend this article to my colleagues and ask consent that it be printed in the RECORD.

The article follows:

THE CASE FOR SUPPLY-SIDE ECONOMICS

(By Bruce Bartlett)

In many respects, supply-side economics is nothing more than classical economics rediscovered. More particularly, it is Say's Law of Markets rediscovered. The essence of Say's Law, named for the great French economist Jean Baptiste Say, is that goods are ultimately paid for with other goods. Thus it is production that limits the satisfaction of human wants, not the ability to consume, which, in the aggregate, is unlimited. Consequently, Say argued that "the encouragement of mere consumption is no benefit to commerce; for the difficulty lies in supplying the means, not in stimulating the desire of consumption; and we have seen that production alone furnishes those means. Thus it is the aim of good government to stimulate production, of bad government to encourage consumption."

This doctrine was essentially accepted by all economists until the Great Depression, when it came under heavy attack from John Maynard Keynes, who misunderstood and misrepresented the basis of Say's Law. He turned Say's Law into a simple statement that "supply creates its own demand" and said that this is "equivalent to the proposition that there is no obstacle to full employment." In defense of this proposition Keynes quoted John Stuart Mill out of context, implying that Say's Law holds that there can never be an oversupply of any product, when in fact Mill states only that there cannot be a general oversupply of all goods.

Keynes argued that the cause of the Great Depression was underconsumption and that government policy ought to be directed toward stimulating demand by means of budget deficits and easy money. Keyne's theory soon became the new economic orthodoxy, largely because his policy prescriptions coincided with the politics of the times. As Joseph Schumpeter said of Keynes's General Theory, "Whatever its merit as a piece of analysis may be, there cannot be any doubt that it owed its victorious career primarily to the fact that its argument implemented some of the strongest political preferences of a large number of modern economists."

In fact, there was a serious problem with the demand side of the economy in the 1930s, but it had nothing to do with Keynesian theory. The problem resulted from the Federal Reserve Board's tragic blunder in causing the U.S. money stock to decline by over a third between 1929 and 1932. When the rigidities of the economy prevented prices and wages from falling to an equilibrium level consistent with the existing money stock, the depression ensued. The great error of economists and policy makers was accepting Keynesian demand-management theories as the basis for a general economic program, rather than restricting them to the conditions of a deflationary depression.

By the end of World War II Keynesian economics had the nearly total allegiance of younger economists. By the 1960s they were the full professors at most universities, their influence so pervasive that Milton Friedman, the preeminent monetarist, remarked in 1965, "We are all Keynesians now." But the heavily Keynesian economic policies of the 1960s and 1970s were sowing the seeds of their own destruction.

In a real sense, Keynesian economics died during the recession of 1974–75. In 1975 the unemployment rate hit its highest level since the depression—8.5 percent—despite a $45 billion budget deficit, the largest since World War II until that time, and a soaring inflation rate. According to conventional Keynesian theory, this just couldn't happen. The Phillips curve, a basic Keynesian component, shows that there is an inverse relationship between inflation and unemployment—the higher one is the lower the other should be—and thus the Keynesians were completely baffled about what policy prescription to offer. Normally, unemployment calls for a budget deficit, and inflation calls for a budget surplus. In the face of the largest peacetime deficit in American history and double-digit inflation, Keynesians could hardly call for more deficit spending, but a reduction in the deficit to battle inflation would worsen the already bad unemployment situation. The Keynesians were therefore left with no solution to offer. Many began to proclaim the death of Keynes.

The question thus arose, What will take the place of Keynesian economics? Irving Kristol was the first to draw attention to supply-side economics as a replacement for the discredited Keynesian school:

"In response to this crisis in the theory of economic policy, a 'new' economics is beginning to emerge. . . . Its focus is on economic growth, rather than on economic equilibrium or disequilibrium, and it sees such growth arising from a free response (e.g., investment, hard work, etc.) to the economic incentives of a free market.

"It does retain the Keynesian macroeconomic apparatus for diagnostic purposes, but its inclination is 'conservative' rather than 'liberal'—i.e., it believes that only the private sector can bring us sustained economic growth, and that whatever tasks one might wish to assign to the public sector, economic growth cannot be one of them.

"This "new" economics is sometimes described, rather cumbersomely, as "supply-side fiscal policy." . . . It arises in opposition to the Keynesian notion that an increase in demand, by itself, will increase supply and therefore accelerate economic growth. The "new" economics asserts that an increase in demand, where the natural incentives to economic growth are stifled, will result simply in inflation. It is only an increase in productivity, which converts latent into actual demand by bringing commodities (old and new) to market at prices people can afford, that generates economic growth."

The difference between the supply-side economists and the Keynesians is most graphically shown by their attitude toward taxation. To the Keynesians, rising taxes hurt the economy only because they cut down on consumer purchasing power. Conversely, to the Keynesians, all tax cuts are the same. It makes little difference whether you have a tax rebate, a tax cut only for those with low incomes, a tax cut only for those with high incomes, a corporate tax cut, whether you cut average tax rates or marginal tax rates, or whether you cut taxes for individuals or businesses. No matter how you do it only one thing counts: the aggregate size of the tax cut, for this alone determines how much fiscal stimulus there will be to aggregate demand. Consequently, it makes no difference to the Keynesians whether you cut taxes or increase government spending since either method generates the same result.

By contrast, to the "new" economists, the supply-side fiscalists, it makes all the difference in the world whether you cut taxes or increase spending, and there are vast differences between the effects of various kinds of tax cuts. They would say that tax rebates and increases in spending stimulate inflation and do nothing for supply because they must be financed either through borrowing—which crowds out private borrowers and raises interest rates—or by increasing the quantity of money through monetization of the debt.

The supply-side economists argue that tax cuts should be structured to give the maximum stimulus to investment, savings, and work incentive. This means a preference for marginal tax rate reductions because they increase the trade-off between work and leisure, investment and consumption. Similarly, they favor reductions in the corporate tax rate, which affect the rate of return, rather than investment tax credits, which primarily affect cash flow.

The principal issue is whether or not a tax cut per se is inflationary and whether a tax cut must be accompanied by a dollar-for-dollar cut in government spending to be effective. Those who argue against tax cuts because they are inflationary or who demand matching spending cuts are not true supply-siders but really conservative Keynesions, for it is only in the Keynesian model that tax cuts are assumed to stimulate demand and therefore inflation. In the supply-side model the critical question is how taxes are being cut. A tax cut that merely reduces government revenue, while government spending remains the same, might be inflationary because it would probably require monetization of the increased debt. But a reduction in tax rates—in particular, marginal tax rates—does more than just increase individual disposable incomes: It alters relative prices, changing the trade-off between work and leisure, savings and consumption. Whether such a tax cut would be inflationary in the short run will depend on how much additional production and saving it generates and on how the government finances its short-run deficit.

Even some self-professed supply-siders fail to see this difference and oppose any tax cut without a corresponding spending reduction. Martin Feldstein, for example, recently said, "Although I support a supply-side approach to unemployment and productivity, I am convinced that inflation will be tamed only by appropriate limits to demand." Dr. Michael Evans, who built a supply-side econometric model for the Senate Finance Committee, has made much the same point, saying the Roth-Kemp 30 percent tax rate reduction would be highly inflationary. And the Federal Reserve Bank of Minneapolis has argued that because the real burden of government is what it spends, a tax cut merely shifts government finances from taxes to borrowing. Insofar as the increased deficit is inflationary it may actually increase the tax burden in the long run by pushing people up into higher tax brackets.

Unfortunately, all of this criticism misses the point, which is that cutting tax rates does much more than reduce government revenue. It eliminates disincentives. As Paul Craig Roberts recently argued,

"The total resources claimed by government is a better measure of the tax burden than tax revenues alone. But some economists let this adding up of concrete resources blind them to another measure of the real tax burden—the production that is lost to disincentives. It is difficult to see the production that doesn't take place because the government has made it unprofitable, but it is nevertheless a part of the tax burden.

"From the viewpoint of this more complete measure of the tax burden, a tax cut can be real even if it is not matched dollar for dollar with a spending cut. That's because a reduction in marginal tax rates changes relative prices. It causes people to shift into work out of leisure and into investment out of current consumption. These shifts occur even if people expect

that in the future taxes might be raised to pay off any government debt incurred by cutting tax rates. In the meantime, however, the additional work and investment expands the tax base; to make good on the deficit, future tax rates would not have to be raised as much as they were cut—if they need to be raised at all."

The theoretical support for Roberts's argument can be found in the work of Sir John Hicks, among others. In Value and Capital Hicks pointed out that price changes involve income and substitution effects. Thus a fall in the price of a commodity makes the consumer better off by raising his real income in terms of goods. On the other hand, it changes relative prices, causing a substitution effect in which the consumer will substitute the commodity whose price has fallen for other commodities. Since the buyer's income gain is exactly offset by the seller's loss, the income effects are canceled, leaving the substitution effect.

So too with changes in tax rates. A reduction in tax rates may reduce the government's revenue, requiring it to borrow more from the public, but the income gain of the taxpayer whose rate is cut is exactly offset by another whose savings went into government debt instead of being consumed or invested in some other way. Thus the income effects cancel out, leaving the substitution effect. (If the government had inflated the currency instead of borrowing the money it would be the same thing, the currency expansion being seen as forced saving or a tax on cash balances.) The substitution effect will cause people to substitute work for leisure and saving for consumption.

Another line of argument is that because inflation is fundamentally caused by an increase in the quantity of money in excess of the growth of goods and services, any tax cut that causes more goods and services to be produced will be antiinflationary as long as the money supply is tightly controlled. This is essentially the view of the Joint Economic Committee, which has published two papers showing how tax cuts can reduce inflation. Conversely, there is now growing doubt that the traditional Keynesian cure for inflation—a recession—will work because it leads to a decline in the production of goods and services while the money stock remains unchanged.

In the end, the political process will decide whether an antiinflationary tax cut is possible. The fact is that the Congress just does not like the Keynesian cure for inflation—unemployment, declining economic growth, etc. Despite opposition to a supply-side tax cut, the political appeal is enormous; it promises that inflation can be reduced without running the country through a wringer and allows politicians to give the people tax cuts without fearing additional inflation. If such a tax cut is enacted and works, supply-side economics may suddenly find itself as the new economic orthodoxy for a generation.●

EXPORT TRADING COMPANIES

● Mr. CHILES. Mr. President, yesterday, the Senate passed S. 2718, a bill to promote and assist American export business. While I supported this legislation and believe it will be of great help in this critical area, I do want to voice a note of concern. This concern involves the banking related provisions of the bill and what amounts to another piecemeal, fragmented change in the banking laws of our land. I have no doubt that banks are important to the future success and growth of export trading companies but I am concerned that we are once again initiating major changes in our banking laws without the benefit of proper congressional review or consideration.

In the past, we have taken this same ad-hoc approach to changes in our banking laws and just this year, in fact, we witnessed another good example of this when efforts were made to eliminate the prohibition against interstate trust branching during consideration of the financial institutions deregulation bill. In proposing that large, money center banks be allowed to branch their trust operations across State lines, we questioned a longstanding and fundamental element of our banking laws that prohibit such interstate banking activities. Issues like this are just too big and too important to be lumped together with other legislation.

It is my view that major changes in our banking laws similar to the important ones we have looked at today need to be reviewed in a much more comprehensive, studied manner and in the context of the other major banking issues facing us today. If we want to make sure we end up with banking laws and policies that make sense and address the important issues facing the industry, then we need to avoid dealing with banking legislation on a piece by piece basis. In my opinion fragmented changes in the banking laws are not in the best interest of the banking community or the people who use bank services.●

DAWDLING WITH INCENTIVES

● Mr. HATCH. Mr. President, with the Finance Committee placing a tax bill before us, Paul Craig Roberts' recent column in the Wall Street Journal is of special relevance. The U.S. economy is not in good condition, and as we all know concern with the budget deficit and inflation has delayed the needed action on the tax front to restore incentives necessary for economic progress. With all the concern about revenue loss—and with a limited budget of revenues to lose—we have got to make sure that none of the revenues that we put into tax cuts are wasted.

Wasted revenues would be those that simply hand back money without increasing incentives to save and produce. From reports that I have seen, the Finance Committee's bill seems to waste about $7 billion in essentially rebate-type handouts that do not really lower the marginal tax rates. These are the revenues allocated to increasing the personal exemption, the zero rate bracket amount, and earned income tax credit. If Government spending is not cut by an offsetting amount, this part of the committee's bill will just result in an increase in aggregate demand of $7 billion without providing the needed incentives on the supply-side. This part of the bill, then, would be inflationary.

Other parts of the committee's bill are good in that they do reduce the marginal tax rate on additional earnings, rather than just providing rebates on present earnings. Because of our failure to control spending, we have a limited ability to act on the tax front. Therefore, we should be sure to cut taxes in a way that most effectively restores production incentives and maximizes revenue feedbacks. The rebate-type parts of the committee's bill do not meet these two crucial tests. It would be much better for the economy to put that $7 billion into lowering marginal tax rates across-the-board.

In terms of supply-side economics, lowering the average tax rate alone does not really qualify as a tax cut. Only reductions that lower marginal tax rates provide the supply-side incentives that the economy so badly needs. As Dr. Roberts pointed out in his testimony before the Committee on Ways and Means on July 29, it is not possible to increase "incentives or raise aggregate supply through tax cuts that simply lower the average rate of tax. The purpose of the tax cut is not to give people more money to spend, but to let them keep more of any additional income that they earn. Tax rebates, earned income credits, and a larger personal exemption and zero rate bracket amount have little or no effect on the marginal rate of tax on additional income earned, so they have no general incentive effects to speak of and do not produce a greater level of supply."

If we are going to cut taxes, we should do it right. I ask that Dr. Roberts' column, "Dawdling With Incentives," from the August 7 Wall Street Journal be printed in the RECORD.

The article follows:

DAWDLING WITH INCENTIVES

(By Paul Craig Roberts)

Senate Finance Committee Chairman Russell Long has settled the debate about whether the Reagan-Kemp tax cut is good politics by announcing that the Senate is going to pass a tax cut before the election. Many hands are now at work to shape its structure. If we are to avoid the deficits and inflation that tax cuts are said to cause, we will have to avoid a tax bill that adds to immediate spending power but delays (through phasing-in) the real production incentives.

From an economic standpoint it is easy to have an incentive tax cut that doesn't add to the deficit and inflationary pressures. You simply design it not to lose any revenues in the first place. All you have to do is to lower the marginal tax rates on personal income and simultaneously reduce the personal exemption or some of the deductions and credits. That way the average tax rate, or the amount of taxes people pay on existing earnings, doesn't change. The government doesn't lose any revenues, yet everyone still has an incentive to increase his work effort and savings as a result of getting to keep a larger percentage of additional income.

A tax cut of this kind would be a revenue raiser because it expands the tax base without lowering the average tax rate. But a Congress that is still dominated by Keynesian thinking is unlikely to legislate a pure incentive tax cut, and, even if it were, an election year calls for a more visible form of tax cutting. The Keynesian teaching that the purpose of cutting taxes is to increase spending goes well together with the political instinct to cut the average tax rate on existing earnings—the larger paycheck is clearly visible.

The goal of the Kemp-Roth bill is to increase production incentives by lowering marginal tax rates, but it doesn't attempt to prevent the average tax rate from falling too. It would leave the private sector with larger paychecks at existing production levels. Whether or not this would add to immediate spending power before the incentive effects have time to increase supply depends on the behavior of the Congress and the Federal Reserve. Congress can avoid a deficit (and pressure on the Fed to finance it by printing money) if it offsets the larger paychecks by holding down the growth in its own spending.

The real problem will come from those politicians who are primarily interested in redistributing income, whether through spending programs or the tax code. They are already busy arguing that Kemp-Roth isn't fair, because it treats taxpayers equally. A fair tax cut, they claim, is one that takes tax dollars paid at the upper end and hands them back at the lower end through rebates and earned income credits. Since a relatively few people at the top pay most of the income taxes collected (the top 10 percent account for 50 percent of the revenues), the vote-buying inclination naturally leads Congress to show its compassion before it does anything that might aid the better-off elements.

That means Congress—especially if it doesn't want to hold down its own spending—can find itself with a big deficit before it gets around to the incentive part of the tax cut, which it then phases in to avoid worsening the deficit. The result, of course, would be to immediately increase spending while postponing the production incentives. The pressure that this would put on the price level could result in Congress phasing out the promised incentives before they took effect.

The idea of phasing in incentives has been receiving enough attention lately to warrant a close look at it from a supply-side perspective. Martin Feldstein recently argued on this page that Congress can improve current incentives "by enacting now a schedule of future tax cuts." People would begin working and investing more today in anticipation of the lower tax rates in the future, and the growth in the tax base would generate the revenues to pay for the subsequent tax cuts.

What we have here is the responsible economist's version of the "Laffer curve." Instead of getting the revenues back after you cut taxes, you get them back before you cut taxes. Politicians are always attracted by the prospect of something for nothing, and they will find the "Feldstein curve" enticing as it allows all of the benefits of tax cuts before they go into effect. But the question is: Will it work?

Professor Feldstein is right that people's current actions will be affected if they expect their tax rates to be lower in the future, but the effect may be the opposite of what he supposes. Remember, a reduction in marginal tax rates changes relative prices. It makes both leisure and current consumption more expensive in terms of forgone income, causing people to shift into work out of leisure and into investment out of current consumption.

However, if you know that the prices of leisure and current consumption are not going to rise now but at a future date, you might decide to enjoy them while they are still cheap and wait until the price (tax rate) actually changes before you work harder and save more. If people respond in this way, then the promise of lower tax rates in the future would cause GNP and tax revenues to be lower in the present.

Now you get the picture: a Congress that rushes to buy votes with some sort of tax handouts and seizes on the Feldstein argument to delay the needed incentives. Consumption and leisure then boom while work and output fall. As the deficit rises and pressure on the price level mounts, people decide that the critics were right after all—tax cuts are inflationary.

The key to a successful tax cut is one that raises the price of leisure and current consumption right now, not in some future year. Announcing a future tax cut can produce the opposite of the desired results as people withhold income until the future period when its after-tax value is greater—just as expected higher oil prices cause OPEC to withhold oil by keeping it in the ground.

Professor Feldstein is right, however, that the tax cut won't work if it doesn't produce more savings and a higher real growth rate. That's why we need a tax cut that doesn't dawdle before it goes into effect.●

A FATHER'S PRIDE; A SON'S COURAGE; AND THE DRAMA IN POLAND

● Mr. WILLIAMS. Mr. President, in recent days we have been reminded once again of the power of the individual in bringing about important change in society and I would like to take a minute to discuss the dramatic developments in Poland as they relate to the family Walesa.

Leach Walesa is, as the world by now knows, the 37-year-old electrician who has been in the forefront of negotiating worker demands in Poland. As all of New Jersey knows, his father is Stanislaw Walesa, a proud and determined lumber worker who resides in our Garden State. New Jersey is especially honored to have this direct and personal link to the events in Poland and our State has been proud of the contributions made not only by Leach Walesa, but by the relatives in Poland of many Polish-American citizens residing in our State.

The elder Mr. Walesa has expressed, eloquently in his native language, his paternal pride for the achievements of his son. The courage, dignity, and persistence of Leach Walesa has resulted in a pact with the Polish Government which many Western specialists have sometimes called impossible—a document which comes very close to acknowledging the right of workers to bargain collectively within the context of a Socialist society. This is a rare and profound achievement for it requires a somewhat novel interpretation of the Marxist dogma which so often stultifies societies under the thumb of conservative communism.

On the other hand, it would be far from correct to read the triumph of the Workers' Committee and the victory of the 21 demands as an endorsement of democratization in Poland. The legitimacy of the Polish regime is balanced precariously between the traditional need of Communist ruling parties to control all the levers of society and the more recent need to satisfy an increasingly hostile and consumer-oriented public. I think Secretary of State Muskie and the Carter administration have been quite correct in their careful yet encouraging analysis of the events in Poland and I think we can all be thankful that our Nation did not act or speak rashly at what might have been a very dangerous moment.

The Polish reformers still have a long road to travel and there are ominous rumblings from the Soviet Union which must cause us alarm. Many scholars have said that the U.S.S.R. is especially wary of reform movements in Eastern Europe because they so quickly become a topic for discussion within Soviet dissident circles. It would be hard to see how the victory and struggle of the Polish workers could not lend inspiration to all freedom-loving people, in both Communist and capitalist nations.

So we are left with an exciting and encouraging story and one which makes us realize how much the people of captive nations cherish the freedoms and independence which have long been enjoyed by citizens in our country. And that is why it is so appropriate for us to express our solidarity with the workers of Poland, as suggested by the Senator from Pennsylvania, Mr. HEINZ, and why it is good to recall the heroic struggle of Leach Walesa and the pride of his father, Stanislaw.

Mr. President, I am proud to add my name as a cosponsor to the resolution introduced by Senator HEINZ and to acknowledge the important contributions in Poland made by the son of one of my constituents.●

NATIONAL PORTS WEEK

● Mr. DURENBERGER. Mr. President, it is a pleasure to join my distinguished colleague from Hawaii, Senator INOUYE in cosponsoring Senate Joint Resolution 176, "National Ports Week."

Senate Joint Resolution 176 recognizes the fact that our Nation's ports plays a vital role in our national security and economic health. The water borne commerce of the United States is responsible for the continued employment of more than 1 million workers and a yearly contribution in excess of $56 billion to the economic well-being of our Nation.

In my home State of Minnesota, the Port of Duluth-Superior plays an important role in the economic well-being of the State and of the Nation. In 1979, 48 million tons of cargo crossed the docks which resulted in an economic impact upon the State of $239 million on taxes and employment. It is estimated that 15 percent to 20 percent of employment in the Duluth region centers around port activities.

An article from the August 26, 1980, Minneapolis Tribune further illustrates the role of importance Duluth plays.

The article follows:

DULUTH-SUPERIOR AGAIN TOPS GREAT LAKES PORTS

DULUTH, MINN.—The port of Duluth-Superior is again leading Great Lakes ports and in 11th place nationally in total water-borne commerce, the Seaway Port Authority of Duluth said Monday.

Preliminary tonnage summaries for the 1978 calendar year by the U.S. Army Corps of Engineers show Duluth-Superior replaced Chicago among Great Lakes ports and moved ahead of Mobile, Ala., and Texas City, nationally compared with final 1977 statistics.

Davis Helberg, port director, said Duluth-Superior and Chicago have alternated at the top of the Great Lakes port ranking for several years depending mainly on the changes in the flow of ore, grain and coal and other bulk cargo movements.

Duluth-Superior's water-borne commerce in 1978 was 45,841,364 short tons, compared with 33,419,210 in 1977, when the port ranked 14th nationally.

Helberg said the corps of engineers complete 1979 national ranking would be reported in mid-1981.

Duluth is Minnesota's world port. It is the key port for the agri-business community of

Minnesota, the Dakotas, Eastern Montana, and portions of Wyoming, Colorado, Nebraska, and Iowa.

I am pleased to be co-sponsoring Senate Joint Resolution 176 because it insures that ports like Duluth will be recognized for their great contributions.

I urge my colleagues to support this resolution also.●

POLAND'S STRIKES

● Mr. MOYNIHAN. Mr. President, all of us who care about the advancement of human rights look upon Poland's workers with enormous respect and admiration. We can afford them nothing less, for they symbolize in a vivid way the durability of the human longing for freedom, autonomy, and dignity. We owe them much; their strike for human rights strengthens the freedom of everyone, for freedom is something not confined or easily preserved by national boundaries.

Last Sunday, Mr. President, the New York Times published a column on the Polish strikers by Mr. Albert Shanker, president of the American Federation of Teachers, AFL-CIO. Mr. Shanker, one of the finest trade unionists we have, understands something about strikes and organizing. He also understands that trade unionism and collective bargaining can survive only in free systems where human rights are respected and promoted. As such, Mr. Shanker and his union have been in the forefront of the movement for international human rights.

Mr. Shanker's comments about the Polish situation are exceptionally insightful. I commend them to my colleagues. Therefore, Mr. President, I ask that Mr. Shanker's column be printed in the RECORD.

The column follows:

STRIKE IN POLAND: A LABOR DAY SERMON

Labor Day is traditionally a time to take a look at the problems facing workers and their unions. In that respect, this Labor Day will be no different. It is a time to look at layoffs and unemployment, the decline in productivity, inflation, the narrow defeat of labor law reform, the prospects for labor unity as affiliation talks continue with the United Auto Workers and Teamsters. And it will surely be a day to predict what will happen to working people in America if Ronald Reagan is elected as against the reelection of Jimmy Carter.

But the big Labor Day story is not in this country. It is in Poland, where the strike goes on amid fears that at any moment there will be brutal repression. What can Americans do? What should our government be doing? What can we learn from the struggle in Poland?

Clearly, we don't want to do anything which will provide an excuse for Soviet intervention. Our government has said clearly that we will not intervene. Unfortunately, it has also said that the Polish struggle is an internal affair. This is dead wrong, and such statements are damaging to America and what it stands for in the world.

It is one thing to say that we will not interfere (and we should also say that no other foreign power should interfere). But it is quite another to give the impression that, therefore, anything the Polish government decides to do—or the U.S.S.R. might do at the "request" of the Polish government—is their own business. Repression of the strike and the destruction of the Polish workers' union would be violations of the Declaration of Human Rights, Convention 87 of the International Labor Organization and the Helsinki agreements, to which Poland is a signatory. These are international human rights commitments and obligations. Their violation is not a mere internal matter but a proper matter for international concern. To say that it is a purely internal matter is to abandon the American commitment to continue the fight for human rights.

While assuring the Polish and Soviet governments—in private and in public—that the U.S. will not intervene, we should nevertheless speak out. The struggle of the Polish workers deserves at least a good Moynihan-like speech in the United Nations and a demand for investigation by the International Labor Organization.

But expressing our country's concern should not be the business of government alone. Most Americans support the Polish workers. Isn't it time to demonstrate that support? Don't we care enough to maintain demonstrations and protests on a regular basis in front of Polish consulates and tourist bureaus across the country? Is there any question that Polish workers—and others seeking freedom around the world—are looking to see if we are doing everything we can do? They know that we can't intervene, but they also know that when Americans care about something, they have ways of communicating that concern to the world.

The Polish workers may bring about major changes in Poland. And they may cause some changes here in America, too. Americans are giving near universal support to the Polish workers. They see that the strike is not just about a little more money or meat. Of course, these are issues, too, but the basic struggle is for human rights—and the major issue is whether the Polish workers will be permitted to have free trade unions. Millions of Americans who have generally been hostile to trade unions can clearly see in this struggle in Poland what they have not always been able to see in their own backyard: that a union gives workers dignity, and that a union is not just a vehicle allowing a worker to win one benefit or another but, rather, a permanent instrument enabling him to fight for his rights without fear of punishment or reprisal. As one Polish worker told *The New York Times* correspondent in Gdansk, the strike is not about money or apartments or petty grievances. "It is for a free trade union. This is the idea: the worker can go and ask for his rights and do it while he is protected against the red bourgeoisie."

If the Carter Administration hasn't been as strong as it should be on this issue, the Republicans are in much worse shape. It is clear that the Polish workers have a union. What they are demanding is that the government recognize it and that the employer deal fairly. They want the Polish version of labor law reform. It will be interesting to see how the Reagans, Hatches and Helmses, who claim to be warriors on the side of freedom against the Communist tyranny, will square their support for the Polish workers with their crusade to weaken unions in America. Or as Alexander Cockburn, commenting in the *Village Voice* on the editorial suoport for the Polish workers expressed by the *Wall Street Journal* and other newspapers, put it: "This solidarity with insurgent labor seems to wane once the strikes are taking place this side of the Iron Curtain. . . . Once the *Wall Street Journal* remembers its priorities, it will be urging the Polish government to deal severely with the outrageous and inflationary demands of the toilers and recommending that Milton Friedman be taken on as special assistant to Edward Gierek."

Yes, there is a lesson this Labor Day in the Polish workers' struggle. Americans—and especially those who disdain unions or oppose the right of workers to organize and bargain collectively—should ask themselves some hard questions. Where is there more productivity—in countries with free trade unions, or in those where workers must struggle for them against enormous odds? Where is there more general prosperity—in countries like the U.S., where national policy protects the rights of workers to belong to the union of their choice, or in the Communist bloc, where the policy and the practice are to suppress and stamp out workers' rights? Who fights harder for freedom and human rights—trade unions, or those who see unions as enemies to be battled in every arena? Maybe this will lead Americans to think about what our country would be like if the Reagans, Helmses and others had their way and there were no trade unions in America.●

THE 1980 U.S. CULINARY OLYMPIC TEAM

● Mr. SCHWEIKER. Mr. President, this weekend, September 5, 6, and 7, a group of chefs comprising the 1980 U.S. Culinary Olympic Team will be coming to Washington, D.C., from their respective cities around the country. They will gather at Loew's L'Enfant Plaza Hotel to conduct one last practice session before traveling to Frankfurt, Germany, this coming October. In Frankfurt, they will take part in an international competition of culinary skills which has been held there every 4 years since 1896. In recent years, the United States has become a leading force in the world of fine food and this year's team stands a good chance of improving on their third place finish in 1976.

I urge my colleagues to join me in extending wishes of good fortune as they represent us and this country in their quest next month.

In addition, let me say that I am proud to have as my constituents, Chef Gunther Heiland of the Fairmont Hotel in Philadelphia, Chef Roland Schaeffer of Gibsonia, Pa., experimental Chef with H. J. Heinz Corp., Chef Baron Galand of Uniontown, Pa., and Chef Richard Bosnjak of Verona, Pa.●

DEAN WITTER SAYS GASOHOL IS GOOD BUSINESS PROSPECT

● Mr. BAYH. Mr. President, as Chairman of the National Alcohol Fuels Commission, I am keenly aware that potential producers of fuel alcohol often face serious problems when they attempt to arrange financing for their planned production facilities. The natural and understandable conservatism of the banking and investment communities and the relative youth of the fuel alcohol industry have combined to make financing for many projects especially difficult. It is for this reason that Congress responded with a range of financial incentives to accelerate the commercialization of this vital new industry.

However, even with the incentives provided by, notably, the Windfall Profit Tax Act and the Energy Security Act, lending institutions must still have confidence that the fuel alcohol industry is a wise investment. It is for this reason that I and many other supporters of alcohol fuels, especially my colleagues on the National Alcohol Fuels Commission,

Senators CHURCH and MCGOVERN, viewed with dismay the now-discredited report by the Department of Energy's Energy Research Advisory Board (ERAB) which took such a negative view of gasohol's prospects. While the so-called ERAB gasohol report was recognized by technical experts as a quickly thrown-together document relying on out-of-date information, many felt that the stature of ERAB would serve to dampen the interests of private sector investors whose support is absolutely essential to the growth of the gasohol industry.

Against this background, I was most pleased to notice that the prestigious investment counseling firm of Dean Witter Reynolds, Inc., of New York has recently released a report on gasohol as an investment opportunity. And it is a bullish report, to say the least.

The report cites testimony before the National Alcohol Fuels Commission in June—as well as a Dean Witter analysis of gasohol's prospects—to refute the ERAB gasohol report. In addition, Mr. President, the report says that the flood of imported alcohol streaming into this country—about which I have spoken on the floor several times—does not represent a meaningful threat to domestic producers. This conclusion is reached, Mr. President, because the Dean Witter analyst assumes that Congress will pass the 40-cent-per-gallon tariff that is included in the Senate version of the revenue reconciliation legislation. That is an assumption I hope will become a reality in the coming weeks.

Because of the importance that investor confidence will have in the development of the infant alcohol fuels industry, Mr. President, I ask that the Dean Witter "Gasohol Update" be made part of the RECORD so that my colleagues might benefit from the views of this prestigious firm.

The update follows:

GASOHOL UPDATE

The United States National Alcohol Fuels Commission recently held a conference in Washington, D.C., at which individuals from business, government, and educational institutions made presentations on a variety of issues relating to gasohol. Although we did not attend the conference, we have reviewed transcripts of the presentations. We have also reviewed a recent report on gasohol issued by the United States General Accounting Office and a somewhat controversial study by the Energy Research Advisory Board. The conference and the studies are summarized below. We also discuss the issue of alcohol imported into the United States. A summary of this material follows:

1. The question of alcohol's "energy efficiency" has subsided over the past year as critics have become aware of more modern production technologies which use less energy and of the importance of saving liquid fuel rather than Btu's. Also, we believe that increasing emphasis will be placed on the ability of alcohol to reduce oil consumption by raising octane levels.

2. The "food versus fuel" issue is likely to decline in importance. It can be demonstrated that 1.2 billion gallons of alcohol could be produced annually from corn in the United States over the intermediate term without placing significant pressure on grain supplies or prices.

3. Although the capacity to produce alcohol may slightly exceed demand in 1982 when a number of new facilities are scheduled to come on stream, we do not believe that this will lead to large, if any, declines in the price of alcohol. It will only mean that the price of alcohol will be less than it would be if capacity were less.

4. Alcohol imported into the United States does not represent a meaningful threat to domestic producers.

5. The Energy Research Advisory Board's recent somewhat controversial report on gasohol contains some questionable statements and analysis.

SUMMARY OF CONFERENCE SPONSORED BY UNITED STATES NATIONAL ALCOHOL FUELS COMMISSION

Statements by speakers and our comments follow:

John A. Schnittker, president of Schnittker Associates. In 1985 1.2 billion gallons of alcohol could be produced from corn without reducing feed supplies in the United States or exports below anticipated demand and without causing grain prices to increase more than prices in general. The agricultural byproducts from this level of alcohol production could be absorbed in the market without disruptions. Only an 8-percent increase in "real" corn prices would be needed to generate the higher level of corn production needed to produce 2 billion gallons of alcohol in 1985. Also, despite a greater quantity of by-products for use as animal feed, soybean meal consumption would be only 5 percent lower than if 1 billion gallons of alcohol were produced. There are 24 million acres of high-quality land in the United States currently in pasture that could be cropped. In fact, it is estimated that by 1990 corn acreage could approximate 107 million acres with enough corn to produce 9 billion gallons of alcohol.

Dr. J. Carroll Bottum, professor, Department of Agricultural Economics, Purdue University. The elimination of the acreage-set aside program in 1978 would have contributed to an increase in grain production sufficient to produce about 2 billion gallons of alcohol. From a worldwide perspective 73 percent of the labor force in 37 low-income countries are engaged in agriculture. Since these persons are producers as well as consumers of food, an increase in food prices could benefit them. Also, countries with substandard diets generally keep food prices too low to justify needed expansion of food production. Finally, it was predicted that gasohol will eventually be competitive with gasoline in the United States without government subsidies.

Mr. Richard E. Burket, vice president and assistant to the chairman, Archer Daniels Midland Company. The production of alcohol from corn leads to a more efficient utilization of the corn crop. Also, ADM's alcohol production process introduces new potentially positive variables into the "food supply" question because waste heat will be used as a heat source for a greenhouse in which vegetables will be grown, and carbon dioxide, a byproduct of alcohol production, could be used to accelerate plant growth. It was also noted that the production of lower-octane gasoline, which could subsequently attain a higher normal octane level by blending with alcohol, may increase the amount of gasoline per barrel of crude oil by 7 percent.

Dr. Barry Commoner, director of Center for the Biology of Natural Systems, Washington University of St. Louis. Fifty billion gallons of alcohol could be produced from agricultural crops in the United States without reducing food or feed production and without soil loss. This could be accomplished by altering the present mix of crops produced. The potentially arable land in the world is twice the amount currently cultivated. The production of alcohol in Third World countries may lead to an increase in food supplies, as higher agricultural prices could contribute to a greater amount of capital devoted to crop production and to higher levels of production.

Lester R. Brown, president, Worldwatch Institute. Individuals in poor countries suffering from substandard diets lack sufficient calories as well as protein. It might be possible to double-crop to produce a winter feed crop such as barley, which matures early, and also a summer "energy" crop such as sweet sorghum.

Daniel E. Shaughnessy, executive director, Presidential Commission on World Hunger. Global grain production will increase at a 2.7 percent compound annual rate, or at a pace fast enough to meet projected commercial demand. The key to alleviating hunger in the world is to increase food production in the developing nations. This is technically, ecologically, and economically feasible. In fact, the quantities of food and money needed to eliminate hunger are remarkably small.

Bob S. Bergland, secretary of the United States Department of Agriculture. The government is unlikely to allow the production of grain for alcohol on set aside acreage. It would be easier to forego a set aside.

James A. Dunlap, vice president, Alternate Energy Department, Texaco. The increase in liquid fuel, which is substantial when coal is the fuel source at an alcohol plant, is the key variable in evaluating the energy efficiency of alcohol.

Barbara Blum, deputy administrator, United States Environmental Protection Agency. Evaporative hydrocarbon emissions from automobiles increase significantly when gasohol is used. However, this is not a serious problem, and these emissions could be reduced by blending alcohol with gasoline at the refinery.

Samuel P. Dickens, vice president, Planning and Finance, Texaco. Gasohol is expected to account for 10–15 percent of motor fuel sales at those Texaco stations where it is sold.

Dr. James L. Prouty, director of fuel alcohol programs, Davey McKee Corporation. The conversion of existing excess or idle plant capacity in a number of industries to alcohol production in combination with existing and planned new facilities of corn wet-millers could result in alcohol capacity in the United States of 500 million gallons by the end of 1981 and about 900 million gallons by 1985. Potential alcohol fuels capacity by 1986 from conversions by industry follow: Distilleries—95 million gallons at a conversion cost of $0.24 per gallon; breweries—95 million gallons at a cost of $1.20 per gallon; sugar beet plants—100 million gallons at a cost of $0.98 per gallon; corn wet-milling plants—93 million gallons at a cost of $0.74 per gallon; and other industries—78 million gallons.

Dr. Raphel Katzen, president, Raphel Katzen Associates, Inc. Small alcohol plants will require a considerably higher investment per gallon and will have higher production costs than large facilities.

Mr. Roger N. Etrheim, marketing director, Iowa Corn Promotion Board; Strud Nash, E. F. Hutton; Donald E. Hill, Citibank; and Burgee Amdahl, St. Paul Bank for Cooperatives. Potential lenders are reluctant to loan money to finance smaller alcohol facilities.

Charles W. Duncan, Jr., secretary of United States Department of Energy. The recent somewhat negative and controversial report on gasohol by the Energy Research Advisory Board has not caused him to alter his basically positive viewpoint.

OUR COMMENTS

The issue of alcohol's energy efficiency has declined significantly in importance over the past 12 months. Many of those who previously questioned the energy efficiency of alcohol have become aware of the reductions in energy usage achievable through the use of more modern production technologies and of the importance of achieving a positive bal-

ance of liquid fuel. The "food versus fuel" issue still generates attention. Based on comments made at this and other conferences and in other studies, we believe that the following conclusions are valid.

First, 1–2 billions gallons of alcohol could be produced annually in the United States from corn over the intermediate term without significantly impacting grain prices or availability. Second, the longer-term production potential is 7–9 billion gallons annually without meaningfully impacting prices or supplies in the United States. Third, these levels of alcohol production would not adversely effect the standard of living of persons in countries with substandard diets. Finally, we believe that the food versus fuel issue will decline in importance over the next 12 months as has the energy efficiency question over the past year.

The capacity to produce alcohol for gasohol could approximate 500 million gallons in 1982 and *700 million gallons in 1985*. The demand for alcohol will depend on the number of retail gasoline stations at which gasohol is sold, gasohol sales as a percent of a station's sales mix, and the possible use of alcohol as an octane enhancer to produce gasoline of only average octane levels.

Assume that alcohol is not used to produce gasoline of average octane levels, and assume that gasohol sales approximate 10–15 percent of motor fuel sales at stations where it is available, which has been the typical experience to date. Under this scenario, 500 million gallons of alcohol would be needed in 1982 if gasohol were sold at stations accounting for 40 percent of total gasoline sales. 700 million gallons of alcohol would be demanded if gasohol were sold at outlets representing 55 percent of gasoline sales.

Based on *current* marketing programs it seems unlikely that gasohol will be sold at stations selling 40 percent of total gasoline in 1982. However, if gasoline prices continue to increase as seems likely, then gasohol could be selling for less than gasoline in the not too distant future. Based on the current alcohol price of $1.80 per gallon and the $0.04 per gallon federal excise tax exemption for gasohol, then the price of unleaded regular gasoline would equal gasohol if unleaded gasoline prices were increased from the current $1.00 per gallon level at the refinery to $1.44. In those 13 states where a $0.04 or higher per-gallon state excise tax exemption exists, unleaded regular gasoline already sells for the same price as gasohol. When gasoline prices exceed those for gasohol, which seems possible over the next few years, then we would expect gasohol to be sold at a large number of gasoline stations. As a result, we do not expect alcohol capacity to significantly exceed demand in the 1982–85 period, especially if some alcohol is used at petroleum refineries to produce a motor fuel of average octane but containing gasoline of below-average octane.

It is possible that capacity for alcohol might be somewhat greater than demand in the year 1982, when a number of new alcohol facilities are scheduled to open. However, this does not mean that alcohol prices will decline sharply, if at all. All it means is that alcohol prices will be lower than they would have been if there were less capacity.

Two factors are critical in evaluating the impact on alcohol prices of a temporary excess of capacity. First, to the extent that front-end grind can be profitably diverted from the production of alcohol to corn sweeteners, there is less incentive for producers to reduce alcohol prices to maintain high operating rates. Second, variable costs account for about 50 percent of the cost of producing alcohol, which also reduces the incentive to cut alcohol prices to maintain high operating rates.

The somewhat controversial report on gasohol by th Energy Research Board is discussed in the next section.

AN EVALUATION OF THE ENERGY RESEARCH ADVISORY BOARD'S REPORT ON GASOHOL

An Energy Research Advisory Board (ERAB) was organized in 1979 to make a study on gasohol for the Department of Energy. The study group consisted of four college professors and three research scientists from corporations or research institutes. Importantly, the board's study was primarily based on existing studies and data, and very little original research was conducted. In our opinion, some of the sources of information are of questionable usefulness. In a letter to Charles Duncan, secretary of energy, the chairman of the Energy Research Advisory Board notes that "the study itself was undertaken on a quick turnaround basis."

Important conclusions of the study and our comments follow:

ERAB conclusion: The net energy return for alcohol produced at plants fueled by oil or natural gas is zero. If coal is the fuel source at the alcohol plant, then each gallon of alcohol produced could save one-half gallon of gasoline.

Our comment: The study was not rigorous in defining "energy balances" or "net energy return." Energy balances are not affected by the type of fuel used at the alcohol plant. When the study refers to a net energy gain from coal, it is actually referring to a saving in "liquid" energy. The study's model of energy balances shows 114,000 Btu's used to produce one gallon of alcohol, with 45,000 expended in growing corn and 69,000 used at the alcohol plant. For energy output, the study calculates 90,000 Btu's for one gallon of alcohol and associated by-products which can be used as an animal feed. This produces a "net energy loss" of 24,000 BTU's. However, the study allocates only 11,000 BTU's to the agricultural by-products produced with one gallon of alcohol, as compared to the 50,000-Btu figure shown in all other studies and generally accepted as accurate. If a 50,000-Btu figure were given to by-products, a "net energy gain" would be shown. Also, the study's figure of 69,000 Btu's needed at the plant to produce one gallon of alcohol is too high based on current technologies such as those used by Archer Daniels Midland.

The study asserts that one-half gallon of oil can be saved when alcohol is produced using coal as the fuel source at the plant. This conclusion is based on the fact that the "net liquid energy savings" of 53,000 Btu's per gallon when coal is used represents about one-half of the Btu's in a gallon of gasoline. However, a gallon of alcohol replaces one gallon of gasoline in gasohol, and since gasohol is only 10 percent alcohol, there is little or no reduction in automobile mileage.

The ERAB study apparently assumes that gasohol provides only 50 percent of the mileage provided by gasoline.

ERAB Conclusion: The use of grain to produce gasohol could adversely affect the quantities of grain available to feed livestock in the United States and for export.

Our Comment: The study's discussion of the "food versus fuel issue" was surprising for the following reasons. First, the study's major concern related to the possibility of higher prices for meat, milk, and eggs in the United States, a situation which might be an acceptable tradeoff for reduced dependency on imported energy. Second, the study failed to mention that the by-products of alcohol production include corn gluten feed and corn gluten meal or distillers' dried grains, which are used as animal feeds. Third, the study states that most cropland in the world is already in production. Interestingly, on the very next page in the study it is stated that "some cropland (in the United States), about 40 million acres, that is currently in pastures could be converted into grain production." That's right. There is a considerable amount of potential but unused cropland available in the United States. Fourth, the study states that grain yields per acre in the world are declining. The ERAB's source for this statement is Lester R. Brown, who recently wrote a paper in which he expressed concern that the production of alcohol would reduce food supplies. Yields for corn in the United States have increased significantly in recent years, as shown in Table 1.

TABLE 1.—*Corn yields per harvested acre in the United States*

Crop year beginning October 1:	*Bushels per acre*
1972–73	97.0
1973–74	91.3
1974–75	71.9
1975–76	86.3
1976–77	87.9
1977–78	90.7
1978–79	100.8
1979–80	109.4

Source: United States Department of Agriculture.

ERAB Conclusion: Alcohol should be allowed to find its own level of usage based on current incentives, and additional incentives should not be implemented.

Our comments: Existing incentives are sufficient for alcohol to be produced and sold at a price which will generate excellent profitability to the producer and allow for continued expansion in gasohol sales.

Our purpose is not to be critical of the Energy Research Advisory Board, whose members were obviously well-intentioned. However, hopefully we have demonstrated that it is important for investors to objectively evaluate increasing number of studies and statements regarding gasohol.

A SUMMARY OF THE UNITED STATES GENERAL ACCOUNTING OFFICE'S REPORT ON "POTENTIAL OF ETHANOL AS A MOTOR FUEL"

The General Accounting Office interviewed government officials, representatives of automobile, engineering, oil and utility companies, alcohol producers, and distributors of gasohol. Also, other studies and information regarding Brazil's alcohol program were reviewed. Important statements in the study and our comments follow.

1. The analysis of net energy balances for alcohol has been overemphasized. The real goal is to produce usable liquid fuels. If oil is used as a fuel source at the alcohol plant, then the oil consumed in the production process amounts to about one-half gallon per gallon of alcohol produced. Thus, every gallon of alcohol produced and used to replace gasoline will save one-half gallon of oil.

However, additional savings are possible. For example, oil refiners can reduce the octane level of the base unleaded gasoline so that when it is blended with alcohol, the octane of the resulting gasohol is at an average level. In this manner, almost one gallon of oil could be saved for each gallon of alcohol produced because less oil is required to produce the lower octane gasoline. Furthermore, even more oil could be saved if gasohol were used to replace premium (above-average octane) unleaded gasoline, which requires more oil to produce than unleaded regular (average octane) gasoline. Used in this way, one gallon of alcohol could save more than one gallon of oil.

Our comments: We believe that the energy savings possible by using alcohol to increase octane levels are significant for gasohol's longer-term potential and will receive increasing attention.

2. Alcohol production from crops could be gradually expanded to 5 billion gallons annually without disrupting our agricultural economy. Cellulose feedstocks would probably be required to increase alcohol production beyond 5 billion gallons.

Our comments: This reinforces our belief that the production of alcohol from corn will not lead to significant price increases

for this grain over the intermediate term. Furthermore, the GAO's prediction of 5 billion gallons as the practical upper limit of alcohol production fom crops could be conservative if significant amounts of new acreage are brought under cultivation.

3. The technology exists for automobiles to run on alcohol blends exceeding the current 10 percent, and necessary modifications could easily be made at auto factories.

Our comments: We expect gasohol in the United States to continue to consist of only 10 percent alcohol for a number of years.

4. Oil companies are becoming more positive towards gasohol.

Our comments: We expect the marketing of gasohol to increase significantly over the next few years.

ALCOHOL IMPORTS ARE NOT A SIGNIFICANT THREAT TO DOMESTIC PRODUCERS

A number of articles have appeared recently in the press relating to the importation of alcohol for gasohol. The level if imports are shown in Table 2.

TABLE 2.—*Alcohol imports*
[*Millions of gallons*]

1976	12.8
1977	19.2
1978	22.0
1979	28.1
First-Quarter 1980	6.4
April 1980	12.2

In the first four months of 1980, Brazil and Argentina accounted for 56 percent and 35 percent, respectively of total alcohol imports. The imports from Brazil reflect strike-related delays in manufacturing automobiles in that country capable of running on high levels of alcohol. The alcohol from Brazil is being sold in the United States for $1.40 per gallon, which is less than the $1.80 per gallon price currently charged by Archer Daniels Midland, the largest producer in the United States. The $1.40 per gallon price of imported alcohol appears to be below cost in view of the relatively inefficient production methods used in Brazil and shipping charges. In fact, the $1.40 per gallon price is less than the price charged at retail in Brazil.

Imported alcohol has probably been a positive rather than a negative factor for alcohol producers in the United States *to date*. The additional availability of alcohol from Brazil has facilitated oil companies testing of gasohol marketing programs. Interestingly, some imported alcohol earlier in the year to supply existing customers.

The alcohol imports have stirred considerable attention among government officials, and the Budget Reconciliation Bill recently passed by the Senate Finance Committee contains a provision which would place a $0.40-per-gallon tariff on alcohol imported for gasohol. [There is strong sentiment among politicians against gasohol containing imported alcohol from receiving federal excise tax exemptions. As a result, we do not consider the imports to be a meaningful threat to domestic alcohol producers.] ●

TRIBUTE TO MARY M. WEILER

● Mr. DANFORTH. Mr. President, I wish to bring to the attention of the Senate the retirement of Miss Mary M. Weiler. A native of St. Louis, she is returning there to live after 52 years of loyal and dedicated service in an out of Government. I am proud to salute a fellow Missourian, whose career exemplifies tireless hard work, loyalty, commitment to excellence, and devotion to country.

During the course of her career, she served as secretary to Clark M. Clifford, himself a native Missourian whose outstanding record is a source of pride to our State. As Mr. Clifford's secretary, she became known to most of Washington and distinguished herself with her knowledge, skill and willingness to be of assistance to all.

In World War II, she set a record of honor and distinction in the U.S. Army. As personal assistant to Gen. Ira Eaker, she served the United States in a number of different threaters in Europe and Africa.

Later, she held the position of special subordinate to the Secretary of Defense, and received a citation for particularly meritorious service.

Mr. President, Mary M. Weiler has earned a unique place for herself in our country. We hereby extend to her our congratulations and best wishes on her retirement and on her return to Missouri.●

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. TALMADGE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 7018.

The PRESIDING OFFICER (Mr. TSONGAS) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 7018) to extend the Federal Insecticide, Fungicide, and Rodenticide Act until September 30, 1981, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. TALMADGE. I move that the Senate insist upon its amendments and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. TALMADGE, Mr. STONE, Mr. LEAHY, Mr. STEWART, Mr. HELMS, Mr. HAYAKAWA, and Mr. JEPSEN conferees on the part of the Senate.

EDUCATION AMENDMENTS OF 1980—CONFERENCE REPORT

Mr. HOLLINGS. Mr. President, I would like to move that the Senate insist upon its amendment to H.R. 5192 and request a further conference with the House, with whoever the manager of the bill will agree to as conferees. What we are trying to do is to bring this bill within reasonable fiscal bounds, with the tremendous improvements made by the Senate bill. We are not against higher education. We are hopeful that another good try will be made on the Metzenbaum amendments and the reconciliation provisions. We did not want to leave the bill hanging.

Mr. PELL. Mr. President, a point of inquiry. Am I correct in saying that it takes unanimous consent to ask for a conference now that the report has left the desk?

The PRESIDING OFFICER. The Chair will state that the request by the Senator from South Carolina is not in order at this point, that it would require the message coming back from the House.

Mr. PELL. Mr. President, does that require unanimous consent?

The PRESIDING OFFICER. It would require unanimous consent.

Mr. PELL. Mr. President, we would like to discuss this with the House first. It might be better, if there is a conference, that the House make the request first. I have worked long and hard on this bill and I am not in the mood to ask the House for a conference at this time. If it is parliamentarily in order, I will object. I may not object tomorrow or another day, but at the moment, if it is in order, I will object.

Mr. HOLLINGS. I will not object to the managers of the bill——

Mr. SARBANES. Mr. President, is it not out of order to ask for unanimous consent?

The PRESIDING OFFICER. Yes.

Mr. SARBANES. It is my understanding that if the House chooses not to go to conference, we may not have a higher education bill, I will say to the Senator from South Carolina and those who support his position.

Mr. HOLLINGS. Mr. President, I am glad they supported that particular position. They understood it. If the Senator had been here during the debate, he would have understood it too, because it was stated very clearly: We intended to move to request a further conference with the House, so that the conferees could bring us back a better bill. Those who lost have actually won. Those who were the original sponsors of the basic educational opportunity grant program, the guaranteed loan program, and the other programs, and for higher education, are willing to work, and I am sure the House is willing to work. But if they want to sulk a little bit, let them sulk a little bit. I do not mind.

I have never heard of any unanimous-consent request being out of order.

We are not trying to force a conference. We want the committee to handle the bill and give us back one that we can support for higher education and which will be in conformance generally with the three votes on higher education that the Senate has taken in the last 3 months.

Mr. SARBANES. Mr. President, I am listening to the Senator very carefully, and the only point I am making is that the Senator stood up to make a motion which is out of order. A unanimous-consent request that would seek to achieve the same objective would also be out of order.

The Senator, in effect, has placed us in the position now of not being able to get back to conference unless the House chooses to go there.

Mr. PELL. If the Senator will yield at that point, I did not express myself correctly earlier in that the papers are with the House now, so it does not make any difference if I object or do not object. The only body that could ask for the conference now is the House.

Mr. HOLLINGS. Mr. President, I was trying to be recognized earlier to make my motion, which was the proper mo-

tion. The fact that I may be out of order at this particular time is because I could not get recognized. The senior Senator from South Carolina on another matter then had the floor. I fully intended to be recognized before this went back to the House, to request that we insist further on our amendments and ask for a further conference. That is where it is. It was not the vote that put us in this situation but the fact that I was not recognized to make the motion.

Mr. METZENBAUM. Mr. President, the Senator from Ohio was informed at the desk that there is some question as to whether the papers are in the possession of the Senate, whether they are somewhere between here and the House, and wnether or not it would be in order to request that the papers be returned from the House in order that the Senator from South Carolina might make his motion.

I would make a parliamentary inquiry as to exactly what is the position.

We first were informed that they were not in the possession of the Senate. Then there seemed to be some question about that, as to whether they are or are not in the possession of the Senate.

The other question is, if they are not in the possession of the Senate, what procedure can we proceed with in order to request that they be returned from the House?

The PRESIDING OFFICER. The Chair will state that the papers are not at the desk. Before a conference can be requested, the papers would have to be at the desk. The papers would have to be here at the desk.

Mr. METZENBAUM. Will the Chair advise as to whether, if they are not at the desk, they are still in the possession of the Senate, and whether they can be brought back to the desk? It is my understanding that they have not been forwarded to the House.

Mr. BELLMON. If the Senator will yield, it would seem that the papers were what we were voting on.

The PRESIDING OFFICER. The Chair will state that the Chair does not know where the papers are at this point except that they are in transit to the House with the amendments from the Senate.

Mr. METZENBAUM. Mr. President, is that correct, or are they somewhere in one of the desks in the Senate?

The PRESIDING OFFICER. The Chair has not looked into it further.

Mr. METZENBAUM. Mr. President, if I may ask one more question. Can a Member of the Senate request that they be returned? If they have not yet been delivered to the House, may they be returned?

The PRESIDING OFFICER. The Chair will state that as long as the papers are in the custody of the Senate, they may be brought back to the desk.

Mr. METZENBAUM. If it is appropriate, Mr. President, I ask that they be returned to the desk in order that the Senator from South Carolina may make such motion as he desires to make. Would that be in order?

The PRESIDING OFFICER. The Senator could make such a request.

Mr. METZENBAUM. I do make such a request.

The PRESIDING OFFICER. Is there objection to the request?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, what is the request?

Mr. METZENBAUM. Mr. President, I request that inasmuch as there seems to be some question as to where the papers are at the moment, that they be returned to the desk in order that such motions as are appropriate may be made.

Mr. ROBERT C. BYRD. Will the Senator withdraw his request for the moment?

Mr. METZENBAUM. I certainly will.

Mr. ROBERT C. BYRD. The matter will work itself out all right.

Mr. METZENBAUM. At the urging of the leader, I am happy to comply.

The PRESIDING OFFICER. Does the Senator from Ohio withdraw his request?

Mr. METZENBAUM. I do.

STANDING RULES OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of Senate Resolution 508.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 508. This has been cleared, I believe, with the minority leader.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, this matter has been cleared on our side and we join with the majority leader in his request for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 508) proposing a change in the Standing Rules of the Senate.

The PRESIDING OFFICER. The Senate will proceed to its immediate consideration.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 508) was considered and agreed to, as follows:

S. RES. 508

Resolved, That nothing in the provisions of the Standing Rules of the Senate shall be construed to limit contributions to defray investigative, civil, criminal, or other legal expenses of Members, officers, or employees of the Senate relating to their service in the United States Senate, subject to limitations, regulations, procedures, and reporting requirements which shall be promulgated by the Select Committee on Ethics. Nothing in the provisions of the Standing Rules of the Senate shall be constructed to limit contributions to defray the legal exoenses of the spouses or dependents of Members, officers, or employees of the Senate.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REMOVAL OF INJUNCTION OF SECRECY—EXECUTIVE Q, 96TH CONGRESS, 2D SESSION

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from a tax convention with the Kingdom of Denmark (Executive Q, 96th Congress, 2d session), transmitted to the Senate today by the President of the United States; and ask that the treaty be considered as having been read the first time, that it be referred with accompanying papers to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Convention), together with a related exchange of notes, signed at Washington on June 17, 1980. I also transmit the report of the Department of State with respect to the Convention.

The Convention will replace the existing convention between the United States and Denmark, which has been in effect since 1948. It is similar to the United States model income tax convention published in May 1977, which takes into account the modernization of tax laws and conventions, but it retains certain provisions of the existing convention. For example, interest from investment and royalties continues to be exempt from withholding of tax at source.

In the new Convention, Denmark agrees to extend to the United States shareholders in Danish corporations a dividend tax credit similar to that available to Danish shareholders; Denmark regards this as a major concession, in that the United States does not grant an analogous reciprocal credit.

In addition, the Convention contains a provision, at the request of the United States, that allows either country to tax capital gains derived by residents of the other country from the sale of real property located in the first country.

An exchange of notes clarifies some technical points.

I recommend that the Senate give early and favorable consideration to the Convention and its advice and consent to ratification.

JIMMY CARTER.

THE WHITE HOUSE, *September 4, 1980.*

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, there will be no further rollcall votes today.

SACRAMENTO VALLEY CANALS, CENTRAL VALLEY PROJECT, CALIF.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 989.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2111) to extend the service area for the Sacramento Valley Canals, Central Valley project, California, and for other purposes.

(Mr. PRYOR assumed the chair.)

Mr. TOWER. Mr. President, I am informed that the bill has been cleared on this side of the aisle.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That the features authorized under section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended, and generally consisting of the Tehama-Colusa Canal with all necessary pumping plants and appurtenances, were intended to serve and were thereby authorized to serve those lands in Yolo County, California, lying within the boundaries of the Colusa County and Dunnigan water districts and existing contracts between the Secretary of the Interior and the Colusa County and Dunnigan water districts are hereby validated by the Congress with respect to the inclusion of said districts in the authorized service area of the Tehama-Colusa Canal.

SEC. 2. Section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended, is further amended by striking the phrase "Tehama, Glenn, and Colusa Counties or" and inserting in lieu thereof the phrase "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora water districts or".

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. I move to reconsider the vote by which the bill passed.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDEFINITE POSTPONEMENT OF CALENDAR MEASURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 734 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRATULATIONS TO WILLIAM A. COX, JR.

Mr. HARRY F. BYRD, JR. Mr. President, it is with great pleasure that I take this opportunity to congratulate William A. Cox, Jr., professional engineer, of Virginia Beach, Va., who was recently elected president of the National Society of Professional Engineers, a nationwide organization which represents nearly 80,000 individual members working in all engineering fields.

Mr. Cox has a remarkable history of service to his profession, having served as a founding and charter board member and president of the Virginia Society of Professional Engineers (VSPE). In 1973, NSPE named him Engineer of the Year and, on three occasions, presented him with outstanding and distinguished service awards.

A registered professional engineer in Virginia and Florida, he is a graduate of the Virginia Polytechnic Institute. In 1946, he helped found Cox-Powell Corp. in Norfolk, Va., of which he is president.

Mr. President, it is with pride that I recognize a fine Virginian as he becomes president of the National Society of Professional Engineers.

THE JESSE HELMS CENTER

Mr. HARRY F. BYRD. JR. Mr. President, in a ceremony at Murfreesboro, N.C., on Labor Day, the senior Senator from North Carolina (Mr. HELMS) was honored by Chowan College.

Chowan's new physical education center was dedicated Monday morning and named the Jesse Helms Center.

Chowan is a 132-year-old college with an enrollment of 1,100; its president being Dr. Bruce E. Whitaker.

The dedication plaque is as follows:

Dedicated to The Glory of God and in honor of Jesse Alexander Helms, Jr., Monroe, North Carolina, Baptist Layman, United States Senator, Friend of Christian Higher Education, September 1, 1980.

I was pleased and honored to have been chosen as the dedication speaker. Chowan is situated about 30 miles from the Virginia border, and approximately 40 percent of the students are from Virginia.

The president of the student body is Sharee Atkinson of Petersburg, Va. The chairman of the board of advisers is Dr. H. Melvin Kunkle of Portsmouth, and the president of the Alumni Association is Mrs. Sandra McCoy of Norfolk.

I was much impressed with Chowan College and with the students. Indeed, it was heartwarming that at the conclusion of the National Anthem the students responded with prolonged applause.

There were 3,000 to 4,000 persons in the gymnasium for the dedication ceremony, and Senator HELMS received a tremendous ovation from the entire group. Especially significant, I think, was the prolonged applause he received from the students. Senator HELMS obviously has great strength, and deservedly so, among rank and file North Carolinians. He was reelected by a large majority 2 years ago, and appears even stronger today.

In talking with hundreds of those present Monday, I got the very clear impression that Senator HELMS' strength comes from his consistency and his willingness to fight for the principles in which he believes, even if he stands nearly alone—as he frequently does.

The naming of the splendid center at Chowan College for JESSE HELMS is a tremendous tribute to the senior Senator from North Carolina, and I wish that all of his Senate colleagues could have been present at the ceremony Monday.

ORDER FOR RECESS TODAY UNTIL MONDAY, SEPTEMBER 8, 1980, AT 1 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 1 p.m. on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR BAKER AND SENATOR TOWER ON MONDAY, SEPTEMBER 8, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on Monday next, Messrs. BAKER and TOWER be recognized, each for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS AND BILLS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess over until Monday at 1 p.m., committees may file bills, reports, and conference reports from 9 a.m. on Friday, September 5, to 3 p.m. on Friday, September 5.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZATION FOR CERTAIN ACTION DURING RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during that same recess, the Secretary of the Senate be authorized to receive messages from the other body and/or from the President of the United States and that they may be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the same recess, the Vice President, the President pro tempore, the Acting President pro tempore be authorized to sign all duly enrolled bills and joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DISABLED VETERANS REHABILITATION ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, today the Senate completed action on the Disabled Veterans Rehabilitation Act of 1980. The bill would improve and modernize Veterans' Administration rehabilitation programs for veterans disabled in service. Since the statutes for VA rehabilitation assistance were written more than 30 years ago, there have been many changes in rehabilitation concepts and therapy practices. Equally important, there have been significant changes in peoples' perception of the role of handicapped individuals in our society.

The legislation would take simple, but overdue and necessary steps to offer disabled veterans new opportunities to function independently, to find employment, and to contribute to society. It would also provide a modest cost-of-living increase in rehabilitation and educational benefits.

I thank my friend from California (Mr. CRANSTON) for his able management of the bill on the floor today. Legislation which he has authored and steered through the Veterans' Committee and through the Senate has been and will continue to be of great benefit to millions of veterans and their families across the country. I also commend Senator SIMPSON, ranking minority member of the Veterans' Committee, for his contribution to the legislation.

SENATOR ROBERT C. MORGAN

Mr. ROBERT C. BYRD. Mr. President, as the 96th Congress draws to a close, I would like to comment on the distinguished service rendered to the Senate by Senator ROBERT MORGAN during his first term.

The junior Senator from North Carolina was sworn in to the Senate in January 1975. Prior to his election in November 1974, Senator MORGAN had served his State as attorney general for 6 years and in the State Senate for 5 terms.

During his first 6 years in the U.S. Senate, ROBERT MORGAN has distinguished himself as a hard-working, conscientious, and reliable colleague. His forceful advocacy of strongly held beliefs has earned him the respect of this body.

ROBERT MORGAN is a team player. When difficult responsibilities are to be shared, he readily steps forward. He is the only original member of the Select Committee on Ethics who still serves there, and also was an original member of the Select Committee on Intelligence. As an active member of both select committees, he helped restore the faith in our governmental institutions which had been badly shaken during the Nixon administration.

ROBERT MORGAN has been a leading advocate for a strong national defense, and he has used his position on the Armed Services Committee to insure that this country stands prepared to defend its vital interests. He has supported efforts to increase the Nation's stock of modern weaponry, including a manned strategic bomber, the cruise missile and the MX missile system.

Senator MORGAN was an early Senate supporter of the registration of young men to provide the Nation with an inventory of manpower in the event of a national emergency. This year the Congress voted its support for this position.

ROBERT MORGAN'S extensive experience as a public official in largely rural North Carolina prepared him well for his responsibilities as chairman of the Rural Housing Subcommittee of the Banking, Housing and Urban Affairs Committee. He understands the need for rural development and has used his chairmanship to promote this goal.

During the 4 years of his chairmanship, the Farmers Home Administration has made more loans for rural housing than it had in the previous 40 years.

States rights has consistently been an important issue to the junior Senator from North Carolina. He has fought to uphold that section of the Constitution which reserves for the States those powers not given the Federal Government. On this issue, as with numerous others, he has faithfully represented the people of his State.

The people of North Carolina—a State which is required by law to balance its budget—are fiscally prudent. Senator MORGAN has reflected this heritage in his efforts to limit Federal spending and balance the Federal budget.

ROBERT MORGAN recognizes that we cannot balance the Federal budget with massive tax cuts. Even while seeking reelection, he has had the courage to argue the impossibility of cutting taxes, increasing defense spending, and balancing the budget unless nondefense spending is cut drastically.

Mr. President, I know North Carolina and I know its people. They are much like the people of my State of West Virginia. They are people who have their roots in the old virtues on which this Nation was founded and which have made this Nation great. They are nonsense people and they approach problems with commonsense solutions. They are not afraid to try new methods, but not just because they are new—they want to be sure that when they make changes, those changes will lead to better things.

And in my opinion, when they sent ROBERT MORGAN to represent them in the Senate, they sent a commonsense man who is entirely in tune with their way of thinking.

As he nears the end of his first term in the Senate, I would like to offer my thanks and congratulations to ROBERT MORGAN for a job well done.

RECESS UNTIL MONDAY, SEPTEMBER 8, 1980, AT 1 P.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 1 o'clock Monday next.

The motion was agreed to; and, at 6:08 p.m., the Senate recessed until Monday, September 8, 1980, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate September 4, 1980:

IN THE AIR FORCE

The following-named officers for promotion as a reserve of the Air Force, under the appropriate provisions of chapter 35 and 837, title 10, United States Code:

LINE OF THE AIR FORCE

Major to lieutenant colonel

Aaronson, Lewis, 114-30-5902.
Aines, John A., 008-26-4394.
Albright, Gary L., 514-40-2508.
Alligood, Gilbert R., 238-60-3324.
Alsip, Thomas E., 307-36-5057.
Amber, Stanley, 349-32-4149.
Ames, Robert T., Jr., 089-26-3668.
Apgar, Henry E., Jr., 149-28-0339.
Arbuckle, Don C., 415-54-6191.
Atkinson, Thomas S., 463-56-0614.
Bailey, James R., 446-30-6583.
Barlow, Glenn B., 548-44-9234.
Barnes, James H., Jr., 415-62-2552.
Barrett, Frederick W., III, 049-28-3452.
Bates, Austin B., 526-48-1105.
Bean, Bruce, 017-32-5509.
Becker, Allen S., 162-30-2761.
Belcher, Alden C., 008-26-8615.
Bell, Raymond L., Jr., 253-54-2129.
Benavides, Louis H., Jr., 451-48-5517.
Bengston, Leroy A., 476-36-9407.
Bennett, Paul D., 516-38-2361.
Bennett, Peter, 039-24-5649.
Bennett, Thomas A., 409-64-7282.
Berge, Donald E., 502-40-9132.
Bess, Robert C., 453-60-2343.
Beyeler, Kerry F., 519-44-1377.
Blankenheim, Hans F., 171-30-1872.
Blizzard, Gerald V., 238-60-0459.
Bohan, James A., Jr., 091-28-8733.
Boone, Harry D., 527-44-9735.
Bowen, Ross R., 391-36-5858.
Bozarth, Gerald W., Jr., 224-44-6093.
Brachvogel, Donald F., 287-32-4679.
Bridges, Clayton I., Sr., 024-26-2119.
Brodnax, Charles T., 435-44-1316.
Brown, Michael A., 355-30-4061.
Brown, Richard C., 154-30-3818.
Brown, Samuel N., Jr., 229-40-8604.
Brown, William F., 429-62-7963.
Brubeck, Hatfield C., Jr., 232-64-2989.
Brumbaugh, Daughn L., 206-24-0182.
Bubel, Howard L., 546-50-1135.
Buchmeier, Otto, 098-28-7002.
Buckner, Thomas A., III, 454-52-7848.
Budge, David C., 049-30-0265.
Buhler, Ernest O., 477-26-9584.
Burkhart, Clark Jr., 211-30-3407.
Burnham, Hathorne A., 034-30-7050.
Busby, Leon R., 486-38-4523.
Byerley, William H., Jr., 578-48-2532.
Cairns, Darin T., 373-38-5038.
Callahan, Robert C., 348-30-1768.
Cano, Alonzo R., 124-30-1816.
Capell, John L., 423-44-7454.
Carbaugh, James H., 270-36-8877.
Carney, John S., Jr., 035-24-5169.
Casson, Charles B., 217-34-1628.
Catey, David L., 458-66-7539.
Cathey, George E., 533-38-0822.
Caviness, Herman L., 533-30-9130.
Chappell, Rulon A., 528-52-0435.
Chirico, Dominick E., 141-30-3336.
Choplin, John R., 554-56-5346.
Cocco, Nicola, 146-28-1081.
Cohen, Allen I., 113-30-5466.
Conant, Ernest M., Jr., 299-32-1990.
Conley, John F., 517-34-0150.
Connell, Ralph W., 038-24-6971.
Conway, William J., Jr., 450-56-6296.
Cook, Richard L., 427-80-4751.
Cooper, John T., 258-54-3537.
Corbin, Jerry W., 451-60-9681.
Cornwell, William C., 331-28-2862.
Corson, Edgar E., Jr., 164-30-0773.
Cosgrove, Richard D., 093-26-6846.
Cowden, Stephen O., 456-54-9490.
Craddock, Joe P., 466-56-5653.

Crigler, Louis A., 405-48-9640.
Criswell, Joe W., 486-34-2873.
Currier, William R., 008-26-6647.
Dangleis, Joseph P., 073-26-4110.
Dart, George W., 180-32-8749.
Davis, Lester J., 326-26-6208.
Day, Foster H., 420-46-4068.
Dejarnette, James C., IV, 224-44-3326.
Denomme, Donald L., 384-38-5746.
Diluzio, Rudolph G., 016-28-7850.
Dilworth, David J., 568-44-4672.
Dornfeld, Gerald R., 017-30-3472.
Doscher, John H., Jr., 249-54-0950.
Duncan, John K., 239-54-6448.
Dutrow, George F., 579-46-5425.
Duvall, William L., 403-54-5821.
Dwyer, Robert J., 072-30-4720
Eichel, Richard S., 250-46-5648.
Eicheiberger, Robert A., 290-32-2226.
Ellis, David A., 409-58-0367.
Elman, Howard L., 147-28-3693.
Erickson, Thad L., 529-50-8142.
Euler, Charles W., 099-28-7293.
Evaniuk, Edward C., 300-30-9443.
Falk, Joel V., 503-34-5303.
Farrell, Ronald E., 315-32-2652.
Fearon, Calvin C., 073-30-4342.
Filkill, Ronald R., 287-32-6589.
Fisher, Frank P., 554-44-9194.
Flair, Leo, 411-56-5789.
Fleming, Thomas F., III, 490-34-1960.
Folds, Joseph B., Jr., 267-50-3176.
Ford, Charles C., 448-34-8017.
Forkner, R. E., 501-30-5029.
Forman, William H., Jr., 434-52-9034.
Foxwell, Vaughn M., Jr., 218-34-8720.
Frantz, James R., 277-28-0535.
Freeman, James C., 245-50-5194.
Fremd, Robert W., 357-30-8645.
Friend, Edwin V., 259-50-0638.
Gale, William C., 178-28-6709.
Garner, Jerry L., 239-66-5149.
Garrison, Durrell W., 448-34-1914.
Gates, George O., 496-42-3746.
Gault, James A., 567-48-7994
Gemelos, Elias N., 051-32-6654.
Geoghan, Thomas L., 377-34-8950.
Gereghty, Arthur G., Jr., 150-30-1053.
Gerenz, Ralph F., 142-28-6243.
Giblin, Thomas A., 498-30-0244.
Gibson, James H., 112-24-2115.
Gorman, Edward J., 012-30-6034.
Gorman, Haven D., 022-32-3013.
Gradinjan, Stephen P., 390-38-3742.
Graham, Johnnie B., 458-54-4200.
Greene, Wiley E., 445-30-4154.
Griffin, Paul M., Jr., 436-50-7973.
Griffth, Richard V., 340-32-7705.
Griffth, Ritchie L., 315-38-0066.
Grigsby, Jack L., 412-58-7211.
Grose, Andrew P., 578-54-0436.
Gross, James R., 091-30-1395.
Guerra, Rafael, Jr., 525-48-3158.
Gustavson, Donald O., 036-24-9040.
Hackel, Stuart M., 548-44-2285.
Hall, William H., 187-30-8585.
Hannon, Lawrence H., 415-42-7100.
Harper, David J., 494-42-6979.
Harper, Merle G., 506-46-4117.
Harrington, David R., 021-30-7622.
Haskins, Burtrand S., 254-48-9553.
Hasler, Dwight F., 313-48-2462.
Haynes, William H., 324-30-4805.
Haynie, Charles W., Jr., 430-68-7593.
Hebert, Huey J., 228-54-2635.
Hemphill, Kent W., 153-24-0098.
Henny, Robert W., 092-30-9019.
Hillman, Richard J., 547-46-9706.
Himley, Richard O., 087-26-4291.
Hinkle, Richard E., 187-32-1491.
Hintzen, Martin H., 306-36-1913.
Holbrook, Albert K., 023-28-6767.
Holko, Andrew R., 302-30-5955.
Hooper, George L., 513-30-8856.
Hopkins, Douglas W., 534-30-8706.
Inabinet, George E., Jr., 250-52-9388.
Ingalls, Kenneth N., 029-28-6363.
Ingram, Edsam M., 454-52-7784.
Jackson, Bobbie G., 260-46-8117.
James, James W., 400-36-0897.
Janczyk, John E., 047-24-4550.
Jarvis, Robert J., 522-50-5915.
Jenkins, Tim W., 471-38-1489.
Jernigan, George W., 463-62-1672.
Jernigan, Kenneth J., 103-24-3949.
Johnson, Benny L., 483-40-4035.
Johnson, Cecil D., 549-48-4696.
Johnson, James A. R., 560-50-5091.
Johnson, Russell C., 499-42-3278.
Johnson, Thomas S., 536-30-0143.
Johnston, Melvin L., 445-32-7609.
Jolly, William R., 521-34-9293.
Jones, James E., 429-62-6167.
Jones, Michael H., 058-30-0951.
Jordan, Donald L., 004-36-8550.
Justiss, Billy R., 461-56-4590.
Kariker, Cecil R., 556-48-0215.
Keen, Robert L., 550-48-8410.
Kehoe, Peter J., 034-28-8266.
Kelly, Douglas N., 241-62-2463.
Kelly, Richard H., 149-28-0565.
Kenney, John W., 560-34-0582.
Kerley, Robert D., 262-52-0459.
Kezar, Charles A., 111-30-0143.
Kiefer, Robert J., 368-36-3516.
Kimberlin, Ralph D., 495-42-2413.
King, Bernard R., 134-34-8146.
Kinoshita, Joseph A., 576-32-3656.
Kirkstadt, James M., 282-34-6769.
Klahre, Harold L., 164-32-0183.
Klapel, Allen R., 392-36-9920.
Klebold, Richard G., 146-20-1945.
Klingbeil, Roger A., 340-30-5167.
Kniffin, Andrew E., 527-46-9909.
Knott, Roland B., 439-52-5403.
Kosnick, Richard S., 086-30-6504.
Krass, John G., 484-40-5487.
Kubert, John P., Jr., 170-30-5881.
Kuntz, Gordon B., 305-38-4321.
Kvidera, Michael L., Jr., 479-38-8228.
Lachinski, George R., 470-40-8905.
Lafollette, John P., 522-40-3701.
Lark, Richard F., 131-28-6736.
Lawyer, John E., Jr., 578-52-9508.
Leach, Charles A., 415-58-5878.
Leazer, Donald W., 452-50-0755.
Lee, Howard H., 458-66-2679.
Leonard, David A., 534-34-5133.
Leonard, John W., 394-34-2051.
Lesesne, Eugene F., 248-54-9304.
Lesinski, John M., 112-30-6661.
Lifvergren, Bruce H., 001-24-2272.
Lightfoot, Thomas E., 528-38-0534.
Lomax, John D., 445-38-0405.
Loosbrock, Marcel I., 477-40-4665.
Lovfald, Lorin O., 517-40-5775.
Lukens, Donald E., 286-28-8739.
Lux, Edward C., Jr., 464-54-8495.
MacDowell, David M., 270-36-2923.
Maier, Norbert J., 202-28-2183.
Maldonado, Joaquin S., 557-46-6805.
Manis, Angelo G., 234-56-3560.
Mansuetti, Leo, Jr., 178-30-0143.
Marks, David D., 313-38-2647.
Mayes, Thomas R., 433-46-4282.
McCarley, Robert W., 427-78-9084.
McCaughey, John R., 160-32-4137.
McCoy, Richard A., 147-26-9837.
McCracken, Theodore E., 497-38-0717.
McDonald, Bross K., Jr., 423-48-2299.
McDowell, Jerry W., 310-38-2244.
McGrory, Robert C., 199-26-1927.
McGuinness, Richard J., Jr., 025-28-7175.
McKinney, William F., 296-32-2237.
McQuate Jack E., 283-36-0616.
McWilliams, Rhea A., Jr., 451-64-9226.
Meriakri, Alexander, 450-54-4450.
Merna, Robert L., 017-28-9243.
Mestre, Richardo W., 256-52-2055.
Meyer, George C., 501-32-0255.
Mikulecky, Richard J., 334-34-8940.
Milligan, Thomas P., 495-40-2292.
Mims, Roy L., 423-44-5922.
Mitchell, Samuel P., 505-46-8481.
Mitchelmore, Gary E., 443-40-8544.
Mocarski, Alexander W., 040-28-3467.
Mock, Terry L., 211-28-7794.
Moore, Gerald J., 169-26-2053.
Morgan, Jack W., 424-46-4142.
Morrison, Burkhardt N., 182-30-7836.
Morrissey, Thomas F., 102-22-0423.
Mosier, Bruce M., 176-30-8220.
Moulton, Harry A., 478-46-4939.
Muckstadt, John A., 067-32-1422.
Murphy, Donald J., 084-30-9056.
Murphy, Timothy J., Jr., 014-30-0784.
Myers, Brenton D., 510-30-8934.
Myers, William A., 455-56-4900.
Nagy, Robert A., 276-32-4912.
Nanney, John P., III, 411-66-9589.
Nelson, Charles H., 551-42-6025.
Ness, Buford D., 527-50-8818.
Neubert, Thomas L., 091-32-9786.
Newcomb, Allen J., 413-46-9033.
Newell, David B., 414-60-0245.
Niven, William A., 559-52-5023.
Noreen, Courtney W., 485-30-3301.
Normand, Kenneth A., 502-32-7332.
Norris, Hugh C., Jr., 458-54-0165.
Norton, Leslie L., 543-34-3916.
Nugent, Maurice J., 498-38-3276.
Nutt, Keith L., 459-52-2536.
Odom, Robert E., 248-52-0718.
Oleary, Joseph P., 130-24-5694.
Olsen, Harold A., 351-28-9477.
Osborne, Charles E., 440-36-6435.
Osborne, Lynwood H., 008-24-7798.
Osik, Robert J., 044-30-4995.
Palmer, William C., 196-24-6509.
Papa, Henry W., 035-24-9690.
Pappas, Nicholas, 018-30-6746.
Pattridge, Roger H., 476-26-8192.
Peck, Frank E., 254-58-2415.
Pepples, Craig A., 360-28-5893.
Pegg, Leonard C., 273-32-8859.
Pfister, Robert E., 305-44-7565.
Picknally, Robert J., 030-26-0240.
Plehal, William B., 477-34-7133.
Polk, James G., 573-50-1669.
Polzin, Robert R., 394-34-9165.
Porter, Charles D., 483-44-8450.
Prentiss, Charles A., 146-26-0442.
Probst, Robert C., 316-42-6493.
Purkalitis, Varis, 343-28-2154.
Raymer, James A., 518-34-2485.
Reed, William H., 441-36-6118.
Reeder, Allen E., Jr., 248-46-6180.
Reichert, Charles M., 502-32-6619.
Reid, John R., 488-40-1874.
Richardson, Henry M., 451-66-0887.
Richardson, Robert C., 003-26-4703.
Ritchie, Richard S., 244-58-2191.
Robins, Raymond C., 529-40-9321.
Robinson, Peter G., 003-26-1819.
Robnett, Dean E., 441-38-8954.
Rock, Leo P., Jr., 216-34-3462.
Rockwell, Lorin L., 309-40-9583.
Rodgers, Charles, 307-36-5078.
Rodriguez, Rodolfo R., 098-32-3059.
Rogers, James E., 323-26-9033.
Roosna, Valdek, 060-28-0912.
Ross, George H., 368-36-1088.
Rubel, Ray R., 089-30-9821.
Ruggiero, Robin R., 091-32-0447.
Rushmore, Thomas C., 267-52-6478.
Russell, Richard A., 274-30-5678.
Sample, Travis L., 465-56-6311.
Sandlin, Albert L., Jr., 420-48-0365.
Sapp, Edwin G., 242-66-9536.
Saroni, Maurice J., 527-48-5240.
Sawyer, George L., 443-26-7066.
Sawyer, Newel E., 445-32-1139.
Scheder, Frank L., 212-32-6464.
Schenk, Robert E., 127-28-6810.
Schlegel, Robert A., 473-36-4899.
Schnell, John J., 061-30-9301.
Schoen, Lewis L., 088-26-1594.
Schrock, Derel D., 446-30-9842.
Schultz, Neil H., 484-42-8244.
Schuster, Fredrick L., Jr., 457-54-4140.
Seabright, Ralph W., II, 365-34-7514.
Searle, Clark W., 473-44-7371.
Seemann, Arthur D., 438-56-6166.
Seivert, Richard H., Jr., 501-34-9310.
Sharpe, Theodore C., 144-30-4791.
Sheridan, Donald T., 282-24-0931.
Sherrow, Herbert R., Jr., 416-46-3969.
Shrack, Gene F., 289-34-0057.
Sibbald, David M. H., 138-28-9810.
Singleton, James A., III, 239-52-3654.
Siebrch, Eugene P., 187-30-6115.
Sleeper, Alburn R., 106-28-2646.
Slothower, Douglas W., 484-38-4364.

Smith, Jerry G., 275–34–8487.
Smoot, Marvin T., Sr., 408–38–4023.
Sommer, Richard B., 349–32–7709.
Spangler, Warren E., 531–30–6813.
Speth, Peter P., 314–42–1646.
Stanton, Charles L., 194–30–9219.
Steele Clifford W., 572–54–9984.
Stegman, Ronald C., 526–44–8936.
Stoiber, George A., 056–30–3605.
Storment, John W., 434–52–1324.
Strickland, Wilton W., 240–44–5817.
Sullivan, William A., 552–46–6015.
Svarverud, Dale M., 533–36–5961.
Szappanos, Emeric T., 297–30–9474.
Szendrey, John P., 186–26–4632.
Talley, Bernard L., Jr., 216–34–7281.
Tanaka, Kenny, 568–50–2717.
Taylor, Vin A., 573–40–7123.
Teasley, Martin M., 585–07–4437.
Thomas, Jerry J., 571–42–0856.
Thomsen, Bruce D., 070–28–5404.
Thomssen, Darrel D., 505–54–3555.
Thurlow, John S., 021–32–1679.
Thweatt, Jerome A., 260–24–0411.
Timmerman, John C., Jr., 250–58–5292.
Tintle, David F., Jr., 014–30–6272.
Tracy, William D., 046–32–6935.
Travis, Rex K., 442–36–5934.
Trefethen, Robert T., 006–34–7833.
Trevor, Malcolm L., 261–46–8178.
Tucker, Franklin D., 503–36–5012.
Turk, George L., 466–48–2114.
Turner, Van W., Jr., 247–46–1561.
Vanderveen, John E., 198–28–0017.
Vanmeter, Donald E., 448–36–1624.
Vaughan, John E., 406–36–7343.
Vick, Orville T., 229–20–4133.
Vincent, Eugene G., 560–52–8173.
Walsh, Robert A., 034–26–4306.
Walter, Raymond C., Jr., 569–44–0699.
Webb, Jon N., 005–38–5906.
Webster, Edward F., 200–24–6822.
Wege, David J., 394–32–0683.
Wehr, Rolf A., Jr., 318–30–5154.
Wendt, David E., 056–30–5401.
Wetzel, James C., 277–30–6993.
Whittemore, John D., 560–38–6933.
Wilkins, Warren E., 533–34–2512.
Winslow, John M., Jr., 459–58–9678.
Winters, Walter L., Jr., 459–56–3954.
Withers, Robert L., 252–40–8811.
Wolff, William J., 152–30–7773.
Woodin, William L., 178–26–9389.
Woodruff, Gary L., 529–52–7922.
Woolley, Verlin R., 446–36–1084.
Worthington, Daniel J., 017–30–0323.
Wrabel, John J., 160–32–9158.
Wright, Larry O., 341–30–0130.
Yu Jackson, 567–50–9480.

CHAPLAIN CORPS

Bahr, Vernon L., 457–32–2353.
Clarke, Thomas J., 054–28–7672.
Gholston, Cecil E., 426–46–3593.
Greene, James F., 026–26–1919.
Lenihan, John P., 338–22–5786.
Martin, William F., 059–28–0552.
McCarter, Calvin W., 464–50–9182.
Murphy, Miles, Jr., 237–38–3867.
Nelson, Warren A., 324–20–8756.
Phillips, Donald G., 489–40–0690.
Relic, John M., 269–28–6616.
Ross, Curtis E., 313–24–8639.
Smeltzer, John P., 064–30–5762.
Thomas Wilton B., 226–44–0750.

DENTAL CORPS

Anderson, Maynard C., 476–32–0143.
Cash, Allan H. Jr., 246–52–7498.
Cheney, George K. III, 454–58–6184.
Deen, Allen L., 426–76–5157.
Gordon, Dean W., 151–24–0811.
Holt, Stanley E., 414–56–5704.
Jones, Thomas M., 425–74–2281.
Pelosi, Robert A., 019–28–9228.
Watson, Richard, 314–34–9344.
Welsh, Edward L., 223–40–0611.

MEDICAL CORPS

Acostavelez, Carlos F., 582–72–2867.
Arthes, Federico G., 257–62–4691.
Aubrey, Howard L., 292–30–0606.
Cammer, Jacob W., 561–66–3934.
Conguon, David R., 008–26–2127.
Curran, John S., 152–30–4802.
Duguine, William R., 324–32–9067.
Ellis, Roy C. Jr., 410–42–3284.
Gilner, Donald M., 256–52–8786.
Herron, Neal F. Jr., 155–03–5678.
Hill, James A., 544–32–2108.
Jansen, George A., 545–42–3770.
Joneslukacs, Elizabeth L., 242–40–9930.
Kapstrom, Albert B., 470–32–0051.
Kelly, Thomas J., 514–30–2103.
Lea, Frederick G., 002–28–6647.
Maxwell, John R., 372–50–4976.
Menn, Stuart J., 107–30–5854.
Metzger, Walter S., 194–30–4168.
Millburn, Lowell F., 361–28–1566.
Ong, Arsenio M., 170–40–4077.
Perico, Carlos J., 486–48–5286.
Riego, Arturo M., 218–42–9069.
Surratt, Jay C., 375–32–2459.
Turner, Francis L., 076–26–3366.
Turner, Jerald B., 308–40–2864.
Urban, Stephen F. Jr., 099–28–2965.
Willoughby, William F., 227–48–1777.

NURSE CORPS

Abrams, Patricia A., 207–30–2522.
Adamczyk, Leonore M., 154–28–2362.
Aleman, Nancy E., 276–30–8139.
Anthony, Rosemary A., 140–24–2619.
Ausen, Ardyce H., 468–84–4349.
Baker, Alexe M., 261–54–5694.
Bergeron, Pauline M., 383–42–5228.
Best, Marilyn A., 495–42–2826.
Bryan, Elsiemae, 572–34–2991.
Camenzend, Ramah J., 347–24–7635.
Carawon, Betty J., 229–46–3218.
Carter, Pauline E., 262–50–0469.
Collins, Deanna L., 539–38–0376.
Danowski, Catherine A., 184–26–9582.
Vevanna, Kathleen M., 024–22–5999.
Dillion, Barbara A., 340–28–2973.
Dilworth, Richard F., 287–24–0911.
Dixon, Audrey A., 381–34–3451.
Dobosz, Mary E., 371–40–9878.
Dobson, Rita E., 162–26–8421.
Donofrio, Anne M., 048–24–8271.
Eszlinger, Julia E., 502–34–7512.
Evans, Edith Y., 419–52–8679.
Gibbons, Mary C., 321–26–5298.
Gier, Margaret E., 176–30–2153.
Gondolfo, Rosario C., 154–30–3624.
Grams, Carol A., 367–30–0769.
Graner, Alice M. H., 469–44–5422.
Grant, Katherine L., 343–26–9440.
Guyton, Nancy C., 433–62–3957.
Hacherl, Michele C., 160–30–7549.
Hall, Caroline M., 143–28–4897.
Hamilton, Rosalind W., 265–66–1407.
Holland, Carol A., 148–34–0004.
Hughes, Naomi F., 446–32–6091.
Jones, Charles E., 419–50–8797.
Jordan, Shirley M., 511–30–5849.
Kamper, Sandra M., 390–30–4838.
Keller, Barbara A., 409–64–8343.
Kelly, Marylou I., 469–52–0937.
King, Sylvia R., 133–32–3361.
Kocon, Patricia A., 184–28–8803.
Koenig, Evelyn L., 488–36–5354.
Kristofsky, Nellie I., 170–34–8799.
Labonoski, Monica J., 172–28–3565.
Lewis, Donna J., 483–42–9518.
Maeder, Darlene A., 473–36–2539.
Matsumoto, Mabel Y., 575–30–9320.
McAfee, Maryann, 513–30–6959.
McGowan, Geraldine B., 126–30–9263.
Merkel, Esther M., 325–32–0928.
Miller, Beverly A., 123–28–8055.
Montgomery, Judith A., 033–30–7791.
Moore, Rita V., 118–26–6323.
Normand, Judith A., 433–54–9983.
O'Neill, Rosella M., 192–26–3654.
Owin, Juanita E., 215–36–5023.
Parrillo, Cecilia D., 149–22–3076.
Patton, Dorothy S., 412–58–5176.
Pedersen Helen J., 140–26–4362.
Ray, Marilyn A., 568–56–7229.
Reinke, Frances P., 502–36–8294.
Sacawa, Marion A., 138–28–7417.
Skipper, Julie J., 247–62–5798.
Snow, Yvonne A., 035–24–8032.
Stone, Carolyn R., 253–46–3802.
Strain, William C., 119–32–9374.
Vanderveen, Ruth E., 372–40–0090.
Wahl, Madeline E., 267–46–8877.
Wilson, Waymon M., 275–28–4465.
Wode, Dora B., 558–48–1914.

MEDICAL SERVICE CORPS

Bailey, Jack C., 457–62–8417.
Blaschke, Ewald J., 463–60–0059.
Bowen, James O., 232–50–9216.
Child, Jerry D., 300–32–0850.
Creed, Robert B., 091–24–4564.
Davidson, Allan W., 019–26–3916.
Eberley, Robert E., 267–48–8639.
Johnson, Richard W., 041–30–1066.
Lorenz, Gerald J., 495–26–2311.
Mason, William M., 559–44–6217.
McIntosh, Stuart S., 570–46–0014.
Mosher John E. 474–32–0475.
Proctor, Marvin F., Jr., 259–36–5529.
Rardin, Ronald A., 328–30–8589.
Schleh, Robert C., 370–34–9709.
Simmons, Henry H., 261–48–8964.
Sorter, Bruce W., 279–28–5990.
Young, Samuel S., 428–64–3966.

BIOMEDICAL SCIENCE

Basile, Joseph R., 334–24–7362.
Bibeau, Robert A., 023–28–0182.
Boehrer, Jane M., 397–34–7657.
Bowler, Richard W., 518–32–9600.
Brown, Mary L., 166–26–8944.
Butterweck, Joseph S., 202–30–4544.
Dumas, Ronald L., 265–50–3262.
Fox Edgar M. 109–24–5992.
Friedle, Carolyn J., 363–32–2458.
Hanley, Eugene P., 151–28–2113.
Hanson, John R., 473–24–6912.
Johnson, William S., 317–36–2390.
Kummero, Virgil E., Jr., 453–48–6192.
Meloan, Don W., 336–20–4929.
Quirin, Frederick M., 510–30–4108.
Waxman, Irwin 084–20–7243.
Whiting, John H., 529–40–2865.

IN THE AIR FORCE

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

To be captain

Abshire, Daniel J., 464–62–6208.
Achey, Michael D., 506–64–3388.
Acklin, James T., 506–66–4639.
Adair, George W., 585–32–2804.
Adams, Walter H., 448–48–7622.
Ahne, David J., 430–92–5925.
Ajas, Hiroshi, 243–80–6570.
Alba, Ruperto R., 508–62–3148.
Aldwell, Anthony A., 564–72–9285.
Alexander, Gilbert D., Jr., 400–64–5354.
Alford, Dennis L., 347–44–9903.
Allen, Jimmy R., 514–52–2790.
Allmon, Robert R., 546–76–0939.
Alsop, James A., 575–62–3542.
Alvis, Joe W., 234–80–7610.
Anderson, Barbara B., 073–38–5214.
Anderson, Lois E., 267–15–6984.
Antal, Gary S., 491–50–9935.
Antell, Mark R., 029–40–9319.
Armstrong, Frank I., 419–66–9755.
Arnold, Walter A., 240–76–0353.
Asbury, Edward T., Jr., 223–72–5123.
Atwell, Keith A., 560–76–6103.
Babson, Thomas F., 116–42–6273.
Baker, Craig M., 270–50–1109.
Baker, Dean L., 518–62–6521.
Baker, Roosevelt, Jr., 419–60–4560.
Baker, Stanley L., 308–50–7887.
Bale, Arthur L., 529–50–3081.
Ball, Ted M., 420–64–9570.
Ballengee, James E., 235–78–5368.
Balzli, Peter J., 572–70–2417.
Bankhead, David H., 527–82–7793.
Barker, Bruce E., 509–46–6200.

Barker, Merna R., 130–36–7580.
Barnes, Randall T., 251–66–6091.
Barrow, Robert J., 422–72–0274.
Barsalou, Joseph N. A., 030–28–2688.
Bartz, David W., 458–82–8826.
Bates, Leonard H., 258–72–8960.
Beaman, Robert E., 476–52–2666.
Beazley, William B., 211–40–5257.
Becker, Donald A., 457–64–4781.
Becker, Harold L., Jr., 098–40–5806.
Beesley, Ronald L., 441–52–3412.
Belie, Robert G., 443–48–3613.
Bell, Charles W., 478–54–7940.
Bell, David M., 507–68–5893.
Bennett, Ross E., 436–60–8141.
Beres, Thomas M., 553–84–1434.
Bessel, Robert P., Jr., 047–42–8212.
Best, Eugene S., 251–88–9224.
Bethart, Thomas H., 076–38–8885.
Biancalana, Martin J., 344–40–2064.
Birgel, Stephen H., IV, 451–80–5099.
Bittlinger, Harry F., Jr., 409–76–2768.
Blanar, Reuben W., Jr., 463–76–0805.
Blank, Richard A., 576–46–4175.
Blocher, William K., 513–52–1524.
Bolen, Paul S., 252–56–9863.
Bombeck, Jeffrey L., 061–38–3256.
Bonnell, Richard A., 232–84–0833.
Bores, David A., 546–68–7400.
Borgman, Marvin L., 479–50–0395.
Bostelman, David R., 297–50–6874.
Bowman, Margaret A., 088–40–7208.
Bowman, Ronald L., 275–46–5421.
Bradshaw, Steven M., 261–96–3264.
Braud, Stuart P., 433–84–5544.
Braun, Richard H., 552–58–2085.
Braund, Thomas F., 296–42–0624.
Brewer, Milton M., 585–48–0785.
Britt, David L., 392–52–4526.
Brod, Joseph D., 462–90–9733.
Brown, Owen S., 385–54–5333.
Brown, Paul T., Jr., 250–94–6985.
Brown, Rufus, Jr., 324–30–6431.
Brown, William N., 145–42–2004.
Bryant, Jeffery W., 549–84–3323.
Bryce, Linda K., 359–42–7159.
Bunt, Joe M., 465–58–0898.
Bush, James A., Jr., 256–68–5212.
Bush, Michael D., 416–58–6110.
Butler, Ralph Q., 418–60–8431.
Butler, Robert K., Jr., 089–38–6068.
Butt, Ray L., Jr., 280–48–6475.
Bystrom, Karl H., 487–80–5879.
Caldwell, Charles S., 512–56–0194.
Callaway, Vera S., 279–50–9451.
Canaday, Ralph W., 515–54–5812.
Candelario, Buddy W., 582–98–1935.
Capes, Robert C., 298–48–2763.
Carlson, Robert D., 030–40–1145.
Carr, Vernon, III, 451–82–5084.
Carrier, Rick T., 377–50–4824.
Carruthers, Arthur B., 068–40–1863.
Cashes, Joseph A., Jr., 136–44–6474.
Cattron, Kirt R., 523–58–5153.
Chalkley, Randolph J., 139–42–6385.
Chamberlin, Gary G., 258–72–7832.
Chapin, Ronald J., 543–58–9224.
Chapman, Clayton J., Jr., 548–74–3399.
Cheek, Richard V., 384–48–0514.
Chesterman, Patrick J., 481–66–4508.
Christopher, Richard S., 106–36–2958.
Cima, Michael T., 319–44–7111.
Clark, Gerald D., 194–40–0260.
Clark, Thomas R., 523–54–6926.
Clark, William G., 134–36–4413.
Clarke, Lane R., 219–56–1717.
Cleland, Timothy R., 585–46–6226.
Coco, Louis J., Jr., 121–36–9714.
Coe, Robert L., 236–68–7420.
Colliander, Paul G., 569–74–9170.
Collins, Patrick J., 110–40–2062.
Collins, Robert J., Jr., 510–56–9626.
Comer, John E., Jr., 288–46–4947.
Conley, Robert J., 277–50–7937.
Connolly, Richard P., 084–40–2524.
Conroy, James G., 286–48–0236.
Cooper, Sheldon B., 568–66–0295.
Cornette, Earl M., Jr., 436–80–5448.
Court, Charles M., 351–40–0004.
Couto, C. Douglass, 482–62–3736.
Cowan, Paul G., 576–50–8792.
Cox, Donald A., 246–82–9146.
Crawford, Ervin, 250–76–4743.
Crespo, Francis J., 073–42–5309.
Crowder, Benjamin G., 526–66–9998.
Crumley, General F. II, 250–82–4145.
Cryer, Jerry M., 463–84–4973.
Cummings, Stephen P., 096–40–9897.
Cunningham, Robert E., 313–48–4383.
Cussins, Roger L., 234–70–8244.
Cyriaks, John B., 507–64–7245.
Danner, Lawrence M., 570–72–3729.
Danzey, Richard E., Jr., 169–42–0005.
Davis, Jimmie R., 486–52–3420.
Davis, John C., 337–40–6153.
Davis, John R., 313–48–3475.
Day, Joseph G., 576–56–5679.
Dean, Charles H., 451–98–5987.
Dennis, John W., Jr., 226–72–5184.
Desanto, Robert J., 154–32–9220.
Diegelman, Larry P., 169–32–3679.
Dillon, James E., 448–50–1527.
Doan, Robert H., 522–68–0512.
Dobrowolski, Henry J., 536–44–3734.
Dohanyos, Alan J., 151–38–7676.
Donovan, John M., 536–42–4536.
Doran, Lenn A., 509–52–1937.
Downer. Virgil D., 530–28–6847.
Dozier, William K., 247–82–6287.
Dreiling, Rene F., 512–54–9968.
Drelick, Walter J., 093–38–2045.
Dubner, Joseph L., 105–38–8830.
Dunbar, James G., 003–40–4093.
Duncan, C.M., III, 224–72–8666.
Dungan, William C., 427–94–2801.
Durham, Randy P., 463–78–7677.
Dwyer, John J., III, 264–60–7676.
Ebsen, Gregory P., 398–50–7897.
Edelen, Michael A., 545–70–8951.
Egan, Christopher D., 456–92–4179.
Eilermann, Keith G., 498–44–1722.
Elder, Richard J., 585–40–7463.
Ellis, Dale L., 439–78–7396.
Ellis, Lawrence R., 052–38–0469.
Elmore, Robert L., Jr., 228–68–1735.
Engbers, Stephen K., 380–54–7628.
England, Michael C., 540–62–5998.
Epley, Jerry D., 487–56–1852.
Faber, Terry L., 522–72–4149.
Fager, Jerry D., 573–68–2166.
Falkenstein, Kurt A., 398–40–7118.
Feeser, Timothy L., 296–46–3567.
Felt, Donald L., 393–32–6833.
Fellows, Jack R., 543–50–9911.
Fenton, David S., 382–42–8495.
Ferguson, Richard M., 467–76–7879.
Ferrell, John S., 229–72–1577.
Ferren, George J., 025–38–2298.
Ficklin, George R., 529–66–4547.
Fickling, Raymond L., 251–90–7079.
Filios, John G., 021–40–9818.
Fingerios, James P., 519–54–1911.
Fischer, Cary A., 435–70–6660.
Fitzpatrick, Harry B., 007–46–2991.
Flowers, Larry F., 126–40–4834.
Foor, Daniel B., 165–42–1539.
Ford, Jerry L., 251–86–5961.
Fowler, Robert C., 120–32–8078.
Frazho, Glenn J., 369–54–5993.
Freeman, Donald A., 238–78–4023.
Fritch, William R., 444–52–8680.
Fulghum, Joseph T., 256–54–5723.
Fultz, Robert T., 264–90–1285.
Furbush, Robert M., 154–40–6464.
Gagnon, Lannis K., 032–40–1358.
Gaiter, Franz R., 422–72–6888.
Galan, Iris I., 277–46–3155.
Galpin, James E., 222–32–9636.
Gandee, Patrick L., 547–70–2903.
Ganger, Stephen R., 308–50–7161.
Garton, Daryl W., 223–68–2253.
Gauci, Dennis J., 385–54–5061.
Gauthier, Robert J., 029–40–2753.
Genaw, Edward G., 375–38–6138.
Gewain, Matthew P. III, 143–40–7699.
Gibbons, James E., 144–40–6888.
Gibbons, Lawrence C., 017–30–3021.
Gibbs, Alan W., 449–80–4150.
Gibbs, Douglas R., 212–58–3045.
Gibson, Richard B., 259–78–3068.
Gill, Robert P., 211–38–4203.
Gillett, Keith R., 483–64–8410.
Glasgow, Frank J., Jr., 514–50–3829.
Glover, Kenneth J., 421–70–0166.
Goss, William G., 565–72–5105.
Goudreau, Roger L., 011–40–4024.
Grace, Robert W., 378–50–4599.
Graham, David C., 200–34–6405.
Gray, Lewis H., Jr., 026–36–6019.
Green, Gerald A., 333–42–4618.
Greene, Mandell H., 476–60–1535.
Grek, John E., 357–42–3502.
Grubbs, Paul A., 553–74–5887.
Grundy, Michael T., 457–82–3079.
Gummo, Thomas L., 203–38–0050.
Gunn, Mark D., 449–84–4695.
Guoan, William H., 265–60–7767.
Gutheinz, David J., 451–84–7165.
Haas, Samuel J., III, 438–76–1030.
Hajdu, William, 387–50–0729.
Hale, Coy R., 228–48–7856.
Halfmann, Eugene P., 454–66–8978.
Hamilton, Terry J., 437–72–5589.
Hammon, Charles M., 230–62–5512.
Hanks, Clifford G., 444–54–5774.
Hansen, Larry A., 575–54–2069.
Haralson, Roger T., 254–70–9898.
Harlamor, Slava W., 140–38–5067.
Harless, George C., Jr., 276–50–3896.
Harrell, Joseph E., 243–70–4880.
Harrington, Charles A., III, 470–52–0802.
Harris, William T., 499–50–3153.
Harsany, Frederick J., 416–64–6209.
Harstine, John R., 510–56–6319.
Harvey, Percy L., 436–70–3533.
Hatfield, David M., 419–62–3271.
Havens, Gregg R., 061–42–3293.
Hearn, William L., 587–48–4003.
Heck, Raymond D., 523–72–7341.
Heilman, William J., III, 446–52–8932.
Heller, Larry J., 151–40–6114.
Hemmerly, Richard M., 279–44–5732.
Hendricks, David L., 261–80–9853.
Henkle, James B., 550–76–5424.
Henthorn, Charles R., 334–40–7356.
Herbolsheimer, Glen A., 368–46–9738.
Hesse, John L., 062–40–7282.
Hidler, Allen E., 267–44–2829.
Higgins, John N., 230–64–2953.
Hill, Wayne H., 440–54–0655.
Hille, Eric J., 096–34–7414.
Hillin, Harry C., 585–32–6609.
Hoag, Edwin C., 065–34–0787.
Hoffman, Frederick C., 164–36–3704.
Holmes, Vernon I., 251–80–7478.
Holt, James R., 528–62–6125.
Holtzman, Lynn I., 322–40–7566.
Horch, Thomas C., 453–82–6865.
Horne, Gary A., 463–86–5060.
Horsfall, John D., 396–52–9874.
Hoshour, James A., 509–46–5920.
Houp, Gary S., 265–86–7317.
House, Robert T., 108–40–1715.
Howard, John D., 437–70–3243.
Howell, Larry B., 255–82–3869.
Hu, Edward C. Y., 300–46–2624.
Hudlin, Charles W., 441–44–3360.
Hudson, Raymond E., Jr., 002–36–1874.
Huebner, Kent L., 266–82–6967.
Hughes, Luther F., 249–64–2167.
Huntsman, Jay K., 263–90–2786.
Huston, Edward S., 198–42–0824.
Ivey, Ronald D., 465–84–2890.
Jackson, Donald E., 268–50–6961.
Jackson, Stephen L., 431–84–7378.
January, Ibra B., 434–72–6630.
Jaremko, Christine L., 038–32–3629.
Jarrell, George A., 587–03–0011.
Jeffreys, John R., 536–56–2894.
Jenchura, James F., 181–38–2503.
Jewell, David C., 553–78–4105.
Jewell, Donald L., 444–50–8289.
Johnson, Daniel E., 078–38–6080.
Johnson, Jeanne M., 524–54–5974.
Johnson, Leon J., 032–38–7667.
Johnson, Peter H., 507–60–7703.
Johnson, Verlan, 464–70–2954.
Johnston, Paul J., 100–38–1598.
Jones, Dwight L., 549–68–3902.
Jones, John F., Jr., 293–50–7329.

Jones, Richard L., 024-36-3246.
Jordan, Hal W., 534-50-5718.
Jordan, Jack L., 446-52-5448.
Jurek, Stanley H., 329-32-3452.
Kamerer, Alain B., 225-76-9324.
Kane, Michael, 205-36-6252.
Karl, Lawrence A., Jr., 439-84-7688.
Kelley, James D., 040-30-0327.
Kelley, Stephen E., 539-44-3538.
Kelley, Francis C., Jr., 435-68-9575.
Kershaw, Robert W., III, 523-72-0579.
Kettela, David J., 566-58-7478.
Kettner, Joseph F., 557-80-9962.
Kilgore, Mary E., 452-72-9595.
Kilp, Dennis W., 398-38-2782.
King, Carl V., 310-40-3697.
King, Gerald L., 548-78-0834.
King, Michael J., 212-58-1219.
King, Philip A., 285-50-9674.
Kintner, Mark A., 513-52-8545.
Kipps, Warren W., 230-62-4497.
Kirchner, Gregory A., 571-80-4122.
Kirk, Carlton K., 424-60-9815.
Kjesbo, Lee A., 391-44-2520.
Kling, Lawrence C., Jr., 125-38-4723.
Knutson, Eric K., 395-56-9270.
Koch, James C., II, 300-46-2448.
Krans, Stephen F., 463-76-5501.
Kreighbaum, Franklyn B., 565-68-0505.
Kuhar, Charles A., Jr., 192-36-5604.
Kunstadt, Ernest, III 344-34-5794.
Kwan, Anthony J., 452-86-4239.
Lamkey, Robert J., 565-64-9598.
Lamoureaux, Donald W., 027-36-4440.
Lane, Marcus J., 510-48-9434.
Laney, Theon W., 517-54-9023.
Langey, Michael B., 009-34-3154.
Lapointe, Gilbert J., Jr., 005-52-0739.
Lappe, Steven G., 479-62-6985.
Lapuaheski, Charles, 156-30-1872.
Latham, Michael T., 547-72-5359.
Lauritzen, Michael A., 529-72-2726.
Lee, Peter H., 298-46-0246.
Lee, Samuel J., 313-52-2703.
Leger, Darryl W., 436-66-3100.
Lett, Jerry M., 420-56-5755.
Lewis, Richard B. H., 530-36-1265.
Lilley, Michael T., 496-58-1017.
Livingston, Luther H., 587-01-5206.
Long, Benny D., 334-76-4198.
Lorincz, Thomas E., 387-48-5796.
Lowery, Donald F., 331-34-8741.
Lowery, Robert D., 431-96-4160.
Lucas, Harry B., Jr., 453-80-7855.
Ludvigsen, John R., 076-40-7483.
Ludwig, William E., 205-40-2255.
Lunsford, Jerry W., 415-84-8942.
Lynn, Gary D., 494-52-4769.
Maasjo, Bradley A., 502-50-6492.
Macartor, Neal C., 549-86-2344.
Macaulay, Alvin G., 020-36-6307.
Madden, John D., 411-86-4650.
Magnuson, Robert N., 028-40-0370.
Manko, Edward J., 377-48-6518.
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Murray, Kenneth F., 273-46-8306.
Mushaw, Stanley L., 542-60-1965.
Muth, Kenneth C., Jr., 466-90-7449.
Mychalishyn, Michael, 205-40-5615.
Myers, Kenneth E., 136-36-0301.
Myers, Robert J., 258-84-8277.
Nance, Kelcie T., 448-52-2669.
Natal, Carlos A., 583-40-9935.
Naumann, Richard M., 217-60-2555.
Nay, Blaine S., 529-70-8417.
Nelson, James B., 258-86-7242.
Nelson, Robert D., 451-98-8296.
Nelson, Steven L., 471-64-0953.
Newman, James R., 442-52-6853.
Newman, Lee A., Jr., 428-94-0248.
Ng, John Jr., 564-72-6786.
Nicholl, Gregory M., 506-60-4002.
Nichols, Michael J., 219-54-1512.
Nichols, William R., 423-76-5969.
Nicholson, Robert W., Jr., 239-88-5476.
Nickason, James J., 548-86-6560.
Nixon, Roy D., 428-92-6226.
Nord, Kenneth W., 290-40-6765.
Nordhagen, Randall A., 572-88-1669.
Norman, Charles E., 462-80-0752.
Norris, James M., 458-78-7491.
Norris, Robert E., 216-60-6282.
Norris, Steven L., 259-76-0173.
Nugent, Steven J., 452-92-9119.
Nuss, Rodney G., 435-70-3474.
Nuttall, Lawrence A., 546-72-8181.
Nutter, Harry L., III, 233-82-7629.
Oakes, Robert K., Jr., 156-36-9038.
Ochsner, David A., 495-58-0351.
Oconnell, James A., 266-04-5060.
Odom, James M., 587-48-3280.
Odom, William M., 252-92-3812.
Olenoski, Joseph L., Jr., 159-42-8306.
Olsen, Allan R., 475-64-5685.
Olson, Michael S., 502-58-6983.
Orellana, Richard C., 286-48-4313.
Ortiz, Raymond A., 352-42-9145.
Osborne, William E., 506-62-3513.
Overfield, Charles N., 509-58-6528.
Owen, Robert C., 571-80-2056.
Owen, Ronny C., 430-90-0118.
Owens, Laurence J., 151-40-5553.
Packard, Richard P., 011-38-9670.
Pahler, Thomas R., 196-38-9178.
Paini, Kathleen D., 553-68-2871.
Palmer, Edwin, II, 265-04-5126.
Pappas, Paul A., 456-84-8379.
Park, John M., 208-34-1256.
Parker, Richard K., 455-88-8608.
Parrett, John W., 587-28-1437.
Parrish, Wayne P., 297-42-4003.
Parsons, Kenneth M., 417-72-3705.
Paryzek, James G., 559-72-4532.
Paterson, Stephen A., 569-78-1560.
Patrick, Donald W., 550-80-6408.
Paull, Patrick J., 517-58-3378.
Payne, Alan H., 551-66-8273.
Peacock, Christie C., 231-70-3450.
Pearce, Barbara A., 005-54-2054.
Pegan, Kevin M., 307-56-0681.
Pegg, Harry T., Jr., 193-32-8363.
Peppers, Gregory S., 287-50-5968.
Perez, Salvador R., 584-36-5049.
Perkins, Alton, 321-48-1836.
Perkins, James R., 427-92-9502.
Perrin, Wayne E., 187-40-0139.
Perritt, John M., Jr., 265-94-3822.
Perry, Jack E., Jr., 230-76-0282.
Perry, Robert J., 324-46-7829.
Peters, Spence E., Jr., 252-88-3366.
Peterson, James R., 484-70-3374.
Petrik, Robert D., 429-08-4557.
Pfeifer, David M., 521-70-4027.
Pfleger, Michael D., 293-40-6856.
Phelps, Charles D., 239-78-6806.
Philipsek, Roger W., 472-58-5131.
Phillips, Earl, 398-40-4002.
Phillips, John D., 308-56-5845.
Phillips, Thornton D., 529-54-2174.
Phoebus, Edward C., Jr., 212-62-5278.
Piatek, Edward F., 041-40-7151.
Pickett, Brian M., 521-62-1390.
Pierson, Dennis A., 445-54-5195.
Plummer, William H. A., 035-36-2099.
Polillo, Ronald T., 518-56-0532.
Pollock, Michael J., 367-58-0699.
Potts, Allen S., 266-96-2133.
Powell, Morrell L., Jr., 254-80-0026.
Poynor, Donald R., 224-80-0027.
Pratt, Randall L., 502-66-2243.
Prescott, David M., 458-88-6773.
Preston, Edward L., 184-44-7415.
Prewitt, Reginald, 578-70-5020.
Pribyla, Virginia N., 454-04-7747.
Price, James L., 573-60-1210.
Price, William E., 460-88-6661.
Price, William L., 284-42-6291.
Propp, Harold B., 516-60-5481.
Provencher, Gary P., 007-46-8116.
Prusak, Michael, 024-34-6097.
Pugh, Henry L., Jr., 419-64-9541.
Pytko, Dennis L., 262-02-4768.
Qualler, William T., 392-58-5588.
Quigley, Bruce M., 272-38-4455.
Quinlan, Michael J., 197-42-1042.
Quinn, David P., 218-56-5045.
Quinn, Donald F., 552-80-8972.
Quintero, Linda M., 524-70-0971.
Rakip, Russell E. J., 025-38-8430.
Ramsey, Robert, 267-84-1123.
Rankin, Richard A., 174-30-2645.
Rannalli, Fred Jr., 569-74-3148.
Rath, Thomas J., 400-76-4232.
Rattan, Travis P., 448-54-0783.
Rawlings, Stephen H., 585-64-3348.
Ray, William L., 250-64-9354.
Razer, Jerry R., 345-44-4124.
Rebhun, Marc I., 262-92-4377.
Reed, John D., 424-74-7612.
Regan, Dennis P., 087-40-8617.
Rehrmann, William E., 091-38-9017.
Reid, Richard L., 447-42-9222.
Remol, John C., 486-58-4510.
Reynolds, Richard M., 211-36-6206.
Ricci, Vincent A., 052-38-2947.
Rice, Dean E., 562-84-0418.
Richardson, Mark H., 461-96-1174.
Richmond, Howard L., Jr., 516-62-7189.
Rickard, Douglas P., 558-68-9334.
Ridge, Daniel V., 435-68-1059.
Riegling, Anthony E., 406-74-7947.
Rife, Robert S., III, 434-74-8194.
Risley, Perry W., 102-42-7914.
Ritchie, Brian D., 420-66-2204.
Ritter, Richard S., 248-86-6448.
Robbins, Dennis L., 445-52-4145.
Roberson, Kerry L., 264-90-2247.
Roberts, Michael L., 259-84-0357.
Roberts, William B., 410-84-4939.
Robertson, Charle R., 439-88-7937.
Robinson, Samuel A., Jr., 153-46-7767.
Robles, Eleno H., 519-46-8154.
Robson, Robert J., 248-96-4803.
Rogers, Renny M., 527-74-3978.
Rohr, John C., 522-74-7326.
Rolfe, Michael E., 449-98-1121.
Romanick, Paul D., 513-52-8627.
Roock, Philip J., 388-54-3552.
Rosado, Artemio, 088-34-1747.
Rosenbaum, John F., 458-72-5055.
Rosenberry, Roger C., 541-64-9775.
Rouse, Danny M., 245-72-5251.
Rouse, William H., 244-74-6771.
Rowland, Ford W., 280-42-3242.
Ruark, Ronald R., 521-80-3167.
Ruehl, Daniel A., 277-52-4477.
Ruess, John C., 550-84-4278.
Ruetten, Thomas M., 392-50-4042.
Runyon, Rodney J., 555-72-0698.
Ruschmann, David F., 013-40-1841.
Russ, Alonzo Z., Jr., 266-78-9872.
Russell, William E., 318-34-3285.
Ryall, Paul J., 135-48-0664.
Ryan, Richard V., 143-34-1082.
Ryle, Thomas A., 466-98-5774.
Sahli, Gregory J., 504-58-6159.
Saier, William E., 571-64-1659.
Salier, Joseph J., 475-52-2629.
Salisbury, Keith E., 557-96-8320.
Sander, Paul C., 137-48-2952.
Sandiford, Gary R., 424-64-2210.
Santana, Juanita, 419-78-5687.
Sapp, James L., 252-80-2827.
Sarrat, Allan J., Jr., 428-96-4104.
Saucier, Joseph F., 507-56-7994.
Sauers, Robert M., Jr., 167-44-6251.
Scaling, Joseph R., Jr., 447-48-1840.
Schafer, John A., 304-52-1444.
Schiermeyer, James J., 545-86-8414.
Schiffman, Larry S., 530-34-5621.
Schindler, Ray G., 211-36-5026.
Schlapkohl, Orval J., 436-68-0186.
Schmidlkofer, Jill G., 234-78-3252.
Schmidt, Kenneth R., 441-48-3433.
Schmidtke, William G., 165-44-5129.
Schnaible, Gregory L., 541-58-3294.
Schott, Frederick O., 190-42-9782.
Schram, Eugene C., III, 267-64-9448.
Schramm, Kenneth G., 267-21-6388.
Schricker, Kristin E., 131-36-5229.
Schroeder, Martin C., 293-42-7313.
Schultz, Michael D., 399-56-1657.
Schwaab, Douglas G., 490-60-5092.
Scoggins, John R., Jr., 250-94-4519.
Scott, Jerry A., 225-62-4212.
Scott, Sandra M., 544-60-9634.
Scott, Theodore J., 556-72-1547.
Sears, David M., 331-46-3609.
Seccombe, William J., 545-82-9984.
Seidel, Kenneth J., 339-46-6175.
Sendral, Edouard D. E., 583-32-4918.
Sennate, Keith H., 350-40-8037.
Seymour, Jeffrey C., 253-86-8203.
Shadden, Marie C., 560-94-9157.
Shaw, Philip R., 262-84-6173.
Shaw, Thomas P., 085-46-1176.
Shay, Larry G., 266-74-1906.
Shea, Robert D., 212-60-8826.
Shellenberger, Richard A., 457-84-6052.
Sheraden, Dennis M., 207-36-4415.
Shimet, Wayne R., 559-72-3976.
Shy, George T., 253-84-7425.
Sierra, Efrain, Jr., 545-88-8721.
Silva, Samuel D., 585-24-7130.
Simmons, Mary E., 467-92-0747.
Simmons, Robert G., Jr., 461-76-6754.
Simpson, James H., 457-82-4574.
Sinor, Ben L., Jr., 439-70-5286.
Sitnik, Edward J., 037-36-2681.
Skousen, Daniel D., Jr., 585-40-9418.
Sloop, Stephen E., 513-50-1721.
Smith, Craig H., 111-40-2639.
Smith, David M., 231-60-7323.
Smith, Doyne E., 544-52-4609.
Smith, Edgar C., 531-54-4982.
Smith, Gary R., 271-36-2657.
Smith, Gerald O., 485-42-5762.
Smith, Homer C., Jr., 418-76-0120.
Smith, Neil D., 546-60-9831.
Smith, Robert A., 215-60-6506.
Smith, Samuel W., 415-86-0989.
Snyder, George H., III, 282-52-6386.
Snyder, Jack M., 304-50-2181.
Snyder, John F., 220-50-7671.
Snyder, Steven N., 533-52-6437.
Soares, Philip J., 001-40-9071.
Soben, Robert S., 266-80-7670.
Soval, Douglas P., 500-58-4983.
Specht, Robert A., 466-94-6396.
Speck, Peter W., 266-66-7204.
Speer, Robert G., 521-72-7226.
Spence, William T., 239-94-9537.
Spillane, Paul W., Jr., 085-42-8444.
Spiller, James D., 587-46-8851.
Sponsler, Mark J., 558-72-5197.
Stanik, Paul, Jr., 189-38-9279.
Stansbury, Kenneth E., 506-68-2502.
Stanzione, Daniel F., 364-48-7771.
Stavropoulos, Thomas G., 007-54-2848.
Steele, Charles L., Jr., 455-90-7340.

Stein, John H., 542-56-7071.
Steinbach, Wayne R., 394-44-1582.
Stephens, Larry M., 536-42-5349.
Stephens, Laveen M., 445-56-2847.
Stevenson, Andrew G., 079-44-7055.
Stevenson, Robert L. B., 266-06-3423.
Stine, Gary W., 103-36-7020.
Stockmann, William H., 497-58-0569.
Stoehr, Carolyn S., 548-74-0017.
Stone, Dallas R., 367-44-6052.
Stone, Donald G., 407-72-5157.
Stoudt, Raymond H., 462-74-7080.
Stout, Clarence A., Jr., 388-46-6827.
Stoutamire, David L., 284-84-8464.
Stowell, Ronald B., 231-70-5342.
Strauss, Randall W., 478-72-0859.
Stringer, Dwyer K., 587-26-2749.
Stutz, Derryl L., 338-42-0347.
Suber, William V., 249-82-0538.
Sudano, Eric V., 151-44-9597.
Sulak, Dale E., 467-78-7705.
Sullivan, Keith C., 521-78-7681.
Suter, Frederick R., 470-54-8831.
Suther, Charlie R., 241-90-3958.
Sutterfield, Stanley J., 447-50-6694.
Swallom, Keith R., 480-62-0201.
Swann, Fred L., 494-56-1730.
Swanson, Robert S., 081-38-3953.
Swartzwelder, John W., Jr., 160-42-7731.
Sweet, Thomas A., 502-56-7967.
Swope, Robert S., Jr., 150-38-1593.
Szymkowicz, Lynn D., 585-58-1029.
Taft, Gary D., 220-58-9223.
Taft, Kathryn T., 212-64-0086.
Talbot, Thomas N., 008-36-6416.
Tanner, Charles R., 433-86-2000.
Tatsch, Lynette M., 015-40-2689.
Taylor, Arvil V., Jr., 322-42-7345.
Taylor, Delawrence W., 241-80-7703.
Taylor, Richard M., 511-52-7621.
Teeter, Martha N., 303-54-1132.
Tennant, John E., 275-54-2561.
Thomas, Michael J., 165-44-7003.
Thomas, Richard M., 158-44-6856.
Thompson, Dean J., 219-46-6925.
Thompson, Larry D., 512-54-1432.
Thompson, Rodney C., 536-60-7856.
Thonn, Robert R., 331-44-9440.
Thornton, Roderick M., 237-94-9449.
Thornvaldsen, Kirk, 101-42-9099.
Thumser, Joseph F., 121-46-5793.
Tiahrt, Harold, II, 332-40-9461.
Tiefenthaler, Steven S., 393-48-5744.
Tigerman, Mark R., 339-46-6120.
Timm, Jerome C., 502-52-8038.
Tirado, Pedro N., 583-66-9821.
Tisdallflood, Marta A., 547-88-9597.
Toffenetti, Paul L., 141-40-1365.
Tom, Robert C., 395-60-1471.
Tompkins, James A., 518-50-2611.
Torigian, Albert S., 356-40-5436.
Townes, Michael L., 430-98-3350.
Townsend, John G., 102-42-1141.
Townsend, Samuel A., 362-58-2251.
Trammell, George H., 448-54-3069.
Trapp, Herbert S., 398-48-4990.
Tredway, George B., 212-46-1063.
Treuting, William J., Jr., 436-78-1047.
Trotter, Michael D., 457-98-6333.
Trudeau, Charles H., Jr., 022-34-3969.
Tubig, Simeon B., 563-94-7336.
Tucker, Donnie M., 255-78-1356.
Tucker, Michael R., 226-80-7598.
Turner, Colleen, 562-84-3847.
Turner, Robert L., 350-36-7075.
Tyler, Brooks B., 435-70-2064.
Tyley, Jeffrey L., 502-60-2135.
Ullman, Robert P., 549-86-3723.
Ullo, Lawrence E., 564-70-3170.
Underwood, J. Flowridge, 419-66-9588.
Unice, Charles J., III, 572-84-5053.
Unnever, Gregory, 043-46-0971.
Vaillencourt, Dennis R., 022-38-3751.
Vanburen, Larry N., 491-52-4610.
Vanderwell, John R., 476-56-4171.
Vanmarter, David C., 507-66-1016.
Vann, Cynthia G., 330-40-6892.
Vansandt, Jack K., 406-64-0832.
Vaught, Sidney P., 231-64-3410.
Veillon, Joseph B., 435-82-0348.
Verbois, Gary D., 437-76-4957.
Verchot, Edgar A., Jr., 418-72-7632.
Visyak, Gregory W., 542-58-6506.
Vogt, Richard A., 450-96-2153.
Volk, Bradley W., 516-56-3223.
Volpe, Richard L., Jr., 338-40-2416.
Wabs, Carl E., Jr., 508-64-1142.
Walker, David M., 462-78-2165.
Walker, Michael W., 002-36-5928.
Wallace, Charles M., 417-50-6255.
Wallace, John O., 364-50-0964.
Walloga, Stanley J., 117-34-2295.
Walls, Glen A., 369-50-4110.
Walton, Bruce A., 510-58-5865.
Wampler, Bert J., 536-52-1049.
Ward, George M., 231-70-6669.
Ward, Randy K., 242-76-7855.
Warner, James F., 011-38-6761.
Warner, Mack L., 459-80-4083.
Washington, Solomon W., III, 422-66-3772.
Watkins, Edwin S., 241-88-8382.
Webb, Frederick B., 562-58-0958.
Webb, Stephen B., III, 436-76-1981.
Webber, James L., 353-48-4796.
Weber, Henry J., 502-58-6152.
Weber, Michael H., 072-40-8499.
Weber, Paul A., 443-42-8793.
Weber, Stephen J., 217-60-6679.
Weems, John F., 257-74-8497.
Weidetz, Arthur D., 552-82-6459.
Weil, Gregory C., 572-84-2475.
Weitzel, Eugene H., 553-66-8139.
Welch, Robert D., 227-80-9920.
Welch, Willard D., Jr., 462-68-9460.
Welcome, Paul A., 287-46-9088.
Weller, Stephen K., 547-76-4678.
Wells, Charles H., 491-52-7712.
Wells, David A., Jr., 257-82-9030.
Wells, Fred L., III, 289-44-7382.
Wells, Lewis F., Jr., 528-74-1082.
Wenger, Kathryn A., 569-90-8088.
Wesley, Mae E., 454-84-2604.
West, Michael S., 382-56-5570.
Westman, Ronald A., 340-44-8219.
Wheeler, Charles R., 266-78-7415.
Wheeler, Thomas R., 327-46-6909.
Whitaker, Michael F., 224-72-6497.
Whitaker, Michael H., 505-70-4015.
White, John A., III, 246-92-0548.
White, Marsha F., 504-54-2156.
White, Maurice E., 216-60-1260.
White, Rick W., 456-84-9255.
White, Thomas G., 246-68-4894.
Whitmer, Benjamin K., 296-44-6554.
Wieler, Theodore P., 085-42-3659.
Wiesel, William E., Jr., 013-40-1009.
Wild, Michael J., 223-72-3345.
Wilds, Catherine M., 382-48-8525.
Wilhelmson, Ronald L., 523-68-9614.
Wilken, Dale L., 524-74-0210.
Wilkerson, Kenny J., 440-56-5070.
Wilkinson, James P., III, 044-36-9405.
Williams, Alden A., 242-76-9846.
Williams, Charles R., 422-66-5936.
Williams, George B., 245-88-2626.
Williams, Glen L., 452-74-3453.
Williams, Lonnie R., 449-78-5877.
Williams, Myron E., 248-96-4809.
Williams, Robert P., 186-44-8018.
Williams, Thomas G., 242-90-9796.
Williamson, Charles R., 505-66-3595.
Willis, Donald K., 534-48-9603.
Wills, Lynn R., Jr., 252-76-5064.
Wilson, Charles E., 416-72-5822.
Wilson, Richard B., 237-86-9964.
Wilson, Richard D., 510-50-6817.
Wishnietsky, Anida G., 242-74-2372.
Witt, Janis R., 455-04-0934.
Witter, Peter C., 116-44-9859.
Wolden, Charles B., 388-52-0072.
Woloshuk, Michael J., Jr., 224-76-8271.
Wooddell, Charles E., 234-82-6417.
Woods, Alfred E., 434-88-9174.
Woodside, Joseph B., 545-84-9797.
Woodsmall, Gary K., 325-44-8339.
Woodward, Edward T., 230-52-6668.
Woodward, Ronald D., 546-82-1833.
Wu, Sally S. Y., 558-70-7321.
Wyrick, Wesley T., 454-94-9297.
Yarbrough, David E., 447-40-1610.
Yokoyama, George A., 574-42-9035.
Young, Roger, 403-78-8195.
Youngblood, Robert L., Jr., 237-72-5086.
Yunes, Barry P., 016-40-6183.
Zagar, Gregory J., 080-38-2301.
Zalneraitis, Roger A., 011-44-8939.
Zanfardino, Louis, 073-40-3198.
Zaremba, John, 044-38-6957.
Zeno, Gregory J., 287-46-9594.
Zitko, Dwaine A., 273-48-9376.
Zwick, Michael J., 293-50-1692.
Zylwitis, Joseph D., 170-42-4598.

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

CHAPLAIN

To be captain

Anderson, Weaver S., 265-66-1017.
Bickers, Donald R., 406-56-7828.
Bischoff, William J., III, 139-34-1101.
Breeding, David E., 412-78-9157.
Brooks, James, 232-68-1813.
Chaviano, Emilio A., 265-74-6526.
Coleman, James W., 522-54-7752.
Cosby, Samuel, 416-62-4659.
Ewing, Bruce, 264-96-2996.
Fey, Thomas J., 439-80-6984.
Freeto, Sharon M., 002-36-9957.
Harris, Howard E., 413-64-1654.
Jewett, Russell E., 549-52-1218.
Kelling, Ronald H., 444-46-1114.
McCahon, Joseph F., Jr., 179-34-7330.
Schiltz, Roger J., 469-48-0070.
Swanson, Loren E., 351-36-9430.
Thompson, Danny R., 227-56-6475.
Tyler, Milton O., 455-60-8650.
Wilks, Robert L., Jr., 282-44-6845.
Willis, John T., 455-70-2721.
Wilson, James R., 251-74-9934.
Zimmerman, Donald M., 382-36-0676.

To be first lieutenant

Armstrong, Danny N., 544-56-5806.
Brantley, Clinton, 247-76-0074.
Wretlind, Dennis O., 521-50-9065.

JUDGE ADVOCATE CORPS

To be captain

Anthony, Michael P., 530-30-7543.
Bauer, Fredric L., 059-40-4854.
Brennan, David R., 299-44-0754.
Donahue, Bernard E., 228-52-0137.
Dunlap, Charles J., 222-30-5759.
Episcopo, Joseph, 221-34-6951.
Hill, William A., Jr., 468-56-7943.
McCormack, Michael G., 116-38-7761.
Pearson, David A., 470-54-9696.
Roberts, George K., 442-46-3334.
Starling, Haywood R., 238-84-5897.
VanNorman Beverly M., 434-88-9228.
Vines, Keith B., 044-44-0287.

To be first lieutenant

Cox, Donald A., Jr., 439-66-6535.
Cox, James F., 511-54-8357.
Jenkins, David L., 481-64-4496.
McAntee, Michael R., 515-56-4230.
Wilbert, Gary M., 303-54-8063.

NURSE CORPS

To be captain

Ackerman, Janet C., 217-48-4445.
Althoetmar, Pamela A., 333-44-0868.
Borowiak, Patrick K., 170-42-3656.
Boucher, Donald A., 077-34-6833.
Bowser, Linda J., 466-68-9150.
Clark, David L., 120-40-6819.
Colliander, Diane E., 086-36-2476.
Fremming, Jackie L., 429-78-7923.
Glodek, Raymond J., 468-44-0191.
Goretski, Eileen M., 382-54-3192.
Gunning, Patricia L., 531-58-0660.
Moll, Stephen C., 546-58-0381.
Newman, Loren D., 469-42-8412.

Nicolao, Shirley A., 393-54-8598.
Perry, Marilyn A., 201-42-0314.
Thoman, Margaret A., 198-32-8792.

To be first lieutenant

Adams, Beth L., 503-56-6789.
Adams, Stephen M., 248-80-6413.
Atkins, Dian L., 236-80-4096.
Backenstoe, Jan R., 203-40-0879.
Banville, Richard E., 012-36-5978.
Beane, David G., 236-86-7766.
Bertinasco, Linda G., 041-46-4191.
Bottemiller, Sandra D., 527-11-8040.
Boyce, Daniel A., 065-46-3647.
Breznisky, Raymond E., 475-60-0827.
Brown, Margaret A., 072-42-1518.
Buckley, Robert L., 438-68-5905.
Burtner, Elizabeth, 454-92-7633.
Byrnes, Ethel L., 433-64-7126.
Campbell, Terry D., 408-80-6186.
Cardinali, Mary A. E., 392-48-5941.
Chapman, Leslie A., 423-74-4832.
Coleman, Joyce K., 491-50-2596.
Collins, Carole S., 049-40-8890.
Connell, Mary L., 269-48-4229.
Crow, Geraldine S., 546-78-8516.
Crye, James P., 541-48-4917.
Davenport, Bruce B., 397-54-7670.
Davis, Thomas A., 484-58-8311.
Delafosse, Jodie L., 437-70-1787.
Dusenbery, John D., 394-54-5253.
Ellis, Lynda S., 408-76-8332.
Farthing, Christine A., 485-68-7301.
Felix, Robert H., Jr., 167-40-9332.
Freeman, Loisann M., 577-76-5622.
Gagnon, Nancy B., 552-92-6089.
Gerow, Ann B., 085-38-1218.
Gilmore, Samuel W., 524-68-5547.
Gooden, Joyce A., 223-72-7694.
Gormley, Thomas M., 578-60-6977.
Guzowski, Christine J., 215-66-8379.
Hall, Kathleen S., 564-76-7547.
Hansen, Jacob A., 478-54-7617.
Hart, Deborah A., 323-46-8454.
Howard, Patricia A., 526-86-9982.
Howell, Pamela M., 242-86-8941.
Hughes, Debra S., 253-02-4226.
Jimenez, Edith S., 552-96-5199.
Jones, Sheila A., 455-84-2504.
Jordan, Suzanne E., 559-74-7636.
Kelly, Joan M., 265-06-5308.
Killby, Maureen M., 369-52-9334.
Knecht, Sherrie L., 279-52-7552.
Kramer, William E., 515-56-9583.
Land, Patricia A., 067-42-8126.
Leatherman, Debra J., 461-80-0146.
Leduc, Margaret H., 009-38-7348.
Lewis, Dorothy M., 412-88-8313.
Lile, Deborah A., 291-52-1900.
Lucas, Karen L., 277-54-0024.
Madsen, Julia W., 540-64-5636.
Maldonado, Gaudiosa, 144-38-5837.
Marchand, Janice L., 041-36-4456.
Martin, Janie L., 260-70-7873.
McGinnis, Randy M., 292-48-0284.
Miller, Rita L., 393-46-7343.
Mitchell, David W., 259-72-3887.
Olson, Jane L., 224-72-0370.
Parker, Gail L., 364-94-3685.
Pegula, Margaret A., 163-44-6495.
Purtle, Jeffrey W., 517-54-3730.
Reidy, Pamela J., 042-48-2252.
Repko, Mary C., 270-48-5867.
Ricci, Corinne A., 191-44-6584.
Rogers, Suzanne M., 319-46-0906.
Root, Diane M., 121-44-6530.
Ross, Glenda G., 404-70-9797.
Sand, Barbara S., 398-52-6150.
Schmidt, Margaret J., 393-58-8761.
Schueller, Lou A. G., 469-64-0456.
Schwartz, Judith M., 263-08-4964.
Schwartz, Loislee A., 534-46-1862.
Sherrill, Tedana M., 570-72-9631.
Smith, Jimmie M., 264-96-0056.
Sullivan, Eileen L., 011-42-9365.
Thompson, Mary, 110-44-9169.
Thompson, Nancy M., 054-50-7049.
Tiley, Patricia A., 435-68-2927.
Turner, Dolores H., 475-58-6283.
Vanderburg, Kathleen, 388-52-4864.
Vandeventer, Jerry D., 499-52-5520.
Wetherald, Shirley D., 214-60-4290.
Williams, Margaret J., 063-37-7945.
Young, Cynthia R., 262-82-2341.

MEDICAL SERVICES CORPS

To be captain

Newell, Carl L., 444-50-9565.

To be first lieutenant

Anderson, Alden P., 262-84-7799.
Baker, Theresa S., 538-48-0515.
Bauer, Charles R., 045-38-5241.
Berger, Robert J., 062-40-5400.
Bonham, George C., Jr., 152-36-8715.
Brown, Don C., 555-96-8906.
Bullis, Cordell W., 508-60-0326.
Davenport, Thomas E., 279-38-7632.
Deem, Charles F., Jr., 215-52-0975.
Delffs, Roger D., 259-74-6940.
French, Patricia, M., 120-46-4128.
Gambino, Michael A., 078-40-9680.
Giesecke, Stephan A., 537-52-2061.
Holmes, Timothy H., 223-60-2552.
Jayne, Kenneth M., 318-46-9531.
Kincy, Ray, 376-42-5932.
Kleefisch, William B., 494-46-3932.
Klinzmann, Jackie L., 506-58-7015.
Latini, Norman J., 585-24-1320.
Lowe, Charles P., 136-36-0705.
Morris, Jasper D., 339-44-7848.
O'Rourke, Patrick J., 532-42-5401.
Schmidt, Frank E., III, 466-76-1423.
Schneider, Carl P., 113-34-3096.
Sietsema, Harvey, 350-38-1726.
Skalomenos, Thomas D., 521-60-5667.
Valliere, Robert P., 001-38-8047.
Williamson, Paul T., 401-68-8229.
Wright, Raymond D., 298-42-7901.

BIOMEDICAL SCIENCE CORPS

To be captain

Green, David E., 543-58-0006.
Larsen, Gary D., 502-50-7467.
Pailthorp, Gary D., 542-42-8633.
Stanley, Marie E., 031-36-0370.

To be first lieutenant

Aycoth, Carol L., 106-42-0959.
Ball, John D., 223-74-1909.
Barker, William F., 512-84-7118.
Barnett, Ralph A., 402-80-4618.
Barrett, Edwin T., 178-40-3556.
Bloom, Richard W., 027-38-5484.
Blue, Sandra J., 217-46-9516.
Burough, Leallan L., 520-52-6903.
Chandler, Keith D., 585-32-3087.
Chyrek, Michael L., 216-46-6060.
Crane, Robert L., 261-76-5960.
Eyestone, Scott M., 340-42-8059.
Fifer, Robert G., 480-60-5693.
Flynn, Thomas A., 561-56-3868.
Fogelman, Vicky L., 423-60-4700.
Gilmore, Carol J., 413-76-4852.
Grosnik, Brenda J., 187-42-8968.
Harris, Richard K., 586-05-9208.
Harshbarger, Harry C., Jr., 254-72-7608.
Hickey, Roberta L., 558-96-5744.
Hodgson, Mary Ann, 153-34-1435.
Horowitz, Neil D., 090-36-8428.
Jessen, John B., 519-64-8562.
Jung, Lynette C., 516-42-4340.
Kazmaier, Martin F., Jr., 063-20-6674.
Kearney, Peggy R., 398-50-3382.
Klassy, Sandra S., 562-72-9754.
Lafky, Alan M., 533-48-5297.
Leonowich, John A., 074-38-0931.
Mann, Dale P., 510-52-3242.
Martinez, Perez Roberto, 584-05-6610.
Meyer, Fdererick M., 453-96-5734.
Moon, Carl R., 266-90-4231.
Morris, James L., 314-58-5514.
Murray, Gerald F., 526-70-1666.
Murray, Ross Jr., 458-66-1599.
Mutschler, Gary G., 163-38-0961.
Neal, Donna P., 433-90-3063.
Ng Elliot K., 572-70-3408.
Nonnemacher, Margaret M., 431-88-3315.
Olsen, Fred W., Jr., 470-58-1663.
Orr, Nancy P., 501-66-8425.
Pasquale, Thomas A., 061-42-6089.
Petrin, Milton J., 516-62-0443.
Phillips, Donald J., 077-34-1692.
Piciucco, Luigi, 029-40-8946.
Polhamus, Garrett D., 567-80-7108.
Poling, Clifton W., 295-48-5983.
Sarno, Wayne A., 109-34-5860.
Sherer, Joel I., 091-30-6590.
Silk, Neil, 562-60-8297.
Singer, Timothy J., 348-40-0067.
Smith, Coy M., 533-46-1248.
Warren, Lawrence C., 491-50-6064.
Werkley, Christopher J., 209-40-4437.
Wians, Frank H., Jr., 034-34-8928.
Wormington, Charles M., III, 569-64-8273.

IN THE ARMY

The following-named officers for promotion in the Army of the United States, under provisions of title 10, United States Code, sections 3442 and 3447:

ARMY PROMOTION LIST

To be colonel

Abrahamson, James L., 344-28-8171.
Abrahamson, John D., 472-36-3461.
Adair, Robert B., 197-30-0157.
Allison, William C., 255-58-5567.
Ammons, David C., 421-46-6809.
Anderson, Charles E., 467-62-0678.
Andrews, Anthony J., 020-30-8603.
Andrews, William R., Jr., 463-58-0887.
Appleton, Forrest W., 453-58-5819.
Armstrong, Charles H., 517-34-4557.
Armstrong, Donald R., 324-28-6409.
Arnold, Steven L., 329-34-5146.
Averill, Ronald H., 556-46-3372.
Baeb, David E., 389-32-1903.
Baldwin, Edward R., Jr., 488-40-3654.
Baldwin, Ronald C., 241-48-2075.
Balish, Warren N., 193-28-6036.
Banks, James H., 257-46-2428.
Barkett, John S., 267-56-0613.
Barmore, Frederick E., Jr., 180-30-1437.
Barnes, Wilson E., 227-44-6418.
Barnett, John R., 458-56-8802.
Barnwell, Isaiah E., Jr., 247-52-7864.
Barnwell, Marion L., 247-52-3972.
Barone, Ercole M., 089-30-1645.
Barr, Grady W., 464-54-1875.
Barrett, Peter J., 051-30-8710.
Baugh, Raymond C., 182-26-4639.
Beakey, Danny J., 444-38-2655.
Bean, Roger K., 532-38-3530.
Beard, Louin L., 542-38-3885.
Beasley, John D., III, 515-32-7114.
Beech, Gary D., 511-30-5864.
Beltson, Richard D., 080-30-5615.
Benson, Roger R., 365-30-6831.
Bergeron, Gary P., 043-26-8298.
Berkley, Nathan R., 006-34-2527.
Berta, Thomas L., 182-28-9442.
Best, David M., 317-30-3602.
Beurket, Raymond T., Jr., 216-34-5917.
Beyer, Alfred H., 073-28-3459.
Bickford, James E., 406-44-8692.
Birrane, John H., 219-26-1813.
Bishop, Edward L., 132-28-0790.
Blanchard, Charles E., 252-50-0710.
Blasco, Andrew P., 215-34-7819.
Blumhardt, Glen A., 396-32-3143.
Bohach, John L., Jr., 550-50-6354.
Borlund, Thomas V., Jr., 103-30-7514.
Borstorff, Allan R., 176-30-8687.
Bosch, Brian J., 262-52-2508.
Boss, Jerry L., 304-36-9475.
Bowdoin, Max S., 424-36-2848.
Boyd, Robert C., 493-36-2878.
Boyle, David J., 473-44-8919.
Boysen, John H., 466-50-6286.
Bradley, Peter W., 095-28-5908.
Brady, Patrick H., 535-30-4962.
Branagan, Brian J., 083-28-8277.
Brass, Ronald W., 060-30-8124.
Brehaut, Joseph W., 019-26-3089.
Breslin, Frederick C., 124-28-8860.
Briggs, Harold L., Jr., 217-32-0547.
Brooke, Arthur L., III, 424-42-7201.
Brown, Gerald C., 006-36-9394.
Brown, Patty E., 411-60-4107.
Buchanan, William J., Jr., 540-38-3609.
Buckley, Benjamin C., Jr., 154-28-7947.
Buckley, James M., 516-38-6452.
Buckman, Leroy R., 042-28-9915.

Burbank, Arlene G., 252-56-6792.
Burchell, Larry E., 227-44-0096.
Burias, Joseph E., Jr., 228-36-6150.
Camp, Junius W., Jr., 227-38-3844.
Campbell, J. F., 240-46-2282.
Cansler, Joe C., 238-58-2191.
Carroll, Robert C., 228-52-8673.
Cato, Richard W., 192-30-4600.
Catt, Jackie D., 429-66-8444.
Cerjan, Paul G., 133-28-0588.
Chen, William S., 339-34-5787.
Cinci, Lyn G., 324-30-2494.
Cisneros, Marc A., 461-60-0361.
Clarke, Gordon M., 576-34-9678.
Clawson, Lucien B., Jr., 278-28-3081.
Clifton, James A., 409-56-3862.
Cloud, Leon B., 465-50-1925.
Cobb, Edward R., Jr., 423-42-0349.
Conforti, Gilbert, 032-26-1736.
Connor, George H., Jr., 423-48-9706.
Conrad, Joseph C., 037-26-3460.
Cook, Grady W., 441-38-9209.
Cooper, Ted V., 412-42-0762.
Cotrupi, Francis J., 009-22-4029.
Council, Robert L., 244-48-4094.
Counts, John E., 524-46-9056.
Craig, Joe F., 445-38-2924.
Crawford, William R., 449-50-5343.
Crouch, James E., 412-46-8190.
Crumley, Michael H., 256-54-0602.
Cumings, Thayer, 366-38-7985.
Cunningham, Patrick J., 125-28-4241.
Cypher, Ronald P., 173-28-5165.
Dahill, John B., 471-34-0645.
Daly, William F., Jr., 103-28-4280.
Darling, Dean H., 473-40-8445.
Davis, Bruce H., 516-34-1923.
Davis, Joseph S., 455-62-6342.
Davis, Russell H., Jr., 265-46-0481.
Dawson, Lawrence S., 401-48-6937.
Deatkine, Norvell B., 224-52-4512.
Deboeser, Edward V., Jr., 163-28-7049.
Degrant, Robert L., 570-44-9732.
Delikat, Stanley J., 035-22-6374.
Demont, Robert W., 299-32-3436.
Dendtler, Robert B., 099-28-4362.
Denney, J. Thomas H., 424-42-9485.
Dennis, Harold B., 254-52-4971.
Dewar, John D., 028-30-6477.
Dexter, Charles E., 289-30-2352.
Dickson, Carroll Z., 459-52-1341.
Dierickx, James E., 279-32-4552.
Dill, Earnest W., 252-56-0703.
Diahner, Wilbert J., Jr., 424-36-7296.
Doran, William K., 297-30-2939.
Doyle, Noel J., Jr., 039-22-4455.
Drewfs, Henry F., Jr., 540-46-2965.
Duchin, Ronald A., 145-26-4819.
Duggan, Dennis M., 576-34-4967.
Durning, Allan R., Jr., 012-26-4449.
Edge, James G., 035-24-6281.
Edmiston, Howard W., Jr., 045-24-3284.
Edwards, Robert H., 150-28-9708.
Eskridge, Robert J., 432-64-3111.
Estes, Ernest F., 417-50-1701.
Evans, Alexander H., 225-50-9874.
Evans, Kenneth A., 282-32-0177.
Fairweather, Robert S., Jr., 530-22-4779.
Farley, John C., 161-28-1697.
Farmen, William N., 054-32-2513.
Fasching, George H., 095-30-7768.
Felsher, Edwin H., Jr., 427-58-2287.
Ferguson, Norman N., 425-62-7666.
Fernandez, Victor M., 523-44-3502.
Fetkenhour, Gordon K., 160-30-5597.
Fitchett, Donald J., 551-48-9015.
Fitzgerald, Joseph P., 120-28-3362.
Fleming, Thomas E., 147-28-9979.
Fluke, Eugene C., 448-34-5869.
Forster, William H., 427-68-5996.
Fournier, Albert L., 004-34-3145.
Frause, William K., 501-36-1402.
Freeman, Waldo D., Jr., 527-62-5800.
Fucella, Edward D., 041-26-3667.
Gallagher, Robert J., 150-24-6559.
Garrison, Darrold D., 543-34-3574.
Gavan, William H., 093-32-3991.
Gehler, Donald C., 503-34-5504.
Gibbs, Philip E., 258-52-5058.
Gilbertson, Clarence L., 517-38-9816.
Gillespie, Paul H., Jr., 535-34-4597.
Gilmartin, Michael W., 524-44-0383.
Glenn, Robert W., 260-52-4135.
Gordon, Don E., 348-32-4196.
Goulet, Donald J., 040-30-5853.
Gracey, Lloyd F., Jr., 036-22-0699.
Grannemann, Rodney F., 496-38-0398.
Grayson, Eugene H., Jr., 227-42-2863.
Green, Grant S., Jr., 533-34-4271.
Greene, Fred W., III, 249-60-5217.
Greenwood, Everett O., 008-26-8453.
Gregg, Noel D., 284-32-2542.
Griffin, Gerald K., 220-30-4576.
Hale, William M., 267-58-3408.
Hall, Bruce W., 519-40-6201.
Hall, Dennis C., 485-40-5951.
Hall, James A., 455-46-1378.
Halstead, Bruce B., 521-42-4614.
Hamilton, Welton E., 458-58-2684.
Handy, George W., 019-30-9527.
Hanson, Wayne A., 574-10-6515.
Hardiman, Robert R., 014-30-2607.
Harmon, Wilburn H., 402-48-7280.
Harnagel, William R., 503-36-7730.
Harper, Thomas M., 463-48-4931.
Harrell, Pascal B., 537-32-9643.
Harris, David H., 334-26-1128.
Harris, Jasper R., 261-54-8625.
Harrison, Jerry C., 491-40-6896.
Harvey, William R., 513-32-6116.
Haselton, Hunter G., 533-32-0372.
Hays, Robert O., 172-30-7618.
Heath, Guy H., Jr., 455-52-6520.
Heberle, Charles J., 516-40-5219.
Heinrich, Darrell C., 545-50-6164.
Heller, Stephen M., 107-30-5481.
Helms, Bobby T., 417-44-8840.
Hendrickson, Charles W., 117-26-1649.
Hessler, Thomas J., 281-30-0350.
Heyman, William, 029-30-3120.
Hill, Jimmy C., 453-54-1349.
Hill, William V., Jr., 218-34-2218.
Hintz, Norman C., 325-30-9100.
Hobar, Basil J., 163-30-4116.
Hobbs, Dale G., 519-32-6386.
Holcomb, Rowland R., 420-40-5536.
Holland, Patrick J., 579-46-6985.
Holley, John C., 237-62-9917.
Hooker, George A., 540-38-5797.
Hooper, Lynn C., 430-76-2872.
Horner, Thomas A., 547-50-1464.
Horton, Lowrey P., 466-50-5335.
Horvath, Richard L., 377-30-6409.
Houston, Samuel B., 252-50-4816.
Howard, James D., 440-36-9028.
Howe, Robert D., 504-34-2173.
Hubbard, Jerry A., 248-58-4741.
Huggin, Benjamin A., 249-60-0451.
Humphrey, Richard A., 262-52-8805.
Hutson, Heyward G., 249-54-3130.
Inglett, Robert A., 253-52-6203.
Irby, Dewitt T., Jr, 425-68-6056.
Jayne, Robert K., Jr., 426-62-4952.
Jenkins, Wilburt L., 262-50-4136.
Johnson, Charles E., 008-24-5241.
Johnson, Hugh P., 267-52-5900.
Johnson, Marshall B., 538-34-9618.
Johnson, Stanley R., 532-34-9400.
Jones, Daniel M., 225-46-3172.
Jones, William S., 558-42-0375.
Joosse, Stanley B., 393-34-5487.
Kaiser, George F., 512-32-8492.
Karl, Edward V., 128-28-7617.
Kawano, Kenneth I., 575-34-5830.
Kee, Robert J., 025-28-0182.
Kellenberger, William E., Jr., 013-30-0193.
Kendall, Donald S., 280-34-5690.
Kennedy, John L., 527-50-2221.
Kennedy, Thomas J., Jr., 546-48-6762.
Kenney, Laurence P., Jr., 053-28-5027.
Keyes, Billy G., 436-54-0258.
Kieffer, George W., 198-38-0594.
Kind, Peter A., 398-38-1886.
Kinney, Linford N., 148-28-0782.
Kirchner, Warren F., 269-38-9421.
Kleb, George R., 272-32-0543.
Kline, Gary L., 482-40-4037.
Knisely, Lynn B., 270-32-3095.
Kniskern, Bruce E., 017-28-7261.
Knoop, Paul R., 406-46-5055.
Kolin, Raymond A., 134-28-3426.
Kraus, George F., Jr., 253-44-3046.
Kuhn, William K., Jr., 572-44-6763.
Kvederas, Robert A., 127-28-1403.
Ladehoff, Harold L., 485-34-8067.
Landry, John R., 262-58-5034.
Langrehr, Michael J., 218-32-8391.
Laposata, Joseph S., 207-30-0517.
Larson, Christian M., 390-34-0407.
Lavigne, Norman A., 003-24-2473.
Lawlor, James, 323-30-3207.
Lax, Robert E., 253-54-1586.
Lechner, Ralph C., 425-58-4516.
Lee, Francis G., 035-24-8214.
Lee, Phillip A., 447-32-0664.
Lee, Robert C., 047-28-4365.
Leffler, Samuel A., 483-48-5420.
Leonard, Daniel R., 502-30-4280.
Lewis, John H., Jr., 216-34-4700.
Lewis, Terris C., 362-36-5703.
Liberatore, Samuel N., 213-32-3381.
Lind, Richard W., 097-28-3950.
Lindquist, Robert E., 560-26-1387.
Lionetti, Donald M., 144-30-6344.
Lipinski, Robert H., 196-30-6032.
Lopez, Manuel, 466-52-4175.
Lotz, Reinhard M., 123-28-9555.
Lovell, James A., 430-52-7046.
Lucas, Wayne L., 496-42-8379.
Luckey, Robert M., 536-32-4257.
Lymn, Harry C., 061-30-9180.
Madden, Charles D., 098-28-6505.
Maglin, Richard R., 073-28-4342.
Malcor, Dennis P., 494-42-4238.
Mallion, Richard J., 022-30-2849.
Manderson, Ivor C., 418-46-6796.
Manderville, Bernard P., Jr., 123-28-5772.
Mangum, Robert A., 223-38-6974.
Markham, John F., 392-34-9426.
Marley, Ronald W., 183-30-5221.
Marsh, Byron D., 494-34-5022.
Martin, Geary D., 262-54-0454.
Martin, Richard H., 159-30-4045.
May, James L., 241-56-1903.
Mayer, John H., 196-30-1425.
McCarthy, Paul J., 076-30-4315.
McCarthy, William J., 018-288-1620.
McCotter, Orson L., 244-56-7636.
McCracken, Henry E., Jr., 250-56-2716.
McCrary, Richard F., 350-28-7018.
McFadden, Phillip L., 464-54-1148.
McFarland, Jon W., 537-34-1212.
McKnight, James G., 460-54-3798.
McLaughlin, Edward J., 099-28-9955.
McQuaid, Ronald J., 106-28-4673.
Medley, Ted, 379-34-5331.
Meloy, John N., 223-40-9839.
Menoher, Paul E., Jr., 547-52-5071.
Mentor, John L., 015-28-7875.
Merchant, James L., 251-52-9294.
Mergner, George F., 164-28-8587.
Merski, Norman R., 189-28-8341.
Miller, Donn G., 093-32-4001.
Miller, James E., 228-42-1176.
Miller, Joseph, Jr., 329-28-6992.
Miner, William H., 332-34-7481.
Minnich, Lawrence E., 439-56-8706.
Mitchell, Corless W., 267-30-8384.
Moe, Donald W., 574-10-6976.
Moore, Bobby L., 243-46-0934.
Moore, Riley R., II, 515-34-3936.
Moorhead, John H., 253-54-8333.
Morton, James O., 441-34-5286.
Motley, James B., 251-56-2309.
Moutos, Gus, 456-46-0216.
Mullen, Frederick F., 037-20-7897.
Mullenax, Donald C., 232-62-6245.
Mullenix, Ronald O., 525-66-1402.
Murray, Jon L., 269-34-3954.
Murry, William V., 463-48-4928.
Musmanno, Francis J., Jr., 011-28-0927.
Myers, Charles T., III, 463-64-3193.
Najera, Pedro, 526-34-9967.
Neely, Carl C., Jr., 186-28-5224.
Noack, Richard R., 465-50-3879.
Nobles, Charles S., 450-60-4142.
Norman, Kenneth G., 535-34-0849.
Novogratz, Robert M., 185-26-7594.
O'Connor, Hugh T., 252-50-0988.
Odom, Fredwin M., 431-60-1852.
Offan, Kenneth J., 434-44-4508.
O'Grady, John E., 263-56-4173.

Oliver, Robert T., 577-46-4683.
Olson, Martin G., 576-32-1845.
Oneill, Kevin J., 230-46-1404.
Oneill, Malcolm R., 326-34-8023.
Oneill, Richard T., 329-30-3679.
Ord, Robert L., III, 053-34-1554.
Orr, Paul F., 287-32-5296.
Osborn, Larry N., 301-30-0360.
Ostovich, Rudolph, III, 399-36-2589.
Ott, John S., 542-38-2538.
Parker, Robert W., 207-28-6941.
Parsons, Donald L., 224-48-3480.
Passarella, Patrick F., 219-26-8817.
Pattison, John A., 375-36-1047.
Patty, J. W., III, 418-46-6230.
Perkins, Stuart L., 217-34-9349.
Pfister, Cloyd H., 052-32-9906.
Phillips, Alan B., 008-26-1423.
Pigaty, Leo J., 044-32-1385.
Plassmeyer, Martin L., 495-36-2556.
Plummer, George W., 157-26-8281.
Posey, Dudley M., 515-36-5765.
Potter, Richard W., Jr., 386-36-4832.
Powell, Jamo C., 453-56-8612.
Powell, Roger E., 403-44-5276.
Pratt, Robert H., 219-34-9284.
Press, Donald P., 487-36-8431.
Prisk, Courtney E., 531-34-2750.
Rafferty, John L., 165-30-7815.
Randall, Howard W., 119-30-5028.
Rapp, Edward G., 523-46-4201.
Ratcliffe, John P., 521-42-8083.
Rauch, Frank C., 093-32-3956.
Ray, Harry D., Jr., 452-52-7516.
Redding, Frank J., 258-50-6880.
Regel, Thomas J., 434-50-0901.
Reinhard, Donald R., 261-54-4559.
Reiser, Andre K., 096-28-6906.
Rexrode, Kenneth E., 524-36-6150.
Reynolds, Harvey J., 254-54-6876.
Rhen, Thomas A., 204-28-2172.
Rhynsburger, Robert B., 520-34-1341.
Richards, Arthur E., III, 427-66-0999.
Richardson, Celeste T., 397-38-0712.
Rigby, Joe W., 453-58-2777.
Riley, James E., 458-56-6351.
Riordan, Robert W., Jr., 433-46-8566.
Robb, Allan D., 514-40-3346.
Robinson, Charles D., 252-52-7763.
Robinson, Edward C., 053-28-0310.
Robinson, John D., 013-30-1090.
Rocco, Domenic P., Jr., 163-30-3015.
Rogers, James G., 420-38-2920.
Roney, Kenneth D., 197-28-0988.
Rosamond, John B., 427-60-7658.
Ross, Lawrence C., 491-40-0970.
Ross, Raymond R., II, 264-58-0703.
Rothblum, Richard A., 136-32-5191.
Rounseville, Richard G., 134-30-3680.
Rushton, Pierce A., Jr., 409-54-8422.
Russell, Thomas B., 508-42-5697.
Salley, Robert W., 116-30-7890.
Salomon, Leon E., 318-28-8116.
Saunders, David L., 241-52-8159.
Sauvageot, Jean A., 289-30-8061.
Schiano, Louis J., 139-28-5297.
Schmacker, Bruce E., 278-30-1474.
Schmidt, Jackie E., 456-50-4735.
Schmitz, Ralph, 147-26-4809.
Schneider, Michael M., 461-56-3223.
Schor, Stephen H., 296-34-9634.
Schroeder, Daniel R., 130-28-3122.
Scott, Richard M., 227-48-3954.
Seitz, John A., III, 494-42-9353.
Seybold, Thomas K., 291-32-5362.
Shachnow, Sidney, 026-26-2683.
Shauf, Elton R., 503-46-6257.
Sheldon, Thomas K., 388-36-8903.
Shepard, Phillip G., 381-36-2029.
Sherard, Stewart, 491-40-2234.
Sherburne, Thomas N., 262-56-3560.
Sherrell, Wilson J., 418-46-7072.
Shimek, Daniel W., 387-34-1462.
Shirey, Wilbur C., 209-32-1728.
Short, Alonzo E., Jr., 231-40-1982.
Shouse, Delbert F., 403-48-8150.
Sikora, Thomas F., 315-38-1936.
Simerly, Julian C., Jr., 256-58-3236.
Slifer, Richard D., 510-34-5513.
Smith, Byrd, 251-56-8578.
Smith, Harold L., 406-42-1454.
Smith, Jack C., 462-46-6259.
Smith, Lee C., Jr., 251-50-1408.
Smith, William G., 092-28-4957.
Sobke, John F., 543-42-2628.
Solomon, Irwin E., 150-24-9718.
Sorensen, Gary A., 516-36-3297.
Sorenson, Wilbert W., Jr., 523-50-2603.
Spisak, John J., 297-36-4700.
Sprague, Ronald K., 311-30-0221.
Springer, Anthony T., 577-52-4592.
Squire, John H., 250-48-1741.
Stanley, Charles M., Jr., 460-64-4823.
Stanley, Frederick J., 249-52-3427.
Starling, James D., 452-48-5631.
Stebbins, Allen F., 009-22-8446.
Stephens, Donald G., 430-60-7335.
Stephens, William J., 372-34-5766.
Stiepock, Robert C., 173-30-3594.
Stiles, Howard J., 081-32-5577.
Stone, Thomas R., 390-36-6139.
Stone, Wayne F., 097-28-4818.
Stroup, Theodore G., Jr., 262-58-8886.
Svendsen, Don F., 323-30-9007.
Swindells, John E., 457-54-7819.
Szustak, Frank G., 184-26-7821.
Tancreti, Roger J., Jr., 012-30-7264.
Taylor, Horace G., 410-60-2936.
Taylor, John E., 433-48-6018.
Taylor, William D., 428-52-6798.
Temple, William E., 260-60-1960.
Thomassy, Fernand A., 170-32-0225.
Thompson, Floyd J., 151-24-1524.
Thompson, Paul F., II, 343-30-1653.
Thompson, Vernon D., 500-36-4958.
Thudium, Christian C., 330-30-6979.
Thurston, Joe B., Jr., 443-38-5668.
Tichenor, James R., III, 406-46-8084.
Torres, Frank C., Jr., 577-50-4676.
Tozier, Robert E., 286-32-6990.
Trdla, Joseph R., 453-46-9705.
Tredinnick, Richard E., 206-28-6408.
Trinkle, Patrick M., 552-50-5053.
Tyler, Erven S., 231-42-6605.
Vaglia, James E., 176-30-0844.
Valleant, John H., 048-30-9757.
Vargosko, Michael A., 048-28-2240.
Vay, Nicolas R., 112-30-2263.
Vercellone, Joseph E., 021-28-4590.
Vermette, Robert E., 036-24-5046.
Vick, Gerald A., 355-30-0986.
Voke, Edward N., 224-38-9295.
Wacloff, Robert L., 501-34-5673.
Wait, William M., 267-52-6944.
Walker, Robert T., 284-32-4287.
Wall, Kenneth L., 409-58-0657.
Wallace, Malcolm K. R., 140-30-4782.
Walsh, James E., Jr., 571-40-1076.
Walters, James P., 466-54-6883.
Warnock, William H., 048-30-0140.
Warren, James A., 226-42-9966.
Weaver, Charles R., 450-50-7705.
Weber, Thomas E., 145-28-7403.
Weinfurter, Robert J., 555-48-9469.
Wenzel, Paul J., 132-28-9657.
Westmoreland, Franklin D., 462-44-3001.
Wheeler, John B., 228-52-7785.
Wheeler, Robert A., 479-38-3638.
White, Lyman G., Jr., 262-56-9198.
Whiteside, Jerry E., 257-56-9689.
Whitworth, David C., 248-54-9144.
Wigner, Larry R., 368-32-7247.
Wilder, William B., 415-50-1453.
Wilkerson, Edwin A., 236-58-0710.
Williams, Arthur E., 133-28-8513.
Williams, Cary E., 426-70-2613.
Williams, Donald B., 516-40-2789.
Williams, Robert B., 528-44-5191.
Williams, Robert S., Jr., 237-56-8485.
Williams, Stuart H., 362-32-8437.
Williamson, Myrna H., 504-44-2760.
Williamson, William R., 193-30-0677.
Wilson, William R., 564-52-9906.
Wolters, Robert A., 378-34-0451.
Woodhouse, Donald L., 520-30-5633.
Woodie, Kenneth J., 433-44-0271.
Worthington, Wayne L., 188-28-9186.
Wuerpel, Charles L., 349-30-2531.
Yeats, Philip L., 550-46-4357.
Yelverton, Rush S., 425-64-9980.
Yon, Frank E., 267-58-7887.
York, Dennis J., 504-34-6015.
Zagalak, Stanley J., 200-26-9756.
Zahn, Kenneth C., 527-44-0866.
Zaldo, William T., III, 452-54-5387.
Zierak, Robert A., 107-24-1431.

JUDGE ADVOCATE GENERAL'S CORPS

To be colonel

Babcock, Charles S., 417-46-8021.
Briggs, David B., 168-30-9725.
Cole, Raymond D., 481-40-7357.
Creekmore, Joseph P., 241-48-4914.
Cuthbert, Thomas R., 390-34-6628.
Ickhardt, William G., 425-90-0124.
Endicott, James A., Jr., 500-38-3676.
Felder, Ned E., 247-52-7735.
Hug, Jack P., 525-76-9233.
Kane, Peter J., 097-28-7951.
Lewis, Jerome K., II, 561-54-7151.
McRorie, Raymond C., 238-40-4053.
Nutt, Robert M., 577-52-3759.
Stone, Frank R., Jr., 525-54-8367.
Watkins, Charlie C., 525-74-2443.
White, Charles A., Jr., 225-40-7536.
Yawn, Malcolm T., 428-52-4951.

CHAPLAIN CORPS

To be colonel

Alexander, George W., II, 406-46-7419.
Bell, Bobby D., 518-32-2120.
Brough, Alfred E., 167-24-5537.
Burttram, Danny W., 417-42-8369.
Compton, David O., 413-56-0811.
David, Lawrence T., 250-40-1452.
Evangelisto, Louis A., 048-20-9897.
Hilliard, Henry C., Jr., 240-48-2916.
Hoh, David W., 395-26-0217.
Huseth, Joseph L., 470-30-6225.
Ives, Ivan G., 517-32-6814.
Keefe, Francis L., 032-12-7605.
Kleinworth, Robert R., 453-36-8887.
Martin, Richard K., 227-40-2987.
Saunders, Robert E., 410-50-2932.
Scott, John C., 038-16-5818.
Standley, Meredith R., 298-28-1411.
Torer, Roland R., 286-22-6635.

MEDICAL SERVICE CORPS

To be colonel

Alex, Allen M., 199-26-7900.
Baker, Harlan H., Jr., 467-46-9050.
Bambery, Thomas W., 473-38-2085.
Benson, Warren D., 480-42-3014.
Boyd, William M., Jr., 224-38-5752.
Crow, Kenneth E., Sr., 425-72-6951.
Gensler, Jay D., 453-58-6388.
Gillespie, Ronald L., 551-44-6335.
Grider, Donald A., 285-32-9498.
Grodt, Robert G., 554-46-7266.
Helgeson, James G., 394-34-7545.
Heller, Kyle M., 393-32-5930.
Hill, William R., 251-58-6021.
Hoke, Mark L., 216-30-2947.
Johnson, Walter F., III, 247-62-9936.
Kielman, Roger W., 504-30-1722.
Labat, Roger J., 468-38-8195.
Leahey, Raymond, 185-30-2486.
Lingle, Kenneth C., 245-48-3898.
MacIntyre, John A., Jr., 579-46-1110.
McIntyre, James E., 260-28-0736.
Moussa, Moufied A., 306-46-2970.
Peacock, James L., 465-48-3090.
Pittman, Thurman M., 237-54-0856.
Posey, William L., 536-32-4409.
Sylvester, Ernest J., 425-80-3000.
Vermillion, James G., 225-46-6377.
Weaver, Joseph U., Jr., 578-44-9435.
Whitlaw, Joseph T., Jr., 213-24-4024.

ARMY MEDICAL SPECIALIST CORPS

To be colonel

Elbeheri, Hahmoud S., 473-38-7618.
Gierhart, Jane E., 325-28-8304.
Hummel, Robert A., 503-32-4908.
Lucas, Mary E., 249-56-5158.
McDowell, Joyce, 444-30-6839.

VETERINARY CORPS

To be colonel

Barck, John C., 282-22-7056.
Cooper, James C., 496-42-1654.
Freel, Marvin E., 506-32-3904.
Gustin, Philip N., 275-36-7995.

Hilmas, Duane E., 474-34-0408.
Robinson, David M., 268-36-0331.
Rozmiarek, Harry, 399-42-3773.
Sims, William M., Jr., 259-52-1517.
Vis, Robert E., Jr., 235-54-9318.

ARMY NURSE CORPS

To be colonel

Barrington, Tillman E., 451-44-7555.
Carson, Amelia, J., 249-58-5915.
Christ, Nancy M., 135-24-2800.
Condon, Kathleen T., 492-32-9471.
Fenlon, Eileen M., 371-36-1647.
Fiaschi, Peter J., 176-28-2456.
Halliburton, Sarah, 409-58-1387.
Herman, James W., Jr., 202-28-6775.
Houghton, Jean M., 024-12-3639.
Hunn, James M., 429-50-9628.
Kamensky, Richard J., 015-28-9177.
Kennedy, Eunice J., 194-14-1497.
King, Joyce W., 222-05-7552.
Kuntz, Mary K., 277-34-2665.
Metz, Martha L., 301-28-2521.
Pavlakovic, Dorothy D., 305-32-6915.
Troniar, Maryrose F., 101-30-2497.

IN THE NAVY

Dennis D. Guy, Navy enlisted scientific education program candidate, to be appointed a permanent ensign in the line of the U.S. Navy, subject to qualification therefor as provided by law.

John H. Keogh, civilian college graduate, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

Ronald J. Lentz, ex-U.S. Navy officer, to be appointed a permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

The following-named ex-Naval Reserve officers to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Bergeon, Milton C.
Winkle, Richard J.

Jere G. Sutton, civilian college graduate, to be appointed a permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

The following named U.S. Navy officers to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Brownell, Douglas A.
Stuckey, Charles E.

Sarv M. Grover, civilian college graduate to be appointed a temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

IN THE NAVY

The following-named ensigns of the U.S. Navy for temporary promotion to the grade of lieutenant (junior grade) in the line and staff corps, as indicated, pursuant to title 10, United States Code, sections 5784 (line and staff corps officers) and 5791, subject to qualifications therefor as provided by law:

LINE

Ahern, Jeffrey J.
Allen, Marvin T.
Anderson, Frederick C.
Aucoin, Joseph P.
Barber, Frederick L.
Barnett, David E., III
Baxley, Michael S.
Beard, Dale A.
Beauchamp, M. J.
Belanger, Scott J.
Bell, Anthony T.
Berry, Eric C.
Berry, Ralph M.
Best, David C.
Blohm, Keith W.
Blomquist, Karl E.
Born, Edward G., Jr.
Botek, John T.
Bouma, John C.
Bousa, Vincent P.
Boyd, Harold D.
Brewster, Edward Y.
Brooks, James D., III
Brugal, Andres A.
Brummett, Jack D.
Bruster, Barry G.
Buczkowski, Bruno R.
Burnick, Mark H.
Burtner, Keith E.
Butterer, Albert J.
Cabe, William G., Jr.
Carney, William
Carter, Clarence E.
Caspers, Jeffrey L.
Causey, Randolph E.
Chappell, David C.
Chevrie, Rickey E.
Childers, Roger M.
Chipkin, Martin
Christianson, Marc S.
Connors, William G.
Convery, James J.
Cooper, Alvin
Corkill, Patrick W.
Corpus, Richard A.
Cousin, Dewayne G.
Critch, Ronald W.
Crouse, Robert D.
Curtis, Sherman L.
Dahmer, Carl W.
Dallago, David S.
Daus, William B.
Davis, James C.
Decker, Brian N.
Dennis, Carl P.
Doskocil, William C.
Driscoll, Barry P.
Dykes, Joel B.
Egide, Mark S.
Ellis, Roland L.
Erickson, Jon J.
Fagan, L. Martin
Fawcett, James D.
Firmin, Glynn R.
Flynn, John M.
Franklin, Gene C.
Friend, Donald W.
Fritsch, David C.
Gagan, Casey A.
Gagne, Robert E.
Galoni, Steven A.
Garcia, Patrick C.
Garrity, Ellsworth M. I.
Gaskin, David D.
George, James M.
Gerson, Gregory S.
Glazer, Elliott H.
Gonzalez, Armando
Graham, Robert G.
Gross, Frederic J.
Groves, Kim R.
Grubbs, Jeffrey W.
Harper, Larry
Harper, Timothy A.
Harvey, Steven F.
Harward Robert S.
Havrilak, James J.
Heinze, Marvin H.
Herbold, Gary B.
Herning, Steven D.
Hill, James R., Jr.
Himebaugh, Paul K.
Hoerning, Brian D.
Hogan, William E.
Humphrey, Michael J.
Hunt, Gordon S.
Huscher, Paul D.
Hutto, Gregory T.
Jansen, Clifford
Johnson, Jeffrey
Johnson, Craig C.
Jones, David W.
Jones, William B.
Jordan, Joseph B.
Jordan, Kurt A.
Kahl, Bruce W.
Karstens, G. A.
Kassilke, Donald J.
Kaus, Paul M.
Kennedy, Michael J., Jr.
Kenyon, Steven E.
King, Michael F.
Kneeland, Walter W.
Knowles, Todd W.
Kociban, Andrew M.
Kolasinski, John T.
Krueger, David L.
Krumel, Glenn L.
Lamb, William D.
Lamble, Michael G.
Lang, James C.
Lashua, Ernest E., Jr.
Ledesma, Alfred
Lee, Charles C., Jr.
Lennon, Jeffrey C.
Leon, Guerrero P.
Lester, Donald J., Jr.
Lighthizer, Kenneth L.
Lipovsik, Mark S.
Lloyd, Charles C.
Long, Charles R.
Loper, Mark W.
Los, Banos G. S.
Lueders, John D.
Lybarger, Michael T.
Maguire, Laurence
Maher, Jerome J., Jr.
Maier, Curt M.
Malone, Richard W.
Manners, David C.
Marble, David C.
Matheke, James D.
Mathis, Gerald
Matthews, Jerry D.
McAuliffe, Warren
McCaffrey, Thomas E.
McClung, Scott H.
McConnell, John A.
McDaniel, James T.
McDonald, Allen D.
McGee, William S.
McIntire, Kevin W.
McIamb, Gary M.
McLarney, David W.
McPhillips, T. M.
Meeks, Walter A.
Mendiola, Anthony
Mess, Jeffrey K.
Meyer, Dean W.
Michielini, Norman
Mihacevich, S. M.
Miller, Benjamin K.
Miller, Michael
Miller, Michael W.
Miller, Ronald A.
Miller, Stephen K.
Miller, Steven C.
Miller, Theodore A.
Miller, Walter A.
Miller, Andrew W.
Mills, Neal J.
Milne, Gregory L.
Minnich, David L., Jr.
Minnig, Douglas A.
Minor, Mark A.
Mirick, Robert A.
Miskell, William G.
Mitchell, William D.
Mitchell, Kenneth C.
Mitenius, Edward J.
Mixon, Robert N.
Model, Sean M.
Mohan, Mark D.
Mohler, Phillip S.
Molleson, Kenneth C.
Monroe, Gregory A.
Monroig, Agustin
Montana, Maurice M.
Montgomery, Joseph R.
Montgomery, Paul R.
Montgomery, Robert G.
Moody, Donald J.
Moon, David B.
Moon, Timothy D.
Moore, Alan R.
Moore, Carter D.
Moore, Corey S.
Moore, Douglas E.
Moran, David R.
Moran, Kevin S.
Morgan, Charles R.
Morgan, Stephen L.
Morgan, Thomas K.
Morlang, Gary M.
Moroney, David T.
Morrison, Robert S.
Morrison, Robert E.
Morrison, Stacy Q.
Morriss, David M.
Morrow, Glenn C., Jr.
Morton, Kenneth P.
Moses, Clyde D.
Moss, Daniel S.
Mostert, Justin R.
Moulden, Bobby F.
Mowins, Michael L.
Mroczynski, Edward R., Jr.
Mueller, Lyle K.
Muir, Bruce V.
Mulcahy, John M.
Mulcare, Timothy M.
Muldoon, John J.
Muldoon, Michael P.
Muller, Kurt A.
Mulloy, Joseph P.
Mumpower, Thomas S.
Munyon, Thomas J.
Murakami, Lance E.
Murphy, Harry A.
Murphy, Michael P.
Murphy, Richard H.
Murray, Michael W.
Murray, Richard P.
Murrell, Thomas A.
Myers, Terry W.
Mygas, Nicholas F.
Nagle, Timothy J.
Neary, James P.
Needham, Robin F.
Nees, Dale M.
Neller, Michael E.
Nelson, Erik S.
Nelson, Peter W.
Nelson, Robert L.
Nelson, Ronald E.
Nestle, Mark L.
Nettles, Patrick
Nevin, Robert W.
Nevitt, Russell D.
Newcomb, Steven L.
Newman, Robert B.
Newmaster, Jeffrey T.
Nicolai, Peter E.
Niederhauser, Glen A.
Nigro, Michael L.
Niner, Francis J.
Noble, William D.
Noel, Harold G.
Nolan, Richard J., Jr.
Norman, Brent B.
Normand, Mitchell W., Jr.
Norton, Blaine T.
Norton, David J.
Norton, Donald E.
Nowell, Richard D.
Noyes, Daniel A.
Nye, Kerry L.
Oard, Douglas W.
Oboyle, Seamus M.
Obrien, Edward V., Jr.
Obrien, Ronald C.
Oconnell, Michael J.
Oconnell, James W.
Oconnor, Thomas C.
Odell, Stephen J.
Odonnel, Richard B.
Oertling, John K.
Ogg, Jack W.
Ohanian, Arthur J.
Ohlson, Edward C.
Okeefe, James L., III
Oldfield, William D.
Olivier, Timothy J.
Olmstead, David
Olsen, Dennis K.
Olsen, Edward D.
Olson, David R.
Olson, Peter J.
Olsson, Lars O.
Olynick, Peter A.
Oneal, Daniel T.
Oneill, Danny T.
Oneill, Andrew J.
Opsal, Philip A.
Orem, John H.
Osterman, James P.
Ott, Timothy M.
Otterson, David J.
Owen, Jeffrey P.
Owen, Walter E.
Owens, Billy L.
Pagel, Keith R.
Pagadanganan, Romeo M.
Pagett, Ronald E.
Painter, Kenneth B.
Palmer, David A.
Palmer, John A.
Palmer, John W.
Palmrose, Donald E.
Paluszek, Stephen E.
Pandes, Ruben C.
Panos, Kenneth J.
Papalski, Joseph C.
Para, Raymond
Parente, Christopher L.
Parker, Andrew A.
Parker, Barry L.
Parker, Daniel L.
Parker, Gary D.
Parker, Gregory S.
Parker, John M., IV
Parrish, John R.
Parrott, Michael T.
Parshall, Gerald H., J.
Parsons, Peter S.
Pasko, John A.
Patrou, Neil T.
Patterson, F.
Patterson, John W.
Patton, Douglas A.
Pauls, Rodney K., Jr.,
Pavelle, Timothy J.
Pavoni, Justin F.
Pawlak, Mark J.
Payette, Stephen W.
Payne, Edward
Payne, Stephens S.
Payton, Lewis N.
Peacock, Robert C.
Peacock, William H.
Peck, Richard D.
Peck, William H.
Pedersen, Dean M.
Pedigo, John C.
Pekarik, Randall J.
Pelc, James H.
Pelliccione, Vincent F.
Peltzer, Todd J.
Pendley, James V.
Penniman, Russell S. I.
Pennington, Charles D.
Perez, Rolando S.
Perkins, Clifton E., Jr.,
Perritt, Stuart E.
Pertle, William E.
Pestcoe, Martin T.
Peters, Larry N.
Peterson, Jay L.
Peterson, Merle N.
Phares, Richard K.
Phelan, Thomas P.
Philipp, Brian F.
Philips, Allen G.
Phillips, Richard M.
Phillips, George M.
Philpot, Daniel V.
Picchini, Renard T.
Pickles, Scott T.
Piela, Donald J.
Pieper, Harry L.
Pierce, Daniel L.
Pietrzak, Ray A.
Pilewski, Phillip J.
Pinho, Michael E.
Pinkston, James T., Sr.
Piper, John C.
Pirozzi, Philip C.
Pitchford, Martin V.
Pietl, Robert T., Jr.
Plumlee, Thurman R.
Pluto, Michael
Podoba, John S.
Poehler, Lester C.
Poetsch, James D.
Pohlmeyer, Mark R.
Pohlmeyer, Paul E.
Pollard, James D.
Pollard, Joseph E., Jr.
Polnaszek, Mark R.
Pomerans, Henry D.

Pong, William R.
Poole, Richard M.
Pope, Dale W.
Popek, John M.
Poplin, Woodrow M.
Porter, William L.
Poss, Edward F. III
Post, Bradley D.
Potter, Robert D., Jr.
Powell, William E.
Powers, Benjamin W., III
Powers, Matthew R.
Powers, Peter W.
Powers, Timothy J.
Pratton, Samuel D.
Prentiss, Paul R.
Price, Paul M.
Prindle, Brian C.
Prinzel, Lawrence J., Jr.
Pritchard, Donald L.
Prochaska, James
Prothero, David W.
Prutzman, Paul B.
Pryde, David R., II
Pullar, Walter S., III
Pursley, Scott J.
Pybus, Sean A.
Quale, Theodore J., Jr.
Quarles, Ralph D.
Quigley, John V.
Quigley, Miles C., III
Quinn, Donald P.
Quinn, James J.
Quinn, Michael S.
Quintong, Wilfred P.
Rabens, Michael V.
Radloff, Robert W.
Radona, Pepito J.
Rahall, Ronald G.
Rahmes, Todd W.
Rains, Terry D.
Ralston, Kelvin D.
Ranalli, David M.
Rand, Gregory P.
Ranker, Keith A.
Ranstead, Robert A.
Ranz, Michael C.
Rasmussen, Pete R.
Ratte, James E., Jr.
Raup, Kenneth W.
Rauss, Robert A.
Rawlins, Robert S.
Reasor, Richard S.
Redwine, Kirk S.
Reed, Vernon D.
Reedy, Michael W.
Reese, Loren F.
Reese, Paul J.
Reeves, Peter F.
Regan, Kevin J.
Regis, Patrick J.
Rehling, Carl W., III
Reid, John A.
Reilly, Dennis J.
Reilly, Robert D.
Reilly, Philip K., III
Reinhardt, Gregory R.
Reinard, Bruce E.
Reinhold, Roy A.
Reisch, Christopher P.
Remelius, Frederick P.
Renaud, Philip G.
Rendine, John J.
Resser, William H.
Retterer, Dennis K.
Reuer, Kenneth L.
Reuss, James L.
Reynolds, James O.
Reynolds, Kenneth M.
Reynolds, Richard C.
Reynolds, Theodore A.
Rhoads, Mark C.
Rhue, William B.
Rice, Lawrence S.
Rice, Russell J.
Rich, David B.
Richards, Donald P.
Richardson, Duncan W.
Richardson, George D.
Rickard, John R.
Riddle, Guy R.
Riedel, Randolph A.
Riggin, Scott A.
Riley, Raymond B.
Rill, Louis F.
Ringlein, Mark J.
Rinke, William J.
Rishel, Douglas M.
Ritz, Kenneth L.
Ritzert, Timothy E.
Rivers, Robert H.
Robb, Thomas E.
Roberts, Bruce V.
Roberts, Gene A.
Roberts, Howell F. I.
Roberts, James F.
Roberts, Mark S.
Robertson, Allen J.
Robertson, James W., Jr.
Robertson, Steven M.
Robinson, Warren T.
Roche, Richard L.
Rocker, Jeffrey
Rodgers, Brian A.
Rodgers, David A. T.
Roegge, Frederick J.
Rogers, David B.
Rogers, David M.
Rogers, Morgan M.
Rogers, Therodore E.
Rohren, Lathan E.
Rohrs, Bradley B.
Roll, Richard A., Jr.
Rolow, Patrick J.
Romaneski, Peter C.
Romano, Joseph J.
Romanoff, Gregory G.
Rome, Kenneth M.
Rooker, Terry L.
Root, David B.
Roper, Steven M.
Rose, Roger M.
Rose, William S.
Rosenberg, Jerald A.
Rosholt, Gary W.
Ross, Michael A.
Ross, Steven H.
Ross, Stephen S.
Ross, Thomas E.
Rossi, Gary L.
Rothwell, Brian J.
Rousseau, Lester G.
Rowe, Kenneth M.
Rowe, Lawrence A., Jr.
Rowen, James D.
Roy, Michael L.
Roys, James R.
Rubin, James B.
Rubin, Robert J.
Rucker, William K.
Ruebens, Mark A.
Rugieri, Dale L.
Ruiz, Fernando A., Jr.
Runow, Michael J.
Rupp, Jimmie D.
Russell, John M.
Rust, Kenneth E.
Ruth, Thomas A.
Rutherford, James A. Jr.
Rutherford, Paul M. Jr.
Ryan, James R.
Sablan, Francis E., Jr.
Sabo, Robert P.
Sadler, Roy D.
Saenz, Steven
Sain, Robert C.
Salazar, Gabriel R.
Saltsman, Robert R.
Salvatori, Marc J.
Sampson, Paul M.
Sampson, William J.
Samson, David F.
Sanborn, Brian L.
Sanchez, Benjamin W.
Sanderson, George H. J.
Sanford, James C.
Sanford, William R., Jr.
Santos, Dioscord C.
Sapone, David T.
Sarmiento, Bundy C.
Sassman, Roger W.
Sauer, Arthur R.
Saunders, Shannon D.
Savas, Sam M., III
Sawyer, Danny R.
Saylor, Robert L.
Scanlon, Randy J.
Schafer, Kurt D.
Schaffner, John N., Jr.
Scheitlin, Mark E.
Scherer, Alan T.
Scheurich, Scott S.
Scheurich, Norman C., Jr.
Schimizze, Richard R.
Schini, Stephen K.
Schmid, John D.
Schneider, John F.
Schock, Steven G.
Schoelen, James C.
Scholley, Frank G.
Schreiber, Mark M.
Schukraft, Keith B.
Schuler, Fred S.
Schultz, Frederick L.
Schwarzkopf, Michael A.
Schwermer, Jay P.
Scott, Brian C.
Scott, George R.
Scott, John B.
Scott, Raymond
Scranton, Michael S.
Seaman, Mark D.
Sebastian, James R.
Sechrest, Edward A.
Secor, Eugene D.
Seffel, Gary A.
Seglem, Mark K.
Seim, Stephen W.
Selden, John K.
Selle, James D.
Sepulveda, John
Sevon, Tero T.
Shafer, David G.
Shaffer, Kirk A.
Shaffer, Paul T.
Shaltz, Terry M.
Shanaghan, Kerry M.
Shareno, David P.
Sharry, John M.
Shatynski, Michael M.
Shaughnessy, Kevin J.
Shaw, Donis L., Jr.
Shawcroft, Grant J.
Sheehan, Joseph D.
Shell, Mark D.
Shellenberger, Paul K.
Shelly, Thomas J.
Shelton, Terence E.
Shepard, Peter
Shepard, Wayne E.
Shepherd, Douglas C.
Sherley, Richard A.
Sherman, Jefferson W.
Shields, Robert E., III
Shikada, David S.
Shin, Kon Y.
Shockley, David W.
Shore, James D.
Short, Randall G.
Shotsberger, Paul G.
Showalter, James M.
Shrader, Lee T.
Shreiner, Terry L.
Shuga, Gilbert
Shugars, Joel C.
Sienicki, Joseph P.
Sifferlen, Stephen G.
Sifford, Douglas P.
Silva, Donald A.
Silvester, Lindsey M., IV
Silvester, Vincent J., Jr.
Simmons, Stephen M.
Simmons, William A.
Simon, Peter S.
Simons, Charles E.
Simons, Thomas P.
Simpson, Richard L., Sr.
Simpson, Robert E.
Sinnett, Kevin P.
Skillman, William F.
Skipley, Mitchell N.
Skogstad, Britt C.
Slain, Gerry L.
Slaughter, Michael S.
Slawson, Mark A.
Slippy, Thomas G.
Sloan, Timothy J.
Slomke, Michael E.
Slomski, Joseph F., Jr.
Sluter, Robert S., Jr.
Smietana, Stephen T.
Smith, Allan E.
Smith, Alvin R.
Smith, Bradley E.
Smith, Brett E.
Smith, Bret W.
Smith, Charles E.
Smith, Clifford A.
Smith, Danny G.
Smith, David C.
Smith, Eric M.
Smith, Galen L.
Smith, Jamie L.
Smith, James C.
Smith, James D., II
Smith, John H.
Smith, John H.
Smith, John M.
Smith, Michael K.
Smith, Richard B.
Smith, Robert J.
Smith, Roy M.
Smith, Scott J.
Smith, Stephen E.
Smith, Steven D.
Smith, Steven L.
Smith, Thomas G.
Smout, Robert J.
Snedeker, John W., Jr
Snell, Ray L.
Snide, Lyle W.
Snyder, Jeffrey C.
Snyder, Mark C.
Snyder, Matthew R.
Sokolik, James O.
Solik, Robert A.
Soper, Robert T.
Soranno, David A.
Sorensen, Walter C.
Sorge, Robert V.
Soriano, James R., III
Sottung, Michael
Spain, David L.
Sparks, Bart R.
Spaulding, Ralph E.
Speer, Harvey D., III
Spellissy, Brian E.
Spencer, George O., III
Spicer, Raymond A.
Spigler, Richard D.
Spiker, Ronald W.
Spiller, John H.
Spivey, Delmar S.
Spotts, Phillip B.
Sprosty, Terry D.
Spruill, Charles K.
Squires, Clifford E.
Squires, Stephen G.
Stacey, Michael K.
Stackley, Sean G. J.
Stadius, Frank J.
Stalters, Russell E.
Stancil, Charles
Stancil, Charles R., Jr.
Stangl, Kevin C.
Stansbury, Robert W.
Stark, Walter A.
Stark, William G.
Starkey, Walter A., III
Statler, Mark A.
Staudt, James E.
Steel, Alan P.
Steelman, Mark B.
Steinfeld, Henry S.
Stephens, Carl W.
Stephens, James M.
Stephenson, Parks E., III
Sterling, Robert R., Jr.
Stetson, James B.
Stevens, James G.
Stevenson, Danny R.
Stevenson, Gregory A.
Stevenson, John R., IV
Stevens, Clark D.
Stewart, Michael R.
Stewart, Richard A.
Stewart, Roger F.
Stidham, Douglas C. S.
Stiles, Philip A., Jr.
Stiles, Richard G.
Stiner, Donn O.
Stockton, Richard V.
Stoehr, Jonathan W.
Stone, Douglas H.
Stone, Howard L., III
Stone, Richard C., Jr.
Storch, Mark G.
Stout, Michael F.
Stowe, Martin D.
Stratton, Jeffrey P.
Strebeck, Walter R.
Streich, Daniel B.
Strickland, Robert T.
Strong, Keith G.
Stuckey, Victor B.
Stumborg, Jack R., Jr.
Sturm, Robert A.
Suits, David L.
Sulkowski, David P.
Sullivan, Christopher J.
Sullivan, Robert J.
Summers, Christopher L.
Sumner, Charles P.
Sumner, James F., II
Susalla, Michael P.
Suttie, Richard D.
Sutton, Steven H.
Suycott, Mark L.
Svatek, Gary F.
Swanstrom, Peter M.
Swauger, Ernest V., Jr.
Swayze, James R.
Sweeney, William C.
Sweigard, Eric L.
Swenson, Dana E.
Swetnam, Michael S.
Swithers, David J.
Szabat, John J.
Szalucka, Gary V.
Szostak, Michael J.
Taggart, Douglas M.
Takasugi, Richard M.
Talon, James D.
Tanaka, Randall R.
Tannenbaum, Steve
Tarbell, Richard W.
Tata, Robert M.
Tate, Gary J.
Tate, Robert J.
Tatman, Larry E.
Taylor, Donald E.
Taylor, John E.
Teasley, Mack M., II
Tedin, David P.
Tedrow Jefferson E.
Tees, Raymond W.
Telson, Ross D.
Tempestilli, Mark
Temple, Kennon P.
Tertocha, James C.
Tetreault, Paul J.
Teynor, Thomas K.
Thelen Jeffrey E.
Thiessen, Myron J.
Thomas, Charles D.
Thomas, Doyle E.
Thomas, Michael J.
Thomas, Stuart J.
Thomas, Timmie L.
Thompson, Mike.
Thompson, Peter M.
Thompson, Thomas C.
Thompson, Thomas W., Jr.
Thorn, Ronald D.
Thorton, Grant B.
Throop, David P.
Tibbits, Timothy S.
Tillotson, Daniel D.
Tilton, William L.
Tindall, Keith D.
Tirpak, Kenn D.
Tisdale, Charles W.
Tobey, Richard D.
Tobin, Timothy M.
Tolis, Spencer P.
Tomlinson, Douglas P.
Tomlinson, Gerald E.
Tortorelli, James P.
Tortorich, Larry J.
Toti, William J.
Towery, John W.
Towle, Thomas D.
Townsend, Armand R.
Townsend, Keith A.
Toy, Bradley K.,
Tozier, James E.
Tracy, Timothy, Jr.
Trail, Kevin E.
Trainer, William T.
Trcka, Michael J., Jr
Trees, James M.
Trimmer, James E.
Tripp, Raymond F.
Troutman, Bruce A.
Trudell, Jerry R.
Trummer, Frederick G., Jr.
Tucker, Alan A.
Tucker, Richard J.
Tully, James E.
Tungett, David W.
Turner, Shelby J.
Turnquist, Guy W.
Turriff, Arthur E.
Twardosky, David R.
Tyre, Odeen L.
Tyson, Donald G.
Uhar, Mark J.
Uhrich, Kevin K.
Ullman, Keith A.
Underwood, Jon H.
Unetic, Frank D., Jr.
Unger, Joseph F.
Urda, Theodore J.
Urrutia, Alexander L.
Ussery, Darrell G.
Uthe, Dennis A.
Utterback, Wiley V.
Valdez, Samuel E.
Valenti, Joseph A.
Valentine, Thomas J.
Valentine, William D., Jr.
Vanbrocklin, Kermit L.
Vanbuskirk, Scott R.
Vancleve, Paul M.
Vanderhorst, Kenneth R.
Vanderslice, Eric T.
Vanderwerken, Roger E.
Vanhorn, Michael A.
Vanhorn, Steven C.
Vanlangen, James, Jr.
Vanmeter, Robert A.
Vann, David D. N.
Vanwagoner, David D.
Vawter, Paul D., Jr.
Veasey, Byron K.
Veringa, Michael G.
Vermette, Paul M.
Verrando, Matthew R.
Vess, Raymond L.
Vezetinski, Patrick E.
Vinci, David L.

Vinci, Donald W.
Vivadelli, John H.
Vlastaras, Emanuel
Voetsch, Stephen S.
Vogels, Richard A.
Voigt, Robert J.
Volonino, David M.
Vonbuelow, Carl E.
Vongohren, John E.
Vonhitritz, Stephen R.
Voorhies, Gerald J.
Vortherms, Daniel R.
Vose, Michael H.
Wagoner, Victor E.
Waite, Stephen G.
Walbert, Joseph A.
Walker, David W.
Walker, Norman C.
Wallin, Jay W.
Walsh, Harvey T., III
Walsh, Michael R.
Walter, Peter J.
Walton, Lynwood G., Jr.
Walton, Steven D.
Waran, David A.
Ward, Brian D.
Ward, Gerald D.
Ward, James A.
Warick, Emory R.
Warner, Richard
Warren, Carey R.
Warren, Thomas C.
Wasilewski, Patrick A.
Wassik, Michael J.
Wasylkiw, Theodore J.
Watkins, Richard H.
Watson, Donald D.
Watson, Philip P.
Watson, Walter B., Jr.
Watters, William J.
Watts, Michael
Wawrzeniak, Bernard T.
Weber, Clifford D.
Weber, Juergen
Webster, John D.
Weckerly, James M.
Weddle, Leonard E.
Weigel, Alan M.
Weigel, Timothy C.
Weikel, Charles W.
Weir, Robert C.
Wert, Leonard D., Jr.
Weis, Robert S.
Weisbrook, Ronald E.
Weiss, Michael R.
Welch, Michael K.
Welch, Thaddeus B., II
Welch, William J., III
Welsh, Christopher B.
Wender, James D.
Wenz, Christopher
Wessel, James J.
West, Phillip H., Jr.
West, Richard C.
Westhaus, Randall T.
Weston, Richard L.
Wetherald, Thomas S.
Weyman, Roland A.
Wheeler, Kenneth
Whipple, Stephen C.
Whitaker, Jerry E.
White, Joseph M.
Whitehead, Christopher C.
Whiting, Alan B.
Whitney, Peter D.
Whitney, Scott W.
Whitson, Mark E.
Whorley, Steven J.
Wicker, Richard F., III
Wieder, Frank P.
Wiemann, Robert D.
Wierzbicki, Dennis M.
Wiesenberg, Robert A.
Wikstrom, Kenneth R.
Wilborn, Dennis W.
Wilckens, Richard D.
Wild, Brian C.
Wilder, Calvin R.
Wiley, Wendell S.
Wilhelm, Paul S.
Wilhelm, Robert H.
Wilhite, James R.
Wilkening, Scott A.
Wilkins, Richard A.
Willett, Charles D., Jr.
Williams, Brian J.
Williams, Bryan S. M.
Williams, Claude M.
Williams, J. S.
Williams, Jackie E.
Williams, James M., III
Williams, John C.
Williams, John R., Jr.
Williams, Lawrence J.
Williams, Michael J.
Williams, Norris O.
Williams, Robert A.
Williams, Steven M.
Williams, Thomas R.
Williamson, Larry D.
Williamson, Michael L
Williamson, Paul D.
Willis, Paul A.
Wilsey, Mark S.
Wilson, Clifford C.
Wilson, Douglas M.
Wilson, Duane A.
Wilson, George H.
Wilson, Gregory J.
Wilson, James J.
Wilson, Joseph A.
Wilson, Robert J.
Wilson, Thomas A.
Wilson, William L.
Winger, Lon L.
Winkowski, David J.
Winsor, Mark R.
Winter, Bruce E.
Winterroth, James M.
Wippell, Harrell G.
Wirth, Gustav A.
Wise, James E., II
Wisnom, Jeffrey R.
Withers, John D.
Wittenschlaeger, Thomas M.
Wittry, Randall J.
Wolfe, John A.
Wolter, Thomas M.
Womble, Thurston E.
Wong, Abraham H. K.
Wong, Chester W.
Wood, Charles L.
Wood, Gary W.
Wood, John S.
Wood, John T.
Wood, Michael E.
Woodson, Steven W.
Woodville, Anthony R.
Woodward, Charles C., Jr.
Woolwine, Deverett
Wootten, Mark A.
Works, Thomas V.
Wortham, Howard L.
Worthington, Michael A.
Wray, Robert O., Jr.
Wright, Andrew N.
Wright, Bill V.
Wright, Charles R.
Wright, Harry M.
Wright, John H.
Wright, Paul T.
Wright, Steven W.
Wrynn, Barry J.
Wyatt, David C.
Wylly, James R.
Yalen, William J.
Yamasyita, Leslie K.
Yanagi, Brian S.
Yancy, Kevin A.
Yarborough, Dean H.
Yarwood, Ralph H.
Yep, Bruce W.
Yingling, Thomas G.
Yip, David W.
Yocum, Richard A.
Yoshihara, David G.
Young, Hershel C.
Young, Mark F.
Young, Randolph K.
Young, Robert A.

SUPPLY CORPS

Aasheim, Larry D.
Abramowicz, Sylvester P., Jr.
Albano, Drencio D.
Arguilla, Rodolfo G.
Baird, George K.
Ballou, Douglas R.
Barredo, Ramon M., III
Baumgardner, Charles R.
Beach, Robert A.
Bennett, Jeffery P.
Bing, Moses L.
Bradfield, Joseph J.
Bradley, Jeffrey D.
Brennan, William J.
Breslauer, Edward
Brown, Dewayne C.
Brown, Kenneth D.
Browning, Michael J.
Carmona, Alfredo P.
Castillo, Steven A.
Cavagnaro, Albert N.
Christensen, John H.
Cockrum, Logan V., Jr.
Conner, Paul B., II
Corbat, Christopher S.
Cowan, Brian J.
Crossley, Scott E.
Cutchins, David O.
Daft, Michael P.
Daly, Robert C.
Domingo, Reynaldo D.
Doswell, John M.
Drehoff, Richard B.
Drinan, John V., Jr.
Dunlap, Leslie H.
Eble, Joseph J.
Fitzgerald, David M.
Flowers, James N.
Floyd, John C., Jr.
Fontilla, Rodolfo E.
Fulton, Timothy V.
Gallagher, Robert J.
Gebhart, Edward R.
Goettl, Leonard J.
Graham, James M.
Grebe, Michael J.
Hanson, Bruce H.
Heckelman, Loren V.
Heibel, John L., III
Heinrich, Mark F.
Heldreth, Steven E.
Howe, James E., Jr.
Hufford, Ross M., Jr.
Hunt, Ohlen M.
Ilk, Joseph L.
Johnescu, Paul A.
Johnson, Darrell G.
Johnson, Robert J.
Joves, Rodante R.
Kaish, Mark A.
Koenig, Peter
Koufos, Peter J.
Kyrios, Christian L.
Lane, Aubrey E.
Larimer, Neil M.
Leavitt, James E. C. I.
Lozano, Carlos
Lucia, Russell J.
Luker, Cordial K.
MacLaren, Ron J.
Madden, Michael T.
Madison, Thomas D.
Mallin, Raemon P.
Manias, Budd L.
Marentic, George A.
Markert, George W.
Martineau, Paul J., Jr.
Matias, Manuel B.
Mauricio, Loreto L.
McCarthy, Patrick J., Jr.
McCombs, Ashton P.
Meisman, David C.
Minter, Oscar R.
Mosley, Ronald S.
Mower, James H.
Munar, Ignacio A.
Nemechek, Paul M.
Nibbe, Scott E.
Norstedt, Lawrence P., Jr.
Obrien, Timothy L.
Paco, Renato M.
Palmquist, Robert J.
Panado, Ernesto F.
Patton, Bennie G.
Peterson, Kevin L.
Platt, William J.
Prendergast, John J. I.
Quinn, Randy L.
Rattz, Donald E.
Rogers, Jerry L.
Rosado, Gilberto
Rosenau, Chris H.
Schauber, Jon A.
Schuler, Paul F.
Sheehan, David R.
Sheets, Glenn E.
Sherbanee, Kelly F.
Shields, David G.
Souther, Rory L.
Stanfield, Paul C.
Stevens, Mark D.
Summerour, Thomas J., Jr.
Summers, Marc A.
Szymanski, Michael L.
Tichy, Thomas N.
Tindell, Douglas R.
Williams, Timothy B.
Wood, David R.
Yeomands, John W.
Zabarouskas, Michael W.
Zaiss, David W.
Zaleski, Peter P.
Zaperach, Ronald W.
Zarzycki, Michael S.
Zbaeren, William D.
Zeigler, Eric
Zell, Bradley D.
Zeller, William F., III.
Ziegler, Michael A.
Zimmerman, Robert L., II.
Ziolkowski, James E.
Zitka, Glenn L.
Zmijewski, Michael P.
Zuchero, William J., Jr.

CIVIL ENGINEER CORPS

Arenz, Thomas W.
Banks, Albert J., Jr.
Barnard, Douglas M.
Barron, Robert B., Jr.
Becker, Joseph D., III
Bowles, Craig D.
Chase, Henri G.
Classen, Terry L.
Crider, Steven S.
Dale, Charles L.
Denardo, Gregory K.
Dressel, Kenneth W.
Elliott, James A.
Femling, Gary W.
Fritzley, Richard D.
Galloway, William J.
Gorman, Robert G.
Grimmig, Alvin E., Jr.
Kuzio, Paul M.
Laboone, Perry A.
Laib, David R.
Linn, Larry D.
Marrs, Richard L.
McKerall, William C.
Miller, Thomas M.
Miller, Timothy R.
Murtha, Michael J.
Plows, Donald A.
Poelker, Scott D.
Raines, Robert B.
Reichert, Bruce A.
Roth, Christopher J.
Sachuk, Robert J.
Sampey, Jerome
Sarles, Mark V.
Shear, Wayne G., Jr.
Shepard, Theodore H., III
Smith, Barry R.
Smith, Mark A.
Stokes, James A.
Taberski, Charles M.
Terpolilli, Alan M.
Toribio, Gary A.
Walter, James R.
Watts, David L.
Williamson, Edward T.

MEDICAL SERVICE CORPS

Abeya, Edwin B.
Alford, Samuel P.
Barrett, Paul G.
Biggs, Michael W.
Brown, Ricky
Coffield, Craig R.
Dheron, Ronald W.
Fahler, Danny J.
Ford, Robert F.
Foster, Richard C.
Giewont, Vincent A.
Halley, Dennis P.
Hoffner, Robert C.
Hogerson, James S.
Hutchings, Richard P.
King, Charles L.
Lowe, William B., Jr.
McInnis, Steven R.
Newsom, Paul E.
Nielsen, Dann W.
Ritz, Robert E.
Roberts, Richard G.
Sacash, Christopher W.
Scott, Craig R.
Setzer, Richard C.
Turner, Donald R.
Walker, Mark A.

The following-named women ensigns of the U.S. Navy for temporary promotion to the grade of lieutenant (junior grade) in the line and staff corps, as indicated, pursuant to title 10, United States Code, sections 5787b (line and staff corps officers) and 5791, subject to qualifications therefor as provided by law:

LINE

Allen, Susan M. R.
Baker, Adrienne M.
Booth, Barbara G.
Bowlby, Linda S.
Brewer, Barbara A.
Clarkson, Elizabeth A.
Crall, Carrie L.
Deniston, Margaret S.
Donovan, Maureen E.
Dullum, Pamela I.
Evans, Jennifer L.
Fordham, Dawn R.
Gabrielli, Gail V.
Glover, Ann C.
Haeffner, Dawn R.
Halsema, Theresa A.
Hayden, Cathy E.
Haynes, Leslie E. D.
Hoffman, Catherine E.
Huffstetler, Laura G.
Jacobs, Mary C.
Kline, Donna E.
Knott, Ellen E.
Long, Anne L.
Lusk, Gail M.
McLaughlin, Kathleen M.
Minton, Rebecca H.
Myers, Connie L.
Nielsen, Sharon C.
Osman, Catherine H.
Owens, Elizabeth C.
Peterson, JoAnn L. S.
Purtell, Barbara S.
Rawls, Patsy E.
Ross, Sarah L.
Ruddell, Germaine M.
Russell, Angela G.
Rychlak, Michelle E.
Sando, Jean M.
Schnabel, Marybeth
Skiber, Carol A.
Strat, Patricia A.
Thompson, Margaret M.
Walsh, Cynthia A.
Wardrop, Ellen A.
Wentland, Cynthia M.
Williams, Mary C.
Wolk, Jean M.

SUPPLY CORPS

Krause, Elaine P.
Shunk, Kimberly
Wendland, Juanita F.

CIVIL ENGINEER CORPS

Kappus, Mary E.
White, Margaret L.

MEDICAL SERVICE CORPS

Daly, Patricia A.
Day, Patricia R.
Thomas, Sharon R.

HOUSE OF REPRESENTATIVES—*Thursday, September 4, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Lord, we thank You for this new day with its opportunities for service to all people who are in need. May we be instruments of Your healing hand as we seek to speak Your word of hope in an uneasy world. We pray for strength, gracious Lord, that we might face the difficulties of the moment undergirded by the presence of Your spirit and with the awareness of Your constant love. Remind us that all things done in Your name may work together for the common good. May our trust in Your grace never wane nor our faith in Your promise ever diminish. This we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendments of the House to the amendments of the Senate numbered 1, 2, 4, and 5 to the bill (H.R. 2538) "An act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes."

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 2514. An act to authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal year 1981, and for other purposes; and

S. 2620. An act to expand the opportunities for small business participation in exporting, and for other purposes.

PRIVATE CALENDAR

The SPEAKER. This is Private Calendar day. The Clerk will call the first individual bill on the Private Calendar.

REINSTATEMENT AND VALIDATION OF SPECIFIED U.S. OIL AND GAS LEASES

The Clerk called the bill (H.R. 6258) providing for reinstatement and validation of U.S. oil and gas leases numbered C–9496, C–9711, C–11600, C–11621, C–11622, C–11630, C–11631, C–11597, C–11599, C–13774, C–14197, C–17049, C–18262, C–26048, C–13532, C–11581, C–11585, C–11590, C–11591, and C–11595.

There being no objection, the Clerk read the bill, as follows:

H.R. 6258

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas leases numbered C–9496, C–9711, C–11600, C–11621, C–11622, C–11630, C–11631, C–11597, C–11599, C–13774, C–14197, C–17049, C–18262, C–26048, C–13532, C–11581, C–11585, C–11590, C–11591, and C–11595, shall be held not to have terminated by operation of law or otherwise on November 1, 1978, but shall be deemed to be in full force and effect and the terms of said leases extended for a period equal to the unexpired portion of the leases or any extensions thereof remaining on November 13, 1978, or for a period equivalent to the time interval between November 13, 1978, and the date on which the Secretary of the Interior reinstates said leases, whichever is the shorter time period, and so long thereafter as oil or gas is produced in paying quantities: *Provided,* That within thirty days after the receipt of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under said leases and unpaid to the last record holder of said leases, Fuel Resources Development Company, doing business in Denver, Colorado, its successors or assigns, said record holder shall tender payment of said amount of rental. Notice shall be given by the Secretary within thirty days after the effective date of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AUTHORIZING AND DIRECTING THE SECRETARY OF THE INTERIOR TO REINSTATE OIL AND GAS LEASE NEW MEXICO 33955

The Clerk called the bill (H.R. 6538) to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955.

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

MRS. ALICE W. OLSON

The Clerk called the bill (H.R. 5160) to amend the act entitled "An act for the relief of Alice W. Olson, Lisa Olson Hayward, Eric Olson, and Nils Olson."

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

WOODSTOCK DAILY SENTINEL

The Clerk called the bill (H.R. 7175) for the relief of the Woodstock Daily Sentinel.

There being no objection, the Clerk read the bill, as follows:

H.R. 7175

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of sections 501 and 504, title 44, United States Code, the Secretary of Defense is hereby authorized and directed to pay out of any money in the Treasury not otherwise appropriated the sum of $1,372.08 to the Woodstock Daily Sentinel, of Woodstock, Illinois. This payment shall be in full and complete settlement of all claims against the United States, based upon the unreimbursed printing services provided by the claimant to the United States Army 12th Special Forces Group, of Arlington Heights, Illinois in 1978.

SEC. 2. No part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

REINSTATING AND VALIDATING U.S. OIL AND GAS LEASES NUMBERED OCS–P–0218 AND OCS–P–0226

The Clerk called the bill (H.R. 5769) to reinstate and validate U.S. oil and gas leases numbered OCS–P–0218 and OCS–P–0226.

There being no objection, the Clerk read the bill, as follows:

H.R. 5769

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Notwithstanding any other provision of law, and subject to the requirements of section 2 of this Act, United States oil and gas leases numbered OCS–P–0218 and OCS–P–0226, located in the Santa Barbara Channel, California, shall be deemed to be in full force and effect from date of enactment of this Act for a period of four years, one hundred and twenty-six days, and so long thereafter as oil or gas is produced in paying quantities.

SEC. 2. (a) Lessees must exercise due diligence in the exploration and development of oil and gas from these leases. Within forty-five days after the effective date of this Act, lessees shall submit an exploration and development plan to the Secretary of the Interior.

(b) Lessees shall be subject to the pertinent provisions of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95–372).

(c) Lessees shall pay to the United States the amount of unpaid rental accrued under said leases and shall continue to pay the annual rental payment for the period the leases are in force.

With the following committee amendment:

Page 2, after line 18 insert the following:

(d) In lieu of the standard royalty interest payment required in each lease, the lessees shall pay to the United States a net profit share payment which—

(1) shall be made in accordance with Part 390 of Title 10 of the Code of Federal Regulations and which is determined on the basis of a recovery allowance of 15 percent, and

(2) shall be an amount equal to 50 percent of the net profits of the lessee under the lease as determined in accordance with such Part 390: *Provided,* That, subject to the provisions of 45 U.S.C. § 1337(a)(3), the payment to the United States in accordance with this subsection shall in each reporting period be at least equivalent to the royalty provided for in the original leases.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that the further call of the Private Calendar be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

BUREAUCRACY HAS STRUCK AGAIN

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. APPLEGATE. Mr. Speaker, bureaucracy has struck again. This time it is HUD, and just as arrogant and abusive of congressional intent as its other sister agencies.

And who is at fault? It is us. It is Congress. Over the past 35 years, Congress has given away more power to bureaucrats than Congress itself has kept.

In a recent action, HUD officials in Columbus, Ohio, completely disregarded the wishes of local determination and arbitrarily ordered a project to proceed, backed by the threats of loss of grants; and worse, the project does not fully meet HUD's own criteria.

And they are doing it in your areas, too. Yes, we have all had a bad taste of bureaucratic power. How does it feel to have been made into a fifth wheel by our predecessors? But let us not just blame them. Let us take a look at our own records and see what we have done to continue the decline of Democratic government. We are all guilty; but my friends, we had better take the bull by the horns, and do it soon, if we want the people of this Nation to have a real voice.

GOOD NEWS ABOUT YOUNG AMERICANS

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, I have good news this morning about the young Americans of this country.

Mr. Speaker, the Chair has received a message today from the Director of the Selective Service System, and also a press conference is being held at this time by the Director of the Selective Service System, about the number of 18- and 19-year-old men that registered in August.

Our young people have come through for us, Mr. Speaker. Well over 3,593,000 have answered the call of peacetime registration. At this time 93 percent of those that were projected and who are eligible have registered. Seventeen hundred more registrations came in yesterday.

In comparison with 1973, 1 month after they had registered in 1973, which is the same comparison we have today, there was only 83 percent in 1973. Today it is 93 percent.

Mr. Speaker, we should be proud of our young men. In spite of those who preached gloom and doom about registration, our young men showed their love and respect for this country.

DEFENSE

(Mr. RHODES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, as the strange story of how the Carter administration leaked the story of the stealth airplane unfolds, it is a shocking case of our defense secrets being revealed for political advantage. It should make every American's blood boil. In my 28 years in Washington, this is the worst thing I have ever seen a President and his associates do, a terrible breach of national security.

According to testimony given the Congress, the Defense Department leaked the story to Armed Forces Journal, then used that leak as the basis for officially announcing stealth technology, "since it had leaked out" anyway. This is an unsavory mess. Not only has the well-kept U.S. defense secret been betrayed, the announcement implied that we have operational aircraft using the technique, and that it is applicable to planes that would take the place of the B–1 bomber. None of this is true.

I have seen instances of political recklessness before, but never have I seen an administration sacrifice military security on the altar of political expediency, as the Carter minions have done. The Soviets, having been tipped off, will be planning accordingly and the job of defending America has become more difficult, thanks to Carter, Brown, and Perry, our leaky sieve Defense Department, and its misuse of its own stealthy technique in leaking classified information.

SAVINGS AND INVESTMENT—THE SOURCE OF AMERICA'S ECONOMIC GROWTH AND NEW JOBS

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, Federal Government policies that arbitrarily hold down interest rates on savings accounts to 5.5 percent, and impose taxes on even the first $1,000 of savings interest, are helping to restrict America's economic recovery by discouraging savings and investment.

Our citizens' savings become the capital to help finance our country's economic growth, prosperity, and creation of jobs in the private sector—yet because of these restrictive Government policies, Americans are saving only 3.5 percent of their after-tax income, the lowest savings rate in this generation.

In Canada, where as much as 10.5 percent can be earned on ordinary savings, and where the first $1,000 in savings interest is tax-free, people are putting away more than $100 from each $1,000 of take-home pay in savings, and providing a needed anti-inflation shot-in-the-arm for economic growth in these recessionary times.

Our Government should follow the wise example of our Canadian neighbors by encouraging greater savings and capital formation—the life blood of free enterprise productivity and the source of needed new jobs for our people.

□ 1010

WALKER SCORES CARTER'S PENNSYLVANIA RECORD

(Mr. WALKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALKER. Mr. Speaker, President Carter's political visit to Pennsylvania yesterday was a callous attempt to paper over his record of failure and neglect in our State.

President Carter promised Pennsylvanians yesterday that he would bring them jobs. He did so despite the sorry record of increasing unemployment in Pennsylvania ever since he became President. Unemployment has gone from 8 percent when President Carter assumed office to 9.5 percent today.

President Carter failed to mention that his opponent might harm the social security system. He said so despite his record of being the worst enemy of social security recipients ever to serve in the White House. Under his guidance, social security taxes have risen dramatically while the retirement trust fund has steadily deteriorated.

President Carter was the first President ever to have a recommendation emerge from within his administration to tax social security benefits, a recom-

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

mendation that was overwhelmingly rejected by the Congress.

President Carter claimed that civil rights advances had been halted during recent Republican administrations while in Pennsylvania. The record says something quite different. A good job providing real opportunity is the basic civil right. The Carter record shows that the unemployment gap between black and white America, which narrowed during Republican years, has widened dramatically during this administration.

President Carter failed to mention that for his entire 4-year term, the Pennsylvania congressional delegation has regularly sought to meet with him on matters of concern to the State. Yet, in that 4-year period, he has not been able to find even a few minutes to meet with the entire delegation. His interest in and concern for Pennsylvania are purely matters of political necessity and not reflected in the Carter record.

The voters of Pennsylvania recognized and rejected the Carter treatment of them during the spring primary election. They also will reject his attempts to gloss over his failures in Pennsylvania this November.

HOUSE SHOULD RENOUNCE LAME-DUCK SESSION

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, those who recommend that the Members of the House be called into a lameduck session this November would do well to study the history of this legislative Chamber. If they did, they would understand that such sessions have historically seen a deterioration in the consensus that this body normally can expect to have.

Congressman Stafford of Wisconsin, illustrated this point in a statement he made in the CONGRESSIONAL RECORD of 1932. I quote:

> I well remember—and the older Members will remember—that fateful day, March 4, 1911, when the Republicans, after having been in control of all branches of Government for 16 years and were then losing control of the House, with Speaker Cannon in the chair, at the hour of 11:15, tried to put through the House under whip and spur, the tariff Commission Act.
>
> The Democrats were solidly arrayed against that outrageous legislative coup. Feeling ran high. The House was in wild disorder. One Democratic Member stood here in the well with a knife in his hand, threatening the Speaker if he would recognize Members to pass the resolution.
>
> By what constitutional right could a legislative body, after it had been renounced by the electorate, assume to legislate, especially on a partisan matter?
>
> Why should any Congress, in a hold-over session, be permitted to pass appropriation bills or any kind of legislation in the short time of the hold-over session, especially where the membership has changed.

For those very reasons, Congress renounced lameduck sessions in 1932, with the passage of the 20th amendment. For the very same reasons, we should renounce lameduck sessions today in 1980.

REAGAN ON THE MIDDLE EAST

(Mr. GILMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GILMAN. Mr. Speaker, last night Gov. Ronald Reagan addressed the 1980 International Convention of B'nai B'rith, the world's largest Jewish service organization, here in Washington, D.C. In his remarks, Governor Reagan detailed his views on the Middle East, setting himself firmly on the side of the security interests of the United States, the State of Israel, and all peace-loving peoples of that troubled region.

Governor Reagan sharply criticized the administration's vacillating Middle East policies, its reluctance to label the Palestinian Liberation Organization for what it is—a gang of terrorists, and the disgrace of the recent U.S. abstention on a United Nations vote condemning Israel for establishing its seat of government in its historic capital in Jerusalem.

I applaud Governor Reagan's forthright stand on these critical questions, and ask that they be printed in full in the Extensions of Remarks section in tonight's RECORD so that my colleagues will have the benefit of sharing his views.

OMNIBUS RECONCILIATION ACT OF 1980

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 776 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 776

Resolved, That upon the adoption of this resolution it shall be in order to move, any rule of the House to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1981, and the first reading of the bill shall be dispensed with, and all points of order against said bill are hereby waived. General debate shall continue not to exceed ten hours, with one hour to be equally divided and controlled by the chairman and ranking minority member of each of the following committees, in the following order, followed by two hours to be equally divided and controlled by the chairman and ranking member of the Committee on Ways and Means: the Committee on the Budget, the Committee on Armed Services, the Committee on Education and Labor, the Committee on Interstate and Foreign Commerce, the Committee on Post Office and Civil Service, the Committee on Public Works and Transportation, the Committee on Small Business, and the Committee on Veterans' Affairs: *Provided*, That the chairman and ranking minority member of the Committee on the Budget may reserve a portion of their time to close general debate. The bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order in the House or in the Committee of the Whole except the following amendments: (1) amendments recommended by the Committee on the Budget, which shall not be subject to amendment; (2) an amendment to strike out subtitle C of title V (sections 520 through 561), and subtitle C of title IX (sections 920 through 948) and to redesignate subtitle D, E, and F of title IX, and said amendment shall not be subject to amendment or to a division of the question in the House or in the Committee of the Whole but shall be debatable for not to exceed thirty minutes, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto; (3) an amendment printed on page H6529 of the Congressional Record of July 25, 1980, by, and if offered by, Representative Vanik of Ohio, and said amendment shall not be subject to amendment but shall be debatable for not to exceed thirty minutes, to be equally divided and controlled by Representative Vanik and a Member opposed thereto; and (4) two amendments to be considered en bloc to strike title I and section 401 of the bill if offered by Representative Bauman of Maryland which shall not be subject to amendment or to a division of the question in the House or in the Committee of the Whole but shall be debatable for not to exceed thirty minutes, to be equally divided and controlled by Representative Bauman and a Member opposed thereto. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, I am not going to talk very long at this point about the rule. Anyone who was interested and who listened to it, would find that it is relatively straightforward and simple. I think most Members know that it was not the rule that I initially preferred. I would have preferred a completely closed rule with the exceptions of a couple of amendments that were requested by the committees involved in the reconciliation process.

Although I am not going to speak long at this point, I know of no issue more important than this rule and the subsequent consideration of the reconciliation bill it makes in order. It is so important because this is the attempt to implement a specific edict of the House. A unique and unprecedented step was taken in the consideration of the budget resolution. Provision was made for this process through which we are now proceeding. Provision was made to direct, in effect, committees in general to save money by cuts and to find money by increases in taxes.

□ 1020

That was done by all of the committees so directed by the House, and if anybody had any doubt that it would have been done, they should have been reassured by the overwhelming vote by which the House of Representatives made it clear that it wanted the reconciliation process to go forward. That vote came on an amendment to strike reconciliation offered by the distinguished gentleman from Arizona (Mr. UDALL) and that vote was 127 to 289. The House overwhelmingly voted to adopt this process. This

process is, as I say, a unique endeavor for the institution.

It is a crucial endeavor because on it, in my judgment, rests the future of the budget process, the first process in modern times which has sought to manage the affairs of Government in a fashion that involved everything at the same time. I cannot conceive of a more important vote. It is my hope that it will be dealt with by everybody who speaks to it with the kind of importance that I indicated I feel that it has. I feel, however, from what I have heard that there may be a good deal of frivolity in the approach of some, although it will be concealed by solemn faces.

I am hopeful that we can look at this as the long term management effort by an institution which long ago should have undertaken this effort. There are an infinite number of ways to attack this kind of a democratic effort to constrain our spending, this kind of a democratic effort to make choices in an infinitely complicated country. Naturally, not everyone is pleased with the result. In fact, no one is delighted with the result but, nevertheless, we accept the responsibility implicit in the idea of majority decision and majority rule. If we act today irresponsibility, we may be throwing away our best hope of effective management by the Congress of its duties, of its responsibilities. If that should turn out to be the case, we may do grave damage to the democratic process itself. I believe very strongly that it is imperative that we get support for this rule and for this process.

Mr. Speaker, I reserve the remainder of my time.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I quite agree with the statements just made by our chairman that this is an important moment because it is the first time since the budget process was started that we will be taking up a matter of reconciliation. By the same token, I think that we ought to realize what we are doing by adopting this rule. By adopting this rule we are limiting ourselves as to the amendments that can be offered, and they are set out in the rule. We have a closed rule being offered to the House on one of the most important pieces of legislation that we will be considering during this session of the Congress, so I want to stress this. If this is what you want, all you have to do is vote for the previous question on this rule, and you have got a modified closed rulemaking in order only three amendments.

A lot of important proposed amendments were brought before the Committee on Rules and were not made in order. I think that it is well for us to consider at this time some of those amendments and ask ourselves whether or not the House should have an opportunity under this rule to voice an opinion on them. For example, the gentlewoman from New York (Mrs. CHISHOLM) wanted to offer an amendment dealing with child nutrition programs, and she was denied the opportunity to do so. We are dealing here with her one amendment of $483 million, not a small sum. Concerning the military retiree COLA reforms that we heard so much about, the gentleman from Maryland (Mr. BAUMAN) was given the right to offer an amendment so the House could choose to delete these.

Under title III, the Interstate and Foreign Commerce section, we have spending increases of about $183 million in one program, $54 million in another, and $155 million in another, and we have absolutely no opportunity in those cases to direct an amendment specifically at those programs. Under Post Office and Civil Service we have $356 million in savings from the COLA reform, and once again it will be affected by the gentleman from Maryland's amendment. That will be taken care of. But we have recommended in the reconciliation bill the elimination of dual compensation for reservists, which is very, very important to the Defense Establishment of this country.

We have heard from our Adjutants General on the National Guards throughout the country. I have heard from General Clement of Ohio that if we do go forward with a program that will deny Federal enlistees or Federal officers who are in the National Guard their dual compensation, the same that private industry affords these indivduals, we will automatically have a decline in membership at a time when we need members in the Ohio National Guard and other National Guards and reservists throughout the country.

Certainly on something of this importance the House should have an opportunity to work its will, but that has been denied under this particular rule that we will be considering. I personally am very much concerned, and have stated in the Committee on the Budget as well as in the Committee on Rules, about using the procedure that we are now undertaking, the reconciliation procedure, for new spending initiatives—new spending initiatives.

Certainly it was not the intent and purpose of the reconciliation process to permit new initiatives. I, frankly, believe that this violates the intent and purpose of the reconciliation process provided in the Congressional Budget Act. The budget committee permitted three committees of the Congress to slip a total of $3.1 billion in new spending increases into the bill along with reductions which the House instructed them to make.

Let us remember that the Committee on the Budget was carrying out a mandate given them by the House of Representatives, and at the same time they were doing that they were permitting these three committees of the Congress to come up with new spending initiatives, and the Committee on Rules refused to make in order an amendment to correct this error. I say it is a precedent-setting error. We have eight House committees that were instructed to come up with spending reductions totaling $6.4 billion in fiscal year 1981, and five of the committees followed the instructions given them by this House and recommended legitimate, straight-forward spending reductions.

Three committees, the Committee on Education and Labor, the Committee on Ways and Means, and the Committee on Interstate and Foreign Commerce, not only recommended the reductions that I have said but took advantage of the situation and proposed spending increases which will cost the taxpayers of this country $3.1 billion over the next 5 years. Certainly this is a violation of the reconciliation section of the Budget Act and sets a dangerous precedent for the future. Why do I say that? If three committees of the Congress can use this process for slipping new spending initiatives into law, how about the other committees of the Congress? They will be able to come back here next year and say, "Well, now, these three committees did it in the First Budget Resolution or reconciliation proposal, how about us? How about us?"

□ 1030

Certainly we will not be able to say: No, that is a violation of the concept. It was established when we passed the Budget Act initially and when we passed the first reconciliation bill it was firmly entrenched into the law that that should not take place.

Mr. PEYSER. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from New York.

Mr. PEYSER. Mr. Speaker, I thank the gentleman for yielding.

I speak now about the Committee on Education and Labor to which the gentleman just referred. That committee cut $850 million. Frankly, I was very opposed to that and appeared before the Rules Committee asking for the right to offer an amendment which request was denied. There was $350 million for the school lunch program and $500 million for the student loan program.

The gentleman just mentioned that we have worked in a way of increasing our expenditures. I wonder if the gentleman would care to expand a little on that statement.

Mr. LATTA. Mr. Speaker, let me say to my friend we have a whole list of them. Rather than take the time, we can supply the list.

Mr. PEYSER. Mr. Speaker, I would be glad to look at the list. I think I am familiar with what the gentleman is saying but we are talking about a progressive program not a new expenditure in this year.

Mr. LATTA. Mr. Speaker, in Education and Labor under title XX, there is a new initiative costing $155 million. I am not quibbling about any of the programs to which the new initiatives pertain. I am speaking not about the merits of the programs. I would probably vote for them if they came before the House in regular form. What I am complaining about is the procedure being used to put these programs into law. I want to make that absolutely clear. We have a lot of changes, for instance, in the medicare and medicaid programs, most of which came from the Committee on Ways and Means.

As a matter of fact, with the exception of a $155 million spending increase from the Committee on Education and Labor and increases of $500 million from the Committee on Interstate and Foreign Commerce, all the remaining spending increases were reported out of the Committee on Ways and Means. I think that is wrong. I stated in the Committee on the Budget, on the floor, and in the Committee on Rules that this is wrong, that it sets a bad precedent. We are going to rue the day in this House that we come forward with a reconciliation which permits new spending initiatives because I can foresee the time when reconciliation bills will be used as a grab bag. You know, if you cannot pass legislation in regular fashion, wait until we get the reconciliation bill and we are going to put it all in there and then we are going to close the rule so you cannot object.

I do not think that is the way to legislate and I do not think that is the way the majority of the Members of this feel that we ought to legislate. I cannot quite understand why the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Interstate and Foreign Commerce were given the favored position that they were by the Committee on the Budget who permitted them to offer these initiatives. All I know is, they say we cannot make substantive changes or should not make substantive changes in the reconciliation bill. Well, I think that we can do anything on this House floor. Since we could not do it in the Committee on the Budget, now is the time to do it. By voting down the previous question, this House can take up this $3.1 billion of new spending initiatives over the next 5 years and say, for all time to come, when we have this reconciliation bill before the House, that it is going to be for reducing expenditures, not providing new expenditures into the future and that is exactly what you would be doing here.

There are many other parts of this reconciliation bill that I am sure the Members are aware of. For instance, the Committee on Veterans' Affairs tightens the eligibility criteria for medical care. That saves $109 million. They eliminate flight training and correspondence course benefits among other changes. That saves $63 million. They eliminate burial benefits to veterans earning more than $20,000. That saves $87 million. They improve collection of debts on VA loans, eliminating $116 million.

The Committee on Public Works and Transportation recommends a decrease for the fiscal years 1980 and 1981 in the obligational ceiling on the Federal highway programs. This saves $700 million.

It reduces the level of the airways program in the reauthorization bill to $60 million in outlays. So it goes. We are talking about $6 billion in savings, and we are going to close the door to only three amendments. I do not think we ought to close the door. We are going to hear from a lot of people back home who are going to be adversely affected. Are we going to be able to use the argument: Well, we had a semiclosed rule or a modified closed rule or a modified open rule, call it what you like, and say to them, and satisfy them, that you had no opportunities to vote? Yes you will. You have an opportunity to vote to open up the rule so that you can go beyond these three amendments provided for by the Committee on Rules.

Mr. Speaker, I yield 5 minutes to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Speaker, I will oppose the reconciliation amendment. One reason is because public attitudes are so set on controlling the spiraling cost of Federal pension programs, and bringing them into line with other entitlement programs, that I believe Federal pensioners will face much more drastic action later on, unless this change to once-a-year cost-of-living pension increases is made for Federal civilian and military retirees.

The drastic action I refer to is the proposal to join the Federal civil service and military retirement programs with the social security program, a proposal that I oppose.

I do not believe that the proposal to join these pension programs with social security is the answer to any problem involving any of the programs.

But it is an alternative that is bound to gain wider acceptance and possible enactment later on unless the twice-a-year COLA for Federal civil service and military retirees is changed to once-a-year, so that the inflation adjustment is consistent across-the-board with other indexed entitlement programs, including social security.

I speak as a Federal retiree myself, even though I do not now receive a Federal pension, when I say that I can understand the concern expressed by many citizens to Members of Congress on this issue.

That concern can be summarized this way—

Give Federal retirees their fair and just due, including appropriate pension cost-of-living adjustments, but not to the point where generous benefits become extravagant at the expense of all other Americans.

The average Federal retiree now receives $849 a month, compared to $295 a month for retired workers on social security.

It is true that Federal retirees pay taxes on their pension income, while social security recipients do not.

And all of us want to see that some appropriate increases are made each year to compensate Federal retirees adequately for the impact of inflation on their pension income.

But each time that a cost-of-living adjustment is provided, the unfunded liability of Federal civilian and military pensions also increases—and that unfunded liability has to be paid for all by taxpayers.

The unfunded liability of Federal civil service retirement in 1979 was $136 billion, and the Federal subsidy in that year was $8.8 billion.

The unfunded liability of military retirement in 1979 was $355.8 billion, and the Federal contribution was $10.3 billion.

At the present rate of growth, with the unfunded liability of civil service and military retirement increasing at an annual rate of $25 to $30 billion a year, we face a situation in the not-too-distant future when the unfunded liability of these Federal pension programs will be $1 trillion.

We simply cannot allow this to happen.

I strongly believe that Congress must fulfill its responsibility to retired civil service and military workers, by giving them their fair and just due.

This means adequate protection for their pension income from the ravages of inflation.

But I believe that the biggest single threat to the integrity and continued payments of Federal pension programs is the growing unfunded liability, and the mounting opposition of taxpayers to the yearly amount of taxpayer dollars necessary to keep these increased benefits flowing.

I therefore support the once-a-year cost-of-living adjustment for Federal civil service and military retirees, as proposed in this reconciliation bill, with the expectation that Congress will make certain that this once-a-year adjustment will be sufficient to keep the pension income up with the rate of inflation throughout the year so that no hardship will be encountered by our retired Government workers.

□ 1040

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Virginia (Mr. FISHER).

Mr. FISHER. Mr. Speaker, I rise to support the rule. I think the rule has been gone over for several weeks now. Different ones of us have had an opportunity before the Rules Committee, and have our say. It has not been an easy process for that committee or for anybody, but a rule has been crafted which I think would permit the House to address the reconciliation head on and allow us to vote on a certain number, a limited number of amendments that are important to large numbers of people in the House and, of course, in the country. I do not think we are going to do better than this rule, and therefore I rise in support of it.

The part of it that I have taken a particular interest in, of course, is the part relating to the cost-of-living adjustment for Federal military and civil employees. I think it is important that one of the provisions on which this House has a separate vote is this very matter of cost-of-living adjustments to military and civil employees. Currently, retirees, civil and military, receive cost-of-living adjustments in their annuities or retirement pay twice a year. The provisions of the reconciliation bill call for elimination of the second adjustment in fiscal year 1981, but we are going to be permitted to have an up-or-down vote on this under the rule; and that seems fair enough to me.

By way of background, before 1977 adjustments in retirement benefits for civil

servants and military were made based on changes in the Consumer Price Index, with an additional 1-percent increase to compensate for the time lag in making the adjustments. Now, in return for taking away the 1-percent add-on 3 years ago, Congress agreed to make cost-of-living adjustments every 6 months.

The loss of the add-on was unsettling and disturbing to the retirees and those nearing retirement, but they accepted it because they were promised twice-a-year adjustments. Now, the reconciliation bill proposes to take away one of the twice-yearly adjustments in the coming fiscal year.

The retirees, with good cause, believe this is a breach of faith, that the Congress is going back on its word. But, by permitting an amendment to be voted on today in the House on this matter, it could result in the restoration of the twice-a-year adjustments which really have been promised to the retirees in action taken and through discussion in the House and the Senate only 3 years ago.

Therefore, I rise to support the rule with the COLA amendment to be voted on in the House, and I urge my colleague to support the rule and then go forward to vote in favor of the amendment to be offered by my colleague from Maryland (Mr. BAUMAN), a member of the Rules Committee. This is the amendment which I originally asked the Rules Committee to make in order and which I had in the RECORD on July 29—page 20119.

Mr. FAZIO. Mr. Speaker, will the gentleman yield?

Mr. FISHER. I yield to the gentleman from California.

Mr. FAZIO. Mr. Speaker, first I want to congratulate the gentleman for the leadership role he played in bringing this issue to the attention of the Rules Committee. His very eloquent statement in the Rules Committee. I think, was very important in the deliberations that led to a separate vote on this COLA issue.

I would certainly like to associate myself with the gentleman's remarks. I think retired Federal civil and military employees in particular, at this point, are very anguished at the turmoil they have been exposed to in the last several years. I think the gentleman's efforts—and I am sure he will be successful in eliminating this threat to remove the twice-a-year annual cost-of-living allowance when it becomes possible to vote on the separate amendment to the reconciliation bill—will be very reassuring to them. I think they understand that there are many people here in Congress who share their concern and wish to attempt at least to stabilize their retirement situation, particularly during this period of high inflation.

Once more, Mr. Speaker, I want to offer my congratulations to the gentleman for his successful effort in getting a separate vote on this issue which is so crucial to Federal retirees and those who have retired from military service. Without his strong advocacy, the Rules Committee would never have been required to acquiesce in granting this rule which is so necessary to preserve the rights of these retirees.

Mr. FISHER. I thank the gentleman from California, and yield back the balance of my time.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Saunders, one of his secretaries.

OMNIBUS RECONCILATION ACT OF 1980

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. DAVIS).

Mr. DAVIS of Michigan. Mr. Speaker, I rise with mixed emotions about this particular reconciliation bill, because some of the amendments that the Rules Committee allowed to be offered today I support. I had offered a substitute amendment in the Rules Committee on behalf of Congressman OBERSTAR and myself to the Vanik amendment. The Vanik amendment will be offered later on to this bill, which sets the effective date of H.R. 1543 at September 30, 1981.

We wanted to offer a substitute which would allow us an opportunity to let the Members vote on an effective date of September 30, 1980. The reason for that should be quite obvious. We passed H.R. 1543 many, many months ago in the House, which would have allowed steelworkers, suppliers of the automobile industry, iron ore workers, and so forth, to be able to qualify for TAA, trade assistance benefits. Under this proposal, none of those people that will be laid off or are laid off now will be able to qualify for these benefits.

It seems to me, and I very much do support the unemployed auto workers being able to qualify for these benefits, that the reason they are laid off is because of the import of foreign automobiles into this country, but these imports have also affected the suppliers of the automobile industry, the steelworker and the iron ore worker.

We had hoped to be able to offer a substitute amendment to the Vanik amendment which would move the date up by 1 year so that those unemployed workers who are laid off would be able to qualify for trade adjustment assistance. There are hundreds of thousands of people laid off now who cannot draw trade adjustment benefits, while some of their cohorts in the industry, directly related to the automobile industry, can draw these benefits, and many people are precluded. This September 30 date means that anyone who is laid off before September 30, 1980, will not even be able to qualify.

□ 1050

So, Mr. Speaker, that means those people who are laid off now will not qualify for these benefits and the benefit will accrue only to those people who are laid off after October 1 of this year. I do not think that is in the best interests of the unemployed workers of this country.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. CONABLE).

Mr. CONABLE. Mr. Speaker, I think we are all quite uncertain about the right thing to do on this reconciliation motion, and we are aware that what we do may set a very important precedent for the future.

I have strongly supported the concept of reconciliation. I would prefer to see it as part of the second budget resolution, but I accept it now as an important principle in our process. However, I deeply regret that this reconciliation motion has become the vehicle for some increases in outyears, even though it involves some reductions in expenditures this year. I think the precedent, coupled with the possibility that it may be amended to add additional expenditures of one sort or another, is a very bad one.

The reconciliation motion can become something like the continuing resolution, which has all kinds of interesting conditions and additions added to it because it is such a critical part of our process when we have not timely passed appropriations bills.

I would like to see us keep reconciliation pristine in its purpose, namely, an expenditure saver and an indication to the legislative committees that they must achieve some additional saving in order to meet our budgetary goals.

For that reason, Mr. Speaker, I urge a vote against the previous question so that the Latta amendment can be considered. I reserve my right to do what I think is right in the light of adopted amendments to this reconciliation motion on final passage. It is a very important part of our procedure, and what we do here may define this part of the process in future years and have a tremendous impact on the budget process generally.

I personally would like to see a tax cut added to reconciliation, but I have to acknowledge that it is inappropriate as part of this motion, and, therefore, I am not going to be pressing for a tax cut amendment. I urge my colleagues to exercise similar restraint on additional opportunities for expenditure, which should not ride this vehicle, either.

The SPEAKER pro tempore. The time of the gentleman from New York (Mr. CONABLE) has expired.

All time of the gentleman from Ohio (Mr. LATTA) has expired.

Mr. LATTA. Mr. Speaker, I would inquire, will the gentleman from Missouri (Mr. BOLLING) yield me some time?

Mr. BOLLING. Mr. Speaker, the gentleman from Ohio (Mr. LATTA) may use 10 minutes of my time, and I now yield him those 10 minutes so he may yield time to other Members.

Mr. LATTA. Mr. Speaker, I thank the chairman of the committee, and I now yield 3 minutes to the gentleman from Virginia (Mr. SATTERFIELD).

Mr. SATTERFIELD. Mr. Speaker, I voted for reconciliation because I felt it would help us achieve the objectives of the budget process. Now, however, I

have serious reservations about reconciliation because of the way it is being used.

I understand and support the proposition that the reconciliation process can function properly only if floor amendments which would affect authorization levels or spending ceilings are precluded or, at least, narrowly controlled. H.R. 7765, however, is not confined to levels of expenditure but contains legislative provisions which do not affect authorizations or spending ceilings. Because this is so I must reluctantly oppose this rule. These provisions have no valid place in a process intended only to effect a reconciliation of expenditures. If they are to be included then they should be subject to amendment in order that the House may freely work its will. I know that the rule before us can be amended to achieve that result without doing violence to the intended reconciliation process.

No better examples of the necessity for this limited right to amend H.R. 7765 can be found than in those sections which were submitted for inclusion in the reconciliation bill by the Interstate and Foreign Commerce Committee and by the Ways and Means Committee. H.R. 3990 and H.R. 4000 are measures which deal with medicaid and medicare. They were referred to the Commerce Committee which has jurisdiction over medicaid and to the Ways and Means Committee which exercises jurisdiction over medicare. These two measures were considered by the Interstate and Foreign Commerce Committee, amended and favorably reported.

Certain provisions in these bills provide cost savings which the Budget Committee indicated it would accept and credit against the respective expenditure categories involved. Thus it became desirable to include savings provisions in the reconciliation measure. I have no quarrel with that. However, this objective led to negotiations between persons who were certainly not designated for that purpose by the Interstate and Foreign Commerce Committee, and representatives of the Ways and Means Committee who developed compromises in each bill. The compromised bills were then included in the submissions by these two committees for inclusion in H.R. 7765.

No effort was made to confine those submissions solely to provisions affecting authorization levels or spending ceilings with the result that H.R. 7765 now contains legislative provisions which are not related in any way to expenditures.

Mr. Speaker, Members of this House should be concerned not only by the questionable negotiations to which I have referred but by the fact that these negotiations resulted in substantive and material variances between the provisions of H.R. 3990 and H.R. 4000 as there are contained in the reconciliation bill and their provisions when reported by the full Interstate and Foreign Commerce Committee.

I do not believe this practice was ever contemplated by the Members of the House when it voted for reconciliation. The practice not only ignores the affirmative action of the Interstate and Foreign Commerce Committee but under the rule now before us, the Members of this body will be denied an opportunity to work their will with respect to the purely legislative provisions of H.R. 3990 and H.R. 4000.

Mr. Speaker, as you know, I am not seeking reelection. I will not be in this body after this year to see it—but I predict that the precedent established by the practice to which I have referred will return to haunt this House and to compromise the legislative process.

By approving this rule and by denying amendment to the legislative provisions of H.R. 7765 which are not involved in the reconciliation of expenditures, this House will create a dangerous precedent upon which the reconciliation process may well serve as a clearinghouse, so to speak, for all manner of legislation—written outside of the accepted legislative process—and insulated against amendment under conditions which are far less stringent than would otherwise be permitted.

Mr. Speaker, for the reasons assigned, I am compelled to oppose this rule and to support an effort to vote down the previous question so that the rule may be amended to permit consideration of amendments to the legislative proposals to which I have referred. I urge my colleagues to consider this matter carefully and to do likewise.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I think that this whole process, the budget process, has become an abomination. It has been used as an excuse to squeeze the programs that I think are essential to the future of our country and the basic fabric of our society.

The Budget Committee has endorsed incredible increases in defense expenditures, engaging us in a multibillion dollar resumption of the arms race which will leave us much less secure than we are today. That, combined with a fictional drive to balance the budget, results in disastrous cuts in education, urban development, jobs, health and senior citizen programs that are essential to our fabric. I am very concerned about that.

I am concerned also about the process by which we are here considering this vitally important matter. The good chairman of the Committee on Rules declined to yield to Members who wanted to speak against this resolution, and the way he worked it out is that majority side opponents would get our time from the minority, as if those of us in the majority who disagree with the Rules Committee were somehow being traitorous. When that Budget Act was considered, the chairman of the Committee on the Budget said there was no time to be yielded to opponents, and the gentleman from New York (Mr. WEISS) and I were excluded from being able to express our contrary points of view altogether. I think that is dangerously undemocratic and contrary to the whole process of the House.

I would like to register my strong objection to the procedure, and I think our democratic process will be in danger indeed if we shut off the voices which may differ from the position of the leadership at any particular time. The budget reconciliation resolution before us is odious, representing dangerously skewed priorities that will permanently damage our Nation. Worst of all, it is being brought up under a closed rule that would not even permit us to vote on many of the most damaging provisions. I am sure that many of my colleagues are not even aware of some of the incredible actions that have been taken.

The bill cuts the postal budget, for example, so as to increase by $100 million the amounts nonprofit organizations must pay to raise their funds. This means that the budget of every private school and college, every hospital, health group, religious organization, and other charitable endeavor will be decimated. Some examples of the costs to the private charities that do such important work in our society and replace the need for further governmental efforts are:

National Catholic Development Conference, $9 million;

March of Dimes, $1.2 million;

National Wildlife Federation, $480,000;

St. Jude Children's Research Hospital, $600,000;

Epilepsy Foundation, $180,000; and

American Lung Association, $1.32 million.

These nonprofit organizations and countless others depend on reduced third-class postal rates to raise funds. The unforseeable increases in postal rates that will be thrust upon religious and charitable organizations by the committee's action—on which we are not even given an opportunity to vote—will result in an enormous reduction in funds available for their charitable, educational, and religious programs.

Equally outrageous cuts made in this resolution, on which we are denied even the right to vote, include a cut of $483 million reduction in child nutrition programs that will deprive thousands of schoolchildren of the one sound meal they get, will impair their ability to participate in their educational programs, demonstrably impairing their futures and increasing the chance they will become public charges.

The sum of $238 million is cut from the guaranteed student loan program, again with no vote provided. This cut will mean that thousands of low- and moderate-income students will not be able to afford higher education.

The Small Business Administration is cut by $800 million at a time of record small business bankruptcies. If you believe as I do that small business is the backbone of our free enterprise economy, and knowing that the SBA was already drastically underfunded to meet the needs in these hard economic times, these cuts appear to be plainly nonsensical, grossly counterproductive. And again, under the rule before us the Members of this House will be denied the opportunity to even vote on the proposal.

Veterans' medical care eligibility is cut as are burial benefits, for total veterans program reductions of $275 million, a

major breach of faith with those who sacrificed of themselves for the security of our country. Again, we are denied a vote.

Lastly, while trade adjustment assistance is provided in the resolution for automobile workers displaced by foreign imports, the thousands of workers in related industries who produced the tires, wheels, parts, and materials dependent on auto production, are denied assistance, and an amendment to provide such assistance is denied even consideration by this supposedly democratic institution.

There are a number of other bad provisions in this resolution, but these in my opinion are the worst. Consideration is denied to any substitute proposals to cut wasteful defense increases or close tax loopholes by which many individuals and companies escape taxation altogether or fail to pay their fair share of the Nation's tax burden. This is the way I feel the budget should be balanced. It is a frightening denial of democracy not even to permit the House of Representatives to vote on the measures within this bill, to say nothing of being able to raise sound, sensible alternative budget balancing proposals.

I strongly urge defeat of this undemocratic, restrictive rule—and should the rule pass, defeat of an unsound, counterproductive resolution.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, I rise in opposition to this closed rule. Earlier in the year, I opposed efforts to remove the reconciliation instructions from the first concurrent budget resolution. I took this position because I believed, wrongly in retrospect, that reconciliation could be used to eliminate some of the real waste and abuse in Government. I thought reconciliation could be used to eliminate wasteful contracting out of Government functions, to curtail the expensive practice of hiring consultants to do that Government's work, to wipe out excesses in GSA's procurement, and to trim fat in the Defense Department.

Instead, H.R. 7765, the omnibus budget reconciliation bill, strikes at those recipients of Federal money who are least able to endure the cuts and who are least able to fight back. The bill eliminates one of the two cost-of-living adjustments (COLA) now made for civil service and military retirees. These are people on fixed incomes who, for the most part, have no way to make up the loss. The bill raises the postal rates of nonprofit organizations. Specifically, the major charities which provide direct human services in health or welfare to the public will have to pay more to raise the same amount of money. The bill strikes at the school lunch program, which provides needed hot meals for children in schools.

The truly sad part is that the lengthy delay in enacting the bill and the types of cuts made in the bill will actually end up costing the Government more money, not less. Perhaps the most expensive provision is the elimination of the look-back provision in civil service retirement. The current provision, allowing retirees to gain the benefit of the cost-of-living adjustment prior to their retirement, is replaced with a provision allowing retirees to receive only a pro-rata portion of that increase. This change is forcing thousands of skilled, experienced, and needed Federal workers to retire before this bill becomes law. These unexpectedly early retirements mean higher costs for the retirement system and new training and salary costs for replacement employees. These retirements mean lower productivity and efficiency for the Federal Government.

Similarly, by raising the costs that charities have to pay to raise money, we are forcing them to provide fewer services. Without a doubt, it will be the Government that has to pick up the slack.

Let me say something to those who think they will protect retirees by voting for the Fisher amendment made in order under the rule. While we may retain twice a year cost-of-living adjustments in our bill, the companion bill passed by the other body eliminates twice a year COLA. The conference will be essentially between the budget committees. The House Budget Committee has made its position quite clear on this issue. So, if you really want to protect retirees, the best way is to defeat this rule.

H.R. 7765 is a bad and expensive piece of legislation. The rule does not permit us to improve it by amendment. The only reasonable course is to vote down this rule and kill H.R. 7765.

The SPEAKER pro tempore. The Chair will state that the gentleman from Ohio (Mr. LATTA) has 5 minutes remaining, and the gentleman from Missouri (Mr. BOLLING) has 10 minutes remaining.

The Chair recognizes the gentleman from Ohio (Mr. LATTA).

□ 1100

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I suppose I should be grateful for the fact that I will be permitted under this rule to offer an amendment dealing with the cost-of-living adjustment concerning the Federal, military, and civilian retirees, and indeed I am. Perhaps I should apologize to the Democratic leadership for having delayed this bill for 30 days in committee. I guess I delayed it, although it was the chairman of the Rules Committee who pulled it off our agenda in a rather unsuccessful attempt to reverse my offering of this COLA amendment.

But whether this rule is adopted or not, the COLA issue will be addressed because if there is no rule, then the twice-a-year cost-of-living adjustments will continue. Government retirees will be protected.

But I, too, share the concern expressed by a number of people here about a reconciliation bill which proposes about $10 billion in savings and then heaps on top of that $3 billion in new spending. And that is what the Latta amendment would correct. I supported reconciliation in the debate on the budget resolution because I still think it is a good idea. But nowhere was it written when we considered reconciliation that it was to mean simply that the committees of jurisdiction in the House would act and no one else would get a chance to act on their decisions. And that is what the Democratic leadership would like to have; no chance for the full House to act.

They simply do not want the House to vote on these issues. They want a closed rule. They do not want the major issues addressed, and they do not want the Members to have to go on record because they know that if they had to vote on these issues, many of the spending programs will be passed. But frankly, whether you are for or against these given propositions, including COLA, the least we ought to have, as a number of speakers this morning have said, the right to vote. That is why we are supposed to be here.

Now, I heard some remarks made about the sacrosanct budget process and how it had to be protected and how reconciliation was so important a part of this.

Let me just note to the Members some of the important parts of this sacrosanct process that are being thrown right out the window by the Democratic leadership who care very little about the democratic process. The Budget Act, in section 300, says that by the 15th of September of each year the Congress is supposed to complete its action on the budget resolution for that year. It sets October 1 for the beginning of the new fiscal year. Section 309 of that act says that not later than 7 days after Labor Day both Houses are supposed to complete action on all bills providing new budget authority. Congress has not acted finally on any of the appropriation bills, although the House has passed most of them.

So, quite obviously, the Democrats do not give a darn about the Budget Act nor the budget process. They are willing to destroy it. They have destroyed it this year and they are doing it for political motives in the sense that they are delaying these votes for an already announced lameduck session that will begin after the November 4 elections. They do not want to have to vote on a balanced budget and a tax cut. And today, as a part of that strategy, they bring you a largely closed rule that prevents you from voting on any of these other budget issues at a time when you should have that right.

I think we should vote down the previous question and, barring that, we should vote down the rule and expose this legislative sham for what it is.

CALL OF THE HOUSE

Mr. BOLLING. Mr. Speaker, as I understand it, the gentleman from Ohio has 1 minute remaining. I move a call of the House.

A call of the House was ordered.

The call was taken by electronic de-

vice, and the following Members responded to their names:

[Roll No. 515]

Abdnor
Addabbo
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Ashbrook
Ashley
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Brownhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Chenev
Chisholm
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Derrick
Deshler
Deliums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Frenzel
Frost
Fuqua
Garcia
Gavdos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzales
Gore
Gramm
Grassley
Gray
Green
Guarini
Gudger
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Harkin
Harris
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Luken
Lundine
Lungren
McClory
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Motti
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Prever
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Rover
Rudd
Russo
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Taylor
Thomas
Thompson
Trible
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

□ 1110

The SPEAKER pro tempore. On this rollcall 361 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

□ 1120

OMNIBUS RECONCILIATION ACT OF 1980

Mr. LATTA. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. MICHEL).

Mr. CLINGER. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to my friend.

Mr. CLINGER. Mr. Speaker, I rise in opposition to the previous question. A provision included in the Senate-version of the reconciliation bill but not in the House's version deals with the windfall profit tax. This provision would exempt the first two barrels of stripper well production from the windfall profit tax. To offset the revenue losses to the Treasury, a slightly higher tax would be levied on larger producing wells.

Stripper wells are marginal wells producing less than 10 barrels per day. Before the tax, stripper wells were exempt from price controls. With the tax, many stripper wells would soon be abandoned due to economic changes in their producing life.

A recent study by the Interstate Oil Compact Commission found that some 13,000 oil wells will be abandoned over the next 10 years because of the windfall profit tax. The resulting loss of production will be 175 million barrels of U.S. crude oil. Moreover, another 10,000 wells will be abandoned before reaching "marginal" status. We face a serious situation where we are taxing our own oil wells out of existence.

Our Nation desperately needs every drop of oil we can get. To duck this issue for another time on another day may be too late. The modified-closed rule on H.R. 7765 will not enable the House to full debate and determine its position on a stripper well exemption. I, therefore, urge my colleagues to defeat the motion on the previous question.

Mr. MICHEL. Mr. Speaker, I read a "Dear Colleague" letter from our good friend from California (Mr. PASHAYAN) recently, which made mention of the Bretton Woods Agreement Act.

That legislation embodied the Grassley-Byrd amendment. There may not be many here who remember Grassley-Byrd, or want to. This administration and this Congress in recent months have been fleet afoot putting as much distance as possible between them and that simple, one-sentence amendment. The amendment wrote into law the now infamous promise made 4 years ago by President Carter to balance the 1981 budget.

We adopted the Grassley-Byrd language on September 14, 1978, just 6 weeks before the election I might add.

Next week is the 2-year anniversary of the legislation. There will be no celebration, of course. The amendment has rusted through. It will be thrown on the scrap heap along with a good many other political promises that have turned to useless junk.

The public knew the truth then and they know it now. Budgets are balanced in Disneyland. They are not balanced in Washington, not under this administration or in this Congress.

But that is all behind us. What we have before us is the issue of reconciliation. I hope reconciliation will survive. I do not want it to end up in the scrap heap of broken political promises.

I have few quarrels with the reconciliation bill that came out of committee. None of us would have an easy time living with all of its provisions, but each and everyone of us are obligated to bite the bullet.

I had hoped that the Rules Committee would have made in order my amendment to make the outlay figure in the second budget resolution a statutory ceiling and give back to the President the power to impound funds over and above the ceiling. Reconciliation needs this kind of discipline.

The Rules Committee turned thumbs down on my request. That I can take. What I cannot take are the amendments the Rules Committee did make in order. The Rules Committee flatly rejected the concept of spending control, but warmly embraced the compulsion to spend more. The Rules Committee has allowed two amendments alone that are going to add in excess of $1.5 billion to the budget, half this year and half the next.

I know why the leadership turned thumbs down on a spending ceiling and thumbs up on spending more.

It is the power of the purse. The compulsion to spend. Not too long ago the Fed clamped down on credit because millions of Americans were in hock up to their ears. They had reached the outer limits of borrowing on those little plastic credit cards, but they just could not bear to rip them up and stop charging. They just could not do it, not even when interest rates were 18 percent or more.

The cards were too handy, too easy, too quick, too painless.

Thousands of Americans got themselves into deep, serious financial trouble with those cards, and they dragged the Nation's economy down with them. They had lost the will to fight the compulsion to spend. The Government had to step in.

That is the way it is in this House. We are at the limit, but the spending compulsion is still there. Only here there is no higher authority to invoke discipline. We are the highest authority. We have to put the lock on the piggybank and throw away the key. If we do not, no one will. If we do not, we will drag the economy down with us.

It is quite obvious the Democratic leadership will not permit us a vote on a spending ceiling. They want to tempt us with amendments to spend more. They love to see us use our little plastic voting cards to get us further and further in debt. It is compulsive, and they want us all to become compulsive spenders. Big spenders do love company.

That is why I am going to vote against the previous question on this rule. I think we should start sending these rules back to the committee until the committee either gives us the opportunity to vote on spending restraint or it quits sending us these billion-dollar budget busters that were not part of the original bill.

We cannot allow the reconciliation process to become a meaningless gesture. We cannot allow this budget to blow up in our faces as did the 1980 budget.

I also urge defeat of the rule if the previous question is ordered, because it is a very selective rule that provides for amendments designed to gut the reconciliation process, but allows none that would strengthen it.

For instance, Mr. CONABLE, Mr. FRENZEL, and myself had hoped to offer an amendment which would provide that the outlay figure in the second budget resolution for fiscal year 1981 constitute a final and statutory ceiling on spending for the fiscal year. Should the ceiling be exceeded by congressional action, the President would be required to impound funds, as has been the prerogative of Presidents throughout our history. The difference here, however, is that there would be certain limits placed on this impoundment power, including requirements that the President not terminate any program, that he not impose cost savings inequitably, and that he not cut social security.

I regret very much that the House leadership, acting through the Rules Committee, did not see fit to allow this amendment to be brought before this body for discussion and a vote. It reminds one very much of the similar types of closed procedures they successfully imposed on the Democratic Convention last month. I do not know what they are afraid of—or perhaps I do. It seems to me, though, that there comes a time when the principle of openness or free choice should take precedence over simply winning or losing.

The House of Representatives is the one body, the only body, which equitably represents all the American people. We surely ought to have an opportunity to consider steps to help save the budget process without being cut off at the pass.

If the budget process is to have any meaning at all, we cannot have a repeat of the fiasco in 1980, when the supposedly final, $547 billion spending ceiling was exceeded by $32 billion, with Congress hardly batting an eye, or where the deficit ballooned from $30 billion to over $60 billion.

The same thing is already occurring with the 1981 budget. One month we have a deficit of $15 billion, the next month it is a surplus of $16 billion, and the following month we are headed down the same old road with a deficit in excess of $30 billion.

The second budget resolution represents a time to reconcile these changes. When we do so, though, we should do so in an honest and realistic fashion—and then live by those changes, as is intended by the Budget Act.

The amendment we had proposed to offer would force us to do that, but in an effective and constructive manner that provides considerable discretion and flexibility as to how to adjust spending.

The idea of a statutory ceiling is not new. It was included by this body in 1973 as part of the Impoundment Control Act, with the support of the majority of Members on the other side of the aisle.

We need such a ceiling now in order to give the budget process credibility, to make it work, and to avoid a repetition of the 1980 experience, now a seemingly commonplace experience, where third and fourth budget resolutions are used to undermine all the hard work we have done up to that point.

We also need such a ceiling to insure that any tax cut we enact does not send the deficit soaring and further fan the fires of inflation. There seems little question now but that we will have a tax cut in fiscal year 1981. The only question is the form it will take and when it will be enacted.

Surely there can be little question that when the Federal tax take from the average American family has gone up by 27 percent over the past 4 years, or when Federal taxes go up by 16 percent for every 10 percent increase in income, that the American people deserve a tax reduction. The economy certainly requires the stimulus that would result from a tax cut. But we must hold overall spending in check when we provide such a cut, and this amendment would help insure that we do so.

Federal spending has gone up by $232 million during the past 4 years, the largest 4-year increase in the history of our Nation. We simply cannot afford, as a nation, such massive spending increases by a bloated, overweight Federal Government.

Adoption of this rule as submitted by the Rules Committee threatens to make a sham of the reconciliation process. The reconciliation bill as it is depends to a great extent upon gimmicks and one-shot reductions in order to achieve the mandated savings level. The amendments allowed by the rule would serve only to weaken the bill further and turn it into a phony exercise.

If we are going to allow amendments, we should make in order those designed to save and enhance the reconciliation process as well as those designed to gut it. If we cannot be fair in this regard, then we should open up the bill to all amendments.

I urge that this rule be defeated.

□ 1130

The SPEAKER pro tempore. The gentleman from Ohio (Mr. LATTA) has 2 minutes remaining.

Mr. LATTA. Mr. Speaker, I would just like to comment on the parliamentary situation. If we vote down the previous question we will have an opportunity on this side to offer a substitute rule. In that substitute rule we will be making in order the amendment I referred to earlier, that eliminates $3.1 billion in new spending that is provided for in this reconciliation bill.

In addition to that, we will make the motion to recommit with instructions. The way the motion is now, it is without instructions.

At that point, if the previous question on my resolution is voted down, then these other people who have come to me here, and there have been several of them, who are requesting votes on various amendments to the bill will have an opportunity to do whatever they like. They will be able to move for an open rule, which I certainly would oppose.

Let me just say as far as the $3.1 billion increase is concerned, some of it is for good programs. If the benefit expansions were coming along through regular channels I would undoubtedly support most of them. As I indicated, I am not against them on their merits. I am merely against the procedure being used to put them in the law.

Mr. OTTINGER. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman.

Mr. OTTINGER. I just did not understand completely. If we vote down the previous question the gentleman is offering and then vote down the previous question on the gentleman's rule, is the gentleman going to support having votes on other amendments?

Mr. LATTA. At that point the previous question will go to somebody who opposes my resolution.

Mr. OTTINGER. Does the gentleman intend to support allowing votes, even an open rule?

Mr. LATTA. The point is that if the previous question on my amendment is defeated, then someone else may be recognized to propose another sort of amendment to the rule, including an open rule. Therefore, to join me in opposing the previous question on this rule now before us will not foreclose your opportunity to propose additional changes to the rule beyond those I will propose.

Mr. BOLLING. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman is recognized for 10 minutes.

Mr. BOLLING. Mr. Speaker, first it is important to understand what the rule reported contains and also what the rule proposed contains in the event that the

previous question is not ordered. The rule reported provides for the offering of the Vanik amendment which does not add money for fiscal year 1981 but keeps alive the import aid bill that came from the Ways and Means Committee to begin with, the aid to workers unemployed because of imports.

We also make in order an amendment by Mr. BAUMAN on the COLA that affects our retirements, and the civil service and military retirement programs, and is probably one of the least excusable of all of the proposals that will be made.

Budget Committee amendments are in order and there is a provision which, of course, I think will pass easily to strike the super fund.

It is not entirely clear to me what my distinguished friend from Ohio (Mr. LATTA) is going to offer, but it does clearly include an elimination of the increases provided in the reconciliation process by some of the committees. On that issue I disagree with him fundamentally. It is inevitable that in the reconciliation process there will be some trade-offs such as the trade-offs that increase funding for title XX programs in the child nutrition portion of the education bill and those going to medicare and medicaid. But, there are very substantial offsets which save a great deal of money. I think it would be a very bad mistake if we tied reconciliation up so it could not deal with trade-offs in that fashion.

That is what the Latta part of the substitute rule would do.

The other part that I will mention, and there may be more to it although I am not quite clear, is that it provides for a recommitment with instructions. This is a very tight rule that we initially offer. A recommitment with instructions enables the managers on that side to deal with all of the political plums in town.

Talk about politics, they could set up a Christmas tree alternative in either direction, either to save or to spend or a combination of the two that would be absolutely incredible. But this should not surprise anybody. This is one area in which the Republican Party is schizophrenic. In the other body, on the other side of the Capitol, there has been a consistent, effective, responsible effort to achieve bipartisanship on the budget process. Witness the fact that the other body has already passed its reconciliation bill and is already in very good shape on an agreed-upon basis. But in the House from the very beginning, and most regrettably, the matter has fallen into about as partisan a set of exercises as I have ever seen.

So I do not think there is any question what is up on the previous question. It is not going to help the liberals over here with whom I sympathize. Many of the programs that are cut in this reconciliation bill are my favorite programs, too. It is not going to help anybody that really wants to do something different.

There is no opportunity to change the balance as between military and people programs. That is not what is up. My colleagues are not going to be benefited by voting against the rule or voting against the previous question.

Really, finally, the issue comes down to two absolute fundamentals. The great dilemma of the democratic process in the world, not just in the United States, is the management by free governments of their budgets. It cannot be said that any free governments have always succeeded in managing their budgets, in managing their spending so as to maximize employment and minimize inflation. It is the greatest dilemma that faces free societies, here no more than in all other free societies that I know. The budget process in this institution, in this Congress, is the key to the effective management of our getting and spending.

If as a people, if as a whole we cannot master this problem, our society will not survive as we know it. That is no prophecy of doom. That is a simple fact. It is easy to see. One of the things that we have to be able to do, one of the things that we have to be able to reconcile is our particular form of fragmented government.

□ 1140

I represent a congressional district. Each of you equally represents a congressional district. You are under enormous pressure from your district, from the interests that are particularly strong in that district, to vote their way. But we can only manage a national budget as a whole. Altogether we must act if we are to be responsible in the management of the affairs of the Nation. We developed a process that has been further evolving this year, a process that is key to that management, and it is a process called reconciliation. We fought out the trade offs, and my side, the Democratic side, generally lost. I was for more for the people programs and somewhat less for defense, and we generally lost. But an overwhelming majority of this institution spoke and said: This is the reconciliation we want. Once that majority spoke, it became a question of implementing a majority decision, a majority decision made after full debate, with bitter argument, with strong feeling. We have to stick by that decision because it was in effect the national decision of all these districts in this House.

I remind you that the other body has already acted. That is what this process is all about. It is pulling together all the interests of the individual districts into a cohesive, coherent, managing whole that says we can manage our affairs; we can manage our business. That is what the vote on the previous question is about.

We need your vote in support of the previous question. That is what the vote on the rule is about. Can this Congress manage its affairs? Can this House of Representatives manage its affairs? This is where party comes into it. We Democrats, whether we like it or not, are properly held responsible for what we do. We have the responsibility to manage our own affairs. We solicit support and help, and bipartisanship from the Republicans, but it is our responsibility, and, quite properly, we will be said to have failed if we cannot come together on this process we established freely, on this process that has come so far.

It is a critical point on a critical issue which has to do with the survival of our free society. I urge your vote for the previous question. I urge your vote for the rule.

Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

Mr. LATTA. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 230, nays 157, not voting 45, as follows:

[Roll No. 516]

YEAS—230

Addabbo
Akaka
Albosta
Alexander
Andrews, N.C.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brooks
Brown, Calif.
Burlison
Burton, John
Burton, Phillip
Byron
Carr
Chisholm
Clay
Collins, Ill.
Corman
Cotter
D'Amours
Daniel, Dan
Danielson
Daschle
de la Garza
Derrick
Dicks
Dingell
Dixon
Donnelly
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Calif.
English
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Glickman
Gonzalez
Gore
Gray
Guarini
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Hanley
Harkin
Harris
Hefner
Heftel
Hightower
Holland
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Ireland
Jacobs
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kildee
Kogovsek
Kostmayer
LaFalce
Lehman
Leland
Levitas
Lloyd
Long, La.
Long, Md.
Lowry
Luken
Lundine
McHugh
McKay
Maguire
Markey
Mathis
Matsui
Mavroules
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Pa.
Murphy, Pa.
Murtha
Musto
Neal
Nedzi
Nelson
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Peyser
Preyer
Price
Rahall
Rangel
Ratchford
Reuss
Richmond
Roberts
Rose
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Santini
Scheuer
Seiberling
Sharp
Shelby
Simon
Skelton
Smith, Iowa
Solarz
Spellman
St Germain
Stack
Staggers
Stark
Stenholm
Stewart
Stokes
Stratton
Studds
Swift
Synar
Thompson
Traxler
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Watkins
Waxman
Weaver
White
Whitley
Williams, Mont.
Wilson, C. H.
Wilson, Tex.
Wirth
Wolf
Wolpe
Wright
Wyatt
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—157

Abdnor
Anderson, Calif.
Andrews, N.Dak.
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bereuter
Bethune
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Butler
Carney
Carter
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, R. W.
Dannemeyer
Davis, Mich.
Deckard
Derwinski
Devine
Dickinson
Dornan
Dougherty
Duncan, Tenn.
Edwards, Ala.
Emery
Erdahl
Erlenborn
Evans, Del.
Fenwick
Findley
Fish
Forsythe
Frenzel
Gilman
Ginn
Goodling
Gramm
Grassley
Green
Grisham
Guyer
Hagedorn
Hammer-schmidt
Heckler
Hillis
Hollenbeck
Holt
Hopkins
Horton
Hyde
Ichord
Jeffords
Jeffries
Johnson, Colo.
Kelly
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leach, Iowa
Leach, Tex.
Lee
Lent
Lewis
Loeffler
Lott
Lungren
McClory
McCloskey
McDade
McDonald
McEwen
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Michel
Miller, Ohio
Mitchell, N.Y.
Moore
Moorhead, Calif.
Murphy, N.Y.
Myers, Pa.
Natcher
Nichols
Nolan
Quayle
Rodino
Sebelius
Shannon
Steed
Symms
Tauzin
Vander Jagt
Whitten
Wydler
Young, Alaska

NOT VOTING—45

Ambro
Anderson, Ill.
Bellenson
Boggs
Bowen
Brodhead
Campbell
Cavanaugh
Chappell
Coelho
Davis, S.C.
Dellums
Dodd
Edwards, Okla.
Goldwater
Gradison
Hansen
Harsha
Hawkins
Hinson
Holtzman
Jenrette
Leach, La.
Lederer
Livingston
Lujan
McCormack
Mattox
Mazzoli
Murphy, Ill.
Myers, Pa.
Nichols
Nolan
Quayle
Rodino
Sebelius
Shannon
Steed
Symms
Tauzin
Vander Jagt
Whitten
Wydler
Young, Alaska

□ 1150

The Clerk announced the following pairs:

On this vote:

Mr. Rodino for, with Mr. Chappell against.
Mr. Nichols for, with Mr. Steed against.
Mrs. Boggs for, with Mr. Campbell against.
Mr. Murphy of New York for, with Mr. Edwards of Oklahoma against.
Mr. Shannon for, with Mr. Goldwater against.
Mr. Mattox for, with Mr. Hansen against.
Mr. Lederer for, with Mr. Hinson against.
Mr. Myers of Pennsylvania for, with Mr. Lujan against.
Mr. Bellenson for, with Mr. Sebelius against.
Mr. Coelho for, with Mr. Symms against.
Mr. Hawkins for, with Mr. Young of Alaska against.
Mr. Dellums for, with Mr. Gradison against.
Mr. Leach of Louisiana for, with Mr. Harsha against.
Mr. Tauzin for, with Mr. Wydler against.
Mr. Dodd for, with Mr. Livingston against.

Mr. Murphy of Illinois for, with Mr. Vander Jagt against.
Mr. McCormack for, with Mr. Quayle against.

Until further notice:

Mr. Ambro with Mr. Davis of South Carolina.
Mr. Bowen with Mr. Cavanaugh.
Mr. Brodhead with Ms. Holtzman.
Mr. Jenrette with Mr. Nolan.
Mr. Mazzoli with Mr. Whitten.

Mr. ICHORD changed his vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

□ 1200

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OTTINGER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 206, nays 182, not voting 44 as follows:

[Roll No. 517]

YEAS—206

Addabbo
Akaka
Albosta
Alexander
Andrews, N.C.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Brademas
Breaux
Brinkley
Brooks
Brown, Calif.
Burlison
Burton, Phillip
Byron
Carr
Cavanaugh
Collins, Ill.
Corman
Cotter
Daniel, Dan
Danielson
Daschle
de la Garza
Derrick
Dicks
Dingell
Dixon
Donnelly
Downey
Drinan
Duncan, Oreg.
Eckhardt
Edgar
Edwards, Calif.
English
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Fisher
Fithian
Flippo
Florio
Foley
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Glickman
Gonzalez
Gore
Gray
Guarini
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Hanley
Harkin
Hefner
Heftel
Hightower
Holland
Howard
Hubbard
Huckaby
Hughes
Hutto
Ireland
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kogovsek
Kostmayer
LaFalce
Lehman
Levitas
Lloyd
Long, La.
Long, Md.
Lowry
Luken
Lundine
McHugh
McKay
Maguire
Markey
Mathis
Matsui
Mavroules
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Pa.
Murphy, Pa.
Murtha
Musto
Neal
Nelson
Nowak
Obey
Panetta
Patterson
Pease
Peppper
Preyer
Price
Rahall
Rangel
Ratchford
Reuss
Richmond
Roberts
Rose
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Santini
Sharp
Shelby
Simon
Skelton
Solarz
St Germain
Stack
Staggers
Stenholm
Stewart
Stokes
Stratton
Studds
Swift
Synar
Thompson
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Watkins
Waxman
Weaver
White
Whitley
Williams, Mont.
Wilson, C. H.
Wilson, Tex.
Wirth
Wolf
Wolpe
Wright
Wyatt
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—182

Abdnor
Anderson, Calif.
Andrews, N.Dak.
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bereuter
Bethune
Bouquard
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burton, John
Butler
Carney
Carter
Cheney
Chisholm
Clausen
Clay
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, R. W.
Dannemeyer
Davis, Mich.
Deckard
Derwinski
Devine
Dickinson
Dornan
Dougherty
Duncan, Tenn.
Early
Edwards, Ala.
Emery
Erdahl
Erlenborn
Evans, Del.
Fenwick
Findley
Fish
Ford, Mich.
Ford, Tenn.
Forsythe
Frenzel
Gilman
Gingrich
Goodling
Gramm
Grassley
Green
Grisham
Guyer
Hagedorn
Hammer-schmidt
Harris
Heckler
Hillis
Hollenbeck
Holt
Hopkins
Horton
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Johnson, Colo.
Kelly
Kemp
Kildee
Kindness
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Leland
Lent
Lewis
Loeffler
Lott
Lungren
McClory
McCloskey
McDade
McDonald
McEwen
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Michel
Miller, Ohio
Mitchell, N.Y.
Moore
Moorhead, Calif.
Myers, Ind.
Natcher
Nedzi
O'Brien
Oakar
Oberstar
Ottinger
Pashayan
Patten
Paul
Perkins
Petri
Peyser
Pickle
Porter
Pritchard
Pursell
Quillen
Railsback
Regula
Rhodes
Rinaldo
Ritter
Robinson
Roe
Roth
Rousselot
Royer
Rudd
Satterfield
Sawyer
Schroeder
Schulze
Sensenbrenner
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Solomon
Spence
Stangeland
Stanton
Stockman
Stump
Tauke
Taylor
Thomas
Trible
Walker
Wampler
Whitehurst
Whittaker
Williams, Ohio
Wilson, Bob
Winn
Wylie
Young, Fla.

NOT VOTING—44

Ambro
Anderson, Ill.
Bellenson
Boggs
Bowen
Brodhead
Campbell
Chappell
Coelho
Davis, S.C.
Dellums
Dodd
Edwards, Okla.
Goldwater
Gradison
Hansen
Harsha
Hawkins
Hinson
Holtzman
Jenrette
Leach, La.
Lederer
Livingston
Lujan
McCormack
Mattox
Mazzoli
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nichols
Nolan
Quayle
Rodino
Sebelius
Shannon
Steed
Symms
Tauzin
Vander Jagt
Whitten
Wydler
Young, Alaska

□ 1210

The Clerk announced the following pairs:

On this vote:

Mr. Rodino for, with Mr. Steed against.
Mr. Nichols for, with Mr. Chappell against.
Mr. Lederer for, with Mr. Campbell against.
Mr. Mattox for, with Mr. Wydler against.
Mrs. Boggs for, with Mr. Edwards of Oklahoma against.
Mr. Murphy of New York for, with Mr. Hansen against.
Mr. Hawkins for, with Mr. Hinson against.

Mr. Jenrette for, with Mr. Lujan against.
Mr. Leach of Louisiana for, with Mr. Symms against.
Mr. Shannon for, with Mr. Vander Jagt against.
Mr. Myers of Pennsylvania for, with Mr. Young of Alaska against.
Mr. Murphy of Illinois for, with Mr. Goldwater against.
Mr. McCormack for, with Mr. Gradison against.
Mr. Dodd for, with Mr. Livingston against.
Mr. Bellenson for, with Mr. Quayle against.
Mr. Coelho for, with Mr. Sebelius against.
Mr. Tauzin for, with Mr. Harsha against.

Until further notice:
Mr. Ambro with Mr. Nolan.
Mr. Bowen with Ms. Holtzman.
Mr. Brodhead with Mr. Whitley.
Mr. Davis of South Carolina with Mr. Mazzoli.

Mr. CLAY and Mr. OBERSTAR changed their votes from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. GIAIMO. Mr. Speaker, I move that the House resolve into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Connecticut (Mr. GIAIMO).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7765, with Mr. BOLLING in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the following Members will be recognized for 30 minutes each:

The gentleman from Connecticut, Mr. GIAIMO;

The gentleman from Ohio, Mr. LATTA;

The gentleman from Illinois, Mr. PRICE;

The gentleman from California, Mr. BOB WILSON;

The gentleman from Kentucky, Mr. PERKINS;

The gentleman from Ohio, Mr. ASHBROOK;

The gentleman from West Virginia, Mr. STAGGERS;

The gentleman from North Carolina, Mr. BROYHILL;

The gentleman from New York, Mr. HANLEY;

The gentleman from Illinois, Mr. DERWINSKI;

The gentleman from California, Mr. JOHNSON;

The gentleman from Ohio, Mr. HARSHA;

The gentleman from Iowa, Mr. SMITH;

The gentleman from Pennsylvania, Mr. MCDADE;

The gentleman from Texas, Mr. ROBERTS; and

The gentleman from Arkansas, Mr. HAMMERSCHMIDT.

And the following Members for 1 hour each:

The gentleman from Oregon, Mr. ULLMAN, and the gentleman from New York, Mr. CONABLE.

The Chair recognizes the gentleman from Connecticut (Mr. GIAIMO).

□ 1220

Mr. GIAIMO. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. PANETTA).

Mr. PANETTA. Mr. Chairman, the House is at a historic point in terms of the budget process. For the first time in the history of the Budget Act since it was adopted in 1974, the House is now proceeding on reconciliation. Reconciliation, by its very nature, was intended to be an extraordinary tool that was developed within the context of the Budget Act. It was not intended to be a normal legislative process. It was intended to be an extraordinary tool to implement legislative savings and to implement the goals contained in the budget resolution. That is what the reconciliation is all about. It is the tool to implement, to expedite the enactment of savings as a package.

If the legislative process were to take piece by piece each of the proposals that are contained in the reconciliation package, then there would be no need for reconciliation. The purpose and the intent behind reconciliation was to be able to put together in one package legislative savings, meaningful legislative savings, so that the House and the Congress could expedite action on those savings and on the goals contained in the budget process.

Why is that necessary? Because the reality is that the committees and the House will not come forward with legislative savings without the implementation offered by reconciliation. And we have seen it. We have seen it happen.

Last year we targeted $2.8 billion in legislative savings in the 1980 budget resolution. Of that $2.8 billion, only $200 million was enacted in legislative savings. At that time we felt that the approach should be to encourage these committees to come forward on their own to deal with legislative savings. But the reality is that we are talking about entitlement programs, we are talking about the area of uncontrollable spending where committees will stray away from unless the tool of reconciliation is present to encourage action.

And so today, as part of the budget resolution enacted a few months ago, we are now implementing reconciliation. Why do we need this discipline? The fact is that we are now dealing with a part of the 75 percent of the Federal budget which is uncontrollable. Over $400 billion of an over $600 billion Federal budget is based on entitlement programs, is labeled "uncontrollable." We have heard that figure over and over again.

To achieve some restraint on Federal spending, it is absolutely essential that committees look at this 75 percent of the budget which is entitlement spending, which is uncontrollable spending, or we will never—we will never—get a handle on the Federal budget. You simply cannot hope to balance the Federal budget or restrain Federal spending based on 25 percent discretionary spending when over one-half of that 25 percent is defense spending.

So the reality is that, if we are really serious about controlling Federal spending, we have to target at those entitlement programs. To encourage that process, we have developed some interesting tools that have been recommended here: Legislative veto, sunset laws, limitation on Federal spending.

But the reality is that reconciliation performs that same role by instructing committees to meet a savings target. And that is what we did this year.

In the first budget resolution we said that eight committees of the House will come forward with $6 billion in legislative savings.

The CHAIRMAN. The time of the gentleman from California (Mr. PANETTA) has expired.

Mr. GIAIMO. Mr. Chairman, I yield 4 additional minutes to the gentleman from California.

Mr. PANETTA. These eight committees were instructed to come forward with $6 billion in legislative savings and $4 billion in terms of the Ways and Means Committee for reforms on the revenue side.

We have a $10 billion savings package that is before the House.

I commend the committees and their chairmen for the hard work that they did in responding to the instructions that were provided in the budget resolution. I know that for many of those chairmen and for many of the members of the committees, this was not an easy task. They were asked to take on programs that they have worked closely with, that they would prefer not to touch. But, on the other hand, they were looking at elements of savings, at administrative controls that are essential and that have been recommended year in and year out, budget resolution upon budget resolution, and for the first time they had to grapple with the issue of achieving those savings.

Those eight committees have come forward. Of the 25 areas that are recommended for savings, the House or the Congress has acted on almost 20 of those areas. We have four contained here that are mentioned in the reconciliation that are public law. We have some 15 areas that were acted upon by the House in one context or another. So the House has affirmed these legislative savings in one way or another. Certainly the vote on the budget resolution was an affirmation of it, certainly the vote on the Udall amendment was an affirmation of this process. But, more importantly, the House has also acted on specific measures that are contained in the reconciliation resolution.

Some will argue that, as a result of current trends in the economy, reconciliation is no longer necessary nor should it be used. Let me say that reconciliation should not be tied to economic conditions. Reconciliation is a process by which committees can review ongoing programs. It is not tied to economic conditions in the sense that, when we have high unemployment or when you have a recession, you ought to do away with reconciliation. Reconciliation is a tool through which committees can continue to review ongoing spending. And that is why it is still important to pass reconciliation as a tool to achieve the goals laid out in the budget resolution.

I want to commend the chairman of the Budget Committee for the work that he has done in emphasizing reconciliation. I want to commend the chairmen of the particular committees that have had to grapple with this issue and have made their recommendations, which I think meet the goals that were provided them within the budget resolution, and I want to commend the chairman of the Rules Committee for keeping a tight rule, because without that we could not implement the basic goals of the reconciliation process.

Mr. Chairman, I urge the Members of Congress to consider this package as a unit, as a first step toward achieving significant legislative savings in one single package and as setting a precedent that has never been accomplished in Congress, a precedent of real savings that everybody likes to talk about but, for the first time, can be achieved in implementing the goals of the resolution.

Mr. LATTA. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, we have before us the omnibus reconciliation bill for fiscal year 1981. This bill, while far from perfect, is, in its original, unamended form, at least a step in the direction toward fiscal responsibility at the Federal level. The reconciliation process embodied in this bill is the only real measure of enforcement we seem to be able to find to control our own excesses. I feel that it is imperative that we pass this bill and establish at least a facsimile of a sound budgetary process.

The budget is the fiscal expression of the administration and Congress priorities. Taking a look at how the administration and this Congress are spending the taxpayers' money, I can only assume that the preservation of the U.S. economy is not one of these priorities.

Although the procedure was conceived in 1974, this is the first year the majority party has used reconciliation. I feel its use is long overdue. As with any "now" method, its implementation has been subject to the effects of outside forces.

Specifically, the reconciliation process has been hampered this year by those who would resort to creative accounting and thus delay, rather than cut, spending, and by those who have used this measure to clean out their legislative closets and attach the residue to this bill.

Also, the partisan atmosphere has done little to speed this much needed bill to the floor, and the gag rule under which it will be debated has made the partisan atmosphere even more stifling.

As we consider this bill, we have to take our current economic situation into account. This bill, with the effects of its pending cuts and the increases in revenues it provides, would save us around $10 billion in fiscal year 1981. Unless the bill is inundated by amendments, we cannot afford to pass up these savings. When Public Law 93-344 went into effect in July 1974 we said that we wanted to establish "effective congressional control over the budgetary process." We have not achieved it. Federal spending still has the American economy by the throat and is choking the life out of it.

Since 1974, the national debt has nearly doubled—from $486 billion in fiscal year 1974 to a projected $962 billion in fiscal year 1981. The amount it will cost us to service this burden for fiscal year 1981 is $80.4 billion, or about 12.7 percent of our total projected expenditures. These massive increases, and the burden that has been placed on the taxpayers are optional. So far, Congress has opted for the course of fiscal profligacy.

The effects on the economy of these spending increases have been catastrophic. Growth in real GNP is down, as is growth in real business investment. Worse, productivity is sinking. Inflation has been reaching alltime high levels and the rate of unemployment is approaching staggering levels. Government spending and the resulting increase in borrowing it requires is crowding private investors out of the market. The Federal Government made up approximately 23 percent of the total credit market borrowings for the period from fiscal year 1975 to fiscal year 1979. This crowding out effect on private investment is another link in the vicious circle whose growth we are fostering. We cannot increase productivity and investment in an adequate or timely fashion without cutting Federal spending.

While this bill encompasses legislative remedies to curb spending from most House committees, in an attempt to curb my own remarks, I will limit my comments to those provisions that originated from one of my own committees, Ways and Means.

The budget resolution required the Ways and Means Committee to find $4.2 billion in additional revenues. While I am in favor of using the reconciliation process to help shrink the budget deficit, I am opposed to the abuse of reconciliation by the administration in order to pass some of its unpopular, unnecessary, and ineffective revenue raising bills.

Among the revenue raising provisions, and perhaps the most obnoxious of the lot, is the provision dealing with the President's cash management proposals for corporations. These provisions, which provide over $3 billion of the total additional revenues, were first presented to the Ways and Means Committee last March. The proposals at that time appeared to have as much popularity among the members of the Ways and Means Committee as another one of the President's revenue raising proposals—the 15 percent withholding tax on savings. Nevertheless, the administration apparently felt that it was most important to remove over $3 billion of vital capital from the economy in order to provide a one-time gain to its election year budget.

The other provisions of the Ways and Means Committee's proposed revenue raising package, while deficient in that it did not have the benefit of legislation action in both Houses of Congress, make some relatively painless, and in some cases necessary, changes in our tax laws.

Last Congress, both the Ways and Means and Interstate and Foreign Commerce Committees spent considerable time in preparing to make needed changes in the medicare and medicaid programs—only to have the bill expire in the Senate's last minute rush to pass bills at the end of the session. This Congress, the House committees again, spent considerable time in passing needed reforms to medicare and medicaid.

While the reforms have great merit, the reconciliation bill is not the appropriate vehicle to pass legislation not now on the statute codes. To allow reconciliation to be used to create new programs is to corrupt the system. Never the less, it was chosen as a safety valve to assure that these reforms would be given adequate consideration by the other body and would be enacted. H.R. 3990 and H.R. 4000 are included in this reconciliation package and are necessary to make the medicare and medicaid programs more responsible to their constituencies, but they should never be included in a reconciliation bill.

While I support most of the changes in the medicare and medicaid programs, I have some concerns about the revision of the home health services that were included in H.R. 3990. In my judgment, the States ought to have the authority to determine the licensing requirements for proprietary home health agencies.

The bill removes the requirement that proprietary home health agencies can only operate in States that have licensing requirements. The bill further allows the Secretary of HHS to establish administrative requirements for these home health agencies. I am concerned that this action might result in more redtape and regulations, and could have the effect of taking away States rights to determine which home health agencies will be allowed to operate in the State.

However, H.R. 3990 makes important changes in the medicare and medicaid reimbursement policy. Among those are to allow: First, dentists to serve their patients in a hospital setting in the same manner by which physicians serve their patients; second, speech pathologists to service patients directly; third, chiropractors to be reimbursed for services in connection with X-rays previously required by medicare; fourth, optometrists to provide postsurgical lenses for aphakic patients; and fifth for expansion of the limitation on services furnished by physical therapists on an outpatient basis. The bill also makes changes in certain automobile insurance cases, reimbursement for blood and ambulance services, and changes in outpatient mental health benefits.

H.R. 4000 makes a number of reforms in the medicare and medicaid program specifically with regard to the Profes-

sional Standards Review Organization (PSRO's). It expands the membership of PSRO's to correspond with individual hospital admittance practices and also expands the membership on statewide council advisory groups.

As a result of a recent court ruling, H.R. 4000 provides that no PSRO will be required to make available any records pursuant to a request under Freedom of Information Act until 180 days after the entry of a final court order requiring such disclosure. That is a great improvement.

Further, the bill provides that, in determining the amount of reimbursement for nonprofit hospitals under these programs, grants, gifts, and income from endowments are not to be deducted from hospital operating costs. In addition, H.R. 4000 makes reasonable changes in Life Safety Code requirements for health institutions and eases the accounting procedures for hospitals who provide long-term care services or "swing beds."

By repealing section 227 of the 1972 Social Securiy Amendments, reimbursement under medicare and medicaid to hospitals with approved teaching programs for services rendered by physicians is authorized, if the hospital so elects, and, if all physicians agree not to bill the program eligibles for professional services rendered in the hospital. Otherwise, physicians in teaching hospitals are to be eligible for reimbursement directly under the physician payment provisions. Finally, the bill authorizes changes in reimbursement for HMO's.

While I would have preferred that H.R. 3990 and H.R. 4000, could have been passed on their own and not part of the reconciliation process, the changes in both bills will greatly improve the medicare and medicaid programs for both the provider and the patient. I hope these provisions, in the original bills, will be accepted by the Senate and quickly be enacted. They are long overdue.

The Rules Committee provided for the Bauman and Vanik amendments to be in order. I oppose both amendments.

I strongly oppose the Bauman amendment to restore the second cost-of-living adjustment (COLA) that the reconciliation bill is designed to eliminate. By eliminating the twice a year COLA, we can save all our taxpayers about $756 million. It is wholly unnecessary and wasteful to escalate Federal pensions more often than once a year.

The Bauman amendment will maintain a preferential, unearned benefit for an elite group in our society. The taxpayers should not be required to bear this inflationary burden merely to provide another benefit, unmatched elsewhere in our society to any already privileged group.

If we cannot defeat the Bauman amendment, we can never control our budget.

I also oppose the Vanik amendment which reverses the Ways and Means Committee's decision to rescind H.R. 1543, which provided changes to our trade adjustment assistance program. The Vanik amendment would delay passage of H.R. 1543 for 1 year. I believe the committee made a wise choice to rescind passage of H.R. 1543, which would have resulted in a costly extension of benefits under the TAA program.

This trade readjustment assistance bill would have added about $822 million in the first year alone, with no indication that the funds would accomplish the original intent of the TAA program, which I do support. In addition, it is apparent that the other body will not pass H.R. 1543, so this exercise is destined for futility in any case.

I hope my colleagues will vote to support the Ways and Means Committee's rescission by opposing the Vanik amendment and thereby conforming to the spirit of the reconciliation bill. During the next Congress, we will have a much better opportunity to reevaluate the TRA bill in more realistic terms to make the needed reforms. If Vanik is passed, reconciliation becomes deferral instead of honest decisionmaking. Deferral merely will prove again that Congress does not have the courage to restrain its spending.

I am not as satisfied with all of the Ways and Means Committee's actions as its opposition to the Vanik amendment, but will support them. A part of its proposal to make the required $2 billion in spending cuts, the Ways and Means Committee made some necessary changes in the laws pertaining to unemployment compensation. These proposals would: first, terminate the provision providing for Federal reimbursement from the FUBA account from unemployment benefits paid to CETA workers; second, increase the length of service in the Armed Forces required for ex-military personnel for purposes of unemployment benefits; and third, terminate extended unemployment insurance benefits when the benefits are paid under an interstate claim in a State where the unemployment level, has not triggered the extended benefits period. I think that all of these provisions are desirable. They do not cause the loss of any unemployment benefits to any worker who has lost his job and has been unable to secure new employment, while at the same time, they tighten up the eligibility requirements for unemployment compensation, so that we do not continue to encourage workers to remain on the unemployment rolls.

Finally, the reconciliation package makes an attempt to cut some of the formerly untouchable areas of the budget. These entitlements must be cut if we want to get spending under control. A great part of entitlements are deadweight and should be trimmed. Since our oversight committees seem unable, or rather, unwilling, to do this it must be attempted by other means, such as the reconciliation process.

This reconciliation measure would be important if only for the savings it is bringing us. However, its impact is magnified by the effect it could have on the budget process as a whole.

Reconciliation is an act of self-discipline, something that is sorely needed, almost unheard of, in this Congress. It could be the start of a more controlled, prudent approach to Federal spending. It probably is not our last chance to gain control of expenditures, but today its the only game in town. If we pass this opportunity, we signal to our constituencies, that we are untrainable and that others are needed in our places to restore fiscal sobriety.

I urge my colleagues to support this measure without amendment. It contains many flaws, but it is very much needed to offset the ruinous spending policies initiated by the Carter administration and previously ratified by this Congress.

This bill does not entirely satisfy me for a number of reasons. Some of its cuts in entitlement programs are temporary where they should be permanent. Some of its so-called cuts are mere postponements. Some of its cuts will lead to increases in costs in the outyears of these programs. But its the only opportunity available now through which to show first Congress does not intend to insult the taxpayers forever.

□ 1230

Mr. PANETTA. Mr. Chairman, I yield 3 minutes to the majority leader, the gentleman from Texas (Mr. WRIGHT).

Mr. WRIGHT. Mr. Chairman, this is a significant and historic day in the House of Representatives. For the first time, we are taking an extra step. We are going the second mile to make the budget process a reality.

We might describe the budget resolution which we adopt in the spring of each year as a roadmap pointing the direction toward a fiscally prudent result, and this year's case a balanced budget. The reconciliation bill which we now have before us is the fuel by which our vehicle can reach the destination marked on that roadmap.

In one sense the budget resolution is a skeleton outline, and those reforms embodied in this piece of legislation are the flesh and blood that can make that skeleton a living and breathing reality.

Pursuant to our budget resolution directive of last June, wherein we reached a balanced budget, 18 committees of the House have adopted a total of some 22 separate spending reforms and 6 separate tax reforms which have been encompassed in this one piece of legislation.

The spending reforms are calculated to save a total of some $6 billion in fiscal 1981. The tax reforms will save almost $4 billion if all are adopted. Even taking the least optimistic fiscal case under this rule that we have approved, assuming the adoption of amendments and the restoration of the semiannual cost-of-living adjustment for retirees, which I believe a majority of us will support, the total saving by the adoption of this bill still will be at least $8½ billion or probably $9 billion in the new fiscal year.

I want to point out that we have not sought to balance this budget upon the backs of the elderly in our society. There were suggestions made to the group originally attempting to achieve a balanced budget, that we might do so by restructuring the formula under which the cost-of-living percentage is computed for our elderly citizens. But when

it became apparent that this was being proposed with the preordained goal of saving money under the premise that housing costs were less for senior citizens than for others, we rejected that idea. We realized that other costs like medical and health care costs are quite considerably higher and that it would be grossly unfair to attempt to rearrange that formula with the specific goal, as one who shoots the arrow first and then draws the target where the arrow hits, of saving money at the expense of our retired citizens. So we dropped that proposal.

In my opinion it would be eminently more fair to lift the ceiling on allowable outside income for social security retirees.

□ 1240

The CHAIRMAN. The time of the gentleman from Texas (Mr. WRIGHT) has expired.

Mr. PANETTA. Mr. Chairman, I yield 1 additional minute to the gentleman from Texas.

Mr. WRIGHT. Another proposal was suggested to the effect that additional revenues might be achieved if we were to impose a tax upon those who were the recipients of social security benefits. That was overwhelmingly rejected. Upon the same general premise, I believe we shall today reject the proposed cutback in cost-of-living adjustments for military and civilian retirees.

So what we have achieved here, while not a perfect instrument—and we will never have a perfect instrument in this imperfect world—is at least an honest attempt on the part of this Congress to make good on its promise of a balanced budget. And we shall not balance it upon the backs of those who can least afford it.

I think it is a significant day in the history of the Congress. After the membership has worked its will upon the amendments before us, I urge our support for the passage of this bill because I believe it is an important milestone in our quest for fiscal responsibility.

Mr. PANETTA. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Chairman, let me just point out two facts that we have to keep in mind. One is that an increasing percentage of our tax dollar is going for interest, rather than for goods and services. Whether you are a conservative, Liberal, Democrat, or Republican, that just does not make sense.

In theory, this reconciliation, assuming now no amendments were to be adopted, would save about $10.4 billion. While the prime rate right now is 11½ percent and the Treasury bonds coming due in 1982 are now 11 percent, the best rate (from the Government viewpoint) you can get on Treasury bonds (those due in 1981) is 10.3 percent. If you apply that best rate to the $10.4 billion, you are talking about $1,071,000,000 each year from now on that will be spent either on interest or on jobs programs or aid to the handicapped or a reduction of taxes to taxpayers or something else; so we have this choice of continuing an interest payment or using that money more effectively and in a noninflationary way.

The second point that we have to keep in mind is that any rational analysis of our budget process over the last 21 years suggests that we need some additional restraint. That additional restraint will either come from the legislature, from this body, or it will come inevitably from the executive branch of Government, one of the two.

Those of us who support this reconciliation resolution are suggesting that that restraint ought to come from the legislative side of Government.

Mr. LATTA. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, for some time now I have been looking forward to the time when the House would consider its first reconciliation bill. You know, the congressional budget process has been in being now for some 6 years. Believe it or not, this is the first time we have had an opportunity to consider it on this floor; but since 1977 every Republican budget substitute has included reconciliation as an essential part of bringing Federal spending under control. Each and every one of these substitutes was defeated by the majority. Only a year ago when we were considering the second budget resolution for 1980, the Senate wrote reconciliation into its version of the budget resolution, but that, too, was rejected by the majority in this House.

For these reasons, I was particularly gratified that the House has finally consented to subject the spending committees to the long overdue discipline of reconciliation.

Unfortunately, the promise of reconciliation far exceeded the results. Several of the committees did a responsible, reasonable job. Others did their best to take advantage of the situation and to sabotage the very intent and purpose of the law. As I have mentioned, reconciliation was seen as one of the few means available to the Congress to reduce uncontrollable entitlement portions of the budget; but several of the committees recommended only one shot, one-year's savings in some entitlement programs, these very programs becoming totally uncontrollable once again in 1982.

Mr. Chairman, I do not believe this is what we had in mind when we talked about reconciliation.

Let me mention the Committee on Ways and Means as one committee. It did not even go so far as to make a one-shot, 1-year savings; but instead, produced a phony savings of $675 million merely by postponing a medicare payment to hospitals scheduled for next September and making it, instead, several weeks later in October, the first month of the next fiscal year.

Now, I do not know whether we had that type of savings in mind when we talked about reconciliation or not, but I do not believe we did.

The taxpayers are not saved 1 penny by this maneuver and the 1982 deficit will be $675 million higher because of this abuse of the reconciliation portion of the Budget Act.

Other committees did their best to make cuts where they were least justified in order to spare some of their more wasteful programs. For example, at the very time our National Guard and Reserve Armed Forces are at their weakest levels in 30 years, the Committee on Post Office and Civil Service decided to further discourage participation by penalizing Federal employees who are also members of the Guard or Reserve. They would do this by cutting out the extra pay these employees now receive when they attend the annual 2-week training exercises in the summer. In my mind, such a proposal is a gross distortion of our most pressing national priorities; yet they took this particular program as a way to save. But these intentional end-runs on the congressional budget process pale in comparison to what three of the eight committees, which I mentioned earlier, ordered to reconcile did in reporting out their recommendations. Not content to live within the technical requirements of the reconciliation instructions—that is, to reduce spending—three committees decided to increase spending in programs under their control in the hopes that these new spending programs would slip through the House, unnoticed and untouchable under a closed rule.

Included in this reconciliation bill are new spending provisions which we will not be able to touch, which will cost the American taxpayer $3.1 billion or more during the next 5 years. So for those of you who think we have before us a bill which will reduce spending, let me tell you that hidden within the bill are 26 separate provisions which will cost $3.1 billion.

So all that glitters is not gold as far as savings are concerned and we have $3.1 billion as increases that you cannot touch.

Now, it does not surprise me that several of the committees inserted the spending increases. After all, they did not like the idea of reconciliation in the first place. But what really disappoints me is that the majority on the House Budget Committee and on the Rules Committee, the two committees charged with enforcing the Budget Act, refused to do anything about it and this House then followed suit and refused to do anything about it.

Now, let me make one thing clear about these particular programs. I do not oppose the individual programs which go toward making up this $3.1 billion. I do not know of any opposition to them in this House; but the question is whether or not the reconciliation procedure is a procedure to use in coming forth with new spending initiatives. I say it is not and we will rue the day we did that in this House today, because reconciliation was not intended to add, but to cut spending.

I have gone over the legislative history of the Budget Act with particular emphasis on those sections dealing with reconciliation and find not a single reference to reconciliation being anything other than the means to reduce

uncontrollable spending programs and to raise revenues. Not a single mention is made of using reconciliation to both reduce some spending and increase it elsewhere. For those of you who were not here in 1974 when the Budget Act passed, or for those of you who were but have a selective memory, I would urge you to read the House floor debate at the time the conference report on the Budget Act was being considered.

□ 1250

Virtually every Member agreed that at long last we were going to get deficit spending under control, do away with devious, backdoor spending, and beat inflation. I would like to share two statements with my colleagues that were made at that time. The first was made by the chairman of the Rules Committee, and I quote:

> The problem is that new programs have a way of developing powerful constituencies, and payments to individuals have a way of being made into voters. So in the last analysis we come back to the question of will. Do we have the will to make this new tool work? I hope we do because the alternative is a budget completely out of control, and a nation which is rapidly outspending its resources.

I could not agree more with that statement. But apparently today we do not have that will he talked about.

This trade-off business, I do not know where that came into being, in order to get one thing we have to trade something. I do not buy that at all.

Let me also quote a former Member of this House, the Honorable H. R. Gross of Iowa who said at the time in response to all of the praise being lavished on the new Budget Act:

> I will not be here when this alleged reform goes into operation, but I predict the Members of this House. . . . will quickly find ways to warp and bend the reform rules laid down here today and, at least, some of the Members present on the floor today will be part of it.

Mr. Chairman, if anything sums up what the Congress has done with the budget process, that does it in a nutshell.

Now, once again, today we are being asked to warp and bend the budget process because it suits the desires of a handful of Members, many of whom were here when the Budget Act was passed.

New spending programs have absolutely no place in a reconciliation bill. We have heard the argument put forth about the trade-offs, and that some consider reconciliation something to trade with. I do not buy that at all.

We have heard the argument that we have assumed some of these spending increases in the first budget resolution, and I cannot accept that assumption.

So I am here to say today that we will rue this day that we have established a precedent in this House, that when reconciliation comes before this body in the future we will have all committees of the Congress, not just three, attempting to bring in new spending initiatives and trading off, as one might say, or has been said here in argument, or they might say we have assumed it in one resolution or another. But, nevertheless, it will come down to more spending, more inflation, and more taxes for the American people.

Mr. FINDLEY. Mr. Chairman, will the gentleman yield?

Mr. LATTA. I am happy to yield to the gentleman.

Mr. FINDLEY. I am wondering if we may also rue the day when we started on the road of bringing to the floor bills under rules as complex as the one under which we are now operating. As I read the rule, time is being yielded to nine different committees. Is that correct?

Mr. LATTA. That is correct.

Mr. FINDLEY. I look back with nostalagia on the day when one single committee controlled all time on a bill. It would seem to me much more orderly for the Budget Committee to be controlling all time on this bill, and I say that with due respect for the other committees invloved. I suspect this is inspired by the new rule under which many bills are referred for consideration to more than one committee. I would suggest to the gentleman that we are fast ruing the day that we started on that road, too.

I fear that the legislative process is literally going to grind to a halt the way we are going.

Mr. LATTA. I could not agree more with the gentleman. As far as the legislative process grinding to a halt, the mere fact they are mentioning a lameduck session indicates something has to be done.

Mr. GIAIMO. Mr. Chairman, I reserve the balance of my time.

Mr. LATTA. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The next Members to be recognized are the Chairman of the Armed Services Committee, the gentleman from Illinois (Mr. PRICE) and the ranking minority member of the Committee on Armed Services, the gentleman from Alabama (Mr. DICKINSON).

The Chair recognizes the gentleman from Illinois (Mr. PRICE).

Mr. PRICE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman. I rise at this time to explain briefly the provision of title I of the reconciliation bill now under consideration.

The Members are aware that the Committee on Armed Services was directed in House Concurrent Resolution 307 to report to the Budget Committee legislation to reduce expenditures in fiscal year 1981 by $400 million.

The Committee on Armed Services has concluded that the required reduction could best be achieved by adopting legislation that would temporarily suspend the automatic adjustment mechanism for military retired pay. The committee would have preferred to suspend the increase in retired pay that is scheduled for March 1981. However, based on the economic assumptions used by the Congressional Budget Office, it appears that only a suspension of the September 1980, increase would generate reductions sufficient to satisfy the reconciliation requirement.

The effect of this proposal would be to defer the increase in military retired pay that otherwise would occur on September 1, 1980. In March 1981 the percentage by which military retired pay would otherwise be increased would be augmented by the percentage that retired pay would have been increased on September 1, 1980. Under the proposed provision, the semiannual adjustment in retired pay would be resumed on September 1, 1981.

In addition, the conference report on H.R. 6974, the Defense Authorization Act for fiscal year 1981, contains an identical provision.

I point out to the Members that this provision differs from the provision advanced by the House Committee on Post Office and Civil Service for retired civil service personnel. Under that committee's proposal, the March 1981, increase would be deferred rather than the September 1980 increase.

The Armed Services Committee has specifically conditioned its provision for the annualization of retired pay increases on similar action being taken in the case of retired civil service personnel. The committee believes that retired Federal personnel—military and civil service—should be similarly treated with regard to cost of living increases in retired pay. Should the amendment to be offered by the gentleman from Maryland (Mr. BAUMAN) be adopted by the House and by the conference, neither the provision in title I of this bill nor the similar provision in the Defense authorization bill will become operative.

On the other hand, the delay in enacting the legislation before us now will require some adjustment to this legislation and to the Defense authorization bill should the amendment of the gentleman from Maryland not be adopted. The September increase has become effective. Military (as well as civil service) retired pay is accuring at the higher rate effective September 1, 1980. Should the civil service retirement system be changed to defer either the September 1980, or March 1981, cost-of-living increase, the provision in the Defense authorization bill would become enabled and the September increase would be deferred—after it has been provided. It was never the intent of the Armed Services Committee to revoke the increase; at most, only to defer it. Therefore, I strongly recommend that, if necessary, the conferees modify, at the appropriate time, not only the provision in the reconciliation bill but also the provision in the Defense authorization bill to avoid a retired pay cut for military retirees that would presently be required if a change is made to the civil service system.

In conclusion, the recommendation for eliminating the September 1980 increase is made by the Committee on Armed Services with reluctance but in conformity with the requirements of the reconciliation direction in the first concurrent resolution in the budget for fiscal year 1981.

□ 1300

Mr. DICKINSON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the Chairman of the Committee on Armed Services and his statement that he has

just given on this subject, title I of H.R. 7765.

The Committee on Armed Services in compliance with the direction contained in the first concurrent budget resolution on the budget for fiscal year 1981 has proposed that the scheduled September 1980 retired pay increase be suspended. Under the Armed Services Committee proposal, the semiannual adjustments in retired pay will be resumed in March 1981. Under that proposal the March 1981 adjustment would reflect the increase in the Consumer Price Index for the entire calendar year of 1980.

This action achieves savings in the order of magnitude required by the first concurrent resolution on the budget for fiscal year 1981, but preserves the permanent law providing for semiannual adjustments in military retired pay.

Time has passed us by on this specific provision, and some action must be taken to recognize that the provision was recommended well in advance of the September cost-of-living increase which already has gone into effect. Retired pay for military and civil service retirees has begun to accrue already at a higher rate, and it would be unconscionable to take it away at this time. Should the provision deferring the adjustment of civil service retired pay remain in the reconciliation bill, we must change the provision affecting military cost-of-living increases, both in this bill and in the Defense authorization bill, which contains a similar provision.

In other words, Mr. Chairman, all we are trying to do is effect equity. To say that the military will be treated the same as the civilian sector, I think, is only commonsense and fair. I would hope that the committee would see fit to do so.

Mr. Chairman, I reserve the balance of my time.

Mr. PRICE. Mr. Chairman, I yield 10 minutes to the gentleman from Texas (Mr. WHITE).

Mr. WHITE. I thank the chairman of the full committee for yielding time to me.

Mr. Chairman, section 403 of the Omnibus Reconciliation Act of 1980 would eliminate military leave pay to Federal employees while they are on their annual 15-day period of active duty. Today, there are 115,000 Federal employees who also serve as members of the Guard and the Reserve.

The Federal Government established military leave pay to Federal employees some 50 years ago to encourage Government employees to voluntarily participate in reserve programs. Subsequently, most State, county, and municipal governments and additionally many private industries and businesses have also adopted the program. Today, 48 out of the 50 States now pay the civilian salary of their employees while they are on military active duty. A recent survey indicates that 12 percent of the private industry sector do also.

Many of the employees of the Federal, State, county, and municipal governments as well as employees of private industry volunteered for service in the Reserve and National Guard because of the attractiveness of this incentive which allows them to receive both their civilian pay as well as their military pay, while they are serving their annual 15-day period of active duty.

If section 403 is adopted, it would be only a matter of time until State, county, and municipal governments, as well as private industry would follow the lead of the Federal Government. Such action would, in my opinion, cause a wholesale loss of members from the Guard and Reserve because they would perceive that they were losing a benefit; another erosion of their entitlements.

It makes no sense to me to spend large sums of money for recruiting, bonuses, et cetera, to encourage civilians to join the Reserve and National Guard and then take away a benefit that will decimate the organizations that we are devoting so much time, effort, and money to build as a critical component of our Defense Establishment.

I am opposed to section 403 of the Omnibus Reconciliation Act of 1980. I urge those Members of this House who are appointed to the House/Senate conference committee to keep in mind the urgent need for incentives to provide manpower for the Guard and Reserve.

Mr. PRICE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. DICKINSON. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The gentleman from Kentucky (Mr. PERKINS) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. ASHBROOK) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. Mr. Chairman, first let me state that we did our best to reconcile our differences with the Committee on the Budget, but in doing so I feel that we did considerable harm to our school lunch programs and other programs. It was my hope that we would have had the opportunity to offer an amendment to restore approximately a half billion dollars to the school lunch program, and we were foreclosed of that opportunity. But I do want to take a moment to point out why I feel that we will do harm to the school lunch program. The response of the Committee on Education and Labor to the direction by the Congress to report legislation to reduce spending is contained in title II of the Omnibus Reconciliation Act of 1980. Title II has three subtitles. Subtitle A deals with child nutrition programs, B with Federal employees compensation, and C with the student loan program.

Details of the cuts, including cost estimates prepared by the Congressional Budget Office, are fully described in the report accompanying the reconciliation bill. I shall not take the time of my colleagues in discussing the programs which provide savings of under $30 million.

Under subtitle A, savings estimated at $190 million would come from the school lunch program. The bill proposes that for fiscal year 1981 the basic Federal reimbursement for all school lunches be lowered by 2.5 cents per meal, except in school districts in which 60 percent or more of the children received free or reduced price meals in the second preceding fiscal year.

The effect of this proposal would be to lower the estimated fiscal year 1981 reimbursement rates from approximately 19.75 cents to 17.25 cents. The U.S. Department of Agriculture assumes that there will be a reduction of 36 million meals reimbursed at the paid rate because of a drop in participation. Estimated fiscal year 1981 savings—$85 million.

Additional cash subsidies are provided to the States for serving lunches free or at a reduced price to needy children whose family incomes fall within income guidelines prescribed by law. The bill before you proposes that the provision that updates the poverty guidelines to the beginning of the relevant fiscal year be eliminated.

This proposal also eliminates the current allowance permitting families to deduct from their incomes special hardship expenditures (for example, high medical and housing expenses) for determining the meal subsidy class.

In place of the hardship deductions the proposal would allow a standard deduction comparable to that used in the food stamp program.

The bill provides for the elimination of the currently allowed higher reimbursement for reduced price lunches served in States that provide a uniform charge for each such lunch that is less than 20 cents. This special assistance factor allows up to 10 cents additional reimbursement for reduced price meals under these circumstances.

Elimination of the higher special assistance reimbursement will have the effect of reducing the reduced price reimbursement rate by approximately 10 cents for more than 90 percent of the reduced price meals currently served. Estimated fiscal year 1981 savings—$105 million.

Reimbursement rates in the school lunch, breakfast and child care food programs under current law are adjusted semiannually in January and July. The bill would change from the current semiannual inflation adjustments of reimbursement rates to annual adjustments for the school lunch, breakfast, summer food, and child care food programs. The effect would be to maintain the reimbursement levels established in July of each fiscal year for the entire fiscal year, instead of updating for the previous 6 months' inflation in January.

Thus, assuming continued inflation, the reimbursement levels would remain at lower levels than currently allowed with a semiannual adjustment. Estimated fiscal year 1981 savings—$75 million.

A reduction is proposed in the per meal value of donated commodities. Fed-

eral assistance is provided in the program of cash and donated commodities for distribution to schools and institutions for school lunches and meals served in the child care food program.

The cash assistance factor is adjusted yearly to reflect changes in the producer price index for foods used in schools and institutions. The total program cost is estimated at $747.6 million for fiscal year 1980.

The bill would reduce the mandated level of commodity assistance for each school lunch and child care meal by 2 cents. This would have the effect of lowering the estimated average commodity reimbursement for each such meal from approximately 17 to 15 cents. Estimated fiscal year 1981 savings—$90 million.

The special milk program would be affected by a reduction proposed in the reimbursement rate for milk served to paying children. Federal subsidies are paid for the full cost of milk served free to children qualifying under the Secretary's guidelines. The subsidy for paying children is adjusted each school year to reflect changes in the producer price index for fresh processed milk.

The bill would lower to 5 cents and freeze the reimbursement for milk served to paying students in schools, institutions or camps that provide federally subsidized meal service.

This change would not affect the reimbursement for free milk served to needy children, or paid milk served in schools or institutions that have no meal service program. The effect of this proposal would be to lower the estimated reimbursement for paid milk from an estimated rate of 8.4 cents in fiscal year 1981 to a flat rate of 5 cents for fiscal year 1981 only. Estimated fiscal year 1981 savings—$57 million.

Subtitle B relates to the Federal Employees' Compensation Act and in effect represents the recommendation by the administration contained in Executive Communication No. 4020.

The Federal Employees' Compensation Act (FECA) was enacted in 1916 to provide compensation benefits for Federal employees injured or killed performing their duties. Cost-of-living increases were provided to FECA compensation claimants by the 1966 amendments to the act. Existing law provides that if a claimant has been receiving compensation for more than 1 year, compensation shall be increased whenever the Consumer Price Index rises at least 3 percent for 3 consecutive months over the index of the latest base month.

The proposed legislative change would provide annual FECA cost-of-living adjustments, which would put FECA on the same timetable being proposed by the administration for the Federal civilian and military retirement systems as part of the President's budget revisions for fiscal year 1981.

When this legislative proposal is enacted, the next benefit adjustment would not occur until March 1, 1981 and would be based upon the CPI change between the last date on which the current law adjustment was applied (probably September 1, 1980) and December 31, 1980. Estimated fiscal year savings—$33 million.

Subtitle C contains the changes proposed for the guaranteed student loan program.

Two proposals contained in the reconciliation bill have already been adopted by the House when the conference report on H.R. 5192, Education Amendments of 1980, was passed on August 28, 1980. One allows for providing information concerning student borrowers who are in default to credit bureau organizations. The other reduces the special allowance by one-half on new guaranteed student loans made with the proceeds of State revenue bonds. As I said, both these proposals are contained in the conference report on H.R. 5192.

The most significant legislative proposal remaining in subtitle C relates to the new parent loan program that was created in H.R. 5192. The reconciliation provision would amend the new parent loan program by forcing parents to borrow to the full extent permitted under the program before a student could apply for a guaranteed loan. This would result in a reduction in loan volume by which savings estimated at $134 million would be achieved in fiscal year 1981.

This proposal will have the effect of severely limiting or terminating the operations of State guarantee agencies, which have proven themselves to be a very effective mechanism for promoting the participation of lenders and for curbing student loan defaults.

In addition, this proposal is likely to have an adverse effect on new State agencies which have been established as a result of the encouragement and reforms included in the Education Amendments of 1976. Estimated fiscal year 1981 savings—$42 million.

When the committee acted to report its cuts, there was no specific information on the next steps in the process. There had been discussions on the staff level, and we had a copy of a document (unattributed and undated) entitled "Questions and Answers on Reconciliation in the First Budget Resolution, Fiscal Year 1981."

In that document the answer to question No. 7 "Will amendments to the reconciliation bill be in order on the floor?" was: "The Rules Committee has the responsibility to draft a rule appropriate for the consideration of all parts of the reconciliation bill. It is likely that the eligibility of specific amendments will be addressed at that time."

On July 3, 1980 (the day following the deadline for the reporting of reconciliation provisions) a letter from the Speaker stated:

> The Rules Committee will consider the reconciliation bill for purposes of fashioning a rule.

Whatever rule each of us may have envisioned back in July, I am sure no one could have imagined the current rule which denies a separate vote on all the savings provisions except for the cost-of-living adjustment to Federal and military retirees. Equity demands that separate votes should be permitted for all provisions of the reconciliation measure.

□ 1320

As I stated at the outset, we have complied the best we can, but I feel that we are practicing a lot of false economy in supporting this resolution at this time.

Mr. Chairman, in my judgment the reconciliation bill before the House represents poor legislation—both in substance and in procedure. I acted in accordance with the mandate of the Congress to report savings in order to balance the budget, but in my judgment we have mandated cuts in the wrong place. The budget for fiscal year 1981, in light of economic trends that were as evident in January 1980 as in July 1980, cannot successfully be balanced. To have forced reconciliation on the House under the guise of achieving a balanced budget on the items mentioned by me is not an achievement to be admired. I think we were put more or less in a straitjacket here, and we are going to cause many of our good programs to suffer considerable damage.

Mr. PEYSER. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to my distinguished friend from New York (Mr. PEYSER).

Mr. PEYSER. I thank the chairman for yielding to me. I want to join with him, in what he has just mentioned in his most thoughtful statement, and also again point out that in my opinion the hardships and the problems we are going to cause by the enactment of this legislation, we are hitting at really the wrong places. I think it is unfortunate that we are not going to have the opportunity to vote and express ourselves on this kind of an issue.

I particularly am thinking of the families, both poor and middle income, who are going to be severely impacted by the changes that will come about under student loan programs, and for the poorer children particularly under the school lunch program, that the chairman himself has been so involved in and has played such a key role over the years in seeing that they reach the level they are at today.

I simply want to make it known that, in today's inflationary period, in striking at these areas as a method of securing a so-called balanced budget that in truth is not going to be balanced is really bad. I resist it personally, and will continue to resist it in every way I can, but I just think that the Congress itself is going to have to move—if not this year, immediately next year—to rectify this particular problem.

I thank the chairman for yielding.

Mr. PERKINS. Let me thank my distinguished colleague from New York.

Mr. Chairman, I now yield 5 minutes to the distinguished gentleman from New York (Mr. WEISS).

Mr. WEISS. Mr. Chairman, I thank the distinguished chairman of the Committee on Education and Labor for yielding to me.

Mr. Chairman, the distinguished chairman of the Education and Labor Committee has very thoroughly and very eloquently stated in detail the problem that we face in relation to the cutbacks that have been mandated on the Education and Labor Committee. I will not repeat what he has said, but want to associate myself fully with his statement.

I do want to underscore the point which he made: These are not just words or numbers on a piece of paper we are discussing; we are literally taking food out of the mouths of children in the cutbacks that are being mandated. Indeed, the U.S. Department of Agriculture has projected that because of reduced participation by children there will be some 36 million fewer lunches served and some $85 to $90 million saved.

Children will be dropping out of the program because their parents will not be able to afford the additional cost which the Federal Government is now bearing. That is literally taking food out of the mouths of children.

I do not understand how under the false guise of balancing a budget we can do that kind of thing. I want to refer, Mr. Chairman, very briefly to how we find ourselves where we are right now. During the spring of this year there was a great game of pretense that went on in this body about how this process of reconciliation on the first budget resolution was essential in order to have a balanced budget. The argument was a sham even then, but at least on paper it added up.

Currently, the Secretary of the Treasury, Mr. Miller, has said to us that the budget for fiscal year 1981 will be out of balance, will be in deficit somewhere between $25 and $30 billion—and that is a very conservative estimate. That is not counting the projected tax cut of an additional $25 to $35 billion. And so, here we are, pursuing a myth which was false to begin with, and taking a half a billion dollars in food subsidies out of the mouths of children.

□ 1330

Mr. Chairman, it is particularly ironic that we are doing this at a time when the whole process of reconciliation and budget resolution has been turned on its head. In 1973, when this legislation was first considered, Senator Ervin, then Chairman of the Senate Government Operations Committee, stated, and I quote:

> Long and serious consideration was given to the possibility of setting a firm limit on total expenditures in the first budget resolution.
>
> However, we were persuaded that Congress needs a flexible budget process, one that can respond to changing circumstances and that an early determination of spending ceilings might be rigid and premature.

He was talking about exactly the kind of situation we find ourselves in.

Our distinguished Chairman of our Committee on Rules, who is an architect of the Budget Act, stated on the floor of this House on December 4, 1973, and again I quote:

> The first concurrent resolution on the budget would set tentative total levels for new budget authority and outlays. . . . These figures would operate to guide Congress during its subsequent consideration of the various spending bill.

It was never intended that in the first budget resolution we would be tying in and legally binding by this reconciliation process figures that were supposed to be simply totals.

It is doubly ironic, because here we are barely 10 days away from the deadline for the second budget resolution, which requires that there be a total review of the basic economic assumptions on which the first budget resolution was based. Those assumptions are totally out of whack. When they first came down, the projection was that at the end of fiscal 1981 we would have a 7.2-percent unemployment rate. We currently, right now, at this very minute, have a 7.8-percent unemployment rate.

Mr. Chairman, the better part of wisdom, would be to defeat this reconciliation measure, have the Budget Committee review the basic economic assumptions, and let them come back to us with a second budget resolution which will be based not on myth but on reality.

Mr. Chairman, I am opposed to the Omnibus Reconciliation Act of 1980.

As provided under the Budget Act of 1974, the first concurrent budget resolution sets spending targets for the coming fiscal year. The legislation we consider today now attempts to apply the reconciliation procedure to the first resolution. If this is adopted, these targets will then in effect become fixed ceilings. This was not the intention of the Congress in 1974 when both Houses decided to use the first concurrent resolution to establish targets, and rejected the idea of fixed ceilings. In the floor debate on March 17, 1974, Senator Sam Ervin, then Chairman of the Senate Government Operations Committee stated:

> Long and serious consideration was given to the possibility of setting a firm limit on total expenditures in the first budget resolution . . . however, we were persuaded that Congress needs a flexible budget process, one that can respond to changing circumstances and that an early determination of spending ceilings might be rigid and premature . . .

Our distinguished colleague, Representative RICHARD BOLLING, an achitect of the budget act, stated on the House floor on December 4, 1973, that—

> The first concurrent resolution on the budget would set tentative total levels for new budget authority and outlays . . . these figugres would operate to guide Congress during its subsequent consideration of the various spending bills.

Clearly, reconciliation was never intended to apply to the first budget resolution.

We are debating reconciliation when the deadline for the budget resolution is barely 10 days away, if we must impose reconciliation, consideration of the second budget resolution may be the more appropriate time for discussion and revision. The economy has changed since the time when the committees first considered this legislation, months ago. And that was a time when it was being considered as a means to achieve a balanced budget. If reconciliation were to be adopted during consideration of the second budget resolution the legislative savings could be properly modified to be in line with the economic realities of today. We are imposing an unnecessary and complicated burden by debating this outdated proposal today.

But today we are debating the application of reconciliation to the first budget resolution, and the bill is being considered under a modified closed rule. This too is contrary to the avowed purpose of congressional debate and the Houses' role as a deliberative body. Quoting again from Senator Ervin regarding floor consideration of the budget resolution and related matters:

> The goal is to provide all members ample opportunity to be heard and offer amendments.

Certainly we are being denied that opportunity today, as we have been throughout this entire process, this year. The argument has been made that these are extraordinary times, and that therefore applying reconciliation to the first resolution is a necessary evil in order to balance the 1981 Federal budget.

But it is clear that the budget will not be balanced in 1981. Just 2 weeks ago Treasury Secretary G. William Miller acknowledged that there may be a deficit of between $25 and $30 billion in the Federal budget for fiscal year 1981. What is the point in cutting back needed services for millions of Americans in pursuit of the illusory and unattainable goal of balancing the Federal budget? We are imposing needless suffering across the Nation if we adopt this measure today.

These are indeed extraordinary times which call for extraordinary measures. But certainly not this measure that is before us today.

At a time when unemployment nationwide is at 7.8 percent, when the average family's real income is actually smaller than it was a year ago, when the Council of Economic Advisors projects the annual rate of inflation to reach 18 percent, it is an absurdity to further cutback basic Federal programs which are intended to deal with the very problems created by such an economy. And many of these programs, especially savings in those reported from the Education and Labor Committee on which I serve, are the very ones which provide a safety net for those who suffer most from unemployment, inflation, and recession.

The Education and Labor Committee was forced to report savings of over $700 million; $500 million of these savings are from the child nutrition programs.

Let us make no mistake about the effect of these cutbacks. We are taking food from the mouths of children. The lowering by 2.5 cents of the Federal reimbursement for school lunches will cause a reduction of 36 million meals reimbursed at the paid rate because of a drop in participation. And the Congressional Budget Office estimates that half of the children who now receive reduced price

lunches would instead drop out of the program. This is due to the imposition of the standard $75 monthly deduction when computing a family's income, the change in income eligibility adjustment from semiannual to annual, and the increase in costs of reduced price meals for the individual child.

Because of a reduction of 2 cents per meal in the commodity assistance program, that is, cash and donated commodities a school receives, New York City alone stands to lose $1.698 million. So when we talk about cuts in nutrition programs we are not talking about kids paying more for their meals. We are talking about kids not eating.

The committee has also reduced the options needy students can weigh when applying for financial assistance in pursuit of a college or university education. If reconciliation is adopted, parents will be forced to take out loans amounting to $3,000 before the prospective needy student could receive a much lower cost guaranteed student loan. This new parent loan program will be much more costly for the family and may force some students to choose a lower cost institution, or no schooling at all. This is most ironic when one considers that the fundamental Federal policy in regards to higher education is to guarantee access and choice for every prospective student, regardless of income.

And under reconciliation seven other committees are forced to cutback numerous vital Federal programs. When unemployment is rising it is difficult to understand a recommendation by the Ways and Means Committee which will most likely result in a reduction in the number of CETA positions, the major Federal manpower initiative. Included in this bill today is the proposed elimination of the Federal reimbursement to States for unemployment compensation benefits for CETA employees. The office of the mayor of the city of New York predicts that payment of unemployment benefits will have to come from funds provided for CETA slots. They estimate that in fiscal year 1982 the city will be forced to spend $20 million on these benefits, or 15 percent of their current CETA budget. The city will be forced to cut the number of available CETA positions by 15 percent in order to fulfill a mandate of the CETA law.

The recommendations of the Ways and Means Committee also include the proposed elimination of the Trade Adjustment Assistance Projects Improvements Act which the House passed by voice vote in May of last year. This legislation would extend adjustment assistance coverage to workers in firms which supply parts and services essential for production of import-impacted products. Enactment of this legislation is critical for the thousands of workers who are adversely impacted by imports.

Mr. Chairman, these are only a few examples of programs devastated by this legislation. But the critical point is that reconciliation was never intended to apply to the first budget resolution. And the savings which are in this legislation basically reflect the dictates of the Budget Committee.

When the economy is worsening, when unemployment and inflation rise hand in hand almost monthly, it is absurd to tie the hands of the Federal Government at a time when its services are most needed.

Again the question becomes why are we doing this? Are we adopting reconciliation so that the Members of Congress can go back to their constituents and claim that a balanced Federal budget is a reality? This is simply not true—there will be no balanced budget next year. This is a cruel hoax we are perpetrating on the American people.

I urge my colleagues to join me in rejecting this measure.

The CHAIRMAN pro tempore (Mr. WHITE). The Chair advises the gentleman from Kentucky (Mr. PERKINS) that he has 6 minutes remaining.

Without objection, the minority member of the Committee on Education and Labor yields back the balance of his time.

There was no objection.

Mr. PERKINS. Mr. Chairman, I yield 3 minutes to our distinguished colleague, the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Chairman, it is with some sadness that I even come to the floor during consideration of this bill and this part of the resolution, because I know that when the chairman of the full Committee on Education and Labor was speaking a few moments ago, there were Members in this Chamber who, along with me, were aware of how many years of his life he has invested in developing the foundation for and in building brick by brick a rational program to provide the very basic nutrition that some children need to learn. And here we are, for the first time in my 16 years in Congress, being asked, not by a bad President and not by a bad OMB, but by our own colleagues who have acted on a budget resolution, to literally tear apart a program that affects hundreds of thousands of children across this country in a very direct way. As my colleague, the gentleman from New York, has already said, this literally asks us to take food from the mouths of babes—not only that, but to take milk away from children.

Do we think the kids in school are drinking too much milk for their own good? Do we think this generation is so healthy that it really does not need the kind of support we have accepted as basic for years?

We are not today turning our backs on some new scheme that has started to cost the Government a lot of money. We are turning our backs on basic programs that Congress after Congress, dominated by a majority in both political parties, has kept on the books and improved and enlarged upon. And now, willy-nilly, we are going to cut them.

The Education and Labor Committee was told that we would find a billion dollars that was to be saved in this fiscal year and take it out of entitlement programs. Now, many of the Members who voted for this resolution and against the Udall amendment which would have spared us this reconciliation process thought that if committees were required to cut funds, they would be given discretion in what to cut. They thought we would be able to do it in some fashion that would make rational and good sense with respect to the overall budget under the jurisdiction of that committee and would not seriously wound or kill any particular programs.

But our instructions were more narrow than this. We were not given that discretion. One of the programs that has to bear the biggest part of the burden is child nutrition. Why? Because it is an entitlement program. We were told to cut entitlement programs under the jurisdiction of the Committee on Education and Labor.

The CHAIRMAN pro tempore. The time of the gentleman from Michigan (Mr. FORD) has expired.

Mr. PERKINS. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. FORD).

The CHAIRMAN pro tempore. The gentleman from Michigan (Mr. FORD) is recognized for the balance of the time.

Mr. FORD of Michigan. Mr. Chairman, as I said, the Education and Labor Committee does not have much in the way of entitlements, so our choice of options was very narrow. No one who was there the day our committee had to act to knock $500 million out of child nutrition could have failed to be impressed by the pain felt by our chairman when, as a good soldier, exercising the responsibility of the full committee chairmanship and the responsibility that that brings to him in the majority, he was the first one with courage enough in that room to say, "Yes," when he called for a vote on adopting the substance of this resolution.

Mr. Chairman, we brought it out of the committee with a big gun pointed at our heads, not by the Budget Committee, not by a bad President, not by the minority, but by the action of this body.

The mistake that we will make if we adopt this resolution today will perpetuate the first mistake that was made in 1973 when we got started on this process. We cannot go back and unravel that. We can look for people and individuals to try to blame. I know now that it is popular to say, "Well, you know, Giaimo is the fellow with the tight pocketbook, and he is responsible for all this."

Well, I do not want to take anything away from the tough way in which the committee chairman, the gentleman from Connecticut (Mr. GIAIMO), has handed this resolution, but the jam we are in today is really inevitable under the rules we have set for ourselves.

I walked around here a little while ago when I voted with the majority for the previous question, and, responding to colleagues who asked, "How can you possibly vote for this resolution?" I said, "I can't."

I have been struggling for a week to find a "good government" explanation for a yes vote on this resolution. I challenge anybody—anybody—to give me a "good government" explanation for why we should be adopting a resolution today which, as the gentleman from New York (Mr. WEISS) has already said, does not bear any resemblance to a balanced budget.

Is there any Member here or out there watching that tube in their office who really thinks they can go back home and con the American people with the idea that we are balancing the budget today, and that the numbers that we had before us when we adopted the budget resolution still mean anything today?

Mr. GIAIMO. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the chairman of the Budget Committee.

Mr. GIAIMO. Mr. Chairman, the gentleman is challenging, and I hope he has a little time left.

The fact of the matter is that we do not have control over the economy in this land. What happens to our economy and what happens to revenues will determine whether or not the budget stays in balance or goes out of balance.

The CHAIRMAN pro tempore. All time has expired.

The gentleman from West Virginia (Mr. STAGGERS) will be recognized for 30 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 30 minutes.

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, under the first budget resolution requiring reconciliation this committee is mandated to reduce medicaid by $200 million and railroad retirement by $100 million. It is important to impress upon the House that, while none of us like making these reductions, especially in programs which have a profound effect upon the poor and elderly, were we not to comply, in all likelihood the Budget Committee would have sought the authority to make perhaps even greater cuts, without our having any control or discretion over the reductions or where they were made.

As is indicated by the extensive and successful effort the committee has made to comply with the reconciliation provisions of the first budget resolution, the committee supports the congressional budget process in general as a responsible effort to hold down Federal spending. The committee feels also that some form of reconciliation process may be desirable as a part of the budget process, but it feels strongly that the reconciliation process followed in the instant case infringes upon the jurisdiction and procedures of committees of the House and of the House itself. The committee is also critical of the procedures followed by the Budget Committee, in that it requested this committee to take actions, but failed to provide the information and guidance necessary for the committee to make cogent decisions, and also that it based some of its recommendations upon assumptions that the committee found later to be substantially inaccurate.

JURISDICTION

In dealing with the reconciliation issue, this Committee was faced with two significant issues involving jurisdiction. The first involved the Hazardous Waste Containment Act of 1980, the second the medicare-medicaid amendments contained in H.R. 3990 and H.R. 4000.

In regard to the former, the Committee reported H.R. 7020, the Hazardous Waste Containment Act of 1980, to the House on May 16, 1980. This legislation would amend the Solid Waste Disposal Act to: First, provide authorities to the Administrator of the Environmental Protection Agency to respond to releases from inactive and certain other hazardous waste disposal sites which endanger public health and the environment; second, establish a Hazardous Waste Response Fund for appropriate response actions, to be financed through a system of industry-based fees and Federal appropriations; and third, establish a Federal cause of action in strict liability to enable the Administrator promptly to recover costs incurred in undertaking such response actions from persons liable for such costs.

Following completion of consideration of H.R. 7020 by the Committee on Interstate and Foreign Commerce, the bill was sequentially referred to the Committee on Ways and Means until June 29, 1980, for consideration of the revenue aspects of the legislation. On that date, the Committee on Ways and Means reported H.R. 7020, with an amendment in the form of a new title, to the House.

On June 25, 1980, the Committee on Ways and Means ordered reported to the House H.R. 7652, its reconciliation recommendations. Included in H.R. 7652 are provisions virtually identical to the amendment to H.R. 7020 as adopted by the Committee on Ways and Means.

The substance of the amendment to H.R. 7020 adopted by the Committee on Wavs and Means is inextricably related to the other provisions of the bill. Indeed, the Committee on Interstate and Foreign Commerce, to whom the introduced bill (which would impose substantial industry fees and hence has revenue implications) was solely referred and which has primary jurisdiction over this legislation, reported H.R. 7020 with provisions that would be substantially modified by the amendment adopted by the Committee on Ways and Means. Enactment of the substance of this amendment into law through the reconciliation process prior to enactment of H.R. 7020 could result in establishment of a naked Trust Fund receiving moneys without either the underlying purposes of the Fund, or anv legal authority for expenditures from the Fund, having been established in law. Moreover, the reconciliation recommendations of the Committee on Ways and Means include authorizations of appropriations reported by the Committee on Interstate and Foreign Commerce and are keyed to nonrevenue provisions of H.R. 7020. These matters are within the sole jurisdiction of the Committee on Interstate and Foreign Commerce. Clearly, piecemeal legislation that would produce such results was never implemented under the Budget Act and would set an undesirable precedent.

A similar situation arises in connection with the medicare and medicaid amendments which were originally reported by both the Ways and Means Committee and the Committee on Interstate and Foreign Commerce as H.R. 3990 and H.R. 4000. While there was substantial similarity in the amendments reported by each committee, there were also numerous differences. In order to respond to the reconciliation requirements, both committees included the provisions of H.R. 4000 in their recommendations. Informal negotiations were undertaken to eliminate the differences between the committees' versions; however, necessarily the compromises were not satisfactory to all concerned. Further, because of the absence of medicaid savings provisions in H.R. 3990, the Commerce Committee was precluded from including H.R. 3990 in its reconciliation package, and was forced to rely on the accommodations the Ways and Means Committee voluntarily incorporated into its recommendations to take into account the version of H.R. 3990 which the Commerce Committee had reported. Again, the concerns of all members of the committee were not satisfied in this process.

The Committee on Interstate and Foreign Commerce is concerned that legislating in this fashion in an attempt to comply with reconciliation directives may subvert the legislative process. If the above-described portions of the reconciliation recommendations of the Committee on Ways and Means are all committees with jurisdiction in two brought before the full House under the procedure envisaged in the reconciliation process, the House will be summarily deprived of an opportunity openly and fully to consider the views of all committees with jurisdiction in two very important areas. Instead, for all practical purposes, the House will be forced to consider, in a precipitous, piecemeal and ill-advised fashion, legislation that should properly be brought before it in a comprehensive, integrated fashion with procedures which allow the House to settle areas of policy differences.

At the time of its action on the reconciliation motion, the committee was unaware of the action of the Committee on Ways and Means regarding H.R. 7020 and, therefore, took no action. It was aware of the problem regarding the medicare and medicaid amendments (H.R. 3990 and H.R. 4000) and directed that a letter be sent to the Committee on Rules, requesting an opportunity for amendments to be in order concerning these areas of difference when the reconciliation bill is considered. It is the intent of the committee to file a similar letter regarding H.R. 7020.

INFORMATION AND GUIDANCE

One very troublesome issue is the adequacy of the information and guidance available to committees upon which to base reconciliation recommendations. The following exchange of correspondence between the chairman of this committee and the chairman of the Committee on the Budget underscores this problem:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., June 6, 1980.

Hon. ROBERT N. GIAIMO,
Chairman, Committee on the Budget, A214 House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to request further information regarding the premises upon which your Committee based its recommendations regarding reconciliation in House Concurrent Resolution 307 and further explanation of the procedures your Committee proposes to have followed by authorizing Committees in trying to achieve reconciliation.

As you are aware, this Committee has already met its first reconciliation goal by reducing fiscal year 1981 outlays by $100 million through the enactment of Public Law 96–254.

As for the remaining reduction of $200 million in budget authority and $300 million in outlays, House Concurrent Resolution 307 explicitly states that this must be achieved by reducing spending authority by changes in laws described in Section 401(c)(2)(C) of the Budget Act, i.e., entitlement programs. For all practical purposes for this Committee, this would mean deep cuts in railroad retirement and in health programs, particularly medicaid, and thus would require this Committee to impose the burden of achieving reconciliation upon those in our society who are already bearing the major burdens of inflation, persons living on fixed incomes, the poor and the elderly. From discussions with members of your staff we understand that this was not the precise intent of your Committee, but resulted in part from the assumption that a $100 million reduction would be achieved by the enactment of the Hospital Cost Containment Act (H.R. 2626), an Administration proposal decisively rejected by the Members early in this Congress.

Your staff has also indicated that despite the explicit requirement in House Concurrent Resolution 307, your Committee would be inclined to accept "genuine" reductions achieved by reducing authorizations. The difficulty arises in trying to determine what is a "genuine" reduction since both appropriations and outlays, which are not under the control of this Committee, are frequently lower than the authorizations. There are only two ways this Committee can attempt to achieve such reductions:

(1) by reducing authorizations for funds authorized and appropriated in a previous year, but not as yet expended, and

(2) by reducing current authorizations below subsequent appropriations.

In either case, we lack the specific information—as to unexpended funds or prospective appropriations—upon which to make judgments.

I presume that in order to arrive at a realistic overall budget figure, your Committee must have made specific assumptions regarding individual appropriations. If so, I respectfully request that in order to enable this Committee to make its decisions regarding reconciliation in a timely manner and pursuant to Rule X(e)(2) of the House, you make available to this Committee, at the earliest possible date, the assumptions regarding appropriation and outlays for fiscal year 1981 for specific programs authorized under this Committee's jurisdiction. I request also that you inform this Committee whether and how these assumptions may be utilized in determining whether and to what extent a reduction in a specific authorization will achieve a "genuine" reduction in spending.

Should such information not be available, I request that you inform this Committee precisely what test may be applied to determine whether a reduction in authorization will result in reduction of outlays.

I appreciate your cooperation.

Sincerely,
HARLEY O. STAGGERS, *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, D.C., June 20, 1980.

Hon. HARLEY O. STAGGERS,
U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR HARLEY: This is in response to your letter requesting information on the assumptions that were used in determining the Interstate and Foreign Commerce Committee reconciliation targets included in House Concurrent Resolution 307, the First Budget Resolution for Fiscal Year 1981.

As you state, the resolution assumes that total savings of $200 million in budget authority and $400 million in outlays would be achieved through changes in laws within the jurisdiction of the Interstate and Foreign Commerce Committee. Specifically, the reconciliation directive to your Committee approved by the Congress on June 12, 1980, states: "The House Committee on Interstate and Foreign Commerce shall recommend (A) program reductions in laws within its jurisdiction to reduce spending for fiscal year 1981 by $100,000,000 in outlays; and (B) changes in laws within its jurisdiction which provide spending authority described in section 401(c)(2)(C) of the Budget Act to reduce spending for fiscal year 1981 by $200,000,000 in budget authority and $300,000,000 in outlays;"

Your understanding is correct that recent enactment of Public Law 96–254, the Passenger Railroad Rebuilding Act, will achieve the $100 million reduction in outlays referred to in clause (A) of the paragraph quoted above.

Clause (B) of the above section specifies that reductions in spending of $200 million in budget authority and $300 million in outlays shall be achieved through changes in laws which provide spending authority. The term "spending authority" is defined in Section 401(c)(2)(C) of the Budget Act as: ". . . authority (whether temporary or permanent) . . . to make payments (including loans and grants) . . . to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law."

Programs, establishing spending authority are popularly referred to as "entitlement programs."

In developing the agreement on the First Budget Resolution for Fiscal Year 1981, the House and Senate Conferees decided not to recommend specific legislative proposals to achieve the savings in the reconciliation directives. However, as the quotation from the Budget Act indicates, it was intended that the savings be achieved through changes in entitlement programs.

Your letter asks whether the Interstate and Foreign Commerce Committee reductions may be achieved through changes in programs which create authorizations for appropriations. In most instances this will not be possible to verify. The allowance established in the Resolution for the Appropriations Committee are aggregated. For fiscal year 1981, the aggregate totals allocated to the Appropriations Committee in the Resolution are $420.3 billion in budget authority and $374.5 billion in outlays. The determination of specific funding levels for individual programs is left to the discretion of that Committee. Therefore, it is extremely questionable whether a change in an authorization for a specific program will have a comparable impact on the level of total spending resulting from the appropriations process.

The key test in determining whether a Committee has complied with the reconciliation directive is whether the change in law proposed by the Committee results in a reduction in Federal spending. In other words, does the change result in "genuine" reductions in spending? While the Budget Committee will be expected to provide its assessment of the recommendations submitted by the House Committees, the final judgment on whether a committee has complied with the reconciliation directives of House Concurrent Resolution 307 will be that of the House of Representatives.

In developing the First Budget Resolution for fiscal year 1981, the House Budget Committee recognized that reducing Government spending in many areas would be very difficult. At the same time the full leadership of the House and Senate and in approving House Concurrent Resolution 307, both Houses, took the position that this is a vital need. I enlist your continued support in this effort.

I hope that this letter has helped to clarify the reconciliation process as it affects your committees. Please let me know if I may be of further assistance.

Sincerely yours,
ROBERT N. GIAIMO,
Chairman.

By failing to provide the chairman of this committee with the information or guidance he requested, the Committee on the Budget made it impossible for this committee to determine what, in fact, would be "genuine" reductions and thus dreprived this Committee of the option of selecting areas for reduction other than entitlement programs. Despite its statements to the contrary, this had the effect of having the Committee on the Budget dictate to this Committee the program areas to be cut under the current reconciliation process.

Finally, the committee was concerned over the inaccuracy of assumptions made by the Committee on the Budget in recommending reductions. In one case, the committee estimated that a savings of $70.2 million would be achieved by changes in the railroad retirement system. Upon that assumption the Committee on the Budget recommended a reduction of $100 million (under its procedure of rounding out all figures over $50 million to $100 million). In fact, after enactment of the recommendation of the Committee on the Budget, it turned out that due to an error in computation, the reduction in savings would be only $35.8 million or almost 50 percent of the Committee on the Budget's estimate.

In another instance, the Committee on the Budget estimated reductions in spending of $100 million to result from enactment of section 208 of Public Law 96–254. Subsequently and after this committee had adopted its reconciliation motion, it was discovered that the reduction in spending would be $155 million, or more than 50 percent greater than the Committee on the Budget's estimate. Under the rounding off procedure this should be treated as $200 million, substantially increasing the effect of the error on the part of the Committee on the Budget. Lacking accurate information or guidance from the Committee on the Budget, this committee at no point in the reconciliation process could be certain whether it was reducing spending by too much or too little, a very unsatisfactory approach to orderly control of the budget.

If the reconciliation process is to be repeated—and I do not recommend that—this committee strongly recommends that the Committee on the Budget and the House address these problems and attempt to shape a procedure that protects the jurisdiction and prerogatives of the House and its committees and provides an orderly mechanism for reducing spending.

I will now recognize the two subcommittee chairmen who have jurisdiction over the railroad retirement and medicaid programs to explain how the reductions will be accomplished.

□ 1340

Mr. Chairman, I yield 15 minutes to my colleague, the gentleman from California (Mr. WAXMAN), the chairman of the Subcommittee on Health and the Environment.

Mr. WAXMAN. Mr. Chairman, the Committee on Interstate and Foreign Commerce recommended to the Budget Committee a series of amendments affecting the medicaid and medicare programs for inclusion in the reconciliation bill. Following the instruction of the House in the first budget resolution, we recommend changes in the medicaid program which would result in a reduction in expenditures in fiscal year 1981 of nearly $200 million. Many of the provisions designed to achieve these savings had already been reported to the House as part of H.R. 4000; additional proposals were developed to reach the savings target. The committee also recommended inclusion in the reconciliation bill of other provisions which were originally part of H.R. 4000 which reform and revise medicaid and medicare practices. In some cases, these changes have no direct cost impact; in others, some cost is entailed. However, the committee complied with the directives of the House in limiting new spending in fiscal year 1981 to the levels assumed in the first resolution. Additionally, the provisions included have previously been reported as integral portions of a bill which contained savings proposals.

The health provisions included in titles III and VIII of the bill are in many instances identical. With few exceptions, these provisions were considered by both the Committee on Interstate and Foreign Commerce and by the Committee on Ways and Means, and were included in two jointly referred bills which were reported previously to the House, H.R. 3990 and H.R. 4000. The cooperative relationship between the members of the Health Subcommittee of the Committee on Ways and Means and the members of the Subcommittee on Health and the Environment has been outstanding throughout consideration of these provisions, and because of that willingness to work together, we are able to bring to the House a set of proposals for changes in the medicare and medicaid programs that will strengthen administration, extend benefits, and result in general improvements. I want to particularly acknowledge my colleague, CHARLES RANGEL, chairman of the Health Subcommittee on Ways and Means, the two chairmen of our committees, who have been unfailingly cooperative throughout, AL ULLMAN and HARLEY STAGGERS, and, of course, the ranking minority member of the Subcommittee, Dr. TIM LEE CARTER. Because these health provisions represent the joint work of both of the committees, I am pleased to divide my time today with Congressman RANGEL, so that the Members of the House can discuss all of the health provisions included in H.R. 7765 at one time.

The medicare and medicaid provisions contained in H.R. 7765 are designed to bring program improvements in a number of areas, including PSRO operation, long-term care, antifraud activities, improved Federal fiscal management, and coverage of prevention services. They are designed to open medicare and medicaid coverage to a broader range of providers.

I will not take the time of the House today to discuss all the provisions of the bill. I do want to mention several provisions that I believe will be of particular interest to the Members:

H.R. 7765 provides for 90 percent Federal matching funds for a 3-year period to establish and operate State medicaid antifraud units. After this startup period, Federal matching is continued at 75 percent thereafter. Few expenditures of Federal funds could be more cost effective than this—establishing effective units to find, punish and deter fraud in our medical care programs.

H.R. 7765 provides coverage for pneumoccocal vaccine under the medicare program. This provision, originally developed in the Commerce Committee, represents an important extension of medicare into the preventive area, a focus of the program which has been lacking. Again, the millions of dollars in decreased expenditures for hospital care to treat the victims of pneumonia, as well as the additional years of healthy life that many senior citizens enjoy, make this an extremely cost effective expenditure.

H.R. 7765 basically repeals the provisions of medicare concerning payment of teaching physicians under the program which have been part of the law since 1972 but which have never been implemented. The time has come to recognize that implementation of these specific provisions in an equitable and reasonable manner seems to be beyond the capacity of the Department. The legislative approach should be rethought; the uncertainty facing the medical schools because the 1972 provision stays on the books should be ended.

H.R. 7765 provides for a period of protection of the confidentiality of PSRO records. This issue is in the courts. When a decision is rendered, records will be protected for 6 months so the Congress can reexamine the issue with the benefit of the court ruling and an institute of medicine study which is now underway.

H.R. 7765 protects medicaid recipients from losing their eligibility because of cost-of-living increases in social security, railroad retirement, or civil service retirement benefits. This remedies an injustice which occurs now when the Congress gives additional cash benefits to help people meet higher living costs and then takes away medicaid benefits as a result.

Two additional sections of the bill should be noted. First, in order to secure the savings in medicaid which the committee was directed to achieve in the first resolution, H.R. 7765 provides for the Federal Government promptly to recover Federal matching funds previously granted to States when the State use of those funds is disallowed. Currently the State retains those funds throughout a lengthy appeals process, returning the money only when the Federal disallowance is upheld. This procedure would be reversed under the bill. The Federal Government would recover the funds by withholding them from the next State grant award. If any State appeal is eventually upheld, the Federal Government would return the money to the States with interest. Unfortunately, the current appeals process is a lengthy one. Concern has been expressed that the Federal Government would delay resolving the State appeal if it held the money. I do not believe this is the case. The provision for payment of interest to the States is designed to encourage the Federal Government to act on the appeal in a timely manner. Let me assure my colleagues, however, that it is the committee's expectation that HHS would resolve appeals within 6 months, and that we will be closely monitoring experience under this provision to assure that there are not inexcusable delays.

Second, some have expressed concern about the so-called swing bed provision contained in the bill. Under this proposal, a hospital could secure planning agency approval to "swing" beds from acute care to long-term care, without setting up the separate cost accounting system required when a distinct part of the institution is set aside for long-term care services.

Questions have been raised concerning the possibility that swing beds would be approved when there were skilled nursing home beds available in the community. Let me state clearly that this is not the intent of the committee. Planning agency review is required specifically to assure that swing beds will not come into existence if there are nursing home beds available. I anticipate that if the occupancy rate in nursing homes in the area is less than 90 percent, the plan-

ning agency would not grant approval. Again, we will closely monitor swing bed approvals to assure that this arrangement is not used inappropriately.

Mr. CORMAN. I thank my colleague for yielding.

Mr. Chairman, I speak for the Ways and Means Health Subcommittee chairman, the gentleman from New York (Mr. RANGEL), who is not in the Chamber at the moment but who will join the debate shortly.

Mr. Chairman, working with the Subcommittee on Health and Environment on this matter has been most satisfying. A number of difficult and complex problems related to the medicare and medicaid programs had to be resolved. And we did so. We also met the demands for savings in a responsible manner.

Mr. Chairman, H.R. 7765 includes the provisions H.R. 3990 and H.R. 4000 which were favorably reported earlier this Congress by both the Ways and Means Committee and the Committee on Interstate and Foreign Commerce. These provisions introduce a number of administrative improvements in the medicare program which result in substantial program savings. They also provide for relatively modest, yet much needed, improvements in medicare benefits. In addition, H.R. 7765 achieves a major fiscal year 1981 savings—$675 million—by temporarily postponing periodic interim payments to hospitals.

The two medicare bills which have been incorporated into H.R. 7765 are the result of lengthy and careful deliberation by the two committees. Similar legislation was overwhelmingly approved by the House during the 95th Congress but was not acted on by the Senate because of the limited time remaining in the session.

The administrative improvements included in the bill represent changes which will not only result in savings to the medicare and medicaid programs but which will also make the programs much more responsive to the individual needs of beneficiaries and providers of medical services. Among those provisions which result in savings is a provision which authorizes the Secretary to require PSRO review of the appropriateness of services routinely required on admission to a hospital and the appropriateness of lengthy preoperative stays.

A number of studies have shown that these are two areas of unnecessary or avoidable utilization that have not received sufficient attention by PSRO's. There is also a provision which makes medicare payment liability secondary rather than primary in cases where there is automobile liability insurance. It has been argued for years that medicare should not have to pay in cases where there is liability under a private insurance contract. The bills also provide reimbursement for ambulatory surgical centers. This new benefit will result in savings because the use of expensive inpatient services will be avoided. Another major savings provision provides for a differential level of reimbursement for inpatient acute care services furnished to patients who really should be in a nursing home.

Mr. Chairman, I am pleased to say that the bill also provides for a number of changes in the medicare program which will have the result of eliminating unnecessary administrative hardships for beneficiaries. For example, the bill allows the medicare program to make payment for physician services on the basis of an unpaid bill in the case of a deceased beneficiary; eliminating a requirement which has long been perceived as unnecessary and unfair and which often represents a financial hardship for the families of deceased beneficiaries.

The bill also limits excessive penalties for late enrollment and liberalizes the requirements related to how many times, and when, beneficiaries can enroll.

The bill is also responsive to the needs of providers of health care services under the program. The Secretary is authorized to apply medicare standards more flexibly to rural hospitals to take into account the availability of qualified technical personnel and the economic impact of required changes in structural standards. The bill also, however, provides assurances that the health and safety of patients will not be jeopardized. In addition, hospital philanthropy is encouraged by providing that grants, gifts, and endowments will not be offset in determining medicare reimbursement.

I am also pleased that the bill provides for benefit increases which, in the context of a $38 billion program may seem rather insignificant but which, in reality, are important to beneficiaries. With a minimum of new cost to the program we have managed to expand coverage for home health services; provide coverage for services furnished in community mental health centers and outpatient rehabilitation centers; and expand coverage for services furnished by dentists, podiatrists, chiropractors, psychologists, and optometrists. The Secretary is also directed to carry out a number of studies so that we can determine the most cost efficient way to cover new services.

The bill also includes an amendment to clarify the respective roles of renal disease networks, State planning agencies and the Secretary in connection with decisions on the necessity for additional renal disease treatment capacity. While the amendment authorizes State planning agencies to determine whether additional capacity is necessary, the role of the renal disease network in providing professional advice and guidance remains undiminished. It is the intent that the networks will be consulted by planning agencies in making such decisions. Moreover, I would emphasize that determinations relating to the quality and effectiveness of services, as well as conditions of participation (including those related to minimum utilization) in which the networks have played an important part, are not affected by the amendment. The Secretary will continue to be responsible for making these determinations—relying to a considerable degree, as in the past, on the expertise and recommendations of the networks—so as to assure that beneficiaries have effective access to all modalities and receive services of appropriate quality in an efficient manner.

Mr. Chairman, this bill represents a balanced package of benefit improvements and savings achieved through administrative improvements. The Congress has not significantly expanded medicare benefits since the Social Security Amendments of 1972. It should be a matter of concern to all of us that we have done nothing for so many years to help the elderly cope with the increasing cost of medical care and the continuing erosion of their medicare benefits. This is a bill that helps to remedy, in small measure, that failure. And it is a bill we can at least take some pride in both from the standpoint of achieving greater cost effectiveness in the medicare program and improving the protection of beneficiaries.

Mr. WAXMAN. I thank the gentleman for his comments.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey (Mr. FLORIO).

Mr. FLORIO. Mr. Chairman, the reconciliation recommendations would result in a net savings to the Federal Government of $51.8 million through minor modifications to the railroad retirement system. Minor benefit modifications will reduce spending by $24.3 million and a small increase in the tax on railroads will produce $27.5 million in new revenues. The suggested changes would only be effective for fiscal year 1981. Existing recipients would not be affected. The reductions are prospective only.

The benefit modifications are minor and should not be controversial. Most of them were adopted from a proposal developed by rail labor. In several cases, they merely conform the railroad retirement system to the social security system. For example, under current law, spouses can receive reduced benefits at age 62. The first change would adopt the reduction factor used in social security instead of the more generous one currently used in railroad retirement.

Similarly, cost-of-living increases are currently reduced for those who receive early benefits—but by a smaller amount than the initial benefit itself. The second change would merely conform to social security practice and use the same fixed reduction factor for both the initial benefit and the cost-of-living increase. In addition, under social security, there is a 5-month waiting period for disability benefits. The proposal would adopt the same waiting period for railroad retirement. Most beneficiaries would be eligible for sickness benefits from the railroad unemployment fund during this period—which are often larger than the corresponding disability benefit.

The other changes are also minor. For example, employees who retire currently have their years and months of service

rounded up to the next highest year. The proposed change would eliminate this rounding up and use the actual number of months of service. Retiring employees under age 62 with 30 years of service would be deemed age 62 instead of age 65. Actual age would be used for those between 62 and 65. The actuarial reduction would be applied uniformly in computing benefits due early retirees entitled to both social security and railroad retirement. Currently, different reduction factors are used in the formula and this generates arbitrary results. Finally, the calculation of the maximum benefit a spouse could receive would be modified. This maximum is currently based on 110 percent of the most any spouse could possibly receive under social security—the most extreme hypothetical case. The revised maximum would be based on a more realistic formula.

The $27.5 million in revenue will be raised by a small increase—from 9.5 to 9.75 percent—in the payroll tax paid by the railroads to finance the nonsocial security component of railroad retirement. The Budget Committee had suggested raising over $260 million in new taxes from the railroads. The recommended proposal is quite modest compared to what the Budget Committee had suggested.

This proposal will enable us to comply with the reconciliation instructions in the budget resolution and help us reduce the budget deficit. But it does not constitute a long-range solution to the financial problems of the railroad retirement system, which is currently operating at a 4-percent deficit. To deal with the longer range problems, there are several options. My subcommittee just held a hearing this morning on one possible solution—H.R. 7793. As another option, the reconciliation bill requires railroad labor and management to submit a joint recommendation to Congress by December 31 of this year that will assure the long-term soundness of the system. I am sure this House will be evaluating these options, shortly.

□ 1350

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

First, I would like to congratulate the committee on this excellent decision not to reduce one benefit when another benefit is raised by a cost-of-living benefit. That is a great forward step.

I would like to ask about the railroad retirement fund specifically. As the gentleman knows, the strike that we have just had, involved 177 carmen under the Railroad Act. According to the published figures, their salaries are $18,000 or $19,000 a year when they are working. Married men receive a pension of $17,000, plus a supplementary pension of $6,000. The unmarried workman receives $12,000 and the supplementary pension of $6,000.

Now, what I wanted to ask is, Do these pensions come out of the railway retirement fund? In other words, there is a supplementary pension on top of the pension, which means that one would make more when retired than one would when working. Is this the common practice in the industry?

Mr. FLORIO. The fact of the matter is I am not familiar with the specific numbers, and I do not think there are specific numbers, because this whole pension system is calculated upon a formula that determines years of service in terms of a lot of other things as well, so one cannot say what one gets until one specifically calculates what the individual is entitled to.

The fact of two systems of retirement is built into the law. There is a tier one provision which roughly matches the social security provision, and there is a tier 2 provision which is in a sense an employer-contributed pension system, private pension system.

This was done pursuant to a legislative enactment in 1974, prior to, I suspect, the gentlewoman's coming to Congress and my own coming to Congress.

There are some problems associated with that system that we are now in the process of trying to correct as a result of those things that were done in prior years. As I have indicated in my remarks, the solvency of this pension fund may not very well survive too terribly long. I would think the more appropriate long-term response would be for this Congress, as a result of recommendations that will be coming to us as a result of negotiations between labor and management, should evaluate at a more leisurely pace, leisurely being programs in the early years of the next session, to formulate a long-term response. That is the way we are going to insure the integrity of the system.

Mrs. FENWICK. I thank my colleague.

Mr. FLORIO. Mr. Chairman, I yield back the balance of my time.

Mr. STAGGERS. Mr. Chairman, we reserve the balance of our time.

Mr. BROYHILL. Mr. Chairman, I yield 10 minutes to the gentleman from Kentucky (Mr. CARTER).

Mr. CARTER. Mr. Chairman, as ranking minority member of the Subcommittee on Health and the Environment I wish to express my support for the health provisions which have been included in title III and title VIII of the Omnibus Reconciliation Act of 1980.

Clearly, in my view, it is preferable to achieve savings in the medicare and medicaid programs through administrative means, rather than through benefit reductions or new eligibility restrictions. I would submit that the proposal before us accomplishes that all-important task—avoiding any adverse effect on patient care for those who rely upon these programs for their needed medical care.

To meet the goal of more efficient and effective administration of the programs, the Commerce Committee has proposed:

First, more effective review of routine hospital admissions and preoperative stays;

Second, appropriate levels of reimbursement for long-term care provided in hospitals—and the use of acute-care beds as long-term beds, where needed;

Third, coordinated audits of providers participating in the medicare and medicaid programs;

Fourth, reimbursement limits and competitive bidding for laboratory services;

Fifth, disallowance of medicaid benefits for those who fraudulently dispose of assets in order to gain eligibility; and

Sixth, expedited review for certain disallowed medicaid claims. Mr. Chairman, I believe that the Commerce Committee's recommendations are an appropriate response to problems which have occurred in the administration of medicare and medicaid. I would submit that many of the recommendations are needed to insure that providers are treated equitably. Others are designed to increase our ability to serve the needs of beneficiaries while also saving the taxpayers money through a more rational system of reimbursing for medical services.

However, in looking ahead to the inevitable pressures that we will face to control Federal spending, I would strongly urge that our Health Subcommittee and our colleagues on the Ways and Means Health Subcommittee join together in a series of oversight hearings on the medicare and medicaid programs so that we will be prepared to make fully informed judgments about the best ways to achieve additional savings in the future. Frankly, I believe that there are more savings to be gained in the administration of the medicaid program, particularly at the State level, where the Federal Government directly supports administrative costs through matching funds. Nevertheless, it would be irresponsible to propose any across-the-board cuts without carefully evaluating the impact of such action.

For this reason, I would urge that we devote a great deal of scrutiny to these programs so that we are better prepared to consider any future reductions that may be necessary.

I am greatly relieved that we have been able to propose savings this year without adversely affecting those for whom these programs were created. However, I remain concerned about the reconciliation process in general, especially to the extent that the process is not grounded on reasoned consideration of the areas in which cuts should be made. I submit that we should keep in mind that millions of people depend on these programs for the health care which they need and the health care which they deserve. With that view in mind, I would hope that future efforts at obtaining savings in these programs could come about as the outcome of the regular legislative process and not one which is disruptive of considered deliberation and one which does damage to traditional jurisdictional responsibilities.

Mr. Chairman, I include charts on medicaid and medicare as follows:

	1981	1982	1983	1984	1985
H.R. 4000—Medicaid:					
Required budget authority	−129.9	−39.1	43	59	77
Estimated outlays:					
Sec. 309: Review of routine hospital admission services and preoperative stays by PSRO's	−4	−5	−6	−7	−7
Sec. 311: Nonprofit hospital philanthropy	0	11	12	14	15
Sec. 320: Hospitals providing long-term care services:					
Swing beds	1	6	9	10	11
Reimbursement for inappropriate hospital services	−13	−20	−23	−26	−30
Sec. 321: Coordinated audits	−4	−5	−6	−6	−7
Sec. 322: Demonstration projects for training AFDC recipients as home health aides	1	−1	−9	−13	−18
Sec. 324: Reimbursement for clinical laboratory services:					
Reimbursement limits	−5	−7	−8	−8	−9
Competitive bidding	−7	−11	−9	0	0
Sec. 326: 2d opinion demonstration projects: Informed consent in certain demonstration projects	0	0	0	0	0
Sec. 331: Reimbursement for nurse-midwives	0	0	0	0	0
Sec. 332: Continuing eligibility despite cost-of-living increases	1	27	49	75	104
Sec. 333: Disposal of assets	−3	−7	−11	−16	−19
Sec. 334: Increased matching for the territories	18.1	31.9	35	38	40
Sec. 335: Funding for long-term care facilities inspectors	9	10	11	0	0
Sec. 336: Funding for fraud control units	15	15	15	16	17
Sec. 337: Satisfactory utilization review	8	0	0	0	0
Sec. 341: Expedited review for certain disallowed claims	−147	−83	−16	−18	−20
Total, medicaid estimated outlays	−129.9	−39.1	43	59	77
Total savings	−183.0	−140.9	−62	−94	−110
Total costs	53.1	100.9	105	153	187
H.R. 3990 Provisions—Medicare (function 550):					
Budget authority	0	−11	−35	−62	−93
Estimated outlays:					
Sec. 102: Home health services	6	35	56	91	154
Sec. 104: Dentists' services	3	16	19	21	24
Sec. 105: Treatment of plantar warts	0	2	2	2	2
Sec. 106: Community mental health centers	0	75	90	110	140
Sec. 107: Comprehensive outpatient rehabilitation facility services	0	13	15	17	20
Sec. 108: Optometrists' services	0	2	2	3	3
Sec. 109: Antivens	0	0	0	0	0
Sec. 116: Payment of providers of services	−6	−8	−10	−12	−15
Sec. 117: Limit on premium increases for late enrollment	0	9	10	11	14
Sec. 119: Chiropractors' services	9	49	55	61	68
Sec. 120: Increases in outpatient mental health benefits	0	61	77	94	114
Sec. 121: Limitation on payments to radiologists and pathologists	−10	−17	−20	−26	−30
Sec. 123: Outpatient physical therapy services	0	4	5	3	3
Sec. 124: Reimbursement for blood	6	30	35	40	45
Sec. 125: Medicare liability secondary in certain automobile accident cases	−8	−18	−42	−97	−112
Sec. 127: Outpatient surgery	−1	−2	−4	−6	−9
Sec. 129: Preadmission diagnostic testing	−3	−6	−9	−12	−16
Sec. 130: Studies and demonstration projects	1	2	0	0	0
Sec. 133: Medicare coverage of pneumococal vaccine	0	45	24	22	0
Total, medicare outlays	−3	292	305	324	407
H.R. 4000—Medicare:					
Budget authority	3	11	17	24	31
Estimated outlays:					
Sec. 306: Required activities of PSRO's	0	0	0	0	0
Sec. 309: Review of routine hospital admission services and preoperative hospital stays by PSRO's	−38	−65	−86	−102	−119
Sec. 310: Study of PSRO criteria	0	0	0	0	2
Sec. 311: Nonprofit hospital philanthropy	0	70	80	90	100
Sec. 313: Study of SNF dual participation	0	0	0	0	0
Sec. 320: Hospitals providing long-term care services:					
Swing beds	2	10	17	19	20
Reimbursement for inappropriate hospital services	−48	−73	−83	−94	−107
Sec. 321: Coordinated audits	0	0	0	0	0
Sec. 324: Reimbursement for clinical laboratory services: Reimbursement limits	−14	−21	−23	−25	−27
Sec. 326: 2d opinion demonstration projects; informed consent in certain demonstration projects	0	1	0	0	0
Sec. 328: Reimbursement for health maintenance organizations	1	5	25	35	40
Total, medicare estimated outlays	−97	−73	−70	−77	−93
Total savings	−100	−159	−192	−221	−253
Total costs	3	86	122	144	160

□ 1400

Mr. BROYHILL. Mr. Chairman, at this time I yield 10 minutes to the gentleman from Illinois (Mr. MADIGAN).

Mr. MADIGAN. Mr. Chairman, sections 351 through 360 of the reconciliation bill relate to savings recommended in the railroad retirement system. Specifically, benefits were reduced by $24.3 million and the railroad retirement tax paid by the railroads is increased by $27.5 million. These suggested changes are effective for the fiscal year 1981.

At the outset, Mr. Chairman, let me point out that we all realize that the present system of funding railroad retirement is insufficient to support the benefits due and payable under that retirement system. The subcommittee of the Committee on Interstate and Foreign Commerce responsible for that problem has taken a number of steps in order to provide a rational and fair way for financing railroad retirement.

Last February we began the process of developing the program for putting Railroad Retirement on a sound financial basis. At that time we encouraged both railroad management and the railroad labor organizations to recommend to us means for solving the deficiency in the railroad retirement fund. Both parties have held numerous meetings and will have recommendations, we are promised, for the Congress to consider by the end of this year.

We believe the new Congress should set as one of its priorities adopting a long term solution to the problem of funding railroad retirement. Unfortunately, this very arbitrary, quick-fix solution, as contained in the reconciliation resolution is counterproductive to achieving the goal of financial integrity for the railroad retirement fund.

In the first place, the benefit reductions raise legal questions because of the nature of railroad retirement benefits. A congressionally mandated reduction of benefits to railroad employees invites litigation and needlessly causes fear and anxiety for potential beneficiaries.

The second quick fix contained in the resolution in order to achieve reconciliation is an increase of $27 million in the payments railroads must make into the railroad retirement fund.

Mr. Chairman, I must reluctantly oppose this provision contained in the budget resolution in that it neither solves the problem of the railroad retirement fund, nor does it provide fairness and equity for either railroad retirement beneficiaries or railroad companies.

Mr. Chairman, I yield back the balance of my time.

Mr. BROYHILL. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I rise to express some grave concern about provisions in this bill that unless they are deleted would in my judgment severely limit the ability of this House to work its will on this particular subject matter. The subject I am referring to is the "Super Fund" bill, as it has been called, that would provide for the creation of a fund that would be available to clean up hazardous waste sites.

Now, our Committee on Interstate and Foreign Commerce has voted out a provision that would provide for a strategy, as well as authority, to deal with hazardous waste sites. The Committee on the Budget, however, has seen fit to include a provision that was recommended by another committee. In fact, another committee, other than the Committee on Ways and Means, and the Committee on Interstate and Foreign Commerce, has also been dealing with this subject.

So I would urge at the proper time that Members support an amendment to delete this section. This would give us an opportunity to work our will on this subject.

My understanding is that the Committee on Rules has permitted this bill to be considered at any time and also would provide for ample opportunity for amendments, so that Members could choose between the various strategies that are offered, ways to deal with this particular problem area.

I do not think it would be good to tie our hands in this way by leaving this amendment in this bill with no provision to amend it or to consider other alternatives.

I would urge that Members support the amendment that will be offered at the proper time by the gentleman from Connecticut (Mr. GIAIMO) that would strike this section of the bill and then we could at a later time consider the other alternatives.

Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

Mr. STAGGERS. Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

The CHAIRMAN. At this time the gentleman from New York (Mr. HANLEY) is recognized for 30 minutes, and the gentleman from Illinois (Mr. DERWINSKI) is recognized for 30 minutes.

The Chair recognizes the gentleman from New York (Mr. HANLEY).

Mr. HANLEY. Mr. Chairman, I rise to explain the committee's recommendations to reduce spending for fiscal year 1981 by nearly $1 billion. Ordinarily, I would say that I rise in support of the committee's recommendations but in this case I cannot honestly say that I support these changes, nor can I honestly say that these are the "recommendations" of the committee. They can be best described as the changes which the committee has reported in compliance with the instructions contained in the budget resolution.

Our proposals would reduce fiscal year 1981 expenditures by $973 million, almost equally divided between postal appropriations made annually and expenditures for civil service pay and benefits.

The sectional analysis of the Budget Committee's report relating to these matters was written by our committee, and accurately reflects the committee's intent. So I will not dwell at length on this subject at this time.

We propose to postpone the March 1981 cost-of-living adjustment in civil service annuities until September 1981. President Carter's proposal would make permanent the once-a-year adjustment in annuities. Our committee proposal, the proposal of the Senate, is that the permanent change not be made at this time, but that there be only one increase between now and the end of fiscal year 1981. Savings resulting from the House committee's proposal would be approximately $356 million.

The second change would be to eliminate the so-called look back feature of the retirement law which permits an employee to enjoy the full benefit of the next increase in annuities when he retires. For instance, an employee who retires on the last day before a cost-of-living adjustment receives the full benefit of the adjustment which was made 6 months prior to this retirement as well as the adjustment which is made the day after his retirement.

The committee proposal would eliminate entitlement to the most recent increase entirely, and would prorate the next increase so that the retiring employee would receive only that portion of the subsequent increase accruing after his retirement. Savings resulting from this change are approximately $34 million.

The third committee proposal would eliminate dual pay for National Guard or Reserve duty for certain Federal employees. Under current law, Federal employees are paid salaries for both military and civilian service during training periods. Under our proposal, employees hereafter would receive only the military pay for training periods, plus the difference, if any, by which their civilian pay exceeds their military pay. Savings resulting from this change are approximately $56 million.

The fourth proposed change would eliminate payment for Federal holidays which happen to fall during the period after an employee is separated from the service, but before his accumulated days of paid leave have expired. This change would save approximately $22 million.

The fifth proposed change would modify the disability entitlement provisions of the civil service retirement laws by requiring an agency to place an employee in another position of equal rank and pay rather than separating the employee on disability simply because he cannot perform the duties of that particular position. Under existing practice, the availability of another position for which the employee is qualified, and which would cause him no loss in pay or rank, is not taken into account. Savings resulting from this change are approximately $13 million.

I want to make it clear that our committee does not intend for this change to interfere with any collective bargaining agreement governing employment in the U.S. Postal Service. Employees in the Postal Service work in particular crafts—letter carriers, clerks, mail handlers, and other positions. We do not intend to require that an employee who becomes disabled for continued service as a letter carrier be transferred to a position in another craft.

The sixth proposed change would change the civil service retirement law, relating to the minimum annuity for individuals who retire on disability. Under existing law, an individual who has at least 5 years' creditable service may retire on disability if he is medically qualified to do so. His annuity is the lesser of 40 percent of his average salary or his earned annuity computed by projecting his service and age to 60 years. The committee would eliminate the minimum in the case of an employee who retires and is also receiving retired or retainer pay from the Armed Forces or compensation from the Veterans' Administration in lieu of such pay. This change would save approximately $3 million.

The seventh proposed change would prohibit State governments from imposing taxes on life insurance premiums paid to insurance firms participating under the Federal employee group life insurance program. This tax exemption would save approximately $3 million.

The second portion of our proposed changes relate to appropriations for the Postal Service. The instructions accompanying the budget resolution required that our committee reduce postal appropriations by $500 million, and this was generally understood to mean the elimination of Saturday mail delivery. We have reduced postal spending by $486 million, but we have carved it out of moneys available for other than Saturday mail delivery, and we have included language prohibiting the elimination of Saturday mail delivery—or any other day's delivery—in fiscal year 1981.

The first proposed change would reduce the public service authorization for fiscal year 1981 by $250 million. We believe this loss of revenue can be absorbed without eliminating one day of delivery. Undoubtedly service will be adversely affected. It is folly to presume that hundreds of millions of dollars can be taken out of a labor-intensive organization without affecting service, but a balanced budget is what the House has demanded and we are complying with that instruction.

The second major change is that we reduce appropriations which subsidize preferred classes and users of mail by a total of $211 million. The first part of that $211 million is a postponement in the authorization for reconciliation appropriations for prior fiscal years—to balance revenues which would have been appropriated if accurate estimates of mail volume had been made at an earlier date. Those estimates are virtually impossible to make accurately, and so the Postal Service is permitted to come in later and ask for an adjustment. We have no objection to that kind of appropriation; if it is all right with the Committee on Appropriations, it is all right with the Committee on Post Office and Civil Service, but we postponed the authorization for that amount for 1 year. The savings is $111 million.

The second part to be carved out of the subsidy for preferred mail is a $100 million reduction for the subsidy for third-class nonprofit mail. Let me explain this in a little more detail, because I am sure that many of my colleagues have heard from the organizations concerning this change.

The third-class bulk rate—meaning rate applicable to mass volume mailers of advertising circulars and other kinds of third-class mail—was established by Congress in 1928. The rate was set at 1 cent per piece. No change was made until 1951, when the rate was raised to 1½ cents. But, responding to the pressures of a great many charitable, religious, and other organizations, Congress provided an exception to maintain the rate at the 1-cent level for any nonprofit organization which fell into any one of eight general categories—religious, educational, scientific, philanthropic, agricultural, labor, fraternal or veterans. A couple of groups have been added since but those basic eight groups are the principal users of third-class nonprofit mail. Their rates have remained very low ever since. In 1967, the last time Congress passed a postal rate bill, the rate for each piece of third-class nonprofit mail was set at 40 percent of the regular third-class rate.

In 1970, as part of the Postal Reorganization Act, Congress provided that the rates applicable to nonprofit third-class mail, as well as some kinds of second and fourth-class mail, could not exceed "attributable" costs. That means that thousands of churches which mail appeals for financial support, and all of the other nonprofit organizations, pay postage rates which include no contribution whatsoever to the overhead or institutional costs of the postal system. And that means that nonprofit third-class mailers pay 3.5 cents per piece for sending their mail, and regular third-class bulk mailers pay 8.4 cents per piece.

The difference, 4.9 cents, is made up by appropriations which were permanently authorized in 1970 and have been made each year. For fiscal year 1981, the total subsidy for all preferred mail, small newspapers, books, church newsletters, and so on, is $678 million. Out of that total, $419 million is the subsidy for third-class nonprofit mail—nearly two-thirds of the total subsidy. Our committee proposal would cut $100 million of that $419 million subsidy. Third-class mailers would still get a subsidy of $319 million, or about 4 cents per piece, rather than 5 cents per piece.

□ 1420

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I will be delighted to yield to my friend, the gentleman from New York.

Mr. OTTINGER. I thank the gentleman for yielding. I want to express my praise for his action.

Mr. HANLEY. I thank the gentleman.

Mr. OTTINGER. And I want particularly to say that the 6-day delivery of mail I think is important to a great many of our businesses and also to employment in the Postal Service. But I would like to express my concern about the cut in the third-class appropriations for nonprofit organizations, because what it means is that the budget of every school, hospital, health group, religious organization, and institution specified by my friend, the gentleman from New York, is going to be seriously damaged and the charitable work they do is going to be impaired.

I think at the very least this body ought to have been given an opportunity to decide for itself to vote on the question of whether or not this kind of subsidy should continue, because these organizations for the most part do work which, if they were not doing and were not raising these funds for, would have to be done by Government.

A few examples of the costs of this provision that I would like to give are, it is going to cost the National Catholic Development Conference $9 million additional; the March of Dimes $1.2 million; the National Wildlife Federation some $480,000; the American Lung Organization, $1.32 million. This comes as a surprise to these organizations. It is not in their budget. It is going to mean reduced ability for them to operate in these important areas. I would like to express my severe concern about the measure, and particular concern that this body was not allowed to vote on this matter.

I thank the gentleman for yielding.

Mr. HANLEY. I appreciate the gentleman's comments. I certainly share his concern, and I have evidenced this concern throughout this entire budget overture, but, as I mentioned initially in my remarks, this committee is doing not necessarily what it wanted to do or what it would have done.

This committee is actually working at the direction of the House of Representatives by virtue of the vote in favor of the budget resolution. The suggestion of the gentleman that we have a separate vote on this issue, of course, at this point in time is academic. We made an overture that might have provided that opportunity, but that, too, was denied.

Mr. OTTINGER. Will the gentleman yield just one second extra? We do have recourse. We can vote down this reconciliation resolution, which I hope we will do.

Mr. HANLEY. That, of course, is the prerogative of each Member of the House.

Undoubtedly the measure and this particular issue will have some impact upon mail operations, but I am constrained to say that the impact upon third-class mail users will probably be no more severe than the diminution of veterans benefits, which our Veterans' Affairs Committee has proposed, or the reduction of money for school lunches, which the Committee on Education and Labor has proposed. If we are going to balance the budget, as we have all heard time and again, cuts in favorite programs are inevitable.

The alternatives would be to cut out Saturday mail delivery or to close, say, 10,000 small rural post offices, which might save $100 million or so; but our committee reached the conclusion that those alternatives are worse.

Our final change is to eliminate the third-class subsidy for political committees after the end of the current fiscal year. This provision has had a difficult, brief life. For those who advocate its continuation, I suggest that when it is brought up again it be presented in a straightforward manner with committee reports and an adequate amount of legislative history, so that its application can survive the test of constitutionality. That goal was not met this time around, and our committee recommends its repeal. The savings will be about $25 million.

The total savings from the combination of civil service and postal changes for fiscal year 1981 are $973 million. We believe that we have complied substantially with the instructions which the House imposed upon our committee. We have done so with a heavy heart and with a conviction on the part of all of us that this legislative act is something between folly and futility. But if it is the House's wish, then the House may sleep more peacefully, perhaps, knowing that its Committee on Post Office and Civil Service has complied with this mandate.

Mr. Chairman, I yield back the remainder of my time.

□ 1430

Mr. DERWINSKI. I yield myself such time as I may consume.

Mr. Chairman, this bill is a smorgasbord of recommendations which will neither delight nor satisfy legislative and fiscal gourmets. Under the reconciliation instructions in the first budget resolution eight committees were given target levels of figures which were to be submitted to the Budget Committee.

Some of the targeted savings were completely unrealistic, but in the best Broadway tradition the "show must go on." The Post Office and Civil Service Committee, for example, was mandated

to come up with savings of $1 billion. With some sleight of hand, it conjured up savings of $953 million. Minority members of the committee were unanimous in expressing their misgivings in supporting the legislative package manufactured by the majority. Forced into a parliamentary vise, majority members could respond only in a way which clearly compromised the legislative independence of the committee.

It is neither realistic nor logical to expect the U.S. Postal Service to absorb $466 million in reductions without resultant cutbacks in service or adjustments in rates for certain categories of mail. Included in that total is a $100 million reduction in the revenue foregone appropriation which underwrites lower postal rates for religious, charitable, educational, and fraternal organizations. The reduction in that appropriation will result in higher rates for worthwhile organizations. These same organizations were assigned lower rates by congressional action, now we are reneging on our commitment.

In postponing the March 1981 cost-of-living adjustment for Federal annuitants, the committee position is more practical than that of the Senate, but there still is a question of equity. A more preferable approach in offering this reduction would be to tie it to absolute assurance that the integrity and independence of the civil service retirement system would be preserved.

It remains to be seen what further damage we face from a Budget Committee intent on producing artificial numbers rather than engaging in legitimate application of budgetary discipline.

Mr. Chairman, now I wish to explain the reasoning behind my votes on the budget reconciliation measure.

Since I believe the Budget Committee has usurped the authority of the authorizing and appropriations committees, I will support Representative BAUMAN'S COLA amendment. If Federal employees are to have their cost of living adjustment cut back to once a year, it should be decided in the first place by the committees having proper authority and jurisdiction over this matter. It should not be used as a gimmick for budget committee purposes.

I will also vote for the other two pending amendments.

As we all know this budget is not in balance and never has been (except on paper) in addition we endured the "smuggling" of sizable deficit spending into the 1980 budget year. The whole process has become a charade, and the victims are American taxpayers.

After all the amendments have been proposed and thrashed out, my vote will be cast against this budget reconciliation bill.

Mr. Chairman, like many of the other Members I sense the awesome importance of this issue and I note, of course, the attendance on the floor of so many Members which attests to their great interest in this budget process.

Mr. Chairman, I would digress for a moment to commend the gentleman from New York (Mr. HANLEY), the chairman of the Committee on Post Office and Civil Service. The gentleman is retiring this year and we will miss him and miss the leadership the gentleman has so vigorously displayed this afternoon. The gentleman gave what I considered a near perfect description of the legislative problems facing the committee and I wish to associate myself with the remarks of the gentleman from New York and commend him for the very able leadership he has provided our committee as chairman.

Mr. HANLEY. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I do yield to the gentleman from New York.

Mr. HANLEY. I am deeply grateful for what the gentleman has said. I want to express my deep gratitude for the ever present cooperation of the gentleman from Illinois. I thank the gentleman very much.

Mr. DERWINSKI. Mr. Chairman, I think the gentleman would agree with me, however, if I pointed out that behind every great chairman and any ranking member there are very efficient staff personnel. In the case of the Committee on Post Office and Civil Service we have the example of Mr. Ted Kazy who started his career in the very demanding profession of sports reporter. And Mr. Joe Fisher who was a political reporter and eventually came to work on our committee. Then, of course, you have Mr. Lockhart, who passed his bar exam with grades bordering on genius and then, of course, Mr. Minton the staff director who first worked in the other body and when he discovered how not to legislate he crossed over to the House where he has performed admirably as staff director. I am sure the gentleman from New York (Mr. HANLEY) would agree with me that these men have been invaluable.

Mr. HANLEY. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I do yield to the gentleman from New York.

Mr. HANLEY. The gentleman provides a nice precedent and while I am on the subject now I feel inclined to say something about some great staff people over on this side of the aisle. They too, contributed greatly in this effort and to each I extend my commendation.

Mr. DERWINSKI. Mr. Chairman, at the risk of forcing an eruption from the chairman of the Committee on the Budget I would like to point out that I think our staff has served us quite effectively and if there was more attention paid to our staff recommendations and less attention paid to the recommendations of the staff of the Committee on the Budget, the whole situation would be better today.

Mr. Chairman, I yield 5 minutes to the distinguished gentleman from California (Mr. LUNGREN).

Mr. LUNGREN. I thank the gentleman from Illinois for yielding.

Mr. Chairman, I take this time to discuss an issue in which I have a major concern and which comes under the jurisdiction of this committee. The matter is COLA.

As one who has been for some period of time talking on the floor about the need to balance the budget and who believes in the reconciliation process, I was one who initially viewed the retention of a twice a year COLA procedure somewhat skeptically.

However, upon one of my trips to my district I had the opportunity to talk to a number of retired people who are not recent retirees, living in an area of my district known as Leisure World where the average age is 75 and every third person is 83. I find these were people who retired from the Federal employment perhaps 20 years ago, when I do not think it can be argued there was truly a comparability in pay between those in Federal employment and those in the private sector. One of the things that was held out to these people at that time and repeated to them time and time again was that in lieu of receiving comparability in terms of direct salary, they could rely on the Federal Government's pension plan to see them through their senior years.

I was particularly struck by the fact of the women who visited me who have been retired 25 years who I do not think anyone could argue, were being paid at a very low rate and, therefore, have a very low basis upon which to figure their pension and to whom COLA twice a year is extremely important.

Many times those of us in the House think of some of our former colleagues, those who have retired, who have told us in effect that the dual COLA adjustment is something which suits them very well and in some eyes might be too generous. However, when you are talking about those other people who are in the lower scheme of things financially, I think it is a very different picture.

I am hopeful that in some time in the future Congress can address this particular issue; that is, whether we should perhaps make different adjustments with respect to those who have retired for some period of years and are receiving money in a very minimal sense, receiving less than social security recipients, so we can be true to the promise made to them a number of years ago that they should receive lesser pay with the expectation of having a pension plan which would be a realistic pension plan.

It seems to me that, attempting to make an adjustment or a change in the 2-year COLA procedure that affects all of these individuals, at this time, puts many of us in a difficult position. We think that a change perhaps ought to be done on those in the higher spectrum and perhaps those people who are more recently retired, when comparability was certainly within reach.

We would hope that perhaps a distinction can be made treating one group a little differently than the other and

in the absence of being able to make that determination at this time, it would seem to me to be the better part of judgment to get support for the Bauman amendment so that those people who find themselves in very difficult straits financially ought not to be unfairly affected this year.

I would just address a question to the distinguished ranking Member, the gentleman from Illinois (Mr. DERWINSKI), as to whether consideration has been given about how this COLA question falls unevenly across people who have retired in different eras and with different bases of pay.

Mr. DERWINSKI. If the gentleman would yield, the gentleman is absolutely correct. In years gone by there was no real effort at so called comparability where in recent years it has been subject to adjustment process and, therefore, the most recent retirees have had their retirement based on salary scales with are much more comparable to private industry.

Then the gentleman is absolutely correct in my judgment at least by stating, as the gentleman has, his affirmative report for the Bauman amendment. I think that is a very equitable effort and I would suggest that Members of the House would do well to support that amendment when we reach that point in this legislative procedure. I think it is a matter of fairness to these people who, as the gentleman indicates, have a legitimate right to expect this budget pension support.

Mr. LUNGREN. Mr. Chairman, it is my understanding that in the legislative context presently before us we really will not have the opportunity to try to make a distinction between one group or another.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DERWINSKI. Mr. Chairman, I yield the gentleman from California 2 additional minutes.

Mr. LUNGREN. Mr. Chairman, I appreciate the gentleman yielding additional time.

Mr. Chairman, it is my understanding that in this legislative context to try to deal with the complex question of deciding when comparability came closer to reality and that period of time in which it did not.

Mr. DERWINSKI. The gentleman is correct. I would point out since we are dealing just with the 1981 budget, therefore, our committee has authorizing jurisdiction. The subject we could well address as we take a good look at the long-term status of the Federal retiree program. In the meantime, the budget issue before us is, as I say, 1 year. Therefore, the COLA battle is a 1-year issue just for this year only and that, hopefully, with a little practical adjustment of the budget process, the authorizing and appropriating committees might be allowed to do work in areas where they presumably have expertise.

Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. HANLEY. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The gentleman from California (Mr. JOHNSON) is recognized for 30 minutes, the gentleman from Ohio (Mr. HARSHA) is recognized for 30 minutes, and the gentleman from Kentucky (Mr. SNYDER) is recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. JOHNSON).

□ 1440

Mr. JOHNSON of California. Mr. Chairman, I yield 5 minutes to the subcommittee chairman, the gentleman from New Jersey (Mr. HOWARD).

Mr. HOWARD. Mr. Chairman, title 5 of the bill contains the contribution of the Committee on Public Works and Transportation to the budget reconciliation process. As you know, Mr. Chairman, I am one of those who originally and strongly opposed reconciliation at this stage of the budget process. I continued to have serious misgivings about this mode of proceeding and intervening events in our national economy have only contributed to this opinion.

However, in the interest of harmony and legislative progress, I am committed, as I know the other members of the Committee on Public Works and Transportation are, to supporting this budget reconciliation effort.

Title 5 of the bill is divided into three subtitles. Subtitle A contains the report of the Committee on Public Works and Transportation for Savings in the basic highway programs; subtitle B contains the savings in the airport and airway development program, and subtitle C contains the superfund approach taken by our committee on those matters within its jurisdiction.

Mr. Chairman, subtitle A imposes a ceiling on the obligation authority of the Secretary of Transportation for Federal-aid highway and highway safety construction programs for fiscal year 1980 and fiscal year 1981. Section 501 establishes a fiscal year 1980 obligation ceiling of $7,900,000,000 and section 502 establishes a fiscal year 1981 obligation ceiling of $8,750,000,000. Because of the user-financed nature of the Federal-aid highway program, the committee has always been reluctant to impose any obligation limitation. The administration and the Office of Management and Budget have continued to insist on an obligation ceiling for the highway program in every fiscal year. Notwithstanding the current revenue problems with the highway trust fund, the committee still believes that the Congress should be slow to enact obligation limitations when there is such a strong record for permitting the States to encumber the highway trust fund up to the full amount of the contract authority authorizations in title 23, as periodically amended.

Because of the extreme restrictions which these obligation limitations have placed on the Federal-aid highway program, the committee has had to resort to a very detailed scheme for allocating these limitations so that each State is still able to get its fair share of the available obligation authority regardless of the timing of its construction season. The committee is going to watch these issues closely and I want to alert the Members to the willingness of the Committee on Public Works and Transportation to advance on short notice legislation increasing very substantially the availability of Federal-aid highway and highway safety construction funding as a part of any overall congressional effort to alleviate our current national economic crisis.

Subtitle A will have the effect of deferring substantially more than the $300 million in new budget authority sought by the Budget Committee, and, when considered in conjunction with the committee's aviation proposals, will produce at least $750 million in outlay reductions in fiscal year 1981. The Congressional Budget Office confirms this estimate.

Mr. JOHNSON of California. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. ANDERSON), chairman of the Aviation Subcommittee.

Mr. ANDERSON of California. Mr. Chairman, I rise in support of section 511 of the reconciliation bill. This section reduces funding for the airport and airway development programs to meet the requirements of the first concurrent resolution on the budget.

The existing airport and airway development programs terminate at the end of fiscal 1980. The Public Works Committee has reported a bill, H.R. 6721, to reauthorize the program from fiscal years 1981 through 1985. Our bill will go to the floor this week.

Section 511 of the reconciliation bill contemplates that in the conference with the Senate on the airport and airway development bill, we will reduce budget authority for fiscal 1981 by $300 million. If we should adopt a conference report which does not make this reduction, section 511 directs the Clerk of the House to make the necessary reductions by adding an obligational ceiling to the conference bill.

Thus, section 511 makes the reductions in airport and airway programs required by the first budget resolution. Section 511 does not make these reductions immediately, but requires that they be made in conference. This procedure is desirable because the funding levels for airport programs are only one part of the total legislative package and cannot be separated from other issues which will be taken up in the conference. If the funding levels are reduced now, there will be an unnecessary and undesirable limitation on the flexibility of the House conferees. We need this flexibility to deal with controversial provisions in the Senate bill, particularly the so-called defederalization provisions which make the 72 largest airports ineligible for Federal assistance. There is no comparable provision in our bill.

There is no danger that deferral of the reductions until conference will lead to excessive spending for the airport development program. The current law expires at the end of fiscal 1980 and there can be no authorizations for fiscal 1981 until H.R. 6721 is passed. Before this bill is passed, it will have to comply with the reconciliation resolution.

Mr. Chairman, section 511 complies with the requirements of the first budget resolution. I urge its adoption.

Mr. JOHNSON of California. Mr. Chairman, I now yield 5 minutes to the gentleman from Texas (Mr. ROBERTS), Water Resources Subcommittee chairman.

Mr. ROBERTS. Mr. Chairman, title V of H.R. 7765 contains the entire text of H.R. 85, the comprehensive oil pollution liability and compensation bill, in the form in which it was reported out of the Public Works and Transportation Committee on May 16, 1980. In this regard it should be noted that H.R. 85 has been referred to three different committees—the Public Works and Transportation Committee, the Merchant Marine and Fisheries Committee, and the Ways and Means Committee—and that it has been reported out in a different form by each. Two versions of H.R. 85—that of the Ways and Means Committee and that of the Public Works and Transportation Committee—appear in the bill before us; however, it does not include the version reported by the Merchant Marine and Fisheries Committee.

Mr. Chairman, the differences in the three versions of H.R. 85 as reported by the various committees have been worked out, and the Rules Committee has granted a rule on the bill. It is anticipated that it will reach the floor of the House within the next few weeks.

I have maintained all along—and I continue to maintain—that it would be most inappropriate for us to enact part or all of H.R. 85 through the medium of the budget reconciliation bill. Nevertheless, our committee felt that, if any of the provisions of H.R. 85 were to be included in H.R. 7765, all of them should be included. With that basic premise in mind, our committee reluctantly decided to include our own superfund legislation in the reconciliation recommendation that we transmitted to the Budget Committee.

Mr. Chairman, I understand that the gentleman from Connecticut (Mr. GIAIMO), pursuant to the rule, intends to offer an amendment which would strike from this bill those provisions in subtitle C of title IX representing the Ways and Means Committee's version of title V of H.R. 85. That amendment would also strike my own committee's version of H.R. 85, which appears in subtitle C of title V. I will give that amendment my wholehearted support, as I feel that the reconciliation process is not an appropriate vehicle for the consideration of new and complex legislation such as H.R. 85.

□ 1450

Mr. JOHNSON of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the budget journey has been long and hard this year, and we have several difficult steps yet to take.

Rapidly changing economic forces both at home and abroad have contributed mightily to the problem of choosing effective budget policies.

I have not always supported all of the budget policies recommended—such as the use of trust fund receipts to offset deficit spending in other program areas and the use of reconciliation in the first concurrent resolution on the budget—a notion that was rejected by the framers of the Budget Act.

However, the members of the Committee on Public Works and Transportation have in the past done and will continue to do everything possible to abide by the wishes of the majority of our colleagues with respect to the requirements of section 3 of the first resolution and the reconciliation process.

Title V of H.R. 7765 contains the recommendations of the Committee on Public Works and Transportation to achieve the savings directed by section 3 of the first concurrent resolution.

This section directs our committee to "recommend program reductions in laws or in reported bills or resolutions within its jurisdiction to reduce spending for fiscal year 1981 by $600 million in budget authority and $750 million in outlays."

Included among the recommendations of the Committee on Public Works and Transportation are a series of limitations which would reduce the amounts of budget authority already available for obligation for fiscal years 1980 and 1981 for highway trust fund programs, State and community highway safety programs, and for airport and airway development programs.

The net effect of these actions is to reduce the budget authority available in 1981 far in excess of the recommended $600 million and accomplish outlay reductions greater than the $750 million included in the first concurrent budget resolution.

The reductions contained in title 5 of H.R. 7765 comply fully with the letter and spirit of the reconciliation process.

I want to commend the three fine subcommittee chairmen: JIM HOWARD, Surface Transportation; GLENN ANDERSON, Aviation; and RAY ROBERTS, Water Resources; and their minority counterparts, BUD SHUSTER, GENE SNYDER, and DON CLAUSEN—for their work on H.R. 7765.

BILL HARSHA, our ranking minority member, provided his usual good leadership.

It is never easy to cut back on good programs, as the programs in title V certainly are, programs that are delivering a quality product for the taxpayer.

Our acceptance of these reductions should be viewed not as a lessening of our commitment to these worthy programs but as a recognition by myself, the Members I have mentioned, and the committee as a whole, of the need to support some reductions now in the hope of getting Federal spending under control at this critical time.

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. HARSHA).

Mr. HARSHA. Mr. Chairman, I rise in support of sections 501, 502, 503, and 511 of the Omnibus Reconciliation Act of 1980. These sections impose budget restrictions in highway and aviation authorizations for fiscal years 1980 and 1981. Taken together, these should result in savings in both fiscal 1981 budget authority and outlays at least equal to the reductions required in the revised conference report on the first concurrent resolution on the budget for fiscal year 1981.

Under the first concurrent resolution, the Committee on Public Works and Transportation was required to develop program reductions in either existing laws or in reported bills within the committee's jurisdiction to reduce spending for fiscal year 1981 by $600 million in budget authority and $750 million in outlays. We proposed to accomplish these savings in the following manner:

First, the fiscal year 1980 obligations limitation for Federal-aid highways and highway safety construction is reduced to $7.9 billion. This new limit is $850 million below the ceiling previously established in the fiscal year 1980 Appropriations Act.

Second, the fiscal year 1981 obligations limitation for Federal-aid highways and highway safety construction would be limited to $8.75 billion.

These new obligations ceilings for fiscal years 1980 and 1981 highway programs would be distributed to the States in accordance with formulas aimed at equitably sharing the reductions.

Third, obligations for State and community highway safety programs for fiscal year 1981 would be limited to $150,405,000, nearly $50 million under its authorized level.

Fourth, fiscal year 1981 obligations for airport development and airport planning and for grants under section 104(e) of the Airport Safety and Noise Abatement Act of 1979 would be limited to $725 million.

While I support these recommendations in an effort to achieve a balanced Federal budget for fiscal year 1981, it is not without some reluctance. My reservations center on the source of funds being used to obtain budget authority and outlay reductions. All four sections imposing obligations limitations for activities within the jurisdiction of the Committee on Public Works and Transportation involve programs financed from self-supported trust funds. I seriously question whether reductions in outlays from trust fund accounts are consistent with the discipline embodied by the balanced budget concept. It occurs to me that the decision to defer these trust fund expenditures may fuel, rather than fight, inflation in the long run.

The Highway Trust Fund is an excellent case in point. Historically, the trust fund has shown a steady upward growth since its creation in 1956. In the late 1950's and early 1960's, it generated $2 billion in annual revenues. That grew to $6 billion in the midseventies, and to just under $8 billion in annual revenues in 1979.

Despite the critical needs of this Nation's highway system, the Highway Trust Fund today has a cash value of over $12 billion. We have been asked, and have reluctantly agreed, to hold down expenditures from the trust fund in both fiscal years 1980 and 1981. We will be holding back more than $700 million in fiscal year 1981 outlays. But these

will only achieve a paper "savings." The trust fund is being used for the sake of appearances in the budget-balancing act. This administration-requested act merely inflates the cash balance in the Highway Trust Fund in order to offset the real deficit of the general funds in the unified budget. This paper "savings" would seem to permit an even larger portion of the budget to be spent elsewhere.

Very clearly, these Highway Trust Fund outlay reductions do nothing to solve the real problem in fighting inflation, namely how to close the gap on deficit spending in general fund programs. The trust fund "savings" cannot be diverted to offset revenue shortfalls in other program areas. It is an apples and oranges situation. On paper we hold down total outlays when in real terms the revenue/deficit gap remains the same or increases.

Aside from the question of impact on the fiscal year 1981 Federal budget, I am equally troubled by the effect the deferral in Highway Trust Fund expenditures will have on our Federal-aid highway program. While the cash balance in the trust fund keeps going up, the value of that money in terms of the improvements it will buy keep going down. It keeps declining every year as the construction cost factors escalate due to runaway inflation and the outrageously high interest rates.

It has not been that long ago that Federal impoundments forced States to accumulate large unobligated balances in the various program categories which make up our national highway effort. It is ironic that the very act passed to remedy previous impoundment actions is now, in 1980, the source of negative signals as to our resolve in completing the interstate system and maintaining the quality of our transportation investment. At best we are sending conflicting signals.

Let me remind you of the actions taken by Congress when we passed the Surface Transportation Assistance Act of 1978. We determined that it was imperative that the interstate system be brought to full completion as rapidly as possible. In order to encourage early completion, several steps were taken. We mandated that environmental impact statement for incomplete gaps in the system be submitted by September 30, 1983, and that these segments have construction begin or rights-of-way acquired by September 30, 1986. Accelerated completion was also encouraged by limiting the interstate obligation period to 2 years after which lapsed funds would be available in a pool to faster moving States on a first-come, first-serve basis.

In noninterstate highway construction programs we substantially liberalized provisions governing the transference of funds from one program to another in order to provide the States with enhanced flexibility. These actions told the States to beef up their programs and get ready to spend. Subsequently, the States did move to comply on the assumption that the necessary funding would be there when needed. Certainly, our action of deferring trust fund obligations must be causing the States to reassess their decisions.

We must not be unmindful of the present crisis being experienced by America's railroads, particularly in the Northeast Corridor. This Nation's Transportation systems are deteriorating at an alaming rate. Our highways last only about 20 years, and current reports suggest they are wearing out faster than they are being replaced.

In order to make our major roads last beyond their 20-year economic life, they must be completely reconstructed or at least undergo major rehabilitation to bring them back to original construction conditions. It is certainly a sign of the times that the cost of reconstruction now is generally greater than the cost of original construction—and that includes the original right-of-way purchase. Nearly half of the Nation's 1.9 million miles of paved roads are rated "very poor" or "fair," and 9 percent of all paved roads are beyond repair and must be rebuilt. In the 1978 Surface Transportation Assistance Act, the largest increases in authorization levels were for resurfacing, restoring, and rehabilitating activities both on interstate sections as well as for primary and Federal-aid secondary system roads.

The needs of our bridge program are no less critical. Approximately 105,500 of our 563,500 bridges have been determined to need repair or replacement. A 1-year delay in continuing our highway efforts may be tolerable in light of the current budget concerns. But it must be a 1-year proposition only. Our actions today must not be misinterpreted. We must not allow our highway system to follow the same path as our railroads. We must not in the name of saving $1 in 1981 put ourselves in the position of having to spend $5 later to make up for it. We already recognize the seriousness and extensive cost of the national bridge problem. It is a symptom of a pennywise and pound foolish policy. We cannot and must not allow the same situation to occur with our highways.

When we first imposed the highway user tax we made a commitment to America's drivers. We committed the use of those tax dollars for the sole purpose of maintaining our highway network. Those taxes have been faithfully paid. They cannot be spent for any other purpose.

Mr. Chairman, in the spirit of cooperation the Committee on Public Works and Transportation will not oppose these trust fund restrictions for fiscal year 1981.

Mr. SNYDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the distinguished chairman of the full committee and the distinguished gentlemen who are the various chairmen of the subcommittees on the other side have very amply explained the provisions as they apply to this committee. We have been over their statements, and I would say that the minority agrees with them in all respects.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. JOHNSON of California. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. SMITH) for 30 minutes.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the first concurrent resolution on the budget for fiscal year 1981 requires the Committee on Small Business to recommend program changes in the laws within its jurisdiction to reduce spending for fiscal year 1981 by $800 million in budget authority and $600 million in outlays.

Now, it was said by the Budget Committee that this could be accomplished by requiring farm producers, agricultural producers, to go to the Farmers Home Administration for loans—that would be for both disaster loans and other loans—rather than to go to SBA. Of course, any loans they receive there instead of from SBA would reduce SBA requirements but would also be offset by increases in FmHA requirements. As far as SBA is concerned, it would reduce their outlays.

We had pending for a considerable number of months legislation that would provide that while they could not discriminate against the small businessmen which happen to be agricultural producers rather than processors, they should go to FmHA if the service is there and available. If not, they should not be discriminated against and must be served by SBA.

Well, since that time that bill has been passed and signed into law, so at the present time what was assumed by the Budget Committee to produce the results that they are requesting has been done, and so this part of the requirements under the bill have been complied with by the Committee on Small Business. Accordingly no further legislation is required in this part of the bill.

Mr. Chairman, unless there are further requests, I yield back the balance of my time.

The CHAIRMAN. The gentleman from Iowa (Mr. SMITH) yields back the balance of his time.

The Chair understands that the gentleman from Pennsylvania (Mr. McDADE) does not desire to be recognized.

The gentleman from Texas (Mr. ROBERTS) is recognized for 30 minutes.

Mr. ROBERTS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the conference report and statement on House Concurrent Resolution 307 instructed the Committee on Veterans' Affairs to recommend program reductions in laws within its jurisdiction, or changes in laws within its jurisdiction, that would reduce spending in fiscal year 1981 by $400 million in budget authority and $400 million in outlays. The Committee on the Budget made several recommendations that were not acceptable to the Committee on Veterans' Affairs.

The Committee on the Budget indicated that if the Committee on Veterans' Affairs desired not to accept the recommendations of the Budget Committee it should proceed to recommend alternatives that would provide for the targeted legislative cost savings.

The Committee on Veterans' Affairs has attempted to carry out the mandate of the Committee on the Budget and the House. And I will review very briefly the

recommendations of our committee, contained in title VII.

First, the Subcommittee on Medical Facilities and Benefits, under the very able leadership of the distinguished gentleman from Virginia (Mr. SATTERFIELD) and the ranking minority member of the full committee, the very able gentleman from Arkansas (Mr. HAMMERSCHMIDT), recommended that the Administrator of Veterans' Affairs be given authority to consider the amount of income and the amount of insurance that certain non-service-connected veterans may have in determining such veterans' eligibility for VA medical care. This would result in net savings of $109 million in fiscal year 1981. This provision is included in H.R. 7102, which passed the House on May 20, 1980. It was accepted by the other body and is contained in Public Law 96-330, which became law on August 26, 1980.

Second, the Subcommittee on Education, Training and Employment, chaired by the distinguished gentleman from North Carolina (Mr. HEFNER) in cooperation with the gentlelady from Massachusetts (Mrs. HECKLER), recommended to the full committee certain amendments to title 38, United States Code, that would assist the VA in the collection of certain debts owed to the Veterans' Administration. These amendments are contained in H.R. 7394, which passed the House on July 21, 1980. If enacted, the amendments would realize savings of $116 million in fiscal year 1981.

In addition, the subcommittee recommended certain GI bill education and training reforms that would result in additional savings of approximately $63 million. These savings are also contained in H.R. 7394.

Finally, the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs, chaired by the distinguished gentleman from Mississippi (Mr. MONTGOMERY) in cooperation with the distinguished gentleman from Ohio (Mr. WYLIE) recommended two reforms within that subcommittee's jurisdiction that would result in savings of $87 million in fiscal year 1981.

Most of the savings, $83.5 million, would be realized by eliminating certain non-service-connected burial benefits. The subcommittee also recommended certain restrictions on the payment of compensation to incarcerated veterans. These amendments are contained in H.R. 7511 that passed the House on Monday, July 21.

I want to thank the gentleman from Arkansas (Mr. HAMMERSCHMIDT) for the complete cooperation he has given me in helping to put together these proposals. It is never easy to recommend program reductions.

I, of course, have very strong feelings, as does the gentleman from Arkansas, that our priorities are wrong when we must cut back in programs for veterans, many of whom served during a time of war, while at the same time, adding to the budget in other areas. I happen to believe that one of our Nation's highest priorities should be in the benefits, care and treatment of our veterans and their dependents.

It distresses me when I am required to bring to the floor legislative proposals to reduce the level of benefits and services for these individuals while, as a body we add to the deficit many millions of dollars to provide care and treatment of individuals whose sacrifices have been far less than those who served our country in time of need. Many recipients of Federal benefits have yet to contribute to our Nation's welfare.

Notwithstanding my personal feelings, I am pleased that the committee has carried out the mandate given to it by the House when Members voted overwhelmingly to accept the reconciliation instructions contained in the first concurrent budget resolution. I am very grateful for the support I have received from all members of the Committee on Veterans' Affairs, who worked so hard to get this matter resolved.

I am privileged to serve with a fine group of people.

I shall not take further time of the House to discuss the specifics of these provisions since there was thorough debate on these cost-savings provisions when the bills containing these provisions were considered and recently passed by the House.

Mr. Chairman, I have no further request for time and yield back the balance of my time.

□ 1500

The CHAIRMAN. The Chair recognizes the gentleman from Arkansas (Mr. HAMMERSCHMIDT) for 30 minutes.

Mr. HAMMERSCHMIDT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to associate myself with the remarks of the distinguished chairman of the full committee, Mr. ROBERTS, and again thank him for his leadership in reaching these program reductions. As you know, Mr. Chairman, the Veterans' Administration budget, particularly in the health-care area, has suffered for several years. Since President Carter took office the VA hospital system has lost 10,000 beds. As such, it does not give me any great satisfaction to stand here and announce my support for the cuts we have been mandated to come up with.

I believe the record should again reflect the closed process that brought about these cuts. The Committee on Veterans' Affairs, which deals with the needs of our Nation's veterans on a full-time basis, recommended a budget to the Budget Committee that was more than a billion dollars higher than the Budget Committee's eventual figure. I should emphasize, Mr. Chairman, that the members of the Veterans' Affairs Committee are not known among their colleagues, for the most part, as big spenders. However, a federal system should adhere to its priorities, and to its governmental structure. The primary obligation of the Federal Government is to provide for defense and defense-related topics, including veterans' benefits. These items should be accorded the highest priority when the Federal Government determines where it must begin to reduce spending. I believe it is highly unfortunate that the Budget Committee went along with the administration's recommendations rather than those of the Veterans' Affairs Committee. I find it equally unfortunate that the Rules Committee failed to approve an amendment offered by its distinguished ranking minority member, Mr. QUILLEN of Tennessee, that would have allowed full debate on the Veterans' Administration budget when it reached the floor of this body. As a Member who has long supported the notion of a balanced budget, I nonetheless am disappointed with the priorities, and the closed manner in which debate was limited, as this body attempted to balance the budget this year.

With respect to the specific recommendations of the various subcommittees, as outlined very well by our distinguished chairman of the full committee, I can only express my support. It should be a simple process to accept these reductions, Mr. Chairman, in light of the fact that they have already been voted on by the full House of Representatives, and overwhelmingly approved. I do, however, wish to express my concern regarding a few of these observations.

First, we are eliminating nonservice-connected burial benefits for veterans with incomes of greater than $20,000 a year. I am deeply disturbed over the idea of turning burial benefits into a program based purely on financial need. I do not believe we should be giving the impression that we are subsidizing paupers' funerals with the burial benefit. We have provided this benefit based on a veteran's service to his country, not on his later economic status. It is a final reward, a last thanks of a grateful nation. I am thankful that the reconciliation provisions limit this reduction only to this fiscal year, and I would be inclined to vigorously oppose a total elimination along these lines.

Second, Mr. Chairman, I do not believe that the administration's logic holds up in the elimination of flight school and correspondence training under the GI bill. All economic indicators show that there will be a pilot shortage in the 1980's. We are making a judgment regarding a traditional earned entitlement that is out of place, and although I have supported this reduction due to lack of any other alternatives, if other alternatives reveal themselves, I can assure you, Mr. Chairman, that I and many other Members will pursue them.

With these hesitations, Mr. Chairman, and with the general misgivings which I discussed at the outset, I lend my support to title VII, the veterans affairs committee reconciliation provisions contained in the conference report.

Mr. Chairman, if there are no requests for time, I yield back the balance of my time.

Mr. ROBERTS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The Chair recognizes the gentleman from Oregon (Mr. ULLMAN) for 1 hour, following which the Chair will recognize the gentleman from New York (Mr. CONABLE) for 1 hour.

Mr. ULLMAN. Mr. Chairman, I yield myself such time as I may consume.

OVERVIEW

Titles 8 and 9 of H.R. 7765 contain the budget reconciliation recommendations of the Committee on Ways and Means which the committee was required to re-

port under sections 3(a)(8) and 3(a)(9) of House Concurrent Resolution 307, the first concurrent budget resolution for fiscal year 1981. Title 8 provides spending reductions of approximately $2 billion with respect to programs within the committee's jurisdiction while title 9 provides revenue increases of approximately $4.2 billion in fiscal year 1981.

SPENDING REDUCTIONS (TITLE 8)

A. HEALTH SAVINGS

Title 8 includes the provisions of two medicare-medicaid bills, H.R. 3990 and H.R. 4000, both of which were favorably reported by the Committee on Ways and Means. In my judgment, enactment of these provisions will improve the cost effectiveness of these programs and enhance the protection they provide aged citizens.

The major medicare and medicaid savings provisions include: First, more appropriate payment for long-term services furnished in hospitals; second, more intensive PSRO review of routine hospital admission services and excessive preoperative stays; third, making medicare the second payor in automobile insurance cases; and fourth, encouraging the use of outpatient surgical centers. Title 8 also includes provision for a temporary postponement of periodic interim payments to hospitals.

In addition, title 8 includes provisions that will encourage use of lower cost alternatives to institutional care by: First, improving coverage of home health services, outpatient services in community mental health centers and rehabilitation facilities; second, covering the preventive use of pneumoncoccal vaccine for aged medicare beneficiaries; and third, revising the medicare method of providing reimbursement for services furnished by HMO's. Title 8 also makes benefit improvements relating to services furnished by dentists, optometrists, chiropractors and physical therapists, and strengthens existing protections against fraud and abuse in the medicare and medicaid programs.

These medicare and medicaid revisions are estimated to result in legislative savings of approximately $803 million in fiscal year 1981, and merit the support of all Members.

B. UNEMPLOYMENT COMPENSATION SAVINGS

Title 8 contains three amendments to the Federal unemployment compensation law which, in the aggregate, will reduce fiscal year 1981 spending by $139 million. The first amendment terminates Federal reimbursement from the Federal Unemployment Benefits Accounts for unemployment benefits paid to CETA workers. Under present law, any unemployment compensation benefits paid to a former CETA worker are initially paid out of the State unemployment insurance trust fund. The State is then reimbursed from general revenues contained in the Federal Unemployment Benefits Account for the amount of the unemployment compensation that was based on CETA employment. Title 8 includes a provision which terminates this Federal reimbursement to States for unemployment compensation benefits paid to former CETA workers. Legislative savings from this provision in fiscal year 1981 are estimated to be approximately $50 million. The committee assumes that there will be no change in the provision in the CETA law that requires CETA workers to have the same unemployment compensation protection as other workers. Rather, it is assumed that States will be reimbursed for such benefits from CETA grants to prime sponsors.

Another unemployment compensation provision increases the length of active duty that is required of ex-military personnel for purposes of unemployment benefits. Under present law, federally funded unemployment benefits are provided to former members of the Armed Forces upon their separation from military service if they meet the qualifying requirements of the State in which they apply for unemployment compensation. The military services of the individual can be considered as wages or employment in the determination of eligibility under the State unemployment compensation law only if: First, the person had served continuously for 90 days or more prior to separation; and second, the individual was separated under other than dishonorable or bad-conduct circumstances. The 90-day continuous service requirement does not apply where separation was the result of a service-incurred injury or disability.

The bill before us today includes a provision which extends to 1 year the period of continuous active duty an individual must serve in the military in order for such service to qualify as employment in the determination of eligibility for unemployment compensation benefits following separation from the military. Legislative savings from this provision in fiscal year 1981 are estimated to be approximately $43 million.

The third unemployment compensation amendment pertains to the interstate payment of extended unemployment benefits. Under present law, a State is required to pay unemployment benefits to individuals who meet the State qualifying requirements even if they are or become residents of another State. If an individual works and qualifies for benefits in a State in which the extended unemployment benefits program is in effect, the State will be required to pay him such benefits even if the individual changes residence to a State in which the extended benefits program is not in effect.

Title 8 contains an amendment that precludes individuals from receiving more than 2 weeks of extended unemployment compensation benefits through an interstate benefit claim, if such claim is filed in a State where extended benefits are not payable because unemployment has not reached the extended benefit trigger level. The provision does not change other conditions of eligibility or benefit computation that may differ between the two States. Legislative savings from this provision in fiscal year 1981 are estimated to be approximately $46 million.

C. TRADE ADJUSTMENT ASSISTANCE SAVINGS

Title 8 rescinds passage of H.R. 1543 by providing that the bill is repealed on the day before the date of enactment of that bill. H.R. 1543 amends the trade adjustment assistance programs for workers and firms under the Trade Act of 1974 to remove inequities in program eligibility under existing law, to improve adjustment aspects, and to accelerate certification and benefit delivery. A major provision of H.R. 1543 would extend trade adjustment assistance to workers and firms supplying component parts and services to import-impacted end products.

The Ways and Means Committee recommended repeal of H.R. 1543 as a legislative savings of $822 million—which was the current reestimate by the Congressional Budget Office of the cost of the bill in fiscal year 1981—this would not adversely affect workers and firms eligible for benefits under existing law. The committee did not consider or take any action to amend the current trade adjustment assistance programs as a budget reconciliation measure.

D. SAVINGS FROM ENACTED LEGISLATION

Congress has enacted H.R. 3236, the Social Security Disability Amendments of 1980, and H.R. 3434, the Adoption Assistance and Child Welfare Act of 1980, both of which were originated by the Committee on Ways and Means. H.R. 3236 establishes work incentives for the disabled and improves accountability in the disability and AFDC programs which will result in savings of $133 million in fiscal year 1981. H.R. 3434 makes a number of improvements in both the child welfare program and the title XX social services program. Specifically, the bill includes provisions that will: First, establish a ceiling on title XX training funds; second, encourage employment of welfare recipients as child care workers; third, disallow AFDC earnings disregards in the case of any income which is reported late; and fourth, permit States to prorate AFDC benefits to children to take into account the income of certain relatives living in the household. The legislative savings in fiscal year 1981 from these provisions of H.R. 3434 are estimated to be approximately $103 million.

These newly enacted laws will reduce spending in fiscal year 1981 by approximately $236 million and have been claimed by the Ways and Means Committee, with the approval of the Budget Committee, in satisfaction of the committee's reconciliation requirements.

REVENUE INCREASES (TITLE 9)

The first budget resolution required the Ways and Means Committee to make recommendations which would raise budget receipts by $4.2 billion in fiscal year 1981. Title 9 embodies the committee's recommendations. In making its decisions, the committee tried to minimize whatever adverse economic effects might result from tax increases at this time. It also attempted to correct some structural problems in the tax law.

Title 9 of the reconciliation bill contains the language of the mortgage subsidy bond bill passed by the House last March. The extraordinary growth of housing bonds threatens to overload the market for tax-exempt bonds and greatly increase the revenue loss associated with tax-exempt bonds. The bill limits the tax exemption for mortgage bonds so that it is only available in cases where

the issuance of such bonds is consistent with good housing policy. The bill also provides liberal transition rules in cases where action was taken before the committee began work on the bill. The revenue gain is expected to be $500 million in fiscal year 1981.

Title 9 also contains the tax and related portions of the superfund bills reported by the Ways and Means Committee. These bills impose, on crude oil and chemical feedstocks, new excise taxes which are deposited into various trust funds to be used for cleaning up inactive hazardous waste sites and compensating for damages caused by spills of oil and hazardous substances. The revenue gain is estimated to be $300 million in fiscal year 1981.

The rule makes in order an amendment to delete the superfund provisions from the bill. This amendment would be acceptable to me because the superfund bill is proceeding along its own track and would be easier to deal with separately. The only reason the Ways and Means Committee put the superfund language in its reconciliation recommendations is that it was advised to do so by the House Budget Committee as the only way by way by which the Ways and Means Committee could be credited with the revenue increase of $300 million associated with the committee's prior action on the superfund legislation. I wish to emphasize, however, that without the superfund provisions, we cannot promise the House that the conference agreement on reconciliation will raise the full $4.2 billion assumed by the first budget resolution. It may be necessary, for example, to come out of conference with a bill raising only $3.9 or $4 billion, leaving the additional $300 million for enactment of the separate superfund bills.

Title 9 also imposes a tax on capital gains by foreigners on the sale of U.S. farm land and other real estate. Reporting requirements are provided to identify when taxable transactions have occurred. The revenue gain is expected to be $40 million in fiscal year 1981.

Title 9 also delays for 1 year the phase-out of the telephone excise tax. Since 1973, this tax has been phasing down from its prior rate of 10 percent. Under present law, it is scheduled to decline to 1 percent in 1981 and to terminate in 1982. Under title 9, the rate will be 2 percent in 1981 and 1 percent in 1982; the tax will terminate in 1983. The revenue gain is estimated to be $400 million in fiscal year 1981.

Title 9 also eliminates a provision in present law relating to social security and unemployment compensation payroll taxes under which employers can reduce their tax base by paying their employees' social security taxes. More and more employers are using this device, and if the practice continues to grow, the solvency of the social security trust fund will be greatly imperiled. The revenue gain is estimated to be $50 million in fiscal year 1981, but considerably more in future years. A transition period is allowed for State and local governments that currently take advantage of this provision to adjust their payroll practices.

The bulk of the revenue raised by title 9 comes from a change in the estimated tax on large corporations. Currently, corporations may base their estimated tax payments on either 80 percent of their current year's tax liability or 100 percent of the prior year's tax liability. This exception based on prior year's tax liability provides a tax deferral which is only available to companies whose tax liability is growing rapidly. Title 9 places a limit on the exception by providing that when a corporation whose taxable income has been more than $1 million in any of the 3 preceding taxable years elects the exception, it must cover a minimum of 60 percent of the current year's tax liability with estimated tax payments. The revenue gain is estimated to be $3.1 billion in fiscal year 1981. The revenue gain will be significantly reduced in future years because the provision does not change final tax liabilities.

CONCLUSION

In conclusion, I would like to stress the following:

First. The Ways and Means Committee did meet the recommendations to reduce spending by $2 billion and increase revenues by $4.2 billion as provided by the first concurrent budget resolution.

Second. The Ways and Means Committee worked quickly and efficiently in developing these recommendations. They were approved by a bipartisan voice vote. The committee's reconciliation recommendations were achieved in as painless a manner as possible to insure that they would not be disruptive to the economy. Revenues are raised without imposing new taxes. We were mindful of the unemployed worker in this time of recession, and no program bore the brunt of these spending reductions. If one examines the Senate's spending reductions, I am sure that you will conclude that the changes recommended by the Ways and Means Committee are less disruptive to all concerned parties.

Third. The subject on which there was the greatest controversy was the committee's decision to rescind passage of H.R. 1543, the trade adjustment assistance bill. The cost estimates of the modifications to the trade adjustmemnt assistance program, as provided by H.R. 1543, had significantly increased from $165 to $822 million.

The provisions of titles 8 and 9 were carefully and responsibly considered and developed by the Ways and Means Committee and merit the support of all the Members of the House.

□ 1510

Mr. FOUNTAIN. Mr. Chairman, will the gentleman yield?

Mr. ULLMAN. I am happy to yield to my friend, the gentleman from North Carolina.

Mr. FOUNTAIN. I want to commend the gentleman from Oregon (Mr. ULLMAN), the members of the Committee on Ways and Means and the members of the committee and the chairman of the Committee on the Budget, the gentleman from Connecticut (Mr. GIAIMO), and those who worked on the Budget Control Act and also the legislative committees which have gone through the agonizing and painful process of coming to the floor with this reconciliation legislation.

It seems to me, however, there are countless thousands of people all over America who somehow do not understand why it has become necessary for us to do what we are doing.

I would like to ask just a couple of questions just to emphasize something which all of us know, but which we seldom hear, particularly from those who are running for public office at this time.

Will the gentleman tell the Members of the House what our national debt is at this time? Is it in the neighborhood of $900 billion?

Mr. ULLMAN. It is very close to $900 billion.

Mr. FOUNTAIN. And the annual interest on that national debt is about how much?

Mr. ULLMAN. About $60 billion to $70 billion.

Mr. FOUNTAIN. So were it not for the fact that the Federal Government has a tremendous amount of power and a lot of ways in which it can get funds, it is basically insolvent; is it not?

□ 1520

Mr. ULLMAN. Well, I guess it would depend on the definition of solvency. I think this is a solvent measure, even with the debt; but I would fully agree with the gentleman that the present level of our indebtedness is intolerable and further extensions of the federal debt are intolerable. That is one of the reasons we are having the persistent problems of inflation. It is not the only reason, but one of the reasons.

It is absolutely essential that we turn that situation around and not only balance the budget, but begin carving away at the existing indebtedness. The budget system is the only way that we can do it. The budget system will not work adequately unless we do have a reconciliation provision that forces us to make the hard decisions that we have tended to evade in the past without a budget system.

Mr. FOUNTAIN. Mr. Chairman, I thank the gentleman for his answer, because I think too often we have a tendency to overlook the necessity for a balanced budget, and reversing the excessive spending process and becoming more fiscally responsible.

Mr. ULLMAN. The gentleman is correct.

● Mr. CORMAN. Mr. Chairman, H.R. 7765 contains three unemployment compensation provisions.

Section 891 of the bill terminates the provision in current law that provides Federal reimbursement from the FUBA account for unemployment compensation paid to former CETA workers.

The Comprehensive Employment and Training Act (CETA) requires that all persons employed in CETA public service jobs be provided unemployment benefits under the same conditions, and to the same extent, as other employees doing the same type of work. Unemployment compensation benefits paid to a former CETA worker are initially paid out of the State unemployment insurance trust fund. The State is then reimbursed from general revenues contained

in the Federal unemployment benefit account (FUBA) for the amount of the unemployment compensation that was based on CETA public service employment. This Federal reimbursement was provided under Public Law 94-444, the Emergency Jobs Program Extension Act of 1976, which amended the Emergency Jobs and Unemployment Assistance Act of 1974 (Public Law 93-567).

The provision in section 891 terminates Federal reimbursement to States from the FUBA account for unemployment compensation benefits paid to former CETA workers. Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Public Law 93-567), which provides such reimbursement, is amended to provide that the term "public service wages" does not include remuneration for service performed in weeks which begin after October 1, 1980.

The committee assumes that there will be no change in the CETA law requiring CETA workers to have the same unemployment compensation protection as other workers. Rather, it is assumed that States will be reimbursed for such benefits from CETA grants to prime sponsors.

Section 892 increases from 90 days to 1 year the length of active duty an individual must serve in the military in order for his or her military service to be counted as employment in determining eligibility for unemployment compensation.

Under present law, federally funded unemployment benefits are provided to former military personnel upon their separation from military service if they meet the qualifying requirements of the State in which they apply for unemployment compensation. The military service of the individual qualifies as wages or employment in the determination of eligibility under the State unemployment compensation law only if: First, the person had served continuously for 90 days or more prior to separation; and second, the inidvidual was separated under other than dishonorable or bad-conduct circumstances. If the individual meets these requirements, the entire period of military service can be counted when determining whether the individual meets the wages or employment qualifications of the State in which he or she files an application for benefits. The 90-day continuous service requirement does not apply where separation was the result of the service-incurred injury or disability.

In recent years, the number of persons leaving the military before their term of enlistment has expired has been on the increase. Questions have been raised about the number of individuals who serve shortened terms of service on the presumption that unemployment compensation will be available to them after only 90 days of active duty. It is the committee's position that unemployment compensation should be available only to those persons who have completed a more lengthy period of service.

This provision changes the present 90-day continuous service requirement to 365 days, effective for individuals who begin active service after October 1, 1980.

Section 893 of the bill limits an individual's entitlement to extended unemployment compensation benefits to no more than 2 weeks, if he or she moves into a State where the unemployment level has not triggered an extended benefits period.

In general, States pay unemployment benefits up to a maximum of 26 weeks. In times of high unemployment, the Federal-State extended unemployment compensation program becomes effective. Under the extended benefits program, up to a maximum of 13 additional weeks of benefits are payable to individuals who exhaust regular benefits. The extended benefits program goes into effect on a State-by-State basis if the insured unemployment rate (IUR) in a State reaches a specified level, or in all States if the national IUR exceeds a specified level.

Under present law, a State is required to pay unemployment benefits to individuals who meet the State qualifying requirements even if they are or become residents of another State. If an individual works and qualifies for benefits in a State in which the extended benefits program is in effect, the State will be required to pay him such benefits (so long as he meets the eligibility requirements for such benefits) even if the individual changes residence to a State in which the extended benefits program is not in effect because unemployment in the new State of residence has not reached the extended benefits trigger level.

In general, an individual obtains benefits in a new State by filing an interstate claim, under an interstate benefit payment plan, against the State in which the qualifying wages were earned.

The provision terminates the payment of extended benefits to an individual who changes his or her residence to a State in which such benefits are not being paid because unemployment in the new State has not reached the extended benefit trigger level. Specifically, the bill terminates an individual's eligibility for extended benefits after he or she has collected 2 weeks of extended benefits through an interstate claim under an interstate benefit payment plan. The provision does not change other conditions of eligibility or benefit computation that may differ between the two States. Further, the individual will continue to be eligible for regular State unemployment compensation benefits for which he or she qualified in his or her former State of residence.

The intent of the provision is to deny extended benefits to those persons who earn their qualifying wages in one State, move to a State in which the extended benefits program is not in effect, and then file an interstate claim under an interstate benefit payment plan against the first State based upon wages or employment in that State. It is not intended to apply to individuals who have worked in two or more States and file an interstate claim for purposes of combining the wages or employment in those States in order to qualify for benefits under the law of the paying State.

The provision applies to weeks of unemployment beginning after October 1, 1980. However, the provision will not become a requirement of State law for any week which begins before June 1, 1981. Where a State legislature does not meet in 1981 in a regular session which begins before April 1, 1981, the provision is not to be a requirement of State law until June 1, 1982.●

The CHAIRMAN pro tempore (Mr. CORMAN). The Chair recognizes the gentleman from California (Mr. ROUSSELOT) for 1 hour.

Mr. ROUSSELOT. Mr. Chairman, I would say to my colleague, the gentleman from North Carolina, in answer to his questions, that we are not doing anywhere near enough to bring this Federal budget into balance. I am afraid that this budget resolution in many ways is a sham no matter what we tell ourselves. The accumulated Federal debt will be almost $900 billion in a few weeks. I say to my colleague, the gentleman from North Carolina, that the interest charge alone is now $75 billion as the gentleman very well knows. I do not think we have done anywhere near enough to bring this budget under control.

If the Congress would just restrain the increases in expenditures in any given year, we could do a lot more to reduce the necessity to increase the debt in any year.

The gentleman knows, because I am sure he has studied this budget process, but we are just kidding ourselves when we talk about balanced budgets. The majority in this House does not really mean it. It is all rhetoric. We are are not really balancing the budget but we try to have the American public believe we are.

I do think that the Committee on Ways and Means did what they were asked to do by the Budget Committee and that is to come up with some $4.2 billion of new revenue. That is actually what happened in the Committee on Ways and Means. The committee came up with it. In some cases it means increasing taxes. In other cases we are going to adjust laws to collect revenues on an accelerated basis. My colleague, the gentleman from Minnesota (Mr. FRENZEL), will describe those items in just a minute.

Mrs. HOLT. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I will be glad to yield to my colleague, the gentlewoman from Maryland, a very devoted member of the Budget Committee who has tried desperately for a long time to bring this thing into balance and has had a terrible time getting the votes.

Mrs. HOLT. Mr. Chairman, I thank the gentleman for yielding and for those kind words.

Is it not true that most of this $4.2 billion is going to be a tax increase that will fall on business at a time when it is struggling to recover from the recession, at a time when we are trying to get unemployment down, get employment up, is it not a very bad time to put that kind of tax on business?

Mr. ROUSSELOT. Well, I think it is. There are parts of this tax increase, and most of it is a tax increase and/or postpones reductions; in the case of the telephone excise tax we have postponed for 1 year a reduction in the tax. The

answer to the gentlewoman's question is a big chunk of the $4.2 billion is estimated tax for corporations to pay.

Of course, we go through the fiction here that, wow, we are really socking it to the corporations. What they really do is turn around and pass it on to the consumers, as the gentlewoman knows.

Mrs. HOLT. Mr. Chairman, it is difficult to believe. Here we are, with a country in the throes of a serious recession, and we are being asked to enact a tax increase.

In other words, the doctor is preparing to give the patient an extra dose of poison. A rising tax burden driven by inflation is among the major depressants afflicting the economy.

The proponents of this omnibus reconciliation bill prefer to concentrate our attention on the legislative savings that would be achieved, but they say very little about the $4.2 billion in extra tax revenues they propose to obtain through legislative changes.

You might argue that $4.2 billion is a fairly modest sum, given the enormously higher numbers we commonly deal with here. But I would remind the House that the tax burden is already excessive and growing, and it is bad economics to add any increment to the awful load.

Most of the proposed tax increase will fall on business at a time when business will be struggling to recover from the recession. This bill would increase revenues by an estimated $3.1 billion by accelerating payments of corporate taxes. The faster tax collections will mean a one-time windfall for Government, but will reduce the cash available for business recovery in 1981.

That is bad news for the unemployed, and bad news for anyone concerned about the future prospects for the American economy. Government not only taxes excessively, but is attempting to grab its take at a faster rate.

There are other pieces in the tax part of this legislation, but the economic consequences of the package will be harmful.

Well, you might say this bill is worth supporting because it changes laws to effect savings of $6.2 billion in 1981. That sounds good until you study the proposals and discover that $1.8 billion of the savings would be for 1 year only, and some of the legislative changes would actually require spending increases in following years.

This bill would simply defer $675 million in medicare payments to hospitals to 1982, effecting no real savings.

In medicare and medicaid reforms proposed by the legislation, $131 million would be saved in 1981, but benefits would be liberalized to add $713 million to spending by 1985.

It is not my intention to demean the real and lasting legislative savings that would be achieved by the bill, but I am alarmed by the tax increase and dismayed by the illusory nature of some of the claimed savings.

Under the prevailing conditions, no tax increase of any kind is tolerable. We should be cutting taxes substantially, with considerably more restraint on spending than provided by the 1981 budget.

I would remind the House that the average annual growth rate of Federal spending in recent years has been in the 11-percent range, will reach an extraordinary 17 percent in the current fiscal year, and is expected to exceed 9 percent in the 1981 fiscal year. I do not believe that the majority that has controlled this Congress for many years can point with pride to this record.

Mr. Chairman, if you make some economic comparisons of the 1960's with the 1970's, you will find that Government claimed a larger share of the gross national product in the 1970's and the economy grew at a slower rate. Those facts are related.

The sure way to wreck an economy is to stimulate consumption with excessive Government spending that strips away increasing shares of the capital needed to expand production. Federal policy has been going down that road for many years.

It is the prime cause of slower production, higher inflation, a rising tax burden driven by inflation, and more unemployment. Some of us have been warning about this trend for many years, demanding that we change course.

The extravagant growth of Government does not bring the economic growth that we need. It does not offer opportunities to Americans who need jobs. It does not rescue people from poverty. It does not improve the advancement opportunities for those already employed.

Only economic growth can open opportunities to the young and poor and enable the struggling middle class to fulfill its ambitions. The way to achieve that growth is to reduce the growth rate of Federal spending and cut taxes substantially.

This year, as in past years, the House minority supported a budget amendment that would have allowed the tax relief so desperately needed by our economy. Unfortunately, the Latta amendment was defeated on the House floor by a majority that continues to pursue more income redistribution instead of economic growth.

Depending on a number of factors, the tax reduction supported by the House minority would have amounted to $20 to $30 billion next year, about half designed to stimulate saving and personal investment and half to offset the impact of inflation on personal incomes.

The best anti-inflation policy consists of tax cuts that reward saving and investment to expand our production capacity and increase productivity, and there is no doubt that American families need tax relief.

If we want to work our way out of the current recession and begin the longer-range objective of rebuilding the American economy with less inflation, and if we want to restore our ability to compete in world markets, then we will begin to reduce the heavy tax penalties that have been imposed on American families and on their savings and investments.

A nation that wants a prosperous economic future must save and invest; a nation that wants production and jobs does not punish investors and producers with execessive taxation. A nation that wants to continue helping its elderly, disabled, and other needy people does not destroy the economic growth that makes those programs possible.

Remember, our future ability to help the least able citizens of our society depends on a healthy economic growth rate, which cannot be achieved with the current growth rates of Government spending and taxation.

Mr. ROUSSELOT. Mr. Chairman, I yield 5 minutes to my colleague, the gentleman from Minnesota (Mr. FRENZEL), a member of the Committee on Ways and Means, I might say.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman.

Mr. Chairman, under the time granted to me by the distinguished gentleman from Ohio (Mr. LATTA) earlier, I commented on the Ways and Means section of the reconciliation bill. What I said was that to ask the Committee on Ways and Means to increase taxes in reconciliation is to me an abuse of the reconciliation process. It was a direction that should not have been given to the committee by the Congress.

Because that direction was, in fact, given, I think the commitee did its best with a poor directive. It has laid on $4.2 billion in new taxes as painlessly as anyone could have done it.

Nevertheless, as the gentlewoman from Maryland pointed out, this is going to be a drag on the economy. It will particularly hurt companies who have had a bad showing in previous years and are finally beginning to make some money. They are the ones who are going to have to escalate their tax payments.

Those escalated payments into the Federal Treasury are going to mean a slower production of new jobs, and a slower infusion of new capital and new investment. So the mandate to the committee to increase taxes was a mistake. The committee did the best it could with it.

Second, the committee did decrease some spending, which is wonderful. Unfortunately, however, it also attached some previously House passed bill which the other body has not accepted. So, in fact, the committee is sending forward some new programs that it apparently has not been able to pass otherwise. That is also a mistake. That also is an abuse of the system. That is something that we are going to have to clean out of the system before we have a useful reconciliation procedure and, therefore, an effective budget process.

Also, I believe the Committee on Rules made a serious error in making the Bauman amendment in order. I hope it is defeated and the same may be said for the Vanik amendment.

When all is said and done, if this bill is not amended too severely, it still is the only savings game in town. It should be supported by this body.

At this point, I would like to make a brief comment about the proposed 40-cent-per-gallon duty on imports of ethyl alcohol. This provision is not part of the House reconciliation recommendations that we are considering today but was included in the Senate version passed on July 23.

The proposed duty increase is designed to eliminate for importers the benefit of

the 40-cent-per-gallon tax credit given to producers of fuels with an alcohol content. The credit was enacted in the Windfall Profit Tax Act of 1979 and applies to producers of gasohol and other special fuels regardless of whether they use imported or domestic alcohol.

The "bound" MFN rate of duty on imported ethyl alcohol is 3 percent ad valorem. To increase that rate unilaterally in order to focus a subsidy solely on domestic producers would violate two important principles of international trade law.

The first is that bound rates of duty will not be increased except under very limited circumstances and then only after an investigation is made and certain other procedures established by law are completed. The second principle is that of "national treatment" whereby the United States and other members of the world trading community agree to treat importers no less favorably than domestic producers with respect to internal taxes, laws and regulations, and so forth.

The worst problem is that when the U.S. unilaterally gains a sound duty rate, under international law, the exporting country can claim compensatory reductions in other products. Certainly Brazil would like to have its shoe duty reduced, but I doubt many people here would support that.

No domestic producer has filed any complaint of unfair trade practices or otherwise exercised the import relief procedures provided in the Trade Agreements Act of 1979 and elsewhere in U.S. law. Neither has any investigation of national security implications been made as is also required under U.S. law before duties are raised for the purpose of protecting a vital national security interest.

Although the Senate report specifically cites national security concerns as a principle objective in offering this provision, it is hard to believe that imports amounting to 45 to 65 million gallons per year could be a threat to our national security. This is especially true since the use of ethyl alcohol, whether domestic or foreign, to make gasohol contributes to our overall energy independence from foreign sources of fossil fuel. It appears that the domestic industry in this case is using Congress to protect them from competition where they would not be able to justify such protection under current U.S. law or under international law. Cannot the auto industry, the steel industry and many others make an equal claim to the national security link?

In short, the duty increase on ethyl alcohol suggested by the Senate has no basis that would justify a unilateral action in violation of our international agreements.

Finally, I would like to point out that Congress requested in the Windfall Profit Tax Act that a study of imports of ethyl alcohol be submitted by October 2, 1980, and that recommendations on import relief be included in that report. When that report is completed less than 2 months from now we will have the information necessary to make a proper assessment of the import situation. To enact a substantial tariff on ethyl alcohol in this reconciliation process is misplaced and premature and I will work to have this provision removed in conference.

Mr. ROUSSELOT. Mr. Chairman, I now yield 5 minutes to my colleague, the gentleman from Iowa (Mr. GRASSLEY), a fervent fighter for a balanced budget and reduced expenditures and all those things.

Mr. GRASSLEY. Mr. Chairman, I thank the gentleman for yielding. I will not take the 5 minutes to express the views that I have on a provision that has been included in this reconciliation act.

I want to thank the chairman of the committee for bringing forth to the floor of the House the legislation that does, in fact, change an inequitable part of our tax law whereby certain tax treaties give foreigners some capital gain tax advantage over American citizens, on real estate in this country.

Originally, I and 185 other cosponsors of H.R. 3106 sponsored legislation affecting a very narrow area of real estate in which we thought it was very unfair for agricultural property to be taxed on capital gains at a higher rate if owned by American citizens than by foreign citizens under some of the tax treaties with our country.

□ 1530

The committee expanded that to include all real estate, and I understand it will bring in several additional millions of dollars, which is badly needed. More importantly, this legislation will extract dollars from people who are avoiding taxes in a way that is very detrimental to the American economy. Under current tax treaties, we encourage foreigners to invest in this country, however, we do not give that same encouragement to American citizens within our country. This is very justifiable legislation. I think it came along at a time when there was money being sought to work a proper balance for the budget, or at least reduce the deficit to some degree. I am glad that my bill became a part of this; not for the sake of the accounting procedures of the Federal Government but because it does take care of an inequity that cannot be justified.

The people in the Midwest who have not experienced a large influx of foreign investment, however, still see this as unfair competition. They probably do not like it in the first instance, but then in the second instance they like it less when they see the unfair competition that comes from the inequitable treatment under our tax laws. It is of some concern to Midwesterners and other people in rural and agricultural America. I am sure they are going to be thanking the Committee on Ways and Means as much as I am for their support of this legislation and for its inclusion in this reconciliation bill.

Mr. ROUSSELOT. Mr. Chairman, I yield 5 minutes to my colleague from New Jersey (Mrs. FENWICK), who has a couple of questions.

Mrs. FENWICK. Mr. Chairman, I thank my colleague for yielding.

I wonder if some questions could be answered. In relation to unemployment compensation, I have brought it to the attention of some of the Members of the House that in my State a person who leaves a job, where the employer has begged him to stay, who then goes to his second job and does not qualify for unemployment, is able to receive unemployment from the first employer whom he left, despite every urging on the part of the employer. Is this general practice? Is this contemplated under Federal law or guidelines?

Second, and even more extraordinary, a man was dismissed from employment because he was said to have stolen something from the company and, indeed, it was proved and he was convicted in court and sent to prison for having stolen. He, too, received unemployment compensation. I believe now the time has been extended. Such an employee used to be able to get unemployment compensation in 6 weeks under those conditions and now he can only get it a year.

When I brought this to the attention of Members of the House, I was told each State makes it own rules concerning these unemployment benefits and that it would be very much resented if the Federal Government took any part. But it does seem to me that if the taxpayers of this country are going to have to put up money when the fund has been exhausted, we must have standards. When I think of 180 people in my district who have lost their jobs because the whole company folded—people who want to work—we ought to be able to take care of them until they find a job. How can we do it if we are going to continue this way of handling public money?

Mr. ULLMAN. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman.

Mr. ULLMAN. Let me say to my friend from New Jersey that many times we have had recommendations that Federal standards in unemployment compensation be adopted and we have had a lot of votes in the Congress. The Congress has resisted imposition of those Federal standards. The provisions the gentlewoman is talking about are strictly up to the State law. They vary from State to State. They are not Federal standards.

The State legislature is the recourse for any remedies that we might seek.

Mrs. FENWICK. Surely, Mr. Chairman, if we accept those conditions then the Federal Government should say that the States have the right to do with their own money what they want, however unwise or improvident, but we cannot expect the general taxpayers whose States may be far more prudent to be rescuing them when they get in these difficulties.

Mr. ULLMAN. If the gentlewoman will yield again, of course it is employer money, it is State-collected money in large part, and a person might be able to justify one standard, but one standard leads to another. So by and large I think that the Congress has been wise in not moving into the area of standards.

Mrs. FENWICK. And the gentleman thinks that we can continue this system even if these funds are going to convicted felons in jail?

Mr. ULLMAN. No, that is not what I said or implied. But as far as the standards and requirements of unemployment

compensation, they should be left, I think, as they are, to State control.

Mrs. FENWICK. Thank you, Mr. Chairman.

Mr. ROUSSELOT. Mr. Chairman, I yield 5 minutes to my colleague from Illinois (Mr. MICHEL).

Mr. MICHEL. Mr. Chairman, notwithstanding my having spoken earlier in the day in opposition to the rule considering this measure, I rise in general support of the bill in its present unamended form. I do so despite misgivings over some of the individual parts, but I think it is absolutely essential to the viability of the budget process that we establish the principle of reconciliation.

It has taken us 6 years to implement the reconciliation provisions of the Budget Act, which is really a disgraceful performance. Still, it is better late than never. This bill represents a positive first step, but only if it is a first step, and not a last step as well.

As I see it, the real key here is the second budget resolution, for reconciliation was really meant to be applied to that resolution. What I am afraid of is that if this bill becomes law, we will consider that action sufficient for the year and revert back to our old practice of simply raising the spending ceiling in the subsequent resolutions. That is why I wanted to offer my amendment to establish a statutory ceiling and provide the President with impoundment powers. My amendment would have imposed upon the process a fiscal discipline that we will most likely not have the gumption to institute on our own.

Since this body turned down the opportunity to consider that amendment, I assume the majority side of the aisle feel they can discipline themselves. But do not count on it. The mere fact that the majority leadership plans to delay consideration of the second resolution until after the election is ample indication that majority members intend to enact a higher spending ceiling without offsetting reductions. They are planning to turn a balanced budget into a $30 billion deficit, but they do not have the courage to do it before the election.

Will we include reconciliation as part of the second resolution, as the law intended? I doubt it. But I am glad that we at least have this bill before us today. It is hardly a perfect document, in that it relies on gimmicks and one-shot reductions in many instances to produce the required savings. In several respects, the Senate version does a better job, and I hope in conference that a number of the Senate changes will be accepted.

But the bill does contain a number of important reductions that will serve to eliminate fat from the budget and excesses from our entitlement programs. I point in particular to the provision killing the massive, unjustified expansion of the trade adjustment assistance program; and to the section terminating Federal unemployment benefits to CETA public service jobholders; and to the provision tightening up on the payment of unemployment benefits to ex-military personnel; and to the provisions tightening up the school lunch program; and finally to the sections placing Federal military and civilian retirees on an equal footing with social security recipients as far as cost-of-living increases are concerned.

These are all fully justifiable savings, and savings which must be made permanent if we ever hope to bring the budget into balance.

Consequently, while the bill leaves much to be desired, it does undertake what some of us have been urging for years, and I thus recommend its adoption in its present form without the adoption of some of the proposed amendments. I would further urge the Budget Committee to follow up this effort by including reconciliation in the second budget resolution, as is required by law, in order to really make the budget process a meaningful vehicle.

Mr. ROUSSELOT. Mr. Chairman, I am willing to yield my time back.

Mr. ULLMAN. I yield back my time, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the chairman of the Committee on the Budget, the gentleman from Connecticut (Mr. GIAIMO).

Mr. GIAIMO. I yield myself 7 minutes.

Mr. GIAIMO. Mr. Chairman, we have completed general debate at this point, I believe, insofar as all of the legislative committees are concerned, and I do not intend to take too much time here. I did want to make just a few comments because I think this is a historic piece of legislation that is before the House today. We have never had this kind of legislation before. What it is is an effort on the part of many people in this Chamber to find areas where we can reduce Federal spending. To the extent that we are effective and can enact this legislation, we will reduce Federal spending, hopefully to the tune of about $6 billion in spending programs, plus, because of the efforts of the Committee on Ways and Means, about $4 billion in additional revenues raised without creating new taxes. This $10 billion in savings will serve the taxpayer and the working man and woman of America in good stead. It did not just happen. It happened and is happening because of the great effort of many, many people.

I certainly want to pay my respects to all of the members of the Committee on the Budget on both sides, Democrats and Republicans, who have worked hard to make reconciliation a reality. I want to certainly pay my respects to the gentleman from California, Mr. LEON PANETTA, who, above all, has made this a project for several years and has really contributed tremendously. I think without the gentleman from California (Mr. PANETTA), we would probably not be here today. There are many other people that I would like to single out who have made great contributions—the Committee on Rules, and particularly the chairman of the Committee on Rules, the gentleman from Missouri (Mr. BOLLING), who fully understands the problems confronting this Nation and the Government and what we must do and the steps we must take in order to bring about changes, healthy changes, reforms, if you will, and a different or better way of conducting the public's business.

I certainly want to pay my gratitude and respect to the committees, all of the committees that have been involved in this reconciliation process. You have heard from them all here today. They have all spoken. They have all explained the various items of legislation which they have proposed as fit subjects of reconciliation. I know that some Members of the House are less than enthusiastic about reconciliation because, as you well know, it is a very difficult thing to reduce programs. It is a very difficult thing to go after the entitlement programs of this Government, which now constitute about 75 percent of the total Federal budget, and to seek changes and reductions in them. But, nevertheless, they have done it. They have recommended it, and they bring it forth to you here today.

I just want to take you back a little bit this year. It was just a few months ago that we were confronted with a very serious crisis—inflation running at 20 percent, interest rates up about 18 percent, and we had to find ways of reducing Federal expenditures. We reported out a first budget resolution which in fact did reduce Federal expenditures by about $16 billion in discretionary programs.

In addition to that amount it was agreed when we worked on these issues in the spring that there was also a necessity to try to reform some of our existing legislation and try to save some money. That is what gave rise to the reconciliation process in the first budget resolution. If we adopt this reconciliation bill, what we will have accomplished is $16 billion worth of reduced spending in the fiscal year 1981 budget, plus $10 billion in reductions through reconciliation, a combination of reduced spending and some additional revenues. That is about $25 or $26 billion off of your deficit, and that is a step in the right direction.

I also think that this process, because of the way in which it is put together, because of the fact that it comes out with a limited rule, is the only practical way in which we can begin to look at the entitlement programs and make some changes in them. That is healthy, and that is good. So again I am grateful for the work and the effort of so many, many people in this House, in addition to the people that I just mentioned and named. I urge that you support this legislation. Let us go to conference with the other body which has already passed a similar type of legislation, and it will mean a real savings to the hard-pressed and harassed taxpayers of the United States.

The CHAIRMAN. The Chair recognizes the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I want to take a few minutes to congratulate our retiring leader, the distinguished gentleman from Connecticut (Mr. GIAIMO), for his work in moving the reconciliation process forward.

It is no secret, for we have screamed it to the rooftops around here for the last couple of hours, that the minority side is not wholly satisfied with either the process or the result. But, the minority side is delighted that the majority has finally joined with it in its willingness to begin an important aspect of the

Budget Procedures Act which has been ignored for the past 6 years.

I think a good deal of the credit can be assigned to the gentleman from Connecticut, and I would like him to know that we all appreciate his efforts in this regard.

Mr. Chairman, we have over the past couple of hours pointed out a number of criticisms that we have. These have centered on the process, but they also relate to the substantive matter of the Reconciliation Act. Nevertheless, the Reconciliation Act is the only opportunity before us to make some desirable reductions in Federal spending this year. Therefore, Mr. Chairman, I am going to support this bill unless it is amended too vigorously, and unless too much money is put back in it.

Mr. Chairman, at this time I would like to yield 5 minutes to the distinguished gentleman from Ohio (Mr. REGULA), a member of the Committee on the Budget.

□ 1550

Mr. REGULA. Mr. Chairman, I rise in support of H.R. 7765, the Omnibus Reconciliation Act of 1980. I hope this is the first of many such bills to reduce and restrain Federal spending.

This is the first real test of the reconciliation process, and I am not 100 percent pleased with this bill, but I believe that a fair appraisal can only come to the conclusion that the House committees have responded well to the reconciliation instructions of the first budget resolution for 1981. It is now up to the whole House to carry on and pass this bill.

Final completion of the conciliation process will send an important message to the American people—that it is possible to change existing laws to achieve significant savings without causing harm to disadvantaged members of our society. My hope is that this is only a beginning, and that the Congress, and the President, finally catch the fiscal restraint bug that has been endemic everywhere except here in Washington.

A majority of the minority members of the Budget Committee voted against reporting this bill, but as we noted in our minority views, that vote should not necessarily be taken as an indication of our votes on final passage. Our vote against reporting the bill was intended to highlight several deficiencies in the bill:

First, the reconciliation process, and specifically a reconciliation bill, should not be used to fight major turf battles between committees. I am referring, of course, to the issue regarding the so-called superfund and the conflicting proposals contained in the reconciliation bill. I trust this will be resolved by amendment.

Second, some of the changes recommended by committees are fine, but they have been restricted to 1 year only. After the fiscal year ends, it is business as usual. While I recognize that the Budget Act cannot insist, through reconciliation, on out-year changes, there is no doubt that the spirit, if not the letter, of the Budget Act intends for the reconciliation-directed savings to be permanent. Nearly one-third of the estimated $6 billion in savings for 1981 is in the form of a 1-year only reduction.

Third, I strongly object to the use of budget-bookkeeping tricks that show savings, but in reality save nothing. The best example of this is in the case of postponing some $675 billion in medicaid payments so that they are counted in 1982 rather than 1981.

Fourth, a reconciliation bill should not provide a vehicle for standing committees to enact their legislative calendars. This bill has been widely touted as a bill that saves money; we are told that the reconciliation recommendations from the House committees will save $21 billion through 1985. But, this bill also contains some $3 billion in added spending—in medicare, medicaid, and child nutrition programs—that need not and should not be part of this legislation. I strongly concur with my colleague from Ohio (Mr. LATTA) in this regard, and support his efforts to remove these items from the bill. I oppose the inclusion of these increases in the bill without prejudice to the proposals.

These program increases should not be a part of reconciliation; they should be brought up separately, outside of the reconciliation process. The biggest danger associated with leaving these matters in the bill is that of a conference deadlock. The Senate did not include these or any other increases in their reconciliation, and I understand that the Senate feels as I do that reconciliation bills should only contain reductions. I would hate to see reconciliation defeated simply because the House insisted on attaching unnecessary cost increases to the reconciliation bill.

Reconciliation has not always been a bipartisan issue. In the past, Members on this side of the aisle were all but alone in demanding that the Budget Act be used to its full legal extent to rein in a Government whose budget had truly become uncontrollable. I am pleased that today the reconciliation process has strong bipartisan support throughout this body.

I especially want to thank the distinguished chairman of the Budget Committee for his leadership; without his stewardship, reconciliation would not be possible. There is not the slightest doubt in my mind as to the sincerity and conviction of my chairman, the gentleman from Connecticut, concerning the reconciliation process.

Let us keep up the momentum of the reconciliation process. I urge an "aye" vote.

● Mr. PEPPER. Mr. Chairman, the bill before this body, H.R. 7765, the Omnibus Reconciliation Act of 1980, represents more than is indicated by its title. To be sure, the bill incorporates many provisions whose purpose is to generate savings in the fiscal year 1981 budget of the Nation. But beyond that, certain features of this bill, which some of us who are members of the Rules Committee fought to preserve, represent triumph for the elderly and disabled people of this land who are served by medicare and the low-income persons who are recipients of medicaid. Moreover, they represent the culmination of several years' work by the Select Committee on Aging, which I have the privilege to chair. I take pleasure in the fact that as the ranking majority member of the Rules Committee, I was able to offer the motion which, among other things, prevented an effort to strip from this bill the provisions of H.R. 3990, the Medicare Amendments of 1980 and H.R. 4000, the medicare and medicaid amendments.

These measures, which were reported months ago by both the Ways and Means and Interstate and Foreign Commerce Committees, include provisions which would accomplish savings and improve benefits. The spending provisions are well below the amount authorized for medicare improvements and they are consistent with the provisions of the first budget resolution.

I wish to commend our distinguished colleague, Mr. GIAIMO, for the courage and leadership he has displayed in the course of these deliberations. His continued role will be most important in the work that remains to be done with regard to the fiscal year 1981 budget.

I must also commend and thank Mr. RANGEL, chairman of the Ways and Means Health Subcommittee, and Mr. WAXMAN, chairman of the Health and the Environment Subcommittee of the Interstate and Foreign Commerce Committee, for their persistence and dedication in bringing this legislation before the full House. Their committees have worked long and hard in developing this legislation, encountering delay and discouragement along the way. Two years ago, both the House and Senate overwhelmingly adopted bills which included many of the same provisions. Unfortunately there was too little time for completion of consideration. That this body will now finally have an opportunity to approve these provisions is a tribute to their labors. And it is a tribute to the respect and concern Members of this body exhibit for the elderly, disabled, and poor people of this country—those who will be the ultimate victors when the provisions of this bill become law.

Limitations of time prevent elaboration of all the provisions included in this measure. There are a few provisions which I wish were not included and which, under other circumstances, I would oppose. There are, of course, other provisions—other needed improvements in medicare and medicaid—which are not included and which, if it were in my power to do so, I would make magically appear in the text of the bill. But on balance, these provisions offer great hope for the people of this country who rely on the medicare and medicaid programs for assistance in meeting their health care needs.

A number of features from H.R. 3990 and H.R. 4000 and, now, H.R. 7765, are similar or identical to legislation I have introduced, with many Members of Congress as cosponsors. Some were passed by the House in the 95th Congress; others were added more recently.

The bill before us would improve the medicare home health benefit by eliminating the requirement of a 3-day prior hospitalization under part A, deleting the limit on visits under parts A and B, eliminating the $60 part B deductible for home health, and establishing the need for occupational therapy as a qualifying criterion for receipt of home health care.

I regret that the committee saw fit to include the provision which would remove the requirement that proprietary home health agencies be licensed by the States in which they operate in order to receive medicare reimbursement. Some 5 years ago, proposed regulations to accomplish this were issued. Joint hearings were conducted by the Subcommittee on Health and Long-Term Care, which I also chair, and the Subcommittee on Long-Term Care of the Senate Special Committee on Aging. We concluded at that time that removing the licensure requirement was not warranted. The regulations were withdrawn.

I warmly applaud the inclusion of several provisions which will expand the coverage under medicare for mental health services. The bill would increase, from $250 to $750, the annual limit on outpatient mental health services and reduce the coinsurance requirement from 50 to 20 percent. It would provide coverage for psychologists services, with referral by a physician, and provide coverage for services furnished in qualified community mental health centers. Up to 15 outpatient visits and 60 partial hospitalization visits per year would be covered.

The bill authorizes the President to enter into reciprocal agreements with other countries to provide hospital and medical benefits for medicare beneficiaries who might live or be traveling outside the United States.

It would provide coverage for services furnished in comprehensive outpatient rehabilitation centers. It would eliminate the requirement that elderly and disabled medicare beneficiaries replace or pay for the first three pints of blood. It would make available coverage of pneumococcal vaccine, which is an important first step toward coverage for preventive health care. Benefit improvement with respect to services furnished by dentists, optometrists, chiropractors, and physical therapists also are included.

Finally, the bill includes a provision which would encourage enrollment by the elderly in health maintenance organizations.

This provision, the inclusion of which I warmly applaud, is very similar to legislation I first introduced in October of 1977 and to the bill offered early in this Congress by Mr. RANGEL, Mr. ULLMAN, Mr. CORMAN, and myself. It would establish a prospective reimbursement mechanism for medicare beneficiaries and thereby encourage their enrollment in HMO's.

The Carter administration has placed great emphasis on the development of HMO's. One of the large, unresolved issues regarding HMO development relates to their service to the elderly who are medicare beneficiaries.

HMO's offer comprehensive medical benefits, economic efficiency, and require only nominal premiums. Through emphasis on preventive and outpatient services, they are able to reduce hospital utilization significantly and channel the savings into broader services for their members.

This provision would institute prospective medicare reimbursement of HMO's, in line with prevailing HMO practices. Under this proposal, medicare would pay an HMO 95 percent of the cost of rendering the medicare part A and B services in the community by providers other than HMO's. A "community rate" for medicare members would be determined, adjusted to reflect the higher utilization rates of the elderly. The difference between the medicare reimbursement rate and the community rate would be used by the HMO to reduce out-of-pocket costs or finance broader benefits for medicare enrollees.

In a very few years, I expect this provision will generate savings in the medicare program—an obvious 5-percent saving for each medicare beneficiary enrolled.

On May 2, 1978, I conducted a hearing by the Subcommittee on Health and Long-Term Care of the Select Committee on Aging, in which we examined, for the first time in a congressional hearing, the benefits to be gained by the elderly as a result of HMO enrollment.

The advantages were clearly demonstrated: the potential for out-of-pocket cost savings; improved access to a wide range of services, such as home health care and prescription drugs; and assured availability of preventive and maintenance care, free of bureaucracy and burdensome paperwork.

Our principal medical programs, medicare and medicaid, promote an institutional bias which is both callous and costly. They to a great degree ignore the most pressing needs of a vast majority of older citizens—care for chronic illness and health maintenance. It is in the area of prevention and maintenance that HMO's can provide such enormous assistance to the elderly, and it is my strong hope that this provision will be enacted into law.

Mr. Chairman, there are many other important medicare and medicaid provisions included in this bill. Some would address fraud and abuse issues. Others would improve the administration of the medicare and medicaid programs. Significant savings in these programs will be generated by this measure. I commend medicare and medicaid provisions of the pending bill to the attention of my colleagues.●

● Mr. ALBOSTA. Mr. Chairman, I rise in support of reconciliation.

If Congress is serious about lowering inflation, balancing the budget, and cutting Government spending, passage of H.R. 7765, the Omnibus Reconciliation bill is a must. This important legislation implements the mandate set down in the first budget resolution to achieve savings of over $10 billion. I commend the chairmen and the members of the various standing committees for their diligence in completing this very difficult task.

There are real sacrifices made in H.R. 7765, cutting back on many popular programs. However, in this period of inflation, I feel it is vital that we tighten up our belts, and start living within our means. Programs that are absolutely necessary are still funded; but with this bill, we have been successful at eliminating excessive Government spending.

While it is clear because of economic forecasts that a balanced budget will be difficult to achieve in fiscal year 1981, the passage of H.R. 7765 will help make that goal a reality. We cannot balance the budget on the backs of the taxpayers. It must be done with responsible cuts in Government spending. This reconciliation bill makes those cuts.

I feel it is imperative that this House pass reconciliation with overwhelming support, to send a message to the Senate, the administration, the financial markets and the American public that we are serious about solving our economic problems by learning to say no to high deficits, and no to higher taxes.

I urge my colleagues to support H.R. 7765.●

● Ms. MIKULSKI. Mr. Chairman, I must urge my colleagues to oppose H.R. 7765—the budget reconciliation bill. I strongly support Congress effort to control Federal expenditures and set an example by balancing the budget—but we must not do so on the backs of our poorest and most disadvantaged citizens and our most loyal Americans.

Look at what this bill does in the name of "budget balancing":

It deprives some of our children of the only nutritious meal they get by cutting back on the child nutrition program and increasing the price students must pay for meals.

It severely restricts students' access to guaranteed student loans by requiring parents to use up their borrowing eligibility before they can get the loan. And, if the parents cannot pay the loan back in time—because we have thrown the father out of work and would not pay the mother a decent salary—then we are going to let the IRS hound them for the money.

It deprives the families of some of our gallant veterans of a decent burial.

It denies hundreds of thousands of workers in the auto, steel, textile, apparel, electronics, and footwear industries of the trade adjustment assistance they so well deserve.

It deprives our faithful civil service employees and valiant members of our armed services of a right they have worked for and counted on—a semiannual cost of living adjustment.

I urge you to oppose this bill. Controlling Federal expenditures is supposed to benefit all Americans. This bill makes sure that many of those who are least able to fend for themselves are the first not to benefit.●

● Mr. HILLIS. Mr. Chairman I rise in general support of the bill, H.R. 7765, the Omnibus Reconciliation Act of 1980. I rise in support, however, with the regret that the House and Senate obviously cannot control the expenditures of the Federal Government.

Throughout the spring of this year there was much talk of balancing the Federal budget. The first budget resolution was almost impossible to get passed due to the debate over how to divide

those few precious $613 billion. As part of that prolonged debate, the reconciliation bill became the linchpin to the success of the balanced budget effort.

In retrospect, the debate this spring seems almost foolish. Since then all hope of a balanced budget has gone down the drain. Congress continues to reach into the taxpayers' pockets and pull out huge deficits.

While all but the most liberal spenders of Federal money support this bill's purpose—to reduce unneeded or unnecessary Federal spending—we must keep it in perspective. Many of the savings in this bill are only temporary. Most of the so-called entitlement programs which we in Congress like to call "uncontrollables" have gone untouched.

We must learn from the lesson we have been taught. We must realize that regardless of our best efforts, the leadership of this Congress is unable to do anything about our huge Federal spending programs. Given every possible tool, some never before used, this Congress still finds it impossible to develop a balanced budget.

It would appear that the lesson to be learned is that now legislation such as sunset, tax reforms to spur the economy, tighter congressional control over Federal agencies, such as one House vetoes, are needed in addition to a meaningful reconciliation bill.

But beyond that—beyond the many legislative approaches which have been offered—we need a change in the attitude of this Congress. We often hear debates on this floor concerning the unemployed, the unborn, the disadvantaged, and the elderly. While it is obvious that we should be concerned about these groups, should we not also be concerned about the family with an income of $15, $20, or $30 thousand. After all, it is that group—the great American middle class—that is fast becoming an endangered species. Yet there seems to be more concern on this floor for the snail darter than the American middle class taxpayer.

We sit in the Congress and watch the oil companies take in billions more each year. We watch inflation hit record highs. We watch interest rates take huge jumps upward. We sit here with the economy in a shambles. Yet the best we can do is to hide behind this bill and pretend to be fiscally conservative. This bill will not help the American worker who is out there watching every dollar eaten by inflation or confiscated by the Government. We have yet to address the problems of excessive taxation and runaway Federal entitlement programs.

And if that were not enough, this Congress has the apparent determination to recess 1 month from today and return after the election in order to avoid being held accountable for the budget as determined by the second budget resolution.

Reconciliation as presented here today by this bill is not the answer. Nevertheless, we should pass the bill but with the understanding that until we re-arrange our priorities and begin examining and solving the problems we have in our economy, the only hope for the American worker is new leadership in this House and in the White House.●

● Mr. DANNEMEYER. Mr. Chairman, last May 7, when the House rejected the amendment of the distinguished gentleman from Arizona (Mr. UDALL) to strike the reconciliation requirement from the first budget resolution, a lot of us really believed the House had taken an important step in the direction of fiscal responsibility. But now that the reconciliation bill (H.R. 7765) is before us, one is not so sure. Rather than living up to the principle and promise of reconciliation, this bill seems to do little more than pay lipservice to the concept.

Particular reference is made to three things: First, that $675 million of the so-called budget cuts called for in H.R. 7765 are achieved, not by cutting spending, but simply by postponing the date of the spending 3 weeks; second, that $3 billion of the $4.2 billion in revenue increases come about, not by raising taxes, but through a speed-up of tax collections; and third, that several new programs—with big price tags—are included in the bill.

I am aware, of course, that an amendment to eliminate one of these new spending programs—the one for hazardous waste cleanup—is in order under the rule, an amendment that I intend to support because we should not be legislating on a reconciliation bill. But the same argument should also apply to the medicare and medicaid reform package that is part and parcel of H.R. 7765. If we are really serious about cutting the budget, and reconciliation is supposed to help us do just that, then we cannot countenance the spending increases and accounting gimmickry this bill incorporates.

In this context, it should also be remembered that, when the House approved reconciliation, the prospects, or at least the publicly stated prospects, were for a balanced budget. But now that OMB has issued its midsession budget review projecting a $30 billion deficit (which does not count another $21.7 billion in off-budget items), everyone knows that the financial picture will be far less rosy and the need for effective reconciliation far greater than ever. I recognize that the idea of cutting the budget in an election year is anathema to a lot of people but, if the inflation rate is not to exceed 20 percent next year or the year after, it simply has to be done. Like it or not, deficit spending by the Federal Government is the major cause of inflation and we cannot cut it by simply creating illusions. Somewhere, somehow, sometime, we have to make the reality match the appearances and, to quote the old adage "there is no time like the present." ●

● Mr. STOKES. Mr. Chairman, I rise in opposition to H.R. 7765, the Omnibus Reconciliation Act of 1980.

As one of six Budget Committee members who voted against the first budget resolution during committee deliberations, I am again faced with the task of voicing my disapproval of this reconciliation bill.

My opposition to the reconciliation proposal stems as a result of three fundamental factors: The first, is that reconciliation as a process is unwarranted, given existing economic realities. The second, is that like the first concurrent budget resolution, this reconciliation package represents a totally inequitable and misguided set of legislative reforms and priorities; and the third and probably most important factor is that reconciliation represents a fraudulent attempt on the part of Congress to show to the voting public our commitment to fiscal restraint.

Never before in the history of the congressional budget process, have both the Senate and House recommended the use of reconciliation as a component in the budget process. This is not to say that reconciliation has not been seriously considered in the past. The Senate proposed its use last year as a part of the budget process. The House Budget Committee conferees insisted that reconciliation not be used, but rather a set of legislative savings proposals were recommended. Although we have not achieved much of the savings recommended in the fiscal year 1980 budget, much of the rationale that led to our decision last year exists today. The budget process has in fact been effective and survived thus far without reconciliation, and certainly can continue another year without it.

I find the use of reconciliation this year, especially in light of the current economic crisis our country is facing, to be totally inappropriate and untimely. One need only consider that over 8 million American people are now unemployed. One need only consider that inflation is deeply embedded into our economy, and what is really needed are effective long-range economic growth policies, if we are to really turn the tide on inflation. Reconciliation serves only as a short-term, ineffective, and politically expedient measure.

We are all aware that the impact of a deficitless Federal budget on reducing the rate of inflation is minimal; and the direct effect of this reconciliation package is even less. We are also aware that the recession—which is really a code word for depression in my district, will and is having its most devastating impact on our poor and disadvantaged citizens. Yet, the majority of the legislative changes which would save $6 billion in outlays, will affect the very same programs which are aimed at ameliorating the plight of our poor and disadvantaged.

I am particularly concerned with the legislative proposals covering the areas of health, nutrition, and retirement benefits. If one carefully examines the language of the bill, we are not in fact eliminating fraud and abuse, but rather reducing actual benefits. Eliminating real benefits at a time when heads of households are increasingly out of work and a time when inflation is reducing the buying power of the dollar daily. This is totally unacceptable.

Many of the proponents of this bill will be quick to point out that along with the actual program reductions, there are in fact many program expansions which would raise the costs of certain programs by $630 million in fiscal year 1981, and $7.4 billion over the next 5 years. The fact is, the greater portion of these program

expansions occur in fiscal year 1983 and beyond. The $6 billion in outlay savings for fiscal year 1981 are very real, and will have their most devastating impact next year. In this sense, the fact that reconciliation contains some program expansions is relative, and actually a moot point with regards to the fiscal year 1981 Federal budget.

One need only look at the reconciliation package closely to see that it is grossly inequitable. The legislative savings of $6 billion recommended in the bill include no legislative changes which would reduce overall defense spending, nor any significant revenue-producing changes in the area of tax expenditures for fiscal year 1981. In short, the majority of the $6 billion in savings for fiscal year 1981 come in only the human needs programs. I question the apparent theory that no legislative changes can be made in the area of defense spending, that would effectuate program savings. Are we saying that the only area where we can tighten our belts is in the human needs program? That there is no fraud and abuse of Federal funds in defense programs. I would disagree.

Likewise I have always found the Budget Committee's oversight of the revenue side of the budget to be lacking. In this sense, the lack of any significant reform in the area of tax expenditures is no surprise. If there is one glaring weakness in the budget process, it has been in lack of emphasis placed on revenue issues versus spending.

In closing, reconciliation was bandied about this spring as the key to a balanced budget. At that time, I as well as many of my colleagues predicted that a balanced budget would be an impossibility for fiscal year 1981. While I am not a soothsayer, it was very clear to me that given the present economy, such a balance was not achievable. The Congressional Budget Office now estimates that the deficit next year will be approximately $30 billion, not including a possible tax cut. While this deficit is due largely to events beyond the control of Congress, the fact remains that the fiscal year 1981 budget will be in deficit. The $6 billion in recommended savings included in this bill will have a negligible effect on both the deficit and the rate of inflation.

On this issue, I disagree with many of my Budget Committee colleagues who contend that without reconciliation the deficit will automatically increase by approximately $10 billion. They are well aware that such a blanket statement is not necessarily true, especially since a second budget resolution for 1981 is still to come.

The reconciliation proposal represents an illusory response on the part of the Congress to today's rapidly changing social, economic and political environment. If we are to be fiscally responsible, we must attack the long-run structural problems of the economy with a comprehensive economic growth policy, and a targeted structural employment effort. In this sense, a delay in the implementation of the policies set forth in the Humphrey-Hawkins Act is counter-productive, and harmful to the economy of this Nation.

I urge each of you not to fall prey to election year politics by passing this bill. It will not stem the tide of inflation, and is truly not a fiscal responsible response to the economic ills of our Nation.●

● Mr. ABDNOR. Mr. Chairman, I rise in support of H.R. 7765, the budget reconciliation measure now before us. While H.R. 7765 has not lived up to all my expectations as a fiscal conservative, I believe it takes us in the right direction: Toward meaningful fiscal sanity.

I support in particular the swing bed portion of the medicare and medicaid amendments, an idea I introduced as H.R. 3460 on April 5, 1979, and have subsequently worked for. It is not often that the Federal Government devises a program which is not only socially desirable but also cost effective, and when that happens it is worth noting.

The swing bed program allows rural hospitals with unused beds to provide long-term care services for needy patients. The measure authorizes medicare and medicaid reimbursements to hospitals for nursing services provided on a "swing bed" basis—that is, alternating between acute and long-term care.

This legislation is aimed primarily at assisting the rural elderly person who is in need of long-term care but is unable to obtain such care due to a lack of nursing home beds. By permitting long-term patients to remain in their local hospital after their acute-care needs are met, the proposal would not only serve the needs of the patient but would also encourage hospital cost containment by allowing the rural administrator to broaden the base of his fixed hospital costs.

One of the most vexing problems faced by rural hospitals has traditionally been uneven demands for acute care services, a circumstance which produces low occupancy rates. Instead of encouraging alternatives to empty hospital beds, our existing medicare and medicaid laws unnecessarily restrict the options available to both patients and hospital administrators.

We in Congress must realize that what is good for one part of the country is not necessarily the best option for another. In most urban areas hospital occupancy rates are high and there is at least an adequate supply of nursing home beds. The opposite is true in rural States like South Dakota. I believe we must support the development of local health care resources which would allow people to remain close to their home communities, if not in their own homes. Rural citizens historically have not had decent access to long-term care facilities.

The swing bed idea is not new. Since the early seventies, the Department of Health, Education, and Welfare has assisted a number of experimental programs designed to reduce health care costs. The Utah cost improvement project, implemented in 1973, and the reducing acute care costs (RACC) experiments in Texas, western Iowa, and South Dakota, implemented in 1976, have provided swing-bed care for the last few years.

I welcome the support of my colleagues for this important legislation.●

● Mr. BETHUNE. Mr. Chairman, the budget reconciliation bill, H.R. 7765, is an indictment of the current congressional leadership and its failure to formulate and pass a balanced budget. Last May, the House adopted an amendment to the first concurrent budget resolution which required the reconciliation bill. This reconciliation amendment required that all of the authorizing committees submit to the Budget Committee their proposed cuts to bring their spending into line with the budget totals. The budget reconciliation is the sum total of these proposals.

During consideration of the rule on this bill, I supported attempts to uphold the spirit of reconciliation. The LATTA proposal would have deleted from the reconciliation bill provisions which will add $3.1 billion in spending over the next 5 years that had been added by the authorizing committees.

This was an attempt by the authorizing committees to legislate through the budget reconciliation process. By an almost straight party vote, these actions were allowed to stand. I supported the reconciliation process when I thought that it would be enforced and that it might result in a balanced budget.

However, it is obvious that the majority party of this Congress is not serious about restraining spending. They chose to hide spending increases—new funding authorizations—in this, a budget reconciliation bill.

I could not support the Budget Committee in their move to eliminate twice-a-year cost-of-living adjustments—COLA's—for Federal retirees. I may, one day, support an amendment of that nature—which takes due account of any contractual or implied obligations that have been promised to Federal employees—if and when the Congress demonstrates that it is serious about fiscal restraint and balancing the budget. To date, that has not been demonstrated. Under such circumstances, it is patently unfair to single out these people for retirement pay cuts since Congress does not have the will to impose fiscal discipline across the board.

The fiscal year 1981 budget process is a sham. The will of the people has not been worked. The reconciliation process did not work. Funding increases were protected by parliamentary rules and many groups were singled out for cuts that were by no means fair.●

Mr. GIAIMO. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. LATTA. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule. No amendments are in order except amendments recommended by the Committee on the Budget or except the following amendments, all of which shall

not be subject to amendment, but each designated amendment shall be debatable for 30 minutes to be equally divided between a proponent and opponent thereto: First, an amendment to strike sections 520 through 561 and sections 920 through 948, and said amendment shall not be subject to a division of the question; second, an amendment printed on page 19812 of the CONGRESSIONAL RECORD of July 25, 1980 by, and if offered by, Representative VANIK of Ohio; and third, two amendments to be considered en bloc to strike title I and section 401 if offered by Representative BAUMAN of Maryland which shall not be subject to a division of the question.

The bill reads as follows:

H.R. 7765

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Omnibus Reconciliation Act of 1980".

PURPOSE

SEC. 2. The Congress declares that the purpose of this Act is to implement the reconciliation provided for in the First Concurrent Resolution on the Budget for the fiscal year 1981, and in so doing—

(1) to help curb the inflationary pressure on the Nation's economy;

(2) to restrain growth in Federal spending by targeting reductions in certain programs;

(3) to begin to control the uncontrollables which account for approximately 75 percent of the Federal budget;

(4) to eliminate waste and inefficiency in Federal spending through basic program reforms; and

(5) to extend review and fiscal discipline in revenues as well as direct spending programs.

TITLE I—HOUSE COMMITTEE ON ARMED SERVICES

ELIMINATION OF SEPTEMBER 1980 COST-OF-LIVING INCREASE IN MILITARY RETIRED PAY

SEC. 101. (a) The increase in the retired and retainer pay of members and former members of the uniformed services which but for this section would be made effective September 1, 1980, under the provisions of paragraph (2)(B) of section 1401a(b) of title 10, United States Code, shall not be made.

(b)(1) In making the determination required by the provisions of paragraph (1)(A) of such section to be made on January 1, 1981, or within a reasonable time thereafter, the Secretary of Defense shall determine the percent change in the index (as such term is defined in section 1401a(a) of title 10, United States Code) published for December 1980 over the index published for December 1979 (rather than over the index published for June 1980).

(2) The increase in the retired and retainer pay of members and former members of the uniformed services to be made effective March 1, 1981, under the provisions of paragraph (2)(A) of such section shall, in lieu of the increase prescribed by such paragraph, be the percent change computed under paragraph (1), adjusted to the nearest 1/10 of 1 percent.

(c) For the purposes of this section, the term "uniformed services" means—

(1) the armed forces; and

(2) the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

(d) Subsections (a) and (b) shall not take effect unless similar legislation is enacted to provide for no cost-of-living increase in annuities under subchapter III of chapter 83 of title 5, United States Code, to be effective September 1, 1980, and a cost-of-living increase in such annuities to be effective March 1, 1981, based upon the increase in the Consumer Price Index published for December 1980 over the Consumer Price Index published for December 1979.

TITLE II—HOUSE COMMITTEE ON EDUCATION AND LABOR

SUBTITLE A—SAVINGS UNDER THE SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS

REDUCTION IN GENERAL REIMBURSEMENT

SEC. 201. Notwithstanding section 4 of the National School Lunch Act, for the fiscal year ending September 30, 1981, the national average payment per lunch under such Act for such fiscal year, after being adjusted under section 11(a) of such Act, shall be reduced by 2½ cents for any school food authority under which less than 60 percent of the lunches served in the school lunch program were served free or at reduced price during the second preceding school year. The amount of State administrative expense funds to be made available to the States by the Secretary of Agriculture under section 7 of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1983, shall not be reduced because of a reduction in the amount of Federal funds expended as a result of the preceding sentence. For the purpose of this section, the term "school fund authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a school lunch or school breakfast program.

REDUCTION IN COMMODITY ASSISTANCE

SEC. 202. (a) For the fiscal year ending September 30, 1981, the national average value of donated foods, or cash payments in lieu thereof, as determined under section 6(e) of the National School Lunch Act, shall be reduced by 2 cents.

(b) For the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966.

INCOME ELIGIBILITY GUIDELINES

SEC. 203. (a) During the fiscal year ending September 30, 1981, the income poverty guidelines described in the second sentence of section 9(b)(1) of the National School Lunch Act shall be adjusted annually without regard to the proviso contained in such sentence.

(b) In computing household income under section 9(b) of the National School Lunch Act for the fiscal year ending September 30, 1981—

(1) in States other than Alaska, Hawaii, and Guam, the Secretary shall allow a standard deduction of $60 each month for each household, which standard deduction shall be adjusted to the nearest $5 on July 1, 1980, to reflect changes in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, Department of Labor, for items other than food for the period beginning September 1977 and ending March 1980;

(2) the monthly standard deduction allowed in Alaska shall bear the same ratio to the standard deduction allowed in the contiguous States as the applicable income poverty guidelines for Alaska bear to the applicable income poverty guidelines for such States; and

(3) the monthly standard deduction allowed in Hawaii and Guam shall bear the same ratio to the standard deduction allowed in the contiguous States as the applicable income poverty guidelines for Hawaii bear to the applicable income poverty guidelines for such States.

ANNUAL ADJUSTMENTS

SEC. 204. (a) The proviso contained in the first sentence of the second paragraph under section 11(a) of the National School Lunch Act shall have no effect during the fiscal year ending September 30, 1981.

(b) During the fiscal year ending September 30, 1981—

(1) no semiannual adjustment required under the second sentence of the second paragraph under section 11(a) shall be made on January 1 of such fiscal year; and

(2) the adjustment required under the second sentence of the second paragraph under section 11(a) which is to be made on July 1 of such fiscal year shall reflect the changes in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, Department of Labor, for lunches served during the preceding 12-month period.

INELIGIBILITY OF JOB CORPS CENTERS

SEC. 205. During the fiscal year ending September 30, 1981, for purposes of the National School Lunch Act and the Child Nutrition Act of 1966, the term "school" shall not be considered to include Job Corps Centers funded by the Department of Labor.

FOOD SUPPLEMENTS

SEC. 206. (a) Section 13(b)(2) of the National School Lunch Act is amended by striking out "Any" and inserting in lieu thereof "except during fiscal year 1981, any".

(b) During the fiscal year ending September 30, 1981, any service institution (as defined under section 13(a)(1)(B) of the National School Lunch Act) shall be permitted, under section 13 of the National School Lunch Act, to serve lunch and either breakfast or a meal supplement each day of operation, and any service institution that is a camp or that serves meals primarily to migrant children shall be permitted to serve not more than four meals each day of operation, if—

(1) the service institution has both the administrative capability to serve such meals, and the food preparation and food holding capabilities, where applicable, to manage more than one meal service each day; and

(2) the service period of different meals does not coincide or overlap.

Meals which camps and any such service institutions serving meals primarily to migrant children may serve shall include a breakfast, a lunch, a supper, and meal supplements.

AMENDMENT TO THE CHILD CARE FOOD PROGRAM

SEC. 207. (a) Section 17(a) of the National School Lunch Act is amended in the second sentence by inserting before the period at the end thereof the following: "; and such term shall also mean any other private organization providing nonresidential day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act".

(b) The amendment made by subsection (a) of this section shall apply with respect to all fiscal years beginning on or after October 1, 1980.

NATIONAL AVERAGE PAYMENT FOR SUPPLEMENTS

SEC. 208. (a) During the fiscal year ending September 30, 1981, in determining under paragraphs (1) through (3) of section 17(c) of the National School Lunch Act the national average payment rate for supplements served in institutions (other than family or group day care home sponsoring organizations)—

(1) no adjustment under such paragraphs shall be made on January 1 of such fiscal year; and

(2) the adjustment under such paragraphs required to be made on July 1 of such fiscal year shall be computed to the nearest one-fourth cent based on changes, measured over the preceding twelve-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, Department of Labor.

(b) For the fiscal year ending September 30, 1981, the average payment rate determined under paragraphs (1) through (3) of section 17(c) of the National School Lunch Act for supplements served in institutions (other than family or group day care home sponsoring organizations), taking into account any adjustment under such paragraphs in accordance with subsection (a) of this section, shall be reduced by 3 cents.

REDUCTION IN EQUIPMENT ASSISTANCE

SEC. 209. Notwithstanding the first sentence of section 17(n) of the National School Lunch Act, during the fiscal year ending September 30, 1981, only $4,000,000 shall be made available under such section for the purpose of providing equipment assistance to enable institutions to establish, maintain, and expand the child care food program.

REDUCTION IN REIMBURSEMENT FOR MILK

SEC. 210. Notwithstanding the sixth and seventh sentences of section 3 of the Child Nutrition Act of 1966, during the fiscal year ending September 30, 1981, the rate of reimbursement per half-pint of milk under such section shall be 5 cents for milk which is—

(1) served to children who are not eligible for free milk; and

(2) served in schools, child care institutions, and summer camps participating in meal service programs authorized under the National School Lunch Act and the Child Nutrition Act of 1966.

PAYMENTS FOR FREE BREAKFASTS

SEC. 211. Notwithstanding section 4(b)(2)(B)(ii) of the Child Nutrition Act of 1966, in determining the maximum payment for free breakfasts under such section for the fiscal year ending September 30, 1981—

(1) no adjustment under such section shall be made on January 1 of such fiscal year; and

(2) the adjustment under such section required to be made on July 1 of such fiscal year shall be computed to the nearest one-fourth cent based on changes, measured over the preceding twelve-month period for which data are available in the series for food away from home of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, Department of Labor.

FOOD SERVICE EQUIPMENT

SEC. 212. Section 5(a) of the Child Nutrition Act of 1966 is amended by striking out "June 30, 1975, not to exceed $40,000,000" and inserting in lieu thereof "September 30, 1980, not to exceed $20,000,000, for the fiscal year ending September 30, 1981, not to exceed $15,000,000,".

NUTRITION EDUCATION AND TRAINING

SEC. 213. Section 19(j)(2) of the Child Nutrition Act of 1966 is amended by inserting after the first sentence the following: "For the fiscal year beginning October 1, 1980, there is authorized to be appropriated for the grants referred to in the preceding sentence not more than $15,000,000.".

Subtitle B—Savings Under the Federal Employees' Compensation Act

SEC. 221. (a) Subsection (a) of section 8146a of title 5, United States Code, is amended to read as follows:

"(a) Compensation payable on account of disability or death which occurred more than one year before March 1 of each year shall annually increase on that date by the amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent.".

(b) Section 8101 of title 5, United States Code, is amended by striking out paragraph (19), and by redesignating paragraphs (20) and (21) as paragraphs (19) and (20), respectively.

SEC. 222. The amendments made by section 221 shall take effect on the date of the enactment of this Act with respect to any adjustments which are to be made on or after that date; except that the period specified in such section as extending from December to December shall, with respect to the adjustment to be made on March 1, 1981, extend instead from the last month in which the price index resulted in an adjustment prior to enactment to December of 1980.

Subtitle C—Savings Under the Student Loan Program

SEC. 231. (a)(1) Section 430(b) of the Higher Education Act of 1965 is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following new paragraph:

"(2)(A) For the purpose of promoting responsible repayment of loans covered by Federal loan insurance or guarantees pursuant to this part, the Commissioner shall enter into cooperative agreements with credit bureau organizations providing for the exchange of information concerning student borrowers in accordance with the requirements of this paragraph. For the purpose of assisting such organizations to comply with the Fair Credit Reporting Act, such agreements may provide for timely response by the Commissioner to requests from such organizations for responses to objections raised by such borrowers. Subject to the requirements of subparagraph (C), such agreements shall provide for the disclosure by the Commissioner to such organizations with respect to any loan for which the Commissioner has received a notice of default under subsection (a) of this section of—

"(i) the date of disbursement and the amount of any such loan;

"(ii) information concerning collection of any such loan, including information concerning the status of any defaulted loan on which the Commissioner has made a payment pursuant to subsection (a) of this section;

"(iii) the date of cancellation of the note upon completion of repayment by the borrower of any such loan or payment by the Commissioner pursuant to section 437.

"(B) Such agreements may also provide for the disclosure by such organizations to the Commissioner, upon receipt from the Commissioner of a notice under subparagraph (A)(ii) that such a loan is in default, of information concerning the borrower's location or other information which may assist the Commissioner in proceeding to collection of the defaulted amount.

"(C) Agreements entered into pursuant to this paragraph shall contain such provisions as may be necessary to ensure that—

"(i) no information is disclosed by the Commissioner unless its accuracy and completeness have been verified, and no information stating that a loan is in default is disclosed until the Commissioner has made a reasonable effort to collect the debt;

"(ii) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the Commissioner with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i);

"(iii) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

"(iv) the Commissioner (I) shall not disclose any such information until he has notified the borrower that such information will be disclosed to credit bureau organizations unless the borrower enters into repayment of his loan, but (II) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than thirty days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(D) The Commissioner shall, within ninety days after the date of enactment of this paragraph, take such steps as may be necessary to establish the disclosure of information described in subparagraph (A)(i), (ii), and (iii) as a routine use in accordance with section 552a(b)(3) of title 5, United States Code, and to establish a system for the prompt notification of any borrower of any disclosure made pursuant to this paragraph.".

(2) Section 427(a)(2) of such Act is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H)(i) contains a notice of the system of disclosure of information concerning such loan to credit bureau organizations under section 430(b)(2), and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations,".

(b) Section 430(c) of such Act is amended by adding at the end thereof the following new sentence: "Any forbearance which is approved by the Commissioner under this subsection with respect to the repayment of a loan shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and diligence in the collection of the loan.".

(c) Section 432 of such Act is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, the Commissioner may provide to eligible lenders, and to any State or any nonprofit private institution or organization having a guaranty agreement under section 428(c)(1), any information with respect to the names and addresses of borrowers or other relevant information which is available to him, from whatever source such information may be derived.".

SEC. 232. Section 438(b)(2) of the Higher Education Act of 1965 is amended by inserting "(A)" after "(2)", by inserting "subparagraph (B) and" immediately after "Subject to", and by adding at the end thereof the following new subparagraph:

"(B)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954 shall be one-half the quarterly rate of the special allowance established under subparagraph (A). Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.

"(ii) the rate set under division (i) shall not be less than one-half of 1 per centum.".

SEC. 233. (a) Part B of title IV of the Higher Education Act of 1965 is amended by inserting immediately after section 428A the following new section:

"LOANS TO PARENTS OF DEPENDENT UNDERGRADUATE STUDENTS

"SEC. 428B. (a) Parents of a dependent undergraduate student (as defined by regulations by the Secretary) shall be eligible to borrow funds under this part in amounts specified in subsection (b), and unless otherwise specified in subsections (c) and (d), such loans shall have the same terms, conditions, and benefits as all other loans made under this part.

"(b)(1) Subject to paragraphs (2) and (3), the maximum amount parents may borrow for one student in any academic year or its equivalent (as defined by regulation by the Secretary) is $3,000.

"(2) The aggregate insured principal amount for insured loans made to parents on account of an undergraduate dependent student shall not exceed $15,000.

"(3) No loan may be made to any parents or student under this part which would cause their combined loans for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance as certified by the eligible institution under section 428(a)(2)(A) of this part. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

"(c)(1) Repayment of principal on loans made under this section may be deferred until the earliest of—

"(A) four years from the disbursement date of the first loan made for the educational expenses of the dependent student named in the parent's loan application;

"(B) the student's anticipated date of graduation or completion of studies estimated at the time of the application for a loan;

"(C) the date on which the student ceases to be at least a half time student at an eligible institution; or

"(D) such other date as the parent may request.

Such repayment obligation shall not be further delayed because of any current status of the student, but nothing in this section shall be construed to prohibit a lender from exercising forbearance for the benefit of the borrower.

"(2) No payments to reduce interest costs shall be paid pursuant to section 428(a) of this part on loans made pursuant to this section.

"(3) If a borrower under this section elects to begin making regular monthly payments of principal and interest at a date later than sixty days after the date such loan is disbursed by a lender, then the interest which would accrue between the date of disbursement and a date thirty days prior to the due date of the first payment shall be calculated and subtracted from the proceeds of the loan before the balance is disbursed. If such repayment begins on a date earlier than thirty days prior to the due date of the first payment, any such interest so retained by the lender which has not been earned shall be used to reduce the principal owing on the loan.

"(4) If a borrower under this section elects to begin making regular monthly payments of principal and interest at a date not later than sixty days after the date such loan is disbursed by a lender, then the interest shall be 7 per centum per annum on the unpaid principal balance of the loan.

"(d) Loans made under this section shall be insured by the Secretary in a State only if—

"(1) the State is not served by an agency having an agreement with the Secretary pursuant to section 428(b), or

"(2) an agency in a State having such an agreement does not authorize loans under this section (A) within one hundred and twenty days after the effective date of this amendment, or (B) if a State is prohibited from authorizing loans under this section because of existing State law, one hundred and twenty days after the adjournment of the next regular session of the State legislature which convenes after the effective date of this amendment.".

(b) Notwithstanding any provision of part B of title IV of the Higher Education Act of 1965, during the period beginning October 1, 1980, and ending September 31, 1981, no loan may be insured under section 427 of such Act, or made under a program covered by an agreement under section 428(b) of such Act, with respect to any dependent undergraduate student (as defined by regulations prescribed pursuant to section 428B(a) of such Act), if—

(1) the parents of such student reside within a State in which the program authorized by section 428B of such Act is determined by the Secretary by regulation to be fully operational; and

(2) such parents have not (A) borrowed under such section an amount equal to the maximum amount which may be borrowed consistent with section 428B(b) of such Act or (B) provided such amount from other sources.

SEC. 234. (a) Paragraph (4) of section 6103(m) of the Internal Revenue Code of 1954 (relating to individuals who have defaulted on student loans) is amended to read as follows:

"(4) INDIVIDUALS WHO HAVE DEFAULTED ON STUDENT LOANS.—

"(A) IN GENERAL.—Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan—

"(i) made under part B or E of title IV of the Higher Education Act of 1965, or

"(ii) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education,

for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such loan.

"(B) DISCLOSURE TO EDUCATIONAL INSTITUTIONS, ETC.—Any mailing address disclosed under subparagraph (A)(i) may be disclosed by the Secretary of Education to—

"(i) any lender, or any State or nonprofit guarantee agency, which is participating under part B of title IV of the Higher Education Act of 1965, or

"(ii) any educational institution with which the Secretary of Education has an agreement under part E of title IV of such Act,

for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.".

(b) The first sentence of section 7213(a)(2) of such Code (relating to unauthorized disclosure of information by State and other employees) is amended to read as follows: "It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (l) (6) or (7), or (m)(4) of section 6103.".

(c) The amendments made by subsections (a) and (b) of this section shall take effect on the date of the enactment of this Act.

SEC. 235. Section 428(f) of the Higher Education Act of 1965 is amended by adding at the end thereof the following new paragraph:

"(5) Notwithstanding any other provision of this subsection no payment may be made under paragraph (1) or (2) of this subsection during the fiscal year beginning October 1, 1980 and ending September 30, 1981.".

TITLE III—HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Subtitle A—Savings Under the Medicare and Medicaid Programs

CHAPTER 1—PROVISIONS OF H.R. 4000

SHORT TITLE; TABLE OF CONTENTS

SEC. 300. This chapter may be cited as the "Medicare and Medicaid Amendments of 1980".

TABLE OF CONTENTS

Sec. 300. Short title; table of contents.

PART A—MEDICARE AND MEDICAID RELATED PROVISIONS

Sec. 301. In general.

[NOTE.—The succeeding sections (302–328), which are listed in this table of contents as being included in part A of this chapter but the text of which is not actually set forth, are substantially identical to the sections included in chapter 2 of subtitle A of title VIII. The text of these sections appears in this Act as sections 842 through 868.]

Sec. 302. Expanded membership of professional standards review organizations.

Sec. 303. Registered nurse and dentist membership on statewide council advisory group.

Sec. 304. Nonphysician membership on national professional standards review council.

Sec. 305. Efficiency in delegated review.

Sec. 306. Required activities of professional standards review organizations.

Sec. 307. Response of professional standards review organizations to Freedom of Information Act requests.

Sec. 308. Consultation by professional standards review organizations with health care practitioners.

Sec. 309. Review of routine hospital admission services and preoperative hospital stays by professional standards review organizations.

Sec. 310. Study of professional standards review organizations norms, standards, and criteria.

Sec. 311. Nonprofit hospital philanthropy.

Sec. 312. Consultative services for skilled nursing facilities.

Sec. 313. Study of need for dual participation of skilled nursing facilities.

Sec. 314. Alternative to decertification of long-term care facilities out of compliance with conditions of participation; look behind authority.

Sec. 315. Life safety code requirements.

Sec. 316. Criminal standards for certain medicare- and medicaid-related crimes.

Sec. 317. Exclusion of health care professionals convicted of medicare- or medicaid-related crimes.

Sec. 318. Requirements concerning reporting of financial interest.

Sec. 319. Withholding of Federal share of payments to medicaid providers to recover medicare overpayments.

Sec. 320. Hospital providers of long-term care services ("swing-beds").

Sec. 321. Coordinated audits under the Social Security Act.

Sec. 322. Demonstration projects relating to the training of aid to families with dependent children recipients as home health aides.

Sec. 323. Quality assurance programs for clinical laboratories.

Sec. 324. Reimbursement of clinical laboratories under medicare and medicaid.

Sec. 325. Reimbursement of physicians' services in teaching hospitals.

Sec. 326. Demonstration projects for requiring second opinions for certain elective surgical procedures under medicare and medicaid; application of informed consent to certain demonstration projects.

Sec. 327. Continued use of demonstration project reimbursement systems.

Sec. 328. Reimbursement for health maintenance organizations.

PART B—MEDICAID ONLY RELATED PROVISIONS

Sec. 331. Reimbursement under medicaid for services furnished by nurse-midwives.

Sec. 332. Continuing medicaid eligibility for certain individuals by disregarding certain involuntary increases in income.

Sec. 333. Limitation on medicaid eligibility for individuals who dispose of assets.

Sec. 334. Adjustment of dollar limitation and elimination of special limitation on medicaid payments to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

Sec. 335. Extension of increased funding for long-term care facility inspectors under medicaid.

Sec. 336. Extension of increased funding for State medicaid fraud control units.

Sec. 337. Change in calendar quarter for which satisfactory utilization review must be shown to receive waiver of medicaid reduction.

PART A—MEDICARE AND MEDICAID RELATED PROVISIONS

IN GENERAL

SEC. 301. For the text of the medicare and medicaid related provisions of H.R. 4000 which are to be taken into account in satisfaction of the reconciliation requirements imposed upon the House Committee on Interstate and Foreign Commerce by section 3(a)(3) of H. Con. Res. 307 (Ninety-sixth Congress), and which are also taken into account in satisfying the corresponding requirements imposed upon the House Committee on Ways and Means, see chapter 2 of subtitle A of title VIII (sections 842 through 868).

PART B—MEDICAID ONLY RELATED PROVISIONS

REIMBURSEMENT UNDER MEDICAID FOR SERVICES FURNISHED BY NURSE-MIDWIVES

SEC. 331. (a)(1) Subsection (a) of section 1905 of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (16);

(B) by redesignating paragraph (17) as paragraph (18); and

(C) by inserting after paragraph (16) the following new paragraph:

"(17) services furnished by a nurse-midwife (as defined in subsection (m)) which he is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not he is under the supervision of, or associated with, a physician or other health care provider; and".

(2) Such section is further amended by adding at the end thereof the following new subsection:

"(m) The term 'nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies (throughout the maternity cycle) which he is legally authorized to perform in the State in which he performs such services.".

(b) Section 1902(a) of such Act is amended—

(1) by striking out "clauses (1) through (5)" in paragraph (13)(B) and inserting in lieu thereof "paragraphs (1) through (5) and (17)";

(2) by striking out "clauses (1) through (5)" in paragraph (13)(C)(i) and inserting in lieu thereof "paragraphs (1) through (5) and (17)";

(3) by striking out "clauses numbered (1) through (16)" in paragraph (13)(C)(ii) and inserting in lieu thereof "paragraphs numbered (1) through (17)"; and

(4) by striking out "clauses (1) through (5) and (7)" in paragraph (14)(A)(i) and inserting in lieu thereof "paragraphs (1) through (5), (7), and (17)".

(c)(1) The amendments made by this section shall (except as provided under paragraph (2)) be effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning more than one hundred and twenty days after the date of the enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN INDIVIDUALS BY DISREGARDING CERTAIN INVOLUNTARY INCREASES IN INCOME

SEC. 332. The next to last paragraph of subsection (a) of section 1902 of the Social Security Act is amended by adding at the end the following new sentence: "In the case of an individual who, for a month after May 1980, was determined to be eligible for medical assistance under the the plan and was receiving a monthly insurance benefit under title II of this Act or under the Railroad Retirement Act of 1974, or an annuity under subchapter III of chapter 83 of title 5, United States Code (relating to civil service retirement), or compensation, dependency and indemnity compensation or a pension, under chapter 11, 13, or 15 of title 38, United States Code (relating to veterans and other persons) and who (but for this sentence) would have become ineligible for such medical assistance in the subsequent month because of an increase in the amount of such benefit or annuity due to an increase in a cost-of-living or price index, or because of an annual, general increase in the amount of such compensation or pension, respectively, becoming effective in such subsequent month, for purposes of establishing the individual's eligibility for medical assistance under the plan for such subsequent month (and each month thereafter until the first month in which the individual otherwise becomes ineligible for such assistance) there shall not be included in the individual's income any such increase in the amount of such benefit, annuity, compensation, or pension which becomes effective in or after such subsequent month.".

LIMITATION ON MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO DISPOSE OF ASSETS

SEC. 333. (a)(1) Section 1902(a)(17)(B) of the Social Security Act is amended by inserting "(except as provided under subsection (l))" after "(B) provide for taking into account".

(2) Section 1902 of such Act is further amended by adding after subsection (h) (added by section 854(b)(1)(A) of this Act) the following new subsection:

"(l)(1) Notwithstanding any other provision of this title (including subsection (f), but except as provided in paragraphs (2) and (4)) and to the extent permitted in this subsection, a State plan for medical assistance under this title may provide that an individual shall be ineligible for medical assistance, provided under a State plan approved under this title, for the period specified in paragraph (2) if—

"(A) within any twenty-four-month period that begins with or after the twenty-fourth month preceding the month in which he files an application for medical assistance under the plan, the individual (or another person whose resources are considered in determining the eligibility of the individual) disposed of resources which, if retained, would have caused the individual to be ineligible for such assistance, for the purpose of establishing eligibility for such benefits (and any disposition of resources within such period may be presumed to have been for such purpose unless the State is furnished convincing evidence that the transaction was for some other purpose), and

"(B) the sum of—

"(i) the current market value of the individual's (or other person's) equity interest in such resources disposed of without any compensation, and

"(ii) the difference between the current market value of the individual's (or person's) equity interest in such resources disposed of for compensation and the amount of such compensation,

exceeded $6,000.

"(2)(A) Except as provided in subparagraph (B), the period for which an individual is ineligible for medical assistance under a State plan by reason of the application of paragraph (1) shall be—

"(i) six months, if the sum described in paragraph (1)(B) is less than $12,000,

"(ii) twelve months, if the sum described in paragraph (1)(B) exceeded $12,000 but was less than $30,000, and

"(iii) twenty-four months, if the sum described in paragraph (1)(B) exceeded $30,000,

and shall begin with the month following the month in which such disposition occurred.

"(B) A period of ineligibility shall end after the month in which the individual (or other person) either (i) returns the resources, the disposition of which caused the ineligibility to occur or (ii) receives payment equal to the amount of any uncompensated interest described in paragraph (1)(B).

"(C) A State plan may provide for the waiver of the requirement of paragraph (1), or the reduction in the period of ineligibility imposed by this paragraph, in such cases as the State determines that such a waiver or reduction is justified.

"(3) If the eligibility of a person for medical assistance under this title is dependent upon the eligibility of another individual and that other individual is determined to be ineligible for medical assistance under paragraph (1) for a period of time, the person shall be ineligible for medical assistance for the same period of time.

"(4)(A) Except as provided in subparagraph (B), paragraph (1) shall not apply to individuals with respect to whom supplemental security income benefits are being paid under title XVI.

"(B) Subparagraph (A) shall not apply to a State which, pursuant to subsection (f), does not provide for medical assistance to all individuals with respect to whom supplemental security income benefits are being paid under title XVI.

"(5)(A) Notwithstanding any other provision of law, if an individual disposes of resources to another person which disposal, under this subsection, could make the indi-

vidual ineligible for medical assistance from a State for a period, the State plan under this title may provide for the recovery from such other person of an amount equal to—

"(i) the cost of the medical assistance provided to the individual during or after such period, or

"(ii) the sum described in clauses (i) and (ii) of paragraph (1)(B) with respect to transactions between the individual and the person for such period.

whichever is less, except that the State may not initiate such an action for recovery more than three years after the last date in such period of ineligibility.

"(B) if a State recovers funds under subparagraph (A), it shall provide for notice to the Secretary of the amounts so recovered and the Secretary shall reduce the amount of payments otherwise provided to the State under this title by an amount equal to product of—

"(i) the amount so recovered, and

"(ii) the Federal medical assistance percentage of the State.".

(b)(1) Except as provided in paragraphs (2) and (3), the amendments made by subsection (a) shall become effective on the later of October 1, 1980, or the first day of the first month beginning after the date of the enactment of this Act, and shall apply to dispositions of resources that occur (or occurred) on and after such date (before, on, or after the date of the enactment of this Act) as the State may specify.

(2) Section 1902(i)(5) of such Act shall apply to dispositions of property that occur on or after the date of the enactment of this Act.

(3)(A) The amendments made by subsection (a) shall (except as otherwise provided in subparagraph (B)) apply to a State which is a non-SSI medicaid State (as defined in subparagraph (C)) on and after the first day of the first calendar quarter beginning more than six months after the date of the enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to comply with the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to comply with such amendments before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(C) For purposes of this paragraph, the term "non-SSI medicaid State" means a State which, pursuant to section 1902(f) of the Social Security Act, has elected not to provide, under the State's plan approved under title XIX of such Act, medical assistance to all individuals with respect to whom supplemental security income benefits are payable under title XVI of such Act.

ADJUSTMENT OF DOLLAR LIMITATION AND ELIMINATION OF SPECIAL LIMITATION ON MEDICAID PAYMENTS TO PUERTO RICO, THE VIRGIN ISLANDS, GUAM, THE NORTHERN MARIANA ISLANDS, AMERICAN SAMOA, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

SEC. 334. (a)(1) The first sentence of section 1101(a)(1) of the Social Security Act is amended—

(A) by striking out "title V" and inserting in lieu thereof "titles V and XIX", and

(B) by striking out "American Samoa" and inserting in lieu thereof "the Northern Mariana Islands, American Samoa,".

(2)(A) Effective for fiscal year 1980 only, section 1108(c)(1) of such Act is amended by striking out "$30,000,000" and inserting in lieu thereof "$33,000,000".

(B) Effective for fiscal year 1981, subsection (c) of section 1108 of such Act is amended to read as follows:

"(c) The total amount certified by the Secretary under title XIX with respect to fiscal year 1981, for payment to—

"(1) the Commonwealth of Puerto Rico, shall not exceed $45,000,000,

"(2) the Virgin Islands shall not exceed $1,500,000,

"(3) Guam shall not exceed $1,400,000,

"(4) the Northern Mariana Islands shall not exceed $350,000,

"(5) American Samoa shall not exceed $350,000, and

"(6) the Trust Territory of the Pacific Islands shall not exceed $1,400,000.".

(C) Effective for fiscal year 1982 and subsequent fiscal years, subsection (c) of section 1108 of such Act is amended to read as follows:

"(c) The total amount certified by the Secretary under title XIX with respect to—

"(1) fiscal year 1982, for payment—

"(A) to the Commonwealth of Puerto Rico shall not exceed $60,000,000,

"(B) to the Virgin Islands shall not exceed $2,000,000,

"(C) to Guam shall not exceed $1,800,000,

"(D) to the Northern Mariana Islands shall not exceed $500,000,

"(E) to American Samoa shall not exceed $500,000, and

"(F) to the Trust Territory of the Pacific Islands shall not exceed $1,800,000; and

"(2) any subsequent fiscal year, for payment to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands shall not exceed the amount specified in subparagraphs (A), (B), (C), (D), (E), and (F), respectively, of paragraph (1) increased by a percentage equal to the percentage increase in the Consumer Price Index for all urban consumers (published monthly by the Bureau of Labor Statistics of the Department of Labor) between October 1982, and the first month of such fiscal year.".

(b) The first sentence of section 1905(b) of such Act is amended—

(1) by striking out "(1)", and

(2) by striking out ", and (2)" and all that follows through "shall be 50 per centum".

(c)(1) The amendment made by subsection (a)(1) shall apply to fiscal years beginning after September 30, 1979.

(2)(A) Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply with respect to care and services provided, under a State plan approved under title XIX of the Social Security Act, in a calendar quarter beginning after September 30, 1979.

(B) Each of the agencies administering or supervising the administration of the State plan, approved under title XIX of the Social Security Act, for the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Northern Mariana Islands may elect not to have the amendments made by subsection (b) apply to any care or services provided in its jurisdiction to an individual over a period of time beginning before October 1, 1979, and ending after October 1, 1979.

EXTENSION OF INCREASED FUNDING FOR LONG-TERM CARE FACILITY INSPECTORS UNDER MEDICAID

SEC. 335. (a) Section 249B of the Social Security Amendments of 1972 (Public Law 92-603) is amended by striking out "and ending September 30, 1980,".

(b) Section 1903(a)(4) of the Social Security Act is amended by inserting "and before October 1, 1983" after "during such quarter".

(c) The amendment made by subsection (b) shall apply to calendar quarters beginning on or after October 1, 1980.

EXTENSION OF INCREASED FUNDING FOR STATE MEDICAID FRAUD CONTROL UNITS

SEC. 336. Section 1903(a)(6) of the Social Security Act is amended by striking out "an amount equal to" and all that follows through "with respect to costs incurred" and inserting in lieu thereof the following:

"an amount equal to—

"(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

"(B) 75 per centum of the sums expended during each succeeding calendar quarter,

with respect to costs incurred".

CHANGE IN CALENDAR QUARTER FOR WHICH SATISFACTORY UTILIZATION REVIEW MUST BE SHOWN TO RECEIVE WAIVER OF MEDICAID REDUCTION

SEC. 337. Section 1903(g)(3)(b) of the Social Security Act is amended—

(1) by striking out "October 1, 1977" and inserting in lieu thereof "January 1, 1978"; and

(2) by striking out "the calendar quarter ending on December 31, 1977" and inserting in lieu thereof "any calendar quarter ending on or before December 31, 1978".

CHAPTER 2—MEDICAID DISALLOWANCE SAVINGS

EXPEDITED RECOVERY FOR CERTAIN DISALLOWED MEDICAID CLAIMS

SEC. 341. (a) Section 1116 of the Social Security Act is amended by adding at the end the following new subsection:

"(e)(1) In the case of a disallowance under subsection (d) with respect to a State under title XIX, the Secretary shall not make such a disallowance unless the State has been provided, at least 30 days before the date the final notice of such disallowance is provided to the State, a preliminary notice of the Secretary's intent to make such a disallowance. After the Secretary provides a State such a final notice of disallowance and pending any reconsideration of such disallowance, the Secretary shall offset, from any subsequent payments made to the State under title XIX, an amount equal to the amount of the disallowance.

"(2) If, in the reconsideration (or appeal of a reconsideration) of such a disallowance, it is determined that the Secretary's disallowance (and offsetting) of an amount was incorrect, the Secretary shall pay to the State, in addition to the amount of such disallowance incorrectly taken, interest on such amount disallowed for the period beginning on the date such amount was offset from payment to the State and ending on the date it was paid to the State at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during such period.".

(b) The amendment made by subsection (a) shall apply to notices of disallowance made on or after October 1, 1980.

Subtitle B—Savings Under Railroad Retirement

CHANGE IN DEFINITION OF YEARS OF SERVICE

SEC. 351. The last sentence of section 1(f)(1) of the Railroad Retirement Act of 1974 is amended to read as follows: "Ultimate fractions shall be taken at their actual value.".

CHANGE IN REDUCTION OF SPOUSE'S ANNUITY

SEC. 352. Section 2(c)(2) of the Railroad Retirement Act of 1974 is amended by striking out "1/180" and inserting in lieu thereof "1/144".

CHANGE IN DEEMING REQUIREMENT

SEC. 353. (a) Section 3(a)(2) of the Railroad Retirement Act of 1974 is amended—

(1) by inserting "who have not attained age 62" after "paragraph (ii) of section 2(a)(1) of this Act"; and

(2) by striking out "65" and inserting in lieu thereof "62".

CHANGE IN METHOD OF COMPUTING EFFECTS OF ANNUITY INCREASES ON CERTAIN DEDUCTIONS

SEC. 354. Section 3(1) of the Railroad Retirement Act of 1974 is amended to read as follows:

"(i) In cases where an annuity awarded under paragraph (iii) of section 2(a)(1) or under section 2(c)(2) of this Act is increased either by a change in the law or by a recomputation, the reduction on account of age in the amount of such increase shall be computed as though such increased annuity amount had been in effect for and after the month in which the annuitant first became entitled to such annuity under section 2(a)(1)(iii) or section 2(c)(2).".

CHANGE IN COMPUTATION OF SOCIAL SECURITY DEDUCTION

SEC. 355. (a) Section 3(m) of the Railroad Retirement Act of 1974 is amended by inserting ", after any reduction pursuant to paragraph (iii) of section 2(a)(1)," after "shall".

(b) Section 4(i)(1) of the Railroad Retirement Act of 1974 is amended by inserting ", after any reduction pursuant to section 2(c)(2)," after "shall".

CHANGE IN COMPUTATION OF SPOUSE ANNUITIES

SEC. 356. Section 4(b) of the Railroad Retirement Act of 1974 is amended by striking out "the maximum amount which could be paid" and all that follows through the end of such subsection and inserting in lieu thereof the following: "the maximum amount which could be paid to anyone with respect to such month as a wife's insurance benefit under section 202(b) of the Social Security Act on the basis of the wages of an individual who retired at age 65 in such month with credit for maximum taxable wages (as defined in section 3121 of the Internal Revenue Code of 1954) for each year after the year in which such individual attained age 21 and before the year in which such individual attained age 65, the amount of the annuity of such spouse under this subsection shall be reduced until the total of such annuity amounts equals such amount.".

CHANGE IN BEGINNING DATE FOR DISABILITY ANNUITIES

SEC. 357. Section 5(a) of the Railroad Retirement Act of 1974 is amended—

(1) by striking out "and" at the end of paragraph (ii);

(2) by striking out the period at the end of paragraph (iii) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following new paragraph:

"(iv) in the case of an applicant entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act or under section 2(d)(1)(i) of this Act on the basis of disability, not earlier than the first day of the sixth month following the onset date of the disability for which such annuity is awarded.".

REPORT

SEC. 358. No later than December 31, 1980, representatives of employees and representatives of carriers, acting through a group designated by them, shall submit to the Senate Committee on Labor and Human Resources and the House of Representatives Committee on Interstate and Foreign Commerce a report containing their joint recommendations for further restructuring of the railroad retirement system in a manner which will assure the long-term actuarial soundness of such system.

INCREASE IN RAILROAD RETIREMENT TAX ON EMPLOYERS

SEC. 359. Subsection (a) of section 3221 of the Internal Revenue Code of 1954 (relating to railroad retirement tax on employers) is amended by inserting "(9.75 percent in the case of compensation paid for services rendered after September 30, 1980, and before October 1, 1981)" after "9.5 percent".

EFFECTIVE DATES FOR SUBTITLE

SEC. 360. (a) The amendments made by sections 351, 352, 353, 354, 355, 356, and 357 shall take effect and apply only with respect to months in the fiscal year ending September 30, 1981, and only with respect to annuities which first begin to accrue during such fiscal year.

(b) Sections 358 and 359 shall take effect on the date of the enactment of this Act.

(c) Except as provided in this section, the Railroad Retirement Act of 1974 shall continue in effect as though this subtitle did not exist.

Subtitle C—Additional Savings

SEC. 361. For provisions of law (within the jurisdiction of the House Committee on Interstate and Foreign Commerce) which further reduce spending for fiscal year 1981 in satisfaction of the reconciliation requirements imposed by section 3(a)(3) of H. Con. Res. 307 (96th Congress), see Public Law 96-254 (the Rock Island Railroad Transition and Employee Assistance Act).

TITLE IV—HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Subtitle A—Savings Under the Civil Service Program

LIMITATION ON ANNUITY COST-OF-LIVING ADJUSTMENTS IN FISCAL YEAR 1981

SEC. 401. (a) Notwithstanding subsection (b) of section 8340 of title 5, United States Code, relating to cost-of-living adjustments—

(1) no determination under paragraph (1)(A) of such subsection, and no annuity increase under paragraph (2)(A) of such subsection, may be made with regard to changes in the price index occurring between June and December of 1980; and

(2) the determination under paragraph (1)(B) of such subsection required to be made on July 1, 1981 (or within a reasonable time thereafter), shall be made with regard to the percent change in the price index published for June 1981 over the price index published for June 1980, and any related annuity increase to be effective September 1, 1981, under paragraph (2)(B) of such subsection shall be based on the percent change so determined.

(b) Subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to any annuity to which section 8340 of title 5, United States Code, applies, whether that annuity commenced on, before, or after the date of the enactment of this Act.

ELIMINATION OF RETROACTIVE ANNUITY ADJUSTMENT; PRORATION OF INITIAL ADJUSTMENT

SEC. 402. (a) Section 8340(c) of title 5, United States Code, relating to cost-of-living adjustments, is amended—

(1) by striking out paragraph (1) thereof; and

(2) by inserting in lieu thereof the following new paragraph:

"(1) The first increase (if any) made under subsection (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, or to the widow or widower of a deceased employee or Member, shall be equal to the product (adjusted to the nearest 1/10 of 1 percent) of—

"(A) ⅙ of the applicable percent change computed under subsection (b) of this section, multiplied by

"(B) the number of full months for which the annuity was payable from the Fund before the effective date of the increase (counting any portion of a month as a full month).".

(b)(1) The amendment made by subsection (a)(1) shall apply with respect to annuities commencing after September 1, 1980, or after the date of the enactment of this Act, whichever date is later.

(2) The amendment made by subsection (a)(2) shall apply to any annuity increase taking effect after the date of the enactment of this Act. In applying section 8340(c)(1) of title 5, United States Code, to the annuity increase to be effective September 1, 1981 (taking into account section 401), "1/12" shall be substituted for "1/6" where it appears in section 8340(c)(1)(A) of such title 5 (as amended).

ELIMINATION OF CERTAIN DUAL COMPENSATION

SEC. 403. (a) Section 5519 of title 5, United States Code, relating to crediting of pay for certain amounts received for Reserve or National Guard service, is amended by striking out "section 6323(c) or (d)" and inserting in lieu thereof "section 6323(a) or (b)".

(b) The amendment made by subsection (a) shall take effect on the first day of the first applicable pay period beginning on or after October 1, 1980.

ELIMINATION OF CREDIT FOR HOLIDAYS IN CALCULATING LUMP-SUM LEAVE PAYMENTS

SEC. 404. (a) Section 5551(a) of title 5, United States Code, relating to lump-sum payment at separation for accumulated leave, is amended by adding at the end thereof the following new sentence: "The period of leave used for calculating the lump-sum payment shall not be extended due to any holiday occurring after separation.".

(b) The amendment made by subsection (a) shall take effect October 1, 1980, and shall apply to employees separating from the service on or after such date.

DISABILITY RETIREMENT ELIGIBILITY

SEC. 405. (a) Section 8337(a) of title 5, United States Code, relating to disability retirement, is amended to read as follows:

"(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. A Member who completes 5 years of Member service and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application. An annuity authorized by this section is computed under section 8339(g) of this title, unless the employee or Member is eligible for a higher annuity computed under section 8339(a)-(e) or (n).".

(b) Section 8331 of title 5, United States Code, is amended by striking out paragraph (6).

(c) The amendments made by this section shall take effect on the 90th day after the date of the amendment of this Act.

MINIMUM DISABILITY RETIREMENT ANNUITY

SEC. 406. (a) Section 8339(g) of title 5, United States Code, is amended by adding at the end thereof the following: "However, if an employee or Member retiring under section 8337 of this title is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of this title) or Veterans' Administration pension or compensation in lieu of such retired or retainer pay, the annuity of that employee or Member shall be computed under subsection (a), (b), or (c) of this section, as appropriate, excluding credit for military service from that computation. If the

amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of this title, or the Veterans' Administration pension or compensation in lieu of such retired or retainer pay, is less than the smaller of the annuity otherwise payable under paragraph (1) or (2) of this subsection, an amount equal to the difference shall be added to the annuity payable under subsection (a), (b), or (c) of this section, as appropriate.".

(b) Section 8347 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) Notwithstanding any other provisions of law, for the purpose of ensuring the accuracy of information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

"(1) the Secretary of Defense or the Secretary's designee shall provide information on retired or retainer pay provided under title 10; and

"(2) the Administrator of Veterans Affairs shall provide information on pensions or compensation provided under title 38.

The Director shall request only such information as the Director determines is necessary. The Director, in consultation with the officials from whom information is requested, shall establish, by regulation and otherwise, such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.".

(c) The amendments made by this section shall take effect on October 1, 1980.

EXEMPTION OF LIFE INSURANCE PREMIUMS FROM STATE TAXATION

SEC. 407. (a) Section 8714 of title 5, United States Code, relating to Employees' Life Insurance Fund, is amended by adding at the end thereof the following new subsection:

"(c)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, on, or with respect to, any premium paid under an insurance policy purchased under this chapter.

"(2) Paragraph (1) of this subsection shall not be construed to exempt any company issuing a policy of insurance under this chapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that company from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.".

(b) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to premiums paid on or after such date.

Subtitle B—Savings Under the Postal Service Program

AUTHORIZATIONS FOR PUBLIC SERVICE APPROPRIATIONS

SEC. 411. Section 2401(b)(1)(C) of title 39, United States Code, is amended by striking out "an amount equal to 8 percent of such sum for fiscal year 1971" and inserting in lieu thereof "$486,000,000".

CONTINUATION OF SIX-DAY MAIL DELIVERY

SEC. 412. During the period from the date of enactment of this Act until October 1, 1981, the Postal Service shall take no action to reduce or to plan to reduce during that period of time the number of days each week for regular mail delivery.

AUTHORIZATION FOR REVENUE FOREGONE APPROPRIATIONS

SEC. 413. (a) Notwithstanding the provisions of sections 2401(c) and 3626 of title 39, United States Code, the authorization for appropriations for fiscal year 1981 for revenue foregone for mail matter described in former section 4452(b) and (c) of title 39, United States Code, shall be $100,000,000 less than would be authorized if this section were not enacted.

(b) The reduction in authorization made by subsection (a) of this section may be deemed a failure of appropriation for the purposes of section 3627 of title 39, United States Code, as amended by section 414 of this Act.

ADJUSTMENT OF REDUCED RATES

SEC. 414. Section 3627 of title 39, United States Code, is amended to read as follows:

"§ 3627. Adjusting free and reduced rates

"If Congress fails to appropriate an amount authorized under section 2401(c) of this title for any class, subclass, or type of mail sent free or at a reduced rate of postage under sections 3217, 3403–3405 or 3626 of this title, the Federal Voting Assistance Act of 1955, or the Overseas Citizens Voting Rights Act of 1975, the rate for that class, subclass, or type may be adjusted so that the increased revenues received during the fiscal year affected from users of the class, subclass, or type will equal approximately the amount which the Congress failed to appropriate. Adjustments made under this section may not become effective until the Postal Service has submitted a request for a recommended decision by the Postal Rate Commission and the recommended decision has been acted upon by the Governors of the Postal Service under section 3625 of this title. The Commission shall conduct a proceeding under section 553 of title 5 and shall issue its recommended decision not later than 60 days after receiving the request. If the Commission fails to render its decision within 60 days, subject to the extension of time provisions of section 3624(c) of this title, the Postal Service may establish temporary rates which may continue in effect until the Commission's decision is acted upon".

RECONCILIATION APPROPRIATIONS

SEC. 415. (a) Section 2401(c) of title 39, United States Code, is amended by adding at the end thereof the following new sentence: "In requesting an appropriation under this subsection for a fiscal year, the Postal Service shall include an amount to reconcile sums authorized to be appropriated for prior fiscal years on the basis of estimated mail volume with sums which would have been authorized to be appropriated if based on the final audited mail volume.".

(b) The request for a reconciliation appropriation described in subsection (a) of this section which was submitted by the Postal Service for fiscal year 1981 shall be resubmitted for fiscal year 1982.

NONPROFIT MAIL RATES FOR POLITICAL COMMITTEES

SEC. 416. Section 3626(e) of title 39, United States Code, is repealed.

EFFECTIVE DATES

SEC. 417. (a) Except as provided by subsection (b) of this section, this subtitle and the amendments made by this subtitle shall become effective upon the date of the enactment of this Act.

(b) The amendment made by section 416 shall become effective October 1, 1980.

TITLE V—HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Subtitle A—Savings Under Highway Programs

SEC. 501. (a) Notwithstanding any other provision of law, the total of all obligations for Federal-aid highways and highway safety construction programs for the fiscal year ending September 30, 1980, shall not exceed $7,900,000,000. This limitation shall not apply to obligations for emergency relief under section 125 of title 23, United States Code.

(b) For the fiscal year ending September 30, 1980, immediately upon enactment of this Act, the Secretary of Transportation shall control the obligation of such limitation by distribution of amounts of such limitation not obligated on the date of enactment of this Act in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to a State in fiscal year 1980 bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States in such fiscal year; except that no State shall receive a distribution such that the total of amounts so distributed to such State and amounts obligated by such State on or before the date of enactment of this Act would exceed a distribution of such limitation made in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to such State in fiscal year 1980 bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States in such fiscal year and the Secretary of Transportation shall not be required to cancel any obligations incurred on or before the date of enactment of this Act.

(c) Notwithstanding subsection (b), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State, except in those instances in which a State has indicated prior to April 2, 1980, its intention to lapse sums apportioned under section 104(b)(5)(A), title 23, United States Code;

(2) after August 25, 1980, revise a distribution made under subsection (b) in the event a State will not obligate the amount distributed during fiscal year 1980 and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during fiscal year 1980; and

(3) not distribute funds for administration expense and forest highways under such limitation.

SEC. 502. (a) Notwithstanding any other provision of law, the total of all obligations for Federal-aid highways and highway safety construction programs for the fiscal year ending September 30, 1981, shall not exceed $8,750,000,000. This limitation shall not apply to obligations for emergency relief under section 125 of title 23, United States Code.

(b) For the fiscal year ending September 30, 1981, the Secretary of Transportation shall control the obligation of the limitation imposed by subsection (a) by allocation according to the following formula: 70 per centum in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to a State for fiscal year 1981 bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year; the remaining 30 per centum not so allocated, in the order in which States having obligated all such sums so allocated submit projects on or after July 1, 1981, to the Secretary of Transportation for his approval and in the amounts for such projects.

(c) Notwithstanding subsection (b), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code;

(2) after July 1, 1981, revise a distribution of the 70 per centum made under subsection (b) if a State will not obligate the amount distributed during fiscal year 1981 and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during fiscal year 1981; and

(3) not distribute amounts authorized for administrative expenses and forest highways.

SEC. 503. Notwithstanding any other provision of law, the total of all obligations for "State and Community Highway Safety" (23 U.S.C. 402) for the fiscal year ending September 30, 1981, shall not exceed $150,405,000.

Subtitle B—Savings Under Airport and Airway Improvement Act

SEC. 511. If the House of Representatives approves a conference report on the Airport and Airway Improvement Act which includes budget authority for fiscal year 1981 which in total exceeds a sum $300,000,000 below the budget authority for fiscal year 1981 in H.R. 6721, as reported by the Committee on Public Works and Transportation, then before the bill which is the subject of such conference report is enrolled, the Clerk of the House is directed to include the following provision in the bill: "Notwithstanding any other provision of law, the total amount which is obligated from the Airport and Airway Trust Fund for airport development and airport planning and for grants under section 104(e) of the Airport Safety and Noise Abatement Act of 1979, as amended, for the fiscal year ending September 30, 1981, shall not exceed $725,000,000.".

Subtitle C—Comprehensive Oil Pollution Liability and Compensation; Hazardous Substances

SHORT TITLE

SEC. 520. This subtitle may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

CHAPTER 1—POLLUTION LIABILITY, COMPENSATION, AND FUND

SEC. 521. For the purposes of this chapter, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by section 522;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States, (B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue:

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel other than an inland oil barge;

(h) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (including a mobile drilling rig when in the drilling mode), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, (including, but not limited to, any motor vehicle or rolling stock) located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) "oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or on land within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under section 523(b)(6);

(o) "navigable waters" means the waters of the United States, including territorial seas;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or, in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(y) "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person;

(z) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(aa) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(bb) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(cc) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator; and

(dd) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 522. (a) There is established in the Treasury of the United States a fund known as the Comprehensive Oil Spill Liability Fund. The amount of the fund may not exceed $200,000,000, except to the extent necessary to permit payment into the fund of moneys recovered or collected under subsections (b)(2) and (3) of this section. The fund shall be administered by the Secretary and the Secretary of the Treasury, as specified in this section. The fund may sue and be sued in its own name.

(b) The fund is constituted from—

(1) all fees collected pursuant to subsection (d);

(2) all moneys recovered on behalf of the fund under section 528;

(3) all other moneys recovered or collected on behalf of the fund, under this chapter.

(c) In addition to the processing and settlement of claims under section 527, the fund is immediately available to pay those removal costs defined in section 521(bb)(1) arising out of or directly resulting from an

oil pollution incident. The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

(d)(1) Subject to the provisions of section 542(b), the Secretary of the Treasury shall collect from each refinery owner, and from the owner of each terminal receiving oil for export or entry into the United States, whether for import or transfer to a foreign country, a fee, not to exceed 3 cents per barrel of oil received. Oil upon which a fee has been levied under this paragraph shall not be subject to subsequent levy hereunder. The person who owns such oil or has a royalty interest in such oil under the Outer Continental Shelf Lands Act, as amended, shall be obligated to reimburse the owner of such refinery or terminal, as the case may be, the amount of the fee levied on the oil of that person and paid by the owner of the refinery or terminal: *Provided*, That whenever a fee is levied on oil that was produced under a lease agreement or other contract, under the authority of the Outer Continental Shelf Lands Act, as amended, that entitles a person to a payment calculated as a percentage of production, commonly referred to as a royalty, that person is considered to be the owner of that percentage of oil which constitutes a royalty, whether that royalty is paid in value or in kind.

(2) The Secretary of the Treasury, after consulting with the Secretary, shall, by regulation, establish the amount of the fee to be collected and procedures relating to the collection of the fee. No amendment to these regulations may become effective less than ninety days after publication of the amendment in the Federal Register. Any change in the amount of the fee shall be designed to insure that the fund is maintained at a level not less than $150,000,000 and not more than $200,000,000. No regulation that changes fees, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation.

(3)(A) Any person who fails to collect or pay fees as required by this section and the regulations issued under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on those fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected under paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the fund.

(2) The Secretary of the Treasury may invest any excess in the fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and under regulations issued by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the fund shall be credited to and form a part of the fund.

(f) If at any time the moneys available in the fund are insufficient to meet the obligations of the fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the Secretary from moneys in the fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States.

DAMAGES AND CLAIMANTS

SEC. 523. (a) Claims for damages for economic loss, incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) loss of use of real or personal property;

(4) injury to, or destruction of natural resources;

(5) loss of use of natural resources;

(6) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 524(e)(1) or 524(e)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 524: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under items 2, 3, and 5, by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 4, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(6) under item 6, by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(5) under item 7, by any State or political subdivision thereof;

(6) under items 2 through 7, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided, however*, That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port; and

(7) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 526, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

LIABILITY

SEC. 524. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 521(bb)(1), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 523.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the incident or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000 or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (5) of subsection (b), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (3) of subsection (b), taking into account the relative potential threat of oil pollution, but in no case shall such a limitation be less than $2,000,000 for any tank motor vehicle operated on highways and transporting oil in bulk with a water capacity of more than 3,500 gallons.

(e) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused—

(A) By an act of war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claimant, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) The fund shall be liable, without any limitation, for all damages for which a claim may be asserted under section 523, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 521(bb), there shall be no liability under paragraph (1) hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 523, and without regard to the limitation of liability provided in this section, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 526, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(i) Nothing in this chapter shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 525. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons that uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability under this subtitle to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 524 and with subsection (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) The owner or operator of each offshore facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitled to limit his liability in accordance with section 524, or $50,000,000, whichever is less. These regulations shall take into account the size, type, location, arrangement and degree of consolidation of the structure, platform, well, or pipeline. The regulations shall also take into account the various groupings of multiple offshore facilities owned or operated by the same person or persons or under joint venture. In cases where the owner or operator owns, operates or leases more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such facilities.

(2) When an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(3) The owner or operator of each tank motor vehicle operated on highways and transporting oil in bulk, with a water capacity of more than 3,500 gallons shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility in such amounts as the Secretary, by regulation, shall establish, but in no event less than $2,000,000.

(c) Any claim authorized by section 523 (a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this chapter. He may also invoke the

defense that the incident was caused by the willful misconduct of the owner or operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

DESIGNATION AND ADVERTISEMENT

SEC. 526. (a)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 527. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 526(b), or

(2) where the owner or operator may recover under section 523(b)(1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 526(a)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 524 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsection (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 526(b), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(i)(1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this chapter, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 524 is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this chapter, unless that claim

is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 523(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 528. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 523, shall be subrogated to all rights, claims, and causes of action which that claimant has under this chapter.

Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this chapter. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 527(b)(1), or (where there has been a denial of liability) under section 527(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 524(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 524(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the fund under section 527(c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 524(g)(2), for the period specified in clause (1) of this subsection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 524(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 526, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 529. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this chapter, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 530. (a) Except as provided in this chapter—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in section 523(a) a claim for which may be asserted under this chapter, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for such a loss, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this chapter.

PENALTIES

SEC. 531. (a) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 525, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 525(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(c) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

APPROPRIATIONS

SEC. 532. (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(b) The Secretary may incur indebtedness on behalf of the United States, as provided in section 522(f), to the extent provided in appropriation Acts for that purpose.

ANNUAL REPORT

SEC. 533. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of the fund during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of the fund and the administration of the liability provisions of this chapter.

CHAPTER 2—EFFECTIVE DATES; SAVINGS PROVISION; CONFORMING AMENDMENTS

SEC. 541. (a) This section, section 521, section 532, section 543, and each provision of chapter 1 that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of chapter 1, the regulations issued thereunder, and section 542 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: *Provided*, That the penalty prescribed by section 531 for failure to comply with the requirements of section 525 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

(c) Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 542, and in effect on the day immediately preceding the effective date of section 542 shall remain in force until superseded by regulations issued under chapter 1 of this subtitle.

SEC. 542. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area" the words "in the State of Alaska"; by inserting after "any activities" the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil Pollution Liability and Compensation Act.".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Comprehensive Oil Spill Liability Fund established by section 522 of this Act. The Comprehensive Oil Spill Liability Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary the total amount of

the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made. If the Secretary finds that—

(A) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to paragraph (4) of this subsection, the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the fee due under section 522(d) on barrels of oil, and the Secretary may waive such fee until such time as the total amount of the fees so waived equals the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified: *Provided*, That, should the fee due under section 522(d) be no longer required whereby the assets transferred and remaining can no longer be used as an advance payment, then the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel; or

(B) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary shall increase by 2 cents per barrel the fee imposed under section 522(d) on barrels of oil until such time as the total amount of the 2-cent-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(3) In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(4) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under paragraph (2) of this subsection for the collection or payment of fees established under section 522(d), such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. The owner shall pay to the State of Alaska during such time as the collection or payment of fees under section 522(d) is waived.

(5) For purposes of paragraphs (2) and (3)—

(A) the term "barrels of oil" means only barrels of oil which would, but for the repeal made by paragraph (1), be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act; and

(B) the term "Secretary" means the Secretary of the Treasury.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The fund established under section 522 of the Comprehensive Oil Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 521 of that Act), taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (17) with a semicolon and adding a new clause (18) to read as follows:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended, in the last sentence, by inserting after the word "person" the words "or his employer".

(3) Clause (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Clause B of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge,".

(5) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 522 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate,".

(6) Subsection (d) is amended by striking out the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund established under subsection (k) of this section or the fund established under section 522 of the Comprehensive Oil Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with this section.".

(7) Subsection (l) is amended by striking out the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances.". Such subsection (l) is further amended by striking out "subsections (c) and (l)" and inserting in lieu thereof "subsection (c)".

(8) Subsection (p)(1) is amended by inserting after "oil" each place it appears the following: "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(9) Subsection (q) is repealed, and subsection (r) is redesignated as subsection (q).

(e) Section 404 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(u) Notwithstanding any other provision of this section, the Secretary shall make any determination with respect to those navigable waters to which the provisions of this section shall apply."

(f) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(1) of this Act;" and inserting in lieu thereof "section 525 of the Comprehensive Oil Pollution Liability and Compensation Act;"

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "fund established under section 522 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(g) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the fund established by section 522 of this Act. The Comprehensive Oil Spill Liability Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 543. No part of any moneys in the Comprehensive Oil Spill Liability Fund established by section 522 of this Act shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

SEC. 544. If any provision of this subtitle or the applicability thereof is held invalid, the remainder of the subtitle shall not be affected thereby.

CHAPTER 3—HAZARDOUS SUBSTANCE LIABILITY

HAZARDOUS SUBSTANCE LIABILITY

SEC. 551. (a)(1) Subsection (a) of section 311 of the Federal Water Pollution Control Act (as amended by section 541(d)(1) of this Act) is further amended by replacing the period at the end of clause (18) with a semicolon and adding a new clause (19) to read as follows:

"(19) 'supplier' means, with respect to subsection (k) of this section, any person who produces, manufactures, or imports any substance identified in paragraphs (2), (3), (4), or (5) of subsection (k) of this section at a place or for removal to a place other than the site of production, manufacture, or importation, or a site that adjoins the site of production, manufacture, or importation, or uses those feedstocks or elements and compounds himself at a place other than the site of production, manufacture, or importation or a site that adjoins the site of production, manufacture, or importation.

"(20) 'United States claimant' means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim:

"(21) 'foreign claimant' means any person residing in a foreign country, a government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

"(22) 'guarantor' means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

"(23) 'removal costs' means—

"(A) costs incurred under subsection (c), (d), or (l) of this section; and

"(B) cleanup costs, other than those described in clause (A);

"(24) 'cleanup costs' means costs of reasonable measures taken, after a discharge has occurred, to prevent, minimize, or mitigate pollution from that discharge;

"(25) 'affiliated' means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person.".

(2) Paragraph (6) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(6)(A) 'owner' means any person owning title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), holds indicia of ownership primarily to protect his security interest in the vessel or facility;

"(B) 'operator' means (i) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualling, and supplying of a vessel or (ii) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;".

(b) Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act are amended to read as follows:

"(f)(1) Claims for damages for economic loss, incurred on or after the effective date of chapter 3 of the Comprehensive Oil Pollution Liability and Compensation Act and arising out of or directly resulting from the discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substances, may be asserted for—

"(A) removal costs;

"(B) injury to, or destruction of, real or personal property;

"(C) loss of use of real or personal property;

"(D) injury to, or destruction of, natural resources;

"(E) loss of use of natural resources;

"(F) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

"(G) loss of tax revenue for a period of one year due to injury to real or personal property.

"(2) A claim authorized by paragraph (1) may be asserted—

"(A) under item (A) of paragraph (1), by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in a discharge may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (g)(5)(A) or (g)(5)(B) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (g): *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

"(B) under items (B), (C), and (E) of paragraph (1), by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

"(C) under item (D) of paragraph (1), by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

"(D) under item (F) of paragraph (1), by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

"(E) under item (G) of paragraph (1), by any State or political subdivision thereof;

"(F) under items (B) through (G) of paragraph (1), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

"(i) the discharge occurred (I) in the navigable waters, or (II) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

"(ii) the claimant is not otherwise compensated for his loss;

"(iii) the discharge was from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, et seq.); and

"(iv) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and

"(G) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

"(3) If the Attorney General fails to act under clause (G) of paragraph (2) within sixty days of the date on which the Secretary designates a source of discharge, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

"(g)(1) Subject to the provisions of paragraphs (2), (3), (4), and (5), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of a discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, or poses a threat of such a discharge in circumstances that justify the incurrence of removal costs, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under subsection (f).

"(2) Except when the discharge or threat of discharge is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the discharge or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under paragraph (1) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

"(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

"(B) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

"(C) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

"(D) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

"(E) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

"(F) in the case of a facility other than one described in clause (D) or (E) $50,000,000 or such lesser limit as is established under paragraph (4).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this paragraph.

"(3) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (E) of paragraph (2), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

"(4) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (D) and (E) of paragraph (2). These regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of discharges involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (C) of paragraph (2), taking into account the relative potential threat of pollution, but in no case shall such a limitation be less than $5,000,000 for any tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity of more than 3,500 gallons.

"(5) There shall be no liability under paragraph (1)—

"(A) to the extent that the discharge is caused—

"(i) by an act of war, hostilities, civil war, or insurrection; or

"(ii) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

"(B) to the extent that the discharge or threat of discharge is caused by an act or omission of a person other than—

"(i) the claimant,

"(ii) the owner or operator,

"(iii) an employee or agent of the claimant, the owner, or the operator, or

"(iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

"(C) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(D) as to a particular claimant, to the extent that the discharge or economic loss is caused by the negligence of that claimant.

"(h)(1) The fund shall be liable, without any limitation, for all damages for which a claim may be asserted under subsection (f), to the extent that the loss is not otherwise compensated.

"(2) Except for removal costs (other than cleanup costs), there shall be no liability under paragraph (1) hereof—

"(A) where the discharge or threat of discharge is caused primarily by an act of war, hostilities, civil war, or insurrection;

"(B) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(C) as to a particular claimant, to the extent that the discharge or threat of discharge or economic loss is caused by the negligence of that claimant.

"(3) In addition to the damages for which claims may be asserted under subsection (f), and without regard to the limitation of liability provided in subsection (g), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which a source of discharge is designated, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

"(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

"(i)(1) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (g), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

"(2) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (g), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

"(3) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, subsections (g), (h), and (i) supersede such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).".

(c) Subsection (k) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(k)(1) There is hereby established in the Treasury a revolving fund to be maintained at a level (except as provided in paragraph (8)) of not to exceed $100,000,000. Forty per centum of the fund revenues each fiscal year shall be collected pursuant to paragraph (2) of this subsection. Twenty per centum of the fund revenues each fiscal year shall be collected pursuant to paragraph (3) of this subsection. Twenty per centum to paragraph (4) of this subsection. Twenty per centum of the fund revenues each fiscal year shall be collected pursuant to paragraph (5) of this subsection. Such fund shall be for the purpose of carrying out subsections (c), (d), (f), and (i) of this section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom), and hazardous substances. All sums appropriated to, or deposited in, the fund shall remain available until expended.

"(2) There is imposed upon each supplier of petrochemical feedstocks a fee, not to exceed 0.1 cent per pound, on any amount of petrochemical feedstock supplied to another person or used by such supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1). For the purposes of this paragraph, 'petrochemical feedstock' means liquid or gaseous hydrocarbons used primarily for the preparation of more complex chemicals including, but not limited to, ethylene, propylene, butylenes, butadiene, butane, propanes, ethane, benzene, toluene, xylenes, naphthalenes, carbon black, and methane (other than methane used to make ammonia).

"(3) There is imposed upon each supplier of inorganic elements and compounds a fee, not to exceed one dollar per short ton, on any amount of inorganic element or compound supplier to another person or used by said supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1). The inorganic elements and compounds subject to this fee are—

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide;

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate; and

"(E) such other inorganic elements or compounds as the Administrator may deem appropriate, based upon information available to him as a result of listing or characterizing hazardous substances under this section.

"(4) There is imposed upon each supplier of benzene, toluene, xylene, or styrene a fee, not to exceed 0.1 cent per pound, on any amount of such substances supplied to another person or used by such supplier. There is imposed upon each supplier of sodium hydroxide, hydrochloric acid, sulfuric acid, ammonia, nitric acid, and phosphoric acid a fee, not to exceed one dollar per short ton, on any amount of such substances supplied to another person or used by such supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1).

"(5) There is imposed upon each supplier of any substances listed in Committee Print 96-45 of the Committee on Public Works and Transportation of the House of Representatives a fee, not to exceed $1 per short ton, on any amount of such substances supplied to another or used by the supplier. Fees imposed under this paragraph shall be deposited in the revolving fund established in paragraph (1).

"(6) Any fees imposed by paragraphs (2) through (5), inclusive, shall be assessed and collected by the Secretary of the Treasury or his delegate, and the provisions of subtitle F of the Internal Revenue Code of 1954 shall apply to the assessment and collection of such fee as if such fee were a tax described in chapter 32 of such Code.

"(7) No earlier than 24 months after the enactment of this paragraph, and not more often than once per fiscal year thereafter, the Administrator shall adjust the fees collected pursuant to paragraphs (2) through (5), inclusive, of this subsection to assure, to the extent reasonably possible, that the percentage of the total fees collected from each of the authorized sources is equitable, based upon the claims and payment experience of the fund. The Secretary of the Treasury shall establish the new fee schedule by regulation within ninety days of publication in the Federal Register of the Administrator's determination.

"(8) Any other funds received by the United States under this section shall also be deposited in the fund established by paragraph (1) of this subsection, along with the fees collected pursuant to paragraphs (2) through (5), inclusive, of this subsection, for such purposes as are authorized in paragraph (1) of this subsection.

"(9) Two years after the date of enactment of this paragraph and annually thereafter, the Administrator is authorized to add to or delete from those substances covered by paragraph (4) of this subsection. Such additions or deletions shall be based on discharge history data, including frequency of discharge, volume of discharge, and the environmental damages incurred as the result of such discharge.

"(10) The recommendations of the Administrator as to substances which should be added to or deleted from those listed in paragraphs (2) and (3) of this subsection shall be submitted annually to Congress.".

SEC. 552. (a) Subsection (o) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(o)(1) Except as provided in this title—

"(A) no action may be brought in any court of the United States or of any State or political subdivision thereof, for damages for an economic loss described in subsection (f)(1), a claim for which may be asserted under this title, and

"(B) no person may be required to contribute to any fund, the purpose of which is to compensate for such a loss, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

"(2) Nothing in paragraph (1) shall preclude any State from imposing a tax or fee upon any person or any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance in order to finance the purchase and prepositioning of any oil (other than petroleum, crude oil, or any fraction or residue therefrom) or hazardous substance, pollution cleanup and removal equipment.

"(3) Nothing in paragraph (1) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.".

(b) Section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(r)(1) When the Administrator receives information of a discharge in violation of this section, he shall, where possible, designate the source or sources of the discharge and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

"(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Administrator, within five days after receiving notification of the designation, or his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Administrator, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Administrator shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

"(3) In a case where—

"(A) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of this subsection,

"(B) the source of the discharge was a public vessel, or

"(C) the Administrator is unable to designate the source or sources of the discharge under paragraph (1) of this subsection,

the Administrator shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

"(4) Advertisement under this subsection shall commence no later than fifteen days from the date of the designation made hereunder and continue for a period of no less than thirty days.

"(s)(1) Except as provided in paragraph (2), all claims shall be presented to the owner, operator, or guarantor.

"(2) Claims shall be presented to the fund under subsection (k)—

"(A) where the Administrator has advertised or otherwise notified claimants in accordance with subsection (r), or

"(B) where the owner or operator may recover under subsection (f)(2)(A).

"(3) In the case of a claim presented in accordance with paragraph (1), and in which—

"(A) the person to whom the claim is presented denies all liability for the claim, for any reason, or

"(B) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (r)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund under subsection (k); that election to be irrevocable and exclusive.

"(4) In the case of a claim presented in accordance with paragraph (1), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (g) or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund under subsection (k).

"(5) In the case of a claim which has been presented to any person, under paragraph (1), and which is being presented to the fund under subsection (k), under paragraph (3) or (4), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund under subsection (k). The Administrator may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

"(6) In the case of a claim presented to the fund under subsection (k), under paragraphs (2), (3), and (4), and in which the fund—

"(A) denies all liability for the claim, for any reason, or

"(B) does not settle the claim by payment to the claimant within sixty days of the date upon which (i) the claim was presented to the fund or (ii) advertising was commenced under subsection (r)(3), whichever is later, the claimant may submit the dispute to the Administrator for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under paragraph (2) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

"(7)(A) The Administrator shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund under subsection (k).

"(B) Except as provided in subparagraph (C), the Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this subparagraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Administrator that advertising is not reasonably practicable. The Administrator may make advance payments to a contractor for services and facilities, and the Administrator may advance to the contractor funds to be used for the payment of claims. The Administrator may review and audit claim payments made under this paragraph. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Administrator. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Administrator.

"(C) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Administrator may use Federal personnel to process claims against the fund.

"(8) Without regard to subsection (b) of section 556 of title 5, United States Code, the Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Administrator under paragraph (6). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

"(9)(A) Upon receipt of a request for decision from a claimant, properly made, the Administrator shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under paragraph (8).

"(B) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

"(C) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this paragraph, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Administrator. If a person fails or refuses to obey a subpena, the Administrator may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

"(D) A hearing conducted under this paragraph shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

"(E) The decision of the administrative law judge or panel under this paragraph shall be the final order of the Administrator, except that the Administrator, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund under subsection (k).

"(F) Final orders of the Administrator made under this paragraph shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

"(10)(A) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

"(B) The fund may intervene in the action as a matter of right.

"(C) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

"(D) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

"(E) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (g) of this section is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

"(11) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

"(12) No claim may be presented, nor may an action be commenced for damages recoverable under this section, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund under subsection (k), as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (f) of this section, or within six years of the date of the discharge which resulted in that loss, whichever is earlier.

"(t)(1) Any person or governmental entity, including the fund under subsection (k), who compensates any claimant for an economic loss, compensable under subsection (f), shall be subrogated to all rights, claims, and causes of action which that claimant has under this section.

"(2) Upon request of the Administrator, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this section. Such an action may be

commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

"(3) In all claims or actions by the fund against any owner, operator, or guarantor, under paragraphs (1) and (2), the fund shall recover—

"(A) for a claim presented to the fund (where there has been a denial of source designation) under subsection (s)(2)(A), or (where there has been a denial of liability) under subsection (s)(3)(A)—

"(i) subject only to the limitation of liability to which the defendant is entitled under subsection (g), the amount the fund has paid to the claimant, without reduction;

"(ii) interest on that amount, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

"(iii) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

"(B) for a claim presented to the fund under subsection (s)(3)(B)—

"(i) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), for the period specified in clause (A) of this paragraph; and

"(III) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited, to processing costs, investigating costs, court costs, and attorneys' fees; or

"(ii) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) the amount the fund has paid to the claimant, without reduction;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this clause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this clause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under subsection (r), the defendant shall not be liable for interest for that period; and

"(III) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

"(4) The fund under subsection (k) shall pay over to the claimant that portion of any interest the fund shall recover, under subparagraph (A) and clause (i) of subparagraph (B) of paragraph (3), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

"(5) The fund under subsection (k) is entitled to recover for all interest and costs specified in paragraph (3) without regard to any limitation of liability to which the defendant may otherwise be entitled.

"(u) No part of any moneys in the revolving fund established in subsection (k) of this section shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

"(v) The owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain in accordance with regulations issued by the President evidence of financial responsibility in such amounts as the President determines necessary but not less than $5,000,000.".

SEC. 553. Nothing in this subtitle or the amendments made by this subtitle shall be construed to authorize any officer or employee of the United States or any department, agency, or instrumentality of the United States to prohibit, control, or otherwise regulate the use of any groundwaters.

SEC. 554. The last sentence of section 115 of the Federal Water Pollution Control Act is amended to read as follows: "Not to exceed $10,000,000 per fiscal year for fiscal years beginning after September 30, 1980, shall be available from the revolving fund established in section 311(k) of this Act for obligation to carry out this section.".

SEC. 555. (a) In any case where the revolving fund established in section 311(k) of the Federal Water Pollution Control Act is insufficient to carry out the purposes for which such fund is available, the Secretary of the Treasury is authorized to utilize funds in the Comprehensive Oil Spill Liability Fund established in section 522 of this Act for such purposes. The Secretary of the Treasury shall, as soon as practicable, repay to such Comprehensive Oil Spill Liability Fund from the fees collected under section 311(k) of the Federal Water Pollution Control Act an amount equal to the amount utilized from such Fund.

(b) In any case where the Comprehensive Oil Spill Liability Fund established in section 522 of this Act is insufficient to carry out the purposes for which such fund is established, the Secretary of the Treasury is authorized to utilize funds in the revolving fund established in section 311(k) of the Federal Water Pollution Control Act for such purposes. The Secretary of the Treasury shall, as soon as practicable, repay to the revolving fund established in section 311(k) of the Federal Water Pollution Control Act from the fees collected under section 522 of this Act an amount equal to the amount utilized from such Fund.

SEC. 556. In any case where the discharge of pollutants is a mixture of both oil and hazardous substances, both the Comprehensive Oil Spill Liability Fund and the revolving fund established by section 311(k) of the Federal Water Pollution Control Act shall be immediately available for payment of emergency work for any purpose for which either fund is available. The Secretary of the Treasury shall, as soon as practicable, make such adjustments in such funds as may be necessary to ensure that the costs of any such work are appropriately allocated to the proper fund.

SEC. 557. This chapter and the amendments made by this chapter shall take effect one hundred and eighty days after the date of enactment of this Act.

CHAPTER 4

SEC. 561. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of this subtitle or of any amendment made by this subtitle, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TITLE VI—HOUSE COMMITTEE ON SMALL BUSINESS

SEC. 601. For provisions of law (within the jurisdiction of the House Committee on Small Business) which reduce spending for fiscal year 1981 in satisfaction of the reconciliation requirements imposed by section 3(a)(6) of H. Con. Res. 307 (96th Congress), see Public Law 96-302 (the Small Business Development Act of 1980).

TITLE VII—HOUSE COMMITTEE ON VETERANS' AFFAIRS

STANDARDS FOR PRESUMPTION OF INABILITY TO DEFRAY MEDICAL EXPENSES

SEC. 701. (a) Section 622 of title 38, United States Code, is amended to read as follows:

"§ 622. Evidence of inability to defray necessary expenses

"For the purposes of sections 610(a)(1)(B), 610(b)(2), 624(c), and 632(a)(2) of this title, the fact that a person is—

"(1) eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(2) a veteran with a service-connected disability; or

"(3) in receipt of pension under any law administered by the Veterans' Administration;

shall be accepted as sufficient evidence of such person's inability to defray necessary expenses.".

(b) The item relating to such section in the table of sections at the beginning of chapter 17 of such title is amended to read as follows:

"622. Evidence of inability to defray necessary expenses.".

LIMITATION ON PAYMENT OF BURIAL ALLOWANCES

SEC. 702. Benefits may not be paid under either section 902 or 903(a) of title 38, United States Code, in the case of an individual who dies during the period beginning on October 1, 1980, and ending on September 30, 1981, and with respect to whose death benefits under either such section may otherwise be paid if the individual's income during the twelve-month period immediately preceding the individual's death exceeded $20,000. If the individual was married during such twelve-month period, the income of the individual's spouse during such period shall be included in determining the income of the individual for the purposes of this section.

REPEAL OF AUTHORITY FOR PURSUIT OF FLIGHT AND CORRESPONDENCE TRAINING

SEC. 703. (a)(1) Section 1631 of title 38, United States Code, is amended by striking out subsection (c).

(2) Section 1641 of such title is amended to read as follows:

"§ 1641. Requirements

"The provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, and 1683 of this title and the provisions of chapter 36 of this title, with the exception of sections 1777, 1780(b), and 1787, shall be applicable to the program.".

(b)(1) Section 1652(c) of such title is amended by striking out "correspondence school,".

(2) Section 1662(c) of such title is amended by striking out "or flight training within the provisions of section 1677 of this chapter,".

(3) Section 1673(b) of such title is amended by striking out "Except as provided in section 1677 of this title, the end inserting in lieu thereof "The".

(4)(A) Section 1677 of such title, relating to flight training, is repealed.

(B) The table of sections at the beginning of chapter 34 of such title is amended by striking out the item relating to section 1677.

(5) Section 1681 of such title is amended—

(A) in subsection (b), by striking out ", other than a program exclusively by correspondence or a program of flight training,"; and

(B) by striking out subsection (c) (including the center heading preceding such subsection).

(6) Section 1682(a)(1) of such title is amended by striking out "1677 or".

(7)(A) Section 1684 of such title is amended to read as follows:

"§ 1684. Apprenticeship or other on-job training

"Any eligible veteran may pursue a program of apprenticeship or other on-job training and be paid a training assistance allowance as provided in section 1787 of this title.".

(B) The item relating to such section in the table of sections at the beginning of chapter 34 of such title is amended to read as follows:

"1684. Apprenticeship or other on-job training.".

(c)(1) Section 1701(a)(6) of such title is amended by striking out "correspondence school,".

(2)(A) Section 1734 of such title is amended—

(i) by striking out "(a)"; and

(ii) by striking out subsection (b).

(B) The heading for such section is amended to read as follows:

"§ 1734. Apprenticeship or other on-job training".

(C) The item relating to such section in the table of sections at the beginning of chapter 35 of such title is amended to read as follows:

"1734. Apprenticeship or other on-job training.".

(d)(1) Section 1780 of such title is amended—

(A) in subsection (a)—

(i) by striking out ", other than a program by correspondence or a program of flight training,"; and

(ii) by striking out clause (5);

(B) by striking out subsection (b) (including the center heading preceding such subsection); and

(C) by redesignating subsections (c), (d), (e), (f), and (g) as subsections (b), (c), (d), (e), and (f), respectively.

(2) Section 1784(a) of such title is amended by striking out "or, in the case of correspondence training, the last date a lesson was serviced by the school".

(3)(A) Section 1786 of such title, relating to correspondence courses, is repealed.

(B) The table of sections at the beginning of chapter 36 of such title is amended by striking out the item relating to section 1786.

(4) The second sentence of section 1798 (c) of such title is amended by striking out "correspondence, flight,".

(e) Section 604(a) of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. 1712 note) is amended by striking out "(1) eligible to pursue a program of education exclusively by correspondence by virtue of the provisions of section 1786 of such title (as added by section 316 of this Act) or (2)".

(f) The amendments made by this section shall take effect on October 1, 1980.

DEDUCTION OF OVERPAYMENTS FROM FUTURE BENEFITS PAYMENTS AND REQUIREMENT THAT INTEREST AND OTHER COSTS BE CHARGED ON THE PAYMENT OF CERTAIN AMOUNTS DUE THE UNITED STATES

SEC. 704. (a)(1) Chapter 53 of title 38, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3113. Overpayment adjustments

"(a) If there is an overpayment of compensation under chapter 11 of this title, an overpayment of dependency and indemnity compensation under chapter 13 of this title, an overpayment of pension under chapter 15 of this title, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, or an overpayment of educational assistance benefits under chapter 31, 32, 34, 35, or 36 of this title, the amount of such overpayment shall be deducted (unless waived by the Administrator under section 3102 of this title) from any future payment made under laws administered by the Veterans' Administration to the person concerned.

"(b) The right of the Administrator to make deductions under this section shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administration proceedings.

"§ 3114. Interest and other costs on delinquent payments of certain amounts due the United States

"(a) Subject to section 3102 of this title and to subsection (b) of this section, interest and administrative costs shall be charged on amounts owed to the United States for (1) overpayment of benefits under laws administered by the Veterans' Administration, or (2) the provision of care or services under chapter 17 of this title. Interest on such amounts shall accrue from the date of the initial notification of the amount due to the person or educational institution owing such amount. The administrative costs which may be collected are such amount of the cost to the Veterans' Administration of furnishing the benefit or care or services, and such amount of the cost of the collection of the amount owed the United States for such overpayment or care or services, as may be determined by the Administrator to be equitable.

"(b) Interest under this section shall not be charged if the amount due the United States is paid within a reasonable period of time. The Administrator shall prescribe by regulation what shall constitute a reasonable period of time for such payment.

"(c) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined under such regulations as the Administrator shall prescribe.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new items:

"3113. Overpayment adjustments.

"3114. Interest and other costs on delinquent payments of certain amounts due the United States.".

(b)(1) Subsection (a) of section 3102 of title 38, United States Code, is amended by inserting "(or any interest thereon)" after "overpayments".

(2) Subsection (c) of such section is amended by inserting "(or any interest thereon)" after "indebtedness" both places it appears.

(c) Section 415 of such title is amended by striking out subsection (f) and redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(d) Subsection (b) of section 506 of such title is amended to read as follows:

"(b) If there is an overpayment of pension under section 521, 541, or 542 of this title or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, the amount of such overpayment shall be deducted (unless waived by the Administrator under section 3102 of this title) in accordance with section 3113 of this title.".

(e) The text of section 1785 of such title is amended to read as follows:

"(a) Whenever the Administrator finds that an overpayment has been made to an eligible person or veteran, the amount of such overpayment shall constitute a liability of the eligible person or veteran to the United States.

"(b) Whenever the Administrator finds that an overpayment has been made to an

eligible person or veteran as the result of (1) the willful or negligent failure of an educational institution to report, as required by this chapter or chapter 34 or 35 of this title and applicable regulations, to the Veterans' Administration excessive absences from a course, or discontinuance or interruption of a course by the eligible person or veteran, or (2) false certification by an educational institution, the amount of such overpayment shall constitute a liability of the educational institution to the United States.

"(c) Any overpayment referred to in subsection (a) or (b) may be recovered, except as otherwise provided in section 1784(b) of this title, in the same manner as any other debt due the United States.

"(d) Any such overpayment may be waived as to the eligible person or veteran as provided by section 3102 of this title. Waiver of any such overpayment as to the eligible person or veteran shall in no event release the educational institution from liability under subsection (b).

"(e)(1) Any amount collected from the eligible person or veteran shall be reimbursed to the educational institution which is liable pursuant to subsection (b), to the extent that collection was made from the educational institution.

"(2) This section shall not preclude the imposition of any civil or criminal liability under this or any other law.

"(3) Nothing in this section or any other provision of this title shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.".

(f) Section 3114 of title 38, United States Code, as added by subsection (a), shall apply to payments of amounts due the United States which are made after the date of the enactment of this Act, but no interest shall accrue by virtue of such section for any period before such date.

DISCLOSURE OF CERTAIN INFORMATION BY THE VETERANS' ADMINISTRATION TO CONSUMER REPORTING AGENCIES

SEC. 705. (a) Subsection (f) of section 3301 of title 38, United States Code, relating to confidential nature of claims, is amended to read as follows:

"(f)(1) The Administrator may disclose the name or address, or both, of any person who is a present or former member of the Armed Forces or a dependent of a present or former member of the Armed Forces (and such other information concerning such person as is authorized to be released under subsection (e) of this section)—

"(A) to any nonprofit organization, if the release is directly connected with the conduct of programs and the utilization of benefits under this title;

"(B) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality has made a written request that such name or address, or both, be provided for a purpose authorized by law;

"(C) to any consumer reporting agency—

"(i) for the purpose of locating any such person—

"(I) if the person has been administratively determined to be indebted to the United States by virtue of participation in any Veterans' Administration benefits program; or

"(II) when necessary to conduct any study authorized by section 219 of this title or authorized or required by any other Federal law pertaining to the evaluation of veterans' benefit programs; or

"(ii) subject to paragraph (2) of this subsection, if the person has been determined by the Administrator to have failed to respond to administrative efforts to collect moneys owed by such person to the United States by virtue of participation in any Veterans' Administration benefits program; or

"(D) for use in connection with proceedings for the collection of amounts owed to the United States by virtue of the participation by such person in any Veterans' Administration benefits program.

"(2)(A) Disclosure of information under clause (C)(ii) of paragraph (1) of this subsection may only be made for the purpose of obtaining consumer reports in order to assess the ability of the person to repay the amount owed to the United States or to give notice of the outstanding obligation.

"(B) The Administrator may not disclose any information under clause (C)(ii) of paragraph (1) of this subsection which would give notice of a debt owed by any person to the United States until after thirty days have elapsed after reasonable efforts have been made to notify the person of the Administrator's intent to disclose information concerning the debt.

"(3) If a person to whom paragraph (1) of this subsection applies who has been administratively determined to be indebted to the United States by virtue of participation in any Veterans' Administration benefits program alleges that the Veterans' Administration is in error as to the existence or the amount of the indebtedness or alleges that repayment of all or any part of such indebtedness is not required disclosure of such person's name and address may not be made under clause (C)(ii) of paragraph (1) of this subsection until a determination regarding the allegation has been made by the Administrator.

"(4) Section 552a of title 5 shall not apply to records released by the Administrator to a consumer reporting agency under a contract entered into to accomplish any of the purposes set forth in clause (C) of paragraph (1) of this subsection. The Administrator shall take reasonable steps to provide for the personal privacy of persons about whom information is disclosed under such clause.

"(5)(A) Any organization or member thereof or other person who, knowing that the use of any name or address released by the Administrator pursuant to paragraph (1) of this subsection (except as specified in subparagraph (B) of this paragraph) is limited to the purpose specified in such paragraph, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

"(B) Subparagraph (A) of this paragraph shall not apply to the use of any name or address released by the Administrator to a consumer reporting agency under a contract entered into to accomplish any of the purposes of clause (C) of paragraph (1) of this subsection.

"(6) The Administrator shall prescribe regulations for the administration of paragraphs (1), (2), and (3) of this subsection.

"(7) For the purpose of this subsection, the term 'consumer reporting agency' means—

"(A) a consumer reporting agency, as such term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); or

"(B) any organization (as determined by the Administrator) which provides to an agency described in subparagraph (A) of this paragraph information relating to the credit experience of persons.".

(b)(1) Subsection (c) of such section is amended—

(A) by inserting "(1)" after "(c)"; and

(B) by adding at the end of such subsection the following new paragraph:

"(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Veterans' Administration in connection with any home, condominium, or mobile home loan under chapter 37 of this title shall be made available to any person who applies for such report or certificate.".

(2) Such section is further amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) (as amended by subsection (a) of this section) the following new subsection (g):

"(g)(1) The Administrator may disclose the name or address, or both, of any person (and such other information relating to the identity of such person as the Administrator may prescribe) to any person in a category of persons described in regulations prescribed pursuant to paragraph (3) of this subsection, if the release of such information is necessary for the purpose of—

"(A) determining the creditworthiness, credit capacity, income, or financial resources of a person who has (i) applied for any benefit under chapter 37 of this title, or (ii) submitted an offer to the Administrator for the purchase of property acquired by the Administrator under section 1820(a)(5) of this title;

"(B) verifying, either before or after the Administrator has approved a person's application for assistance in the form of loan insurance or a loan guaranty under chapter 37 of this title, information submitted by a lender to the Administrator regarding the creditworthiness, credit capacity, income, or financial resources of such person.

"(C) offering for sale or other disposition by the Administrator, pursuant to section 1820 of this title, any loan or installment sale contract owned or held by the Administrator; or

"(D) providing assistance to any applicant for benefits under chapter 37 of this title or administering such benefits, so long as the Administrator records the fact of the disclosure in the records of the person concerned.

"(2) Section 552a of title 5 shall not apply to records released by the Administrator to a consumer reporting agency under a contract entered into to accomplish any of the purposes set forth in paragraph (1) of this subsection. The Administrator shall take reasonable steps to provide for the personal privacy of persons about whom information is disclosed under such paragraph. For the purposes of this paragraph, the term 'consumer reporting agency' has the meaning given such term by paragraph (7) of subsection (f) of this section.

"(3) The Administrator shall prescribe regulations for the administration of this subsection. Such regulations shall specify and describe the categories of persons to whom information may be released under paragraph (1) this subsection.".

(c) The amendments made by this section shall take effect on the first day of the first month beginning after the end of the sixty-day period beginning on the date of the enactment of this Act.

REPEAL OF AUTHORITY TO PURSUE PREDISCHARGE EDUCATION PROGRAM (PREP) UNDER CHAPTER 32

SEC. 706. (a) Section 1631 of title 38, United States Code, is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (d) as subsection (b).

(b)(1) Subchapter VI of chapter 34 of such title is repealed.

(2) Section 1661(c) of such title is amended by striking out "subchapters V and VI" and inserting in lieu thereof "subchapter V".

(3) The table of sections at the beginning of such chapter is amended by striking out the item relating to subchapter VI and the

items relating to sections 1695, 1696, 1697, and 1698.

(c)(1) Subsection (c) of section 1780 of such title (as redesignated by section 703(d)(1)(C)) is amended—

(A) in paragraph (2)—

(i) by striking out "other than under subchapter VI of chapter 34)"; and

(ii) by striking out "paragraphs 5(B) and (C) and (6)" and inserting in lieu thereof "paragraphs (4)(B) and (C) and (5)";

(B) by striking out paragraph (3);

(C) by redesignating paragraph (4) as paragraph (3);

(D) by redesignating paragraph (5) as paragraph (4) and striking out "paragraphs (2) and (3)" in such paragraph and inserting in lieu thereof "paragraph (2)"; and

(E) by redesignating paragraph (6) as paragraph (5) and striking out "paragraph (5)" in such paragraph and inserting in lieu thereof "paragraph (4)".

(2) Subsection (d) of such section (as redesignated by section 703(d)(1)(C)) is amended by striking out "subsection (d)(2) and (3)" and inserting in lieu thereof "subsection (c)(2)".

(3) Subsection (e) of such section (as redesignated by section 703(d)(1)(C)) is amended by striking out "(except as provided by subsection (d)(3) of this section)".

(4) Subsection (b) of section 1784 of such title is amended by striking out "section 1780(d)(5)" and inserting in lieu thereof "section 1780(c)(4)".

(5) Section 1788(a)(6) of such title is amended by striking out "or 1969(a)(2)".

(6) Section 1789(b)(5) of such title is amended by striking out "or VI".

(7) The second sentence of section 1798(c) of such title is amended by striking out ", or PREP".

(8) Section 1798(f)(2) of such title is amended by striking out "section 1780(d)(5)" and inserting in lieu thereof "section 1780(c)(4)".

(d) The amendments made by this section shall take effect on October 1, 1980.

LIMITATION ON BENEFITS TO INCARCERATED VETERANS AND INCARCERATED ELIGIBLE PERSONS

SEC. 707. (a) Section 1682(b) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of clause (1);

(2) by adding "or" at the end of clause (2); and

(3) by inserting after clause (2) the following new clause:

"(3) in the case of a veteran who is incarcerated in a Federal, State, county, or local prison or jail,".

(b) Section 1732 of such title is amended by adding at the end thereof the following new subsection:

"(e) In the case of an eligible person who is incarcerated in a Federal, State, or local prison or jail, the educational assistance allowance shall be at the rate as prescribed in section 1682(b)(3) of this title for incarcerated veterans.".

(c) Section 1780(a) of such title (as amended by section 7103(d)(1)(A)) is further amended by inserting after clause (4) the following new clause (5):

"(5) to any eligible veteran or person incarcerated in a Federal, State, or local prison or jail for any course (A) for which the tuition and fees of the veteran or person are paid under any Federal program (other than a program administered by the Administrator) or under any State or local program, or (B) for which there are no tuition and fees.".

(d)(1) Chapter 55 of such title is amended by adding after section 3204 the following new section:

"§ 3205. Limitation of payment of compensation for service-connected disabilities or death and payment of dependency and indemnity compensation during confinement in a penal institution

"(a) Compensation for a service-connected disability or death under chapter 11 of this title or any other law administered by the Veterans' Administration and dependency and indemnity compensation under chapter 13 of this title or any other law administered by the Veterans' Administration may not be paid in an amount in excess of $60 per month to or for any individual who is imprisoned in a Federal, State, or local penal institution as a result of conviction of a felony or misdemeanor for the period beginning sixty-one days after such individual's imprisonment begins and ending on the date such individual's imprisonment ends.

"(b) If a veteran is disqualified from receiving compensation in an amount in excess of $60 per month for any period solely by reason of subsection (a) of this section, the Administrator may apportion and pay to such veteran's spouse, children, or dependent parents the compensation which such veteran would have received for such period but for this section.

"(c) If any surviving spouse or child of a veteran is disqualified from receiving compensation or dependency and indemnity compensation for any period solely by reason of subsection (a) of this section, the Administrator may (1) if the surviving spouse is so disqualified, pay to the child, or children, the compensation or dependency and indemnity compensation which would be payable if there were no such surviving spouse, or (2) if a child is so disqualified, pay to the surviving spouse or other children, as applicable, the compensation which would be payable if there were no such child.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"3205. Limitation of payment of compensation for service-connected disabilities or death and payment of dependency and indemnity compensation during confinement in a penal institution.".

(e)(1) The amendments made by subsections (a), (b), and (c) shall take effect on the first day of the first month beginning after the end of the sixty-day period beginning on the date of the enactment of this Act.

(2) The amendments made by subsection (d) shall apply only to payments for months beginning after September 30, 1980.

TITLE VIII—HOUSE COMMITTEE ON WAYS AND MEANS; EXPENDITURE REDUCTIONS

Subtitle A—Medicare and Medicaid Program Savings

CHAPTER 1—H.R. 3990 PROVISIONS

SHORT TITLE; TABLE OF CONTENTS

SEC. 801. This chapter may be cited as the "Medicare Amendments of 1980".

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HOME HEALTH SERVICES

SEC. 802. (a) Section 1811 of the Social Security Act is amended by striking out "and related post-hospital services" and inserting in lieu thereof ", related post-hospital, and home health services".

(b) Section 1812(a)(3) of such Act is amended to read as follows:

"(3) home health services.".

(c) Section 1812(d) of such Act is repealed.

(d) Section 1812(e) of such Act is amended—

(1) by striking out "(b), (c), and (d)" and inserting in lieu thereof "(b) and (c)"; and

(2) by striking out "post-hospital extended care services, and post-hospital home health services" and inserting in lieu thereof "and post-hospital extended care services".

(e) Sections 1814(a) and 1835(a) of such Act are amended by adding the following new sentence at the end of each such section: "With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than January 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan.".

(f) Section 1814(a)(2)(D) of such Act is amended—

(1) by striking out "post-hospital home health services" and inserting in lieu thereof "home health services";

(2) by inserting ", occupational," after "or physical"; and

(3) by striking out ", for any of the conditions" and all that follows through "extended care services".

(g) Section 1832(a)(2)(A) of such Act is amended by striking out "for up to 100 visits during a calendar year".

(h) Section 1833(b) of such Act is amended—

(1) by striking out "and" at the end of clause (1) in the first sentence; and

(2) by striking out the period at the end of the first sentence and inserting in lieu thereof the following: ", and (3) such deductible shall not apply with respect to home health services.".

(i) Section 1834 of such Act is repealed.

(j) Section 1835(a)(2)(A) of such Act is amended by inserting ", occupational," after "or physical".

(k) Section 1861(e) of such Act is amended—

(1) by striking out "subsections (i) and (n)" in the material preceding paragraph (1) and inserting in lieu thereof "subsection (i)"; and

(2) by striking out "subsections (i) and (n)" in the third sentence and inserting in lieu thereof "subsection (i)".

(l) Section 1861(m)(4) of such Act is amended by inserting the following before the semicolon: "who has successfully completed a training program approved by the Secretary".

(m) Section 1861(n) of such Act is repealed.

(n) Section 1861(o) of such Act is amended—

(1) by striking out "and" at the end of paragraph (5), by inserting "and" at the end of paragraph (6), and by adding the following new paragraph after paragraph (6):

"(7) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;"; and

(2) by striking out "except that" the first place it appears in the material following paragraph (6) and all that follows through "regulations; and".

(o) Section 1816(e) of such Act is amended—

(1) by inserting "(subject to the provisions of paragraph (4))" after "the Secretary may" in paragraph (2); and

(2) by adding the following new paragraph at the end thereof:

"(4) Notwithstanding subsections (a) and (d) and paragaphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1861(o)) in the region, except that in assigning such agencies to such designated regional agencies or organizations the Secretary shall assign a home health agency which is a subdivision of a hospital (and such agency and hospital are affiliated or under common control) only if, after applying such criteria relating to administrative efficiency and effectiveness as he shall promulgate, he determines that such assignment would result in the more effective and efficient administration of this title.".

(p) Section 1861(v)(1) of such Act is amended by adding the following new subparagraph at the end thereof (after the new subparagraph added by section 860(a)(2) of this Act):

"(H) In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

"(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the financial security requirement described in subsection (o)(7);

"(ii) in the case of home health agencies to which the financial security requirement described in subsection (o)(7) applies, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this title to the agency, except that such costs may be included in reasonable cost if the Secretary determines that the agency was acting in good faith in borrowing the amounts;

"(iii) in the case of contracts entered into by a home health agency after the date of enactment of this subparagraph for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract (I) which is entered into for a period exceeding five years, or (II) which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency; and

"(iv) in the case of contracts entered into by a home health agency before the date of enactment of this subparagraph for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract, which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency, to the extent that such cost exceeds the reasonable value of the services furnished on behalf of such agency.".

(q) Section 226(c)(1) of such Act is amended—

(1) by striking out "and post-hospital home health services" and inserting in lieu thereof "and home health services"; and

(2) by striking out "or post-hospital home health services" in clause (B).

(r) Section 7(d)(1) of the Railroad Retirement Act of 1974 is amended by striking out "posthospital home health services" and inserting in lieu thereof "home health services".

(s)(1) The amendments made by this section shall become effective with respect to services furnished on or after July 1, 1981, except that the amendments made by subsections (n) and (o) shall become effective on the date of the enactment of this Act.

(2) The Secretary of Health and Human Services shall take administrative action to assure that improvements, in accordance with the amendment made by subsection (n)(1), will be made with respect to home health services by December 31, 1980.

RECIPROCAL AGREEMENTS FOR SERVICES FURNISHED OUTSIDE THE UNITED STATES

SEC. 803. Title XVIII of the Social Security Act is amended by adding at the end thereof (after the new subparagraph added by section 860(a)(2) of this Act) the following new section:

"INTERNATIONAL AGREEMENTS

"SEC. 1884. (a) The President is authorized to enter into agreements establishing reciprocal arrangements between the programs established by this title and the program of any foreign country under which similar services are provided directly to entitled individuals or under which insurance is provided to meet all or part of the expenses of entitled individuals for such services.

"(b) Any agreement establishing such a reciprocal arrangement pursuant to this section shall specify—

"(1) the nature and extent of payment to be made to or on behalf of (A) individuals entitled to benefits under this title for services covered under such title when such individuals are present in the foreign country and receive such services from persons who are authorized under the program of that foreign country to furnish them, and (B) individuals entitled to benefits under the program of that foreign country who receive such services in the United States from persons meeting such requirements or conditions as are required under such title;

"(2) such limitations on the nature and duration of services for which payment may be made in one country to individuals entitled to benefits under the program of the other country, as the President deems appropriate, except that no agreement shall authorize any individual to receive benefits in the United States on a reciprocal basis in excess of those provided for individuals entitled to benefits under this title;

"(3) such limitations on entitlement of individuals to benefits on a reciprocal basis under an agreement in the United States and in the foreign country, as the President deems appropriate, except that no agreement shall provide entitlement to benefits under this title in the United States for an individual who does not meet the requirmeents for entitlement applicable under such title with respect to age or medical condition;

"(4) the methods by which the cost of providing services to persons on a reciprocal basis shall be shared equitably by the persons receiving such services and by the respective programs of the United States and the foreign country; and

"(5) such other provisions, not inconsistent with this section, as the President deems appropriate.

"(c) The Secretary shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

"(d) Pending the conclusion of an agreement under this section with a foreign country, the Secretary is authorized to enter into interim arrangements with any hospital in that country which is accredited by the Joint Commision on Accreditation of Hospitals, or such other hospitals as the Secretary finds meet health and safety standards equivalent to those required under this title for hospitals in the United States and which are accredited in the foreign country concerned, under which payment may be made for inpatient hospital services, as defined in section 1861, to or on behalf of an individual who is entitled to such benefits under part A of this title. For purposes of making payment under such an interim arrangement, the Secretary shall use whichever of the methods provided for in section 1814(f) he finds appropriate, except that any payments made under part A of this title to the individual or to the hospital shall be reduced to the extent that the individual has no legal obligation to pay for any items or services furnished to such individual by reason of the laws of the foreign country in which the hospital is located or such individual's membership in an insurance plan that provides for payment for such items or services.".

DENTISTS' SERVICES

SEC. 804. (a) Clause (2) of the first sentence of section 1861(r) of the Social Security Act is amended to read as follows: "(2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions,".

(b) Section 1814(a)(2)(E) of such Act is amended to read as follows:

"(E) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;".

(c) Section 1862(a)(12) of such Act is amended by inserting "or because of the severity of the dental procedure" after "clinical status".

(d) The amendments made by this section shall apply with respect to services provided on or after July 1, 1981.

TREATMENT OF PLANTAR WARTS

SEC. 805. (a) Section 1862(a)(13)(C) of the Social Security Act is amended by striking out ", warts,".

(b) The amendment made by subsection (a) shall apply with respect to services furnished on or after July 1, 1981.

COMMUNITY MENTAL HEALTH CENTERS

SEC. 806. (a) Section 1832(a)(2) of the Social Security Act is amended by striking out "and" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof a semicolon, and by adding the following new subparagraph at the end thereof:

"(E) community mental health center services;".

(b) Section 1832(a)(2)(B)(i) of such Act is amended by striking out "or" at the end of subclause (I), by striking out "and" at the end of subclause (II) and inserting in lieu thereof "or", and by adding the following new subclause after subclause (II):

"(III) a physician to a patient in a community mental health center or to a patient in a comprehensive outpatient rehabilitation facility; and".

(c) Section 1933(c) of such Act is amended by inserting "and not a patient of a community mental health center" after "of a hospital".

(d) Part B of title XVIII of such Act (as amended by section 802(i) of this Act) is amended by inserting the following new section after section 1833:

"LIMITATION ON COMMUNITY MENTAL HEALTH CENTER SERVICES

"SEC. 1834. Payment under this part may be made for community mental health center services furnished an individual for—

"(1) up to 15 outpatient visits during any calendar year; and

"(2) up to 60 partial hospitalization visits to such a center during any calendar year. Services shall be taken into account for purposes of paragraphs (1) and (2) only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1835(a), made with respect to such services under this part.".

(e) Section 1835(a)(2) of such Act is amended by striking out the period at the end of subparagraph (D) and inserting in lieu thereof a semicolon, and by inserting the following new subparagraph after subparagraph (D):

"(E) in the case of community mental health center services, (i) such services are or were required in connection with the treatment of mental, psychoneurotic, or personality disorders, (ii) a plan for furnishing such services has been established by a physician (as defined in section 1861(r)(1)) or other mental health professional (as defined for this purpose in regulations by the Secretary) and is periodically reviewed and approved by a physician, (iii) such services are or were furnished while the individual is or was under the case management of a physician (as defined in section 1861(r)(1)), and (iv) in the case of services provided with respect to a partial hospitalization visit, the individual would otherwise require or have required (in the professional judgment of such physician) inpatient psychiatric services;".

(f) Section 1861(l) of such Act is amended by inserting "or community mental health center" after "nursing facility" each place it appears therein.

(g) Section 1861(u) of such Act is amended by inserting "community mental health center," after "home health agency,".

(h) Section 1861(w)(1) of such Act is amended by inserting "community mental health center,", after "nursing facility,".

(i) Section 1861 of such Act (as amended by section 868(c)(1) of this Act) is further amended by adding the following new subsection at the end thereof:

"Community Mental Health Center Services

"(cc)(1) The term 'community mental health center services' means the following items and services furnished to an individual as an outpatient by a community mental health center or (to the extent permitted in regulations by the Secretary) by others under arrangements with them made by the center—

"(A) diagnostic, therapeutic, or rehabilitative services furnished at the facility and crisis intervention outside the facility, when furnished by a physician (as defined in subsection (r)(1)) or any qualified mental health professional (as defined by the Secretary in regulations), including clinical psychologists, psychiatric nurses, and psychiatric social workers;

"(B) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered; and

"(C) such items and supplies as are ordinarily furnished to outpatients by community mental health centers in connection with an active mental health program of diagnosis and treatment,

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

"(2) The term 'community mental health center' means a facility which—

"(A) meets the definition of a community mental health center under section 201 of the Community Mental Health Centers Act and the regulations prescribed thereunder;

"(B) has a requirement that all mental health services are provided under the supervision of a physician or other qualified mental health professional;

"(C) meets such requirements as the Secretary may prescribe with respect to staffing requirements and qualifications of the staff;

"(D) maintains clinical records on all patients;

"(E) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

"(F) has in effect an agreement with a hospital pursuant to subsection (1);

"(G) in the case of a community mental health center in any State in which State or applicable local law provides for the licensing of community mental health centers, is licensed pursuant to such law;

"(H) has appropriate procedures or arrangements (in compliance with applicable State and Federal law) for storing, administering, and dispensing drugs and biologicals; and

"(I) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such center.".

(j) Section 1864(a) of such Act is amended—

(1) by inserting ", or whether a facility therein is a community mental health center as defined in section 1861(cc)(2)" before the period at the end of the first sentence;

(2) by inserting "or a community mental health center" after "home health agency" in the second sentence; and

(3) by inserting "community mental health center," after "laboratory," each place it appears in the fifth sentence.

(k) The amendments made by this section shall become effective with respect to a community mental health center's first accounting period which begins on or after July 1, 1981.

(l) The Secretary of Health and Human Services shall submit a report, not later than twenty-four months after the date of the enactment of this Act, to the Congress recommending a definition of an outpatient mental health center which could be used to broaden the definition of community mental health center as established by the amendments made by this section, especially the part of that definition which requires that such a center meet the definition of section 201 of the Community Mental Health Centers Act.

COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY SERVICES

SEC. 807. (a) Section 1832(a)(2) of the Social Security Act is amended by adding the following new subparagraph at the end thereof (after the new subparagraph added by section 806(a) of this Act):

"(F) comprehensive outpatient rehabilitation facility services; and".

(b) Section 1835(a)(2) of such Act is amended by inserting the following new subparagraph at the end thereof (after the new subparagraph added by section 806(e) of this Act):

"(F) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and".

(c) Section 1861(u) of such Act is amended by inserting "comprehensive outpatient rehabilitation facility," immediately after "skilled nursing facility,".

(d) Section 1861(z) of such Act is amended by striking out "extended care facility," and inserting in lieu thereof "skilled nursing facility, comprehensive outpatient rehabilitation facility,".

(e) Section 1861 of such Act is amended by adding the following new subsection at the end thereof (after the new subsection added by section 806(i) of this Act):

"Comprehensive Outpatient Rehabilitation Facility Services

"(dd)(1) The term 'comprehensive outpatient rehabilitation facility services' means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such

individual) established and periodically reviewed by a physician—

"(A) physicians' services;

"(B) physical therapy, occupational therapy, speech pathology services, and respiratory therapy;

"(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

"(D) social and psychological services;

"(E) nursing care provided by or under the supervision of a registered professional nurse;

"(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self administered;

"(G) supplies, appliances, and equipment, including the purchase or rental of equipment; and

"(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an outpatient of a hospital.

"(2) The term 'comprehensive outpatient rehabilitation facility' means a facility which—

"(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;

"(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in section 1861(r)(1), who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

"(C) maintains clinical records on all patients;

"(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

"(E) has a requirement that every patient must be under the care of a physician;

"(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standard establishment for such licensing;

"(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

"(H) has in effect an overall plan and budget that meets the requirements of subsection (z); and

"(I) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities.".

(f) Section 1863 of such Act is amended by striking out "and (o)(6)" in the first sentence and inserting in lieu thereof "(o)(6), and (dd)(2)(I)".

(g) Section 1864(a) of such Act is amended—

(1) by inserting "or a comprehensive outpatient rehabilitation facility as defined in section 1861(dd)(2)" after "section 1861(aa)(2)" in the first sentence; and

(2) by inserting "comprehensive outpatient rehabilitation facility," after "rural health clinic," each place it appears in the second and fifth sentences.

(h) The amendments made by this section shall become effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

OPTOMETRISTS' SERVICES

SEC. 808. (a) Clause (4) of the first sentence of section 1861(r) of the Social Security Act is amended by striking out "but only with respect to establishing the necessity for prosthetic lenses," and inserting in lieu thereof "but only with respect to services related to the condition of aphakia.".

(b) The Secretary of Health and Human Services shall submit to the Congress by January 1, 1982, legislative recommendations with respect to reimbursement under title XVIII of the Social Security Act for services furnished by optometrists in connection with cataracts and such other services which they are legally authorized to perform.

(c) The amendment made by subsection (a) shall apply to services furnished on or after July 1, 1981.

ANTIGENS

SEC. 809. Section 1861(s)(2) of the Social Security Act is amended by striking out "and" at the end of subparagraph (E), by adding "and" after the semicolon at the end of subparagraph (F), and by inserting the following new subparagraph after subparagraph (F):

"(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in section 1861(r)(1), for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;".

PAYMENT WHERE BENEFICIARY NOT AT FAULT

SEC. 810. Section 1879 of the Social Security Act is amended by adding the following new subsection at the end thereof:

"(e) Where payment for inpatient hospital services or extended care services may not be made under part A of this title on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1861 (e) or (j) by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, professional standards review organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.".

FLEXIBILITY IN APPLICATION OF STANDARDS TO RURAL HOSPITALS

SEC. 811. Section 1861(e) of the Social Security Act is amended by adding the following new sentence at the end thereof: "The term 'hospital' also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

"(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility's failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

"(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, and (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients; and

"(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary may (i) waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility's compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.".

CERTIFICATION AND UTILIZATION REVIEW BY PODIATRISTS

SEC. 812. (a) Section 1861(r)(3) of the Social Security Act is amended to read as follows: "(3) a doctor of podiatric medicine for the purposes of subsection (s) of this section but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k) and (m) of this section and sections 1814(a) and 1835 but only if his performance of functions under subsections (k) and (m) and sections 1814(a) and 1835 is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform.".

(b) Section 1861(k)(2)(A) of such Act is amended by inserting after "two or more physicians" the following: "(of which at least two must be physicians described in subsection (r)(1) of this section)".

PHYSICIAN TREATMENT PLAN FOR SPEECH PATHOLOGY

SEC. 813. Section 1835(a)(2)(D)(ii) of the Social Security Act is amended by inserting after "established" the following: "by a physician or by the speech pathologist providing such services".

PAYMENT FOR PHYSICIANS' SERVICES WHERE BENEFICIARY HAS DIED

SEC. 814. (a) Section 1870(f) of the Social Security Act is amended to read as follows:

"(f) If an individual who received medical and other health services for which payment may be made under section 1832(a)(1) dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

"(1) if the person or persons who furnished the services agree that the reasonable charge is the full charge for the services, payment

for such services shall be made to such person or persons, and

"(2) if the person or persons who furnished the services do not agree that the reasonable charge is the full charge for the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.".

(b) The amendment made by this section shall apply only to claims filed on or after the date of the enactment of this Act.

PRESUMED COVERAGE PROVISIONS

SEC. 815. (a) Section 1814 of the Social Security Act is amended by striking out subsections (h) and (i) and by redesignating subsection (j) as subsection (h).

(b) Section 1814(c) of such Act is amended by striking out "subsection (j)" and inserting in lieu thereof "subsection (h)".

PAYMENT TO PROVIDERS OF SERVICES

SEC. 816. (a) Section 1814(b) of the Social Security Act is amended to read as follows:

"(b) The amount paid to any provider of services with respect to services for which payment may be made under this part shall, subject to the provisions of section 1813, be the reasonable cost of such services, as determined under section 1861(v) and as further limited by section 1881(b)(2)(B).".

(b) Section 1833(a) of such Act is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) in the case of services described in section 1832(a)(2) (except those services described in subparagraphs (D), (E), (F), and (G) of such section and in paragraph (5) of this subsection)—

"(A) with respect to home health services, the reasonable cost of such services, as determined under section 1861(v);

"(B) with respect to other services (except those described in subparagraph (C) of this paragraph), the reasonable costs of such services, as so determined, less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such other services exceed 80 percent of such costs;

"(C) with respect to services described in the second sentence of section 1861(p), 80 percent of the reasonable charges for such services;

"(3) in the case of services described in subparagraphs (D), (E), and (F) of section 1832(a)(2), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A), less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such services exceed 80 percent of such costs; and

"(4) in the case of facility services described in subparagraph (G) of section 1832(a)(2), the applicable amount described in subparagraph (A) of section 1833(i)(2); and

"(5) in the case of preadmission diagnostic services described in section 1861(s)(2)(C) which are furnished to an individual by the outpatient department of a hospital within 7 days of such individual's admission to the same hospital as an inpatient or (to the extent practicable as determined by regulations prescribed by the Secretary) to another hospital, the reasonable costs for such services.".

(c) The amendment made by subsection (a) shall apply to services furnished on or after October 1, 1980.

LIMIT ON PREMIUM INCREASES DUE TO LATE ENROLLMENT

SEC. 817. (a) The first sentence of section 1839(d) of the Social Security Act is amended by inserting the following immediately before the period at the end thereof: "; except that in no case may the total amount of such increase exceed 30 percent of such monthly premium so determined".

(b) The amendment made by subsection (a) shall apply to premiums for months after June 1981.

REENROLLMENT AND OPEN ENROLLMENT IN PART B

SEC. 818. (a) Subsection (b) of section 1837 of the Social Security Act is repealed.

(b)(1) Subsection (e) of such section is amended to read as follows:

"(e) There shall be a general enrollment period which is any period after the period described in subsection (d).".

(2) Subsection (g)(3) of such section is amended by striking out "the earlier of the then current" and all that follows through "subsection (e) of this section)" and inserting in lieu thereof "the month in which the individual files an application establishing such entitlement".

(c)(1) Section 1838(a)(2)(E) of such Act is amended by striking out "the July 1" and inserting in lieu thereof "the first day of the third month".

(2) The second sentence of subsection (d) of section 1839 of such Act is amended by striking out "who enrolls for the second time (2)" and all that follows through "in which he enrolled for the second time" and inserting in lieu thereof "who reenrolls (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled".

CHIROPRACTORS' SERVICES

SEC. 819. (a) Section 1861(r)(5) of the Social Security Act is amended by striking out "demonstrated by X-ray to exist" and inserting in lieu thereof "demonstrated by X-ray or other chiropractic clinical findings to exist".

(b) Section 1861(s)(3) of such Act is amended by inserting "(A)" after "(3)", and by adding the following new subparagraph at the end thereof:

"(B) diagnostic X-ray tests which are furnished by a physician described in subsection (r)(5) and which are reasonable and necessary in the diagnosis of a subluxation of the spine;".

(c) The amendments made by this section shall apply to services furnished on or after July 1, 1981.

INCREASE IN OUTPATIENT MENTAL HEALTH BENEFITS UNDER PART B

SEC. 820. (a)(1) Section 1833(c) of the Social Security Act is amended—

(A) by striking out "there" and inserting in lieu thereof "not more than $937.50"; and

(B) by striking out everything after "subsections (a) and (b)" and inserting in lieu thereof a period.

(2) Section 1866(a)(2)(A) of such Act is amended by striking out the last sentence.

(b)(1) Section 1861(r) of such Act is amended by striking out "or" at the end of clauses (3) and (4) of the first sentence and by inserting the following before the period at the end of the first sentence: ", or (6) a clinical psychologist who is licensed as such by the State (or in a State which does not license clinical psychologists as such, is legally authorized to perform the services of a clinical psychologist in the jurisdiction in which he performs such services) and who meets uniform minimum requirements prescribed by the Secretary, but only for the purpose of section 1861(s)(1) and section 1835(a)(2)(B)(ii) and only with respect to the treatment of an individual who is not an inpatient of a hospital (as defined in subsection (e) or (f) of this section), was referred to the psychologist by a physician described in clause (1), and is receiving such services in connection with the treatment of mental, psychoneurotic, or personality disorders and only with respect to services which such clinical psychologist is legally authorized to perform by the State or jurisdiction in which such services are furnished".

(2) Section 1835(a)(2)(B) of such Act is amended—

(A) by inserting "(i)" before "in the case of";

(B) by striking out "and" at the end thereof; and

(C) by adding the following at the end thereof:

"(ii) in the case of services furnished by a physician described in section 1861(r)(6) to an individual described in such section, such services are or were required for the treatment of mental, psychoneurotic, or personality disorders;".

(c) The amendments made by this section shall apply to expenses incurred in calendar years beginning with 1982.

LIMITATION ON PAYMENTS TO RADIOLOGISTS AND PATHOLOGISTS

SEC. 821. (a) Subsections (a)(1)(B) and (b)(2) of section 1833 of the Social Security Act are each amended by inserting after "pathology" the following: "who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842(b)(3)(B)(ii)) for all physicians' services furnished by him for hospital inpatients enrolled under this part".

(b) The amendments made by subsection (a) shall apply to services furnished after the sixth calendar month beginning after enactment of this Act.

SHORTENED PART B TERMINATION PERIOD FOR CERTAIN INDIVIDUALS WHOSE PREMIUMS MEDICAID HAS CEASED TO PAY

SEC. 822. (a) Section 1843(e) of the Social Security Act is amended by adding at the end thereof the following: "The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed.".

(b) The second sentence of section 1838(b) of such Act is amended by inserting "(except as otherwise provided in section 1843(e))" after "shall".

(c) Section 1843(g)(2) of such Act is amended—

(1) by adding "and" at the end of clause (A);

(2) by striking out ", and" at the end of clause (B) and inserting in lieu thereof a period; and

(3) by striking out clause (C).

(d) The amendments made by this section apply to notices filed after the third calendar month beginning after the date of the enactment of this Act.

(e) The coverage period under part B of title XVIII of the Social Security Act of an individual whose coverage period attributable to a State agreement under section 1843 of such Act is terminated and who has filed notice before the end of the third calendar month beginning after the date of the enactment of this Act that he no longer wishes to

participate in the insurance program established by part B of title XVIII shall terminate on the earlier of (1) the day specified in section 1838 without the amendments made by this section, or (2) (unless the individual files notice before the day specified in this clause that he wishes his coverage period to terminate as provided in clause (1)) the day on which his coverage period would terminate if the individual filed notice in the fourth calendar month beginning after the date of the enactment of this Act.

OUTPATIENT PHYSICAL THERAPY SERVICES

SEC. 823. (a) Section 1833(g) of the Social Security Act, as added by section 251(a)(2) of Public Law 92-603, is amended by striking out "$100" and inserting in lieu thereof "$500".

(b) Subsection (g) of section 1833 of such Act, as added by section 279(b) of Public Law 92-603, is redesignated as subsection (h).

(c) The amendment made by subsection (a) shall apply to expenses incurred in calendar years beginning with calendar year 1982.

REIMBURSEMENT FOR BLOOD

SEC. 824. (a) The following provisions of the Social Security Act are repealed:

(1) paragraph (2) of section 1813(a);

(2) the last sentence of section 1833(b); and

(3) section 1866(a)(2)(C).

(b) Section 1861(v)(1)(A) of such Act is amended by striking out "and" before "(ii)" in the fourth sentence and by inserting the following before the period at the end of such sentence: ", and (iii) take into account the customary practices of providers of services in the replacement of blood (or equivalent quantities of packed red blood cells, as defined in regulations) furnished to an individual with respect to whom payment may be made under this title, except that, notwithstanding such practices, such adjustments as are necessary to assure compliance with the principles set forth in this subsection (and regulations pursuant thereto) shall be made in determining such costs".

(c) The amendments made by this section shall apply to blood furnished on or after July 1, 1981.

MEDICARE PAYMENT LIABILITY SECONDARY IN CERTAIN INSURANCE

SEC. 825. Section 1862(b) of the Social Security Act is amended—

(1) by inserting "or under an automobile insurance policy" before the period at the end of the first sentence thereof; and

(2) by inserting "or policy" before the period at the end of the second sentence thereof.

HOSPITAL TRANSFER REQUIREMENT FOR SKILLED NURSING FACILITY COVERAGE

SEC. 826. Section 1861(i) of the Social Security Act is amended—

(1) by striking out "14 days" each place it apoears therein and inserting in lieu thereof "30 days"; and

(2) by striking out ", or (B) within 28 days" and all that follows through "he resides, or (C)" and inserting in lieu thereof ", or (B)";

OUTPATIENT SURGERY

SEC. 827. (a) Section 1832(a)(2) of the Social Security Act is amended by adding the following new subparagraph at the end thereof (after the new subparagraphs added by sections 806(a) and 807(a) of this Act):

"(G) facility services furnished in connection with surgical procedures specified by the Secretary pursuant to section 1833(i)(1) and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations).".

(b) Section 1833 of such Act is amended by adding the following new subsection at the end thereof:

"(i)(1) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations, specify surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center or hospital outpatient department.

"(2)(A) The amount of payment to be made for facility services furnished in connection with surgical procedures specified pursuant to paragraph (1) and furnished to an individual in an ambulatory surgical center shall be equal to an amount established by the Secretary with respect to each such procedure which (i) takes into account the costs incurred by such centers, or classes of centers, generally in providing the services appropriate for the performance of such services, and (ii) takes such costs into account in such a manner which will assure that the performance of the service in such an ambulatory surgical center will result in substantially less amounts paid under this title than would have been paid if the services had been furnished on an inpatient basis. The amount so established shall be reviewed periodically and may be adjusted, when appropriate, to take account of varying conditions in different areas.

"(B) The amount of payment to be made under this part for services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in an ambulatory surgical center or a hospital outpatient department shall be the reasonable charge for such services if the physician accepts an assignment, as provided for in section 1842(b)(3)(B)(ii), with respect to such payment.".

(c) Section 1835(a)(2) of such Act is amended by adding the following new subparagraph at the end thereof (after the new subparagraphs added by sections 806(e) and 807(e) of this Act):

"(G) in the case of services furnished in connection with surgical procedures, specified pursuant to section 1833(i)(1), in an ambulatory surgical center, such services are or were medically required.".

(d) Section 1861(u) of such Act is amended by inserting "ambulatory surgical center," after "hospital,".

TECHNICAL RENAL DISEASE AMENDMENTS

SEC. 828. (a) Sec. 1881(c)(4) of the Social Security Act is amended by adding at the end the following sentence: "The Secretary may not find, for purposes of such certification, that the addition or expansion of a facility within a network is not needed if the State health planning and development agency, fully or conditionally designated under title XV of the Public Health Service Act for the State in which the facility is located, has certified under section 1523(a)(4)(B) of such Act that such addition or expansion is needed.".

(b) Section 1881(e) of such Act is amended—

(1) by striking out "and" the first place it appears in paragraph (1) and inserting a comma in lieu thereof;

(2) by inserting "and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently," after "renal dialysis facilities," in paragraph (1);

(3) by striking out "such providers and facilities" and inserting in lieu thereof "such providers, facilities, and nonprofit entities"; and

(4) by striking out "or facility will—" in paragraph (2) and inserting in lieu thereof ", facility, or other entity will—".

(c) Section 1881(g) of such Act is amended by striking out "April" each place it appears and inserting in lieu thereof "July".

PREADMISSION DIAGNOSTIC TESTING

SEC. 829. (a) Section 1833(a)(1) of the Social Security Act is amended by striking out "and (E)" and inserting in lieu thereof "(E)", and by inserting the following after "section 1881," at the end of clause (E): "and (F) with respect to expenses incurred for preadmission diagnostic radiological or pathological services for which payment may be made under this part and which are furnished to an individual by the outpatient department of a hospital within seven days of such individual's admission to the same hospital as an inpatient or, to the extent practicable as determined by regulations prescribed by the Secretary, to another hospital by a physician in the field of radiology or pathology who has an agreement in effect with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842(b)(3)(B)(ii)) for all physicians' services furnished by him for such services to individuals enrolled under this part, the amounts paid shall be equal to the reasonable charges for such services.".

(b) The Secretary of Health and Human Services shall report to the Congress no later than one year after the date of the enactment of this Act describing the policy which has been developed and is being or will be implemented with respect to the amendments made by subsection (a) of this section and by section 816(b) of this chapter as they concern expenses incurred for preadmission diagnostic testing furnished to an individual at a hospital within seven days of an individual's admission to another hospital.

STUDIES AND DEMONSTRATION PROJECTS

SEC. 830. (a) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall develop and carry out a demonstration project to determine (1) the extent to which the commencement of nutritional therapy in early renal failure, utilizing (but not limited to) controlled protein substances, can retard or arrest the progression of the disease with a resultant substantive deferment of dialysis, and (2) the administrative, financial, and other aspects of making such nutritional therapy generally available as part of the benefits received under title XVIII of the Social Security Act.

(b) The Secretary shall submit, to the Congress, within one year after the date of the enactment of this Act, a report on the demonstration projects being conducted by the Secretary with respect to waiving the applicable cost sharing amounts which beneficiaries under title XVIII of the Social Security Act have to pay for obtaining a second opinion on having surgery performed. Such report shall include any recommendations for legislative changes in such title which the Secretary finds desirable as a result of such demonstration projects.

(c) The Secretary shall conduct a study of the circumstances and conditions under which services furnished by registered dietitians should be covered as a home health benefit under title XVIII of the Social Security Act.

(d) The Secretary shall develop and carry out demonstration projects to determine the administrative, financial, and other aspects of making the services of clinical social workers more generally available as part of the benefits received under title XVIII of the Social Security Act.

(e) The Secretary shall, in consultation with appropriate professional organizations,

conduct a comprehensive study of methods for providing coverage under part B of title XVIII of the Social Security Act for orthopedic shoes for individuals with disabling or deforming conditions who require special fitting considerations to help protect against increasing disability or serious medical complications or who require special shoes in conjunction with the use of an orthosis or foot support. The Secretary shall submit to the Congress, no later than July 1, 1981, a report on the findings of this study and such specific legislative recommendations as is appropriate with respect to the utilization, cost control, quality of care, and equitable and efficient administration of such an extension of coverage.

(f) The Secretary shall conduct a study of the circumstances and conditions under which services furnished with respect to respiratory therapy should be covered as a home health benefit under title XVIII of the Social Security Act.

(g) The Secretary shall conduct a study involving a comprehensive analysis of the cost effects of alternative approaches to improving coverage under title XVIII of the Social Security Act for the treatment of various types of foot conditions.

(h) The Secretary shall submit a report on each of the demonstration projects and studies described in subsections (a), (c), (d), (f), and (g). Each such report shall be submitted within twenty-four months of the date of the enactment of this Act and shall contain any recommendations for legislative changes which the Secretary finds desirable as a result of conducting the demonstration project or study with respect to which the report is submitted.

(i) Grants, payments under contracts, and other expenditures made for studies and demonstration projects under this section shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

PROVIDER REIMBURSEMENT REVIEW BOARD

SEC. 831. Section 1878(f)(1) of the Social Security Act is amended by inserting the following after the second sentence thereof: "Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which such determination is rendered. If a provider of services may obtain a hearing under subsection (a) and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing.".

ACCESS TO BOOKS AND RECORDS OF SUBCONTRACTORS

SEC. 832. Section 1861(v)(1) of the Social Security Act is amended by adding the following new subparagraph at the end thereof (after the new subparagraph added by section 802(p) of this Act):

"(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any service furnished in connection with matters for which payment may be made under this title and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after the date of enactment of this subparagraph and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that until the expiration of three years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon request, to the Secretary or the Comptroller General of the United States (or any of their duly authorized representatives) the contract, and books, documents, and records of such subcontractor that are necessary to verify the nature and extent of such costs.".

MEDICARE COVERAGE OF PNEUMOCOCCAL VACCINE AND ITS ADMINISTRATION

SEC. 833. (a)(1) Section 1861(s) of the Social Security Act is amended—

(A) by redesignating paragraphs (10) through (13) as paragraphs (11) through (14), respectively;

(B) by striking out "and" at the end of paragraph (8);

(C) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and"; and

(D) by inserting after paragraph (9) the following new paragraph:

"(10) pneumococcal vaccine and its administration.".

(2) Section 1864(a) of such Act is amended by striking out "paragraphs (10) and (11) of section 1861(s)" and inserting in lieu thereof "paragraphs (11) and (12) of section 1861(s)".

(3) Section 1862(a) of such Act is amended—

(A) by inserting ", or, in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness" before the semicolon at the end of paragraph (1), and

(B) by inserting "(except as otherwise allowed under section 1861(s)(10) and paragraph (1))" in paragraph (7) after "immunizations".

(b)(1) Section 1833(a) of such Act (as amended by sections 816(b) and 829(a) of this Act) is amended—

(A) by striking out "and" before "(F)" in paragraph (1);

(B) by inserting at the end of paragraph (1) the following: "and (G) with respect to items and services described in section 1861(s)(10), the amounts paid shall be 100 percent of the reasonable charges for such items and services,";

(C) by inserting "and to items and services described in section 1861(s)(10)" in paragraph (2)(A) after "home health services"; and

(D) by inserting "(other than for items and services described in section 1861(s)(10))" in paragraph (3) after "but in no case may the payment for such services".

(2) The first sentence of section 1833(b) of such Act is amended by inserting "(A)" in clause (2) after "expenses incurred", and by inserting before the comma at the end of such clause the following: ", or (B) for items and services described in section 1861(s)(10)".

(3) Subparagraph (A) of section 1861(aa)(1) of such Act is amended by inserting before the comma at the end the following: "and items and services described in section 1861(s)(10)".

(c) The amendments made by this section shall apply to services furnished on or after July 1, 1981.

CHAPTER 2—H.R. 4000 PROVISIONS

SHORT TITLE; TABLE OF CONTENTS

SEC. 841. This chapter may be cited as the "Medicare and Medicaid Amendments of 1980".

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EXPANDED MEMBERSHIP OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 842. Section 1152(b)(1)(A) of the Social Security Act is amended—

(1) by inserting "and, if the organization so elects, of other health care practitioners engaged in the practice of their professions in such area who hold independent hospital admitting privileges," after the comma in clause (ii); and

(2) by inserting "(except as otherwise provided under section 1155(c))" after "does not" in clause (vi).

REGISTERED NURSE AND DENTIST MEMBERSHIP ON STATEWIDE COUNCIL ADVISORY GROUP

SEC. 843. (a) Section 1162(e)(1) of the Social Security Act is amended by inserting "(including at least one registered professional nurse and at least one doctor of dental surgery or of dental medicine)" after "representatives".

(b) The amendment made by this section shall become effective 180 days after the date of the enactment of this Act.

NONPHYSICIAN MEMBERSHIP ON NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

SEC. 844. (a) Section 1163(a)(1) of the Social Security Act is amended by inserting "one doctor of dental surgery or of dental medicine, one registered professional nurse, and one other health practitioner (other than a physician as defined in section 1861(r)(1))," after "physicians,".

(b) Section 1163(a)(2) of such Act is amended by striking out "four members" and inserting in lieu thereof "five members".

(c) Section 1163(a)(3) of such Act is amended by inserting "physician" before "members".

(d) Section 1163(b) of such Act is amended by striking out "Members" and inserting in lieu thereof "Physician members".

(e) Section 1173 of such Act is amended by striking out "(except sections 1155(c) and 1163)" and inserting in lieu thereof "(except section 1155(c))".

(f) The amendments made by this section shall become effective 180 days after the date of the enactment of this Act.

EFFICIENCY IN DELEGATED REVIEW

SEC. 845. Section 1155(e) of the Social Security Act is amended by striking out "effectively and in timely fashion" and inserting in lieu thereof "effectively, efficiently, and in timely fashion".

REQUIRED ACTIVITIES OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 846. (a)(1) Subsection (b) of section 1154 of the Social Security Act is amended—

(A) by striking out "in addition to review of health care services provided by or in institutions, only such of the duties and functions required under this part of Professional Standards Review Organization as he determines such organization to be capable of performing" in the first sentence and inserting in lieu thereof "in addition to review of health care services (other than ancillary, ambulatory care, and long-term care services) provided by or in hospitals, only such of the duties and functions as he requires the organization to perform under subsection (f)(2) or subsection (f)(4) and which the organization is capable of performing"; and

(B) by striking out "only if the Secretary finds that it is substantially carrying out in a satisfactory manner, the activities and functions required of Professional Standards Review Organizations under this part with respect to the review of health care services provided by or in institutions (including ancillary services) and, in addition, review of such other health care services as the Secretary may require" in the second sentence and inserting in lieu thereof "only if the Secretary finds that it is substantially carrying out in a satisfactory manner the activities and functions required of that Professional Standards Review Organization under this part".

(2) Subsection (c) of such section is amended by inserting "of that organization" after "required under this part".

(3) Such section is further amended by adding at the end the following new subsection:

"(f)(1) The Secretary shall establish a program (hereinafter in this subsection referred to as the 'program') for the evaluation of the cost-effectiveness of review of particular health care services by Professional Standards Review Organizations.

"(2) In order to demonstrate the cost-effectiveness of requiring review of particular health care services before such review is generally required, the program shall be designed in a manner so that the Secretary will require particular Professional Standards Review Organizations, chosen by a statistically valid method that will permit a valid evaluation of the cost-effectiveness of such review, to review particular health care services.

"(3) The program shall provide for the evaluation of cost-effectiveness of the review of particular health care services under the program, particularly in comparison with areas in which such review was not required or performed.

"(4) Based upon such evaluation, or upon an evaluation of comparable statistical validity, and a finding that review of particular health care services is cost-effective or yields other significant benefits, the Secretary shall specify such particular health care services which Professional Standards Review Organizations (either generally or under such conditions and circumstances as the Secretary may specify) have the duty and function of reviewing under this part.

"(5) For purposes of this subsection, the term 'particular health care services' does not include health care services (other than ancillary, ambulatory care, and long-term care services) provided by or in hospitals.".

(b) Section 1155(a) of such Act is amended—

(1) by striking out "at the earliest date practicable" in paragraph (1) and inserting in lieu thereof "to the extent and at the time specified by the Secretary under section 1154(f)";

(2) by inserting ", consistent with section 1154(f)," in paragraph (7)(A) after "only"; and

(3) by inserting "(consistent with section 1154(f))" in paragraph (7)(B) after "to the extent".

(c) Section 1155 of such Act is amended by striking out subsection (g).

(d) Section 1155 of such Act is amended by adding at the end thereof the following new subsection:

"(h) If the Secretary has designated an organization (other than under section 1154) as a Professional Standards Review Organization, but that organization has not assumed responsibility for the review of particular activities in its area included in subsection (a)(1), the Secretary may designate another qualified Professional Standards Review Organization (in reasonable proximity to the providers and practitioners whose services are to be reviewed) to assume the responsibility for the review of some or all of those particular activities.".

RESPONSE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS TO FREEDOM OF INFORMATION ACT REQUESTS

SEC. 847. No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the end of the 180-day period beginning on the date of entry of a final court order requiring that such records be made available.

CONSULTATION BY PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS WITH HEALTH CARE PRACTITIONERS

SEC. 848. (a) Section 1155(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(8) Each Professional Standards Review Organization shall consult (with such frequency and in such manner as may be prescribed by the Secretary) with representatives of health care practitioners (other than physicians described in section 1861(r)(1)) and of institutional and noninstitutional providers of health care services, in relation to the Professional Standards Review Organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.".

(b) Section 1162(e) of such Act is amended by striking out the first parenthetical material in paragraph (1) and the parenthetical material in paragraph (2).

(c) The amendments made by this section shall become effective 180 days after the date of enactment of this Act.

REVIEW OF ROUTINE HOSPITAL ADMISSION SERVICES AND PREOPERATIVE HOSPITAL STAYS BY PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 849. Section 1155(a)(2) of the Social Security Act is amended to read as follows:

"(2) Each Professional Standards Review Organization shall have the authority to determine, in advance, in the case of—

"(A) any elective admission to a hospital or other health care facility (including admissions occurring on weekends), and

"(B) any routine diagnostic services furnished in connection with such an admission,

whether such service, if provided, or if provided by a particular health care practitioner or by a particular hospital or other health care facility, organization, or agency, would meet the criteria specified in subparagraphs (A) and (C) of paragraph (1). Each such Organization may be directed by the Secretary to exercise such authority where the Secretary finds (consistent with section 1154(f)) that such determinations can be made on a timely basis by the Organization and appropriate procedures will be applied to assure prompt notification of such determinations to providers, physicians, practitioners, and persons on whose behalf payment may be made under this Act for services and items.".

STUDY OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS NORMS, STANDARDS, AND CRITERIA

SEC. 850. The Secretary of Health and Human Services shall, in consultation with the National Professional Standards Review Council, conduct a nationwide study of the differences in medical criteria and length-of-stay norms utilized by Professional Standards Review Organizations in the various regions of the country. The study shall include an assessment of the rationale that contributes to these regional differences. The Secretary shall report the findings and conclusions made with respect to the study to the Congress within one year after the date of the enactment of this Act.

NONPROFIT HOSPITAL PHILANTHROPY

SEC. 851. (a) Part A of title XI of the Social Security Act is amended by adding after section 1133 the following new section:

"ENCOURAGEMENT OF NONPROFIT HOSPITAL PHILANTHROPY

"SEC. 1134. (a) It is the policy of the United States that philanthropic support for health care be encouraged and expanded, especially in support of experimental and innovative efforts to improve the health care delivery system.

"(b) For purposes of determining under titles V, XVIII, and XIX the reasonable costs of services furnished by nonprofit hospitals, unrestricted grants, gifts, and income from endowments shall not be deducted from any operating costs of such hospitals, and, in addition, the following items shall not be deducted from any operating costs of such hospitals:

"(1) A donor designated or restricted grant, gift, or income from an endowment, as defined in section 405.423(b)(2) of title 42 of the Code of Federal Regulations.

"(2) An unrestricted grant or gift, or income from such a grant or gift, which is not available for use as operating funds because of its designation by the hospital's governing board.

"(3) A grant or similar payment which is made by a governmental entity and which is not available, under the terms of the grant or payment, for use as operating funds.

"(4) The sale or mortgage of any real estate or other capital assets of the hospital which the hospital acquired through a gift or grant and which is not available for use as operating funds under the terms of the gift or grant or because of its designation by the hospital's governing board, except for recovery of the appropriate share of gains and losses realized from the disposal of depreciable assets.

"(5) A sinking fund which is (A) created by the hospital in order to meet a condition imposed by a third party for the third party's financing of a capital improvement of the hospital, and which fund is used exclusively to make payments to such third party for the financing of the capital improvement.".

(b) Subsection (b) of section 1134 of the Social Security Act (as added by subsection (a)) shall apply to grants, gifts, and endowments made or established on or after September 1, 1981.

CONSULTATIVE SERVICES FOR SKILLED NURSING FACILITIES

SEC. 852. Section 1864(a) of the Social Security Act is amended by striking out the third and fourth sentences.

STUDY OF NEED FOR DUAL PARTICIPATION OF SKILLED NURSING FACILITIES

SEC. 853. (a)(1) The Secretary of Health and Human Services shall conduct a study of the availability and need for skilled nursing facility services covered under part A of title XVIII of the Social Security Act and under State plans approved under title XIX of such Act.

(2) Such study shall include—

(A) an investigation of the desirability and feasibility of imposing a requirement that skilled nursing facilities (i) which furnish services to patients covered under State plans approved under title XIX of the Social Security Act also furnish such services to patients covered under part A of title XVIII of such Act, and (ii) which furnish services to patients covered under such title XVIII also furnish such services to patients covered under such State plans,

(B) an evaluation of the impact of existing laws and regulations on skilled nursing facilities and individuals covered under such State plans and under part A of such title XVIII, and an evaluation of the extent to which existing laws and regulations encourage skilled nursing facilities to accept only title XVIII beneficiaries or title XIX recipients, and

(C) an investigation of possible changes in regulations and legislation which would result in encouraging a greater availability of nursing facility services.

(3) In developing such study, the Secretary shall consult with professional organizations, health experts, private insurers, nursing home providers, and consumers of skilled nursing facility services.

(b) Within one year after the date of the enactment of this Act the Secretary shall complete such study and shall submit to the Congress a full and complete report thereon, together with recommendations with respect to the matters covered by such study (including any recommendations for administrative or legislative changes).

ALTERNATIVE TO DECERTIFICATION OF LONG-TERM CARE FACILITIES OUT OF COMPLIANCE WITH CONDITIONS OF PARTICIPATION; LOOK BEHIND AUTHORITY

SEC. 854. (a) Section 1866 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f)(1) Where the Secretary determines that a skilled nursing facility which has filed an agreement pursuant to subsection (a)(1) or which has been certified for participation in a plan approved under title XIX no longer substantially meets the provisions of section 1861(j), and further determines that the facility's deficiencies—

"(A) immediately jeopardize the health and safety of its patients, the Secretary shall provide for the termination of the agreement or of the certification of the facility and shall provide, or

"(B) do not immediately jeopardize the health and safety of its patients, the Secretary may, in lieu of terminating the agreement or certification of the facility, provide

that no payment shall be made under this title (and order a State agency established or designated pursuant to section 1902(a)(5) of this Act to administer or supervise the administration of the State plan under title XIX of this Act to deny payment under such title XIX) with respect to any individual admitted to such facility after a date specified by him.

"(2) The Secretary shall not make such a decision with respect to a facility until such facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the provisions of section 1861(j), to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

"(3) The Secretary's decision to deny payment may be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and its effectiveness shall terminate (A) when the Secretary finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the provisions of section 1861(j), or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of section 1861(j) or section 1903(c) (as the case may be), or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.".

(B) Such section is further amended by inserting before the semicolon at the end of subsection (a)(33)(B) the following: ", except that the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation".

(2) Section 1910 of such Act is amended by adding at the end thereof the following new subsection:

"(c)(1) The Secretary may cancel approval of any skilled nursing or intermediate care facility at any time if he finds on the basis of a determination made by him as provided in section 1902(a)(33)(B) that a facility fails to meet the requirements contained in section 1902(a)(28) or section 1905(c), or if he finds grounds for termination of his agreement with the facility pursuant to section 1866(b). In that event the Secretary shall notify the State agency and the skilled nursing facility or intermediate care facility that approval of eligibility of the facility to participate in the programs established by this title and title XVIII shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

"(2) Any skilled nursing facility or intermediate care facility which is dissatisfied with a determination by the Secretary that it no longer qualifies as a skilled nursing facility or intermediate care facility for purposes of this title, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until

a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.".

LIFE SAFETY CODE REQUIREMENTS

SEC. 855. Section 1861(j)(13) of the Social Security Act is amended by striking out all that follows "(13)" and precedes the first semicolon and inserting in lieu thereof "meets such provisions of such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes".

CRIMINAL STANDARDS FOR CERTAIN MEDICARE- AND MEDICAID-RELATED CRIMES

SEC. 856. Paragraphs (1) and (2) of section 1877(b) of the Social Security Act and of section 1909(b) of such Act are each amended by inserting "knowingly and willfully" after "Whoever".

EXCLUSION OF HEALTH CARE PROFESSIONALS CONVICTED OF MEDICARE- OR MEDICAID-RELATED CRIMES

SEC. 857. (a) Part A of title XI of the Social Security Act is amended by inserting after section 1127 the following new section:

"EXCLUSION OF CERTAIN INDIVIDUALS CONVICTED OF MEDICARE- OR MEDICAID-RELATED CRIMES

"SEC. 1128. (a) Whenever the Secretary determines that a physician or other individual has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to such individual's participation in the delivery of medical care or services under title XVIII or title XIX, the Secretary—

"(1) shall bar from participation in the program under title XVIII, for such period as he may deem appropriate, each such individual otherwise eligible to participate in such program;

"(2)(A) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under title XIX, of the fact and circumstances of such determination, and (except as provided in subparagraph (B)) require each such agency to bar such individual from participation in such program for such period as he shall specify, which in the case of an individual specified in paragraph (1) shall be the period established pursuant to paragraph (1);

"(B) may waive the requirement under subparagraph (A) to bar an individual from participation in a State plan program under title XIX, where he receives and approves a request for such a waiver with respect to that individual from the State agency administering or supervising the administration of such plan; and

"(3) shall promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of such individual of the fact and circumstances of such determination, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to such request.

"(b) A determination made by the Secretary under this section shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, post-hospital extended care services, and home health services furnished under title XVIII, such determination shall be effective in the manner provided in paragraphs (3) and (4) of section 1866(b) with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

"(c) Any person who is the subject of an adverse determination made by the Secretary under subsection (a) shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).".

(b) Section 1862(e) of such Act is amended to read as follows:

"(e) No payment may be made under this title with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1128 from participation in the program under this title.".

(c) Section 1902(a)(39) of such Act is amended to read as follows:

"(39) provide that the State agency shall bar any specified individual from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1128, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual during such period;".

(d) Section 1902(g) of such Act is repealed.

REQUIREMENTS CONCERNING REPORTING OF FINANCIAL INTEREST

SEC. 858. (a) Section 1124(a)(3)(A)(ii) of the Social Security Act is amended to read as follows:

"(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity; or".

(b) Section 1902(a)(35) of such Act is amended to read as follows:

"(35) provide that any disclosing entity (as defined in section 1124(a)(2)) receiving payments under such plan complies with the requirements of section 1124;".

WITHHOLDING OF FEDERAL SHARE OF PAYMENTS TO MEDICAID PROVIDERS TO RECOVER MEDICARE OVERPAYMENTS

SEC. 859. (a) Subparagraphs (D) and (E) of section 1902(a)(13) of the Social Security Act are each amended by inserting "(except where the State agency is subject to an order under section 1913)" after "payment".

(b) Section 1903(a)(1) of such Act is amended by striking out "subject to subsections (g) and (h)" and inserting in lieu thereof "subject to subsections (g), (h), and (j)".

(c)(1) Section 1903(i) of such Act is amended to read as follows:

"(j) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State for any quarter shall be adjusted in accordance with section 1913.".

(2) Section 1903(n) of such Act is amended by striking out "or is subject to a suspension of payment order issued under subsection (j)".

(d) Title XIX of such Act is amended by adding at the end the following new section:

"WITHHOLDING OF FEDERAL SHARE OF PAYMENTS FOR CERTAIN MEDICARE PROVIDERS

"SEC. 1913. (a) The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

"(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1866; and (B)(i) from which the Secretary has been unable to recover overpayments made under title XVIII, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under title XVIII; and

"(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1842(b)(3)(B)(ii), and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under title XVIII, or submitted claims for payment under title XVIII which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under title XVIII.

"(b) The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this title for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a), or the total overpayments to such institution or person under title XVIII, and may require the State to reduce its payment to such institution or person by such amount.

"(c) The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

"(d) The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under title XVIII, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under title XVIII and to which the institution or person would otherwise be entitled under this title.

"(e) The Secretary shall restore to the trust funds established under sections 1817 and 1841, as appropriate, amounts recovered under this section as setoffs against overpayments under title XVIII.

"(f) Notwithstanding any other provision of this title, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this title which is withheld by the State agency pursuant to an order by the Secretary under subsection (b).".

HOSPITAL PROVIDERS OF LONG-TERM CARE SERVICES ("SWINGBEDS")

SEC. 860. (a)(1) Title XVIII of the Social Security Act is amended by adding after section 1882 the following new section:

"HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES

"SEC. 1883. (a)(1) Any hospital (other than a hospital which has in effect a waiver of the requirement imposed by section 1861(e)(5)) which has an agreement under section 1866 may (subject to subsection (b)) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute post-hospital extended care services.

"(2)(A) Notwithstanding any other provision of this title, payment to any hospital for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

"(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

"(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of (I) the number of patient days during the year for which the services were furnished, and (II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the previous calendar year under title XIX to skilled nursing facilities located in the State in which the hospital is located and which have agreements entered into under section 1902(a)(28).

"(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

"(b) The Secretary may not enter into an agreement under this section with any hospital unless the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act) for the State in which the hospital is located.

"(c) An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1866 (unless the hospital fails to satisfy the requirements specified in subsection (b)) and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1866; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1866, or where there is in effect for the hospital a waiver of the requirement imposed by section 1861(e)(5). A hospital whose agreement under this section has been terminated shall not be eligible to undertake a new agreement until a two-year period has elapsed from the termination date.

"(d) Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1866; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this title (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1866.

"(e) During a period for which a hospital has in effect an agreeemnt under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement received for routine services from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine title XVIII reimbursement for routine hospital services.

"(f) A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1861(j)(15). Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

"(g) The Secretary shall prescribe by regulation an alternative method for determining the amount of the reasonable cost of post-hospital extended care services furnished in a distinct part of a hospital certified as a skilled nursing facility under section 1861(j) that is the same method as the method prescribed in subsections (a) and (e) for determining the amount of the reasonable cost for such services furnished by a hospital that uses beds interchangeably for either acute or long-term care and shall approve the use of this method when a hospital can demonstrate that its use would contribute significantly to the more efficient or effective administration of this part and would be in the interest of program beneficiaries.".

(2) Section 1861(v)(1) of such Act is amended by adding after subparagraph (F) the following new subparagraph:

"(G) Where a hospital furnishes inpatient services that would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility on the basis of a determination made by a Professional Standards Review Organization (or, in the absence of such a qualified organization, by such organization or agency with review responsibility as is otherwise provided for under this title) that (i) post-hospital extended care services are medically necessary; and (ii) such services are not otherwise available (as determined in accordance with criteria established by the Secretary) at the time the determination is made that post-hospital extended care services rather than inpatient hospital services are medically necessary (and for such period as the circumstances described in clauses (i) and (ii) continue to apply); and where the Secretary finds that such hospital (I) has had, during the immediately preceding calendar year, an average daily occupancy rate of less than 80 percent, and (II) could be granted a certificate of need for the provision of long-term care services from the designated State health planning and development agency for the State in which the hospital is located, the reasonable cost of such services for such hospital shall be computed as provided for in section 1883(a). Where payment is made in accordance with the preceding sentence, the individual who is furnished such services will be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1866.".

(3) Within three years after the date of the enactment of this Act, the Secretary shall submit to the Congress a report evaluating the program established by the amendment made by paragraph (1) of this subsection and shall include in such report an analysis of—

(A) the extent and effect of the agreements under the program on availability and effective and economical provision of long-term care services, and

(B) whether the program should be continued.

(b) Title XIX of such Act is amended by adding after section 1913 (added by section 859(d) of this Act) the following new section:

"HOSPITAL PROVIDERS OF SKILLED NURSING AND INTERMEDIATE CARE SERVICES

"SEC. 1914. (a) Notwithstanding any other provision of this title, payment may be made, in accordance with this section, under a State plan approved under this title for skilled nursing facility services and intermediate care facility services furnished by a hospital which has in effect an agreement under section 1894.

"(b)(1) Payment to any such hospital, for any skilled nursing or intermediate care facility services furnished, shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under this title to skilled nursing and intermediate care facilities located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

"(2) With respect to any period for which a hospital has an agreement under section 1883, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services received from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine title XIX reimbursement for routine hospital services.

"(c) The State plan may provide an alternative method for determining the amount of payment for long-term care services furnished in a distinct part of a hospital (where the conditions described in section 1883(g) are met) that is the same as the method prescribed in subsection (b) of this section for determining the amount of payment for such services furnished by a hospital that uses beds interchangeably for either acute or long-term care.".

(c) The amendments made by this section become effective on the date on which final regulations, promulgated by the Secretary to implement the amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth calendar month following the month in which this Act is enacted.

COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

SEC. 861. (a) Title XI of the Social Security Act is amended by inserting after section 1128 (added by section 857(a) of this Act) the following new section:

"COORDINATED AUDITS

"SEC. 1129. (a) If an entity provides services reimbursable on a cost-related basis under title V or XIX, as well as services reimbursable on a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title V or XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that

these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordinated audits between the program established under title V or XIX and the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title V or XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be in excess of the amount that would have been apportioned to the State under the title (for the expenses of the State incurred in the common audit) if it had participated in the common audit.

"(b)(1) In the case of entities which have audits coordinated under subsection (a), the Secretary shall establish one or more projects to demonstrate the feasibility of creating a single coordinated appeal hearing to adjudicate those administrative cost items which are determined under such a coordinated audit and which such entities dispute and appeal.

"(2) In the case of a demonstration project under this subsection, the Secretary may waive such requirements of title V, XVIII, or XIX as would prevent carrying out the project or would require duplicative activity or otherwise create unnecessary administrative burdens in carrying out the project.

"(3) The Secretary shall report to Congress not later than April 1, 1982, on demonstration projects conducted under this subsection, including the reaction of the entities involved and estimates of any savings effected through reduction of duplication of appeal hearings, and shall include in such report recommendations for such legislation as the Secretary deems appropriate to insure the maxin um feasible coordination of such appeal hearings.

"(4) The Secretary shall also provide for the review of the feasibility of establishing a single coordinated process for the collection of overpayments established in a coordinated audit under subsection (a). The Secretary shall report to Congress not later than April 1, 1981, on such review and on such recommendations for changes in legislation as the Secretary deems appropriate.".

(b)(1) Section 1902(a) of such Act is amended—

(A) by striking out "and" at the end of paragraph (40);

(B) by striking out the period at the end of paragraph (41) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (41) the following new paragraph:

"(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for entities also providing services under title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1129(a).".

(2)(A) The amendments made by paragraph (1) shall (except as provided under subparagraph (B)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act, on and after the first day of the first calendar quarter beginning more than 30 days after the date of enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

(c)(1) Section 505(a) of such Act is amended—

(A) by striking out "and" at the end of paragraph (14);

(B) by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (15) the following new paragraph:

(16) provides (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for entities also providing services under title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1129(a).".

(2) The amendments made by paragraph (1) shall apply to services provided, under a State plan approved under title V of the Social Security Act, on and after the first day of the first calendar quarter beginning more than 30 days after the date of enactment of this Act.

(d) The Secretary shall report to the Congress, not later than July 1, 1981, on actions the Secretary has taken (1) to coordinate the conduct of institutional audits and inspections which are required under the programs funded under title V, XVIII, or XIX of the Social Security Act, and (2) to coordinate such audits and inspections with those conducted by other cost payers, and he shall include in such report recommendations for such legislation as he deems appropriate to assure the maximum feasible coordination of such institutional audits and inspections.

DEMONSTRATION PROJECTS RELATING TO THE TRAINING OF AID TO FAMILIES WITH DEPENDENT CHILDREN RECIPIENTS AS HOME HEALTH AIDES

SEC. 862. (a) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") may enter into agreements with States, selected at his discretion, for the purpose of conducting demonstration projects for the training and employment of eligible participants as homemakers or home health aides, who shall provide authorized services to elderly or disabled individuals, or other individuals in need of such services, to whom such services, are not otherwise reasonably and actually available or provided, and who would, without the availability of such services, be reasonably anticipated to require institutional care.

(b) For purposes of this section the term "eligible participant" means an individual who has voluntarily applied for participation and who, at the time such individual enters the project established under this section, has been certified by the appropriate agency of State or local government as being eligible for financial assistance under a State plan approved under part A of title IV of the Social Security Act and as having continuously received such financial assistance during the ninety-day period which immediately precedes the date on which such individual enters such project and who, within such ninety-day period, had not been employed as a homemaker or home health aide.

(c)(1) The Secretary shall enter into agreements under this section with no more than twelve States. Priority shall be given to States which have demonstrated interest in providing services of the type authorized under this section.

(2) A State may apply to enter into an agreement under this section in such manner and at such time as the Secretary may prescribe.

(3) Any State entering into an agreement with the Secretary under this section must—

(A) provide that the demonstration project shall be administered by a State health services agency designated for this purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act);

(B) provide that the agency designated pursuant to subparagraph (A) shall, to the maximum extent feasible, arrange for coordinating its activities under the agreement with activities of other State agencies having related responsibilities;

(C) establish a formal training program, which meets such standards as the Secretary may establish to assure the adequacy of such program, to prepare eligible participants to provide part-time and intermittent homemaker services or home health aide services to individuals who are elderly, disabled, or otherwise in need of such services;

(D) provide for the full-time employment of those eligible participants who successfully complete the training program with one or more public agencies (or, by contract, with private bona fide nonprofit agencies) as homemakers or home health aides, rendering authorized services, under the supervision of persons determined by the State to be qualified to supervise the performance of such services, to individuals described in subsection (a) at wage levels comparable to the prevailing wage levels in the area for similar work;

(E) provide that such services provided under subparagraph (D) shall be made available without regard to income of the individual requiring such services, but that a reasonable fee will be charged (on a sliding scale basis) for such services provided to individuals who have income in excess of 200 percent of the needs standard in such State under the State plan approved under part A of title IV of the Social Security Act for a household of the same size as such individual's household;

(F) provide for a system of continuing independent professional review by an appropriate panel, which is not affiliated with the entity providing the services involved, to assure that services are provided only to individuals reasonably determined to be in need of such supportive services;

(G) provide for evaluation of the project and review of all agencies providing services under the project;

(H) submit periodic reports to the Secretary as he may require; and

(I) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(4) The number of participants in any project shall not exceed that number which the Secretary determines to be reasonable, based upon the capability of the agencies involved to train, employ, and properly utilize eligible participants. Such number may be appropriately modified, subsequently, with the approval of the Secretary.

(5) Any contract with a private bona fide nonprofit agency entered into pursuant to paragraph (3)(D) shall provide for reasonable reimbursement of such agencies for services on a basis proportionate to the amount of time allocated to individuals eligible to receive such services under this section (and, in case such agency is an institution, the amount of the reimbursement shall

not exceed the amount of reimbursement which would have been payable if the services involved had been provided by a free-standing agency).

(6) For purposes of this section, a facility of the Veterans' Administration shall, at the request of the Administrator of Veterans' Affairs, be considered to be a public agency. In the case of any such facility which is so considered to be a public agency, of the costs determined under this section which are attributable to such facility, 90 percent shall be paid by the State and 10 percent by the Veterans' Administration.

(d)(1) For purposes of this section, authorized homemaker and home health aide services include part-time or intermittent—

(A) personal care, such as bathing, grooming, and toilet care;

(B) assisting patients having limited mobility;

(C) feeding and diet assistance;

(D) home management, housekeeping, and shopping;

(E) health-oriented recordkeeping;

(F) family planning services; and

(G) simple procedures for identifying potential health problems.

(2) Such authorized services do not include any services performed in an institution, or any services provided under circumstances where institutionalization would be substantially more efficient as a means of providing such services.

(e)(1) Agreements shall be entered into under this section between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as an additional payment under section 1903 of such Act for each quarter, an amount equal to 90 percent of the reasonable costs incurred (less the Federal share of any related fees collected) by such State during such quarter in carrying out a demonstration project under this section, including reasonable wages and other employment costs of eligible participants employed full time under such project (and, for purposes of determining the amount of such additional payment, the 10 percent referred to in subsection (c)(6), paid by the Veterans' Administration, shall be deemed to be a cost incurred by the State in carrying out such a project).

(2) Demonstration projects under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for planning and development, and up to six months for final evaluation and reporting. Federal funding under this subsection shall not be available for the employment of any eligible participant under the project after such participant has been employed for a period of three years.

(f) For purposes of title IV of the Social Security Act, any eligible participant taking part in a training program under a project authorized under this section shall be deemed to be participating in a work incentive program established by part C of such title.

(g) For the first year (and such additional immediately succeeding period as the State may specify) during which an eligible participant is employed under the project established under this section, such participant shall, notwithstanding any other provision of law, retain any eligibility for medical assistance under a State plan approved under title XIX of the Social Security Act, and any eligibility for social and supportive services provided under the State plan approved under part A of title IV of such Act, which such participant had at the time such participant entered the training program established under this section.

(h) The Secretary shall submit annual reports to the Congress evaluating the demonstration projects carried out under this section, and shall submit a final report to the Congress not more than six months after he has received the final reports from all States participating in such projects.

(i) The Secretary shall, and is hereby authorized to, waive such requirements, including formal solicitation and approval requirements, as will further expeditious and effective implementation of this section.

(j) The Secretary's authority to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

QUALITY ASSURANCE PROGRAMS FOR CLINICAL LABORATORIES

SEC. 863. Section 1123(a) of the Social Security Act is amended by striking out "1977" and inserting in lieu thereof "1980".

REIMBURSEMENT OF CLINICAL LABORATORIES UNDER MEDICARE AND MEDICAID

SEC. 864. (a)(1) Section 1842 of the Social Security Act is amended by inserting at the end the following new subsection:

"(h) If a physician's bill or request for payment for a physician's services includes a charge to a patient for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

"(1) If the bill or request for payment indicates that the physician who submitted the bill or for whose services the request for payment was made personally performed or supervised the performance of the test or that another physician with whom the physician shares his practice personally performed or supervised the test, the payment shall be the reasonable charge for the test (less the applicable deductible and coinsurance amounts).

"(2) If the bill or request for payment indicates that the test was performed by a laboratory, identifies the laboratory, and indicates the amount the laboratory charged the physician who submitted the bill or for whose services the request for payment was made, payment for the test shall be the lower of—

"(A) the laboratory's reasonable charge to individuals enrolled under this part for the test, or

"(B) the amount the laboratory charged the physician for the test,

plus a nominal fee (where the physician bills for such a service) to cover the physician's costs in collecting and handling the sample on which the test was performed (less the applicable deductible and coinsurance amounts).

"(3) If the bill or request for payment (A) does not indicate who performed the test, or (B) indicates that the test was performed by a laboratory but does not identify the laboratory or include the amount charged by the laboratory, payment shall be the lowest charged at which the carrier estimates the test could have been secured by a physician from a laboratory serving the locality (less the applicable deductible and coinsurance amounts).".

(2) The amendment made by paragraph (1) shall apply to bills submitted and requests for payment made on or after such date (not later than October 1, 1980) as the Secretary of Health and Human Services prescribes by a notice published in the Federal Register.

(3) Not later than 24 months after the effective date specified in paragraph (2), the Secretary of Health and Human Services shall report to the Congress—

(A) the proportion of bills and requests for payment submitted (during the 18-month period beginning on such effective date) under title XVIII of the Social Security Act for laboratory tests which did not identify who performed the tests,

(B) the proportion of bills and requests for payment submitted during such period for laboratory tests with respect to which the amount paid under such title was less than the amount that would otherwise have been payable in the absence of section 1842(h) of such Act,

(C) with respect to requests for payment described in subparagraph (B) which were submitted by patients, the average additional cost per laboratory test to patients resulting from reductions in payment that would otherwise have been made for such tests in the absence of such section 1842(h), and

(D) with respect to bills described in subparagraph (B) which were submitted by physicians, the average reduction in payment per laboratory test to physicians resulting from the application of such section 1842(h).

(b)(1) Section 1902(a) of the Social Security Act (as amended by section 861(b) of this Act) is further amended—

(A) by striking out "and" at the end of paragraph (41);

(B) by striking out the period at the end of paragraph (42) and inserting in lieu thereof "; and"; and

(C) by adding after paragraph (42) the following new paragraph:

"(43) if the State plan makes provision for payment to a physician for laboratory services the performance of which such physician (or any other physician with whom he shares his practice) did not personally perform or supervise, include provision to insure that payment under the State plan for such laboratory services not exceed the payment authorized for such services by section 1842(h).".

(2)(A) The amendments made by paragraph (1) shall (except as otherwise provided in subparagraph (B)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act, on and after the first day of the first calendar quarter that begins more than six months after the date of enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

(c)(1)(A) Section 1902(a)(23) of such Act is amended by inserting "(A)" before "has entered into" and by inserting before the semicolon at the end the following: ", or (B) during the three-year period beginning on the later of October 1, 1980, or the date of the enactment of this clause, has made arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1905(a)(3), if the Secretary has found that (i) adequate services will be available under such arrangements, (ii) such laboratory services will be provided only through laboratories (I) which meet the requirements of the section 1861(e)(9) or paragraphs (10) and (11) of section 1861(s), and such additional requirements as the Secretary may require, (II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this title or under part A or part B of title XVIII, and (iii) charges for services provided under such arrangements are made at the lowest rate charged (determined without regard to administrative costs which are related solely to the method of reimbursement for such services) for comparable services by the provider of such services, or, if charged for on a unit price basis, such charges result in aggregate expenditures not in excess of expenditures that

would be made if charges were at the lowest rate charged for comparable services by the provider of such services".

(B) The Secretary of Health and Human Services shall evaluate arrangements made for the purchase of laboratory services under section 1902(a)(23)(B) of the Social Security Act and shall transmit that evaluation to the Congress, together with recommendations as to whether such section 1902(a)(23)(B) should be extended or modified, no later than 24 months after the date of enactment of this Act.

(2) Section 1902(a)(9) of such Act as amended—

(A) by striking out "and" at the end of subparagraph (A),

(B) by striking out the semicolon at the end of subparagraph (B) and inserting in lieu thereof ", and", and

(C) by adding after subparagraph (B) the following new subparagraph:

"(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the requirements of section 1861(e)(9) or paragraphs (10) and (11) of section 1861(s);".

REIMBURSEMENT OF PHYSICIANS' SERVICES IN TEACHING HOSPITALS

SEC. 865. (a)(1) Paragraph (7) of section 1831(b) of the Social Security Act is amended to read as follows:

"(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title.".

(2) Section 1832(a)(2)(B)(i)(II) of such Act is amended by striking out ", unless either clause (A) or (B) of paragraph (7) of such section is met" and inserting in lieu thereof "where the conditions specified in paragraph (7) of such section are met".

(b) The amendments made by this section shall apply with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election under section 1861(b)(7)(A) of the Social Security Act (as administered in accordance with section 15 of Public Law 93-233) as of September 30, 1978, shall constitute such hospital's election under such section (as amended by this Act) on and after October 1, 1978, until otherwise provided by the hospital.

DEMONSTRATION PROJECTS FOR REQUIRING SECOND OPINIONS FOR CERTAIN ELECTIVE SURGICAL PROCEDURES UNDER MEDICARE AND MEDICAID; APPLICATION OF INFORMED CONSENT TO CERTAIN DEMONSTRATION PROJECTS

SEC. 866. (a)(1) Part A of title XI of the Social Security Act is amended by inserting after section 1129 (added by section 861(a) of this Act) the following new section:

"DEMONSTRATION PROJECTS FOR REQUIRING SECOND OPINIONS FOR CERTAIN ELECTIVE SURGICAL PROCEDURES UNDER MEDICARE AND MEDICAID

"SEC. 1130. (a)(1) The Secretary is authorized to make grants to, and enter into contracts with, public and private nonprofit entities, including professional standards review organizations designated (conditionally or otherwise) under part B of this title and medical societies, for the conduct of demonstration projects for the purpose of determining the cost-effectiveness and appropriateness of requiring that a second opinion with respect to specified elective surgical procedures (defined in subsection (f)(1)) be provided before payment may be made under title XVIII or under a State plan approved under title XIX with respect to the performance of the procedure

"(2) To the extent feasible, the Secretary shall provide under this section for—

"(A) demonstration projects applicable to all specified elective surgical procedures proposed to be furnished to individuals eligible to hospital insurance benefits under part A, and enrolled under the supplementary medical insurance program under part B, of title XVIII of this Act, and

"(B) demonstration projects applicable to all specified elective surgical procedures proposed to be furnished to individuals eligible for medical assistance under State plans approved under title XIX of this Act.

"(3) The Secretary shall provide, to the extent feasible—

"(A) for at least seven demonstration projects under this section,

"(B) that the number of such projects conducted be equally divided between projects described in paragraph (2)(A) and projects described in paragraph (2)(B), and

"(C) for the conduct of such projects in a variety of geographic settings and covering a variety of sizes of populations, in order to determine the relative effectiveness of requiring second opinions in different areas of the country and under programs of different sizes.

"(b)(1) No grant may be made or contract entered into under this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary may provide.

"(2) The amount of any grant or contract under this section shall be determined by the Secretary.

"(3) Grants and payments under contracts made for demonstration projects and related administrative expenses (including expenses for analysis of data) described—

"(A) in subsection (a)(2)(A) shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841), and

"(B) in subsection (a)(2)(B) shall be made from funds appropriated under title XIX of this Act.

Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

"(4) In addition to any other authority provided under part B of this title, professional standards review organizations designated (conditionally or otherwise) under such part are authorized to receive grants and enter into contracts for demonstration projects under this section.

"(5) For administrative expenses (including analysis of data) associated with demonstration projects under this section, there is authorized to be appropriated for fiscal year 1981 an amount, not to exceed $7,000,000, to remain available until expended.

"(c) No grant or contract shall be made with respect to a demonstration project under this section unless the project meets the following requirements:

"(1) The project must potentially apply to a sufficiently large population of individuals eligible for benefits under part A of title XVIII (in the case of a project described in subsection (a)(2)(A)) or under the State plan (in the case of a project described in subsection (a)(2)(B)) for specified elective surgical procedures recommended during a two-year period, so as to provide for statistically valid data to properly evaluate the project.

"(2)(A) The project must provide (through the entity or the Secretary) for notice to the applicable population, and, to the extent feasible, to physicians and hospitals which may provide specified elective surgical procedures for such population, of the existence of the demonstration project and the requirement of subsection (d) for a second opinion as a condition of payment for such procedures, and must include in such notice made to the applicable population a general description of the procedure and techniques available for the treatment of the condition for treatment of which a specified elective surgical procedure has been recommended.

"(B) The project must provide for making available to individuals covered under the project lists of qualified physicians who have indicated that they will provide, in accordance with the provisions of the project, written opinions with respect to the necessity and appropriateness of particular specified elective surgical procedures.

"(3) To the extent practicable and consistent with the protection of patient privacy, the project must be so designed as—

"(A) to prevent the qualified physician providing the second or third opinion from knowing the identity of the physician who provided a previous opinion with respect to that procedure, and

"(B) to avoid duplication of laboratory and other tests required in order to render such an opinion.

"(4) The project must provide that for the transmittal to the Secretary—

"(A) of interim data on the project's performance not later than eighteen months after the date the project is initiated, and

"(B) of final data on its performance not later than six months after the end of the two-year period described in paragraph (1).

"(d)(1) Notwithstanding any other provision of law (except as provided in paragraph (2)), if a specified elective surgical procedure to be furnished to an individual is covered under a demonstration project under this section applicable to title XVIII or to a State plan approved under title XIX, no payment may be made under such title or plan, respectively, with respect to the procedure unless the individual has been furnished, before the procedure is undertaken, at least—

"(A) one written opinion by a physician described in subsection (f)(2)(A), and

"(B) one written opinion by a qualified physician (as defined in subsection (f)(2)), based on all factors deemed relevant to the determination, respecting the necessity and appropriateness of the procedure.

"(2) Paragraph (1) shall not apply—

"(A)(i) in the case of a demonstration project described in subsection (a)(2)(A), to procedures furnished by or through a health maintenance organization under a risk sharing contract entered into with the Secretary pursuant to section 1876(i)(2)(A), or

"(ii) in the case of a demonstration project described in subsection (a)(2)(B), to procedures furnished by or through a health maintenance organization which provides to the enrollees, on a prepaid capitation risk basis or on any other risk basis, such procedures; and

"(B) in the case in which the patient is unable, because of severe physical or cognitive limitations, to understand the requirement of such paragraph or in such other cases as the Secretary determines that equity requires that such paragraph not apply.

"(e) The Secretary shall analyze the data on demonstration projects transmitted to him under this section and shall submit to the Congress—

"(1) not later than two years after the date of the enactment of this section, an interim report on the demonstration projects assisted under this section, and

"(2) not later than four years after the date of the enactment of this section, a final

report on the demonstration projects assisted under this section.

Such final report shall include such recommendations for changes in legislation with respect to imposing the requirement described in subsection (d) with respect to some or all of the specified elective surgical procedures as the Secretary determines to be appropriate.

"(f) For purposes of this section:

"(1) The term 'specified elective surgical procedure' means—

"(A) in the case of a demonstration project applicable to the medicare program—

"(i) cholycystectomy,

"(ii) menisectomy,

"(iii) prostatectomy,

"(iv) cataract surgery,

"(v) hemorrhoidectomy, and

"(vi) excision of varicose veins; and

"(B) in the case of a demonstration project applicable to State plans approved under title X X of this Act—

"(i) hysterectomy,

"(ii) menisectomy,

"(iii) submucous resection,

"(iv) hemorrhoidectomy,

"(v) excision of varicose veins, and

"(vi) tonsillectomy and adenoidectomy,

if such procedures are medically necessary to treat other than an emergency medical condition. In addition, such term includes such other elective surgical procedures as the Secretary, in his discretion, determines to be appropriate.

"(2) The term 'qualified physician' means, with respect to an opinion on a specified elective surgical procedure for treatment of a medical condition of a particular patient, a physician who—

"(A) is a board-eligible or certified specialist with respect to the procedure or with respect to treatment of the medical condition or who possesses such other qualifications with respect to such procedure or treatment as the Secretary may specify;

"(B) agrees not to perform the surgical procedure for which the opinion is sought (except under emergency conditions); and

"(C) is not affiliated with a physician who provided a previous opinion with respect to such treatment of such patient.".

(2) The Secretary of Health and Human Services is not authorized to make grants or enter into contracts under section 1130 of the Social Security Act until October 1, 1980, and any projects under such grants or contracts shall not be construed to be subject to any of the requirements of part 46 of title 45, Code of Federal Regulations (applicable to research, development, and related activities in which human subjects are involved).

(b)(1) Section 1861(q) of such Act is amended by inserting (including consultation as to the necessity and appropriateness of elective surgical procedures)" after "consultation".

(2)(A) Section 1833(a)(1) of such Act (as amended by section 833(b)(1) of this Act) is further amended—

(i) by striking out "and" before clause (G), and

(ii) by adding at the end thereof the following: "and (H) with respect to a second or third opinion as to necessity and appropriateness of specified elective surgical procedures in the case of a demonstration project described in section 1130(f)(1)(A), the amounts paid shall be equal to 100 percent of the reasonable charge for such opinion".

(B) The first sentence of section 1833(b) of such Act (as amended by section 802(h) of this Act) is further amended by striking out "and" before clause (3) and by inserting before the period the following new clause: ", and (4) such total amount shall not include expenses incurred for a second or third opinion described in subsection (a)(1)(H) for an elective surgical procedure".

(3)(A) Section 1842(b)(3)(B) of such Act is amended by inserting "in paragraph (6) of this subsection or" after "(except as otherwise provided)".

(B) Section 1842(b) of such Act is further amended by adding after paragraph (5) the following new paragraph:

"(6) No such contract shall provide for payment for a second or third opinion described in section 1833(a)(1)(H) on a basis other than that described in clause (ii) of paragraph (3)(B).".

(4) The amendments made by this subsection shall take effect with respect to opinions provided on or after the first day of the first month beginning after the date of the enactment of this Act.

(c)(1) Section 1903(a) of such Act is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) an amount equal to 90 per centum of the sums expended during such quarter which are attributable to the performance of a second or third opinion as to necessity and appropriateness of specified elective surgical procedures in the case of a demonstration project described in section 1130(f)(1)(B); plus".

(2) Sections 506(f)(1) and 1903(i)(1) of such Act are each amended by striking out "and fifth" and inserting in lieu thereof ", fifth, and ninth".

(3) The amendments made by this subsection shall apply to calendar quarters beginning on or after October 1, 1980.

(d) Notwithstanding subsection (a)(2) of this section and section 1130(d)(1) of the Social Security Act, a demonstration project under section 1130 of the Social Security Act shall not apply to an individual unless the individual has provided a written and legally effective informed consent, described in section 46.103(c) of title 45, Code of Federal Regulations, to participate in the project.

CONTINUED USE OF DEMONSTRATION PROJECT REIMBURSEMENT SYSTEMS

SEC. 867. (a) Section 1814(b) of the Social Security Act (as amended by section 816(a) of this Act) is further amended—

(1) by inserting "(1)" after "(b)",

(2) by inserting "the lesser of" before "the reasonable cost",

(3) by inserting before the period the following: ", or the amount determined under paragraph (2)", and

(4) by adding at the end the following new paragraph:

"(2) If some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222(a) of the Social Security Amendments of 1972, if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to such hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then such hospitals shall continue to be reimbursed under such system until the Secretary determines that—

"(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

"(B) the rate of increase for the previous three-year period in such hospitals in cost per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.".

(b) Section 1902(a)(13)(D) of such Act is amended by inserting before the semicolon at the end of the following: ", except that in the case of hospitals reimbursed for services under part A of title XVIII in accordance with section 1814(b)(2), the plan must provide for payment of inpatient hospital services provided in such hospitals under the plan in accordance with the reimbursement system used under such section".

REIMBURSEMENT FOR HEALTH MAINTENANCE ORGANIZATIONS

SEC. 868. (a) Section 1876 of the Social Security Act is amended to read as follows:

"PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS

"SEC. 1876. (a)(1) The Secretary shall annually determine a per capita rate of payment—

"(A) for each class of individuals who are enrolled (in accordance with this section) with a health maintenance organization which has entered into a contract under this section and who are entitled to benefits under part A and enrolled under part B; and

"(B) for each class of individuals who are so enrolled with such an organization and who are enrolled under part B only.

Such rate for each class shall be equal to 95 percent of the adjusted average per capita cost for that class.

"(2) For purposes of this section, the term 'adjusted average per capita cost' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by a health maintenance organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B, or part B only, and types of expenses otherwise reimbursable under parts A and B, or part B only (including administrative costs incurred by organizations described in sections 1816 and 1842), if the services were to be furnished by other than a health maintenance organization or, in the case of services covered only under section 1861(s)(2)(H), if the services were to be furnished by a physician or as an incident to a physician's service.

"(3) In establishing classes of individuals for purposes of this subsection, the Secretary shall take into consideration such factors as age, sex, institutional status, disability status, and place of residence.

"(4) After determining under paragraph (1) the rate of payment to be utilized with respect to a health maintenance organization, the Secretary shall make monthly payments, in advance and in accordance with such rate, except as provided in subsection (i)(2), to such organization for each individual enrolled in accordance with this section with the organization. Such payments shall be in lieu of payments which (in the absence of the contract entered into under this section) would be payable otherwise pursuant to section 1814(b) or 1833(a) for services furnished by or through the organization to individuals enrolled with the organization and entitled to benefits under part A and enrolled under part B or enrolled under part B only.

"(5) The payment to a health maintenance organization under this subsection for individuals enrolled in accordance with this section with the organization and entitled to benefits under part A and enrolled under part B shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust

Fund. The portion of that payment to the organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

"(A) the product of (i) the number of such individuals for the month who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1839(c)(1); and

"(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1839(c)(4).

The remainder of that payment shall be paid by the former trust fund.

"(b)(1) For purposes of this section, the term 'health maintenance organization' means a public or private organization, organized under the laws of any State, which is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) or which—

"(A) provides or otherwise makes available to enrolled participants health care services, including at least the following health care services: physicians' services performed by physicians (as defined in section 1861(r)(1)), inpatient hospital services, laboratory, X-ray, emergency, and preventive services, and out of area coverage;

"(B) is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided;

"(C) provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis);

"(D) assumes full financial risk on a prospective basis for the provision of the health care services listed in subparagraph (A), except that a health maintenance organization may obtain insurance or make other arrangements—

"(i) for the cost of providing to any enrolled participant health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

"(ii) for the cost of health care services listed in subparagraph (A) provided to its enrolled participants other than through the organization because medical necessity required their provision before they could be secured through the organization, and

"(iii) for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year; and

"(E) has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

"(2) The Secretary may not enter into a contract with a health maintenance organization under this section, unless, with respect to individuals enrolled with the organization under this section, the following requirements are met:

"(A) BENEFIT PACKAGE.—The organization must provide to such individuals who are—

"(i) entitled to benefits under part A and enrolled under part B, only those services covered under parts A and B of this title, or

"(ii) only enrolled under part B, only those services covered under such part,

except that, in addition, the organization may provide such individuals with such additional health care services either as the Secretary may approve or as such individuals may elect, at their option, to have covered. The Secretary shall approve any such additional health care services which the organization proposes to offer to such individuals, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

"(B) LIMITS ON DEDUCTIBLES, COINSURANCE, AND COPAYMENTS.—The amount of any deductibles, coinsurance, and copayments required by such individuals will not exceed the limits applicable under subsection (g) of this section.

"(C) PROVIDERS.—The organization must provide the services described in subparagraph (A) to such individuals through institutions, entities, and persons meeting the applicable requirements of section 1861.

"(D) OPEN ENROLLMENT.—The organization must have an open enrollment period, for the enrollment of such individuals, of reasonable duration at least every year during which it accepts up to the limits of its capacity and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (h) or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

"(E) EXPULSION OF MEMBERS.—The organization must (i) provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and (ii) notify each such individual of such fact at the time of the individual's enrollment.

"(F) AVAILABILITY OF SERVICES.—The organization must—

"(i) make the services described in subparagraph (A) (and such other health care services as such individuals have contracted for) (I) available and accessible to each such individual, within the area served by the organization, promptly as appropriate and in a manner which assures continuity, and (II) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

"(ii) provide for reimbursement with respect to services which are described in clause (i) and which are provided to such an individual other than through the organization, if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.

"(G) GRIEVANCE PROCEDURES.—The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and such individuals.

"(H) QUALITY ASSURANCE.—The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (i) stresses health outcomes and (ii) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

"(c) If an individual is enrolled in accordance with this section with a health maintenance organization, only the health maintenance organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual.

"(d) Subject to the provisions of subsection (e), every individual entitled to benefits under part A and enrolled under part B or enrolled under part B only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any health maintenance organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

"(e)(1) An individual may enroll under this section with a health maintenance organization as may be prescribed in regulations and may terminate his enrollment with the health maintenance organization as of the beginning of the first calendar month following a full calendar month after the request is made for such termination.

"(2) The Secretary may prescribe the procedures and conditions under which a health maintenance organization that has entered into a contract with the Secretary under this subsection may inform individuals eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization.

"(f) Any individual enrolled with a health maintenance organization under this section who is dissatisfied by reason of his failure to receive any health care service to which he believes he is entitled and at no greater charge than he believes he is required to pay shall, if the amount in controversy is $100 or more, be entitled to a hearing before the Secretary to the same extent as is provided in section 205(b), and in any such hearing the Secretary shall make the health maintenance organization a party. If the amount in controversy is $1,000 or more, the individual or health maintenance organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 205(g), and both the individual and the health maintenance organization shall be entitled to be parties to that judicial review.

"(g)(1) In no case may—

"(A) the portion of a health maintenance organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B) to individuals who are enrolled in accordance with this section with the organization and who are entitled to benefits under part A and enrolled under part B, or

"(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B) to individuals who are enrolled in accordance with this section with the organization and enrolled under part B only

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled in accordance with this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, other appropriate data) and entitled to benefits under part A and enrolled under part B, or enrolled under part B only, respectively, if they were not members of a health maintenance organization.

"(2) If the health maintenance organization provides to its enrollees under this section services in addition to services covered under parts A and B of this title, election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (b)(2)(A)) shall be optional for such enrollees and such organization shall furnish such enrollees with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

"(A) the portion of such organization's premium rate charged, with respect to such additional services, to individuals enrolled in accordance with this section, and

"(B) the actuaral value of its deductibles, coinsurance, and copayments charged, with respect to such services, to such individuals exceed the adjusted community rate for such services.

"(3) For purposes of this section, the term 'adjusted community rate' for a service means, at the election of a health maintenance organization, either—

"(A) the rate of payment for that service which the Secretary annually estimates would apply to an individual enrolled in accordance with this section with the health maintenance organization if the rate of payment were determined under a 'community rating system' (as defined in section 1302(8) of the Public Health Service Act, other than subparagraph (C), or

"(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to an individual enrolled in accordance with this section with the health maintenance organization, as the Secretary annually estimates is attributable to that service,

but adjusted for differences between the utilization characteristics of the individuals enrolled with the health maintenance organization under this section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of individuals in other health maintenance organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with a health maintenance organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

"(4) Notwithstanding any other provision of law, the health maintenance organization may (in the case of the provision of services to an individual enrolled in accordance with this section for an illness or injury for which the member is entitled to benefits under a workman's compensation law or under an automobile insurance policy) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

"(A) the insurance carrier, employer, or other entity which under such law or policy is to pay for the provision of such services, or

"(B) such member to the extent that such member has been paid under such law or policy for such services.

"(h)(1) Except as provided in paragraph (2), each health maintenance organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least half of which consists of individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.

"(2) The Secretary may modify or waive the requirement described in paragraph (1) in circumstances which, as determined by the Secretary, warrant special consideration (and may take into account, in determining whether to modify or waive that requirement, the reasonableness of the organization's premium rate and other charges for members entitled to benefits under this title or under a State plan approved under title XIX; except that the Secretary may make such a modification or waiver only on the condition that the health maintenance organization will not have, for the duration of such contract, an enrolled membership of which one-half or more are individuals entitled to benefits under part A or enrolled under part B.

"(i)(1) The Secretary may enter into a contract with any health maintenance organization, as defined in subsection (b)(1), for the purpose of carrying out this section.

"(2) Each contract shall provide that—

"(A) if the adjusted community rate, as defined in subsection (g)(3), for services covered under parts A and B (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for individuals enrolled in accordance with this section with the organization and entitled to benefits under part A and enrolled in part B, or

"(B) if such adjusted community rate for services under part B (as reduced for the actuarial value of the coinsurance and deductibles under that part) for individuals enrolled in accordance with this section with the organization and enrolled under part B only

is less than the average of the per capita rates of payment to be made under subsection (a)(1) at the beginning of an annual contract period for individuals enrolled in accordance with this section with the organization and entitled to benefits under part A and enrolled in part B, or enrolled in part B only, respectively, the health maintenance organization shall provide to each individual enrolled in accordance with this section with the organization and entitled to benefits under part A and enrolled in part B, or enrolled in part B, respectively, additional benefits which are selected by the health maintenance organization and which the Secretary finds are at least equal in value to the difference between the average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

"(3) Such additional benefits shall be (A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to individuals enrolled under this section, or (B) the provision of additional health benefits, or both.

"(4) The effective date of any contract executed pursuant to this subsection shall be specified in the contract.

"(5) Each contract under this section—

"(A) shall provide that the Secretary, or any person or organization designated by him—

"(i) shall have right to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under the contract, and

"(ii) shall have right to audit and inspect any books and records of the health maintenance organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, and (II) to services performed or determinations of amounts payable under the contract;

"(B) shall require the organization to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this title, to each individual enrolled under this section with the organization; and

"(C) shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary.

"(6) The Secretary may not enter into contract with a health maintenance organization under this section if a former contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

"(7) The authority vested in the Secretary by this subsection may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this title.".

(b) Section 1861(s)(2) of such Act (as amended by section 809 of this Act) is further amended—

(1) by striking out "and" at the end of subparagraph (F);

(2) by adding "and" after the semicolon in subparagraph (G); and

(3) by adding after subparagraph (G) the following new subparagraph:

"(H) services furnished pursuant to a contract under section 1876 to a member of a health maintenance organization by a physician assistant or by a nurse practitioner and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service;".

(c)(1) Section 1861(aa) of such Act is amended—

(A) by striking out ", for purposes of paragraphs (1) and (2)," in paragraph (3);

(B) by redesignating paragraph (3) as subsection (bb) of section 1861; and

(C) by inserting the following subsection heading after and below paragraph (2):

"Physician Assistant and Nurse Practitioner".

(2) Section 3(e) of Public Law 95-210 is amended by striking out "section 1861(aa)(3)" and inserting in lieu thereof "section 1861(bb)".

(d)(1) Section 1122 of the Social Security Act is amended by adding at the end the following new subsection:

"(j) A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if the obligation of the capital expenditure by the facility would not be required to be reviewed under section 1527 of the Public Health Service Act.".

(2) Section 1124(a)(2)(A) of such Act is amended by striking out "(as defined in section 1301(a) of the Public Health Service Act)".

(e) The amendments made by this section (other than subsections (c) and (d)) shall apply with respect to services furnished on or after the first day of the thirteenth calendar month which begins after the date of enactment of this Act, or earlier (but not earlier than July 1, 1981) with respect to any health maintenance organization if the organization so requests and the Secretary of Health and Human Services agrees, except that such amendments shall not apply—

(1) with respect to services furnished by a health maintenance organization to any individual who is enrolled with that organization and entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act at the time the organization first enters into a contract subject to the amendments made by this section, unless—

(A) the individual requests at any time that the amendments apply, or

(B) the Secretary determines at any time that the amendments should apply to all members of the health maintenance organization because of administrative costs or other administrative burdens involved and so informs in advance each affected member of the health maintenance organization, or

(2) with respect to services furnished by a health maintenance organization during the five-year period beginning with the date of enactment of this Act, if a contract between the organization and the Secretary of Health and Human Services under section

1876(i)(2)(A) of the Social Security Act was in effect immediately before the date of the enactment of this Act, unless the organization requests that the amendments apply earlier.

(f) The Secretary shall conduct a study of the additional benefits selected by health maintenance organizations pursuant to section 1876(i)(2) of the Social Security Act, as added by subsection (a) of this section. The Secretary shall report to the Congress within twenty-four months of the date of the enactment of this Act with respect to the findings and conclusions made as a result of such study.

(g) The Secretary shall conduct a study evaluating the extent of, and reasons for, the termination by medicare beneficiaries of their memberships in health maintenance organizations. In conducting such study, the Secretary shall place special emphasis on the quantity and quality of medical care provided in health maintenance organizations and the quality of such care when provided on a fee-for-service basis. The Secretary shall submit an interim report to the Congress, within two years from the date of the enactment of this Act, and a final report within five years from such date containing the interim and final, respectively, findings and conclusions made as a result of such study.

CHAPTER 3—TEMPORARY DELAY IN PERIODIC INTERIM PAYMENTS

TEMPORARY DELAY IN PERIODIC INTERIM PAYMENTS

SEC. 871. Notwithstanding section 1815(a) of the Social Security Act, in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that with respect to the last twenty-one days for which such payments would otherwise be made during fiscal year 1981, such payments shall be deferred until fiscal year 1982.

Subtitle B—Additional Savings

SEC. 881. For provisions of law (within the jurisdiction of the House Committee on Ways and Means) which further reduce spending for fiscal year 1981 in satisfaction of the reconciliation requirements imposed by section 3(a)(8) of H. Con. Res. 307 (96th Congress), see Public Law 96-265 (the Social Security Disability Amendments of 1980) and Public Law 96-272 (the Adoption Assistance and Child Welfare Act of 1980).

Subtitle C—Unemployment Compensation Amendments

SEC. 891. TERMINATION OF PROVISIONS PROVIDING REIMBURSEMENT FOR UNEMPLOYMENT BENEFITS PAID ON THE BASIS OF PUBLIC SERVICE EMPLOYMENT.

Part B of title II of the Emergency Jobs and Unemployment Assistance Act of 1974 is amended by adding at the end thereof the following new section:

"TERMINATION

"SEC. 224. Notwithstanding any other provision of this part, the term 'public service wages' shall not include remuneration for services performed in weeks which begin after October 1, 1980."

SEC. 892. INCREASE IN LENGTH OF SERVICE IN ARMED FORCES REQUIRED FOR EX-SERVICEMEN TO BE ELIGIBLE FOR UNEMPLOYMENT BENEFITS.

(a) GENERAL RULE.—Subparagraph (A) of section 8521(a)(1) of title 5 of the United States Code is amended by striking out "90 days or more" and inserting in lieu thereof "365 days or more".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to periods of continuous active service which begin after October 1, 1980.

SEC. 893. CESSATION OF EXTENDED BENEFITS WHEN PAID UNDER AN INTERSTATE CLAIM IN A STATE WHERE EXTENDED BENEFIT PERIOD IS NOT IN EFFECT.

(a) GENERAL RULE.—Section 202 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new subsection:

"Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect

"(c)(1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

"(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

"(B) an extended benefit period is not in effect for such week in such State.

"(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

"(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of compensation required under this subsection."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to weeks of unemployment beginning after October 1980; except that such amendment shall not be a requirement of any State law under section 3304(a)(11) of the Internal Revenue Code of 1954 for any week which begins before June 1, 1981.

(2) SPECIAL RULE FOR CERTAIN STATES.—In the case of any State the legislature of which does not meet in a regular session which begins during calendar year 1981 and before April 1, 1981, paragraph (1) shall be applied by substituting "June 1, 1982" for "June 1, 1981".

Subtitle D—Repeal of Trade Adjustment Assistance Amendments

SEC. 895. REPEAL OF TRADE ADJUSTMENT ASSISTANCE AMENDMENTS.

Effective on the day before the effective date provided by section 303 thereof, the Act to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974 (H.R. 1543, 96th Congress) is hereby repealed.

TITLE IX—HOUSE COMMITTEE ON WAYS AND MEANS; REVENUE INCREASES

Subtitle A—Housing Bonds

SEC. 901. SHORT TITLE.

This subtitle may be cited as the "Mortgage Subsidy Bond Tax Act of 1980".

SEC. 902. MORTGAGE SUBSIDY BONDS.

(a) IN GENERAL.—PART III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by inserting after section 103 the following new section.

"SEC. 103A. MORTGAGE SUBSIDY BONDS.

"(a) GENERAL RULE.—Except as otherwise provided in this section, any mortgage subsidy bond shall be treated as an obligation not described in subsection (a)(1) or (2) of section 103.

"(b) MORTGAGE SUBSIDY BOND DEFINED.—

"(1) IN GENERAL.—For purposes of this title, the term 'mortgage subsidy bond' means any obligation which is issued as part of an issue a significant portion of the proceeds of which are to be used directly or indirectly for mortgages on owner-occupied residences.

"(2) EXCEPTIONS.—The following shall not be treated as mortgage subsidy bonds:

"(A) any qualified mortgage bond; and

"(B) any qualified veterans' mortgage bond.

"(c) QUALIFIED MORTGAGE BOND; QUALIFIED MORTGAGE ISSUE; QUALIFIED VETERANS' MORTGAGE BOND.—

"(1) QUALIFIED MORTGAGE BOND DEFINED.—

"(A) IN GENERAL.—For purposes of this title, the term 'qualified mortgage bond' means an obligation which is issued as part of a qualified mortgage issue.

"(B) 2-YEAR TERMINATION.—No obligation issued more than 2 years after the date of the enactment of this section may be treated as a qualified mortgage bond.

"(2) QUALIFIED MORTGAGE ISSUE DEFINED.—

"(A) DEFINITION.—For purposes of this title, the term 'qualified mortgage issue' means an issue by a State or political subdivision thereof of 1 or more obligations, but only if—

"(i) all proceeds of such issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences, and

"(ii) such issue meets the requirements of subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l).

"(B) GOOD FAITH EFFORT TO COMPLY WITH MORTGAGE ELIGIBILITY REQUIREMENTS.—An issue which fails to meet 1 or more of the requirements of subsections (d), (e), (f), (g), and (h) and paragraphs (4) and (5) of subsection (l) shall be treated as meeting such requirements if—

"(i) the issuer in good faith attempted to satisfy all such requirements before the mortgages were executed,

"(ii) 95 percent or more of the proceeds devoted to owner-financing was devoted to residences with respect to which (at the time the mortgages were executed) all such requirements were met, and

"(iii) any failure to meet the requirements of such subsections and paragraphs is corrected within a reasonable period after such failure is first discovered.

"(C) GOOD FAITH EFFORT TO COMPLY WITH OTHER REQUIREMENTS.—An issue which fails to meet 1 or more of the requirements of subsections (i), (j), and (k) and paragraphs (1), (2), and (3) of subsection (l) shall be treated as meeting such requirements if—

"(i) the issuer in good faith attempted to satisfy all such requirements, and

"(ii) any failure to meet such requirements is due to inadvertent error after taking reasonable steps to comply with such requirements.

"(3) QUALIFIED VETERANS' MORTGAGE BOND DEFINED.—For purposes of this section, the term 'qualified veterans' mortgage bond' means any obligation—

"(A) which is issued in registered form as part of an issue substantially all of the proceeds of which are to be used to provide residences for veterans,

"(B) the payment of the principal and interest on which is secured by the general obligation of a State, and

"(C) which is part of an issue which meets the requirements of subsection (l)(4).

"(d) RESIDENCE REQUIREMENTS.—

"(1) FOR A RESIDENCE.—A residence meets the requirements of this subsection only if—

"(A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and

"(B) it is located within the jurisdiction of the authority issuing the obligation.

"(2) FOR AN ISSUE.—An issue meets the requirements of this subsection only if all of the residences for which owner-financing is provided under the issue meet the requirements of paragraph (1).

"(e) 3-YEAR REQUIREMENT.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if each mortgagor to whom financing is provided under the issue had a present ownership interest in a principal residence of such mortgagor at no time during the 3-year period ending on the date the mortgage is executed. For purposes of the preceding sentence, the mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to—

"(A) any financing provided with respect to a targeted area residence,

"(B) any qualified home improvement loan, and

"(C) any qualified rehabilitation loan.

"(f) PURCHASE PRICE REQUIREMENT.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is to be provided under the issue does not exceed 80 percent of the average area purchase price applicable to such residence.

"(2) AVERAGE AREA PURCHASE PRICE.—For purposes of paragraph (1), the term 'average area purchase price' means, with respect to any residence, the average purchase price of single family residences (in the statistical area in which the residence is located) which were purchased during the most recent 12-month period for which sufficient statistical information is available. The determination under the preceding sentence shall be made as of the date on which the commitment to provide the financing is made (or, if earlier, the date of the purchase of the residence).

"(3) SEPARATE APPLICATION TO NEW RESIDENCES AND OLD RESIDENCES.—For purposes of this subsection, the determination of average area purchase price shall be made separately with respect to—

"(A) residences which have not been previously occupied, and

"(B) residences which have been previously occupied.

"(4) SPECIAL RULE FOR TARGETED AREA RESIDENCES.—In the case of a targeted area residence, paragraph (1) shall be applied by substituting '110 percent' for '80 percent'.

"(5) EXCEPTION FOR QUALIFIED HOME IMPROVEMENT LOANS.—Paragraph (1) shall not apply with respect to any qualified home improvement loan.

"(g) DOWNPAYMENT REQUIREMENT.—

"(1) 5-PERCENT REQUIREMENT.—An issue meets the requirements of this subsection only if 75 percent or more of the owner-occupied financing provided by the issue (other than qualified home imorovement loans and qualified rehabilitation loans) is 95-percent financing.

"(2) 95-PERCENT FINANCING DEFINED.—For purposes of paragraph (1), financing of a residence is 95-percent financing if such financing is 95 percent or more of the acquisition cost of such residence.

"(3) LARGER DOWNPAYMENT PERMITTED IN CASE OF GRADUATED PAYMENT MORTGAGES.—For purposes of determining whether a graduated payment mortgage meets the 95-percent financing requirement of paragraph (1), the percentage of the acquisition cost of the residence which is not required to be financed by the mortgage shall be increased to the lesser of—

"(A) 10 percent of the acquisition cost, or

"(B) the sum of—

"(i) 5 percent of the acquisition cost, plus

"(ii) the excess of—

"(I) the aggregate amount payable before the crossover point under a comparable standard mortgage, over

"(II) the aggregate amount payable before the crossover point under such graduated payment mortgage.

For purposes of the preceding sentence, the crossover point is the first day of the first payment period for which the payment under the graduated payment mortgage is greater than the payment would be under a comparable standard mortgage.

"(h) INCOME REQUIREMENTS.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if—

"(A) at least 50 percent of the owner-financing provided under the issue is provided for mortgagors whose family income is 90 percent or less of the median family income for the statistical area in which the residence is located, and

"(B) all owner-financing provided under the issue is provided for mortgagors whose family income is 115 percent or less of the median family income for the statistical area in which the residence is located.

"(2) DETERMINATION OF FAMILY INCOME.—For purposes of this subsection, the family income of mortgagors, and median family income, shall be determined under regulations prescribed by the Secretary which, to the extent not inconsistent with the purposes of this subsection, shall be consistent with the regulations prescribed under section 8 of the United States Housing Act of 1937.

"(3) SPECIAL RULE FOR APPLYING PARAGRAPH (1)(B) IN THE CASE OF TARGETED AREA RESIDENCES.—In the case of any financing provided under any issue for targeted area residences—

"(A) the mortgages for one-third of the targeted area residences may be provided without regard to paragraph (1)(B), and

"(B) paragraph (1)(B) shall be treated as satisfied with respect to the remainder of the targeted area residences if the family income of the mortgagor is 140 percent or less of whichever of the following is the greater:

"(i) the median family income for the statistical area in which such residence is located, or

"(ii) the statewide median family income for the State in which such residence is located.

"(i) LIMITATION ON AGGREGATE AMOUNT OF QUALIFIED MORTGAGE BONDS ISSUED DURING ANY CALENDAR YEAR.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if the aggregate amount of bonds issued pursuant thereto, when added to the aggregate amount of qualified mortgage bonds previously issued by the issuing authority during the calendar year, does not exceed the applicable limit for such authority for such calendar year.

"(2) 5-PERCENT LIMIT.—Except as provided in paragraph (3), the applicable limit for qualified mortgage bonds for any issuing authority for any calendar year shall be 5 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences located within the jurisdiction of such issuing authority.

"(3) AT LEAST $50,000,000 MAY BE ISSUED IN EACH STATE DURING EACH CALENDAR YEAR.—If, but for this paragraph, the aggregate amount of qualified mortgage bonds which could be issued in any State during any calendar year is less than $50,000,000, the aggregate amount which may be issued by each issuing authority in such State during such calendar year (determined without regard to this paragraph) shall be increased to the amount determined by multiplying such aggregate amount by a fraction—

"(A) the numerator of which is $50,000,000, and

"(B) the denominator of which is the aggregate amount of qualified mortgage bonds which could be issued by all issuing authorities in such State during such year (determined without regard to this paragraph).

"(4) OVERLAPPING JURISDICTIONS.—Except as provided in paragraph (5), if 2 or more governmental units have authority (determined without regard to paragraph (1)) to issue qualified mortgage bonds with respect to residences in the same geographical area, for purposes of this subsection only the unit having jurisdiction over the smallest geographical area shall be treated as having issuing authority with respect to such area unless such unit agrees to surrender part or all of such authority for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

"(5) STATE MAY PROVIDE DIFFERENT FORMULA.—The State may, by law enacted after the date of the enactment of this section, provide a different formula for allocating the 5-percent limitation (and, if applicable, the $50,000,000 limitation) among the governmental units in such State having authority to issue qualified mortgage bonds.

"(6) TRANSITIONAL RULES.—In applying this subsection to any calendar year, there shall not be taken into account any bond which—

"(A) was issued on or before April 24, 1979, or

"(B) by reason of section 214 of the Mortgage Subsidy Bond Tax Act of 1980, receives the same tax treatment as bonds issued on or before April 24, 1979.

"(j) PORTION OF LOANS REQUIRED TO BE PLACED IN TARGETED AREAS.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if at least 20 percent of the proceeds of the issue which are devoted to providing owner-financing is made available (with reasonable diligence) for owner-financing in targeted area residences for at least 1 year after the date on which owner-financing is first made available with respect to targeted area residences.

"(2) LIMITATION.—Nothing in paragraph (1) shall be treated as requiring the making available of an amount which exceeds 40 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences located in targeted areas within the jurisdiction of the issuing authority.

"(k) REQUIREMENTS RELATED TO ARBITRAGE.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if such issue meets the requirements of paragraphs (2), (3), and (4) of this subsection. Such requirements shall be in addition to the requirements of section 103(c).

"(2) EFFECTIVE RATE OF MORTGAGE INTEREST CANNOT EXCEED BOND YIELD BY MORE THAN 1 PERCENTAGE POINT.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph only if the excess of—

"(i) the effective rate of interest on the mortgages provided under the issue, over

"(ii) the yield on the issue,

is not greater than 1 percentage point.

"(B) EFFECTIVE RATE OF MORTGAGE INTEREST.—

"(i) IN GENERAL.—In determining the effective rate of interest on any mortgage for purposes of this paragraph, there shall be taken into account all fees, charges, and other amounts borne by the mortgagor

which are attributable to the mortgage or to the bond issue.

"(ii) SPECIFICATION OF SOME OF THE AMOUNTS TO BE TREATED AS BORNE BY THE MORTGAGOR.—For purposes of clause (i), the following items (among others) shall be treated as borne by the mortgagor:

"(I) all points or similar charges paid by the seller of the property, and

"(II) the excess of the amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property where owner-financing is not provided through the use of qualified mortgage bonds.

"(iii) SPECIFICATION OF SOME OF THE AMOUNTS TO BE TREATED AS NOT BORNE BY THE MORTGAGOR.—For purposes of clause (i), the following items shall not be taken into account:

"(I) any expected rebate of arbitrage profits, and

"(II) any application fee, survey fee, credit report fee, insurance charge or similar amount to the extent such amount does not exceed amounts charged in such area in such cases where owner-financing is not provided through the use of qualified mortgage bonds.

Subclause (II) shall not apply to origination fees, points, or similar amounts.

"(iv) PREPAYMENT ASSUMPTION.—In determining the effective rate of interest, it shall be assumed that the mortgage prepayment rate will be the rate set forth in the most recent mortgage maturity experience table published by the Federal Housing Administration for the State (or, if available, the area within the State) in which the residences are located.

"(C) YIELD ON THE ISSUE.—For purposes of this subsection, the yield on the issue shall be determined on the basis of—

"(i) the issue price (within the meaning of section 1232(b)(2)), and

"(ii) an expected maturity for the bonds which is consistent with the assumption under subparagraph (B)(iv).

"(3) NON-MORTGAGE INVESTMENT REQUIREMENTS.—

"(A) IN GENERAL.—An issue meets the requirements of this paragraph only if—

"(i) at no time during any bond year may the amount invested in non-mortgage investments with a yield higher than the yield on the issue exceed 150 percent of the debt service on the issue for the bond year, and

"(ii) the aggregate amount invested as provided in clause (i) is promptly and appropriately reduced as mortgages are repaid.

"(B) EXCEPTION FOR TEMPORARY PERIODS.—Subparagraph (A) shall not apply to—

"(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for mortgages, and

"(ii) temporary investment periods related to debt service.

"(C) DEBT SERVICE DEFINED.—For purposes of subparagraph (A), the debt service on the issue for any bond year is the scheduled amount of interest and amortization of principal payable for such year with respect to such issue. For purposes of the preceding sentence, there shall not be taken into account amounts scheduled with respect to any bond which has been retired before the beginning of the bond year.

"(4) ARBITRAGE AND INVESTMENT GAINS TO BE USED TO REDUCE COSTS OF OWNER-FINANCING.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

"(i) the excess of—

"(I) the amount earned on all nonmortgage investments (other than investments attributable to an excess described in this clause), over

"(II) the amount which would have been earned if the investments were invested at a rate equal to the yield on the issue, plus

"(ii) any income attributable to the excess described in clause (i),

shall be paid or credited to the mortgagors as rapidly as may be practicable.

"(B) INVESTMENT GAINS AND LOSSES.—For purposes of subparagraph (A), in determining the amount earned on all non-mortgage investments, any gain or loss on the disposition of such investments shall be taken into account.

"(l) OTHER REQUIREMENTS.—

"(1) STATE OPINION THAT ISSUE MEETS FEDERAL REQUIREMENTS.—An issue meets the requirements of this subsection only if a preliminary official statement of such issue has been submitted to a State agency and—

"(A) such agency has, within 30 days after the date of such submisssion, issued an opinion that such issue meets the requirements of subsections (i) and (j) of this section, or

"(B) 30 days have elapsed since such submission and during such 30-day period the State agency has not issued an opinion that the issue does not meet the requirements of subsections (i) and (j) of this section.

"(2) OBLIGATIONS MUST BE REGISTERED.—An issue meets the requirements of this subsection only if each obligation issued pursuant to such issue is in registered form.

"(3) REQUIREMENT OF MORE THAN ONE LENDER.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an issue meets the requirements of this subsection only if the mortgages are originated by 2 or more persons.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply if—

"(i) due diligence was exercised in offering an opportunity to participate and not more than one person was willing and able to originate the mortgages, or

"(ii) a sound public purpose is served by having one person originate all owner-financing provided under the issue.

"(4) MORTGAGES MUST BE NEW MORTGAGES.—

"(A) IN GENERAL.—An issue meets the requirements of this subsection only if no part of the proceeds of such issue is to be used to acquire or replace existing mortgages.

"(B) EXCEPTIONS.—Under regulations prescribed by the Secretary, the replacement of—

"(i) construction period loans,

"(ii) bridge loans or similar temporary initial financing, and

"(iii) in the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage for purposes of subparagraph (A).

"(5) CERTAIN REQUIREMENTS MUST BE MET WHERE MORTGAGE IS ASSUMED.—An issue meets the requirements of this subsection only if a mortgage with respect to which owner-financing has been provided under such issue may be assumed only if the requirements of subsections (d), (e), (f), and (h) are met with respect to such assumption.

"(m) TARGETED AREA RESIDENCES.—

"(1) IN GENERAL.—For purposes of this section, the term 'targeted area residence' means a residence in an area which is either—

"(A) a qualified census tract, or

"(B) an area of chronic economic distress.

"(2) QUALIFIED CENSUS TRACT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified census tract' means a census tract in which 70 percent or more of the families have income which is 80 percent or less of the statewide median family income.

"(B) DATA USED.—The determination under subparagraph (A) shall be made on the basis of the most recent decennial census for which data are available.

"(3) AREA OF CHRONIC ECONOMIC DISTRESS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'area of chronic economic distress' means an area of chronic economic distress—

"(i) designated by the State as meeting the standards established by the State for purposes of this subsection, and

"(ii) the designation of which has been approved by the Secretary and the Secretary of Housing and Urban Development.

"(B) CRITERIA TO BE USED IN APPROVING STATE DESIGNATIONS.—The criteria used by the Secretary and the Secretary of Housing and Urban Development in evaluating any proposed designation of an area for purposes of this subsection shall be—

"(i) the condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units,

"(ii) the need of area residents for owner-financing under this section, as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates,

"(iii) the potential for use of owner-financing under this section to improve housing conditions in the area, and

"(iv) the existence of a housing assistance plan which provides a displacement program and a public improvements and services program.

"(n) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MORTGAGE.—The term 'mortgage' includes any other owner-financing.

"(2) BOND.—The term 'bond' includes any obligation.

"(3) STATE.—The term 'State' includes a possession of the United States and the District of Columbia.

"(4) STATISTICAL AREA.—

"(A) IN GENERAL.—The term 'statistical area' means—

"(i) a standard metropolitan statistical area, and

"(ii) any county (or the portion thereof) which is not within a standard metropolitan statistical area.

"(B) STANDARD METROPOLITAN STATISTICAL AREA.—The term 'standard metropolitan statistical area' means the area in and around a city of 50,000 inhabitants or more (or equivalent area) as defined by the Secretary of Commerce.

"(C) DESIGNATION WHERE ADEQUATE STATISTICAL INFORMATION NOT AVAILABLE.—For purposes of this paragraph, if there is insufficient recent statistical information with respect to a county (or portion thereof) described in subparagraph (A)(ii), the Secretary may substitute for such county (or portion thereof) another area for which there is sufficient recent statistical information.

"(D) DESIGNATION WHERE NO COUNTY.—In the case of any portion of a State which is not within a county, subparagraphs (A)(ii) and (C) shall be applied by substituting for 'county' an area designated by the Secretary which is the equivalent of a county.

"(5) ACQUISITION COST.—

"(A) IN GENERAL.—The term 'acquisition cost' means the cost of acquiring the residence as a completed residential unit.

"(B) EXCEPTIONS.—The term 'acquisition cost' does not include—

"(i) usual and reasonable settlement or financing costs,

"(ii) the value of services performed by the mortgagor or members of his family in completing the residence, and

"(iii) the cost of land which has been owned by the mortgagor for at least 2 years before the date on which construction of the residence begins.

"(C) SPECIAL RULE FOR QUALIFIED REHABILITATION LOANS.—In the case of a qualified rehabilitation loan, for purposes of subsection (f), the term 'acquisition cost' includes the cost of the rehabilitation.

"(6) QUALIFIED HOME IMPROVEMENT LOAN.—The term 'qualified home improvement loan' means the financing (in an amount which does not exceed $15,000)—

"(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

"(B) only if such items as substantially protect or improve the basic livability of the property.

"(7) QUALIFIED REHABILITATION LOAN.—

"(A) IN GENERAL.—The term 'qualified rehabilitation loan' means any owner-financing provided in connection with—

"(i) a qualified rehabilitation, or

"(ii) the acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after the completion of the rehabilitation.

"(B) QUALIFIED REHABILITATION.—For purposes of subparagraph (A), the term 'qualified rehabilitation' means any rehabilitation of a building if—

"(i) there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins,

"(ii) 75 percent or more of the existing external walls of such building are retained in place as external walls in the rehabilitation process, and

"(iii) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

For purposes of clause (iii), the mortgagor's adjusted basis shall be determined as of the completion of the rehabilitation or, if later, the date on which the mortgagor acquires the residence.

"(8) DETERMINATIONS ON ACTUARIAL BASIS.—All determinations of yield, effective interest rates, and amounts required to be paid or credited to mortgagors under subsection (k)(4)(A) shall be made on an actuarial basis taking into account the present value of money.

"(o) SPECIAL RULE FOR ISSUE USED FOR OWNER-OCCUPIED HOUSING AND RENTAL HOUSING.—In the case of an issue—

"(1) part of the proceeds of which are to be used for mortgages on owner-occupied residences in a manner which meets the requirements of this section, and

"(2) part of the proceeds of which are to be used for rental housing which meets the requirements of section 103(b)(4)(A),

under regulations prescribed by the Secretary, each such part shall be treated as a separate issue.

"(p) ADVANCE REFUNDING OF MORTGAGE SUBSIDY BONDS NOT PERMITTED.—On and after the date of the enactment of this section, no obligation may be issued for the advance refunding of a mortgage subsidy bond (determined without regard to subsection (b)(2))."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter I of such Code is amended by inserting after the item relating to section 103 the following new item:

"Sec. 103A. Mortgage subsidy bonds."

SEC. 903. INDUSTRIAL DEVELOPMENT BONDS FOR HOUSING PURPOSES LIMITED TO LOW- OR MODERATE-INCOME RENTAL HOUSING.

Subparagraph (A) of paragraph (4) of section 103(b) of the Internal Revenue Code of 1954 (relating to industrial development bonds) is amended to read as follows:

"(A) projects for residential rental property if—

"(i) 20 percent or more of the units in each project are to be occupied by individuals of low or moderate income (within the meaning of section 167(k)(3)(B)), and

"(ii) each obligation issued pursuant to the issue is in registered form,".

SEC. 904. EFFECTIVE DATE FOR BOND PROVISIONS.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by sections 902 and 903 shall apply to obligations issued after April 24, 1979.

(b) EXCEPTION FOR OFFICIAL ACTION TAKEN BEFORE APRIL 25, 1979.—

(1) IN GENERAL.—The amendments made by sections 902 and 903 shall not apply to obligations if official action before April 25, 1979, of the governing body of the unit having authority to issue such obligations indicated an intent to such obligations.

(2) ACTION BY STAFF OF HOUSING AUTHORITY TREATED AS ACTION OF AUTHORITY IN CERTAIN CASES.—For purposes of paragraph (1), if, before April 25, 1979—

(A) the permanent professional staff of a State or local housing authority performed substantial work on a bond issue, and

(B) it was reasonable to expect that the bond issue, as developed by the staff, would be promptly approved by the governing body of the housing authority,

then such action by such staff shall be treated as the official action of such governing body.

(3) SPECIAL RULES RELATING TO SIZE OF ISSUE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an issue does not qualify for the exception provided by paragraph (1) if the issue size exceeds the intended issue size.

(B) EXCEPTION.—In the case of an issue to provide owner-financing for residences for which as of April 24, 1979, there was no documentation relating to intended issue size, paragraph (1) shall not apply unless—

(i) substantially all of the proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to provide owner-financing for one to four family residences (one unit of which is owner occupied) and not to acquire or replace existing mortgages within the meaning of section 103A(l)(4) of the Internal Revenue Code of 1954), and

(ii) substantially all of the proceeds referred to in clause (i) are committed by firm commitment letters (similar to those used in owner-financing not provided with tax-exempt bonds) to such owner-financing before the day which is 9 months after the date of issue of the obligations.

(C) ISSUE SIZE DEFINED.—For purposes of this paragraph, the term "issue size" means the aggregate face amount of obligations issued pursuant to the issue.

(D) INTENDED ISSUE SIZE.—For purposes of this paragraph, the term "intended issue size" means the aggregate face amount of obligations which a reasonable individual would reasonably conclude from the documentation before April 25, 1979, was the issue size which the governing body of the issuing authority intended to issue.

(4) LOCAL REFERENDUM HELD BEFORE JUNE 7, 1979.—

(A) IN GENERAL.—For purposes of paragraph (1), if—

(i) on April 25, 1979, legislation was pending in a State legislature,

(ii) on April 27, 1979, such legislation was amended to authorize local governmental units to issue tax-exempt obligations,

(iii) before June 7, 1979, such legislation was enacted and a local governmental unit in such State held a referendum with respect to the issuance of obligations to finance owner-occupied residences, and

(iv) any action with respect to the issuance of such obligations by the governing body of such local governmental unit would have met the requirements of paragraph (1) if such legislation had been in effect, and such referendum had been held, when that action was taken,

then such legislation shall be treated as in effect, and such referendum shall be treated as having been held, at the time when such action was taken.

(B) DOLLAR LIMIT FOR LOCAL GOVERNMENTAL UNITS.—The aggregate amount of obligations which may be issued by local governmental units with respect to the area comprising any local governmental area by reason of subparagraph (A) may not exceed—

(i) $35,000,000, reduced by

(ii) the aggregate amount of obligations which are issued (before, on, or after the issue under this paragraph) by local governmental units with respect to such area after April 24, 1979, and to which the amendments made by this subtitle do not apply solely by reason of this subsection (determined without regard to the application of subparagraph (A) of this paragraph).

(C) MORTGAGE REQUIREMENTS.—Subparagraph (A) shall not apply with respect to any issue unless such issue meets the requirements of paragraph (3)(A) of subsection (c).

(5) CERTAIN LOCAL ACTION PURSUANT TO LEGISLATION ENACTED BEFORE SEPTEMBER 29, 1979.—

(A) IN GENERAL.—For purposes of paragraph (1), if—

(i) on April 25, 1979, legislation was pending in a State legislature authorizing a local governmental unit to issue tax-exempt obligations for owner-occupied residences,

(ii) before September 29, 1979, such legislation was enacted, and

(iii) any action with respect to the issuance of such obligations by the local governing body would have met the requirements of paragraph (1) if such legislation had been in effect when that action was taken,

then such legislation shall be treated as in effect at the time when such action was taken.

(B) DOLLAR LIMIT FOR LOCAL GOVERNMENTAL UNITS.—The aggregate amount of obligations which may be issued by local governmental units with respect to the area comprising any local governmental area by reason of subparagraph (A) may not exceed the lesser of—

(i) the aggregate amount authorized by the legislation referred to in subparagraph (A), or

(ii) $150,000,000.

(C) MORTGAGE REQUIREMENTS.—Subparagraph (A) shall not apply with respect to any issue unless such issue meets the requirements of paragraph (3)(A) of subsection (c).

(c) $150,000,000 EXCEPTION FOR STATE HOUSING FINANCE AGENCIES.—

(1) IN GENERAL.—To the extent of the limit set forth in paragraph (2), the amendments made by this subtitle shall not apply to obligations issued by a State housing finance agency.

(2) DOLLAR LIMIT FOR STATE HOUSING FINANCE AGENCIES.—The aggregate amount of obligations which may be issued by State housing finance agencies with respect to any State by reason of paragraph (1) may not exceed—

(A) $150,000,000, reduced by

(B) the aggregate amount of obligations which are issued (before, on, or after the issue under this subsection) by the housing finance agencies of such State after April 24, 1979, to finance owner-occupied residences and to which the amendments made by this subtitle do not apply solely by reason of subsection (b).

(3) COMMITMENTS.—Paragraph (1) shall

not apply with respect to any issue unless substantially all of the proceeds of such issue (exclusive of issuance costs and a reasonably required reserve)—

(A) are to be used to provide owner-financing for 1 to 4 family residences (1 unit of which is owner-occupied) and not to acquire or replace existing mortgages (within the meaning of section 103A(i)(4) of the Internal Revenue Code of 1954), and

(B) are committed by firm commitment letters (similar to those used in owner-financing not provided by tax-exempt bonds) to owner-financing before January 1, 1981.

(4) SPECIAL RULE FOR ACTION IN 1978 PURSUANT TO MORTGAGE PROGRAM ESTABLISHED IN 1970.—

(A) IN GENERAL.—If—

(i) in 1970 State legislation established a program to issue tax-exempt obligations to finance the purchase of existing mortgages from banks,

(ii) in August 1978, as a step toward issuing obligations under such program, the governing body of the housing agency administering the program made a finding that there was a shortage of mortgage funds within the State,

(iii) moneys received by any bank on the purchase of mortgages will be reinvested within 90 days in new mortgages, and

(iv) the issue meets the requirements of subparagraphs (B) and (C),

then paragraph (3) shall not apply with respect to an issue of obligations pursuant to the program referred to in clause (i) and the finding referred to in clause (ii).

(B) DOWNPAYMENT REQUIREMENT.—An issue meets the requirements of this subparagraph only if 75 percent or more of the financing provided under the issue is financing for residences where such financing constitutes 95 percent or more of the acquisition cost of the residences.

(C) TARGETED AREA REQUIREMENT.—An issue meets the requirements of this subparagraph only if at least 20 percent of the financing provided under the issue is owner-financing of targeted area residences. For purposes of the preceding sentence, the term "targeted area residence" means a residence in an area which is a census tract in which 70 percent or more of the families have income which is 80 percent or less of the statewide median family income (determined on the basis of the most recent decennial census for which data are available).

(D) DOLLAR LIMIT.—The aggregate amount of obligations which may be issued by a State housing authority by reason of subparagraph (A) may not exceed $125,000,000.

(d) SPECIAL RULES.—

(1) COURT ACTION WAS PENDING TO DETERMINE SCOPE OF AUTHORIZING LEGISLATION.—

(A) IN GENERAL.—If—

(i) before April 25, 1979, a State had enacted a law under which counties were authorized to establish public trusts to issue tax-exempt obligations for public purposes,

(ii) on such date the question of whether or not that law authorized the issuance of obligations to finance certain owner-occupied residences was being litigated in a court of competent jurisdiction,

(iii) before July 31, 1979, the Supreme Court of such State held that the counties were so authorized, and

(iv) there is written evidence (which was in existence before April 25, 1979) that before April 25, 1979, the governing body of a county in such State had taken action indicating an intent to issue (or to establish a program for issuing) tax-exempt obligations to finance owner-occupied residences,

then the amendments made by section 902 shall not apply to obligations issued by the public trust for such county.

(B) DOLLAR LIMIT.—The aggregate amount of obligations which may be issued with respect to any county by reason of subparagraph (A) may not exceed $50,000,000.

(2) STATE LEGISLATION ENACTED BEFORE JUNE 8, 1979, WHERE LOCALITY HAD ESTABLISHED INCOME LIMITATIONS BEFORE APRIL 25, 1979.—

(A) IN GENERAL.—If—

(i) on April 25, 1979, legislation was pending in a State legislature authorizing a local governmental unit to issue tax-exempt obligations for owner-occupied residences,

(ii) there is written evidence (which was in existence before April 25, 1979) that before April 25, 1979, the governing body of the local governmental unit had taken action indicating to its delegation to the State legislature what the income limitation would be for individuals who would be eligible for mortgages under the program, and

(iii) before June 8, 1979, the legislation referred to in clause (i) was enacted,

then the amendments made by section 902 shall not apply to obligations issued by the local governmental unit.

(B) DOLLAR LIMIT.—The aggregate amount of obligations which may be issued with respect to any local governmental area by reason of subparagraph (A) may not exceed $150,000,000.

(3) RESOLUTIONS BEFORE CITY COUNCIL HELD FOR ENACTMENT OF STATE AUTHORIZING LEGISLATION.—

(A) IN GENERAL.—If—

(i) before April 25, 1979, 2 resolutions were submitted to a city council the first of which would create an urban residential finance authority and the second of which would authorize the president of the city council to appoint the members of such authority,

(ii) the vote on the second resolution was postponed because the State authorizing legislation had not been enacted,

(iii) before April 25, 1979, the State authorizing legislation was enacted, and

(iv) after April 24, 1979, and before May 17, 1979, the 2 resolutions referred to in clause (i) were passed by the city council,

then section 902 shall not apply with respect to obligations issued on behalf of such city.

(B) DOLLAR LIMIT.—The aggregate amount of obligations which may be issued with respect to any city by reason of subparagraph (A) may not exceed $50,000,000.

(4) SPECIAL RULE WHERE CITY POSTPONED SECOND HALF OF AUTHORIZED ISSUE TO SAVE INTEREST.—If—

(A) on April 11, 1979, the council of a city adopted a resolution authorizing the issuance of not to exceed $30,000,000 of mortgage revenue bonds,

(B) on or about August 1, 1979, approximately one-half of the obligations authorized by such resolution were issued, and

(C) the reason why the remaining obligations were not issued at that time was to save interest payments until the money was actually needed,

then the amendments made by section 902 shall not apply with respect to the issuance of the remaining obligations which were authorized by such April 11, 1979, resolution.

(5) STATE WAS IN PROCESS OF PERMITTING LOCALITIES TO ESTABLISH NONPROFIT CORPORATIONS.—

(A) IN GENERAL.—If—

(i) a State law enacted after April 24, 1979, and before June 16, 1979, provides that local governments may establish nonprofit corporations to issue tax-exempt obligations to finance owner-occupied residences,

(ii) pursuant to such State law, a local government establishes such a nonprofit corporation and designates it for purposes of this subsection, and

(iii) on November 7 or 14, 1979, an amount was specified by or for the local government as the maximum amount of obligations which the local government expected the nonprofit corporation to issue with respect to the area under any transitional authority provided by this subtitle,

then the amendments made by section 902 shall not apply to obligations issued by the nonprofit corporation with respect to the area for which such local government has jurisdiction.

(B) DOLLAR LIMITS.—The aggregate amount of obligations which may be issued with respect to any area by reason of subparagraph (A) may not exceed the amount referred to in subparagraph (A)(iii) which was specified on November 7 or 14, 1979, by or for the local government.

(C) SUBSTITUTION OF HOUSING AUTHORITIES, ETC.—For purposes of applying so much of paragraph (7) as relates to subparagraph (A)—

(i) if the local housing authority had the intent referred to in paragraph (7), such local housing authority shall be substituted for the local government, and

(ii) if the governing body of the local government is a commissioners court, the county judge who was on April 24, 1979, the presiding officer of such court shall be treated as the governing body of such government.

(6) OBLIGATIONS ISSUED UNDER THIS SUBSECTION MUST MEET THE REQUIREMENTS OF SUBSECTION (c)(3).—No obligation may be issued under this subsection unless the issue meets the requirements of subsection (c)(3).

(7) GOVERNING BODY MUST FILE AFFIDAVITS SHOWING INTENT ON APRIL 24, 1979.—No obligation may be issued under this subsection with respect to any area unless a majority of the members of the governing body of the local governmental unit having jurisdiction over that area file affidavits with the Secretary of the Treasury (or his delegate) indicating that it was their intent on April 24, 1979, either that tax-exempt obligations be issued to provide financing for owner-occupied residences or that a program be established to issue such obligations.

(8) LIMITATIONS REDUCED BY CERTAIN PRIOR ISSUES.—Any limitation on the amount of obligations which may be issued by any issuer by reason of any paragraph of this subsection shall be reduced by the aggregate amount of obligations which are issued (before, on, or after the issue under this subsection) by local governmental units with respect to the area within the jurisdiction of such issuer after April 24, 1979, and to which the amendments made by this subtitle do not apply solely by reason of subsection (b).

(e) ONGOING LOCAL PROGRAMS FOR REHABILITATION LOANS.—

(1) IN GENERAL.—If before April 25, 1979, a local governmental unit had a qualified rehabilitation loan program, then the amendment made by this subtitle shall not apply to obligations issued by such governmental unit for qualified loans if substantially all of the proceeds of such issue (exclusive of issuance costs and reasonably required reserve) are committed by firm commitment letters (similar to those used in owner financing not provided by tax-exempt bonds) to qualified loans before January 1, 1981.

(2) LIMITATION.—The aggregate amount of obligations which may be issued by reason of paragraph (1) by local governmental units with respect to the area comprising any local governmental area may not exceed the lesser of—

(A) $10,000,000, or

(B) the aggregate amount of loans made with respect to that area under the qualified rehabilitation loan program during the period beginning on January 1, 1977, and ending on April 24, 1979.

The limitation established by the preceding sentence shall be reduced by the aggregate

amount of obligations (if any) which are issued (before, on, or after the issue under this subsection) under the qualified rehabilitation loan program after April 24, 1979, with respect to the same local governmental area and to which the amendments made by this subtitle do not apply solely by reason of subsection (b).

(3) QUALIFIED REHABILITATION LOAN PROGRAM.—For purposes of this subsection, the term "qualified rehabilitation loan program" means a program for the financing—

(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

(B) only of such items as substantially protect or improve the basic livability of the property.

(4) QUALIFIED LOAN.—For purposes of this subsection, the term "qualified loan" means the financing—

(A) of alterations, repairs, and improvements on or in connection with an existing 1 to 4 family residence (1 unit of which is owner-occupied) by the owner thereof, but

(B) only of such items as substantially protect or improve the basic livability of the property.

(5) DOLLAR LIMIT ON QUALIFIED LOANS.—For purposes of this subsection, a loan shall not be treated as a qualified loan if the financing is in an amount which exceeds $20,000 plus $2,500 for each unit in excess of 1.

(f) $50 PER CAPITA EXCEPTION FOR LOCAL GOVERNMENTS.—

(1) IN GENERAL.—To the extent of the limit set forth in paragraph (2), the amendments made by section 902 shall not apply to mortgage subsidy bonds issued by local governmental units after April 24, 1979.

(2) LIMIT.—

(A) IN GENERAL.—The aggregate amount of obligations issued with respect to any area by reason of paragraph (1) shall not exceed—

(i) the amount equal to the product of $50 and the population of that area, reduced by

(ii) the aggregate amount of obligations which are issued (before, on, or after the issue under this subsection) by local governmental units after April 24, 1979, with respect to that area and to which the amendments made by this subtitle do not apply solely by reason of subsections (b), (d), and (e).

(B) DETERMINATION OF POPULATION.—For purposes of subparagraph (A), the population of any area shall be the population as of July 1, 1976, as determined for purposes of the State and Local Fiscal Assistance Act of 1972.

(3) UNIT MUST ESTABLISH THAT ACTION WAS TAKEN BEFORE APRIL 25, 1979.—Paragraph (1) shall not apply with respect to any obligation issued by any local governmental unit unless—

(A) there is written evidence (which was in existence before April 25, 1979) that before April 25, 1979, the governing body of such local governmental unit had taken action indicating an intent to issue (or to establish a program for issuing) tax-exempt obligations to finance owner-occupied residences,

(B) on October 30, 1979, such local governmental unit had authority to issue obligations to finance owner-occupied residences, and

(C) a majority of the members of the governing body of the local governmental unit file with the Secretary of the Treasury (or his delegate) affidavits that the requirement of such subparagraph (A) is met.

For purposes of subparagraph (A), action of the governing body of a second local governmental unit with respect to the same area shall be treated as action of the issuing governmental unit.

(4) COMMITMENTS.—Paragraph (1) shall not apply with respect to any issue unless such issue meets the requirements of paragraph (3) of subsection (c).

(5) OVERLAPPING JURISDICTIONS.—For purposes of this section, if 2 or more local governmental units meet the requirements of paragraph (3) and have authority to issue mortgage subsidy bonds with respect to residences in the same area, only the unit having jurisdiction over the smallest geographical area shall be treated as having issuing authority with respect to such area unless such unit agrees to surrender part or all of the amount permitted under this subsection to the local governmental unit with overlapping jurisdiction which has the next smallest geographical area.

(g) ROLLOVER OF EXISTING TAX-EXEMPT OBLIGATIONS.—

(1) IN GENERAL.—The amendments made by sections 902 and 903 shall not apply to the issuance of obligations to refinance for the same purpose tax-exempt indebtedness which was outstanding on April 24, 1979 (or indebtedness which had previously been refinanced pursuant to this subsection), but only if—

(A) on April 24, 1979, there was an agreed on period for the maturity of the mortgages or other financing, and

(B) the new obligations have a maturity date which does not exceed by more than 2 years the agreed on period referred to in subparagraph (A).

(2) AMOUNTS FOR RESERVES, ISSUE COSTS, ETC.—An issue which otherwise meets the requirements of paragraph (1) shall not be treated as failing to satisfy such requirements solely because the amount of the new indebtedness exceeds the amount of the old indebtedness by such amount as is reasonably necessary to cover construction period interest, reserves, and the costs of issuing the new indebtedness.

(h) SPECIAL RULES FOR PROJECTS UNDER DEVELOPMENT.—

(1) RENTAL HOUSING.—The amendment made by section 903 shall not apply to a project which was in the development stage on April 24, 1979, if—

(A) a plan specifying the number and location of rental units was approved on or before such date by a governing body of a State or local government or by a State or local housing agency or similar agency, and

(B) substantial expenditures for site improvement for the project had been incurred on or before such date.

(2) RENTAL HOUSING PROJECTS APPROVED BY SECRETARY OF HUD.—The amendment made by section 903 shall not apply to a project which was in the development stage on April 24, 1979, if—

(A) a plan specifying the number and location of rental units was preliminarily approved by the Secretary of Housing and Urban Development pursuant to section 221 (d)(4) or section 232 of the Housing Act on or before such date, and

(B) fees for processing the project with the Department of Housing and Urban Development and other expenditures for the project had been incurred on or before such date.

(3) OWNER-OCCUPIED HOUSING.—The amendments made by section 902 shall not apply to a project which was in the development stage on April 24, 1979, if on or before such date—

(A) substantial expenditures had been made for detailed plans and specifications, and

(B) either tax-exempt construction financing had been issued with respect to the project or there is written evidence that a governmental unit intended to issue tax-exempt obligations to finance the acquisition of the units by home buyers.

The amendment made by section 903 shall not apply to construction or other initial temporary financing issued with respect to a project which meets the requirements of the preceding sentence if substantially all of the dwelling units in such project are to be owner-occupied residences.

(4) CERTAIN REDEVELOPMENT MORTGAGE BOND FINANCING PROJECTS.—Subparagraph (B) of paragraph (3) shall be treated as satisfied if, before April 25, 1979—

(A) the developer of a project acquired the land for such project,

(B) there was approval by the mayor's advisory committee of a city of a comprehensive proposal (under a State law authorizing tax-exempt obligations for use only in redevelopment areas) for such project, subject to revisions to be made, and

(C) a revised proposal was submitted to the redevelopment agency and city council containing the revisions.

The aggregate amount of obligations which may be issued by local governmental units with respect to the area comprising any local governmental area by reason of this paragraph may not exceed $20,000,000.

(i) REGISTRATION REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, the amendments made by sections 902 and 903, insofar as they require obligations to be in registered form, shall apply to obligations issued after the date of the enactment of this subtitle.

(2) BONDS UNDER TRANSITIONAL RULES.—Any obligation issued by reason of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section after the date of the enactment of this Act shall be in registered form.

(j) ADVANCE REFUNDING.—Notwithstanding any other provision of this section—

(1) subsection (p) of section 103A of the Internal Revenue Code of 1954 (as added by section 902) shall apply to obligations issued after the date of the enactment of this Act to refund obligations issued before, on, or after such date of enactment, and

(2) subsections (b), (c), (d), (e), (f), (g), and (h) shall not apply to obligations issued after such date of enactment for the advance refunding of obligations issued before, on, or after such date of enactment.

(k) TRANSITIONAL RULE FOR 20-PERCENT LOW- AND MODERATE-INCOME REQUIREMENT.—In the case of obligations issued after April 24, 1979, and before January 1, 1981, the period for which clause (i) of section 103 (b)(4)(A) of the Internal Revenue Code of 1954 (as amended by section 903 of this subtitle) is required to be met shall be 20 years.

(l) SUBSTITUTION OF GOVERNMENTAL INSTRUMENTALITY FOR CITY.—

(1) IN GENERAL.—If—

(A) a corporation was created on June 17, 1971, pursuant to State law to provide financing for the construction and rehabilitation of low-income housing,

(B) pursuant to a State law enacted in 1955 a city has made loans to housing developers from the proceeds of short-term bonds and notes issued by the city, and has secured 50-year mortgages from the developers, and

(C) the corporation agrees to acquire from the city certain of the loans referred to in subparagraph (B) by issuing obligations which will be secured by mortgages referred to in subparagraph (B) on 12 projects (11 of which projects are subsidized with interest-reduction subsidies under section 236 of the National Housing Act),

then the amendments made by this subtitle shall not apply to obligations issued by the corporation to acquire the loans (and mortgages) referred to in subparagraph (C).

(2) DOLLAR LIMIT.—The aggregate amount of obligations to which paragraph (1) applies shall not exceed $135,000,000.

(3) TIME LIMIT.—Paragraph (1) shall not

apply to any obligation issued after December 31, 1980.

(m) STATE LEGISLATION WAS PENDING ON APRIL 1, 1979, AND ENACTED ON APRIL 26, 1979, WHERE LOCALITY HAD TAKEN ACTION TO UNDERTAKE A STUDY OF LOCAL MORTGAGE MARKET.—

(1) IN GENERAL.—If—

(A) on April 1, 1979, legislation was pending in a State legislature limiting the authority of local governments within such State to issue tax-exempt obligations for owner-occupied residence under existing home rule authority, and such legislation was enacted on April 26, 1979,

(B) there is written evidence (which was in existence before April 25, 1979) that not earlier than June 1, 1978, but before April 25, 1979, the governing body of a local government in such State had taken action authorizing the undertaking of a demographic or related study of the local mortgage market, which study was intended to serve as a basis for issuance of tax exempt obligations for owner occupied residences,

(C) on December 20, 1979, an amount was specified by or for the local government as the range of obligations which it expected to issue with respect to the area under any transitional authority provided by the Act, and

(D) a majority of the members of the governing body of the local government certify that the city or county was waiting enactment of the legislation described in subparagraph (A) prior to determining to proceed towards the issuance of tax-exempt obligations for owner-occupied residences.

then the amendments made by section 902 shall not apply to obligations issued by such city or county.

(2) DOLLAR LIMITS.—The aggregate amount of obligations which may be issued with respect to any area by reason of subparagraph may not exceed the maximum amount referred to in paragraph (1)(C) which was specified on December 20, 1979, by or for such local government.

(3) TIME LIMITS.—Paragraph (1) shall not apply with respect to any issue unless substantially all of the proceeds of such issue (exclusive of issuance costs and a reasonably required reserve) are committed by firm commitment letters (similar to those used in owner-financing not provided by tax-exempt bonds) to owner-financing before January 1, 1981.

Subtitle B—Cash Management

SEC. 911. ESTIMATED INCOME TAX PAYMENTS BY CORPORATIONS.

(a) GENERAL RULE.—Section 6655 of the Internal Revenue Code of 1954 (relating to failure by corporation to pay estimated income tax) is amended by adding at the end thereof the following new subsection:

"(h) LARGE CORPORATIONS REQUIRED TO PAY AT LEAST 60 PERCENT OF CURRENT YEAR TAX.—

"(1) IN GENERAL.—In the case of a large corporation, the amount treated as the estimated tax for the taxable year under paragraphs (1) and (2) of subsection (d) shall in no event be less than 60 percent of—

"(A) the tax shown on the return for the taxable year, or

"(B) if no return was filed, the tax for such year.

"(2) LARGE CORPORATION.—For purposes of this subsection, the term 'large corporation' means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

"(3) RULES FOR APPLYING PARAGRAPH (2).—

"(A) TESTING PERIOD.—For purposes of this subsection, the term 'testing period' means the 3 taxable years immediately preceding the taxable year involved.

"(B) MEMBERS OF CONTROLLED GROUPS.—For purposes of applying paragraph (2) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations for such taxable year, the $1,000,000 amount specified in paragraph (2) shall be divided among such members under rules similar to the rules of section 1561.".

(b) TECHNICAL AMENDMENT.—Subsection (e) of section 6655 of such Code is amended by striking out "subsections (b) and (d)" and inserting in lieu thereof "subsections (b), (d), and (h)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1980.

Subtitle C—Environmental Revenue

CHAPTER 1—ENVIRONMENTAL REVENUE ACT OF 1980

SEC. 920. SHORT TITLE.

This chapter may be cited as the "Environmental Revenue Act of 1980".

Subchapter A—Imposition of Taxes

SEC. 921. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D of the Internal Revenue Code of 1954 (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"PART I. Taxes to fund pollution liability.
"PART II. Taxes to fund hazardous waste containment.

"PART I—TAXES TO FUND POLLUTION LIABILITY

"Sec. 4601. Imposition of tax.
"Sec. 4602. Definitions and special rules.

"SEC. 4601. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4602. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this part—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section 4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"Subchapter B—tax on Certain Chemicals

"PART I. Taxes to fund pollution liability.
"PART II. Taxes to fund hazardous waste containment.

"PART I—TAXES TO FUND POLLUTION LIABILITY

"Sec. 4651. Imposition of tax.
"Sec. 4652. Definitions and special rules.

"SEC. 4651. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

"(2) 31 cents a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4652. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this part—

"(1) TAXABLE CHEMICAL.—The term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—

"(A) IN GENERAL.—The terms "specified petrochemical feedstock' means any of the following substances:

Ethylene	Toluene
Propylene	Xylene
Butylene	Naphthalene
Butadiene	Methane
Butane	Carbon Black
Propane	Ethane
Benzene	

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4651(a), the person so using it shall be treated as the manufacturer thereof).

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hyrdrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4602(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

"(c) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4651 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section, then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced."

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D of such Code is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. Environmental taxes."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subchapter B—Establishment of Trust Funds

PART I—ESTABLISHMENT OF TRUST FUNDS

SEC. 925. ESTABLISHMENT OF COMPREHENSIVE OIL POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter in this subchapter referred to as the "Oil Pollution Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under the Comprehensive Oil Pollution Liability and Compensation Act.

(b) TRANSFER TO OIL POLLUTION TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Oil Pollution Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subchapter referred to as the "Secretary") to be equivalent to—

(1) the amounts received in the Treasury under section 4601 of the Internal Revenue Code of 1954,

(1) the amounts recovered or collected on behalf of the Oil Pollution Trust Fund under chapter 1 of the Comprehensive Oil Pollution Liability and Compensation Act, and

(3) any penalties imposed under chapter 1 of such Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils).

(c) EXPENDITURES FROM OIL POLLUTION TRUST FUND.—

(1) IN GENERAL.—Amounts in the Oil Pollution Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under chapter 1 of the Comprehensive Oil Pollution Liability and Compensation Act (as in effect on the date of the enactment of such Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Oil Pollution Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

(d) TERMINATION.—No amount may be paid out of the Oil Pollution Trust Fund after September 30, 1985.

SEC. 926. ESTABLISHMENT OF HAZARDOUS SUBSTANCE POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Pollution Liability Trust Fund" (hereinafter in this subchapter referred to as the "Hazardous Substance Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under the Comprehensive Oil Pollution Liability and Compensation Act.

(b) TRANSFER TO HAZARDOUS SUBSTANCE TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Hazardous Substance Trust Fund amounts determined by the Secretary to be equivalent to—

(1) the amounts received in the Treasury under section 4651 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of such Trust Fund under section 311 of the Federal Water Pollution Control Act, and

(3) any penalties imposed under section 311 of such Act (insofar as it relates to substances other than petroleum oils).

(c) EXPENDITURES FROM HAZARDOUS SUBSTANCE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Hazardous Substance Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under section 311 of the Federal Water Pollution Control Act (as in effect on the date of the enactment of the Comprehensive Oil Pollution Liability and Compensation Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Hazardous Substance Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

(d) TERMINATION.—No amount may be paid out of the Hazardous Substance Trust Fund after September 30, 1985.

PART II—GENERAL PROVISIONS APPLICABLE TO TRUST FUNDS

SEC. 927. PURPOSES FOR WHICH TRUST FUNDS ARE AVAILABLE.

(a) DEFINITION OF COMPENSABLE DAMAGES.—

(1) IN GENERAL.—For purposes of this subchapter, the term "compensable damages" means damages asserted for—

(A) removal costs,

(B) injury to, or destruction of, real or personal property,

(C) injury to, or destruction of, natural resources, and

(D) loss of opportunity to harvest marine life due to injury to, or destruction of, natural resources, but—

(i) only if the person asserting the claim meets the income requirements of paragraph (2), and

(ii) only to the extent that the damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(2) INCOME REQUIREMENTS.—For purposes of paragraph (1), a person meets the income requirements of this paragraph if—

(A) such person's gross income from the harvesting of marine life for the taxable year which includes the day on which such person first suffered the loss described in paragraph (1)(D), or for the preceding taxable year, exceeds

(B) 25 percent of his total gross income from all sources for the taxable year (or preceding taxable year, as the case may be).

(b) RESTRICTION ON INTEREST PAYABLE OUT OF TRUST FUNDS.—No amount in any Trust Fund established by this subchapter may be used to pay interest on any claim for any period before the 46th day after the day on which such claim is finally determined.

(c) CERTAIN INTERFUND LOANS PERMITTED.—

(1) IN GENERAL.—Amounts in any Trust Fund established by this subchapter (hereinafter in this subsection referred to as the "lending fund") may be loaned to the other Trust Fund established by this subchapter if—

(A) the Secretary (after consultation with the appropriate Federal official) reasonably expects that the amount to be loaned will not be needed by the lending fund for the period of such loan,

(B) interest is payable on such loan at a rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturities similar to that of such loan, and

(C) immediately after the making of such loan, the amount in the lending fund equals or exceeds $30,000,000.

(2) APPROPRIATE FEDERAL OFFICIAL.—For purposes of paragraph (1), the appropriate Federal official is—

(A) the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and

(B) the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund.

(3) AMOUNT IN TRUST FUND.—For purposes of this subsection and section 928(a), the amount in any Trust Fund shall be the sum of any cash in such Trust Fund and any public debt securities held by such Trust Fund.

SEC. 928. LIMITATION ON PAYMENT OF CLAIMS BY FUND.

(a) GENERAL RULE.—No amount in any Trust Fund established by this subchapter shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the balance in such Fund to an amount less than $30,000,000.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time any Trust Fund established by this subchapter is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 929. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim for damages filed against any Trust Fund established by this subchapter may be paid out of such Trust Fund. Nothing in the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by such Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than a Trust Fund established by this subchapter.

(b) NO BORROWING FROM GENERAL FUND OF TREASURY.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by such Act) shall be construed to authorize any Trust Fund established by this subchapter to borrow any money from the general fund of the Treasury.

SEC. 930. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 925(b) or 926(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUNDS.—

(1) REPORT.—The Secretary shall be the trustee of each Trust Fund established by this subchapter, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of each Trust Fund established by this subchapter as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

Subchapter C—Coordination With Other Provisions of Law

SEC. 931. COORDINATION WITH OTHER PROVISIONS OF LAW.

(a) GENERAL RULE.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by such Act) shall authorize—

(1) the establishment of any fund,

(2) the payment out of any Trust Fund created by this subchapter,

(3) the level or collection of any fee, or

(4) the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under this chapter (or under any amendment made by this chapter).

(b) REFERENCE TO FUND.—To the extent not inconsistent with this chapter—

(1) any reference in chapters 1 and 2 of the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by either of such chapters) to a fund shall be deemed to be a reference to the Comprehensive Oil Pollution Liability Trust Fund established by this chapter, and

(2) any reference in chapter 3 of the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by such chapter) to a fund shall be deemed to be a reference to the Hazardous Substance Pollution Liability Trust Fund established by this chapter.

(c) CERTAIN LIABILITIES ARISING BEFORE OCTOBER 1, 1980.—If any provision of the Comprehensive Oil Pollution Liability and Compensation Act provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to any Trust Fund established by this chapter (hereinafter in this subsection referred to as the "transferee fund"), any claim which arises before October 1, 1980 (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the transferee fund notwithstanding any of the limitations imposed by subchapter B of this chapter.

(d) ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND.—

(1) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(A) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4601 of the Internal Revenue Code of 1954 on crude oil first transported through the trans-Alaska pipeline after the date of such determination, or

(B) that there is a TAP fund deficit, the tax imposed by section 4601 on crude oil first transported through the trans-Alaska pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) TAP FUND SURPLUS.—The term "TAP fund surplus" means the excess (if any) of—

(i) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this chapter, over

(ii) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time of such transfer.

(B) TAP FUND DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(i) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Comprehensive Oil Pollution Liability Trust Fund established by this chapter, over

(ii) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this chapter.

Subchapter D—Study

SEC. 935. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study—

(1) on the feasibility of—

(A) taxes which are based on the frequency of hazardous substances pollution and the degree of harm to the environment which results from such pollution, and

(B) adjustments in the amount of taxes on different modes of transportation to reflect different risks of pollution,

(2) an exemption from the taxes imposed by section 4651 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) on the impact of the taxes imposed by sections 4601 and 4651 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

CHAPTER 2—HAZARDOUS WASTE REVENUE ACT OF 1980

SEC. 940. SHORT TITLE.

This chapter may be cited as the "Hazardous Waste Revenue Act of 1980".

Subchapter A—Imposition of Taxes

SEC. 941. IMPOSITION OF TAXES.

(a) TAX ON PETROLEUM.—Subchapter A of chapter 38 of the Internal Revenue Code of 1954 (as added by section 921) is amended by adding at the end thereof the following new part:

"PART II—TAXES TO FUND HAZARDOUS WASTE CONTAINMENT

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.

"SEC. 4611. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 0.6 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.6 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this part—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product."

(b) TAX ON CERTAIN CHEMICALS.—Subchapter B of chapter 38 of such Code (as added by section 921 of this Act) is amended by adding at the end thereof the following new part:

"PART II—TAXES TO FUND HAZARDOUS WASTE CONTAINMENT

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $2.54 a ton in the case of specified petroleum feedstocks, or

"(2) $2.33 a ton in the case of specified inorganic substances.

"(c) DETERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this part—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—

"(A) IN GENERAL.—The term 'specified petrochemical feedstock' means any of the following substances from whatever source derived:

Ethylene	Benzene
Propylene	Toluene
Butylene	Xylene
Butadiene	Naphthalene
Butane	Methane

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic and the equivalent weight of arsenic in arsenic trioxide;

"(B) cadmium;

"(C) chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate;

"(D) lead and the equivalent weight of lead in lead oxide;

"(E) mercury;

"(F) the equivalent weight of barium in barium sulfide;

"(G) antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide;

"(H) cobalt;

"(I) nickel;

"(J) the equivalent weight of tin in stannic chloride and stannous chloride;

"(K) chlorine;

"(L) the equivalent weight of fluorine in hydrofluoric acid;

"(M) bromine;

"(N) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid; and

"(O) elemental phosphorus.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) EXCEPTION FOR USE IN PRODUCTION OF FERTILIZER.—

"(1) IN GENERAL.—For purposes of this part, the term 'taxable chemical' shall not include any substance—

"(A) used in a qualified use by the manufacturer, producer, or importer,

"(B) sold for use by the purchaser in a qualified use, or

"(C) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(2) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) REGISTRATION.—The provisions of section 4222 (relating to registration) may be extended to, and made applicable with respect to, the exemption provided by paragraph (1) to the extent provided by regulations prescribed by the Secretary.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4661 in the same manner as if such chemical were sold by him.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4661 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of—

"(A) any other substance the sale of which by such person would be taxable under such section, or

"(B) a fertilizer,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which paragraph (2)(A) applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subchapter B—Establishment of Trust Fund

SEC. 945. ESTABLISHMENT OF HAZARDOUS WASTE RESPONSE TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Waste Response Trust Fund" (hereinafter in this subchapter referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section.

(b) TRANSFERS TO TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, PENALTIES, ETC.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subchapter referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered by the United States under subpart F of part 2 of subtitle C of the Solid Waste Disposal Act,

(C) any amount reimbursed to the Trust Fund as provided in subsection (a)(3) of section 3041 of the Solid Waste Disposal Act, and

(D) any penalties assessed under part 2 of subtitle C of the Solid Waste Disposal Act.

(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Trust Fund for the fiscal year—

(A) 1981, $50,000,000,

(B) 1982, $75,000,000,

(C) 1983, $75,000,000,

(D) 1984, $100,000,000, and

(E) 1985, an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(c) EXPENDITURES FROM TRUST FUND.—

(1) IN GENERAL.—Amounts in the Trust Fund shall be available, to the extent provided in appropriations Acts, only for purposes of making expenditures for emergency response, removal, containment, cleanup, and other action taken under subpart C of part 2 of subtitle C of the Solid Waste Disposal Act (including reimbursement of excess costs pursuant to section 3041(c) of such Act) as in effect on the date of the enactment of the Hazardous Waste Containment Act of 1980. No amount in the Trust Fund may be used to pay any part of the costs referred to in the preceding sentence which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

(2) LIMITATION ON AMOUNT EXPENDED OUT OF TRUST FUND FOR ANY FISCAL YEAR.—The amount expended out of the Trust Fund for any fiscal year shall not exceed 10 times the amount appropriated to the Trust Fund for such fiscal year under the authority contained in subsection (b)(2).

(d) TERMINATION.—No amount may be paid out of the Trust Fund after September 30, 1985.

SEC. 946. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 945(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of the Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

(c) NO AUTHORITY TO BORROW.—Nothing in any provision of law shall be construed to authorize the Trust Fund to borrow any money from the general fund of the Treasury or from any other fund established in the Treasury.

Subchapter C—Coordination With Other Provisions of Law

SEC. 947. COORDINATION WITH OTHER PROVISIONS OF LAW.

(a) GENERAL RULE.—Nothing in the Hazardous Waste Containment Act of 1980 (or in any amendment made by such Act) shall authorize—

(1) the establishment of any fund,

(2) the payment out of the Trust Fund created by this chapter, or

(3) the levy or collection of any fee.

(b) REFERENCE TO FUND.—To the extent not inconsistent with this chapter, any reference to a fund in the Hazardous Waste Containment Act of 1980 (or in any amendment made by such Act) shall be deemed to be a reference to Hazardous Waste Response Trust Fund established by this chapter.

Subchapter D—Study

SEC. 948. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study on—

(1) the feasibility and desirability of—

(A) a schedule of taxes—

(i) which is based on the disposal or generation of hazardous waste, and

(ii) which would reflect the degree of hazard and risk of harm to the public health and the environment posed by the various hazardous wastes,

(B) taxes imposed on substances not taxed by the amendments made by this chapter such as coal and biomass, and

(C) taxes which are designed to promote the recycling, incineration, and neutralization of hazardous waste,

(2) an exemption from the taxes imposed by section 4661 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) the impact of the taxes imposed by sections 4611 and 4661 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

Subtitle D—Telephone Tax

SEC. 951. TELEPHONE TAX CONTINUED AT 2 PERCENT FOR 1981.

(a) IN GENERAL.—The table contained in paragraph (2) of section 4251(a) of the Internal Revenue Code of 1954 (relating to imposition of tax on communication services) is amended by striking out the last 2 lines of such table and inserting in lieu thereof the following:

"During 1980 or 1981	2
During 1982	1".

(b) CONFORMING AMENDMENT.—Subsection (b) of section 4251 of such Code is amended by striking out "January 1, 1982" and inserting in lieu thereof "January 1, 1983".

Subtitle E—Taxation of Foreign Investment In United States Real Property

SEC. 961. SHORT TITLE.

This subtitle may be cited as the "Foreign Investment in Real Property Tax Act of 1980".

SEC. 962. TAX ON DISPOSITION OF FOREIGN INVESTMENT IN UNITED STATES REAL PROPERTY.

(a) IN GENERAL.—Subpart C of part II of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to miscellaneous provisions with respect to nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

"SEC. 897. DISPOSITION OF INVESTMENT IN UNITED STATES REAL PROPERTY.

"(a) GENERAL RULE.—For purposes of this title, gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest shall be taken into account—

"(1) in the case of a nonresident alien individual, under section 871(b)(1), or

"(2) in the case of a foreign corporation, under section 882(a)(1),

as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business.

"(b) LIMITATION ON LOSSES OF INDIVIDUALS.—In the case of an individual, a loss shall be taken into account under subsection (a) only to the extent such loss would be taken into account under section 165(c) (determined without regard to subsection (a) of this section).

"(c) UNITED STATES REAL PROPERTY INTEREST.—For purposes of this section—

"(1) UNITED STATES REAL PROPERTY INTEREST.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'United States real property interest' means—

"(i) an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States, and

"(ii) any interest (other than an interest solely as a creditor) in any entity which was a United States real property holding organization at any time during the shorter of—

"(I) the period after June 18, 1980, during which the taxpayer held such interest, or

"(II) the 5-year period ending on the date of the disposition of such interest.

"(B) EXCLUSION FOR INTEREST IN CERTAIN ENTITIES.—The term 'United States real property interest' does not include any interest in an entity if—

"(i) as of the date of the disposition of such interest, such entity did not hold any United States real property interests, and

"(ii) all of the United States real property interests held by such entity at any time during the shorter of the periods described in subparagraph (A)(ii)—

"(I) were disposed of in transactions in which the full amount of the gain (if any) was recognized, or

"(II) ceased to be United States real property interests by reason of the application of this subparagraph to one or more other entities.

"(2) UNITED STATES REAL PROPERTY HOLDING ORGANIZATION.—The term 'United States real property holding organization' means any entity (whether domestic or foreign) if—

"(A) the fair market value of its United States real property interests equals or exceeds 50 percent of

"(B) the fair market value of—

"(i) its United States real property interests,

"(ii) its interests in real property located outside the United States, plus

"(iii) any other of its assets which are used or held for use in a trade or business.

"((3) EXCEPTION FOR STOCK REGULARLY TRADED ON ESTABLISHED SECURITIES MARKETS.—If any class of stock of a corporation is regularly traded on an established securities market, stock of such class shall be treated as a United States real property interest only in the case of a person who, at some time during the shorter of the periods described in paragraph (1)(A)(ii), held more than 5 percent of such class of stock.

"(4) TREATMENT OF CONTROLLING INTEREST.—

"(A) IN GENERAL.—Under regulations, if any person holds a controlling interest in any entity, for purposes of determining whether such person is a United States real property holding organization—

"(i) such controlling interest shall not be taken into account,

"(ii) such person shall be treated as holding a pro rata share of the assets of such entity, and

"(iii) any assets used or held for use by such entity in a trade or business shall be treated as so used or held by such person.

"(B) CONTROLLING INTEREST.—For purposes of subparagraph (A), the term 'controlling interest' means—

"(i) in the case of a corporation, 50 percent or more of the total combined voting power of all classes of stock of such corporation, or 50 percent or more of the fair market value of all classes of stock of such corporation,

"(ii) in the case of a partnership, 50 percent or more of the capital or profits interest, or

"(iii) in the case of a trust, 50 percent or more of the beneficial interests in such trust (actuarially determined).

"(5) OTHER SPECIAL RULES.—

"(A) INTEREST IN REAL PROPERTY.—The term 'interest in real property' includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

"(B) CONSTRUCTION OWNERSHIP RULES.—For purposes of determining under paragraph (3) whether any person holds more than 5 percent of any class of stock and of determining under paragraph (4) whether a person holds a controlling interest in any entity—

"(i) with respect to a corporation, section 318(a) shall apply (except that paragraphs (2)(C) and (3)(C) of section 318(a) shall be applied by substituting '5 percent' for '50 percent'), and

"(ii) with respect to a partnership or trust, rules similar to the rules of clause (i) shall apply (but substituting interests in the entity for stock).

"(C) REAL PROPERTY INCLUDES ASSOCIATED PERSONAL PROPERTY.—The term 'real property' includes movable walls, furnishings, and other personal property associated with the use of the real property.

"(D) ENTITY.—The term 'entity' means a corporation, partnership, or trust.

"(d) COORDINATION WITH NONRECOGNITION PROVISIONS.—

"(1) IN GENERAL.—Except to the extent otherwise provided in paragraph (2), any nonrecognition provision shall apply for purposes of this section to a transaction only in the case of an exchange of a United States real property interest for an interest the sale of which would be subject to taxation under this chapter.

"(2) REGULATIONS.—The Secretary shall prescribe regulations (which are necessary or appropriate to prevent the avoidance of Federal income taxes) providing the extent to which nonrecognition provisions shall, and shall not, apply for purposes of this section.

"(3) NONRECOGNITION PROVISION DEFINED.—For purposes of this subsection, the term 'nonrecognition provision' means any provision of this title for not recognizing gain or loss."

(b) CLERICAL AMENDMENT.—The table of sections for such subpart C is amended by adding at the end thereof the following new item:

"Sec. 897. Disposition of investment in United States real property."

(c) CROSS REFERENCES.—

(1) Subsection (g) of section 871 of such Code (relating to tax on income of nonresident alien individuals) is amended by adding at the end thereof the following new paragraph:

"(8) For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897."

(2) Subsection (a) of section 882 of such Code (relating to tax on income of foreign corporation connected with United States business) is amended by adding at the end thereof the following new paragraph:

"(3) For special tax treatment of gain or loss from the disposition by a foreign corporation of a United States real property interest, see section 897."

SEC. 953. REPORTING REQUIREMENTS.

(a) GENERAL RULE.—Subpart A of part III of chapter 61 of the Internal Revenue Code of 1954 (relating to information returns concerning persons subject to special provisions) is amended by inserting after section 6039B the following new sections:

"SEC. 6039C. RETURN OF CERTAIN ENTITIES HOLDING UNITED STATES REAL PROPERTY INTERESTS.

"(a) ENTITIES TO WHICH THIS SECTION APPLIES.—

"(1) IN GENERAL.—This section applies to any entity for a calendar year if at any time during such year—

"(A) 1 or more of the persons owning an interest in such entity is a foreign person, and

"(B) such entity would be a United States real property holding organization under section 897(c)(2) if '40 percent' were substituted for '50 percent' in section 897(c)(2)(A).

"(2) CONTINUING APPLICATION.—This section applies to any entity for any calendar year if this section applied to such entity for any of the 4 preceding calendar years (determined without regard to this paragraph).

"(b) RETURN REQUIREMENT.—If this section applies to any entity for any calendar year, such entity shall make a return for such calendar year setting forth—

"(1) the name and address of any foreign person who held an interest in such entity at any time during the calendar year,

"(2) such information with respect to the composition of the assets of such entity at such time or times during the calendar year as the Secretary may be regulations prescribe,

"(3) such information with respect to transfers during the calendar year of interests in such entity as the Secretary shall by regulations prescribe,

"(4) whether such entity is a United States real property holding organization (with the meaning of section 897(c)(2) at any time during the calendar year), and

"(5) such other information as the Secretary shall by regulations prescribe.

Any such return shall be made at such time in and in such manner as the Secretary shall by regulations prescribe.

"(c) STATEMENTS TO BE FURNISHED TO PERSONS HOLDING INTERESTS IN THE ENTITY.—Every entity making a return under subsection (a) shall furnish to each foreign person who at any time during the calendar year held an interest in such entity a written statement showing—

"(1) the name and address of the entity making such return,

"(2) whether such entity is a United States real property holding organization at any time during the calendar year, and

"(3) such other information as the Secretary shall by regulations prescribe.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the year for which the term under subsection (a) was made.

"(d) SPECIAL RULES.—For the purposes of this section—

"(1) FOREIGN OWNER MUST HOLD MORE THAN 5 PERCENT OF STOCK IF ENTITY IS PUBLICLY TRADED CORPORATION.—In the case of any corporation the stock of which is regularly traded on an established securities market at all times during the calendar year, subsections (a) and (c) shall be applied by substituting 'a more than 5-percent interest' for 'an interest'.

"(2) MORE THAN 5-PERCENT INTEREST.—The term 'more than 5-percent interest' means more than 5 percent of the fair market value of any class of stock of the corporation.

"(3) FOREIGN PERSON.—The term 'foreign person' means any person who is not a United States person.

"(4) CONSTRUCTIVE OWNERSHIP.—For purposes of determining ownership in any entity, the rules of section 897(c)(5)(B) shall apply.

"(5) ENTITY.—The term 'entity' means any corporation, partnership, or trust.

"SEC. 6039D. RETURN OF CERTAIN FOREIGN PERSONS HOLDING UNITED STATES REAL PROPERTY INTERESTS.

"(a) PERSONS TO WHOM THIS SECTION APPLIES.—This section applies to any foreign person for a calendar year if—

"(1) at any time—

"(A) during such calendar year, such person owned a United States real property interest, or

"(B) during such calendar year or a subsequent calendar year, such person received (or is to receive) an installment payment from an obligation acquired from the disposition of a United States real property interest,

"(2) such person did not engage in a trade or business in the United States at any time during such calendar year,

"(3) the aggregate of—

"(A) the fair market value of the United States real property interests owned by such person at any time during such year, and

"(B) the face amount of the installment obligations referred to in paragraph (1)(B),

equals or exceeds $5,000, and

"(4) such person is not required to file a return for such calendar year under section 6039C(b).

"(b) RETURN REQUIREMENT.—If this section applies to any person for any calendar year, such person shall make a return for such calendar year setting forth—

"(1) the name and address of such person,

"(2) a description of all United States real property interests held by such person at any time during the calendar year and of all installment obligations referred to in subsection (a)(1)(B), and

"(3) such other information as the Secretary may by regulations prescribe.

"(c) TIME FOR FILING RETURN.—Any return required under subsection (b) with respect to any calendar year shall be filed on or before April 15 (March 15 in the case of a corporation) of the following calendar year, or at such other time as the Secretary may by regulations prescribe.

"(d) DEFINITIONS AND SPECIAL RULES.—

"(1) UNITED STATES REAL PROPERTY INTEREST.—For purposes of this section, the term 'United States real property interest' has the meaning given to such term by section 897(c).

"(2) DETERMINATION OF FAIR MARKET VALUE.—For purposes of subsection (a)(3)(A), fair market value shall be determined as of the end of the calendar year (or, in the case of any property disposed of during the calendar year, as of the date of such disposition).

"(3) FOREIGN PERSON.—For purposes of this section, the term 'foreign person' means any person who is not a United States person."

(b) PENALTY FOR FAILURE TO FILE RETURN.—Section 6652 (relating to failure to file certain information returns, registration statements, etc.) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) RETURNS REQUIRED UNDER SECTION 6039C OR 6039D.—

"(1) IN GENERAL.—In the case of each failure—

"(A) to make a return required by section 6039C(b) or 6039D(b) which contains the information required by such section, or

"(B) to furnish a statement required by section 6039C(c),

on the date prescribed therefor (determined with regard to any extension of time for fil-

ing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the amount determined under paragraph (2) shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to make such return or furnish such statement.

"(2) AMOUNT OF PENALTY.—For purposes of paragraph (1), the amount determined under this paragraph with respect to any failure shall be $25 for each day during which such failure continues.

"(3) LIMITATIONS.—

"(A) FOR FAILURE TO MEET REQUIREMENTS OF SECTION 6039C.—The amount determined under paragraph (2) with respect to any person for failing to meet the requirements of section 6039C for any calendar year shall not exceed $25,000.

"(B) FOR FAILURE TO MEET REQUIREMENTS OF SECTION 6039D.—The amount determined under paragraph (2) with respect to any person for failing to meet the requirements of section 6039D for any calendar year shall not exceed the lesser of $25,000 or 5 percent of the aggregate of—

"(i) the fair market value of the United States real property interests owned by such person at any time during such year, and

"(ii) the face amount of the installment obligations referred to in section 6039D(a)(1)(B).

For purposes of clauses (i), fair market value shall be determined as of the end of the calendar year (or, in the case of any property disposed of during the calendar year, as of the date of such disposition)."

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of chapter 61 is amended by inserting after the item relating to section 6039B the following new items:

"Sec. 6039C. Return of certain entities holding United States real property interests.

"Sec. 6039D. Return of certain foreign persons holding United States real property interests."

SEC. 964. MISCELLANEOUS AMENDMENTS.

(a) SOURCES WITHIN UNITED STATES.—Paragraph (5) of subsection (a) of section 861 of the Internal Revenue Code of 1954 is amended to read as follows:

"(5) DISPOSITION OF UNITED STATES REAL PROPERTY INTEREST.—Gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c))."

(b) RESTRICTION ON EXAMINATION OF TAXPAYERS.—Subsection (b) of section 7605 of such Code (relating to restrictions on examinations of taxpayers) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any inspection of a taxpayer's books of account for purposes of section 897."

SEC. 965. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle shall apply to dispositions after June 18, 1980.

(b) REPORTING.—The amendments made by section 963 shall apply to 1980 and subsequent calendar years. In applying such amendments to 1980, such calendar year shall be treated as beginning on June 18, 1980, and ending on December 31, 1980.

(c) SPECIAL RULE FOR TREATIES.—After December 31, 1984, nothing in section 894(a) or 7852(d) of the Internal Revenue Code of 1954 or in any other provision of law shall be treated as requiring an exemption from (or reduction of) any tax imposed by section 871 or 882 of such Code on a gain described in section 897 of such Code by reason of any treaty obligation of the United States.

Subtitle F—Inclusion in Wages for Purposes of Social Security and Unemployment Taxes of Employer

SEC. 971. INCLUSION IN WAGES OF EMPLOYEE TAXES PAID BY EMPLOYER.

(a) SOCIAL SECURITY TAX.—

(1) AMENDMENT OF INTERNAL REVENUE CODE OF 1954.—Paragraph (6) of section 3121(a) of the Internal Revenue Code of 1954 (defining wages) is amended to read as follows:

"(6) the payment by an employer (without deduction from the remuneration of the employee)—

"(A) of the tax imposed upon an employee under section 3101, or

"(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer;".

(2) AMENDMENT OF SOCIAL SECURITY ACT.—Subsection (f) of section 209 of the Social Security Act is amended to read as follows:

"(f) The payment by an employer (without deduction from the remuneration of the employee)—

"(1) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1954, or

"(2) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer;".

(b) FEDERAL UNEMPLOYMENT TAX.—Paragraph (6) of section 3306(b) of the Internal Revenue Code of 1954 (defining wages) is amended to read as follows:

"(6) the payment by an employer (without deduction from the remuneration of the employee)—

"(A) of the tax imposed upon an employee under section 3101, or

"(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer;".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to remuneration paid after December 31, 1980.

(2) EXCEPTION FOR STATE AND LOCAL GOVERNMENTS.—

(A) The amendments made by this section (insofar as they affect the application of section 218 of the Social Security Act) shall not apply to any payment made before January 1, 1984, by any governmental unit for positions of a kind for which all or a substantial portion of the social security employee taxes were paid by such governmental unit (without deduction from the remuneration of the employee) under the practices of such governmental unit in effect on June 18, 1980.

(B) For purposes of subparagraph (A), the term "social security employee taxes" means the amount required to be paid under section 218 of the Social Security Act as the equivalent of the taxes imposed by section 3101 of the Internal Revenue Code of 1954.

(C) For purposes of subparagraph (A), the term "governmental unit" means a State or political subdivision thereof within the meaning of section 218 of the Social Security Act.

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AMENDMENT OFFERED BY MR. GIAIMO

Mr. GIAIMO. I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GIAIMO: Strike out subtitle C of title V (comprehensive oil pollution liability and compensation; hazardous substances), beginning on page 59, line 20, and ending on page 144, line 3.

Strike out subtitle C of title IX (environmental revenue), beginning on page 364, line 10, and ending on page 400, line 22.

Redesignate subtitles D, E, and F of title IX as subtitles C, D, and E, respectively.

The CHAIRMAN. Pursuant to the rule, the gentleman from Connecticut (Mr. GIAIMO) is recognized for 15 minutes.

Mr. GIAIMO. Mr. Chairman, the amendment which I offer is really simple in nature. It would simply strike the so-called superfund provisions from the reconciliation bill.

The superfund legislation, contained in H.R. 85 and H.R. 7020, falls within the jurisdiction of four House Committees: Ways and Means, Public Works and Transportation, Merchant Marine and Fisheries, and Interstate and Foreign Commerce. As reported by the Budget Committee, pursuant to the requirements of the Budget Act, the reconciliation bill contains differing versions of the superfund, as submitted by two of those committees. These provisions would raise $300 million of the $4.2 billion in new revenues contained in the bill. However, consideration of the superfund proposal in the context of reconciliation would necessitate the resolution of substantive issues effecting the jurisdictions of these four House committees. Consequently, I believe that it will be more efficient to separate the issue of the oil and hazardous material cleanup fund from the issue of reconciliation. I understand that the respective committees are prepared to move superfund legislation to the floor so that we may, in fact, realize the $300 million in new revenues by the time conference on the reconciliation bill is concluded.

Mr. Chairman, I understand the rules have been granted on that legislation. In this regard, on August 27, as I recall, and as I stated, the Committee on Rules did act.

Given that the superfund legislation is proceeding satisfactorily on a separate track and moving along quickly to the floor of the House and that it involves a multifaceted jurisdictional issue and that it is expected to generate increased revenues for fiscal year 1981 I urge Members to support my amendment to strike the superfund provisions from the reconciliation bill. There will be no harm done. The legislation will be forthcoming to the floor of the House and will proceed on its own track and it will be a much better way of handling it.

Mr. ULLMAN. Mr. Chairman, will the gentleman yield?

Mr. GIAIMO. I yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Chairman, I thank the gentleman for yielding.

The reason, of course, this provision was put into our section of the bill was so that we could indeed claim credit for the increased tax rates the Committee on Ways and Means put on the bill.

Now, as the gentleman has stated, an agreement has been worked out between the committees and the legislation will now move forward in an orderly way. With that understanding I certainly have no objection to the amendment and I hope the House will approve it without further delay.

Mr. GIAIMO. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. ROBERTS).

Mr. ROBERTS. Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from Connecticut. This amendment would strike from H.R. 7765 all provisions that are identical to the respective versions of H.R. 85 that have already been reported out of the Committee on Ways and Means and the Committee on Public Works and Transportation. As much as I want to see the substantive provisions of H.R. 85 enacted into law, I remain convinced that the Omnibus Reconciliation Act of 1980 is the wrong vehicle to use in accomplishing that goal.

When the Committee on Ways and Means filed its reconciliation recommendations, it included the text of its amendment to H.R. 85. In light of this action, our committee included H.R. 85, as we reported it, in our reconciliation recommendations. While we believed that substantive legislation such as H.R. 85 should not be included in the reconciliation bill, we wished to insure that if it was included it be included as a whole and not taken up in piecemeal fashion.

Since that time, the three committees involved in H.R. 85 have reached agreement on a substitute amendment incorporating all the committees' views. A rule has been granted on H.R. 85 and we expect it to come to the floor in the near future.

I, therefore, urge passage of the gentleman's amendment which would remove all references to the text of H.R. 85 from the reconciliation bill.

● Mr. SNYDER. Mr. Chairman, I rise in support of the amendment of the gentleman from Connecticut (Mr. GIAIMO). The purpose of the amendment has already been explained by the gentleman—we seek to delete from the reconciliation bill all provisions relating to H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act and H.R. 7020, the Hazardous Waste Containment Act. I do not intend to repeat the able statement of the gentleman from Connecticut, but I would like to underscore a few points for the benefit of the Members which I feel are important in understanding this issue.

Our reason for supporting the amendment is simple. It is the position of the Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries that the reconciliation bill is not the appropriate vehicle for considering a piece of legislation as complex and complete as H.R. 85. H.R. 85 is important enough to be considered on its own merits under an open rule.

If the provisions of H.R. 85 are not deleted from H.R. 7765, then the Members of the House will be faced with passing legislation which would establish a new comprehensive approach to oil and hazardous substances pollution liability and compensation. Since the House is considering H.R. 7765 under a modified closed rule, the opportunity for amendments (and some are necessary in the opinion of the leadership of our committee) is denied; and further, if H.R. 7765 passes in its current form, the provisions of title V would be in conflict with title IX.

Moreover, there would be no clear understanding of how these issues would be resolved. Certainly, a new approach is too important to be "worked out in conference," especially if a committee having no substantive responsibility nor expertise over the subject matter is in charge of the conference.

Also, anyone who supports the budget process must be concerned about the use of the reconciliation bill to enact major legislative initiatives. The budget process is concerned with fiscal policy and should not be used as an end run around the normal legislative procedure. H.R. 85 should come to the floor on its own merit, under an open rule allowing every Member the full opportunity to debate, to work out problems, and to perfect the legislation, if necessary.

Let us examine for a moment what exactly is involved in the problem we are attempting to resolve with the pending amendment. In the 95th Congress the House on two occasions passed H.R. 6303, the Comprehensive Oil Pollution and Liability Act. Because of a disagreement with the other body that bill failed to become law. H.R. 6803 had been developed by the Committee on Merchant Marine and Fisheries and concurred on by the Committee on Public Works and Transportation. Ways and Means neither sought nor received referral of this legislation.

In the 96th Congress a similar bill to H.R. 6803, H.R. 85, was introduced and jointly referred to the Committees on Public Works and Transportation and Merchant Marine and Fisheries. Merchant Marine and Fisheries reported the bill on May 15, 1979 and Public Works and Transportation reported their version on May 15, 1980. As reported by Merchant Marine and Fisheries, H.R. 85 imposes a fee of up to 3 cents a barrel on oil imported into and exported from or produced within the United States. It establishes a $200 million "superfund" to pay for cleanup and removal of oil pollution and to pay compensation for damages to the victims of these events.

The bill also establishes a comprehensive liability scheme. As reported by Public Works the oil pollution-related provisions are virtually identical to those of Merchant Marine and Fisheries Committee. Public Works, however, added a new title to establish a comprehensive liability and compensation program to deal with hazardous substances regulated under the Federal Water Pollution Control Act. An existing fund under section 311 of the Federal Water Pollution Control Act would be expanded to $100 million financed by a fee on certain petrochemical feedstocks and specific chemicals which pose the greatest risk to the environment.

The Committee on Ways and Means sought and received a sequential referral of H.R. 85 and changed the two funds created by this legislation to trust funds financed by a tax on oil and petrochemical feedstocks. The size of the funds was reduced to $75 million per year per fund and a 5-year limitation on the program was imposed. Additionally, that Committee substantively changed the program by amending the provisions of H.R. 85 relating to compensation for economic damages by reducing the categories for which claims could be presented to the funds. Additionally, Ways and Means exempted their amendments from title IV of the Public Works Committee bill which allows review of executive regulations by the Congress. The Committee on Ways and Means upon reporting their amendments to H.R. 85 also adopted these same amendments as part of their reconciliation package.

The Committee on Public Works and Transportation seriously questioned the appropriateness of using the reconciliation process to adopt measures relating to superfund. By letter dated July 1, 1980, the Public Works Committee leadership requested the Budget Committee to delete from the Reconciliation bill the measures relating to H.R. 85. The letter is as follows:

Hon. ROBERT N. GIAIMO,
Chairman, Committee on the Budget,
Washington, D.C.

DEAR MR. CHAIRMAN: We are writing with regard to the reconciliation bill which is to be considered by your committee. The Committee on Ways and Means has recommended that its amendments to H.R. 85 be included in that bill when it is taken to the floor. This is a matter which is of great concern to the Committee on Public Works and Transportation for a variety of reasons.

H.R. 85 has been reported by three committees—our Committee, the Committee on Merchant Marine and Fisheries, and the Committee on Ways and Means. The bill is now awaiting action by the Rules Committee. This legislation establishes a comprehensive system providing for the recovery of cleanup costs and compensation of damages caused by spills of oil and hazardous chemicals, liability for these costs and damages, and funds out of which these costs and damages will be paid. The amendments of the Committee on Ways and Means substitute excise taxes for fees, limit the damages for which claims may be filed, and limit the availability of the oil and hazardous chemicals funds for the payment of claims and cleanup costs. Also included are conforming amendments.

Under the procedure planned to be followed in connection with the reconciliation bill, these amendments would be considered separately from the remainder of the provisions of H.R. 85. The House would be considering a substantive portion of this legislation before the remainder of the legislation had even come before the Committee on Rules, much less the House. Moreover, this procedure would have the effect of predetermining the House's position on a significant part of H.R. 85—a part that is not without some controversy on jurisdictional issues—before the House has an opportunity to consider the bill as a whole. In short, the proposed procedure would subvert the normal legislative process and would render meaningless the concept and purposes of joint referral.

We would also point out that the revenues to be raised in the amendments to H.R. 85 as reported by the Committee on Ways and Means would be deposited in funds which are available only for designated cleanup and compensation costs and not available to reduce deficits, and only then if there is money in the funds. In addition, the balance of H.R. 85 relating to liability, claims procedures and the like is not yet law, so that the revenues collected could not be spent, even for the purposes contemplated in H.R. 85. There is therefore considerable questions as to the appropriateness of including these amendments as part of a reconciliation bill or resolution, certainly to the extent that they address matters other than revenue raising measures, such as limitations on the types of damages for which claims may be filed.

It is our position that the Comprehensive Oil Pollution Liability and Compensation Act should not be considered in piecemeal fashion by the House of Representatives. Therefore, the Committee on Public Works and Transportation requests that the measures relating to H.R. 85 reported by the Ways and Means Committee not be included in the reconciliation bill. If they are included, however, we have been directed by the Committee on Public Works and Transportation to include in the reconciliation package adopted by the Committee our version of H.R. 85 (a copy of which is included and report language supporting the recommended statutory language) approved by the Committee on Public Works and Transportation. If the House of Representatives is to consider legislation relating to oil pollution and hazardous substances liability and compensation, then it must have before it the complete legislative package in order to act responsibly.

Sincerely,

HAROLD T. (BIZZ) JOHNSON,
Chairman.

RAY ROBERTS,
Chairman,
Subcommittee on Water Resources.

WILLIAM H. HARSHA,
Ranking Minority Member.

DON H. CLAUSEN,
Ranking Minority Member,
Subcommittee on Water Resources.

Recognizing that the request might be beyond the scope of the jurisdiction of Budget Committee, the Public Works Committee directed the chairman to include in the reconciliation package adopted by the Committee the Public Works version of H.R. 85. This was necessary because the committee felt that if the House of Representatives is to consider legislation relating to oil pollution and hazardous substances liability and compensation, then it must have before it the complete legislative package in order to act responsibly.

While we recognize that the creation of two trust funds financed by a tax which will raise $300 million in fiscal year 1981 appears to be generating revenues which will be available to offset deficits, we also believe that these funds may not comply with the mandate to the Ways and Means Committee under the reconciliation process because these funds are available only for designated cleanup and compensation expenditures. That is, they have a dedicated purpose and therefore are not available to reduce deficits in the fiscal year 1981 budget. It is our position, therefore, that they should not be included in the reconcilation process.

Mr. Chairman, I believe that a thorough examination of the issues surrounding H.R. 85 and H.R. 7765 will lead most Members to the conclusion that the reconciliation process is not the appropriate vehicle to consider the major substantive legislation. Superfund should be debated on its merits, and under an open rule. Therefore, I urge the Members to support the amendment to delete from H.R. 7765 all provisions relating to H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution and Compensation Act, and H.R. 7020, the Hazardous Waste Containment Act.●

● Mr. BIAGGI. Mr. Chairman, I fully support the position of the chairman of the Committee on the Budget, the Honorable ROBERT GIAIMO.

As you may know, I have been working on legislation to provide a comprehensive system of liability and compensation for damage caused by oil and hazardous substances pollution and for removal costs for the past several Congresses.

I have been and continue to be gravely concerned over those who have been victimized as well as those who will pay for such a system. Therefore, I would of course like to see H.R. 85 enacted. However, I desire to see it enacted under conditions that will insure a carefully considered, integrated bill. I do not believe that enactment of H.R. 85 as part of the budget reconciliation process will produce that result.

The three involved committees have carefully and laboriously developed this bill and are in the process of resolving a number of remaining issues. Recently, the Committee on Rules provided the necessary vehicle to bring H.R. 85 to the House floor in the very near future. This procedure would be more appropriate and conducive to the finalization of a good bill.

I therefore whole heartedly support the distinguished gentleman from Connecticut in his motion to remove consideration of H.R. 85 from the difficult process of balancing the budget.●

The CHAIRMAN. Does any Member desire to be heard in opposition to the amendment offered by the gentleman from Connecticut (Mr. GIAIMO)?

If not, the question is on the amendment offered by the gentleman from Connecticut (Mr. GIAIMO).

The amendment was agreed to.

□ 1600

AMENDMENT OFFERED BY MR. VANIK

Mr. VANIK. Mr. Chairman, I offer an amendment printed on page 19812 of the CONGRESSIONAL RECORD of July 25, 1980, made in order pursuant to H. Res. 776.

The Clerk read as follows:

Amendment offered by Mr. VANIK: Page 306, strike out lines 11 through 19, inclusive, and insert the following:

Subtitle D—Delay of Effective Date of Trade Adjustment Assistance Amendments

SEC. 895. DELAY OF EFFECTIVE DATE OF TRADE ADJUSTMENT ASSISTANCE AMENDMENTS

Notwithstanding any other provision of law, the effective date of the Act to improve the operation of the adjustment assistance programs for worker and firms under the Trade Act of 1974 (H.R. 1543, 96th Congress) shall be September 30, 1981.

Amend the index to bill accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio (Mr. VANIK) is recognized for 15 minutes.

Mr. VANIK. Mr. Chairman, I yield myself such time as I may require.

Mr. Chairman, section 895 of H.R. 7765 repeals enactment of amendments contained in H.R. 1543, to improve the operation of the trade adjustment assistance programs for workers and firms under the Trade Act of 1974. The Committee on Ways and Means included repeal of H.R. 1543 as one of its recommendations under title VIII of the Omnibus Reconciliation Act for spending reductions totaling $2 billion in fiscal year 1981.

The amendment I propose to section 895 would delay the effective date of H.R. 1543 to September 30, 1981, as a substitute for the repeal of the bill. This amendment would achieve the same spending reductions as called for in the first concurrent budget resolution, but delay the effective date of H.R. 1543 until the last day of fiscal 1981, and at the same time retain the improvements in the trade adjustment assistance programs which the bill provides.

Mr. Chairman, a bill similar to H.R. 1543 passed both Houses and would have been enacted by the 95th Congress except for nongermane Senate amendments which could not be resolved in the closing hours before adjournment. H.R. 1543 passed the House on May 30, 1979, by a voice vote, has been reported by the Senate Finance Committee and is currently pending on the Senate Calendar. The amendment I now propose was nearly adopted by the Ways and Means Committee during its consideration of budget reconciliation recommendations, failing by a vote of 16 to 17.

The trade adjustment assistance program was established by Congress in 1962, and revised in the Trade Act of 1974 as a vital component of U.S. national policy to reduce the barriers to international trade. This policy is based on the belief that trade expansion benefits the American economy as a whole. However, Congress also recognized that sudden increases in import competition can adversely affect employment in entire industries, making it very difficult for workers to obtain suitable alternative employment, particularly if layoffs are concentrated in a particular region. The Congress believed the Federal Government rather than individual workers and firms affected, should bear the cost of adjustment resulting from Federal liberal trade policies and that the nature of trade-related dislocation warranted a special program of assistance.

Mr. Chairman, to date over 650,000 workers, particularly in auto, steel, textile and apparel, electronics, and footwear industries have received adjustment assistance benefits under the Trade Act. Over 200 small and medium-sized companies have received financial assistance, and over 750 companies have received technical assistance under the adjustment program for firms.

H.R. 1543 addresses the principal inequities in coverage, deficiencies in adjustment benefits, and delays in certification and delivery procedures in the current programs brought to the attention of the Ways and Means Committee by Members of Congress, major unions, and individual companies and their workers. A major provision of the bill extends program eligibility to all workers and firms supplying components and services directly impacted by increased imports in the end product. While auto parts workers would be the largest beneficiaries at the present time, the amendment would apply to workers in firms in any import-impacted industry supplying essential components or services.

H.R. 1543 also provides benefits to workers unaware of the 1-year time limit under the new program for filing petitions. It reduces the minimum prelayoff employment eligibility requirement, extends benefit periods for workers in training or older workers, increases relocation and job search allowances, establishes demonstration training projects, increases technical and financial assistance and reduces loan interest rates for firms, and provides industry-wide technical assistance.

Mr. Chairman, the need for program improvements under this bill has never been more urgent than now, in a period of recession, high unemployment, and efforts by our basic industries, such as automobiles and steel, and their suppliers, to adjust to import competition. In legislation, to date, Congress has recognized that a viable adjustment assistance program is an essential part of a balanced trade policy. Unless effective assistance is available to help firms and their workers hurt by these policies, the pressures to impose import restrictions will increase to the detriment of our economy and the trading system as a whole. Unfortunately, the spending limits necessitated by the first concurrent budget resolution preclude the immediate enactment of H.R. 1543. However, my amendment provides a realistic compromise which achieves the purpose of budget reconciliation while enabling enactment of sorely needed changes for viable import adjustment.

Mr. Chairman, I urge the passage of this amendment, and I reserve the balance of my time.

Mr. FRENZEL. Mr. Chairman, I rise to speak in opposition to the amendment.

The CHAIRMAN. The gentleman from Minnesota (Mr. FRENZEL) is recognized for 15 minutes.

Mr. FRENZEL. Mr. Chairman, earlier today I commented on the Vanik amendment and indicated that it would delay the passage of H.R. 1543 for 1 year, and defer a decision which really ought to be made in this reconciliation bill. At that time, I indicated also that I do not expect the other body to pass H.R. 1543, so that this effort we are conducting at this moment is probably one of futility anyway.

The Vanik amendment seeks to postpone for 1 fiscal year, minus 1 day, the effective date of H.R. 1543, the trade adjustment assistance program improvements bill passed by the House last May. The Vanik amendment is, in essence, a substitute for the provision of the budget reconciliation recommendations agreed to by the Ways and Means Committee which would rescind passage of H.R. 1543 altogether.

Although H.R. 1543 provided for certain valuable changes in the trade adjustment assistance program designed to broaden the program's scope and to make it more responsive to current needs, there was a great deal of concern over whether some of these changes did not redirect the focus of the program from trade readjustment to a sort of second-tier unemployment compensation system. There was also a great deal of uncertainty over the cost of the new legislation. It now seems that these concerns were justifiable.

The costs associated with H.R. 1543 are officially estimated at $822 million for the first fiscal year. I understand those costs should now be reversed upward to $1.2 billion. They come principally from the provision which would expand coverage of the trade adjustment assistance program to parts and service industries. Under the new legislation, a firm would no longer have to produce a product like or directly competitive with a particular imported product in order to qualify, or for their workers to qualify, for trade adjustment assistance benefits. These firms would need only supply parts or services to another firm adversely affected by import competition and be, as a consequence, adversely impacted themselves. You readily can see the difficulty in predicting exactly how many workers and firms could become certified under the new legislation and thus predict the cost associated with such a vast expansion of the program.

As you know, the House approved H.R. 1543 by voice vote early this session when the total cost of the bill was estimated to be about $166 million in fiscal year 1981. However, the Senate has not yet acted on the bill and is unlikely to do so during this Congress. The principal concern of the Senate in postponing final passage is the bill's price tag, which seems to escalate daily. The cost, of course, is also the reason the Wavs and Means Committee agreed to recommend that Congress reverse its decision to expand the trade adjustment assistance program this year.

The recession we are now experiencing touches every aspect of our economy. Imports are but one element, and industries that feel the competition if imported products most keenly cannot necessarily claim to be more seriously injured than industries hurt by other factors of the current economic crunch. Congress has been acutely aware of the effects of imports and a free-trade policy on our economy. We have put in place what I believe to be an effective trade adjustment assistance program designed to cushion the effects of import-related unemployment.

However, the trade adjustment assistance program cannot be expected to solve every problem associated with an overall economic slowdown. Fiscal responsibility is especially important as the economy adjusts and moves toward recovery. Merely postponing the effective date of H.R. 1543, as the Vanik amendment would do, does not solve either the problem of cost nor the inherent problem of whether expanding the program in such a manner is a viable response to trade-related unemployment. Delaying the budget impact does not in any way assure us that the cost of the new legislation will ever be controllable even though its provisions are triggered in fiscal year 1982 or perhaps later still.

In the course of the budget reconciliation process, the Ways and Means Committee recognized that now is not the time for a significant expansion of the trade adjustment assistance program. That decision goes beyond the fiscal year 1981 budget impact. If the repeal of H.R. 1543 stands, we will have an opportunity during the next Congress to reevaluate the improvements that need to be made in more realistic terms. It is difficult to see how we will be able to move a trade adjustment assistance bill through both the House and Senate, and have it signed into law, without limiting its scope and bringing its costs under control.

Although I am a long-time supporter of the trade adjustment assistance program, and will work toward enactment next year of needed improvement in the system, I agree with the budget reconciliation recommendation to forego enactment of H.R. 1543. I hope my colleagues agree as well and will join me in opposing the Vanik amendment.

Mr. Chairman, I yield 5 minutes to the gentleman from Michigan (Mr. DAVIS).

Mr. DAVIS of Michigan. Mr. Chairman, I rise to support the Vanik amendment. I appeared before the Rules Committee and asked for the opportunity to offer a substitute amendment which would have put the Vanik amendment into effect on September 30 of 1980 instead of 1981. The reason for that should be quite obvious. It would have allowed many of our unemployed workers in the steel industry, the supply industry, and the iron ore industry to be able to qualify for TAA benefits, which they will not be able to qualify for now.

Because we lost on that, or at least we were not allowed the opportunity to present that amendment on the floor and debate it, I must rise to support the Vanik amendment now, which will at least allow those people who are laid off after September 30 of this year to perhaps qualify because, under the Vanik amendment, they have 1 year to go back and put their application in. The Vanik amendment, of course, would set the date at September 30, 1981, as a comoromise—not really the best compromise that I would like, but the best we could get at this time. I recognize that in the future, if the imports of foreign products do cause layoffs of a number of our people in this country, then they would be able to collect benefits under the Vanik amendment.

□ 1610

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. DAVIS of Michigan. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Chairman, I certainly thank my distinguished colleague for his support of this amendment.

I want to point out that for many people who are involved in the benefits that are provided under this program, it is for many a "tombstone" support program. They have got to convert to another kind of job. I hope I am wrong, but I sadly fear there is going to be a permanent attrition for maybe as high as 25 percent of our work force in automobiles and components. This is resulting from not only the import problem but also from the problem that results from higher costs of automobiles.

If the average person in America owns an automobile one extra year, that can dry up 25 percent of the sales in this country, whether they are imported or domestic.

So I think what we are dealing with here is the fact that we are providing workers who have suffered from trade impact dislocation an opportunity to face up to the realities of what they have to adjust to because of a certain change of status, not of their making and very often not of the making of their employer but from circumstances that came about through policies of our Government and the administration's trade policy.

Mr. Chairman, I thank the gentleman for his support.

Mr. CONTE. Mr. Chairman, will the gentleman yield?

Mr. DAVIS of Michigan. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Chairman, I want to compliment the gentleman in the well and associate myself with his remarks. I commend also the gentleman from Ohio (Mr. VANIK) for offering this amendment.

I believe that 650,000 workers have already availed themselves of this program as a result of the flood of imports and the depressed condition of the automobile industry, the textile industry, the apparel industry, and the footwear industry in my part of the country.

The gentleman from Ohio (Mr. VANIK) has phrased it well. For a lot of workers this is a "tombstone." It is a little crumb that we can give them to carry on their existence, and I want to compliment the gentleman for offering the amendment.

Mr. DAVIS of Michigan. Mr. Chairman, I appreciate the remarks of both gentlemen.

I might just say that I happen to have 2,000 iron ore workers who were laid off on the last Sunday in June as a direct result of the import of foreign automobiles. It is very difficult to explain to

them why they cannot qualify for trade adjustment benefits when some of the auto workers in our automobile manufacturing plants can.

What I wanted to be able to do, of course, was to offer an amendment which would qualify them. I cannot do that, so the only way we have to go is to support this amendment, and this will at least allow them to qualify for these benefits in the future.

Mr. FRENZEL. Mr. Chairman, I have no further requests for time.

Mr. VANIK. Mr. Chairman, I yield 4 minutes to the gentleman from Maryland (Mr. MITCHELL).

Mr. MITCHELL of Maryland. Mr. Chairman, those workers drawing TAA assistance are broken down into three categories, as most of the Members know.

The first category is that group that is permanently unemployed because of plant closings and other things like that. Approximately 23 percent of all recipients fall into that category.

The second group of TAA recipients are those who are on temporary layoff. That is the largest group, and that makes up about 60 percent of all the recipients. These are the workers, primarily male workers, who are heavily concentrated in the durable manufacturing industries, particularly the automobile and steel industries.

The last group of recipients are those who work on reduced hours. That is about 17 percent of the TAA recipients.

I look to my own city and my own district where we have Bethlehem Steel which has suffered because of the dumping of steel for many, many years. I look to the Fisher body plant where there are layoffs because of the obvious influx and importation of foreign cars. I attended a meeting in my district in which a number of these workers asked, "What will we do? How can we possibly make it without TAA assistance?"

Mr. Chairman, I think my distinguished colleague, the gentleman from Ohio (Mr. VANIK), has provided an answer, not a full answer but at least an answer that is characterized by some sense of compassion, and I would urge the support of the Vanik amendment.

● Mr. ALBOSTA. Mr. Chairman, I rise in support of the Vanik amendment to delay the effective date of H.R. 1543, instead of rescinding the earlier House approval of the bill.

H.R. 1543 is necessary to improve the operation of the trade adjustment assistance program under the Trade Act of 1974. No, it is more than necessary; for my constituents in Michigan, it is vital. That is why I have cosponsored H.R. 1543, and that is why I now support the amendment to retain it.

Most laid-off automobile workers are getting TRA benefits, but workers who supply parts and services to the automobile companies have been denied them—even though they can lose their jobs because of the same foreign import crisis. The whole industry is so interdependent, it seems only fair to extend TRA benefits to those who supply parts and services. And this, in part, is what H.R. 1543 intends to do.

Those who favor deleting H.R. 1543 are missing a critical point: the same spending reductions sought by the Ways and Means Committee can be achieved in 1981 simply be delaying the effective date of H.R. 1543. This will satisfy the Committee goal of reduced spending while at the same time preserve the positive changes in the trade adjustment assistance program.

I urge my colleagues to vote in favor of the Vanik amendment.●

Mr. FRENZEL. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. VANIK. Mr. Chairman, I yield back the balance of my time, and I urge the adoption of my amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. VANIK).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BAUMAN

Mr. BAUMAN. Mr. Chairman, I offer an amendment which is at the desk and which is made in order by the rule.

The Clerk read as follows:

Amendment offered by Mr. BAUMAN: Beginning on page 2, line 14, strike all through page 4, line 2; and

Beginning on page 45, line 8, strike all through page 46, line 7.

The CHAIRMAN. Under the rule, the gentleman from Maryland (Mr. BAUMAN) is recognized for 15 minutes.

Mr. BAUMAN. Mr. Chairman, I yield myself 2 minutes.

The CHAIRMAN. The gentleman from Connecticut (Mr. GIAIMO) will be recognized in opposition to the amendment for 15 minutes.

The Chair recognizes the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Chairman, the amendment before us simply strikes the sections from the bill that would remove the cost-of-living adjustments which are granted under the current law twice yearly to Federal civilian and military retirees.

I think most of us have heard from individual constituents, as well as organizations, who are interested and understand the import of the Bauman amendment.

I noted that my colleague, the gentleman from Virginia (Mr. FISHER), in a very well written "Dear Colleague" letter set out the case in favor of this amendment and stated; and I quote: "Regardless of who offers the amendment, the principle remains the same." I am not sure of the full implication of that wording, "Regardless of who offers the amendment."

But, quite frankly, my reason for offering the amendment was that this is one of the many issues that ought to be addressed by the full House during the reconciliation process. As a matter of fact, I believe I voted in favor of every amendment that was proposed in the Committee on Rules for cuts or increases in order to allow them to be debated on the floor. This particular issue, with its inherent question of equity to Federal retirees, is one on which I thought we ought to have the right to act here on the floor. The majority of the Committee on Rules, as a bipartisan group, joined together to make my amendment possible today, in spite of the overwhelming opposition of the Democratic leadership.

I have another reason for offering the amendment. That is that I do not believe this bill does what some of the people who support it say it does on the Federal COLA issue. What is included in this bill is simply a one-time delay in the cost-of-living increase that was scheduled for September. That date has gone by. But I also understand that this bill might very well result in a double cost-of-living increase at the end of next year. So the COLA reduction is in one sense a phony reduction.

Other pending legislation would do away with the twice-a-year cost-of-living increase, but I viewed this bill section as a gimmick and I think that the House can reject it for what it is, a false saving that will not occur. I think we should face the issue directly today by adopting the amendment and honoring the congressional commitment to Federal retirees.

Mr. FISHER. Mr. Chairman, will the gentleman yield to me briefly?

Mr. BAUMAN. Yes. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. FISHER).

Mr. FISHER. Mr. Chairman, I thank the gentleman very much.

Mr. Chairman, I rise in support of this amendment which has been offered by my colleague, the gentleman from Maryland (Mr. BAUMAN). We should definitely stay with twice-a-year COLA—cost-of-living adjustment—for Federal, military, and civil employees.

We agreed to this only 3 years ago. It is necessary to keep faith with the military and civil employees. Certainly at this time we should do nothing to renege on retirement benefits for members of the Armed Forces.

Going to once-a-year COLA saves $600 million or $700 million in fiscal year 1981 but will not save over the longer run. It will simply mean that on the first day of fiscal year 1982 we will make all that up, and it is, therefore, a temporary, once-only, quick kind of fix for the benefit of the 1981 budget.

Finally, in a sense this reconciliation effort has been passed and overtaken by events. If the reconciliation proposal was put together in the framework of the first budget resolution which called for a balanced budget—and I supported that, and many others did—the recession, with its automatic revenue-reducing and expenditure-increasing effects, will force us to go to a second budget resolution with a deficit. That is sad, but it is a fact of life.

Some of the reconciliation items continue to be sound and desirable; others should be reexamined in the light of present realities and future likelihoods. COLA is one requiring reexamination.

Mr. Chairman, the amendment to retain the twice-a-year COLA should be approved, and I urge support of the amendment.

□ 1620

Mr. BAUMAN. Mr. Chairman, I yield 1 minute to my colleague, the gentleman from Maryland (Mr. MITCHELL).

Mr. MITCHELL of Maryland. I am delighted that my distinguished colleague, the gentleman from Maryland (Mr. BAUMAN), yielded to me.

Mr. Chairman, the power of this House always overwhelms me. It is being manifested today in Mitchell rising to support a Bauman amendment, which I do support heartily and without any reservations or equivocations. With double-digit inflation raging as it does, the gentleman from Maryland has shown that the milk of human kindness flows in his veins, and he indeed is rising to the occasion by looking out for people who need help desperately. It shows the power of the House and it shows the redemptive power of love of the church that the gentleman from Maryland has risen to new heights and has offered us an amendment that we should all support. I am deeply and profoundly grateful to my colleague.

Mr. BAUMAN. Mr. Chairman, today Bauman, tomorrow Reagan and the world.

I yield 1 minute to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, I support the amendment of the gentleman from Maryland for several reasons, not the least of which is that it minimizes some of the coercive character of the budget reconciliation process.

In a statement that accompanied our committee reconciliation amendments, our Republican members declared:

> We have grave misgivings of developments which have forced this legislative committee to take action and offer recommendations against its better judgment. We do not fully agree with the course of legislative action produced by the majority members, but we felt, as they do, that the independence of the legislative committees has been compromised.

Mr. Chairman, the elimination of the cost-of-living adjustment next March for Federal civilian and military annuitants is less a budgetary saving than it is cost avoidance that eventually will be disbursed from the Federal Treasury.

As a matter of equity, we owe it to Federal annuitants to deal more carefully with this matter and should not be rushed into legislation that makes the budget look good by simply delaying authorized payments to annuitants.

The bill under consideration is the wrong place to tinker with a critical element of retirement law. The amendment of the gentleman from Maryland offers us the opportunity to set this issue aside and to consider it at the proper time in conjunction with all other aspects of retirement law and under saner circumstances.

Mr. Chairman, I wish to commend the gentleman from Maryland (Mr. BAUMAN) for what I understand was a very effective manner in which he manipulated the Rules Committee for a 3- or 4-week period until this rule was granted. I understand, from reading the publications of the Federal employee groups, especially the retirees, that the gentleman from Maryland is considered sort of a male Joan of Arc, saving them from the Budget Committee. I commend the gentleman. I commend him for his leadership and his political astuteness and the great manner in which he approached this legislation. I also commend him for the very effective fashion in which I understand he helps the chairman of the Rules Committee operate that body.

Mr. BAUMAN. Perhaps we can all go out and burn a stake together later this evening.

Mr. GIAIMO. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. PANETTA).

Mr. PANETTA. Mr. Chairman, there is no question that in attempting to achieve legislative savings there are obviously concerns about priorities and specifics of the proposal that is before the House, but, surely, no one can argue that the burden that is presented here on legislative savings ought not to be shared as equally as possible between the rich and the poor, between the retirees and the active employees, between the public and the private sector.

In the name of that equity, this amendment ought to be rejected.

The poorest in our society are limited, at most, to a once-a-year increase. Those on social security receive once-a-year increases. Those receiving food stamps receive once-a-year increases. Built into the reconciliation bill are limitations on Federal workmen's compensation and child nutrition that limit increases to once a year. Active duty personnel, be they in the military or people who work in the Government, are limited to once-a-year increases in October. And in the private sector, there is not one pension plan that provides for twice-a-year cost-of-living increases.

If this amendment passes and if reconciliation passes, the only group in our society that will receive twice-a-year increases are Federal retirees and military retirees.

The cost here is $800 million in legislative savings that will be impacted in terms of the reconciliation process.

So in the name of fairness and in the name of equity and in the name of reconciliation and the process of reconciliation, I ask the Members to reject this amendment and support the committee position.

Mr. GIAIMO. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, I oppose the Bauman amendment to restore the second cost-of-living adjustment that the reconciliation bill is designed to eliminate.

By eliminating that twice-a-year COLA, we can save all of our taxpayers about three-quarters of a billion dollars. It is unnecessary and wasteful to escalate more often than once a year.

The Bauman amendment will maintain a preferential, unearned benefit for a small group in our society. The general taxpayers should not be required to bear this inflationary burden merely to provide another benefit, unmatched elsewhere in our society, to this small group.

If we cannot defeat the Bauman amendment, we can never control our budget.

Mr. GIAIMO. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I rise in strenuous opposition to this amendment. We are talking about saving the taxpayers money in this reconciliation bill. We are talking about trying to make combined savings in outlays and revenues of $10 billion. One of the key parts of that is the $700 million for twice-a-year cost-of-living adjustments for Federal retirees, military and civilian.

It is no secret to any of the Members in this chamber that I am not running for reelection. I have decided that 22 years in Congress is sufficient time, and I am going to retire to private life in January. So I will be one of those retirees who will be getting a lovely pension from the Federal Government, twice a year adjusted for inflation, with a look-back provision, probably, while everyone else in this land is lucky if they get any kind of adjustment for inflation. And I know the pressure that has been put on the Members of this body by the lobbies of the retired employees of the Government, military and civilian, and I say to the Members that it is disgraceful. There is nothing as good in this land as a Federal pension. We have people, as I said, who get no pension at all. We have many others who do get pensions. Some of them get an adjustment for inflation. Very few of them get 100-percent adjustment for inflation, and even fewer get a 100-percent adjustment for inflation twice a year like our Federal retirees do.

Our social security recipients, our social security pensioners, they get an adjustment for inflation once a year. Once a year.

Oh, it will be said, "Yes, but they do not pay into their retirement fund like Federal retirees do," or, rather, "They do not pay income tax on the money."

The fact is that, after the second year as a Federal retiree, you have gotten back all of the money that has been paid in, and it is Uncle Sam's money, or better yet, the taxpayers' money, that is financing this. I think it is outrageous that we should compensate twice a year for inflation for Federal retirees when we do not do it for anyone else in the land. And the only reason the pressure is on us is because the retirees are so well organized. They have been crawling all over this Chamber, hitting every Member here and back home, and putting the heat on them. And they are politically organized. But I say to the Members that it is wrong. It is the least justifiable of Federal programs. We are talking about $700 million. I must say that I am shocked that my friend, the gentleman from Maryland, who is such a great protector of the public's purse, has seemed to have erred in this particular instance and is proposing this amendment. Shame, I say, on my good friend from Maryland. Shame.

You are going to hear arguments from some of my colleagues who represent areas which have many, many retirees living in them. But I will submit to you, do not listen to them. The pressure is on. This is a wrong, wrong expenditure of money.

At one time we tried to have comparability between Federal pay and civilian pay in the economy, and at that time we came forth with twice-a-year adjustments for inflation, a 1-percent kicker. But those days have passed, and I will say to the Members today that a Fed-

eral pension is better than any other pension you can get anywhere in the land. And it certainly does not need a 1-percent kicker, and we recognized that and we eliminated it several years ago.

□ 1630

Now we have this twice-a-year adjustment at 100 percent for inflation. This is wrong, and it should go.

The CHAIRMAN. The time of the gentleman from Connecticut (Mr. GIAIMO) has expired.

Mr. GIAIMO. Mr. Chairman, I yield myself an additional 2 minutes.

The CHAIRMAN. The Chair recognizes the gentleman from Connecticut.

Mr. GIAIMO. They will tell you, "We made a contract with them. It is wrong to breach faith with them."

That is nonsense. Nonsense. We are talking about the taxpayers' money, and we have a responsibility to achieve equity; and nothing goes on forever, and even ripoffs have to end.

Mr. MAGUIRE. Mr. Chairman, will the gentleman yield?

Mr. GIAIMO. I yield to the gentleman from New Jersey.

Mr. MAGUIRE. I remember as the gentleman does the debate in this House on the 1-percent kicker. I joined the gentleman and other Members in arguing that really had to be abolished because it built on itself and it compounded itself, and it really more than adjusted for the rate of inflation.

My recollection, though, is in that debate and in those discussions, we indicated that we would be sympathetic to the continuation of the twice-yearly adjustment on the ground that that was a proper, a more fair way of keeping up with the rate of inflation, as opposed to the kicker, which really was quite unfair to the taxpayer.

I just wondered if the gentleman would comment on that and whether or not we do, in fact, have on the record of this House, when we eliminated the 1-percent kicker, a type of commitment to continue the twice annual adjustment.

Mr. GIAIMO. One Congress cannot commit another. There is no such thing as a commitment. There is a law, and the law, when circumstances come along, can be changed. There is no commitment, and certainly what might have been committed by some Members of Congress in an earlier Congress cannot commit this one.

Mr. MAGUIRE. I was one of those Members who did make that kind of commitment. That is one of the things that will motivate me in my vote today.

I thank the gentleman.

Mr. GIAIMO. Let me repeat, in closing: Social security benefits are only adjusted once a year for inflation. No private pension plans are automatically adjusted twice a year. Only 3 percent of private pension plans are adjusted automatically for inflation on any basis.

The CHAIRMAN. The time of the gentleman from Connecticut (Mr. GIAIMO) has again expired.

Mr. GIAIMO. Mr. Chairman, I yield myself 1 additional minute.

The CHAIRMAN. The Chair recognizes the gentleman from Connecticut.

Mr. GIAIMO. Sixty percent of private pension plans are adjusted on an ad hoc basis. Thirty-seven percent of private pension plans provide no adjustment for inflation.

Let me tell this body something: We will not vote an adjustment upward for inflation for ourselves. We will not vote it for certain working people in the Government. And yet, we will do it for the retirees because of this pressure on us from the retired groups. I say it is wrong, and the time to stop it is now. This is the least justifiable of all Federal expenditures.

Mr. BAUMAN. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Chairman, I rise in support of the amendment offered by my colleague, the gentleman from Maryland (Mr. BAUMAN), which would strike those sections of H.R. 7765 proposed by the Committees on Armed Services and Post Office and Civil Service eliminating: First, the September 1980 cost-of-living adjustment for military retirees; and second, the twice per year COLA for Federal civilian retirees;

H.R. 7765 as presently written would adversely affect more than 3 million Federal civilian and military retirees.

I cannot agree with the determination of those on the House Committee on Armed Services who recommended a cut for our already hard-pressed military retirees. I believe that those who have served our Nation bravely and in its time of need should not be singled out and penalized at a time when our Nation is suffering through an economy ravaged by inflation.

Turning to the recommendation proposed by the Committee on Post Office and Civil Service, of which I am a member, which I could not support, I can only say that we are sending into the front line in the war against inflation, those least fiscally fit for the assignment. I am referring to our civilian retirees.

While our committee's recommendation does not permanently modify the twice-per-year COLA statute, it does delay the March 1981 COLA until September 1981, thus further jeopardizing the financial status of our Federal annuitants. Such action, and the magnitude of the estimated savings involved, $356 million, would be better addressed by our committee through deliberative consideration of authorization legislation—not the broad dictates of a Budget Committee which demands somehow that our committee, in a relatively short period of time, achieve, in whatever manner, budget cuts in important programs. Congress in repealing the 1 percent add-on or "kicker" in retirement benefits for Federal civilian retirees, committed itself to a statute providing for a semi-annual COLA. H.R. 7765, as presently written, would result in the Congress reneging on its commitments to Federal governmental retirees.

Accordingly, for these reasons, I urge my colleagues to support the amendment offered by the gentleman from Maryland to correct the serious deficiencies in this legislation which misdirect our efforts on behalf of fiscal responsibility.

Mr. BAUMAN. Mr. Chairman, I yield 1 minute to the gentleman from Hawaii (Mr. HEFTEL).

Mr. HEFTEL. Mr. Chairman, in 1976, this body entered into a contract with the people who serve this Nation, military and nonmilitary. That contract stipulated that the Government would withdraw the 1-percent kicker and as a partial compensation provide a twice-a-year cost-of-living allowance adjustment. The Federal retirees were led to believe that the commitment could be taken seriously and that we care about the relationship we have with those who serve our Nation, in and out of the military.

I know of no group of people in this Nation working for a company with a sense of responsibility who would expect to retire and then that their retirement compensation is adjusted downward according to the dictates of the directors or management personnel, unilaterally, as though no prior contract had been consummated.

Mr. BAUMAN. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. LOEFFLER).

Mr. LOEFFLER. Mr. Chairman, I rise in support of Bauman twice yearly COLA amendment. No one has yet given me a convincing reason why we should target this group of people and cut the benefits due to them.

No one today is saying that twice yearly COLA's are unnecessary to keep the income of retirees in line with the inflation rate. No one has shown me that retirees are being overcompensated for inflation, as was argued in 1976, when Federal retirees were first placed on the semi-annual COLA system as a replacement for their 1-percent "kicker." In fact, GAO recently reported that retirees are not being overcompensated for inflation, and there is even concern that the Consumer Price Index understates the impact of inflation on the elderly.

I believe the Government has a commitment to provide the inflation protection promised to Government workers when they began work for they selected the military or Civil Service in large part because of its secure retirement plan.

Today, we are trying to upgrade the quality and quantity of military personnel and of course we are always looking for qualified and dedicated people to fill the ranks of our Civil Service. Yet time after time I have been told by military people in my district: "You can't attract people on the basis of benefit packages when they can look to Congress and see their benefit plans being bounced around as political toys." We are striving to strengthen our national defenses on the one hand, yet we consider stabbing ourselves in the back by implementing this kind of policy on the other.

I urge my colleagues to join me in supporting the Bauman amendment, not only for today's retirees but also for tomorrow's qualified and capable military and civil servants.

Mr. BAUMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. CARNEY).

Mr. CARNEY. Mr. Chairman, I stand in support of the Bauman amendment. As we are all aware, the legislative package we are now considering contains a

provision that would limit the number of cost-of-living adjustments received by Federal retirees from twice to once a year. Proponents of this measure claim that this change is fair since social security recipients receive only one cost-of-living increase a year.

What this argument fails to consider, however, is the unique nature of the civil service retirement system. Social security was never intended to provide individuals with a full retirement income, only to serve as a supplement in their later years. The civil service retirement system, on the other hand, is designed to provide a full retirement income in lieu of other benefits.

There are many other differences between the two programs. Civil service annuities are taxable; social security benefits are not. Federal employees contribute a greater portion of their incomes into their retirement system than private sector workers pay into social security. Federal retirees have health and life insurance payments deducted from their annuities while social security recipients do not.

Furthermore, the Government's own statistics show that private sector workers in comparable positions earn more than most of their Federal counterparts. Many qualified employees, however, enter—and remain in—Government service because the existence of a sound, attractive retirement program compensates for the lower pay and lack of social security coverage. Eliminating the twice-a-year adjustment at this stage is akin to changing the rules after the game has been played. Enactment of a once-a-year COLA would be a breach of faith by the American Government to the very citizens responsible for the successful day-to-day operation of the United States.

I believe that any modification to the present system is, at best, premature. The President's Commission on Pension Policy is currently studying indexation procedures in all retirement plans and seeking to develop a recommendation for an equitable cost-of-living adjustment that can be adapted to various programs. At the very least, we should wait until the Commission has released its report before considering a drastic change in the civil service retirement system.

Mr. Speaker, many glittering tributes to our Nation's senior citizens have been uttered on the floor of the House. Unfortunately, when the time comes to support some or all of them through concrete action, these sentiments change rapidly. I, for one, do not believe that the annuities received by many older Americans should be sacrificed to the reconciliation process. I strongly oppose the elimination of the twice annual cost-of-living adjustment for Federal retirees.

Mr. BAUMAN. Mr. Chairman, I yield 4 minutes to the gentlewoman from Maryland (Mrs. SPELLMAN).

Mrs. SPELLMAN. Mr. Chairman, Machiavelli was a piker. Machiavelli was a pantywaist. He would be green eyed with envy if he could see the kind of antics that have been displayed here in this House in opposition to the COLA amendment.

Just today, we Democrats received an issue paper which purported to convey the real story on Federal retirement. It was interesting that we received it today, not yesterday, not the day before—today—so that we could not give a point-by-point refutation of the document that was so full of misinformation.

Many of my colleagues here think that Federal retirees are all fat cats. They have these big earning figures thrown at them in newspapers and issue papers like the one I just referred to.

Well, what is the truth? Who are we really talking about?

According to the Office of Personnel Management's 1979 Federal fringe benefits statistics, 90,000 Federal retirees and the 150,000 survivors of Federal retirees receive less than $200 a month in benefits. Approximately 700,000 annuitants receive less than $500 a month. Half of the people we are talking about, half who are on the rolls as of March 1980, receive less than $700 a month. They are not really as fat as those figures that we received would have us believe.

Mr. Chairman, in that issue paper that we received, there was a comparison of the Federal retirement system to social security. That is totally ridiculous. They cannot be compared. They are two entirely different kinds of programs.

□ 1640

Social security was not meant to be a retirement program. It is an insurance program, a quasi-welfare program. Social security is not taxable. Civil service is taxable.

Has anyone compared General Motors retirement to social security? Of course not. Everyone recognizes the difference between their retirement program and social security. As a matter of fact their employees all have both.

Let us talk a little bit about the benefits. Social security recipients receive medicare benefits. Federal retirees do not. Social security income is tax free. Federal retirement is not.

Social security disability benefits provide additional supplements for dependents. Civil service does not.

Social security old age benefits are supplemented for dependents. Civil service benefits are not.

A civil service retiree must take a reduced benefit to provide dependents with some protection. But, social security provides additional benefits to aged parents, to students, to divorced spouses, to the families of disabled workers, for medical expenses, rehabilitation service. The civil service retiree had better save some money. None of those are covered.

But if we have to equate the two, and my beloved chairman of the Budget Committee just made mention of the fact that social security is adjusted only once a year, let me point out that the Social Security Advisory Council in December of 1979 recommended that the law be changed to provide for twice a year cost-of-living adjustments for social security.

You have heard here that only Federal retirees get cost-of-living adjustments.

The CHAIRMAN. The time of the gentlewoman from Maryland has expired.

Mr. BAUMAN. Mr. Chairman, I yield 30 seconds of the time of the gentleman from Maryland (Mr. BARNES) to the gentlewoman from Maryland (Mrs. SPELLMAN). I am sorry to do that. That is all I have left.

Mrs. SPELLMAN. It just is not so. Many receive regular adjustments through collective bargaining, an option, obviously not available to Federal employees. I can tell you that those people who are retirees in the United Steelworkers, Caterpillar Corp., John Deere Co., the United Autoworkers, Bell Telephone, ITT Corp., and I do not have time to give you all the rest, would never change places with a Federal retiree.

Let us keep our promise. Besides, we promised a twice a year adjustment at the time we dropped the 1 percent kicker. Keeping promises is sacred with me. It should be for this body.

Of course, we can save money with the cuts being proposed. We have taken money from children. We have taken money from students and I know we are going to be proud now to take this from our senior citizens. I congratulate my colleagues, the gentleman from Virginia, (Mr. FISHER) and the gentleman from Maryland (Mr. BAUMAN) and I would hope that all of my colleagues will join with us to vote for the amendment.

Mr. GIAIMO. Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. HARRIS).

Mr. HARRIS. Mr. Chairman, I thank the very gracious chairman of the Budget Committee, the gentleman from Connecticut (Mr. GIAIMO) for yielding me this minute of time.

I do not think there is any question about what is going on here today. I think the comments from the gentleman from Connecticut made it clear that this is not a proposal for a temporary suspension of COLA. It is a proposal for a permanent suspension, with the first step being a temporary suspension. I think this makes it clear.

The question is whether we are going to control inflation or whether we are going to make the little people that are subjected to inflation pay the bill. That is what the question is.

This budget resolution, this reconciliation resolution says it is the little people that are going to pay. We are going to have them carry the burden.

Mr. Chairman, this is wrong. This is not in the spirit of the Democratic Party. This is not in the spirit of the people that brought these kinds of decent annuity benefits to our civil service workers.

The Democratic Party brought these benefits, not the Republican Party. The Democratic Party has no business sponsoring this type of a measure. They should not do it today and they should not do it tomorrow.

Mr. HARRIS. Mr. Chairman, I urge my colleagues to join me in casting a vote in favor of the amendment to retain two cost-of-living adjustments for Federal retirees who are struggling to make ends meet in these inflationary times. The vote on the amendment today caps a long battle to allow Members of this body to vote against making Federal retirees the scapegoats of inflation.

The House Post Office and Civil Serv-

ice Committee was ordered by the Budget Committee to enact legislation saving $1 billion. I voted to strike reconciliation. Unfortunately it did not succeed. I voted against the budget resolution because it contained this requirement and because I could not support what was only a charade of a balanced budget. I offered an amendment in the House Post Office and Civil Service Committee to retain the cost-of-living adjustments and to substitute the savings from my legislation, H.R. 4717. Enactment of H.R. 4717 would eliminate wasteful Federal contracting and year-end spending. My amendment narrowly missed passage in committee by a vote of 8 to 10.

When the language eliminating the March COLA was included in the reconciliation bill, I wrote the House Rules Committee urging them to allow a separate vote on the elimination of the March COLA. The Rules Committee's favorable response to my request makes possible the vote we are about to take.

Reducing earned benefits would be one more sad example in the string of broken promises between the Federal Government and its employees. It would be bad for recruitment of future employees, bad for the morale of current employees and unconscionable for current annuitants. It would clearly demonstrate bad faith on the part of the Federal Government in dealing with its own employees. I will vote for the amendment to retain the semiannual COLA, and I strongly urge my colleagues to do the same.

Mr. GIAIMO. Mr. Chairman, I yield 1 minute to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. Mr. Chairman, I want to follow on with what my colleague, the gentleman from Virginia just said. There is no free lunch. That is how it is being portrayed to this House and to this committee.

One of the most attractive parts of Federal service and military service is our retirement programs. What we are doing here again is taking away benefits that we promised civil service workers, that we promised military workers. It is another erosion of those benefits. We have all heard about it when we have gone home, that "you just will not keep faith with your commitment when we hired on."

Now people in the military, we have tried to send a positive signal to with the Nunn-Warner amendments and an 11-percent pay increase, they are going to say again, "Oh, yes, but now they are going to take away our retirement benefits. They are going to take away our COLA. That is one of the reasons we got in, because the retirement program was attractive."

This is just another effort to erode those benefits. I think it is wrong. I think it is a tragic mistake. I urge the House to accept this amendment.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Maryland. The ravages of inflation spare no one, least of all our retired citizens. Medical costs and the daily necessities of life increase even more rapidly than the general economy. Yet these are the part and parcel of a retired person's expenses. We now have before us legislation that would signal a wholesale retreat from a commitment to protect those civilian and military retirees who gave long and dedicated service to the Nation. We must not allow this to happen.

A retiree with a $700 a month annuity, a modest income by any standards, would stand to lose $360 in the first year of a annualized COLA. The average annuitant, who receives $300 a month, would lose $150 in that first year. Many Federal retirees have difficulties stretching the few dollars they receive now. To make that burden even worse can simply not be justified.

We should also remember that unlike social security, Federal retirement payments are taxed. Federal retirees experience the same bracket creep from inflation that others do. This is an extra burden that can at least be partially offset by a semiannual cost of living adjustment.

Recruitment and retention of skilled and dedicated military and civilian personnel is critical to the effective operation of Government. Our ability to recruit and retain such people is dependent on providing adequate incentives. The Federal retirement systems that recognize the impact of inflation are among our most valuable incentives. Yet it is fashionable to view Federal workers and retirees as repeated victims for budget cuts. Repeated pay caps and attacks on the retirement system have seriously eroded both civilian and military morale and made management of these vital resources exceedingly difficult.

I am particularly disturbed by the signal the COLA cutback would have on the military. Just last week this body approved the Nunn-Warner compensation package designed to improve our ability to retain skilled personnel. Now we are being asked to turn 180 degrees and take an important benefit away. While we are handing a welcome check to the military member, we are picking his pocket under this bill. It is a classic case of the Congress giveth and the Congress taketh away.

Solving our military personnel crisis will take time and considerable effort. The most critical task now is to convince those in the service who are considering leaving that the Congress recognizes the problem and is working to solve it. This proposed COLA reduction sends exactly the wrong signal. If military retirement is to be changed, it must be done in the context of other compensation adjustments, not on a piecemeal basis.

Retention of civilian personnel is also a growing problem. At industrially funded activities in the Department of Defense we often find it impossible to recruit the engineers and skilled personnel we need. The incentives in the private sector are just too attractive. For the Federal civilian, the retirement system is a prime motivator. Yet this system has come under repeated attack. Federal workers are uncertain about their future, their morale has declined tremendously, many are leaving while they see the leaving good.

When Congress eliminated the 1-percent adjustment for time delays in the COLA adjustment in 1976, we pledged to our retirees that there would be no more tampering with this mechanism. We can not commit the breach of faith which this reconciliation proposes.

There of course, must be a sharing of the burden in this important reconciliation process. Included in this bill are $131 million in civil service salary and retirement reductions besides the annualization of cost-of-living adjustments for retirement. The Post Office and Civil Service Committee will still have $600 million in reductions for programs under its jurisdiction should this amendment succeed. I do not advocate that Federal workers should be exempt from the sacrifices necessary to reduce spending. But we can not have a reconciliation bill which is built on the backs of those who can least bear the burden. The Congress can do better than that. We must do better than that.

Mr. BAUMAN. Mr. Chairman, I yield my other half minute to the gallant gentleman from Maryland (Mr. BARNES).

Mr. BARNES. Mr. Chairman, I rise in strong support of the Bauman amendment, which retains the twice/yearly cost-of-living adjustments for millions of retired Federal civilian and military personnel. This amendment would correct an injustice which the reconciliation bill in its present form would inflict on retired Americans, most on fixed incomes, who earned and depend upon these cost-of-living adjustments to keep pace with inflation. A vote in favor of the Bauman amendment would also insure that the Federal Government keeps faith with its employees and former employees now in retirement. That faith has been sorely tested recently.

Many Members who served in this House during 1976 may have forgotten that they voted overwhelmingly to institute the twice/yearly COLA adjustments as a cost savings measure in place of the "1-percent add-on" feature which had been part of the Federal retirement system and which had provided additional protection against inflation. The floor manager of the bill which instituted the twice/yearly COLA, our former colleague Congressman George Shipley of Illinois, said that the switch to the twice/yearly system would save $3 billion over the following 5 years. At the time the change was made, there was an implied promise to Federal retirees from the Government that it was a one-time change, and that the U.S. Government's retirement system would not continue to be nit-picked apart year after year to achieve cost savings for political reasons.

Yet, almost immediately, efforts began to eliminate permanently one of the two cost-of-living adjustments, and when that failed we were confronted with the present bill.

Mr. Chairman, there has been a specious argument raised which purports to compare the cost-of-living adjustments in the Federal retirement system with social security. This argument overlooks a number of key points. First, Federal employees contribute a higher portion of their income to their retirement system as contributions during their period of

employment. They pay much more to get the benefits they receive. Second, Federal retirees are taxed on their annuities after they have received back the amounts they contributed. Social security recipients are not taxed. And third, the twice/yearly COLA adjustments are part of a Federal retirement system which we need to maintain and to make attractive so that people will work for the Government. That was the rationale behind the system to begin with—to let the Federal Government compete successfully for the best people.

This Congress and other Congresses and administrations before it have done much to undermine the compensation paid to Federal civilian employees and members of our Armed Forces, and to try to take back the retirement annuities which Federal personnel thought they were earning during their participation in the system. Morale throughout the Federal service is very low. Members of this body who constantly carp against Federal workers and retirees must share the responsibility for the record number of retirements of highly trained and experienced personnel recently. People are getting out now because they do not trust their Government, and with good reason. There are plenty of other areas where budget cuts can more reasonably be made.

Congress should keep hands off the Federal retirement system before things get worse than they already are. Leave it alone, and vote for the Bauman amendment.

Mr. GIAIMO. Mr. Chairman, I reserve the balance of my time.

Mr. BAUMAN. Mr. Chairman, under the rule, does not the proponent have the closing time?

The CHAIRMAN. The gentleman from Maryland gets the last word. The gentleman from Maryland has 1 minute remaining. The gentleman from Connecticut has 2 minutes remaining.

The gentleman from Maryland gets the last word.

Mr. GIAIMO. Mr. Chairman, I think I had another strong proponent of twice-a-year adjustment for COLA here who wanted a minute.

Does the gentleman from Virginia seek a minute?

I really like to hear these arguments in favor of COLA twice a year.

I yield 1 minute to the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, I thank the gentleman very much.

I look back very fondly on the time I spent on the Budget Committee under the gentleman's chairmanship.

Mr. Chairman, I am proud to have brought this amendment to the Rules Committee originally. I am delighted that my colleague, the gentleman from Maryland (Mr. BAUMAN), a member of the Rules Committee, carried it forward so effectively.

I am delighted also that we have such generous support from both sides of the aisle for this amendment.

I do urge my colleagues to vote for it.

Mr. GIAIMO. Mr. Chairman, I rise in opposition to this amendment. I urge that it be defeated.

I just say that I hope the American people wake up and realize what waste is going on with this whole business of pensions involving Federal retirees. It is an outrage. It is a shame and it should be terminated.

I urge the defeat of the amendment.

Mr. BAUMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from California, Mr. LAGOMARSINO.

Mr. LAGOMARSINO. Mr. Chairman, I rise in support of the Bauman amendment to continue twice-a-year cost-of-living allowances.

As has been pointed out two times a year COLA's was the trade for elimination of the 1 percent inflation kicker several years ago.

Now the Budget Committee wants to go back on that commitment.

How can we attract and retain qualified people in the civil service and in the military if we don't keep our commitments?

I urge support of the amendment.

Mr. BAUMAN. Mr. Chairman, I just want to say to the gentleman from Connecticut, he has been very gallant in opposing this amendment.

I am not at all ashamed in offering it. I do think the House ought to have a chance to work its will on this issue, as I felt they should on others. Earlier this year the House adopted my amendment cutting $1.4 billion from the international lending institution bill. I need not point out that more than covers the cost of this amendment.

I congratulate the gentleman on his retirement from the Congress and his remarks today. I am sure they are unrelated to each other; but I would say to the gentleman that many of us do have some concern about the Federal retirees that are involved in this program. We do think their treatment at the hands of the Federal Government influences whether or not we are going to have retention in the military and other Government service.

So simply, I am presenting the case today and a chance for the House to work its will, as they were denied the right to work their will on a great many other amendments. If, in fact, the amendment passes, the House will have decided that the gentleman from Maryland is once again right.

● Mr. CONYERS. Mr. Chairman, I will vote for the amendment to the budget reconciliation bill to preserve the twice-annual cost-of-living adjustment (COLA) to the pensions of retired Armed Forces personnel and retired civilian employees of the Federal Government.

The attempt by the Budget Committee to cut out one of the two cost-of-living adjustments in fiscal year 1981 for the sake of budgetary savings is without any justification. It was done earlier this year, along with other selective savings, to achieve a balanced Federal budget. Now that the goal of a balanced budget is unachievable largely because of the recession, there is no justification for singling out retired civil servants and military personnel for sacrifices that others are not being called on to make.

In principle, the attempt to eliminate twice annual cost-of-living adjustments was wrong from the start. In 1976 when the adjustments were established, Congress made a commitment to retirees that their benefits would keep pace with inflation. To change the rules now would abrogate that agreement, which became the basis for financial planning for Federal retirees.

Furthermore, the reconciliation bill would have eliminated one of the two semiannual adjustments only during the next budget year, and presumably restore the twice-annual payments in future years. This kind of tinkering with retirement benefits is the height of arbitrary policymaking.

The twice-annual cost-of-living adjustment that was created for Federal civil servants and Armed Forces personnel was a reasonable way to protect the economic rights of more than 3 million individuals. It should be the model for extending similar protections to social security recipients, who presently receive only one annual adjustment, and for recipients of private pension plans, only 3 percent of which are adjusted automatically for inflation. Working men and women, whether in the Government or the private sector, deserve to have ample security in their retirement.●

● Mr. ALBOSTA. Mr. Chairman, I rise in support of the Bauman amendment.

I am a strong supporter of the reconciliation process. I do not feel however, that the place to make last minute cutbacks should rest with the retirees who are already finding it very difficult to deal with spiraling inflation.

As my colleagues know, I have been in the forefront against the taxation of social security benefits for our Nation's retired persons. I took on this battle because I felt that the elderly public has paid its dues to the Government, and should not have their limited earnings from social security chopped away by the Internal Revenue Service.

Likewise, the retirees in this Nation who chose a career of military or civil service should not have their retirement benefits arbitrarily cut back at a time when senior citizens can least afford any downward movement in their income.

A recent study by the American Association of Retired Persons showed that the Consumer Price Index actually understates the effect of inflation on our retired public. Federal retirees, however, must pay income tax on their pensions, so any cost-of-living increase would be negated by the increased tax burden. It should thus be clear that every penny of that increase is needed by those retirees.

To change the rules of COLA in midstream during one our Nation's highest periods of inflation would represent a great injustice to these retirees who have served this Nation well.

I urge my colleagues to support this amendment to protect the well-being of these retirees and to protect the good work of the Congress in promising COLA in the first place.●

● Mr. ANDERSON of California. Mr. Chairman, I would like to express my

strong support for the adoption of Representative BAUMAN's amendments to the Budget Reconciliation Act which we are considering today.

As you know, my distinguished colleague's amendments will strike the provisions in the bill which would provide, on a one-time basis only, that retirement benefits for military and civilian retirees be adjusted to match the rise in the cost-of-living only once a year rather than the usual twice a year.

I am in sympathy with those who want to cut back on Federal spending. Indeed, I have introduced a constitutional amendment which, if ratified, would mandate a balanced budget after 4 years. So, I respect the goals of budget cutters.

But their aims must be targeted sensibly. While the elimination of one of the two COLA's for military and civilian retirees would save the Federal Government millions of dollars, I just cannot support such proposals. How can we, for the sake of expediency, penalize the Government's Federal retirees, after they spent so many years helping to support their country?

I might add that in 1976 the "1-percent add-on" provision of the Federal retirement system was rescinded and, Congress enacted the current biannual cost-of-living adjustment system in its place. In times of double-digit inflation, such as we have today, it is imperative that military and civilian retirees retain their deserved biannual COLA's.●

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Maryland (Mr. BAUMAN).

The question was taken; and on a division (demanded by Mr. BAUMAN) there were—ayes 22, noes 12.

RECORDED VOTE

Mr. GIAIMO. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 309, noes 72, answered "present" 6, not voting 45, as follows:

[Roll No. 518]

AYES—309

Abdnor
Addabbo
Akaka
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Applegate
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burton, John
Burton, Phillip
Byron
Carney
Cavanaugh
Chappell
Cheney
Chisholm
Clausen
Clay
Clinger
Coleman
Collins, Ill.
Conte
Convers
Corman
Coughlin
Courter
D'Amours
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derwinski
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fascell
Fazio
Ferraro
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Harkin
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hillis
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ireland
Jeffries
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Luken
Lundine
Lungren
McClory
McDade
McDonald
McHugh
McKay
Madigan
Maguire
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nelson
Nolan
Nowak
Oakar
Oberstar
Ottinger
Patten
Patterson
Paul
Pepper
Perkins
Petri
Peyser
Porter
Preyer
Price
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Roberts
Roe
Rose
Rosenthal
Roth
Roybal
Royer
Russo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stark
Stokes
Studds
Stump
Swift
Synar
Tauke
Taylor
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vento
Volkmer
Walker
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, C. H.
Wilson, Tex.
Winn
Wolff
Wolpe
Wright
Wyatt
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOES—72

Anderson, Ill.
Anthony
Archer
Ashbrook
Ashley
Aspin
Bolling
Bowen
Butler
Carr
Cleveland
Collins, Tex.
Corcoran
Cotter
Crane, Daniel
Crane, Philip
Daniel, Dan
Dannemeyer
Devine
Duncan, Oreg.
Erlenborn
Fary
Fenwick
Findley
Frenzel
Gephardt
Giaimo
Gradison
Gramm
Hagedorn
Hutchinson
Ichord
Jacobs
Jeffords
Jenkins
Johnson, Colo.
Jones, Okla.
Kelly
McCloskey
McEwen
McKinney
Michel
Miller, Ohio
Mottl
Neal
O'Brien
Obey
Panetta
Pease
Pickle
Pritchard
Regula
Ritter
Robinson
Rostenkowski
Rudd
Sabo
Scheuer
Seiberling
Sharp
Simon
Snowe
Stanton
Stenholm
Stewart
Stockman
Stratton
Thomas
Walgren
Waxman
Wirth
Wylie

ANSWERED "PRESENT"—6

Carter
Moorhead, Pa.
Nedzi
Staggers
Vanik
Wilson, Bob

NOT VOTING—45

Albosta
Alexander
Annunzio
Bellenson
Boggs
Brodhead
Burlison
Campbell
Coelho
Conable
Davis, S.C.
Derrick
Dodd
Edwards, Okla.
Goldwater
Hansen
Hawkins
Hinson
Holland
Holtzman
Jenrette
Leach, La.
Livingston
Lujan
McCormack
Markey
Mattox
Mazzoli
Murphy, N.Y.
Myers, Pa.
Nichols
Pashayan
Quayle
Rhodes
Rodino
Rousselot
Sebelius
Shannon
Steed
Symms
Tauzin
Vander Jagt
Whitten
Wydler
Young, Alaska

□ 1700

The Clerk announced the following pairs:

On this vote:

Mr. Annunzio for, with Mr. Nedzi against.

Mr. Murphy of New York for, with Mr. Derrick against.

Mr. Edwards of Oklahoma for, with Mr. Livingston against.

Mrs. SNOWE, Mr. COTTER, and Mr. SCHEUER changed their votes from "aye" to "no."

Mr. ANDERSON of California changed his vote from "no" to "aye."

Mr. BOB WILSON changed his vote from "aye" to "present."

Mr. NEDZI. Mr. Chairman, I have a live pair with the gentleman from Illinois (Mr. ANNUNZIO). If he were present, he would have voted "aye." I voted "no." I withdraw my vote and vote "present."

Mr. NEDZI changed his vote from "no" to "present."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

● Mr. NELSON. Mr. Chairman, I speak in favor of the Omnibus Reconciliation Act of 1980. First, I want to commend the eight committees of the House who responsibly worked to come up with this package of legislative savings in many Federal programs. This bill represents tough decisions by each of the committees.

This is an unprecedented effort to restrain the growth in Federal spending. The best past record for the Congress to restrain spending by reforming programs was never more than $200 or $300 million. The reconciliation bill will result in a savings of $6.2 billion.

Not everything in the package is palatable to everyone—in fact, there are probably objections from one interest group or another to each piece of legislation in the bill. These are painful, but necessary changes.

Three-fourths of the budget is "uncontrollable." This means that these programs require changes in current law to cut funding—that is what this reconciliation does. These programs cannot be cut by the appropriations process alone. They must be changed legislatively.

We cannot continue to make major cuts only in the "controllable" portion of the budget either. The bulk of the "controllable" or discretionary portion of the budget is in national defense spending. We cannot diminish our national defense spending at this time. We must strengthen our defense and military readiness.

This reconciliation bill is the beginning of a reform of entitlement programs to target them better and to make them

fairer and more equitable. This should be an ongoing process—we should not stop with the passage of this one bill.

We must show the American people that the Congress can fiscally discipline itself—their impression of the Congress now is that it knows only how to spend more and more. As the balanced budget becomes more difficult to attain due to the current recession, it becomes even more important to enact this legislation. The failure to enact the reconciliation bill would add another $10.4 billion to any 1981 deficit.

However, these savings are not just for fiscal year 1981—there will be long-term savings realized by the passage of this vital legislation.

The Senate has already passed their version of the reconciliation bill. It is time to get on with our attempts to restrain Federal spending.

Mr. Chairman, I urge the passage of the Reconciliation Act of 1980.●

Mr. WIRTH. Mr. Chairman, I want to emphasize to my colleagues the importance of the 1981 National Science Foundation authorization legislation we are considering today.

I strongly urge their support for an institution whose funding represents one of the most important investments our Nation can make in its economic future—both in improving the long-term health of domestic industries and in strengthening the United States' international economic position.

In 1979, for the first time since World War II, our Nation's productivity actually declined, reversing nearly 25 years of constant, steady increases. The implications of that decline for the health of the American economy in the 1980's are serious and have a broad impact on all Americans.

First, and most important, declining productivity will add to the inflationary pressures against which every family is struggling. In an economy whose underlying, basic inflation rate is broadly agreed to be in the vicinity of 10 percent, continuing declines in productivity—which are synonymous with increasing labor requirements for each unit of goods produced—can hamstring even the most promising efforts to bring inflation under control.

Second, declining productivity and the consequent cost increases in American exports may continue into this decade to place our economy at a competitive disadvantage in world markets. Export-stimulating measures will be no more than temporary palliatives if we do not address the long-term weakness in our Nation's productivity.

There is already broad agreement among economists that three measures are critical in restoring our economy's long-term health:

First, Carefully targeted tax cuts to spur increased business investment in new capital equipment;

Second, Incentives to reverse the drop-off in savings by individuals, now at a 28-year low, in order to increase capital availability; and

Third, Increased Federal support for basic research.

The legislation we are considering today is the third critical component in any program which seeks to address the long-term problems of our economy.

Particularly in a time of high inflation, basic research—whether it be university- or industry-based—requires strong and consistent Federal support. In a period of inflation as high as that we have experienced during the past year, business support for basic research—whose payoffs are frequently years down the road—declines, as businesses seek investments which provide immediate hedges against inflation. Strong Federal support becomes more and more important.

Unfortunately, that simple fact has not been recognized over the past decade in Federal policy. We have concentrated for so long on short-term solutions to whatever ails our economy in any particular year, that Federal investment in our economic future has declined consistently. Industrial and Government support for basic research and development has declined from a high of about 3 percent of our gross national product in 1964 to approximately 2.2 percent in 1980. That decrease parallels the slowdown in productivity growth of the past 10 years. Today, we are paying the price for that long-term slippage in the form of an actual decline in economic productivity.

Mr. Chairman, that trend must be reversed. Along with the investment incentives which we must provide to business and individuals, we must reverse the trend of falling investment in basic research and development.

As my colleagues on the House Budget Committee are aware, I strongly believe that one step toward economic health in this decade must be a consistent effort to bring the Federal budget and the unsustainable growth of Federal spending under control. That has required major cuts in Federal programs in virtually every area of the budget. But we cannot achieve the long-term reduction in inflation we are seeking if we misallocate those cuts and in the process cripple the scientific community by slashing Federal support for basic research. Every area of the budget must be scrutinized for wasteful or ineffective programs, and this field is no exception, but we cannot accept cuts which eviscerate basic research efforts which will play a key role in reversing our productivity decline.

During the first House-Senate conference on the first budget resolution for 1981, a majority of House conferees accepted an agreement which, in my view, would have done precisely that. I was pleased that the full House saw fit to reject that agreement, and that in a second conference we were able to restore $100 million in budget authority for the National Science Foundation and the National Aeronautics and Space Administration. That authority is reflected in the legislation before us now.

I strongly urge my colleagues to support the 1981 National Science Foundation authorization, and to reject proposals which will be offered to slash its funding once again.

The programs we fund through NSF can make a critical contribution to increasing productivity in almost every sector of our economy. In voting to preserve those programs, the Members of this body will be suporting one of the most important long-term investments in our economic health the Federal Government can make.

● Mr. ASHLEY. Mr. Chairman, I strongly oppose Mr. BAUMAN's amendment.

Most of us agree, or at least pay lip-service to the fact, that we need to get a grip on Government spending. The obstacle that confronts us when we attempt to reduce Government spending is the fact that a full 76 percent of the budget is made up of so-called uncontrollable expenditures, half of which are indexed, either explicitly or implicitly, for inflation. These automatic increases of Government benefits year after year have added a momentum to Government spending totally independent of congressional action. Indexation has been one of the primary sources of growth in Federal spending in the past decade. If this Congress is serious about getting a handle on Government spending, it cannot refuse to change policies and programs we can no longer afford. Congress cannot ignore the budgetary impact of indexing entitlement programs.

The current policy of protecting retired military and Federal employees against inflation by indexing retirement benefits 100 percent for inflation twice a year has substantial budgetary impact. These cost-of-living adjustments are like a time bomb waiting to blow the top off the Federal budget some day. Clearly, Congress has the responsibility to defuse this time bomb before it goes off.

The fact is that neither the military nor the civil service retirement system is a self-financing system as is the social security system. The military retirement system is a noncontributory system. All benefits are financed from general revenues, courtesy of the U.S. taxpayer. The civil service retirement system is a contributory system, but matching employee-agency contributions do not begin to come close to paying for the long-term costs of the system. In 1980, almost half, 46 percent, of the total cost of the civil service system was financed by the U.S. taxpayer. The current unfunded liability is $136 billion, most of which has come from benefit liberalization and cost-of-living increases. Annual payments from the general revenues each year compensate for this unfunded liability. But the fact is that each cost-of-living adjustment adds billions of dollars to this liability and to the drain on the Treasury and ultimately the U.S. taxpayer.

If this Congress refuses to make changes in the cost-of-living adjustment, we are going to be in serious trouble. The Budget Committee has made projections on the total cost of the system if inflation and current cost-of-living adjustments continue at the present rate. In 1980, the civil service retirement system cost the Federal Government $15 billion; by 1990 the system will

cost $64 billion; by 2000, $198 billion and by 2010, $487 billion. For comparative purposes, I would point out that the entire Federal budget for fiscal year 1980 was $526 billion.

Even more startling are projections on annual civil service benefit levels. Assuming a 14 percent rate of inflation, the Budget Committee projects that the benefit level for a colonel in the Armed Forces who retires with 30 years service at age 52, would receive at age 70 $353,295 a year; a colonel in the Armed Forces with 20 years service who retires at age 42 would receive at age 70 $863,996; a Federal civilian employee who retires at age 58 with earnings the same as average annual earnings in the private sector ($12,545 in 1980) would receive $31,572; a Federal civilian employee who retires at ceiling with 30 years service at age 58 would receive at age 70 $131,093. These projected annuities are outrageous. How can Congress allow such cost-of-living increases to continue? By contrast, the average U.S. taxpayer who is covered by the social security system and is footing the bill for this very expensive system, would receive at age 70 $14,114 per year from social security. A worker in the private sector who had earned minimum wage all of this life, would receive only $10,950.

Not only are the civil service and military retirement systems far more generous than any pension system currently available in the private sector, but the semiannual adjustment for retired Federal workers is extremely generous when compared with the protection provided persons in the private sector. The cornerstone of retirement protection in the private sector is the social security program. Social security benefits are adjusted only once a year for inflation. While there have been proposals to provide semiannual adjustments for social security recipients, the cost as all of us know would be prohibitive. Yet, the U.S. taxpayer who is covered by social security is expected to finance two cost-of-living adjustments for retired Federal employees.

Furthermore, private pension plans provide extremely limited protection against inflation. Only 3 percent of private pension plans are adjusted automatically for inflation on any basis. Sixty percent of private pension plans are adjusted on an ad hoc basis. Thirty-seven percent of private pension plans provide no adjustment at all.

Additionally, the benefits of Federal retirees compare quite favorably with social security and a private pension. The average civil service retiree receives $940 a month. The average social security recipient receives $330 a month. A civil service employee can retire at age 55 without a reduction in retirement benefits. Under social security, early retirement is not available until age 62 and then only with a lifetime reduction in benefits. Civil service retirees can go to work in private industry, earn as much or more than they did in the Government, and still receive an annuity. Under social security, until the recipient reaches age 72, benefits are reduced if he or she returns to work.

The real issue simply is whether this country will continue as a matter of public policy to protect a select group of Americans at the expense of everyone else. Who can argue the unfairness of continuing to provide Federal employees two cost-of-living adjustments a year? As part of the effort to control Federal spending this year, legislation was enacted into law this spring to provide annual cost-of-living adjustments in the food stamp program. This change reduced benefits for 22 million low-income Americans. The Omnibus Reconciliation Act which we are considering here today also provides annual cost-of-living adjustments in the school lunch and child nutrition programs. The Bauman amendment would not undo these reductions, it would simply change the reduction in the number of cost-of-living increases for retired Federal employees. When circumstances demand sacrifice, all beneficiaries of Federal largess, including Federal employees, must bear a fair share of the burden.

I strongly urge my colleagues to defeat the Bauman amendment.●

□ 1710

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. BOLLING, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the Budget for the fiscal year 1981, pursuant to House Resolution 776, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GIAIMO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 294, nays 91, not voting 47, as follows:

[Roll No. 519]

YEAS—294

Abdnor
Akaka
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Chappell
Clausen
Cleveland
Clinger
Coleman
Conte
Corcoran
Corman
Cotter
Coughlin
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
de la Garza
Deckard
Dickinson
Dicks
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Foley
Ford, Tenn.
Fountain
Fow'er
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Gore
Gradison
Gramm
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Hanley
Harkin
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hillis
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lehman
Leland
Lent
Levitas
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lundine
McClory
McCloskey
McDade
McHugh
McKay
McKinney
Maguire
Marks
Marlenee
Marriott
Mathis
Mica
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nowak
O'Brien
Obey
Panetta
Patten
Patterson
Pease
Pepper
Pickle
Preyer
Price
Pritchard
Pursell
Quillen
Rangel
Ratchford
Regula
Reuss
Ritter
Roberts
Robinson
Rose
Rostenkowski
Royer
Russo
Satterfield
Sawyer
Scheuer
Schulze
Selberling
Sharp
Shelby
Shuster
Simon
Skelton
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stratton
Studds
Stump
Swift
Synar
Tauke
Taylor
Thomas
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Weaver
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—91

Addabbo
Andrews, N.Dak.
Archer
Ashbrook
Badham
Bauman
Beard, Tenn.
Bethune
Bingham
Blanchard
Bonior
Buchanan
Burton, John
Burton, Phillip
Cheney
Chisholm
Clay
Collins, Ill.
Collins, Tex.
Conyers
Courter
Crane, Daniel
Crane, Philip
Dannemeyer
Dellums
Derwinski
Devine
Dingell
Dornan
Early
Fenwick
Florio
Ford, Mich.
Forsythe
Garcia
Goodling
Gray
Hammer-schmidt
Hollenbeck
Holt
Jeffries
Kastenmeier
Kildee
Kindness
Kramer
Lee

Lewis
Luken
Lungren
McDonald
McEwen
Madigan
Martin
Matsui
Mavroules
Michel
Mikulski
Mitchell, Md.
Moorhead, Calif.
Nedzi
Nolan
Oakar
Oberstar
Ottinger
Paul
Perkins
Petri
Peyser
Porter
Rahall
Richmond
Rinaldo
Roe
Rosenthal
Roth
Rousselot
Roybal
Rudd
Sabo
Schroeder
Sensenbrenner
Shumway
Smith, Iowa
Solarz
Stark
Stokes
Thompson
Traxler
Waxman
Weiss
Wilson, C. H.

NOT VOTING—47

Albosta
Alexander
Annunzio
Bellenson
Boggs
Brodhead
Burlison
Campbell
Coelho
Conable
Davis, S.C.
Derrick
Dodd
Duncan, Oreg.
Edwards, Okla.
Goldwater
Hansen
Hawkins
Hinson
Holland
Holtzman
Jenrette
Leach, La.
Livingston
Lujan
McCormack
Markey
Mattox
Mazzoli
Murphy, N.Y.
Myers, Pa.
Nichols
Pashayan
Quayle
Railsback
Rhodes
Rodino
Santini
Sebelius
Shannon
Steed
Symms
Tauzin
Vander Jagt
Whitten
Wydler
Young, Alaska

□ 1720

The Clerk announced the following pairs:

On this vote:

Mr. Annunzio for, with Mr. Steed against.

Mr. Derrick for, with Mr. Hawkins against.

Until further notice:

Mr. Tauzin with Mr. Hansen.

Mr. Murphy of New York with Mr. Livingston.

Mrs. Boggs with Mr. Symms.

Mr. Santini with Mr. Vander Jagt.

Mr. Rodino with Mr. Conable.

Mr. Jenrette with Mr. Edwards of Oklahoma.

Mr. Mazzoli with Mr. Goldwater.

Mr. McCormack with Mr. Hinson.

Mr. Nichols with Mr. Lugar.

Mr. Coelho with Mr. Young of Alaska.

Mr. Dodd with Mr. Railsback.

Mr. Myers of Pennsylvania with Mr. Pashayan.

Mr. Whitten with Mr. Quayle.

Mr. Albosta with Mr. Wydler.

Mr. Bellenson with Mr. Sebelius.

Mr. Burlison with Mr. Campbell.

Mr. Brodhead with Mr. Holland.

Mr. Davis of South Carolina with Ms. Holtzman.

Mr. Leach of Louisiana with Mr. Duncan of Oregon.

Mr. Markey with Mr. Mattox.

Messrs. RICHMOND, LEE, and BLANCHARD changed their votes from "yea" to "nay."

Mr. VENTO changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GIAIMO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 7765.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

AUTHORIZING CLERK TO CORRECT PUNCTUATION MARKS, CROSS-REFERENCES, AND SECTION NUMBERS IN ENGROSSMENT OF H.R. 7765, OMNIBUS BUDGET RECONCILIATION BILL

Mr. GIAIMO. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 7765, the Clerk of the House be authorized to correct punctuation marks, cross-references, and section numbers.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 2719, HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980

Mr. ASHLEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2719) to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes, with the House amendment thereto, insist on the House amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Ohio? The Chair hears none, and appoints the following conferees: Messrs. REUSS, ASHLEY, ST GERMAIN, GONZALEZ, FAUNTROY, PATTERSON, AUCOIN, and LUNDINE, Ms. OAKAR, and Messrs. VENTO, STANTON, WYLIE, MCKINNEY, EVANS of Delaware, and GREEN.

FIRST ANNUAL REPORT OF FEDERAL LABOR RELATIONS AUTHORITY FOR FISCAL YEAR 1979—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Post Office and Civil Service.

(For message, see proceedings of the Senate of today, September 4, 1980.)

NATIONAL SCIENCE FOUNDATION AUTHORIZATION, 1981

Mr. BROWN of California. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7115) to authorize appropriations for activities of the National Science Foundation for fiscal year 1981, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from California (Mr. BROWN).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7115, with Mr. BREAUX in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, June 16, 1980, all time for general debate on the bill had expired.

The Clerk will read.

The Clerk read as follows:

H.R. 7115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Science Foundation Authorization Act for Fiscal Year 1981".

SEC. 2. (a) There are authorized to be appropriated to the National Science Foundation, for the fiscal year 1981, the sums indicated for the following categories:

(1) Mathematical and Physical Sciences, $259,800,000.

(2) Astronomical, Atmospheric, Earth, and Ocean Sciences, $235,800,000.

(3) United States Antarctic Program, $61,400,000.

(4) Ocean Drilling Programs, $17,500,000.

(5) Biological, Behavioral, and Social Sciences, $187,510,000.

(6) Science Education Programs, $92,200,000.

(7) Engineering and Applied Science, $142,560,000.

(8) Scientific, Technological, and International Affairs, $30,450,000.

(9) Cross-Directorate Programs, $33,200,000.

(10) Program Development and Management, $59,800,000.

(b) Of the total amount authorized under subsection (a)(7)—

(1) not less than $19,400,000 shall be available for Earthquake Hazards Mitigation;

(2) not less than $1,000,000 shall be available for the Small Business Innovation Program, for projects to aid the handicapped;

(3) not less than $3,000,000 shall be available for Research and Development in Appropriate Technology;

(4) not less than $5,000,000 shall be available for a Center for Innovation Development to be located in an area which experienced an unemployment rate in excess of 10 per centum in 1979, and which is centrally located to serve several major metropolitan centers; and

(5) not less than $1,800,000 shall be available for the establishment and operation of three university-based Innovation Centers.

(c) Of the total amount authorized under subsection (a)(6)—

(1) not less than $2,400,000 shall be available for Science Faculty Improvement Programs, for year-long awards to experienced, full-time, two- and four-year college and university science teachers who are involved primarily in undergraduate science instruction to increase their competence in science; and

(2) not less than $1,500,000 shall be available for Science Education Programs relating to Appropriate Technology.

(d) Of the total amount authorized under subsections (a)(1), (a)(2), (a)(5), and (a)(7), not less than $2,000,000 shall be available for the salaries of faculty members of two-year and four-year colleges that have only small or no doctoral programs in science and engineering or of universities that have very limited science and engineering programs, for the purpose of enabling them to participate in research projects at institutions other than the faculty members' home institutions.

(e) Of the total amount authorized under subsection (a)(4), not more than $500,000 is authorized for the Ocean Margin Drilling Project, including such sums as may be nec-

essary for the National Academy of Sciences study specified in section 3(c).

(f) Of the total amount authorized under subsection (a)(9), not more than $1,600,000 is authorized for United States/Union of Soviet Socialist Republics cooperative research, no portion of which shall be expended until the President has certified in writing to the Congress that such expenditures shall be of direct and very substantial benefit to the United States.

(g) Of the total amount authorized under subsection (a)(8), $14,500,000 is authorized for International Cooperative Science Activities.

SEC. 3. (a) The Foundation shall prepare a report on the Ocean Margin Drilling Project and shall transmit the report to Congress not later than December 31, 1980. The report shall include—

(1) plans for conversion of the Glomar Explorer or other drilling platform;

(2) plans for drilling;

(3) detailed cost estimates;

(4) a discussion of the feasibility and cost of alternative drilling platforms;

(5) plans for funding; and

(6) other plans.

(b) No funds shall be obligated for the Ocean Margin Drilling Project after December 31, 1980, until the report specified in subsection (a) is transmitted Congress.

(c) The National Academy of Sciences shall study marine earth sciences research and report to the Congress.

(d) To the extent permitted by law, all Federal funding of the Ocean Margin Drilling Project shall be provided from the Windfall Profit Tax Account.

SEC. 4. Appropriations made under the authority provided in sections 2 and 6 shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making the appropriations.

SEC. 5. From appropriations made under the authority provided in this Act, not more than $5,000 may be used for official consultation, representation, or other extraordinary expenses at the discretion of the Director of the National Science Foundation. His determination will be final and conclusive upon the accounting officers of the Government.

SEC. 6. Besides the sums authorized by section 2, not more than $5,500,000 is authorized to be appropriated for the fiscal year 1981 for expenses of the National Science Foundation incurred outside the United States, to be drawn from foreign currencies that the Treasury Department determines to be excess to the normal requirements of the United States.

SEC. 7. Funds may be transferred among the categories listed in section 2(a), but neither the total funds transferred from any category nor the total funds transferred to any category may exceed 10 per centum of the amount authorized for that category in section 2(a) or available for that category after the application of section 10, unless—

(1) thirty calendar days on each of which at least one House of Congress is in session have passed after the Director of the National Science Foundation or his designee has transmitted to the Speaker of the House of Representatives, to the President of the Senate, to the Committee on Science and Technology of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate a written report containing a full and complete explanation of the transfer involved and the reason for it, or

(2) before the expiration of the thirty days both the Committee on Science and Technology of the House and the Committee on Labor and Human Resources of the Senate have written to the Director to the effect that they have no objection to the proposed transfer.

SEC. 8. The National Science Foundation is directed to consolidate all Directories, including the Science Education Directorate, under one roof, in the present location of the central administrative offices, on or before August 1, 1982.

SEC. 9. The Director of the National Science Foundation, jointly with the Secretary of Education, shall develop and transmit to Congress a proposed joint Science Education Program plan.

SEC. 10. If the total amount of appropriations made by any Act for program activities included in section 2 for the fiscal year 1981 is less than the total amount authorized to be appropriated for those activities by section 2, the amount available for such appropriations for any particular program activity shall bear the same ratio to the amount authorized to be appropriated for that activity by section 2 as the total amount of the appropriations made by such appropriation Act for all included program activities bears to the total amount authorized to be appropriated for those activities by section 2 (with each ceiling and floor set forth in section 2 being reduced in the same ratio for purposes of determining the amounts so available), except to the extent specifically otherwise provided in the text of the Act making the appropriations for the program activities involved.

SEC. 11. (a) Section 15 of the National Science Foundation Act of 1950 is amended by striking out subsection (c), and by redesignating subsection (d) as subsection (c).

(b) The text of section 16 of such Act is amended to read as follows:

"SEC. 16. To enable the Foundation to carry out its powers and duties, only such sums may be appropriated as the Congress may authorize by law.".

SEC. 12. (a) Section 2(a) of the Act entitled "An Act to establish a National Medal of Science to provide recognition for individuals who make outstanding contributions in the physical, biological, mathematical, and engineering sciences", approved August 25, 1959 (42 U.S.C. 1881(a)), is amended by striking out "or engineering" and inserting in lieu thereof "engineering, behavioral, or social".

(b) The title of such Act is amended by striking out "and engineering" and inserting in lieu thereof "engineering, behavioral, and social".

SEC. 13. The President, with the assistance of the Director of the Office of Science and Technology Policy and members of the Cabinet, shall develop a comprehensive national policy with regard to women and minorities in science and technology. Further, the President is directed to report to the Congress a comprehensive legislative and administrative program to implement this policy before January 1, 1981.

SEC. 14. The Director of the National Science Foundation shall henceforth require the titles of all its grants to contain a brief statement of the purpose of the research being undertaken. Insofar as possible such statements shall be in layman's language.

SEC. 15. Any deferral of funds for research and related activities appropriated pursuant to the National Science Foundation Authorization Act for Fiscal Year 1980 (Public Law 96-44) shall be applied such that the ratios of the amount deferred from a category to the amount authorized for that category shall be the same for all categories of section 2(a) of that Act, excepting category (5).

Mr. BROWN of California (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, I will ask the gentleman from California (Mr. BROWN) what his intention is as far as the remainder of the evening is concerned. Are we going to finish this bill, and does the gentleman have an estimate of time?

Mr. BROWN of California. Mr. Chairman, if the gentleman will yield, it is my understanding that we have completed all general debate, and that the gentleman from Ohio may have an amendment to offer.

I have two minor amendments which are perfecting amendments that are technical in nature. It is our hope that we can complete the bill within a very short period of time, and I have no further understanding of the program for the rest of the evening.

Mr. BAUMAN. Mr. Chairman, I thank the gentleman, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BROWN of California. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I make this motion for the purpose of explaining where we are from a parliamentary standpoint, and at the conclusion of my explanation I have two technical amendments which I will offer.

I would like to refresh the memory of the Members as to the status of this bill. It was brought up for general debate on June 16, and general debate was completed at that time. Subsequent to that the House took up the appropriation bill with regard to this matter and passed the appropriation bill, so that, much as I regret to make the statement, very little of what we do with regard to the actual passage of this bill will have an impact upon the actual dollars spent next year.

The appropriation bill that passed the House was, as I recall, identical to the President's request, but with a slightly different distribution of funds. What the Committee on Appropriations did—and this has the full support of the authorizing committee, I might say, except for the magnitude of the numbers—was to put additional emphasis upon science education in the Foundation's budget. It did so by cutting slightly into the research directorates and taking the money from the research directorates and putting it into science education. The Senate has likewise considered the authorization bill and has passed it also at the same amount as the President's request. So we have more or less established the parameters within which the budget for the Foundation will exist for the next fiscal year.

I might also indicate that the distinguished gentleman from Ohio (Mr. MILLER) succeeded in placing an amendment on the appropriation bill which withheld 2 percent of the total, and while the exact impact of that on the National Science Foundation is not clear, I think it is obvious that the amount of

money available for the Foundation will be somewhat less than the amount budgeted by the President as far as the appropriation bill is concerned.

Now, the authorization bill which we have before us, as I pointed out at the time of general debate, is a bill which is less than the President's original budget submission in January, but it is approximately $50 million more than his revised budget.

□ 1740

I would like to make the point that since June, when we discussed this bill, the administration has already recognized that the amount that they requested was inadequate due to an unexpected escalation in the cost of energy. It should not have been unexpected, but they say unexpected.

A good part of the money in this bill goes to provide fuel for our oceanographic fleet, fuel for research activities on Antarctica and fuel for other kinds of activities that are paid for by the Foundation, and the administration has now submitted a request for $10 million more than was in their revised budget request.

I might even say further that, in the President's new economic policy for the reindustrialization of American industry announced just last week—not yet translated into specific figures—there is a request for about $300 million more for research and development in fiscal year 1981 than was included in his budget request in April.

Now, while the National Science Foundation is not the only agency doing research and development, it is highly likely that when this additional request is translated and distributed to the various agencies, the President will be requesting an additional $50 million or $60 million for the research programs of the National Science Foundation.

What I am saying to the Members is that I think the bill that the authorizing committee brought to the floor in June will end up being almost exactly at the level which the President's revised requests are going to ask for when he finishes the rethinking that is going on in the administration at the present time.

I ask the Members to bear these points in mind in the event that any of the Members, in all good faith, should be tempted to offer additional substantial cuts in this authorization.

AMENDMENT OFFERED BY MR. BROWN OF CALIFORNIA

Mr. BROWN of California. Mr. Chairman, I offer an amendment to strike section 15 of the bill.

The Clerk read as follows:

Amendment offered by Mr. BROWN of California: Strike all of section 15, beginning on page 9, line 17 and ending on line 23.

Mr. BROWN of California. Mr. Chairman, this is an amendment which I discussed on the floor during general debate and which I had agreed to with the distinguished chairman of the Appropriations Subcommittee, the gentleman from Massachusetts (Mr. BOLAND), which removes language which attempted to direct the way in which rescissions in the President's budget would be made in fiscal year 1980.

The distinguished gentleman from Massachusetts has convinced me with his eloquence and with his logic that this was an unnecessary effort on the part of the authorizing committee, and I am pleased to offer this amendment to accommodate his feelings in that regard.

Mr. HOLLENBECK. Mr. Chairman, will the gentleman yield?

Mr. BROWN of California. I yield to my distinguished colleague, the ranking minority member of the subcommittee, the gentleman from New Jersey.

Mr. HOLLENBECK. Mr. Chairman, the minority is familiar with the purpose behind this amendment and the reasons for it, and we have studied it and we have no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. BROWN).

The amendment was agreed to.

The CHAIRMAN. Are there additional amendments?

AMENDMENT OFFERED BY MR. BROWN OF CALIFORNIA

Mr. BROWN of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BROWN of California: In section 13, lines 7-8, page 9, delete the phrase "with regard to women and minorities in science and technology." and insert in lieu thereof: the phrase "with regard to women, minorities, science and technology."

Mr. BROWN of California. Mr. Chairman, this is a purely technical amendment to correct a typographical error in the language, and it merely states what was intended to be the thrust of the language.

Mr. HOLLENBECK. Mr. Chairman, will the gentleman yield?

Mr. BROWN of California. I yield to the gentleman from New Jersey.

Mr. HOLLENBECK. Mr. Chairman, again we are familiar with this amendment. It is purely a technical amendment, and there is no objection on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. BROWN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: On page 2, line 12, delete "$187,510,000" and insert in lieu thereof "$177,900,000".

Mr. ASHBROOK. Mr. Chairman, I should probably preface my remarks by saying, "Here we go again." I say that because I have offered amendments to National Science Foundation authorization and appropriation legislation for several years, each time with the hope that NSF will get the message that taxpayers do not wish to see their hard-earned dollars expended on projects which are often of a dubious nature. My amendment should come as no surprise to my colleagues. I am simply proposing that the funding for biological, behavioral and social science research be held at the level appropriated in fiscal 1980. I believe that my amendment is a modest one in light of our present budgetary crisis and I think that most of my colleagues will be able to accept it. While I would personally like to cut more, I will settle for adoption of this amendment.

Many of my colleagues may recall some of the ridiculous taxpayer-financed studies which we discussed during last year's debate. How could anyone forget that memorable $52,000 study of the sex life of the African white fronted bee eater or the $88,000 project detailing homosexual couple formation and career conflicts. And then there was that $83,000 grant to the American Bar Association financing a study of the legal profession—by the legal profession—at taxpayer's expense. And finally, let us not forget that $68,000 project which revealed, at long last, the differences between men and women.

One would think that after last year's debate, the officials at NSF would be a little more careful with the tax money which is entrusted them. From what I can tell, they were not. I have made it a point to monitor NSF grants very closely during the last year. I have not been favorably impressed.

Duplication of existing work seems to be about par for the course at NSF. In 1979, the Library of Congress conducted a study of research in the areas supported by the National Science Foundation to see what activity was going on outside of that funded by the agency. In all six cases, knowledge had been expanded without NSF help. In some cases, a virtual avalanche of work had been conducted on the very same topics, or topics which were closely related.

As I pointed out to the Science and Technology Subcommittee earlier this year, the NSF, in March of 1979, spent $30,759 for a book on women scientists in the United States from 1830 to 1980. The Library of Congress found no less than 82 books and articles on this subject dating back to 1970. Unfortunately, this is not an isolated example.

Let us take for instance, the study of decisionmaking, an area where many of us might feel the Federal Government does not belong—particularly when you consider its own dismal record. $93,686 for a project entitled "Comparative Study of Organization"; $95,117 for "Decision Making Under Majority Rule;" $49,120 for "Multiperson Cooperative Game Theory." The list goes on.

First, from a management standpoint, the funding of duplicate projects is just plain irresponsible. Second, the National Science Foundation has no business funding studies which can and have been well researched in the private sector. As a businessman, as a legislator, I can appreciate the need for studies on decisionmaking but the last place I would go for help is the Federal Government.

On that note, let us take a look at some of the areas where the NSF has funded studies the Federal Government has no business funding. While the Carter administration has made no secret of its interest in regulating the American family, the National Science Foundation has

funded social engineering away from the public eye. In fact, in the 17 separate grants I reviewed in that category, I totaled expenditures of more than $1,-250,000. Studies like "Socialization of Achieving Behavior in Men and Women," $149,724. "Birth Spacing and Family Size," $48,054. "Families and Communities: Helping Networks," $150,262. "Gender Differences in Influenceability," perhaps a sequel to last year's study which told us the basic differences between the two sexes, $45,475. And there is plenty more where that came from. When my colleagues rise to oppose this amendment, to say that its adoption will cause a setback in the scientific community, I wonder if they will be able to respond to my objections to these taxpayer-financed social studies. Looking at these grants makes one wonder how we were ever able to survive for these 2,000 years. One would think that we never had successful families in the United States before the Federal Government made families its business.

I also strongly object to taxpayer-financed doctoral dissertations. I would guess that many of my colleagues in this Congress did their undergraduate work in political science. I wonder if any of them studied under instructors who were being heavily subsidized by the Federal Government. Well, I can tell you that some of our sons and daughters have and I, for one, have serious reservations about the Federal Government involving itself in academia to such a dangerous degree.

I frankly could not believe how many separate grants were funded in this last fiscal year by the National Science Foundation that enabled budding, young professors to complete political science projects, particularly when so many of the projects, as is so often the case with NSF-financed projects, were duplicates. I counted $56,805 in grants for doctoral dissertations in anthropology and $94,-722 for dissertations in political science, the history of science and sociology. I will note that many of my colleagues would not blink an eye at that kind of money but if that is the case here, then why such a small amount? How can we arbitrarily subsidize these future professors? If we were to use NSF logic, if we were to give them the full amount as suggested by the committee, then why not give tax dollars to everyone who wants to get a doctorate? Why not give away more money that we do not have?

After reviewing some of the NSF grants to academia, I could not help but wonder how Madison and Hamilton and Jay ever completed the Federalist Papers without a Federal subsidy. I wonder how De Tocqueville ever got started on "Democracy in America" without an NSF grant to pay for his travel expenses from France. Even Marx and Engels, who launched the greatest revolutionary movement of our time did so without Government money.

Mr. Chairman, last year when the House adopted a similar amendment which I offered to the NSF authorization bill, I pointed out that when the scientific process is bureaucratized and used by Government, thought control and Government intervention into fundamental freedom is inevitable. If an academic is funded by big government, will his or her work not then be biased toward that big government? I think it will.

Finally, the National Science Foundation has pursued a policy typical of Federal agencies in the Carter administration. Like the Department of Commerce, which has allowed the illegal diversion of sophisticated technology to the Soviet Union for the benefit of big business and to the detriment of our Nation, NSF has funded a host of projects which benefit other nations which share few, if any of our basic values.

Take for instance, a grant which I just learned about last week—a $300,000 grant for the support of scientists for research in Communist China to the International Communications Agency. That should go along well with the previously awarded grant of $170,000 to that very same agency for that very purpose. All in all, I totalled more than $1 million in that aid category, which I call "Aid to the Communists." Those grants included a $153,949 grant which financed 'collaborative United States-U.S.S.R. research in econometric modeling and computer analysis applied to the economics and management of large systems." Perhaps some of my colleagues would support that venture but I would not.

Mr. Chairman, every year when I offer these amendments, opponents rise to say that if adopted, the amendment will cause a dangerous setback for science, that it will prevent the future development of cancer cures, that we will never again have another discovery like the Salk vaccine. I do not buy that at all. I'm simply proposing that we maintain funding for the National Science Foundation at the level appropriated in fiscal 1980. If the NSF can come back next year and show us that they have spent the money well, that they have not squandered it on projects they have absolutely no business sponsoring, then perhaps some of us will be more receptive to their requests.

I urge adoption of the amendment.

Mr. LOTT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I would like to speak briefly in support of this amendment because we are talking about just a minimum of a cut. Over the years I have paid close attention to some of the grants that have been approved in this behavioral science area, and there is no question in my mind that a lot of them are of a very dubious nature and value.

I want to give credit where credit is due to the distinguished ranking member of the subcommittee and committee that has worked on this to try to get the behavioral science program better under control. He has already spoken of that, I believe, in his remarks in general debate. But I think that still we have to keep the pressure on so that some of these ridiculous programs we have heard about in the past do not continue to be funded where money is wasted on personal items not really dealing with the behavioral sciences. I think a minimum cut here that the gentleman from Ohio has offered with his amendment is in order. It helps to keep emphasis on the problem, and certainly we should be able to make some small cut in the National Science Foundation and in the authorization we have here.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Ohio.

Mr. ASHBROOK. I thank the gentleman for yielding.

Mr. Chairman, in support of my effort to be brief, I did not point out what the $177 million figure is. That is the amount of last year's budget. So we are not really talking about a deep cut. Yes, we would be cutting the increase that they would normally get, and I think that is a very reasonable cut.

Mr. LOTT. I thank the gentleman for his comments.

Mr. Chairman, I would like to ask the chairman of the committee, is the chairman satisfied that we are getting a more responsible decisionmaking process from the NSF in making these behavioral science grants?

Mr. BROWN of California. Will the gentleman yield?

Mr. LOTT. I yield to the gentleman from California.

□ 1750

Mr. BROWN of California. I am happy to say that there has been substantial improvement in the quality of the granting process and the quality of the research done in these areas that have been subject to scrutiny by the gentleman from Ohio.

Not only has the Foundation been much more careful in the type of research for which it awards grants, but our distinguished colleague from New Jersey has introduced language into the authorizing bill which requires them to do a much better job of explaining and tightening the titles of these grants so that they will not be subject to misinterpretation.

I am frankly appreciative of the effort that the gentleman from Ohio has made in seeking to make these kinds of improvements. I think he knows, as we know, that in the social and behavioral sciences we are not as far advanced as we are in some of the so-called hard sciences. They require greater scrutiny and I think a closer direction to make sure that we are actually improving the quality of this science. I think we are doing that, and I can respond with an enthusiastic affirmative to the gentleman's question as to whether we are making that kind of effort.

Mr. LOTT. I appreciate the chairman's comments.

I also want to say I am pleased to see the language in the report that calls for some fairer geographic distribution of these grants also. That is an area where I have had a lot of concern over the past few years.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. LOTT. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

I would like to comment, and I am afraid to oppose the amendment, because we had two very interesting things come on the floor of the House. Objection was made to a program entitled "Study of the Sweat Glands of Australian Aborigines." It was considered to be totally irrelevant, and why are we interested.

It turned out to be a most important study that the Army wanted because of survival in very hot desert conditions.

Another was a study entitled "Study of the Sex Life of the Fruitfly."

I remember one of our colleagues from Texas rose and said that this study saved millions of dollars for the growers of Texas, that they did not have to spray from airplanes any more. They merely put out attractive little lures with exactly the right kind of perfume, sex-attractive perfume, and solved a great problem for that whole area of Texas.

I think the titling has a lot to do with the discouragement of the public.

Thank you.

The CHAIRMAN. The time of the gentleman from Mississippi (Mr. LOTT) has expired.

(At the request of Mr. ASHBROOK and by unanimous consent, Mr. LOTT was allowed to proceed for 3 additional minutes.)

Mr. LOTT. I would like to make one comment. I think the gentlewoman makes a very important point. I have also taken the time to look at some of these grants and seen where some of this money is spent. I found one particular instance where some of the grant money was spent for luggage for the person who was going to do the study, such as a typewriter, guide services, private airplane transportation in South America; and that is why I think that a minimal reduction of the nature we are talking about here would encourage the NSF to see that the people's money is not spent for such things as luggage and typewriters and a very large salary for a guide and things like that. That is why I support the amendment.

While I recognize some of these things sound bad, there is some value and some merit in it.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Ohio.

Mr. ASHBROOK. If I could direct one comment to my very good friend and esteemed colleague from New Jersey in a vein somewhat of using the pessimistic-optimistic argument, half-full, half-empty, if you look at my amendment, and what we are saying, and the gentleman from Ohio finds he must almost say this for the record, what we would in effect be saying if we passed my amendment is we are probably doing with 95 to 97 percent good; and maybe they could be a little more careful with the 3 percent we are trying to cut.

The gentlewoman used the tactic, and I suppose we could use the other side of it. We always use the good side to carry the bad. I suppose in past years I have used the bad side to somewhat denigrate some of the good side.

I will stipulate for the record I think they do a lot of good. As a matter of fact, the two committees I have had some degree of oversight on, I think in many ways the NSF runs a tighter ship than the NIE, in education and LEAA in the judiciary.

It is not just one isolated area of Government. I believe earnestly we still could make this small cut and not do any great disservice to all those projects we are talking about and maybe make their degree of selectivity in the projects a little more acute.

Mr. PEASE. Mr. Chairman, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Ohio.

Mr. PEASE. I thank the gentleman for yielding.

I am a member of the subcommittee. I would be grateful if the gentleman would give me specific information about the particular projects that he had in mind. I would like to pursue it on the subcommittee. I think we all are interested in cutting out waste and making sure our taxpayers are not ripped off.

We on the floor of the House, it seems to me, have a responsibility to be factual and objective, and I know the gentleman is, and I know that he would not want to unfairly hold up a project to ridicule. I would just promise him that if he would present me with the specifics——

The CHAIRMAN. The time of the gentleman from Mississippi (Mr. LOTT) has expired.

(At the request of Mr. PEASE and by unanimous consent, Mr. LOTT was allowed to proceed for 1 additional minute.)

Mr. PEASE. If the gentleman would continue to yield, I would just promise him if he would provide me with the specifics, I would be happy to pursue that as a member of the subcommittee. I do think that we have to be very careful not to broadbrush and paint these projects as being wasteful and that sort of thing. I am pleased to note the very fair attitude of my colleague from Ohio who points out that the NSF has done a better job than some other agencies in oversight.

I would come to a different conclusion. Mine would be that we ought to reward that tightness on the NSF's part with the amount of their authorization and not to cut them back. I think that is a poor reward for the work they have been doing.

Mr. LOTT. The details of those particular programs are in the record from the debate of last year. I do have some specifics I will give the gentleman.

I think NSF has been improving. I think we need to keep the pressure on and make sure that the money is properly spent.

Mr. PEASE. I thank my colleague.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Does the gentleman know that much of this research deals with productivity, that the Japanese are in fact using a great deal of these studies to improve their own productivity? We seem to stomp on some of this kind of research. While I realize there may be some dogs in the bunch here, I wanted to make the point clear that much of this category does deal with productivity research. I think that is important.

Mr. ASHBROOK. Mr. Chairman, I move to strike the requisite number of words.

I realize I am addressing the House for a second time. I will take 1 minute.

Let us be very honest about our budgetary situation. I have spent a considerable amount of time with the NSF people. They clearly indicate in this particular category they have high priority; they have middle priority and they have low priority areas.

I think it is proper to tell anyone, I would say to my friend from Ohio, my colleague (Mr. PEASE), it is proper to tell anyone to cut down some the lower priority. I think that is exactly what this amendment would do would be to encourage them to cut back on some of the low-priority items, not only because of some of the concerns we have, but also budgetary concerns.

I yield back the balance of my time.

Mr. SCHEUER. Mr. Chairman, I move to strike the requisite number of words.

I do want to call to the attention of my colleagues the urgent necessity of this NSF funding to examine not only the question of productivity in this country, and that is an urgently important matter, but also to have a comprehensive scientific look at what is happening to our planet. All of us have been shocked, indeed, horrified by the July report of The Year 2000 issued by the State Department, and the President's Council on Environmental Quality, and by an equally horrendous projection of population explosion and environmental degradation released by the World Bank this month.

Clearly, this Congress, this House and the other body, ought to have a systematic, structured, organized way of looking at these problems of future global change that threaten the Earths ecosystems as we know them.

But certainly in the meantime we urgently need the National Science Foundation to create a data base, to take a systematic look at these awesome global changes that are coming about, so that when the Congress finally creates a means to cope, we will have a systematic, scientific, technologically sound way of confronting these issues and developing public policies and programs to deal with them.

At the U.N. conference on population and development at Sri Lanki in August 1979, attended by over 200 parliamentarians from 52 developed and developing nations, including Senator PERCY, Representative JOHN ERLENBORN and myself, one of the major recommendations coming out of the conference was that each national parliament should organize a committee of members concerned with the challenges of global population and development problems. High

on the agenda of the 97th Congress should be creation of a joint Senate-House committee to create strategies to help us and other leaders in the developed and developing world cope with the impending devastation of the world's fragile ecosystems.

We urgently need to establish a more secure and well-positioned center of expertise on these complex issues and to advise both the Congress and the executive branch on the momentous issues facing us worldwide:

World population is now 4.4 billion, and growing at a rate of 90 million persons a year, will reach nearly 7 billion by the year 2000. Ninety percent of this increase will occur in the developing world—Asia, Africa and Latin America—where the poor are getting poorer.

This is producing a desperate need for job creation. The developing world will have a deficit over what they have now of an additional 800 million jobs by the year 2000, more than the entire employed population of the Western World. How can this enormous job deficit be met? The factors that encourage developing country citizens to enter the United States illegally should be examined by Congress more closely than before. These factors include both "push" factors, such as extensive unemployment and "pull" factors, such as the perceived opportunity of relatively highly paid employment in the United States.

According to World Bank and "Global 2000" studies, these disparities will continue and in all likelihood grow in the foreseeable future. Hence the forces fueling the "push-pull" components driving illegal immigration over our borders may be expected to accelerate considerably in the coming decades.

According to the "Global 2000" report, the world faces the "potential for global problems of alarming proportions" by the turn of the century unless steps are taken to avert environmental and population problems.

"If present trends continue, the world in 2000 will be more crowded, more polluted, less stable ecologically and more vulnerable to disruption than the world we live in now," according to the report, a 3-year study that coordinated data from all Federal Government agencies.

The "Global 2000" study, in its more than 800 pages of detail, paints a generally gloomy picture:

Income: Using estimates of gross national product, the "Global 2000" researchers project overall increases, but the gaps between the rich and poor countries are expected to widen.

Food: Food production is projected to be 90 percent higher in 2000 than in 1970, but population growth will counterbalance much of that increase.

Fish: Although fishery resources have been put forth as a possible solution to world food shortages, the international harvest of fish is "expected to rise little, if at all, by the year 2000," says the report.

Forests: On the basis of present trends, government forecasters warn that "significant losses of world forests" will continue over the next 20 years as the demand for forest products and wood fuel increases.

Water: Rapidly increasing demands for fresh water may worsen regional water shortages and water quality deterioration over the next two decades. Irrigation for agriculture and rising consumption from population growth will put increasing demands on water and water development will become more costly.

Energy: The study's projections show no "early relief" from the world's energy problems and cost increases would make it difficult for less developed countries to meet their demands. World energy needs are projected to increase nearly 60 percent by 1990.

Environmental consequences: Population growth and resource demands would dramatically affect the quality of the environment in almost every way, says the study, unless current practices change. With the push for increased food production, water would become more polluted from heavy application of pesticides and the rapid loss of tropical forests could also affect water supplies. World climate would be altered by increasing concentrations of carbon dioxide, and acid rain threatens more damage to lakes, soils and crops.

Mr. Chairman, I could go on and on, reciting one bleak statistic after the other about the major population problems facing society the world over today. The "Global 2000" study—issued by the State Department and the President's Council on Environmental Quality—warned last month that:

If present trends continue, the world in 2000 will be more crowded, more polluted, less stable ecologically and more vulnerable to disruption than the world we live in now.

And the World Bank predicted just this month that economic growth rates will decline worldwide in the first half of the 1980's because of inflation, recession, and higher energy costs.

Here, for example, is what the World Bank study found:

Economic growth rates will decline around the world in the first half of the 1980's because of inflation, recession, and higher costs of energy.

African and South Asian countries that import all of their oil and contain most of the 800 million people living in what the bank calls "absolute poverty" will be hardest hit, with growth rates sinking to the levels of the 60's or lower, the report said, or about 1.8 to 2.4 percent.

Under any but the most favorable circumstances, people in sub-Saharian Africa will be poorer in 1990 than they are now, according to the report's projections.

The study, "World Development Report, 1980," is the bank's third. It is less optimistic than the 1979 study, which was "far less optimistic" than the 1978 report, a bank official said.

Similar concerns are expressed in a foreword to the report by Robert S. McNamara, who will retire in 1981 after 13 years as president of the World Bank. "There is a real risk," he writes, "that the domestic economic problems of richer countries will cause them to give inadequate attention to the immense problems of the developing world and to the hardships that narrow or shortsighted policies—in energy, trade and financial assistance—can inflict."

This is not a pretty picture, and population growth is one of the main keys to the whole problem.

Perhaps we need a joint House-Senate committee which would examine the major problems of the developing world and how best the United States can construct an agenda to help the Third World in such areas, for example, as decertification—the annual reversion of grazing lands to desert, dust and sand, that Secretary of State Muskie described at the U.N. last week, equal in area to the size of his State of Maine; the loss of crop lands and grazing lands and depletion of our forests and ocean fisheries. Current population trends are causing serious problems in resource depletion, the most desperate energy and food shortages and tragic environmental degradation.

We cannot afford to wait much longer, and the House and Senate should act expeditiously to structure a mechanism to cope with the horrendous problems threatening to envelop us by the year 2000, if we do not encourage intelligent global policies to conserve the richness of our planet and its sensitive ecosystems which current global population trends threaten to ravage.

AMENDMENT OFFERED BY MR. BROWN OF CALIFORNIA AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. ASHBROOK

Mr. BROWN of California. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. BROWN of California as a substitute for the amendment offered by Mr. ASHBROOK: On page 2, line 7 strike "$235,800,000" and insert in lieu thereof "$237,100,000"; on page 2, line 9 strike "$61,400,000" and insert in lieu thereof "$64,200,000"; and on page 2, line 12 strike "$187,510,000" and insert in lieu thereof "$183,410,000".

Mr. BROWN of California. Mr. Chairman, may I precede my remarks by again acknowledging the very healthy contribution made by the gentleman from Ohio (Mr. ASHBROOK) in focusing attention on the need for greater accountability, responsibility and quality in social science research, which I think is the area on which the gentleman has primarily focused. As some of the previous speakers have indicated, we have tended to downgrade this type of science in this country to our own detriment.

Our competitors in Japan have, as they have in connection with our technological developments in many other areas, made very widespread use of our social science research in the fields of worker productivity, motivation and other research of that sort. In considerable degree their success in doing a better job in productivity than we have is due to the fact that they use our published research and put it into practice in their industrial system, whereas we tend to disregard it. That is regrettable.

I think this focus on social science research may help us to correct that shortcoming.

Let me explain very briefly what my substitute would do. It concedes about half of the reduction which the gentleman from Ohio (Mr. ASHBROOK) wishes to make. It reduces the biological, behavioral, and social sciences by a total of $4.1 million, but it takes that same amount of money and uses it to meet the request that the administration has made in part for a $10 million additional supplement to meet the escalating cost of fuel oil. It does that by transferring the reduction from biological, behavioral and social sciences, to the Antarctic program and to the astronomical atmospheric, Earth and ocean sciences program.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. BROWN of California. I would be happy to yield.

Mr. ASHBROOK. Well, I think what my colleague has done is most interesting. I have been sitting here thinking. I do not know who would win on a vote. Let us not find out. As far as I am concerned, I think what the gentleman has done serves the purpose and I would accept it as a substitute for my amendment.

Mr. BROWN of California. I will not belabor the point.

Mr. HOLLENBECK. Mr. Chairman, will the gentleman yield?

Mr. BROWN of California. I would be happy to yield to the gentleman from New Jersey.

Mr. HOLLENBECK. Mr. Chairman, I rise in favor of the Brown substitute and against the Ashbrook amendment.

I want to associate myself with the remarks of our subcommittee chairman and colleague, the gentleman from California (Mr. BROWN), with regard to the Ashbrook amendment. As I indicated in my opening statement, the biological, behavioral, and social sciences are today at the same stage of development I believe that electronics and the chemical industry were just prior to the Second World War and we have seen how those sciences have taken off with a tremendous variety of applications which have changed entirely the character of our modern lives.

The traditional so-called soft sciences are about to do the same. We can see this in biology, where the introduction of recombinant DNA techniques and other forms of biological engineering are on the verge of exploitation. They are expected to open up a whole new range of innovation in the pharmaceutical industry, in the development of new materials, the development of new methods of industrial fermentation in the chemical industry.

The discovery of endorphins and enkephalins, the natural analogs of morphine produced by the brain, will, I am told by the director of research for a major drug company, revolutionize anesthesia and pain relief.

Memory research sponsored by NSF is expected to have a major impact on the way courts and the law treat eyewitness testimony.

Psychological studies are on the way to understanding the causes of obesity.

Energy conservation, without which we cannot solve our national energy problems, cannot be achieved by hardware alone—it depends on people—turning down thermostats, driving slower, buying energy-efficient cars and appliances, or making the decision to actually install insulation. We desperately need to know what motivates people to conserve energy. To obtain that knowledge and translate it into action will require advances in sociology, psychology, economics, and political science—all four of them social sciences.

Mr. Chairman, I think I have made my point—the biological, behavioral, and social sciences are of great importance to our future economic well-being. Indeed, we will need these very sciences to determine where best to allocate R. & D. funds for improving economic productivity.

It is, however, true, Mr. Chairman, that there has been great misunderstanding with regard to the purpose of some scientific research. Since the subjects are esoteric, it should not surprise us when the public questions why the Government is apparently wasting taxpayers' money on such arcane topics as the life-cycle evolution and speciation in North American gryllus or the experience of crowding. In fact, the first grant was given to find out how field crickets behave. Field crickets, and their relatives, locusts and grasshoppers, are extremely destructive to agricultural produce. Understanding their life cycle and development could well lead to safe methods of controlling these agricultural pests. The grant on the experience of crowding could contribute to reducing crime in the streets or increasing workplace productivity if we knew better how people feel when their personal spaces are violated as a result of the crowded conditions in which they live and work.

One example where a "silly" grant did pay off was a project called "The Growth of Viruses in Monkey Kidney Cells." That project won a Nobel prize for Dr. John Enders and it made possible the controlled growth of polio viruses which led Jonas Salk to his development of a polio vaccine, virtually eliminating a disease which affected me as a child.

Mr. Chairman, in order to correct this, at my suggestion H.R. 7115 contains a provision which stipulates that hereafter the National Science Foundation must require all grant titles to include a brief statement of purpose—a subject touched upon by the gentlelady from New Jersey (Mrs. FENWICK). It does seem to me that scientists have an obligation to explain to the public, which after all is supporting their research, why it is being undertaken. And they should do this in language which is understandable to the layman. I believe that if the Foundation and the scientific community make a sincere effort in this regard, public support for science and technology will grow, as it must, if we are to survive economically in this highly competitive world.

We can ill afford to neglect the sciences while other nations such as Germany, Japan, and the Soviet Union steadily increase the scientific and technical literacy of their citizens on a mass basis. We must not only continue and greatly strengthen our public and private support of science, but we must also develop an educated public which understands science and which knows its limitations as well as its strengths. And I thank the gentleman from Missouri (Mr. LOTT) and the gentleman from Ohio (Mr. ASHBROOK) for their recognition of my amendment and commend them for their attention to the responsibility of the NSF.

Mr. Chairman, I believe my provision on grant titles and the purpose of research which the committee adopted will do much to alleviate the concerns which prompt the amendment, and thus render it unnecessary at this time.

Mr. Chairman, one final point I would make is this. Our economy is predominantly a service economy. Services are the largest single sector—46 percent—of the GNP. And the proportion is growing all the time. To really improve the productivity of our economy, we must above all improve the productivity of services. That task is predominantly a problem for the social and behavioral sciences. If we slight funding for these sciences now, we are foreclosing most improvement in the productivity and working conditions of the vast majority of working Americans, that is, 58 million working men and women, or approximately 65 percent of our labor force.

The Brown substitute, which the gentleman from Ohio (Mr. ASHBROOK) has accepted, is well directed at this time and is typical of the gentleman's awareness of several other potentially catastrophic problems facing our Nation's physical environment.

Mr. GONZALEZ. Mr. Chairman, I move to strike the requisite number of words.

I rise to speak in favor of the substitute amendment.

Actually I rise to direct some questions more than to address myself at any particular length to the amendment.

First, I wish to compliment the distinguished chairman of the subcommittee for some very fine work in a very important area. I am glad that the gentleman is offering this substitute amendment.

There are two areas of concern to me and I think would be of particular concern to the gentleman, since he is from California. One has to do with this very specific field of inquiry on earthquake consequences and societal acceptance of the pending threat. I noticed in a science magazine of a technical nature just last week that one of the leading scientists in this area had written the Governor of California in very precise terms about the rather imminent danger of a very substantial earthquake.

Apparently there has been very little response.

Does this legislation, this authorization, in any way recognize this very important area to which much could be contributed by the Science Foundation for the avoidance of otherwise catastrophic consequences of such a tremor?

Mr. BROWN of California. Mr. Chairman, would the gentleman yield?

Mr. GONZALEZ. Certainly.

Mr. BROWN of California. I am very pleased that the gentleman brought the subject up. I am sure he recalls that I had the pleasure of sponsoring the Earthquake Hazard Reduction Act which the House passed 3 years ago.

The act provides a key role in this area to the National Science Foundation, as well as the Geological Survey in the Department of the Interior and to the Federal Emergency Management Agency as a part of a coordinated program to understand and reduce the hazards to our urban communities and other communities from earthquakes.

The science has progressed to the point where we are able to make reasonably accurate predictions of earthquake occurrences in some circumstances. What we need now is further work on organizing our social systems to take advantage of this knowledge and to protect our society from the catastrophic consequences of earthquakes. The Science Foundation does play a lead role in that.

Mr. GONZALEZ. The second question has to do with something of more immediate concern to my area. The gentleman will recall last year's oil spill in the Bay of Campeche. There were some very consequential and rather detrimental results, and to my complete dismay I find neither on the State level or on the national level do we have resources and recourse to even study now the consequences of our impact on our environmental, on our estuaries in Texas. It just seems terrible.

I notice that in this bill the Foundation has a specific area on oceanographic studies; also some local scientists at the University of Texas in San Antonio have stated that some of the very unusual weather manifestations and phenomena in our particular area and right above the geographical area of the oil spill was perhaps a consequence of that spill.

So recently I asked the leading oceanographic scientists of the U.S. Service and he said that the matter has not been studied. They suspect that perhaps there is a relation.

I am wondering if there is any area for that kind of a study in this budget for this authorization.

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Mr. BROWN of California. There is a very small amount of research in this area, I might tell the gentleman. If the research is focused on the weather aspects, the primary responsibility in this area would be in the National Oceanic and Atmospheric Administration. If the research focuses on the effects on physical organisms, the ecological effects, it would generally be done by the Environmental Protection Agency, but fundamental research underlying both of these is done in the National Science Foundation.

Mr. GONZALEZ. I thank the gentleman.

Mr. RITTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to support the substitute offered by the gentleman from California to the amendment of the gentleman from Ohio. I want to commend the reasonable compromise proposed by my colleague, the Chairman of the Subcommittee on Science, Research and Technology. Throughout our consideration of this important bill he has always succeeded in finding a middle ground upon which we all could agree—this is no exception.

Let me say also that I too share some of the concerns of the gentleman from Ohio about the character of social and behavioral research—for this reason I wish to commend my colleague, the gentleman from New Jersey, and Ranking Minority Member of our subcommittee for his efforts to provide greater public understanding of biological, behavioral and social sciences. This is terribly important. We cannot afford the breakdown in communication which is so often the case between the public and the scientific community.

As a scientist become Congressman I can personally attest to this. So it is very important to point out some of the highly worthwhile areas of research which are being funded by the biological, behavioral, and social science directorate of the National Science Foundation. Perhaps the best known example is Recombinant DNA research or so-called "genetic engineering." Every day the newspapers related a new discovery. There is substantial evidence to suggest that this new research will produce a whole sector of our economy just as electronics and computers have since World War II.

New techniques of industrial fermentation using biological mechanisms could provide reasonable cost alcohol/gasohol fuels as well as a wide variety of chemicals currently produced from oil and natural gas.

In the area of material resources, bacteria have been discovered which can reduce sulfate and oxide mineral ores to pure metals. This may prove the only economic way to tap the very low grade mineral resources upon which we will depend in the future. At the same time biology helps save our materials shortages it may help protect our environment through the development of artificial bacteria which can digest oil spills. These bacteria have been much in the public eye because they were the subject of a recent Supreme Court decision on the patenting of life.

Mr. Chairman, the watchword of this election year is "industrial innovation and productivity." The social sciences can make an essential contribution. I recall a recent conversation I had with Robert Samuelson, the columnist. He said that Japanese managers are incorporating American developed social science research into new corporate and industrial organizations, industrial quality control, labor-management relations and improved efficiency. Our subcommittee heard eloquent testimony this spring from Professor Robert Cole of the University of Michigan which supports my conversation.

Mr. Chairman, we need better social and economic data and research to understand how to allocate R & D funds and capital investments so as to increase productivity. Preliminary data which we heard in testimony before our Subcommittee by Professor Edwin Mansfield of the University of Pennsylvania indicates that the rate of return on technological innovation growing out of research is very high (25–50 to 1 year). But we need much more data and research before we can put this preliminary understanding to work.

In sum, Mr. Chairman, we cannot afford to become technologically obsolete when we live in such a highly competitive world economy. Technology is, however, people working with machines to satisfy economic and human needs. Hardware alone will not do but we require social and economic research and development as well.

As a final word of warning—we heard testimony yesterday that Japanese and Swedish engineers are required to learn the social sciences, as part of their professional training. This will be tough competition for the future. Support for the social, behavioral, and management sciences is essential both for government and private industry. Otherwise, we may lose the race for the future.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. BROWN) as a substitute for the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK), as amended.

The amendment, as amended, was agreed to.

Mr. PEASE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I appreciate this opportunity to appear before the House to discuss the National Science Foundation authorization for fiscal year 1981 and to urge its approval as it was unanimously discharged from the Science and Technology Committee.

The Subcommittee on Science, Research and Technology, under Congressman GEORGE BROWN's peerless leadership, has completed an extensive review of the NSF budget request. Mr. BROWN has detailed here the recommendations made by the subcommittee and the rationale for them. As a subcommittee member, I fully support the decisions reached by our authorizing committee regarding the National Science Foundation. More specifically, however, this afternoon, I would like to bring the high priority of NSF science education programs to the attention of my colleagues.

For a number of years, this subcommittee and the Congress have been concerned over the fate of science education within the National Science Foundation. The record shows that science education has not fared well in the administration's budget review process—either relative to the rest of the foundation or in absolute terms. And this year is no exception. The January funding request for all of NSF was for 15-percent increase over fiscal year 1980 which was revised by the President to 8.1 percent in March.

In contrast, the request for the science education directorate began at a much smaller 9.6 percent—not even enough to keep up with inflation—and was revised downward to a negative 3.2-percent change compared to the fiscal year 1980 level. In my mind, these funding decisions show a disturbing trend in the ordering of priorities. The administration has discarded even the illusion that science education is one of its priority

missions for NSF. Fortunately, our committee agreed to oppose and reverse this disastrous proposal which would have compromised long-term manpower and public education needs for very minor short-term savings. The administration initiated these budgetary slashes, I might add, at exactly the same time it proposed very large increases for basic research programs for the same agency during the same year of severe economic constraints. I find such inconsistent hypotheses particularly disturbing in light of the fact that our best scientists, to paraphrase, are made—not born—and their performance depends on the quality of our teachers, classrooms, and scientific equipment.

We have seen the purchasing power of the science education budget cut to one-third of the level it enjoyed as recently as 1968. This trend cannot be allowed to continue in the face of mounting evidence of an impoverished degree of science literacy in this country and in the face of a crisis shortage of top-flight engineers as well as developing problems in other areas of science.

My colleagues may have seen two recent Washington Post articles describing the extraordinary accomplishments in the Soviet Union in science education which, as the author points out, render the American system "primitive by comparison." I will not take the time to list all of the shortfalls and the dangers thereof of this country's failure to make science literacy a national priority. However, I will take a moment to emphasize that our science training at all academic levels is crucial to our ability to maintain a strong, effective national defense system. One article states:

> The disparity between the level of training in science and mathematics of an average Soviet skilled worker or *military recruit* and that of a non-college-bound American high school graduate, an average worker in one of our major industries or *an average member of our All-Volunteer Army* is so great *that comparisons are meaningless.* (Emphasis is mine.)

In order to reverse this alarming deficiency in this country's science training institutions, the committee has seen fit to approve a modest increase in the President's original budget request for the science education directorate. Unfortunately, the job of providing adequate funding for the science education directorate has been chronically neglected by the National Science Foundation—the Nation's lead science agency. It has fallen to the Science, Research, and Technology Subcommittee year after year to provide a sufficient increase to the administration to request to continue science education program funding at the bare minimum. Our subcommittee has been fortunate in finding support in this endeavor from the NSF Appropriations Subcommittee. I would like to thank Chairman BOLAND for his persevering perspicacity.

The support of my colleagues and of our good friends on the Appropriations Committee has been particularly vital in light of the Myopia of the Foundation's own National Science Board as well as that of the Office of Management and Budget. I would like to quote from a portion of testimony that was offered during our subcommittee hearings on science education which I chaired last February. The remarks were offered by Dr. Jerrold Zacharias, who is widely recognized as a leader in the fields of nuclear physics and educational reform. Dr. Zacharias stated:

> The education directorate is struggling against an almost impossible enemy—an enemy from within. From its inception, the Science Board that supervises the NSF has treated the education directorate as a trivial country cousin. They have said that the Government should give the NSF money for scientific research and never mind what happens to the 200 million people who don't do research.

I agree with Dr. Zacharias that—

> It is those very people whose lives, jobs, leisure, entertainment, food, security, and everything else depend on a sound economy in a democratic society.

Moreover, as the Washington Post articles also pointed out, a high degree of science literacy on the part of all our citizens is essential to increasing our productivity, improving the ability of our electorate to make astute political judgments on a number of public issues that require scientific background, and providing a military that is able to operate the sophisticated weaponry that is critical to the defense of this country.

It is not consistent to both bemoan the public's lack of understanding of technical choices and risks and then undermine the strength of vital science education programs. Yet, the administration continues its policy of robbing Peter to pay Paul, as is evident from its redundant request for science education rescissions for fiscal year 1980.

I believe it is imperative that Congress begin a long-term commitment to improving the quality of science courses, science teachers, science literacy and to expanding the pool of science and engineering students. This Nation cannot afford to further experience an "intellectual shortage" either on the part of our top-flight scientists or on the part of the electorate. Therefore, I ask that the House support the full authorization of this bill with its commitment to science education.

In addition, Mr. Chairman, I would like to note that last February the White House requested the National Science Foundation and the Department of Education to collaborate on a report, due to be released at any minute, on science and engineering education in the United States. I am intrigued by the fact that a study of this caliber—the first in almost two decades—emanated from the White House rather than from the Nation's foremost science agency. Nevertheless, I look forward to the background and to the momentum that this study will undoubtedly provide to the continuing efforts of our subcommittee to focus attention on science education as a national priority.

The President's budget this year placed an important emphasis on basic research. However, providing funds for insuring the continuation of high quality science education programs seems to me an integral part of such an emphasis. Therefore, I asked that no less than $2.4 million of the directorate's funds be used for the science faculty professional development program. The intent is to provide year-long awards to experienced, full-time 2- and 4-year college and university science instruction to increase their competence in science. The administration has requested no funds for this highly competitive and productive program for fiscal year 1981. Fortunately, the subcommittee agreed with my perception of the critical need for this type of opportunity for undergraduate faculty.

It is also of great importance that the National Science Board and the Foundation take immediate steps to narrow the institutional gap between science education and research which serves to diminish the quality of both. The Board and the Foundation should stress excellence in attempting to reach its target population in science education rather than remedial short-term measures. This goal can be best accomplished by finding ways to integrate serious research with education. I have taken steps to enlarge a very small and under-used opportunity in the research directorates to provide 9- to 12-month sabbaticals for undergraduate faculty as employees of the major research projects at large academic institutions.

It is my intent that this expanded opportunity will contribute to breaking down the barriers between research and education and to maintaining the competence of able people who are committed to teaching science. I hope that NSF will see the wisdom of permitting the grantees to combine research and teaching at the university if they see fit during their sabbatical. In addition, I hope State institutions will be encouraged to urge their faculty to take advantage of this program which does not require a matching contribution from the participant's home institution.

There is no longer any excuse for the National Science Foundation to overlook the needs and contributions that can be realized through a strong science education program. The White House is gearing up for such a commitment: The Congress must turn its words into action in this regard. It is rumored that the imminent report on science and engineering education suggests that the United States is perhaps uniquely evolving into a two-culture society—divided between highly trained, professionally engaged scientists and engineers and a scientifically illiterate mass with little or no comprehension of the workings of the modern world. With a little help from the National Science Foundation, such a catastrophe can be reversed.

I include the following articles:

CRISIS IN THE SCIENCE CLASSROOM

(By Efthalia and John Walsh)

> Young people going back to school and college this month are members of the post-Sputnik generation, beneficiaries of the highly touted "revolution" in American education two decades ago that transformed the

teaching of science, math, and foreign languages. But the new curriculum proved to be no cure-all and now there are warnings of another crisis in the classroom.

The symptoms? Science and math test scores are sagging. Top echelon computer science jobs are going begging. A high-tech military cannot find and keep officers and noncoms to man and maintain sophisticated equipment. American setbacks in international markets raise anxieties that the U.S. work force is losing its technical edge.

Such concerns recently reached the top of the policy pyramid in Washington. President Carter's science advisor Frank Press took over an emergency assessment of science and math education, saying "We would be stupid as a country to permit the continued erosion of science and math training in our primary and secondary schools." As with the 1957 Sputnik, the sense of urgency is sharpened by what is seen as a direct challenge from the Soviet Union. This challenge is expressed not only in growing military strength but in a bid to outpace the United States and other Western nations through an educational "mobilization" program designed to prepare all Soviet youth to participate fully in an advanced technological society.

Central to this Soviet effort is a reform of compulsory education launched 15 years ago and aimed at a major expansion of enrollment and improvement in instruction. Heavy stress is placed on science and mathematics. The capstone of the reform is a new math program that is topped off by two years of calculus in the final two years of the ten-year, general polytechnic school course. The result: An estimated five million Soviet graduates from secondary schools this year will have studied two years of calculus. This compares to about 105,000 U.S. students who will have taken only one year of calculus in high school. Press and many American educators feel that calculus is crucial because it serves as the passport to the study of advanced sciences and higher mathematics.

American math and science teaching reforms of the 1950s and 1960s were designed to produce more scientists and engineers and to prepare young people heading for careers in science. Ironically, the programs may have worked too well. Available data indicates that students on the fast track, taking advanced courses, are as well or better prepared in science and math as American students have ever been. The trouble comes in the underrepresentation of women and minority students in this select group and with the low level of competency in science and math among the overwhelming majority of students.

This time around it will not be enough to develop new course materials, retrain teachers, and provide extra funds for lab equipment and supplies, although that too is necessary. Clearly, there are serious problems with student motivation. A decline in teacher status and pay, poor discipline in the classroom, and financial constraints in most school districts are the most widely publicized of all the difficulties that directly and indirectly affect science and math education. These difficulties, rooted in more fundamental changes in family life and in society at large, are hard to understand and harder to change.

Nevertheless, sentiment is strong that whatever the obstacles, corrective measures must be taken. The surge in Soviet education and comparable efforts in other socialist countries and in friendly rivals such as Japan and Western Europe is seen as putting the U.S. future on the line.

Comparing educational systems in different countries is notoriously tricky. Evidence is accumulating, however, that the Soviets and countries of Eastern Europe are making an extraordinary effort to raise the level of scientific understanding among the masses, which in this case really does mean everybody. Of course, this is what the Russians have been saying they meant to do all along. Marxist-Leninist theory provides an ideological basis for a scientific world view that puts a high value on scientific knowledge, theoretical and applied. But the Soviets are not so naive as to assume that identifying ideology with science will be sufficient to motivate students. Education is the chief mobility mechanism in Soviet society. Success in school, above all in science and math, opens the way to careers with high prestige and pay. This is well understood, and it is a powerful incentive to parents and children.

Until recently, Americans who called attention to the thrust of Soviet education received the Cassandra treatment. All that is changing. For example, receiving newfound attention are the views of University of Chicago mathematics professor Izaak Wirzup, a knowledgeable student of Soviet and Eastern European math education. He writes that the Soviets have not only made a prodigious effort to enroll all school-age children, but, "For the 98 percent of the school-age population that now completes secondary school or its equivalent, the Soviets have introduced science and mathematics curricula whose content and scope place them far ahead of every other nation, including the United States.

Making a direct comparison, Wirzup notes that, "In only ten years, the Soviet compulsory program for all students covers the equivalent of at least 13 years of American schooling in arithmetic, algebra, and calculus and does so much more thoroughly and effectively. The American one-year geometry course offers but a small fraction of the Soviet ten-year geometry curriculum." The Soviets have also made a much greater research effort to find better ways to teach children math and science.

Have the Soviets created an educational utopia? Visiting Americans doubt it. A gap in the quality of education in urban and rural schools remains. Students in non-Russian regions of the USSR are said to be denied opportunities for training and jobs open to Russian students. Wirzup himself notes difficulties with the new math curriculum. Its introduction in 1975, at the time compulsory schooling was lengthened to ten years, increased stresses on the system. Some Soviet educators have told visitors that the Soviets were repeating the mistakes of the American reformers of the 1960s. Students were overworked and teachers overburdened. And the innovative math curriculum encountered resistance from traditionalists. As a result, authorities in 1977 ordered a review of all school curricula, particularly the math program.

There is also considerable skepticism in the United States that 15- and 16-year-olds across the board will attain a very high proficiency in calculus. At the same time, there is respect for the Russian assumption that students of normal intelligence will profit from serious exposure to physics, chemistry, and math. The Soviets have put massive resources behind their assumption that a decisive advantage is to be gained by raising the level of scientific literacy and numeracy of their population.

The United States has no centralized educational system comparable to the Soviets, Europeans, or Japanese. Education, constitutionally, is the responsibility of the states and is carried out in some 16,200 local school districts. Quality, therefore, varies enormously. State requirements exert little pressure toward excellence in science and math. Two-thirds of the states require only one year of high school science for graduation; the other third requires two years. The last science course taken by half of the high school graduates is biology in the tenth grade. Only seven percent of all students take advanced math or calculus.

There is no mandated national curriculum in this country and little likelihood for one. The elective system that prevails in the U.S. high schools encourages adolescents to follow the path of least resistance. "Kids are capable of learning a great deal more than we require of them," says Lee S. Shulman, director of the Institute for Research on Teaching at Michigan State University. "The price we pay for giving students freedom to elect courses of study is that many of them either select themselves out or are counseled out of the more difficult courses. This is especially true for minorities and women."

Admiral Hyman Rickover, long a critic of American education, seconds this view that students are pampered. In a recent letter to the director of the National Science Foundation, Rickover writes, "By promoting the notion that learning is easy and entertaining, we are letting our children grow up believing they need not struggle to excel—a notion which is damaging to both the child and to society."

Standardized test scores in science and math have shown a pattern of decline for a decade or more. An inquest of the downward trend in Scholastic Aptitude Test (SAT) scores found that 70 percent of the decline was due to a change in the composition of the group taking the tests, but cited other factors such as poor motivation, broken families, television, peer pressure, and a declining ability to write and think effectively. The National Assessment of Educational Progress exam in science, given three times since 1969, indicate significant declines in both biological and physical science scores for 17-year-olds and also some erosion in the scores for 9- and 13-year-olds. Drops occurred in all reporting regions and all groups, but as predicted, patterns of advantage emerged. Groups performing above the national norms were whites, males, students with at least one parent with post-high school education, students from the northeast and central regions, and students from affluent groups in cities and big city suburbs.

What do educators cite as the causes of the downward trend?

"The curriculum reforms of the 60s were purist and elitist," says Bill Aldridge, Executive Director of the National Science Teachers Association. They were intended to educate the scientific and mathematical crème de la crème, but they were far too difficult for the majority of students. "The new curriculum was too heavy on theory and abstraction," he says, "and applications were systematically purged." The result, claims Aldridge, was that science became less interesting to most students, and their ability to succeed was lowered. Perhaps only five or six in a class master the material.

Other critics say that the concepts and curricula were not at fault, but rather teacher training and pay. According to Jerome S. Marco, principal of Walt Whitman High School in Bethesda, Maryland, whose student body annually produces a bumper crop of National Merit Scholar Finalists, "You can have the greatest equipment and the greatest curriculum, but if you don't have people who can translate concepts into skills, well then, forget it."

Also, schools are not getting and keeping the excellent teachers in science and math that are needed. "You have to have one hell of a commitment to be willing to teach today," he said. "The quality math- and science-oriented people are being drained from the field. They can get double their salaries just sitting at a desk as low level computer technicians."

Science and math teaching has always had a high turnover, but an unprecedented exodus from the field now is occurring. The National Science Teachers Association lost 1,000 of its 10,000 high school members this year. Critics say that the situation is even worse than it appears because teachers who

stay are the likeliest ones to have lower qualifications.

In elementary schools, the "Back to the Basics" movement is said to have damaged science and math teaching. Science has not been considered a "basic," and relatively little time is spent on it. Elementary science has always been an uphill fight because most elementary school teachers have little science training and many are intimidated by it. And the back-to-basics approach to mathematics has been extremely narrow, centered on computational skills, not on problem solving.

Almost everybody agrees that science and math education need federal help. However, science educators see a lack of real commitment by government and the science establishment. As evidence of benign neglect, they cite disappearing federal support for pre-college science and math education programs. In 1964, National Science Foundation funding for pre-college science education reached 60 million dollars. Funding currently runs only 20 million dollars out of a total billion-dollar NSF budget, and that is in inflation-shrunk 1980 dollars. In this period, the programs for teacher retraining and refreshing are remembered as particularly important in providing teachers with intellectual, financial, and moral support. Among science educators now, there is a feeling that by backing out of the curriculum reform effort after the first round of curricula revisions the government left the schools high and dry.

"The question is of a scientific elite," concludes Wirzup. "The United States has a superior elite in science and mathematics. But ours is a small elite, while the Soviets are training a new elite, a large elite, and the general population will be much more sophisticated in science and math than we are."

[From the Washington Post, May 13, 1980]

THE INTELLECT GAP

(By Daniel S. Greenberg)

Americans who monitor Soviet education are reporting extraordinary accomplishments there from a decade-long drive to provide all high school students with extensive, super-enriched training in mathematics and science. It's so successful, they're saying, that the American high school system has been rendered primitive by comparison.

Though there can be a lot of slack in the linkage between national power and scientific literacy, interest is compelled by the Soviet commitment to make virtually all its young people go through mathematical and scientific training of a duration and intensity that relatively few Americans experience. For example, while calculus has almost disappeared from the American high school curriculum—only about 100,000 students a year take it—all Soviet high school students get two years of calculus, and about 97 percent of Soviet youngsters now finish high school.

According to one of the leading American observers of Soviet education, Izaak Wirszup, professor of mathematics at the University of Chicago, the new Soviet science education represents a break with the old lock-step, imagination-dulling methods that have been widely blamed for Soviet science's relatively poor standing in world-class research. "These changes," Wirszup says in an unpublished report to the National Science Foundation, "are tantamount to an educational mobilization of the entire population." Of particular importance, he notes, is that the reformed scientific training is characterized "by an unexpected turn toward the individual and the development of his ability to do independent, creative work."

If that's so, and if it eventually takes hold in the actual conduct of scientific research, then the Soviet scientific community may be on its way to shaking off a well-earned reputation as a sluggish giant. The Soviets are aware of the relatively low productivity of their scientific enterprise and, as Wirszup points out, have given a high priority to expansion and reform of a school system that has been identified as a major bottleneck in the modernization of the Soviet economy.

The Soviets, he states, gave a great deal of authority for curriculum reform to their leading mathematicians and educational researchers. The result, he continues, "is a program for mathematics instruction that is modern in content, innovative in approach, well integrated and highly sophisticated. It gives strong emphasis to theoretical foundations and logical rigor as well as to applications. . . . Moreover, the extraordinary Soviet research in psychology and methods of learning and teaching mathematics has been applied to the new curriculum, which now surpasses in quality, scope and range of implementation that of any other country."

Wirszup, who is an internationally recognized authority on Soviet computer technology and mathematics education in the Eastern bloc, added in his report that the Soviet effort amounts to "a concerted drive to produce mass education of unmatched quality."

For those many Americans who take a peculiar pride in acknowledging scientific ignorance, the differences that Wirszup tabulated in standard Soviet and American high school programs are likely to be quite startling. He reports, for example, that a Soviet high school student is required to complete five years of physics, four years of chemistry, one year of astronomy, five and one-half years of biology, and so on down a list that would empty America's high schools via the dropout route. Wirszup concludes: "The disparity between the level of training in science and mathematics of an average Soviet skilled worker or military recruit and that of a non-college-bound American high school graduate, an average worker in one of our major industries, or an average member of our all-volunteer army is so great that comparisons are meaningless."

Finally, he observes that while the remaking of the Soviet education system has hit some snags and stirred up pedagogical controversies, the Soviets feel they're on the right track and continue to invest vast resources in what they themselves describe as an "educational revolution." As for the students, they are lured on, Wirszup states, by the realization that "educational achievement . . . is practically the only safe avenue to a more comfortable standard of living under Soviet conditions."

Wirszup's findings, along with continuing reports of slumping standards and student achievements in American high school science and math programs, contributed to a White House request in February for the Department of Education and the National Science Foundation to collaborate on a report, due next month, on science and engineering education in the United States.

Of the many shortages now confronting the United States, it may be that the intellect shortage is the most dangerous.

WHILE ALL WE DO IS PUSH THE BUTTON

(By Daniel S. Greenberg)

Compare their education standards and ours, and you'll have a new clue to the runaway industrial performance of West Germany and Japan.

That's one of the main points that's going to be delivered to the White House next month when a team of specialists completes what's described as "the first review of science and engineering education policies to be prepared at the presidential level in almost two decades." Conducted at President Carter's request by the Department of Education and the National Science Foundation, the report, now circulating in near-final draft form, introduces an additional suspect to the long-running inquest on what ails the American economy; the declining quality and scope of science, engineering and mathematics training throughout the education system.

While, as is so often the case in American society, the peaks are at world-beater levels, the rest of the system is decaying at a time when Germany, Japan and the Soviet Union have pin-pointed mass science and mathematics training as strategic requirements for the modern state. The result, the report suggests, is that the United States is perhaps uniquely evolving into a two-culture society—divided between highly trained, professionally engaged scientists and engineers and a scientifically illiterate mass with little or no comprehension of the workings of the modern world.

Meanwhile, the report notes, in Great Britain, France, Germany, the Soviet Union and Japan, "virtually the entire educated class of opinion leaders and decision-makers . . . has a high level of scientific and technical literacy. In the U.S., however, there is an increasing divergence in the science and mathematics qualifications between those secondary students interested in the science and engineering professions and those who are not."

Nothing that most high school systems in the United States require only two years of mathematics and two years of science, the White House study points out, for example, that the German and Japanese versions of junior high school far exceed that requirement and that their high school students go on to super-enriched math and science programs that have few counterparts here. Ironically, the Japanese are making good use of the Sputnik-crisis curriculum materials that were developed in the United States in the 1960s—only to be abandoned or watered down here in response to complaints that they were too difficult.

As for Germany, the inquiry found that "the overall picture . . . is one of a very high level of science and math literacy among college graduates as well as a strong science/math understanding among the general population."

The key question, of course, is whether it matters that a large part of our population is uncomprehending of science and technology. After all, it is possible to use modern machinery without having the remotest notion of how it works; the ubiquitous hand-held electronic calculator is a perfect case in point.

The White House study, however, suggests that scientific illiteracy is a drag on industrial performance and political judgment. Thus it notes reports "from U.S. industry that in some highly technical areas the time required to produce a product has increased as workers' base level of understanding of science and math has decreased over the past decade." The study cites the military services' complaints about the difficulty of obtaining recruits who can maintain sophisticated military equipment.

The inquiry also found that the British, in their long agonizing over plummeting productivity rates, have credited mass science and engineering education in Germany and Japan as major factors in the postwar industrial growth of those countries. Japan, with about half the American population, outproduces the United States in engineers; and Japanese students, the White House study reports, "view the engineering degree as a 'ticket' to business and social success in much the same way as the liberal arts degree used to be viewed in the U.S."

Only half of Japan's new engineers go into engineering, the report continues. "The others become civil servants and managers in industry. Around half of the senior civil serv-

ice hold degrees in engineering or related subjects, and half of those are at the post-graduate level. In industry, about half of all directors have engineering qualifications." Similarly high proportions of leaders with advanced technical training are to be found in reigning bureaucracies of the other nations with which the United States competes in one way or another.

The American political and administrative tradition holds that the non-technical generalist leader can get by with the assistance of highly skilled advisers and that engineering management can make up for lack of trained skills on the factory floor.

The forthcoming White House report on science and engineering education strongly indicates that's no longer true. Whether this country can act on that diagnosis is a separate matter.

Mr. ERTEL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, an important part of our responsibility in the Congress is to make decisions which will shape the future of the country. Decisions which affect our ability to provide for future energy needs, to improve the quality of life for our children, to guarantee the continued economic strength of the country both domestically and in the international marketplace. Increasingly, we depend upon advances in science and technology to meet the challenges and opportunities of the future. Yet, I fear that we are paying too little attention to the health and vitality of the scientific community to whom we will turn for answers to increasingly complex problems.

Examples of what can happen in the future if we fail to live up to our responsibility for the future are in the areas of energy and productivity. We are all aware of our dependence upon foreign sources of energy and the urgent need to develop new sources of energy. The Nation's productivity has been declining, thus adding to inflation and unemployment. Unless we take a strong stand in support of science and provide the Nation's scientists with the necessary resources and equipment, these problems will only be compounded.

Advances in science, and the ability of science and technology to respond to national needs, do not come overnight. Our investment in science in many cases will not yield benefits until years into the future. Yet unless we have the foresight to make these investments today, there may well not be solutions at hand for our future needs. I believe that it is in this context that we must view the work of the National Science Foundation.

The chairman of the Science and Technology Committee and the chairman of the Science, Research, and Technology Subcommittee are to be commended for their dedicated work to insure that the Nation continues to generate new understandings of the world and the universe and to bring that knowledge to bear on our needs and opportunities. Much attention has been focused on the activities supported by the National Science Foundation. This authorization is a tribute to their foresight and devotion to the Nation. If I have any quarrel with this bill, it is that there is not more support for many of the critical areas of research that we will be turning to tomorrow.

While I understand and support the need to work toward a balanced budget, it would be a tragic mistake to cut money from science and technology research. Such moves are shortsighted. Investments in these areas are not inflationary, they are deflationary. They provide us with new goods and services, improved methods of manufacturing, new jobs, and an improved quality of life.

We have already seen some of the harm that comes from inadequate support for the sciences. In the early 1970's funding in many areas of research was reduced. Today productivity is declining; we are increasingly losing to foreign competition in the international market—even in the high technology fields which are so critical to our balance of payments; the number of students seeking scientific and technical degrees dropped and we are already witnessing serious shortages in trained professionals in important fields such as energy.

The downward trend in our support for science has only recently begun to be reversed, but our support is still inadequate to insure that our future needs will be met. Further reductions in this support are irresponsible and unconscionable.

Let me turn my attention to some of the specific activities being supported by the National Science Foundation. This work can be broken down into three broad categories: Basic science, applied science, and science education.

It is far too easy to make light of specific basic science research endeavors. These projects often have titles which are unintelligible to the general public and the research seems to have little relevance. By its very nature, basic science does not have a clear and immediate application. This is not to say, however, that tomorrow it will not prove to be fundamental to advances of enormous significance.

I believe that assessing the importance of basic science is more easily accomplished in retrospect. For example, advances in basic science have given us understandings of the basic building blocks of atomic and molecular structures. This information is critical for future energy developments. Advances in our knowledge of the geophysical forces of the Earth has improved our knowledge of the dynamics of earthquakes and climate, as well as the formation and location of fossil fuel and mineral deposits. We have witnessed a remarkable expansion in the computer sciences as pure mathematic theories have combined with the silicon chip to advance the solid state technology of high-speed computers. The deciphering, just 10 years ago, of the genetic code for DNA and RNA has led to advances in cell biology and immunology. Our understanding of the genetic code has great significance for agriculture and medicine, and may even create new energy sources. Private industry is already engaged in the production of synthetic insulin and interferon, using recombinant DNA techniques. Similar techniques are being applied to the study of nitrogen fixation in plants. Many of the conveniences enjoyed by our society have their origins in basic research. The only bounds on our ability to predict future applications of basic science are those of our own imaginations. The returns on our investments in basic research are too great to even calculate.

Applied Science represents the critical linking mechanism for directing science and technology to national needs and opportunities. Again, the range of these activities and their implications for the Nation are enormous. In the process of bringing the fruits of our basic science research endeavors to bear on current or near-term needs, increased productivity in the private sector is often a byproduct. An important part of the National Science Foundation's applied science activities centers on the small business innovation and industrial technology program. While nearly all of the NSF's programs, including basic research, may contribute to innovation and productivity indirectly, this program is specifically geared to improving the innovative capabilities of the private sector.

The primary objectives of the program are: First, to draw upon scientific and technological research capabilities in small businesses and universities with the goal of moving the most promising research into commercialization as soon as possible, and second, to combine the scientific and technological resources of universities and industry in innovative programs which accelerate the introduction of new technologies in U.S. business.

It is important in looking at this program to realize that the Foundation is not so much promoting specific innovations as it is providing the environment in which industry and universities can innovate on their own. This is accomplished through a variety of mechanisms and has been very successful. In fact, many of the elements of the President's industrial innovation initiatives, unveiled late last year, were modeled after NSF programs. Among the approaches used in this effort are: University/industry cooperative research; the development of generic technology research centers; and centers to assist small businesses wishing to innovate.

In addition to these particular innovation programs, there is an ongoing effort to direct information derived from individual basic research programs toward specific applications. This linking of basic and applied science is essential if the Nation is to maintain its strong competitive position in the future. We are increasingly realizing the emphasis that our trading competitors place on research applications.

Science education is another area where the NSF makes an important contribution to the Nation. The importance of science education and the need for its improvement in the United States was pointed out in a recent editorial in the Washington Post by Daniel S. Greenberg. I am submitting that article here for the RECORD.

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The Foundation has worked to address some of these science education problems and needs by developing better science curricula for our schools, by supporting scientist's research endeavors, and through a variety of informal educational efforts designed to increase the science literacy of the general public. Unfortunately, these activities have not received the support which is necessary both today and for the future. Hopefully, the review of science and engineering education to be completed in the near future at the President's request will give this activity a higher priority.

Mr. Chairman, the United States cannot afford to sit back and rest on its scientific and technological successes of the past. Change is coming at a dizzying pace. Today's knowledge knows no national boundary. Western Europe and Japan are making striking advances in their efforts to improve the strength and vitality of their own scientific and technological communities. We have already lost our leading position in many electronic and industrial fields. Japanese televisions and radios are a painful example of how we are being overtaken. Eastern Airlines' decision to buy a fleet of the European-built wide-body A-300 Airbus—the first time that a major U.S. carrier has gone abroad to purchase big planes—is an example of Europe's advances in high-technology manufacturing and increasing competition in the international marketplace. Japan has focused on the goal of passing the United States in computer technology. We must make a commitment to support scientific inquiry in this Nation and to put the fruits of our new knowledge to work. We cannot afford not to increase our scientific investments. To do otherwise will only aggravate our present problems and add to them.

This authorization for the National Science Foundation represents a bare minimum commitment to these critical endeavors. Just as the loss of America's nuclear monopoly profoundly changed the military security of the Nation, we are now losing our preeminent position in science and technology. The implications of this will be equally significant for our economic security in the future. I urge my colleagues to support this important bill.

The CHAIRMAN. Are there additional amendments?

If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. BREAUX, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7115), to authorize appropriations for activities of the National Science Foundation for fiscal year 1981, and for other purposes, pursuant to House Resolution 685, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 314, nays 55, not voting 63, as follows:

[Roll No. 520]

YEAS—314

Abdnor	Breaux	Derrick
Addabbo	Brinkley	Derwinski
Akaka	Brooks	Dickinson
Ambro	Broomfield	Dicks
Anderson, Calif.	Brown, Calif.	Dingell
	Brown, Ohio	Dixon
Anderson, Ill.	Buchanan	Donnelly
Andrews, N.Dak.	Burgener	Dougherty
	Burton, John	Downey
Anthony	Burton, Phillip	Drinan
Applegate	Butler	Duncan, Oreg.
Archer	Byron	Duncan, Tenn.
Ashley	Carney	Early
Aspin	Carr	Eckhardt
Atkinson	Carter	Edgar
AuCoin	Cavanaugh	Edwards, Ala.
Bailey	Chappell	Edwards, Calif.
Baldus	Cheney	Emery
Barnard	Chisholm	Erdahl
Barnes	Clausen	Erlenborn
Beard, R.I.	Clay	Ertel
Beard, Tenn.	Clinger	Evans, Del.
Bedell	Co'eman	Evans, Ga.
Benjamin	Collins, Ill.	Fary
Bennett	Conte	Fascell
Bereuter	Conyers	Fazio
Bevill	Corcoran	Fenwick
Biaggi	Cotter	Ferraro
Bingham	Coughlin	Findley
Blanchard	Courter	Fish
Boland	D'Amours	Fisher
Bolling	Daniel, Dan	Fithian
Boner	Danielson	Flippo
Bonior	Daschle	Florio
Bonker	Davis, Mich.	Foley
Bouquard	Deckard	Ford, Tenn.
Brademas	Dellums	Forsythe

Fountain	Luken	Rosenthal
Fowler	Lundine	Rostenkowski
Frenzel	McClory	Roybal
Frost	McCloskey	Royer
Fuqua	McDade	Russo
Gaydos	McEwen	Sabo
Gephardt	McHugh	Santini
Gibbons	McKay	Sawyer
Gilman	McKinney	Scheuer
Gingrich	Madigan	Schroeder
Ginn	Maguire	Seiberling
Glickman	Marks	Sharp
Gonzalez	Marlenee	Shelby
Gore	Marriott	Shuster
Gradison	Martin	Simon
Grassley	Matsui	Smith, Iowa
Gray	Mavroules	Smith, Nebr.
Green	Mica	Snowe
Grisham	Mikulski	Snyder
Guarini	Miller, Calif.	Solarz
Gudger	Mineta	Spellman
Guyer	Minish	St Germain
Hall, Ohio	Mitchell, Md.	Stack
Hamilton	Mitchell, N.Y.	Staggers
Hammer-schmidt	Moffett	Stanton
Hance	Mollohan	Stark
Hanley	Moore	Stewart
Harkin	Moorhead, Calif.	Stokes
Harris	Moorhead, Pa.	Stratton
Hefner	Mottl	Studds
Heftel	Murphy, Ill.	Swift
Hightower	Murphy, Pa.	Synar
Hillis	Murtha	Tauke
Holland	Musto	Thomas
Hollenbeck	Myers, Ind.	Thompson
Holt	Natcher	Traxler
Horton	Neal	Trible
Howard	Nelson	Udall
Huckaby	Nolan	Ullman
Hughes	Nowak	Van Deerlin
Hutchinson	O'Brien	Vanik
Hyde	Oakar	Vento
Ireland	Oberstar	Walgren
Jacobs	Obey	Walker
Jeffries	Ottinger	Wampler
Jenkins	Panetta	Watkins
Johnson, Calif.	Patten	Waxman
Johnson, Colo.	Patterson	Weaver
Jones, N.C.	Pease	Weiss
Jones, Tenn.	Pepper	White
Kastenmeier	Perkins	Whitehurst
Kazen	Peyser	Whitley
Kemp	Pickle	Williams, Mont.
Kildee	Price	Williams, Ohio
Kindness	Pritchard	Wilson, Bob
Kogovsek	Pursell	Wilson, Tex.
Kostmayer	Rahall	Winn
LaFalce	Railsback	Wirth
Lagomarsino	Rangel	Wolff
Leach, Iowa	Ratchford	Wolpe
Lederer	Regula	Wright
Lehman	Reuss	Wyatt
Leland	Richmond	Wylie
Lent	Ritter	Yates
Levitas	Roberts	Yatron
Lloyd	Robinson	Young, Fla.
Long, La.	Roe	Young, Mo.
Lowry	Rose	Zablocki
		Zeferetti

NAYS—55

Ashbrook	Harsha	Petri
Badham	Hopkins	Porter
Bafalis	Hubbard	Rousselot
Bauman	Ichord	Rudd
Bethune	Jeffords	Satterfield
Broyhill	Jones, Okla.	Schulze
Collins, Tex.	Kelly	Sensenbrenner
Crane, Philip	Kramer	Shumway
Daniel, R. W.	Latta	Skelton
Dannemeyer	Leath, Tex.	Solomon
de la Garza	Lee	Spence
Devine	Loeffler	Stangeland
Dornan	Lott	Stenholm
English	Lungren	Stump
Evans, Ind.	McDonald	Taylor
Goodling	Michel	Volkmer
Gramm	Miller, Ohio	Whittaker
Hagedorn	Montgomery	
Hall, Tex.	Paul	

NOT VOTING—63

Albosta	Conable	Heckler
Alexander	Corman	Hinson
Andrews, N.C.	Crane, Daniel	Holtzman
Annunzio	Davis, S.C.	Hutto
Bellenson	Dodd	Jenrette
Boggs	Edwards, Okla.	Leach, La.
Bowen	Ford, Mich.	Lewis
Brodhead	Garcia	Livingston
Burlison	Giaimo	Long, Md.
Campbell	Goldwater	Lujan
Cleveland	Hansen	McCormack
Coelho	Hawkins	Markey
Mathis	Preyer	Steed
Mattox	Quayle	Stockman
Mazzoli	Quillen	Symms
Moakley	Rhodes	Tauzin
Murphy, N.Y.	Rinaldo	Vander Jagt
Myers, Pa.	Rodino	Whitten
Nedzi	Roth	Wilson, C. H.
Nichols	Sebelius	Wydler
Pashayan	Shannon	Young, Alaska

The Clerk announced the following pairs:

Mr. Annunzio with Mr. Campbell.
Mr. Nichols with Mr. Rinaldo.
Mr. Nedzi with Mr. Young of Alaska.
Mr. Tauzin with Mr. Quillen.
Mr. Mazzoli with Mr. Roth.
Mr. Murphy of New York with Mr. Wydler.
Mr. McCormack with Mr. Conable.
Mr. Burlison with Mr. Daniel B. Crane.
Mrs. Boggs with Mr. Sebelius.
Mr. Bellenson with Mr. Edwards of Oklahoma.
Mr. Alexander with Mr. Quayle.
Mr. Giaimo with Mr. Lujan.
Mr. Hawkins with Mr. Symms.
Mr. Jenrette with Mr. Pashayan.
Mr. Markey with Mr. Stockman.
Mr. Moakley with Mr. Livingston.
Mr. Myers of Pennsylvania with Mr. Vander Jagt.
Mr. Dodd with Mr. Cleveland.
Mr. Coelho with Mr. Goldwater.
Mr. Corman with Mr. Hansen.
Mr. Bowen with Mr. Lewis.
Mr. Albosta with Mrs. Heckler.
Mr. Brodhead with Mr. Hinson.
Mr. Davis of South Carolina with Mr. Garcia.
Mr. Mathis with Mr. Mattox.
Mr. Steed with Mr. Rodino.
Mr. Preyer with Mr. Whitten.
Mr. Hutto with Ms. Holtzman.
Mr. Long of Maryland with Mr. Leach of Louisiana.
Mr. Charles H. Wilson of California with Mr. Ford of Michigan.
Mr. Andrews of North Carolina with Mr. Rhodes.

□ 1830

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 568) to promote the full use of human resources in science and technology through a comprehensive program to maximize the potential contribution and advancement of women in scientific, professional, and technical careers and to authorize appropriations for activities for the National Science Foundation for fiscal years 1981 and 1982, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 568

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled, That this Act may be cited as the "National Science Foundation Authorization and Women in Science Act".

TITLE I—NATIONAL SCIENCE FOUNDATION AUTHORIZATION

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. (a) There are authorized to be appropriated to the National Science Foundation $1,074,000,000 for the fiscal year 1981 and $1,235,500,000 for the fiscal year 1982.

(b) Funds authorized for the fiscal year 1981 will be available for the following categories:

(1) Mathematical and Physical Sciences, $245,290,000.

(2) Astronomical, Atmospheric, Earth and Ocean Sciences, $225,540,000.

(3) United States Antarctic Program, $58,000,000.

(4) Ocean Drilling Programs, $24,000,000.

(5) Biological, Behavioral, and Social Sciences, $173,540,000.

(6) Science Education Programs, $87,100,000.

(7)(A) Engineering, $58,540,000.

(B) Applied Sciences, $69,540,000 of which not less than 12.5 per centum shall be expended to small business concerns.

(8) Scientific, Technological, and International Affairs, $26,500,000.

(9) Cross-Directorate Programs, $32,750,000.

(10) Program Development and Management, $60,000,000.

(11) Funds to be expended at direction of the Director in accordance with section 255(b)(3), $7,700,000.

(c) Funds authorized for the fiscal year 1982 will be available for the following categories:

(1) Mathematical and Physical Sciences, $267,800,000.

(2) Astronomical, Atmospheric, Earth and Ocean Sciences, $245,800,000.

(3) United States Antarctic Program, $64,000,000.

(4) Ocean Drilling Programs, $26,500,000.

(5) Biological, Behavioral, and Social Sciences, $189,800,000.

(6) Science Education Programs, $121,000,000.

(7)(A) Engineering, $67,800,000.

(B) Applied Sciences, $96,800,000 of which not less than 12.5 per centum shall be expended to small business concerns.

(8) Scientific, Technological, and International Affairs, $29,000,000.

(9) Cross-Directorate Programs, $52,000,000.

(10) Program Development and Management, $66,000,000.

(11) Funds to be expended at the direction of the Director in accordance with section 255(b)(3), $9,000,000.

(d) Of the total amount authorized under subsection (b)(9), not more than $1,000,000 is authorized for United States/Union Soviet Socialist Republics cooperative research, no portion of which shall be expended until the President has certified in writing to the Congress that such expenditures shall be of direct and very substantial benefit to the United States of America.

AVAILABILITY OF APPROPRIATIONS

SEC. 102. Appropriations made under authority provided in sections 101 and 104 shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making the appropriations.

SPECIAL EMPHASIS PROGRAMS

SEC. 103. (a) Of the total amount authorized under sections 101(b)(6) and 101(c)(6)—

(1) $1,000,000 is authorized for a program of education in appropriate technology;

(2) $2,250,000 is authorized for the program Ethics and Values in Science and Technology; and

(3) $5,000,000 is authorized for the program Minorities and the Handicapped in Science.

(b)(1) Of the total amount authorized under sections 101(b)(1), 101(b)(2), and 101(b)(5) for equipment and instrumentation, not less than 10 per centum shall be made available for grants to two- and four-year colleges for equipment and instrumentation costing $35,000, or less.

(2) Of the total amount authorized under sections 101(c)(1), 101(c)(2), and 101(c)(5) for equipment and instrumentation, not less than 10 per centum shall be made available for grants to two- and four-year colleges for equipment and instrumentation costing $35,000, or less.

OFFICIAL EXPENSES

SEC. 104. From appropriations made under this Act, not more than $5,000 for fiscal year 1981 and such sums as may be necessary for fiscal year 1982 may be used for official consultation, representation, or other extraordinary expenses at the discretion of the Director of the National Science Foundation. His determination will be final and conclusive upon the accounting officers of the Government.

FOREIGN CURRENCY

SEC. 105. Besides the sums authorized by section 101, not more than $5,500,000 for fiscal year 1981 and such sums as may be necessary for fiscal year 1982 are authorized to be appropriated for expenses of the National Science Foundation incurred outside the United States, to be drawn from foreign currencies that the Treasury Department determines to be excess to the normal requirements of the United States.

TRANSFER AUTHORITY

SEC. 106. (a) Funds may be transferred among the categories listed in section 101(b) or 101(c), so long as the net funds transferred to or from any category do not exceed 10 per centum of the amounts authorized for that category in section 101.

(b) The Director of the Foundation may propose transfers to or from any category exceeding 10 per centum of the amounts authorized for that category in section 101. Such a proposal must be transmitted in writing to the Speaker of the House, the President of the Senate, and the Senate Committee on Labor and Human Resources and the House Authorization Committee on Science and Technology. The proposed transfer may be made only when—

(1) thirty calendar days have passed after submission of the written proposal, or

(2) the chairmen of the House Committee on Science and Technology and the Senate Committee on Labor and Human Resources have both written the Director to the effect that the committees have no objection to the proposed transfer.

AMENDMENTS TO THE NATIONAL SCIENCE FOUNDATION ACT OF 1950

SEC. 107. (a)(1) Section 4(c) of the National Science Foundation Act of 1950 is amended by inserting after the first sentence the following new sentence: "In making nominations under this section, the President shall give due regard to equitable representation of scientists who are women and who represent minority groups.".

(2) Section 4(j) of the Act is amended to read as follows:

"(j)(1) The Board shall prepare and submit a biennial report to the President, for submission to the Congress, on or before January 15th of every other year, commencing with 1982. Such policy report shall deal essentially, though not exclusively, with policy matters or issues which affect the Foundation or with which the Board in its official role as the policy-making body of the Foundation is concerned.

"(2) The Board shall prepare and submit a biennial report to the President for submission to Congress, on or before January 15th of every other year commencing with 1982. Such report shall deal with indicators of the state of science in the United States. In addition, the Board shall prepare and submit to the President for submission to the Congress such other reports on policy matters related to science, engineering, and science education, as the Board, the President, or the Congress may determine necessary.".

(b)(1) Section 15(c) of the National Science Foundation Act of 1950 is repealed.

(2) Subsection (d) of section 15 of such Act is redesignated as subsection (c).

(c) Section 16 of the National Science Foundation Act of 1950 is amended to read as follows:

"APPROPRIATIONS

SEC. 16. To enable the Foundation to carry out its powers and duties, only such sums may be appropriated as the Congress may authorize by law.".

AMENDMENTS TO AWARDS

SEC. 108. (a) Section 2(a) of the Act entitled "An Act to establish a National Medal of Science to provide recognition for individuals who make outstanding contributions in the physical, biological, mathematical, and engineering sciences" approved August 25, 1959 is amended by striking "or engineering" and inserting in lieu thereof "engineering, behavioral or social".

(b) Section 6(a) of the National Science Foundation Authorization Act, 1976 is amended by inserting after "engineering" a comma and the following: "behavioral".

TITLE II—WOMEN IN SCIENCE

SHORT TITLE

SEC. 201. This title may be cited as the "Women in Science and Technology Equal Opportunity Act".

PART A—STATEMENT OF FINDINGS, PURPOSE, AND POLICY

STATEMENT OF FINDINGS

SEC. 211. The Congress finds that—

(1) it is in the national interest to promote the full use of human resources in science and technology and to insure the full development and use of the talents of men and women with scientific and technical skills;

(2) the preeminent position of the Nation in science and technology depends upon the development of the full potential of the talents of men and women with scientific and technological skills, and the full employment of such men and women produces job opportunities in technical and support occupations and exerts a multiplier effect on the gross national product;

(3) the full use of the scientific and technical human resources of the Nation is required to meet the demand for such resources over the long term;

(4) skills in science and mathematics are essential for entry and achievement in a wide range of professional and technical fields;

(5) literacy in science and mathematics contributes importantly to the ability of the individual to function in a wide range of activities;

"(6) women have long been denied equal employment opportunities in scientific and technical fields; and

"(7) although men and women have equal potential for excellence and advancement in scientific and technical fields—

"(A) about 10 per centum of scientists and engineers engaged in research are women;

"(B) the unemployment rates of women scientists are two to five times higher than such rates for men in every field of science;

"(C) women scientists generally earn less than men in every field, at every degree level, at every level of experience and in every employment setting;

"(D) minority women have yet to achieve measurable participation in science; and

"(E) handicapped women have yet to achieve measurable participation in science.

"STATEMENT OF POLICY

SEC. 212. The Congress declares it is the policy of the United States to encourage women to acquire skills in science and mathematics, to assure equal opportunity for women in education, training, and employment in scientific and technical fields, and thereby to promote scientific literacy and the full use of the human resources of the Nation in science and technology. Activities conducted to carry out the purposes and provisions of this Act shall—

(1) be carried out under the direction of the National Science Foundation;

(2) make maximum use of existing Federal programs, funding, and reporting procedures;

(3) provide for coordination between all Federal agencies involved in carrying out the provisions of this Act;

(4) use the expertise of women scientists and women involved in scientific activities;

(5) provide for the participation of professional associations and groups with expertise in the advancement of women, especially associations and groups involved in the advancement of women in scientific and technical fields;

(6) encourage the involvement in and contribution of resources for scientific activities by the private sector;

(7) encourage opportunities for accomplishing comprehensive and long-term institutional change relating to the participation of women in science;

(8) emphasize fields of scientific and technical study and employment in which the underrepresentation of women is most serious and in which employment opportunities are the greatest; and

(9) provide for and encourage cooperation among governmental, industrial, academic, and other types of employers in accomplishing the purposes of this Act.

DEFINITIONS

SEC. 213. For the purposes of this Act—

(1) the term "Federal agency" means an agency as defined in section 551(1) of title 5, United States Code;

(2) the term "State" means each of the several States and the District of Columbia;

(3) the term "Foundation" means the National Science Foundation;

(4) the term "Director" means the Director of the Foundation;

(5) the term "Committee" means the Committee on Women in Science established under section 251; and

(6) the term "science" includes engineering.

PART B—EDUCATION

ELEMENTARY AND SECONDARY EDUCATION PROGRAMS

SEC. 221. (a) The Foundation is authorized to support, by way of grant or contract, programs in science and mathematics in elementary and secondary schools.

(b) Programs supported under this section shall emphasize the acquisition of knowledge, skills, and information by female students, and may include—

(1) the training and retraining (including inservice training) of teachers, counselors, administrators, and other appropriate educational personnel to improve the quality and relevance of education in science and mathematics and to increase student awareness of career opportunities requiring scientific and technical skills;

(2) the use of visiting women scientists and technicians, field trips, or other techniques to encourage students to continue in and complete courses in science and mathematics and to consider careers in scientific and technical fields;

(3) student science training programs, research participation projects, and internships; or

(4) workshops for students and their parents and guardians to increase awareness and understanding of the importance of skills in science and mathematics and of the extent to which scientific and technical skills are required for entry into careers.

(c) The Foundation shall coordinate activities to carry out this section with complementary activities of appropriate public agencies and private entities.

(d) Elementary and secondary school programs included under this section shall not be implemented by the Foundation or any of its grantees or contractors in any school system without the prior written consent of the local education agency as defined in section 801(f) Public Law 89-10.

HIGHER EDUCATION PROGRAMS

SEC. 222. (a) The Foundation is authorized to support, by way of grant or contract, activities designed to (1) increase the participation of women in courses of study at the undergraduate, graduate, and postgraduate levels leading to degrees in scientific and technical fields, (2) encourage women to consider and prepare for careers in science and technology, (3) provide traineeship and fellowship opportunities for women in science and technology, or (4) provide continuing education and retraining opportunities in scientific and technical fields for women whose careers have been interrupted.

(b) Activities supported under this section may include—

(1) the awarding of graduate and postgraduate fellowships, and career development grants, directly to individuals and to institutions for award to individuals, without regard to when the individual received an undergraduate or graduate degree; or

(2) research participation, traineeships, and internship programs;

(c) The Foundation shall coordinate activities under this section with complementary activities of appropriate public agencies and private entities.

(d) Individual recipients of fellowships, grants, and traineeships under this section shall be paid such stipends as the Director may prescribe.

CONTINUING EDUCATION PROGRAM

SEC. 223. (a) The Foundation is authorized to support, by way of grant or contract, activities in continuing education in science and engineering which provide opportunities for women who (1) are in the work force or (2) who are not in the work force because their careers have been interrupted to acquire new knowledge, techniques, and skills in scientific and technical fields.

(b) Activities supported under this section may include—

(1) the award of full-time and part-time fellowships to enable individuals eligible under subsection (a) to pursue study and research, continuing education, and career development in scientific and technical fields, without regard to when the individual received a degree; or

(2) other activities, including pilot programs and regional efforts, to further the purposes of this section.

(c) Individual recipients of fellowships under this section shall be paid such stipends as the Director may prescribe.

(d) The Foundation shall coordinate activities under this section with complementary activities of appropriate public agencies and private entities.

PART C—PUBLIC UNDERSTANDING

RESEARCH PROGRAM

SEC. 231. (a) The Director is authorized to undertake or support, by way of grant or contract, a comprehensive research program designed to increase understanding of (1) the potential contribution of women in science and technology and (2) the means to facilitate the participation and advancement of women in scientific and technical careers.

(b) The program shall include studies concerning the problems confronting girls and women in the study of science and mathematics, and the impact of science and mathematics skills on the entry and advancement of women in nonscientific fields.

VISITING WOMEN SCIENTISTS PROGRAM

SEC. 232. (a) The Director is authorized to establish a visiting women scientists program.

(b) Each year, the Director is authorized to name not fewer than thirty women to be visiting women scientists. Visiting women scientists named under this subsection shall visit secondary schools and institutions of higher education in all regions of the country in order to—

(1) encourage girls and women to acquire skills in mathematics and science;

(2) encourage girls and women to consider careers in science and engineering and to prepare themselves appropriately for such careers; and

(3) conduct lectures, seminars, informal discussions, and workshops concerning various aspects of scientific and technical careers for women.

(c) Each visiting woman scientist who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS-18 under the General Schedule under section 5332 of title 5, United States Code, for each day, including travel-time, she is engaged in the actual performance of her duties under this section. A visiting woman scientists who is an officer or employee of the United States Government shall serve without additional compensation. Each visiting scientist shall be reimbursed for travel, subsistence, and other necessary expenses incurred by her in the performance of her duties.

MEDIA PROJECTS

SEC. 233. (a) The Foundation is authorized to support, by way of grant or contract, activities designed to improve the scope, relevance, and quality of information available to the public concerning the importance of the participation of women in careers in science and technology through the use of radio, television, journals, newspapers, magazines, and other media.

(b) Activities supported under subsection (a) may—

(1) demonstrate potential for increasing public awareness of the contribution of women in scientific and technical fields;

(2) stress the importance of equal opportunity for women in careers in science and technology;

(3) emphasize the importance of skills in mathematics and science for a wide range of activities and programs; or

(4) include new media or information techniques with the potential to further the purposes of this section.

MUSEUM PROGRAMS

SEC. 234. The Foundation is authorized to support, by way of grant or contract, activities of museums and science centers which demonstrate potential to interest and involve women. Activities supported under this section shall encourage the study and development of skills in mathematics and science, emphasize opportunities for careers in scientific and technical fields, and stress the importance of equal opportunity for women in science and technology.

PART D—OPPORTUNITY IMPROVEMENT AND REPORTING PROGRAMS

Subpart 1—Opportunity Programs

NATIONAL RESEARCH OPPORTUNITY GRANTS

SEC. 241. (a) Each year, the Director is authorized to make grants, to be known as the National Research Opportunity Grants, to women scientists who (1) have received their doctorate within five years prior to the date of the award or (2) have received their doctorate, have had their careers interrupted, and are re-entering the work force within five years after such interruption. Grants under this section shall be made on the basis of merit through an annual competition.

(b) Each grant made under this section shall be used by the recipient to conduct scientific research in a field chosen by the recipient. Grants made under this section may include funds for the acquisition or maintenance of equipment and the renovation of facilities for research purposes.

(c) Each grant made under this section shall be made for a period of three-years and may be renewed once for an additional three-year period.

(d) The minimum annual amount of any grant under this section shall be $10,000 and the maximum annual amount of any such grant shall be $75,000. In determining the amount of each grant, the Director shall consider the field in which the research is to be carried out pursuant to the grant and the costs of carrying out research in such field. A grant under this section shall be paid directly to the scientist conducting the research.

(e) The Director may provide not in excess of $5,000 per year to each academic institution, research center, or research organization in which research conducted pursuant to any grant made under this section is carried out. Such funds shall be used for the purposes of defraying the administrative costs of such institution, center, or organization related to such research.

(f) A recipient of any grant under this section may conduct research pursuant to the grant at any academic institution, research center, or research organization approved by the Director.

VISITING PROFESSORSHIPS FOR WOMEN IN SCIENCE

SEC. 242. (a) The Foundation is authorized to make grants to individuals or academic institutions for full-time or part-time visiting professorships for women in science. Such professorships may be held by individuals from the industrial, public, or academic sectors.

(b) A visiting professor shall serve at an institution which assures the Director that—

(1) the visiting professor will have appropriate research and teaching opportunities, as well as opportunities to serve as a source of advice and counsel for women considering careers in science and technology; and

(2) the institution will establish or expand activities to increase the participation and advancement of women scientists and engineers in the activities of the institution, including research and teaching activities.

(c)(1) Each visiting professor shall serve in an institution in which the establishment of a visiting professorship is expected to increase the participation and advancement of women scientists and engineers in its research and teaching activities.

(2) Each visiting professorship shall be for a period of at least one year and not more than two years.

DEMONSTRATION PROJECTS

SEC. 243. The Foundation is authorized, after consultation with appropriate public agencies and private entities, to support, by way of grant or contract, activities of individuals, public agencies, and private entities designed to encourage the employment and advancement of women in science, engineering, and technology through—

(1) the establishment and implementation of cooperative research and education arrangements among business concerns, academic institutions, and other appropriate entities;

(2) the development of work-study, preservice, or inservice programs leading to permanent employment or advancement;

(3) the development of programs to assist scientists and engineers to obtain new skills in order to change fields, advance, or otherwise adapt to changing needs in science and technology;

(4) the development of programs to permit scientists and engineers to exchange positions or rotate between positions within and among public agencies and private entities;

(5) the establishment of new research opportunities for students, scientists, and engineers;

(6) the improvement of employment policies and conditions; and

(7) other appropriate activities.

Subpart 2—Agency Responsibility

DEFINITIONS

SEC. 246.(a) For purposes of this part—

(1) the term "Federal financial assistance" means any grant, loan, or contract other than a contract of insurance or guaranty;

(2) the term "national laboratory" means any Government directed research and development laboratory, as well as any research and development laboratory funded at least in part by the Federal Government, except as provided in paragraph (3) of this subsection; and

(3) the term "federally funded research and development center" means any organization which performs research and development exclusively or substantially financed by the Federal Government and which is administered by an industrial firm, university, college, or other nonprofit institution.

(b) The Director of the Office of Science and Technology Policy, in consultation with the Director of the National Science Foundation, the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and appropriate public and private entities, shall establish the criteria for defining the term "scientific and technical positions" for the purposes of this part.

DATA COLLECTION

SEC. 247. (a) By September 30 of each year, the Chairman of the Equal Employment Opportunity Commission shall prepare and transmit to the Foundation a report concerning the employment status of women in scientific and technical fields. To the maximum extent possible, the Chairman shall collect such information through existing appropriate data collection mechanisms and reporting procedures.

(b) The report required by subsection (a) shall include but not be limited to—

(1) for all employers with fifteen or more employees who employ individuals from scientific and technical fields and for each Federal agency that conducts or supports research and development in science and technology, a compilation, comparison, and evaluation, by sex, race, ethnic groups, and discipline, of—

(A) the number of individuals in permanent and temporary and in full-time and part-time scientific and technical positions, by level or other similar category;

(B) the average salary of individuals employed in such scientific and technical positions, by level or other similar category;

(C) the number and type of promotional opportunities realized by individuals in such scientific and technical positions;

(D) the number of individuals serving on each Federal peer review and advisory panel dealing with scientific research and development activities; and

(E) the number of individuals serving as principal investigators in Federal agency, national laboratory, or federally funded research and development center supported or conducted scientific research and development projects; and

(2) for each Federal agency, national laboratory, or federally funded research and development center, a description and evaluation of the activities of such agency, laboratory, or center to—

(A) prevent discrimination against women in science and technology;

(B) increase opportunities for the employment, training, and advancement of women in science;

(C) increase the participation of women scientists in federally funded research;

(D) encourage the participation of minority women in scientific and technical careers; and

(E) encourage the participation of handicapped women in scientific and technical careers.

BIENNIAL REPORT

SEC. 248. (a) By January 30, 1982, and biennially thereafter, the Director shall simultaneously transmit the report to the Congress, the Attorney General, the Director of the Office of Science and Technology Policy, the Chairman of the Equal Employment Opportunity Commission, the Director of the Office of Personnel Management, the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services.

(b) The report required by subsection (a) shall contain—

(1) an accounting and comparison, by sex, race, and ethnic group and by discipline, of the participation of women and men in scientific and technical positions, including—

(A) the number of individuals in permanent and temporary and in full-time and part-time scientific and technical positions by appropriate level or similar category;

(B) the average salary of individuals in such scientific and technical positions;

(C) the number and type of promotional opportunities realized by individuals in such scientific and technical positions;

(D) the number of individuals serving as principal investigators in federally conducted or federally supported research and development; and

(E) the unemployment rate of individuals seeking scientific and technical positions; and

(2) such other data as the Commitee determines appropriate in accordance with section 251(a)(7).

(c) In preparing the report required by subsection (a), the Director shall use the report prepared by the Chairman of the Equal Employment Opportunity Commission pursuant to section 247 and may collect, compile, and analyze such other data and information as may be necessary.

PART E—GENERAL PROVISIONS

COMMITTEE ON WOMEN IN SCIENCE

SEC. 251. (a) There is established within the Foundation a Committee on Women in Science, which shall be composed of 13 members. The Commitee shall—

(1) provide advice to the Foundation concerning (a) the implementation of the provisions of this Act and (B) other policies and activities of the Foundation to encourage full participation of women in scientific, engineering, professional, and technical fields;

(2) establish goals for increasing the participation of women in science and technology;

(3) make recommendations to the Foundation concerning the manner in which funds appropriated to carry out the provision of this Act should be distributed among the programs and activities authorized by this Act, taking into consideration the activities conducted and supported by other public agencies and private entities;

(4) provide advice to the Foundation concerning mechanisms to encourage women scientists and engineers to fully participate in all the programs of the Foundation, particularly research programs;

(5) provide advice concerning the appropriate manner to increase the number of women principal investigators on research projects, the development of flexible research support programs, and the improvement of cooperation between business concerns, academic institutions and other appropriate entities to facilitate research opportunities;

(6) make recommendations for the modification of the policies and procedures of the Foundation relating to the appointment of advisory committees and the selection of peer review committees in order to further the purposes of this Act;

(7) make recommendations to the Director concerning the inclusion of data in the report required under section 248; and

(8) evaluate the effectiveness of activities undertaken and supported under this Act.

(b)(1) Each member of the Committee shall be appointed by the Director with the concurrence of the National Science Board. The membership of the Committee shall represent a cross-section of the physical, mathematical, life, behavioral, and social sciences. At least two members of the Committee shall be nonscientists. At least nine members of the Committee shall be women, of whom at least seven shall be scientists or engineers active in promoting increased participation of women in science. In appointing members to the Committee, the Director shall obtain recommendations from governmental and private organizations active in promoting equal opportunity for women in science.

(2) The Chairperson of the National Science Board Committee on Minorities and Women shall be an ex officio member of the Committee.

(c) Members of the Committee shall be appointed to serve for a three year term, except that the terms of office of members first appointed shall expire, as designated by the Director at the time of appointment, five at the end of one year, four at the end of two years, and four at the end of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of such term. Members may be reappointed to serve one additional term of three years.

(d) Seven members of the Committee shall constitute a quorum, and any vacancy in the Committee shall not affect its power to function.

(e) Members of the Committee shall select a member to serve as Chairperson.

(f) Each member of the Committee who is not otherwise employed by the United States Government shall receive compensation, at a rate established by the Director which shall not exceed a rate equal to the daily rate prescribed for GS-18 under the General Schedule under section 5332 of title 5, United States Code, for each day, including travel-time, such member is engaged in the actual performance of duties as a member of the Committee. A member of the Committee who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(g)(1) The Director shall establish in the Foundation a Special Assistant for Women in Science who—

(A) shall be the principal adviser of the Director on matters relating to the advancement of women in science and technology;

(B) shall provide such support, staff, and assistance to the Committee as may be neces-

sary to carry out its responsibilities under this Act; and

(C) shall facilitate the implementation of recommendations of the Committee.

(2) The Director shall provide the Special Assistant with such support, staff, and assistance as may be necessary to carry out the duties specified in this subsection.

(h) The Committee, with the approval of the Director, is authorized to establish such additional procedures and criteria as necessary to implement the provisions of this part.

(i) Each year the Committee shall prepare and transmit to the Congress a report concerning its activities during the previous year and its proposed activities for the next year.

AUTHORITY

SEC. 252. (a) Except as otherwise provided in this Act the Foundation shall, in carrying out its functions under this Act, have the same powers and authority the Foundation has under the National Science Foundation Act of 1950 to carry out its functions under that Act.

(b) Except as otherwise provided in this Act, the Director shall, in carrying out the functions of the Director under this Act, have the same powers and authority the Director has under the National Science Foundation Act of 1950 to carry out the functions of the Director under that Act.

APPLICATIONS REQUIRED

SEC. 253. No grant may be made nor any contract entered into under this Act unless an application is submitted to the Director at such time and in such manner and containing or accompanied by such information as the Director may require.

SEVERABILITY

SEC. 254. If a provision of this Act is held invalid, the validity of the other provisions of the Act shall not be affected. If an application of a provision of this Act to a person or circumstance is held invalid, the validity of the application of the provisions to another person or circumstance shall not be affected.

AVAILABILITY OF APPROPRIATIONS

SEC. 255. (a) Of the sums appropriated for the National Science Foundation under section 101(a), not less than 2.1 percentum shall be available in fiscal years 1981 and 1982 for carrying out the provisions of this title.

(b) The funds made available under subsection (a) shall be expended as follows:

(1) one-third of such sums to be expended to carry out the provisions of parts B and C of title II;

(2) one-third of such sums to be expended to carry out the provisions of part D of title II; and

(3) one-third of such sums to be expended to carry out the provisions of title II at the direction of the Director.

(c) Funds appropriated to carry out programs and activities authorized by this Act are in addition to funds appropriated pursuant to any other provision of law for the purpose of increasing the participation of women in science and technology.

MOTION OFFERED BY MR. BROWN OF CALIFORNIA

Mr. BROWN of California. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROWN of California moves to strike out all after the enacting clause of the Senate bill, S. 568, and to insert in lieu thereof the text of the bill, H.R. 7115, as passed, as follows:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "National Science Foundation Authorization Act for Fiscal Year 1981".

SEC. 2. (a) There are authorized to be appropriated to the National Science Foundation, for the fiscal year 1981, the sums indicated for the following categories:

(1) Mathematical and Physical Sciences, $259,800,000.

(2) Astronomical, Atmospheric, Earth, and Ocean Sciences, $237,100,000.

(3) United States Antarctic Program, $64,200,000.

(4) Ocean Drilling Programs, $17,500,000.

(5) Biological, Behavioral, and Social Sciences, $183,410,000.

(6) Science Education Programs, $92,200,000.

(7) Engineering and Applied Science, $142,560,000.

(8) Scientific, Technological, and International Affairs, $30,450,000.

(9) Cross-Directorate Programs, $33,200,000.

(10) Program Development and Management, $59,800,000.

(b) Of the total amount authorized under subsection (a)(7)—

(1) not less than $19,400,000 shall be available for Earthquake Hazards Mitigation;

(2) not less than $1,000,000 shall be available for the Small Business Innovation Program, for projects to aid the handicapped;

(3) not less than $3,000,000 shall be available for Research and Development in Appropriate Technology;

(4) not less than $5,000,000 shall be available for a Center for Innovation Development to be located in an area which experienced an unemployment rate in excess of 10 per centum in 1979, and which is centrally located to serve several major metropolitan centers; and

(5) not less than $1,800,000 shall be available for the establishment and operation of three university-based Innovation Centers.

(c) Of the total amount authorized under subsection (a)(6)—

(1) not less than $2,400,000 shall be available for Science Faculty Improvement Programs, for year-long awards to experienced, full-time, two- and four-year college and university science teachers who are involved primarily in undergraduate science instruction to increase their competence in science; and

(2) not less than $1,500,000 shall be available for Science Education Programs relating to Appropriate Technology.

(d) Of the total amount authorized under subsections (a)(1), (a)(2), (a)(5), and (a)(7), not less than $2,000,000 shall be available for the salaries of faculty members of two-year and four-year colleges that have only small or no doctoral programs in science and engineering or of universities that have very limited science and engineering programs, for the purpose of enabling them to participate in research projects at institutions other than the faculty members' home institutions.

(e) Of the total amount authorized under subsection (a)(4), not more than $500,000 is authorized for the Ocean Margin Drilling Project, including such sums as may be necessary for the National Academy of Sciences study specified in section 3(c).

(f) Of the total amount authorized under subsection (a)(9), not more than $1,600,000 is authorized for United States/Union of Soviet Socialist Republics cooperative research, no portion of which shall be expended until the President has certified in writing to the Congress that such expenditures shall be of direct and very substantial benefit to the United States.

(g) Of the total amount authorized under subsection (a)(8), $14,500,000 is authorized for International Cooperative Science Activities.

SEC. 3. (a) The Foundation shall prepare a report on the Ocean Margin Drilling Project and shall transmit the report to Congress not later than December 31, 1980. The report shall include—

(1) plans for conversion of the Glomar Explorer or other drilling platform;

(2) plans for drilling;

(3) detailed cost estimates;

(4) a discussion of the feasibility and cost of alternative drilling platforms;

(5) plans for funding; and

(6) other plans.

(b) No funds shall be obligated for the Ocean Margin Drilling Project after December 31, 1980, until the report specified in subsection (a) is transmitted to Congress.

(c) The National Academy of Sciences shall study marine earth sciences research and report to the Congress.

(d) To the extent permitted by law, all Federal funding of the Ocean Margin Drilling Project shall be provided from the Windfall Profit Tax Account.

SEC. 4. Appropriations made under the authority provided in sections 2 and 6 shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making the appropriations.

SEC. 5. From appropriations made under the authority provided in this Act, not more than $5,000 may be used for official consultation, representation, or other extraordinary expenses at the discretion of the Director of the National Science Foundation. His determination will be final and conclusive upon the accounting officers of the Government.

SEC. 6. Besides the sums authorized by section 2, not more than $5,500,000 is authorized to be appropriated for the fiscal year 1981 for expenses of the National Science Foundation incurred outside the United States, to be drawn from foreign currencies that the Treasury Department determines to be excess to the normal requirements of the United States.

SEC. 7. Funds may be transferred among the categories listed in section 2(a), but neither the total funds transferred from any category nor the total funds transferred to any category may exceed 10 per centum of the amount authorized for that category in section 2(a) or available for that category after the application of section 10, unless—

(1) thirty calendar days on each of which at least one House of Congress is in session have passed after the Director of the National Science Foundation or his designee has transmitted to the Speaker of the House of Representatives, to the President of the Senate, to the Committee on Science and Technology of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate a written report containing a full and complete explanation of the transfer involved and the reason for it, or

(2) before the expiration of the thirty days both the Committee on Science and Technology of the House and the Committee on Labor and Human Resources of the Senate have written to the Director to the effect that they have no objection to the proposed transfer.

SEC. 8. The National Science Foundation is directed to consolidate all Directorates, including the Science Education Directorate, under one roof, in the present location of the central administrative offices, on or before August 1, 1982.

SEC. 9. The Director of the National Science Foundation, jointly with the Secretary of Education, shall develop and transmit to Congress a proposed joint Science Education Program plan.

SEC. 10. If the total amount of appropriations made by any Act for program activities included in section 2 for the fiscal year 1981 is less than the total amount authorized to be appropriated for those activities by section 2, the amount available from such appropriations for any particular program activity shall bear the same ratio to the amount authorized to be appropriated for that activity by section 2 as the total amount of the appropriations made by such appropriation Act for all included program activities bears to the total amount authorized to be appropriated for those activities by section 2 (with each ceiling and floor set forth in section 2 being reduced in the same ratio for purposes of determining the amounts so available), except to the extent specifically otherwise provided in the text of the Act making the appropriations for the program activities involved.

SEC. 11. (a) Section 15 of the National Science Foundation Act of 1950 is amended by striking out subsection (c), and by redesignating subsection (d) as subsection (c).

(b) The text of section 16 of such Act is amended to read as follows:

"SEC. 16. To enable the Foundation to carry out its powers and duties, only such sums may be appropriated as the Congress may authorize by law.".

SEC. 12. (a) Section 2(a) of the Act entitled "An Act to establish a National Medal of Science to provide recognition for individuals who make outstanding contributions in the physical, biological, mathematical, and engineering sciences", approved August 25, 1959 (42 U.S.C. 1881(a)), is amended by striking out "or engineering" and inserting in lieu thereof "engineering, behavioral, or social".

(b) The title of such Act is amended by striking out "and engineering" and inserting in lieu thereof "engineering, behavioral, and social".

SEC. 13. The President, with the assistance of the Director of the Office of Science and Techology Policy and members of the Cabinet, shall develop a comprehensive national policy with regard to women, minorities, science and technology. Further, the President is directed to report to the Congress a comprehensive legislative and administrative program to implement this policy before January 1, 1981.

SEC. 14. The Director of the National Science Foundation shall henceforth require the titles of all its grants to contain a brief statement of the purpose of the research being undertaken. Insofar as possible such statements shall be in layman's language.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to authorize appropriations for activities of the National Science Foundation for fiscal year 1981, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 7115) was laid on the table.

GENERAL LEAVE

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERSONAL EXPLANATION

Mr. HUTTO. Mr. Speaker, I was unable to register my vote on H.R. 7115. Had I been able to do so, I would have voted "yea."

DEFENSE AUTHORIZATION, 1981—CONFERENCE REPORT

(Mr. BENNETT asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BENNETT. Mr. Speaker, for myself and Mr. ICHORD, I want to say that the portion of the Defense authorization, 1981, conference report, title II, research development test and evaluation, entitled "new class carrier design" has, I am afraid, been subject to misinterpretation.

The August 26, 1980, CONGRESSIONAL RECORD, Senate, page 23250, contains a statement which purports to clarify the legislative intent of the conferees respecting aircraft carrier design. Unfortunately, the "clarification" is not consistent with the understanding of the House conferees or the specific language in the conference report.

The House report on the Department of Defense Authorization Act, 1981, contains no reference to a specific aircraft carrier design for the Navy. The Senate report contains very specific guidelines for a light carrier program. The guidelines set limits on tonnage, aircraft complement, acquisition costs and design specifications.

The House Armed Services Committee has long favored nuclear-powered aircraft carriers, preferably of the *Nimitz*-type. Large deck carriers can accommodate an optimum number of aircraft required for the most meaningful operation of air power at sea. The committee is mindful of the recent lessons learned from carrier units in the Indian Ocean that show the nuclear-powered carriers to cost less operationally than oil-fired carriers by an order of about two to one. The House conferees were, therefore, unanimous in their decision not to accept any compromise in conference that contained any restrictions on carrier design for the Navy. The House conferees specifically rejected language which contained the words "light carrier." The latter was to make very clear that the House would not accept any restrictions as to size and propulsion characteristics of aircraft carriers.

The conference report language on carriers was one of the last issues to be settled by the conferees. The House was adamant that the Senate's "light carrier" language was unacceptable. The agreed upon compromise specifically eliminated any reference to "light carriers" by adopting instead the words "new class carrier design."

The conference report language thus states:

NEW CLASS CARRIER DESIGN

The Senate amendment authorized $30 million which would have allowed for the development of a new class of aircraft carrier. The Department of Defense requested no funds for such purpose, and the House bill contained no authorization.

If the United States Naval Forces are to continue to carry out their mission, there is strong evidence to support the need for additional aircraft carrier forces. For over three years, the Navy has been studying various sea-based aircraft platform alternatives. Despite this intense study effort, no program has been forthcoming to increase naval air capability at sea. Air-at-sea continues to provide the greatest flexibility in meeting new and challenging technological changes in warfare. It would be shortsighted indeed to fail to provide adequate forces, and especially air capable platforms, in this era of increasing Soviet naval capability. In providing for adequate forces in the years ahead, the Navy should consider carriers of all various designs.

Therefore, $30 million is authorized for such additional R&D efforts as may be required to permit a definitive recommendation by the Navy to the Congress for a new class of aircraft carrier.

The legislative intent of the conferees clearly is to leave with the Navy the choice of the kind of aircraft carrier it may need now and in the future, without any restrictions as to size, propulsion or aircraft complement.

I believe that it is an accepted principle of legislative interpretation when one House of the Congress submits language in legislation, or in report language, to a conference, and the other House has different or no language on the subject, that then, when the conference agrees on language on the general subject matter, this renders inoperative the language which has been substituted for. It is manifestly obvious that the new language agreed upon by the House and Senate in this conference report supersedes the rejected Senate language and removes all restrictions in the study as to size, propulsion, or aircraft complement.

□ 1730

SENATOR RANDOLPH'S 9,000TH VOTE

(Mr. RAHALL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RAHALL. Mr. Speaker, it is with great pride that I rise today to congratulate my home State's senior Senator, a great American and a great man, JENNINGS RANDOLPH, on the casting of his 9,000th vote as a Member of Congress.

The depth of Senator RANDOLPH's commitment to his country and his State, can certainly be measured by this milestone.

A champion of the Interstate Highway System, the 55 miles per hour speed limit, environmental protection, the social security system, water resources, flood control, energy, coal, air travel, the disabled, the handicapped, older Americans, economic development, and the Appalachian Regional Commission; Senator RANDOLPH has always been there, in a leadership role, to help those who need help the most.

For 14 years in the House of Representatives, and for 22 years in the U.S. Senate, JENNINGS RANDOLPH has been in the forefront, advancing the causes that are good. His career has truly been "people oriented."

I know this great achievement is shared by his wonderful wife, Mary, and his two sons, Jay and Frank. The entire Randolph family is joined, with pride, by all West Virginians and by all Americans in the celebration of the major accomplishment.

Congratulations, Senator RANDOLPH. Keep on going, and I hope to be here to help you celebrate No. 10,000 also.

THE HOLOCAUST COMMISSION

(Mr. YATES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YATES. Mr. Speaker, I am extremely pleased to advise the House that I am joining today with 99 of my colleagues to introduce legislation which will establish the U.S. Holocaust Memorial Council as a permanent body.

The principal functions of the Holocaust Memorial Council will be to plan and oversee the construction and operation of a permanent, living memorial museum to the victims of the holocaust; to establish and administer an educational foundation; and to establish a Committee on Conscience to provide early warning of threats of genocide against any people throughout the world. In addition, the Council will designate 1 week in each year, to be known as Days of Remembrance, as a national, civic, commemoration of the holocaust, and it will encourage and sponsor appropriate observation of Days of Remembrance throughout the United States.

The funding for these projects, Mr. Speaker, is to be primarily through private contributions. I am pleased to be able to report that, toward that end, a private foundation, the U.S. Holocaust Remembrance Foundation, Inc., has already been established. The Remembrance Foundation will receive donations and contributions from private citizens and groups.

In establishing the Holocaust Memorial Council by Executive order as a temporary body, pending this legislation, President Carter noted the reasons that the holocaust is of fundamental significance to Americans, and explained why there should be an American commemoration of its victims. It was American troops who liberated many of the death camps and exposed the horrible truth of what had been done there. Also, the United States subsequently has become the homeland of many survivors and their families.

The President noted further that Americans must bear responsibility for not having been willing to acknowledge, 40 years ago, that the tragedy was occurring. Thus, thousands of refugees were turned away from our shores, and countless thousands of lives were lost that otherwise could have been saved. In studying the systematic destruction of the Jews by the Nazis, the President added, we can seek to learn how to prevent the recurrence of genocidal threats against any national or ethnic group.

As we know, Mr. Speaker, the holocaust was the annihilation of 6 million Jews as a formal, systematic act of state, pursuant to what the Nazis referred to as the final solution of the Jewish question. The event was all the more ghastly because it was committed by a modern European country with an extraordinary history of achievement in science, the arts, and philosophy. Indeed, those very achievements, which might have been expected to provide a civilizing bulwark against beastliness, were put to work to expedite the mass slaughters, to ease the consciences of the slaughterers, and even to attempt to rationalize and to justify the evil. And, through the years of anti-Semitic race laws, persecution, and extermination, the world acquiesced in its silence and inaction.

Inevitably, the horror spread, and other people, throughout the occupied countries of Europe, were subjected to Nazi atrocities. Those victims, too, will be remembered through the work of the Holocaust Memorial Council.

In addition to commemoration, the Council will be concerned with attempting to comprehend the holocaust, to draw lessons from that experience, and to seek to prevent genocide directed against any people, anywhere in the world. Those goals are to be achieved through the Educational Foundation and through the Committee on Conscience. Unhappily, the urgent need for such an effort has been made manifest by events since World War II, even into the present day.

For those reasons, Mr. Speaker, I take particular pride in introducing this legislation, and in calling upon my colleagues to join in establishing a permanent U.S. Holocaust Memorial Council.

A TRIBUTE TO THE WORKERS OF POLAND

(Mr. BRADEMAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRADEMAS. Mr. Speaker, the coal miners of Silesia, the last of the workers of Poland still striking, returned to work today after having won the agreement of the government of Poland to their insistence on greater freedom. The heroic and historic strike of the Polish workers is now over and all of us as Americans should join in saluting the Polish workers for their extraordinary bravery and their dedication to freedom.

For, Mr. Speaker, the workers of Poland, and the Polish people who stood with them, have provided the world an example of courage that will be forever remembered.

The Polish workers have demonstrated that the flame of freedom, which in the long and tortured history of Poland has often been dimmed, can never be quenched.

It was just 41 years ago this month, I would remind you, Mr. Speaker, that the armies of Nazi Germany and the Soviet Union swept into Poland and destroyed a democratic society. While defending their homeland during the years of terror under the Nazis, more than 6 million Poles were killed.

Today, Mr. Speaker, 4 decades later, a new generation of Poles has accomplished what only weeks ago would have been thought impossible.

In just 18 days, the workers of Poland have radically altered the conditions under which they work and live. By their heroic actions, the Polish workers have won economic and political rights unmatched in any other nation controlled by a Communist Party.

Alone and unarmed, the Polish workers have won the right to strike and the right to establish their own trade unions, independent of control by the government, as well as a series of economic and political reforms that we in the United States take for granted but which have been denied the people of either Eastern Europe or the Soviet Union.

One of the most striking aspects of this victory, to me Mr. Speaker, is the way it happened. What began as a protest by one small group of workers at a shipyard in Gdansk spread within less than 3 weeks to 600,000 workers in more than 20 cities.

Never once did these brave people flinch, and never once did they resort to violence. They stood their ground as their forebears stood so courageously over 4 decades ago and as Poles have for generations resisted forces arrayed against them.

Mr. Speaker, there are several reasons that I take this time to pay tribute to the Polish workers.

In the congressional district in Indiana which I have the honor to represent, there are many Americans of Polish origin.

I have on several occasions had the opportunity to visit Poland, most recently in August of 1979 when I led a delegation of Members of the House of Representatives for meetings with officials of the Polish Government and with leaders of the Roman Catholic Church. While in Poland, we had the privilege of meeting with Stefan Cardinal Wyszynski, Primate of the Roman Catholic Church of Poland, and Franciszek Cardinal Macharski, successor to Pope John Paul II as Archbishop of Krakow. We also visited Czestochowa, the shrine of Polish Roman Catholics.

Beyond all these reasons for my interest in Poland, Mr. Speaker, my wife, Mary Ellen, is of Polish origin.

But I am sure, Mr. Speaker, that Americans of all backgrounds because of our belief in human freedom and human rights will join in admiration for what the workers of Poland have accomplished.

I should, however, note, Mr. Speaker, that it would be foolhardy for us to assume that the struggle in Poland is over. Obviously it is not. Promises have been made to the workers by the Government of Poland and the Communist Party of Poland and those promises must be kept. There must be no outside interference in the internal affairs of Poland. The Polish people must be allowed to work out the details of their destiny.

Indeed, Mr. Speaker, many of us in the House of Representatives, together with the distinguished chairman of the Committee on Foreign Affairs, the Honorable CLEMENT J. ZABLOCKI of Wisconsin, joined late last month in introducing a resolution which called on the Government of Poland to observe the political and civil rights of the striking workers.

That resolution, Mr. Speaker, noted various international agreements which the Polish Government had accepted guaranteeing civil and political rights, including the right to form and join trade unions.

The resolution urged the Polish Government "to resolve the issues raised by the workers through peaceful means" and requested the government "immediately to release persons unjustly imprisoned * * * for their efforts to exercise their rights."

The resolution also called on all signatories of the Helsinki Accords to observe its principles "relating to sovereign equality, inviolability of frontiers, and nonintervention in internal affairs."

Mr. Speaker, I believe that the Government of our country has been wise in demonstrating moral support for the position of the Polish workers while avoiding any action that could have been seized upon by the Soviet Union to justify intervention, military or otherwise, in Poland.

I am pleased also that President Carter has taken the initiative in suggesting to the nations of the West that they favorably consider requests for assistance from Poland in this time of difficulty.

Mr. Speaker, the 12 million Americans of Polish origin have been among our most valued citizens. Today Polish Americans—and all Americans—have the right to feel a sense of pride and joy at the success of our friends and relatives in Poland in achieving progress in human rights to a degree that exists nowhere else in the countries of Eastern Europe.

LEGISLATION TO HELP HOSPITALS SERVING THE MEDICALLY INDIGENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. BINGHAM) is recognized for 15 minutes.

Mr. BINGHAM. Mr. Speaker, I am today introducing a bill which would help hospitals which serve the medically indigent. It is called the Hospital Ambulatory Services Reimbusement Reform Act.

This bill is designed to keep financial crises from recurring in hospitals which have already come through a crisis, and to prevent such crises from occurring in other hospitals serving similar populations. The proposed reimbursement reform program presumes that the provision of care to those who cannot pay for it is part of the legitimate cost of operation in certain hospitals serving large indigent populations and should be accommodated within the reimbursement system. Under this bill medicare and medicaid would be required to assume their share of the costs to the hospitals of providing ambulatory services to those unable to pay.

This bill has been introduced in the Senate by Senator JAVITS.

The need for this kind of legislation has become increasingly clear. I myself became aware of this need through the problems experienced by the Bronx-Lebanon Hospital Center (BLHC) located in my congressional district. Serving an urban area, BLHC has found it increasingly necessary to provide essential ambulatory care services to people who cannot pay, either because they have no private insurance or because they are ineligible for medicaid. Unfortunately, the future operation of hospitals such as BLHC is threatened because the cost of nonreimbursed services is greater than available resources. This is so in spite of the almost Herculean efforts of its president to keep the hospital open and serving the community.

At the same time, I am cosponsoring two bills already introduced by my colleague from New York, Mr. RANGEL, which are also aimed at helping hospitals in financial difficulty. These bills are H.R. 7680, the Financially Distressed Hospitals Assistance Act, and H.R. 7776, the Hospital Financing Experiment and Demonstration Act.

H.R. 7680 would provide emergency grants to prevent the closure of hospitals which are the principal source of essential health services in their communities and which are experiencing severe financial distress due to the high volume of ambulatory health services provided to the medically indigent. Grants would provide for payment of accrued debts for private nonprofit hospitals to allow them to regain a stable financial position for future operations.

H.R. 7776 is designed to provide the information necessary to develop more permanent reforms in the health care system. It would expand existing demonstration authorities under the medicare and medicaid programs to allow the Secretary of Health and Human Services to test some of the reimbursement reforms which have been suggested. The Health Subcommittee which Mr. Rangel chairs has already marked up this bill and is expected soon to report it to the full Ways and Means Committee.

The time has come for Congress to address the problems faced by hospitals that serve the medically indigent. These hospitals provide vital services, and they are often the financial backbone of the community. We cannot allow them to go under. Although time is short, I hope Congress can act on these bills before the end of this session.

The text of the Hospital Ambulatory Services Reimbursement Reform Act follows:

H.R. 8074

A bill to amend the Social Security Act to provide for reimbursement reform with respect to financially distressed hospitals serving the medically indigent

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hospital Ambulatory Services Reimbursement Reform Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) many hospitals are experiencing financial distress as a consequence of providing ambulatory health services to individuals who have no means by which to pay for such services; and

(2) the costs of providing ambulatory and emergency services in such hospitals to such individuals is a part of the cost of operating that hospital and should be shared by all who pay for hospital care.

(b) It is the purpose of this Act to—

(1) encourage more efficient and effective use of ambulatory care and emergency services; and

(2) modify Federal reimbursement policies to provide assistance to hospitals delivering ambulatory and emergency services to patients who have no means by which to pay for such services.

MEDICARE REIMBURSEMENT

SEC. 3. Title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"COMMUNITY SERVICE COST REIMBURSEMENT FOR FINANCIALLY DISTRESSED HOSPITALS

"SEC. 1882. (a)(1) For purposes of reimbursement under this title to a financially distressed hospital (as defined in subsection (b)), there shall be included as an allowable cost item in determining reasonable cost under the regulations issued pursuant to section 1861(v)(1), an amount equal to the community service costs incurred by such hospital in providing covered outpatient services (as defined in subsection (e)) to any individual—

"(A) whose family income is not in excess of an amount equal to 125 percent of the annually adjusted Community Services Administration income poverty guidelines in the area in which such hospital is located;

"(B) who is not covered for such services under a State plan for medical assistance; and

"(c) who is not covered by insurance for such service and is not able to pay for such services after the hospital has made reasonable efforts to collect all charges for such services.

"(2)(A) The amount of the community service costs shall be determined as follows:

"(i) The amount of the charges for covered outpatient services (as defined in subsection (e)) provided by such hospital to individuals described in paragraph (1) shall be divided by the amount of the charges for covered outpatient services provided by such hospital to all patients.

"(ii) The amount determined under clause (i) shall be multiplied by the reasonable cost of covered outpatient services provided by such hospital to all patients.

"(iii) The amount determined under clause (ii) shall be reduced by the amount of the charges for covered outpatient services provided to individuals described in paragraph (1) which are collected by such hospital.

"(iv) The amount determined under clause (iii) shall be further reduced by an amount equal to such hospital's obligation to provide services to persons unable to pay therefor, with respect to covered outpatient services, under regulations issued pursuant to section 603(e) of the Public Health Service Act.

"(B) The amount of the community service costs as determined under subparagraph (A) for a hospital shall be apportioned to the program established by this title in an amount which bears the same ratio to the total amount of such community service costs as the total charges by such hospital for beneficiaries under this title bears to the total charges by such hospital for all patients.

"(b)(1) For purposes of this title, a hospital shall be considered a financially distressed hospital for the first accounting year beginning after the date of the enactment of this section if such hospital—

"(A) is a non-Federal public or private nonprofit short-term acute care facility;

"(B) meets the requirements of section 1861(e);

"(C) primarily serves a medically underserved population (within the meaning of section 330(b)(3) of the Public Health Service Act);

"(D) is certified by an independent accounting firm or fiscal intermediary, based upon generally accepted accounting principles, to (i) have had a net patient care deficit (excess of patient care expenses over patient care revenue) in the outpatient department and emergency room service of such hospital in each of the two preceding

accounting years prior to the accounting year in which an application is submitted under this section, and (ii) the net revenue of the hospital did not exceed the net patient care deficit of the combined outpatient department and emergency room service for each of such two preceding accounting years; except that the provisions of this subparagraph shall not apply in the case of a public general hospital or a hospital owned or operated by a public benefit corporation; and

"(E) demonstrates that for each of the two preceding accounting years, at least 60 percent of the total charges for patient services in the outpatient department and emergency room were incurred by any combination of (i) individuals eligible for medical assistance under a State plan approved under title XIX, or under another State or local medical assistance program, at the time of such service, or (ii) individuals who were not covered by any form of medical insurance with respect to the payment of or reimbursement for the services, and were unable to pay for such services after the hospital had made reasonable efforts to collect all charges for such service.

"(2) With respect to accounting years beginning after the accounting year referred to in paragraph (1), a hospital shall be considered a financially distressed hospital if it meets the requirements of subparagraphs (A) through (D) of paragraph (1) and demonstrates that for the preceding accounting year at least 60 percent of the total charges for covered outpatient services were incurred by any combination of—

"(A) individuals who were eligible for medical assistance under a State plan approved under title XIX, or under another State or local medical assistance program, at the time such services were provided; or

"(B) individuals (i) whose family income is not in excess of an amount equal to 125 percent of the annually adjusted Community Services Administration income poverty guidelines in the area in which such hospital is located, and (ii) who were not covered by any form of medical insurance with respect to the payment of reimbursement for the services provided and were unable to pay for such services after the hospital had made reasonable efforts to collect all charges for such services.

"(c)(1) In order for a hospital to participate in the reimbursement program established under this section, the State in which such hospital is located must submit an application to the Secretary on behalf of such hospital. Such application shall include—

"(A) a description of the hospital's financial condition, including any supporting documentation required by the Secretary;

"(B) documentation that the hospital meets the eligibility requirements set forth in subsection (b);

"(C) utilization data necessary to make the community service cost determinations under subsection (a);

"(D) projected changes in revenues and expenses in the event that the hospital is approved for participation in the reimbursement program established under this section;

"(E) description of current management practices of the hospital as the Secretary may determine to be necessary; and

"(F) a plan prepared by the State and the hospital for any appropriate reorganization of health care services, emphasizing the closing or conversion of unnecessary hospital beds or any managerial, operational, or fiscal reforms, to be undertaken by the hospital.

"(2) The Secretary shall approve an application if the Secretary determines that—

"(A) the hospital meets all applicable requirements of this section;

"(B) the application has been reviewed and approved by the National Advisory Council on Hospital Financing Stabilization and Reorganization established under subsection (f);

"(C) the hospital and the State in which the hospital is located have agreed to provide any appropriate additional information or reports which the Secretary may require; and

"(D) the State, county, and municipality in which the hospital is located provide assurances that State, county, and municipal funding for such hospital will be maintained at levels not lower than the level provided with respect to the preceding accounting year, increased by a percentage equal to the percentage increase in the medical care expenditure class of the consumer price index for such preceding accounting year or the annual increment permitted under existing State law whichever is less; except that the Secretary may waive the requirement of this subparagraph to the extent that lower funding levels reflect increased revenue or cost savings resulting from improved collections, management efficiencies, reorganization of services, changes in size of patient population, changes in case mix, or other indices of performance in such hospitals as may be determined by the Secretary in consultation with the National Advisory Council on Hospital Financing Stabilization and Reorganization.

"(3)(A) The Secretary shall approve or disapprove an application submitted under this subsection within 90 days after a completed application has been submitted. The Secretary shall provide specific reasons for disapproving any such application. If the Secretary disapproves any such application, the applicant State may, within 30 days after such disapproval, submit a revised application on behalf of such hospital responding to the specific reasons of the Secretary for disapproval of such application. The National Advisory Council on Hospital Financing Stabilization and Reorganization shall consider such revised application and make its recommendation to the Secretary for action in accordance with this paragraph.

"(B) Approval of an application shall be for a one-year period only. Any renewal application shall contain such additional information as the Secretary may require in order to make determinations of eligibility under this section.

"(C) Prior to approval of a renewal application, the Secretary may request that a hospital which is participating in the reimbursement program established under this section make appropriate changes in health care services organization or in managerial, operational, or fiscal practices. The hospital's responsiveness to such request may be taken into account by the Secretary in making determinations with respect to renewal applications.

"(d) Notwithstanding the provisions of subsection (a), the amount of additional reimbursement made under this title and under the State plan approved under title XIX for any accounting year to any hospital on account of the provisions of this section and section 1902(a)(41) may not exceed the combined net deficit in the operation of the outpatient department and emergency room for such accounting year.

"(e) For purposes of this section—

"(1) the term 'patient care expenses' means the total amount of expenses incurred in the provision of direct patient care by a hospital, reduced by an amount equal to (A) such hospital's obligation to provide services to persons unable to pay therefor under regulations issued pursuant to section 603(e) of the Public Health Service Act, and (B) any community funds, or grants, gifts, or endowment income, designated by a donor for payment of specific patient care expenses incurred;

"(2) the term 'revenue' means the total income of the hospital from whatever source, excluding (A) specific purpose service grants and grants for education, research, or training programs, from the Federal Government and (B) restricted grants, gifts, endowments and income therefrom not designated by a donor for payment of specific patient care expenses incurred and (C) unrestricted grants, gifts, and endowments and income therefrom;

"(3) the term 'patient care revenue' means revenue collected for the delivery of direct patient care; and

"(4) the term 'covered outpatient services' means preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided in a hospital to an outpatient by or under the supervision of a physician or dentist.

"(f)(1) There is established a National Advisory Council on Hospital Financing Stabilization and Reorganization (hereinafter in this section referred to as the 'Council').

"(2) The Council shall be composed of nine members appointed by the Secretary. The members shall be selected as follows:

"(A) Two members shall be individuals representative of hospital administration, one of whom shall represent a public general hospital.

"(B) Two members shall be individuals representative of private entities that insure individuals and reimburse hospitals on behalf of such individuals.

"(C) Two members shall be individuals who represent consumers of health care services at hospitals for which reimbursement is intended under this section and who do not meet the criteria of subparagraph (A) or (B).

"(D) One member shall be an individual who represents an organization representing hospital employees.

"(E) Two members shall be individuals who, as a result of training or experience in fields of health care management, health services organization, health care financing, or health care quality assurance, are exceptionally well qualified to assist in serving on and carrying out the functions of the Council.

"(F) The Secretary or the Secretary's designee, the Director of the Health Care Financing Administration or the Director's designee, and the Assistant Secretary for Health or the Assistant Secretary's designee, shall be ex officio members of the Council.

"(3) The Secretary shall appoint the members of the Council not latter than 60 days following the date of the enactment of this section. Four members of the Council shall be appointed for four years, three members of the Council shall be appointed for three years, and two members of the Council shall be appointed for two years. Members appointed to fill a vacancy previously filled by a member shall be appointed for a term of four years. A vacancy in the Council shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

"(4) The Council shall elect one member who is not a Federal employee to act as Chairperson and the Chairperson shall serve until the expiration of such member's term.

"(5) Five members of the Council shall constitute a quorum to do business. The Council shall meet at least quarterly at the call of the Chairperson or at the call of a quorum of its members.

"(6) The functions of the Council shall be to—

"(A) advise the Secretary with regard to the preparation of general definitions, regulations, and policy matters regarding the implementation of this section, and review and approve such definitions, regulations, and policy matters prior to implementation;

"(B) review and approve, disapprove, or make recommendations to the Secretary for modification of, the applications submitted pursuant to this section; and

"(C) monitor and evaluate the operational, managerial, and financial practices, and health services of hospitals receiving reimbursement under this section to the extent necessary to implement this section.

"(7)(A) Each member of the Council not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS-18 under the General Schedule contained in section 5332 of title 5, United States Code, including traveltime, for each day such member engaged in the actual performance of duties as a member of the Council. A member of the Council who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

"(B) The Council is authorized to—

"(i) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

"(ii) enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Council in such amounts as may be agreed upon by the Chairperson and the Administrator of General Services; and

"(iii) procure supplies, services, and property, and make contracts, without regard to the laws and procedures applicable to Federal agencies.

"(C) Section 14 of the Federal Advisory Committee Act shall not apply to the Council.

"(D) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this paragraph.".

MEDICAID REIMBURSEMENT

SEC. 4. (a) Section 1902(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (39);

(2) by striking out the period at the end of paragraph (40) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (40) the following new paragraph:

"(41) provide that payment to any hospital, which has been determined to be a financially distressed hospital under section 1882, shall include payment of the community service costs incurred by such hospital in providing covered outpatient services in the same manner as such payments are included under section 1882, except that such cost shall be apportioned to the State plan in an amount which bears the same ratio to the total amount of such community service costs incurred by such hospital as the total amount of charges by such hospital for individuals eligible for services under the State plan bears to the total amount of charges by such hospital for all patients.".

(b) Section 1902(a)(13)(D) of such Act is amended by inserting after "section 1122," the following: "and consistent with the requirements of paragraph (41) of this subsection relating to financially distressed hospitals,".

EFFECTIVE DATES

SEC. 5. The amendments made by this Act shall become effective one hundred and eighty days after the date of the enactment of this Act.

FUEL FROM BIOMASS PRODUCTION INCENTIVE ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Dakota (Mr. DASCHLE) is recognized for 5 minutes.

Mr. DASCHLE. Mr. Speaker, I am today introducing legislation to encourage the production of fuel from our Nation's renewable biomass resources. Fuel produced from biomass is a renewable domestic fuel which can replace imported fuels and lessen our Nation's dependence on imported energy resources. Already the Congress has recognized the important contribution which fuel produced from biomass can make in reducing our dependence on imported oil by including in the Crude Oil Windfall Profit Tax Act an incentive for the production of fuel from processed wood. The legislation I am introducing today will extend the same production incentive to fuel produced from additional biomass resources including flax residue, rye grass, peanut hulls, sugar cane, and other agricultural residues and will compliment the alternative fuel production incentive provided earlier this year by the Congress.

Fuel produced from biomass is a very clean and efficient fuel. In a recent assessment of fuel produced from biomass the Solar Energy Research Institute has stated densified biomass fuel can be burned in standard equipment with reduced emissions and increased heat release and thermal efficiency. The sulfur content of biomass fuel is less than one-tenth of 1 percent thus reducing or eliminating the need for costly sulfur control equipment. The ash content of densified biomass fuel is approximately 1 percent and this can be returned to the soil as a fertilizer or conditioner. Fuel produced from biomass is an attractive alternative fuel and should be extended the same production incentive which has already been provided for processed wood.

I am very pleased Senator RUSSELL LONG, chairman of the Senate Finance Committee, has introduced similar legislation in the Senate and I am hopeful this body will quickly and favorably consider this measure.

Mr. Speaker, I include the text of the Fuel From Biomass Production Inventive Act in the RECORD at this point.

ALTERNATIVE FUEL PRODUCTION CREDIT

General rule

The conference agreement includes a nonrefundable income tax credit for the production and sale of certain alternatives energy sources. This credit is intended to provide a guaranteed price floor for production from these sources in the event of future declines in the price of oil. The credit is $3 per barrel of oil-equivalent, measured on a Btu basis. The $3 amount (except in the case of tight sands gas production) is adjusted for inflation occurring after 1979, as measured by the GNP deflator.

The credit is allowed only for energy produced and sold from domestic facilities placed in service between December 31, 1979, and January 1, 1990, or from wells drilled during that period on properties with no production before January 1, 1980. Fuel is eligible only if the sale occurs after December 31, 1979, and before January 1, 2001. The credit for production from any particular facility is reduced proportionately to the extent the facility or equipment was financed with grants, subsidized energy loans, or tax-exempt financing. The production credit otherwise allowable for any facility is reduced dollar-for-dollar to the extent that the energy investment credit was allowable for that facility until the full energy credit is recaptured.

The credit phases out as the average price of uncontrolled domestic oil rises from $23.50 to $29.50 per barrel, adjusted for inflation occurring after 1979. The credit for tight sands gas production terminates if that gas is deregulated.

The following energy sources are eligible for the credit:

(1) oil from shale;

(2) oil from tar sands;

(3) liquid, gaseous or synthetic solid fuel or feedstock produced from coal;

(4) natural gas from geopressured brine, coal seams, tight sands, or Devonian shale;

(5) gas produced from biomass;

(6) steam produced from solid agricultural by-products; and

(7) processed wood if the energy content, per unit of weight or volume, of the processed wood exceeds that of the raw wood by at least 40 percent.

Special rules

Devonian shale.—For production and sales in 1980, 1981 and 1982, the phaseout of the credit for gas produced from Devonian shale is based on the price of deregulated natural gas, not deregulated oil. Specifically, the credit phases out as the average price of high cost natural gas (as defined under section 107(c)(2), (c)(3), and (c)(4) of the Natural Gas Policy Act of 1978) rises from $4.05 to $5.08 per thousand cubic feet (mcf).

Qualifying processed wood.—The credit is available only for facilities placed in service in calendar years 1980 and 1981 and for production from these facilities before either October 1, 1983, or three years from the date that the facility first is placed in service, whichever comes later. However, the phaseout based on the price of oil will not apply to the first three years of production from any facility.

Steam from solid agricultural byproducts.—The credit is available only for production before January 1, 1985. However, the phaseout based on the price of oil will not apply to the first three years of production from any facility, and expansions of pre-1980 facilities will be treated as facilities placed in service after December 31, 1979, and, therefore, will be eligible with respect to incremental production.

H.R. 8077

A bill to amend the Internal Revenue Code of 1954 with respect to the application of the credit for producing fuel from a nonconventional fuel to solid fuel pellets made from biomass

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF SECTION 44D.

(a) BIOMASS FUEL PELLETS TREATED AS QUALIFIED FUEL.—Paragraph (1) of section 44D(c) of the Internal Revenue Code of 1954 (relating to general definition of qualified fuels) is amended—

(1) by striking out "and" at the end of subparagraph (D),

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a comma and the word "and", and

(3) by adding at the end thereof the following new subparagraph:

"(F) qualifying fuel pellets produced from biomass.".

(b) DEFINITION; SPECIAL RULES.—

(1) DEFINITION.—Subsection (c) of section 44D of such Code (relating to definition of qualified fuels) is amended by adding at the end thereof the following new paragraph:

"(6) QUALIFYING FUEL PELLETS FROM BIOMASS.—

"(A) IN GENERAL.—The term 'qualifying fuel pellets from biomass' means any solid fuel in pellet form produced from biomass (other than wood or wood products) which has a Btu content per unit of volume or weight, determined without regard to any nonbiomass elements, which is at least 40 percent greater per unit of volume or weight than the Btu content of the biomass from which it is produced. The determination of Btu content shall be made immediately before processing, and, in the case of such fuel produced from bagasse, after sugar extraction and before drying.

"(B) ELECTION.—A taxpayer shall make an election, the same as the election described in (4)(B), with respect to the determination of Btu content for purposes of this paragraph.

"(C) USE BY TAXPAYER.—

"(i) IN GENERAL.—The use by the taxpayer in his trade or business of qualifying fuel pellets from biomass shall be treated as a sale by the taxpayer to an unrelated person on the date of use.

"(ii) USE AS STEAM.—If the taxpayer produces steam described in paragraph (1)(E) as a result of such use, the taxpayer shall elect, at such time and in such manner as the Secretary may prescribe, to claim the credit allowed by subsection (a) with respect to such steam or with respect to the qualifying fuel pellets from biomass so used, but not both, with respect to such use.".

(c) FIRST 3 YEARS OF PRODUCTION TO QUALIFY.—Paragraph (5) of section 44D(d) of such Code (relating to application of phase-out) is amended—

(1) by striking out "or steam from solid agricultural products" in the caption of such paragraph and inserting in lieu thereof the following: ", steam from solid agricultural byproduct, or qualifying fuel pellets from biomass",

(2) by striking out "or" at the end of subparagraph (A),

(3) by inserting "or" at the end of subparagraph (B), and

(4) by inserting immediately after subparagraph (B) the following new subparagraph:

"(C) qualifying fuel pellets from biomass,".

(d) EFFECTIVE DATE.—Subsection (f) of section 44D of such Code (relating to application of section) is amended—

(1) by striking out "paragraph (2)" in paragraph (1) and inserting in lieu thereof "paragraphs (2) and (3)"; and

(2) by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULES FOR QUALIFYING FUEL PELLET FACILITIES.—In the case of qualifying fuel pellets from biomass, this section shall apply only with respect to such pellets which are—

"(A) produced in a facility—

"(i) placed in service after December 31, 1979, and before October 1, 1983, or

"(ii) for the construction of which the taxpayer was obligated under a contract which, on September 30, 1983, was binding on all parties, and

"(B) sold before January 1, 1990.

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 of this Act shall apply with respect to taxable years ending after December 31, 1979.

NORTHWEST ENERGY BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. WEAVER) is recognized for 5 minutes.

Mr. WEAVER. Mr. Speaker, today the Committee on Interior and Insular Affairs, by a vote of 28 to 14, passed the Northwest energy bill. One of those 14 votes in opposition to the bill was mine. I have fought this bill now for 4 years. Finally, the power of certain political elements in the State of Washington and in the State of Oregon and elements within the utility industry and the Federal Government have forced this bill through, now, two House committees, and it will be coming to the floor if they can get it through the Committee on Rules.

Mr. Speaker, this bill nationalizes the utility industry of the Northwest by putting all power in the hands of the Bonneville Power Administration. It forces my constituents and every ratepayer in the Northwest to pay for any project that the Bonneville Power administrator and the utilities wish to propose, without their consent, whether they need it or not, whether it works or not.

I offered a freedom of choice amendment, Mr. Speaker, allowing a utility to opt out of any given project. A project could be in one end of the Northwest of such magnitude costing billions of dollars and a utility in the other end of the Northwest may not wish to take the risk and would not, of course, share in any benefits, et cetera.

Mr. Speaker, this amendment of mine was crushed by the utility lobby because they must force every single ratepayer, every single utility, every single county and State in the Northwest to bend under their whip, whether they like it or not, whether they consent to it or not, whether anything they do works or not, whether it is needed or not.

Now, the fundamental part of the bill is that it would have the Federal Government, an agency of the Federal Government, guarantee to purchase the output of a plant, whether it works or not. I do not mind buying the actual electricity, Mr. Speaker, but to be forced, without our consent our choice, to buy the theoretical output of a plant is to me close to the worst elements of other forms of government.

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This is a democracy; this is supposedly a free market, a free enterprise system of government. Now, we have the nationalization of the utility industry in the Northwest coming to a head in the Northwest energy bill, and I beseech my good conservative friends that, where I am fighting the fight for the free market——

Mr. SWIFT. Mr. Speaker, will the gentleman yield?

Mr. WEAVER. I would be only too glad to yield to my colleague.

Mr. SWIFT. To suggest that the regional power bill for the Northwest would nationalize the power industry is the grossest misunderstanding of the bill that I can imagine.

Mr. WEAVER. I would like to have a debate here with my dear friend and say that what it does is put all planning in the hands of the Bonneville Power Administrator, plus a council—a council that will be chosen by the Secretary of Energy.

Mr. SWIFT. Will the gentleman yield further?

Mr. WEAVER. I surely do.

Mr. SWIFT. It does not put all of the planning power in the hands of the Bonneville Power Administrator. It specifically does not put the planning power in the hands of the Administrator. It rather puts it in the hands of a council which is appointed——

Mr. WEAVER. I just said, appointed by the——

Mr. SWIFT. Appointed by the Governor.

Mr. WEAVER. It is my time, I say to the gentleman from Washington. I would be delighted to have an argument with him, but if the Attorney General, if the unofficial letter from the Justice Department is correct, that the appointment by the Governor is unconstitutional, then the bill says the Secretary of Energy shall appoint a council.

Mr. DICKS. Mr. Speaker, will the gentleman yield?

Mr. WEAVER. I yield to the gentleman from Washington.

Mr. DICKS. There are very few people in the House I have more personal respect for and enjoy more than the gentleman from Oregon, but I also want to point out that the private utilities in the Pacific Northwest are all in favor of this legislation. It is nearly laughable to say that they would participate in some process that would lead to the nationalization of the energy industry.

Mr. WEAVER. I would like to comment on that very point. The reason the private utilities are for the bill is, there is something in it for them. It guts the Public Utility Holding Company Act of 1935, pushed through the Congress by Sam Rayburn—his most cherished bill—and its guts that law. That is why the private utilities support it.

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 5 minutes.

● Mr. NEAL. Mr. Speaker, I am submitting to the House today the U.S. Export-Import Bank's proposal to help finance the sale of more than $291 million worth of U.S. goods and services for a fertilizer project in the Republic of Nigeria.

The Eximbank would provide loans and financial guarantees of $247,503,000 for the project, which would be jointly managed and operated by Nigeria's Federal Ministry of Industries and the Pullman-Kellogg Co. of Houston, Tex. Pullman-Kellogg would provide, or contract with other U.S. companies for the goods and technical services required.

The nitrogenous fertilizer project, which would include ammonia, urea and mixed fertilizer plants, would provide Nigeria with a domestic source of fertilizer (now imported from Europe) and would utilize natural gas currently being flared.

Pullman-Kellogg has strong competition for this sale from a French firm, which is offering official financing similar to the Eximbank's.

This Eximbank notification was referred to me as chairman of the Banking Committee's Subcommittee on International Trade, Investment and Monetary Policy. Under section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, the Eximbank must notify Congress of loans or financial guarantees, or combinations thereof, of $100 million or more. Unless Congress determines otherwise, the Eximbank may give final approval to the transaction after 25 days of continuous session of the Congress following notification.

I am submitting for the RECORD a copy of the Eximbank notification stating the terms and details of this proposed transaction. I would welcome any comments or questions my colleagues might have.

The Eximbank material follows:

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, D.C., September 2, 1980.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, D.C.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
H-209, U.S. Capitol,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Nigeria.

A. Description of Transaction.

1. Purpose.

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $247,503,000 to the Republic of Nigeria, acting by and through its Federal Ministry of Finance (Borrower). The purpose of the Eximbank Financing is to facilitate the purchase in the United States by the Federal Ministry of Industries (FMI) of the Republic of Nigeria of equipment and services for a nitrogenous fertilizer project together with related infrastucture (Project). The total U.S. export value for this transaction is estimated to be $291,180,000.

2. Identity of the Parties.

(a) Republic of Nigeria.

The Republic of Nigeria, acting by and through its Federal Ministry of Finance, will act as the Borrower of the Eximbank Financing.

(b) FMI and Pullman-Kellogg.

FMI is the Ministry of the Republic of Nigeria charged with the responsibility for developing the country's industrial resources. FMI and Pullman-Kellogg (P-K) of Houston, Texas intend to form a joint venture company for the management and operation of the Project.

3. Nature and Use of Goods and Services.

The Project will be comprised of a 1,000 metric tons per day (MTD) ammonia plant, a 1,500 MTD urea plant, and a 1,000 MTD mixed fertilizers unit. The goods to be exported will involve chemical process, materials handling, utility plant, and construction equipment as well as various services including: engineering, procurement, construction supervision, start-up, training, and process licensing.

B. Explanation of Eximbank Financing.

1. Reason.

The Eximbank Financing of $247,503,000 will facilitate the export of $291,180,000 of U.S. goods and services. P-K has initialed a lump sum contract with FMI to act as prime contractor for the Project. The Project will provide Nigeria with a domestic source of fertilizer, will utilize natural gas currently being flared, and will result in foreign exchange savings since Nigeria currently imports the fertilizer to be produced from Europe.

The award of this Project to P-K represents a major breakthrough for a U.S. firm in Nigeria, a market in which the U.S. has had only limited success. It was accomplished in the face of strong competition from the French who also offered official export financing for 85 percent of the Project costs at a blended rate of 8.4 percent per annum.

P-K estimates that its engineering and other client services will involve approximately 607,000 man-hours of employment. In addition, P-K, as managing contractor will subcontract for equipment and engineering services from a number of other U.S. suppliers which will account for substantial additional man-hours of employment.

2. The Financing Plan.

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. cost
Cash	$43,677,000	15
Eximbank financing	247,503,000	85
Total	291,180,000	100

It is expected that the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

(a) Eximbank Charges.

The financial charge on the Eximbank Financing to be paid by the Borrower will be 8.4% per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for the Borrower on September 11, 1979. A commitment fee of 0.5% per annum will be charged on the undisbursed portions of the Eximbank Financing and is included in the above financial charge of 8.4%.

(b) Repayment Terms.

The Eximbank Financing will be repaid by the Borrower in 20 semiannual installments beginning December 31, 1984.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. ALLEN.

NIGERIA: KEY ECONOMIC INDICATORS

[In millions of dollars at current exchange rate unless otherwise indicated]

	1977	1978	Percent change 1977–78	Estimate 1979
National income:				
GDP (current prices)	41,476	42,698	2.9	46,968
Population (millions)	79.7	81.7	2.5	83.7
GDP per capita	520.5	522.6	.4	561.1
Exchange rate (Naira dollar) [1]	1.55	1.56	.6	1.66
Production index (1972=100):				
Mining	114.5	103.6	−9.5	125
All manufacturing	193.5	221.4	14.4	230
Beer	185.6	285.2	53.7	290
Cotton textiles	172.9	167.1	−3.4	200
Vehicle assembly	1,097.3	922.7	−9.5	1,145
Soap, detergents	328.4	362.5	10.4	320
Electricity	212.3	260.6	22.8	285
Agricultural production (1,000 tons):				
Yams	18,000	18,100	.6	18,100
Millet	2,950	3,100	5.1	3,100
Corn	1,500	1,675	11.7	1,070
Palm kernels	340	350	2.9	370
Cocoa beans (commercial)	205	165	−19.5	170
Cotton (commercial: 1976=81)	36	40	11.1	41
Peanuts (commercial: 1975=300)	14	20	429	50

	1977	1978	Percent change 1977–78	Estimate 1979
Monetary:				
Money supply (Dec. 31)	7,431	7,466	.5	9,500
Retail price index (urban) (1975=100)	141.5	176.0	24.4	210
Commercial minimum lending rate (percent)	6	7	16.7	8
Treasury certificates	3.5	4.5	28.6	4.5
Trade:				
Reserves (Dec. 31)	3,908	1,948	−57.8	3,400
Payments balance (private)	648	4,730	629.9	3,000
Exports	12,364	9,838	−20.0	16,000
To United States	4,675	3,981	−14.8	8,000
Imports	10,747	13,136	22.2	11,000
From United States	1,203	1,407	17.0	1,000
Petroleum exports (million barrels per day)	2.03	1.85	−8.9	2.23

[1] The rate is adjusted frequently by the Central Bank. The figure for 1979 is a weighted average of rates during 1979. At the year's end the rate was $1.74 Naira.

Sources: Central Bank of Nigeria, Federal Office of Statistics, Agricultural Data and 1979 estimates, U.S. Embassy. From: U.S. Department of Commerce: Foreign Economic Trends and Their Implications for the United States, April 1980, No. 80-023.

Eximbank Exposure in Nigeria as of July 31, 1980

Short-term FCIA Insurance	$20,619,000
Medium-term FCIA Insurance	1,525,000
Medium-term Bank Guarantees	6,290,000
Financial Guarantees	3,375,000
Direct Credits	28,302,000
Cooperative Financing Facility	----------
Total Exposure	60,111,000

PAYMENTS HISTORY

Overall, Eximbank has had a satisfactory repayment record on direct credits in Nigeria. Some slow payments have occurred due to delays within Nigeria's administrative system.

PERSONAL STATEMENT

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. BRADEMAS. Mr. Speaker, on Thursday, August 28, 1980, I missed rollcall No. 506, a vote on final passage of H.R. 7036, the Health Research Act of 1980. The bill passed by a vote of 292 to 48. I was paired for this bill and had I been present, would have voted "yea."

On September 3, 1980, Mr. Speaker, I missed two recorded votes. The votes are as follows:

Rollcall No. 507, on a motion that the House resolve itself into the Committee of the Whole for consideration of H.R. 8061, District of Columbia Appropriations, fiscal 1981. The motion was agreed to by a vote of 308 to 2. Had I been present, I would have voted "yea."

Rollcall No. 509, on an amendment to H.R. 8061, District of Columbia Appropriations, fiscal 1981, offered by Mr. MILLER of Ohio. The amendment was agreed to by a vote of 218 to 144. Had I been present, I would have voted "no." ●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. RODINO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

Mr. CORMAN (at the request of Mr. WRIGHT), after 6 p.m., today, and for September 5, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LEE) to revise and extend their remarks and include extraneous material:)

Mr. GINGRICH, for 60 minutes, September 8.

(The following Members (at the request of Mr. SWIFT) to revise and extend their remarks and include extraneous matter:)

Mr. BINGHAM, for 15 minutes, today.
Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. DASCHLE, for 5 minutes, today.
Mr. WEAVER, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. SNYDER, following Mr. GIAIMO's remarks on Giaimo amendment to eliminate superfund on H.R. 7765.

Mr. NELSON, prior to vote on final passage of H.R. 7765 in the House today.

Mr. ASHLEY, prior to vote on final passage of H.R. 7765 in the House today.

Mr. WIRTH's remarks to appear prior to the vote on final passage on H.R. 7115.

(The following Members (at the request of Mr. LEE) and to include extraneous matter:)

Mr. LEE.
Mr. GILMAN.
Mr. YOUNG of Florida in five instances.
Mr. WYDLER.
Mr. DERWINSKI.
Mr. CARTER in four instances.
Mr. SAWYER.
Mr. KEMP in three instances.
Mr. FRENZEL in three instances.
Mr. PHILIP M. CRANE.
Mr. MITCHELL of New York.
Mr. WALKER.
Mr. LEACH of Iowa.
Mr. DICKINSON.
Mr. ABDNOR.
Mr. COLLINS of Texas in four instances.
Mr. BEREUTER.
Mr. DORNAN in two instances.

(The following Members (at the request of Mr. SWIFT) and to include extraneous matter:)

Mr. BALDUS.
Mr. BRODHEAD.
Mr. GAYDOS in two instances.
Mr. KILDEE.
Mr. MOLLOHAN.
Mr. FROST.
Mr. STOKES in two instances.
Mr. DINGELL in two instances.
Mr. MCDONALD.
Mr. HAMILTON.
Mr. RODINO.
Ms. MIKULSKI.
Mr. ERTEL.
Mr. FORD of Michigan.
Mr. LONG of Maryland.
Mr. LONG of Louisiana.
Mr. MOORHEAD of Pennsylvania.
Mr. YOUNG of Missouri.
Mr. HARRIS.
Mr. SKELTON.
Mr. ASHLEY.
Mr. LUKEN.
Mr. YATRON.
Mr. CONYERS.
Mr. MARKEY.
Mr. DASCHLE.
Mr. DRINAN.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2620. An Act to expand the opportunities for small business participation in exporting, and for other purposes; to the Committee on Small Business and the Committee on Foreign Affairs.

ENROLLED BILLS SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2538. An act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes; and

H.R. 4627. An act to authorize the enlistment of citizens of the Northern Mariana Islands in the Armed Forces of the United States of America.

ADJOURNMENT

Mr. SWIFT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 43 minutes p.m.) the House adjourned until tomorrow, Friday, September 5, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5231. A letter from the President of the United States, transmitting proposed supplemental appropriations for fiscal year 1980 and budget amendments for fiscal year 1981 (H. Doc. No. 96–368); to the Committee on Appropriations, and ordered to be printed.

5232. A letter from the Deputy Assistant Secretary of the Interior, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5233. A letter from the Assistant Secretary of Transportation for Administration, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5234. A letter from the Secretary of the Interior, transmitting a correction to a previously submitted notice of bidding systems to be used in an Outer Continental Shelf lands lease sale, pursuant to section 8(a)(8) of the Outer Continental Shelf Lands Act, as amended; to the Committee on Interior and Insular Affairs.

5235. A letter from the Comptroller General of the United States, transmitting a report on natural gas incremental pricing (EMD–80–96, Sept. 4, 1980); jointly, to the Committees on Government Operations and Interstate and Foreign Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. Supplemental report on H.R. 7418 (Rept. No. 96–1156, pt. 4). Ordered to be printed.

Mr. EDWARDS of California: Committee on the Judiciary. H.R. 5615. A bill to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources (Rept. No. 96–1219, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. H.R. 7112. A bill to authorize an extension and amendment of the revenue

sharing program to provide general purpose fiscal assistance to local governments, and for other purposes; with amendment (Rept. No. 96–1277). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 7956. A bill to make various changes in the tax laws; with amendments (Rept. No. 96–1278). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SCHROEDER: Committee on Post Office and Civil Service. H.R. 7466. A bill to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status; with amendment (Rept. No. 96–1279). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SPELLMAN: Committee on Post Office and Civil Service. H.R. 7666. A bill to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes; with amendment (Rept. No. 96–1280). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SPELLMAN: Committee on Post Office and Civil Service. H.R. 6372. A bill to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants (Rept. No. 96–1281). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 6175. A bill to provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map; with amendment (Rept. No. 96–1282). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 7519. A bill to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended (Rept. No. 96–1283). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 1464. A bill to direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians; with amendment (Rept. No. 96–1284). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 2223. A bill to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons; with amendment (Rept. No. 96–1285). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. S. 1280. A bill to provide assistance to States and to political subdivisions within States to promote national energy objectives, and for other purposes; with amendments (Rept. No. 96–1286, pt. 1). Ordered to be printed.

Mr. FOLEY: Committee on Agriculture. H.R. 7548. A bill to amend the Farm Credit Act of 1971 to permit farm credit system institutions to improve their services to borrowers, and for other purposes; with amendments (Rept. No. 96–1287). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ULLMAN:

H.R. 8073. A bill relating to the tax treatment of certain transactions involving automobiles and trucks entered into before January 1, 1981; to the Committee on Ways and Means.

By Mr. BINGHAM:

H.R. 8074. A bill to amend the Social Security Act to provide for reimbursement reform with respect to financially distressed hospitals serving the medically indigent; jointly, to the Committees on Ways and Means and Interstate and Foreign Commerce.

By Mr. BROWN of Ohio:

H.R. 8075. A bill to add representatives of town officials to the membership of the Advisory Commission on Intergovernmental Relations; to the Committee on Government Operations.

By Mr. DASCHLE:

H.R. 8076. A bill to authorize appropriations for fiscal year 1981 for the Navy for research, development, test, and evaluation of a shallow underwater missile (SUM) submarine system; to the Committee on Armed Services.

H.R. 8077. A bill to amend the Internal Revenue Code of 1954 with respect to the application of the credit for producing fuel from a nonconventional fuel to solid fuel pellets made from biomass; to the Committee on Ways and Means.

By Mr. DASCHLE (for himself and Mr. ABDNOR) (by request):

H.R. 8078. A bill to deauthorize the Oahe unit, James division, Missouri River Basin project, South Dakota; to the Committee on Interior and Insular Affairs.

By Mr. MOLLOHAN:

H.R. 8079. A bill to designate the Veterans' Administration medical center in Clarksburg, W. Va., as the "Louis A. Johnson Veterans' Medical Center"; to the Committee on Veterans' Affairs.

By Mr. SOLARZ (for himself and Mr. WINN, Mr. WHITEHURST, Mr. HINSON, Mr. CORCORAN, Mr. ROSE, Mr. BUTLER, Mr. FINDLEY, Mr. CARTER, Mr. EDGAR, Mrs. FENWICK, and Mr. FAZIO):

H.R. 8080. A bill to amend the Foreign Agents Registration Act of 1938 to prohibit relatives of the President, Vice President, any Member of Congress, or the President's Cabinet from acting as a foreign agent; to the Committee on the Judiciary.

By Mr. YATES (for himself, Mr. LEHMAN, Mr. BLANCHARD, Mr. GREEN, Mr. SOLARZ, Mr. WRIGHT, Mr. BRADEMAS, Mr. MICHEL, Mr. PHILLIP BURTON, Mr. ADDABBO, Mr. AKAKA, Mr. AUCOIN, Mr. BARNES, Mr. BENJAMIN, Mr. BINGHAM, Mr. BOLLING, Mr. BONIOR of Michigan, Mr. BONKER, Mr. BRODHEAD, Mr. BURGENER, Mr. CARNEY, Mr. COELHO, Mr. CONTE, Mr. CORMAN, Mr. COURTER, Mr. DIXON, Mr. DODD, Mr. DOUGHERTY, Mr. DRINAN, Mr. EDWARDS of California, Mr. EDWARDS of Oklahoma, Mr. EVANS of Delaware, Mr. FARY, Mr. FASCELL, Mr. FAZIO, Mr. FISH, Mr. FORD of Tennessee, Mr. FORSYTHE, Mr. FRENZEL, Mr. FROST, Mr. GIBBONS, Mr. GILMAN, Mr. GLICKMAN, Mr. GRAY, Mr. HARRIS, Mr. HOLLENBECK, Ms. HOLTZMAN, Mr. HOWARD, Mr. HUGHES, Mr. JACOBS, Mr. JEFFORDS, Mr. KASTENMEIER, Mr. KEMP, Mr. KILDEE, Mr. KOSTMAYER, Mr. LAGOMARSINO, Mr. LEACH of Louisiana, Mr. LEACH of Iowa, Mr. LEDERER, Mr. LENT, Mr. LEVITAS, Mr. LLOYD, Mr. LONG of Maryland, Mr. LOWRY, Mr. MAGUIRE, Mr. MARKS, Mr. MARTIN, Mr. MATSUI, Mr. MAVROULES, Mr. MAZZOLI, Mr. MCDADE, Mr. MCHUGH, Mr. MOAKLEY, Mr. OBERSTAR, Mr. OTTINGER, Mr. PEPPER, Mr. PEYSER, Mr. PORTER, Mr. RANGEL, Mr. RATCHFORD, Mr. RICHMOND, Mr. RINALDO, Mr. ROE, Mr. ROSE, Mr. ROSENTHAL, Mr. ROYBAL, Mr. SCHEUER, Mrs. SCHROEDER, Mrs. SPELLMAN, Mr. STACK, Mr. STARK, Mr. THOMPSON, Mr. VAN DEERLIN, Mr. VANIK, Mr. WAXMAN, Mr. WEISS, Mr. WHITEHURST, Mr. WIRTH, Mr. WOLFF, Mr. WOLPE, and Mr. CARTER):

H.R. 8081. A bill to establish the "United States Holocaust Memorial Council"; jointly, to the Committees on Post Office and Civil Service, House Administration, and Interior and Insular Affairs.

Mr. DORNAN:

H.J. Res. 605. Joint resolution proposing an amendment to the Constitution of the United States allowing the District of Columbia, Puerto Rico, Guam, and the Virgin Islands to have Representatives in the House of Representatives; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 844: Mr. MURPHY of New York.
H.R. 5225: Mr. MURTHA.
H.R. 6402: Mr. TAUKE.
H.R. 6632: Mr. LLOYD, Mr. CLINGER, Mr. SHUSTER, Mr. MUSTO, Mr. BAILEY, Mr. BEREUTER, Mr. EVANS of Delaware, Mr. ANDREWS of North Carolina, Mr. MURPHY of Pennsylvania, Mr. FLORIO, and Mr. PHILIP M. CRANE.
H.R. 7505: Mr. DIXON.
H.R. 7622: Mr. ANDREWS of North Dakota and Mr. HARKIN.
H.R. 7663: Mr. LUJAN.
H.R. 7773: Mr. BOWEN.
H.R. 7776: Mr. BINGHAM.
H.R. 7793: Mr. KILDEE and Mr. ATKINSON.
H.R. 7846: Mr. MARKS, Mr. RAILSBACK, Mr. GREEN, Mr. PETRI, Mr. THOMAS, and Mr. MCCLOSKEY.
H.J. Res. 511: Mr. HANCE, Mr. MAZZOLI, Mr. LOTT, Mr. HYDE, Mr. YATRON, Mr. CARTER, Mr. WAXMAN, and Mr. FAZIO.
H.J. Res. 568: Mr. GARCIA, Mr. PRITCHARD, Mr. HARRIS, Mr. FANETTA, Mr. ROYBAL, Mr. HEFTEL, Mr. O'BRIEN, Mr. BROWN of California, Mr. BINGHAM, Mr. FOUNTAIN, Mr. MILLER of California, Mr. MAGUIRE, Mr. CHARLES H. WILSON of California, Mr. COTTER, Mr. JACOBS, Mr. ROYER, Mr. CLINGER, Mr. RITTER, and Mr. JONES of Oklahoma.
H.J. Res. 596: Mr. OBERSTAR, Mr. BARNES, Mr. KOGOVSEK, Mr. BENJAMIN, Mr. LAGOMARSINO, Mr. MARKS, Mr. WHITEHURST, Mr. GORE, Mr. HORTON, Mr. APPLEGATE, Mr. BARNARD, Mr. NEAL, Mr. PORTER, Mr. ERTEL, Mr. WOLFF, Mr. BRADEMAS, Mrs. BOGGS, Mr. BURGENER, Mr. GRADISON, Mr. MINETA, Mr. AMBRO, Mr. FITHIAN, Mr. ROSE, Mr. BROWN of California, Mr. BUCHANAN, Mr. HUGHES, Mr. MAZZOLI, Mr. RAHALL, Mr. CARR, Mr. ANDERSON of California, Mr. STRATTON, Mr. MCDONALD, Mr. PETRI, Mr. HANCE, Mrs. SPELLMAN, Mr. FINDLEY, Mr. KEMP, Mr. SCHEUER, Mr. HOLLENBECK, Mr. LOTT, Mr. HUTTO, Mr. MCKINNEY, Mr. BEREUTER, and Mr. MOORHEAD of Pennsylvania.
H. Con. Res. 396: Mr. FITHIAN.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 6721

By Mr. BADHAM:

—Add to the end of section 24, page 132:

(e) Until such time as the task force shall report its findings and recommendations to the chairmen of the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate, neither the Secretary nor the Administrator of the FAA shall have any power under the Federal Aviation Act or any other

statute to institute, continue or conduct proceedings designed to compel an airport operator to change its present method of allocating the use of airport facilities and airspace (including, but not limited to, gate facilities, landing facilities, airspace slots, and ticketing and terminal space) among persons using or seeking to use such facilities.

By Mr. PETRI:

—Page 102, after line 4, insert the following new paragraph:

(10)(A)(i) No project grant application for an airport with respect to which the Secretary has received a complaint under clause (1) may be approved unless the Secretary is satisfied that the airport owner and operator do not and will not deny reasonable opportunity to pick up and discharge passengers at the terminal area of such airport to any approved motor common carrier of persons.

(ii) For purposes of clause (i), any approved motor common carrier of persons may submit a complaint to the Secretary, pursuant to procedures prescribed by the Secretary, alleging that the owner or operator of such airport deny reasonable opportunity to pick up and discharge passengers at the terminal area of such airport to such carrier.

(B)(i) No project grant application for an airport with respect to which the Secretary has received a complaint under clause (ii) may be approved unless the Secretary is satisfied that the airport owner and operator provide a reasonable number (considering the size of such airport) of clearly marked locations at such airport where information relating to the transportation provided by any approved motor common carrier of persons to and from such airport can be placed or displayed.

(ii) For purposes of clause (i), any approved motor common carrier of persons may submit a complaint to the Secretary, pursuant to procedures prescribed by the Secretary, alleging that the owner or operator of an airport do not provide a reasonable number (considering the size of ruch airport) of clearly marked locations at such airport where information relating to the transportation provided by such carrier to and from such airport can be placed or displayed.

(C) For purposes of this paragraph—

(i) the term "approved motor common carrier" means a motor common carrier which has been authorized by the Interstate Commerce Commission, a State or local government, or a local public body to provide regularly scheduled transportation between an airport and another point; and

(ii) the term "motor common carrier" has the same meaning such term has in section 10102(11) of title 49, United States Code.

H.R. 7235

By Mr. ALBOSTA:

—Page 164, strike out lines 7 through 13 and insert in lieu thereof the following:

SEC. 502. (a) Section 10906 of title 49, United States Code, is amended to read as follows:

"§ 10906. Purchase of abandoned lines; rail bank

"(a)(1) When the Commission finds under section

Page 165, line 19, strike out the closing quotation marks and the following period.

Page 165, after line 19, insert the following new subsection:

"(b)(1) When the Commission finds under section 10903 of this title that the present or future public convenience or necessity requires or permits abandonment or discontinuance of rail properties and such properties are not disposed of under subsection (a) of this section, the Secretary shall either (A) enter into appropriate arrangements to acquire property rights, other than fee simple title, with respect to such properties to ensure their future availability for railroad purposes, including, but not limited to, the leasing of the property or the acquisition of easements, or (B) if no arrangements described under clause (A) are feasible, purchase such properties. Any property rights or properties acquired under the preceding sentence shall be included in the Railroad Land Bank established under section 502(c) of the Harley O. Staggers Rail Act of 1980. In the event that sufficient funds are not available in any fiscal year to acquire all such property rights or properties, the Secretary shall determine which property rights or properties will be acquired for inclusion in the Railroad Land Bank on the basis of the factors set forth in paragraph (3)(A) of such section 502(c). In no event shall the amount paid for the acquisition of such property rights or properties exceed the net liquidation value, as established by the Commission.

"(2) As used in this subsection and in section 502(c) of the Harley O. Staggers Rail Act of 1980, the term 'rail property' shall not include railroad cars, engines, or other rolling stock or property other than real property, fixtures thereto, and any appurtenant rights.".

Page 166, after line 5, insert the following new subsection:

(c)(1) The Secretary of Transportation shall, within 90 days after the effective date of this Act, establish within the Department of Transportation a Railroad Land Bank for purposes of holding, preserving, and facilitating the return to service of abandoned rail properties. The Secretary shall include in such Railroad Land Bank all rail properties and property rights acquired under section 10906(b) of title 49, United States Code (hereinafter in this subsection referred to as "rail properties").

(2) The Secretary shall encourage the use of rail properties included in the Railroad Land Bank established under this subsection to the extent that such use does not substantially impair the future availability of such properties for railroad purposes. Such use shall include, but need not be limited to, bicycle paths, power transmission lines, and forms of mass transportation and communication that do not require removal of substantially sound railroad track. The Secretary may require reasonable fees for the use of such rail properties.

(3) The Secretary shall, at the end of the 4-year period beginning on the effective date of this Act and at the end of each subsequent 4-year period, submit a report to the Congress containing—

(A) his recommendations with respect to which rail properties acquired for the Railroad Land Bank during the preceding 4 years should continue to be included in such Bank because—

(i) the benefits afforded by retaining such properties in such Bank are significantly greater than the costs of such retention; or

(ii) the availability of such properties for future rail service is important to energy production and conservation, the national defense, or agricultural production; and

(B) a listing of any rail properties acquired for the Railroad Land Bank during the preceding 4 years which are not recommended for retention under subparagraph (A).

In making the determination described under subparagraph (A), the Secretary shall take into consideration, to such extent as he determines to be appropriate, the factors used by the States in the development of their rail services plan under section 1654(j) of title 49, United States Code.

(4) If, during the 90-day period beginning on the date of the submission of any report to the Congress under paragraph (3) either House of the Congress passes a resolution—

(A) disapproving any recommendation for retention of rail property made in such report, such property shall be subject to disposition under paragraph (5); or

(B) disapproving any recommendation for the sale of rail property made in such report, such property shall not be subject to disposition under paragraph (5).

(5)(A) After submission of each report to the Congress under paragraph (3), the Secretary shall, after the end of the 90-day period referred to in paragraph (4), provide for the sale of—

(i) any rail properties which are listed in the report, pursuant to paragraph (3)(B), as properties not recommended for retention in the Railroad Land Bank, unless the recommendation to dispose of such property was disapproved by a resolution of either House of the Congress under paragraph (4); and

(ii) any rail properties recommended for retention in the report, pursuant to paragraph (3)(A), but subject to disposition under this paragraph as the result of a resolution of either House of the Congress under paragraph (4) disapproving of the Secretary's recommendations.

Such property shall, in accordance with any other applicable requirements of law not inconsistent with the provisions of this paragraph and after adequate public notice thereof, be sold by the Secretary to any person submitting an offer to purchase of the highest amount, subject to subparagraph (B).

(B) In disposing of property under this paragraph the Secretary shall give priority to any reasonable offer to purchase submitted by any person who indicates an intention to use such property for the purpose of providing rail service. If more than one person submits an offer to purchase such property for such purpose at an amount determined by the Secretary to be reasonable, the Secretary shall sell the property to the person intending to use the property for rail service who submits such an offer to purchase for an amount higher than any amounts offered by other persons intending to use the property for such purposes. In the case of any sale made under this subparagraph, the property shall be sold subject to the condition that the property shall be used for the purpose of providing rail service during a period of 20 years beginning on the date of the sale of the property under this subparagraph and that before the property may be sold or used for any other purpose during such period, the owner thereof shall first provide the Secretary with the right to purchase such property at its net liquidated value.

(5) There are authorized to be appropriated for fiscal years 1981, 1982, 1983, and 1984 not to exceed $50,000,000 per year for purposes of carrying out the provisions of this subsection and for the acquisition of rail properties under section 10906(b) of title 49, United States Code.

By Mr. STAGGERS:

—Page 125, strike out line 14 and all that follows through line 17 on page 138 (including the material between lines 17 and 18) and insert in lieu thereof the following:

COMPENSATORY JOINT RATE RELIEF

SEC. 301. (a)(1) Chapter 107 of title 49, United States Code, is amended by inserting after section 10705 the following new section:

"§ 10705a. Joint rate surcharges and cancellations

"(a)(1)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may publish and apply a surcharge increasing or decreasing the through charge applicable to any movement between points designated by the surcharging carrier subject to a joint rate. Such a surcharge may be applied without the concurrence of the other carriers that are party to such joint rate.

surcharge to any movement on a line operated by such carrier which carried more than 3,000,000 gross ton miles of traffic in the preceding year.

"(C) Any surcharge applied pursuant to this subsection must be applied in equal dollar amounts to the movement subject to the surcharge over all routes between the points designated by the surcharging carrier which such carrier participates in under the joint rate involved, and, when the surcharge increases the through charges, under any of such carrier's single line rates between the same points.

"(2)(A) Whenever a rail carrier applies a surcharge increasing a through charge pursuant to paragraph (1) of this subsection, any other rail carrier that participates in any movement subject to such surcharge may cancel the application of such surcharge to any route participated in by such carrier, if such carrier makes the demonstration described in subparagraph (B) of this paragraph.

"(B) A rail carrier may cancel the application of a surcharge under this paragraph if such carrier demonstrates to the Commission that the surcharging carrier's share of the revenues, at the time the surcharge was filed with the Commission, from its participation in the movement over the route involved would have been equal to or greater than 110 percent of its variable costs of providing service over such route, under either—

"(i) the applicable joint rate, in effect at the time the surcharge was filed with the Commission, without the surcharge;

"(ii) a new rate division increasing the share of the surcharging carrier;

"(iii) a new higher lawful rate published by the canceling carrier; or

"(iv) a new, lesser surcharge which shall be prescribed by the Commission upon and in conformity with the request of the carrier proposing to cancel the surcharge. Any such prescribed surcharge shall, in conjunction with the surcharging carrier's division of the joint rate in effect on the date the original surcharge was filed with the Commission, provide the carrier proposing the original surcharge revenues equal to or greater than 110 percent of such surcharging carrier's variable cost of providing service over such route.

"(C)(i) The cancelling tariff shall only become effective if the rail carrier proposing to cancel the application of the surcharge makes the demonstration described in subparagraph (B) of this paragraph.

"(ii) If the demonstration described in clause (i) of this subparagraph is made on the basis of the applicable joint rate in effect at the time the surcharge was filed with the Commission, without the surcharge, the tariff shall become effective on one day's notice.

"(B) A carrier earning adequate revenues (as defined in section 10704(a)(2) of this title) may not apply such a surcharge to any movement on a line operated by such carrier which carried more than 3,000,000 gross ton miles of traffic in the preceding calendar year.

"(iii) If the demonstration described in clause (i) of this subparagraph is made on the basis of a new rate, division, or surcharge prescribed pursuant to subparagraph (B)(iv) of this paragraph, the tariff shall become effective the date such new rate, division, or surcharge becomes effective.

"(D) The remedy available to a call carrier cancelling the application of a surcharge under this paragraph shall be in addition to any other remedy available to such carrier under this chapter.

"(3)(A) The Commission may cancel the application of a surcharge to a route to which such surcharge applies if a shipper moving traffic over such route demonstrates to the Commission that—

"(i) there is no competitive alternative to such route for the movement of the traffic involved that is not subject to such surcharge; and

"(ii) the surcharging carrier's share of the revenues from its participation in the movement over the route to which such surcharge applies, under the applicable joint rate in effect at the time the surcharge was filed with the Commission, with the surcharge, would be greater than 110 percent of its variable cost of providing service over such route.

"(B) If the Commission cancels the application of a surcharge to a particular route pursuant to subparagraph (A) of this paragraph, the Commission shall determine the level of surcharge which, in conjunction with the surcharging carrier's division of the joint rate in effect at the time the surcharge was filed with the Commission, would equal 110 percent of the surcharging carrier's variable cost of providing service over such route, and shall authorize such carrier immediately to apply such a surcharge without any further proceedings under this subsection.

"(4) A rail carrier may not apply a surcharge under this subsection unless, for the one-year period preceding the surcharge, such carrier has concurred in all rate increases of general applicability applicable to the joint rate to which such surcharge applies and agreed to by all other carriers that are party to such joint rate.

"(5) A rail carrier may not apply a surcharge under this subsection increasing a through charge applicable to a particular movement more than once each calendar year.

"(6) Notwithstanding any other provision of this subsection, a rail carrier may, by tariff, reduce the total charges applicable to a movement over any specific joint line or single line route or routes in which such carrier participates, if such reduction does not lower the total charges applicable to such movement to a level that is less than the lowest total charges applicable to the same movement over a competing route. Any such reduction may be made without the concurrence of any other rail carrier, and shall be borne solely by the carrier reducing the charge.

"(b)(1) Notwithstanding subsection (a) of this section, a rail carrier may publish and apply a surcharge applicable to traffic originating or terminating upon any of its lines that carried less than 3,000,000 gross ton miles of traffic per mile, in the most recent calendar year for which traffic data is available. Such a surcharge may be applied without the concurrence of any connecting rail carrier.

"(2) A rail carrier may apply a surcharge under this subsection if, prior to the application of such surcharge, that portion of the charges applicable to traffic to and from the line to which the surcharge applies and accruing to the surcharging carrier does not provide such carrier revenues adequate to cover—

"(A) 110 percent of such carrier's variable cost of transporting the traffic involved to or from such line; plus

"(B) 100 percent of such carrier's reasonably expected costs of continuing to operate such line, which shall include all costs necessary to sustain service on the line.

"(3)(A) Upon petition of a shipper located upon a line to which a surcharge under this subsection is applied, the Commission may cancel the application of a surcharge under this subsection if such shipper demonstrates to the Commission that, after application of the surcharge, the surcharging carrier's revenues from all traffic originating or terminating upon the line to which the surcharge applies exceed 110 percent of such carrier's variable cost of transporting all traffic to or from such line plus such carrier's reasonably expected costs of continuing to operate such line.

"(B)(i) A rail carrier's revenue from all traffic originating or terminating upon a line shall be presumed to exceed 110 percent of its variable cost of transporting all traffic to or from such line plus its reasonably expected costs of continuing to operate such line if the complaining shipper demonstrates that the carrier is earning revenues from all traffic originating or terminating upon such line equal to or greater than the percentage set forth in section 10701(e)(1) of this chapter (as adjusted therein) of its variable costs.

"(ii) A surcharging carrier may rebut the presumption set forth in clause (i) of this subparagraph by demonstrating to the Commission that its reasonably expected costs for operating the line to which the surcharge applies exceed the percentage of variable cost set forth in such clause (i).

"(C) Upon a finding by the Commission that application of the surcharge will produce revenues in excess of 110 percent of the surcharging carrier's variable cost of transporting traffic to or from the line plus its reasonably expected costs for operating the line, the Commission shall determine the level of surcharge which would produce revenues equal to such figure and shall authorize such carrier immediately to apply such surcharges as will generate such revenues without any further proceedings, subject only to the right of a shipper to proceed under paragraph (4) of this subsection.

"(4)(A) A rail carrier may not apply a surcharge under this subsection that results in any shipper being required to bear more than a reasonable proportion of the reasonably expected costs of continuing to operate the line to which such surcharge applies.

"(B) Upon complaint of a shipper, the Commission shall determine whether the shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph.

"(C) If the Commission finds that a complaining shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph, the Commission may reallocate the surcharge among the traffic originating or terminating on the line to which the surcharge applies, but may not order relief which would result in the surcharging carrier's earning revenues less than those which the carrier would have earned had the surcharge been applied as filed.

"(5) A shipper may, in a single complaint, seek relief under paragraphs (3) and (4) of this subsection. In any such complaint, the Commission shall first determine the right to relief under paragraph (3) and shall grant such relief as is appropriate under such paragraph.

"(6) In any proceeding brought before the Commission challenging the application or amount of a surcharge under this subsection, whether the surcharge is claimed to violate this subsection or some other provision of this chapter, the Commission shall not suspend the application of any such surcharge unless the person filing the verified statement required by section 10707(c) of this title, in addition to the matters required by such section, also makes the demonstration required by paragraph (3)(A) of this subsection. If the demonstration required by paragraph (3)(A) is made, the Commission may suspend the application of only so much of the surcharge as will produce revenues in excess of the amount so demonstrated.

"(c)(1) Notwithstanding any other provision of this title, any prior agreement in effect on the effective date of the Harley O. Staggers Rail Act of 1980, or any requirement of the Commission, a rail carrier may cancel the application of a joint rate to a through route in which it participates, without the concurrence of any other rail carrier that is a party to such joint rate, unless another

rail carrier that participates in such through route or a shipper that has no competitive alternative to such route makes the demonstration described in paragraph (2) of this subsection.

"(2) The application of a joint rate to a through route may not be canceled under this subsection if a rail carrier that participates in such through route or a shipper that has no competitive alternative to such route from an origin or destination served by such route demonstrates to the Commission that the canceling carrier's share of the revenues, under the joint rate in effect at the time the application of the joint rate is canceled, is equal to or greater than—

"(A) 110 percent of the canceling carrier's variable cost of providing service over such route; or

"(B) such lesser percent of the canceling carrier's variable cost as such carrier earns over a competing through route to which application of the joint rate has not been canceled, or over a competing single line route.

"(3) When a complaining party is unable to make the demonstration required by paragraph (2) of this subsection, the Commission may suspend the tariff canceling the joint rate only if—

"(A) a complaining carrier publishes a new rate division or a new higher lawful rate which increases the canceling carrier's share of the revenues over such route to the amount calculated under paragraph (2)(A) or (2)(B) of this subsection, whichever is less; or

"(B) a complaining carrier or shipper petitions the Commission and the Commission, in conformity with such petition, imposes a surcharge upon the joint rate which will accrue solely to the canceling carrier and which, in conjunction with the canceling carrier's division of the joint rate in effect on the date the tariff canceling the joint rate was filed, will provide the canceling carrier revenues equal to or greater than 110 percent of its variable cost of providing service over such route.

Unless a new rate, division, or surcharge described in this paragraph becomes effective within 120 days after the proposed effective date of the rate cancellation, the canceling tariff shall, nevertheless, become effective.

"(4) If the demonstration described in paragraph (2) is made or a new rate, division, or surcharge described in paragraph (3) becomes effective, the tariff canceling the joint rate shall be considered by the Commission in accordance with section 10705 of this title. The existing joint rate or the new rate, division, or surcharge, as appropriate, shall remain in effect during the pendency of the Commission's consideration.

"(5) Whenever the application of a joint rate to a through route is canceled under this subsection and a rate other than a joint rate is or has been published by the canceling carrier to apply to such route, such rate shall thereafter apply in lieu of all other rates (except joint rates subsequently agreed to by such carrier) and any through rate of which such rate is a factor shall divide as the separate factors of such rate are made.

"(6) Nothing in this subsection shall be construed to limit the authority of the Commission under section 10705(a) of this title to prescribe joint rates which provide a rail carrier participating in such joint rate revenues equal to or greater than 110 percent of its variable cost of providing service over each route to which such rate applies.

"(d)(1) Except as provided in paragraph (2) of this subsection, any increase or decrease in revenue resulting from the application of a surcharge under subsection (a) of this section, or from the cancellation of the application of a joint rate under subsection (c) of this section, shall accrue solely to or be borne solely by the carrier applying the surcharge or canceling the application of the joint rate, as the case may be.

"(2) Whenever a class III rail carrier which participates in a through route to which a surcharge has been applied under subsection (a) of this section by a carrier operating in the same rate territory as such class III carrier demonstrates to the Commission that the application of such surcharge to such route provides, in the absence of any increase in the joint rate in effect on the date the surcharge was filed with the Commission, revenues from traffic moving over such route to such surcharging carrier in excess of 110 percent its variable costs over such route, such surcharging carrier shall, from the date of such demonstration, share those revenues from such route, from the surcharge and the applicable joint rate in effect on the date the surcharge was filed with the Commission, in excess of 110 percent of its variable costs with all class III rail carriers participating in such route, on the basis of their existing divisions of the joint rate to which the surcharge applies.

"(e)(1) Except as provided in paragraph (2) of this subsection, whenever a rail carsubsection (a) of this section or to cancel rier proposes to apply a surcharge under the application of a joint rate under subsection (c) of this section and another rail carrier subsequently agrees to a new rate division or a new lawful rate that increases the surcharging or canceling carrier's share of the total through charges for a movement over a particular through route subject to a joint rate, such other rail carrier shall also agree to any other new rate division and new lawful rate—

"(A) that is proposed within 120 days after the date of the first agreement; and

"(B) that increases the surcharging or canceling carrier's share of the total through charges for movements over a competing through route subject to such joint rate.

"(2) A rail carrier shall not be required to agree under this subsection to any proposed new division or new rate which would—

"(A) reduce such carrier's share of the total through charges for a movement over any through route to less than (i) 110 percent of its variable costs of providing service over such route, or (ii) such lesser percent of its variable costs as such carrier earns from such movement over a competing through route with respect to which such carrier has agreed to a new division or rate;

"(B) increase the surcharging or canceling carrier's share of the total through charges for a movement over any through route to an amount in excess of 110 percent of its variable costs of providing service over such route;

(C) reduce such carrier's share of the total through charges for a movement over any through route by a dollar amount in excess of the greatest dollar reduction which such carrier has agreed to make, for purposes of increasing the surcharging or canceling carrier's share, to its share of the total through charges for a movement over any competing through route; or

"(D) reduce such carrier's share of the total through charges for a movement over any through route in an amount in excess of such carrier's pro rata share (based on established divisions for movements over such route) of the increase of the surcharging or canceling carrier's share of the total through charges for movement over such route.

"(f) A rail carrier applying a surcharge or canceling the application of a joint rate under this section shall file a tariff with the Commission in accordance with section 10762 of this title. Such a tariff may not become effective until the expiration of the 45-day period (or such longer period as the filing carrier specifies) beginning on the date such tariff is filed.

"(g)(1) Any rail rate to which a surcharge is applied under this section shall be subject to section 10701a and 10709 of this title, and any such surcharge shall constitute a rate increase for purposes of such sections.

"(2) For purposes of rate regulation under section 10701a of this title—

"(A) only the rail carrier proposing a surcharge under this section shall be required to defend such surcharge; and

"(B) the reasonableness of the surcharge and the revenues received by the rail carrier proposing the surcharge under the joint rate to which the surcharge applies shall be determined without regard to amounts received and services performed by other rail carriers that are party to such joint rate.

"(3) Except as provided in subsection (i), (j), or (k) of this section, if the application of a surcharge or the cancellation of the application of a joint rate under this section is found to constitute a violation of any provision of this title, such violation shall not be ordered remedied in any manner which—

"(A) requires the carrier applying a surcharge under subsection (a) of this section or canceling the application of a joint rate under subsection (c) of this section to provide service over any route under a rate that provides revenues to such carrier that are less than 110 percent of its variable costs of providing such service; or

"(B) which requires the carrier applying a surcharge under subsection (b) of this section to provide service over the route to which such surcharge applies in a manner that provides revenues to such carrier that are less than 110 percent of such carrier's variable cost of transporting the traffic involved to or from the line to which the surcharge applies, plus such carrier's reasonably expected costs of providing service over such line.

"(h) Within 5 days after the request of a rail carrier participating in a joint rate subject to a surcharge or cancellation under this section, a shipper moving traffic over a route to which such surcharge or cancellation applies, or an affected port, the Commission shall make available to such carrier, shipper, or port the Commission's determination of the variable costs and revenues, over the route or routes to which the surcharge or cancellation applies, of the carrier applying the surcharge or canceling the application of the joint rate.

"(i)(1) Whenever a class III rail carrier, in a protest filed with the Commission, makes a prima facie showing that the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section will have an adverse effect on competition, the Commission shall investigate such protest. If on the basis of such investigation the Commission finds that the protested surcharge or cancellation is, or is intended to be, anticompetitive, the Commission shall, within 30 days after the date such protest is filed, enter an order rescinding such surcharge or cancellation, and may, on presentation of an adequate record, prescribe new joint rates or divisions of joint rates.

"(2) No order prescribed under this subsection shall require a carrier to provide service over any route under a rate which provides revenues less than 110 percent of the variable cost of providing such service unless the Commission determines that the public interest requires a lesser revenue to variable cost ratio to avoid anticompetitive action and to preserve service on the route involved.

"(j)(1) Any class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under

subsection (c) of this section may protest such surcharge or cancellation whenever—

"(A) such surcharge or cancellation affects the sole remaining route available to that carrier for that traffic; and

"(B)(i) such carrier demonstrates that alternative transportation is available or that a shipper dependent on that carrier will suffer significant market loss because of such surcharge or cancellation; or

"(ii) such surcharge or cancellation, alone or when considered in conjunction with other surcharges or cancellations affecting the carrier, is likely to unduly impair a carrier's ability to earn an adequate rate of return.

"(2)(A) The Commission may, after an investigation on the basis of a protest under this subsection, prescribe a lesser surcharge or a different division of the joint rate. The Commission shall grant the surcharging or canceling carrier revenues not less than 110 percent of its variable cost of the movement involved, unless it determines that the public interest requires a lesser revenue to variable cost ratio to preserve service on the route involved. Any action by the Commission based on a protest under this subsection shall be taken within 30 days after the date such protest is filed.

"(B) If the Commission prescribes a different division of a joint rate under this paragraph, the Commission shall, upon petition of the surcharging or canceling carrier or the protesting class III rail carrier, reopen the proceeding in which such division was prescribed to reconsider whether such prescribed division is reasonable. If, on the basis of such reconsideration, the Commission determines that such division is not reasonable, it shall prescribe a new, reasonable division of the joint rate to which the surcharge or cancellation applies.

"(k)(1) Upon the complaint of a class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section that such surcharge or cancellation will result in differences or greater differences in rates, including any surcharges, for the traffic to which the surcharge or cancellation applies over different routes in which the surcharging or canceling carrier participates—

"(A) from a single origin point to destination points within a 75 mile direct radius from the destination point on such class III rail carrier; or

"(B) to a single destination point from origin points within a 75 mile direct radius from the origin point on such class III rail carrier,

the Commission shall investigate such complaint and shall, within 30 days after the date such complaint is filed, take such actions, including rescinding surcharges or cancellations or prescribing new joint rates or surcharges, as it determines are required to eliminate such differences in rates, unless it finds that such actions are not warranted by the public interest in ensuring effective competition among rail carriers or in the preservation of rail service on the route involved.

"(2) No action taken by the Commission under this subsection shall require a carrier to provide service over any route under a rate which provides a revenue to variable cost ratio over such route less than that provided under the joint rate to which the surcharge or cancellation was applied or less than 110 percent, whichever is greater, unless the Commission determines that the public interest in ensuring effective competition among rail carriers or in preserving service over such route warrants requiring the surcharging or cancelling carrier to provide service at a lesser revenue to variable cost ratio.

"(3) Notwithstanding subsection (m)(1) of this section, if, in a proceeding under this subsection or under subsection (i) or (j) of this section, the Commission considers whether to require the revenues of a carrier applying a surcharge under subsection (a) of this section or cancelling the application of a joint rate under subsection (c) of this section to be less than 110 percent of its variable costs (as calculated using the Commission's Rail Form A cost finding methodology), such surcharging or cancelling carrier may prove its actual variable costs on the basis of evidence other than unadjusted costs calculated using such Rail Form A cost finding methodology. Such evidence shall be prepared in accordance with generally accepted accounting principles.

"(l) Whenever the application of a joint rate to a through route is cancelled under subsection (c) of this section, the Commission shall, upon petition by a class II or III rail carrier participating in such route, prescribe a new compensatory through rate or rates over such route within 30 days after the date such petition is filed.

"(m) For purposes of this section—

"(1) variable costs for a class I rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates;

"(2) variable costs for a rail carrier other than class I shall be presumed to be the average variable costs of all class I rail carriers in the region in which such carrier operates (as determined under paragraph (1) of this subsection) unless a rail carrier rebuts such presumption with other proof of variable costs; and

"(3) at the option of a carrier applying a surcharge or canceling the application of a joint rate under this section, revenue share may be determined by reference to past revenue settlements actually made in the most recent calendar year by connecting lines.

"(n)(1) The authority to apply a surcharge under subsection (a) of this section, and (except as provided in paragraph (2)) the authority to cancel such a surcharge, shall expire 3 years after the effective date of the Harley O. Staggers Rail Act of 1980 unless extended for one additional year by the Commission upon petition of any rail carrier and for good cause shown.

"(2) Any surcharge lawfully applied under subsection (a) of this section shall remain in effect in accordance with its terms following the expiration of the provisions of this section. Any such surcharge applied during the 45-day period immediately preceding the date of the expiration of the provisions of this section shall, notwithstanding such expiration, be subject to cancellation under subsection (a)(2) or (a)(3) of this section during the 45-day period beginning on the date such surcharge is applied.".

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10705 the following new item:

"10705a. Joint rate surcharges and cancellations.".

(b) For purposes of section 10705a of title 49, United States Code, the Interstate Commerce Commission shall classify all rail carriers on the basis of revenues, shall from time to time review its regulations setting forth revenue-based classifications for rail carriers, and shall make appropriate changes in such regulations in order to reflect inflation. The Commission shall not reclassify switching and terminal carriers, or any other rail carriers not classified on the basis of revenues on the effective date of this Act, for any purpose other than for purposes of such section 10705a.

(c)(1) The Interstate Commerce Commission shall include in its annual report to the Congress under section 10311 of title 49, United States Code, a report with respect to the application of surcharges and the cancellation of the application of joint rates by the Consolidated Rail Corporation and other rail carriers, during the preceding year, under section 10705a of title 49, United States Code. Each such report shall include—

(A) an analysis of the effect of application of surcharges and the cancellation of the application of joint rates under such section 10705a on shippers, ports, class II and class III rail carriers, railroad employees, and other elements of the rail system;

(B)(i) the number of surcharges applied by the Consolidated Rail Corporation and other rail carriers under such section 10705a and the amount of revenue received by the Corporation and all other rail carriers from the application of such surcharges, (ii) the number of surcharges applied by the Corporation and all other rail carriers that were canceled under the procedures of such section 10705a, and (iii) the number of cancellations of the application of a joint rate by the Corporation and other rail carriers under such section 10705a; and

(C) an analysis of the operation of the remedies made available to class III rail carriers under subsections (i), (j), and (k) of such section 19705a and to class II and class III rail carriers under subsection (l) of such section 10705a.

(2) The Interstate Commerce Commission shall, within 2 years after the effective date of this Act, submit a report to the Congress with respect to whether the provisions of section 10705a of title 49, United States Code, have adequately addressed the joint rate problems of rail carriers. The report shall include such recommendations with respect to such joint rate problems as the Commission considers necessary and appropriate.

EXPEDITED DIVISION OF REVENUES PROCEEDINGS

SEC. 302. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1)(A) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(i) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(ii) in all cases other than those specified in clause (i) of this subparagraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this clause, it must report its reasons to Congress.

"(B) The provisions of this paragraph imposing time limitations upon Commission action shall not apply to any division proceeding involving a joint rate participated in by a class III rail carrier.".

REGULATION OF RAILROAD RATES

SEC. 303. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended

by inserting after section 10701 the following new section:

"§ 10701a. Standards for rates for rail carriers

"(a) Except as provided in subsection (b) or (c) of this section and unless a rate is prohibited by a provision of this title, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may establish any rate for transportation or other service provided by the carrier.

"(b)(1) If the Commission determines, under section 10709 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

"(2) In any proceeding to determine the reasonableness of a rate described in paragraph (1) of this subsection—

"(A) the shipper challenging such rate shall have the burden of proving that such rate is not reasonable if—

"(i) such rate (I) is authorized under section 10707a of this title, and (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; or

"(ii) such rate does not meet the description set forth in clause (i) of this subparagraph, but the Commission does not begin an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable; and

"(B) the rail carrier establishing the challenged rate shall have the burden of proving that such rate is reasonable if—

"(i) such rate (I) is greater than that authorized under section 10707a of this title, or (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; and

"(ii) the Commission begins an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable.

"(3) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Commission shall recognize the policy of this title that efficient rail carriers shall earn adequate revenues, as established by the Commission under section 10704(a)(2) of this title.

"(c)(1) Any rate established after the effective date of the Harley O. Staggers Rail Act of 1980 for transportation by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that does not contribute to the going concern values of such rail carrier is not reasonable.

"(2) A rate for transportation by a rail carrier that equals or exceeds the variable cost of providing the transportation is conclusively presumed to contribute to the going concern value of such rail carrier.

"(3)(A) Upon the filing of a complaint alleging that a rate is in violation of this subsection, the Commission shall take final action thereon by the 90th day after the date such complaint is filed.

"(B) If the Commission determines, based on the record after opportunity for a hearing, that a rate is in violation of this subsection, the Commission may order such rate to be raised, but only to the minimum level required by this subsection. The complainant shall have the burden of proving that such rate is in violation of this subsection.".

(b)(1) The first sentence of section 10701(a) of title 49, United States Code, is amended by inserting "(other than a rail rate)" immediately after "A rate".

(2) Section 10701(b) of title 49, United States Code, is repealed.

(3) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately below the item relating to section 10701 the following new item:

"10701a. Standards for rates for rail carriers.".

DETERMINATION OF MARKET DOMINANCE

SEC. 304. Section 10709 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In this subsection—

"(A) 'fixed and variable cost' means all cost incurred by rail carriers in the transportation of freight, but limiting the return on equity capital to a rate equal to the embedded cost of debt.

"(B) 'cost recovery percentage' means the lowest revenue-variable cost percentage which, if all movements that produced revenues resulting in revenue-variable cost percentages in excess of the cost recovery percentage are deemed to have produced only revenues resulting in the cost recovery percentage, would produce revenues which would be equal, when combined with total revenues produced by all other traffic transported by rail carrier, to the total fixed and variable cost of the transportation of all traffic by rail carrier.

"(C) 'revenue-variable cost percentage' means the quotient, expressed as a percentage figure, obtained by dividing the total revenues produced by the transportation of all traffic received by rail carriers for rail transportation by the total variable cost of such transportation.

"(2) In any proceeding under this section, the Commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than—

"(A) 160 percent during the period beginning on the effective date of the Harley O. Staggers Rail Act of 1980 and ending September 30, 1981;

"(B) 165 percent during the period beginning October 1, 1981, and ending September 30, 1982;

"(C) 170 percent during the period beginning October 1, 1982, and ending September 30, 1983;

"(D) 175 percent or the cost recovery percentage, whichever is less, during the period beginning October 1, 1983, and ending September 30, 1984; and

"(E) the cost recovery percentage, during each 12-month period beginning on or after October 1, 1984.

For purposes of subparagraphs (D) and (E) of this paragraph, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of 170 percent or more than a revenue-variable cost percentage of 180 percent.

"(3) A finding by the Commission that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the applicable percentage under paragraph (2) of this subsection does not establish a presumption that (A) such rail carrier has market dominance over such transportation, or (B) the proposed rate exceeds a reasonable maximum.

"(4)(A) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980 and on an annual basis thereafter, the Commission shall determine the cost recovery percentage for transportation of all traffic received by rail carrier. The Commission shall make such determination after considering each individual revenue-variable cost percentage resulting from the revenues and costs of a valid and reliable statistical sample of all movements of commodities transported by class I rail carriers during the most recent calendar year for which such information is available.

"(B) If, on the basis of calculations under subparagraph (A) of this paragraph, the Commission determines that revenues earned by all class I rail carriers during the previous calendar year do not exceed the fixed and variable costs of such carriers, then the cost recovery percentage for purposes of this section shall be deemed to be equal to the cost recovery percentage last determined by the Commission.

"(C) The Commission shall, in its annual report submitted to the Congress under section 10311 of this title, set forth the cost recovery percentage determined for that year under subparagraph (A) of this paragraph.".

ZONE OF RATE FLEXIBILITY

SEC. 305. (a) Subchapter I of chapter 107 of title 49, United States Code is amended by inserting after section 10707 the following new section:

"§ 10707a. Zone of rail carrier rate flexibility.

"(a) In this section—

"(1) 'base rate' means the rate in effect on the effective date of the Harley O. Staggers Rail Act of 1980 for the transportation of a particular commodity. If no rate exists for the transportation of a particular commodity on such effective date, the base rate for the transportation of such commodity shall be the rate established by the rail carrier, unless such rate is found to be unreasonable by the Commission, in which case the base rate shall be the rate authorized by the Commission.

"(2) 'adjusted base rate' means the base rate, as adjusted on a quarterly basis to reflect inflation.

"(b)(1) Except as provided in paragraph (2) of this subsection, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may, in addition to rate increases authorized under subsection (b) or (c) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title in order to cover cost increases due to inflation, so long as the increased rate is not greater than the adjusted base rate for the transportation involved.

"(2) A rail carrier may not increase a rate under this subsection to the extent that the cost increases to such carrier due to inflation are recovered through (A) general rate increases pursuant to section 10706 of this title, or (B) inflation-based rate increases under section 10712 of this title.

"(c)(1) During the 12-month period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 6 percent of the base rate. During each of the 3 succeeding 12-month periods, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any such rate by an annual amount of not more than 6 percent of the adjusted base rate, except that in no event shall the total increase under this subsection result in a rate which is more than 118 percent of the base rate.

"(2) If any portion of a rate increase under this subsection is not implemented in the year in which it is authorized, such portion may be implemented only in the next succeeding year.

"(d)(1) Except as provided in paragraph (3) of this subsection, during the 12-month period beginning on October 1, 1984, and during each succeeding 12-month period, a rail carrier may, in addition to rate increases under subsection (a) of this section, increase any rate over which the Commission

has jurisdiction under section 10709 of this title by an annual amount of not more than 4 percent of the adjusted base rate.

"(2) No portion of any rate increase under this subsection which is not implemented in the year in which it is authorized may be implemented in any other year.

"(3) The provisions of this subsection shall not apply to (A) a rail carrier proposing to increase a single line rate if such carrier earns adequate revenues, as established by the Commission under section 10704(a)(2) of this title, or (B) rail carriers proposing to increase a joint rate if all carriers participating in the route to which the joint rate applies earn adequate revenues, as established under such section.

"(e)(1) Notwithstanding the provisions of section 10707 of this title, in the case of any rate increase by a rail carrier that is authorized under this section—

"(A)(i) the Commission may not suspend such rate increase pending final Commission action; and

"(ii) except as provided in paragraph (2) of this subsection, the Commission may not begin an investigation proceeding under section 10707 of this title with respect to the reasonableness of such rate increase; but

"(B) an interested party may file a complaint under section 11701(b) of this title alleging that such rate increase violates the provisions of this subtitle;

"(2)(A) If a rate increase authorized under this section in any year results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable in that year under section 10709(d) of this title, the Commission may, on its own initiative or on complaint of an interested party, begin an investigation proceeding to determine whether the proposed rate increase violates this subtitle.

"[(B) In determining whether or not to investigate a proposed rate increase, the Commission shall set forth its reasons therefor, giving due consideration to the following factors:

"[(i) the amount of traffic which is transported at revenues below going concern value and efforts made to minimize such traffic;

"[(ii) the amount of traffic which contributes only marginally to fixed costs and the extent, if any, to which rates for such traffic can be changed to maximize the revenue from such traffic; and

"[(iii) the impact of the proposed rate increase on attaining the long-term national energy goals and the rail transportation policy set forth in section 10101a of this title, taking into account the rail carrier's role as a primary source of energy transportation and the need for a sound rail system in accordance with the revenue adequacy goals of section 10704(a)(2) of this title.

This subparagraph shall not be construed to change existing law with respect to the nonreviewability of such determinations.]

"[(C) In determining whether a rate is reasonable, the Commission may consider, among other factors, evidence of the following:

"[(i) the amount of traffic which is transported at revenues below going concern value and efforts make to minimize such traffic;

"[(ii) the amount of traffic which contributes only marginally to fixed costs and the extent, if any, to which rates for such traffic can be changed to maximize the revenues from such traffic; and

"[(iii) whether any commodity is paying an inordinate and unreasonable share of the carrier's overall revenues.]

"(f) In any proceeding under this section, evidence of the underlying rail carrier rate is admissible.

"(g) A finding by the Commission that a rate increase exceeds the increase authorized under this section does not establish a presumption that the proposed rate exceeds a reasonable maximum.

"(h) The authority of the Commission to determine and prescribe reasonable rules, classifications, and practices may not be used, directly or indirectly, to limit the rates which rail carriers are otherwise authorized to establish under this section.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10707 the following new item:

"10707a. Zone of rail carrier rate flexibility.".

(c)(1) Any rail carrier rate which increased over 70 percent between 1976 and 1979 inclusive for the transportation, in shipper owned equipment over a distance exceeding 1,550 miles between points within the United States, of coal pursuant to a tariff calling for an annual volume of more than 2,000,000 tons per year purchased by a municipality owned utility for the generation of electric power under a 20-year purchase agreement entered into by such utility in the year 1974 shall not be increased so long as coal is purchased under such original agreement, except that—

(A) during the period beginning October 1, 1980, and ending September 30, 1987, the Interstate Commerce Commission may permit increases in such rate which result in a revenue-variable cost percentage of not more than 162 percent; and

(B) after October 1, 1987, such rate shall be subject to section 10701a of title 49, United States Code, and related provisions of such title governing regulation of rail carrier rates, except that until such rate results in a revenue-variable cost percentage that equals or exceeds the revenue-variable percentage applicable under section 10709(d) of such title, such rate may not be increased more than 4 percent, in addition to inflation, in any year.

(2) Neither the provisions of this subsection nor any rate subject to this subsection shall be admissible as evidence or considered in any way in any proceeding involving any other rail carrier rate that is commenced to determine market dominance under section 10709 of title 49, United States Code, or to determine reasonableness under section 10701a of such title.

RATE REGULATION PROCEEDING AND STUDY

SEC. 306. (a)(1) The Interstate Commerce Commission shall commence a proceeding for purposes of determining whether, and to what extent, product competition should be considered in proceedings under subtitle IV of title 49, United States Code, to determine the reasonableness of rail carrier rates. The Commission shall complete its proceeding under this subsection within 180 days after the effective date of this Act.

(2) On the basis of the proceeding conducted under this subsection, the Commission may find that, in determining the reasonableness of rail carrier rates—

(A) proof of product competition should be considered as a factor to the same extent as it is considered under existing law on the effective date of this Act;

(B) proof of product competition should be given greater weight than that described in subparagraph (A) of this paragraph; or

(C) proof of product competition should be conclusive.

(3)(A) For purposes of this subsection, the term "product competition" means the availability to a consignee, at a competitive delivered cost and in sufficient quantities, of products or commodities which are of the same type as the commodity or product to which the rate in question applies, without regard to whether such products or commodities are available from the same or a different origin as those to which the rate applies.

(B) In determining the availability of alternative sources of a particular commodity for purposes of this subsection, such commodity must be capable, by reason of similar specifications such as Btu's, sulfur content, and ash content, of being effectively utilized by the consignee.

(C) In determining the availability of alternative sources of coal for purposes of this subsection, such coal must be capable, by reason of similar specifications such as Btu's and sulfur content, of being effectively utilized by the consignee.

(D) For purposes of this subsection, any coal imported in the United States for the generation of electricity by utilities shall not be taken into account in the determination of whether coal is available to a consignee from another source.

(4)(A) Nothing in this subsection shall be construed as requiring the Commission to modify its determination of the reasonableness of rail carrier rates under existing law and procedures.

(B) Nothing in this section shall be construed as altering the meaning, use, or interpretation by the Commission, the courts, or any party of the term "market dominance", as defined in section 10709(a) of title 49, United States Code. No determination under this subsection shall in any way alter the meaning of such term, even if such meaning denies the Commission jurisdiction over the transportation of commodities where product competition exists.

(b)(1) The Interstate Commerce Commission shall, within 3 years after the effective date of this Act, submit a report to the Congress setting forth its recommendations with respect to the appropriate jurisdictional threshold to be used for purposes of determining those cases in which the Commission will have jurisdiction to determine whether a proposed rail carrier rate is reasonable.

(2) The report submitted under this subsection shall include a consideration of feasibility of utilizing, as the criteria for establishing the jurisdictional threshold described in paragraph (1) of this subsection—

(A) the cost recovery percentage, as defined in section 10709(d) of title 49, United States Code;

(B) a specific revenue-variable cost percentage;

(C) a reasonable transportation alternative test;

(D) a revised statutory or administrative market dominance test;

(E) a test based on rail carrier return on investment; or

(F) such other criteria as the Commission considers appropriate.

(c)(1) The Interstate Commerce Commission shall, within 180 days after the effective date of this Act and thereafter as necessary, establish standards for determining what constitutes adequate revenues for rail carriers under section 10704 of title 49, United States Code.

(2) On the basis of the standards established under paragraph (1) of this subsection, the Commission shall, within 180 days after the effective date of this Act and on an annual basis thereafter, determine which rail carriers are earning adequate revenues.

(d) The rail carrier rate level resulting from any case pending in any Federal court on July 22, 1980 (including any case on remand), shall be considered to be the rate for purposes of determining permissible rate increases under chapter 107 of title 49, United States Code.

INFLATION-BASED RATE INCREASES

SEC. 307. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10712. Inflation-based rate increases

"(a) After the elimination of general rate increases under section 10706 of this title,

the Commission may, on a quarterly basis and consistent with the rail transportation policy set forth in section 10101a of this title, prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases. Such percentage rate increase or rate index may be applicable on an industry-wide or on a carrier-by-carrier basis.

"(b) Within 60 days after the date the Commission prescribes a percentage rate increase or rate index under subsection (a) of this section, each rail carrier or group of rail carriers shall notify the Commission of any rate or group of rates which such carrier or carriers intend to be excluded from the application of such percentage rate increase or rate index.

"(c) For purposes of this section, a percentage rate index may permit rate increases within a specified range to allow carriers to recover a total revenue increase specified by the Commission as necessary to compensate for inflationary cost increases.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10711 the following new item:

"10712. Inflation-based increases.".

INVESTIGATION AND SUSPENSION OF RATES

SEC. 308. (a) Section 10707(b)(1) of title 49, United States Code, is amended to read as follows:

"(b)(1) The Commission must complete a proceeding under this section and make its final decision by the end of the 5th month after the rate, classification, rule, or practice was to become effective, except that if the Commission reports to the Congress by the end of such 5th month that it cannot make a final decision by that time and explains the reason for the delay, it may take an additional 3 months to complete the proceeding and make its final decision.".

(b) Section 10707(c) of title 49, United States Code, is amended to read as follows:

"(c)(1) The Commission may not suspend a proposed rate, classification, rule, or practice during the course of a Commission proceeding under this section unless it appears from the specific facts shown by the verified statement of a person that—

"(A) it is substantially likely that the protestant will prevail on the merits;

"(B) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

"(C) because of the peculiar economic circumstances of the protestant, the provisions of subsection (d) of this section do not protect the protestant.

"(2) The burden shall be on the protestant to prove the matters described in paragraph (1) (A), (B) and (C) of this subsection.".

(c) Section 10707(d) of title 49, United States Code, is amended to read as follows:

"(d)(1) If the Commission does not suspend a proposed rate increase under subsection (c) of this section, the Commission shall require the rail carrier to account for all amounts received under the increase until the Commission completes its proceedings under subsection (b) of this section. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

"(2) If a rate is suspended under subsection (c) of this section and any portion of such rate is later found to be reasonable under this title, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days, except that this paragraph shall not apply to general rate increases under section 10706 of this title.

"(3) If any portion of a proposed rate decrease is suspended under subsection (c) of this section and later found to be reasonable under this title, the rail carrier may refund any part of the portion of the decrease found to comply with this title if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.".

(d) Section 10707(e) of title 49, United States Code, is repealed.

CONTRACTS

SEC. 309. (a) Subchapter I of chapter 107 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new section:

"§ 10713. Contracts

"(a) One or more rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

"(b) Each contract entered into under this section shall be filed with the Commission, together with a summary of the contract containing such nonconfidential information as the Commission prescribes. The Commission shall immediately make a summary of each such contract available to interested persons.

"(c) A contract filed under this section shall be approved by the Commission, as provided in subsection (e) of this section, unless the Commission determines in a proceeding under subsection (d) of this section that such contract is in violation of this section.

"(d)(1) No later than 30 days after the date of filing of a contract under this section, the Commission may, on its own initiative or on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

"(2)(A) In the case of a contract other than a contract for the transportation of agricultural commodities, a complaint may be filed—

"(i) by a shipper only on the ground that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

"(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

For purposes of this paragraph, the term 'unreasonable discrimination' has the same meaning as such term has under section 10741 of this title.

"(B) In the case of a contract for the transportation of agricultural commodities, in addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper on the ground that such shipper individually will be harmed because—

"(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

"(ii) the proposed contract constitutes a destructive competitive practice.

"(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Commission may establish, the Commission shall determine whether the contract that is the subject of such proceeding is in violation of this section.

"(B) If the Commission determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a carrier, the Commission shall order such carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

"(e) Approval of a contract filed under this section shall be effective—

"(1) on the date the Commission expressly approves such contract, but in no event before the end of the 30-day period beginning on the date such contract is filed or after the end of the 60-day period beginning on such date; or

"(2) if the Commission has not disapproved such contract by the end of the 60-day period beginning on the date such contract is filed, at the end of such 60-day period.

"(f) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under this section, except to the extent necessary to comply with section 11128 of this title.

"(g) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

"(h)(1) A contract that is approved by the Commission under this section may not be subsequently challenged before the Commission or in any court on the grounds that such contract violates a provision of this subtitle.

"(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

"(i) The provisions of this section shall not affect the status of any lawful contract between a rail carrier and one or more purchasers of rail service that is in effect on the effective date of the Harley O. Staggers Rail Act of 1980.

"(j)(1) During the 3-year period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open to hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC), except that in the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment utilized on the average during the prior 3-year period may be used for such contract without prior authorization by the Commission.

"(2) Any rail carrier or other party may seek relief from the limitations of paragraph (1) of this subsection, and the Commission may grant such relief as it considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier's ability to meet its common carrier obligations under section 11101 of this title.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10712, as added by this Act, the following new item:

"10713. Contracts.".

DEMAND SENSITIVE RATES

SEC. 310. Section 10727 of title 49, United States Code, and the item relating to such section in the section analysis for chapter 107 of such title, are repealed.

PHASEOUT OF CAPITAL INCENTIVE RATES

SEC. 311. (a) Section 10729 of title 49, United States Code, and the item relating to such section in the section analysis of chapter 107 of such title, are repealed.

(b) Notwithstanding any other provision of law, any rate established by a rail carrier under section 10729 of title 49, United States Code, prior to the effective date of this Act shall remain in effect in accordance with its terms, but for no longer than 5 years after the date it became effective, unless the parties otherwise agree. However, the Interstate Commerce Commission may, during the period such a rate is in effect, order such rate revised to a level equal to the incremental cost of providing the transportation if the Commission finds that the level then in effect reduces the going concern value of the rail carrier.

PERMISSIVE LIMITED LIABILITY RATES

SEC. 312. (a) Section 10730 of title 49, United States Code, is amended—

(1) by inserting "(a)" immediately before "The";

(2) by inserting "(other than a rail carrier)" immediately after "carrier" the first place it appears; and

(3) by adding at the end thereof the following new subsection:

"(b) A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish rates for transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier, and may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.".

(b)(1) Section 11707(c) of title 49, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(5) The liability of a rail carrier under subsection (a) of this section shall not exceed the value of the physical loss of or damage to the property transported, or the cost of repair to such property, to the extent that the loss or damage thereto is caused by the rail carrier. Any other or special damages shall not be recoverable.

"(6) If property transported by a rail carrier is lost, damaged, or delayed by reason of the act or negligence of both the carrier and the shipper, owner, or consignee, such carrier shall not be liable for the portion of loss, damage, or delay caused by the act or negligence of such shipper, owner, or consignee.".

(2) Section 11707(d) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(d)";

(B) by inserting "(other than a rail carrier)" immediately after "delivering carrier" and

(C) by adding at the end thereof the following new paragraph:

"(2) A civil action under this section may be brought either against the originating rail carrier in a court having jurisdiction over the point of origin or against the delivering rail carrier in a court having jurisdiction over the point of destination. Such action may be brought in a district court of the United States or in a State court, and in any such action Federal law and Federal court decisions shall be applied. No other cause of action shall exist to recover for loss, damage, or delay to property.".

(3) Section 11707(e) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(e)";

(B) by inserting "(other than a rail carrier)" immediately after "A carrier"; and

(C) by adding at the end thereof the following new paragraph:

"(2)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier may not provide by rule, contract, or otherwise a period of less than six months for filing a claim against such carrier under this section or a period of less than one year from the date such carrier declines such claim for bringing a civil action against it under this section. This period for filing claims shall be computed from the date of the loss of or damage to the property transported, and the period for bringing a civil action shall be computed from the date the person filing the claim receives notice that such claim is declined.

"(B) The limitations set forth in this paragraph shall not apply whenever a rail carrier has entered into a contract for the provision of transportation or service and such contract is filed with the Commission as a tariff under section 10762 of this title.".

RATE DISCRIMINATION

SEC. 313. Section 10741 of title 49, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) Differences between rates, classifications, rules, and practices of rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title do not constitute a violation of this section if such differences result from different services provided by rail carriers.

"(f) This section shall not apply to—

"(1) rates and conditions set forth in contracts approved under section 10713 of this title;

"(2) surcharges or cancellations under section 10705a of this title;

"(3) separate rates for distinct rail services under section 10726 of this title;

"(4) rail rates applicable to different routes; or

"(5) expenses authorized under section 10751 of this title,

except that with respect to rates described in paragraphs (2), (3), and (4), nothing in this subsection shall affect the authority of the Commission under this section with respect to rate relationships between ports or within the same port.

EXEMPTION

SEC. 314. Section 10505 of title 49, United States Code, is amended to read as follows:

"§ 10505. Authority to exempt rail carrier transportation

"(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons or a transaction or service when the Commission finds that the application of a provision of this subtitle—

"(1) is not necessary to carry out the transportation policy of section 10101a of this title; and

"(2) either (A) the transportation or service is of limited scope, (B) the application of a provision of this subtitle is not needed to protect shippers and receivers where there is an absence of effective competition, or (C) there is effective competition.

"(b) The Commission may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party.

"(c) The Commission may specify the period of time during which an exemption granted under this section is effective.

"(d) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of section 10101a of this title.

"(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11707 of this title. Nothing in this subsection or section 11707 of this title shall prevent rail carriers from offering alternative terms nor give the Commission the authority to require any specific level of rates or services based upon the provisions of section 11707 of this title.

"(f) The Commission may exercise its authority under this section to exempt transportation that is provided by a rail carrier as a part of a continuous intermodal movement.

"(g) The Commission may not exercise its authority under this section (1) to authorize intermodal ownership that is otherwise prohibited by this title, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle.".

INTRASTATE RATES

SEC. 315. (a) Section 11501(a) of title 49, United States Code, is amended—

(1) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(2) by striking out "subchapter I or subchapter IV" and inserting in lieu thereof "subchapter IV";

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(4) by striking out paragraph (2).

(b) Section 11501 of title 49, United States Code, is amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting immediately after subsection (a) the following new subsections:

"(b)(1) A State authority may only exercise jurisdiction over intrastate transportation provided by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title if such State authority exercises such jurisdiction exclusively in accordance with the provisions of this subtitle.

"(2) Within 120 days after the effective date of the Harley O. Staggers Rail Act of 1980, each State authority exercising jurisdiction over intrastate rates, classifications, rules, and practices for intrastate transportation described in paragraph (1) of this subsection shall submit to the Commission the standards and procedures (including timing requirements) used by such State authority in exercising such jurisdiction.

"(3)(A) Within 90 days after receipt of the intrastate regulatory rate standards and procedures of a State authority under paragraph (2) of this subsection, the Commission shall certify such State authority for purposes of this subsection if the Commission determines that such standards and procedures are consistent with the procedures applicable to regulation of rail carriers by the Commission under this title. If the Commission determines that such standards and procedures are not consistent, it shall deny certification to such State authority, and such State authority may re-

submit new standards and procedures to the Commission for review in accordance with this subsection.

"(B) The standards and procedures existing in each State on the effective date of the Harley O. Staggers Rail Act of 1980 for the exercise of jurisdiction over intrastate rail rates, classifications, rules, and practices shall be deemed to be certified by the Commission from that date until the date an initial determination is made by the Commission under subparagraph (A) of this paragraph.

"(4)(A) Any State authority which is certified by the commission under this subsection may use its standards and procedures in exercising jurisdiction over intrastate rail rates, classifications, rules, and practices during the 5-year period commencing on the date of such certification. Any State authority which is denied certification may not exercise any jurisdiction over intrastate rates, classifications, rules, and practices until it receives certification under this subsection.

"(B) Any intrastate transportation provided by a rail carrier in a State which may not exercise jurisdiction over an intrastate rate, classification, rule, or practice of that carrier due to a denial of certification under this subsection shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

"(5)(A) Certification of a State authority under this subsection is valid for the 5-year period beginning on the date of such verification. Prior to the expiration of such 5-year period, the State authority shall resubmit its intrastate regulatory standards procedures to the Commission for subsequent certification in accordance with this subsection.

"(B) During any 5-year certification period, a State may not change its certified standards and procedures without notifying and receiving express approval from the Commission.

"(6) Notwithstanding any other provision of this section, a State authority may not exercise any jurisdiction over general rate increases under section 10706 of this title or inflation-based rate increases under section 10712 of this title.

"(C) Any rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may petition the Commission to review the decision of any State authority in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined on the grounds that the standards and procedures applied by the State were not consistent with the provisions of this subtitle. The Commission shall dispose of any such petition within 30 days after the date it is received. If the Commission determines that the standards and procedures were not in accordance with the provisions of this subtitle, its order shall determine and authorize the carrier to establish the appropriate rate, classification, rule, or practice.".

(c)(1) Section 11501(d)(2) of title 49, United States Code, as redesignated by subsection (b) of this section, is amended by inserting "and chapter 107 of this title" immediately before the period at the end of the first sentence.

(2) Section 10103(a) of title 49, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided in this subtitle, the".

(3) Section 10501(a)(2) of title 49, United States Code, is amended by inserting "such jurisdiction is not limited by subsection (b) of this section or the extent" immediately after "to the extent".

(4) Section 10501(b)(1) of title 49, United States Code, is amended by inserting "other than transportation which is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title" immediately after "(other than the District of Columbia)".

(5) Section 10501(c) of title 49, United States Code, is amended by striking out "transportation by carriers" and inserting in lieu thereof "transportation (other than transportation which is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title) by carriers".

(6) Section 10501 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) The jurisdiction of the Commission and of State authorities (to the extent such authorities are authorized to administer the standards and procedures of this title pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this title with respect to the rates, classifications, rules, and practices of such carriers, is exclusive.".

CUSTOMER SOLICITATION EXPENSES

SEC. 316. (a) Subchapter III of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10751. Customer solicitation expenses

"(a) Any business solicitation or entertainment expense incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not constitute a violation of section 10741 or 10761 of this title if such expense would not be unlawful if incurred by a person or corporation not subject to the jurisdiction of the Commission.

"(b) Any business entertainment expense authorized under this section that is paid or incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not be taken into account in determining the cost of service or the rate base for purposes of this title.

"(c) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Commission shall institute a rulemaking proceeding pursuant to which it shall issue rules establishing appropriate standards and guidelines for authorized business solicitation and entertainment expenses under this section. Such standards and guidelines shall be consistent with standards and guidelines applicable under existing law to persons not subject to this title, including competing unregulated surface transportation carriers.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10750 the following new item:

"10751. Customer solicitation expenses.".

(c) Section 10761 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) This section shall not apply to expenses authorized under section 10751 of this title.".

EFFICIENT MARKETING

SEC. 317. (a) Section 10762(c)(3) of title 49, United States Code, is amended by striking out the second sentence and inserting in lieu thereof the following: "In the case of a carrier other than a rail carrier, a proposed rate change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier, a proposed rate change resulting in an increased rate or a new rate shall not become effective for 10 days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for 5 days after the notice is published, except that a contract authorized under section 10713 of this title shall become effective in accordance with the provisions of such section.".

(b) Section 10762(d)(1) of title 49, United States Code, is amended by striking out "30-day" and inserting in lieu thereof "notice".

Redesignate sections 302 through 309 as sections 318 through 325, respectively.

Page 138, strike out line 23 and all that follows through line 12 on page 139 and insert in lieu thereof the following: "shall have such meaning as the Commission shall by regulation prescribe.".

Page 139, strike out line 20 and all that follows through line 9 on page 140 and redesignate the following subsections accordingly.

Page 140, immediately before the semicolon on line 19, insert ", except that for purposes of general rate increases only, if the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

Page 141, strike out lines 3 through 12 and insert in lieu thereof the following: "part of a particular single route. This clause shall take effect on January 1, 1984, or on such earlier date as the Commission determines. If the Commission finds, at any time, that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

Page 141, immediately after "rates." on line 25, insert the following new sentence: "If the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

Page 146, strike out "to construct and operate a railroad" and insert in lieu thereof "both to construct and operate a new railroad".

Page 147, beginning on line 6, strike out "and joint service agreements".

Page 148, strike out line 1 and all that follows through line 12 on page 150 and insert in lieu thereof the following:

(b) Section 10706(a) of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(5)(A) Whenever two or more shippers enter into an agreement that relates to the amount of compensation such shippers propose to charge rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Commission for approval of that agreement under this paragraph. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101a of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the terms required by the Commission, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement.

"(B) If the Commission approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers are unable to agree upon the amount of compensation to be charged for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Commission. The Commission shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Commission.".

Page 152, line 7, strike out "or carriers involved".

Page 152, after line 13, insert the following new sections:

SAFE RAILROAD REINVESTMENT REQUIREMENTS

SEC. 326. (a) The Secretary of Transportation shall, on the basis of inspections of the track, physical facilities, and operations of a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, notify the Commission that such carrier (1) does not meet the safety requirements of applicable Federal statutes, and (2) is not maintained and operated in a manner which protects the public health and safety and the health and safety of railroad employees. The Secretary may include in his notification to the Commission that, for purposes of reviewing rate increases over which the Commission has jurisdiction, a rail carrier has excessively deferred its maintenance without good cause. For the purposes of this subsection, inspection of track shall be conducted at least once each year.

(b)(1) Upon receipt of the Secretary's notification under subsection (b) of this section with respect to a rail carrier, the Interstate Commerce Commission may, to the extent of its authority under chapter 113 of title 49, United States Code, review the financial arrangements of such carrier and prohibit any financial transactions which would unreasonably impair the ability of such carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

(2) The Commission may exercise its authority under this subsection with respect to a rail carrier until such time as the Commission determines that the safety deficiencies of such carrier which were the basis of the Secretary's notification have been remedied. In exercising such authority, the Commission shall take all steps necessary to avoid impairing the ability of such carrier to obtain financing.

(c) The Interstate Commerce Commission shall submit an annual report to the Congress setting forth its findings with respect to whether rail carriers that are subsidiaries of other companies are involved in financial transactions with the parent company which (1) result in the transfer of funds or assets, directly or indirectly, from the rail carrier to its parent company, and (2) impair the ability of the rail carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 327. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.), shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out "and the Milwaukee Railroad Restructuring Act" and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the

Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(d)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(h)(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and cancelled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1) (A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

LOAN GUARANTEES

SEC. 328. (a) To promote competition in the transportation of coal, the Secretary of Transportation shall, no later than 45 days after the date of enactment of this Act, take final action of any application for loan guarantees, under section 511 of the Railroad Revitalizaiton and Regulatory Reform Act of 1976, to be used in connection with joint ownership, construction, or rehabilitation of any facilities (including support facilities) for a second rail carrier to serve the Powder River Coal Region in Montana and Wyoming.

(b) The Secretary of Transportation may waive the provisions of section 511(g) of the Railroad Revitalization and Regulatory Reform Act of 1976 in making the loan guarantees described in subsection (a) of this section.

(c) The provisions of section 4(f) of the Department of Transportation Act shall not apply to any loan guarantee described in subsection (a) of this section.

AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 329. The second sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by inserting "is not required to make the findings with respect to subsections (e)(3) and (f) and" immediately after "the Association" the first place it appears.

SAVINGS PROVISIONS

SEC. 330. (a) Any rate that is in effect on the effective date of this Act for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, may, during the 180 day period beginning on such effective date, be challenged in a complaint filed with the Interstate Commerce Commission by any interested party alleging that the rail carrier has market dominance over the transportation to which the rate applies, as determined under section 10709 of such title, and that the rate is not reasonable under section 10701a of such title.

(b) Any rate described in subsection (a) of this section—

(1) which is not challenged in a complaint filed within the 180-day period provided in such subsection; or

(2) which is challenged in such a complaint, but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable,

shall be deemed to be lawful and may not thereafter be challenged in the Commission or in any court.

(c) The provisions of this section shall not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date of this Act did not exceed 500 net tons and has increased tenfold in the 3-year period immediately preceding the bringing of a challenge to the increase of such rate.

RELATIONSHIP TO TITLE II

SEC. 331. In any case in which any provision of or amendment made by title II of this Act conflicts with any provision of or amendment made by this title, the provision of or amendment made by this title shall control.

RAIL TECHNOLOGY AND SHIPPER NEEDS BOARD; OTHER SHIPPER ASSISTANCE

SEC. 332. (a)(1) There is hereby established a Rail Technology and Shipper Needs Board (hereinafter in this section referred to as the "Board"), which shall be composed of the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Labor, and the Chairman of the Interstate Commerce Commission. The Secretary of Transportation shall serve as Chairman of the Board and shall have the responsibility for expediting the proceedings of the Board.

(2)(A) The Board shall select personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees, task forces, and advisory panels. Such individuals shall be selected on the basis of their proven expertise in transportation related fields.

(B) Individuals selected under this section may be compensated for their services at the discretion of the Board, but in no event shall any such individual receive compensation in excess of 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of title 5, for each day (including travel time) in which he is engaged in the actual performance of duties vested in the Board.

(b)(1) The Board may conduct studies of technological means to improve rail productivity and of the continuing transportation needs of urban and rural rail shippers, and shall submit reports to the Congress, in accordance with paragraph (2) of this subsection, on the results of such studies. Such reports shall include—

(A) an assessment of current rail technology limitations, with recommendations for rail technological innovations and improvements designed to—

(i) reduce rail operating and future investment costs;

(ii) reduce consumer prices, including food prices;

(iii) reduce energy consumption;

(iv) promote inter-modal and intra-modal coordination;

(v) provide financially self-sustaining and continuing rail service to light traffic density agricultural areas; and

(vi) enhance the competitive position of United States exports (including agricultural products) in world markets;

(B) estimates of future labor and capital investment requirements to rehabilitate the essential rail system of the United States;

(C) a recommendation with respect to the need to develop and disseminate, on a continuing basis, information, and analysis on projected transportation needs of urban and rural shippers for the purpose of improving private and public investment decision-making;

(D) an analysis of the affect of the provisions of this Act on urban and rural shippers, including so-called "captive" shippers;

(E) recommendations with respect to improving economic, regulatory, and legislative conditions to enhance the acquisition and financially self-sustaining operation of rail feeder lines by cooperative organizations; and

(F) an analysis of potential and existing urban and rural Federal rail programs which need to be coordinated in order to insure the maximum utilization of Federal funds.

(2) The Board shall submit an interim report to the Congress under this subsection no later than January 1, 1982, and shall submit a final report to the Congress no later than January 1, 1984.

(c)(1) The Board shall cooperate with existing Federal departments and agencies to assure that sufficient resources and facilities exist to assist agriculture shippers in forming cooperative shipper associations and in taking advantage of expanded opportunities for contracting.

(2) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

(d) The Board shall cease to exist 5 years after the effective date of this Act.

(e) In evaluating restructuring plans submitted under section 518(h) of the Railroad Revitalization and Regulatory Reform Act of 1976, the Secretary of Transportation shall consult with the Secretary of Agriculture with respect to any aspect of such a plan that impacts upon the provision of transportation services to agricultural and rural areas.

(f) The Secretary of Agriculture, in cooperation with the Secretary of Transportation, may establish regional agricultural transportation representatives to assist shippers in securing railroad or alternative transportation services on the most favorable possible terms.

(g)(1) The Secretary of Transportation and the Secretary of the Treasury shall jointly submit to the Congress, within 9 months of the effective date of this Act, a comprehensive report on the anticipated effect (including the loss of revenue to the Federal Treasury) of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines. Such report shall also include such criteria as may be necessary to prevent the abuse of such special tax status.

(2) For purposes of this section, railroad feeder line rehabilitation includes the acquisition, construction, reconstruction, or erection of any feeder line roadbed, track, trestle, depot, switching, and signalling equipment, or any other rail equipment (other than rolling stock).

(h) There are authorized to be appropriated for purposes of carrying out the provisions of this section not to exceed $2,000,000.

Page 98, strike out the item in the table of contents relating to section 301 and insert in lieu thereof the following new items:

Sec. 301. Compensatory joint rate relief.
Sec. 302. Expedited division of revenues proceedings.
Sec. 303. Regulation of railroad rates.
Sec. 304. Determination of market dominance.
Sec. 305. Zone of rate flexibility.
Sec. 306. Rate regulation proceedings and study.
Sec. 307. Inflation-based rate increases.
Sec. 308. Investigation and suspension of rates.
Sec. 309. Contracts.
Sec. 310. Demand sensitive rates.
Sec. 311. Phaseout of capital incentive rates.
Sec. 312. Permissive limited liability rates.
Sec. 313. Rate discrimination.
Sec. 314. Exemption.
Sec. 315. Intrastate rates.
Sec. 316. Customer solicitation expenses.
Sec. 317. Efficient marketing.

Redesignate the following items in the table of contents for title III accordingly.

Page 98, at the end of the items relating to title III in the table of contents, insert the following new item:

Sec. 326. Safe railroad reinvestment requirements.
Sec. 327. Rock Island and Milwaukee Railroad amendments.
Sec. 328. Loan guarantees.
Sec. 329. Amendment to the Regional Rail Reorganization Act of 1973.
Sec. 330. Savings provisions.
Sec. 331. Relationship to title II.
Sec. 332. Rail Technology and Shipper Needs Board; other shipper assistance.

By Mr. KOSTMAYER:

(1) On page 16, after line 4, insert a new section 105(b) to read as follows:

"(b) PARTICIPATION IN REPOSITORY LICENSING DECISIONS.—Upon the submission to the President of the recommendation of a site for a repository for the disposal of high-level waste, the State Review Board of the State in which the site is located may, by majority vote of the membership of the Board, submit a petition to the Congress requesting that the Congress disapprove the site designation. A State Review Board may submit such a petition to the Congress not later than the 30th day after the date that the President approves the site recommendation under section 107(b) and submits the recommendation and report of the Secretary of Energy to the Congress. A petition shall be considered to be submitted to the Congress on the date of the transmittal of the petition to the Speaker of the House and the President pro tempore of the Senate. The petition shall be accompanied by a statement of reasons explaining why the petition should be granted."

(2) On page 24, after line 6, insert a new section 107(b)(3) to read as follows:

"(3) The designation of site for a repository for high-level waste shall be effective upon approval of the President under paragraph (1) unless a State Board has submitted to the Congress a petition for disapproval under section 105(b) or the governing body of an Indian tribe has submitted such a petition under section 106. If any such petition has been submitted, the approval of the designation shall not be effective except as provided under subsection (c)."

(3) On page 24, line 18, after the comma, insert the phrase, "and either a State Board submits to the Congress a petition for disapproval under section 105(b) or the governing body of an Indian tribe submits to the Congress such a petition under section 106."

(4) On page 24, line 23, after the phrase "high-level waste shall," insert the word "not".

(5) On page 25, line 4, strike the word "disapproves" and insert the word "approves".

EXTENSIONS OF REMARKS

GOOD NEWS FOR AMERICA AND HER VETERANS: WESTERN NEW YORK'S MICHAEL KOGUTEK'S ELECTION AS THE AMERICAN LEGION'S NATIONAL COMMANDER

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. KEMP. Mr. Speaker, the election of Michael J. Kogutek as national commander of the American Legion by his fellow Legionnaires at the recent convention in Boston is gratifying to me, an honor for western New York, and most fitting for Mike, a native of Lackawanna, N.Y., and an outstanding leader of our community.

Following his election by acclamation, Mike did not waste any time. As expected by those of us who know him, he came out fighting for American veterans. Last week he already was on Capitol Hill, presenting our distinguished colleague, RAY ROBERTS, the chairman of the Veterans' Affairs Committee, with telegrams protesting the President's veto of the bill we passed to increase salaries for doctors and dentists in our veterans' hospitals.

And before that—in his acceptance speech at the convention—Mike Kogutek spoke out forcefully for modernizing the pay structure for the men and women of our Armed Forces, an effort I fully support and urge all my colleagues to rally behind.

We are fully aware that many of our military personnel must take moonlight jobs in order to compensate for the inroads of inflation upon their paychecks. Like Mike Kogutek, I believe that Americans who stand ready to defend our country make enough sacrifices without being called upon to make an additional monetary sacrifice.

Just as important, Mike stands in the front ranks of us who believe we must provide our Armed Forces with the kinds and numbers of weapons, both conventional and strategic, and logistical support that will redress the growing imbalance of power between the Soviet Union and its surrogates on the one hand and the United States and our allies on the other.

In his acceptance speech, Mike reiterated the American Legion's continuing opposition to ratification of the SALT II agreement until, as he said, that pact is amended "to remove the military disadvantages to the United States."

"In the area of national security," Mike declared, "we continue to advocate and support a position of peace through strength, the only language our potential adversaries understand."

A veteran who served with the U.S. Navy in the South Pacific during World War II, Mike Kogutek is squarely on target in our continuing struggle to strengthen our Nation's defense and foreign policy and enhance our goal for peace, through strength.

Mr. Speaker, I wish to share with the Members of this body, some of the credentials of Mike Kogutek for the leadership of that most worthy institution, the American Legion.

At age 54, he has devoted 34 years to the Legion, veterans, and the worthy causes indentified with both. Mike is a charter and lifetime member of Lackawanna's Matthew Glab Post No. 1477. He has steadily climbed the ranks of responsibility at all levels with the Legion.

During the years 1961 and 1962, Mike was commander of post 1477 following service in a variety of post positions. He was adjutant of Erie County, N.Y., before becoming county commander in 1964 and was elected as commander of the eighth district of the Legion for the years 1966 and 1967.

Mike Kogutek was commander of the department of New York during the American Legion's golden anniversary in 1968–69. At the State level, he served as chairman of special activities, resolutions, membership, convention arrangements, and as a member of the National Executive Committee.

He is a past alternate national executive committeeman and currently is a member of the National Finance Commission and the board of directors of the National American Legion Child Welfare Foundation. His previous national appointments include the National Economic Commission, National Veterans' Preference Committee, and the National Economic Subcommittee for which he served as liaison with the Small Business Administration of the Federal Government.

Mike was born in Lackawanna, N.Y., September 30, 1925, and was educated in Lackawanna's public and parochial schools. He studied industrial and labor relations at Cornell University and holds an associate degree in science from Empire State College. He is plant manager for Buffalo Brake Beam Co. and a former police commissioner and commissioner of public works for the city of Lackawanna.

He is past president of both the Lackawanna Chamber of Commerce and the Central Railway Club of Buffalo, and holds membership in the Professional and Businessmen's Association, the Associated Industry Association of New York, the Knights of Columbus, and the Buffalo Chamber of Commerce.

In 1977, Mike was the recipient of the Citizen-of-the-Year Award, presented by the highly esteemed voice of Polonia in western New York, the weekly newspaper The AM-POL Eagle. This recognition was most deserved by Mike who had, as the Buffalo Evening News observed, "acquired a reputation as an aggressive spokesman of Legion platforms" and who, during his tenure as New York State commander, brought Legion membership to a record high.

Mr. Speaker, Mike Kogutek has announced he will take a 1-year leave of absence from his position at the Buffalo Brake Beam Co. to devote full time to his new responsibilities as national commander. These will involve his lobbying from the Legion headquarters here in Washington and Indianapolis and extensive traveling across our Nation in behalf of millions of his fellow veterans.

As a member of the Defense Appropriations Subcommittee, I welcome the opportunity to work with him to achieve our common goals. And I congratulate him and wish him, his wife, Dorothy, and his son, Michael, and daughter, Sharon, my very best.

At this point, I wish to add to my remarks an editorial which appeared in the August 28 edition of the AM-POL Eagle:

CONGRATULATIONS DUE KOGUTEK

Thirty-four years of dedicated service resulted in the ultimate achievement last week as Michael Kogutek of Lackawanna was elected National Commander of the American Legion during the organization's annual convention in Boston. Mr. Kogutek, a member of Lackawanna's Matthew Glab Post, becomes the first Western New Yorker and the first Polish American to head the 2.6 million member organization.

The election of Mr. Kogutek is an event in which all Western New Yorkers and all Polish Americans can take pride. The American Legion is one of our nation's most respected and influential organizations and to have one of our leading citizens heading the body is indeed a significant achievement.

Mr. Kogutek's attainment of the pinnacle of success in the American Legion did not come about by chance. Instead, it is a reflection of more than three decades of dedication to the ideals of not only the organization, but our nation as well.

We are most proud to have been among the first to recognize Mr. Kogutek's outstanding abilities and accomplishments back in 1977 when we honored him as an Am-Pol Eagle Citizen of the Year. We wrote at that time that he was a "dedicated" and "outstanding" leader whom we predicted would be a powerful force in the destiny of the American Legion in the years ahead. Our prediction was fulfilled last week in Boston.

We offer our sincere congratulations to Mr. Kogutek, his family and his fellow legionnaires. We wish him well during his tenure in office, confident in our knowledge that he will lead with distinction, dedication and a sense of purpose.●

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

RAIL ACT OF 1980

HON. GARY A. LEE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. LEE. Mr. Speaker, today I offer for entry into the RECORD a letter which I received from Transportation Secretary Neil Goldschmidt, which outlines the Secretary's enthusiastic endorsement of H.R. 7235, HARLEY O. STAGGERS' Rail Act of 1980.

This legislation is due for consideration by this House within a matter of days. Because of this, I feel it is important to share Secretary Goldschmidt's views of this important bill with my colleagues prior to any vote.

Following is the text of that letter, received in my office September 3, 1980:

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 3, 1980.

Hon. GARY A. LEE,
House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. LEE: On behalf of the Administration, I am most pleased to support, and urge the enactment of H.R. 7235, the Harley O. Staggers Rail Act of 1980, as it will be modified by the Staggers-Rahall-Lee compromise. The bill, as amended, will be an extremely important step forward toward meeting the twin goals of reducing unnecessary regulation and improving the financial health of the railroad industry, an essential element of the nation's economy.

As you are undoubtedly aware, the railroad industry has been plagued in recent years by extremely low rates of return on investment. The result has been decreased maintenance, poor service, more accidents and higher rates. Although it is clear that overregulation is not the sole cause of this problem, it is a significant part of it. And H.R. 7235, with the Staggers-Rahall-Lee compromise, is a vital part of the solution.

We recognize that many shippers, as well as some of the smaller railroads, were concerned that as reported by the Interstate and Foreign Commerce Committee, the bill would not have adequately protected their interests. It is clear that in a transition to a more flexible rate and service system for railroads, there is a potential for some individual difficulties. The original bill attempted to balance the competing interests. The Staggers-Rahall-Lee compromise builds on this, and should, in our opinion, provide adequate reassurance to shippers that the burden of the transition will not fall unfairly upon them.

In particular, in lieu of the initial threshold for Interstate Commerce Commission (ICC) review of rail rates provided by the bill as reported (estimated to be 200 percent of variable cost), the Staggers-Rahall-Lee compromise would set the threshold level at 160 percent for the first year after enactment, increasing gradually to a maximum of 180 percent after five years. In addition, a major source of concern to shippers, the "reasonable transportation alternative test" (proposed section 10709(c)(2)(A)(ii)), has been eliminated, and the Staggers-Rahall-Lee compromise would maintain existing law on market dominance. This agreement recognizes the need for further study and analysis by the ICC of the difficult concepts of product, market and geographic competition.

The compromise also explicitly responds to the particular concerns of agricultural shippers and ports. The compromise language will make clear that the new rate and service flexibility (particularly surcharges) will not abrogate or in any way adversely affect existing law as it relates to inter- and intra-port relationships. In addition, the compromise strikes existing law permitting the establishment of demand-sensitive rates, and will, for agricultural shippers and ports, allow a proposed contract to be challenged on the grounds that it unfairly discriminates against other similarly situated shippers. These changes, together with the elimination of the reasonable transportation alternative test, respond to the major concerns voiced by agricultural shippers.

The surcharge section, section 301 of H.R. 7235, would be amended in several important respects to respond to the concerns of small railroads, ports, and small shippers. In essence, the revised provision would limit surcharges to the level needed to cover the direct operating costs of a movement. Thus, shippers will no longer have to suffer poor service from a railroad that loses money on every shipment, and short line railroads will be assured that larger carriers will not be able to use unreasonably high surcharges to divert traffic away from smaller carriers. In addition, the total joint rate that results from a surcharge would be subject to review by the ICC under the maximum rate provisions discussed above. I wish to emphasize that the surcharge provision under the compromise does no more than guarantee a railroad that it will no longer be forced to carry goods at less than its out-of-pocket costs. This proposition is essential to a strong and sound railroad system and I urge you to vote against any attempt to weaken it.

In summary, our economy needs a financially healthy and productive railroad system in private hands. In an age of diminishing energy resources, the energy-efficient railroads are essential. H.R. 7235, as modified by the Staggers-Rahall-Lee compromise, will move us closer to a healthy railroad industry, with manifest benefits for shippers, employees, and consumers. The Administration strongly supports the bill. I urge all Members to vote for the Staggers-Rahall-Lee compromise, and for H.R. 7235 with no further amendments.

Sincerely,

NEIL GOLDSCHMIDT. ●

MAYOR OF FLINT, MICH., TESTIFIES AT AUTO TASK FORCE HEARING

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. KILDEE. Mr. Speaker, in an effort to determine the specific impact of the current unemployment crisis in the American automotive industry on the communities in which plants are located, the Congressional Auto Task Force held a hearing in Detroit on September 2. Mayors and Governors were invited to testify, and their testimony provided disturbing insights into the economic crisis that their communities and States have been thrown into because of the drastic downturn in the auto industry. I wish to draw to the attention of my colleagues the excellent testimony presented by Hon. James W. Rutherford, mayor of the city of Flint, Mich. As one of the members of the auto task force who attended the hearing, I was struck by Mayor Rutherford's assertion that the national recession has reached depression conditions in Flint, my home town and the center of my district. I must agree that conditions there are as bad as I have ever seen them in my adult life. Following is Mayor Rutherford's testimony, with some of his recommendations for what the Congress can do to help the affected cities:

Good afternoon, my name is James W. Rutherford and I am the elected Mayor of the City of Flint. I am in my second term as Mayor of an industrial city of 165,000 population and an area population of about 500,000. The City of Flint is the birthplace of General Motors and contains the following General Motors Plants: Buick Motor Division, Chevrolet Manufacturing Plant, AC Spark Plug Plant, Chevrolet Truck Plant, Chevrolet Engine Plant, Chevrolet Metal Fabricating Plant, and Fisher Body.

The City of Flint plants are augmented by three area General Motors facilities: two Fisher Body Plants and General Motors Parts Division Headquarters. These General Motors plants have over 78,000 employees when there is full employment.

I would like to state that Flint is undoubtedly one of the greatest auto industry towns in the world. When things are going good—as they were as late as January of 1979—the workers were enjoying overtime and building autos and trucks galore—we enjoyed a prosperity. When things go bad as they did in 1958 and 1973–75, things got pretty dismal. This recession, however, has reached depression-dimensions. Our unemployed are estimated at 25.9% of the work force. The truth is, the figures are conservative. When the hard-core unemployed cannot get a job in prosperous times they, for the most part, give up going to employment offices and become non-statistics—for example, when Congress was discussing a "kicker" for Counter-cyclical funds, we were already entitled based on our unemployment rate.

You know Flint is a hard-working, typically American industrial town—a part of the heart of this great nation. We face the future with optimism and without fear. Even with over 20% of our municipal employees laid off and a reduction of our city budget from 58 million to 43 million dollars, we know we will survive. But, Congress can help cities like Flint and Pontiac and Saginaw and Muskegon to do more than survive. Prioritizing and implementing a recovery package should be our pledge.

I would like to reassure this committee I have no intention of crying the blues about cities our size which frequently are forgotten among the Detroit's and Philadelphia's. Nor, will you have to sit through our financial trouble story—for we are just one among the best of cities in these inflationary and yet recession-ridden times. Rather, I would like to try to offer a couple of suggestions to overcome the problems on a short-term and long-term basis.

First of all, when Congress reconvenes, they could, they should, they must, provide some flexibility in CETA regulations. The regulations must address the problems of industrial cities that are an endangered species without such help. There are a few regulations which, if waived, can provide instant help and re-employment of municipal employees currently and/or soon to be laid off.

(1) The eighteen month enrollment period should be waived until unemployment is 6 or 7 per cent in that community, not the

nation. The reason I emphasize nation as not being the standard is that we and others had 13.6% unemployment when the national average was set at 6%.

(2) Coinciding with that waiver should be new regulations—tied to a 6% local unemployment factor—as to the maximum wages which can be paid to municipal employees.

(3) The regulations should waive the regulation of mandatory lay-offs (the so-called maintenance of effort clause) if a general fund employee must be laid off for lack of non-CETA funds. Let the cities negotiate with the employee's union over this matter.

There are several ways Congress could give immediate impetus to reindustrialization of the northeast and mid-west communities. I stress "immediate" because that is what is needed to change the mood and despair brought about by the downturn of the recovery. Even with this action, it will take some time to turn the cities around.

1. Increase financing of UDAG to encourage industrial investment in the cities of the two regions.

2. Increase EDC bond limits drastically for industrial growth and/or rehabilitation for cities of the two regions.

3. Permit Industrial Revenue Bonds in massive amounts for the cities of the two regions.

4. Re-establishment of Local Public Works projects.

Let me quickly address those four issues. Industrial UDAG Projects. HUD's UDAG Program is basically sound, well-conceived and administered. The financing for industrial growth and/or reindustrialization can use this positive program.

The manufacturing, assembly plant component should be funded separate from the existing UDAG and not compete with the non-industrial UDAG projects. Congress can and should address this issue as a priority.

EDC bond limitations.—Congress should recognize the dire consequences of the economy of the northeast and midwest through special legislation to overcome the bleak outlook of the area. Self-help can be encouraged through the waiver of present dollar limits of E.D.C. bonds when sold for manufacturing plant rehabilitation or construction. Such a program could provide a tool to make the cities competitive and resourceful. The difference of the cost of interest on non-taxable bonds and taxable bonds could thus make the cities a first-thought location instead of an afterthought.

Industrial revenue bonds restrictions.—Congress should, even if the Office of the Budget objects, give hard-core cities exclusive rights to construct or rehabilitate structures for industrial growth within their communities through Industrial Revenue Bonds. Technically, this issue could be resolved through use of the Economic Develoment Commission Bonds if exclusivity was made possible.

Local public works.—I would like to state I support Local Public Works' projects. Then let me make a suggestion that we have one to fifteen or twenty million dollars for those cities hard hit to utilize in any fashion they see fit to provide a renaissance job-wise for their community. One city might choose to build a parking lot for an industrial park or another might put in a massive lighting system to attract a plant, another community might acquire land and sell it with a writedown to make it competitive. Perhaps, some will say this is a give-away—not so—it is an investment by the Federal Government which will pay off in income taxes very quickly. Nor is it a form of UDAG since it would not be one of competition between large and small cities. It would be an entitlement with few restrictions and require few staff additions. The entitlement would be for two years or three at the maximum.

Ladies and gentlemen, I know you will be in receipt of fiscal tales of woe—I have chosen to give you some solutions which should be instituted this Session while others are going to take longer to accomplish. I know your job is not an easy one and you desire the same results that the mayors and managers seek—a stronger nation which is the leader not the follower! Thank you for your interest and time and God Bless You.●

SHALLOW UNDERWATER MISSILE (SUM)

HON. THOMAS A. DASCHLE

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. DASCHLE. Mr. Speaker, I am introducing legislation to authorize funds for the research, development, testing, and evaluation of the shallow underwater missile submarine system which would be capable of launching existing intercontinental ballistic missiles (ICBM's) or the proposed MX missiles now nearing the production stage.

I believe it is very important not to let the SUM concept go by the boards. There are elements to such a system that are superior to the proposed horizontal multiple protective basing system—racetrack—of deploying nuclear weapons. These elements need to be explored and thoroughly analyzed in test conditions above and beyond the feasibility studies that have already been completed. This legislation will authorize the go-ahead for this next stage of development.

The shallow underwater missile concept would consist of small 450-600-ton submarines outfitted with ICBM or MX missiles encapsulated outside the hull of the submarine. Horizontal placement of the missiles outside the submarine would avoid potential problems with buoyancy and the need to make other technical refinements in designing the proper submarine. The submarine itself would be diesel powered and have a crew of 12. Prototypes of such a submarine have already been constructed in Germany. The light weight of the submarine—450 tons—as compared to 18,000 tons for the new nuclear-powered Trident class submarines means that massive support facilities and the construction of new ports will be unnecessary.

There are two major and several tertiary advantages the SUM concept has over the MX and its multiple protective basing system. One of the major advantages is cost. Total cost figures for the SUM system have been estimated to be in the $12 to $15 billion range. Conservative estimates of the MX racetrack network figure it will cost $30 to $35 billion. Thus, SUM is a far less expensive system to build than the MX racetrack. I think this is very important as these extra funds could then be utilized to beef up other areas of the military, such as additional surface ships for the navy, spare parts for F-15's, and incentives to encourage active duty personnel to reenlist.

Another significant advantage of this concept is the fact that deployment can occur much earlier than with the racetrack method. Estimates are that the SUM network could be established within 3 to 6 years from approval date while the MX racetrack system will take until the end of this decade to complete. This is extremely important as our most dangerous period of vulnerability to a preemptive Soviet strike will be at the same time that the MX system is under construction.

Another reason to further explore SUM is the fact that the Air Force is considering the possibility that an antiballistic missile (ABM) defense network may be necessary to protect the MX and its multiple protective basing system. I seriously question the propriety of pouring billions of dollars into multiple protective structures if it will soon become necessary to construct additional costly defense facilities to protect the MX. The SUM concept has no such disadvantage.

Furthermore, deployment of missiles under the SUM concept would create a quadrad of strategic capabilities. Such deployment would further complicate Soviet targeting of strategic targets and force them to increase spending for improved antisubmarine warfare (ASW) capabilities at the expense of other programs. The addition of a fourth strategic nuclear capability would also give the United States additional leverage when dealing with the Soviets in strategic arms limitation discussions. This leverage could be utilized to further restrict the Backfire bomber if so desired.

Claims that submarine-launched missiles from the SUM system would largely be inaccurate have been discounted by Dr. Richard Garwin, former consultant to the White House and the Arms Control and Disarmament Agency, director of applied research at the IBM Corp. and now a professor of public policy at Harvard University. Garwin and Dr. Sidney Drell, of the Stanford Research Institute have been leading advocates of the SUM system and insist that the navigation and traffic control system (NAVSTAR) and global positioning system (GPS) receiver-computers can be utilized to perfect missile accuracy and even assist in submarine navigation.

In conclusion, it is my deepest hope that neither the MX or SUM missiles will ever have to be utilized. Unfortunately, the balance of power in the world today necessitates that the United States be prepared for any eventuality, including nuclear war. It is thus up to the Congress and the President to grasp this responsibility and determine which weapon systems are most compatible with our national interest. An intelligent decision on this matter cannot be made unless such factors as cost, environmental impact, availability of scarce resources—especially water supplies, and the expediency with which such weapons can be developed and deployed are considered. I am convinced that the multiple protective structures designed to protect the MX are not compatible with the majority of these concerns. Simply stated, the SUM alternative is less expensive and can be deployed much earlier. These are two critical factors considering the increasing vulnerability of our land-based minuteman missiles and the need to control Federal spending, balance the budget, and prevent the misuse of taxpayer money on expensive boondoggles which will contribute little to productivity and the long-term viability of our economic and political system. Mr. Speaker, for these reasons, I have introduced this legislation today.●

MAYORS BRUNER OF WALKER, MICH., AND ISENGA OF WYOMING, MICH., TESTIFY BEFORE THE CONGRESSIONAL AUTO TASK FORCE

HON. HAROLD S. SAWYER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. SAWYER. Mr. Speaker, I recently asked two mayors who represent cities in my district to testify before the Congressional Auto Task Force meeting in Detroit, on September 2. As a member of the task force, I was extremely pleased that the Fifth District could be represented in this forum, to provide an assessment of how severely the difficulties of the auto industry have affected even our smaller communities and cities, as well as larger cities such as Grand Rapids and the State as a whole.

I include with my statement today copies of the testimonies presented by Mayor Bruner and Mayor Isenga, as examples of how critical and urgent it is that we recognize this impact and set about to address the problems.

Our hearing in Detroit was definitely a positive step in that direction. The comments and observations which were provided at this meeting will be valuable to our task force panel as we strive to assist in revitalizing the auto industry and restoring stability and growth to our smaller cities and communities, which have been impacted by these problems.

The testimonies follow:

My name is Harold Isenga. I am Mayor of the City of Wyoming, Michigan.

The City of Wyoming is a community of approximately 60,000 persons, located south of and contiguous to the City of Grand Rapids, which is in the western part of Michigan.

The City has a tax base of approximately 57 percent industry and business and 43 percent residential. General Motors has two plants in the City, known as Fisher Body and GM Diesel. Although there are several other large industrial plants in the City, there are numerous small manufacturing facilities, many of whom are geared to furnishing parts to the major auto producers. Most of the residents of Wyoming are primarily blue collar workers.

Unlike some of the larger cities in Michigan where unemployment is as high as 25 percent (Flint) and the average unemployment in Michigan of approximately 14 percent, the unemployment rate in our area is only approximately 10 percent.

According to the Grand Rapids Press, the help wanted advertising was off 47.5 percent in July, compared to July of 1979. Although the index is not predicting an early upturn in job availability, it should be noted that there has been no further deterioration in the last few months.

Even though the mortgages of less than $150,000.00 in size is still well below the level for this time in 1979, there seems to be an indication that there has been an improvement in home building within the area.

One of the hardest hit businesses in the area is that of new car and truck sales within Kent County. The State of Michigan, during the month of July, offered special incentives for the purchasing of vehicles and, during that time, sales increased.

However, sales plummeted during the first week of August after the ending of those incentives. The average weekly sales in Kent County for new cars for 1979 was 493 and for new trucks 156. However, the average weekly sale of new cars for 1980 has been 390, or a 21 percent reduction, and for new trucks has been 67 or a 43 percent decrease.

RETAIL SALES—PERCENT CHANGE FROM PREVIOUS YEAR

[In percent]

	General merchandisers		Department and soft goods stores		Hard goods and household furnishings	
	July	7 Mos	July	7 Mos	July	7 Mos
Average percent sales change	+4.7	−0.3	+5.3	+1.7	−14.2	−5.4
Median percent sales change	+1.2	−1.8	+0.4	−1.3	−11.1	−7.1
Average of top quartile	+17.9	+11.2	+19.2	+11.7	+36.5	+12.7
Average of bottom quartile	−7.0	−10.5	−2.6	−7.4	−28.7	−23.7

As stated before, many of the local industrial plants furnished parts to the major automobile manufacturers, which parts consist of bumpers, ash trays, door handles, etc. Although I do not have the exact figures it is estimated that these businesses have suffered a 20 to 30 per cent reduction in their orders for 1980 as compared to the prior year. For example, Reynolds Metals Company, which has a plant in Wyoming, has a sizable overall business geared to the processing of bumpers and the balance of its business to the extrusion of metals. Although the extrusion of metals area has not been affected during the past two years, the bumper fabrication has suffered so that the total output is down by approximately 20 per cent, with the reduction in the corresponding work force of about 5 per cent.

I, like many other leaders of small cities throughout the United States, am quite concerned with several aspects of the automobile industry.

First, I am quite concerned by the unbridled freedom that Japan and other countries have in flooding the United States with automobiles. This has resulted in reduced output by the American manufacturers, layoffs resulting from the reduced output and further resulting in unemployment especially in cities which depend heavily on automobile manufacturing. Action must be taken to reduce the number of imports of automobiles from Japan and other countries.

Secondly, I believe that the government should help industry to retool its plants so that they are as modern and efficient as any foreign car manufacturer. I do not advocate direct government subsidy but I believe tax incentives to industries would help them compete with the foreign car manufacturers.

Thirdly, the Federal Government should refrain from enacting any further regulations or restrictions on the automobile industry at this time and should seriously consider putting a moratorium on certain of the existing regulations. These actions would assist the automobile industry in competing with the foreign manufacturers and would also ease the financial burdens they are facing.

Lastly, foreign car manufacturers should be required to build into their cars the same safety and crashworthiness features that the American manufacturers already have as indicated by the most recent Traffic Institute tests.

Even though, as I have stated in the beginning, the City of Wyoming has not been adversely affected as other communities within our nation have, many of our small businesses have suffered and some have even folded their doors because of lack of orders from the major automobile manufacturers. If some of the larger cities continue to have unemployment because of low car production, this can only adversely affect other cities.

I encourage you in Congress to take whatever reasonable steps are necessary, not only to correct this situation, but to see a growth once again in one of the largest industries in the nation, namely, automobile manufacturers, and that such action should be taken immediately.

OPENING STATEMENT BY ROBERT L. BRUNER, MAYOR, CITY OF WALKER

I would like to thank this committee for the opportunity to be a witness regarding this very grave problem dealing with automotive sales and manufacturing slowdown that confronts not only our cities, but our states and nation.

Upon gathering this information many of the businesses contacted expressed appreciation that these hearings were being held and hold out hope that something will be accomplished to turn the situation around.

IMPACT ON LOCAL BUSINESS—AUTOMOBILE RELATED

North American Industries—This firm makes parts for the auto industry. Mr. Smith, one of the owners, reports that their employment has dropped from 125 employees to 55 employees. Also, they are now only working four days per week. Mr. Smith estimates their business is down 50-60% of what it was.

General Motors Trim Plant—This is the second highest tax payer in the City of Walker. Bill Malone, Personnel Director,

states that a year ago, hourly and salaried people totaled 2100. As of this date, the total is 1600 people. Over the past four months, they have been calling a few people back but this figure is minimal. There is very little overtime—maybe, an hour or so per week. Production on trim for the new "J" model car will not start until late in the fall as this car will not be in production until next March at the Lordstown plant.

Grand Rapids Spring and Wire Products—Larry Berkins—70 percent of their business is automobile-related. Loss of production is 25 percent. Ten persons have been laid off due to this loss. Addition to the building was built in 1979, however, due to the above factors, has not been used as yet.

Northwest Tool and Die Co.—Richard Alfen—95 percent of their business is automobile-related. Estimate a 5 to 10 percent loss. No employees have been laid off as yet, however, they are all working reduced hours. As to plant expansion, there is none planned.

Link Manufacturing Co.—Dennis Link—60 percent of their production is automobile-related. There have been no layoffs, as yet, however, it is estimated their production is down 35 percent. They are trying to secure new contracts in other than automobile-related fields so they will not have to cut hours for remaining employees. No planned expansion as of this time.

Walker Tool and Die, Inc.—Mr. Hendricks—70 percent of their production is automobile-related and their loss of production is between 20 and 25 percent. While there have been no layoffs as yet, average employee has been cut back 8 hours per week. They do not plan any expansion in equipment and/or building until 1982. Then, only if feasible.

Jack Keller Ford—Employment is down from 101 employees to 56 employees. Inventory is down 40 percent. At the present time they are carrying only 60 percent of prior inventory. Jim Hoeksema, Sales Manager, stated that most dealers are in the same situation and all attribute the decline in auto sales and employment, to the unemployment in the automotive field.

C. Bell Chevrolet—Chuck Gladstone, General Manager, states that they have dropped from 98 employees to 60 employees. All employees, including management, have taken a 10 percent cut in pay. Their inventory in January was about two million. It is now one-half, or one million. They have also closed their truck sales department and moved it into another building with new car sales and now have a Truck Sales Manager instead of a Manager, his Assistant, and sales personnel. They no longer have a full-time car leasing person. This person does many jobs now because business is down so much. They feel this impact is also from the automotive industry shutdown and slowdown.

IMPACT ON EFFICIENCY OF CITY OPERATIONS

For one thing, the several businesses that have slowdowns and layoffs immediately affects the City because it affects the buying power of these people who, in turn, buy less which, in turn, hastens many of the foreclosures and bankruptcy filings that we have had within the City the past eighteen months. This, in turn, affects the revenue coming into the City for City operations in the way of personal property tax, sales tax, income tax, gas and weight tax, etc. One of the more outstanding facts regarding this within the City Hall is the decrease in building permits which is down between 30 and 40 percent. This is caused by a couple factors. Admittedly, one is the high interest factor. The second is loss of income caused in great part by the problems that the automotive industry faces today. When building permits are down, revenue that the City anticipates from new property taxes and improved property taxes is not forthcoming which immediately affects the City by curtailing further extension of needed public services which are very important to insure the public health, safety and welfare of the community. One of these much needed services is the increase in law enforcement. The needed revenue to further increase this service is not forthcoming nor does it seem likely in the near future that this will better itself and puts the City in a precarious position as to what will happen if the unemployment lines grow longer and the people start running out of monies to feed their families. For example, the following is a breakdown in the percentages of crime increases in the past year:

Larcenies, 15 percent.
Assaults, 18 percent.
Breaking and entering, 10 percent.
Narcotics, 10 percent.
Disorderlies, 11 percent.
Driving under influence, 69 percent.
Robberies, 300 percent.

I am fully aware that the total blame of all these problems cannot be placed on the automobile industry. However, in our locality, a great deal of importance and reliability is placed on the automotive industry and the very fact that it has been badly curtailed in the past eighteen months due to several factors, does directly affect the City's operation and the public safety, health, and welfare of its residents.

IMPACT ON SCHOOLS

An additional impact on the community is the effect of unemployment on the schools and educational system. The schools have applied twice to the community for additional millage for operation due to the inflationary spiral of costs, and have been soundly rejected both times by the community. A good deal of this rejection was due to the unemployment status of the community caused by the slowdown or shutdown of automotive companies and subsidiary manufacturing plants which do considerable automotive work. On the surface, the defeat of this school millage does not seem to have a terrific impact. However, as it is studied more closely, the end result could be very serious. For example, the school in losing the millage had to cut many programs. One of the first to be chopped off is all recreational and extracurricular activities for the school. School buildings will not be open for the many and varied activities as they have been in the past. This results in putting many young people out on to the streets to find other interests or activities to fill up the void left by the lack of sports and other athletic events, either as participants or spectators. This not only includes football, basketball, tennis, track, etc., but also, other extracurricular activities such as school dances, school plays, band and orchestra, and so on. Plus, there are many related things involved such as team managers, cheer leaders, pom-pom girls, and the bus drivers needed to transport students to various events in the area. These young people are vulnerable to any suggestions, good and bad, that can come down the pike. The main reason being that they are very unhappy for the loss of "fun" times which the schools do provide and with the least provocation could strike back at the community for what they feel they have lost. Even though, in reality, the impact was caused in great part by the closing or slowdown of the automotive industry.

The summation of these reports indicates that the continued drop of automotive sales and resultant decrease in manufacturing will cause more problems than we are already experiencing.

I feel there are a number of actions that could be taken to get this turned around, they are as follows:

1. Some kind of tax rebate, possibly income tax—Michigan's July sales tax seemed to be quite effective in increasing sales.

2. Lower interest rates on the financing of new cars.

3. Balancing import tariffs to make U.S. manufactured cars competitive with foreign cars in their own countries and in the United States.

4. Less governmental regulations of the automotive industry.●

THE NEED FOR CONGRESSIONAL ADVOCACY FOR CHILDREN'S RIGHTS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BIAGGI. Mr. Speaker, for the past number of years, the voice of Eleanor McGovern, wife of our colleague from the Senate GEORGE MCGOVERN, has been eloquently heard on the topic of children's rights in the United States.

Recently Mrs. McGovern wrote an article in the New York Daily News entitled "The Price Children Pay for a Jobless Home." The article presents some graphic statistics on what Mrs. McGovern refers to as the "saddest victims of unemployment, inflation, and poverty—our children." These figures include 10 million children living in poverty, nearly 6 million in dilapidated housing—350,000 children under 6 had both parents unemployed and 3.9 million had 1 parent unemployed.

Tragically, when a young person seeks employment—he finds barriers. Youth employment is at its highest levels in 5 years. Happily in this area, the House has responded with the enactment last week of the Youth Employment Act.

While Congress has responded to some of the problems facing children with enactment of such laws as the Child Abuse Prevention and Treatment Act—the fact remains we lack a coordinated national policy on children and youth. It should be placed high on the agenda of the next Congress.

I now insert the article for the consideration of my colleagues:

THE PRICE CHILDREN PAY FOR A JOBLESS HOME

When the "unemployment story" is pictured on television newscasts or in the newspapers, the people shown standing in lines are always adults. The jobless figures are usually given for men and women. But among the most numerous and certainly the saddest victims of unemployment, inflation and poverty are our children. The American economy, in fact, is perhaps the most serious problem of childhood today.

Some 10 million children live in poverty. According to the last census, nearly 6 million children under 18 years old live in dilapidated housing. By one count, 350,000 children under six had both parents unemployed, and 3.9 million had one parent unemployed and needing work. Last year, some 10 million children received no health care at all, and 5 million children received no dental care.

And while it's true that most of today's young children will grow up to be strong and capable, healthy and whole adults, for a substantial number the prospects for such a future are clouded. Nationally, three million arrests were made for juvenile crime last year; millions of children and adolescents suffer from drug and alcohol abuse; one million teenage girls become pregnant each year; a million youngsters run away from home; suicide has become the highest killer of teenagers after accidents. We know that the abuse and neglect of children have reached shocking proportions, that hundreds of thousands of children lead miserable lives in institutions, that millions are physically, mentally, or emotionally disabled, that half a million are in foster care, that well over a million under the age of 15 are not in school, that the national school dropout rate is 15 percent, and that upwards of 500,000 children age 16 and under, most of them from migrant families, are working in the fields because of loopholes in the child labor laws, while the real unemployment rate for urban black youths is believed to be over 50 percent.

What can be done for the children?

"Children's issues" have never been a dominant theme in any session of the Congress. Consideration of policies affecting children and families occupies a minute proportion of the total time of members and committees of the Congress. Yet Congress, by both its actions and its failures to act, often creates the policies which make a difference in the lives of millions of children. These policies determine whether children get a nutritious breakfast or lunch; whether they receive adequate health care or education; and whether they even have a permanent home.

For better or worse, decisions about national policies affecting children are made in the same way and by the same legislators as decisions on tax policy, the energy shortage or foreign policy. We must learn to use the policy-making process to convince our legislators that meeting children's needs should be given at least the same amount of attention and priority as these other issues.

We have for years held the view that children are somehow above the political process—that we should separate them from the political process. That's a mistake, because nobody in this country does very well who is outside that political process and not in there bargaining for his interest.

We must pull all groups in our communities together into a political and educational network so that every piece of legislation begins to be looked at in terms of its impact upon children. On specific critical issues we must stop competing and join forces. As the pie gets smaller and there are fewer pieces, we must join forces so that stronger, more organized groups can't finish that pie before we even get to the table.

The political process is slow. It would be foolish to believe that changes in rules or institutions can be accomplished overnight. But attitudes, bureaucracies, and laws do change under sufficient pressure.

The time is ripe for questions and action regarding children and families. 1979 was the International Year of the Child. The White House Conference on Families has just concluded. The White House Conference on Children and Youth is just beginning.

In the United States we consider that our children are the responsibility of their parents. They are the individual family's joy or sorrow. Their achievements are worn like medals, their defeats are to be endured. The fact is, while the family bears the most difficult burden, the entire community pays the cost of illness, failure and defeat in lost productivity, low talent and lost revenue. Similarly, the community reaps the benefit of the child's successes and triumphs. A successful child is one who will enrich the nation.

The time to begin is now. The place to begin is at home—home is the place closest to the problem and home is the place closest to each and every legislator's heart.●

GOSPEL MUSIC WEEK

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. RODINO. Mr. Speaker, I want to recognize the World Gospel Music Association which has its roots in my home city of Newark. Its founder and president, Prof. Albert J. Lewis, Jr. has worked hard to bring the joy of gospel music to the citizens of Newark, and in so doing has enriched the State of New Jersey and the Nation. Many famous entertainers such as Sarah Vaughn, Dionne Warwick, Dee Dee Warwick, Sissy Houston, and others started in the Newark area, and Professor Lewis is continuing the tradition through his World Gospel Music Association.

The association held a World Gospel Music Convention earlier this summer which was widely recognized by the media and those of us in Government. The Newark Municipal Council and Mayor Kenneth Gibson proclaimed June 14 through June 21, Gospel Music Week in the city. Newark's WNJR radio station declared Newark, the "Gospel Music Capital of the Garden State," and New Jersey Governor Brendan Byrne also signed a proclamation designating June 14 as Gospel Music Day in our State.

Mr. Speaker, I believe that the time has come for all Americans to celebrate the greatness of gospel music as an integral part of American culture.

I am proud of the leadership role played by my home city of Newark in the effort to bring gospel music to all Americans and I commend Professor Lewis on his diligence and determination in this task. I ask my colleagues to support his efforts.

Mr. Speaker, I include the Gospel Music Week proclamations by Mayor Gibson, Governor Byrne, and the Newark Municipal Council in the RECORD as follows:

PROCLAMATION

Whereas spirituals were the first original songs created by Protestant Negro slaves on American soil, they were excellent examples of a blending of African and European cultures and can be easily traced back to the 1700's. The slaves added their own rhythmic emphasis to any music taught to them, liturgical or any other kind; and

Whereas there were sometimes symbolic references to railways or rivers leading to freedom or to heaven; sometimes these references even gave directions to aid escape from slavery; and

Whereas music was a means of preserving the traditions, ambitions, and lore of the tribe, music performed a vital role in maintaining the unity of the social group. Singing the same songs in the same way at the same time bound the individuals together, and a strong group feeling was established; and

Whereas it was this background, nurtured by woe and human hardship in slavery, from which sprang the seeds of Gospel Music as we know it today; and

Whereas on June 14, 1980, the soul of the City of Newark will come alive with the sounds of Gospel Music when the Macedonia Church of Christ becomes the setting for the World Gospel Musical Convention.

Now, therefore, I, Kenneth A. Gibson, mayor of the City of Newark, New Jersey, do hereby proclaim the week of June 14-21, 1980 Gospel Music Week in the City of Newark, and I urge all citizens to go "Back to the Roots" of the music which spanned distance, time and adversities, thus enriching the total American Culture.

PROCLAMATION

Whereas, Gospel Music has long been a source of spiritual stimulation and expression and has inspired many persons to a better way of life; and

Whereas, Gospel Music is important to the proper conduct of many religious services and has brought much pleasure and comfort to many citizens, not only in New Jersey, but around the Nation; and

Whereas, the World Gospel Musical Association of Newark seeks to support and perpetuate the Gospel Music Arts through promotion of various programs emphasizing the historical, cultural and educational aspects of gospel music, recognized as the progenitor of blues, jazz, ballad, country and western music; and

Whereas, the 12th Annual World Gospel Musical Convention will be held at the Macedonia Church of Christ in Newark;

Now, therefore, I, Brendan Byrne, Governor of the State of New Jersey, do hereby proclaim June 14, 1980 as Gospel Music Day.

THE NEWARK MUNICIPAL COUNCIL HEREBY ISSUES THIS RESOLUTION

Whereas, the City of Newark has a history rich in the cultural accomplishments of its residents, past and present; and

Whereas, the racial and ethnic diversity of Newark's residents has always contributed in a positive manner to this long list of accomplishments; and

Whereas, one of the many contributions of the City's Black community has been the beauty and magnificence of Gospel Music which has left an indelible mark on the American music scene and which continues to greatly influence numerous other forms of modern music; and

Whereas, the City of Newark is home to a number of Gospel Music organizations whose programs are attempting to nurture and promote the study, performance and appreciation of Gospel Music; and

Whereas, in acknowledgement of Newark's importance as a center of Gospel Music and the many famous entertainers the Greater Newark area has produced such as Sarah Vaughn, Dionne Warwick, Dee Dee Warwick, Sissy Houston, etc., the World Gospel Musical Association under the auspices of its President, Professor Albert J. Lewis, Jr., is hosting a World Gospel Musi-

cal Convention on June 14, 1980, in Newark; and

Whereas, the Newark Municipal Council has determined that this event is important to the cultural life of the City and is deserving of the official recognition of the Governing Body: Now, therefore, be it

Resolved by the Municipal Council of the City of Newark, New Jersey that they do hereby declare the week of June 14–June 20, to be Gospel Music Week in Newark and recognize the City of Newark as the Gospel Music Capital of New Jersey; and be it further

Resolved, that a copy of this Resolution suitably inscribed be presented to the World Gospel Musical Association in recognition of this event.●

FEDERAL WORKERS DESERVE PAY COMPARABILITY

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. HARRIS. Mr. Speaker, I am pleased that President Carter has decided to scrap his earlier plan to limit Federal workers to a 6.2 percent pay adjustment this October. I felt this was totally unrealistic, and in a telegram on January 28, 1980, I urged President Carter to reconsider his proposal and support a more objective pay raise that was in line with the goals of the Pay Comparability Act.

Although the 9.1 percent pay increase the President has now proposed is less than the 13.5 percent needed to keep Federal wages fully comparable to salaries in business and industry, it is a step in the right direction.

Holding down Federal pay and benefits in the long run will cost the taxpayer more money as highly qualified Federal employees leave the Government for more lucrative jobs with private contractors who act as brokers to do the work which could be done more economically by the Government. This problem is forcing many talented Federal workers to leave the Government for higher paying jobs in the private sector.

The Pay Comparability Act of 1970 was enacted by Congress to keep Federal wages competitive with private industry so the Government could recruit and retain qualified personnel. This law has been substantially eroded over the past several years and salaries for Federal managers now lags 46 percent behind the salaries of their counterparts in private industry.

I can name hundreds of Federal installations across the country where engineers, technicians, and typists are leaving their Federal jobs to go to work for Government contractors. There is no cap on the amount of money that can be paid to a contractor and these employees are getting hundreds of dollars a day for work which could feasibly be performed by in-house employees.

As pay disparity forces many employees out of Federal service and ceilings force work out, the Government ends up indirectly hiring the same or comparable employees through contract at a much higher cost to the taxpayer.

I hope the President's decision to change his mind on this year's pay increase will be followed by a decision to drop the administration's proposal to make sweeping changes in the way Federal pay is computed and to eliminate one of the two semiannual cost-of-living adjustments (COLA) for Federal and military retirees. In addition, I hope President Carter will join me in opposing any merger of the social security and civil service retirement systems.●

STEPHEN L. HILL, SR.

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. SKELTON. Mr. Speaker, recently, an outstanding resident of my district passed away—Stephen L. Hill, Sr. He resided in Blue Springs, Mo. He was an administrative law judge for the Social Security Administration and previously was an assistant U.S. attorney for the western district of Missouri for 9 years.

He was graduated from the University of Missouri School of Law in 1962 and was a member of the American Bar Association, the Administrative Law Judge Association, the Greene County, Mo., Bar Association, Phi Delta Phi legal fraternity and the Trenton, Mo., United Methodist Church.

He was extremely well thought of and was highly respected by those who knew him. He leaves his wife, Mrs. Carolyn L. Hill, and two sons, Stephen L. Hill, Jr., and Sidney Hill. He was certainly a remarkable person and family man.●

SCIENTISTS AND ENGINEERS DEVISE SENSIBLE ENERGY CONTINGENCY PLAN

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. WYDLER. Mr. Speaker, recently, a 3-day colloquium on "Contingency Planning for an Energy Emergency" was held at Stanford University, jointly sponsored by the Scientists and Engineers for Secure Energy and the Hoover Institution. Scientists and Engineers for Secure Energy is primarily an association of scholars, educators, and research engineers working the fields of theoretical, and applied, natural sciences and, as such, does not take stands on economic matters. This group made a most responsible statement on contingency planning in the colloquium which dealt with sudden consequences of a sudden cutoff of oil from the Persian Gulf. I strongly recommend that my colleagues read this statement which includes a collection of the most sensible energy steps that this Nation can take in case of a serious shortfall. I should also note for my colleagues that many of these steps recommended are, in fact, the framework for a long-term national energy policy which would encourage domestic sources of supply.

The statement follows:

STATEMENT OF COLLOQUIUM

CONTINGENCY PLANNING FOR AN ENERGY EMERGENCY

A sense of urgency permeated a meeting of 60 of the nation's leading academicians and industrialists concerned with energy problems, convened June 16–18 at Stanford University. Entitled "Contingency Planning for an Energy Emergency," the colloquium dealt with the consequences of a sudden cut-off of oil from the Persian Gulf.

The prolonged interruption of oil supplies from the Gulf by any one of a number of scenarios (for example: revolution or Soviet expansionism) is a real possibility. There was nearly unanimous agreement that the economy of the United States and of its allies would be in jeopardy if this occurred, and that immediate programs to reduce this vulnerability should be instituted.

The colloquium was sponsored by Scientists and Engineers for Secure Energy and by the Hoover Institution. The participants considered how the energy requirements of the United States could be met if the contingency occurred. The physical limits of a national response covering a period of five years from the cut-off were investigated. Topics discussed included: emergency conservation measures; possible expansion of oil supplies from alternate sources; substitution, when possible, of gas, coal and electricity for oil; effects on electric power generation; rationing and other forms of allocation; economic effects and changes in life style; and advance preparations to reduce our vulnerability.

The colloquium findings are:

The initial situation faced by the industrial democracies after a complete cut-off (which is a limiting case of more probable partial cut-offs) would be a short-fall of about 45 percent of their oil supplies, or 16 million barrels/day. According to the existing oil-sharing agreements between the U.S. and the other members of the International Energy Agency, the short-fall would be distributed as follows:

U.S. oil supply would be reduced about 35 percent, by 6 million barrels/day,

Oil supply of our allies would be reduced about 55 percent, by 10 million barrels/day.

As a result, in the United States a Mideast cut-off would: Cause the transportation system to be greatly disrupted. Private automobile use would be reduced about 50 percent, and other vehicle transportation would be cut about 30 percent; cause massive additional unemployment of over 8 million workers, and reduce annual disposable income by over $3,000 per household; impair our ability to mobilize effectively to defend ourselves, and imperil the security of the free world; and lower the Gross National Product by $350–650 billion dollars per year (about 15 to 25 percent).

Further, depending on the timing of the cut-off and the region of the country, one could expect the closing off of some housing space, or abandonment of some types of housing which the users might not be able to heat; accelerated movement of people to a warmer climate; relocation of people closer to their places of work; and perhaps even dormitory housing for younger workers near industrial enterprises (as occurred, for example, at Oak Ridge during World War II); shopping habits would undergo dramatic changes, and recreational and cultural activities would be greatly curtailed.

In the five years subsequent to an oil cut-off, assuming only present technologies could be effective on a large-scale, replacement of the U.S. oil supply deficit by determined expansion of domestic and other foreign oil supplies, and by substitution of other fuels, would be substantial but still only partial (40–60 percent).

To avoid the vulnerability of our society to these consequences, participants recommended a number of measures. While further measures may be necessary or advisable, there was general agreement that the following should be adopted:

1. The security of the United States requires the implementation of an aggressive program to increase both energy production and the more efficient use of oil. The object of this program should be to reduce vulnerability to loss of imported oil as quickly as possible. Examples of opportunities for increased sources of energy supply are: coal, gas, nuclear power, biomass, and on a longer time scale, shale oil. As was proven during World War II, high level policy organization is an absolute prerequisite for organizing and implementing an effective program.

2. Rapid decontrol of oil and gas prices and abolition of entitlements are the most important ways of providing needed incentives to displace oil imports by inducing real conservation and increasing supply. Equity concerns, such as undue burdens on people with low incomes, should be dealt with by income transfers rather than by manipulating prices or by allocations.

3. Environmental laws should be administered and perhaps amended to encourage energy production as well as to protect the environment, thus reducing the danger that curtailments caused by an oil cut-off will harm the health and welfare of the American people.

4. Licensing for operation of completed nuclear plants should be expedited in order that the plants may be put in production immediately. Partially completed power plants (both coal and nuclear) should be completed on an accelerated schedule. Unnecessary regulatory impediments to other energy facilities (such as pipelines, port facilities, and drilling platforms) should be removed.

5. Oil for non-transportation uses should be replaced by natural gas and coal- and nuclear-generated electricity as soon as possible. Limitations on production and use of natural gas and electricity should be reduced to permit price competition to determine their relative market shares. Electric utility rates should more nearly reflect the marginal costs of new power plants.

6. The energy industries should with government encouragement jointly prepare emergency plans against an oil cut-off. Among other measures, acquiring spare production and storage capacity should be encouraged.

7. The automotive industries should be encouraged to increase their efforts to produce more fuel efficient automobiles, including electrical and hybrid vehicles.

8. Contingency plans should be made to curtail energy consumption, and to suspend temporarily some procedural requirements and environmental standards, in the event of an oil cut-off. Wide public discussion of these plans at the community and the factory levels should be inaugurated.

9. In addition to our present commercial operational oil reserve (about 30–40 days of total imports), we should begin to fill the Strategic Petroleum Reserve at a rate of more than 300,000 bbl/day. Note that at a rate of 100,000 bbl/day, it would take 20 years to accumulate an amount of oil which would cover the maximum projected deficit (6 million bbl/day) for four months. To the extent possible, the SPR fill should be achieved by reduction of current oil consumption according to the preceding recommendations.

10. Since the use of oil in Western Europe and Japan for generating electricity is about 3 million barrels per day, it is in our mutual interest to reduce their vulnerability by encouraging and assisting their conversion to nuclear energy and coal.

Implementing the foregoing recommendations would, as time passes, progressively reduce the severity of the initial shock of an oil cut-off and the duration of the recovery period.

The undersigned participants subscribe to the general sense of the above statement as individuals (affiliation for identification only):

SIGNATORIES AS OF JULY 24, 1980

Robert K. Adair, Yale University.
Donald G. Allen, New England Electric Co. (ret.).
Hans A. Bethe, Cornell University.
Elliot Bloom, Stanford Linear Accelerator Center.
Harvey Brooks, Harvard University.
Arthur M. Bueche, General Electric Company.
Toby Burnett, Westinghouse Electric Corporation.
Peter Camp, General Electric Company.
Roger S. Carlsmith, Oak Ridge National Laboratory.
Karl Cohen, Stanford University.
Thomas Connolly, Stanford University.
Gordon R. Corey, Commonwealth Edison Co. (ret.)
W. Kenneth Davis, Bechtel Power Corporation.
R. Leslie Dugan, SE,
Lloyd E. Elkins, Petroleum Consultants, Tulsa, OK.
Robert Erdmann, Science Applications, Inc.
Gary J. Feldman, Stanford Linear Accelerator Center.
John S. Foster, Jr., TRW, Inc.
Michehl R. Gent, National Electric Reliability Council.
Tsahi Gozani, Science Applications, Inc.
Elmer E. Hall, Pacific Gas & Electric Co.
Carl E. Hedeen, General Motors Corporation (ret.).
Carolyn Meinel Henson, L5 Society.
Frederick A. L. Holloway, Treasurer, National Academy of Engineering.
Richard J. Kessler, Center for Strategic and International Studies.
George Marotta, Hoover Institution.
Sullivan S. Marsden, Jr., Stanford University.
John McCarthy, Stanford University.
Robert R. Nathan, Consulting Economist, Washington, D.C.
Kenneth D. Nichols, U.S. Army (ret.).
W. E. Parkins, Rockwell International.
Norman Parlee, Stanford University.
S. S. Penner, University of California at San Diego.
Robert B. Richards, General Electric Company.
Larry E. Ruff, Brookhaven National Laboratory.
Andrew Safir, Business & Transportation Agency, State of California.
Benjamin Schlesinger, American Gas Association.
Herman E. Schroeder, E.I. DuPont de Nemours & Co. (ret.).
Paul Seabury, University of California at Berkeley.
Frederick Seitz, Rockefeller University.
Rudolf Sher, Stanford University.
George P. Shultz, The Bechtel Group.
Chauncey Starr, Electric Power Research Institute.
John S. Taylor, Westinghouse Corporation.
Edward Teller, Hoover Institution.
Miro M. Todorovich, City University of New York.
Robert K. Whitford, Purdue University.
Eugene P. Wigner, Princeton University.
Bertram Wolfe, General Electric Company.
Charles A. Zraket, The Mitre Corporation.●

MICHTER'S DISTILLERY

HON. ROBERT S. WALKER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. WALKER. Mr. Speaker, on July 19, 1980, a ceremony was held to designate Michter's Distillery of Schaefferstown, in the heart of Pennsylvania's Dutch country and my congressional district, as a national historic landmark. The decision to recognize the historic value of this enterprise was made by the Department of the Interior and signifies that Michter's is a landmark of importance in our Nation's heritage. Mr. T. D. Veru, chairman and president of the distillery, accepted this honor from Interior Secretary Cecil Andrus while National, State, and local dignitaries looked on.

Michter's had its beginning in 1753 when John and Michael Shenk, Swiss Mennonite farmers and millers, started the distillery as a home-farm operation. In time, because of the relative ease of transporting spirits, and the instability of currency, the converted grain became the accepted medium of exchange. In fact, prior to 1840, whisky was the currency of the Commonwealth of Pennsylvania.

In 1861 Michter's farm and distillery was purchased by another Pennsylvanian who increased production threefold. Abe Bomberger began the growth process that has resulted in a modern distillery whose reputation for producing quality sour mash has never faltered. Michter's is the only distillery that was in operation during the American Revolution and remains in operation today. It alone has survived out of over 3,000 distilleries that once dotted the Pennsylvania countryside.

I would like to offer my heartiest congratulations to Mr. Veru and his associates for the outstanding work they have done in preserving the historic value of the distillery site, and for the recognition they received on July 19, citing Michter's Distillery as a national historic landmark.●

OUR CHINA POLICY

HON. WILLIAM L. DICKINSON

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. DICKINSON. Mr. Speaker, in view of the recent attention focused on our China policy, the following article written by Dr. Anthony Kubek, professor of political science at Troy State University, should be of interest to the Members of the House. Dr. Kubek has watched our policies in the Pacific area—particularly the People's Republic of China and the Republic of China in Taiwan—for a number of years and his views as outlined in the article from the August 17, 1980, Birmingham News bear paying attention to:

REAGAN AND REPUBLIC OF CHINA

If Ronald Reagan is elected this fall, it will be important to the future of the Republic of China on Taiwan as well as to the future of American interests in East Asia and the global security of the United States. Though Reagan has not yet defined a "China policy" which he would pursue as president, his campaign statements clearly indicate he favors closer ties with Taipei government. In various speeches Reagan has boldly criticized the crude, shoddy treatment of the Republic of China by the Carter Administration. As president, Reagan would move promptly to upgrade relations with the Taipei government to an official status and thus redress Washington's insulting behavior in December, 1978, when President Carter announced recognition of the Chinese Communist regime at Peking.

The prospect of such a correction is heartening to the many longtime supporters of the Republic of China in the United States. And, what is more, such a step is certain to be received with enthusiasm by a large majority of the American people whose sense of fair play was offended by President Carter's rude dismissal of a faithful friend and firm ally.

Reagan has for years appreciated the consistency of the Republic of China. He has visited Taiwan and talked with President Chiang Ching-kuo and other leaders. His election in November will lead to a positive change in American treatment of an old partner whose sensitivities have been cruelly hurt in recent years. In a speech at Cleveland during the primaries, Reagan declared he would seek to re-establish "official relations" between Washington and Taipei. For this, he was castigated in the Chinese Communist press. From Peking on June 14 came a comment in the People's Daily that Reagan was undermining "the foundation of Sino-U.S. relationship" and threatening "the will of the two peoples." What, one may properly ask, does that mean? The "will" of the American people certainly is not pro-communist in 1980, even though staunch anti-communism is perhaps not as commonplace in our country as it once was. And "the will of the people" in Communist China has no real meaning at all.

Reagan clearly understands the central fact that 30 years of Maoism have left the economic system of mainland China a miserable failure. The standard of living is slightly higher than in India. And the people of mainland China continue to vote for freedom with their feet, as witnessed by the thousands who still flee southward every month to Hong Kong.

Also evident to Reagan is the core reason why American prestige is so impoverished throughout the world today. Our old friends and allies are naturally disillusioned when they watch American leaders become blind to the difference between international cooperation and opposition. The Carter administration has tried hard to make friends of enemies, but it has succeeded only in making enemies out of friends. The Republic of China, though grossly insulted and ignored by Washington, has not become unfriendly. Reagan knows this, and he wishes to reward Taiwan for its steadfastness.

After the incredible crudeness of President Carter's manner of breaking diplomatic ties with the Republic of China in 1978, Congress tried to pick up the pieces of the disavowed Defense Treaty of 1954. The answer has been the Taiwan Relations Act. While this bill falls short of an outright military commitment to defend Taiwan against attack, it does repair some of the damage inflicted on the Republic of China by President Carter's precipitous recognition of Peking. Reagan realizes its value as well as its shortcomings. He realizes, moreover, that the Carter administration has foot-dragged in carrying out what Congress mandated. Sen. Barry Goldwater has called attention to a dozen violations of the Taiwan Relations Act on the part of the Carter administration in recent months, and has recommended further action by Congress to ensure the safety and independence of Taiwan. Reagan approves such action.

Reagan knows that the Chinese on Taiwan have violated no treaties, made no deals behind our backs, and uttered no words of disrespect or enmity for the American people. He knows also that they have liquidated no landlords, closed no churches, and set up no slave labor camps. He knows they have done nothing to deserve the deplorable treatment dealt them by the Carter administration, which sailed into office under a brave banner called human rights but so abruptly struck its colors.

It is clear to Reagan that President Carter and his assorted advisors have been almost acrobatic in bending over backwards to please the Chinese Communists. Their determination to "play the China card" against the Soviet Union has amounted to a fixation. At the same time the Carter administration has gone to great pains, until recently at least, in encouraging détente with the Soviets. Reagan recognizes the fatal inconsistency here. He knows it has been the plague of U.S. foreign policy for a long time. As he said in a recent speech, "Some in the Carter administration seem so anxious to buy short-term friendship from Peking that they fail to see the long-term price in terms of damage that can be done by such a strategy to American interests and credibility in the free world."

Reagan understands that the Republic of China meets every test of a legitimate government under the definitions of international law. It has five times as many people as Israel, as many as Australia and New Zealand combined, and appreciably more than such old established nations as Greece, Sweden and Venezuela. Further, the Republic of China conducts more trade with the United States than all the Communist countries taken together. No other government of a so-called "developing country" has done more during the last quarter century in improving the welfare of its people.

Chapters of "Friends of Free China" are popping up all over the United States. Just recently, more than 11,000,000 signatures from American supporters of the Republic of China were presented to officials at Taipei by Anna Chennault, widow of the famous Flying Tiger of World War II, and by the well known Washington, D.C., attorney, Thomas C. Cocoran. Reagan appreciates the fact that there is a groundswell of sympathy and sentiment for the Republic of China in the United States.

It is noteworthy that Ronald Reagan has been the only presidential candidate on record in 1980 in support of the Republic of China in its present predicament. As for the Chinese Communist regime at Peking, it will doubtless be difficult to undo what the Carter administration has already done. Relations with Peking will probably remain unchanged. But the voters should understand that a Reagan victory will mean due respect and a sympathetic ear from a brave government and an industrious people on the island of Taiwan. The Republic of China merits our enduring friendship and highest commendation as a nation that can stand strong and tall on its own two feet. It is squarely within the American tradition as a land of the free and home of the brave—a tradition which Ronald Reagan personifies—that this should be so. Anything less is simply not enough for Americans.●

BUSINESS AND PROFESSIONAL WOMEN'S CLUB AT SUNBURY, PA.

HON. ALLEN E. ERTEL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. ERTEL. Mr. Speaker, I want to take this opportunity to bring to the attention of the Members of the House the purpose and work of the Business and Professional Women's Club of Sunbury, Pa. This coming Saturday, September 6, 1980, marks the 50th anniversary of this fine organization.

First, let me tell you about the Sunbury club's parent organization, the National Federation of Business and Professional Women's Clubs, Inc. Founded in 1919, the National Federation of Business and Professional Women's Clubs has 3,700 local clubs across the Nation. Its membership includes employed women in all 50 States, the District of Columbia, the Virgin Islands, and Puerto Rico. The purpose of the National Federation of Business and Professional Women's Clubs is fourfold. It strives:

One, to elevate the standards for women in business and the professions,

Two, to promote the interest of business and professional women,

Three, to bring about a spirit of cooperation among business and professional women in the United States,

Four, to extend opportunities to business and professional women through education along lines of industrial, scientific, and vocational activities.

Perhaps the most outstanding accomplishment of the National Federal of Business and Professional Women's Clubs has been the establishment of the Business and Professional Women's Foundation. This foundation was created in 1956 and provides scholarship funds and financial support to programs for training and educating and for improving and developing the capabilities of business and professional women.

The Business and Professional Women's Club of Sunbury, Pa. for 50 years has met the high goals of the National Federation, making distinctive contributions to the community. One project more than any other testifies to the good intentions of the Business and Professional Women's Club of Sunbury—the establishment of a community library. The club, in conjunction with other community organizations and interested individuals, initiated an effort in 1935 to establish a public library in Sunbury. The library became a reality in 1937 and still serves the Sunbury community today.

Mr. Speaker, I congratulate the Business and Professional Women's Club of Sunbury, Pa. on its 50th anniversary. I know this fine community organization will continue its efforts to serve the women and community of Sunbury.●

AMENDMENTS TO THE LIABILITY PORTIONS OF H.R. 7020, THE "SUPERFUND" BILL, ARE NEEDED

HON. ALBERT GORE, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. GORE. Mr. Speaker, we will shortly be considering one of the most significant pieces of legislation introduced in this Congress, H.R. 7020, the "superfund" bill to clean up abandoned hazardous waste sites.

My colleagues on the Oversight and Investigations Subcommittee of the Interstate and Foreign Commerce Committee and I have conducted 18 hearings on the enormous problems associated with hazardous waste disposal, both in this Congress and in the 95th Congress. The case for remedial action has been made beyond any reasonable dispute. The legislation we will soon be debating is an effective response to the problem. It is a good bill, worthy of the enthusiastic support of every Member of this body. It is well thought out and accurately targeted on the problem it addresses. Nevertheless, it requires some improvement on the floor. Members will be called upon to choose between two versions of the superfund, one crafted in the Ways and Means Committee, the other crafted in my own Commerce Committee. I would like to take this opportunity to urge my colleagues in the strongest possible terms to choose the Ways and Means Committee's version of the superfund. The Commerce Committee's version is far too small to do the job and its insistence on a 50-50 split of the responsibility for the problem between the taxpayers and the industry which primarily caused the problem is unfair and inequitable. The $1.2 billion provided for in the Ways and Means version will allow us to make significant progress in cleaning up the worst of the abandoned dumpsites, and their division of responsibility—75-25—is far more equitable, although I would prefer to see even more responsibility assigned to the industry principally responsible for creating this problem.

Much will be said and written during the coming days about this impending debate. Before that debate begins, I would like to serve notice of three other amendments which I will be offering to the liability portions of H.R. 7020. Although these portions of the bill have not attracted quite as much attention as the financing mechanism for the superfund, they are extremely significant, and must receive the closest possible scrutiny. I am extremely concerned about what I regard as serious deficiencies in these portions of the bill. It is for that reason that I will offer three amendments which I would like to describe in some detail. The first amendment I will offer is to the so-called third party defense granted in section 307(a)(1)(C). The second amendment I will offer is to the joint and several liability section, 3071(a)(1). The third amendment I will offer establishes a Federal cause of action for hazardous waste victims. With your indulgence, Mr. Speaker, I would like to discuss these three amendments one by one:

THIRD PARTY DEFENSE UNDER H.R. 7020

As presently drafted, section 307 (a)(1)(C) of H.R. 7020 provides that a defendant can escape liability for a release, or threatened release of hazardous waste if he or she can demonstrate that such was:

> Caused solely by * * * an act or omission of a third party if the defendant establishes that he exercised "due care" with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste.

This language alters the existing common law rules of: First, strict liability for abnormally dangerous—ultrahazardous—activity and alternatively; second, liability for inherently dangerous activity that would otherwise be applicable to parties dealing with hazardous waste.

STRICT LIABILITY

A. HAZARDOUS WASTE DISPOSAL IS ABNORMALLY DANGEROUS/ULTRAHAZARDOUS ACTIVITY

There can be little doubt that actions involving hazardous waste would be considered by the courts as abnormally dangerous or ultrahazardous activity sufficient to subject a responsible party to strict liability. While there may at present be no decision in which an individual has been held strictly liable to damages resulting from a release of hazardous waste, this is due to the "newness" of waste problems rather than a reticence on the part of the judiciary. The common law proceeds on the basis of analogy and by extrapolation of existing doctrine to new fact situations. Absence of case law on the specific issue of strict liability for hazardous waste in no way invalidated the conclusion of the doctrine's applicability.

Strict liability for abnormally dangerous/ultrahazardous activity originated with the historic case of *Rylands* v. *Fletcher*, 159 Eng. Rep. 737 (1865), rev'd, L.R.1 Ex. 265, aff'd, L.R.3 H.L. 330 (1868). In Rylands, the defendant was held liable without fault when a reservoir built on his land broke through the ground, and flooded an abandoned coal mine shaft. The water flowed along connecting passages and eventually flooded and damaged the adjoining mine of the plaintiff. In holding the defendant strictly liable, Lord Cairns, speaking for the House of Lords, concluded:

> (I)t seems but reasonable and just that the neighbour who has brought something on his property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischievious if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there, no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. L.R.3 H.L. 330 at 338.

In the more than 100 years since Rylands the law of strict liability has progressed and expanded tremendously. Today, numerous activities have been held to constitute abnormally dangerous-ultrahazardous activities for which strict liability will be imposed. Most of these are far less dangerous than the handling, generation, and disposal of hazardous waste. Such activities include the handling and shipping of explosives, blasting, quarrying, handling of nuclear materials, aerial spraying of pesticides, fumigation, sonic booms, handling oxygen, testing rocket fuels, storage of natural gas in populated areas, the operation of a gasoline station so as to affect families' wells, pile driving, and transportation of hazardous chemicals. See Prosser, Law of Torts 512-16 (1971). Undoubtedly, as litigation involving hazardous waste develops, court will add the generation and disposal of such wastes to the list of ultrahazardous activities. Indicative of this is the recent case of *New Jersey* v. *Ventron Corporation*, Nos. C-2996-75 and C-1110-78 (Superior Court of New Jersey, Chancery Division, Bergen County, Aug. 29, 1979), a case cited by the Justice Department in its correspondence and its testimony before the Committee on Ways and Means, in which a mercury processing operation was held strictly liable for damages caused by a release of mercury from its plant.

Section 520 of the Restatement (Second) of Torts sets forth six factors to consider in the classification of an activity as abnormally dangerous.

Note: "Ultrahazardous" activity was the term used in the first Restatement; the

phrase "abnormally dangerous" is used by the Restatment (Second):

(a) existence of a high degree of risk of some harm to the person, land or chattels of other;

(b) likelihood that the harm that results from it will be great;

(c) inability to eliminate the risk by the exercise of reasonable care;

(d) extent to which the activity is not a matter of common usage;

(e) inappropriateness of the activity to the place where it is carried on; and

(f) extent to which its value to the community is outweighed by its dnagerous attributes.

Not all these factors need be present before an activity can be said to be abnormally dangerous and strict liability imposed. Most, however, if not all of the factors are applicable to release of hazardous waste.

First, as has been demonstrated at Love Canal and elsewhere, release of hazardous waste obivously posed great harm and danger to a community. It does not matter that there may be only a slight possibility that a release might occur in a given area. As comment g to section 520 points out:

If the potential harm is sufficiently great . . . the likelihood that it will take place may be comparatively slight and yet the activity be regarded as abnormally dangerous.

Second, releases of waste can occur despite the exercise of reasonable care. Certainly, a great deal of risk can be eliminated by the exercise of due care; however, strict liability will still attach because of the inherent potential of hazardous waste to cause harm despite proper precautions. As comment h explains:

There is probably no activity . . . from which all risks of harm could not be eliminated by the taking of all conceivable precautions, and the exercise of utmost care, particularly as to the place where it is carried on. . . . It is not necessary, for the factor stated in Clause (c) to apply, that the risk be one that no conceivable precautions or care could eliminate. What is referred to here is the unavoidable risk remaining in the activity, even though the actor has taken all reasonable precautions in advance and has exercised all reasonable care in his operation, so that he is not negligent.

Additionally, most activities that could result in a release of hazardous waste are not "customarily carried on by the great mass of mankind or by many people in the community" and so cannot be said to be a matter of common usage. See comment i, section 520. Appropriateness of the activity to its surrounding and value to the community, moreover, will usually excuse only those activities that, while dangerous, can be carried on only in a particular area and/or support the economic well-being of a community to an extraordinary degree. See comments j and k, section 520. Given the above, it is inconceivable that actions involving hazardous waste would not be considered abnormally dangerous. Strict liability would thus be imposed upon anyone responsible for a release of such waste.

B. THE IMPACT OF § 307(a)(1)(C)

To understand the impact of the third party defense provided by H.R. 7020, it is important to keep in mind the policy underlying the doctrine of strict liability. Certain activities carry with them the inherent possibility of harm to others and so, as outlined above, are deemed abnormally dangerous, or ultrahazardous, activities. Society makes a basic policy decision, however, that, despite the inherent danger, these activities are needed and so they are permitted to occur. Were it not for this value determination, the activities would be considered too dangerous to allow, and anyone engaged in any of the activities would be guilty of negligence. In other words, the activity is felt to be of such utility that the risk which is involved in it cannot be regarded as so great or so unreasonable as to make it negligence merely to carry on the activity at all. See comment b, section 520, Restatement (Second) of Torts. Consequently, because of the social utility of their manufactured products, generators of hazardous wastes are not considered negligent simply because they are engaged in their business.

Having decided to permit the abnormally dangerous activity, however, society imposes certain obligations on those individuals engaged in such activities. Fundamentally, an abnormally dangerous activity must pay for itself. The activity may be carried on, but if an innocent party is injured, he must be compensated regardless of whether the defendant was at fault. As Justice Stewart explained in dissent in *Laird* v. *Nelms*, 406 U.S. 797 (1972), (which involved the Federal Torts Claim Act and is factually inapposite to the concerns here):

The law . . . imposes liability for harm caused by certain narrowly limited activities even though those activities are not prohibited and even though the actor may have exercised the utmost care. Such conduct is "tortious" not because the actor is necessarily blameworthy, but because society has made a judgment that while the conduct is so socially valuable that it should not be prohibited, it nevertheless carries such a high risk of harm to others, even in the absence of negligence, that one who engages in it should make good any harm caused to others thereby. 406 U.S. at 805 (Stewart, J., dissenting).

Thus, while the generation and disposal of hazardous waste are deemed a necessary evil in our society, the unavoidable risk of harm that is inherent in—handling waste—requires that it be carried on at—the defendant's—peril, rather than at the expense of the innocent person who suffers harm as a result of it. Restatement (Second) section 520, comment h. In accordance with the foregoing, section 520(1) of the Restatement (Second) of Torts provides:

One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land, or chattels of another resulting from the activity, *although he has exercised the utmost care to prevent the harm.* (Emphasis added.)

As comment d to section 520 relates, the defendant's liability is not based on any negligence:

Either in attempting to carry on the activity itself in the first instance, or in the manner in which it is carried on. The defendant is held liable although he has exercised the utmost care to prevent the harm to the plaintiff that has ensued. The liability arises out of the abnormal danger of the activity itself, and the risk that it creates, of harm to those in the vicinity. It is founded upon a policy of the law that imposes upon anyone who for his own purposes creates an abnormal risk of harm to his neighbors the responsibility of relieving against that harm when it does in fact occur.

The defendant, then, is basically an insurer against the consequences of his abnormally dangerous conduct. As Prosser stated, "He is liable although he has taken every possible precaution to prevent the harm and is not at fault in any moral or social sense." Prosser, supra, at 517.

The effect of section 3071(a)(1)(C) is thus readily apparent. By enabling a defendant to escape liability by a showing of due care, H.R. 7020 erects a negligence standard where one of strict liability would otherwise apply. As shown above, under the common law, negligence is irrelevant to a finding of liability for abnormally dangerous/ultrahazardous activity. H.R. 7020 changes this common law rule. Under section 3071(a)(1)(C), a defendant can avoid liability, despite being engaged in ultrahazardous activity, by contracting with a third party to dispose of the hazardous waste. As long as the defendant can sustain his/her burden of proof regarding the exercise of due care in selecting a transporter or disposer, the defendant cannot be held liable and no recovery can be had from him/her. Although it couches its language in terms of "new" duties imposed on a defendant, the Commerce Committee Report is quite open as to the effect of section 3071(a)(1)(C):

With respect to the third party defense, a defendant is also required to establish that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such waste. The defendant must show that he exercised due care with respect to all reasonable foreseeable acts or ommissions of a third party. For instance, in the case of a defendant generator, shipper, transporter, or disposer, the defendant must demonstrate that he exercised due care in the selection and instruction of a responsible contractor or other independent party engaged by such defendant for the transportation, storage, treatment, or disposal of the waste, provided adequate information as to the identity, quantity, composition, condition and characteristics of the waste to such person, and took reasonable measures to assure or verify that such person properly carried out the activities for which he was engaged. Such defendant must also demonstrate that he properly labeled, loaded, and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste. In general, the Committee intends that for a defendant to establish that he exercised due care, the defendant must demonstrate that he took all precautions with respect to the particular waste that a similarly situated reasonable and prudent person would have taken in light of all relevant facts and circumstances. *Commerce Committee Report* at 34.

While a defendant must thus show that he took a number of precautions and acted with due care in order to escape liability, the basic problem still remains. Under the common law, the defendants could not escape liability even if he did take every precaution. H.R. 7020, then, effectively destroys a rule that has been in effect for over 100 years.

In addition to interposing the negligence barrier between the plaintiff and defendant, the defense provided in section 3071(a)(1)(C) flies in the face of section 522 of the Restatement (Second) of Torts. That section provides:

One carrying on an abnormally dangerous activity is subject to strict liability for the resulting harm although it is caused by the unexpectable.

(a) Act, negligent or reckless conduct of a third person * * * As the comment to section 522 explains, the abnormally dangerous nature of an activity is the basis for the defendant's liability when the activity results in damage or injury. Just as the negligence of the defendant is irrelevant when the activity is considered abnormally dangerous, acts by a third party cannot affect liability under the common law. It is the activity itself, not an individual's conduct, that determines the liability.

INHERENTLY DANGEROUS ACTIVITY

Related to the doctrine of strict liability is the rule that holds a defendant liable for injuries resulting from inherently dangerous activity even though he/she contracted with a third party for the performance of that activity. This is basically a rule of vicarious liability, whereby the employer is held liable for the negligence of the independent contractor, regardless of whether the employer himself has been at fault. As with strict liability, policy reasons dictate that the employer not be permitted to shift responsibility to the contractor. The difference between the liability here and that for abnormally dangerous activity appears to be that the defendant here has himself actually been engaged in no activity; the contractor performs all the work. This rule seems more applicable to situations involving middlemen—if such are used—in hazardous waste disposal that to the generators of waste.

Under the rule here, it does not matter that the defendant exercised due care in his selection or instructions to the contractor. The inherently dangerous nature of the activity to be performed provides the grounds for liability. As section 416 of the Restatement (Second) of Torts provides:

One who employs an independent contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the failure of the contractor to exercise reasonable care to take such precautions even though the employer has provided for such precautions in the contract or otherwise.

Under section 416 the employer remains liable for injuries resulting from dangers that he should contemplate at the time that he enters into the contract; he cannot shift to the contractor the responsibility for such dangers or for taking precautions against them. The employer will remain liable even if the contract contains express stipulations for the taking of adequate precautions and even if the contractor agrees to assume all liability for harm caused by his failure to take such precautions.

Clearly, by enabling a defendant to exonerate himself by demonstrating due care, H.R. 7020 abrogates this common law rule as well. Section 3071(a)(1)(C) enables—indeed encourages—a defendant to contract out disposal of hazardous wastes and thereby contract away liability. Because of the inherently dangerous nature of the work performed, the negligence of the contracting party is irrelevant to liability under the common law. H.R. 7020, however, alters the rule to provide a defense where, for sound policy reasons, one heretofore has not existed.

Although I would have preferred the deletion of any third party defense, after consultation with Chairman FLORIO, I have decided to offer a compromise. My amendment strikes a middle ground between the path followed under common law and the process currently envisioned under H.R. 7020. My amendment would restrict the application of the third party defense to situations where the third party is not an employee or agent of the defendant, or where the third party's act or omission does not occur in connection with a contractual relationship, direct or indirect, with the defendant. My amendment would further restrict the application of the third party defense to situations in which the third party has acted negligently.

Finally, I would clarify the requirement that the defendant exercised due care by defining that term directly in the statute. The definition is taken from the committee's report. I feel that a statutorily defined term is critical to assure that there is no ambiguity over what we mean by due care, and therefore everyone—defendants, prosecutors, judges and juries, and anyone else who traffics in hazardous wastes—will know what are the rules of the game.

These changes are more in accord with the common law relating to abnormally dangerous activities and they promote incentives for generators, handlers, and disposers of hazardous waste to eliminate as many of the hazards as possible that accompany the presence of such wastes. My amendment will encourage greater cooperation in discovery and cleanup of waste disposal sites, as an alternative to this liability provision—remembering that Government cleanup is a last resort where those responsible cannot or will not take appropriate actions.

The amendment will cultivate responsible hazardous waste disposal and it will encourage industry to ferret out and exclude those parties who have a poor waste disposal track record. In addition, this closer adherence to a true strict liability format greatly improves the prospects of recovering public funds used for emergency response efforts.

The text of my first amendment follows:

Page 47, line 17 strike out "an" and insert in lieu thereof "a negligent"

Page 47, line 17 after "party" insert: "other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant,"

Page 48, after line 4 insert the following new paragraph, renumbering as appropriate.

(2) For purposes of subparagraph (1)(C) a defendant (including a generator, transportor, shipper, or disposer) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of any third party and that he exercised due care in light of all relevant facts and circumstances, including:

(A) exercised due care in the selection and instruction of a responsible person engaged by such defendant for the transportation, storage, treatment or disposal of said hazardous waste;

(B) provided adequate information as to the identity, quality, composition, condition, characteristics and potential hazard of the waste to such person;

(C) took reasonable measures to assure and verify that such person properly carried out the activities for which he was engaged;

(D) properly labeled, loaded and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste, and

JOINT AND SEVERAL LIABILITY UNDER H.R. 7020

Although section 3071(a)(1) of H.R. 7020 proclaims that the liability of any party found to have caused or contributed to a release of hazardous shall be joint and several with any other such person, exceptions created by the bill effectively render that term meaningless here. Joint and several liability ordinarily would mean that whenever a single, indivisible harm is sustained as a result of independent, separate, but concurring tortious acts by two or more actors, each can be held liable for the entire amount of damages incurred. See Harper and James, 1 Law of Torts 693 (1956). The defendants in such a case would be jointly liable in that collectively they would be responsible for any damage caused; they would also be severally liable in that each is individually liable for the full amount of damage. The plaintiff could collect the total sum of damages awarded from a single defendant and could avoid the agony of multiple suits

against the defendants that would otherwise be necessary to achieve full compensation. See Prosser, Law of Torts 315-17 (1971). Under the theory of contribution, the defendant from whom the plaintiff receives payment may then collect from the other defendants for that part of the damages for which each is responsible. Prosser, supra, at 505-10. Under the theory of satisfaction, the plaintiff, once he receives from one or more defendants an amount equal to the judgment awarded, cannot collect more than that sum. Prosser, supra, at 299-301.

JOINT AND SEVERAL LIABILITY GENERALLY

Originally, courts were reluctant to impose joint and several liability on defendants in cases wherein the injury suffered was considered indivisible. Because contribution was not formerly allowed among defendants, courts were reluctant to place the full burden of liability on any one defendant. On the other hand, because the injury was indivisible, the plaintiff had difficulty establishing the respective responsibility of each defendant for portions of the harm. Consequently, courts often denied recovery.

Eventually, as States enacted statutes providing for contribution among defendants, courts became more accepting of joint and several liability and permitted plaintiffs to recover the full amount of damages from a single defendant. The courts concluded that because the defendants were the ones at fault, it would be unfair to place the burden of demonstrating the apportionability of the damage on the plaintiff. The burden was thus placed on the defendants to work out for themselves who was responsible for what part of the injury under the process of contribution. The plaintiff would be allowed to recover his judgment, and the paying defendant would now be reimbursed under one of the new statutes for that portion of the payment for which he was not responsble. Joint and several liability gained its greatest acceptance early in cases involving multiple simultaneous or successive automobile collisions when a single plaintiff was injured by the acts of several negligent drivers.

DIVISIBILITY OF HARM

As stated, the indivisibility of the harm suffered is the key to a ruling of joint and several liability. The harm must be of such a nature that is not practicably apportionable, for where some reasonable means of apportioning the damages is evident, the courts will generally not hold the tortfeasors jointly and severally liable. See Harper & James, 1 Law of Torts 693-94 (1956). Prosser explained that:

> (t)he question is primarily not one of the fact of causation, but of the feasibility and practical convenience of splitting up the total harm into separate parts which may be attributed to each of two or more causes. Where a logical basis can be found for some rough apportionment, which limits a defendant's liability to that part of the harm which he in fact has caused, it may be expected that the division will be made.

Prosser, supra, at 313-14. Section 433A of the Restatement (Second) of Torts concurs in this analysis. That section provides:

> (1) Damages for harm are to be apportioned among two or more causes where (a) there are distinct harms, or (b) there is a reasonable basis for determining the contribution of each cause to a single harm.
>
> (2) Damages for any other harm cannot be apportioned among two or more causes.

Subsection (1)(b) embodies the specific rule that joint and several liability does not apply where the injury is divisible.

Subsection (2) of section 433A represents the flip side of subsection (1)(b)—namely that joint and several liability is appropriate where the harm cannot be practicably apportioned. As Prosser noted:

> Certain results, by their very nature, are obviously incapable of any logical, reasonable, or practical division. . . . No ingenuity can suggest anything more than a purely arbitrary apportionment of such harm. Where two or more causes combine to produce a single result, incapable of any logical division, each may be a substantial factor in bringing about the loss, and if so, each must be charged with all of it. Prosser, supra, at 315.

Basically, the joint and several liability is possible whenever an injury is indivisible. The trick is to determine when an injury can in fact be considered indivisible and thereby permit employment of joint and several liability. This requisite indivisibility can be of two sorts. First, the injury can be the type that is not even theoretically divisible. Damages of this nature are such things as death or the total destruction of one's property or chattel. Most personal injury suits present damages like these. Alternatively, however, the harm can be such that, although theoretically divisible, it is indivisible in a practical sense insofar as the plaintiff's ability to apportion it among the wrongdoers is concerned. Pollution by multiple defendants would usually fall within this classification.

Courts uniformly will permit entire recovery from any or all defendants under the first type of indivisibility. There is conflict, however, regarding the second situation. As stated earlier, where there has been some rational basis for apportioning damages, courts in the past in pollution cases have denied joint and several liability. There is a growing body of case law, however, that holds that a plaintiff's right to recover for his harm should not depend on his ability to apportion the damage; instead, apportionment is seen as a problem properly left to the defendants themselves. See Harper & James, supra, 701-02.

Along these lines, most pollution cases pose a special problem regarding the indivisible injury issue. Because the overall, and allegedly indivisible, harm is caused by a series of independent, concurrent tortfeasors, it is usually the case that some damage would have been done even had some of the defendants not contributed; the damage would not be as great, however, as that actually sustained. In other words, each polluter has contributed to produce some but not all of the harm. This is the sort of injury that most earlier cases held to be at least theoretically divisible and which therefore mandated apportionment of liability. For sound policy reasons, however, courts have begun to view pollution by multiple defendants as a form of indivisible harm by examining the problem from the plaintiff's perspective. Joint and several liability has thus been frequently imposed. As Harper and James related:

> These cases emphasize that the burden of apportioning damages, if possible, more properly should be placed on the multiple defendants who have been sued for injuries resulting from their independent, concurring—although not necessarily simultaneous—(actions) under circumstances in which it is not alleged that any one defendant was responsible for the entire injury or any specified part of it. (Harper & James, supra, at 708.)

For example, in *Landers* v. *East Texas Salt Water Disposal Company*, 151 Tex. 251, 248 S.W. 2d 731 (1952), the plaintiff sued a salt water disposal company and an oil company jointly and severally for damages caused when they independently dumped salt water in his lake. Assuming that neither defendant alone would have caused the entire damages, the court nevertheless decreed that the defendants should be held jointly and severally liable. As the court concluded:

> Where the tortious acts of two or more wrongdoers join to produce an indivisible injury, that is, an injury which cannot be apportioned with reasonable certainty to the individual wrongdoers, all of the wrongdoers will be held jointly and severally liable for the entire damages and the injured party may proceed to judgment against any one separately or against all in one suit. (151 Tex. at 256, 248 S.W. 2d at 734).

Although the court also provided that a defendant could reduce his liability by demonstrating the amount of damage caused by his acts only, or that caused by other defendants, the effect of the decision was to require the defendants, rather than the plaintiff, to show that other tortfeasors contributed to the harm and in what quantities they so contributed. This incentive to locate all other responsible parties is one of the prime considerations underlying use of joint and several liability in pollution suits. In fact, in addition to shifting the burden of proving the cause of plaintiff's injury, the court placed on the sued defendants ultimate responsibility for bringing any other defendants into the suit as codefendants. Facing the prospect of either proving that other parties were also responsible for the injury or paying the full judgment themselves, defendants would henceforth have incentive to insure that no parties have been inadvertently omitted from the suit. As the court in Landers stated:

> If fewer than the whole number of wrongdoers are joined as defendants to plaintiff's suit, those joined may by proper cross action under the governing rules bring in those omitted.

Thus, any responsible parties not named as defendants initially by the plaintiff would be located by the named defendants and included by cross-claim.

The emerging rule of joint and several liability in pollution cases was also noted in *Phillips Petroleum Company* v. *Hardee*, 189 F. 2d 205 (5th Cir. 1951). In that case, a number of rice farmers sued several oil companies for damages to their crops caused by oil pollution of their irrigation water. As in Landers, each defendant's pollution alone was insufficient to cause the whole damage. Nevertheless, the court stated that:

> Where persons acting independently are guilty of negligence, and the results of their negligence combine to set up a chain of causation resulting in the complaint of damage, these persons, though not acting in concert, are yet joint tortfeasors and as such, are liable for the damage caused by the conjunction of their separate negligence.

That the defendants bear the burden of proving the apportionability of harm in the new wave of pollution decisions was demonstrated well by the leading case of *Michie* v. *Great Lakes Steel Division*, 495 F. 2d 213 (6th Cir. 1974). In Michie, 37 residents of Ontario, Canada, brought suit against three Michigan corporations for damages caused by pollution emitted by the defendants into the ambient air. Rejecting the old Michigan rule denying joint and several liability in pollution cases, the sixth circuit reasoned that, in any claim for relief, there is a manifest unfairness in "putting on the injured party the impossible burden of proving the specfic shares of harm done by each (defendant)." 495 F. 2d at 216. As a result, the court placed on the defendants the burden of proving "which one was responsible and to what degree" for the plaintiffs' injuries.

As one commentator has noted, after Michie a defendant cannot now escape liability merely by proving that other parties contributed to the injury in such a way as to make apportionment impracticable. See Comment, 1974 Utah L. Rev. 603, 607. The court essentially analyzed the issue as a contest between the rights of individuals and the rights and duties of industry. In the end, the court concluded that the rights of the injured party were superior.

The Michie case thus stands for the proposition that if a plaintiff in a pollution suit can show a causal connection between the defendants' acts and the plaintiff's injury, as well as the violation of some duty owed by the defendants to the plaintiff (where there is no ultrahazardous material involved) the burden of proof will shift to the defendants to demonstrate which defendant is responsible for what portion of the injury. The rule espoused in Michie is similar to that presented in section 433B of the Restatement (Second) of Torts, which provides:

> (2) Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.

Basically, as both Prosser and the Michie court noted, if apportionability cannot be demonstrated, the acts of each defendant could then be considered a substantial factor in the plaintiff's injury, and each would be liable for the full amount of damages. Contribution among the defendants, however, would prevent one defendant from absorbing the entire loss.

IMPACT OF H.R. 7020

While the essence of joint and several liability is that multiple defendants are each liable for the full amount of damages unless the feasibility of apportionment can be demonstrated by the defendants, sections 3071(a)(2)(A), (B), and (C) effectively foreclosed the possibility that any defendant will be held fully liable. Particularly, subsections 2 (B) and (C) emasculate the effect of the indivisible injury rule by providing that a court shall apportion liability even when the defendants have not established that such is feasible or warranted.

Subsection (2)(A) appears to reflect the procedure utilized by most courts in approaching joint and several liability. That section sets up a process by which a defendant may demonstrate by a preponderance of the evidence that he is responsible for only a certain portion of the damage done. If the defendant is successful in proving the limited extent of his responsibility, the injury is considered apportionable to that extent and that particular defendant's liability is limited. The remaining amount of the damages would then be imposed on the remaining defendants.

Ordinarily, if the remaining defendants could not establish their respective liability for the damages left after the section (2)(A), apportionment is subtracted, each would be fully liable for the remaining damages. Subsection (2)(B) changes this rule, however. That section provides that even if the defendants do not establish the apportionability of the remaining damages, the court shall itself apportion the liability. Subsection (2)(C) goes on to provide that once this apportionment has been made by the court, no defendant shall be liable for more than his apportioned share. The effect is that no one defendant can ever be held responsible for the full amount of the damages and the fund will sometimes be used to pay for damages when responsible parties can be identified. Thus, there actually is no joint and several liability at all in H.R. 7020.

One obvious problem with the apportionment system erected by H.R. 7020 is that a plaintiff—the Government under the present bill—would be forced to seek payment from each of the defendants based on the amount designated by the court as that which he owes. Under a scheme of joint and several liability, where the defendants cannot themselves establish their respective liabilities, each is responsible for the full amount, and the plaintiff may collect that full sum from any one of them. The paying defendant would then have the right to go against the other "nonapportioned" defendants for contribution; the defendants would bear the burden of deciding who would pay how much to whom among them. The theory behind enabling the plaintiff to collect fully from one defendant is essentially that as wrongdoers, the defendants each bear the burden of proving that he is not liable for the full extent of the damage caused. If the defendant cannot meet this burden and shows that he is not fully responsible, then he is fully liable. H.R. 7020 clearly abrogates this theory.

THE ONE-BARREL DUMPER

One concern expressed about imposing joint and several liability for cleanup of hazardous waste sites is that a one-barrel dumper may be held liable for millions of dollars in damages. Such concern is completely unfounded, for if such one-barrel dumpers actually exist, they are protected from full liability by the present common law procedures.

For a defendant to be held liable for full damages under joint and several liability, not only must the nature of the harm be incapable of apportionment, but the particular defendant's actions must also have been a substantial factor in bringing about the damage.

There is no single standard for what constitutes a substantial factor. That determination is a question of fact to be determined by the trier of fact at trial. As Prosser exlained:

> Whether (a defendant's conduct) is a * * * substantial factor is for the jury to determine, unless the issue is so clear that reasonable men could not differ. It has been considered that "substantial factor" is a phrase sufficiently intelligible to the layman to furnish an adequate guide in instructions to the jury, and that it is neither possible nor desirable to reduce it to any lower term.

Prosser, supra, at 240. The case of the one-barrel dumper is perhaps most analogous to the situation in which an individual tosses a lighted match into an already flaming forest fire. It can hardly be contended that the individual's act was a substantial factor in bringing about any harm caused by the spread of the fire. This is not to say, however, that there would never be an occasion to hold a small dumper

fully liable. For example, the particular barrel that that individual dumped could have been improperly sealed, allowing its contents to spill and corrode the other containers at the site; or the barrel might contain a particularly hazardous and dangerous substance.

Paragraph (2)(B) of section 3071 in H.R. 7020 establishes a perverse incentive system for those who have caused or contributed to hazardous waste incidents. It encourages all defendants, except for those who are insignificant contributors, to ignore the burden of proof requirements of paragraph (A) and to cast their lot with any other defendants under the mandated apportionment formula of (2)(B). Hence, a major contributor would seek to establish the culpability of other defendants—although he would not quantify the harm contributed by each—to enlarge the pool of liable parties thereby reducing each defendant's cost obligations. Consequently, the defendant can shift the burden of proof responsibility onto the plaintiff to demonstrate to the maximum extent practicable what each party has contributed to the damages.

Paragraph (2)(B) should be removed from the liability provision to allow a court to proceed under a true joint and several liability scheme. I reluctantly relaxed my efforts to completely delete this misguided subsection and in a spirit of compromise, I am instead offering an amendment to help ease its adverse effects.

My proposal would affirm the court's authority to apportion the remaining costs under (2)(B), but would not require such apportionment. The language would permit the court to apportion the remaining damages among the remaining defendants, taking into account certain equitable factors. Apportionment would be solely at the discretion of the court.

The text of this amendment follows:

Page 48, line 6, after "establishes" insert "by a preponderance of the evidence"

Page 48, line 11 after "establishes" insert "by a preponderance of the evidence"

Page 48, strike out lines 16 through 20 and insert in lieu thereof:

"(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the remaining costs among the parties if the court deems such apportionment appropriate. In apportioning liability under this subparagraph, the court may consider factors, including:

(i) the ability of the party to demonstrate that his contribution to a discharge, release, or disposal of a hazardous substance can be distinguished;

(ii) the amount of hazardous substance involved;

(iii) the degree of toxicity of the hazardous substance involved;

(iv) the degree of involvement in the manufacture, treating, transporting, disposing of the hazardous substance; and

(v) the degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment."

Page 48, line 21 strike "this paragraph" and insert "subparagraph (A)"

FEDERAL CAUSE OF ACTION FOR HAZARDOUS WASTE VICTIMS—ARGUMENTS FAVORING A FEDERAL CAUSE OF ACTION

Mr. Speaker, there are many reasons for granting private parties the right to sue in Federal court for injuries caused by hazardous waste:

(1) Statute of limitations problems faced by plaintiffs in State courts;

(2) Strict proof of causation requirements in State courts;

(3) The need for uniformity in the law regarding liability for waste-caused injuries; and

(4) Greater acceptance by Federal courts of prevailing legal theories of recovery for such injuries.

All of these considerations are valid and forceful reasons for providing a Federal forum via the "superfund" legislation.

STATUTE OF LIMITATIONS PROBLEMS

This is possibly the best argument in favor of creating a Federal cause of action. A number of States have restrictive statutes of limitations that effectively preclude any plaintiff injured by exposure to hazardous wastes from bringing suit. A Federal cause of action is needed to enable injured parties to overcome what, in this situation, amounts to an arbitrary and unreasonable barrier to recovery.

In the majority of States the statute of limitations for personal injury suits begins to run at the time at which the plaintiff discovers or should have discovered his injury. This is known as the time of discovery rule. In the remaining States, however, the statute of limitations begins to run immediately upon the plaintiff's exposure to the toxic or hazardous substance(s). This time of exposure rule reflects the older, traditional, but now minority rule in tort law.

The problems that the time-of-exposure rule pose for a prospective plaintiff are readily apparent. Physical symptoms resulting from exposure to hazardous substances often are not manifest until several years after the initial contact. In many cases the physical effects do not appear until as long as 15 to 20 years after first exposure. Because, depending on the State, statutes of limitations range from 2 to 6 years, plaintiffs who do not experience physical symptoms until after this period are blocked from bringing suit where the time of exposure rule is in effect.

All States agree that the statute of limitations should begin to run from the date of the party's injury. The point of disagreement among the jurisdictions is defining when the injury occurred. Those States that have adopted the time-of-discovery rule have chosen to designate the real injury as occurring at the time of some actual manifestation of physical harm; the statute runs, in other words, from the time at which the injury was discovered or should reasonably have been discovered. States employing the time-of-exposure rule take a strict and literal view of the time of injury. A few States, not wishing to accept either interpretation, have adopted a continuing injury theory. Under this approach, a new injury to the aggrieved party is said to occur each day there is exposure to the hazardous substance. This theory removes the statute of limitations problem for a citizen living near a waste site who does not discover his/her injury until several years after his initial exposure; it does not, however, help an individual who moved away from a site area and whose exposure to the substances ended beyond the limiting period. A Federal cause of action is thus needed to provide a forum for injured parties whose claims are precluded by either the time-of-exposure or continuing injury theories.

The most striking example of a State employing the time-of-exposure rule is New York. Three major cases have contributed to this approach on the part of the New York judiciary. The leading case is *Schmidt* v. *Merchants Dispatch Transportation Company*, 270 N.Y. 287, 200 N.E. 824 (1936), in which a victim of occupationally induced pneumoconiosis was denied access to the courts because he filed suit more than three years after terminating his employment with the defendant. Despite the fact that the plaintiff's injury was not diagnosed until after leaving employment, the court ruled that his cause of action had accrued at the point of initial inhalation. Although the court recognized the inequity of its decision, it declared:

> The statute of limitations is a statute of repose. At times, it may bar the assertion of a just claim. Then its application causes hardship. The Legislature has found that such occasional hardship is outweighed by the advantage of outlawing stale claims. 200 N.E. at 827-28.

Schmidt set the tone for subsequent decisions by the New York courts. In *Schwartz* v. *Heyden Newport Chemical Corporation*, 12 N.Y. 2d 212, 237 N.Y.S. 2d 714, 188 N.E. 2d 142, amended, 239 N.Y.S. 2d 896, 190 N.E. 2d 253, cert. denied, 374 U.S. 808 (1963), plaintiff filed suit in 1959 for loss of an eye in 1957 due to a carcinoma that had been produced by a drug administered to the plaintiff in 1944. The court dismissed the claim, stating that under Schmidt the plaintiff's cause of action accrued in 1944. Again accepting the inequity of its decision, the court stated:

> Considering the function of a statute of limitations as a device for repose, a potential defendant's equities are the same whether the plaintiff knows of his condition or not. Repose is as beneficial to society in the one case as in the other * * *. It is hard to say for certain, but perhaps the possibility of feigned cases against unprepared defendants and the difficulties of proof in meritorious cases led to a decision that society is best served by complete repose after certain number of years even at the sacrifice of a few unfortunate cases. 237 N.Y.S. 2d at 718-19.

Finally, last year the New York court reaffirmed Schwartz and

Schmidt in *Thornton* v. *Roosevelt Hospital*, 47 N.Y. 2d 780, 417 N.Y.S. 2d 920, 391 N.E. 2d 1002 (1979), in which the plaintiff had been administered a drug through injection that produced cancer in 1972. The court barred the plaintiff's suit declaring:

> It is well established in this State that when chemical compounds are injected into a person's body, the injury occurs upon the drug's introduction, not when the alleged deleterious effects of its component chemicals become apparent. Here, plaintiff's claim being interposed some 20 years after the decedent's injection—the date of injury—the action is time-barred, irrespective of whether the cause of action is couched in terms of strict products liability. 417 N.Y.S. 2d at 922.

The import of these and similar decisions for parties injured by hazardous wastes, such as those at Love Canal, is clear. Under the time-of-exposure rule espoused in these cases countless claims would be barred arbitrarily.

It must be noted that the New York State Legislature is presently considering legislation to amend the statute of limitations in that State to the time-of-discovery rule. The bill has been approved by the State assembly and now rests in the rules committee of the senate. There is no estimate of its possibilities for passage.

That the time-of-discovery rule is the superior and more logical rule was forcefully argued in the leading case of *Karjala* v. *Johns-Manville Products Corporation*, 523 F. 2d 155 (8th Cir. 1975). In that case, plaintiff instituted an action against several manufacturers of asbestos insulation after he contracted asbestosis. Plaintiff had been an installer of asbestos insulation but had been forced to leave his job because of his condition. Plaintiff had been constantly exposed to great quantities of asbestos dust from 1940 to 1966. In 1959 plaintiff began to experience a shortness of breath, congestion, loss of appetite, and general weakness. Plaintiff suspected he had tuberculosis, but a chest X-ray did not confirm this condition. In early 1963 a tumor was discovered on plaintiff's right lung and was removed in May. Finally, after coughing up blood in 1966, plaintiff was told by his physician that he had asbestosis and would have to leave his job. Plaintiff filed suit in 1966.

The defendants argued that the statute of limitations barred plaintiff's suit. The Eighth Circuit Court of Appeals, upholding the trial court, concluded, however, that the statute of limitations did not begin to run until some harm or impairment, for which the defendant could be liable, manifested itself. As the court explained:

> [T]here is rarely a magic moment when one exposed to asbestos can be said to have contracted asbestosis; the exposure is more in the nature of a continuing tort. It is when the disease manifests itself in a way which supplies some evidence of causal relationship to the manufactured product that the public interest in limiting the time for asserting a claim attaches and the statute of limitations will begin to run. 523 F.2d at 160.

The time-of-discovery rule was also praised in *Harig* v. *Johns-Manville Products Corporation*, 284 Md. 70, 394 A. 2d 299 (1978). In Harig, plaintiff sued for damages resulting from occupationally induced malignant mesothelioma. Plaintiff had terminated her employment with the defendant in 1955 but did not develop the disease until 1975. Plaintiff brought suit in 1977. In ruling that the statute of limitations did not begin to accrue until the time of discovery, the court declared:

> In cases where the initial injury is inherently unknowable * * * the statute of limitations should not begin to run until the plaintiff should reasonably learn of the cause of action. Avoiding possible injustice in such cases outweighs the desire for repose and administrative expediency, which are the primary underpinnings of the limitations statute. 394 A.2d at 305.

The time-of-discovery rule has, moreover, been adopted by the U.S. Supreme Court in its construction of the statute of limitations for the Federal Employer's Liability Act. In *Urie* v. *Thompson*, 337 U.S. 163 (1949), plaintiff sued for injuries sustained from breathing silica dust over a 30-year period. The Court rejected any theory that would bar a plaintiff's cause of action before he was aware of the nature of his injury. The Court stated:

> We do not think the humane legislative plan intended such consequences to attach to blameless ignorance. Nor do we think those consequences can be reconciled with the traditional purposes of statutes of limitations which conventionally require the assertion of claims within a specified period of time after notice of the invasion of legal rights. The record * * * is clear that Urie became too ill to work in May of 1940 and that diagnosis of his condition was accomplished in the following weeks. There is no suggestion that Urie should have known he had silicosis at any earlier date. It follows that no specific date of contact with the substance can be charged with being the date of injury, inasmuch as the injurious consequences of the exposure are the product of a period of time rather than a point in time; consequently, the affected employee can be held to be "injured" only when the accumulated effects of the deleterious substance manifest themselves. 337 U.S. at 170.

The Court thus clearly adopted the view that when an injury does not manifest itself immediately, the cause of action should accrue not when the injury was initially inflicted, but when the plaintiff had reason to know that he had been injured. Generally, then, the cause of action would accrue when the plaintiff's condition was diagnosed, unless there was evidence that the plaintiff should have known at an earlier date that he was injured.

NEED FOR A DEFINED LIMITING PERIOD

In order to facilitate suits by victims of hazardous wastes, any statutory provision should contain not only a grant of Federal jurisdiction but also reference to use of the time-of-discovery rule and a specific limiting period. The "superfund" legislation in the other body, S. 1480, provides that there shall be liability under the act for "all damages for economic loss or loss due to personal injury," including, among others, damages for harm to personal and real property, loss of income and profits, impairment of earning capacity, and medical and burial expenses. While more detailed, this language is similar to that contained in the original House bill, H.R. 7020. The other body's bill provides additionally, however:

> No claim may be presented nor may an action be commenced for damages under this Act unless that claim is presented or action commenced within three years from the date of discovery of the loss or the date of enactment of this Act, whichever is later.

Delineation of a specific time for the commencement and duration of the applicable statute of limitations here is necessary to avoid any uncertainties and ambiguities that could develop with less explicit language. For example, the original version of H.R. 7020 created liability simply for all damages for personal injury, injury to real or personal property, and economic loss resulting from a release of hazardous waste. It is unclear exactly what impact this language could have on plaintiffs' claims. In the absence of a specifically defined limiting period, the courts might create a Federal statute of limitations for these actions under the guise of Federal common law. Given the limited use of Federal common law, however, this is improbable. Alternatively, the courts, in a stretch of jurisprudence, might grant an unlimited cause of action. This, too, is improbable; and even if such were possible, its fairness to defendants would be highly questionable.

The more likely result is that without a specific limiting period, the language would provide only access to a Federal forum for tort claims. The Federal courts, under the doctrine of Erie against Tompkins, would then have to look to State law to ascertain the relevant statute of limitations. If so, those plaintiffs able to bring a hazardous waste injury suit would be only slightly better off than if they had sued in State court. More importantly, many potential plaintiffs would still be blocked by restrictive State statutes of limitations that would now be applied also by Federal courts in the particular forum States. Whichever path might ultimately be chosen by the courts, it seems desirable to avoid any possible confusion by making the House bill's language as explicit as possible and incorporating into it a set year limit on injury actions comparable to that in the Senate bill.

POLICY BEHIND STATUTES OF LIMITATIONS

When considering the Federal forum issue, it is useful to bear in mind the policy reasons behind the statute-of-limitations concept. A statute of limitations is intended to protect unsuspecting defendants from stale claims by plaintiffs who, intentionally or negligently, fail to bring suit expeditiously. This concern is basically inappro-

priate in actions delayed, not out of deceit or sloth, but because it was impossible for the plaintiff to have known of his/her injury. The punitive effect of a statute of limitations was never intended to apply in such an instance. Where the time of exposure rule is in effect, however, courts have felt obliged to deny suits for latent personal injuries, believing that alteration of the rule is a legislative prerogative. Although some States have adopted the time of discovery rule judicially, legislative action is thus needed. Such action would indeed change existing restrictive limiting statutes in the minority of States that retain them; this is the desired effect. For the majority of jurisdictions, moreover, a Federal statute of limitations would merely codify and affirm the existing procedures.

In addition to avoiding any punitive impact on plaintiffs, the time of discovery rule had been cited as capable of furthering the procedural policy behind statutes of limitations in cases involving delayed-effect injuries. In *Raymond* v. *Eli Lilly & Company*, 117 N.H. 164, 371 A. 2d 170 (1977), the New Hampshire Supreme Court articulated five reasons for the desirability of the discovery rule for latent injuries. First, the rule does not facilitate unfair surprise against potential defendants because industry is fully aware of the latency period required for many injuries to manifest themselves. Second, because the evidence in toxic substances cases is primarily documentary, the traditional concerns about stale evidence, disappearing witnesses, and fading memories, which constitute the major justification for a restrictive statute of limitations, become less important. Third, the passage of time in such cases is actually likely to improve the quantity and quality of scientific evidence available to establish—or disprove—a causal connection between a plaintiff's injury and a defendant's activities. Fourth, by removing procedural obstacles to liability, the body of scientific knowledge concerning toxic/hazardous substances will increase because industry will perform additional tests on these substances when it is to their advantage to do so. Finally, the possibility of actual liability will act as a strong incentive for industry to exercise greater care in its activities and reduce any unnecessary exposure to these substances. While the court in Raymond was concerned specifically with a drug-caused injury, its remarks are applicable to latent injuries caused by hazardous waste as well.

TWO-PART TIME-OF-DISCOVERY RULE

While granting a Federal cause of action with the time of discovery rule will enable plantiffs to overcome existing restrictive State practices, such may nonetheless not provide victims of hazardous waste with all the procedural relief that is actually needed. A strong argument can be made that the Federal statute of limitations should be triggered by a two-part discovery rule: that the statute should not begin to run until such time that the plaintiff (1) discovered or should have discovered his/her injury, and (2) discovered or should have discovered a causal relationship between his/her injury and the defendant's conduct. Such a provision would accommodate those cases in which discovery of an injury and discovery of the causal relationship do not take place simultaneously—or at least not with sufficient proximity to permit a suit within the statute of limitations. It is not improbable that some victims, upon discovering their injuries, will not immediately realize the cause or the source of their harm. A physician may not attribute a victim's symptoms to exposure to hazardous waste; or even if the general medical/chemical cause can be traced, the waste disposal site may still be unknown to the public. Moreover, even if the disposal site is discovered it may be inactive, and the statue of limitations may run before the dumpers—that is, defendants—can be identified. Accordingly, employment of the discovery of the causal relationship rule would comport with the general notion of when the statute of limitations should commence: the point at which the plaintiff could first have maintained an action to a successful conclusion. It is difficult to maintain a successful suit without knowledge of either the cause of the injury or the party responsible.

CAUSATION REQUIREMENTS

This is a more controversial justification for providing a Federal cause of action to parties injured by hazardous waste. A Federal cause of action may not in itself ease the requirements for proof of causation. It is highly possible that Federal courts in hearing suits brought under H.R. 7020, will simply adopt the present, restrictive common law causation standards of the respective forum States. On the other hand, as the Federal courts adjudicate claims under the statute, they may develop their own Federal requirements for causation. These requirements, if developed, would likely be more lenient in their demands on plaintiffs. Creation of a Federal cause of action might thus indirectly ease a plaintiff's burden of proof.

A more direct method of lessening plaintiff's currently unreasonable burden is to articulate in the act itself the requirements of causation. The other body's bill, S. 1480, enunciates factors by which a finding of presumptive causation can be made in personal injury suits brought under that act. Section 4(a)(3)(A) of S. 1480 declares that "it shall be presumed that a defendant caused or significantly contributed to—plaintiff's—injury or disease" if the plaintiff can show:

(1) that the plaintiff was exposed to a hazardous substance found in a discharge, release, or disposal which the defendant caused or to which he contributed; and

(2) that there exists a reasonable likelihood that exposure to such substance causes or significantly contributes to injury or disease of the class or type which the (plaintiff) claims to have suffered.

The presumption thereby created, however, is rebuttable by the defendant if he can demonstrate that the plaintiff's exposure to the substance in question did not cause or significantly contribute to the plaintiff's injury. The Senate bill also seems to limit use of the presumptive causation formula to claims for medical expenses.

Under the existing common law system, proof-of-causation requirements vary among the States. While some States are more lenient than others, a plaintiff would have difficulty in nearly every State demonstrating the requisite linkage between his/her injury, exposure to a hazardous substance (which may have occurred years before), and the action of the defendants, even under a scheme of strict liability. This situation may change as more waste-related suits are tried in the State courts and the judiciary becomes more familiar with the questions and factors involved. Even then, however, there will likely still be a disparity between the States in their causation requirements, and a plaintiff's likelihood of recovery could depend upon where his/her claim is brought.

UNIFORMITY IN THE LAW

Related to the problems discussed regarding proof of causation, there is a need for consistency in theories and procedures in finding liability for waste-caused injuries. Presently, the common law tort system is disjointed and fragmented as each State maintains its own rules and requirements regarding not only causation, but evidence, pleadings, degree of liability, and so on, for personal injury cases. These disparities are accentuated when waste-related injuries are considered, for the hazardous waste issue is so new that there is no real, existing body of common law here on which State courts can rely in adjudicating claims. Each State is thus likely either to develop its own unique set of rules for such cases or to extrapolate rules from those that it already employs in other tort matters.

While differing standards of liability, et cetera, may not, in themselves, be undesirable in the usual tort case, hazardous waste injuries present a special need for consistency. As previously discussed, proof of causation will be difficult, and as each State develops its causation requirements, liability could well be dependent on the choice of forum. Because of the complexities involved here, uniformity is needed not only to lessen plaintiffs' difficulties but also to provide defendants with sufficient notice of their potential liability.

Uniformity is also needed for evidentiary purposes. For example, biostatistical data of varying sorts is likely to be an essential element of any plaintiff's suit. Nevertheless, some States may refuse to permit the introduction of such data. Not only would this occurrence severely handicap those plaintiffs unable to present biostatistical data as evidence, it would also hinder the development of an adequate body of knowledge about the effects of hazardous wastes. Such information is sorely needed now, and private litigation can help compile it.

A Federal cause of action would facilitate uniformity because of the manner in which Federal courts rely upon one another for guidance. While State judiciaries operate more as autonomous entities, the Federal courts exist as components of an overall, interrelated Federal legal network. Once theories and procedures are developed by some Federal courts for handling hazardous waste cases, the odds are good that they will be adopted by the other Federal courts as well. This is not true for State courts.

INNOVATIVENESS OF FEDERAL COURTS

Just as the Federal courts can promote uniformity of law in hazardous waste injury suits, they can contribute to the development of new approaches to liability that are better suited to the complexities of such litigation than existing tort law. Many State courts will likely accept the view that the generation and disposal of hazardous waste constitutes ultrahazardous activity and so subjects producers and dumpers to strict liability. It is also possible, however, that some States will make great demands of proof, causation, et cetera, before they will hold a defendant strictly liable. There is a natural hesitancy on the part of State courts generally to accept new methods of proof and theories of liability. It may thus be difficult for an injured party to meet the traditional tort test because of the exceptional circumstances—causation, delayed overt injury—that will surround many waste-related harms.

Although the Federal courts have not always proved to be a haven for progressive legal theory, they do exhibit greater receptivity to new modes of thinking when exigent circumstances arise. Rather than deny a deserving plaintiff recovery, the Federal courts have been willing to extend existing legal theories to cover novel situations or even to create new legal rules to meet changing times. Certainly, some State courts, such as California's, have played a leading role in judical innovation. Many State courts, however, are not as bold and will deny recovery rather than establish new precedent.

DIVERSITY JURISDICTION

The preceding discussion was not meant to imply that presently plaintiffs are completely denied access to the Federal courts. A plaintiff may bring suit in Federal court on the basis of diversity of citizenship if the defendant is a citizen of another State. Jurisdiction on diversity grounds, however, is not available to all victims of hazardous waste. Moreover, diversity jurisdiction does nothing to bring about the objectives enumerated at the outset of this paper. While a Federal court hearing a diversity claim might be sympathetic to creative legal theories, the Federal courts will generally apply the law of the forum State, since the claim is brought under the common law. Additionally, because the Federal courts will apply State law, uniformity of rules and procedures is not encouraged—although all evidentiary considerations are governed by the Federal Rules of Evidence. Finally, the problem with statutes of limitations and proof of causation are not alleviated.

On occasion, a Federal court has deviated from State law and established its own approach for handling complicated injury cases similar to those involving hazardous waste. Such cases will in part help to establish some Federal common law on the subject; but these cases are infrequent and the precedents too disjointed to have a significant impact. A simple grant of Federal jurisdiction, even without language affecting the statute of limitations question and requirements for causation, would be an improvement over the present system.

The text of my third amendment is as follows:

Page 47, line 25, after "costs" insert ", damages, or losses".

Page 48, in lines 2, 6, 11 and 23 after "costs" insert ", damages, and losses".

Page 49, line 1, after "COSTS" insert "DAMAGES, AND LOSSES" and after "costs" insert "damages, and losses".

Page 49, line 3, after "are" insert "(1)".

Page 49, line 9, before the period insert: ", and (2) all damages for personal injury, injury to real or personal property, and economic loss, resulting from such release or threatened release".

Page 49, line 10, after "To Whom Liable.—" insert "(1)".

Page 49, line 11, after "(b)" insert "(1)".

Page 49, after line 19, insert:

"(2) The liability for damages or loss described in subsection (b)(2) shall be to the person who sustained such damages or loss. In the case of any such damages or loss to natural resources owned, controlled, or managed by the United States or by a State or local government, the liability shall be to the United States, the State, or the local government, as the case may be. No action may be brought under this section for any damages or loss described in subsection (b)(2) after the date three years after the date on which the plaintiff discovers such damages or loss, or after the date three years after the date of the enactment of the Hazardous Waste Containment Act of 1980, whichever is later."

CONCLUSION

Mr. Speaker, all three of these amendments merit the support of this body. In closing, I would like to express my deep thanks to two members of my staff who have devoted long hours and great effort to serving the public interest with respect to this issue. Mr. Ted von Glahn has been principally responsible for the work in my office on the hazardous waste issue. His assistance has been invaluable. Mr. Steve Owens has been principally responsible for the work in my office on the liability portion of this legislation and has crafted the three amendments that I have just discussed. All three of us share with many other Americans a deep commitment to finding a just remedy for the enormous problems associated with hazardous waste disposal.●

MAYOR YOUNG TESTIFIES BEFORE AUTO TASK FORCE

HON. WILLIAM M. BRODHEAD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BRODHEAD. Mr. Speaker, on September 2, the auto task force held its first public hearing in the city of Detroit. We met in Detroit because the auto industry—the largest single manufacturing industry in the United States—is now facing the most difficult period of its history. As of last month, sales of American-made cars had plunged to an annual rate less than three-fifths of what it was just 2 years ago. This plunge was accompanied by an unprecedented jump in the sale of foreign imports. Today more than one car in four sold in the United States is in fact produced by foreign labor.

We know the results: As of last month, a total of 239,000 U.S. auto workers had been laid off indefinitely. Another 450,000 workers in supply industries were also out of work. Many of these unemployed workers are now exhausting their unemployment benefits and have no prospect of reemployment. In Michigan, our welfare caseload has risen to its highest level in history: The number of families on welfare is increasing by 3,000 to 4,000 each month.

The full human cost of this disruption cannot be measured. However, in economic terms, each lost job requires additional payments for unemployment benefits, and often for food stamps and welfare. These additional dollars must be taken from the pockets of the remaining work force, creating a heavy drain on the wealth and productive capacity of the entire economy.

Each and every member of this task force agrees that this disruption must not continue. Each of us believes that Congress must move quickly to help the industry recover its vitality and its competitive edge. In recent weeks and months, many individuals and groups have offered specific proposals for congressional action. Our task force, however, wants to build its joint plan of action on the views of leaders of the communities which have suffered most. One such individual, Mayor Coleman Young of Detroit, provided the task force with valuable suggestions. I would like to share his views with my colleagues in the House.

TESTIMONY OF COLEMAN A. YOUNG, MAYOR, CITY OF DETROIT

Mr. Chairman, Members of the United States House of Representatives Auto Task Force. I am Coleman A. Young, Mayor Detroit. On behalf of the the City, Welcome! I compliment the Congress for having the wisdom to appoint a Detroiter, Bill Broadhead, as Chairperson of this Task Force and for holding its first hearing here in Detroit—the nation's Automobile Capital.

Detroit's lifeblood is still the manufacture of automobiles and auto parts and supplies despite efforts to diversify the local economy. Nationally, one in five job holders work in a motor vehicle-related industry. Locally, forty percent (40 percent) of all manufacturing employment is in the automotive industry. This means, therefore, that the City of Detroit's health is inextricably tied to the health of the American auto industry. It can hardly be news to you, then, when I tell you that Detroit is in very, very poor health. The City is in serious recession due to the severe downturn in auto sales and profits. Domestic automotive vehicle production during the Second Quarter of 1980 dropped 41 percent below the comparable 1979 Quarter. During the same period, the percent of sales captured by foreign auto makers increased from 23 to 28 percent.

In the 10 days ending August 20, the last period for which sales data are available, GM car sales had declined 35.2 percent from the same period in 1979, Chrysler sales had declined 23.5 percent and Ford sales had declined 51.3 percent. The Total U.S.-produced cars sold during that August 10–20 period, including Volkswagen of America which increased sales by 162 percent, declined from 239,579 in 1979 to 171,265 this year. That is a 36.5 percent decline.

Domestic autos which lost the greatest market share were the larger, less efficient cars produced in the aged factories of Detroit. Motor vehicle production in the Detroit SMSA fell from 739,000 in the second quarter of 1978 to 301,000 in the first quarter of 1980, a 60 percent decrease! Second quarter 1980 data are not available, but I have every certainty that the decline is even more dramatic.

IMPACT ON THE PEOPLE

The effect of these plummeting sales and production figures on Detroit has been swift and disastrous. Between May, 1979 and May, 1980, the number of workers employed in motor vehicles and equipment manufacturing in the Detroit SMSA dropped 35 percent (248,100 to 160,800).

Currently, Detroit has an "official" unemployment rate of 18.3 percent (June, 1980). The City's previous high of 17.9 percent was reached in March, 1975. During the second quarter of this year, the unemployment rate for Detroit's Black males was 33 percent.

While no data are available for Detroit City only, SMSA unemployment claims against the auto companies rose from 10,000 in June of 1979 to 90,000 in June of 1980. Again using an SMSA base, in June of 1980 there were 160,000 workers drawing regular unemployment benefits and 39,000 drawing extended benefits. The 39 weeks of available benefits are being exhausted at an alarming rate. Statewide, 253,000 will exhaust their unemployment benefits this year. In June alone, benefits ran out for 46,000, three-fourths of them in Wayne County.

John Dempsey, Director of the State of Michigan's Department of Social Services, has predicted that State welfare rolls will reach 250,000 families by late winter. That is 20,000 more than at present and 43,000 more than at the peak of the 1975 recession. Those new clients are expected to be laid off skilled workers who have exhausted all union and State unemployment benefits.

In Detroit, welfare rolls have exploded in the last year. On July 1, 1980 there were 45,000 Detroiters receiving general assistance, 225,000 receiving ADC, 33,000 receiving SSI (Supplemental Security Income), 35,000 receiving medical assistance only, and a whopping 302,000 in food stamp certified households.

IMPACT ON CITY GOVERNMENT

A. Tax losses

The combined effects of drastic industry declines and massive unemployment on the City government structure are enormous. Local revenues account for over 60 percent of Detroit's $1.5 billion budget. Major sources of local revenues are property taxes, 11.3 percent of the 1980 City budget, (property taxes also fund County operations and the independent public school system) and the municipal income tax, 10.5 percent of the total budget.

Income tax receipts have been immediately and directly affected by the drastic decline of the auto industry. Corporations are taxed 2 percent on net profits derived within the City, the apportionment being calculated from a combination of payroll, property and sales. Both Chrysler and General Motors have extensive operations in the City. Chrysler has fourteen (14) plants here. GM World Headquarters and ten (10) of its plants are in Detroit. Because of recent losses, none of the automobile companies are expected to pay any corporate income tax to the City this year. And, carry forward provisions insure that corporate income tax receipts from automobile companies will remain depressed long after the expected recovery occurs.

The City collects a 2 percent income tax from residents and ½ percent from non-residents who work in the City. City income taxes withheld by employers grew from $105.2 million in fiscal 1977 to $113.9 million in fiscal 1978, to $123.6 million in fiscal 1979, healthy 8.3 and 8.5 percent increases. In fiscal 1980, only $124.6 million was collected, less than ⅒ of one percent growth. This year, our Income Tax Division expects withholding tax collections to shrink to $114 million, an 8.5 percent decline, if there are no further major layoffs.

Net (after refunds) municipal income tax receipts from corporations, partnerships and individuals for fiscal 1980 was $138 million. This was $19.9 million less than budget.

The fiscal 1981 City budget depends on net municipal income tax receipts of $154.4 million. Based on current activity, the collections may be as low as $125 million. If that proves to be the case, it would put a $28.4 million hole in this year's budget.

General Motors and Chrysler are two of the three largest property taxpayers in the City. Ford Motor Company has much less property here, (although many hundreds of Detroiters work at Ford's huge Rouge Complex in Dearborn).

The combined City of Detroit 1980 real property assessment (50 percent of market value) for the "Big Three" is $205.4 million, nearly 10 percent of the City total. This property generates $13.9 million in City and school taxes, and will generate about $2 million in County taxes based on the 1979 County tax rate.

We have heard numerous rumors of plant closings. Although no City of Detroit auto plant has yet been permanently shut down, some are indefinitely closed, and the effects on City revenues substantial.

Chrysler Corporation plants which are considered likely to close are Lynch Road, Huber Foundry, Outer Drive Stamping, and Mack Avenue Stamping. These properties are currently assessed at $47 million, and generate $3.2 million in City and school taxes, and $⅓ million in County taxes.

Potential GM closings include Cadillac Motor Michigan Avenue-Clark Street, Conner Avenue Stamping, Fisher Body Fleetwood, and Fisher Body Detroit Fort Street plants. They are assessed at $60 million and generate $4 million in City and school taxes and $600,000 in County Taxes.

The closing of these facilities would reduce the real property taxes collected on the facilities by 25 to 50 percent, up to $4.1 million.

City personal property taxes are applied to the content of factories. In 1980, $5.7 million will be collected from the "Big Three" on $168.4 million worth of machinery and equipment, some 35 percent of the personal property taxed in Detroit. Another $5.6 million in personal property taxes will be paid to the Detroit Public School System. County taxes rates for 1980 are not available, but in 1979, the automobile companies paid $1.6 million to Wayne County in personal property taxes.

The equipment in those Chrysler plants rumored as likely to be closed is assessed at $44 million; that in the rumored GM plants at $54 million. Combined, they generate $6.5 million in City and school taxes, and $1 million in County taxes. If the companies were able to dispose of all the equipment in those plants under discussion, the total local personal property tax loss would be $7.5 million.

In addition, the City collects a 5 percent Utility Users Excise Tax, capped at $37 million. About half of this tax has traditionally been collected from industry, with Chrysler and General Motors paying an estimated 20 percent of the industrial portion. Depressed auto activity will result in a fall off of this city revenue.

The budget problems these reductions in tax revenues have caused have been exacerbated by the steps taken by the State and Federal governments to reduce their spending. The failure to enact countercyclical fiscal assistance legislation at the Federal level, the failure of State passage of court reorganization and "Census Hold-Harmless" legislation, and reductions in State Revenue Sharing contributed significantly to the City's fiscal year 1980 budget deficit.

B. Reduction of city services

In fiscal 1979–80 my Administration was faced with a potential budget deficit of $106.4 million. I instituted a hiring freeze, and in October, 1979, laid off 907 City employees, including 400 Police Officers. This layoff affected about 5½ percent of the 16,624 General City employees. In spite of this, we ended the fiscal year with a deficit of about $85.5 million; $50 million of which was the result of a fire and police arbitration award. The deficit and local economic conditions has recently resulted in the lowering of our bond rating to "below investment" grade.

We have just completed the first two months of fiscal 1980–81, and we see the problems worsening: tax revenues continue to fall; State Revenue Sharing will be $9.5 million less than anticipated; new union contracts will cost $12.6 million more than budgeted; last year's deficit is $26.3 million more than expected; and, State and Federal legislation that would grant us essential operating revenues are stalled.

Another 690 Police Officers will be laid off effective September 5 reducing the uniformed complement to about 4,225, a reduction of 23 percent in the past year. This is the first of two Police layoffs planned in the 1979–80 budget.

My staff has been working for the past several weeks to formulate additional layoff and savings plans. City services have already been reduced below "adequate." They will, of necessity, be reduced still further. The reductions in City programs come at a time when our citizens can least afford it. After three years of steady decline, crime has started an upward trend, a result of the depressed economy. Yet we have been forced to lay off over 1,000 Police Officers in the last year.

Michigan Employment Security Commission data for Detroit indicates that in the second quarter of 1980, the unemployment rate for non-white males aged 16–19 was 61.5 percent. But, we have had to reduce summer recreation programs for lack of funds.

With total unemployment reaching 20 percent, employment and training programs are being slashed.

Public health services are being squeezed when demand indicates they should be expanded.

Bus routes are being reduced at a time when public transportation needs are growing.

I could continue, but I think you get the idea. City government is being forced by financial necessity to contract when it should expand to meet the increased need for services. And, the State of Michigan, faced with the similar budget problems, has been slashing programs and reducing its vital services. For example, the State Department of Social Services will spend approximately $2.9 billion this year due to the soaring welfare rolls. In an attempt to reduce State Social Service cost, Governor Milliken has proposed denying assistance to single employable persons aged 45 or under. This could leave some 40,000 persons in Wayne County alone without income. I shudder to think what the repercussions of this action, if upheld by the State legislature, will be.

LOCAL REVITALIZATION EFFORTS

During the past seven years I have worked with business, labor and community leaders to strengthen that public-private partnership which is so very necessary to ensure healthy urban economics—particularly in the Northwest and Upper Midwest regions of this country. The three major automotive companies have been active members of the Economic Growth Corporation of Detroit, Detroit Renaissance, and New Detroit, three of the most prominent partnership organizations in the City.

The City recognizes the significant role the automotive companies have played in Detroit's economy and to the people of Detroit. One example of our concern for these companies, and for other Detroit firms, is the special tax exemption program Detroit has operated for the past five years. Under a 1974 State Act, Detroit grants special 12 year tax exemption districts to encourage industry to expand and rehabilitate existing facilities. Over 75 firms in Detroit have applied for and received such exemptions. Chrysler and General Motors have used this program at several of their facilities.

In 1979 alone, Chrysler received tax abatements (City, School, and County) valued at $3.1 million. In 1977 and 1978 plant investments by General Motors in Detroit have resulted in approximately $1 million in taxes. Currently, there's a total of $14.2 million annually in taxes abated citywide, to all approved Industrial Districts.

The future of the automotive industry is of extreme importance to the City. That is why we presently are working closely with the Chrysler Corporation to provide local financial assistance for the firm's $100 million renovation of its Jefferson Avenue Assembly facility. This project made possible the production of the highly competitive, fuel efficient, front-wheel drive "K" car.

In addition, the City is working with the Corporation in the development of a five-year capital investment program in Detroit. This investment program to modernize Detroit plants would ensure the competitiveness of Chrysler in the automotive industry. By participating in this plan, the City believes we can retain a viable Chrysler Corporation in Detroit, and maintain jobs for Detroiters.

The City of Detroit together with the General Motors Corporation and the Trizec Corporation of Canada, with major assistance from the Federal Government, have launched an exciting inner-city residential/commercial revitalization project. Two Urban Development Action Grants are involved totalling some $12.4 million with General Motors' contribution amounting to approximately $11 million.

In addition, the city currently is working with General Motors on its plan to build a modern assembly plant for its Cadillac Division in Detroit. Federal, State and local resources will be tapped to enable the City to deliver some 450 acres cleared and improved land to General Motors.

Mr. Chairman, these are but a few examples of what Detroit is doing and must do if it is to retain and, hopefully, expand its existing economic base. At the same time, Detroit must make every effort to diversify its economy so that the economic and fiscal depressions we have experienced so often in the past and are experiencing now will be minimized in the future.

SERVING THE NATIONAL INTEREST

Mr. Chairman, I would like to conclude my remarks this morning by pointing out why the National interest would be best served if the Federal Government would become an even stronger member of the Government/Industry/Labor partnership in place here in Detroit.

As the Mayor of a city which some characterize as being a mature, industrial city in need of assistance, I am pleased that the present Administration and the Congress have enacted laws which provide the City with additional tools to revitalize and enhance Detroit's economic base as well as provide community development and human service opportunities for those unable to totally provide for themselves. Many of our cities are benefiting from these very effective federal programs. For the first time, the federal government has made a commitment to the Nation's cities and has begun to implement a National Urban Policy.

The same kind of national commitment to our industrial sector must be made if our basic national industries such as automotive are to withstand the pressure of world-wide markets and competition and retain our world industrial status. It is time we realize that our basic industries are in serious trouble. They have become increasingly obsolete and are in critical need of overhaul and modernization. The cause of their current problems are numerous—the draining of dollars and jobs out of the United States due to international trade practices, our domestic energy crisis, world competition by other industrialized nations which appear to have better working relations with their basic industries and more. No matter the cause, the problem is too great for any one corporation to solve by itself. Initiative must be taken now by our national government. Federal investment in the automotive industry would not only make that industry modern and competitive, but would act as a catalyst to stimulate all the other industries such as steel, glass, rubber and more, which are so dependent on the auto industry.

I enthusiastically commend President Carter on his recently-announced economic revitalization program for the 1980's. It is a major step forward for the industrial sector of our economy and for those regions of the country so closely tied to manufacturing. I challenge you, the United States House of Representatives, and the United States Senate to enact expeditiously his legislative proposals and to capitalize on the momentum which his initiatives have created.●

TRIBUTE TO FRANCOIS MIGNON

HON. GILLIS W. LONG

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. LONG of Louisiana. Mr. Speaker, the State of Louisiana has suffered a great loss with the recent death of an outstanding citizen, Mr. Francois Mignon, 81, one of our premier authors and historians.

Throughout his life, Mr. Mignon devoted himself to preserving the historical Natchitoches area and popularizing local culture and traditions. His award-winning newspaper column featured every topic from native flora and fauna to ancient Greece and modern Louisiana. In addition to his talents as a writer and historian, a series of plates he designed depicting Natchitoches history and legend illustrated his ability as an artist, too.

Mr. Mignon's contributions to Louisiana was not only displayed in his personal achievements, but also in the guidance and inspiration he gave to those who had the opportunity to work with him and know him as a friend. We are especially grateful to Mr. Mignon for introducing primitive painter Clementine Hunter to the world. Under Mignon's guidance, the painter, once a field hand and plantation cook, became the first black to have a one-person showing at New Orleans Delgado Museum. Ms. Hunter went on to achieve international recognition for her fascinating and unique primitive art style.

To list all of Mr. Mignon's contributions to society would be an extraordinary, if not impossible task. I am pleased at this time, in these few words, to express tribute to Mr. Mignon and all that he has given to our great State and Nation.●

THE WELFARE MYTH

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. FORD of Michigan. Mr. Speaker, one of the most common complaints in America today is that too many lazy, shiftless people are taking advantage of the welfare system to enjoy comfortable lives at the expense of those Americans who work for a living.

The falsity of this all-too-common belief is effectively exposed in an excellent editorial by the Detroit News, entitled "The Welfare Myth."

Michigan's growing unemployment rate, already the Nation's highest, has created a large pool of jobless persons whose unemployment benefits have been exhausted, forcing them to seek public assistance for the first time in their lives. These families are discovering that welfare is not easy to obtain and that the benefits hardly provide a comfortable existence.

Mr. Speaker, I insert the text of the editorial at this point in the RECORD. I urge my colleagues to read it carefully and keep it in mind next time they hear complaints about welfare cheaters living on steaks and champagne.

WELFARE MYTHS

State Social Services Director John Dempsey attacked what he called welfare "myths" at a Detroit press conference the other day. Two myths are that many people are on public assistance fraudulently and that they get public assistance without much checking.

A growing group of Michiganians are, unfortunately, finding out that easy access to the welfare system is indeed mythical. They are the laid-off workers whose union and state unemployment benefits have run out and who are now applying for public assistance for the first time in their lives.

According to Mr. Dempsey and district welfare offices, a lot of these first-time applicants are angry and confused when they find that getting money out of the government isn't as simple as they had assumed.

First of all, anyone applying for aid to families with dependent children (ADC), general assistance, food stamps, or other programs will have to fill out a new 22-page form that, like any piece of government paperwork, is a test of determination in itself.

The questions on that form are intimate and exhaustive, and each answer has to be backed up by written proof. For example, when the government wants to know how many children the family has in school, the applicant must show evidence of school attendance. Neither the applicant's word nor a verifying phone call is enough.

Rather than wait long hours only to be told to return with the necessary papers, welfare offices advise prospective clients to bring in the following: Social Security cards for every member of the family, children included; bank books; insurance information; car registrations; mortgage company or landlord statements; recent utility bills; information on Social Security benefits; and if employed, the last month's pay stubs.

Unfortunately, many of the laid-off workers who become new welfare clients will be surprised to learn that, although they don't have a cent in the bank, they may not be able to qualify for ADC or general assistance.

Many will be told they have too many assets. Public assistance allows clients one home or apartment, household goods, and one car. The second car, the snowmobile, the motor home, the boat, the cottage up North, all painfully purchased in more prosperous times, will be considered unnecessary assets. To qualify for aid, many laid-off workers are going to have to sell those items. And selling real estate, cars, boats, or snowmobiles is very difficult in the current market. Many people will be forced to take a loss on their investments.

Those who sell assets to be eligible for assistance must also show proof of how they used the proceeds. Reinvesting in new household items isn't allowed; the money from the sale of the snowmobile must have been used up by rent, food, health care, or other necessities.

Those who still wonder about all the supposed cheaters can consider these facts: Only 1.8 percent of the state's total caseload is referred to the inspector general for suspected fraud, and 70 percent of those cases are said not to involve any actual cheating. Certainly, some fraud is going undetected and one can complain that the fraud that is detected tends to go unpunished. But welfare cheating is not as widespread as many assume.

Once the new applicant is eligible for welfare, the checks don't begin arriving immediately. It takes 30-45 days to be processed. In the meantime, an emergency-needs program is available to prevent eviction or utility shutoffs and food stamps prevent starvation, but it's better not to wait until creditors are banging at the door (welfare won't help with your department-store charge or auto loans).

And once those welfare payments are coming in, the amount might seem trifling. A family of three or four gets about $130 a month for rent, up to about $230 with more children. A house payment will be budgeted for a maximum of $230. You can own a car, but ADC will not cover car payments or car insurance. With ADC, personal needs—meaning both food and clothing—are covered by a $73 per person per month allotment.

Clearly, it's not possible to pay for a nice suburban home, a good car, and new clothes on that budget. Traditional welfare clients may be used to the $130 apartment, but the flood of laid-off workers may face painful cuts in living standards to make ends meet with ADC or general-assistance programs.

Welfare, for all its faults, is not an easy-money program for high-living chiselers. And a lot of first-time applicants are discovering the truth about such misconceptions the hard way.●

HERKIMER AMERICAN LEGION BASEBALL SQUAD

HON. DONALD J. MITCHELL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. MITCHELL of New York. Mr. Speaker, it gives me great pleasure to bring my colleagues attention to the significant achievement of a group of young men from my hometown—Herkimer, N.Y. Under the able leadership of manager Larry Hughes and pitching coach Jim Aiello, the Herkimer American Legion baseball squad has become the Cinderella team of American Legion baseball by winning the New York State American Legion baseball championship.

On Saturday, August 16, at historic Doubleday Field in Cooperstown, N.Y., Herkimer's American Legion Post 38 won the 1980 State championship. On its way to the championship, this group of young men, composed entirely of the Herkimer High School ballplayers, defeated big city rivals whose teams were built with recruits from varied and larger high schools and, in some cases, colleges.

Their 6 to 1 victory over defending champion North Albany raised the Herkimer record to 20 wins and 7 losses. It also rewarded the hard work of the players and coaches and the enthusiastic support of parents and the community.

The members of the 1980 New York State American Legion baseball champions—Michael Atkins, Ronald Brown, Joseph Casale, Anthony Cirelli, Daniel Hughes, Robert Jackson, Pasquale Mula, Daniel Murphy, David Preische, Troy Rice, Gerald Sakowski, John Sarafin, Andrew Scialdo, Joseph Wood, William Wood, Mark Vallese, and Timothy Newman—should all be extremely proud of their accomplishment.●

CONGRESSMAN ROBERT A. YOUNG, MAYOR JAMES CONWAY, AND CLYDE WISEMAN TESTIFY BEFORE AUTO TASK FORCE

HON. ROBERT A. YOUNG

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. YOUNG of Missouri. Mr. Speaker, under the leave to extend my remarks in the RECORD, I include the following:

STATEMENT OF CONGRESSMAN ROBERT A. YOUNG

Mr. Chairman and fellow Members of the Congressional Auto Task Force, my name is Robert A. Young, U.S. Representative from the Second District of Missouri. It is indeed an honor and a pleasure to serve on the first Congressional Auto Task Force.

As everyone here is aware, the U.S. automobile industry experienced the lowest sales record and the highest unemployment levels in recent history. It is clearly a matter of grave concern that the U.S. auto industry is in severe trouble, when little relief is in sight for the near future.

The difficulties of the industry stem from a wide range of sources. The gasoline shortages and rapidly rising gas prices which are a consequence of our ongoing energy crisis have led to a major shift in consumer preference to small, fuel efficient, quality automobiles.

Domestic producers, for a number of reasons, have been unable to respond quickly to this irreversible shift in consumer preference. Although we have made great progress in producing small, fuel efficient cars in the United States, it will, however, take several years for American manufacturers to complete this conversion of retooling our factories.

Foreign cars now hold the second biggest share of the United States market after General Motors. The Japanese have made the biggest gains by selling over 2 million cars here last year, as compared to 19,000 American-made cars sold in Japan. It has been suggested that Japanese producers should begin making some of their automobiles here in the United States. Such an investment would have the dual advantage of creating jobs for American workers, while providing the small, fuel efficient cars to the American consumers.

It has also been suggested that the Japanese should allow American manufacturers greater access to the Japanese market. This

of course, would be very beneficial, however, the Japanese persist in maintaining needless regulations and standards which serve as nontariff barriers to trade in American-made automobiles.

It is of course, imperative, that American manufacturers become more inventive in producing small, fuel efficient cars which can continue to compete domestically, as well as compete in foreign markets.

To be sure, American productivity and competitiveness is of great concern. As is the question of the foreign imports. However, more importantly is the issue of over one-third of the nation's auto workers that are unemployed and nearly half a million jobs in auto-related industries that have been lost. It is vital that we in the Congress, develop a national strategy to alleviate the burdens of the unemployed.

Another area of concern is the increasing number of older plants being abandoned by the industry in our urban areas. We must develop a program where these older plants could be rehabilitated and revitalized so as to become an asset rather than a liability to the community.

In the final analysis, a number of proposals and programs have been advanced to spur industrial growth; programs which will increase private and public sector investment and that will encourage rehabilitation of existing facilities, as well as investment in new plants and equipment. I believe the President's program announced last Thursday, August 28th, 1980, is an important step in providing for America's industrial revitalization.

I would now like to take time to focus on the situation in the State of Missouri, and more specifically, the automobile manufacturers in St. Louis.

The state of Missouri ranks second among the states in the production of passenger cars and third in the production of trucks. Between May of 1979 and May of this year, employment in the production of motor vehicles and equipment went down from 41,000 to 23,100.

My own home area of St. Louis produces more cars and trucks than any other urban area except Detroit. At present, there are about 14,000 persons employed in vehicle assembly and parts production in the St. Louis metropolitan region. That is down from 28,500—a 50 percent drop—since 1977 and 1980.

You can see why I am extremely concerned about the difficulties facing the American automobile industry.

We have factories of all the big three auto producers in the St. Louis region, and employment at all three is down drastically.

Chrysler closed down its truck line completely this summer, eliminating 2,100 jobs. More than 1,800 workers had already been laid off there. We are hoping it will be reopened, but that does not seem to be likely any time soon.

Both Ford and Chrysler have eliminated second shifts on their auto assembly lines, costing us another 3,000 jobs.

Our Chevrolet plant is pretty well shut down until a new plant is finished in another part of the St. Louis area. Even when that plant starts up, there will be fewer jobs than at the old plant . . . and the Corvette assembly operation is moving out of the area entirely after next year, eliminating 1,450 jobs.

Another concern in my district is what is to be done with the old Chevrolet plant that General Motors is about to vacate. Those of us in the Congress might want to consider whether it would be a good idea to offer some federal assistance in rehabilitating such property for some other job-producing activity.

That is the situation in my home area, and it is a bad situation.

Mr. Chairman and fellow Members of the Congressional Auto Task Force, that concludes the remarks of my opening statement.

STATEMENT OF MAYOR JIM CONWAY

Mr. Chairman, Honorable Members of the Ad Hoc Auto Task Force, I'm Jim Conway, Mayor of the City of Saint Louis, and I want to express my appreciation to you for inviting me to appear before you today. I'd like to take just a few minutes of your time to talk to you about the current state of the American automobile industry in the context of that industry's primary environment—the older major industrial cities of the Northeast and Middle West.

Saint Louis has been this country's second largest automobile manufacturing center for many years, but recent events suggest that by 1985 or 1990, this may no longer be the case, unless we as public officials take quick and decisive action. Such action must include both incentives for reinvestment in, and retooling of, existing plant facilities, and disincentives for ex-urban relocation. I know this to be true owing to my recent experience with the General Motors assembly plant in the City of Saint Louis.

That facility, located on our city's north side, which at peak has employed 10,000 plus workers, will close sometime within the next two years, to coincide with the opening of a new plant some thirty miles away in rural Wentzville, Missouri. While I am glad that the State of Missouri was able to retain General Motors, I have to live with the crippling blow this move has dealt to the City's fragile economic base, and I strongly believe that this type of plant relocation runs totally counter to the national interest.

There is no doubt that our country's mission over the next decade will be to effect what has been popularly dubbed "reindustrialization"—the retooling and modernizing of our plant, equipment, and production techniques—so that we can continue to compete effectively on the world market. To go about this task by encouraging the abandonment of literally billions of dollars in existing physical plant and public infrastructure would, however, be not merely shortsighted, but in the final analysis ineffective in bringing about a true economic recovery. We in this country are finally coming to grips with the necessity to conserve energy in all its forms. The broad mandates of energy conservation are that we cannot continue our wasteful process of casually discarding the old for the new, our reluctance to assess the cost of long-distance employee commuting, our seeming willingness to abandon a skilled workforce. We must rather remodel, renovate, retrain and maximize the use of the massive investments of energy, materials and talent we have made over the years.

Industry must enter into a truly meaningful partnership with the community to accomplish our nation's economic and social goals. Frankly, my disappointment with Generals Motor's actions toward the City of Saint Louis during the last year stem in great part from that corporation's apparent lack of willingness to join just such a partnership with us. On the contrary, the story of General Motors' dealing with the public officials of the City of Saint Louis over the past eighteen months is one of bad faith on their part.

In March of 1979, Tom Murphy, Chairman of GM, came to Saint Louis to announce GM's decision to move its Corvette operations from Saint Louis to Bowling Green, Kentucky. To soften that blow, he also announced that the company planned to invest $100,000,000 to modernize its other facilities at its City location on Union and Natural Bridge. To this end, the City committed to the assembly of 44 acres adjoining that site for purposes of GM's supposed plant expansion. Consultations between GM real estate personnel and the City got underway immediately and were continuing right up to January 31, 1980. Never once did GM indicate it had changed its mind on this expansion program until I and the media were handed a press release on that Thursday, January 31, 1980, announcing the phasing out of the GM plant in our City.

Starting that very day, we began to move to make available to GM a city site meeting their requirements, to the extent, of course, that they were willing to make those requirements known to us. While I am proud of the job we did, I knew from the start that the prognosis for success was very poor. GM's program had clearly been planned for quite some time, and a decision had already been made. All of us are naturally quite reluctant to admit that we may not have made the best decision possible once that decision has been publicly announced.

Had city officials known of GM's needs sufficiently early in the planning process, I am confident that we would have had at least a reasonable chance of selling our proposal. And while we had planned for several years to acquire and make available for industrial development the 44 acres adjoining the existing GM facility, I doubt that we would have prioritized the expenditure of the $1,000,000 to make it happen when we did, had GM not requested us to work with them on their supposed expansion. We obviously are faced with the need to target every scarce public dollar for our most pressing problems, and in all probability, we would have elected to hold this particular industrial land project on the back burner a little longer.

I have been deeply disturbed as well by the use of public funds to accommodate GM's ex-urban plant facility. While proponents of the relocation made numerous assurances that any and all necessary transportation and other infrastructure improvements at and around the site would be made either at GM's expense or through the issuance of county bonds, it seemed clear then and is proving to be the case now that the magnitude of improvements necessary could not be financed completely on the local level, nor would GM assume non-plant costs.

A case in point. We in the Saint Louis community have attempted for many, many years to convince our State Highway Department to complete two vital road projects—the reconstruction of the Vandeventer Overpass on U.S. Highway 40, and the completion of the Innerbelt Highway between Highway 40 and Interstate 270. The delays, backsliding, excuses and apologies we have received from the State fill several files. Most recently, we have consistently been told that these projects are the State's number one priorities and have not been completed only because of the Highway Department's severe shortage of funds. Yet several months ago, I, as a member of the board of directors of our metropolitan planning organization, was confronted with a request from the State for amendments to the highway work program, namely, including major improvements to Interstate 70 and Highway 61 in the vicinity of the new GM plant at Wentzville, and the expediting of a long-dormant project to construct a new bridge over the Missouri River on Highways 40-61 leading to Wentzville. Clearly, this is partly a matter of state priorities, but I wish to point out to this distinguished committee that the funds in question are

federal funds, and to my mind, they are being spent in a manner totally at odds with the President's Urban Policy.

I am aware as well that at the time when General Motors needed source permits for air emissions at the new location, the State of Missouri's State Implementation Plan in terms of what are called PSD regulations had not yet been approved by the Environmental Protection Agency. Our State Air Pollution Control Division and EPA moved in what may well be record time to issue major source permits for GM within 45 days. In doing so, the State made a number of quick concessions to EPA on points at issue relative to the State's overall plan to regulate stationary sources, and now those concessions, after having been made to accommodate General Motors, are beginning to have significant repercussions on other industries throughout the City and State.

Again, I must emphasize that I'm not interested in indulging in some kind of community self-pity, or in doing anything whatsoever to thwart the construction of a new G.M. plant in our state. The City put forth its best effort in difficult circumstances, and the decision has been made. On the other hand, I cannot stand idly by and permit City and regional priorities to suffer as a result.

Saint Louis will recover from the loss of General Motors, but the recovery will be lengthy and difficult. The direct effects to city revenues are devastating and the spin-off loss from suppliers and support businesses virtually incalculable. In gasoline usage alone, we as Americans may be using 5.6 million additional gallons of fuel per year as a result of commuting to the Wentzville General Motors site. This would be an ironic waste of energy, particularly when auto producers are gearing up for production of smaller, more fuel-efficient automobiles. Of course, this additional gasoline usage is projected based on the assumption that a fair number of City residents will be able to retain their jobs. I personally feel that this may not be the case—the costs of either long-distance communting or relocating one's family will in many cases simply be too great.

Hardest hit will be the black community of North Saint Louis, which now relies heavily on the General Motors plant for employment. At maximum capacity, GM employed 3,500 black skilled and semi-skilled workers whose average educational level is twelfth grade. It is nearly impossible for the City of Saint Louis to place these workers in productive jobs given the already high unemployment rate (nearly 40%) for blacks 18 to 35 years of age. There will inevitably follow serious erosion of our recent hard-fought gains in improving black neighborhood stability and residential conservation.

I do not come before you today to suggest that we ought not to assist the nation's automobile industry to meet head-on the threat of foreign competition. I am, in fact, a strong supporter of recent proposals to encourage retooling and plant modernization through the granting of accelerated depreciation and other targeted tax considerations. Large numbers of Chysler and Ford employees, as well as those of General Motors, are currently laid off in the Saint Louis community, and the future of those plants is very problemmatic. The frame plant in nearby Granite City has closed for good, and there is every reason to believe that numerous support and supplier industries, such as Carter Carburetor, are in jeopardy. I am a member of our state's "Support Chysler Committee," and I plan to continue my active involvement with reasonable and thoughtful programs for putting this country's automobile industry back on its feet. Such actions are vital to this nation's overall economy and vital to the economic well-being of countless millions of American families, including my own. My father helped to organize the Saint Louis General Motors plant for the United Auto Workers and was employed there for over forty years. I worked there myself during high school, and following high school, attended the General Motors Institute until the time when I was required to enter the United States Army to perform my military obligations. Dozens of my friends and relatives depend either directly or indirectly on the local automobile industry for their own and their families' livelihood.

I do want to urge you in the strongest possible terms, however, to develop a plan of action which will incorporate revitalization of the auto industry into the overall framework of urban conservation, urban economic stimulation and recovery, prudent management of scarce resources, and the provision of job opportunities for minorities and the economically disadvantaged who are concentrated in our older urban centers. We must begin to work more closely together—industry, labor, government—to achieve the economic renaissance of this country and the cities where the majority of our citizens live and work.

Thank you very much for your time and interest. I'd be pleased to answer any questions you may have.

STATEMENT OF CLYDE WISEMAN

Thank you, Representative Young.

Mr. Chairman and members of the task force, I am Clyde Wiseman, urban affairs director for the St. Louis Regional Commerce and Growth Association. As such, I supervise the organization's cooperation with elected officials like Representative Young and with various government agencies whose actions affect our members.

Our thanks to you for demonstrating concern for the difficulties the automobile industry slump is causing communities across the nation.

Representative Young has told you of the drastic drop in auto and truck assembly and parts manufacturing employment in our region. We figure that every assembly line job means 1.67 additional jobs elsewhere in our regional economy, so the loss of 10,000 assembly jobs means a total of 26,700 persons eventually out of work. We estimate the cost to local businesses of that kind of displacement at $3 billion and the loss of personal income at $380 million on a yearly basis.

I am not here to tell you that St. Louis is going to fold up because of conditions in the auto industry. We are fortunate in having a widely diversified economy and we have weathered slow-downs in motor vehicle production before.

However, we are hurting and hurting badly. Even though we have nearly a million job-holders in our region, a loss of more than 26,000 paying positions can be felt throughout any community.

Not only are personal incomes affected, our local governments find their tax revenues decreasing while pressures on public services increase.

We hope that this task force of concerned legislators can take some proposals to the Congress which would help our region over the worst of the present difficulties.

Mr. Chairman, I'd like to suggest for your consideration several things that might help the motor vehicle manufacturers and their workers. And if you will allow me, I would like to point out that these measures would help more than just the auto industry, whose problems may differ from general business problems more in their intensity than in their quality.

The St. Louis area has long been a manufacturing center, but we have been losing manufacturing jobs for several decades now. In the prosperous year of 1967, our region had 294,000 persons engaged in manufacturing work. In the prosperous first half of 1979—before the auto industry slump—that number was down by 34,000 to 260,000.

Part of the problem is the age of our plants and machinery. We are an old industrial city, and as you know, the most efficient plants are the new ones. Yet there have been disincentives in our tax laws to make capital investments for more productive facilities.

There has to be declaration of national policy recognizing the free enterprise system as an essential natural resource. A commitment is needed to a partnership of business, labor and government. The need for reindustrialization could provide the national sense of purpose that has been so lacking in our country.

The time has come when the federal government must change its policies to encourage capital expenditures, through tax abatements and depreciation allowances, if we are to accomplish the necessary retooling of American industry. Besides abatements, incentives and more favorable depreciation allowances, immediate tax relief is needed for an economic stimulus.

Imports hurt more than the automobile industry. In our area, the shoe manufacturers are the outstanding example of an industry drastically cut back because of foreign competition.

We feel strongly that our friends in Japan and elsewhere should be encouraged in a very firm way to build automobiles in this country. They know they have a market here. Providing jobs for some of the American workers displaced by their success in the American marketplace would not only seem fair but would seem to be in the interest of the foreign manufacturers.

Some of the very stringent and expensive requirements imposed on the auto industry by federal regulatory bodies should be relaxed or extended in time to help our auto manufacturers through this problem period.

Government regulation, it has been estimated, added an average $666 to the cost of each car in the 1978 model year.

And on that subject, it is well to keep in mind that regulations are adding to the cost of virtually every product. The average consumer pays $500 more a year because of government regulations, according to an estimate.

Small businesses file 305 million federal forms a year at an average cost of $1270 per business; a study of 48 large companies in 1977 showed they spent $2.6 billion, almost 16 per cent of their after-tax income, on direct costs of government regulation.

Gentlemen, we are placing a very heavy burden on our American businesses. We would like to see the government cooperate with business a bit more enthusiastically. While some regulations are necessary, over-regulation simply adds to business failure and increased unemployment.

We have proposed to our Congressional delegation that a comprehensive review of the Clean Air Act be undertaken by the 97th Congress. The economic impact of all regulatory activities must be taken into consideration and recognition has to be given to the fact that nothing worthwhile can be accomplished without an element of risk.

Mr. Chairman, we would also like to suggest that some of the federal money now being channeled into job training programs be earmarked for the retraining of workers

who, because they are neither unskilled nor poor, are ineligible for present programs.

A good many of the jobs related to auto production in the St. Louis area seem to be gone for good. The A. O. Smith Corporation has just closed down a plant in nearby Illinois which made frames for large automobiles. The down-sized cars now being produced have integrated frames and bodies, so A. O. Smith's local market has dried up. Sixteen hundred people are out of work as a result—1400 of them production workers.

These are good, smart, experienced workers, but there is little demand for their particular skills now. This is the human side of economic change and dislocation. Almost equally depressing are the shells of antiquated, noncompetitive plants that have been abandoned in older manufacturing centers like St. Louis. Assistance is needed to remove existing buildings and rehabilitate the sites to attract new job-producing investment.

Finally, we in St. Louis, consider inflation to be a tragic economic result of present national policies. Government spending has to be brought into perspective with our national income. We suggest that lessening of government regulation would not only reduce the cost of government but would contribute toward reduction of our sagging productivity rate in the private sector.

Once again, thank you for giving us an opportunity to express our concerns to you. We have every confidence that the American automobile industry—and American industry in general—can meet the challenges they now face. The sooner we can help them adjust and retool for the future, the sooner the challenge will be met successfully. The challenge is one that needs and deserves the dedicated commitment of all segments of society.●

JOEY ADAMS—HUMOROUS HUMANITARIAN

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BIAGGI. Mr. Speaker, over two centuries ago in 1712 Joseph Addison, the distinguished 18th century English literary figure, wrote in his book, "The Spectator," that man is distinguished from all other creatures by the faculty of laughter. In medieval times court jesters were called in to bring joy and diversion to communities obsessed with the black plague and other crises. During our own country's devastating depression in the 1930's, comedians such as W. C. Fields and Laurel and Hardy brought laughter to millions caught in the grip of economic catastrophe. In recent times one man has stood forth as America's champion of good will, traveling across the globe to bring humor and joy to millions. That man, whom we honor today, is Joey Adams. For almost a quarter of a century as Ambassador for three Presidents, star of night clubs, author, humanitarian, Mr. Adams has won the love and admiration of his fellow Americans and people across the world.

Mr. Adams greatest service to the world and to his country began in 1961 when he suggested to President Kennedy that a group of entertainers be sent around the world as part of a deliberate American foreign policy of good will. The White House and the State Department saw infinite possibilities in Adams' suggestion and Kennedy sent him, with a delegation of 23 Americans, to the Middle East and to Asia. Adams' tours brought him to a wide variety of countries—Afghanistan, Thailand, Cambodia, Laos. Everywhere his appearance was hearalded as stupendous; his work, indeed the entire trip, was termed an unqualified success. Delighting audiences with his wit, Adams prompted Indonesia's Prime Minister to remark that "if the price of rice goes up, the people of Indonesia will revolt, but if the price of Joey Adams' show goes up, people will pay it gladly." Adams himself commented on the good will and warmth toward America he saw while on the tour: "Everywhere we put our hand out to the people they took it and shook it. There were no Yankee go home signs, not one." Since that first trip, Adams has served as such a good will ambassador for three Presidents. He has toured the world for the armed services and has represented the State Department on tours of South East Asia, India, and Africa. In an era of declining respect for America abroad, an era in which so many countries are turning to the Soviet Union or to the nonalined block, Adams has done much to solidify support for our country and restore love and laughter to a world plagued with crises.

Praised by Congressman Seymour Halpern in 1962 as "a man of rare ability and great warmth," Mr. Adams, a close personal friend, has been one of the great humanitarians of our times. Born himself on New York's East Side, he has never lost his deep compassion for the poor, the homeless, the oppressed. While on tour he and his wonderful wife Cindy have visited orphanages, hospitals, and children across the world. Several years ago, Cindy told a reporter of the difficulties she and Mr. Adams have endured just to bring their message to the heart of the poor in the far East: "Many times we had no hot water, no electricity; we tramped through mud in evening gowns to get to our stages." As president of the American Guild of Variety Artists, Mr. Adams has done considerable work to fight juvenile delinquency. Describing the role of the organization as acting as "middleman for God," Mr. Adams has brought special shows to schools in juvenile delinquency areas, entertaining the children and teaching them the crafts of show business. He has been founder and chairman of two great humanitarian programs—the Actor's Youth Fund of America and the Senior Citizens of America. In short, Mr. Adams is a lover of mankind, a compassionate humanitarian, whose work for the good of all will not soon be forgotten.

Mr. Adams is well noted for the unique personal touch that makes everyone love him. During a show in New Delhi on one occasion, a fight erupted between an American and an Indian over the last of hundreds of red, white, and blue balloons. Joey personally took both combatants backstage in the middle of the performance and gave each his own balloon. Another time his presence so moved a group of 600 children at an orphanage in Saigon that they stood up and sang "God Bless America" in English. As has so often been noted, Joey's lovely wife Cindy has delighted audiences in many lands by insisting on introducing the acts in the native tongue. In all, both Joey and Cindy Adams have added that special touch that has made so many friends and won the hearts of people both at home and abroad.

Revered worldwide, Mr. Adams is held in special esteem in his hometown of New York. He often refers to himself as the adopted son of former Mayor Fiorello La Guardia. Indeed it was his special relationship with the "Little Flower" that introduced Mr. Adams to the political arena and that instilled in him a deep love for New York and all her people. Today, 35 years after La Guardia left the scene, the late mayor is enshrined among those who have made America great. Joey Adams too has become a part of the La Guardia legacy, carrying on the noble tradition—of humor, public service, devotion to the "Big Apple" and all it represents.

In addition to his work as diplomat, New York City public servant, and world humanitarian, Mr. Adams has written an enormous number of books, with titles ranging from the "Encyclopedia of Humor" to "Laugh Your Calories Away." He has starred in "Guys and Dolls" and the "Gazebo," has produced his own motion pictures, and has a daily radio show on WEVD as well as a syndicated column that appears frequently in the New York Post and in newspapers across the world.

On a purely personal note, I must add that Joey Adams has always shown me the deepest kindness. He is always willing to help on very little notice. Every year when my friends gather at a testimonial luncheon, he serves as the master of ceremonies. He has added such warmth, such exuberance, and wit to each affair that he has become an integral part of the tradition. Indeed, it may truly be said that the annual event would not be the same without him. As Congressman Halpern said in 1962, Joey Adams "is more than an entertainer. He is gifted with charm, dedication, and a seemingly endless storehouse of energy."

Over the years, Mr. Adams has been honored in a myriad of ways for his service to his country and to all the people of the world—as "Man of the Year" by the March of Dimes, as "Trouper of the Year" by Show Business, and as "Scout of the year" by the

Boy Scouts. He has received thousands of awards from charities and philanthropic organizations for his famed humanitarian efforts. Today, it is my proud privilege to honor him once again: Joey Adams—Ambassador of Good Will, humanitarian, dear personal friend. In closing my remarks about this great American, Mr. Speaker, I shall remind us all of what the late Adlai E. Stevenson once said of Eleanor Roosevelt, a tribute we apply today to Joey Adams: "He would rather light candles than curse the darkness, and his glow has warmed the world."●

RULE ON BUDGET RECONCILIATION

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. DORNAN. Mr. Speaker, we are all concerned with the integrity of the budget process. The underlying reason for this concern is the control of Federal spending. Reconciliation is an important component in the effort to reduce expenditures, but H.R. 7765 permits an increase in spending of over $3 billion over the next 5 years. The purpose of the reconciliation process is to require fiscal austerity, not provide an opportunity for additional spending after the budget resolution is passed.

If a proposal is made to increase Federal spending, let it be made in an authorization bill. The reconciliation bill is not the legislation to increase funding, it is the legislation to cut expenditures.

I oppose the adoption of a closed rule on the reconciliation bill not because I oppose reconciliation—I support it—but because I cannot support this legislation which is being used to increase revenues.

The defeat of the closed rule would bring to this body the opportunity to display some real fiscal restraint in the form of an amendment providing for a responsible reduction in tax rates and depreciation reform.

I have spoken often on the House floor of the need to revive this economy with a reduction in the taxes that are discouraging production in our country. Defeat of the closed rule is our opportunity to demonstrate a real commitment to the spirit of reconciliation and vote for a tax reduction. The major issue here, and the major issue for this session, is Federal spending and let us not forget it. If we are to maintain the trust of an electorate that is looking for economic relief, we must allow the tax cut amendment to the reconciliation bill.●

THE DORNAN AMENDMENT TO H.R. 8061

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BIAGGI. Mr. Speaker, during yesterday's consideration of H.R. 8061—the District of Columbia Appropriations Act—an amendment was offered to bar the use of those funds to pay for any abortions. I joined the majority of my colleagues in defeating this amendment, and I wish to discuss my reasons for taking such action.

First, it is important to understand that this amendment was far different than the so-called Hyde amendment which has been attached to various authorizations and appropriations measures. The difference is very fundamental. Under the Hyde amendment, Federal financing of abortions is prohibited except when the life of the mother is endangered by carrying the fetus to term. The amendment offered yesterday by Mr. DORNAN did not contain this most essential and humane feature. To me, that omission was critical and as a result, I could not support the Dornan amendment. I was gratified that the House eventually adopted a compromise amendment offered by Mr. ASHBROOK which more closely reflected the sentiments of those of us who have long supported the prolife movement as contained in the language of the Hyde amendment.

In summary, my vote yesterday was consistent with my past record, which reveals that in this Congress alone, I have voted on 10 occasions against the use of Federal funds for abortions except when the life of the mother was endangered. On these occasions, I have remained firm in my opposition to efforts aimed at expanding the conditions under which abortions could be performed.

My views regarding this extremely controversial issue reflect the overwhelming sentiments of my constituents. In a questionnaire which was sent out just 1 month ago, a random sampling shows that 68.5 percent of my constituents support limiting Federal funding of abortions to those instances when the life of the mother is endangered.

I consider it important to clarify my position on the abortion issue and I appreciate this opportunity to do so.●

UNITED STATES HOLOCAUST MEMORIAL COUNCIL

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. LEHMAN. Mr. Speaker, I am very pleased to report that I am today joining with many of my distinguished colleagues in introducing legislation to establish, as a permanent body, the United States Holocaust Memorial Council.

The Holocaust Memorial Council will have the responsibility to plan and carry out the recommendations of the President's Commission on the Holocaust. The Commission was established by the President on November 1, 1978, to recommend a fitting memorial to all those who perished in the Nazi holocaust as well as other victims of persecution. The Commission recommended to the President that a permanent living memorial/museum to the victims of the holocaust be established, that an educational foundation be established, and that there be created a Committee on Conscience to provide early warning of threats of genocide against any people throughout the world. In addition, the Commission recommended that 1 week each year be designated as "Days of Remembrance" to be marked by a national, civic commemoration and appropriate private and public observances.

Private contributions, Mr. Speaker, will provide most of the funding for these projects. The Holocaust Memorial Council, which was itself established by Executive order as a temporary body, has already established the United States Holocaust Remembrance Foundation, Inc., for the purpose of accepting private contributions.

Mr. Speaker, the establishment of a permanent Holocaust Memorial Council to plan and oversee the construction and operation of a memorial museum and to oversee the implementation of the other recommendations is of great importance, not only to the memory of the victims of the holocaust but to all people who have been persecuted and those who may perhaps escape persecution in the future. While the Council will be concerned with commemorating the holocaust, its work will be dedicated to seeking to prevent genocide directed against any people, anywhere in the world.

For these reasons, I would like to urge my colleagues to join with the 100 Members on the House side who have already sponsored this legislation to establish a permanent United States Holocaust Memorial Council.

Mr. Speaker, I would also like at this time to share with our colleagues the letter from President Carter to the Honorable Elie Wiesel requesting Mr. Wiesel to serve as chairman of the Holocaust memorial Council, and the text of an address presented by the Honorable Monroe Freedman, Director of the United States Holocaust Memorial Council, at the May 1980 meeting of B'nai B'rith International in Washington, D.C.

The material follows:

THE WHITE HOUSE,
Washington, D.C., April 18, 1980.

Hon. ELIE WIESEL,
New York, N.Y.

I want you to know once again how greatly I have valued your distinguished service as Chairman of the President's Commission on the Holocaust. Under your guidance and leadership, the Commission has made an invaluable contribution to our country and to the memory of the six million Jews who perished in the Holocaust, and the other victims of Nazism in World War II.

I have been gratified by our developing friendship, and deeply touched by the opportunity to broaden my awareness and perception of the Holocaust—a period of darkness that revealed the most profound evil and the highest spirituality that the human soul is capable of achieving.

In order to carry out the Commission's recommendations, I have now established the United States Holocaust Memorial Council. Specifically, the Council will be responsible for the establishment of an appropriate memorial museum, an educational and research foundation, and a Citizens Committee on Conscience to commemorate the Holocaust.

I think it is essential that these projects recognize the distinctively Jewish nature of the Holocaust. As you so eloquently wrote in submitting the Commission's report, while not all victims were Jews, all Jews were victims, destined for annihilation solely because they were born Jewish. Of course, it is also important to take into account, as the Council's work proceeds, that there were Nazi atrocities committed against other nationalities and ethnic groups in all of the occupied countries of Europe.

Although the Holocaust took place in Europe, the event is of fundamental significance to Americans for at least three reasons. First, it was American troops who liberated many of the death camps, and who helped to expose the horrible truth of what had been done there. Also, the United States became a homeland for many of those who were able to survive. Secondly, however, we must share the responsibility for not being willing to acknowledge forty years ago that this horrible event was occurring. Finally, because we are humane people, concerned with the human rights of all peoples, we feel compelled to study the systematic destruction of the Jews so that we may seek to learn how to prevent such enormities from occurring in the future.

I am pleased to invite you to serve as Chairman of the Holocaust Memorial Council. In view of your previous service and your extraordinary record as a survivor, witness, author, scholar, and teacher, it is uniquely appropriate that you once again assume the responsibilities of leadership in this vital mission.

As always, you will have my strongest personal support.

Sincerely,

JIMMY CARTER.

THE PARTICULAR HOLOCAUST

Two years ago President Carter established the President's Commission on the Holocaust, under the chairmanship of Elie Wiesel. In September 1979, that Commission fulfilled its responsibilities by presenting to the President its Report and Recommendations. The Commission recommended a permanent memorial/museum to the victims of the Holocaust, an educational foundation, and a Committee on Conscience, to monitor and provide early warning against threats of genocide worldwide. Funding is to be primarily through private contributions. The present body, the United States Holocaust Memorial Council, was established by a second Executive Order to seek legislation to carry out the Commission's recommendations.

In forming the Holocaust Memorial Council, President Carter noted the reasons that the Holocaust is of fundamental significance to Americans, and why there should be an American commemoration of its victims. It was American troops who liberated many of the death camps and exposed the horrible truth of what had been done there. Also, the United States subsequently became the homeland of many survivors. The President noted further that Americans must bear responsibility for not being willing to acknowledge 40 years ago that the tragedy was occurring. Thus, thousands of refugees were turned away from our shores, and countless thousands of lives were lost that otherwise could have been saved. Further, Americans are a humane people, concerned with the human rights of all peoples. In studying the systematic destruction of the Jews by the Nazis, the President added, we can seek to learn how to prevent the recurrence of genocidal threats against any national or ethnic group.

The original Commission recognized at an early point, however, that the Holocaust could not be appropriately memorialized—historically, logically, or morally—as an event unrelated to Nazi atrocities throughout the occupied countries of Europe. In addition, the earlier annihilation of one and one-half million Armenians is a relevant, significant precedent for genocide unrestrained by a community of nations claiming to be civilized.

Moreover, just as the Armenian genocide should have become an object lesson to the world, rather than a precedent for brutality unrestrained, so the Holocaust must provide lessons to humanity of the individual, national and international moral responsibility for such catastrophes as we have subsequently witnessed in Bangladesh and Nigeria, and are witnessing today in Cambodia.

Just as it would be illogical, unhistorical, and immoral to commemorate the Holocaust unrelated to historical precedent and context, and without regard to the continuing confrontation with genocide, so too would it defy logic, history, and morality to deny what the Holocaust itself was. As recognized in literature, philosophy, and theology (and even on television), the Holocaust was the annihilation of six million Jews as a formal, systematic act of state, pursuant to what the Nazis referred to as the Final Solution of the Jewish question. The event was all the more ghastly because it was committed by a modern European country with an extraordinary history of achievement in science, the arts and philosophy. Indeed, those very achievements, which might have been expected to provide a civilizing bulwark against bestiality, were put to work to expedite the mass slaughters, to ease the consciences of the slaughterers and even to attempt to rationalize and to justify the evil. And through the years of anti-Semitic race laws, persecution and extermination, the world acquiesced in its silence and inaction.

To say, therefore, that the Holocaust was unique, and that its victims were Jews who died as Jews because they were Jews, is to recognize a horrible historical truth. Surely, however, that observation does not denigrate in the least the sufferings of other peoples. For just as each person is unique, so is each people, and the calamities of each people, unique. To say that is to emphasize, not to deny, our common humanity.

It has been suggested, however, that a commemoration of the Holocaust—even in its historical context and with full recognition of its universal implications—is somehow inappropriate, unless the Holocaust is to be redefined as an event involving not six million Jews, but eleven million civilians. That is, the Holocaust, it is suggested, should be universalized, not only in its implications, but also in such a way as to deny that it was, fundamentally, the policy and execution of genocide against the Jewish people. As the universalist view has been expressed, rhetorically, are Jewish lives more precious, or more deserving of commemoration, than are those of other civilian victims of Nazism?

Of course not. And, as I have already emphasized, other victims of Nazi atrocities will, unquestionably, be a significant part of any United States Holocaust Memorial. Accomplishing that, however, does not require either a redefinition of the Holocaust, or a falsification of the historical fact of the Final Solution, or a denial of the uniqueness of the Jewish experience that the Holocaust represents.

That suggests no lack of compassion, much less disrespect, for others who have suffered. Indeed, the extreme universalist position succumbs ineluctably to the logic of its own rhetoric. If commemoration of the Holocaust is somehow ethnocentric, and implies lack of compassion for others, then where, rationally or morally, is the stopping point? How can we be so callous as to exclude the civilian victims of the Nazi firebombings of London? And indeed, why should a memorial be limited to civilians? Are their lives somehow more precious, or are they more worthy of being commemorated, than are the young men who were drafted into military service to be killed before their time? Moreover, what of the civilians on the other side? Are we to deny, for example, the humanity of those who perished so horribly in the destruction of Dresden? Indeed, why are those who died during World War II more worthy of remembrance than those who died in other wars—or in peacetime, for that matter?

Where, indeed, is the rational or moral stopping point? Once one starts trying to impose a sense of guilt for commemorating a particular group of victims, there is no valid justification to stop short of all humankind.

For the reasons stated earlier, it is clear to me that the Jewish victims of the Holocaust are entitled to particular recognition. Moreover, they died as Jews, because they were Jews. I am offended, therefore, by efforts to strip them of their Jewishness. I understand that there are religious groups who posthumously convert people to their faith. In a sense, the insistence of referring to six million Jews as an indistinguishable part of eleven million civilians is a similar effort—if not of conversion, then of posthumous assimilation.

If we are to have a philosophical objection to commemorating the Jews of the Holocaust, then I am afraid we must also rethink other particularist causes, such as our support of Soviet Jewry. What, for example, if one were to argue as follows:

People say to me, "We must help the Jews in the Soviet Union," and I reply, "You can't improve the lot of Jews in the Soviet Union until you improve the lot of the whole (Soviet) population."

That is another aspect of universalism. Nor have I fabricated an argument ad absurdum to make the point. That quotation is from a statement by Simon Wiesenthal. As a further example of Mr. Wiesenthal's universalism, we have a full-page ad from the Wiesenthal Holocaust Center. Nowhere on that entire page does the word "Jew" appear, even once. Although I admire much of what Mr. Wiesenthal has done, I cannot concur in his apparent compulsion to assimilate every Jew, living and dead, into the non-Jewish community.

Let me state as a fact, without expressing either pride or apology, that I rarely have been involved previously with particular

Jewish causes, although I have always been involved with a sense of Jewish identity and obligation. Whether black civil rights, the anti-war movement, the rights of indigent criminal defendants, prisoners' rights, women's liberation, affirmative action, homosexuals' rights, the handicapped, union democracy, institutionalized children—even the rights of Nazis to march in Skokie—each was a particular cause. And each, in my mind, has had universal implications.

It is in that spirit that I speak for the integrity of our remembrance of the Holocaust. It was a uniquely Jewish event, and it cannot be understood if we deny that fact. It occurred, however, in a historical context of suffering of millions of others, who cannot, who should not, be ignored. And its implications are, awesomely, frighteningly universal.●

CONGRESS AND THE BUDGET: AN EDITORIAL VIEWPOINT

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BEREUTER. Mr. Speaker, today's debate on the budget reconciliation measure brings to mind an editorial I read in one of the newspapers in my congressional district. Titled, "Faulty Act," the editor of the Norfolk Daily News discusses the congressional budget process. I found the analysis to be most interesting, and wish to commend excerpts of the editorial to the attention of my colleagues.

With two more months left in the federal fiscal year, experts are guessing that the deficit may turn out to be $60 billion, more than twice as much as originally feared. And the once-projected balance for fiscal 1981 has already disappeared without a dime yet spent or a dollar collected for the period from Oct. 1, 1980, to Sept. 30, 1981.

The resolve to do better about spending has produced little; a Budget Act which Congress heralded as a means to get control of the appropriations process has yielded nothing but more public estimates about the sizes of the deficits.

A Wall Street Journal editorial more than a year ago pointed out the shortcomings of that act. The Journal remarked, "The original idea (of the Budget Act), you may remember, was that unintended deficits resulted because spending decisions were made piece-by-piece, with no overview of the budget's economic impact.

"So the Budget Act provided a mechanism for setting a spending ceiling and a floor before any action on appropriations or taxes. Many people hoped that this would help balance the budget.

"In fact, however, the combined deficits for the three years immediately following the Budget Act turned out to be three times the size of the deficit for the three years prior to the new process. This is remarkable when you consider that the deficits for 1971-73 were, at that time, the largest in our peacetime history and the source of much of the concern that led to the 1974 Budget Act."

The editorial continued: "Performance is worsening rather than improving. Comparing five years each side of the Budget Act shows more than a four-fold increase in the size of the deficit. Why has Congress' budget control process turned out to be worse than no control at all?

"The reason is that the budget committees have defined budget control in terms of Keynesian fiscal policy rather than budget balance. The Congressional Budget Office provides alternative 'low growth' and 'high growth' budgets: the first with small deficits and high unemployment, the latter with large deficits and fast inflation. The committee then picks a middle course as a deficit 'appropriate in light of the economy's need for stimulation,' which happens to provide the spending totals the big spenders want.

"This convenient outcome probably results because the fix is in to begin with. At least in theory, Keynesian fiscal policy is not supposed to justify deficits at every stage of the business cycle, but that is how it has turned out in practice. Deficits are justified in bad times to fight recession. They are justified in periods of recovery in order to keep the recovery going. And they are justified in good times in order to fight off the recession that is predicted to be around the corner.

"House Republicans, who caught on early to the game that still escapes the Senate Budget Committee minority, have been the only threat to the big spenders' control over the purse strings. They have consistently embarrassed the spenders by pointing out that tax rate reductions are a cheaper way than spending increases of providing any deficits deemed necessary to stimulate the economy.●

OAHE

HON. THOMAS A. DASCHLE

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. DASCHLE. Mr. Speaker, I am introducing today, by administration request, a bill to deauthorize the Oahe unit, James division, Missouri River Basin project, South Dakota. This bill is the result of an agreement between the South Dakota delegation and the administration which will allow the South Dakota delegation to proceed in seeking the authorization of WEB, while at the same time giving the State of South Dakota a 15-month period whereby it can be determined whether an acceptable Oahe deauthorization package which identifies other water projects can be developed.

Text of the amendment follows:

H.R. —

A bill to deauthorize, by request, the Oahe unit, James division, Missouri River basin project, South Dakota

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the construction, operation, and maintenance by the Secretary of the Interior of the Oahe Unit, the James division, Missouri River Basin project, South Dakota, authorized by the Act of August 3, 1968 (Public Law 90-453; 82 Stat. 624), for the purpose of furnishing a surface irrigation water supply and for other purposes, is hereby deauthorized and hereafter is not authorized for construction and is no longer a part of the James division, Missiouri River Basin Project. Any action by the Secretary of the Interior to wholly or partially accomplish the purposes of the Oahe Unit previously set out in the Act of August 3, 1968, shall require further action by the Congress.●

LELAND HAZARD: A RENAISSANCE MAN

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. MOORHEAD of Pennsylvania. Mr. Speaker, on Sunday, August 17, 1980, the city of Pittsburgh was saddened by the death of a remarkable civic and business leader, Leland Hazard, 87. Mr. Hazard was largely responsible for one of the country's greatest urban successes, the renaissance of Pittsburgh. It was his concern as a friend and his creativity as a leader and an innovator that provoked the significant growth of urban renewal and brought about a new life for Pittsburgh. His busy and dedicated life encompassed the fields of business, law, literature, art, urban affairs, and transportation. The editorial written in the Pittsburgh Post-Gazette gives a deserving tribute to this great man.

The editorial follows:

HAZARD: A RENAISSANCE MAN

Although the late R. K. Mellon was clearly the business leader of Pittsburgh's Renaissance I, it took a number of others with varied talents to achieve that remarkable urban success.

Without question one of the key persons in that unusual band was Leland Hazard, who died Sunday at 87. Mr. Hazard, then an attorney for Pittsburgh Plate Glass Co., was especially valuable to the cause because of his ability to write clearly and interestingly, to speak in the same way and because he was not afraid of being a controversial figure. A Renaissance man in the customary sense of the word, Mr. Hazard could draw on a wide background of knowledge in law and business, literature and art, history and urban affairs to articulate a philosophical underpinning for the Pittsburgh Renaissance and often personally to spearhead it publicly.

Mr. Hazard won many battles and lost some—notably the Skybus struggle. And his sage criticism of the county for not supporting a metropolitan form of government and his proposals for revitalizing downtown with such innovations as free mass transit, crossover bridges for pedestrians and forbidding truck deliveries except at night unfortunately fell on deaf ears at the time.

But he will be remembered in Pittsburgh not only for his successes as a leader in the Allegheny Conference on Community Development but also for his important role in the founding of public television here with WQED and for his efforts on behalf of the arts. Indeed, in his 1975 autobiography, "Attorney for the Situation," about the only note of criticism of the community's leadership which Mr. Hazard allowed himself to make was some acid comment about stiff-necked bungling by the establishment in losing for Pittsburgh the vast collection of paintings and sculpture owned by G. David Thompson.

An example of the largeness of Mr. Hazard's vision which should remain as part of his legacy to Pittsburgh was his frequent comment about this city's physical renaissance—that it takes more than a park, a symphony concert or a museum to make culture.

"If Pittsburgh is to become pre-eminent in spirit," he said, "she must make herself a place where tolerance is stronger than fear of dissident thought and taste; where untruth will be looked in the face and talked, not shouted, down; where what is right is more searched for than what is wrong."●

BOSTON GLOBE EDITORIALIZES AGAINST H.R. 5615—INTELLIGENCE COMMITTEE'S NAMES OF AGENTS BILL

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. DRINAN. Mr. Speaker, yesterday the House Judiciary Committee gave its approval to H.R. 5615, an Intelligence Committee bill which makes it a Federal crime to disclose the names of CIA and certain FBI agents regardless of whether that information was already in the public domain. The Subcommittee on Civil and Constitutional Rights, after hearings on this proposal recommended making a Federal crime the disclosure of a CIA agent's identity by a present or former Government employee who learned the identity in the course of such employee's access to classified information. This was the approach originally favored by the Justice Department.

The majority of the Subcommittee on Civil and Constitutional Rights, as well as a number of constitutional law professors, urged the committee to reject criminal penalties for the disclosure of information derived from public sources. Our outrage over the disclosure of CIA agent's identities cannot be an excuse for limiting first amendment guarantees of freedom of speech and freedom of the press. I would like to share with my colleagues an editorial on this matter from today's Boston Globe:

THE PENALTY FOR NAMING NAMES

The five-year fight, still unresolved, over establishment of charters for the FBI and CIA have demonstrated clearly the difficulties of resolving the conflicting needs of secret intelligence agencies and the demands of an open society. One aspect of that conflict is highlighted in legislation now before Congress that would make it a crime to publish the names of agents. The idea sounds fine, but as the intelligence committees in the House and Senate have proposed to accomplish it, it could cause a serious abridgement of First Amendment rights.

The issue is due to come soon before the House and Senate judiciary committees, the latter chaired by Sen. Kennedy. They must make certain the First Amendment survives intact.

The notion of making it a crime for a present or former government official, who learned the identity of an FBI or CIA agent through access to classified information, knowingly to reveal that name is entirely sensible. The government needs classified information and has every right to require government officials to keep its secrets. A bill with this narrow focus would be wholly supportable.

But the intelligence committees are seeking to go substantially further. Their proposals would make it a crime for any person using any information, including nonclassified information, to identify a covert agent to any individual not authorized to receive such information. Further, the Senate version of the bill would extend such protection to FBI agents working within the United States and to any foreigner, residing inside or outside the country, who is "a present or former agent of, or a present or former informant or source of operational assistance to an intelligence agency."

The legislation does require that the person charged undertake a "pattern of activities intended to identify and expose covert agents" and that he must have reason to "believe such activities would impair or impede the foreign intelligence activities of the United States . . ." Yet, an investigative reporter or a scholar seeking to trace the role of the CIA in the overthrow of the Allende government in Chile or the involvement of CIA agents in Watergate or the extent of FBI infiltration of the antiwar movement could be prosecuted were he to publish an agent's name. Even an organization policing itself, a church seeking to determine whether its missionaries are in the employ of the CIA, could run afoul of the proposed bill.

Congressional interest in the "names of agents" legislation was reawakened after the Covert Action Intelligence Bulletin, which claims to rely on analysis of public information, published the name of a CIA station chief in Jamaica and his home was shortly thereafter fired upon. The concern on Capitol Hill is understandable.

But outrage over the activities of the Bulletin and others who would strain the limits of America's free-speech rights cannot be the excuse for narrowing the freedom of those who seek to employ those rights constructively. Certainly the appropriate balance between the needs of intelligence agencies and the demands of an open society will not be struck if the intelligence agencies are placed beyond the reach of responsible criticism.●

TRIBUTE TO JAMES A. BYRNE

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. YATRON. Mr. Speaker, I join with my colleagues on this sad occasion to honor a personal friend and fellow U.S. Representative from Pennsylvania, the late James A. Byrne.

For 20 years, Congressman Byrne was a talented, able, and effective legislator whose accomplishments will be long remembered by the people of the Kensington area of Philadelphia, who he represented. As a member of the House Armed Services Committee he was successful in his efforts to keep the Philadelphia Naval Shipyard open, thus, preserving many jobs for the people of Pennsylvania's largest city. He was also responsible for much of the restoration to the Independence Mall area of Philadelphia, an area which is known by most Americans for its importance to our country's historical heritage.

Moreover, Congressman Byrne was respected and admired by his colleagues in the U.S. House of Representatives, regardless of their party affiliation or political inclination. He could always be counted on to speak out for the less fortunate and disenfranchized citizens whose voice is seldom heard in the Halls of Government. He provided these people with representation and they, in turn, developed a confidence and faith in our system of government.

I am privileged to have served with Jim for 4 years in the House where we developed a close friendship. I was also able to witness and appreciate his many unique skills. James Byrne truly distinguished himself not only as an adept legislator, but also as an outstanding citizen of Pennsylvania and the United States.●

ELIMINATE CAPITAL GAINS TAX

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. COLLINS of Texas. Mr. Speaker, great strides forward will be made when Congress reduces taxes. The cut we took in 1979 on the capital gains tax proves the tremendous economic impetus provided through lower taxation. In reading my current Forbes magazine, I saw an excellent advertisement by the W. R. Grace Co. Grace people are strong advocates of free enterprise and graphically showed how equity capital was encouraged with lower taxes. They took companies with a net worth under $5 million and compared them in 1969 when we had a 25-percent capital gains rate and there were 698 stock offerings. In 1975 with a 49-percent rate there were only four. In 1977 with a 49-percent rate there were only 13. But in 1979 with a 28-percent rate there were 46. And momentum is growing.

New jobs are developed when we have capital that can provide modern machinery, better plants, and finance the working capital to produce more.

One of the greatest problems with today's inflation is the fact that taxation is based on the increased price. If you had a stock you bought for $10,000, and a few years later with inflation it was selling for $20,000, the stock might have equal value. But when you sold it, you would be taxed on the inflationary price increase.

Businessmen understand the negative impact of excessive taxation. They agree with Chief Justice Marshall who so wisely said, "The power to tax is the power to destroy." Government does not create jobs. When government pays people, it represents 100-percent tax income from the other citizens.

When industry through capital formation creates jobs, it means we have more people working. Let us take a giant step forward and abolish the capital gains tax.●

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CMF FELLOWS PROGRAM

HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. LEACH of Iowa. Mr. Speaker, many of us have expressed deep concern over the abuses which have come to light in the area of private-sector contracts with Federal agencies. For that reason, it is a pleasure to learn of organizations which seem genuinely to have the public interest at heart. The Congressional Management Foundation is one such nonprofit, educational foundation which has just recently initiated a fellows program whereby private sector management expertise will be made available to Members of Congress at no expense to the Congress itself. This effort by the CMF which is, I might add, supported by private sector corporations, shows potential for bringing to the Hill greater efficiency and effectiveness in the conduct of congressional operations at all levels. A brief explanation of the task the Congressional Management Foundation fellows program sets for itself follows:

CMF FELLOWS PROGRAM

THE CASE: AN S.O.S. FOR ORGANIZATIONAL DEVELOPMENT IN CONGRESS

The responsibilities of Congress have multiplied tremendously in recent years. As a result, Members of Congress are finding it difficult to meet these increasing demands. For example, between the 84th and the 94th Congresses, the number of committee and subcommittee hearings and hours the House was in session more than doubled. The number of recorded votes increased ten fold. Twice as many bills were introduced during the 94th Congress bringing that session's total to 16,986. During the last six years, the amount of mail received by Congress has grown 400 percent to 53 million pieces annually.

With such an increase in workload, it is logical to assume that the institution of Congress also changed to accommodate these heavier responsibilities. Unfortunately, the facts prove otherwise. Studies indicate an organization in disarray. Between January and May 1977, 14,482 committee meeting conflicts occurred. During the ten busiest days of meetings, 91 percent of the representatives had at least one meeting conflict. One-third of the Members of Congress told the Commission on Administrative Review they have problems assessing the national or local impact of pending legislation. Forty percent cited difficulty gathering information concerning existing needs, past efforts or other proposals that are reported from committees on which those Members do not sit. Nearly two-thirds of the Members have trouble recruiting, training, and managing personal offices and staff.

Why does this situation persist? Most politicians lack experience and training in the use of management techniques. Many of the management tools that have proven themselves in the private sector are surprisingly absent in Congress. Words like accountability, goal setting, performance review, delegation of authority and even planning are rarely mentioned in House and Senate offices.

Not only are these techniques under-utilized, but our system of elections fails to promote organizational development. There is no built-in accountability for the overall performance of Congress, but rather 535 different individuals from separate districts. The election of individual representatives has not proven to be an effective vehicle for expressing the voter's frustration with the performance of Congress as a whole. During the 1976 elections, public opinion polls showed that three out of every four people were dissatisfied with the performance of Congress, yet 96 percent of all incumbents seeking reelection were successful.

It is obvious that we must go beyond the election process if we are to address the organizational inadequacies of Congress as it is presently functioning. The impact on our lives of the decisions made in Congress is too great for us to allow the perpetuation of a legislative body in disarray. When Members complain of being inadequately informed, cast votes on bills with which they are totally unfamiliar and find it virtually impossible to initiate any long-range planning or effective federal program oversight, the risks become too great.

THE PROJECT: AN EFFORT USING THE RESOURCES OF THE PRIVATE SECTOR TO IMPROVE THE PERFORMANCE OF CONGRESS

In January, 1977, the Congressional Management Foundation was established to work in and out of Congress to improve the operations of Congress. During the last three years, over three hundred congressional offices have benefited from seminars, retreats, individual consulting and publications. CMF has gone a long way towards building a receptivity in Congress for new, improved techniques for meeting the overwhelming workload.

But CMF is presently not doing enough. The problem is too great and CMF's resources too small. To help meet this challenge, CMF is initiating the CMF Fellows Program involving business, labor, and academia in specific projects to improve management techniques in Congress. This program is an opportunity for corporations and other organizations to play a direct role in improving the effectiveness of Congress, while, at the same time, gaining a better understanding of how to communicate and work with the federal legislature.

The CMF Fellows Program will provide management research and technical assistance on methods for improving congressional operations. The program will involve nine projects during the first year. Each project will investigate a specific management problem through the use of three to seven-person teams. Corporate, labor and academic representatives, as well as CMF staff, will comprise each team. Each project will take between five and fifteen days to complete. Examples of probable project areas include time management in the congressional setting, personnel problems and solutions, computer applications in a congressional office, establishing an efficient filing system, decision-making models in the public sector, paper flow, and coping with stress as an elected public official.

Each project will culminate with a confidential management report for participating congressional offices and a training seminar and written report for all Members of Congress. The CMF staff has gained a special understanding in our daily work with congressional offices. We are uniquely equipped to apply the fresh, objective perspective of outside management experts to the political setting.

This program offers several substantive benefits. Members of Congress will receive new ideas on methods to improve congressional operations. Business, labor and academia will gain a better understanding of the uniqueness of Congress and how to work with the institution. The CMF Fellows will find this project a new and interesting challenge and a motivating diversion from their on-going work. The program will inform Members of Congress that private sector leaders care about our system of government and want to do their part to help make it work.

THE STRUCTURE: ORGANIZING THE CMF FELLOWS PROGRAM

A special Board of Trustees comprised of leaders from business, labor and academia will initiate the project. This Board will appoint a Management Committee which will review all project proposals and assist in recruiting organizations to participate. The Management Committee will meet twice each year to oversee the project. CMF's Board of Directors will retain all financial liability for the CMF Fellows Program and the CMF staff will be responsible for the day-to-day implementation of the program.

Funding grants will be required to begin the CMF Fellows Program. The initial year will require a budget of $57,050. This will cover the cost of reports, follow-up seminars, CMF staff coordination, project design and implementation. Each organization will be responsible for the expenses of its individual participants.

Following the first year, the CMF Fellows Board of Trustees will host a Good Government Day and Dinner to support the program. This event will consist of a day of workshops designed to improve the working relationships between the private sector and Congress. During the evening, a dinner will bring together Members of Congress and organizations from across the country to enhance the spirit of cooperation between the public and private sector.

The Congressional Management Foundation is the only organization in a position to successfully sponsor a project like the CMF Fellows Program. Through CMF's work in Congress, and through our Charter Associate Program for corporations, CMF has earned the respect and trust of both groups. CMF is unencumbered by partisan or ideological bias in either Congress or the private sector. As an independent, non-partisan organization, CMF does not report to, work under, or answer for any particular Member of Congress or congressional committee. Functioning as an objective third party, CMF has no other agenda than that of helping Congress become better able to meet the legislative needs of our nation.

CMF is a 501(c)(3), tax exempt, non-profit educational foundation.●

FURTHER FUNDING URGED FOR SENIOR CITIZENS

HON. LARRY J. HOPKINS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. HOPKINS. Mr. Speaker, recently we had a valuable opportunity to benefit older Americans so that they may be self-sufficient and secure from the threat of being institutionalized. This opportunity was provided when the House passed H.R. 7998. I was particularly pleased that the House appropriated $10 million over the $247 million recommended by the second budget resolution for title III-B of the

Older Americans Act of 1965 as amended.

Title III-B provides essential services for senior citizens: services for health, continuing education, and recreational, services for transportation that provide access to nutrition centers and services to obtain adequate housing. Title III-B is not only undertaking these services, but it is also authorized to take on the supportive services that at one time were assumed by title III-C. With the rising costs of these services, along with the assumption of new responsibilities, an increase of funds is vital to the effectiveness of title III-B.

Unfortunately, to date, we as Members of Congress have been unable to insure those senior citizens the self-reliance they seek. It is imperative that title III-B be funded at the fiscal year 1981 first budget resolution recommendation of $280 million. H.R. 7998, as passed by the House is $23 million short of this recommended level. At this lower level, the elderly are provided with food services; however, the transportation provided to get to these services is disastrously inadequate.

I am not in the habit of urging an increase in funds where they are not needed. However, I feel that these are warranted. To deny the needs of our older Americans would be a grave injustice.

Today I have written to Senate Appropriations chairman, Senator MAGNUSON, to stress my support for additional appropriations for H.R. 7998. I strongly urge those of my colleagues who share my concern about this matter to join me in this worthy effort.●

BLOCK NUCLEAR FUEL SALE TO INDIA

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. MARKEY. Mr. Speaker, less than 1 month remains for Congress to block the shipment of nuclear fuel to India. If we do not strictly apply sanctions against countries such as India that have manufactured nuclear explosives from civilian activities, then we face a collapse of U.S. nuclear nonproliferation policy. Our opposition to the spread of atomic bombs will be ignored by country after country.

The India case is the first major test of the 1978 Nuclear Non-Proliferation Act, which sought to ban shipments to countries that do not renounce all attempts to acquire nuclear weapons.

In 1974, India exploded an atomic bomb. It thus became the sixth member of the nuclear bomb club, and the only member to have used plutonium from a civilian nuclear program—in this case, a Canadian-supplied research reactor with American-supplied heavy water coolant.

The explosion brought a vow from Pakistani leaders that it would finance an atomic bomb even if "its people had to eat grass or leaves, or go hungry." Pakistan has since been reported to be working on two different methods of securing the necessary ingredients for weapons manufacture: a centrifuge method of uranium enrichment and a reprocessing plant.

I urge my colleagues to consider carefully the views of the Federation of American Scientists, an organization of 5,000 natural and social scientists concerned with the problems of science and society. Recently, the national council of this distinguished organization announced its opposition to the sale of enriched uranium to India. In their words, "From the point of view of the Nuclear Non-Proliferation Act, the Indians have done everything possible to deserve a cutoff."

The views of the National Council of the Federation of American Scientists are printed in the September 1980 issue of the F.A.S. Public Interest Report. The full text of the council's statement will be included at the close of my statement.

I would draw the attention of my colleagues to several of the passages in this statement:

* * * supporters of U.S. non-proliferation efforts have ample reason to fear that the Nuclear Non-Proliferation Act—if not U.S. non-proliferation policy generally—is about to be destroyed on the rock of Indian resistance unless strong action is taken.

* * * much of the proliferation problem springs from Indian interest in playing a major nuclear power role, and Pakistan's interest in not being forced consequently to bargain from a felt position of inferiority.

In particular, FAS recommends that the uranium sale to India be viewed as a prime example of the leverage we have.* * * If, in the face of this leverage, the Indians were nevertheless unwilling even to discuss the matter with the Pakistanis (who have called for a South Asian nuclear free zone) it is hard to avoid the conclusion that the sale of Tarapur fuel would utterly destroy our nonproliferation efforts by exposing them as utterly without force.

The full text of the FAS statement, follows:

PUBLIC INTEREST REPORT

TARAPUR: RETHINKING NON-PROLIFERATION STRATEGY IN SOUTH ASIA

It became evident in the 1950's that the secret of the atomic bomb could not be kept. Efforts to prevent the proliferation of nuclear weapons turned to a non-proliferation treaty which most nations would sign.

In the seventies it became evident that stronger action would be necessary in those hard-core cases that could not be resolved by rhetoric or a bandwagon approach. These involved states which considered themselves to have national security problems to which the bomb was somehow relevant. There were Arab states that thought the Israelis had a bomb and, in any case, wanted a bomb to pressure Israel (e.g. Iraq and Libya). There was the Taiwanese and South Korean desire for a bomb to dissuade northern neighbors from violent takeover. There was the South African desire to strengthen its geopolitical hand. And there was, of course, the Indian-Pakistani rivalry.

It was obvious to bystanders that few if any of these conflicts could really be usefully influenced by the possession of a nuclear weapon. Nevertheless, to the states involved, there was sufficient motivation to move ahead.

The U.S. response to this new stage in non-proliferation prospects was to put some teeth into its policy in 1977 and 1978. Under the Non-Proliferation Act of 1978, no help with nuclear reactors would be provided to states unless they committed themselves to eschew nuclear explosives and to permit International Atomic Energy Agency (IAEA) safeguards on all peaceful uses of nuclear energy. In addition, the Symington and Glenn Amendments to the 1977 International Security Assistance Act call on the President to terminate all economic and military aid to non-nuclear weapon states receiving nuclear technology outside IAEA channels, or detonating a nuclear weapon.

Predictably even this has not been enough in the several cases where states are more concerned about their neighbors than they are about any pressures which the U.S. would likely generate.

The Indian-Pakistani issue is such a case. This month, the Senate must debate whether to continue to supply 38 tons of enriched uranium to the Indians for use in their Tarapur Atomic Power Station designed to generate electricity in the Bombay region. From the point of view of the Nuclear Non-Proliferation Act, the Indians have done everything possible to deserve a cutoff.

(a) They detonated a nuclear explosive device on May 18, 1974 under the thin cover of "peaceful purposes" and refused to sign the non-proliferation treaty;

(b) They refused the IAEA "full-scope" safeguards which the Act demands over "all peaceful nuclear activities" and, indeed, struggled, with some success, to limit the application of safeguards even where U.S. assistance was given.

(c) They refused any "strict undertaking" not to detonate more nuclear explosives and, it is widely believed, violated (or legalistically distorted) a previous obligation not to use Western assistance in their work on their first nuclear device.

Nevertheless, the Administration wants to carry through on the sale with a waiver of the Nuclear Non-Proliferation Act provisions because it senses that its bargaining position is too weak; it fears that the Indians might in response:

(a) Reprocess U.S. supplied spent fuel that is still in India for subsequent recycle of the plutonium in its reactors; this would set a world-wide reprocessing precedent we oppose as an important step toward nuclear proliferation.

(b) Remove the Tarapur facility from IAEA safeguards; such removal has again, never been done.

(c) Violate its agreement with us not to use materals supplied for Tarapur for nuclear explosion.

In sum, it fears that India could ignore U.S. strictures and simply, in response, roll back existing agreements. On the other hand, supporters of U.S. non-proliferation efforts have ample reason to fear that the Nuclear Non-Proliferation Act—if not U.S. non-proliferation policy generally—is about to be destroyed on the rock of Indian resistance unless strong action is taken. And if the Indians react badly in response, they see ample American capacity to retaliate with an American opinion primed to back up a tough line.

What neither side in this debate has yet admitted, however, is the depth of the non-proliferation problem at issue. The Indian explosion of 1974 has made Pakistan feel that it must have a bomb. Pakistan has been reported in the press to be working on two different methods of securing the neces-

sary material: a centrifuge method and a reprocessing plant. And the Pakistani efforts have further reinforced Indian interest in its own bomb. Meanwhile, the Chinese nuclear arsenal provides another reason for Indian proliferation. And the Soviet action in Afghanistan provides the Pakistanis with another motivation to have its nuclear weapon lest an Indian-Soviet alliance dismember Pakistan.

Something new has to be added. In general, the U.S. must begin to base its non-proliferation policy on the interest of the regional parties themselves in avoiding proliferation rather than on U.S. interest in preventing them from moving ahead. This is also more consistent with the Indian and Pakistani sense of injustice that such nuclear powers are pressuring poorer non-nuclear powers into foregoing nuclear weapons. We propose that what U.S. leverage exists over Pakistan and India be used to draw them into serious and sustained talks on the control of their incipient arms race. And, in order to create a fruitful context for such talks—recognizing that the nuclear pressures come not only from each other but from regional superpowers—that the U.S. stand ready subsequently to explore separately with the Soviet Union and the People's Republic of China the possibility that U.S., USSR and PRC assurances might support whatever the Indians and Pakistanis might need to underpin their agreement.

In other words, the U.S. should be asking the Indians and Pakistanis upon what terms they might forego nuclear weapons and then offering to help guarantee those terms. The U.S. ought to have enough leverage to get talks along these lines started even where it fails to have the strength to insist to the powers separately that they restrain themselves. In particular, FAS recommends that the uranium sale to India be viewed as a prime example of the leverage we have, and used to secure Indian involvement in such talks. If, in the face of this leverage, the Indians were nevertheless unwilling even to discuss the matter with the Pakistanis (who have called for a South Asian nuclear free zone) it is hard to avoid the conclusion that the sale of Tarapur fuel would utterly destroy our non-proliferation effort by exposing them as totally without force.

This effort to start the Indians and Pakistanis thinking about their demands upon each other (and others) to maintain a non-nuclear status captures what hope now remains of control of nuclear weapons on the Indian subcontinent. And there is some hope left. Nuclear weapons are not particularly relevant to such territorial disputes as those in Kashmir. And the military forces of India and Pakistan may be civilized enough in dealing with each other to so recognize. Indeed, much of the proliferation problem springs from Indian interest in playing a major nuclear power role, and Pakistan's interest in not being forced consequently to bargain from a felt position of inferiority. The subcontinent incentives for nuclear weaponry are therefore not great.

Meanwhile the costs and risks are obvious of building nuclear weapons and being confronted with them in turn by a neighbor. And both nations have an interest in securing guarantees from their larger northern neighbor against the use of force. The Indians might be able to secure from the Chinese, and the Pakistanis from the Soviets, some guarantee of non-violation of frontiers in return for non-nuclear status. Certainly the Chinese and the Soviets have an interest in restraining the number of nuclear powers in their region.

So the outlines of a bargain exist. But the bargain can be negotiated only by the subcontinent powers themselves. Tarapur's real significance may lie in announcing the last clear chance for avoiding a nuclear arms race in the subcontinent. All efforts, including in particular the Tarapur leverage, ought be directed at catalyzing a lasting regional solution, designed by the regional powers themselves.●

WELFARE SYSTEM NEEDS WORK INCENTIVES

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. LUKEN. Mr. Speaker, recently a letter to the editor appeared in the Cincinnati Enquirer which poignantly expresses a problem faced by many Americans who receive welfare assistance. Just as the recipient manages to earn enough to come off the program, they find that in the long run they would be financially better off by earning less and remaining on the rolls. This perverse work incentive needs to be corrected. The Congress must meet the challenge of building work incentives into the welfare system that allow these Americans to gain the economic independence they seek. The letter follows:

WELFARE PROGRAM KILLS INCENTIVE, SELF-ESTEEM

To the EDITOR: I would like very much to bring to your attention a seemingly insurmountable problem within the welfare system.

To begin with, I recently started a new job. It was not enough income to take myself and four children off the welfare program. However, at this point in time, I have been offered a raise. I talked to my caseworker and she informed me I would be "overincomed" to receive any further benefits from welfare. It would seem this was a great improvement for myself and my four children. How wrong could anyone be!

If, in fact, the raise is approved, which by the way has not happened yet, I stand to lose more than I have gained by being on welfare. I ask you, is there not something wrong with a welfare system that in fact provides better living for a person than one working and trying to make a living on his/her own?

If I do get and accept said raise, I stand to lose not only $75 per month, but also my food stamps and my medical card. The raise serves no purpose in that the amount I will receive will not nearly cover the added expenses of food and medical bills.

It seems to me the government would be pleased that a person is doing all he/she can do in order not to be dependent upon the system. But if there is no program available to promote such self-reliance, why should I try to make a better living for myself and my family?

I feel there should be some type of program to supplement a person who is working, up to the time he/she can stand on his/her own two feet, so to speak. That's not to say he/she should continue to receive full benefits he/she received prior to becoming employed, but perhaps just enough food and medical benefits until the person becomes financially stable enough to pay added expenses for himself/herself. These expenses are not optional, but are very much a part of life and must be dealt with as such.

Public opinion holds that welfare recipients are the dregs of our society, along with being lazy and degenerate, to say the least. In my opinion, this is a great travesty and a grossly unjust statement.

I ask you, where and to whom can we plead our cause? We want only a chance to improve the conditions of our life.

I implore you to give this matter your most serious consideration. The self-esteem and independence of a great many people are at stake. Since childhood it has been my belief that this is the premise upon which this country was founded.

BETTY KNUCKLES.●

UNION CONTEST WITH GOVERNMENT—PART I

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. McDONALD. Mr. Speaker, there is a power structure in these United States which for years has been an enigma. Its exact relationship to constitutionally required individual liberty and a free market has been poorly defined; and yet it exercises great influence over our economy and Government. I am speaking specifically about labor unions. Few if any have ever been able to rival the Government's monopoly on coercion as has this body. There is also no question that if our free institutions are to survive, a better understanding must be had of their workings and this rivalry. England is a stark example of why this is so.

The following article entitled "Union Contest with Government" by Clarence B. Carson, is an excellent analysis of this subject and its history in this country.

I commend part I of a two-part series to the attention of my colleagues:

UNION CONTEST WITH GOVERNMENT

Labor unions are an enigma. Their enigmatic character begins to surface as we explore the questions of what they are and what they do. It does not take long to come upon aspects of unions that do not jibe with what they appear or claim to be. Labor unions claim to be organized against employers. In fact, however, they are most basically organized against other workers. Moreover they conceal this contest behind the screen of ideological formulations taken from socialism.

There is more to the enigma than that, however. One way to get to it is to look more closely at the character and functions of unions. In one sense, there is no mystery about what a union is. It is an organization, an organization of workers. When we go beyond that, however, we enter upon confusion. For example, what sort of organization is a labor union? Is it a charity? Is it a fraternity? Is it a business? Is it a government? In short, where does the labor union fit within the spectrum of organizations that are familiar?

In several respects, a union resembles a business. If those who are employed by the union are considered as distinct from the worker members, the union takes on some of the aspects of an agency. That is, those who are employed by the union are representatives or agents of the rank and file members. But what sort of agency? In one of its aspects, it bears some resemblance to an employment agency. In another, it resembles an agency such as actors, writers, and artists sometimes employ to make arrangements for their work. In another, it may resemble an insurance agency, collecting and handling retirement funds. However, a union is not just a business, for it also resembles a mutual aid society or a fraternal organization, and may sometimes do works of charity.

UNIONS EMPLOY COERCION

Be that as it may, there is one crucial difference between labor unions and the above organizations. It is that unions employ coercion. They have a tendency to compel people to become members, and, when they fail at this, to treat them as if they were. In their efforts to exclude non-union workers or those from other unions, they are monopolistic. And many of the tactics employed in organizing, in boycotting, and in labor disputes are coercive. In their use of coercion, unions resemble government. And it is their use of coercion that brings them into conflict with government.

Indeed, the contest between unions and government is a basic one. Union coercion challenges established government at its foundation. It challenges government's monopoly of the use of force. A government—any government—is that body which has a monopoly of the use of force within its jurisdiction. If it does not have it, the stage is set for armed conflict.

Union ideology lays claim to a jurisdiction for unions in which government (or other governments) is not supposed to interfere. The argument is usually made obliquely—unions do not claim to be governments—and goes something like this. Capital and labor (or management and labor) are the contestants in any labor dispute. Indeed, whatever is in dispute is solely between them. But capital has a large initial advantage in the dispute because of the accumulated wealth it represent and the control over the livelihood of workers involved. Not only are individual workers powerless to deal with them but also organized workers unless they are permitted to use the tactics which will enable them to match the power of wealth with the force of their numbers.

Unionists usually draw the battle lines in such a way that it is only possible for government to intrude into the dispute on one side or the other. "You are either for us or against us," they say, in effect. The basic posture of union leaders has usually been that government should stay out, though they have not been averse to legislation favorable to unions.

Their position came out rather clearly when they testified before the Senate Committee considering amendment of the Wagner Act after World War II. The chairman of the committee accused Walter Reuther of taking the position that "Government should not interfere at all and that we should not pass any laws because the Government should not interfere." But, the chairman pointed out, there were already laws on the book. To which Reuther replied, "The Wagner Act was remedial legislation to correct a particular abuse. Nobody can deny it was created because American labor in the face of this concentrated wealth could not begin to get the rightful status in American industry around the bargaining table."

John L. Lewis was asked this question by one Senator: "Do you not think there is a point where the exercise of the right and freedom by any group of individuals impinges so drastically on the rights, privileges, and freedoms of all others that the Government has to step in and do something about it?" Lewis answered, "No, I think definitely the Government should not, Senator, not if you want to preserve America as we know it, and its freedom, because you cannot regulate the human beings who work for a living in this country, and who, in a major sense are not rich and in a substantial sense are quite poor. . . ."

In sum, labor unions claim the right to use coercive tactics. Moreover, they claim a special jurisdiction within which they can employ these tactics. The bounds of that jurisdiction are supposed to be in the organization of workmen and in labor-management disputes. For any government to grant such a jurisdiction is either to recognize unions—or unions in conjunction with management—as having the status of a government or sharing in the powers of existing government. For example, they might be conceived as comparable to a town or city in the United States, incorporated by states to exercise certain political powers but not independent of the states.

NO SPECIAL STANDING

Actually, however, unions have had no special legal standing for most of American history. They were private organizations with no particular power, authority, or responsibility. Such rights as they possessed were those belonging to individual members. As one book puts it, "They are voluntary organizations without limited liability and are generally without a personality apart from that of their individual constituent members." Only one state has required incorporation and, though a Federal law permitted incorporation in the District of Columbia from 1886 to 1932, there was no rush of unions to achieve that status. They were organized into a body, banded together for concerted action, given to using coercive tactics, yet before the law they dissolved into their component parts.

It is not difficult to see why union action brings them into conflict with government. Every resort to coercion is a challenge to government. There is the continuing underlying conflict arising from government's effort to monopolize the use of force. Beyond that, there are the difficulties unions pose for government in the performance of its basic functions. Its basic functions are to protect the life, liberty, and property of those within its jurisdiction. To the extent that unions use coercive tactics, they challenge the exercise of these functions.

Contrary to union ideology, labor disputes are not simply a contest between unions and management (hence, nobody else's business). Basically, unions are organizations of some workers for the purpose of raising the price of labor by excluding competing workers from employment. If there is a strike, and management attempts to operate the struck facility, the visible conflict is usually between strikers and those who are willing to work. Union ideology attempts to conceal the character of the conflict by describing those who would work as instruments of the employer. They are described as "scabs," "rats," and "strikebreakers." This invective helps to obscure, too, a much broader situation that may prevail. There are not only those who do work during a strike but also others who might apply for work and be employed were they not intimidated by the strikers. These are the silent interests in what is billed as a labor-management dispute.

INJURY TO EMPLOYERS, SUPPLIERS, AND CONSUMERS

To say that the conflict with management is in the background—is secondary, if you will—is not to imply that the owners of facilities may not be harmed by union coercion. On the contrary, there are frequently assorted damages from which government action to prevent or bring a halt to the coercion might protect them. Their property may be trespassed upon. There may be work stoppages because workers are prevented from entering the plant. They may be unable to meet contractual obligations. They may lose business to competitors. They may be unable to pay their bills when they come due. And so on.

A third line of effects extends outward from strikes and boycotts. The flow of commerce may be interrupted. Suppliers may be damaged by the loss of a market. Those dependent upon the struck facility for goods or materials will have to look elsewhere or do without. Transportation facilities may lie idle. A whole category of interdependencies may be disrupted.

A fourth order of effects may also result from union coercion. It is the effect upon consumers. If strikes, boycotts, or other disruptive tactics, succeed in shutting down facilities, goods will not reach the marketplace. Shortages may develop, and prices will rise. If the product is in any way unique, customers will be denied choices. But whether any of this occurs, if unions succeed in raising wages, there will tend to be a rise in prices to compensate for the raise.

Union use of coercion inevitably brings it into a contest with government, then. It challenges the government monopoly of the use of force. Its coercion is exercised against those whom government is committed to protect. The extended effects reach eventually to all the inhabitants of the country.

HOW GOVERNMENTS HAVE RESPONDED

Governments in the United States have responded to the challenge implicit in union activity in three ways historically. One writer on labor policy describes them this way: "suppression, toleration, and encouragement." Until after the passage of the Sherman Antitrust Act in 1890 the federal government had no primary involvement in labor disputes. The responsibility for maintaining the peace and protecting life and property was exercised by the states. In the few instances prior to the 1890s when the federal government did become involved it was in response to requests from governors of states for military help.

Suppression is too strong a term for describing state action toward unions during the first half century or so of the existence of the United States. Some unions existed throughout this period. However, when cases came before the courts, unions were often found to be guilty of conspiracy either because of coercive tactics or for the exclusion of competing workers from employment. In short, unions had the same right to existence as any private organization, but they could not employ coercion to fix wages or other conditions of employment. For a variety of reasons, and it is not at all clear that their legal status was the most important, unions were usually shortlived and insignificant for the first half of the nineteenth century. There were no nationwide unions and little enough national commerce.

Toleration is imprecise for describing the posture of governments toward unions in the latter part of the nineteenth century (and well into the twentieth, for that matter). It might be more accurate to say that unions were usually ignored until they

created some disturbance. At that point, when police or troops were called in, an ad hoc solution was applied. Courts did not generally concern themselves with such effects as the financial impact on workers excluded from employment or those which reached through to the consumer. Indeed, courts restricted themselves largely to trying individuals for acts of violence if and when such cases were brought before them until well into the 1890s.●

MORE ON THE FEDERAL ELECTION COMMISSION COVERUP

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. DORNAN. Mr. Speaker, when the Congress went on its short recess last week I told my colleagues that I would continue to place more information into the CONGRESSIONAL RECORD concerning the horrendous noninvestigation by the Federal Election Commission into the handling of campaign finances of two candidates for Federal office.

I now include more of the discrepancies which my own 1 year and 1 month investigation has uncovered regarding this sorry episode of obfuscation by Federal officials and some private citizens. I had originally intended to file these discrepancies with the FEC as a formal complaint. However, their performance, or rather nonperformance, has led me to believe that not only would I be treated unfairly, but that I would again be a victim of their continuing coverup. So, my colleagues, and other respecters of justice I present to you once again further information that I have uncovered.

My material follows:

PECK AND STEWART DID NOT REPORT RECEIPT OF SUSPICIOUS MONEY TO THE FEC YET FEC MAKES NO MENTION WHATSOEVER OF SUSPICIOUS NATURE OF DONATIONS TO PECK ALTHOUGH IT PUNISHED ANOTHER CAMPAIGN FOR SAME ACTION

The then F.E.C. Chairman Robert O. Tiernan told Congressman Dornan via phone on February 7, 1980, that "a reasonable man would certainly have been suspicious" when receiving 13 $1,000 cashiers checks from the same bank—sequentially numbered—from over two thousand miles away (as young Peck did). Not one other donation from Alabama or all states in between.

Chairman Tiernan subsequently indicated at a House Administration hearing on April 25, 1980, the following:

Congressman FRENZEL. What kind of advice do you give to a campaign committee regarding its obligation to verify the source of the contribution when these money orders, or similar kinds of anonymous instruments are received particularly when they are maximum contributions? What is the campaign committee's obligation?

Mr. TIERNAN. The regulations set forth in 103.3(b)(1), "contributions which appear to be illegal shall be within 10 days either returned to the contributor or deposited in the campaign repository box and reported. If deposited the treasurer shall make and retain a written record noting the appearance of illegality. A statement notifying that illegality should be included in the report . . ." and so forth. There are regulations that provide for that situation.

Congressman FRENZEL. OK.

The F.E.C. in *La Rouche* v. *F.E.C.* (a precedent setting case) raised statutory objection to a request for presidential matching money because small (under $51) sequentially numbered cashiers checks and money orders were given to the LaRouche campaign "in patterns that raised substantial statutory questions." (See Petition for Writ of Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit Court Number 77-1184).

The Office of General Counsel for the F.E.C. thought that the following sequence of cashiers checks and money orders, all of which were in amounts of $50 or less, were suspicious because of the following chart:

Both Oldoker and Steel of the F.E.C. Office of General Counsel were on this case.

DISCREPANCY: THE FEC CLAIMS THAT A REVIEW OF PECK'S FEC FORMS ARE INCONCLUSIVE, REGARDING ILLEGAL DONATIONS, BECAUSE THEY DID NOT HAVE A COMPLETE LIST OF NAMES USED BY MR. DENNIS. YET, 7 OUT OF 13 PHANTOMS WERE THE SAME AS DENNIS' ILLEGAL CONTRIBUTIONS TO STEWART. INCREDIBLY, DENNIS, ON HIS OWN VOLITION, GAVE OGC/FEC ALL 13 PHANTOM NAMES IN MAY 1979 IN PERSON.

"The reports filed by Mr. Peck and his principal campaign committee, Carey Peck for Congress, were reviewed. However, without a complete list of the names used by Mr. Dennis, the review is inconclusive." (First General Counsel's Report by Judy Thedford, Office of General Counsel of the Federal Election Commission prepared May 31, 1979 and received by the FEC June 1, 1979.)

At the time this report was written, the FEC Office of General Counsel had evidence that Dennis had made 22 $1,000 contributions to Senator Stewart in the names of other Alabama residents and one (that we know of) $1,000 illegal corporation contribution in his own name.

Carey Peck had twelve names of $1,000 donors explicitly showing Alabama addresses on his forms which were filed for the period of October 24, 1978 through November 27, 1978. One of the "donors" of $1,000, Mike Henley of Alabama, was never identified by any address or occupation. (To this day that form is not amended.) Six of the Alabama names shown as contributors on Peck's forms were identical to Stewart's donors: James H. Dennis, Johnny Desmond, Wayne Moore, Gary Dennis and Richard Morehart. (See conciliation agreement.) On Stewart's forms for the 1978 campaign, the name of Max Gurley shows up as a contributor. His name was omitted from the conciliation list. Why? Nevertheless, Max Gurley is listed as a Peck contributor and both Roberta Gurley and Max Gurley are listed as Stewart contributors. Additionally, another Alabama name on Peck's forms shows the same last name as another of the names listed on Stewart's forms. This is probably not coincidence.

On May 16, the F.E.C. had received two news articles, both of which listed 19 individuals on whose behalf money was given to Stewart by Dennis. The Birmingham News article of May 9, 1979 indicated that Dennis donated $12,000 (in the names of others) to Carey Peck, and "Dennis said he used some of the same names for the Peck contribution that he used to give to Stewart."

Additionally, an article in the Anniston Star for April 13, 1979 received by the F.E.C. on April 27, 1979 states: "F.E.C. records on file at the Secretary of State's office in Montgomery show Stewart contributor Max Gurley and John Lee are listed as employees of Alabama and Tennessee Oil Company . . . checks with the Alabama Secretary of State's office revealed no information about the Alabama and Tennessee Oil Co . . . Gurley, whose home address was listed as Argo, Route 1, contributed $1,000 on August 17, 1978. Max Gurley is also listed on Peck's forms as giving the maximum $1,000 but his address is listed Route 1, Arley, Alabama. With the addition of Max Gurley, that makes six identical names out of 12 possible. Mike Henley, the other "phantom" Alabama donor was not listed by Peck as having any address or occupation whatsoever . . . Blank.

Furthermore, Peck's F.E.C. forms filed December 7, 1978 lists Roy J. Ledbetter of Birmingham as working for the non-existent Alabama and Tennessee Oil Company with a Birmingham address this time.

Unless Ms. Thedford and her other associates at the Office of General Counsel for the F.E.C. were purposely ignoring such blatant evidence, there should have been a much different conclusion regarding the Peck/Dennis contributions from what was stated in the O.G.C. report of May 31, 1979.

To summarize, the Office of General Counsel had before them the following:

1. List of similar names of Dennis' "phantom" donors to both Peck and Stewart campaigns as those names had appeared in the newspapers as a result of investigative reporting and Dennis' own open admissions of guilt.

2. Peck's and Stewart's F.E.C. forms listing the questionable donations.

Peck's F.E.C. forms listed the Alabama illegal contributors as follow: (1) James H. Dennis; (2) Johnny Desmond; (3) Wayne Moore; (4) Gary Dennis; (5) Richard Morehart; (6) Max Gurley; and (7) Andy Shadix.

Stewart's F.E.C. forms listed the Alabama contributors as follows: (1) James H. Dennis; (2) Johnny Desmond; (3) Wayne Moore; (4) Gary Dennis; (5) Richard Morehart; (6) Max Gurley (F.E.C. Report filed in Montgomery, Alabama. See April 13, 1980 Anniston Star); and (7) Terri Shadix (from Birmingham News article).

In addition, Roy Ledbetter is listed on Peck's F.E.C. forms showing him as employed by Alabama and Tennessee Oil Company. The Alabama and Tennessee Oil Company did not exist according to reporter from the Anniston Star in an article dated April 13, 1979.

Of the four Alabama names left on Peck's forms, three were from one family (Chancey). Dennis had indicated that he used only Alabama names for Stewart's contributions and that he also used Alabama names for the remaining Peck contributions. Peck's F.E.C. form for the relevant period showed a total of 101 individual contributions. Of these 88 were from California (most from Beverly Hills). The remaining 13 contributions were all for $1,000 and were all from Alabama. A "red flag" situation for any objective form checker! You will recall that 23 of the 24 Dennis donations to Stewart were for $1,000 each. Here is another "red flag" bit of easily observed evidence shoved aside by the F.E.C.

Peck had 12 Alabama $1,000 donors, plus Dennis himself, and Dennis said he gave $12,000 (actually $13,000) to Peck in the Birmingham News story of May 9, 1979. How in the devil did the Office of General Counsel not find reason to believe that Peck had obviously accepted illegal money?

To summarize, Peck's F.E.C. forms reveal he had 88 California donations of which only 13 gave $1,000 each: one maximum Alabama contribution for $1,000 although no address or occupation was listed, and 12 more

Alabama contributions for a maximum of $1,000 each with partial addresses with some addresses entered with a different typewriter.

DISCREPANCY: PECK CLAIMS HE RETURNED $13,000 TO DENNIS: DENNIS CLAIMS HE U-TURNED MONEY BACK TO PECK IN CASH—THE MOST IMPORTANT WEST COAST DISCREPANCY

Equally as strange as the acceptance of the $13,000 in illegal corporate money are the circumstances surrounding the alleged return of the $13,000 to James H. Dennis by Carey Peck.

Carey Peck's F.E.C. report for April 1, 1979 through June 30, 1979 was submitted by Peck's brand new treasurer, Mike Gordon. (Caiden, a lawyer of unquestionable integrity, had departed.) In that document, we find: Carey Peck for Congress Committee's:

1. Receipts—$13,000 on June 14, 1979 from Carey Peck

2. Itemized Expenditures of $13,000 on June 13, 1979 "refund of contribution (sic—singular) per attached list (and here Peck lists the 13 Alabama names but not two M. Chancey's and no reason why the return is necessary).

3. Debts and Obligations—$13,000 owed to Carey Peck, June 14, 1979 identified as "Advance for Campaign Expenditures"—from personal funds?

The last statement above is a flat lie. Carey Peck has been quoted as saying that he borrowed $9,000 from a bank to cover the claimed return of the money. Gregory Peck has been quoted elsewhere as saying that his son Carey borrowed $13,000 from a bank to obtain the money for the claimed return of the illegal corporate donations to his benefactor, James H. Dennis. The facts required by law regarding the name and branch location of the bank would be helpful elsewhere in other parts of this inquiry.

Furthermore, the F.E.C. Act requires that any bank loan by a candidate be reported in full listing: the amount, bank and co-signers if any. 11 C.F.R. 104.2(b)(s)(ii)(B): Each loan must be reported together with the identification, occupation and principal place of business if any, of each lender, endorser or guarantor, as the case may be. The report shall include the date and amount of the loan.

So, the reader will shortly see, this portion of the law has been violated by Peck.

According to testimony obtained by the FBI and Congressman Dornan in an extensive interview April 30, 1980 with James Dennis at the Taladega Federal Prison, Dennis flew to Los Angeles on or about June 14, 1979. He went to Carey Peck's lawyer's office. (Apparently Jules G. Radcliff, Jr., presently of Lewis, D'Amato, Brisbois, and Bisgaard, 261 South Figueroa St., Suite 300, Los Angeles, CA 90012).

Dennis said he waited in Radcliff's office while a $13,000 loan was arranged for Carey "at his daddy's bank." Carey himself then presented Dennis with a check, then they (?) drove Dennis to Carey's campaign bank on Wilshire Blvd. where Dennis cashed the check! He then went back to Radcliff's (?) office and presented Carey Peck with the $13,000 in cash! Dennis returned to Alabama that very afternoon. Dennis stated that the return of the money was a "real" loan because it was not for campaign expenses. (He directed that little incorrect rationalization to the FBI agent with mock seriousness then began smiling again and pouring on the charm.)

This was said in the presence of FBI Agent Will Deffenbaugh and Justice Department assistant district attoney Bill Barnett. This was discussed in a Jack Anderson column of June 21, 1980. Needless to say, Carey Peck did not list a felonious "loan" from Dennis on his F.E.C. form.

Did this U-turn of the $13,000 take place? Rick Cziment, a reporter for the Venice-Santa Monica Independent Journal claims he has seen a copy of the check, and he also told Congressman Dornan that "the money never left California." This latter information came from a discussion Cziment had with Carey Peck's campaign manager, Terry Pullen. Young Peck was avoiding the press that month. The check was cashed in California, and has no bank markings from Alabama. Cziment claims he has a xerox copy of the front and back of the check.

Peck has told Rick Cziment that he would sue if the Independent Journal ever printed this information. This was told to Dornan campaign manager Arnold Steinberg who also learned that the Independent Journal, while on solid ground on the relevant facts, is without funds for this type of harassing lawsuit.

In the absence of a personal transfer of the $13,000, other modes of exchanging money would leave traceable evidence on paper, i.e., federal express, postal money order, personal check made out to Peck from Dennis. (Dennis has already served 6 months in Federal Prison for "fraud-by-wire.")

According to an article which appeared in the Birmingham News on July 7, 1979, Dennis used wire communication for his dealings with the Itel Corporation when dealing in the hundreds of thousands of dollars. The question arises, why would Dennis fly out of California for the $13,000 transaction except to avoid having any easily discernable evidence surrounding the alleged return of the $13,000 and/or to physically U-turn the money to an aspiring politician as he claims he did with his winning U.S. Senate candidate, Don Stewart.

Dennis has told the FBI (see June 20, 1980 Jack Anderson column) that Stewart definitely pulled off the same U-turn trick.

Reporter Cziment asked young Peck why Dennis would want to fly across the country or to walk around with $13,000 cash in his pockets (let's say 130 hundred dollar bills!) Why? Peck responded slowly, "Well . . . he is a con-man, isn't he?" (Daaaaah)●

LIEUTENANT GOVERNOR BRICKLEY TESTIFIES BEFORE AUTO TASK FORCE

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BONIOR of Michigan. Mr. Speaker, on September 2, the auto task force held its first meeting in the city of Detroit. Lt. Gov. James Brickley of Michigan provided the task force with some valuable suggestions for strengthening the American auto industry and increasing its competitiveness. I would like to share these with my colleagues in the House.

Lt. Governor James H. Brickley testified today before the United States House of Representatives' Task Force on the Auto Industry. Co-chaired by William M. Brodhead of Michigan and Elwood Hillis of Indiana, the Task Force held its first hearing in Detroit for Governors and Mayors to offer comments. Lt. Governor Brickley made his comments on behalf of Governor William G. Milliken's administration.

The text follows:

Congressmen Brodhead and Hillis, it is a pleasure to have this opportunity to submit comments on behalf of Governor William G. Milliken's administration to your Auto Task Force.

For Michigan families, these are desperate times. There is anger and frustration among men and women who never before faced the humbling experience of unemployment. Their eyes tell you the pain they feel. Their bank accounts show their financial losses.

Industrial labor produced this nation's wealth. The men and women of this and other industrial states put this nation on wheels and built for us the highest standard of living in the world. These men and women built twentieth century America, and our debt to them is the fundamental wealth of our entire economy.

The problems of the auto industry can be laid to many different factors. Some suggest that corporate boardrooms have been stale of ideas. Some suggest that corporate mismanagement is to blame. Some suggest that wage rates out strip productivity. Some suggest that governmental policies are the culprit.

There is enough blame to go around. There is no one scapegoat. There is no one simple solution.

But this much we know: the auto industry is not expendable. Auto workers are not expendable. This country must open its eyes to the crisis; in its simplest terms, the crisis is that we have treated industry as though it were obsolete. For the last thirty five years, we have strengthened the industrial economies of many of our free world friends. While we rebuilt Japan and Germany, we let our own industrial cities and plants decay. It cannot continue.

We are painfully aware of the slump within the automotive industry. We should be just as aware of the ripple effect this slump has on the steel, iron ore, rubber, aluminium, and other industries.

Nearly 300,000 auto workers are unemployed. In Detroit, unemployment hit 14.4% in June. But merely looking at the terrible impact of this recession on Detroit does not begin to portray its effect on Michigan's overall economy.

The northern part of Michigan, for example, faces severe economic problems. Auto component suppliers, the iron and steel industries, mining, railroads, and marine shippers have suffered sharp setbacks.

The Cleveland Cliffs Iron Company has closed mining operations at Empire Mine and Republic Mine, idling 2,000 miners.

Forty-four ore carriers out of 240 ships have been laid up and ship passages through the Soo locks have declined from 55 a day to between 21 and 36 a day.

Essex Automotive Corporation has closed permanently its plant in Atlanta idling 250 workers and has laid off 50 workers at its plant in Boyne City.

Two automotive supply firms in Menominee have curtailed operations, laying off 215 employees.

Gulf and Western Stamping has laid off 470 employees at two northern Michigan plants.

The list goes on and on.

These examples from northern Michigan are mirrored around the nation. Detroit is not alone in feeling the impact of the auto recession.

We have waited too long to encourage industrial modernization. We urge the Congress to support accelerated depreciation, encouraging rehabilitation of existing plants and investment in new plants and equipment.

American automotive technology and plant design have been oriented toward a broad market of car purchasers, from those wanting compacts to those wanting large, luxury vehicles. The shift to small cars is

well underway. Retooling facilities is very costly, often dictating relocation and construction of new facilities.

To encourage the use of industrial sites in urban centers, increased federal funding through the Urban Development Action Grant program should be used to help defray demolition costs associated with site development.

We support easing the overly stringent high altitude emission standards. We urge the Congress to reevaluate environmental regulations governing the auto industry. The time has come to recognize that overly rigid standards and regulations undermine the automakers' efforts to produce cars the public can afford.

We urge the Congress to consider allowing auto companies to claim a significant tax credit to offset research and development costs associated with developing small and fuel efficient cars. Toward that same end, Congress should reexamine federal antitrust laws currently prohibiting joint research and development. A greater portion of federal research and development monies should be targeted for the auto industry. We support directing a greater percentage of the crude oil windfall profits tax to the difficult task of reinventing passenger vehicles.

We support guaranteed loans through the Small Business Administration to auto dealers for working capital. To also assist sales, we urge Congress to consider providing tax credits to individuals who purchase new domestic cars meeting fuel economy standards. A national campaign promoting new car sales would reduce existing inventories and reward manufacturers of fuel efficient automobiles.

There has been much discussion regarding the restriction of Japanese imports. We know that in a freely competitive international market, American products will prevail, both in quality and price. Restricting foreign imports with rigid trade barriers is not the answer to our long term problem.

On the other hand, other nations impose restrictions on goods we hope to export. Japan, for example, has stiff restrictions on the importing of automobiles and computer technology.

The President must seriously consider winning temporary and voluntary assistance from Japan in its export of cars during this most difficult period in the American economy. In such discussions, the President should raise the problem of Japanese restrictions on our export products.

American labor and business benefit from free trade. We believe that Japanese auto manufacturers should invest in plants in America. On several occasions, Governor Milliken has visited the top management of Japanese auto firms to encourage that investment. The siting of a new Volkswagen plant in Michigan is proof that foreign firms find the United States an attractive and mutually beneficial place in which to build cars, as well as sell them.

In addition to aiding the industry, the federal government should recognize the critical problems in communities now depressed because of the auto downturn. Any program of help to these communities must include loan guarantees, development grants, direct loans, and interest subsidies to businesses in distressed areas. If targeted properly, these expenditures will provide a significant return on the dollar invested without damaging efforts to insure fiscal responsibility in the federal budget.

We support targeting funds through the Economic Development Administration for communities hard hit by the auto recession. Detroit, for example, has recently submitted an application for a $60.5 million HUD loan to help acquire land and relocate residents at a proposed General Motors replacement facility site within the city. Additional federal support may be necessary from the Departments of Transportation and Commerce. We urge prompt attention to the applications by these federal agencies and support from the Congress for their approval.

We urge Congressional repeal of the Maybank Amendment, which prohibits the targeting of defense contracts to depressed areas. The Labor Surplus Set-Aside program directs federal procurement, non-formula grants, and executive agreements to concerns in areas of high unemployment. Unfortunately, the Maybank Amendment exempts the Defense Department from this policy. Defense dollars account for almost 30% of all government procurements.

We strongly support congressional and administrative expansion of present procurement efforts as one measure of countering the transitional problems of our auto manufacturers and the communities in which they are located. More importantly, we urge Congress to eliminate the Maybank Amendment from all future Defense appropriation acts.

As the federal government assists the auto industry and our communities hard hit by the recession, we must extend a helping hand to the people who suffer the most: the laid off workers and their families.

Governor Milliken and I have recommended extending regular unemployment benefits to 52 weeks, as provided in Congressman Brodhead's bill HR 6540. We are pleased that, after initial opposition, the White House now supports the proposal. By the end of the year, 285,000 workers in Michigan will have exhausted both their regular and extended benefits. The current limitation of 39 weeks is woefully inadequate in a recession of this magnitude and depth. Income protection must be guaranteed until laid-off workers return to their jobs.

We also recommend that Trade Readjustment Assistance benefits be extended to workers and firms supplying essential parts or services or extracted materials to companies affected by imports. Workers hurt by the ripple effect are presently ineligible for benefits. Because people in support industries are unemployed for precisely the same reason that employees in directly affected firms are out of work, similar benefits should be available to them.

In conclusion, the Administration and Congress must place auto industry problems at the top of the governmental agenda. We must begin now to rebuild the industrial sector. We must encourage private development in our cities. We must protect the people hurt most in this period of transition and readjustment.

Thank you.●

POLISH CRISIS RENEWS DEBATE OVER ETHNIC LOBBYING

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. DERWINSKI. Mr. Speaker, the news media has now turned away from the situation in Poland as a result of the agreement between the strikers and that government. However, it is now more important than ever that we continue to keep a close eye on the Soviet Union's role in the actions of the Polish Government as well as other nations held captive by communism. It is important for us to develop a stronger foreign policy by using our economic, diplomatic, and moral leverage in dealing with the Soviet authorities.

I direct the attention of the Members to a pertinent article by John Maclean who covers the State Department for the Chicago Tribune's Washington bureau. His column appeared in the September 1 edition of that paper before the strike was resolved. His column follows:

POLISH CRISIS RENEWS THE DEBATE OVER ETHNIC LOBBYING

WASHINGTON.—Ever since the birth of the Republic, Americans have debated the merits and demerits of ethnic lobbying in foreign affairs.

The first occasion came with Loyalist efforts to keep the colonies British. That debate often ended with the Loyalists astride a rail on their way to Canada.

The most current episode involves the efforts of Polish-Americans to spur their government to a more active role in the Polish crisis, which the Carter White House has determined to weather as quietly as possible.

Following a visit to the State Department by 13 Polish-American leaders, an unidentified State Department spokesman called their proposals "preposterous" and generally criticized their efforts.

This sort of ill treatment must have some explanation other than inexperience, given the long history of this kind of activity. The Polish-Americans, represented by the Polish American Congress, Inc., lost no time in asking for an accounting.

Aloysius Mazewski, president of the Chicago-based group, said he telephoned Zbigniew Brzezinski, national security adviser, and Secretary of State Edmund Muskie about the matter. He received an official public disavowal of the characterization of "preposterous" and presumably a good deal of mollifying from his two fellow Polish-Americans.

In reporting the "preposterous" remark and subsequent developments, I was struck by several points as an observer of ethnic lobbying and foreign policy.

First, the unnamed source reflected a general attitude within the Carter administration that the U.S. should play a minimal role in the Polish unrest. His extensive remarks to me came unbidden, apparently from a sense of impatience that Polish-Americans would try to upset U.S. policy.

His statement, of course, had the opposite effect from what he intended, serving to inflame the matter rather than maintain the quiet watchfulness which has marked the U.S. reaction.

Second, it appeared to me the Polish-American program exhibited considerable restraint. Without judging whether it should be U.S. policy, the program they asked for could be called modest in comparison with the U.S. reaction in other recent crises.

The Polish-Americans asked for an economic assistance program for Poland, which has close commercial ties with the U.S. They also urged that Poland be called upon to live up to promises of freedom agreed upon in the Helsinki Accords.

Given the depth of feeling within the Polish-American community, these seem modest enough. They fall far short of calling for the overthrow of the Communist government in Poland. They seem especially constrained in light of Carter administration reactions to upheaval in Afghanistan and Iran.

In Afghanistan, the Soviet invasion created a more immediately menacing situation than a Polish workers' strike. But even so, the reaction here of creating a Persian Gulf doctrine without the troops to support it seems intemperate, and was described in those terms at the time.

In Iran, as strikes and unrest plagued the shah of Iran, President Carter found nothing wrong with personally calling on the shah to keep on liberalizing, a move which contributed to his downfall.

The course chosen in Poland may prove to be wise. The Polish-Americans are certainly entitled to debate the matter, and their special understanding of the area can help all of us to be more sensitive about the hopes of the Polish people.

For example, the fact that large numbers of Polish-Americans have not called for the overthrow of the Communist regime has made it far easier for the White House to pursue a muted course.

Given past performances, Carter's conversion to quiet diplomacy has come late in the game.●

A TRIBUTE TO ROBERT F. HURLEIGH

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. PHILIP M. CRANE. Mr. Speaker, for those of us who grew up in Chicago, we will all remember the fine journalistic contributions made by Robert F. Hurleigh. But his broadcasting career spanned more than the Chicago suburbs and he soon earned the reputation nationally as one of the top newsmen in the country, first with WBBM and later as news director of WGN radio and television.

He continued his distinguished career as president of the Mutual Network for 8 years. He later became publisher of the American Labor magazine and continued to be a commentator on national and international political issues, as well as the moderator for the "Reporter's Roundup," a public affairs program which he initiated at Mutual.

He was, to revive a fine old word, a great patriot, not merely in the parochial sense of American patriotism, but as a dedicated defender of democratic principles in the world. He was a strong advocate of the free enterprise system as well as an articulate and staunch defender of American interests and liberties.

Perhaps no greater tribute can be obtained that an acknowledgment of one's efforts by his peers. One such tribute came from his friend Paul Harvey when he stated, "No one loved his country more."

He was a dedicated and skillful wordsmith and his passing away leaves an empty void which cannot be matched. We all knew him as a professional, but he also was a compassionate human, as those whose lives he touched directly know. He is survived by his wife, Majorie; his mother, Elizabeth Lort of Washington, D.C.; his half-brother, Walter Blake; two sons, Robert and Steven; three daughters, Maryland Elizabeth Davis, Robin Marie Johanson, and Jan Teresa Hurleigh. He is also survived by six grandchildren.●

MILK PRICE SUPPORT PROGRAM

HON. ALVIN BALDUS

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BALDUS. Mr. Speaker, on October 1 the Secretary of Agriculture will announce a new support price for the milk price support program. Under the terms of Public Law 96-127, that support price must be set at 80 percent of the parity price.

Because of the increasing costs of factors affecting the dairy industry, the October increase will amount to approximately 65 cents per 100 pounds of milk. The market has been in a state of surplus for most of this year, and there are critics of the program who argue that the price should not be increased at this time. The problem is that these critics do not understand the dairy program or how it works. The current surplus situation can turn, and in the past has turned, into a dairy shortage almost overnight.

On July 19, the National Journal published an article explaining the dairy program which was written by a constituent of mine, Mr. Irvin J. Elkin. Irv is a dairyman himself and also serves as president of Associated Milk Producers, Inc.

I recommend this excellent article to my colleagues and include it in the RECORD at this point:

MILK PRICE SUPPORTS—AN EXPERIENCE IN SOUND FOOD POLICY

AGRICULTURAL PRODUCERS IN TROUBLE

The U.S. agricultural economy may be in its worst crisis since the great depression of the 1930s. Growers of corn, wheat, milo, hogs, chickens, turkeys and beef are absorbing losses. The 1980 general election will surely reflect the agony and frustration within the agricultural sector.

One notable exception to the list of major agricultural commodities in trouble is milk. Milk, with inherent supply-price volatility exceeding that of most commodities, has the best record of price stability. That is not an accident. It is the result of rational public policy; a public policy that genuine public interest groups and agencies strongly support.

Better dairy management and genetic improvement of cattle for milk production are enabling the remaining numbers of farms to provide enough milk for U.S. consumers, at lower unit profit margins. The resulting benefits have been passed along to consumers so that they are exchanging less labor for each unit of milk and dairy product purchased.

Statements by President Carter that productivity is the key to curbing inflation are certainly true. Currently, it is estimated that an average U.S. dairy farm produces milk for 900 consumers. As recently as 1950, the average dairy farm was able to supply the milk needs for only 44 consumers. Proof that our dairy programs have demanded and achieved production efficiencies. And from the viewpoint of consumers, that is a success story!

RESULTS

This highly efficient production system, coupled with the stability provided by the price support program, has prevented dairy products from increasing as much in price, since 1967, as have all other food products combined and all consumer items in the Consumer Price Index. That is the ultimate test of our milk marketing system—results.

SCAPEGOAT FOR CRITICS

Incredibly, the dairy program which has served U.S. consumers and producers so well is under irresponsible attack. These attacks come from several governmental agencies and from cause-seeking consumer activist groups whose very survival depends upon being perceived as the discoverer and eradicator of consumer "rip-offs".

Only through ignorant analysis or a dishonest presentation can dairy's performance be depicted as a consumer rip-off.

DOMESTIC FOOD POLICY

Milk may be the only U.S. farm commodity with a carefully designed and proven rational public policy. National dairy policy is designed to sustain dairy farm families that will produce enough milk for our domestic needs for the foreseeable future.

That policy has resulted in adequate supplies of fresh, wholesome milk at reasonable prices. The dairy price support program is genuine consumer legislation designed to provide adequate long-term milk supplies. Congress has long realized that if consumers are to enjoy such benefits, dairy farmers must have the incentive to maintain productive capacity. This system has worked well.

MILK PRICE SUPPORTS ARE THE CORNERSTONE

The cornerstone of this dairy program is price supports. Mechanically, the price support program is simple. The Commodity Credit Corporation (CCC), stands ready to buy cyclical or seasonal surplus dairy products, establishing a "floor" under milk prices. Without such "floors" the market erroneously signals dairy farmers to adjust their productive capacity. The needed productive capacity that would be eliminated is composed of highly specialized dairy labor, management, equipment, buildings and cows.

CCC also stands ready to sell its purchased products back to commercial buyers to meet their market needs. This "sell-back" helps maintain market price stability for consumers during times of decreased production.

A CASE IN POINT

In 1977, CCC purchases increased sharply. The price support floor prevented milk prices for dairy farmers from falling. Treasury expenditures began to alarm public officials, as well as concern dairy farmers, and there was talk of radical revision of the price support program. Fortunately, such action was not taken and consumers were protected from severe price escalations in subsequent periods. Early in the period 1978-79 milk supplies were inadequate. Market prices moved sharply upward as consumers bid for these limited supplies. The results would have been even worse with a lower floor price, thousands of additional cows would have been sold for slaughter and without their milk 1978-79 milk prices would have moved much higher. Furthermore, the dairy products purchased by CCC in 1977 moved back into consumer markets in 1978-79, preventing sharp increases in the market prices for such products.

Consumers realized a net savings in 1978-79 as a result of government price support expenditures in the prior year.

CRITICS IGNORE DAIRY'S DYNAMIC NATURE

Numerous superficial appraisals of dairy price supports always appear in those times when surplus product purchases are high, claiming that consumers could have an immediate net gain if milk prices were permitted to drop to market clearing levels, and that those gains foregone, plus the Treasury costs represent a net taxpayer-consumer "rip-off". Such an appraisal is downright dishonest, and ignores consumer benefits from milk productive capacity preserved for future years and from the dairy product sell-back from government stocks.

DAIRY IN PERSPECTIVE WITH OTHER FARM COMMODITIES

Agricultural enterprises are characterized by price instability. From the 1930s to the mid 1970s the "farm problem" was that farm productive capacity was great enough to drive commodity prices below costs of production. In the mid-70s, world agricultural production fell and the U.S. farm productive capability was inadequate to meet export needs. New farm prosperity prompted an end to programs restricting U.S. farm output. "Produce to the limit" became the watchword. Agricultural exports became our greatest hope of an avenue to avoid national bankruptcy in the new petroleum-dominated world economy.

All the risks of uncertain export markets were placed squarely upon individual farmers. As was ultimately certain, the feather-edged margin between world shortage and world surplus shifted, and the old farm problem reappeared. Now, U.S. agriculture has become expendable in the game of world politics, subject to the day-to-day whims of world leaders.

In these circumstances, it is not business as usual on America's farms. Business survival now holds paramount priority. Trouble in other farm enterprises accounts for much of the increased surplus milk products purchased by USDA. Farm resources are being shifted to dairy as the brightest prospect for making a profit or for minimizing losses. Yet University of Wisconsin figures show that average cows at today's prices can only return $2.59 per hour for a dairy farmer's labor after paying other production costs.

DAIRY—A USEFUL PAWN

A measure of milk price stability has been achieved, but when compared to the stability of non-farm segments of the economy, such as the average hourly wage received by U.S. manufacturing workers, milk price variations are erratic indeed. Consumer advocates, both within and outside of the Department of Agriculture, should be deeply concerned about potential milk price instability. But irresponsible "advocates" can be expected to continue to pursue minimum commodity prices regardless of the longer-term effect upon farm productive capacity. Such a course serves their purpose of building constituencies.

Dairy farmers have been used as pawns in world trade matters. Substantial volumes of 1980 price support purchases are a direct result of irresponsible concessions for additional foreign government subsidized cheese imports. Even larger volumes of 1980 price support purchases are a direct result of imported casein. Casein imports continue to escalate to higher levels in 1980, increasing government purchases of displaced domestic cheese, butter and non-fat dried milk.

Dairy farmers also serve as pawns for "inflation fighters". Superficial rhetoric on the evils of milk price supports may be impressive, but only if long-term effects are ignored. Consumers' long-term interests can only be served through assuring adequate milk productive capacity.

The price support program is most vital to consumers and producers when there is surplus product. It cannot serve its purpose if floor prices are set to minimize surplus purchases.

In summary, every genuine representative of consumer interests, should favor continuation of milk price supports at 80 per cent of parity, even if Treasury costs temporarily seem high, to allow time for improvement in other agricultural alternatives and in the general economy. It would be unfortunate indeed if the most successful agricultural program should be damaged because of temporary external circumstances.

IRVIN J. ELKIN,
President,
Associated Milk Producers, Inc.●

DESIGNATION OF THE LOUIS A. JOHNSON VETERANS' MEDICAL CENTER

HON. ROBERT H. MOLLOHAN

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. MOLLOHAN. Mr. Speaker, it gives me great pleasure today to introduce legislation to name the VA medical center in Clarksburg, W. Va., after our Nation's second Secretary of Defense, Louis A. Johnson. His dedicated service to this country throughout his life certainly merits this recognition.

After receiving his law degree from the University of Virginia, Mr. Johnson settled in Clarksburg and was named district attorney of Harrison County. At the age of 26, he was elected to the West Virginia House of Delegates where he headed the Judiciary Committee and was the majority floor leader.

As a veteran of World War I, he was a commissioned officer and served in France as an infantry captain. He participated in the Muese-Argonne offensive and was decorated as a commander of the French Legion of Honor. After the war, his interest in military affairs continued and he remained a commissioned officer in the Reserve. In 1932, he was elected national commander of the American Legion.

Under President Roosevelt, Johnson served as Assistant Secretary of War from 1937 to 1940. Due to the effective job he did in this capacity, he was given credit for shortening World War II by 1½ years because he had purchased needed Army equipment, planned the industry's mobilization for war, organized munitions and war resources boards, and helped to write the Selective Service Act.

Among Johnson's many accomplishments as Secretary of Defense under President Truman were the unification of the armed services, abolition of 800 boards and agencies, and an end to racial segregation in the services. He promoted better interracial and interfaith understanding and was the Nation's first and foremost advocate of adequate preparedness. He once said, "a strong man, well armed, keepeth his palace in order." He strongly backed the Truman doctrine of opposing Communist aggression throughout the world.

It is only fitting that the VA medical facility in Clarksburg be named after one of Clarksburg's most outstanding and prominent citizen who demonstrated leadership throughout his career as a prominent lawyer, veteran, and Government official.

Mr. Speaker, it was my personal privilege to know Louis A. Johnson for many years. I knew him to be a dynamic leader, and unparalleled patriot, and a proud and forceful American. Thus, it is my fervent hope that this bill will be acted upon expeditiously.●

INTO THE 1980'S—ANOTHER SCHOOL YEAR BEGINS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. BIAGGI. Mr. Speaker, as the week after Labor Day traditionally begins the start of the new school year for students across this Nation, I think it important that we pause and think about what we expect from our educational system in the coming decade.

As New York's senior member of the House Education and Labor Committee, I am particularly acquainted with the problems of our urban high schools. This body approved a comprehensive work and training bill last week—the Youth Act of 1980—that is a first step in coordinating the needs of disadvantaged youth in helping them to obtain meaningful employment. As an original cosponsor of this measure, H.R. 6711, I hope that our colleagues in the Senate will move quickly on this bill since President Carter has expressed his willingness to sign it into law.

I commend to the attention of my colleagues an article which appeared in this week's U.S. News & World Report which provides a report card for education in this country. I think that it is a most thoughtful article and hope that my colleagues will take time to consider its implications for education in the coming decade.

DRIVE TO RESCUE AMERICA'S BATTERED HIGH SCHOOLS

(By Stanley Wellborn)

At the start of the first school year of the 1980s, the nation's educators are primed for an all-out drive to put the battered American high school back on course again.

Major aim of the campaign: To reverse a decline that has left many schools with rock-bottom standards, unruly classes, despairing teachers and idle, turned-off students.

Such conditions, built up over the past two decades, are being attacked by federal and state programs with strong assistance from concerned parents and local school boards.

For many critics of today's often chaotic classrooms, the turnaround cannot begin too soon.

"We risk losing a generation of young people if improvements in high schools aren't made soon," warns Robert Calfee, a Stanford University education professor. "Too many schools today are easy and unchallenging. We can't afford that kind of multibillion-dollar baby-sitting service."

Nowhere are the nation's educational shortcomings more acute than in the 25,300 public junior and senior high schools—with an enrollment of 16.7 million students and more than a million teachers and administrators.

While elementary schools and colleges have begun to navigate the back-to-basics tide in recent years, high schools have lagged behind in academic achievement, enrollment and public confidence.

Continuing declines in test scores tell only part of the story, says Patricia Albjerg Graham of Harvard University, a former director of the National Institute of Education. Writing in Daedalus, she decries the seeming inability of schools to make students, particularly those from poor families, fully literate.

"Many children in the high schools have not mastered the elementary-school curriculum. They are in the 10th grade, but their reading skills are similar to those expected in the third or fourth grade."

The Council for Basic Education, pointing to the chronic decline in high-school standards, observes that "there is cause to ask whether high-school diplomas are worth keeping now."

Today, say critics, schools have become places of empty ritual, performing only a "credentialing" function for students. Now, they say, is the time for an educational crusade of the magnitude prompted by the Russian launching of the Sputnik satellite in 1957—the last time that secondary education was given a thorough public reappraisal across the nation.

A DISMAL PICTURE

During the past year, a spate of studies has concluded that the high school—the historic backbone of American public education—is in desperate straits.

None disputed the fact that America's best high schools are producing better-educated graduates than ever before. But there are too few of them. Far too many students receive mediocre educations that are the great blot on America's 95-billion-dollar public-education system.

In an assessment of secondary education entitled "Giving Youth a Better Chance," the Carnegie Council on Policy Studies in Higher Education notes that ill-equipped graduates are largely responsible for today's long-term unemployment among young adults.

Poor schooling, the report added, contributes to "ruined lives, crime, drug addiction, lost hopes, social fears, reduced productivity, raised social expenditures and disdain for authority."

Further, the council warns: "Problems that have become endemic in many high schools have moved down into some junior high schools, including lack of discipline, absenteeism, vandalism and use of drugs."

Although educators agree that equality of access has been achieved in many school districts across the U.S., they say that goal may have resulted in a watering down of the curriculum and an alienating, even prison-like, atmosphere in classrooms—particularly those in large urban areas.

Another study refers to high schools in many cities as "holding tanks" for idle youths, who find that staying in school can be as disastrous as dropping out.

Surveys of high school students also show disenchantment with what schools are providing. A Gallup Poll found that 53 percent of U.S. teenagers contend they are not being asked to work hard enough in school. Sixty-two percent say that there should be more emphasis on basic subjects in their schools.

In a massive study of U.S. schools done by the Institute for Development of Educational Activities (IDEA), researchers asked 13,700 students in junior and senior high schools to pick the "one best thing" about their schools. Only 7 percent chose "the classses I'm taking." Eight percent simply replied, "Nothing."

Many high schools, overburdened with "elective" courses, discouraged teaching staffs and skimpy financial resources, have become virtual remediation centers for many pupils.

Few educators fault the primary grades for the poor performance of many high schoolers. Until grades 4 and 5, the vast majority of students master the traditional "building block" skills and retain an enthusiasm for learning.

But from grades 6 through 9, the IDEA study found, students gain in self-respect and personal maturity, while their respect for academics falls off markedly. Thus, many students become high-school sophomores with a distracted or turned-off attitude toward traditional education.

Part of the problem: The "minimum competency" movement requiring basic knowledge for a high-school diploma has prompted many schools to emphasize survival skills to the exclusion of more-demanding course work.

What can reverse those negative feelings among students and bring about a change for the better in public high schools? Of many suggestions made by education authorities, three crop up again and again: Better teaching, a more rigorous curriculum and stronger support from homes and communities.

TEACHER TROUBLES

The quality of teaching has been attacked with increasing frequency as high-school achievement scores have declined.

John I. Goodlad, dean of the Graduate School of Education at the University of California, Los Angeles, suggests that lack of teacher inventiveness may be a key reason for student loss of interest.

"Far too many classrooms from the fourth grade up rely on homogenized textbooks and workbooks and on a narrow range of teaching techniques," comments Goodlad, adding that a "pedagogical renaissance is desperately needed" in U.S. schools.

However, the bureaucratic and disciplinary difficulties of teaching in modern schools have created a generation of demoralized teachers. "If you look generally at the training of teachers in the U.S.," says Stanford's Calfee, "it is an area of great despair. With declining enrollment, with resources being cut back, jobs are scarce. Salaries are going down. There is not much fun to teaching any more."

Bombarded by mounting criticism for the past 15 years, high-school teachers are leaving the field in greater numbers than ever before, says Diane Ravitch, professor at Columbia University Teachers College. "Many teachers wonder what they are doing there. Are they just caretakers and custodians? That's not the kind of role that makes them want to work hard, if they feel that they're nothing more than glorified baby-sitters."

Moreover, as the profession has lost social prestige, it has attracted more recruits who are themselves barely competent students. Confirmation of this has come from W. Timothy Weaver, an associate professor of education at Boston University, who discovered that high-school seniors nationwide who plan to major in education are "academic weaklings," performing well below average on standardized Scholastic Aptitude Tests.

Weaver notes that education majors scored 34 points below average on verbal tests and 43 points below average in math. Even worse, prospective teachers scored lower in English than majors in nearly every other field.

Some school administrators see hope in that poorer teachers will be weeded out as high-school enrollments decline in the 1980's. Others point to teacher-competency tests implemented by at least 15 states to insure that instructors are up-to-date in their subjects.

Above all, many educators say, teachers must begin to take more personal responsibility for students' successes and failures. Michael Rutter, author of "Fifteen Thousand Hours: Secondary Schools and Their Effects on Children," a highly praised study of British schools, says that teachers who are single-minded about helping youngsters always get the best results.

"Teachers, first of all, should expect all students to learn," says Rutter. "Then they should assign and check homework regularly, praise good work and good behavior, punish firmly and fairly, and waste no time in unproductive classwork."

Secretary of Education Shirley M. Hufstedler voiced agreement with this idea in July at the National Education Association meeting in Los Angeles: "The secret to being a successful teacher in the 1980's—and not simply a survivor—is to reject generalized blame for all of education's ills while accepting in a very personal way the responsibility for each student's success or failure.

"Those who fail to get through to their students tend to blame the students. Even more important, those teachers who do take personal responsibility for their student's successes and failures tend to produce higher-achieving students."

CURRICULUM COMPLAINTS

The extensive growth of electives in high schools also is blamed by critics for the lack of educational focus among many recent graduates.

Columbia's Ravitch describes today's curriculum as a "delicatessen assortment of silly, fluffy courses." She agrees with former Commissioner of Education Ernest Boyer, who suggests in an interview beginning on page 49 that high schools must return to a traditional core curriculum.

Examples of the trend in recent years: Courses in pop psychology and television soap operas now supplant social-studies classes. Required survey courses in American and world literature have given way in some schools to classes in underground newspapers and country-music lyrics.

Concern about lax course offerings is beginning to reach state education officials, too. Declares Michael Kirst, a Stanford School of Education professor and president of the California State Board of Education: "It's surprising and alarming to see students in the world's most advanced technological state taking courses more appropriate for a relatively backward region. If our high schools increased science, math and other academic offerings, there's reason to believe that the performance of our students would improve."

Another strategy—now employed in one form or another by most states—is a requirement that students demonstrate minimum competency in essential-skills examinations before graduation. In some jurisdictions, students are given different versions of high-school diplomas depending on how well they perform on the tests.

COMMUNITY-SCHOOL TIES

Taking hold in many localities is the view that broader support should come from the many groups that shape public high schools—parents, teachers, taxpayers and government.

"Education is too important to leave exclusively to the province of the schools," asserts B. Frank Brown, author of a new study entitled "The Transition of Youth to Adulthood: A Bridge Too Long," by the National Commission on Youth of the Charles F. Kettering Foundation. Among the commission's recommendations:

Lower to 14 the age at which students no longer will be legally required to attend school.

Develop work-study programs so high-school students can take part-time jobs during school terms and summers.

Establish programs in which high-school students tutor in elementary schools on a daily basis.

Provide part-time internships for high-school students in service and government agencies.

Says Brown: "No longer can society rely exclusively on schools to carry out a task that is clearly a function of both the school and the community."

Despite current problems, many educators believe the salvation of America's secondary schools is attainable. They point to growing insistence by parents and taxpayers on higher standards, and a movement away from educational excesses of the past.

If students, teachers, principals and administrators commit themselves to improvements, these educators say, there is every reason to believe American high schools can return to a state of excellence in the 1980s.●

PRESIDENT HARRY S. TRUMAN'S COMMITTEE ON CIVIL RIGHTS

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. STOKES. Mr. Speaker, thank you for giving me this opportunity to acquaint my colleagues with a bit of history which up until this point has received minimal notice—the Civil Rights Committee of the late President Harry S. Truman.

Dr. Phillip A. Grant, Jr., associate professor of history at Pace University, has written a very concise and enlightening paper on the Civil Rights Committee instituted by President Truman and his actions in this area. The paper was delivered at the 64th annual meeting of the Association for the Study of Afro-American Life and History. At this time, I would like to share the paper and my thoughts about the implications and relationship of these historical events with my colleagues in the U.S. House of Representatives.

Mr. Speaker, it seems particularly appropriate to recount this historical information in the wake of the recent political conventions where the achievements of former Presidents were praised and used as models for the future. The reactions and rationales against President Truman's civil rights suggestions are not only characteristic of a bygone era. Rather, we hear some of the same arguments today when programs for the poor and disadvantaged which would raise them from the throes of a permanent underclass are proposed.

History notes that President Truman may well have been the first unsung Presidential hero for civil and human rights. History further documents that his leadership in this area with the appointment of the Civil Rights Committee and his call to the Congress met with extreme opposition. Then, like today, other issues were higher on the Congress agenda than the active uplifting of people's civil and human rights in regards to employment and general economic status.

This is buttressed by the fact that it was in 1947 that President Truman sounded the call that he was appointing the aforementioned Committee. Although the Committee issued its formal report entitled "To Secure These Rights," it was not until 1964 that the Congress approved the Civil Rights Act.

Mr. Speaker, I believe that this paper not only points up our faults as the decisionmakers in this Nation but also our failure to actively pursue the best course of action for all citizens. Many people have noted that history is the best teacher. I hope that in sharing this paper with my colleagues, it will help to illuminate our path as we continue to debate the programs and activities needed to overcome the social and economic discrimination which plagues our poor in this Nation.

It is with this personal note, Mr. Speaker, that I submit the paper written by Dr. Grant for the CONGRESSIONAL RECORD:

PRESIDENT HARRY S. TRUMAN'S COMMITTEE ON CIVIL RIGHTS

On December 5, 1946 President Harry S. Truman appointed a Committee on Civil Rights. On that date the President directed the fifteen members of the Committee to recommend "more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."[1]

Designated as Chairman of the Committee on Civil Rights was Mr. Charles E. Wilson, President of General Electric. The other members of the committee included several of the nation's most illustrious religious, academic, labor, and business leaders. These ladies and gentlemen were as follows: The Right Reverend Henry Knox Sherrill, Presiding Bishop of the Protestant Episcopal Church; The Most Reverend Francis J. Haas, Bishop of the Catholic Diocese of Grand Rapids; Rabbi Roland B. Gittelsohn; Mrs. M. E. Tilly, Women's Society of Christian Justice of the Methodist Church; Dr. Channing H. Tobias, former Senior Secretary of the Young Men's Christian Association; Dr. John S. Dickey, President of Dartmouth College; Dr. Frank P. Graham, President of the University of North Carolina; Mr. Boris B. Shiskin, American Federation of Labor Economist; Mr. James B. Carey, Secretary-Treasurer of the Congress of Industrial Organizations; Mr. Morris L. Ernst, lawyer and author; Mr. Franklin D. Roosevelt, Jr., American Veteran's Committee; Mrs. Sadie T. Alexander, National Urban League; Mr. Charles Luckman, President of Lever Brothers; and Mr. Francis P. Matthews, former Supreme Knight of the Knights of Columbus and a director of the United States Chamber of Commerce.

On January 6, 1947 President Truman delivered his State of the Union Message to a joint session of Congress. Reminding the House and Senate that he had recently appointed the Committee on Civil Rights, the President lamented the "numerous attacks upon the constitutional rights of individual citizens as a result of racial and religious bigotry." Truman, disturbed that substantial numbers of Americans had been frustrated in attempting to exercise their right to vote and had been denied freedom of assembly, concluded that the "will to fight these crimes should be in the hearts of every one of us."[2]

Ten days after his address on Capitol Hill President Truman invited the members of the Committee on Civil Rights to the White House. Referring to the task of the committee as a "vitally important job," Truman stressed that he was determined to have the Bill of Rights "implemented in fact." Truman climaxed his remarks to the committee as follows: "I hope that you will bring me something tangible by which we can accomplish the purposes which we have been trying to accomplish for one hundred and fifty years."[3]

The Committee on Civil Rights issued its formal report to President Truman on October 29, 1947. Entitled "To Secure These Rights," the report was one hundred and seventy-eight pages in length. The document was based on the testimony offered by forty witnesses, the correspondence received from approximately two hundred and fifty private organizations and individuals, and the relevant information provided by an impressive number and wide variety of federal, state, and local agencies.[4]

The official committee report consisted of four distinct sections. They were labeled as follows: (1) The American Heritage: Promise of Freedom and Equality; (2) The Record: Short of the Goal; (3) Government Responsibility: Securing These Rights; (4) A Program: The Committee's Recommendations.

Section One enumerated the fundamental rights characteristic of a free society. According to the committee, a free society by definition guaranteed such rights as security of the person and freedom of expression. Moreover, the rights to equality and the privileges of citizenship were definitely inherent to a free society. In effect the object of Section One was to inquire whether the realities of American life in 1947 accurately reflected the nation's uniquely revolutionary heritage of freedom and justice.

Section Two alluded to those contemporary incidents of American life which were

[1] "Harry S. Truman: Messages and Papers of the Presidents of the United States, 1946" (Washington: United States Government Printing Office, 1962), p. 532; Harry S. Truman, "Memoirs" (2 vols.; Garden City: Doubleday and Company, Inc., 1956), II, 180-181; Post, Washington, D.C., December 6, 1946, pp. 1, 12.

[2] "The State of the Union Messages of the Presidents, 1790-1966" (New York: 3 vols.; Chelsea House, 1966), III, 2946-2947; United States Congress, Congressional Record, Eightieth Congress, First Session (Washington: United States Government Printing Office, 1947), XCIII, 135-139; Post, Washington, D.C., January 7, 1947, pp. 1, 6; Evening Star, Washington, D.C., January 6, 1947, pp. 1, 6, 7.

[3] "Messages and Papers of the Presidents, 1947," pp. 98-99; Post, Washington, D.C., January 17, 1947, p. 3.

[4] "To Secure These Rights" (Washington: United States Government Printing Office, 1947); Post, Washington, D.C., October 30, 1947, p. 1, 9, 10; Evening Star, Washington, D.C., October 29, 1947, pp. 1, 6.

obviously at variance with the ideals of a free society. Special emphasis was focussed on the numerous lynchings of 1946 and 1947, the frequent police brutality inflicted on Blacks and other minority groups, the apparent failure of the judiciary to insist upon equal justice under law, and the systematic denial of the ballot to Blacks. Section Two also documented the appalling lack of equal opportunity in such crucial areas as education, employment, housing, medical care, and public accommodations. Perhaps of paramount significance in Section Two was the committee's unequivocal condemnation of both the principle and the practice of racial segregation in the United States. Denouncing segregation as totally incompatible with the values of a free society, the committee expressed grave concern that segregation was such a longstanding tradition in neighborhoods located in close proximity to the White House, the Capitol Building, and the chambers of the Supreme Court.

Section Three accentuated the urgent need for the Federal government to assert itself more vigorously in the realm of the protection of civil rights. Convinced that civil rights was an enormous problem affecting the entire nation, the committee felt that only the federal government was vested with sufficient power and authority to provide a national solution. The committee not only cited appropriate provisions of the Constitution and numerous Supreme Court decisions as irrefutable evidence of the involvement of the federal government, but also declared that a meaningful precedent had been established by the creation of a civil rights section in the Department of Justice in 1939. Notwithstanding the inclinations of the federal government to safeguard civil rights, the committee maintained that it was imperative to secure more definitive statutory authority. Otherwise, the committee feared that the federal government would be severely impeded in its quest to assure protection to those American citizens whose rights were either threatened or nonexistent.

Section Four was the committee's comprehensive program for resolving the multitude of problems pertaining to the civil rights question. In this section the committee stressed the moral, economic, and diplomatic considerations which justified the federal government's immediate assumption of much greater responsibility for the protection of civil rights in American society. The committee advocated the improvement of the administrative machinery affecting civil rights questions, the strengthening of the rights to the safety and security of the person, the protection and enlargement of the right to citizenship and its privileges, and the fostering of the conditions for equality. The committee proposed the establishment of a Civil Rights Division within the Department of Justice, a permanent Commission on Civil Rights, and a Joint Congressional Committee on Civil Rights. It also recommended that Congress enact legislation to prosecute individual violators of civil rights, including more stringent penalties in the federal criminal code and anti-lynching laws. Moreover, the committee endorsed the abolition of the poll tax, laws protecting the right to vote in both primaries and general elections, local self-government for the District of Columbia, and the elimination of discrimination and desegregation in the armed forces. Finally, the committee urged Congress to approve a fair employment practices (FEPC) law and prohibit segregation in interstate transportation and implored the Executive Branch to limit the distribution of federal funds to public and private agencies which disavowed discrimination and to initiate legal action to challenge restrictive housing covenants.

On January 7, 1948 President Truman mounted the rostrum of the House of Representatives for the purpose of delivering his State of the Union Message. The President, noting that the United States had "always had a deep concern for human rights," declared that any abridgement of human rights was a "denial of our basic beliefs of democracy and of our regard for the worth of each individual." Deploring the fact that certain Americans were "still being denied equal opportunity for education, for jobs and economic advancement, and for the expression of their views at the polls," Truman emphasized that racial discrimination was "utterly contrary to American ideals of democracy." The President, acknowledging that the report of the Committee on Civil Rights "points the way to corrective action by the Federal Government," promised to send a subsequent special message to the Congress "on this important subject."[5]

President Truman's Civil Rights Message of twenty-four paragraphs was sent to Congress on February 2, 1948. Saddened by the fact that there were "examples"—flagrant examples—of discrimination which are utterly contrary to our ideals, Truman proclaimed that the federal government had a "clear duty to see that constitutional guarantees of individual liberties and equal protection of the laws are not denied or abridged anywhere in our Union." Truman strongly endorsed many of the major proposals of the Committee on Civil Rights. The President urged Congress to establish a permanent Commission on Civil Rights, strengthen existing civil rights statutes, approve anti-lynching legislation, protect more thoroughly the right to vote, authorize the creation of a Fair Employment Practices Commission, outlaw discrimination in interstate transportation facilities, and provide home rule and suffrage in presidential elections for the District of Columbia. Truman also stressed that the Executive Branch was striving "to improve the enforcement of civil-rights statutes and to eliminate discrimination in Federal employment, in providing Federal services and facilities, and in the armed forces." Asserting that the United States had been instrumental in advocating a "world order of law and justice fully protective of the rights and dignity of the individual," the President terminated his message as follows:

"If we wish to inspire the peoples of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining imperfections in our practice of democracy.

"We know the way. We need only the will."[6]

Notwithstanding the constructive recommendations of the Committee on Civil Rights and the forcefully worded sentiments of President Truman, Congress steadfastly refused to address itself to the lingering problem of racial discrimination in the United States. For nearly a decade after the issuance of the committee's report a coalition of Republicans and Southern Democrats successfully resorted to a maze of parliamentary devices to forestall the enactment of civil rights legislation. Indeed it was not until August 1957 that Congress even sanctioned a modest proposal to facilitate the realization of voting rights. Finally, it was not until the historic Civil Rights Act of July 1964 that Congress approved the principle of equal opportunity in employment and prohibited discrimination in public accommodations. It was the Supreme Court rather than the Congress which provided the impetus for such landmark changes as the elimination of discrimination in interstate transportation and the end to segregation in public education.

Although Congress remained shamefully oblivious to the problem of civil rights, the essential questions raised by President Truman's committee were to assume increasing relevance in successive presidential elections. The adoption of a forthright civil rights plank by the Democratic Party in 1948 probably never would have occurred had it not been for the sustained publicity generated by the Committee on Civil Rights. In 1948 a substantial number of powerful Southern Democrats were so thoroughly embittered by President Truman's emphasis on civil rights that they defiantly bolted the Democratic Party and avidly supported the so-called "Dixiecrat" ticket. The unexpected election of Truman in November 1948 and the rise to prominence of such articulate civil rights proponents as Governor G. Mennen Williams, Senators Hubert H. Humphrey, Paul Douglas, and John F. Kennedy, and United Auto Workers President Walter Reuther proved extremely helpful in persuading a growing percentage of Americans that the prevalence of racial discrimination posed a monumental challenge to the integrity of our Democratic system. The election of Senator Kennedy to the presidency in 1960 was to be of pivotal importance to the momentum of the civil rights movement. It was ironic, of course, that most of the issues so passionately debated in the 1960 presidential contest had been subjected to calm deliberation by the Committee on Civil Rights thirteen years earlier.

President Truman's Committee on Civil Rights was comprised of fifteen unusually distinguished American citizens. These ladies and gentlemen were well-informed, compassionate, and broadly representative of the nation's population. Undertaking an exhaustive study of the overall question of civil rights in the United States, they conscientiously analyzed the problem of racial discrimination within the framework of our American heritage. Recognizing that the country had conspicuously failed to prevent the continuation of racial injustice. The members of the Committee on Civil Rights performed their assigned task remarkably well. They correctly dramatized the foremost domestic shortcoming of twentieth century American life. In every respect they have been vindicated by history. They were and are deserving of the profound gratitude of all Americans committed to eradicating the curse of racial discrimination and promoting the ideal of genuine equality.●

[5] "State of the Union Messages of the Presidents," III, 2952; Congressional Record, XCIV, 33-36; Post, Washington, D.C., January 8, 1948, pp. 1, 4; Evening Star, Washington, D.C., January 7, 1948, pp. 1, 6.

[6] "Messages and Papers of the Presidents, 1948," pp. 121-126; Congressional Record, XCIV, 927-929; Post, Washington, D.C., February 3, 1948, pp. 1, 2; Evening Star, Washington, D.C., February 3, 1948, pp. 1, 5.

REAGAN ON THE MIDDLE EAST

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. GILMAN. Mr. Speaker, last night Senator RUDY BOSCHWITZ of Minnesota, Representative JACK KEMP of New York, and I, while attending a B'nai B'rith forum, heard Governor

Reagan deliver a significant policy message on the Middle East.

Mr. Speaker, I request that Governor Reagan's speech delivered last night before the international convention of B'nai B'rith be inserted at this point in the RECORD so that our colleagues may have the opportunity to share his views on the important security interests of the United States and Israel in the resolution of the hostility in the Middle East.

The address follows:

ADDRESS BY HON. RONALD REAGAN

I know it will come as no surprise to you that I have chosen to speak to you tonight about the State of Israel, its importance to our own nation and world peace.

But in a sense when I speak of Israel, I speak as well of other concerns of B'nai B'rith and of the entire Jewish community in the United States. Israel is not only a nation—it is a symbol. During my campaign I have spoken of the values of family, work, neighborhood, peace and freedom. I made a commitment to see to it that those values would be at the heart of policy-making in a Reagan Administration. Israel symbolizes those values. What is Israel if not the creation of families, working together to build a place to live and work and prosper in peace and freedom?

In defending Israel's right to exist, we defend the very values upon which our nation is built.

The long agony of Jews in the Soviet Union is, of course, never far from our minds and hearts. All these suffering people ask is that their families get the chance to work where they choose, in freedom and peace. They will not be forgotten by a Reagan Administration.

But, I must tell you this:

No policy, no matter how heartfelt, no matter how deeply rooted in the humanitarian vision we share, can succeed if the United States of America continues its descent into economic impotence and despair.

Neither the survival of Israel nor the ability of the United States to bring pressure to bear on the situation of dissidents against tyranny can become realistic policy choices if our American economy continues to deteriorate under the Carter policies of high unemployment, taxes and inflation.

The rhetoric of compassion and concern becomes just that, mere words, if not supported by the vision—and reality—of economic growth. The present Administration does not seem to realize this. It seems to believe that if the right kind of words are chosen and repeated often enough, all will be well. Can those who share our humanitarian concerns ignore the connection between economic policy, national strength and the ability to do the work of friendship and justice and peace in our own nation and world?

The theme of this convention, "A Covenant With Tomorrow," speaks directly to the question of American interests and the well-being of Israel. There is no covenant with the future which is not firmly rooted in our covenant with the past. Since the rebirth of the State of Israel, there has been an iron-clad bond between that democracy and this one.

That bond is a moral imperative. But the history of relations between states demonstrates that while morality is most frequently given as a motive for actions, the true and abiding motive is self-interest. Well, the touchstone of our relationship with Israel is that a secure, strong Israel is in America's self-interest. Israel is a major strategic asset to America.

Israel is not a client, but a very reliable friend, which is not something that can always be said of the United States today under the Carter Administration.

While we have since 1948 clung to the argument of a moral imperative to explain our commitment to Israel, no Administration has ever deluded itself that Israel was not of permanent strategic importance to America. Until, that is, the Carter Administration, which has violated this covenant with the past. Can we now have confidence it will honor a covenant with tomorrow?

The interests of all the world are served by peace and stability in the Middle East. To weaken Israel is to destabilize the Middle East and risk the peace of the world, for the road to world peace runs through the Middle East.

How do we travel that road?

We cannot positively influence events at the perimeters of our power if power—including economic power—at the center is diminished.

The conduct of this nation's foreign policy in the last four years has been marked by inconsistency and incompetence.

We must have a principled, consistent foreign policy which our people can support, our friends understand, and our adversaries respect. Our policies must be based upon close consultation with our allies.

We require the defensive capability necessary to ensure the credibility of our foreign policy, and the security of our allies and ourselves. There can be no security for one without the other.

Today, under Jimmy Carter, our defensive capability has been so seriously eroded as to constitute not a deterrent but a temptation.

This is not a campaign issue, it is a matter of grave national concern; indeed so grave that the President considers it a liability to his personal political fortunes. He has tried to give the appearance of responding to it. But the half-hearted measures he proposes are clearly inadequate to the task.

We must restore the vital margin of safety which this Administration has allowed to erode, maintaining a defense capability our adversaries will view as credible and that our allies can rely upon.

As an ally of the United States, Israel must have the means to remain strong and secure. Over the years, the United States has provided economic and defense assistance, and a Reagan Administration will maintain this traditional commitment.

In 1976, Candidate Jimmy Carter came before this convention and said: "I have called for closer ties with our traditional allies, and stronger ties with the State of Israel. I have stressed," he said, "the necessity for a strong defense—tough and muscular, and adequate to maintain freedom under any conceivable circumstances."

One wonders, did the candidate listen to his own call? Today we have fewer real allies and, among those, we speak with diminished authority. Our relations with Israel are marked by doubt and distrust. Israel today is in grave danger, and so is freedom itself.

In 1976, Jimmy Carter declared that he would seek what he called a "comprehensive settlement" in the Middle East. What this might mean for Israel and how this might be achieved were questions neither asked nor answered.

The comprehensive agreement which Mr. Carter sought required, first, a reconvening of the Geneva Conference. Israel was amenable to this step. Her adversaries agreed conditionally. But, the conditions were that the Palestine Liberation Organization be represented and that Israel effectively agree in advance of negotiation to withdraw to the pre-1967 borders, which were in fact armistice lines resulting from the first effort to destroy the State of Israel. Israel rightly refused these conditions and was promptly accused of intransigence. Can we believe that Mr. Carter is not still in favor of dealing with the P.L.O. and desirous of forcing the terms of a settlement?

Mr. Carter invited the Soviet Union to join him in his effort to force Israel to accept the mockery of negotiations in Geneva. Before that, it had required a major effort to keep the Soviets out of the Middle East peace process. In October, 1977, Mr. Carter invited them back in free of charge, and they graciously accepted. The Carter Administration presented as a major achievement the conclusion of a joint Soviet-American accord which would have given the Russians a stranglehold on negotiations, as well as a convenient calling card for inserting themselves more deeply into the Middle East.

This seriously disturbed President Sadat. The President of Egypt did not share Mr. Carter's appreciation of the Soviets, and he came to the conclusion which other world leaders, including Mr. Brezhnev, have now reached: Mr. Carter is incapable of distinguishing between his own short-term political interests, and the nation's long-term foreign policy interests. Mr. Carter professed not to understand what all the fuss was about.

The result was that the United States Government, for the first time in the history of the rebirth of Israel, found itself on the outside looking in. President Sadat made his courageous trip to Jerusalem at the invitation of Prime Minister Begin, and a bilateral peace process began. Without, let me re-emphasize, the participation of Mr. Carter. The quick foreign policy success that Carter had hoped to achieve turned instead into another major foreign policy blunder.

What we do or fail to do in the Middle East is of vital importance not only to the peoples of the region, but also to the security of our country, our Atlantic and Pacific allies, Africa, China, and the Asian subcontinent.

Because of the weak and confused leadership of Jimmy Carter, we are approaching a flashpoint in this tragic process, with Soviet power now deployed in a manner which directly threatens Iran, the Persian Gulf and Arabian Sea; with Soviet forces and proxy forces building up again in the region; with Soviet fleets and air bases emplaced along the sea lanes on which we and our Allies and the entire free world depend.

In spite of this I am confident that if we act with vigor, vision and practical good sense, we can peacefully blunt this Soviet thrust. We can rely upon responsible Arab leaders in time to learn what Anwar Sadat learned, which is that no people can long endure the cost of Soviet patronage.

How we deal with Israel and her neighbors in this period will determine whether we rebuild the peace process or whether we continue to drift. But let it be clear that the cornerstone of our effort and of our interest is a secure Israel, and our mutual objective is peace.

While we can help the nations of that area move toward peace, we should not try to force a settlement upon them.

Our diplomacy must be sensitive to the legitimate concerns of all in the area. Before a negotiated peace can ever hope to command the loyalty of the whole region, it must be acceptable to Israelis and Arabs alike.

Most important, we must rebuild our lost reputation for trustworthiness. We must again become a nation that can be relied upon to live up to its commitments.

In 1976, Candidate Jimmy Carter said: "I am concerned with the way in which our country, as well as the Soviet Union, Britain and France have poured arms into certain Arab countries—five or six times more than Israel receives."

But it was Mr. Carter who agreed to sell sixty F-15 fighters to Saudi Arabia. To get the Congress to go along, he assured these aircraft would not have certain offensive capabilities. Now, the Secretary of Defense tells us he cannot say whether this commitment to Congress will be honored.

It was Mr. Carter who agreed to sell one hundred main battle tanks to Jordan.

It was Mr. Carter who agreed to provide U.S. licensed turbine engines for Iraqi warships.

Meanwhile, Israel is being increasingly isolated by international terrorism and by U.N. resolutions designed to undermine Israel's position in the world while Carter stands by and watches.

I was appalled to see the Carter Administration abstain from voting on, rather than veto, the Resolution passed by the United Nations Security Council two weeks ago, totally disregarding the Democratic Platform promises of 1976 and 1980. As I stated then, that Resolution not only undermines progress toward peace by putting the United Nations on record against Israel and on one side of the sensitive issue of the status of Jerusalem; it also presumes to order other nations—including our Dutch ally—to move their embassies from Jerusalem.

I believe this sorry episode sheds some light on an earlier action by Jimmy Carter concerning another U.N. resolution, voted on in March this year. On March 1st, the Carter Administration failed to veto a mischievous U.N. resolution condemning Israel's presence in Jerusalem, calling it an "occupation." That was the position of the Carter Administration on Saturday. Two days later, on a Monday, reacting to the public outcry, Jimmy Carter put the blame for this outrage on his Secretary of State and reversed the position of the Administration.

The man who asks "trust me," zigzags and flip-flops in ever more rapid gyrations, trying to court favor with everyone: Israel, the P.L.O., the voting bloc in the United Nations and the voters at home. On March 1st, it took the Carter Administration three days to switch positions. On August 20th, it took only three minutes. Secretary of State Muskie condemned the U.N. Resolution on Jerusalem in a long speech that was for the voters in this country. Minutes later, he abstained instead of vetoing the U.N. Resolution. That was for the P.L.O. and their friends.

This is the Carter record on the Middle East. Arab leaders are persuaded that we don't say what we mean. Israel is persuaded that we don't mean what we say. How do we build productive relations with either side on such a basis?

Before we can act with authority abroad, we have to demonstrate our ability to make domestic policy without asking permission of other governments.

Mr. Carter sent an emissary to Saudi Arabia to ask for permission to store petroleum here in our own country—a strategic reserve vital to our national security and long demanded by Congress. The Saudis, predictably, said no. Mr. Carter halted the stockpiling.

Can we have relations with our friends in the Arab world if those relations are built on contempt for us?

Clear away the debris of the past four years, and the following issues remain to test the good faith of the Arab nations and of Israel, and to challenge our national will and diplomatic skill in helping them to shape a peace.

There is the unresolved question of territorial rights resulting from the 1967 war.

There is the status of Jerusalem which is part of the first question.

There is the matter of refugees.

There is the matter of the P.L.O., which I consider distinct from the matter of the refugees.

The question of territory, putting aside Jerusalem for the moment, must still be decided in accordance with Security Council Resolutions 242 and 338. We will tolerate no effort to supersede those Resolutions. We must weigh the future utility of the Camp David accords against that position.

There are basic ambiguities in the documents Camp David produced, both in the links between the Israeli-Egyptian peace, and in the provisions for an autonomous regime in the West Bank and the Gaza Strip. These ambiguities have now brought negotiations to a dangerous impasse.

Let us remember that an autonomous Palestinian Arab regime for the West Bank and the Gaza Strip was an Israeli proposal—a major concession on Israel's part in the interest of progress toward peace.

Negotiations between Israel and Jordan could result in long and creative steps toward resolving these problems. Israel and Jordan are the two Palestinian states envisioned and authorized by the United Nations. Jordan is not recognized as sovereign in some 80 percent of the old territory of Palestine. Israel and Jordan are the parties primarily authorized to settle the future of the unallocated territories, in accordance with the principles of the Mandate and the provisions of Resolutions 242 and 338.

Thus, the autonomy plan called for in the Camp David Agreements must be interpreted in accordance with the two Security Council Resolutions, which remain the decisive and authoritative rules governing the situation. The Camp David Agreements cannot and should not lead to fundamental changes in the security position, or to the withdrawals of Israeli troops, until Jordan and other neighbors make peace.

Jerusalem has been a source of man's spiritual inspiration since King David founded it. Its centrality to Jewish life is known to all.

Now it exists as a shared trust. The holy places of all faiths are protected and open to all. More than this, each is under the care and control of representatives of the respective faiths. Unlike the days prior to 1967, Jerusalem is now and will continue to be one city, undivided, with continuing free access for all. That is why I disagree with the cynical actions of the Carter Administration in pledging to preserve the status of Jerusalem in its party platform and its undercutting Israel and Jerusalem by abstaining on a key U.N. vote. I believe the problem of Jerusalem can be solved by men of good will as part of a permanent settlement. The immediate problem is to make it easier for men of good will to come to the peace table.

President Carter refuses to brand the P.L.O. as a terrorist organization.

I have no hesitation in doing so.

We live in a world in which any band of thugs clever enough to get the word "liberation" into its name can thereupon murder school children and have its deeds considered glamorous and glorious. Terrorists are not guerrillas, or commandos, or freedom-fighters or anything else. They are terrorists and they should be identified as such. If others wish to deal with them, establish diplomatic relations with them, let it be on their heads. And let them be willing to pay the price of appeasement.

The P.L.O. is said to represent the Palestinian refugees. It represents no one but the leaders who established it as a means of organizing aggression against Israel. The P.L.O. is kept under tight control in every state in the area except Lebanon, which it has effectively destroyed. As for those it purports to represent, when any Palestinian breathes a word about peace to Israel, he is an immediate target for assassination. The P.L.O. has murdered more Palestinians than it has Israelis.

This nation made an agreement with Israel in 1975 concerning its relations with the P.L.O.

This Administration has violated that agreement. We are concerned not only with whether the P.L.O. renounces its charter calling for the destruction of Israel, we are equally concerned with whether it is truly representative of the Palestinian people. If we can be satisfied on both counts, then we will not be dealing with the P.L.O. as we know it, but a quite different organization, one truly representative of those Arab Palestinians dedicated to peace and not to the establishment of a Soviet satellite in the heart of the Middle East.

Finally, the question of Arab Palestinian refugees.

My analysis of this tragic situation begins with the Declaration of the Establishment of the State of Israel, May 14, 1948. Let me read the relevant paragraph:

"We appeal—in the very midst of the onslaught launched against us now for months—to the Arab inhabitants of the State of Israel to preserve peace and to participate with us in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions."

Tragically, this appeal was rejected. People left their land and their homes confident Israel would be destroyed in a matter of days and they could return. Israel was not destroyed and the refugee problem is with us today.

One solution to this refugee problem could be assimilation in Jordan, designated by the U.N. as the Arab Palestinian state.

In the final analysis, this or some other solution must be found as part of a peace settlement. The Psalms speak to our concerns, for they encompass all that we strive for. They are a vision of our ideals, of the goal to which we strive with constancy, dedication and faith. They embrace our hopes for a just, lasting peace in the Middle East and our hopes that the works of justice and mercy be done at home:

. . . May our garners be full, affording
every kind of store; . . .
May there be no breach in the walls, no
exile, no outcry in our streets.

Happy the people for whom things are thus.

It is given to us to see that this vision is never lost, its message never forgotten, that the work of peace and justice and freedom goes on, inspired by our values, guided by our faith and made permanent by our commitment.●

SURVEY SUPPORTS QUOTAS ON IMPORTS

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. GAYDOS. Mr. Speaker, I recently concluded a survey in the 20th Congressional District of Pennsylvania dealing with the problems of the

Nation, its trade laws, and the Federal social security program. I believe my colleagues might be interested in the results.

For example, residents of the 20th District indicate they have little faith in the traditional practice of the executive branch to achieve truly fair trade with certain foreign producers through negotiated or voluntary agreements or arrangements. Eighty-five percent of those responding to a question as to whether Congress should place mandatory limits on the amount of foreign products—steel, autos, and so forth—imported into the United States answered in the affirmative. Twelve percent oppose mandatory quotas and 3 percent had no opinion.

That percentage, I am certain, indicates people do understand what can happen when a foreign producer captures an unreasonable share of a domestic industry's home market. Our people know you can never achieve the goal of free trade among all nations until you also achieve fair trade as well.

A similar overwhelming majority also expressed their support of the use of general tax funds to insure the solvency of the social security program. As we all know, the ability of the social security fund to provide benefits for qualified recipients has come under serious questioning. The expansion of coverage coupled with a reduction in contributions resulting from adverse economic conditions has caused unrest among the Nation's elderly and young workers.

The elderly feel the fund will go bankrupt, leaving them destitute. Congress sought to allay these fears by increasing the tax and the base on which it is paid. This effort created turmoil among the ranks of contributors because it began draining huge sums from their income, destroying dreams of owning a home or of a brighter future.

Now, there is talk of increasing the tax even higher or go the other route and begin stripping benefits from the social security program. The people of the 20th District have rejected these alternatives. Seventy-three percent favored the use of general tax funds to bolster the program, 16 percent voted to support higher taxes, and only 12 percent sought a reduction in benefits.

I also asked our people what, in their opinion, was the most serious problem facing the Nation. Energy, defense, inflation, or recession? Sixty-one percent ranked inflation first; followed by national defense, 14 percent; the recession, 13 percent; and energy, 12 percent.

Mr. Speaker, I have forwarded the results of this survey to the President in the hope the opinions of residents in the 20th Congressional District will assist him in plotting the future course of our Government's actions in these areas.●

CHRISTIANITY AND POLITICS—PART II

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 4, 1980

● Mr. McDONALD. Mr. Speaker, this is the second half of a two part series written by Rev. Joseph C. Morecraft of Atlanta, Ga., entitled, "The Counterproductivity of Not Linking Christianity and Politics: A Reply to Senator MARK HATFIELD." In part 1 Reverend Morecraft identifies the basic premises and arguments used by others to support the belief that religion should remain neutral in the political arena and some of the fundamental weaknesses of this position. In the following excerpt the reverend continues and explains why religious neutralism is inconsistent with a proper sense of law as well as Christian principles. I commend it to the attention of my colleagues:

Religious neutrality in politics is especially dangerous, because of the far-reaching impact of legislation and laws. The source of law for a society is the god of that society. If the source of law is the Bible, then Almighty God is the God of that society. On the other hand, if the source of law is man, then Man becomes the god, and that spells slavery and chaos for that society. As Rushdoony has written, "Law is in every culture religious in origin. Because law governs man and society, because it establishes and declares the meaning of justice and righteousness, law is inescapably religious, in that it establishes in practical fashion the ultimate concerns of a culture. Accordingly, a fundamental and necessary premise in any and every study of law must be, first, a recognition of this religious nature of law.

"Second, it must be recognized that in any culture the source of law is the god of that society. If law has its source in man's reason, then reason is the god of that society. If the source is an oligarchy, or in a court, senate, or ruler, then that source is the god of that system.

"Modern humanism, the religion of the state, locates law in the state and thus makes the state, or the people as they find expression in the state, the god of the system. In Western culture, law has steadily moved away from God to the people (or the state) as its source, although the historic power and vitality of the West has been in Biblical faith and law.

"Third, in any society, any change of law is an explicit or implicit change of religion. Nothing more clearly reveals, in fact, the religious change in a society than a legal revolution. When the legal foundations shift from Biblical law to humanism, it means that the society now draws its vitality and power from humanism, not from Christian theism.

"Fourth, no disestablishment of religion as such is possible in any society. A church can be disestablished, and a particular religion can be supplanted by another, but the change is simply to another religion. Since the foundations of law are inescapably religious, no society exists without a religious foundation or without a law-system which codifies the morality of its religion.

"Fifth, there can be no tolerance in a law-system for another religion. Toleration is a device used to introduce a new law-system as a prelude to a new intolerance. Legal positivism, a humanistic faith, has been savage in its hostility to the Biblical law-system and has claimed to be an 'open' system."[7]

"Religious neutrality in politics", then, is a subversive, revolutionary, and anti-christian principle!

The second fundamental weakness of this principle is that it betrays two cardinal truths of the Christian religion: (1). the lordship of Christ over all of life; and (2). the all-embracing authority of the Bible, as the written Word of God.

One of the clearest teachings of Christianity is that Jesus Christ is King. He was hailed as such at His birth.[8] He professed to be such throughout His life.[9] He died as a King, in total control of the situation.[10] He arose from the grave as a majestic King.[11] He reigns over all today, and is working to establish His kingdom over all the earth.[12] He shall return at the end of history to consummate His reign.[13] Faith is spoken of in terms of submission to His lordship.[14] Two things, then, become absolutely clear: (1). The lordship of Christ is unlimited and unrestricted, i.e., it includes all areas of life without exception. There is no area of human life or in the entire creation that is not under his lordship and accountable to Him.

(2). Christ's lordship is of particular importance for the political realm. Revelation points out that Christ's rule includes the political arena, when He is called, "the ruler of the kings of the earth."[15] Psalm 2 directly addresses civil governments and calls upon them to "Do homage to the Son, lest He become angry, and you perish in the way * * *." The book of Acts indicates that the civil governments of Christ's day were intimidated by the political implications of the universal lordship of Christ. The early church certainly was aware of the conflict with Rome, the lordship of Christ brought them into. "And when they did not find them, they began dragging Jason and some brethren before the city authorities, shouting, 'These men who have upset the world have come here also; and Jason has welcomed them, and they all act contrary to the decrees of Caesar, saying that there is another king, Jesus,'" (Acts 17:6-7)

The point appears to be obvious. Jesus Christ is the unrivaled monarch of the political process of the United States of America. Christians have the duty to declare His lordship in the American political arena; and they may not rest until His divine rights and absolute authority are recognized and submitted to in the executive, legislative, and judicial branches of our civil government at the national, state, and municipal levels. For a Christian to seek anything less is to act as if Christ is something less than what He, in fact, is—King of kings and Lord of lords, Who possesses all authority and power in heaven and on earth.[16] Neutrality in politics is rebellion against the Lord Christ.

An example of proper zeal for the crown rights of Jesus Christ was Rev. James Henley Thornwell, who, in 1861, fought for the following preamble to be included in the constitution of the Confederacy: "Nevertheless we, the people of these Confederate States, distinctly acknowledge our responsibility to God, and the supremacy of His Son, Jesus Christ, as King of kings and Lord of lords; and hereby ordain that no law shall be passed by the Congress of these Confederate States inconsistent with the will of God, as revealed in the Holy Scriptures."[17]

This brings us to the other cardinal truth at stake in this issue, which is the all-embracing authority of the Bible as the written Word of God. American Christians, since the landing of the pilgrim fathers, have been committed to the authority of Biblical Law as the only basis for a just, orderly and prospering society.[18] If Jesus Christ is Lord, He has given a law that is to be obeyed by all men and all nations.[19] Since Christ is King, it is impossible for a relationship to exist without revealed law. God's Law was given to govern the entire life, thought and economy of godly nation.[20] "Righteousness, i.e., conformity to biblical law, exalts a nation, but sin is a reproach to any people." (Proverbs 14:34) God tells Israel in Deuteronomy 4:8 that there is no legal code or system of laws that is as just as the revealed Law Of God. Throughout the Old Testament, God judges Israel and many other nations, as nations, if they disregard or transgress Biblical Law. In the New Testament, the civil government is said to be "the minister of God for good" and the "avenger who brings wrath upon the one who practices evil." Both of these phrases are found in Romans 13:1-7. Their point is that it is the civil government's God-given responsibility to administer justice solely in terms of right and wrong. For the Christian, as well as the writers of the New Testament, the only standard of right and wrong is the written Word of God. As a "minister" the civil government has the responsibility before God to administer His Law. It does not have the right to legislate laws by fiat. Its authority is ministerial not legislative, according to the Bible. That makes the Bible of critical importance in politics, because justice is impossible, unless it is based upon the final authority of Biblical Law.[21] Jesus specifically says that the Scriptures, which can never be broken, were especially addressed to civil officials in John 10:35.

Consider these examples of the attitude the founding fathers of the United States had toward Biblical Law. First of all, we have a quotation from the "Fundamental Orders of Connecticut" (1638): "* * * well knowing where a people are gathered together the word of God requires that to maintain peace and union of such people there should be an orderly and decent government established according to God, to order and dispose of the affairs of the people at all seasons as occasion shall require; do therefore associate and conjoin ourselves to be as one public state or commonwealth; and do * * * enter into combination and confederation together, to maintain and preserve the liberty and purity of the gospel of our Lord Jesus Christ which we now profess * * *."[22]

Then we have a quotation from the New Haven Colony: "March 2, 1641/2: And according to the fundamental agreement made and published by full and general consent, when the plantation began and government was settled, that the judicial law of God given by Moses and expounded in other parts of scripture, so far as it is a hedge and a fence to the moral law, and neither ceremonial nor typical nor had any reference to Canaan, hath an everlasting equity in it, and should be the rule of their proceedings. April 3, 1644: It was ordered that the judicial laws of God, as they were delivered by Moses * * * be a rule to all the courts in this jurisdiction in their proceeding against offenders * * *."[23]

Last, we have a quotation from the "Address to the Reader" by Aspinwall in John Cotton's "Abstract of the Laws of New England" (1655): "This model far surpasseth all the municipal laws and statutes of any of the Gentile nations and corporations under the cope of Heaven. Wherefore I thought it not unmeet to publish it to the view of all, for the common good * * *. Judge equally and impartially, whether there be any laws in any state in the world, so just and equal as these be. Which, were they duly attended to, would undoubtedly preserve inviolable the liberty of the subject against all tyrannical and usurping powers * * *. This Abstract may serve for this use principally to show the complete sufficiency of the word of God alone, to direct his people in judgment of all causes, both civil and criminal * * *. But the truth is, both they we, and other the Gentile nations, are loath to be persuaded to lay aside our old earthly forms of governments, to submit to the government of Christ."[24]

For the United States to survive, prosper and enjoy peace under the blessing of Almighty God, we must as a people and as a political structure confess that "the Lord is our Judge, the Lord is our Law-giver, the Lord is our King; He will save us." (Isaiah 33:22) The Christian must work toward the repeal of all laws that originate with humanism and toward the reinstitution of Biblical Law as the basis for the laws and legislation of the United States. Religious neutrality here amounts to the question ng of the justice and integrity of the revealed Law of God. Rushdoony makes the point dramatically, in his comments on Deuteronomy 6:4-9, known as the Shema Israel, "The first principle of the Shema Israel is thus one God, one law. It is the declaration of an absolute moral order to which man must conform. If Israel cannot admit another god and another law-order, it cannot recognize any other religion or law-order as valid either for itself or for anyone else. Because God is one, truth is one.

"All this illustrates a second principle of the Shema Israel: one absolute, unchanging God means one absolute, unchanging law. Men's social applications and approximations of the righteousness of God may alter, vary, and waver, but the absolute law does not. To speak of the law as 'for Israel' but not for Christians is not only to abandon the law but also to abandon the God of the law. Since there is only one true God, and His law is the expression of His unchanging nature and righteousness, then to abandon the Biblical law for another law-system is to change gods. The moral collapse of Christendom is a product of this current process of changing gods.

"A third principle of the Shema Israel is that one God, one law, requires one total, unchanging, and unqualified obedience. The meaning is that man must obey God totally, in any and every condition, with all his being. Since man is totally the creature of God, and since there is not a fiber of his being which is not the handiwork of God and therefore subject to the total law of God, there is not an area of man's life and being which can be held in reservation from God and His law."[25]

This should suffice to impress us with the fact that a Christian cannot enter the political arena and leave the Law of God behind. To do so is to endanger his own welfare and to lay aside that guide which God gave to enhance the life, prosperity and peace of the nation according to Deuteronomy 28. Let it be made very clear, "Christ cannot be accepted if His sovereignty, His law, and His word are denied."[26]

In conclusion, I trust it has been shown that the religious neutrality in politics principle is destructive to justice and to Christianity. It is another myth of secular humanism. It must be repudiated by all Christians. It is my earnest prayer that Sen. Mark Hatfield will re-evaluate his position in the light of the principles we have set forth here, insofar as they are in accordance with God's Word. I sincerely pray that, in rebuilding his political position in exclusively Christian and biblical terms, God will richly bless Sen. Hatfield to be one of the powerful men in Congress whom God is using in the Christian reconstruction of the United States into a truly Christian Republic.

May all Christians everywhere re-commit themselves, by the grace of God, to pray for and diligently work towards the establishment of the crown rights of Jesus Christ over all the earth and the reconstruction of all aspects of American society and culture by the inerrant and all-sufficient Word of God in the power of the Holy Spirit to the glory of Almighty God.

FOOTNOTES

1. Hebden Taylor, E. L., "The Myth of Religious Neutrality in Politics", pg. 1, unpub.
2. Ibid. pg. 1.
3. Ibid. pg. 2.
4. Lee, F. N., "The Central Significance of Culture", Presbyterian and Reformed Publishing Co., Nutley, N.J., 1976, pg. 121.
5. Ibid. pg. 123.
6. Van Til, H., "The Calvinistic Concept of Culture", Presbyterian and Reformed Publishing Co., Nutley, N.J., 1972, pg. 27f.
7. Rushdoony, R. J., "The Institutes of Biblical Law", Craig Press, Nutley, N.J. 1973, pg. 4f.
8. Luke 2:11.
9. Mark 2:10,28.
10. Colossians 2:15.
11. Acts 2:32-36.
12. I Corinthians 15:23-28.
13. Philippians 2:9-11.
14. Romans 10:9.
15. Revelation 1:5.
16. Matthew 28:18.
17. "Thornwell's Theocracy" in "Presbyterian Heritage", vol. 1, No. 1, published by Atlanta Christian Training Center, Atlanta, Georgia.
18. Deuteronomy 28-30.
19. Exodus 20:1ff.
20. Study the book of Deuteronomy to see the all-embracing nature of God's Law.
21. Proverbs 28:4,5; 29:4,14.
22. Walton, R., "Fundamentals for American Christians", Vol. I, Plymouth Rock Foundation, N.H., pg. 44.
23. Rushdoony, "The Institutes of Biblical Law", Craig Press, Nutley, N.J., 1973, pg. 1f.
24. Bahnsen, G., "Theonomy in Christian Ethics", Craig Press, Nutley, N.J., 1977, pg. 549f.
25. Rushdoony, "The Institutes of Biblical Law", pg. 18ff.
26. Ibid. pg. 667.●

HOUSE OF REPRESENTATIVES—*Friday, September 5, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Eternal God, who has created the heavens and the Earth and the peoples of every nation, bless all those who turn to You for comfort and solace. Even as we thank You, O God, for the gift of freedom, we remember those who each day face oppression or anxiety because they do not know the liberty with which we have been blessed. O God, continue to support and strengthen those of Your creatures who face captivity or suppression, those who cannot freely worship You or follow their faith. May Your spirit support those who yearn for freedom and whose cause is just, that sustained by Your promise, they may ever continue and be upheld by Your abiding word. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate insists upon its amendments to the bill (H.R. 7018) entitled "An act to extend the Federal Insecticide, Fungicide, and Rodenticide Act until September 30, 1981, and for other purposes," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. TALMADGE, Mr. STONE, Mr. LEAHY, Mr. STEWART, Mr. HELMS, Mr. HAYAKAWA, and Mr. JEPSEN to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2718. An act to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

TRIBUTE TO THE LATE HONORABLE JAMES A. BYRNE

(Mr. MOORHEAD of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I rise with regret to advise the House of the death of former Congressman James A. Byrne, who served in the House of Representatives for 20 years beginning in 1952. During 14 of those years I had the pleasure of serving with him, I say pleasure because, although he took his job seriously, he never lost his delightful sense of humor.

Jimmy Byrne was a loyal Democrat.

He was a concerned and capable Congressman.

He worked in Washington but his heart was in Philadelphia and with the people of his district. He will be missed in both places.

As a fellow Pennsylvanian I pay tribute to his fine career and extend my condolences to his family on this sad occasion.

A newspaper article follows:

[From the Philadelphia Inquirer, Aug. 29, 1980]

JAMES A. BYRNE, CONGRESSMAN FROM KENSINGTON FOR 20 YEARS

(By Burr Van Atta)

Former U.S. Rep. James Aloysius Byrne, 74, who represented his Kensington constituency in Congress for 20 years, died Wednesday at St. Mary Hospital. He lived at 2315 E. Cumberland St. in the heart of his old Third District.

Mr. Byrne was a lifelong Democrat who followed in his father's footsteps and began working for the party long before he could vote. He built a record as a staunch liberal in Washington and was regularly scored as "perfect" or "near perfect" in ratings of congressmen by the Americans for Democratic Action.

He was first elected in 1952 to represent the district. He served 10 terms and held a number of key committee posts between 1953 and 1973.

Mr. Byrne was a strong supporter of civil rights legislation, Medicare, foreign aid and the Vietnam war. He changed his mind on the war in 1970 and joined in a resolution calling on President Richard M. Nixon to seek a quick end to the conflict.

Noting the changing mood of the people, he shifted his position on the war after several tours of the combat area. And, he noted, two members of his family were fighting there.

But the thrust of much of his work was toward projects that would benefit his constituents and the Philadelphia area.

A member of the House Armed Services Committee, he led the fight against Robert S. McNamara when the defense secretary first recommended closing of the Philadelphia Naval Shipyard and then the Frankford Arsenal. He won the first issue and lost the second.

Mr. Byrne was responsible for much of the work in the Independence Mall area, and was pleased when the new Federal Courthouse at Sixth and Market Streets was given his name.

Greatly interested in the area, he waged a fight against "a new Chinese wall" that would cut the city off from the Delaware River. He succeeded in convincing authorities to depress the Delaware Expressway (Interstate 95) through the Society Hill-Queens Village area.

While the liberal wing of the Democratic Party was high in its praise of his performance, it was at times critical of his high rate of absenteeism.

Mr. Byrne, who carefully tended his home precincts, spent much of his time in the city. Since 1937, he had also operated a funeral home from his home; the occupation won him the nickname "Digger," a nickname he did not enjoy. He preferred "Jimmy."

He became one of the great travelers in Congress, frequently making extended trips to investigate conditions around the world.

He considered his voting record and his trips part of the job of representing his constituents.

His people wanted to know what was going on in the world, he said, and it was his job to find out. To the end, he was sure they would support him. "They're people who have to work for a living, and the Democratic Party is the party of the working man," he said.

He explained his view of his political role while campaigning in 1968. "When I walk down the street, people think I'm Santa Claus," he said. "And I hear confessions at all hours."

Mr. Byrne began his life in the party when a student at St. Joseph's Preparatory School. He left St. Joseph's College after two years when he was elected a Democratic committeeman. He was leader of the 31st Ward for 35 years, always with support from labor unions.

From 1941 to 1945, he was U.S. marshal, and then was named chief of disbursement for the state treasurer. He was a state representative from 1950 to 1952 and campaigned for Congress from the House seat.

Through the years he made friends in the party, including an ally and later mayor, James H. J. Tate. He also made enemies, among them former state Sen. Henry J. (Buddy) Cianfrani and former Democratic City Chairman Peter J. Camiel. Cianfrani and Camiel regularly threatened to run for his congressional seat.

Mr. Byrne finally met defeat at the hands of the man who is now mayor, William J. Green 3d.

The two Democrats came into conflict in the 1972 primary after their districts were merged in a bit of gerrymandering that political writers said was "tailor-made for the younger, better-known Green."

Faced with what was clearly the fight of his life, Mr. Byrne brushed aside reports that he would retire. "Why should I retire?" he asked. "I like it here."

With full backing from the party and support from then-mayor Frank L. Rizzo, he was confident. Rizzo granted his support in reply to Green's primary race against him in 1971.

Byrne, then 66, waged a traditional campaign, visiting supermarkets and plants, holding his union support, pressing the flesh in endless rounds of handshaking and seeing to it that party workers were happy. Green, 33, a member of the House Ways and Means Committee, who was described by political writers as "sleek and glib, the son of the best political boss the city had seen in this century," pulled out the stops, using Madison Avenue compaign techniques and summoning up all the "glitter and glamour at his command."

Green won the nomination by a 3–2 ratio. Camiel commented that Mr. Byrne could only blame himself for the defeat.

He is survived by his wife, Virginia Mullin Byrne, a brother and a sister.

A viewing will be held from 6 to 9 p.m. Monday and after 8:30 a.m. Tuesday at St. Ann's Church, Memphis Street and East Lehigh Avenue. A Mass of Christian Burial will be offered at 11 a.m. Tuesday at the church. Burial will be in Holy Sepulchre Cemetery, Wyndmoor.

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

IN MEMORY OF FORMER REPRESENTATIVE JAMES A. BYRNE

(Mr. GAYDOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GAYDOS. Mr. Speaker, I was deeply saddened to learn of the death of a dear friend and colleague from the State of Pennsylvania, former Representative James A. Byrne.

Jim Byrne was elected to the Pennsylvania State Legislature in 1950, beginning a long and illustrious career in public service. In 1952, he was elected to the U.S. Congress, where he served 10 terms and distinguished himself as a member of the Armed Services and Merchant Marine and Fisheries Committees.

Throughout his years of public service, Jim was dedicated to the cause of civil rights and the needs of the elderly, and was a friend and champion of the working man. He diligently maintained close contact with his constituency and devoted considerable time and efforts in support of those projects which would most benefit his congressional district and the people of Philadelphia.

Jim Byrne was a true statesman and clearly loved meeting people. He was always willing to lend a helping hand and rightfully earned the respect of his constituents and his colleagues in the House.

It was indeed a great honor to have served with Jim Byrne in this House, and it is with heartfelt sorrow that I join with my colleagues in paying him tribute today. My deepest and sincerest sympathy goes out to Jim's wife, Virginia.

THE PASSING OF FORMER CONGRESSMAN JAMES A. BYRNE

(Mr. LEDERER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. LEDERER. Mr. Speaker, it is with great sadness that I join with my colleagues from Pennsylvania in announcing the passing of former Congressman James A. Byrne on August 27, 1980.

The people of Kensington, Fishtown, and the Third Congressional District were seen over the weekend spreading the sad news of the loss of this great leader. The "Digger" as he was affectionately called in the Halls of Congress and Jimmy to all those in Philadelphia who loved him so much was a man for all seasons.

Jimmy Byrne started his political career while a student at St. Joe's Prep School in Philadelphia. Among the many offices he held on his way to the U.S. Congress were Democratic leader of the 18th ward, Democratic leader of the 31st ward, a post which he held for 35 years. From 1941 to 1945 he was the U.S. marshal, appointed to that post by President Franklin D. Roosevelt. He served that office with distinction, a record to be emulated by his successors. He held the position of chief of disbursement for the State treasurer. In 1950 he was elected to the House of Representatives of the Commonwealth of Pennsylvania and in 1952 when President Eisenhower was sweeping the country Jimmy Byrne was elected to serve his first term in the U.S. House of Representatives where he stayed for 20 years. Congressman Byrne served on the Merchant Marine Committee and was a ranking member of the Armed Services Committee.

Jimmy Byrne led the fight to save the Philadelphia Naval Yard, was able for many years to keep the Frankford Arsenal open and probably more than any other person he was responsible for the Independence Mall National Park which houses Independence Hall and the Liberty Bell which was taken back through urban renewal.

During the Vietnam war Congressman Byrne on more than a few occasions was in the combat zone.

Jimmy's philosophy was that his constituents were a hard-working people and the Democratic Party was the party to represent their needs and interest. He was a legend in his own time in that he was never too busy to see a constituent in his offices or after Mass at his beloved St. Ann's parish, Memphis Street and East Lehigh Avenue.

I ask my colleagues to join with me today in extending our sympathy to his wife, Virginia Mullin Byrne; his brother, Robert; his sisters, Claire and Catherine; and to his many nieces and nephews, and to Senator Joseph Smith, his friend and confidant of many years; to Gerry Middleburg; his many friends and associates and the 31st ward Democratic executive committee.

FAILURE TO PASS BUDGET RESOLUTION VIOLATES THE LAW

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, title 31, section 1331(b) of the United States Code, the law of this country, says as follows:

No later than September 15 of each year, the Congress shall complete action on the concurrent resolution on the budget referred to in subsection (a) of this section.

There is nothing in this section which authorizes anybody in this House to waive this law. In effect it requires the Congress to file a tax return. It is the law of the land. And yet we now have the specter of an impending lameduck session, ostensibly because we cannot complete our work before September 15.

What happens to the ordinary citizen when he or she fails to file a tax return as is required by the law?

Well, title 26, United States Code, section 7203, says that for any citizen who fails to file a tax return, they have up to a year in jail staring them in the face, or a $10,000 fine.

The American people should be alert to this prospective violation of the law, and one of the best ways to do it is a national debate, a national debate between the leaders of the two great powers who serve in this House would provide the American people with the opportunity to determine if we truly need a lameduck session.

The truth of the matter is that we have ample time to complete this task by September 15. The Democrats, who control this House by a 63-percent majority, want to keep from the American people until after the election the fact that in fiscal year 1981 we will incur a deficit of $30 to $40 billion. These deficits will only stop when the people of this country decide to change which party controls this Congress.

AMERICAN PEOPLE OUTRAGED BY ADMINISTRATION SECURITY LEAK

(Mr. SOLOMON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SOLOMON. Mr. Speaker, in his testimony to the Armed Services Committee yesterday, Defense Secretary Brown said it was a mysterious set of news leaks that prompted him to reveal our top secret plans for the stealth bomber.

But it was the Defense Department itself that caused the leaks and inspired the news reports. One reporter was even given a high level briefing on the stealth project and urged to publish an article.

Mr. Speaker, I am outraged by this clear indication that the administration is so desperate to be reelected. It is even willing to tamper with our Nation's security for a cheap, 2-day headline, and judging by the calls and messages that I have received from my constituents, the American people are outraged, too.

Mr. Speaker, we have our political differences, but traditionally we have joined together in bipartisan unity when it comes to defending our country from threats abroad. By clearly playing politics with his Defense Department, Mr. Carter has broken this tradition and betrayed the faith of the American people.

ACTION ON SECOND CONCURRENT BUDGET RESOLUTION IMPERATIVE

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, the deadline for consideration of the second concurrent budget resolution is September 15. I believe we must begin debate on the budget immediately if we are to make the tough decisions regarding defense spending, inflation, and taxes. By delaying this essential debate we are putting off critical decisions which must be made in order to get this country moving again. The effect of postponement is to deprive every American citizen of the right to know how his or her elected Representative voted on the 1981 budget prior to the November election. Surely, this would not be fair to the American people.

CARTER'S ANSWER FOR THE AMERICAN STEEL INDUSTRY: JOBS FOR JAPAN

(Mr. SCHULZE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHULZE. Mr. Speaker, candidate Jimmy Carter said unemployment would, "be the major thrust of my administration." Little did we know that he meant to fight unemployment in Japan.

Back on the home front: The American steel industry continues to suffer one of the worst slumps in its history. Yet, the first project initiated under the Synthetic Fuels Act will be constructed with steel gasifier vessels fabricated in Japan. To put it mildly, it seems ironic that the first project in a program to decrease our dependence on foreign energy will increase our dependence on foreign steel.

Mr. Speaker, it was clearly the intent of Congress to encourage full utilization of American industry through the synfuels act. The decision to award this contract to a Japanese firm must be rejected. America's development of synthetic fuels must not be used to support foreign industry at the expense of American jobs.

SECRETARY OF DEFENSE BROWN'S "NO COMMENT" ON STEALTH AIRCRAFT UNACCEPTABLE

(Mr. BEARD of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEARD of Tennessee. Mr. Speaker, yesterday I had my first chance to cross-examine Secretary of Defense Brown about the Pentagon's unbelievable decision to confirm, against the advice of our uniformed military leadership, the existence of highly classified stealth aircraft technology. I remain completely dissatisfied.

Yesterday the Secretary of Defense repeatedly refused to answer my simple question as to whether or not he had received instructions from the White House Armed Services Investigative Subproject. I find his answer of "No comment" unacceptable. Obviously, the House Armed Services investigation subcommittee has every right to ask if the President or any of his assistants had decided to compromise our national security for the sake of political advantage.

I have requested that the Secretary of Defense immediately submit all pertinent records of written, oral, and telephonic communication between the Department of Defense, the National Security Council, the White House, and the Carter campaign staff. I am also requesting that all Department of Defense interoffice communications between Secretary Brown's staff and the Joint Chiefs or other uniformed personnel.

The implications in this matter are so grave that Congress and the American public must have full disclosure quickly. And for the administration to not immediately supply these records could tend to be self-incriminating.

DEMOCRATS RUNNING SCARED ON SECOND BUDGET RESOLUTION

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, the House has acted on all but two appropriations bills for next year, and yesterday we approved the Reconciliation Act. Yet, the leadership has not budged from its intention to put off a vote on the second budget resolution until after the November 4 election. It is becoming increasingly apparent that the party which has controlled Congress the last 25 years is running scared. The Democratic majority does not want to admit to the American people that it has failed to deliver on its pledge to enact a balanced budget for 1981. Nor does it want to admit its intention to raise taxes nearly $100 billion next year, and that the tax cut President Carter has proposed for 1981 is as invisible as the bomber the administration says has altered the military balance.

Mr. Speaker, the American people are not in a mood to listen to rhetoric of "trust us." They want, and deserve to know, what we intend to do about inflation, unemployment, taxes, and defense spending before they go to the polls this November. A lameduck session is not necessary; we still have a month to go before the scheduled date of adjournment. If that is not enough, we should forgo campaigning by staying here until we get the job done that we were elected to do.

□ 1020

LAMEDUCK LEGISLATING

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, in the absence of a true emergency, is it not a violation of the concept of representative government to invite repudiated lame ducks to come back here, days after their defeat, and ask them to continue to vote on public policies that will continue in effect long after they have left this Chamber?

These are not the mere partisan maunderings of a devoted Republican, but rather a contemporary restatement of the wisdom which prevailed in 1932, when Congress acted to do away with lameduck sessions by the adoption of the 20th amendment to the Constitution.

At that time, Congressman Cartwright of Oklahoma observed:

> Of course it is no disgrace to be a lame duck, but they have been crippled. Their responsibility to the people has been lessened. They have been rejected by the people, yet they hold the balance of power in both houses, and so have it in their power to decide matters of the greatest importance to the nation.

Let us not disenfranchise the voters of as many as 30 to 50 congressional districts by undertaking this perilous exercise in lameduck legislating.

PRESIDENTIAL MANIPULATION OF GOVERNMENT FUNDS

(Mr. TRIBLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRIBLE. Mr. Speaker, President Carter is again seeking to buy votes with taxpayer dollars.

On Wednesday, in an act whose contempt for Federal contracting procedures was exceeded only by its crass political opportunism, President Carter announced that the service life extension work on the aircraft carrier *Forrestal* would be performed at the Philadelphia Navy Yard in 1983.

It is my understanding that the Navy had not yet determined where this ship should be assigned and that, in fact, the necessary studies were incomplete.

Two years ago, it was conclusively demonstrated that work on the first SLEP carrier, the *Saratoga*, could be performed at a substantially lower cost to America's taxpayers at Newport News Shipbuilding in Virginia. That remains true today.

In an exercise of the naked power of an incumbent President, Mr. Carter has chosen to ignore the interests of the American people and to cynically dispense patronage through the Department of Defense.

I do not believe the American people will tolerate this crude manipulation of Government funds, and this Member—and his colleagues from Virginia—will do all he can to prevent this from occurring.

DEPOLITICIZE THE PRESIDENCY

(Mr. EVANS of Delaware asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EVANS of Delaware. Mr. Speaker, the decision by the Carter administration to leak information on the stealth technology in order to gain some sort of temporary political advantage must rank as one of the greatest betrayals of the public trust in the history of our country.

President Carter has presided over a potentially disastrous decline in our military preparedness over the last 4 years. Now in a desperate attempt to cover over this record of neglect, the administration has rifled through the highest secrets of this country in order to find materials for a press release. As the campaign grows more and more heated, goodness knows what other secrets the Carter administration will trot out in an effort to garner votes.

I am sure the leaders at the Kremlin are ecstatic over this unmatched breach of national security at the highest levels of our Government.

I hope for our country's sake, it will not continue, and I hope also that we can depoliticize the Presidency and that this body and the American people will see the wisdom of one 6-year term for the President.

THE BOMBER "STEALTH"

(Mr. DEVINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEVINE. Mr. Speaker, how appropriate the name of the new suddenly discovered bomber Stealth.

This Member just looked it up in the dictionary. It says, "furtive or cunning or sly." That is the posture that this President takes in suddenly discovering buried in the depth of the Pentagon this great new bomber. This is the same President who sabotaged the B–1 program, the M–1 missile, the Trident and so forth, the man who had postured bordering on unilateral disarmament.

It is interesting to make a political move that is actually something that started back during the Ford administration that this President now suddenly decides to claim credit for.

Governor Reagan in his speech in Jacksonville pointed out the dangers in this type of politics, and I commend the gentleman from Tennessee (Mr. BEARD) for his interrogation of the Secretary of Defense, Mr. Brown, who furtively and slyly and cunningly evaded the questions on the Stealth.

America has traditionally maintained a posture of "peace through strength," which Carter abandoned, but Governor Reagan will restore.

RAIL ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7235) to reform the economic regulation of railroads, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey (Mr. FLORIO).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 333, nays 2, answered "present" 2, not voting 95, as follows:

[Roll No. 521]

YEAS—333

Abdnor
Addabbo
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Anthony
Archer
Ashbrook
Atkinson
AuCoin
Badham
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bevill
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Breaux
Brinkley
Brooks
Broyhill
Buchanan
Burton, John
Burton, Phillip
Butler
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Clinger
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
de la Garza
Derwinski
Devine
Dicks
Dingell
Donnelly
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Harkin
Harris
Harsha
Hefner
Heftel
Hightower
Hillis
Hollenbeck
Holt
Hopkins
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Luken
Lundine
Lungren
McClory
McDade
McHugh
McKay
McKinney
Madigan
Maguire
Marks
Marlenee
Marriott
Martin
Matsui
Mavroules
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nelson
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patten
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Rahall
Railsback
Ratchford
Regula
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Taylor
Thomas
Thompson
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolf
Wolpe
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—2

Bauman
Lloyd

ANSWERED "PRESENT"—2

Bafalis
Ottinger

NOT VOTING—95

Ambro
Anderson, Ill.
Annunzio
Applegate
Ashley
Aspin
Bellenson
Bethune
Biaggi
Boggs
Brademas
Brodhead
Broomfield
Brown, Calif.
Brown, Ohio
Burgener
Burlison
Byron
Campbell
Carney
Chisholm
Cleveland
Coelho
Corman
Cotter
Crane, Daniel
Crane, Philip
Davis, Mich.
Davis, S.C.
Deckard
Dellums
Derrick
Dickinson
Dixon
Dodd
Dougherty
Evans, Ga.
Ford, Tenn.
Garcia
Gephardt
Giaimo
Goldwater
Hansen
Hawkins
Heckler
Hinson
Holland
Holtzman
Horton
Ireland
Jenrette
Leach, La.
Livingston
Lujan
McCloskey
McCormack
McDonald
McEwen
Markey
Mathis
Mattox
Mazzoli
Mitchell, Md.
Murphy, N.Y.
Myers, Pa.
Neal
Nedzi
Nichols
Patterson
Pepper
Quayle
Quillen
Rangel
Reuss
Rodino
Roe
Sebelius
Seiberling
Shannon
Skelton
St Germain
Stark
Steed
Symms
Taustin
Traxler
Vander Jagt
Walker
Waxman
Whitten
Wilson, Bob
Wilson, C. H.
Wright
Wydler
Young, Alaska

□ 1040

Mr. WILLIAMS of Ohio and Mr. CHAPPELL changed their votes from "present" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7235, with Mr. AUCOIN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole House rose on Thurs-

day, July 24, 1980, title III was open to amendment at any point.

Are there any amendments to title III?

PARLIAMENTARY INQUIRY

Mr. ECKHARDT. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. ECKHARDT. Could the Chair delineate the parliamentary position that we are in at the present time respecting the Rail Act?

The CHAIRMAN. The Chair will state, as he has already stated, that title III was open for amendment at any point when the Committee rose on July 24, 1980. That is the situation. Title III is open for amendment at this point.

Mr. ECKHARDT. Further pursuing my parliamentary inquiry, Mr. Chairman——

The CHAIRMAN. The gentleman from Texas.

□ 1050

Mr. ECKHARDT. Mr. Chairman, do I understand the parliamentary situation to be, restating the situation that occurred immediately before we arose, that there had been a vote on the Eckhardt-Rahall amendment to title II which prevailed; that we then moved into title III; the title having been read, under the rules we should proceed to amend title III at the present time? Is that the situation that presently prevails?

The CHAIRMAN. The Chair will state to the gentleman that is correct.

Mr. ECKHARDT. I thank the Chair.

AMENDMENT OFFERED BY MR. STAGGERS

Mr. STAGGERS. Mr. Chairman, I offer an amendment, and I ask unanimous consent to proceed for 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The Clerk read as follows:

Amendment offered by Mr. STAGGERS: Page 125, strike out line 14 and all that follows through line 17 on page 138 (including the material between lines 17 and 18) and insert in lieu thereof the following:

COMPENSATORY JOINT RATE RELIEF

SEC. 301. (a)(1) Chapter 107 of title 49, United States Code, is amended by inserting after section 10705 the following new section:

"§ 10705a. Joint rate surcharges and cancellations

"(a)(1)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may publish and apply a surcharge increasing or decreasing the through charge applicable to any movement between points designated by the surcharging carrier subject to a joint rate. Such a surcharge may be applied without the concurrence of the other carriers that are party to such joint rate.

"(B) A carrier earning adequate revenues (as defined in section 10704(a)(2) of this title) may not apply such a surcharge to any movement on a line operated by such carrier which carried more than 3,000,000 gross ton miles of traffic in the preceding calendar year.

"(C) Any surcharge applied pursuant to this subsection must be applied in equal dollar amounts to the movement subject to the surcharge over all routes between the points designated by the surcharging carrier which such carrier participates in under the joint rate involved, and, when the surcharge increases the through charges, under any of such carrier's single line rates between the same points.

"(2)(A) Whenever a rail carrier applies a surcharge increasing a through charge pursuant to paragraph (1) of this subsection, any other rail carrier that participates in any movement subject to such surcharge may cancel the application of such surcharge to any route participated in by such carrier, if such carrier makes the demonstration described in subparagraph (B) of this paragraph.

"(B) A rail carrier may cancel the application of a surcharge under this paragraph if such carrier demonstrates to the Commission that the surcharging carrier's share of the revenues, at the time the surcharge was filed with the Commission, from its participation in the movement over the route involved would have been equal to or greater than 110 percent of its variable costs of providing service over such route, under either—

"(i) the applicable joint rate, in effect at the time the surcharge was filed with the Commission, without the surcharge;

"(ii) a new rate division increasing the share of the surcharging carrier;

"(iii) a new higher lawful rate published by the canceling carrier; or

"(iv) a new, lesser surcharge which shall be prescribed by the Commission upon and in conformity with the request of the carrier proposing to cancel the surcharge. Any such prescribed surcharge shall, in conjunction with the surcharging carrier's division of the joint rate in effect on the date the original surcharge was filed with the Commission, provide the carrier proposing the original surcharge revenues equal to or greater than 110 percent of such surcharging carrier's variable cost of providing service over such route.

"(C)(i) The cancelling tariff shall only become effective if the rail carrier proposing to cancel the application of the surcharge makes the demonstration described in subparagraph (B) of this paragraph.

"(ii) If the demonstration described in clause (i) of this subparagraph is made on the basis of the applicable joint rate in effect at the time the surcharge was filed with the Commission, without the surcharge, the tariff shall become effective on one day's notice.

"(iii) If the demonstration described in clause (i) of this subparagraph is made on the basis of a new rate, division, or surcharge prescribed pursuant to subparagraph (B)(iv) of this paragraph, the tariff shall become effective the date such new rate, division, or surcharge becomes effective.

"(D) The remedy available to a call carrier cancelling the application of a surcharge under this paragraph shall be in addition to any other remedy available to such carrier under this chapter.

"(3)(A) The Commission may cancel the application of a surcharge to a route to which such surcharge applies if a shipper moving traffic over such route demonstrates to the Commission that—

"(i) there is no competitive alternative to such route for the movement of the traffic involved that is not subject to such surcharge; and

"(ii) the surcharging carrier's share of the revenues from its participation in the movement over the route to which such surcharge applies, under the applicable joint rate in effect at the time the surcharge was filed with the Commission, with the surcharge, would be greater than 110 percent of its variable cost of providing service over such route.

"(B) If the Commission cancels the application of a surcharge to a particular route pursuant to subparagraph (A) of this paragraph, the Commission shall determine the level of surcharge which, in conjunction with the surcharging carrier's division of the joint rate in effect at the time the surcharge was filed with the Commission, would equal 110 percent of the surcharging carrier's variable cost of providing service over such route, and shall authorize such carrier immediately to apply such a surcharge without any further proceedings under this subsection.

"(4) A rail carrier may not apply a surcharge under this subsection unless, for the one-year period preceding the surcharge, such carrier has concurred in all rate increases of general applicability applicable to the joint rate to which such surcharge applies and agreed to by all other carriers that are party to such joint rate.

"(5) A rail carrier may not apply a surcharge under this subsection increasing a through charge applicable to a particular movement more than once each calendar year.

"(6) Notwithstanding any other provision of this subsection, a rail carrier may, by tariff, reduce the total charges applicable to a movement over any specific joint line or single line route or routes in which such carrier participates, if such reduction does not lower the total charges applicable to such movement to a level that is less than the lowest total charges applicable to the same movement over a competing route. Any such reduction may be made without the concurrence of any other rail carrier, and shall be borne solely by the carrier reducing the charge.

"(b)(1) Notwithstanding subsection (a) of this section, a rail carrier may publish and apply a surcharge applicable to traffic originating or terminating upon any of its lines that carried less than 3,000,000 gross ton miles of traffic per mile, in the most recent calendar year for which traffic data is available. Such a surcharge may be applied without the concurrence of any connecting rail carrier.

"(2) A rail carrier may apply a surcharge under this subsection if, prior to the application of such surcharge, that portion of the charges applicable to traffic to and from the line to which the surcharge applies and accruing to the surcharging carrier does not provide such carrier revenues adequate to cover—

"(A) 110 percent of such carrier's variable cost of transporting the traffic involved to or from such line; plus

"(B) 100 percent of such carrier's reasonably expected costs of continuing to operate such line, which shall include all costs necessary to sustain service on the line.

"(3)(A) Upon petition of a shipper located upon a line to which a surcharge under this subsection is applied, the Commission may cancel the application of a surcharge under this subsection if such shipper demonstrates to the Commission that, after application of the surcharge, the surcharging carrier's revenues from all traffic originating or terminating upon the line to which the surcharge applies exceed 110 percent of such carrier's variable cost of transporting all traffic to or from such line plus such carrier's reasonably expected costs of continuing to operate such line.

"(B)(i) A rail carrier's revenue from all traffic originating or terminating upon a line shall be presumed to exceed 110 percent of its variable cost of transporting all traffic to or from such line plus its reasonably expected costs of continuing to operate such line if the complaining shipper demonstrates that the carrier is earning revenues from all traffic originating or terminating upon such line equal to or greater than the percentage set forth in section 10701(e)(1) of this chapter (as adjusted therein) of its variable costs.

"(ii) A surcharging carrier may rebut the presumption set forth in clause (i) of this subparagraph by demonstrating to the Commission that its reasonably expected costs for operating the line to which the surcharge applies exceed the percentage of variable cost set forth in such clause (i).

"(C) Upon a finding by the Commission that application of the surcharge will produce revenues in excess of 110 percent of the surcharging carrier's variable cost of transporting traffic to or from the line plus its reasonably expected costs for operating the line, the Commission shall determine the level of surcharge which would produce revenues equal to such figure and shall authorize such carrier immediately to apply such surcharges as will generate such revenues without any further proceedings, subject only to the right of a shipper to proceed under paragraph (4) of this subsection.

"(4)(A) A rail carrier may not apply a surcharge under this subsection that results in any shipper being required to bear more than a reasonable proportion of the reasonably expected costs of continuing to operate the line to which such surcharge applies.

"(B) Upon complaint of a shipper, the Commission shall determine whether the shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph.

"(C) If the Commission finds that a complaining shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph, the Commission may reallocate the surcharge among the traffic originating or terminating on the line to which the surcharge applies, but may not order relief which would result in the surcharging carrier's earning revenues less than those which the carrier would have earned had the surcharge been applied as filed.

"(5) A shipper may, in a single complaint, seek relief under paragraphs (3) and (4) of this subsection. In any such complaint, the Commission shall first determine the right to relief under paragraph (3) and shall grant such relief as is appropriate under such paragraph.

"(6) In any proceeding brought before the Commission challenging the application or amount of a surcharge under this subsection, whether the surcharge is claimed to violate this subsection or some other provision of this chapter, the Commission shall not suspend the application of any such surcharge unless the person filing the verified statement required by section 10707(c) of this title, in addition to the matters required by such section, also makes the demonstration required by paragraph (3)(A) of this subsection. If the demonstration required by paragraph (3)(A) is made, the Commission may suspend the application of only so much of the surcharge as will produce revenues in excess of the amount so demonstrated.

"(c)(1) Notwithstanding any other provision of this title, any prior agreement in effect on the effective date of the Harley O. Staggers Rail Act of 1980, or any requirement of the Commission, a rail carrier may cancel the application of a joint rate to a through route in which it participates, without the concurrence of any other rail carrier that is a party to such joint rate, unless another rail carrier that participates in such through route or a shipper that has no competitive alternative to such route makes the demonstration described in paragraph (2) of this subsection.

"(2) The application of a joint rate to a through route may not be canceled under this subsection if a rail carrier that participates in such through route or a shipper that has no competitive alternative to such route from an origin or destination served by such route demonstrates to the Commission that the canceling carrier's share of the revenues, under the joint rate in effect at the time the application of the joint rate is canceled, is equal to or greater than—

"(A) 110 percent of the canceling carrier's variable cost of providing service over such route; or

"(B) such lesser percent of the canceling carrier's variable cost as such carrier earns over a competing through route to which application of the joint rate has not been canceled, or over a competing single line route.

"(3) When a complaining party is unable to make the demonstration required by paragraph (2) of this subsection, the Commission may suspend the tariff canceling the joint rate only if—

"(A) a complaining carrier publishes a new rate division or a new higher lawful rate which increases the canceling carrier's share of the revenues over such route to the amount calculated under paragraph (2)(A) or (2)(B) of this subsection, whichever is less; or

"(B) a complaining carrier or shipper petitions the Commission and the Commission, in conformity with such petition, imposes a surcharge upon the joint rate which will accrue solely to the canceling carrier and which, in conjunction with the canceling carrier's division of the joint rate in effect on the date the tariff canceling the joint rate was filed, will provide the canceling carrier revenues equal to or greater than 110 percent of its variable cost of providing service over such route.

Unless a new rate, division, or surcharge described in this paragraph becomes effective within 120 days after the proposed effective date of the rate cancellation, the canceling tariff shall, nevertheless, become effective.

"(4) If the demonstration described in paragraph (2) is made or a new rate, division, or surcharge described in paragraph (3) becomes effective, the tariff canceling the joint rate shall be considered by the Commission in accordance with section 10705 of this title. The existing joint rate or the new rate, division, or surcharge, as appropriate, shall remain in effect during the pendency of the Commission's consideration.

"(5) Whenever the application of a joint rate to a through route is canceled under this subsection and a rate other than a joint rate is or has been published by the canceling carrier to apply to such route, such rate shall thereafter apply in lieu of all other rates (except joint rates subsequently agreed to by such carrier) and any through rate of which such rate is a factor shall divide as the separate factors of such rate are made.

"(6) Nothing in this subsection shall be construed to limit the authority of the Commission under section 10705(a) of this title to prescribe joint rates which provide a rail carrier participating in such joint rate revenues equal to or greater than 110 percent of its variable cost of providing service over each route to which such rate applies.

"(d)(1) Except as provided in paragraph (2) of this subsection, any increase or decrease in revenue resulting from the application of a surcharge under subsection (a) of this section, or from the cancellation of the application of a joint rate under subsection (c) of this section, shall accrue solely to or be borne solely by the carrier applying the surcharge or canceling the application of the joint rate, as the case may be.

"(2) Whenever a class III rail carrier which participates in a through route to which a surcharge has been applied under subsection (a) of this section by a carrier operating in the same rate territory as such class III carrier demonstrates to the Commission that the application of such surcharge to such route provides, in the absence of any increase in the joint rate in effect at the time the date the surcharge was filed with the Commission, revenues from traffic moving over such route to such surcharging carrier in excess of 110 percent its variable costs over such route, such surcharging carrier shall, from the date of such demonstration, share those revenues from such route, from the surcharge and the applicable joint rate in effect on the date the surcharge was filed with the Commission, in excess of 110 percent of its variable costs with all class III rail carriers participating in such route, on the basis of their existing divisions of the joint rate to which the surcharge applies.

"(e)(1) Except as provided in paragraph (2) of this subsection, whenever a rail carrier subsection (a) of this section or to cancel rier proposes to apply a surcharge under the application of a joint rate under subsection (c) of this section and another rail carrier subsequently agrees to a new rate division or a new lawful rate that increases the surcharging or canceling carrier's share of the total through charges for a movement over a particular through route subject to a joint rate, such other rail carrier shall also agree to any other new rate division and new lawful rate—

"(A) that is proposed within 120 days after the date of the first agreement; and

"(B) that increases the surcharging or canceling carrier's share of the total through charges for movements over a competing through route subject to such joint rate.

"(2) A rail carrier shall not be required to agree under this subsection to any proposed new division or new rate which would—

"(A) reduce such carrier's share of the total through charges for a movement over any through route to less than (i) 110 percent of its variable costs of providing service over such route, or (ii) such lesser percent of its variable costs as such carrier earns from such movement over a competing through route with respect to which such carrier has agreed to a new division or rate;

"(B) increase the surcharging or canceling carrier's share of the total through charges for a movement over any through route to an amount in excess of 110 percent of its variable costs of providing service over such route;

"(C) reduce such carrier's share of the total through charges for a movement over any through route by a dollar amount in excess of the greatest dollar reduction which such carrier has agreed to make, for purposes of increasing the surcharging or canceling carrier's share, to its share of the total through charges for a movement over any competing through route; or

"(D) reduce such carrier's share of the total through charges for a movement over any through route in an amount in excess of such carrier's pro rata share (based on established divisions for movements over such route) of the increase of the surcharging or canceling carrier's share of the total through charges for movement over such route.

"(f) A rail carrier applying a surcharge or canceling the application of a joint rate under this section shall file a tariff with the Commission in accordance with section 10762 of this title. Such a tariff may not become effective until the expiration of the 45-day period (or such longer period as the filing carrier specifies) beginning on the date such tariff is filed.

"(g)(1) Any rail rate to which a surcharge is applied under this section shall be subject to section 10701a and 10709 of this title, and any such surcharge shall constitute a rate increase for purposes of such sections.

"(2) For purposes of rate regulation under section 10701a of this title—

"(A) only the rail carrier proposing a sur-

charge under this section shall be required to defend such surcharge; and

"(B) the reasonableness of the surcharge and the revenues received by the rail carrier proposing the surcharge under the joint rate to which the surcharge applies shall be determined without regard to amounts received and services performed by other rail carriers that are party to such joint rate.

"(3) Except as provided in subsection (i), (j), or (k) of this section, if the application of a surcharge or the cancellation of the application of a joint rate under this section is found to constitute a violation of any provision of this title, such violation shall not be ordered remedied in any manner which—

"(A) requires the carrier applying a surcharge under subsection (a) of this section or canceling the application of a joint rate under subsection (c) of this section to provide service over any route under a rate that provides revenues to such carrier that are less than 110 percent of its variable costs of providing such service; or

"(B) which requires the carrier applying a surcharge under subsection (b) of this section to provide service over the route to which such surcharge applies in a manner that provides revenues to such carrier that are less than 110 percent of such carrier's variable cost of transporting the traffic involved to or from the line to which the surcharge applies, plus such carrier's reasonably expected costs of providing service over such line.

"(h) Within 5 days after the request of a rail carrier participating in a joint rate subject to a surcharge or cancellation under this section, a shipper moving traffic over a route to which such surcharge or cancellation applies, or an affected port, the Commission shall make available to such carrier, shipper, or port the Commission's determination of the variable costs and revenues, over the route or routes to which the surcharge or cancellation applies, of the carrier applying the surcharge or canceling the application of the joint rate.

"(i)(1) Whenever a class III rail carrier, in a protest filed with the Commission, makes a prima facie showing that the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section will have an adverse effect on competition, the Commission shall investigate such protest. If on the basis of such investigation the Commission finds that the protested surcharge or cancellation is, or is intended to be, anticompetitive, the Commission shall, within 30 days after the date such protest is filed, enter an order rescinding such surcharge or cancellation, and may, on presentation of an adequate record, prescribe new joint rates or divisions of joint rates.

"(2) No order prescribed under this subsection shall require a carrier to provide service over any route under a rate which provides revenues less than 110 percent of the variable cost of providing such service unless the Commission determines that the public interest requires a lesser revenue to variable cost ratio to avoid anticompetitive action and to preserve service on the route involved.

"(j)(1) Any class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section may protest such surcharge or cancellation whenever—

"(A) such surcharge or cancellation affects the sole remaining route available to that carrier for that traffic; and

"(B)(i) such carrier demonstrates that alternative transportation is available or that a shipper dependent on that carrier will suffer significant market loss because of such surcharge or cancellation; or

"(ii) such surcharge or cancellation, alone or when considered in conjunction with other surcharges or cancellations affecting the carrier, is likely to unduly impair a carrier's ability to earn an adequate rate of return.

"(2)(A) The Commission may, after an investigation on the basis of a protest under this subsection, prescribe a lesser surcharge or a different division of the joint rate. The Commission shall grant the surcharging or canceling carrier revenues not less than 110 percent of its variable cost of the movement involved, unless it determines that the public interest requires a lesser revenue to variable cost ratio to preserve service on the route involved. Any action by the Commission based on a protest under this subsection shall be taken within 30 days after the date such protest is filed.

"(B) If the Commission prescribes a different division of a joint rate under this paragraph, the Commission shall, upon petition of the surcharging or canceling carrier or the protesting class III rail carrier, reopen the proceeding in which such division was prescribed to reconsider whether such prescribed division is reasonable. If, on the basis of such reconsideration, the Commission determines that such division is not reasonable, it shall prescribe a new, reasonable division of the joint rate to which the surcharge or cancellation applies.

"(k)(1) Upon the complaint of a class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section that such surcharge or cancellation will result in differences or greater differences in rates, including any surcharges, for the traffic to which the surcharge or cancellation applies over different routes in which the surcharging or canceling carrier participates—

"(A) from a single origin point to destination points within a 75 mile direct radius from the destination point on such class III rail carrier; or

"(B) to a single destination point from origin points within a 75 mile direct radius from the origin point on such class III rail carrier,

the Commission shall investigate such complaint and shall, within 30 days after the date such complaint is filed, take such actions, including rescinding surcharges or cancellations or prescribing new joint rates or surcharges, as it determines are required to eliminate such differences in rates, unless it finds that such actions are not warranted by the public interest in ensuring effective competition among rail carriers or in the preservation of rail service on the route involved.

"(2) No action taken by the Commission under this subsection shall require a carrier to provide service over any route under a rate which provides a revenue to variable cost ratio over such route less than that provided under the joint rate to which the surcharge or cancellation was applied or less than 110 percent, whichever is greater, unless the Commission determines that the public interest in ensuring effective competition among rail carriers or in preserving service over such route warrants requiring the surcharging or cancelling carrier to provide service at a lesser revenue to variable cost ratio.

"(3) Notwithstanding subsection (m)(1) of this section, if, in a proceeding under this subsection or under subsection (i) or (j) of this section, the Commission considers whether to require the revenues of a carrier applying a surcharge under subsection (a) of this section or cancelling the application of a joint rate under subsection (c) of this section to be less than 110 percent of its variable costs (as calculated using the Commission's Rail Form A cost finding methodology), such surcharging or cancelling carrier may prove its actual variable costs on the basis of evidence other than unadjusted costs calculated using such Rail Form A cost finding methodology. Such evidence shall be prepared in accordance with generally accepted accounting principles.

"(l) Whenever the application of a joint rate to a through route is cancelled under subsection (c) of this section, the Commission shall, upon petition by a class II or III rail carrier participating in such route, prescribe a new compensatory through rate or rates over such route within 30 days after the date such petition is filed.

"(m) For purposes of this section—

"(1) variable costs for a class I rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates;

"(2) variable costs for a rail carrier other than class I shall be presumed to be the average variable costs of all class I rail carriers in the region in which such carrier operates (as determined under paragraph (1) of this subsection) unless a rail carrier rebuts such presumption with other proof of variable costs; and

"(3) at the option of a carrier applying a surcharge or canceling the application of a joint rate under this section, revenue share may be determined by reference to past revenue settlements actually made in the most recent calendar year by connecting lines.

"(n)(1) The authority to apply a surcharge under subsection (a) of this section, and (except as provided in paragraph (2)) the authority to cancel such a surcharge, shall expire 3 years after the effective date of the Harley O. Staggers Rail Act of 1980 unless extended for one additional year by the Commission upon petition of any rail carrier and for good cause shown.

"(2) Any surcharge lawfully applied under subsection (a) of this section shall remain in effect in accordance with its terms following the expiration of the provisions of this section. Any such surcharge applied during the 45-day period immediately preceding the date of the expiration of the provisions of this section shall, notwithstanding such expiration, be subject to cancellation under subsection (a)(2) or (a)(3) of this section during the 45-day period beginning on the date such surcharge is applied.".

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10705 the following new item:

"10705a. Joint rate surcharges and cancellations.".

(b) For purposes of section 10705a of title 49, United States Code, the Interstate Commerce Commission shall classify all rail carriers on the basis of revenues, shall from time to time review its regulations setting forth revenue-based classifications for rail carriers, and shall make appropriate changes in such regulations in order to reflect inflation. The Commission shall not reclassify switching and terminal carriers, or any other rail carriers not classified on the basis of revenues on the effective date of this Act, for any purpose other than for purposes of such section 10705a.

(c)(1) The Interstate Commerce Commission shall include in its annual report to the Congress under section 10311 of title 49, United States Code, a report with respect to the application of surcharges and the cancellation of the application of joint rates by the Consolidated Rail Corporation and other rail carriers, during the preceding year, under section 10705a of title 49, United States Code. Each such report shall include—

(A) an analysis of the effect of application of surcharges and the cancellation of the application of joint rates under such section 10705a on shippers, ports, class II and class III rail carriers, railroad employees, and other elements of the rail system;

(B)(i) the number of surcharges applied by the Consolidated Rail Corporation and other rail carriers under such section 10705a and the amount of revenue received by the Corporation and all other rail carriers from the application of such surcharges, (ii) the number of surcharges applied by the Corporation and all other rail carriers that were canceled under the procedures of such section 10705a, and (iii) the number of cancellations of the application of a joint rate by the Corporation and other rail carriers under such section 10705a; and

(C) an analysis of the operation of the remedies made available to class III rail carriers under subsections (i), (j), and (k) of such section 19705a and to class II and class III rail carriers under subsection (l) of such section 10705a.

(2) The Interstate Commerce Commission shall, within 2 years after the effective date of this Act, submit a report to the Congress with respect to whether the provisions of section 10705a of title 49, United States Code, have adequately addressed the joint rate problems of rail carriers. The report shall include such recommendations with respect to such joint rate problems as the Commission considers necessary and appropriate.

EXPEDITED DIVISION OF REVENUES PROCEEDINGS

SEC. 302. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1)(A) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(i) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(ii) in all cases other than those specified in clause (i) of this subparagraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this clause, it must report its reasons to Congress.

"(B) The provisions of this paragraph imposing time limitations upon Commission action shall not apply to any division proceeding involving a joint rate participated in by a class III rail carrier.".

REGULATION OF RAILROAD RATES

SEC. 303. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10701 the following new section:

"§ 10701a. Standards for rates for rail carriers

"(a) Except as provided in subsection (b) or (c) of this section and unless a rate is prohibited by a provision of this title, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may establish any rate for transportation or other service provided by the carrier.

"(b)(1) If the Commission determines, under section 10709 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

"(2) In any proceeding to determine the reasonableness of a rate described in paragraph (1) of this subsection—

"(A) the shipper challenging such rate shall have the burden of proving that such rate is not reasonable if—

"(i) such rate (I) is authorized under section 10707a of this title, and (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; or

"(ii) such rate does not meet the description set forth in clause (i) of this subparagraph, but the Commission does not begin an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable; and

"(B) the rail carrier establishing the challenged rate shall have the burden of proving that such rate is reasonable if—

"(i) such rate (I) is greater than that authorized under section 10707a of this title, or (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; and

"(ii) the Commission begins an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable.

"(3) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Commission shall recognize the policy of this title that efficient rail carriers shall earn adequate revenues, as established by the Commission under section 10704(a)(2) of this title.

"(c)(1) Any rate established after the effective date of the Harley O. Staggers Rail Act of 1980 for transportation by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that does not contribute to the going concern values of such rail carrier is not reasonable.

"(2) A rate for transportation by a rail carrier that equals or exceeds the variable cost of providing the transportation is conclusively presumed to contribute to the going concern value of such rail carrier.

"(3)(A) Upon the filing of a complaint alleging that a rate is in violation of this subsection, the Commission shall take final action thereon by the 90th day after the date such complaint is filed.

"(B) If the Commission determines, based on the record after opportunity for a hearing, that a rate is in violation of this subsection, the Commission may order such rate to be raised, but only to the minimum level required by this subsection. The complainant shall have the burden of proving that such rate is in violation of this subsection.".

(b)(1) The first sentence of section 10701(a) of title 49, United States Code, is amended by inserting "(other than a rail rate)" immediately after "A rate".

(2) Section 10701(b) of title 49, United States Code, is repealed.

(3) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately below the item relating to section 10701 the following new item:

"10701a. Standards for rates for rail carriers.".

DETERMINATION OF MARKET DOMINANCE

SEC. 304. Section 10709 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In this subsection—

"(A) 'fixed and variable cost' means all cost incurred by rail carriers in the transportation of freight, but limiting the return on equity capital to a rate equal to the embedded cost of debt.

"(B) 'cost recovery percentage' means the lowest revenue-variable cost percentage which, if all movements that produced revenues resulting in revenue-variable cost percentages in excess of the cost recovery percentage are deemed to have produced only revenues resulting in the cost recovery percentage, would produce revenues which would be equal, when combined with total revenues produced by all other traffic transported by rail carrier, to the total fixed and variable cost of the transportation of all traffic by rail carrier.

"(C) 'revenue-variable cost percentage' means the quotient, expressed as a percentage figure, obtained by dividing the total revenues produced by the transportation of all traffic received by rail carriers for rail transportation by the total variable cost of such transportation.

"(2) In any proceeding under this section, the Commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than—

"(A) 160 percent during the period beginning on the effective date of the Harley O. Staggers Rail Act of 1980 and ending September 30, 1981;

"(B) 165 percent during the period beginning October 1, 1981, and ending September 30, 1982;

"(C) 170 percent during the period beginning October 1, 1982, and ending September 30, 1983;

"(D) 175 percent or the cost recovery percentage, whichever is less, during the period beginning October 1, 1983, and ending September 30, 1984; and

"(E) the cost recovery percentage, during each 12-month period beginning on or after October 1, 1984.

For purposes of subparagraphs (D) and (E) of this paragraph, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of 170 percent or more than a revenue-variable cost percentage of 180 percent.

"(3) A finding by the Commission that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the applicable percentage under paragraph (2) of this subsection does not establish a presumption that (A) such rail carrier has market dominance over such transportation, or (B) the proposed rate exceeds a reasonable maximum.

"(4)(A) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980 and on an annual basis thereafter, the Commission shall determine the cost recovery percentage for transportation of all traffic received by rail carrier. The Commission shall make such determination after

considering each individual revenue-variable cost percentage resulting from the revenues and costs of a valid and reliable statistical sample of all movements of commodities transported by class I rail carriers during the most recent calendar year for which such information is available.

"(B) If, on the basis of calculations under subparagraph (A) of this paragraph, the Commission determines that revenues earned by all class I rail carriers during the previous calendar year do not exceed the fixed and variable costs of such carriers, then the cost recovery percentage for purposes of this section shall be deemed to be equal to the cost recovery percentage last determined by the Commission.

"(C) The Commission shall, in its annual report submitted to the Congress under section 10311 of this title, set forth the cost recovery percentage determined for that year under subparagraph (A) of this paragraph.".

ZONE OF RATE FLEXIBILITY

SEC. 305. (a) Subchapter I of chapter 107 of title 49, United States Code is amended by inserting after section 10707 the following new section:

"§ 10707a. Zone of rail carrier rate flexibility.

"(a) In this section—

"(1) 'base rate' means the rate in effect on the effective date of the Harley O. Staggers Rail Act of 1980 for the transportation of a particular commodity. If no rate exists for the transportation of a particular commodity on such effective date, the base rate for the transportation of such commodity shall be the rate established by the rail carrier, unless such rate is found to be unreasonable by the Commission, in which case the base rate shall be the rate authorized by the Commission.

"(2) 'adjusted base rate' means the base rate, as adjusted on a quarterly basis to reflect inflation.

"(b)(1) Except as provided in paragraph (2) of this subsection, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may, in addition to rate increases authorized under subsection (b) or (c) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title in order to cover cost increases due to inflation, so long as the increased rate is not greater than the adjusted base rate for the transportation involved.

"(2) A rail carrier may not increase a rate under this subsection to the extent that the cost increases to such carrier due to inflation are recovered through (A) general rate increases pursuant to section 10706 of this title, or (B) inflation-based rate increases under section 10712 of this title.

"(c)(1) During the 12-month period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 6 percent of the base rate. During each of the 3 succeeding 12-month periods, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any such rate by an annual amount of not more than 6 percent of the adjusted base rate, except that in no event shall the total increase under this subsection result in a rate which is more than 118 percent of the base rate.

"(2) If any portion of a rate increase under this subsection is not implemented in the year in which it is authorized, such portion may be implemented only in the next succeeding year.

"(d)(1) Except as provided in paragraph (3) of this subsection, during the 12-month period beginning on October 1, 1984, and during each succeeding 12-month period, a rail carrier may, in addition to rate increases under subsection (a) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 4 percent of the adjusted base rate.

"(2) No portion of any rate increase under this subsection which is not implemented in the year in which it is authorized may be implemented in any other year.

"(3) The provisions of this subsection shall not apply to (A) a rail carrier proposing to increase a single line rate if such carrier earns adequate revenues, as established by the Commission under section 10704(a)(2) of this title, or (B) rail carriers proposing to increase a joint rate if all carriers participating in the route to which the joint rate applies earn adequate revenues, as established under such section.

"(e)(1) Notwithstanding the provisions of section 10707 of this title, in the case of any rate increase by a rail carrier that is authorized under this section—

"(A)(i) the Commission may not suspend such rate increase pending final Commission action; and

"(ii) except as provided in paragraph (2) of this subsection, the Commission may not begin an investigation proceeding under section 10707 of this title with respect to the reasonableness of such rate increase; but

"(B) an interested party may file a complaint under section 11701(b) of this title alleging that such rate increase violates the provisions of this subtitle;

"(2)(A) If a rate increase authorized under this section in any year results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable in that year under section 10709(d) of this title, the Commission may, on its own initiative or on complaint of an interested party, begin an investigation proceeding to determine whether the proposed rate increase violates this subtitle.

"[(B) In determining whether or not to investigate a proposed rate increase, the Commission shall set forth its reasons therefor, giving due consideration to the following factors:

"[(i) the amount of traffic which is transported at revenues below going concern value and efforts made to minimize such traffic;

"[(ii) the amount of traffic which contributes only marginally to fixed costs and the extent, if any, to which rates for such traffic can be changed to maximize the revenue from such traffic; and

"[(iii) the impact of the proposed rate increase on attaining the long-term national energy goals and the rail transportation policy set forth in section 10101a of this title, taking into account the rail carrier's role as a primary source of energy transportation and the need for a sound rail system in accordance with the revenue adequacy goals of section 10704(a)(2) of this title.

This subparagraph shall not be construed to change existing law with respect to the nonreviewability of such determinations.]

"[(C) In determining whether a rate is reasonable, the Commission may consider, among other factors, evidence of the following:

"[(i) the amount of traffic which is transported at revenues below going concern value and efforts made to minimize such traffic;

"[(ii) the amount of traffic which contributes only marginally to fixed costs and the extent, if any, to which rates for such traffic can be changed to maximize the revenues from such traffic; and

"[(iii) whether any commodity is paying an inordinate and unreasonable share of the carrier's overall revenues.]

"(f) In any proceeding under this section, evidence of the underlying rail carrier rate is admissible.

"(g) A finding by the Commission that a rate increase exceeds the increase authorized under this section does not establish a presumption that the proposed rate exceeds a reasonable maximum.

"(h) The authority of the Commission to determine and prescribe reasonable rules, classifications, and practices may not be used, directly or indirectly, to limit the rates which rail carriers are otherwise authorized to establish under this section.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10707 the following new item:

"10707a. Zone of rail carrier rate flexibility.".

(c)(1) Any rail carrier rate which increased over 70 percent between 1976 and 1979 inclusive for the transportation, in shipper owned equipment over a distance exceeding 1,550 miles between points within the United States, of coal pursuant to a tariff calling for an annual volume of more than 2,000,000 tons per year purchased by a municipality owned utility for the generation of electric power under a 20-year purchase agreement entered into by such utility in the year 1974 shall not be increased so long as coal is purchased under such original agreement, except that—

(A) during the period beginning October 1, 1980, and ending September 30, 1987, the Interstate Commerce Commission may permit increases in such rate which result in a revenue-variable cost percentage of not more than 162 percent; and

(B) after October 1, 1987, such rate shall be subject to section 10701a of title 49, United States Code, and related provisions of such title governing regulation of rail carrier rates, except that until such rate results in a revenue-variable cost percentage that equals or exceeds the revenue-variable percentage applicable under section 10709(d) of such title, such rate may not be increased more than 4 percent, in addition to inflation, in any year.

(2) Neither the provisions of this subsection nor any rate subject to this subsection shall be admissible as evidence or considered in any way in any proceeding involving any other rail carrier rate that is commenced to determine market dominance under section 10709 of title 49, United States Code, or to determine reasonableness under section 10701a of such title.

RATE REGULATION PROCEEDING AND STUDY

SEC. 306. (a)(1) The Interstate Commerce Commission shall commence a proceeding for purposes of determining whether, and to what extent, product competition should be considered in proceedings under subtitle IV of title 49, United States Code, to determine the reasonableness of rail carrier rates. The Commission shall complete its proceeding under this subsection within 180 days after the effective date of this Act.

(2) On the basis of the proceeding conducted under this subsection, the Commission may find that, in determining the reasonableness of rail carrier rates—

(A) proof of product competition should be considered as a factor to the same extent as it is considered under existing law on the effective date of this Act;

(B) proof of product competition should be given greater weight than that described in subparagraph (A) of this paragraph; or

(C) proof of product competition should be conclusive.

(3)(A) For purposes of this subsection, the term "product competition" means the availability to a consignee, at a competitive delivered cost and in sufficient quantities, of products or commodities which are of the same type as the commodity or product to which the rate in question applies, without regard to whether such products or commodities are available from the same or a different origin as those to which the rate applies.

(B) In determining the availability of alternative sources of a particular commodity for purposes of this subsection, such commodity must be capable, by reason of similar specifications such as Btu's, sulfur content, and ash content, of being effectively utilized by the consignee.

(C) In determining the availability of alternative sources of coal for purposes of this subsection, such coal must be capable, by reason of similar specifications such as Btu's and sulfur content, of being effectively utilized by the consignee.

(D) For purposes of this subsection, any coal imported in the United States for the generation of electricity by utilities shall not be taken into account in the determination of whether coal is available to a consignee from another source.

(4)(A) Nothing in this subsection shall be construed as requiring the Commission to modify its determination of the reasonableness of rail carrier rates under existing law and procedures.

(B) Nothing in this section shall be construed as altering the meaning, use, or interpretation by the Commission, the courts, or any party of the term "market dominance", as defined in section 10709(a) of title 49, United States Code. No determination under this subsection shall in any way alter the meaning of such term, even if such meaning denies the Commission jurisdiction over the transportation of commodities where product competition exists.

(b)(1) The Interstate Commerce Commission shall, within 3 years after the effective date of this Act, submit a report to the Congress setting forth its recommendations with respect to the appropriate jurisdictional threshold to be used for purposes of determining those cases in which the Commission will have jurisdiction to determine whether a proposed rail carrier rate is reasonable.

(2) The report submitted under this subsection shall include a consideration of feasibility of utilizing, as the criteria for establishing the jurisdictional threshold described in paragraph (1) of this subsection—

(A) the cost recovery percentage, as defined in section 10709(d) of title 49, United States Code;

(B) a specific revenue-variable cost percentage;

(C) a reasonable transportation alternative test;

(D) a revised statutory or administrative market dominance test;

(E) a test based on rail carrier return on investment; or

(F) such other criteria as the Commission considers appropriate.

(c)(1) The Interstate Commerce Commission shall, within 180 days after the effective date of this Act and thereafter as necessary, establish standards for determining what constitutes adequate revenues for rail carriers under section 10704 of title 49, United States Code.

(2) On the basis of the standards established under paragraph (1) of this subsection, the Commission shall, within 180 days after the effective date of this Act and on an annual basis thereafter, determine which rail carriers are earning adequate revenues.

(d) The rail carrier rate level resulting from any case pending in any Federal court on July 22, 1980 (including any case on remand), shall be considered to be the rate for purposes of determining permissible rate increases under chapter 107 of title 49, United States Code.

INFLATION-BASED RATE INCREASES

SEC. 307. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10712. Inflation-based rate increases

"(a) After the elimination of general rate increases under section 10706 of this title, the Commission may, on a quarterly basis and consistent with the rail transportation policy set forth in section 10101a of this title, prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases. Such percentage rate increase or rate index may be applicable on an industry-wide or on a carrier-by-carrier basis.

"(b) Within 60 days after the date the Commission prescribes a percentage rate increase or rate index under subsection (a) of this section, each rail carrier or group of rail carriers shall notify the Commission of any rate or group of rates which such carrier or carriers intend to be excluded from the application of such percentage rate increase or rate index.

"(c) For purposes of this section, a percentage rate index may permit rate increases within a specified range to allow carriers to recover a total revenue increase specified by the Commission as necessary to compensate for inflationary cost increases.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10711 the following new item:

"10712. Inflation-based increases.".

INVESTIGATION AND SUSPENSION OF RATES

SEC. 308. (a) Section 10707(b)(1) of title 49, United States Code, is amended to read as follows:

"(b)(1) The Commission must complete a proceeding under this section and make its final decision by the end of the 5th month after the rate, classification, rule, or practice was to become effective, except that if the Commission reports to the Congress by the end of such 5th month that it cannot make a final decision by that time and explains the reason for the delay, it may take an additional 3 months to complete the proceeding and make its final decision.".

(b) Section 10707(c) of title 49, United States Code, is amended to read as follows:

"(c)(1) The Commission may not suspend a proposed rate, classification, rule, or practice during the course of a Commission proceeding under this section unless it appears from the specific facts shown by the verified statement of a person that—

"(A) it is substantially likely that the protestant will prevail on the merits;

"(B) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

"(C) because of the peculiar economic circumstances of the protestant, the provisions of subsection (d) of this section do not protect the protestant.

"(2) The burden shall be on the protestant to prove the matters described in paragraph (1)(A), (B) and (C) of this subsection.".

(c) Section 10707(d) of title 49, United States Code, is amended to read as follows:

"(d)(1) If the Commission does not suspend a proposed rate increase under subsection (c) of this section, the Commission shall require the rail carrier to account for all amounts received under the increase until the Commission completes its proceedings under subsection (b) of this section. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

"(2) If a rate is suspended under subsection (c) of this section and any portion of such rate is later found to be reasonable under this title, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days, except that this paragraph shall not apply to general rate increases under section 10706 of this title.

"(3) If any portion of a proposed rate decrease is suspended under subsection (c) of this section and later found to be reasonable under this title, the rail carrier may refund any part of the portion of the decrease found to comply with this title if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.".

(d) Section 10707(e) of title 49, United States Code, is repealed.

CONTRACTS

SEC. 309. (a) Subchapter I of chapter 107 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new section:

"§ 10713. Contracts

"(a) One or more rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

"(b) Each contract entered into under this section shall be filed with the Commission, together with a summary of the contract containing such nonconfidential information as the Commission prescribes. The Commission shall immediately make a summary of each such contract available to interested persons.

"(c) A contract filed under this section shall be approved by the Commission, as provided in subsection (e) of this section, unless the Commission determines in a proceeding under subsection (d) of this section that such contract is in violation of this section.

"(d)(1) No later than 30 days after the date of filing of a contract under this section, the Commission may, on its own initiative or on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

"(2)(A) In the case of a contract other than a contract for the transportation of agricultural commodities, a complaint may be filed—

"(i) by a shipper only on the ground that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

"(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in

unreasonable discrimination against such port.

For purposes of this paragraph, the term 'unreasonable discrimination' has the same meaning as such term has under section 10741 of this title.

"(B) In the case of a contract for the transportation of agricultural commodities, in addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper on the ground that such shipper individually will be harmed because—

"(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

"(ii) the proposed contract constitutes a destructive competitive practice.

"(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Commission may establish, the Commission shall determine whether the contract that is the subject of such proceeding is in violation of this section.

"(B) If the Commission determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a carrier, the Commission shall order such carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

"(e) Approval of a contract filed under this section shall be effective—

"(1) on the date the Commission expressly approves such contract, but in no event before the end of the 30-day period beginning on the date such contract is filed or after the end of the 60-day period beginning on such date; or

"(2) if the Commission has not disapproved such contract by the end of the 60-day period beginning on the date such contract is filed, at the end of such 60-day period.

"(f) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under this section, except to the extent necessary to comply with section 11128 of this title.

"(g) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

"(h)(1) A contract that is approved by the Commission under this section may not be subsequently challenged before the Commission or in any court on the grounds that such contract violates a provision of this subtitle.

"(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

"(i) The provisions of this section shall not affect the status of any lawful contract between a rail carrier and one or more purchasers of rail service that is in effect on the effective date of the Harley O. Staggers Rail Act of 1980.

"(j)(1) During the 3-year period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC), except that in the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment utilized on the average during the prior 3-year period may be used for such contract without prior authorization by the Commission.

"(2) Any rail carrier or other party may seek relief from the limitations of paragraph (1) of this subsection, and the Commission may grant such relief as it considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier's ability to meet its common carrier obligations under section 11101 of this title.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10712, as added by this Act, the following new item:

"10713. Contracts.".

DEMAND SENSITIVE RATES

SEC. 310. Section 10727 of title 49, United States Code, and the item relating to such section in the section analysis for chapter 107 of such title, are repealed.

PHASEOUT OF CAPITAL INCENTIVE RATES

SEC. 311. (a) Section 10729 of title 49, United States Code, and the item relating to such section in the section analysis of chapter 107 of such title, are repealed.

(b) Notwithstanding any other provision of law, any rate established by a rail carrier under section 10729 of title 49, United States Code, prior to the effective date of this Act shall remain in effect in accordance with its terms, but for no longer than 5 years after the date it became effective, unless the parties otherwise agree. However, the Interstate Commerce Commission may, during the period such a rate is in effect, order such rate revised to a level equal to the incremental cost of providing the transportation if the Commission finds that the level then in effect reduces the going concern value of the rail carrier.

PERMISSIVE LIMITED LIABILITY RATES

SEC. 312. (a) Section 10730 of title 49, United States Code, is amended—

(1) by inserting "(a)" immediately before "The";

(2) by inserting "(other than a rail carrier)" immediately after "carrier" the first place it appears; and

(3) by adding at the end thereof the following new subsection:

"(b) A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish rates for transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier, and may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.".

(b)(1) Section 11707(c) of title 49, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(5) The liability of a rail carrier under subsection (a) of this section shall not exceed the value of the physical loss of or damage to the property transported, or the cost of repair to such property, to the extent that the loss or damage thereto is caused by the rail carrier. Any other or special damages shall not be recoverable.

"(6) If property transported by a rail carrier is lost, damaged, or delayed by reason of the act or negligence of both the carrier and the shipper, owner, or consignee, such carrier shall not be liable for the portion of loss, damage, or delay caused by the act or negligence of such shipper, owner, or consignee.".

(2) Section 11707(d) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(d)";

(B) by inserting "(other than a rail carrier)" immediately after "delivering carrier" and

(C) by adding at the end thereof the following new paragraph:

"(2) A civil action under this section may be brought either against the originating rail carrier in a court having jurisdiction over the point of origin or against the delivering rail carrier in a court having jurisdiction over the point of destination. Such action may be brought in a district court of the United States or in a State court, and in any such action Federal law and Federal court decisions shall be applied. No other cause of action shall exist to recover for loss, damage, or delay to property.".

(3) Section 11707(e) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(e)";

(B) by inserting "(other than a rail carrier)" immediately after "A carrier"; and

(C) by adding at the end thereof the following new paragraph:

"(2)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier may not provide by rule, contract, or otherwise a period of less than six months for filing a claim against such carrier under this section or a period of less than one year from the date such carrier declines such claim for bringing a civil action against it under this section. This period for filing claims shall be computed from the date of the loss of or damage to the property transported, and the period for bringing a civil action shall be computed from the date the person filing the claim receives notice that such claim is declined.

"(B) The limitations set forth in this paragraph shall not apply whenever a rail carrier has entered into a contract for the provision of transportation or service and such contract is filed with the Commission as a tariff under section 10762 of this title.".

RATE DISCRIMINATION

SEC. 313. Section 10741 of title 49, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) Differences between rates, classifications, rules, and practices of rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title do not constitute a violation of this section if such differences result from different services provided by rail carriers.

"(f) This section shall not apply to—

"(1) rates and conditions set forth in contracts approved under section 10713 of this title;

"(2) surcharges or cancellations under section 10705a of this title;

"(3) separate rates for distinct rail services under section 10728 of this title;

"(4) rail rates applicable to different routes; or

"(5) expenses authorized under section 10751 of this title,

except that with respect to rates described in paragraphs (2), (3), and (4), nothing in this subsection shall affect the authority of the Commission under this section with respect to rate relationships between ports or within the same port.

EXEMPTION

SEC. 314. Section 10505 of title 49, United States Code, is amended to read as follows:

"§ 10505. Authority to exempt rail carrier transportation

"(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons or a transaction or service when the Commision finds that the application of a provision of this subtitle—

"(1) is not necessary to carry out the transportation policy of section 10101a of this title; and

"(2) either (A) the transportation or service is of limited scope, (B) the application of a provision of this subtitle is not needed to protect shippers and receivers where there is an absence of effective competition, or (C) there is effective competition.

"(b) The Commission may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party.

"(c) The Commission may specify the period of time during which an exemption granted under this section is effective.

"(d) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of section 10101a of this title.

"(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11707 of this title. Nothing in this subsection or section 11707 of this title shall prevent rail carriers from offering alternative terms nor give the Commission the authority to require any specific level of rates or services based upon the provisions of section 11707 of this title.

"(f) The Commission may exercise its authority under this section to exempt transportation that is provided by a rail carrier as a part of a continuous intermodal movement.

"(g) The Commission may not exercise its authority under this section (1) to authorize intermodal ownership that is otherwise prohibited by this title, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle.".

INTRASTATE RATES

SEC. 315. (a) Section 11501(a) of title 49, United States Code, is amended—

(1) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(2) by striking out "subchapter I or subchapter IV" and inserting in lieu thereof "subchapter IV";

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(4) by striking out paragraph (2).

(b) Section 11501 of title 49, United States Code, is amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting immediately after subsection (a) the following new subsections:

"(b)(1) A State authority may only exercise jurisdiction over intrastate transportation provided by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title if such State authority exercises such jurisdiction exclusively in accordance with the provisions of this subtitle.

"(2) Within 120 days after the effective date of the Harley O. Staggers Rail Act of 1980, each State authority exercising jurisdiction over intrastate rates, classifications, rules, and practices for intrastate transportation described in paragraph (1) of this subsection shall submit to the Commission the standards and procedures (including timing requirements) used by such State authority in exercising such jurisdiction.

"(3)(A) Within 90 days after receipt of the intrastate regulatory rate standards and procedures of a State authority under paragraph (2) of this subsection, the Commission shall certify such State authority for purposes of this subsection if the Commission determines that such standards and procedures are consistent with the procedures applicable to regulation of rail carriers by the Commission under this title. If the Commission determines that such standards and procedures are not consistent, it shall deny certification to such State authority, and such State authority may resubmit new standards and procedures to the Commission for review in accordance with this subsection.

"(B) The standards and procedures existing in each State on the effective date of the Harley O. Staggers Rail Act of 1980 for the exercise of jurisdiction over intrastate rail rates, classifications, rules, and practices shall be deemed to be certified by the Commission from that date until the date an initial determination is made by the Commission under subparagraph (A) of this paragraph.

"(4)(A) Any State authority which is certified by the Commission under this subsection may use its standards and procedures in exercising jurisdiction over intrastate rail rates, classifications, rules, and practices during the 5-year period commencing on the date of such certification. Any State authority which is denied certification may not exercise any jurisdiction over intrastate rates, classifications, rules, and practices until it receives certification under this subsection.

"(B) Any intrastate transportation provided by a rail carrier in a State which may not exercise jurisdiction over an intrastate rate, classification, rule, or practice of that carrier due to a denial of certification under this subsection shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

"(5)(A) Certification of a State authority under this subsection is valid for the 5-year period beginning on the date of such verification. Prior to the expiration of such 5-year period, the State authority shall resubmit its intrastate regulatory standards procedures to the Commission for subsequent certification in accordance with this subsection.

"(B) During any 5-year certification period, a State may not change its certified standards and procedures without notifying and receiving express approval from the Commission.

"(6) Notwithstanding any other provision of this section, a State authority may not exercise any jurisdiction over general rate increases under section 10706 of this title or inflation-based rate increases under section 10712 of this title.

"(C) Any rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may petition the Commission to review the decision of any State authority in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined on the grounds that the standards and procedures applied by the State were not consistent with the provisions of this subtitle. The Commission shall dispose of any such petition within 30 days after the date it is received. If the Commission determines that the standards and procedures were not in accordance with the provisions of this subtitle, its order shall determine and authorize the carrier to establish the appropriate rate, classification, rule, or practice.".

(c)(1) Section 11501(d)(2) of title 49, United States Code, as redesignated by subsection (b) of this section, is amended by inserting "and chapter 107 of this title" immediately before the period at the end of the first sentence.

(2) Section 10103(a) of title 49, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided in this subtitle, the".

(3) Section 10501(a)(2) of title 49, United States Code, is amended by inserting "such jurisdiction is not limited by subsection (b) of this section or the extent" immediately after "to the extent".

(4) Section 10501(b)(1) of title 49, United States Code, is amended by inserting "other than transportation which is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title" immediately after "(other than the District of Columbia)".

(5) Section 10501(c) of title 49, United States Code, is amended by striking out "transportation by carriers" and inserting in lieu thereof "transportation (other than transportation which is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title) by carriers".

(6) Section 10501 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) The jurisdiction of the Commission and of State authorities (to the extent such authorities are authorized to administer the standards and procedures of this title pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this title with respect to the rates, classifications, rules, and practices of such carriers, is exclusive.".

CUSTOMER SOLICITATION EXPENSES

SEC. 316. (a) Subchapter III of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10751. Customer solicitation expenses

"(a) Any business solicitation or entertainment expense incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not constitute a violation of section 10741 or 10761 of this title if such expense would not be unlawful if incurred by a person or corporation not subject to the jurisdiction of the Commission.

"(b) Any business entertainment expense authorized under this section that is paid or incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not be taken into account in determining the cost of service or the rate base for purposes of this title.

"(c) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Commission shall institute a rulemaking proceeding pursuant to which it shall issue rules establishing appropriate standards and guidelines for authorized business solicitation and entertainment expenses under this section. Such standards and guidelines shall be consistent with standards and guidelines applicable under existing law to persons not subject to this

title, including competing unregulated surface transportation carriers.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10750 the following new item:

"10751. Customer solicitation expenses.".

(c) Section 10761 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) This section shall not apply to expenses authorized under section 10751 of this title.".

EFFICIENT MARKETING

SEC. 317. (a) Section 10762(c)(3) of title 49, United States Code, is amended by striking out the second sentence and inserting in lieu thereof the following: "In the case of a carrier other than a rail carrier, a proposed rate change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier, a proposed rate change resulting in an increased rate or a new rate shall not become effective for 10 days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for 5 days after the notice is published, except that a contract authorized under section 10713 of this title shall become effective in accordance with the provisions of such section.".

(b) Section 10762(d)(1) of title 49, United States Code, is amended by striking out "30-day" and inserting in lieu thereof "notice".

Redesignate sections 302 through 309 as sections 318 through 325, respectively.

Page 138, strike out line 23 and all that follows through line 12 on page 139 and insert in lieu thereof the following: "shall have such meaning as the Commission shall by regulation prescribe.".

Page 139, strike out line 20 and all that follows through line 9 on page 140 and redesignate the following subsections accordingly.

Page 140, immediately before the semicolon on line 19, insert ", except that for purposes of general rate increases only, if the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

Page 141, strike out lines 3 through 12 and insert in lieu thereof the following: "part of a particular single route. This clause shall take effect on January 1, 1984, or on such earlier date as the Commission determines. If the Commission finds, at any time, that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

Page 141, immediately after "rates." on line 25, insert the following new sentence: "If the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

Page 146, strike out "to construct and operate a railroad" and insert in lieu thereof "both to construct and operate a new railroad".

Page 147, beginning on line 6, strike out "and joint service agreements".

Page 148, strike out line 1 and all that follows through line 12 on page 150 and insert in lieu thereof the following:

(b) Section 10706(a) of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(5)(A) Whenever two or more shippers enter into an agreement that relates to the amount of compensation such shippers propose to charge rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Commission for approval of that agreement under this paragraph. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101a of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the terms required by the Commission, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement.

"(B) If the Commission approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers are unable to agree upon the amount of compensation to be charged for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Commission. The Commission shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Commission.".

Page 152, line 7, strike out "or carriers involved".

Page 152, after line 13, insert the following new sections:

SAFE RAILROAD REINVESTMENT REQUIREMENTS

SEC. 326. (a) The Secretary of Transportation shall, on the basis of inspections of the track, physical facilities, and operations of a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, notify the Commission that such carrier (1) does not meet the safety requirements of applicable Federal statutes, and (2) is not maintained and operated in a manner which protects the public health and safety and the health and safety of railroad employees. The Secretary may include in his notification to the Commission that, for purposes of reviewing rate increases over which the Commission has jurisdiction, a rail carrier has excessively deferred its maintenance without good cause. For the purposes of this subsection, inspection of track shall be conducted at least once each year.

(b)(1) Upon receipt of the Secretary's notification under subsection (b) of this section with respect to a rail carrier, the Interstate Commerce Commission may, to the extent of its authority under chapter 113 of title 49, United States Code, review the financial arrangements of such carrier and prohibit any financial transactions which would unreasonably impair the ability of such carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

(2) The Commission may exercise its authority under this subsection with respect to a rail carrier until such time as the Commission determines that the safety deficiencies of such carrier which were the basis of the Secretary's notification have been remedied. In exercising such authority, the Commission shall take all steps necessary to avoid impairing the ability of such carrier to obtain financing.

(c) The Interstate Commerce Commission shall submit an annual report to the Congress setting forth its findings with respect to whether rail carriers that are subsidiaries of other companies are involved in financial transactions with the parent company which (1) result in the transfer of funds or assets, directly or indirectly, from the rail carrier to its parent company, and (2) impair the ability of the rail carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 327. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.), shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out "and the Milwaukee Railroad Restructuring Act" and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(d)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(h)(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and cancelled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1)(A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

LOAN GUARANTEES

SEC. 328. (a) To promote competition in the transportation of coal, the Secretary of Transportation shall, no later than 45 days after the date of enactment of this Act, take final action of any application for loan guarantees, under section 511 of the Railroad Revitalizaiton and Regulatory Reform Act of 1976, to be used in connection with joint ownership, construction, or rehabilitation of any facilities (including support facilities) for a second rail carrier to serve the Powder River Coal Region in Montana and Wyoming.

(b) The Secretary of Transportation may waive the provisions of section 511(g) of the Railroad Revitalization and Regulatory Reform Act of 1976 in making the loan guarantees described in subsection (a) of this section.

(c) The provisions of section 4(f) of the Department of Transportation Act shall not apply to any loan guarantee described in subsection (a) of this section.

AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 329. The second sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by inserting "is not required to make the findings with respect to subsections (e)(3) and (f) and" immediately after "the Association" the first place it appears.

SAVINGS PROVISIONS

SEC. 330. (a) Any rate that is in effect on the effective date of this Act for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, may, during the 180 day period beginning on such effective date, be challenged in a complaint filed with the Interstate Commerce Commission by any interested party alleging that the rail carrier has market dominance over the transportation to which the rate applies, as determined under section 10709 of such title, and that the rate is not reasonable under section 10701a of such title.

(b) Any rate described in subsection (a) of this section—

(1) which is not challenged in a complaint filed within the 180-day period provided in such subsection; or

(2) which is challenged in such a complaint, but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable,

shall be deemed to be lawful and may not thereafter be challenged in the Commission or in any court.

(c) The provisions of this section shall not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date of this Act did not exceed 500 net tons and has increased tenfold in the 3-year period immediately preceding the bringing of a challenge to the increase of such rate.

RELATIONSHIP TO TITLE II

SEC. 331. In any case in which any provision of or amendment made by title II of this Act conflicts with any provision of or amendment made by this title, the provision of or amendment made by this title shall control.

RAIL TECHNOLOGY AND SHIPPER NEEDS BOARD; OTHER SHIPPER ASSISTANCE

SEC. 332. (a)(1) There is hereby established a Rail Technology and Shipper Needs Board (hereinafter in this section referred to as the "Board"), which shall be composed of the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Labor, and the Chairman of the Interstate Commerce Commission. The Secretary of Transportation shall serve as Chairman of the Board and shall have the responsibility for expediting the proceedings of the Board.

(2)(A) The Board shall select personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees, task forces, and advisory panels. Such individuals shall be selected on the basis of their proven expertise in transportation related fields.

(B) Individuals selected under this section may be compensated for their services at the discretion of the Board, but in no event shall any such individual receive compensation in excess of 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of title 5, for each day (including travel time) in which he is engaged in the actual performance of duties vested in the Board.

(b)(1) The Board may conduct studies of technological means to improve rail productivity and of the continuing transportation needs of urban and rural rail shippers, and shall submit reports to the Congress, in accordance with paragraph (2) of this subsection, on the results of such studies. Such reports shall include—

(A) an assessment of current rail technology limitations, with recommendations for rail technological innovations and improvements designed to—

(i) reduce rail operating and future investment costs;

(ii) reduce consumer prices, including food prices;

(iii) reduce energy consumption;

(iv) promote inter-modal and intra-modal coordination;

(v) provide financially self-sustaining and continuing rail service to light traffic density agricultural areas; and

(vi) enhance the competitive position of United States exports (including agricultural products) in world markets;

(B) estimates of future labor and capital investment requirements to rehabilitate the essential rail system of the United States;

(C) a recommendation with respect to the need to develop and disseminate, on a continuing basis, information, and analysis on projected transportation needs of urban and rural shippers for the purpose of improving private and public investment decision-making;

(D) an analysis of the effect of the provisions of this Act on urban and rural shippers, including so-called "captive" shippers;

(E) recommendations with respect to improving economic, regulatory, and legislative conditions to enhance the acquisition and financially self-sustaining operation of rail feeder lines by cooperative organizations; and

(F) an analysis of potential and existing urban and rural Federal rail programs which need to be coordinated in order to insure the maximum utilization of Federal funds.

(2) The Board shall submit an interim report to the Congress under this subsection no later than January 1, 1982, and shall submit a final report to the Congress no later than January 1, 1984.

(c)(1) The Board shall cooperate with existing Federal departments and agencies to assure that sufficient resources and facilities exist to assist agriculture shippers in forming cooperative shipper associations and in taking advantage of expanded opportunities for contracting.

(2) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

(d) The Board shall cease to exist 5 years after the effective date of this Act.

(e) In evaluating restructuring plans submitted under section 516(h) of the Railroad Revitalization and Regulatory Reform Act of 1976, the Secretary of Transportation shall consult with the Secretary of Agriculture with respect to any aspect of such a plan that impacts upon the provision of transportation services to agricultural and rural areas.

(f) The Secretary of Agriculture, in cooperation with the Secretary of Transportation, may establish regional agricultural transportation representatives to assist shippers in securing railroad or alternative transportation services on the most favorable possible terms.

(g)(1) The Secretary of Transportation and the Secretary of the Treasury shall jointly submit to the Congress, within 9 months of the effective date of this Act, a comprehensive report on the anticipated effect (including the loss of revenue to the Federal Treasury) of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines. Such report shall also include such criteria as may be necessary to prevent the abuse of such special tax status.

(2) For purposes of this section, railroad feeder line rehabilitation includes the acquisition, construction, reconstruction, or erection of any feeder line roadbed, track, trestle, depot, switching, and signalling equipment, or any other rail equipment (other than rolling stock).

(h) There are authorized to be appropriated for purposes of carrying out the provisions of this section not to exceed $2,000,000.

Page 98, strike out the item in the table of contents relating to section 301 and insert in lieu thereof the following new items:

Sec. 301. Compensatory joint rate relief.
Sec. 302. Expedited division of revenues proceedings.
Sec. 303. Regulation of railroad rates.
Sec. 304. Determination of market dominance.
Sec. 305. Zone of rate flexibility.
Sec. 306. Rate regulation proceedings and study.
Sec. 307. Inflation-based rate increases.
Sec. 308. Investigation and suspension of rates.
Sec. 309. Contracts.
Sec. 310. Demand sensitive rates.
Sec. 311. Phaseout of capital incentive rates.
Sec. 312. Permissive limited liability rates.
Sec. 313. Rate discrimination.
Sec. 314. Exemption.
Sec. 315. Intrastate rates.
Sec. 316. Customer solicitation expenses.
Sec. 317. Efficient marketing.

Redesignate the following items in the table of contents for title III accordingly.

Page 98, at the end of the items relating to title III in the table of contents, insert the following new item:

Sec. 326. Safe railroad reinvestment requirements.
Sec. 327. Rock Island and Milwaukee Railroad amendments.
Sec. 328. Loan guarantees.
Sec. 329. Amendment to the Regional Rail Reorganization Act of 1973.
Sec. 330. Savings provisions.
Sec. 331. Relationship to title II.
Sec. 332. Rail Technology and Shipper Needs Board; other shipper assistance.

Mr. STAGGERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. FRENZEL. Reserving the right to object, Mr. Chairman, over the last few days this body has been treated to a spectacle of writing and rewriting the amendment which I understand has now been offered by the gentleman from West Virginia.

We have seen a fair amount of articles in the press. We have had laudatory, and otherwise, letters, Dear Colleague letters, written to us about it. But none of us—or, that is, those of us who are not in the elite corps of substitute drafters—have been able to see this amendment.

Last night there were some copies drifting around, none of which were made available to me. This morning I was given a copy by a member of the committee when the House convened. About 10 short minutes ago I was given another copy of the substitute which seems to be quite different and six pages longer. It is time to ask the real substitute to stand up.

Mr. Chairman, the House has been put in an impossible situation. We are confronted with 91 pages of new material about which most of us have little or no information. It is said to be a rewrite, and yet I have found sections of it which are totally new material which are, in my judgment, nongermane.

Even if they are not, they are certainly a surprise for this House. I am reserving the right to object because I want to call the attention of this body to what I think is outrageous legislative procedure.

Several times in the history of the House, at least since I have been here, we have accepted substitute amendments after working on a bill for a long period. Many of us did not understand

those substitutes, and in every instance in which that occurred, that legislation which we did not know very much about has come back to bite us.

This committee has worked long and hard to put together a compromise. The Members are to be complimented. But why could they not have presented the compromise and had it printed in the RECORD so that all Members would have a chance to look at it?

In this regard I would like to yield to the distinguished chairman of the committee, the gentleman from West Virginia (Mr. STAGGERS), so that he might explain that problem.

Mr. STAGGERS. I thank the gentleman for yielding, and I think he has brought up a point that is worthy of consideration. I would say to the gentleman I hope he does not object because it would just take the time of the House to read this. We will explain each and every section of the amendment, especially where the changes are, so that the gentleman will understand and the rest of the House will understand. I can assure the gentleman that I believe that we will have the Members just sitting here needlessly, and everybody will leave as soon as we start reading the bill anyhow. Nobody will be listening. I will say to the gentleman I hope he will not object to the bill being considered as read and printed in the RECORD.

Mr. FRENZEL. I thank the chairman.

Further reserving the right to object, Mr. Chairman, I realize the committee has had a difficult time with this bill, and I realize it is important, or at least that many Members feel it is important, to go ahead with it.

On the other hand, I really believe that this is a procedural outrage, and I am disturbed that the leadership of the House and the leadership of the committee would be willing to go ahead on this basis, knowing that most of the Members really do not know what they are doing—or I will take that back and say that some of the Members like myself do not know what they are doing on this particular bill.

My own rule of thumb has been if you do not know what is in the bill, your best option is to vote against it until you do know what is in the bill.

Mr. Chairman, I have no desire to unnecessarily prolong the proceedings today. My sermon is, however, when you try to shortcut normal procedures, when you try to prevent the light from shining in on our work here, you are going to put that bill or whatever we are considering, in dire jeopardy. I think the chairman and the members of the committee who put this together should know that they are taking perilous risks in moving ahead in this way.

Mr. Chairman, with that said, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. ECKHARDT. Mr. Chairman, reserving the right to object, I reserve the right to object but I shall not object because, as I understand it, we may proceed on this bill in an orderly way as has been discussed with the Parliamentarian. I understand that the amendment that is now offered is subject to debate, would be subject to a substitute, and that such substitute would be subject to debate. The original Staggers amendment in the nature of a substitute would then be open for amendment at any point. If the amendment at any point, after which the substitute I shall offer would be so open amendment which I shall offer should fail, the Staggers amendment would be subject to amendment in its detail in the ordinary manner. I understand all of that to be correct parliamentarily, and I understand there will be no attempt to frustrate that, of course, reserving to those who are offering the amendment all rights with respect to cutting off debate by the normal means.

Do I have a correct understanding on these points, Mr. Chairman?

Mr. STAGGERS. If the gentleman will yield, what did the gentleman say about cutting off debate? I think we should set a time sometime this afternoon that we could stop on this bill, but that will come up later. I have no vision of that now. I think it should be at that time.

Mr. ECKHARDT. Further reserving my right to object, Mr. Chairman, I would like before I choose not to object to let the entire House know in very general terms what this amendment does. I should also like to address a few questions to the distinguished chairman of the subcommittee on this point, if I may do so. I must say that I agree with the gentleman of the other party on the proposition that it is a long and complex amendment.

Mr. STAGGERS. Mr. Chairman, would the gentleman yield?

Mr. ECKHARDT. Yes, I yield to the gentleman.

Mr. STAGGERS. I thank the gentleman for yielding. I would hope that before the gentleman started asking questions, he would let me present the amendment, and then in the orderly procedure that he would get time and ask any questions that he wishes to ask.

Mr. ECKHARDT. I think my questions will be very short, and they will go to the question of whether or not an objection should be made at this time.

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I want to be sure what we have before us. If the distinguished gentleman from New Jersey would respond to these questions, I would appreciate it.

We have received on September 2 a document called, "Proposed Compromise Amendment." Now, that was a document of some 79 pages. Then, we received a document on September 4 containing some 91 pages. We received that at about 6 o'clock yesterday. This morning, just before the commencement of this session, the gentleman from Texas received another document dated September 5, 1980, containing some 91 pages.

I am informed by counsel for the subcommittee that there is textual change beginning on about page 30 of that amendment which uses different wording, but according to the statement of the counsel no different intent or effect is intended.

Could the gentleman point out to me where the changed language commences and where it ends?

Mr. FLORIO. Mr. Chairman, if the gentleman will yield, while the language is being obtained, I can represent to the gentleman that the representation of the counsel is correct. There has been no substantive change that has been made since the bill was printed in the RECORD. The langauge which has been modified is on page 30, and begins on line 14 and extends through page 31, line 18.

Mr. ECKHARDT. Line 18, and then what language is supplanted in the document dated September 4?

Mr. FLORIO. This langauge is essentially the same as the amendment which was printed in the RECORD. As the gentleman knows, the documents have been floating back and forth between his office, my office, and other Members' offices, and are essentially the same, with minor modifications. What we are working from is the amendment that was printed in the RECORD, and what the gentleman has in his hand is that amendment with the modification, a technical modification that I have indicated and have called to the attention of the gentleman.

Mr. ECKHARDT. I think I understand it then, the textual material that has been somewhat altered in the document of September 5, 1980, is from about line 14 on page 30 through line 18 on page 31.

Mr. FLORIO. Only technical modifications, that is correct.

Mr. ECKHARDT. Of course, whether it is substantive, I guess we all have to use our own judgment on that.

Mr. FLORIO. That is correct.

Mr. ECKHARDT. But what does it supplant in the previous document?

Mr. FLORIO. This, as the gentleman knows, deals with the question of the burden of proof in the 6-percent zone, and attempts to clarify the language that was in the amendment. It in no way changes the burden of proof. It just uses language to clarify the intent of the language that was introduced.

Mr. ECKHARDT. For the purpose of the Members of the House, do I understand that when the gentleman refers to the 6-percent zone, he is referring to that zone of flexibility above the threshold figures that are referred to in the later section of the bill beginning with 160, 165, 170, 175?

Mr. FLORIO. The gentleman is correct. That is the essence of the compromise, phasing in from the number that the gentleman advocates to a cost recovery percentage. The gentleman is correct.

Mr. ECKHARDT. And do I understand that there are no changes between the September 4 document and the one dated September 5 with respect to the section setting out the threshold figures?

Mr. FLORIO. That is correct.

Mr. ECKHARDT. And there are no changes respecting the provisions headed, "Determination of market dominance"?

Mr. FLORIO. That is correct as well.

Mr. KAZEN. Mr. Chairman, will the gentleman yield to me under his reservation of objection?

Mr. ECKHARDT. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, a moment ago, when the gentleman was talking about his understanding of procedures, did I hear correctly that there would be a move to cut off debate in order to have a vote on final passage today?

Mr. ECKHARDT. Well, I cannot answer for the leadership on this bill on that proposition. It would be possible for them to so move, as I understand the rules.

Mr. KAZEN. I was wondering what the gentleman's understanding of the procedure was going to be as far as setting time limits.

Mr. ECKHARDT. This gentleman has agreed to no setting of time limits, nor has the gentleman from New Jersey agreed in advance to any change with respect to the rights of the Members to debate or the rights of the committee to seek a cutoff by a majority vote of the House. I do think we could agree to that bindingly without unanimous consent, and no such unanimous consent has been sought.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. KAZEN. Mr. Chairman, reserving the right to object, I do so for the purpose of asking the manager of the bill if it is his intention to limit debate in order to get a vote on final passage before the House adjourns this afternoon.

Mr. FLORIO. If the gentleman would yield, it is not my present intention to do that. It is my hope that we will be able to expedite consideration to finish this bill today. Knowing that the heart of the bill is the Staggers-Rahall-Lee-Loeffler amendment, and of the intention of the gentleman from Texas to offer a substitute, I think it is key that we deal with that question without any limit. When we deal with that question and dispose of it, it is my personal opinion that there will not be too terribly much left in the bill. I hope we can go forward hopefully without limitation. We then, of course, reserve our rights to reevaluate our positions later in the day.

Mr. KAZEN. I thank the gentleman for his answer. I just want to make sure he understood that there are other Members interested in this bill besides the gentleman he mentioned, because I have, to this moment, yet to see the last amendment or the last bill that is going to be considered here this afternoon.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. GIBBONS. Reserving the right to object, Mr. Chairman, I have a great deal of respect for the subcommittee chairman and the committee chairman who are handling this legislation, and I do not think that I have ever objected to a request like this in the 18 years that I have been in Congress. But, I want to state very seriously that I may object to this unanimous-consent request right now.

I would like to lay the predicate for it first before I do it. My community, the congressional district that I represent, is served by only one railroad. That railroad is the lifeblood of my community.

□ 1110

I want to point out how serious it is because of the inability of the public utility in my area and the railroad to get along together. I want to ask the Members if they can guess where my people have to buy the coal from to fire the utility plant that serves all of my area. I will not push the Members too hard on that, but let me just say they find it is cheaper to buy coal in Poland and transport it all the way to Tampa than it is to bring it just a short distance from Kentucky.

So the Members can understand why my folks are interested in this legislation. I have received phone calls as recently as just before this session started from governmental agencies in my area, not knowing what is going on, and, frankly, because of the confusion that has taken place here I am not able to inform them as to just what is going on.

So my question to the chairman of the subcommittee is this: Does the gentleman intend to press for a final vote on this substitute before 2 o'clock this afternoon?

Mr. FLORIO. Mr. Chairman, if the gentleman will yield, it would be my hope that that would take place. As I have indicated, I am fully convinced that there will be an adequate airing of the views as to the merits or the demerits of the alternative proposal.

Certainly there are those who are very articulate who may not agree with what is in the compromise. I happen to believe the compromise satisfies the needs of those like the gentleman from Florida (Mr. GIBBONS) who are concerned about the question of utilities and particular rail lines.

I think the gentleman should have sufficient confidence in the Members of this House to have a full and adequate threshing out of the merits. Of course the gentleman has the right to vote as he sees fit.

I think it is important to the country as well as to the gentleman's constituents that there be this discussion, and that this discussion go forward in an orderly way.

Therefore, Mr. Chairman, I would hope that the gentleman would permit us to go forward in an orderly way to discuss the merits of what this proposal provides.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I rise because I want to make it clear, since the term, "compromise," has been used and since I have heard over the last week that an agreement was reached to which no one dissented with the gentleman from Texas, that there has been no such compromise. I want to say that the opponents of the Staggers amendment and those who favor what the House did when we last acted on this bill include the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperatives, the National Association of Regulatory Utility Commissioners, United States Steel, National Steel, the Consumer Federation of America, the Consumer Energy Council of America, 60 shortline railroads, the National Council of Farmer Cooperatives, the American Association of Port Authorities, International Paper Company, American Feed Manufacturers Association, the American Soybean Association, the National Corn Growers Association, and the Grain and Feed Dealers Associations of 11 States. There may be others. At least there are those from whom we have not gotten a consensus nor an agreement at this time.

Mr. BAUMAN. Mr. Chairman, will the gentleman from Florida yield?

Mr. GIBBONS. I will be glad to yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Chairman, I thank the gentleman for yielding under his reservation.

Mr. Chairman, I just want to say that I have the same concern. I personally would not want to delay the proceeding today, but I would not like to see the House act finally on this legislation for the very reasons the gentleman has suggested.

I happen to represent an area in the Delmarva Peninsula which has very unique real problems, and this bill would deal with that subject. I have been contacted by the Secretary of Agriculture of the State of Maryland yesterday asking us not to proceed with legislation dealing with the short lines in my area. The major complaint is not that they are opposed to latest compromise but that they do not know what it does.

If we proceed, as the gentleman from New Jersey (Mr. FLORIO) says, we may, since he has given us no guarantee and since it is final as of today, wake up tomorrow, having read the proceedings in the RECORD and find that this might harm my area and it might harm the areas of other Members.

No amount of guarantee about the length of debate would prevent that, unless we have a guarantee that we would go to a certain point and stop, not finish the bill, and that would let us have a chance to take up this matter again in a fashion that would allow us to be informed, because we are not informed today.

Mr. GIBBONS. Mr. Chairman, I agree with the gentleman's observation. I was just trying to be as cooperative as possible, but I am not satisfied with the answer of the gentleman from New Jersey (Mr. FLORIO).

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I will be glad to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, the gentleman in the well is a very senior and respected and distinguished member of the Committee on Ways and Means.

There have been many occasions when amendments to Ways and Means Committee bills coming from the Committee on Ways and Means were not even printed in the RECORD before this Member was required to cast his vote upon them. But recognizing the expertise and experience of members of the committee like the gentleman in the well, this Member has been satisfied to accept their explanations about things on which he was about to be required to vote.

This amendment which I hope we are going to address in debate very soon was printed in the RECORD last night and could have been read by anyone who wanted to read the RECORD.

Mr. Chairman, I would ask the gentleman in the well if the procedure which we are asking to be followed today is so very much different from that which the Committee on Ways and Means frequently asks us to follow here on the floor of the House.

Mr. GIBBONS. Mr. Chairman, if the gentleman thinks I am going to be foolish enough to defend everything that the Committee on Ways and Means does on this floor, he does not understand me.

Mr. ALBOSTA. Mr. Chairman, will the gentleman yield further?

Mr. GIBBONS. I yield to the gentleman from Michigan.

Mr. ALBOSTA. Mr. Chairman, I agree with what the gentleman is saying. I do not believe the only issues here are the compromises that have been reached between the gentleman from Texas and the gentleman from New Jersey.

I think it is very important that this body understand what we are going to be getting into if we abandon all the rail lines today that could be abandoned because of this piece of legislation. I think it would be short changing the American people, and it would be irresponsible on the part of this country not to consider a rail bank.

If we do not consider and do a study on what may be needed in the future for rail lines in this country, then we are going to be making a drastic mistake.

I personally would not agree that we should end debate at any time today. I believe we ought to discuss this issue fully so each Member of this Congress understands what the problem really is.

Mr. Chairman, if we do not have the foresight to see that we may need a line somewhere and need these easements and rights-of-way, we might find that it would be impossible to purchase those lines in the future.

Mr. ANDREWS of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I am glad to yield to the gentleman from North Dakota.

Mr. ANDREWS of North Dakota. Mr Chairman, I appreciate my colleague and good friend yielding.

I certainly recognize the fact that this amendment was indeed printed in the RECORD, but we just now received that in our offices. This is a very complex and technical type of bill.

The reason so many agricultural groups are against this as it stands is because of their concern with and their perception of section 301, for instance, that would provide for de facto abandonment of branch lines, in their legal counsels' opinion.

I have checked with some of my good friends, including my friend, the gentleman from Illinois, and there are differences of opinion as to what that would do. I respect their opinions, but there is still that difference of opinion.

If this bill would allow, for instance, the Burlington Northern, for which our farmers in North Dakota have no great degree of love and affection because they keep increasing freight rates and increasing freight rates, while providing less and less service, to take a line like the Wilton-Pingree Line in North Dakota, which is a branch line, and put a surcharge on those freight rates and get that rate up so the freight is shoved off onto trucks, a couple of things would happen: First, we would have more trucks going down our inadequate roads, fighting with the smaller and smaller cars that we have got to drive, and that is not good because they use more fuel than shipping on rail; and second, there will be no freight going down that branch line after the surcharge forces the grain to trucks so the railroad can then abandon the branch line, and this bill, according to our agricultural groups, will allow that to happen.

I would like to have a little bit more time to find out how these provisions will work. There is another section in the bill. I am told by my agricultural people, that allows Government money to be used to finance a Union Pacific line directly parallel to an already built line into the Powder River basin to ship coal.

This is in an area where we have seen the abandonment of one of the major lines through northern South Dakota that is greatly needed to move coal to an already existing 800-megawatt powerplant that will have to be abandoned at tremendous cost to electric consumers if we cannot get a transfusion of money. Why build competing lines with Government loan guarantees when other areas are seeing their only service abandoned?

□ 1120

To put money into a duplicating line and not have it then available for a line that needs it so desperately does not make sense.

These are just a couple of the reasons why I think it is extremely important that we follow the suggestion made by my good friend, the gentleman from Florida, and let time bring a little bit of sunshine in on this bill, let some of these people be heard, so that we are certain what these provisions do before we vote on them.

Our farmers cannot afford more branch-line abandonment any more than my colleague, the gentleman from Florida, can afford a situation where it is cheaper to import coal from Poland instead of getting it from the United States which would have provided job opportunities for American coal miners and would preclude the further export of capital and the imbalance of payments that are raising havoc right now with our balance of payments and our inflation rate.

So I salute my colleague, the gentleman from Florida, and I hope he will take the proper action to allow the maximum amount of time for discussion so that we may actually know the impact of what is in this bill.

Mr. ECKHARDT. Mr. Chairman, will the distinguished gentleman from Florida yield?

Mr. GIBBONS. Mr. Chairman, further reserving my right to object, I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I should like to urge upon my colleague, the gentleman from Florida, that he permit the biill to go forward without the reading of the section. I understand his position, and I share it. As I have pointed out, though, we have had some access to the very long amendment. The provisions in that amendment which embrace both title II and title III have been the subject of grave concern to a great number of people.

We have had negotiations, not much, I must say, between the gentleman from New Jersey and myself—though I have urged it—but considerable talk with various interest groups, and there has been some movement toward agreement, but there has been no final agreement by any means.

I would suggest to the gentleman from Florida, and I would respectfully suggest to the manager of this bill—and I may say, inferentially, that the gentleman from Florida, I am sure, will assure this body and the gentleman from New Jersey that we have had no discussion, you and I, about this matter before. But I would like to move on this. And I would suggest that if we could complete title III today, if we could proceed on that—and I doubt that we could get any further by the time of our deadline anyhow—take a vote on title III and then not proceed further, the interests of the gentleman from Florida would be totally protected; because just as the gentleman from New Jersey is arguing, and I shall oppose it on a point of order, but if the gentleman from New Jersey is correct that in amending title III or substituting title III he may change what we did in title II—and there is argument to that effect—in the same way, the gentleman from Florida could offer a new title IV and change all we did, once he finds out what the effect of this 91-page document is.

So the gentleman would not be precluding his rights to study the amendment carefully.

There is another means by which the same thing could be accomplished if we do not complete the bill today, and that is, after we have observed what has been done on the floor of the House, we could go back and see if we could reconcile our differences in a total substitute that would be in order at the end of the reading of the bill.

Therefore, I would suggest that the gentleman might invite from the chairman of the subcommittee the agreement not to require the reading of this long document. If it were required, another substituted long document could be offered and it could be required to be read.

But I would suggest that we withhold such procedural delay if the gentleman from New Jersey would agree with us that we would complete title III and then rise.

Mr. GIBBONS. Mr. Chairman, I think the gentleman from Texas has made a good suggestion.

And, further reserving my right to object, Mr. Chairman, what say the gentleman from New Jersey?

Mr. FLORIO. If the gentleman will yield, it is my hope that we could complete the bill. I certainly will consult with all of the interested Members.

Mr. GIBBONS. Then, Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read the amendment.

The Clerk continued the reading of the amendment.

□ 1130

Mr. STAGGERS (during the reading). Mr. Chairman, I renew my request that the amendment be considered as read and printed in the RECORD at this point.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

□ 1140

Mr. GIBBONS. Mr. Chairman, reserving my right to object to the unanimous-consent request by the gentleman from West Virginia (Mr. STAGGERS), Mr. Chairman, I have never engaged in dilatory tactics in my life on this House floor and I do not intend to now.

I am merely seeking to work out some orderly procedure in which I can find out what this bill does to the people that I represent, my congressional constituents.

As I say, they are very vitally affected by it, because we are only served by one railroad. Not only is the utility that serves my people affected by it, but the Port Authority which actually accounts for 36,000 jobs in my district is vitally affected by this legislation, because they must be served by the only one railroad.

As of the time I came to the floor this morning, those two agencies did not know how they stood with the so-called compromise.

It is only in that spirit that I reserve the right to object.

Now, I shall not object, Mr. Chairman, and I have not talked but briefly with the gentleman from Texas (Mr. ECKHARDT) about this this morning, and never before, but I have been following his action. If we could work out some reasonable arrangement so that we are not foreclosed from taking further affirmative action after we find out what is in this title.

Now, I would like to hear from the gentleman from New Jersey, who is the floor manager of this bill.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I would be happy to yield to the gentleman.

Mr. FLORIO. Mr. Chairman, it is my understanding that the Speaker is prepared to schedule this rail bill on Monday as the first item of business and to continue until the conclusion of the bill, if the bill is not finished today.

It is not my intention to ask for a limitation on time and I would hope that the bill would go forward in an orderly fashion. At this late hour it seems highly unlikely that we would be able to complete the entire bill. It would be my hope that we could conclude title III, which is the major section of the debate and the major point in contention. It would be my hope that we could finish that, but I do not intend to limit debate, particularly in light of the representation that this would be the first item of business up on Monday.

Mr. KAZEN. Mr. Chairman, will the gentleman yield to me under his reservation?

Mr. GIBBONS. I would be glad to yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, I just want to make sure, is this bill going to be read by titles or will it be open to amendment at any point, to the point where if title II and title III are taken care of today, but Monday we find there is something that has got to be corrected, that we could go back to titles II and III?

Now, if this is going to be precluded, then I would object. I would like an answer or a clarification of the procedure.

Mr. GIBBONS. Well, I think we better satisfy the gentleman from Texas (Mr. KAZEN) if we can, because he may supersede me.

Mr. KAZEN. Mr. Chairman, if the gentleman will yield further, I just want to make sure that the bill would be open to amendment at any point. I understand that under that procedure, we can offer an amendment to correct title II or title III after they have been amended.

The CHAIRMAN. Does the gentleman from Florida continue to reserve his reservation of objection?

Mr. GIBBONS. Mr. Chairman, the gentleman from Florida continues to reserve his right to object.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. Yes. Let me yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I would hope the gentleman from Texas would not object.

May I suggest that opening the bill to amendment at any point would not permit us to go back to things that we have already completed, except by means of offering a substitute at the end.

I want to suggest to all Members here, I would not object under any conditions to this reading. I make no condition on it, but I merely suggest to my colleagues who are likely to object and wish to preserve an opportunity to act later, and also I would like to urge upon the chairman of the subcommittee that the suggestion I am about to make will not really change the situation here. At this point we cannot possibly do more than get through title III and possibly title IV. If we could only have the agreement that there will not today be the final conclusion of the bill that would prevent a substitute at the end, the gentleman from Florida and the gentleman from Texas are absolutely protected.

The gentleman from New Jersey is protected in all practical ways, because at this stage we cannot possibly get to that point.

I would suggest it would be far better for us to move today than to have the Clerk merely read.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I would be glad to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I wonder in view of the request or the suggestion of the gentleman from Texas, if we could have some assurance from the gentleman from Texas that the suggestion that he is outlining will not simply be a procedure which will enable him to offer again ad infinitum variations of the same proposals.

Mr. ECKHARDT. I will assure the gentleman that I have no intention of merely varying a proposal previously offered for the occupation of time. The gentleman from Texas, I think, has never engaged in dilatory practices, except once in this body, and I remember that with some regret.

I would not do so at this time.

Mr. BAUMAN. Mr. Chairman, will the gentleman from Florida yield?

Mr. GIBBONS. I would be glad to yield to the gentleman from Maryland.

Mr. BAUMAN. Summoning up all my legal training at Georgetown Law Center, I listened carefully to what the gentleman from New Jersey said to the gentleman from Florida. What he said was that the Speaker would allow this bill to be finished on Monday if it were not concluded today.

Now, I read that as no guarantee at all that we will have a chance next Monday or whatever day next week to address in an intelligent fashion the portions of the bill that many of us are still in the dark about. If we could simply have the word of the gentleman from New Jersey that we will finish title III today and proceed further on the bill next week, I think the reading could go forth; but so far we have not had that representation from the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, would the gentleman yield?

Mr. GIBBONS. I am happy to yield to the gentleman from New Jersey.

Mr. FLORIO. If the gentleman would just let me correct the representation that I made, it was that I would not in any way take part in attempting to limit debate.

I think the suggestion of the gentleman from Texas is one that is worthy of consideration, that we go forward as far as we can go today. He injects the new point that perhaps the process should be terminated before we come to final vote so that if someone sees fit to offer a substitute for whatever it is that has been done. That would be something that would be acceptable to me, particularly in light of the representation from the Speaker's office that the bill would be dealt with expeditiously on Monday.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I would be glad to yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I strongly urge the gentleman in the well

and the gentleman from Texas to accede to the offer of the gentleman from New Jersey at the present time, because I think it protects everyone.

Mr. GIBBONS. As I understand the offer of the gentleman from New Jersey, it is this, that we proceed today, that we go as far as we can, but that the bill not be put on final passage, but that the bill still be available for amendment on Monday; is that correct?

Mr. FLORIO. That is correct.

Mr. GIBBONS. Then, Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia (Mr. STAGGERS)?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, do I understand that the gentleman from New Jersey then will move that the Committee rise and report the bill back to the House without conclusion, at whatever point he deems, but without final action scheduled today; is that the guarantee?

Mr. FLORIO. That is correct.

Mr. BAUMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia (Mr. STAGGERS)?

Mr. ECKHARDT. Mr. Chairman, reserving the right to object, I merely wish to preserve my point of order at the proper time.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia (Mr. STAGGERS)?

Mr. GONZALEZ. Mr. Chairman, I reserve the right to object.

Mr. Chairman, I rise for the purpose of making sure we understand what this assurance or semiassurance is. I have been intrigued bv what has been going on. The gentleman from Minnesota made it clear that really none of us has had an opportunity to look at it. I thought perhaps the gentleman from Texas, my colleague, since he has been intimately following the course of this and he belongs to the committee, after he got up a while ago revealed that he did not know any more. The gentleman asked questions that clearly revealed he has not had ample opportunity to obtain or study the bill. None of us have.

I think the issue is not whether we are going to have an opportunity to complete it today or whether we should or should not. I think the real issue is the one originally raised by the gentleman from Minnesota and that is, that we know what we are doing. That still remains unresolved.

We have no assurance that somebody else will not insist.

Do I understand that the motion will be made to rise at a point certain in time this afternoon; is that the assurance we have?

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. Certainly.

Mr. ECKHARDT. As I understand the assurance, and I think it would totally protect the gentleman from Texas, it is that we would rise at a time that would permit on Monday an amendment in the nature of a substitute for the whole bill to be offered. In that way no one would be precluded from reading the bill and ultimately offering a complete substitute which might, for instance, put into effect the will of the body to that point with the changes that the author of the substitute wished to make. In that way the gentleman would be protected on any major or substantive change he wished to make at that time.

I would like the gentleman to yield and see if I am correct on that.

Mr. GONZALEZ. Mr. Chairman, if I may continue with my reservation, I do not know that that is an assurance, because I have just as vital a stake as far as my representation is concerned as any Member, including the gentleman from Florida; in fact, probably more so; but if you have a resolution on the so-called compromise, which up to now has not been printed and given to us in ample time to analyze, and in my cursory examination of the compromise, I hate to use the words, but I am blunt, and that is the way it impresses me, it is a sellout. It is not a compromise. It is a sellout. If we are going to discuss that today and if we are going to resolve that issue today, I, for instance, do not feel I am better informed or knowledgeable or prepared to deal with that issue than I was when they started reading the bill.

Now, the gentleman is telling me that is what is going to happen.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. Certainly.

Mr. ECKHARDT. Mr. Chairman, there is no Member of this House that can state in more plain, blunt, effective terms, than the gentleman from San Antonio, Tex., what the real issue is, and on all those points I agree with him.

The only thing I am saying is this, that when we last dealt with this bill, we established a threshold for ICC consideration, which was at that time called the Eckhardt-Rahall amendment.

What would be sought by this amendment would be to go back and change that. I shall say that that cannot be done in my argument on points of order; but if it can be done, there is no question but that the gentleman from San Antonio can do exactly the same thing. He can erase what has been done today by an amendment in the nature of a substitute, go back to the title II thing and restore what we did last in this House. I hope he does not have to. I hope we beat this; but if he has to, he is totally protected. That is the reason I urge so strongly that we proceed at this time, because I think the gentleman is totally protected.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia (Mr. STAGGERS)?

Mr. GONZALEZ. Mr. Chairman, further reserving the right to object, I wish I could accede to that plea; but I am afraid I am a little bit more hardened in my expectations.

I see what has happened here to my colleague that shares representation of the city of San Antonio, the gentleman from Texas (Mr. LOEFFLER) in his so-called compromise, which I am afraid has no guarantee that it is going to survive 5 minutes in the conference.

Therefore, Mr. Chairman, I am constrained to object, and I do object.

□ 1150

Objection is heard.

The Clerk will read the amendment.

The Clerk continued the reading of the amendment.

□ 1210

Mr. MADIGAN (during the reading). Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair observes that a quorum is not present.

Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 522]

Addabbo	Dellums	Harris
Akaka	Devine	Heckler
Albosta	Dickinson	Hefner
Alexander	Dicks	Heftel
Ambro	Dingell	Hightower
Anderson, Calif.	Donnelly	Hillis
Anderson, Ill.	Dornan	Hollenbeck
Andrews, N.C.	Dougherty	Holt
Andrews, N.Dak.	Downey	Hopkins
Anthony	Duncan, Oreg.	Howard
Archer	Duncan, Tenn.	Hubbard
Ashbrook	Early	Huckaby
Atkinson	Eckhardt	Hughes
AuCoin	Edgar	Hutchinson
Bafalis	Edwards, Ala.	Hutto
Bailey	Edwards, Calif.	Hyde
Baldus	Edwards, Okla.	Ichord
Barnard	Emery	Jacobs
Barnes	English	Jeffords
Bauman	Erdahl	Jeffries
Beard, R.I.	Erlenborn	Jenkins
Beard, Tenn.	Ertel	Johnson, Calif.
Bedell	Evans, Del.	Johnson, Colo.
Benjamin	Evans, Ind.	Jones, Okla.
Bennett	Fary	Jones, Tenn.
Bereuter	Fascell	Kastenmeier
Bethune	Fazio	Kazen
Bevill	Fenwick	Kelly
Bingham	Findley	Kemp
Blanchard	Fisher	Kildee
Boland	Fithian	Kindness
Bolling	Flippo	Kogovsek
Boner	Florio	Kostmayer
Bonior	Foley	Kramer
Bonker	Ford, Mich.	LaFalce
Bowen	Ford, Tenn.	Lagomarsino
Breaux	Forsythe	Latta
Brinkley	Fountain	Leath, Tex.
Brooks	Fowler	Lederer
Brown, Calif.	Frenzel	Lehman
Broyhill	Fuqua	Leland
Buchanan	Gaydos	Lent
Burton, John	Gephardt	Levitas
Butler	Giaimo	Lewis
Byron	Gibbons	Lloyd
Carr	Gilman	Loeffler
Carter	Ginn	Long, La.
Cavanaugh	Gingrich	Lott
Chappell	Glickman	Lowry
Cheney	Gonzalez	Luken
Clausen	Goodling	Lundine
Clay	Gore	Lungren
Clinger	Gradison	McClory
Coleman	Gramm	McHugh
Collins, Ill.	Grassley	McKay
Collins, Tex.	Gray	Madigan
Conable	Green	Maguire
Conte	Grisham	Marks
Convers	Guarini	Marlenee
Corcoran	Gudger	Marriott
Coughlin	Guyer	Martin
Courter	Hagedorn	Matsui
Crane, Philip	Hall, Ohio	Mavroules
Daniel, R. W.	Hall, Tex.	Mica
Danielson	Hamilton	Michel
Dannemeyer	Hammer-schmidt	Mikulski
Daschle	Hance	Miller, Calif.
Deckard	Hanley	Miller, Ohio
	Harkin	Mineta
		Minish

Mitchell, N.Y.	Ratchford	Studds
Moffett	Regula	Stump
Mollohan	Reuss	Swift
Montgomery	Rhodes	Synar
Moore	Richmond	Tauke
Moorhead, Calif.	Ritter	Taylor
Motl	Roberts	Thomas
Murphy, Ill.	Robinson	Thompson
Murphy, Pa.	Rose	Traxler
Murtha	Rosenthal	Trible
Musto	Rostenkowski	Van Deerlin
Myers, Ind.	Roth	Vento
Natcher	Rousselot	Volkmer
Neal	Roybal	Walgren
Nedzi	Royer	Wampler
Nelson	Rudd	Waxman
Nowak	Russo	Weaver
O'Brien	Sabo	Weiss
Oakar	Sawyer	White
Oberstar	Schroeder	Whitehurst
Obey	Schulze	Whitley
Panetta	Seiberling	Whittaker
Pashayan	Sensenbrenner	Williams, Mont.
Patten	Sharp	Williams, Ohio
Patterson	Shelby	Wilson, Bob
Paul	Shumway	Wilson, Tex.
Pease	Simon	Winn
Pepper	Smith, Iowa	Wirth
Perkins	Smith, Nebr.	Wolff
Petri	Snowe	Wolpe
Peyser	Snyder	Wyatt
Pickle	Solomon	Wylie
Porter	Spellman	Yates
Preyer	Spence	Yatron
Price	Stack	Young, Fla.
Pritchard	Staggers	Young, Mo.
Pursell	Stangeland	Zablocki
Rahall	Stanton	Zeferetti
Rangel	Stenholm	
	Stratton	

□ 1220

The CHAIRMAN. Three hundred and twenty-four Members have answered to their names, a quorum is present, and the Committee will resume its business.

The Clerk will continue to read the amendment.

The Clerk continued the reading of the amendment.

□ 1300

Mr. FRENZEL (during the reading). Mr. Chairman, I reserve a point of order against the Staggers-Rahall-Lee substitute now being read.

The CHAIRMAN. The gentleman from Minnesota (Mr. FRENZEL) reserves a point of order.

The Clerk will continue to read.

The Clerk continued the reading of the amendment.

□ 1310

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. HANCE. I object, Mr. Chairman.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued the reading of the amendment.

(During the reading, by unanimous consent, Mr. MADIGAN was allowed to speak out of order.)

FURTHER LEGISLATIVE PROGRAM

Mr. MADIGAN. Mr. Chairman, I take this time for the purpose of addressing to the manager on the majority side of the aisle a question as to what his understanding is as to how we are going to proceed for the balance of the afternoon.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I will be happy to yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding. It had been my hope that we could proceed. I made my request for unanimous consent that this amendment be considered as read in the hope that this amendment could be considered as read. At that point there would be an opportunity for those who have points of order to raise those points of order and that matter resolved one way or the other. It would then be my hope that the amendment offered by the gentleman from Texas (Mr. ECKHARDT) would be offered again and placed in the RECORD. This would give all of those who have indicated some interest in having the weekend to read in depth the relevant amendments that will be before us an opportunity to use the weekend period. It would then be my intention to rise.

Mr. MADIGAN. So it is the gentleman's intention to move that the Committee rise without any other votes being taken this afternoon on any amendment or substitute amendment to the rail bill?

Mr. FLORIO. That is correct.

Mr. MADIGAN. I thank the gentleman.

Mr. FLORIO. Mr. Chairman, I would, therefore, ask unanimous consent that the amendment which is pending be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey (Mr. FLORIO)?

Mr. ECKHARDT. Reserving the right to object, let me understand what is attempting to be done here. I understand the gentleman will not go to a vote on any matter but will rise before a vote is called for?

Mr. FLORIO. If the gentleman will yield, that is correct.

Mr. ECKHARDT. The position that I am in now is a little bit different than that which existed in the beginning. That is, if we did have a vote, many Members have departed. That is the reason I want to be sure that we will not proceed to a vote. I did not object to dispensing with the reading in the beginning. I would be concerned now if we were to proceed and go to a vote with so many people gone, but the gentleman is saying there will be no vote this afternoon.

Mr. FLORIO. That is correct.

Mr. ECKHARDT. There will, of course, be a point of order raised at such time as no objection may be made, if such occurs this afternoon. I intend to make a point of order at that time, and I would presume that we will argue the point of order. Does the gentleman intend to proceed with any debate on the Staggers amendment this afternoon?

Mr. FLORIO. If the gentleman will yield, it would be my hope that since a number of people have expressed so much concern about having an opportunity to read the major proposals that are going to be immediately before us that we would not have debate on those proposals. If the gentleman from Texas would offer his substitute to be put in the RECORD, we would terminate at that point. When we come back on Tuesday—and the new date we have from the Speaker is Tuesday—the parliamentary situation would be that both of these amendments would be before us. Both could be offered, and, therefore, it would be appropriate to have our full debate on the merits of the competing amendments conducted at that time.

□ 1320

Mr. ECKHARDT. Well, let me express perfectly frankly what my problem is with that procedure, and suggest that there might be a slight alteration to it. I do think that Members should know in advance what the amendment in the nature of a substitute is, and what the substitute is, but the situation I am in is that I had received the amendment only at 6 o'clock yesterday. There may be ways to reconcile our positions on section 301. I would not like to set my substitute amendment in concrete today if it might preclude such reconciliation.

I would like to say that I would place a written substitute in the RECORD by Monday, but I would not like to be bound at this time to the specific substitute.

Mr. FLORIO. If the gentleman would yield further, I am very surprised at that statement because that is exactly the position we find ourselves in now. The gentleman has led the effort here, saying that people need more time. If the gentleman is talking about putting something in on Monday for Tuesday's RECORD, we are going to hear the same charge, that Members have not had an adequate opportunity to review the amendment.

The gentleman had his substitute prepared last night, and it seems to me that it is appropriate that he provide to all of the Members the opporunity to read it and to absorb it over the weekend at leisure. I do not find any thread of consistency in the position of the gentleman now with regard to his position just a few minutes ago.

The CHAIRMAN. Does the gentleman from Texas continue to reserve the right to object?

Mr. ECKHARDT. Yes, I continue to reserve the right to object.

I did not receive the final amendment until approximately 10 o'clock this morning. It contained some changes that the staff is reviewing. The draft of one amendment that, according to the gentleman's staff, is essentially the same as that now before us was not supplied me until 6 o'clock last night. I had read through the previous amendment, and then I had to start reading another document about 90 pages long.

All I am saying is that I would like an opportunity to digest this just like all other Members are seeking to digest it. That is what I am concerned about. If notice over the weekend is necessary, we would attempt to place in the RECORD of today the proposed substitute, but we would not like to be absolutely bound. The gentleman from New Jersey has not been bound and has changed his amendment three times between September 2 and the present time.

He says all of these are merely technical amendments. I may say that I am at something of a disadvantage in having to frame my amendments in advance and be sewed into them on so short notice. I think other Members would feel the same way. I am not the only one who can offer a substitute.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield for a moment?

Mr. ECKHARDT. I yield to the gentleman from Illinois.

Mr. MADIGAN. Speaking for the minority, on this side we are perfectly willing to stay here the balance of the afternoon and have the Staggers amendment read in full, and the amendment of the gentleman from Texas read in full and placed in the RECORD so that all Members may have the entire weekend and Monday, even, to study those things. We would prefer to do that. The purpose of my interrupting the reading now was so that all the Members here present and those in their offices will have the opportunity to understand that we do not contemplate taking any further votes this afternoon, but I have canceled my traveling arrangements and I am perfectly willing and anxious to have all of these things read in their entirety, printed in the RECORD to lie there until Tuesday next. I thank the gentleman for yielding.

Mr. ECKHARDT. Further reserving the right to object, I have no objection whatsoever to our considering this matter as read if we may terminate immediately before the offering of my substitute. That is the only point I am making. I feel that is only fair. We have not had time to digest the full amendment in the nature of a substitute.

Mr. FLORIO. Mr. Chairman, will the gentleman yield further?

Mr. ECKHARDT. I yield to the gentleman.

Mr. FLORIO. Could the gentleman explain to me why we will be in a different position on Tuesday than we are today with Members, perhaps some on the other side of the debate, coming in and saying, "We only got Mr. ECKHARDT's amendment yesterday. Maybe we should not go forward. We need more time."

The point, that Members need an adequate opportunity to review amendments, has been raised. We are convinced of the sincerity of the Members and believe that is a valid point. We are trying to now resolve this matter by placing into the RECORD the two relevant substitutes so that Members will have adequate opportunity to review both amendments before the debate.

I have a copy of the gentleman's amendment that he offered to me for review. I will be happy to put it into the RECORD just for academic purposes, but I would hope that the gentleman would go forward and put his amendment into the RECORD.

Mr. ECKHARDT. Certainly, I have no objection to putting it into the RECORD. I simply do not want to be foreclosed from some technical or minor changes, or perhaps some additions that might arise from the questions that are brought up in the gentleman's longer amendment available this morning. But, if the gentleman is concerned about requiring a long reading of my amendment: In the first place I would not insist on it; and in the second place I have no intention of offering an amendment that is more than four or five pages, perhaps only two, as the gentleman has before him.

Mr. FLORIO. With the gentleman's assurance that the modifications that would occur would merely be technical or clerical, I have no difficulties with that and do not have any problem in agreeing to those conditions.

Mr. ECKHARDT. I cannot say that they would be only technical. I can say that they will not be a comprehensive, 90-page document, or a document that is more than, at most, four or five pages. We may offer the same thing, but there are certain provisions in the gentleman's 90-page amendment that we are entirely in agreement with, and I do not wish to write an amendment that wipes out certain provisions in the 90-page amendment with which we may agree on.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield further?

Mr. ECKHARDT. I yield.

Mr. MADIGAN. I thank the gentleman for yielding. Just for the purposes of the gentleman's information, I will object to unanimous-consent request if what the gentleman is suggesting is that the chairman of the committee, Mr. STAGGERS, must be locked into the amendment which is being read now, but the gentleman from Texas would be free to offer whatever he would want to offer, with nobody having had the opportunity to review it. I think both these things should lie in the RECORD over the weekend, and if the only way we can accomplish that is to proceed with the reading of the Staggers amendment in its entirety, then I will object to any other procedure.

The CHAIRMAN. Objection is heard.

The Clerk will read the amendment.

The Clerk concluded the reading of the amendment.

□ 1410

POINTS OF ORDER

Mr. ECKHARDT. Mr. Chairman, I reserve a point of order on the Staggers amendment.

The CHAIRMAN. The gentleman is recognized. Does the gentleman reserve a point of order or make a point of order?

Mr. ECKHARDT. Mr. Chairman, at this time I reserve, in case the proponents wish to explain the bill. Otherwise, I will make the point of order.

The CHAIRMAN. The gentleman makes a point of order. The gentleman from Texas is recognized on his point of order.

Mr. ECKHARDT. Mr. Chairman, in considering the point of order, the nature of the amendment must be considered. The salient question is whether or not by amending title III, a title dealing with the question of railroad intercarrier practices, and by including in that amendment a number of specific matters which I will deal with later in my point of order, and including provisions on title II dealing with railroad rates, profits, and reinvestment, whether or not the Staggers amendment is germane to the provisions in title III. That is the essential question.

In an amendment offered in this way, which, incidentally, is a very, very unusual way of offering an amendment, or a substitute, the question is not only one of the germaneness to the bill as a whole, but the question of whether or not the amendment is germane to the title sought to be amended. Such would not be true had an amendment of this nature been offered after the completion of title III and as a new title to the bill, or had the amendment been offered as a full substitute altering the provisions previously put into effect under title II.

The first point I wish to make is the broadest point upon which my point of order rests, and that is that the general subject matter of title II is quite different from the subject matter dealt with in title III. Essentially title II is what its title says it is. It is a title dealing with railroad rates, profits, and reinvestment.

In that connection, the most crucial measure dealt with in that title and, indeed, the most crucial measure which comes before this body is the question of what should be the scope of review by the Interstate Commerce Commission. Should that scope, as under existing law, cover the whole area of dominant carrier situations. If not, how should it be limited within the dominant carrier area of control.

As I think is generally understood, the existing 4R Act deregulates all railway rates which are not in the area of dominant carrier prescribed rates. We are, in this act, and probably in its most important phase, dealing with how far we should assume that ICC jurisdiction should be removed, even in areas where there is a monopoly or a near monopoly situation.

□ 1420

Essentially the difference between the original bill in title II and the Eckhardt-Rahall amendment which was offered to it and which was successful in the last sitting of the Committee of the Whole House on this bill, is that the original bill provided a threshold at 200 percent of variable cost. That was accomplished by what was called and what constituted a formula to determine the area in which the threshold would be met. The formula resulted, as the committee has stated, in somewhere between 190 and 110 percent of variable costs. The Eckhardt-Rahall amendment put into effect 160 percent. In the Eckhardt-Rahall amendment at the conclusion of 3 years a cost recovery percentage formula identical with that in the original bill would cut in, and at that point such would constitute the threshold for ICC contracts of rates imposed by railroads above such thresholds.

The attempt in this substitute is to go back and undo the provisions contained in the Eckhardt-Rahall amendment, not to undo it to the extent of putting it in its original form, but to strike some compromise position between the Eckhardt-Rahall amendment and some 200 percent of variable cost threshold. The attempt would be to start out with the same figure as in Eckhardt-Rahall amendment of 160 percent of variable cost and then go up by increments until 1984 when the cost recovery percentage formula would go into effect, but to bind

that formula between two somewhat flexible brackets—170 percent at the low point and 180 at the high point. I shall not go into the details of additional flexibility above that point other than to say the ultimate result would be, as we understand it as a practical matter to be, an overall limit of about 190 percent after 4 years, and, of course, at that point we would enter into the merits if we discussed and characterized the effect of that proposition.

The real question is not whether a compromise should be arrived at nor the question of the desirability of such compromise, but the question of whether or not dealing with that subject matter in a title which deals in an entirely different subject field is germane to title III. If the Staggers-Rahall-Lee amendment in the nature of a substitute deals with a different subject matter not germane to the subject matter dealt with in title III, or if any part of the amendment in the nature of a substitute deals with some subject matter not germane to title III, then the whole amendment must fall. Title III, as I have pointed out, deals with railroad intercarrier practices. It is true, of course, that under that general heading there are several different categories that I think could be understood by the sections and their headings.

The 301 deals with compensatory joint rate relief. That has to do, of course, with the division between various carriers having a joint rate.

Rate bureaus, which has to do with the subject matter relating to rather specific areas of control where rate bureaus are established, and, of course, which has an impact on railroad intercarrier practices.

Long- and short-haul transportation. There is, of course, as one of the major conflicts in the bill certain conflicts between railroads—long-haul and short-haul railroads.

Railroad entry.

Service during periods of peak demand, again a question largely relating to interrailroad questions.

Reciprocal switching, again railroad carrier practices.

Car service compensation, which deals with another specific area not related to the question of rates in general and the ICC's jurisdiction.

Car service order for exigent circumstances.

Employee protection.

The subject matter of title II deals primarily with a question involved with ICC within the brackets of control defined in that area and with the question of relationship between the carrier and the shipper, the most salient and sensitive of which is a situation involving what we call the captive shipper. Therefore, we urge as a broad proposition, and the broadest proposition of our point of order, that provisions relating to the title II matters and in effect attempting to strike a compromise in that area of contracts, that is, the rate control area, the jurisdictional area of ICC, is not germane to the provisions dealing essentially with the intercarrier relationships and certain other provisions in title III. We are aware of the fact that there are instances where a miscellaneous section of the bill deals with such a wide variety of subjects that it may be said if that were an original bill, the provisions of another title of the bill would be germane to it, even though the subject matter of the other title has already been dealt with, but we urge that that is not the case here. This is not a wide variety of subject matter. It is a subject matter related to the question of interrailroad relations.

Where there are other subject matters involved, they are narrow and in most instances related to that broader topic. But the position we are taking here is not limited to that broad contention. There are other provisions in the Staggers substitute which deal with a variety of subjects not touched even in the original bill. These are sought to be brought under consideration or perhaps as a matter of compromise and sweetener to various groups, and they go far beyond the original area of title III. They actually would amend provisions of other laws besides those related to title III. It should be noted that the scope of title III is limited to provisions amending the codified Interstate Commerce Act, title 49 of the United States Code. In contrast, the Staggers-Rahall-Lee amendment in section 327 amends several other laws and titles of the United States Code.

□ 1430

Section 327 includes major amendments to the Rock Island Railroad Transportation and Employee Assistance Act, 45 U.S. 1001 et seq.; and the Milwaukee Restructuring Act.; 45 U.S. 901, et seq. The subject matter of section 327 of the proposed substitute relating to the Rock Island and Milwaukee Railroads varies substantially from the scope of title III of the pending legislation. Now, while I would not object to the offering of the section—and there could be no objection—as a separate title at a later time, this provision is clearly not germane to title III. Whereas title III does not authorize any expenditure of Federal funds, section 327 would authorize $37 million of Federal moneys for railroad revitalization purposes. That is contained in section 327(d)(1).

If specified conditions are met, the United States would forgo the recovery of several million dollars in loans from the Milwaukee Railroad. Clearly, were title III a single and separate bill—and we must for the purpose of determining germaneness consider it as such—it would be outlandish to provide in such a bill dealing with divisions between railroads a large expenditure from the Federal Treasury with respect to foregoing recovery of several million dollars of loans. The situation is clearly analogous to a situation presented to the Speaker in ruling on the germaneness on a Senate amendment incorporated in the conference report of the Tax Reduction Act of 1975. I refer here to the bound CONGRESSIONAL RECORD of March 26, 1975, page 8931.

In that case, the original House bill contained amendments to diverse portions of the Internal Revenue Code. However, Mr. CONABLE objected to a section of a Senate amendment in the nature of a substitute relating to social security recipients, and the Speaker ruled that the section in question was not germane because: First, it was related to the Internal Revenue Code; and second, it provided for an authorization of appropriations from the U.S. Treasury.

Section 327 fails to meet the test of germaneness for the same reasons that the Senate amendment was deemed nongermane. First, the section contains substantial amendments to existing laws which are not amended by title III. Second, in contrast to title III, the section provides for a substantial authorization of appropriations from the U.S. Treasury and significantly alters the rights of the United States as a creditor.

Moreover, the Milwaukee and Rock Island amendments are subjected to a point of order because the provision seeks to accomplish the purposes of title III by methods that are not closely allied to methods encompassed in title III. See Deschler's Procedure, chapter 28, section 33.11, providing that:

> To a bill designed to aid in the control of crime through the research and training an amendment aimed at the control of crime through regulation of the sale of firearms and affecting laws not amended by the bill was held not germane.

While title III seeks to further railroad revitalization by revisions and regulatory requirements, section 327 seeks to accomplish this objective in part through a substantial expenditure of Federal funds.

Now, I should like to address the question of intrastate rates in section 315. Section 315 of the proposed amendment dealing with intrastate rates, classifications, rules, and practices also fails to meet the subject matter test of germaneness. Title III of the Rail Act deals with relationship between railcarriers; section 301, joint rates; and section 302, rate bureaus, relationship between the railcarriers and water carriers; section 303, long- and short-haul transportation, relationships between railcarriers and their employees; section 309, employee protection and relationships between railcarriers and shippers; section 303, long- and short-haul transportation; section 305, service during peak demand.

Now, the chairman will quickly note that none of these headings, none of these subject matters dealt with in title III have anything whatsoever to do with the question of the relationship between the States and their regulatory authority and the Federal Government. Title III is exclusively limited to Federal controls, Federal matters, Federal matters as applying in most instances to the question of relationships between railroads, but also Federal matters relating to the relationship between railroads and their employees. At no place does it in anywise entrench on the State's right to deal with these areas of concern.

I would like to point out to the chairman that this does not only deal with rates established by the States; incidentally, as I recall, the very first draft of the amendment did deal only with rates, but it is also now expanded to classifications, rules, and practices. Now, there are many classifications, rules, and practices imposed by States relating to questions of safety, questions relating to railway labor, questions widely ranging but within intrastate jurisdiction.

This provision enters into that field and purports to regulate through Federal law an area far beyond the original provision of title III. None of the title III provisions relate to the relationship between the Federal Government and State governments, or alter State jurisdiction over rules, classifications, and rates and practices in any way. The scope of title III is limited to interstate transportation by railcarriers. Therefore, section 315 of the proposed amendment dealing with intrastate transportation is subject to a point of order.

Moreover, the scope of the intrastate amendment to title III is even broader than the intrastate language in title II. The title II language is limited to certain preemptions of intrastate ratemaking, and as I have pointed out, this has been enlarged to classifications, rules, and practices. Thus, section 315 provides authority for a Federal Government to preempt State regulatory authority over virtually the entire operations of intrastate railcarriers.

Previous rulings by the Speaker support this conclusion that this provision is, therefore, not germane. For example, volume VIII of Cannon's Precedents, section 2964, notes that—and I quote:

> To a bill relating to interstate commerce a proposition relating to intrastate commerce is not germane.

Similarly, volume V of Hinds Precedents, section 5841, emphasizes that, and I quote:

> To a bill relating to commerce between the States, an amendment relating to commerce within the several States was offered and held not to be germane.

□ 1440

In our Federal form of Government the relationship between the States and the Federal Government is clearly a major issue. It is an issue that we have fought on this floor many times. It is an issue that has been in controversy with respect to this bill in other portions of the bill. There are those of us who in other portions of the bill would permit the State to act first, and then ICC control might come in at a later time.

When this bill was originally offered, the State's authority was absolutely removed, but this question of State and Federal relationship was not at any time considered or provided for or impinged on or touched by title III. We may not now engage in this very important change—and it is a widening change, as I have pointed out—by an attempt to amend title III to reach into other sections to accomplish such a change.

Now, I have already alluded to the threshold question, and I think I have discussed that rather thoroughly. I would, though, like to point out one thing, and this, I think, is at the practical basis of a rule requiring that an amendment reaching back to deal with something that has previously been dealt with and including matters not germane to the section which has already been dealt with should not later be revisited by a wide-ranging amendment in a given title of the bill that ranges not only through the areas of title III but through the entire gamut of title II and into many other areas not touched by either title II or title III and, in the Rock Island case, not even touched by the original bill.

The reason for the rule is simply this: That there should be some sort of order to our proceedings. We should deal with one subject matter and not inject into it other subject matters during the reading of the bill. There are ways to get to these points which I have alluded to, either by adding a new section or a new title, which would then fall within the germaneness rule with respect to the whole bill, or by offering a substitute amendment at the end.

But let us note the ingenious manner in which it is attempted to leave in place, without touching it, the provisions that this body with careful deliberation has established through the Eckhardt-Rahall amendment to title II. The language which is contained in this amendment that attempts to get by that is this:

> In any case in which any provision of or amendment made by title II of this Act conflicts with any provision of or amendment made by this title, the provision of or amendment made by this title shall control.

What is attempted to be done is to enter into the whole major subject matter of title II and reverse it by putting this in a title which does not have anything to do with the question of the jurisdictional scope and limitations of the ICC.

But as I have pointed out, that is not as egregious an error as to reach clean outside the bill to deal with other statutes not even touched by title III and with matters which are not even touched by the bill itself.

Title III does include two provisions relating to ratemaking: Section 301 relating to joint rate relief and section 302 relating to rate bureaus. However, neither of these provisions relate to the trigger for ICC jurisdiction over interstate rates. Thus section 304 of the proposed amendment is subject to a point of order.

Mr. Chairman, there is yet another section which is itself subject to the point of order. That is section 332. This is subject to a point of order under the committee jurisdiction test as well as the subject matter test.

In particular, section 322(g) requires the Secretary of the Treasury to submit a report on the anticipated effect of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines.

This matter is clearly within the jurisdiction of the Committee on Ways and Means, and, therefore, it is not germane to legislation within the jurisdiction of the Committee on Interstate and Foreign Commerce. See Deschler's Procedure, chapter 28, section 4.42, where it is said:

> To a title of a bill reported from the Committee on Interstate and Foreign Commerce containing diverse petroleum conservation and allocation provisions, an amendment imposing quotas on the importation of petroleum products from certain countries was held to be a matter within the jurisdiction of the Committee on Ways and Means and was ruled out as not germane.

Mr. Chairman, for these many reasons, all of which are supported by reason and all of which are based upon the protection of the processes of this House, I urge that the Chair should rule the Staggers-Rahall-Lee amendment not germane.

The CHAIRMAN. Does the gentleman from New Jersey (Mr. FLORIO) care to be recognized on the point of order?

Mr. FLORIO. Yes, Mr. Chairman, I do. I will try to be a little more succinct and state the reasons why the point of order should not be sustained.

Mr. Chairman, title III, as reported by the Committee, is a diverse title dealing with many and diverse railroad issues, including surcharges and cancellations, rate bureaus, and employee protection in abandonment proceedings involving bankrupt carriers. The title has unrelated provisions dealing with many sections of the Interstate Commerce Act. These provisions were separated from title II simply to break up an otherwise unwieldy series of provisions. A quick synopsis of the provisions in title II will bear this out.

Section 301 permits carriers recovering less than 110 percent of their variable costs in a particular movement to surcharge or cancel such rates. Section 302 narrows the antitrust immunity railroads have under the Reed-Bullwinkle Act to establish rates collectively. Section 303 permits a railroad to charge more for a longer haul than a shorter haul in the same direction over the same route, contrary to existing law.

Section 304 allows one railroad to construct a new railroad line across another railroad. Section 305 provides that carriers which meet commitments on contracts do not violate their common carrier obligations.

Section 306 permits the ICC to order one railroad to pick up and deliver cars not on its own lines. Section 307 gives the ICC the discretion to grant antitrust immunity to shippers to discuss the compensation that will be paid for the use of their own cars.

Section 308 defines the conditions which must exist before the ICC may issue car service orders and limits the duration of such orders. Section 309 provides for employee protection in abandonment proceedings involving bankrupt rail carriers and amends title II of the United States Code which deals with bankruptcy proceedings for railroads.

It is clear from a mere recitation of the extent of this title that there is no common thread running through title III, except that all sections deal with railroad matters. The name of title III, the "Railroad Inter-Carrier Practices," was used primarily because section 301, the most important provision in the title, addresses such practices. The title was not intended to govern the subject matter of that entire title. The amendment we are

offering is germane because it generally deals with railroads and it includes section 301 of the bill as reported by the committee with other minor changes.

The amendment contains minor changes in the present section 301 which are clearly germane to title III. It also contains sections dealing with regulation of rates by the ICC, the establishment of competition between a rail movement and existing or potential movements by rail or other modes, a study by the ICC on the extent to which competition should enter into the ICC decisionmaking process, the establishment of a percentage zone of permissible rate increases which is identical to a provision currently in title III relative to general rate increases, suspension or investigation of rates, contracts, exemption of rail carriers from most provisions of the act, specific changes to sections of title III which will be maintained, and changes to the Rock Island Transition and Employee Assistance Act.

□ 1450

Present title III amends and affects a great number of sections of the Interstate Commerce Act and other statutes, a list of which has been provided to the Parliamentarian, and including title II of the United States Code.

In conclusion, title III covers a broad range of railroad issues, as does the amendment. There is no unifying factor in title III, but they address matters affecting railroads and, accordingly, and under the precedents, the amendment is and does appear to us to be germane.

The CHAIRMAN. The gentleman from Minnesota (Mr. FRENZEL) reserved a point of order.

Does the gentleman from Minnesota wish to be heard on the point of order?

Mr. FRENZEL. I do, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, I have a further point of order.

The point of order of the gentleman from Texas does deal with germaneness, and the argumentation by the subcommittee chairman also dealt with that.

Mr. Chairman, my point of order against this amendment is one of germaneness, as well. I invite the Chair's attention to section 328 of the proposed amendment dealing with loan guarantees. That section states as its purpose, and I quote, "to promote competition in the transportation of coal."

The purpose of the bill before us, according to its purpose in section 3, is "to provide for the restoration, maintenance and improvement of the physical facilities and financial stability of the rail system of the United States."

Nowhere in the bill are we dealing with promoting competition in the transportation of one particular item. The proposed amendment's purpose is, as I stated, "competition in the transportation of coal," and not the "rehabilitation (of) the rail system in order to meet the demands of interstate commerce and the national defense," as the bill proposes to do.

The chairman of the subcommittee argues that because there are a lot of different things in the bill, somehow it escapes the rules of germaneness. If we are to accept that kind of reasoning, any substitute, however gross, however nongermane, would somehow be declared germane.

This particular section, section 328, was not included in the original bill and cannot escape that rule of germaneness, Mr. Chairman.

The amendment specifically amends section 4(f) of the Department of Transportation Act and states that such section of the Department of Transportation Act shall not apply to any loan guarantee described in the loan guarantee section attempting to promote competition in the transportation of coal. The bill and the amendment in the nature of a substitute offered by the committee do not amend this provision of the law, and this new amendment is waiving a section of another law not contained in the original bill nor in the committee amendment.

This is an omnibus bill, I grant that. It does involve financing of the rail system. But the amendment proposed by the gentleman from West Virginia, and others, goes much farther than the bill and expands the scope to involve loan guarantees to promote competition in the transportation of a single commodity.

I have a couple of citations, Mr. Chairman. One of them is Deschler's Procedure, chapter 28, section 33.6 where an amendment proposing changes in the Agricultural Marketing Agreement Act, amending several laws relating to agriculture, which was not otherwise amended in the bill, that is, the amendment to a section not otherwise amended in the bill, was ruled not germane.

In Deschler's Procedure, chapter 28, section 16.6, "* * * a substitute for an amendment must be confined in scope to the subject of the amendment."

As I pointed out earlier, section 328 far exceeds the scope of the amendment that it seeks to amend.

Another Deschler's Procedure citation, chapter 28, section 16.7, reads as follows:

> A substitute amendment must be germane to the amendment for which offered and must relate to the same portion of the bill being amended by the amendment.

The gentleman from Texas, I think, carefully pointed out that the amendment offered by the gentleman from West Virginia does not conform to this standard of germaneness, and I urge that the Chair rule the amendment out of order.

The CHAIRMAN. Does the gentleman from New Jersey (Mr. FLORIO) wish to be recognized?

Mr. FLORIO. Mr. Chairman, on the point that has been raised, I think I have adequately addressed the question that the scope of this amendment and the scope of the bill, titles I and II, are sufficiently broad, related to railroad matters, that they are germane, and I would just renew our request that the Chair so rule.

The CHAIRMAN. Does the gentleman from Illinois (Mr. MADIGAN) wish to be recognized on the point of order?

Mr. MADIGAN. Mr. Chairman, I should like to be heard on the question of germaneness of the Staggers substitute.

The CHAIRMAN. The Chair recogizes the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I point out at the outset that in his argument the gentleman from Texas has referred to the Staggers substitute as containing a provision to amend the Internal Revenue Code.

As a matter of fact, there is no such provision in the Staggers substitute. There is only a request for a study and a report of the results of that study.

Mr. Chairman, I believe the amendment is germane to title III of this bill. Title II affects a broad range of issues affecting railroads. It amends many provisions of the Interstate Commerce Act, both in subchapter 107, subchapter 109, subchapter 111, and subchapter 113, and it, as well, amends title 11 of the United States Code as it applies to railroads.

Similarly, the amendment affects a broad range of issues affecting railroads. It includes amendments to various subchapters of the Interstate Commerce Act and to title 45 of the United States Code as it affects railroads.

The only unifying factor in title III is that all of the provisions affect railroads. In the same way, the amendment is a diverse one which deals with many issues affecting railroads.

Title III was separated from other parts of this bill only so that the bill would be easier to follow. There is no logical distinction between the titles of the bill. The heading for title II, "Inter Carrier Practices," was chosen because the most important provision in that title deals with how railroads divide revenues. The other provisions do not relate only to inter-railroad practices.

The amendment is germane and I believe the Chair should so rule.

I would cite, in making that argument, chapter 27, section 27.9 of Deschler's Precedents, which deals with the issue now before us as I see that issue. I believe that the gentleman from Texas is questioning whether or not we can amend in title III something that has already been amended in title II.

The reference that I have made reads, and I wish to quote:

> While the Committee of the Whole may not amend a section of a bill already passed during the reading under the 5-minute rule, it may adopt an amendment to a later section which has the effect of negating the provisions of the earlier section.

There are references there cited.

On the basis of that, I would urge that the Chair would uphold the gentleman from New Jersey and find the amendment to be germane.

The CHAIRMAN. Does the gentleman from Texas (Mr. ECKHARDT) wish to be recognized?

Mr. ECKHARDT. Just briefly, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, in the statement of the gentleman from Illinois as to my position, I have exactly what I said a moment ago. I did not say that section 332(g) seeks to amend the Revenue Code. What I said, in particular, section 332(g) requires the Secretary of

the Treasury to submit a report on the anticipated effect of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines.

I did not say that it amended the Code. I said precisely what it does. Yet I think it is quite clear that it calls upon the Secretary of the Treasury to make a recommendation. Such recommendation is clearly also within the jurisdiction of the Committee on Ways and Means.

The CHAIRMAN. The Chair is prepared to rule.

The gentleman from Texas makes the point of order that the amendment offered by the gentleman from West Virginia (Mr. STAGGERS) is not germane to title III of H.R. 7235 but rather is an attempt to indirectly amend provisions already amended in title II of the bill which has been passed in the reading for amendment, and also to include extraneous provisions relating to railroads not addressed by title III.

First, the Chair would state that the Chair does not rule on the consistency of amendments but rather on the substance of amendments.

Under the provisions of House Resolution 716 governing consideration of the bill pending, the bill is being considered by titles, and title III, not merely section 301, is now open to amendment at any point. Thus, the relevant test of germaneness of the amendment is its relationship to the entire pending text, title III, and not merely to section 301 relating to joint rates.

The Chair has had an opportunity to examine the scope of title III and basically agrees with the characterization of that title made by the gentleman from New Jersey that title III is diverse in its treatment of railroad regulation and employee protection and bankruptcy issues and is not merely confined to intercarrier practices issues, as suggested by the title heading.

The Chair would also agree that the revenue provisions cited by the gentleman from Texas do not amend the Internal Revenue Code but do instead call for a study on taxation, which study, if submitted, would be referred to the Committee on Ways and Means.

In a similar situation, an amendment requesting a study of a possible change in tax law, but not amending the Internal Revenue Code, was held germane to a bill not reported by the Committee on Ways and Means; this ruling on October 18, 1979.

□ 1500

The Chair would also note that the loan guarantee provision cited by the gentleman from Minnesota relates to railroad carriers only although applicable to rail transportation of coal. The Chair would in this case rely on the precedent cited in Deschler's Procedure, chapter 28, sections 2.15 and 2.16, standing for the proposition that an amendment may be germane to more than one portion of the bill, and involving a comparable situation wherein a title of the bill in which the amendment would have been particularly germane had been passed in the reading for amendment. The amendment in that case was offered to a subsequent title of the bill containing miscellaneous provisions on a general subject; and Chairman PRICE stated at that time that while "an examination of the amendment shows that it would have been more appropriately offered to another title of the bill, the Chair does observe that the title which is under consideration is referred to as miscellaneous amendments, and it amends several other acts."

The Chair would state that there are two other precedents in chapter 28 of Deschler's that are applicable in this case. Section 14.3 states that an amendment may be germane at more than one place in the bill, thus where the first several sections of the bill pertain to one category within the subject under consideration and subsequent sections introduce other such categories, an amendment adding a further such category may be offered at either of two places, the point which in the reading of the text the sections dealing with the first category have been passed, or at the end of that part of the text where the other categories have been added.

Section 14.11 states that the test of germaneness of an amendment in the form of a new section to the title of the bill being read by titles is the relationship between the amendment and the pending title.

The Chair feels that title III is sufficiently broad in scope to admit as germane an amendment dealing, inter alia, with the subject of railroad rates and other railroad related employee protection, bankruptcy, and financial assistance provisions although they may only be applicable to specific railroads or to specific commodities transported by rail.

The Chair overrules the point of order.

The gentleman from New Jersey (Mr. FLORIO) is recognized for 5 minutes in support of the amendment.

Mr. FLORIO. Mr. Chairman, to start the debate officially on this amendment. I would like to assure the Members of this body that when we go forward on Tuesday, we are prepared to debate this matter.

Before moving to rise, I would like to ask if the gentleman from Texas (Mr. ECKHARDT) intends to offer at this point, or to insert in the RECORD, the amendment that he has in the nature of a substitute, which has been provided to us?

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I thank the gentleman for yielding.

The gentleman from Texas believed, he has argued on the point of order, that he was confined to offering his amendment within what he conceived at the time as the scope of title III.

The gentleman from Texas did not believe he was permitted to offer the many sweetening amendments that the gentleman from New Jersey (Mr. FLORIO) has placed in his amendment.

The gentleman from Texas is going to have to look at the ruling, because he is now apparently permitted, for instance, to offer in his amendment things like the sweetener with respect to the Rock Island with respect to other railroads, which he thought were precluded to the gentleman, as he stated in his argument.

Therefore, we are not prepared at this time, in view of the ruling, which has frankly surprised us, to agree that the substitute will be so limited. We find now that we may range out much more broadly than we had thought when we drafted the amendment.

Mr. FLORIO. Mr. Chairman, I thank the gentleman for his answer, which I assume is, no, he is not going to offer his amendment that has been represented as the amendment to be offered as a substitute to the Staggers-Lee-Rahall-Loeffler amendment.

This Member assumes that we can foresee the gentleman putting into the RECORD at the next available opportunity, Monday, which will be printed and available on Tuesday, the day we are to take up this bill. This will be the first time many Members will have the opportunity to look at the amendment. Of course, this will start the whole process that we have had today all over again. This Member is hopeful that that will not be the case; but he appreciates the gentleman's position and is hopeful that we can go forward on Tuesday as expeditiously as possible to resolve this matter. This is a very important piece of legislation which should be dealt with in the legislative process without obstacles being put forth to stop this body from debating this and coming to a conclusion on the merits of this legislation.

Title III as reported by the committee is a diverse title dealing with many and diverse railroad issues, including surcharges and cancellations, rate bureaus, and employee protection in abandonment proceedings involving bankrupt carriers. The title has unrelated provisions dealing with many sections of the Interstate Commerce Act. These provisions were separated from title II simply to break up an otherwise unwieldy series of provisions. A quick synopsis of the provisions in title II bears this out.

Section 301 permits carriers recovering less than 110 percent of their variable costs in a particular movement to surcharge or cancel such rates. Section 302 narrows the antitrust immunity railroads have under the Reed-Bullwinkle Act to establish rates collectively. Section 303 permits a railroad to charge more for a longer haul than a shorter haul in the same direction over the same route, contrary to existing law. Section 304 allows one railroad to construct a new railroad line across another railroad. Section 305 provides that carriers which meet commitments on contracts do not violate common carrier obligation. Section 306 permits the ICC to order one railroad to pick up and deliver cars not on its own lines. Section 307 gives the ICC the discretion to grant antitrust immunity to shippers to discuss the compensation they will be paid for use of their own cars. Section 308 definues the conditions which must exist before the ICC may issue car service orders and limits the duration of such orders. Section 309 provides for employee protection in abandonment proceedings involving bankrupt rail carriers and amends title II of the United States

Code, which deals with bankruptcy proceedings for railroads.

It is clear that there is no common thread running through title III, except that all sections involve railroads. The name of title III "Railroad Inter-Carrier Practices" was used because section 301, the most important provision in the title, addresses such practices. The title was not intended to govern the subject matter of that title. The amendment we are offering is germane because it generally deals with railroads and it includes section 301 of the bill as reported by the committee with minor changes.

The amendment contains minor changes to the present 301, which are clearly germane to title III. It also contains sections dealing with regulation of rates by the ICC, the establishment of competition between a rail movement and existing or potential movements by rail or other modes, a study by the ICC on the extent to which competition should enter into ICC decisionmaking, the establishment of a percentage zone of permissible rate increases which is identical to a provision currently in title III, suspension or investigation of rates, contracts, exemption of rail carriers from most provisions of the act, specific changes to sections of title III which will be maintained, and changes to the Rock Island Transition and Employee Assistance Act.

Present title III amends and affects a great number of sections of the Interstate Commerce Act and other statutes. This list—including title II of the United States Code—has been provided to the Parliamentarian:

1. 10705.
2. 10706.
3. 10726.
4. 10901.
5. 11101.
6. 11103.
7. 11122.
8. 15 USC et seq. (Sherman Act), 15 USC et seq. (Clayton), 15 USC 41 et seq. (Federal Trade Commission Act), 15 USC 8 and 9 (Wilson Tariff Act), 15 USC 13, 13a, 13b, and 21a.
9. 1123.
10. 11347.
11. 11 USC 1170 (Bankruptcy Act).

The amendment amends the following provisions of the Interstate Commerce Act or other statutes:

1. 10705.
2. 10701.
3. 10709.
4. 10707.
5. 10712.
6. 10713.
7. 10727.
8. 10729.
9. 10730.
10. 10741.
11. 10505.
12. 11501.
13. 10751.
14. 10762.
15. 10706.
16. 45 USC 1001 et. seq. (Rock Island Railroad Transition and Employee Assistance Act).
17. 45 USC 901 et seq. (Milwaukee Railroad Restructuring Act).
18. 45 USC 231 (Railroad Retirement Act).
19. 45 USC 825(h).

Title III covers a broad range of railroad issues, as does the amendment. There is no unifying factor in title III but that it addresses matters affecting railroads. The amendment does the same and is germane.

Mr. FLORIO. Mr. Chairman, I would like to insert in the RECORD at this point the amendment that the gentleman from Texas (Mr. ECKHARDT) provided to me as the amendment that he intended to offer as a substitute to the Staggers amendment. I do this so the Members will have the weekend and Monday to review the substitute of the gentleman from Texas and analyze it along with the Staggers amendment.

EXPEDITED DIVISION OF REVENUE PROCEEDINGS

SEC. 301. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(A) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(B) in all cases other than those specified in subparagraph (A) of this paragraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this subparagraph, it must report its reasons to Congress.".

Page 98, strike out the item relating to section 301 and insert in lieu thereof the following:

SEC. 301. Expedited division of revenue proceedings.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. AUCOIN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, H.R. 7235, to reform the economic regulation of railroads, and for other purposes, had come to no resolution thereon.

LEGISLATIVE PROGRAM

(Mr. RHODES asked and was given permission to address the House for 1 minute.)

Mr. RHODES. Mr. Speaker, I take this time in order to inquire of the gentleman from Michigan (Mr. DINGELL), the distinguished acting majority leader, as to the program for the balance of the week and for the next week.

Mr. DINGELL. Mr. Speaker, if the gentleman will yield, the schedule for next week is as follows:

On Monday, September 8, the House will meet at noon. It is District Day. There are no bills.

The House will consider the following 11 bills under suspension of the rules:

H.R. 7817, criminal procedure and evidence rules amendments.

H.R. 7306, provide for disposal of certain Federal lands in Nevada.

H.R. 6629, Indian health care programs.

S. 1250, Stevenson Technology Innovation Act of 1980.

H.R. 6372, withholding State income tax from civil service retirement annuities.

H.R. 7466, personal assistants for handicapped Federal employees.

H.R. 7666, life insurance program improvements.

S. 299, Small Business Regulatory Flexibility Act.

H.R. 7779, IRC amendments re Tax Court judges.

H.R. 7956, Miscellaneous Revenue Act of 1980.

H.R. 20, Aquaculture Act.

Also to be considered is H.R. 6790, Foreign Service Act of 1980, under an open rule with 2 hours of general debate.

Then we will consider H.R. 7301, military construction authorizations, fiscal year 1981, under an open rule with 2 hours of general debate.

On Tuesday, September 9, the House will meet at 12 o'clock noon. There will be no bills under suspension. Recorded votes, if ordered, on suspensions debated on Monday, September 8, 1980, will be taken.

Also to be considered is H.R. 7235 the Rail Act of 1980, and it is expected that consideration will be completed that day.

If time remains we will also consider:

H.R. 7265, DOE authorizations of Defense programs, under an open rule with 1 hour of general debate. The rule already will have been adopted; and

H.R. 7244, increase U.S. quota in International Monetary Fund, under an open rule with 1 hour of general debate.

On Wednesday, September 10, the House will meet at 10 a.m., for the consideration of:

H. Res. 745, resolution of inquiry directed to the President of the United States.

H.R. 7668, Intelligence Oversight Act of 1980.

H.R. 85, Comprehensive Oil Pollution Liability and Compensation Act.

And, H.R. 7020, Hazardous Waste Containment Act of 1980.

□ 1510

H.R. 7668, Intelligence Oversight Act of 1980, under an open rule, with 2 hours of general debate.

H.R. 85, Comprehensive Oil Pollution Liability and Compensation Act, under a modified rule, with 3 hours of general debate.

H.R. 7020, Hazardous Waste Containment Act of 1980, under a modified rule, with 2 hours of general debate.

On Thursday and Friday, the House will not be in session in observance of the Jewish New Year.

The House will adjourn by 3 p.m. on Wednesday. Adjournment times on Monday and Tuesday will be announced.

I also would advise that conference reports may be brought up at any time and any further program will be announced later.

Mr. RHODES. Could the gentleman

inform the House as to whether or not all votes on Monday will go over until Tuesday? The tentative 7 schedule says that recorded votes on suspension debated on Monday go over and the program calls for two other bills to be considered on Monday.

I wondered what the status might be on any votes that might occur on those bills.

Mr. DINGELL. Mr. Speaker, will the gentleman yield further?

Mr. RHODES. I yield.

Mr. DINGELL. The votes on suspensions will be put over until Tuesday. Votes on bills which will be up under a rule will take place on Monday.

Mr. RHODES. Could the gentleman inform us as to the probable time of adjournment on Monday, September 8?

Mr. DINGELL. I do not really think I can give the gentleman good counsel on that. It would depend on how long it would take to conclude the business.

I note that there are 4 hours of debate and 11 hours of suspensions, or rather there is a potential of 11 hours of suspensions. Probably they will not take that long, but that could be apart from votes and apart from amendments and consideration under the 5 minute rule; it could be up to 13 hours, but I do not know.

Mr. RHODES. I gather it is the intention of the leadership to complete the work on Monday which is set forth here, 11 suspensions and 2 bills, before adjournment on Monday night.

Mr. DINGELL. I believe that is correct; yes.

Mr. RHODES. Also, I do understand that the fourth suspension, S. 1250, when it passes the House will not just be the Stevenson Technology Innovation Act of 1980, it will be the Stevenson-Wydler Technology Innovation Act of 1980; is that correct?

Mr. DINGELL. If the gentleman would yield, I have no intention of intruding on that. I believe that will be decided by the committee. I do know that the gentleman from New York (Mr. WYDLER) is a very distinguished member of that committee; I would be ill put to quarrel with that judgment.

Mr. RHODES. I just wondered, because the name WYDLER was marked off on tentative schedule No. 7. I assume that it will be reinstated at the proper time.

Mr. DINGELL. I am not prepared to tell the gentleman what the fact is.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the gentleman from Arizona for yielding.

I really do not direct this as a question to the gentleman from Michigan, because know he is only acting as the majority leader to give us the program. It is more of a comment.

I have looked at this program carefully. I consider it to be in essence a joke. There is no way that the legislation that has been announced can be completed next week.

For instance, on Wednesday, there is listed 7 hours of general debate on three different bills and the program also says that we will only be in session for 6 hours. That does not even consider the fact that we will have a resolution of inquiry that might take some time.

If I may just finish, I understood some weeks ago we were told that we would be recessing on October 4 and coming back for a lameduck session sometime after the elections. In the last 24 hours I have heard the rumor that we may recess on September 20 or September 26 to accommodate the other body, which has apparently a massive and collective urge to get out on the campaign trail, for good reason.

I do think it is incumbent on somebody in the leadership in this House, if there is any on the majority side, to come forward and tell the House and the people of the United States what is their legislative program for the rest of the year if, indeed, they have any. Maybe this one lone voice crying in the wilderness will spur them to do the courtesy to the Members of the House to tell them exactly what is going on around here, because obviously, nobody knows.

Mr. DINGELL. Mr. Speaker, will the gentleman from Arizona yield?

Mr. RHODES. I yield.

Mr. DINGELL. In response to the first point, it means that we shall have to debate matters rather rapidly on Wednesday next. I am sure that the gentleman from Maryland will assist us in that undertaking.

With regard to the next point, it is the intention of the leadership that we shall adjourn on October 4, as announced. Hopefully, we will be able to meet that date. Regrettably, if the business is not transacted in good time and we are not able to do so, there probably will be occasion that there will be some further attention by this body to its legislative business.

I do thank the gentleman for yielding.

Mr. RHODES. I do think I should reassure the gentleman from Michigan, as I have assured the majority leadership, that if the majority leadership desired to stay in session until all business is completed, the minority would be glad to cooperate in staying. We might not be cooperating in passing the bills, but we would certainly cooperate in considering them.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Georgia.

Mr. LEVITAS. I thank the gentleman for yielding.

I have several questions. The first relates to the bill on suspension, S. 299. Could the gentleman from Michigan inform me whether this bill has been considered by any committee of the House, and if so, which committee?

Mr. DINGELL. I know the number of the bill because the gentleman has mentioned it. The name of the bill and what it does, I must confess, I am not familiar with.

Mr. LEVITAS. It has to do with regulatory flexibility.

Mr. DINGELL. I observe that it is I believe a Judiciary Committee bill, S. 299, Small Business Regulatory Flexibility Act. It may also be that that is one that came jointly from the Committee on the Judiciary and the Committee on Small Business.

Mr. LEVITAS. Has that legislation been considered by either or both of those committees, so far as the gentleman knows?

Mr. DINGELL. I can only assume that the answer to that question is "Yes"; otherwise it would not be on the Suspension Calendar.

Mr. LEVITAS. I would hope that no bill would be on suspension that had not been considered by some committee of this body, although I am informed that it has, in fact, not been considered by any committee.

Mr. DINGELL. I would say, if the gentleman from Arizona would yield further, that it is probably good grounds for attacking the bill, but I am not able to give the gentleman competent counsel on that.

Mr. LEVITAS. If the gentleman will yield further, I notice an absence on the calendar, even subject to a rule or otherwise, for consideration of two bills, one of which is an administration bill known as the Regulation Reform Act, which is the centerpiece, I am told, of the administration's regulatory reform program.

Can the gentleman from Michigan advise the gentleman from Georgia and Members of this House whether or not there is any intention on the House having an opportunity to vote on the Regulation Reform Act?

Mr. DINGELL. I believe that bill has yet to be reported from the committee and it has yet to get a rule. Until such time as that has occurred, I would suspect it would be quite difficult to program the bill.

If the gentleman would yield further, and I do thank him for yielding, I would assume that the leadership would program that expeditiously when the committees of appropriate responsibility have acted.

Mr. RHODES. I say to the gentleman from Georgia, if my memory serves me correctly, the bill that the gentleman mentioned was not on the list of "must" legislation that came from the majority leadership.

Mr. LEVITAS. If the gentleman from Arizona will yield further, I thank the gentleman for that observation.

I find it almost amazing, since it is the centerpiece of the administration's regulatory reform program, that it is not considered an important piece of legislation. I just would like to mention that.

Mr. RHODES. I share the gentleman's amazement.

I yield back the balance of my time.

REQUEST TO DISPENSE WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule on Wednesday of next week be dispensed with.

The SPEAKER pro tempore (Mr. RAHALL). Is there objection to the request of the gentleman from Michigan?

Mr. LEVITAS. Mr. Speaker, reserving the right to object, and I do so to inquire whether or not the acting majority leader feels that we could expedite the proceedings of this body by getting the Regula-

tory Reform Act reported out of committee, which I understand has been sabotaged since May 14, and perhaps even avoid the necessity of offering a legislative veto amendment to the rail bill, which will be pending on Tuesday. Does the gentleman know?

Mr. DINGELL. Well, if the gentleman will yield, I certainly have no objection to the gentleman offering an amendment to the rail bill. As the gentleman knows, I am not over much in sympathy with it myself; but with regard to the question of getting it reported, I think that is a matter that should more appropriately be addressed to the majority leader or to the chairman of the committee or perhaps the Speaker.

Mr. LEVITAS. Mr. Speaker, further reserving the right to object, I would like to state that it is the intention of the gentleman from Georgia to take such steps as are within his authority, power, and jurisdiction, to create as many incentives as possible for the leadership of the House to see that the Regulatory Reform Act is reported out expeditiously and pending that occurrence to offer such amendments and make such motions and objections as is necessary to provide adequate incentives.

□ 1520

Mr. LEVITAS. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

ADJOURNMENT TO MONDAY, SEPTEMBER 8, 1980

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at noon on Monday, September 8, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

DOT REFUSES WAIVER IN ABILENE, TEX., CASE

(Mr. SIMON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SIMON. Mr. Speaker, if Senator PROXMIRE of Wisconsin is seeking another place to award a Golden Fleece Award, I have a nomination for him. If anyone in Government wonders why many people get irritated with officialdom, I have a perfect illustration of Government regulation gone rigid and insensitive, serving itself rather than the public. If President Carter wonders why those who supposedly serve the public under his direction can be causing political problems for him, I have a detailed case for him.

The relatively new Department of Transportation is already at least partially ossified.

Some of you may recall that when the Department of Transportation appropriation was before our body, our distinguished colleague from Texas, (Mr. STENHOLM), offered an amendment giving local authorities the option of meeting the present requirements of accessibility. I resisted that amendment, and it was defeated, as it should have been. But in the course of debate I assured our colleague from Texas (Mr. STENHOLM) that I would be happy to meet with him and with the officials from Abilene, that if, indeed, they had an unusual situation, I would join him in asking the Department of Transportation to grant a waiver, that the law did not need to be emasculated in order to secure flexibility.

Shortly after that debate I met with the mayor of Abilene, Mr. Oliver Howard, and its city manager, Mr. Ed Seegmiller. Meeting with us was Ms. Judith Wagner, staff director of the Subcommittee on Select Education. I have the honor of chairing that committee, which among other responsibilities has the major oversight role on most of the programs for the handicapped. I have been proud to champion the cause of these people who need a greater opportunity in our society. I made clear at that meeting that accessibility must continue to be the law of the land. It must be the rule and not the exception. Mainstreaming must be the general pattern.

At the meeting with the Abilene officials I said that I was willing to send a subcommittee staff member down to Abilene to look at their situation, though I frankly was skeptical that any waiver would be warranted. I have talked to too many officials in too many cities who believe they should be exempt from the law and regulations. But I felt that I owed their city and our colleague from Texas, Mr. STENHOLM, this extra look. I asked Marylyn McAdam, who spends her waking hours in a wheelchair and who understands the problems of the handicapped, to go to Abilene. She went and spent 2 days there. She went over every bus route. She talked to the handicapped. She talked to city officials. She came back and reported that Abilene is indeed different, that a partial waiver is both justified and desirable, that two of the bus routes which serve the main part of the city and the two malls, as well as the West Texas Rehabilitation Center, should be required to have lifts because these areas are accessible, but that because of the unusual terrain and street structure, that the rest of the bus routes should be served by special vans for the handicapped.

Her report provided better answers for the handicapped. It included accessibility. Her report provided better answers for city officials who wanted to serve the people rather than waste money. Her report could save money for the taxpayers of Abilene and the taxpayers of the Nation, since the Federal Government picks up 80 percent of the additional cost.

I checked with Congressman STENHOLM and he reported back to me that while her recommendation was not the complete waiver Abilene had requested, on reflection they felt it was an excellent recommendation and they could accept it.

We had the complication of time pressing upon us. By the time the city had contacted my Texas colleague and me they had only about 2 weeks before they had to make a decision on signing a contract for buses which included lifts. If they failed to sign the contract, the price would go up on a rebid.

Our staff and I immediately made contact with the Department of Transportation. At first the staff was told that the Department did not have the legal authority to waive the requirements. That shield disappeared quickly; they do have the legal authority.

I tried to reach Secretary of Transportation Neil Goldschmidt, who has always made a favorable impression on me, but he was on a vacation, one that I have every reason to believe he richly deserved. I was told he could not be reached. I then talked to the Deputy Secretary, William Beckham, and he admitted there was no legal barrier to a waiver, and he assured me that the reason they were denying the waiver—even after Marylyn McAdam went over to discuss her report with them—had nothing to do with the facts or the legality, but the philosophy of the matter. He also told me—as others did over and over—that if they granted this partial waiver, there would be increased pressure on them to grant other waivers. He admitted that the Department's representative in Texas who also visited Abilene made a recommendation for a waiver, as did their regional manager. He did not dispute that the handicapped of Abilene would be better served by the McAdam recommendation; he did not dispute that the taxpayers of the Nation would save money; what he was telling me essentially was that it was a matter of administrative convenience to reject the waiver request. He was polite at all times, but unbending.

I called Stu Eizenstat, who heads President Carter's domestic staff at the White House and who I regard as one of the finest public servants I have ever known. He is a quality person in every respect. I caught him a few minutes before he was to leave for a weekend with his family. He turned the matter over to a member of his staff with whom I visited at length on at least two occasions. She ultimately said that the key person was Theodore Lutz, counsel for the Department of Transportation.

I had phone conversations with him similar to those with Mr. Beckham. He did not dispute the facts. I asked him (on a Friday) whether he would be willing to make a trip to Abilene to find out the facts for himself or if he preferred to make decisions without the facts. He seemed most reluctant to even consider making a trip to Abilene.

So we found ourselves facing a contract deadline with someone sitting at a desk in Washington who was making a decision, not on the basis of facts, but despite the facts, who has in the past rendered a service to the handicapped community by not caving into pressure for waivers when the facts did not warrant it, but who has now caused problems for the handicapped because of his rigidity.

During this period I tried reaching a variety of other officials who might talk sense into the Department of Transportation because by this time I could not believe what I was being told on the phone. One of these I tried to reach was the Secretary of Transportation. He returned from his vacation and apparently tried to reach me on Sunday night, August 31. Tuesday afternoon I called his office at least twice and then he returned the call from his automobile, on the way home. We chatted briefly about the situation and he said he would be back to me that night. Later he called and repeated the same line that he did not want to be inundated with waiver requests and so he would have to deny the request for a waiver. If the law should change—and it may soon—he would be willing to reimburse the city of Abilene for some of their losses. I conveyed this less than satisfactory response to Congressman STENHOLM and Mayor Howard.

In one final attempt to work this out, the next day I tried to work in a conference call between Marylyn McAdam, Secretary Goldschmidt, Mayor Howard, Congressman STENHOLM, and myself. The Secretary was too busy to join such a conference call. We were offered the Deputy Secretary instead, and I declined that high honor.

Complicating all of this is that we soon will face the authorization for the Department of Transportation and there are those who would emasculate the present requirements in the law which require accessibility for the handicapped. The law has been a giant step forward for a sizable body of Americans and there should be no retreat. Unfortunately, the rigidity of the Department of Transportation is ammunition for those who say bureaucracies cannot be trusted, that they do not exercise commonsense. And so we face increased pressure because of Abilene to take a step backward. What we need to do is not to take any backward steps but simply to make clear to the Department that we expect them to pay attention to facts, to be sensitive to the needs of the handicapped, to continue to push for accessibility, and to exercise a little commonsense. That is asking more than we have received, but it is not asking too much.

It was with great reluctance that I called Mayor Howard and told him toward the end of the day on Tuesday that there no longer was any hope, that the public image of bureaucracy—and I hasten to add I have not found this typical—had prevailed over compassion and commonsense.

I want to pay tribute to Mayor Howard, and particularly to my colleague, Mr. STENHOLM, who played a much more prominent role in all of this than my relating this narrative suggests. Though I disagreed, and disagree, with his amendment, I have found him to be practical, hard working, sensitive to the complex problems we were dealing with. The people of Abilene should know that he served them well in this matter, even though everyone lost.

DOT INFLEXIBLE ON PROBLEMS OF HANDICAPPED IN ABILENE

(Mr. STENHOLM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STENHOLM. Mr. Speaker, may I say at the beginning that I sincerely appreciate the effort of my colleague, the gentleman from Illinois, Mr. PAUL SIMON, in trying to be of help to the people of Abilene, Tex., in meeting the needs of the handicapped in that area. We were not successful.

As we remember, on July 31 the amendment that I offered in the House was turned down by some 27 votes because it was felt that we should not legislate on an appropriations bill. The result of this now has been that the city of Abilene has had to purchase, because of contractual agreements, 14 wheelchair lifts for buses in Abilene, Tex., which will be a waste of money and will not meet the needs of the handicapped, as testified by a majority of the handicapped of the Abilene commmunity.

Since the beginning of my work in the U.S. Congress I have been witness to the manufacturing and implementation of new, arbitrary, meaningless, illogical, ill-conceived, ill-timed, poorly executed, and uncompromising regulations by various Federal agencies day after day. This latest example of an unbending attitude by the bureaucracy, which is not elected by the American people, must be made known, because we in the Congress have the responsibility.

Mr. Speaker, we cannot run America from Washington. Yet we in the Congress continue to allow the bureaucracy we have created to do that, and they do just that day after day.

The Department kindly provided me with a copy of its "Transportation Agenda for the 1980's" on August 18, 2 weeks after my amendment failed. In that agenda the Department states:

> We must not retreat from present policy that affords a significant and growing portion of our population accessible public transportation. At the same time, we should recognize that the handicapped are a diverse group and will need flexible door-to-door service where regular public transportation will not do the job.

With this information in hand, I attempted to work with the Department to work out a flexible resolution to Abilene's problems. Congressman PAUL SIMON, chairman of the Subcommittee on Select Education, and I were almost totally ignored in our effort to provide a meaningful service to the handicapped of Abilene.

I take this opportunity to personally commend and publicly thank my colleague, the Honorable PAUL SIMON, for his untiring efforts to help.

You cannot run America from Washington. Yet we in Congress continue to allow the bureaucracy we have created to do just that.

□ 1010

LET'S GET ON WITH REGULATORY REFORM

(Mr. LEVITAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVITAS. Mr. Speaker, the American public is fed up with being run by an unelected bureaucracy. The rules and regulations that pour out of the agencies in Washington, without any control by the elected representatives of the people, is shameful.

The two speakers who have preceded me have documented only one more in a long list of the abuses and arrogance of the unelected officials in Washington trying to run this country without control by the elected Congress. My two colleagues who have just spoken come from different ends of the political spectrum, yet their complaint was in unison. They decried the arbitrary, arrogant bureaucratic rules and decisions of the Department of Transportation which will waste taxpayers dollars and not assist the handicapped citizens who were supposed to be aided.

There are bills now pending in the Congress which could remedy that situation of bureaucratic dictatorship. But those bills are being pigeon-holed. Those bills are being held up. Those bills are being sabotaged by the administration with the help of the leadership of this House.

Mr. Speaker, where is the regulatory reform bill? It has been ready for action since May of this year. It has widespread support. The legislative veto bill, H.R. 1776, has more than 230 cosponsors. Why cannot this House exercise its will on that legislation? Mr. Speaker, either you or the White House could cause these bills to come out for a vote in keeping with the democratic legislative process. Let the people's representatives have an opportunity to represent the people's will. Mr. Speaker, you are Speaker of this House. You are not the Speaker of the White House. Let your Members have a chance to vote. Let your Members do their constitutional duty.

Let us return Congress to the people and give Members of this body the opportunity to vote on these two important bills.

CREDIT CONTROL SUNSET ACT OF 1980

(Mr. STANTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STANTON. Mr. Speaker, today I am introducing the Credit Control Sunset Act of 1980. As you know, the Credit Control Act of 1969 grants the Federal Reserve Board almost absolute power "to regulate and control any or all extensions of credit" and is the basis for the Board's special credit restraint program of March 14, 1980.

The benefits of this sunset legislation are twofold. First, the adoption of a sunset provision to the Credit Control Act—together with a reporting requirement that would require the Federal Reserve Board justify the continued need for that act—will force the Congress to review the legislation before a date certain. Second, this bill neither passes judgment on the merits of the current credit restraint program nor interferes with the administration of those controls. Indeed, this legislation allows the Board's program ample time to achieve its intended purpose of controlling that portion of inflation which may be generated by the excessive extension of credit.

Since the Federal Reserve Board announced its credit restraint program,

there has been renewed interest in the long dormant authority for the Board's actions. If any of my colleagues who were not present in this Chamber over 10 years ago think that the present credit controls are controversial, then you should be aware of the controversy surrounding the enactment of the Credit Control Act. What started out as a simple extension of regulation Q soon became the vehicle for this unprecedented authority over a particular segment of the economy. On December 17, 1969, a motion to delete the credit controls title from the bill failed in the House of Representatives by the slim margin of only 13 votes: 193 yeas to 206 nays. It is little wonder that a program questioned by so many people is the end result of such contentious legislation.

The recent action by the Federal Reserve Board has been the first case of imposing credit controls since the Credit Control Act was enacted in 1969. In light of the recent credit restraint program, I believe that it is appropriate for Congress to reexamine the purpose and continuing need for that act.

As early as April 21, 1980, just 5 weeks after the controls were imposed, Paul Volcker, chairman of the Board of Governors of the Federal Reserve System, publicly expressed his reservations about the utility of the Credit Control Act while a guest on the "MacNeil/Lehrer report." Chairman Volcker termed the March 14 measures as "extraordinary actions" and offered these sentiments about the credit controls:

> I'd like to get rid of those [credit controls] as soon as we can. I'm sure everybody else in the Federal Reserve Board would like to get rid of them as soon as we can. . . .

Since his initial remarks Chairman Volcker has characterized these same extraordinary measures as "disruptive of normal market processes." Speaking before the annual meeting of the National Association of Mutual Savings Banks, Chairman Volcker succinctly stated what I consider to be a proper and fundamental tenet of Federal Reserve policy:

> We are not interested in fostering any impression that credit allocation, formal or informal, can be any part of the basic continuing armory of monetary policy; the special measures are, to put it most simply, no substitute for general instruments of policy, and the side effects, if prolonged, can be counterproductive.

Similarly, former chairman of the Federal Reserve Board Arthur Burns recently testified before the Joint Economic Committee that repeal of the Credit Control Act should be the highest item of priority on the congressional agenda. Without mincing any words, Dr. Burns labeled the legislation as "stupid," "potentially destructive of our economic system," and "a demagogic piece of legislation, one that has really put dictatorial power into the hands of the Federal Reserve Board."

Mr. Speaker, I am concerned that the current administration and this Congress as well as previous Congresses have placed far too great a burden on the Federal Reserve to fight inflation single-handedly. As Alan Greenspan, former chairman of the Council of Economic Advisers, correctly stated in testimony before the Senate Banking Committee last year on legislation to amend the Credit Control Act: "mismanagement of our fiscal affairs has led us to the point where there is currently no simple alternative to monetary tightness."

There can be no doubt that necessary restraints on the growth of money and credit must be a key part of the unfortunately slow process of defusing the inflationary bias that threatens this Nation's economy. Today, many economic observers rightly are questioning whether this most recent regulatory reflex is all that necessary or will be all that effective. This questioning becomes particularly acute when these same observers realize that the necessary restraint is—and will continue to be—based primarily on the control of bank reserves, which has been emphasized recently by both the October 1979 Federal Reserve actions as well as the passage of the Monetary Control Act of 1980 (title I of Public Law 96–221), and on other traditional instruments of monetary policy such as open market operations.

It is obvious that many people including myself are troubled by the March 14 credit restraint program, just as I was disturbed by the passage of the Credit Control Act which I strongly opposed in 1969. It is also obvious that the great majority of my colleagues in the House of Representatives was not present in this Chamber when the legislation was enacted. For three important reasons it is time to conduct a serious review of that legislation.

First, the Credit Control Act as imposed places an unfair burden upon consumer credit and hurts the average American in an inequitable manner. One tangible result of the March 14 program is that the average consumer has been affected visibly, while the more affluent investor or the larger corporation can find ways to circumvent these controls.

While many banks and credit card companies have implemented policies which have a relatively greater impact on the average consumer—such as raising monthly credit card payments, adding new annual service fees, or curtailing the issuance of credit cards—wealthier individuals and businesses still have access to other forms of financial services. Thus, credit controls invariably hurt the average consumer and small businesses because they have fewer, alternative sources of funds.

Second, no matter in what light such programs are cast, credit controls are a form of allocating credit. Invariably, the result of allocating credit through Government programs is a less efficient and less productive allocation than would be determined by market forces. Recent studies indicate that credit growth has slowed dramatically, even before the credit restraint program, because of these same market forces. Outstanding consumer installment credit is down from a 20-percent rate of increase during 1978 to a 5-percent rate in late 1979 and early 1980. A look at market innovations that have been a direct response to other forms of financial controls—the growth of the Eurodollar market, the growth of the commercial paper market, and the growth of money market funds—will show the frustration and futility of imposing such controls.

Third, the Credit Control Act places too much of a burden on an already overburdened Federal Reserve Board and does nothing to correct the structural causes of inflation. By implementing the Credit Control Act, is not the administration shirking its responsibilities for fighting inflation in the areas of budgetary and fiscal restraint? We in Congress must reverse the Federal Government's increasing direct and indirect preemption of the Nation's available credit, thereby relieving some of the enormous inflationary pressures from the private credit markets.

Let no one misunderstand the purpose of this legislation. The addition of a sunset provision to the Credit Control Act which gives the Congress sufficient time to review the continuing need for that act should not be interpreted by the domestic or international money markets as any diminution on the part of our determination to fight inflation. On the contrary, traditional policies to fight inflation—whether they take the form of controlling the money supply through the size of bank reserves or curtailing Government spending—should be implemented fully without resorting to the temptation of a quick fix through selective methods of allocating credit.

Mr. Speaker, I am pleased to announce that the Credit Control Sunset Act of 1980 has the bipartisan support of many of my colleagues on the Banking Committee. Among the cosponsors are: CHALMERS WYLIE, STEWART MCKINNEY, GEORGE HANSEN, HENRY HYDE, RICHARD KELLY, JIM LEACH, TOM EVANS, BILL GREEN, RON PAUL, ED BETHUNE, NORM SHUMWAY, CARROLL CAMPBELL, DON RITTER, JON HINSON, JOHN EDWARD PORTER, PARREN MITCHELL, STEVE NEAL, CARROLL HUBBARD, DAVE EVANS, DOUG BARNARD, and WES WATKINS.

In closing, Mr. Speaker, I urge all of my colleagues to support this legislation when it is considered on the floor of the House of Representatives.

PRESIDENT CARTER BREAKS FAITH ON PLEDGE TO BUILD SUPERIOR NAVAL FORCES

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, despite the proven speed and superior capabilities of all-nuclear U.S. naval task forces, such as the one dispatched to the Persian Gulf in response to the Soviet invasion of Afghanistan, President Carter has canceled the planned construction of any new nuclear-powered surface warships for the U.S. Fleet.

The President has scrapped the entire U.S. program to build sufficient nuclear-powered escorts for our nuclear aircraft carriers, despite earlier congressional appropriations for this program based on administration promises that this would be done.

I think this action is an outrage at a time when we need to strengthen America's ocean-going military forces.

I would like to include in the RECORD at this point a letter I have received on this serious matter from Adm. Hyman G. Rickover, one of our country's leading experts and the pioneer and inspiration of our nuclear fleet.

> USS ARKANSAS (CGN–41),
> *New York, September 1, 1980.*
>
> Hon. ELDON RUDD,
> *House of Representatives.*
>
> DEAR MR. RUDD: We are returning from the first sea trials of the nuclear-powered guided-missile cruiser *Arkansas* (CGN 41), our ninth nuclear cruiser and twelfth nuclear-powered surface warship. The *Arkansas*, fourth and last currently authorized ship of the *Virginia* Class, put to sea yesterday from the Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia. This ship, in conjunction with nuclear-powered aircraft carriers and other nuclear-powered guided-missile cruisers, will give the Navy the most capable surface strike forces we can build.
>
> Three other ships of the U.S. Navy and one Confederate warship have borne the name *Arkansas*. The Confederate ship *Arkansas*, an iron-clad river ram, saw action in 1862 where she successfully disabled three Union warships before being attacked and disabled, grounded, and set afire to avoid falling into Union hands near Baton Rouge, Louisiana. The last previous U.S. Navy ship *Arkansas* was a battleship, commissioned in 1912. She saw service in both World Wars and fought in the invasions of Normandy, Southern France, Iwo Jima, and Okinawa, earning four battle stars.
>
> The present *Arkansas* is 585 feet long, has a beam of 63 feet, and displaces 11,000 tons. She carries two twin-armed launchers for antiaircraft missiles and antisubmarine rockets; also two five-inch guns, long range sonar, torpedoes, electronic warfare equipment, and a helicopter hangar. The initial reactor cores contain enough energy for at least 10 years of operation without refueling.
>
> The *Arkansas'* primary mission is to provide antiaircraft and antisubmarine protection to an aircraft carrier task group. The all-nuclear carrier task group has far greater capability for sustained combat operations than an oil-fired group by virtue of its essentially unlimited high speed endurance and increased capacity for carrying combat consumables. This permits longer periods between replenishments and enables the task group to retire at high speed for replenishment in low threat areas.
>
> All-nuclear task groups can transmit quickly to remote areas and arrive ready for protracted combat without the need for prepaced oilers to supply propulsion fuel. This unique capability was recently and dramatically demonstrated in response to the Soviet invasion of Afghanistan when a nuclear-powered battle group consisting of the aircraft carrier USS *Nimitz* (CVN 68) and the cruisers USS *California* (CGN 36) and USS *Texas* (CGN 39) transited from the Mediterranean around Africa to the Arabian Sea in January 1980, covering the 11,000 mile distance at 25 knots in just over 18 days, arriving on station without requiring or having required refueling.
>
> The continuing decline in the number of U.S. overseas bases and the current naval operations in the Indian Ocean highlight the vulnerability of the long supply lines required to provide fuel for our oil-fired warships. In war, the vulnerability of oilers could well make it impossible to provide fuel for our oil-fired naval forces when and where they need it.
>
> The increased mobility and tactical flexibility of the all-nuclear carrier task group increases its offensive capability and reduces its vulnerability to enemy attack. Only a task force consisting entirely of nuclear-powered ships can match the sustained high speed endurance of enemy nuclear submarines. The nuclear group's sustained high speed capability eliminates the increased susceptibility to attack during the frequent slowings required to refuel oil-fired ships.
>
> Nuclear propulsion in guided-missile ships like the *Arkansas* also makes them uniquely suited for independent missions when logistic support is not practicable. Commanding Officers of nuclear-powered cruisers often write me describing missions assigned them beyond the normal capabilities of a conventionally-powered cruiser. The nuclear cruiser's increased tactical flexibility afforded by freedom from propulsion fuel concerns, and greater on-station time resulting from the inherent high speed endurance of the nuclear propulsion plants, enabled successful completion of these assigned tasks.
>
> Notwithstanding the repeatedly demonstrated superior capabilities afforded by nuclear propulsion in surface warships, the *Arkansas* is now the last nuclear-powered cruiser in the Navy shipbuilding program. In fiscal year 1978, Congress appropriated advance procurement funds for the CGN 42, the first of a new class of nuclear-powered cruisers, on the basis of Department of Defense assurance that the ship would be requested for authorization in fiscal year 1979. The CGN 42 Class cruisers were to be equipped with the AEGIS fleet air defense weapons system. Subsequent Department of Defense five year shipbuilding programs have slipped the planned authorization of CGN 42 from 1979 to 1980, then to 1983. Finally, last year, the CGN 42 was deleted completely.
>
> The current Department of Defense fiscal year 1981 five year shipbuilding plan not only omits the CGN 42, but contains no new nuclear-powered surface warships. If all-nuclear task groups are envisioned, then this shipbuilding plan disregards the Navy's long-standing position that each aircraft carrier should have four escorts. With Congressional authorization last year for construction of the fifth nuclear carrier, CVN 71, delivery of *Arkansas* will give the Navy only nine nuclear-powered cruisers, not enough to provide two nuclear-powered escorts for each nuclear-powered aircraft carrier.
>
> The nuclear surface fleet which the *Arkansas* will join consists of eight nuclear cruisers, the *Long Beach* (CGN 9), *Bainbridge* (CGN 25), *Truxtun* (CGN 35), *California* (CGN 36), *South Carolina* (CGN 37), *Virginia* (CGN 38), *Texas* (CGN 39), and *Mississippi* (CGN 40), and the three nuclear carriers, *Enterprise* (CVN 65), *Nimitz* (CVN 68), and *Dwight D. Eisenhower* (CVN 69). The fourth nuclear carrier, *Carl Vinson* (CVN 70), is under construction and the contract to begin construction of CVN 71 is being negotiated with the shipbuilder.
>
> That the Navy has these nuclear-powered aircraft carriers and cruisers is due to the wisdom and foresight of Congress in taking the initiative to provide nuclear propulsion for our naval strike forces.
>
> Respectfully,
>
> H. G. RICKOVER.

MR. CARTER'S ECONOMICS

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ASHBROOK. Mr. Speaker, everybody knows that the Carter administration has lost the key to the economy. Last week Mr. Carter admitted one more setback in his failed policies by announcing the seventh new economic policy since he took office, and the third in the last 8 months. The President wants us to forget that he has failed six times in a row. He tells us "Unlike all my other plans, this one is going to work; but let us not try it right now. Let us wait until after the election." Our beseiged President has added to the liberal economic policies that passed off as Keynesian economics, later Walter Heller's "new economics." Now we have Carter's "election year economics."

I can understand why Mr. Carter does not want the voters to judge his economic policies according to performance rather than promise. But it is a little late in the game to ask for such favors. Under Mr. Carter's stewardship, a family of four now has to earn more than $20,000 to achieve the same real after-tax income that they could get by earning $10,000 in 1970. Our working men and women need relief now, not 8 or 10 months down the road.

But Mr. Carter, who 4 years ago was campaigning against Gerald Ford's use of the veto against spending bills, tells us that he will veto any tax cut passed by Congress before election day. If he wins the election, the President can then continue the pattern of changing his whole game plan every 6 months. The stark reality is that if this administration will not accept a tax cut during an election year, then there is no time when it will ever accept one.

Through all the zigzags and flip-flops in economic policy during the last 3½ years, there has been one consistent element: Higher taxes. Even if Mr. Carter sticks by his new package, and even if he succeeds in getting every piece of it enacted next year, the net result will be a tax increase of $80 billion. If you think the largest peacetime tax burden in American history is still not large enough, if you think it is irresponsible for the voters to be demanding relief from this burden, if you think that the way to stimulate the economy is to hang still heavier lead weights onto workers and businesses—then you will love this President's economics.

CARTER TAX PROPOSALS DO NOT END THE MARRIAGE TAX

(Mr. ROYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROYER. Mr. Speaker, I am glad that the administration has finally admitted, at least tacitly, that our economy needs a tax cut. I am, however, disappointed that Mr. Carter still believes that we should not consider the cuts he has proposed until next year. His posturing and flip flopping on the tax issue is unseemly, though totally in character. But I am particularly distressed by his proposal as it relates to the marriage tax. The relief provided is a crumb. A couple making $30,000 to $50,000 last year will be penalized under current law $860. Under the President's proposal, the couple would get a paltry $130 in relief and still be penalized $730 above what similar couples living together, but unmarried, would pay filing as singles. Is this the much ballyhooed reform of the tax system that was characterized by candidate Carter in 1976 as a disgrace to the human race? I think not. Let us get it right and end this needless discrimination.

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from North Carolina (Mr. NEAL) is recognized for 15 minutes.

● Mr. NEAL. Mr. Speaker, I am notifying the House today of a proposal by the U.S. Export-Import Bank to provide a loan guarantee to make possible the sale of five new Boeing 767 jet aircraft valued at $263 million for use by Britannia Airways Ltd. of the United Kingdom.

The Eximbank is prepared to guarantee a private loan of $223,550,000 to T. N. H. Leasing A. G., which will lease the five airliners, plus spare engines, parts, and ground support equipment to Britannia Airways. The planes would be delivered from 1984 to 1986.

This notification was referred to me as chairman of the Banking Committee's Subcommittee on International Trade, Investment and Monetary Policy. Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, requires that the Eximbank notify Congress of proposed loans or financial guarantees, or combinations thereof, of $100 million or more. Unless the Congress determines otherwise, the Eximbank may give final approval to the transaction after 25 days of continuous session of the Congress after notification.

I am submitting for the RECORD at this time a copy of the Eximbank notification providing the terms and details of the proposed financing. I would welcome any comments or questions my colleagues might have on this proposal.

The Eximbank material follows:

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. STEPHEN L. NEAL,
Chairman, Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

H. K. ALLEN.

Enclosure.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27 1980.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
The Speaker's Room,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to the United Kingdom.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing in the form of a financial guarantee of a commercial loan of $223,550,000 to be extended by a United States private lender to T.N.H. Leasing A.G. The purpose of this Eximbank financing is to facilitate the purchase in the United States and lease to Britannia Airways Limited ("Britannia") of five new Boeing 767 jet aircraft, spare engines, related spare parts and ground support equipment. The total U.S. export value for this transaction is estimated to be $263,000,000.

2. Identity of the parties

Britannia, based in the United Kingdom, is a charter airline and a third-tier wholly-owned subsidiary of International Thomson Organisation Limited ("ITOL"), a diversified Canadian holding company whose principal activities are printing and publishing newspapers, magazines and books, operating travel agencies, and participating in North Sea and other oil and gas fields. Britannia's current fleet consists of twenty-two 737 aircraft. The airline, established in 1962, operates package tours primarily from London to the Canary Islands and various Southern European and Mediterranean resort areas. Britannia will lease the aircraft from a wholly-owned subsidiary of ITOL.

3. Nature and use of goods and services

The principal goods to be exported from the U.S. are five new medium-range, wide-bodied commercial jet aircraft, related spare parts and ground equipment to be delivered during the period 1984–1986. Most of the airframe components will be manufactured in the Seattle-Renton-Everett area by The Boeing Company of Seattle, Washington. It is also expected that other United States firms will furnish components and spare parts. Potential engine manufacturers are the Pratt and Whitney Aircraft Division of United Technologies Corporation in Hartford, Connecticut, the jet aircraft engine division of General Electric Company in Cincinnati, Ohio, and Rolls-Royce Limited in the United Kingdom. In the event Rolls-Royce engines are selected by Britannia, they will not be financed by Eximbank and Eximbank's financing will be reduced accordingly. Non-United States components manufactured in Japan and Italy will cost about $28 million, or approximately 11 percent of the United States goods, and are not included in the financing plan set out below.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank financial guarantee of $223,550,000 will facilitate the export of $263,000,000 United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their subcontractors are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financing support for the export of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial jet aircraft. In order to maintain the existing market share for U.S. commercial jet aircraft over the next several years, Eximbank must strive to meet both borrowers' needs and foreign competition, in particular that from the European consortium, Airbus Industrie.

Airbus Industrie's A-310 jet aircraft was determined by Britannia to be technically and economically competitive with the 767 aircraft. Adequate financing from U.S. sources was necessary to enable Britannia to proceed with the purchase of all five aircraft, of which three are optional, and to enable Boeing to penetrate the European market with the first sale of 767 aircraft. The Eximbank financing appears to have been a decisive factor in winning the sale for the U.S. suppliers.

Boeing estimates that the production of each 767 aircraft will generate 1,017,900 man-hours of work for Boeing and its sub-suppliers consisting of 870,000 for each airframe and 147,900 for each engine. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts, ground support and other related equipment.

2. The financing plan

The financing plan for the total U.S. procurement supported by Eximbank is as follows:

	Percent of U.S. costs	Amount
Cash payment	15	$39,450,000
Private financing with Eximbank guarantee	85	223,550,000
Total	100	263,000,000

(a) *Eximbank charges*

The financial charge on the financing extended under the Eximbank guarantee will be 10.7 percent per annum, payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for Britannia on February 7, 1980. It is possible that if market conditions require, some Eximbank credit will be blended with the financing extended under the Eximbank guarantee. A commitment fee of ½ of 1 percent per annum and a guarantee commitment fee of ⅛ of 1 percent per annum will also be charged on the undisbursed portion of the Private Financing. The financing will be secured by the guarantee of ITOL and mortgages on the aircraft.

(b) Repayment terms

The financing for the aircraft will be repaid in three repayment schedules of 20 semiannual installments each, beginning November 15, 1984 with respect to aircraft to be delivered in 1984; beginning November 15, 1985 with respect to aircraft to be delivered in 1985; and beginning November 15, 1986 with respect to aircraft to be delivered in 1986.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN THE UNITED KINGDOM
(AS OF JULY 31, 1980)

	Outstanding	Undisbursed
Direct loans	$394,379,199.71	$185,237,734.86
Financial guarantees	56,682,480.00	110,257,520.00
CFF loans	38,400.00	
Bank guarantees	6,004,348.64	13,566,722.75
Insurance medium	3,130,226.94	3,958,562.55
Insurance short	123,596,239.42	
Total for the United Kingdom	583,830,894.53	313,020,540.16

DEFAULTS AND RESCHEDULINGS

Loan No. 4097 was rescheduled November 3, 1977 in the amount of $1,619,998.84. This loan was paid in full January 17, 1979. There have been no other defaults to date.

ATTACHMENT II—AUGUST 25, 1980

UNITED KINGDOM

Area and population

Area: 244,000/sq. km.
Population (mid-1979): 55.8 million.
Population Density: 229/sq. km.
GDP per capita (1979): $6,129.

Sources and application of national product

[In percent]

Uses (1978):	
Consumption	53.8
Government	23.2
Capital Formation	20.7
Stocks	1.0
Exports	33.9
Imports	−32.6
	100
Sources (1978):	
Agriculture, forestry and fishing	2.6
Mining and quarrying	3.2
Manufacturing	28.7
Construction	6.0
Transportation and Communication	8.2
Services	51.3
	100

	1976	1977	1978	1979	1980 (E)
GDP data:					
Billions of dollars (nominal)	$221	$246	$308	$342	$305
Rate of change (real) (percent)	3.6	1.4	3.3	1.5	−3.0
Fiscal and monetary data:					
Government deficit (billions)	$12.3	$7.8	$16.1	$17.4	NA
Deficit as percent of GNP	5.5	3.2	5.2	5.1	NA
Increase in money supply (M3) (percent)	11.2	9.8	14.9	12.7	12.7
Savings ratio (percent)	14.6	13.9	15.2	15.7	17.0
Price data (percent increase over preceding year):					
CPI	16.5	15.9	8.3	17.5	18.5
WPI	17.3	19.8	9.1	12.2	18.0
Labor data (percent increase over preceding year):					
Wages (weekly rates)	16.5	10.3	14.6	15.5	19.0
Unemployment	5.3	5.7	5.7	5.4	7.1

	1976	1977	1978	1979	1980 (E)
External debt:					
Outstanding Public Debt (billions)	$14.2	$18.0	$15.8	$14.6	$13.9
Debt/GDP (percent)	6.4	7.3	5.1	4.3	4.6
Debt service ratio (public debt only)[1] (percent)	7.3	4.8	2.9	4.9	NA
Balance of payments data (billions):					
Exports	$45.9	$56.1	$67.3	$86.3	$111.5
Imports	−52.4	−59.2	−70.2	−93.3	−119.8
Trade balance	−6.5	−3.1	−2.9	−7.0	−8.3
Invisibles balance	4.5	3.8	4.2	1.9	1.7
Current account balance	−2.0	.7	1.3	−5.2	−6.6
Capital account	−4.6	12.2	−3.0	9.0	NA
Overall balance	−6.6	12.9	−1.7	3.8	NA
Reserve data (billions):					
Foreign exchange (excluding gold)	3.4	20.1	16.0	19.9	.....
Gold (average London price)	2.6	3.3	4.4	12.1	.....

[1] For 1976 and 1977 includes only capital repayment.

Sources: IMF, IFS, and OECD survey, OECD.

EXPORT-IMPORT BANK OF THE
UNITED STATES,
Washington, D.C., August 27, 1980.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
The Speaker's Room,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Mexico.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing in the forms of loans and guarantees ("Eximbank Financing") of $111,387,400 to Comision Federal de Electricidad ("CFE"). The purpose of the Eximbank Financing is to facilitate the purchase in the U.S. for export to Mexico of 14 gas turbines and ancillary equipment to be manufactured by Westinghouse, General Electric, United Technologies and Brown Boveri. The total U.S. export value for this transaction is $131,044,000. In addition, Eximbank has issued a preliminary commitment to CFE to facilitate the purchase in the United States of $130 million of steam turbines and boilers.

2. Identity of the borrower

CFE is an autonomous institution of the Federal Government of Mexico which is responsible for providing most of Mexico's electric power. Eximbank has made many loans to CFE, and repayments have been made on a timely basis.

3. Nature and use of goods and services

The goods to be exported will be installed in and operated as part of CFE's electric power system. Mexico is in the midst of a severe power shortage, and the expansion of the system is a critical necessity. Mexico has abundant supplies of natural gas and petroleum to fuel the new units.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank Financing of $111,397,400 will facilitate the export of $131,044,000 of U.S. goods and services. CFE has signed letters of intent to purchase the gas turbine units from Westinghouse, General Electric, Brown Boveri and United Technology. CFE is requiring suppliers to provide 85 percent fixed rate financing. European and Japanese suppliers are now including such financing as a part of their government supported bids. Over the past few years much of CFE's electrification programs have been so financed by EID/MITI of Japan. The Eximbank Financing will assist in the generation of some 5,240 jobs in the U.S. over the period of fabrication of the items. U.S. electrical equipment manufacturers are generally operating below capacity and are anxious to secure additional orders.

2. The financing plan

The total cost of the U.S. goods and services to be purchased by CFE will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$19,656,600	15
Eximbank financing	111,387,400	85
Total	131,044,000	100

It is expected that 65 percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank ("Blended Eximbank Financing"). The remaining 35 percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

a. Eximbank Charges

The financial charges on the Blended Eximbank Financing to be paid by CFE will be 8.75 percent per annum, payable semiannually. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment Terms

CFE will repay the Eximbank Financing in 20 semiannual installments, beginning on August 15, 1981.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.●

ENI COMPANIES IN FOREFRONT IN ACHIEVING ENERGY INDEPENDENCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. DICKS) is recognized for 5 minutes.

● Mr. DICKS. Mr. Speaker, the State of Washington has been in the forefront of efforts to achieve greater energy independence for our Nation. Prominent in this effort has been the leading independent firms marketing and managing oil and gas drilling programs. The ENI companies, based in Seattle, have raised more than a third of a billion dollars in support of the drilling activities of the domestic independent petroleum industry.

This highly successful venture was founded in 1971 by Victor Alhadeff—then only 24 years of age. Today ENI has marketing offices in 14 major cities, employs nearly 100 marketing representatives, and projects $1 billion in drilling fund sales during the 1980's.

A few weeks ago, Mr. Alhadeff was interviewed by the Houston Chronicle's oil editor. During the interview he made a number of cogent observations, among them a prediction of "a tremendous increase" in domestic drilling activities. Given the urgent need to expand our domestic oil and gas production, I would like to share Mr. Alhadeff's insights with my colleagues and ask unanimous consent that the interview be printed in the RECORD.

INTEREST IN OIL DRILLING INDUSTRY HIGH, FUND RAISING EXPERT SAYS

(By Albert T. Collins)

Victor D. Alhadeff, a specialist in raising private capital for investment in oil and natural gas drilling ventures, says institutional investors, including pension funds and insurance companies, are displaying "a tremendous amount of interest" in getting into petroleum exploration.

Alhadeff, the Seattle-based chairman of ENI Companies, said industrial companies similarly are interested in exploration because they view a barrel of oil or a cubic foot of natural gas as "the purest hedge against inflation."

In Houston Tuesday for a review of ENI's current activities, Alhadeff said institutional investors and industrial companies feel they can "offset inflation through ownership of oil and gas reserves."

He pointed out that such insurance companies as Aetna, Prudential and INA are involved in oil and gas exploration.

Alhadeff founded ENI in 1971 when he was 24 years old to provide, he said, a link between the private investor and oil and gas explorers. ENI has since moved into exploration itself through ENI Exploration Co.

The company's goal is participating in 200 wells a year. In the first half, it participated in 155 new wells, including 87 which were completed as commercial producers, Alhadeff said at a Hyatt Regency Houston news briefing.

This year it expects to raise about $100 million for drilling ventures. It is participating with more than 74 different operating companies.

Alhadeff recalled that he did not oppose enactment of the controversial windfall profits tax last year at a time when the oil industry was generally against levying the tax on revenues of producers benefitting from the phased removal of federal price controls from domestic crude oil production.

He said he favored the tax's concept because he felt the industry could live with the tax if it knew the rules under which it would have to operate.

Domestic oil not subject to federal price controls is now selling at $40 to $42.50 a barrel, Alhadeff said, adding: "Net of the windfall profits tax, this figures to about $35 a barrel.

That is a strong incentive to drill for oil, he said, noting that ENI has committed about $40 million in its 1980 budget for oil exploration.

Another strong incentive, he said, is the Natural Gas Policy Act of 1978 which provides for an inflation escalator adding 3 to 4 percent to the price of gas.

Natural gas prices, he said, "are going up faster than inflation."

Alhadeff said "we tend to like deep gas wells," those wells which are drilled at least 15,000 feet, because the gas is not subject to federal price controls. Such gas is selling for as much as $6.50 to $6.75 a thousand cubic feet in some cases, he said.

The ENI chairman agrees with major oil company forecasts that domestic oil production will decline in the years ahead, but said he believes the rate of decline will be slowed because of the increased deep drilling for natural gas that is taking place.

"A vast amount of the energy remaining to be discovered in the United States," he predicted, "will come from deep wells."

Alhadeff said: "I have never seen as much money in Houston as I have seen today. Oil and gas deals are being sold rapidly. People are looking for pospects."

But the ENI executive said the quality of prospects is declining.

He said he believes it will be "wasted effort" if independent oilmen push a legal fight to have the windfall profits tax repealed.

"I have been asked to participate, but I have declined," he said. "It would be better to work for exemption for independent producers and royalty owners."

By the time the fight is ended, he said, prices will be freed from controls.

Acknowledging that the tax is "hurting" some small companies, royalty owners and family land-owners, Alhadeff said this poses "an improved situation for negotiating an exemption."

Alhadeff, predicting "a tremendous increase" in domestic drilling rig activity, said rigs capable of drilling to depths of 30,000 to 40,000 feet "will be a major area of growth" in the future.●

OPEN RULE REQUESTED FOR CONSIDERATION OF H.R. 5615

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. BOLAND) is recognized for 5 minutes.

● Mr. BOLAND Mr. Speaker, I have today sent a letter to Chairman BOLLING requesting a modified open rule for floor consideration of H.R. 5615, the Intelligence Identities Protection Act.

The rule would make in order only those amendments which were offered during the Judiciary Committee's markup of the bill and another amendment, to be offered by Mr. ASHBROOK concerning the culpability standard of section 501(c).●

TRADE FOLLOWS AID

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 30 minutes.

● Mr. ALEXANDER. Mr. Speaker, the axiom "trade follows aid" is as well established as the trade routes over which goods are carried to the ports of the world. With U.S. Government participation of only $7 billion the international development banks have financed roughly $11 billion in export of U.S. goods and services from their inception through 1978.

Last night, Secretary of the Treasury G. William Miller addressed the Economic Club of New York during which he discussed "The International Financial Institutions: A Time To Recognize U.S. Self-interest." I was privileged to have been present on this occasion to hear the Secretary's remarks. Secretary Miller did an excellent job in reviewing this timeless subject. Inasmuch as the United States is attempting to reach out and expand exports, aspiring to become a trading nation again I commend the Secretary's remarks for the consideration of my colleagues interested in the subject of foreign trade.

THE INTERNATIONAL FINANCIAL INSTITUTIONS: A TIME TO RECOGNIZE U.S. SELF-INTEREST

(Remarks by the Honorable G. William Miller, Secretary of the Treasury)

It's a pleasure to meet with this distinguished group to discuss a matter of central importance to U.S. interests—our participation in the international financial institutions, the International Monetary Fund, the World Bank Group and the Regional Development Banks.

The 1980s will be a period of great economic challenge and opportunity for this nation. If we meet the challenge in a forthright and courageous way, we can ascend to even higher levels of prosperity; if we do not, we will slip into a steady decline to economic mediocrity. The program announced by President Carter on August 28 will put us on a course to revitalize our economy through increased investment and higher productivity. We are also taking strong steps to increase U.S. competitiveness in world trade.

Equally important to achievement of our domestic economic objectives is action to assure maintenance of the expanding and open world economy to which our own economic health has become so closely tied. The dependence of the United States upon world trade and financial flows has become enormous. The share of U.S. economic output devoted to exports has almost doubled over the past decade, from 6.4 percent in 1970 to over 12 percent in the first half of 1980. Today, one out of every seven U.S. manufacturing jobs and one out of every three acres of U.S. farmland produce for export. Imported goods, ranging from raw materials to highly sophisticated capital equipment, are thoroughly enmeshed in all phases of U.S. economic activity. International investment has become a major factor in U.S. production, both at home and abroad. One of every three dollars of U.S. corporate profit derives from the international activities of U.S. firms. The U.S. and international capital markets are highly integrated, and the dollar serves as the principal vehicle for trade and finance internationally as well as domestically.

The international financial institutions are central to the effort to maintain a strong and growing world economy. Yet at a time of acute need for leadership in support of this effort, this country has fallen behind in its financial support for the institutions. To allow this situation to persist would be shortsighted and gravely damaging to key U.S. interests—foreign policy, economic and humanitarian. This audience, perhaps as much as any single group that could be assembled in this country, should be attuned to the importance of a strong and cooperative world economy to the achievement of U.S. objectives at home and abroad

The world economy faces challenges of financing of huge payments deficits and promoting fundamental adjustment to the changed world energy situation which is at the heart of current global economic difficulties. The International Monetary Fund and the Banks are leading the international community's effort to meet these challenges. Whether the institutions succeed in restoring a strong and stable global economy has a critical and direct bearing on the economic well-being of the United States. The health of the world economy directly affects markets for the production of our farms and factories and for the employment of our labor. In difficult times, such as we are experiencing now, there is always a temptation to retrench, to cut back on our support for international organizations that seem to have no domestic constituency. This would be a tragic mistake. Our stake in a healthy world economy is large and growing larger.

Unfortunately, international tensions—political and economic—pose serious threats to the global economy. The disruption in Iran and Soviet aggression in Afghanistan make us acutely aware of the vulnerability of the world's major oil producing region to internal instability and external conflict. The turmoil in Southwest Asia has contributed to further uncertainty about oil supplies at a time when the world economy already faces extremely difficult problems. The dramatic oil price increases since the end of 1978 have caused a slow-down in world economic growth, a surge of inflation, and sharp deterioration in the balance of payments position of the oil-importing world. Today's world economic environment is likely to make it not only more difficult for nations to obtain needed financing, but also more difficult for them to make the economic adjustments required by changed external circumstances.

In more concrete terms:

Economic growth has slowed to a bare one percent in the industrial nations this year and to 4½–5 percent in the non-oil exporting developing countries. Unemployment is increasing in virtually all countries, compounding the difficulties of adjustment.

Inflation rates have surged to double-digit figures in many of the OECD nations and to an average of 35 to 40 percent in the developing world.

OPEC's current account surplus is rising sharply, to a range of $100–$120 billion, with a corresponding deteriorating in the current account position of the oil-importing world.

As growth slows, unemployment rises and balance of payments deficits widen, countries will inevitably face increasing internal pressures for restrictive trade actions, unfair or inappropriate exchange rate practices, or other "beggar-thy-neighbor" policies.

But such an inward turn, by this nation or other nations, is not a viable response to the world's economic problems. History has demonstrated forcefully that efforts by individual countries to deal with their internal problems through such devices cannot succeed and in the end only worsen the situation for all. The need is for a coordinated and cooperative international response to the problems of the world economy in order to assure an effective solution and to maintain the essential economic framework for cooperation across the broad range of international relations.

This need is recognized by the international community. The IMF and the development banks are at the forefront of efforts to carry out a coordinated approach. They are the natural vehicles to spearhead this collective effort. These institutions have the experience, the expertise, the proven track record. And they are moving rapidly to adapt their policies to meet the needs for balance of payments financing, for structural adjustment and for expanded energy production that will be imperative in the period ahead.

The so-called "recycling problem" has in general been handled satisfactorily to date. Markets have worked smoothly. But success so far is not a reason for complacency. Commercial banks are scrutinizing loan requests more carefully. Individual countries are beginning to encounter financing difficulties. Some—as yet only a few—appear to be approaching limits of borrowing capacity and are facing growing pressures to adjust their economies. Adjustment is of course needed. The question is whether it can be carried out smoothly and responsibly, in a manner that benefits both the economies concerned and the world economy generally.

Recourse to the IMF has accelerated sharply in 1980, and the Fund is positioning itself to meet potentially major demands for balance of payments financing and to assist countries in undertaking longer-term programs to revitalize their economies. An IMF quota increase is in process, and the Fund is exploring the possibility of borrowing additional funds from major surplus countries. Four other important steps have already been taken or are in process.

Countries will be able to borrow substantially more from the IMF, enabling them to sustain positive growth rates and maintain needed imports while adjustment measures take effect.

The period for implementing IMF adjustment programs is being lengthened, in recognition of the time required to accomplish the structural changes that are needed in many cases.

The maturities on some IMF credits have been lengthened, again in recognition of the structural nature of some of the economic changes required.

Greater emphasis is being placed on stimulation of productive investment and enhanced supply to enable countries to maintain living standards while basic adjustments—particularly in the energy area—are undertaken.

These efforts by the IMF closely parallel a major initiative being undertaken by the World Bank to promote structural adjustment in the developing nations. The Bank has initiated a new program of non-project lending in the form of sequential loan agreements over a medium-term period, 5 to 7 years. Disbursement of the loan segments, and decisions on subsequent loans in the sequence, are conditioned on various identified micro- and macro-economic policy changes by the borrowing country which are designed to produce "structural adjustment"—especially in response to the changing energy situation—in its economy. The United States strongly supports this Bank initiative as an important and necessary complement to its regular practice of project lending and its focus on energy development.

By cooperating closely in implementing these programs, the Fund and Bank can support efforts of their member countries to undertake difficult adjustments, which necessarily have a medium-term horizon, while simultaneously addressing their shorter-term external financing needs. At the same time, it is essential that flows of development assistance, both bilateral and through the development banks, be sustained to permit the development process to continue during this difficult period of adjustment.

Major steps are under way to strengthen the resources of both IMF and the development banks to enable them to carry out these tasks. It is in the national interest of the United States to participate fully in these efforts. Let me discuss them in turn.

INTERNATIONAL MONETARY FUND

The purpose of the International Monetary Fund is the maintenance of a strong and orderly international monetary system. It is a revolving fund, from which all participants benefit directly. It is not foreign aid. It is not commodity financing. It is unique, not like any other institution in which the United States participates.

The IMF has two basic functions. The first is general guidance over the operations and evolution of the international monetary system. The second, closely related, is provision of temporary financing in support of adjustment programs by IMF members facing balance of payments problems.

The IMF is a source of funds, provided by all member nations and available to all through assigned quotas, for supporting countries in their efforts to overcome balance of payments difficulties. A 50 percent overall expansion of quotas—from about SDR 39 billion to SDR 58 billion or, in dollar terms, from about $50 billion to $75 billion—has been agreed upon as a key element of the international community's response to increasing and potentially major world balance of payments problems. The IMF has periodically required increases in its resources, in response to rapid growth of world economic activity and international trade and financial transactions. Today, at a time when world payments imbalances and demands on the IMF are rising sharply, quotas represent barely four percent of world trade—as compared with 12 to 14 percent during the 1960s. To maintain a strong IMF, capable of encouraging needed adjustment and providing the temporary financing required to maintain monetary stability, we must assure that its resources are adequate to meet potential needs.

Quotas are key to IMF operations. They are its permanent resources. They determine the amounts of financing which countries can draw in time of need. They determine the distribution of SDR allocations. And they determine voting power. Because of these important advantages, nations compete for increases in IMF quota shares, rather than trying to reduce their shares as they do in many other international institutions. The United States has by far the largest IMF quota, the largest share of votes and the largest potential access to IMF resources. Over the years, the United States has drawn about $7½ billion in foreign currencies from the IMF, second only to drawings by the United Kingdom. Drawings of $3 billion equivalent of German marks and Japanese yen from the IMF were a major part of our November 1978 program to combat speculation against the dollar.

In support of the general IMF quota increase, the Administration has requested Congressional approval of a 50 percent increase in the U.S. quota, amounting to SDR 4.2 billion or about $5½ billion at current exchange rates. The proposed increase in the U.S. quota will maintain our share of total IMF quotas, intact at 21.5 percent, and thus will preserve our voting position and ability to influence key IMF decisions on the nature and operations of the international monetary system.

THE WORLD BANK AND THE REGIONAL DEVELOPMENT BANKS

The development banks have received strong, sustained U.S. support throughout their history. Active, undiminished support during the 1980s will be critical to fundamental U.S. economic, political and security interests.

Loan commitments by these banks represent by far the largest official source of external capital for the developing world, equivalent to $14 billion in 1979. These loans contribute in a major way to economic growth and stability in recipient developing countries. Economic growth in the developing countries is an important U.S. objective, both in terms of basic humanitarian concerns and as a source of strength to the global economy as a whole. The developing nations are today—at a time of a general slowdown—the main area of world economic growth, the world's engine of expansion. Growth generates increased imports—and non-oil developing countries now take 20 percent of total U.S. exports, 25 percent of our exports of manufactured goods, and support more than half a million U.S. manufacturing jobs. They are our most dynamic export market.

In providing policy advice, preparing development projects based upon objective economic criteria, and serving as a financial catalyst, the development banks are an important and respected force for the development of an efficient, responsive international market economy. They play a key role in the transfer of technology and in "human capital formation," which represent perhaps the greatest contribution to long-term development.

The Banks also provide an important forum for cooperative efforts among developed and developing countries to respond rapidly to critical world needs. Most recently, this has produced initiatives in two key product areas and, as I noted earlier, in the area of structural adjustment:

The United States has actively supported a shift in the allocation of lending by the development banks away from infrastructure projects toward agricultural and rural development, and subsequently toward education, health, and population projects, as the banks increasingly have adopted a basic human needs strategy to target project benefits directly for the poor. The World Bank is far and away the largest single source of external funding for agricultural and food production, providing over 40 percent of all official commitments to agriculture. Over the five years ending in 1979, total lending commitments for these projects equaled $11.6 billion, representing 33 percent of total lending. The World Bank expects to finance projects which will contribute on the order of one-fifth of the increase in annual food production in its developing member countries in the 1980s.

With strong support from the United States, the World Bank is moving to intensify its programs for energy exploration and development. It has already programmed financing for oil and gas projects which, combined with other official and private financing, will total more than $33 billion over the next five years. This effort should ultimately yield an additional 2.5 million barrels of oil equivalent a day. By increasing world energy supplies, this will help reduce pressures on world oil prices, as well as deal directly with one of the most critical bottlenecks to development.

Thus the international financial institutions, with strong U.S. leadership, are moving forcefully in directions that are essential to maintenance of a strong and stable world economy and are directly in the U.S. interest. But there is a potentially critical weakness in this approach. And that is the fact that the United States, whose full participation above all is needed for the institutions to carry out their tasks, is falling seriously behind in providing financial support.

U.S. arrearages to the multilateral development banks have been increasing in recent years and now exceed $1.3 billion. We are the only major contributor in this position. We are behind because we have not been able to obtain full and timely Congressional approval of our requests. For example, legislation authorizing U.S. participation in providing additional funds to the Inter-American Development Bank was needed to bring into effect the agreement by all of the donors to provide funding. Although such legislation was submitted to the Congress in January 1979, there were lengthy delays and the bill was not signed into law until June 1980. As a direct result of these U.S. delays, the Bank was forced to suspend all new lending operations. That suspension affected every developing country in this hemisphere, including such key nations as Brazil and Mexico, and posed particularly severe problems for the smaller countries in Central America and the Caribbean.

Similar delays in passing authorizing legislation for the Asian Development Fund halted concessional lending by that institution to some of the poorest countries in the world, such as Pakistan, Nepal and Bangladesh, and interrupted lending programs for key U.S. allies such as Thailand and the

Philippines. Indeed, at the very time the West was trying to respond to the Russian invasion of Afghanistan, all ADF lending to Pakistan was being held up by our legislative delays, effectively blocking more than $250 million that was in the pipeline. As of June 30, 1980, the mid-point of its fiscal year, the Asian Development Fund had been able to make new loan commitments of less than eight percent of its program for the entire year.

Legislative delays in our contribution to the sixth replenishment of the International Development Association (the World Bank's concessional lending window) are now preventing the entire replenishment agreement from taking effect.

The Congress is now considering major legislation to increase the U.S. quota in the IMF, to authorize U.S. participation in the sixth replenishment of IDA, and to fund this year's contributions to the multilateral development banks. Failure by the United States to participate fully and promptly in these funding programs would not only jeopardize their lending operations, it would disrupt our own strategy to deal with the most serious world economic crisis of the post-World War II period.

The fact is that this country has come to take for granted a world economy hospitable to its own interests. To be sure, there has been economic tension and instability in the past. Yet, because it has been handled with relative ease and efficiency, we have tended to assume that stability and order were the natural state of affairs. We have allowed our support for the institutions—designed to assure that stability and order—to erode.

We can no longer afford this assumption and neglect. We must recognize our own strong self-interest in actively providing needed financial support to the institutions as they confront the problems of the 1980s.

In doing so, we should bear in mind two additional points.

First, participation in these institutions is of minimal cost to the United States. The monetary character of our transactions with the IMF assures that, for every dollar we transfer to the IMF under our quota, we receive an automatically available, interest bearing reserve claim on which we can draw foreign exchange in case of balance of payments need. Consequently, U.S. transfers to the IMF under our quota have no net effect on budget expenditures or the Federal budget deficit.

U.S. payments to the development banks likewise have little budgetary cost. Financial responsibility for the banks is shared broadly with many other countries, developed and developing alike, and the banks raise the largest part of their resources through the private capital markets. The cost-sharing principle and reliance on private markets together allow major development bank lending activity at very small cost to the taxpayer. The World Bank, for example, lends about $50 for each dollar paid in by the United States. For the banks as a whole, lending from their inception through 1978 financed roughly $11 billion in exports of U.S. goods and services, against total U.S. government payments to the banks of only $7 billion. These purchases of U.S. goods and services have major beneficial effects on U.S. employment and profits—yielding GNP growth of $3 for each dollar we pay to the banks—and this in turn leads to increased tax receipts. Ultimately, we believe, the net budgetary impact of this process has been minimal.

Second, our participation in the institutions provides major leverage for obtaining financing by other countries and assuring effective burden-sharing. The United States over the years has consistently sought a more equitable sharing of international assistance provided through the development banks as a fair assumption of increased responsibilities by other nations in response to today's more pluralistic global economy. This effort has been highly successful, and the U.S. share is declining in every development bank in which we have participated since the 1960s.

For example, we have been able to reduce our share in the World Bank from 35 percent in 1945 to 22 percent today, and our share of IDA from 43 percent at its inception in 1960 to 27 percent currently. But we must be careful not to travel this path too far. The United States must continue to play a substantial role in the banks, not only because of the broad benefits we derive and in order to retain our influence, but also as a measure of cooperation. It is axiomatic that if we do not support other nations in achieving their legitimate economic objectives, we cannot expect their cooperation in achieving ours.

CONCLUSION

The international economy is in a critically difficult period, easily as dangerous as any since the Second World War. Success in overcoming global difficulties is essential to success in dealing with the problems confronting our own nation.

The international financial institutions, with strong U.S. support and leadership, are positioned to guide the international effort. But a potentially major threat to this effort is our own failure—a failure to recognize our own self-interest—to provide full and timely financial support for the institutions. This must be corrected. The world community has charged the institutions with enormous tasks, They need the resources to do the job.

The costs to us are minimal. The potential benefits are enormous.

These issues and concerns are not esoteric debating points to be thrashed out solely by government officials in Washington. Leaders of the business and financial community in this country—many of whom are here tonight—must assume part of the responsibility for making the American people aware of the benefits of strong U.S. leadership in the international financial institutions. Once the facts are known, then I am confident that the American people and the political process will respond with the necessary suppport that is so clearly in our national self-interest.●

DISASTROUS CUTS IN EMIGRATION RATE FOR SOVIET JEWRY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. WAXMAN) is recognized for 5 minutes.

● Mr. WAXMAN. Mr. Speaker, on the eve of the Madrid Conference, which is to review the compliance of all the signers of the 1975 Helsinki Accords, it is increasingly evident that the tragedy of the repression of Soviet Jewry is being renewed with even greater intensity by the Soviet Government. In a policy apparently implemented last summer—before the invasion of Afghanistan and the suspension of SALT—the U.S.S.R. began cutting in half the number of Jews permitted to emigrate. This preceded the wholesale "cleaning" of Moscow of refuseniks, dissidents, and other undesirables in preparation for the Olympics. These terribly restrictive emigration quotas are being imposed despite the solemn commitments the Soviets made to its own citizens and the world at Helsinki, despite the importance of this issue to the United States, and despite the growing desire of Soviet Jews to exercise the simple human right of freedom of emigration.

The cold statistics speak for themselves. In January 1979, 3,722 Soviet Jews arrived in Vienna; a year later, only 2,803 came—a decrease of 25 percent. During last May, only 1,976 arrived—a 53-percent reduction from the 4,613 of May 1979. In the meantime, over 12,000 invitations arrive each month to Soviet Jews to join families in Israel. Because of Soviet policy, they remain unanswered. And in the key Ukrainian cities of Kiev, Odessa, and Kharkov, the processing of visa applications has ceased completely.

These actions are the most serious threat to Soviet Jewry since large-scale emigration began in 1971. It exceeds even the dark days of 1975, when the rate of emigration was slashed 35 percent. It is doubtful that more than 20,000 Jews will be able to leave this year. These reductions coincide with a crude campaign of anti-Semitism being waged in the media, the arts, and academia. Soviet Jews are being singled out and punished for the failures and frustrations of the regime.

The Jews of the Soviet Union know that the new year, which begins with Rosh Hashanah next week, promises to be a bitter one for their hopes and dreams of finding freedom in Israel. We must not abandon them in these days of renewal and rededication.

Following for the benefit of my colleagues are data prepared by the National Conference on Soviet Jewry, and a recent article on these developments.

ARRIVALS IN VIENNA

	1979	1980	Decrease (percent)
January	3,722	2,803	24.7
February	3,837	3,023	21.2
March	4,418	3,049	31.0
April	4,296	2,469	42.5
May	4,163	1,976	52.5

Jewish emigration from the U.S.S.R.—annual statistics

October 1968–70	4,235
1971	13,022
1972	31,681
1973	34,733
1974	20,628
1975	13,221
1976	14,261
1977	16,736
1978	28,864
1979	51,320

From October 1968 to December 1979, 228,701 persons left the Soviet Union with Israeli visas. Approximately 153,000 went to Israel. In that period 598,100 Israeli invitations were sent to Soviet Jews.

City	Jewish population (January 1970 census)	Emigrated (1970 to 1979) Total	Percent
Odessa	117,000	23,840	20.4
Kiev	152,000	21,590	14.2
Kharkov	76,490	3,730	4.9
Lvov	27,720	7,080	25.5
Moscow	251,250	12,910	5.1
Leningrad	162,590	11,590	7.1
Minsk	47,060	4,370	9.3
Kishinev	49,970	13,180	26.4

[From the New York Times, July 11, 1980]

EMIGRATION OF SOVIET JEWS HAS SLOWED TO A TRICKLE

(By Craig R. Whitney)

MOSCOW, July 10.—Emigration of Soviet Jews, which reached a record of more than 51,000 in 1979, has fallen steadily this year and has slowed to a trickle this month. Western diplomats tend to attribute the decline to the fact that Soviet visa officials are preoccupied with the Moscow Olympics.

These diplomats, and activists in the emigration movement, believe there are several other reasons for the decline, including Soviet retaliation against the United States for cutting back this year on trade, an issue Congress linked to emigration in 1974.

But there are also signs of official concern about the economic consequences of the emigration, which has seen nearly 240,000 Jews, most of them well-educated people from urban areas, leave the country in the last decade.

ANTI-SEMITISM TONED DOWN

"Last year there was open anti-Semitism in the official press coverage of the Middle East," said an activist who has been trying to emigrate for six years. "This year it's been toned down a little. They may be trying to get people to stay now."

In October, the peak month last year, 4,867 people were issued exit visas for Israel. By January, after the sharp American reaction to the Soviet intervention in Afghanistan, the monthly total had dropped to 3,271, by May to 2,100 and by June to about 1,500, according to officials involved.

Now, with Soviet visa offices in Moscow, Leningrad, Kiev, Minsk and Tallinn devoted to processing visitors to Olympic events in those cities beginning this month, the flow of emigrants from these places has been almost cut off.

PEOPLE STILL SHOWING UP

"It hasn't stopped entirely," a Western diplomat said, "and people are still showing up in Moscow with exit permission from places like Moldavia and Azerbaijan and outlying cities in Russia not affected by the Olympics."

He predicted that the total might be well below 1,000 in July, but said he could only speculate about whether Soviet authorities would resume granting more exit visas after the Olympic Games end on Aug. 3.

"The people showing up here now can't even get hotel rooms in Moscow while they complete their paperwork, because all hotels are reserved for the Olympics," a diplomat said. "So many of them are living with their families in the railroad station waiting rooms."

According to information available here, about 14,000 Jews have received permission to emigrate so far this year.

While this is far fewer than last year's total, which was a record, it is almost as many as the 16,737 who were allowed to leave in 1977 and more than the 13,221 who left in 1975. The previous record was set in 1973, also a time of official Soviet expectations of trade concessions from the United States. A total of 34,733 Jews left that year.

In 1974 Congress enacted legislation tying improved trade terms to increased emigration. This year the Carter Administration said it would make no effort to cut the link and sharply curtailed Soviet trade after Moscow's Afghanistan moves last December.

ARMENIANS ALLOWED TO GO

That may be one of the reasons why the rate of Jewish emigration has been sharply reduced, though paradoxically the authorities are allowing Armenians to emigrate to the United States this year in record numbers. As many as 7,000 may leave by December, according to the United States Embassy here.

Soviet Jews say there are other explanations for the drop.

The Soviet visa offices in the Ukraine, from where a large part of last year's emigrants came, have imposed strict regulations on applicants this year. No one who does not have an authentic invitation from a close relative in Israel is allowed to apply for a visa, sources in the emigration movement say. In the past, Soviet authorities accepted invitations without examining them closely.

The restrictions are said to be most severe in Kiev, the capital of the Ukraine, where visa offices will only accept invitations from a parent or child of the applicant. Ten thousand Jews left Kiev last year, and most of them went to the United States instead of Israel.

Some Jews say the authorities may be beginning to realize that harsh anti-Israeli propaganda, with its overtones of anti-Semitism, was one reason for the surge in emigration, and that they are taking tentative steps to tone it down.

A few days ago a woman who was about to emigrate got an appointment with Vladimir V. Sazanov, an official of the Communist Party Central Committee in Moscow, to present a hefty collection of quotations from Soviet books, magazines and newspapers that she judged anti-Semitic.

Instead of rejecting her claim, Mr. Sazanov reportedly agreed with the woman. "You are not entirely wrong," he said, when she charged that the writers Valentin Pikul, Vladimir Begun and Yevgeny Yevseyev had been particularly offensive in their works. "We try, but we cannot always control these things," he added.

"On the Brink," a novel by Mr. Pikul, received several sharply negative reviews in the official Soviet press last year for what were called its distortions of history. It portrays the last days of the Romanov dynasty in the clutches of a conspiracy of Jewish capitalist millionaires and Rasputin, the mystic and charlatan faith healer.

"There are a few signs of a change of emphasis at high levels," said Viktor Brailovsky, editor of an underground journal called Jews in the U.S.S.R. "But how long it will last is unclear."

JEWS GAIN LENIN PRIZES

This spring's crop of Lenin Prizes, prestigious state awards, included a surprising number of Jewish names, including the popular comedian and actor Arkady Raikin.

In addition, a Yiddish musical theater founded in 1978 by the composer Yuri Sherling was finally given permission this spring to settle in Moscow after two years in the remote Jewish Autonomous Region of Birobidzhan in the Soviet Far East. But it was closed last week because its auditorium, an abandoned movie theater off Taganka Square in Moscow, did not meet fire regulations.

Mr. Brailovsky was arrested last spring in an investigation of his journal. But since then, he said, the authorities have left him alone and, unlike many other dissidents, he has not been ordered to leave Moscow or shunt foreign visitors when the Olympic Games begin on July 19.

EXODUS FROM ODESSA CITED

Friends tell him that in Odessa, a Ukrainian city from which emigration has almost ceased because of new and stricter regulations, people are being told that the Jewish exodus was harming the well-being of the city as a whole.

"If the West can use these people," the message goes, "so should we." Other versions of what is being said are more chilling. "We shouldn't let the jews go West," another story has it. "In 20 years they'll be so rich they'll come back and take over."

Only 1,811,000 people identified themselves as Jews in the 1979 Soviet census, down from 2.15 million in 1970.

Arye Dulzin, chairman of the World Zionist Organization, said in New York recently that the true number might be closer to three million.●

BASIC LAW: JERUSALEM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. ADDABBO) is recognized for 15 minutes.

● Mr. ADDABBO. Mr. Speaker, as millions of Jewish people throughout the world prepare to celebrate the holy day of Rosh Hashanah, the Jewish New Year, I would like to take this opportunity and call to the attention of my colleagues, Jerusalem, the capital of the modern State of Israel.

Over 3,000 years old, Jerusalem is mentioned in the daily liturgy, and throughout the centuries of Jewish dispersion it was the symbol of the nation's glorious past, as well as of hope for the ultimate restoration of the national Jewish homeland. On April 1, 1980 the Egyptian People's Assembly issued a statement determining that East Jerusalem was sovereign Arab territory, the Egyptian parliament calling for the establishment of the city as the seat of the Palestinian autonomous authority.

I strongly protest such a decision, for I believe the sovereignty of the State of Israel must be maintained. I also am in the opinion that Jerusalem must continue to remain as an open one, open to all peoples who wish to practice the religion of their choice, and no action by the United States in seeking a lasting peace in the Middle East should be allowed to compromise that fact.

I recently received a very informative and interesting paper from the Embassy of Israel in regards to this most pressing question and I would like to share it with my colleagues.

BASIC LAW: JERUSALEM

1. From time to time, forces hostile to Israel bring up the "Jerusalem question" in international forums, in an attempt to undermine the city's status as the Capital of Israel and as the living heart of the Jewish people as a whole. The latest furor over Jersalem was raised, at the U.N. and elsewhere, on the initiative of the Arab states, aided by some of the countries of Europe and the "Third World;" it was not Israel that initiated this move. It is those countries, and not Israel, that are responsible both for the timing and for the strident to one of this most recent assault on the integrity of Jerusalem.

2. Originally established by King David as the capital of the United Jewish Kingdom 3,000 years ago, Jerusalem has known repeated cycles of glory, conquest, destruction and exile, followed each time by return, rebuilding and Jewish renaissance.

3. Upon the creation of the State of Israel in 1948, Transjordan (now Jordan) unleashed its army in a ferocious attack upon Jerusalem. Despite U.N. condemnations and calls for at least a local cease-fire to protect Jerusalem's holy places, the beleaguered and besieged Jewish population, fighting desperately for survival, narrowly escaped annihilation by indiscriminate shelling and round-the-clock armored and infantry attacks—while the world stood by without lifting a finger to help save the city so sacred to all religions. Only the tenacity and heavy sacrifices of Jersualem's 100,000 Jews ultimately

ensured the survival of most of the town, leaving but the walled Old City and some of its surroundings in the attackers' hands. For 19 years, the Jordanian army desecrated the Old City's precious synagogues, vandalized its ancient Jewish quarter and used tombstones from the nearby Jewish cemetery to build latrines. Under the armistice agreement, Jordan undertook to allow access to worship at Judaism's holiest shrine, the Western Wall. Not for one day was that commitment ever honored.

4. Jerusalem became the capital of the modern State of Israel when the Knesset, its democratically elected parliament, convened there on Feb. 15, 1949. On Dec. 13 of that year the then Prime Minister, David Ben-Gurion, declared: "The State of Israel has had in the past, and will have in the future, only one capital, as we believe, till the end of time."

5. On the morning of June 5, 1967, as Israel faced renewed aggression from Egypt and Syria, the late Prime Minister Eshkol sent an urgent and solemn message to King Hussein, calling on Jordan to desist from joining the battle and thereby avoid any action against it by the Israel Defense Forces. Alas, the king chose to spurn that appeal. Having joined in a military pact with Egypt, he went to war against Israel. Jordanian artillery and armor opened up a violent artillery barrage against the Israeli sector of Jerusalem and along the whole border with Israel. In the battles that followed, while Israel was fighting for its very existence, the Jordanian aggressors were defeated and withdrew across the Jordan River.

6. The Arab and Islamic campaign against Israel on the subject of Jerusalem began back in 1974, at the Conference of Islamic States, and was given renewed impetus, on the initiative of the Arab Rejectionist States, after the signing of the Camp David Agreements in September, 1978.

7. The subject of Jerusalem came up for discussion at Camp David. When it transpired that agreement could not be reached between the parties, each side presented its position on the subject in a separate letter appended to the Agreements. It was understood by both sides, together with the United States, that priority be given, in the peace negotiations, to the subject of autonomy for the inhabitants of Judea-Samaria and the Gaza district.

8. It was Egypt that first deviated from this understanding. As far back as March 21, 1980, in an interview with NBC, President Sadat minimized the sanctity of Jerusalem for the Jews, in comparison with its sanctity for the Moslems, citing the fact that there are 800 million Moslems but only 13 million Jews. (In moslem religious law and tradition, Jerusalem actually ranks third in holiness after Mecca and Medina—a fact dramatized by President Sadat himself when, on his visit to Jerusalem in November, 1977, he attended prayer services at the El-Aqsa Mosque and, of course, together with the other Moslem worshippers in the mosque, turned his face southward—towards Mecca, which is the center of Islam.)

9. A move of particular gravity was made by Egypt on April 1, 1980, when Egypt's People's Assembly (parliament) issued a statement determining that East Jerusalem was sovereign Arab territory, that it was "an integral part of the West Bank, which had been occupied by armed force." All the steps that had been taken in the city by Israel since the Six-Day War were proclaimed "illegal, null and void and non-binding." The Egyptian parliament called for the establishment of Jerusalem as the seat of the Palestinian autonomous authority.

10. No one outside of Israel raised any objections to this flagrant, unprovoked interference in Israel's internal affairs. Those who stood by in silence when the Egyptian parliament declared Jerusalem to be Arab have forfeited the right to express consternation, now, over the declaration by Israel's Knesset that Jerusalem is Jewish and Israeli.

11. The fact is that no country in the world could fail to react in the strongest terms to so prolonged and persistent a series of provocative interventions in its anairs as has taken place in this instance. Israel was finally compelled to rise to the challenge and to act to protect and clarify its rights. This it did in the form of the Knesset's "Basic Law: Jerusalem," which originated as a Private Member's Bill submitted to the House for the first time on May 14, 1980—in the wake of, and as a reaction to, the anti-Jerusalem campaign that had been mounted in the preceding months and some of whose elements have here been detailed.

12. The wide support given this law by the representatives of the various parties in Israel, in the Coalition as well as the Opposition, underlines the unity of view and of purpose prevailing in this country concerning the fact of Jerusalem's being the eternal capital of Israel—and, in the wider sense, of the entire Jewish people. This fact is deeply rooted in the Jewish consciousness and in the history, culture and religion of the people of Israel.

13. The people and the Government of Israel are keenly aware of the religious meaning of Jerusalem to the followers of Christianity and Islam, whose rights, interests and free access will continue to be meticulously guarded by the Government of Israel, in the future as in the past. But the nature of their attachment to the city is different from that of the Jews. This difference was defined with admirable clarity and precision in an editorial in the London Daily Telegraph on June 25, 1967, shortly after the Six-Day War:

"To Christians and Moslems, Jerusalem is a place where supremely important things happened long ago. To them, therefore, it is an object of pilgrimage. To Jews on the other hand, it is the living centre of their faith, or, if they have no faith, of their identity as a people. To them, it is a place to be possessed, today and forever."

"There is no essential incompatibility between these differing needs. Jewish political possession of Jerusalem and absolute freedom of access to it by Christians and Moslems—these have always been twin declared principles of the State of Israel."

14. Jerusalem's international standing as a holy city derives essentially from its history and character, as a Jewish city—the city in which Judaism, as a religion and a civilization, and the Jewish people, as a nation, came into their own; the city, moreover, in which, for the last 100 years and more, the Jews have constituted a clear majority of the population. It is indeed unfortunate that so many governments still fail to recognize this reality. But that does not make it any less a reality, molded as it has been by thousands of years of history. Certainly, any attempt to strike at this unalterable reality is to deal a blow to the peace process and to Israel itself. Jerusalem is the very symbol of the sovereignty of Israel and a central element in the self-determination of the Jewish people as a nation.

15. From the judicial point of view, there is virtually nothing new in this law. It simply reaffirms the existing situation as established either by previous laws or by accepted norms:

(a) The first paragraph of the law reaffirms the long established fact that Jerusalem, complete and united, is the capital of Israel.

(b) The second paragraph states that Jerusalem is the seat of the President of the State, of the Knesset, of the Government and of the Supreme Court—as already laid down in the specific laws relating to these official bodies.

(c) The third paragraph, dealing with the inviolability of the holy places of all religions and free access to them, repeats what is stated in the Protection of the Holy Places Law, 1967, which, as is universally known, has been fully and meticulously observed.

(d) The fourth paragraph deals with the development of the city and the resources to be allocated for this purpose.

16. The real significance of this law lies in the political-declarative realm—in other words, in it serving as a reply to those who would question or undermine Israel's sovereignty over the capital city. It should be understood as a restatement of basic facts concerning Jerusalem and as an official reaffirmation of Israel's rights, in the wake of the Arab-Moslem campaign to negate those facts—and those rights. In the light of the fact that Jerusalem is and has been Israel's capital, one must understand that the recent legislation merely serves to confirm the prevailing situation. For those who question Israel's rights in this regard, the law will serve to clarify Israel's position.●

HAROLD RUNNELS—A NICE GUY

(Mr. PERKINS asked and was given permission to extend his remarks at this point in the RECORD.)

● Mr. PERKINS. Mr. Speaker, one of the people in the House it was always a pleasure to talk with, about Congress or anything else, was Harold Runnels. He was a proverbial "nice guy," as the expression goes, and we need more of them, not fewer, in our midst.

But aside from that, Congressman Runnels was a well-informed man, informed about the issues that concerned his State and the Nation, and an active mover with legislation directly reflecting his constituents' needs.

In addition to that, he was a farmer, and I really think that farming was what he liked more than anything else. We used to talk about agriculture often, especially livestock, and once we traded some bulls. I can attest to the quality of his livestock, and I think—if I know how farming people value opinions—that Harold would appreciate knowing I chose to say, on the floor, that he was a quality person, and a quality farmer.

He had served five terms when he died at the relatively early age of 56, and we are going to think of him often here, and we are going to miss him very much.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. BURGENER (at the request of Mr. RHODES), for today, and September 8, 1980, on account of official business.

Mr. RODINO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DINGELL) to revise and extend their remarks and include extraneous material:)

Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. NEAL, for 15 minutes, today.
Mr. DICKS, for 5 minutes, today.
Mr. BOLAND, for 5 minutes, today.
Mr. ALEXANDER, for 30 minutes, today.
Mr. WAXMAN, for 5 minutes, today.
Mr. ECKHARDT, for 5 minutes, today.
Mr. ADDABBO, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. FLORIO, and to include extraneous material, on the bill, H.R. 7235, in the Committee of the Whole today.

(The following Members (at the request of Mr. KRAMER) and to include extraneous matter:)

Mr. COLEMAN.
Mr. HILLIS.
Mr. BROYHILL.
Mr. LEWIS.
Mr. DERWINSKI in two instances.
Mr. DORNAN in four instances.
Mr. YOUNG of Florida.
Mr. VANDER JAGT.
Mr. ASHBROOK in two instances.
Mr. ROUSSELOT.

(The following Members (at the request of Mr. DINGELL) and to include extraneous matter:)

Mr. MINETA.
Mr. WEISS.
Mr. HEFTEL.
Mr. EARLY.
Mr. BINGHAM.
Ms. OAKAR.
Mr. MCDONALD.
Mr. DELLUMS.
Mr. ASPIN.
Mr. BARNES.
Mr. STARK.
Mr. OBEY in five instances.
Mr. HARKIN.

ADJOURNMENT

Mr. DINGELL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 25 minutes p.m.) the House adjourned until Monday, September 8, 1980, at 12 o'clock noon.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports of various House committees, and delegations traveling under an authorization from the Speaker, concerning the foreign currencies and U.S. dollars utilized by them during the second quarter of calendar year 1980 in connection with foreign travel pursuant to Public Law 95-384 are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1980

Name of Member or employee	Date: Arrival	Date: Departure	Country	Per diem [1]: Foreign currency	Per diem [1]: U.S. dollar equivalent or U.S. currency [2]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency [2]	Other purposes: Foreign currency	Other purposes: U.S. dollar equivalent or U.S. currency [2]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency [2]
Hon. Bill Alexander	4/8	4/11	Japan		368.00						368.00
	4/11	4/15	China (PRC)		(3)		1,964.70				1,964.70
Hon William Lehman	4/3	4/5	France		188.00						188.06
	4/5	4/8	Egypt		225.00						225.00
	4/8	4/11	Israel		245.00						245.04
	4/11	4/12	Italy		75.00						75.00
	4/12	4/14	Tunisia		246.00						246.00
	4/14	4/15	Spain		96.00						96.00
Military transportation							3,228.00				3,228.00
Hon. Clarence Long	5/25	5/26	Switzerland		192.00		2,036.00				2,228.00
Hon. Matthew McHugh	4/3	4/5	France		188.00						188.00
	4/5	4/8	Egypt		225.00						225.00
	4/8	4/12	Israel		320.00						320.00
	4/12	4/14	Tunisia		246.00						246.00
	4/14	4/15	Spain		96.00						96.00
Military transportation							3,228.00				3,228.00
Hon. Sidney Yates	5/23	5/24	Italy		172.00						172.00
	5/24	5/28	Israel		195.32						195.32
Military transportation							5,601.60				5,601.60
Hon. C. W. Bill Young	5/25	5/26	Switzerland		192.00						192.00
Military transportation							2,036.00				2,036.00
Jimmy R. Fairchild	4/3	4/5	France		188.00						188.00
	4/5	4/8	Egypt		225.00						225.00
	4/8	4/12	Israel		320.00						320.00
	4/12	4/14	Tunisia		246.00						246.00
	4/14	4/15	Spain		96.00						96.00
Military transportation							3,228.00				3,228.00
Robert S. Kripowicz	4/5	4/10	Brazil		414.00		90.97				504.97
	4/10	4/12	South Africa		150.00						150.00
	4/12	4/14	United Kingdom		351.00		15.84				366.80
Commercial transportation							3,299.46				3,299.40
Edwin F. Powers	4/3	4/5	France		188.00						188.00
	4/5	4/8	Egypt		225.00						225.00
	4/8	4/12	Israel		320.00						320.00
	4/12	4/14	Tunisia		246.00						246.00
	4/14	4/15	Spain		96.00						96.00
Military transportation							3,228.00				3,228.00
Total					6,334.32		27,956,57				34,290.89
Surveys and Investigations staff:											
George T. Prosser	4/12	4/15	United Kingdom		354.75						
	4/15	4/25	Germany		804.75						
	4/25	4/29	France		399.50						
	4/29	5/2	Spain		225.00		2,471.87				4,255.87
Ralph A. Regalbuto, Jr.	4/12	4/15	United Kingdom		354.75						
	4/15	4/25	Germany		806.75						
	4/25	4/29	France		376.00		2,465.45				4,002.95
Robert J. Reitwiesner	4/12	4/17	United Kingdom		446.25						
	4/11	4/12									
	4/17	4/25	Germany		736.25						
	4/25	4/29	France		399.50						
	4/29	5/2	Spain		225.00		2,624.50				4,431.50
Leonard M. Walters	4/12	4/17	United Kingdom		417.25						
	4/11	4/12									
	4/17	4/25	Germany		754.25						
	4/25	4/29	France		376.00		2,628.35				4,175.85
Total					6,676.00		10,190.17				16,866.17

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] None claimed.

Aug. 29, 1980.

JAMIE L. WHITTEN, Chairman.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON THE BUDGET, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1980

Name of Member or employee	Date: Arrival	Date: Departure	Country	Per diem [1]: Foreign currency	Per diem [1]: U.S. dollar equivalent or U.S. currency [2]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency [2]	Other purposes: Foreign currency	Other purposes: U.S. dollar equivalent or U.S. currency [2]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency [2]
Nancy Kay	5/13	5/14	Canada	$177.52	150.00		160.00				310.00
Michael Telson	6/22	6/25	United Kingdom	£213.78	504.00	£493	1,163.00				1,667.00
Total					654.00		1,323.00				1,977.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

Aug. 20, 1980.

ROBERT N. GIAIMO, Chairman.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1980

Name of Member or employee	Date: Arrival	Date: Departure	Country	Per diem [1]: Foreign currency	Per diem [1]: U.S. dollar equivalent or U.S. currency [2]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency [2]	Other purposes: Foreign currency	Other purposes: U.S. dollar equivalent or U.S. currency [2]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency [2]
Hon. Andrew Maguire	4/3	4/4	Sudan	0	75.00					0	75.00
	4/4	4/5	Somalia	464.20	75.00					464.20	75.00
	4/5	4/6	Oman	73.870	216.00					73.870	216.00
	4/7	4/9	Pakistan	1504.80	[3] 152.00					1504.80	[3] 152.00
	4/9	4/10	Saudi Arabia	506.20	152.00					506.20	152.00
	4/10	4/11	Kuwait	41/400	154.00					41/400	154.00
	4/11	4/13	Turkey	11,055	150.00					11,055	150.00
Transportation, Department of the Air Force.							5,404.36				5,404.36
Hon. Elliott Levitas	4/10	4/11	Belgium	6,250	206.00	NKR2,655	527.41				733.41
Total					1,180.00		5,931.77				7,111.77

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] $76 overpayment returned to U.S. Treasury; this figure reflects only what should have been received.

July 31, 1980.

JACK BROOKS, Chairman.

AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1980

Name of Member or employee	Date: Arrival	Date: Departure	Country	Per diem [1]: Foreign currency	Per diem [1]: U.S. dollar equivalent or U.S. currency [2]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency [2]	Other purposes: Foreign currency	Other purposes: U.S. dollar equivalent or U.S. currency [2]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency [2]
Hon. Lester L. Wolff	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
Hon. Leo C. Zeferetti	5/23	5/25	Italy	289,280	344.00		1,196.00			289,280	1,540.00
Hon. James H. Scheuer	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/30	India	1,741.50	225.00		1,370.00			1,741.50	1,595.00
Hon. Robert K. Dornan	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00		1,160.40			14,496	1,480.40
Patrick L. Carpentier	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
Roscoe B. Starek III	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
C. Robert Pfeifle	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
Total					5,333.00		3,726.40				9,059.40

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

Note: Military transportation costs totaled $25,756.71. Local transportation costs incurred in New Delhi totaled $446.62.

July 31, 1980.

LESTER L. WOLFF, Chairman.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO ITALY, ISRAEL, INDIA AND PAKISTAN, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1980

Name of Member or employee	Date: Arrival	Date: Departure	Country	Per diem [1]: Foreign currency	Per diem [1]: U.S. dollar equivalent or U.S. currency [2]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency [2]	Other purposes: Foreign currency	Other purposes: U.S. dollar equivalent or U.S. currency [2]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency [2]
Edward J. Palmer	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
Jon D. Holstine	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
Susan S. Hardesty	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
James DeChaine	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	5/28	Israel	14,496	320.00					14,496	320.00
	5/28	5/31	India	1,741.50	225.00					1,741.50	225.00
	5/31	6/3	Pakistan	2,257.20	228.00					2,257.20	228.00
Benek Geizhals	5/23	5/24	Italy	144,800	172.00					144,800	172.00
	5/24	6/1	Israel	14,496	320.00					14,496	320.00
Total					4,272.00						4,272.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

Note: Military transportation costs totaled $18,397.65.

July 31, 1980.

BENEK GEIZHALS, Chairman.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rules XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. REUSS: Committee on Banking, Finance and Urban Affairs. Report pursuant to section 302(b) of the Congressional Budget Act of 1974 (Rept. No. 96–1288). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 7945. A bill to provide financial asistance for the establishment and implementation of energy plans by units of local government, and for other purposes; with amendment (Rept. No. 96–1299). Referred to the Committee of the Whole House on the State of the Union.

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 3806. A bill to establish a U.S. Court of Appeals for the Federal Circuit, to establish a U.S. Claims Court, and for other purposes; with amendment (Rept. No. 96–1300). Referred to the Committee of the Whole House on the State of the Union.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 7273. A bill to amend the Immigration and Nationality Act, and for other purposes; with amendment (Rept. No. 96–1301). Referred to the Committee of the Whole House on the State of the Union.

Mr. DRINAN: Committee on the Judiciary. H.R. 7817. A bill to amend or disapprove certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence proposed by the Supreme Court, and to amend chapter 231 of title 18, United States Code (relating to probation; with amendment (Rept. No. 96–1302). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rules XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 935. For the relief of Jessie Kuo Tang and Sharon Kuo Tang; with amendment (Rept. No. 96–1289). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 936. For the relief of Kit Tung (Rept. No. 96–1290). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 3096. For the relief of Raymond M. Gee (Rept. No. 96–1291). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 3869. For the relief of Eileen Angella Crossdale; with amendment (Rept. No. 96–1292). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 4522. For the relief of Annette Jutta Wohrle; with amendment (Rept. No. 96–1293). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 5157. For the relief of Lilia Ester Cantu; with amendment (Rept. No. 96–1294). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 5379. For the relief of Jaramporn Sermsri and Akharata Sermsri; with amendment (Rept. No. 96–1295). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 5745. For the relief of Michael Chinwen Ke. (Rept. No. 96–1296). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 6030. For the relief of Elena Patricia Mattos. (Rept. No. 96–1297). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. S. 215. A bill for the relief of Renuka Pavla (Rept. No. 96–1298). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GIBBONS:

H.R. 8082. A bill to amend the Internal Revenue Code of 1954 to extend the benefits of special farm valuation for estate tax purposes; to the Committee on Ways and Means.

By Mr. ADDABBO (for himself and Mr. ZEFERETTI):

H.R. 8083. A bill to amend the Social Security Act to provide that the Federal Govment will gradually take over the local share of welfare and medicaid costs, and for other purposes; jointly, to the Committees on Interstate and Foreign Commerce, and Ways and Means.

By Mr. OBEY:

H.R. 8084. A bill to amend the Wild and Scenic Rivers Act to authorize the acquisition of certain lands in Douglas County, Wis.; to the Committee on Interior and Insular Affairs.

By Mr. STANTON (for himself, Mr. WYLIE, Mr. HANSEN, Mr. HYDE, Mr. KELLY, Mr. LEACH of Iowa, Mr. EVANS of Delaware, Mr. GREEN, Mr. PAUL, Mr. BETHUNE, Mr. SHUMWAY, Mr. CAMPBELL, Mr. RITTER, Mr. HINSON, Mr. PORTER, Mr. MITCHELL of Maryland, Mr. NEAL, Mr. HUBBARD, Mr. EVANS of Indiana, Mr. BARNARD, and Mr. WATKINS):

H.R. 8085. A bill to sunset the Credit Control Act; to the Committee on Banking, Finance and Urban Affairs.

By Mr. FORD of Michigan (for himself, Mr. ALBOSTA, Mr. ANDREWS of North Carolina, Mr. BAILEY, Mr. BEDELL, Mr. BENJAMIN, Mr. BLANCHARD, Mr. BONIOR of Michigan, Mr. BRODHEAD, Mr. BROOMFIELD, Mr. CARTER, Mr. CLAY, Mr. DAVIS of Michigan, Mr. DINGELL, Mr. FROST, Mr. KILDEE, Mr. MINETA, Mr. MITCHELL of Maryland, Mr. MURPHY of Pennsylvania, Mr. NEAL, Mr. NEDZI, Mr. O'BRIEN, Mr. RITTER, Mr. ROYER, Mr. TRAXLER, Mr. VENTO, Mr. CHARLES WILSON of Texas, and Mr. YOUNG of Missouri):

H.J. Res. 606. Joint resolution authorizing the President to enter into negotiations with foreign governments to limit the importation of automobiles and trucks into the United States; to the Committee on Ways and Means.

By Mr. PHILLIP BURTON:

H. Con. Res. 429. Concurrent resolution expressing the sense of the Congress regarding the biennial cost-of-living adjustments for Federal retirees; jointly, to the Committees on Armed Services and Post Office and Civil Service.

By Mr. DONNELLY:

H. Con. Res. 430. Concurrent resolution expressing the sense of the Congress with respect to the equal treatment by the U.S. Government of persons violating the law; to the Committee on the Judiciary.

By Mr. PATTERSON:

H. Res. 782. Resolution authorizing the printing as a House document of the transcript of hearings of the Select Committee on Committees relating to energy jurisdiction of House committees; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. ROYER introduced a bill (H.R. 8086) for the relief of Charles Evans and Associates of San Mateo, Calif.; which was referred to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 654: Mr. MOORHEAD of California.

H.R. 1918: Mr. BALDUS and Mr. LEACH of Louisiana.

H.R. 3764: Mr. LLOYD.

H.R. 6540: Mr. STUDDS.

H.R. 6709: Mr. BETHUNE.

H.R. 6977: Mr. GREEN.

H.R. 7505: Mr. MAVROULES.

H.R. 7983: Mr. D'AMOURS, Mr. AUCOIN, Mr. MARTIN, Mr. MINETA, and Mr. DOWNEY.

H.J. Res. 506: Mr. ALEXANDER, Mr. BARNARD, Mr. BOWEN, Mr. BURGENER, Mr. CAMPBELL, Mr. CARNEY, Mr. CHENEY, Mr. CLAUSEN, Mr. DANIEL, B. CRANE, Mr. DE LA GARZA, Mr. DOWNEY, Mr. EVANS of Delaware, Mr. HOWARD, Mr. KOGOVSEK, Mr. LEHMAN, Mr. LONG of Maryland, Mr. LAGOMARSINO, Mr. MADIGAN, Mr. MATSUI, Mr. MCEWEN, Mr. MCHUGH, Mr. NEAL, Mr. NELSON, Mr. OBERSTAR, Mr. OTTINGER, Mr. PETRI, Mr. ROE, Mr. STACK, and Mr. WIRTH.

H.J. Res. 511: Mr. CLINGER.

H.J. Res. 568: Mr. KOSTMAYER, Mr. CORMAN, and Mr. VENTO.

H. Con. Res. 412: Mr. BADHAM, Mr. CARTER, Mr. FAZIO, Mr. GUYER, Mr. HUGHES, Mr. LUNGREN, Mr. MCCLORY, Mr. STARK, and Mr. ROBERT W. DANIEL, JR.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 20

By Mr. BREAUX:

—Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and that may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national policy for aquaculture;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increase aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "coordinating group" means the interagency aquatic coordinating committee established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any States.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "'State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers or employees of the Federal Government), while away from their homes or regular places of business in the performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5708 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine to have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential;

(3) taking into account the status of aquaculture regarding the aquatic species concerned, address—

(A) aquaculture facility design and operation;

(B) water quality management,

(C) use of waste products (including thermal effuents),

(D) nutrition and the development of economical feeds, including natural food sources,

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans),

(F) processing and market development,

(G) production management and quality control, and

(H) the development of adequate supplies of seed stock;

(4) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(5) include, where appropriate, programs to analyze, and to formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture; and

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person; and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquacultural assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the coordinating group, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system and, if necessary to determine its feasibility, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economic information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and

(ii) recommended measures to ameliorate any such effect; and

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, though the coordinating group, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, an explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretaries deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 5. (a) ESTABLISHMENT.—There is established within the Office of Science and Technology Policy on interagency aquaculture coordinating group that shall, subject to subsection (f), operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978. The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture.

(2) The Secretary of Commerce.

(3) The Secretary of the Interior.

(4) The Secretary of Energy.

(5) The Secretary of Health and Human Resources.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Administrator of the Small Business Administration.

(9) The Administrator of the Agency for International Development.

(10) The Chairman of the Tennessee Valley Authority.

(11) The Director of the National Science Foundation.

(12) The Governor of the Farm Credit Administration.

(13) The heads of such other Federal agencies as are deemed appropriate by the Director of the Office of Science and Technology (hereinafter in this section referred

to as the "Director"), after consultation with the coordinating group.

(b) PURPOSE AND FUNCTIONS.—The purpose of the coordinating group is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the coordinating group shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) CHAIRMAN.—Each of the Secretaries or their designees, on such rotating basis as shall be determined by the Director, shall serve as the chairman of the coordinating group. The term of office of the chairman is two years.

(d) REPORTS.—The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) FEDERAL CONSISTENCY.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

(f) FUNCTIONS IF FEDERAL COUNCIL TERMINATED.—If at any time after the date of the enactment of this Act, the functions of the Federal Council are by executive action terminated or transferred to any agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) and the report required under subsection (d) shall be made to the Director.

CONTRACTS AND GRANTS

SEC. 7. (a) IN GENERAL.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) LIMITATION.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

SEC. 8. (a) CAPITAL REQUIREMENTS STUDY.—The Secretaries, through the coordinating group, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) CAPITAL REQUIREMENTS PLAN.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

SEC. 9. (a) REGULATORY CONSTRAINTS STUDY.—The Secretaries, through the coordinating group, shall conduct, within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to recove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983;
(2) to the Department of Commerce—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983; and
(3) to the Department of the Interior—
(A) $3,000,000 for fiscal year 1981,
(B) $4,000,000 for fiscal year 1982, and
(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or activity authorized under any other provision of law.

H.R. 6721

By Mr. MOORE:

—Page 80, line 25, strike out ", operate,".

Page 81, line 2, strike out "manner" and insert in lieu thereof "condition".

Page 81, line 3, insert the word "maintenance" immediately before the word "expenses".

Page 81, line 5, strike out "The amounts appropriated" and all that follows through the date "1985" on line 10 and insert in lieu thereof the following: "The amounts appropriated from the Trust Fund for the purposes of clauses (1) and (2) of this subsection may not exceed $400,000,000 for fiscal year 1981; $428,000,000 for fiscal year 1982; $458,000,000 for fiscal year 1983; $490,000,000 for fiscal year 1984; and $524,000,000 for fiscal year 1985.".

H.R. 7020

By Mr. FLORIO:

—Page 56, line 14, strike out "0.6" and insert in lieu thereof "0.4".

Page 57, line 7, strike out "0.6" and insert in lieu thereof "0.4".

Page 60, line 19, strike out "$2.54" and insert in lieu thereof "1.88".

Page 60, line 21, strike out "$2.33" and insert in lieu thereof "$1.73".

Page 62, line 2, insert after "chromite" the following: "(excluding that portion used to make ferrochrome)".

Page 67, line 12, strike out "$75,000,000" and insert in lieu thereof "$85,000,000".

Page 67, line 13, strike out "$75,000,000" and insert in lieu thereof "$85,000,000".

Page 67, line 14, strike out "$100,000,000" and insert in lieu thereof "$113,000,000".

Page 68, beginning in line 4, strike out "as in" and all that follows down to the period in line 6.

H.R. 7244

By Mr. HANCE:

—Page 9, line 23, strike out "SEC. 6." and insert in lieu thereof "SEC. 7.".

Page 9, after line 21, insert the following new section:

ASSISTANCE TO THE PRIVATE SECTOR OF EL SALVADOR AND OTHER NATIONS

SEC. 6. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. It is the sense of the Congress that in providing assistance through loans or other means to any nation, in particular El Salvador, the Fund and the Bank should encourage programs which assist the private sector, and which provide funds to the private sector, to create an environment which will stabilize the economy of the nation. The United States representatives to the Fund and the Bank shall promote the use of assistance by the Fund and the Bank to encourage such programs.".

EXTENSIONS OF REMARKS

ISRAEL AS A NATION AND A SYMBOL: RONALD REAGAN'S STATEMENT BEFORE THE B'NAI B'RITH

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. KEMP. Mr. Speaker, no single nation has assumed the immense importance to American security—with or without benefit of a formal alliance—that Israel has acquired in her three decades of existence. Israel is, quite literally, a strategic asset to the United States in the midst of a troubled but vital region that is now the focus of Soviet covert as well as overt aggression. As a nation, Israel has stood without reservation as America's most loyal and valuable ally in the region.

Its resolve to retain its freedom in the face of implacable hostility and long odds have also served to make Israel a symbol of the relentless effort required to preserve peace.

Until the advent of the Carter administration, the central relationship of Israel to American security was well understood by every President since Truman. As a result, American diplomacy was directed to support Israel and her right to exist. Under the present administration, three decades of consistent American policy has been threatened. Israel's enemies are armed by the administration with advanced American offensive weapons. Crucial votes in international organizations on questions of profound concern to the security of Israel are met not with American support, but indifference. As one observer expressed it, "the stench of America's abstention—from voting—in the United Nations has the smell of oil"—a Faustian bargain the administration appears to believe it can make to trade off Israel's security for the favor of the Petro-Shieks.

In a statement before the B'nai B'rith forum on September 3, 1980, Ronald Reagan reaffirmed his commitment to the traditional American understanding of the importance of Israel to our national interest.

In his remarks, he called attention to the grave risks associated with the administration's policy. "To weaken Israel is to destabilize the Middle East and risk the peace of the world, for the road to world peace runs through the Middle East." Governor Reagan's reaffirmation of our commitment to Israel stands in stark contrast to the unremitting efforts of the Carter administration to pressure Israel into accepting terms for a Middle East settlement which jeopardizes Israel's security. Ronald Reagan's statement on Israel deserves to be read as an assertion of a change of course in American policy in the Middle East that will restore our policy to one which supports our interests in the region.

Governor Reagan's speech follows:

ADDRESS BY HON. RONALD REAGAN

I know it will come as no surprise to you that I have chosen to speak to you tonight about the State of Israel, its importance to our own nation and world peace.

But in a sense when I speak of Israel, I speak as well of other concerns of B'nai B'rith and of the entire Jewish community in the United States. Israel is not only a nation—it is a symbol. During my campaign I have spoken of the values of family, work, neighborhood, peace and freedom. I made a commitment to see to it that those values would be at the heart of policy-making in a Reagan Administration. Israel symbolizes those values. What is Israel if not the creation of families, working together to build a place to live and work and prosper in peace and freedom?

In defending Israel's right to exist, we defend the very values upon which our nation is built.

The long agony of Jews in the Soviet Union, is, of course, never far from our minds and hearts. All these suffering people ask is that their families get the chance to work where they choose, in freedom and peace. They will not be forgotten by a Reagan Administration.

But, I must tell you this:

No policy, no matter how heartfelt, no matter how deeply rooted in the humanitarian vision we share, can succeed if the United States of America continues its descent into economic impotence and despair.

Neither the survival of Israel nor the ability of the United States to bring pressure to bear on the situation of dissidents against tyranny can become realistic policy choices if our American economy continues to deteriorate under the Carter policies of high unemployment, taxes and inflation.

The rhetoric of compassion and concern becomes just that, mere words, if not supported by the vision—and reality—of economic growth. The present Administration does not seem to realize this. It seems to believe that if the right kind of words are chosen and repeated often enough, all will be well. Can those who share our humanitarian concerns ignore the connection between economic policy, national strength and the ability to do the work of friendship and justice and peace in our own nation and world?

The theme of this convention, "A Covenant with Tomorrow," speaks directly to the question of American interests and the well-being of Israel. There is no covenant with the future which is not firmly rooted in our covenant with the past. Since the rebirth of the State of Israel, there has been an iron-clad bond between that democracy and this one.

That bond is a moral imperative. But the history of relations between states demonstrates that while morality is most frequently given as a motive for actions, the true and abiding motive is self-interest. Well, the touchstone of our relationship with Israel is that a secure, strong Israel is in America's self-interest. Israel is a major strategic asset to America.

Israel is not a client, but a very reliable friend, which is not something that can always be said of the United States today under the Carter Administration.

While we have since 1948 clung to the argument of a moral imperative to explain our commitment to Israel, no Administration has ever deluded itself that Israel was not of permanent strategic importance to America. Until, that is, the Carter Administration, which has violated this covenant with the past. Can we now have confidence it will honor a covenant with tomorrow?

The interests of all the world are served by peace and stability in the Middle East. To weaken Israel is to destabilize the Middle East and risk the peace of the world, for the road to world peace runs through the Middle East.

How do we travel that road?

We cannot positively influence events at the perimeters of our power if power—including economic power—at the center is diminished.

The conduct of this nation's foreign policy in the last four years has been marked by inconsistency and incompetence.

We must have a principled, consistent foreign policy which our people can support, our friends understand, and our adversaries respect. Our policies must be based upon close consultation with our allies.

We require the defensive capability necessary to ensure the credibility of our foreign policy, and the security of our allies and ourselves. There can be no security for one without the other.

Today, under Jimmy Carter, our defensive capability has been so seriously eroded as to constitute not a deterrent but a temptation.

This is not a campaign issue, it is a matter of grave national concern; indeed so grave that the President considers it a liability to his personal political fortunes. He has tried to give the appearance of responding to it. But the half-hearted measures he proposes are clearly inadequate to the task.

We must restore the vital margin of safety which this Administration has allowed to erode, maintaining a defense capability our adversaries will view as credible and that our allies can rely upon.

As an ally of the United States, Israel must have the means to remain strong and secure. Over the years, the United States has provided economic and defense assistance, and a Reagan Administration will maintain this traditional commitment.

In 1976, Candidate Jimmy Carter came before this convention and said: "I have called for closer ties with our traditional allies, and stronger ties with the State of Israel. I have stressed" he said, "the necessity for a strong defense—tough and muscular, and adequate to maintain freedom under any conceivable circumstances."

One wonders, did the candidate listen to his own call? Today we have fewer real allies and, among those, we speak with diminished authority. Our relations with Israel are marked by doubt and distrust. Israel today is in grave danger, and so is freedom itself.

In 1976, Jimmy Carter declared that he would seek what he called a "comprehensive settlement" in the Middle East. What this

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

might mean for Israel and how this might be achieved were questions neither asked nor answered.

The comprehensive agreement which Mr. Carter sought required, first, a reconvening of the Geneva Conference. Israel was amenable to this step. Her adversaries agreed conditionally. But, the conditions were that the Palestine Liberation Organization be represented and that Israel effectively agree in advance of negotiation to withdraw to the pre-1967 borders, which were in fact armistice lines resulting from the first effort to destroy the State of Israel. Israel rightly refused these conditions and was promptly accused of intransigence. Can we believe that Mr. Carter is not still in favor of dealing with the P.L.O. and desirous of forcing the terms of a settlement?

Mr. Carter invited the Soviet Union to join him in his effort to force Israel to accept the mockery of negotiations in Geneva. Before that, it had required a major effort to keep the Soviets out of the Middle East peace process. In October, 1977, Mr. Carter invited them back in free of charge, and they graciously accepted. The Carter Administration presented as a major achievement the conclusion of a joint Soviet-American accord which would have given the Russians a stranglehold on negotiations, as well as a convenient calling card for inserting themselves more deeply into the Middle East.

This seriously disturbed President Sadat. The President of Egypt did not share Mr. Carter's appreciation of the Soviets, and he came to the conclusion which other world leaders, including Mr. Brezhnev, have now reached: Mr. Carter is incapable of distinguishing between his own short-term political interest, and the nation's long-term foreign policy interests. Mr. Carter professed not to understand what all the fuss was about.

The result was that the United States Government, for the first time in the history of the rebirth of Israel, found itself on the outside looking in. President Sadat made his courageous trip to Jerusalem at the invitation of Prime Minister Begin, and a bilateral peace process began. Without, let me re-emphasize, the participation of Mr. Carter. The quick foreign policy success that Carter had hoped to achieve turned instead into another major foreign policy blunder.

What we do or fail to do in the Middle East is of vital importance not only to the peoples of the region, but also to the security of our country, our Atlantic and Pacific allies, Africa, China, and the Asian subcontinent.

Because of the weak and confused leadership of Jimmy Carter, we are approaching a flashpoint in this tragic process, with Soviet power now deployed in a manner which directly threatens Iran, the Persian Gulf and Arabian Sea; with Soviet forces and proxy forces building up again in the region; with Soviet fleets and air bases emplaced along the sea lanes on which we and our Allies and the entire free world depend.

In spite of this I am confident that if we act with vigor, vision and practical good sense, we can peacefully blunt this Soviet thrust. We can rely upon responsible Arab leaders in time to learn what Anwar Sadat learned, which is that no people can long endure the cost of Soviet patronage.

How we deal with Israel and her neighbors in this period will determine whether we rebuild the peace process or whether we continue to drift. But let it be clear that the cornerstone of our effort and of our interest is a secure Israel, and our mutual objective is peace.

While we can help the nations of that area move toward peace, we should not try to force a settlement upon them.

Our diplomacy must be sensitive to the legitimate concerns of all in the area. Before a negotiated peace can ever hope to command the loyalty of the whole region, it must be acceptable to Israelis and Arabs alike.

Most important, we must rebuild our lost reputation for trustworthiness. We must again become a nation that can be relied upon to live up to its commitments.

In 1976, Candidate Jimmy Carter said: "I am concerned with the way in which our country, as well as the Soviet Union, Britain and France have poured arms into certain Arab countries—five or six times more than Israel receives."

But it was Mr. Carter who agreed to sell sixty F-15 fighters to Saudi Arabia. To get the Congress to go along, he assured these aircraft would not have certain offensive capabilities. Now, the Secretary of Defense tells us he cannot say whether this commitment to Congress will be honored.

It was Mr. Carter who agreed to sell one hundred main battle tanks to Jordan.

It was Mr. Carter who agreed to provide U.S. licensed turbine engines for Iraqi warships.

Meanwhile, Israel is being increasingly isolated by international terrorism and by U.N. resolutions designed to undermine Israel's position in the world while Carter stands by and watches.

I was appalled to see the Carter Administration abstain from voting on, rather than veto, the Resolution passed by the United Nations Security Council two weeks ago, totally disregarding the Democratic Platform promises of 1976 and 1980. As I stated then, that Resolution not only undermines progress toward peace by putting the United Nations on record against Israel and on one side of the sensitive issue of the status of Jerusalem; it also presumes to order other nations—including our Dutch ally—to move their embassies from Jerusalem.

I believe this sorry episode sheds some light on an earlier action by Jimmy Carter concerning another U.N. resolution, voted on in March this year. On March 1st, the Carter Administration failed to veto a mischievous U.N. resolution condemning Israel's presence in Jerusalem, calling it an "occupation." That was the position of the Carter Administration on Saturday. Two days later, on a Monday, reacting to the public outcry, Jimmy Carter put the blame for this outrage on his Secretary of State and reversed the position of the Administration.

The man who asks "trust me," zigzags and flip-flops in ever more rapid gyrations, trying to court favor with everyone: Israel, the P.L.O., the voting bloc in the United Nations and the voters at home. On March 1st, it took the Carter Administration three days to switch positions. On August 20th, it took only three minutes. Secretary of State Muskie condemned the U.N. Resolution on Jerusalem in a long speech that was for the voters in this country. Minutes later, he abstained instead of vetoing the U.N. Resolution. That was for the P.L.O. and their friends.

This is the Carter record on the Middle East. Arab leaders are persuaded that we don't mean what we say. How do we build productive relations with either side on such a basis?

Before we can act with authority abroad, we have to demonstrate our ability to make domestic policy without asking permission of other governments.

Mr. Carter sent an emissary to Saudi Arabia to ask for permission to store petroleum here in our own country—a strategic reserve vital to our national security and long demanded by Congress. The Saudis, predictably, said no. Mr. Carter halted the stockpiling.

Can we have relations with our friends in the Arab world if those relations are built on contempt for us?

Clear away the debris of the past four years, and the following issues remain to test the good faith of the Arab nations and of Israel, and to challenge our national will and diplomatic skill in helping them to shape a peace.

There is the unresolved question of territorial rights resulting from the 1967 war.

There is the status of Jerusalem which is part of the first question.

There is the matter of refugees.

There is the matter of the P.L.O., which I consider distinct from the matter of the refugees.

The question of territory, putting aside Jerusalem for the moment, must still be decided in accordance with Security Council Resolutions 242 and 338. We will tolerate no effort to supersede those Resolutions. We must weigh the future utility of the Camp David accords against that position.

There are basic ambiguities in the documents Camp David produced, both in the links between the Israeli-Egyptian peace, and in the provisions for an autonomous regime in the West Bank and the Gaza Strip. These ambiguities have now brought negotiations to a dangerous impasse.

Let us remember that an autonomous Palestinian Arab regime for the West Bank and the Gaza Strip was an Israeli proposal—a major concession on Israel's part in the interest of progress toward peace.

Negotiations between Israel and Jordan could result in long and creative steps toward resolving these problems. Israel and Jordan are the two Palestinian states envisioned and authorized by the United Nations. Jordan is now recognized as sovereign in some 80 percent of the old territory of Palestine. Israel and Jordan are the parties primarily authorized to settle the future of the unallocated territories, in accordance with the principles of the Mandate and the provisions of Resolutions 242 and 338.

Thus, the autonomy plan called for in the Camp David Agreements must be interpreted in accordance with the two Security Council Resolutions, which remain the decisive and authoritative rules governing the situation. The Camp David Agreements cannot and should not lead to fundamental changes in the security position, or to the withdrawals of Israeli troops, until Jordan and other neighbors make peace.

Jerusalem has been a source of man's spiritual inspiration since King David founded it. Its centrality to Jewish life is known to all.

Now it exists as a shared trust. The holy places of all faiths are protected and open to all. More than this, each is under the care and control of representatives of the respective faiths. Unlike the days prior to 1967, Jerusalem is now and will continue to be one city, undivided, with continuing free access for all. That is why I disagree with the cynical actions of the Carter Administration in pledging to preserve the status of Jerusalem in its party platform and its undercutting Israel and Jerusalem by abstaining on a key U.N. vote. I believe the problem of Jerusalem can be solved by men of good will as part of a permanent settlement. The immediate problem is to make it easier for men of good will to come to the peace table.

President Carter refuses to brand the P.L.O. as a terrorist organization.

I have no hesitation in doing so.

We live in a world in which any band of thugs clever enough to get the word "liberation" into its name can thereupon murder school children and have its deeds considered glamorous and glorious. Terrorists are not guerrillas, or commandos, or freedom-fighters or anything else. They are terrorists and they should be identified as such. If others wish to deal with them, establish diplomatic relations with them, let it be on their heads. And let them be willing to pay the price of appeasement.

The P.L.O. is said to represent the Palestinian refugees. It represents no one but the leaders who established it as a means of organizing aggression against Israel. The P.L.O. is kept under tight control in every state in the area except Lebanon, which it has effectively destroyed. As for those it purports to represent, when any Palestinian breathes a word about peace to Israel, he is an immediate target for assassination. The P.L.O. has murdered more Palestinians than it has Israelis.

This nation made an agreement with Israel in 1975 concerning its relations with the P.L.O.

This Administration has violated that agreement.

We are concerned not only with whether the P.L.O. renounces its charter calling for the destruction of Israel, we are equally concerned with whether it is truly representative of the Palestinian people. If we can be satisfied on both counts, then we will not be dealing with the P.L.O. as we know it, but a quite different organization, one truly representative of those Arab Palestinians dedicated to peace and not to the establishment of a Soviet satellite in the heart of the Middle East.

Finally, the question of Arab Palestinian refugees.

My analysis of this tragic situation begins with the Declaration of the Establishment of the State of Israel, May 14, 1948. Let me read the relevant paragraph:

"We appeal—in the very midst of the onslaught launched against us now for months—to the Arab inhabitants of the State of Israel to preserve peace and to participate with us in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions."

Tragically, this appeal was rejected. People left their land and their homes confident Israel would be destroyed in a matter of days and they could return. Israel was not destroyed and the refugee problem is with us today.

One solution to this refugee problem could be assimilation in Jordan, designated by the U.N. as the Arab Palestinian state.

In the final analysis, this or some other solution must be found as part of a peace settlement. The Psalms speak to our concerns, for they encompass all that we strive for. They are a vision of our ideals, of the goal to which we strive with constancy, dedication and faith. They embrace our hopes for a just, lasting peace in the Middle East and our hopes that the works of justice and mercy be done at home:

May our garners be full, Affording every kind of store;
May there be no breach in the walls, No exile, no outcry in our streets.
Happy the people for whom things are thus.

It is given to us to see that this vision is never lost, its message never forgotten, that the work of peace and justice and freedom goes on, inspired by our values, guided by our faith and made permanent by our commitment.●

TRIBUTE TO HAROLD SAY

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. ANDERSON of California. Mr. Speaker, it was with great sadness this morning that I learned of the death of our good friend Harold Say. He was for many years the legislative director of the Veterans of World War I organization.

I do not want to recount all of his substantial and sometimes colorful accomplishments. But I do want my colleagues who may not have been so fortunate to know him well, to be aware that we have lost someone very special. Ever since I have been in Congress, I have been promoting a service pension for veterans of World War I and their widows. In this effort, I have been privileged to work closely with Harold Say. I have seen him as a determined, firm and irrepressible fighter for just programs for all veterans. I knew him personally as a very warm, honest, and likable individual.

One of Harold's dreams was the pension I mentioned. One of the tragic aspects of that proposal is that every day there are fewer veterans left who could receive it. Now their ranks are diminished by one more, diminished by one who is not replaceable. So, my sadness comes not only from losing a friend, but also from seeing his dream unfulfilled in his lifetime.

My sincere sympathy goes out to his wife, Lillian, and his family.●

FARMERS HIT FROM ALL SIDES

HON. E. THOMAS COLEMAN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. COLEMAN. Mr. Speaker, there is no question that this year has been one of the toughest ever faced by the American farmer. Many of the problems have been at the hands of Mother Nature. Recently I have toured some of the farms in my district to survey damage from the heat wave and unusual storms that have significantly affected crop yields. I do not know if more people are using that margarine they advertise on TV, but something riled Mother Nature this year and she let us know that she is one lady who does not fool around.

What has been even harder on the American farmer than the weather, however, has been the policies and economic factors originating in Washington. A monolithic bureaucracy and a mixed up administration have created an economic climate more damaging to farmers that any heat wave.

Mr. Speaker, I would like to address three major points. The first is an overview of the present economic conditions created in Washington that I just mentioned. How it got rolling and where it is going. The second is an update on some of the things done by the Agriculture Committee to address these problems and what we intend to do next year as we draft the 1981 farm bill. Finally, I want to share some ideas of mine—of the farmers role in reestablishing the preeminence of our Nation while developing for themselves and their families a stable economic foundation.

The stage is set for a disastrous year. In 1980 we have seen:

First. Low prices weakened further by the administration's embargo of grain to the Soviet Union;

Second. Sharply rising production costs being driven up daily by spiraling inflation;

Third. A farm credit crunch brought on by an administration demand for higher interest rates—up to 20 percent;

Fourth. A precipitous drop in livestock prices, falling to the point where many producers are unable to regain even their costs of production;

Fifth. Transportation and storage problems; and

Sixth. On top of it all, the heat wave and drought.

Specifically, the USDA shows farm income down 39 percent during the second quarter of 1980, compared to the same period of 1979.

Production expenses jumped from $112 billion in the second quarter of 1979 to $126 billion during the same period this year.

This is the effect of inflation on the family farmer. And, what does Washington do about it? The administration and the majority in Congress promise a balanced budget.

But as we move toward final passage of the Federal budget, we see $60 billion worth of red ink, the second largest deficit in our history. The big spenders and supporters of big government do not have the guts to cut the fat out of the many misdirected and mismanaged social programs. Instead, they settle for rising unemployment, a deepening recession, and continued inflation. For 25 years the big spenders have dominated Congress. That domination means taxes are up eightfold from 1955; Federal spending is up 800 percent since 1955; the national debt has risen from $270 billion in 1955 to $900 billion today; and, the 1955 dollar is worth just 36 cents.

With the cost-price squeeze I mentioned a few moments ago, it is obvious that the farmer is really getting stuck under inflationary policies like these. That is why we must, for the good of the farmer and the entire Nation, slash Federal spending and balance the Federal budget. Many of us feel a constitutional amendment requiring a balanced Federal budget is the only answer to force Congress and the White House to get serious about inflation. The mood of the country is finally shifting our way and hopefully in the near future we can end the

domination of the big spenders and bring inflation under control.

Two years ago I sat on the same platform with President Carter at a convention of the Missouri Farmers Association in Columbia, Mo. Two years ago President Carter stood before the MFA and the entire Nation, and declared there would be no more embargoes.

Of course we must stand up to the Soviet Union. We cannot condone Soviet expansionism fnto Afghanistan. But an embargo of grain has not and will not scare the Russian troops out of Afghanistan.

The farmers of America have a record of patriotism that cannot be questioned. But, they have every right to wonder if they are having to bear an unfair burden in this administration's response to Soviet aggression. With all the resources of this Nation and the Federal Government why should the burden fall almost totally on the shoulders of 4 percent of the American people—the American farmer? We must be dedicated to the proposition that our farmers will not be the first or only card played in world politics.

Now let us look at the prices farmers were faced with before the embargo and then after the embargo, but before the recent heat wave ruined many crops and escalated prices somewhat. In fact, commodity prices have gone up along with the temperature, not because of any administration farm policy:

Wheat before the embargo—$4.39 per bushel.

After the embargo—$4.01 per bushel.

Corn before the embargo—$2.56 per bushel.

Corn after the embargo—$2.30 per bushel.

Soybeans before the embargo—$6.15 per bushel.

Soybeans after the embargo—$5.63 per bushel.

And while American farmers were suffering depressed prices, were the Soviets faced with lower quantities of grain? No, the Russians are getting their grain and the other exporting nations are getting rich. Let us look at the figures again. In Australia wheat prices went from $173 per ton on January 3 to $210 per ton on February 7. And in Argentina, corn prices went from $123 per ton on January 3 to $150 per ton of February 7.

So much for showing the Kremlin we mean business. So much for a promise made 2 years ago in Columbia.

And now, to the credit crunch of 1980.

Thousands of farmers went to the bank this year for loans, none of them could believe their ears when their friendly banker said 17 percent, 18 percent, 19 percent, 20 percent interests.

And in Washington the economic soothsayers of the administraton and the Federal Reserve demand higher interest rates and sagely proclaim they will slow down inflation. Cut up your credit cards, they say. Do not buy unnecessary luxuries on credit.

Well, farmers are not borrowing money to buy their wives a fur coat, or to get their children a new stereo, or to buy themselves a new set of golf clubs. Farmers are borrowing money to farm. To plant their crops in spite of low prices. To work the land. To try to make a living and feed our Nation.

This spring, after talking to some of the farmers in my district, I went to the Federal Reserve to tell them of my concerns about the credit squeeze. Needless to say, the Fed underestimated the impact of their decision. Later in the year, Congress extended an economic emergency loan program to help farmers survive the credit crunch, but not before it took its toll on thousands of producers throughout the Nation.

So in 1980, with a backdrop of double-digit inflation, the administration ushered in the New Year with an embargo and marked the coming of spring with a credit crunch and the costs of farming keep going up.

Using the USDA's own figures: the cost of planting an acre of soybeans went up 21 percent from 1979 to 1980. An acre of wheat cost 23 percent more to grow. Corn, 24 percent more. From last year to this the cost of tractors and machinery jumped 12 percent; fertilizer up 26 percent; farm equipment supplies climbed 40 percent; and fuel and energy skyrocketed 41 percent over the last year.

In the last decade the costs of production to the farmer went up an average of 84 percent, while at the grocery store, every dollar increase in the typical marketbasket means only 32 cents to the farm producer.

Is it any wonder, with policies like the embargo and credit restraints, coupled with inflation, that the ranks of the farmer has dwindled from 23 million in the mid-1950's to fewer than 8 million today?

But, 1980 has not been a total loss. There have been some positive accomplishments in the House Agriculture Committee. We have approved legislation ranging from increases in crop price supports to measures dealing with credit, transportation, pesticides and energy.

Among the successes I am most proud of is the repeal of the carryover basis provision. Congress repealed this tax provision which would have forced many heirs to sell off their family farms in order to pay the estate taxes. By repealing the carryover basis heirs who inherit property will be able to keep it thanks to a significant reduction in their potential capital gains tax liability. But I feel our job is not finished until we repeal all taxes on the transfer of family farms to family members.

Also passed into law was a 7-percent increase in target prices for 1980 crops; an extension of natural disaster compensation payments; and a major synthetic fuels act which provides significant funds for the development of gasohol and other alternative fuels. Hopefully, the Synthetic Fuels Act will provide even greater encouragement to farm producers throughout the Nation to help us become energy independent while providing yet another market for American commodities.

Among legislation awaiting final passage in Congress this year is a bill which would end the unfair advantage foreign investors have in buying U.S. farmland. The bill would tax capital gains on all U.S. real estate owned by foreign citizens. Until now, believe it or not, foreigners have been able to escape capital gains taxes when selling property while American farm families are taxed to the limit.

While these steps have been necessary and important, there is a bigger question at hand. What will the role of agriculture be in the coming decade as our Nation faces one of its most perilous times in history.

Together we face a great challenge to assure that farmers and ranchers continue to be the strong backbone of America. We must look to the agricultural sector of our economy to help expand our Nation's influence and preeminence throughout the world; to revitalize our spirit as a world leader; and to rekindle the flames of freedom in the oppressed countries of the world.

To this end we must be aware of and prepared to meet the challenges of an ever growing world population.

Many nations, notably those in the so-called Third World, face expanding populations in the coming 10 years with no corresponding ability to feed their people. This situation presents us with great opportunities to expand trade relations throughout the world while significantly helping offset our own negative trade balance. Many of these developing countries have the natural resources that America needs to continue our own development and leadership in the world.

From $6 billion worth of agricultural trade in 1968, we have seen American farm exports grow to a record $32 billion in fiscal 1979. Of that, my home State of Missouri contributed $1.14 billion, ninth highest in the Nation. These exports are not giveaway programs. Most are earning dollars from the marketplaces of the world. In fact, U.S. farm exports have significantly cushioned the impact of rising imported oil costs the last couple of years. If our other areas of export could expand at the rate of the agricutural sector, we could substantially reduce, if not eliminate, the negative trade balance which has seriously weakened the dollar at home and abroad.

It is my personal goal that the 1980's herald an even stronger period of trade expansion. Specifically, Congress should call for full implementation of the foreign trade offices authorized in legislation passed in 1978. Of 25 offices authorized in the bill, the administra-

tion has so far opened only 6. We must open the full complement of U.S. foreign trade offices in order to promote new markets for American farm products. Furthermore, we should better utilize our farm trade programs, such as food-for-peace—Public Law 480—to develop stronger economic and philosophical ties with Third World nations.

Conservation measures must also receive priority consideration. Each year the average farm in the United States loses an estimated 12 tons of soil per acre to erosion. As much as 900 tons of topsoil per minute flow from the mouth of the Mississippi River. This is why a strong, continuing effort to control erosion is necessary to prevent our wealth in soil from literally going down the drain.

Just as we pledge to work for the future of American agriculture, we must continue working to make rural America a good place to live. We must address the needs and problems of rural America in such areas as water and sewer facilities, electrical and telephone services and economic development. In recognizing that there is a role for the Federal Government in rural communities, most farmers believe as I do that local solutions are best for local problems and that Federal programs must work to reflect local priorities and minimize bureaucratic interference. We have the opportunity to learn from the lessons taught by years of Federal programs aimed at urban problems, with enormous costs, questionable benefits and increased bureaucratic control over local matters. Our commitment to finding solutions to the problems of our rural communities must be equaled by our determination to avoid the mistakes created by misguided Federal involvement in urban areas.

In order to accomplish many of these goals, it is important to reestablish the USDA's traditional role as the advocate of the American farmer rather than its current stature as a collector of statistics and an arm of the social welfare system.

Mr. Speaker, there are some who say the American will is gone; that the problems we face are too heavy a burden to carry and too difficult to solve.

Let me just say if there has been a decline in American will it has not been a failure of the people but of her leaders. The people want America to be respected. They want America to be secure. They want America to be strong. It is time America's leaders respond to the people and define her purpose, restore her strength and revitalize her will.

In closing, as I said earlier, we have seen the ranks of the farmer dwindle over the past 25 years from more than 23 million to fewer than 8 million. But those who remain are an inspiration to all Americans and the hope of the entire world. We cannot allow this vibrant sector of American life to slip from our grasp for if we do we will lose the very qualities upon which our Nation was founded. Those qualities of American spirit: of hard work, perseverance in the face of adversity, love of family, bold determination, freedom and independence.●

A WELL-MERITED TRIBUTE TO FORMER CONGRESSMAN JOSEPH E. CASEY OF MASSACHUSETTS

HON. JOSEPH D. EARLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. EARLY. Mr. Speaker, I was very sorry to learn of the passing, here in the District of Columbia last Tuesday, of one of the most distinguished native sons of our Massachusetts Commonwealth, former U.S. Representative Joseph E. Casey. Mr. Casey was an outstanding Representative, in this House, of the people of the Third Massachusetts Congressional District from 1934 to 1942. In 1942 he was an unsuccessful candidate for the U.S. Senate. Shortly thereafter he returned to Washington and was an eminently respected practicing attorney here during the intervening years. However, he maintained his friendships in Massachusetts and is a legend in the Clinton area where he was born, and which is part of the Third District that I now have the honor to represent in the Congress.

Even before he came to the U.S. House of Representatives "Joe" Casey was a well recognized young and rising figure in the legal and political circles of central Massachusetts. He had an unusually attractive personality, a genial nature, scholarly disposition, gifted mind, and eloquent voice. He had the reputation of always being well prepared for anything in which he engaged, was very warmly regarded by his friends and neighbors in Clinton and highly respected by his professional associates. He was universally admired for his exceptionally high character, integrity, and competence and commonly held to be one of the most persuasive orators in the legal and political history of Massachusetts.

In the comparatively short time of 8 years Joe Casey rose to become a leading influence in the U.S. Congress. He was a pioneering pleader for the enactment of such landmark legislation as the Lend-Lease Act of 1941, minimum wage and hour laws, public housing, rural electrification, social security, and a host of other social betterment measures and programs designed to realistically fulfill our constitutional pledge to extend equal justice, opportunity, and treatment to all American citizens of whatever level or class. These basic legislative achievements will always remain in this House as an everlasting monument to the patriotic dedication, diligence and effectiveness of Congressman Joe Casey in trying to improve the quality of life for his contemporary fellow Americans and all who would come after him in this great country.

Mr. Speaker, it was my great privilege to meet Joe Casey shortly after I came here as a Member of Congress 6 years ago. Through the years I came to know him as a kind and courteous and thoughtful man. He was immensely proud of having been the first Democrat to be elected to the U.S. House of Representatives from the Third Massachusetts Congressional District. On every occasion that we met he was intensely interested in national issues, amazingly energetic, and deeply enthusiastic about the future of the United States. I am a most grateful beneficiary of his profound wisdom and guidance. I will long and greatly miss him as a valued adviser and dear friend. I extend my deepest sympathy to his gracious wife, Constance and his five children in their great sorrow.●

IMMIGRATION POLICY

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. ASPIN. Mr. Speaker, the United States is in danger of having its immigration policy determined by any other country that wants to shed itself of population.

The Carter administration has no real policy; the Congress has no real policy; we are floundering.

For many decades it has been the policy of dictatorial regimes to hem in their peoples and prevent anyone from getting out. The Soviet Union has more border guards than many countries have people; the Berlin wall is the most graphic example of the extremes totalitarian states will go to prevent their people from seeking better lives for themselves.

But now there is a shift away from the Soviet approach. Cuba and Vietnam exemplify the growing attitude that it is easier to rule if you simply let those elements that might coalesce as an opposition leave the country. Hanoi not only lets people leave, it made a profit out of them by selling the chance to leave for top dollar.

For the past 30 years, most refugees were fleeing war, insurrection or famine and simply walked to the next country where the United States helped by supplying food and funds but accepted few as immigrants. In that time we developed a special policy toward those fleeing Communist rule. Basically, it was an open door policy. That was acceptable to almost all Americans because, quite frankly, few people had the chance to get near the open door.

Now we face the growing prospect that more Communist countries, especially Castro's Cuba, will unleash their "people weapon" against the United States. On top of that we have burgeoning discontent in many Caribbean countries with the possibility of elicit boatlifts from many more islands than Cuba and Haiti. And on top of that, polls show that two out of every three people in Latin America would come here if they could. Modern transportation in the hands of the unscrupulous means that each year more and more can.

The absence of a policy is not just the fault of the administration. We have not really had a national debate on this because the public has not yet come to grips with it. And we cannot have a real policy until we have something approaching a national consensus.

The easy and obvious policy alternatives are all undesirable.

First, if we dump all illegal aliens found in this country in jail and leave them there until they arrange to leave this country, it would tend to discourage others from coming. But this society is not about to condone such concentration camp tactics.

Second, if we spend untold billions to vastly expand our border and coastal patrols, we might limit the inflow. But it will undoubtedly remain easier and cheaper for them to punch holes in our 10,000-mile wall than for us to plug the holes.

Third, we can severely crimp any boatlifts by letting vessels sink—a policy we have not and I hope we never will seriously consider.

It will take a lot more finesse to limit the refugee flow, but we will still continue to see periodic spurts. It was Hungarians in 1956, Cubans in the early 1960's, Vietnamese in 1975 and 1978, and Cubans in 1980. Every time there has been an outburst of refugees, there has been an outburst of protest.

Recently Congress passed the Refugee Act of 1980 specifically to try to control and regulate the inflow of refugees. The act, which went into effect just last spring, envisioned an influx of 50,000 refugees a year. Castro has neatly made mincemeat of our own legislation. Given that periodic bursts of large numbers of refugees can be expected to continue, we had better decide now how we are going to deal with them.

Therefore, I am outlining today a five-point immigration program designed to address the problems of immigration without punishing the immigrant.

The Nation needs to sail a careful course between our limited resources and our traditions of hospitality. I have no truck for the small minds of those who would lock our gates to all newcomers once they themselves are inside, but it is also a simple fact that we cannot accept anyone and everyone who would like to be an American or we will be overwhelmed and our resources depleted.

My program is designed to discourage what for lack of a better word we call moochers while attracting the kind of hard working immigrant who helped build America in the past and will continue to help build it in the future.

The five points are:

First, selectivity. We will accept refugees of our choosing, not Fidel Castro's or anyone else. The Coast Guard has proved that it can seal our sea borders reasonably tightly. It was President Carter's blunder not to use that ability from the first day that Castro unleashed his boat offensive. We have accepted Cuban refugees for two decades after selecting out the felons and the prostitutes. We can continue and should continue to do so through our mission in Havana.

Second, reduce costs. We are spending more than $1.3 billion this year to support refugees and even have at least one welfare program that is closed to citizens and open only to refugees. We ought to switch to a system of no-interest, long-term loans for new arrivals. We will capitalize them to help get them settled. As they enter the mainstream, they will repay Uncle Sam. I think they will be more than happy to do so—certainly the type we want to attract would be most happy to do so.

Third, sponsor responsibility. Sometimes families now sponsor an aging relative into this country and then abandon the newcomer to the welfare rolls. Sponsors of these immigrants should be made financially liable for their arriving relatives.

Four, a special Mexican program. Geography means we cannot stop the flow of illegal immigrants across the Mexican border. We should make an agreement with Mexico to allow a certain number of their citizens to work in this country on a temporary basis each year. We did this before in the 1950's. While it did not work perfectly, it was far better than the mess we have now. The problem with the bracero program of the 1950's was that the Mexicans helped to hold down wage levels. The problem now is that the uncontrolled, illegal flood of Mexicans holds down wage levels even more. We have gone from the frying pan into the fire. Let us go back to the frying pan. The Mexican Government has indicated it is interested in a regularized flow. It is the United States that is sitting down and doing nothing.

Five, address the Caribbean now. The next refugee explosion could come from the Caribbean where dozens of poor and overcrowded islands have little future. Social upheaval could produce pro-Soviet regimes and send floods of refugees this way. We should allow more temporary workers into this country from the Caribbean and also create a special import preference program to encourage small-scale industry to locate in the islands knowing they would have a market in this country. These kinds of programs are not popular, but a responsible government spends large sums on preventatives rather than immense sums on curatives.

I should say a word about refugee costs, which are scattered all over the Federal budget. Finding out how much we spend on refugees is almost as bad as trying to find out how much the Pentagon has overrun its weapons budget.

I have tracked down at least $1.3 billion that will be spent this year on refugees who come to this country. That doesn't include the $162 million we will send overseas to help maintain refugee camps in other countries.

The $1.3 billion includes about a half billion in welfare program costs, largely for the Indochinese, close to $400 million to run the refugee camps for the newly arrived Cubans and Haitians and almost $300 million to help bring Indochinese here at the rate of 14,000 a month.

I mentioned earlier that there is a special welfare program open only to refugees and not to citizens. I saw some jaws drop at mention of that so I think I had better explain it.

This special refugee assistance program—which will cost about $200 million this year—is calculated the same way as the main welfare program, Aid to Families with Dependent Children. AFDC provides funds in half the States only to one-parent families with minor children. The special refugee assistance program says that so long as your income is under the ceiling for AFDC eligibility, you can get AFDC-type payments even though you may be a married couple, a childless couple or even a single person.

This program was not dreamed up in a void. The logic behind the idea was that the Federal Government should pick up all refugee costs and should not leave some refugees to go on State welfare programs. I could not agree more wholeheartedly with the thought—but the practice leaves a great deal to be desired because there are two massive holes in the program:

First, about 10 States have no general assistance welfare programs so refugees there get funds while citizens in equally dire straits get zero. In many other States, general assistance is less than the AFDC payments so the refugees get more aid than citizens.

Second, under the Carter administration's proposal, none of the Cubans and Haitians who entered this country this year would come under the special Federal refugee aid plan. Despite the philosophy of having the Federal Government pick up all refugee costs, Washington would leave the States with general assistance programs to pick up the tab for the Cubans and Haitians.

Let us say there is a Cambodian family of four that came here in May, and a Cuban family of four that came here the same day. They both live on the same block with a native born American family of four in a State

with no general assistance program. And they all have the same poverty-level income.

The American family gets no government aid at all from either the State or Federal Government. The Cambodian family will get a few hundred dollars from Washington on the logic that the local authorities should not have to pay what is a nonexistent bill for refugee welfare. And the Cuban family will get nothing from anywhere because the administration simply does not want to spend more money.

Somehow, we have now managed both to discriminate between refugee and citizen and to discriminate among refugees depending on their place of birth. With the goal of complete fairness in mind, the system has produced a program that really is not fair to anybody.

If we want to be fair to the States and not leave them with a refugee bill, then Washington should reimburse the States for any general assistance costs—but it should not be paying welfare to foreigners who would not qualify if they were citizens. And if we are going to provide aid for refugees, we should not discriminate between the Cubans and Haitians on one hand and everybody else on the other hand.

If we simply dole out billions and include programs that even citizens cannot qualify under, then we are asking for trouble. We will feed hatred and animosity toward the refugees and end up making their lives here miserable.

That is why I am suggesting we supplant the bulk of the existing welfare programs with a Federal, no-interest loan program for refugees. They would get money to resettle and to start up new lives. But that money would not be a gift. They would be expected to repay it over succeeding years.

This idea has a number of benefits. For one thing, it would be a lot cheaper than the present costly approach. For another, it would help to sort out the refugees who are simply looking for a free ride here from those whom we want to attract—the hard-working, nose-to-the-grindstone types that helped build America over the last two centuries.

Another key question is how many refugees should be accepted. That is harder to answer because, first, almost any number is going to be arbitrary and, second, the flow of refugees obviously reflects disasters abroad and not just the desires of bureaucrats in Washington for an even and manageable flow. It is our nature in government to try to fix some annual figure. It might be better if we set a limit by the decade and recognized that half that number might come in any one year, like the surges of Hungarians, Cubans, and Indochinese I cited earlier.

I should note that we may face another explosion of Cuban refugees in the foreseeable future.

There are several pieces of evidence to support this:

First, economic conditions in Cuba and crime continue to be a problem.

Second, there is evidence that Castro has been improving the departure port of Mariel, giving it the look of a permanent installation.

Third, there is evidence that Castro has alined himself with a hard line faction that favors a policy of confrontation with the United States.

Of course, a harsh clampdown by the United States on skippers who bring refugees over in their boats could severely crimp any boatlift. But that does not eliminate Castro's options.

I am concerned that Castro might retaliate by unloading truckloads of refugees outside the fence at the Guantanamo base and telling them to clamber over. It is not an invasion by Cuban troops that the Marines at Guantanamo have to worry about.

The Nation must give more thought to what policy we will pursue if there is another refugee flood because the chances are very good that Castro isn't finished cleansing his island of elements he doesn't like. What is more, there is the likelihood of more illegal inflows from Haiti and elsewhere around the Caribbean.

There are indications that an organized group using a secret mother ship is bringing Haitians to this country and only placing them on rickety old ships for the last few miles.

I am sure anyone who has looked at the news photos of hundreds of people jampacked on a tiny boat has wondered how they could have spent a week at sea in such a vessel. The Coast Guard wonders too—especially since officers who have met the boats report that the hordes of people on them are reasonably clean, neat, and well fed—too clean, neat and well fed to have spent many days at sea.

Coast Guard officials have compared the Haitians with the Cubans who generally arrived haggard and hungry despite a trip that is ostensibly only about a fifth as long.

This has led to the belief that some person or persons is actually bringing the refugees—for a large fee, of course—aboard a mother ship. Then they are put aboard a rickety boat only for the last segment of the trip to the Florida coast.

I am concerned that the proposal to amnesty all illegal Haitians in this country will simply spur even more to come here. Furthermore, this same boat ploy could be used to relieve dozens of other Caribbean islands of their population pressures. That is why one of my five points specifically addresses the unique problems of the Caribbean.

We need a far more comprehensive policy on refugees than the one we have now, which merely addresses what we will do if we can have a controlled, regulated and limited flow of 50,000 a year into the United States. This does not reflect the realities of the periodic bursts of refugees we have seen since World War II.

Mr. Speaker, I suggest that we frame a refugee policy that reflects the real rather than the ideal world. I submit my five-point proposal as the framework for just such a policy.●

THROWING MONEY AT A PROBLEM

HON. TOM HARKIN

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. HARKIN. Mr. Speaker, Ed Sidey has written another one of his very fine editorials which cuts through the surface and gets right to the heart of the matter. Mr. Sidey, who is editor and publisher of the Adair County Free Press in Greenfield, Iowa, is widely known for his thoughtful and incisive editorials. This is another of his to the point editorials about how some political candidates accuse others of throwing money at a problem in order to solve that problem, and then that very same individual will turn right around and try to solve our defense problem by throwing money at it. It is an editorial which I am sure will be of interest to my colleagues. The editorial follows:

POSSIBLE TO "THROW MONEY" AT DEFENSE

In the political campaign ahead of us this fall, we will hear much comment about certain candidates who are supposed to be "strong" on defense or "weak" on defense. Too often, their positions on defense are equated with how much money they have voted or would vote for the defense budget.

Somewhere in the campaign, we hope the idea comes across that sometimes it isn't the amount of money spent, but how and for what it is spent, that determines whether we have strengthened our armed forces.

Republicans have been fond of accusing Democrats of "throwing money at a problem" in a futile attempt to solve it. We submit that it is possible to "throw money at defense" in a similar fashion, and just as futile. Some of the hawkish candidates, who pride themselves on being financial conservatives, are most guilty of throwing money at our defense problems.●

IN HONOR OF RABBI AND MRS. JACOB GOLDBERG

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. WEISS. Mr. Speaker, there are citizens in every part of this Nation who give inspiring, unselfish service to their communities. Two such citizens, Rabbi and Mrs. Jacob Goldberg, have left their mark on two parts of New York for the past several decades: The Lake Peekskill area upstate, and the Washington Heights neighborhood in New York City, which I have the privilege to represent in this House.

In each of these areas, Jewish congregations claim Rabbi Goldberg for their own. In Lake Peekskill, where the Goldbergs spend their summers, he has led Temple Israel. In Washington Heights, it is the Fort Tryon Jewish Center that cherishes him the rest of the year.

Our distinguished colleague, HAMILTON FISH, JR., who represents Lake Peekskill in Congress, recently took part in ceremonies honoring the Goldbergs in that community. As a friend and admirer of my constituent, Jacob Goldberg, I join Mr. FISH in applauding the rabbi's rare dedication to public service.

The Goldbergs have been particularly active in the struggle to end the persecution of Jews in the Soviet Union, a cause to which Mr. FISH has also lent his considerable talents.

I am honored, and proud, to commend the following remarks of Mr. FISH at the Lake Peekskill celebration to the attention of my colleagues. The remarks follow:

TEMPLE ISRAEL REMARKS HONORING RABBI AND MRS. JACOB GOLDBERG BY HON. HAMILTON FISH, JR.

Ladies and gentlemen, it is indeed a privilege to be here with you this evening to honor Rabbi and Rabbitzen Goldberg for their dedication and good works here in Lake Peekskill, in New York City, and around the world.

I would like to mention Al Brenner, Sam Slutzky, and Abe Meltzer for their efforts in making tonight possible. I want to thank them all for their assistance in bringing us together for this special occasion.

Outstanding citizens like Rabbi and Rabbitzen Goldberg reaffirm my belief that this country does not suffer from a lack of moral leadership and unselfish commitment. They symbolize the faith, values, and social involvement Americans dedicated to serve their community and to improve the lives of citizens of all denominations. By their continuing relationships with the Washington Heights and Lake Peekskill communities, Rabbi and Rabbitzen Goldberg have formed lasting and firm bonds with the members of the two congregations. We are all proud and delighted at celebrating thirty-two years of inspiration and wisdom from Rabbi Goldberg here at Temple Israel and I am honored to call him friend.

Rabbi Goldberg epitomizes that which Jewish congregation leaders have been throughout the centuries. For Rabbi Goldberg is a guiding force in prayer, study, cause and counseling. He carefully preserves the Jewish tradition and therefore the Jewish people. He is available to share times of happiness, console the bereaved, and to be a friend. For that we all are greatful, Rabbi.

Most of all, Rabbi Goldberg is that which all Rabbis are by definition—a teacher. He brings great scholarship and historical perspective to the traditional themes of prayer. His interpretations of the Hebrew Scriptures illuminate our understanding. It has been my good fortune, as you know, to attend some of Rabbi Goldberg's services and I have always come away better informed about the rich Jewish tradition.

Rabbi and Rabbitzen Goldberg have long been dedicated to a cause to which I am also fully committed, Soviet Jews. In 1967, Rabbi Goldberg was among the first of American Rabbis to visit the Soviet Union. The persecution and mistreatment of Soviet Jews, the suffering of those imprisoned or tortured just because they were Jewish, and the horrors of the Gulag Archipelago were visions which Rabbi Goldberg has never forgotten.

Upon his return to the United States in 1967, Rabbi Goldberg helped form and became the first president of the New York Coordinating Council on Soviet Jewry, now the Greater New York Conference on Soviet Jewry. Rabbi Goldberg created this group and worked hard to expand its influence and activities because of his anguish and dismay at what was happening to Jews in the Soviet Union. He continues this work today. And as we all know from my recent remarks to this congregation, there are still many Jews inside the Soviet Union, such as Vladimir Kislik, Ida Hindel, and Anatoly Shcharansky who are not free to live as they choose.

It is on behalf of these men and others equally unfortunate that Rabbi Goldberg and the organization he created will not cease their vigorous efforts until all who wish to live in freedom achieve their goal.

In order to further his education and knowledge, Rabbi and Rabbitzen Goldberg spent a year in Israel. He came back infused with the spirit of Israel and the Jewish people. This awareness is apparent in all that Rabbi Goldberg says and does among the congregation and in the outside world.

I think it is important for us to note the academic achievements of Rabbi Goldberg. The clarity and quality of his teaching reflects his three masters degrees in history, rabbinics, and counseling. His exceptional background benefits his entire congregation.

One of Rabbi Goldberg's degrees, his masters in counseling, has led him to involvement in a new area—bereavement counseling. In conjunction with an interfaith group in New York City, Rabbi Goldberg—ceaseless in his search for services—is developing a new and important program for educating clergy to better perform the difficult task of comforting the bereaved. This is just another example of Rabbi Goldberg's leadership in the community he so faithfully serves.

I again note my privilege in being able to speak to you on this special occasion. I would like to extend my best wishes to Rabbi and Rabbitzen Goldberg's family, his son and two daughters and their spouses and children, who are attending this ceremony this evening. This congregation is justifiably proud of Rabbi Goldberg, enriched by him as we all are. We all wish that he serve many more years here in Lake Peekskill.●

UNION CONTEST WITH GOVERNMENT—PART II

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. McDONALD. Mr. Speaker, the following excerpt is the second part of a two-part series on unions by Clarence B. Carson. In part I, Mr. Carson examined union organization and their legal definition, union competition with Government regarding the latter's monopoly on coercion, and finally the response of Government to this competition. Part II takes a different tack and examines, from a historic perspective, labor union development and serious strikes since the Civil War along with the attendant legal developments.

There are few if any power structures in our society today which strike at such a fundamental issue as Government control and monopoly on force as labor unions do. Misunderstanding of the constitutional necessities regarding this subject is the seed of serious civil upheaval and the foundation for what could well be a stifling hold on all production as well as the freedom of workers. For this reason I commend the conclusion of this paper to the careful attention of my colleagues:

UNION CONTEST WITH GOVERNMENT

UNIONS AFTER THE CIVIL WAR

Unions did begin to become nationally important after the Civil War. Several national unions were organized, and there were successful efforts to organize workers in many industries. "The Industrial Commission of 1900 reported that there were 22,793 strikes between 1881 and 1900 which affected some 117,000 businesses. During the same period there were 1,005 lockouts." A lockout occurs when facilities are closed to protect the premises from trespass and the property from damage. The number of them may provide some indication of the fear of destruction during labor disputes.

The union contest with government became visible, vociferous, sometimes violent during this period. The first national instance was the Railway Strike of 1877. This was not a single strike coordinated by a central union but a series of strikes which spread to several railroads and states during that year. The strike began in Baltimore following the announcement of a wage cut on the Baltimore and Ohio Railroad. Crewmen refused to move trains, replacements were hired, and when the strikers remained in the yards, they were arrested. The trouble then shifted to Martinsburg, West Virginia. When the crewmen refused to take the trains through, the railroad asked the governor for troops. When the state troops met resistance they killed a striker and one of them was wounded. The governor requested Federal troops, and several hundred were dispatched. After a change of commander, these were able to get the trains moving again.

Much worse violence lay ahead in Pittsburgh, however. The reduction of wages was not the issue there. The trouble arose over the decision of the Pennsylvania Railroad to haul longer trains by using two engines. Crewmen and yardmen refused to move the train and, when an attempt was made to move it, they attacked it. All train traffic was stopped and the sheriff wired the governor for troops. Local Guardsmen from Pittsburgh were supplemented by a large contingent from Philadelphia.

When the sheriff assisted by Guardsmen, attempted to arrest the leaders, shooting broke out, and the Pittsburgh troops threw down their weapons and took sides with the strikers. The Philadelphia Guard withdrew to the railroad roundhouse. "Shut up in the roundhouse, the guardsmen were surrounded by a large crowd that called upon them to surrender. A gun brought by the rioters and loaded with couplings and broken rails steadily pelted the roundhouse, but the guardsmen held out and marched out only when the pickets had pushed burning oil cars against the building. The retreating troops were fired upon as they moved through the streets, and several fell from revolver and rifle shots." After another day

of violence, things quieted down, but trouble was spreading in Pennsylvania.

The governor requested troops from President Hayes. These were dispatched from Baltimore, but "Strikers blocked the road at Altoona and refused to allow National Guardsmen to proceed to Pittsburgh. . . . The governor set up headquarters in Philadelphia, assembled troops and set out for Western Pennsylvania, followed by several hundred regular army troops equipped with artillery." When a sympathy strike broke out in Scranton, large damage in mines was anticipated. "A clash between pickets and a posse that had been recruited by the mayor of Scranton resulted in the killing of four and the wounding of several others. Aid was sought from the governor while armed citizens patrolled the city streets. A force of 1,800 men was dispatched and was followed by 2,000 additional troops."

Trouble spread to Ohio, Indiana, and Illinois. In Chicago, pickets went from one plant to another attempting to make them close down and go out on strike. Pleas from the mayor and governor were unavailing, for "crowds clashed with the police, some of them were killed and many others wounded." The army was brought in. "Order was restored with the arrest of rioters and their leaders."

THE HAYMARKET RIOT

Surely, these clashes between unions and government were unusual in scope and severity. However, there were instances when clashes were more pointedly ideological than those in the Railway Strike. Perhaps the most well known was the Haymarket Riot in 1886. There were anarchists directly involved in events which led to this series of events in Chicago, men who believed and taught that government was an instrument of capitalists to oppress the workers, that government, then, was an enemy to be overthrown.

Cyrus McCormick, owner of a harvester works in Chicago, had refused to accept a union to represent his employees. When pressed, he closed his factory and opened it later with non-union workers. Conflicts between the union men now on strike and the workers were frequent. Meanwhile, organized labor launched a campaign for the 8-hour day with a general strike. For whatever reasons, probably as a conciliatory measure toward his workers, McCormick granted the 8-hour day and gave his workers a half-day holiday to celebrate. "As the workers came out of the factory they were greeted with hoots of contempt and derision by the union men assembled near by. Not far away, in a vacant lot, striking lumbermen were holding a meeting. . . . The two groups joined forces. The owner summoned the police and, in the fighting that followed, several workingmen were killed and a score or so wounded."

A protest meeting was scheduled for the next night to be held in Haymarket Square. Circulars were printed up in English and German and distributed over the city. The heading read: "Revenge! Revenge! Workmen to arms!" The body of it spelled out the antagonism toward the police:

"Men of labor, this afternoon the bloodhounds of your oppressors murdered six of your brothers at McCormick! Why did they murder them? Because they dared to be dissatisfied with the lot which your oppressors have assigned to them. They demanded bread, and they gave them lead for an answer."

Toward the end of the meeting a squad of police arrived and asked the crowd to disperse. A bomb was thrown into the ranks of police; the explosion killed one and wounded others. Shooting broke out; sixty-eight policemen were wounded, and seven of them died. Four people in the crowd were killed. In the aftermath several anarchists were tried and convicted of murder.

THE HOMESTEAD STRIKE

The Homestead Strike of 1892 provides an example of another aspect of the contest. Companies sometimes hired their own police. When a strike portended, these might be supplemented by private forces such as the Pinkerton Detective Agency. The Homestead (Pennsylvania) plant was a part of Carnegie Steel. Henry C. Frick was the chief administrator. When the Amalgamated Association of Iron and Steel Workers called a strike in 1891, Frick tried to operate the Homestead plant. More than a hundred deputy sheriffs were sent to the site. However, pickets refused to allow them to enter the plant, and the deputies would not force the picket lines. The sheriff managed to get negotiations opened, and the strike was settled.

Things went differently in 1892. Frick caused a three-mile-long fence to be constructed around the plant. The fence was topped with barbed wire, spaced holes were cut in it, and search-lights were mounted along it. When the union decided to strike, the company did ask the sheriff for protection, but Frick did not intend to place much reliance on him. Instead, he had already placed a tentative order with Pinkerton Detective Agency to supply guards, for he had concluded, he said, that "it would be necessary to protect our own property and secure new workmen.

Three hundred Pinkerton detectives tried to reach the plant by way of boats on the river. However, their approach was detected by the strikers who broke through the fence that had been erected and would not permit them to land. Shooting broke out and several were killed. The Pinkertons made two other unsuccessful assaults before they surrendered. The plant was taken over by the strikers and the guards held captive. The sheriff applied to the governor for troops, and 7,000 were sent. They removed the strikers from the premises, and the mill was eventually reopened without them. In the midst of these developments an anarchist shot and stabbed Frick but failed in the effort to kill him.

THE PULLMAN STRIKE

The Pullman Strike of 1894 provided the setting for a major shift in dealing with labor disputes. Theretofore, state and local governments had been primarily responsible for maintaining the peace in labor disputes. In this strike, the United States became involved on its own initiative (not simply as a backup force). A contest between a union and the federal government developed. Secondly, it began the shift to the widespread use of the injunction in labor disputes. Third, the Sherman Antitrust Act was invoked in a labor dispute.

Actually, Pullman Strike is a misnomer for the events that brought action by the federal government. There was a Pullman strike, but it was only the approximate cause of the trouble. It could more aptly be called the American Railway Union Boycott. When the workers at the Pullman plant near Chicago went out on strike, the American Railway Union proclaimed a boycott of Pullman cars on trains. That is, the members of their union were not to handle Pullman cars on the train that they worked. The associated railroads which came into Chicago determined that the lines would not be used in that way, that they would continue to use and pull Pullman cars. When the union men refused to comply with company orders, they were replaced by those who would. Many railway workers then struck.

The railroads experienced increasing difficulty in operating. The mail was piling up in some cities because the railroads were tied up by the strike. Injunctions were obtained which enjoined interference with the railroads. A witness described the response to the reading of the injunction this way:

"Marshal Arnold stood in a mail car and read one injunction. He was jeered considerably . . .; then the other injunction was read from the back of a passenger car by his deputy . . . The men, of course, gathered around and I suppose there were 500 men upon the hill, in the roadway and around the cars . . . It was from that crowd that the cry came, 'To hell with the Government.' 'To hell with the President.' 'To hell with the court and injunctions.' "

The United States Marshal wired that he was unable to enforce the injunction and requested that troops be sent in. This was done, but the immediate result was an increase in the violence. Several marshals and their resisters were killed and wounded. Shortly after the union leaders were arrested, the violence subsided, and the strike was called off.

The United States Strike Commission, appointed by President Grover Cleveland, described the situation this way in the latter part of the nineteenth century:

"It is encouraging to find general concurrence . . . in condemning strikes, boycotts, and lockouts as barbarisms unfit for the intelligence of this age, and as, economically considered, very jurious and destructive forces. Whether won or lost is broadly immaterial. They are war—internecine war—and call for progress to a higher plane . . . These barbarisms waste the products of both capital and labor, defy law and order, disturb society, intimidate capital, convert industrial paths where there ought to be plenty into highways of poverty and crime, bear as their fruit the arrogant flush of victory and the humiliating sting of defeat, and lead to preparations for greater and more destructive conflicts."

The Commission recommended that the government encourage labor combinations as it had capital formation in the interest of industrial peace.

Except for the railroads and more generally for a brief period during World War I, that would not be the course the government followed for the next four decades. (When the government did eventually turn to the encouragement of unions, as Metz called it—it might better be called empowerment—it hardly resulted in industrial peace.) The contest between unions and government did, however, shift to a different plane between the 1890s and early 1930s. Much of the initiative for maintaining the peace shifted from the police (and armed forces) to the courts. The main instrument for controlling labor unions was the injunction.

The injunction was increasingly used in labor disputes from the 1880s through the 1920s. Both state and Federal courts issued them. A total of 28 such injunctions were issued in the 1880s, 122 in the 1890s, 328 from 1900 through 1909, 446 from 1910 through 1919, and 921 in the 1920s. One authority described the impact of this use of the injunction this way:

"For almost a generation and a half, from the 1890s to the early 1930s . . . the power of the courts was invoked to assist in defeating most of the more important strikes—among them, the Pullman Strike of 1894, the coal strike of 1919, the shopmen's strike of 1922—and only a smaller proportion of the relatively less important ones . . . to prevent the successful spreading of labor boycotts . . . and . . . to prevent organizing activities where the workers were engaged under individual nonunion or 'yellow-dog' contracts."

SHERMAN ACT OF 1890

The Sherman Act of 1890 provided legislative support to the use of the injunction in labor disputes. It was not essential to the use of the injunction in this way, per se, since courts of equity could, and did, issue injunctions to forestall irreparable damages where they were the appropriate remedy. The Sherman Act went much further, however. It prohibited combinations or conspiracies which restrained or obstructed interstate commerce. It provided for criminal prosecution, for injunction relief, and for suits in which triple damages could be awarded.

Labor unions were neither exempted from nor specifically mentioned in the Sherman Act. However, a provision to exempt combinations of laborers from its application was not adopted by Congress, and the language was altered to refer not only to trusts but to "other" combinations as well. In any case, the courts began to apply it, and in the Danbury Hatters case, heard in 1908, triple damages were assessed against a union. The Supreme Court eventually affirmed its validity.

The courts had now moved toward the position that labor unions were at least partially responsible legal entities. The fine in the Danbury Hatters case was levied against the membership of the American Federation of Labor. I say partially responsible, however, for only damage to employers was assessed, not that to non-union workers, to government, or to the general public. Indeed, there may be no way equitably to arrive at such damages. In any case, these developments concerned union leaders greatly. They launched a political campaign to get the antitrust laws modified so as to exempt unions from their applications.

THE CLAYTON ACT: "LABOR'S MAGNA CARTA"

This campaign bore fruit, or so many union leaders thought, with the passage of the Clayton Antitrust Act in 1914. Section 6 of the Act does appear to exempt labor unions. It reads, in part:

"That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor . . . organizations . . .; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

Samuel Gompers, head of the AFL, hailed it as "Labor's Magna Carta," and declared that it was "the most important and comprehensive measure ever enacted touching the freedom of workers."

Indeed, the Act may have been a boon to "the freedom of workers," but it was hardly a victory for labor unions, as matters turned out. Section 20 of the Act did provide that no restraining order should be issued by the courts of the United States in cases involving employers and employees, but there was an exception: "unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law. . ." Section 20 goes on to assert that labor organizations may engage in "peaceful" and "lawful" acts. Many states proceeded to pass acts modeled on the Clayton Act.

What the courts tended to do thereafter was to rule that the Clayton Act made no substantial change in the situation. (It did make one change, for theretofore the government had to initiate requests for injunctions; this power was now extended to private parties.) It had simply declared what was settled law and good construction before it had been enacted. The injuction was more widely used than ever after its passage.

The Clayton Act did not, of course, end, or even reduce, the contest between unions and government. If anything, it sharpened and focused it. One writer says that "The result was that the labor injuction 'weakened and undermined the courts' and so respect for law and government, since unions considered the law so unfair and unduly restrictive of their right to self-protection." Moreover, "they did not prevent the violence which continued to be an accompaniment of industrial disputes."

In essence, there is a conflict between union coercion and government. The conflict has often been obscured by treating labor disputes as if they were simply something between employers and employees. When viewed in that light exclusively, government action becomes "interference" in a labor dispute. However, when the matter is looked at from the broad perspective of its impact on others, it takes on a different cast. When unions resort to coercion, government becomes a party to the dispute, else it forgoes its monopoly of the use of force. More, if government does not intervene, it does not perform the function which justifies its existence, namely the maintenance of the peace and the protection of life and property. These have been at issue in the union contest with government.●

OVER 80'S TOURNAMENT

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Ms. OAKAR. Mr. Speaker, as a member of the Select Committee on Aging, I was very pleased to view the "Tic Tac Dough Over 80's Tournament" produced by Mr. Allen Koss and the Barry & Enright Productions. The "Over 80's Tournament" provided an outstanding opportunity for all Americans to recognize not only the intelligence but also the warmth, charm, courage, and humor of a small number of people over 80 years old who mirror the qualities of our older Americans. Programs such as this present a serious and human projection of our senior citizens who should be the most respected and honored members of our society. I commend Mr. Allen Koss and the Barry & Enright Productions for their foresight and sensitivity in presenting the well-done and outstanding "Over 80's Tournament."

Additionally, I commend the senior citizens whose lively participation in the tournament contributed to the entertainment and interest of all the viewers. In particular, the final contestants, Dr. Reba Kelley and Ms. Bobbi Tremain, deserve our commendation for their knowledge and charm, and our highest admiration for the generosity of Ms. Tremain in offering to share her winnings with Dr. Kelley. I certainly support Ms. Tremain's hope that programs such as the "Over 80's Tournament" will continue to be produced—programs such as this will truly show the value of our older Americans.

Finally, I would like to commend the program host, Mr. Wink Martindale, whose warmth and sensitivity toward the contestants certainly contributed to the success of the "Over 80's Tournament."●

WHO WILL REGULATE THE REGULATORS?

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. BROYHILL. Mr. Speaker, by now, I am sure my colleagues are aware of the ongoing efforts to secure passage of a regulatory reform bill this year. To this end, I have initiated discharge petition No. 12, to bring H.R. 3263, the Regulation Reform Act of 1980, to the House floor as quickly as possible.

Those of my colleagues who have not signed the petition are urged to do so.

Let me point out another compelling example of why regulatory reform on a comprehensive scale is needed.

Early this year, I had a meeting with Paul S. Ellison, director of the Cleveland Memorial Hospital in Shelby, N.C. Mr. Ellison related a story to me which I found, frankly, to be amazing.

It seems that Cleveland Memorial Hospital wanted to replace two X-ray machines. Out of curiosity, hospital officials monitored the paperwork and expense necessitated by compliance with the Department of Health and Human Services regulations promulgated under the Health Planning Act which require review and documentation of all hospital purchases of capital equipment in excess of $100,000.

What Mr. Ellison found was that the staff at the Hospital spent 161 hours to prepare the 47 pounds, 3 ounces of paperwork necessitated by the regulations.

What a graphic example of the often burdensome effects of overregulation.

I asked Mr. Ellison to provide me with the documentation he had of the cost and efforts to replace the machines, and I believe my colleagues may find it of interest. If this does not convince you to sign Discharge Petition No. 12, then I would urge you to talk with some hospital administrators in your home district who, I am positive, can relate similar stories.

The material follows:

CLEVELAND MEMORIAL HOSPITAL, INC.,
Shelby, N.C., February 13, 1980.

Hon. JAMES T. BROYHILL,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN BROYHILL: In my recent discussion with you, I described the process we went through in replacing two

radiographic diagnostic x-ray machines. Ordinarily, the x-ray machines would be depreciated over a ten-year period and we would reserve sufficient funds in our depreciation schedule for the appropriate replacement, subject to the approval of the Board of Trustees of Cleveland Memorial Hospital. However, to replace the two machines we complied with Public Law 92-603 which mandates that all capital equipment in excess of $100,000 be reviewed under Section 1122 of the Social Security Amendments. We prepared the appropriate documentation required by Public Law 93-641, National Health Planning and Resources Act, for review by health Systems Agency I and for further review by the State Planning Agency. From October 26, 1978 through December 13, 1978, our staff spent 161 manhours preparing the 47 pounds and 3 ounces of paper necessary to provide the required copies for the agencies. Since we are in the eastern section of the 26-county Health Systems Agency I, we were required to make several trips to Asheville for our project review hearing and the Health Systems Agency Board hearing. After we received notification of approval for the replacement of the two x-ray machines, the accepted bid for the machines amounted to $450,000 ($225,000 per machine). As a matter of interest, one of the machines was purchased in 1966 at a cost of $32,134, and the other machine was purchased in 1967 for a price of $33,104. Documentation of the cost and efforts to replace the machines is enclosed.

I also discussed with you my concerns about the changes in the Hill-Burton program, and I am enclosing a statement which reflects the impact on Cleveland Memorial Hospital as a result of the changes.

These are two of the many reasons our health care costs continue to escalate.

Sincerely,

PAUL S. ELLISON, FACHA,
Director.

Enclosures.

COSTS AND EFFORTS INVOLVED IN FILING OF 1122 APPLICATION FOR RADIOGRAPHIC AND FLUOROSCOPIC EQUIPMENT IN RADIOLOGY

[Oct. 26, 1978 to Dec. 13, 1978]

Weight of application	Each	9 copies	10 copies
Prepared	2 lbs, 7.5 oz		24 lbs, 11 oz
Requested from State and HSA	4 lbs, 11.5 oz		47 lbs, 3 oz
Sent to State and HSA	2 lbs, 7.5 oz	19 lbs, 12 oz	

HOURS SPENT ON APPLICATION

Name	Hours
Clontz	78.5
Plyler	13.5
Friend	12.0
Ellison	5.0
Secretarial services	15.0
Subtotal	124.0
From page 3	37.0
Total	161.0

MAN-HOUR COSTS

Name	Hours paid	Dollars
Clontz:		
Application	44.0	254
3 trips to HSA—Morganton and Charlotte	10.0	58
Trip to Morganton—Con. meeting	3.5	20
Total	57.5	332

MAN-HOUR COSTS—Continued

Name	Hours paid	Dollars
Plyler		
Application	3.0	
2 trips to HSA—Morganton	7.0	
Trip to Morganton—Con. meeting	3.5	
Total	13.5	
Friend: Application	12.0	
Ellison		
Application	1.5	
Trip to Morganton—Con. meeting	3.5	
Total	5.0	
Secretarial services: Application and Xerox-ing	15.0	61
Travel expense		61
Mailing		
If mailed package to Raleigh [1]		4
Mailing of package to Morganton		1
Total		5
Xerox: 2,000 copies × $.0304		61
Paper and supplies		3

[1] In actuality, the applications were delivered in person.

COST TO DATE

Expenses	Dollars
Salary	
Clontz	332
Secretarial	61
Administrative	
Travel	61
Mailing	5
Xerox	61
Paper and supplies	3
Total (Administration staff)	523

ACTUAL FUTURE COSTS AND EFFORTS

[Man-hour costs]

Name	Hours	Dollars
Clontz	14	
Plyler	16	
Radiologist	7	
Total	37	
Travel:		
Travel to meetings in Asheville		51
Breakdown of future efforts:		
A. Public hearing in Shelby	2	
B. Project Review Committee meeting in Asheville	7	
C. Full HSA Board meeting in Asheville	7	

FIRING A POLITICAL WEAPON

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. LAGOMARSINO. Mr. Speaker, a recent editorial in the Santa Barbara News Press raises serious questions about the motives of the Carter administration in leaking news of the Stealth bomber. I believe the questions raised are valid ones and that President Carter owes the American people straightforward answers on them.

The editorial follows:

FIRING A POLITICAL WEAPON

The more we learn about the "leak" of information about the Stealth bomber project, the more disturbing the case becomes. The evidence indicates that it is an ugly blight on the Carter administration.

Stealth is the name that the Pentagon gave to a project for developing a new attack airplane. Supposedly the use of some special materials in the construction of the plane would make it, in effect, all but "invisible" to detection devices. The research and development have been going on for two years or more, a top-secret project of the Air Force.

But recently someone "leaked" information on the project to a magazine named Armed Forces Journal. After the Journal's September issue carried an article about Stealth, defense officials confirmed the story. Then they went further. They held a news briefing and disclosed more details about the project. Clearly this would show that, though the Carter administration has been criticized for cutting military plans, in fact it had been secretly pushing a revolutionary aerial warfare program. Secretary of Defense Harold R. Brown held a briefing that told the world about Stealth.

A House subcommittee got the story this week on how the "leak" of information happened.

Benjamin F. Schemmer, editor of the Armed Forces Journal (not an official publication), testified that his magazine learned something about Stealth in early 1978. Pentagon officers persuaded him not to publish anything, on national security grounds. He agreed.

A few weeks ago, the Pentagon decided Schemmer could now publish the story. He was given a briefing on the project by William J. Perry, undersecretary of defense for research and engineering. Schemmer told the house subcommittee that he was assured that Secretary Brown would not announce the Stealth project until after the magazine's September issue was distributed. Schemmer also told the subcommittee that he thinks the official strategy was "irresponsible."

The case raises serious questions.

If secrecy was vital in the first years of the project, why was it of no consequence in August 1980, even though this program is still far from operational?

Does the heavy publicizing of Stealth now give the administration a new "image" of strong defense-mindedness, even though U.S. military strength has declined during the past three years?

Or does the handling of the publicity indicate that Carter is playing campaign politics with military secrets?

In our view, the answer to that last question is yes, and that leaves us shaken.

An incumbent president has many campaign advantages. A lot of departments are at his beck and call, and he has much control over the propagandizing of their projects. In the case of Stealth, he or someone on his first team apparently fired a political weapon long before it was ready for use.●

TRIBUTE TO CLAUDE PEPPER

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. DRINAN. Mr. Speaker, I know that our colleagues will want to read the tribute to our friend, Congressman CLAUDE PEPPER, which appeared in the Boston Herald-American on September 4, 1980.

The article was written by prize winning Wendell Coltin, an expert who is nationally recognized on issues related to senior citizens.

This well-deserved tribute to Congressman PEPPER notes that his 80th birthday will occur on Monday, September 8.

The article follows:

HAPPY 80TH TO REPRESENTATIVE CLAUDE PEPPER

(By Wendell Coltin)

This Labor Day week, if you have a birthday card on hand—or would like to send a brief note of birthday greetings to someone who has labored for the elderly, you can address it to Rep. Claude Pepper, House of Representatives, Washington, D.C. 20515.

Pepper, chairman of the House Select Committee on Aging, and, appropriately, the oldest member of the House, will be 80 next Monday, Sept. 8. He has been a true friend of the elderly; loyal to their cause.

Under his leadership, the Committee on Aging has concerned itself with many problems of the elderly. Pepper has initiated numerous public hearings related to those problems, to unearth evidence that called for changes, improvements in certain public programs, and dignified treatment of elders. Hearings that he and fellow committeeman Rev. Robert F. Drinan held in Brookline and Waltham produced overwhelming testimony against mandatory retirement of workers because of age.

Pepper achieved fame for his crusade in behalf of the elderly. He played a major role in the enactment of legislation that led to abolition of mandatory retirement in the Federal Government and raising of the mandatory retirement age from 65 to 70 in the private sector. It is his aim—as it has been Drinan's, too—that mandatory retirement be eliminated entirely.

Pepper's admirers point to his fighting leadership in getting a program of meals on wheels for persons too incapacitated to leave their homes; a $32 million program to combat crime in the elderly's public housing projects; and discounts for elderly riders on Amtrak trains.

The Brookline and Waltham hearings demonstrated the importance of a state having membership on a congressional committee. Those hearings were held in Massachusetts because of Drinan's membership on the committee and a mutual respect that he and Pepper have publicly proclaimed for each other. When Sen. Edward M. Kennedy and former Sen. Edward W. Brooke were on the Senate Committee on Aging, the then chairman, Sen. Frank Church, D.-Idaho, came to Boston to conduct a hearing in Gardner Auditorium, which was largely attended.

Val Halamandaris, an attorney on the staff of the House Committee on Aging, formerly on the Church-chaired Senate Committee on Aging, told me a few days ago, when I asked for a comment from him on Pepper:

"He is easily the most articulate and most able and most genteel member in the Congress.

"He has the greatest sensitivity, as far as understanding and appreciation of the problems of older Americans."

He recalled a meeting conducted by the leadership of the American Association of Retired Persons. He said, "Every major political figure came to address it. Pepper made the greatest impression. He has the ability to move a crowd. He loves people. He turns them on. Frank Church, a great orator, spoke; Kennedy, too. Pepper got the longest reception and a prolonged standing ovation."

Halamandaris revealed that the committee is soon to come out with a report on 15 years of Medicare. Asked what it would say, he disclosed, "It will state there is a need to expand the program, that Medicare is on the verge of becoming a broken promise; that fewer and fewer doctors are taking assignment (on Medicare claims) and it will urge more doctors to take assignment."

Henry Pulchalsky, take a bow!

Barre resident Pulchalsky, formerly of Worcester, is a Massachusetts Rehabilitation Commission ombudsman and last week I contacted him for assistance in the case of a young North Shore man, who received aid through the commission while a student and had been trying, without success, recently to find out if he was still registered with the commission.

Pulchalsky came through beautifully.

When thanked for his efforts, he graciously mentioned there is another person working with him in the ombudsman's office, Paul Dowd, who was on vacation at that time.

The Massachusetts Rehabilitation Commission makes the determination of whether applicants for disability benefits under Social Security or Supplemental Security Income qualify, by reason of disability, and much of the ombudsman's office's work involves checking on the status of applications for benefits, in the interest of men and women who anxiously contact Mass. Rehab. for such information.

Memo to persons who will be 65 in December and are not collecting Social Security benefits: This is a good month for you to enroll in Medicare.●

WHITE HOUSE LOOKS OTHER WAY ON YUGOSLAVIAN HUMAN RIGHTS VIOLATIONS

HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. ASHBROOK. Mr. Speaker, while we are concerned about human rights all over the world, the administration tends to ignore violations in certain countries.

The Communist dictatorship of Yugoslavia is an example. While it is not quite as oppressive as most of the other Communist states, it does its share of persecution of dissidents. The victims range from supporters of individual freedom, nationalists, to even dissident Communists—called in Yugoslavia "Cominformists."

The Committee to Aid Democratic Dissidents in Yugoslavia headed by the writer Mihajlo has released a report on political prisoners in Yugoslavia. The report also reveals how our State Department stonewalls on this issue.

The report follows:

MEMORANDUM ON HUMAN RIGHTS IN YUGOSLAVIA

The Commission on Security and Cooperation in Europe has released its report to the Congress on "Implementation of the Final Act of the Conference on Security and Cooperation in Europe: Five Years After Helsinki," in Washington on July 31, 1980. In spite of the numerous indications of human rights violations, including Amnesty International Reports, the Commission's Report ignores these violations in Yugoslavia!

At the Department of State daily press briefing on July 29, 1980, and in commemoration of the Fifth Anniversary of the Helsinki Accord, two questions were asked regarding Yugoslavia:

Q. "Does the US intend to give support to the amnesty movement in Yugoslavia, which was recently launched by the petition of 36 prominent intellectuals asking for amnesty for all political prisoners?"

A. "While the United States supports all efforts designed to advance the cause of human rights at home and abroad, we do not believe it would be useful to comment on the June 11 amnesty appeal by 36 Belgrade intellectuals. The Yugoslav Government is aware of the fact that its positive approach to many aspects of human rights is an important component of the special respect which Yugoslavia enjoys in this country."

Q. "Is the US Government intending to approach the Yugoslav Government regarding the case of Momcilo Selic, a young architect, in prison for criticizing US-Yugoslav relations?"

A. "We do not intend to approach the Yugoslav Government with regard to the case of Momcilo Selic. While our knowledge of his case is incomplete, on the basis of the information available to us and given the fact that an appeal process is underway in the Yugoslav courts, we do not believe it would be appropriate to raise his case at this time. Our understanding is that Selic was not imprisoned for criticizing US-Yugoslav relations."

While the Helsinki Commission ignores the intensified violations of human rights in Yugoslavia and the Department of State clings to the idea that Yugoslav Government pursues a "positive approach", the Federal Public Prosecutor in Belgrade, General Vuko Goce-Gucetic, claims that there are about 300 prosecutions for political crimes each year. He further states: "Nine-tenths of political crimes are committed verbally. Only every sixth verbal crime is of a serious nature and can be classified as enemy propaganda." (NIN, June 29, 1980).

Since the Helsinki Accord, signed by the Yugoslav Government, does not stipulate as a crime a verbal or written criticism of the existing socio-political order, and since the nonviolent exercise of human rights, freedom of expression and association are being punished by imprisonment, it is clear that the Yugoslav Government is violating the Helsinki Accord. In support of this contention, a partial list of arrests and sentences given, since the Accord was signed, is attached (Political Arrests 08/1/75–08/1/80).

POLITICAL ARRESTS 08/01/75—08/01/80

08/15/75—Dusan Brkic, former deputy premier of Croatia, and five others, for "Cominformist leanings". NYT.

09/13/75—Kostadin Dimevski, a salesman; Pende Eftimov, a reporter; and Djordje Ordev, publishing house employee, for "Macedonian separatism". VUS.

09/17/75—Esad Ajdini, 30, for "connection with emigre groups". VUS.

10/25/75—Branko Nazor, 28, a returnee from Australia, for "belonging to Croatian separatist organization", in Split, 3 yrs. BOR.

11/01/75—Arrested in Croatia: Lav Znidarcic, a defense attorney; Definka Vecerina, a lawyer; Tomislav Drazic, editor of daily Vjesnik; Mladen Grubisic and Mile Vukosav. LEM.

11/07/75—Thirty-five Cominformist sympathizers reported arrested. TEL.

11/23/75—Nine persons arrested for being "pro-Soviet communists". NYT.

11/27/75—Laszlo Toth, 43, US citizen, in a secret trial for "economic espionage", 7 yrs. NYT. Toth was released (07/24/76 NYT), however, the fate of the Yugoslav plant manager, the director of research, and the plant photographer, who were sentenced with Toth, is unknown.

12/21/75—A Swedish couple jailed for "passing out religious literature", 20 days. NYT.

12/25/75—In Banja Luka: Slavoljub Vranjesevic, 71, a former army officer, 9 yrs; Petar Trivunovic, 33, a worker, 12 yrs; Krstan Jagodic, 28, a worker, 2½ yrs; and Bozidar Gajic, 35, a worker, 2½ yrs. OSL.

01/—/76—In Tuzla, on variety of charges, from "hostile propaganda" to "insulting the President of the Republic"; Branko Rakisic, 50, to 7 yrs; Danica Rakisic, 42, to 2½ yrs; Vinko Jozic, 50, to 4 yrs and Stjepan Blazevic, 46, to 1½ yrs.

02/06/76—Seventeen persons including an Orthodox priest, sentenced in Belgrade for "opposing the regime of Marshal Tito." NYD.

02/14/76—Prof. Adam Demaci, 40, and others for "association against the People and the State," in Pristina. Prof. Demaci, 15yrs; Skender Kastrati, 29, to 12yrs; Ethem Bajrami, 30 to 7yrs; Hasan Dermalu to 7yrs; Osman Dumösa, 30, to 7yrs; Recep Malja, 25, to 9 yrs; Seljani Novoseli, 31, 7yrs; Ilijas Pireva, 28, to 7yrs; Hakmir Salobu, 25, to 7yrs; David Dermaku, 27, to 9yrs; Sefir Masurica, 27, to 7yrs; Sami Dermaku, 27, 6yrs; Zihadin Spahiu, 31, 5yrs; prof. Isa Kastrati, 29, to 6yrs; Ahmet Hoti, 29, 6yrs; Nijaju Korca to 6yrs; prof. Irfan Sadjiri, 26, to 7yrs; Hilmi Ramadavi, 23, to 5yrs; Nazim Suriani, 26, to 4yrs. A78, VUS, NYT (04/26).

03/05/76—Rev. Miroslave Cvitkovic, 50, to 6yrs. and Drago Govan, 46, to 3yrs. for bringing "antigovernment publications to Yugoslavia." VEN. Rev. Cvitkovic released in November 1977.

03/11/76—In Valjevo, Srdja M. Popovic, 38, an attorney, for "maliciously spreading false information and causing public disorder" while defending his client, to 1yr. NYT (NYT editorial 03/26). The sentence was suspended 05/27.

03/13/76—Milivoje Stevanovic, 64, former editor of Tanjug, 10yrs; Dusan Brkic, former deputy premier of Croatia, 8yrs. (released Nov. 77); Radovan Zigic, 55, former minister of industry, 8½yrs, and Ljubomir Radulovic, 58, to 7½yrs, for allegedly "asking Yugoslav emigres if the Soviet army would interfere in Yugoslavia after Tito's death." NYT.

03/13/76—Ivan Čirk, 40, a returnee from abroad, for "hostile acts against the state," 12yrs. VUS.

03/16/76—In Sarajevo: Milorad Dacic, 45, an attorney, 8yrs. and Hristofor Siljanovic, 58, 5yrs. 8mos., for "nationalistic, dogmatic and separatist ideas". BOR, VUS(03/27).

03/16/76—In Novi Sad, for "forming an illegal organization with the aim to change, by force, the existing social system": Djuro Sargin, 63, to 15yrs; Velimir Moraca, 46, to 15yrs; Djordje Bikicki, 60, to 15yrs; Grga Lubic, 63, to 13yrs; Nikola Zec, 51, to 12yrs; Milena Sargin, 56, to 10yrs; Roman Milic, 36, an engineer, to 10yrs; Miroslav Moraca, 28, a student, to 10yrs; and Dr. Bojan Rucnov, 28, to 4yrs. BOR.

03/21/76—In Titograd, Radisav Gajic, 23, as a member of a Croatian separatist group. LEM.

03/22/76—In Zajecar, Milan Petrojkic, 38, a lawyer, for "attempting to form an enemy group", 13yrs. POL, LEM(03/25).

03/31/76—Stipe Kasunovic, 46, for "uttering hostile remarks", near Sibenik, sentence unknown. POL.

03/31/76—In Zajecar, Dragoljub Jovanovic, 47, a lawyer, for "defamatory and false statements", 2yrs. POL.

04/—/76—In Banja Luka, for "Creating a counter-revolutionary organization": Gojko Bjelajac, to 12yrs; Djordje Dadjenkovic, to 5yrs; Cedo Knezevic, to 6yrs; Dusan Strbac, to 1yr; Dr. Branka Mraovic, to 9yrs; Dr. Tuifo Bukva, to 8yrs; Jefto Tadic, to 7 yrs; Milenko Jankovic, to 7yrs; and Momcilo Pavicevic, to 6yrs.

05/12/76—In accordance with the report of Amnesty International, five newspaper reporters have disappeared in Yugoslavia. LEM

05/21/76—In Split: Nikola Bijader-Kutlecic, to 8yrs; Slavko Stanic, to 3yrs; and Andrija Bakota to 2yrs., for "organizing a group to fight against Yugoslav socialist structure and its constitution".

05/27/76—Ms. Irina Pozega, 30, a Soviet Citizen, to 5yrs, for "spying". Fate of three Yugoslavs arrested with her is unknown. Ms. Pozega was released 07/20/76. NYT, LEM.

06/20/76—Rev. Ljubo Krasic, a permanent resident in the U.S., forcibly detained in Yugoslavia. NYT.

06/26/76—In Bihac: Rev. Marko Srdic, 28, to 9yrs; Bogoljub Vidovic, 58, a plant manager, to 15yrs; Lazar Arezina, 30, a barber, to 7yrs., for "hostile activities against the state while travelling abroad". POL.

07/26/76—In Belgrade, Vladimir Dapcevic, 59, a Belgian citizen and a former colonel in Tito's army, after abduction from Romania, to 20yrs, as an alleged Soviet agent. NYT.

07/18/76—Robert Edwards, British subject, editor of London Sunday Mirror, arrested for "photographing a steam engine". Sunday Mirror.

07/22/76—In Rijeka, four persons sentenced for "Cominformist connections", from 5 to 15yrs. LEM.

07/28/76—One of the five Americans held in Yugoslav prisons is Mihajlo Sedmak, 60, arrested in September 1974 on "spying" charges. NYT.

08/03/76—Rev. Peter Devey, a British subject, and Ms. Hiliary Rishetts, sentenced to 30 and 15 days respectively, and held incommunicado. NYT.

09/29/76—In Ljubljana, Viktor Blazic, a writer for the Party paper Delo, to 2 yrs, for "articles in defense of Edvard Kocbek's ideas". NYT.

10/16/76—In Kranj, Judge Franc Miklavcic, 55, for "disseminating hostile propaganda", to 6 yrs. NYT.

11/08/76—Djordje Djuranovic, 55, a retiree from Vranje, for "handing out leaflets with enemy contents regarding our social system. . .", 4 yrs. NOV.

03/12/77—In Sarajevo, Mate Rajic, 53, a lawyer, for his activities as a "counter-revolutionary, Cominformist and nationalist", 5 yrs. VUS.

04/13/77—In Sarajevo, Zivadin Radovic, an engineer, for stating that there will be "more freedom after Tito's passing", 2½ yrs. IHT.

04/29/77—Momcilo Jokic, the editor of Pobeda, Party paper in Titograd. NYT.

05/07/77—Vitomir Djilas, 41, a lawyer, for "advocating democratic liberties in a letter", 2½ yrs. (The letter to a Belgrade newspaper was never published). NYT.

07/31/77—There are 201 persons serving prison terms for political offenses in Croatia, 127 persons sentenced but had not begun to serve their terms, and the prosecution of 180 others is still pending. NYT.

07/—/77—In Banja Luka, Dzemel Zulic, 31, upon returning from West Germany for having "hostile emigre papers" and belonging to a "terrorist group", to 9 yrs. Sentence reduced to 3 yrs. in Nov. 1979. A78.

08/06/77—Dr. Nikola Novakovic, medical doctor, for "establishing contact with hostile groups abroad" (in 1962), and for "disseminating hostile propaganda", in Sarajevo, to 12 yrs. LEM, A78.

08/27/77—Franjo Rupic, in Djebala near Bjelovar, for passing out "enemy, pro-western materials", to 3 yrs. VUS.

10/30/77—For the first half of 1977 there were 102 persons accused of political crimes, compared to 152 for the same period in 1976. NIN.

11/01/77—Trajko Canevski and Mihailo Nastasievic, director and president of central worker's committee of shoe factory "Cik", for "abuse of self-management", in Kumanovo. POL.

11/29/77—In Tuzla, Manda Paric, a nurse, for "contacts with emigres", to 6yrs. NYT, A79.

12/03/77—Rev. Stjepan Brajkovic, 46, from Mostar, for "hostile propaganda", to 5 yrs. A78.

—/—/77—In Sarajevo, Mirko Kovacevic, a high-school teacher, for "enemy propaganda", to 8 yrs. A79.

—/—/77—Nenad Vasic, a lawyer, for "hostile propaganda" (opinion expressed in a private conversation), in Sarajevo, to 10 yrs. A79.

03/02/78—Bogdan Jovovic, member of the illegal communist party was kidnapped from abroad. TEL.

03/—/78—In Sremska Pozega, Anton Brkic, 22, for "hostile propaganda and possession of Croatian emigre publications", to 3 yrs. A78.

04/13/78—In Belgrade, Mileta Perovic, 54, general secretary of the illegal communist Party, kidnapped from Switzerland, his arrest announced 11/23/77, for "counter-revolutionary activities", to 20 yrs. A78.

08/—/78—Vjenceslav Cizek, in Nov. 1977 disappeared while on a trip from Germany to Italy. Subsequently sentenced for "acting from counter-revolutionary positions subversive to Yugoslav social system", in Sarajevo, to 15yrs. A79.

10/01/78—Mirko Rajcic, Marko Juranovic, Fabjan Dumancic, Jakoslav Rojnica, and Ante Rakic, all students from Zagreb, sentenced to prison terms for "liaison with emigres". A79.

12/—/78—Dr. Veselin Masic, 56, a gynaecologist, for "hostile propaganda" (conversation in his own home), in Tuzla, to 6yrs. A79.

02/18/79—In Skopje, Dragan Bogdanovski, former editor of a Macedonian emigre paper, for "having conspired against the Yugoslav state and having illegally entered Yugoslavia", to 13yrs. LEM, A79.

03/18/79—Zvonimir Kisic, 53, a barber, who demanded free Dubrovnik Republic, for "slandering social and political conditions in the country", to 2yrs. VJE.

05/23/79—Vladimir Markovic, 28, a student, sentenced to mandatory treatment in a psychiatric hospital, for "spreading false information". RCD.

08/08/79—In Sabac, Bogdan Stefanovic and a group of his followers from "Realistic European Union—Yugoslav Movement European", sentenced to terms of 1½ to 6yrs.

09/15/79—In Zajecar, Milan Budic, 26, a factory worker, for "falsely presenting socio-political conditions in the SFRY", to 2yrs. POL.

10/16/79—In Belgrade, Dragoljub Ignjatovic, a writer and the editor of the underground journal Casovnik (The Clock), for "illegal publication", to 30dys. NYT.

12/09/79—Jovo Ilic, a factory worker, upon return from West Germany, for "association with emigre political organization", in Tuzla, to 9½ yrs. POL.

03-11-80—Zlatko Tomicic, writer and former editor of the Croatian Literary Journal, arrested in Jan. 1980 for "writing his memoires from prison" (previously served 3-5yrs). Presently free in Rijeka, pending his trial. LEM.

03-12-80—Ivan Zalembar, 46, for "bringing banned publications into the country", in Osjek, to 5yrs.

03/15/80—In Cacak, during 1979 seven persons sentenced for "enemy activity against the country", sentences range from 3½ to 9yrs. POL.

03/30/80—Fifty Albanian nationalists in the Province of Kosovo to be tried for allegedly undermining "brotherhood and unity". POL.

04/04/80—In Zadar, Pavao Despot, professor of Croatian language, arrested for "enemy propaganda". VEL.

04/09/80—In Doboj, Zarko Aleksic, a lawyer, to 7yrs for "nationalistic activities", and Milorad Joksimovic, 40, a worker, for "attacking the policy of the LCY and our constitution", while living abroad. BOR.

04/25/80—In Belgrade, Momcilo Selic, 34, an architect and a writer, for dessiminating "enemy propaganda". This was in a six page article given to friends, to 7yrs. OSL.

05/23/80—Dragutin Trumbetas, graphic artist and factory worker, author of the book 'Gastarbeiter', arrested upon return from West Germany. Released pending trial. GUA.

06/02/80—In Smederevo, Miroslav Cvetkovic, 28, a locksmith, for "enemy activities while living abroad", to 8 yrs.

06/10/80—In Pristina, for "enemy propaganda and for forming a coalition for enemy activities": Sefcet Jasari, 36, an interpreter, to 8 yrs; Ramadan Plana, 33, a student, to 7 yrs; Avdi Kelmendi, 29, a foreman, to 5 yrs; Avdulj Lijahu, 36, a clerk, to 4 yrs; Isa Demaj, 34, a teacher, to 4 yrs; Sulejman Djucala, 26, a factory worker, to 4 yrs; Skender Jasari, 26, a clerk, to 3 yrs, and Hisen Grvala, 39, a farmer, to 3 yrs. BOR.

06/17/80—In Zagreb: Andrija Mart, 45, to 15 yrs; Franjo Belancic, 38, to 13 yrs; Stjepan Jankovic, 62, to 8 yrs; Ivo Juric, 36, to 10 yrs; Djuro Krznar, 43, to 7 yrs; Branko Hodak, 43, to 6 yrs, and Vladimir Uzelac, 37, to 5 yrs, for alleged "terrorist activities". TAN.

06/19/80—Josip Cesarec, 25, for stating "a day will come when the political system in Yugoslavia will collapse", in Osjek, to 4 yrs.

07/08/80—Prof. Gani Sula, to 6 yrs; Muharem Shaliani, an attorney, to 5 yrs, and Ms. Hatixhe Maliqi, a student, to 3 yrs, in Skopje, for "anti-state activities". RAB.

07/13/80—In Sarajevo, Rev. Franjo Vidovic, 21, and Franciscan novice Ivan Turudic, 20, for "enemy propaganda", to 6 and 5½ yrs respectively. GLK.

ABBREVIATIONS FOR SOURCES

A78 Amnesty International Report 1978.
A79 Amnesty International Report 1979.
BOR Borba, organ of the LCY, daily.
GLK Glas Koncila, Zagreb, weekly.
GUA The Guardian, London, daily.
IHT Inter. Herald Tribune, daily.
LEM Le Monde, Paris, daily.
NIN Belgrade, weekly.
NOV Novosti, Belgrade, daily.
NYD Daily News, New York.
NYT The New York Times.
OSL Oslobodjenje, Sarajevo.
POL Politika, Belgrade, daily.
RAB Radio Belgrade.
RCD Religion in Communist Dominated Areas, New York, mo.
TAN Yugoslav Press Agency
TEL The Daily Telegraph, London.
VEL Vecernji List, Zagreb.
VEN Vecernje novosti, Belgrade.
VJE Vjesnik, Zagreb, daily.
VUS Zagreb, weekly.●

442D REGIMENTAL COMBAT TEAM

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. MINETA. Mr. Speaker, in one of the more ironic episodes in our recent past, thousands of Americans of Japanese ancestry served with distinction in this Nation's armed services during World War II while their families and neighbors were being detained in internment camps in the country's interior. In particular, many Americans will recall the outstanding record of the 442d Regimental Combat Team, which was proposed by Mike M. Masaoka, then executive secretary of the Japanese American Citizens League, to the War Department and approved by the President. The 442d consisted largely of Japanese Americans, among them the distinguished Senators from Hawaii, DANIEL K. INOUYE and SPARK M. MATSUNAGA.

The 442d served in seven major campaigns, and its men were awarded more than 18,000 individual decorations, including 1 Congressional Medal of Honor, 52 Distinguished Service Crosses, 1 Distinguished Service Medal, nearly 600 Silver Stars, more than 5,000 Bronze Stars, and nearly 9,500 Purple Hearts.

One battle in particular stands out in this distinctive record, the rescue of the "Lost Battalion" of the Texas 36th Division by the 442d in southern France in October 1944. I would like to direct the attention of my colleagues to the following account of a recent reunion of the men from the 442d and those of the 36th Division "Lost Battalion" from the Los Angeles Times, September 1, 1980.

JAPANESE-AMERICANS GET TEXANS' SALUTE AS HEROES

(By Charles Hillinger)

For the first time in 36 years, members of two Army units involved in one of the most heroic battles of World War II held an emotional reunion during the Labor Day weekend here.

Few of the 500 Texans or 250 Japanese-Americans had seen each other since the week-long battle to rescue the "Lost Battalion" in German-occupied southern France in October, 1944. For many of the Texans, the war was the only time they have ever had any contact with Japanese-Americans.

The Allies had landed the previous August but the fighting was still very heavy and Hitler's forces were still in control.

It was the famed all-Japanese-American 442nd "Go-for-Broke" regimental Combat Team that came to the rescue of the 2nd Battalion, 141st Infantry of the all-Texan 36th Division.

The Texas battalion was trapped behind German lines for seven days. Repeated attempts by other Texas combat units were repulsed, resulting in heavy casualties. Some of those men attended the reunion, too. Finally the Japanese-American forces were thrown into the fray.

The fighting was so fierce that there were more Japanese-American casualties in the rescue operation than there were Texans trapped behind the German lines.

The "Go-for-Broke" regiment suffered 800 casualties in the battle to free the 275 members of the Lost Battalion. More than 200 Japanese-Americans were killed and more than 600 were wounded in the effort. Of the trapped Texans, 211 were rescued by the 442nd and 64 were killed in the battle.

"It was the ultimate of patriotism. These men came from behind barbed-wire internment camps, where the Japanese-Americans were held, to volunteer to fight and give their lives," said Sen. Daniel K. Inouye of Hawaii, a member of the 442nd who lost his right arm fighting the Germans in France.

WE KNEW WE WERE EXPENDABLE

Inouye was the principal speaker at the reunion.

"We knew we were expendable. We were willing to do this. We accepted the challenge," he said. "It wasn't easy. There was a lot of bloodshed.

"Out of this experience we—our Texas comrades and we of the 442nd—have developed a friendship that will last forever."

"Rescuing the Texans was something we had to do," said Hoppy Kaneshina, 56, who operates a small cafe in Gardena, Calif. His entire company was almost wiped out in the effort to rescue the Texans.

"It was the go-for-broke, shoot-the-works spirit of our men. We were out to prove ourselves, to prove that we were loyal Americans. We had to rescue those Texans no matter what the cost."

At the reunion were scores of Texans and Japanese-Americans like Inouye with arms and legs missing and scars from bullet wounds and shrapnel from the battlefield.

"I paid a high price—my leg—to get the Texans out from behind the enemy lines," said Frank Fujino, 62, of Culver City, Calif., who came to the reunion in a wheelchair. "I have no regrets," he added.

YOU ARE OUR HEROES

Among the Texans at the reunion were members of the Lost Battalion and many others of the 36th Division who were involved in the engagement.

Jack L. Scott, 60, president of the 36th Division Assn., saluted the assembled 442nd veterans:

"You are our heroes. To be with you men again is the most powerful experience I have ever had."

The groups celebrated their 36 years of separation with a four-day down-home Texas party with barbecue dinners, square dancing and an excursion to the Dallas Cowboy-Pittsburgh Steeler football game.

Among the veterans of the 36th division was John D. McKeel Sr. of Balch Springs, Tex., who wore a yellow ribbon on his lapel. His son, Marine Sgt. John D. McKeel Jr., 27, is a hostage in Iran.

FRESNO ATTORNEY SOUGHT REUNION

It was Fresno attorney Shim Hiraoka, 65, who had the original idea to get the two groups together and who worked to bring the reunion about.

"I thought the story of the 442nd and the 36th Division ought to be heard at this time," Hiraoka said. "No longer in our country is there a feeling of the necessity to sacrifice to keep this nation strong.

"If we had been surrounded by an enemy force and virtually captured like the Lost Battalion, we would have wanted someone to come and get us.

"There are 50 Americans in Iran and no one is going after them. . . ."

Texans and Japanese-Americans spent hours during the four-day reunion reminiscing.

In one room, survivors of the Lost Battalion and the Japanese-Americans from "I" company of the 442nd who made the breakthrough and were the first to contact the trapped Texans recalled that battle.

THEY HAD US SANDBAGGED

Everyone in the room had been shot or hit by shrapnel in the skirmish.

"There were 275 of us completely surrounded by the Germans. They had us sandbagged," recalled Harry McGowan, 58, a retired San Antonio fireman.

"We were trapped in the woods in the hills of southern France for seven days,

with fighting all around us. We cut down trees to cover our fox holes for protection. We were running out of ammunition. We were out of food," said Bill Stadler, 56, of Erie, Pa.

"It was desperate," chimed in Bob Harrison, 55, of Pryor, Okla, "Our 2nd Battalion tried to break through and reach us and were thrown back with heavy casualties from German fire.

"Then you fellows from the 442nd made it through at a heavy loss and got us out of there."

"How did it feel to have us Buddha Heads save you?" asked Monte Fujita, 64, of Los Angeles. (The 442nd veterans all through the war and to this day call one another Buddha Heads as a nickname.)

THE BEST DAMNED SOLDIERS EVER

"Hey, you guys are the greatest! You're the best damned soldiers ever. Because of you, 211 of the 275 men in our battalion walked out of that trap alive. If it wasn't for you, we would all have been slaughtered by the Germans," McGowan said.

"There's a lump in my throat and I've got this feeling in my heart," he continued, as tears welled in his eyes and he choked up with emotion. "There just are not the words to describe the deep feelings I have to be with you here today after all these years."

"God, remember how the Germans machine-gun emplacements were all over the place," said Hideo Takahashi, 63, of Ontario, Ore. "We gave them a banzai attack but we never had so many casualties in one battle. We had to step over bodies of our dead comrades to keep going up that hill to get to you Texans."

"It was one helluva battle. It took us four days just to go 1,000 yards. It took us a week to make it. Our fellows were being shot by Germans like flies. We kept fighting our way up that hill through machine-gun fire," recalled Shiro (Kash) Kashino, 58, of Seattle.

"What a good feeling we had when we finally broke through and reached you."

"You didn't feel half as good as we did," said Bill Stadler.

OUR GUYS WERE ALL VOLUNTEERS

"You know our guys were all volunteers, most of us came out of the barbed-wire Japanese interment camps on the West Coast and from Hawaii. When the war broke out all of us Japanese-Americans, guys like me who were born in America, were classified as enemy aliens," Kashino said.

"We had to prove to the rest of America that we were loyal to America. That's why we joined the Army as soon as we were permitted to, to show Americans that we love this country as much as everyone else born and living here."

"I had a feeling of anger, resentment and humiliation when myself and my family were hauled out to a concentration camp. All of our rights were taken away. It wasn't easy. We thought we were Americans. It means loyalty to a country that rejected us. It meant duty before human rights," said Victor Izui, 61, an Evanston, Ill., dentist.

"I was in Honolulu and was working near the Aloha Tower when the Japanese attacked Pearl Harbor," said James Okimoto, 68, of Kaneohe, Hawaii. "I saw those planes fly over and saw the red meatball on the wings (the Japanese rising-sun emblem) and I knew this was it—that we were at war.

I COULDN'T WAIT TO FIGHT

"For me it didn't make any difference what my ancestry was. Those planes were dropping bombs and trying to kill everyone in Hawaii. I couldn't wait to fight to defend my country."

Kashino turned to the Texans and said "Did you guys know we were in concentration camps?"

"It was a shame. It should never have happened. God Almighty knows it should never have happened," Stadler replied.

"There were a lot of ironies in those years," said Henry Nakada. "There were seven of us brothers in the service. In 1945 my mother was selected as the service mother of the year. She was in a concentration camp at the time. You should have seen all those gold stars for sons killed in action on the doors of the barracks in those concentration camps."

YOU LAID YOUR LIVES ON THE LINE

Bob Harrison recalled how some of the wounded in the Go-for-Broke unit and Texas soldiers wound up in the same military hospital in California.

"Do you remember how we would leave the hospital on passes and people would give you guys a bad time because you were of Japanese ancestry?" Harrison asked. "How we would go into a bar or into a place to eat and they refused to serve you fellows?

"And hell, this is only a few weeks after you laid your lives on the line for us and lost so many of your comrades."

The Japanese-American veterans all nodded as they remembered.

"We made sure you were served when you fellows were out with us," Harrison continued.

"Sometimes it would wind up in a real donnybrook and we would have to eat on broken chairs or tables but we made sure they served all of us, you Go for Brokers and us guys from Texas."●

STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. FUQUA. Mr. Speaker, on July 29, 1980, I filed the report on S. 1250, the Stevenson Technology Innovation Act of 1980. This is a bill which provides a legislative basis for a number of steps which the administration has proposed to take to promote innovation.

The bill has had strong bipartisan support in the Committee on Science and Technology. Because of the contributions to this legislation of the gentleman from New York, Mr. WYDLER, ranking minority member of the Science and Technology Committee, who is retiring from Congress at the end of this session, I am proposing to retitle the bill as the Stevenson-Wydler Technology Innovation Act of 1980.

The administration was not completely satisfied with the bill because it went beyond the administration's proposals in several respects, so since the time the bill was filed, the staff of the Committee on Science and Technology has been negotiating with the administration to arrive at a compromise version of the bill which is acceptable to the administration. A suitable compromise has now been reached resolving all but minor differences on the amounts authorized and amounts for research and development utilization. This compromise version of the bill is scheduled for consideration on the House floor on Monday, September 8, 1980, under suspension of the rules.

I am putting the compromise version of the bill in the RECORD at this point so that Members will have a chance to study it before floor action Monday:

S. 1250

An act to promote United States technological innovation for the achievement of national economic, environmental, and social goals, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Stevenson-Wydler Innovation Act of 1980".

SEC. 2. FINDINGS.

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, Federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

(4) Small businesses have performed an important role in advancing industrial and technological innovation.

(5) Industrial and technological innovation in the United States may be lagging when compared to historical patterns and other industrialized nations.

(6) Increased industrial and technological innovation would reduce trade deficits, stabilize the dollar, increase productivity gains, increase employment, and stabilize prices.

(7) Government antitrust, economic, trade, patent, procurement, regulatory, research and development, and tax policies have significant impact upon industrial innovation and development of technology, but there is insufficient knowledge of their effects in particular sections of the economy.

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the Federal Government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(11) The Nation should give fuller recognition to individuals and companies which have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

SEC. 3. PURPOSE.

It is the purpose of this Act to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of centers for industrial technology;

(3) stimulating improved utilization of federally funded technology developments by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

SEC. 4. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

(1) "Office" means the Office of Industrial Technology established under section 5 of this Act.

(2) "Secretary" means the Secretary of Commerce.

(3) "Director" means the Director of the Office of Industrial Technology, appointed pursuant to section 5 of this Act.

(4) "Centers" means the Centers for Industrial Technology established under section 6 or section 8 of this Act.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 6 or section 8 of this Act that is owned and funded by the Federal Government, whether operated by the Government or by a contractor.

(7) "Supporting agency" means either the Secretary of Commerce or the National Science Foundation, as appropriate.

SEC. 5. COMMERCE AND TECHNOLOGICAL INNOVATION.

(a) IN GENERAL.—The Secretary shall establish and maintain an Office of Industrial Technology in accordance with the provisions, findings, and purposes of this Act.

(b) DIRECTOR.—The Secretary shall appoint, a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of title 5, United States Code.

(c) DUTIES.—The Secretary through the Director, on a continuing basis, shall—

(1) determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;

(2) determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological developments in particular industrial sectors worldwide;

(3) identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;

(4) assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and social demands for goods and services and to promote productivity and economic growth;

(5) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

(6) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

(7) publish the results of studies and policy experiments.

(d) REPORT.—The Secretary shall prepare and submit to the President and Congress, within 3 years after the date of enactment of this Act, a report on the progress, findings, and conclusions of activities conducted pursuant to sections 5, 6, 8, 11, 12, and 13 of this Act and recommendations for possible modifications thereof.

SEC. 6. CENTERS FOR INDUSTRIAL TECHNOLOGY.

(a) ESTABLISHMENT.—The Secretary shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be nonprofit institutions and shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) ACTIVITIES.—The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university basic and applied research;

(2) assistance to individuals and small businesses in the generation, evaluation and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c) REQUIREMENTS.—Prior to establishing a Center, the Secretary shall find that—

(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to and inventions conceived or made under the auspices of the Center; and

(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

(5) consideration has been given to any effects upon competition of the activities proposed under the Center.

(d) PLANNING GRANTS.—The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3).

(e) ADDITIONAL CONSIDERATION.—The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request. However, the establishment of a Center, the rendering of an opinion by the Attorney General, or any other activity undertaken or approved under this Act, shall not convey to any person, association, corporation or other business organization immunity from civil or criminal liability, or create defenses to actions under any antitrust law.

SEC. 7. GRANTS AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this Act, including activities performed by individuals. The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program.

(b) ELIGIBILITY AND PROCEDURE.—Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Secretary shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

(c) TERMS AND CONDITIONS.—

(1) Any grant made, or cooperative agreement entered into, under this section shall be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such pro-

ceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

SEC. 8. NATIONAL SCIENCE FOUNDATION CENTERS FOR INDUSTRIAL TECHNOLOGY.

(a) ESTABLISHMENT AND PROVISIONS.—The National Science Foundation shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 6(a) through the conduct of activities as provided in section 6(b). The provisions of section 6(e) shall apply to Centers established under this section.

(b) PLANNING GRANTS.—The National Science Foundation is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan, as required under section 6(c)(3).

(c) TERMS AND CONDITIONS.—Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this Act shall be governed by the National Science Foundation Act of 1950 and other pertinent Acts.

SEC. 9. ADMINISTRATIVE ARRANGEMENTS.

(a) COORDINATION.—The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this Act, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development, the Environmental Protection Agency, National Aeronautics and Space Administration, Small Business Administration, Council of Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

(b) COOPERATION.—It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by, or could contribute to, the programs established under this Act, should, within the limits of budgetary authorizations and appropriations, support or participate in activities or projects authorized by this Act.

(c) ADMINISTRATIVE AUTHORIZATION.—

(1) Departments and agencies described in subsection (b) are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this Act.

(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this Act.

SEC. 10. EXTERNAL ADVICE.

The Secretary shall require an appropriate advisory committee to review annually the activities of the Office and to advise the Secretary and the Director with respect to—

(1) the formulation and conduct of activities under section 5 of this title;

(2) the designation and operation of Centers and their programs under section 6 of this Act including assistance in establishing priorities;

(3) the preparation of the report required under section 5(d); and

(4) such other matters as the Secretary or Director refers to the Committee for review and advice.

The Director shall make available to the Committee such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

SEC. 11. UTILIZATION OF FEDERAL TECHNOLOGY.

(a) POLICY.—It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive, where appropriate, to transfer federally owned or originated technology to State and local governments and to the private sector.

(b) ESTABLISHMENT OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each Federal agency which operates or directs one or more Federal laboratories shall make available not less than 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications, unless, at the time the agency transmits its annual budget to Congress, the agency also transmits to Congress a written justification for a waiver of requirement (1) of this subsection and/or requirement (2) of this subsection with a full and complete explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(c) FUNCTIONS OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—It shall be the function of each Office of Research and Technology Applications—

(1) to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the Center for the Utilization of Federal Technology and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry; and

(4) to provide technical assistance in response to requests from State and local government officials.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) CENTER FOR THE UTILIZATION OF FEDERAL TECHNOLOGY.—There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on Federally-owned or originated technologies having potential application to State and local governments and to private industry;

(2) coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories;

(3) utilize the expertise and services of the National Science Foundation and the existing Federal Laboratory Consortium for Technology Transfer, particularly in dealing with State and local governments;

(4) receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories.

(5) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(4); and

(6) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems.

(3) AGENCY REPORTING.—Each Federal agency which operates or directs one or more Federal laboratories shall prepare biennially a report summarizing the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section. The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.

SEC. 12. NATIONAL TECHNOLOGY MEDAL.

(a) ESTABLISHMENT.—There is hereby established a National Technology Medal, which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommendations submitted by the Office of Science and Technology Policy, may prescribe.

(b) AWARD.—The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) PRESENTATION.—The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

SEC. 13. PERSONNEL EXCHANGES.

The Secretary and the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated to the Secretary for purposes of carrying out section 6, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985.

(b) In addition to authorizations of appropriations under subsection (a), there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this Act, not to exceed $5,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985.

(c) Such sums as may be appropriated under subsections (a) and (b) shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this Act only such sums may be appropriated as the Congress may authorize by law.●

TESTIMONY PRESENTED TO THE CONGRESSIONAL AUTO TASK FORCE

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. PURSELL. Mr. Speaker, as a charter member of the Congressional Auto Task Force, I was pleased to have an opportunity to participate in its first public meeting, appropriately held in Detroit, Mich., on September 2. Today, I would like to share with my colleagues here in the House a statement I presented at that time.

The task force will be holding its next hearing in Washington on September 15. The following day, the House Foreign Affairs Subcommittee on Asian and Pacific Affairs is scheduled to take up a related resolution, House Concurrent Resolution 363, which I introduced in June. I am hopeful that as many Members as possible will be able to participate in these proceedings.

STATEMENT OF HON. CARL D. PURSELL

As a charter member of the Congressional Auto Task Force, I am pleased to have an opportunity to participate in its first public meeting, appropriately being held here in Detroit today. I come, not only as a member of the Michigan delegation but also, as one privileged to serve on the powerful House Appropriations Committee and as Co-Chairman of the Northeast/Midwest Coalition's Budget Task Force.

Needless to say, the automobile industry is facing its greatest challenge in our lifetime, and the adverse consequences of this situation are being felt throughout the Nation's economy. One out of every 12 manufacturing jobs are directly, and one of six jobs are indirectly, dependent upon the auto industry. For every hourly job involved in the manufacture of motor vehicles, an additional 2 jobs are created in the entire economy. Steelworkers, in particular, can attest to the harmful effects on related industries of the downturn in the auto sector.

Over 300,000 auto workers currently are on layoff, as are an estimated 550,000 additional workers in auto-dependent industries. That means, not only hardships and suffering by the families of those out of work, but less tax revenue and more federal expenditures, which add to the burdens of those of us lucky enough to have a job.

However, I am not here to paint bleak pictures, join in a handringing session, or—most importantly—assess blame. Rather, I would like to offer some potential solutions for dealing with the short term, intermediate, and long-run problems associated with these serious conditions.

First, we cannot delay any longer in dealing with the flood of foreign automobiles and trucks—primarily from Japan—that are taking an increasing share of the American market. While our plants are being idled and shut down, Japanese plants are running overtime and producing an unprecedented volume of vehicles, which now represent 22 percent of the U.S. market.

Make no mistake about it, this is not happening by chance, but is part of a conscious, well-planned design. Shortly after World War II, Japan decided to develop its own passenger car industry. This was accomplished by excluding imports from the United States and other established producers through preventing foreign investment, as well as imposing prohibitive tariffs and discriminatory commodity taxes, and leaving the burdens of defense to others.

Once the Japanese auto industry got firmly on its feet, most of their barriers to foreign imports were reduced. (Although a U.S.-built car still costs almost twice as much in Japan as it sells for domestically.) Meanwhile, potential markets in Europe and elsewhere maintained quotas or other restraints to trade. Thus, the United States, the only substantial "open" market available, became the prime target for Japan's aggressive new export efforts.

The geographic size of Japan, its uncontrolled fuel costs, urban driving conditions, along with a host of other factors, demanded a small, fuel-efficient vehicle. Accordingly, when American driving and car-buying habits abruptly changed following the Iranian crises, the Japanese were the lucky beneficiaries. That is, their "grand design" worked better than they ever dreamed.

The U.S. automobile industry is currently in the midst of an $80 billion conversion to meet the new demands of its driving public. And what is needed now is some "breathing room", such as that experienced by the Japanese industry during its time of conversion in the 1950's and 60's.

On September 16, the House Foreign Affairs Subcommittee on Asian and Pacific Affairs will be holding hearings on a measure (H. Con. Res. 363) I introduced in June, along with my colleagues Bill Brodhead, Bob Davis, and Jim Blanchard. This resolution urges the President "to enter into negotiations with the representatives of the Government of Japan with respect to a temporary restraint in the exportation of automobiles into the United States, an equitable relationship between prices changed in domestic and foreign sales, and elimination of trade barriers affecting purchase of American products." I am hopeful that Congress will act promptly on this resolution following those hearings.

Now let us turn briefly to the intermediate problems facing the auto industry—and for that matter the American economy in the aggregate. Although increased imports have greatly exacerbated the current recession, they did not cause it. For example, it should be noted that total car sales—including imports—have declined from 11 million units in 1977 and 1978 to a present rate of about 9 million vehicles.

Many Americans simply cannot afford a new car, imported or domestic. One fast and effective way of improving this situation would be to enact a meaningful tax cut. Such action would leave billions of dollars in the paychecks of working men and women—money available to spend and save, in turn, providing increased demand for goods and services. That, not incidentally, also means more jobs.

In July, along with 84 cosponsors, I introduced a new five-year tax cut proposal designed as a common ground for a bipartisan agreement. The bill (H.R. 7730) combines a total 30% tax rate cut for individuals, with tax rate indexing beginning in 1986, after all the cuts have been implemented.

As you probably know, the House Ways and Means Committee has been holding hearings on various tax proposals affecting both individuals and businesses. Again, I am hopeful that Congress will act on this important subject as promptly and effectively as possible.

Finally, I want to speak about the long-term—something which we in government do all too little. Budgets are battled out on an annual basis, Congressional elections are held every two years, and it seems like we now go from one Presidential campaign right into the next. Like most physicians, we spend almost all of our time fighting diseases, not preventing them.

Once again, we can learn a lesson from our friends in Japan. Let me briefly quote from a recent report by the U.S. Comptroller General:

"There is an important time-frame difference between Japan and the United States . . . Japan anticipates. Its conception of 'early warning' rests on economic projections 5 to 10 years or more in the future . . . the United States reacts."

In addition to looking beyond the current decade, Japan involves all aspects of its society in a voluntary planning process—management, labor, education, and government at all levels. On the contrary in the U.S. these various groups usually take on an adversarial relationship, even when their best interests would seem to require a cooperative approach.

I strongly believe that we can forge meaningful partnerships to solve common problems, without destroying the individual identity of institutions, without reducing competitiveness, and without damaging the diversity that has be · our strength for over 200 years.

I am proud of the work of the Northeast/Midwest Coalition in recognizing this approach and in taking small, but important steps to implementing it on a regional basis in Congress. In addition, I have been working with various government and private sector leaders in Michigan to help lay the groundwork for long-range cooperative planning sessions on a statewide basis.

I challenge all of you here to seriously consider the opportunities available by such planning at the local, state, regional and even national levels.

Our nation was founded in the midst of conflict and has been at its best when facing adversity. Despite abundant natural resources, America's greatest wealth has always been its people. Through depressions, wars, and various social struggles leaders have emerged and the people have responded in a way that has produced a country stronger and more desirable than ever.

We are not now marching to war or facing the depths of the Great Depression; however, in many ways the tasks before us are every bit as difficult and serious as those of the 1930's and 40's. Let us not shirk our duty, but respond in the tradition that has been established for us. We have no other choice!●

PATRIOTISM AND THE NATIONAL ANTHEM

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. ANDERSON of California. Mr. Speaker, I would like to draw your attention to an article written by Bill Gold which appeared in his August 28, 1980, column in the Washington Post. The article follows:

THE PUNKS WON

A few days ago, this newspaper carried a dispatch from Waukegan that began with these words:

"The Star Spangled Banner waves over the Great Lakes Naval Training Center, but the national anthem singing its praise has been silenced at the base movie theater."

It used to be the custom to play the anthem before the start of every evening's entertainment. But one night a few catcalls and jeers broke out among the audience in the darkened theater, and thereafter the show of disrespect became standard operating procedure. The anthem was booed every night.

Adm. Charles Gurney III was furious. He ordered the playing of the anthem stopped "for as long as I am commander here," and added disgustedly, "The punks won."

When Maj. John M. Alley of Alexandria read those lines, he reacted to them pretty much as I had. "To say I was shocked would be an understatement," he wrote.

"What the commander should have done was to close the theater until assurances were received that the audience would act properly. I think more should be done about this."

I agree wholeheartedly.

Recruits in basic training are not permitted to attend the theater at Great Lakes. Those in attendance, from whose ranks the disorderly conduct emanated, were personnel in the technical training school, the base staff, and their dependants.

They should have known better. They should have had the decency to show respect for the government that pays them, feeds them and houses them.

Lt. Cherie Davis, a public information officer at the base, seemed annoyed that the public expects that "people in the service should have one standard of conduct and the civilian population should have another." She said people in the civilian community had been brought up to show disrespect for the flag and the anthem. "You've seen them at sporting events," she said. "They jeer, they slouch, they talk, they throw popcorn and spit, during the national anthem."

What she said is true. Some civilians do act like uncivilized animals, not only during the playing of the Star Spangled Banner but throughout their lives. But what does that have to do with the respect that a serviceman should show the flag to which he had taken an oath of allegiance? And what does it have to do with the respect that should be shown by a civilian employed by the military, or by his family?

Does Lt. Davis have any conception of what a military PIO's function is supposed to be? Is Adm. Gurney the most effective commander the Navy could find for this assignment?

I am thoroughly disgusted with the episode at Great Lakes and with the entire subject of disrespect to our nation and its symbols.

I wish the people who are so determined to show public disrespect for this country would go live in a country that suits them better and leave this one to those of us who thank God for granting us the blessings of liberty that flow from our American citizenship.

Your punks may have won, admiral, but if punks ever become a majority in this country they'll find out in short order what they've really won. They're not going to like that, either.

Mr. Speaker, however, after reading Mr. Gold's column on September 3, 1980, it seems that, after the original story was published, such an uproar of protest was made Admiral Gurney decided to resume playing the national anthem.

Needless to say, I was certainly glad to see that this ugly problem had been rectified; however, it should have never had happened to begin with. When Admiral Gurney decided that the solution to the situation was to stop playing the anthem, he did not solve the problem but became part of it. Admiral Gurney should have had the guts to have those individuals involved with this disgusting display of behavior apprehended and disciplined, or if this was infeasible, to simply close the theater until other patrons exerted sufficient pressure on the troublemakers to bring them into line.

In a time when Americans all across the country are once again joining together in a patriotic bond of unity for our hostages in Iran, this type of repulsive behavior should not be tolerated.

As you know, over 110 of our colleagues have joined in cosponsoring legislation I have introduced which would designate the week commencing with the third Monday in February 1981 as "National Patriotism Week." I only hope that this significant bill will be enacted into law this 96th Congress, to encourage Americans everywhere to demonstrate their patriotic feelings. This should show those few individuals at the Great Lakes Naval Training Center that there is a great deal of love and respect for our Nation, its flag, and its national anthem, and for what it represents.●

SANTA MARIA'S 75TH ANNIVERSARY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I am pleased to announce to my colleagues that Santa Maria, Calif., will be celebrating its 75th anniversary on September 12, 1980. Mayor George Hobbs declared that the occasion will be commemorated with the celebration of "Diamond Jubilee Week."

The week's events will include concerts, dances, a western barbeque sponsored by the Santa Maria Historical Society, and the burying of a time capsule. Also, the city's senior citizens' center will be renamed as the Elwin Mussell Senior Citizens Center, in honor of the late mayor.●

FOREIGN INVESTMENT

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. DERWINSKI. Mr. Speaker, I would like to direct the attention of the Members to an editorial broadcast over Chicago's highly respected and popular radio station, WBBM 78. The editorial, carried on August 15, presents some very perceptive and far-sighted views on foreign investment in American business and property. I believe that this editorial is worthy of review:

FOREIGN INVESTMENT

Yesterday we said that foreign interests are buying up our nation from under our feet, and that we aren't doing much about it. Today we'll suggest some measures to control this situation.

Most important, there must be Federal registration of all past and future foreign direct investment in American business and property. We also need a screening mechanism to assure that a foreign investment will be beneficial to the U.S. economy. And we need a complete and immediate restructuring of the interagency Committee on Foreign Investment in the United States. This committee has had the responsibility to evaluate foreign investment in light of U.S. interests. Unfortunately, a recently released government report accuses the Committee of shirking its duties.

We also need a presidential commission to conduct a major federal policy reappraisal on better ways to attract and manage foreign investment.

We don't believe these measures will harm foreign investment in our country. Registration and screening are already being used in other countries. Rather, our goal is to encourage foreign investment that will benefit the United States. As New York Congressman Benjamin Rosenthal says, "We need to understand the true sources and likely effects (of foreign investment). And we need to protect our businesses, workers and communities from harmful consequences. We are already hostage to foreign oil. We cannot become hostage to foreign control."●

CORRECTIONS IN H.R. 7972 AS INTRODUCED

HON. CECIL (CEC) HEFTEL

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. HEFTEL. Mr. Speaker, on August 20, 1980, I introduced H.R. 7972, a bill to amend title XVIII of the Social Security Act to provide for an independent Provider Payment Review Board to review disputes on cost reimbursement under the medicare program between provider of services and the Secretary of Health and Human Services.

There are two inadvertent errors to the bill as printed which I wish to

hereby clarify. These errors in H.R. 7972 are:

First, on page 10, line 2, instead of "A final decision," it should read: "In the case of entities which were not parties to the hearing, a final decision."

Second, on page 11, beginning on line 3, instead of "covered by the decision," it should read: "beginning after the date the decision was rendered."

I offer these changes in order to clarify the intent of the legislation and to expedite the dialog which will ensue.●

RONALD REAGAN SPEAKS OUT

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. ROUSSELOT. Mr. Speaker, the liberal left and the media have been giving Ronald Reagan a lot of flack lately. Why? He has been committing one of the more serious of the political "sins." Governor Reagan has been honestly speaking his mind.

As columnist James J. Kilpatrick points out in the editorial that follows, Ronald Reagan should be commended—not condemned—for truthfully expressing his views. He is willing to "call a spade a spade instead of an implement for digging." And, as in the case of his comments on both Taiwan and the Marxist nature of the progressive income tax, Reagan's observations are generally right on target.

Mr. Speaker, I commend Mr. Kilpatrick's editorial, in its entirety, to the attention of my colleagues:

The editorial follows:

MR. REAGAN IS SPEAKING HIS MIND

(By James J. Kilpatrick)

Ronald Reagan has been catching some garbage lately from the quiche-eating set of the liberal left. The general idea is to depict him as a blockhead, ignorant of history and diplomacy alike, a fellow who is just too stupid, my dears, to be entrusted with the White House. The two principal targets have to do with Karl Marx and Taiwan.

Let me take them one at a time. It appears that back in 1964, in a speech entitled "Losing Our Freedoms By Installments," Mr. Reagan spoke generally of an income tax characterized by disproportionately higher rates on personal income. "This progressive system," he said, "was spawned by Karl Marx and declared by him to be the prime essential of a socialist state—the method prescribed for taxing the middle class out of existence."

Sen. Edward Kennedy's speech-writers dug out the 16-year-old quote. In his rousing address in New York, Mr. Kennedy ridiculed Mr. Reagan for denouncing the progressive income tax "as the invention of Karl Marx." Mr. Kennedy was afraid Mr. Reagan "has confused Karl Marx with Theodore Roosevelt." Writing in The New Republic, Richard Strout was appalled by Mr. Reagan's ignorance. "Can America really elect a man president who believed (or at least declared) that the graduated income tax was invented by Karl Marx? Why does Reagan say such things?"

REAGAN AND MARX

The answer may be that Mr. Reagan had read the Communist Manifesto and that Messrs. Kennedy and Strout have not. Toward the end of this seminal work, Marx listed 10 measures by which the proletariat would wrest power. This was his second measure: "A heavy progressive or graduated income tax." Now, this pernicious scheme may have been invented, for all I know, by Hammurabi. But if Teddy Kennedy thinks it was invented by TR, who's the blockhead?

The point is that Reagan was precisely right in identifying a graduated income tax with Marx. On the matter of Taiwan: Here again, as in his assertion that Vietnam was a "noble cause," Mr. Reagan's distaste for sham has got him in trouble. He doubtless should have been more careful in defending an "official" relationship with Taiwan.

This is a buzz word. Chinese Communists and American liberals came to him like so many hornets. But why not call a spade a spade instead of an implement for digging? Must we forever persist in make-believe? Under the act passed by Congress after President Carter imperially nullified our treaty with Taiwan, our relations are conducted through "the American Institute in Taiwan."

The institute is a charade. It is financed entirely by the U.S. Treasury under appropriations approved by Congress. Its contacts go through the State Department. The law directs the institute to function "as if" it were a consulate. This is exactly what Mr. Reagan has agreed to support.

Yes, Mr. Reagan has been critical of President Carter's abandonment of a 25-year-old treaty with our small ally. The criticism is richly deserved. And without rehashing the whole unhappy story, it may be observed that "normalization" with the People's Republic has accomplished nothing in terms of Sino-Soviet relations, or in terms of worldwide balancing of powers, that would not have happened anyhow. Mr. Reagan is honestly speaking his mind. It is small wonder that liberal spokesmen are dumbfounded. As they say down South, you just don't hardly ever hear that kind of talk no more.●

JOHN BURTON—FOUNDER OF GRANDPARENTS DAY

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. STARK. Mr. Speaker, Sunday is Grandparents Day. In addition to honoring all the grandparents of this country in these remarks, I would also like to honor the man who provided the inspiration for their celebration—our colleague JOHN BURTON.

While JOHN is not a grandparent, a candy salesman, a florist, or a stockholder in Hallmark Cards, he does have a vested interest in Grandparents Day—he invented it. He is a sincere admirer of those in our population who have earned the right to be called grandpa or grandma.

Sunday is their day and my colleague from California and the bay area deserves credit for what he has wrought.

Well done, JOHN, and best wishes to all the grandparents of the United States and everywhere.●

SOME FRIEND

HON. C. W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. YOUNG of Florida. Mr. Speaker, according to the Washington Post, the education plans of 128,000 veterans who served our country during the Vietnam war may have to be changed either because of mismanagement by the Carter administration or lack of interest on their part. These veterans, who were guaranteed educational benefits under the GI bill, now have been told there is no money available for them.

Nearly 2 months ago, the VA notified the administration of the shortage, but OMB sat on the request until yesterday before sending us a supplemental appropriation request for the funds needed to cover the shortage. Most colleges have just begun classes or will just be beginning classes and what will the Veterans' Administration be able to say to those veterans who were planning on using this money to start school.

As a member of the Appropriations Subcommittee that oversees the funding for Veterans' Administration programs, I can assure you that I will do everything possible to expedite this funding so that these veterans will not have to postpone their education plans. But this whole situation seems ironic to me. Several weeks ago President Carter stood before veterans organizations and claimed that his administration is a friend of veterans. Today's news about the problems created for the veterans by the Carter administration is certainly a strange way to express that friendship.●

VOTERS ARE STILL WAITING ON CARTER TO DELIVER ON HIS PROMISES OF 1976

HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. ASHBROOK. Mr. Speaker, as the Presidential campaigns start to pick up steam, it is always best to consult the records of the two candidates. The Rome News-Tribune of Rome, Ga., did look at President Carter's promises made in 1976 and compared them with what he has delivered and found him wanting the other day in an editorial printed on Sunday, August 17, 1980. I think it is an excellent summary of campaign promises made, but not kept. The voters should certainly keep this in mind next fall. The editorial follows:

VOTERS ARE STILL WAITING ON CARTER TO DELIVER ON HIS PROMISES OF 1976

President Carter would have us believe that we must either return him to office for another four years in November or watch our nation move to the brink of economic chaos and international conflict. The choice is that simple, he says, between his candidacy and that of the Republican Party standard bearer.

Unfortunately for Mr. Carter, such rhetoric doesn't cut the mustard, not anymore. They are just meaningless words shot full of holes by Mr. Carter's miserable track record of the last three and a half years. Lest we forget, four years ago he promised the nation peace and prosperity. Four years ago he promised to return government to the people, to eliminate much of the bureaucracy that dictates our lives and to balance the budget. Four years ago he vowed to bring under control the cancer of inflation.

Four years ago he painted himself as America's saviour who has his hand on the pulse of the people—a man not infected by or influenced by the self-serving and special interest politics of Washington.

It is difficult for us to forget these promises because we're still waiting for Mr. Carter to deliver.

If there is peace in the world, Mr. Carter must have coined a new definition of the word. If there is prosperity he must be excluding the millions on food stamps, those who swell the welfare rolls, and the growing number of unemployed who are trying to retain what little pride they have left. The working people watched the purchasing power of their earnings diminish. Housing prices skyrocketed and finally the home building industry ground to a halt. Our giant automotive and steel industries posted record losses and record layoffs.

All of this under the administration of Mr. Carter, who promised us peace and prosperity.

Moreover, government still has control of our lives, contrary to what Mr. Carter promised. Business and industry grinds to a halt under the weight of federal regulations. Just as he did while serving as governor of Georgia, Mr. Carter's idea of reducing the size of government is to eliminate small agencies and create new cabinet-level monsters. That's like swapping mosquitoes for rats.

Mr. Carter juggled figures and projected record revenues to have us believe, at one time, that the federal budget would be balanced. He even tried to slip in a new tax on gasoline in the process. But, when the truth came out the administration had to hide—tuck its tail between its legs in the wake of another projected deficit.

Through all this—the undelivered promises and the dismal failure of Mr. Carter's administration—inflation remains an unwanted member of every home.

And now Mr. Carter talks with pride about the accomplishments of his Democratic administration. He asks the people to return him to office for another four years and tell us we cannot accept the alternative of voting for his opponent.

But, if Mr. Carter thinks the people are fooled by his rhetoric he had better think again. When a person can't accomplish at least a portion of his major goals with a Congress dominated by members of his own party, then he's a failure as a president.●

DO NOT WEAKEN GUN LAWS

HON. MICHAEL D. BARNES

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. BARNES. Mr. Speaker, earlier this summer the House Judiciary Committee overwhelmingly rejected an amendment to the criminal code bill which would have drastically weakened existing Federal laws on firearms. There is currently underway a massive lobbying campaign to reverse this result when the bill comes to the floor. I strongly urge my colleagues to uphold the committee's action and reject the amendment again, not only because the amendment is bad policy but also because it has no place in legislation recodifying criminal law.

Mr. Speaker, I place in the RECORD for the information of the House an editorial on this subject which appeared in the Washington Post of Wednesday, September 3.

The editorial follows:

GUNRUNNERS' SNEAK ATTACK

It's been a busy summer for the master gun-worshippers of the National Rifle Association—whose troops have been all over Capitol Hill; methodically whipping up an ugly legislative surprise for all who believe in reasonable controls on handgun traffic. The NRA threat this year is double-barreled: If unchecked, it would mean (1) the end of almost all existing federal regulations of guns and (2) a go-ahead for handgun purchases by certain convicted felons and for free-wheeling interstate traffic in all sorts of pistols, machine guns and other firearms that can hardly be considered as sporting equipment.

Besides the old pistol-packers' game of loading key politicians' pockets with campaign contributions, this round of gun-lobby efforts includes sneak attacks to undo votes just taken in Congress that have gone against the NRA. Thanks to cooler heads in the House and Senate committees that traditionally consider gun-control legislation, the gun lobby's initial efforts were voted down. But now the NRA, having disguised its free-for-all gun proposal as a "Federal Firearms Reform Bill," seeks to slip its proposals into law in the form of an amendment to the Criminal Code Bill. In the House, where a committee voted 22 to 5 against the effort to repeal gun controls, a variation may be tried.

Whatever the camouflage, people shouldn't be fooled by this destructive legislative attempt to repeal the reasonable, minimum gun controls that do exist. The 1968 Gun Control Act, which the NRA would repeal, was enacted after the assassinations of Robert F. Kennedy and the Rev. Dr. Martin Luther King, Jr., to put some basic safety rules on the books: licensing of gun dealers, bans against certain types of weapons such as machine guns, prohibitions against sales to out-of-state residents and against gun trafficking by convicted felons.

None of this has, or would, disarm the sportsman. National polls have shown time and again that a solid majority of Americans support federal handgun controls to place some responsibility on handgun ownership and handgun commerce. If thoughtful legislators respect this desire, and if they stop listening to a narrow special-interest lobby, the scant controls now on the books can be preserved.●

THE NINTH DISTRICT OF MICHIGAN ANNUAL CONGRESSIONAL QUESTIONNAIRE RESULTS

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. VANDER JAGT. Mr. Speaker, the residents of the Ninth Congressional District of Michigan have returned thousands of congressional questionnaires to me, and the results have been tabulated in the last few weeks. I would like to take this opportunity to share the results with my colleagues.

Of particular interest to me were the very strong opinions held on national defense issues, with 87 percent of the respondents agreeing that the United States should be prepared to defend our vital interests in the Persian Gulf region but only 6 percent saying that they are satisfied that the U.S. military is sufficiently strong. It was also interesting to note that only 21 percent said they approved of President Carter's handling of the Iranian hostage situation, and only 38 percent felt the President responded appropriately to the Soviet invasion of Afghanistan.

Inflation remains the No. 1 issue to most Ninth District residents who responded to the annual questionnaire survey I sent in June, with 41 percent listing it as the most serious issue facing the Nation. Few, 18 percent, said they are optimistic that they will be better off economically 1 year from now than they are today, indicating to me a very low degree of confidence in the handling of the economy.

Another indication of the low esteem now held for our leaders was exhibited by the response to the general question asked on the single most serious problem facing our Nation. After inflation, most people, 31 percent, listed "Government leadership" as the Nation's most serious problem.

While energy was not listed as one of the greatest problems facing the Nation—only 7 percent listed it as such—there was evidence of concern over energy supplies; 83 percent favored the relaxation of some air pollution standards to permit more coal to be burned, and 73 percent favored the continued development of nuclear power; 59 percent said they favored Federal restrictions on the use of automobiles in the event of a gasoline shortage.

Mr. Speaker, I would like to express my appreciation to the many newspapers throughout the Ninth District which assisted me by printing the 1980 congressional questionnaire to insure that every district resident would have the opportunity to participate.

The complete results of the 1980 questionnaire are:

ANNUAL NINTH DISTRICT QUESTIONNAIRE RESULTS IN PERCENT

1. Do you approve of President Carter's handling of the Iranian hostage situation? yes, 21; no, 78.
2. Do you feel President Carter responded appropriately to the Soviet invasion of Afghanistan? yes, 38; no, 62.
3. Do you agree that the United States must be prepared to "defend" vital interests in the Persian Gulf region? yes, 87; no, 13.
4. Are you satisfied that the U.S. military is sufficiently strong? yes, 6; no, 94.
5. Should the Federal budget be balanced even if it means slowing the growth of Federal support in areas such as health, education and other social programs? yes, 81; no, 19.
6. Do you feel that Federal tax cuts will help fight inflation? yes, 49; no, 51.
7. Are you optimistic that you will be better off economically one year from now than you are today? yes, 18; no, 82.
8. Would you favor the relaxation of air pollution standards to permit more coal to be burned? yes, 83; no, 17.
9. Do you favor the continued development of nuclear generated power to meet our energy needs? yes, 73; no, 27.
10. In the event of a gasoline shortage, should the Federal Government impose restrictions on the use of individuals' automobiles? yes, 59; no, 41.
11. Do you favor limitations on commercial fishing by Indians in the Great Lakes? yes, 84; no, 16.
12. Should state and local governments assume greater responsibility for programs and services now provided by the Federal Government? yes, 85; no, 15.

What do you consider is our Nation's most serious problem?

Inflation—41; taxes—6; national defense—9; energy—7; unemployment—6; Government leadership—31.●

TOOTHLESS WATCHDOGS OF THE FEC

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 5, 1980

● Mr. DORNAN. Mr. Speaker, I would like to call to the attention of my colleagues, four more discrepancies in the continuing FEC coverups of the west coast, gulf coast, Potomac scandal involving Carey Peck and Donald Stewart.

The material follows:

DISCREPANCY: DENNIS CLAIMS HE GAVE $11,000 "IN CASH" TO STEWART. STEWART DENIES YET BANK RECORDS NEVER CHECKED BY FEC TO VERIFY STEWART'S DENIAL

On June 20, 1979, the F.E.C. General Counsel Oldaker sent James Dennis a letter through his lawyer, Stephen Salter, (Get this: Salter and his partner Groenendyke are major donors to Stewart—$2000.00—and presumably function as his lawyers behind the scenes. Conflict?), which stated in part:

"A summary of the evidence is as follows . . . (4) Mr. James H. Dennis, Sr., made contributions equaling $11,000 in cash to the Friends of Donald Stewart in violation of 2 U.S.C. § 441(g) and 11 C.F.R. § 110.4 (c)(1)." A similar statement was included in a June 20, 1979 letter to the Stewart campaign. Both June 20, 1979 letters contained the following sentence: "Under the Act, you have an opportunity to demonstrate that no action should be taken against you."

This ludicrous statement of the F.E.C. Office of General Counsel was made in light of a prior June 4 Dennis affadivit which stated: "I utilized corporate funds of Dennis Mining Supply and Equipment, Inc., an Alabama Corporation, (a "dummy corporation" according to an investigative reporter who has been working on this case for months) to acquire the cashier's checks used to make all contributions to the campaigns of both Honorable Donald Stewart and Carey Peck."

What evidence for the cash contribution to Stewart the O.G.C. is referring to in item No. (4) does not appear in the F.E.C. MUR 970 or in the files. Nor does anybody associated with Stewart "demonstrate" that no cash was given. John W. (Jack) Vardaman, Counsel for Senator Stewart in a July 2, 1979 hand delivered letter to F.E.C. General Counsel William Oldaker, simply denies that any Dennis contributions were made in cash. (Is this the beginning day of the internal cover up?)

The Dennis affadavit of July 16, 1979 is silent about cash contributions. Nowhere in the above cited affadavit does Dennis deny the original allegation referred to the F.E.C. by the Justice Department, and repeated by General Counsel Oldaker in two letters sent out to the principals regarding the $11,000 cash contribution Dennis allegedly made to Stewart. How did the $11,000 cash contribution first arise except from a principal in the matter? Maybe U.S. Attorney J. R. Brooks was the first to learn this.

Since the original referral came from this Alabama Justice Department prosecutor, Mr. "J. R." Brooks (whose continuance in that job is at the sufferance of the Senator from Alabama, who was named as possibly receiving $11,000 in illegal cash contributions from corporate funds) it stands to reason that Brooks has in his possession substantive evidence in order to forward to the Federal Election Commission in Washington, D.C.

"The ravings of a tea leaf reader" would hardly cause a U.S. District Attorney to forward evidence to the F.E.C., involving in effect the employer of that U.S. District Attorney, and yet the F.E.C. does not check the records of the First National Bank of Birmingham to verify, even as Dennis had frankly advised, whether Stewart received all of the $23,150 from Dennis in the form of cashier's checks, mostly sequentially numbered. All this is what we get from an agency (F.E.C.) that was created because of Watergate! Tragic . . .

DISCREPANCY: FEC COMPOSES LETTER TO PECK WHICH WAS NEVER SENT TO HIM. WHY?

One of the 13 illegal Alabama "Phantom" contributions is listed by Carey Peck as having been giving by a Robbie Chancey of 2106 Starlake Drive, Birmingham, Alabama and transmitted by C. Mike Chancey (F.E.C. Report for 10-24 through 11-27-78).

James Dennis laughingly told Congressman Dornan, while the Congressman interogated him in the Warden's Conference Room at the Taladega Federal Prison in Alabama on April 30, 1980, that Robbie Chancey was 4 years old at the time of the 1978 election. "The Congressman can have fun with that one," Dennis told the FBI agent. Additionally, no cashier's check made out in Robbie Chancey's name was among those submitted by James Dennis in his July 4, 1979, contact with the F.E.C. There is a check from Mike Chancey, #1083646, dated November 14, 1978. (The day before the "defeat party" at Gregory Peck's house and Chasen's.) This apparently is the check which Carey Peck lists as coming from Robbie Chancey, then four years old. The F.E.C. has possessed a customer's copy of this check since June 7, 1979!

Did the F.E.C. believe that Robbie Chancey gave the money or that C. Mike Chancey gave the money or that Mike Chancey gave the money. The Office of General Counsel apparently believed that the contribution to Peck came from all three at various times. Did this bother Peck or the O.G.C., William Oldaker, at the F.E.C.? Apparently not. Let's look at the following facts:

In the letter which the O.G.C. prepared on August 9, 1979 for Peck, Mike Chancey is listed as a contributor of $1000 on November 24, 1978. Yet the Mike Chancey check is dated November 14, 1978. The only place that the date of November 24, 1978 shows up in any F.E.C. file is on Carey Peck's form for the period of 10-24-78 through 11-27-78. Yet, in finding the date for that particular contribution, the person (?) who prepared the letter from General Counsel Oldaker's signature, would also have had to see that Carey Peck listed the contribution as coming from Robbie Chancey, "transmitted by" C. Mike Chancey (whatever the hell that means). So, although the F.E.C.'s "pretend letter" disputes on its face the Peck claim about the name of the donor, the F.E.C. General Counsel just let this discrepancy slide under the covers.

In fact, this F.E.C. official omitted two points from the "Peck report form" for inclusion on the proposed F.E.C. letter to Carey Peck: (1) Robbie Chancey was the contributor listed by Peck! and (2) the initial "C" was omitted by the F.E.C. from "C" Mike Chancey's name. This covered Peck's acceptance of TWO Mike Chancey $1000 checks.

Was this done by the F.E.C. because of the Office of General Counsel's policy that "Carey Peck hadn't done anything which even appeared to violate the law" which would be contradicted by an F.E.C. letter to Peck, which itself listed contributions from both a Charles Mike Chancey and a "C" Mike Chancey both of the same address? The answer is probably, Yes.

Yet, when the O.G.C. sent out a proposed conciliation agreement to Dennis, the "Mike Chancey" contribution was changed back to "Robbie Chancey."

In short, the O.G.C. saw a First National Bank of Birmingham check made out to "Carey Peck for Congress" apparently purchased by a Mike Chancey, but which Carey Peck's F.E.C. forms listed as having come from Robbie Chancey as transmitted by "C" Mike Chancey and couldn't have cared less.

None of this, as witnessed by the F.E.C. MUR 970, apparently bothered the O.G.C. then under William Oldaker or now under Charles Steele.

DISCREPANCY: FEC TAKES NO ACTION AGAINST PECK BECAUSE NO COMPLAINT WAS FILED

According to an A.P. news story by Reporter Jay Perkins dated in April of 1980, F.E.C. spokesman Fred Eiland claimed that the F.E.C. took no action on Dennis' contributions to Peck because there was never a complaint filed about the scandal.

Yet, F.E.C. law, 2 U.S.C. 437 g(a)(2) states that the F.E.C. shall notify any candidate of a suspected violation and shall investigate such violation on the basis of information ascertained "in the normal course of carrying out its supervisory responsibilities" after

four members of the F.E.C. agree that there is reason to believe a violation has occurred.

DISCREPANCY: THE FEC, OGC SEEMS TO PROTECT YOUNG CAREY PECK AT ALL COSTS IN VIOLATION OF THEIR OWN LAW

In the lengthy period since the Dennis contributions to Senator Stewart and Carey Peck first came to the attention of the F.E.C. and its O.G.C., there is not so much as a letter to be found in the F.E.C. files which the O.G.C. had actually sent to Carey Peck.

This O.G.C. policy is in conflict with what then F.E.C. Chairman Tiernan told Congressman Carroll Campbell, Jr., and others at an April 25, 1980 House Administration hearing:

Congressman CAMPBELL. All right. For instance, say I was running and I got a contribution from six or seven different people and later found out that the money had been given to six or seven different people by John Doe, and they sent it in. Under the circumstance, I would be directed to refund that money, or what?

Mr. TIERNAN. Well, if you were to find out about it, you know, a situation like that, and you on your own initiative returned those contributions to the individuals, the Commission certainly would take that—that is the primary purpose of the Act, and the function of the Commission, to see that there is voluntary compliance with the Act, and (but) if in fact we found out about it, we would notify the candidate or the treasurer of that candidate's committee that we have reason to believe that there was a prohibited contribution, and then proceed on that basis.

On June 20, 1979, the O.G.C. sent letters out to two of the principals in this case (1) James Stewart, Treasurer, Friends of Donald Stewart, and (2) Stephen Salter, lawyer for James Dennis, about the illegal contributions to Stewart and Carey Peck (MUR 970).

No letter was ever sent to Carey Peck by the O.G.C. even though at this time the O.G.C. had received 8 customer's copies of the 13 sequentially numbered cashier's checks which Dennis had given to Carey Peck's campaign coffers. An investigative windfall—the remainder of the customers copies were burned, says Dennis. Arson has been charged in Alabama and by the Itel executives. Additionally, James Dennis had submitted an affadavit signed June 3, 1979 along with the customer's copies of the 8 cashier's checks which stated in part:

"I utilized corporate funds of Dennis Mining Supply and Equipment Inc., an Alabama corporation, (To do what? No one knows.) to acquire the cashier's checks to make all contributions to the campaigns of both Hon. Donald Stewart and Mr. Carey Peck." (MUR 970).

Even through Dennis would be charged with violating the F.E.C. Act regarding the prohibitions on corporate contributions, the F.E.C. never—repeat, never—notified Carey Peck on this account. Unbelievable.

The copies of checks given to Peck with affadavit admissions were sent by Dennis' lawyer on June 4, 1979 directly to William Clyde Oldaker, General Counsel, F.E.C. They stamped in to the F.E.C. as received on June 7, 1979 (MUR 970).

Former Chairman Tiernan's words before Congress, and General Counsel Oldaker's action in the Dennis/Peck, Sr./Peck, Jr./Steward scandal do not square.

However, other letters from the F.E.C. during the same time period, regarding so-called minor, very minor surface violations of the Peck campaign were sent to the Peck treasurer. One "surface" violation involved an $8,000 contribution which was later returned! The other involved a $1,000 contribution from K. B. Tabatabay Development (a corporation?). Peck later told the F.E.C. that the $1,000 Tabatabay contribution was K. R. Tabatabay—wholly owned. This two word explanation apparently satisfied the F.E.C. reviewers, even though a corporation could be wholly owned by one person and still be not allowed to make political contributions by law.

Another point to note is that in that Oldaker letter of June 20, 1979, to James Stewart (brother), treasurer of "Friends of Donald Stewart," he states in part:

"Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are related to the Commission's analysis of the matter."

In the public records of the matter (MUR 970) nowhere does Stewart or his agents demonstrate that they did not accept cash. In a July 2, 1979 letter from Stewart's lawyer, Jack Vardaman to William Oldaker, we find Mr. Vardaman stating in part, "(3) In the course of a thorough investigation by our Committee, Mr. Dennis admitted that he contributed $33,000 to the Committee in the names of other people. None of the contributions were made in cash." (MUR 970).

A clear demonstration that Stewart had not received $23,150 from Dennis, $11,000 of which was indicated to have been in cash, would be copies of all the cashiers checks. Interestingly enough, Dennis in a July 16, 1979 affadavit suggested that the F.E.C. "go to the First National Bank of Birmingham" to get actual cancelled cashier's checks. If the F.E.C. did go to the bank where Dennis says he purchased the checks, MUR 970 does not reflect this.

Did Senator Stewart or his lawyer, Jack Vardaman, show the F.E.C. xerox copies of the 23 checks from Dennis? Most campaigns copy every large check. Some campaigns like Congressman Dornan's copy every, repeat every, check. MUR 970 does have a hand delivered letter from Jack Vardaman dated Wednesday, August 1, 1979, regarding a prior phone conversation with Hal Ponder, office of the General Counsel and a personal meeting scheduled for Friday, August 3, 1979. Did Mr. Ponder see the checks? The public record is silent. However, from the letter's content and lack of reference to the $11,000 cash contributions, it does not appear that the $11,000 illegal cash contributions were to be discussed.

On August 16, 1979, General Counsel Oldaker sent Mr. Vardaman a letter regarding certain Commission determinations which said in part that "the $22,000 in contributions made in the name of another by James Dennis to 'Friends of Donald Stewart' was not made in cash."

How did Oldaker know either tentatively or conclusively (the standard used by O.G.C.'s first memo, dated May 31, 1979, regarding the contributions to Peck) that all of the Dennis money to Stewart was in the form of cashier's checks? Did he, or Hal Ponder, or any other member of the O.G.C. staff see copies of all of the cashier's checks made out to Stewart? Did they total up to $23,150? This is the only way that Stewart could "demonstrate" (Oldaker's words to Stewart's campaign) that he had received 23 ($23,000) or 24 (the extra $150) cashier's checks, and not a grab bag $23,150 of which $11,000 was in cash.

If O.G.C. saw the 23 or 24 cashier's checks, why are they not in the public record of MUR 970? Could it be the F.E.C. did ask the First National Bank of Birmingham for records? Why doesn't a reporter or the F.B.I. ask lawyer Ed Ashton of the First National Bank of Birmingham if the F.E.C. ever asked for copies of the checks, or if another legal body (a grand jury) has ever asked for copies of the checks? If this was done, why is there no reference to this logical procedure in the files? Mr. Ashton told Congressman Dornan that all Dennis checks were subpoened in the spring of 1979. By whom?

Could it be that anyone who saw the checks in sequential order would have been naturally suspicious of the source of the monies but that the O.G.C. didn't want to expose this?

Reporter Tim Nagler of the Montgomery Advertiser, Alabama, wrote two editorials critical of the F.E.C.'s handling of the Peck/Dennis/Stewart affair. He told Bob Marshall of Dornan's staff that he (Nagler) had sent his two critical editorials to the F.E.C. and that they were sent by registered mail, return receipt requested.

Even without copies of the checks, Nagler and other Alabama reporters "smelled a rat" in the Stewart contributions. Nagler pointed out the obvious. Nagler also told Marshall that the F.E.C. gave him a "rough run-around." Stewart's campaign disclosure forms showed that 10 maximum $1000 donors all came from the same post office box in tiny Sumiton, Alabama. If Nagler and others in Alabama who are only peripherally familiar with F.E.C. forms can see that 10 individuals who make maximum contributions to Senator Stewart would not obviously not have the same post office box as an address, why didn't Stewart and/or the O.G.C. of the F.E.C. also see that something was " rotten in the state of Alabama"? Perhaps they did; but if so, a sophisticated cover up would have been under way if the F.E.C./O.G.C. had failed to vigorously investigate.

F.E.C. reviewers and the Office of General Counsel cannot plead ignorance in this matter. Why? Because the "Friends of Donald Stewart" filed a complaint regarding campaign monies spent on behalf of their general election opponent, Mr. Jim Martin. (See MUR 820)

At the time this complaint was filed (November 3, 1978) 2 U.S.C. 437g(a)(3) required that F.E.C. officials audit the opposing campaign. The complaint was sent by James Stewart, treasurer, "Friends of Donald Stewart," to the Office of General Counsel. Why wasn't the O.G.C. suspicious when they routinely reviewed Stewart's forms in connection with the complaint about Martin and obviously saw 10 maximum donors all listed as receiving mail at Drawer S, Sumiton, Alabama?

Additionally, in a May 9, 1979, Birmingham Post Herald article, the Stewart campaign told the press that they had sent registered letters to all of the alleged illegal contributors and included a copy of the "money order or cashier's checks" of those individuals.

Yet, when James Stewart sent a letter to the F.E.C. about their "thorough investigation" he is silent about sending copies of the cashier's checks? Why didn't "good citizen Stewart" send the F.E.C. those valuable copies of the cashier's checks? Another question: how did Stewart receive all of those Dennis contributions (2 dozen)? By mail? By good ol' Federal Express? By a lackey? In person?●

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PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, SECOND SESSION

SENATE— *Monday, September 8, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 1 p.m., on the expiration of the recess, and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

O God, we seek Thee only to discover that Thou art already seeking us. Breathe upon us the spirit of the Master that we may work for that larger kingdom Thou dost govern, the law of which is love. Give us wisdom to make and keep this Nation strong and brave and good. Make us truly sensitive to the heartaches and hardships of others. Be with those who work in places of danger. Minister to those who are poor and needy. Strengthen and uphold those of faint heart. Support those who are persecuted for righteousness' sake. Bring peace and justice in our time, for Thy name's sake. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 8, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. ROBERT C. BYRD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. TALMADGE). The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The PRESIDING OFFICER. Without objection, it is so ordered.

POLISH STRIKE SETTLEMENT

Mr. ROBERT C. BYRD. Mr. President, Poland is emerging from an especially difficult, yet encouraging period. My colleagues and all Americans have watched the recent events in Poland with concern and keen interest. The historic agreement between Polish workers and Government is profoundly significant for Poland's future.

The strikes in Poland were an internal Polish matter, resolved by Poles. Now that the strike has been resolved, I am pleased that the people of Poland have avoided violence and have reached agreement through serious and productive bargaining.

American workers, and in fact all Americans understand the rights of workers to decide to join a labor union. We understand as well the right for unions to strike as part of the bargaining process. These are basic rights. It is laudable and encouraging that Poland—through its own exchanges and without outside intervention—has recognized those rights.

The strike by the workers of Gdansk's huge Lenin shipyards captivated international attention. At these same shipyards 10 years ago, labor unrest met a less fortunate resolution and 40 workers were killed. This time the strike spread to 500,000 workers, shutting down an estimated 600 State enterprises. But again, the attention was on Gdansk, where the unified strike committee issued its list of 21 demands. In that city strike leader Lech Walesa and First Deputy Premier Miexzyslaw Jagielski led the bargaining and arrived at a settlement. A city which had known tragedy in the past was the site of an historic agreement.

Both sides are to be congratulated for their restraint and their perseverance in reaching a settlement. They have begun a new period of labor relations in Poland. There is now a new union hall in Poland, and there may soon be others. Workers are lining up to join. The Polish Government has stated that it intends to honor the concessions accorded the workers. The new Communist Party leader, Stanislaw Kania, who has succeeded Edward Gierek, has affirmed that the Communist Party of Poland will honor the agreements.

The strike was costly to the Polish economy. I certainly hope that these agreements will provide a foundation for future economic strength. There have been difficulties in the Polish economy for some time, and the strike has added some short-term problems. But Poland has signaled that it will face its future having recognized certain workers' rights, and having accepted the strike demands as legitimate. No one believes that the coming years will be easy ones for the people of Poland. But the strength and independence of this proud people have been confirmed, and I am confident that they will endure future hardships with increased pride and resilience.

These positive accomplishments, which have become symbolized by the city of Gdansk, represent change and adaptation. They are positive accomplishments, and while acclaimed in Poland and praised in this country and others, they have been criticized. The world has been witness to the events of Gdansk. And the world will watch carefully as the promises of September live through the coming months and years. The Polish people have spoken for themselves and deserve the right to carry out their historic decisions as freely as they reached them. Gdansk means hope for a better future in Poland.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, does the minority leader need my time?

Mr. BAKER. Mr. President, I thank the majority leader. I do not need the time. I expect not to need all my time and I have a special order, I believe, for

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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this morning. So I will not need any additional time.

I thank the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I yield the remainder of my time to the minority leader.

Mr. BAKER. I thank the majority leader.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr HEFLIN). The Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Chair.

THE POLISH STRIKE SETTLEMENT

Mr. BAKER. Mr. President, I will take this opportunity to commend the distinguished majority leader for his remarks in respect to the recent developments in Poland.

I think we have witnessed a remarkable chain of events, events which might have produced extraordinarily tumultuous, even bloody, results. But, on the contrary, they appear at this time to have produced real progress toward the elaboration of individual rights and collective opportunities within Poland.

While I am often critical of the President and his administration of our foreign policy, I wish to take this opportunity to say that I think our handling of the Polish situation was done in an intelligent and wise way and deserves our commendation and support.

I would, as well, Mr. President, take this opportunity to pay my special respects and evidence my hearty congratulations to our former colleague, the Secretary of State, Secretary Muskie, for this must have been a particulary poignant moment for him because of his interest in the freedom of Poland and the people of that brave nation.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, are there special orders for the recognition of Senators this morning?

The PRESIDING OFFICER. There is a special order for Senator TOWER, in addition to the time of the minority leader.

Mr. BAKER. I have a special order this morning as well?

The PRESIDING OFFICER. Fifteen minutes.

Mr. BAKER. So there are two special orders, for Senator BAKER and Senator TOWER.

Mr. President, shortly, I will make a brief statement which is to be the subject of my special order. I ask unanimous consent that any time I have remaining under the standing order for the recognition of the two leaders, together with my time under the special, be aggregated and assigned to the distinguished Senator from Texas for his use and control.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Texas is recognized.

Mr. BAKER. Mr. President, will the Senator from Texas yield to me for a statement?

Mr. TOWER. I yield to the distinguished minority leader such time as he may require.

Mr. BAKER. I thank the Senator from Texas.

THE "STEALTH" AIRCRAFT

Mr. BAKER. Mr. President, over the past several weeks, we have watched with alarm as the fabric of secrecy around one of the Nation's most sensitive and important military programs, Stealth, has come unraveled. That fabric now lies in shreds, the program exposed, and the costs to the American people and the security of the Nation are incalculable. I am saddened and I am angry because none of this was necessary.

In our efforts to preserve the military balance, the security of the United States has become dependent upon maintaining a significant qualitative edge over the Soviet Union in the development of military weapon systems. Huge Soviet investment in military research and development—$40 billion more than the United States during the Carter administration alone—has made it more and more difficult each year for us to maintain a qualitative offset to Soviet numerical superiority.

For that reason, it is essential that we keep advanced military research highly classified and well protected to prevent the Soviet Union from developing effective countermeasures. In the case of stealth, keeping the very existence of the program secret was of great importance.

Today it is common knowledge that the United States has had underway for some years a program to develop so-called Stealth technologies which may make aircraft far more difficult to detect and attack. Some successes have been recorded in this program and more are hoped for in the future. As a result of the disclosure of this program, however, the successful application of these technologies in the future could be short lived as a result of the development of countermeasures by the Soviet Union, countermeasures which the Soviets now know they must begin developing.

Mr. President, we are all dismayed by the unauthorized disclosures, for whatever reason, of classified information; but this leak is worse than most because the motivation for it is dubious at best and the rationale justifying it totally inadequate. The Washington Post, in an editorial on Sunday, asked the right questions; the American people deserve answers to those questions. Mr. President, I ask unanimous consent that the Post editorial, which states that the "burden is on the administration to show that the Soviets, in the Stealth affair, were not handed an intelligence coup," be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

STEALTH

You have to be a real administration loyalist to take at face value the Pentagon's insistence that its official disclosure of top-secret information on the "Stealth" aircraft project last month was guided entirely by a desire to plug further leaks. The "major" unauthorized leak that prompted the disclosure came, in a story in this newspaper, on Aug. 14—just as Jimmy Carter was being renominated. Officials cited in that story acknowledged readily—some of them bitterly—that it was going to be used to combat Ronald Reagan's charges that Mr. Carter had lowered the nation's guard by, among other things, canceling the proposed B1 bomber. The Stealth technology, you see, is supposed to render aircraft virtually invulnerable to radar detection. It will thereby enable a future bomber to penetrate enemy defenses far better than could the late and widely lamented 31, and it will enable an administration so minded to claim that in canceling the B1 it was merely, wisely, waiting for a penetration bomber that actually could penetrate.

Secretary of Defense Harold Brown and President Carter resist conceding outright that the Stealth announcement was intended at least in part to burnish the administration's controversial defense credentials. Mr. Carter has a particular problem: to be seen as an adequate (but not excessive) hawk, but not to be seen as a born-again hawk. But the administration's collective denials are lame. It evidently wants the credit for demonstrating urgent and effective concern for security, but it does not want the blame for whatever damage may have been done—political damage as well as security damage—by premature release of secret information for campaign purposes.

Ronald Reagan says the Pentagon's confirmation gives the Soviet Union a tip-off of 10 years (lead time for a Stealth-equipped bomber) to prepare countermeasures. What about that? It seems fair to ask why, if the offense was so heinous, it took Mr. Reagan three weeks to say so. Is it just a coincidence that his assault coincided with an evident need to lift his campaign out of something of a self-confected slump?

For all of that, we remain troubled by the possibility that the administration's *confirmation that Stealth had been proven, flight-tested and validated at the highest levels* did add a good deal to earlier leaks—and to earlier official acknowledgments that the United States was working on the problem. Mr. Carter, ever since he got down to actually running against Ronald Reagan, has been doing some very transparent and occasionally reckless rearranging of his own defense record and trying to alter the public's perception of it. He has shown himself willing to involve the most intricate and secret security matters in the political campaign. The burden is on the administration to show that the Soviets, in the Stealth affair, were not handed an intelligence coup.

Mr. BAKER. Mr. President, based upon evidence now on the public record, it is clear that the Pentagon, with White House complicity, provided private briefings for selected journalists on this technology. Then, against the advice of principal uniformed military advisers, on August 22 the Carter administration held a public press briefing on the program.

These disclosures have been justified on the basis of prior leaks, but the administration has for several years held a cavalier disregard for the security of this program. In June 1978 a major news story would have disclosed the program had it not been voluntarily withheld. No investigation was made to determine the source of that story. Now, official disclosure has been justified on the basis of leaks which appeared in public on the

11th and 14th of August. No investigation was undertaken until the 27th, coincidentally the date of the first House Armed Services Committee hearings on the disclosure, and even then only at the initiative of a subordinate DOD official, not the Secretary of Defense. I can only surmise that there was no incentive for an investigation because the Pentagon and the White House not only knew who was disclosing the information but had, in fact, authorized the disclosures. Why investigate when you already know the answers?

It is clear to me that these unconscionable disclosures could not have been made by the Pentagon without White House authority. Indeed, the Washington Post has quoted White House aides as considering the release of this information as part of President Carter's appearance at the Democratic National Convention. This violation of the public trust cannot be allowed to pass without the strongest possible effort to determine the person or persons responsible. Consequently, I call today for President Carter:

To make available to the committees of appropriate jurisdiction in the Congress all documents, correspondence, telephonic tapes or transcripts pertaining to the decision to disclose the Stealth technology program:

To direct the Carter-Mondale Presidential Committee and all elements of the executive branch, including the White House, NSC, Pentagon, intelligence community, or other appropriate entities not to destroy, or otherwise dispose of or permit the disposal of any documents, tapes, transcripts, notes or other matters of record bearing on access to information relative to "Stealth technology" and/or the decision to release any such information to the public;

To disclose the identity of and make available to appropriate committees of Congress such personnel from the above organizations involved in the decision to declassify this technology together with records and material cited earlier for use on congressional inquiries now in progress or to follow.

I further today request that the appropriate jurisdictional committees of the Senate undertake a thorough oversight inquiry into the leakage and overt release of this vital Government secret and that they do so without delay.

The irresponsible commingling of vital national security interests with domestic political concerns has resulted in a needless degradation of the well-being of this Nation and cannot be tolerated. In the interest of national security, if not simple decency, President Carter should come forward promptly with a full disclosure of the information I have requested. Otherwise, I will be forced to assume that the President personally authorized and directed this tragic disclosure, and I, and I believe the American people, will hold the President and his administration fully accountable.

Mr. President, I thank the Senator for yielding.

Mr. TOWER. Mr. President, I thank the distinguished minority leader for his statement. It is a singularly appropriate statement. It is a very thoughtful statement and one that I know he has pondered over for some time. He has rightly come to the conclusion that the statement should be made.

I believe that everything that has transpired over the past few weeks reinforces the efficacy of everything that has been said by the distinguished minority leader. He has noted that there is adequate evidence for political motivation of the leaks, noting the Washington Post story of August 14.

I note further that if the Brown press conference had been aimed at arresting the leak, as he claims, he would not have had to add the rather titilating description that this new discovery will alter the strategic balance and has been demonstrated successfully and is of great military significance.

In fact, in terms of the application of this technology to a bomber the statement made by the Secretary of Defense is simply untrue because the administration has not committed to a new bomber using this or any other technology.

I note, also, that Secretary Brown held this press conference and this briefing against the advice of his leading uniformed military advisors.

I note further that the implication of the White House is clear, that Jody Powell has confirmed that the President was aware of the situation and Brown's plans for action.

Mr. President, there have been some excellent articles that have appeared in various newspapers over the past few days. I wish to enter some of those in the RECORD.

First, an editorial from the Washington Star of Saturday, September 6, headed "Compromising Military Secrets," says, among other things:

Secretary Brown, and any White House superiors who approved his unusual handling of the leaks, demonstrate an attitude towards military secrets best described as callow.

The Star went on to say:

His account smacks of Boy Scout stuff, even if you take it at face value. While official lying isn't to be condoned, a bit of smoke-blowing to guard military secrets, in an age when the stakes include the lurking threat of nuclear war, remain in our book not only customary but imperative.

Whatever the angle you take, then, the performance of the administration following the "stealth" leaks looks naive at best. That it may have been politically self-serving is also a distinct possibility.

Mr. President, I ask unanimous consent to have this editorial printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

COMPROMISING MILITARY SECRETS

In the breach of secrecy surrounding the "stealth" aircraft program Governor Reagan has found a promising target. Whether he has hit it squarely is another question. His charge Thursday in Jacksonville, Fla., that the "breach of security was blessed and sanctioned by the Carter administration itself solely for the purpose of aiding Carter's campaign" is harsh and speculative, but still the administration has some explaining to do.

The "stealth" radar-evading technology is—or was—one of the most closely-held military secrets. Even so, secrecy had been partially compromised before mid-August stories in The Post and on ABC News brought it to general attention.

Benjamin Schemmer, editor of Armed Forces Journal, recently told a House Armed Services investigating subcommittee that he knew of the project as early as two years ago, although only after the mid-August leaks was he invited for a special Pentagon briefing and urged to write the story for his magazine—which he did, reluctantly, he claims. Also, the "stealth" project was discussed "in some detail," according to Richard Burt of The New York Times, in the most recent edition of Jane's All The World's Aircraft, published last September.

Thus it is not quite accurate to charge that the breach of secrecy was instigated, let alone "blessed and sanctioned" by the administration. No one seems to know, in fact, when or how the first leaks occurred.

A clearer issue, itself quite serious, arises from the administration's management of the mid-August leaks once they had begun. In his testimony Mr. Schemmer said he was told that Defense Secretary Harold Brown would confirm the existence of the "stealth" program only after his Armed Forces Journal story, fed by the special briefing, appeared. So it seems that after the first stories of August 11 and 14, the secretary of defense and his colleagues at the White House decided not to try to brush over the breach of secrecy but, in fact, to widen and amplify it.

Mr. Brown did just that at a press conference, claiming that future aircraft—perhaps a penetrating bomber—might be equipped with "stealth" technology rendering it "invisible" to Soviet radar detection. Mr. Brown went on to say, with uncharacteristic extravagance, that this non-existent warplane "alters" (present tense) "the military balance significantly." That is a tall claim, if it is not nonsensical, for a weapons system whose final form, by the secretary's own admission, will not be decided before next March at the earliest, and which cannot enter significant production in this decade.

Several things require emphasis in this sequence. It is, we believe, highly unusual, certainly it is of dubious wisdom, for an administration to amplify a breach of security; and indeed it emerged this week that the administration did so in the face of strenuous objections from, among others, the head of the Strategic Air Command. On August 14 that official, General Richard Ellis, wired the Pentagon that "giving the Soviets . . . advance warning of a new technology system, they must counter is to sound the death knell of that system." He asked "that you take immediate action . . . to discredit the story."

General Ellis' advice was disregarded for reasons uncertain but which, as Secretary Brown explained them to the House this week, seem naive at best. Mr. Brown not only confirmed the "stealth" system's existence, he did so in a manner tending to suggest that the administration is very sensitive to opposition charges that it is permitting the strategic balance to tip in the Soviets' favor and finds the promise of "stealth" a handy device for saying them nay.

Of course, the reality may be quite otherwise than it appears to be; conceivably, the cancellation of the B–1 bomber three years ago had something to do with the unripened promise of "stealth" technology. Yet Secretary Brown, and any White House superiors who approved his unusual handling of the

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leaks, demonstrate an attitude towards military secrets best described as callow.

Secretary Brown claimed, loftily, that a deceptive attempt to minimize the recent leaks "would have resulted in a rash of competitive reporting and a cascade of new leaks . . . much more damaging," and that "a policy of deceiving the public undermines the basic link of trust between the government and the people." So instead he built a "firebreak" against further revelations.

Possibly. But his account smacks of Boy Scout stuff, even if you take it at face value. While official lying isn't to be condoned, a bit of smoke-blowing to guard military secrets in an age when the stakes include the lurking threat of nuclear war, remain in our book not only customary but imperative.

Whatever the angle you take, then, the performance of the administration following the "stealth" leaks looks naive at best. That it may have been politically self-serving is also a distinct possibility. Governor Reagan is well within bounds to call attention to that possibility, even with a glancing blow.

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the RECORD an article, by the very capable writer on such matters, Mr. George Wilson, in the Washington Post of this date, entitled, "The Risk in Politicizing the Pentagon."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE RISK IN POLITICIZING THE PENTAGON

(By George C. Wilson)

Willingly or unwillingly, rightly or wrongly, Defense Secretary Harold Brown has now politicized himself and the Pentagon more than any of his predecessors. And there is considerable risk that any short-term political gains Brown has made for candidate Jimmy Carter will be far outweighed by the long-term losses, not only to President Carter but to the whole process of arriving at national decisions in the all-important field of national security.

For no matter what you may think of Harold Brown, he is the one and only man at the top of the Carter administration who really knows what he is talking about when it comes to the modern weaponry that threatens everybody on the planet. As a brilliant nuclear physicist, he helped develop the intercontinental ballistic missile and the hydrogen bomb and has wrestled with the Soviets on arms control issues for more than two decades. Harold Brown is truly an expert witness, as both the executive and legislative branches have come to appreciate in his first tour as steward over the world's most complicated military establishment.

Yet the cutting edge of this expertise has been dulled and chipped because Carter and Brown have used it too much in the political campaign. The defense secretary's credibility as a non-political, expert witness on such questions as the verifiability of the pending SALT II treaty has been eroded—at least for the short term. If Carter is reelected and keeps Brown as his leading SALT II advocate, any loss in Brown's credibility will be a loss to the president as well.

Although Brown is far from the first defense secretary to involve himself in a presidential campaign—as former Republican candidate Barry Goldwater has testified, in complaining that former defense secretary Robert S. McNamara politicized the Pentagon against him—he has dug himself deeper into it than any of his predecessors.

Last week, Brown was exchanging political fire directly with Ronald Reagan on the issue of whether Brown publicized secrets about radar-invisible Stealth aircraft to help combat Republican charges that Carter has been soft on defense. Shortly before that, even though his official spokesman had said Brown was going to the Democratic National Conventions only to listen to Carter's acceptance speech, the defense secretary went on the convention floor to lobby for the MX missile.

It was also Brown who gave the one and only public explanation of Carter's new and controversial nuclear targeting doctrine, again because of his expertise; who attacked the defense planks in the Republican Party platform; who took the lead in defending the disastrous Iranian rescue attempt made under a plan he had personally reviewed and endorsed; who accused previous Republican administrations of cutting the defense budget, despite the fact he had bragged early in his term at the Pentagon about cutting the inherited Ford budget; who invited the press to come along to White Sands, N.M., to watch testing of the cruise missile—the weapon Carter had chosen over the B1 bomber.

Brown denies that all this adds up to politicizing himself and the Pentagon. He says he regrets that national defense has become a central issue in the presidential election campaign. But now that it has, Brown contends, he has an obligation to set the record straight for the American people, allies abroad and potential enemies.

"I consider it part of my responsibility as secretary of defense to try to make the American people understand the facts on important defense issues," Brown said in justifying his responses to Reagan's charges on Stealth disclosures. He contends it is important for everybody to understand that the United States is still the most powerful nation on earth; that American technology is still keeping the country ahead of the Russians, with the Stealth breakthrough in making planes invisible to radar only one case in point. "I think it is part of my responsibility to make it clear what U.S. advantages are." One obstacle keeping people in the United States and elsewhere from making informed judgments about the state of the national defense "is an unwarranted denigration of U.S. capability. This hurts U.S. security."

Brown, a somewhat introverted man sees himself as one who has been dragged onto the center of the political stage by events. He says he is not enjoying the starring role—a larger one than the extroverted ex-pol, Melvin Laird, played before him as a Republican secretary of defense.

But it is not only Reagan who is complaining about Brown's going political. Other critics include both Democrats and Republicans: Republicans on the House Armed Services Committee who insist Brown went out of bounds for a defense secretary by holding a televised press conference on Aug. 22; senators who claim he has been playing politics for Carter with the defense budget; and active and retired military people who fear Brown and some of his service secretaries have politicized the Pentagon for all time.

Perhaps such criticism will blow away along with all the smoke of the political campaign after the November election. If not, the administration's only fully certified expert on the life and death questions of nuclear arms will have lost credibility at a most crucial time.

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the RECORD an article, by Jack Anderson appearing also in today's Washington Post, entitled "Violating Secrecy to Preserve It."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

VIOLATING SECRECY TO PRESERVE IT

(By Jack Anderson)

President Carter was accused by the Republicans of jeopardizing national security for political gain when he disclosed the "invisible plane" program.

That may be overstating it a bit, but not by much. Despite protestations of innocence by Carter's people in the Pentagon, both the timing and the content of the "stealth technology" disclosure suggest political motivation.

Defense Secretary Harold Brown explained the need for public announcement in a strange way. He said it was to stop the growing number of leaks about the program. In other words, to protect the secret program, it was necessary to destroy its secrecy.

Military officials closely associated with the stealth technology, which could eventually thwart enemy radar detection of American planes, are furious at the Carter administration for confirming the press leaks and adding details and credibility to the earlier, unofficial reports.

The absurdity of the position this puts the program's leadership in was illustrated by retired Air Force General Tom Stafford, who ran the project until last year. "I still will not even acknowledge that the project exists," he told my associate Peter Grant. "But if it does, the president has blown the lid off some of the finest technology that exists."

Everyone agrees that the development of stealth technology is a major breakthrough in strategic weaponry. And no one seriously denies that the announcement, at a highly unusual news conference with full publicity fanfare, helped Carter counter claims by Ronald Reagan that the president has been weak on defense policy. It particularly weakens the Republican charge that Carter's cancellation of the B1 bomber damaged our nuclear strike capability.

Until last month, knowledge of the program was limited to a few dozen key government officials. But after several news reports revealed bits and pieces of the project, Pentagon officials explained, it was decided to declassify certain portions "to keep the onion from peeling all the way."

But Defense Department insiders point out that Brown revealed far more about the state of the art than the unconfirmed press reports had. For instance, he said the Air Force had been making test flights of both manned and pilotless versions of the invisible plane since 1978. It was also disclosed that so far the concept had been applied only to tactical aircraft.

Blaming press leaks for the decision to disclose the program has a hollow ring to it, inasmuch as the first leaks had occurred as early as 1976. This lends credence to Republican suspicions that the dramatic revelation was politically inspired—timed to come just at the start of a close election campaign.

As a mater of fact, the biggest pre-announcement leak of all came from the Carter administration earlier this year. When Congress was considering funds for a new manned bomber, which Carter opposed, the Pentagon dispatched its top scientist, William Perry, to Capitol Hill. He let key senators in on the Stealth secret, and persuaded them to put off the manned-bomber decision.

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the RECORD a story of Friday, in the Washington Star, by John Fialka, which is headlined "Generals Opposed Release of Information on 'Stealth' Technology."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GENERALS OPPOSED RELEASE OF INFORMATION ON "STEALTH" TECHNOLOGY

(By John J. Fialka)

Two top Air Force generals have gone before a House panel to say they opposed the Pentagon's decision to release information on a secret aircraft project.

A House Armed Services investigative subcommittee heard testimony yesterday from Gen. Richard H. Ellis, head of the Strategic Air Comand, who said that both he and Gen. Lew Allen, the Air Force chief of staff, expressed "apprehension" over Defense Secretary Harold Brown's plans to discuss the general outlines of the so-called "Stealth" program at a Pentagon press conference.

The program, described as one of the most important top secret developments since the invention of radar during World War II, deals with a number of technological advances that apparently can make an airplane virtually invisible to enemy air defense radar systems.

The most likely user of an "invisible bomber" would be SAC. Ellis said that when he saw an Aug. 14 story in The Washington Post giving the general details of the Stealth program, he sent Allen a telegram that said the story "brought the hair up on the back of my neck."

Ellis, who said Allen shared his concern that a description of the program might give the Soviet Union enough advance warning to develop countermeasures, said he wanted the Defense Department to refuse to comment on the story. He said he wanted "the same kind of treatment that we have given all black (top secret) programs and the same treatment that we have given nuclear weapons for many years."

Defense officials, however, decided to take a different approach to the leaks, which also appeared in the magazine Aviation Week and on two television networks during the week of the Democratic convention. In his appearance before the committee yesterday, Brown said he rejected a "no comment" approach because it would have resulted "in a rash of competitive reporting and a cascade of new leaks."

Brown said he also rejected suggestions that he try to discredit the story. "As the nation learned to its bitter regret in the Watergate era, a policy of deceiving the public undermines the basic link of trust between the government and the people," he said.

"In those circumstances," he said, "I decided that the only truthful and effective course of action would be to acknowledge what had already been disclosed to the Soviets in the leaks and to lay down strict new security guidelines to prevent any further disclosures." Brown explained that he approved a partial declassification of the general nature of the program on Aug. 16.

"By doing so we have, in effect, created a "firebreak" to prevent the spread of technical details which, because they are at the heart of operational effectiveness, must remain highly classified," Brown said.

Rep. Rolin Beard, R-Tenn., suggested that the release of information might have been timed to coincide with the Democratic National Convention. He asked Brown for the details of any conversations he may have had about Stealth with President Carter or other White House officials during the week of the convention, but Brown flatly refused it, saying only that his "marching orders" from the President were to keep the existence of the program secret "as long as feasible."

"And we did that as long as we could," Brown asserted.

The success of past efforts to protect Stealth technology was also brought under question by subcommittee members, who asked Brown and his undersecretary for research, Dr. William J. Perry, about earlier leaks that appeared in various trade journals, beginning with an account of the Stealth program in Aerospace Daily on July 23, 1976. It gave a detailed account of the Stealth program, then a small effort at Lockheed's Burbank, Calif., facility, the same experimental plant that produced the U-2 spy plane during the late 1950s.

Perry said in his statement to the committee that the first security break in the Stealth program occurred in June 1978 when the editor of Armed Forces Journal, Ben Schemmer, came to him with a story "revealing some aspects of our test program."

Perry said he urged Schemmer not to publish the story on national security grounds and Schemmer agreed, "as long as the story was not published elsewhere."

Despite Perry's success with Schemmer, stories about the Stealth program—the very name of which was classified—continued to leak out. Readers of a stock investor's newsletter were told in June, for example, about details of the wing, engine and stabilizer design on a Stealth prototype, an account which added that "in early May 1978 a Stealth aircraft reportedly crashed in the Nevada desert while operating out of Nellis Air Force Base."

But Defense officials apparently believed that a less detailed account in The Washington Post on Aug. 14 was going to be seen by more than a few investors. The article quoted administration sources as suggesting that President Carter might disclose details of a new invisible bomber when he spoke before the Democratic National Convention.

"As members of this committee well know," Brown said during his testimony, "Aviation Week and The Washington Post are read closely in the Soviet Embassy and are viewed as authoritative publications."

Part of the reasoning behind the disclosure of the general details of the Stealth program, Brown and Perry explained, was that it would remind the more than 1,000 people now involved in the secret program that new security guidelines have been drawn around the details of the technologies involved, which, they said, will remain highly classified.

Mr. TOWER. Mr. President, at this point I wish to yield such time as he may require to the distinguished ranking minority member of the Research and Development Subcommittee of the Armed Services Committee, the distinguished Senator from Virginia (Mr. WARNER) who will comment on this matter and on another matter of great importance regarding the personnel of our Armed Forces.

I yield such time as he may require to the Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague from Texas and also express appreciation to the minority leader for calling for hearings on this issue of the Stealth matter.

Mr. President, on August 28 I wrote to the chairman of the Senate Armed Services Committee urging that the committee hold hearings on the important matter of the Stealth technology and its partial revelation. I believe that this is a most important matter involving sensitive and highly classified national security information.

I ask unanimous consent to have that letter printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C. August 28, 1980.

Hon. JOHN C. STENNIS,
Chairman, Senate Armed Services Committee, Washington, D.C.

DEAR MR. CHAIRMAN: As Ranking Minority Member of the Research and Development Subcommittee, I have developed a great appreciation of America's ability to develop and ultimately exploit new technologies which will enhance our Nation's defenses. As Secretary of the Navy and now as a Member of the United States Senate, I have been aware of the importance of protecting highly classified new technologies from unauthorized disclosure.

Recent disclosures concerning the status and some details of ongoing programs to develop "Stealth technology" are very troublesome to me. Because this technology may offer great promise in the future, I am concerned that these leaks may prompt the development by the Soviet Union of countermeasures which may reduce the success of these programs.

Recent testimony before the House Armed Services Committee has indicated that these leaks have been encouraged by high-ranking Administration officials. For that reason I believe that the Senate Armed Services Committee should conduct an investigation of Administration participation in the disclosure of this highly classified information.

Sincerely,

JOHN WARNER.

Mr. WARNER. I believe the Senate has an obligation to look into the manner in which this classified information was revealed to the public and to ascertain whether political motivations were behind the disclosure. We can perform this responsibility, I am confident, without further compromise of security interests of this program.

ARMED FORCES PERSONNEL COMPENSATION

Mr. President, today is a very historic day for men and women in the Armed Forces. In 1 hour the President will affix his signature to a bill that went through this Chamber with almost unanimous support (87–1). But it is only the first step in a long needed legislative process properly recognizing the men and women of the Armed Forces for their services today and their need to have fair and adequate compensation in their fight against inflation.

The Carter administration initially lobbied hard against this bill. It was only after indications that the House of Representatives would soon join the Senate and pass the bill that the administration made a quick 180-degree reversal in its position, and that reversal was handled in a manner that we will all remember for many years.

The President chose the return of the aircraft carrier *Nimitz* and its escort ships from the Indian Ocean to stage a media event where he could indicate his support for higher compensation for our military personnel. In fact, the U.S.S. *Nimitz* was ordered to speed up and arrive home 2 days early on Memorial Day to accommodate a more appropriate time for media coverage.

I am pleased that the President decided to support the Warner-Nunn legislation, and I regret that I cannot accept the normal courtesies of the President extended to sponsors of such legislation and be in attendance in 1 hour when this bill which I authored will become law.

I feel that in clear conscience I cannot be there because, by my attendance I would be condoning the Carter administration's politicizing of defense matters.

The Carter administration opposed this pay legislation vigorously for months, and only after it became obvious that it would pass, despite adminis-

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tration opposition, did the President make the 180-degree switch to support the legislation.

I feel that much more remains to be done to improve the conditions of service of our military personnel.

I pledge to them my continuing support to insure they are fairly treated and compensated, even if I have to once again overcome opposition from the Department of Defense and the administration.

I should like to have printed in the RECORD at this time, and I ask unanimous consent to do so, an editorial appearing in the Washington Star which points to the administration record on this legislation.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

POLITICS AND NUNN-WARNER

The White House is laying on a dog-and-pony show tomorrow for President Carter's signing of the Nunn-Warner military benefits package. Lights, cameras, action—in plenty of time for the evening telecasts!

Given the president's campaign arabesques to assure the voters that a strong national defense takes second place to none among his priorities, Mr. Carter could hardly be expected not to make political capital of this measure. But it would have been seemly for the White House to forego the panoply of a presidential signing of the Nunn-Warner measure. After all, the administration found little to like about the proposal until, suddenly and in the wake of mounting publicity about the rush out of the service by seasoned noncoms and mid-level officers, Mr. Carter decided the proposal looked mighty good—and his change of heart was conspicuously announced as he greeted the crew of the carrier Nimitz on its return from long and arduous duty in the Indian Ocean.

No matter the political use to which the measure is put by the administration, Sens. John Warner, R-Va., and Sam Nunn, D-Ga., deserve great credit for the tenacity with which they fought to get their proposal through Congress.

It does not denigrate their proposal to call it, if not a bandaid, a compress for a severe military-manpower wound. Nunn-Warner is carefully focused—to quickly address a number of the most aggravating problems of retention. These remedial steps, in combination with the impending 11.7 per cent pay raise for the military (a figure that includes President Carter's increase for all federal employees), should provide opportunity for a thorough congressional look at the armed-services pay structure—which Senator Warner has requested.

Retaining the skilled personnel vital to a sophisticated military machine involves more than benefits, of course. A military career carries a particular set of tensions and demands that affect family life; "duty, honor, country" seems to have become a less compelling code than in the past; discipline has edged ever closer to being regarded as a four-letter word. But the provision of more sensible benefits may restore some appeal to military life.

The Nunn-Warner package would increase sea pay by an additional 15 per cent, and raise flight pay by 25 per cent; it would provide 10 per cent more in the subsistence allowance for personnel living off-base, which is not sufficient but may alleviate some of the moonlighting that is necessary for too many soldiers, sailors and airmen to feed their families; it would extend a desperately needed improvement in housing by a differential to put military allowances more in line with actual expenses in high-cost areas.

A good session's work. Now Congress can turn its attention to enhancing military service, perhaps through a new GI Bill, so higher quality recruits can be attracted to the wobbly all-volunteer force. Or, better yet, by ending that flawed experiment and instituting an equitable draft that would leaven the armed forces with the essential element that has gone over the hill.

Mr. WARNER. Mr. President, my colleagues have mentioned how we in the Congress, and how people throughout the Nation, are absolutely appalled at clear examples of the President of the United States using defense decisions for political benefit.

I would like to bring to the attention of my colleagues a new case of politicizing defense matters.

Mr. President, last week the President in a campaign visit to Philadelphia announced that the aircraft carrier *Forrestal* will be overhauled in Philadelphia bringing thousands of jobs and other economic benefits.

This announcement followed by only a few months an earlier campaign appearance in Philadelphia where President Carter announced how his administration had brought another aircraft carrier to Philadelphia—the U.S.S. *Saratoga*.

On May 9, 1980, the President made the following statement regarding the compensation for closing the Frankford arsenal:

We have worked as hard as possible, because of that move and because of other reasons, to bring one of our major aircraft carriers here to the Navy Yard, as you know, for an overhaul. This will be a multi-hundred million dollar project that will keep intact between 8,500 and 9,000 jobs that were threatened and add at least 2,500 more new jobs in the repair or overhaul of the *Saratoga*.

The political involvement in the *Saratoga* decision was documented in the June 30, 1980, CONGRESSIONAL RECORD on page 17857 and I ask consent that it be reprinted at this point in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

CHRONOLOGICAL SEQUENCE OF "SARATOGA" SERVICE LIFE EXTENSION PROGRAM

Significant Events: 1977 and 1978.

May 1977: Congressional emphasis on least cost approach:

The Senate Armed Services Committee in its report "was not convinced that the Navy's current plans represent the least cost approach" and noted the inconsistency of projecting "serious declines in future private yard forces and at the same time plan[ing] to increase Naval shipyard work forces. . . ."

July 1977: Letter of the President to then Congressman Ellberg stating that with respect to the Philadelphia Naval Yard, "another 2,000 positions are expected to be created at that installation in 1980."

Uniformed Naval documents of November 8, 1977, Captain G. E. Fink; November 10, 1977, Admiral C. R. Bryan; November 23, 1977, Admiral L. H. Michaelis, recommending Newport News assignment for the *Saratoga*.

April 1978: Announcement of the Vice President linking the transfer of the USS *Saratoga* to the Philadelphia Naval Yard with an unsuccesful campaign pledge to keep open Frankford Arsenal in Philadelphia.

May 1978: The two Armed Services Committees adopted language freezing the assignment of SLEP and mandating the Navy to complete a least cost analysis for both the SLEP and DDG-2 modernization program.

June 1978: Secretary Claytor stated the comparative *Saratoga* cost to be $15–$30 million less at Newport News but supported the Philadelphia assignment on other grounds.

September 1978: The GAO, after adjusting for Navy errors, reported that the *Saratoga* cost would be $105.2 million less at Newport News based on existing law.

Significant Events: 1979:

January 3, 1979: Admiral Hayward memorandum. The Committees received from the Navy the legally mandated least cost study in which Admiral Hayward recommends the Newport News location based on:

An $80 million cost difference favoring Newport News based on the application of existing blue collar wage law and OMB regulation, and

A number of non-cost factors including the need elsewhere in the fleet for the 1,100 skilled naval personnel that would be required for SLEP at Philadelphia, the difficulty of increasing by 1,600 the Navy civilian jobs within present ceilings, and the potential dilution of the SLEP effort due to other high priority Navy work at Philadelphia.

January 25, 1979: Memorandum from Secretary of the Navy for the Secretary of Defense.

Secretary Claytor endorsed the Haywood report and recommendation along with statement that if civilian ceiling relief is obtained, Philadelphia would be an "acceptable alternative".

January 25, 1979: Letter from Deputy Secretary Duncan to Chairman Stennis.

In letter transmitting Navy study to Congress, Deputy Secretary Duncan, without repudiating Navy study or offering any justification on the merits, overruled Navy position favoring Newport News.

April 6, 1979: Committee on Armed Services recommended, in the FY 79 Defense supplemental authorization, language which precluded the obligation of funds for the *Saratoga* SLEP program unless the program was conducted on the basis of least cost as confirmed in the Comptroller General's report to the Congress.

May 3, 1979: The Senate voted additional language which in effect permitted the Secretary of Defense to determine the *Saratoga* shipyard assignment.

Subsequently, in conference with the House, all language was dropped with respect to the *Saratoga*.

Significant Events: 1980:

The President on May 9, 1980 made the following statement regarding the compensation for closing the Frankford Arsenal:

"We have worked as hard as possible, because of that move and because of other reasons, to bring one of our major aircraft carriers here to the Navy Yard, as you know, for an overhaul. This will be a multi-hundred million dollar project that will keep intact between 8,500 and 9,000 jobs that were threatened and add at least 2,500 more new jobs in the repair or overhaul of the *Saratoga*."

Source.—May 9, 1980, White House Press Release, p. 5.

Mr. WARNER. Now, just a few short months later the President has again gone to Philadelphia and announced that the U.S.S. *Forrestal* will be sent to Philadelphia.

The President, from the pulpit of the Zion Baptist Church, said:

The U.S.S. *Saratoga* will come to the Philadelphia Naval Shipyard later this month for re-fitting. That will save 8,500–9,500 jobs and bring in an additional 2,600 jobs—not

hand-outs, not make-work jobs, but important jobs that will add an additional 15 years of service to the life of that ship, jobs that will build a stronger and better future for our nation. The *Forrestal* will also be refitted here, and that will mean more jobs.

The *Forrestal* is not due to go to Philadelphia until sometime in 1983. Why then in the midst of a political campaign does the President make that type of an announcement?

Well, I made inquiry to the Department of the Navy, official and unofficial, and I ask unanimous consent to have printed in the RECORD my letter dated September 5 to the Secretary of the Navy asking him specifically to confirm information that I have in hand that the Department of the Navy had not even completed the formal decision-making process on where the U.S.S. *Forrestal* would be assigned when the President in the pulpit in Philadelphia made that announcement.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., September 5, 1980.

Hon. EDWARD HIDALGO,
Secretary of the Navy,
Pentagon Building,
Washington, D.C.

DEAR MISTER SECRETARY: On Wednesday, the President, while campaigning for re-election in North Philadelphia, announced that the carrier, U.S.S. Forrestal, will be assigned to the Philadelphia Naval Shipyard for modernization under the Service Life Extension Program.

In response to news inquiries, I issued the following statement concerning the President's announcement:

"As a former Secretary of the Navy, I know from first-hand experience that the assignment of ships to a repair yard is normally a routine, one-line public announcement from the Department of the Navy.

"For a President to seize such an announcement and use it as an opportunity for political advantage confirms that the decision was guided by political consideration, not cost-effective use of defense dollars.

"This tragedy is further compounded by the diversion of more than 1,000 uniformed sailors from active fleet service to routine shipyard work at the very time that the Navy is experiencing a crisis in retention."

Mister Secretary, the Forrestal is not scheduled to go into a shipyard for service life extension until 1983, which to many raises serious questions about the timing of the President's campaign-trail announcement.

And today, there is an indication that the official Department of the Navy paperwork on assignment of the ship has not been completed by the Chief of Naval Operations, Admiral Thomas Hayward, or by you.

Is this the basis for another allegation that national defense is being politicized by the President and being used as an active element in his quest for another term in the White House?

Mister Secretary, I would appreciate your timely response to the following questions:

1. Had the Department of the Navy completed its decision-making process and the official paperwork attendant to assignment of the Forrestal by the time the President made his announcement on Wednesday?

2. When had the Department of the Navy contemplated making its own announcement of the Forrestal's assignment?

3. Did you, as Secretary of the Navy, know in advance that the President planned to make his announcement concerning the Forrestal's assignment during his campaign visit to Philadelphia?

Thank you for your courtesy.

Yours sincerely,

JOHN W. WARNER.

Information has come to me from the Department of the Navy revealing that the formal procedures and cost analyses controlling a final decision on the assignment of the U.S.S. *Forrestal* to a shipyard had not been completed. If this proves true, then we have another example of the President seizing political gain by prematurely announcing a Defense Department decision.

This event follows the Stealth program announcement, the new nuclear targeting doctrine, the *Nimitz* military pay package announcement, and the Vice President's promise to send U.S.S. *Saratoga* to Philadelphia. These actions support the allegations that this administration is politicizing our Nation's defense. These actions have not escaped the watchful eye of the press.

I ask unanimous consent that an editorial from the September 7 edition of the Virginian Pilot be printed in the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PAYING FOR POLITICS

Another plum for Philadelphia. And when else but at election time.

The plum is the overhaul of the carrier *Forrestal*. It will be refitted at the Philadelphia Naval Shipyard, not at Newport News Shipbuilding. A $550 million overhaul of the carrier *Saratoga* had already been set for Philadelphia at the end of this month.

Normally, notes Senator John Warner, R-Va., the assignment of a ship to a yard is "a routine one-line announcement from the Department of the Navy."

This assignment came, however, from the pulpit of north Philadelphia's Zion Baptist Church where President Carter was campaigning on jobs.

Representative Paul Trible, R-Va., branded Carter's announcement "a political move to win votes in Pennsylvania."

If politics were the whole of it, that would be just Virginia's tough luck. Philadelphia is Pennsylvania's Democratic breadbasket. And Pennsylvania is a state a Democrat has to win.

If Jimmy Carter carries Virginia, on the other hand, he will be heading toward a landslide.

What disgraces this decision is not politics, but economics. The General Accounting Office has estimated Newport News could perform a carrier overhaul for $80 million to $120 million less than Philadelphia.

And Chief of Naval Operations Admiral Thomas B. Hayward has argued that "since two-thirds of all Atlantic Fleet carriers are already homeported in Norfolk, far less turbulence to our people will result from a decision favorable to Newport News."

Since Mr. Carter has decided to ignore both cost and inconvenience to Navy families, Philadelphia will probably receive the remaining two carrier overhauls also, though the formal announcement must await some future election.

Mere patronage politics is one thing. The politics of planned inefficiency is altogether something else.

It's bad enough that the *Forrestal* assignment leaves taxpayers $100 million short. Some among them may also shy from contributing so handsomely to Mr. Carter's re-election.

Mr. TOWER. Mr. President, I want to commend the distinguished Senator from Virginia for his not attending the signing today of the bill of which he was a co-author, on which he labored long, hard, and thoughtfully. To do so would, in my view, tend to reinforce a deception that has been perpetrated by the White House.

Incidentally, I intend to join him with my absence during that signing ceremony today, remembering how the President tried to gag and inhibit the Chief of Naval Operations a few months ago when he tried to call the attention of the Congress and the American people to the fact that our retention rate of experienced enlisted personnel was deteriorating at an alarming and rapid rate, and the fact that now we do not have the level of combat-readiness that we should have in a number of our ships because we simply do not have the trained personnel.

To be present at the signing of this bill today would be an endorsement of a hypocrisy.

The Senator from Virginia has adequately pointed out what the President is doing is a 180-degree change from a previous position, and done so obviously under political pressure. He will probably now claim that he has done something splendid for the American military people when, in fact, this was a congressional initiative that was forced on him, and, as the Senator from Virginia pointed out, more is required to improve our personnel situation in the armed services of the United States.

On the matter of the stealth bomber, I think in the final analysis the evidence of the pure politicization of the issue is to be found in the fact that has always been traditional and customary in the past not to dignify leaks by confirming them; that when you confirm a leak of sensitive information you give it an official imprimatur that it does not have as long as it is only characterized as a leak.

Always when classified information escapes into the public eye, the traditional position of people in both the executive branch and the congressional branch has been neither to confirm nor deny.

There was no widespread publicity of this matter until the Secretary of Defense chose to have a press conference and to insult the intelligence of the American people by saying, in effect, that he had to expand on the public's knowledge of this highly sensitive program to prevent any further leaks.

There is growing sentiment in this country, as people become more aware of it, that what has been done has compromised the security of the United States for political purposes.

I believe the American people are outraged because, as I think public awareness grows, they will come to feel that on matters of national defense this administration is not to be relied on to make its decisions based on the national interest but based on the political exigencies of the moment.

Mr. President, I would like to yield 3 minutes to the distinguished chairman of the Armed Services Committee, the Senator from Mississippi (Mr. STENNIS).

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Mr. STENNIS. Mr. President, I thank the Senator from Texas, and I thank the Senator from New Mexico very much for the patience he has exhibited in yielding to me.

I am in a personal situation here, Mr. President, timewise.

I understand something has been said here on the floor—and I know it is said in good faith—about the situation with reference to the so-called hidden bomber and reference was made that maybe there should be investigations and so forth by the proper committees. So I feel it is my duty to respond to that, at least briefly now.

Mr. President, let me very fully and frankly say this: I have been familiar with this matter and I have known the facts on the situation in helping supply the authorizations and the money for several years on this new weapons project, a project, and that is all I am going to call it. But I consider it a highly important project and a great deal rides with our side on coming out on top in this project. A great deal rides on that possibility. It has a meaning that will go on and could have a meaning that could go into the decades. So it is not just another little secret matter that somebody is kind of experimenting with. It is highly important.

With reference to investigating or having hearings—and I know those suggestions were made with the best possible good faith—I will tell you that you will go a long, long, long way before you find a way to do that without it becoming so heated up or so explosive or so difficult that you realize then that mistakes have been made and caused still unknown information to be revealed.

The PRESIDING OFFICER. The Senator has used his 3 minutes.

Mr. STENNIS. May I have 3 additional minutes?

Mr. TOWER. I yield 3 additional minutes to the Senator from Mississippi.

Mr. STENNIS. I thank the Senator from Texas very much.

We have the matter, though, of this being taken up by the House now. I do not say this at all critically of them for taking it up or how they are handling it. I say now, though, as I have said to some of the members on our committee, that I lean against the idea of bringing this out for a so-called investigation, because too much is at stake. There is a great deal of this that has not been told yet, so far as I know. Facts are left untold that are still secret that are helpful to us—I mean in this project that is so helpful to our side.

So there is a chance for us to gain a real advantage out of this project that has been carried on for a long time.

I do not see any good that can come, frankly, from trying to go into it further and take a chance on revealing more—may I have a chance to get my mind together here a little? This is a highly important matter.

The PRESIDING OFFICER. The Senate will be in order.

Mr. STENNIS. I say that there are still possibilities in this project for our side to gain, to come out on top in this thing. I lean strongly against exposing this project further, investigating and bringing it all out. I do not see how you can go into it much more without bringing up this unknown material.

But I am willing to consider it. I have talked to other members of the committee and we will consult about it in a proper way. But I am leaning strongly against risking more revelation by going into it more as I have said—and I do not speak as a novice on this matter. I have helped carry the load of this kind of work for just about 20 years. So what little impressions I have, have been burned into me by route of experience, including sleepless nights and worry.

And I am looking at a man here who knows what I am talking about, the Senator from North Dakota (Mr. YOUNG). He has been one who has been in that group. So I speak with great deference to everyone.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. STENNIS. Yes. I do not believe I have any more time. The Senator from Virginia spoke to me about this.

Mr. WARNER. Mr. President, I am the one who originally wrote the letter asking for the hearings and today I have been joined with my colleagues, Senator BAKER and Senator TOWER.

I wish to insure the chairman—and the chairman knows full well that as ranking member of the minority on the knowledge of this program and it was my responsibility. I did not mean to suggest in my letter that the hearings should go into the ramifications of this project that would jeopardize the security.

But I do strongly believe, most respectfully I say to the chairman, that we have a duty in the Senate corresponding to that in the House to examine the procedures that were followed by which it was determined by the Secretary of Defense to have a full-blown press conference on this issue.

Mr. STENNIS. Mr. President, I say to the Senator I am not complaining. I am not complaining to him or anyone else. I am just telling him what I feel, what I know by experience and what I believe will be helpful to us in the future. That is all I have to say.

I thank the Senator very much.

Mr. TOWER. Mr. President, I can understand the concerns of the distinguished Senator from Mississippi. He has always been most careful and most prudent in terms of the treatment of classified information.

I do not believe that, in any instance, ever, that any leakage of classified information could be traced to the distinguished chairman of the Armed Services Committee or to any of his actions. I do not know of anyone in the Senate who has been more careful than my distinguished friend from Mississippi has been in this matter.

I do believe that we could get to the bottom of these leaks, however, without compromising further national security information. It occurs to me that the DOD should have undertaken this 2 years ago when this matter started leaking out, but they failed to do it. They did not do it. Now, on the 25th of August, Mr. Ross, the spokesman for the DOD, said that the administration and the Pentagon were not responsible for leaks. That has been proven to be untrue since that time.

The implication of that statement coming from him is clear, in that Members of Congress were the only other people who had official confirmation of what was going on, Mr. Ross implies, therefore, that Congress is where the leaks came from. In fact, they did not. And time and circumstance have established pretty well that the blame rests on the shoulders of the administration and the Pentagon. I think we ought to know who is responsible.

Mr. BAKER. Mr. President, will the Senator yield 1 minute to me?

Mr. TOWER. Yes, I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, no man in this Chamber has a greater respect for the Senator from Mississippi than do I. But I must confess that I am disappointed that the chairman does not agree to the call for hearings.

But I am a realist. If JOHN STENNIS does not want hearings, there will not be hearings. But the House of Representatives is having hearings, and I commend them for it.

I have today called on the President, and I reiterate now my request that the President of the United States instruct the agencies and departments of his administration and the personnel therein to preserve and protect the papers, the memoranda, the tapes, and the other documents that will permit us to see whether or not this disclosure was politically motivated.

Surely that request, to preserve the data so that at least the House committee can act on it, is a fair and a reasonable request under these circumstances.

Senator STENNIS makes a good point, as he always does. If he suggests, as he has today, that he does not want hearings, I would wager there will not be hearings on the Senate side. But the House will.

My requests to the President are just as relevant for their inquiry as they would be for the Senate.

Mr. TOWER. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. Two minutes and 27 seconds.

Mr. TOWER. Mr. President, I ask unanimous consent that the Senator from New Mexico may have 5 additional minutes due to my using his time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHMITT. Mr. President, I thank the distinguished Senator from Tennessee. I also thank other Senators who have articulated on this issue. I concur in their general remarks almost entirely.

Mr. BAKER. Will the Senator yield to me?

Mr. SCHMITT. I yield.

Mr. BAKER. If the Senator will yield to me, I believe that ends the colloquy on the Stealth situation There are other Senators, including the Senator from New Mexico, the Senator from South Carolina (Mr. THURMOND), and possibly one or two others, who have other matters that they would like to discuss. From a communication with the majority leader, who is not on the floor because of other commitments, it is my understanding that he will provide shortly for a period for the transaction of routine morning business. If the Senator will withhold for a moment, I would like to suggest the absence of a quorum so that the majority leader can come to the floor and make the arrangements that I understand he wants to make. Will the Senator be willing to do that?

Mr. SCHMITT. I would be happy to do that, but I believe I do have the additional 5 minutes. I can be finished in that time. Maybe by then he will be here.

Mr. BAKER. I am sure he will be here.

Mr. SCHMITT. Mr President, I have no objection.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 1 hour, and that Senators may speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader for protecting my rights while I had to be off the floor

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

AMERICANS FOR CHANGE

Mr. SCHMITT. Mr. President, once again I must sadly bring to the Senate's attention the continuing attack on our basic freedoms growing out of the desperation of the Committee To Reelect the President.

Last Friday, desperate, shortsighted people took another step to intimidate broadcasters and to stifle freedom of speech and freedom of the press. My concern is based on the specter of a threat so ugly under these conditions that, unless nipped in the bud, it poses a serious threat to our most fundamental rights as free Americans, the rights of freedom of speech and freedom of the press.

As you are aware, I am national chairman of an independent political organization called Americans for Change, an organization with the purpose of raising and expending funds in behalf of the Republican national ticket, but independent of the ticket's organizational activities. Americans for Change recently prevailed in major litigation brought against us in Federal court. A suit to stop our activities was brought by Common Cause and joined in by the Federal Election Commission. This suit was rejected outright and unanimously by a three-judge panel less than 2 weeks ago.

Our principle for existence of Americans for Change is basic: The basic right of first amendment freedom of speech and association. Now that the court has once again upheld the rights of Americans for Change and other Americans to participate fully in the election process, the Carter-Mondale Campaign Committee, in its desperation, has taken another truly unprecedented step to stifle freedom of speech. On July 24, my colleagues will recall I informed the Senate of the Carter-Mondale Committee's efforts to intimidate the radio and television broadcasters of the country with threats of litigation if they ran paid advertising by Americans for Change or other independent committees.

Last Friday, they struck again, Mr. President. The Carter-Mondale Campaign Committee petitioned the Federal Communications Commission (FCC) for a drastic and major reinterpretation of the equal time provisions as they apply to the broadcasting of political advertisements. Obviously waiting until they had failed to stop free speech in the courts, this campaign committee petitioned the FCC for a declaratory ruling, which if granted, would require broadcasters to give free time—I repeat, to give free time—to the Carter-Mondale Committee equivalent to time bought by independent committees in which use of the voice and/or image of a Presidential candidate occurs.

This request for a ruling, if granted, would have the practical economic effect of forcing broadcasters to avoid selling time to many independent committees. Such a demand is particularly offensive and dangerous since Carter is the incumbent and thus has enjoyed free time galore throughout his first term and still does enjoy a vast media advantage in the campaign with the White House press corps available at almost any time.

In addition, the FCC, with a 4 to 3 Democratic majority, has set the ridiculous and preemptive deadline of Friday, September 12—this week, Mr. President—for public comment on the request by the Carter-Mondale Committee. This effectively 4-day comment period is without precedent when it comes to a major change in policy in political broadcasting. Ordinarily, at least 30 days for comment would be afforded, and the FCC might well hold a hearing before deciding the matter.

Mr. President, the intent of the Carter-Mondale Campaign Committee is clear. It is trying to accomplish, through abuse of Presidential power, and abuse of the power of the incumbency, and abuse of political control of the FCC, what it could not accomplish in the courts: to stifle this voice through coercion, threats, and intimidation; to stifle all opposition to the reelection of Jimmy Carter by suppressing freedom of speech.

Where will the Carter abuse of power stop? What other intimidation is in the wings? Was not a crass attempt to prevent the legal receipt of campaign funds by Reagan enough? Was not the nearly treasonous confirmation of highly secret data on bomber development enough? Was not the political use of Ambassadors and of Federal employees in the Department of Health and Human Services enough? Was not the blatant use of Presidential press conferences on the tragic situation in Iran to win primaries enough?

Next will the FEC—the Federal Election Commission—the FCC, the Justice Department, and other regulatory agencies be called on to close down more opposition political activities? Do not tell me that the first steps in such an effort have not been taken. They have been taken before the courts, before the FEC—as I and others can personally testify—and now before the FCC. Arguments have even been made in Federal court, Mr. President, that Americans for Change was illegal because it had too many members. Fortunately, and rightly, the court rejected those arguments.

Are other moves planned so that opposition political groups above a particular size are prevented free association and free speech? God help us, Mr. President. I hope Carter and his cronies will stop this insane and repetitive attack on our American political institutions.

Many political experts and observers have forecast that the Presidential campaign of 1980 will be the dirtiest in history. I must state bluntly that, tragically, these forecasts seem to be coming true.

In 1976, candidate Jimmy Carter roamed this Nation from one end to the other giving Americans new hope about morality and open government—preaching of love and honesty and integrity and confidence in our elected leaders.

Unfortunately we already learned, during the past 4 years, that those preachings were empty words, for the most part. The conduct of the Presidency and many associated with it for these nearly 4 years prove that fact beyond doubt.

This latest blatant attack on freedom of speech and expression by the Carter political organization is a new low. I am shocked and distressed and deeply concerned, both as a U.S. Senator and as an American citizen, over this latest tactic by a group of desperate shortsighted people.

The tactic will not go unchallenged. As chairman of Americans for Change, I have asked our attorneys to consider a response to both this latest outrage, and previous chicanery by the Jimmy Carter political machine.

A news conference will be held tomorrow morning to discuss options that may be open to us.

The fight has begun. And the real fight has become the protection of the basic rights of free Americans as much as who will be their next President.

In conclusion, Mr. President, let me answer some critics of my remarks before they pose the question. My concerns are not primarily political, although clearly the outcome of the Presidential election is at stake. To emphasize this point, let me assure the Senate that Americans for Change probably would not be affected directly by this latest desperate attack on freedom

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of speech by the Carter-Mondale Committee if they should prevail. Americans for Change has no plans at this time to use the voice or image of Presidential candidates in its political advertisements; however, that has been our tactical judgment. It should never be a judgment forced upon us by this blatant attempt to intimidate, or worse, unconstitutionally control and coerce the broadcast industry.

My concern here today is not to protect Republican fortunes in this election year, rather it is to protect the basic rights of American citizens to speak in behalf of the candidates of their choice and the basic rights of the press to sell advertising without intimidation by the Federal Government, or by those acting in behalf of the President.

Mr. President, I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I yield a minute and a half to the distinguished Senator from Iowa.

Mr. JEPSEN. I thank my distinguished colleague.

REVELATIONS OF THE SO-CALLED STEALTH PROGRAM

Mr. JEPSEN. Mr. President, I wish to register my deep concern about debate surrounding the so-called stealth program.

I recently had the opportunity to review testimony before the House Armed Services Subcommittee on Investigations. As we all know, it was revealed in these hearings that a high level official of the Department of Defense approached Mr. Benjamin Schemmer, editor of the Armed Forces Journal, and asked him to print a story containing heretofore highly classified information.

I found it quite shocking that, in this particular instance, the Department of Defense had not just passively condoned this leak—which would have been bad enough itself—but they actually originated and sanctioned this unprecedented breach of security.

In an attempt to bring this issue to the attention of my colleagues in the Senate, I ask unanimous consent that pages 46 through 62 of the House transcript be printed in the RECORD.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

Mr. STRATTON. Would you please be seated. You are the Editor of the Armed Forces Journal, are you not?

Mr. SCHEMMER. Yes sir.

Mr. STRATTON. And there did appear in the Armed Forces Journal, the current issue, a rather detailed story on the stealth bomber and the stealth bomber technology.

According to Admiral Murphy, that was the result of an interview given to you by Dr. Perry. I wonder if you could either confirm or deny that, and could you tell us in your own words just the time that this alleged interview occurred and the circumstances under which it occurred?

Mr. SCHEMMER. Mr. Chairman, I respectfully decline to say, to name the source or sources for that story.

Mr. STRATTON. We understand your unwillingness to name your sources, but is it true that you did have an interview and that the material on which the story was based came from a high Pentagon source?

Mr. SCHEMMER. Yes sir, I did have an interview with a senior Pentagon official.

Mr. STRATTON. Could you indicate the date on which that interview occurred and the circumstances under which the story appeared in the Armed Forces Journal?

Mr. SCHEMMER. The so-called interview, sir, was on Monday the 18th of August.

Mr. STRATTON. I beg your pardon?

Mr. SCHEMMER. The interview was on Monday, the 18th of August.

Mr. STRATTON. And did this individual indicate that Secretary Brown had declassified the subject matter?

Mr. SCHEMMER. Specifically, no sir, I was told that Secretary Brown was aware of the classification. I was told, Mr. Dickinson, that Secretary Brown was aware of the conversation that was taking place.

Mr. STRATTON. So is it not true that the Armed Forces Journal became aware of this technology—in fact, your issue indicates that as much as some three years ago, and that you declined to publish it because of its highly sensitive nature?

Mr. SCHEMMER. Essentially. It was a little more than two years ago, Mr. Chairman, we did do such a story, we were concerned about its implications and showed it to several individuals. One of them asked that we please sit on the story for a very long time.

Mr. STRATTON. Now, your interview was on the 18th?

Mr. SCHEMMER. Yes sir.

Mr. STRATTON. And when did the journal go to press?

Mr. SCHEMMER. Part of it was already at the press, Mr. Chairman, the preceding weekend, and based upon a prior conversation we made arrangements to kill some articles or pages to include the story that you are referring to. Essentially we were at press from I believe approximately Friday or Saturday the 14th and 15th, and I believe we came off the press shortly after midnight Wednesday.

Mr. STRATTON. Did this individual tell you that this was a highly classified matter and that he didn't want it released? Was he giving it to you for our personal information because you were a knowledgeable person in defense matters or——

Mr. SCHEMMER. I hope not.

Mr. STRATTON. Was he aware of the fact that you were going to get it published within the next few days?

Mr. SCHEMMER. Yes sir, he certainly was, and he did indicate that, reiterate it was a very sensitive program, that there was concerns about some leaks, that they felt there would be more, and that an effort was underway to try and contain the damage.

Mr. STRATTON. When did your journal hit the stands or hit the mails, whatever it does when it comes out?

Mr. SCHEMMER. I believe we received our first copies and delivered them to the Pentagon shortly after midnight on Wednesday and delivered them to the Pentagon very early Thursday morning.

Mr. STRATTON. That would be the 21st then, right? Wednesday was the 20th and——

Mr. SCHEMMER. Yes sir.

Mr. STRATTON. Okay.

Mr. SCHEMMER. I believe we received our first copies sometime——

Mr. STRATTON. And you heard Admiral Murphy say that whatever was released officially by the Defense Department, and Mr. Ross's knowledge there were any releases—maybe that is the reason he is in the Virgin Islands today instead of here—did this individual indicate to you that by giving you much more than had appeared in the Washington Post or Aviation Weekly, that he was thereby limiting the damage of those leaks by George Wilson and the unidentified authors of the Aviation Weekly?

Mr. SCHEMMER. Not in those words, Mr. Chairman, but I was led to believe that an article in the Journal might be helpful in this damage containment program.

Mr. STRATTON. Well, you are a knowledgeable individual. If you have a secret and only a part of it leaks out, are you limiting the damage by releasing more of it?

I said in my opening statement that under this theory, when the Rosenbergs were able to transmit to the Soviets the lens pattern for the atomic bomb, we could have limited our damage by giving them the whole damn plan. Does that make sense to you?

Mr. SCHEMMER. Not to me, Mr. Chairman. I checked the leaks that had preceded the Journal article as I was developing the article. And I expressed very strongly, before we came off the press, my very strong conviction that it was irresponsible to let this information out at this time.

Mr. STRATTON. Is it true that this individual who gave you this so-called damage limiting information, pressured you, if I can use that word, to get it out even sooner than your publication schedule would have provided? Did he urge you to speed it up?

Mr. SCHEMMER. I would not characterize it that way, Mr. Chairman.

Mr. STRATTON. Did he encourage you to try to get it out rapidly?

Mr. SCHEMMER. I believe so. We worked night and day to get this off the press as soon as possible.

Mr. STRATTON. Was it your understanding that Secretary Brown would not hold his press conference until after the Armed Forces Journal, with the information supplied by this high official, was in print?

Mr. SCHEMMER. Yes sir.

Mr. STRATTON. And were you aware—the final question—that in the UPI story, the release of the information by the Armed Forces Journal was given as one of the reasons—since this secret had cascaded out in your publication—one of the reasons why Secretary Brown has reluctantly had to go public?

Mr. SCHEMMER. I read that, Mr. Chairman. I thought it was kind of ironic.

Mr. STRATTON. Did you think that you had been set up as the fall guy?

Mr. SCHEMMER. Not really, sir.

Mr. STRATTON. Mr. Daniel.

Mr. DAN DANIEL. Thank you, Mr. Chairman.

Would you tell the committee how long you have known about the technology and over that period of time did you carry on any dialogue with any officials in the Pentagon.

Mr. SCHEMMER. Mr. Daniel, I have known a little bit about this kind of work for many years. I was not aware of what it added up to in terms of the stealth program being discussed until early in 1979, and as I have testified, did write an article about the program to see what things might add up to and was concerned about what it all added up to and whether that story should be printed.

Mr. DAN DANIEL. When did you write that story?

Mr. SCHEMMER. In the first half of '79, Mr. Daniel, and I would like not to be more specific.

Mr. DAN DANIEL. All right, I will accept that. I assume that you discussed tha article with some responsible individual in the Pentagon as to whether or not it should be released?

Mr. SCHEMMER. Yes sir.

Mr. DAN DANIEL. And what response did you get?

Mr. SCHEMMER. I was told that it was an extremely sensitive program, that the story we had written had the key elements, was essentially correct, that there were some errors in it, I believe of no real significance,

and I was asked if I would not print the story for a very, very long time.

Mr. DAN DANIEL. I respect your desire not to name your source.

Let me ask you whether or not you received the information from one source, more than one source, from the more than one agency of government, for example, the Pentagon, or Congress? Could you comment on that without calling any names?

Mr. SCHEMMER. Mr. Daniel, if you are asking about the first article, I put that article, 98 percent of it, together from unclassified bits and pieces of information that Admiral Murphy talked about earlier, and did attempt to discuss those little bits and pieces with a number of people, but that article was 98 percent from unclassified material.

Mr. DAN DANIEL. Were all of those people with whom you discussed those bits and pieces at the Pentagon or some of them in Congress or some at the White House?

Mr. SCHEMMER. Yes sir.

Mr. DAN DANIEL. They were all at the Pentagon?

Mr. SCHEMMER. They were all over.

Mr. DAN DANIEL. Thank you, Mr. Chairman.

Mr. STRATTON. Mr. Robert Daniel.

Mr. ROBERT DANIEL. I will yield.

Mr. STRATTON. Mr. Beard.

Mr. BEARD. I must say I am extremely shocked at the revelations here.

Would the gentleman confirm once again the date of your initial interview. August 18, did you say?

Mr. SCHEMMER. There was a phone conversation on August 18 and a person to person meeting on August 18.

Mr. BEARD. And the committee staff, will you confirm the date of your hearings and who requested the hearings that Dr. Perry presented to this committee. Can the committee give me the information on that?

It was August 20, two days after the initial interview, and did this committee request those hearings or did the Department of Defense come to us, the Department of Defense to give us those hearings?

Mr. STRATTON. Dr. Cooper.

* * * * *

Mr. BEARD. The Department of Defense requested to come over out of the blue to give us hearings on a project none of us knew anything about, two days after you had had the initial interview with a high ranking member of the Department of Defense, at which time, then followed by that, the Secretary of Defense, Harold Brown, on the 22nd, has a press conference, at which time he announces the development of a new revolutionary bomber system, where he states "I am announcing today a major technological advance of great military significance" talking about putting us light years ahead of the Soviet Union then referring to the reason why he is doing this is because of leaks attributed to the Armed Forces Journal, some of which were attributed to the Armed Forces Journal, is that correct?

Mr. SCHEMMER. Mr. Beard, I have read that. I was not present at Secretary Brown's——

Mr. BEARD. It is in the statement. He states, he notes that "several leaks about the stealth bomber, including the Armed Forces Journal," about the four or five types of invisible aircraft.

Mr. SCHEMMER. Mr. Beard, I have read the transcript of Secretary Brown's press conference. I was not present at it. One of our editors was. I believe Secretary Brown referred in this press conference to "newspapers and magazines and the TV leaks". I do not believe he cited any specific newspapers, the TV networks or magazines. I believe sir, yours is a ——

Mr. BEARD. I am sorry.

Mr. SCHEMMER.—wire service report of that press conference.

Mr. BEARD. Beg your pardon. I have the Washington UPI stating that he noted there had been several news leaks about it this week, including the Armed Forces Journal report. So I don't know if that refers to your magazine or not. But it seems to.

Mr. SCHEMMER. It seems some people drew that conclusion.

Mr. BEARD. If he is referring to yourself, which he instructed a high ranking official of the Pentagon to come and interview, before we were even interviewed, even briefed, then I find that that is absolutely unacceptable.

It goes on to say "In the fact of these leaks, I believe that it is not appropriate or credible for us to deny the existence of this program." Secretary Brown said that.

I think this totally shoots out of the water the Assistant Secretary of Public Relations for Defense, Tom Ross' statement, that none of these leaks came from the White House or the Pentagon. I think it makes it even more imperative that Mr. Ross is brought before this committee for participating in what I feel on the front seems to be a major critical coverup.

I also would ask this, Mr. Chairman, at this time, that this committee mandate that the Secretary of Defense be called before this investigations subcommittee for a hearing into what I feel could be one of the most politically motivated and flagrant violations of our national security.

I have never in my eight years in Congress seen such a politically motivated charade bringing into serious question serious, serious national security issues, because the polls don't look good for the Carter Administration, and I hate to be partisan, but the facts are leading up to it, and I would like to ask this committee as its ranking minority member of this committee, ask that we bring Secretary of Defense Brown before this committee, if he refuses that, we issue a subpoena, and I would like the Chairman's response to that.

Mr. STRATTON. Well, I think the committee wants to proceed in order, and judging from the very vacuous procedures that exist in the Pentagon for classifying and declassifying and in view of Admiral Murphy's testimony, I can hardly see how we can conclude the investigation without calling Secretary Brown. But I think we have got enough to crew on right now. We will take that under advisement later on.

As far as a subpoena is concerned, of course those have to be issued by the chairman of the full committee.

Mr. BEARD. I am sure when there is national security and a breach of our most stringent laws dealing with national security. I don't care whether it be the President or the Secretary of Defense, if the finger starts pointing that they have breached the security of this country for political reasons, then I feel that we set aside the so-called protocol and get these people over here by any means.

Mr. STRATTON. Mr. Daniel, do you want to reclaim any of our time?

Mr. ROBERT DANIEL. Thank you, Mr. Chairman.

I might ask that of Mr. Beard when his time comes.

Mr. BEARD. I am sorry, I have a list of questions.

Mr. STRATTON. Mr. Price.

Mr. PRICE. I have no questions.

Mr. STRATTON. Mr. Nichols.

Mr. NICHOLS. Thank you, Mr. Chairman.

I want to commend you for holding the hearings in the first place, Mr. Chairman. I don't have any questions of the witness. I appreciate and understand his reluctance to be here and I appreciate the motivation that brings him here. I appreciate it.

I just want to say, Mr. Chairman, that Admiral Murphy's testimony is the most disappointing testimony that I believe I have ever heard brought before this committee. I am alarmed by it. I am distressed about it. When a representative of the Department of Defense, on what appears to be a leak of this magnitude, comes before this committee and states that our objective of these investigations is not prosecution but simply rather identifying the leader and isolating him, in order to stem the flow of unauthorized disclosure, you are moving him over, just putting him on a shelf in another job, that is inexcusable, Mr. Chairman.

The second thing, when he comes here and when he says that I regard it as a right of the press to freely gather information without harassment or curtailment, and human propensity to share tidbits of information with inquisitive reporters. There are some things that don't need to be shared with the press, that need to be curtailed.

And finally, in the closing statement when he says I don't think the solution is prosecution or a more repressive climate of probes and checks. I can't tolerate this, Mr. Chairman, and I hope the committee will go into it in a good bit of depth.

I have no further questions.

Mr. BEARD. Would you yield? In my statement I failed to say to the witness before us, to commend him on what I feel has been exhibited as a typical example or an example of responsible journalism, and so please forgive me for not acknowledging that first. But I do commend the gentleman for having shown responsible actions for the past two years. I only regret that the gentleman is having to appear before this committee at this time and I certainly would hope that it would not injure his professional endeavors in the future.

Mr. SCHEMMER. Thank you.

Mr. NICHOLS. If this is the policy of the Department of Defense that has been brought to us this morning by Admiral Murphy, I am glad it has been called to our attention. I think the responsibility to get this matter straightened out rests squarely on this subcommittee and I am sure the Chairman is adequate to that task.

Mr. STRATTON. Mr. Badham.

Mr. BADHAM. Thank you, Mr. Chairman.

Mr. SCHEMMER. I also appreciate your being here and appreciate your concern in being here.

On August 18, the high ranking Pentagon official with whom you had the interview, was he a civilian or military or can you answer?

Mr. SCHEMMER. Mr. Badham, I respectfully decline to identify with whom I had these conversations.

Mr. BADHAM. Even to the point whether he was civilian or military?

Mr. SCHEMMER. Yes sir.

Mr. BADHAM. But he worked for the Pentagon?

Mr. SCHEMMER. Yes sir.

Mr. BADHAM. Did he call you or did you call him?

Mr. SCHEMMER. He called me, sir.

Mr. BADHAM. So the substance of the publication of your article was to move it up an issue and get it out as fast as you could. Was the whole situation commenced by a call to you from a high official of the Pentagon, is that correct?

Mr. SCHEMMER. With the exception I am concerned about the characterization, that of pushing up the issue. We did work very hard after the phone call and the visit to a subsequent——

Mr. BADHAM. He didn't call you up and say I am going to tell you this stuff, don't publish it?

Mr. SCHEMMER. I was asked when we could get the issue out.

Mr. BADHAM. You wouldn't have done anything had he not called you, is that correct?

Mr. SCHEMMER. That is correct.

Mr. BADHAM. Okay.

Mr. STRATTON. Would you yield?

Mr. BADHAM. Let me get the next question out if I may.

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Was this person who called among those people with whom you discussed your proposed article over two years ago on the subject of the stealth bomber technology?

Mr. SCHEMMER. He is one of the individuals.

Mr. BADHAM. Whom you asked whether or not you should print or could?

Mr. SCHEMMER. That is not correct, sir. I gave two copies of this article to two other individuals and I was asked then to meet with this individual.

Mr. BADHAM. Okay. In your opinion, was this person then who came back to you two years ago, and the person who called you the other day, doing so because he knew that you knew so you ought to be one of the ones who got to publish it when it was to be published, kind of an obligation?

Mr. SCHEMMER. In part, yes sir. I would not use the word obligation. He certainly had no obligation.

Mr. BADHAM. He had no obligation but he felt if somebody was going to get the information you ought to be able to because you had it earlier?

Mr. SCHEMMER. I believe so, Mr. Badham.

Mr. BADHAM. I would yield to the Chairman.

Mr. STRATTON. I just wanted to reiterate for the record, you testified earlier, did you not, that you actually urged this individual not to give you this stuff, that you felt that it was improper and damaging to print at this particular time?

Mr. SCHEMMER. After I wrote the article on Tuesday, Monday afternoon or Tuesday, I had a subsequent conversation, and having reread the article, and then looked at the leaks which had precipitated this, suggested very strongly that nothing be published, and I thought it was irresponsible for this information to be made public at this time.

Mr. BADHAM. So if I may reclaim, even though you were given the information and encouraged to publish it, you thought it would be improper to do so?

Mr. SCHEMMER. I felt, yes sir, I felt that the leak——

Mr. BADHAM. In the best interest of the country it would be proper not to print it?

Mr. SCHEMMER. I felt the leaks were a bunch of smoke.

Mr. BADHAM. I thank you for your patriotism and I yield back.

Mr. STRATTON. Mr. Lloyd.

Mr. LLOYD. Thank you Mr. Chairman, Mr. Schemmer.

I have a question as to the methodology of the interpersonal relationships that exist between our profession and the Department of Defense.

Is it common for the journalists of your repute to have this kind of a rapport, and has other information, not pertaining to this information but other information pertaining to national defense issues, which were of a classified nature, to have been disclosed to you?

Mr. SCHEMMER. Yes sir.

Mr. LLOYD. Is it done with other "reporters", journalists, news media?

Mr. SCHEMMER. To the best of my knowledge, absolutely.

Mr. JEPSEN. Mr. President, I also wish to register my concern for the unprecedented reasons given by Secretary Brown for making this highly sensitive program a matter of public record. It has been a long-standing practice of the intelligence and defense community not to comment on highly sensitive material of this kind.

For example, there were many rumors, editorials, and even a few articles concerning the possibility of a secret mission to rescue U.S. hostages still held in Iran. These public comments were denied before the aborted rescue attempt or at least were greeted with a terse "no comment." In fact, such stories are still being denied to this day.

I see no compelling reason for Secretary Brown to have publicly admitted the existence of this program anymore than he would divulge the existence of other highly sensitive programs or missions. Senior military officials advised against it, and, through the auspices of Dr. Perry, so did the Senate Armed Services Committee.

Finally, Dr. Brown's claim that he had, in effect, been "forced" to admit the existence of the program because of persistent press reports is ridiculous on its face. Anyone who has dealt with Dr. Brown before our committee knows that, with the possible exception of the President, nobody "forces" Dr. Brown into doing or saying anything.

Mr. President, I yield the floor back to my distinguished colleague (Mr. THURMOND).

THE POLITICIZING OF THE OFFICE OF THE SECRETARY OF DEFENSE

Mr. THURMOND. Mr. President, I am deeply disturbed by the recent statements and activities of Secretary of Defense Harold Brown. It is becoming apparent to the general public and the press that the President is using his Cabinet officers for his political purposes more so than any previous U.S. President.

Mr. President, with so many military problems facing us today, I would hope that the Secretary of Defense would be focusing his complete attention toward their solution rather than stumping and and trying to justify what I consider to be a very poor track record for defense over the past 4 years. The Navy desperately needs more ships and they need them quickly. The Army has a serious recruiting and retention problem. The Air Force continues to thrash about with the MX program and also the need for a new strategic bomber.

Additional military pay and educational benefits are urgently needed by all the services. Mr. President, the list of problems which comes before the Senate Armed Services Committee is so long and so complicated that it really takes a Herculean effort by the Secretary of Defense and his staff to solve them. To allocate any of his time to political pursuits will only put our country further behind in efforts to improve our military posture. The Washington Post recently reported a large number of political speeches scheduled by all of the Cabinet officers between now and the election in November. I hope these trips are not taken at Government expense and on Government time. Frankly, in the defense area, I just do not see how the Secretary can take the time away from the critical problems facing us.

Finally, Mr. President, the political leak by Secretary Brown's staff on the "stealth" technology strikes me as nothing more than a feeble attempt to convince the public that this administration is doing, at least something, in the defense area. The leak on stealth technology and Presidential Directive 59 on strategic retargeting are calculated to confuse the American public and to refocus the American press away from the dismal administration track record on defense over the past 4 years.

It remains for the public to judge in November if they are satisfied with today's strategic balance with the Soviets.

Are they satisfied with our efforts on civil defense?

Are they satisfied with meeting a three-ocean requirement with a one and one-half ocean Navy?

Are they satisfied with 19,000 naval personnel on food stamps?

Are they satisfied with 25 percent of our Army recruits coming from mental category 4?

Are they satisfied with the shortage of military physicians and pilots?

Are they satisfied with the shortage of tanks, planes, helicopters, and spare parts which we now have, due to successive defense budget cuts over the past 4 years?

Mr. President, these are critical national defense problems of great importance. In the coming months, I would hope the Secretary gives his attention to these and the many other defense problems facing us. Also, I would urge that he not allow his office to become involved in a paristan political campaign. He is not an elected official. Partisan politics should be left primarily to those who must account to the voters for the policies they have espoused during their period in office.

Mr. President, I ask unanimous consent that the following two editorials on this important matter from the August 14, 1980, issue of the Charleston Evening Post; the September 8, 1980, issue of Fortune magazine, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE AND POLITICS

Secretary of Defense Harold Brown, in a speech delivered not long ago in Oakland, Calif., attacked the Republican Party's military platform as "unrealistic, simplistic and dangerous." He went on to defend President Carter's defense policy as "prudent and mature."

Traditionally, secretaries of defense have remained aloof from partisan politics in an election year, keeping the Defense Department as nonpolitical as possible. In breaking with this tradition, Secretary Brown is even now politicking for Carter at the Democratic convention in New York.

But then, Mr. Brown has always supported his political masters rather than heeding the advice of his military advisors—the Joint Chiefs of Staff. It, was Defense initiatives, under Brown's direction, that scuttled the B-1 bomber and tried to sink the nuclear carrier program. The Army's new battle tank was delayed as well as other programs. It was only thanks to alert members of Congress that some of those programs found their way back into the budget.

Now let's look at the latest in this "prudent and mature" defense policy. In a directive some Navy officials call "political gamesmanship", Brown has done an about-face on the Navy's shipbuilding plans for fiscal 1982. In his own testimony last January, he told Congress the Navy ought to build 19 ships in 1982. However in the still-secret, new budget guidelines sent to the Navy, he has directed that total be dropped to twelve. In that document he told the Navy "to bear in mind the fiscal realities we face." Even Navy Secretary Hidalgo termed the memo "most disturbing", saying the extra shipbuilding funds are "imperative if we are to achieve the force posture needed to support our strategy."

The dilemma is an obvious one. How can the administration deliver on its promise to build up defense without increasing the budget deficit and inflation? The answer is they can't, so again as in the past, Harold Brown bows to the politicians.

Regrettably he has decided to play this political role. We can only hope his successor will return to the nonpolitical stance that the Hatch Act demands for all other members of the Defense Department.

A LETTER THAT MATTERS

If $a=b$, then $a+c$ is greater than b, provided only that c is a positive number. We assume that Harold Brown, Ph.d., would readily assent to this abstract proposition. However, there does seems to be a problem about getting the Secretary of Defense to swallow the proposition when it begins to take on operational meaning—when, for example, it is applied to the Soviet-U.S. military balance.

It struck us, in reading the text of a speech Brown delivered in Oakland the other day, that logic is getting to be in some trouble at our highest military levels. Brown was assailing the Republican platform, assailment being, of course, part of every Cabinet officer's job these days. He was especially choleric about words in the platform suggesting that the U.S. was now militarily inferior to the Bolsheviks and promising to make us superior. Brown denied that the facts were as alleged; in fact, he averred, superiority for either side is pretty much impossible. "The truth is," he said, "that comprehensive military superiority for either side . . . is a military and economic impossibility if the other is determined to prevent it . . . Neither side can win . . . an arms race, because neither side would or needs to concede it to the other."

Now we know as well as the next fellow that the measurement of military power is no breeze. Dollars spent on defense are a far-from-perfect indicator of the capabilities achieved, as the article on page 38 makes plain. But presumably the dollars have something to do with the capabilities. If they don't, then Brown was just wasting the time of a lot of important people last year when he went before the Council on Foreign Relations and the Foreign Policy Association, jointly huddled at New York's Waldorf-Astoria, and worried about the "steady increase in Soviet military spending during each of the last 15 years."

But let us return to our little letters. Let us say that a represents Soviet military capabilities at some point several years ago and b represents U.S. capabilities at the same point. At this time, clearly, official U.S. doctrine held that a equaled b. We have, in fact, been saying that the two are equal ever since 1969—the year in which we formally abandoned any claim to U.S. superiority. We were still talking about equality in 1977—the year in which Harold Brown took over as Secretary of Defense. His own early speeches and his first "posture statement" proclaimed the two sides to be still about equal. He added in that statement, however, that "we must increase our investment in defense if we are to stay abreast."

That brings us to c. Let us say that c represents the net gain for the Soviet side since the point of presumed equality—that is, the amount by which Soviet spending on defense has outdistanced our own. There seems to be no disagreement about the fact that c is a positive, indeed a huge, number. The latest posture statement says that the Russians have recently been spending between 11 percent and 14 percent of their G.N.P. on defense, while we spend around 5 percent of a G.N.P. that is larger; what it all nets out to is that they're outspending us by around 50 percent. In defense investment (military hardware, construction, and R. and D.) the gap is greater. The posture statement says that Soviet investment spending probably exceeded our own by 85 percent in 1979. In short, $a+c$ is beating b by a mile.

It may seem tiresome to chop logic in such warm weather, but it is time to state that our Defense Department cannot sustain indefinitely the posture it has been clinging to for years. It can't go on, year after year, insisting that we have parity with the Russians while acknowledging, year after year, that they're heavily outspending us. An election year may be just the right time to insist that c matters.

Mr. THURMOND. Mr. President, in closing, I hold in my hand an article which appeared in today's Washington Post, September 8, 1980, entitled "The Risk In Politicizing the Pentagon" by George C. Wilson.

Mr. President, I believe this article has already been entered in the RECORD by Senator TOWER. But I want to emphasize that it is important that the American people read this article. It is important the Members of the Senate read this article. I think it will be apparent that the President of the United States is using his Secretary of Defense to politicize the Pentagon.

If he is going to politicize any department of Government, it should not be the Pentagon. In the Pentagon lies the hope for the survival of the freedom of the people of this Nation. In the Pentagon lies the hope for the survival of the freedom of the people of the free world, because without the United States the free world would fall like ripe apples into a basket.

Mr. President, it is extremely important that the President quit using the Secretary of Defense for politicizing the Pentagon.

I was amazed at the Stealth disclosures made by the Secretary of Defense. It is also important that he not use the Secretary of State for political purposes. It is important he not use the Attorney General of the United States for political purposes. But he is using all three of them.

It is not right. It is not proper. It is not in the best interests of this Nation.

I hope he will see that he has made a mistake and will discontinue doing so.

Mr. President, these matters are of grave concern to the people of this Nation. I hope the press will see fit to tell the people of the country what is going on here during this campaign.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

FROM PUBLIC SHOOTINGS TO GAS CHAMBERS

Mr. PROXMIRE. Mr. President, people have said there can never be another wholesale slaughter comparable to that conducted by the Nazis against the Jews. Yet, it must be remembered that at the time the Nazis were implementing their planned annihilation, many people were unaware of the extensive murder being committed.

Even today, many individuals do not comprehend the horror these men created. Perhaps, if the realities of the genocide initiated by the Hitler regime were told, again and again if necessary, people would realize the necessity of a preventive measure like the Genocide Convention.

The Nazis took great care to shroud their hideous activities and to formulate the most efficient means to effectuate the desired extermination of the Jews. The evolution of death-creating methods exemplifies this point.

During the summer of 1941, gas vans came into use as the townspeople tired of public shootings and the scale of murders increased. The vans held from 15 to 25 people and brought death within 15 minutes via carbon monoxide.

Initially, this method was applauded as it saved the Nazis the trouble of constructing permanent installations and of transporting the victims to distant burial sites.

However, within a short period of time, problems developed.

First, numerous complaints of headaches were expressed by the men assigned to unload the dead cargo.

Apparently, the victims urinated and defecated while in the throes of death.

Second, the vans were inadequate for the mass murder envisaged.

Open-air killings gradually replaced the van. The victims were transported to the outskirts of towns, divested of all clothing and other belongings, lined up, and shot. This method also proved unsatisfactory. Too many people were privy to the executions: The organizers, the local militiamen whose task it was to cover the graves, and the townspeople. The local inhabitants could not be prevented from hearing the incessant rattle of pistols, rifles, and submachine guns.

Furthermore, the killer squads had some men in their ranks who were unable to cope with the continuous cold-blooded murder of men, women, and children.

Eventually, the leaders determined that the stationary gas chamber was the best mode of extermination. Gas chambers were installed in the relatively secluded camps and operated by small staffs, thus permitting the program of annihilation to continue on a full scale and in secret.

The use of intelligent minds to implement the holocaust is frightening. We must acknowledge this and take action to prevent a recurrence of any form of genocide. The Genocide Convention can help us in this endeavor. The systematic annihilation of a national, racial, ethnic, or religious group is termed an international crime in the treaty. Certainly, in our own minds, genocide is one of the most heinous of crimes. We must transform this personal belief into a statement to the world. I urge the swift ratification of the Genocide Convention.

PRENOTIFICATIONS OF EXIMBANK FINANCINGS

Mr. PROXMIRE. Mr. President, I call to the attention of my colleagues five separate communications I have received from the Export-Import Bank

pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, notifying the Senate of the following six transactions the Bank intends to approve: First, a financial guarantee of a commercial loan of $223,550,000 to facilitate the purchase by Britannia Airways of five new Boeing 767 jet aircraft, spare engines, related spare parts and ground support equipment; second, loans and guarantees of $111,387,400 to Mexico for the purchase of U.S.-produced gas turbines and ancillary equipment; third, loans and guarantees of $150,000,000 to TAP, the national airline of Portugal, for the purchase of five new Lockheed L1011-500 jet aircraft and related spare parts and services; fourth, loans and guarantees of $178,110,000 to Hylsa, S.A., a leading Mexican steel producer, for the purchase of U.S. goods and services to expand steel and port facilities at Tampico, Mexico; fifth, loans and guarantees of $460,173,000 to Air Canada for the purchase of 12 Boeing 767-200 jet aircraft with related spare engines, spare parts and services; and sixth, loans and guarantees of $247,503,000 to Nigeria to facilitate the purchase of U.S. equipment and services for a nitrogenous fertilizer project.

Mr. President, if there is a sacred cow in this body, it is the Eximbank. When that name is raised people bow, scrape, and act as if it is something that cannot possibly be criticized. Well, I would like to criticize it.

I think it is ridiculous for us to provide loans and loan guarantees, and, of course, these loans and loan guarantees are below market in every case, otherwise they would go to the market.

Loans and loan guarantees for what purpose? For the purpose of enabling some of our biggest corporations to sell in the foreign market, and in almost every case, Mr. President, they have a virtual monopoly of that market or they compete with other American firms, not with foreign firms.

How can we possibly justify hundreds and hundreds and hundreds of millions of dollars of guarantees—for example, to sell jets abroad—when the competition of course, is between, primarily, Boeing and Lockheed?

In the case I am announcing this afternoon, we have a guarantee to Boeing for $223 million to sell five jet aircraft to Britain, and then we have a guarantee of $460 million—almost half a billion dollars—to Air Canada for the purchase of jet aircraft, and that is being supplied by Boeing.

Then we have $150 million to provide for the sale of five new Lockheed jet aircraft to Portugal. This subsidy is paid for by the American taxpayer.

Anyone who thinks that our budget cannot be cut because if we do we grind the face of the poor, that we hurt the people whose incomes are low and who cannot fend for themselves—the sick, the lame, the halt, the blind, the unemployed—should consider what I am announcing here. I am announcing not a program of a few million dollars or a few hundred thousand dollars but one that adds up to more than a billion dollars. It is a program overwhelmingly for the benefit of the biggest, most prosperous, most profitable corporations in this country. It does not make any sense.

Section 2(b)(3)(i) of the Act requires the Bank to notify the Congress of proposed loans or financial guarantees or combinations thereof in an amount of $100,000,000 or more at least 25 days of continuous session of the Congress prior to the date of final approval. Upon expiration of this period, the Bank may give final approval to the transaction unless the Congress adopts legislation to preclude such approval.

Mr. President, I ask unanimous consent that the letters from Eximbank and accompanying information pertaining to these transactions to be printed in the RECORD. Persons wishing to submit questions or comments on any of these transactions may contact Robert W. Russell, counsel to the International Finance Subcommittee, at (202) 224-0819 or Paul Freedenberg, minority professional staff member, at (202) 224-0891.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to the United Kingdom.

A. Description of Transaction.

1. Purpose.

Eximbank is prepared to make available financing in the form of a financial guarantee of a commercial loan of $223,550,000 to be extended by a United States private lender to T.N.H. Leasing A.G. The purpose of this Eximbank financing is to facilitate the purchase in the United States and lease to Britannia Airways Limited ("Britania") of five new Boeing 767 jet aircraft, spare engines, related spare parts and ground support equipment. The total U.S. export value for this transaction is estimated to be $263,000,000.

2. Identity of the Parties.

Britannia, based in the United Kingdom, is a charter airline and a third-tier wholly-owned subsidiary of International Thomson Organisation Limited ("ITOL"), a diversified Canadian holding company whose principal activities are printing and publishing newspapers, magazines and books, operating travel agencies, and participating in North Sea and other oil and gas fields. Britannia's current fleet consists of twenty-two 737 aircraft. The airline, established in 1962, operates package tours primarily from London to the Canary Islands and various Southern European and Mediterranean resort areas. Britannia will lease the aircraft from a wholly-owned subsidiary of ITOL.

3. Nature and Use of Goods and Services.

The principal goods to be exported from the U.S. are five new medium-range, wide-bodied commercial jet aircraft, related spare parts and ground equipment to be delivered during the period 1984-1986. Most of the airframe components will be manufactured in the Seattle-Renton-Everett area by The Boeing Company of Seattle, Washington. It is also expected that other United States firms will furnish components and spare parts. Potential engine manufacturers are the Pratt and Whitney Aircraft Division of United Technologies Corporation in Hartford, Connecticut, the jet aircraft engine division of General Electric Company in Cincinnati, Ohio, and Rolls-Royce Limited in the United Kingdom. In the event Rolls-Royce engines are selected by Britannia, they will not be financed by Eximbank and Eximbank's financing will be reduced accordingly. Non-United States components manufactured in Japan and Italy will cost about $28 million, or approximately 11% of the United States goods, and are not included in the financing plan set out below.

B. Explanation of Eximbank Financing.

1. Reasons.

The Eximbank financial guarantee of $223,550,000 will facilitate the export of $263,000,000 United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their subcontractors are heavily dependent upon exports. Through 1990, aircraft purchase by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financing support for the export of U.S. aircraft has assisted U.S. aircraft manufacturers on obtaining approximately 80 percent of the world market for commercial jet aircraft. In order to maintain the existing market share for U.S. commercial jet aircraft over the next several years, Eximbank must strive to meet both borrowers' needs and foreign competition, in particular that from the European consortium, Airbus Industrie.

Airbus Industrie's A-130 jet aircraft was determined by Britannia to be technically and economically competitive with the 767 aircraft. Adequate financing from U.S. sources was necessary to enable Britannia to proceed with the purchase of all five aircraft, of which three are optional, and to enable Boeing to penetrate the European market with the first sale of 767 aircraft. The Eximbank financing appears to have been a decisive factor in winning the sale for the U.S. suppliers.

Boeing estimates that the production of each 767 aircraft will generate 1,017,900 man-hours of work for Boeing and its subsuppliers consisting of 870,000 for each airframe and 147,900 for each engine. Additional benefits which will flow from the United States from the transaction include sizeable follow-on exports of spare parts, ground support and other related equipment.

2. The Financing Plan.

The financing plan for the total U.S. procurement supported by Eximbank is as follows:

	Percent of U.S. costs	Amount
Cash payment	15	$39,450,000
Private financing with Eximbank guarantee	85	223,550,000
Total	100	263,000,000

(a) Eximbank Charges.

The financial charge on the financing extended under the Eximbank guarantee will be 10.7% per annum, payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for Britannia on February 7, 1980. It is possible that if market conditions require, some Eximbank credit will be blended with the financing extended under the Eximbank guarantee. A commitment fee of ½ of 1% per annum and a guarantee commitment fee of ⅛ of 1% per annum will also be charged on the undisbursed portion of the Private Financing. The financing will be secured by the guarantee of ITOL and mortgages on the aircraft.

(b) Payment Terms.

The financing for the aircraft will be repaid in three repayment schedules of 20 semiannual installments each, beginning November 15, 1984 with respect to aircraft to be delivered in 1984; beginning November 15, 1985 with respect to aircraft to be delivered in 1985; and beginning November 15, 1986 with respect to aircraft to be delivered in 1986.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN THE UNITED KINGDOM
[As of July, 31, 1980]

	Outstanding	Undisbursed
Direct loans	$394,379,199.71	$185,237,734.86
Financial guarantees	56,682,480.00	110,257,520.00
CFF loans	38,400.00	
Bank guarantees	6,004,348.64	13,566,722.75
Insurance medium	3,130,226.94	3,958,562.55
Insurance short	123,596,239.24	
Total for the United Kingdom	583,830,894.53	313,020,540.16

Defaults and reschedulings: Loan No. 4097 was rescheduled Nov. 3, 1977, in the amount of $1,619,998.84. This loan was paid in full Jan. 17, 1979. There have been no other defaults to date.

UNITED KINGDOM

Area and population:	
Area (square kilometer)	244,000
Population (mid-1979) (millions)	55.8
Population density (per square kilometer)	229
GDP per capita (1979)	$6,129
	Percent
Sources and application of national product:	
Uses (1978):	
Consumption	53.8
Government	23.2
Capital formation	20.7
Stocks	1.0
Exports	33.9
Imports	−32.6
Total	100
Sources (1978):	
Agriculture, forestry and fishing	2.6
Mining and quarrying	3.2
Manufacturing	28.7
Construction	6.0
Transportation and communication	8.2
Services	51.3
Total	100

	1976	1977	1978	1979	1980(E)
GDP data:					
Billions of dollars (nominal)	221	246	308	342	305
Rate of change (real) (percent)	3.6	1.4	3.3	1.5	−3.0
Fiscal and monetary data:					
Government deficit (billions of dollars)	12.3	7.8	15.1	17.4	NA
Deficit as percent of GNP	5.5	3.2	5.2	5.1	NA
Increase in money supply (M3) (percent)	11.2	9.8	14.9	12.7	12.7
Savings ratio (percent)	14.6	13.9	15.2	15.7	17.0
Price data (percent increase over preceding year):					
CPI	16.5	15.9	8.3	17.5	18.5
WPI	17.3	19.8	9.1	12.2	18
Labor data (percent increase over preceding year):					
Wages (weekly rates)	16.5	10.3	14.6	15.5	19.0
Unemployment	5.3	5.7	5.7	5.4	7.1
External debt (billions of dollars):					
Outstanding public debt	14.2	18.0	15.8	14.6	13.9
Debt/GDP (percent)	6.4	7.3	5.1	4.3	4.6
Debt service ratio (public debt only) [1] (percent)	7.3	4.8	2.9	4.9	NA
Balance of payments data (billions of dollars):					
Exports	45.9	56.1	−67.3	86.3	111.5
Imports	−52.4	−59.2	−70.2	−93.3	−119.8
Trade balance	−6.5	−3.1	−2.9	−7.0	−8.3
Invisibles balance	4.5	3.8	4.2	1.9	1.7
Current account balance	−2.0	0.7	1.3	−5.2	−6.6
Capital account	−4.6	12.2	−3.0	9.0	NA
Overall balance	−6.6	12.9	−1.7	3.8	NA
Reserve data (billions of dollars):					
Foreign exchange (excluding gold)	3.4	20.1	16.0	19.9	.....
Gold (average London price)	2.6	3.3	4.4	12.1	.....

[1] For 1976 and 1977 includes only capital repayment.

Sources: IMF, IFS, and OECD Survey, OECD.

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Mexico.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing in the form of loans and guarantees ("Eximbank Financing") of $111,387,400 to Comision Federal de Electricidad ("CFE"). The purpose of the Eximbank Financings to facilitate the purchase in the U.S. for export to Mexico of 14 gas turbines and ancillary equipment to be manufactured by Westinghouse, General Electric, United Technologies and Brown Boveri. The total U.S. export value for this transaction is $131,044,000. In addition, Eximbank has issued a preliminary commitment to CFE to facilitate the purchase in the United States of $130 million of steam turbines and boilers.

2. Identity of the Borrower:

CFE is an autonomous institution of the Federal Government of Mexico which is responsible for providing most of Mexico's electric power. Eximbank has made many loans to CFE, and repayments have been made on a timely basis.

3. Nature and Use of Goods and Services:

The goods to be exported will be installed in and operated as part of CFE's electric power system. Mexico is in the midst of a severe power shortage, and the expansion of the system is a critical necessity. Mexico has abundant supplies of natural gas and petroleum to fuel the new units.

B. Explanation of Eximbank Financing

1. Reasons:

The Eximbank Financing of $111,387,400 will facilitate the export of $131,044,000 of U.S. goods and services. CFE has signed letters of intent to purchase the gas turbine units from Westinghouse, General Electric, Brown Boveri and United Technology. CFE is requiring suppliers to provide 85 percent fixed rate financing. European and Japanese suppliers are now including such financing as a part of their government supported bids. Over the past few years much of CFE's electrification programs have been so financed by EID/MITI of Japan. The Eximbank Financing will assist in the generation of some 5,240 jobs in the U.S. over the period of fabrication of the items. U.S. electrical equipment manufacturers are generally operating below capacity and are anxious to secure additional orders.

2. The Financing Plan:

The total cost of the U.S. goods and services to be purchased by CFE will be financed as follows:

	Amount	Percent of U.S. Costs
Cash	$19,656,600	15
Eximbank financing	111,387,400	85
Total	131,044,000	100

It is expected that 65 percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank ("Blended Eximbank Financing"). The remaining 35 percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

a. Eximbank Charges:

The financial charges on the Blended Eximbank Financing to be paid by CFE will be 8.75 percent per annum, payable semiannually. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment Terms:

CFE will repay the Eximbank Financing in 20 semiannual installments, beginning on August 15, 1981.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK OF THE UNITED STATES
Washington, D.C., August 27, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Portugal.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $150,000,000 to Transportes Aereos Portuguese (TAP), Lisbon, Portugal. The purpose of the Eximbank Financing is to facilitate the purchase in the United States by TAP of five new Lockheed L1011-500 jet aircraft and related spare parts and services. The total U.S. export value for this transaction is estimated to be $250,000,000.

2. Identity of the Parties:

(a) TAP:

TAP, established in 1944, is Portugal's national air carrier and provides scheduled and charter service on both domestic and international routes. It is 100 percent owned by the government of Portugal.

(b) Guarantor:

The Government of Portugal, acting by and through its Ministry of Finance, will unconditionally guarantee payment of TAP's indebtedness under the Eximbank Financing.

3. Nature and Use of Goods and Services:

The principal goods to be exported from the United States are five commercial jet aircraft to be used by TAP on its international routes. The airframes for the L-1011-500's will be manufactured in California by the Lockheed California Company. In addition, other U.S. suppliers will furnish components and spare parts. The engines for the aircraft will be supplied by Rolls Royce supported by official export credit financing provided by the United Kingdom.

B. Explanation of Eximbank Financing:

1. Reason:

The Eximbank Financing of $150,000,000 will facilitate the export of $250,000,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their sub-contractors are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial aircraft.

The export of the five commercial jet aircraft which are the subject of this letter depends to a significant degree upon the availability of Eximbank support for the medium and long term maturities. Commercial lenders are unable to commit themselves in Portugal at fixed interest rates or for the full repayment term involved in this case, a ten year amortization after a four year delivery period. Therefore, the Eximbank Financing is necessary to provide repayment terms that would make the transaction economically feasible for TAP.

Lockheed estimates that the construction of each aircraft involves 600 man years of employment evenly divided between Lockheed and its suppliers. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts and related equipment.

2. The Financing Plan:

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$37,500,000	15
Unguaranteed private Financing	62,500,000	25
Eximbank financing	150,000,000	60
Total	250,000,000	100

It is expected that forty percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank (Blended Eximbank Financing). The remaining sixty percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

(a) Eximbank Charges:

The financial charge on the Blended Eximbank Financing to be paid by TAP will be 8 percent per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for TAP on July 5, 1979. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portions of the Eximbank Financing.

(b) Repayment Terms:

The Eximbank Financing and the Unguaranteed Private Financing will be repaid by TAP in two schedules of 20 semiannual installments beginning October 25, 1983 and October 25, 1984. The Unguaranteed Private Financing will be repaid from the early installments of each such schedule.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN PORTUGAL

[As of July 31, 1980]

	Outstanding	Undisbursed
Direct loans	$75,295,058.21	$11,833,288.82
CFF loans	1,128,425.70	1,333,288.82
Financial guarantees	2,658,426.92	
Bank guarantees and other	111,093.95	1,521,280.00
Insurance:		
Medium term	260,637.98	499,959.00
Short term	1,699,026.76	93,543,202.48
Total exposure	81,152,669.52	108,731,019.10

Defaults and reschedulings: In the past 10 yr. there have been no defaults or reschedulings of Export-Import Bank direct credits for United States export sales in Portugal.

PORTUGAL

Area (square kilometers)	92,072
Population (end 1979) (millions)	9.3
Population density (per square kilometer)	101
GDP per capita (in 1979 U.S. dollars)	$2,154
GDP:	Percent
Expenditure structure (1979):	
Private consumption	73
Government	15
Investment	22
Exports	25
Imports	−35
Total	100
Origin of GDP (1977):	
Agriculture	14
Industry	45
Services	41
Total	100

	1976	1977	1978	1979(P)
GDP data:				
Millions of dollars (nominal)	14,821	15,730	16,994	20,028
Growth rate (real)	6.9	5.3	3.2	4.0
Fiscal and monetary data:				
Government deficit (millions of dollars)	1,585	1,142	1,941	1,981
Deficit as percent of GDP	10.7	7.3	11.4	9.9
Increase in money supply (M1) (percent)	8.4	11.8	14.5	25.9
Savings ratio (percent)	14.3	13.2	16.3	19.7
Price data (percent change over previous year):				
CPI	12.1	27.4	22.1	24.2
WPI	19.2	28.7	31.6	NA
Labor data:				
Wages (monthly earnings) (percent change)	11.9	12.0	11.0	NA
Unemployment rate (percent)	6.9	7.9	8.4	10.0
External debt:				
Outstanding debt (millions of dollars)	2,892	4,427	5,420	6,583
Private	1,752	2,488	3,433	3,721
Public	1,140	1,939	1,987	2,862
Debt service ratio (public debt only) (percent)	5.0	6.1	5.3	NA
Total debt/GDP (percent)	19.5	28.1	31.9	32.9
Balance of payments (millions of dollars):				
Exports, f.o.b	1,823	2,027	2,410	3,594
Imports, f.o.b	−3,932	−4,533	−4,791	−6,016
Trade balance	−2,109	−2,506	−2,381	−2,422
Tourism (net)	186	268	431	695
Net services	−107	−863	−54	100
Unilateral transfers (net)	972	1,134	1,635	2,472
Of which emigrant remittances		1,174	1,671	2,446
Current account balance	−1,244	−1,499	−800	150
Capital account balance	277	636	760	1,259
Overall balance	−1,967	−863	160	1,352
Reserves (millions of dollars):				
Foreign exchange (excluding gold)	176	366	871	940
Gold (London average price)	3,454	3,562	4,276	12,262

Note: Exchange rate: Escudos/U.S. dollars—1976=31.549, 1977=39.855, 1978=46.010, 1979=49.781.

Sources: I.F.S., OECD Survey, IMF—Recent economic developments.

EXPORT-IMPORT BANK OF THE UNITED STATES,

Washington, D.C., August 27, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Mexico.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing to Hylsa, S.A. in the form of loans and guarantees ("Eximbank Financing") of $178,110,000 covering U.S. costs of $151,393,500 and local costs of $26,716,500. The purpose of the financing is to facilitate the purchase in the U.S. for export to Mexico of various equipment and services required for the expansion of the Borrower's integrated steel facilities and port facilities at Tampico, Mexico. The total U.S. export value for this transaction is $178,110,000.

2. Identity of the Borrower:

Hylsa, S.A. is one of Mexico's leading producers of steel, and a wholly owned subsidiary of Grupo Industrial Alfa, S.A., which

is Mexico's largest privately owned and most diversified company. Eximbank's experience with the Borrower has been satisfactory.

3. Nature and Use of Goods and Services:

Various items of equipment and services to be used in the expansion of the Borrower's steel port facilities.

B. Explanation of Eximbank Financing:

1. Reasons:

The Eximbank Financing of $178,110,000 will facilitate the export of that amount of U.S. goods and services. U.S. equipment firms are having a difficult time winning jobs against Japanese and European bidders, all of whom offer competitive pricing and financing. Eximbank has been informed by the U.S. suppliers that their backlogs are way down, particularly since there are no major expansions contemplated by U.S. steel plants; thousands of U.S. jobs are therefore dependent in large part upon the ability of the U.S. suppliers to compete for steel mill jobs overseas. Recent OECD exchanges make it clear that Japan and England are supporting financial packages for this project of 85% of fixed rate financing, in addition to 15% of local costs, all at an interest rate of 7.5%. The Eximbank Financing will assist in the generation of some 7,120 jobs in the U.S.

2. The Financing Plan:

The total U.S. and local costs of the project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$26,716,500	15
Eximbank financing:		
(a) U.S. costs	151,393,500	85
Total		[1] 100
(b) Local costs	26,716,500	15
Total	204,826,500	

[1] U.S. costs.

It is expected that the Eximbank Financing for the U.S. Costs will consist of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

a. Eximbank Charges:

The financial charges on the Eximbank Financing to be paid by Hylsa will be 8.25 percent per annum, payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for Hysla on March 6, 1980. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment Terms:

Hylsa will repay the Eximbank Financing in 20 semiannual installments, beginning on January 10, 1985.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK OF THE UNITED STATES,

Washington, D.C., August 29, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Canada:

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available to Air Canada financing in the form of loans and guarantees (Eximbank Financing) of $460,173,000 to facilitate the purchase in the United States by Air Canada of 12 Boeing 767-200 jet aircraft with related spare engines, spare parts and services. The total U.S. export value of these purchases is estimated to be $575,216,000.

This transaction is the first proposed credit under a Preliminary Commitment issued by Eximbank to Air Canada for financing of Air Canada's purchases of jet aircraft referred to in our letter of August 23, 1979. In that Preliminary Commitment, Eximbank indicated to Air Canada the terms and conditions under which it will be prepared to extend up to $628,000,000 of financing (including the Eximbank Financing proposed in this transaction) to Air Canada to assist in the purchase of up to 24 Boeing 767-200 jet aircraft (including the 12 mentioned above) to meet that airline's needs for increased traffic on its domestic and North American routes and replacement of its aging fleet. Including the transaction mentioned above, the total U.S. export value of these purchases is estimated to be $1,035,000,000.

2. Identity of the Borrower:

Air Canada, Canada's largest airline, was established in 1937 as a corporation owned by the Canadian National Railroad and was reorganized in 1978 under the ownership of the Government of Canada. Its routes are worldwide, the principal routes being to Europe and North America, in addition to extensive operations throughout Canada. Eximbank has previously made 6 loans to Air Canada and repayments have been made on a timely basis.

3. Nature and Use of Goods and Services:

The principal goods to be exported from the United States are 12 Boeing 767-200 commercial jet aircraft to be used by Air Canada, together with the additional commercial jet aircraft contemplated by the Preliminary Commitment, to handle increased traffic on its domestic and North American routes and to replace its aging fleet. The aircraft will be exported under various schedules during the period 1982-1986.

The airframes for the 767's will be manufactured in the Seattle-Renton-Everett area by the Boeing Company of Seattle, Washington. The engines for the 767's will be manufactured by the Pratt and Whitney Aircraft Division of United Technologies Corporation in Hartford, Connecticut. In addition, other U.S. firms will furnish spare parts. Non-U.S. components manufactured in Japan and Italy will cost about $60,901,000, or approximately 11 percent of the United States goods, and are not included in the financing plans set out below.

B. Explanation of Eximbank Financing:

1. Reasons:

The Eximbank financing support of $460,173,000 contemplated in this transaction will facilitate the export of $575,216,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their subcontractors are heavily dependent upon exports.

During the next two to three years, several large foreign airlines will be undertaking major reequipment programs, and through 1990 aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial jet aircraft, and Eximbank believes it must be sensitive to purchasers' needs during this period of new product selection to insure that U.S. aircraft and engine manufacturers are able to offer attractive financing which helps them to sustain their position as a leading U.S. export sector.

The export of 12 Boeing 767-200 jet aircraft will have been achieved in the face of strong competition from the A-310-200 jet aircraft manufactured by Airbus Industrie. The A-310-200 was determined by Air Canada to be technically and economically competitive with the B767-200 for Air Canada's domestic and North American routes. To be competitive and to break into the important North American market with the A-310-200 type of aircraft, Airbus arranged special financing with support by the Governments of France and Germany. Adequate, comparable financing from U.S. sources was necessary to offset the A-310-200 financing. Air Canada's selection of the 767 over the Airbus will govern a substantial portion of Air Canada's fleet acquisition plans for the period through 1990. The Eximbank financing, therefore, was a decisive factor in winning this sale for the U.S. suppliers.

Boeing estimates that the sale of 12 B767-200 jet aircraft will provide 12.2 million man/hours of work for Boeing and its subcontractors, including 1.8 million for Pratt and Whitney in Connectcut for production of the engines. Additional benefits which will flow to the United States from the transaction include follow-on sales of up to 12 additional B767-200 jet aircraft and related exports of spare parts, ground support and other auxiliary equipment.

2. The Financing Plan:

The cost of the 12 B767-200 jet aircraft will be financed as follows:

	Amount	Percent of U.S. costs
Cash payment	$115,043,000	20
Eximbank financing	460,173,000	80
Total	575,216,000	100

It is expected that the Eximbank Financing described above will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

(a) Eximbank Charges:

The financial charge on the Eximbank Financing to be paid by Air Canada will be 8.7 percent per annum, payable semiannually until the start of principal repayments as set forth in subparagraph (b) below. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

(b) Repayment Terms:

The Eximbank Financing, together with interest thereon, will be repaid in 2 schedules of 24 equal semiannual installments beginning (i) January 15, 1984 for aircraft to be delivered in 1982 and 1983 and (ii) January 15, 1985 for aircraft to be delivered in 1984. Repayments will be computed on the basis of an actuarial annuity method requiring level installment payments composed of decreasing amounts of interest and increasing amounts of principal in each installment, with interest accruing prior to the start of principal repayments being payable semiannually.

Attached is certain additional information on Eximbank activity in, and economic data about, Canada.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN CANADA

[As of July 31, 1980]

	Outstanding	Undisbursed
Direct loans	266,265,082.89	139,286,880.20
Financial guarantees	0	0
CFF loans	289,555.58	0
Bank guarantees	253,870.60	0
Insurance:		
Medium	1,036,208.53	815,871.70
Short	113,820,916.29	

Defaults and reschedulings: In the past 10 yr there have been no defaults or rescheduling of Eximbank direct credits financing United States export sales to Canada.

CANADA

Area (thousand square kilometer)	9,976
Population (begin 1979) (millions)	23.5
Population density (per square kilometer)	2
GNP per capita (1979)	$9,464
	Percent
Expenditures of GNP (1979):	
Consumption	63
Government	17
Capital formation	24
Exports	24
Imports	−28
Total	100
Origin of GDP (1978):	
Agriculture	3
Industry	29
Services	61
Other	7
Total	100

	1976	1977	1978	1979	1980(P)
GNP data:					
Nominal (billions of U.S. dollars)	194.2	197.6	203.2	222.4	249.3
Rate of change (real GNP) (percent)	5.4	2.4	3.4	2.7	0.3
Fiscal and monetary data:					
Government deficit (millions of U.S. dollars)	3,246.5	6,965.6	9,526.6	9,906.2	2,191.8
Deficit as a percent of GNP	1.7	3.5	4.8	4.5	0.9
Increase in money supply (M2) (percent)	12.6	14.0	10.7	2	NA
Savings ratio (percent)	10.2	10.1	10.4	10.3	NA
Price data (annual changes) (percent):					
CPI	7.5	8.0	8.9	9.1	9.7
WPI	4.2	9.2	9.4	13.9	10.9
Labor data (annual changes) (percent):					
Wages (hourly earnings)	14	10.5	7.1	9.0	NA
Productivity	5.1	0.4	0.4	−0.9	0.6
Unemployment rate	7.1	8.1	8.4	7.5	7.8
External debt:					
Net international indebtedness (billions of U.S. dollars)	19.9	25.8	40.1	42.1	41.2
As percent of GNP	10.2	13.1	19.7	18.9	16.5
Debt service ratio (total debt) (percent)	4.1	4.8	6.1	7.4	NA
Balance of payments (millions of U.S. dollars):					
Exports	38,534	40,396	44,276	55,785	61,012
Imports	−37,127	−37,896	−41,424	−52,374	−60,098
Trade balance	1,407	2,500	2,852	3,411	914
Services (net)	5,331	−6,810	−7,358	−8,237	−9,265
Transfers (net)	488	381	36	531	513
Current account balance	−3,435	−3,929	−4,470	−4,295	−7,841
Capital balance	4,425	2,630	1,689	5,750	NA
Overall balance	989	−1,299	−2,781	1,455	NA
Reserves (millions of U.S. dollars):					
Foreign exchange (excluding gold)	4,964	3,672	3,560	3,056	
Gold (average London price)	2,698	3,251	4,276	12,278	

Sources: OECD Survey, IMF, and IFS.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Nigeria.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $247,503,000 to the Republic of Nigeria, acting by and through its Federal Ministry of Finance (Borrower). The purpose of the Eximbank Financing is to facilitate the purchase in the United States by the Federal Ministry of Industries (FMI) of the Republic of Nigeria of equipment and services for a nitrogenous fertilizer project together with related infrastructure (Project). The total U.S. export value for this transaction is estimated to be $291,180,000.

2. Identity of the Parties:

(a) Republic of Nigeria:

The Republic of Nigeria, acting by and through its Federal Ministry of Finance, will act as the Borrower of the Eximbank Financing.

(b) FMI and Pullman-Kellogg:

FMI is the Ministry of the Republic of Nigeria charged with the responsibility for developing the country's industrial resources. FMI and Pullman-Kellogg (P-K) of Houston, Texas intend to form a joint venture company for the management and operation of the Project.

3. Nature and Use of Goods and Services:

The Project will be comprised of a 1,000 metric tons per day (MTD) ammonia plant, a 1,500 MTD urea plant, and a 1,000 MTD mixed fertilizers unit. The goods to be exported will involve chemical process, materials handling, utility plant, and construction equipment as well as various services including: engineering, procurement, construction supervision, start-up, training, and process licensing.

B. Explanation of Eximbank Financing:

1. Reason:

The Eximbank Financing of $247,503,000 will facilitate the export of $291,180,000 of U.S. goods and services. P-K has initiated a lump sum contract with FMI to act as prime contractor for the Project. The Project will provide Nigeria with a domestic source of fertilizer, will utilize natural gas currently being flared, and will result in foreign exchange savings since Nigeria currently imports the fertilizer to be produced from Europe.

The award of this Project to P-K represents a major breakthrough for a U.S. firm in Nigeria, a market in which the U.S. has had only limited success. It was accomplished in the face of strong competition from the French who also offered official export financing for 85 percent of the Project costs at a blended rate of 8.4 percent per annum.

P-K estimates that its engineering and other client services will involve approximately 607,000 man/hours of employment. In addition, P-K, as managing contractor will subcontract for equipment and engineering services from a number of other U.S. suppliers which will account for substantial additional man-hours of employment.

2. The Financing Plan:

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$43,677,000	15
Eximbank financing	247,503,000	85
Total	291,180,000	100

It is expected that the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

(a) Eximbank Charges:

The financial charge on the Eximbank Financing to be paid by the Borrower will be 8.4 percent per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for the Borrower on September 11, 1979. A commitment fee of 0.5 percent per annum will be charged on the undisbursed portions of the Eximbank Financing and is included in the above financial charge of 8.4 percent.

(b) Repayment Terms:

The Eximbank Financing will be repaid by the Borrower in 20 semiannual installments beginning December 31, 1984.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. ALLEN.

NIGERIA: KEY ECONOMIC INDICATORS

[In millions of dollars at current exchange rate unless otherwise indicated]

	1977	1978	Percent change 1977–78	Estimate 1979
National income:				
GDP (current prices)	41,476	42,698	2.9	46,968
Population (millions)	79.7	81.7	2.5	83.7
GDP per capita	520.5	522.6	.4	561.1
Exchange rate (dollars per Naira) [1]	1.55	1.56	.6	1.66
Production index (1972=100):				
Mining	114.5	103.6	−9.5	125
All manufacturing	193.5	221.4	14.4	230
Beer	185.6	285.2	53.7	290
Cotton textiles	172.9	167.1	−3.4	200
Vehicle assembly	1,097.3	922.7	−9.5	1,145
Soap, detergents	328.4	362.5	10.4	320
Electricity	212.3	260.6	22.8	285
Agricultural production (1,000 tons):				
Yams	18,000	18,100	.6	18,100
Millet	2,950	3,100	5.1	3,100
Corn	1,500	1,675	11.7	1,070
Palm kernels	340	350	2.9	370
Cocoa beans (commercial)	205	165	−19.5	170
Agriculture production—Continued				
Cotton (commercial: 1976=81)	36	40	11.1	41
Peanuts (commercial: 1975=300)	14	20	42.9	50
Monetary:				
Money supply (Dec. 31)	7,431	7,466	.5	9,500
Retail price index (urban) (1975=100)	141.5	176.0	24.4	210
Commercial minimum lending rate (percent)	6	7	16.7	8
Treasury certificates (percent)	3.5	4.5	28.6	4.5
Trade:				
Reserves (Dec. 31)	3,908	1,948	−57.8	3,400
Payments balance (private)	648	4,730	629.9	3,000
Exports	12,364	9,838	−20.0	16,000
To United States	4,675	3,981	−14.8	8,000
Imports	10,747	13,136	22.2	11,000
From United States	1,203	1,407	17.0	1,000
Petroleum exports (million barrels per day)	2.03	1.85	−8.9	2.23

[1] The rate is adjusted frequently by the Central Bank. The figure for 1979 is a weighted average of rates during 1979. At the year's end the rate was $1.74 Naira.

Sources: Central Bank of Nigeria, Federal Office of Statistics, Agricultural Data and 1979 Estimates, U.S. Embassy U.S. Department of Commerce: Foreign Economic Trends and Their Implications for the United States, April 1980, No. 80-023.

Eximbank exposure in Nigeria as of July 31, 1980

Short-term FCIA insurance	$20,619,000
Medium-term FCIA insurance	1,525,000
Medium-term bank guarantees	6,290,000
Financial guarantees	3,375,000
Direct credits	28,302,000
Cooperative financing facility	
Total exposure	60,111,000

PAYMENTS

History

Overall, Eximbank has had a satisfactory repayment record on direct credits in Nigeria. Some slow payments have occurred due to delays within Nigeria's administrative system.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. HELMS. Mr. President, I have listened with interest to the comments of my friend from Wisconsin. He always makes sense.

As he was speaking, I was thinking about how we got into this syndrome that all ills of the Nation can be cured from Washington, D.C. But it does not happen that way. I have just about decided that Washington does not solve problems—Washington is the problem.

In any case, I was just thinking about a good-sounding Federal program that was instituted by the bureaucracy with the approval of Congress a couple of years ago to supply fuel for needy people during emergency times. It was a very cold winter, as the Senator will recall; $22,000 was allocated for Gaston County, N.C., and they set up a complex bureaucracy, even there, to administer this $22,000.

The first thing they did was to hire a director for the program, equip him with an automobile, an office, a telephone, and a secretary. I will not go into all the details, but it ended up that just a little less than $500 of the $22,000 allocated for Gaston County, N.C., went for fuel for the poor. The remainder of it went for administration—for, if you please, a bureaucracy. They could not account for half of the almost $500 that supposedly was spent for fuel. They could not find where the oil went. They did find where some coal went.

So I rise just to pay my respects to my friend from Wisconsin, because he is forever looking at all these programs, and I have tried to stand with him in searching out waste and extravagance.

Mr. PROXMIRE. I thank the Senator from North Carolina. He is 100 percent right.

There is one word we seem to have forgotten. We learned it literally at our mother's knee. That is the word "no." I think the first thing a mother has to tell her little children is, "No, you can't do this; no, you can't do that."

We have to say, "No, we can't spend this money."

We are beseeched by various interest groups, some of whom have reasonably good cases but almost never are content, and we keep adding and adding, and the burden falls on the taxpayer—not the well-to-do alone, but on all the taxpayers.

I believe many people forget that the taxes are borne very heavily by people with incomes of $10,000, $12,000, and $14,000 a year, with families to support, and every nickel of those taxes hurts.

Not only do taxes go up with the spending, but also, prices go up, and it is heartbreaking for people with modest incomes.

I am delighted that my good friend from North Carolina, who has been a valiant opponent of excessive Government spending and waste, has made the statement he has. I could not agree with him more.

Mr. HELMS. I thank the Senator, and I compliment him.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. TALMADGE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, it is so ordered.

ONE MAN'S EFFORTS PAY OFF

Mr. HELMS. Mr. President, it is always inspiring to note the accomplishments of a single individual who has devoted a total dedication to a cause he knows to be right. It is even more heartwarming when the individual is a close personal friend, someone you have known and respected for many years.

Such is the case with my good friend, C. Hoke Leggett of Hobgood, N.C., outgoing president of the National Cotton Council. Hoke is a prominent farmer in my State. In addition to cotton, he also produces tobacco, peanuts, corn, soybeans, and hogs.

Hoke is an all-round farmer and gentleman—of the most persuasive makeup, I might add. A recent article in the Progressive Farmer observed that Hoke Leggett is an extremely convincing man of words. The publication stated, in fact, that Mr. Leggett is such a persuasive fellow, and such a firm believer in cotton, that he could talk the DuPont family into wearing cotton underwear.

In this article to which I refer, tribute was paid to Leggett for almost single-handedly having convinced members of the National Cotton Council that they should raise $9 million for a crash program to keep cotton dust out of textile mills. His argument was that if cotton producers assume that dust and brown lung disease are something just for the textile mills to be concerned with, then the cotton producers are in big trouble.

He did not wait for the Government to step in to muddle it all up with a bureaucratic remedy. Hoke Leggett took it upon himself to get his fellow producers to take the initiative.

I ask unanimous consent, Mr. President, that the article from the Progressive Farmer be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SMALL GROWER DOES BIG THINGS FOR COTTON

Edith Longest Leggett was telling a group of ladies at the National Cotton Council (NCC) annual meeting how tricky it was to

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get in the 1979 peanut crop. "Where was Hoke?" one of them asked.

"Oh, doing what he's doing now," Mrs. Leggett replied. "Only I think it was in Washington at that time."

What C. Hoke Leggett was doing was convincing a group of skeptical cotton farmers of the dangers they faced from cotton dust. The Hobgood, N.C., producer of cotton, tobacco, peanuts, corn, soybeans, and hogs, who is outgoing NCC president and the man who could convince the Du Ponts that they ought to wear cotton underwear, was succeeding better than he knew.

At the January 1980 council meeting, delegates finally resolved that a $9 million crash program to keep cotton dust out of the textile mill was the only way to keep the cotton industry out of disaster.

"If cotton producers assume that dust and brown lung disease are a problem for the textile mills to solve, then we're going to be in big trouble" is the way Leggett's arguments run. "The problem belongs to the whole industry, to producers as well as to spinners and weavers. If we don't solve it, we won't have a cotton industry left to worry about."

The odds against scratching up $9 million in new research money for cotton dust in 1980 were pretty long in January. An Assistant Secretary of Agriculture was on hand to say that the President had passed the word to pare USDA research budgets to the core.

Cotton Incorporated spokesmen protested that they were already spending a big hunk of money on cotton dust research.

Millmen simply pointed to the billions already spent in their efforts to meet worksite standards laid down by the Occupational Safety and Health Administration (OSHA).

Still, NCC had its resolution; and to the surprise of no one who knew how he could work on a problem, it appointed Leggett Chairman of the newly established Industry-wide Cotton Dust Committee.

If Edith Leggett thought she was going to see more of Hoke around the farm because he was no longer NCC president, she was due for a disappointment.

Backed by the technical staff and like-minded officers of the council, Hoke began a campaign of begging, threatening, lobbying, arguing, speaking, arm twisting, and convincing. By lay-by, most of the funds for a $9 million, two-year, crash research program were promised or in sight.

"The price tag is high, but we've got to pay it," Leggett says. "If we don't, the mills will simply shift to synthetics."

Leggett concedes that the price of problem solving is always high, if not in money, always in time and effort. His neighbors sometimes ask him how he can spend so much time serving in state, regional, and national organizations.

"How can I not take the time to look after our business?" he'll reply, holding you with his expressive eyes while snapping out his words in a way that sometimes belies his North Carolina rural background. To Leggett, good marketing and consumer acceptance are as much the business of farming as is careful crop production.

His national activities haven't made him forget his community responsibilities. He has served two terms as mayor of Hobgood, been instrumental in starting a local peanut marketing association, and helped bring a branch of the Peoples Bank and Trust Co. to his town.

With 350 acres, Leggett is a small cotton grower as cotton growers go these days. "But everybody has got to help, large or small," he says.

"Maybe I could grow more and better cotton if I stayed home all the time and paid closer attention to my production practices. But somebody has got to sell it if we're going to raise it. If we all stay home griping about our poor market conditions, nobody is going to make any profit."

Leggett thinks that cotton's future looks good. "Cotton can stay competitive with synthetics if we can solve the dust problem," he says.

Cotton marketing has made a lot of progress, and Leggett credits Cotton Incorporated with making a big share of that progress possible. Personalities need not get in the way of an effective marketing program, he believes, adding, "We all must continue to support CI's program."

Leggett started growing cotton in 1954 and has seen many problems come and go. His farm is located in the area covered by the experimental boll weevil eradication program.

"We've shown here that a communitywide effort can deal with the pesky weevil," he says.

"Just a few years ago, I sprayed my cotton 19 times in a single season, mostly to control boll weevils. Last year, we sprayed only once, and that was to take care of a worm infestation. We didn't spray at all for boll weevils."

The boll weevil eradication effort has been so successful that cotton acreage has increased dramatically this year.

Leggett makes no bones about the fact that too few farmers are willing to pitch in and help solve farm problems.

"No one else will do it for us," he says.

For cotton farmers willing to take his advice and get involved in the leadership of their industry, Leggett gives the following pointers:

Start attending as many meetings as possible of organizations that are working to solve your problems. Get active in committee work. Speak up at meetings. Hold an office when it's offered.

Ask for opportunities to serve as a contact with Congressmen and other people in positions of leadership.

Go visit Cotton Incorporated in Raleigh and see what the staff is doing to solve marketing problems.

Get to know people in the textile industry. Find out what they want.

Get involved in the democratic process. Speak up on political issues that concern you.

Learn everything you can about producing quality cotton. Then produce it.

Encourage people of the news media to cover the positive efforts of the cotton industry. Help them see that the industry is working to solve the brown lung disease problem.

Basically, Leggett's attitude toward the cotton business is "get off your seat and onto your feet." He has always believed that the way to deal with your problems is to roll up your "britches legs" and wade right in.

Maybe that's why Mrs. Leggett is willing to get in the peanuts. And maybe she's pretty proud of the respect and admiration that Hoke has won wherever he has waded into farmers' problems.

MULTIPLE-USE MANAGEMENT OF FOREST LANDS MEANS CONSERVATION

Mr. HELMS. Mr. President, I am gratified that the Senate Committee on Agriculture, Nutrition, and Forestry voted last week to report S. 2861, the North Carolina Multiple-Use Forestry Management Act, sometimes referred to as the North Carolina Wilderness Act. This bill deserves timely consideration and enactment, and I commend it to the Senate.

On August 5, the Subcommittee on Environment, Soil Conservation, and Forestry held a hearing on the bill. I am surprised at the lack of public understanding concerning the management of our national forests. This was evidenced by a number of newspaper articles following the hearing which seemed to suggest that the alternative to wilderness is clearcutting the national forests. In all but a few of the newspaper articles there was a total lack of awareness of multiple-use management, which has been the guiding management philosophy of our national forests since 1905.

Furthermore, the question of multiple-use management of our national forests is not a partisan issue. Both Republicans and Democrats strongly endorse sound management of the resources of our national forests and have made clear their understanding that these resources will be enhanced by the final resolution of wilderness issues. The 1980 Democratic platform, for instance, says:

America's national forests contain a national treasure that provides recreation, wilderness, fish and wildlife, and timber products.

We reaffirm the Democratic Party's traditional support for multiple-use management to ensure the survival of these precious resources for this generation and generations to come.

We call for the speedy resolution by Congress of the Roadless Area Review and Evaluation, stimulated by this Administration, to determine which areas are best suited for wilderness and which should be released for timber harvest and multiple-use management.

The Senate Subcommittee on Environment, Soil Conservation, and Forestry also endorsed multiple-use management in a recent review paper on the Forest and Rangeland Renewable Resources Planning Act. The Subcommittee found that:

The role of the Federal Government in the National Forests is to protect and enhance the land, and to provide goods and services from those lands to the nation's people. . . . Accomplishment of the basic goal of land stewardship will also improve watersheds, fish and wildlife habitat, and enhance outdoor recreation opportunities available on the National Forests.

This, of course, is what Congress has directed the Forest Service to do. Multiple-use management is a tool which clearly has provided for the increased productivity of our national forests and is responsible for the increasing enhancement and protection of our forest resources.

We have a tremendous need for multiple-use management in the national forests of North Carolina, and because of our moist climate and the resulting rapid growth rates of our forests, management is essential for conservation purposes.

In an attempt to explain further the need for multiple-use management, as it applies to our Southeastern forests, I shall submit two articles to be printed in the RECORD at the conclusion of my remarks.

The first is a statement by one of the witnesses appearing at the hearing on

S. 2861, Mr. Hamilton C. Horton, an attorney from Winston-Salem, N.C., and a noted conservationist in our State.

The second article, "Silviculture of Eastern Hardwoods," is by David A. Marquis, who has served as the principal research silviculturist at the Northeastern Forest Experiment Station in Warren, Pa.

Both of these articles discuss the unique aspects of our eastern hardwood forests and explain the rationale behind the use of multiple-use management of our national forests.

Mr. President, I ask unanimous consent that these articles be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY HAMILTON C. HORTON, JR.

North Carolinians love the land of their state, perhaps more than most Americans. They want it preserved and passed down to their children and grandchildren unspoiled. And I think the evidence will show that they have not been laggards in the conservation of it.

We have more forest cover today in our state than we had in 1880. Our state parks have doubled and the acreage has increased in the past six years by a whopping 63.7 percent, compared to the National park increase of only 5.7 percent. We have more deer than when the white man came to our shores in 1588. And as Congress learned in the New River bill, Tarheels are willing to fight to keep their land and their waters from exploitation.

Why, then, given this desire to preserve their inheritance, did 82 percent of the general responses to RARE II in North Carolina oppose wilderness designation?

I suggest that perhaps it was because they realized that in our state, with national forests and national parks covering approximately 7 percent of the area, with private forests covering more than 60 percent of our land, with five components of the Wilderness system already, we had more pressing needs for our National Forest land.

Let me be specific. "Wilderness" is a fetching word—conjuring images of the forest primeval, of Walt Disney and Bambi. It is hard to argue against that sort of image.

But the actuality is that, far from preserving existing wilderness, RARE II in North Carolina is in the business of manufacturing wilderness. I say this because there is hardly an acre of our forest land that has not been logged over at least once. These previously cut over acres are candidates for RARE II designation today simply because the United States Forest Service has proven to be a good steward.

We would do well to remember that the Wilderness Preservation System is just one of the tools available to those of us interested in the environment. And its usefulness in particular cases is a question on which conservationists can honestly differ.

Because the evidence will show that there are definite tradeoffs involved: indeed, the evidence will show that such environmental values as habitat, wildlife conservation, reestablishment of near extinct species, can be jeopardized by "Wilderness" designation in North Carolina.

Largely this is because the Southeastern and Appalachian Forest regenerates itself more quickly than forests in most other sections of the nation, since we have the heaviest rainfall of any major section of the country, and our climate permits a longer season—more than 200 days—than the northern and far western forests.

This means that the many food plots and game openings which the Forest Service in cooperation with the State of North Carolina has established in any areas established for Wilderness, will immediately begin the inexorable process of closing up. In two or three years, they will disappear. With grave consequences to the wildlife population which requires them for food.

The tradeoff then, is between the value of having roadless acreages available for "Wilderness" experiences, and the values of habitat for our wildlife.

You see, under Forest Service regulations, once an area is declared "Wilderness," there can be no manipulation of habitat for wildlife. The most useful tool for deer and wild turkey conservation that we have found in North Carolina, for example, is the food plots and game openings I have mentioned, which provide browse and fruits and berries along the forest edge. We need more of these openings.

Let me dwell on just one concrete example. In the Wilson Creek watershed before RARE II, the Forest Service in cooperation with the North Carolina Wildlife Commission, had achieved a deer population of 1 per 40 to 50 acres. The turkey population was 1 per 500 acres.

Before RARE II there were 64 acres of openings for wildlife, and the plans were to create 52 additional game openings totaling 150 acres, to expand and protect the grape thickets and other food sources, and to improve the browse and forage available to deer by thinning the trees on 5,592 acres.

The result would have been a deer population of 1 per 25 to 30 acres. And a turkey population of 1 per 50 acres. This plan, then, in Wilson Creek would have increased the turkey population ten fold, and almost doubled the deer population.

But today, the largest part of the Wilson Creek watershed is frozen in Further Planning status under RARE II. More accurately, not frozen—but rather degenerating. Because nothing is more true than that nature does not stand still. Forest Service figures underscore this: In that watershed, deer food production, in thousands of pounds, was 15.8 million in 1973. If thinning of the forest had been permitted, the forest would be yielding 21.4 million pounds of deer food by 1983. But without thinning, by 1983 the forest food yield would be only 14.9 million pounds.

The point is that while the deer comeback under enlightened game management has been spectacular in Wilson Creek, we still want more. And our turkey population is still scarce. With the bulk of the Wilson Creek watershed now in further planning, the status quo there is being maintained. But those of us who want improved habitat and a real comeback for America's noblest bird, feel the status quo is not enough.

This bill by releasing the Lost Cove and Harper Creek RARE II areas in the Wilson Creek watershed would let North Carolina and the Forest Service get about the business of wildlife management, protection, and increase, and would permit those improved and more productive habitats for which plans had been finalized before RARE II.

The situation I have cited above is repeated throughout the RARE II areas which have not been designated for non-wilderness: it is not just that the game and wildlife openings would be obliterated if areas became "Wilderness," but that our plans for more and better wildlife habitat are at a standstill in both Wilderness-nominated and Further Planning areas.

But wildlife openings are not the only habitat improvement techniques that are jeopardized or stalemated as long as RARE II hangs fire in North Carolina.

Under Forest Service Regulations once an area is declared "Wilderness," there can be no thinning of the forests to increase browse for deer, no prescribed burning (another technique to foster the growth of food producing plants). There would be no protection of nuts or mast bearing trees.

Here let me insert that those familiar with the subject are unanimous that most birds and animals manifestly benefit from properly supervised, systematic harvesting of the timber of the national forests—something that, of course, is forbidden in Wilderness. Indeed, mature, virgin forests have been described as the "silent forests"—because of the absence of bird and animal life.

Moreover, under Forest Service regulations, once an area is declared wilderness, there can be no stocking of exotic species—that is to say non-native species—within its boundaries. Among other species, this would include the rainbow and brown trout—stocked by our state fish hatcheries under a program more than 50 years in operation.

Harper's Creek and Lost Cove Creek—now held under Further Planning—are considered the best trout waters in North Carolina.

But should these ultimately become Wilderness, under the terms of Forest Service regulations it would seem that only the Eastern Brook Trout—our only native trout species—would be permitted. While eagerly sought as game fish, the average size of the brook trout is only about 8" in length and a mere 4 oz. in weight.

The rainbow and brown trout, which would be excluded after half a century, average twice the size of the brook trout in streams, and in lakes and pools can weigh as much as 8 to 12 pounds.

I have tried to make the point that there are serious environmental tradeoffs involved with wholesale "Wilderness" acreage in our state—that the acknowledged positive values of "Wilderness" must be considered in balance with the negative values of harm to our longstanding and increasingly successful efforts to restore and maintain habitat for wildlife and plants.

The Forest Service has in the past been able to do this—using the Multiple Use approach. While producing regular harvests of timber, they have nurtured the golden eagle habitat in the Shining Rock area through controlled burning, have actively fostered growth of food trees and plants, have protected endangered and threatened species from being engulfed by the rampant growth of our forests—all acts which would be forbidden in "Wilderness" areas.

Many of us have been troubled by the unwillingness of certain national environmental groups to consider the adverse tradeoffs involved in Wilderness Designation in North Carolina. The only explanation I can make is that they are thinking of our forests as similar to the northern and western National Forests they are more familiar with—forests which do not regenerate as fast as ours, and where game openings often occur naturally.

Down in North Carolina, we have to keep cutting back the forests just to stay abreast. Indeed, decades of cooperative efforts of our State and Federal government can be obliterated within two or three years of neglect.

Certainly the Forest Service has conceded in its Southern Applachian and Atlantic Coast States Draft Environmental Statement that:

"Timber stands allowed to mature become choice environments for insects and disease buildup which could spread beyond the wilderness boundaries."[1]

"The opportunity for a catastrophic fire because of heavy fuel buildup will be greater in wilderness areas than in a managed forest."[2]

"Species requiring early stages of vegetative succession for a part of their habitat

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Footnotes at end of article.

UMI

such as deer, grouse and turkey, rabbit and many song birds would decline."[2]

"Where fisheries are dependent on stocking . . . to maintain fishable populations, and stocking depends on motorized access, fish populations could decline."[3]

"Some increase in hunting of small animals such as squirrels can be expected, but big game hunting will probably decline."[4]

"Roadless areas currently used by individuals for hunting, firewood gathering or fishing, where vehicle use is necessary will become unavailable if the roadless area is designated wilderness. Recreational use in roadless areas by handicapped people will virtually be eliminated."[5]

So the approach taken by S. 2861 seems to be extremely wise: the two areas designated wilderness are areas that are deserving: Pocosin is a unique ecosystem which simply must be preserved. About 90 percent has never been disturbed: It would qualify as wilderness in the true sense. The Birkhead Mountains deserve the status for another reason: although that area was operated as an active plantation as recently as 1933, and has been lumbered as recently as 1973, it has the advantage of being the only potential wilderness in the piedmont plateau of the entire Southeast.

Of the areas which are to be considered by Congress at a later time under S. 2861, the Linville Gorge Extensions, Shining Rock Extension, and the Ellicott Rock Extension add valuable buffer land to existing, genuine "Wilderness," while the Craggy Mountain Wilderness Study Area and Craggy Mountain Extension have been mandated by the Congress for Wilderness consideration under the Eastern Wilderness Act. I am confident that when the Congress does have adequate time to consider these tracts, they will be found worthy of inclusion in the Wilderness Preservation System.

The remainder of the RARE II areas now proposed for "Wilderness" or retained in Further Planning status, would be released for Multiple Use—which would permit the Forest Service to protect it from fire and infestation, and improve habitat for fish and game, and protect endangered and threatened species as they have in the past.

Finally, let me urge this committee not to approach the evaluations made by the Forest Service of the individual RARE II tracts with undue reverence.

By this I mean that the original data base cranked into the RARE II computers was assembled in a hurried, almost frantic manner: the Forest Service in North Carolina had less than one month to complete the Wilderness Attribute Rating forms, the information from which was in turn inserted into the computer to form a part of the data base from which the entire RARE II evaluation system was extrapolated. The other major insertion into the data base was an evaluation of the mineral and energy potential of each nominated area—something we understand was done largely by telephone conference calls, with no input from local sources.

Thus, in North Carolina, 31 areas comprising more than 200,000 acres had to be evaluated by the hard-pressed Forest Service between November 1977 and the first of January 1978. The actual computer forms had to be completed for WARS in less than a month. The most conscientious efforts could not give an adequate analysis of the tracts in question under these time constraints. Indeed, in North Carolina there was no on-site geological evaluation, archaeological study, biological study, or even endangered or threatened species census: the crucial data base came from such information as was already available in Forest Service files and in the memory of Forest Service employees. There was no input at this stage from the State of North Carolina or from the academic community: they were not even consulted until after the Draft Environmental Statement was already published. And by this time the computer data base—full of inadequate, even erroneous, guesswork, recollection, and outdated statistics—had been established and was destine to influence the printout each time the computer was employed.

In conclusion, the passage of S. 2861 will be greeted by most North Carolinians as a sensitive and balanced approach to the competing values of habitat and wilderness experience, and will permit our people, in cooperation with the United States Forest Service to resume their long time and sucessful partnership in providing balanced and varied recreation to our people and enhanced habitat for our wildlife of all types.

FOOTNOTES

[1] Swanquarter, Ellicott Rock, Joyce Kilmer-Slickrock, Linville Gorge and Shining Rock.

[2] Page 46, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

[3] Page 47, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

[4] Page 50, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

[5] Page 53, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

SILVICULTURE OF EASTERN HARDWOODS

(By David A. Marquis[1])

EXTEND AND LOCATION OF EASTERN HARDWOOD FORESTS

Deciduous hardwood forests cover some 235 million acres in the Eastern United States (U.S. Forest Service, 1973); this represents nearly half of the forested area in the entire country. Eastern hardwood acreage on National Forest lands totals about 17 million acres or nearly 20 percent of the commercial forest land in the National Forest System.

There are about five major types of eastern hardwood forests. The northern hardwood, or beech—birch—maple type, occurs throughout the northern portions of the East, and is especially important in the Lake States and New England. The aspen—paper birch type occurs throughout the same region but is especially prevalent in the Lake States. The Allegheny and Appalachian mixed hardwood types occur along the Appalachian Mountains and on the Allegheny and Cumberland Plateaus.

These are highly productive mixtures of both northern and southern or central species, with considerable variation from place to place in actual species composition. The oak—hickory and oak—pine types are the most extensive forest types in the United States; they occur throughout the East, but reach best development in the Central and Southern States.

Bottomland hardwoods occur in the stream bottoms of the South and Southeast and include both tupelo—cypress mixtures in the swamps and mixed oak—gum—hardwoods in the intermittently flooded bottoms or stream terraces.

Most eastern hardwood forests originated from old farms, after fires, or after heavy cutting during the era of railroad logging in the Eastern United States—about 1880–1930. Many stands were commercially clearcut over large areas during this time, and the resulting second-growth is essentially even-aged. Furthermore, the distribution of age-classes is highly imbalanced—most stands are 50 to 90 years old, and there are very few stands in the younger age classes.

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There are considerable acreages of hardwoods that contain several age classes, the result of partial cuttings of one sort or another that provided for regeneration of part of the stand, but did not completely remove the overstory. There is much variation in the degree of stocking and quality of such stands.

Some existing hardwood types originally contained considerable quantities of conifers. Examples are the northern hardwoods, and Allegheny and Appalachian hardwoods where hemlock, white pine, and, in northern areas, red spruce and balsam fir were once prevalent. Some oak—hickory and oak—pine stands also had larger proportions of loblolly, shortleaf, or pitch pine than they now contain. In many cases, past cutting practices have eliminated or reduced these conifer components from their original levels.

EASTERN HARDWOODS—A COMPLEX BIOLOGICAL COMMUNITY

The eastern hardwoods are among the most complex biological communities on earth. There are well over a hundred species of trees that have commercial timber value, and many additional species of trees and shrubs of value to wildlife. In the mixed bottomland type alone there are over 70 commercial tree species. Diversity is equally great among the lesser plants and among the animal component of the ecosystem. No other forest types in the United States exceed the hardwoods in variety of game animals or variety of bird species, for example.

Differences in growth rate, longevity, and value for timber or wildlife add greatly to the complexity of management in mixed stands of eastern hardwoods. Even in stands where all the trees are the same age, it may require as much as 100 years longer for the slow-growing shade-tolerant species to mature than it does for the fast-growing intolerants. This often produces stands that are not only a mixture of species, but a mixture of sizes, with the crowns of the various species stratified into horizontal layers (Smith 1971). Such stands are often mistaken for all-aged stands, even though their origin and proper management is quite different from that of a true all-aged forest.

The different species also have markedly different values. Some are extremely valuable to wildlife—aspen is an outstanding example, as are the mast producers such as the oaks, cherries, and hickories. Characteristics of the wood—its strength, density, fiber length, color, figure (pattern), durability and workability—determine its value for timber products.

Prime examples of the great differences in value that exist are such species as black walnut, black cherry, yellow birch, or red oak where veneer-quality logs may bring prices 2 to 10 times higher than comparable logs of other species. And many of the hardwoods are used for specialty products where substitution of another species is not always possible or economically feasible.

For example, there is no wood equal to ash for the production of tool handles and baseball bats, none equal to birch for turning, to maple or oak for flooring, or to cherry or walnut for certain styles of furniture.

ECOLOGICAL CHARACTERISTICS OF EASTERN HARDWOOD SPECIES

Each of the many species of eastern hardwood trees has evolved a unique set of characteristics that adapt it to establishment and growth under particular forest conditions. In terms of natural or ecological succession, the climax species are those adopted to establishment in growing-space vacancies created by relatively minor disturbances, such as the death or removal of a single large tree.

Climax species such as beech and sugar maple are often characterized by production of modest quantities of large seed that is

dispersed only short distances, by seedlings with the ability to survive and grow under the shade of a forest canopy, by slow growth rate and long life span. At the other end of the scale, pioneer species are those adapted to establishment in areas that have been severely or extensively disturbed by such events as lethal fires, extensive windthrow, tree clearcutting, or agricultural cultivation.

Pioneer species such as aspen, cottonwood, and paper birch are often characterized by production of prodigious quantities of small seed that is disseminated over long distances, by seedlings resistant to exposure and adapted to very rapid growth in full sunlight. Between these extremes are many species adopted to establishment in growing space vacancies of intermediate size or severity.

Climax or shade-tolerant hardwoods include American beech and sugar maple. Pioneer or shade-intolerant species include the aspens, cottonwoods and paper birch. Other intolerants include a large group of species that are long-lived, and thus require severe, but infrequent, disturbances for perpetuation. These are among the most valuable tree species, for they grow rapidly to large size. They include yellow-poplar, black cherry, black walnut, white ash, red oak, and others. Some intermediate species include the hickories, red maple, yellow birch, and the white oaks (Smith 1973, U.S. Forest Service 1965). In forest types where truly tolerant species do not occur, intermediates like the hickories, red maple, and the white oaks often fill the tolerant's ecological niche, forming a sort of subclimax association.

FOREST CUTTING PRACTICES FOR EASTERN HARDWOODS

Forest cutting practices in the eastern hardwoods are based upon the ecological characteristics of the various species. The objective is to redirect the productive capacity of the forest to optimize some combination of benefits. Since trees naturally tend to occupy all of the available growing space, forest culture almost always involves the removal of some or all of the trees in ways that simulate or accelerate the kinds of natural disturbance that will produce the desired growth or regeneration.

Trees removed are usually harvested and their wood converted into timber products, but manipulation of the forest ecosystem for reasons of esthetics, recreation, wildlife, water, or grazing also usually requires the removal of trees. Thus, forest cutting is the primary tool of silviculture, whether or not the wood removed has value for timber.

Regeneration cutting methods all have the same objective—that of obtaining tree reproduction. And all employ the same technique—that of removing some of the existing vegetation to make available some light, moisture, and nutrients that are excess to the needs of the remaining trees so that new trees can get started. The several regeneration methods differ primarily in the degree of cutting, or the amount of existing vegetation that is removed. Each cutting method is really an attempt to simulate some natural disturbance, to create the environmental condition conducive to establishment of the particular species desired.

Single tree selection cutting involves the cutting of selected individual trees creating stands of mixed sizes or ages. In simulates natural disturbances such as might result from the periodic death of scattered large trees in a climax forest. Since regeneration is established under the partial shade of the overstory, and new seedlings must survive for long periods of time under this shade, single tree selection cutting is useful as a regeneration cutting method primarily for species that are shade tolerant.

Beech and sugar maple are the only two commercially important hardwood timber species that are well adapted to single tree selection cutting. These two are major components of the northern hardwood forest type, and also occur on some sites in the Allegheny and Appalachian mixed hardwood types.

When single tree selection cutting is applied to stands containing intolerant species, the species composition will gradually change as the intolerants are removed and replaced by more tolerant species (Trimble 1965, 1970). Complete stand conversion may require 50 to several hundred years, but stands cut repeatedly by single tree selection will eventually be dominated by a few tolerant species.

Results of single tree selection cutting in forest types that do not contain desirable tolerant species are not entirely predictable. In some cases, intermediate species such as red maple, white oaks, and hickories increase in predominance and may form a subclimax association, but it is not certain that such associations can be managed to produce high yields over extended periods of time. Such species are often less desirable than the intolerants they replace. And on many sites, particularly in the central and southern types, brush species may be increased rather than trees.

Single tree selection cutting is recommended for regeneration only in the northern hardwood type and in selected parts of the Allegheny and Appalachian mixed hardwood types where sugar maple and beech are found. In these types, it is recommended only where the objectives do not include perpetuation of intolerant and intermediate species.

A major advantage of single tree selection cutting is that it leaves the forest with a more natural or undisturbed appearance than any other regeneration cutting method. It is therefore especially suitable in areas where esthetics or recreational values are highest. Single tree selection is generally less favorable than water yield or wildlife habitat diversity are desired.

Group selection cutting involves the removal of trees in small groups of a few to many trees. Single tree selection is usually practiced in the areas between openings, as well. There is not complete agreement as to the maximum area that should be considered a group, but it is usually less than an acre, occasionally up to several acres. Perhaps clarity is best if the term "group" is used only for openings of less than about ½ acre, and the term "patch" is used for openings of about ½ to 2 acres in which all trees down to a small size are removed (Leak and Filip, 1975).

Group or patch selection cuttings simulate moderate disturbances in natural stands and hence are most appropriate for species of intermediate shade tolerance. The method has considerable latitude, however; tolerants also regenerate well under group selection and the method can be adapted for some intolerant species by using patch selection with the larger sized openings. Aspen—paper birch in the North, and cottonwood and willow in the South are perhaps the major examples for which some variation of group or patch selection could not be used to perpetuate the type.

Most others will reproduce in patch openings, although not necessarily in the proportions or with the efficiency that is possible using other cutting methods. In small patch or group openings, intolerants may reproduce, only to diminish in importance as a result of shading by the border trees. For example, patch cuttings of 1/10 to 6/10 acre in New England were found to contain only four percent intolerants after 15 years, in contrast to 5-acre clearcuts which contained thirty-eight percent intolerants (Leak and Wilson, 1958).

Just as the ability to reproduce intermediate and intolerant species by group or patch selection varies with size of opening used, so does the effect vary on esthetics and wildlife habitat. Small group openings may create a forest that is very nearly as pleasing to look at as one created through single tree selection cutting and may increase the proportion of some intermediate species; but these small openings provide only minor increases in habitat diversity and in the proportion of intolerant species regenerated.

Larger patch cuttings, on the other hand, can provide considerable increases in habitat diversity and in the proportion of intermediate and even intolerant species regenerated. But these patch cuttings are really small clearcuttings, and they may be just as unattractive as larger clearcuttings. Furthermore, even-aged regulation of areas by age class becomes much more efficient and effective than uneven-aged regulation as patch size gets larger. And loss of quality on border trees due to epicormic sprouting can be an important problem with patch cuttings (Smith 1965).

BECK AGAINST COMMUNICATIONS WORKERS OF AMERICA PROVIDES EVIDENCE OF EXTENT OF UNION'S USE OF COMPULSORY UNION DUES FOR POLITICAL PURPOSES

Mr. HELMS. Mr. President, use of compulsory union dues for political purposes is one of the most blatant abuses of the American political system imaginable. Congress allows big labor to collect millions of dollars in dues each year from workers who have no choice but to pay or lose their jobs. The union bosses then use a vast amount of this money to support political candidates and causes of their own choosing.

It does not matter whether the dues-paying employees happen to agree with the political choices of the union bosses. The workers have no say-so. I heard a prominent union leader acknowledge on television the other day that a great many of the members of his union favor Governor Reagan for President. No matter. The leadership of the union does not favor Reagan; therefore, the union is endorsing President Carter.

The extent of big labor's use of compulsory union dues for political purposes has always been a mystery because Federal election laws do not require the unions to report the so-called "in kind" contributions compulsory dues money is used to fund. But a recent ruling by a special master appointed by the U.S. District Court for Maryland in the case of Beck against Communications Workers of America gives some indication of how the union leaders spend the untold millions of dollars they collect.

The master ordered the Communications Workers of America to refund 81 percent of the agency shop fees it had collected from nonunion employees because the union used the money for political and other purposes unrelated to collective bargaining.

In 1976, Harry Beck, 18 of his fellow nonunion employees of the Chesapeake & Potomac Telephone Co., and one nonunion employee of American Telephone & Telegraph filed suit against the Communications Workers of America. Mr. Beck and his coworkers objected to the union's collection of agency shop fees for purposes not directly related to

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collective bargaining, contract administration, and grievance adjustment.

In a landmark decision released in March 1979, the court held that the union's use of agency fees for purposes unrelated to collective bargaining violated the first amendment rights of employees who object. The court ordered the union to refund to the nonunion employees the percentage of its budget not related to collective bargaining. A special master was appointed to take evidence and compute the percentage.

The union alleged that more than 86 percent of the agency fees collected were used for collective bargaining, contract administration, and grievance adjustment. But the special master found that only 19 percent of the agency fees collected were used for these permissible purposes. The master found that the union spent 81 percent of the fees for impermissible purposes, such as support of political candidates, legislative lobbying, charitable and social activities, and organizing drives.

The master ruled that employees have a first amendment right to a full refund of dues improperly collected, and ordered the union to refund 81 percent of the fees.

Mr. Beck and his coworkers had paid agency shop fees averaging $185 per year, so the average refund was $150.

Mr. President, use of compulsory union dues for political purposes is the greatest threat to the political freedom of the American voter that I know of. Harry Beck is only one of millions of American workers who object to having to finance political candidates and causes they do not otherwise support.

A recent poll by Opinion Research Corp. showed that 71 percent of the American people—including 65 percent of the Nation's union members—are opposed to the use of union dues in political campaigns.

It is time to call a halt to the excessive political power now being exercised by big labor. As my colleagues know, I have introduced a bill, S. 2325, that would prohibit the use of compulsory union dues for political purposes.

The union bosses have already declared that this legislation is "antiunion." It is no such thing. It proposes only that an element of fairness be restored to the political process.

I am not opposed to labor unions. But I feel that no American ought to be forced to join a union in order to get a job, or to keep one. Nor do I believe that any worker ought to be forced to pay dues to support political activities he or she opposes.

We live in an era when the inordinate political clout of a few labor union bosses has almost become an accepted fact of life. I do not feel that any segment of society ought to be conceded the right to dictate the political process.

Mr. President, let us not ignore the message of Beck against Communications Workers of America. Let us swiftly move to enact legislation to preserve the right of all Americans to participate voluntarily in the political process. Let us end the use of compulsory union dues for political purposes.

A LOOK AT "SUPERFUND"

Mr. HELMS. Mr. President, the Committee on Environment and Public Works has recently completed work on the Environmental Emergency Response Act, better known as the "superfund bill." I commend the committee for attempting the most difficult and serious task of dealing with hazardous waste problems. The issues are enormously complex and involve significant value judgments on the part of committee members.

However, I perceive that in reporting out S. 1480, the committee has erred on the side of overregulating the problem. This legislation would take us far beyond what many see as the real need for a bill narrowly targeted at the issue of inactive waste sites. Instead, it would make sweeping changes in existing common law, with the consequences of such changes completely unknown, and place an unnecessary burden on anyone who handles toxic chemicals—from the small farmer and the small businessman to the large chemical manufacturer and utility company.

S. 1480 would set aside hundreds of years of tort-liability law and substitute a new Federal "cause of action" coupled with a strict liability provision. Under the terms of the legislation, any person who is identified as having contributed in any significant degree to a hazardous waste release could be held responsible for the entire amount of the cleanup and damages. In addition, the bill would strip defendants of defenses they now have, such as third party negligence or intentional acts of a third party.

Mr. President, the effect of such a doctrine is clear. Take, for example, a small farmer who is driving down the highway with a container of pesticides to apply to his fields. A reckless driver comes whipping along in a Honda, loses control and plows the farmer right off the road, spewing pesticides right and left. Years later, someone else, who had gotten out of his own car to watch all the commotion, develops cancer. He remembers the pesticide accident and decides to sue the farmer. Now, of course, the farmer did not do anything wrong. And under current law, the burden falls on the cancer victim, not the farmer, to show that the cancer is indeed attributable to some act of the farmer. But S. 1480 would change that. Suddenly the burden of proof would fall on the farmer to prove that he was not responsible for injuries from the accident. In other words, the farmer could find himself facing a barrage of suits in which he is being held strictly liable for all the damages, regardless of whether or not he had any control over the situation.

The illusion has been created that agricultural activities have been exempted from S. 1480. Indeed, field application of pesticides and fertilizers are exempted. But even though "field applications" have been excluded from the fund and liability provisions, this is a very narrow exemption. As the committee report points out, anyone who spills, dumps, disposes of or leaks pesticides, whether intentionally or accidentally, legally or illegally, could be liable for all damage and injury.

It is because of such impact on the agriculture community that, on July 14, the American Farm Bureau, the Nation's largest farm organization, came out in public opposition to this legislation. In addition, groups ranging from the National Cotton Council to the Agricultural Chemical Association oppose S. 1480.

Mr. President, I have other concerns about this legislation. Problems inherent in the new liability provisions are compounded by the definition of hazardous substance. S. 1480 defines "hazardous substance" as:

(G) any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimulation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

Under this definition, literally any substance—even common table salt—may be considered a "hazardous substance" if spilled into your local creek.

The new liability provisions for medical expenses would be based on evidence from the claimant that first, he was exposed to a hazardous substance for which the defendant was responsible; second, the exposure was in a quantity or for a duration such as to create a reasonable likelihood that it was sufficient to cause or significantly contribute to the injury; and third, a reasonable likelihood exists that the substance causes or significantly contributes to the class or type of injury which is the subject of the claim. The proof of the existence of these factors would create a presumption in the plaintiff's favor. This would amount to a major change in existing law.

My suspicions about this bill have been confirmed by the statement of a Justice Department lawyer who helped develop and would enforce this legislation: "Government is perfectly prepared to punish the innocent for the sins of the guilty."

Mr. President, the issues involved here are highly complex. Far more information than we now have is required before we can adopt such sweeping legislation as S. 1480. Let us take a look and consider more limited legislation directed at the real problem—the abandoned or orphaned waste sites.

QUESTIONS AND ANSWERS ON PROPOSED URANIUM SHIPMENTS TO INDIA

Mr. PERCY. Mr. President, Senator GLENN on July 25 raised a number of key questions regarding the proposed shipments of uranium to India for India's Tarapur reactors. I read Senator GLENN's statement at the time with great interest because of my own concerns about the nonproliferation implications of these sales and also because of my high regard for the seriousness and dedication with which Senator GLENN addresses any issue before this body.

As is the usual case, Senator GLENN

raised some of the important questions which we all must address in making a decision on the Tarapur shipments. He opposes the shipments and answered the questions from his perspective. I thought it would be useful to have the State Department, as a proponent of the shipments, answer the very same questions from a department perspective.

We will soon be considering this controversial question in the Senate. The Senate Foreign Relations Committee is scheduled to take it up on September 10. I would like to share the answers I received from the State Department with my colleagues as part of our overall effort to air all arguments before a final decision must be made.

I ask unanimous consent that the questions and answers be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUESTIONS AND ANSWERS ON PROPOSED URANIUM SHIPMENTS TO INDIA

1. IMPORTANCE OF TARAPUR DECISION

Q. Why are these particular shipments of such importance?

A. These fuel exports, for two shipments of approximately 19 tons of enriched uranium each, carry out the U.S. commitment to India made in 1963 to provide the fuel for the Tarapur reactors, which were built with U.S. assistance.

Should the U.S. fail to provide this fuel for Tarapur, India has made clear that it may consider itself relieved of any obligations under the 1963 agreement for cooperation. If India were to do so, we could lose four important non-proliferation controls under the agreement. These include:

(a) IAEA safeguards on the U.S. fuel provided for Tarapur, including over 200 tons of spent fuel;

(b) Indian commitments to use only U.S. fuel in the Tarapur power reactors—loss of this commitment could result in the loss of what is essentially a non-explosive-use pledge and open the door to the use of Soviet-supplied fuel;

(c) U.S. consent rights over the reprocessing of that fuel and its subsequent use at Tarapur or elsewhere as India may desire—U.S. policies against the recycle of plutonium in current generation reactors, such as the Tarapur reactors, have been a central tenet of the Administration's nonproliferation efforts; and

(d) An obligation on the part of India not to transfer Tarapur fuel or any of its products to other countries without U.S. approval.

In addition, these shipments are important because the Tarapur issue has come to be a source of discord in U.S.-Indian relations. By dealing positively with the present two shipments, we will remove this source of discord and manifest a willingness to deal fairly and equitably with a state which occupies a position of central importance in South and South-West Asia. With the Soviet invasion of Afghanistan, relations between the U.S. and India are of great importance to the stability and the security of this critical region.

The Nuclear Non-Proliferation Act (NNPA) provides that countries receiving U.S. nuclear exports would have to have International Atomic Energy Agency (IAEA) safeguards on all their peaceful nuclear activities for continued U.S. nuclear supply. Both the Executive Branch and the Legislative Branch agreed on the importance of this full-scope safeguards criterion. But the Act also provides that this criterion does not apply during a grace period—license applications that were submitted before September 10, 1979, where the first export would occur before March 10, 1980, are not affected. One of the pending licenses was submitted in September 1978, and the second in August 1979. In accordance with a schedule worked out by U.S. and Indian experts, both license applications envisaged that the fuel shipments would have occurred before March 10, 1980.

The shipments were delayed by Executive Branch and NRC consideration of the licenses and by questions posed to the Executive Branch about the future policy of the Government of India and its nuclear program. Answers to these questions were delayed because India passed through a period of caretaker government during this time. It was not until January 1980, with the election with the election of the present government led by Mrs. Gandhi, that the NRC questions could be addressed on a conclusive basis. Thus the shipments of fuel that were expected to occur before March 10 could not take place because of delays in the U.S. Government. Thus, the Executive Branch believes these shipments must be treated as falling within the grace period. They do not therefore create a precedent for exempting any future license applications from the full-scope safeguards export criterion.

2. THE FULL-SCOPE SAFEGUARDS CRITERION

Q. Contrary to the State Department assertion, was the NRC correct in its legal interpretation that the NNPA provision on full-scope safeguards applied to these shipments?

A. The State Department's legal view is that licenses which were applied for within the 18-month period set forth in the law for shipments which would have occurred within 24 months are within the grace period during which the full-scope safeguards export criterion does not apply. While it is possible to construe the statute more narrowly, as the NRC's Office of the General Counsel had done, we feel that such a construction does not deal with a number of facts which are central to the provision of law and see no reason to adopt the narrower construction especially when it is contrary to United States policy interests. This narrower construction would essentially permit delay within the United States Government to defeat exports which could otherwise be made. Moreover, as a matter of law, there is no question that the President may authorize these exports if he finds that withholding them would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The "grace period" issue is basically one as to how the President's action with regard to these two fuel shipments should be characterized—as unexceptional because the licenses fell within the grace period or as an exception.

3. IMPACT ON THE NPT AND ON THE ADOPTION OF FULL-SCOPE SAFEGUARDS BY OTHER NATIONS

Q. What will be the impact on other nations if the US sends this fuel at this time?

A. The impact must be looked at in terms of the effect it has had on the states that are parties to the Nuclear Non-Proliferation Treaty (NPT) and those who are not, as well as on other nuclear supplier countries.

(a) *NPT Parties.* We see no discernable impact on the NPT or on the prospects for obtaining additional adherence to the NPT. In point of fact, the 111 non-nuclear weapon states party to the NPT have already accepted full-scope safeguards. However, approval of these two licenses does not diminish US support for full-scope safeguards as a condition of supply. As mentioned earlier, these two license applications fall within the grace period allowed by the NNPA before the fullscope safeguards requirement became effective.

(b) *NPT Non-Parties.* The attitudes of states that are not parties to the NPT (or the Treaty of Tlatelolco) but which are recipients of US exports or which might be such recipients—such as Brazil, Argentina, Spain and others—should be looked at carefully. With some NPT non-parties—Israel and Pakistan—the US has no pending exports and is unlikely to have any without significant changes in the situation. No negotiations are under way with such states. With states such as Argentina, Brazil and Spain with which we are negotiating to receive assurance that the full-scope safeguards criterion is met, these negotiations have continued without interruption or without being affected by the decision on Tarapur.

(c) *Nuclear Suppliers.* With respect to those nuclear supplier nations that already requires full-scope safeguards as a condition of export—such as Australia and Canada—we have seen no wavering in their commitment to this position. With respect to others—such as France and West Germany—whom we are seeking to persuade to move in this direction, we have been told that they support our decision and consider it appropriate under the circumstances. We have no indication that they have retreated or retrenched in their own attitudes toward full-scope safeguards as a result of the President's Tarapur decision. Moreover, those who have expressed an intention to re-examine the possibility of supporting a requirement for full-scope safeguards as a condition for new supply commitments have not altered this position. Requiring full-scope safeguards for new supply commitments of course differs markedly from the US requirement in the NNPA for full-scope safeguards as a retroactive condition for the continuation of cooperation under existing agreements which are already in effect.

4. SIGNIFICANCE OF SAFEGUARDS

Q. Why are full-scope safeguards of significance for India? Does India have significant indigenous unsafeguarded facilities?

A. India does have significant unsafeguarded facilities. These include both existing research facilities and power facilities under construction. The absence of IAEA safeguards on these facilities means that there is no independent means to verify that all Indian nuclear facilities are solely concerned with non-explosive uses. The lack of such an assurance has contributed to doubts about India's nuclear intentions in South Asia.

We have negotiated for several years in an attempt to obtain Indian acceptance of safeguards on all its nuclear activities. In essence the Indian position has been, and remains, that India is not prepared to accept such safeguards until all states, including the nuclear-weapons-states accept them.

5. INDIAN ATTITUDE ON SAFEGUARDS

Q. Two years ago, when fuel licenses for Tarapur were being reviewed by Congress, the State Department argued that sending the exports would be an inducement to the Indians to cooperate on the safeguards questions. The exports were sent. What has been the Indian attitude on this issue since then?

A. At times over the 2 years of negotiations it appeared that some movement was possible. With the fall of the Desai Government, the installation of the caretaker government, and the advent of Mrs. Gandhi's Government there has been no sign of real give in the Indian opposition to full-scope safeguards and we are not optimistic that India will accept full-scope safeguards at any time in the foreseeable future.

The possibility that continuing discussions with India on this question will result in Indian acceptance of full-scope safeguards is slight. However, other progress on

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issues of non-proliferation interest may be more likely. It is possible to predict that, should the US fail to provide fuel for Tarapur, India will take the position that it regards the 1963 agreement as no longer in effect. If India were to take that step, as noted previously, we could lose four important nuclear non-proliferation controls that apply to cooperation under the present agreement. Failure to provide for the present two licenses will almost certainly shut off the possibility of a further dialogue with India on follow-up safeguards.

6. U.S.-INDIA OBLIGATIONS

Q. What are major U.S. and Indian obligations under the U.S.-India agreement for cooperation and fuel contract relevant to this case?

A. Our 1963 agreement for cooperation with India provides that the U.S. will sell to India all requirements for enriched uranium for use as fuel at the Tarapur reactors until 1993. The fuel is to be supplied in accordance with a contract. The contract makes clear that it is subject in all respects to the 1963 agreement, which controls in the case of incompatability.

In 1971, the contract was amended to provide for a change in U.S. law which permitted fuel to be owned while in the United States by a purchasing country rather than by the U.S. Government. That contract amendment provided that the purchaser would acquire title to the fuel in the U.S. and, with respect to that fuel, would obtain licenses for the shipment of the fuel and comply with all applicable United States laws.

The contract, as amended, continues to make clear in several places that it is not intended to affect the obligation to supply under the agreement for cooperation. In view of these provisions, it is doubtful that the Government of India would concur that it had agreed to comply with any future US law which could affect the obligation to supply fuel under the agreement of cooperation nor was such the intention of the US Government.

Subsequently, U.S. and Indian experts worked out a schedule for the provision of fuel to India. The schedule takes into account the fact that U.S.-supplied enriched fuel for the Tarapur reactors must first be fabricated at the Indian fuel fabrication facility at Hyderabad. This is the only existing fuel fabrication facility in the world which can manufacture fuel for Tarapur. U.S. low-enriched uranium must be provided about a year in advance in order to permit time to manufacture the fuel elements for the reactors. The schedule for supply is based on that fact, and the two pending shipments were applied for on the basis of this schedule.

India's key obligations under the agreement are summarized in Question 1.

7. POSSIBLE INDIAN LEGAL CLAIM

Q. Does India have a strong legal claim that rejection of the pending exports violates the U.S. obligation to supply the Tarapur reactors and that India is, therefore, released from her obligations under the agreement?

A. We do not wish to comment on the relative merits of the legal cases on both sides, and whether failure to supply the fuel in question would entitle India to consider itself released from its obligations under the 1963 U.S.-India agreement.

We note, however, that the Indian Government has made clear to the U.S. its view that the continuous and timely supply of fresh fuel is an important obligation. The more germane question is what India would do should it consider the agreement to have been breached by the U.S. Since the reactors, the spent fuel, and the reprocessing plant are all located on Indian territory, and the problem of electricity supply vitally affects India, fuel supply is a central issue for India. If we cease to supply, it is quite conceivable that India would claim the right to terminate safeguards, reprocess U.S.-origin spent fuel, retransfer the fuel to other countries as it might wish, use the fuel in whatever program it might decide was in its interest, and seek an alternative supplier such as the Soviet Union. These are actions which could be taken by India within its own territory, no matter what is the U.S. view of the legal situation.

8. POSSIBLE INDIAN ACTIONS AND CONSEQUENCES

Q. Despite the U.S. legal position, what would be the practical consequences if India violated the agreement by reprocessing without our permission, 200 tons of U.S.-origin spent fuel stored at Tarapur and/or removed safeguards from the Tarapur facility?

A. The removal of safeguards would be the first time that any country would have removed IAEA safeguards from nuclear fuel, without substitution or subjecting it to other IAEA safeguards.

It would be condemned by many states world-wide, and be a serious blow to the IAEA safeguards system and the need for strict observance of that system. This world seriously injure nuclear non-proliferation objectives.

With respect to the material at Tarapur, of the 200 or so tons, approximately one percent consists of plutonium. This plutonium would add a significant amount to the plutonium on hand or likely to be on hand in India. Moreover, it is likely that India would choose to recycle this plutonium in the Tarapur reactors. It would take approximately three years to construct a mixed-oxide fuel fabrication facility to make the mixed oxide fuel elements to recycle that plutonium. However, Indian willingness to commit itself to do so would be a serious demonstration of intent and have an adverse impact on U.S. interest in limiting plutonium recycle in thermal reactors.

Such steps by India would have the most serious consequences for non-proliferation.

The grace period was introduced in the law to provide for an orderly transition. We believe that this transition period was carefully worked out through cooperation by both the Congress and the Executive Branch to deal with countries such as India, and that the present shipments fall within that transition period.

9. CONTINUING DIALOGUE

Q. Will a cutoff cause irreparable damage to U.S.-Indian relations, thus making a continuing non-proliferation dialogue with India impossible, as claimed by the State Department?

A. It is difficult to see rationally how, in the absence of continuing nuclear cooperation, there is likely to be a serious dialogue with the Government of India on the issue of full-scope safeguards or other non-proliferation matters. For some time, the Tarapur issue has troubled U.S. relations with India and particularly in the area of nuclear cooperation. We believe that a break will have a negative effect on our overall relationship and make it difficult to discuss nuclear issues with India including concerns about nuclear stability in the subcontinent and the Pakistan nuclear program.

10. "UNRELIABLE SUPPLIER" ARGUMENTS

Q. Will a cutoff to India reinforce the image of the U.S. as an "unreliable supplier", as implied by the State Department?

A. Yes. Many countries have told us they view our position on the Indian case as significant in determining whether the U.S. will continue to be a reliable supplier to other nations. Senator Glenn argues that our problems in the area of reliable supply have to do with apparent inconsistencies in our non-proliferation policy. In that light, it is difficult to see how the charge of inconsistency can be rebutted based on our failure to approve fuel shipments which we undertook to deliver to India for a 30-year period under the 1963 agreement and which are permitted by the NNPA.

11. INDIAN FOREIGN POLICY

Q. What evidence is there to indicate that our nuclear trade with India has substantially affected India's foreign policy?

A. The Administration does not make such a claim. We have noted that the Indians regard the Tarapur issue as an important test of U.S. interest in maintaining a cooperative relationship with them; as an index of the U.S. Government's attitude toward India. Terminating fuel shipments would be seen as a signal of U.S. indifference toward cooperation with India, particularly in view of the strong Indian belief that the 1963 agreement firmly obligates us to supply fuel. The widespread indignation that would be created by a negative decision would undoubtedly strengthen the hands of those in India who claim that the Soviet Union is India's only reliable friend and that Moscow should replace the U.S. as supplier for Tarapur. This clearly would be contrary to our interests.

India's overriding national interest is in maintaining a strong non-aligned posture in South Asia. Against that backdrop India has pursued a foreign policy which it has gauged to be in its own interest. We should like to diminish the discord in our relationship with them at a time when one of the central threats to peace and stability exists in Southwest Asia—the Soviet invasion of Afghanistan. India has stated its concerns about the Soviet invasion, and we believe now is not the time to increase or hasten divisive factors in our relationship which a disapproval of these exports would entail.

12. REMAINING U.S.-INDIAN TIES

Q. If the pending shipments are rejected, will the U.S. be left without any substantial economic or military links to India?

A. No. U.S. relations with India cover a broad range of activities. We have provided economic assistance to India and remain an important trading partner for India. However, the Tarapur issue can affect that relationship in significant ways. Efforts to improve U.S.-Indian ties will have to operate in a more difficult environment if the fuel is not provided. If the licenses are approved, there may be new opportunities for developing constructive relations with India.

13. FUTURE U.S.-INDIA NUCLEAR TIES

Q. If this export is turned down, does that necessarily mean the end of all nuclear trade with India?

A. If these licenses are turned down, India has made clear in diplomatic correspondence with the U.S. Government that it believes India will be free to claim a material breach of agreement in our nuclear relationship. We could thus lose the non-proliferation benefits from our present relationship, which have been outlined in the response to Question 1 above, and would be undermining any basis for continued discussion with India on the issue of full-scope safeguards or other nuclear non-proliferation matters.

14. INDIAN-SOVIET NUCLEAR TIES

Q. If these shipments are rejected, won't the Indians turn to the Soviets for help?

A. Failure to provide these shipments would in effect be inviting the Soviets to take over the supply of fuel for reactors built with US aid and which have been perhaps one of the most important and significant US assistance projects to India. While the Soviets' nuclear control are traditionally strict and are not likely to undermine our non-proliferation objectives, we would be providing the Soviets an important opportunity further to solidify their already extensive relationship with India at this critical time—a step which is clearly not in US interest given the Soviet invasion of Afghanistan and the potential for further Soviet development of its position in South Asia. Further, the Soviets are unlikely to try or, if they did, to succeed in securing controls over US-origin materials.

15. EFFECT ON PAKISTAN

Q. What will be the impact on our effort to dissuade Pakistan from pursuing a nuclear weapons option if we provide the fuel for Tarapur?

A. Pakistan has not been happy with the President's decision to provide the fuel for Tarapur and this unhappiness has been voiced in the Pakistani press. However, our decision is unlikely to have any significant effect on Pakistan's intention and programs to acquire a nuclear explosive capability.

The US ceased certain economic and military assistance to Pakistan in 1979 as a result of the importation by Pakistan of material, equipment, and technology for the enrichment of uranium. This was in accordance with a provision of the Foreign Assistance Act.

We have no reason to believe that India has decided to renew a nuclear explosives testing program. We thus do not believe that approval of these shipments for Tarapur will have any direct impact on Pakistani intentions. However, failure to approve the licenses will seriously inhibit our ability to engage in a dialogue with India over nuclear matters aimed at resolving the serious nuclear problem in South Asia.

16. IMPACT ON NUCLEAR TRADE

Q. Is support for a cutoff inconsistent with a pronuclear attitude?

A. A strong non-proliferation policy is not necessarily inconsistent with either pro- or anti-nuclear attitudes. A strong non-proliferation policy is important to civil nuclear power. We believe that supply of fuel for Tarapur supports US non-proliferation objectives. In addition, as noted above, the decision will contribute to, rather than detract from, the impression of the US as a reliable supplier. A negative decision can only reinforce the impression of some that US nuclear supply policies are partly driven by anti-nuclear sentiment.

17. PAST MISUSE OF US NUCLEAR EXPORTS

Q. Have the Indians ever misused any nuclear materials we have exported to them under a valid sales agreement?

A. The Government of India has adhered to all the terms and conditions of the 1963 Agreement for Cooperation and the 1966 implementing contract, as amended.

As an entirely separate transaction, in 1956 the United States supplied India, on a one-time basis, twenty-one short tons of heavy water under a contract between India and the U.S. Atomic Energy Commission. That contract provided that the heavy water would be used only for peaceful purposes. In 1970, however, the United States formally told India that we would not consider any explosive use of plutonium produced through use of the heavy water to be consistent with the peaceful purpose pledge. The Indian Government made clear the next month that it understood our views but did not agree with them. It stated that it felt free to use nuclear energy for any peaceful purposes, including so-called peaceful nuclear explosive uses. Thus, there was no agreement in 1956 or in 1970 that the 1956 heavy water sales contract precluded use of U.S. heavy water in a peaceful nuclear explosion; this is a matter of disagreement between the two countries.

We believe it is probable that some United States-supplied heavy water was in the Cirus reactor at the time it produced the plutonium for the 1974 Indian nuclear test. However, we do not believe the legal obligation regarding such use was sufficiently unambiguous to warrant a legal charge that India violated the 1956 agreement. Moreover, after the 1974 explosion, the legal situation under the Tarapur agreement for cooperation was clarified by an exchange of letters so that no Tarapur supplies can be used for any nuclear explosive uses, no matter how the purpose of such an explosive is characterized. We have pointed out above, however, continued delay in providing exports of Tarapur fuel or alternatively, a denial of these exports could risk the possibility that India will consider itself free to use previously supplied Tarapur fuel and the derived plutonium without reference to the constraints imposed by the 1963 agreement.

ADDITIONAL QUESTIONS

The State Department also provided its responses to three other arguments made against the sale in the press and elsewhere.

Q. Hasn't India just agreed to a $1.6 billion sale of arms shipment from the Soviet Union on highly concessional terms? Why should we go ahead with the fuel shipment?

A. We do not see any direct connection between the Indo-Soviet arms deal and Tarapur fuel supply, and do not believe that the provisions of the Non-Proliferation Act were intended for punitive use in other areas of foreign policy.

In fact, the Indo-Soviet arms deal underscores our view that there are good foreign policy, as well as non-proliferation, reasons for going ahead with these fuel shipments. The Soviets have long been India's major arms supplier and the latest deal has been under negotiation for a year and a half. The terms, however, are extremely generous which demonstrates Soviet anxiety "to woo" India. While we do not see the Tarapur shipments as part of a competition with Moscow, at the same time we do not believe it to be in US interest to give the Soviets an opportunity in this area and unnecessarily attenuate our ties with India.

Q. Why not wait for the GAO report to be delivered next year before deciding this question? Couldn't the President resubmit the Executive Order next year?

A. There are times when postponing a decision is in effect a negative decision. The Indians need this fuel now in order to fabricate the fuel rods to produce power in the heavily industrialized and power-short Bombay area. The Indian Government has shown considerable patience, but has indicated that significant further delay in these two shipments could lead it to conclude that a material breach of the 1963 agreement has occurred. Although we would contest that view, there is good reason to believe that a postponement until next year would cause India to consider itself relieved of its obligation under the agreement and that it would seek alternative fuel supplies and/or reprocess the Tarapur spent fuel for recycling into the reactor.

In short, there is a very high probability that India would believe that reconsideration sometime "next year" is too late and too uncertain. If that were to be the case, postponement would have the same effect as a negative decision, including the loss of the non-proliferation safeguards and controls in the Tarapur agreement, not to speak of the damage to our broader policy interests.

Q. Now that India has launched its own satellite, doesn't nuclear supply to India mean that we will be suppporting a much more dangerous case of proliferation?

A. The question presumes that India's space launch vehicle capabilities can be directly and rapidly transmuted into a sophisticated medium—or intermediate—range nuclear delivery capability. While India's capacity to launch a satellite indicates a significant space launch vehicle capacity, the Indian launch vehicle is not necessarily directly or easily converted to a nuclear weapon delivery system. For example, the number of stages involved in the launch vehicle and the limited capacity of the launch vehicle make a direct or easy conversion unlikely.

The question also presumes that India has proceeded to construct a smaller weaponized version of the explosive device it tested in 1974. We have no evidence that India has done so. All other states which have proceeded down this road have required a series of tests to perfect the weapon it intended to develop for use with its ballistic missile delivery system. We have no evidence that such testing has taken place in India.

Thus, while relevant, the question is very remote from the two fuel licenses. There are alternative routes for the delivery of nuclear weapons open to countries with India's capabilities such as the use of modern aircraft, which might be both more effective and reliable should India choose to develop them. We have seen no signs nor do we have any evidence that such is the case.

THE RELIABILITY OF COAL

Mr. PERCY. Mr. President, on June 24 the Senate passed a landmark piece of legislation, S. 2470. This measure could become the most aggressive and potent law ever enacted to insure the expanded production and utilization of our Nation's abundant coal reserves. The Powerplant Fuel Conservation Act of 1980, which the Senate accepted 86 to 7, provides $3.6 billion in grants and loans to 80 utility powerplants across the country to convert from oil to coal. Six hundred million dollars is also included to help other powerplants control increased air pollution resulting from the burning of high-sulfur coal. This bill could conserve 400,000 barrels of oil a day by 1990, a dynamic step toward energy independence before the year 2000.

Unfortunately, this legislation has not yet been sent to the floor of the House of Representatives for a vote; it has been bottled up amidst controversy in committee, instead. With only 21 working days before the House's scheduled adjournment, it is becoming more and more doubtful that an oil back-out bill will be passed into law this session of Congress.

Mr. President, the legislation the Senate passed did not help the future of Illinois coal as much as I would have liked; the highly important phase II of our legislation was removed even before the bill reached the Senate floor. This section, the Senate will recall, would have made $6 billion available to utilities willing to retire their existing non-coal powerplants ahead of schedule, so they could build new coal powerplants or use alternative fuels instead. Illinois would have been the supplier of millions of tons of coal to these new plants, many of them located in the South and Southwest.

Phase II was removed from this legislation, but I still am in support of S. 2470. I support it for one simple reason: The foremost energy issue we are facing in this country today is not a regional one, between western low-sulfur coal and eastern medium- and high-sulfur coal. It is, rather, the question of whether or not we are going to reduce our oil imports, and begin burning Amer-

ican coal instead. Are we going to use this precious bounty of domestic energy from wherever it comes, and stop our intolerable reliance upon unstable foreign suppliers?

For decades, Mr. President, talk about using greater quantities of coal has been as cheap as the coal itself has been to buy. But this talk has been just that—talk. It has disappeared as soon as the first signs surfaced that domestic and foreign oil supplies could get us through our daily lives just a little longer. Despite the fact that the fuel burned in new utility coal boilers is cleaner than that burned in most oil boilers, according to the Environmental Protection Agency, using our greatest domestic fossil fuel has become popular only in talk, not in action. And the longer we wait before we recognize the danger of our ways, the worse off we will be.

Mr. President, on June 30, 1980, Bob Wiedrich of the Chicago Tribune wrote an excellent essay on the need to use coal as something other than a conversation piece. His message is succinct and direct:

> Politicians have used coal as a security blanket, whenever crisis has threatened. But always it has been returned to the cedar chest once the energy threat has subsided.

Weidrich notes that, no matter how secure our future relations may become with the nations of OPEC, we will always have an even more secure energy source in domestic coal. He urges all Americans to recognize, once and for all, the opportunity this domestic fuel source has to lead us to a secure energy future.

As we look at the unfortunate prospects of our failure to enact an oil backout bill this year, there is no better time for the Congress to appreciate Mr. Wiedrich's column than right now.

Mr. President, I ask unanimous consent that the June 28 column of Mr. Bob Wiedrich from the Chicago Tribune be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WHEN OIL SLIPS, FALL BACK ON COAL

(By Bob Weidrich)

Again, world leaders are going bananas over coal.

Every time the oil-producing countries hike the price and tighten the spigot, the politicians start getting bituminous smoke in their eyes.

Former President Nixon did so in 1974 after the first Arab oil embargo. Former President Ford followed suit during his brief tenure in the White House.

Now, Jimmy Carter has joined the leaders of six other major industrial nations in pledging their governments to developing sufficient alternative energy sources to break their mutual dependence on foreign oil.

Naturally, a substantial part of the commitment involves the use of coal, either for direct burning or as a source of synthetic oil and gas.

So once again, the relatively environmentally unacceptable, but overwhelmingly abundant mineral has become the darling of the political drawing rooms.

And hopefully, this time, the declarations from a Venice summit conference by President Carter and the chieftains of West Germany, Britain, France, Canada, Italy, and Japan will really mean what they say. For in the past, that has not been the case.

Politicians have used coal as a security blanket, whenever crisis has threatened. But always it has been returned to the cedar chest once the energy threat subsided.

Such tactics have left the coal industry in a state of indecision and disarray, unwilling to commit the financial resources required for the salvation of a fickle industrial society so thoroughly wedded to oil as a major energy source.

Granted, since the 1973–74 Arab oil embargo, the fidelity to coal has been increasing. An entirely new industry has developed around the burning of low-sulfur western coal, especially for the generation of electricity.

But even as the approach of a day of judgment caused by diminishing oil reserves has become apparent to all but the most optimistic observers, environmentalists and their governmental consorts have thrown expensive roadblocks in the path of that emerging industry.

Electric utilities attracted by the trillions of tons of coal still beneath the earth have been confronted by fantastically costly environmental controls from Washington, impairing the practicality of coal as a fuel.

Railroads hauling the coal to market in long-unit trains have been accused of everything from blocking traffic at highway crossings to interfering with the mating habits of western deer by building spur lines through their habitat.

I'm not criticizing the environmentalists for their fervor. Nor am I questioning the need for stringent controls over the burning of coal.

However, the demands for purity in many cases have been so excessive as to make it economically impossible for utilities to convert boilers burning oil and gas to handle coal, which is more abundant than oil and cheaper.

And the federal government, until now, has disgracefully lagged in providing the impetus and funding for a synthetic fuel industry that could get the United States started toward achieving independence from the economic domination of foreign oil producers and their often unstable governments.

Congress finally has passed—five years after the Arab oil embargo—a multibillion-dollar energy bill with synthetic fuel as its focal point.

After six months of negotiations, a bill has been approved to fund a $20-billion, five-year program of loan and price guarantees intended to produce plants capable of converting coal and oil shale into fuels.

However, the legislation envisions only the production of the equivalent of 500,000 barrels of oil a day by 1987, with an additional target of 2 million barrels a day by 1992. This is only a modest fraction of the 18 million barrels now consumed daily.

Yet, even these modest goals have already provoked congressional predictions of "socio-economic dislocations" in western oil shale areas through the spawning of unsavory boom towns, unless there is adequate planning now.

Obviously, there will be multifaceted problems in weaning America away from foreign oil. But the alternative of remaining under the thumbs of Middle East oil barons is unacceptable to a democracy accustomed to freedom.

What disturbs me, though, is the foot-dragging attitudes that have pervaded Washington during the half a decade that has passed since the Arabs first demonstrated their ability and willingness to throttle western oil supplies as a political weapon.

There has been much rhetoric, but precious little action—until now.

Synthetic fuel technology has been no secret for many decades. Neither have been the warnings that the United States would eventually run short of oil, warnings dating back as far as 1918.

In 1949, the U.S. made a half-hearted stab at energy independence by building a coal-to-oil demonstration plant at Louisiana, Mo., a year after America became a net oil importer for the first time in its history. When cheap Arab oil came on stream in 1953, however, the plant was scrapped. The rest is history.

So today, if the Arabs suddenly offer to kiss and make up, I hope Jimmy Carter and the other world leaders stick by their guns. Coal is a predictable resource deserving of our attention. The Arabs are not.

NATIONAL UNITY CAMPAIGN—REBUILDING A SOCIETY THAT WORKS: AN AGENDA FOR AMERICA

Mr. PERCY. Mr. President, The Congressional Research Service is interested in indexing the platforms adopted by the two major parties. CRS also wants to include the platform recently released by Congressman JOHN ANDERSON running for President on the National Unity Campaign. Because Senator HOWARD BAKER inserted the Republican platform in the CONGRESSIONAL RECORD, and Senator PAT MOYNIHAN inserted the Democratic platform. It is felt that it would facilitate the indexation process if the Anderson platform were to be included in the RECORD as well. CRS could then make reference to specific pages in the CONGRESSIONAL RECORD for comparative purposes.

I have been asked to make this insertion by Congressman ANDERSON, who has been my friend for several decades and my colleague in the Illinois congressional delegation for 14 years. I am not only pleased to insert his platform because of these reasons but also because I believe his viewpoints as expressed, "Rebuilding a Society That Works: An Agenda for America" represent some bold challenging approaches and views that could well be carefully considered and in some cases adopted by the candidates of both major parties.

Mr. President, I ask unanimous consent that the Anderson platform be printed in the CONGRESSIONAL RECORD, not only so that the indexation process of the Congressional Research Service may be facilitated, but also so that it be available in its full text to all Members of Congress and readers of the CONGRESSIONAL RECORD for their study, analysis, consideration as a valuable contribution to the American political process, and as an historical document.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REBUILDING A SOCIETY THAT WORKS: AN AGENDA FOR AMERICA

To the American people:

In the past few weeks, the traditional political parties have released their traditional platforms. Now we are releasing ours—an untraditional program for America that responds to new challenges in new ways.

Our program is presented in two related documents. The first, "Rebuilding a Society that Works: An Agenda for America" highlights many of the major themes and proposals that our National Unity Campaign will offer to the nation. It is relatively short and deliberately selective. It states our goals and sketches in general terms how we intend to promote them. It is intended as a synthesis and an introduction to our program.

The second document, "The Program of the Anderson/Lucey National Unity Campaign," presents the details of our legislative and executive program in every major area of concern to this nation. It is divided into three sections. First, the Introduction sets forth the public philosophy that guides and unifies our program. The second, the body of the document, details our program in the general areas of economic policy, foreign and defense policy, social policy, and civil and human rights. The final section deals with the practical problems of governance. It substantiates our conviction that an Independent administration can effectively govern this nation.

It should be clear that we do not desire to implement every proposal in this program in the first year of an Anderson Administration. The full fiscal impacts of these initiatives are to be spread over the next four years. It would be fiscally irresponsible to do otherwise.

The program does not contain any massive new expenditures on the scale of a $60 billion land-based missile or a $25 billion-a-year comprehensive national health insurance scheme. Nor does the program call for large personal income tax cuts in advance of a balanced budget.

Moreover, we anticipate that the initiatives outlined in this program are small enough in their revenue impacts to be accommodated by the normal real dollar growth in revenues associated with an expanding economy. We will, within the next three weeks, issue a budgetary impact statement for our program.

How does our program differ from traditional party platforms?

First, it is *specific*. We have not been satisfied to express a vague commitment to abstract goals. We have spelled out our intentions; in many instances we have proposed specific legislation.

Second, it is directed toward *problem-solving*. We believe that government must be for the sake of acting. We firmly believe in the old maxim, "If it isn't broken, don't fix it." In each section of our program, therefore, we begin by stating the real, pressing, unavoidable problems we face. And everything we propose is intended to advance this nation towards solving these problems.

Third, our program is coherent. We believe that government fails when it loses its sense of overall purpose and direction. We believe that the public interest is neglected when government disintegrates into a grab-bag of uncoordinated, contradictory efforts to serve special interests.

Our proposals are consistent with the public philosophy which guides our unity campaign. Its principles are both simple and profound. We believe America is in peril because our tradition of self-government has been eroded. We believe we must prepare for the future; that we must be cognizant of its limits, and aggressively pursue its opportunities. We believe we must rebuild America, and that the government must act as a catalyst to encourage every American to participate in the task of rebuilding. We believe that the rebuilding of America will not have succeeded unless we have persevered in our efforts to establish justice for all Americans.

Fourth, our program is realistic. We know that our resources are limited and that they must be applied to our most basic and pressing needs. We have not promised more than our federal budget and our national economy can bear. And we have not avoided the hard choices. As we constructed this program, we thought in terms of what our responsibilities would be if we were governing this nation. It is a strategy of governance, not a game plan for winning the election.

Fifth, our program is a personal commitment. Harry Truman was right when he said that a platform ought to be a contract with the American people. But too often party platforms are ignored by the candidates, after the election and even during the campaign. This year, for example, the Democratic National Convention repudiated much of the economic program of its own party's nominee, and he, in turn, rejected their decisions. Alternatively, the Republican Vice Presidential candidate ran virtually his whole primary campaign against proposals appearing in the platform upon which he is now running. There is no ambiguity about our commitment to our platform. It's ours, we mean every word of it, and we'll stand by it, during and after the national campaign.

Although our program is a personal commitment, it is not the work of our hands alone. We have consulted with business executives and assembly-line workers and farmers and with citizens concerned about our nation's future. We have analyzed and debated every proposal, and we have drafted and redrafted them until we were fully satisfied. We are proud of this program and we will fight hard for it.

We urge you to read and consider the program, and to compare it with those of the traditional parties. At this time of national testing, we must move beyond the politics of empty tactics and superficial images. We must face and debate the real issues. You may disagree with what we say, but we want you to know that we believe and what we will do if elected. You have a right to know what we stand for and what we will try to get enacted into legislation. The program will also help you identify the main issues we must debate and the problems we must solve. Our country needs the energy, the involvement, the concern of each one of you.

Sincerely,

JOHN B. ANDERSON.
PATRICK J. LUCEY.

I. INTRODUCTION

Nearly thirty years ago, at the beginning of his campaign for the Presidency, Adlai Stevenson declared:

"Let's talk sense to the American people. Let's tell them the truth, that there are no gains without pains."

This courageous warning is as necessary now as it was in 1952. We cannot expect that the 1980s will be an easy decade. Our nation faces its gravest challenge since the Second World War. We cannot expect that our problems will solve themselves. They are not going to go away like some bad dream. We must make changes, and in the short run they will be painful. We can rebuild our economy and regain control of our national destiny, but we will have to pay a price for our recovery.

To cure our nation's ills, we must begin by understanding them.

In the century after the Civil War, we Americans built the greatest economy and society the world has ever seen. We planned for the future, and we invested in it. We built railroads and dams and factories and cities. We invented the telephone and mass-produced automobiles at prices most people could afford. We created an unsurpassed system of public education and universities. We invested in systems of security for the ill, the aged, and the unemployed. Our nation worked, and other countries admired our efficient, undogmatic common sense. When the world asked: What is the future?, the answer always was: Look at America.

But in the past twenty years our political leaders and political parties have failed the nation. We gradually abandoned the practices that made us great. We stopped planning, we stopped saving, and we stopped investing. We ignored the needs of tomorrow. We failed to take care of what we had built. And we lived beyond our means.

Nations, like families, cannot postpone their bills indefinitely. And our nation's bills have now come due.

Our economy is locked in a cycle of inflation, recession, and high interest rates.

Our factories are outdated and uncompetitive in world markets.

The foundations of our older cities—the bridges, the streets, the water mains—are crumbling.

Our system of public education is no longer teaching many of our children the skills they need to get jobs and survive in our society.

We have neglected our military equipment and our military personnel.

Worst of all, we have lost control over our economy, our foreign policy, indeed our very destiny, because we have lacked the will to declare our independence from foreign oil.

A generation of political leaders has told us that we could run bigger and bigger budget deficits without raising inflation and interest rates. A generation of political leaders has told us that we could concentrate on the interests of particular groups in our society and that the general interest of the nation would somehow take care of itself. A generation of political leaders has told us that we could get something for nothing.

We were told that we could fight a war without paying for it.

We were told that we could clean up the environment without paying for it.

We were told that we could increase pensions and social services without paying for them.

We were told that we could increase our consumption of ever-costlier foreign oil, without paying for it.

It has been a time of deception and illusion. And it must end now. Let us never again be told that we can get something for nothing. And let us never again be told that we can govern ourselves without making hard choices.

Turning this country around won't be easy. Our political system is now dominated by a jumble of special interest groups locked in a heedless struggle for private gain, ignoring the greater good of a healthier and more just society. We are close to becoming a stalemated society, locked into a politics of paralysis, where each interest group blocks any policy, no matter how wise and how necessary, if its own interests are threatened.

But our difficulties go even deeper than political illusion and political stalemate. We are also suffering from the manifest exhaustion of our political ideas.

Nearly half a century ago, Franklin Roosevelt took office amidst a national crisis and set in motion the policies that we have come to call the New Deal. These policies were designed to solve specific problems and to confront the devastation of the Great Depression. They were appropriate to the times, and they contributed to the relief of human misery and to the national recovery.

The Democratic party still clings to the policies of the New Deal. But today our circumstances are very different. The policies that once battled deflation now spur inflation. The policies that stimulated production now diminish productivity. The policies that attacked unemployment now actually contribute to it. The policies that once ministered to human misery now perpetuate it.

The Republican party has responded to the exhaustion of the New Deal approach in two contradictory, and equally erroneous, ways: it has embraced New Deal economics while it seeks to repeal New Deal social policy.

The Republicans tell us that we should cut personal income taxes across the board, by one-third. If we follow this advice, we

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will not save and invest more, we will spend and consume more. We will have skyrocketing interest rates that will choke off economic recovery, further stifle our automobile and housing industries, and plunge us into an even deeper recession. We will have record budget deficits and, to finance them, we will have an explosive growth in the money supply that will produce a record inflation. This is not a program for national recovery; it is a formula for national bankruptcy.

At the same time, Republicans advocate massive cutbacks in social programs. Their platform talks incessantly about freedom, but hardly ever about justice. It talks of liberating individuals from big government, but it would only liberate those least in need of assistance from their responsibilities to the nation.

This outdated quarrel between the old liberalism and an even older conservatism, which the two major parties are about to resume, has ceased to illuminate our most pressing public problems. Far away from the discord and rancor of party strife, the American people have reflected on the experience of this century, and we now agree on some basic truths.

We are all liberals, we are all conservatives. We all believe that prosperity without justice is unacceptable, and that justice without prosperity is unattainable. We all know that government must be bold and purposeful, but that it cannot do for us what we can only do for ourselves. We all believe that individuals are responsible for their acts, but not for the conditions within which they act. We all believe that life without liberty is intolerable, but that liberty without order is self-defeating. And we all know that this consensus must guide us as we seek solutions to our problems.

The Anderson campaign is based on a new public philosophy—one that neither repeats nor repeals the past, but rather builds upon it. Its principles are clear and simple. America is in peril because her foundations have been neglected in the past generation. We must plan for the future, we must save for the future, and we must invest in it. We must rebuild America. For the most part, government cannot do this directly. Rather, it must act boldly to create a new climate, and a new framework of incentives, that encourage individuals and businesses to get to work at the task of rebuilding. All Americans must contribute to, and help pay for, our national recovery, but the burdens must be allocated in proportion to the ability of individuals and groups to bear them. The rebuilding of America cannot succeed unless we move toward the future united; but we cannot remain united unless we persevere in our efforts to establish justice for all Americans.

To rebuild America, we must begin by restoring our economic vitality. To do this, an Anderson administration will move forward on three fronts.

First, we will use the tax code to limit consumption, and increase savings and capital formation.

Second, we will use fiscal policy to bring inflation under control and to restore a stable, predictable environment for long-term planning and investment. We cannot halt inflation until we stop printing money faster than we produce goods and services. But we can only slow the creation of money if we restore the balance of our federal budget, not in every year necessarily, but rather over the course of each business cycle. This will require moderation, discipline, and the willingness to make hard, explicit choices.

Third, an Anderson administration will move aggressively to keep American capital at home to be used for American purposes, by sharply reducing our dependence on imported oil. We will tax gasoline to reduce consumption, and we will set in motion programs to save energy in transportation, in our homes, and indeed in every aspect of our lives.

These measures will generate a substantial pool of investment capital. An Anderson administration will use these funds to put Americans back to work rebuilding America by creating new arenas for their energy and inventiveness.

We will put Americans back to work retooling our aging factories. We will not allow the Detroits and the Youngstowns of this nation to die. And as we retool our factories, we will preserve the kinds of jobs American workers want and deserve—permanent, productive jobs with prospects for advancement, not temporary, make-work, dead-end jobs.

We will assist the smaller businesses that have always produced most of the new ideas and new jobs for America and will do so again, if only we lift the burden of taxation and regulation from their backs.

We will stimulate technological innovation by providing new tax incentives to industry for research and development, and by increasing federal support for basic scientific research and for our space program.

We will put Americans back to work rebuilding the streets, the bridges, and the water mains of our crumbling cities with a $4 billion annual Urban Reinvestment Trust Fund. We will put our unemployed construction workers back to work building housing for America with cost-effective mortgage subsidies, and tax-exempt mortgage savings accounts for young couples. And we will use tax incentives and direct subsidies to neighborhood organizations to put Americans to work renovating the dwellings and rebuilding the economic base of the decaying neighborhoods of our inner cities.

We will put Americans back to work building public transportation for the 1980s with a $4 billion annual Community Transportation Trust Fund. At the same time, we will move toward the transportation system our economy needs, by rebuilding the railroads, the highways, and the ports of this country.

We will rebuild our system of public education. We will make public education an attractive career once again for our ablest college graduates, and we will vigorously employ the new Department of Education to promote quality basic education for all our children.

We will keep Americans at work in our most basic industry, agriculture, by taking steps to preserve the family farm. We will treat farmers as small businessmen, and give them tax breaks for investment in machinery and buildings. We will change the tax code to recognize the contribution of farm women and to reduce obstacles to the transmission of family farms from parents to children.

An Anderson administration will rebuild American military strength. We will pay the men and women in our volunteer armed forces what they need and richly deserve. We will rehabilitate our military equipment, so that it is really ready for use in emergencies. And we will restore the military balance with efficient and reliable new weapons systems, but not with costly boondoggles like the MX missile that will not increase our security but will only take away scarce resources from the weapons we really need.

As we move toward energy self-reliance, and as we rebuild our economy and our military strength, we will once again be able to deal consistently with friends and foe alike.

An Anderson administration will follow the prudent policy of rebuilding America's alliances with the nations that most closely share our interests and our values, by treating them as equal partners. We will never act in matters of joint concern without consulting them, and we will never expect them to follow us blindly.

To our adversaries, an Anderson administration will always offer opportunities for negotiation, for the reduction of arms, and for the easing of tensions. We will press for the ratification of SALT II and for the next stage in arms control negotiations—a real reduction, not just limitation, of strategic weapons. At the same time, we will allow no one to mistake moderation for weakness. We will make it clear to our adversaries that we will resist to the utmost any attempt at subversion and conquest. And we will never fear to aid those who are truly fighting for freedom.

As we rebuild America, at home and abroad, we will hold fast to our vision of a just America.

An Anderson administration will work for the even-handed application of our statutes to all citizens, and we will strongly support the efforts of the United States Commission on Civil Rights to impose reasonable, uniform standards on police use of deadly force.

An Anderson administration will work for fair housing laws with teeth in them.

An Anderson administration will carefully review the report of the Select Commission on Immigration, with the goal of devising a truly color-blind immigration policy.

An Anderson administration will use its resources of persuasion to obtain enactment of the Equal Rights Amendment and to block adoption of statutory and Constitutional restrictions on every woman's freedom of choice in matters of reproduction.

An Anderson administration will strive to promote economic justice. We will work for a more equitable system of taxation, and we will resist tax cuts, such as the Reagan-Kemp-Roth proposal, that give a bonanza to the rich, crumbs to the middle class, and nothing at all to the poor. As we reduce unemployment, we will seek to reduce disparities in the rate of unemployment among different groups in our population. We will not continue to tolerate unemployment rates above 40 percent in our inner cities. And we will not use unemployment as a weapon in the fight against inflation.

These measures are all part of a larger whole—the American vision of a society in which all enjoy genuinely equal opportunity to develop their gifts and to go as far as their talents and energies will allow. This is the justice the Preamble of our Constitution requires us to establish.

The struggle to rebuild America and to establish justice will be long and arduous. But we can do the job. The American people do not suffer from any mysterious malaise. They are weary of bad government, to be sure. But they are bursting with ideas, with energy, and with the desire for a better future. They are willing to sacrifice to gain that future. All they want is a government that presents them with a clear, believable program for the future, that enables them to save and to plan with confidence, that encourages innovation and risk-taking, that reduces regulation and liberates their energies. This is the kind of government an Anderson administration will give them.

With sensible policies, we cannot fail to surmount our current problems. We are rich in natural resources, and in human skill and energy. We have stable and flexible political institutions. We hold fast to a vision of human freedom that brings streams of refugees to our shores each year.

So let us take heart as we recall our strengths. We must make sacrifices, to be sure. We must allocate them openly and honestly. We must protect those who cannot easily bear additional burdens. Those of us who have prospered in America must contribute generously to the task of rebuilding the nation. And we must move toward the future resolutely united, as one nation, indivisible. For, as Theodore Roosevelt once reminded us, "The fundamental rule in our national life—the rule which underlies all others—is that in the long run, we shall go up or down together."

II. THE ECONOMY

Something has gone wrong. A nation whose productive capacity made it the arsenal of

democracy and the envy of the world today finds itself plagued by a shrinking capacity to produce and a growing inability to compete in the world marketplace.

Once the world's leading producer of steel, we now find our output surpassed by both the Soviet Union and Japan. A year ago, the United States was the leading manufacturer of automobiles. Today, we are second. Even in high technology markets, once the near-exclusive reserve of American business, we find ourselves increasingly unable to compete.

Something indeed is wrong.

The nation's productive capacity has suffered from a decade of neglect. The "guns and butter" policies of the late 1960's led to a level of public and private consumption that ignored the critical investment needs of the economy. During the course of the past decade, the rate of personal savings has declined sharply, and government borrowing has dramatically increased. As a result, our rate of capital investment, which long ago fell behind the efforts of our chief foreign competitors, has declined further still. Our continuing failure to save and invest imperils our economic vitality and mortgages our hopes for a better and more prosperous tomorrow.

We can no longer afford to live off our past labors, manufacturing in obsolete plants with outmoded technology. There is an urgent need to rebuild our productive capacity to create jobs for the unemployed and to lessen inflationary pressures. The continuing failure of the Carter administration to take necessary actions threatens to generate yet another decade of economic stagnation with a resulting loss of purchasing power and employment opportunities.

Our tax laws penalize thrift. A penny saved is no longer a penny earned. Although inflation erodes the value of personal savings, the federal government still taxes the nominal interest received. As a consequence, the personal savings rate has declined steadily in recent years. In January of this year, the personal savings rate fell to a 29-year low.

Our tax laws have discouraged investment in capital plant and equipment. Between 1962 and 1968, real business investment expanded at an annual rate of 7 percent. During the past six years, however, real business investment has expanded at an annual average of only 2 percent.

A nation once famed for its entrepreneurial spirit is in danger of losing its competitive vitality. Small businesses, burdened by excessive taxation and regulation and saddled by high interest rates, have failed in recent years to generate the necessary jobs and technology. Large businesses, hampered by inadequate depreciation allowances, have failed to undertake the necessary retooling—resulting in an erosion of our industrial base.

Throughout most of the 1950's and 1960's, productivity grew at an annual rate of nearly 3 percent. Growth slowed to less than 2 percent in the 1970's. And in the first half of 1980, after 18 months of near constant decline, productivity has fallen to 1977 levels.

As individuals, as businesses, and as a nation, we have lost our ability to plan for the future. We have become a society that lives for today and ignores the needs of tomorrow.

The job of restoring our economic vitality requires a broad-based attack on the root causes of our economic decline. Nothing less than a comprehensive approach will suffice.

Our task is the rebuilding of America.

Immediate problems

The 1980 Recession

The disastrous rise in interest rates to record peaks in the first half of 1980 precipitated one of the worst, if not the worst, recession in the post-war era. Auto sales in May fell 42 percent below the previous year's level. Housing starts declined from an annual rate of 1.8 million earlier in the year to less than 1.0 million new starts in May.

Today, over 250,000 auto workers are on indefinite layoffs with 50,000 more on temporary layoffs. Over 2 million Americans have been added to the unemployment rolls in the past four months. While there are preliminary indications that the housing and auto sectors of the economy are beginning to recover, unemployment is expected to rise still higher in the months ahead.

We cannot remain indifferent to the hardship of those who have lost their jobs, nor to the threat of future layoffs. We must expand the eligibility for extended unemployment compensation and adopt a countercyclical revenue sharing program providing $500 million in relief for hard-pressed communities in fiscal year 1981 and $1 billion for fiscal year 1982. We must ensure adequate funding of summer youth jobs programs and other youth employment initiatives. We must also seek effective implementation of the Brooke-Cranston program to revive the housing market if present conditions persist.

Most important, however, we must resist appeals for either large-scale spending increases or massive tax cuts that would serve to further exacerbate the $30 billion deficit anticipated for fiscal year 1981. A larger deficit at this juncture would mean increased government borrowing and higher interest rates. The resulting credit squeeze would further retard the recovery of the interest-sensitive sectors of the economy, including the auto, housing, and the capital goods industries. This danger requires a very cautious and selective approach to all fiscal policy choices.

Inflation

Although inflation, as measured by the consumer price index, has receded from the 18 percent rate recorded in the first quarter of 1980, the underlying inflation rate remains at historically high levels. A central focus of national economic policy must be a progressive, year-by-year reduction in the inflation rate until reasonable price stability is achieved.

While fiscal and monetary restraint is essential to the achievement of price stability, we must also endeavor to reach a broader national accord on appropriate wage and price increases. Upon taking office, we will construct a Wage-Price Incentives Program. And Anderson Administration will seek to call labor and management leaders together to agree upon fair and realistic wage and price guidelines and to determine an appropriate means of encouraging compliance with those standards through tax-based incentives.

In the absence of sharp and prolonged increases in the rate of inflation, the Anderson Administration will oppose any mandatory wage and price standards. Experience has demonstrated that such controls are difficult to administer and result in a misallocation of economic resources.

FULL EMPLOYMENT

A sound economic policy must incorporate a commitment to full employment. We reaffirm the goals of the Humphrey-Hawkins Act and condemn the President for his failure to consult with Congress this past January before altering the timetables set forth in that Act. The establishment and attainment of national economic objectives is the jointly responsibility of the President and Congress.

While the central focus of American's full employment policy must be on the creation and preservation of productive, private sector jobs, there will be a continuing need for creative and complementary federal employment programs to reach areas of unmet needs.

Existing federal employment programs—administered under the Comprehensive Employment and Training Act (CETA)—place an undue reliance on public service employment and other jobs programs that do not significantly upgrade the labor skills or the employment prospects of program participants. While recent program initiatives, such as Title VII of CETA, have sought to expand the role of the private sector, such efforts have been underfunded and underutilized. We propose to expand the role and funding of the Private Industry Councils under Title VII and to otherwise enlarge the role of private employers in federally sponsored job training efforts.

State unemployment compensation programs, for the most part, are not linked to the retraining needs of displaced workers. As a result, those who exhaust their unemployment benefits frequently lack the necessary skills for gainful employment. We propose establishing federally funded pilot projects integrating State unemployment benefits with retraining benefits for those with long records of unemployment.

The Congress, in 1977 and again in 1978, approved an employment tax credit of 50 percent of the first $6,000 in wages of qualified new employees hired by small businesses. Many small businesses, however, have not taken advantage of the tax credit because they have no tax liability against which to apply the credit. An Anderson Administration will initiate an inter-department study on the advisability of making the tax credit refundable on a one-year trial basis.

Special attention must be devoted to the problem of youth unemployment, particularly minority youth unemployment. Nationwide, the unemployment rate for black and other minority youth is nearly 40 percent, and in many urban areas it exceeds 50 percent! To deal with this critical social problem an Anderson Administration will propose a number of youth employment initiatives:

Enactment of the proposed Youth Act of 1980 that will provide over $2 billion a year for job training and state and local educational programs designed to improve the employability of disadvantaged and out-of-school youth;

Increased funding for youth career intern programs;

A youth opportunity wage incentive that would exempt eligible youths and their employers from social security taxes during the first six months of employment; and

A Youth Energy Projects Act that would provide up to $1 billion a year (by fiscal year 1983) for multiyear, large-scale energy and energy conservation projects—including mass transit—offering career opportunities for economically disadvantaged youth between the ages of 18 and 24.

Structural initiatives

If we are to rebuild the American economy, we cannot be content with short-term measures employed first to stimulate and then to dampen the swings of the business cycle. We must address the basic long-term problems of job creation, inflation, productivity, economic growth, and the quality of life.

To solve these long-term problems, we must avoid stop-and-go economic measures. We cannot fight higher prices with higher unemployment and we cannot combat the decline of purchasing power with inflationary, across-the-board, consumption-oriented tax cuts like the Reagan Kemp-Roth proposal.

We believe that America needs a coherent program for long-term economic recovery and growth. This program must be designed to stimulate investment and to hold back consumption in a fair and equitable way so that we can rebuild and renew our capital plant—industrial, commercial, and public.

We believe that basic industry must be given the opportunity to rebuild and to restore its competitive edge by creating a new climate for investment and entrepreneurship.

UMI

It is not our intention to use protection or direct subsidies to achieve this end. Nor is it our intention to imitate the Japanese experience by putting the government into the business of picking the winners and losers of industrial competition. Such policies may be relevant to the requirements of those nations, but they are not relevant to a country that expects to be at the cutting edge of economic innovation and growth. Instead, we will create the conditions within which enterprises can flourish, provided they are well-managed by forward-looking entrepreneurs.

Although we will make every effort to facilitate the growth of major industry, and although we hope that major industry will expand strongly during the next decade, we believe that the major engine for American economic growth during the 1980's will come from small- and medium-sized businesses as they grow into large businesses. Therefore, we will also seek to encourage their formation and expansion in recognition of their role as the principal providers of new jobs and technologies in our economy.

To create a climate for economic recovery, rebuilding, and growth for businesses of all sizes, we will seek to enact five major structural initiatives:

First: We will use a prudent, restrained fiscal and monetary policy to dampen inflation, lower interest rates, and foster a stable economic environment for long-range planning by investors and government alike.

Second: We will use the tax code to encourage greater personal savings and capital formation.

Third: We will use tax incentives and direct federal assistance to stimulate research and development and to spur productivity.

Fourth: We will use legislation and executive authority to review and to prune regulations that waste capital and do not adequately promote valid regulatory objectives.

Fifth: We will use a tough, conservation-oriented energy program to curtail the rapid flow of American capital overseas to pay for imported oil.

Without these measures, we cannot hope to offset our economic decline. With them, we can produce a climate within which investment will be possible and attractive. It will then be the task of our managers and entrepreneurs to make use of the opportunities our policies will create. If they do—and we believe they will—our economy will once again generate a wealth of new jobs and rising real incomes.

Monetary and Fiscal Stability

We need to create a stable economic climate conducive to industrial development and the full employment of our human resources. Efforts in recent years to 'fine tune' the economy have served to accentuate, rather than moderate, cyclical economic swings. The resulting economic dislocation has damaged our productive capacity. The record jump in interest rates experienced this past spring brought the corporate bond market near collapse, forced thousands of small businesses into bankruptcy and pushed the consumer price index to a post-war high.

An Anderson administration will seek to avoid "stop and go" economic policies and will work to achieve a better balancing of monetary and fiscal policies: we should not rely upon a monetary tourniquet to stop the hemorrhage of inflation.

In ordinary times, federal expenditures should not exceed revenues. Thus, while declining tax revenues and increasing transfer payments can be expected to unbalance the budget during times of economic difficulty, the budget should be in balance, or in surplus, during times of economic expansion.

It should be understood that fiscal stringency requires an element of sacrifice on the part of all Americans. Fairness dictates, however, that no segment of our society should be asked to bear a disproportionate share of the burden. Moreover, all federal expenditures—whether for defense or nondefense related purposes—should be rigorously examined to determine whether they are cost-effective means of achieving national objectives.

Once balance in the federal budget has been achieved, the Anderson administration will propose legislation "indexing" the personal income tax brackets to prevent taxpayer incomes from being pushed into higher tax brackets by inflation. To the extent that further economies are made in federal spending, we will propose tax cuts that go beyond the tax relief afforded by indexing.

The Anderson administration, however, will not propose tax cuts that run counter to the goal of balancing federal revenues and expenditures. Proposals to cut personal income tax rates by one-third are fiscally irresponsible. A tax cut of that size would widen the deficit, increase government borrowing, hike interest rates, and accelerate inflationary expectations and underlying inflationary pressures. Rather than spurring new investments and savings, the plan would choke off recovery of the capital goods sector and lower the personal savings rate.

The goal of fiscal and monetary stability taken in the context of a fight against inflation will provide a climate of greater economic certainty in which investment decisions—large and small—can be made more rationally. Without such a climate of realizable expectations an investment oriented rational recovery program will be extremely difficult to implement.

The independence of the Federal Reserve, which has come under increasing attack in recent years, must be protected. While it is critically important for the Federal Reserve Board to observe its responsibility to report to the Congress and the President on the growth targets for the monetary aggregates, it is equally important that the Federal Reserve be free from undue political pressures. An Anderson Administration will respect the traditional independence of the Federal Reserve.

While mindful of the need for fiscal discipline and economic predictability, an Anderson Administration will oppose any new Constitutional limitation on the spending and taxing powers of Congress. Necessary budget reforms, including the typing of government spending to an appropriate percentage of GNP, should be enacted in the form of amendments to the Congressional Budget Act in a manner that will reserve to Congress and the President the power to adapt fiscal policies to changing circumstances.

America's Capital Needs

Sustained economic recovery requires an adequate pool of savings and capital. As individuals and as a nation, we need to save and invest more. Current Federal tax laws—and in some instances regulations—have served to foster debt and penalize thrift.

An Anderson Administration will commit itself to working with Congress toward the formulation of a comprehensive program designed to meet America's capital needs in the decade ahead.

The personal savings rate should be increased. Individuals needs to save, not only for retirement purposes, but also to guard against unforeseen financial troubles. Personal savings are also an important component of economic growth, providing the resources with which to finance new housing and capital expansion.

We must make it both possible and desirable for the average American to save again. Lowering the inflation rate will be a powerful stimulus to savings. The phasing out of interest rate restrictions on savings accounts, recently approved by Congress, will also be an important stimulant. More remains to be done, however, to remove the disincentives to savings and investment currently in our tax code. We propose the following initiatives:

Expanding the existing interest and dividend income exclusion (now $200 for individuals and $400 for married couples filing jointly) to $750 for individuals, $1500 for married couples filing jointly, by 1986;

Liberalizing the eligibility and income requirements for Individual Retirement Accounts, particularly for homemakers; and

Instituting a further review of capital gains tax treatment.

Our existing capital cost recovery system operates as a strong deterrent to capital expansion of plant and equipment. The historic cost method of calculating depreciation allowances vastly understates actual depreciation, effectively boosting business tax liabilities and discouraging the purchase of the capital equipment needed to improve worker productivity. Capital cost recovery problems are particularly acute for small businesses that do not take advantage of the liberalized depreciation allowances afforded by the asset depreciation range because of the complexity of the schedules.

We propose a comprehensive reform of the capital cost recovery system that would:

Establish a Simplified Cost Recovery System (SCR) for investments in capital equipment and machinery. Equipment should be assigned to one of four recovery accounts with recovery periods of 2, 4, 7 or 10 years depending upon its nature and normal useful life. Equipment and machinery can be depreciated an average of 40 percent faster than under existing law, and depreciation deductions should be computed by use of the "open-ended account" system currently in use in Canada.

Reduce the current useful life depreciation of structures to a standard twenty-year straight line depreciation with Section 1250 recapture provisions. The new depreciation guidelines would apply to all industrial and commercial structures and qualified low-income rental housing.

Provide a special 25 percent investment tax credit (in lieu of the existing 10 percent investment tax credit) for the rehabilitation of commercial and industrial structures.

Allow small businesses to expense (write-off in one year) the first $50,000 in annual expenditures for equipment and machinery.

The current state of the economy and of our most basic industries, including the auto and steel industries, requires the adoption of added capital cost recovery measures designed to insure that troubled companies and industries will not suffer from a competitive tax disadvantage in undertaking the necessary capital expansion and improvements in the forthcoming economic recovery.

The 10 percent investment tax credit, now permanent, allows businesses to offset the credit against 80 percent of tax liabilities in 1981 and 90 percent in 1982. Any part of the credit which cannot be applied against current tax year tax liability may be carried back three years and forward seven years. Restricting the credit to offsets against federal tax liabilities effectively denies the full benefit of the credit to businesses not currently showing a profit (and hence having no tax liabilities). This inequity can be resolved by making the investment tax credit refundable. While Congress has been understandably reluctant to approve the refundability of tax credits, the current state of many of our most basic industries and businesses requires a reevaluation of this policy as it relates to the investment tax credit.

To encourage unprofitable companies to modernize their plants and equipment, an Anderson Administration will propose amendments to the existing investment tax credit provisions to accelerate the time for applying the 90 percent limit based on tax liability and to provide for the prospective refundability of currently earned investment tax credits after the close of the year in which they are earned. To insure that Congress will have adequate opportunity to review and reconsider this measure, we propose to "sunset" the refundability provision three years after its enactment.

We believe that these measures will provide a strong stimulus to re-investment in America. An Anderson administration will, however, be prepared to go even further in the direction of investment-oriented incentives should that be necessary to complete the job of retooling our basic industries and to create a climate of rapid replacement for capital equipment so that our threatened firms can become internationally competitive once again.

Research and Development

Thirty years ago, three American scientists working for Bell Laboratories invented the transistor. As a technological breakthrough, it transformed communications, computing, education, entertainment and weaponry. In the early 1960's, scientists at Hughes Aircraft invented the laser, a breakthrough for which the full potential is still to be realized. Between 1950 and 1970, American scientists constructed the great accelerators which opened up vast new areas of human knowledge and technology.

These fundamental advances were the products of a nation that recognized the importance of scientific achievements and the role that science plays in our everyday lives. Total U.S. research and development spending as a percent of the gross national product, however, has fallen by nearly 50 percent in the past 15 years. We are in danger of losing our technological edge.

Declining technological growth has real consequences for all Americans. Technological improvements account for 40 to 70 percent of productivity growth. We all benefit from rising productivity in the form of increased purchasing power and higher real incomes. It is more than coincidence that our declining rate of productivity growth was preceded by an equally serious decline in our research and development effort.

To revive our flagging R&D effort, we propose a number of new initiatives and program improvements. An Anderson Administration will seek to:

Reverse the decline in the real dollar level of federal funding for research and development;

Provide a 10 percent investment tax credit for qualifying research and development expenditures;

Establish a federal program to re-equip the laboratories of our universities, our non-profit research centers, and our government facilities;

Redefine the working relationship between government and universities so as to avoid the substitution of paperwork for genuine creativity;

Provide fixed objectives and more predictable project funding for scientists and engineers on the cutting edge of technology;

Establish regional technology centers under the aegis of the National Science Foundation and NASA to lower the costs of selling and licensing new technologies to private business;

Establish a more uniform patent policy for all federal agencies;

Require federal agencies to determine in an expeditious manner whether they will retain the patent on inventions developed by private contractors with federal monies;

Reorganize and increase the funding of the Patent and Trademark Office to improve its operations and handling of patent requests;

Explore the possibility of creating a separate patent court to reduce the time needed to establish the validity of a patent.

Regulation

Federal regulations are required to protect workers and consumers in such vital areas as health, safety, the environment, and maintenance of competition. Attempts to reform the regulatory process must recognize the contribution that appropriate regulations can make to a safer and more prosperous economy.

The pledge of the Carter Administration notwithstanding, the vast bulk of the federal regulatory machinery has not been properly streamlined and scrutinized. If we are to realize the widely-shared objective of reducing the estimated $100 billion in regulatory compliance costs, we must establish a comprehensive timetable for the review of the entire regulatory framework, instead of relying upon piecemeal review.

We will seek the passage of legislation that would:

Set forth an eight year timetable for thorough Congressional review of regulatory agencies;

Require the President by May 1st of the first session of each new Congress to submit a regulatory reform plan for each of the regulatory agencies scheduled for review in that Congress;

Require Congress to act on the regulatory reform plan by August 1st of the second session;

Provide "action-forcing" means of assuring Congressional action, including denying the affected agency the power to promulgate new rules and regulations until Congress has acted.

An Anderson Administration will be firmly committed to the growth and maintenance of competition in our modern economy. We support recent efforts toward deregulation of the transportation industry, and we will support thorough review of other federal laws affecting competition including our anti-trust laws.

Energy

The availability and cost of energy have been among the most important structural factors in the American economy during the decade of the 1970's. Our increased dependence upon overseas oil has been responsible for a massive capital outflow. The rise in OPEC prices has fueled our inflation and precipitated two major recessions. Ownership of American industry, land, and structures is being transferred overseas to pay for our oil bill. It is not an overstatement to say that our ability to rebuild America will depend in large part upon our ability to reduce our dependence on foreign oil.

Six years have passed since the Arab oil embargo made energy a major issue in U.S. domestic and foreign policy. Despite his proclamation characterizing the energy problem as the "moral equivalent of war", President Carter has not succeeded in producing an effective comprehensive energy policy for the nation. The present situation is dangerous not only for the U.S. but also for world stability. It is time for us to move forward with consistent short-term and long-term policies designed to protect our economic vitality, security, and environmental health. This requires a new context for energy—a new way of viewing the energy opportunities before us, backed up by a set of policies to take advantage of those opportunities.

A healthy economy and a high standard of living for all citizens are not dependent on a given quantity of energy consumed but on maximizing the services or benefits derived from consumption. The goal of the Anderson energy program is to design policies aimed at providing individual and industrial consumers with all the heat, light, and mechanical power they require at the least cost. Our policies must encourage competition among various fuels and numerous technologies for using energy more efficiently.

To create an economic environment which enhances competition, energy supplies must be priced to reflect their real economic value. The incentive provided by correct energy pricing will hasten the transition away from scarce and expensive energy sources to economical renewable resources and more efficient ways of using finite supplies. Because these technologies have been at a competitive disadvantage in the past (due to price controls on oil and gas) they lack the capital investment needed to exploit their full potential. The Anderson energy program encourages economic investments in conservation technologies, new sources of oil and gas supplies, coal consumption technologies, and solar applications. In addition, policies are required to reduce our vulnerability to oil import disruptions and, for the longer term, to explore new technologies not now economical or fully developed.

While conservation is often thought of as simply doing without, conservation policies included in this program emphasize increasing the energy efficiency of housing, transportation, and industrial equipment that is needed to sustain our economy. Since the goods and services required by society can be produced by using various combinations of energy, capital, and labor, a least-cost strategy can be followed by encouraging technologies which require less energy to supply the same level of services. Application of economic conservation technologies to improve energy productivity now costs less than developing new energy supplies and so reduces the total cost of providing energy services to consumers.

These concerns are addressed by the programs covered in the following sections.

CONSERVATION POLICY

Energy conservation deserves the highest priority in U.S. energy planning because it is the least expensive way to provide energy services for homes, transportation, and industry. Conservation must be viewed as an additional option for providing energy benefits in the same way oil, gas, coal, and other technologies do. The energy services provided by conservation have distinct advantages over those provided by conventional fuels: they are cleaner, they are safe, they do not rely on foreign sources, and most important they are less costly.

A recent study by the National Academy of Sciences concluded that "throughout the economy, it is now a better investment to save a BTU than to produce an additional one". Conservation can be the most important method of providing the energy benefits we need over the next decade. The problem is that investments of major proportions are needed in conservation. Several studies indicate that $400–$500 billion in capital could be invested in retrofitting homes, improving auto efficiency, and increasing energy productivity in industry with economically attractive returns. Unfortunately, those sectors of the economy most in need of improved energy efficiency are also those least able to generate the necessary capital. We need to shift capital into energy-efficiency improvements, remove institutional barriers to such investments, and provide technical assistance and educational programs to motivate consumers to adopt energy-savings measures. To realize these goals, we should:

Pricing Reform

Firmly support continued decontrol of domestic oil and gas prices. Letting prices rise is the most efficient way to exploit our conservation potential. When consumers face the full economic value of the energy they use (prices which reflect more expensive domestic production costs, the insecu-

rity of import dependence, and environmental risks) they will respond by substituting conservation technology to provide the energy services required.

Urge further reform of utility pricing to better reflect the varying costs of providing electricity service, thereby giving accurate cost signals to consumers. Since generating costs are higher during peak demand periods, consumption will shift to off-peak hours when power will be supplied by more efficient baseload equipment. The federal government should support local experiments around the country to demonstrate the cost effectiveness of this pricing strategy.

Residential/Commercial Buildings

Encourage utility companies to experiment with new ways to deliver and finance building retrofits. For example, interest-free loans could be offered to consumers for weatherproofing or solar water heating investments, with the costs of the program added into the rate base rate of the utility. The federal government should fund short-term demonstration programs to help utilities start up such programs and then disseminate the results to public utility commissions.

Develop a residential energy performance rating system to reflect the relative energy efficiency of a dwelling for a given geographic location and size. FHA and VA appraisers should include such an evaluation in their housing assessments. Preferential treatment for conservation investments should be built into federal lending practices by requiring lower down payments for mortgage loans on homes with high energy performance ratings.

Use local community action groups to educate consumers on energy conservation opportunities and their costs and benefits. Since effective conservation is the result of many individual decisions, we must establish informational and technical assistance programs directed to the individual consumer. Community block grant programs should expand funding for home audits, direct retrofit assistance, promotion of "life cycle" costing and other measures to help consumers make more economical choices and reduce their energy consumption.

Promote a strategy for retrofitting existing buildings to reduce energy costs and provide new employment. Financing is generally a more difficult problem for retrofits than for new construction, especially for inner-city multi-family rental dwellings. To remove such barriers, the Federal Government should substantially increase the investment tax credit for building rehabilitation. (See the program section on America's capital needs.)

Conservation in Transportation

Substantially increase the Federal tax on motor fuels and use the proceeds to lower payroll taxes and increase social security benefits. A 50 cent per gallon tax would achieve a reduction in gas consumption of as much as 700,000 barrels per day in the short-run and over one million barrels per day in the longer term. It would also generate over $50 billion per year in net revenues to be returned to consumers through offsetting tax relief.

Seek Congressional approval of an auto fuel economy standard of 40 miles per gallon by 1995. Enhanced fuel economy would save one million barrels per day over the level of consumption anticipated if the 1985 standard of 27.5 mpg is not raised. In addition, a special fuel economy minimum should be established for light trucks weighing 3 to 5 tons (a rapidly increasing share of the personal transportation market). By exempting these trucks from such standards, much of the conservation benefit of higher auto efficiency levels is being negated.

Enforce strict adherence to the 55-mile per hour speed limit on all major highways. It has been estimated by the Department of Transportation that this restriction on excessive speed cuts U.S. gasoline consumption by 3.4 billion gallons annually. Even more convincing, however, is that since its introduction in 1974, this law has saved 37,500 lives and prevented untold numbers of accidents on our roads.

Improve and expand mass transit to supplement the use of private vehicles. Short-haul public transportation designed to meet local commuter needs will reduce street congestion and air pollution as well as energy consumption. A much greater federal investment in a variety of public modes is required. (See the Community Transportation Program.)

Conservation in Industry

Promote industrial cogeneration by increasing DOE funding for demonstration projects and by providing technical assistance to industries and utilities. Because cogeneration is a highly efficient use of oil and gas, cogenerators should not be restricted in the use of these fuels by the Fuel Use Act and Windfall Profits Tax Act. Removal of these barriers would stimulate the operation of economic, decentralized systems to provide energy services.

Provide incentives to investment in energy productivity improvements including new conservation technologies. Adoption of accelerated depreciation allowances would stimulate general productivity increases as well as promote the purchase of energy-saving equipment. Also, consideration should be given to increasing the tax credits for industrial conservation measures, after careful evaluation of the response to existing incentives.

Conservation in Government

Set high energy efficiency standards in federal, state, and local government activities. Emphasizing conservation in the acquisition and operation of buildings and motor vehicle fleets demonstrates both the seriousness of our energy problems and the cost-effectiveness of our solutions.

Provide a market for energy-saving technology. The government should act as a proving ground for new conservation ideas directly through its procurement practices and should widely publicize those that are most successful.

Low-Income Energy Assistance

Continue federal financial aid to help pay residential energy costs incurred by the poor. Higher prices which result from oil and gas price decontrol will most adversely affect low-income families because they are most limited in what they can do to reduce their home heating bills and electricity demand.

Continue federally funded weatherization services to low income families, those least able to invest in energy-saving measures. The recent changes in the Weatherization Assistance Program to expand the labor component and improve the selection of qualified local agencies should help insure a more timely and efficient program.

Petroleum Policy

Federal petroleum policy must address two major problems. The first is the inability of the domestic resources base to supply the huge volumes of oil and gas required by the economy. Proved domestic reserves of these fuels declined by about 30 percent in the last decade because production levels far exceeded new discoveries. With each increase in demand, the balance of the nation's oil requirements was met by foreign imports. The second problem is the vulnerability created by a dependence on imports. Aside from the continuing problems of inflation and balance of payments deficits, the U.S. could suffer enormous economic damage if a sudden and severe disruption in supplies were to occur. Our oil dependence, particularly during periods of economic growth, contributes to instability in the world market by gradually reducing the market's flexibility which in turn leads to further large OPEC price increases. Both components of the problem have been aggravated by past policies that restricted the full development of domestic resources and subsidized greater imports.

The rate of decline in domestic reserves needs to be reduced by policies that encourage enhanced recovery from existing sources, increase—subject to environmental priorities—the amount of federal land and off-shore tracts available for exploration, and make greater use of previously marginal resources of oil shales, heavy oil deposits, gas trapped in tight sand formations, and similar unconventional deposits. Since these sources will not be adequate in themselves, it is also necessary to produce synthetic oil and gas using abundant coal reserves. Regulatory and pricing policies must be changed to discourage imports and promote competition among all sectors of the energy industry.

Problems caused by the extent of our dependence on foreign oil cannot be solved immediately, but our vulnerability can be reduced by the storage of a greater volume of emergency supplies and effective advance preparation to handle the effects of supply disruptions. It should also be recognized that major price increases might be reduced in the future by implementing supply and demand management programs well before world market conditions become dangerously strained. To make larger and more secure petroleum supplies available in the future, we should:

Developing New Supplies

Continue federal support for research and development programs on enhanced oil recovery from existing reserves, production from oil shale, tight sands, and heavy oil deposits.

Expand the off-shore tracts and federal land made available for petroleum exploration provided the best available and safest technology is used, cost effectiveness is demonstrated and environmental impacts are acceptable.

Diversify the sources of foreign supply by establishing a supply development function—an Agency for International Energy Development—within the International Energy Agency, by providing additional financial assistance to existing World Bank and Agency for International Development programs, and by increasing technical assistance to developing countries that are not currently net oil exporters.

Continue start-up funding for projects to develop synthetic gas and oil supplies using feedstocks. Support for production beyond present targets will depend on whether environmental problems are solved, whether technical feasibility is clearly demonstrated, and, most important, whether synthetics are more economic than other energy sources.

Increase federal support for efforts to define the availability and characteristics of new gas resources from geopressurized methane, devonian shales, and tight sand formations.

Restrict federal approval for new LNG projects until safety, siting, and security of supply issues have been resolved. This policy would not affect imports of gas by pipeline from either Mexico or Canada.

Contingency Planning

Complete and fill the Strategic Petroleum Reserve. At least one billion barrels should

be in storage in order to provide significant protection from possible supply disruptions. A regional reserve for the Northeast, an area particularly dependent on imported oil, should be constructed.

Modify the current policy regarding use of oil in storage to permit withdrawal whenever world market conditions become overly rigid. In the past, accelerating demand for world oil supplies in the latter stages of the recovery cycle has strained the market to the point where a small disruption of supply causes disproportionately large increases in the world price. Use of the Strategic Petroleum Reserve to alleviate these conditions should require simultaneous economic measures to reduce overall demand.

Cooperate with other members of the International Energy Agency to arrange for mandatory restrictions on unusually large purchases in periods of tight supply. Often in the past, petroleum companies, anticipating a major OPEC price increase, have contributed to its magnitude by increasing inventories for short-term benefits.

Prepare several stand-by emergency conservation plans to promote fuel switching, electric power transfers, and reduced gasoline consumption in the event of an oil embargo.

Revise the present emergency rationing plan to reduce the length of time needed to put it into operation. A plan that takes longer than three months to be implemented has limited usefulness.

Pricing and Regulatory Policy

Continue the phasing out of price controls on oil and gas under the schedules provided in current legislation. The Windfall Profit Tax is necessary to meet national standards of equity.

Since the elimination of well head price controls will give all refiners comparable costs, end the Entitlement Program. Emergency allocation authorities should be retained for use in a major supply disruption.

Have the Energy Information Administration monitor transfer pricing practices by integrated petroleum companies to determine whether independent refiners are placed at an unfair competitive disadvantage by subsidies to the refining segment of integrated firms. Similarly, competitive conditions in the coal industry will be monitored to determine whether the use of profits from oil and gas operations give an excessive competitive advantage to the coal mining subsidies of oil companies in relation to independent coal companies.

Coal

This nation has the resources for coal to assume a much larger share of our energy supply mix. In conjunction with conservation, it offers an important alternative supply to reduce our dependence on imported oil. Coal also can serve to improve substantially our balance of payments through exports to other industrialized countries. Despite these opportunities, the demand for this fuel has not kept pace with the capability of coal industry miners and operators to produce it. Greater coal production and use will depend on resolving environmental and health problems and on rectifying constraints in coal transportation.

The combustion of coal is a major source of several major air pollutants. There is evidence that large quantities of sulfur oxides and nitrogen oxides emitted into the atmosphere from midwest power plants are contributing significantly to acid rainfall in New England and Canada. Such precipitation is believed to account for declines in certain species of fish and to have adversely affected crops and forests. In addition, there is growing speculation that large increases of carbon dioxide in the atmosphere will produce significant adverse changes in climate around the world. While carbon dioxide presents no direct threat to health or welfare at present levels, scientists are concerned that greater coal use will create a "greenhouse" effect, trapping heat that normally radiates away from the earth, thereby raising global temperatures.

Another environmental problem associated with coal is land degradation. Much of the expansion in output over the next few decades will require strip mining, a method of production which causes extensive land disruption and water problems if not properly controlled. Standards must be maintained to assure that land is returned to its original contour.

The expansion of coal output for both domestic and foreign markets is hindered by bottlenecks in our transportation system. Increased coal shipments, especially from Western states, would strain rail and port facilities. The ability of railroads to move coal on a timely and efficient basis requires increasing mainline trackage and supplying rolling stock. At East Coast ports, the capacity for storing and handling coal is inadequate, causing high demurrage charges.

To improve the competitiveness of coal while limiting adverse environmental impacts, we should:

Increase the Demand for Coal

Expedite the conversion of oil-fired electric power plants to coal beginning with the 80 plants targeted in the Senate oil backout bill. The government should provide financial assistance in the form of grants or loans to be repaid out of the fuel savings subsequently realized. All conversions must meet current air quality standards.

Encourage industrial use of coal by offering tax incentives to firms that convert from oil. The government has yet to implement regulations for the investment tax credit for coal-fired industrial boilers authorized in 1978.

Mitigate Environmental Impacts

Reduce acid rainfall by requiring electric power pools to use available plant capacity on a least emissions rather than least cost basis. Mandatory pre-combustion coal "washing" may also be a cost-effective way of curbing area-wide sulfur dioxide emissions.

Accelerate research and development of fluidized bed combustion and direct limestone injection processes to reduce air pollution. Adapting these technologies for new power plants offers a promising alternative to current expensive scrubber systems.

Increase funding to established independent agencies for research on the possible climatic effects of carbon dioxide emissions. Since the problem is a global one, parallel efforts need to be undertaken on an international level.

Support existing legislation to insure that states adequately regulate mining practices. Surface mining should not be allowed where land cannot be restored to the level of productive use which existed before strip mining.

Improve Coal Transportation

Facilitate the movement of coal to domestic markets by reducing railroad regulation while providing protection for "captive" coal shippers. Rates set by the ICC must compensate railroad companies for building, maintaining, and equipping an adequate transportation system.

Propose the establishment of a Coal Export Authority to review the need for expanded port facilities to accommodate coal for export and coastal movements. Where appropriate, this authority should undertake to aid in the funding of new coal terminals on both the East and West coasts. (See the Transportation Program.)

Reform the Regulatory Process

Improve the stability and predictability of environmental regulations and occupational health and safety standards. All rule-making should be conducted openly and policies should be consistent over time. It is possible to eliminate costly and unnecessary delays in the regulatory process while maintaining strict operating standards.

Resume the leasing of public land for coal production. Federal leasing policy should be designed to make low-cost coal available in efficient mining blocks, at a fair return to the public treasury, while insuring sound environmental practices.

Nuclear Power

Escalating problems with the cost and safety of nuclear power have raised serious questions regarding its role in America's energy future. The expansion of nuclear power, which presently accounts for 10 percent of the nation's electrical generating capacity, must be linked to the resolution of the nuclear waste and reactor safety problems, along with a reassessment of both the full costs of nuclear power and the anticipated demand for electrical generating capacity in the 1980's and 1990's. If the safety and nuclear waste questions cannot be satisfactorily resolved, we must halt the further expansion of nuclear power and phase out existing plants. If those questions can be satisfactorily answered, the future of nuclear power will be contingent on competitive cost factors, as well as the need for additional electrical generating capacity.

The Kemeny and Rogovin reports found major deficiencies in the management and practices of the Nuclear Regulatory Commission (NRC) and the industry itself. Both studies recommended substantial changes affecting the organization of the NRC, the operation and design of nuclear plants, evacuation plans, and the training of plant operating personnel. Prudence requires that we respond fully to their recommendations. The NRC should be barred from issuing new operating licenses unless the Commission certifies that the stringent safeguards adopted since Three Mile Island have been incorporated into the plant's design, operating procedures and emergency plans, and that all other safety issues pertinent to the plant and its design have been resolved.

We propose a moratorium on new construction permits, beyond those now being processed, until work has commenced on a permanent geologic disposal site. We have postponed the nuclear waste question for too long. If no suitable means of permanent disposal is available or technically feasible, then it would be irresponsible to put more nuclear power plants on the drawing board. If, on the other hand, a suitably safe means exists, we should begin a demonstration project at the earliest appropriate time.

While safe, permanent disposal of all high level radioactive and transuranic waste must be the principal responsibility of the federal government, all levels of government—including state, local, and tribal—must be allowed to participate in the entire decision-making process.

While every state must be responsible for the management and disposal of all civilian low-level nuclear wastes generated within its boundaries, disposal should proceed on an acceptable regional basis. Regionalization is favored by cost, transportation risk, geologic and other circumstances which make some states unsuitable as sites. We endorse the Task Force Report on Low Level Radioactive Waste Disposal of the National Governor's Association, which recommends that Congress authorize states to enter into compacts to select disposal sites.

Our commitment to nuclear power must be no greater than our commitment to the safety of nuclear reactors and the safe disposal of nuclear wastes. For twenty years now we have allowed our thirst for a cheap and reliable source of energy to outstrip the safeguards and other steps that should have

accompanied the development of nuclear power.

It is important to remember that what happened at Three Mile Island was not merely a "loss of coolant": there was also a "loss-of-confidence": public confidence. Just as a "loss-of-coolant" can lead to the shutdown of a nuclear reactor, so too can a "loss-of-confidence" lead to a shutdown of the entire nuclear industry. We must restore public confidence in nuclear power; but we must restore it by the force of our actions, rather than by the volume of our rhetoric.

In the meantime, we must begin in earnest to reduce our demand for electricity through conservation and enhanced energy efficiency, and to speed the development of renewable energy sources, and other alternatives to nuclear power.

Direct Solar Energy

Harnessing the sun's energy in active and passive solar applications should be one of our most important energy sources. However, the breakthrough required to have the potential offered by the various solar technologies realized has yet to occur in practice. In part, this has been due to the competitive advantage traditional fuels have enjoyed because of controlled prices and also because the federal program in solar energy has failed to offer sustained and adequate support for the most promising technologies. In the future, higher oil, gas, and electricity prices will sharply increase demand for the already cost-effective technologies and will provide necessary impetus for photovoltaic systems. The federal government, however, should undertake a much larger effort to promote research and development, improve consumer confidence in solar technologies, remove institutional barriers, and make a substantial commitment in solar energy for its own use. To attain the goal of meeting 20 percent of our energy needs from renewable resources by the year 2000, we should:

Develop uniform performance standards for active solar systems. This would significantly reduce consumer uncertainty about the prospective performance of solar devices by using standard performance criteria to facilitate comparisons between competing systems.

Encourage public utilities to establish special lending arrangements to help finance the purchase or lease of economical solar devices. Utility customers could then be supplied with a number of energy services at least cost.

Reduce the cost of photovoltaic systems by authorizing a larger federal procurement program. Significant federal purchases of these systems would encourage mass production by assuring manufacturers of an adequate intermediate market, lower unit production costs, and generate useful performance data. In addition, this program would serve as a training ground for building trades workers and increase consumer confidence in solar energy.

Focus federal research and development programs on identifying the basic reasons for the present high capital or operating costs of solar systems and on ways to reduce them. New construction materials and methods and energy storage devices should be explored seriously so that many options for using solar energy will be available.

Monitor the activities of the Solar Energy and Energy Conservation Bank to determine whether the $525 million authorized by Congress to subsidize solar energy for the next three years will be sufficient to maximize the long-term effectiveness of the program.

Other Energy Sources

In addition to the renewable and non-renewable energy resources discussed so far, significant contributions to meeting our energy needs can come from alternative energy sources. It is in our nation's best interests to make substantial investments in a wide range of promising technologies to determine which can provide energy services at least cost. Because our financial resources are limited, we must distinguish between those options which will deliver within the next twenty years and those which offer promise on a 30- to 50-year horizon. In the near term, there are several technologies, including wind and biomass energy systems, which require no major technical breakthroughs for their introduction. In the longer run, large quantities of energy from ocean power, geothermal resources, and nuclear fusion may be forthcoming, provided technical and economic hurdles can be overcome.

While greater reliance on these alternatives will occur eventually, critical decisions should be made now to speed the timing and reduce the costs of this transition. New incentives are needed to encourage more rapid implementation of these technologies beyond the demonstration stage. While current federal programs provide some experience in establishing financial incentives, development of a comprehensive and balanced approach to alternative energy commercialization remains a crucial problem.

Although many of the institutional and technical barriers to development have been resolved, incentives to invest in "new" energy sources have been limited in comparison with conventional sources of supply. This has been due, in part, to domestic price controls which maintain market prices below true replacement costs. By giving investors a false sense of the value of alternative source, the market has biased decisions away from more energy efficient, economical, and environmentally benign systems. A second barrier to full commercialization of alternative technologies is the high cost and limited availability of capital. Projects which are cost effective still have difficulty competing for financing in a tight capital market with high interest rates. Another difficulty is that private investors have been reluctant to commit funds to innovative projects where the returns are perceived to be uncertain. This has resulted in a cautious, wait-and-see attitude on the part of many potential users.

Recent federal actions to deal with some of these problems have included the passage of the Crude Oil Windfall Profits Tax Act and the Energy Security Act. To further stimulate the timely development and commercialization of alternative energy sources, we will:

Expand DOE funding for nonhardware activities. For small-scale decentralized systems, greater attention should be paid to increasing user awareness and acceptability, reducing utility interface problems, and developing competitive systems' manufacturing capability.

Direct DOE to demonstrate the reliability of wind energy equipment. Operating experience, power production and maintenance will instill consumer confidence by providing valuable information on machine designs and economics.

Emphasize smaller scale biomass conversion facilities to maximize its potential at least cost. Also, near term technologies, such as the production of methanol from wood, should be included in programs to commercialize biomass energy systems.

Prepare a comprehensive plan for the development of ocean thermal energy conversion (OTEC) in order to estimate its total cost and the federal involvement required to bring it to commercialization. DOE should complete a detailed resource assessment of the potential for OTEC to determine where it is likely to be the least-cost alternative.

Support accelerated funding of fusion energy research, contingent upon continued progress toward the demonstration of technical feasibility.

Targeted Measures

As we create a new climate that promotes economic stability, long-range planning, capital formation, investment, innovation, and risk-taking, we will lay a foundation for a resumption of steady growth, rising productivity, lowered inflation, and high employment.

In addition, however, we need specific initiatives to enable the various sectors of our economy to build on this foundation.

We need an industrial policy sensitive to the special problems of our basic industries.

We need to restore small business to its traditional role as a generator of new ideas and new jobs.

We need to ensure that our transportation system can meet the demands of an economy changing in light of changing energy usage practices.

We need to seek new solutions to the traditional problems of the farm economy.

We need to revitalize our space program, another important source of innovation.

We need to remove existing barriers to exports and to work aggressively to increase them.

We need to protect our trade and our currency through increased international economic cooperation.

Finally, we must preserve and extend the gains our working men and women have achieved in nearly a century of organization and struggle.

Industrial Policy

Once the Colossus of International trade and industry, America is now losing its ability to compete in the world marketplace. In 1968, U.S. manufacturing exports accounted for 24 percent of work exports. Last year, however, America's share of world manufactured exports was only 17 percent.

Our inability to compete in the world marketplace not only aggravates the balance of trade, it also erodes confidence in the dollar overseas, and leads to a loss of jobs and purchasing power here at home.

If we are to avoid yet another decade of economic stagnation, we must rebuild our declining industrial base. The rebuilding process must begin with a new industrial policy. By industrial policy, we mean the sum of government policies affecting industrial growth. Nothing less than a comprehensive review of those policies will do.

Industrial policy, however, should not be a subterfuge for the selective bailout of troubled companies or the artificial propping up of failing industries. Rather, our task is to promote a climate conducive to the recovery of troubled industries, the advancement of growing industries and the creation of new ones.

Neither should industrial policy be used as a vehicle for the elimination of necessary environmental and safety and health regulation. While regulatory objectives can sometimes be achieved by less burdensome and costly means of compliance, our environmental, safety, and health laws serve real public needs.

The principal focus of industrial policy must be on the five structural initiatives discussed above which we believe will spur industrial growth and innovation. Other important program initiatives include transportation and trade initiatives discussed below. There are, however, a number of other tasks that must be undertaken which are peculiar to the requirements of industry.

A decade of lagging research and development has led to a dangerous erosion of the competitiveness of some of our most basic industries, including the auto and steel industries. Many of those companies now lack the ability to attract the capital needed to finance the development of cost-saving innovations.

To assist in the recovery of established, but troubled, industries, an Industrial Development Administration should be established in the Department of Commerce. Like the existing Economic Development Administration (also in the Commerce Department), the Industrial Development Administration (IDA) should be authorized to give loan guarantees for selected projects. Unlike EDA, however, the new agency should be directed to assist in the financing of projects involving the development of new technologies and cost-saving techniques for industries as a whole.

IDA's assistance should be targeted at troubled industries; the agency should not be authorized to support projects in new or expanding industries.

It should encompass a cooperative government-industry program of directed basic research in automobile and steel technologies. IDA's support in this and other areas, however, should be limited to basic research and cost-saving production techniques.

Since IDA's limited objective is to assist in the remodernization of America's basic industries in the difficult decade ahead, authority to issue loan guarantees should expire December 31, 1989. On that date, IDA's financial obligations and responsibilities should be assumed by the Economic Development Administration or a related Commerce Department authority.

A commitment to the revitalization of American industry requires a White House staff structure that ensures proper attention to matters affecting the health of vital industries and the wellbeing of the American worker. To achieve this end, we propose to create, through legislative initiative, an Industrial Development Council modeled in part on the National Security Council.

The Council should be chaired by the President and have as members relevant Cabinet officers, other executive branch officials, and selected business and labor leaders. The Council should also have an adequate staff, headed by a Presidential advisor for Industrial Development to be appointed by the President, subject to Senate confirmation.

The Council should be charged with the responsibility of coordinating and reviewing those government policies which touch on industrial matters, fostering closer relations between leaders of management and labor, and encouraging American industry to adapt to the rapidly changing developments in international economics, technology, and consumer preferences.

Of particular importance is the need to open a closer dialogue between management, labor, and government leaders. When industries of major significance are in trouble, business, labor, and government all have a common interest in a remedy. The success of earlier labor-management committee experiments in the United States suggests these cooperative efforts should be conducted on a broader and more formal scale. The formation of a limited number of national, industry-wide labor-management committees should serve as useful adjuncts to the work of the proposed Industrial Development Council by providing a vehicle for direct input from the private sector.

The Auto Industry. The domestic auto industry is in trouble. Foreign imports in May of this year accounted for 28 percent of auto sales in this country. Domestic sales for May were 42 percent below last year's level, resulting in the lowest sales rate since the early 1960's. This summer, 250,000 auto workers have been on indefinite layoff and thousands more on temporary layoff.

While there has been a summer rebound, auto sales remain sluggish and the outlook clouded. Short-term prospects for the industry will be determined by the availability of consumer credit and the competitiveness and attractiveness of the newer, more fuel efficient models due to be marketed this fall and next spring. The longer term future of the industry will be determined by the resourcefulness of management, the cooperation of labor, the availability of capital and consumer credit, the level of import competition, and the tax and regulatory policies of the federal government.

The policies of an Anderson Administration will serve to assist the automotive industry's recovery:

Lower interest rates will enable more people to finance the purchase of automobiles.

The liberalized depreciation allowances will be specifically applicable to the special capital needs of the auto industry.

The refundability of the investment tax credit will serve to lower the effective costs of capital expansion and will be of special relevance to companies operating at a loss, as the auto industry now is.

The 10 percent investment tax credit for qualifying research and development will help spur innovation in an industry where demands for more fuel-efficient products are great and where product redesign is fundamental.

The Industrial Development Administration will help, through loan guarantees and other assistance, to establish a cooperative government-industry program of directed basic research in automotive technology.

The Industrial Development Council, through its industry-wide labor management committees, will provide a vehicle for cooperation between industry, labor, and government to coordinate a concerted attack on industry problems.

Finally, an Anderson Administration will consult with foreign automotive producers in an effort to avoid arbitrary trade restrictions by persuading them to observe voluntary restraint during times of sharply slumping domestic sales.

The Steel Industry. Once the world's leading producer of steel, U.S. steel production recently fell into third place, behind both the Soviet Union and Japan. Steel shipments for 1980 are estimated at 80–88 million tons, compared to 100 million tons in 1979.

While U.S. steel shipments can be expected to rebound as the economy recovers from the 1980 recession, the steel industry faces serious long-term difficulties. A recent Office of Technology Assessment report concluded that "continued low profitability and some Federal Government policies, such as long depreciation time for new facilities, will cause the domestic steel industry to contract substantially."

From the standpoint of jobs and national security we must make every reasonable effort to revive the steel industry. OTA's report concluded that the "U.S. steel industry can be revitalized through increased investment in research and development (R&D) and the adoption of new technology." It is anticipated, however, that steelmakers will have to expand their capital spending by 50 percent (to approximately $3 billion per year) in order to make the necessary modernizations in plant and equipment.

The policies of the Anderson Administration will help rescue the steel industry as long as that industry is willing to make a commitment to its own future. The structural initiatives set forth above will be important factors in the steel industry's recovery—especially the liberalized depreciation allowances, the refundability of the investment tax credit, and the R&D investment tax credit. The institutional initiatives of the IDA and the IDC will also play important roles. Efforts to revive the auto industry will, quite rationally, also assist the steel industry. Furthermore, the heavy emphasis on capital expenditures for industry, as set forth above, and for basic urban and transportation needs, as set forth below, will provide a strong and predictable domestic market for steel manufacturers during the decade.

As with autos, an Anderson Administration will consult with foreign steel producers in an effort to avoid arbitrary trade restrictions by persuading them to observe voluntary restraint during times of sharply slumping domestic sales.

Small Business

The strength and vitality of the American economy is dependent on the health and competitiveness of small businesses. Twelve million small businesses today account for nearly one-half of the gross national product and employ more than one-half of the work force.

Small businesses make up the cutting edge of our economy. They are responsible for a majority of the nation's technological innovations and create over 80 percent of all new jobs.

Despite their economic importance, short-sighted government policies have over-regulated and over-taxed small businesses. Between 1960 and 1976, the share of total corporate after-tax profits earned by small and medium-sized companies fell from 41 percent to 27 percent.

To reduce the excessive taxation of small business enterprises, we propose to:

Allow small businesses to elect to write-off in the the first year the first $50,000 in investments in equipment and machinery each year, as described above.

Provide simplified and liberalized depreciation allowances for capital equipment and structures.

Provide an investment tax credit for qualifying research and development expenditures;

Defer capital gains tax on the sale of a small business if the proceeds are reinvested in another qualified small business within six months;

Expand the eligibility for Subchapter S status by expanding the maximum number of allowable investors;

Initiate a further review of capital gains treatment; and

Reduce corporate tax rates by two percentage points across-the-board by 1986.

The regulatory problems affecting small business deserve special consideration. Small businesses are often less suited or equipped to deal with federal regulatory requirements. Legislation should be enacted that would require federal regulatory agencies to consider the feasibility of enacting less burdensome regulatory requirements for small businesses, providing the new regulations do not jeopardize important safety and health objectives.

Transportation Policy

In a national program to rebuild our industrial base, save energy, and meet special requirements such as the export of coal and wheat, the quality of our transportation network assumes a fundamental importance.

Much of America's transportation infrastructure was designed at a time of declining fuel prices. That infrastructure must now be adapted to meet the nation's needs during a time of growing energy scarcity and rising prices. In transportation, as in other areas of the economy, there are unmet capital needs. Many of the nation's railbeds are in a state of serious disrepair. Highway maintenance costs are escalating. Our port facilities must be upgraded to meet rising and changing demands. Our traffic control systems need to be updated. We ignore these problems at our peril.

Rail Policy. For ninety years, the railroad industry has taken signals from government rather than from a free market. The government has used the railroad industry to promote economic and social goals, often forcing shippers on profitable, heavily travelled routes to cross-subsidize shippers on less remunerative lines. Competition from other modes superimposed on this regulatory regime has fashioned a financially troubled industry. Not only has the railroad industry

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been unable to provide shippers with quality service at reasonable rates, it has also failed to exploit the fuel efficiency advantages it enjoys over the trucking industry.

We must revitalize our nation's rail system. Railroads must be freed from the anachronistic regulation which now encumbers many aspects of the industry. Government must shift its focus from preserving unprofitable portions of the system to preservation of the system itself. An Anderson Administration will:

Give railroads more flexibility to determine their pricing and operating policies. In many parts of the country, however, shippers of bulk commodities over long distances remain captive to rail carriage. For reasons of both equity, and in the case of coal, national security, an Anderson Administration will guarantee rate protection to such shippers.

Abolish procedures that allow railroads collectively to set general rates. We applaud the recent ICC decision to withdraw antitrust immunity from rate bureaus setting general rates.

Continue those provisions of the 4-R Act that provide matching funds to States for the purchase of abandoned lines to ease the impact of abandonments on State and local economies.

Make the investment tax credit refundable to provide additional investment incentives, particularly for railbed investment. This proposal will be helpful to the weaker, marginally-profitable and unprofitable roads in their efforts to maintain and modernize.

Encourage the future formation of several long-haul rail lines to maximize the efficiency of uninterrupted rail movement.

Support Conrail at least until the United States Rail Association, Conrail's oversight body, completes its study and makes its recommendations to Congress this coming December.

Continue financial support for Amtrak. Amtrak should be provided with the funds necesary to meet its operating costs and to aid in roadbed improvements. Emphasis must be placed on rapid line corridor service through such programs as the Northeast Corridor Improvement Program.

Port Policy. In the 1980's America must stop exporting its dollars and start exporting its industrial produce. Our ports handle more than 95% of the tonnage moving in U.S. overseas foreign trade. Foreign trade currently accounts for 20 percent of our nation's GNP. That figure will grow throughout the decade, and with it will grow the demands placed upon our ports. We must take action to ensure that our ports will be able to bear the responsibilities placed upon them.

Oil price increases have opened up prospects for dramatic increases in U.S. coal exports. These exports could engineer a major turnaround in this nation's balance of payments. Yet a number of obstacles could delay or prevent the growth of this valuable trade. Harbor channels must be dredged to accommodate the deep-drafted vessels necessary to transport coal shipments economically. Processing time for dredging permits must be shortened and delays by environmental agencies and the Army Corps of Engineers minimized. The environmental problems raised by port expansion must be solved, including the development of an adequate method for the disposal of contaminated spoil.

An Anderson Administration will establish a Coal Export Authority within the Department of Commerce to accelerate the revitalization of our nation's ports. The Authority will:

Explore the need for expanded and improved port facilities to accommodate coal for export and coastal movements.

Aid, where appropriate, in the funding of coal terminals on both the East and West coasts.

Reduce processing time for dredging permits. Specific criteria would be established for approving time extensions, highlighting the Corps' and the federal agencies' performance in meeting time frames through periodic reports, and more clearly delineating specific areas of review for each agency.

Urgently work toward solving the problem of disposal of contaminated spoil from dredging operations. This will also reduce delays caused by the three environmental agencies.

Highway Rehabilitation. In 1956, President Eisenhower launched the most successful transportation program in the nation's history—the Interstate Highway Program. Today, however, the highways are deteriorating at an alarming rate.

The Highway Trust Fund was established by Congress to provide a stable source of revenue to finance construction of the Interstate system. It provides the funds necessary for much of the rehabilitation work on both Interstate and non-Interstate roads as well as for the costs of new construction. But over the past two years expenditures have exceeded revenues. Revenues coming into the Trust Fund have declined while the costs of completion of the Interstate system and rehabilitation of federal-aid highways have skyrocketed. If conditions remain unchanged, the current Trust Fund balance of $12.6 billion could be depleted in a matter of years.

We must make a strong commitment to maintain our nation's highways. An Anderson Administration will:

Complete the few segments of our Interstate system which are deemed necessary in an energy-conscious and environmental conscious era.

Rehabilitate those federal highways which have deteriorated to the point of eroding their serviceability.

Make a strong commitment to increasing revenues for the Highway Trust Fund, recognizing that the fund may face lower revenues as fuel costs rise. We will review the federal highway program's revenue policy in order to develop additional sources adequate to meet the nation's highway needs. This will probably mean increased taxes no later than the mid 1980's.

Aviation Safety. Throughout its history the aviation industry has maintained a commendable safety record. But that record could be jeopardized without the implementation of major improvements. Outdated air traffic control equipment, and a steady increase in the number of flights, has endangered scores of passengers in recent months.

An Anderson Administration will recognize the need to revamp existing procedures and equipment to permit safe air travel by our nation's air commuters. Our proposals are not large budget items but will contribute significantly to aviation safety. Specifically, an Anderson Administration will recommend:

Replacement or upgrading of outdated traffic control equipment.

Installation of effective new control systems at airports of all sizes. New systems at small airports will allow small aircraft to land in bad weather, reducing congestion at the larger airports handling commercial aircraft.

Improvements, where necessary, in the certification, inspection and maintenance procedures utilized by the Federal Aviation Administration.

Study of the feasibility of improving the post-crash safety of planes. Prevention of the fires and noxious fumes which cause the majority of air crash fatalities would be addressed.

Redesign of regulations to improve the safety and licensing requirements of commuter airlines and private planes. Most aviation fatalities occur as a result of accidents involving these types of aircraft.

Agriculture

Agriculture is America's most basic industry. The American farmer, however, is in trouble. Net farm income in the second quarter of this year fell by an estimated 40 percent over the prior year's level. Squeezed by low grain and livestock prices, high interest rates, and escalating farm production costs, net farm income for all of 1980 is projected to fall an estimated 29 percent below last year's level.

For farmers in many parts of this country, the news has turned from bad to worse. A severe drought has crippled farm production in several important agricultural states, resulting in both higher prices for consumers and financial hardship or ruin for many farmers.

Agricultural policy in the 1980's must restore the fundamental strength of American agriculture. To achieve that goal, we must expand farm exports, assure adequate farm prices, restrain rising farm production costs, strengthen the family farm, provide ample farm credit, preserve agricultural land, and stabilize farm incomes.

Farm exports

Agricultural products are the mainstay of U.S. exports. Farm exports this year will total an estimated $40 billion. World trade in farm commodities is heavily encumbered by import restrictions and other barriers to fair competition.

An Anderson Administration will work to liberalize world trade and expand U.S. exports. We propose to:

Negotiate aggressively to reduce protectionist barriers overseas and to increase farm exports;

Provide for the maintenance of realistic inventories of basic farm commodities, principally in farmer-held reserves, sufficient to insure adequate and secure supplies at reasonably stable prices in the event of production shortfalls;

Expand export markets for American food products through continued support of economic development programs in the developing countries and to develop longer-range patterns of bilateral trade with those nations; and

Provide generous relief programs for the emergency feeding of refugees and the victims of famine or natural disaster.

Farm prices

The collapse of farm incomes this year points to a continuing need to maintain adequate farm prices. Neither consumers nor producers are well served by the boom and bust cycle of farm prices. It is in the best interests of both parties to maintain full and ample farm production at fair and stable prices.

Many government actions have powerful effects upon the prices American farmers receive, some actions by limiting commodity price decreases and others by restricting price increases contrary to actual supply and demand conditions. Such actions have been taken during recent years without any recognized test of whether the resulting prices are fair. Both the recent Republican and Democratic Administrations have repudiated the parity formula established by law for that purpose. Government action which interferes with market forces in the establishment of commodity prices should be reduced to a minimum, but when it becomes necessary, the government should insure that the price consequences of its action will be fair. The current restriction on sales of grain to the Soviet Union is a case in point.

The Anderson Administration will re-examine the parity formula and other proposals for measuring the equitability of farm commodity prices. Such a review should

call for the views of both farmers and consumers in an effort to determine fair and equitable returns for farmers.

We propose also to improve and administer farm price supports and other commodity programs so as to make them less cumbersome and their effects more predictable and stable.

Recent drought conditions have dramatized the continuing need to expand the eligibility of coverage of federal crop insurance programs to better protect farmers from the financial devastation of drought and other natural disasters, while also providing adequate emergency farm credit.

We also reaffirm our support for the Capper-Volstead Act, the basic charter under which agricultural producers are empowered to organize for group action in pricing and marketing their products.

Farm costs

Net farm incomes in recent years have been sharply affected by the rising costs of fuel, petroleum-based fertilizers and pesticides, transportation, and farm equipment. Restraining those costs and lowering interest rates can further boost America's already high agricultural productivity and raise net farm incomes.

We propose to:

Reduce the cost of energy for farmers by encouraging efficient programs to convert farm and forestry products into alcohol and other forms of energy and promoting and facilitating increased use of solar, wind, and water energy resources;

Continue efforts to free farmers from excessive federal regulation by requiring federal regulators to assess the special impacts of their rule-making on small businesses;

Assure consideration in rail deregulation legislation of the needs of captive rail shippers for access to their markets and distribution systems at reasonable costs;

Insure priority allocation of fuel for agricultural use in the event of supply shortages;

Insure farmers fair and adequate access to farm credit; and

Reduce farm costs overall by instituting sound federal fiscal policies designed to reduce government borrowing, lower interest rates, and curb inflation.

The family farm

The real strength of American agriculture is the family farm. If we are to preserve this institution, however, we must adopt new measures designed to insure the continuity of family farm ownership and eliminate those aspects of current law that discriminate against the family farmer.

An Anderson administration will:

Support further reform of estate and inheritance tax policies to permit opportunities for successor generations to assume ownership and management of farm enterprises without incurring crippling tax burdens;

Insure smaller farmers fair and equal access to federal credit programs;

Expand current, long-term low-equity financing programs to better enable young farm families to begin full-time farming enterprises while guarding against abuse of the program by speculators;

Recognizing the vital role of women in the farm enterprise and work to repeal the application of the estate tax to the transfer of family farms between spouses—the so-called "widows tax"; and

Reform the tax laws to discourage the purchase of farm land for tax loss farming purposes.

Farm and rural women

The Anderson administration will strive to gain legal recognition for the role of farm and rural women as full partners with their husbands or brothers, sons or daughters. Farm women contribute their time, their labor and in many instances their money to the farming enterprise. They work in the fields and barns, they keep farm accounts and they participate in making farm business decisions.

Yet, today, because of high inflation and declining farm income, many farm and rural women find they cannot participate as they choose. Low farm returns force many to seek additional employment and another income off their farms, frequently to the detriment of their health and emotional well being. We will support programs that assure recognition of their contributions to the farming enterprise and a sound economic policy that will allow farmers to maintain a decent standard of living for their families.

Agricultural lands

The U.S. loses an estimated 20,000 acres of its best farmland each week to other uses. Much of it is irretrievably lost due to the enormous costs of reclamation. Preliminary statistics compiled by the National Agricultural Lands Study, now being conducted by the U.S. Department of Agriculture and the Council on Environmental Quality, suggests that the nation may lose as much as 22.4 million acres (7 percent) of its prime farmland by the year 2000. An Anderson administration will encourage state and local units of government to develop programs to protect vital agricultural lands and seek to bring federal actions into better conformity with state and local plans for agricultural land use.

Soil and water conservation

Conservation of our increasingly valuable soil and water resources is vital to America's future and to its future generations. America grew up on its farms. However, the pressures of rising population, economic growth and world food requirements have subjected these resources to steadily intensified competition and conflict among potential users.

Almost one-third of our total harvested acreage—109 million acres of cropland—is being subjected to erosion each year at a rate the USDA deems to be over "permissible erosion rates." If this continues, it would eventually destroy these lands' utility as cropland.

We must institute a closer, on-going review of soil and water depletion rates, while seeking to increase the delivery of technical and educational services. At the same time, however, we must recognize the very difficult decisions that will have to be made in these areas.

There are no easy solutions to the growing erosion, salinization and water scarcity problems. The Anderson administration will seek to frame these choices in the frankest manner possible and strive for an equitable resolution of conflicting needs and claims.

Agricultural policy and consumers

Although the food distribution process begins on the farm, food often goes through a complex chain of distributors before it reaches the consumer. This process adds two-thirds or more to the consumer's food bill. It is in the processing, distribution and advertising costs of food that the greatest potential for economics exists.

An Anderson administration will shift the federal government's research efforts on food processing and marketing towards reducing non-farm-added costs of food. Review should include new food forms and more efficient marketing practices and systems.

We also pledge to support and strengthen the food assistance programs, including the food stamp and school lunch programs, to better meet the nutritional needs of the truly needy.

The U.S. space program

Since its inception over twenty years ago, the U.S. space program has yielded an impressive array of technological and economic benefits. But after achieving the Kennedy Administration's goal of putting a man on the moon by the 1970's, America's space effort has faltered. While the U.S. has made impressive strides with the development of the space shuttle, the overall level of dollar commitment has declined in real terms.

We believe an invigorated space program can play an important role in raising productivity and revitalizing our economy since the space program funds basic research in a wide range of fields such as photography, communications, metallurgy, life-support systems, and many other areas of science and engineering.

An expanded space program based generally on NASA's current five-year plan should be established. The objectives of that plan should be:

To fill the transportation and orbital needs of space missions in an economical and effective manner.

To improve our ability to apply space technology in areas that promise immediate or potential benefits to humanity, including remote sensing, communication and materials processing;

To improve our ability to acquire, transmit, and process data;

To increase our knowledge about the history of the cosmos and expand our understanding of the evolutionary process involved; and

To advance our fundamental knowledge of how energy is transported from the sun and through the intergalactic medium and what effects that energy has on Earth's environment.

NASA's current five-year plan does not include funding for several vital programs needed for the development of space science, technology, and industrialization. Many of these programs, included in earlier plans and cut from the current proposal by the Carter Administration, should be reinstated. They include:

An intensified effort to achieve routine operational use of the Space Shuttle, with improvements in lift and on-board power capabilities, that will enable it to realize its full potential.

Establishment of an operational Landsat-type system for Earth resources surveys, as repeatedly urged on a bipartisan basis in Congress, in lieu of the hesitant, half-hearted motions of the Carter Administration in this direction.

Proper support of a long-term program to explore the solar system with unmanned space probes, avoiding the costly starts and stops we have experienced under the Carter Administration. The Galileo mission to Jupiter, the Venus Orbiting Imaging Radar and Halley's Comet Flyby missions are important steps in this program.

Full support for scientific study of the universe through completion and operation of the large optical space telescope and other specialized scientific satellites.

Eventual establishment of a permanent U.S. presence in space through planning and design of a general purpose orbiting space station to work with and be serviced by the space shuttle, thereby regaining the economically important lead in space research which the Soviet Union now enjoys as a result of its ongoing space operations.

Continuation and amplification of satellite power system evaluation (including the possible manufacture from nonterrestrial materials) in order to determine the practical desirability of collecting solar energy in space and safely transmitting it to Earth.

Active research on large space structures, expanded space power generation, and the other technological advances needed to form a sound basic for developing a substantial national space industrialization capability within the foreseeable future.

Export promotion

A nation once famed for its "Yankee traders" now finds itself out-traded and outmaneuvered in the world market place. If

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America is to prosper domestically, it must compete more effectively.

A nation, such as ours, which pays nearly $100 billion a year for foreign oil must export aggressively if it is to survive the decade ahead with its economy and currency intact. Viewed in that light, our export policy must be immediately invigorated. The policy of "benign neglect" that has characterized export administration in recent years cannot continue.

We propose a revitalized export promotion program, including the following new initiatives:

Expanded, competitive U.S. Export-Import Bank financing of U.S. exports;

Reduced taxation of American nationals living abroad and engaging in export activities;

Provision for duty-free entry of machinery and materials for use in export manufacture in foreign trade zones;

Amendments to the Webb-Pomerene law to permit business associations engaged in export activities to obtain pre-clearance anti-trust immunity for certified activities;

Measures designed to encourage the formation of export trading companies to assist small and medium sized firms in entering export markets;

Amendments to the Commodity Credit Corporation Charter Act creating an Agricultural Export Credit Revolving Fund to assure adequate financing of agriculture exports; and

Renewed efforts at obtaining international agreement on foreign business practices.

International economic relations

The present weakness of the U.S. economy reflects not only our own lack of capital investment and productivity improvements in recent years but also the larger fragility of the international economy due to the massive shifts of wealth from the oil-consuming nations to the oil-producing nations. It is anticipated that the current accounts surplus of the OPEC nations will reach $131 billion this year—a 15-fold increase over the 1978 surplus of $8.8 billion. By year's end, it is also expected that the industrialized countries will show an aggregate current account deficit of $49 billion, as compared to a 1978 surplus of $131 billion.

As severe as the oil-price pressures are to the industrialized West, they are even more severe for the non-oil exporting developing countries. Their deficit in 1980 is expected to reach nearly $70 billion, as compared to a $37.5 billion deficit in 1978. The combined debts of these countries has increased from $70 billion at the end of 1970 to approximately $300 billion by the end of 1979.

The continuing imbalance in world trade will put an enormous strain on world financial markets and test the limits of our international monetary system. Now more than ever, there is a need for closer international consultation and cooperation on international trade and monetary affairs. We cannot permit our shared problems to rupture either international trade or the international monetary order.

To meet the recurring challenges to international economic stability, we pledge:

Continued cooperation with our allies in attempting to achieve the energy conservation and production targets set forth in the recent Venice Summit Agreement;

Closer cooperation among our trading partners in an effort to reduce through common agreement the frictions which, if left unattended, could lead to arbitrary trade restrictions and a resulting trade war;

More effective and timely coordination of economic and financial policy among the leading industrialized nations, including the full use of facilities provided by the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD);

Continued efforts to enhance the effectiveness of IMF exchange rate surveillance;

Expanded financial and technical assistance to non-OPEC developing countries in their efforts to explore and market new energy sources; and

Renewed efforts to establish a new stable monetary order through further refinement and extension of the Special Drawing Rights, rather than reverting to an anachronistic and rigid gold standard as proposed by the Reagan platform.

Working men and women

An Anderson Administration will strive to improve the purchasing power of American workers, safeguard their working conditions, and protect their bargaining rights. In working toward these goals, we pledge to consult on a regular basis with the interested party—the working man and woman of America.

Within the last year, the purchasing power of the average urban worker has declined by over 7 percent. This is the record by which the Carter Administration's labor policy must be judged; and, by any reasoned interpretation, it must be adjudged a failure.

The policies of the past four years have not served to reduce unemployment at the expense of purchasing power. They have served to aggravate both jobiessness and inflation. Unemployment today is higher than when President Carter took office. The average American worker today is neither more secure in his job nor richer in his pay than when the President took office.

The collective bargaining rights of the American worker must be protected. We find unacceptable the willingness of certain employers to bear the cost of defying sanctions for unfair labor practices. The administration and enforcement of our labor laws must be strengthened through selective improvements in the National Labor Relations Act.

An Anderson Administration will support measures designed to expedite the National Labor Relations Board hearing process, adequately compensate those who are illegally dismissed by their employer for union-organizing activities, and give the Secretary of Labor discretionary authority to withhold federal contracts from employers guilty of flagrant or repeated labor law violations.

We reaffirm our support for a fair and equitable federal minimum wage. The minimum wage should bear a consistent and reasonable relation to the average manufacturing wage. Congress should exercise proper oversight of the federal minimum wage laws by periodically reviewing both the level and scope of minimum wage protection.

Upon proper review and evaluation, an Anderson Administration will submit legislation in the first session of the 97th Congress to ensure a fair and adequate minimum wage for 1982 and beyond. We will oppose, however, efforts to "index" the minimum wage to an arbitrary wage or price formula. The minimum wage should be subject to normal and periodic review by Congress.

The health and safety of working men and women deserve the highest measure of protection. We reaffirm our longstanding support for the full and effective enforcement of the Occupational Safety and Health Act of 1970. The right of every American to a safe and healthful workplace should be safeguarded by a fully funded Occupational Safety and Health Administration (OSHA).

We pledge to oppose legislation, currently before the Congress, which would effectively exempt 90 percent of all workplaces from safety inspections, including inspections triggered by employee complaints of hazardous working conditions. The proposed legislation would put undue reliance upon "voluntary compliance", jeopardizing the lives of thousands of American workers. The proper role of OSHA is accident prevention, not after-the-fact accident investigation.

In addition to fair wages and improved working conditions, our working men and women want meaningful work. They have unique knowledge of what lowers the quality and raises the cost of what they make, and they have important views on how the workplace can be organized more sensibly and humanely. Workers in many of the world's healthiest economies have won the right to cooperate with their companies to help determine the structure of production. An Anderson Administration will seek to encourage this development in the United States in a prudent manner consistent with our own traditions.

Workers on indefinite layoffs in distressed industries such as the automobile, steel, and shipbuilding industries require special assistance. We support an extension of job-retraining and relocation assistance for displaced workers and Economic Development Administration assistance to distressed communities. We support on a pilot-project basis the adoption of work-sharing programs designed to minimize plant-layoffs through voluntary work-sharing agreements supported by modified unemployment compensation benefits for those working shortened hours.

We shall oppose efforts to repeal the Davis-Bacon Act of 1931. Workers on federal projects should be paid the prevailing wage of the community in which the construction takes place. We reserve judgment, however, on the advisability of extending prevailing wage protections into new areas.

III. MEETING HUMAN NEEDS

Introduction

A dynamic and growing economy is the necessary condition of social progress, of domestic harmony and equity, and of military strength and national security. And only such an economy can allow all its citizens the basic freedom to choose and to pursue their own occupations. But economic health is not an end in itself. The worth of every society is determined by what its members do—as individuals and as citizens—with the wealth they create.

We believe that a modern society must accept its responsibility to provide for basic human needs, in three ways.

First, it must act to furnish all its citizens with those public goods that cannot be attained through individual effort, but only through cooperative endeavors. It must, therefore, care for its cities, its transportation, and its community environment.

Second, a modern society must accept responsibility for those who cannot support themselves. It must provide sustenance for those who are unable to work, income for those who have reached the age of retirement from the workforce, and medical care and other services for those who cannot afford them without assistance.

Third, a modern society must create an environment within which human beings can strive to fulfill their own needs. It must encourage, not discourage, family life through tax policies and child care. It must enable its citizens to develop their abilities through systems of education and training, and through a wide variety of cultural experiences. And it must enable them to apply their abilities to their own betterment and that of their community, in productive and satisfying occupations. And it must protect the large environment in which we all must live.

An Anderson Administration will accept these three responsibilities. It will not seek to return this nation to the 1920's, as the Republicans dream of doing, but neither will it simply repeat the programs and ideas of the past, as the Democrats do. Rather, it will propose new means to attain the ends on which the overwhelming majority of Americans are in agreement: means that are as

efficient, as equitable, and as humane as our ingenuity can devise.

The Future of America's Cities

General background

In the century after the Civil War, the United States underwent an economic expansion without precedent in world history. In the course of this great transformation, the United States, predominantly rural in 1865, became an urban nation. Once primarily service and trade centers, our cities became manufacturing centers as well. Massive urban capital investments were made—not only in factories but also in housing, roads, bridges, public transportation, sewers, and water systems. Population steadily shifted from farms to cities as urban employment opportunities expanded and the efficiency of the agricultural sector increased. This human tide was swollen by European immigrants and by Southern blacks.

After the Second World War, many older cities—particularly in the Northeast and Midwest—entered a period of economic decline. The proliferation of the automobile, coupled with the construction of our highway system, made it possible for members of the middle class to leave the central city for the suburbs. This trend was encouraged by the FHA, which directed capital toward single-family suburban housing construction. The newly burgeoning economies of the South and Southwest began to attract capital, skilled workers, corporate headquarters, and government contracts. Simultaneously, older cities received large numbers of new residents, from the South and from abroad, with below-average income, skill, and education but above-average requirements for public services. The net outflow of population these cities experienced slowed the growth of property values and promoted blight and crime in many neighborhoods.

These developments have had a marked effect on the composition of the inner cities. Between 1970 and 1977, the population of major American cities dropped by 4.6 percent, compared with a growth in suburban population of 12.0 percent and 10.7 percent in nonmetropolitan areas. The change has been even more pronounced in the cities of the northeast and midwest as population has shifted from those regions to the south and west.

Of the total population below the government's poverty level, 38 percent were living in the major cities by 1977, compared with 34 percent in 1970. In contrast, the proportion of the poor living outside the metropolitan areas fell during the same period from 44 percent to 39 percent.

Racial and ethnic population statistics are equally dramatic and disturbing. Fifty-five percent of the nation's black population now live in the large cities, compared to 25 percent of white Americans. Growing proportions of urban residents today belong to Hispanic or female-headed households. These three groups—Blacks, Hispanics, female-headed households—suffer from severe deprivation in housing, jobs, and income.

A recently released major study demonstrates that, despite the massive government assistance cities have received in the past two decades, the older, distressed cities of our nation are in worse shape than they were in 1960. Clearly the old policy of putting cities on welfare has not dealt successfully with their real problems.

We must do better. But we must not fall into the trap of seeking a new grand design or of attempting to devise a new set of policies while ignoring what we now have. The Carter Administration has tried to do this, and it has only made matters worse.

We should not fear to innovate. But we must also be concerned with the sound administration of existing programs. Regulations must be simplified, and better linkages established among related programs. Programs that work must be identified and expanded, while those that do not should be terminated or reoriented.

Federal urban policy should be guided by appropriate general principles.

We should strive for a suitable balance between federal and local initiatives, recognizing that neither centralization nor decentralization will succeed in all circumstances. Tasks, the equitable and efficient performance of which require national coordination should be handled at the federal level, while others are the proper function of states and localities.

We must recognize that there is no major urban problem that the federal government can solve solely through its own efforts. Federal initiatives should seek to mobilize local resources and to involve the private sector. Federal policy should try to substitute incentives for regulations and prohibitions whenever possible. The federal government should aim to create a climate within which individual initiative is encouraged and rewarded.

Some problems are best dealt with through sharply focused categorical programs. In general, however, the federal government should employ block grants to consolidate related programs, reduce burdensome regulations, and increase flexibility and access on the state and local level. We thus strongly support the general revenue sharing program.

To advance truly national interests, the federal government should minimize the use of discretionary programs that vest excessive decision-making authority in the bureaucracy. In general, formula-based allocation stemming from explicit, public legislative decision-making is sound public policy.

The federal government must seek to identify the most urgent needs of our urban centers and to concentrate its efforts upon them. We propose that the federal involvement in urban problems be increased because of the unmet human needs in many of our nation's cities, not because cities as such deserve special attention.

The federal government should distinguish between a short-term support function and a long-term investment function in its urban policies. While we meet today's needs, we should search for ways of rebuilding the economic capacity of our cities so that they can move toward eventual revenue independence and fiscal self-sufficiency.

The urban reinvestment trust fund

Most urban experts agree that the deterioration of our massive investment in urban capital stock—housing, roads, bridges, public transportation, sewers, water systems—is the most serious problem now confronting the nation's cities. Caught between declining tax bases and escalating costs, many cities particularly the older cities of the Northeast and Midwest have been forced to defer essential maintenance to meet immediate operating needs. A recent comprehensive survey of twenty-eight major cities concluded that:

Deterioration in the capital stock of older cities has accelerated in the past five years as a consequence of fiscal stress and aging.

As repair needs mount, maintenance workforces are being cut.

In many cases, cities facing severe budgetary pressures have curtailed maintenance spending more sharply than spending for other current operations.

Similarly, capital spending has been squeezed.

Older cities, predominantly those located in the Northeast and Midwest, face investment backlogs and lack the financial capabilities to meet their needs from local resources.

To address this massive and urgent problem, an Anderson Administration will propose an Urban Reinvestment Trust Fund (URTF) to assist distressed cities in rehabilitating and replacing their capital stock.

Funding. The URTF would be funded through 45 percent of the federal alcohol and tobacco excise taxes, to be phased in over a three-year period. When fully funded, it would receive and disburse approximately $3.8 billion annually (in 1980 constant dollars).

Allocation. The URTF would be allocated to cities and metropolitan areas on the basis of a three-factor formula: pre-1939 housing stock (weighted 50 percent); population in poverty (weighted 30 percent); population loss (weighted 20 percent). This formula is the best indicator of the two most relevant dimensions of community need: degree of decay of capital stock, and ability to raise and use tax revenues for maintenance.

Disposition of funds. The funds made available through the URTF would be used for:

The upgrading and repair of existing capital plant and equipment: streets, bridges, sidewalks, street lighting, water mains, sewers, waste processing and sanitary facilities, pollution control facilities and equipment, and related items;

The replacement or installation of such plant and equipment when current facilities are either beyond repair or altogether lacking.

Local authorities would be free to determine their own priorities and allocation procedures, subject to three constraints. Legislation would require:

That equity prevail in the use of funds within cities, with immediate emphasis on upgrading facilities in the most severely decayed areas;

That neighborhood organizations be adequately consulted in the process of determining community-wide priorities;

That URTF funds supplement, not replace, local funds currently employed for capital stock maintenance and rehabilitation.

Because the revenues from the federal excise taxes on alcohol and tobacco have been rising more slowly than the rate of inflation, at the end of the phase-in period we will consider raising current excise tax rates to meet the urgent national needs to which our Trust Fund is addressed.

Housing

The quality of life in our cities, and throughout our nation, is crucially affected by the availability of decent, affordable housing for all citizens. But the Carter policy of fighting inflation with tight money and high interest rates has had a devastating effect on this sector of the economy. Housing starts have declined to an annual rate of one million, the lowest since World War Two and one million units lower than predicted last year. This level of activity will result in: the loss of 1.6 million jobs; the loss of $27.6 billion in wages; the loss of over $3.5 billion in federal tax revenues and $7.5 billion in combined federal, state, and local revenues. Moreover, this lost production will produce an even more rapid inflation in housing costs as the economy recovers from the Carter recession.

The underlying demand for housing is very strong and will grow substantially through the 1980's. During this decade, 41 million Americans will reach the prime homebuying age, compared with 31 million in the previous decade, and the rate of new housefold formation will be 25 percent higher. This demand cannot be satisfied even by levels of production considered high in the past. Unfortunately, the crisis in rental housing means that new rentals will not be able to meet any substantial portion of the existing de-

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mand. Recent statistics show that in the past three years, there has been an annual net loss of rental units of nearly 2 percent. High interest rates, increased operating costs, and burdensome regulations have nearly shut down the private construction of rental housing. As a result, the nationwide multi-family vacancy rate has fallen to the lowest level since this statistic was first compiled twenty years ago. In many cities there is virtually no vacant rental housing.

In the early part of the 1970's, the federal government stepped into the breach by subsidizing the construction of new rental housing. This assistance reached its peak in 1976. Since then, because of soaring unit costs and fiscal constraints, the amount of subsidized new construction has declined sharply.

If we do not undertake effective new initiatives, housing will become a major source of social conflict in the 1980's, as new families struggle with dwindling supplies and escalating costs. In the past year, the percentage of families able to afford the monthly payments on their first house has declined sharply at the same time that rental housing has become scarcer and less affordable. We run the risk of being split into two nations: those who were fortunate enough to buy while housing costs were a reasonable fraction of personal incomes, and those who were unfortunate enough to arrive on the scene too late.

To deal with our housing problems, we propose the following steps:

We must begin to attack the housing problem in this nation by stabilizing our economy. Reckless spending and huge deficits lead to inflation which in turn escalates long-term interest rates, the key determinant of housing costs. In addition, inflation produces a flight from savings and paper money into real property, reducing funds available for mortgages and further hiking housing prices. The housing industry cannot function properly until we restore sound economic climate for planning and investment. This we pledge to do, as our first order of business.

We must work to dampen the inefficient and damaging housing cycle. We support the reactivation of a program such as that proposed by Republican Senator Edward Brooke and Democratic Senator Alan Cranston, a countercyclical mortgage-subsidy program that would be automatically triggered whenever housing starts fall below a designated level for a significant length of time. This is not a permanent subsidy, but rather a low-cost, temporary, recoverable government investment that works effectively to place a floor under housing starts.

We must embark on a comprehensive review of federal, state, and local regulations affecting housing construction and renovation which have been estimated to add up to 20 percent to the cost of each new unit. Where possible, we must simplify or eliminate this burdensome system of regulation.

We support the reauthorization of tax-exempt, revenue bonds to support single and multi-family housing construction, subject to reasonable restrictions.

We support new initiatives to stimulate the private construction and operation of multi-family housing, including increased shallow interest rate subsidies and increased tax incentives, particularly accelerated depreciation, for multi-family buildings.

We support an urgent effort to increase the supply of urban housing stock to usable condition. All remaining federal restrictions on the use of HUD funds for renovation of existing housing should be eliminated. Programs, such as urban homesteading, that mobilize local renovation efforts should be encouraged. We especially support an increased partnership between the federal government and community organizations to put the people of our neighborhoods to work rebuilding their own homes.

We should explore policies that would increase the supply of urban housing by encouraging the conversion of abandoned buildings from other uses to housing. Such policies include providing technical assistance, identifying and donating surplus government buildings, and providing accelerated depreciation.

We support the extension of current programs that encourage low and moderate income urban residents to develop a stake in their community through ownership of their own residences. The Federal government should assist apartment dwellers to form cooperative organizations to purchase and renovate their buildings.

To increase the supply of mortgage funds, and to assist prospective homeowners, we support the gradual expansion of the existing interest income exclusion ($200 for individuals, $400 for married couples) to $750 for individuals and $1,500 for married couples as stated elsewhere in the platform.

Neighborhoods

A healthy city is a place of ethnic and economic diversity, neither a playground for the rich, nor a dumping ground for the poor. It is an association of stable, vigorous neighborhoods, secure in their differences, linked by common interests and purposes. A liveable physical environment is only a first step.

For too long, federal policy has discouraged or neglected neighborhoods. In the past, "urban renewal" obliterated existing neighborhoods, replacing them with public housing projects, highways, and office buildings. Today, although the federal government no longer levels whole neighborhoods, it continues to sponsor initiatives that damage neighborhood interests while neglecting and underfunding programs that directly benefit neighborhoods.

The following steps are essential to remedy this situation:

The next administration must appoint a new, high-level executive task force to review and, where appropriate, to implement the recommendations of the National Commission on Neighborhoods. The Commission's report was released nearly eighteen months ago, after extensive research and numerous public hearings, but the Carter Administration has almost completely ignored its findings;

We must promote the formation and activities of neighborhood associations, through such means as:

A neighborhood improvement tax credit, providing an 80 percent credit on the first 50 dollars of each taxpayer's contribution to a neighborhood group;

The provision of federal matching money to local neighborhood improvement groups in designated distressed areas;

Increased support for such ventures as the Neighborhood Housing Service, operating under the aegis of the Neighborhood Reinvestment Corporation, which seeks to form partnerships among neighborhood associations, financial institutions, and local governments to increase the supply of affordable housing;

Adequate funding for HUD's Office of Neighborhood Development which, in spite of significant accomplishments, has been neglected by the Carter Administration.

We must promote economic development in neighborhoods through:

Directing the Small Business Administration to comply with its authorizing legislation, which mandates that SBA programs be made accessible to Community Development Corporations;

Reauthorizing the SBA's 502 direct loan program, which is on the verge of termination in spite of its proven record of stimulating small business in declining neighborhoods;

Insuring that the Urban Development Action Grant program sponsors projects that distribute federal funds more equitably within cities and more directly benefit neighborhoods;

Offering increased tax incentives to the private sector to enter into partnerships with community development corporations and other neighborhood-based economic development groups.

We must recognize that although the increased flow of suburban dwellers back to our central cities has favorable consequences for urban tax bases and housing stock, it also generates a significant problem of dislocation, particularly among the poor and elderly. In the past, dislocation has meant declining housing quality, persistent overcrowding, increased costs, and severe psychological and social disruption for those forced to move.

Federal policy must be more responsive to the needs and legitimate claims of those presently residing in neighborhoods undergoing these changes. If some dislocation is unavoidable, the federal government must accept its fair share of the responsibility to assist displacees.

Enterprise zones

Within our distressed older cities, there are neighborhoods that can only be called zones of devastation. Dwellings are boarded up and abandoned, or inhabited by derelicts. Businesses are failing and fleeing. Arson is rife. Gangs fight for control of the streets while ordinary citizens live in constant fear. All who are able to escape do so, leaving behind those without alternatives or hope. In the South Bronx, for example, 96 percent of the residents are now Black or Hispanic, compared to 66 percent in 1970. One-quarter of the residents live in households with annual incomes under $3,000. One-third of the population is entirely dependent on welfare.

Some have suggested what amounts to urban triage—that we declare that certain areas are unsalvageable and leave them to their fate. We completely reject this proposal. It makes no economic sense to abandon our enormous investment in housing, factories, and capital stock, much of which is still usable or capable of being renovated. And it is inhumane to abandon viable neighborhoods where families have lived and worked for generations, and which still provide continuity and identity for many residents. Clearly, however, the traditional tools of federal urban and social policy have not worked, and cannot reasonably be expected to work, in these areas.

In an effort to give these devastated zones a chance to recover and thrive, Republican Congressman Jack Kemp and Democratic Congressman Robert Garcia have recently introduced a bill that would permit the designation of "enterprise zones".

The enterprise zone approach seeks to improve conditions in the most run-down urban areas by encouraging local governments to participate with the federal government in creating a climate favorable to the establishment and success of small business, by lowering existing corporate, capital gains, payroll, and property taxes and by furnishing new tax incentives. Two-thirds of all new jobs are in companies employing fewer than 20 people. Such companies are more able to develop new, profitable ideas and to utilize existing facilities. In addition, entrepreneurs with marketable skills and ideas but little capital are often willing to devote long hours in poor working conditions to build up their businesses. Moreover, although small business entrepreneurs often have little knowledge of business skills when they begin, as their businesses grow they

gain management competence and are able to utilize increasing amounts of local labor. In short, the enterprise zone concept seeks to use federal legislation to mobilize already existing local resources—structurally sound buildings, surplus labor, enterpreneurial spirit—to help people in need to help themselves and to work toward pride and independence.

The Kemp-Garcia bill is still in a relatively early stage of legislative development and needs considerable refinement. Specifically, we propose that:

To be eligible to participate, local governments be required to lower sales taxes within the zones;

A residency requirement be added to ensure that a significant percentage of those hired under the payroll tax reduction provision actually live in the zones; and

Local lending institutions receive tax incentives to direct capital towards new ventures in the zones.

We believe that, appropriately amended, the enterprise zone bill will give new hope to urban areas that presently have no hope. Although it is an experiment, it will be undertaken only in areas that have little if anything to lose. We therefore support the passage and rapid implementation of well crafted enterprise zone legislation.

Community transit

Through years of planning, negligence, profligate consumption, and lack of federal leadership, the United Sates has slid into a state of dependence on foreign oil that threatens our economic viability and national security. Transportation consumes half the petroleum used in this country, and the single-passenger automobile is the largest consumer. While the automobile provides—and will continue to offer—freedom of mobility and flexibility of response, its technical performance must be improved and its efficient use encouraged. Additionally, as a Nation, we must commit ourselves fully to the development of a broad range of transportation alternatives. Increasing transportation choices requires strong federal support for public mass transit and incentives to encourage the private sector provision of energy-efficient and consumer-responsive transportation service options. It further requires a dedicated and predictable federal funding source. Such a federal policy will bring enormous fuel savings as well as increased and more fuel-secure personal mobility.

An Anderson Administration will propose a plan to provide a continuing and predictable federal commitment to:

provide long-term financial support for the capital and operating costs of mass transit systems;

finance effective auto management plans for urban areas;

stimulate the innovative involvement of the private sector in offering options to the solo use of the automobile; and

respond to the increasing need of rural populations for transportation alternatives.

A major part of this commitment will be met by the establishment of a new Community Transportation Trust Fund to fund capital and maintenance costs of metropolitan and local transit systems. Operating costs and other assistance programs would continue to be funded out of general revenues.

The CTTF would be funded through 45% of the federal alcohol and tobacco excise taxes. Over the next five years, 15 billion dollars would be expended. $2.5 billion in fiscal year 1981 alone. The surplus—as much as an additional $1.5 billion—would be reserved as a hedge against inflation. The reserve fund would be used to provide federal loan guarantees for automobile and other manufacturing companies that produce transit vehicles. The companies could use their federally guaranteed loans for research and development into the design, safety, and energy-efficiency of transit vehicles and for capital and tooling costs in manufacturing vehicles that respond to local procurement requests.

The CTTF will provide for the maintenance and modernization of rail, light rail, and bus systems for metropolitan areas, and for the building of new cost-effective surface light rail systems that contribute to rational land use planning and development objectives in accordance with the following priorities:

assurance that long-term federal commitments to new energy-efficient rapid transit lines are consistent with sound urban planning objectives;

more flexible funding to modernize, upgrade, and extend older fixed-rail and light rail systems and stations;

rigorous review of the cost- and energy-effectiveness of any new fixed guideway transit systems proposals;

investment in new light rail systems, using existing railroad right-of-ways highway medians, or urban streets;

production or rehabilitation and deployment of 10,000 buses annually for the next ten years;

employment of "track-sharing" systems where feasible, by which both commuters and freight-haulers make use of the same urban railbeds.

An Anderson Administration will also use funds from the CTTF to stimulate the revitalization of the cities. Urban areas would be encouraged to bring together civic leaders in making commitments to include: providing new jobs and training; establishing strong affirmative action goals; bringing new businesses and industries to the area; and designing new private facilities that enhance the environment.

The beneficial impact of transportation investment on urban economic development necessitates the coordination of transportation policies with other public decisions. The federal tax code, water and sewer grants, and highway programs tend to encourage scattered suburban development. An Anderson Administration will propose to realize the full economic revitalization potential of transportation by supporting transportation policy with other federal programs that influence urban development patterns. Housing, environmental, and overall urban policy will be coordinated to achieve this objective.

An Anderson Administration will prepare a twenty-year community transportation financing plan with state and community participation, to be enacted by Congress. The plan would provide both long-term funding predictability and greater local decision-making flexibility, enabling local transit agencies to plan more effectively and to allocate their resources in response to overall community needs. The long-term community transportation financing plan will have the following objectives:

establishment of a national goal of a ten percent annual growth rate in transit ridership and private ridesharing;

establishment of a comprehensive bus or rail system for every urban area with a population of 200,000 or more by the end of the decade;

establishment of effective ridesharing programs in all fifty states to provide alternatives to the automobile for urban and rural workers and others who are dependent on the automobile; and

development of a nationwide, coordinated approach to providing transportation choices for all rural Americans.

Efficient use of federal funds to provide transportation choices requires that communities also undertake comprehensive programs to ensure the responsible use of the automobile. An Anderson Administration will use federal funding, tax incentives, and technical assistance to encourage shared ridership and effective traffic management planning. Funds should also be administered to encourage all types of public and private operators to offer specialized collective transportation services.

The dynamics of private competition must be reintroduced into collective transportation. An Anderson Administration will create opportunities for specialized profit-making transit services. These opportunities include removing legal barriers providing tax credits, and amending the tax laws to encourage the use of alternatives to the automobile.

An Anderson Administration will encourage local alternatives to reverse the serious decline in transportation services to rural Americans. Car pooling, block grants for collective transportation, and technical assistance are vital federal options which will be utilized.

Federal support for local mass transit systems must be placed on a predictable long-term basis, enabling communities to respond to their transportation needs in the most effective manner. A creative Anderson Administration will achieve this goal by establishment of the CTTF and the twenty-year financing plan coupled with a flexible and realistic approach to transportation planning.

Health care

The underlying strength of the health care system in the United States lies in the quality, ingenuity, and diversity that is a hallmark of a free and diverse society. Federal health care policy must build on these strengths.

We cannot afford comprehensive, nationalized health care at this time. Nor can we afford a laissez faire attitude that simply blames our problems on federal regulation. The fundamental federal objective must be to contribute toward the overall health of our society while providing for those who cannot adequately take care of their own health care needs. We need an innovative, practical federal health policy which closes the gaps in our health care system, and complements and sustains the inherent strengths of a private-based system.

Federal health care policy must address the serious problems and weakness in our system, which include:

rampant inflation in health care costs;

gaps in health care coverage, including the limited access of the urban and rural poor to health care;

the lack of a comprehensive, long-term care policy for the elderly; and

the disproportionate emphasis of federal programs on the treatment of disease and the under-emphasis on preventive medicine and keeping people well.

Of these problems, the most severe is rampant inflation in health care costs. The health care industry accounts for 9% of GNP, nearly doubling since 1960. The average cost of a day in a hospital has increased from $15 in 1950 to $225 in 1978, seven times the general rate of inflation. Some of these increases in health care costs are undoubtedly attributable to remarkable but expensive improvements in health care technology and in expanded health care coverage for people previously underserved. But spiralling health care costs are also fueled by severe economic distortions in the health care financing systems.

Prior public policy decisions are responsible for a non-competitive health care environment. Heavy regulation of alternative delivery systems such as health maintenance organizations (HMOs) have made it nearly impossible for these systems to operate on a competitive basis. Cost-plus reimbursement under Medicaid and Medicare encourages doctors and hospitals to increase the volume and quality of hospital services without considering cost. The federal health insurance

tax subsidy program, costing $13 billion annually, promotes adoption of health policies without full regard for costs. Regulatory programs such as the health system agencies (HSA) and professional standards review organizations (PSROs), while successful in some areas, have not yet demonstrated nation-wide success in holding down health care costs.

An Anderson Administration will reform federal financing, and encourage market-oriented incentives in order to reward cost-conscious behavior, contain rising health care costs, and respond to real health needs in the most appropriate and caring manner. Specifically, an Anderson Administration will:

Phase out retroactive cost-plus reimbursement under federal programs and replace it with prospective rate or fixed-premium financing. This will eliminate much of the expensive cost accounting and cost-reporting practices now imposed on hospitals, nursing homes, home health agencies, and health maintenance organizations, giving providers the incentive to contain costs rather than rewarding excessive spending;

Amend Medicare and Medicaid to allow participants to choose among competing health care options. This will promote flexibility, by allowing participants to select according to their needs, whether that be through prospective financial arrangements with hospitals or ambulatory care facilities, or through fixed-premium financing like a health maintenance organization;

Make employer health insurance tax deductibles contingent upon the offering of several qualified competitive insurance plans to encourage private sector competition. Employers should be required to make the same dollar outlay for health benefits per employee, regardless of the plan's cost, thus encouraging employees to make cost-effective selections and insurers to monitor the cost and efficiency of health care providers. Appropriate exemptions for small businesses should be allowed; and

Eliminate unnecessary and inefficient health system regulations as the principles of competition take effect. Federal funding for the health systems agencies and professional standards review organizations programs should be maintained. These regulatory programs were established in response to the failure of marketplace mechanisms to curb rising health costs. As competition is brought back into the health system, however, these regulatory activities can be phased out.

These reforms are designed to create incentives, control costs, deliver services efficiently, and provide quality services for all participants in the health care industry. An Anderson Administration will endeavor to hold down costs and provide quality health care simultaneously.

A second major problem is the lack of health care coverage for 22 million Americans. Despite considerable investment in medical care payments for the poor, these populations still suffer from poorly coordinated and episodic health care, and decreased access to medical care services.

An Anderson Administration will propose a responsible federal health care policy to better insure access to adequate health care and protection from improverishment. Specifically, an Anderson Administration will:

Increase the supply of medical personnel to underserved areas through increased funding of the National Health Service Corps. The NHSC has been successful in placing physicians, dentists and nurses in underserved areas where many have remained to practice.

Convert, where possible, urban hospitals with severe financial predicaments to serve, in whole or in part, as primary-care centers with federal assistance.

Stimulate demonstration projects utilizing the Independent Provider Association (IPA) model for rural area physicians, linking them to existing central urban HMOs. By facilitating the specialty services through the urban HMO, IPAs can "subcontract" the delivery of services to rural patients through existing solo practice or small-group physicians;

Expand the Medicare and Medicaid programs to include provision of mental health services; and

Expand, in gradual steps, the Medicaid program to provide adequate coverage for the poor and working poor not yet covered, including coverage of low-income intact families, childless couples, and singles, as more efficient practices free up resources for such growth in beneficiary population.

To better insure access to catastrophic coverage for working men and women, the Anderson Administration will propose legislation requiring private-sector employers to offer a catastrophic insurance option in order to qualify their health plans for federal tax deductions.

Our health care system also lacks effective, long-term care services for the elderly. Federal programs frequently foster unnecessary hospitalization, which not only has serious financial impact on the individual and the government, but also creates a class of demoralized and dependent senior citizens. We must shift our emphasis from institutionalization to home health care. Approximately 2.5% of the federal health care budget is spent on home health care, compared to 20% spent on nursing home care, yet it is estimated that many of the 1,100,000 nursing home residents could be cared for more cheaply, humanely, and appropriately by alternative health care services.

An Anderson Administration will propose a comprehensive federal policy supporting long-term care needs of older Americans that is directed toward optimal health care maintenance through prevention, care, and rehabilitation. We must provide the necessary care to allow older Americans to remain financially secure and productive participants in their community. Specifically, an Anderson Administration will:

Provide, as part of the Medicare program, a number of home health services: 1) homemaker and healthaide programs to provide such services as meal preparation, cleaning, and personal care; 2) adult day care centers for the elderly who need full supervision, but are cared for at night and weekends by relatives; 3) respite services to allow families to leave elderly members in care of competent individuals during vacations; 4) patient education to encourage the elderly toward greater self-reliance and self-sufficiency;

Allow tax credits for families caring for elderly relatives to assist them in meeting rising costs for goods and services for the elderly individual;

Extend Medicare benefits to cover services provided by alternative health care professionals, such as nurses and physician's assistants;

Extend Medicare benefits to cover eyeglasses, dentures, and hearing devices;

Promote provision of low-cost housing communities through tax credits, low-interest loans, or direct-funding incentives; and

Expand the Institute on Aging's research budget at NIH beyond the current 2% level.

An Anderson Administration will propose these reforms to insure greater security and fulfillment for elderly Americans. We must begin to take a step away from viewing the elderly as a burden and back toward seeing them as sources of wisdom and guidance.

Our present health care system also places disproportionate emphasis on the treatment of illness and lacks appropriate emphasis on preventive health care and health research. This practice is cost-inefficient and discourages proper health maintenance. We must place increased emphasis on protecting the healthy populations of our country from illness and on encouraging their continued good health. Health research must be recognized as a legitimate operating cost of the health care system.

An Anderson Administration will support programs to promote and extend good health to all Americans. Specifically, an Anderson Administration will:

Continue enforcement of clean air, clean water, solid waste, and toxic substance standards.

Increase funding for prevention and treatment of drug and alcohol abuse, and mental illness;

Pursue handgun control and automotive safety initiatives to reduce the loss of life and disability resulting from handgun and car accidents;

Support a Child Health Assurance Program to extend care to low-income children and pregnant women;

Preventive health care and early detection of disease for these groups would do much to eliminate birth defects and decrease the incidence of many chronic debilitating diseases;

Provide adequate funding for all forms of biomedical and health care research particularly in the area of prevention. The results of research relating health to lifestyle, diet, and the environment must be adequately disseminated to the public, so that enlightened personal decisions can be made;

Make tax moneys to professional health care education facilities that are heavily dependent upon federal financing contingent upon instruction on preventive medicine, nutrition, and epidemiology as part of their core curriculum; and

Continue support of OSHA and encouragement of innovative and economic ways of achieving safety and occupational health standards.

The measures outlined above form a health care policy that is fiscally responsible, incentive-based, and targeted on the gaps and weaknesses that currently exist in our fundamentally strong, private-sector based health care system. To curb escalating health care costs, we propose competition among health care options in the private and public sector. To reduce the gaps, we propose to extend Medicaid eligibility for the poor and support National Health Service Corps for under-served inner city and rural citizens. To care for the elderly, we extend home health care coverage and other Medicare provisions. And finally, we change the focus of health care to preventive measures like the Child Health Assurance Program. These measures stop short of comprehensive national health care, but they address the most critical needs of the American health care system in an affordable fashion.

Welfare reform

Welfare reform remains one of the great unfulfilled promises of government. The existing patchwork of public assistance programs is fragmented, irrational, wasteful, duplicative and inefficient. Repeated efforts at comprehensive welfare reform have failed under both Democratic and Republican Administrations.

The continuing failure to enact the necessary reforms has manifested itself in several forms. State and local governments which have sought to meet legitimate public assistance needs have been burdened by escalating costs, despite honest attempts to eliminate welfare fraud. States and localities that have permitted inflation to erode benefit levels have fared better financially, but welfare recipients in those states have suffered from increasingly inadequate support levels.

In many states, Aid for Families with Dependent Children (AFDC) benefits have been limited to one-parent households, forcing the breakup of families when fathers leave home to retain benefits for the children. In nearly all states there remains substantial work disincentives with welfare recipients confronting high "effective" marginal tax rates.

Transferring all responsibility for public welfare programs back to the states is not an appropriate means of dealing with the problems. We must seek to utilize the greater administrative efficiency that can be realized by large-scale delivery programs at the federal level with the greater equity and savings that can be realized at the local level by closer supervision and oversight.

Our task is to devise a more rational public assistance delivery scheme. Experience has demonstrated that welfare reform is best addressed by a series of selective reforms, rather than by attempting to secure immediate comprehensive reform. Adoption of the Social Welfare Reform Amendments of 1979, approved by the House of Representatives last December, would be a good first step towards reform of public assistance. The bill would:

Establish a national AFDC minimum benefit level equal to 65 percent of the poverty level for all families with children;

Raise income limits in certain states and provide a system of decining cash welfare supplements to recipients until the income ceiling is reached;

Require states to offer Aid for Families with Dependent Children (AFDC) benefits to families with two parents, one of whom is unemployed, providing the family meets an income and "unemployment test";

Decrease the non-federal funding share of AFDC benefits by 10–30 percent, depending on the nature of the benefit provided; and

Liberalize the Supplemental Security Income (SSI) program for the aged, blind and disabled, by permitting a husband and wife who separate to qualify for individual benefits earlier; and "cash out" foodstamps for certain classes of SSI recipients.

We must, however, go beyond these reforms in our efforts to provide a more responsive and cost-effective delivery system. Public assistance should be tied to both work incentives and work requirements for the able-bodied. Our principal objective must be the provision of private sector employment. While public sector employment programs will continue to play an important role in job-training and temporary employment, special attention must be directed at longer-term, private sector job opportunity.

We support an expansion of the Supportive Work Program, based on the recent successful demonstration project, in conjunction with the WIN program for AFDC recipients. We also endorse further expansion of the Earned Income Tax Credit for the working poor. These and other initiatives, including proposed changes in the benefit reduction formula, would go a long way toward increasing work incentives; but renewed emphasis must also be placed on job creation. We support retention of the Employment Tax Credit, which encourages new hires of disadvantaged workers, and expanded reliance upon the private sector jobs initiatives under Title VII of CETA. We must recognize, however, that the greatest provider of jobs for the disadvantaged in this country has always been a growing and vibrant economy.

If welfare costs are to be contained without sacrificing benefit levels for the truly needy, we need continuing administrative improvements in welfare programs, including standard procedures for the periodic determination of income and eligibility, and expansion of electronic management information systems. We support the use of innovative new approaches, like the National Recipient Systems (NRS), to the problem of erroneous payments.

Food stamps

Despite some of the earlier problems associated with the program, the Food Stamp Program remains a vitally important element of our public assistance delivery system. Food Stamps have provided timely and critical assistance to millions of Americans whose household budgets have been disrupted by temporary or permanent layoffs or whose incomes have suffered due to age or physical handicap. As a compassionate and humane society, we cannot ignore the legitimate nutritional needs of those who would otherwise go hungry. We shall continue to support full and adequate funding of the Food Stamp Program.

Senior citizens

Senior citizens desire to live a useful and secure life. Yet, for many, this goal remains elusive despite new federal initiatives and expenditures which consume one-fourth of the current federal budget. An estimated nine million older Americans now live in poverty, lacking wholesome food, adequate housing, and proper health care. For those living in isolation, a sense of being unneeded and unwanted robs their later years of meaning and dignity.

An Anderson Administration would be committed to meeting the real needs of older citizens, strengthening effective programs and initiating reforms as experience dictates. Before recommending any additions, however, we would insure that ineffective programs are eliminated.

An Anderson Administration would remove the barriers discouraging productive activity by the aging by:

Liberalizing the Social Security "retirement test," which limits outside earnings from part-time and temporary employment; and

Tightening loopholes in the Age Discrimination in Employment Act and enforcing current provisions to eliminate early mandatory retirement.

In the vital area of health care for the aging, reforms in the Medicare system could both improve care and reduce cost by eliminating unnecessary institutionalization. Older persons not needing intensive care in high-cost facilities could receive appropriate personal attention from their families or neighbors assisted by local supportive services. To encourage this approach we would:

Modify provisions which tax Social Security recipients living with their families, rather than in institutions;

Propose income tax deductions for families which care for relatives in their homes; and

Provide supportive services such as geriatric day care, homemaker services, nutrition programs, and sheltered living arrangements to allow the aging to remain in their communities at reduced cost.

The Medicare program would be revised to include home health services:

Homemaker and health-aide programs to provide services such as meal preparation, cleaning and personal care;

Adult day care centers for aging persons requiring full-time supervision who receive care from relatives on nights and weekends;

Respite services to allow families to entrust aging family members to the care of competent individuals during vacations; and

Patient education to help ill persons achieve greater self-reliance and self-sufficiency.

We would also encourage the development and use of health maintenance organizations (HMOs), which offer health services for predetermined annual fees. Prospective payment encourages preventive care and discourages unnecessary medical procedures.

We would support legislation to end fraud and abuse in the sale of private health insurance purchased by many aging persons to cover the gaps in Medicare coverage.

Lack of adequate, affordable housing plagues many aging persons. We favor increased support of public housing for older persons and pledge to continue to aid the aging in coping with rising energy costs.

Social Security Financing

The Social Security system is a public trust. It must be protected and preserved. We cannot allow potential insolvency to jeopardize the benefits of those who have contributed to the system during their working years.

Despite a series of scheduled payroll tax increases approved by the Congress in 1977, it is evident that neither the short-term nor the long-term financing questions have been resolved. It is anticipated that the Old Age and Survivors Insurance Trust Fund will approach insolvency within a few years.

The recurring problems with Social Security financing require close Congressional scrutiny. The 1977 amendments corrected one flaw in the Social Security program (the method for indexing benefits), which contributed to the long-term instability of the trust funds. There are, however, other problems. One factor is the increase in the number of retirees relative to the number of contributing workers. The changing beneficiary/contributor ratio means that more benefits will have to be paid out while contributions to the trust fund decline. The second factor is inflation. Social Security benefits are indexed to inflation to maintain the value of the benefits. In recent years, however, inflation rates have exceeded wage increases, resulting in a further depletion of the funds.

The short-term financing problems of the Old Age and Survivors Insurance Trust Fund can be resolved by either reallocating a portion of the payroll tax from the disability and health insurance trust funds, or allowing the OASI Trust Fund to borrow from one of the other two funds.

The longer-term problems of the Social Security system require a more fundamental adjustment. When the "baby boom" generation reaches retirement age, the ratio of beneficiaries to contributors will rise sharply, requiring correspondingly sharp increase in payroll taxes in order to keep the Social Security system solvent. The problem can be avoided, either by substantially reducing benefits at that time or by gradually increasing the retirement age beginning in the year 2000. It would be unconscionable to postpone such a decision until that date. Individuals must be allowed to plan for their retirement future with the confidence that last minute changes in Social Security will not disrupt their plans. An Anderson Administration will urge Congress to resolve this question so as to better facilitate retirement planning by young Americans.

The problems associated with rising Social Security payroll taxes—lowered employment and higher prices—can be resolved in part by alternative financing, including the use of revenues from higher gasoline taxes. A 50 cent a gallon increase could generate enough revenues in 1980 to reduce the employee's contribution by 50 percent. Such a trade-off, if coupled with other forms of relief, could satisfy an urgent conservation need and reduce the adverse economic impacts associated with payroll taxes.

The family

American families, while evolving in diverse ways in recent years, remain a cornerstone of American society. However, complex forces have recently confronted the American family. Spiralling inflation, discriminating tax structures, conflicting welfare policies, and declining educational experiences

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are indicative of the challenges confronting family life in the 1980's. The many social tensions a family must face include the problems of material health, family planning, day care, and child welfare. In addition, the malaise in single parent families living in poverty deserves special attention. This broad catalogue of problems and needs includes abortion, adolescent pregnancy, health care, protection of the elderly, housing discrimination, unemployment, alcoholism and drug abuse, domestic violence, and flexible working schedules.

Given the diverse ideological opinions held as to the meaning of a family, it is unwise for government to think in terms of a "family policy". The government, however, should recognize the impact that its laws and practices have upon our social institutions, and try wherever possible to see that these laws and practices do not actively discriminate against the initiatives of the family. An Anderson Administration will support:

The elimination during the next few years of the "marriage tax" which discriminates against working spouses whose combined incomes are taxed at a proportionately higher rate than if they were single.

Elimination of inheritance and gift taxes in transfers between spouses.

Individual retirement accounts (IRA) for homemakers.

Government assistance for displaced homemakers.

Gradual revision of the federal welfare laws to eliminate discrimination against two-parent families.

Reform of the federal health care system as set forth elsewhere in the platform.

Elimination of the existing biases against intermediate care facilities and home-care treatment in federal health care programs.

Support for added tax deductions for wage earners in families that care for relatives instead of institutionalizing them.

Support for federal funding for child care for children whose parent or parents are employed and cannot afford privately funded child care.

Support for increased child care facilities for welfare mothers who want to work or training for work.

Recognition in our laws that the role of the homemaker is of equal value and dignity with that of the providing spouse.

Reform of child support and alimony enforcement machinery.

Elimination of discrimination against women as set forth elsewhere in the platform.

Support for Child Health Assurance Plan (CHAP) to provide preventive health care for children.

Consumer affairs

Fundamental to the functioning of a sound and stable domestic order is the protection of the health and safety of the American consumer. The American marketplace was founded upon the premise that the consumer is sovereign—we must continue to adhere to this principle. While we must uphold essential health and safety standards, we must also recognize that the American consumer does not benefit from an excessively regulated economy. We must protect the recent gains made in protecting the basic rights of the American consumer.

We must take the following steps to ensure the basic rights of consumers:

Support the improvement of management coordination and effectiveness of agency consumer programs through the efforts of the existing Inter-Agency Consumer Affairs Council and the implementation of government-wide standards for these consumer programs;

Continue support for essential food safety and drug statutes;

Preserve product disclosure requirements;

Protect consumers against dangerous products with appropriate standards for auto safety, clothing flammability, new drugs and chemicals, and food and children's products;

Support the right of a fair hearing for consumers and public participation in government proceedings;

Enforce legislation prohibiting debt collection agencies from engaging in unfair collection practices;

Enforce truth-in-lending and fair credit reporting laws;

Support for legislation to overturn the *Illinois Brick* case to provide indirect purchasers the right to seek redress against a manufacturer;

Eliminate abuses in the sale of credit life insurance;

Eliminate fraud in sale of health policies to the elderly;

Support a nation-wide program under the Elementary and Secondary Education Act to alert consumers of their rights, enhance their ability to make rational and well informed choices, and to inform them of their opportunity for participation in government decision-making;

Enforce anti-trust laws to protect consumers and assure an efficient and productive marketplace; and

Enforce anti-redlining laws.

Veterans

Our veterans have risked their lives to defend our nation's interests, and deserve our deepest respect. We must be willing, as a nation, to show our appreciation of veterans of our foreign wars.

The Veterans Administration was established to insure that our veterans would be treated properly. Yet, despite its resources, despite its manpower, the Veterans Administration often fails to fulfill its responsibilities. Too frequently, veterans are turned away from V.A. Hospitals; they are denied the medical care they need and deserve. An outside evaluation team should make a thorough review of the Veterans Administration and recommend pressures for reorganization and improvement.

One of the Veterans Administration's most glaring failures has been its response to Vietnam veterans. We recognize the unique problems facing these veterans, victims of a war that left many of them physically, psychologically, and emotionally shattered. In general, Vietnam veterans have a higher unemployment rate than non-veterans, and 20 percent earn less than $7,000 per year. It has been estimated that 25–30 percent of all Vietnam veterans suffer from high-level readjustment problems, including drug addiction, alcoholism, and chronic depression.

The most serious effects of the Vietnam War, however, may not be realized for many years. It is now known that the herbicide code-named "Agent Orange", which was used extensively in Vietnam, contains a deadly chemical which may produce cancer, anemia, and hemorrhaging in those exposed to it and birth defects in their children. Thousands of American soldiers and Vietnamese were exposed to this deadly herbicide. Today many veterans face the uncertainty of not knowing whether the delayed effects of Agent Orange will claim them or their offspring as victims.

We believe that the plight of the Vietnam veterans can no longer be ignored. We strongly support the enactment of comprehensive legislation to improve our nation's treatment of Vietnam veterans, such as the Vietnam Veteran's Act currently proposed by Senator Heinz.

An Anderson Administration will:

Extend the limitation date for Vietnam veterans' education benefits with a 10-year extension for theater veterans and a 3-year extension for era veterans. Educational benefits should be adjusted to reflect the cost of living. The limitation of state matching requirements will be eliminated;

Require the Veterans Administration to undertake a major outreach program to contact the victims of Agent Orange poisoning. This program should include evaluation, treatment, and compensation, where due, for both veterans and their children;

Authorize the Veterans Administration to pay the administrative start-up costs needed to establish state-run programs providing direct housing loans at an interest rate below the prevailing market rate;

Provide for necessary personal counseling of Vietnam veterans. There should be no fixed deadline on this counseling. Theater veterans should be able to take advantage of non-V.A. facilities, such as community health centers or private mental health services. An outreach program should be employed to contact those Vietnam era veterans who have become disenchanted with the current Veterans Administration; and

Implement programs, under the auspices of the Veterans Administration, to reimburse employers for wages and other training expenses incurred for veterans. These reimbursements would be available up to the value of the monthly educational entitlement available to the veteran.

These proposals will cost money. To neglect our veterans, however, could prove even more expensive, both to society and to the military. Our past practices have led to great attrition from our voluntary army; recruitment of qualified and competent people is becoming increasingly difficult. A major effort must be made to reverse our past decade of neglect.

Primary and secondary education

Public education is an investment in America's future—an investment of even greater value to the nation than our capital plant and equipment. We must upgrade our investment in our human capital, just as we seek to rebuild our physical capital.

Despite a rising federal dollar investment in primary and secondary education, there is a growing concern about the rate of return on those federal dollars. The question, "Why can't Johnny read?" is asked with concern at the third grade level. At the high school level, it is asked with dismay.

Governor Reagan proposes to abolish the Department of Education. We propose to make it work. This is no time to sound the retreat on public education.

Over the past four years, federal aid to education has increased by 73 percent. An Anderson Administration pledges to make better use of those dollars.

Education and Regulatory Reform

The federal government, in recent years, has assumed a larger and larger role in local education programs, resulting in waste and duplication of effort. Grantsmanship has replaced scholarship at the local level in the scramble for federal dollars. The Anderson Administration will work for formula federal aid to local school districts to take school boards out of educational finance and back to educational excellence.

We must work to redefine the federal role in primary and secondary education. There must, of course, be oversight of federal dollars, but such oversight should not be intrusive or destructive of local school matters. The federal government should serve as a catalyst—providing the funds which can help public school systems achieve their goals, rather than dictating those goals.

To assist in the task of redefining the federal role, we propose to appoint, with Congressional authorization, a Presidential Commission on Primary and Secondary Education. The Commission's mandate will expire 18 months after its authorization, after providing recommendations on ways to:

Reduce the federal paperwork burden on local schools;

Evaluate better the financial needs of public schools;

Restore state and local initiative;

Minimize unnecessary federal intrusion; and

Harmonize federal and state regulation.

Federal Aid to Primary and Secondary Education

The creation of the new Department of Education affords the opportunity to review the full range of federal education programs in a coherent and comprehensive fashion. The new department should review the proper role and mix of categorical and block grant programs. In a number of areas, including special education, categorical grants play an essential role in assuring federal objectives. In the absence of a compelling federal interest in program supervision, federal assistance should take the form of block grants in order to minimize paperwork and maximize local initiative.

Federal aid to education must continue to play a leading role in assuring that school districts with insufficient local resources can provide equal education opportunity. Federal assistance must put a greater emphasis on reducing the intra-state disparities that still exist.

An Anderson Administration will continue to support the Title I concentration grants for remedial instruction of low income and disadvantaged students. We also reaffirm our support for the Headstart Program and related program initiatives.

An Anderson Administration will oppose tuition tax credits for primary and secondary education. Tax expenditures of this nature would drain much needed resources from public education needs at a time when the public school system's long-standing role as the principal provider of quality education is endangered. An Anderson Administration, while recognizing the important role of private primary and secondary institutions, is committed to preserving the traditional importance of free public education.

We recognize the special education needs of the disadvantaged or the specially situated. We reaffirm our commitment to quality education for all and for federal support of special education initiatives, including targeted assistance for low income and low achieving students and bilingual education programs for those who possess limited English language skills.

Special attention must be directed at the problems associated with federally mandated education requirements. An Anderson Administration is committed to reducing federally imposed education costs by increasing the federal funding of those costs. The federal government must shoulder the fiscal responsibility for its own legislative mandates.

Education of the Handicapped

There are an estimated 8 million handicapped children under the age of 21 in the United States. Nearly half of them are enrolled in programs that fail to address their special problems. Many of those problems remain undiagnosed. As a consequence, many of these children are wrongfully labeled as "slow learners" or characterized as having "attitude problems." The Department of Education, under an Anderson Administration, will encourage more extensive testing at the pre-school or first grade level in order to better identify hidden handicaps.

We reaffirm our commitment to the Handicapped Childrens Act of 1975, P.L. 94–142, which requires that handicapped children be educated with the unhandicapped. We will support additional federal funds for the supplemental training of the classroom teachers needed to meet the federal requirements.

An Anderson Administration will also focus on the transitional problems that many handicapped students meet when they seek to move from the classroom to the workplace. Better linkages are required between special education programs and private sector affirmative action employment programs.

Vocational and Technical Education

Despite an unemployment rate of nearly 8 percent, many skilled jobs in this country still go unfilled for lack of qualified employees. The paradox of high unemployment and unfilled jobs illustrates the continuing need for federal support of vocational and technical education. Vocational programs can serve not only to improve the employability of program participants, but also make education more relevant to disillusioned youth.

An Anderson Administration will encourage a vigorous vocational and technical education program, tied to comprehensive career counseling programs. We pledge continuing efforts aimed at upgrading technical equipment and facilities and encouraging private industry to establish work-study programs at the school level.

Gifted and Talented

The creativity and intelligence of American children are our most valuable natural resource. Our most promising investment in the future is in the gifted and talented children who excel through a combination of ability and perseverance, and test the limits of our traditional educational resources.

The federal government has a special responsibility to these children, and to the school systems which must continually challenge and motivate them. Ironically, these students, who have the greatest potential to benefit from education have the highest drop-out rate. Many schools lack the facilities and personnel to identify and provide for the special needs of the gifted. Currently, only 12 percent of the 2,000,000 to 2,500,000 talented children in the United States are receiving special attention, and interstate differences in participation are profound. We are mandated to reduce the inequities and to guarantee that every gifted child is inspired to actualize his or her potential.

John Anderson would direct the Department of Education to develop programs to serve gifted and talented students in every state.

Federal funding can also be used to assist in the development of cooperative programs between private and public secondary and post-secondary schools and to improve programs now established by various public institutions, such as the National Science Foundation.

The private sector can and must participate in the education of these unique students. By opening the arts, business, and industry to the inquisitive and creative minds of talented students, we can provide them with invaluable opportunities for discovery and learning.

Bilingual Education

We have an obligation to deliver a fair and equitable education to all residents of this nation. We must strengthen our commitment to bilingual education. Bilingual programs should not simply be transitions toward a single language education, but rather should be jointly designed by government and community representatives with minority participation to maintain and cultivate a student's multiple linguistic capability.

Under an Anderson Administration, the Department of Education would be required to provide appropriate guidance to state and local governments and school boards for the joint development of responsive and effective bilingual education programs. The federal government will provide funding to cover the additional costs of mandated programs.

Literacy

At present, estimates indicate that between 20 and 30 million adults lack the fundamental skills necessary to read a newspaper or fill out a job application. We believe that without the ability to read, an individual is deprived of the ability to pursue his or her basic rights. Without reading skills, an individual has little opportunity for employment. Illiteracy prevents the people who need the greatest voice in government from having much of a voice at all.

Illiteracy contributes to an increased inefficiency of the American worker. Education programs of the past have failed to address the needs of the illiterate. We need to attack the problem where it begins—in our primary and secondary schools.

Success rates in adult education have been low and only a small percentage of the illiterates in this nation have ever been reached by such programs. This nation cannot afford to hire the individual tutors that literacy training requires. It must be up to individual communities to muster the resources and manpower necessary for literacy training.

An Anderson Administration will direct the Department of Education to undertake experimentation with community-developed and community-run literacy programs. Such programs should involve all appropriate resources in a region; the local school system, colleges, the private sector, local government, and the community. The Department should also have the responsibility for informing the nation of the severity of the literacy problem and devising methods to convince those who are illiterate to seek aid.

Higher education

In the 1960's and 1970's, our federal and state governments invested heavily in the expansion of higher education. They created an educational system unparalleled in human history, an asset of priceless value. Our modern institutions of higher education not only provide educational opportunity, they also are centers of scientific research, and have a major impact on economic growth in a technologically oriented society which requires the services of skilled professionals. Most important to our democratic society, institutions of higher learning are a primary mode of social and economic mobility.

In the 1980's, we enter a critical period for our higher education establishment. The expansion of the last two decades has halted. By 1983, enrollment in higher education will peak, and then decline by 15 percent by 1990. As with any sector when it enters a static period, our nation's universities and colleges face a period of disruption. These institutions must entrench, rebuild, and revitalize to help our nation face the demanding years ahead. Just as the steel and other basic industries in our country face a time of rebuilding, so too do our educational institutions.

The federal government has a crucial stake in sustaining the educational establishment. Hundreds of programs in a variety of federal agencies have invested in higher education: its academic quality and fiscal health; the vitality of its research and scholarship; and the availability of educational and self-development opportunities.

The federal government has supported our institutions of higher education by grants to students, faculty members, and to the universities themselves. As we look toward the 1980's and beyond, we must continue and strengthen all three means of support.

Federal financial aid to students in higher education is not a coherent program. It is a complicated mixture of programs reflecting different national commitments and goals developed over the past 36 years. Many of the programs are inadequately funded, and others are misdirected.

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Our primary objective in providing grants and loans should be to increase access to higher education by lowering financial barriers to all members of society. We must encourage the provision of quality educational services, and promote traditional values which may have been ignored by efforts to rectify past inequities. There are no simple solutions to the weaknesses in the current federal financial aid programs:

We can identify problem areas but much research is necessary to develop comprehensive solutions. An Anderson Administration will make a commitment to develop these solutions, and will:

Develop a more rational, equitable, and widely available loan program to provide needed aid to middle income families. Currently, there are numerous loan programs, each with different repayment terms and degrees of availability;

Gradually increase the Basic Educational Opportunity Grants (BEOG) to reflect changes in the costs of education;

Liberalize the half-cost rule, which presently limits grant assistance to $750 annually for disadvantaged students attending a tuition free constitution;

Support renewed emphasis on self-help College Work-Study Program;

Encourage and increase funding of the TRIO programs: Talent Search, Upward Bound, Special Services for Disadvantaged Students, Educational Opportunity Centers, and Educational Information Centers—that deal with special problems and difficulties of access for the educationally disadvantaged;

Develop targeted post-enrollment remedial programs for students coming from disadvantaged educational environments;

Establish both an undergraduate and graduate Merit Scholarship Program at an estimated cost of $80 million; and

Maintain real spending on Supplemental Educational Opportunity Grants (SEOG) and State Students Incentive Grants (SSIG), currently funded at $440 million annually.

In addition to student financial aid, we must recognize the importance of subsidizing basic research in our institutions of higher learning. These centers play a significant role in the research and development needed to advance the technological genius and cultural heritage of our society. Recognizing this role, an Anderson Administration will:

Maintain real levels of support for the humanities;

Modestly increase funding for foreign language and area studies programs as described below;

Increase support for engineering research;

Increase support for quality scientific equipment, instrumentation, and facilities through a four-year phase-in program;

Upgrade research laboratories and equipment at universities and colleges with a five-year program of grants;

Create a fund for competitive post doctorate and research fellowships; special attention will be given to people out of universities for several years;

Increase support for research libraries collection development and collection preservation;

Improve the administration policies federally sponsored research to assure that regulations do not unduly restrict research programs;

Encourage both stability and predictability of resources; and

Encourage flexibility by federal regulators and auditors in the exercise of financial oversight; and recognize that efforts to document fully and precisely how every federal dollar is spent are often counter-productive;

Our nation has led the world in the quality of our medicine and medical professionals. As we renew our emphasis in comprehensive health care, we must continue to provide quality educational and research resources. The federal government can play a crucial role in sustaining these capabilities. An Anderson Administration will:

Support House Resolution 3633 Nurse Training and Health Programs Extension Act, providing continuing capitation funding for nursing education, and increased funding for the training of nurse practitioners and nurse midwives;

Increase funding for the National Health Service Corps;

Encourage the training of more health professionals, including physicians' assistants, nurse practitioners, paramedics, physical therapists, and midwives; and

Support predictable, long-term funding for biomedical research.

Federal involvement in higher education has resulted in numerous restrictions, changes in institutional procedures, and additional costs and burdens. Indiscriminately applied federal regulations have hampered our institutions of higher learning, impeded freedom of action and restricted self-management.

More care must be taken in the application of regulations to insure they do not unfairly impinge on the role of educational institutions. An Anderson Administration will not retreat from a forceful policy of affirmative action and environmental concern. But within these constraints, we must reexamine the effect of government regulations. Specifically, an Anderson Administration will propose to:

Subsidize compliance costs with a modest grant program;

Develop a comprehensive regulatory policy;

Take greater efforts to assess the impact of grant compliance requirements before their enactment; and

Increase flexibility in fund management for research.

International studies programs in our nation's institutions of higher learning are currently in a state of decline. America's ability to understand and deal effectively with both friends and foes depends heavily on trained and educated people knowledgeable in international affairs and competent in foreign languages. But the network of institutions and programs created in the 1950's and 1960's through the combined efforts of the government, private foundations and the universities has been seriously eroded. Federally funded foreign language and area fellowships declined from a peak of 2,557 in 1969 to 828 in 1978. Federal expenditures for university-based foreign affairs research declined from $20.3 million to $8.5 million, or 58 percent in constant dollars. At a time when America's needs for competence in international studies and foreign languages is becoming increasingly complex and urgent, our ability to respond to these needs is decreasing precipitously.

In a nation as large and pluralistic as the United States, only the federal government can provide the leadership and resources essential to improve substantially our foreign language and international studies capabilities. An Anderson Administration will establish long-term, enduring policies to:

Provide financial support for existing international studies programs at our universities and colleges and encourage the creation of new centers to correspond to national needs;

Provide funding for language teaching and support research designed to discover more adequate and effective language teaching techniques at all levels of instruction;

Increase support for foreign area and global issues research; and

Strengthen and expand our various international affairs programs at the community level, especially through the resources of our vast community college system.

The diversity and special services of minority-oriented institutions of higher learning are essential to rectifying past inequities. An Anderson Administration will:

Continue to support black colleges and universities;

Fully support the maintenance and development of American Indian community colleges. We are opposed to the transferring of schools under BIA control to the Department of Education. We recognize the need for community members to become further involved in the running of their schools. Decisions on the creation or termination of schools should not be made without tribal consent.

The arts

Our nation has always been distinguished by its rich and full artistic culture. The arts, in their popular as well as their professional forms, have played a key role in enriching the lives of all Americans. John Anderson affirms the essential role the arts play in American society.

John Anderson believes that the federal government should be a strong supporter of the arts. Yet, we must be careful in choosing the form of this support. The government should foster the development of the arts without controlling their content. Government support of the arts should consist primarily of creating an environment that, while encouraging a balanced development of all arts, allows the mechanisms of private and popular selection to play a predominant role.

John Anderson cites the following areas in which the government can assist the arts:

National endowments.—Funding for the National Endowments for the Arts and the Humanities should keep pace with inflation. The President should monitor the Endowment's operations to insure that the public has access to the Endowment's programs, and to insure that their funds are being spent wisely.

White House Conference on the Arts and Humanities.—John Anderson has supported efforts to hold a White House Conference on the Arts and Humanities. He will continue to help to arrange this Conference, which would provide a needed opportunity to discuss the future of American arts.

Cultural heritage preservation.—The federal government should take measures to assure that the nation's cultural heritage—its monuments, artifacts, works of art, languages, and cultural traditions—is protected and preserved.

Art bank.—John Anderson supports the bill to create a National Art Bank within the National Endowment for the Arts. The funds for this Art Bank would be used to purchase works of American art, which would then be leased for exhibition in government buildings, hospitals, and civic centers. The Art Bank would benefit all Americans by increasing exposure to American artists, and bringing the best of contemporary American art to all regions of the country.

Private support.—Private financial support is the element essential to the well-being of our national arts. The federal government offers a tax credit to those private individuals and corporations contributing to the arts. The Anderson Administration would encourage the private sector to take maximum advantage of this tax credit.

The challenge grant program, which provides matching funds for contributions from the private sector, has proven very successful. Anderson strongly supports this method of giving financial assistance to the arts.

A patron awards program is a third measure that could be used to foster contributions from the private sector. Individuals and corporations who provide essential support to the arts deserve to have their support publicly recognized.

Fair compensation.—John Anderson would investigate improvements in copyright and patent laws to insure that artists receive proper compensation for their work. He favors tax credits in those instances where an artist lends his or her talents to public performances.

Taxes.—John Anderson supports the Artists Equity Tax Act, and endorses the clarifications of the bill's language that have been suggested by the Authors League of America. This bill would modify our tax laws to: (1) encourage donations of art into the public domain, and (2) eliminate unfair tax burdens on artists and their heirs.

While recognizing the costs of these programs to foster the arts, John Anderson believes we must remember the arts' proven role in economic renewal and development. The establishment of art centers leads to improved property values, the growth of ancillary industries, with an accompanying increase in tax revenues. The arts could prove particularly useful in urban renewal programs, as they would help to attract people back into the cities. It is clear that the arts play an essential role in the well being of our nation.

Environment

The protection and preservation of the Earth's biosphere is vital to human survival. It is therefore necessary to ensure that our environmental initiatives of the past decade are not abandoned. We need to encourage a new ethos in our society that is built upon a greater respect for the environment and a greater willingness to protect it.

The Anderson Administration will accept the challenge offered by continuing threats to the environment by ensuring strong enforcement of our present environmental laws, and by enacting additional environmental legislation when necessary.

The Anderson Administration will be willing to accept the economic costs related to the protection and preservation of our air, land, and water against pollution, exhaustion, and depletion. We will ask the same of all our citizens. Our values cannot be oriented to short-term measures taken at the expense of future generations.

The nation's environmental standards were enacted to protect the health and safety of the American people and to ensure the quality of our lives and the lives of our children. We will exert our best efforts to meet our national commitment of protecting our environment. We will not relax these standards.

The following are important issues where an Anderson Administration will take new initiatives.

Oceans and Costal Areas

The United States continues to neglect its connections to the seas. The rapid deterioration of our nation's coastlines and waters is visible in oil-stained tidal pools, quarantined shellfish beds, the depletion of shorebird populations, and the loss of 300,000 acres of wetlands and 6,000 acres of fragile barrier islands which protect the Atlantic and Gulf Coasts.

Dumping of sewage sludge, catastrophic oil spills, chronic oil spills, and development of offshore oil and gas threaten to turn portions of our seas into large polluted sinks with barren underseas plains.

Once considered useless, our coastal wetlands are now seen as invaluable endangered resources. They provide vital habitat for water fowl, other coastal wildlife, food for commercially valuable fish and shellfish, natural waste treatment for tons of sewage effluent, storage for flood waters and the recharging of groundwater supplies. These valuable wetlands are being altered, polluted, and plundered by the pressures of energy siting, escalating demand for shipping channels, commercial development and second-home development.

Fish are in great demand as a source of protein; new sources of continental shelf oil and gas are urgently required to meet energy needs; seabed nodules are about to be mined for strategic minerals; global shipping grows; ports and harbors have become busier. Along the attractive coastal rim, urban populations concentrate more heavily and seek recreational joys from both water-related sports and esthetic surroundings. Finally, well over 100 nations face the sea, and they are exploring the potential of the oceans in contributing to their future.

To protect our oceans and coastlines from rampant resource exploitation, the Anderson Administration will institute the following programs:

It will actively lobby for the passage of "Oil Spill Superfund" legislation which would provide funds for rapid clean-up and damage compensation. Under our program:

Revenue for the superfund will be obtained through the taxation of companies involved with the transport and storage of oil that could result in the pollution of our country's waters.

Administration of the superfund will be by the EPA.

Use of superfund monies will be for:

The clean-up of oil spills.

Immediate compensation for damages caused by the oil spill.

The superfund will have the ability to sue the polluter to recover funds disbursed for damages, and the tax be adjusted on a biennial basis in the light of actuarial calculations.

With increased shipping of petroleum and hazardous cargo, and with increased size and decreased maneuverability of ships, greater attention is necessary to reduce risk to the environment and to assure safety for human life.

The Anderson Administration will direct the Coast Guard to strengthen traffic management systems and to devise means to enforce safety regulations more strictly. Additionally, new incentives and penalties will be provided to the shipping industry itself, so as to facilitate its assuming greater responsibility for operations. The Anderson Administration will also ask Congress to increase Coast Guard funding to cover the costs of these new programs.

The Anderson Administration will direct the Department of Transportation to research ways and means to accommodate increased maritime traffic, while reducing risk.

Sophisticated technology required for Arctic hydrocarbon exploration has not been tested and is still only in the developmental stage. Under the Anderson Administration, leasing in the Beaufort Sea will proceed only after technological methods are proven—*and* the annual review of the leased areas is comprehensive and conclusive enough to determine whether oil and gas exploration is having a detrimental impact on species such as the endangered Bowhead and Gray whales. Exploration in other Arctic areas such as the Chukchi Sea, Norton Sound and Navarin Basin will not proceed until the effects of Beaufort leasing is known, and consideration will be given to limiting exploration only within the barrier islands.

The Anderson Administration will require the following safeguards before any drilling is allowed to occur on George Bank, the world's most abundant fishery:

The barging of drill muds and cuttings offsite away from spawning areas except when meteorological conditions make this more hazardous than on-site disposal. Many of these materials contain toxic substances.

The reinjection of formation waters into the drilled cavity. These are waters associated with oil and gas reservoirs which are usually separated from oil and gas, and dumped overboard. Benzene, toluene, xylene, and ethyl-benzine are some of the materials found in these waters, and they are also the most toxic to marine organisms. The dumping of those materials could have a disastrous effect on fish larvae which circulate near the surface areas of the water columns.

Improvement in the composition and authority of the Biological Task Force established to monitor the effects of oil and gas activity on biological resources.

Lessees will be required to factor costs of safeguards into their costs of production in determining the feasibility of a particular tract. If the tract is subsequently determined to be economically infeasible, the developer will not be allowed to waive the safeguards, rather, the tract will be deleted.

Existing legislative and administrative authorities under the Federal Water Pollution Control Act (Section 404) will be strictly enforced, and federal agencies will encourage and solicit local support and aid in this enforcement.

The 1972 Coastal Zone Management Act is due for Congressional reauthorization. The Anderson Administration would seek to have this Act reauthorized by Congress and strengthened with more effective management incentives and enforcement tools. The following points should be included:

The CZMA should provide stronger incentives and penalties for states to develop and adopt their own management plans.

Periodic reports should be required from state and federal governments on the coastal areas, including reviews of state management plans.

Incentives for states to identify and preserve coastal areas of national significance.

Funding for additional beach access.

An Anderson Administration would address the issue of reducing federal funding for projects in high hazard areas especially on flood plains, wetlands, and barrier islands.

An Anderson Administration would support a strong, viable Marine Sanctuary Program.

Recent proposed changes in Section 404 of the Federal Water Pollution Control Act giving the Army Corps of Engineers more authority in the permitting process would be opposed by an Anderson Administration. (We favor the present procedure in which EPA has final veto over the Corps permits in the case of fragile areas.)

An Anderson Administration will require a review of our major ports in order to establish what are our national needs for ports and how established infra-structure can meet these needs without encouraging additional construction at the expense of our wetlands.

Through the United States Law of the Sea conference, the Anderson Administration would encourage adoption of environmental standards that would better control ocean pollution, the dumping of waste and the continuing disposal of radioactive materials on an international basis.

Public Lands

To fill the resource demands of a continually growing consumer population, many people wish to exploit the vast tracts of resource rich public lands in the West, and the remote undeveloped spots in the East. We must recognize that once we begin the exploitation of our public lands, however, that we are creating irreversible change. For this reason, it is in the best interest of the American people to hold portions of our natural lands in safekeeping, forever to be free from the threat of exploitation. Other federally owned lands can provide large amounts of valuable timber, minerals, and grazing land, if they are carefully managed. The next administration will have to address the following land management and resource preservation topics:

Alaska Lands

The Udall-Anderson Alaska Lands Bill (H.R. 39) passed the House of Representatives due in large part to intensive support by its primary minority co-sponsor, John Anderson. If enacted into law, this measure will protect approximately 128 million acres

of unspoiled Alaska lands; of these, 67 million acres will be given "wilderness" designation. More recently, the Senate passed its own version of the Alaska Lands Bill, proposing the protection of approximately 100 million acres, but excluding some prime regions that are protected by the House bill.

We will exert our best efforts to secure enactment of a strong Alaska Lands Bill, as introduced by John Anderson in the House of Representatives.

Sagebrush Rebellion

The Bureau of Land Management of the Department of Interior manages the nation's "unappropriated, unreserved lands". This now amounts to about one-fourth of the land area of the United States. Ninety percent of these unreserved lands are west of the Rocky Mountains. There is currently local political pressure to enable the states to assume management of these lands.

It is, however, also argued that states will find it too expensive to manage the lands and will succumb to overwhelming pressures to sell it. (It would cost Idaho $51 million to manage 20 million acres of national forest lands at the current level of management by the federal government.) With the zeal to develop these areas, environmental concerns could easily be overlooked or ignored.

The Anderson Administration will work to have federal lands remain in the possession of the federal government to ensure they are managed in the best national public interest, according to principles of conservation and multiple use of all resources.

Forestry

More and more pressure has come from the timber industry and building trades to cut more heavily in our national forests as lumber shortages increase. Yet, we currently export logs to Japan. The hard choice here is between the preservation of an important and substantial part of the environment and the accummulation of needed export revenues. In an area as important as the national forests, we must allocate our resources more wisely. We must have respect for the land that extends beyond our time. Broad interests definitely should be represented in the preservation of national forests.

The Anderson Administration will vigorously enforce the multiple use/sustained-yield policy set forth in the National Forest Management Act of 1976.

The Anderson Administration will require the Forest Service to review its timber pricing policy to bring it in line with sound business practices, since the subsidizing of timber prices discourages private forest investment and other uses of the forests. More emphasis will be placed on private timber farms by the Forest Service to increase its cost-sharing and assistance programs.

RARE II Process

Through the RARE II (Roadless Area Review and Evaluation) process, the Forest Service has reviewed 62 million acres of roadless lands in the national forest system. The Forest Service has recommended 15.4 million acres as wilderness, 35 million acres be managed for multiple use (logging, grazing, recreation), and 10.8 million acres be studied further.

Under the Anderson Administration, wilderness designations will be increased and areas not previously studied will be re-evaluated for their wilderness potential.

Urban Parks

To improve the urban environment and to assist urban areas maintain and protect their valuable parks, an Anderson Administration will:

Encourage the National Park Service to attend to the special needs and problems of parks and public recreational areas within the urban setting.

Air and Water Quality

In recent years the energy needs of our country have been the primary issue in the minds of our government officials and the general public. Since this issue receives focused attention and efforts, other domestic programs and issues at times go lacking or are even submerged. Environmental concerns are often considered hinderances to energy development and industry is continually attempting to have standards eased. Auto manufacturers plead to have auto emission standards relaxed as a way of attaining adequate mile-per-gallon ratings. The increased use of coal and synthetic fuels bring with it the potential of vitiating the nation's air quality. Emissions from increasing fossil fuel combustion combine with accumulations of carbon dioxide to form acid rain that has fallen on the Northeast depleting fish in mountain lakes and affecting crop production and forest yields.

Our water quality and reserves are also declining at a dangerous rate. Our ground water is being contaminated by abandoned waste dumps, unsafe landfills, polluted streams, and oil and gas well drilling techniques.

Some suggest we submerge environmental concerns to solve the energy, productivity, and economy issues. We must put in place policies and programs that will answer the needs of the future and not be oriented to short-term concerns without reference to what the consequences might be for future generations.

The Anderson Administration will establish the strict enforcement of the Clean Air Act of 1977 and the Water Pollution Control Act of 1972 as national priorities.

Through the EPA, the Anderson Administration will seek to reduce further industrial emissions and require the installation of best available control technology on existing coal-fired power plants.

The Anderson Administration will lobby against attempts to weaken standards or postpone the deadlines for reducing carbon monoxide and hydrocarbon levels in automobile exhausts.

The Anderson Administration will direct the EPA to phase out the substitution of taller smoke stacks for emission controls.

The Anderson Administration will seek to retain the section of the Clean Air Act that prohibits any "significant deterioration" of pristine air in our national parks and wilderness areas. (Removal of this provision would have allowed a giant coal-fired plant to be erected only nine miles from a major park in Utah.)

The Anderson Administration will direct the EPA to institute an exhaustive study of the effects of acid rain and methods for its prevention. (For further discussion of acid rain, see the Energy plank.)

A national program of water conservation will be initiated by the Anderson Administration. Environmental values will receive top priority in planning of water programs and projects.

Through the EPA, the Anderson Administration will strictly enforce federal standards for carcinogens in drinking water. If standards are not met by the utility or municipality serving a community, the consumers will be notified, and the utility required to meet the standards using appropriate technologies.

Wildlife

Ninety percent of all species which ever lived on Earth have now disappeared; almost all of them died out naturally. Recently, this process has changed. Man's actions now account for the extermination of numerous species. In 300 years man has eliminated 150 known species of mammals and birds, and an unknown number of reptiles, amphibians, and fish. Pressures from an increasing world population seeking room to live and resources necessary to support an ever rising standard of living are depleting the habitat of our wildlife.

A concern for wildlife conservation can seem frivolous in today's world, yet man has a tremendous self-interest in ensuring ecosystem stability and protecting the Earth's gene pool. Any reduction in the diversity of resources reduces our ability to respond to new problems and opportunities. In order to protect the wildlife of our lands and seas, the Anderson Administration will:

Strengthen the National Wildlife Refuge program by limiting the secondary uses of the refuges: grazing, timber harvest, hunting, trapping, predator control, and pesticide use.

Expand and strengthen the current embargo on the import of products derived from endangered wildlife.

Exercise the influence of the United States to encourage other countries to terminate the wholesale slaughter of whales, porpoises, seals, and other wildlife.

Enforce international whale conservation efforts through sanctions under the Pelly amendment to the Fisherman's Protective Act, which provides that any nation which undermines an international conservation treaty will have its nation's fishing products embargoed from entering U.S. ports under the direction of the Department of Commerce. Where a nation was in violation of an international conservation treaty and certified under the Pelly amendment, the Anderson Administration would employ the Packwood/Magnuson amendments to the Fishery Conservation and Management Act, which can expressly limit the amount of fishing allowed within the U.S.-200 mile limit.

Water Projects

Due to the pork-barrel nature of Army Corps of Engineers and other federally funded water projects, legislation in this area is often given a cursory review by Congress and usually passes with ease. As a result, many water projects are constructed without proper attention to their environmental impact.

The insatiable desire for ever cheaper electric power, without attention to cost-benefit ratios, will bring about the costruction of numerous hydro-electric dams on previously free-flowing rivers and streams. This could have many adverse effects such as the destruction of valuable fish and wildlife habitats, the inundation of productive farmland, the displacement of rural populations, and loss of irreplaceable scenic and recreational areas.

The wetlands of our country are also in jeopardy. Land developers are now turning to areas that were previously difficult to develop, but are now attractive due to escalating land costs. Now that the technology and machinery exists to drain our marshes and wetlands easily, we are faced with the prospect of the destruction of these valuable ecosystems that provide habitats for many forms of flora and fauna. Wetlands are also a valuable component in our water cycle, providing natural waste treatment and a means by which we can store flood waters to recharge our groundwater supplies.

To assure that federal water projects respect environmental concerns the Anderson Administration will do the following:

Direct the Army Corps of Engineers to place a strong emphasis on the preservation and restoration of our nation's wetlands.

Pay careful attention to proposed federal water projects to see that their cost-benefit ratios did not underestimate environmental impact. An example of a project that proves to be very cost-effective and that the Anderson Administration will support is the Charles River Watershed Project in North Carolina. This project establishes good flood-plain management and protects valuable wetlands.

Re-evaluate the cost-benefit ratios of all navigation projects for barges that are less than 40 percent complete to determine if they are still profitable. If they no longer pass this profitability test, then the Administration will halt their construction.

Decrease federal funding of water project costs to encourage the states to assume a larger share of project costs.

Federal water project aid will be made conditional on state implementation of groundwater management laws.

Toxic Substances

Through the manufacture of chemical substances, our nation generates 77 billion pounds of hazardous waste each year. Such waste threatens our air, rivers, and ground water resources. The serious toxic contamination discovered in the Love Canal area of New York has understandably resulted in public suspicion, fear, and anger. Such reaction is not unwarranted. There is convincing and sobering evidence that chemical wastes until recently have been disposed of illegally or carelessly in a way that assures they will ultimately find their way into the environment. In many instances these chemicals once released cannot be controlled.

The U.S. government through EPA has the framework to control chemical products and wastes. (The Toxic Substances Control Act authorizes the government to collect information on chemicals that may damage health or the environment and to control them where necessary.) The Resource Conservation and Recovery Act provides for government control over hazardous wastes from their point of generation to final disposal.

Thus the U.S. government is beginning to collect information on all aspects of waste generation and to dispose of (or store) the wastes securely. There is growing public concern that the federal government's present level of commitment is not adequate for the task.

In many instances, the failure to take swift measures endangers the public's health. As a matter of public policy, we cannot delay action while we await conclusive evidence of toxic-related cancer, abortion, fatalities, and birth defects.

Federal policy must be focused on the prevention of toxic disasters. The following policies will be implemented to address this national environmental crisis:

The Anderson Administration will more aggressively enforce the Toxic Substance Control Act and the Resources Conservation and Recovery Act. This calls for rapid promulgation of the rules by the EPA and for the expansion of testing and monitoring. Within legislative mandates, the Anderson Administration will expand the existing testing and monitoring procedures.

The Anderson Administration will work toward enactment of a "Toxic Waste Superfund" program for the clean-up of improperly disposed of toxic materials.

The superfund will be built on taxes levied on the principal hazardous waste generating industries.

The industries to be taxed will be identified through a study by the EPA.

The individual tax rates will be determined by the quantity of waste produced by the company.

The "Toxic Waste Superfund" will be administered by the EPA.

The superfund will be used for:

The clean-up of improperly disposed of toxic materials.

Compensation to innocent victims as a remedy of last resort. It must be noted that a polluter is liable for injuries incurred as a result of its improper disposal of toxic waste. If the polluter is unknown, or if liability for damage cannot be expeditiously established, then the EPA will be able to award compensation to the victim if it can be proven that injuries resulted from the improper disposal of toxic wastes.

The Anderson Administration will promptly convene regional councils of governors and mayors to develop sensible regional solutions to the disposal site problem. These councils would make the hard choices that are needed, assisted by technical experts from federal, state, and local agencies, with input from private citizens.

The Anderson Administration will direct the EPA to grant funds to be used to help the councils ensure that these priority disposal sites are managed with the greatest care and skill. This would include provision of technology development funds where appropriate in order to pioneer new and more effective disposal techniques.

The Anderson Administration will institute temporary emergency bans on the usage of toxic substances, herbicides, and pesticides where there is extensive evidence and confirmatory information that the substance is causing serious adverse health effects on people and the environment. (The EPA imposed an emergency ban on the use of both 2,4,5–T and Silvex. They took the action due to evidence that these herbicides caused cancer, birth defects, and miscarriages. We support this emergency ban.)

The Anderson Administration will examine in detail the problem of the transport of hazardous chemicals. It will act quickly to reduce the danger to the public from this source. Safe traffic routes will clearly be a major component of this initiative.

IV. GUARANTEEING RIGHTS AND PROMOTING JUSTICE

Prosperity without justice, and security without basic rights, are incomplete. Indeed, any society that long denies basic rights and just treatment to all its citizens diminishes its unity and strength, and sows a crop of bitterness and rage. It is both the obligation and the interest, of every society to deal fairly with all.

In modern American society, however, it must be remembered that economic well-being is considered a basic right of all Americans. Action in the field of civil rights today, therefore, has these basic priorities:

First, we must seek to provide employment opportunities for all. This is the purpose of our proposals here and elsewhere in the platform in the area of *jobs*.

Second, we must transform our laws so that they cover and protect all equally. This is the purpose of our proposals in the area of civil rights.

Third, we must ensure that all the laws we have are enforced fairly and equally. This is the purpose of our proposals in the areas of criminal justice.

Jobs and justice

A just and progressive civil rights policy must be founded not only upon the enactment and enforcement of civil rights legislation, but must also be founded upon an economic policy that provides opportunities for employment and advancement.

Throughout this program we have set forth proposals that affect the employment status of minorities. These include strengthening Title VII of CETA, enacting a Youth Energy Projects Act, supporting the Youth Act of 1980, stimulating small businesses in declining areas, establishing urban enterprise zones, and rebuilding neighborhood confidence by promoting policies that encourage local initiative. We have proposed urban housing programs to increase the supply of low income housing, encouraging self-ownership, and removing restrictions on the use of HUD funds for the restoration of existing residential structures. We have proposed low income energy assistance needed to help families unable to meet skyrocketing residential energy and weatherization costs. Our investment proposals include tax credits for firms that renovate their existing structures (largely relevant to urban areas). We have proposed a job-creating Urban Investment Trust Fund to rebuild the basic infrastructure of our cities and a job-creating Community Transit Trust Fund to renovate and rebuild our transportation network. Jobs will be a central concern of an Anderson Administration.

In addition to these and other programs outlined in this program, we propose a strong initiative in the field of minority business.

The ownership of businesses and other capital assets is the best way in which members of minority groups can gain their deserved share of the American economy. However, minority-owned businesses face not only all of the problems of finance, over-regulation and marketing facing all small businesses, but also the additional problems caused by a long history of discrimination. Thus, it is necessary to provide additional assistance to Black, Hispanic, American Indian and other minority entrepreneurs. Such assistance should be carefully tailored to provide help to businesses that create long-term productive jobs and stimulate economic growth. We endeavor to:

Place additional emphasis in the Minority Business Development Program upon assisting minority entrepreneurs in growth industries, such as energy production and conservation, electronics and communications.

Implement legislative setaside provisions for minority businesses, especially in areas that can improve the productivity of the minority community and the economy as a whole, including funds allocated for research and development activities.

Expand the Minority Business Technology Commercialization Program of the U.S. Department of Commerce in assisting minority entrepreneurs to participate in the process of the commercialization of new technologies, including those resulting from our space program.

Make the programs of the Small Business Administration more effective through streamlined procedures, monitoring of results and closer working with minority-owned banks.

Civil rights

John Anderson's commitment to civil rights has never wavered throughout his years of government service. A vocal supporter of every major piece of civil rights legislation from the 1964 Civil Rights Act to the 1980 Fair Housing Act, he has remained steadfast in his loyalty to the principles of equal education, open housing, and employment for all. Governor Lucey has an equally long and distinguished civil rights record.

Although many are willing to make the claim that the battle for civil rights has been won and is over, we disagree. We are willing to applaud the progress thus far, but as long as we fail to see an Equal Rights Amendment ratified, as long as previous commitments to the rights of American Indians, Hispanics, Blacks, and other minorities are not honored; as long as we fail to extend those same commitments to the rights of the handicapped, immigrants, and others; as long as our fair housing laws are wantonly abused; and as long as groups such as the Klu Klux Klan and the Nazi party not only survive but actually gain nominations for public office, we are unwilling to call for a truce in the struggle for civil rights.

In most instances, the legislation necessary for the guarantee of civil rights is already in existence. Unfortunately, many of these laws, some of which have existed for a century, and some for two decades, are not being seriously upheld or enforced. Existing laws and statutes must be upheld and, if necessary, revised to enhance their en-

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forcement. Only when we strictly enforce laws such as the Civil Rights Acts and uphold our fair housing laws will we realize an effective commitment to civil rights.

Housing

Title VIII of the 1968 Civil Rights Act declared that "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." But despite this, many Blacks, Hispanics, and other minorities are still denied equal housing opportunities.

We believe steps must be taken immediately to insure equal housing opportunities for all.

The Anderson Administration will seek immediate enactment of Fair Housing legislation, if H.R. 5200 is not enacted during the 96th Congress.

In 1968, John Anderson cast the deciding vote in the Rules Committee which brought the Open Housing bill to the House floor, and he helped lead the fight for its passage. We recognize that the original bill must be strengthened. Thus, we support the legislation currently before the Congress which would authorize HUD to order violators to cease discriminatory practices, and to assess civil penalties against those accused of violating the Fair Housing Act.

We believe adequate funding must be provided to enable HUD to conduct community-wide compliance reviews, monitor compliance agreements, and establish a viable program for interagency coordination with regard to fair housing. We must increase funding for the Department of Justice in order to ensure adequate prosecution of Title VII violators. Affirmative Action.

The mandate of our civil rights legislation cannot be fulfilled simply by prohibiting practices intentionally designed to deny opportunities. We believe that we must make an honest and positive effort to enforce the equal protection clause of our constitution through the establishment of affirmative action programs.

We cannot be lax either in the monitoring or in the enforcement of affirmative action programs. Such programs have been in effect for only a brief interval of time compared to the years of oppression that preceded them. Over a century ago, the Supreme Court stated that when a person emerges from slavery to citizenship, he "ceases to be a special favorite of the laws." Such thinking, similar to the growing revisionism of today, helped to usher in a century of enforced segregation and discrimination. An Anderson Administration will never accept such a reactionary and unjustified view. It will be prepared to use the threat of terminating federal funds to offending institutions and municipalities much more extensively than previous administrations have been.

We also believe that the federal government should set the example in the application of minority hiring practices. An Anderson Administration will require full accountability from all government departments and agencies with regard to the implementation of affirmative action. We believe that the true test of an administration's intention lies in its ability to place minorities in all branches of government, not just in those sections of government concerned with minorities. An Anderson Administration will seek to place minorities in all foreign as well as domestic branches of government.

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Education

Since the *Brown vs. The Board of Education* decision, school districts have struggled with the problem of properly integrating their schools. We favor federal support for communities to devise their own method to attain school desegregation. Those methods include redrawing zone boundaries, pairing arrangements between school districts where feasible. However, if these strategies fail to achieve integration, we favor an intelligently devised busing plan as a last resort.

The Anderson Administration will absolutely oppose any attempts to pass a constitutional amendment prohibiting busing.

We recognize that court-ordered busing is the result of community failure to design a local remedy for school desegregation. An Anderson Administration will seek to enact the National Educational Opportunity Act introduced in the 95th and 96th Congresses by John Anderson. This legislation would provide federal funds to encourage local cooperation in enacting school desegregation programs.

Native Americans and Alaskan Natives

The obligation owed to Native Americans and Alaskan Natives by the federal government is not discretionary, but is based on prior legal commitments established through judicial and legislative pronouncements. However, in many instances, the federal government has failed or is failing to meet this nation's obligations to Native Americans and Alaskan Natives.

We have always been strong supporters of sovereign tribal rule, as guaranteed to Native Americans and Alaskan Natives by treaty, Supreme Court decisions, Congressional policy and Executive Order. Under an Anderson Administration, treaties will not be abrogated without the consent of all parties involved.

We believe that a strong Bureau of Indian Affairs is necessary to adequately protect the interests of Native Americans and Alaskan Natives within the federal government. Any reorganization of the Bureau should seek to distribute more power toward both the Agency and tribal level.

The federal government must work with Native Americans and Alaskan Natives to plan, develop and implement realistic economic development programs which will improve and strengthen their economic position and which will bring long-term employment opportunities to their people. Where Tribal and Alaskan Native lands contain considerable amounts of coal, uranium, natural gas and other natural resources the federal government should not be permitted nor should it permit private industry to exploit these resources in a manner detrimental to those Tribes and Alaskan Natives.

We support the efforts of the Bureau of Indian Affairs' Federal Recognition Project.

An Anderson Administration will order enforcement of the Voters Rights Act and the Bilingual Education Act to assure that Native Americans and Alaskan Natives will receive voting information as well as sufficient educational materials in their native languages.

Life expectancy for Native Americans and Alaskan Natives is low. We propose an expansion of programs involving tribally controlled paraprofessionals and grassroots health services with an emphasis on preventive medicine.

Puerto Rico

The islands of Puerto Rico should be entitled to political self-determination. We support any decision the people of Puerto Rico make in a referendum whether the decision includes becoming a state, maintaining its status as a commonwealth, establishing independence.

Sexual Orientation

We believe that discrimination due to sexual orientation should not be tolerated baring discrimination based upon sexual orib y the Federal Government. An Anderson Administration would work to repeal the section of the Nationality and Immigration Act which excludes individuals from immigrating soley on the grounds of sexual orientation. We would issue an executive order entation within the Federal Government. An Anderson Administration would encourage Congress to extend to the Civil Rights Commission the power to investigate acts of discrimination against individuals based upon their sexual orientation.

District of Columbia

We applaud past efforts to grant the District representational rights. We support ratification of the amendment which would grant D.C. voting rights in Congress.

Immigration

Immigration policy raises a number of difficult issues. We seek to balance the aspirations of the poor, hungry, and jobless in other lands while protecting the most disadvantaged members of our own society from special burdens.

An Anderson Administration will create an executive task force to review and, where appropriate, to implement the recommendations of the Select Commission of Immigration and Refugee Policy as soon as its report is made public. In so doing, it will constantly keep in mind the contributions made by generations of immigrants.

The two thousand mile border we share with Mexico presents unique problems, but unique opportunities for mutually beneficial cooperation as well. The immigration of undocumented Mexican workers affects the interests of many parties, not just those of our two governments. It affects local communities on both sides of the border; it affects the American worker as well as the undocumented Mexican worker, and it affects our own Hispanic-American community.

We believe that any attempt to close the border would be detrimental to our relations with Mexico. We are opposed to any policy which requires the carrying of work cards. Such a policy is inconsistent with this nation's fundamental commitment to civil rights.

We must deal with the issue of Mexican immigration within the context of other border issues. The existing mechanisms for handling specific problems in the border region have not been satisfactory. Therefore, an Anderson Administration would propose the creation of a joint Mexican-American commission to promote cooperative border development in an integrated fashion as described elsewhere in the platform.

Handicapped

While significant strides have been made toward ending discrimination against the handicapped, much remains to be done in terms of increasing employment and education opportunities, while also promoting freer access to public buildings and services. Several tasks remain to be done.

We must work to eliminate discrimination against the handicapped in housing by amending Title VIII of the Civil Rights Act to bar such discrimination.

We must insure compliance with Section 504 of the Rehabilitation Act of 1973 to increase the accessibility of public facilities for disabled Americans.

We must accelerate the spending of monies already authorized for independent living demonstration projects.

We must expand federal vocational and educational training provisions to include independent skill training programs for the disabled.

We must provide appropriate tax relief for private employers who remove architectural or other barriers to the hiring of the handicapped.

Justice for American women

The time has come for all our institutions and leaders to seek justice for American women.

Full partnership for women in our society is essential to our self-respect as a nation and our moral standing as a world leader. In addition, rebuilding our nation depends on our capacity to utilize all the creativity,

leadership, and technical skills available. Justice for women is not a luxury; it is a necessity.

The women's movement of this generation is a vital force in our society. Thousands of the ablest women are enlisted in this cause and have achieved great gains.

Federal legislation prohibiting discrimination in education, employment, credit, and housing has been passed. The Equal Rights Amendment has been ratified by 35 states representing 72 percent of the population. Thirteen states have added effective ERA's to their state constitutions. The Supreme Court has made tentative but ambiguous steps in the direction of interpreting the fourteenth and fifth amendments to extend to women equal protection of the laws.

Women of means can get legal, safe abortions.

Improvements have been made in marital property, divorce, and inheritance laws in a number of states.

The number of women mayors, city council members, and state legislators has steadily grown.

Half our college undergraduates are women, and 25 percent of our law and medical school enrollment.

Participation of girls and women in sports has skyrocketed.

Opportunities for women in non-traditional training and jobs have been opened up.

Government funding of child care facilities for low income women has increased.

Women have made gains in full acceptance in the military services, particularly in non-traditional occupations.

Some shelters for victims of rape and battered women have been established, and some Federal government funding is being provided.

These gains came against great opposition and at great cost in time and money to literally thousands of women and many supportive men.

In spite of the impressive victories already won, women are nowhere near achieving full partnership in any of our institutions, including the family.

The ERA, which would provide legal equality, has not been ratified.

The ERA is sorely needed because federal law and most state laws are based on the English common law, under which married women were chattel under the control of their husbands. They were considered incompetent to control their children, their property, or their own lives. Although many piecemeal reforms have been made, the laws are still riddled with vestiges of the English common law. For example, one state code reads as follows: "The husband is the head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit, or for the preservation of public order."

Under another state code, a widow may forfeit any rights in her deceased husband's estate if she is guilty of "misconduct." There is no similar provision applying to a widower.

In a number of states, a wife may not receive alimony if she is at fault. A husband, however, is not penalized for being at fault.

In several states, profits from a business run jointly by wife and husband are the property of the husband.

The ERA is needed to insure that states and the Federal government make a systematic effort to review and revise their codes to eliminate such laws as these.

Many other problems remain:

Stumbling blocks have been put in the way of those seeking reform of domestic relations laws to accord homemakers the value and dignity they so richly deserve;

Over one-half of divorced mothers are supporting their children without assistance from the father and only 4.6 percent of divorced women receive any alimony;

The right to choose whether to bear children is not available to many poor women, and sterilizations without informed consent are still being performed;

Women still earn on the average 59 percent of what men earn, and 80 percent of women in the labor force are still employed in the segregated low-paid occupations. Many of these occupations pay less than traditionally male jobs with less responsibility and requiring less skill and education. Too many of the children of working mothers have inadequate care. Only 1.6 million licensed day care slots are available for 6.9 million children under 6 with working mothers.

Our university faculties have been very resistant to employing and promoting women. Although there are many more women Ph.D.'s than 15 years ago, the percentage of women faculty in universities has not improved significantly. Most of the improvement has come at four-year and two-year colleges in lower ranks.

Little progress has been made in participation of women in non-traditional vocational education programs;

Most battered women still have no refuge from violence, particularly women in small towns and rural areas;

The domestic relations laws of most states and the tax laws of the federal government are not based on the premise that the contributions of homemakers are equal in value and dignity to that of the providing spouse;

The federal government does not direct a fair share of employment and training opportunities to women;

Many federal government programs, such as alcohol and drug abuse programs, have not provided benefits to women in proportion to their needs. Health research has focused on women's reproduction leaving women out of studies on other aspects of health. In some programs, data are not kept by sex so that assessment of the impact on women cannot be made.

The Anderson administration will strive to create a climate that will encourage all our leaders and institutions to join the effort to bring women into full partnership in our society.

Equal Rights Amendment

The Anderson administration will strongly support the Equal Rights Amendment by giving its ratification a high priority. We will develop a joint strategy with state sponsors in unratified states and do our part to implement it. We will publicize the truth about the ERA and expose the distortions that are prevalent. We support the boycott of unratified states and urge private organizations to do so.

Reproductive Freedom

The Anderson administration will:

Oppose government intrusion or coercion in the most private of decisions—to bear or not to bear children. We support freedom of choice for the individual;

Oppose any constitutional amendment prohibiting abortion and urge that federal programs providing funding for medical care of pregnancy and childbirth should include funding for abortion;

Strictly enforce federal regulations to insure that sterilization is voluntary;

Increase government funding of family planning services, including services for teenagers; and

Increase research to find more effective methods of contraception, with the hope the time will come soon when no woman finds it necessary to have an abortion.

Appointments

Recognizing that highly qualified women are not as visible as highly qualified men, the Anderson administration will make a systematic effort to identify women for key positions, using the many women's organizations and other sources. Volunteer experience will be evaluated on its merits.

Enforcement of anti-discrimination laws

Anderson's administration will vigorously enforce anti-discrimination laws and executive orders, giving special attention to university tenure and promotion practices. We will oppose amendments that weaken such laws, including amendments that would limit women's opportunities to participate in sports. Appointees to positions responsible for enforcing such laws will be chosen on the basis of their capacity and commitment to full enforcement.

Participation of women in government programs

Anderson's administration will require that administrators of government programs collect data by sex and review the impact of these programs on women and the participation of women in policymaking. Corrective action will be required in those services, such as employment and training programs and alcohol and drug abuse programs, not enrolling women in proportion to their numbers in the populations served.

Health research will include women in the populations studied and women will serve on the committees designing studies and selecting grantees. It will be the Anderson administration's policy that women be equitably represented on all grant-awarding and review boards, committees, and advisory panels.

Pay equity

The Anderson administration will support research on methods of achieving pay equity for women in traditionally women's occupations and the development of guidelines and legislation, if necessary, to promote this goal.

Child care

The Anderson administration will support more extensive child care funding for children whose parent or parents are employed and cannot afford privately funded child care. We will support increased child care facilities for welfare mothers who want work or training for work.

Marriage

The Anderson administration will seek modification of federal laws to conform with the principle that the contributions of wife and husband are of equal value and dignity. We will:

Urge elimination of gift and estate taxes on transfers between marital partners;

Recommend elimination of the "marriage tax" by permitting two-earner families to file as if single;

Develop proposals for revision of social security laws to provide equity for homemakers and wives employed outside the home;

Support enactment of the Homemaker Retirement bill of which John Anderson is a sponsor;

Support government assistance for displaced homemakers to help them enter or reenter paid employment;

Recommend legislation and appropriations to aid victims of domestic violence.

While the marital property, divorce, and inheritance laws are under state jurisdiction, the Anderson administration will create a climate that will encourage fair treatment of women.

Registration/draft/military service

The Anderson administration opposes a peace time draft. If the Congress authorizes registration or a draft, we will urge inclusion of women.

The Anderson administration will:

Support repeal of laws prohibiting women in combat, leaving to the Armed Services discretion in assigning personnel;

Elimination of discrimination against women in the military services, and opening up of more military occupations to women.

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Health and safety

Health insurance programs proposed by John Anderson's administration or supported by it will include coverage of women's health needs, such as care for pregnancy and pregnancy-related disabilities and abortion. Coverage will be provided for single-parent families and divorced and widowed women, who too often have inadequate coverage.

Safety and Health Standards will protect the reproductive health of women and men, and Title VII of the Civil Rights Act will be strictly enforced in cases where women are indiscriminately removed from positions involving contact with toxic substances. The Equal Employment Opportunity Commission and the Labor Department will be directed to issue the too-long-delayed guidelines immediately and proceed with enforcement.

Rural American women

Women living in small towns and rural areas are particularly handicapped by distance from educational institutions, employment and counseling services, day care, job training programs, health services, battered women's and rape crisis centers, and alcohol and drug abuse treatment centers. John Anderson's administration will endeavor in cooperation with representative organizations, to modify federal programs as necessary to provide equity for farm women and other women living in rural areas and small towns.

Minority and ethnic women

Special attention will be given to the needs of minority and ethnic women in all programs to combat discrimination and in programs to provide services to support women.

International

The Anderson administration will:

Advocate ratification by the Senate of the U.N. Convention on Elimination of all forms of Discrimination Against Women, attaching if appropriate reservations to insure consistency with United States laws;

Appoint more women to U.S. delegations, on governing bodies of international agencies, and in the U.N. system.

Criminal justice

Criminal Code Reform

An Anderson Administration will support a studied, incremental approach to criminal code revision rather than an omnibus approach that may sacrifice essential civil rights in the process of legislative bargaining.

We should set clear priorities and concentrate on revision in areas of key concern. These include:

Fair and uniform sentencing policies;

Equal protection of rights for all, including aliens, in every appropriate area;

More extensive coverage of white-collar crime.

Police/Community Relations

A police department must have the cooperation and good will of the residents of a community if it is to act in an efficient and effective manner. For cooperation to exist, residents must believe that the police force is acting on their behalf and is not an enemy to be feared and avoided.

An Anderson Administration would introduce legislation to Congress which would specifically authorize the Attorney General to take civil action against offending government and police departments so as to eliminate proven patterns and practices of misconduct in those departments. Anderson would also encourage efforts to increase staffing for the Department of Justice in the criminal division with a special emphasis placed on minority recruitment and hiring. Adequate staffing should also be provided for civil rights enforcement in the U.S. Attorney's office.

We also believe that those suspected of violating the law must be apprehended with a minimum of force. It should be the trial, not the arrest, that renders judgment and determines punishment. The federal government must use its powers of moral, legal and political persuasion to ensure that local justice is meted out in conformity with the standards of minimum force.

The Community Relations Service (CRS) which provides mediation and conciliation as opposed to litigation can be most useful in limiting racial tension. However, CRS is understaffed and underfunded. An Anderson Administration will seek to expand the staff beyond the 111 it now employs. Arbitration and mediation is a viable tool in police and community relations as well as in intracommunity relations.

Prison Reform

There are approximately 314,000 offenders housed in state and federal prisons. At present, prisons are largely failing to rehabilitate those inmates and are instead creating impediments to rehabilitation. One-third of all prisoners released are back in prison within five years.

We support efforts being made by the courts to correct unconstitutional prison conditions created by the neglect of government officials. Such conditions can only prove to be a counter-productive force in our society. In addition, an Anderson Administration would authorize the Attorney General to institute civil suits on behalf of any inmate unable to get redress for deprivations of his or her federal constitutional and statutory rights.

We support legislation which would provide financial assistance to states for use in expanding educational and job training programs at correctional facilities.

Handgun Crime

The statistical profile of handgun crime constitutes a litany of death:

Handguns are used to commit nearly half of all the murders committed in the United States;

During the peak years of the Vietnam War, more Americans were killed by handguns than were killed in action in Vietnam;

Almost three out of every four law enforcement officers killed are victims of handguns;

Every hour, one American is killed by a handgun.

Despite these tragic realities, small but influential elements of our society have successfully fought handgun crime controls. More than a decade after the Eisenhower Commission called for handgun registration and the eventual universal licensing of handgun ownership, these goals elude us.

Some state and local governments have enacted laws to regulate handgun sales, distribution, and possession. These controls have effectively reduced handgun crimes, but their piecemeal enactment has resulted in localized benefits. In the absence of uniform activity by the states and municipalities, the national handgun problem cannot be solved. The deadly facts showing high rates of homicide by handguns mean that comprehensive federal legislation is needed now.

Before assuming office, candidate Carter "committed" his Administration to handgun control. After taking office, President Carter either forgot his promise or intentionally ignored it. The Carter Administration has not proposed any gun control legislation to the Congress and the death toll from handgun crimes continues to mount.

The Anderson Administration will do what the Carter Administration has failed to do: submit handgun legislation to both houses of Congress. The Anderson Administration will propose a Handgun Crime Control bill which will:

Stop the manufacture, sale, and transfer of "Saturday Night Specials", the cheap handguns so widely used by criminals;

Establish mandatory jail sentences for the commission of crimes with a handgun;

Reduce illegal purchases of handguns by requiring purchasing licenses;

Establish strict requirements for those who are licensed to sell or manufacture handguns;

Develop a more effective tracing system to track down mis-used handguns and curtail illicit handgun traffic;

Require manufacturers, dealers, and owners to report the theft or loss of handguns, and penalize those who fail to do so;

Establish liability for illegal transfer of any handgun subsequently used to kill or injure another person;

Improve enforcement of federal handgun laws;

Require licenses to carry handguns outside the home or place of business.

The enactment of legislation embodying these proposals will not eliminate handgun crimes completely, and it will take years to eliminate illegal handguns from society. Yet, the longer this legislation is postponed, the higher the handgun death toll will climb. We must begin to enact remedies immediately.

Right to Privacy

Our right to privacy and freedom from government intrusion is one of our most fundamental rights. Now it is one of our most endangered rights. Improved communications technology allows increasing amounts of personal information to be transmitted and stored electronically. Many life-altering decisions are now based upon analyses of recorded data instead of personal interviews. The use of microwaves in telephone communications subjects our conversations to interception. Electronic funds transfer systems are capable of centralizing data on our financial transactions, but are also subject to possible abuse.

An Anderson Administration will draft legislation which more adequately protects our right to privacy. It will include provisions enabling citizens:

To have greater knowledge about data being collected about them;

To have the opportunity to correct erroneous information;

To be notified of adverse decisions based upon recorded information; and

To protect consumers' private financial records from unauthorized disclosure.

Recent court decisions concerning First and Fourth Amendment rights have increased the likelihood of government intrusion. An Anderson Administration will seek to enact legislation proposed in 1979 by John Anderson to prohibit law enforcement officials from obtaining search warrants to seize notes, photographs, and similar materials from groups or individuals not suspected of any criminal activity, except when necessary to prevent death or serious bodily injury.

Appointments

An Anderson Administration will work to increase the number of minorities and women at every level of our judicial system—as United States Attorneys, federal magistrates, federal judges, and United States Supreme Court Justices.

We completely reject any ideological "litmus test" of fitness for judicial positions as being wholly antithetical to the ideals of an independent and impartial judiciary.

V. SECURITY POLICY

Foreign policy

Introduction

The last two decades have seen a dramatic decline in the credibility and integrity of America's position in world affairs. We have witnessed the growth of Soviet military power, Soviet aggression in Afghanistan, and Soviet military and political thrusts in Southeast Asia and Africa. We have seen Americans taken hostage, our representatives abroad killed, and our embassies destroyed. We have seen a significant erosion of our own economic power, our industrial productivity and our scientific and technological base. With this decline has come a concurrent rise in our dependence, on others—on the Arab states for our oil, on the Third World for other vital raw materials, on the Europeans to rescue our currency, and on China to balance Russia.

We are drifting downstream, learning to cope with each new demonstration of our weakness, unable to take the measures necessary for our long-run survival as a free and independent society.

We need clear and coherent answers and thoughtful leadership to revive the wellsprings of our strength so that we can regain our independence and restore our international position.

The first priority for American foreign policy quite simply must be to put our own house in order. Our economy and our technological base have always been the principal sources of our strength. Their decline is now the principal source of our growing weakness. The call, elsewhere in this program, for rebuilding our domestic strength is the starting point for our international recovery.

The next priority for American foreign policy is to restore and nurture our historic alliances, which have been neglected in the pursuit of global power balances that play our potential adversaries against each other. A common sense approach to foreign policy will look to our alliance systems as the bedrock of our long-range security.

The successful execution of these two prudent policies will go far toward restoring our international posture. Relying on these solid and secure foundations, we can better define our relationships with the Soviet Union, China, and the Third World.

The Soviet government will attempt to advance the reach of Soviet influence, whenever it is considered timely and promising. It will do so borne along by a large and skilled population, by deep and powerful historic currents of Russian nationalism, and by a comprehensive and flexible ideology. The Soviet Union is also beset with significant economic difficulties. It must contend with East European states always probing the limits of Soviet domination, and with a growing, united, and determined China. In dealing with the Soviets, we must be militarily strong, but seek whenever possible through negotiations to reduce fear and uncertainty. We should also pursue an even-handed policy between the Soviet Union and China, seeking to reduce our reliance upon their mutual antagonism as a major factor in our security position in Asia.

We must next reexamine our entire approach to the Third World, an area in which the United States has suffered great setbacks in the last two decades. We have treated Third World countries more as clients and as suppliers than as sovereign and independent states with their own needs, interest, and destinies. Our foreign policy must enunciate our ideals and promote our interests, but always within the bounds of respect for the sovereignty and independence of every nation, large and small.

We must also pay heed to human rights, not only to display our moral concern, but also to further human decency and to relieve pain and suffering. A strengthened America will launch a quiet offensive to help the refugee fleeing oppression, the Soviet citizen who wishes to leave his or her homeland, political prisoners all over the world, and American citizens languishing under barbarous conditions in foreign jails. We must also reach out to the hundreds of thousands of starving people in Cambodia, the Sahel, and other places throughout the world.

To succeed in these task, we must pay more attention to the conduct of our diplomacy. In recent years indecision and disunity have characterized the conduct of American diplomacy. There have been too many egregious examples where at best communications broke down and at worst important people with relevant viewpoints were deliberately excluded from the decision-making process. An Anderson administration will not tolerate such practices.

In formulating our policy, we must abandon the false logic that dexterity is a substitute for genuine strength. We must rediscover the meaning of the word commitment and understand that flexibility for its own sake is a self-defeating enterprise. We must recognize that America, as the world's leading power, must set an example for others by providing a focus for stability in the world. And we must never again find ourselves in a position where we need others more than they need us.

Furthermore, in the conduct of our diplomacy, we must once again emphasize substance over symbol. No grand conceptualization is needed to understand the dimensions of our current difficulties. No moral crusade will ever be a substitute for a solid foundation of patient diplomacy. No glittering style can ever successfully replace a cautious prudence. And no amount of bullying—however aggressive—can ever disguise genuine weakness.

What Americans must insist upon and must achieve is a renewed economic power and moral authority linked to a reinvigorated partnership with our democratic allies. With it, Western civilization can confront the dangers and the challenges of the world from a position of quiet but unquestioned strength and courage.

Western Europe and the Atlantic Alliance

The strength of our relationship with Western Europe and the Atlantic Alliance is central to the successful conduct of our foreign policy. Our ties to Europe touch all facets of America's interests abroad: relations with the Soviet Union and China, Middle Eastern and Persian Gulf problems, development in Third World, nuclear and conventional defense capabilities, arms control, energy dependency, human rights, and many others. These issues are addressed elsewhere in this program. What follows are the broad principles upon which an Anderson Administration will build its Western European policies. Also considered here are Western European issues not discussed elsewhere in this program.

For more than thirty years, the great and historic partnership between the United States and the nations of Western Europe succeed in preserving the peace and in providing a climate within which European skills and energy were mobilized to produce unprecedented prosperity, stability, and progress.

There are today significant challenges to the transatlantic relationship. Chief among them are the loss of control over the supply and price of energy, the relative decline of the American economy in comparison to the economies of Europe, and the steady expansion of Soviet military capabilities. These will continue to cause rivalry and tension in transatlantic relations. We reemphasize our belief, however, that close relations between the United States and Western Europe are central to sustaining our freedoms and security.

To pursue and nurture successfully our Atlantic partnership in the next decade, we must have a strong sense of the basic principles that should guide our efforts.

First among these broad principles is the recognition that apart from deterring a physical attack upon the United States itself, there is no more important national interest than the maintenance of our Alliance with Western Europe. We can afford nothing less than a full measure of cooperation and partnership.

Second, we must recognize that the Alliance must be a union of equal partners. Each member must act as a leader in its own right. Each must be prepared to share fairly in the burdens of our joint endeavors, and to justify these sacrifices to its own people. Each must have the steadfastness to persevere in joint initiatives.

Third, we must be prepared to acknowledge that there will be times when European interests are not those embraced by the United States. But we must not use these differences to decry the state of the Alliance. A mature and balanced partnership can accommodate differences of opinion or approach.

Fourth, the United States must cease talking about consultation and actually begin to consult with its allies before embarking on ventures in which it expects them to participate. Reciprocally, our allies must acknowledge that they have a similar responsibility. We must be ever aware of the need to seek counsel, explore proposals, and air ideas in confidence with our allies, before we embark on a course of conduct which we would expect others to follow. We must seek to use those opportunities and organizations that now exist to better advantage. To assist in achieving this goal, we need to broaden the scope of the present summit meetings to cover a wider range of political and security problems as well as economic problems.

An Anderson Administration will also encourage the European Community's evolution toward political union. The first direct election of the European Parliament and the establishment of the European Monetary System are significant indications of a prospering European idea. We believe that the admission of Greece, Spain and Portugal to the European Community will both strengthen the European idea and the future of democracy in Southern Europe.

In the economic sphere, oil and energy policies, monetary problems, and the rise of protectionism continue to crowd the transatlantic agenda. These issues are of deep concern to Japan as well, for they affect all the industrial democracies in similar ways. In dealing with these issues, an Anderson Administration will adhere to two tenets. First, rebuilt American industries are the mainstay of our international economic relationships. We must rebuild our industrial base and increase the productivity of our workers to restore our competitiveness in world markets. Second, the United States and the Western nations must ensure that divergent economic interests do not impair our security relations. These differences, rather than isolating countries, can encourage greater efforts toward agreed-upon solutions to our various problems.

Consistent with our strong interest in augmenting the Atlantic Alliance, we welcome Greece's participation as a full member of the Alliance, and will support efforts at enhancing stability in the Eastern Mediterranean. We recognize the importance of the Aegean Islands to the security of Greece, and look forward to a just resolution of Aegean Island issues.

We believe that the continuing crisis in Cyprus, too long delayed in its resolution, must be settled through negotiations between Greece, Turkey, and the Cypriot people.

The principles embodied in United Nations Resolution 3212 and the Ten Point Agreement of 1979 provide the surest foundation for peace, security, and stability in the region. An Anderson Administration will be

prepared to provide assistance in the rebuilding of the Cypriot community.

The Soviet Union

We have entered a new era in our relationship with the Soviet Union. The Soviet troops and tanks that poured into Afghanistan have banished to the history books the business as usual relations of the 1970's. The problem of how to deal with the Soviet Union is the greatest task our diplomacy will face in the years ahead.

Our relationship with the Soviet Union is competitive. They are our rival, not our partner, in the international arena. But the elements of our rivlary, while extremely serious, are neither total nor absolute, largely because our security interests are not completely separable. We share with the Soviet Union, and with all nations, a pre-eminent interest in avoiding a nuclear holocaust.

We must therefore establish a balance of prudent expectations in our relationship with the Soviet Union. An Anderson Administration will not hesitate to take serious measures to resist Soviet political and military thrusts, but we will exercise our power in a responsible manner. We will be energetic in seeking safeguards to reduce the risks of war, and we will do our utmost to demonstrate to the Soviets that their interests are best served by their own restraint.

Toward these ends, the Anderson Administration, as stated elsewhere in this program, will do what is required to maintain the invulnerability of our nuclear forces as the Soviets continue to improve the accuracy of their missiles. We will continue to improve our conventional forces. Without illusions, we will continue the SALT II process, and thereby lay the groundwork for SALT III.

Measured against the resources, skills, and capacities of the West, the Soviet Union is the far weaker force. The successes of the Soviet Union thus depend in great part on the degree of cohesion, firmness, and vigor which the Western world can exhibit. The Anderson Administration's efforts to rebuild the Western Alliance will therefore be a centerpiece of our efforts to conduct diplomacy toward the Soviet Union.

We strongly support the Helsinki process. The broadening of trade, as well as the expansion of scientific, technological, and cultural exchanges, will be dependent upon practices by the Soviet and East European governments which are consistent with basic human rights standards.

We respect the desires of the people of Eastern Europe to determine their own destinies, free of outside interference. We reaffirm our commitment to respect the territorial integrity and national sovereignty of Eastern European states and we expect the Soviet Union to respect that integrity and sovereignty as well.

Lastly, our relations with the Soviet Union must be seen in the broader setting of world politics. Activities by the Soviet Union and East European countries in Third World areas which endanger our interests must necessarily impede the broadening of our relationships. But we must not let our concerns about the Soviet Union dis ort our policies toward the nations of Africa, Asia, Latin America, and elsewhere. With our allies, we will encourage the forces of nationalism to find expressions not in demagoguery and military dictatorships, the breeding ground of revolutionary violence, but in moderate policies of social change.

We will oppose Soviet adventurism whereever necessary, but we will also seek opportunities for reducing fear, uncertainty, and misunderstanding through negotiations. Above all else, we must be clear, steady, and coherent in our dealings with the Soviet Union, leaving no doubt about our determination to maintain and advance our foreign policy interests.

Middle East

The attainment of peace and stability in the Middle East is a high priority of American foreign policy. In recent years, the cause of peace has advanced dramatically with the signing of the Camp David accords by Israel and Egypt. In the Persian Gulf, however, stability is threatened by the revolution in Iran, the Soviet invasion of Afghanistan, world dependence on Arab oil, and religious and ideological disputes among the regional actors. Our policy throughout the region must be directed towards the reduction of tensions and, with the support of our allies, the protection of Western interests.

American policy toward the Arab-Israel dispute must be conducted with the understanding that a solution to that conflict will not resolve the energy crisis, the instability of the oil producers, the turmoil in the Persian Gulf, the plight of the hostages in Iran or the occupation of Afghanistan. The United States must remain the guarantor of the Egyptian-Israeli Peace Treaty.

An Anderson Administration will not exert pressure on the parties involved nor interfere in the negotiations. The United States should not attempt to dictate the terms of a peace settlement with public rebukes of the negotiating parties, clandestine meetings with those who would abort the peacemaking process or submission of comprehensive proposals for peace that are not supported by the countries directly concerned.

America's political, economic and military commitment to Israel is fundamental to our strategic interests in the Middle East. Israel is committed, as we are, to democratic ideals and to a free and open way of life that respects human rights. We should utilize Israel's strategic and technical experience, its intelligence information and, in an emergency, its facilities. We will continue to provide military and economic assistance to Israel at a level sufficient to enable it to maintain its security as its potential adversaries expand their military capabilities, and to maintain its economy while accepting the high costs of withdrawal, relocation and peace.

The United States must remain committed to a meaningful peace. A lasting settlement must encompass the principles affirmed in the Camp David accords, including reconciliation; the establishment of secure and recognized borders; fully normalized relations including trade, travel, communications and the exchange of ambassadors; and an end to military threats, political attacks and economic warfare.

The courageous efforts of President Sadat to achieve peace with Israel have encouraged the development of friendly relations between Egypt and the United States. This relationship with the Arab world's leading country should be vigorously promoted with assistance and diplomatic support, to demonstrate the value of the Camp David Accords, to promote Western interests and to help maintain the balance of power in the region.

An Anderson Administration will continue to support the recognition of Palestinian rights, embodied in the Camp David accords, but will oppose the creation of a Palestinian state between Israel and Jordan. Such a state would be dominated by the Palestine Liberation Organization, would promote instability in the Middle East and would threaten other nations in the area as much as the security of Israel. We should look to Jordan to help significantly in resolving the Palestinian questions. The United States must continue its refusal to recognize or negotiate with the PLO until it repudiates terrorism, explicitly recognizes Israel's right to exist in peace, and accepts UN Security Resolutions 242 and 338 unchanged.

An Anderson Administration will weigh its public statements with care and put greater emphasis on quiet diplomacy through regular diplomatic channels. We will not, for example, stoop to the temptation to use UN votes as a means of interfering with the diplomacy of the peace process. An Anderson Administration will not label Israeli settlements as "illegal" and as "obstacles to peace". This prejudges and compromises negotiations from the outset. The question of the settlements can best be resolved by Egypt, Israel and the Palestinian residents of the West Bank and Gaza Strip.

The final status of East Jerusalem must be decided by negotiation. The United States must support the continuation of free and unimpeded access to Jerusalem's holy places by people of all faiths. Jerusalem must remain an open and undivided city. At the conclusion of the peacemaking process, the Anderson Administration will recognize Jerusalem as the capital of Israel and move the U.S. embassy there.

The Anderson Administration will exercise restraint in approving arms transfers to those nations which oppose the peace process and do not cooperate with our diplomatic efforts. The United States should actively use diplomatic channels to discourage those arms transfers by third parties which might contribute to regional instability.

The invasion of Afghanistan, the instability in Iran, and recent events in Saudi Arabia have provided the Soviet Union with an opportunity to achieve the political encirclement of the Persian Gulf and the states of the Arabian peninsula. Soviet activity in the Yemens, Syria, Libya, and Ethiopia increases the danger of this threat and offers immediate challenges to the United States. Efforts to increase our presence in the region should proceed with caution, and be made in close cooperation with our friends in the region and our European allies.

To give ourselves greater leverage in regional and great power disputes, we must reduce our costly dependence on foreign oil. An Anderson Administration will embark on a comprehensive program of energy independence, outlined elsewhere in this platform.

Our principal objective in Iran is to secure the prompt and safe release of our embassy personnel still being held hostage by the Iranian government. We will use every measure of quiet diplomacy, bilateral and multilateral, to achieve this end.

East Asia and the Pacific

Japan

Our relationship with Japan stands at the center of American foreign policy toward East Asia. The bonds of history, though recently forged, are strong. Common interests bind us as well: Japan, next to Canada, is the single largest trading partner of the United States, and our treaty with Japan is the cornerstone of our security interests in East Asia.

We believe that two basic principles should guide our policy toward Japan: that a genuine American-Japanese partnership is fundamental to all else in the Pacific, and that economic and security elements in the partnership cannot be separated.

We recognize that Japanese defense expenditures raise critically difficult problems for both Japan and the nations of East Asia. Japan's role as an economically powerful, but lightly armed, nation significantly contributes to East Asian regional stability. A major shift in Japan's military role in the region could undermine, not enhance, that stability. An Anderson Administration will not press Japan to expand its military capabilities beyond the level which the Japanese believe their security requires and their constitution permits. Japan should contribute more to collective security, but this need not be through military measures. We will urge Japan to increase its economic assistance to other countries, and to expand its contribution to research and development of alternative energy resources. We will continue to renegotiate burden-sharing arrangements on the cost of American bases in Japan to reflect changes in the value of the yen and the dollar as well as increases in Japan's economic capabilities.

We will make no military or diplomatic moves in East Asia, particularly with regard to China and Korea, without advance consultation with Japan. We will demonstrate greater sensitivity to Japan's great dependence on imported energy supplies and to the vital role alternative energy sources can play in Japan's economy.

Japan's post-war economic ties to the United States have been fundamental to Japan's own progress and its expansion into regional and world economies. The ASEAN Nations (the Association of Southeast Asian Nations comprised of Indonesia, Malaysia, the Philippines, Singapore, and Thailand), with its population expected to increase from its present 230 million to 290 million in 1985 is one of the world's fastest-growing economic regions.

An Anderson Administration will explore ways of expanding America's role among the ASEAN group which also enchances our relationship with Japan. One approach to this end would be to extend current mechanisms for American-Japanese consultation now dealing with defense issues and bilateral trade to include funding for ASEAN projects.

Japan is at once our military ally and our economic rival. Three major issues have troubled American-Japanese trade relations from our perspective: the large current trade imbalance; the impact of Japanese exports on the American automobile industry; and access to Japan's domestic market.

The principal remedy for these problems is to restore the dynamism of the American economy to make it more competitive in the Japanese market. We will press for the removal of restraints on the import of American goods by Japan, particularly in telecommunications equipment, computers, and semiconductors, areas in which the United States has a comparative advantage over Japan but has not had fair access to Japanese markets. We will encourge Japan to build additional industrial plants in the United States to retain jobs now being lost to industry in Japan.

China

The diplomatic breakthrough with China is a remarkable achievement of twentieth century diplomacy. An Anderson Administration will build on this achievement to develop closer relations with China diplomatically, economically, and culturally.

We have been reduced in recent years to a reliance upon the antagonism between Russia and China to bolster our security position in Asia. We believe that those who talk blithely about playing the fabled "China card" fail to recognize that China is not a card to be played, but a player with cards. China's interests may depart from our own or from those of our Asian allies. We cannot allow China to develop an "America card" for use in her relations with the Soviet Union or with other East Asian countries, who view China with a mixture of awe and fear.

An Anderson Administration will never place the United States in a position where we pressure any of our friends into reaching a dangerous accommodation with their historic antagonists. We must, therefore, never put ourselves in a position where Taiwan is the price for Chinese cooperation against Russia.

We will continue our present informal military and economic relations with Taiwan, at the same time giving quiet encouragement to the indirect trade relations developing between Taiwan and China. We strongly oppose restoring our relationship with Taiwan to governmental status. Such a course of action would be disastrous setback for American foreign policy.

The Anderson Administration will take no steps to increase antagonism between Russia and China. It is therefore unwise at this time to become an arms supplier to China.

We will seek to bring China into discussions with the Soviet Union, Western Europe, and the United States on arms control. We will search for ways to encourage China's leaders to take measures to guard against accidental nuclear war, and to maintain strategic nuclear stability.

The Chinese government has announced plans for a ten-year economic plan of staggering proportions; the estimated total investment is some $600 billion, and includes construction of 120 large industrial projects. China is, however, a great distance from these goals, and its successful modernization will require the participation of all industrial nations.

The Anderson Administration will expand scientific, cultural, and particularly educational exchanges with China. We will also promote the growth of United States trade with China through such measures as assisting the American business community to expand its presence in China. We will discuss with China ways in which we can assist its efforts to generate foreign exchange to finance its imports. We believe that sales of technology to China should encourage the Chinese to continue to concentrate its efforts on improving its economic performance.

In broadening trade contacts with China, the Anderson Administration will adhere to two tenets. First, China will not provide America with a major market for many years to come. Second, we must extend credits to China and accord her full opportunities under the most favored nation principle at the same time we move forward in resolving our trade difficulties with Japan. If these difficulties are left unresolved, while trade with China expands, we run the risk of convincing our principal ally in East Asia that our support is truly feckless.

Southeast Asia

Southeast Asia has once again become an arena of military conflict and human suffering. The boat people from Vietnam and the millions of hungry Cambodians assisted through American-supported international programs are the victims of these conflicts.

We support swift humanitarian responses to the human tragedies of Southeast Asia. An Anderson Administration will place a high priority on American support for Red Cross/UNICEF humanitarian aid programs for Kampuchea. We will also support their insistence that no relief goods go to armed groups in Kampuchea nor those on the Thai border.

But humanitarian responses alone are not enough. Vietnam's occupation of Kampuchea and Chinese support for Pol Pot's guerrillas, China's threat to invade Vietnam again, and Soviet access to Vietnamese ports and airfields are parts of a deepening Southeast Asian crisis. The present trend is toward the consolidation of Vietnamese control over Kampuchea and greater involvement by both the Soviet Union and China in the region.

Our objectives will be the reduction of the Soviet military presence and political influence in Vietnam, the restoration of normal life in Kampuchea by an end to the fighting and the withdrawal of Vietnamese troops, and the assurance of Thailand's security.

To achieve these objectives we will encourage the ASEAN nations in their current negotiations with Vietnam. We will, while forging a new relationship with China, be attentive to Vietnam's concerns about China, just as we pay heed to the concerns of Thailand and other ASEAN nations about Vietnam itself.

We will also announce an end to United States support for the forces under Pol Pot's command. They represent a morally reprehensible regime and prolong the suffering of the Kampuchean people without offering any realistic prospect of helping to reach a compromise settlement of the conflict.

The United States should not vote for the seating of Pol Pot's regime at the U.N., but instead support a vacant seat for Kampuchea until a government emerges with a proper claim to represent the Kampuchean people.

Korea

Geography and ideology have combined to make the division of Korea a danger to the peace of East Asia and the world. The United States is responsible for supporting South Korean security both through the presence of its combat forces in South Korea and its security treaty with South Korea. We reaffirm the importance of maintaining our commitment to defend South Korea against attack. We will not pursue unilateral withdrawal of American combat forces from South Korea, as was attempted by the Carter Administration in 1977–78. Those unilateral actions increased rather than allayed tensions throughout the region, raising new questions about America's seriousness of purpose and capacity for determined leadership.

The eruptions of anti-government protests demanding restoration of democratic freedoms and constitutional government in South Korea require far-sighted and coherent United States policies. Pressures for progress toward these political goals and opposition to physical repression by the military-dominated government have become far stronger than in past years. The government's attempt to suppress protest while failing to establish a timetable for elections and the removal of restrictions on democratic freedoms risks an unprecedented political explosion which might invite intervention by North Korea and trigger a new war.

The problem of security and political stability in South Korea cannot be separated, therefore, from the problem of political freedoms. An Anderson Administration will strengthen American efforts to persuade the military to change its policy. We will make it clear that the United States cannot remain passive in the present situation, given its own heavy responsibility for the defense of South Korea, and that it supports to the fullest extent possible the legitimate aims of those demanding democratic freedoms.

Toward North Korea, we will end the fruitless and dangerous isolation from the United States, moving forward, in consultation with South Korea and Japan, in such areas as cultural and academic exchanges.

The critical issue of stabilizing the Korean situation on a more lasting basis will be a daunting task. We will give active encouragement to North and South Korea to move toward a true accommodation, recognizing that the goal will not be achieved soon and that the issue is of deep concern to Japan and China, and to the Soviet Union.

Australia and New Zealand

Our friendship with Australia and New Zealand is deep and lasting. The ANZUS Treaty, the continuing symbol of our close ties, will remain a cornerstone of American security in the Pacific.

An Anderson Administration will consult with Australia and New Zealand on security issues of mutual concern. We should pursue a unified approach to strengthening ASEAN and in handling refugee problems in the region. We will consult with Australia and New Zealand before establishing any permanent spent nuclear fuel storage sites in the southern Pacific.

The United States shares with Australia and New Zealand important commercial and economic interests. An Anderson Administration will pay close attention to the issues

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created by Australian and New Zealand access to American markets.

South Asia

Since the end of World War II, United States foreign policy in South Asia has suffered from misunderstanding concerning the political, economic, and strategic importance of the region, the aims of its principal nations, and the nature of its regional conflicts. As a result, we have repeatedly failed to achieve our foreign policy objectives in the region, and we have helped to create the one condition we sought most to avoid—namely, the extension of Soviet influence into an area whose leaders and peoples are inclined toward friendship with the United States.

An Anderson Administration's policies toward South Asia will center around three interrelated realities.

First, India lies at the region's center in every sense of the word. None of the major conflicts in the region can be resolved consistent with our interests without considering the interests of India.

Second, there are two principal sources of tension in South Asia: the India-Pakistan conflict and the India-China conflict. Our policy in the 1980's must avoid the past mistake of embracing Pakistan and tilting away from India. We must help each recognize that their common regional security interests should outweigh local differences that have separated them in the past. We must, while developing the new relationship with China, be sensitive to India's concerns about China.

Third, the underlying bases for conflicts among the South Asian countries are indigenous and regional in character. They are distorted, not clarified, when viewed solely through the prism of American-Soviet relations.

The Carter Administration's unsuccessful rush to re-arm Pakistan following the Soviet invasion of Afghanistan diminished our prestige, and revived Indian suspicions that the United States was building an informal alliance which threatened India's interests.

If the Soviet Union threatens Pakistan's territorial integrity—a threat that would also endanger India's security—we will consult with Pakistan, India, and other countries about steps to be taken to meet the Soviet challenge. An Anderson Administration will be prepared to consider seriously a request for arms by Pakistan in such circumstances.

We believe that any economic aid to Pakistan must genuinely help to maintain the country's integrity and economy, and should be designed to strengthen Pakistan's internal stability by improving the standard of living of its people. It should be concentrated in such areas as agrarian development and reform, road-building programs, rural electrification, and improved internal communication. But if Pakistan is to become truly secure, the government must be encouraged to broaden its political base, renew its commitment to constitutional government and fair elections, and move toward more stable relations with India.

An Anderson Administration will make a major effort to open a wider window to India, whose size, population, economic strength, military might, and relative political stability ensure that it will continue to exercise significant influence in the region. We will support India's independent role in world affairs. We will not abandon our commitments to other countries in the area for the sake of improved relations with India. But with quiet and patient diplomacy it is both possible and desirable to establish a more lasting and productive friendship with this enormous land.

To help achieve this goal, the Anderson Administration will encourage both India and China to continue efforts to settle their boundary controversies. We will assure the Indian government that the American naval forces in the Indian Ocean will not intervene in internal South Asian disputes.

Our interrelated policies toward Pakistan and India will require diligence and courage. Nowhere will this be more important than in forging a position on nuclear materials. First, we must encourage India in the moderate nuclear policies the country has pursued since its explosion of a nuclear device in 1974. We will link our nuclear materials export programs to the continuation of such policies. Second, we will help to create a sense of security for Pakistan in order to reduce its incentives to test a nuclear device.

Finally, we cannot accept as permanent any arrangement which incorporates Afghanistan into the Soviet orbit. An autonomous and independent Afghanistan must be our goal. An Anderson Administration will work with the Government of India in efforts to influence the Soviet Union to withdraw its troops from Afghanistan in furtherance of the regional stability which we and our friends desire.

Africa

The United States must recognize that Africa will play a key role in world affairs in the years ahead. Today many African states are expressing increased independence in world affairs. Africa possesses an abundance of oil and other raw materials essential to the world economy, and represents an important potential export market for our manufactured goods. The success of global policies will increasingly depend on our ability to maintain good relations with African countries.

We must respect the right of Africans to determine their own destinies. An Anderson Administration's African policies will promote genuine stability in the continent by helping the nations of Africa to achieve social justice, political progress, and economic prosperity for their people.

We believe that the long-term interests of all the people in Namibia and South Africa will be served best by an orderly transition to majority rule in each country. The South African government's continued refusal to permit free elections in Namibia, or to share power with the black majority in its own country, threatens the stability of Africa. An Anderson Administration will look for peaceful means to increase pressures on South Africa to expedite the resolution of these conflicts.

South Africa is the only country in the world where all political, economic, and social rights are completely dictated by race. Apartheid, an all-encompassing legal system proclaiming the superiority of the white race, is an affront to human decency.

In an effort to bring a peaceful transition to majority rule in South Africa, an Anderson Administration will:

Continue efforts to bring an end to apartheid in South Africa through negotiations in regional and multilateral forums;

Continue Export-Import Bank restrictions on lending and credit guarantees for investments in South Africa;

Encourage compliance by all countries with the United Nations embargo on the export of military equipment to South Africa; and

Discourage investments in South Africa, whenever possible in cooperation with our allies.

South Africa's refusal to allow for the completion of a negotiated transition to majority rule in Namibia requires a number of immediate steps. An Anderson Administration will:

Work with other members of the Contact Group (Canada, France, West Germany, Britain) to seek a final agreement in Namibia based on U.N. Security Council Resolution 435, which has been accepted by both South West Africa People's Organization and the South African government;

Deny Export-Import credit privileges to corporations making investments in Namibia based on rights secured from South Africa or the present Namibian authorities;

Support all U.N. efforts to speed the transition to majority rule in Namibia; if U.N. efforts prove ineffective, an Anderson Administration will work through other multilateral forums, particularly the Organization for African Unity (OAU), to bring majority rule to Namibia.

Territorial disputes, particularly those in the Western Sahara and in the Horn of Africa, threaten both the stability of the countries directly involved, and that of the entire region. In helping to resolve these disputes, an Anderson Administration will adhere to two principles. First, all settlements should be consistent with the principle of territorial integrity endorsed by the Organization of African Unity. Second, the United States should encourage OAU peacekeeping and peacemaking initiatives aimed at resolving these conflicts.

The Cuban and Soviet military presence in Africa is of deep concern to us. We believe that peace and political stability in Africa is best assured by African people and governments resolving their political disputes without the intervention of outside military forces. We will encourage the peaceful resolution of African disputes as the surest means of guaranteeing African regional stability.

American interests in Africa will best be served if our policies are designed to assist African nations develop their economies. Thus, an Anderson Administration will increase the effectiveness of our foreign aid by augmenting our programs and improving our disbursement practices. (see Foreign Assistance)

We will give priority to assistance programs in those African countries which have made significant progress toward responsive, stable governments. Zimbabwe, for example, has recently undergone a peaceful transition to majority rule, but the United States has not yet offered assistance adequate to meet reconstruction needs. An Anderson Administration will also endeavor to build a close partnership with Nigeria, which has recently made an encouraging transition from military rule to a system of government whose constitution closely resembles our own.

Our government should also promote private investment in Africa which is essential to fostering peaceful progress.

The Western Hemisphere

A fundamental principle of our foreign policy is that relations with countries that are closest geographically and in interest and purpose are among the most important. We must give primacy to maintaining confidence and trust in these relations. Too often we have assumed, however, that good relations come naturally and without effort. They do not. They must be carefully nurtured through positive action to further and maintain mutual understanding and respect.

Canada

Facts of history, geography, economics, and security tie the United States closely to Canada. But our ties, no matter how strong, need constant attention. By failing to resolve differences when they first appear, we run the risk of having them turn into more serious problems. There are four initiatives that the Anderson Administration will take towards Canada.

We will support the conclusion of a treaty on Atlantic fishing rights. Our countries began negotiations on fishing rights in August, 1977, culminating in a treaty signed on March 29, 1979. The Senate has yet to approve this treaty. But a fishing rights treaty which serves the long-term economic interests of

American fishermen is desperately needed if we are to avoid the overfishing of the Georges Bank.

We will continue to engage the Canadians in a dialogue on trade issues of mutual concern, and will work to reach agreement on a comprehensive tax arrangement on trade between our two nations.

The United States and Canada must work together to insure that both our nations have adequate future energy supplies. Our nations need to increase their cooperation in energy research and development projects. The Anderson Administration will work to expedite the construction of the Alaskan-Canadian natural gas pipeline, a cooperative effort which offers important benefits to both our nations. American investment in Canadian energy resource projects will help Canada achieve energy independence.

Our common border dictates that the United States and Canada develop a consistent approach to environmental problems. The United States is presently considering an increase in its use of coal as an energy source, particularly in the Northeast. This increase threatens to raise the level of sulphuric pollution in the atmosphere in Canada as well as in the United States. The proposed Garrison dam project would also have serious effects on the Canadian environment. Canada is thus justifiably concerned with these and other issues that affect the Canadian environment. As a responsible ally and neighbor, we must continue to consult Canada on these matters of mutual interest.

Latin America

For most of the 20th century, our hemispheric neighbors in Latin America have lived in the military, political, and economic shadow of the United States. This old, unequal relationship is now obsolete. Over the past decade, economic development and social change within the hemisphere have given our neighbors a new sense of self-confidence and national pride. Our Latin American relations will thus be increasingly complex in the years ahead. If we accept this challenge in a spirit of mutual respect and cooperation, our traditional friendships will be strengthened. If we turn away from the challenge, ignoring it or seeking to reassert the paternalism of the past, we will find ourselves increasingly isolated in our own hemisphere.

Mexico

We have no more important partner in Latin America than Mexico. Many of the most pressing bilateral issues between the United States and Mexico have major domestic implications on both sides of the border. Improving our relations will require careful, flexible negotiations which are sensitive to the legitimate interests of both nations, and that recognize the emerging industrial power of our southern neighbor.

The Anderson Administration will explore more fully the ways in which we can assist Mexico in its program of industrial development. Unless we are able to find fields for mutual cooperation, such as technology transfer, Mexico will naturally seek such assistance elsewhere. Unless we are responsive to the needs of Mexico's industrial development program, it will be difficult to secure Mexico's cooperation on such issues as energy and immigration.

One of the most complex and difficult issues is the immigration of undocumented Mexican workers to the United States. The immigration issue touches the interests of many parties, not only those of our two national governments. It affects local communities on both sides of the border; it affects the American worker as well as the undocumented Mexican worker; and it affects our own Hispanic-American community.

We recognize that there is no easy solution to the immigration problem. Any attempt on our part to close the border would be impractical and enormously expensive. And Mexico would see it as an unfriendly act.

An Anderson Administration will begin to deal with the issue of immigration within the context of other border issues. Migration in the border regions has produced local communities that straddle the border. We have not worked closely enough with Mexico to fashion policies that address the unique social problems that these border communities face. The existing mechanisms for handling specific social problems in the border region have not been satisfactory.

We propose that a joint American/Mexican Commission be created to promote cooperative social development in the border region. This Commission would concern itself with improving and integrating social services in the border areas. Among that Commission's tasks would be the strengthening of organizations like the U.S./Mexico Border Health Association. The joint Commission would establish a structure responsive to the basic unmet, human needs in the border region.

Beyond the immediate human problems along our common border, there are many issues between our two countries that require and deserve a mechanism for continuing high level collaboration. The Anderson Administration will expand the State Department's current modest effort to collaborate with Mexico by formalizing a permanent consultative mechanism. An on-going, high-level dialogue on issues such as trade, agriculture, energy, migration, finance, and industry is essential to building the kind of partnership that should characterize our relations with Mexico in the 1980's and beyond.

Central America

The most dangerous threat to hemispheric peace today is the acute political crisis in Central America. We must recognize that the political violence in El Salvador, Guatemala, and Hondouras is in part the product of real social problems and human rights violations, and that decades of poverty, inequality, brutality, and dictatorship have produced the volatile conditions with which we now must grapple.

The Anderson Administration will take initiative in urging the governments of these nations to broaden their political base, create truly democratic political institutions, and proceed with the necessary policies of social change without delay. We will refrain from supporting governments unwilling to undertake these necessary reforms. We cannot again afford to wait until a political crisis is full blown, as it is today, in El Salvador, before we begin to seek solutions.

It would be a grave mistake to blame the current political crises in Central America on Cuban subversion. Cuba will seek to take advantage of instability in the region, but Cuba is not the sole cause of such instability. We must not allow our concerns about Cuba exclusively to shape our policy toward Central America, or any other part of the hemisphere. No amount of military aid can make a repressive government popular, and an unpopular government is never secure for long. The best antidote to Cuba's promotion of revolution is a region of sound, popular, democratic governments—not an armed camp of military dictators.

For four decades, the United States supported the corrupt and unpopular dictatorship of Anastasio Somoza in Nicaragua. Even though the revolution which drove Somoza from power last year enjoyed the support of virtually the entire populace, the United States tried, until the last moment, to prevent the revolutionary government from coming to power. The new Nicaraguan government is understandably suspicious of American intentions.

Nevertheless, Nicaragua and the United States have been able to maintain cordial relations over the past year. The new Government of National Reconstruction has committed itself to political pluralism. The government's program of reforms has created some tensions with the private sector, but both sides have thus far shown a willingness to compromise in the interests of national reconstruction.

We believe that providing economic aid to Nicaragua serves our national interest well. We support the $75 million aid package recently passed by the Congress. It will speed economic recovery and will also help sustain the current atmosphere of compromise and moderation within Nicaragua. To cut off economic assistance, as proposed in the Reagan platform, will undermine those political groups which have urged moderation, push the government towards more radical economic policies, and drive Nicaragua to seek closer ties with the Soviet Union.

In recent years Cuba has taken new intiatives in both Central America and the Caribbean. Cuba has provided some arms to revolutionaries in Central America, and has provided economic aid to some nations in the Caribbean.

We must not allow our concerns about Cuba to distort our policies toward the rest of the hemisphere. It would be a mistake to support repressive governments in Central America merely because Cuba opposes them; it would be a mistake to refuse aid to governments in the Caribbean merely because Cuba aided them.

At the same time, we will not tolerate direct military intervention by Cuba in Central America. There must be no Angolas in the Western hemisphere. We will also oppose any attempt by the Cubans to lead the nonaligned movement into the Soviet camp.

Others may wish to enter into relations with Cuba, but we ourselves cannot consider a normalization of relations until Cuba demonstrates a willingness to compromise on the many issues that divide us.

Caribbean

The economic situation in most of the Caribbean is particularly difficult today. The small-island economies which depend on world trade for many critical resources face severe trade imbalances because of the rising price of energy. This has led to a burgeoning foreign debt, inflation, and unemployment, all of which aggravate the already serious problem of poverty in most of the Caribbean.

These conditions have produced both a new potential for political unrest and a new willingness to experiment with different models of economic development. Jamaica, Grenada, and Guyana have adopted democratic socialist models which seek to blend socialist economies with parliamentary democracy.

As Cuba seeks to expand its influence on the region through its own economic assistance programs, the United States should respond, not with efforts to contain Cuba, but with efforts to build a strong basis of friendship between ourselves and our Caribbean neighbors. The complex social and economic problems of this region cannot be solved by military responses.

Increased economic assistance is an absolute necessity for some of the Caribbean islands. While the Carter Administration has raised the level of U.S. assistance to the region, even more must be done. The ongoing deterioration in the region's terms of trade requires balance of payments assistance as well as development assistance.

To avoid creating an unhealthy bilateral dependency between the United States and those Caribbean economics that are most in need of external aid, much of the economic assistance provided by the United States should be channeled through multilateral institutions such as the Caribbean Development Bank.

Increased levels of aid cannot by themselves solve the economic problems faced by Caribbean countries. Other global and regional programs will be required if these states are to experience sustained growth. Effective commodity agreements, particularly for sugar, are needed to reduce the vulnerability of Caribbean economics to the vagaries of the world market. Initiatives toward regional economic cooperation and integration should be encouraged. International donors, including the United States, could support a regional shipping line to lower transportation costs and stimulate intra-regional trade. Similar cooperative ventures in such fields as food and energy should be encouraged as well.

South America

In South America, we must continue to strengthen our diplomatic relations with the continent's democracies. The Andean states of Venezuela, Colombia, Peru, and Ecuador are important allies in our quest for human rights and the restoration of democracy in the region. We must increase the coordination of our policy with theirs in responding to crises such as the recent military coup in Bolivia. Military officers in Bolivia and elsewhere must know that when they destroy a democratic government, they will meet not only the opposition of the United States, but also a solid front of opposition from all the democracies of our hemisphere.

The existing military governments of the southern cone must understand that our commitment to human rights and democracy is firm. Until they demonstrate substantive progress in the field of human rights and towards the restoration of democracy, they can expect no improvement in their relations with the United States. Moreover, we must make clear to them that interference in the internal affairs of their neighbors is incompatible with hemispheric peace and security.

The current U.S. policy of denying foreign assistance to governments that systematically violate human rights is a laudible one and should be continued. But more must be done. In too many cases, American banks and corporations undercut our governmental policy by providing loans and investments to the very countries which are ineligible for governmental aid. Our government must make greater informal efforts to bring public and private policy into better coordination.

The case of Chile is a special one. There is strong reason to believe that the Chilean military government was directly responsible for a brutal act of international terrorism perpetrated in the United States—the assassination of Orlando Letelier and the murder of Ronni Moffitt. The Chilean government has refused to cooperate with the U.S. in bringing the responsible parties to justice.

As the scourge of international terrorism spreads, the United States must take an unequivocal stand that it will not tolerate acts of terrorism in this country, especially when those acts are the responsibility of a foreign government. If Chile continues to refuse to cooperate in the prosecution of the Letelier-Moffitt case, the U.S. should consider additional measures to bring diplomatic and economic pressure on Chile.

Human Rights

To advocate human rights is to insist on respect for and protection of the rights and freedoms of persons—to be free from political persecution and torture, hunger, and deprivation; to enjoy freedom of thought, conscience, religion or belief.

We must not allow others to come to believe that our commitment to human rights is negotiable, or that it will be sacrificed at the first convenience. Of necessity, we must recognize the limits of our ability to improve the condition of human rights in other nations: the results will be long-term and gradual. But we shall never despair in promoting the full and free development of the individual.

A primary task of the Anderson Administration will be to sustain the framework of international peace and security within which human rights can be discussed, championed, and enlarged. The continuation of stable relations itself is therefore a crucial condition for the improvement of human rights in Eastern Europe and the Soviet Union.

We are angered that the number of Jews permitted to emigrate from the Soviet Union has plummeted, and we deplore the continued harassment of Jews in the Soviet Union. We are also deeply troubled with actions taken by authorities in the Soviet Union and Eastern European countries against individuals monitoring their nation's progress in complying with the Helsinki Accords. We reaffirm the conviction set forth in the Helsinki Accords of the "right of the individual to know and act upon his [human] rights and duties".

We must attend the second Helsinki review conference in Madrid, and we must insist upon a complete assessment of the degree to which the Soviet Union and the Eastern European nations have complied with the Helsinki Accords. We must make it clear before and during the Madrid conference that the imprisonment of Helsinki monitors and the punishment of countless others for their religious or political beliefs is violative of the Helsinki Accords and repugnant to the common tenets of civilization.

Under an Anderson Administration, the growth of American trade with the Soviet Union and Eastern European countries will require progress toward genuine respect for the right to emigrate. We see few, if any, justifications for denying the right of persons to change their citizenship from one country to another country willing to admit them.

An Anderson Administration will bring to bear on all countries, through bilateral and multilateral measures, every possible peaceful influence to prevent, to repair, or to end gross violations of human rights. Exceptions to our peaceful intercessions in support of human rights will be narrowly construed and strictly limited.

An Anderson Administration will:

Give strong diplomatic support for democratic governments; it will propose new foreign assistance legislation that would allow us to furnish these governments adequate and timely aid to help secure economic, social, and political rights for their people;

Limit economic and military assistance to nations that overthrow their democratic governments;

Deny military and economic assistance to governments that systematically violate human rights; and

Encourage corporations to conduct their activities and policies abroad in ways that are consistent with internationally recognized human rights standards.

The plight of refugees seeking haven in America requires urgent and diligent action. The Refugee Act of 1980 establishes the first comprehensive statutory basis for our refugee policy, providing for more equitable refugee admissions and assistance programs. The Anderson Administration will vigorously implement this important new legislation.

Equal justice and our commitment to human rights requires our establishing a sound and humane national immigration policy. John Anderson has repeatedly urged the Carter Administration to grant political asylum to the 10,000 Haitian refugees who have sought refuge in this country since 1971. Our immigration policies, laws, and practices must safeguard the civil rights of all Americans and the rights of those visiting our country for legitimate purposes. The Select Commission on Immigration and Refugee Policy chaired by Father Theodore Hesburgh will report to Congress by December on reforming our system of immigration and our refugee laws. Reform is greatly needed, and the Anderson Administration will move vigorously in this area.

The absence of bold leadership in the past four years has been nowhere more apparent than in the timorous responses of the Carter Administration to the tragedy in Cambodia. An Anderson Administration will press for adequate aid programs and will oppose any reduction in the monthly number of Indochinese refugees who may now be admitted to the United States.

An Anderson Administration will give active support to the private voluntary agencies, the Red Cross, and the various United Nations organizations in their unflagging efforts to provide relief and sustenance to hundreds of thousands of men, women, and children throughout the world who, fleeing war and famine, face disease and starvation. We must, where the need is especially urgent, speed up our timetable for contributing pledged funds. Humanitarian assistance, quickly provided, can mean the difference between life and death for thousands of people.

United Nations

The United Nations, now nearly 35 years old, continues work that needs to be done, but which the United States cannot begin to do by itself. The U.N. is helping to eradicate the ancient scourges of disease and malnutrition through public health programs. It is organizing help for refugees and migrants. It is monitoring world-wide environmental dangers. It is administering safeguards to discourage nuclear proliferation. It is maintaining truce supervisors and peace-keeping forces in the Middle East and elsewhere.

The Anderson Administration will play a vigorous role in supporting United States foreign policy objectives in the United Nations, through the General Assembly, the Security Council, and the specialized agencies. We will give strong support in the Congress to those U.N. programs which further our interests. The agenda is crowded:

Strengthening the peacemaking and peacekeeping capacities of the U.N.;

Helping Namibia, through a United Nations presence, in its transition from South African control to full independence;

Reaching an acceptable conclusion on the Law of the Sea negotiations;

Establishing a United Nations High Commissioner for Human Rights;

Sustaining the work of the International Labor Organization; and

Expanding United Nations efforts in controlling international terrorism.

We must also reassess our role in a number of United Nations activities.

Our contribution to the United Nations Development Fund fell by one-third in real terms during the 1970's. We need to consider maintaining our financial contribution at historical levels. But more than money is needed. We should also make significant program contributions. Few economies have developed and applied technology to their productive processes so quickly as ours. We should make full use of our own economic development experiences in launching initiatives for United Nations development activities.

We have in recent years given greater attention to human rights concerns in our foreign policy, but incongruously we have failed to ratify a number of international human rights conversions widely accepted in the international community.

The Convention on the Prevention and Punishment of the Crime of Genocide has languished in the Senate for more than 30 years. It has been supported by every administration, Democrat and Republican. It should be promptly approved by the Senate. Other human rights agreements are in the Senate, including the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. These covenants raise important constitutional issues. Our aim should be their ratification, attaching, where appropriate, reservations to insure that they are consistent with the United States Constitution.

The recent decision by the International Court of Justice calling for the release of our diplomatic personnel held hostage in Iran underlines the need to strengthen international legal institutions. If we expect other countries to accept the jurisdiction of the Court, we must be prepared to do the same by repealing the Connally Reservation.

We have seen in the Security Council action on Iran and in the General Assembly condemnation of the Soviet invasion of Afghanistan how the United Nations can advance the goal of world peace. We have seen in General Assembly resolutions on Israel and the Palestine Liberation Organization how our purposes can be impeded. Neither euphoria, born of success, nor cynicism, born of frustration, should guide our policies toward the United Nations.

The United Nations is a political institution. Our success in it will be in equal measure to the aggressiveness with which we promote our legitimate interests. But we must be unyielding in our efforts to prevent the humanitarian aims of the UN's nonpolitical organizations from being exploited for narrow national, or ideological advantage. An Anderson Administration will strongly oppose efforts to stack committees and to bar nations from participating in regional or organizational activities.

We should not be dismayed at setbacks. Instead we must move to regain in the United Nations and in its specialized agencies that role which the strength, skills, and democratic practices of this nation suggest should be ours.

Foreign Assistance

The United States should return to its long tradition of extending assistance to the needy peoples and countries of the world. Funds channeled through American agencies and international organizations have been spent in the pursuit of a wide range of objectives, consistent with our humanitarian obligations and our political, economic, and security interests.

During the past decade, domestic support for foreign aid has waned. At present, the United States ranks 13th among industrialized nations in the percentage of GNP devoted to foreign assistance. There is a growing belief among voters that America can no longer afford to spend scarce resources on foreign assistance programs that seemingly produce few concrete results.

An Anderson Administration will seek to reverse this trend by heightening public awareness of the value of foreign aid programs. American foreign aid:

Increases world stability by supporting countries which are struggling to establish responsive political institutions, and prosperous economies;

Gives us continued access to raw materials by promoting steady economic development in Third World countries;

Provides business and jobs for Americans because roughly 75 cents of every development aid dollar is used to buy American products;

Promotes a vigorous export sector, which is a key element in American economic growth; and

Adds to the security of our nation by reinforcing alliances of strategic value.

These practical reasons for strengthening foreign aid programs reinforce humanitarian concerns. Foreign aid enables us to help alleviate the plight of the world's poor.

Our national interests, humanitarian obligations, and international responsibility demand that we provide more funds for foreign assistance. An Anderson Administration will harbor no illusions about foreign aid programs. The primary objective of foreign aid, to foster the development and modernization of Third World countries, is an extremely delicate task that often takes years. We should do all we can to ensure the success of development programs, but not lose faith if some development efforts meet with failure.

Foreign aid funds used to alleviate absolute poverty should be channeled through multilateral assistance programs wherever possible. By meeting basic human needs in nutrition, health, and education, we can provide people with the means to become self-reliant, and to participate in the building of their societies.

Long-term economic development will also play a major role in an Anderson foreign assistance program.

International and regional financial institutions provide capital essential for the development of Third World economies. An Anderson Administration will seek suitable assistance for the World Bank, the United Nations, and other institutions with similar goals to ensure that adequate capital is available for multilateral development programs.

The rising cost of oil has caused the current accounts deficit of non-oil-exporting developing countries to increase 400 percent in the last seven years. An Anderson Administration will encourage OPEC states to help Third World countries cope with an increasing burden of debt.

An Anderson Administration will emphasize economic assistance over military aid, consistent with our belief that security is built upon responsible political institutions and economic prosperity.

Specifically, an Anderson Administration will:

Increase the efficiency of the foreign assistance bureaucracy by placing the Agency for International Development (AID) once more directly under the supervision of the Secretary of State;

Establish a clearer separation of economic aid from military aid.

Re-evaluate present assistance allocation policies which tend to give small amounts of money to many different programs. The result is that some projects do not receive enough money to be fully successful.

As America moves into the 1980's, we cannot weaken our commitment to a sound policy of foreign assistance. A sensible foreign policy requires a strong assistance program. Misunderstanding, cynicism, and a leadership vacuum has led to neglect of this vital component of our national heritage and prosperity.

The Intelligence Agencies

Our intelligence community is passing through the darkest period of its history. The talents of the intelligence agencies have been sorely misused in the past and investigations by congressional committees have raised serious questions about the integrity and effectiveness of our intelligence effort.

Many claim that a strong intelligence service, with secrecy necessarily woven into the fabric of its activities, is basically antagonistic to the exercise of liberty in a free and open society. We disagree. The work of the intelligence agencies is a significant and necessary part of America's efforts to live securely and peacefully in the world. And we are confident that the intelligence agencies can accomplish their vital functions without impairing our basic rights and freedoms.

An Anderson Administration will strongly support congressional oversight of the intelligence agencies. We will request Congress to enact charter legislation to define the nature, breadth, and scope of intelligence activities. We will also support reduction in the number of congressional committees to which the intelligence agencies must report. Through its oversight committees, Congress should receive prior notification of all significant covert intelligence operations, and the principle of congressional access to intelligence agency information and material must be firmly established.

We believe that covert operations should be undertaken only for compelling reasons, and we will support legislation that prohibits assassination in peacetime and other practices by our intelligence agencies that are repugnant to our democratic traditions. We also favor a prohibition on the paid covert use for intelligence purposes of accredited American journalists, academicians, those following a full-time religious vocation, and Peace Corps volunteers. The Intelligence Oversight Board, too long ineffective, must meaningfully monitor the propriety of intelligence activities.

The ability of the intelligence agencies to provide accurate and timely assessments of actual and emerging international events requires urgent attention. Two areas must be immediately addressed. We must strengthen our ability to make a more discriminating use of intelligence-collecting resources and to engage in more thoughtful analysis. We must also vigorously promote better coordination of both agency information and counter-intelligence activities.

Finally, we share the widespread concern about the exposure of the identities of our intelligence agents abroad. An Anderson Administration will consider seeking legislation to bring criminal charges against individuals who, using secrets learned while employed in an intelligence agency, endanger lives by revealing an agent's identity. We affirm our conviction, however, that punishing writers who have not worked for an intelligence agency is inconsistent with First Amendment freedoms. Such measures would be a false promise of agent safety and national security.

Nuclear Non-Proliferation

For thirty-five years the United States has pursued policies intended to restrict the spread of nuclear weapons. The original objective of the program was to keep weapons design and fabrication techniques secret while promoting the use of nuclear power for peaceful purposes. As other countries developed research expertise, however, the focus shifted toward a framework of multilateral and bilateral agreements to renounce nuclear weapons development and apply internationally administered controls on the technology and supplies required to build atomic weapons.

The unchecked proliferation of nuclear weapons and weapons-grade material directly affects the security of the United States, by altering regional balances, and potentially threatening global stability. The destabilizing effects of nuclear proliferation are compounded by the danger of civil wars, irridentist ambitions, terrorist activities, and the failure of command and control systems.

An Anderson Administration will work in cooperation with other states to safeguard physically all nuclear materials from diversion and to restrain the spread of sensitive nuclear technology. We will devote particular attention to limiting the number of facilities which use or produce plutonium or weapons-grade uranium.

Reprocessing plants are particularly susceptible to the diversion of nuclear fuels since a commercial plant processes about

150 tons of plutonium annually and existing accounting techniques have significant "acceptable" error levels. Even if new technology was developed which could monitor fuel losses continuously to an accuracy of one percent, measurement uncertainties would still greatly exceed the amount needed to fabricate a bomb. We must therefore, rely increasingly on physical security measures to deter diversion of nuclear fuels, while also working to improve the measurement techniques which provide a crucial technical safeguard. An Anderson Administration will work to restrict the spread of reprocessing plants to additional countries since most states with "young" nuclear industries have no economic need for these facilities.

We believe that the United States must maintain a vigorous program of nuclear energy research and development if we are to retain our capacity to contribute technology, managerial skills, and operational experience to the broad range of nuclear activities relevant to the prevention or management of nuclear weapons proliferation. In particular, we must take a lead in supporting research to develop improved fuel cycle safeguard technology, including exact and continuous fuel rod assay systems for use in reprocessing plants. Nuclear weapons can be manufactured from diverted fuel in a matter of days, so exact and continuous international monitoring of the fuel flow and stocks in all civilian nuclear facilities should be a long-range objective of American diplomacy.

Though the detection of "trickle" diversion of fuels from reprocessing plants may never be possible, technological improvements and strict internationally supervised safeguards could make nuclear power and reprocessing systems much more secure than they are today.

An Anderson Administration will use every technological and managerial tool at its disposal to increase still further the distance between the military and peaceful uses of nuclear energy, and to secure nuclear fuel from diversion or misuse. For example, we will support basic research into alternative designs of the breeder reactor which do not use plutonium and we will consult closely with our European allies on all nonproliferation matters.

We must encourage all states to join in improving nuclear facility safeguards as a means of building confidence between nations and increasing the genuine security of nuclear fuel cycles. We will best be able to broaden the appeal of nuclear safeguards policies by emphasizing their technical aspects and avoiding public condemnations of our allies. We will promote internal accounting improvements as a means of boosting quality control and reducing worker radiation hazards.

An Anderson Administration will support a strengthening of the safeguards and inspection authority of the International Atomic Energy Agency (IAEA). We will also encourage efforts to have the IAEA play a greater role in ensuring the physical security of nuclear material. Standards for the physical protection of nuclear materials in transit, whether international or domestic, should be made as rigorous as current protective technology will allow.

We believe that the international community will gain from future efforts along the lines of the International Nuclear Fuel Cycle Evaluation process and an Anderson Administration will support such efforts. Technically oriented meetings presently offer the best procedure for evaluating elements of civilian nuclear programs and building toward an international consensus on the issue.

The Non-Proliferation Treaty and the Treaty of Tlatelolco have helped to build confidence among participating states by establishing verification procedures as well as a presumption against nuclear proliferation. Neither treaty has been signed by every possible signatory, but the agreements have clearly had a beneficial effect and an Anderson Administration will search for further opportunities to expand the scope of the non-proliferation regime.

We believe that exports of nuclear technology should only be approved by the United States in instances where the proposed transfer clearly assists American nonproliferation goals. An Anderson Administration will enforce strict policies concerning the export of technical data, material, and technology and we will review the definition of relevant technologies to ensure that certain non-nuclear technology will be controlled if the technology, when combined with nuclear technology, might lead to the further proliferation of nuclear weapons.

An Anderson Administration will support the provisions of the 1978 Nuclear Non-Proliferation Act. We will seek to strengthen the commitments of all nuclear supplier states to refrain from the transfer of those fuel cycle components which were identified as "least proliferation resistant" at the International Nuclear Fuel Cycle Evaluation conference. We will call on all nuclear supplier states to make known the agreed upon arrangements for disposal of spent fuel from nuclear facilities which they have supported in any way. We will propose negotiations towards an agreement which would involve the IAEA in the approval of design and construction plans for all nuclear facilities worldwide.

An Anderson Administration will take initiatives aimed at satisfying the legitimate research and development needs of countries with small nuclear programs. This approach certainly introduces some minor proliferation risks, but it might prove to be the most effective means of avoiding additional unnecessary programs using weapons-grade fuels. We should initiate joint research programs with scientists from such states, but should simultaneously ask their governments to forego nuclear explosive research and accept all international safeguards.

We believe that the United States and other nuclear supplier nations should join with the IAEA, EURATOM, and national nuclear authorities to create a fund and technical advisory service to assist developing nations convert research facilities using weapons-grade fuel to fuels of lower nuclear weapons utility. An Anderson Administration will also increase the amount of foreign aid devoted to technical and financial assistance for developing countries which are interested in expanding their "soft path" energy resource programs.

Defense

Introduction

The fundamental purpose of America's armed forces is to provide for our security and to sustain and advance our national policies. The years ahead will see old and new challenges to our achieving this purpose that will test the patience and wisdom of our people and our leaders.

The greatest of those challenges will continue to be the expansion of Soviet military strength, and the Kremlin's efforts to exploit its military capabilities against the West.

In strategic forces, the Soviets have reached essential equivalence with our own and continue to improve the accuracy of their missiles. In conventional forces, the Soviet Union has greatly augmented its forces in Central Europe. It has sent thousands of ground troops into Afghanistan, and whether directly or through client states, has sought to extend its political and military influence in Southeast Asia, in the Persian Gulf region, and elsewhere.

The United States must therefore contend with the continued growth of Soviet military capabilities.

We must also attend to other challenges to our security, which lie outside the realm of our concerns with the Soviet Union.

In Central and Latin America, Africa, and throughout the region stretching from the Persian Gulf to the Pacific Ocean, nations and peoples are undergoing immense political, economic, and social changes. Change is inevitable. It is rapid, often unanticipated, and too frequently causes human tragedy on a vast scale. Regions and continents will not be won or lost by any single power. But our political, economic, and military interests in an interdependent world require consistent attention to the Third World through enonomic and political measures, and, where appropriate, through prudent and effective defense programs.

What must be done to meet these challenges?

Our first priority is to build a defense posture that demonstrates to the Soviet Union that it cannot gain strategic advantages over us.

We must take steps to protect the invulnerability of our nuclear forces.

We must have usable conventional forces to carry out the tasks dictated by defense needs.

We must proceed with arms control measures that enhance our security, but at the same time not fall prey to the illusion that arms control can or should carry the entire burden of preserving the military balance with the Soviet Union.

We must do our utmost to modernize our military personnel policies to retain the skilled men and women whom we need so much to implement our defense responsibilities.

We must spend what we need for defense, but we must apply the most exacting standards of efficiency and accountability to the way we spend defense dollars.

What matters is what we buy with our defense dollars, not how much we incrementally change our budget. We must discard simplicities which hold that spending more money will itself provide a solution to our security problems.

Moreover, we must never forget that arms by themselves are not sufficient to guarantee our security. As outlined elsewhere in this program, we must also restore our domestic economy, which, in the long run, is the true foundation of our international power. We must encourage further growth of our technological and scientific capacity. Spending unwisely for defense while we neglect the steps necessary to increase the productivity, innovation, and competitiveness of the American economy will buy us short-range comfort and long-range disaster.

Provision for our security also requires that we invigorate our alliances with Europe and Japan. If these alliances are preserved on the basis of a full measure of cooperation and partnership, the West will have more economic, industrial, and technological resources than any power or combination of powers that might challenge us. But we must also recognize that our alliances are unions of partners. Each must be prepared to share the burden of our joint endeavors fairly and to justify these sacrifices to its own people.

We cannot enter the international arena of the 1980's either poorly armed or fearful to do whatever is necessary to meet our commitments. There is the risk that the world will become a more hostile environment for the United States, and we must be prepared for this eventuality.

We need leadership to develop sound defense programs and strategies to implement them.

We need leadership to work constructively with Congress, orchestrating a balanced approach to national security.

We need leadership to provide steady coherence in the conduct of our joint affairs with our allies.

The Anderson Administration will meet the challenges to our national security as follows:

Strategic Forces

The nuclear weapons relationship with the Soviet Union is at the center of our military concerns.

Nuclear weapons, because of their enormous destructive power, their global reach, and the great speed with which they can reach their targets, have had a revolutionary impact on the security of nations. Throughout history, the chief purpose of armed forces has been to win wars. The chief purpose of nuclear weapons must be to prevent war.

For the past five Administrations, Democrat and Republican, our nuclear strategy has been based on the principle of deterrence. Our principal objective is, not to wage nuclear war, but to prevent it.

An Anderson Administration will unambiguously reaffirm this traditional strategy. We must hold fast to the conviction that control of nuclear war is improbable, and that victory in nuclear war is meaningless. We re-emphasize our belief that the extensive deployment of weapons which threaten to destroy the other side's strategic weapons undermines the stability of the strategic balance and can be dangerous in a crisis, for each side will then have a strong incentive to fire its missiles before they are destroyed on the ground. We must maintain secure strategic forces capable of delivering measured, timely, proportionate, and, if necessary, overwhelming responses to any conceivable attack. We have such forces now. We must protect their ability to survive in the future.

One component of our strategic arsenal, our fixed, land-based missiles, is, however, becoming vulnerable to an all-out surprise attack by Soviet forces. We must recognize the danger but not be either paralyzed or imprisoned by it. We should remember that even after absorbing a massive first-strike against one portion of our nuclear deterrent, our strategic forces will be able to destroy enough of the Soviet Union's industries and military facilities to prevent its re-emergence as a major industrial or military power.

The fundamental question posed by the growing vulnerability of our land-based missiles is what comprises the most desirable mix of forces as the American arsenal is modernized in the 1980's. Should we preserve the three main components of our strategic forces, land-based missiles, bombers, and submarines? Or, as we move into the future, should we place greater reliance on bomber and submarine forces?

A possible solution would be negotiations with the Soviet Union that verifiably reduces the capacity of each party to threaten the other's land-based missiles. Unfortunately, the Soviets have so far rejected such negotiations. We must urgently seek to convince them that their intrasigence is forcing us to consider options which may severely impair strategic stability.

The Carter Administration's specific cure for the vulnerability of our land-based missiles—the proposed mobile land-based MX system—is unsound. It will be enormously expensive (at least $50 billion, perhaps as much as $100 billion). There is reason to believe that the Soviet Union could destroy the system for less cost than we can build it. The proposed system will consume vast water and energy resources, and will disrupt, perhaps irreparably, the environment in the proposed missile site areas. It would invite Soviet military planners to aim nuclear weapons at thousands of new targets in the United States, and if SALT II is not ratified, the Soviets can develop all the necessary warheads and additional delivery vehicles to overwhelm the system as proposed.

American ingenuity can devise a more flexible and more cost-effective solution to the threat posed to our land-based missiles.

The Anderson Administration will give this matter the fresh and sober consideration it deserves through a comprehensive assessment of strategic doctrines, capabilities, and choices, free from either ideology or illusion.

What specific steps must be taken now to rebuild and modernize our strategic forces?

Our military command, control and communications systems should be made as survivable as our strategic weapons systems. For much less than it would cost to build the MX system proposed by the Carter Administration, we can insure that our command, control, and communications systems could survive any attack.

Our warning systems must be improved, as well as our ability to analyze data and make decisions under war-time conditions.

We can improve the basing systems for our aircraft and fleet ballistic missiles.

We must also move ahead with the current Trident submarine program. The technology embodied in the missile and in the submarine will enable us to be more secure and confident in the coming decades.

We should continue research into other missile-carrying submarines, including a larger number of smaller submarines, as additional means for enhancing our deterrent capabilities, as well protecting our seaborne strategic retaliatory forces against future Soviet anti-submarine warfare capabilities.

We will continue modernization of the B-52 with air-launched cruise missiles, short-range attack missiles, and with improved navigational and other electronic systems. The B-52 is a formidable weapon of destruction. The Soviet Union obviously does not take it for granted. Neither should we.

We will continue existing research on new bomber forces, including those capable of launching cruise missiles.

Conventional Forces

The brutal invasion of Afghanistan has underscored that the Soviet Union persists in a foreign policy of opportunistic expansion. However, in allocating more money for conventional defense capabilities to help limit Soviet power, we must pause to assess our situation and to clarify our strategy.

Soviet improvements of their general purpose forces, real and potential, must be taken seriously. They must also be kept in perspective. The Soviet Union cannot be assured that with the outbreak of war in Central Europe, the East European countries would be compliant allies. And to the East, there is a united and hostile China, growing stronger.

In Europe, the size and quality of Western forces continue to make military aggression appear unattractive to the Soviet Union. The risk of nuclear escalation imposes even greater cautions. But to maintain a credible conventional deterrent, United States forces and those of our European allies will need to be improved, particularly to address the critical issue of depth in the alliance's central sector.

An Anderson Administration will:

Improve personnel effectiveness.

Increase operations and maintenance funding to improve overall force readiness. Too large a proportion of our equipment is not ready for action on short notice.

Pre-position more equipment in Europe. This would allow us to send reinforcements to Europe more quickly, and would have the added advantage of freeing airlift and sealift capabilities to meet threats to stability in the Persian Gulf region.

Reexamine the relation between support to combat roles in the Army to determine how the "tooth-tail" ratio can be increased to achieve greater efficiency of fire-power and use of logistic assets.

Improve weapons design systems. Advanced technology can and should be used to strike out in new directions. Too often, however, we forego simple, reliable, rugged weapons systems with clear missions in favor of expensive, complex systems which yield only marginal improvements. Multi-purpose weapons systems, while providing more flexibility, may suffer from four defects: (1) they are usually very expensive and, hence, fewer can be bought; (2) because fewer can be bought, additional resources are often needed to protect them; (3) they may be less suited to any given mission than simpler single-purpose systems; (4) this "gold-plating" invariably makes weapons more difficult to maintain, thereby compounding our manpower problems. An Anderson Administration will conduct a thorough assessment of military design and procurement practices to examine such problems as these and to establish a sounder basis for making judgments about the cost-effectiveness of weapons systems.

We welcome our allies' commitment to raise defense spending by 3 percent a year until 1984. An Anderson Administration will discuss with our European allies additional measures for increasing their conventional capabilities in concert with our efforts. These measures include:

The role of European reserves as combat-ready forces for use in the initial phases of combat. Most European reserves are meant to serve as individual replacements for casualties in units already in action. These reservists could be organized into actual combat formations to help cope with a Warsaw Pact armored breakthrough.

The condition of European war reserve stocks of ammunition, parts, and replacement equipment. There should be agreed stockage levels among the allies, as well as standardization and interoperability to share stockpiled materials in wartime.

The level of armaments of European ground forces.

The role of European civilian airline fleets in airlift operations, looking towards alterations in wide-bodied jets to increase the speed at which American reinforcements reach Europe.

Although the defense of Europe remains the central concern of our overseas conventional force capabilities, it is necessary to recognize that other areas of the world, notably the Middle East and the Persian Gulf, may require the continued deployment of American conventional forces in the foreseeable future. An Anderson Administration will not let our primary focus on European force requirements lead us to neglect our responsibilities in other areas of the world.

The Anderson Administration will develop political and military measures, wherever possible in cooperation with our allies and others, to limit Soviet influence in Third World areas, and to persuade the Soviets that unilateral action on their part will not be successful. Our conventional capabilities must also respond effectively to local situations that arise outside our relationship with the Soviet Union. Economic and political measures are the principal instruments for serving our security interests in these areas, but military forces can provide a necessary ingredient in our overall posture.

Our military forces in the Persian Gulf area should serve two purposes: to give confidence to friends and to deter Soviet action in the Persian Gulf region.

To achieve these goals, an Anderson Administration will improve the Marine Corps' tactical mobility and ground-based firepower capabilities. We will take measures to deploy a regular naval presence in the Persian Gulf region, without impairing our naval strength elsewhere. We must be able to reinforce this presence rapidly with suffi-

cient military power to contend successfully with Soviet incursions.

An Anderson Administration in its military acquisition practices will recognize that some parts of the world may require equipment that is different from equipment designed for operations in Europe.

An Anderson Administration will also encourage our Western allies and Japan to act in concert with us, whenever possible, in the Persian Gulf Region. The British, Dutch, French, and Australians either maintain bases in the Indian Ocean and/or regularly deploy naval units there. The security of the Persian Gulf area is vitally important to the economies of the West. The United States should not be alone in shouldering the burden of shared concerns.

We will discuss with our friends in the Persian Gulf region ways of pre-positioning equipment in their countries, and use of their air and naval facilities.

In all these measures, we will proceed cautiously, mindful that military capabilities and commitments must not become engines driving our foreign policy.

During the past 20 years, our general purpose naval forces have emphasized capabilities for offensive actions against Soviet sea and land targets. This must remain a significant mission for the Navy. But we believe that the Navy, as a flexible instrument of American statecraft, must give renewed and significant attention to its traditional responsibilities, namely, protecting the sealanes between the United States and our allies and protecting our interests in Third World areas. An Anderson Administration will develop a naval construction program to expand existing capabilities and to meet new challenges to our security interests in the 1980's and beyond.

The Draft and Military Personnel Policies

An Anderson Administration will oppose peacetime draft registration. The freedom to choose individual careers without the threat of government compulsion is a precious one. To protect it, we must make every effort to meet our military manpower needs without conscription.

The all-volunteer forces as currently maintained, however, are not adequate. The armed services are finding it difficult to recruit men and women to their ranks. The average educational competence of new recruits is declining. There is evidence that the military competence of our combat troops has deteriorated.

Career military personnel, whose professional skills are critical to our military effectiveness, are leaving the armed services at disturbing rates. Continued erosion of the size and quality of the armed forces will have serious repercussions for our national security. No more urgent task confronts our armed forces than meeting our military personnel needs.

Fairness to the men and women in the armed services and their families also argues for action. They deserve a quality of life equal to the importance of their responsibilities and the sacrifices we ask of them.

An Anderson Administration will:

Increase basic pay and allowances to compensate for losses since the start of the all-volunteer force;

Support breaking the link between military pay and that of civil service workers;

Provide bonuses for superior job performance by individuals as determined by unit commanders, as well as reenlistment bonuses for those individuals in occupational skills of critical importance to the armed forces;

Eliminate in many instances the "up or out" policy governing military promotions which requires many qualified enlisted personnel and officers to retire from the service even though they could continue to make useful contributions to our national security. We should create a pool of skilled individuals who may remain in the armed services outside the normal promotion path up to age 55 or 60;

Improve base housing, increase housing allowances, and expand social services such as day care facilities for military families;

Increase the cost-of-living allowances for individual service men and women in areas with especially high costs of living;

Grant allowances for all forces stationed overseas in places such as Germany, where, for example, the value of the dollar has declined 66 percent against the mark since 1970;

Adopt independent insurance fee schedule for medical services provided by private physicians to dependents of U.S. military personnel;

Develop a program of lateral entry enlistments for active duty and reserve forces for both enlisted and officer ranks;

Provide enlistment bonuses for those with education or technical training beyond high school;

Provide additional education to enlistees in exchange for an extension of the initial enlistment period;

Provide more extensive training to individual reservists including overseas deployments with active units for two-week periods where appropriate;

Reevaluate the issue of ceilings on the numbers of military dependents overseas.

These measures will cost money. But our nation can make no sounder defense investment. Moreover, these measures will save money in the long run. Reducing the outflow of experienced personnel will mean lower expenditures for recruiting, outfitting, and training. Additional monies can be saved by having the most experienced personnel continue to operate and maintain sophisticated weapons systems.

Arms Control

We face a critical juncture in the pursuit of a sound arms control policy aimed at limiting the levels and types of nuclear weapons as well as conventional forces. SALT II, the SALT process itself, technological threats to stability, the continuing proliferation of nuclear weapons, all demand our closest attention.

What are the fundamental elements of a sound and workable arms control policy?

Arms control agreements must enhance our basic security and must not compromise our ability to protect our national interests.

In our major arms control endeavors, we must insure that present and future agreements will preserve and reinforce the stability of the strategic balance.

Arms control agreements, particularly our accords with the Soviet Union, are not agreements between friends. We cannot rely on the good intentions, or promises on paper, of our adversaries. Arms control agreements must be based on adequate, effective verification.

We must develop new ways in which our NATO allies can participate fully, wherever possible, in the arms control process. Genuine consultation with our allies is essential if we are to deal imaginatively with the complex problems of theater nuclear weapons and the conventional military balance in Europe.

The Anderson Administration will take steps to complete the SALT II process, and thereby lay the groundwork for SALT III. We will propose immediate discussions with Moscow to consider possible supplementary measures to facilitate ratification of the pending treaty and to explore an agenda for the next round of negotiations on strategic weaponry.

The basic security interests of the United States are well served by ratifying the SALT II treaty. The treaty as negotiated is adequately verifiable, within the constraints imposed by national technical means of verification. Critics of the treaty have not shown how our nation would be more secure if we rejected it. In the absence of the SALT II constraints, the Soviets can expand their nuclear armaments to levels well beyond those provided in the treaty. We would have no choice but to match arms for arms in a renewed arms race. Fear and insecurity, the wellsprings of war, would be the constant lot of both countries.

In Europe, the Soviet Union is deploying nuclear missiles of sufficient accuracy to threaten land-based nuclear weapons in Europe. The Western Alliance should proceed with its plans to modernize its theater nuclear arsenal; at the same time, we should keep open the possibility of negotiations with the Soviet Union to limit theater nuclear forces.

The Anderson Administration will support efforts to negotiate a ban on the development, testing, and deployment of anti-satellite warfare systems. Until, however, the Soviet Union shows a willingness to enter serious negotiations in this area, we should continue research on an anti-satellite capability.

We favor conclusion of a short-term comprehensive Nuclear Test Ban Treaty among the United States, the Soviet Union, and the United Kingdom, with frequent review pending inclusion of all nuclear weapons states.

The United States should continue to seek agreements in such key areas as peaceful nuclear explosions, chemical warfare, and conventional arms transfer restraint.

Conclusion

We cannot help keep the peace, nor retain the confidence of our friends or the respect of our adversaries, if our military strength declines. We must do what is required to sustain the credibility of our nuclear forces, to rebuild our conventional forces, and to retain the services of our most capable military personnel. These actions must be pursued consistently and with common sense.

Our aim must be the wiser use of defense moneys to achieve for ourselves and our posterity a peaceful future, confident in America's ability to maintain a defense policy that will insure its security in the years ahead.

VI. HOW AN INDEPENDENT CAN GOVERN

We have set forth a comprehensive program for America. But this is not enough. The American people want new ideas, but they also want effective government. The novel possibility of an Independent administration raises important questions about governing this nation—questions to which the American people deserve answers.

We believe that at this critical juncture, America needs an Independent President, and we believe that such a President can work successfully with a Congress organized along party lines to govern this nation.

We now need an Independent President, for two reasons:

The major parties have proved unequal to the task of formulating a realistic post-New Deal public philosophy. The Democratic Party is committed to extending the New Deal without providing the means to pay for it. The Republican Party has been captured by forces that offer a curious combination of consumption-oriented economics and pre-New Deal social policies. The Anderson-Lucey National Unity Campaign is based on a centrist philosophy that ties its program of social policies to those measures needed to rebuild the economic base upon which they can rest.

The traditional parties were reasonably effective mechanisms for distributing the the dividends of economic growth. But during a period in which the central task of government is to allocate burdens and orchestrate sacrifice, these parties have proved incapable of making the necessary hard

choices. We are prepared to tell the American people what we must do, and allocate the burdens in a manner sensitive to both economic efficiency and social equity.

Most of the key issues confronting the country now cross traditional party divisions. In the sphere of foreign and defense policy, the overwhelming majority believes that our military preparedness must be increased, that our long-standing alliances with Europe and Japan must be rebuilt, and that our manufactured goods must be free to compete on a fair basis in major world markets. In the domestic sphere, we agree that we must reindustrialize our economy, rebuild our cities, reduce unemployment, inflation, and energy consumption, safeguard our environment, and extend the full protection of civil rights to all who reside within our borders. Conversely, the issues that most passionately divide us—the controversy between capitalism and corporatism, and social issues such as ERA, abortion, and affirmative action, are debated within rather than between political parties.

The Anderson National Unity Campaign builds on this agreement. It transcends the irrelevant quarrels between an old liberalism and an even older conservatism, and it offers effective, coordinated means to achieve goals that enjoy overwhelming public support.

We believe, further, that an Independent President can be effective. We must, of course, acknowledge that the context within which presidents must act has become more complicated and restrictive during the past two decades. Sober observers have pointed to the decentralization of Congress, the fragmentation of political parties, the risk of single-issue constituencies, and the atomization of the electorate as major elements of this new situation. But we contend that in 1980 an Independent Anderson Administration can deal with it more effectively than can a major party administration.

We have four reasons for this contention.

An Anderson victory—in the teeth of the enormous institutional bias against independents—would be a dramatic signal to Congress that the nation wants and expects action, based on the new consensus the campaign has articulated.

Unlike other post-war independent candidacies, the Anderson campaign represents neither a region nor a dissident fringe, but rather a coalition of the center—the traditional basis for governing the American polity.

In the absence of Congressional cohesion and party discipline, the President's effectiveness rests largely on his ability to persuade significant numbers of legislators that his proposals are sensible and fair. John Anderson and Patrick Lucey are superbly equipped to do this. Mr. Anderson has spent two decades acquiring a working knowledge of the issues, from a national perspective. He is intimately acquainted with the intricate process by which ideas are translated into proposals, proposals into laws, and laws into deeds. And he knows the individuals who make the laws—their concerns, their language, their sensibilities. As President, Anderson would have the potential to work as effectively with the Congress as any post-war chief executive. Mr. Lucey has served as an effective Governor of a major state which contains virtually all the problems of industry, commerce, and agriculture that are found elsewhere in the United States.

Congress will work productively with any President who enjoyed the trust and confidence of the American people. A key determinant of this in modern politics is the President's ability to communicate with them, face-to-face and through the media. This ability does not depend upon the party application of the President, but upon the ability of the President to advocate and persuade.

We believe with Alexander Hamilton that:

. . . the true test of a good government is its aptitude and tendency to produce a good administration.

A good administration, in turn, has two requisites: good personnel, and prudent use of them.

As President, an Anderson Administration will strive to appoint talented individuals, without regard to party affiliation. They will be drawn from a broad range of backgrounds—government, business, labor, academia. Ideally, each will blend general intellectual or theoretical competence and practical experience—both in Washington and elsewhere.

The Administration will attach great weight to judicial appointments on every level. It will strive to ensure that only wise and experienced individuals be nominated for these crucial offices without regard to partisan affiliation. We believe that the greatest asset of the judiciary is the trust—even reverence—accorded to it by the American people, and that in the years ahead this high regard can be maintained only if the judiciary is perceived as broadly representative of the spirit of the nation. Accordingly, we will intensify the quest for women and members of minority groups from whom judges and Supreme Court Justices can be appointed.

As to the appropriate use of individuals within the modern Presidency, two great statesmen and electoral antagonists have between them succinctly propounded the correct policy. Adlai Stevenson once stated that there are only three rules of sound administration: pick good people, tell them not to cut any corners, and back them to the limit. And Dwight Eisenhower, whose genius for governance becomes more evident with every passing year, once reflected on his tenure in office in the following terms:

The government of the United States has become too big, too complex, and too pervasive in its influence on all our lives for one individual to pretend to direct the details of its important and critical programming. Competent assistants are mandatory; without them the Executive Branch would bog down. To command the loyalties and dedication and best efforts of capable and outstanding individuals requires patience, understanding, a readiness to delegate, and an acceptance of responsibility for any honest errors—real or apparent—those subordinates might make.

We believe that the greatest administrative failure of the current administration is its failure to deal successfully with the Congress. At the heart of its failure lies its inability to engage in substantive, meaningful consultation. Such consultation has two components:

The involvement of relevant Congressional personnel in the drafting of legislative submissions; and

A constant two-way exchange on the progress of proposed legislation through the Congress.

An Anderson Administration will give relations with Congress the highest priority, assigning to this task experienced senior officials known to and trusted by the Members of Congress.

In general, an Anderson Administration will act on the principle that a strong Presidency rests on a strong Congress. It will respect the traditional prerogatives of the Congress and it will attempt to foster unity rather than foment discord within the Congressional ranks. At the same time, an Anderson Administration will protect and vigorously employ the powers of the Presidency. Our Constitution envisages a perennial mixture of contest and harmony among the different branches of our government, through which the liberties of the people will be preserved and the general welfare promoted.

Conception of the presidency

A successful Presidency rests on a clear conception of the Presidency. We believe that:

The President must be a problem-solver, whose every effort is directed toward the general welfare. The "general welfare" is not a rhetorical fiction, but rather a course of action that promotes individual well being while complying with the dictates of justice and fair play.

The President must be a policy-coordinator. Government fails unless its initiatives are mutually consistent, reflecting coherent priorities and a sense of direction. Standing at the apex of government, only the President is in a position to perform this task.

The President must give leadership to the Executive Branch. He should not recklessly attack federal personnel, most of whom are dedicated and hard working, but rather ensure that they receive clear signals to guide their endeavors.

A President cannot simply enunciate his preferences but must energetically follow through with determined efforts to translate them into policy. To this end, the President must avoid inflammatory public rhetoric while engaging in quiet persuasion and patient, persistent negotiation.

A President must tell the truth to the American people, even when it is unpalatable and unpopular. In current circumstances, only an individual prepared to be a one-term President, if necessary, can faithfully and conscientiously discharge his Constitutional responsibilities.

A President must exhibit constant resolve and steadfastness once he has made a decision and embarked on a course of action. He should not expect to please everyone; nor should he be deterred by criticism. And he should not attempt to govern the nation by public opinion polls, but should always act to further the long-term public good, as he sees that good.

The President must embody and express an appropriate historical perspective. He must strive to link significant public acts to the American political tradition, to give the Amercan people a sense of continuity with their basic values and a feeling of participation in a meaningful common enterprise.

It has become fashionable to point to the many constraints within which modern Presidents must operate. And some political leaders—including the present occupant of the Oval Office—have sought to lower our expectations of presidential performance and achievement.

We cannot deny the existence of constraints. But for the most part they are nothing new. They are built into the structure of the Constitution itself. In the past, great Presidents have used the many powers of their office to overcome these obstacles, to promote the common defense and general welfare.

We believe that it is still possible to do this, with bold, farsighted, independent leadership. We oelieve that the program we have set forth is the basis for such leadership, and that we can effectively direct the affairs of this nation in the 1980's.

The essence of presidential responsibility is to assert the general interest over narrow interests; to make difficult choices among worthy, but conflicting, objectives; to strike policy balances that are wise and fair enough to earn the support of Congress and the nation.

No president can forecast in all respects the precise course he will follow on all issues. But it is incumbent upon candidates who seek your vote to state their view of the country's needs and to identify those initiatives they expect to undertake.

This we have attempted to do. Many distinguished Americans have contributed to the studies and position papers upon which it is based, but it is our own sketch of the

priorities we believe should guide our country—not a mosaic of bargains among special interests or trade-offs among experts.

We seek a workable synthesis of policy and program, for the next administration must blend new ideas with old, innovative concepts with traditional values, proven approaches with tentative ones. In responding to the challenges we face, government must be frankly experimental in some fields, conventional in others. It must also be utterly ruthless in judging its performance and pruning its failures. These convictions will animate our administration.

We speak for a patriotism greater than party. And we invite patriots of all persuasions to join with us in shaping a government that can shape the future.

OLD DEFENDERS' DAY 1980

Mr. MATHIAS. Mr. President, Marylanders will celebrate Old Defenders' Day this September 12 to mark the 166th anniversary of the successful defense of Baltimore by its citizen-soldiers in the War of 1812.

If the British thought that Baltimore Harbor was worth fighting for in 1814, imagine what they would think today. The port is in the midst of a major economic rejuvenation that is crowned by the twin pavilions of Harborplace. Baltimore Harbor is more than just the major industrial center in the State of Maryland, however. It attracts more than just business investment. The new Baltimore celebrates the people of the city and with the construction of Harborplace draws them into the thick of this vibrant port.

The battles of North Point and Fort McHenry which began on September 12, 1814, were a turning point in the War of 1812. The rebuilding of the Port of Baltimore today signals an important turning point as well. Baltimore was once defended against attack from foreign invaders. Now it is being defended against decay and neglect. In both cases the people fought for it and the people will benefit.

PRIVILEGE OF THE FLOOR

Mr. TALMADGE. Mr. President, I ask unanimous consent that the following staff members of the Committee on Agriculture, Nutrition, and Forestry, and Tom Little of Senator HUDDLESTON's staff, be granted the privilege of the floor during consideration of the conference report on S. 1125: Henry Casso, Carl Rose, Phil Fraas, Bill Lesher, George Dunlop, and Burleigh Leonard.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL CROP INSURANCE ACT OF 1980—CONFERENCE REPORT

Mr. TALMADGE. Mr. President, I submit a report of the committee of conference on S. 1125 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistance legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 28, 1980.)

Mr. TALMADGE. S. 1125 provides the framework for a workable, nationwide program of disaster protection for farmers. I believe that the changes to the Senate bill made in conference strengthen the bill, and urge my colleagues to join me in approving the conference report.

I thank Senator HUDDLESTON for his hard work over the past 2 years on crop insurance legislation and for his leadership in managing S. 1125 in the Senate. I also commend Senator HELMS for his cooperation and assistance, as ranking minority member of the committee on Agriculture, Nutrition, and Forestry, in developing this important legislation, and Chairman FOLEY of the House Agriculture Committee for his outstanding service as chairman of the conference committee.

EXPANSION OF COVERAGE

Mr. President, the existing disaster protection programs do not adequately meet the needs of U.S. farmers. The protection they are supposed to provide often is insufficient or nonexistent to meet emergencies when and where they arise. The present Federal crop insurance program is now available in only about half the Nation's counties and on only 26 crops. In Georgia, only 61 of the State's 159 counties are included in the existing crop insurance program.

It makes no sense to me—and it makes no sense to farmers affected—that this insurance protection is available to some and not to others, even when they may be neighbors operating farms side-by-side divided only by a county line.

S. 1125 responds to the needs of U.S. farmers by authorizing the extension of the present limited Federal crop insurance program to all counties and all crops.

GREATER PROTECTION

In addition, S. 1125 will reduce the cost of crop insurance to farmers and permit them to obtain insurance to cover almost all production costs. Under the bill, a farmer would be able to obtain coverage based on the projected market price of the commodity involved.

To reduce the cost of Federal crop insurance so that farmers will be able to afford full coverage, the Federal Crop Insurance Corporation would pay 30 percent of each participating farmer's premium on that portion of the policy insuring 65 percent of normal yield.

CONCLUSION

Mr. President, I set as a priority for the Committee on Agriculture, Nutrition, and Forestry this year the development of a bill to improve the Federal disaster protection program for farmers. Through the efforts of Senator HUDDLESTON, Senator HELMS, and many others, the Senate has for consideration today a strong bill that meets this objective. S. 1125 will greatly benefit U.S. farmers, and I urge its approval by the Senate.

Mr. President, I yield the floor at this time to my distinguished ranking minority member, the Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Chair, and, of course, I thank my able colleague, the distinguished chairman of the Agriculture Committee, Mr. TALMADGE.

Mr. President, were it not for the efforts of the House and Senate conferees I would feel obliged to oppose this Federal crop insurance legislation.

I voted against the crop insurance bill approved by the Senate on September 10, 1979, because of its excessive cost and because it would deal a mortal blow to private hail and fire insurers and the agents who serve them.

I explained in the minority views published with the committee report to S. 1125 the conditions under which I would be able to support the legislation:

First, the premium subsidy would have to be limited to the first 50 percent of yield coverage.

Second, FCIC would have to offer an all-risk policy without hail and fire coverage, with premium costs adjusted accordingly and the same premium subsidy applicable to such policy, so as to give the farmer the opportunity to obtain hail and fire coverage from the private sector if he so desired.

Third, disaster payments would be available only in those counties where Federal crop insurance is not offered.

Fourth, the private insurance agent or broker who places all-risk crop insurance with FCIC would have the right to renew and service that policy.

Fifth, the private insurance agent would have to be indemnified for loss suffered as a result of acts or omissions of FCIC in issuing, billing, and renewing policies.

In conference, virtually all of my conditions were met. It was agreed that a 30-percent premium subsidy, rather than the Senate's 20- to 40-percent subsidy range, would be applicable on the first 65 percent of the farmer's yield, rather than the Senate's 75-percent coverage level.

The conferees accepted an arrangement, which I had advocated, to allow farmers the option of substituting private hail and fire insurance for the hail and fire coverage provided in the Federal all-risk policy. To make the option meaningful FCIC will provide the farmer with a premium credit on the Federal all-risk policy that reflects the costs of the excluded hail and fire coverage.

The conferees decided that a producer shall not be eligible to receive a premium subsidy on his Federal crop insurance policy if he elects to make his acreage eligible for disaster payments. The farmer can still purchase Federal crop insurance; however, he will have to do so without the benefit of the additional premium subsidy.

Finally, the conferees accepted provisions that give private agents and brokers renewal and servicing rights on Federal all-risk policies that they place. The agents will also be indemnified for loss suffered as a result of FCIC's acts or omissions.

By making these significant modifications of the Senate crop insurance bill, the conferees have paved the way for replacing an inequitable and much-abused disaster payments program with a nationwide, shared-cost, all-risk crop insurance program that should cost the American taxpayers far less than the current disaster payments. And the conferees have done so without exposing the private hail and fire crop insurance industry to an undue displacement of its business.

In fact, S. 1125 will open up new opportunities to private insurers by providing a reinsurance plan that will permit the private sector to offer its own all-risk crop insurance policy. If the private sector can live up to its claim that it can do a better job of extending coverage to farmers, the need for Federal Government involvement in the crop insurance business may vanish altogether.

I believe that this legislation creates the kind of environment in which private industry and the Federal Government can work together in a partnership to provide the farmers of this Nation with protection from natural disasters at a reasonable cost to both producers and taxpayers. I urge my colleagues to approve the conference report on S. 1125.

Before I yield the floor, I wish to ask the able Senator from Georgia (Mr. TALMADGE) one question.

Section 104 of S. 1125 requires that FCIC reimburse private insurance companies for the administrative and program expenses incurred by them "under terms and provisions and rates of compensation consistent with those generally prevailing in the insurance industry."

Later, in the same section, reference is made to the fact that licensed private insurance agents and brokers "shall be reasonably compensated" for their successful efforts to sell Federal all-risk crop insurance policies.

I interpret the words "shall be reasonably compensated" to mean that private insurance agents and brokers are to be compensated for their services according to terms and provisions and rates of compensation generally prevailing in the insurance industry for similar services. Such an interpretation tracks the language in section 104 regarding the compensation of insurance companies. It also reflects the congressional intent to provide the same basis for computing the compensation of both private insurance companies and private insurance agents and brokers.

So my question is this: Does the Senator from Georgia accept this interpretation as accurately reflecting his understanding of the intent of the agent compensation provisions of section 104?

Mr. TALMADGE. The answer is yes.

Mr. HELMS. I thank the Senator.

I yield the floor.

Mr. HUDDLESTON. Mr. President, S. 1125 substantially revises the Federal crop insurance program for farmers and provides for expansion of the program to all crops and all farmers.

It is vital that this legislation be enacted. Farmers must be provided with a sound program of disaster protection that is equitable and responsive to their legitimate needs. And the American taxpayer must be assured that Federal expenditures for disaster assistance are used wisely and without waste.

EXPANSION AND IMPROVEMENT OF THE CROP INSURANCE PROGRAM

For the past 41 years, the Federal Government has offered an all-risk crop insurance program through the Federal Crop Insurance Corporation. The Corporation has operated the program on an actuarially sound basis and it has been an extremely cost-effective Government service in the counties in which it has operated. However, the program has operated only in a limited number of counties and has been available only for a limited number of commodities.

S. 1125, as agreed to by the conference committee, will amend the Federal Crop Insurance Act to expand the Federal crop insurance program. S. 1125 will remove the limits under existing law on the growth of the program and provide funding authority to permit rapid expansion of the program throughout the Nation. Secretary of Agriculture Bob Bergland, in a letter to me dated September 5, 1980, estimates that, with enactment of S. 1125, the Federal Crop Insurance Corporation will, by 1985, be able to offer comprehensive crop insurance coverage for virtually all acreage in the United States devoted to major crop.

The Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, which I chair, has responsibility for oversight of Federal crop insurance. The subcommittee will be following closely the course of the Department of Agriculture's implementation of S. 1125 and act as necessary to assure that there are no unnecessary delays in the schedule for expanding the program and that integrity within the Federal Crop Insurance Corporation is preserved. The subcommittee will hold hearings in the near future to receive testimony from the Department of Agriculture on its actions to improve the management of the Federal Crop Insurance Corporation and on its plans to implement the crop insurance reforms under S. 1125.

S. 1125 will assure that Federal crop insurance is affordable to all farmers. It will require that the Federal Government pay 30 percent of the cost of crop insurance under the act for that portion of each policy covering 65 percent of normal yield. S. 1125 will also provide farmers the opportunity to obtain coverage on an additional 10 percent of yield, thereby bringing allowable coverage up to 75 percent of their normal crop yields.

ROLE OF PRIVATE INSURANCE

The bill contains several provisions designed to encourage the private insurance industry to participate in the expanded crop insurance program.

Private insurance companies, as a rule, now write only specific risk crop insurance covering hail, fire, and lightning risks. Numerous attempts by private industry to write all-risk policies have failed.

Federal reinsurance—to cover the risk of catastrophic losses such as those that arise from large-scale droughts, floods, or freezes—is necessary if private industry is to succeed in entering the all-risk field.

The Federal Crop Insurance Act now authorizes the Federal Government to provide reinsurance but the act has a 20-county limit on the reinsurance program.

The private industry, although expressing interest in all-risk crop insurance, has been reluctant to commit resources to an experimental effort that would be at best a pilot project in terms of magnitude, and that does not provide a sufficient base for dispersion of risk to build a sound reinsurance program.

The Federal all-risk crop insurance program cannot expect to have maximum participation by farmers unless private industry commits its resources and delivery system to all-risk insurance.

S. 1125 addresses this need by repealing the 20-county limit on the reinsurance program and providing that the Federal subsidy of Federal crop insurance premiums will also apply to crop insurance policies written by private companies if the policies are reinsured by the Federal Crop Insurance Corporation. Also, the conference bill requires the Corporation to implement a pilot reinsurance program beginning in 1982.

These steps will provide the impetus for the development of a private-Federal partnership in providing all-risk insurance to U.S. farmers.

S. 1125 also amends the act to require the Federal Crop Insurance Corporation, to the maximum extent feasible, to use private companies in administering the program. This will enable the Corporation to use the delivery system of private industry to market and service Federal all-risk crop insurance on a commission on contract basis. Private industry can bring a wealth of expertise and well-trained personnel to the expanded, nationwide crop insurance program.

There are some 25,000 to 30,000 private crop insurance agents across the Nation who could sell and service crop insurance. The Federal Crop Insurance Corporation should use this valuable resource pool in implementing the crop insurance program under S. 1125, rather than establishing a massive new Federal bureaucracy.

In addition, S. 1125 amends the Federal Crop Insurance Act to permit farmers to obtain coverage against hail and fire risks from non-Federal insurers and purchase Federal crop insurance to cover other risks. This provision is designed to assure that the expanded all-risk crop insurance program under S. 1125 will complement, but not unfairly compete with, the well-established hail and fire insurance industry.

With these provisions in S. 1125, the bill enjoys the support of most of the insurance industry, as well as the support of farm groups and the Department of Agriculture.

DISASTER PAYMENTS

S. 1125 includes provisions to extend through 1981 the disaster payments programs for producers of wheat, feed grains, upland cotton, and rice.

Although the disaster payments programs have helped thousands of farmers hard hit by natural disasters during the last 6 years, the programs have been

criticized for being expensive, limited to just six crops, and inequitable in their application.

Under existing law, the disaster payments programs will expire when the 1980 crops are harvested, and the administration is strongly opposed to extension of the programs beyond the time it takes to implement crop insurance reform.

By extending the disaster payments program for 1 additional year, S. 1125 will assure that producers of the disaster payments commodities are not left without disaster protection during the period needed by the Federal Crop Insurance Corporation to develop the crop insurance program under S. 1125. Once in place, the crop insurance program should provide to these farmers a strong alternative to disaster payments.

S. 1125 PROVIDES NEEDED PROTECTION

Mr. President, agriculture is one of this Nation's most valuable resources. We have an efficient system for producing food and fiber unparalleled in the world. Nonetheless, for the thousands of family farmers who make up U.S. agriculture, it remains one of the highest risk undertakings in our economy. Historically, 1 out of every 12 acres planted is not harvested because of adverse weather or other natural disasters.

This year, farmers in many areas of the Nation have suffered from destructive hot weather and drought. In some localities, farmers are experiencing their third or fourth straight year of drought conditions. Many may go out of business.

Our farmers need disaster protection. They do not want or need a Federal handout, but they need some type of assistance to help them cope with the uncertainties of weather and other natural conditions and they are willing to pay their fair share to get it.

This need can best be met through a comprehensive Federal crop insurance program under which farmers can protect their capital investments in food and fiber production. S. 1125, as agreed to by the conference committee, provides such an insurance program. I urge my colleagues to approve the conference report on S. 1125.

Mr. President, I ask unanimous consent that a summary of the major provisions of S. 1125, as agreed to by the conferees, and Secretary of Agriculture Bergland's letter to me, dated September 5, 1980, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE MAJOR PROVISIONS OF S. 1125, AS AGREED TO BY THE CONFERENCE COMMITTEE

The Federal Crop Insurance Act of 1980, as agreed to by the conference committee, would establish an expanded and comprehensive crop insurance program for farmers. The conference bill would remove limits to the expansion of the Federal crop insurance program, authorize additional funding for the program, encourage private industry participation in the program, provide partial Federal payment of premiums for crop insurance policies, and extend the disaster payments program under the Agricultural Act of 1949.

Specifically, the major provisions of the conference bill would—

(1) Increase the authorized capital stock of the Federal Crop Insurance Corporation from $200 million to $500 million;

(2) Cancel all capital stock of the Corporation outstanding on the date of enactment of the bill;

(3) Increase the membership of the Board of Directors of the Corporation from 5 to 7 and change its composition so that it would include—

(a) the manager of the Corporation,

(b) the under secretary or assistant secretary of agriculture responsible for the Federal crop insurance program,

(c) the under secretary or assistant secretary of agriculture responsible for the farm credit programs of the Department of Agriculture,

(d) one person, not in Government service, who is experienced in the crop insurance business, and

(e) three active farmers who are Federal crop insurance policyholders;

(4) With respect to administration of the crop insurance program, require the Corporation, to the maximum extent possible, to—

(a) contract with private insurance companies. Private insurance companies would be reimbursed for administrative and program expenses incurred by them under terms and conditions and rates of compensation consistent with those generally prevailing in the industry; and

(b) encourage the sale of Federal crop insurance through licensed private insurance agents and brokers (and give insured farmers the right to renew insurance for successive terms through such agents and brokers). Agents and brokers would be reasonably compensated, from premiums, for sales and renewals of Federal crop insurance, recognizing their function to provide continuing service while the insurance is in effect. However, compensation for agents and brokers would not be included in computations establishing premium rates;

(5) Require the Corporation to provide reasonable indemnification to private insurance agents and brokers for errors or omissions of the Corporation or its contractors for which the agent or broker is held liable (except to the extent the agent or broker caused the error or omission);

(6) Effective with the 1981 crops—

(a) remove the 150-county and 3-commodity annual limits to expansion of the Federal crop insurance program, and

(b) remove the 20-county limit on the program to provide Federal reinsurance to private crop insurers;

(7) Provide, with respect to coverage to be made available under the Federal crop insurance program, as follows:

(a) Insurance would be made available to a farmer on his crop for 75 percent of normal yield;

(b) lower levels of yield coverage would also be made available, including coverage at 50 percent of normal yield; and

(c) price coverage would be made available, per unit of production, that approximates (but is not less than 90 percent of) the projected market price;

(8) Require the Corporation, to the maximum extent possible, to provide reinsurance to private insurance companies and government entities that provide crop insurance to farmers under plans acceptable to the Corporation, and make available a test program of reinsurance to begin not later than with the 1982 crops. The Corporation would pay operating and administrative costs to insurers of policies that are reinsured to the same extent that such costs on the Corporations' policies of insurance are covered by the Corporation;

(9) Provide that a producer may have deleted from his Federal crop insurance policy coverage against hail and fire risks if he obtains equivalent hail and fire coverage from nonfederal insurers. For any producer who makes this election, his Federal crop insurance premium would be reduced by 40 percent of the prevailing average insurance premium charged in the country by nonfederal insurers for equivalent coverage on hail and fire risks; but the amount derived using formula could not be less than 15 percent, nor more than 30 percent, of the Federal crop insurance premium, nor could the reduction in the cost of the premium exceed the actual cost to the producer of the substitute coverage;

(10) In order to encourage the broadest participation in the Federal crop insurance program, require the Federal Government to pay 30 percent of the cost of crop insurance premiums covering 65 percent (or less) of yield. The Federal payment would apply both to (a) premiums on direct Federal crop insurance and (b) in order to provide equity among producers purchasing crop insurance, premiums on nonfederal crop insurance reinsured by the Federal Government;

(11) Authorize the Corporation to offer Federal crop insurance and provide for reinsurance in Puerto Rico and other commonwealths and territories of the United States;

(12) Authorize the Corporation to offer specific risk protection programs for risks not covered by private insurance;

(13) Delete the $12 million limit on annual appropriations to cover the Corporation's operating and administrative costs;

(14) Authorize annual appropriations to the Corporation to cover agents' commissions, Federal premium payments, direct costs of crop inspections and loss adjustments, and interest on Treasury notes;

(15) Authorize the Corporation to obtain emergency funding whenever moneys available to the Corporation are insufficient to cover claims for loss indemnification, as follows:

(a) The Secretary of Agriculture could use the funds of the Commodity Credit Corporation whenever the Board of Directors of the Federal Crop Insurance Corporation requests such use of funds (the Secretary's authority to use Commodity Credit Corporation funds would expire 1 year after the date on which the authority is first used); and

(b) The Corporation could borrow from the U.S. Treasury to the extent provided in advance in appropriation acts; and

(16) Make applicable to the 1981 crops the farm disaster payment and prevented planting disaster payment provisions for wheat, feed grains, upland cotton, and rice of the Agricultural Act of 1949. In 1981, a producer of any of these commodities would have the option of choosing between such disaster payments or participating in the shared-cost crop insurance program provided in the bill (they would not be eligible for both).

DEPARTMENT OF AGRICULTURE,
Washington, D.C., September 5, 1980.

Hon. WALTER D. HUDDLESTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUDDLESTON: I am pleased to learn that the Senate will soon consider the conference report on S. 1125, a bill designed to strengthen and improve the Federal Crop Insurance Program. The Administration strongly supports this legislation. It would provide the basis for extending an actuarially sound insurance program to all significant crops, thus permitting subsidized crop insurance to become the primary form of Federal disaster protection for farmers. For the 1980 crop year, the Federal Crop Insurance Corporation (FCIC) extended $2.7 billion of insurance protection to farmers. By 1985, when expansion plans are expected to be largely achieved for major crops, FCIC's insurance coverage is expected to climb to $14.7 billion. At that point, virtually all acreage devoted to major crops would be insurable.

The current management of FCIC is very familiar with the new legislation as well as the operational aspects of the Corporation and I have no doubt that they will be able to administer the new program in a very effective manner. Acting Manager Everett Sharp has over forty years' experience with the Corporation.

Implementation of the expanded and improved crop insurance program would work to the benefit of farmers, the insurance industry and the taxpayer. I want to assure you that the USDA stands ready to fully and quickly implement this proposed new program.

We are confident that the new program will be a success and urge prompt consideration of the conference report for S. 1125.

Sincerely,

BOB BERGLAND,
Secretary.

Mr. TALMADGE. Mr. President, I urge adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. TALMADGE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HAY TRANSPORTATION DEREGULATION

Mr. TALMADGE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1625.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1625) entitled "An Act to amend the Act of December 20, 1944, as amended", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That the Act of December 20, 1944 (58 Stat. 836; 12 U.S.C. 1150), is amended by adding at the end thereof a new section 4 as follows:

"SEC. 4. Notwithstanding any other provision of law, no persons who have received or have owing to them, prior to the date of enactment of this section, payments at rates announced by the Secretary of Agriculture for self-hauling of hay or other roughages under the hay transportation assistance program shall be liable for, or be obligated to refund, any amount that is determined by the Secretary to be in excess of the payment computed in accordance with the maximum rate provided by section 8 of the Farmer-to-Consumer Direct Marketing Act of 1976: *Provided*, That the Secretary determines that such persons have otherwise complied with the terms and conditions of, and are otherwise entitled to payments under, the hay transportation assistance program.

Mr. TALMADGE. Mr. President, S. 1625 would provide relief to certain livestock producers who received drought emergency financial assistance in 1976 for transporting roughage from points beyond their normal trade area to the location of their livestock in a designated drought-stricken county. Because of a miscalculation on the part of the Department of Agriculture, the producers received payments at an announced rate that exceeded the payment rate authorized by statute.

However, the producers had no knowledge in 1976 that the rate announced by the Department exceeded the statutory maximum rate, and many contracts were executed based on the rate announced by the Department.

It is simply unfair to ask the producers to pay for the Government's mistake. Therefore, S. 1625 would cancel the debts of those producers who have not made the requested refund and provide reimbursement to those producers who have already refunded the overpayments.

The House amendment to S. 1625 is technical in nature, providing simply that any payments made under the bill will be made from funds appropriated, or otherwise available on the date of enactment, for disaster relief.

Mr. President, I move that the Senate concur in the House amendment.

Mr. HELMS. Mr. President, I agree with the distinguished Senator from Georgia and I endorse the legislation and I urge its adoption.

Mr. McGOVERN. Mr. President, I am pleased that Congress is taking final action today on a bill I introduced to allow the Department of Agriculture to honor the commitment it made in 1976 to livestock producers who participated in the hay transportation assistance program.

In the summer of 1976, it became apparent that livestock producers needed Federal assistance because of the impact of the drought on the various sources of livestock feed, such as hay and feed grains. For years, the Department of Agriculture had a program of providing subsidized livestock feed in such situations. However, in the summer of 1976, this program was not in operation, inasmuch as there were no longer stocks of surplus feed grains.

To fill this gap, the President exercised the broad authority given to him by Congress in section 305(a) of the Disaster Relief Act of 1974: "In any emergency, the President may provide assistance to save lives and protect property and public health and safety." He authorized the implementation of a hay transportation assistance program. The program was funded by the Federal Disaster Assistance Administration—now called the Federal Emergency Management Agency—and administered by the Department of Agriculture.

The purpose of the program was to provide livestock producers with financial assistance for transporting roughage purchased from points beyond their normal trade area to the location of their livestock in a designated drought-stricken county.

In implementing the program in 1976, the Secretary of Agriculture provided that assistance would be limited to specified amounts per ton.

The program was later revised in some respects, and on October 7, 1976, the program was further changed to include beet pulp as an eligible roughage.

With the approval of the Farmer-to-Consumer Direct Marketing Act of 1976 on October 8, 1976, increases were made in transportation assistance under the program to require the Secretary to pay 80 percent of the cost of transporting hay, not to exceed $50 per ton, from areas in which hay was in plentiful supply to areas where farmers or ranchers were located. Wherever farmers performed the transportation themselves, the Department calculated and paid a uniform rate of reimbursement expressed in cents per ton mile. The rate was established at 9.5 cents effective October 8, 1976.

After a few weeks of experience under the program using the 9.5 cents reimbursement rate, the Department found that the rate resulted in overpayments in virtually all cases involving self-transportation of roughage for distances of over 100 miles. Consequently, on December 1, 1976, the rate for self-hauling was adjusted from a flat rate of 9.5 cents per ton mile to a two-step rate of 9.5 cents for the first 100 miles and 6.5 cents per ton mile for the remainder of the trip. This rate change was to correct what was found to be excessive payments to farmers hauling long distances.

Upon the program's expiration, it was learned through an audit that farmers who had transported beet pulp pellets in their own conveyances had, under the flat rate, been paid in excess of 80 percent of the cost. This happened because of the condensed nature of the roughage and because the farmers used large capacity vehicles for hauling.

Approximately 40 producers who transported beet pulp in their own vehicles have been required by the Department to make partial refund of payments made under the program. Claims against other producers are pending.

In many cases, contracts were executed for the purchase of roughage in reliance on the level of assistance announced by the Secretary.

Since the participants had no knowledge that the published flat rate exceeded the legal maximum rate at the time the contracts were executed, it would be unfair and harsh to require these producers to make repayments.

S. 1625 provides relief by allowing payments to stand as made to those participants who transported roughage in their own conveyances and were paid on the basis of the announced flat rate that was in effect at the time. The debts of those who have not made the requested refund would be canceled, and reimbursement would be made to those producers who have already made a refund. Under the bill, the Secretary would retain authority to insure that the program participants who would be relieved by the bill have complied with all other requirements of the program.

The enactment of S. 1625 will be in keeping with other statutes that permit the Secretary of Agriculture to provide fair and equitable treatment to farmers who rely in good faith on erroneous advice or action of authorized representatives of the Secretary.

The House amendment to S. 1625 is of a technical nature and makes no substantive change. I urge my colleagues to concur in the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur.

The motion was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TALMADGE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOREN). Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 1½ hours and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, today I am making my 22d speech on a subject of the United States Senate. I will relinquish the floor at any time any Senator wishes to speak and I will be glad to also relinquish the floor to accomplish the transaction of any business. At the moment, there is none that is cleared, but it may be that some business may be cleared before the day is over. It is also possible that some business can be cleared for tomorrow and the remaining days of the week. But for now there is nothing but waiting to be done.

In the event I do yield the floor to another Senator or for the purpose of suggesting the absence of a quorum before completing my statement, Mr. President, I ask unanimous consent that my statement may not show an interruption in the RECORD and that it appear today just before the statement of the program for tomorrow and the motion to recess.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. ROBERT C. BYRD at this point on the United States Senate are printed later in the RECORD, by unanimous consent.)

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider the nomination of Barbara S. Thomas of New York to be a member of the Securities and Exchange Commission.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the purpose of the reservation is to provide an opportunity to advise the majority leader that the nomination of Barbara S. Thomas is cleared on our Executive Calendar and we have no objection to the consideration and confirmation.

The PRESIDING OFFICER. Without objection, it is so ordered. The nomination will be stated.

SECURITIES AND EXCHANGE COMMISSION

The legislative clerk read the nomination of Barbara S. Thomas, of New York, to be a member of the Securities and Exchange Commission.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President of the United States be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection it is so ordered.

SENATE CONCURRENT RESOLUTION 121—TO CORRECT THE ENROLLMENT OF S. 299

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAKER and myself, we send a concurrent resolution to the desk to make a technical correction in S. 299 and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

Senate concurrent resolution (S. Con. Res. 121) to correct the enrollment of S. 299.

The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made:

In section 608(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . ."

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INFANT FORMULA ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 999, S. 2490, the Infant Formula Act of 1980.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not, the reservation is for the purpose of advising the majority leader that Calendar Order No. 999 is cleared on our calendar, and we have no objection to its consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2490) to provide certain requirements for infant formula, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Infant Formula Act of 1980".

SEC. 2. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 411 the following new section:

"REQUIREMENTS FOR INFANT FORMULAS

"SEC. 412. (a)(1) An infant formula shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by this section:

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the quality control requirements prescribed by the Secretary under this section.

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients provided under subsection (g);

"(B) revise the required level for any such nutrients;

"(C) establish requirements for quality factors for such nutrients; and

"(D) establish the quality control procedures as the Secretary determines necessary to assure that an infant formula provides nutrients in accordance with this section and establish requirements respecting the retention of records of procedures required under this clause (including maintaining necessary nutrient testing records). Quality control procedures prescribed by the Secretary shall include the periodic testing of infant formula to determine whether such infant formula is in compliance with this section.

"(b)(1) On the 90th day after the date of the enactment of this section, and on each 90th day thereafter, a manufacturer of infant formula shall notify the Secretary that each infant formula manufactured by such manufacturer provide the nutrients required under subsection (g). Such notification requirement shall expire upon the effective date of regulations relating to quality control procedures prescribed by the Secretary under subsection (a)(2)(D).

"(2) Not later than the 90th day before the first processing of any infant formula for commercial or charitable distribution for human consumption, the manufacturer shall notify the Secretary whether—

"(A) such infant formula provides nutrients in accordance with this section and meets the quality factor requirements prescribed by the Secretary; and

"(B) the processing of such infant formula meets the quality control procedure requirements prescribed by the Secretary.

"(3) Before the first processing of any infant formula for commercial or charitable distribution for human consumption—

"(A) after a change in its formulation, or

"(B) after a change in its processing,

which the manufacturer reasonably determines may affect whether the formula is adulterated as determined under subsection (a)(1), the manufacturer shall notify the Secretary of such changes and that the formula provides nutrients in accordance with this section and meets the quality factor requirements prescribed by the Secretary and that the processing of such infant formula is in compliance with the quality control procedures prescribed by the Secretary.

"(c)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required under this section; or

"(B)(i) may be otherwise adulterated or misbranded, and

"(ii) If so adulterated or misbranded presents a risk to human health.

the manufacturer shall promptly notify the Secretary of such noncompliance of risk to health.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(d)(1) If a recall of an infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary may prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(e)(1) Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. No manufacturer shall be required under this subsection to retain any record respecting the distribution of an infant formula for a period of longer than 2 years from the date the record was made.

"(2) To the extent that the Secretary determines that records are not being made or maintained in accordance with paragraph (1), the Secretary may by regulation prescribe the records required to be made under paragraph (1) and requirements respecting the retention of such records under such paragraph. Such regulations shall take effect on such date as the Secretary prescribes but not sooner than the 180th day after the date such regulations are promulgated. Such regulations shall apply only with respect to distributions of infant formulas made after such effective date.

"(f)(1) Any infant formula which is represented and labeled for use by an infant—

"(A) who has an inborn error of metabolism or a low birth weight, or

"(B) who otherwise has an unusual medical or dietary problem,

is exempt from the requirements of subsections (a) and (b). The manufacturer of an infant formula exempt under this paragraph shall, in the case of the exempt formula, be required to provide the notice required by subsection (c)(1) only with respect to adulteration or misbranding described in subsection (c)(1)(B), and to comply with the regulations established by the Secretary under paragraph (2).

"(2) The Secretary may by regulation establish terms and conditions for the exemption of an infant formula from the requirements of subsections (a) and (b). An exemption of an infant formula under paragraph (1) may be withdrawn by the Secretary if such formula is not in compliance with applicable terms and conditions prescribed under this paragraph.

"(g) An infant formula shall contain the following nutrients and any other nutrient required by the Secretary by regulation under subsection (a)(2)(A):

"NUTRIENTS

"Nutrient	Minimum*	Maximum*
Protein (gm)	1.8†	4.5.
Fat:		
Gm	3.3	6.
Percent cal	30	54.
Essential fatty acids (linoleate):		
Percent cal	2.7	
Mg	300	
Vitamins:		
A(IU)	250 (75 μg)‡	750 (255 μg)‡
D(IU)	40	100.
K(μg)	4	
E(IU)	0.7 (with 0.7 IU/gm linoleic acid)	
C (ascorbic acid) (mg)	8	
B_1 (thiamine) (μg)	40	
B_2 (riboflavin) (μg)	60	
B_6 (pyridoxine) (μg)	35 (with 15 μg/gm of protein in formula).	
B_{12} (μg)	0.15	
Niacin (μg)	250	
Folic acid (μg)	4	
Pantothenic acid (μg)	300	
Biotin (μg)	1.5**	
Choline (mg)	7**	
Inositol (mg)	4**	
Minerals:		
Calcium (mg)	50††	
Phosphorus (mg)	25††	
Magnesium (mg)	6	
Iron (mg)	0.15	
Iodine (μg)	5	
Zinc (mg)	0.5	
Copper (μg)	50	
Manganese (μg)	5	
Sodium (mg)	20 (6 meq)‡‡	60 (17 meq).‡‡
Potassium (mg)	80 (14 meq)‡‡	200 (34 meq).‡‡
Chloride (mg)	55 (11 meq)‡‡	150 (29 meq).‡‡

*Stated per 100 kilocalorie.
†The source of protein shall be nutritionally equivalent to casein.
‡Retinol equivalents.
**Required to be included in this amount only in formulas which are not milk based.
††Calcium to phosphorus ratio must be no less than 1.1 nor more than 2.
‡‡Milliequivalent for 670 kcal/liter of formula.".

SEC. 3. Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 321) is amended by adding at the end the following:

"(aa) The term 'infant formula' means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.".

SEC. 4. Section 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)) is amended—

(1) in the first sentence, by inserting "(1)" before "For purposes" and by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(2) in the third sentence, by inserting "or by paragraph (3)" after "preceding sentence";

(3) in the sixth sentence, (A) by striking out "The provisions of the second sentence of this subsection" and inserting in lieu thereof the following:

"(2) The provisions of the second sentence of paragraph "(1)",

and (B) by redesignating paragraphs (1) through (4) as subparagraphs(A) through (D), respectively; and

(4) by adding at the end the following:

"(3) An officer or employee making an inspection under paragraph (1) for purposes of enforcing the requirements of section 412 applicable in infant formulas shall be permitted, at all reasonable times, to have access to and to copy and verify any records—

"(A) bearing on whether the infant formula manufactured or held in the facility inspected meets the requirements of section 412, or

"(B) required to be maintained under section 412.".

SEC. 5. (a) Section 301 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new paragraph:

"(s) The failure to provide the notice required by section 412(b) or 412(c), the failure to make the reports required by section 412(d)(1)(B), or the failure to meet the requirements prescribed under section 412(d)(2).".

(b) Section 301(e) of such Act is amended (1) by striking out "section 703" and inserting in lieu thereof "section 412 or 703", and (2) by striking out "section 505" and inserting in lieu thereof "section 412, 505".

(c) Section 301(j) of such Act is amended by inserting "412," before "505".

SEC. 6. Section 412 of the Federal Food, Drug, and Cosmetic Act (added by section 2) shall apply with respect to infant formulas manufactured on or after the 90th day after the date of the enactment of this Act.

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SEC. 7. (a) The Secretary of Health and Human Services shall conduct a study to determine the long-term effect on infants of hypochloremic metabolic alkalosis resulting from infant formulas deficient in chloride. The Secretary shall report the results of such study to the Congress.

(b) The Secretary of Health and Human Services shall conduct a review of existing Federal requirements for the labeling of infant formula to determine the effect of such requirements on infant nutrition and proper use of infant formula. Not later than the 180th day after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives containing the results of the review and including recommendations for any legislative or administrative action with respect to the labeling of infant formula as the Secretary determines appropriate.

(c) The Secretary of Health and Human Services shall conduct a review of issues concerning the export of infant formula that, if marketed in the United States, would be in violation of section 412 of the Federal Food, Drug, and Cosmetic Act. Not later than the 180th day after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, containing the results of the review and including recommendations regarding appropriate legislative or administrative action to improve current export policies, as the Secretary determines appropriate.

SEC. 8. (a) Section 503 of the Controlled Substances Act (21 U.S.C. 873) is amended by adding at the end the following new subsection:

"(c) The Attorney General shall annually (1) select the controlled substance (or controlled substances) contained in Schedule II which, in the Attorney General's discretion, is determined to have the highest rate of abuse, and (2) prepare and make available to regulatory, licensing, and law enforcement agencies of States descriptive and analytic reports on the actual distribution patterns in such States of each such controlled substance.".

(b) Section 203 of the Psychotropic Substances Act of 1978 (Public Law 95-633) is amended by striking out subsection (d).

(c) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) by striking out "except as provided in paragraphs (4) and (5) of this subsection" in the first sentence of subsection (b)(1)(B) and inserting in lieu thereof "except as provided in paragraphs (4), (5), and (6) of this subsection"; and

(2) by adding after paragraph (5) of subsection (b) the following new paragraph:

"(6) In the case of a violation of subsection (a) involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, and in addition, may be fined not more than $125,000. If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title, title III, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, and in addition, may be fined not more than $250,000.".

Mr. METZENBAUM. Mr. President, on March 27, I introduced S. 2490, the Infant Formula Act of 1980. That legislation, which is before the Senate today, has the cosponsorship of Senators BAUCUS, LEAHY, HUDDLESTON, MCGOVERN, WILLIAMS, SCHWEIKER, JAVITS, and KENNEDY.

This legislation came about in response to last year's recall of four infant formula products—three of them because they lacked an essential nutrient and the fourth because of poor processing. That recall, by the way, was less than fully effective—after 3 months, cans of defective infant formula were still for sale in several parts of the country, including my own State of Ohio.

S. 2490 sets minimum nutrient requirements for products labeled as "infant formula." The bill also directs the FDA to establish quality control procedures for the manufacture of infant formula, provides for full FDA access to testing and distribution records and requires the manufacturers to notify the FDA in case of adulteration or misbranding. In addition, the bill establishes guidelines for recall of adulterated misbranded products.

Mr. President, the Congress has been understandably reluctant to create any new Federal regulation. In this case, however, we have had a remarkable degree of cooperation between the Congress, consumer groups, the FDA, and particularly, the industry in producing what we believe is a fair and workable approach to a common problem.

Parents whose children suffered tragic consequences from consuming defective formula took the lead in bringing this situation to public attention. Their dedication and their undaunted efforts played a crucial role in moving this legislation.

The FDA has worked with us also in drafting regulatory provisions in the bill—provisions that are reasonable and workable.

Finally, I must commend the industry for its cooperation throughout this process. Rather than automatically opposing a regulation, the industry worked long and hard to help us draft legislation that will insure the safety of formula products without placing an undue burden on formula manufacturers.

This is the way legislation should be written—taking into account the legitimate concerns of all interested parties.

In all, the passage of this legislation took less than 1 year. I thank my colleagues on the Labor and Human Resources Committee, the chairman, Senator WILLIAMS, the ranking minority member, Senator SCHWEIKER, and all the bill's cosponsors for working together and swiftly for the passage of S. 2490. I also commend Congressmen AL GORE and RON MOTTL, who were instrumental in securing passage of companion legislation in the House.

Mr. President, this bill will protect our most precious resource—the children who are the Nation's future. I ask its option.

● Mr. BAUCUS. Mr. President, I am delighted that the Senate today is considering the Infant Formula Act of 1980. This legislation is urgently needed to insure the nutritional quality and safety of infant formula products.

I have long been concerned about the potential misuse of infant formula. The frightening and tragic events of last summer where over 130 infants suffered illness from consuming infant formula deficient in essential nutrients reinforced my conviction that Congress must take speedy, corrective action to assure the safety of our Nation's most valuable resource, young children. It was in response to these events and the documented inability of the Secretary of Health and Human Services to play an active role in monitoring infant formula products that I introduced S. 2490 with my distinguished colleague from Ohio, Senator METZENBAUM.

S. 2490 is a simple, forthright measure. It provides that infant formulas meet minimum nutritional standards, that manufacturers comply with premarket testing requirements, that procedures for effective recall of adulterated or deficient formulas be established, and that greater authority for the Secretary of Health and Human Services be provided to inspect manufacturer distribution records of infant formula products. The legislation also requires the Secretary to conduct a study on various aspects of infant formula labeling and its impact on consumers.

Mr. President, this legislation does not impose burdensome regulatory requirements. Further, the Congressional Budget Office has estimated that the provisions of S. 2490 will not result in significant additional expenditures to the Federal Government.

I would like to commend the Committee on Labor and Human Resources for their prompt and responsible consideration of this important measure. I want to thank especially Senator METZENBAUM for his effort and dedication in seeking a solution to insure the safety and nutritional quality of these life-sustaining products.●

● Mr. KENNEDY. Mr. President, as we move to consideration of S. 2490, The Infant Formula Act of 1980, I would like to add my congratulations to Senator METZENBAUM for his contribution to the resolution of this difficult issue.

When we first heard late last year that there was something seriously wrong with some infant formula products, all of us were surprised and saddened: Surprised to learn that such an error could have escaped detection for so long a period; saddened to know the anguish and doubt which the parents of these children must inevitably face. But through the hard work of my good friend and colleague, Senator METZENBAUM, we now have before us for consideration a bill which will assure that this sort of tragic error will never again take place. I understand that this bill has the full support of the industry, the administration, and the parents, and this broad ranging consensus on such a difficult issue gives clear testimony to the fairness of the provisions upon which we are to act.

The issue before us is the health of our children. I know from my travels throughout the country this past year

that there is no issue about which the American people care more deeply, or for which they are willing to make greater sacrifices. Now, it is important that we lend our full support to the passage of this bill . . . and its guarantee of nutritious and unadulterated infant formula for our children.●

● Mr. SCHWEIKER. Mr. President, I urge my colleagues to join me in supporting the Infant Formula Act of 1980.

Nothing is more critical to the health and early development of our children than proper infant nutrition. For millions of American babies, this means that the formula they receive as the sole or primary source of nutrition must contain adequate levels of all essential nutrients.

Confidence in the safety of infant formula was shaken last summer, when we discovered that two widely-used products had been reformulated and marketed without adequate testing. The products were seriously deficient in chloride. Lack of chloride can severely impair normal growth and development, causing a condition known as metabolic alkalosis. The infants fail to gain weight and develop normally. Long term effects of chloride deficiency during critical months of infant development are still unknown.

The Food and Drug Administration's standards for infant formula, in effect at the time this problem was discovered, were inadequate and out-of-date, in light of current knowledge of what is needed for good health. FDA standards did not insure the safety of the most important food many children will ever eat, and there were no testing or quality control requirements in place to make certain formula products were safe and nutritious.

At the Health and Scientific Research Subcommittee's hearings in June, we heard moving testimony from the parents of affected children. We heard about the tragic human consequences of inadequate testing, out-of-date FDA guidelines, and poorly implemented product recalls.

Before us today is a bill that will go far to correct these deficiencies by filling in the gaps in FDA's regulatory authority and placing minimum nutrient standards for infant formula into law. Although placing the standards in statute may seem unusual, I believe it is warranted in light of the delays we can usually expect from the regulatory process. We need to insure formula safety by having the standards in effect just as soon as possible, on enactment. The standards in the bill reflect current scientific consensus, as developed by the American Academy of Pediatrics.

The bill provides for future changes in nutrient level requirements as our knowledge of proper infant nutrition advances. Of particular concern to me is the amount of iodine found in infant formula, and I am pleased that the Labor and Human Resources Committee's report on the bill directed the Secretary of Health and Human Services to give high priority to the need to curtail excessive iodine consumption and establish an appropriate maximum for iodine when the nutrient standards for infant formula are updated.

This legislation is very similar to the bill that passed the House of Representatives overwhelmingly and has the very rare distinction—for a new regulatory bill—of having been endorsed by the infant formula industry as a worthwhile, necessary and appropriate piece of legislation. As ranking Republican member of the Labor and Human Resources Committee and its Subcommittee on Health and Scientific Research, and as a cosponsor of the Infant Formula Act, I want to commend Senator METZENBAUM, the infant formula industry, and my other colleagues on the committee for the admirable spirit of cooperation and sense of responsibility that have been exhibited throughout the development of this legislation. What we have is a workable response to a real problem, avoiding the pitfalls of regulatory over-kill while providing needed protection for our children.●

UP AMENDMENT NO. 1551

(Purpose: To make certain technical corrections)

Mr. METZENBAUM. Mr. President, I send to the desk a technical amendment to the committee amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 1551.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 11, line 24, strike out "by this section" and insert in lieu thereof "by subsection (g)".

On page 12, line 8, strike out "provided under" and insert in lieu thereof "in the table in".

On page 12, beginning on line 10, strike out "such nutrients" and insert in lieu thereof "nutrient required by subsection (g)".

On page 12, line 14, strike out "the quality" and insert in lieu thereof "such quality".

On page 12, beginning on line 22, strike out "testing of infant formula to determine whether such infant formula is" and insert in lieu thereof "testing of infant formulas to determine whether they are".

On page 13, line 14, strike out "this section" and insert in lieu thereof "subsection (g)".

On page 14, line 3, strike out "this section" and insert in lieu thereof "subsection (g)".

On page 14, line 13, strike out "under this section" and insert in lieu thereof "by subsection (g)".

On page 16, beginning on line 24, strike out "established" and insert in lieu thereof "prescribed".

On page 17, strike out lines 8 through 10 and the table following line 10 and insert in lieu thereof the following:

"(g) An infant formula shall contain nutrients in accordance with the table set out in this subsection or, if revised by the Secretary under subsection (a)(2), as so revised:

"NUTRIENTS

"Nutrient	Minimum*	Maximum*
Protein (gm)	1.8†	4.5.
Fat:		
Gm	3.3	6.
Percent cal	30	54.
Essential fatty acids (linoleate):		
Percent cal	2.7	
Mg	300	
Vitamins:		
A (IU)	250 (75 μg)‡	750 (275 μg).‡
D (IU)	40	100.
K (μg)	4	
E (IU)	0.7 (with 0.7 IU/gm linoleic acid)	
C (ascorbic acid) (mg)	8	
B_1 (thiamine) (μg)	40	
B_2 (riboflavin) (μg)	60	
B_6 (pyridoxine) (μg)	35 (with 15 μg/gm of protein in formula).	
B_{12} (μg)	0.15	
Niacin (μg)	250	
Vitamins—Continued		
Folic acid (μg)	4	
Pantothenic acid (μg)	300	
Biotin (μg)	1.5**	
Choline (mg)	7.0**	
Inositol (mg)	4.0**	
Minerals:		
Calcium (mg)	50.0††	
Phosphorus (mg)	25.0††	
Magnesium (mg)	6	
Iron (mg)	0.15	
Iodine (μg)	5	
Zinc (mg)	0.5	
Copper (μg)	60	
Manganese (μg)	5	
Sodium (mg)	20	60.
Potassium (mg)	80	200.
Chloride (mg)	55	150.

*Stated per 100 kilocalories.
†The source of protein shall be at least nutritionally equivalent to casein.
‡Retinol equivalents.

**Required to be included in this amount only in formulas which are not milk-based.
††Calcium to phosphorus ratio must be no less than 1.1 nor more than 2."

UMI

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The amendment (UP No. 1551) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be discharged from further consideration of H.R. 6940 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6940) to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that Act to assure the safety and nutrition of infant formulas, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that all language after the enacting clause be stricken and that the language of S. 2490, as amended, be substituted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 6940) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further consideration of S. 2490 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I thank the majority and minority leaders for their assistance.

Mr. ROBERT C. BYRD. The Senator is welcome.

RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate recess for 30 minutes.

There being no objection, the Senate, at 3:50 p.m., recessed for 30 minutes; whereupon, at 4:20 p.m. the Senate reassembled when called to order by the Presiding Officer (Mr. TSONGAS).

Mr. ROBERT C. BYRD. Mr. President, I yield to my distinguished friend (Mr. MATSUNAGA).

Mr. MATSUNAGA. I thank the distinguished leader for yielding.

RETIRING CONGRESSMAN ROBERT DRINAN SALUTED FOR HUMAN RIGHTS INITIATIVES

Mr. MATSUNAGA. Mr. President, retiring Representative ROBERT F. DRINAN was honored this morning by the Washington Committee for Soviet Jewry because of his many years of dedication to the cause of human rights.

Having served in the House with Father DRINAN for 6 years before my election to the Senate, I, too, wish to congratulate him upon the conclusion of 10 years of outstanding public service in the Congress. A Jesuit priest and the former dean of Boston College Law School, Congressman DRINAN has served as chairman of the Criminal Justice Subcommittee of the House Judiciary Committee. I particularly recall serving with him on the House Select Committee on Aging and working with him in the early 1970's to enact the War Powers Act. During his 10 years in Congress, he has been a highly effective advocate for human rights and his voice will be very much missed in the Congress. However, I am sure that not only the voice, but also the leadership of ROBERT F. DRINAN will be heard and heeded, wherever he may choose to be. I wish him well in his future endeavors.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination, which was referred to the Committee on Labor and Human Resources.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:07 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House insists upon its amendment to the bill (S. 2719) to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. REUSS, Mr. ASHLEY, Mr. ST GERMAIN, Mr. GONZALEZ, Mr. FAUNTROY, Mr. PATTERSON, Mr. AUCOIN, Mr. LUNDINE, Ms. OAKAR, Mr. VENTO, Mr. STANTON, Mr. WYLIE, Mr. MCKINNEY, Mr. EVANS of Delaware, and Mr. GREEN were appointed as managers of the conference on the part of the House.

The message also announced that the House has passed the bill (S. 586) to promote the full use of human resources in science and technology through a comprehensive program to maximize the potential contribution and advancement of women in scientific, professional, and technical careers and to authorize appropriations for activities for the National Science Foundation for fiscal years 1981 and 1982, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 5769. An act to reinstate and validate United States oil and gas leases numbered OCS-P-0218 and OCS-P-0226;

H.R. 6258. An act providing for reinstatement and validation of United States oil and gas leases numbered C-9496, C-9711, C-11600, C-11621, C-11622, C-11630, C-11631, C-11597, C-11599, C-13774, C-14197, C-17049, C-18262, C-26048, C-13532, C-11581, C-11585, C-11590, C-11591, and C-11595;

H.R. 7175. An act for the relief of the Woodstock Daily Sentinel;

H.R. 7203. An act to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such act for the education of health professions personnel, and for other purposes;

H.R. 8061. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes; and

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day".

At 5:10 p.m. a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981, in which it requests the concurrence of the Senate.

HOUSE MEASURES REFERRED

The following bills and joint resolution were read twice by their titles and referred as indicated:

H.R. 5769. An act to reinstate and validate United States oil and gas leases numbered OCS-P-0218 and OCS-P-0226; to the Committee on Energy and Natural Resources.

H.R. 6258. An Act providing for reinstatement and validation of United States oil and gas leases numbered C-9496, C-9711, C-11600, C-11621, C-11622, C-11630, C-11631, C-11597, C-11599, C-13774, C-14197, C-17049, C-18262, C-26048, C-13532, C-11581, C-11585, C-11591, and C-11595; to the Committee on Energy and Natural Resources.

H.R. 7175. An act for the relief of the Woodstock Daily Sentinel; to the Committee of the Judiciary.

H.R. 7203. An act to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such Act for the education of health professions personnel, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 8061. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes; to the Committee on Appropriations.

H.R. 7765. An act to provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for fiscal year 1981; to the Committee on the Budget.

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day"; to the Committee on the Judiciary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4578. A communication from the Deputy Assistant Secretary of Defense, reporting, for the information of the Senate, that the security classification brackets were inadvertently omitted from the Current Estimate column of items 9, 10, 11 and 12 of Format D, Schedule Section (page 4) on the TACTAS SAR for the quarter ending June 30, 1980; to the Committee on Armed Services.

EC-4579. A communication from the Chairman, U.S. Consumer Product Safety Commission, transmitting, pursuant to law, the FY 1982 budget estimates for the Consumer Product Safety Commission; to the Committee on Commerce, Science, and Transportation.

EC-4580. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Natural Gas Incremental Pricing: A Complex Program With Uncertain Results and Impacts," September 4, 1980; to the Committee on Energy and Natural Resources.

EC-4581. A communication from the Associate Director, Bureau of Land Management, Department of the Interior, reporting, pursuant to law, that the Bureau of Land Management proposes to sell 4,614.78 acres of public land in Millard County, Utah, to the Intermountain Power Agency for development of a generating plant; to the Committee on Energy and Natural Resources.

EC-4582. A communication from the Secretary of the Interior, transmitting, for the information of the Senate, a correction notice to the notice of leasing systems required by section 8(a)(8) (43 U.S.C. 1337(a)(8) of the Outer Continental Shelf Lands Act, as amended), transmitted on August 15, 1980; to the Committee on Energy and Natural Resources.

EC-4583. A communication from the Assistant Secretary for Administration, U.S. Department of Transportation, transmitting pursuant to law, reports for a new system of records; to the Committee on Governmental Affairs.

EC-4584. A communication from the Records Officer, United States Postal Service, transmitting, pursuant to law, proposals for two systems of records; to the Committee on Governmental Affairs.

EC-4585. A communication from the Secretary of Health and Human Services, reporting, for the information of the Senate, concerning a study of the issues associated with establishing a Federal system to locate individuals exposed to hazardous substances and to assist them in obtaining medical care; to the Committee on Labor and Human Resources.

EC-4586. A communication from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to extend authorizations of appropriations for programs under the Child Abuse Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and for other purposes; to the Committee on Labor and Human Resources.

EC-4587. A communication from the President of the United States, transmitting a proposed amendment to the request for appropriations for the fiscal year 1981 in the amount of $147,500,000 for the Department of Housing and Urban Development; to the Committee on Appropriations and the Committee on the Budget, jointly, pursuant to order of January 30, 1975.

REPORTS OF COMMITTEES SUBMITTED DURING THE RECESS

Under the authority of the order of September 4, 1980, the following reports of committees were submitted on September 5, 1980:

By Mr. JOHNSTON, from the Committee on Appropriations, with amendments:

H.R. 7590. An act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 96-927).

By Mr. RANDOLPH, from the Committee on Environment and Public Works:

S. Res. 515. An original resolution to waive section 402(a) of the Budget Act with respect to the consideration of H.R. 4084, authorizing funds for Fiscal Year 1981 for the Suisun Marsh, California. Referred to the Committee on the Budget.

By Mr. RANDOLPH, from the Committee on Environment and Public Works, without amendment, and (on behalf of Mr. Jackson) from the Committee on Energy and Natural Resources, with amendments:

H.R. 4084. An act to provide for a cooperative agreement between the Secretary of the Interior and the State of California to improve and manage the Suisun Marsh in California (Rept. No. 96-928).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS from the Committee on the Budget, without amendment:

S. Res. 504. Resolution to waive section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3027, authorizing funds for fiscal year 1981 for the Disaster Relief Act.

S. Res. 507. Resolution waiving 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3059.

S. Res. 511. Resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3074.

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, with an amendment:

H.R. 5625. An act authorizing the President of the United States to present a gold medal to the A. Philip Randolph Institute (Rept. No. 929).

GOLD MEDAL TO THE A. PHILIP RANDOLPH INSTITUTE

Mr. PROXMIRE. Mr. President, from the Committee on Banking, Housing and Urban Affairs, I report favorably a bill which would authorize the President to award a gold medal to the A. Philip Randolph Institute in recognition of Mr. Randolph's contributions to the American labor movement. For the purpose of designing and manufacturing the gold medal, the bill would authorize the sum of $20,000 to be appropriated. The legislation would also permit the manufacture of bronze duplicates for sale to the general public and would require the Treasury to attempt to recover the cost of the gold medal through the sale of these duplicates.

This proposal is reported by the committee with a technical amendment changing the fiscal year authorization in subsection (a) to 1982. This is consistent with the Congressional Budget Act.

By Mr. CHILES, from the Committee on Governmental Affairs, with an amendment and an amendment to the title:

S. 1411. A bill to improve the economy and efficiency of the Government and the private sector by improving Federal information management, and for other purposes (together with additional views) (Rept. No. 96-930).

By Mr. CHILES, from the Committee on Governmental Affairs, without amendment:

S. Res. 516. An original resolution waiving section 402(a) of the Congressional Budget Act with respect to the consideration of S. 1411. Referred to the Committee on the Budget.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BENTSEN:

S. 3095. A bill to amend the Internal Revenue Code of 1954 to encourage the revitalization of urban areas around the nation; to the Committee on Finance.

By Mr. NELSON:

S. 3096. A bill to amend the Wild and Scenic Rivers Act to authorize the acquisition of certain lands in Douglas County, Wisconsin; to the Committee on Energy and Natural Resources.

By Mr. NELSON (for himself and Mr. JACKSON):

S. 3097. A bill to establish an Office of Critical Materials; to the Committee on Governmental Affairs.

By Mr. HEFLIN:

S. 3098. A bill to amend the Internal Revenue Code of 1954 to provide an additional personal exemption for the taxpayer, the taxpayer's spouse, or a dependent, who has a disability requiring the use of a wheelchair; to the Committee on Finance.

By Mr. NELSON:

S. 3099. A bill to provide for the relief of the trustee of the bondholders of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin; to the Committee on the Judiciary.

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By Mr. MATHIAS:

S. 3100. A bill to authorize the President of the United States to present on behalf of Congress a specially struck gold medal to Jesse Owens; to the Committee on Banking, Housing, and Urban Affairs.

S. 3101. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to provide for the same cost-of-living adjustments in the basic compensation of officers and members of the United States Secret Service Uniformed Division as are given to Federal employees under the General Schedule; to the Committee on Governmental Affairs.

By Mr. PROXMIRE:

S. 3102. A bill to amend section 31 of the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENTSEN:

S. 3095. A bill to amend the Internal Revenue Code of 1954 to encourage the revitalization or urban areas around the Nation; to the Committee on Finance.

MODIFICATION OF THE REHABILITATION TAX CREDIT FOR COMMERCIAL AND INDUSTRIAL STRUCTURES

● Mr. BENTSEN. Mr. President, today I am introducing a bill to expand the existing 10 percent rehabilitation tax credit for commercial and industrial structures. Under present law, lessors are eligible for the rehabilitation tax credit if they lease the structure to private tenants. However, if the lessor improves the structures and then leases it to a State, local, or Federal governmental agency or a tax-exempt entity, the lessor is not eligible to claim the rehabilitation tax credit. This legislation would simply permit the lessor to claim this credit notwithstanding the identity of the lessee.

Mr. President, the tax cut bill recently approved by the Senate Finance Committee (H.R. 5829) includes my amendment to increase from 10 percent to 25 percent the present rehabilitation tax credit for industrial and commercial structures. Under present law, and under H.R. 5829, costs which qualify for the credit are depreciable rehabilitation costs incurred in connection with a building which has been in use for at least 20 years for the interior and exterior renovation, restoration, or reconstruction of the building.

The legislation that I am introducing today would supplement the decision of the Senate Finance Committee to increase the rehabilitation credit from 10 percent to 25 percent.

Mr. President, prompt enactment of the bill I am introducing today is needed for several reasons.

First, denial of the rehabilitation tax credit translates into higher rentals for governmental entities and tax-exempt organizations and may thus price them out of the inner city market where they should ideally locate to serve the needs of their constituents.

Second, governmental units and tax-exempt organizations have always been disproportionately high users of inner city properties because of their need to be in proximity to the public they serve.

Third, a commitment by governmental agencies or tax exempt organizations to locate and lease in inner city neighborhoods and renovated buildings has not only proven to be a catalyst for private investment but in many instances has broken the barrier of private sector resistance to locate and lease in such ne ghborhoods and buildings.

Fourth, relocation and leasing action by government agencies and tax exempt organizations has caused individual buildings, declining neighborhoods and central city areas to "turn around" through the infusion of private investment capital.

Fifth, to impede or restrict the stimulus of Federal, State, or local government agency and tax-exempt organization leasing and relocation to renovated buildings in these neighborhoods is clearly contrary to the objectives of the rehabilitation tax credit.

Mr. President, I urge the Senate to approve this legislation which would help revitalize some of the urban sections of all parts of this Nation.●

By Mr. NELSON:

S. 3096. A bill to amend the Wild and Scenic Rivers Act to authorize the acquisition of certain lands in Douglas County, Wis.; to the Committee on Energy and Natural Resources.

ACQUISITION OF CERTAIN LANDS IN DOUGLAS COUNTY, WIS.

● Mr. NELSON. Mr. President, I first introduced legislation to preserve the St. Croix River in northern Wisconsin 15 years ago, in 1965. Three years later, the Wild and Scenic Rivers Act was passed, setting up a national system to protect our freeflowing, pristine rivers. The act immediately designated eight qualified rivers. The St. Croix was the only river east of the Mississippi to be included in the original eight.

Today I am introducing a bill to protect an area of exceptional beauty and ecological importance to the Upper St. Croix, the Velie Estate. A companion bill was introduced in the House of Representatives last week by Congressman DAVE OBEY.

This bill adjusts the boundary of the St. Croix National Scenic Riverway to include the Velie Estate so that the land may eventually be acquired by the National Park Service. The timely passage of this bill will prevent this exquisite tract of land from being subdivided and lost forever.

THE RESOURCE

From its origin in Lake St. Croix to its junction with the Namekagon River, there is only one outstanding natural area bordering the St. Croix which combines all of the qualities and environmental values associated with national parks—virgin timber, scenic vistas overlooking the valley, bubbling springs, trout streams and lakes, and numerous nature trails. All of these resources are found in a single property—the 1,380-acre Velie Estate, about 7 miles southwest of the Gordon Dam in Wascott Township, Douglas County, Wis.

A LAST CHANCE TO SAVE THE ESTATE

Held intact and preserved for many years by the Velie family, this property is now owned by a real estate developer who sold off 600 acres of peripheral forest land to a paper company. The owners are now in the process of offering fragments of the remaining property for sale to individuals and corporation, thus excluding public use and protection.

Subdivision would not only jeopardize the quality of scenic, water source and wildlife values but it would also deprive noncanoeing recreational visitors an opportunity to visit and obtain a wild river experience. The real danger of septic tank pollution at the headwaters of the river system would be exacerbated.

NEED FOR LEGISLATION

The National Wild and Scenic Rivers Act of 1968 authorizes the National Park Service to acquire strips of land along the banks of the St. Croix to protect natural features from intrusions. However, it does not provide for the acquisition and protection of exceptional scenic and ecologically important watershed areas beyond the riverside strips.

This bill would adjust the boundaries of the riverway to include this area. Inclusion of the Velie Estates would accomplish two important purposes. First, it would assure the continued protection of its important aquifers, virgin timber, scenic values, and wildlife habitat for endangered and threatened species—bald eagles, osprey, timber wolves, moose, and whitetail deer.

Second, the Velie Estate is the only area on the upper St. Croix of National Park Service caliber which could provide a natural history center for the general recreational public. Two modest visitor information centers have been established for the riverway, at Trego and Grantsburg, but campgrounds, visitor use, or interpretive facilities are not available in the upper St. Croix—a region of intensive recreational usage. Furthermore, much of the river is not easily accessible except to canoeists.

NATURAL HISTORY INTERPRETIVE VISITOR CENTER

The Velie Estate combines all the qualities needed for complete public use and appreciation of the upper St. Croix scenic riverway system.

Its huge rustic log lodge would accommodate a natural history interpretive center.

Both walking and woodland driving trails lend themselves to guided or self-guided nature trails.

Scenic overlooks from the bluffs command an awe-inspiring appreciation of the whole Upper St. Croix River Valley which once carried melting glacial waters.

The importance of protecting clear and clean cold water sources is easily demonstrated at the numerous bubbling springs at the base of the bluffs.

Trout streams and cold lakes will be available to trout fishermen.

Campground facilities could accommodate many visitors.

Its hundreds of acres of virgin forest would present unique opportunities for scientific studies.

This 1,380-acre tract, if acquired by

the National Park Service, would offer northwestern Wisconsin's economy several major benefits without causing any noticeable problems:

First. In lieu, taxpayments by the Federal Government would be approximately equal to the property taxes paid by the private owners.

Second. As a major attraction to recreational visitors, the service businesses in Gordon, Wascott, and nearby recreational resorts would be substantially benefited.

In order to provide for inclusion of this unusually valuable property in the St. Croix National Scenic Riverway, I intend to offer this bill as an amendment to the omnibus park bill (S.).

Finally, I would like to point out that, in contrast with other similar situations, there is total local and statewide support for Park Service acquisition of this property. The local township where it is located (Wascott), the county board (Douglas), and the Wisconsin Natural Resources Board have all passed resolutions urging Park Service purchase.●

By Mr. NELSON (for himself and Mr. JACKSON):

S. 3097. A bill to establish an Office of Critical Materials; to the Committee on Governmental Affairs.

OFFICE OF CRITICAL MATERIALS

● Mr. NELSON. Mr. President, I am today offering, with Senator JACKSON, legislation designed to develop a national materials policy.

It is quite clear that we are on the brink of a crisis far more serious than the 1970's crisis created by the Arab oil embargo and the exorbitant price increases levied by the OPEC cartel.

This crisis will result from the shortages or unavailability of raw materials essential to domestic manufacturing and our national defense.

Six years ago, I introduced legislation to create a National Resource Information System to monitor, analyze, and forecast supplies of, and demand for important world resources, and the implications for the U.S. economy.

I said at that time, at the peak of the energy crisis, that "If we respond correctly to our new condition, and start planning immediately, perhaps we can anticipate and avert crises looming in other commodities."

Six years after I introduced that legislation, and with the weight of two Presidential commissions, three major Government reviews, and dozens of privately and publically commissioned studies, the lessons of the energy crisis have gone unheeded and legislation that would have established a mechanism to deal with our critical materials problems has been ignored.

When I introduced the legislation in 1974, information prepared by the National Commission on Materials Policy showed U.S. dependence on foreign sources for more than 50 percent of its supply of half a dozen basic materials, five of them minerals.

More recent information indicates we are importing more than half our needs in 20 critical materials, and our dependence on foreign sources continues to grow as our technology advances and our needs increase. In some cases, a handful of underdeveloped, politically unstable nations control virtually all of our supplies of certain minerals necessary to construction of military aircraft engines, manufacturing of lightweight steel, and the making of catalytic converters for pollution control. There is nothing to prevent these nations from forming a cartel to control prices and allocate supplies. Given the political situation in some of these producing countries, there is nothing to prevent a total disruption in supplies.

Yet, as a nation, we have no mechanism for dealing with such situations.

If, in 1950, there had been an adequate resource information system, then by 1955 we would have had five annual reports on fuel resources and we would have seen the need for a major energy research and development program. We would have had 15 years in which to develop alternative energy sources and refine our technology to make better use of available supplies. Had we had such a system, we would not have faced the energy crisis of the 1970's, which has been at the heart of our economic problems of the last several years.

In 1974 I urged that we heed the energy crisis as a "distant early warning signal" so that we may soften the impact of shortages impending in important materials. I believed then, and even more so now, that the energy crisis tells us that we must abandon our assumption that there will always be an abundance of materials needed by a complex industrial society to maintain a high standard of living.

We should have begun 30 years ago to start planning so that we could anticipate and cope crises looming in these other materials. We certainly should have begun 6 years ago, when the energy crisis was at its peak of visibility. We must begin now.

Information extracted from Metal Statistics, the 1979 edition using the latest complete figures, from 1978, shows very vividly our situation regarding imported metals.

We import 100 percent of our needs in columbium, mica, and strontium. Columbium, from Brazil, Thailand, and Canada, is used in the aerospace industry and for the manufacturing of superalloys and pipeline steels. Mica, from India, Brazil, and the Malagasy Republic, is used widely in the electrical and electronic industries, for making insulators and capacitors, and liners for steam boilers.

We import more than 90 percent of our needs in manganese, tantalum, cobalt, bauxite, chromium, and platinum group metals. While the United States is the worlds largest producer and user of aluminum, we import 93 percent of our aluminum ore—bauxite—from such countries as Jamaica, Surinam, and Australia. Tantalum, used for data processing equipment, telecommunications, and weaponry, comes from Thailand, Canada, Brazil, and Malaysia.

Cobalt, a material absolutely necessary to the production of jet engines for military aircraft, and for cutting and drilling tools so vital to the domestic and defense industries, is a prime example of the potential problems we face.

Well over half of world production of cobalt comes from two African nations, Zaire and Zambia, and most of that from Zaire. Adding in production by the Soviet Union and Cuba, these four nations produce three-quarters of the world's cobalt.

Almost 70 percent of our national needs of cobalt are imported either directly or indirectly from Zaire and Zambia and we import 97 percent of our needs. A disruption in supply by even one of these nations, let alone the possibility of a cartel, would deal a crippling blow to our defense industry.

In April 1978, African Metals Corp., the marketing agent for Zaire's cobalt in the United States, announced that metal orders would be handled on an allocation basis only. In May of that year, insurgents occupied the key town in the key cobalt producing Shaba province, disrupting production for 2 weeks. Even with resumed production, the allocation remains in effect today.

This uncertainty surrounding the world's prime supplier of just one critical mineral combined with the potential for a single nation to become a cartel, places America in a vulnerable position.

We cannot afford this vulnerability, this potential for America's defense industry or domestic manufacturing to be brought to its knees.

The idea of a cartel for nonfuel minerals is a distinct possibility. In the mid-1970's, Guinea, Australia, Guyana, Jamaica, and Surinam, the principal producers of bauxite, the aluminum ore, met to discuss such an arrangement. In 1978, Brazil, Gabon, Mexico, Morocco, Upper Volta, and Zaire, principal producers of manganese, met to discuss "pricing problems." We import 98 percent of this important material for steelmaking, machinery, and construction industries.

We import between 60 percent and 90 percent of asbestos, fluorine, tin, nickel, cadmium, zinc, potassium, and selenium, and half or more of our needs in mercury, gold, and tungsten. In some of these cases, our dominant suppliers are traditionally friendly nations such as Canada and Australia. In others, we have more cause for concern. We import 81 percent of our needs in tin, from Malaysia, Thailand, Bolivia, and Indonesia.

As serious as our potential problems are in 1980, we are looking at far more serious problems in the near future. Our own mineral needs are projected to double by the year 2000, and as our needs expand, so too will the needs of the rest of the world. Our major competitors, Japan, West Germany, Great Britain, and France, have historically engaged in a quest for materials not domestically produced by them, but such keen competition for materials is somewhat new to American industry and Government.

For most of our history, we have been accustomed to having a bulk of our materials needs satisfied by either domestic interests or friendly foreign sources. As before OPEC, Americans have held to the view that the world's resources are

not only limitless but that those resources are ours for the taking.

Our potential problems go far deeper even than supply disruption, and these problems are at least as serious. The economic consequences of raw materials pricing should be an immediate concern. Prices of raw materials have increased substantially across the board since 1973–74. Cobalt increased by 300 percent in 1 year. Molybdenum rose from $1.92 per pound in 1973 to $8 a pound in 1979, an increase of more than 400 percent.

We must deal with the relationship between materials and our overall industrial capacity. In a time of perceived tight supply and resultant escalating prices of materials, we have observed an adverse change in an already sagging industrial capacity. Some steel companies, for example, have made the business decision not to continue to maintain foundry facilities.

In a time when reindustrialization and revitalization of our economic base is essential to improving the health of our economy, industries are, instead, choosing to put their limited capital into activities that will not maintain either a vital industrial base or sustain industrial capacity.

In addition, small businesses, like independent foundries and those many subcontracting producers of parts and components using imported raw materials, face even more serious economic drains, and these smaller firms are a vital link in the industrial chain that we cannot afford to weaken or break.

Leading economists have classified this present economic recession as the "first-ever American supply-side" recession. The Council on Wage and Price Stability has cautioned that the answer to our present inflationary dilemma lies in increasing production and improving productivity. We must develop a better understanding of the consequences of our raw materials dependence is having on our industrial capacity, our production and productivity.

There is also cause for concern about the international side of our materials problem. Can the United States and the other free market nations provide the investment necessary to maintain, as well as explore and develop, vital mineral resources? The decade of the 1980's promises to be a decade in which capital will be far more scarce than it has been in the past.

At the same time, the costs of developing mineral sites are enormous. In the last year, several World Bank economists working on a United Nations study concluded that in order to keep pace with 1990 copper demands, the West must invest $46.5 billion to expand copper production.

Research and development of alternatives to materials even now in short supply is lagging for lack of investment dollars, as well as for lack of proper planning.

Foreign policy and defense implications of growing minerals dependence are numerous and obvious. While this Nation has been becoming more and more dependent on foreign sources for vital strategic materials, the Soviet Union appears to have been vigorously pursuing both sufficiency and stability in its supplies. Many analysts are rightfully concerned over the strategic security of vital mineral-producing regions and the stability of key mineral-rich countries. Are America's naval forces strong enough to maintain sea lanes required to supply our industry with imported materials? Can we afford to maintain a small tonnage of bulk merchant shipping to transport vital materials?

It is alarming enough just to look at leadtimes on aircraft part production—landing gear for military aircraft in 40 months, fuselages in 34 months, radar in 32 months, engines in 29 months, and batteries in 24 months.

Despite the many questions affecting our national security, there is serious question as to whether we have an effective national plan to deal with the abrupt cutoff of supplies on critical materials.

It is for these reasons that Senator JACKSON and I have introduced a critical materials bill that will create an Office of Critical Materials within the Office of the President to coordinate Government materials activities, to generate a much greater awareness both in the Government and among the general public of the importance of materials matters, to make recommendations to the President, the Congress and departments and agencies of the Federal Government, and to recommed a coordinated national materials policy.

Responsibility for materials policy at the Federal level is now split among more than 20 Government entities. This fragmentation creates duplication of information and reporting, thwarts attempts to develop a cohesive body of information, and inhibits development of a policy which recognizes our dangerous dependence and ways to alter or control it.

This Office would consist of a small group of professionals who will impose discipline, management and leadership on our present fragmented Government structure.

Through its annual reports to the President and the Congress, and through its close relationship with an advisory board composed of private sector industrialists, scientists, engineers, and businessmen, we would have the mechanism to begin a national dialog on the critical materials problem. Congress will have the opportunity and the information to conduct public hearings on the issues and the private sector will have information available to it to make the proper decisions for the future.

This legislation proposes that the Office of Critical Materials be initially empowered for only 3 years. The objective is simple. The Office must pursue its mission with urgency and pass on to us its recommendations as quickly as possible so that the United States may be in a position to deal with our raw materials problems actively and with foresight, rather than reactively and with hindsight. At the end of that 3-year term, during which annual reports will be made inventorying our raw materials supplies and needs and projecting demand and sources of supply, the Office will issue a recommendation as to how the Federal Government should best proceed.

So far we have ignored all the warning signs, we have ignored the projections of previous studies and commissions. So far, we have failed to deal with the impending crisis in raw materials just as we failed to deal with the potential problems of oil supplies.

It is time we recognize that the magic of our technology is dependent upon a finite supply of minerals and materials.

This legislation offers us the mechanism with which to design a rational materials policy.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S 3097

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "the Critical Materials Act of 1980".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the last decade has brought new and far-reaching developments in international critical materials matters, including the increased American dependence on critical materials sources outside of the United States;

(2) such dependence has resulted in a growing uncertainty over the availability of materials vital to American industry and strategic needs;

(3) the United States is not self-sufficient regarding these critical materials and is without any significant domestic source of some of these critical materials;

(4) the Nation's economy and defense rests on satisfying the resource needs of industry and small business;

(5) critical materials matters transcend many aspects of national public policy.

(6) the Federal Government's responsibility for critical materials matters is shared by more than 20 different departments, agencies, councils, and commissions with no single entity having authority and responsibility for coordinating or plannng overall Federal materials policy;

(7) the role small business plays as both a critical materials user and producer is frequently overlooked by the Government and the public; and

(8) a materials policy process which considers, as fully as possible, all of the relevant factors involved in the supply and allocation of critical materials is needed to coordinate the resource demands of defense and civilian endeavors.

(b) It is the purpose of this Act to establish an Office of Critical Materials in the Executive Office of the President in order to—

(1) vest the authority for coordinating critical materials actions, for identifying critical materials issues, for improving the materials policy process and advancing a national materials policy in one Government instrumentality;

(2) provide greater public exposure to the vital issues associated with critical materials and enhance public understanding of such matters; and

(3) insure greater interagency coordination on critical materials matters.

ESTABLISHMENT OF THE OFFICE OF CRITICAL MATERIALS

SEC. 3. There is hereby established an Office of Critical Materials (hereinafter referred

to as the "Office") within the Executive Office of the President of the United States.

RESPONSIBILITIES AND DUTIES

SEC. 4. (a) The Office's primary responsibilities include:

(1) coordinating Federal materials policies, programs, and decisions on behalf of the President and making substantive materials policy recommendations to individual departments, agencies and instrumentalities of the Federal Government including recommendations on improving the coordination of the Federal Government's activities on critical materials;

(2) promoting, among the general public and the Federal Government, an awareness of the extraordinary importance of critical materials to the national economic and defense interests; and

(3) providing, within 3 years after the date of enactment of this Act, a substantive recommendation as to how the Federal Government may best be organized to improve the materials policy process and advance a national materials policy.

(b) The Office's duties also include—

(1) examining the activities and policies of the Federal Government departments, agencies, and instrumentalities as well as those activities of private industry, by use of public and Government information and data as well as that secured through the cooperation of private industry and the Government, in order to make recommendations regarding present and future policies affecting critical materials and the materials policy process;

(2) issuing an annual report on domestic inventory of critical resources with projections on the prospective needs of government and industry for these resources; and including an annual forecast, prepared in conjunction with other government departments, agencies, and instrumentalities, of the prospective major critical materials problems which the United States is likely to confront in the immediate years and provide advice as to how these problems may best be addressed;

(3) monitoring and evaluating the critical materials needs of basic industry, including the critical materials needs of small businesses;

(4) initiating Government and private studies and analyses, including those to be conducted by or under the auspices of the office, which are designed to advance knowledge of critical materials issues and develop alternatives to resolve immediate and emerging national critical materials problems;

(5) gathering, analyzing, and evaluating authoritative information concerning significant developments and trends in critical materials matters affecting national economic and defense interests, in order to recommend that the Federal Government support particular public or private activities which promise to advance the Nation's interest in securing a continuing supply of critical materials needed for the economy and defense;

(6) cataloging, as fully as possible, research and development activities of the Government, private industry, and public and private institutions, and developing a cost estimate of research and development activities which the office determines are most likely to advance the Nation's interest in securing a continuing supply of critical materials needed for the economy and defense;

(7) recommending ways to maximize cooperation with other countries in order to advance critical materials knowledge through the free exchange of information;

(8) assisting upon request of other government departments, agencies, and instrumentalities in the development of United States foreign policy pertaining to mineral-rich countries and vital materials regions of the world and in the development of a program of materials needs in United States defense policy;

(9) advising the President and the Congress as to the extent to which various Government or private activities affect the Nation's interest in securing a continuing supply of critical materials needed for the economy and defense;

(10) issuing an annual report to the President and the Congress detailing the work of the office in the preceding year; and

(11) providing, on a periodic basis, information on the current activities of the office to pertinent congressional committees.

AUTHORITY

SEC. 5. The Office is authorized to—

(1) prescribe rules and regulations as may be necessary for its operation;

(2) enter into contracts and acquire property necessary for its operation to the extent or in such amounts as are provided in appropriation Acts;

(3) publish or arrange to publish critical materials information that it deems to be useful to the public and private industry if such publication is consistent with the national defense and economic interests; and

(4) request available information from private and public sources which the office considers necessary in the discharge of its duties if—

(A) the information requested of private sources does not create an undue burden or hardship on the source from whom the information is requested; or

(B) the public sources of whom a request is made are permitted by law to furnish the requested information.

THE DIRECTOR OF THE OFFICE OF CRITICAL MATERIALS

SEC. 6. (a) The President of the United States, within 30 days after enactment of this Act, with the advice and consent of the Senate shall appoint, for a term of three years, a Director of the Office who shall be responsible for the functioning of the Office.

(b) The Director shall have the authority to develop rules and regulations necessary to carry out the purposes of this Act and shall be compensated at a level not to exceed the pay level for Executive Level II established in section 5313 of title 5, United States Code.

(c) In the event of a vacancy in the position of the Director, the President shall be required to submit the name of a nominee to the Senate within 30 days after the date of the position is vacant.

RESPONSIBILITIES OF THE DIRECTOR

SEC. 7. The Director shall be responsible for—

(1) advising the President on critical materials matters and assisting the President in Federal critical materials policy planning and development;

(2) informing the President of critical materials developments that bear significantly on the national economy or defense;

(3) maintaining a broad review of, and sustaining an on-going evaluation of, critical materials problems and the national critical materials policy process;

(4) performing any related duties which the President may prescribe or which may result from this Act;

(5) appointing and fixing the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(6) obtaining the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(7) establishing an annual program agenda for the Office which shall be conducted in cooperation with other Federal Government departments, agencies, interagency task forces, and instrumentalities which possess expertise in the area in order to maximize the use of interagency task forces; and

(8) entering into agreements with the General Services Administration for the procurement of necessary financial and administrative services for which reimbursement in such amount as may be agreed upon by the Director and the Administrator of General Services from funds of the Office

(b) In order to aid the operation of the Office the Director is authorized, upon the direction of the President, to require Federal Government departments, agencies and instrumentalities to furnish statistical data, information and reports as he deems necessary to discharge his responsibilities under this statute, including the duties identified in section 4(b)(2), (4), (5), (6), and (10).

INDUSTRY ADVISORY PANEL

SEC. 8. (a) There is hereby established an advisory panel on critical materials and industry whose purposes shall include aiding the Director in his formation of an annual program agenda for the Office, providing the Office with information on materials problems and developments, and other tasks as the President or the Director shall prescribe.

(b) The panel shall be comprised of 15 members and shall include individuals with expertise in foreign policy, industry, engineering and science, economics, public administration, small business, defense policy or other areas related to critical materials matters.

(c) The President shall appoint 15 individuals, none of whom shall be presently employed by the Government, to the panel within 30 days after receiving 30 nominations made by the Director who, himself, shall have submitted such nominations within 30 days after being appointed Director.

(d) Five of the 15 appointees shall serve for 3 years; five appointees shall serve for 2 years; and five appointees shall serve for 1 year; however, each of the appointees is entitled to reappointment for additional 3-year terms should the Office remain in existence beyond three years.

(e) A vacancy in the panel shall not affect its powers and any vacancy shall be filled in the same manner in which the original appointment was made, with the succeeding appointee serving the remainder of the predecessor's term.

(f) Each member of the Panel shall receive compensation at a rate equal to the daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, he or she is engaged in the actual performance of his or her duties as a member of the Panel and all members of the Panel shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(g) A Chairperson shall be appointed by the Director within 30 days after appointment of eight of the Panel members.

(h) The Chairperson shall organize the panel into subcommittees in a manner he and the Director determines will most aid the Office.

(i) The Chairperson shall call a meeting of the panel within 30 days after being appointed by the Director.

(j) In addition to meetings which may be called by the Chairperson, both the President and the Director shall have authority to convene a panel meeting as frequently as they decm necessary in order to aid in the efforts of the Office.

(k) The Director shall provide staffing and

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support to the advisory panel in order to assist the members of such panel in carrying out their duties.

FOREIGN AND DEFENSE POLICY

SEC. 9. The President, at his discretion, shall call upon the Secretaries of State, Defense, and Commerce, or their designees, and the Director of the office to meet to facilitate and coordinate the development of United States foreign policy, including international economic policy, as it pertains to mineral-rich countries and vital materials regions and to assist in the development of a program of material needs for United States defense policy, and to perform other materials tasks related to defense and foreign policy.

INFORMATION SERVICES

SEC. 10. The Office shall devote a portion of its resources in an effort to provide private industry with nonconfidential information on critical materials, and the national critical materials policy process.

SMALL BUSINESS

SEC. 11. (a) The Office shall survey the critical materials activities of small business in order to determine the most promising or advanced critical materials work being conducted by small business enterprises and outline measures to advance the innovative activities of small business enterprises working on critical materials matters.

(b) The Office shall provide information on Federal Government programs to small businesses and shall encourage the Federal Government to assist small businesses engaged in the most promising or advanced critical materials work.

(c) The Office shall issue, within 2 years after enactment of this Act, a report on the importance of critical materials to small business, both as a user and producer, and the report shall include an evaluation of the relationship between critical materials-related small businesses and United States industry as a whole.

DEFINITIONS

SEC. 12. As used in this Act "critical materials" means non-fuel minerals or other substances necessary for defense and economic activity that are primarily imported or in a market where there is prospect of shortages or uncertain supply.

APPROPRIATIONS

SEC. 13. There are authorized to be appropriated $5,000,000 for fiscal year 1981 and such sums as may be necessary for fiscal years 1982 and 1983.●

By Mr. MATHIAS:

S. 3100. A bill to authorize the President of the United States to present on behalf of Congress a specially struck gold medal to Jesse Owens; to the Committee on Banking, Housing, and Urban Affairs.

GOLD MEDAL FOR JESSE OWENS

● Mr. MATHIAS. Mr. President, today I send to the desk a bill to authorize the President to present on behalf of Congress a specially struck gold medal to Jesse Owens, the track star who won four gold medals in the 1936 Olympics in Berlin, Germany. James Cleveland Owens was born on September 12, 1913, the son of an Alabama cotton picker. Sixty-six years later, the renowned Olympic champion died of lung cancer on March 31, 1980.

Jesse Owens' feats in the 1936 Olympics have been well documented in recent months for new generations of Americans through the media coverage that attended his death. As the winner of four Olympic gold medals during the period Hitler was propagating his theory of Aryan supremacy, Owens not only achieved an athletic triumph, but effectively discredited Hitler's vicious racism. It was unfortunate that these victories, so stunning in themselves and symbolically, were not recognized in some tangible way upon Owens' return to the United States. Unlike the Olympic champions in recent years, Jesse Owens received no congratulatory honors, no letters nor even any congratulatory greetings when he returned to the United States from Berlin that summer. Instead, he was still expected to sit in the back of the bus and to live in specifically designated areas. In those days, the four gold medals that spelled world superiority could not win equality at home.

Again, however, Jesse Owens' personal qualities dominated over the racial obstacles existing at the time, and he achieved success in the field of public relations. In doing so well, both at the Olympics and throughout his entire life, Jesse Owens was an inspiration to his fellow athletes, especially his fellow black athletes. I am pleased to introduce this legislation to honor such a great American.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3100

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the President of the United States is authorized to present, on behalf of the Congress, to Jesse Owens, a gold medal of appropriate design in recognition of his athletic achievements in the 1936 Olympics. For such purpose, the Secretary of the Treasury is authorized and directed to cause to be stricken a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Treasury. There are authorized to be appropriated not to exceed $15,000 to carry out the provisions of this subsection.

(b) The Secretary of the Treasury may cause duplicates in bronze of such medal to be coined and sold under such regulations as he may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the appropriation used for carrying out the provisions of this subsection shall be reimbursed out of the proceeds of such sale.

(c) The medals provided for in this Act are national medals for the purpose of §3551 of the Revised Statutes (31 U.S.C. 368).●

By Mr. MATHIAS:

S. 3101. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to provide for the same cost-of-living adjustments in the basic compensation of officers and members of the U.S. Secret Service Uniformed Division as are given to Federal employees under the General Schedule; to the Committee on Governmental Affairs.

COST-OF-LIVING ADJUSTMENTS FOR OFFICERS AND MEMBERS OF THE UNITED STATES SECRET SERVICE UNIFORMED DIVISION

● Mr. MATHIAS. Mr. President, 4 years ago today, I introduced a bill in the Senate that separated the U.S. Park Police from the District of Columbia Police and Firemen's Salary Act, and provided that further pay adjustments would be in accordance with the Federal Pay Comparability System. At the time, the U.S. Park Police, although employees of the Department of the Interior, were considered an extension of the Metropolitan Police Department in the District of Columbia, and their pay adjustments were governed by the same standards governing D.C. employees. With the establishment of Home Rule and a City Council, Congress ceased to adopt salary increases for the District employees and, as a result, pay rates for park police, employees of the Interior Department, were established by locally elected officials in the District. The Secret Service Uniformed Division finds itself in much the same position today.

I send to the desk a bill that would make the annual pay adjustment mechanism for the U.S. Secret Service Uniformed Division compatible with that of other Federal employees under title 5 of the United States Code. At present, the members and officers of the Secret Service Uniformed Division are considered under the District's Police and Firemen's Salary Act of 1956. My bill would assure that payroll and personnel decisions made by the District's government and directed at District of Columbia employees do not affect these Federal employees.

What we appear to have here is a two-tier system within the Secret Service. The U.S. Secret Service falls within the Department of the Treasury. Secret Service agents, who protect the President and his family, are Federal employees for purposes of pay, benefits and retirement. The Secret Service Uniformed Division is assigned the duty of protecting the White House and the location of the President and his family. The Uniformed Division began as the White House police force and in 1978 became a part of the Secret Service, but retaining their status under the D.C. Police and Firemen's Salary Act. My bill would bring them under the Federal umbrella for purposes of pay adjustments, and thus begin the process of assimilating them into the Federal system completely.

I am hopeful that this bill can receive favorable consideration before the end of the Congress. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no obligation, the bill was ordered to be printed in the RECORD, as follows:

S. 3101

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the purpose of this Act is to insure that officers and members of the United States Secret Service Uniformed Division are entitled to adjustments in basic compensation in the same overall percentage as are other Federal employees within the General Schedule under the Federal pay comparability system.

(b) Section 501 of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, Sec. 4–833) is amended—

(1) by striking out "Executive Protective Service" in subsection (a) and inserting in lieu thereof "United States Secret Service Uniformed Division";

(2) by inserting ", and the annual rate of basic compensation of officers and members of the United States Secret Service Uniformed Division shall be adjusted by the Secretary of the Treasury." in subsection (b)(1) after "Secretary of the Interior"; and

(3) by inserting "or to officers and members of the United States Secret Service Uniformed Division" in subsection (c) after "United States Park Police force".

(c) The amendments made by subsection (b) shall take effect on October 1, 1980.●

By Mr. PROXMIRE:

S. 3102. A bill to amend section 31 of the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

AMENDMENT OF SECURITIES EXCHANGE ACT OF 1934

Mr. PROXMIRE. Mr. President, I am today introducing legislation to broaden and modify the fee structure under the Federal securities laws and increase the revenues generated by the SEC's activities.

Mr. President, on two previous occasions, the Banking Committee has expressed its concern over the increasing gap between the expenses of running the SEC and the real decline in the amount of its annual appropriation recouped through fees. In 1978, the committee directed the SEC to examine its fee structure and report its results to the committee (S. Rept. No. 95–1057). At that time, the committee stated that it had no desire for the SEC to charge fees which created "any undue burden on securities transactions or any adverse reaction upon the capital market," but noted that increasing the amount of revenues generated by SEC fees would result in fewer tax dollars being used to finance the SEC's activities.

The committee reiterated this feeling in the report on the pending SEC authorization bill (S. 2564, S. Rept. No. 96–752) in the following passage:

Obviously, a more realistic fee schedule establishing a closer relationship between the fees collected by the SEC and the Commission's appropriated funds will reduce the burden the taxpayer now assumes in financing the Commission's activities. The Committee expects the Commission to cooperate in this effort since both statutory and administrative changes in the existing fee structure and levels will increase the likelihood that actual appropriations in future years will correspond to the authorizations approved by the Committee.

At the committee's mark up of the SEC's authorization in May, I expressed my concern about the disproportionate share of the SEC's costs being shouldered by the general taxpayer. A few years ago the SEC secured in fees about as much as it cost. The net cost to the taxpayers was a very small percentage of the total amount. This has deteriorated year by year. By and large, this is an investor protection agency and I believe the investors ought to pay for it. Almost by definition they are among the wealthiest people in our society.

Shortly after the SEC's authorization was reported by the committee, the SEC completed the study requested by the committee. The Fee Study Report discussed the background of the Commission's fee; reported on the revenues produced; summarized the collection procedures employed, and recommended possible changes in the fee structure.

Mr. President, the reasons for increasing the level of fees raised by the Commission's activities are discussed in the study. First, from 1966 until 1974, SEC receipts have averaged $19.4 million per year and represented an average of only 64 percent of the agency's budget. Since 1974, annual receipts jumped to an average of $24 million; however, as a result of the rising costs of salaries and other expenses, receipts have offset an average of only 57 percent of appropriated funds since 1974. The following chart illustrates the SEC's budget history in terms of its total fees, the relationship to its appropriation, and expresses fees as a percentage of the appropriation.

Mr. President, I am a strong supporter of the Securities and Exchange Commission and an admirer of its success in protecting investors and guaranteeing the integrity of our stock markets, the most preeminent in the world. The success of our securities markets is attributable to the vigorous regulatory and enforcement programs which have become characteristic of the SEC since its creation in 1934.

At the same time, I believe it should be investors, who enjoy directly the tangible benefits of the SEC's efforts, that should contribute the lion's share toward the SEC's costs rather than the general taxpayer. I concede that it is difficult to measure the benefits of the SEC's program and to associate those benefits with the various groups involved in our capital markets; however, the SEC agrees that the biggest beneficiaries of its programs are the buyers and sellers of securities. Accordingly the SEC recommended modifications to its present fee structure based largely on the transaction fees required by section 31 of the Securities Exchange Act of 1934.

Mr. President, the SEC recommended a generally sound approach in its Fee Study. The transaction fee can be raised with relative ease and minimal burden for several reasons. First, it is paid by the buyers and sellers of securities at the time of the transaction and thus has the benefit of ease of collection. Second, transaction fees are so low in comparison with other investment related costs, such as brokerage commissions, that there is not likely to be an economic consequence from raising the fee level. Third, collection and compliance costs are relatively low. Fourth, the fee increase will be borne by investors in an equitable manner. Finally, increasing the transaction fees will avoid increases in other SEC fees which could compound the present difficulties encountered in raising capital for American industry. I should note that the SEC advised against changes in the current registration fees under the Securities Act of 1933 and expressed the desire to eliminate a range of fees pursuant to the Independent Offices Appropriation Act of 1952 which have proved difficult and costly to administer.

Mr. President, the bill embraces the SEC's recommendation concerning the transaction fee with several important changes. First, the bill would increase the transaction fee from the present level of one three-hundredths of 1 percent. The SEC recommended a level of one-fiftieth of 1 percent. Second, the bill would extend this fee beyond transactions in securities listed on a national securities exchange which are covered under present law and extend the fee for the first time to over-the-counter securities. As a result under this bill the law would no longer differentiate between securities markets for the purposes of imposing and collecting a transaction fee. As our markets change and as the national market system mandated by Congress evolves, there will be less and less reason for discriminating among markets for this purpose.

Mr. President, this legislation will achieve annual savings to the Federal Government of between $30 and $50 million a year, depending on trading volume. At the time that we are increasing general revenues to the Treasury, we can help to eliminate at least one impediment to its receiving higher appropriations commensurate with its expanding responsibilities.

Mr. President, by introducing the measure at this time, I hope to provoke thought by the self-regulatory organizations and the individual brokerage houses about modifications in the SEC present fee rate and structure. Obviously, such legislation will require the alteration of existing practices and procedures as well as the establishment of new ones to provide collection and compliance mechanisms within the industry and at the Commission. The costs and consequences of these changes warrant careful consideration. I expect to take testimony in the future on these questions as well as on the impact of the other recommendations in the SEC's fee study concerning the Independent Offices Appropriation Act.

Mr. President, I ask unanimous consent that the bill and the accompanying table be printed in the RECORD.

There being no objection, the bill and the table were ordered to be printed in the RECORD, as follows:

S. 3102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended to read as follows:

"TRANSACTION FEES

"SEC. 31. (a) Every national securities exchange shall pay to the Commission each year a fee in an amount equal to one eightieth of one per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during such calendar year. Every registered broker and dealer shall pay to the Commission each year a fee in an amount equal to one eighth of one per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on a national securities exchange during such calendar year.

"(b) No payment shall be required under this section for any calendar year in which the amount of such payment would be less than one hundred and twenty-five dollars. The fees imposed by this section shall be paid to the Commission no later than twenty

business days after the end of each calendar quarter.

"(c) The Commission may, by rule, exempt any sale of securities or any class of sales of securities from any fee imposed by subsection (a) of this section if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system. The Commission may, by vote, specify the conditions for the payments required in subsection (b), and permit reasonable extensions of the dates of such payments.".

SEC FEES COLLECTED

[Dollar amounts in thousands]

Fiscal years	Total fees	Appropriation	Fees, percent appropriation
1935	$288	$1,545	14.7
1936	900	3,029	29.7
1937	1,104	4,245	26.0
1938	716	3,895	18.4
1939	575	4,872	11.8
1940	493	5,470	9.0
1941	518	5,400	9.6
1942	313	5,440	5.8
1943	193	4,910	3.9
1944	408	4,602	8.8
1945	654	4,697	13.7
1946	1,093	4,694	23.2
1947	1,111	5,534	20.0
1948	946	5,739	16.5
1949	788	6,121	12.8
1950	790	5,878	13.4
1951	1,087	6,230	17.4
1952	1,364	5,813	23.5
1953	1,199	5,245	22.8
1954	1,216	5,000	24.3
1955	1,703	4,843	35.2
1956	2,074	5,278	39.3
1957	2,244	5,749	39.0
1958	2,334	6,935	33.6
1959	2,408	7,705	31.2
1960	2,631	8,100	32.5
1961	2,927	9,517	30.7
1962	3,422	11,412	29.9
1963	2,534	13,261	19.1
1964	3,106	13,937	22.3
1965	3,300	15,442	21.4
1966	6,608	16,442	40.0
1967	9,767	17,550	56.0
1968	14,623	17,730	82.0
1969	21,996	18,264	118.0
1970	15,526	21,904	71.0
1971	16,374	23,615	69.0
1972	19,121	26,776	71.0
1973	22,117	30,138	73.0
1974	21,828	36,202	56.0
1975	24,021	44,427	54.0
1976	25,836	49,291	52.0
1977	29,168	56,270	52.0
1978	26,426	52,475	42.0
1979	33,048	67,100	49.0

ADDITIONAL COSPONSORS

S. 2879

At the request of Mr. MELCHER, the Senator from Oklahoma (Mr. BELLMON), the Senator from North Dakota (Mr. BURDICK), the Senator from Mississippi (Mr. COCHRAN), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. JEPSEN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from New York (Mr. MOYNIHAN), the Senator from Arkansas (Mr. PRYOR), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 2879, a bill to amend the Department of Education Act, Public Law 96-88 (20 U.S.C. 3414).

S. 2958

At the request of Mr. PERCY, the Senator from Maine (Mr. COHEN) was added as a cosponsor of S. 2958, a bill to insure the development and implementation of policies and procedures to encourage the Veterans' Administration and the Department of Defense to cooperate in the efficient and effective use of Federal medical resources, and for other purposes.

S. 2967

At the request of Mr. NELSON, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 2967, a bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes.

S. 2979

At the request of Mr. METZENBAUM, the Senator from Colorado (Mr. HART), and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

S. 3046

At the request of Mr. PERCY, the Senator from South Carolina (Mr. HOLLINGS) was added as a consponsor of S. 3046, a bill to amend the Safe Drinking Water Act to extend the period for which variances may be provided in the case of contaminant level and treatment technique requirements of national primary drinking water regulations, and for other purposes.

S. 3056

At the request of Mr. CHILES, the Senator from Florida (Mr. STONE) was added as a cosponsor of S. 3056, a bill to authorize the Secretary of Interior to revise the boundary of Everglades National Park in the State of Florida, and for other purposes.

S. 3087

At the request of Mr. SASSER, the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Missouri (Mr. EAGLETON) were added as cosponsors of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

SENATE JOINT RESOLUTION 193

At the request of Mr. RIEGLE, the Senator from Kentucky (Mr. FORD) was added as a cosponsor of Senate Joint Resolution 193, a joint resolution authorizing the President to enter into negotiations with foreign governments to limit the importation of automobiles and trucks into the United States.

SENATE RESOLUTION 516—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. CHILES, from the Committee on Governmental Affairs, reported the following original resolution, which was referred to the Committee on the Budget:

S. Res. 516

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1411. Such waiver is necessary because provisions of S. 1411 establish a goal to reduce the burden of Federal paperwork requirements on the public by twenty-five percent in three years, which would be difficult to accomplish if the small amount of resources required in fiscal 1981 were not available to the Office of Information and Regulatory Affairs. Reductions in paperwork for all sectors of the economy are expected to reduce inflationary pressures. The Committee regrets it was unable, due to the lengthy consideration of regulatory reform and lobbying reform to meet the May 15 date for the Paperwork Reduction Act. The Committee believes the potential savings and reduced inflation due to reduced paperwork burden should not be foreclosed. The Committee's letter to the Budget Committee pursuant to the requirements of Section 301(c) of the Congressional Budget Act 1974 did discuss S. 1411, the Paperwork Reduction Act.

AMENDMENTS SUBMITTED FOR PRINTING

POSTAL SERVICE ACT OF 1980—H.R. 826

AMENDMENT NO. 2289

(Ordered to be printed and to lie on the table.)

Mr. PERCY (for himself, Mr. ROTH, and Mr. DANFORTH) submitted an amendment intended to be proposed by them, jointly, to the bill (H.R. 826) to amend title 39, United States Code, to provide that the U.S. Postal Service shall be subject to certain provisions of the Occupational Safety and Health Act of 1970.

Mr. PERCY. Mr. President, in face of probably the most disastrous Federal budget crisis in recent history, I send to the desk an amendment to delete from the omnibus postal legislation, H.R. 826, an expensive new postal subsidy program.

Section 6(a) of the bill would allow schools and libraries to mail back to publishers books and other materials they do not wish to keep at a rate below the already subsidized special rates for books. The bill also applies this heavily subsidized "library" rate to private as well as public libraries and expands the category of materials eligible for the reduced library rate to include teaching guides, kits and other items in addition to books and records.

When the committee reported the bill on May 15, the Congressional Budget Office using the projected mail volume for 1979 estimated that this new subsidy would cost $37 million in fiscal year 1981, $38 million in fiscal year 1982 and $41 million in fiscal year 1983. On September 5 the CBO revised these figures downward somewhat based on the actual 1979 mail volume for an expected cost of $27 million, $28 million and $29 million for fiscal years 1981 to 1983, respectively. With the mail-back subsidy estimated to increase by $2 million annually thereafter, we strongly believe that this postal subsidy is still too much of an unjustified expense to the taxpayers—costing $84 million over a 3-year period.

Under current law, the special fourth-class library rate for mailing materials to libraries and schools and between such institutions costs the taxpayers $54.5 million in fiscal year 1979. The total costs of materials mailed under the library rate was $76.4 million of which mailers—many of whom are commercial publishers—paid only $21.9 million. Taxpayers, therefore, picked up almost 72 percent of the tab for postage collected under this class of mail. The new mail-back program of H.R. 826 would greatly increase the costs of this library rate subsidy.

During hearings on the omnibus postal legislation, there was no discussion of the need for this expensive new mail-back program. No witnesses addressed the issue and no empirical evidence was submitted to justify its costs. But because this provision had a history of being included in previous "catch-all" postal legislation—but never enacted, we must note—the expanded library subsidy was attached to H.R. 826 without any consideration of the current budgetary crisis. We simply cannot afford to begin a new program subsidy, particularly at a time when we are under a mandate to cut overall postal costs. Vital social programs, including education programs, are being cut in an effort to stem the tide of inflation, and we must scrutinize the way every tax dollar is spent. The money slated for this mail-back program—$84 million over a 3-year period—can be put to better use.

With the reestimated budget deficit for fiscal year 1980 skyrocketing above $60 billion, the whole budget process is in danger of collapsing. While some may argue that $27 million is small change in light of the total Federal budget, we strongly believe that this type of reckless spending contributes greatly to mounting deficits. It is time to stop being frivolous about the American people's hard-earned tax dollars and establish a rigorous system of priorities for future Federal spending.

We would like to emphasize that the amendment does not affect the current library rate which is scheduled to be phased up to its full cost by 1987. The amendment takes nothing away from nor adds any unforeseen costs to libraries or publishers. The current library rate will remain in effect at the current rate of 19 cents on the first pound as opposed to the special rates for books of 59 cents on the first pound and $1.15 for regular parcel post mailers.

We urge our colleagues to vote for our amendment to strike section 6(a). Preventing the implemenation of this expensive, and to our minds unjustified, postal subsidy will demonstrate Congress commitment to the taxpayers that it is serious about reducing unnecessary Federal spending.

I ask unanimous consent that the amendment and the revised CBO estimate be printed in the RECORD. It should be noted that the CBO estimate discusses section 8 of H.R. 79 which is identical to section 6(a) of H.R. 826.

There being no objection, the amendment and letter were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 2289

On page 14, beginning with line 12, strike out all through page 15, line 24, and insert in lieu thereof the following:

SEC. 6. Section 3626 of title 39, United States Code, is amended by adding at the end thereof the following new subsections:

On page 16, line 1, strike out "(g)" and insert in lieu thereof "(f)".

On page 16, line 12, strike out "(h)" and insert in lieu thereof "(g)".

On page 16, strike out lines 22 through 24.

On page 23, line 5, strike out "6(b)" and insert "6".

On page 23, strike out lines 8 through 10.

On page 23, line 11, strike out "(d)" and insert in lieu thereof "(c)".

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 5, 1980.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to an inquiry from Congressman Ford, the Congressional Budget Office has prepared the attached detailed description of the analysis of Section 8 of H.R. 79, as ordered reported by the House Committee on Post Office and Civil Service on April 25, 1979. Please note that the CBO has revised the estimated cost for this provision based on more current postal volume data. The cost of this provision, which would result in a larger revenue forgone payment to the United States Postal Service, is estimated to be approximately $27 million in fiscal year 1981, $28 million in fiscal year 1982 and $29 million in fiscal year 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 4, 1980.

Hon. WILLIAM D. FORD,
Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FORD: In response to your June 13 letter, the Congressional Budget Office has prepared a more detailed explanation of the costs estimated for a provision in H.R. 79 and S. 2558 that would expand the fourth class library rate. In addition, the Congressional Budget Office has updated the cost of this provision based on more current data.

ANALYSIS OF H.R. 79

Section 8 of H.R. 79, as ordered reported by the House Committee on Post Office and Civil Service on April 25, 1979, would expand the category of mailers as well as type of mail eligible for special fourth class book rate, or library rate.

EXPAND ELIGIBILITY

The library rate would be extended to libraries other than public libraries. This would include special interest libraries, i.e., the Folger or presidential libraries; those accessible by membership, i.e., legal libraries; and other libraries, including those of associations and historical societies.

In order to estimate the number of additional libraries likely to be eligible for library rates, the Congressional Research Service (CRS) provided the CBO data from the 1978 edition of the American Library Directory, prepared by R. R. Bowker and Company. It was determined that over 7,000 libraries would be potentially eligible to receive reduced rates, including approximately 5,300 special, 840 law and 1,100 religious libraries. For purposes of calculation, the number of eligible libraries was reduced to 5,000 because of possible duplications in the listings and other factors. Based on industry statistics, CRS estimated that the average number of annual acquisitions per library was 3,300. However, it was assumed that the number of acquisitions would be approximately one-third that amount, or 1,100, to adjust for the assumption that nonpublic libraries would generally be smaller and receive books other than those sent through the United States Postal Service (USPS). The annual growth rate of 5 percent for acquisitions was assumed through fiscal year 1983.

The estimated additional pieces of mail were then added to the projected fiscal year 1979 library rate volume for currently eligible mail. Currently eligible mail was assumed to be 88 million pieces in fiscal year 1979, based on average growth in volume for fiscal years 1976 through 1978, and consistent with USPS mail volume projections available in the USPS January 1979 Comprehensive Statement on Postal Operations. The estimated current level was assumed to grow at a rate of around 8.5 percent annually, based on projections provided by USPS.

ADDITIONAL VOLUME OF MAIL USING LIBRARY RATE—EXPANDED ELIGIBILITY

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Estimated current level	88.0	95.0	104.0	114.0	125.0
Additional eligibles	5.5	5.8	6.1	6.4	6.7
Total, projected volume	93.5	100.8	110.1	120.4	131.7

EXPAND MAIL CLASSIFICATION

Section 8 clarifies Public Law 94-421, specifying that teaching aids, guides and catalogs of books are eligible for library rates in addition to books (even if mailed separately). While no precise projections were available at the time the CBO cost estimate was prepared, growth in mail volume was estimated by various sources to range from negligible to over 20 percent, particularly if catalogs could be mailed at the lower rate. An estimated increase of 10 percent over the projected library rate volume was assumed as reasonable. This represented a volume diversion of approximately 4 percent from the special fourth class rate.

ADDITIONAL VOLUME OF MAIL USING LIBRARY RATE—EXPANDED CLASSIFICATION

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Projected volume	93.5	100.8	110.1	120.4	131.7
Additional volume resulting from expanded classification	9.4	10.1	11.0	12.0	13.2

ALLOWANCE FOR RETURNS AND MAIL FROM NONPROFIT INSTITUTIONS

Under current law publishers may mail books to libraries and schools using library rates, but returns must be sent using the higher special fourth class rate. Section 8 would permit schools or libraries to return books at the lower library rate, as well as allow nonprofit organizations to mail books and other educational materials at the library rate. Under current law nonprofit organizations are allowed to mail at the lower rate only when the mailing is on loan or exchange.

According to industry statistics available in Book Industry Trends, published by the Book Industry Study Group, fewer than 20 percent of all books shipped to educational institutions are returned. The number of mailings from nonprofit organizations could not be precisely estimated, however. According to USPS officials the number of pieces could be considerable, assuming that many nonprofit organizations (i.e., the National Geographic Society, Red Cross, etc.) would become eligible for lower rates. For purposes of the estimate it was assumed that the maximum increase in mail volume for returns plus additional mail from nonprofit or-

ganizations would be 20 percent. The estimated percentage increase in volume was applied to the current volume plus expanded eligibility to derive the returns and nonprofit increment. (The additional volume anticipated from the expanded mail classification was not included in the base from which the rate of increase was calculated because it was assumed that the most weighted component would be catalogs, and these would not likely be returned.)

ADDITIONAL VOLUME OF MAIL USING LIBRARY RATE—RETURNS AND NONPROFIT ELIGIBILITY

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Total projected volume	93.5	100.8	110.1	120.4	131.7
Returns and nonprofit	18.7	40.2	22.0	24.1	26.3

SUMMARY

The total annual volume diversion from fourth class special rate to fourth class library rate is shown below.

ESTIMATED ADDITIONAL MAIL VOLUME RESULTING FROM SEC. 8

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Additional libraries	5.5	5.8	6.1	6.4	6.7
Expanded classifications	9.4	10.1	11.0	12.0	13.2
Returns plus mail from nonprofits	18.7	20.2	22.0	24.1	26.3
Total, additional volume	33.6	36.1	39.1	42.5	46.2

The number of additional pieces of mail was multiplied by the net additional revenue forgone payment, with a 20 percent increase in rates assumed for the second quarter of fiscal year 1981. The estimated cost for fiscal year 1979 was $7.4 million, which reflects the last quarter of the year. Costs for fiscal years 1980 through 1983 were estimated to be $32 million, $38 million, $40 million and $42 million in each year, respectively.

ANALYSIS OF S. 2558

On May 15, 1980 the Senate Committee on Government Operations ordered reported and filed their report on S. 2558. Because of time exigencies only a few changes were made to the costs estimated for Section 6(a) of S. 2558, a provision similar to Section 8 of H.R. 79. Applying the same methodology, but allowing for later date of enactment, the CBO estimated that that the net additional cost of this provision would be $37 million in fiscal year 1981, $38 million in fiscal year 1982 and $41 million in fiscal year 1983.

UPDATE OF H.R. 79, SECTION 8

CBO prepared the cost estimate for H.R. 79 on May 7, 1979. Since that time data on actual library rate volume has become available. Rather than the 88 million pieces which the USPS had projected would be sent at library rate in fiscal year 1979, the actual number was far less—61.8 million pieces. Using the actual fiscal year 1979 library rate volume as a base, and assuming a 6 percent annual growth rate, the same methodology applied to the new volume estimate results in an estimated cost for this provision of $27 million in fiscal year 1981, $28 million in fiscal year 1982 and $29 million in fiscal year 1983.

Should you so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

NOTICES OF HEARINGS

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr. President, the Select Committee on Small Business will hold a markup session on H.R. 5612, and other pending legislation.

The hearing will begin at 10 a.m., in room 424 of the Russell Senate Office Building, on September 16.

SUBCOMMITTEE ON ANTITRUST, MONOPOLY, AND BUSINESS RIGHTS

Mr. METZENBAUM. Mr. President, the Judiciary Subcommittee on Antitrust, Monopoly, and Business Rights hearing on S. 2798, the Small Business Motor Fuel Marketer Preservation Act of 1980, and on S. 2828, the Small Business Motor Fuel Market Preservation Act of 1980, scheduled for Wednesday, September 10, has be rescheduled for Tuesday, September 9. The hearing will begin at 9 a.m. in room 5110 of the Dirksen Senate Office Building on the 9th.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 9, to hold hearings on executive nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

BIRTHDAY GREETINGS TO HON. CLAUDE PEPPER

● Mr. SASSER. Mr. President, today America's foremost champion for senior citizens celebrates his 80th birthday. On behalf of Tennessee's older citizens and myself, I would like to extend a heartfelt "Happy Birthday" to our senior colleague, the Honorable CLAUDE PEPPER.

CLAUDE PEPPER has served his country for 32 years as a Member of the Senate and the House of Representatives. And during those 32 years he has developed a well-earned reputation as a champion of the Nation's elderly.

As chairman of the House Select Committee on Aging, CLAUDE PEPPER has led the fight to improve the housing, nutrition, health, and economic status of our senior citizens. His willingness to work with other Members of Congress is an important factor in his success. I have had the pleasure of working with him on a number of occasions, including our work on legislation to provide a discount for senior citizens on Amtrak trains.

As the leading congressional proponent on matters such as mandatory retirement, meals-on-wheels, and safety for the elderly, CLAUDE has shown a unique sensitivity to the special needs of our older people. His early support of strong civil-rights legislation and the 40-hour week mark him as a man attuned to the needs of the Nation as well.

Mr. President, CLAUDE PEPPER shows no sign of slowing down, now that he has reached his 80th year. If anything, CLAUDE will continue to be a beacon of hope for millions of senior citizens—a man all can look to for guidance and inspiration.

I wish Congressman PEPPER the best on his birthday and continued success in the years to come. I look forward to many more years of cooperation on important issues and programs.●

BILINGUAL SCHOOL PROGRAMS

● Mr. HARRY F. BYRD, JR. Mr. President, I find increasing dissatisfaction throughout Virginia with the mandate of the new Department of Education requiring regular instruction of foreign born students in "their strongest language." The newly created Department has lost little time in injecting the Federal Government deeper into the operation of local schools.

Today I received a thoughtful letter from a long-time friend who has spent a lifetime either in the field of public education or from the outside as a strong and informed advocate.

The letter is written to President Carter by Stewart Bell, Jr., of Winchester, Va. Mr. Bell served 24 years on the Winchester City Council and 8 years as mayor. Earlier in his career, he was a public school teacher and then principal of a school at Gore in Frederick County, Va.

Mr. President, Mayor Bell's letter is a thoughtful one and it makes so much sense that I ask that it be printed in the RECORD.

The letter follows:

WINCHESTER, VA.,
August 30, 1980.

President JIMMY CARTER,
The White House
Washington, D.C.

DEAR PRESIDENT CARTER: Secretary of Education, Mrs. Hufstedler, has proposed a new set of Federal Regulations (Federal Register, Vol. 45, No. 152, p. 520–557, August 5, 1980) for bilingual programs in local schools throughout the country which will require regular instruction of foreign-born students to be in "their strongest language".

I wish to protest in the strongest terms this proposed regulation because:

1. It is wrong in principle. A major mission of our public schools is to be a unifying institution, reducing the divisive, abrasive, and economically disqualifying differences among us.

2. Our schools should be a strong counter-influence to those forces tending to fragment our society; they should emphasize our common interests and universal goals. One of the most insidious weaknesses in America is the drift toward the segmentation of our society into all sorts of groups and divisions who perceive themselves as having varied and sometimes competing interests and goals. In the face of these natural tendencies, we tend to lose sight of the fact that we are the *United* States of *America*.

3. Public schools should not abridge or deny the motivation and opportunities of paramount importance they provide for students to achieve equality within the mainstream of American culture and economic life. They may also encourage students to have an awareness of and pride in their ethnic history, culture, and achievements.

4. Our strength as a nation has been distilled in large measure from the strengths of our various and multiplied ethnic heritages. Through the challenging action of the American "melting pot" we have submerged and left behind many portions of our varied heritages, absorbed their strengths, and produced a new and unique culture which we are proud to call the United States of America.

5. It is administratively and financially unfeasible or impossible to provide regular required classwork in various languages. Obviously, good teachers and administrators give some special attention and effort to help foreign-born students to become oriented to their new situations on an introductory short-term basis.

I believe this proposed regulation is an egregious example of Federal regulations that are wholly unwarranted when measured in terms of our own well established national goals as enumerated in our Constitution. Among those stated are "to form a more perfect union, (and) to insure domestic tranquility."

I call attention to the fact that the inscription on the Statue of Liberty, the laws of our land, and the want ads in most newspapers are not written in languages other than English.

Sincerely,

STEWART BELL, Jr.●

CIA PREDICTS RISE OF 5 PERCENT A YEAR IN SOVIET DEFENSE COST

● Mr. GARN. Mr. President, the Central Intelligence Agency now estimates that the Soviet Union is spending between 12 and 14 percent of its GNP on military forces compared to 5.3 percent for the United States and that over the last decade the Soviet Union outspent the United States by over $300 billion. This very year Soviet military expenditures are 50 percent greater than those of the United States.

This state of affairs is dangerous. Even more dangerous is the fact that these estimates are the product a CIA that now admits that it underestimated Soviet military spending for a decade by almost 100 percent. Current critics of the CIA point out that current CIA estimates are based on precisely the same methodology that produced the almost 100 percent error only 5 years ago.

There are some who try to attribute the Soviet disparity simply to manpower cost differences. This is simply not the case. As Gen. David Jones, chairman of the Joint Chiefs of Staff informed the Congress earlier this year, "the Soviets now possess an accumulated military capital stock some 25 to 50 percent larger than that of the United States," and that "the differential is projected to increase to the 40 to 60 percent range in favor of the Soviet Union by the mid 1980s."

I commend my colleagues' attention to a Washington Post article entitled "CIA Predicts Rise of 5 Percent a Year in Soviet Defense Cost," and ask that it be printed in the RECORD.

The article follows:

CIA PREDICTS RISE OF 5 PCT. A YEAR IN SOVIET DEFENSE COST

(By George C. Wilson)

The CIA yesterday predicted that the Soviet Union will keep increasing its defense budget 5 percent a year, the same percentage Congress approved for the United States this year.

The agency, at a hearing before a House Intelligence subcommittee, did say it is possible that Soviet military spending will slow down because of declining overall economic growth.

"The current and projected decline in Soviet economic growth raises questions about the U.S.S.R.'s ability to contnue increasing defense spending," Robert Huffstutler, director of CIA strategic research, told the subcommittee.

While foreseeing little slowdown before 1985, Huffstutler added, "In the longer term, growing economic difficulties may push the Soviet leaders to reexamine their plans with a view to reducing the growth of defense spending."

Two possible economies would be to reduce the production rates of some weapons and agree to arms control agreements providing direct savings, the CIA specialist said.

He cautioned, however, that "we think it highly unlikely" that the Soviet leaders will reduce military spending to the point that it reverses "longstanding policy of continuing to improve their military capabilities."

He said Soviet defense spending, after allowing for inflation, has grown "an average of 4 to 5 percent a year since at least 1965." In contrast to this steady growth, U.S. defense spending has been up and down in that same period, with the Vietnam war pushing the totals up during the late 1960s.

Who has been responsible for the decline in U.S. military spending since Vietnam is a hot issue in the presidential campaign, with Democrats and Republicans blaming each other.

A related issue is whether the CIA has been providing accurate comparisons of U.S. and Soviet military spending, a topic Chairman Les Aspin (D-Wis.) said the subcommittee would question the agency about in closed session.

The CIA provoked a flap in 1976 by announcing that it was nearly doubling its estimates of how big a slice of the Soviet gross national product was going for defense. Instead of the old 6 to 8 percent estimates the CIA said the new estimate was between 11 and 13 percent.

However, in 1978 the CIA attributed much of the increase to the fact that the Soviets were getting less bang for the buck because "Soviet defense industries are far less efficient than formerly believed."

Yesterday the agency stuck with its 11 to 13 percent of GNP for the 1965 through 1978 period, but raised the estimate to between 12 and 14 percent for 1979 because the Soviet economy sagged that year.

The estimated annual growth rate, after allowing for inflation, in the Soviet defense budget was estimated at between 4 and 5 percent in rubles.

The CIA estimates how much it would cost the United States and the Soviet Union to duplicate each other's military establishment, with one comparison expressed in rubles and another in dollars.

The CIA's cumulative estimates in dollars from 1970 through 1979 were $1,135 trillion for the United States and $1,460 trillion for the Soviet Union, a difference of about 30 percent. In 1979 alone, the CIA estimated the Soviet Union spent $165 billion on its military, about 50 percent more than U.S. expenditures.

Aspin said during a break in the hearing that CIA dollar comparisons are distorted because the agency puts Soviet soldiers on U.S. salaries.

Under that kind of figuring, Aspin said, "the Chinese would be spending us into oblivion" if their huge army was considered to be paid U.S. military salaries for making dollar comparisons.●

UNITED STATES MUST PROTEST DROP IN EMIGRATION OF SOVIET JEWS

● Mr. CRANSTON. Mr. President, recent reports out of the Soviet Union bring us the alarming news that the drop in emigration of Soviet Jews which began shortly after the Soviet invasion of Afghanistan last December has accelerated sharply. The number of Soviet Jews granted their emigration rights fell from last year's monthly average of more than 4,000 to 3,049 in March, 1,976 in May, 1,205 in July, and just 770 last month.

This sharp curtailment of emigration rights has been accompanied by a new clampdown on emigration activists by Soviet authorities. And officially sanctioned anti-Semitic campaigns are on the rise once again within the Soviet Union.

I believe it is incumbent upon the United States to protest vigorously the cutback in emigration perpetrated by Soviet authorities. Therefore, I have recently called upon my Senate colleagues to join in a letter to President Carter raising our voices in protest and asking for an official U.S. condemnation of recent Soviet emigration practices. I believe it is especially important to press this issue at the upcoming Madrid conference to review the compliance with the Helsinki accords which include important commitments from the Soviet Government regarding its respect for emigration rights. The agenda for this November conference will be set up in meetings which will begin in Madrid tomorrow. It is crucial that the United States press the emigration issue forcefully, both at the preparatory meetings and in the November sessions as well.

I am today submitting for the RECORD the full text of the recent letter to President Carter, cosigned by 57 Members of this body, which requests such a vigorous U.S. position. It is as follows:

U.S. SENATE,
Washington, D.C., September 4, 1980.

Hon. JIMMY CARTER,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We are writing to express our deep concern over the fate of the many people seeking to leave the Soviet Union, especially Soviet Jews. Emigration of Soviet Jews, which reached a record high of more than 51,000 in 1979, has fallen drastically throughout the first seven months of this year and has slowed to a trickle this month. Where an average of more than 4,000 Jews were granted emigration rights each month last year, only 1,205 exited in July 1980 and projections for August based upon half-month figures suggest that less than 700 will leave this month. This would mark the lowest monthly total since the signing of the Helsinki accords in 1975. Harassment of emigration activists by Soviet authorities has also increased—as have officially sanctioned anti-Semitic campaigns within the U.S.S.R. And a number of would-be emigration applicants have been arrested and subject to criminal prosecution on trumped-up charges in recent months.

We, as citizens of a free and democratic society, view these current trends with deep concern and a sense of renewed commitment to the rights of Soviet Jews to emigrate freely. The leadership of the Soviet Union must know that the United States will not shrink from its commitment to the principles of the Helsinki accords.

In view of your immutable commitment to human rights, and in light of the upcoming meeting in Madrid to review implementation of the Helsinki Final Act, we urge you to condemn publicly Soviet violations of internationally agreed upon human rights protocols and that you instruct the United

States delegation to the Madrid conference to press the emigration issue forcefully, both at the September preparatory session and in the November conference itself.

The United States made significant concessions to the Soviet Union in the Helsinki accords. In Basket I, our agreement to the principle of the inviolability of frontiers permitted the Soviets to represent that the post-World War II changes in Eastern European boundaries were legitimate. In Basket II, we agreed to increase trade with COMECON countries, greatly improving their access to modern Western technology. The human rights commitments made by the Soviet Union in Basket III were in exchange for these concessions. Thus, U.S. efforts to raise the emigration issue now do not constitute unwarranted interference in Soviet internal affairs. The Soviet government signed these international accords and made a commitment to implement the human rights provisions, thereby accepting international monitoring of the accords and registration of complaints regarding the failure of the Soviet Union to respect certain emigration and other rights.

We believe a White House statement would do much to focus world attention on the Soviets' flagrant abuse of international human rights charters. Additionally, such a statement would serve to renew the spirits of those at the forefront of the effort to protect the emigration rights of Soviet Jews in these days of darkness.

Sincerely,

Alan Cranston, Claiborne Pell, Daniel Patrick Moynihan, Harrison A. Williams, Jr., Rudy Boschwitz, Howell Heflin, John C. Danforth, Lloyd Bentsen, Richard S. Schweiker, Howard W. Cannon, Birch Bayh, David L. Boren, Max Baucus, Larry S. Pressler, Paul S. Sarbanes, Jacob K. Javits, Howard M. Metzenbaum, Lawton Chiles, Gaylord Nelson, Ernest F. Hollings, Herman E. Talmadge, Malcolm Wallop, John Heinz, Edward Zorinsky, William S. Cohen, Donald W. Riegle, Jr., Bob Packwood, Charles McC. Mathias, Jr., J. James Exon, Dennis DeConcini, John A. Durkin, Gary Hart, John C. Culver, Thomas F. Eagleton, Paul E. Tsongas, Frank Church, Carl Levin, S. I. Hayakawa, Robert Dole, Joseph R. Biden, Jr., Donald W. Stewart, Richard G. Lugar, Bill Bradley, David Durenburger, David Pryor, George J. Mitchell, Walter D. Huddleston, Abe Ribicoff, Alan K. Simpson, Jake Garn, Howard H. Baker, Jr., Charles H. Percy, Richard Stone, Lowell P. Weicker, Jr., Gordon J. Humphrey, Roger W. Jepsen, John Tower.●

TRIBUTE TO ALBERT B. (AB) HERMANN

● Mr. MATHIAS. Mr. President, to describe a funeral as being "nice" seems like a contradiction in terms. But the funeral of Albert B. (Ab) Hermann was just that—it was nice.

Ab Hermann died at the age of 81 while enjoying a vacation. His life had been long and productive; his death was quick and painless. Those who mourn Ab Hermann now grieve to lose him from their lives. But they rejoice in remembering his own rich life, crowned by those greatest of all blessings: a happy marriage and a loving family.

Ab Hermann's funeral was nice because Ab was nice and because he was a man who had made the most of every minute given him, who had served his fellow citizens well and faithfully, who had contributed much to his country and who had remained vigorous to the end.

Ab Hermann was a longtime official of the Republican National Committee and, as chairman of its Minorities Division, was the moving spirit behind its drive to expand its horizons by returning to its roots for inspiration. Ab Hermann's Republican Party was Abraham Lincoln's Republican Party: The party of freedom; the party of all the people.

Ab served as executive director of the Republican National Committee from 1949 to 1952 and from 1957 to 1961. In addition to being chairman of the Minorities Division, he served as director, campaign director, and special assistant to the chairman. He was director of the Speakers Bureau when he retired in the late 1970's.

In view of the tremendous contribution Ab made to the Republican Party it is not surprising that four former chairmen of the RNC gave memorial tributes at his funeral on August 25.

Meade Alcorn recalled that he had first encountered Ab Hermann as a student at Suffield Academy in Connecticut. Ab was a famous athlete from Colgate University where he had received the Lawrence Scholarship as best student athlete, earned 11 letters and made All American in three sports—football, basketball, and baseball.

Ab had come to Suffield as a coach and there, said Alcorn, he learned how to handle unreasonable, intractable, impatient schoolboys who all wanted to be athletes. Later, at the Republican National Committee, he handled unreasonable, intractable, impatient men who all wanted to be candidates for public office.

BOB DOLE called Ab "a man who knew how to love" and it was this greatest of all virtues that enabled Ab to handle all those unreasonable, intractable, impatient people who pounded on his door, first as coach and then as counselor, and to make them his friends.

All of us who knew Ab are better for it. We will miss him but we will never forget this man who gave so much to so many people.

Mr. President, I ask that the full text of Senator BOB DOLE's and Ray C. Bliss' eulogies be printed at the conclusion of my remarks together with the funeral service program as conducted by the Reverend L. R. Elson, Chaplain of the Senate, and the prayers said that day for Ab. I regret that no texts of the tributes of Meade Alcorn and William E. Miller are available, since they spoke extemporaneously and from the heart.

I would also like to submit for the RECORD, a column by David S. Broder from the Washington Post of August 27, 1980, which captured Ab's spirit very beautifully.

Mrs. Mathias joins me in sending deepest sympathy to Ab's widow, Sylvia, and their two daughters, Ellen H. Warfield and JoAnn H. Emerson.

The material follows:

FUNERAL SERVICE FOR ALBERT B. HERMANN

Gawler's Chapel, Washington, D.C.
Monday, August 25, 1980—1:30 P.M.

Officiating: The Rev. Edward L. R. Elson, S.T.D., Chaplain, United States Senate.

Organist: Mrs. Margaret Bryce.

Organ Prelude: "Onward Christian Soldiers"; "Amazing Grace"; "A Mighty Fortress"; "The Battle Cry of Freedom"; "America, the Beautiful"; "God Bless America".

Opening Sentences:

Prayer:

The Old Testament Lesson, Psalm 46, 23.

The New Testament Lesson, Selected.

Memorial Tributes by Former Chairmen of the Republican National Committee; The Honorable Meade Alcorn, The Honorable William E. Miller, The Honorable Ray Bliss, The Honorable Robert Dole.

The Memorial Prayers, The Lord's Prayer.

The Benediction.

Organ Postlude. The Congregation will remain seated during the rendering of "The Battle Hymn of the Republic."

REMARKS OF RAY C. BLISS, FORMER REPUBLICAN NATIONAL CHAIRMAN, AT THE MEMORIAL SERVICE OF MR. A. B. HERMANN

Sylvia, members of the Hermann family, and friends of Albert Hermann:

We assemble here today to pay tribute to one who has meant much to each of us.

His wisdom and knowledge of the American political scene was one of my major guidelines during my long political career.

I am sure that each of us benefited in some way through this man who touched our lives.

To him we are grateful in our hearts for knowing him, and he will be forever etched in our memories.

There was and will be only one Albert B. Hermann.

REMARKS OF SENATOR BOB DOLE: TRIBUTE TO ALBERT HERMANN

Sylvia and members of Ab's family: Of all the words in the English language, perhaps the hardest to say is the word good-bye. Ultimately, of course, it must be. But not this afternoon. This afternoon, we prefer other words—words like friend, mentor, genius and inspiration. It is not a death that we mourn but a triumphant life that we celebrate. Can you imagine Ab having it any other way?

Ab was a man who knew how to love. He loved his family, he loved his friends, and he loved what he always called "the great State of New Jersey." He also loved the Republican Party—and those of us who were fortunate enough to be his colleagues in the party certainly loved him.

The grand ole party has lost a great Republican warrior. He was as old as the twentieth century, plus one, and during his life he saw his country and his party undergo revolutionary change. He was at the forefront of many of those changes. Because he loved our party, he wanted her to be what she was intended to be at her birth—a vehicle for the ideals and aspirations of every American regardless of surname, power, or economic station.

Walt Whitman, the great poet of American Democracy, put it this way . . . "I dare not shirk any part of myself, not any part of America, good or bad, not to build for that which builds for mankind, not to balance ranks, complexions, creeds and the sexes. I am for those that have never been mastered, I am for those who walk abreast with the whole earth, who inaugurate one, to inaugurate all."

Ab's belief in the average American was never mastered. And it led him to great accomplishments. Long before blacks and women and ethnic Americans claimed their place on the public stage, Ab Hermann was fighting to give them a share of the Republican Party. There were frustrations along the way, and there must have been times when even Ab wondered about the long-range prospects. But he was a persistent man. Persistence was a Hermann quality. Persistence mingled with the agility that won him eleven athletic letters, made him an all American in three sports, and later allowed him to perform equally marvelous balancing acts between people of strongly held opinions. The Boston Braves loss was the party of Lincoln's gain.

For me, I will always remember what Ab did for a fresh and very green young Congressman from the first district of Kansas who arrived in Washington in 1961—and who promptly discovered a sage and wit who was willing to share his vast experience with one who had a lot to learn.

Ab brought to life for me the abstract ideals in which we all claim to believe. He made those old Fourth of July chestnuts live and breathe—because he lived his life under their influence. He painted a vivid picture of the Republican Party as it should be, as the home of black and Hispanic and Jewish and Italian and millions of other Americans who have too long been excluded from the political mainstream. Ab wanted nothing to do with country club politics.

When I had the honor of working with Ab at the Republican National Committee, I found him to be a man who avoided the limelight, a man of humility, who was happy working behind the scenes. You could find Ab in his office, on the phone, quietly working away, that is, if you could make your way through the layers of cigar smoke.

He was always a tower of strength, a person you could rely on for a word of wisdom or encouragement when the occasion warranted. Ab was always cautioning me not to talk too long and I can see him now in the back of the room, looking at his watch—sending me a signal. We had great times bantering back and forth. I often introduced Ab as "Abe Lincoln's advance man" because of his long service, and he was constantly reminding me not to take myself too seriously—in fact, I'll bet he's smiling now.

Ab Hermann was an uncommon man. He achieved great things with his body, with his mind, with his uncommonly large heart. He loved a woman, and their love was an inspiration to all who knew them. He loved two daughters, and three grandchildren, and they will be blessed all their lives with that very special gift. They will leave here with memories that age cannot tarnish. Like all of us, they will find it difficult to say good-bye—but then, the good-byes will be tempered by having shared so much in a life crowned with triumph.

PRAYERS

Eternal Father, in whom we live and move and have our being, draw us close to Thee and let Thy light and joy fill our souls as we offer unto Thee the praise and thanksgiving of our hearts; for the mystery and wonder of life here and hereafter. We thank Thee that deep in the human heart is an unquenchable trust that life does not end with death, that the Father who made us will care for us beyond the bounds of vision even as He has cared for us in this earthly pilgrimage. We praise Thy name that our hope has been so wondrously confirmed in the life, the words and resurrection of our Lord Jesus Christ.

Almighty God, Father of mercies and Giver of all comfort, deal graciously, we pray Thee, with all those who mourn this day, that casting every care on Thee, they may know the consolation of Thy love, the healing of Thy grace, and the companionship of Thy presence. May Thy grace attend Sylvia, Jo Ann and Ellen and all others dear to him. Through Jesus Christ our Lord.

We give Thee thanks, O Lord, for all the sacred memories which cluster about this hour. We thank Thee this day for Thy servant "Ab"—for his home and his heritage. We thank Thee for the nobility of his manhood, the reach of his ideals, the integrity of his person, the strength of his intellect, the depth of his dedication, the hospitality of his mind, the warmth and durability of his friendship. We thank Thee for his versatile athletic skills, for his political prowess, for his executive talents, for the force and contagion of his patriotism and his selfless spirit of service to the common good. We thank Thee for the home he created and the love he shared.

We thank Thee, O Lord, for the battles fought and the victories won. We thank Thee too for lessons learned both in winning and in losing—for times when effort was unrewarded and work uncompensated, but a great cause was advanced. We thank Thee for the deep ties of the spirit binding us together—heart to heart, mind to mind, soul to soul, the visible and the invisible for time and eternity.

God of our Father and our God who has watched over this Nation from generation to generation may a new spirit of hope and joy arise in us to match the needs of the times. Give us wisdom and grace to go from strength to strength.

And now, O Father, who doest all things well, with thankful hearts that Thou hast given him to us for a season, we give Thy servant Albert, back to Thy tender care, until the shadows flee away, and the brighter day dawns, when the visible and the invisible are as one in Thy higher kingdom. Through Jesus Christ our Lord.

THE LORD'S PRAYER

Our Father, who art in heaven; Hallowed be Thy name. Thy Kingdom come. Thy will be done; On earth as it is in heaven. Give us this day our daily bread. And forgive us our debts; As we forgive our debtors. And lead us not into temptations; But deliver us from evil; For Thine is the kingdom, the power, and the glory, for ever. Amen.

BENEDICTION

The God of peace, that brought again from the dead our Lord Jesus, that great Shepherd of the sheep, through the blood of the everlasting covenant, make you perfect in every good work to do His will, working in you that which is well-pleasing in His sight; through Jesus Christ, to whom be glory forever and ever. Amen.

[From the Washington Post, Aug. 27, 1980]

FOUR LEGACIES

(By David S. Broder)

Four times in the past few weeks, the obituary pages have reported deaths of men for whom this reporter's professional respect was mingled with feelings of personal affection and gratitude.

William J. Baroody Sr., the former president and guiding spirit of the American Enterprise Institute; Albert B. (Ab) Hermann, a longtime official of the Republican National Committee; Donald G. Herzberg, the dean of graduate studies at Georgetown University; and former governor James B. Longley of Maine—unique and distinctive individuals, with little in common. But they exemplified four qualities that give vitality to our society and our politics and that are diminished by their deaths.

Bill Baroody believed in the power of ideas. He came to Washington as an advocate of free enterprise in a capital dominated by New Deal thinking. While advising two generations of Republican presidential contenders, his main purpose was to build an intellectual center of conservative thinking that could challenge the prevailing orthodoxy.

The American Enterprise Institute is that center, and it expanded under his 25 years of leadership from a ragtag outfit to an organization whose scholarly activities, conferences and publications rival those of its more liberal neighbor, The Brookings Institution.

Because Bill Baroody believed in open political debate, AEI has also become a place where dissenters from today's fashionable conservatism are welcome—and where the discussions are both civil and stimulating.

And Ab Hermann was a very different fellow—a street-smart politician whose vocabularly always bore the stamp of his Milltown, N.J., upbringing and his eight years as a third baseman with the old Boston Braves. Ab Hermann believed in the Republican Party in the same simple, fundamental way that he believed in his Colgate University athletic teams and in the value of competitive sports.

For almost 30 years, he was the unchanging presence on the political staff of the Republican National Committee, taking an unending succession of chairmen through their initiation rites and showing them which skeletons occupied which closets and how to keep them still.

For dozens of reporters (including this one, when I was barely able to find my way from the Cafritz Building GOP Headquarters to Capitol Hill), Ab Hermann was also a guide. Without the least trace of disloyalty to his party, he would—by the lift of an eyebrow or one of his fractured, Casey Stengel sentences—steer you toward reality, or at least to the Republican version of that elusive prize.

Don Herzberg was very bit as partisan a Democrat, but what distinguished him was his faith in young people and his devotion to the nurturing of their political talents. He did not make it easy for anyone to discover that fact; for, despite his academic career, he affected the pose of a tough-talking pol—someone who had no patience, for example, with the "reforms" of the Democratic convention and nominating process.

But his life work was teaching. Before coming to Georgetown, he had spent 17 years making the Eagleton Institute of Rutgers University one of the great graduate centers of politics in this country.

Don Herzberg had a particular affinity for practitioners, and not just scholars. He found them in places that fashionable opinion scorned. Under his leadership, Eagleton developed a program for identifying and coaching the most promising young state legislators in seminars designed for their special needs—and this at a time when the press and public did nothing but ridicule the legislatures as the sewers of politics.

The subsequent careers of those men and women are the best proof that Herzberg's faith was justified.

Jim Longley, the last of these four friends, was a man with enormous faith in himself. That is a trait of every successful politician, of course, but Longley possessed it to a degree I have rarely seen.

It made him a difficult, prickly person to deal with on many occasions. But that was a small price to pay for a relationship in which the intensity of one man's convictions forced an equally honest response from the other.

He had been a smashingly successful insurance salesman before he was drawn into politics by his work on a commission examining the operations of the Maine government. What he saw convinced him he could run Maine better than anyone else. When he decided that, he simply ran for governor as an independent, scorning the bend to the demands of the party nominating process.

He won in 1974—to everyone's surprise but his own—and quit in 1978, as he had said he would, satisfied that he had proved his point.

I said at the outset that these men were strikingly different from each other. But it occurs to me that there were some common threads. Jim Longley's only campaign button read "Think about it," a slogan Bill Barcody would have liked.

The legacy of this independent governorship in Maine is a strengthened two-party system, with both Democrats and Republicans in that small state presenting the voters with an exceptional quality of young leadership—something Ab Hermann and Don Herzberg would have loved.

They will be missed for what they were—and what they did.●

SUSAN POWELL FROM OKLAHOMA—MISS AMERICA

● Mr. BOREN. Mr. President, on Saturday night, a beautiful, green-eyed brunette from Elk City in western Oklahoma was crowned the 54th Miss America. Susan Powell, 21, epitomizes the quality of the outstanding young people of my home State.

Oklahomans are justifiably proud of Susan, who not only possesses a tremendous talent, but is a very warm and gracious young woman. There is no question that she will wear her crown well and be an outstanding representative for our entire Nation this year.

Susan is a 1977 graduate of Elk City High School and is presently a senior, majoring in vocal performance, at Oklahoma City University. She is the daughter of Vinita Powell and Wendell Powell of Elk City, and is active there in the United Methodist Church and the church choir.

Her ultimate goal is to sing with the Metropolitan Opera Co. I think all who heard her sing "Lucy's Aria" from Menotti's "The Telephone" as her pageant talent presentation would agree that she has the talent to meet this objective.

Oklahoma now becomes one of only five States in the 60-year history of the Miss America pageant to boast of three winners. In 1926, the late Norma Smallwood Gilcrease Bruce of Tulsa wore the crown of Miss America, and in 1967 Jayne Ann Jayroe of Laverne, Okla., held the title.

Only two other States have had more than three winners.

Susan speaks of her upcoming year with the patriotic pride characteristic of an Oklahoman. She says she feels Miss America is "an unelected representative of the country." It is her goal this year to "learn to love our country even more" during her travels.

Larry Wade, mayor of her home community recently hosted President Carter during his Elk City town meeting. He says nothing, other than the President's visit, could even compare with the excitement that Susan's triumph has caused in this western Oklahoma town.

His words speak much about how Oklahomans feel about their young people. "It is marvelous to see a young lady grow up in your community and be a warm and gracious part of it, then be such a great success."

Elk City residents, and all Oklahomans, are looking forward to having a big celebration in coming weeks when Susan returns home.

Obviously, Susan feels the same pride in her home State. Upon winning the crown Saturday night, she told national reporters, "I just want to say one thing to Oklahoma. I love you * * * Oklahoma is the greatest place to be."

Mr. President, Susan Powell, Oklahoma's Miss America, has a great future ahead of her. Oklahoma claims Susan as her own, but looks forward to sharing her talent and warmth with the entire Nation during the next year.●

NATIONAL NETWORK OF HOSTELS

● Mr. SASSER. Mr. President, traveling Americans both young and old have come to appreciate the 50-nation international network of hostels. Unfortunately, the hostels in this country are too few and far between. Vast distances separate America's 240 hostels, and this country is unique among Western nations in having no Government subsidies for them.

I am pleased to lend my support as a cosponsor of S. 3092, introduced in the Senate on September 4. This bill will set in motion a systematic approach for developing a national network of hostels.

With the rising costs of fuels and transportation, hostels are an increasingly appealing option for young Americans. Hosteling introduces education through travel at an affordable level which later, as families and incomes grow, is capitalized upon by larger corporations in the travel industry. It is often the case that an 18-year-old traveling on a shoestring budget will return when he is 25 or 30 years old traveling first class.

The development of an extensive hostel system in the United States will afford many Americans access to cultural attractions, natural resources, and urban centers. By utilizing the hostel's low-cost accommodations, many Americans will be able to see parts of the country which they otherwise would have only dreamed about. We owe our young people this opportunity and I urge the passage of the National Hostel System Act of 1980.●

THE PRIMARY PROCESS

● Mr. BIDEN. Mr. President, the intensity of press coverage of the political campaign tends to make us all a little dizzy. The print and broadcast media devote so much space and time to the campaign, the candidates and a welter of too often trivial details that we are overwhelmed by more information than we can absorb.

The result, I am afraid, is that we frequently find it easier simply to accept whatever is passing for fashionable thinking on political subjects, rather than to undertake the harder work of reaching our own conclusions. Such has been the case, I believe, with regard to the primary election process for selecting Presidential candidates.

Now and then, however, we are effectively challenged to do our own thinking, and commentator Jeff Greenfield has provided just such a challenge in a recent issue of Parade magazine. In an article entitled "Isn't It a Good Time To Look at What We've Done?" Greenfield explodes a series of cliches that have grown up around the primary process and clears the way for some clearer thinking on the subject.

Mr. President, I ask that Jeff Greenfield's thoughtful article be printed in the RECORD.

The article follows:

ISN'T IT A GOOD TIME TO LOOK AT WHAT WE'VE DONE?

(By Jeff Greenfield)

Now that the political conventions are over and the Presidential campaign has entered the grand finale, it is time to take a hard look at the recent and persistent attacks—from voters, politicians, political analysts and journalists—that have been mounted against the primary-based system of selecting nominees. It's time as well to reexamine our nostalgia for the old, boss-controlled convention system that, critics say, gave us Presidential giants while today we are offered only dwarfs.

It may seem heretical in the present atmosphere of bewailing the system, but herewith a dissent: The faults of our current setup are relatively minor, easily correctible—and not nearly as significant as those of the late, lamented system our present one was designed to correct.

A look at some specific complaints will, I hope, demonstrate that many of them are overblown, exaggerated, or just plain false—especially when they are based on a nostalgic and often wildly inaccurate view of the way things were. During the post-primary season, we have been bombarded with the following conclusions:

"The process takes too long." From the January caucuses in Iowa to "Super Tuesday" in June, 19 weeks elapsed. By the end of the primaries, Americans were hopelessly bored with the ceaseless flow of political stories. This process, certainly, could be shortened by legislating a primary season—say, from the first week in March to the first week in June.

But these actual voting weeks are not why the process seems so long. The length is due instead (1) to the growing practice of candidates announcing for office two years before Election Day, and (2) to the press's desire to be on top of the story as early as possible. There is no constitutional method of forcing the press to ignore Presidential politics two years in advance (stories are already appearing, in fact, about Ted Kennedy's chances in 1984).

Moreover, the process seems long now because (3) in the Good Old Days, prospective Presidents battled for votes by meeting with political power brokers in secret, months or years before the conventions were held. So the process isn't really longer now—it's just out in the open longer.

"The process is too expensive." If we count primaries and general elections together, political expert Richard Scammon says, it is probably less costly to elect a President now than in bygone days. In 1896, the Republicans spent $4 million to elect William McKinley—a sum which, considering the real value of those pre-inflation dollars, exceeds what any candidate will spend in 1980.

It is true that this year candidates found themselves running short of cash as key primaries approached: John Connally, who raised $12 million before the first primary was held, was out of funds by March; Ronald Regan had to cancel TV time in the later primaries. But this very constraint may actually help "cure" the complaint of excessive campaign length; with federally ordered limits on campaign fund-raising and spending, candidates in the future might announce later and save their money for key big-state primaries.

"The process puts too much weight on early primary and caucus states." Clearly, the flood of reporters into Iowa and New Hampshire gives these early-vote states enormous power in establishing "momentum." But there is nothing to prevent states such as California from advancing their dates to be part of the early primary season (New York's primary, once in mid-June, is now in late March).

Further, for all the talk of "momentum," late states often do have a good deal of power. In 1976, Jimmy Carter's nomination was not secured until he won Ohio in June. This year, Reagan's certain victory in California forced George Bush from the Presidential field.

"The primaries give too much of an edge to non-office-holders." True, both Reagan and Bush were non-office-holders in 1980, as was Carter in 1976. But does that establish a general rule?

It does not. Gerald Ford in 1976 and Carter in 1980 were incumbent Presidents; Edward Kennedy's Senate seat did not cause his primary losses.

The idea that our present system rewards the non-office-holder is a classic case of political myopia—a generalization from one campaign into a sweeping political "rule" that indicts a whole system.

"The skills needed for election are not the skills needed to govern." In the good Old Days, prospective Presidents dealt with power brokers and political leaders. The skills involved, it is argued, were precisely those needed to be an effective President—not the skills required today of creating a telegenic political personality.

Does this analysis hold water? John Kennedy, taking the telegenic primary route in 1960, won the Democratic nomination from Lyndon Johnson—an absolute master as political negotiations. Yet when Johnson assumed the Presidency, his skills proved ineffective in keeping the nation behind him on either his domestic or Vietnam policies. Warren Harding, Calvin Coolidge and Herbert Hoover did not display excessive Presidential timber even though they won nominations through wheeling and dealing.

In fact, this argument about skills, if extended logically, would suggest that we not choose Presidents by elections at all—just find worthy, wise elders and let them pick our leaders. A commitment to democracy demands that we trust the populace, and if we trust ourselves to choose a President, we ought to trust ourselves to choose candidates too.

The present systems has been in place for only three elections. It is the product of a specific year—1968—when political upheaval revealed an unpleasant truth: we had become effectively disenfranchised from choosing our candidates. In many states, delegates had been picked with no popular participation at all—as much as two years before the conventions. It was this condition that the primaries were designed to replace.

To defend this system is not to insulate it from challenge. It needs shortening, it needs financial reform, and it needs press coverage which treats the campaign not as a horse race but as a clash among ideas, policies and programs. But it also needs nurturing—not shortsighted attacks that ignore the substantial evils it was designed to correct.●

SENATOR JESSE

● Mr. LAXALT. Mr. President, over the weekend I read a tribute to the father of our distinguished colleague, the senior Senator from North Carolina (Mr. HELMS). It was, in fact, a tribute to both JESSE's father and JESSE himself.

The tribute was published in the September/October issue of Charlotte magazine, published in North Carolina's largest city. The author, Joe Maynor, is an able writer, and his account of the relationship between Senator HELMS and his late father touched my heart.

Mr. President, I commend this article to the attention of my colleagues because it tells a very great deal about Senator HELMS, his stout principles, and how he acquired them.

I ask that the article by Joe Maynor be printed in the RECORD.

The article follows:

SENATOR JESSE

(By Joe Maynor)

His name was Papa and Papa was always right.

He was an imposing looking hulk of a man who served in the dual role of fire and police chief. He was known by everybody in the community because he was in evidence almost everywhere. His huge, beefy hands could restrain a fighting prisoner or soothe a scrape on a young lad's knee. He could be as gentle as he was firm, and his keen sense of justice gave him the respect and admiration of everybody who knew him.

Nobody had more regard for the awesome figure of a man than the young boy who was often seen following his footsteps. The youngster was skinny, a little tall for his age, but he had to pump his legs relentlessly to keep pace with the long strides of his father. When the man spoke, the boy listened, and he learned.

Papa was the first teacher that Jesse Helms, Jr. had, and the lessons he taught were based on a strict code of hard work, justice, and moral conduct.

Born in Monroe, North Carolina, on land that his ancestors settled in 1745, young Jesse Helms grew up in the company of people who held strong religious convictions and promising principles. Although there were many who made indelible impressions on on him, by far the strongest influence in his life was that giant of a man with the long stride and endless shadow—his father.

The Jesse Helms in the United States Senate today is nothing more, nor anything less, than an extension and refinement of the boy who developed his character and moral principles during a time when he says, "everybody was poor, but we didn't know it." He learned the work ethic early in life from his father and, like the subjects in McGuffey's Readers, his lessons were often punctuated by dramatic examples.

Take that special July 4th celebration at the height of the Great Depression. A group of merchants in Monroe got together and bought a new automobile to give away on Independence Day. Customers at participating stores received tickets with each purchase, and the stubs were deposited in a large container. On July 4th, a ticket would be drawn from the container and the winner of the car revealed.

"I remember that Papa gave each of us [children] three stubs that he had acquired when making purchases," the Senator recalls in his book, When Free Men Shall Stand.

" 'Keep them,' he said, 'but don't count on getting an automobile for nothing.'

"That was one of the few times that I doubted Papa's advice. I kept those stubs and examined them so often that they were almost tattered. I slept with them under my pillow. I knew that Papa just had to be wrong this time: surely fortune would smile on me."

Fortune frowned, of course, and young Jesse's disappointment was followed by a long talk with his father.

"In that talk he taught me that the way to achieve, the way to acquire something that I really wanted, was to work for it. Earn it, he said in his gentle way. He told me that in America people who work hard and save can do amazing things," Helms remembered.

It was a lesson he would never forget. From that incident and the resulting talk, he learned that there is no such thing as a free ride, and it gave him the foundation for his staunch support and practice of the work ethic. Because of that, he sees a bleak future for the nation today, if the trends of our modern society continue to perpetuate what he calls the Work-Less Ethic.

Again, quoting from his book: "While driving from my home in Raleigh to the airport one day recently, I counted thirty-six boys doing nothing. There was one cluster, eight or ten, standing in front of a neighborhood drugstore. A pool hall at one corner had five or six outside, and heaven knows how many inside. Three automobiles, each bearing three or more teenagers, roared past as I continued toward the Durham highway and the airport. And so it went. I recall seeing one boy—just one—behind a mower. But I also saw three elderly men doing yard work."

Such idleness would have been unheard of when he was a boy, and it frustrates him to see it now. He views it as an ailment that agonizes the country, giving root to the drug craze, the rising crime rate and even the breakdown in communications between the older and younger generations.

The work ethic took effect early on young Jesse Helms. At the age of nine he wrote his first newspaper story. It was a four paragraph account of a local football game in which the Purple Pythons broke a losing streak. His lead was, "The Purple Pythons Uncoiled Today . . . " That was the beginning of a career of public expression that he seemed destined to spend a lifetime pursuing.

Although there was little overt evidence of an interest in politics in his early life, he was profoundly influenced by the things that happened in his government and by those who observed those events. He felt a special, personal loss when he delivered the Charlotte News to nearby neighborhoods on the day the headlines carried the news about the deaths of Will Rogers and Wiley Post in a plane crash in Alaska. He was thirteen at the time, and he remembers it as "a dreary afternoon as I delivered the sad news . . ."

Will Rogers had a fundamental distrust of big government in general and Congress in particular. Jesse Helms shares that distrust. He points out that there is a statue of Will Rogers in Washington which is positioned about one hundred feet from one of the entrances to the House Chambers. It's the only statue facing the House Chamber—in keeping with his suggestion that "somebody better keep an eye on that crowd."

"There ought to be one facing the Senate Chamber as well. More Americans ought to keep their eyes on both houses," the Senator says.

Monroe writer/historian Max Harris, who was a couple of years behind him in school, remembers young Jesse racing up to the sidelines at football games, carrying a typewriter and spending most of the contest behind it, writing a fresh-from-the-game story for the Monroe paper. "He was also in the band," Harris recalls, "and that particular band had a lot of people who became famous North Carolina personalities."

Indeed it did. In addition to Jesse, there was Henry Hall Wilson, who served as a presidential advisor in the Kennedy and Johnson Administrations; Hargrove "Skipper" Bowles, who came extremely close to becoming Governor of North Carolina; Skipper's brother, John, who was president of Rexall Drugs; James "Bud" Nance, who rose to Rear Admiral in the U.S. Navy and commanded the

carrier *Forrestal*; Bruce Snyder, who went from the high school band to the Tommy Dorsey band at the height of the Swing Era; and a number of doctors, lawyers and other professional people.

All of those people heard the same teachers and learned the same lessons in school, but many went in different political directions when they left. For Jesse, there was never any question about the truth of conservatism. From his early childhood, he had learned that the country owed him nothing except the opportunity that it promised. That concept continues to be a major part of his political persuasion.

There is no way to discuss politics with Jesse Helms without talking about the economy and his gold-plated theory on it. That, too, dates back to those high school days, traceable directly to the English class of Miss Annie Lee, a teacher the Senator idolized.

Miss Annie Lee was an English teacher from the old school, and she demanded good grammar from her students. She had two pet peeves where grammar was concerned: she hit the roof when she saw a split infinitive and her teeth gripped one another when she was subjected to "different than."

"It's different from . . . different from! Not different than," she would say.

But Miss Annie Lee, English teacher, was also Miss Annie Lee, critical observer of the economy in those years of New Deal recovery. On the day the President announced that the country would be going off the Gold Standard, Miss Annie Lee took time out from her English instruction to lecture her class on the dangers of such a move. That lecture has stayed with Senator Helms to this day, and he is quick to point out that his English teacher's prophecies in those dark days of the Depression have come true.

"She got me interested in the Gold Standard," he said. "Our economy had been operating on legalized gold, gold certificates, and the money was backed up by precious metals. But when we went off that standard, Miss Annie Lee forecast what would happen. She said it would now be easy for the government to spend money that it doesn't have, weakening our currency with indebtedness. She was right. It happened."

Another English teacher, Mrs. Anna Benson Bamberger, recalls teaching Jesse in high school. He was the kind of student she would have to remember.

"He did his homework," she said. "He was ambitious, thoroughly trustworthy and he had a purpose in life." No teacher ever forgot a student like that.

The Baptist Church had its influence on young Jesse Helms, and that rock-ribbed religious background never fails to frustrate his enemies who would like to see him falter and be sent home from Washington in disgrace. He won't be found in a compromising position. It won't happen because his morality is as sincere as his insistence on the return of the Gold Standard or his demand to regain ownership of the Panama Canal. There were too many years of regular church and Sunday School attendance, done within the endless shadow of that giant of a man who vouched for the truth of it all, for Jesse Helms to violate his Christian principles.

The roots are so deep that they are fundamental to the character of the man. When Senator Helms rises on the floor of the Senate to denounce the practice of abortion as legalized murder, he means it. When he prepares legislation to restore prayer to the public schools, he means that, too. He is equally sincere when he defends the rights of fundamentalist ministers to use their influence in reestablishing Christian foundations in their government. He believes that there is a new religion developing in this country that makes a god of the government through socialism, and denies the Deity of Christ.

"Some years ago a clergyman found himself addressing a gathering in Charlotte," he recalls. "The talk turned to economics. 'As far as socialism is concerned,' the clergyman said, 'there are only two places where it will work: in heaven, where they don't need it, and in hell, where they have it already.' "

Senator Helms quotes many people in the ministry, and he counts a number of well-known fundamentalist preachers among his close friends. Religion not only works as a powerful force in his daily life, it's also a strong influence in his political convictions. For example, his stand on the nation's welfare programs is tied directly to his view of the teaching of Christ.

"Nowhere at any time did Christ mention a government welfare program, let alone endorse one," he says. "He suggested another way, one that would work. But neither the politicians nor the people have paid much attention. They have preferred instead to try to do it their way."

Fulfilling personal responsibilities by being productive citizens is the Senator's answer to runaway welfare. Once again, his personal life reflects his political philosophy. He worked three jobs while going through Wake Forest College. His family didn't have the money to send him to college, so he went on motivation.

"R. W. House was the principal of Monroe High School and just before graduation, he called the seniors in for talks about their future," Helms recalled. "When he asked me if I would be going to college I told him we couldn't afford it. That's when he gave me a lecture that has stayed with me ever since."

The principal told him that there were jobs available to help anybody through college who wanted to go, but be willing to do whatever was necessary, as long as it was honest. "It will all come in time," he said, "if you're willing to work hard enough for it."

He was, and it did.

He dug post holes, proofed copy for a Raleigh newspaper and worked in the college sports information office.

There were other challenges in the young life of Jesse Helms. R. W. House was not only the principal, but the band leader as well. He recalls a time when Senator Helms was competing for state honors with the tuba. The championship competition was underway and Jesse had the attention of the judges.

"He started playing 'The Flight of the Bumble Bee,' and he got going a little bit, then stopped. He started over, but he stopped again. This time he took a new grip on the tuba, looked around for a moment and then looked directly at a judge. 'Judge, I'm scared to death,' he said. But he went on to win the state championship."

In fact, Jesse Helms was a two-time state tuba playing champion, and he tied once for national honors with the instrument. In spite of that, nobody, including himself, ever expected him to join the Boston Symphony.

"I played the tuba by memory," he said. "I really wasn't very good at it." So much for the musical career.

Yet the experience of conquering the tuba and taking it to championship heights was just another McGuffey's Reader experience that proved a point and exemplified the lesson that difficult things can be mastered with patience and dedication to the task.

With almost total recall, Senator Jesse Helms can relate to lessons of his youth to his action and attitudes of today. Those years are important to him, and so were the people he looked up to for guidance and counseling. He has taken them with him everywhere, forgetting nothing about them.

"I remember once after I came to the Senate, a number of us were working on a bill," he said. "Hubert Humphrey was in the working session, and we debated over long hours. Finally we came up with a bill we could all live with, but I noticed something that jumped out at me. I said, 'Gentlemen, there is one more change that I must insist on. There's a split infinitive in this bill, and Miss Annie Lee would never permit that. Let's change it, just for Miss Annie Lee.' Hubert Humphrey said, 'By all means. Let's make the correction for Miss Annie Lee.' She was extremely ill at the time, and I called her from Washington. I managed to get the message to her that we had corrected a split infinitive in a bill, just for her."

Jesse Helms remembers what he learned from his teachers and his friends, but most of all he remembers the lessons of that imposing figure with the beefy hands, the gentle touch, the long strides and the endless shadow. He called him from Washington just about every day until the day the old man died.

When he was gone, a great void was left in the life of the Senior Senator from North Carolina. He had been a teacher, a counselor, and a voice of wisdom to the very end.

His name was Papa, and to Jesse Helms, Papa is still right.

ARSON FOR PROFIT

● Mr. BIDEN. Mr. President, arson for profit has reached epidemic proportions. The National Fire Prevention Agency estimated that in 1978, there were 173,934 fires of incendiary or suspicious origin and 1,046 civilian deaths. In the State of Ohio, for example, it is estimated that there are an average of four arson fires set each hour of every day; and in the city of Wilmington, Del., arson caused 69 percent of all fires between June 1978 and June 1979 resulting in a dollar loss of $4.4 million.

On Wednesday, September 10, 1980, at 10:30 a.m. in room 2228 Dirksen Building, the Senate Judiciary Committee, Subcommittee on Criminal Justice, of which I am chairman, will hold a hearing on S. 252—The Anti-Arson Act of 1979. This bill would authorize and mandate that the FBI reclassify arson as a major crime by including it in their part I major crime statistics, instead of relegating it to the minor crimes category of part II crimes along with vandalism and drunkenness.

S. 252 would also create a formal interagency committee which would coordinate nine Federal agencies concerned with arson to complement and assist States in arson prevention. In addition, S. 252 would require applicants seeking property insurance in high risk neighborhoods under the FAIR plan to fully disclose all prior instances where property they held was destroyed by fire within the past 10 years. (The FAIR plan is the fair access to insurance requirements plan where privately owned agencies operated by State insurance authorities, provide property insurance in primarily urban areas where the insurance industry will not insure. These plans are reviewed by the Department of Housing and Urban Development.)

The witnesses who will testify possess a broad range of backgrounds and include a prosecutor, a firefighter, a representative from the FBI and several spokesmen from the insurance industry. The prosecutor, John Pyle and John Barracato (whose statement will be read by Rod Birmingham) manager of the Arson Fraud unit of Aetna Life and Casualty Insurance Co. are known nationally for their work in arson prevention. Both of

them have contributed to a recent article in the June issue of the American Bar Association Journal entitled "The Most Neglected Crime in the United States."

This article, which I would like to share with my colleagues, discusses the efforts of Senator JOHN GLENN, the sponsor of S. 252, and what can be done to stop this arson epidemic before it gets out of control. I ask that the article be printed in the RECORD.

The article follows:

THE MOST NEGLECTED CRIME IN THE UNITED STATES

(By Betty Freudenheim)

In the early 1970's, you could stand at the intersection of 141st St. and St. Anne Ave. in the Bronx and see fire engines racing in every direction, recalls Edward McCarthy of the district attorney's office there. "Every building smelled of burning. Now if you go there—don't go alone—there is nothing left but stray dogs and junkies standing in empty doorways. Not just buildings were burned, but whole neighborhoods have been wiped out as far as the eye can see."

Many older cities have their smallscale South Bronxes, and others show a potential for repeating this tragedy and devastation, the wasteland created by arson. But after the flames are doused, the dead buried and insurance claims paid, only a few areas are making a real effort to track down the malefactors or to remove the profit which motivates the crime. Those cities which can show that their arson crimes are diminishing, point out that they are limited by budgets, certain current laws and untrained personnel. Here and there legislators are writing new laws, law enforcement officials are developing anti-arson strategy; nowhere in this country can they claim that, like small pox, they have wiped out the plague of arson. But the fight has begun.

"Arson is probably the most neglected crime in the United States, if not the world," said David F. McCormack, superintendent of the National Fire Academy (NFA). "Its outbreak is now at epidemic proportions." In the last decade arson has increased 400 percent, causing an estimated 1,000 annual deaths.

Michael J. Laperch, a Treasury Department official, said that "arson is the biggest crime, dollar-wise, in the nation." He estimated that losses now run from $3–6 billion dollars a year. Some experts go as high as $10 billion when tax and job losses are added in.

Reflecting the minimal attention given by investigators and prosecutors to this crime, the conviction rate for arsonists hovers around 1 percent nationally.

How has a crime of such magnitude managed to go unchecked and largely unnoticed? Only the occasional caption under a newspaper photo of a disastrous big fire tells us "arson suspected." Who cased the fire? Was the arsonist caught and convicted? Even though multiple deaths may have been involved, unlike sensational murders, we rarely find out who-done-it.

Sen. John Glenn, D-Ohio, asked himself similar questions after hearing complaints from fire marshals of Cleveland, Toledo and Youngstown. He called for hearings, in December 1977, of the Senate Intergovernmental Relations Subcommittee and declared "As residents of older, denser and poorer inner cities can readily testify, the smell of gasoline and the sound of fire engines in the night is an all too common characteristic of inner city life."

At these hearings, Sen. Charles Percy, R-Ill., testified that a General Accounting Office report, which he requested, indicated that "federal law enforcement agencies have done almost nothing to determine the severity of the problem or to lay down a coordinated strategy to cope with it." The GAO informed him that only 0.1 percent of the Law Enforcement Assistance Administration funds for localities—$1.7 million out of $2 billion—went for arson control in the period 1975–77. "This is ludicrous in the light of the frightening human and financial losses resulting from arson," Percy stated. (According to Percy, the LEAA has changed its policy and recently awarded 35 anti-arson grants totalling $8 million. However, this amounts to an average of only about $230,000 per city.)

One explanation for the national apathy to this violent crime was brought out by former Mayor Beame of New York City. Only four months before the hearings, this city had experienced a storm of vicious looting, rioting and arson during a power blackout. He testified that when he called on the Federal Bureau of Investigation for help in tracking down arsonists, such as those who had set fire to the South Bronx, his plea was turned down. Explanation: the FBI didn't consider arson a major crime. It was listed in the agency's Uniform Crime Reports as a "Part II" crime, ranked with drunkenness and disorderly conduct.

Former astronaut Glenn took on the down-to-earth task of changing the status of arson through a unanimously approved bill, to a Part I crime, which would rate it in importance with murder, rape and auto theft. This was the first change in the recording of crimes since the origin of the FBI in 1928. The 1979 crime statistics will show a large jump in Part I crimes because of this inclusion. However, Dave Cassens of the FBI's Washington office said that the figures for the last year still contain only partial statistics since the police chiefs (who formed the only opposition to the bill) have had to develop a whole new system of crime reporting. The 1980 figures, when they are announced, will reveal, at last, the true dimensions of the crime of arson.

What will this change of status do to help combat arson? As any general knows, you first have to recognize the enemy, and then any information about its tactics, size of forces and equipment are as important to the battle as maintaining a well-trained, coordinated combat force.

Glenn wants to use these figures and other information from federal investigative agencies to initiate a federal strategy to battle arson and encourage training and funding for anti-arson forces at both federal and local levels. He disclosed that "Federal efforts in the arson area are often duplicative, working at cross purposes, underfunded and uncoordinated. Arson assistance does not have high priority at the federal level." Training efforts have been spotty at best.

His new bill (S. 252, not voted on in 1979 and reintroduced this session) would establish a federal Interagency Committee on Arson Control composed of representatives of nine offices: The attorney general; FBI; postmaster general; secretary of the treasury; National Fire Prevention and Control Administration; Federal Insurance Administration; director of the Bureau of Alcohol, Tobacco, and Firearms; commissioner of the Internal Revenue Service and director of LEAA.

The committee would have power to organize a national strategy which would coordinate anti-arson training and develop federal research on arson prevention. (A special fund to finance the agency was dropped from the bill.) The bill will give a "clear message to LEAA that the Congress expects a strong LEAA effort in arson fighting," Glenn said. The bill also contains a provision that would make the classification of arson as a Part I crime a permanent classification. (The first bill had only stipulated a one-year period for this change.)

U.S. LAUNCHES ANTI-ARSON PROGRAM

Last December, the White House, stealing the march on Glenn, announced an arson-fighting program bringing together some of the same agencies. Under it, grants totaling $9 million are being made to nine states and 26 regional, county and local governments to improve investigation and prosecution of arson.

In the past decade, two federal agencies have become involved in arson investigation on a limited scale. For years the FBI had said that it could enter arson cases only if they occurred on federal property, otherwise the case would not involve a federal crime. Although S. 2292, a bill sponsored by Senator Percy that would give arson federal crime status, is still pending, the FBI now is participating in investigations involving racketeering activity under the Racketeer Influenced and Corrupt Organizations (RICO) law [18 U.S.C. § 1962(c) 1976]. The agents also prove that the arsonist violated federal statutes against mail fraud through insurance claims, obstruction of justice, etc.

"We are fighting a great deal of technology," said FBI's Cassens. "Torches (hired arsonists) know what to do, how to do it and how to make it look as though they had not done it." Although he did not want to discuss details, he said that in some cities where recent big fires have brought big insurance payoffs there is strong evidence that the torches may be employees of organized crime syndicates. Some of these "professionals" make $300,000 a year—tax-free of course, he said.

The Alcohol, Tobacco and Firearms (ATF) division of the Treasury Department also started investigating arson which affects interstate commerce in 1972, when "Molotov cocktails" were included in the definition of explosives [18 U.S.C. § 232(5).] (See United States v. Haynes 466 F.2d 1260 [5th Cir. 1972] reversed on other grounds; and 1970 Code Cong. and Ad. News 4011).

According to a memorandum by Jack Patterson, assistant chief counsel of ATF, "in incidents involving 'explosives or incendiary devices,' a violation of the National Fire Arms Act (NFAA) occurs in that there is the possession of an unregistered destructive device. Under NFAA, the term 'destructive device,' means any explosive or incendiary bomb or similar device, and includes any combination of parts from which a destructive device can be readily assembled [26 U.S.C. § 5845(f).]

"This office could work full time on arson cases, giving up all our other investigations, and still only make a dent in the situation," Michael LaPerch, special agent in charge of the New York office of ATF. "But even if we didn't do a thing, when the word is out that the Feds are working [there], that is enough to scare off some arsonists," he said.

ATF agents were called in to investigate more than 40 fires which occurred in the Buffalo area; these included 20 in lumberyards. Local firemen had sought federal help because they thought a business competitor perhaps a Canadian, might be the culprit. One snowy night, illuminated by three lumberyard fires, footprints led these investigators to a teenager who had incendiary devices in his car that matched those found at the fire scenes. Photos of all the suspicious fires and a few others which firemen had not even suspected were collected at the young man's home. Although federal agents rarely are involved in cases of pyromaniacs, it was their tracking skill which ended this chain of fires.

FIREMEN AND POLICE DEBATE JURISDICTION

Just as the FBI and ATF have been cautious about which arson-for-profit investigations they enter, so too, many fire and police departments have debated who has jurisdiction in cases of suspected arson. Firemen frequently say that their responsibility ends with putting out the fire, that they are not equipped to pursue criminals. Police departments report that fires are not their business. Petty jealousies and rivalries for the same tax dollars have impeded effective investigative efforts.

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The internecine rivalries between the two forces are almost a local tradition in New York City. When the Bronx Social Club burned down on a Saturday night in 1976, 25 people died and 18 were maimed. Police and firemen were at loggerheads on the scene, arguing among the smoking ruins and departing ambulances over who should question the witness. Worried that such confrontations would fatally weaken his case, Bronx District Attorney Mario Merola forced both departments to report to him and to each other during the three-month investigation. The result: three arsonists were caught and sent to prison for life. One admitted he had been angered because his "niece" had gone to the social club despite his admonitions to keep away from the place.

Using this cooperation as an example, Merola created an arson squad with representatives from the fire marshal's office, police department and Insurance Crime Prevention Institute. "We coordinate their efforts since we have to prosecute the cases," said Edward McCarthy of the DA's office. "Everybody is under one tent now. We had to re-educate the police and fire departments so we don't lose a case. We don't want things botched up at the bottom."

The score card for this coordinated effort is all on the plus side. Structural fires in the Bronx have decreased from 14,474 in 1974 to 9,445 in 1979, according to Bronx Fire Department statistics. "Some people may say this is because we have nothing left to burn," said Barry Kluger of the arson squad, but no one can argue with the squad's 60 felony convictions out of 150 arson arrests in 1979. In the three years since the arson squad was created, the felony convictions have tripled over the 1974–76 average.

Testifying at Glenn's 1977 hearings, Merola admitted that the city had been self-defeating in the arson war through some of its regulations. About 100,000 people were on the lists for public housing, waiting for places to become available. Those whose homes had been burned were moved up to the top of the list and given $2,000 for new furniture from the city treasury. This double incentive, dangled before the eyes of unfortunate tenants, created an incentive for occupants to burn their own dwellings. Under new rules, if an applicant has more than one fire, investigation is made before he receives more money, and he no longer gets top priority.

THE FRIDAY NIGHT FIRES

In New Haven, the fire department takes some of the blame for the recurring arson blight of the Hill section there. In the early 1970s, four or five wooden frame houses would go up in flames every Friday night. "They knew that no one would be around to investigate until Monday morning," said the fire department's Lt. Martin O'Connor. Now whole blocks stand in mute testimony to past failures: windows boarded over and crumbling charred walls. "Cool it," says the black graffiti on one such broken wreck.

In March 1977, a grand jury attempted to do just that, uncover the extent of the city's arson problems. The highly publicized proceedings led to the arrest of 14 people for arson-related crimes. But the New Haven police and fire departments were also "found guilty" of failing to coordinate efforts.

The creation of a unified police-fire, fourman, highly trained arson squad also succeeded here. "We never had co-operation before," said Fire Marshall Thomas Lyden. "You'd have thought we had the plague."

"They are clasping hands now, not parting," said Arnold Markle, states attorney for the Judicial District of New Haven. "Suddenly, we are finding that we are successful. But this situation was born out of bitterness."

PERSONAL DIRECTION OF INVESTIGATIONS

As the second prong of New Haven's three-way arson attack, Markle personally directs investigations, urging concentration of effort on those cases that he feels can succeed in court. His book, *Criminal Investigation and Presentation of Evidence* (part of the Criminal Justice Series of West Publishing Co.), lists 31 questions for prosecutors, the answers to which could provide relevant information on the amount of insurance on a property compared to its value, figures showing whether the property was operating at a loss or statements from tenants indicating whether they were involved in a dispute with the landlord.

The careful preserving and testing of evidence is another Markle "must." "In the old days when there was accelerant dripping down the wall, the fire department would simply call it cooking oil," he said. "Never in a million years would that occur now." Officers are also instructed to seize the clothing of arrestees, particularly if they are arrested close to the fire scene.

Everything is run through the labs. New Haven, like many other cities, is requesting LEAA money to purchase sophisticated equipment such as hydrocarbon detectors and gas chromatographs. (Some inspectors send their evidence to the FBI lab in its DC headquarters or to the four ATF labs in Philadelphia, Atlanta, San Francisco and Rockland, Md., but a few prosecutors have indicated that they hesitate to have evidence leave their jurisdiction. They fear that it would be hard to prove in court that the gas-soaked board which had traveled to a far city was the same one which was found at the fire scene.)

COMPUTERS AND CONVICTIONS

The third prong of New Haven's arson war consists of a computer program to analyze information from city departments on a group of 100 houses which have no fire histories compared to 100 others with blackened backgrounds. Not only will this information help to convict torches and conspiring landlords, it also is useful in drawing attention to buildings which might provide future arson targets.

By analyzing computer printouts "we have discovered that arson occurs not only in deteriorating neighborhoods, but also in some which are undergoing the process of gentrification," Lt. O'Connor said. In the upgrading areas, landlords seeking quick eviction of low-rent tenants sometimes use gasoline to avoid city hall red tape. The city also gets stuck for the demolition costs, he added.

Arson is not the heart of the problem in upgrading neighborhoods; the "difficult reality lies in the conditions which allow arson to exist there," said James P. Chapman of Chicago's Uptown People's Law Center. He claims that the city of Chicago has purposely refused federal funds from the Housing and Urban Development Department for rehabilitation of the upper north side because this would stabilize the low-income population there, blocking the would-be improvement process. His group of downtown lawyers is working to protect the rights of tenants who are being evicted and burned out by speculators who intentionally let their buildings "go to pot."

Switching from the emphasis on the motives for arson, Seattle (which nearly halved its arson losses—$3.2 million in 1974 to $1.8 in 1978) has concentrated on arson prosecution. Its inspectors realized that, unlike in armed robbery cases, witnesses to arson crimes are rare and that would-be informers fear revenge fires if they testify. Most torches also have adequate time to create an alibi before the wick is burned or the gas exploded by the pilot light. The arson team in Seattle decided to exploit the Achilles' heel of a pro who has done a good job: he will often brag about his success. Insurance company funding provided an "Arson Hot Line" with rewards for informants. They can call toll-free from anywhere in the state and their identities will be protected. In the first three years of this program, rewards totaling $14,500 helped convict 23 arsonists responsible for $4.6 million in damages.

SEARCH WARRANTS RESTRICT INVESTIGATIONS

Another difficulty encountered by arson investigators was presented by the United States Supreme Court decision in *Michigan v. Tyler* (1978), [436 U.S. 499] which deals with the Fourth and 14th Amendments as they apply to entries and searches of fire-damaged property. In this case, while extinguishing a fire at Tyler's Auction, a furniture store leased by the respondent, containers of accelerants were noticed by the fire fighters. Because smoke and darkness prevented searching after the blaze was extinguished, fire officials and a detective postponed their examination until the following morning. Three additional visits were made without search warrants—four, seven and 25 days later.

Loren Tyler and his partner Robert Tomkins were convicted on evidence uncovered during the searches. The convictions were upheld by the Court of Appeals of Michigan, but the Supreme Court of Michigan, in a decision upheld by the U.S. Supreme Court, reversed the decision, holding entry to fight the fire and seizure of evidence at that time was legal but that once the fire was extinguished, any subsequent re-entry should have been pursuant to a search warrant.

In Michigan, administrative warrants are now issued if it is necessary to make more than one visit to a fire scene. Barry Kluger of the Bronx arson squad says that investigators there have avoided warrants by getting written consent from property owners to examine the premises to establish the causes of fires. "It would look pretty suspicious if they didn't want us to see what happened," he said.

Other laws inhibiting fire investigations include the state regulations ordering insurance companies to pay the victims of fire damage within 30 days. These laws, intended to squelch fly-by-night insurance companies, have encouraged arson profiteers who know that few investigations are completed within a month. Many insurance companies that formerly prided themselves on prompt payments now withhold money until the investigation is over. To protect such companies, the State of Washington last year adopted a law providing immunity from civil suits for insurance companies and fire departments in arson cases.

"We now have a regulation forcing insurance companies to pay all the back taxes which are owing before sending a check to the owner," said Kluger. In New Haven, the companies now must pay the demolition costs before paying the insuree. Both of these approaches are hacking away at the profit motive in arson.

But money is not always the instigating factor in arson. Enraged revenge fanatics, who burn the home of their adversaries, pyromaniacs and juvenile vandals are usually easy targets for police trackers. These aronists will often readily admit setting the fire and their motives.

In a Chicago case, Commander Nickels of the bomb and arson section of the police department related that a dinner guest felt that he was being served a type of fish which was inferior to what the members of the family were enjoying. This disgruntled gourmet rushed out and returned with gasoline, which he exploded at the front door when the family answered his ring.

REVENGE SEEKERS ARE MOST DANGEROUS

Revenge is the most dangerous form of arson since it often is accompanied by homicide. "This type of fire is usually right in the hallway, so people can't get out; there is smoke in the entire building," said New York City's Fire Marshall George F. Molloy. "Luckily they usually light bags of garbage (which doesn't burn well). The worst is when they lose all touch with reality, rush in with a can of gas, pour it out and light a flame. That creates a real disaster, such as the Bronx Social Club.

"Yes, we do have pyromaniacs in this city of eight million," Molloy continued, "but not as many as they have on TV. There is a desperate need to study the psychology of pyromaniacs and revenge-type arsonists." Many are escaping punishment on insanity pleas, he said.

But it is not only the psychologically twisted arsonists who are evading sentences in the courts. The profit-motivated landlords and their co-conspirators rarely end up in cells because few prosecutors are equipped to handle such cases. John Barracato, former deputy chief fire marshall of New York City and new head of Aetna Insuarnce Company's nationwide efforts to "win the war on arson," said he is having difficulty finding six lawyers qualified and available to assist him in court. Aetna has underwritten the cost of developing an arson instruction and trial practice manual for California judges, prosecutors and law enforcement officers. It will be made available nationally through local district attorneys' offices in the spring of 1980.

A second new volume intended to develop arson expertise among prosecutors is being put out by the Greater Cleveland Crime Prevention Committee, in cooperation with John S. Pyle, assistant U.S. attorney for the Northern District of Ohio. This extensive and highly detailed book covers every aspect of investigations, from description of the best camera to use and type of color photos to be taken at the fire scene to sample search forms and copies of all pertinent laws. Out of nearly 40 pages, 70 are devoted to the trial itself: the voir dire, sample opening statements and examinations of fire inspectors, chemists and witnesses. The final 44 pages provide cases concerning the sufficiency of evidence. [Lawyers who wish to order this book can do so through the Greater Cleveland Crime Prevention Committee—1835 Williamson Building, Cleveland, Ohio 44114.]

With added knowledge, funding, equipment and well-trained arson squads, the mounting arson statistics could be turned downward nationally as they have been in certain locales. But there can be no real success story while homes, people and businesses are being burned. The goal of cooling these flames can be achieved only with co-operation at all levels, removal of the insurance profit motive and the thorough prosecution and sentencing of arsonists in the courts.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. BAUCUS). The Chair will state that the time for morning business has expired.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONTINUATION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business be continued, that Senators may speak during the period not to extend beyond 30 minutes, and that at the close of morning business the Chair in his capacity as a Senator suggest the absence of a quorum unless a Senator in the Chamber does it.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President and upon the recommendation of the minority leader, pursuant to the provisions of 22 U.S.C. 276, as amended by Public Law 95–45, appoints the Senator from South Dakota (Mr. PRESSLER) to attend the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16–24, 1980.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HAPPY BIRTHDAY, REPRESENTATIVE CLAUDE PEPPER

Mr. CHILES. Mr. President, it is my honor and my very extreme pleasure to invite my colleague and former Senator to visit me, so that the Senate can join me in extending my wishes to my distinguished colleague from Florida, former Senator PEPPER.

Senator PEPPER had the occasion of serving in this body for longer than I have served here already. In addition to that, of course, he has provided years of very distinguished service in the House.

He is celebrating his 80th birthday today, and we say that he is 80 years young.

There are those who think he is a little like Satchel Paige and that there may be 25 or 30 years that he is not counting somewhere along the line in regard to those 80 years. But all of us know that he does more work than most young men 35 or so are able to do. In addition to doing more work he is able to accomplish more.

I had occasion to campaign with Congressman PEPPER in Miami. We were walking a district in South Beach, and I was saying, well, I knew he was not going to have any problems, because everybody was coming out of the stores and they were all saying hello to Senator PEPPER and they were saying, "It is so good to see you over here again," and they were all asking who was that fellow he had with him. So I wondered why I was supposed to be there sort of campaigning for him, realizing that everybody knew him and was supporting him. But it was interesting.

He said he did not take anything for granted; that he did have what he thought could be a strong race, but he felt as if the people would be kind to him.

He said, "You know, I was in this particular area, in a parade, and that it looked like the people were saying hello. You can sort of tell by the expression on their faces whether they are receiving you well or not." He said, "It sort of brought back to mind the time I was riding in an open car with Franklin Roosevelt through this same area in 1932."

I realized then that I was sitting and listening to all of this history, and here we were campaigning in, I believe that was about, 1978 at that time, and he could relate the choice of an area to the same area back to 1932.

Of course, having this remarkable grasp that he does of our country, of Government, of everything that has happened in our country in between those times, I tell him that I think I would like to follow him all the time with a tape recorder to make sure that we receive and save all of this information, knowing how many events in history he has had the opportunity to witness, and not only to witness but to help to shape, because I think you will find his imprint on much of the legislation today that we think of as being a cornerstone, social security, much of the legislation that has happened, forward-thinking legislation, in this country.

Senator PEPPER has the distinction also of really being able to have served long enough so that he has at one time or another been vilified first, I think, for being conservative, then for being a liberal, and then again for being a conservative.

I really do not know, Senator, whether they are talking about you now as being a conservative or a liberal. But I think your philosophy has basically been the same through all that time, and that is to try to help people, to try to see that Government worked, and that we came up with workable solutions.

It is amazing to see what has happened, how a lot of different ideas were viewed at about that time as to whether they were supposedly wild ideas at one time that you early on espoused, and then when those ideas became acceptable, I think you also had occasion to try to oversight some of those same ideas to see that the bureaucracy, when it got hold of that legislation that was passed, was responding to that legislation in a proper way and in the spirit in which it had been formed.

I know I speak for my colleagues in the Senate, where you served so many years in this body, in saying that we all wish you a very happy birthday today. We know you are a fellow who is still planting trees, so there are going to be many, many returns. But we certainly wish you a happy birthday today, and we are delighted to have this opportunity to so say that in this Chamber today.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield?

Mr. CHILES. I am delighted to yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I served in the other body when CLAUDE PEPPER served as a U.S. Senator. I have had the pleasure of his friendship now for these many years. He and I traveled to Cuba upon one occasion together. I

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enjoyed visiting Cuba with CLAUDE PEPPER.

I have also counted him as my friend, as a very able legislator, and I am delighted today to join with my equally good friend, LAWTON CHILES, as he commends CLAUDE PEPPER on his distinguished service and on his birthday.

I would say this to CLAUDE:

Count your garden by the flowers;
Never by the rains that fall;
Count your days by the sunny hours,
Not remembering clouds at all.
Count your nights by stars, not shadows;
Count your life by smiles, not tears;
And on this beautiful September afternoon,
Count your age by friends, not years.

Mr. CHILES. I thank the Senator.

NO EARLY RETIREMENT FOR CLAUDE PEPPER

Mr. METZENBAUM. Mr. President, today I join my colleagues in extending the warmest of birthday greetings to the only "Senator" in the House of Representatives. As you know, Congressman CLAUDE PEPPER served with distinction for 14 years as U.S. Senator from Florida. After leaving the Senate, another opportunity arose to serve his State and his country, and Senator PEPPER, as he is called affectionately by his many admirers, was elected to the House in 1962 and is now rounding out his ninth consecutive term in that body.

As chairman of the Senate Judiciary Committee's Subcommittee on Antitrust, Monopoly, and Business Rights, I have had the pleasure of working with him in his capacity as chairman of the House Select Committee on Aging. Our common concern was the exploitation of people in the sale of specialty health insurance such as cancer insurance policies. I was touched by his depth of compassion for these victims, his feelings for innocent persons who are victimized by unscrupulous operators and his desire to draft meaningful legislation to limit questionable sales practices.

His campaign to wipe out mandatory retirement policies based strictly on age and his efforts to better the conditions for our senior citizens are milestones in the basic civil rights struggles of this Nation.

Today we mark CLAUDE PEPPER's 80th birthday.

Mr. President, CLAUDE PEPPER has set a mandatory retirement age for himself. He says will retire in the year 2000 on the occasion of his 100th birthday.

Knowing CLAUDE, I will only believe it when I see it.

Mr. CHILES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE UNITED STATES SENATE

THE SENATE PAGES

Mr. ROBERT C. BYRD. Today I would like to explore the history behind a group of Senate employees we see every day. Each morning that the Senate is in session, we see before us, sitting here on these risers, the fresh faces of our young pages. They have already been up, attending school, and on the job for several hours before we set foot in this chamber, and no matter how late into the night we remain in session, the pages are always with us. All we need to do is to beckon—as I shall do now—and a page will scurry over to respond to our every request. This young lady is going to get me a fresh glass of water. I am afraid sometimes we take these young people for granted, so, in partial remedy, I would like to tell my colleagues of the long history of service by the pages to this institution.

The term "page" is of Middle English origin. According to the Oxford English Dictionary, the word dates from the fifteenth century when it meant a youth employed as a personal attendant to a person of rank. Because of the similarity of their ages and the services they provide Members of Congress, the word "page" is the term used to describe these congressional employees who have served Congress so well.

One of the earliest references to pages in the Congress is found in a report on House pages issued by the twenty-seventh Congress in 1842. The report noted:

> From the origin of the present government, in 1789, to the present time, they (messengers) have been employed under the orders and resolutions of the House, and experience has attested the necessity of their services . . . From the first session of Congress held at the city of Washington, they have continued to be employed with the approbation of the House.

In 1827, the House employed three young boys to wait on its two hundred thirteen members, and the number steadily increased.

Tradition has it that Senators Daniel Webster of Massachusetts and Henry Clay of Kentucky began the page system in the Senate. Although the Senate had older messengers from its beginning in 1789, boys were apparently not used as pages until the late 1820's. The first Senate page, appointed by Clay and Webster, was nine-year-old Grafton Dulany Hanson, a direct descendant of John Hanson of Maryland, president of the Continental Congress. Grafton Hanson grew up in the office of page, serving over ten years. He moved on to other jobs in the Senate and left only to fight in the Mexican War where he was decorated for bravery.

When Grafton Hanson became too old to continue work as a page, Daniel Webster, in 1831, appointed a second boy, Isaac Bassett. Bassett was just twelve when he became a page but he served the Senate in various capacities for the rest of his life. For the next sixty-four years, from 1831 until 1895, from Andrew Jackson to Grover Cleveland, from page to assistant doorkeeper and governor of the pages, Bassett seldom missed a single day on the Hill.

Soon after Bassett began in 1831, another boy was hired as his assistant, raising the Senate page staff to two. The boys wore blue uniforms with shiny brass buttons. Together they filed all the Senate bills and documents and performed other services for the Senate's forty-eight members.

These first pages, Hanson and Bassett and those who followed them, had a variety of duties to perform which might not occur to us today. Pages still keep our desks supplied with writing materials, but in the nineteenth century, this job required knowledge of what type of quill pen and ink each Senator preferred. It was important to keep individual preferences straight. Daniel Webster always wanted a broad-nibbed pen while Clay preferred a fine point. Ink then did not come in convenient bottles. Pages had to mix it up and if they did not do it properly, there were plenty of complaints. There were also individual sand shakers to be filled. Some of us may have wondered what these little shakers here on our desks are for—the sand was used to blot the ink.

There were other needs of the Senators to which the pages catered. The flamboyant Sam Houston of Texas used to stride into the old Senate chamber down the hall dressed in a panther-skin waistcoat, large Mexican sombrero, and brightly colored serape.

He wore a flaming red vest, the kind of vest I wear when I play on the Grand Ole Opry and on Hee-Haw. He was particularly fond of his flaming red vest. So am I. I gave one of my flaming red vests to the Country Music Hall of Fame, but I have one extra red vest, and I will not give it away.

Senator Houston required special attention. Houston would while away the time in the chamber by whittling, creating a pile of shavings beneath his desk, and pages would bring him his pine blocks and then clean up the shavings. We have a charming description of Houston in a book by a Senate page during the 1850's. In *Memoirs of a Senate Page*, Christian Eckloff describes the scene:

> "Sam" Houston was one of the gentlest and most kindly natures I have ever known. A true friend and a gallant gentleman. Day after day, during spare moments, he sat there in his seat carving hearts out of soft pine wood. They were pieces about the size of the hand. When he had completed one of these works of art, he would summon a page, and pointing toward some fair spectator in the gallery, would say: "Give this to that lady up there, with General 'Sam' Houston's compliments."

And he would send her a little pine heart he had whittled.

In addition to keeping General Houston supplied with whittling blocks, the pages also had to keep the Senate snuff boxes filled.

As I pointed out last week there are still two snuff boxes, one on the left of the Chair and one on the right of the Chair, little lacquered boxes that are kept filled with snuff even to this day.

Perhaps some of my colleagues are not aware that there are still snuff boxes here in this chamber, still kept filled by our pages, should we ever be inclined to take a pinch or a sniff of snuff. Until 1849, the snuff box was kept on the Vice President's desk. After that, two little oriental snuff boxes were placed on either side of the presiding officer's chair, a position which they retain today. Some Senators would walk over to the boxes and help themselves to a pinch of the fine Macaboy snuff. Others expected the pages to anticipate their needs and bring them a pinch whenever they desired to "gratify the nostrils and clear the mind." The pages themselves sometimes had a good time with the snuff. Another nineteenth century page, Edmund Alton, who also wrote a charming book about his years in the Senate called *Among the Law-Makers* noted that when things got dull in the chamber, a page would sneak a large pinch of snuff and toss it in the faces of his fellow pages who were sitting in the front of the chamber like a row of solemn penguins, throwing them all into a fit of sneezing. One of our very own pages may also write a book about the Senate someday.

By the 1840's, two little boys were not enough to handle all the tasks of a rapidly growing Senate, so their number was increased to four. One of the new boys was eight-year-old Baker A. Jamison who also wrote about his experiences in a book called *Memories of Great Men and Events*.

In these early days, pages were usually paid $1.50 for each day the Senate was in session. But sometimes, the sessions lasted long into the night, and the sleepy pages had to remain at their posts. Night sessions meant a great deal of extra work for the boys. Oil had to be brought for the lamps on the walls, candles for the desks, and constant armfuls of hickory wood were needed for the four fireplaces and two stoves in the old chamber. In the wintertime, the pages were responsible for keeping the fires blazing away night and day. Christian Eckloff described the scene:

> One winter I recall—the winter of 1854–1855, if I am not mistaken—was extremely severe, with frequent snows and the mercury trying hard to get out at the bottom of the tube. Woolen shawls were then the fashionable garment for both men and boys, and they were heavy and warm; of somber hues, principally grey and brown, with a little variety in Scotch plaids. It was a common sight to behold the revered dignity of the Senate wrapped head and all in these big shawls, and comfortably retaining them in the chamber on very cold days. Many of the older men in their efforts to keep warm made frequent pilgrimages to the open grates, and were far more interested in the state of the fires than in the State of the Union.

For their overtime in night sessions and extra labors during the cold winters, the Senate usually voted, at the end of each session, to award the pages a bonus. At the end of the 1846 session, page Baker Jamison recalled receiving a small pile of twenty-dollar gold pieces. "This," he noted, "was a large sum for a small boy to carry through the streets of Washington, so the careful and thoughtful Secretary of the Senate, Mr. Asbury Dickins, had the money sewed up in our vest pockets and sent us home in the Senate mail wagon."

As one might imagine, enterprising pages soon hit upon another way of earning a little extra money. Their way to wealth lay through the autograph books that soon became a plague to Senators.

And they are still a plague to Senators. When I go to meetings these days and if I have to catch a plane immediately after, what a sight it is to see persons coming with the autograph books, or little pieces of paper torn on which they want the autograph. Once I start that autographing, there is no end of it. So I sometimes run the risk of missing my plane.

But that is one of the things we have to do as Senators, because the autographs are very much sought after by people whom we meet.

But the enterprising pages hit on a way of making a little extra money through autographs.

The albums had a roll-call list pasted on the front and, as each member's signature was secured, the page would check his name off. The signatures were not for the pages, of course, but for the tourists anxious to obtain the autographs of home-state and prominent Senators. Sometimes visiting ladies in the galleries would send the page in with their personal autograph book, seeking an inscription. The going rate in the 1850's was six cents a name. Pages would trade names amongst themselves, trying to get a complete set, which might bring as much as $10.00. Most Senators willingly cooperated until the demands became too frequent, but some were annoyed by it from the first. Henry Clay and John C. Calhoun were particularly reluctant to give their autographs, and to get them required considerable strategic maneuvering by the pages.

After his years as a page, Baker Jamison became a lawyer in nearby Maryland and, eventually, a member of the Maryland legislature. Among the other boys to serve as pages in the old chamber was Jamison's colleague, Henry Burgevine, who went off to sea, became a soldier of fortune, and was killed during an attempt to lead a Chinese rebellion. Another of Jamison's companions was John M. Wilson, who went on to West Point and became a General during the Civil War. The first pages also produced an admiral—Leonard Frailey, born in Washington in 1843 and a page at the age of twelve.

Two Maryland boys who started together as pages in the House in the 1850's later returned as Democratic members of Congress. Richard Townshend was born in Upper Marlboro, Maryland, in 1840. He left Washington for Illinois after his years as a page ended and became a school teacher and then an attorney. He returned to Washington in 1877, serving seven terms in the House.

Some say that Arthur Pue Gorman became a politician the day he started as a House page in 1852 at the age of thirteen. He was a page in the House less than a year before he caught the eye of Senator Stephen Douglas. The Illinois Senator had him transferred to the Senate page force. The story goes that he literally made his mark in the Senate almost immediately. During a recess, Gorman carved his name in one of the old stone columns in the old chamber with his pen knife. Years later, when Gorman was a Senator, he went back and claimed he found the evidence of his youthful misdeed. After various jobs in the Senate, Gorman became a Democratic member of the Maryland House, then its Speaker, then state Senator, and gradually the leader of his party. At age thirty-three, he was president of the Chesapeake and Ohio Canal Company. In 1880, the Maryland legislature elected Gorman to the United States Senate and kept him there, except for one term, until his death in 1906. Though an extremely influential Senator, Gorman never forgot his very first days in the Senate and was always a good friend to the pages.

The Civil War brought dramatic changes to the Senate. There were divided loyalties among the pages just as among the Senators they served. The emotional battles of words on the floor were often continued in the Capitol basement by pages who sought to settle differences with their fists. Many pages from the seceding states left Washington for the South with their sponsoring Senators in the summer of 1861. As the older boys left to enlist, their places were filled by pages from the North who were considerably younger.

Many of these boys were entirely on their own. As with pages today, they had to find their own food and lodging. Some of their boardinghouses apparently lacked bathing facilities. At one point, the pages' appearance became so objectionable that officers of the House and Senate tried to enforce a rule that every page take two baths a week in one of the huge marble bath tubs in the Capitol basement. It was no doubt a chilling experience since hot water was at a premium and the floors were cold marble. Indeed, it is alleged that Vice President—and former Senator—Henry Wilson caught the cold from which he died in the room right off this chamber in those very tubs. It is even said that on cold, still nights, Wilson's ghost roams the basement of this building and can be heard sneezing and sniffling.

The page boys tried every trick in the book to avoid the baths. As a result, a ticket system was devised. Each boy was issued two tickets and, upon entering the baths, he was to turn one in and it would be credited to his name with a tally taken each week. I must admit that these boys were not lacking in cleverness! They took to selling their tickets to city boys eager to say they had had a Congressional ablution.

After the Civil War, the page boys found still other ways of making extra money. A thriving business in autographs continued, especially during the impeachment trial of President Andrew Johnson. Unused tickets to the trial, discarded programs, and nearly every scrap of official paper dealing with the occasion

proved to be salable souvenirs. Pages could also work overtime in the Senate folding rooms, sorting and folding the outgoing mail.

But the most lucrative sideline of all was getting commissions on the printing of speeches by members. When a Senator gave an important speech—and when did a Senator never give an important speech?—he would designate a page and give him sole responsibility for handling its dissemination. The page would solicit orders for the speech, fix a charge, hire a printer, and keep the profit. Christian Eckloff reported that in the years before the Civil War an address by Douglas, Seward, Sumner or some other nationally famous personality, with a subscription list of over 50,000 copies assured, could bring a page as much as $30.00. He also noted that his fellow page, Arthur Pue Gorman, was one of those most adept at landing such choice commissions.

One of the most colorful accounts of life as a page in the post-Civil War Senate can be found in Edmund Alton's *Among the Law-Makers*, from which I quoted earlier. Alton describes Washington and the Senate as he saw it from his perch on the steps before us.

Alton became a page on December 2, 1872. He dutifully showed up on his first day in the required attire: dark blue knee-breeches and jacket, long ribbed stockings, and white blouse shirts. Here is Alton's description of his first few minutes in the chamber:

> The prayer was hardly finished when nearly all the Senators began to clap their hands in every part of the Chamber, making quite a racket . . .

You see, they used to clap their hands. Some Senators do this—snapping their thumb and finger—and others will simply wave for a page and hold up their hand. But in those days Senators clapped their hands.

> They had a habit of doing that immediately after the opening exercises, and, on one occasion, caused an old man in the gallery to exclaim, "Well, I'll be hanged if I saw anything particularly fine about that prayer!" But they were not applauding the prayer—they were merely calling for pages.

Alton continues:

> When the clapping commenced, the other pages began running zigzag and in every direction, and at first I became confused and did not know what to do. At last I saw one Senator look at me and clap, but as I started to walk another page ran ahead of me. I was about the only new page, and more timid and modest than the other boys. They wished to show off, and they ran as fast as they could every time; and as I was a little fellow, with short legs, of course, they distanced me. I tried about a dozen times to answer calls, but was beaten by the other boys.
>
> I think several of the Senators must have observed my embarrassment, for after a while Senator Conkling beckoned me with the forefinger of his right hand—that was the way he always called a page—and I moved toward him at a quick and respectful gait . . . He was then standing behind his desk holding a letter, and a number of boys rushed and put up their hands and grabbed at the letter, and almost fought for it. The Senator made a gesture for them to go away, and when I came up he reached over their heads and gave the letter to me, with instructions as to what I should do with it. After that episode, I felt all right.

It did not take Alton very long to feel very much at home in the Senate. Only a few days later, he played a bold trick on a Senator. Here is what he said he did:

> A Senator came into the Chamber just as his name was reached by the Clerk who was calling the roll on some question. He looked around, and did not know what was going on or what he should do, and I pitied him and called out from behind him, "Vote No!" And he did! Of course he thought it was some responsible Senator speaking to him.

Alton intersperses his history of the times with one amusing story after another, and I think they give some idea of just what sort of mischief boys can get into. I will only mention a few incidents, however, since I do not want to give our current pages too many ideas!

When things were slow in the chamber, Alton recalled that the boys would play marbles right under the President's chair:

> Sometimes the Senators could not think of anything to send the pages for, and we would have an easy time; and, instead of sitting, as we ought, in an erect and dignified position, we would kneel down upon the soft carpet and play marbles. I have often gone up on the Republican side to where the Vice-President sat, as on a throne—just as the distinguished Senator from Oklahoma (Mr. BOREN) is doing today—and played marbles with a page on the Democratic side, almost under the Vice-President's chair. It would make some of the Senators angry to see us do this, especially Senator Anthony . . . But most of the Senators believed in letting us do whatever we pleased, so long as we kept still, while the young ladies in the gallery usually paid more attention to what we did than to what the lawmakers were doing. Perhaps it was this that used to annoy Senator Anthony.

When things got very dull, the page boys would dare one another to see who was brave enough to sneak a cap under the presiding officer's gavel. The next rap of the gavel brought a small explosion which certainly enlivened the chamber and enraged many Senators.

Evening sessions seemed to bring out the worst in the pages. They warmed to their mischief by first clearing the chamber of bats:

> On warm summer nights the bats would fly through the open window of the Marble Room, and, crossing the lobby, dash about the Chamber in bewildering style. Their gyrations were as nothing, however, in comparison with the antics of the chasing pages endeavoring to drive them from the room.

Once the bats were removed, the pages would run about, gleefully hiding the Senators' hats, coats, and canes. The slick marble banisters outside the chamber presented an irresistible temptation. To the horror of visiting ladies, pages would slither down them head first, shrieking all the way. Some would crawl out onto window ledges and howl like banshees or snake their way through the ductwork.

> We would take up the registers in the cloak-rooms and crawl all about, through the ventilating flues, under the floor of the Senate-chamber, among pipes and other heating and lighting contrivances that, like network, ran in every direction, looking for—no one knew what! The fact that we were in utter darkness and that there was an air-well into which we might fall and break our necks, added to the pleasure of such an excursion.

Sometimes the pages would play tricks on one another, sparing the Senators. A favorite pastime on long evenings was to find an unwary page asleep in some corner and cover him with mucilage and ink spots. Senators even entered into the game and would reveal to the "glue crew" the whereabouts of nodding pages.

The most fun, however, whether day or night, was to be had in mock session, mimicking the Senators they served. Would you think pages would do that? You would not think so? They still do, as I shall later explain.

Some boys were so good at their imitations that the Senators they modeled themselves after would come to watch. With a page occupying the President's chair, others answered to the names of their favorites in the chamber. One "Senator" would always begin with a motion to toss the previous day's journal into the waste basket, and it always carried.

For a brief time in the 1920's, these mock sessions evolved into an organization called "the Little Senate," with Vice President Charles Dawes presiding at some of its meetings. Dawes gave a luncheon for the "Little Senate" in 1925, during Prohibition, and urged the pages not to become "hip-flask boys" if they wanted to amount to something.

We learn of some early twentieth century page pastimes in the book by another former page, Richard Riedel, who stayed on in the Senate for forty-seven years, ending as Senate press liaison, after coming as a page at age nine in 1918. Mr. Riedel reports that in 1918, "We would see who could launch a paper clip with a rubber band hard enough to hit the glass ceiling. A champion launcher could make the old roof ring or hit a paddle arm on one of the electric fans that were suspended from the ceiling before the era of air conditioning."

Let me hasten to add that, lest we begin to think that the life of pages in the past was all play and no work, they had some very arduous tasks to perform in the days before the automobile and telephone. Before the installation of the legislative buzzers and signal lights—the signal lights are over the two doors, to the right and to the left of the Presiding Officer—pages raced through the halls and through committee rooms announcing an impending vote as they ran. There were also riding pages. Before telephones were invented, communication with the Executive Departments was by mail, sometimes a slow method—and still a slow method.

Consequently, the first riding pages were equipped with ponies and mail pouches and dispatched with letters of an urgent nature. For communications around Capitol Hill, there were pages known as "telegraph pages" who were equipped with the fashionable high seat bicycles to deliver and dispatch the telegrams to and from individual Members.

Before pages were assigned to cover certain areas of the chamber and certain Senators, a hand clap from a Senator could bring a stampede of pages eager for his attention. Only the strong survived! Half a dozen small boys would collide in front of a Senator's desk, and the one who sustained the least shock and picked himself up first got to run the errand. Senators often amused themselves when they required a page's aid by folding their messages into paper airplanes and watching the pages jump for them. Once, in his exuberance to aid Senator Oliver Morton of Indiana, a page slid right over the Senator's desk and into his lap. Former page Alton tells of how Senator Daniel Pratt's method of summoning pages once got him into trouble:

> Senator Pratt occupied a seat on the back row, and every day he used to roll up his heavy *Record* into a tight package ready for mailing, and toss it to the pages . . . Once, when he wished to have some extra fun, he stood up and threw the package, apparently with all his might. But whether he did not take good aim or his arm slipped, the *Record* whizzed through the air and struck Senator Anthony on the back of the head. With a cry of pain, that venerable Senator jumped to his feet, his eyes glistening with astonishment and vengeance. Turning fiercely around (expecting, perchance, to fasten the guilt upon a page), he saw Mr. Pratt bowing profoundly and profusely, the other Senators smiling. So Mr. Anthony forced a smile to his own face, and with an elegant obeisance, resumed his seat. But he rubbed his head for an hour or more.

From Senator Charles Sumner of Massachusetts, pages often had to endure pinches on the ear. The gesture was an affectionate one but sometimes, as in Alton's case, it had the opposite effect:

> Often have I attempted to pass the Senator, while he would be walking to and fro on the floor of the Senate, only to have both my ears seized good-naturedly . . . I shall always remember one of these adventures. He had sent me on an errand. Having returned, reported to him the answer, and received his deep-voiced thanks, I started to move away, but he had caught me, and continued his slow march—I in front, Indian file. As he was a tall man and I a very small boy in comparison, I had to walk on tiptoe to ease the pain, and even then it seemed as if my ear would come off my head. The worst of it was that he at once became so lost in thought that he forgot he had hold of me, and mechanically paced up and down, with his long strides, while I danced a mild wardance for some minutes—it seemed to me hours—to the intense amusement of all who observed it.

Since the turn of the century, much about the Senate pages' life has changed. Yet, much has remained the same. Pages still find it advantageous to know the likes and dislikes of those they serve. In the 1940's, one page had to remember that Senator Kenneth McKellar of Tennessee preferred a special brand of mineral water and fruit-flavored chewing gum. Senator Harley Kilgore of West Virginia liked a certain cola drink. And Senator Carter Glass of Virginia liked a piece of apple pie with cheese at two o'clock in the afternoon. Senator Joseph O'Mahoney of Wyoming liked an unusual brand of cigarettes, while Senator Charles Tobey of New Hampshire liked cigarettes with filters. Perhaps in their preferences for cigarettes, they recalled the "Lucky Strike" ads, then appearing in national magazines, containing a testimonial by their colleague, Gerald P. Nye. Said Nye:

> I have smoked Luckies off and on ever since my first term in the Senate 11 years ago, and I have always enjoyed their taste and the feeling of comfort and safety a light smoke gives my throat. I have done a great deal of public speaking, on the floor of the Senate, over the radio and at conferences. Necessarily this results in a strain on the voice. So naturally, in smoking, I have to think of my throat—and I have found that a light smoke is suitable to my throat.

Senators still like to tease the new pages. When Richard Riedel was a page in 1919, Senator Charles McNary of Oregon, a great friend of pages, had a special initiation for them. Riedel reported:

> In a serious Senatorial voice he instructed the novice to find "Senator Sorghum" for him immediately, said statesman having last been seen in the Senate restaurant. The waiters, elevator operators, and clerks were all in on the joke and sent the unsuspecting page to every corner of the Capitol on hearing that "Senator McNary wants to find Senator Sorghum." Eventually the page had to report back to McNary empty-handed. Another day, he would send a gullible new pege to the Document Room for a nonexistent bill stretcher, but McNary failed to trick me the second time.

The fictitious "bill stretcher" was a favorite ploy, one which may even be in use today! It was used on Riedel in 1918, and Bobby Baker, later Secretary of the Majority, reported that Senator Robert Wagner of New York sent him for a "bill stretcher" in 1943 when he was a new page.

In the midst of first day confusion, one Senator always liked to give some dazed page a quarter and tell him to go down to the barbershop and get him a haircut. The young man would be half-way there before realizing he had been had!

But while more recent Senators have had fun *at* the pages' expense, they've also had fun *with* them, too. Senator McNary used to adopt each page, in turn, for a weekend of football, baseball, or theatergoing.

Senator James Davis of Pennsylvania shared the candy he kept in his desk for pages, and Senator Rufus Holman of Oregon shared his comic books.

In 1913, Vice President Thomas Marshall began what was to become a custom of the Vice President, giving a Christmas dinner in the Capitol for the pages. There was turkey and all the trimmings, and the Senators chipped in to buy small presents for the 16 pages. Vice President Calvin Coolidge continued the custom and brought his sons, John and Calvin, along to the dinner in 1921. The pages gave Coolidge a gavel to use when he presided over the Senate. In 1929, the pages gave Vice President Charles Curtis a tomahawk, in recognition of his Indian heritage, claiming a gavel was inadequate for enforcing silence in the Senate.

Since nine-year-old Grafton Hanson became the Senate's first page in the 1820's, there have been a number of changes in the age limit. In 1854, the Senate adopted a resolution which stated: "That in no case shall a page be appointed younger than thirteen years, remain in office after the age of seventeen years, or for a longer time than two Congresses or four years." In 1870, the age span was changed to twelve through sixteen years. And in 1949, the current limit was established permitting appointment to include pages between the ages of fourteen through seventeen.

In 1966, the Joint Committee on the Organization of Congress proposed a major change in the pages' age limit. It recommended that congressional pages be limited to "persons who have completed their high school education but who are not over the age of twenty-one." While the provision was included in the Legislative Reorganization Act of 1967 passed by the Senate, the act did not become a law. In 1973, the Senate again attempted to raise the age requirement to eighteen through twenty-one years, but the House took no action on the measure, so the 1949 limitations, fourteen through seventeen, still stand. There were and are, however, always exceptions. Richard Riedel was only nine when he became a page in 1918, a time when pages were to be from twelve to sixteen years old. How did he get in? Riedel explained that it was because of the influence of his sponsor, Senator Boies Penrose of Pennsylvania:

> Senators in those days could waive rules and customs just as grandly as they could wave the flag. Boies Penrose, the czar of Pennsylvania politics who personally had to approve a generation of Republican presidential candidates, could have put a toddler on the rostrum if he had wanted to.

While pages do have to leave when they reach the maximum age, they no longer have to leave because of height. There was an unwritten rule in the nineteenth century that no page could be taller than the shortest Senator. The way these youngsters seem to shoot up these days, with all the vitamins we have, we might have a constant turnover here in the chamber if we allowed ourselves such vanity. In the Supreme Court, which until just a few years ago had pages, one of the stipulations for the job was that the youngster not be higher than the Justice's chairs so that they could scurry about unnoticed by the audience.

No matter what their age, the road to becoming a Senate page has always remained the same. Whether it was Grafton Hanson appointed by Senators Webster and Clay in the 1820's, or Richard Riedel by Boies Penrose in 1918, or the pages that serve us today in this chamber, they all became pages because a Senator appointed them. The majority party gets to appoint the majority of the pages through the Majority Leader, while the Secretary for the Minority administers the page appointments for the Senate Republicans. Once appointed, the Sergeant-at-Arms swears in the pages, places them on the payroll, and supervises them while they are on duty. The Secretary of the Senate is responsible for their education.

Pages may still be young, and they may still be our appointees, but they are no longer all boys. That tradition was brought to an end in 1970, when our distinguished colleague, Senator JAVITS, let it be known that he intended to appoint

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a girl to fill a forthcoming vacancy. Incidentally, Senator JAVITS also hired the first black page in 1965. Learning from Minority Secretary J. Mark Trice, himself a former page, that there were no rules of statutes forbidding the hiring of female pages, Senator JAVITS appointed sixteen-year-old Paulette Desell. The Sergeant-at-Arms, however, refused to accept her appointment, claiming that the Rules Committee would have to make the decision as to whether a female page was acceptable

Meanwhile, Senators CHARLES PERCY and Fred Harris also appointed girl pages and were waiting for the same decision. During hearings on the question, the main objections raised by opponents to female pages concerned their safety, their ability to carry out the more arduous tasks, and what they would wear. After nearly five months of deliberation, the Rules Committee decided in the girls' favor, and on May 14, 1971, Paulette Desell became the Senate's first female page. A few minutes after her swearing-in, she performed her first official duty—serving a glass of water to the presiding officer, our colleague, Senator ALAN CRANSTON.

While there was some question about what the girls would wear, they did not have to worry about the scratchy knickers that the Senate pages had worn until 1947. For the first time in many years, the Republicans won a majority in the Senate in 1946, and they set about putting their own stamp on the era. One of the first changes was in the pages' attire. To the enormous relief of the Senate pages, who had had to endure merciless teasing from the House pages who had abandoned their knickers in favor of long pants a few years before, their uniform was changed to a dark blue suit and tie. The female pages easily adopted the same style.

All of our pages, whether girls or boys, are responsible for finding their own lodging and meals. This is what had always concerned Senators and often led to discussions for raising the age limit. This is a big city, and we worry about them at night after long sessions, and we worry about their diets degenerating into a steady, unsupervised one of pizza and soda. I must say, though, that they all look pretty healthy to me.

In the early Congresses, most of the pages were from Washington, and housing was seldom a problem since the pages lived at home. It has only been in this century that Senators have begun appointing pages from their home states, raising problems of housing. In 1943, Representative Alfred Elliott of California introduced legislation to provide for suitable housing, but no action was taken. Ever since, bills have been introduced periodically for that purpose but have met the same end. Those pages who do not live at home or with relatives usually live with other pages in the boardinghouses here on Capitol Hill. I am *sure* they are always perfectly behaved and a credit to the Senate every minute! Obviously, if they are to pay for their own food and lodging, the pages' salaries have had to be raised from the $1.50 a day that pages received in the early nineteenth century. Today, Senate pages earn $9,090 per year. As we watch them dashing about, sometimes loaded down with books and reports, I think we might all agree that they earn their keep.

While their duties no longer include chasing bats from our chamber and bringing us whittling sticks, they still have to sit up nights with us, and there are plenty of other duties to keep them busy. The pages are principally messengers—carrying documents, messages, and letters between the chambers of the House and Senate, Members' offices, committees, and the Library of Congress, and doing other errands to assist Senators.

When their school day is over, around 10:30 in the morning unless the Senate has convened earlier, the pages report to the Senate cloakrooms to which they have been assigned. While House pages are divided by function into bench, floor, documentarian, cloakroom, and overseer pages, Senate pages are not so categorized. All pages do whatever is needed, though they usually serve only the Senators of their party. After reporting to the cloakroom, a typical day for a page begins with placing the latest CONGRESSIONAL RECORD, calendar of business, and bills, resolutions, reports, and other documents that are scheduled before the Senate on the desk of each Senator.

Once the Senate convenes, the pages sit on the steps to the right and left of the Chair waiting to be summoned for assistance.

The Democratic pages appointed by Democratic Senators sit to the right of the Presiding Officer, and the pages appointed by Republican Senators to the left of the Presiding Officer.

On the House side, there is an electronic light system to summon pages, but here in this smaller chamber Senators used to clap their hands—and today we still nod our heads, or wave, or snap our fingers. I suppose we could always try clapping as our predecessors did, too. Our pages also make sure our microphones are working and the lines are not stretched out so we will trip and fall over them. They also place phone calls, deliver messages, and bring us a glass of water when we become parched in the midst of a speech.

One of the Senate pages' special duties only occurs every four years when they take part in the ceremony of counting the electoral ballots after a presidential election. Two pages, one from each party, carry the wooden boxes containing the ballots from the Senate to the House where the votes are tallied.

The biggest change in the twentieth century pages' life has been the beginning of the Page School. I think we might all be more forgiving of the occasional yawn escaping from a weary page during an evening session when we stop to realize that they must be up, dressed, and *in school* by 6:10 in the morning! Ten minutes past 6:00 o'clock in the morning!

It was not until 1925, when Congress passed the Compulsory School Attendance Act for the District of Columbia, raising from twelve to fourteen the minimum age at which a boy could quit school and go to work, that anyone gave much thought to the pages' education. Because their Congressional duties prevented them from attending regular public schools during the day, the Doorkeeper of the House, Bert Kennedy, decided to set up a private school for the pages. He set aside a basement room, found some battered desks and chairs to furnish it, and hired David J. Laupheimer, a Baltimore educator, to be principal, teacher and entire staff.

The boys paid tuition to attend the school, and Mr. Laupheimer drilled them in the rudiments of reading, writing, and arithmetic. The curriculum included semi-annual field trips. In March 1928, in eight cars provided by various Senators and Representatives, Mr. Laupheimer and twenty-two boys motored to Atlantic City where they were greeted by the mayor, rode ponies on the beach, and piloted the roller chairs up and down the boardwalk.

In 1929, the Devitt Preparatory School took charge of educating the pages. But transporting the pages from the Capitol to the school each day proved unwieldy, and, in 1931, the school in the Capitol basement was revived with Ernest Kendall as principal. By 1937, the school was approved by the District of Columbia school board and had five classrooms beneath the west terrace of the building.

In his excellent book, *Democracy's Messengers: The Capitol Pages*, William Severn describes Mr. Kendall's frustrations in acquiring suitable desks for his students. He finally discovered the desks that had been used at one time in the House chamber. Though dusty, the solid old desks were in good shape, even bearing the nameplates of their former occupants. At least one student was moved to express his sentiments upon sitting at such hallowed desks in verse:

> The pages, peculiarly Congress's pride,
> have in the Page School an incentive sublime, equipped as it is with desks where—
> side by side—Congressional statesmen sat
> in Lincoln's time . . .

From all accounts, the desks seem to have been the only sturdy, attractive furnishings in these early school rooms. Despite Mr. Kendall's pleas, no additional room could be found, and conditions were far from ideal. Senator Harold Burton of Ohio happened upon the school rooms by chance in 1942 and was most distressed by what he saw.

Testifying before the Joint Committee on the Organization of Congress in 1945, Senator Burton recounted his visit:

> I visited the school a couple of years ago, and found it housed in the most disreputable and unsuitable conditions. Dickens' Dotheboys schools had nothing on it at all. It was under the terrace of the Capitol Building, looking west. The room that the elementary boys used was one that the newspapermen used for a card and smoking room.

Senator Burton's reference to Dickens' Dotheboys schools alluded to the brutal Yorkshire school, Dotheboys Hall. Continuing Senator Burton's words:

> The main room was at the center of the Capitol. There were desks, but water was dripping from the ceiling onto the desks, and the plaster was falling down. A piece that had fallen had recently just missed a boy. There were no blackboards in the room, and there was no adequate lighting. The whole place looked as disreputable as it could be.

Senator Burton's speech must have had an effect. When the Joint Committee issued its report, it recommended improvements in the school. As a result, Congress included provisions for the tuition-free education of its pages in the Legislative Reorganization Act of 1946. From that point on, the Page School has been a part of the District of Columbia School System. Plans were also made for the school to move to more suitable quarters on the third floor of the Library of Congress where it still meets today.

Periodically, there have been attempts to provide the pages with a permanent residential school building. Most recently, the Legislative Reorganization Act of 1970 contained authorization for the Architect of the Capitol to acquire property near the Capitol grounds for dormitory and classroom facilities. The new building was to be called the John W. McCormack Residential Page School in honor of their Speaker of the House. Those plans, however, are still in abeyance.

Today, the Capitol Page School, although part of a large metropolitan public school system, is one of the smallest of big city high schools. The school is fully accredited by the Middle States Association of College and Secondary Schools. There are currently six teachers, a principal, Mr. John Hoffman, who has been in charge of the school for eleven years, an administrative assistant, and, last semester, two volunteers from the Georgetown University Law School who help the students stage mock trials. The school starts in September and runs through June, but the number of students there at any one time may fluctuate, since some pages come for as little as two months and others remain for as long as three years. The curriculum is geared toward college preparation, since ninety-eight percent of the pages go on to colleges and universities. As I mentioned, school starts each day at 6:10 a.m. There are courses in social studies, English, foreign languages, physics, business, and mathematics. While there are laboratories for physics and biology classes, considering the priceless library collection housed in the same building, it is not surprising to learn there is no chemistry laboratory.

Students are expected to maintain a C average. A powerful incentive to do so may be the fact that students' report cards are issued not only to the pages and their parents, but also to their sponsoring Senators and the Senate Sergeant-at-Arms, Mr. Hoffmann.

If the pages complete their senior year at the Capitol Page School, they may take part in the impressive graduation ceremony.

On June 19 of this year, graduation ceremonies for forty-nine seniors were held in the Senate Caucus Room to the accompaniment of the Marine Band. The students also receive certificates and congratulations from the President of the United States. President Eisenhower was the first Chief Executive to hand out the awards in person at the White House in 1953, and the tradition has continued almost unbroken, with President Carter doing the honors a few weeks ago.

Now, Senators might think that rising around five o'clock in the morning, before dawn's first light, attending school all morning, and then serving in the chamber all day, and sometimes into the night, would keep our pages so busy that there would be little time for any extracurricular activities at school. But that is not the case. I was amazed to learn of the variety of their interests. The school has an active Student Council. The elections are hotly contested in active campaigning. We can all appreciate the arduousness of a campaign, particularly when we realize that Student Council officers must stand for election twice a year!

In addition to the Student Council, there is the *Congressional*, the pages' award-winning yearbook. It is indeed a handsome volume, produced entirely by the pages, and supported by advertising, sponsorships, and the sale of copies. The students also publish a newspaper, *The Courier*, and participate in several clubs, such as the chess club.

It is hard to believe these students have enough energy left at day's end to play basketball, but they do. They not only play basketball; they win most of their games. In March of this year, the sports page of the *Washington Star* asked, "Can high school basketball players be successful on the court after contending with the responsibility of helping the legislative branch of the government work efficiently?" The answer was an unqualified "yes." This year, the team, coached by teacher Joe McGarth, was 19–2 for the season. Not bad for a team with constant turn-over, no gym of its own, and very irregular practice hours. Contributing to the victories this year was Donna McNeilly, the only female player on a boy's varsity team in the area.

I think most of us realize the many things the pages do for us. But what do the pages get in return, besides their salary, for the miles of leg-work they put in? Former Senator Harold Hughes of Iowa told one graduating class:

> Actually you probably know more about what is going on in the House and Senate chambers than we members do. You have heard virtually all of the speeches and parliamentary dueling that goes on, while we members, owing to committee hearings and other demands on our time, hear only a part.

Lyndon Johnson once described the chance to be a page as "a chance to see government without glamour—to learn that ideals alone don't make programs; that dreams do not automatically become reality." The pages seem to agree with these assessments of their job. As one page described it, "It's having a chance to watch day by day that counts. It's fascinating to see how one thing balances against another, the compromises, the need to give way on this to get that." Another said that from her vantage point right on the floor of the Senate, she had come to realize the complexities of government. "It's like a puzzle. When you look at just one piece—one day—it means nothing, but after a while you discover how it all fits and locks together."

Recently, I had the privilege of interviewing a former Senate page. I thought that before I gave this little speech on the Senate pages, it might be well if I interviewed a former Senate page—not so much a page serving at present, because I felt that there might be some reticence on the part of a page to speak candidly about Senators. So I chose to speak to a former page who had served a 6-week term in this body.

I doubt that any Majority Leader or, for that matter, any Senator, has ever had this type of in-depth interview with one of our young people who do such a fine job of helping us on the Floor and in the Page Rooms and in our Senate Office Buildings, and I wanted to get some first-hand impressions from the inside.

I asked the young man for his first impressions upon arriving on the Hill to serve as a Senate page. He replied that he was struck by the apparent waste of time that goes on on the Senate Floor. He was referring to the long debates, and the yielding of time back and forth from one Senator to another. I have often thought that it must seem that way to many of our visitors in the galleries, who are unfamiliar with our complicated procedure with regard to time allotted to Senators, and with parliamentary procedure in general.

Then our discussion turned to pages, and their errands and responsibilities. A Senate page must transport messages from building to building, from office to office, and from person to person on the Senate Floor. In addition, a page must remember what type of water a Senator prefers—so I was told by this former page—whether the Senator prefers spring water or sparkling water, whether or not a Senator requires a pillow at his desk. The former page informed me that a page must remember not to talk, chew gum, or point fingers on the Senate Floor. The young man I spoke with said that Patrick Hynes and Nordy Hoffmann were quite adept at reminding pages of the proper conduct expected on the Floor and were always giving pages "the eye."

I was pleased to hear that we have such fine "watch-dogs of decorum" in the persons of Patrick Hynes and Nordy Hoffmann.

We then moved on to a discussion of "page power." Being totally unfamiliar with this phenomenon, I was, frankly, fascinated to discover that the struggle for power begins so early on. Apparently, from what I could learn in my conversation with this former page, the most coveted positions are the Floor page jobs. The Floor pages are usually stationed on the Senate Floor and do not have to run so many errands. They also have the privilege of telling the other pages what to do. The Floor patronage positions are usually filled by those pages who have been around for a while and have some familiarity with Senate procedure.

Newer pages are divided into two groups, and those groups are supposed to alternate between duty on the Floor and duty in the Page Room. Apparently, the rotation does not always occur, be-

cause pages find the Page Room a little less interesting than Floor duty.

Partisanship also rears its head at an early age. The young man I talked with told me that he had observed a distinct difference between the Republican pages and the Democratic pages. He said that the Republicans seemed to be richer and a little more impressed with their station in life than the more middle-class Democrats. He related a story about a ride he took on an elevator with a fellow page from the other side of the aisle. It seems that the other boy looked my Democratic friend up and down, sneered, and said, "Oh, so you're a Democratic page."

I then asked about my friend's general impressions of specific Senators. I was unable to resist doing it. He gave them to me, and I will give them to Senators, but I will omit the names, except for my own. It may be interesting for other Senators to try to find themselves in these descriptions. It is always enlightening to see how we may appear in the eyes of observers. It can also be humbling.

My friend said that, generally, the older Senators are more quiet and seem to command more respect. The younger "troops" get much more emotional and some almost seem to scream when they speak on the Senate Floor. So, we have our firebrands, and we have our wise gray heads—a nice balance.

In his descriptions of individual Senators, one Senator was depicted as "being a little overweight and a real comedian"—although the gentleman in question appeared to be unaware that he was so funny. Another Senator was described as having a "very red face, looking perpetually angry," such qualities being fine material for imitation by young Senate pages. Another Senator was depicted as having a "Caesar-like" manner and pose. And, a final description was of a tall Senator who "constantly wears a wrinkled suit." One Senator fancies himself "the Senate's orator," according to the young former page. When he got to ROBERT C. BYRD, my friend got up and imitated my "Senatorial pose." He walked over to my mantlepiece, leaned against it, and looked slightly distracted. It was a pretty good imitation.

He thought I had "worked for years to perfect that pose," and he had it down pat. I was surprised to learn that I was the "terror of the pages" because I "roam from desk to desk" on the Senate Floor and "sometimes knock over water glasses." I was also characterized as having "hawk-like features." I am not sure that I agree with that, but that is the way he saw me.

I will go back on my earlier statement about not mentioning any other names and say that my friend indicated that his favorite presiding officer was my good friend, SPARKY MATSUNAGA, because Senator MATSUNAGA performed the duties of the Chair with such zeal and ceremony. I have to agree that SPARKY does handle that job with style.

We moved along to a discussion of the things that pages hate to do and those included the following.

Rush notices. "A page runs like mad to an office to deliver a document, only to see it thrown on a corner of a desk and not opened."

Whip notices. The page said that was a "lot of work."

House office building calls. They despise having to go all the way over to the House office buildings. He said that was "inconvenient."

Soda water versus regular water. "It is hard to remember who gets what."

He mentioned the fact that I had to have a special water: "This Senator likes that kind of water and another Senator likes a different kind of water."

But for the record, for those who will read 100 years hence, the reason I have to have a special water is, I joined the kidney stone club several years ago. I have had five experiences with kidney stones and the doctor suggested that I drink a distilled water so I will not have so many kidney stones. Five kidney stones are enough for anyone in a single lifetime.

As with every job, however, it's not all bad, so my friend listed for me the things pages enjoy. So here are some of the things now that pages enjoy:

Taking breaks; delivering messages to Senators; buying cigarettes and candy; cigars for Senators—he threw the cigars in, probably, for my enjoyment; playing in the Chamber after hours and imitating Senators. I would like to see this.

I asked him which Senator he imitated. He said, well, he imitated ROBERT C. BYRD for one.

We then moved on to my guest's analysis of the "evolution of a page."

Stage one. A new page is very much "on the ball," and jumps up at the slightest nod from a Senator, just jumps right up. He is always on time and studies his "blue book," a book issued to pages containing pictures of Senators for identification purposes, to try to learn to recognize Senators. My friend said that this was an almost impossible task because the Senators do not much resemble the photographs. They seem to be high school pictures. This stage lasts for about 2 weeks.

Stage two: Boredom sets in. The page has now run every conceivable type of errand and tries very hard to get out of anything difficult. The "older pages" try very hard to "use their seniority of a whopping 3 weeks" to give the new pages all of the bad jobs. The pages, by now, have learned where all of the secret hiding places are. These are the places where the pages go to watch TV and to sleep. I wonder where those places are? I think this would be very useful information during quorum calls. I may have the young man come back and further explore this point because pages may pick the places that Senators go to watch TV and sleep.

Stage three. By the time a page has been on duty for 3 to 6 months he or she begins to become more responsible. The outlook changes as the individual sees the possibility of moving into a floor page position. It is at this point that the pages start learning about the Senate and how it works.

I asked the young man about his overall impression of the Senate as an institution. The response was that he had never had a course in Government but that he thought that the Senate was "an effective and well-organized body" and that it handled bills and amendments in an orderly fashion. My friend said that he did not believe that an unpopular bill could be forced through the Senate. In a rather astute observation, my friend talked about one fault that he found with the Senate. He felt that there was no need to have two Senators from each State because they sometimes ended up "debating against each other and canceling each other's vote." I would concur with that opinion except, in cases where there are two Democrats from the same State. However, I doubt that such a measure would get much support from the other side of the aisle.

My young friend ended our discussion by saying he had not really been here long enough to "catch on" to the ins and outs of how the Senate operates but that he had learned a lot and had had a lot of fun during his service. He said that he had been careful to avoid committing the "pages' sin." I said, "What is the pages' sin?" He told me that the pages' sin was "mixing up the two Byrds."

I certainly had a lot of fun talking with my young, articulate friend, and I gained some new insights into the lives of the young men and women who help us so much here in the Senate.

When the 1964 graduating class of the Capitol Page School went to the White House to meet President Johnson, he reminisced about his years of dealing with pages while in the Senate, and he paid them a high tribute which I think we all would agree is still fitting. The President said:

> Woodrow Wilson said that the office of President requires the constitution of an athlete, the patience of a mother, and the endurance of an early Christian. Personally, I think he may have overstated the requirements of the Presidency. But from long and close observation of thirty-four years, it seems to me that President Wilson may have been describing the requirements for a congressional page.

ORDER FOR RECESS UNTIL 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are no orders.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand recessed until the hour of 10:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF ENERGY AND WATER APPROPRIATIONS BILL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees are recognized on tomorrow, the Senate proceed to the consideration of Calendar Order No. 1009, H.R. 7590, the energy and water appropriations bill.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, this item has been the subject of extensive negotiations on both sides today. It was cleared on this side. We have no objection to the request of the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the minority leader.

THE FOREIGN SERVICE REFORM BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 995, S. 3058, the foreign service reform bill is called up and made the pending business before the Senate, no nongermane amendments be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, it is the understanding that the Senate will complete action on the energy and water appropriations bill tomorrow or Wednesday, more than likely Wednesday, and that the Senate would then take up the foreign service reform bill. But it is also the understanding that if the foreign service reform bill were to be called up on Wednesday and not completed on Wednesday, it would go over until Monday next.

Mr. President, I thank the distinguished minority leader, Senator STENNIS, Senator JOHNSTON, Senator PELL, Senator HELMS, and other Senators, for their cooperation in achieving the agreement.

HEALTH RESEARCH ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 988.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 988) entitled "Health Sciences Promotion Act of 1980."

(The amendment of the House is printed in the RECORD of August 28, 1980, beginning at page 23681.)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I move that the Senate disagree to the amendments of the House of Representatives, ask for a conference of the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, and Mr. HUMPHREY conferees on the part of the Senate.

MULTIEMPLOYER PENSION PLANS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. WILLIAMS, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 3904.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the amendments of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1974 and the income security under private multiemployer pension plans by strengthening the funding requirements for those plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. WILLIAMS, I move that the Senate insist upon its amendments and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. WILLIAMS, Mr. RANDOLPH, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. LONG, Mr. MATSUNAGA, Mr. BOREN, Mr. DOLE, and Mr. CHAFEE conferees on the part of the Senate.

RECESS UNTIL TUESDAY, SEPTEMBER 9, 1980, AT 10:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order entered previously, that the Senate stand in recess until 10:30 a.m. tomorrow morning.

The motion was agreed to; and the Senate, at 6:33 p.m., recessed until Tuesday, September 9, 1980, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 8, 1980:

COMMUNITY SERVICES ADMINISTRATION

Laird F. Harris, of Michigan, to be an Assistant Director of the Community Services Administration, vice Frank Jones, resigned.

CONFIRMATION

Executive nominations confirmed by the Senate September 8, 1980:

SECURITIES AND EXCHANGE COMMISSION

Barbara S. Thomas, of New York, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 1985.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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HOUSE OF REPRESENTATIVES—*Monday, September 8, 1980*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. WRIGHT).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 5, 1980.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Monday, September 8, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Lord, who rules in the heavens above and yet lives in the hearts of people, we thank You for a new day with opportunity to serve those about us. Be present, O God of wisdom, and bless this assembly, enabling those gathered here to be effective instruments of peace and understanding. Grant us awareness to search for the truth that will best serve the common good, and teach us always to go about our work respecting those who differ from us. Give us the unity to focus on those goals and ideals that give health to the Nation and fulfillment to your people. In Your holy name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with an amendment, in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2111. An act to extend the service area for the Sacramento Valley Canals, Central Valley project, California, and for other purposes.

NORTHWEST ENERGY BILL DANGEROUS AND HIGHLY CONTROVERSIAL

(Mr. WEAVER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEAVER. Mr. Speaker, the Interior Committee has just passed out the northwest energy bill with 14 dissenting votes. The Eugene Water and Electric Board, my home utility, the largest public utility in Oregon, is strongly opposed to this bill. The board of the Eugene Water and Electric Board, including a conservative Republican pronuclear member, is unanimously and adamantly opposed to the passage of this bill. The reason: It would destroy local community control, destroy local initiative in developing new energy sources, and eventually would destroy the utility itself. I believe it necessary to do everything in my power to prevent passage of this dangerous, highly controversial legislation.

THE HONORABLE CLAUDE PEPPER'S 80TH BIRTHDAY

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, a magnificent Member of Congress, to wit, the gentleman from Florida, Mr. CLAUDE PEPPER, will be celebrating his 80th birthday today. The gentleman from Massachusetts, Father DRINAN, the gentleman from Florida, Mr. FASCELL, and other Members of Congress have arranged for a special order this afternoon. I think it is under the name of Mr. FASCELL. I just want to point this out to the Members here now so they might want to extend their remarks or make some observations on Mr. FASCELL's special order tonight.

Mr. PEPPER is a man I have known through most of our respective lives. He is called by many the most outstanding man of our era, certainly in the State of Florida, in preserving human rights and working to make things better for mankind. It is my pleasure to call this to the attention of the House, and maybe some of us would like to join the gentleman from Florida, Mr. FASCELL, this afternoon in paying tribute to the gentleman from Florida, Mr. PEPPER.

AMERICAN AGRICULTURE AND FAMILY FARMER IN STRUGGLE FOR SURVIVAL

(Mr. GINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINN. Mr. Speaker, it is no news that American agriculture and the family farmer are locked in a desperate struggle for economic survival. It is also no secret that the outcome of that struggle will foretell the future prospects of our entire economy. If the farmer can survive and maintain a plentiful and inexpensive supply of food and fiber, then the American economy can survive the trials of high-priced foreign oil and the ravages of inflation.

But unfortunately, I must report today that the prospects for our farmers are dark, and getting darker. Piled on top of the problems of skyrocketing farm operating costs and declining prices, our Nation is now gripped in a drought period that is likely to be recorded as one of the most severe in our history.

The drought has been particularly acute in my own State of Georgia. We face a crop loss exceeding $700 million and the full impact of the drought will no doubt far exceed that figure.

There is no magic solution to this crisis, but I am today introducing legislation, cosponsored by Representative DOUG BARNARD, which we believe will help. This bill will establish a 7-percent loan program for a 40-year period for farmers who wish to install or expand farm irrigation systems.

The loan money could be used to install new irrigation systems, repair or expand old ones, dig deeper irrigation wells, construct ponds, or other work designed to improve a farm irrigation operation.

Now, I will be the first to admit that our farmers are already faced with a huge operating debt, and we do them no great favor in passing new loan programs to let them try to borrow their way out of that burden of debt. But in this case, the need for irrigation equipment is so compelling that I believe it is essential for survival.

In Georgia, we have learned that irrigation is no longer a luxury. It is essential to the viability of a working farm, and without it, the average family farmer is playing Russian roulette with a fully loaded revolver.

I urge my colleagues to review this bill with care. I will be seeking cosponsors to the legislation this week, and I would greatly appreciate your support.

HIGH PRAISE AND THANKS TO MEN OF AMERICA AS CLOSE OF SELECTIVE SERVICE REGISTRATION DRAWS NEAR

(Mrs. HOLT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. HOLT. Mr. Speaker, as the Nation and our farmers continue to reel under the blows of inflation and recession at home, while we suffer declining prestige and mounting challenges abroad, we may be very proud of our young men. Not nearly enough has been said about the figures released last week indicating that 93 percent of all eligible men have registered for Selective Service. This turnout is far higher than had been predicted by the Anti-American groups and shows the patriotic, law-abiding spirit of our younger generation. They are making a real contribution to our preparedness effort.

There are still about a quarter of a million affected men who have yet to sign up. I believe that they will, as the close of the registration period draws near.

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

I offer my highest praise and my sincere thanks to the men of America who have answered the lawful call of their Nation.

THE CARTER ADMINISTRATION'S OUTRAGEOUS BREACH OF SECURITY

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, since the Ford administration, information about the highly classified "stealth" bomber program has remained top secret and only sketchy unconfirmed rumors about the program have ever publicly surfaced before now.

Now the Carter administration has unnecessarily provided the Soviet Union and other hostile powers a virtual gift of this top secret military information, which has certainly damaged our national security interests.

For several decades, our intelligence agencies have worked hard to prevent the disclosure of such highly classified secrets at even the lowest level, and the disclosure of much less vital secret information has landed violators behind bars.

President Carter and his top officials have shown themselves to be irresponsible and reckless by revealing the most intricate secret security matters for what appears to have been a political ploy to advertise their concern for defense after 4 years of negligence.

As the Washington Post noted editorially this past weekend, this was an abuse of office for political gain.

THE PRESIDENT'S HYPOCRISY

(Mr. DICKINSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKINSON. Mr. Speaker, at 2:15 this afternoon there is a scheduled exhibition at the White House where the President will sign into law the so-called Nunn-Warner amendment to increase the cost-of-living allowances for our enlisted men particularly. Just recently the President was on board the *Nimitz* and announced to those who were returning from 144 days at sea that he was going to support the cost-of-living increase, and they all believed it. As soon as he got back, he rescinded this and said he would not support this because it was not in his budget, and it would lead to an unbalanced budget. Senator HOLLINGS, a Democrat from South Carolina, said that this was hypocrisy and was made as a political ploy on the part of the President.

Mr. Speaker, I would say that this afternoon at 2:15 when the President goes through the motions of signing this bill, a bill which he opposed and now he is trying to get credit for, that this is politics at its highest and hypocrisy at its worst.

THE PRESIDENT'S DECISION TO LEAK "STEALTH" INFORMATION IS TREACHERY

(Mr. WINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WINN. Mr. Speaker, the editor of the Armed Forces Journal, who revealed to the American people the President's decision to leak for political purposes some of the most highly classified weapons technology information since the Manhattan project, has called that decision "irresponsible." I submit that it is more than irresponsible, it is treacherous. The highly sophisticated Stealth technology, an aircraft that presumably would be able to avoid radar detection until on top of its target, would if deployed render virtually obsolete the entire antiaircraft system of the Soviet Union. It would, of course, radically alter the military balance in this Nation's favor, at least until the 1990's, at which time it would be ready for use. By its action, the Carter administration and its shamefully politicized Department of Defense has now given the Kremlin a 10-year headstart on development of a system to counter this technology, and for what purpose? For none, apparently, other than for a brief splash of newspaper headlines in the desperate hope of reviving the President's failing reelection campaign. I would like to take this opportunity to make known my deepest concern for the loss of this military advantage, for the role it could play in the defense of the American people. And I would express my concern as well for this Nation that its defenses are left in the hands of an administration that for such fleeting political advantage will exploit the very systems by which this Nation survives. The survival of this society, I need not remind my colleagues, is nothing to be toyed with in so cavalier a manner, and it is nothing if not treacherous on the part of those who do.

☐ 1010

CONCLUDING THE WORK OF CONGRESS AS SCHEDULED

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, it has now been 4½ weeks since the leadership indicated that it does not intend to schedule a vote on the 1981 budget until after the election. In reaction, a number of us voiced the opinion that a lameduck session was really a cynical attempt on the part of the leadership to deny the voters the opportunity to judge how their Congressman stands on issues like inflation, unemployment, taxes and defense spending. Little has happened in the last 4½ weeks to prove us wrong. Aside from the Reconciliation Act, there has been no attempt on the part of the majority to move the budget process along. And, looking at this week's agenda, once again I see no mention of the second budget resolution. Still, we have 4 weeks to go before the scheduled date of adjournment on October 4—and that is more than enough time to act on next year's budget if the leadership wants to. But in the event that this does not happen, I am confident you will find strong support on this side of the aisle for staying in session until the budget is completed. Mr. Speaker, we feel it is more important to stay here and do our job than to spend October in our districts campaigning to save our jobs. However, given the majority party's record over the last 25 years, it appears its leadership has come to a different conclusion.

A NEW SECURITY CLASSIFICATION

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. LAGOMARSINO. Mr. Speaker, a report in yesterday's Los Angeles Herald-Examiner, attached, indicates the Carter administration is considering adding a new category of secret information classification to the existing system of confidential, secret, and top secret. Unnamed administration sources say the new classification will be called "royal."

Other published reports said the system will cut off most congressional, military, and other governmental officials, and would protect politically sensitive or embarrassing information from disclosure.

I submit that "royal" would certainly be an appropriate term for this new system of classification. Indeed, we would probably have to look back to George III or even Louis XVI to discover similar examples. And, of course, we all know what happened to Louis the XVI. He lost his head.

Perhaps someone should remind President Carter that we are a democracy (with a small "d"), and that he has not yet been crowned king.

WHAT IS A "ROYAL" SECRET?

WASHINGTON.—A new system of tightening access to highly secret information—including a supersecret designation "royal"—is being developed by the Carter administration, administration sources said last night.

The sources, who asked not to be identified, said the "royal" designation does not supersede the existing "confidential," "secret" and "top secret" categories, but is instead part of a system designed to manage an increasing volume of intelligence information originating from extremely sensitive methods or sources.

Other published reports said the system will cut off most congressional, military and other government officials and would make the classification "royal" above even "top secret." The reports quoted unnamed sources as saying "royal" would protect politically sensitive information that could embarrass President Carter.

Alfred Friendly Jr., a spokesman for Zbigniew Brzezinski, Carter's national security adviser, termed such a characterization of "royal" as "an outrageous fabrication."

LAMEDUCK SESSION A FURTHER EROSION OF PUBLIC CONFIDENCE

(Mr. LUNGREN asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, over the last two decades we have experienced a steady decline in the percentage of our citizens who turn out at the polls to participate in national elections. In fact, voter turnout in the United States now trails that of many of the Western democracies.

Political scientists point to this development as an alarming indication that public confidence in our representative institutions is on the wane.

At a time when we should be taking care to bolster that public confidence, the leadership of the majority proposes that we laugh in the face of the electorate by holding a lameduck lawmaking session.

During the 1932 debate on the 20th amendment to the Constitution, Representative Lozier of Nebraska made this point quite clear:

> The American people when they express themselves at the ballot box have the right to have their will represented and reflected in legislation. According to the genius and spirit of our institutions the people have the right to demand that their representatives meet speedily and translate their mandate into legislation.

If the Members of the House do submit to a session of lameduck lawmakers this November, they will be helping to further the apparent erosion of public confidence in our democratic institutions.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would like to announce that this is the day for the consideration of bills under suspension of the rules. Pursuant to the provisions of clause 3(b), rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV. Such rollcall votes, if postponed, will be taken on tomorrow, Tuesday, September 9.

CRIMINAL PROCEDURE AND EVIDENCE RULES AMENDMENTS

Mr. DRINAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7817) to amend or disapprove certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence proposed by the Supreme Court, and to amend chapter 231 of title 18, United States Code (relating to probation), as amended.

The Clerk read as follows:

"(B) any offer to plead guilty or nolo contendere; or

"(C) any statement made in connection with and relevant to—

"(i) any of the foregoing pleas or offers; or

"(ii) any discussion which the defendant reasonably believes to be a plea discussion, and which does not result in a plea of guilty or nolo contendere, or results in a plea of guilty, later withdrawn, or a plea of nolo contendere;

is not admissible in any civil or criminal proceeding if offered against the person who made the plea, offer, or statement. However, evidence of a statement made in connection with and relevant to any plea of guilty later withdrawn, plea of nolo contendere, or offer to plead guilty or nolo contendere is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.".

(B) Rules 17(h), 26.2, and 32.1 of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall not take effect.

(C) Rule 44(c) of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall take effect as proposed and transmitted, except that the sentence beginning "Unless it appears" shall not take effect.

(D) Rule 410 of the Federal Rules of Evidence as amended by the amendments so proposed and transmitted shall take effect as amended to read as follows:

"Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

"Except as otherwise provided in this rule, evidence of—

"(1) any plea of guilty, later withdrawn, or plea of nolo contendere;

"(2) any offer to plead guilty or nolo contendere; or

"(3) any statement made in connection with and relevant to—

"(A) any of the foregoing pleas or offers; or

"(B) any discussion which the defendant reasonably believes to be a plea discussion, and which does not result in a plea of guilty or nolo contendere, or results in a plea of guilty, later withdrawn, or a plea of nolo contendere;

is not admissible in any civil or criminal proceeding if offered against the person who made the plea, offer, or statement. However, evidence of a statement made in connection with and relevant to any plea of guilty, later withdrawn, plea of nolo contendere, or offer to plead guilty or nolo contendere is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.".

(b) Rule 32(f) of the Federal Rules of Criminal Procedure is repealed.

SEC. 2. Chapter 231 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3657. Termination of probation

"At any time before the expiration of a period of probation, the court may, on its own motion or on motion of the defendant or the Government, terminate such probation if the court is satisfied that the conduct of the defendant and the interests of justice warrant such termination.

"§ 3658. Modification of probation

"At any time before the expiration of a period of probation, the court may, after opportunity for a hearing at which the defendant is entitled to assistance of counsel, modify the period and conditions of such probation.

"§ 3659. Summons and warrant for violation of probation

"(a) If a defendant is alleged to have violated a condition of probation in a material respect—

"(1) a probation officer may issue a summons for such defendant to appear at a preliminary hearing under section 3660 of this title; or

"(2) the court may issue a warrant to retake the defendant.

"(b)(1) A summons or warrant under this section shall be issued as soon as practicable after discovery of the alleged violation. Imprisonment of the defendant shall not be deemed grounds for delay of such issuance, except that, in the case of a defendant charged with but not convicted of a Federal or State offense, issuance of a summons may be suspended pending disposition of the charge.

"(2) If a defendant is serving a sentence of imprisonment for a Federal or State offense, a summons or warrant under this section may operate with respect to such defendant as a detainer.

"(c) A summons or warrant under this section shall be accompanied by a written statement setting forth—

"(1) the conditions alleged to have been violated;

"(2) the time, place, and purpose of the preliminary hearing;

"(3) the defendant's rights under section 3660(c) of this title; and

"(4) the action which the court is authorized to take under section 3661 of this title.

"§ 3660. Preliminary hearing and revocation hearing with respect to alleged violation of probation.

"(a)(1) If a defendant is alleged to have violated a condition of probation, the court with jurisdiction over the defendant or, upon order of such court, a court reasonably near the place of the alleged violation shall conduct a preliminary hearing without unnecessary delay to find if there is probable cause to believe that such a violation has occurred. Upon a finding of probable cause, the court may—

"(A) order a revocation hearing under subsection (b) of this section and order that the defendant be incarcerated pending such hearing;

"(B) order a revocation hearing under subsection (b) of this section and temporarily restore the defendant to probation pending such hearing—

"(i) if incarceration of the defendant is not warranted by the frequency or seriousness of the alleged violations;

"(ii) if the defendant is likely to appear for future proceedings; and

"(iii) if the defendant is not a danger to any person; or

"(C) order that the proceedings relating to the alleged violation be terminated without a revocation hearing if such action is in the interest of justice.

"(2) Conviction of a Federal or State offense committed after the defendant is placed on probation constitutes probable cause under this section.

"(b) Not later than sixty days after the date on which an order is entered under subsection (a)(1)(A) or (B) of this section, the court shall hold a revocation hearing. Such hearing may be held at the same time and place as the preliminary hearing.

"(c) At a preliminary hearing and a revocation hearing, the defendant shall have the opportunity—

"(1) to be represented by counsel;

"(2) to be apprised of the adverse evidence and to confront and cross-examine adverse witnesses; and

"(3) to appear and testify and to present witnesses and relevant evidence.

"(d) The defendant may waive the right to a preliminary hearing and to a revocation hearing.

"§ 3661. Action concerning violation of probation

"(a) If the court, after a revocation hearing, determines by a preponderance of the evidence that the defendant has violated a condition of probation, the court may—

"(1) continue probation unchanged;

"(2) reprimand the defendant;

"(3) modify the conditions of probation; or

"(4) revoke probation and impose any sentence that the court was authorized to impose at the time of initial sentencing.

"(b) In carrying out subsection (a) of this section, the court shall consider—

"(1) if the defendant has been convicted of a Federal or State offense, the seriousness of such offense; and

"(2) the frequency and seriousness of other violations of the conditions of probation.

"(c) If the court—

"(1) revokes probation and imposes a new sentence involving payment of a fine; or

"(2) modifies probation by increasing any monetary obligation of the defendant;

any money paid by the defendant pursuant to a condition of probation shall be credited toward any monetary obligation imposed upon the defendant as a part of the new sentence or as a result of the modification of probation.

"(d) If the court revokes probation and imposes a sentence of imprisonment—

"(1) any time served in confinement during probation shall be counted toward that term of imprisonment; and

"(2) any time served on probation without a violation of the conditions of probation may be counted toward that term of imprisonment.

"(e) If the court modifies probation by extending the period of such probation or by increasing the period of confinement provided in connection with such probation—

"(1) any time served in confinement in connection with the probation shall be counted toward the modified period of confinement; and

"(2) any time served on probation without a violation of the conditions of probation may be counted toward the modified period of probation.

"(f) A determination under this section shall be made on the record not later than twenty-one days after the date on which the revocation hearing is concluded and shall include a statement of the reasons for such determination.

"(g) The power of the court to revoke probation for violation of a condition, and to impose another sentence, extends beyond the expiration of the period of probation for any period reasonably necessary for the adjudication of matters arising before the expiration of such probation if, before such expiration, a summons or warrant is issued under section 3659 of this title on the basis of an allegation of the violation.

"§ 3662. Arrest of probationer by probation officer

"If, at any time during the probation period, a defendant violates a condition of probation, and such violation—

"(1) occurs in the presence of a probation officer; and

"(2) constitutes a Federal or State offense;

such probation officer may arrest such defendant.

"§ 3663. Searches by probation officers

"Upon the request of a probation officer, a court shall issue a warrant for such an officer to search for or seize property that is evidence that a defendant on probation—

"(1) has violated a condition of probation; or

"(2) has committed a Federal or State offense;

if the probation officer seeking the warrant establishes reasonable and articulate grounds to believe that such defendant has violated such a condition or has committed such an offense.".

SEC. 3. (a) Section 3651 of title 18, United States Code, is amended by striking out the undesignated paragraph beginning "The court may revoke".

(b) Section 3653 of title 18, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu therof the following new section heading:

"§ 3653. Report of probation officer and transfer of jurisdiction";

(2) by striking out the undesignated paragraph beginning "At any time"; and

(3) by striking out the undesignated paragraph beginning "As speedily as".

SEC. 4. The table of sections of chapter 231 of title 18, United States Code, is amended—

(1) by striking out the item relating to section 3653 and inserting in lieu thereof the following:

"3653. Report of probation officer and transfer of jurisdiction.";

and

(2) by adding at the end thereof the following new items:

"3657. Termination of probation.
"3658. Modification of probation.
"3659. Summons and warrant for violation of probation.
"3660. Preliminary hearing and revocation hearing with respect to alleged violation of probation.
"3661. Action concerning violation of probation.
"3662. Arrest of probationer by probation officer.
"3663. Searches by probation officers.".

SEC. 5. This Act and the amendments made by this Act shall take effect on December 1, 1980.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. DRINAN) will be recognized for 20 minutes and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. DRINAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in April 1979, several proposed amendments to the Federal rules of criminal procedure and the evidence were promulgated, pursuant to the Rules Enabling Act. They were to have taken effect on August 1, 1979. However, there were significant objections to some of those proposed amendments, so Congress delayed their effective date until December 1, 1980, in order to permit Congress the sort of thorough review that is contemplated by the Rules Enabling Acts. These amendments will now take effect on December 1 unless Congress takes action to modify them.

The Subcommittee on Criminal Justice held 2 days of hearings, and received testimony and statements from a wide variety of groups, including the Judicial Conference, the Department of Justice, the American Bar Association, private practitioners, law professors, the ACLU, the Federal Public and Community Defenders, and the National Legal Aid and Defender Association. Based upon the testimony and statements received, the subcommittee made certain changes in the proposed amendments. These changes are embodied in H.R. 7817, which was reported by a voice vote by the Judiciary Committee on August 27.

There are four matters covered in H.R. 7817. First is probation revocation procedures; second, joint representation of defendants; third, discovery of witness statements; and fourth, plea discussions.

First, probation revocation procedures. A new rule, 32.1, was proposed that changed the law to take account of recent constitutional pronouncements by the U.S. Supreme Court. The matter of probation revocation was addressed in detail by the Subcommittee on Criminal Justice and the full Committee on the Judiciary during their work on H.R. 6915, the criminal code legislation recently approved by the committee. The provisions in the criminal code bill were carefully considered by the subcommittee and committee.

They parallel the parole provisions recently enacted in the Parole Commission and Reorganization Act of 1976. H.R. 7817 replaces the proposed new rule with these provisions. Because probation revocation is a substantive, not a procedural, matter, H.R. 7817 places these provisions in title 18 of the United States Code, rather than in the Federal Rules of Criminal Procedure.

Second, joint representation of criminal defendants: Proposed new rule 44 (c). That proposal requires a trial court fully to advise defendants who are represented by the same lawyer that they have a constiutional right to the effective assistance of counsel, including separate counsel. It also permits the court to compel a defendant to obtain separate counsel, even if the defendant objects. The subcommittee approved the part of the proposed rule requiring advice of rights, but it disapproved that part of the rule permitting defendants to be compelled to obtain separate counsel. The constitutionality of this procedure is questionable, and the subcommittee decided that the better course of action is not to enact any rule on the subject until the courts have more fully addressed the issue.

Third, discovery of witness statements: Proposed new rule 26.2. The proposed new rule provides for production of defense witness statements. There is a great deal of opposition to this rule. The American Bar Association, for example, opposes the proposed rule as unconstitutional.

In light of this opposition, the Judicial Conference has advised that it does not oppose rejection of the proposed rule. The Judicial Conference is satisfied that the case of United States against Nobles, which provides for Government discovery of defense witness statements under certain circumstances, is still the law.

H.R. 7817 rejects proposed new rule 26.2. This will in no way affect the status of the Nobles case.

Fourth, plea discussions.

The present rule was enacted by Congress in 1975. The purpose of the rule is to promote disposition of cases without need for a full trial. This is accomplished by providing that statements made during plea negotiations are not admissible at a trial. Thus, the present rule in criminal cases is parallel to the rule in civil cases (Federal Rule of Evidence 408), which protects settlement negotiations in a like manner.

The proposed amendments would change the current rule by making statements made during plea negotiations inadmissible only if the statements

were made to an attorney for the Government. This would be inconsistent with the legislative history of the rules and was vigorously opposed by a wide variety of groups, including the American Bar Association. If a defendant believes that plea discussions are taking place, even though the discussions are with a Government official other than an attorney, they should be inadmissible. However, a rule drafted too broadly is open to abuse. Therefore, H.R. 7817 disapproves the proposed amendments but amends the present rule to provide that only those statements that the defendant reasonably believes to be plea discussions are inadmissible.

H.R. 7817 is the result of careful consideration and balancing of a wide spectrum of interests. I urge my colleagues to support it.

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Mr. Speaker, I reserve the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I too rise in support of H.R. 7817. The bill deals with six amendments proposed by the Supreme Court to the Federal Rules of Criminal Procedure, as has been stated, and the Rules of Evidence which the Congress found so controversial last year that it delayed their effective date until December 1, 1980.

When the Congress so acted last year, it was responding to concerns expressed by a broad range of the practicing bar, including the American Bar Association, that these amendments should receive legislative attention from elected officials. The Congress felt that while the Enabling Acts permitting judicial promulgation of procedural amendments may serve a salutary purpose, they were never intended to prevent the Congress from looking at the substance of the promulgations.

Those who believe in the propriety of legislative veto or congressional veto, which is so popular in this House, over executive regulations, would seem logically to be found to support a similar effort of congressional oversight when the judicial branch is involved.

We have some indications that some Members of the House object to the procedure whereby the House has accepted this attempt to delay the implementation of these rules; and further to, on this occasion, attempt to change some of them and disapprove others. There is an additional view in the report of the committee to that effect. Some of the signers of those additional views I believe to be supporters of congressional veto. I have difficulty—great difficulty—in reconciling those two positions.

H.R. 7817 disapproves of two proposed amendments to the rules and provides alternative language for the other four. It was drafted fully a year after the amendments proposed by the Court had been delayed by the Congress, thus permitting time for the controversial dust raised by the original promulgation to settle, and allowing issues and problems to be carefully delineated. The gentleman from Massachusetts, Father DRINAN, has outlined the changes that would be made in the four instances.

I would particularly direct the attention of the Members to the disapproval of rule 26.2, which is rejected outright in this bill. The rule is rejected because it adds little to the substantive process of a trial, while on the other hand raising substantive questions. While U.S. against Nobles and its reciprocal rights of discovery, as are delineated in that case, will continue to be the law, our rejection of 26.2 is I believe a necessity which will permit the Judicial Conference to redraft and again propose a rule change which would be more acceptable.

I would urge that H.R. 7817 indeed be dealt with promptly. We have a time limit facing us. Those who would say that it ought to be brought up under the usual procedure with a rule, may also want to bear in mind that it would be difficult for this matter to be brought before the House before the adjournment on October 4. After the election, if there is indeed a lame duck session, we would be facing a December 1, 1980, time limit, at which time these rules would otherwise go into effect without any legislative input with respect to their content.

So, Mr. Speaker, I would urge an affirmative vote on H.R. 7817, and reserve the balance of my time.

Mr. KAZEN. Mr. Speaker, would the distinguished gentleman from Massachusetts yield to me for a question?

Mr. DRINAN. I would be happy to yield to my friend from Texas.

Mr. KAZEN. Mr. Speaker, I have heard from one of my Federal district judges that somewhere in the Congress there is a bill or provisions in bills to the effect that parties to a lawsuit can exercise a peremptory challenge to the presiding judge; in other words, that even if a judge is in no way disqualified, the parties can ask that he be removed for no cause whatsoever.

Is there anything like that in this bill?

Mr. DRINAN. There is nothing like that in this bill. I can assure the gentleman. That is the subject of a separate bill on which my subcommittee held hearings, and I can assure the gentleman from Texas and his friend the judge that that is not going to move, at least in this session of the Congress.

The American Bar Association is very favorably disposed to that legislation, and it indicates that in areas of judicial districts with more than four judges, an individual would be able to exercise one peremptory challenge against a particular Federal judge. I thank the gentleman for his inquiry, but there is nothing even approaching that in this bill whatsoever.

Mr. KAZEN. Let me further ask the gentleman this: Does he foresee the possibility of that bill coming to the floor this year?

Mr. DRINAN. There is no possibility.

Mr. KAZEN. I thank the gentleman for his answer.

Mr. DRINAN. Mr. Speaker, I am happy to yield such time as he may consume to the distinguished gentleman from North Carolina (Mr. GUDGER).

Mr. GUDGER. Mr. Speaker, I thank the gentleman from Massachusetts for yielding.

Mr. Speaker, the Rules Enabling Acts contemplate a thorough review of any proposed amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence. The Subcommittee on Criminal Justice, of which I am a member, and the Judiciary Committee, fulfilled its responsibilities under these acts by considering the proposed amendments before us today and by making changes in them where they were necessary.

The Subcommittee on Criminal Justice heard from a wide variety of witnesses, representing all sides of the criminal justice system. H.R. 7817 was the result. It is a balanced bill, approving some of the proposed amendments, disapproving some of them, and amending some of them. H.R. 7817 is supported by a wide spectrum of practitioners, law professors and groups such as the American Bar Association.

The first proposed rule, rule 44(c), wisely requires a trial court to advise defendents who are represented by the same lawyer of their rights of effective assistance of counsel, including separate counsel. But the rule would also have permitted the court to require the defendants to obtain separate counsel even if they object, and want to continue to be represented by the same lawyer. Several witnesses objected that this rule may be unconstitutional. This is an issue that has not been fully addressed by the courts. H.R. 7817 disapproves of giving the courts this authority until they more definitively resolve the issue.

Second, proposed rule 11(e)(6) protects the statements of parties who are engaged in plea negotiations from disclosure at trial. Plea bargaining is a fact of life in the criminal justice system; its main purpose is to resolve cases without trial. The proposed amendment would have limited the protection of the rule to only those plea negotiations between the defendant and a Government attorney. It would have made plea discussions with law enforcement agents admissible in all circumstances, unless they are coerced or involuntary. A variety of groups, including the American Bar Association, testified that law enforcement officers do engage in plea negotiations, and that the proposed amendment would be unfair to defendants who in good faith reasonably believe that they are negotiating with law enforcement officers.

But H.R. 7817 protects against possible abuse by a defendant who in bad faith, or unreasonably claims that an agent was plea bargaining. The defendant's belief must be reasonable for such discussions to be protected. In addition, since the defendant is a voluntary participant in the plea discussions these statements by their very nature are not coerced or involuntary. The effect of the proposal would be to leave a defendant's plea bargaining totally unprotected a large amount of the time. This would of course lead to an increase in trials as defendants stop trying to negotiate pleas.

H.R. 7817 also disapproves proposed rule 26.2, which would have required production of defense witness statements to the Government under a wide variety of circumstances. According to the Judicial Conference, the proponent of the

rule, it is supposed to effectuate the Supreme Court case of United States against Nobles. But the Nobles case is much narrower than the proposed rule. Because it is much narrower, it does not present the constitutional problems that rule 26.2 does. Several witnesses, including the American Bar Association, criticized the rule as unconstitutional on fifth and sixth amendment grounds.

They also testified that the rule would violate the attorney's work product privilege. These issues have not been considered by the Supreme Court and there has been little lower court interpretation of the Nobles case. Congress should not promulgate a rule that is probably unconstitutional on a variety of grounds. It should at the very least allow the courts to interpret the Nobles case more fully. The Judicial Conference has said that it is satisfied that Nobles remains the law and that it does not need rule 26.2.

H.R. 7817 also substitutes for proposed rule 32.1 the provisions of H.R. 6915, the proposed Federal criminal code, on probation revocations. These provisions were carefully drafted by the subcommittee and the committee, and more fully and clearly set forth the rights and obligations of probationers and the courts during probation revocation hearings.

As noted earlier, the subcommittee heard from representatives of all viewpoints of the criminal justice system. It carefully considered the proposed amendments and the opposition to them. H.R. 7817 is a balanced bill, that takes into account a wide variety of interests and I urge my colleagues to support it.

□ 1030

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the very able and amiable gentleman from Michigan (Mr. SAWYER).

Mr. SAWYER. Mr. Speaker, let me say to my colleagues that I sparingly take the well of the House, as I am sure they are all aware, and never unless I think that I have something to contribute.

This bill, H.R. 7817, should be resoundingly defeated. This bill comes from my subcommittee and my committee. Let me tell the Members what it does, particularly what rule 11(e)(6) provides. Contrary to what the Supreme Court and the Judicial Conference of the United States proposed, after extensive hearings—probably far more extensive than what we have done legislatively, and participated in by sitting Federal judges and bar associations—we, by vote in the subcommittee, and carried through in committee, have put restrictions on the admissibility of admissions or confessions or statements that might be made in the way of plea bargaining.

With that nobody disagrees. We have the same rule in civil procedure, that settlement discussions, are not admissible. But this language proposed in rule 11(e)(6) by the Supreme Court and by the Judicial Conference provides that to enjoy the privilege of being inadmissible it be made in conversations with an attorney for the Government; namely, someone who is authorized to bind the Government in a plea bargain. This bill would extend this privilege to statements made to a deputy sheriff on the street, the police officer on the street, or whoever, so that they would all be barred. And it says, "If the defendant reasonably believed that he was engaged in plea bargaining."

To any of the Members who have ever had experience in defending criminal cases or in prosecutorial roles—and I have had both—I can tell you that every single admission against interest and every confession made by a criminal will be asserted to be privileged when he has counsel, by claiming that the accused reasonably believed this statement was made in this course of plea bargaining.

The accused is given Miranda instructions right away when he is arrested. We, unfortunately, in the legal profession have the habit of naming our milestones after criminals. The medical profession calls a new advance the Salk vaccine or whatever we call it the Esposito rule or the Miranda rule, naming it after the criminal who was involved instead of calling it the Justice Warren rule or the Justice Douglas rule.

But be that as it may, the accused is told that whatever he says may be used against him in a court of law. He is not required to say anything, he is entitled to have counsel, and if he is unable to provide himself with counsel, the people will provide him with counsel free of cost to himself. The accused is told that when he is arrested.

Now, in most criminal cases guilt is proved by admissions and confessions. If one has a guilt complex and he knows he has done something wrong and somebody comes up and asks a few questions, he says to himself "My gosh, they've got me," and his desire is to be cooperative. His thinking probably goes along plea bargaining lines. He thinks that "If I am cooperative and I tell these guys everything, somehow or other they are going to be nicer to me."

So we are going to get this argument, that whenever they make admissions of fact when confronted with evidence, they can reasonably believe they were plea bargaining with a policeman on the beat, with a deputy sheriff out at the jail, or whoever, someone who has absolutely no authority to bind the Government in a plea bargain. And to my knowledge, I have never heard of a case where enforcement officers claimed authority to plea bargain. That has to be done by an attorney for the Government.

If we open this door, we are opening Pandora's box and we are destroying a well-considered rule by all the Federal judges who sit on these matters in the United States functioning as the Judicial Conference. If we shoot from the hip here in Congress, and if we change something this drastically and this quickly, it will be a serious impediment to our criminal law enforcement. Goodness knows, with the rate of criminal activity we have, we need more prosecutorial help, certainly not more obstacles.

I hope that we have a bigger closed circuit audience than we have here in the Chamber, and I would again say to the Members that I do not take this well to urge positions when I do not know whereof I speak. I say that if we undertake here in the Congress, with scant consideration, to undo what the entire Judicial Conference of the United States and a unanimous Supreme Court decided, namely, to limit the sanctity of discussion to those talks had with attorneys with the United States who have authority to bind the Government, we will deal a serious blow to enforcement of the criminal laws of the United States.

Mr. Speaker, I urge a no vote on this bill.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. LUNGREN), the gentleman of the sunny disposition as well as the sunny State of California.

Mr. LUNGREN. Mr. Speaker, I am, as is the previous speaker, a member of the subcommittee and the committee before which this matter was considered, and I have to say that, contrary to some assertions that have been made on this floor, I do not think we gave this matter very serious consideration, certainly not extensive consideration.

The period of time we gave this legislation in subcommittee was 2 days of hearings, and we heard the testimony of only about a half dozen witnesses, some of whom were talking to us about another matter, that is, the question of peremptory challenge which we decided we would not place in this bill.

□ 1240

So we did not get a great deal of input with respect to the substance of the bill before us.

If the Members of the House would look at the report that came out of our committee, they will see that there are three dissenting opinions. Interestingly enough, a number of those opinions are signed on by a number of different Members, sometimes in more than one case. The reason why you have three dissenting opinions is that there are so many parts to this one small bill. There are so many different rules we are talking about. And it seems to me that it certainly is not the better part of judgment to bring before this body a bill which contains a number of different aspects to be dealt with on the Suspension Calendar where we cannot even utilize the amendment process for dealing with the differences.

If I could address myself to one of those proposed rules that we have rejected, that is, the court's proposed rule 26.2, essentially all this rule does is to provide a uniform procedure for effectuating a policy which the Supreme Court unanimously established some time ago in the Nobles case. It is nothing that novel. But it is an attempt to try to establish a uniform procedure so that it is carried out around the country and is utilized in the same way throughout all of the courts.

I would suggest to my fellow Members that this is the wrong way to go about dealing with this type of legislation. Those of us who believe in the legislative veto and yet disagree with this, I think disagree in part because of the way in which it is presented here. It is here before us on the suspension calendar. We cannot give the careful consideration that is absolutely necessary.

Let us look at another particular rule that we are asked to change from what

was brought to us by the court. This is the rule that goes to the question of plea bargaining. I had an amendment which was adopted in the process which puts in the word "reasonably," that is, that the particular individual involved must reasonably believe that the Government person to whom he is talking to be involved in plea negotiations. I put that in because the rule that we had was far more expansive, I thought, than what was brought to us by the court. But I am not necessarily satisfied with what we did even with my particular amendment. I think all that does is point up the problems that we have with this bill as it is brought before us and the inability we have on the Suspension Calendar to even consider amendments.

Mr. Speaker, I would ask for a no vote on this particular bill.

Mr. DRINAN. Mr. Speaker, I yield myself 3 minutes so that I may engage in a colloquy with the gentleman from California.

Mr. Speaker, the gentleman would concede that all support for proposed rule 26.2 evaporated during our hearings. And even the Judicial Conference, which had originally proposed 26.2 as a codification of the Nobles decision now says that they are prepared for its withdrawal.

We are not changing law. They wanted to change law. All of the experts that we had and the members of the subcommittee and the full committee said that the proposed rule goes beyond the Nobles decision. We say let the Nobles decision remain there rather than provoke a lot of litigation in the courts about the precise meaning of 26.2. We are doing what careful lawyers do; namely, postponing the effective date of things until we know there is consensus. We would be stirring up litigation in the courts, throwing the rights of the litigants and defendants into question. I would urge upon the gentleman that 26.2 goes beyond the Nobles decision and that, contrary to Nobles—for example, 26.2—requires the court to preclude a witness from testifying if the defense refuses to produce the witness' statement. On the other hand, Nobles approved preclusion of a witness' testimony if the court, in its discretion, felt it was appropriate.

I would, therefore, suggest that the gentleman has oversimplified the matter. The committee recommends the postponement of 26.2 and a reconsideration by all parties involved.

Mr. LUNGREN. Does the gentleman wish me to respond?

Mr. DRINAN. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I would say to the gentleman that, unfortunately, there is some misunderstanding between our subcommittee and the Department of Justice. In fact, the Department of Justice was not afforded the opportunity to make their presentation before us, and the Department of Justice, I think, has a very serious concern in this matter. The Department of Justice at this point in time still supports the rule as it originally came to us. I think those of us who wish to have the rule as it originally came to us are concerned about the fact that too often particularly those of us who are practitioners of the art of the law recognize that when we get in a courtroom situation we look upon it as just a contest in which we are out there dealing for our side versus the other side representing their particular interests, and the idea about really getting to the essential truth is sometimes lost. And it seems to me the fact that someone on the defense side is allowed to make a presentation, is allowed to testify under oath with respect to matters that that individual has already made statements on, that that information should come forward so that we can find out the truth rather than going around some of the rules that we attorneys construct, in some ways for a very, very good reason but in other ways which act not to try to find out exactly what happened, with all constitutional protections, but yet seem to go around the idea of getting to the truth of the matter.

I understand the sincerity of the gentleman's position, but I suggest that there are just as sincere positions on the other side, and I would suggest that, because we have this controversy, it is not appropriate for us to bring this particular bill before us on the suspension calendar where we cannot make the careful determination between the different rules.

Mr. DRINAN. I thank the gentleman for his comments, and I reserve the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. I should like to wish the Speaker pro tempore a very happy birthday today.

The SPEAKER pro tempore (Mr. PEPPER). The Chair thanks the gentleman.

Mr. HYDE. Mr. Speaker, I have very mixed feelings about this legislation. It comes very swiftly, and it is complex. I do not in any way wish to criticize the Subcommittee on Criminal Justice led by the gentleman from Massachusetts (Mr. DRINAN) and the gentleman from Ohio (Mr. KINDNESS). No committee, no subcommittee, has worked as hard as this subcommittee about the business of their assigned jurisdiction, and I salute them and compliment them. But, nonetheless, I feel uncomfortable about this legislation.

Rule 26.2 has to do with the variation of the Jencks Act. Every lawyer who has ever tried a case and had a witness testifying on the other side has wanted to have access to prior inconsistent statements if they are relevant and germane and concern substantial issues involved. And while the defense can get those under the Jencks Act and the Jencks case, the prosecution now has great difficulty getting access to those prior statements which may or may not be inconsistent.

A trial ought to be a search for truth. We ought not to continually tilt the procedural rules in favor of the defense. At some point, society ought to get some evenhanded treatment.

But, nevertheless, I understand there are problems with this rule. Many times the defense attorney acts as the investigator and, therefore, he would have to testify in a hearing concerning the production of statements which may or may not exist and may or may not be inconsistent with statements made by the witness on the stand.

Then you get into a problem of defense counsel possibly having to withdraw from the case and all of these resulting complications. I do think it is a subject that has to be studied and we need a resolution for it. If defense attorneys can afford a secretary, they ought to be able to afford an investigator and not put themselves into this dual position.

This subject deserves a lot more thorough treatment than it has received.

Mr. KINDNESS. Mr. Speaker, may I inquire of the Chair as to the amount of time remaining on each side?

The SPEAKER pro tempore. The gentleman from Ohio (Mr. KINDNESS) has 5 minutes remaining, and the gentleman from Massachusetts (Mr. DRINAN) has 5 minutes remaining.

Mr. DRINAN. Mr. Speaker, I am happy to yield my 5 minutes to the distinguished gentleman from Ohio (Mr. KINDNESS), but I will take 30 seconds to say, Mr. SPEAKER, that I join the thousands of friends in wishing you a happy 80th birthday.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The gentleman from Ohio (Mr. KINDNESS) is recognized for 10 minutes.

□ 1250

Mr. KINDNESS. Mr. Speaker, I thank the gentleman from Massachusetts for yielding the additional time. I do not believe it will be necessary to employ that much time, but I would like to add my expression of wishes for great joy and happiness on the birthday today of the gentleman from Florida (Mr. PEPPER) who is acting as Speaker today.

Mr. Speaker, there is running through the debate that we have had on this bill today a concentration of concern on one part, and that is rule 26.2. I will grant that the gentleman from Michigan (Mr. SAWYER) has addressed himself largely to rule 11(e), but we must note that everyone seems to be looking at rule 26.2 and saying, in effect, there is dissatisfaction or concern about it.

Those who argue against the bill have said there is a difference of opinion. There is cause for concern about it. It is my concern, in response to that, that we not pass up the opportunity to delay rule 26.2 from going into effect. That is the whole point with respect to rule 26.2.

Some have said, for example, that this action comes very swiftly. It does not. A year ago the Congress delayed for 1 year the effective date on these rule changes that we deal with here today.

It has been said that there were only 2 days of hearings. Let us bear in mind that there has been 1 whole year for people to submit their concerns and their views and their differences with respect to these rules. There has been very ample opportunity afforded for every point of view to be expressed.

With respect to the Department of Justice, it has been said that there was an unfortunate mixup as a result of which the Department did not testify on this occasion. Well, the position of the Department of Justice has not changed, apparently. Obviously it would not change, because the Department of Justice would like to have every prosecutorial tool available to it that they could have.

Now, regardless of the position of the Department of Justice, we are concerned primarily with the promulgation, the formulation of a rule 26.2 in the future that will protect the rights of individuals under the Constitution. Their right to effective counsel can be drastically affected by rule 26.2 as it is presently structured. I do not think it is worth letting a rule go into effect on December 1, 1980, just because we think it might be all right. As the gentleman from Massachusetts, Father DRINAN has said, let us be careful, and if you will, conservative, if I may use that expression, about the promulgation or the finalization of such a rule. Let us not do it, in other words. Let us pass H.R. 7817 resoundingly.

I would urge there be very firm support for H.R. 7817 so that we may have an orderly process of these rules being changed, delayed, or in the case of rule 26.2, a whole reworking is in order and is very much needed.

Mr. Speaker, I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Speaker, I thank the gentleman for yielding. I commend him for his comments and concur completely.

In a matter like this, I think that we are all as lawyers very conservative, because the rights of the accused and the defendants are involved.

I commend the gentleman for understanding the complexity of these issues and explaining them so adequately.

Mr. Speaker, just a few points about what has been said.

With regard to proposed rule 11(e)(6), that rule is an attempt to change existing law. No showing was made to the subcommittee of abuses in the present rule. We are not dealing in this rule with deputy sheriffs and officers on the beat; we are dealing with highly trained Federal law enforcement officers. It is not uncommon for them to attempt, in the interest of judicial economy, to talk to defendants about disposition of the case. Usually such negotiation comes to fruition and a plea agreement is entered into. In those instances where it does not, should the discussions, when entered into in good faith and reasonably, be admissible in evidence? The current rule says "no." The civil rules say "no." There has been no showing that there are abuses under the current rule. In the absence of such a showing, no change is called for.

With regard to proposed rule 26.2, it is clear that the proposal goes beyond what was intended by the Judicial Conference and raises serious constitutional questions. The intent was to codify the decision in the Nobles case. The proposed rule goes far beyond that. Should the proposed rule be rejected, the present law, set forth in Nobles, will remain in effect. The best course of action, therefore, would be to follow what my distinguished colleague Representative KINDNESS, has suggested—let the Judicial Conference try again. Rather than let a badly drafted proposal take effect, we should disapprove it and let the Judicial Conference redraft it.

Mr. Speaker, I have no additional requests for time. I yield back the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. DRINAN) that the House suspend the rules and pass the bill, H.R. 7817, as amended.

The question was taken.

Mr. SAWYER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. DRINAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7817, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PROVIDING FOR ORDERLY DISPOSAL OF CERTAIN FEDERAL LANDS IN NEVADA AND FOR ACQUISITION OF CERTAIN OTHER LANDS IN THE LAKE TAHOE BASIN

Mr. PHILLIP BURTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7306), as amended.

The Clerk read as follows:

H.R. 7306

SECTION 1. (a) The Congress finds that—

(1) the Bureau of Land Management has extensive land ownership in small parcels interspersed with or adjacent to private lands in urban areas of Clark County, Nevada;

(2) for orderly development of the communities in that county certain of those lands should be sold by the Federal Government;

(3) the Lake Tahoe Basin is a closed basin two-thirds of which is located within the State of California and one-third within the State of Nevada;

(4) the environmental quality of the Lake Tahoe Basin is seriously jeopardized by overdevelopment of sensitive land areas;

(5) a majority of the acreage developed within the Lake Tahoe Basin and the potential for further development of sensitive land areas is within California;

(6) further tourist oriented development within the basin encourages significant permanent development of other kinds as well as tourist visitation; and

(7) the unique character of the Lake Tahoe Basin is of national significance deserving of further protection and management.

(b) The purpose of this Act is to provide for the orderly disposal of Federal lands in Clark County, Nevada, and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin.

SEC. 2. (a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized and directed to dispose of lands under the jurisdiction of the Bureau of Land Management in Clark County, Nevada, as shown on the map numbered 7306A, dated May, 1980, and entitled "Las Vegas Valley, Nevada, Land Sales Map", which map shall be on file and available for public inspection in the offices of the Bureau of Land Management. Such disposal shall be in accordance with regulations developed jointly by the Secretary and the affected local governmental jurisdictions and shall be consistent with the provisions of the Federal Land Policy and Management Act and other applicable law except to the extent necessary to expeditiously carry out the provisions of this Act.

(b) No more than seven hundred acres per calendar year may be offered for sale by the Bureau of Land Management in Clark County.

(c) Notwithstanding section 1(b), the Secretary and the affected local governmental jurisdictions shall jointly select lands to be offered for sale under this Act. The Secretary may not offer any land for sale if in his judgment such land has not been appropriately classified in accordance with adjacent land use by the local governmental jurisdiction. In the event agreement cannot be reached on joint selection, no lands shall be offered for sale.

(d)(1) Except as otherwise provided in this subsection, the revenues from the sale of public lands under this subsection within Clark County, Nevada, shall, notwithstanding any other provision of law, be deposited annually, in the general fund of the Treasury of the United States.

(2) Five per centum of the annual revenues referred to in paragraph (1) shall be returned to the State of Nevada annually for use in the general education program of the State.

(3) Twenty per centum of the net annual revenues referred to in paragraph (1) shall be returned annually directly to the county or municipality within the boundaries of which such land sale occurred to be used for the purpose of acquisition and development of recreational lands and facilities. The total annual revenue returned under this paragraph to each such county or municipality shall be an amount proportional to the amount of revenues generated under this section from sales under this section of Federal land located within each such county or municipality. The preceding provisions of this paragraph shall cease to apply on October 1, 1982, unless, on or before such date, the States of Nevada and California have submitted to Congress for ratification amendments to the Tahoe Regional Planning Compact which amendments have been approved by both States.

(e) The revenues deposited in the general fund of the Treasury of the United States under subsection (d) are deemed to be in the nature of repayment for those authorizations set forth in section 3 of this Act. The Secretary, in cooperation with the Secretary of Agriculture, shall submit an accounting report biannually of income and expenditure provided for by this Act to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(f) The Secretary shall, subject to the provisions of subsection (c), make the first land

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sale offering of Clark County, Nevada, land no later than one year after the date of enactment of this Act.

(g)(1) The Secretary of Agriculture is authorized and directed to make annual payments to the governing bodies of each of the political subdivisions any portion of which is located in the area depicted on the final map filed pursuant to section 3(a). Such payments may be used only for water pollution control, soil erosion mitigation, or acquisition by local government authorities of lands and interests in lands within the Lake Tahoe Basin, or for any combination of the foregoing purposes.

(2) The total amounts appropriated for payments pursuant to this subsection shall be allocated proportionately among such political subdivisions in any fiscal year on the basis of the relative amounts of acreage acquired under this Act in each such political subdivision.

(3) In addition to the amounts authorized to be appropriated to carry out the provisions of section 3 of this Act, there is authorized to be appropriated for making payments under this subsection a sum equal to 15 per centum of the amount appropriated under such section 3.

(h) In addition to the amounts authorized to be appropriated to carry out the provisions of section 3 of this Act, there is authorized to be appropriated a sum equal to 5 per centum of the amount appropriated under such section 3 to be used by the Secretary of Agriculture only for purposes of preventing, controlling, or mitigating water pollution associated with national forest system lands in the Lake Tahoe Basin and for managing acquired lands within the Lake Tahoe Basin. Such sum shall be in addition to any other amounts available to the Secretary of Agriculture for expenditure in the Lake Tahoe Basin.

(i) The provisions of section 3 of the Act of October 20, 1976 (31 U.S.C. 1601), and the provisions of subsections (a) through (c) of section 106 of the Act of March 27, 1978 (16 U.S.C. 790), shall apply to lands acquired by the Secretary of Agriculture under this Act in the same manner and to the same extent as such provisions apply to lands owned by the United States and referred to in such section 106. For purposes of applying such provisions, any reference in such provisions to the lands referred to in such section 106 or to the National Park System shall be treated as including reference to the lands acquired by the Secretary of Agriculture under this Act.

SEC. 3. (a)(1) The Secretary of Agriculture is authorized to acquire by donation, purchase with donated or appropriated funds, or otherwise, lands and interests in lands which were unimproved as of September 8, 1980 (except as provided in subsection (c)), and which are environmentally sensitive land within the meaning of paragraph (2). The funds used for acquisition of such lands and interests in lands shall be the funds authorized to be appropriated pursuant to this Act, and no such funds may be expended until the final map has been filed in accordance with paragraph (2)(B). Such funds shall be in addition to any other amounts available to the Secretary of Agriculture for expenditure in the Lake Tahoe Basin.

(2)(A) The Secretary of Agriculture, in consultation with the governments of Nevada and California and with local governments, including the appropriate planning and regulatory agencies, after notice and opportunity for public hearing, shall prepare a map of the lands to be acquired pursuant to this subsection.

(B) The Secretary of Agriculture shall, on or before December 31, 1980, and after notice and opportunity for public hearing, file with the United States Senate Committee on Energy and Natural Resources and the United States House of Representatives Committee on Inerior and Insular Affairs a map which in the Secretary of Agriculture's judgment best achieves the objectives set forth in this Act and includes the environmentally sensitive land defined in subparagraph (D) of this paragraph.

(C) the estimated acreage of the area depicted on the map filed pursuant to subparagraph (B) which is subject to acquisition under this subsection shall not exceed the acreage of the area depicted as environmentally sensitive land on the map entitled "H.R. 7306", numbered 1, and dated May 1980.

(D) For purposes of this paragraph, the term "environmentally sensitive land" means lands with respect to which human occupancy and use is resulting in, or if developed could result in, unacceptable environmental disturbance to water quality, soil, vegetation, wildlife, or visual or cultural resources. Such term includes—

(i) stream environment zones which are—

(I) areas generally located within the 100-year-flood plain;

(II) areas containing soils which are associated with high run off or high water tables;

(III) areas of riparian vegetation types, or

(IV) minimum protective buffer areas for the areas referred to in subclauses (I) through (III);

(ii) high hazard lands which are characterized by steep slopes and a fragile environmental balance or with a high erosion potential;

(iii) unimproved lands previously modified by man which are causing unacceptably high rates of sedimentation;

(iv) lands in the foreground view which are visually important to maintaining the natural character of the Lake Tahoe Basin; and

(v) shore zone areas which are sensitive to cliff erosion, beach erosion, and near-shore instability.

(E) The map filed pursuant to subparagraph (B) shall be prepared at such scale as to clearly identify the affected land tracts by ownership and shall designate such tracts for acquisition or non-acquisition.

(3) Before initiating acquisition proceedings for any lands under this subsection, the Secretary shall consult annually with State and local government agencies as to the necessity for such acquisition, the potential impacts on State and local government, and other appropriate aspects of the acquisition.

(4) Lands within the boundaries of the area subject to acquisition under this section which are owned by any State or local government may be acquired only by donation.

(b) Lands acquired under this section shall be administered as a part of the United States National Forest System; except that the Secretary of Agriculture, acting through the Chief of the Forest Service, may, in the case of lands (1) which are not contiguous to other lands within the National Forest System or (2) which are unsuitable for forest service administration, transfer such lands or interests therein to an appropriate unit of State or local government with appropriate deed restrictions to protect the evnvironmental quality and public recreational use of the lands concerned.

(c)(1) Except as provided in paragraph (2), with respect to that portion of the Lake Tahoe Basin, as defined as of the date of the enactment of this Act by the Secretary of Agriculture, which lies within the boundary deed restrictions to protect the environment of the State of California, as in effect on the date of the establishment of the Tahoe National Forest (October 3, 1905), the Secretary of Agriculture may require improved lands or interests in improved lands with the consent of the owner thereof or upon a finding by the Secretary of Agriculture that such lands are being used, or that an imminent threat exists that they will be used, in a manner detrimental to the preservation of the existing air, water, or visual qualities of the basin.

(2) No single family dwelling which is improved land (as defined in this subsection) may be acquired under the provisions of this subsection without the consent of the owner thereof unless the Secretary of Agriculture finds that (A) a change in the use of such dwelling has occurred subsequent to the date of enactment of this Act or that such a change in the use is threatened, and (B) in the case of a single family dwelling having a change or threatened change in use but maintained as a single family dwelling, such change or threatened change will result in a detriment to the preservation of the existing air, water, or visual qualities of the Basin.

(3) At such time as the Tahoe Regional Planning Agency has adopted final requirements for the protection of the air, water and visual qualities of the Basin, the Secretary of Agriculture shall make the findings provided for in section 3(c)(1) and 3(c)(2) herein in a manner consistent with such requirements.

(4) For purposes of this Act, the term—

(A) "improved land" means any land on which there is located a single family dwelling or other residential or commercial building, the construction of which commenced before September 8, 1980, together with so much of the land on which such building is located as is reasonably necessary to the use and enjoyment of such building; and

(B) "unimproved land" means any land other than improved land.

(5)(A) The owner or owners of any improved land acquired by the Secretary of Agriculture under this Act may retain a right of use and occupancy of such land for—

(i) a definite term of not more than twenty-five years from the date of the enactment of this Act, or,

(ii) a term ending at the death of the owner or owners of such land.

The owner shall elect the term to be reserved, except that if the owner is a corporation, the term shall not exceed twenty-five years from the date of the enactment of this Act. Unless the improved land is wholly or partially donated, the Secretary of Agriculture shall pay to the owner the fair market value of the improved land on the date of its acquisition, less the fair market value on that date of the right retained by the owner. For purposes of applying the preceding provisions of this subparagraph, ownership shall be determined as of the date of acquisition, except that in applying clause (ii) ownership shall be determined as of May 1, 1980.

(B) A right retained by the owner pursuant to this paragraph shall be subject to termination by the Secretary of Agriculture upon his determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon notification by the Secretary of Agriculture to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.

(d) Lands and interests therein may be acquired by the Secretary of Agriculture in accordance with this section without the consent of the owner thereof only where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed.

(e) The fair market value of the land or interest in land to be acquired by the Secretary of Agriculture under this section shall be determined by an independent appraisal made, where practicable, on the basis of comparable sales at the time of such acquisition. For purposes of the appraisal of any property to be acquired under this section, in determining the comparability of other property sales, the independent appraisal shall take into account the utilities, services, and facilities associated with the property concerned. Any change after the date of the enactment of this Act in the value of any property to be acquired under this section shall not be taken into account for purposes of determining the fair market value of such property to the extent that such change is attributable to the enactment of this Act.

(f) In acquiring any property under this section, the Secretary of Agriculture and the owner of the property to be acquired may agree that the purchase price will be paid in periodic installments over a period that does not exceed ten years, with interest on the unpaid principal balance thereof at a rate which is not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining period of maturity comparable to average maturities on the installments.

(g) There is hereby authorized to be appropriated, for the purposes of this Act, from the Land and Water Conservation Fund, $10-000,000 for the fiscal year 1981, and $20,000,-000 for the fiscal year 1982. In addition there is hereby authorized to be appropriated for these and subsequent fiscal years an amount equal to the amount of revenue obtained by the Federal Government from the sale of federally owned lands in Clark County, Nevada, after October 1, 1978, reduced for any fiscal year by the amount appropriated, pursuant to this sentence, in the prior fiscal years. Amounts authorized to be appropriated under this subsection shall remain available until expended. Authorizations of moneys to be appropriated under this Act shall be effective October 1, 1980. Authority to enter into contracts and agreements and to make payments under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. SEBELIUS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. PHILLIP BURTON) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. SEBELIUS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. PHILLIP BURTON).

Mr. PHILLIP BURTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7306 reflects an intense effort over a period of the last 24 months. This effort was designed to couple two rather significant problems. The first problem, from my point of view, was to provide some mechanism for protecting Lake Tahoe from further degradation. Lake Tahoe straddles the California-Nevada border.

□ 1300

It is the largest alpine lake in the Western Hemisphere. By definition, its ecosystem is very fragile. Because of its extraordinary beauty there has been what I perceive to be uncontrollable pressures for overdevelopment, and we felt that some protective mechanism was needed, hence this bill. This bill provides a significant element in that regard.

The second significant problem that confronted us, a problem I think that becomes all the more clear if you visit Clark County in Nevada. The Federal Government and the Bureau of Land Management own millions of acres in the State of Nevada, and own significant acreage in Las Vegas (Clark County), and even own property in downtown Las Vegas. Property that the committee decided, particularly at the insistence of our distinguished colleague from Nevada (Mr. SANTINI), should be put to productive use rather than remaining vacant. It is property that I would submit under the current and conventional values should be returned to the private tax rolls.

The gentleman from Nevada (Mr. SANTINI) brought this urgent problem to my attention 2 years ago or more, and the bill we have today reflects the rather intense discussions and negotiations that have followed that earlier plea. Our distinguished colleague from California, (Mr. FAZIO), introduced a bill that would have made the entire Lake Tahoe Basin, in effect, a national recreation area. This proposal, I would submit, was a reasonable one and one that, if I had my druthers, I would have preferred.

But the art and the challenge of the legislative process is to find some common ground, if there be any—and normally there is—to reconcile what appear to be irreconcilable differences.

So it is with a great deal of pride that I joined as a coauthor with the coarchitect and seminal source of this proposal, the lead author of the legislation, our distinguished colleague from Nevada (Mr. SANTINI).

For those of my colleagues who have not had the occasion to work with the gentleman from Nevada (Mr. SANTINI) firsthand, let me forewarn you, even if your objectives are compatible but your approach is different, you will be exposed to an extraordinary intellectual, philosophical, and political experience. JIM SANTINI's tenacity is only exceeded by diligence and intelligence.

This product is a good one, it is a thoughtful one, it is a reasonable one, and it is designed, among other things, to recognize that Lake Tahoe is a "national treasure." This legislation, in my view, is legislation that will go a good way toward solving and resolving the problems confronting this great heritage.

Mr. Speaker, H.R. 7306 provides for the orderly disposal of Federal lands in Clark and Washoe Counties, Nev., and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin, California and Nevada.

I am pleased to offer this legislation which is designed to help solve two significant problems in the States of California and Nevada; the protection of the Lake Tahoe Basin and aid the planned growth of urban areas of Clark County, Nev., through controlled sales of federally owned land. These are difficult issues that have required a great deal of time of myself and our colleague from Nevada, JIM SANTINI.

I am greatly impressed by and wish to commend Mr. SANTINI for his efforts on this bill. His long months of work, inventiveness, attention to detail and determination to develop a good policy serving the needs of the people of Nevada and the Nation is a credit to him and this institution.

The bill, as reported by the Committee on Interior and Insular Affairs subsequent to hearings held in Sacramento, Calif., Reno, Nev., and Washington, D.C., reflects amendments by the committee in consideration of the concerns of the local people while establishing measures to protect the Lake Tahoe Basin. The bill reflects the need for local participation with the U.S. Forest Service in preparing a map of the unimproved environmentally sensitive lands which may be acquired by the Secretary of Agriculture. The local governmental agencies, particularly the Tahoe Regional Planning Agency, are afforded special consideration in providing input and guidance to the Secretary of Agriculture.

Mr. Speaker, the bill specifically does the following:

Section 1 sets forth the findings and purposes of the legislation.

Section 2 establishes a mechanism for the orderly disposal of certain Federal lands managed by the Bureau of Land Management in Clark County, Nev. Subsection (a) directs the Secretary of the Interior, acting through the Bureau of Land Management, to dispose of certain Federal lands in urban areas of Clark County by map reference. Subsection (b) places a limitation on land sales pursuant to this act. No more than 700 acres per year may be sold under the act in all the local government jurisdictions combined in Clark County. Subsection (c) requires that a joint decision by the Secretary of the Interior and the affected local governments be made to determine parcel selection prior to sales. Subsections (d) and (e) are the provisions of the bill which stipulate disposition of revenues generated by land sales pursuant to this act. Subsection (f) directs the Secretary of the Interior to begin the first sale officially in Clark County no later than 1 year after the bill passes. Subsection (g) provides for the Secretary of Agriculture to make payments to local jurisdictions in the Lake Tahoe Basin for the purposes of correcting problems of water pollution, soil erosion, and land acquisition. These payments are to be allocated based on the amount of appropriations available to the Secretary of Agriculture. Subsection (h) provides for additional appropriations to the Secretary of Agriculture for pollution and erosion control on lands administered by the U.S. Forest Service. Subsection (i) provides for the highest

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level of in-lieu taxes permitted by existing law to be paid to the local jurisdictions in the Lake Tahoe Basin.

Section 3(a) authorizes the Secretary of Agriculture to acquire unimproved property and interests in unimproved property in environmentally sensitive areas in California and Nevada, according to map designation to be prepared by the Secretary of Agriculture in cooperation with the local governmental agencies, and after public hearings. The map is to identify unimproved environmentally sensitive lands as defined and is to be completed by December 31, 1980. Subsection (b) requires that any lands acquired shall be administered as part of the National Forest System. Subsection (c) establishes authority for the Secretary of Agriculture to acquire improved property within the Lake Tahoe Basin in the State of California with the consent of the owner or if use in certain cases or a change in use of such property would be detrimental to the existing air, water, or visual qualities of the basin. Special provisions are included to assure this authority will be used in a manner consistent with, once TRPA adopts final requirements, said requirements.

Improved lands are defined and rights of occupancy if the authority is exercised, are established. Subsection (d) requires the Secretary of Agriculture to expend all reasonable efforts to acquire lands by negotiation. Subsection (e) stipulates the process by which the Secretary of Agriculture shall establish fair market value for the lands to be acquired. Subsection (f) permits the Secretary of Agriculture to pay the seller for lands acquired in installments over a 10-year period. Subsection (g) provides for authorization for appropriations. This authorization limits appropriations to $10 million in fiscal year 1981, $20 million in fiscal year 1982 plus the income from the sales of lands in Nevada as set forth in the bill. The last sentence of subsection (g) is controlling as it relates to any authorization or appropriations provided for in this act.

Mr. Speaker, with regard to section 3(e) of the bill, it is our intent that special care be exercised by the U.S. Forest Service, when establishing fair market value, to determine and to set forth the amount of bonded indebtedness could be considered a lien against the land acquired. Many parcels within the Lake Tahoe Basin have a burden of bonded indebtedness against them for such items as sewers. Such amounts as may be involved should be collected by the agency administering the bonds. The U.S. Forest Service also should notify all of the agencies which administer bonded services and which might be affected by a land purchase, at the earliest possible time as to the proposed schedule of acquisition.

Finally, I wish to compliment James Bruner and all the members of the League To Save Lake Tahoe for their unrelenting efforts to preserve the beauty of this outstanding national treasure.

Mr. Charles Warren, an old and dear personal friend, who formerly was chairman of the Council on Environmental Quality, provided outstanding support in assisting myself and the committee work out the many difficult problems associated with the bill.

Lastly, the long hours put in by Mary Lou Cooper of JIM SANTINI's staff and committee staff, members, Dale Crane, Judy Lemons, Jowanda Shelton, Gary Ellsworth, and Clay Peters is greatly appreciated.

Editorial support is included below:

[From the San Francisco Examiner, June 6, 1980]

A BOOST FOR TAHOE PRESERVATION

President Carter's announcement last week about Lake Tahoe reflected a forward-looking policy decision that will be welcomed by that large and growing legion of people who are deeply concerned about the basin's fate.

It has been obvious for far too long that only a strong federal presence can prevent further deterioration of the fragile Tahoe environment. The joint effort by California and Nevada, upon which so many hopes rested in the early 1970s, proved vastly disappointing. Expansion-minded, hard-line Nevada casino interests, building demands on both sides of the state line and population pressures continued to over-tax the basin's natural resources.

Now the feds, like the cavalry of old, have come galloping to the rescue.

What Carter said was this:

1—He will instruct federal agencies to create a coordinating council to assure that no federal activity contributes to further pollution. Thus, the Environmental Protection Agency could cut off funds for new sewer connections and federal funds could be denied for some highway projects.

2—The president supported the Burton-Santini bill to sell federal properties in the Reno and Las Vegas areas and use the proceeds, approximately $150 million, to buy environmentally sensitive tracts of land in the Tahoe Basin.

If Carter should be re-elected (make your own forecast), he would be in a position to follow up on these declarations. If not, the Federal Government at least will have been launched on a constructive rescue operation which, if not perfect, nonetheless is bound to be more protective than any measures seen in the past.

The need for stringent controls becomes more evident all the time. A total of 47,000 people now inhabit the lake basin year-round. The population reaches 185,000 or more at the tourist peak. No wonder Mother Nature groans with the strain.

Some opponents of the Federal role protest that the people who live at the lake are best qualified to decide how it should be protected. That's nonsense. They had their chance and they muffed it. We welcome the more positive Federal intervention and only wish that it were stronger—and had come quite a lot sooner.

[From the Tahoe World, May 21, 1980]

SUPPORT TAHOE BUYOUT BILL

(By Tom Martens)

Lake Tahoe is at a turning point.

How can you tell?

Witness the green algae clinging to rocks in the Lake off the Coast Guard Station at Lake Forest. Sink your feet into the sediment ooze at the beach at Kings Beach. Observe the bright green algae along the Lake Tahoe Shoreline near Crystal Bay.

Such sediment and algae didn't get into the lake by accident. It pollutes Lake Tahoe as the result of years of poor development, road building and soil management practices.

It's about time to turn around such pollution.

We think the so-called Burton-Santini land swap bill is the key to future preservation efforts for Lake Tahoe.

We support the compromise. And think you should do the same.

The measure, a compromise numbered House Resolution 7306 and co-authored by Rep. Phillip Burton, D-San Francisco, and Rep. James Santini, D-Nevada, proposes the federal government sell land near Reno and Las Vegas and use the money to buy out environmentally sensitive land in the Tahoe Basin.

The measure also proposes that the federal government authorize that $10 million be spent in 1981 and $20 million in 1982 for Lake Tahoe environmental protection. That money would come from the Land and Water Conservation Fund, under the bill.

The bill authorizes the Secretary of Agriculture to buy land at Tahoe which may be used to the "detriment of existing air, water or visual qualities of the basin."

No detached single-family residential dwelling may be bought, according to the bill, unless a change in dwelling (made after the bill's passage) results in a detriment to air quality in the Tahoe Basin.

Under this condition, the owner of the property would be permitted to live in the dwelling for not more than 25 years.

Some would have Lake Tahoe residents believe that this revision means home owner would be forced to leave. With the buyout language, we think the bill provides the necessary authority to buy the environmentally sensitive land yet give bill teeth for dwellings that radically change after passage.

We think the bill is the key to any future erosion control in the Tahoe Basin. Any of the far-reaching plans—whether creation of a National Scenic Area or the State Water Resources Quality Control Board's 208 recommendations—should deal with financing for the misplaced Tahoe property owner.

The $25 state bond before the voters in November won't provide enough money. We think the land swap is the answer. And we think it should be ushered through Congress while there's still national interest in preserving Lake Tahoe.

[From the Sacramento Bee, May 21, 1980]

THE TAHOE COMPROMISE

With each passing day, it seems more likely that Congress will approve the California-Nevada compromise bill to curb residential and commercial growth at Lake Tahoe. The measure authorizes more than $150 million in federal land purchases at Tahoe over the next 10 years to slow down pollution and commercialization. Financing of these acquisitions of private property would be tied to sales of federal lands in the urban-growth paths of Reno and Las Vegas.

The measure sailed through the House Interior Committee and is ready for action by the entire House membership. A Senate version of the bill, with California Sen. Alan Cranston and Nevada Sen. Paul Laxalt as co-authors, will be introduced any day now.

The only reported opposition in the House is coming from two California representatives who have the most reason to support the measure on behalf of the majority of their constituents. Rep. Harold T. Johnson, who represents the North Shore of Tahoe and Rep. Norman Shumway, who represents the southern part of Tahoe, have come down on the side of the construction industry and the developers at Lake Tahoe. Johnson opposes a key provision which would give federal officials authority to acquire improved property on the California side if the owners planned additional construction that could harm the environment in the Tahoe Basin. Shumway opposes the bill generally and accuses Rep. Phillip Burton, one of the bill's authors, of trying to "ramrod legislation through at the eleventh hour."

The position of Johnson and Shumway does not serve their constituents well. Thousands of Lake Tahoe landowners who bought subdivision lots on the California side of the lake only to find out, too late, that they can't build homes on the property because of environmental protection rules, will be bailed out if the bill is passed. The people in the valley who don't own Tahoe lots, but who enjoy visiting the lake, are ill-served by Johnson's and Shumway's opposition to the compromise bill because the only way the scenic beauty of Lake Tahoe will be preserved is for the federal government to buy environmentally fragile land on both sides of the lake to slow down further growth and development.

The measure deserves the support of California's congressional delegation. Not only is it designed to protect the environment at Lake Tahoe and to compensate landowners who cannot build on their lots, but it is also a significant step toward forging an agreement between California and Nevada to preserve the scenic aspects of the mile-high lake.

[From the Los Angeles Times, Apr. 20, 1980]

A STEP TOWARD SAVING TAHOE

Democratic Reps. Jim Santini of Nevada and Phillip Burton of California are working together on legislation that could hold the line on pollution and congestion at Lake Tahoe through federal purchase of potential sites for commercial and residential development.

Although we still think creation of a national recreation area on one or both sides of the California-Nevada border is the best hope of halting the Tahoe urbanization, Nevada is dead set against that approach and has the clout to block it in Washington.

But if Santini and Burton, who chairs the House national parks subcommittee, can reach final agreement—and if Congress approves the legislation—an important step will have been taken toward reducing the excessive and inappropriate development that now threatens the magnificent alpine lake.

The measure would authorize the annual sale of up to 700 acres of federal holdings on the outskirts of Reno and Las Vegas to private investors. The receipts would be spent by the government to acquire parcels in the Tahoe basin that might otherwise become construction sites.

The concept of exchanging federal holding in urban areas for lands of high scenic and recreational value seems reasonable, and should prove attractive to Nevada, where the Sagebrush Revolution for the opening of more federal lands is very much alive.

The Santini-Burton measure assumes that the major potential for pollution and lakefront erosion exists in California, which has three-fourths of the land base. For that reason, the section of the basin within California would be subject to stricter land-use controls than would property in Nevada.

In exchange for that concession, Santini apparently has agreed to firm assurances, which might be written into the legislation, that his state's moratorium on new casino construction would remain in effect. Santini also is said to be amenable to prompt federal purchase of "environmentally sensitive" properties within his state.

California and Nevada have been warring over Tahoe for many years, and the lake itself had become the principal casualty of runaway development on both sides of the border. Along with the Brown Administration and the Sierra Club, we believe that the federal government, which already owns two-thirds of the basin, should have the dominant role in regulating future growth.

But that approach is anathema to Nevada's congressional delegation and the Santini-Burton compromise apparently is not, at least at this stage of the negotiations. It is the only concept that has a chance this year, and we favor its enactment.

Time would tell whether the new plan would effectively halt future environmental damage to Tahoe; if it did not, federal management would remain the best, and perhaps only, answer.

[From the Sacramento and Fresno Bee, Apr. 19, 1980]

A COMPROMISE TO SAVE TAHOE

A proposed bill by Reps. Jim Santini, D-Nev., and Phillip Burton, D-San Francisco, to create a national scenic recreation area on the California side of Lake Tahoe is a positive, although necessarily restrained, federal response to the failure of California and Nevada to agree on a save-Tahoe compact.

The measure, initiated by Nevada, recognizes that a continuing source of federal funds is necessary to buy private land at Tahoe that might otherwise be converted into residential or commercial uses. The money would come from annual sales, authorized by the bill, of up to 700 acres of federal lands near Las Vegas and Reno. Moreover by setting up a national recreation area on the California side of the lake only, the bill also supports Nevada's contention that California, not Nevada, is responsible for most of the overdevelopment at the lake. Staff members of the House National Parks Subcommittee made a study of the Tahoe Basin and found that, indeed, most of the pollution of the lake comes from California and that much of the land on the Nevada side is already under public ownership.

The sticking point here is pollution caused by the presence of huge gambling casinos on the Nevada side. Unless a way is found to halt the proliferation of the casino-hotels, limiting commercial development on the California side, while highly desirable, will have a limited effect on reducing air and water pollution in the entire basin. Common sense dictates that the bill contain some sort of provision to assure that Nevada's recent ban on new Tahoe casinos cannot be repealed and that definite limits are set on expansion of existing casinos. This is still to be worked out, but those in close touch with the preparation of the bill are optimistic that the final draft will contain such restrictions.

Although the Santini-Burton bill falls short of conservationists' desire for a national scenic area on both sides of the lake, having a federally controlled area on the California side would be a hopeful thrust toward a federally managed Tahoe-Basin where land use ultimately would be controlled by the U.S. Forest Service or the Department of the Interior.

Rep. Vic Fazio, D-Sacramento, has introduced such a measure creating a basinwide federal scenic area, but it has little chance of passing as long as the Nevada representatives oppose it. Fazio sees the possibility, however, that he, Burton and Santini may find common ground and unite behind one bill.

Although the Santini-Burton bill still needs refining and strengthening, the proposal puts flesh on skeletal hopes for saving both sides of Lake Tahoe. Under Nevada sponsorship, and with California backing, it has a decent chance of approval by Congress.

[From the Valley Times, Aug. 10, 1979]

SANTINI PLAN TO SAVE TAHOE JUST MIGHT WORK

The Nevada Legislature fumbled with it.

Gov. Bob List dropped the ball.

And the California Legislature declined to accept it.

Thus a bi-state compact to save Lake Tahoe from further environmental degradation was lost this year.

The legislatively-imposed building moratorium at the lake has run out and Mr. List has decided that he won't extend the building freeze.

So the building boom on the shores of beautiful, but fragile, Lake Tahoe goes on.

What can be done to prevent them from paving the lake to put in a parking lot?

Congressman Jim Santini has a plan and it just might work. We applaud his efforts in this direction.

The plot calls for the sale of federally-owned land in and around Las Vegas, the proceeds of which would be put into a trust for public buy-outs of private Lake Tahoe property.

The land exchange idea has been presented to California Congressman Phil Burton, chairman of the House Subcommittee on National Parks, who will be in town Monday to meet with Santini and look over the Las Vegas lots now owned by the federal government.

It should appeal to all factions, environmentalists and developers alike.

Private property owners at Lake Tahoe could sell their land to Uncle Sam at a fair market value and not have to worry about complying with environmental regulations on building.

About 70 percent of Tahoe land is already in the hands of state, local and federal governments. Forestry officials would like to see this increased to 85 percent to insure public access and use of this important scenic and recreation area.

As far as the BLM-controlled Las Vegas land goes, you can hardly call it fragile. Much of it is checker-boarded in the city and county and opening up these building lots to developers would be to the public benefit.

It's a good way to start getting urban federal lands into private hands, because the Sagebrush Rebellion could drag on for years.

And at least it's a step in the right direction to slow the bulldozers at Tahoe and keep most of the lake in the public domain so we can all enjoy it.

Mr. PHILLIP BURTON. Mr. Speaker, at this time I yield such time as he may consume to the author of the legislation our distinguished colleague from Nevada (Mr SANTINI).

Mr. SANTINI. Mr. Speaker, it is with pride that along with my esteemed California colleague, the Honorable PHILLIP BURTON, I bring H.R. 7306 to the floor for consideration by the House. I believe H.R. 7306 offers a completely new and creative approach to two different land management problems—

First. The overdevelopment of fragile lands in the Lake Tahoe Basin which results in declining water quality of the lake; and

Second. The lack of orderly development and planning in the Las Vegas Valley, Nev., area because of urban Federal land holdings.

The general concept of H.R. 7306, selling certain Federal "checkerboarded" lands in the Las Vegas Valley and considering the proceeds repayment for acquisition of private environmentally sensitive land in the Lake Tahoe Basin was born 3 years ago. Since that time, Mr. BURTON and I have labored arduously to turn a creative concept into a viable legislative product. It has been a long, hard road, but I believe we have succeeded in our endeavors.

I would like to express my personal gratitude to my very able colleague, Mr. BURTON. We have discussed this measure, debated it and yes even argued about it in an attempt to balance a wide variety

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of concerns. At all times, his commitment to the goals we set out to achieve was unwavering. His personal expenditure of time and energy went far beyond the call of duty.

Mr. Speaker, the bill before you is not a perfect bill. Some will say it goes too far. Others will say is does not go far enough. I believe the truth lies somewhere in the middle. H.R. 7306 is a moderate aproach to some very tough, challenging problems.

I would like to take a moment to briefly describe the nature of those problems. Lake Tahoe, as many of you know, is an Alpine Lake which lies high in the Sierra Nevada Mountains of California and Nevada. Centuries ago it was used as the summer home of the Washoe Indians. Later, agriculture development came to the Lake Tahoe Basin, and by the 19th century timber from the basin was used for Comstock mining ventures. Gradually a few large estates and resorts came to Lake Tahoe. By the end of World War II, development in the area began to accelerate. Summer resorts increased in popularity, ski areas came, then gambling, then expanded residences, vacation homes, and heavy commercial development. All of these activities, and others have contributed to the pollution of one of America's most beautiful treasures.

At the same time land and water problems grew at Lake Tahoe, the Las Vegas, Nev., area also experienced growing pains. The urban areas of southern Nevada literally became islands in the middle on a federally owned area. Urban growth cannot be properly planned in the urban Las Vegas Valley because small parcels of Federal land are interspersed or "checkerboarded" with private land. The Bureau of Land Management even owns 150 acres of land on the Las Vegas Strip. Planning for urban growth is complicated and frustrated by scattered enclaves of vacant, unmanaged Federal land used in some cases for trash dumps and abandoned car lots.

The Santini-Burton proposal before you now represents an effort to provide a workable remedy for two very serious land management problems.

Mr. Speaker, at this time I would like to discuss some of the proposals reflected in the committee amendment to H.R. 7306. Following bill introduction, three hearings were held on the bill, one in Washington, D.C., and two in the field. By and large I have been most impressed by the sincere and substantive comments made by well over 100 witnesses and hundreds of letter writers. Almost everyone agreed with the bill in concept, but many people offered specific suggestions for improvement.

After these hearings, Mr. BURTON and I went back to the drawing board and spent many hours trying to devise amendments which would as far as possible accommodate private property interests in the Tahoe Basin and yet still retain the heart and purpose of the bill. Resolving these problems was not easy, but I do think we offered the Interior Committee a series of changes which go a long way toward a fair and proper balance. The committee amendment relates to such things as the Tahoe land acquisition map, consultation with State and local governments, modified condemnation, fair market value and soil erosion from highways and roads.

Mr. Speaker, at this time I would like to clarify the meaning and purpose of certain sections of the bill.

TAHOE ACQUISITION MAP AND PROGRAM

As a result of testimony at public hearings, the House Interior Committee was persuaded to discard the original land acquisition map (entitled H.R. 7306, numbered 1 and dated May 1980) which originally accompanied H.R. 7306. In its place, the committee has substituted language which requires the development of a new land acquisition map to be filed with the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs by December 31, 1980.

As you know, the reason I proposed the language to create a new map is to insure a carefully drawn, refined product which is of such a scale that owners of parcels will be able to see clearly whether or not their property is subject to acquisition.

And, although pursuant to section 3 (2)(c) we have stated that the new Lake Tahoe acquisition map will depict no more acreage as environmentally sensitive than was depicted on the original H.R. 7306 land acquisition map, our intent, of course, is that the land acreage designated as environmentally sensitive shall, insofar as possible, match anticipated appropriations authorized by this bill.

By way of further explanation, I would like to note that the committee added language which gives a precise definition of "environmentally sensitive." The reason we did so was to give the Secretary of Agriculture very strong guidelines with regard to the portrayal of environmentally sensitive lands on the new Tahoe acquisition map. I fully expect the new Tahoe acquisition map to be a much more precise and refined document.

One final word on the Tahoe acquisition map is in order here. I am very pleased that the committee saw fit to incorporate consultation and review by State and local governments and the general public in both the map preparation and in the actual acquisition process. And, in addition, the committee provided for consultation on map development with appropriate planning and regulatory agencies. We mean by this language to include consultation with the Tahoe Regional Planning Agency as well as other appropriate planning and regulatory agencies.

It is my belief that review and consultation with State and local governments and their planning and regulatory agencies would be usual Forest Service procedure, but these provisions certainly go a long way to insure input by people who know the area best and in the end will result in a much improved acquisition map and program.

BONDED INDEBTEDNESS

Mr. Speaker, in public hearings on H.R. 7306, it was brought to my attention by representatives of groups such as general improvement districts (GID's) that they were very concerned that passage of our bill would leave these GID's with outstanding bond obligations which subsequently could not be retired because of revenue losses from assessments on property removed from private ownership and placed in Federal ownership.

I would like to clear up any remaining doubt on this subject. It is our intent that any bonded indebtedness on specific parcels acquired by the Secretary of Agriculture pursuant to H.R. 7306 will be paid at the time of acquisition.

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I would like to insert into the RECORD at this time a letter from the chief of the U.S. Forest Service, Mr. Max Peterson, which sets forth their usual procedure with regard to bonded indebtedness. It is our intent that the procedure so outlined be used as the basis for extinguishing bonded indebtedness on property acquired pursuant to H.R. 7306. Our clarifying remarks should be considered amplification of the Forest Service's usual procedure.

Mr. PHILLIP BURTON. Mr. Speaker, will the gentleman yield?

Mr. SANTINI. I will be happy to yield to the chairman.

Mr. PHILLIP BURTON. I thank the gentleman for yielding. It is also our intention wherever possible that in the course of noticing to the property owner the amount that owner will receive, there will be separately stated the amount ascribed to the bonded indebtedness to the end that there can be more full and understandable disclosure in that respect.

Mr. SANTINI. I think the chairman's observations are very well taken.

The letter is as follows:

U.S. DEPARTMENT OF AGRICULTURE,
Washington, D.C.

Hon. JIM SANTINI,
Washington, D.C.
House of Representatives,

DEAR CONGRESSMAN SANTINI: This responds to Ms. Cooper's request for information on how bonded indebtedness is handled in the Forest Service appraisal process.

The Provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1890, require that the Federal Government offer landowners not less than fair market value in all purchase transactions.

Determination of fair market value is based on appraisals of the land to be purchased and is made by competent, trained land appraisers. The appraisals are made following accepted appraisal premises, practices, and approaches that are recognized by professional appraisal societies and the courts. They are based on the current private real estate market transactions for the vicinity in which the individual property being appraised is located.

On occasion, we have found it necessary to appraise properties that are encumbered with bonded indebtedness. A sewer bond is one example of this type of indebtedness that we have encountered. In the instances we have been involved with, the sewer service is an improvement to the land. In past cases, we have considered the sewer assessment as a contribution to the land value in the total amount of the assessment.

We have no indication that the availability of sewer connections may enhance the property value more than the actual assessment. Lacking any indications contrary to allowing the total assessed value as an improvement to land, we will continue to treat properties with outstanding sewer assessments in the same manner when they are appraised for acquisition.

Following is an example of how a bonded indebtedness may be handled in an appraisal:

1. Value of a property without sewer service—$15,000. Assume no bonded indebtedness. Market value of property is $15,000 and landowner would be offered this amount.

2. Assume the same property as above is provided sewer service through a bonded indebtedness. The bond is $5,000. Because the property now has sewer service, the market value has increased. Appraised market value is now $20,000, and this amount would be offered to the landowner.

In the example above, the property is now worth $20,000. However, there exists a debt of $5,000 for the sewer service which is owed to a third party by the owner. The debt is a lien (legal claim for payment) on the property and must be satisfied by the owner prior to acquisition by the United States in order for the owner to convey an unencumbered title to the land.

There may be instances where properties have sold with the bond indebtedness included in the selling price. These sales may then be used as direct comparisons to a property being appraised that is subject to a sewer bond assessment, since any enhancement due to the sewer availability would be included in the selling price of the transaction.

Sincerely,

R. MAX PETERSON,
Chief.

LAND SALES AND LAND SALES MAP

Mr. SANTINI. I will turn for a moment, Mr. Speaker, to that portion of our bill which deals with Bureau of Land Management land sales as directed by H.R. 7306. There are two matters which I would like to clarify. First of all, the current land sales map referred numbered 7306 A, dated May 1980, and entitled "Las Vegas Valley Nevada land sales map" for various reasons fails to include for the most part checkerboarded public land within the city limits of the city of Las Vegas and the city of North Las Vegas, Nev. As currently drafted, the Las Vegas Valley Land Sales Map shows approximately 7,000 acres of checkerboarded Federal land in urban Clark County, Nev.

It is the intent of the sponsors of the bill that the public lands sales map of H.R. 7306 will include an additional 3,000 acres of Federal land "in small parcels interspersed with or adjacent to private lands" which must lie entirely within the city limits of the city of Las Vegas, Nev., and the city of North Las Vegas, Nev. This acreage will be added to the current map pursuant to joint selection by the Bureau of Land Management and the city of Las Vegas and North Las Vegas, Nev. It is our intent that the total acreage for potential sales in the land sales map to accompany H.R. 7306 will not exceed 10,000 acres of land and that it be BLM land which is "in small parcels interspersed with or adjacent to private lands." The Las Vegas Valley land sales map which will accompany our bill, furthermore, shall clearly delineate the boundaries of three urban governments in the Las Vegas Valley—Clark County, the city of Las Vegas, and the city of North Las Vegas.

The second issue I would like to address with regard to the public lands sales procedures established by H.R. 7306 relates to section 2(a) and 2(c) of the bill. I want to make very clear that the regulations we are directing the Secretary of Interior and the affected local governmental jurisdictions to develop to carry out the purposes of the act should in no way detract from the normal BLM lands sales procedures relating to public comment.

That concludes my remarks on the bill. I urge the support of my colleagues.

I thank the indulgence of the chairman of the committee for my time.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. SANTINI. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the gentleman for yielding. I just wondered whether or not this bill in any way expanded the gentleman's colonial empire which I read about in today's paper. The gentleman might use this as an occasion where "the empire strikes back."

Mr. PHILLIP BURTON. If the gentleman will yield, I consulted with the gentleman from Nevada (Mr. SANTINI) in that respect, and it is surprising how territorially unlike the rest of us the gentleman from Nevada is with reference to his State. So I fear that no matter how much it may be deserving, the gentleman from California's contribution will not be permanently noted.

Mr. BAUMAN. If the gentleman will yield further, I would just observe for the record that we have not done too terribly well with Presidents lately; perhaps an emperor is in order, and the gentleman would be most congenial in that role.

Mr. PHILLIP BURTON. I thank the gentleman very much.

Mr. SANTINI. I would like to make a further observation. I do think it is relevant that the Delegate from Guam (Mr. WON PAT) will be serving as mayor of Las Vegas on January 2, 1981.

Mr. PHILLIP BURTON. The only thing I cannot understand is why they took the 3,000 islands in the Pacific Trust Territories out of the domain of our distinguished subcommittee. I accused the gentleman from Oregon (Mr. DUNCAN) that perhaps he played some role in that respect, but he denies it.

Mr. BAUMAN. If the gentleman will yield further, there is no provision in this bill to rectify that situation, thus reexpanding the empire?

Mr. PHILLIP BURTON. Not yet. Not yet. There is only one title to this bill, believe it or not.

Mr. SEBELIUS. Mr. Speaker, I yield 6 minutes to the eminent ranking member of the Committee on Interior and Insular Affairs, the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, as many of the Members know, when the Lake Tahoe bill was first reported from the Committee on Interior and Insular Affairs, I raised some very serious reservations in our minority remarks, along with some of our colleagues from California, regarding the hurried procedure that was being followed as well as the merits of the legislation itself. Since that time the committee has held 2 full days of field hearings, one of which I was able to attend in Reno, and has spent many long hours attempting to work out the best possible solution. To my knowledge, there are some 12 to 14 perfecting amendments that were adopted as a result of the input that came from that Reno hearing. For that reason I want to commend the gentleman from Nevada (Mr. SANTINI), our chairman, the gentleman from California (Mr. PHILLIP BURTON), as well as the gentlemen from California (Mr. JOHNSON, Mr. SHUMWAY, and Mr. FAZIO), for their willingness to cooperate and to work with us in the direction of perfecting this product.

As a result of these efforts, the legislation has been amended to address some of the major objections raised by the local officials, residents of the Lake Tahoe Basin, and the Members whose districts are affected, and has gained additional support, at least in concept.

Mr. SHUMWAY played a particularly important role in this process. He provided the committee with an extensive list of concerns expressed on behalf of the residents of the basin. The bill before us, I believe goes a long way toward accommodating his requests.

Mr. Speaker, after I listened to my friend, the gentleman from Nevada (Mr. SANTINI) explaining the basic provisions of the bill, it reminded me of a similar situation that we went through in the committee back in 1970 when I had the responsibility of directing what in effect was a new concept, namely, the King Range Conservation Area.

We had a similar situation involving the checkerboarding of Federal ownership and private lands. In the act establishing the King Range Conservation Area in my congressional district we provided for an exchange of lands for Bureau of Land Management lands outside the area to remove areas within the boundaries from private ownership.

Since the establishment of the King Range Conservation Area, we have enacted the BLM Organic Act designed to improve the agency capability of managing public lands under their jurisdiction.

In the Lake Tahoe situation, we are dealing with U.S. Forest Service lands intermingled with private lands. The bill before us allows for the exchange of these lands as one of several options available to the agency.

Of particular concern throughout this process has been the question of condemnation authority and the different applications of that condemnation authority with respect to Nevada as well as California. The legislation allows for acquisition of improved properties in California by way of condemnation, while limiting this authority in Nevada to unimproved lands. We addressed this problem specifically in our final markup of the legislation. A majority of the committee agreed that the condemnation authority was too broad and adopted two very significant amendments. While they

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fall short of removing the condemnation authority altogether, they do help to clarify when and how it can be used. It became clear during the course of the hearings that full condemnation was not acceptable, but there seemed to be a case that could be made for some limited condemnation, and, of course, that is what we have tried to do.

First, an amendment that was offered by my colleague, the gentleman from California (Mr. LAGOMARSINO), was adopted which addresses those lands in which a single-family dwelling is located and limits acquisition authority to only those instances where a "change in the use of such dwelling has occurred" subsequent to the passage of the bill or a change in use is threatened. It must be determined that the change in use or threatened change "will result in a detriment to the preservation of the existing air, water, or visual qualities of the basin."

Second, the committee recognized the important role of the Tahoe Regional Planning Agency in the adoption of the final requirements for the protection of the air, water, and visual qualities of the basin. The bill was amended, in an amendment that I offered to provide that once TRPA has developed a set of standards, the acquisition of lands will be made in a manner consistent with the requirements set by TRPA. In this way local input will be maximized and landowners will have a clearer understanding of their rights. The California Legislature did in its closing days formally reestablish TRPA, and I am hopeful they will move quickly in developing the necessary guidelines. If the California provisions had been amended to allow acquisition only by exchange, donation, or negotiated purchase, I believe the legislation would have little opposition. However, the limitations placed on the condemnation authority does certainly help give the landowners some of the assurances they desire and should prevent overly zealous actions on the part of the Department of Agriculture, its Secretary and personnel.

Everyone agrees that the Lake Tahoe Basin is a unique national treasure, a gem in the landscape of the Sierra Nevada Mountains, and must be preserved and protected.

□ 1320

We believe that this legislation, as amended extensively, by the committee goes a long way toward accomplishing that objective. Therefore, I ask my colleagues to support it and advance the bill to the Senate for further consideration and, hopefully, adoption by this Congress.

Mr. SEBELIUS. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. LAGOMARSINO), a member of the committee.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 7306 as amended. The bill provides needed protection for the Lake Tahoe Basin which is a magnificent resource important not only to the States of California and Nevada but to the Nation as well.

I would like to compliment the chairmen of the National Parks Subcommittee (Mr. BURTON, Mr. SANTINI, and Mr. SHUMWAY) for their willingness to listen to the concerns of local citizens in the Tahoe Basin and for their efforts to formulate a legislative solution which is sensitive to their needs while providing a strong degree of protection for the environment.

The committee amendment in the nature of a substitute which is before us today, has made several important improvements over the original version of H.R. 7306. Significant protections against condemnation have been added for owners of single family dwellings on the California side of the Lake Tahoe Basin. Section 3(c)(2) of the bill clearly states that no single family dwelling may be acquired by the Secretary of Agriculture without the consent of the owner unless a change in the use of that dwelling takes place or is threatened after the date of enactment of this act. Moreover, if a change in use does take place but the structure remains a single family dwelling nonetheless, the Secretary cannot acquire the property without the owner's consent unless that change is detrimental to existing air, water, or visual qualities of the basin.

These provisions make it very clear that owners of single-family dwellings can make changes in the use of their property without fear of condemnation so long as they are reasonable and not detrimental to the environment.

Furthermore, section 3(c)(3) provides that at such time as the Tahoe Regional Planning Agency has adopted final requirements for the protection of air, water, and visual qualities in the basin, the Secretary must make the findings which are prerequisite to condemnation of any improved property—including single family dwellings—in a manner consistent with the TRPA requirements. This section is intended to give property owners a clear set of standards, established by local government, by which changes in use can be judged and allowed without invoking the threat of Federal acquisition.

I am also pleased that the amendment makes funds available to political subdivisions within the States of California and Nevada under section 2(g) for water pollution control and soil erosion mitigation.

In summary, I believe H.R. 7306 as amended contains significant safeguards for the private landowners of the Tahoe Basin, while providing an appropriate degree of balance between Federal and State interests.

The Federal Government has a responsibility and an important role in protecting the public lands within the region as well as the unique qualities of the Interstate Basin. At the same time, the States of California and Nevada have an equal interest in protecting the rights, property, and environment of their respective citizens. This bill strikes a balance in which the interests of each are protected through a coequal partnership of authority and responsibility.

For these reasons, I urge my colleagues to join me in supporting passage of this legislation.

Mr. SEBELIUS. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. JOHNSON).

Mr. JOHNSON of California. Mr. Speaker, I rise to speak in opposition to passage of H.R. 7306 under suspension of the rules.

This legislation, which would provide for sale of Federal lands in the State of Nevada and the acquisition of other lands in the Lake Tahoe Basin, has some serious flaws. It is not a simple measure and needs to be given more careful and critical examination.

The bill would set up a double standard for land acquisition in the Tahoe Basin, and is not equitable in this important regard. In the California portion of the Tahoe Basin, it would provide for condemnation of lands improved by the construction of residential or commercial buildings, including private, single-family homes. However, in the Nevada portion of the Tahoe Basin, no condemnation of any kind would be authorized.

This section of the bill has been worked over several times by the committee since the measure was originally reported. But the basic inequity concerning acquisition authority is still there.

This different treatment of lands in the California and Nevada sections of the Tahoe Basin is carried through into provisions dealing with the way acquisition would be handled. It seems clear that a map would be completed by December 31, 1980, showing the unimproved lands in Nevada which are to be acquired by donation, purchase, or like means.

On the other hand, no map is required and no fixed date is established for deciding which improved lands in California are to be acquired by condemnation. In short, California landowners would have the threat of condemnation hanging over their heads for an undetermined period of years.

Another concern is with those provisions of H.R. 7306 that relate to the role of State and local government in land acquisitions within the basin. These provisions raise a number of questions that should be given careful study by all of those who might be affected.

The bill only requires that the Secretary of Agriculture, or the Forest Service, acting as his agent, consult with State and local governments before taking action to acquire lands. There is no mechanism established which would do more to encourage or stimulate consent agreements. Such a mechanism might at least set up a formal procedure for State and local government recommendations and Federal review and comment, as well as formal Federal explanations where State and local plans are not to be honored.

Mr. Speaker, legislation as sensitive and as complicated as this should not move so fast that it cannot be fully analyzed before it comes to a vote. Yet H.R. 7306 has not been available in final form so that those affected—the people of the Tahoe Basin—can study it, consider how it would affect their community, and give us their judgments.

Mr. SEBELIUS. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. SHUMWAY).

Mr. SHUMWAY. Mr. Speaker, as many of my colleagues know, I have the good fortune to represent the southern portion of California's share of Lake Tahoe and as a result I maintain an active interest in this legislation and even though I am not a member of the subcommittee, I did attend the meeting held by the National Parks Subcommittee in Reno, Nev., on June 13, 1980.

Lake Tahoe represents a very beautiful asset in America but one which presents very difficult problems at the same time. Perhaps because of its bistate nature, these problems have been very challenging to those of us in Congress and in the State governments. Recent proposals for the preservation of the environment in that basin have ranged all the way from H.R. 6338, to create a national scenic area administered by the Forest Service, to doing nothing. In this setting and because to me it represents a potentially better solution than either one of these other extremes, I am lending my qualified support to H.R. 7406. I think this bill is novel insofar as it might assist in solving two problems at once. One, of course, is the excess Federal land problem we have heard about in the State of Nevada and the other is the need to generate more revenue for the purchase of additional land in the Lake Tahoe Basin.

□ 1330

As the bill was originally introduced, I had considerable reservations about it. Particularly after the hearing we held in Reno, those reservations appeared to be insurmountable. I am happy to report now, because of a series of amendments adopted by the committee following the efforts of my colleagues who are very interested in this bill, many of those problems have been abated. Even though I still have some serious difficulties with a few provisions in the bill, I do think it has run its full course in the House. I understand that when it reaches the Senate it will gain more public participation, and because of this prospect I am happy to lend my support to the bill.

The feature of the bill which gave the greatest difficulty to all of us was the eminent domain authority. Because of the continuing controversy regarding condemnation, I frankly would like to see section 3 stricken in its entirety. I do not think it is necessary. Studies have not demonstrated the need for that acquisition procedure.

However, if it is deemed to be necessary because of the tax advantages, I think it should be used with these particular qualifications:

First, that it not be used for a period of time, for example, 5 years following the enactment of the bill. I think this would effectively reserve its use for the more difficult cases.

Second, that it be used for the acquisition of unimproved property only.

Third, that it be applied with equal force and effect in both California and Nevada.

Fourth, that it be applied only in cases where there is a direct and legally definable pollution such as might be declared a public nuisance.

I am hopeful that as the bill is subjected to the refinements of further public hearings in the Senate, perhaps appropriate amendments will be added. Upon that condition, I lend my support to the bill.

Mr. SEBELIUS. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr FAZIO).

Mr. FAZIO. Mr Speaker, I thank the gentleman for yielding. I will be very brief. I simply wish to lend my strong support to this piece of legislation which I think, in tandem with a revised bistate compact, which I think the Nevada Legislature is about to adopt and which should be before us for final approval in the next year; the Presidential Executive order which will for the first time coordinate all Federal activities in the basin; and hopefully, the passage of a $85 million bond issue in California on the November ballot, will name this a great year for Lake Tahoe.

I would like to give particular credit to the chairman of the subcommittee, the gentleman from California (Mr. PHILLIP BURTON) who put aside his own personal views and indications in this area to engage in a very strenuous and combative bargaining session which resolved, I think, the problem of dealing with the degradation of Lake Tahoe to the satisfaction of almost every Member of Congress. He and Mr. SANTINI deserve the thanks of not only Nevadans and Californians, but of all Americans who will value the many aspects of Lake Tahoe in the future.

Mr. SANTINI is a particularly courageous individual who took the trouble to enter into a very, very difficult thicket, one that is extremely sensitive in Nevada. As a result of his efforts, he has done his State a tremendous service, particularly the people of Las Vegas and the people of Clark County.

Mr. Speaker, our colleagues Mr. SANTINI of Nevada and Mr. BURTON of California have worked extremely hard on this to sell Federal lands in Clark County, Nev., and to simultaneously buy lands in the Lake Tahoe basin. H.R. 7306 represents a concrete, constructive approach to a pair of issues that often lead advocates and opponents astray into emotional and impractical tangents.

I am the author of another bill, H.R. 6338, which aims at a comprehensive solution to the problem of overdevelopment at Lake Tahoe but I strongly support this legislation. The lake is one of the most precious gifts nature has bestowed upon this country, a unique, very large, very deep, crystal clear, alpine lake, nestled in a basin of snowy peaks high in the Sierra Nevada Mountains. For many reasons governmental efforts to fulfill our obligation to preserve this resource have failed in the past 20 years. Part of the problem has been the sheer complexity of negotiating between the local, State, and national interests. This difficulty has been compounded because the lake lies in two States, Nevada and California. Another part of the problem has simply been understanding the way the basin's ecosystem works, and the roles that proliferating jurisdictions play in helping or hindering the natural mechanism. Given all this confusion the economic incentives to overdevelop the basin increment by increment have proven irresistible. Much damage has been done; much more damage is easily foreseeable unless we devise a governmental mechanism to stop it.

H.R. 6338 was an attempt at such a mechanism. It sought to rely as its basis on the considerable Federal presence already in the basin. The U.S. Forest Service owns 72 percent of the area, and we have spent over $50 million in the last decade buying large tracts of lands in order to preserve them from development. The trouble is that these purchases have been made part of the Forest Service's traditional policies of land acquisition, and have not seriously zeroed in on the lands where development is most economic, most harmful, and most imminent.

Further, while the Federal Government has been spending millions to preserve the basin, the Government has been spending equal amounts providing the essential public works projects to underwrite growth on private lands, nearly $50 million during the same period.

On the premise that truly effective efforts to handle growth in the basin would continue to elude local and State political officials—despite the sincerity of a number of them—and in recognition that the Federal Government has been as much the problem as a solution, H.R. 6338 sought to create a national scenic area whereby Federal actions would be coordinated among themselves and local actions would be coordinated with the Federal under a Federal master plan. The master plan would take as its basis the well-documented finding that the natural system of the Tahoe basin are now at a point of overload and irreversible degradation is accelerating.

This represented a strong approach to the basin's ills, but one which seemed necessary enough given the lessons of history that 42 Members of Congress agreed to cosponsor the legislation.

However, the political realities are such this year that the national scenic area approach embodied in H.R. 6338 probably is premature. Since its introduction the two States have renegotiated a bi-State compact for land use controls in the basin. California has agreed to it. Nevada apparently will soon. It should be before the Congress for ratification during the next year, the President by Executive order has also announced steps to coordinate Federal programs in the basin, and to place them under the primary test of preserving it.

In the context of these events, the Santini-Burton bill would make a very real contribution to a multifaceted problem that can hopefully be contained by these various new approaches. So I would like to commend Mr. SANTINI and Subcommittee Chairman BURTON for taking an approach that will significantly help

the basin even if it does not garner them enthusiastic support from antagonistic groups at the ends of the spectrum. This sort of leadership is what the basin has truly needed.

As I view H.R. 7306, it tackles the basin's most difficult and dangerous problem head on: What should we do about the thousands of vacant single family lots approved years ago, but not built upon for one reason or another? Construction on many, if not most, of these lots. Together with efforts to raise amounts of sedimentation down the slopes of the basin and into the lake.

The Santini-Burton bill makes money available at no net loss to the American taxpayer to buy the most dangerous of these lots. Together with efforts to raise $85 million in bond money on the November ballot in California, we may solve another of the injustices that has become a fact of life at Tahoe. That is the thousands of lots are owned by thousands of individuals, who have had their money tied up for years in a situation that for them seemed impossible until this bill emerged.

However, Mr. Speaker, I would like to make one point. Key to the truly effective use of this money is the direction and authority this Congress must give to the Forest Service to move effectively on this problem. By that I mean, the Forest Service must have the ability to acquire by eminent domain a few parcels from speculators unwilling to sell. This power should be used only when necessary and only as a last resort. The Interior Committee has included provisions in this recent version of the bill which guard against the unwarranted or irresponsible use of this authority. The people are protected against abuse and the lake must also likewise be protected against continued abuse.

Mr. SANTINI and Mr. BURTON should be credited for the efforts they have taken to strike this careful balance. It is a balance if—and there is some reason to fear this might be the case—amendments are made to this bill in the Senate that deprive the Forest Service of tools to protect the lake by implementing a truly effective acquisition program, the bill's balance will have been lost and it will not be worth the surrender of lands owned by all Federal taxpayers to those in Clark County, Nev.

A land acquisition program must be organized; there must be a strategy to it. The strategy must be buttressed by eminent domain authority so that in the few instances where that power is necessary the whole fabric can be protected. Otherwise the Forest Service will be diverted into the same sorts of acquisition programs that have not sufficed in the past.

It takes some political courage on the part of our colleague from Nevada to recognize and act on this fact. I am most hopeful that the House will support the lake by supporting him and by maintaining this careful and constructive balance. In conjunction with the new bistate compact and with the President's Executive order, the Santini-Burton bill can do a lot, and it deserves our strong support. I hope very much that this tripart approach to the lake is sufficient to halt the degradation. If not, I will be anxious to move quickly to bolster it in the future where necessary. But clearly this is an excellent step which we can take this year and we should do so.

Mr. SEBELIUS. Mr. Speaker, I yield my final 2 minutes to myself.

Mr. Speaker, this bill constitutes an effort at the Federal level to directly apply some medicine and band-aids to the Lake Tahoe Basin, which is sick and ailing from overdevelopment.

Most of the credit for the fashioning of this bill must go to the chairman of our subcommittee, the Honorable PHIL BURTON, and to our colleague from Nevada, the Honorable JIM SANTINI. Had it not been for their initiatives and joint efforts, this bill would not be before the House today.

Lake Tahoe and its immediate environs constitutes a nationally significant resource—on that there can really be no argument. It is an extremely beautiful place. It also constitutes one of the best examples in the entire Nation of the inability of local government—and also of State government—to adequately protect from man's ruination, a magnificent resource.

The forces responsible for those adverse influences and impacts are so great and so far advanced by this time however, that even the Federal Government cannot singlehandedly solve the problem—the costs to do so and the political muscle to do so cannot possibly be mustered.

Consequently, this bill is but a part of the solution; the other parts of the solution must come forth from the cooperative efforts of the California and Nevada State governments, along with the multitude of other jurisdictions which have authorities and jurisdictions at Tahoe.

This bill represents a rather convoluted and piecemeal solution, but I do believe that under the difficult circumstances of the times it can be of help.

I think it is essential that the two Secretaries involved—Agriculture and Interior—and the Senate and House authorizing and appropriating committees all monitor all facets on the implementation of this bill very closely, as I am of the opinion that there will soon prove to be a need for legislative adjustment to various parts of this act.

Of primary importance is that this bill, when enacted, not jeopardize or curtail the good work that has been accomplished in recent past years by the U.S. Forest Service in its acquisition program. It is not intended that the bill will in any way work against that effort, but rather will augment it through its various different provisions.

Mr. PHILLIP BURTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from California (Mr. PHILLIP BURTON) that the House suspend the rules and pass the bill, H.R. 7306, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to insert their remarks in the RECORD on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

INDIAN HEALTH CARE PROGRAMS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6629) to amend the Indian Health Care Improvement Act (90 Stat. 1400) to reauthorize appropriations for the various programs therein, as amended.

The Clerk read as follows:

H.R. 6629

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 102 of the Indian Health Care Improvement Act (90 Stat. 1400), hereinafter referred to as the "Act", is amended by striking the last sentence in subsection (c) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,300,000, $2,600,000, $3,000,000 and $3,500,000, respectively.".

(b) Section 103 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,600,000, $1,800,000, $2,100,000, and $2,400,000, respectively.".

(c) The first sentence of section 757(a) of the Public Health Service Act is amended by striking the phrase "and for each of the succeeding fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting, in lieu thereof, the following: "$9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 for the fiscal year ending September 30, 1984.".

(d) Section 105 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $990,000, $1,140,000, $1,310,000, and $1,510,000, respectively.".

SEC. 2. (a) Section 201(c) of the Act is amended by adding the following sentence to paragraph (1) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $20,250,000, $23,000,000, $26,500,000, and $30,500,000, respectively, and such further additional positions are authorized as may be necessary.".

(b) Section 201(c) of the Act is amended by adding the following sentence to paragraph (2) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $6,400,000, $7,350,000, $8,450,000, and $9,700,000, respectively, and such further additional positions are authorized as may be necessary."

(c) Section 201(c) of the Act is amended by adding the following sentence to paragraph (3) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,875,000, $2,150,000, $2,500,000, and $2,875,000, respectively, and such further additional positions are authorized as may be necessary.".

(d) Section 201(c)(4) of the Act is amended by—

(A) adding the following sentence to subparagraph (A) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,500,000, $2,875,000, $3,300,000, and $3,800,000, respectively, and such further additional positions are authorized as may be necessary.";

(B) adding the following sentence to subparagraph (B) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $750,000, $870,000, $1,000,000, and $1,150,000, respectively, and such further additional positions are authorized as may be necessary.";

(C) by adding the following sentence to subparagraph (C) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,350,000, $2,700,000, $3,100,000, and $3,600,000 respectively, and such further additional positions are authorized as may be necessary.";

(D) by adding the following sentence to subparagraph (D) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $460,000, $525,000, $600,000, and $690,000, respectively, and such further additional positions are authorized as may be necessary."; and

(E) by adding the following sentence to subparagraph (E) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $250,000, $285,000, $325,000, and $375,000, respectively.".

(e) Section 201(c) of the Act is amended by adding the following sentence to paragraph (5) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $15,000,000, $17,250,000, $19,840,000 and $22,800,000, respectively.".

(f) Section 201(c) of the Act is amended by adding the following sentence to paragraph (6) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $5,000,000, $5,750,000, $6,600,000, and $7,600,000, respectively, and such further additional positions are authorized as may be necessary.".

(g) 201(c) is amended by striking all of paragraph (7) thereof.

SEC. 3. Title III of the Act is amended by inserting a new section 305 as follows:

"SEC. 305. For fiscal years 1981, 1982, 1983, and 1984, funds necessary to carry out the purposes of section 301 and 302 of this Act may be appropriated pursuant to authority contained in the Act of November 2, 1921 (42 Stat. 208), as amended by the Act of October 12, 1976 (90 Stat. 2233); and the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267).".

SEC. 4. Section 506 of the Act is amended by adding the following sentence at the end thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $18,750,000, $21,500,000, $24,725,000, and $28,500,000, respectively.".

SEC. 5. Section 4(c) of the Act is amended by adding at the end the following: "For purposes of titles II and III of this Act, such terms include Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State of California.".

The SPEAKER pro tempore. Is a second demanded?

Mr. CLAUSEN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes, and the gentleman from California (Mr. CLAUSEN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I am pleased to bring before the House the bill (H.R. 6629) reauthorizing funds for the various initiatives and new programs established under the Indian Health Care Improvement Act of 1976.

Many years ago, the United States assumed the obligation to provide health care to Indian citizens living on or near Indian reservations. If the United States did not provide health services to Indians, they would have no health services available.

Yet, Mr. Speaker, the health gap between the Indian people and the rest of the Nation is abysmal. By all standards, the Indian people and communities lag 20 to 30 years behind in health status.

The 1976 act sought to establish a 7-year, incremental program, beginning in 1978, to raise the poor health standards of the American Indian and to close the gap between the Indian community and the rest of the Nation. The act provided specific funding authorizations for fiscal years 1978 through 1980, but reserved for later enactment the funding levels for fiscal years 1981 through 1984. H.R. 6629 provides that reauthorization.

Title I of the act provides for the development of health professions manpower to serve Indian communities. Programs are provided for health professions recruitment among Indians; compensatory scholarships; graduate scholarships in medical professions; an extern program. A total of $68,950,000 is authorized for these programs for the next 4 fiscal years.

Title II of the act gives congressional direction to the Indian Health Service in the field of patient care. Appropriations for patient care is authorized by other statutes on a continuing basis. Title II is intended to require appropriations over and above the basic authorization and appropriation. A total of $252,893,000 is authorized for the 4 fiscal years.

Title III of the act provides additional money for the construction of Indian health facilities. H.R. 6629 provides that appropriations for such facilities would revert to the existing authorization.

Title V of the act provides for the establishment and funding of urban Indian health outreach programs. H.R. 6629 authorizes a total of $93,475,000 over the next 4 fiscal years for these programs.

Since the authority for fiscal year 1981 is included in this bill, it is important that it be enacted in this Congress.

Mr. Speaker, I urge the passage of this bill.

Mr. CLAUSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to rise in support of H.R. 6629, and further to associate myself with the remarks of our distinguished chairman, Mr. UDALL, of Arizona, and to urge its passage by the House under suspension of the rules.

H.R. 6629 is a noncontroversial yet very important piece of legislation whose purpose is to reauthorize funds for the programs initially established by the Indian Health Care Improvement Act of 1976 for the fiscal years 1981 through 1984.

Enactment of the Indian Health Care Act followed extensive congressional oversight hearings by our committee which documented severe Indian health problems and deficiencies in the Federal programs to provide health care to Indians. The magnitude of these problems and deficiencies led Congress to provide for an incremental, 7-year program to provide the resources necessary to meet Indian health manpower, services, and facilities construction needs. The 1976 act authorized specific appropriations through fiscal year 1980, and provided that authorization for the next 4 years be by separate legislation after an assessment of the progress under the act during the first 3 years.

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The Committee on Interior and Insular Affairs reviewed the work that has gone forward under the act to date and found that considerable progress has in fact been made. Accordingly, H.R. 6629 represents a continuing commitment to the goals of the 1976 act, those, of course, to improve on the health and health care programs of the Indian community of America.

I am pleased to note that the bill contains an amendment prepared in conjunction with the Committee on Interstate and Foreign Commerce to insure that Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State are eligible for assistance provided in titles II and III of the act.

By a 1958 act of Congress, numerous small Indian rancherias in California were terminated from Federal recognition. Included among the conditions of termination was a requirement that the Indian Health Service bring certain community sanitation facilities up to standard. In many cases, however, this and other conditions were not fulfilled. In addition, the U.S. district court held that due process was denied dependents of terminated Indians in the termination act, and that these Indians should be eligible for Indian services. This amendment clarifies their eligibility.

Mr. Speaker, if I could have the attention of the chairman of the committee for just a brief moment, I want to clarify that those who were terminated under the rancheria program are in fact now qualified and eligible for coverage under this Indian health care legislation. Is the answer to that question in the affirmative?

Mr. UDALL. Yes. Mr. Speaker, if the gentleman will yield, that is the effect of the amendment to which the gentleman referred.

Mr. CLAUSEN. Mr. Speaker, I thank

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the gentleman from Arizona (Mr. UDALL).

H.R. 6629 continues the congressional commitment of the 1976 act to meet the national policy goal of providing the highest possible health status to Indians and to provide existing Indian health services with the resources necessary to effect that policy. As my colleagues will remember, the 94th Congress adopted that policy goal by a vote of 310 to 9. The work should be continued to meet that goal.

Mr. Speaker, I therefore urge my colleagues in the House to pass H.R. 6629 without delay.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. CLAUSEN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Speaker, could we get into a little discussion of the cost of this legislation? What are we talking about in terms of cost?

Mr. CLAUSEN. Mr. Speaker, the overall amount—and I would ask for verification of this from the committee chairman—is $435 million. That is the authorized amount.

Mr. ASHBROOK. That is almost a half a billion dollars?

Mr. CLAUSEN. Almost a half billion dollars spread out over a 4-year period.

Mr. UDALL. Mr. Speaker, will the gentleman yield to me?

Mr. CLAUSEN. I am happy to yield to the committee chairman.

Mr. UDALL. Mr. Speaker, I want to make the point again that this is over a 4-year period, as shown on page 8 of the report. For 1981 the total is $87 million, it is $100 million in the next year, and in the peak year it is $132 million. In the fourth year it is $132 million.

Mr. ASHBROOK. Mr. Speaker, if the gentleman will yield further, may I ask, where does this money come from?

Mr. CLAUSEN. These are general fund authorizations.

Mr. ASHBROOK. General fund authorizations.

Mr. Speaker, I thank my colleague, the gentleman from California (Mr. CLAUSEN).

● Mr. CARTER. Mr. Speaker, I support H.R. 6629 which reauthorizes funding for programs under the Indian Health Care Improvement Act (Public Law 94-347) that would otherwise expire this fiscal year.

As you may recall this act was enacted in 1976 as a result of congressional oversight hearings which disclosed severe Indian health problems and deficiencies in Federal programs designed to provide health care to Indians.

That legislation was considered by the Interior Committee and by the Commerce Committee's Health and Environment Subcommittee on which I serve as ranking minority member. In order to address the wide range of Indian health problems we agreed to establish seven titles in the bill to provide a comprehensive and coordinated Federal effort.

These titles included programs to address the following needs:

Health manpower, including the need for a sufficient cadre of trained Indian health professionals;

Patient care;

Construction of hospitals and other health care facilities;

Elimination of unsafe water supplies and unsanitary waste disposal systems; and

Improved access to health resources for urban Indian organizations.

In sum, the Indian Health Care Improvement Act provided a framework for a sustained Federal effort to improve the status of Indian health.

And although improvements have been made significant problems still remain which support the need for continuing these authorities.

For example, if we compare the age-adjusted mortality rate for Indians and Alaskan Natives in 1978 with that of the U.S. population for all races in 1977 for various diseases we find that the Indian population has consistently higher rates.

For example, the age-adjusted mortality rate for Indians dying from 1.1 times as high as the comparable rate for the U.S. population.

For cirrhosis of the liver the Indian mortality rate was 4.8 times as high as that of the U.S. population. Indeed, alcoholism is one of the most serious health problems facing the Indian people today.

Another serious health problem among the Indian population is diabetes mellitus. We find that the age-adjusted mortality rate for Indians dying from diabetes is 2.6 times that of the U.S. population. And of course there are many serious complications that result from diabetes as well including blindness.

And finally, it should be noted that the death rate for Indians from tuberculosis is 6.2 times that of the U.S. population when age adjustments are taken into account.

In conclusion, Mr. Speaker, I would urge my colleagues to support H.R. 6629 so that we may continue our efforts to improve the status of Indian health in this country.

I would point out to my colleagues that the fiscal 1981 authorization level is substantially less than both the fiscal 1980 appropriation and authorization. This reduction was achieved primarily by elimination of title III, construction authority, which was determined not to be necessary any longer.

Finally, I wish to emphasize that the Commerce Committee still maintains its jurisdiction over Indian health legislation and our commitment to insure effective Federal programs in this area.

It was only because H.R. 6629 provided a straightforward extension of existing law, rather than major revision, coupled with the fact that our committee had a very full schedule, that we did not exercise jurisdiction over this reauthorization. A letter to Chairman UDALL from Commerce Committee Chairman HARLEY STAGGERS describing our committee's position appears in the committee report on page 7.

Again I urge favorable consideration of H.R. 6629.●

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CLAUSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 6629, as amended.

The question was taken.

Mr. ASHBROOK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

Mr. BROWN of California. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1250) to promote U.S. technological innovation for the achievement of national economic, environmental, and social goals, and for other purposes, as amended.

The Clerk read as follows:

S. 1250

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Stevenson-Wydler Technology Innovation Act of 1980".

SEC. 2. FINDINGS.

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, Federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

(4) Small businesses have performed an important role in advancing industrial and technological innovation.

(5) Industrial and technological innovation in the United States may be lagging when compared to historical patterns and other industrialized nations.

(6) Increased industrial and technological innovation would reduce trade deficits, stabilize the dollar, increase productivity gains, increase employment, and stabilize prices.

(7) Government antitrust, economic, trade, patent, procurement, regulatory, research and development, and tax policies have significant impacts upon industrial innovation and development of technology, but there is insufficient knowledge of their effects in particular sectors of the economy.

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the Federal Government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(11) The Nation should give fuller recognition to individuals and companies which have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

SEC. 3. PURPOSE.

It is the purpose of this Act to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of centers for industrial technology;

(3) stimulating improved utilization of federally funded technology developments by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging and exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

SEC. 4. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

(1) "Office" means the Office of Industrial Technology established under section 5 of this Act.

(2) "Secretary" means the Secretary of Commerce.

(3) "Director" means the Director of the Office of Industrial Technology, appointed pursuant to section 5 of this Act.

(4) "Centers" means the Centers for Industrial Technology established under section 6 or section 8 of this Act.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 6 or section 8 of this Act that is owned and funded by the Federal Government, whether operated by the Government or by a contractor.

(7) "Supporting agency" means either the Secretary of Commerce or the National Science Foundation, as appropriate.

SEC. 5. COMMERCE AND TECHNOLOGICAL INNOVATION.

(a) IN GENERAL.—The Secretary shall establish and maintain an Office of Industrial Technology in accordance with the provisions, findings, and purposes of this Act.

(b) DIRECTOR.—The Secretary shall appoint a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of title 5, United States Code.

(c) DUTIES.—The Secretary through the Director, on a continuing basis, shall—

(1) determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;

(2) determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological developments in particular industrial sectors worldwide;

(3) identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;

(4) assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and social demands for goods and services and to promote productivity and economic growth;

(5) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

(6) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

(7) publish the results of studies and policy experiments.

(d) REPORT.—The Secretary shall prepare and submit to the President and Congress, within 3 years after the date of enactment of this Act, a report on the progress, findings, and conclusions of activities conducted pursuant to sections 5, 6, 8, 11, 12, and 13 of this Act and recommendations for possible modifications thereof.

SEC. 6. CENTERS FOR INDUSTRIAL TECHNOLOGY.

(a) ESTABLISHMENT.—The Secretary shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be nonprofit institutions and shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) ACTIVITIES.—The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university basic and applied research;

(2) assistance to individuals and small business in the generation, evaluation and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c) REQUIREMENTS.—Prior to establishing a Center, the Secretary shall find that—

(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to inventions conceived or made under the auspices of the Center; and

(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

(5) consideration has been given to any effects upon competition of the activities proposed under the Center.

(d) PLANNING GRANTS.—The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3).

(e) ADDITIONAL CONSIDERATION.—The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request. However, the establishment of a Center, the rendering of an opinion by the Attorney General, or any other activity undertaken or approved under this Act, shall not convey to any person, association, corporation or other business organization immunity from civil or criminal liability, or create defenses to actions under any antitrust law.

SEC. 7. GRANTS AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this Act, including activities performed by individuals. The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program.

(b) ELIGIBILITY AND PROCEDURE.—Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Secretary shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

(c) TERMS AND CONDITIONS.—

(1) Any grant made, or cooperative agreement entered into, under this section shall

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be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

SEC. 8. NATIONAL SCIENCE FOUNDATION CENTERS FOR INDUSTRIAL TECHNOLOGY.

(a) ESTABLISHMENT AND PROVISIONS.—The National Science Foundation shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 6(a) through the conduct of activities as provided in section 6(b). The provisions of section 6(e) shall apply to Centers established under this section.

(b) PLANNING GRANTS.—The National Science Foundation is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan, as described under section 6(c)(3).

(c) TERMS AND CONDITIONS.—Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this Act shall be governed by the National Science Foundation Act of 1950 and other pertinent Acts.

SEC. 9. ADMINISTRATIVE ARRANGEMENTS.

(a) COORDINATION.—The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this Act, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development, the Environmental Protection Agency, National Aeronautics and Space Administration, Small Business Administration, Council on Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

(b) COOPERATION.—It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by or could contribute to, the programs established under this Act, should, within the limits of budgetary authorizations and appropriations, support or participate in activities or projects authorized by this Act.

(c) ADMINISTRATIVE AUTHORIZATION.—

(1) Departments and agencies described in subsection (b) are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this Act.

(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this Act.

SEC. 10. EXTERNAL ADVICE.

The Secretary shall require an appropriate advisory committee to review annually the activities of the Office and to advise the Secretary and the Director with respect to—

(1) the formulation and conduct of activities under section 5 of this title;

(2) the designation and operation of Centers and their programs under section 6 of this Act including assistance in establishing priorities;

(3) the preparation of the report required under section 5(d); and

(4) such other matters as the Secretary or Director refers to the Committee for review and advice.

The Director shall make available to the Committee such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

SEC. 11. UTILIZATION OF FEDERAL TECHNOLOGY.

(a) POLICY.—It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive, where appropriate, to transfer federally owned or originated technology to State and local governments and to the private sector.

(b) ESTABLISHMENT OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each Federal agency which operates or directs one or more Federal laboratories shall make available not less than 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. The agency head may waive the requirements set forth in (1) and/or (2) of this subsection. If the agency head waives either requirement (1) or (2), the agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(c) FUNCTIONS OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—It shall be the function of each Office of Research and Technology Applications—

(1) to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the Center for the Utilization of Federal Technology and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry; and

(4) to provide technical assistance in response to requests from State and local government officials.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) CENTER FOR THE UTILIZATION OF FEDERAL TECHNOLOGY.—There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories;

(3) utilize the expertise and services of the National Science Foundation and the existing Federal Laboratory Consortium for Technology Transfer, particularly in dealing with State and local governments;

(4) receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories;

(5) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(4); and

(6) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems.

(e) AGENCY REPORTING.—Each Federal agency which operates or directs one or more Federal laboratories shall prepare biennially a report summarizing the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section. The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.

SEC. 12. NATIONAL TECHNOLOGY MEDAL.

(a) ESTABLISHMENT.—There is hereby established a National Technology Medal, which shall be of such design and materials and bear such inscriptions as the President, on this basis of recommendations submitted by the Office of Science and Technology Policy, may prescribe.

(b) AWARD.—The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) PRESENTATION.—The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

SEC. 13. PERSONNEL EXCHANGES.

The Secretary and the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated to the Secretary for purposes of carrying out section 6, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985.

(b) In addition to authorizations of appropriations under subsection (a), there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this Act, not to exceed $5,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985.

(c) Such sums as may be appropriated under subsections (a) and (b) shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this Act only such sums may be appropriated as the Congress may authorize by law.

SEC. 15. SPENDING AUTHORITY.

No payments shall be made or contracts shall be entered into pursuant to this Act except to such extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. HOLLENBECK. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. BROWN) will be recognized for 20 minutes, and the gentleman from New Jersey (Mr. HOLLENBECK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that I may have permission to revise and extend my remarks, and that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BROWN of California. Mr. Speaker, I should like to thank the gentleman from Florida (Mr. FUQUA), chairman of the Science and Technology Committee, and the committee's ranking minority member, the gentleman from New York (Mr. WYDLER), for their leadership and assistance during the committee's considerations of S. 1250—a bill "to promote U.S. technological innovation for the achievement of national economic, environmental, and social goals."

I would also like to thank the members of the Subcommittee on Science, Research and Technology and, in particular, Mr. WATKINS, Mr. ERTEL, and the ranking minority member, Mr. HOLLENBECK for their assistance in preparing the bill.

Mr. Speaker, as you well know, technological innovation is a vital component of our country's economic growth as viewed from both domestic and international perspectives. Traditionally, the United States has been a leader in innovation—however, recent trends indicate that the extent of this lead may be diminishing in relation to past U.S. industrial performance and vis-a-vis foreign industrial performance.

Its concern over the current state of technological innovation in the United States has led the Committee on Science and Technology, and specifically, the Subcommittee on Science, Research and Technology to undertake an extensive review of this issue during the 96th Congress. A series of hearings, reports, and recommendations have culminated in the committee's support of S. 1250, now titled the Stevenson-Wydler Technology Innovation Act of 1980.

S. 1250, as amended, provides for a multifaceted approach to improving the environment in which industrial innovation occurs. The bill acts to strengthen the relationships between Government, industry, and academia such that each sector can contribute to the innovation process in a program of shared responsibilities. The resources available in the Federal laboratories are acknowledged and an effort to improve the utilization of this knowledge and expertise is prescribed. Several of President Carter's industrial innovation initiatives are given legislative mandates through this bill.

Overarching thrusts of the bill are: First, to build links between generators of knowledge (universities and Federal laboratories) and users of knowledge (industry and State and local governments); and second, to build into the Federal Government a positive concern for the welfare of industry. It is the committee's judgment that these two matters have not heretofore received sufficient attention from the Federal Government, and the bill is intended to rectify the situation.

The major features of the bill are as follows:

CENTERS FOR INDUSTRIAL TECHNOLOGY (SECTIONS 6 AND 8)

The bill authorizes the Department of Commerce (DOC) and the National Science Foundation (NSF) to support centers for industrial technology. The centers would be similar to existing NSF centers that either focus on a specific technology area (for example, polymer processing) or on training university students to be technological entrepreneurs. The bill leaves fairly broad latitude for center variety. The "generic technology" centers which have been planned by the Department of Commerce would be covered by the bill.

The bulk of the dollars authorized would be authorized for the centers.

OFFICE OF INDUSTRIAL TECHNOLOGY (SECTION 5)

The bill establishes an Office of Industrial Technology in DOC. This would provide a legislative basis for the Office of Productivity, Technology and Innovation (OPTI) which is being formed in DOC. The Office would undertake policy studies and experiments, and would be in charge of centers for industrial technology established by DOC.

UTILIZATION OF FEDERAL TECHNOLOGY (SECTION 11)

The bill declares a policy that Federal technology should be fully used, requires the establishment of Research and Technology Applications Offices in Federal laboratories, and establishes a single center for the Utilization of Federal Technology (CUFT). CUFT is being established by DOC anyway, and the bill would provide a legislative basis for it.

NATIONAL TECHNOLOGY MEDAL (SECTION 12)

The bill establishes a National Technology Medal to recognize individuals making outstanding contributions to technology. The President has announced his intention to have such a medal, and this would provide a legislative basis for it, similar to the legislative basis for the National Medal of Science.

PERSONNEL EXCHANGES (SECTION 13)

This bill requires DOC and NEF to establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Government laboratories.

AUTHORIZATIONS (SECTION 14)

The bill authorizes a total of $285 million over 5 fiscal years (1981–85). No funds are authorized to the National Science Foundation; rather, NSF funds for purposes of the bill would be included in the annual NSF authorization bill.

In addition, the bill provides that one-half of 1 percent of the research and development budget of each agency with a Federal laboratory should be available for technology utilization efforts in the agency.

The bill, as passed by the Senate, included the centers for industrial technology and the Office of Industrial Technology which I described previously. The Science and Technology Committee made no substantive deletions from the Senate-passed version of S. 1250, but did add material on the utilization of Federal Technology, the National Technology Medal, and Personnel Exchanges. The committee also added a role for the National Science Foundation. NSF had no role in the Senate-passed version of S. 1250, except to cooperate with the programs established under this act, as specified in section 9. The Science and Technology Committee gave NSF a role in supporting centers for industrial technology and in supporting personnel exchanges.

In an effort to meet the administration's objections to parts of the bill, we have made some additional changes since S. 1250 was reported by the Science and Technology Committee. I would like to outline the major changes made to accommodate the administration's wishes in what follows:

1. PATENT PROVISION (SECTION 6)

The patent provisions stated in section 6 have been deleted. The administration has argued that these provisions should be deleted because they are inconsistent with its position on Government patent policy reform as articulated in H.R. 6933. Furthermore, the administration has argued that, should a uniform patent

policy bill like H.R. 6933 not pass this Congress, the inclusion of a new patent policy in section 6 will merely add another policy to the 26-odd patent policies under which the Federal agencies operate today. Lastly, the administration has argued that the intent of the patent provisions of section 6 can be met under existing patent policies at NSF and the Department of Commerce. That is, the administration has said that NSF and the Department of Commerce can and will promote the grant of exclusive rights to inventions, including the grant of full title, to industrial innovation centers at which the invention was conceived or under whose auspices the invention was made.

I lean toward the view that the patent provisions of section 6 are far better than most of the patent policies under which Federal agencies are currently forced to operate. However, because the administration has assured us that the intent of section 6's patent provisions will be met without explicit legislative language, the patent provisions have been deleted from the bill before us today.

2. ANTITRUST PROVISION

Section 6 contains a provision which permits NSF and the Department of Commerce to request an opinion from the Attorney General as to whether a proposed joint research activity of a center would violate any of the antitrust laws. The administration requested the inclusion of language that would make explicit that the Attorney General's opinion is only advisory and should not be looked upon as creating an absolute defense to subsequent actions brought under any antitrust law. The requested language has been included in the version of S. 1250 before us. Also, the making of a request for an opinion has been made optional rather than mandatory.

3. NATIONAL INDUSTRIAL TECHNOLOGY BOARD

S. 1250, as reported by the Science and Technology Committee contained a provision in section 9 which established a National Industrial Technology Board to advise the Secretary of Commerce and the Director of NSF with regard to matters within the act's purview. This section has been changed to allow the Secretary of Commerce to assign the functions of the Board, as designated in the act, to an existing advisory committee. Some of the requirements of membership and terms have also been changed. Again, these changes were made at the administration's request.

4. UTILIZATION OF FEDERAL TECHNOLOGY

Section 11 of S. 1250 requires the Federal Government to strive, where appropriate, to transfer federally owned or originated technology to state and local governments and to the private sector. Specifically, the act requires a commitment on the part of all agencies with Federal labs to operate offices of research and technology applications and to allocate a small portion of their research and development budgets (at least one-half of 1 percent) to support the technology transfer function at the agency and its laboratories.

As a result of strong administration opposition to this provision, we have included a waiver provision which permits Federal agencies to waive the budget and staffing requirements of section 11(b) if the agency transmits to Congress a written justification for the waiver with a full and complete explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency. Given the inclusion of the waiver provision, I believe that section 11 now allows each Federal agency the kind of flexibility it may need to meet the objectives of section 11 within the context of differing agency characteristics.

I believe that the present form of the bill does or should meet all of the administration's most substantial objections to S. 1250. I strongly urge my colleagues to join with me in supporting this bill. The Stevenson-Wydler Technology Innovation Act of 1980 is a step in the right direction for the U.S. economy as a whole and for the health of technological innovation in particular. Thank you, Mr. Speaker.

□ 1350

Mr. Speaker, I want to give an opportunity to others who wish to speak on the bill to do so, and I note the approach of the distinguished chairman, whose contribution I have already recognized in this matter. I would be happy to yield to the gentleman from Florida (Mr. FUQUA) for whatever statement he may wish to make.

Mr. FUQUA. Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980.

Every Member of this House is aware of the economic problems the country is facing. Inflation continues unchecked, our balance of trade is deeply in the red, and the increase in productivity of the Nation's work force has stopped in its tracks. We need to do something.

The Committee on Science and Technology has been working throughout the 96th Congress to understand the nature of our problems in innovation and productivity and to come up with solutions. I would like to compliment the gentleman from California, the Honorable GEORGE BROWN, for the leadership he has taken through the Subcommittee on Science, Research and Technology in studying these problems.

While the gentleman from California has conducted dozens of sessions of hearings on innovation and productivity, the full Committee on Science and Technology has also held many sessions. I have had the pleasure of chairing most of them.

I particularly remember the joint hearing we held with the House Committee on Small Business and the Senate Committees on Commerce and Small Business last October. That day we heard from the administration regarding the President's industrial innovation initiatives. The bill before the House now provides a legislative basis for several of the initiatives put forth that day. The principal thrusts of the bill are those of the President's industrial innovation initiatives on which there is agreement between the administration and Congress.

The gentleman from California's statement explains these thrusts, so I will not repeat them. The bill is quite modest in its provisions; we are not busting any budgets. The Committee on Science and Technology will be considering further legislation in the next Congress to help solve our innovation and productivity problems. The President, I should note, took the second step 2 weeks ago in his "economic program for the eighties." We are looking at that program carefully. I am pleased to see the steps the President is proposing.

As I mentioned a moment ago, the bill now before the House, S. 1250, provides for measures on which there is wide agreement. The bill has enjoyed bipartisan support in the Committee on Science and Technology. It has reached the floor of the House without a dissenting vote in subcommittee or committee. I especially appreciate the support for this bill provided by our colleague, the gentleman from New York, the Honorable JACK WYDLER, ranking minority member of the Committee on Science and Technology.

The gentleman from New York, as Members are aware, is retiring from Congress at the end of this session. His retirement is one I am sure his constituents would not have voted for if he had put them to the test.

JACK WYDLER and I were both sworn in for the first time on January 3, 1963, 18 years ago. We both joined the Committee on Science and Astronautics and the Committee on Government Operations. After 16 years we both arrived at the top of our party's seniority list of the Committee on Science and Technology. In our 18 years of common service, the lively debates JACK and I have had in our two shared committees would fill a large book. I will miss the gentleman from New York, and the committees will miss him.

As a tribute to the contributions of the gentleman from New York, in the version of the bill which is before the House now, which is shown in the CONGRESSIONAL RECORD from last Friday, I have proposed to add JACK WYDLER's name to the title of the bill. It is the Stevenson-Wydler Technology Innovation Act of 1980.

Mr. Speaker, the Stevenson-Wydler bill is a good bill and an urgently needed bill. I urge Members to vote for it. We need to get America moving. Thank you.

Mr. BROWN of California. I thank the gentleman very much for his contribution.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Oklahoma (Mr. WATKINS), who has been one of the staunchest members of the subcommittee in his concern for the interests of the health of American business and industry and who has made a substantial contribution to the perfection of this legislation.

Mr. WATKINS. Mr. Speaker, I am happy to rise in support of the bill S. 1250, the Stevenson-Wydler Innovation Act of 1980. I believe this bill can go a long way toward improving the climate for technological innovation in this country and I urge my colleagues to join with me in supporting this bill.

Mr. Speaker, I would like to commend my colleagues on the Science, Research, and Technology Subcommittee, and its chairman, Mr. BROWN, for the excellent job they have done with this bill. I would also like to commend our committee chairman, Mr. FUQUA, and the committee's ranking minority member, Mr. WYDLER, for their leadership and assistance during the committee's consideration of this bill.

I would particularly like to commend my Science Committee colleagues for their support of section 11 of the bill entitled, "Utilization of Federal Technology." This section is especially important to me and I believe it is a critical element of the bill.

Mr. Speaker, it is shocking to realize that, with few exceptions, the vast technology developed by federally funded programs since World War II has not resulted in widespread "spin-offs" of additional applications of practical products, processes, and services in our country's economy. But such "spin-off" applications can make a substantial impact on the Nation's economic growth, industrial productivity, and employment gains. They can also help revitalize our local economies. Thus, transfer and utilization of federally funded technology with a view toward solving critical national and local problems is truly an endeavor which promises great public benefits.

To achieve these public benefits, we need to shift the focus of Federal concern from simply telling local and State governments and commercial users about promising technologies to actually transforming these technical resources into an ultimately useful form. Cooperation and communication between the actual provider and the potential user are essential elements in this process.

Mr. Speaker, section 11, in which I had a major role in writing, should go a long way toward accomplishing the goal of effective technology transfer between the Federal R. & D. enterprise and State and local governments as well as the private sector. Again, I strongly urge my colleagues to join with me in supporting this bill.

Mr. BROWN of California. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. ERTEL), a member of the subcommittee who has also made major contributions to the drafting of this legislation.

Mr. ERTEL. Mr. Speaker, I appreciate the gentleman's yielding and those kind words. I would like to compliment the chairman of the committee and the chairman of the subcommittee for bringing out this important legislation. I think it is important to the Nation.

I would also like to add my words to the chairman of the subcommittee in praising the gentleman from New York (Mr. WYDLER). Although I have only served on this committee for 2 years, I have had a great deal of opportunity to see his work on the committee, and I think he has done an outstanding job. The Republican minority ought to be proud to have such a member as part of their group, and I am sure that the committee will miss his endeavors in the future. He has certainly lent an enlightened view to many of the discussions we have had, and I have certainly appreciated his insights and acumen.

Mr. Speaker, we have heard about the need to improve productivity and innovation in this Nation, but unfortunately we have seen almost no action. This legislation offers us the opportunity to stop talking about our problems and start doing something about them.

There are many ways to approach the problem of declining productivity and innovation, but an important underpinning is bringing industry, Government and academia together to work in concert. This is precisely what this legislation does. We are talking about pooling our resources to make substantive improvements in fundamental industrial and technological processes. Not exotic, high technology hardware, but simple and basic activities such as welding, cement manufacturing, or making better use of the mineral properties of basic raw materials. These are activities which underlie a vast range of manufacturing and industrial processes.

Everyone benefits from improvements in these areas; but small businesses will find critical value in this work. Small businesses most often find themselves in need of improved manufacturing techniques and least able to pay for the necessary research and development. Generic technology centers support the basic tenant that made America's economic system strong to begin with—do it better.

This legislation addresses another area of great importance. How often have we heard that there is little value in the research done in our Federal laboratories? The basis for this statement is that little use is made of the research conducted at these institutions. The failure is not because there are not important applications for the work done in the Federal labs. Instead, there is no incentive to make use of the work. Even when a researcher wants to find applications, no mechanism exists for transferring this work to deal with our problems. That is, there is little or no technology transfer. Instead, the research information collects dust on the shelf. This bill takes an important step in changing this situation.

Quite often, technology transfer is discussed but we see little action. When action is taken, it involves transfers to other countries, while we ignore making use of our research at home. This legislation would create a mechanism within our large Federal laboratories to disseminate the work being conducted and to find applications in the United States. This work would be supported by a small part of the labs' budget—no additional money.

A few cities in this country have experimented with assigning an individual to see if anything the laboratories are doing can solve local problems. These experiments have been extremely successful. But we all know that our cities are facing major financial difficulties. Most do not have the luxury of turning someone loose on the Federal labs. Therefore, we must insure that the labs themselves meet their responsibility to make the fullest possible use of Federal R. & D. activities.

Let me give you an example of how technology transfer should work. Nearly every city has an assortment of records such as deeds. Over time, many of these records fade and can no longer be read. Community development is significantly affected by property ownership; however, if legal questions arise and deeds cannot be read, cities can face serious problems. The city of Philadelphia had such a problem. The city's science adviser had heard that NASA was working on a way to enhance photographs from its Mars missions and he asked if this process could be used on records such as deeds. NASA tried it out and it worked.

This is an example of a clear and important application of Federal lab work. We need to encourage this type of technology transfer; but unless we build in the necessary mechanisms to make it possible, our citizens are not going to be getting a full return on their investments.

Finally, let me say that when the Science and Technology Committee was working on this legislation, concerns were raised about how patents would be treated. The legislation contained a section which dealt with the allocation of patent rights for inventions coming out of the work of the generic technology centers. I supported these provisions, but the committee has been assured by the administration that it already has the authority to implement the policies delineated in that part of the bill and would act in a manner consistent with the intent of the committee.

In addition, legislation is moving toward floor consideration which would create a uniform Federal patent policy. It is more preferable to have one comprehensive policy, than to have a large number of policies as we have today. Consequently, those parts of the bill dealing with patent treatment have been dropped. It is my hope that the administration's assurances will be followed.

This legislation is an important step in an effort to imorove innovation and productivity in the Nation. It gives us a chance to stop talking and start acting. I commend the chairmen of the full committee and the subcommittee for their work on this critical issue, and I urge my colleagues to vote for the bill.

□ 1400

Mr. BROWN of California. Mr. Speaker, I reserve the balance of my time.

Mr. HOLLENBECK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980. As a cosponsor of the earlier House version of this bill, at this time I want to pay tribute to my colleague, JACK WYDLER, the retiring ranking minority member of our Science and Technology Committee, for his efforts over the years to assure a strong national R. & D. program. In particular, I would commend his work with NASA in promoting that agency's technology utilization program which seeks to facilitate the spinoff or transfer of federally funded R. & D. to

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civilian uses. For many years now he has stood up very strongly for the principle that the results of Federal research should be shared throughout the society and I think it is a fitting tribute that this legislation, when passed will bear his name. I also commended the chairman of the full committee Mr. FUQUA and the subcommittee Mr. BROWN for their efforts in this area.

Mr. Speaker, I do not need to recite the litany of declining U.S. productivity. We can see its effects. I should note that it is particularly serious in some of our older industries; however, there are ominous signs, such as the extraordinarily high quality standards of Japanese electronics computer chips which suggest that even in those industries where the United States is now preeminent, we shortly face very stiff competition from the Japanese.

Mr. Speaker, I do not know how many of my colleagues here read last week's announcement that the Commerce Department is sponsoring three cooperative research centers to undertake research in so-called generic technologies.

These are technologies where the industrywide benefits of basic research would be substantial but where the return to any one company is relatively small so that it is impossible to justify the necessary funding by one company alone. The three centers which the Commerce Department is setting up concern welding and joining, lubrication, and power-metal processing. The Washington Post article noted that only $5.2 million was set aside to start the three centers because of budget restraints by the White House.

Mr. Speaker, these three centers are one example of the Centers for Industrial Technology which would be mandated by section 6 of the bill we are considering today. We would agree that far greater effort should be devoted to this type of activity which would promote a greater degree of cooperative technological innovation between scientists in industry and in universities. This bill is a positive step forward and I hope that by its passage Congress will impress upon the administration the urgency of the task before us. Reinvigorating the economy cannot be solved by penny-pinching grants of $5.2 million or a $20 billion tax cut program such as the President announced a week ago. The tasks are far greater.

The generic technology centers would be sponsored by the National Science Foundation as well as by the Department of Commerce. The National Science Foundation has for a number of years sponsored the famous cooperative industry-university polymer research center at MIT. It is upon that successful example that this bill draws its original inspiration. For this reason our bill, in contrast to the original Senate version, also gives the National Science Foundation a mandate to continue its activities in this area.

Mr. Speaker, I am pleased to see that S. 1250 provides a mandate for the newly created Office of Industrial Technology in the Department of Commerce which would seek to evaluate new technological developments, international technology transfers as well as the performance of U.S. industrial innovation relative to other nations. This office would also identify technical needs and opportunities across industrial sectors. The office would not formulate a national industrial policy which I firmly believe we must have in the future and which the findings of the bill support, but it would at least attempt to identify emerging problems and opportunities in promoting industrial innovation.

Mr. Speaker, I have said here and elsewhere many times that the United States needs a comprehensive national reindustrialization policy at the highest level which would seek to enunciate long-term industrial and economic goals as well as policies to achieve those objectives. I believe it is essential that we consider this process of reindustrialization over a 30- or 50-year lifetime throughout the lifecycle of the coming generation of new technologies. We are one of the few nations who does not have a comprehensive national industrial policy, and I believe the time is coming to mandate such a policy. In the near future I will introduce or cosponsor further legislative proposals to put into effect comprehensive national policies for industrial innovation. In the meantime, the new Office of Industrial Technology would provide a first step by spotting emerging industrial problems and opportunities.

Mr. Speaker, there are a number of specific areas I would like to note which I believe it will be very important for the administration to bear in mind as it carries out this legislation over the coming years. First, I would mention patent policies for inventions and innovations produced by the centers for industrial technology. In view of prospective legislation which may pass the House this year, at the request of the administration, we have eliminated patent provisions which are contained in the committee bill. They would have given a center, which incidentally is a nonprofit, nongovernmental institution, the option of acquiring title to any invention. We know from testimony before our committee that exclusive license or title must be given to an inventor if commercialization is to proceed. Since the whole point of this bill is to stimulate the commercialization of industrial innovations, then we must concede the principle of exclusivity with regard to patent rights if these innovations are to be put into practice. However, in the interest of consistency we have not enunciated a specific patent policy in this legislation.

In our negotiations with the administration they have agreed that within the mandates of the Department of the Department of Commerce and the National Science Foundation, the centers will be given the option to acquire title to any invention made under their auspices as a matter of customary practice. I hope that this policy will be put into practice with a minimum of bureaucratic and administrative redtape and with a minimum of administrative delay for the potential patent holder. Mr. Speaker, I hope that the administration honors this agreement because it represents a very substantial compromise on our part. We firmly believe that if commercialization is to proceed on a wide scale, it is essential that exclusive rights be given to develop the inventions which grow out of this program.

Finally, Mr. Speaker, section 11 of this bill requires that Federal laboratories establish Offices of Research and Technology Applications and that the Department of Commerce establish a Center for the Utilization of Federal Technology. The purpose of these offices within a laboratory is to promote the transfer of inventions and research conducted by each laboratory to State and local governments and to the private sector. The purpose of the Center for the Utilization of Federal Technology is to coordinate programs for the transfer of technology across the Federal Government. I strongly support the provision which requires any laboratory with a budget of over $20 million to assign at least one professional full-time to its Office for Research and Technology Application.

I also strongly support the requirement that Federal agencies designate at least 0.5 percent of their research and development budget for technology transfer. In many cases, these amounts are substantially less than the agencies are carrying out under their own initiative. S. 1250 would give the function of technology transfer a definite mandate for all Federal laboratories, not just for a select few such as NASA.

In some cases, technology is being developed which simply does not have conceivable application to civilian uses or to State or local government. In these and other extraordinary circumstances, an agency would be permitted to waive this requirement upon writing a written justification to the Congress. We do not intend to be inflexible; however, we do feel that this commitment represents at least a minimal goal for the important function of technology transfer at Federal laboratories.

Mr. Speaker, in conclusion I urge my colleagues to support S. 1250 today. Once again let me say that I think that passage of this bill will be a fitting tribute to our distinguished colleague, the ranking minority member of the Science Committee, JACK WYDLER.

Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. CARNEY).

Mr. CARNEY. Mr. Speaker, I, too, stand in support of S. 1250, the Stevenson-Wydler Innovation Act of 1980. As a member of the Committee on Science and Technology, I would like to associate myself with the remarks of both the majority membership and the minority membership who spoke so eloquently about the bill, as well as about the gentleman from New York (Mr. WYDLER), the ranking minority member of the Science and Technology Committee.

As a member of the Long Island delegation where the gentleman from New York (Mr. WYDLER) serves as the caucus chairman, I say without hesitation that the gentleman from New York (Mr. WYDLER) certainly understands the necessity of this bill and how it would help our community back on Long Island. I

believe I share this view with all six Members from that community. I can say that without hesitation that the Long Island community from one end of the island to the other will miss the gentleman from New York (Mr. WYDLER) in the Congress of the United States.

I would just like to add my praise for the 18 years of fine work he has done in the Congress of the United States.

Mr. HOLLENBECK. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. WYDLER).

Mr. WYDLER. Mr. Speaker, I thank the gentleman for yielding.

Of course, it is an unusual experience to any Member to sit on the floor of the House and listen to himself praised. It is also a pleasant experience, however, so it is one that I thoroughly enjoy. I thank all the people that have participated in that praise; the chairman of the committee, the gentleman from Florida; the chairman of the subcommittee, the gentleman from California; the ranking member of the subcommittee, the gentleman from New Jersey; the gentleman from Pennsylvania, and my colleague, the gentleman from New York. I do appreciate their kind words and I think that I am proud in a sense to have my name associated with this legislation. It is important.

I only say in summary of those remarks that I believe our country in the years ahead in looking toward its economic future and what that future will be will come more and more to rely on the development of new technology to keep us as a nation and as a people enjoying the type of standard of living that we have become used to and that we hope to improve upon in the years ahead for our children. We are not going to compete in this world because we have low wages in our country, and I do not think in a true sense we are going to be able to compete because our workers are that much more productive than some of the workers in other countries of the world; but the one area in which the United States can maintain its support in the years ahead would be in technology.

□ 1410

So the development of that technology is something of the highest order and should be of the highest priority for this Congress.

I would only say I hope as we develop that technology and enjoy its benefits—the benefits, of course, would be a greater number of jobs for our people and higher paying jobs for our people—as we develop these new products from the technology that we learn as people to enjoy the benefits of that, and the benefits from that are that we cannot only use these new products ourselves, but sell them to other countries of the world.

To do that we are going to have to mature, in my judgment, very greatly as a people and stop finding one way after another, and one reason after another, to deny ourselves foreign markets in so many places in the world. We have, as I have traveled around the world and looked at the situation, literally raised a myriad of regulations, not regulations in our country against our people, but regulations in every country, foreign country in the world against the introduction of American products and materials in those countries, for one reason or another, some good, some not so good, many questionable, but for one reason after another when one goes to these countries, country after country we find that the United States has managed to find some reason that they do not want to do business with that country, or they are prohibiting the sale to that country of certain types of material from the United States, most of it for noble causes, but most of it, unfortunately, totally ineffective since the countries simply buy the materials from other countries in the world.

In my judgment, if we were to tear down the artificial barriers we have erected as a nation around the world, we would find that we could "double," and I use that word, double the exports of the United States to the world. That would make a dramatic difference in the economic situation in which we find ourselves. If that were to come about a lot of our unemployment problems, a lot of our economic problems, and, yes, indeed, a lot of our inflationary problems would begin to turn back in our favor. We have lost a lot of that advantage, in my judgment, over the last 20 years of our Nation's history because of this constricting of our powerful trade potential that we have created as a problem for ourselves.

So I do hope that the House will, indeed, pass this legislation. It is a small but important step on the road to improving and increasing the technology that we make available to our industry, to make it more competitive, and to make it more productive. In that respect it holds out a great hope for the future betterment of the economic position in which our country finds itself.

Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980. Let me say that I am deeply honored by the initiative of the chairman of the Science Committee, and the chairman of the Subcommittee on Science, Research, and Technology to include my name in the title of this bill. I say this because I believe that the reindustrialization of this country and the very invigoration of technological innovation are among the most pressing tasks facing this Nation for the next generation. I believe this legislation, which would set up an Office of Industrial Technology to evaluate the status of industrial innovation and which would mandate joint university-industry centers for industrial technology, is extremely important to that end. I believe that this bill represents a real step forward in the attempt to try and bridge the difficult gap between government and industry by creating a new form of industry-university partnership in applied research. Somehow we must develop new mechanisms which go beyond the traditional spin-off of research such as has occurred mainly from DOD research. And it is also evident that simply having the Government directly carry out research in its own laboratories is not sufficient. The mere existence of ideas does not lead to their implementation. This is true in Government as well as universities and industry, and this bill is directed at making the university a real third party.

Mr. Speaker, a further extremely important provision added to the original bill introduced by Senator STEVENSON is contained in our section 11. That section would mandate the formation of Research and Technology Application Offices at Federal laboratories as well as a Center for the Utilization of Federal Technology at the Department of Commerce. These offices, as well as the Center, would carry out the promotion of technology transfer from Federal Laboratories and Federal research programs to State, local governments, and to the private sector. Federal agencies would be required to devote one-half of 1 percent of their R. & D. budgets to the function of technology transfer, and Federal laboratories with a budget of over $20 million would be required to have at least one full-time professional working on technology transfer. I think the committee has been extremely reasonable in trying to consider some of the administration's reservations about this provision. In order to give flexibility, we have compromised by allowing any agency to waive the set-aside requirement. The waiver would be by congressional notification, including the agency's plans for conducting its own technology transfer program.

Mr. Speaker, for years now, as I have overseen the activities of the National Aeronautics and Space Administration, I have supported that Administration's technology utilization program. I think in many ways they have done a fine job but I think we can go a bit further. All our national laboratories should reach beyond their traditional departmental or agency missions and within limits serve broader purposes such as improving the productivity of private industry and of State and local governments. This bill would greatly encourage this broader role for Federal research programs as well as for our national laboratories.

Mr. Speaker, let me say that authorizations proposed under this bill are reasonable in relation to the extraordinary need which our society faces over the coming generation to reinvigorate our economy. I believe that the private sector is the primary place where this reinvigoration must occur, but Government can provide an important catalytic role in supporting research and development in certain areas such as so-called generic technologies. In a complementary vein, I was successful in having an amendment adopted to the National Science Foundation authorization for three university-based technology innovation centers. These centers would not only encourage university-industry cooperation in basic research but also train potential entrepreneurs in technology commercialization. To achieve the purposes of this bill will require well-tailored seed money. Even more important is the creation of an innovative climate through appropriate national policies for private sector efforts.

Mr. Speaker, in conclusion, I urge my colleagues to support S. 1250. Once

again, let me say that I am deeply honored to have my name associated with this bill and I wish to thank my colleagues on the Science Committee, Chairman FUQUA, Subcommittee Chairman BROWN, and ranking minority member of the subcommittee, "CAP" HOLLENBECK, for their initiative in honoring me by naming this bill after me. It is a highly worthwhile endeavor and I hope it is but the first of the many steps we must take in the reinvigoration of American technology development.

Mr. HOLLENBECK. Mr. Speaker, I have no further requests for time.

Mr. BROWN of California. Mr. Speaker, let me just summarize very briefly. I think the spirit and content of the bill has been conveyed adequately.

If the gentleman from Ohio were here, I think he would want to know just how much we are honoring the gentleman from New York (Mr. WYDLER) in this legislation. I want him to know that the authorization for the next fiscal year contained in this legislation is $24 million, a substantial part of which has already been requested by the administration for their budget. This is hardly as much as a new Federal building in the gentleman's district would cost, so I think we probably are getting a bargain in this legislation.

● Mr. RITTER. Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980 and compliment my colleagues on the Science and Technology Committee for the outstanding work they have done in bringing this legislation before the full House for consideration today.

I also extend my best wishes to Congressman WYDLER and want him to know of my great admiration and respect for him and the job he has done over the years for the American people. This Congress, and the people we represent, will sorely miss JOHN, for he is a tremendous asset to this Congress.

As I speak in support of this proposed legislation today, I bring a somewhat unique-to-the-Congress background. Being a scientist I have had the opportunity to actively participate in both university and industrial research. In addition, I have had the opportunity to interact with a variety of Federal laboratories which carry out research so valuable to many technological advances. I have also had the experience of small businesses. I know from firsthand experience the importance of bringing research to the product innovation, market stage.

In my view, these entities should share the common goal of encouraging and stimulating technological innovation. I am pleased that the bill before us today encompasses that common objective. Each of these vital elements provide skills and outlooks that must now be focused in support of stimulating greater innovation and productivity. The existence of the centers this legislation would establish for industrial technology is an important step to redirecting the more basic knowledge orientation of the universities toward the more market oriented objectives of industry.

That is what this measure is attempting to do and I applaud the fact that it is under consideration here today and I urge my colleagues to support this action.●

Mr. BROWN of California. Mr. Speaker, under the circumstances, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. BROWN) that the House suspend the rules and pass the Senate bill, S. 1250, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

EMPLOYMENT OF PERSONAL ASSISTANTS FOR HANDICAPPED FEDERAL EMPLOYEES

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7466), to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status, as amended.

The Clerk read as follows:

H.R. 7466

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees

"(a) For the purpose of this section—

"(1) 'agency' means—

"(A) an Executive agency; and

"(B) the Library of Congress;

"(2) 'handicapped employee' means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

"(3) 'nonprofit organization' means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

"(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties and who shall serve without pay from the agency, without regard to—

"(A) the provisions of this title governing appointment in the competitive service;

"(B) chapter 51 and subchapter III of chapter 53 of this title; and

"(C) section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

"(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that handicapped or by advancement or reimbursement to the handicapped employee.

"(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

"(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

"(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

"(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.".

(b) The item relating to section 3102 in the analysis of chapter 31 of title 5, United States Code, is amended to read as follows:

"3102. Employment of personal assistants for handicapped employees, including blind and deaf employees."

(c)(1) Section 604(a)(16)(A) of title 28, United States Code, is amended by striking out "3102" and inserting in lieu thereof "3102(b)".

(2) Section 410(b)(1) of title 39, United States Code, is amended by striking out "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees)," and inserting in lieu thereof "section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees),".

SEC. 2. Section 7(d)(1) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting "; and" in lieu thereof, and by adding at the end thereof the following new subparagraph:

"(C) such members—

"(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

"(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties."

SEC. 3. The amendments made by this Act shall take effect sixty days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. LEACH of Iowa. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Colorado (Mrs. SCHROEDER) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. LEACH) will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7466 authorizes Federal agencies to employ personal assistants for employees with severe physical disabilities. By so doing, the bill permits the Federal Government to meet its responsibility for making reasonable accommodation to the special needs of handicapped individuals, as required by the Rehabilitation Act of 1973. Currently, agencies have the authority to hire readers for blind employees and interpreters for deaf employees. H.R. 7466 extends this authority to the employment of personal assistants for employees with severe physical disabilities.

This does not mean that each handicapped employee will have a full-time personal assistant. Most disabled employees are able and prefer to perform virtually all job-related functions by themselves. From time to time, a disabled employee might need someone to change the tape on a dictating machine or someone to push their wheelchair down to the cafeteria or someone to assist them in the bathroom. Since agencies now lack authority to employ for this purpose, handicapped employees must rely on colleagues to volunteer. The volunteer system is, however, unreliable and demeaning. This bill permits agencies to assign employees to perform these functions.

The bill, also, provides for the use of personal assistants who are paid for directly by the disabled employee or who are paid for by voluntary organizations. Further, it allows the Government to pay the costs for a traveling companion who is needed by handicapped employee while on travel. Additionally, H.R. 7466 extends this authority to members and staff of advisory committees.

The Goverment is cheating itself if it does not make use of the talents of our handicapped citizens. While employing disabled citizens reduces the Government's burden to support those who cannot work, the better reason to employ handicapped Americans is because many of them have skills, talents, and expertise that our Government needs. The Federal Government should be in the forefront of efforts to bring handicapped citizens into the mainstream of society. This bill will help in these efforts.

The cost of this legislation should be slight. I ask unanimous consent that the cost estimate of the Congressional Budget Office, which we received too late to place in the comittee report, be printed in the RECORD at this point.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Speaker, I introduced this legislation at the request of the Office of Personnel Management on May 29, 1980. My Subcommittee on Civil Service held 1 day of hearings on August 20. The Committee on Post Office and Civil Service ordered the bill reported on August 27, without dissent.

While this legislation makes only small changes in the law, it is very significant because it reaffirms the commitment of this Congress to bringing disabled citizens into the mainstream of American life. I urge its adoption.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 4, 1980.

Hon. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7466, a bill to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped federal employees both at their regular duty station and while on travel status, as ordered reported by the House Committee on Post Office and Civil Service, August 27, 1980. The bill would not provide any additional budget authority, nor would it change personnel ceilings. It is assumed that costs of implementation would be met from existing agency funds.

Without historical evidence, it is not possible to estimate the precise costs that would be associated with this amendment if it were enacted. Based on a review of this bill and data supplied by the Office of Personnel Management, CBO would anticipate a maximum annual cost of $2.7 million to be associated with enactment of this bill. To the extent that services provided under this amendment are being provided by existing employees, and that employees hired as personal assistants will also perform other, currently funded duties, the costs would be less.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. HARRIS. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I am happy to yield to the gentleman.

Mr. HARRIS. Mr. Speaker, I simply want to take a moment to congratulate the gentlewoman for the work she has done on this bill. This may seem like a small thing to some, but I think it will be of great help to those active, productive handicapped workers with very little cost.

I think one of the confusions on the bill was that people imagined these helpers were going to be full-time helpers. They are not. They are people that are simply scheduled in a supplementary way to give the help and assistance that we receive such a large dividend on.

I want to congratulate the gentlewoman from Colorado (Mrs. SCHROEDER) for her leadership in bringing this bill to us. It is a good bill.

Mrs. FENWICK. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield.

Mrs. FENWICK. I must ask where this leads. Is it correct, as this sheet I have before me states, that some 7 percent of the 2.8 million Federal employees are handicapped? That means 196,000 people.

As I also read, if they want to travel, or if they would need to travel, they would be provided an assistant. Why would it not be wiser to encourage the volunteer activities that are already taking place?

□ 1420

Mrs. SCHROEDER. Those figures are a little bit deceptive. What we are talking about here are Federal employees with severe physical handicaps. When one says "handicaps" in a generic form, it encompasses a broad range.

Mrs. FENWICK. I would like to say this to my colleague: I am sure she knows that the Department of Labor classified at one time—and I hope it has now been changed—alcoholics and drug addicts as handicapped. We have to be careful in this House not to draw up legislation in such a way as to allow interpretations by the agencies far beyond what this House ever intended.

Mrs. SCHROEDER. If I can take some time back, I would like to assure the gentlewoman from New Jersey that we have exempted the alcoholic classification as a handicap. We are talking about severe physical—and I underline "physical"—handicaps, and the agency has the authority to look at whether or not those needs are really, No. 1, the needs of the Government and, No. 2, justifiable.

Mrs. FENWICK. I must ask my colleague if this is the time, with the deficits we have and the national debt we have, to inaugurate these new programs. I remind my colleague—I have only been here 5½ years—that when I came, the interest on the national debt was some $32 billion, and now it is around $70 billion. We cannot continue to inaugurate new programs which are going to hire people who then come on the Federal payroll.

Mrs. SCHROEDER. Again, if I may reclaim my time, we are certainly not starting new programs. This is from the 1973 act, and I think all of us know that there are many, many efficiencies involved in making sure people with handicaps can be gainfully employed rather than just saying we are going to put them all on welfare or on disability retirement. This bill makes a minuscule addition to the current law.

Mrs. FENWICK. What costs is the gentlewoman assigning?

Mrs. SCHROEDER. The maximum amount of costs that the Congressional Budget Office figured it could possibly cost would be $2.7 million. That is absolutely top dollars.

Mrs. FENWICK. Is that not the way we start everything? We started energy aid for the poor at $200 million; it is now

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$1.2 billion. We started food stamps at $54 million; they are now $9.5 billion.

Mrs. SCHROEDER. Again, if I may reclaim my time, I think the gentlewoman realizes the other alternative is to put all of these people on disability retirement.

Mrs. FENWICK. It is not.

Mrs. SCHROEDER. We know that the disability retirement system is very expensive.

Mrs. FENWICK. It is not the only alternative.

Mrs. SCHROEDER. I think it is.

Mrs. FENWICK. The alternative is to put them into jobs where they do not have to travel. Not every single Federal employee has to travel.

Mrs. SCHROEDER. Again if I may reclaim my time, we are not talking about every single employee having to travel. In our hearings we heard from people who were injured in the line of Federal duty. They much preferred staying at their desks rather than taking disability retirement. With a very minuscule amount of money we can keep them there and not drain the disability retirement funds. Other people who are perfectly capable to do other things can also be made to fit into this category. I think this makes an incredible, inordinate amount of sense.

Mrs. FENWICK. This is a new program; it should not come to the floor under suspension.

Mrs. SCHROEDER. I would suggest the gentlewoman read the hearings because I think they would answer her questions.

Mr. Speaker, I have no further requests for time, and I would reserve the remainder of my time.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wholeheartedly endorse the provisions of H.R. 7466, which will permit the employment of personal assistants for handicapped employees at their regular duty stations as well as when on travel status, just as readers for the blind and interpreters for the deaf are presently employed.

The Federal Government, if it is to fulfill its role as a model employer must make good its intentions to usefully employ the skills and services of the Nation's handicapped. The employment of an assistant is essential both to fulfill the severely physically handicapped's medical needs and to allow him or her to function as efficiently and independently as possible.

This is not an elaborate, complex bill with many difficult far-reaching problems. It is, rather, a very sound financial and humanitarian approach to help a segment of our society achieve financial independence and, most important, the personal dignity for which we all strive. It does not create a large tax burden on the public; rather, it creates a new class of responsible, employed taxpayers.

This bill will help many severely handicapped people to fulfill the true goals of rehabilitation—to allow the handicapped person to be as economically and physically free as the "normal person in the street."

It should be made clear, in this regard, that it is the intent of the committee members actively involved in this legislation that the additional hires authorized by H.R. 7466 should not be charged against any agency's personnel ceiling. As the author of an amendment to the Civil Service Reform Act of 1978 (Public Law 95-454) which called for a Government-wide limit on the size of the civilian work force, I would like to emphasize that limitations of this nature, imposed by the Congress and administered by the executive branch, should not prejudice programs such as that provided by this legislation.

I urge my colleagues in the House to lend H.R. 7466 their unreserved support.

Mr. Speaker, I have no further requests for time and yield back the remainder of my time.

Mrs. SCHROEDER. Mr. Speaker, I would just like to point out that we do have an estimate from the Office of Personnel Management. They said they could not possibly imagine more than 200 employees ever having to travel with a severe physical handicap during a 1-year period, so I hope that puts some of the concerns that many people have to rest, that this is not opening a loophole. This is trying to serve a very serious need that has been overlooked in the past.

● Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 7466, legislation permitting the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

I commend my colleague, the gentlelady from Colorado (Mrs. SCHROEDER), for her work in bringing this measure before the Committee on Post Office and Civil Service, of which I am a member, and to the House floor.

Mr. Speaker, we are all well aware of the fact, which has been proven in both the private and public sector, that our handicapped citizens, given the opportunity, can make a valuable contribution to society. Indeed, the performance record of handicapped individuals demonstrates a substantial return on those adjustments and considerations provided them in their workplace because of their handicapped status.

H.R. 7466 would expand those current statutes authorizing the employment of or assignment of Federal employees as readers for the blind and interpreters for the deaf, by providing for assistance for other handicapped Federal employees. While the Office of Personnel Management estimates the cost of this measure at $330 000 for travel assistant services and $2.148.000 for assistant services needed on the job, OPM indicates that actual expenditures will be considerably less because many of these services will be provided by the existing work force of health unit staffs and coworkers.

Accordingly, Mr. Speaker, I urge my colleagues to support this important measure providing handicapped Federal employees the incentive and needed assistance to make a substantial contribution to our Nation.●

Mrs. SCHROEDER. Mr. Speaker, I have no further requests for time and would yield back the remainder of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Colorado (Mrs. SCHROEDER) that the House suspend the rules and pass the bill, H.R. 7466, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the bill, H.R. 7466, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

WITHOLDING STATE INCOME TAX FROM CIVIL SERVICE RETIREMENT ANNUITIES

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6372) to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants.

The Clerk read as follows:

H.R. 6372

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8345 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding.

"(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect with respect to different States during any one calendar year.

"(3) An annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the first month beginning after the day on which such request or revocation is received by the Office.

"(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities.

"(5) For the purpose of this subsection, 'State' means a State, the District of Columbia, or any territory or possession of the United States.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Michigan (Mr. FORD) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. CORCORAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, this bill is being called up on behalf of the chairman of the Subcommittee on Compensation and Employee Benefits of the House Committee on Post Office and Civil Service, the gentlewoman from Maryland (Mrs. SPELLMAN), who was called away just before we reached the floor for scheduled consideration. I believe that there is no controversy surrounding the bill and that it is supported unanimously by our committee.

Mr. Speaker, this is a very straightforward bill with a very limited purpose. H.R. 6372 will permit civil service retirees to have State income tax withheld from their annuity checks if they so desire.

Under existing law Federal income taxes are deducted from civil service annuity checks. In addition, in 1975 the Congress enacted Public Law 94-166 which authorized the Office of Personnel Management to make allotments from annuity checks for such purposes as the Office determines appropriate. Despite the authority to do so, OPM has refused to provide for allotments for State income tax purposes, and thus there is no mechanism by which civil service retirees can have State income taxes withheld from their annuity checks.

Under these circumstances civil service retirees must make periodic estimated tax payments to the States. These payments, which usually fall due on a quarterly basis, can be very inconvenient for retirees on small fixed incomes. Testimony presented to the Subcommittee on Compensation and Employee Benefits indicates that often retirees must take out short-term high interest loans at tax time in order to meet their State income tax obligations. I should point out that not only will the bill provide a convenient method for the retirees to pay their taxes, it will also facilitate the collection of income taxes by the States and for that reason the bill is supported by the National Association of Governors, the U.S. Conference of Mayors, and the National Association of Counties.

Mr. Speaker, this bill will result in no significant cost. The Congressional Budget Office cost estimate was not received in time to be included in the committee's report, and I ask unanimous consent that it be placed in the record at this point. The estimate indicates that the cost of H.R. 6372 will be approximately one-half million dollars per year. This is a small cost for legislation which will benefit our retirees as well as the several States, and I urge enactment of this legislation.

The Congressional Budget Office cost estimate is as follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 5, 1980.

Hon. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6372, a bill to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants, as ordered reported by the House Committee on Post Office and Civil Service, August 27, 1980.

The bill, if enacted, would require the Office of Personnel Management (OPM) to withhold state income taxes from annuity checks when such withholding is voluntarily requested by the annuitant. The bill does not authorize additional appropriations for an increase in OPM's personnel ceiling.

CBO estimates that costs of approximately $450,000 would be incurred during fiscal year 1981 if this bill were enacted. Expected costs in fiscal year 1982 would be about $530,000. After fiscal year 1982 CBO would anticipate a reduction in costs required to maintain the program. OPM has estimated first year costs of $632,963 and costs of $604,452 thereafter. This estimate was based on the assumption that annuitants from 44 different states would be involved in the program. The CBO estimate reflects the fact that 17 states either have no personal income tax requirement or exempt civil service annuities. The CBO estimate also reflects lower costs in fiscal year 1981 to allow for the time required to initiate the new procedures.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

□ 1430

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Michigan (Mr. FORD) has adequately and accurately described the details of the bill. The bill primarily authorized the Office of Personnel Management to enter into a relationship with those States that provide taxes on the annuities of Federal employees in order to permit a withholding of that State tax.

Mr. Speaker, I rise in support of H.R. 6372, which provides for voluntary withholding of State income tax for civil service annuitants.

Testimony before the Subcommittee on Compensation and Employee Benefits, of which I am the ranking minority member, revealed that many annuitants would like the opportunity to have payroll deduction for State taxes. It would be of considerable benefit to the very elderly who worry over making quarterly tax payments on time, and it would also be helpful to those retirees who travel a good deal of time away from their primary residences.

It is nearly impossible to estimate how many annuitants would elect to have State taxes withheld from their annuity checks. We do know, however, that in approximately 41 States either no tax is levied on annuities or a certain portion of annuity income is exempt from taxation.

Mr. Speaker, this bill will enable many Federal annuitants to meet their State tax obligations in an orderly, timely fashion through payroll deductions. There is a minimal cost to the Government for establishing such a procedure.

As a precedent for this action, Federal tax and deduction of union dues are presently being withheld from annuity checks.

I urge prompt enactment.

Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. DERWINSKI), who is a ranking minority member on the full committee.

Mr. DERWINSKI. Mr. Speaker, H.R. 6372 is a general housekeeping bill which allows for the voluntary withholding of State income tax from Federal annuitants' checks.

This bill will primarily affect those elderly annuitants who are concerned and worry about making quarterly State tax payments on time. It will also benefit those annuitants who are away from their principal residences for long periods of time.

At present, similar withholding is made by the Office of Personnel Management for union dues from annuity checks.

Mr. Speaker, as a practical matter this bill will have minor administrative costs because it will only apply to annuitants who reside in States which tax annuity income. Subcommittee testimony shows over four-fifths of all States either exempt all or part of the annuity income.

Also, since the bill provides for voluntary withholding of State taxes, not all annuitants will elect such deductions from their annuity checks.

I support enactment.

Mr. CORCORAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 6372.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE ACT OF 1980

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7666) to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7666

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the Federal Employees' Group Life Insurance Act of 1980.

REGULAR GROUP INSURANCE PAYMENT

SEC. 2. (a) Section 8701 of title 5, United States Code, is amended—

(1) in the section heading, by striking out "Definition" and inserting in lieu thereof "Definitions"; and

(2) by inserting at the end thereof the following new subsection:

"(c) For the purpose of this chapter, 'basic insurance amount' means, in the case of any employee under this chapter, an amount equal to the greater of—

"(1) the annual rate of basic pay payable to the employee, rounded to the next higher multiple of $1,000, plus $2,000, or

"(2) $10,000,

except that the amount of insurance may not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title, rounded to the next higher multiple of $1,000, plus $2,000. In the case of any former employee entitled to coverage under this chapter, the term means the basic insurance amount applicable for the employee at the time the insurance to which the employee is entitled as an employee under this chapter stops pursuant to section 8706(a) of this title.".

(b) Section 8704(a) of title 5 is amended to read as follows:

"(a) An employee eligible for insurance is entitled to be insured for an amount of group life insurance equal to—

"(1) the employee's basic insurance amount, multiplied by

"(2) the appropriate factor determined on the basis of the employee's age in accordance with the following schedule:

"If the age of the employee is:	The appropriate factor is:
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0.".

(c) Section 8704(b) of title 5 is amended—

(1) by inserting before "Subject to" the following new sentence: "An employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection.";

(2) in the table, by striking out "shown in the schedule in subsection (a) of this section" each place it appears and inserting in lieu thereof "of the employee's basic insurance amount"; and

(3) in the last sentence, by striking out "the amount shown in the schedule in subsection (a) of this section" and inserting in lieu thereof "an amount equal to the employee's basic insurance amount.".

(d) Section 8704(c) of title 5 is amended by striking out the last sentence and inserting in lieu thereof the following: "For the purpose of this chapter, 'annual pay' includes—

"(1) premium pay under section 5545(c)(1) of this title; and

"(2) with respect to a law enforcement officer as defined in section 8331(20) of this title, premium pay under section 5545(c)(2) of this title.".

(e) The item relating to section 8701 in the table of sections for chapter 87 of title 5 is amended by striking out "Definition" and inserting in lieu thereof "Definitions".

(f) Subsections (b) and (c) of this section shall take effect beginning with the first pay period beginning on or after October 1, 1981.

CONTINUATION OF REGULAR GROUP LIFE INSURANCE

SEC. 3. (a) Section 8706(b) of title 5, United States Code, is amended to read as follows:

"(b)(1) In the case of any employee who retires on an immediate annuity and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding the date of the employee's retirement, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office.

"(2) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding the date the employee becomes entitled to compensation, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismembership insurance, may be continued under conditions determined by the Office, during the period the employee is receiving compensation and is held by the Secretary of Labor or the Secretary's delegate to be unable to return to duty.

"(3) The amount of life insurance continued under paragraph (1) or (2) of this subsection shall be continued, with or without reduction, at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury, in accordance with the employee's written election at the time eligibility to continue insurance during retirement or receipt of compensation arises, as follows:

"(A) the employee may elect to have the deductions required by section 8707 of this title withheld from annuity or compensation, and the employee's life insurance shall be reduced each month by 2 percent of the face value until 25 percent of the amount of life insurance in force before the first reduction remains; or

"(B) in addition to any deductions which would be required if the insurance were continued as provided under subparagraph (A) of this paragraph, the employee may elect continuous withholdings from annuity or compensation in amounts determined by the Office, and the employee's life insurance coverage shall be either continued without reduction or reduced each month by no more than 1 percent of its face value until no less than 50 percent of the amount of insurance in force before the first reduction remains.

"(4) If an employee elects to continue insurance under subparagraph (B) of paragraph (3) of this subsection at the time eligibility to continue insurance during retirement or receipt of compensation for disease or injury arises, the individual may later cancel that election and life insurance coverage shall continue as if the individual had originally elected coverage under subparagraph (A) of paragraph (3) of this subsection.".

EMPLOYEE DEDUCTIONS; WITHHOLDING

SEC. 4. (a) Section 8707 of title 5, United States Code, is amended to read as follows:

"§ 8707. Employee deductions; withholding

"(a) During each period in which an employee is insured under a policy purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the employee's pay a share of the cost of the group life insurance and accidental death and dismemberment insurance.

"(b)(1) Whenever life insurance continues after an employee retires on an immediate annuity or while the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in section 8706(b) of this title, deductions for insurance shall be withheld from the employee's annuity or compensation, except that, in any case in which the insurance is continued as provided in section 8706(b)(3)(A) of this title, the deductions shall not be made for months after the calendar month in which the employee becomes 65 years of age.

"(2) Notwithstanding paragraph (1) of this subsection, insurance shall be so continued without cost (other than as provided under section 8706(b)(3)(B)) to each employee who so retires, or commences receiving compensation, on or before December 31, 1989.

"(c) The amount withheld from the pay, annuity, or compensaton of each employee subject to insurance deductions shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost as determined by the Office for each $1,000 of the employee's basic insurance amount.

"(d) If an agency fails to withhold the proper amount of life insurance deductions from an individual's salary, compensation, or retirement annuity, the collection of unpaid deductions may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of unpaid deductions, the agency shall submit an amount equal to the sum of the uncollected deductions and related agency contributions required under section 8708 of this title to the Office for deposit to the Employees' Life Insurance Fund.".

PREEMPTION

SEC. 5. (a) Section 8709 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

"(2) For the purpose of this section, 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.".

CONTINUATION OF REGULAR OPTIONAL INSURANCE

SEC. 6. (a) Section 8714a(c)(2)(C) of title 5, United States Code, is amended to read as follows:

"(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.".

(b) Section 8714a(d) of title 5 is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraph:

"(2) If an agency fails to withhold the proper cost of optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.".

ADDITIONAL OPTIONAL LIFE INSURANCE

SEC. 7. (a) Chapter 87 of title 5, United States Code, is further amended by inserting after section 8714a the following new section:

"§ 8714b. Additional optional life insurance

"(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of additional optional life insurance (without accidental death and dismemberment insurance). An employee may elect coverage under this section without regard to whether the employee has elected coverage under optional insurance available under section 8714a of this title.

"(b) The additional optional insurance provided under this section shall be made available to each eligible employee who has elected coverage under this section, under conditions the Office shall prescribe, in multiples, at the employee's election, of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee (rounded to the next higher multiple of $1,000) except that coverage may not exceed an amount equal to 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title (rounded to the next higher multiple of $1,000). An employee may reduce or stop coverage elected pursuant to this section at any time.

"(c)(1) The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title.

"(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, so much of the additional optional insurance as has been in force for not less than—

"(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

"(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

may be continued under conditions determined by the Office after retirement or while the employee is receiving compensation under subchapter I of chapter 81 of this title and is held by the Secretary of Labor (or the Secretary's delegate) to be unable to return to duty. The amount of insurance continued under this paragraph shall be reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age and is retired or is in receipt of compensation. The reduction shall continue for 50 months at which time the insurance stops.

"(d)(1) During each period in which the additional optional insurance is in force on an employee the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues additional optional insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost thereof shall be withheld from the former employee's annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the additional optional life insurance shall be without cost to the former employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a (d) of this title.

"(2) If an agency fails to withhold the proper cost of additional optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

"(e) The cost of the additional optional insurance shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

"(f) The amount of additional optional life insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.".

(b) The table of sections for chapter 87 of title 5, United States Code, is amended by inserting after the item relating to section 8714a the following new item:

"8714b. Additional optional life insurance.".

OPTIONAL LIFE INSURANCE ON FAMILY MEMBERS

SEC. 8. (a) Chapter 87 of title 5, United States Code, is further amended by inserting after section 8714(b) (as added by section 7 of this Act) the following new section:

"§ 8714c. Optional life insurance on family members

"(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of optional life insurance (without accidental death and dismemberment insurance) on the employee's family members.

"(b) The optional life insurance on family members provided under this section shall be made available to each eligible employee who elects coverage under this section, under conditions the Office shall prescribe, in the amount of $5,000 for a spouse and $2,500 for each child described in section 8701(d). The employee may stop coverage elected under this section at any time.

"(c)(1) Optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, 12 months after discontinuance of pay, or the employee's entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to individual policies under conditions approved by the Office.

"(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and who has had in force insurance under this section for no less than—

"(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

"(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

optional life insurance on family members may be continued under the same conditions as provided in section 8714b(c)(2) of this title.

"(d)(1) During each period in which the optional life insurance on family members is in force the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues optional life insurance on family members after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost shall be withheld from the annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the optional life insurance on family members shall be without cost to the employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

"(2) If an agency fails to withhold the proper cost of optional life insurance on family members from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

"(e) The cost of the optional life insurance on family members shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

"(f) The amount of optional life insurance which is in force under this section on a family member of an employee or former employee on the date of the death of the family member shall be paid, on the establishment of a valid claim by the employee, to such employee or, in the event of

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the death of the employee before payment can be made, to the person or persons entitled to the group life insurance in force on the employee under section 8705 of this title.".

(b) Section 8701 of title 5 is further amended by inserting at the end thereof the following new subsection:

"(d)(1) For the purpose of this chapter, 'family member', when used with respect to any individual, means—

"(A) the spouse of the individual; and

"(B) an unmarried dependent child of the individual (other than a stillborn child), including an adopted child, stepchild (but only if the stepchild lived with the individual in a regular parent-child relationship), or recognized natural child—

"(i) who is less than 22 years of age, or

"(ii) who is 22 years of age or older and is incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

"(2) For the purpose of this subsection, 'dependent', in the case of any child, means that the individual involved was, at the time of the child's death, either living with or contributing to the support of the child, as determined in accordance with the regulations the Office shall prescribe.".

(c) The table of sections for chapter 87 of such title 5 is amended by inserting after the item relating to section 8714b (as added by section 7 of this Act) the following new item:

"8714c. Optional life insurance on family members.".

REPEAL OF SECTION 8713 OF TITLE 5

SEC. 9. (a) Section 8713 of title 5, United States Code, is repealed.

(b) The table of sections for chapter 87 of title 5 is amended by striking out the item relating to section 8713.

EFFECTIVE DATES

SEC. 10. (a) Unless otherwise specified, this Act shall take effect on the date of the enactment of this Act and shall have no effect in the case of an employee who died, was separated, or retired before the date of enactment.

(b) The amendment made by subsection (d) of section 2 of this Act shall apply with respect to premium pay payable under section 5545(c)(2) of title 5, United States Code, from and after the first day of the first pay period which begins on or after the date of the enactment of this Act.

(c) The amendments made by section 3 of this Act shall apply only in the case of an employee who retires or becomes entitled to receive compensation for work injury on or after the 180th day following the date of the enactment of this Act, or any earlier date that the Office of Personnel Management may prescribe which is at least 60 days after the date of enactment.

(d) The amendments made by sections 7 and 8 of this Act shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of the enactment of this Act, or on any earlier date that the Office may prescribe which is at least 60 days after the date of enactment, and shall have no effect in the case of an employee who died, was finally separated, or retired before the effective date.

AVAILABILITY OF CERTAIN FUNDS IN EMPLOYEES' LIFE INSURANCE FUND

SEC. 11. Amounts credited to the Employees' Life Insurance Fund under section 8714a(d) of title 5, United States Code, shall be available for expenses incurred by the Office of Personnel Management in implementing the amendments made by sections 7 and 8 of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. CORCORAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The gentleman from Michigan (Mr. FORD) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. CORCORAN) will be recognized for 20 minutes.

The Chair recognized the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to indicate, as I did before, that this is a bill coming from the subcommittee chaired by the gentlewoman from Maryland (Mrs. SPELLMAN), and I present the bill on her behalf.

Mr. Speaker, this legislation would improve the life insurance program offered to Federal employees under the provisions of the Federal Employees' Group Life Insurance Act of 1954. Under existing law, employees are covered under a group policy which offers insurance equal to the amount of their annual salary, plus $2,000. They are also eligible to purchase, at their own expense, without Government contribution, an additional policy of up to $10,000. When an employee retires, he may carry his insurance into retirement, but after reaching age 65 the amount of the insurance in force begins to decline at the rate of 2 percent of the face value of the policy until a minimum of 25 percent of the original face value remains.

When this life insurance program was enacted 25 years ago, it was a very progressive and farsighted fringe benefit program. But, over the years, it has not kept pace with life insurance generally available for employees in the private sector of the economy. Indeed, compared to major employers, it falls far short of being a comparable and adequate insurance program.

H.R. 7666, as amended, would make three major improvements in the program. First of all, it would increase the amount of basic insurance available from the amount of the employees annual salary, plus $2,000, to an amount equal to the annual salary, plus $2,000, multiplied by a factor of 2. This doubling of the existing coverage would apply to any employee less than 36 years of age. For the employees between the ages of 36 and 45, the multiplication factor declines according to age. For employees 45 years of age and older, the current amount remains in effect. The additional cost of this new insurance for the younger employee is paid for entirely by the Federal Government.

Second, a new optional life insurance policy is made available to all employees regardless of age under which an employee may purchase, at his own expense, without Government contribution, additional insurance in increments equal to his annual salary up to five times his annual salary. For instance, an employee who is a GS-7, step 4, earns $15,317 a year. Under the existing program, he is entitled to $18,000 basic insurance. That is, his annual salary rounded off to the next higher thousand dollars, plus $2,000. Under H.R. 7666, as amended, he would be entitled to basic insurance, plus an additional optional policy of $16,000, $32,000, $48,000, $64,000, or $80,000, according to which increment of additional optional insurance he wished to purchase. The employee would also be permitted to buy insurance for his spouse or children in amounts of $5,000 and $2,500, respectively.

The third change we proposed is in insurance protection for employees after retirement. Under existing law, the reduction takes effect immediately after the retired employees' 65th birthday and continues until the 25-percent remainder is reached 38 months later. Under H.R. 7666, the employee could continue to pay an amount determined by the Office of Personnel Management necessary to cover the cost of slowing down or entirely eliminating the reduction in coverage. The employee would have the option of paying the cost of changing the reduction to 1 percent a month instead of 2 percent; or he could elect to pay the cost of having no reduction at all.

This legislation has support on both sides of the aisle, and I am pleased to say that the administration has expressed its strong support for the enactment of this bill. Its cost, which would not become effective until the beginning of fiscal year 1982, would be $12 million in the first year, and decrease to $6 million by the fifth year.

I urge the House to suspend the rules and pass this important legislation.

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 7666. This measure was reported from our Committee on Post Office and Civil Service on a voice vote and it has the blessings of the administration.

Rather than reiterate the details of this bill, as has already been done by Mr. FORD, I will instead make some remarks about the general thrust of the bill.

Basically, this bill increases the amount of regular group life insurance to Federal employees under age 45. It allows Federal employees to buy increased amounts of group optional life insurance for themselves and their families. It also allows employees to elect to have additional amounts withheld from their annuities in order to have greater insurance coverage after retirement.

According to the Office of Personnel Management, the expense to the Government would be reasonable. While there would be additional outlays from the employee's life insurance fund until 1990, after this date the required additional contributions from employees would fully offset outlays in the early years.

Mr. Speaker, this proposal will vastly improve the Federal life insurance program by structuring it more along the lines of plans in the private sector.

I urge enactment.

□ 1440

Mr. Speaker, at this time I would like to yield 1 minute to the gentleman from Illinois (Mr. DERWINSKI), the ranking minority member of the Post Office and Civil Service Committee.

Mr. DERWINSKI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, H.R. 7666, as amended, provides needed improvements in the Federal employees life insurance program. In doing so, it avoids any cost in fiscal year 1981. While there are costs to the Government in the early years these costs will, in the long run, be offset by additional required contributions by Federal employees.

Specifically, this legislation changes the existing life insurance program in the following ways: First, it increases amounts of regular group life insurance for employees who are under 45 years of age. Second, it allows employees to elect to have additional amounts withheld from their annuities in order to have greater insurance coverage after retirement. Third, beginning with employees who retire after January 1, 1990, deductions will be made for continued group life insurance until age 65. Fourth, additional optional life insurance is available to Federal employees and their families.

Mr. Speaker, this is a reasonable proposal which has the solid support of the House Post Office and Civil Service panel.

I urge enactment.

Mr. CORCORAN. Mr. Speaker, I do not have any further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 7666, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous matter on the bill, H.R. 7666, just considered by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

IRC AMENDMENTS RE TAX COURT JUDGES

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7779) to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court, as amended.

The Clerk read as follows:

H.R. 7779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. 3 ADDITIONAL JUDGES FOR TAX COURT; REMOVAL OF AGE LIMITATION.

(a) INCREASE IN NUMBER OF JUDGES.—Subsection (a) of section 7443 of the Internal Revenue Code of 1954 (relating to the number of judges on the Tax Court) is amended by striking out "16" and inserting in lieu thereof "19".

(b) REMOVAL OF AGE LIMITATION.—Subsection (b) of section 7443 of such Code (relating to appointment to the Tax Court) is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on February 1, 1981.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Oregon (Mr. ULLMAN) will be recognized for 20 minutes, and the gentleman from Pennsylvania (Mr. SCHULZE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7779 responds to the vital need for the appointment of additional judges to the U.S. Tax Court by adding three judges to that court thus increasing the total number of Tax Court judges from 16 to 19. Appointments to these new seats could not be made before February 1, 1981.

In recent years, the workload of the Tax Court has increased significantly. Since 1974, the Tax Court has been authorized to issue declaratory judgments with respect to the status of certain organizations' employee retirement plans, municipal obligations, and the tax aspects of certain property transfers, and to decide certain disclosure actions brought against the Internal Revenue Service. The Crude Oil Windfall Profit Tax Act of 1980 extends the court's jurisdiction to windfall profit tax deficiencies. Because of these new responsibilities and the growth of complex tax litigation, particularly in the area of tax shelters, an increase in the court's membership to 19 is necessary to maintain timely resolution of taxpayer disputes. Despite these new responsibilities, the number of judges, has remained at 16 for over 50 years.

The bill also eliminates the present law ban on appointments of individuals age 65 or older as judges of the U.S. Tax Court. This ban conflicts with Federal policies against age discrimination and could deprive the Tax Court of experienced personnel.

The bill will have no effect on budget receipts and will increase outlays by only $185,000 in fiscal year 1981, $565,000 in fiscal year 1982, $665,000 in fiscal year 1983, $720,000 in fiscal year 1984, and $770,000 in fiscal year 1985.

Mr. Speaker, H.R. 7779 has bipartisan support in the Committee on Ways and Means. It is supported also by the tax section of the American Bar Association and, by the Department of the Treasury. I urge the passage of this most necessary bill.

Mr. SCHULZE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the suspension of the rules and immediate passage of H.R. 7779, a bill to add three judges to the U.S. Tax Court.

The Tax Court has functioned with 16 judges since 1925. The caseload of the court has grown significantly in recent years. Therefore, expanding the Tax Court to 19 judges will help it reduce the backlog of cases and adjudicate tax disputes without undue delay.

The increasing caseload on the Tax Court comes from several sources. First, since 1974 the Tax Court has had authority to issue declaratory judgments with respect to certain issues such as employee retirement plans and municipal obligations. Second, the crude oil windfall profit tax gives the Tax Court jurisdiction over this new excise tax. The windfall profit excise tax may generate some complicated litigation in the early years of its administration. Third, the IRS crackdown on abusive tax shelters is resulting in many persons challenging the IRS deficiency assessments in the Tax Court. Fourth, the public generally has become more prone to litigate tax disputes. While this may be a sign of a dynamic society, it does place a strain on the judicial branch to respond in a timely manner.

H.R. 7779 also eliminates the current prohibition on initially appointing an individual to the Tax Court after he has attained age 65. I believe this change will allow the Tax Court to attract highly qualified, mature persons for service on the bench.

Mr. Speaker, H.R. 7779 is a good bill. It will help the Tax Court discharge its responsibilities in a timely manner and will open Tax Court service to citizens of all ages.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. ULLMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill, H.R. 7779, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.".

A motion to reconsider was laid on the table.

REGULATORY FLEXIBILITY ACT

Mr. HARRIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 299) to amend title 5, United States Code, to improve Federal rulemaking creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The Clerk read the Senate bill as follows:

S. 299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Flexibility Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediately after chapter 5 the following new chapter:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"Sec. 601. Definitions.
"Sec. 602. Regulatory agenda.
"Sec. 603. Initial regulatory flexibility analysis.
"Sec. 604. Final regulatory flexibility analysis.
"Sec. 605. Avoidance of duplicative or unnecessary analyses.
"Sec. 606. Effect on other law.
"Sec. 607. Preparation of analyses.
"Sec. 608. Procedure for waiver or delay of completion.
"Sec. 609. Procedures for gathering comments.
"Sec. 610. Periodic review of rules.
"Sec. 611. Judicial review.
"Sec. 612. Reports and intervention rights.

"§ 601. Definitions

"For purposes of this chapter—

"(1) the term 'agency' means an agency as defined in section 551(1) of this title;

"(2) the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

"(3) the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(4) the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(5) the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

"(6) the term 'small entity' shall have the same meaning as the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4) and (5) of this section.

"§ 602. Regulatory agenda

"(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

"(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

"(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

"(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

"(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

"(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their repersentatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

"(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

"§ 603. Initial regulatory flexibility analysis

"(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

"(b) Each initial regulatory flexibility analysis required under this section shall contain—

"(1) a description of the reasons why action by the agency is being considered;

"(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

"(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

"(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

"(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

"(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

"(3) the use of performance rather than design standards; and

"(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

"§ 604. Final regulatory flexibility analysis

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and the objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

"(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

§ 605. Avoidance of duplicative or unnecessary analyses

"(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisnes the provisions of such sections.

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

"(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604, and 610 of this title.

"§ 606. Effect on other law

"The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

"§ 607. Preparation of analyses

"In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

"§ 608. Procedure for waiver or delay of completion

"(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

"(b) An agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be promulgated until a final regulatory flexibility analysis has been completed by the agency.

"§ 609. Procedures for gathering comments

"When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

"(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

"(3) the direct notification of interested small entities;

"(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

"§ 610. Periodic review of rules

"(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

"(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

"(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

"§ 611. Judicial review

"(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

"(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

"§ 612. Reports and intervention rights

"(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

"(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

"(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).".

EFFECTIVE DATE

SEC. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. HARRIS).

Mr. HARRIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us represents, I think, a great deal of work in both the other body and in this body with respect to trying to get regulation off the back of small business. The Small Business Committee, chaired by the distinguished Member from Iowa (Mr. SMITH), has had extensive hearings on this and has, in fact, reported out legislation.

The Judiciary Committee, and specifically the Administrative Law Subcommittee chaired by Mr. DANIELSON, of California, has also had extensive hearings and extensive markup with respect to a more comprehensive regulatory reform bill. What we have here is a bill that has been passed by the other body

and does a number of important things with respect to alleviating the burden on small business of our regulatory procedure. It requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have any substantive economic impact on a substantial number of small entities.

□ 1450

It requires an initial and final regulatory analysis of their rules to assess the impact on small entitles. The analysis may be done in conjunction with any other required analysis. The analysis need not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, and the analysis may be waived or delayed in the event of emergency but for not more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on a rule's effectiveness. Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities. There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance, and it is the Office of Advocacy of the Small Business Administration that will in fact conduct a review.

Mr. Speaker, I would like to yield to my colleague, the gentleman from Iowa (Mr. SMITH), who is the one Member who has done so much to bring this matter into focus and bring to the attention of this House the problems of small business and the need for this sort of regulatory reform.

Mr. SMITH of Iowa. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this bill which gives clear recognition to the different impact which Federal rules and regulations have on small business as compared to big business. This bill, S. 299, would require Federal agencies and departments to consider the impact of proposed rules and where appropriate to exempt or adopt different and less burdensome regulations for small businesses, small nonprofit businesses and small cities, towns, and other political subdivisions. An exemption or simplified regulation would be required where the purposes of the law could be obtained while doing so.

Similar legislation (H.R. 4660) was extensively considered by the House Small Business Committee. The Subcommittee on Special Small Business Problems held hearings in 1977 and 1978 and developed the approach in the bill. The Small Business Committee members unanimously support that bill and each of them are cosponsoring it. I want to note that the House bill (H.R. 4660) was unanimously favorably reported by the Small Business Committee last October and the bill was then referred to the Judiciary Committee which was discharged from further consideration on May 28 of this year. Meanwhile, the Senate substituted this approach for the provisions in a bill they had held hearings on and passed the bill.

Overregulation of small entities is one of the ways big business has gained advantages over small businesses. The cost per unit for a big business to comply may be small due to a large volume. Small businesses cannot cope with the maze of Federal regulations and they cannot afford the hiring of lawyers, accountants, engineers, and consultants which are employed by large companies. Nor can they afford their own time needed to comply with existing regulations and reporting requirements.

As a result of overregulation, productivity and innovation have been curtailed and inflation has increased and in some cases competition from smaller businesses eliminated. Our committee's files are replete with documentation of these burdensome requirements which range from one company with three small shops receiving Federal forms weighing 45 pounds to another company which paid a $500 fine rather than fill out a Federal form which was 63-feet long.

I also want to point out that some laws and agencies currently use flexible regulatory strategies such as the Internal Revenue Code's provisions permitting salaried persons earning less than $20,000 per year to file a short form income tax form while other taxpayers are required to file the long form.

I believe that the provisions of this bill now under consideration (S. 299) will substantially reduce the burden imposed by Federal regulation upon small business and yet at the same time allow Federal departments and agencies to carry out their duties and functions. Although the Senate-passed bill differs in some respects from the bill favorably reported by the House Small Business Committee, it is designed to accomplish the same purpose and I hope that all Members will strongly support it today so that it may be sent to the White House without further delay. For the benefit of my colleagues I am attaching a brief statement concerning the provisions of the bill now under consideration.

I also want to point out that the concept of two-tier regulation was one of the issues considered by the recent White House Conference on Small Business which included a recommendation for two-tier legislation as No. 15 on the list of priorities. The Small Business Administration counsel for advocacy would have the authority and responsibility to make sure that agencies do as expected under the law.

Finally, I want to commend all of the Members who worked so long and hard on this matter and particulary the chairman of our Special Small Business Problems Subcommittee, ANDY IRELAND, the subcommittee's ranking minority member, Mr. BROOMFIELD, and the ranking minority member on the committee, JOE MCDADE. I also want to commend Representative MARTY RUSSO who previously served on the Small Business Committee and chaired the Special Small Business Problems Subcommittee. It was his initial efforts and drafting which laid the groundwork for the bill we are considering today.

The material follows:

S. 299

(As passed Senate 8-6-80)

Sec. 2. Provides extensive statement of findings and purposes.

Sec. 3. Amends 5 U.S.C. to provide regulatory flexibility—

§ 601. Definitions—

(1) Agency means as defined in 5 U.S.C. (1),

(2) Rule means rule covered under 553(b) and includes those on grants but excludes rules of particular applicability relating to wages, prices, etc.,

(3) Small Business means as defined under § 3 of Small Business Act unless agency redefines,

(4) Small organizations means not for profit, independently owned and operated and not dominant in field of operation,

(5) Smal governmental jurisdiction means political subdivision of less than 50,000 population unless agency can justify additional definition, and

(6) Small entity means small business, small organization and small governmental jurisdiction.

§ 602. Regulatory agendas—

(a) In October and April each agency shall publish a regulatory flexibility agenda including

(1) Expected rules with significant economic impact on substantial number of small entities.

(2) Summary of nature of rules,

(3) Name and phone number of involved agency official—

(b) Copy of agenda sent to Chief Counsel for Advocacy,

(c) Agency shall provide notice by letter, publication etc, and

(d) Agency may promulgate regulation even if not on agenda.

§ 603. Initial regulatory flexibility analysis—

(a) If proposed rule must be published, an analysis must be done of impact on small entities; requires publication in Federal Register and transmittal to SBA's Chief Counsel for Advocacy, and

(d) Analysis must contain—

(1) Reason for rule,

(2) Objectives and purposes,

(3) Estimate of number of small entities to which rule will apply,

(4) Description of anticipated compliance requirements, and

(5) Crossreferences to other rules.

(c) Description of significant alternatives considered, including discussion of—

(1) Different compliance or reporting requirements,

(2) Clarification, consolidation or simplification of compliance and reporting requirements,

(3) Use of performance rather than design standards, and

(4) Exemption for smalls.

§ 604. Final regulatory flexibility analysis—

(a) Final rule shall be accompanied by final analysis; including—

(1) Succinct statement of need for rule and objectives,

(2) Summary of issues raised by comments, agency assessment of issues, changes made in response, and

(3) Alternatives and why rejected.

(b) Agency must make analysis available and give notice of availability in Federal Register.

§ 605. Avoidance of duplication or unnecessary analyses—

(a) Agency may do analyses as part of other proceedings,

(b) Regulatory flexibility analysis not required if head of agency certifies that rule will not have significant economic impact on substantial number of small entities, and

(c) Related rules may be combined into one analysis.

§ 606. Effect on other laws—Regulatory flexibility analysis does not alter other laws.

§ 607. Preparation of analyses—Agency may use either a quantifiable or numerical description of effects of proposed rule or alternatives or a more general description if quantification is not practicable or reliable.

§ 608. Waiver or delay—

(a) Agency head may waive or delay initial analysis upon written finding that final rule is emergency one making compliance impracticable, and

(b) Agency head may not waive final analysis but may delay it for up to 180 days after final rule published if emergency rule making; if not done, the rule lapses.

§ 609. Comment gathering procedures—When rule is promulgated having significant economic impact on substantial number of small entities, agency head shall assure that small entities have been given opportunity to participate through techniques such as—

(1) Notification that rule may have significant economic effect on a substantial number of small entities,

(2) Publication of notice of rule making in publications likely to be obtained by small entities,

(3) Direct notification of small entities,

(4) Holding open conferences or public hearings, and

(5) Agency rules designed to reduce cost of participation by small entities.

§ 610. Periodic review of rules—

(a) Within 180 days of law, agency shall publish in Federal Register a plan for periodic review of rules with a significant economic impact upon substantial number of small entities. Purpose is to change as needed to minimize significant economic impact upon substantial number of small entities. All rules reviewed within 10 years and new ones within 10 years, except agency may delay review for up to 5 years one year at a time.

(b) In conducting review, agency shall consider—

(1) Continued need for rule,

(2) Complaints or comments,

(3) Complexity,

(4) Relationship with other Federal or state regulations, and

(5) Changes which have occurred.

(c) Agency annually publishes agenda of rules to be reviewed in next year.

§ 612 Judicial review—

(a) Agency decisions regarding regulatory flexibility implementation are not subject to judicial review except as below in (b),

(b) Regulatory flexibility analysis and compliance or non-compliance by agency are not subject to judicial review but the analysis shall be apart of record of agency action if rule is subject to judicial review, and

(c) Nothing herein bars judicial review of any other impact statement or analysis otherwise permitted by law.

§ 611. Reports and intervention rights—

(a) SBA's Chief Counsel for Advocacy shall monitor agency compliance and report to President and Congress annually;

(b) Chief Counsel for Advocacy may appear amicus curiae in any action to review a rule to present his views on effect of rule on small entities, and

(c) U.S. court shall grant application of Chief Counsel for Advocacy to appear for purpose of (b).

§ 4. Effective date—Act effective 1-1-81 except that provisions for initial regulatory flexibility analysis and final regulatory flexibility analysis apply only to proposed rules issued 1-1-81 or after.

Mr. HARRIS. Mr. Speaker, I would like to yield at this point to the chairman of the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, the gentleman from California (Mr. DANIELSON), who has worked on regulatory reform so assiduously over the past several months.

Does the chairman of that subcommittee wish me to yield to him at this point?

Mr. DANIELSON. Mr. Speaker, as long as the gentleman from Virginia (Mr. HARRIS) is here and is managing the bill on behalf of the Committee on the Judiciary, which has jurisdiction over this subcommittee, and with no other committee having that jurisdiction, I will allow him, with my thanks, to continue in the management of the bill, but I would like to have an opportunity to comment later. I trust the gentleman will give due recognition to members of the Committee on the Judiciary who are here and who would like to be heard.

Mr. HARRIS. Mr. Speaker, I would like to yield to our fine colleague from the Committee on the Judiciary, the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, the legislation before us today, the Regulatory Flexibility Act, may be one of the best means we have to acknowledge that our diversity, which is our strength, is based as much on size as on anything else.

This bill addresses the very real differences between big business and small business—large urban areas and small towns—major national organizations and small local nonprofit groups.

It says, basically, that the Federal Government should, where feasible and consistent with the intent of the law, develop regulations only after thoroughly assessing their impact on small entities—business, organizations and governmental jurisdictions.

The measure before us is a result of several years of effort, numerous hearings in the House and Senate, and compromises between the House, Senate and the administraiton. More than half the House has cosponsored either H.R. 4660 or my own bill, H.R. 1971.

The Senate has twice unanimously passed a version of this legislation—comparable to my own bill, H.R. 1971 of the 96th Congress—first on the last day of the 95th Congress, and most recently on August 6 of this year.

Senator CULVER deserves particular praise for his efforts on behalf of this legislation. He, along with Senator NELSON, developed the concept back in 1977, and they have built a body of testimony substantiating the need for such legislation. Both Senator CULVER and Congressman IRELAND have assembled for the RECORD lengthy statements describing the legislative history of regulatory flexibility proposals and the intent of S. 299. Senator CULVER's statement appears in the RECORD of August 6, 1980 at pages 21452–21461. Mr. IRELAND's is appearing in today's RECORD. These statements ably describe the understandings reached among the principal authors and sponsors of regulatory flexibility legislation on the Judiciary and Small Business Committees, allowing S. 299 to come before us today.

The President has issued a statement in support of the bill and embodied it in a directive to agency heads last November. We propose to embody it in law to assure congressional oversight of agency compliance with regulatory flex-

The bill requires that agencies consider the needs and interests of small ibility provisions.

entities in carrying out their mandates. In no other respect does it alter current procedures. In no respect does it alter substantive law.

The bill's treatment of judicial review is intended to strike a balance between two necessary goals.

First, to insure that the internal procedures of the agencies are not unnecessarily delayed by interlocutory and intermediate court review of the regulatory flexibility analysis; and

Second, the desire to insure that agencies take seriously their obligation under the law by providing for review of regulatory flexibility analyses as part of the entire record.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield at that point?

Mr. HARRIS. Mr. Speaker, I might note that I have the time here, and I am going to continue to yield to the gentleman from Wisconsin (Mr. KASTENMEIER). I have the time.

Mr. KASTENMEIER. Mr. Speaker, may I conclude my remarks? The gentleman from Virginia (Mr. HARRIS) has the time, and perhaps he will yield to the gentleman from Georgia (Mr. LEVITAS) at the appropriate time.

Mr. LEVITAS. Mr. Speaker, if the gentleman from Virginia will yield, I have a question I would like to ask the distinguished member of the Committee on the Judiciary about that very point that he was just addressing. If he could explain it for the RECORD, it would be quite helpful.

Mr. HARRIS. Mr. Speaker, I do have a number of requests for time, but I do yield for the purpose of a question by the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I would simply like to inquire, what does this bill do by way of providing a judicial review to see that the procedures that have been written into this are in fact followed and can be reviewed by a court to see if they have been followed?

Mr. KASTENMEIER. Mr. Speaker, my understanding is, as the gentleman from Georgia (Mr. LEVITAS) knows because he has been following the bill, too, that this strikes a balance between having an appeal and not having appeals made on the record of the regulatory analysis as such, but when challenges to the rules themselves are made, that is, as a part of the complete record, the process of regulatory analysis may also then be reviewed, but only reviewed in that context judicially.

Mr. Speaker, if I may conclude my remarks, in other words, as I was saying, the courts may examine the regulatory flexibility analysis in determining the reasonableness of the final rule. The bill in no other way, changes or alters the right of judicial review under the Administrative Procedure Act.

Through this bill we can remove some

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of the burdensome requirements placed on small business and small governments. We can begin to free vitally needed capital and human resources from wasteful activities and direct these energies to more productive and efficient purposes. This can be an important component of our economic recovery program and one that all Members of this body should support.

Mr. HARRIS. Mr. Speaker, may I inquire of the Chair as to how much time I have remaining?

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) has 10 minutes remaining.

The Chair recognizes the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, public discussion of overregulation and the need for regulatory reform all too often conjures up the oversimplified image of a confrontation between big government and big business. But, as we all know, it is small business that carries the heaviest burden with respect to governmental regulation. Other small entities such as hospitals, small colleges, and local governments are also hampered by the same situation. Unlike large corporations or unions, these organizations do not have the time, the personnel, nor the resources to adequately monitor and comply with the morass of regulation that confronts us all daily.

For this reason, I support the regulatory flexibility concept that is symbolized in S. 299.

I would like to point out by way of clarification how we happen to be where we are today. The Committee on Small Business of the House reported out some months ago H.R. 4660, the Small Business Regulatory Flexibility bill, which was sequentially referred to the Committee on the Judiciary. The concept was embodied into the regulatory reform bill that the Committee on the Judiciary has been working with.

However, the administration has sought to delay the progress of the regulatory reform bill in the full Judiciary Committee for reasons that have to do with its current contents. Thus the concept has not reached us or has not reached the House floor previously in what would be an orderly fashion. Incidentally, H.R. 4660 amended the Small Business Act, and that properly came out of the Committee on Small Business.

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This bill that comes to us from the other body, however, adds a chapter VI to the Administrative Procedures Act and thus, of course, appropriately is within the jurisdiction of the Judiciary Committee; but Small Business and the Judiciary Committee are certainly no strangers, and the interest is shared, of course, with the Small Business Committee in seeing a more appropriate type of approach to regulatory flexibility for small business.

The regulatory flexibility approach recognizes that it is often counterproductive and unfair to apply identical regulations to entities regardless of their size. The regulatory flexibility approach is based upon the understanding that generalized rules often do not advance the regulatory objective that is involved.

However, I would be less than candid if I did not express concern over our present involvement in a piece-meal approach to regulatory reform. This is only a part of the picture that we are dealing with today. As important as regulatory flexibility for small organizations is, it does not address the full range of problems brought on by overregulation. We on the Judiciary Committee have been working on comprehensive regulatory reform since last November. Tomorrow the full Judiciary Committee was scheduled to resume its consideration of the Regulatory Reform Act of 1980, H.R. 3263. This has been stalled for some time, since about last May, because of the direct intervention of the Carter administration whose regulatory reform program has been marked by confusion and hypocrisy. It remains my hope that we will be able to bring this broader, more comprehensive bill to the House floor before adjournment.

The concept of small business and small organization regulatory flexibility is an important element in H.R. 3263 that is before the Judiciary Committee. But this measure also would require that agencies consider the economic impact of regulation, as well as regulatory and geographic differences, in promulgating new rules. H.R. 3263 also contains provisions aimed at speeding up seemingly interminable administrative proceedings, along with encouraging expanded public and business input into the regulatory process.

In fact, it is particularly worth noting that the language of H.R. 3263 is even stronger than the bill before us today with respect to small business and small organization regulatory flexibility. The bill we consider today requires that regulatory agencies undertake a detailed analysis, so as to give special consideration to the impact of a proposed rule on small entities. However, there is no language specifically requiring that the agency act on the conclusions of their analysis. It is conceivable that we could study these problems and then choose to do nothing about them. In contrast, under H.R. 3263, an agency is empowered to exempt a small business or small organization from the scope of a regulation, or to set lower compliance standards, where such a distinction is lawful, desirable and feasible.

I urge that S. 299 be supported today, realizing it is only part of a larger picture.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Speaker, I rise in strong support of this legislation.

Mr. Speaker, I strongly support S. 299, the Regulatory Flexibility Act, and urge its passage by the full House.

As a small businessman myself, I am painfully aware of the need for a policy of 2-tier regulation as a means of helping small businesses. S. 299 addresses the fact that small businesses cannot and should not be expected to comply with all of the regulations developed for application to big businesses.

In addition, small governmental jurisdictions with populations of less than 50,000 are also granted relief by this bill. It incorporates a number of methods of making regulations more flexible, including, for example, the establishment of differing compliance and reporting requirements that take into account the amount of resources available to small businesses and mandate agency consideration of regulatory effects on small cities and towns, as well as on small enterprises and on individuals.

The present regulatory environment has a devasting effect on the competitive viability of the small business sector. Regulations when applied uniformly to big businesses and small businesses clearly provide huge advantages to the largest enterprises. Big business has the lawyers, accountants, engineers, consultants, and economic resources to comply with governmental regulations. On the other hand, the small businessperson often must spend critical time and resources sorting through a confusing morass of complex Federal regulatory requirements, which is a drag on national productivity.

As the chairman of the House Small Business Subcommittee on Antitrust, I have been a witness to the need for this legislation. I have heard not only from my constituents in northwest Iowa, but from small business people from all over the United States.

Last year, the Antitrust Subcommittee undertook an investigation into petroleum retail marketing practices. We found that several years of Federal attempts to regulate that industry have harmed the competitiveness of participating small businesses, contributing to tens of thousands of independent service station operators going out of business. Ironically, this effect was not the intent of the Federal regulations. Small businesses, whom the Government sought to protect, were smothered by a system imposed upon them that gave them no opportunity to respond to changing marketplace demands. Large oil companies, whom the Government attempted to control through regulation, easily found ways to manipulate and profit from Federal regulations, further entrenching their dominant industry position at the expense of the small business operator.

Today the gasoline retail market is structurally unsound, due to the uneven way Federal regulations have affected competition. As a result, the House Small Business Committee favorably reported the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722; a bill also identified by the Speaker's Task Force on Small Business as being one of this Congress most vital small business bills.

Regulations reward staid, inefficient business practices that often are found in large bureaucratic enterprises. Frequently, they are drafted to force these enterprises to respond to the interests of our national goals. But when applied uniformly to small business they stifle innovation, creativity and efficiency—the hallmark of the entrepreneur.

Of course, judicial review is necessary to assure that agencies comply with this act. The question of judicial review has been addressed very sensibly in this legislation, which provides that the courts should not be bogged down with lawsuits before the agencies have even finished their rulemaking. However, section 611(b) states that regulatory flexibility analyses can be examined by the courts when the validity of final rules is being determined. So judicial review in this act fits in well with the practice of judicial review under the law we are amending today and, I might add, with most of the other pending regulatory reform bills. I think this is a good, balanced approach to judicial review which will achieve the benefits the bill seeks without causing any unnecessary litigation.

Mr. Speaker, I have been supporting action on this problem ever since I came to Congress 6 years ago. A Federal policy of regulatory flexibility is long overdue. The delegates to the White House Conference on Small Business, representing the views of small business people from all across the United States, overwhelmingly endorsed the concept of reg-flex. Your task force on small business chose this legislation as a small business priority for this session of Congress. Two hundred and forty-six Members of Congress, including every member of the House Small Business Committee, are cosponsors of H.R. 4660, the original House version of S. 299. This legislation deserves the support of the entire House.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I support the concept of S. 299, but I think it is important for the Members of this body to know that this legislation does not really, in the long run, solve the problem.

This legislation does rightfully address some of the problems faced by small businessmen. The small businessman must be given special consideration, as offered by this bill, for regulations which are applied generally, can be most oppressive to small businesses. But I do not want the American public, or the small businessman, to be taken in and made to believe that this legislation alone will accomplish meaningful regulatory reform.

As the gentleman from Ohio pointed out, all of the language in this legislation could be totally ignored by any agency. There is no effective enforcement mechanism. This legislation can be disregarded by the same bureaucrats who are trampling over the small businessman right now.

If the administration thinks it can get away with calling this bill alone regulatory reform, without action on the comprehensive regulatory reform bill, then they are going to have people across the country remind them of the hypocrisy of their actions, both on the Republican side and on the Democratic side, between now and November. Without more comprehensive regulatory reform, this bill alone will be comparable to attacking a dragon with a wet spaghetti noodle.

We need real regulatory reform that has teeth in it. This is a good move in the right direction, but it in and of itself will not accomplish the goals of effective regulatory reform. We need results, not cosmetics.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. ALBOSTA).

Mr. ALBOSTA. Mr. Speaker, I rise in support of the bill.

S. 299, the Regulatory Flexibility Act, is needed to reduce the unfair regulatory burden currently placed on our Nation's small businesses. This bill is part of a comprehensive regulatory reform package that includes vital elements, such as the one-House veto, court reimbursements to small businesses for actions against Government agencies, paperwork reduction, and revisions in the selection and evaluation of administrative law judges.

The package of regulatory reform is a must for the 96th Congress, if we are serious about reducing the burden of Government on the private sector. With productivity at record lows, we must streamline the requirements placed on business by the Government. I am hopeful that the appropriate committees will continue in their efforts to move this legislation on to the floor of the House.

S. 299 is one of the major parts of the regulatory reform package, requiring regulatory agencies to analyze the likely impact of their rules on small businesses and other concerns. The bill requires each agency to publish semiannual lists of rules it anticipates promulgating which are likely to have a serious economic impact on small businesses or other small concerns. Small businesses are encouraged to participate in the rulemaking procedures. The bill also requires agencies to review all new and existing rules within 10 years.

I am pleased to see that the subcommittee, under the able leadership of the gentleman from Florida, included a section in this bill to apply the "two-tiered" approach to regulations affecting most nonprofit organizations which "are not dominant in their field" and local governmental subdivisions under 50,000 in population.

I urge my colleagues to support the passage of S. 299 so this process of regulatory reform and paperwork reduction can begin.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I rise in support of S. 299, which embodies the concept of regulatory flexibility. This means that agencies must analyze alternatives to proposed regulations that would minimize any adverse burden on small business. Among the alternatives would be the granting of outright exemptions or issuing regulations with different and less burdensome standards of compliance for small business. This concept has undergone several legislative changes in the last few months. And I am glad to say that these changes have improved the proposal significantly.

Earlier this year, a variation of this concept was presented in the form of an amendment to the Regulation Reform Act which the Judiciary Committee was considering in May. That amendment required an agency to issue regulations which exempt or lessen the burden on small businesses when the agency's analysis indicates it would be feasible to do so. I believe strongly that every effort must be made to free small businesses from unnecessarily burdensome regulations. At the same time it is important that this goal not be attained in ways that would result in significant weakening of other important public interests to which regulations may be directed.

For example, we must be careful not to make it easy for big businesses to spin off their dirty operations into small businesses that are not subject to a strict regulation. This occurred when the kepone scandal broke, involving the Allied Chemical plant in Hopewell, Va. Allied Chemical simply spun off the plant to a small business. Certainly we do not intend to say that being a small business, is in itself, sufficient grounds for exempting it from public health and safety laws.

Another factor relates to productivity. In some cases, an exemption could create an incentive for a small business to stay small. Certainly we do not want to create any disincentives to economic growth.

Another important consideration is whether a particular exemption would impair the ability of the Government to protect the public health and safety. For example, amendments have been offered from time to time to exempt from occupational safety and health laws any business employing less than 25 people. It is important to make sure that OSHA does not impose unnecessary burdens on small businesses. On the other hand, people who work for a business that employs less than 25 people surely are entitled to have their health and safety protected.

Because it seemed to me that agencies ought to consider such factors, I offered an amendment to the regulatory flexibility amendment during the Judiciary Committee markup in May. The amendment read:

> In determining whether it is feasible and desirable, and in the public interest, to exempt or set differing and less burdensome standards for small businesses and small organization, the agency shall consider whether such exemption or standard would
>
> (A) provide opportunities for businesses and organizations that are not small businesses and small organizations to avoid compliance with such rule;
>
> (B) create incentives for small businesses and small organizations against increasing their productivity, hiring additional employees, merging with other businesses or organizations, or otherwise increasing their size; or
>
> (C) impair the ability of the agency to protect the public health, safety or the environment or otherwise achieve statutory requirements.

While there was important committee support expressed for my amendment, it

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was the consensus of the committee that such language would be best handled in the report, rather than in the bill itself.

Representative ROBERT KASTENMEIER, one of the regulatory flexibility amendment's coauthors, stated that he supported report language to this effect. The regulatory flexibility amendment's other coauthor, Representative CALDWELL BUTLER, expressed appreciation to me for bringing this matter to the attention of the committee and stated that he would work with the subcommittee chairman in an effort to accommodate my recommendations into the legislative history.

Representative ROMANO MAZZOLI, who was managing the bill in the absence of Representative GEORGE DANIELSON, the chairman of the Subcommittee on Administrative Law and Government Relations, offered his services in drafting report language similar to the language in my amendment.

The reason I raise these points now is that the Judiciary Committee has not yet completed marking up the Regulation Reform Act and, therefore, no report has been written. In supporting the Senate bill we are now considering I want to make sure that the record reflects that my support, and I believe that of many other Members, is given with the understanding that such considerations are implicit in this legislation.

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in strong support of S. 299. At the same time, I wish to remind the Members of this body that the American people have been asking for true regulatory reform for many years. We are told that overregulation costs the American people over $100 billion a year. This bill is directed to only a small segment of the total amount of industry that is affected and the total number of people in this country who are affected by this overregulation.

This bill is a good first step, but I would hope that we would not take it as a substitute for H.R. 3263 which the Judiciary Committee and this Congress has been laboring over for many, many months.

The American people deserve to have true regulatory reform that deals with all of American industry and American problems of overregulation. This bill that we are considering today requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have significant economic impact on a substantial number of small entities, such as small businesses, organizations and governmental jurisdiction. It requires an initial and final regulatory analysis of all rules to assess their impact on small entities.

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The analysis may be done in conjunction with any other required analysis.

The analysis may not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The analysis may be waived but delayed in the event of an emergency, but not for more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on rules affecting them.

Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities.

There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance.

You can see from the things that this bill covers that there are many, many areas that are left totally uncovered. We do nothing in this legislation about a one- or two-House veto giving the Congress the right to decide themselves whether regulations are in order that have been passed by a regulatory agency. At the present time we have nonelected people that are determining the fate of thousands and thousands of American businesses and jobs of millions of American people without any real opportunity for the elected Members of Congress to react in such a way that they could overturn the regulations that are adopted, even though they are not in conformity with legislation that has previously been adopted by the Congress, or even if they are nonessential and go far beyond the problems that they seek to cure.

I think it is important in regulatory reform that the regulations at least are cost effective. This bill does not provide for that. It is a good first step, but please, let us not have the Congress fall for the kind of control that the present administration is presently imposing upon the Congress to prevent true regulatory reform.

Let us do something about this problem that we have promised the American people that we would do something about. Let us do it this year. Let us not let this bill take the place of a strong, true regulatory reform bill.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. MCDADE).

Mr. MCDADE. Mr. Speaker, I want to thank my friend, the gentleman from Ohio, for yielding to me.

Mr. Speaker, today the House will have the opportunity to approve legislation of tremendous significance to our Nation's small business men and women. The Small Business Committee has worked on this bill for almost 3 years, and I am pleased to say that I have cosponsored a similar measure and worked for its passage. Because the bill was stalled during the consideration of another bill in the Judiciary Committee, the Senate version has been used as a vehicle for this body to act upon this urgent request of the small business community.

S. 299 provides the impetus to Federal agencies to undertake innovative, flexible approaches when adopting and applying Federal regulations which otherwise may adversely affect smaller enterprises. Small organizations and small Government units are also covered by the bill's provisions.

The legislation under consideration revises administrative procedures to require Federal departments and regulatory agencies to perform an analysis of the economic and paperwork impact of a proposed rule on individuals, small businesses, organizations, and local governments. A number of alternatives designed to insure that rules promulgated are tailored to fit the size and scale of the entities to be regulated consistent with the applicable statute, are spelled out in the bill.

These include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation of compliance, and reporting requirements; and

Use of performance rather than design standards.

Regulatory flexibility legislation represents 3 years of hearings and related work by the Small Business and Judiciary Committees, with input by small business owners and their national associations, labor representatives, public interest groups, economists, fellow Members, and administration officials.

The need for flexible standards has generally been acknowledged and endorsed by these various interests. Prompt passage of this proposal is imperative, especially as we proceed through a period of escalated inflation, high unemployment, and business decline. By directing Federal agencies to consider the economic and redtape impact of their proposed regulations, we can expect less burdensome requirements for small entities. In this way, a measure of the resources necessary to get us back on the road to economic recovery can be directed to more efficient and productive purposes.

Mr. Speaker, no doubt each of us has heard from individuals operating small firms within our districts. The comments are always the same. Small business owners regularly report that they are unfairly burdened by complicated, costly regulations uniformly applicable to both large and small operations; by insensitive Federal regulators; and by detailed, time-consuming paperwork requirements. Such regulations strain the limited resources of small business owners who find that their limited capital must be spent on compliance and their precious time consumed by redtape demands. It is simply unfair to expect small outfits to be subject to the same rules as their counterparts, when less burdensome methods could be adopted and still serve the mandate of the applicable statute.

The measure under consideration today revises Federal administrative procedures so that whenever a Federal department or regulatory agency under-

takes a rulemaking, it must perform an analysis of the economic impact, including the cost of compliance, of a proposed rule on individuals and small businesses, organizations and governmental units. The purpose behind this requirement is to assure that Government agencies adopt reasonable alternatives, consistent with the underlying substantive statute which would be less burdensome for smaller concerns. The proposal spells out a number of solutions agencies are to seriously consider to insure that rules promulgated are tailored to fit the size and scale of the parties to be regulated. The alternatives recommended to minimize the impact of a proposed rule on individuals and small entities include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation and simplification of compliance and reporting requirements; and

Use of performance rather than design standards.

Let me point out that Federal agencies are not limited to consideration of these alternatives only. Other reasonable means of assuring regulatory flexibility may be discussed. But, these alternatives are included in the legislation so that agencies will be on notice of their authority and, in fact, of their duty to take flexible steps in their regulation of small entities, if this would be consistent with the applicable statute. The alternatives the agency reviewed and deemed feasible, along with the reasons why any were rejected, must accompany issuance of the final rule.

When undertaking a regulatory flexibility analysis, Federal agencies are also required to evaluate the impact of recordkeeping and reporting requirements imposed by a proposed rule, including an estimate of the time necessary to complete such paperwork. Additionally, S. 299 directs the agencies to actively seek the participation of small businesses, organizations and governmental units in the consideration and formulation of proposed regulations. To insure adequate advance notice, each agency will have to publish semiannually an agenda of rules and regulations expected to be issued or reviewed during the coming year. Finally, at least once every 10 years, agencies must assess regulations currently on the books, with a view toward modification of those which unduly impact on small entities.

I must emphasize that this legislation is not designed to confer special favors or advantages on certain individuals or groups within our society. Nor is it intended to strip away the advances we have made in laws promoting the public's health, safety, and well-being, including statutes calling for clean air and water, a safe workplace, and manufacture of safe goods, to name just a few. Small business owners who testified before the Small Business Committee have not called for a wholesale abrogation of these laws. Rather, they have sought recognition that the regulations implementing these laws accommodate the size and capabilities of affected parties. I feel that S. 299 ably accomplishes these goals.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield?

Mr. MCDADE. I yield to the gentleman from Michigan.

Mr. BROOMFIELD. Mr. Speaker, I rise in support of this bill.

Mr. Speaker, I would like to see congressional action to improve Federal agency rulemaking for all segments of our economy, and I certainly support S. 299 which is a positive beginning toward reducing the regulatory burden imposed upon small business by the Federal Government.

Small business plays a vital role in our Nation's economy. As a group, small businesses exemplify the traits which made America great. Today, however, this important sector of our economy is being crushed by the weight of Federal regulations and the resulting paperwork. One of the most frequent complaints I hear from the small business people of my district concerns the burden of Federal regulations, and I believe this is true of most of us in the Congress. The small business community's message to us regarding the Federal regulations and paperwork burden has been loud and clear: Reduce it. And that is the aim of this bill: To reduce the impact of Federal regulations on small businesses.

The bill does not call for a special commission to make a study of the problem and issue a report to Congress. Nor does it call for a new agency to deal with the continuing growth of regulations. This bill checks the growth at its source.

This legislation will make some overdue changes in the way the Federal agencies develop and issue regulations. It requires the agencies to weigh carefully the effects of their rules on small businesses and not issue those regulations whose benefits do not justify their costs to small business.

It is not the intent of the legislation to undermine the important progress our country has made during the past two decades in providing safer food, drugs, places of work, and cleaner air and water. We must protect the health and welfare of people as well as small business. Many regulations are essential and were developed in response to rising expectations and demands of the public that the Federal Government "do something about that."

This bill does not seek the elimination of Federal regulations, but a control of the bureaucrats. It deals with those Federal regulations that severely impact small business, and are not necessary, equitable, or very poorly serve the public interest. The legislation meets the justified concerns of small businesses without sacrificing progress toward meeting the goals established by legislative mandate and public need.

This bill gives the Members of the House a chance to really do something about a major problem facing small business. It is not a final answer, but it is a first step toward keeping the regulatory agencies from being a nightmare for small businesses. I urge my colleagues to support it.

Mr. Speaker, I wonder if the gentleman from Pennsylvania would join me in a little colloquy on the intent of this bill.

Mr. MCDADE. I would be delighted to.

Mr. BROOMFIELD. Mr. Speaker, I am concerned about the difference between this bill and H.R. 4660 which I cosponsored, was approved unanimously by my subcommittee and was passed out of the Small Business Committee. Particularly, I am worried about whether the agencies are actually required to analyze their regulations for impact on small businesses, or may merely slide over potentially devasting provisions with only a cursory glance.

Mr. MCDADE. My friend, the gentleman from Michigan, as usual, has raised a tremendously important question, one that we looked at in the subcommittee with diligence. May I say that it is the intent of our committee, and we are the people who wrote and reported the companion bill, and I believe I can speak for the members of the committee, I know I certainly speak for my friend, the gentleman from Massachusetts, who has had 3 years of his life invested in this bill, that agencies and departments have a positive duty under this legislation to determine the impact on small businesses of each and every new regulation and a specific, and I repeat, specific statement of businesses to which the new rule will apply and the proposed alternatives to reduce that impact. Furthermore, the agency has a positive duty to consider alternatives that would lessen the impact upon small business.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield further?

Mr. MCDADE. I would be delighted to yield to my friend.

Mr. BROOMFIELD. But what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy, or incomplete?

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired.

Mr. KINDNESS. Mr. Speaker, I yield 2 additional minutes to the gentleman from Pennsylvania.

Mr. BROOMFIELD. Mr. Speaker, repeating the question, but what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy or incomplete? What if the agency ignores significant information provided by an affected individual; or, more importantly, what happens if the agency ignores its own findings or makes a conclusion that is not in keeping with its own facts?

Mr. MCDADE. Mr. Speaker, again I want to commend my friend. The question, I think, is terribly important as we establish the legislative history of this piece of legislation.

Let me say unequivocally as a member of the committee that wrote this bill, that in that instance, upon review of the final regulation, it is the intent of our committee that the court should strike down the regulation.

Now, I must make it clear that there are no intermediate court reviews. The

only review will be for final regulations; but when the court does review it, and I know I speak for my friend, the gentleman from Iowa, the distinguished chairman of the subcommittee on this, when the court finally does review it, then we intend that this regulation shall be invalidated.

Mr. BROOMFIELD. Mr. Speaker, I thank the gentleman.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I am delighted to yield to my friend, the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, I just want to point out that it is difficult to make sure in legislation that every agency will do what it is expected to do; but to try to guarantee that, this bill provides, and our bill provided, although I think our bill was a little stronger, that the Chief Counsel for Advocacy has both the authority and the responsibility to carry through within the administration to make sure agencies do what they are expected to do under this legislation. The Chief Counsel for Advocacy does have a measure of independence within the administration and we will be sure he gets the personnel to do that.

Mr. McDADE. I thank my chairman. I could not agree with him more. It is our intent that our bill, and I agree with the chairman, it was stronger than the one we are considering today, but the intent of all of us in passing this legislation is to do exactly what the gentleman says and to make the agencies respond.

I thank my friend, the gentleman from Iowa, for his contribution.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I stand in support of this critical legislation. With the passage of this measure before us today, the House takes a major step forward on behalf of the overregulated small businessman and woman in this recession-ridden country.

For years now the small business community has been disproportionately burdened by the same reporting requirements as the corporate giants in the United States, those multinational, multibillion dollar entities which comprise the Dow-Jones industrial stock average. This is true even though the problems which gave rise to the Government action may not have been caused by the smaller entities.

It is obvious to all in this Chamber that unnecessary regulations create many barriers in many industries and discourage potential businessmen and women from introducing beneficial products and processes into the mainstream How far do you think Wilbur and Orville would have gone if faced with similar regulations?

Mr. Speaker, as a member of the Small Business Committee since 1965, I have actively supported and cosponsored legislation designed to achieve the stated goals of this legislation. It is critical for the future posture of our industrial, high-technology Nation that it provide the innovative and productive sector of our society, small business men and women, the opportunity to direct most of its energies on production and not paperwork.

Failure to pass this long-awaited measure translates into continued diminution of this country's image as a world leader in innovation and technology. The long-term effect will be that the Japan's and Germany's in the world marketplace will continue to surge ahead in their relative productivity figures.

Therefore, it is imperative that Federal agencies endeavor to fit regulatory and information requirements to the scale of the businesses. If we can accomplish the objectives of this legislation, small businesses throughout the United States will save the millions of nonproductive man hours and billions of dollars required each year to comply with these unnecessary regulations.

I urge passage of this important matter.

□ 1520

In closing, Mr. Speaker, I want to congratulate the subcommittee, the gentleman from Iowa (Mr. SMITH) and the gentleman from Florida (Mr. IRELAND), who is chairman of the subcommittee. I also want to thank the gentleman from Pennsylvania (JOE McDADE) and all of the others on the Small Business Committee, who have worked so hard and diligently for the past 3 years on this piece of legislation which I, too, have cosponsored.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. NOWAK).

Mr. NOWAK. Mr. Speaker, today we will consider landmark legislation on behalf of small business. For the first time, Government regulations must be designed to "fit the scale of those being regulated." Regulatory flexibility is not a new concept. Both Houses of the Congress have considered similar measures over the last few years.

Recently, I voted, along with 29 of my other colleagues on the Small Business Committee, to report a similar bill, H.R. 4660. And every Member knows the issue: They have been directly involved with constituent cases, and have seen how excessive Government regulations hamper smaller firms.

S. 299, the Regulatory Flexibility Act, is the first step toward the establishment of a broad, tiered Government policy, one which recognizes the special needs and limits of smaller firms. Ultimately, this policy will restore our free enterprise system.

It will insure that the small business community will continue to create the jobs, competition, and innovation our economy so desperately needs in the 1980's.

S. 299 provides a framework which will yield regulatory flexibility. Federal agencies are required to periodically publish a regulatory flexibility agenda. And they must prepare a regulatory flexibility analysis which will explain how their rules can be tiered to accommodate smaller firms. Lastly, they must review existing regulations and change them if they adversely affect small business.

Tiered regulations are not a drastic departure from past regulatory practice. A good example of a two-tiered reporting requirement is the personal income tax form. Salaried persons earning less than $20,000 a year are permitted to file a short form, 1040A, while others fill out the more detailed long form.

The Securities and Exchange Commission has embarked on an ambitious program of tiering. The Department of Energy tiers, the Environmental Protection Agency tiers, the Occupational Safety and Health Administration tiers. The problem is that, in some cases, past efforts to promote flexible regulations within the agencies have been undertaken without adequate economic analysis. The results are sporadic and sometimes inconsistent.

What this bill would do is impose an orderly, Government-wide, process on a rather ad hoc process. Some may ask, if we impose too many restrictions on the agencies' informal rulemaking, are we opening the door to the possibility that agencies will get around the restrictions by increasing enforcement efforts in an attempt to establish legal precedents? Agencies, of course, can, and should pursue violators of the law. However, when enforcement becomes petty or ill conceived, Congress has shown little reluctance to step in and chastise agencies through the oversight and budget review process.

Small business' demands are not outrageous. They only want straightforward, equitable laws. They are willing to pull their own weight, to hire employees, sell their products, to pay taxes, and contribute to our economy. Today, unfortunately, what they have is a jungle of conflicting regulation, and a Tax Code skewed in favor of the wealthy and the large corporations.

Tiered laws and regulations will move us a step closer to our goal. S. 299 is an important and vital first step which should be overwhelmingly supported by this House.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. SKELTON).

Mr. SKELTON. Mr. Speaker, I rise in support of S. 299, the Regulatory Flexibility Act.

The House version, H.R. 4660, the Smaller Enterprise Regulatory Improvement Act was unanimously reported by the Small Business Committee on October 17, 1979, and had 245 cosponsors.

S. 299 was unanimously passed by the Senate August 6, 1980.

This legislation would require Federal agencies to assess the small business impact of their regulations and tailor them to fit the size of the entity being regulated.

Legislation of this nature was one of the major goals of the White House Conference of Small Business.

Our Nation's small businesses file more than 305 million Federal forms every year, totaling over 850 million pages and containing over 7.3 billion questions. The cost of this paperwork is about $12.7 billion, a cost that is eventually passed along to the consumer.

I commend the gentleman from Florida (Mr. IRELAND) for his work and leadership on this measure. I support it and urge its passage.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. HEFTEL).

● Mr. HEFTEL. Mr. Speaker, I rise in support of S. 299 as a token recommendation of the necessity for better protecting small business from the consequences of rulemaking by Federal agencies. It is mandatory that these agencies analyze before the fact proposed rulemaking in terms of the consequences for small business. It is unfortunate that the bill is not stronger and I would hope that this body would consider carefully the necessity for strengthening it in the future if such a need becomes apparent.●

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. IRELAND).

Mr. IRELAND. Mr. Speaker, today marks the next to last step of a very long journey—that of the odyssey of the concept of regulatory flexibility for small business. I need not take up the House's time explaining how the mounting tide of Federal regulation and paperwork has swept away small business after small business. We have all heard the horror stories. The Small Business Committee has worked on this issue for years.

The result of several years of effort in our committee was H.R. 4660. This bill gained 246 cosponsors. Over 60 more Members asked to cosponsor after the report on the bill had been filed. The main concepts of the bill were later incorporated into major House regulatory reform legislation. Apparently, that legislation may not proceed further this Congress. In any event, small business cannot wait any longer.

Today we have before us Senate bill S. 299. This bill, which passed the Senate unanimously, is essentially the same as H.R. 4660. In fact, in all candor, S. 299 improves upon several sections of H.R. 4660. In a discussion of issues which I will insert in the RECORD today, our understanding of S. 299, which we are taking up today in lieu of H.R. 4660, is carefully described. I would like to thank Congressman BUTLER for providing his well prepared statement to the House for its consideration before the vote on this act.

What will this bill do for small business? First, Federal agencies will be required to publish in the Federal Register every 6 months a regulatory flexibility agenda. This agenda will also be sent to the Chief Counsel for Advocacy at the Small Business Administration and agencies will also endeavor to notify small businesses of the agenda through other channels. The agenda will contain a summary of any rules to be proposed which will have a significant economic impact on small business as well as the name and telephone number of a knowledgeable agency official among other things.

Second, whenever an agency has to publish notice of general rulemaking they are to prepare and make available for comment an initial regulatory flexibility analysis. They then must prepare a final regulatory flexibility analysis after having reviewed all comments. In this analysis, they must explain how their rules can be "tiered" or their burdens on small business otherwise lessened.

Third, agencies must review all regulations currently on the books and determine the continued need for any rules which have a substantial impact on small business. They have 10 years in which to complete this task and may use 1-year extensions, not to exceed 5 years, to complete the task.

Finally, the Chief Counsel for Advocacy of the Small Business Administration will monitor agency compliance with this law and will report at least annually to the Congress on said subject.

The Members of the House should know that regulatory flexibility was one of the major priority recommendations to come out of the White House Conference on Small Business. Last November, the President issued an executive memorandum that directed Federal agencies to consider flexibility in future rulemakings.

Mr. Speaker, the United States is presently in the midst of a rapid and pervasive expansion of Government influence over business. To assure a future for private, competitive enterprise, Federal policy needs to give careful attention to ways of dealing with the increasing intrusion of Government into the mechanics of the marketplace.

The design of the regulatory process goes right to the heart of the relationship between the Government and the people. It is the most tangible contact many people have with their Government. Every aspect of our lives is affected in some way by Government regulation: The air we breathe, the food we eat, our daily transactions in the marketplace, our safety as we drive our cars or work at our jobs. Government intervention in the economy is today much more the rule than the exception.

Although Federal regulation has helped our society achieve many desirable goals, evidence is growing that too many regulations are poorly designed to begin with, or have outlived their usefulness. Such unnecessary regulations have imposed tremendous burdens on the public.

The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: First, the disproportionate impact of Government regulation on small business reduces the competitive capacity of small business, thereby placing Government in the strange position of encouraging economic concentration, and, second, consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

The time to act is now. The vehicle is S. 299.

I would like to take this opportunity to commend President Jimmy Carter for the leadership and concern he has shown in this area of regulatory relief for small business. While the congressional wheels were turning, the President put regulatory flexibility into an executive memorandum and in effect got the ball rolling early. His staff has been very helpful in the latter stages of this process and their expertise and assistance was much appreciated.

The Nation's small businesses owe a special debt of gratitude to the former chairman of the Subcommittee on Special Small Business Problems, Representative MARTY RUSSO. MARTY worked long and hard on this legislation and due to his appointment to the Ways and Means Committee was unable to continue as chairman. We all know that MARTY RUSSO has been a leader in the fight against needless regulation not only on this bill but also by his work on independent bakers' labeling problems.

Needless to say this bill has wide support. Chairman NEAL SMITH and ranking minority member, JOSEPH McDADE, of our committee have been towers of strength for years in the battle against overregulation of small business. Also, SBA Administrator A. Vernon Weaver, Chief Counsel for Advocacy Milton D. Stewart and, Jere W. Glover, Director SBA Office of Interagency Office Affairs, have been instrumental in this process. The National Federation of Independent Business and the National Small Business Association have played a major supportive role during considerations on this bill.

I would like to thank the subcommittee staff which has worked for several years on this issue—Stephen P. Lynch and Patricia E. Reese of the majority staff; Marvin W. Topping of the minority staff; and James W. Morrison, former consultant to the subcommittee.

Mr. Speaker, at this point I would like to insert in the RECORD a legislative history of H.R. 4660, a reply to Mr. SEIBERLING on the question of abuse of the size standards, a discussion of the issues involved in S. 299, and a letter from Senator CULVER.

I also would ask permission to revise and extend my remarks.

WON'T TIERED REGULATIONS ENCOURAGE LARGE BUSINESSES TO SET UP "DUMMY" SMALL BUSINESSES TO TAKE ADVANTAGE OF LESSER REQUIREMENTS ON SMALL BUSINESS?

The bill provides that the definition of a small business shall be that employed by SBA or a definition of the agency's choosing. The SBA definition, at 15 USC 632 provides, among other things, that a small business concern "shall be deemed to be one which is independently owned and operated . . ." This tough, explicit definition provided by Congress has been strengthened by SBA criteria which further refine the concept of a small and independent business. SBA has more expertise on this matter than any other agency in Washington. Its Size Standards Division has carefully researched the question of business size for many years. An important body of case law has developed around these SBA definitions.

For instance, the courts have held that the SBA definitions have the force of law. (See for example: *Otis Steel Products Corp. vs. U.S.*, 1963, 316 F. 2d, 937,161 Ct. Cl. 694.) The courts have also backed up SBA's refusal to consider an affiliate of a big business as a small business. (See, for example, *American Electric Co., vs. U.S.*, D.C. Hawaii 1967, 270 F. Supp. 689 and *Springfield White Castle Co. vs. Foley*, D.C. Mo. 1964, 230 F. Supp. 77.)

Thus, these highly-developed, legally binding SBA criteria should be adequate in nearly every situation. However, should a rare case arise in which an agency feels it needs even more stringent criteria to define a small business, the bill would allow the agency to de-

velop its own definition. Given these stringent safeguards against abuse, and given the bill's stipulation that critical matters of public health, safety, and welfare are never to be compromised, the issue of potential misuse of the tiers would seem to be fully addressed within the legislation.

SEPTEMBER 8, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: This is in response to your inquiry with regard to the judicial review provisions of S. 299 recently approved by the Senate. I understand that your concerns relate to part of the explanation on page 21457 in the Congressional Record of August 6, 1980.

I believe your concern can be resolved by the addition of the words "and consciously" between "completely" and "ignores" in lines ten and eleven of the second column, and by striking the word "therefore" in the eighteenth line of that column.

Sincerely,

JOHN C. CULVER.

LEGISLATIVE HISTORY OF H.R. 4660 OF THE HOUSE SMALL BUSINESS COMMITTEE

H.R. 4660 was the result of 3 years of hearings and related work by the Committee. During the Ninety-Fifth Congress two relevant bills were referred to the Committee, H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. Caldwell Butler of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative Andy Ireland of Florida. The purpose of his bill was to give Federal agencies flexibility in the issuance of Federal regulations.

Hearings were held on these bills on February 1, March 8, March 9, and March 16, 1978.

During this Congress, several similar bills were introduced and forwarded to the Committee. They were:

H.R. 1306, introduced by Representative Richard Schulze of Pennsylvania. The purpose of his bill was to require the preparation of small business impact statements in connection with Federal agency rules.

H.R. 1745, introduced by Representative Andy Ireland of Florida. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 2837, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of her bill was to require the preparation of small business impact statements in connection with Federal agency rules, and for other purposes.

H.R. 2908, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 3011, introduced by Representative Robert Lagomarsino of California. The purpose of his bill was to amend the Small Business Act to require Federal agencies to reimburse small business for certain paperwork costs.

Hearings on these and the concepts considered last Congress were held on April 5, April 24, May 17, and May 22, 1979.

In these eight hearings the Committee heard from almost 40 witnesses from the public and private sectors. The result of all of this was a Committee bill combining the original Butler and Ireland concepts with refinements—H.R. 4660. This bill was considered and ordered favorably reported by the Full Committee 30–0, on July 17, 1979, as amended. At present 246, including all 39 members of the Small Business Committee, are co-sponsoring this legislation.

THE NEED FOR THE LEGISLATION

The Committee has for the last several years received evidence and heard testimony from countless small businesses complaining about Federal overregulation. These individuals have not opposed all regulation, but have drawn attention to instances of too much regulation and of ill-conceived regulation which has had an extraordinary economic impact.

Most of the witnesses who addressed themselves to this legislation sought means for balancing the goals of Federal regulation with those of a market economy. One such witness, Dr. Murray L. Weidenbaum, the Director of the Center for the Study of American Business at Washington University in St. Louis, has devoted considerable effort to studying the various impacts Federal regulation has upon business. In testimony before the Committee, he eloquently outlined some problems of regulatory impact. Turning to the Occupational Safety and Health Administration (OSHA), for example, he noted that the agency "provided a complex pamphlet containing 24 pages of fine print just listing the applicable standards for 'general industry'." And the explanation of those standards? For this the reader was referred to 29 CFR 1910. How is the average businessman supposed to know that CFR is the Code of Federal Regulations, that 29 is the volume 29 dealing with labor, and 1910 is section 1910, devoted to OSHA?

"(Assuming such a business person eventually located) * * * a copy of 29 CFR 1910, he is in for some surprises. The document contains 455 pages of fine print, including algebraic equations and trigonometric functions, but no index. Let us assume, generously, that our small business executive skips over the obviously technical parts and turns to what seems to be a simple section—the definition of an exit. By way of reference, the dictionary tells us that exit is 'a passage or way out.' For OSHA, however, defining exit is a challenge to its bureaucratic prerogatives, and it is not found wanting.

"To OSHA, an exit is 'that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment * * *' to provide a protected way of travel to the exit discharge." Obviously, our business executive now needs to find out what is "a means of egress" as well as an "exit discharge."

"Exit discharge is the easier term. It is defined merely as 'that portion of a means of egress between the termination of an exit and a public way.' Next comes OSHA's definition of a means of egress: 'a continuous and unobstructed way to exit travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel (?) and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, exits, escalators, horizontal exits, courts, and yards.'"

Anyone who followed all this would ultimately discover that OSHA is saying that an exit is an exit is an exit. In the case of "ladder" there are three renditions of the same tedious set of definitions plus one trigonometric function.

OSHA is certainly not the only offender when it comes to abstruse regulations. One could note the proposed regulations on job testing written by the Equal Employment Opportunity Coordinating Council. The guidelines were drafted with the best of intentions—to assure that tests do not discriminate on the basis of race, color, religion, sex or national origin. The objective surely is worthy. Yet the guidelines have been challenged by such professional organizations as the American Society for Personnel Administration and the American Psychological Association.

Reading the proposed regulations reveals the basis for the objections. Here is a typical section, one of which in fact attempts to ease the burden on employers:

"A selection procedure has criterion-related validity, for the purpose of these guidelines, when the relationship between performance on the procedure and performance on at least one relevant criterion measure is statistically significant at the .05 level of significance * * * If the relationship between a selection procedure and a criterion measure is significant but non-linear, the score distribution should be studied to determine if there are sections of the regression curve with zero or near zero slope where scores do not reliably predict different levels of job performance."

Should such guidelines be enforced, the result would surely not be fairer testing but a shift from what would be very costly and cumbersome procedures back to the simpler but far more bias-prone oral interview.

A CASE STUDY OF REGULATORY EFFECT ON SMALL BUSINESS LABELING RULES AND INDEPENDENT BAKERS

The Subcommittee on Special Small Business Problems conducted all the hearings leading up to H.R. 4660. In addition they have held many other hearings concerning regulatory impact on small business. One of the most telling examples of what is happening came in their hearings on small bakers and a Food and Drug Administration labeling regulation.

In the 1930's there were more than 10,000 independent bakers in America. Between 1939 and 1964, while the volume of bread production increased fivefold, the number of bakery plants declined to less than 5,000. Today the number of independent bakers is less than 1,000. Several large metropolitan areas have only one independent to serve them.

Independent bakers have made significant contributions to their industry as well as to the economy. For example, all of the following bakery innovations are attributed to independent bakers:

1. Wrapped bread.
2. Marketing of sliced bread.
3. Baking of a continuous-mix bread.
4. Bag bread.
5. End labels.
6. Bread in cellophane.
7. Bake-and-serve items.

Under sections 401 and 403 of the Federal Food, Drug, and Cosmetic Act, Congress directed the Food and Drug Administration to require careful and detailed labeling of food products. In particular, the act requires that all foods composed of two or more ingredients be labeled with the common or usual names of those ingredients. The FDA, in interpreting the law has for the most part required that ingredients be listed in the order of predominance.

In 1978 the FDA was prepared to put a new labeling regulation into effect. The rule had no flexibility and called for all products to be listed in strict order of predominance on the label. Since small bakeries tend to have more variable sources of supply the requirement would have necessitated the printing of an almost infinite number of labels by such small operations. Small bakers complained to the Subcommittee that this one new rule would add vast new costs and would drive a number of them out of business.

Subcommittee members had several meetings with the bakers, FDA officials, and consumer advocates. Once various consumer representatives who had urged the FDA to adopt the regulation saw what the results

would be, they were ready to modify the rule. The FDA was very cooperative. A new rule was issued, taking into account the needs of smaller bakeries.

Based on this and other similar experiences, the FDA has now set up four information desks throughout the nation for small business. The agency also now seeks out small buinesses for all their views, not just on labeling.

The lesson of this experience is important. An accelerated decline in independent bakeries would have led to a concentrated group of dominant companies and might well have created a baking monopoly or oligopoly. Characteristics of monopolies and or ologopolies are all to well known—controlled output, high prices, and excess profits. Such a situation would confront the consumer with a market functioning according to the whims of a few. An objective of Federal regulation is to stop such concentration, not to create it. But a Congressional Subcommittee cannot realistically be expected to intervene in every such situation.

OTHER EXAMPLES

The Committee's files are replete with documentation of burdensome regulations adversely affecting small business. Productivity and innovation have ben curtailed. Inflation has been increased. Instances like the following are unfortunately all too commonplace:

A gas station owner spent 600 hours last year filling out just his Federal reporting forms.

An Idaho businessman paid a $500 fine rather than fill out a Federal form which was 63 feet long.

A New Hampshire radio station paid $26.23 in postage to mail its license renewal back to Washington.

A dairy plant licensed by 250 local governments, 3 states, and 20 agencies had 47 inspections in 1 month.

A butcher had one Federal agency tell him to put a grated floor in his shop one month and then the next month was told by another Federal agency he could not have a grated floor.

A company was forced out of the toy business because one of its main products was inadvertently placed on a Federal ban list.

An Oregon company with three small shops received Federal forms weighing 45 pounds.

THE OVERALL REGULATORY CLIMATE FOR SMALL BUSINESSES AND SMALL ORGANIZATIONS

A regulatory environment which necessitates the hiring of lawyers, accountants, engineers and consultants for businesses of any size to survive will clearly provide competitive advantages of the largest, most automated businesses and increase the size of firms which can enter the marketplace or remain there.

Professor Milton Kafoglis, formerly Senior Economist of the Council on Wage and Price Stability, set forth the problem in testimony on this legislation:

"* * * the regulatory agencies usually assume—contrary to fact—that costs imposed by regulation can be passed through to consumers with equal ease by all firms. This assumption tends to blunt the concern of regulatory agencies about disproportionate impacts on various sizes and classes of business.

"Though 'uniform' regulatory treatment of all businesses seems to be a reasonable criterion, it must be remembered that there are real differences and that uniformity of regulation could represent an economically inefficient solution * * *

"Uniform application of regulatory requirements seems to increase the size of firm that can effectively compete. In technical jargon, the unit-cost curve of the firm is shifted upward and to the right with its minimum point occurring at a larger output. That is, the imposition of regulations will, in most cases, artificially increase the size of the firm that can survive. If one employs the economists' theoretical 'dominant firm' model and introduces such upward shifts in cost curves (the small firm's cost curve shifting more than that of the dominant firm's), the market share of the dominant firm will increase while that of the small firms will decrease. As a result, industrial concentration will have increased. Thus, the 'small business' problem goes beyond mere sympathy for the small businessman, but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly.

"The usual paperwork and reporting burden whose total costs are invariant to output is the most obvious example of economies of scale imposed by regulation. Whereas large firms typically have a managerial structure and/or legal section that can absorb these costs with either no increase in staff or with an incremental increase, small firms must either add increments which are large relative to the size of the firm or seek consulting services which are expensive and not very highly specialized in the firms' particular needs. All such expenses are invariant to output, and their cost per unit of output declines as output increases. Such costs raise the cost curves of all firms but place the small firm at a relative disadvantage on a unit-cost basis.

"More importantly, the technology imposed by most regulations is itself subject to scale economies * * *

"Standards which impose technologies involving large fixed costs also raise barriers to entry, imposing capital burdens that small or medium-size firms cannot handle, and solidifying the market positions of existing firms. Indeed, large firms are likely to support such regulations since they are capable of insulating the industry from new competition * * *

"* * * there is not to my knowledge a government regulation which (if uniformly applied to all firms) would generate diseconomies of scale and increase the number of firms in an industry, thus encouraging deconcentration and increased competition."

Our Committee found ample evidence, on the other hand, that flexible regulatory strategies are not only workable in theory but have in fact been used on a sporadic and ad hoc basis throughout the agencies. An example of a two-tiered reporting requirement with which most Americans are familiar is the income tax form. Salaried persons, earning less than $20,000 are permitted to file their tax returns on Form 1040A (the "short form"), while other taxpayers are required to fill out Form 1040 (the "long form"). In this instance the Internal Revenue Service has made a determination that less information is necessary from low- and middle-income taxpayers with a single major source of income than is necessary from other taxpayers. Other agencies on occasion use multi-tiered techniques and they should continue to do so.

The Committee discovered numerous examples of such flexibility (both legislatively and administratively mandated) throughout the Code of Federal Regulations. The National Federation of Independent Business (NFIB) presented schematic charts of some of the varieties of existing "tiered" Federal regulation in a dozen different regulatory areas. Other witnesses compiled lists of flexible regulations in specific industries.

Unfortunately, however, efforts to promote regulatory flexibility have until now been sporadic, lacking in overall Congressional guidance, and at times ill considered. For example, the General Accounting Office's (GAO) testimony drew attention to the Department of Energy's crude oil entitlements program, which has enabled smaller refineries to purchase crude oil at subsidized prices. An unintended consequence of this program was that 37 of the 38 refineries built in the United States between January 1974 and September 1977 were designed to process less than 40,000 barrels per day, the threshold of the entitlements program, whereas the minimum technologically efficient refinery size is 175,000 barrels per day.

Our Committee is persuaded that the most direct and practical solution to counterproductive flexible regulations, is to stimulate a much greater degree of participation in rulemaking by affected parties. Offering agencies the means for tailoring regulations to the resources of affected parties must be accompanied by a strong mandate to involve those parties in the deliberations.

Thus, although administrative and legal precedents support the general approach of the bill, they do not obviate the need for the legislation.

In fact, much of the thrust of the legislation could be met by the agencies by adapting their application of Executive Order 12044 to the demonstrated problems of small businesses and small organizations.

The Executive order requires that regulations should be as simple and clear as possible and should achieve legislatively mandated goals effectively and efficiently. It states that:

"They shall not impose unnecessary burdens on the economy, on individuals, on public and private organizations, or on state and local governments."

While this policy is completely consistent with the purposes of H.R. 4660, such as reducing unnecessary requirements and simplifying and clarifying necessary ones, there are numerous provisions of H.R. 4660 which are not addressed in the Executive order.

The order does not address the issue of the different impact of uniformly applied regulations on individual segments of the population, nor does it urge agencies to issue rules which apply differently to such segments of the population. Although the order does improve the opportunities for public comment on substantive rules, its provisions are narrower than those of H.R. 4660, and it does not open reporting requirements for public comment.

Finally, the Small Business Committee noted that enforcement of the Executive order is restricted. Since the question of agencies' compliance with the order is not subject to judicial review, realization of the benefits the order seeks to provide will largely depend upon the personal sensitivity and good faith of the rulemakers. Adherence to the order by the independent regulatory agencies, which are not part of the executive branch, is completely voluntary. Moreover, the Office of Management and Budget has limited structural mechanisms for enforcing the order, even within the executive agencies.

H.R. 4660 does not conflict with the Executive order and does not represent a duplication of objectives. H.R. 4660 would supplement and strengthen the order in several ways, notably by adding two new regulatory objectives: improving public participation and an assessment of alternative regulatory strategies in light of their impact on small concerns. Thus, the Committee believes this legislation is not only necessary, but timely.

Indeed, the Committee agrees with the testimony offered by the General Accounting Office (GAO) that:

"In the absence of Congressional action establishing comprehensive guidelines to improve agency rulemaking, we would support legislation designed specifically to ease the regulatory burden on small business."

H.R. 4660 has been carefully designed to permit such broad scale reform in the future, and nothing in the legislation would stand

in the way of comprehensive rulemaking reform. Each major aspect of the bill accords with generally accepted principles under Executive Order 12044 or existing administrative law.

THE CONCEPT OF FEDERAL REGULATION OF THE MARKETPLACE

Federal regulations have the effect of law when finalized. Though thousands of new regulations are created every year, very few are ever taken off the books. Estimates of the cost to the economy of all these regulations ascend to $100 billion. In such a situation, it is important to keep track of the main lines of reasoning in support of Federal intervention in the marketplace.

There are two main arguments. Market failure, a term which economists use to designate a flaw in the marketplace which produces undesirable consequences, can create several problems. Regulations can remedy many of these problems. Among them are:

Natural monopoly, resulting in high prices, reduced output, and excess profits;

Interdependencies in natural resource extraction, resulting in the inefficient use of natural resources;

Destructive competition, resulting in chronically sick firms unable to satisfy consumer demand;

Externalities, which impose costs in society but not on the person who causes them; and inadequate information in the marketplace, resulting in poor decisions and wasted resources.

A regulation in any of these areas is meant to improve the market system and aid competition.

The second line of reasoning concerns social or political problems which demand regulation. Among these are regulations which are intended to:

Alter income distribution;
Strengthen national security;
Improve the environment;
Protect public health and safety;
Promote new industries;
Give special protection to groups like small business or family farms;
Provide special assistance to smaller communities and or rural areas.

In each of these cases, regulation serves to meet an important social need. Difficulties arise when bureaucracies which are not responsible to the electorate exceed their statutory authority or fail to consider rulemaking alternatives which would have a less burdensome impact on the regulated public. It is this imbalance between goals and unnecessary burdens which this legislation is designed to address. The Committee did not intend to sanction any diminution of the legislatively mandated goals of Federal regulation.

AGENCY ENFORCEMENT

During the hearings an issue arose concerning an option which agencies may use rather than regulation. One of the witnesses before the Subcommittee, Mr. Calvin Collier, a former Deputy Director of OMB and former Chairman of the Federal Trade Commission, raised the possibility that agencies confronting new rulemaking procedures might evade them by resorting to the creation of legal precedents through enforcement actions against "worse case" offenders, and subsequent enforcement of such precedents upon the regulated public as though the precedents were actual rules.

While our Committee believed such agency action is much more likely under the more sweeping regulatory reform measures now pending before Congress, and that the Smaller Enterprise Regulatory Improvement Act would impose little additional burden on any agency, the Committee would note that agency enforcement budgets will be subject to rigorous oversight if evidence suggests that enforcement actions are being used as a surreptitious form of "rulemaking."

A PUBLIC PROBLEM

Overregulation is not just a small business probem. It is a problem with significant public consequences. One witness summed it up this way:

"The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: (1) the disproportionate impact of government regulation on small business reduces the competitive capacity of small business, thereby placing government in the strange position of encouraging economic concentration, and (2) consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

"The disproportionate impact of regulation on small business stems from economies of scale inherent in the regulatory process. This fact is neither unexpected nor stunning once attention is drawn to it. But as often is the case of the obvious, we tend to dismiss it in our preoccupation with the more specific."

On October 17, 1979, H.R. 4660 was referred to the House Judiciary Committee. On May 28, 1979, the Judiciary Committee was discharged from further consideration of H.R. 4660.

DISCUSSION OF ISSUES

When the Senate passed S. 299 on August 6, a "Description of Major Issues and a Section-by-Section Analysis" was provided to explain certain substitute language adopted for that bill. (See 136 Congressional Record 21452–21461.) Members of the House of Representatives took an active role in helping the various parties in interest achieve the understandings which were necessary to bring the measure before the Senate, just as members of the Senate have provided much help in bringing the measure before the House of Representatives today. Thus the Senate document entered into the Record on August 6 already reflects many of the concerns of House members who have been involved in the development of regulatory flexibility legislation. Indeed, much of S. 299 as passed is derived from provisions of H.R. 4660. Rather than commenting again on each of the various sections of S. 299, as passed by the Senate, this Discussion of Issues will supplement the Senate document by noting some general themes and objectives of the legislation, occasionally amplifying some of the points made during Senate consideration, and drawing upon, where appropriate, House Report 96–519 on H.R. 4660 (which should be incorporated by reference into the legislative history of the pending bill.) That House report more fully conveys the views on regulatory flexibility legislation of the principal authors and sponsors in the House of Representatives. Agreement on the matters discussed in this Discussion of Issues has helped provide the broad political consensus necessary to bring S. 299 before the House of Representatives in lieu of H.R. 4660. House members who have worked on this legislation are deeply grateful for the active and creative participation of Senators Culver, Nelson, Laxalt, Thurmond, and others in developing S. 299. Senator Culver has shown particular strength and perseverance in the long effort to enact regulatory flexibility legislation.

In general, regulatory flexibility legislation is designed to eliminate the unnecessary regulatory burdens which attend uniform or rigid regulatory strategies, particularly with respect to those on whom such unnecessary burdens weigh the most heavily—small businesses, small organizations, and small jurisdictions of government. The legislation directs agencies promulgating federal rules, reporting, and recordkeeping requirements to carefully examine them with the purpose of seeking less burdensome "flexible" alternatives.

The agencies are directed to assess such options as "tiering" (that is setting differing and less burdensome requirements on smaller entities), exemptions from all or parts of rules, the structuring of differing timetables for compliance, the use of performance standards rather than design standards, and so on. It is important to note that agencies are not restricted to use of the options specifically enumerated in S. 299. When S. 299 refers (in Section 603(c)) to "any significant alternatives to the proposed rule" and then enumerates alternatives "such as" those mentioned above, it means just that—that those alternatives are examples or possibilities, but that any other appropriate flexible regulatory strategy which is suggested must be given serious consideration. The Act does not specifically mention the adoption of less frequent reporting requirements for smaller entities, for example, although this form of flexible regulation is already used by many agencies, and is indeed completely consonant with S. 299. Equally appropriate in the future, although again not explicity noted in the Act, would be such current agency practices as adopting multi-tier regulations, and using criteria which have the effect of tiering by size but which do not directly measure business size (as for example, the EPA regulations affecting leather tanneries which are tiered according to volumes of effluent discharge.) The Act does not specifically cite the entitlements programs now in use by some agencies, although entitlements programs are a form of flexible regulation. Nor does it take note of imaginative new approaches like the Environmental Protection Agency's "bubble" concept, which takes into account that agency's mandate to clean up the air while lessening unnecessary burdens through a flexible application of a statute.

Neither S. 299 nor any other single piece of legislation could ever begin to specify the appropriate solution to address every situation regulators will encounter, now and in the future, and it would be unwise to attempt to do so. Reguatory flexibility should be viewed by the agencies as Congressional encouragement to reward agency personnel for seeking out and applying creative solutions to the genuine problems our smaller entities face in complying with broad, general statutes. Statutory mandates must never be compromised—that is why section 606 explicitly states that the Act does not alter any other statutory standard—but agencies are required by the Act to solicit and consider flexible approaches in the application of their statutes, where legally permissible.

Agencies may undertake initiatives which would directly benefit such small entities. Thus, the term "significant economic impact" is neutral with respect to whether such impact is beneficial or adverse. The statute is designed not only to avoid harm to small entities but also to promote the growth and well-being of such entities.

Acertaining the impact on small entities is the heart of the regulatory flexibility analysis. It is a finding of significant economic impact on a substantial number of small entities which triggers the consideration of flexible regulatory strategies. Evidence of such impact upon any one of the three types of entities—the small businesses, the small organizations or the small jurisdictions of government—requires agency compliance with applicable provisions of this legislation. Normally, rules will not affect two or three types of small entities simultaneously, but when this does occur, agencies should take steps to involve each type of entity in their

rulemaking, and account for each in their regulatory flexibility analyses. Agencies should promulgate final rules whose flexible provisions are based on the rule's potential impact on each of the different types of affected small entities.

Thus the possibility that a rule may cause a substantial impact on a significant number of small entities is central to an agency's determinations under this legislation. Exactly what a "significant economic impact on a substantial number of small entities" is will vary from case to case. For example, if there were 500 small organizations of a certain description, and 200 of them would face major new reporting requirements if a certain rule were implemented, then the rule should be expected to have a significant economic impact on a substantial number of small entities (in this case small organizations). If there were only 25 small businesses in an industry dominated by 12 large businesses, then a rulemaking initiative which would threaten the economic viability of 15 of those small businesses, and thus adversely affect competition and industrial concentration, would have a "significant economic impact on a substantial number of small entities" within the meaning of the legislation, even though the absolute number of small businesses involved would be minuscule. As this example makes clear, economic impacts include effects on competition and economic concentration. The phrase "significant economic impact on a substantial number of small entities" is ambiguous in order to cover critical situations such as these examples without imposing exact numerical thresholds on the agencies overall. But clearly, any anticipated rulemaking which common sense would suggest could have a direct, noticeable economic impact on several thousand or more small entities (of any type) should be considered as included within the concept of having a "significant economic impact on a substantial number of small entities." Obviously, agencies are not expected to estimate the unforeseeable or to avoid ever making any mistakes in their estimates. Rather, the agencies should make good faith efforts to arrive at reasonable estimates and should scrupulously follow the procedures outlined in the legislation.

Those procedures can be delineated in a step-by-step manner. The initial decision the agency makes is a determination that the provisions of this Act are applicable to the agency and to the actions that it takes. This is clearly an important decision, which the agency should consider very seriously. The legislation is intended to be as inclusive as possible, and doubts about its applicability should be resolved in favor of complying with the provisions of the Act. Any significant comments from the public or especially the Office of Advocacy that a rulemaking should be accompanied by a regulatory flexibility analysis should be given the utmost serious consideration by an agency.

Although these more inclusive interpretations may result in additional effort for the agencies in the short run, such inconvenience should be viewed in light of the final rule's long-term advantages: more just application of the laws and more equitable distribution of economic costs, which will ultimately serve both the society's and the government's best interests.

It is difficult to ascertain how many regulatory flexibility analyses agencies will be required to prepare or publish under this Act. One estimate is that there will be about 500 per year. There may be more or fewer. The number will surely vary according to the subject areas the agencies choose to consider in any given year.

Having made the determination described above, the agency must then perform the regulatory flexibility analysis. The first step in this analysis is a careful estimation or projection of whether a rule, not yet proposed, may if implemented have a significant economic enact on a substantial number of small entities. This estimation will become a part of the agency's permanent rulemaking record. Under normal circumstances, a positive finding regarding impact should be followed by notification on the agendas required by section 602 that the rule, if implemented, could have such an effect on small entities. Sometimes, very early in rulemaking, agencies may only know in general terms that an area of rulemaking activity could have such an effect. This, too, should be noted on the agendas. In other words, an agency does not need to have a specific rule already developed to provide the public with agenda notification; agency activity in an area which is likely to result in a proposed rule having such an effect should also be noted. For purposes of agenda publication, agencies should interpret potential impact liberally. It would be preferable to have the agendas err on the side of anticipating more impact than subsequent rulemaking records indicate is likely to occur than to have such impact overlooked on agendas. For in cases where such potential impact proves to be unsupported by subsequent evidence, agencies are completely free to suspend any further regulatory flexibilty analysis (provided appropriate certification is published pursuant to section 605(b) of this Act), but the rulemaking record will have been enhanced by public comment on the agenda items. (Such public comment on agendas should be gathered in accordance with Section 609 of this Act, to the extent feasible.) A different type of situation occurs when an agency obtains evidence later in its rulemaking that suggests that an estimation of "significant economic impact on a susbtantial number of small entities" would be appropriate. In such a situation, the agency should proceed directly to the publication of an initial regulatory flexibility analysis. In other words, when, an agency must consider or act upon an item which did not appear in an agenda, it may do so. And an agency will not be required to consider or act upon any matter solely because it appeared in an agenda. In preparing agendas, as with other responsibilities under this Act, agencies may reduce their paperwork and avoid duplicative analyses by considering a group of closely related rules as one rule for purposes of simplifying analyses. But agencies may not avoid the requirements of this Act by dividing a larger rule into smaller rules with less impact.

Following the receipt and consideration of comments on the agency's impact assessment, as published in its agenda, the next step in the regulatory flexibility analysis is either the agency head's certification, under section 605(b), that a rule will not, if promulgated, have a significant economic impact or a substantial number of small entities, on the publication of an initial regulatory flexibility analysis under section 603. A certification under 605(b) must be made by the agency head personnaly, must be based upon sufficient evidence with in the rulemaking record, and must not ignore or fail to account for any significant evidence to the contrary. Certifications under section 605(b) should not be abused or taken lightly; they represent an important step in the evolution of an agency's regulatory flexibility analysis and overall rulemaking. Such certifications will also become a part of an agency's rulemaking record. For the administrative convenience of the agencies, the Act allows, certifications under section 605(b) to be published either concurrently with proposed rule publication, or after publication of an initial regulatory flexibility analysis (under section 603) concurrently with final rule publication. This timing of publication is flexible so that section 605(b) certifications can serve as the final evaluation in the regulatory flexibility analysis: the point at which the evidence makes clear that a flexible rule is not warranted by a rule's potential impact.

Agencies are required to notify the Chief Counsel for Advocacy of the Small Business Adminitration whether they publish an initial regulatory flexibility analysis under section 603 or whether they publish a certification under 605(b). The Chief Counsel's office was set up by Congress (under P.L. 94–305, 90 Stat. 669) to be an advocate for small business within the Federal Government. In that role, the Chief Counsel's office has been empowered to take part in a variety of inter-governmental activities, including participation in agency rulemaking proceedings. Comments by the Chief Counsel's office on agency certifications under section 605(b) should be viewed by the agencies as being just as significant as comments by the Chief Counsel's office on other parts of the regulatory flexibility analysis, such as comments upon the publication of the initial regulatory flexibility analysis under section 603. Because of the broad role Congress is assigning the Chief Counsel in the Administrative Procedure Act in monitoring agency compliance with this legislation, any comments submitted by the Chief Counsel in connection with an agency rulemaking should be given the utmost serious consideration by the agency. Agencies will benefit from the considerable experience of the Chief Counsel in developing flexible alternatives under this new area of law.

The reports on agency compliance which the Chief Counsel is required to submit to the President and to Congress under section 612(a) of this Act should include a listing of the Chief Counsel's comment submissions regarding the applicability to agency actions of provisions of the Act, including especially sections 602(b), 603(a), 605(b), and 610, as well as candid evaluations of all instances of disagreement between the Chief Counsel and the agencies involved. The reports will measure the progress of regulatory reform by compiling the number of regulatory flexibility analyses completed, rules under review, rules reviewed and flexible alternatives adopted. Inasmuch as the Chief Counsel is required to report "at least" annually, he may report more frequently, and may from time to time issue special reports on matters of particular significance with respect to regulatory flexibility implemention. Reports by the Chief Counsel's office, and other responsibilities of the Chief Counsel under this Act, should be implemented in accordance with existing procedures under that office's authorizing statute, P.L. 94–305. Section 612 of the Regulatory Flexibility Act provides that the Chief Counsel for Advocacy be permitted to appear as amicus curiae in any action in any views and the views of small entities with respect to the effect of a rule upon entities covered under the Act. This judicial role complements his already-established function of monitoring federal rulemaking affecting small business and participating in such rulemaking where appropriate.

After publishing an initial regulatory flexibility analysis, an agency should take the steps stipulated in section 609 for gathering comments, and should do so with special vigor if such steps have not already been taken following agenda publication under section 602.

Section 609 is quite explicit about the direct involvement of affected smaller entities in rulemaking. The participation of affected smaller entities in an agency's deliberations regarding flexible alternatives is an absolutely essential responsibility of an agency under this legislation. Such public participation will doubtlessly produce a number of significant contributions to an agency's search for the least burdensome

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regulatory strategy consistent with its mandate.

Analysis of comments gathered using these procedures, as well as comments, if any, from the Chief Counsel's office should form the foundation for the agency conclusions as expressed in the publication of the final regulatory flexibility analysis. An agency's final regulatory flexibility analysis of a rule should be directly linked to the final rule. It would not be reasonable for an agency to publish a finding that a rule is unnecessarily burdensome and that it could and should be made flexible, and for the agency then to fail to promulgate such a flexible rule.

Agencies may conduct emergency rulemaking in exceptional situations. The initial steps of a regulatory flexibility analysis need not be performed if a rule is being promulgated in response to an emergency, although the agency head must personally so certify, as in the case of certifications under section 605(b). However, as noted in section 608 (b), all rules, even emergency rules, must have a final regulatory flexibility analysis published for them (unless, of course, the agency publishes a certification under section 605(b) of this Act), but such publication may occur up to 180 days after the rule is promulgated. Failure to publish a final regulatory flexibility analysis within 180 days shall cause a rule to lapse.

To help agencies cope with unusual circumstances, particularly when unforeseen difficulties arise in the future, an agency head is permitted to extend the time limit for the review beyond ten years, for a year at a time, up to fifteen years. This authority should be used very sparingly, on a case-by-case basis for each rule involved. This provision of section 610(a) is most emphatically not intended to extend the review period beyond ten years on a wholesale basis for any agency. The agency plan for review of its rules, which must be published within 180 days of the enactment of this legislation, should be based on a ten-year cycle of review. In reviewing existing rules, agencies should follow the procedures described in sections 602–609 to the extent appropriate. Of course, such reviews should be consistent with the objectives stated within the underlying statutes of the agencies, as should all agency actions under this Act.

Ultimately, the Regulatory Flexibility Act is directed to agencies which in the past may not have known whether they were permitted by Congressional mandate to promulgate rules which were flexible enough to take into account special problems faced by small entities. The Act is designed to eliminate such uncertainty as well as to encourage agencies already promulgating flexible rules to continue doing so.

The sponsors of this Act hope that those agencies, and the agencies already working to implement flexible rules, will take their new responsibilities under this Act seriously and will make steadfast good faith efforts to comply. There are sanctions available for agencies which do not comply with this legislation, of course, in Congress and in the courts. This Act represents more than three years of careful work by both Houses of Congress to provide responsible legislative assistance to groups of Americans who feel sorely and justifiably afflicted by the way their government has treated them. Congress' concern about this problem is vividly expressed in the legislative history of regulatory flexibility proposals, a history which has included numerous unanimous votes in subcommittees, in full Committees, and on the Floor. In fact, there has never been a single negative vote cast against any regulatory flexibility bill since the introduction of the first such bill in the 95th Congress. Today's vote on the Floor of the House of Representatives finalizes a now general consensus that proper implementation of this legislation will result in much needed relief and significant benefits to our Nation's small entities.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from California, chairman of the Subcommittee on Administrative Law and Governmental Relations (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I should like to point out a few things in connection with this bill which we are today considering, S. 299.

First of all, this bill has never been considered by any committee or by any subcommittee of the House of Representatives. It stands here naked, by itself, the product of the other body, which was passed by the other body, but has never been referred to a committee of the House of Representatives.

Comment has been made, as to the subject matter of judicial review, to the effect that judicial review is provided for in this bill. I should like to point out that section 611 on page 15 of the bill provides as follows:

> Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

Insofar as thare may be Members who feel that judicial review is encompassed within this bill, I trust that the foregoing reference to the language of the bill itself will set that point straight.

I am willing to state as I stand here that this bill has some merit, and I emphasize the word "some." But I submit that it has very little.

The problems of regulatory reform are not fully addressed by this bill. If one were to use a form of common analogy, one could say that this is but a band aid on an economic cancer. The public and the business community have for years been clamoring for some relief from the overregulation from which we all suffer.

My subcommittee and I have worked long and hard to provide that relief. But apparently what we are confronted with now, under suspension of the rules, with no opportunity to amend, is a very small and inadequate substitute.

This bill, S. 299, falls far short of realizing the promise of regulatory reform as heralded so long ago by Executive Order No. 12044 which was issued on March 23, 1978, and which is now scheduled to expire on April 30, 1981.

In response to the public clamor, from all walks of life, for some meaningful reform of the regulatory process which would lift some of the burden of overregulation from the backs of our business and governmental community, the President issued Executive Order No. 12044 setting forth a realistic, meaningful, and hopeful proposal to make some real and substantial changes in the process under which Government regulations are issued to govern the business and community relationships of all our people.

In response to Executive Order No. 12044 I, together with Chairman PETER RODINO of the Judiciary Committee, and others, introduced the bill H.R. 3263 on March 27, 1979. That bill sought to bring about many improvements in the regulatory process and, at the same time, to extend its coverage to govern the regulatory procedures of the so-called independent agencies as well as those agencies which are a part of the Executive Office.

The Judiciary Committee's Subcommittee on Administrative Law, of which I am the chairman, conducted hearings for many months in order to obtain the information which would be necessary to mark up an effective bill which would carry out the purposes of Executive Order No. 12044. We had 10 days of testimony during which we heard more than 100 witnesses from every walk of life, from every section of the business community including small businesses and big businesses alike, from legal scholars, from the officials of many executive department agencies and from independent agencies, from legal scholars and practicing lawyers, from professors and administrative law judges, from organized labor, from public interest groups, Members of Congress, numerous Government officials and others. We benefited greatly from the opinions and experiences of this wide variety of witnesses. There followed 13 days of subcommittee markup before we concluded our amendments to the bill, H.R. 3263, and reported the same to the full Judiciary Committee.

Later the Judiciary Committee held 5 days of markup making sundry amendments to different parts of the bill but largely sustaining the work of the subcommittee.

In fact on May 14, 1979, when we concluded the fifth day of markup by the full committee, we were within about 2 hours of completing our work. Since then we have held the bill, H.R. 3263, in abeyance at the request of those who wish to work out some kind of compromise or agreement on two of the more controversial provisions of the bill; namely, those relating to the so-called legislative veto and those relating to the so-called Bumpers amendment.

Nevertheless, the bill, H.R. 3263, is completed in substantial respect and is an excellent bill which, with or without legislative veto and with or without the Bumpers amendment, could bring about the salutory and meaningful regulatory reform that the executive department, the legislature, the business community, labor, and the public so urgently need.

H.R. 3263 covers the entire spectrum of regulatory reform and would require many innovative techniques to be used by regulatory agencies in the preparation and promulgation of the rules and regulations to which it is directed. The bill would require advance notice to all concerned through a mandated regulatory agenda published twice a year identifying prospectively all major and significant rules that an agency might consider.

It requires regulatory analysis prior to rulemaking for all major and significant rules. As marked up by the Judiciary Committee that bill provides the maximum of regulatory flexibility which would take into account the specific needs of smaller businesses, smaller organizations and smaller units of government.

It would also require flexibility as to geographical sectors since it is obvious, for example, that a rule regulating water must be treated differently in a water rich area such as the Northeastern United States than in an arid area such as the Southwestern part of the United States. H.R. 3263 would require that regulations be drafted in plain English that can be understood by all, that there be an opportunity for public participation in the hearings on ruemaking procedure; and that there be review provisions for those regulations already in effect so that regulations which are no longer necessary could be eliminated and those which no longer meet the problems for which they are intended could be amended and modified. The bill, H.R. 3263, takes into consideration many other factors most of which are not even considered in the present bill S. 299.

One of the inadequacies of the present bill, S. 299, is shown by the following:

The question of whether Treasury regulations issued under the Internal Revenue Code are covered by S. 299 is not resolved by this bill. S. 299 was never considered in the Judiciary Committee nor in any subcommittee thereof. The bill by its terms applies only to the rules and regulations governed by section 553(b) of the Administrative Procedures Act, and that section excepts—excludes—interpretative rules.

Therefore, to the extent that Treasury Department regulations are in fact and in law interpretative rules they would be excluded. Otherwise, they would not be excluded. There are many other "open questions" in the bill which would be avoided by the passage of H.R. 3263.

Mr. Speaker, I respectively submit that the bill, S. 299, is not necessarily a bad bill. Truly, it amounts to nothing. It does not respond at all to, and does not meet, the need for regulatory reform which all of us have heard and considered during the past several years. It certainly does not meet the promise of regulatory reform that the public has come to expect as a result of the clamor of the last few years. After all the clamor and discussion concerning regulatory reform in the past 2 years the public has a right to expect a monumental work which will truly bring about meaningful and useful regulatory reform; instead of that what we are producing here today is a very small molehill.

Mr. Speaker, I hope that no one uses this bill as an excuse for, and that this bill will not lessen the demand for, regulatory reform. And I hope that this poor bill will not be used by the administration, by the Congress, or by anyone else as an excuse for not proceeding further with the bill, H.R. 3263, which is capable of providing the public with meaningful regulatory reform and which could be completed in the remaining days of this 96th Congress.

Mr. KINDNESS. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. ROTH).

Mr. ROTH. Mr. Speaker, I rise in support of the bill, S. 299, the Small Business Regulatory Flexibility Act. S. 299 amends the Administrative Procedure Act to provide for increased flexibility in the application of the Federal rulemaking process to small businesses, small governmental jurisdictions, and small organizations.

This measure further provides that agencies must include economic and red-tape impact analysis for small businesses, small governmental jurisdictions and small organizations whenever it publishes notice of a proposed rulemaking and must give public opportunity to comment on the initial analysis.

Moreover, this measure provides that agencies must publish a final regulatory flexibility analysis when it issues a final rule, explaining how rules can be "tiered" and offer reasons why less burdensome alternatives were rejected. If the Agency fails to do the required analysis or fails to take its own study into account when the final rule is published, the regulation is subject to being struck down by the courts. I want to point out that this act does not deny the statutory responsibility of the agencies. On the contrary, the act makes it perfectly clear to the agencies that they have a congressional mandate to adopt flexible alternatives.

By embracing S. 299, the House can take a quantum leap forward in the reduction of regulatory burdens which small businesses must shoulder. It must be recognized that Federal regulatory policies work a hardship on the small firm that the large is able to escape. Large firms have at their command a myriad of resources—lawyers, accountants, and greater organization that enable them to absorb and sometimes deflect the impact of Federal regulations. We must remember that in order for an economic system to remain competitive, it needs a strong and healthy small business section and I believe S. 299 is a step in the right direction toward insuring this goal.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Speaker, I want to say to my colleagues that as a member of the Administrative Law and Governmental Relations Subcommittee of the Committee on the Judiciary, I am extremely disappointed at how the administration has tried to slip this particular bill through as some means of regulatory reform. Our subcommittee has worked for the better part of 10 months in trying to craft a bill that would actually achieve the reform that is needed in the regulatory process.

H.R. 3263 is a much, much superior bill. The bill that was reported out by the Small Business Committee, and the Small Business Committee worked long and hard on, is a much preferable bill. This is not even half a loaf. It does not go anywhere near where we have to go in reforming the regulatory process.

Those that suggest they are cosponsors of this legislation are totally in error. There are no cosponsors to this legislation. This bill is S. 299—a Senate bill. There have been no hearings to look at any aspect of this particular bill, and no Members of Congress in this body have had an opportunity to cosponsor or work their will on this legislation. In fact, I am greatly concerned at this point that the administration will believe that this legislation is an adequate substitute for the bill we should be passing, H.R. 3263.

● Mr. LUKEN. Mr. Speaker, I have always been a strong supporter of regulatory flexibility, because I believe burdensome and unnecessary regulations are a threat to the survival of the small businesses of this Nation.

We are currently facing declining productivity and innovation in the United States. Small business can reverse this trend if it is allowed to do so and is not regulated to death. Time and time again, small business has proven itself to be the innovator in our country.

For example, during the period of 1953–73, firms with less than 1,000 employees accounted for almost one-half of major U.S. innovations.

Furthermore, the small business community has proven to be the backbone of our economic system. Recent reports indicate that 43 percent of the GNP is generated by small business and 57 percent of all employees in the United States are employed by small businesses.

In recent years, the regulatory burden for small business has continued to increase to levels that are suffocating their entrepreneurial qualities. This paperwork burden has spread to all types of interaction that small businesses have with the Federal Government. The Small Business Energy Subcommittee, which I chair, has heard testimony from numerous witnesses on the number of forms they must complete to apply for Federal funding and Government procurement. One solar small businessman stated that he has a 4-pound application file, containing 52 different forms, exhibits, and financal statements, requiring no fewer than 1,127 segments of data. Added to this were approximately 5,000 words of narrative descriptions and thousands of calculations and hundreds of hours of preparation time.

Small businesses must be relieved of this unnecessary and costly drain on their time and financial resources. Small business men and women cannot afford to spend the majority of their time completing forms, nor should they have to. If this trend is not reversed, many small businesses will have to close their doors, because they cannot overcome the demands imposed by the Federal Government. We must not let this occur, but we must do everything possible to stand behind the small businesses which are so valuable to our Nation's well-being.

S. 299, the Regulatory Flexibility Act of 1980, is an important step in reducing this disproportionate burden small business faces. This legislation tailors regulations to the size and capabilities of those being regulated. Small business will no

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longer have to bear the brunt of uniform rules and regulations created by Federal agencies. I urge you to join me in supporting this much-needed and valuable legislation. Thank you.●

● Mr. BUTLER. Mr. Speaker, I rise in support of the Regulatory Flexibility Act now pending before us. As the author of the first small business impact bill, H.R. 7739, in the 95th Congress, I am extremely gratified to find that my regulatory approach has now received such widespread support shown in the unanimous enactment of S. 299 by the Senate. I thank my Senate colleagues for their cooperation with me and the other principal House sponsors in the process of revising S. 299. The act we are voting on today is consonant with the objectives of my original bill and H.R. 4660 which I coauthored and creates a viable consensus on those important issues covered by the legislation. I have considered the Discussion of Issues which my colleague and coauthor on H.R. 4660, Mr. IRELAND, is placing in the RECORD today. Mr. IRELAND's Discussion of Issues explains very thoughtfully the understandings reached among the principal authors of regulatory flexibility legislation on the Judiciary Committee and its sponsors in the House. These understandings have cleared the way for House consideration of S. 299. I am particularly pleased to be able to make this statement today regarding S. 299 so that the House may consider my comments in voting on this legislation.

When I served on the Small Business Committee, I was horrified at some of the testimony presented before the committee by small businessmen regarding some Government regulations, and the seeming lack of concern by Federal agencies for the plight of the small businessman in complying with these regulations. Examples are numerous. Horror stories over OSHA regulations are legion, making OSHA a four-letter word among businessmen.

The number and functions of Government regulatory agencies have expanded at an alarming rate in the 1960's and 1970's, and it is obvious that almost every facet of business activity is subject to one or more governmental agencies who have the power to inspect, review, modify or reject the work of private industry; we are talking about regulation which affects nearly every aspect of industry, commerce, agriculture, trade, banking, and even private life.

And this regulation comes to us with an incredible price tag for which the consumer picks up the tab.

The cost of Government regulation in 1979 is estimated to run over $100 billion. Of that amount, $4.8 billion will go to operating costs of the agencies themselves but the cost of compliance with regulation will be over 20 times that. This compliance cost is especially alarming, considering it has doubled since 1974, and is five times its cost in 1970. Regulatory agency staffs now number 80,000, or nearly triple their size in 1970.

The successful small business in this country is the personification of the individual spirit that has characterized the achievements and accomplishments of this Nation. We must do what we can to halt the decline of small business if we are to preserve our free enterprise system. The purpose of well-conceived, meaningful regulations can still be accomplished and small businesses can still be protected if Government agencies will only take small business into consideration when they draft regulations. This act, in my opinion, would help make Government agencies cognizant of small business, would help the agencies implement their statutory goals, and would help preserve small business in our economy.

This legislation directs Federal agencies to consider less burdensome alternatives to regulations with significant economic impact on a substantial number of small entities. The specific requirement to analyze small business needs and regulatory goals will vastly improve the quality of rulemaking and will benefit both society and the affected entities.

Agencies will be required to prepare and publish an initial regulatory flexibility analysis for every proposed rule meeting the impact criterion. This preliminary analysis should generally explain the proposal's goals, the expected impact on small entities and the need for the proposed rule. Such an analysis will also include a preliminary discussion of significant less burdensome alternatives.

Agencies are invited to go beyond the alternatives presently in use (such as multitiered regulations, reduced paperwork and additional time for compliance and adopt innovative approaches for regulatory flexibility, for example, the EPA "bubble" approach. Additional innovative approaches are especially desirable for the fulfillment of statutory goals with the minimum cost to the affected entities and the public that would inevitably bear a portion of the additional costs.

Let me emphasize that this act does not, in any way, compromise the statutory mission of the agencies. The act simply clarifies the authority of the agencies to adopt flexible alternatives. Where the underlying statute does not specifically preclude the consideration of flexible alternatives, Congress confirms the authority of every agency to incorporate flexible alternatives in its promulgation of rules.

I would like to add that this act also provides an excellent vehicle for agencies to fulfill their obligation under the Small Business Act, other applicable Federal laws and applicable executive orders and memoranda that direct Federal agencies to promote and protect the interests of small business. There have been numerous instances of the use of regulatory flexibility approaches to strengthen small business' ability to compete in the marketplace. The term "significant economic impact" was deliberately used to convey the intent of Congress that agencies would continue their practice of utilizing the regulatory flexibility analysis framework to develop rules that will benefit small businesses directly, as well as reducing the burdens on small businesses.

In other words, because the agencies are required to identify all proposed rules with "significant economic impact," both adverse and positive, they will consequently be considering alternatives which also promote the health and well-being of small businesses. This benefit from this legislation is particularly welcome news at a time when vigorous small business activity would go far toward reducing inflation and unemployment and promoting the Nation's economic health.

After the receipt of comments from the affected small entities, from the Chief Counsel for Advocacy, if any, and from other interested parties, the agency shall prepare and then publish a final regulatory flexibility analysis. Such analysis shall explain the basis for the adoption of the final rule, and shall include discussion of the significant flexible alternatives.

The act does not require that an agency adopt a rule establishing differing compliance standards, exemptions or any other alternative to the proposed rule. It simply provides that the agency must explain its rejection of any reasonable alternative rule which would have been significantly less burdensome or significantly more beneficial to small entities. The act also insures that agencies which determine that the inclusion of small entities poses a significant burden to the small entities and is also of minimal value to the realization of the statutory goals will be certain to exempt those small entities from the scope of the final rule.

This legislation also recognizes that unforeseen events will occasionally preclude timely compliance with the initial and final regulatory flexibility analysis requirements (sections 603 and 604). Under certain conditions, an agency is permitted to waive or delay the preparation and publication of the initial regulatory flexibility analysis.

However, section 608(b) clearly provides that a final regulatory flexibility analysis must be completed for every final rule.

Thus, even rules issued in final (pursuant to section 553(b)(3)(B) of title 5, the "good cause" exception) without a proposed rule published for comment will be subject to a final regulatory flexibility analysis.

Although the provision for judicial review in S. 299 is less encompassing than the review applicable in H.R. 4660, this provision nevertheless insures that Government agencies will take seriously their obligation to comply with this new mandate. Current implementation of the concept of regulatory flexibility varies greatly among the agencies. The judicial review provision is designed to eliminate undesirable interlocutory or purely procedural challenges to rulemaking proceedings, but leave unimpaired the present right under the Administrative Procedure Act of review of the final rule. Judicial review of the lack of or adequacy of the regulatory flexibility analysis is permitted to the extent it is relevant to a review of the validity of the final rule. While the compliance of an agency with respect to particular provisions of this legislation is not subject to independent judicial review, such matters may be relevant to a determination of the reasonableness of the final rule.

Thus, unlike the situation regarding environmental impact statements, the failure to perform a regulatory flexibility analysis would not be grounds for injunctive relief in advance of the issuance of the final rule. However, the failure to perform an analysis of a reasonable alternative consistent with the desired regulatory goal may be adequate grounds for a determination that the final rule is unreasonable. Similarly, an agency's unreasonable determination not to perform a regulatory flexibility analysis may provide a basis for invalidation of the final rule, but would not be grounds for interlocutory relief.

The requirement of agenda publication, section 602, and the public notification requirements of section 609 will go far toward assuring adequate small business participation in the formulation of proposed rules with significant small business impact. For example, such a provision could have prevented the recent failure of the Department of Energy (DOE) to consider certain flexible alternatives in its recent proposal of appliance energy efficiency standards. Because the advance notification requirements were not in place, DOE overlooked informing the affected small business trade associations that the Department was proposing to include a testing requirement beyond that required by the Federal Trade Commission that had been developed months earlier. By DOE's own estimate, the new requirement would force some 65 percent of the small appliance manufacturers out of business.

Specifically with regard to small manufacturers of refrigerators, freezers, ranges/ovens, water heaters and room air conditioners, the Department indicated that these manufacturers had a 0.0 percent chance of successfully financing compliance with the new requirement. In its Economic Analysis, DOE simply stated that this was "an acceptable impact."

Furthermore, compliance with the provisions of section 603 requiring an initial regulatory flexibility analysis would have prevented DOE from failing to consider flexible alternatives at the time of the proposal. The Department did not consider the desirability of the alternative of not imposing the additional burdensome testing requirements, nor did it evaluate the impact of the proposal on competition in the industry.

When this act becomes effective, perhaps the Department of Energy will, at last, pay more attention to its statutory mandate and Executive directives to promote and protect small businesses. If the Department still entertains any doubts regarding its authority to promulgate flexible alternatives under its existing laws to aid small businesses and to alleviate small business burdens, this legislation resolves all such doubts and directs DOE to consider and promulgate such alternatives where appropriate.

Let me add a few words about the role of the Chief Counsel for Advocacy of the U.S. Small Business Administration. Under Public Law 94-305, the Chief Counsel for Advocacy is already required to file reports with the President and the Congress. This new law simply specifies the content of one of those reports. The Chief Counsel is already empowered under Public Law 94-305 to compel agency disclosure of the pertinent information required to perform these duties. It is expected that the Chief Counsel for Advocacy's monitoring efforts will insure compliance with the new law and aid Federal agencies in developing effective regulatory alternatives. The Office of Advocacy should act as a catalyst for innovative experimentation with regulatory alternatives by the agencies.

The legislation also provides that the Chief Counsel for Advocacy be permitted to appear as an amicus curiae in any action in any U.S. court to review a rule. He will present the views of the small business community with respect to the effect of a rule on small businesses. This judicial role complements his current role as the primary Federal regulatory watchdog for small business at the agency rulemaking stage. Courts should profitably draw from the considerable experience and expertise of the Chief Counsel in considering the unchartered waters of this regulatory reform. This provision provides an additional incentive for agencies to comply with the new legislation.

As the author of the first small business impact bill, H.R. 7739, I am extremely pleased to have played a part in helping this regulatory flexibility legislation be enacted into law. I am convinced that this act will mark the most significant legislative achievement for small business since the passage of the Small Business Investment Act 22 years ago.●

● Mr. RUSSO. Mr. Speaker, it is with extreme pleasure that I rise today to urge the House to act favorably upon legislation which embodies the concept of regulatory flexibility for small business. Through the majority of work done on H.R. 4660, I was the chairman of the House Subcommittee on Special Small Business Problems. Since that was the case, I believe it only appropriate that for the record I state the history of this concept.

James W. Morrison, who at the time was on Senator GAYLORD NELSON's staff, developed the concept of regulatory flexibility in August 1977. Senator NELSON, along with Senator JOHN CULVER, introduced the concept as a bill, S. 1974. It passed the Senate unanimously last Congress.

Last Congress several regulatory bills were introduced and referred to my subcommittee. The two primary bills were H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. CALDWELL BUTLER of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative ANDY IRELAND of Florida. The purpose of this bill was to give Federal agencies flexibility in the issuance of Federal regulations.

The concepts in these two bills were merged and formed the basis for H.R. 4660. The interest and hard work of the members of the subcommittee were instrumental in the forging of our final product. The subcommittee also was fortunate to have had Mr. Morrison on board as a consultant during our hearing process for a period of 6 months.

Representative ANDY IRELAND, a member of the subcommittee, became chairman upon my departure and has done a most commendable job of promoting regulatory flexibility. He has perservered and after endless meetings with various parties, he has brought us today to the brink of a new era in the relationship between the Federal Government and the small business community. The Senate on August 6 passed S. 299, thanks to the diligent efforts of many people. Senators JOHN CULVER, GAYLORD NELSON, and PAUL LAXALT deserve special praise.

S. 299 embodies the concept of our own H.R. 4660, and in fact, improves the bill in several areas. Congressman IRELAND, who introduced H.R. 4660 with me, has prepared a legislative history of H.R. 4660, and a Discussion of Issues of S. 299, for insertion in the RECORD today. The Discussion of Issue in particular very clearly states what we expect from this bill, and how we expect the agencies to implement it. We need this legislation.

In poll after poll, growing Federal regulation and its accompanying paperwork demands rank near the top and often are the No. 1 complaint of the Nation's small businessmen and women. Our Nation has a mixed economy. Public and private sectors necessarily interact. The Federal Government, through some regulation, attempts to bolster competition among businesses by laws designed to eliminate restraint of trade. Conversely, certain business activities are directly regulated by the Government. In effect, this substitutes Government decisionmaking for the normal workings of the marketplace. All types of Federal regulation have grown so much in recent years, that virtually every industry and household is now affected in often highly visible ways.

The time to act is at hand. We have the vehicle before us. Let us pass S. 299 and send the bill to the President.●

● Mr. BALDUS. Mr. Speaker, today is a special day for the small business men and women in this country. At last, we, in Congress, are heeding the pleas that they have long made to us to reduce the crush of Federal regulation that they must face on a daily basis.

This bill, S. 299, not only admits that such a problem exists, it addresses that problem as well. If we pass this bill today, in the future, Federal bureaucrats will have to understand, as well as be more sensitive to, the impact of the regulation they generate, and, we will all be better off because of it.

In the last Congress, as a Small Business Subcommittee chairman, I strongly and vigorously supported regulatory flexibility in several different legislative pro-

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posals. In this 96th Congress, S. 299 is the culmination of a long search for substantive regulatory flexibility for the small business community. I am especially pleased that this bill also recognizes that small organizations and small governmental jurisdictions are also in need of the same relief.

The primary sponsors of H.R. 4660—Representatives ANDY IRELAND, MARTY RUSSO, and M. CALDWELL BUTLER, should be highly commended for their perseverance in this field. President Carter, who earlier issued an Executive order calling for regulatory flexibility, should also be thanked for his assistance, and it is my hope that he will sign this bill as soon as possible.

Small business makes a tremendous contribution to our Nation's economy. Small business, as defined by the Small Business Administration, constitutes over 13 million businesses, comprises about 97 percent of all U.S. businesses, and accounts for more than one-half of all private employment in this country. Small business also accounts for 43 percent of business output, and one-third of the gross national product. Small businesses account for nearly all of the major innovations and inventions that move our technology ahead, as they have since World War II, and small business increases employment by about 4 percent per year as compared to the Fortune 500 companies which increase it only about 0.07 percent per year. In terms of economic growth, the record of small business is about twice that of the Fortune 500 companies, again, by percent.

For all of these vital contributions small business makes to our economy and the American way of life itself, small business asks very little from us in return. The small business community is one of entrepreneurs that have made it on their own, and believe that they can continue to make it on their own, maintaining their exceptional record of achievement, if they are not unduly interfered with by Government. The Federal help that these 13 million small businesses do receive each year is in the form of 270,000 loans from the Small Business Administration, but the recipients of these loans promise to return the money to the Government, with interest, and on time.

The clearest and most fervent request of these independent, small businessmen and women to the Federal Government is one which distinguishes them from the other special interest groups the Federal Government deals with. In exchange for their substantial contributions to our Nation's economy, they ask not for a handout, but only that the Government stop unreasonably regulating the environment in which they must function.

While the Government will always require a certain amount of information from business and while some regulation of industry may be inevitable, it should and can be accomplished in a reasonable and an equitable manner. It is clear that as it now stands, the amount of Government regulation has grown to self-defeating proportions which is deleterious to small business' very existence.

Mr. Speaker, S. 299 is a major first step in completing the task of reducing the regulation which stifles small businesses in a time when we need small businesses more than ever.

I urge the House to pass this bill.●

● Mr. RATCHFORD. Mr. Speaker, I welcome the opportunity to take a moment today to voice my support for S. 299, the Regulatory Flexibility Act.

My colleagues in the House have all become more conscious of the burdens which Federal regulations place on business and industry, and of the heavy responsibility which rests with the Congress to insure that regulations are neither excessive nor unnecessary. The regulatory process poses particularly large burdens for small businesses, which have neither the capacity nor the resources to challenge or to comply with Federal rules and regulations. It is this concern for the plight of the small businessman to which S. 299 is addressed.

Every week, when I return to Connecticut's 5th District, I hear the frustration of small businessmen who are being increasingly overwhelmed by the burdens of Federal regulation. The White House Conference on Small Business which was convened this January reaffirmed this message, and among the conference recommendations given the highest priority were calls for the establishment of greater regulatory flexibility with regard to small business. The White House Conference on Small Business reminded us all that we cannot treat large corporations and small firms as though they were identical, and the legislation before us today reflects the extent to which Congress has heard and responded to that important message.

The Regulatory Flexibility Act will take some crucial first steps in recognizing the special needs of small business. The legislation requires Federal agencies to analyze the likely impact of their regulations on small, privately owned businesses and other concerns. The bill also requires each agency to publish semiannual lists of rules it anticipates issuing which are likely to have a serious economic impact on small businesses and other concerns. Finally, provisions of S. 299 are designed to encourage small businesses to participate more fully in the Federal regulatory process.

The above provisions are significant, in that they represent the beginning of a growing awareness that regulations must be sensitive to the situation of small businessmen while protecting the public interest. In addition to these advances in the development of new Federal regulation, S. 299 also addresses problems in existing Federal regulations by requiring agencies to review all new and existing rules within 10 years. I have long supported the concept of "sunset" legislation which would mandate a periodic review of Federal programs to assess their effectiveness, and I strongly applaud the use of this type of mechanism in the Regulatory Flexibility Act to protect small business from excess in existing regulations.

Mr. Speaker, I have little doubt that this landmark legislation for regulatory flexibility with regard to small businesses will receive overwhelming approval by my colleagues in the House. The need for greater sensitivity in applying regulations to small businesses is all too apparent, and the merits of this legislation are equally clear. I simply wish to register my strong support for the Regulatory Flexibility Act, and to express my deep hope that this legislation represents the beginning of an honest effort in Congress to shape a regulatory process which serves the public interest while remaining manageable for the small businessmen who have contributed so much to our Nation's strength and prosperity.●

● Mr. RODINO. Mr. Speaker, the Congress, working with the administration, has been moving toward an extraordinary record in regulatory reform. In the last 3 years, we have passed major deregulation bills covering the airline, trucking, and banking industries and we are working on railroads, communications, and a comprehensive overhaul of the regulatory process.

The Regulatory Flexibility Act, which the House is considering today, is a vital part of that program. It will help the small businesses of our country and thereby strengthen competition.

Too many Federal regulations and paperwork requirements are written with big companies in mind, without considering the effect on small business. These rules can have a disproportionate and unfair impact on small businesses, reducing their ability to compete.

The Regulatory Flexibility Act requires all regulators to assess the impact of a proposed rule or report on small organizations. When the impact is significant, the agency must consider alternative approaches, such as requirements tailored to the size of the organizations affected and performance standards that give more leeway on how to comply. The creative approaches to regulation in this act will ease the burden on small business without sacrificing our commitment to protect the public's health and safety.

This act is drafted to help small businesses deal with the regulatory process. Many valid regulations are tied up in years of litigation, and small businesses often cannot afford the legal costs to participate. The judicial review standard in this bill is carefully designed to avoid needless litigation.

I want to commend the chairman of our Subcommittee on Administrative Law and Governmental Relations, Mr. DANIELSON; Mr. HARRIS, the manager of this bill, S. 299; and all of my colleagues who have supported the major deregulation bills that we have passed in the 96th Congress. S. 299 is a very significant part of the overall regulatory reform effort, and I urge my colleagues to vote for its passage.

□ 1530

Mr. HARRIS. Mr. Speaker, I want to recognize all those who worked so hard

on this bill. The fact of the matter is that this is a good bill. I think it is time that we remove the tremendous burden of unnecessary regulation upon the small business community. I think they deserve it; I think they need it; I think our economy will benefit from it.

Mr. Speaker, I urge the passage of this bill and yield back the remainder of my time.

Mr. REGULA. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. LENT).

● Mr. LENT. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act.

As a cosponsor of similar legislation, the Smaller Enterprise Regulatory Improvement Act (H.R. 4660), I am gratified that legislation requiring Federal agencies to assess the small business impact of their regulation is on the agenda for final congressional action. This legislation was unanimously passed by the Senate last month. Prompt and positive action today can insure that this legislation is enacted without further delay.

Though I have long sought comprehensive improvements to administrative rulemaking to alleviate unnecessary and costly Federal regulation, I believe expeditious action on behalf of small business, small organizations, and small governmental jurisdictions—"small entities"—is absolutely necessary.

Small organizations face special burdens resulting from Federal regulation; uniformly applied Federal regulations often have a disproportionately greater economic impact on small entities unable to benefit from large-firm economies of scale. Overly burdensome Federal regulations have adversely affected competition and created barriers to innovation and creativity in many industries. Paperwork such as reporting and recordkeeping requirements pose special hardships on firms not having in-house accounting and legal departments; too often, compliance with such Federal regulatory requirements necessitates that costly outside assistance be retained.

This legislation is designed to alleviate this counterproductive situation by providing a measure of flexibility in the application of the Federal rulemaking process to small entities. Where necessary, agencies are directed to institute procedures including two-tiered rulemaking and exemptions from all or part of some rules to help reduce the disparate economic impact of rules and regulations on small entities. By assuring that the Small Business Administration is informed of proposed agency rules likely to have a significant economic impact on a substantial number of small entities, this legislation can increase small business participation in the Federal rulemaking process—a process which for too long has remained isolated from the organizations it most affects.

Along with calling for periodic review of new and existing rules affecting small entities, the bill also contains a provision waiving the requirement that a regulatory flexibility analysis be prepared in those cases where a proposed regulation has no significant economic effect on a substantial number of small businesses.

On balance, this legislation makes sense and I urge my colleagues to support passage of S. 299 so this legislation can be enacted into law without further delay.●

● Mr. BEREUTER. Mr. Speaker, I wholeheartedly urge my colleagues to vote today for passage of S. 299, the Regulatory Flexibility Act. America's productive small businesses, now hampered by a multitude of rules and regulations, must be given relief. Approval of S. 299 would provide some measure of assistance to this beleaguered segment of the economy, and would help our country return to the path of economic growth and prosperity.

ORIGINS OF THE REGULATORY PROBLEMS

During the decade of the 1970's, Congress rushed to pass legislation which would insure clean air, clean water, a safe workplace, and a multitude of other desirable environmental and social goals. This legislation granted many existing and newly created agencies sweeping powers to bring about those desirable objectives. As a result of this excessive delegation of authority, the Federal Government has become engaged too often in an inappropriate effort to restructure business operations and the activities of individuals.

This unprecedented regulatory effort went forward without due consideration for the cost efficiency of any individual regulation or for the cost efficiency of the regulatory effort as a whole. Furthermore, far too few efforts have been made to determine if the ends indeed justify the means used and the costs imposed by these regulations. In addition, the regulators have explored few alternatives to direct regulation; rather, detailed requirements applied across the board and strict enforcement have been the norm.

As a result, commercial and industrial enterprises within this country now bear a heavy paperwork burden and must expend far too much money in order to comply with these rules. Scarce financial resources, necessary to finance plant expansion, equipment acquisition, technological innovation, and job creation, thus have been siphoned off into less productive activities. In some cases, the costs imposed by such rules threaten the financial viability of individual businesses and entire industries.

The small business sector of our economy, in particular, bears a weighty burden in its attempts to comply with these rules. This segment of the economy typically must spend 7 to 10 times the amount spent by larger businesses in meeting the requirements of a given rule or regulation.

Obviously, the hard-working businessmen and businesswomen of America need relief.

S. 299 OFFERS RELIEF

At long last, Congress appears ready to recognize this problem and to provide that necessary relief by adopting S. 299. This bill would require each agency:

First, to publish a semiannual agenda of forthcoming regulations which are expected to have a significant impact on a substantial number of small businesses, organizations, and governmental units.

Second, to precede the promulgation of a rule with an analysis of its potenial impact on small businesses, organizations, and governmental units.

Third, to publish this analysis at the time the final rule is adopted. In this analysis, the agency must state the need for the regulation, and its objectives. In addition, public comments on the proposed regulation must be summarized and printed. An identification of the changes made in response to these public comments must be included in the analysis as well. An explanation of the alternatives to the regulation would form another part of the analysis. Finally, justification for the rejection of alternatives must be given as well.

Fourth, to insure that small businesses, organizations and governmental units receive an opportunity to comment upon any proposed regulation which may possess a significant impact upon them. New methods of notification must be pursued in order to allow more businesses to learn of pending regulations which may affect them.

Fifth, to design rules in order to reduce the cost of participation in rulemaking proceedings.

Sixth, to review—on a 10-year cycle—existing rules which impose a significant economic impact upon small businesses, organizations, and governmental units in order to eliminate or to modify the rules as necessary.

Despite my support for this long-overdue bill, I am disappointed that more comprehensive legislation remains stalled in committee. Enactment of S. 299 represents only one small, minor step on the road to regulatory reform. Much more needs to be done in order to reduce duplicative, unduly complicated, contradictory, and ineffective regulations in American society. The current regulatory system, clogged by delays and hampered by uncertainty, must be replaced by a cost efficient, effective, and streamlined system—one that is based on commonsense and reasonable discretion in the application of regulations.

I urge my colleagues, therefore, to give their support to S. 299 today and to follow through with even stronger support for passage, yet this session, of the more comprehensive legislation necessary to bring about true regulatory reform.●

● Mr. UDALL. Mr. Speaker, I rise in support of the Regulatory Flexibility Act, S. 299. I want to commend my good friend, the chairman of the Small Business Committee, for his hard work and strong leadership in bringing this bill to the floor. I know that he has put in many long hours in working on this legislation and on other bills that will benefit small business.

Back in 1978, I began extensive discussions with small businessmen and women in southern Arizona about their problems with the Federal Government. I continued those talks into 1979, when I co-

sponsored a small business conference with Walt Pearson, who is the publisher of a noted Arizona business magazine. The one overwhelming complaint that came up was that small businesses are swamped with paperwork. And it really does not make much sense to force some small firm—a corner drugstore, a little plumbing outfit, a small clothes store—to comply with the same regulations that we ask General Motors and Exxon and A.T. & T. to follow.

After consulting with business people in Tucson, and the rest of southern Arizona, I introduced a bill, H.R. 4729, the Small Business Promotion Act, that deals with several problems connected with small firms. One of those was Federal paperwork and Federal regulations. Title II of that bill would have required that all Federal agencies and departments examine their past regulations to see if somehow they could be less burdensome on small business, and it required that all future regulations be examined to either exempt or set separate standards for small businesses, whenever that is possible.

So I am glad that S. 299, which is very similar to this proposal, has made it this far and will, I hope, soon be enacted into law. I know that there are some departments and agencies of the Government that do not like this idea. But it is time that Government become more responsive to the needs of small business, and more realistic about the demands placed on these small firms. S. 299 will take us a long way toward these goals.

I strongly support passage of this bill, and I urge my colleagues to vote for it.●

● Mr. McKAY. Mr. Speaker, in recent years the Federal Government has intruded increasingly into the private sector in an effort to provide benefits for the American public. This has resulted in safer places to work, a cleaner environment, and many other benefits.

This process, however, has also resulted in thousands of rules and regulations being issued, all governing the lives and activities of Americans and American businesses. Thousands of reports and answers to thousands of questions from Federal agencies are required by this regulation.

The paperwork alone has become burdensome, particularly for small business. As a member of the Small Business Task Force, I have heard time and again examples of how Government regulations adversely affect small businessmen, particularly because of the discrepancy between the size of the enterprise and the scale of Federal requirements.

This overregulation is more than just a small business problem. The greater impact Federal regulation has on a small business reduces its ability to compete in the marketplace. The advantage goes to the largest, those most able to afford the hiring of the lawyers, accountants, and consultants needed to complete the work. Small businesses often lack the manpower and skills needed to comply efficiently. The public must pay the consequences of the resulting economic concentration.

Small businesses should not be exempted from important and beneficial regulation simply because they are small. But the requirements should and must be tailored to their ability to comply. We must stop restricting innovation and productivity. We must also stop fueling inflation.

This bill, S. 299, the Smaller Enterprise Regulatory Improvement Act, by requiring that Federal agencies take the circumstances of small business into account, will put us on the path toward equitable treatment for all, and will speed economic recovery in the Nation. It is with pleasure, therefore, that I have watched the progress of S. 299. As a cosponsor, I commend its passage to my fellow Congressmen.●

● Mr. GILMAN. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act of 1980.

As a cosponsor of a similar House bill, H.R. 4660, I am gratified for having this opportunity to vote on this Senate measure.

Mr. Speaker, it is crucial to our small businesses that a way be found to relieve them of burdensome, unnecessary, and unreasonable regulations.

I am pleased that this bill also includes in its purview small government jurisdictions—with less than 50,000 populations—as well as small businesses.

What S. 299 will do is direct Federal agencies to institute, where necessary, procedures—including two-tiered rulemaking, and exemptions from all or part of some rules—to help reduce the disparate economic impact of rules and regulations on small entities.

By reducing the special burden of regulations on small businesses, the bill will help those small businesses remain competitive with larger organizations which have the resources necessary to comply with complex Government regulations.

Small business provides the bulk of the new jobs created every year in the American economy. Unless we look after small business at every stage of the regulatory and legislative process, we will be in danger of "killing the goose that laid the golden egg" of our American economy. The way to recovery from our present economic difficulties will surely involve a greater role for the small businessman, and I very much hope that the way toward their assuming that greater role will be enhanced by the passage of this important legislation.

Mr. Speaker, I urge the adoption of this measure and that a summary of the provisions of S. 299 be printed at this point in the RECORD:

PROVISION OF S. 299

REGULATORY AGENDAS

S. 299 requires agencies to publish twice yearly a regulatory agenda which summarizes proposed agency rules likely to have a significant economic impact on a substantial number of small entities. The agency must transmit the agenda to the Small Business Administration (SBA), and endeavor to notify small entities of the agenda.

INITIAL REGULATORY FLEXIBILITY ANALYSIS (IRFA)

Whenever required by law, to publish notice of a proposed rule, an agency must prepare for public comment an IRFA describing the impact of the rule on small entities, including the projected time and degree of skill required to comply with the recordkeeping and reporting requirements of the rule. Each analysis also shall discuss significant alternatives to the rule, such as:

Differing reporting requirements depending on the size and resources of the entity;

Simplification of reporting requirements for smaller entities;

Use of performance rather than design standards; and

Exemptions from coverage of the rule.

FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

When an agency promulgates a final rule, the agency shall prepare an FRFA outlining the need for the rule and its objectives. Public comments received shall be summarized, including any decisions or actions taken as a result of those comments. If alternatives were rejected the agency must state why.

CERTIFICATION AND WAIVER

Allows the agency to certify that a proposed rule will not have a significant economic effect on a substantial number of small entities, thereby obviating the need for any flexibility analyses. The agency also may waive or delay an IRFA where necessary to propose an "emergency" rule. It may not waive an FRFA for such a rule, though the agency may delay publishing the FRFA while the emergency rule takes effect. The emergency rule will lapse, however, if an FRFA is not published within 180 days from the day the rule was published.

PERIODIC REVIEW

The bill requires an agency to review its rules which significantly affect a large number of small entities. For existing rules, this review must take place within 10 years of the date of the Act; for future rules, within 10 years of their promulgation. The agency must publish a plan for such review within 180 days of the effective date of the Act.

This review should assess the continued need for the rule, evaluating length of time since the rule has been evaluated and considering: changes in economic or technological conditions; any complaints received on the rule; and the complexity of the rule. The agency shall publish yearly a list of the rules to be evaluated during the succeeding 12 months, inviting public comment.

OTHER PROVISIONS

S. 299 provides no interlocutory right of review of agency action, and does not alter any existing standards of review.

Each agency shall insure public participation in its rulemaking process.

All IRFA's, FRFA's and certifications of no significant impact must be published in the Federal Register.

The SBA shall monitor agency compliance with this Act, reporting annually to the President and Congress.●

● Mr. BIAGGI. Mr. Speaker, as a cosponsor of similar House legislation, I rise as an avid supporter of S. 299, the Regulatory Flexibility Act. Once again, Congress, in a close partnership with

President Carter, has emerged with substantive legislation in the all-important area of regulatory reform—a vital element in a stable economic future for our Nation.

S. 299 is directed at one of this Nation's most important economic segments—the small business community. The rapid proliferation of Government regulations has had an especially adverse impact on small businesses. The cost of Government regulation in 1979 was estimated to be in the vicinity of $100 billion. Regulatory staffs alone have tripled in size, now totaling 80,000. Excessive and occasionally unnecessary Government regulation has stifled small business growth and development. As a consequence, productivity has dropped significantly.

This legislation seeks to put forth some important reforms aimed at relaxing the regulatory stranglehold on small businesses. S. 299 requires Federal rulemaking agencies to analyze the likely impact of their rules on small, privately owned businesses and other concerns. The bill further requires each Federal agency to publish semiannual lists of rules it anticipates promulgating, which are likely to have a serious economic impact on small businesses or other small concerns. Small businesses are encouraged to participate in the rulemaking process.

President Carter, to his credit, has made regulatory reform one of the main elements of his domestic economic policy. His support and advocacy of this legislation has been invaluable. We should consider this to be good short- and long-term legislation. It will reduce a major problem of today which, in turn, will bolster our Nation in the future.

The small businessmen and women of this Nation typify what is supported to be the best of our free enterprise system. Yet, the free enterprise system is under severe stress because of the burdens of regulations and paperwork mandated by the Government. S. 299 is an excellent blueprint for a new policy seeking much needed and unrestricted growth in small business development. It deserves our passage today.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken.

Mr. HUGHES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum will be considered withdrawn.

GENERAL LEAVE

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 299.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

NATIONAL AQUACULTURE ACT

Mr. BREAUX. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 20) to provide for the development of aquaculture in the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 20

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquaculture production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology—

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propaganda and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers of employees of the Federal Government), while away from their homes or regular places of business in the

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performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential;

(3) address, taking into account the status of aquaculture regarding the aquatic species concerned—

(A) aquaculture facility design and operation,

(B) water quality management,

(C) use of waste products (including thermal effluents),

(D) nutrition and the development of economical feeds, including natural food sources,

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans),

(F) processing and market development,

(G) production management and quality control, and

(H) the development of adequate supplies of seed stock;

(4) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(5) include, where appropriate, programs to analyze, and formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture; and

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person, and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquacultural assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the coordinating group, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system and, if necessary to demonstrate its feasibility, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economic information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and

(ii) recommended measures to ameliorate any such effect; and

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, through the coordinating group, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, an explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretary deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 6. (a) ESTABLISHMENT.—There is established within the Office of Science and Technology Policy an interagency aquaculture coordinating group that shall, subject to subsection (f), operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978. The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture.

(2) The Secretary of Commerce.

(3) The Secretary of the Interior.

(4) The Secretary of Energy.

(5) The Secretary of Health and Human Resources.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Administrator of the Small Business Administration.

(9) The Administrator of the Agency for International Development.

(10) The Chairman of the Tennessee Valley Authority.

(11) The Director of the National Science Foundation.

(12) The Governor of the Farm Credit Administration.

(13) The heads of such other Federal agencies as are deemed appropriate by the Director of the Office of Science and Technology Policy (hereinafter in this section referred to as the "Director"), after consultation with the coordinating group.

(b) PURPOSE AND FUNCTIONS.—The purpose of the coordinating group is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the coordinating group shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) CHAIRMAN.—Each of the Secretaries or their designees, on such rotating basis as shall be determined by the Director, shall serve as the chairman of the coordinating group. The term of office of the chairman is two years.

(d) REPORTS.—The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) FEDERAL CONSISTENCY.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

(f) FUNCTIONS IF FEDERAL COUNCIL TERMINATED.—If at any time after the date of the enactment of this Act, the functions of the Federal Council are by executive action terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) and the reports required under subsection (d) shall be made to the Director.

CONTRACTS AND GRANTS

SEC. 7. (a) IN GENERAL.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) LIMITATION.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

SEC. 8. (a) CAPITAL REQUIREMENTS STUDY.—The Secretaries, through the coordinating group, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) CAPITAL REQUIREMENTS PLAN.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

SEC. 9. (a) REGULATORY CONSTRAINTS STUDY.—The Secretaries, through the coordinating group, shall conduct, within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—

(A) $7,000,000 for fiscal year 1981,

(B) $10,000,000 for fiscal year 1982, and

(C) $12,000,000 for fiscal year 1983;

(2) to the Department of Commerce—

(A) $7,000,000 for fiscal year 1981,

(B) $10,000,000 for fiscal year 1982, and

(C) $12,000,000 for fiscal year 1983; and

(3) to the Department of the Interior—

(A) $3,000,000 for fiscal year 1981,

(B) $4,000,000 for fiscal year 1982, and

(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or activity authorized under any other provision of law.

The SPEAKER pro tempore. Is a second demanded?

Mr. FORSYTHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. BREAUX) will be recognized for 20 minutes, and the gentleman from New Jersey (Mr. FORSYTHE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a little like the last bill that we just had passed, there was a better bill which we wished everyone could have agreed on with regard to aquaculture. However, the bill which we bring to the House floor today is, I think, one that all Members could be comfortable with supporting.

Mr. Speaker, Americans have not ranked among the major fish-eating peoples of the world. We consume on an average only a bit more than 13 pounds per capita a year while the average Japanese citizen eats some 70 pounds of seafood annually. In addition, this Nation is blessed with one-fifth of the world's fishery resources within 200 miles of our shores. Given these statistics, you may wonder why we should bother to encourage the development of aquaculture in this country which is what the bill before us is designed to do. But these statistics are somewhat misleading.

First, despite a relatively low appetite for fish and a wealth of fishery resources, we still import well over 60 percent of the fish we consume. Second, Americans are learning not only to appreciate the good taste of seafood but also its healthful qualities—high in protein and low in cholesterol. Consequently, they are eating it more with current estimates that

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levels of consumption will rise 80 percent by the year 2000. At the same time, on the basis of information garnered since the passage of the Fishery Conservation and Management Act of 1976, we now know that many of our traditional stocks of marine resources are declining from overfishing, pollution, and many other pressures. The regional fishery management councils have drawn up plans to manage these stocks and they will, wherever possible, be returned to a maximum yield level but this will take time.

In the meantime, where will we get the fish to meet our growing appetite? Initially, we can increase the share of the resources off our shores taken by Americans rather than foreign fishermen. My committee will be bringing legislation for this purpose before this body in the near future. Then, of course, we could always import more fish—or could we?

Aside from the detriment to our balance of payments, that is not a likely possibility in the years ahead. The world situation is far graver than ours: While estimates vary on the maximum global harvest from traditional marine stocks, they all agree that maximum will be reached no later than the year 2000. At the same time, the world's population is growing by leaps and bounds and is expected to reach 6 billion by the end of this century. In short, more people are going to be vying for a share of a limited supply of seafood. No, increased imports are not the answer even if we wanted to take that route.

This leads us to an as yet largely untapped nutritional resource—this country's vast potential for the development of aquaculture. But the emphasis here is strongly on potential. Contrary to what most of the small percentage of Americans who are aware of aquaculture think, it will be no simple matter to cultivate fish and shellfish on a national scale. America may be the breadbasket of the world but we have a long way to go before we can farm fish as effectively as we produce loaves.

The National Oceanic and Atmospheric Administration (NOAA) has categorized our current aquaculture expertise as being "roughly analogous to the state of agriculture before the land grant system and the Department of Agriculture launched intensive research programs to develop agricultural technology." And that took place over 100 years ago.

But the situation is not as hopeless as it sounds. However embryonic our aquaculture efforts may be, there are pockets of success throughout the country which show that it can be done even in the existing climate of discouragement.

Salmon produced in publicly supported hatcheries on the Columbia River represent more than one-half of the salmon caught in that large river system. The eggs are hatched and the fish are fed until they grow to a suitable size to be released to the wild. The released salmon feed off natural resources until maturity when they return to spawn and are caught by commercial fishermen or for sport.

Another successful example is that of trout farming. All of the trout purchased in our local markets are products of aquaculture.

Catfish is another species that is raised by large-scale production and is commercially successful. There are approximately 3,000 catfish farmers located in 42 States. The larger, more productive farms are located in the warmer climates of the Southern States and account for 80 percent of the catfish cultured.

The type of aquaculture with which I am most familiar and I might add for which I am most grateful, is that of culturing crawfish. In my home State of Louisiana, crawfish farming is an integral part of our local economy. Local landowners produce 99 percent of the crawfish in the United States, 85 percent of which is consumed within the State. In South Louisiana there are some 40 processing plants providing jobs for hundreds of people.

Aquaculture supplies only 3 percent of the fish we consume but where would we be without it? Would we be importing a larger quantity of our salmon and all of our trout, catfish, and crawfish? It is apparent that aquaculture can be a viable industry. It can and does contribute to our food supply. It can and does create new job opportunities. Other species can be cultured on the same basis with additional research and technical expertise. America's aquaculture potential can be realized if we will provide a climate of encouragement in which these pockets of success can multiply.

Mr. Speaker, the legislation before us today is a product of long and intensive study of aquaculture and its needs by the Committee on Merchant Marine and Fisheries which has held hearings on the subject in the 94th, 95th and current Congresses and has instigated a number of related studies. I am happy to say that these efforts have brought about a greater awareness of and interest in aquaculture in the executive branch. But these efforts have only enhanced the need for coordinating legislation.

Recognizing this fact, other members of the Committee on Merchant Marine and Fisheries and I introduced H.R. 20 on January 15, 1979. After a brief hearing, the committee unanimously ordered the bill reported to the House on May 3, 1979. That bill as reported authorized the Secretary of Commerce in consultation with the Secretaries of Agriculture and Interior, to develop a national aquaculture plan within 18 months. That plan would identify those aquatic species with a high potential for culturing on a commercial basis. For each identified species, the plan would set forth a research and development program.

The bill authorized the Secretary of Commerce to appoint an advisory committee to assist in initial development of the plan and to set up an interagency coordinating committee comprised of the heads of eight Federal agencies and chaired by the Secretary of Commerce, who was charged with preparation of a biennial report on the status of aquaculture. This bill also authorized scale tests and, if necessary, construction, operation, and maintenance of developmental aquaculture facilities—including production scale facilities—to assess the biological and economic feasibility of any aquaculture system.

It established an Aquaculture Information Center and provided for the sharing of such information with foreign countries.

It authorized matching grants on a 50–50 basis and loan guarantees up to a maximum of $150 million and provided a risk insurance program with a maximum face value of $125 million.

In addition to these assistance programs, the bill authorized to be appropriated to the Departments of Commerce, Interior, and Agriculture $65 million over a 3-year period.

Mr. Speaker, H.R. 20 was sequentially referred to the House Agriculture Committee. That committee ordered a substantially amended version of the bill reported to the House on July 11, 1979.

The Agriculture Committee bill contained many of the provisions of the original bill, but it authorized the Secretaries of Agriculture, Interior, and Commerce to draw up a national plan and establish a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET) under the Office of Science and Technology Policy (OSTP) to be composed of 13 agency heads. The Chairmen of two FCCSET sponsoring Committees would select the Chairman of the Joint Subcommittee for a 2-year term.

In this bill, the biennial report on the status of aquaculture would be prepared by the three Secretaries through the Joint Subcommittee on Aquaculture and the Joint Subcommittee would be required to complete, within 18 months, studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture.

The construction of production scale facilities was specifically excluded and provisions for matching fund grants, loan guarantees and insurance were eliminated from this bill which authorized to be appropriated only such sums as may be necessary to carry out the programs authorized.

In the ensuing months the two committees have negotiated their differences and this has culminated in the joint committee amendment in the nature of a substitute, to H.R. 20 which we are bringing before the House for its approval today.

The compromise bill closely parallels the bill reported by the Agriculture Committee but includes some changes considered important by the Merchant Marine and Fisheries Committee. It would require the Secretaries of the Interior, Commerce, and Agriculture to develop within 18 months the national aquaculture plan previously described.

The three Secretaries would be authorized to appoint an advisory committee to assist in initial development of the plan. An interagency aquaculture coordinating group would be established under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering, and Technology, and would consist of the heads of 13 agencies with acquaculture responsibilities. Its chairman would be selected by the Director of OSTP from among the three Secretaries or their designees for a 2-year term. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis. The bill also authorizes demonstration projects to test the feasibility of aquaculture systems. There are authorized to be appropriated to each of the departments of Commerce and Agriculture $7 million for fiscal year 1981, $10 million for fiscal year 1982, and $12 million for fiscal year 1983; and to the Department of the Interior $3 million for fiscal year 1981, $4 million for 1982 and $5 million for 1983. This is a total of $70 million over the 3-year life of the program.

It is the understanding of the members of the Merchant Marine and Fisheries Committee that the language of this bill with respect to demonstration projects would include production scale facilities where necessary to assess the biological, technical and economic feasibility of aquacultural systems.

Mr. Speaker, the members of both committees have worked hard to reach this compromise language. We believe it is the bare minimum necessary to get a national aquaculture development program underway.

Many of the Members of this body will recall that a more expansive aquaculture bill was passed overwhelmingly 2 years ago by both Houses only to be vetoed by President Carter. The compromise language which we are presenting for your approval today was negotiated in coordination with representatives of both the Senate and the administration and we have every reason to expect it will be enacted into law.

Administration witnesses, including representatives from the Office of Science and Technology Policy, and the Departments of Agriculture, Commerce, and the Interior all testified in support of a virtually identical bill at Senate hearings late last year. In addition, the Secretary of Agriculture wrote the Senate Agriculture Committee strongly recommending enactment of that bill.

Mr. Speaker, this bill has the overwhelming support of the Committee on Merchant Marine and Fisheries and of the Committee on Agriculture. Legislation for this purpose is strongly backed by the shellfish industry, the catfish industry, the freshwater trout industry, and all other fishermen in general, except the Pacific salmon fishermen, who were fearful that large private salmon producers would adversely affect their industry.

Mr. Speaker, the end of this century is only a short 20 years away. If we are ever going to coordinate the aquaculture programs of the Federal Government into an effective effort to encourage the development and growth of a thriving U.S. aquaculture industry, we must begin now. I can think of no more important legislative proposal than one which is aimed at assuring adequate supplies of protein-rich food resources for Americans in the 21st century and I urge the Members of the House to join me in this effort by adopting H.R. 20.

Mr. FORSYTHE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the National Aquaculture Act offers an exciting opportunity for this Nation to seize the initiative in the development of a new seafood production industry. Although worldwide output from aquaculture has approximately doubled in the last 5 years, and now amounts to some 6 million metric tons, U.S. aquaculture has remained relatively static.

One of the reasons why worldwide aquaculture production has increased is that several nations have recognized the potential for aquaculture development and have embarked on extensive aquaculture programs. Japan, for example, has established a 7-year coastal fisheries development program and has allocated $333 million to develop aquaculture. Canada has committed $300 million to an ambitious aquaculture program for restoring British Columbia salmon stocks. Mexico has recently launched a $1 billion fisheries program, of which more than $200 million will be allocated to aquaculture.

In contrast to the aquaculture efforts of these nations, aquaculture in the United States has been small and insignificant for many years. While international aquaculture accounts for approximately 10 percent of the world's fisheries production, U.S. aquaculture accounts for only 3 percent of all fish and shellfish consumed within the United States.

On an annual basis, the U.S. aquaculture industry is producing 48 million pounds of catfish, 2.6 million pounds of clam meats, 10 million pounds of crawfish, 17,000 pounds of freshwater prawns, 20 million pounds of oyster meats, 1 million pounds of pen cultured salmon, 60 million pounds of hatchery released salmon, 800,000 pounds of shrimp, and 30 million pounds of trout. Although these figures may seem significant, it is important to recognize that other nations such as Japan are producing 11½ times as much seafood by aquaculture as the United States. It is also significant to note that the United States is importing approximately $800 million of seafood products each year which could be produced domestically by the aquaculture industry.

Despite the relatively limited production of aquaculture in the United States, the future seafood market in this country provides an excellent opportunity for the expansion of the U.S. aquaculture industry. Within the United States, most traditional fisheries resources are already being harvested at or near their optimum sustainable levels. It is expected, however, that the demand for seafood products in the United States will increase 80 percent by the year 2000.

Even allowing for the introduction of nontraditional species into domestic markets, the amount of seafood which will be available to meet domestic demands will probably be severely limited. The implications of a limited domestic supply are increased prices to the consumer, an inadequate supply of seafood products, and an increase in the U.S. seafood balance-of-payments deficit.

Mr. Speaker, in my view, aquaculture offers the potential for overcoming many of these problems. Proven techniques for the production of trout, salmon, oysters, and other species are well known, and a review of the production records for these species provides a basis for estimating the potential for expanded production. The aquaculture production of rainbow trout, for example, has increased from just over 1 million pounds in 1954 to over 30 million pounds in 1972. With adequate markets and acceptable feed prices, it is estimated that production could be doubled in the next decade.

Private oyster farmers currently produce 20 million pounds of meat annually. Production through aquaculture could increase by a factor of 10 in many places by suspending oysters above the bottom, a method currently used in Japan and experimentally tested in the United States. With adequate markets and satisfactory prices, private oyster production through aquaculture could be quadrupled during the next decade.

For nearly 100 years, the salmon fishery has been enhanced by public aquaculture (hatcheries) and more than one-quarter of our salmon, 60 million pounds, now originates in these hatcheries. Federal and State salmon culture experts estimate that landings attributable to public hatcheries could be increased by 50 percent during the next decade if funds were available for expanding hatchery production. Private salmon aquaculture also has a great potential for expansion. The production from this source, which was less than 1 million pounds in 1974, could exceed 80 million pounds by 1985 if certain production problems could be solved and if markets remain attractive.

If these breakthroughs can be achieved, the benefits to the United States will be extraordinary. As I noted earlier, the United States is currently importing over $800 million of seafood products which could be provided by U.S. aquaculture. In addition to meeting our own growing demand for seafood, and significantly reducing our seafood balance-of-payments deficit, the United States could become a net exporter of marine protein to meet the food needs of other nations.

If the future is so bright, the question is why do we need to enact a National

Aquaculture Act? Although the answer is not simple, it can be summarized by saying that there are significant obstacles to the development of the aquaculture industry which can be overcome by this legislation.

The development of aquaculture for any species is a two-stage process. First, it is essential that an understanding of the basic biology of the species be developed. This entails a knowledge of what makes the species reproduce, what is the optimal growing temperature, what is the best food mixture at various stages of development, and so forth.

Once this information is available, it is possible to move into the second stage of development—an engineering, biological, and economic stage. There is a major difference between growing 100 fish in a laboratory tank and 100,000 fish in an aquaculture facility. The problems of disease, waste disposal, water quality within the system, nutrient mixes, and other factors become magnified. The problems are no longer biological.

For many species, the basic biology is known. What is needed is second-stage development and here is where the problem lies. Because of the present high-risk nature of the fledgling U.S. aquaculture industry, investors are generally reluctant to invest their funds in aquaculture when higher and safer returns are available elsewhere. We are thus confronted with the proverbial chicken and egg situation. Investment money is available to develop the aquaculture industry, but only after second-stage development is completed. Yet, without this investment capital, second-stage development may never be achieved.

To overcome these problems, the National Aquaculture Act directs the Secretaries of Commerce, Agriculture, and the Interior to develop an aquaculture development plan and to implement that plan through contracts and grants. The purpose of these contracts and grants is to test and demonstrate the feasibility of aquaculture including, where appropriate, the construction and operation of demonstration production facilities.

Mr. Speaker, in view of the extremely high potential the U.S. aquaculture industry offers for meeting the United States and world demand for seafood potential, and in view of the hesitation by private investors to provide capital for the development of the U.S. aquaculture industry, I urge that my colleagues join me in supporting this legislation.

Mr. Speaker, I would now yield such time as he may consume to the gentleman from Virginia (Mr. WAMPLER), the ranking member of the Committee on Agriculture.

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Mr. WAMPLER. Mr. Speaker, I thank the distinguished gentleman from New Jersey for yielding.

Mr. Speaker, I rise in support of this legislation, the National Aquaculture Act of 1980, which provides a framework for the development of aquaculture in the United States. For many months, a number of members on the House Committee on Agriculture and the House Committee on Merchant Marine and Fisheries have been working to reach agreement on legislation that would serve the needs of our aquaculture industry. This bill is the result of those efforts.

We on the Agriculture Committee were particularly interested in assuring that the Secretary of Agriculture had coequal status with the Secretaries of Commerce and the Interior in the development and carrying out of the national aquaculture development plan, and this is provided in the bill. Although a number of Federal agencies—including the Farmers Home Administration and the Farm Credit Administration—have been providing assistance to the aquaculture industry, most people would agree that more needs to be done. One of the major problems, however, is the lack of sufficient information about the acquaculture industry as a whole upon which to base further Federal support.

With the new impetus of the interagency aquaculture coordinating group in the development of a national aquaculture plan and in carrying out this legislation, I feel that we will be able to gather the needed information and make progress toward assisting the aquaculture industry of this Nation in research and development, technical assistance, demonstration, and extension education and training activities.

An important provision of this legislation is a requirement that a study be conducted to determine capital requirements for the further development of the industry. It was this aspect of the prior legislation passed by the 95th Congress which prompted the President to veto that bill. The President cited the lack of a clear demonstration of need for a loan guarantee program and an insurance program.

This study should allay the President's concern and enable him to sign this legislation into law. The results of the study should clearly demonstrate where additional Federal support needs to be targeted. I feel no one can disagree that we will need in the future to increase our supplies of aquatic foods in order to meet our ever increasing needs for food both nationally and worldwide.

We must be prepared to meet these demands by whatever means are available. The development of the aquaculture industry is most promising in this regard, and in my opinion, the bill we are considering is an important step to expediting this development.

I urge my colleagues to support this legislation.

Mr. BREAUX. Mr. Speaker, I yield 2 minutes to a member of the subcommittee who has worked very hard with the subcommittee on this legislation, the gentleman from Hawaii (Mr. AKAKA.)

Mr. AKAKA. Mr. Speaker, I rise in strong support of H.R. 20, the National Aquaculture Act. As the Members are aware, this bill is the result of much work between the Merchant Marine and Fisheries Committee and the Agriculture Committee and represents a sensible approach to Federal support of this growing industry.

The aquaculture industry stands on the threshold of great advances, and an indication of Federal support will give it the needed impetus. This is a reasoned and balanced approach to Federal support for aquaculture, providing an interagency national aquaculture development plan which will encourage aquaculture activities in both the public and private sectors.

Technical assistance will be provided to those individuals interested in aquaculture, and efforts will be made to eliminate needless regulation involved in starting aquaculture ventures. To accomplish the purposes of the legislation, a modest sum of money is authorized, certainly consistent with the present policy of fiscal restraint.

Mr. Speaker, in my State of Hawaii, we have long turned to the sea for many of our needs. Passage of this bill will lend support to those efforts throughout the Nation, and greatly assist this developing industry.

I urge my colleagues to support this bill and ask unanimous consent to revise and extend by remarks.

Mr. BREAUX. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. HEFTEL).

Mr. HEFTEL. Mr. Speaker, I want to congratulate the gentleman from Texas (Mr. DE LA GARZA) and the gentleman from Louisiana (Mr. BREAUX) for their leadership and perseverance, with the Members on the other side of the aisle, in finally bringing this bill back to the floor, not in its original form unfortunately, but nonetheless this is a step in the right direction.

Mr. Speaker, I rise in strong support of H.R. 20, the National Aquaculture Act. This legislation will create a long-overdue national policy on aquaculture development, requiring the planning and coordination of the Federal activities relating to aquaculture. Equally important, it will mandate studies of the financial and regulatory constraints which have inhibited the development of aquaculture in the United States.

In my home State of Hawaii, where we are blessed with climatic conditions conducive to aquaculture, we lead the country in its development. However, in the United States as a whole, acquaculture accounts for only 3 percent of all fish and shellfish consumed domestically. In 1979, the United States produced about 90,000 metric tons of fish through aquaculture. China, in the meantime, has produced 1.2 million metric tons annually of farmed fish, Japan 480 000 metric tons, and the Soviet Union 190,000 metric tons. Since the United States imports over 60 percent of the fish that Americans consume, the economic and trade benefits of a national aquaculture plan are readily evident.

There are many individual aquaculture efforts taking place in our country today, including overlapping Federal, State, and private activities. By taking

action now to coordinate these efforts and encourage aquaculture production through careful planning, research, and development, I am convinced that we will be able to better meet the increasing challenge of feeding the world's people.

I urge my colleagues to join with me in supporting this bill and look forward to the President's early signature on this legislation.

Mr. FORSYTHE. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I rise as a cosponsor of H.R. 20, to commend both the subcommittee chairman and the ranking member for this legislation. Representing, as I do, the Chesapeake Bay of Maryland, I am acutely aware of the deficiencies in the development of aquaculture in the United States. This was forcefully brought home to me only a few months ago when I met with officials of a Japanese corporation that is now establishing a commercial eel farm in St. Mary's County, Md., where they will use American fish products grown in Maryland and harvested there. They will be cooked, frozen and shipped back to Japan for consumption, all at a price that is cheaper than production in Japan. Yet we in the United States are unable to produce and harvest fish stocks and species that are perfectly acceptable to our own American people for consumption and yet we have to import great amounts of fish at great cost. Perhaps this legislation will lead the way to encouragement toward ending that situation and enhancing American fish production.

Mr. Speaker, again I commend the committee for its action.

Mr. BREAUX. Mr. Speaker, I would just conclude with the statement that while we are today considering a bill under the simple process of suspension of the rules, it really belabors the fact that we have worked many, many months and, many years and, in fact, through several Congresses on getting to the point where we are today. I would like to acknowledge the tremendous amount of staff work that has gone on, I know in the staff of the Committee on Merchant Marine and Fisheries and I am certain also in the staff of the Committee on Agriculture to bring us to the point where we can stand today and bring up a bill with relatively no opposition at all. It was not like that in the 94th Congress, it was not like that in the 95th Congress when the President saw fit to veto this bill and yet today we are able to stand before the House and recommend a bill almost by unanimous consent which has the potential of bringing about some dramatic and realistic changes for this country which we will see well into the 21st century.

Mr. Speaker, I will also conclude by saying that our former colleague, Bob Leggitt of California, was very instrumental in the early days doing work on this legislation. I remember many, many drafting sessions and many, many points in time where it looked like we would never see a national aquaculture bill. Today we are on the brink of having that become a reality and an accomplishment.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Speaker, I thank my colleague, the distinguished chairman of our subcommittee, for yielding.

Mr. Speaker, 2½ years ago, the House overwhelmingly supported legislation to establish a national aquaculture development plan. Unfortunately, the President pocket vetoed that bill as too costly and too far reaching.

Since that time, the House Merchant Marine and Fisheries Committee in concert with the House Agriculture Committee have worked together to fashion the legislation before us today, H.R. 20, the National Aquaculture Act.

Aquaculture has been in existence for about 4,000 years and is highly developed in other nations such as Japan and Russia. Unfortunately, aquaculture has been long overlooked in the United States even though it can be an important component of our Nation's agricultural industry. American aquaculture presently accounts for only 3 percent of all fish and shellfish consumed domestically. One reason for this is that previous efforts to develop a thriving aquaculture industry have been highly diffused. The necessary research and development in marine biology and related technology to make aquaculture successful have been almost nonexistent.

It makes sense to do something about this pattern. World production of seafood is on the wane. Certain stocks of fish of importance to the United States are either depleted already or seriously declining. Even so, the demand for these kinds of fish is increasing and that has created a potential shortage for U.S. consumers serving to drive the prices for shellfish to an all time high.

The United States is also faced with a terrific seafood import problem. An estimated 65 percent of the fish products consumed in the United States are imported. These fish products alone account for nearly $2 billion worth of fish.

If we are able to raise poultry, hogs, and beef for slaughter, we should be able to farm our waters methodically and scientifically as well. To accomplish the goals of increased fish production and a better trade balance, it is necessary for the Government to help the private sector get involved in the aquacultic cultivation of fish stocks. This requires advisory, educational, and technical assistance to those interested in becoming a part of the aquaculture industry.

With better coordination between the producers of fish and shellfish and the Government, we will be entering a new food producing era. A thriving aquaculture program can also take a good deal of the pressure off the commercial fishing and shellfish industries by complementing their endeavors. It will eventually help build up our depleted stocks and help compensate when clam and oyster beds are shut down because of pollution or disease.

Obviously, this rather modest bill will not solve every problem encountered by our commercial fishing industry but it can help insure that the United States holds its own in basic fish production both here at home and abroad. I strongly support H.R. 20 and urge my colleagues to join me in helping the United States regain her rightful position in the world's fishing community.

● Mr. FOLEY. Mr. Speaker, I rise in support of H.R. 20, as amended, the National Aquaculture Act of 1980. The version of H.R. 20 that appears before the House today represents a compromise between bills that have been reported by the Merchant Marine and Fisheries Committee and the Committee on Agriculture. The two committees have worked assiduously to provide a measure that would meet the objectives of the members of both committees and at the same time would be acceptable to the administration. The Senate recently passed a similar bill, S. 1650, and we have also worked with the representatives of the relevant committees in the Senate to strike a compromise that we believe will be acceptable to the other body.

This bill provides an important step in assuring a coordinated effort by agencies of the Federal Government in support of the development of the Aquaculture resources of the United States. The U.S. currently imports over 60 percent of its seafood requirements thus incurring a trade deficit of about 2 billion per year. Only 3 percent of our seafood needs are produced by aquaculture whereas the worldwide average is approximately 10 percent and in some countries the figure ranges upward to 40 percent. Our capture fish resources in many cases have been taxed to the limit. Any substantial improvement must come from aquaculture.

Today aquaculture in the United States produces such species as salmon, catfish, trout, oysters, shrimp, and other shell fish varieties. Estimates that domestic demand for seafood will grow 80 percent by the year 2000 have enhanced the market for aquaculture development.

The bill before the House today would require the Departments of Agriculture, Commerce, and Interior to formulate a National Aquaculture Development Plan within 18 months after enactment of the bill. It also encourages aquacultural activities and programs in both the public and private sector, increases coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, and the creation of new industries and jobs.

The bill requires the plan, among other things, to identify species that have significant potential for commercial cultivation, and set forth a research and development program. In implementing the plan, the Secretaries would provide educational and technical assistance on aquaculture to interested persons and to assess the feasibility of any aquaculture

system, the Secretaries could conduct tests and if necessary to demonstrate its feasibility, construct and operate developmental aquaculture facilities for testing laboratory results. H.R. 20 also requires periodic reviews of the plan to keep the list of aquatic species with commercial potential accurate, and requires the Departments, in implementing the plan, to provide advisory, educational, and technical assistance on aquaculture to interested individuals and to avoid duplication of other Federal programs relating to aquaculture.

An interagency aquaculture coordinating group would be established by the bill under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering, and Technology, and would consist of the heads of 13 agencies with aquaculture responsibilities. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis.

Finally, the bill authorizes to be appropriated: $7 million for fiscal year 1981, $10 million for fiscal year 1982, and $12 million for fiscal year 1983 to the Department of Agriculture; identical sums to the Department of Commerce; and $3 million for fiscal year 1981, $4 million for 1982, and $5 million for 1983 to the Department of the Interior.

The Committee on Agriculture has undertaken further efforts to assist in the development of an aquaculture industry in the United States. The conference report on the Federal crop insurance program which will be considered by the House this week, S. 1125, authorizes the Department to provide a crop insurance program for aquaculture financed in part by subsidies from the Federal Government on the same basis as provided for agricultural crops produced in the United States.

In addition, the committee has reported H.R. 7548, which amends the Farm Credit Act of 1971 that provides additional authority to the financial institutions that make up the Farm Credit System to offer financial assistance to those engaged in aquaculture. For example, with respect to producers and harvesters of aquatic products, the Farm Credit Act Amendments—

First, authorize Federal land banks to make real estate mortgage loans to producers or harvesters of aquatic products;

Second, authorize Farm Credit System institutions to provide to borrowers, members, and applicants financial-related services appropriate to their aquatic operations;

Third, authorize Federal intermediate credit banks to discount aquatic loans of lending institutions outside the Farm Credit System; and

Fourth, clarify that cooperatives engaged in furnishing aquatic business services are eligible to borrow from the banks for cooperatives.

Mr. Speaker, I urge the Members to join me in support of this important measure.●

● Mr. MURPHY of New York. Mr. Speaker, aquaculture in the United States accounts for only 3 percent of all fish and shellfish consumed domestically. With the U.S. importing over 60 percent of its fish for human consumption, it is immediately apparent that large economic benefits would accrue to this country in the forms of a healthier balance of trade and less strain on existing capture fisheries if this Government would encourage much more extensive acquaculture.

This is not being done, and what is being accomplished is taking place almost in spite of the diffusion of laws and agencies charged with responsibility for the aquaculture industry.

Annual landings of edible fish by U.S. fishermen have remained relatively constant since the 1960's. Traditional stocks of marine resources, once thought to be unlimited, are now estimated at a maximum level of global harvest of 100 to 150 million metric tons. Fish catches of such resources currently are around 70 million metric tons commercially and are increasing.

With finite marine resources and a seemingly infinitely expanding human appetite for protein due to population growth, it is incumbent on the United States to increase greatly its aquaculture production. It has been estimated that the potential protein production per unit area of water is up to 5,000 times that of a similar area in pasture used for beef production, and the conversion by fish of feed to edible protein is done much more efficiently than by those mammals husbanded by man on dry land.

Aquaculture needs firm, rational encouragement from the Federal Government if it is to succeed and grow in the way it should. It is hardly a risk-free business: Even under controlled circumstances aquaculture is at the mercy of nature, and it should be Government policy to aid in a fair way those entrepreneurs who take on the risks of the business.

However, at present, 11 Federal agencies have been identified as having direct involvement with aquaculture, and some 10 other agencies have programs which are indirectly related. Several of these agencies and components within these agencies have conducted research and development within the framework of specified missions, yet any coordination that has taken place has been primarily to avoid undesirable overlaps. However, far more serious than the overlaps have been the gaps because of lack of proper coordination and direction.

On January 15, 1979, I introduced H.R. 20, a bill which closely parallels legislation of the 95th Congress which was vetoed by the President. The Committee on Merchant Marine and Fisheries reported H.R. 20 on May 15, 1979. H.R. 20 was sequentially referred to the Agriculture Committee and that committee reported its version of the bill on July 16, 1979. Since that time, the two committees have negotiated a compromise version which is before the House for approval. The compromise version closely parallels my bill, as introduced, except it does not contain the features found objectionable by the President concerning loan guarantees and insurance.

Briefly explained, the compromise version would require the Secretaries of the Interior, Commerce, and Agriculture to develop a national aquaculture plan within 18 months. The plan would identify those aquatic species with a high potential for culturing on a commercial basis. For each identified species, the plan would set forth a research and development program.

The Secretaries would be authorized to appoint an Advisory Committee to assist in the initial development of the plan. An interagency aquaculture coordinating group would be established under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering and Technology, and would consist of the heads of 13 agencies with aquaculture responsibilities. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis. The bill also would authorize demonstration projects to test feasibility of aquaculture systems which would include production-scale facilities when deemed necessary by such Secretaries. There would be authorized to be appropriated a total of $70 million to carry out the legislation.

Aquaculture is an idea whose time is overdue. H.R. 20, as amended, proposes an all-out effort in the direction of creating a widespread vital aquaculture industry.

I urge the prompt passage of H.R. 20, as amended.●

● Mr. ASHLEY. Mr. Speaker, traditional stocks of marine resources, once thought to be unlimited, are now estimated by experts to be capable of yielding a maximum global harvest of 100 to 150 million metric tons per year. More conservative estimates rarely exceed 100 million metric tons, including that of the National Oceanic and Atmospheric Administration which estimates the 100 million figure will be reached in the 1980's. World fish catches are currently around 70 million metric tons.

The present world population is approximately four billion and is expected to expand to 6 billion by the year 2000. What these figures mean is that, on a worldwide basis, we can expect a shortage of fisheries products within the next decade.

Currently, more than 60 percent of all fish consumed in the United States is imported and aquaculture accounts for 3 percent of the approximately 40 percent produced domestically.

With limited traditional stocks of marine resources to meet this increased need for fisheries products, it is apparent that the potential for aquaculture in the United States is enormous. However, that potential can become a reality only if our government takes the necessary steps to encourage more extensive aquaculture in the United States and this is what H.R. 20 is intended to accomplish.

H.R. 20, as reported by the Committee on Merchant Marine and Fisheries, closely parallels this committee's bill of the 95th Congress that was vetoed by the President. Under this legislation, the Secretary of Commerce would be designated as the lead agency and authorized to guarantee loans for the construction of aquaculture facilities and acquisition of stocks and provide insurance to owners of aquaculture facilities when insurance is not reasonably available in the commercial market.

H.R. 20 was sequentially referred to the Committee on Agriculture. As reported by that committee, it closely parallels the bill as reported by the Merchant Marine and Fisheries Committee except it does not contain the loan guarantee and insurance provisions, which were found objectionable by the President in the 95th Congress bill. Instead, it would call for a study to be carried out within 12 months to determine if there is a need for such assistance. Also, it would require a study to be carried out to identify the legal and regulatory constraints to the development of aquaculture to be followed by a plan of action to remove such obstacles. In addition, the Secretaries of Commerce, Agriculture, and the Interior would be given equal authority in carrying out the legislation.

During the past several months, the committees have met on a number of occasions with a view toward negotiating a compromise version of H.R. 20. A compromise has been reached which is in essence the Agriculture Committee's version of the bill with certain clarifying and technical amendments.

Under the compromise version, which is before the Members for approval today, the Secretaries of Commerce, Agriculture, and the Interior would be required to develop a national aquaculture plan within 18 months, identify those aquatic species with a high potential for culturing on a commercial basis, and set forth a research and development program for each identified species. The Secretaries would be authorized, for the purpose of assessing the biological, technical, and economic feasibility of an aquacultural system, to conduct tests of such system and, if necessary to demonstrate its feasibility, to construct, operate, and maintain developmental aquaculture facilities. It should be emphasized that such demonstration facilities could include production-scale facilities when it is deemed necessary by the Secretaries, in the furtherance of the development of certain aquatic species.

To assist in coordinating aquaculture activities among the various agencies, the compromise version would provide for the establishment of an interagency coordinating group under the direction of the Office of Science and Technology Policy within the Executive Office of the President. This coordinating group would consist of the heads of 13 agencies with aquaculture responsibilities.

The compromise bill would adopt the Merchant Marine and Fisheries Committee's funding authorization as it relates to the three Secretaries except that it would increase the funding by $5 million bringing the total amount authorized to $70 million over 3-year life of the legislation.

H.R. 20, as amended, has the strong support of the Committees on Merchant Marine and Fisheries and Agriculture and the aquaculture industry. Because of prior consultations with in the Senate and the administration when developing the compromise version of the bill, it is anticipiated that the Senate will agree to the compromise version and that the President will sign it when it reaches him for signature. In fact, the compromise version is practically identical to the Senate bill, S. 1650, which the administration strongly supports.

Mr. Speaker, I urge the prompt passage of H.R. 20, as amended.●

Mr. BREAUX. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORSYTHE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. BREAUX) that the House suspend the rules and pass the bill, H.R. 20, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. BREAUX. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1650) and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1650

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and that may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national policy for aquaculture;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) the term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law);

(2) the term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;

(3) the term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile or aquatic plant;

(4) the term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any States;

(5) the term "Plan" means the National Aquaculture Develoement Plan required to be established under section 4;

(6) the term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior; and

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(7) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, and the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers or employees of the Federal Government), while away from their homes or regular places of business in the performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine to have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential. The Plan shall address the following matters, taking into account the status of aquaculture regarding the aquatic species concerned:

(A) aquaculture facility design and operation;

(B) water quality management;

(C) use of waste products (including thermal effluents);

(D) nutrition and the development of economical feeds, including natural food sources;

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans);

(F) processing and market development;

(G) production management and quality control; and

(H) the development of adequate supplies of seed stock;

(3) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(4) include, where appropriate, programs to analyze, and to formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture, and

(5) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practical, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person; and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquacultural assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the Joint Subcommittee on Aquaculture established in section 6, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system and, if necessary, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economical information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and

(ii) recommended measures to ameliorate any such effect;

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, and explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretaries deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 6. (a) ESTABLISHMENT.—There is established a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereafter in this section referred to as the "Subcommittee") that shall be composed of the following members or their designees:

(1) the Secretary of Agriculture,

(2) the Secretary of Commerce,

(3) the Secretary of the Interior,

(4) the Secretary of Energy,

(5) the Secretary of Health and Human Resources,

(6) the Administrator of the Environmental Protection Agency,

(7) the Chief of Engineers,

(8) the Administrator of the Small Business Administration,

(9) the Administrator of the Agency for International Development,

(10) the Chairman of the Tennessee Valley Authority,

(11) the Director of the National Science Foundation,

(12) the Governor of the Farm Credit Administration, and

(13) the heads of other Federal agencies as appropriate.

(b) PURPOSE AND FUNCTIONS.—The purpose of the Joint Subcommittee on Aquaculture is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the Subcommittee shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the two sponsoring Committees (the Committee on Atmosphere and Oceans and the Committee on Food and Renewable Resources) and the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) CHAIRMAN.—The Chairman of the Joint Subcommittee on Aquaculture shall serve a term of two years and shall be selected by the mutual agreement of the Chairmen of the sponsoring committees of the Federal Council.

(d) REPORTS.—The Subcommittee shall regularly report to the Chairman of the two sponsoring Committees and through them to the Chairman of the Federal Council, on the Subcommittee's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) FEDERAL CONSISTENCY.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the Subcommittee and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

CONTRACTS AND GRANTS

SEC. 7. (a) IN GENERAL.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) LIMITATION.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

SEC. 8. (a) CAPITAL REQUIREMENTS STUDY.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) CAPITAL REQUIREMENTS PLAN.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

SEC. 9. (a) REGULATORY CONSTRAINTS STUDY.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall conduct within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—

(A) $7,000,000 for fiscal year 1981;

(B) $10,000,000 for fiscal year 1982; and

(C) $12,000,000 for fiscal year 1983;

(2) to the Department of Commerce—

(A) $7,000,000 for fiscal year 1981;

(B) $10,000,000 for fiscal year 1982; and

(C) $12,000,000 for fiscal year 1983;

(3) to the Department of the Interior—

(A) $3,000,000 for fiscal year 1981;

(B) $4,000,000 for fiscal year 1982; and

(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or action authorized under any other provision of law.

MOTION OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BREAUX moves to strike out all after the enacting clause of the Senate bill, S. 1650, and to insert in lieu thereof the provisions of the bill, H.R. 20, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid upon the table.

A similar House bill, H.R. 20, was laid on the table.

GENERAL LEAVE

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

UMI

PROVIDING FOR CONSIDERATION OF H.R. 6790, FOREIGN SERVICE ACT OF 1980

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 695 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 695

Resolved, That upon the adoption of this resolution is shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, the first reading of the bill shall be dispensed with, and all points of order against the bill for failure to comply with the provisions of clause 5, rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be considered as having been read for amendment under the five-minute rule. It shall be in order to consider the amendments recommended by the Committees on Foreign Affairs and Post Office and Civil Service now printed in the bill, and all points of order against said amendments for failure to comply with the provisions of clause 5, rule XXI are hereby waived. It shall be in order to consider en bloc any of the amendments recommended by the Committee on Post Office and Civil Service now printed in the bill, in an order recommended by the chairman of that committee. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

□ 1550

The SPEAKER pro tempore. The gentleman from California (Mr. BEILENSON) is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield the usual 30 minutes for purposes of debate only to the gentleman from Mississippi (Mr. LOTT), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 695 is the rule providing for the consideration of H.R. 6790, the Foreign Service Act of 1980. It is an open rule providing for 2 hours of general debate. One hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, and the other hour is to be equally divided and controlled by the chairman and ranking minority member of the committee on Post Office and Civil Service.

The rule waives clause 5 of rule XXI, which prohibits appropriations in a legislative bill, against consideration of the bill and the reported amendments of both the Foreign Affairs and Post Office and Civil Service Committees. This waiver is necessary because the bill and the amendments make various changes in the Foreign Service compensation and benefits structures. Such changes may result in the use of funds already appropriated for purposes other than originally intended. Technically, such changes are considered appropriations and thus a point of order would lie against the bill or the amendments without the waiver.

The rule also allows the amendments reported by the Post Office and Civil Service Committee to be considered en bloc in an order recommended by the chairman of the committee. This en bloc provision allows the combination of committee amendments dealing with the same issue. It will simplify floor consideration but will not have a restrictive effect during the amendment process.

Finally, the rule provides for one motion to recommit.

Mr. Speaker, H.R. 6790 is the first comprehensive revision of Foreign Service legislation since 1946. It will modernize the basic personnel management rules in the Foreign Service by tracking many of the policies contained in the Civil Service Reform Act of 1978. For example, the bill creates a senior Foreign Service along the lines of the recently created senior executive service. At the same time, the bill addresses those matters unique to the Foreign Service. It takes steps, for example, to reaffirm the requirement that membership in the Foreign Service means availability for worldwide service and seeks to improve the so-called "up or out" promotion system.

The bill is the product of extensive work by two House committees and will result in a simplified and clear governing statute for the Foreign Service. I urge my colleagues to support both the bill and the open rule under which it is to be considered.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 695 is the rulemaking in order consideration of the Foreign Service Act of 1980. It is an open rule and provides for 2 hours of debate. One hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs and 1 hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service. Clause 5 of rule XXI prohibiting appropriations in a legislative bill is waived against consideration of the bill. This is necessary since the bill makes changes in pay and benefits which would allow previously appropriated funds to be used for new purposes. The rule makes in order consideration of the amendments recommended by the Committees on Foreign Affairs and Post Office and Civil Service and waives clause 5 of rule XXI against the amendments. This is necessary since the amendments also make changes in pay and benefits which could constitute the use of existing appropriations for new purposes. Lastly, it shall be in order to consider en bloc the Post Office and Civil Service Committee's amendments and they shall be in an order recommended by the chairman of that committee.

Mr. Speaker, the primary purpose of this bill is to codify into statute the various laws and rules governing the Foreign Service. The last major revision of Foreign Service law took place in 1946, and it is clear that changes are needed. Although most of the bill's provisions are sound, there does appear to be some controversy about certain parts of the bill. For example, the Foreign Service pay schedule is in need of revisions which will make it more realistic in view of the economic changes which have taken place. However, the bill seems to have gone far beyond what was needed and adopted linkages between the GS and Foreign Service schedules which result in increases for Foreign Service personnel of nearly 12 percent in addition to whatever general pay raise is provided in October. In addition, 17 percent of Foreign Service employees would receive increases of between 20 and 25 percent. These pay provisions are an impediment to passage of this legislation and invite a veto of the bill. It is my understanding that an amendment to restructure this section will be offered.

A number of other amendments to the bill are anticipated, including one which affects the automatic entitlement for former spouses. Rather than automatically entitling a divorced spouse to a substantial portion of a Foreign Service officer's pension, the amendment would allow the courts to order such payments, as is the current practice approved by the 95th Congress.

Mr. Speaker, although there are several amendments likely to be offered to this legislation, this is an open rule and consequently I have no objection to its passage.

Mr. Speaker, I yield back the balance of my time.

Mr. BEILENSON. Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 7301, MILITARY CONSTRUCTION AUTHORIZATIONS, FISCAL YEAR 1981

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 696 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 696

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, the bill shall be read for amendment under the five-minute rule by titles instead of by sections. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas (Mr. FROST) is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 969 is an open rule providing for the consideration of H.R. 7301 authorizing appropriations for certain construction at military installations in fiscal year 1981, and for other purposes.

The rule provides for 2 hours of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services and further provides that the bill shall be read for amendment under the 5-minute rule by titles rather than by sections.

Mr. Speaker, H.R. 7301 authorizes $5.538 billion for military construction projects in fiscal year 1981. This amount is $707,000 less than the total requested by the administration in its January budget request, March amended request and fiscal year 1980 supplemental request. The Committee on Armed Services has combined these three budget requests and the authorization level contained in H.R. 7301 reflects the committee's judgment on the programs requested by the administration for fiscal year 1981 as well as for the remainder of fiscal year 1980. I should note that H.R. 7301 does not make funds specifically available for fiscal year 1980, rather the Committee on Armed Services has made adjustments to the fiscal year 1981 authorization levels to accommodate the supplemental requests.

My colleagues will recall that the House has previously passed the fiscal year 1981 military construction appropriation without benefit of this authorization. It is therefore especially important that the House consider this legislation so that the appropriation approved in June be properly authorized.

Mr. Speaker, House Resolution 696 is a simple open rule and I would urge my colleagues to adopt it so that we may proceed to the consideration of H.R. 7301.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the notable thing about this rule is that it contains no waivers of points of order and no restrictions on amendments.

It provides 2 hours of general debate for the consideration of the military construction authorization for fiscal year 1981 and provides that this bill will be read for amendment by titles instead of by sections.

Mr. Speaker, the bill made in order by this rule authorizes a total of $5,538,003,000 for military construction. The Committee on Armed Services reported the bill by a vote of 41 to 0, with 1 voting "present."

The Rules Committee reported the rule by a voice vote.

I support the rule so that the House may proceed to consider the bill.

Mr. FROST. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1600

FOREIGN SERVICE ACT OF 1980

Mr. FASCELL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FASCELL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DERWINSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 2, answered "present" 2, not voting 103, as follows:

[Roll No. 523]

YEAS—325

Abdnor
Addabbo
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Barnard
Barnes
Bauman
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Bingham
Blanchard
Bolling
Boner
Bonior
Bouquard
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burton, Phillip
Byron
Carney
Carr
Carter
Cavanaugh
Cheney
Clausen
Cleveland
Clinger
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dixon
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fascell
Fazio
Fenwick
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kildee
Kindness
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lujan
Luken
Lungren
McCormack
McDade
McDonald
McEwen
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Motti
Murphy, Pa
Murtha
Musto
Myers, Ind.
Natcher
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patterson
Pease
Pepper
Petri
Pickle
Preyer
Price
Pritchard
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Roe
Rose
Rosenthal
Roth
Roybal
Rudd
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—2

Lloyd
Mitchell, Md.

ANSWERED "PRESENT"—2

Neal
Ottinger

NOT VOTING—103

Ambro
Anderson, Ill.
Applegate
Ashbrook
Baldus
Beard, R.I.
Beard, Tenn.
Biaggi
Boggs
Boland
Bonker
Breaux
Burgener
Burlison
Burton, John
Butler
Campbell
Chappell
Chisholm
Clay
Coelho
Coleman
Conyers
Corman
de la Garza
Dicks
Dingell
Dodd
Donnelly
Dougherty
Eckhardt
Edwards, Okla.
Emery
Fary
Ferraro
Findley
Fish
Fountain
Giaimo
Grassley
Hall, Ohio
Harkin
Hillis
Hinson
Holtzman
Hubbard
Jenrette
Kastenmeier
Kelly
Kemp
Kogovsek
Leach, La.
Lederer
Lehman
Leland
Lowry
Lundine
McClory
McCloskey
McKinney

Marriott	Porter	St Germain
Mathis	Pursell	Steed
Mattox	Quayle	Stockman
Minish	Railsback	Stokes
Moffett	Richmond	Tauzin
Murphy, Ill.	Ritter	Thomas
Murphy, N.Y.	Rodino	Walker
Myers, Pa.	Rostenkowski	Whitten
Nedzi	Rousselot	Williams, Ohio
Nelson	Royer	Wilson, Bob
Nolan	Russo	Wilson, C. H.
Patten	Satterfield	Young, Alaska
Paul	Seiberling	Zeferetti
Perkins	Shannon	
Peyser	Spellman	

□ 1610

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 6790, with Mr. KAZEN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida (Mr. FASCELL) will be recognized for 30 minutes; the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 30 minutes; the gentlewoman from Colorado (Mrs. SCHROEDER) will be recognized for 30 minutes; and the gentleman from Iowa (Mr. LEACH) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. FASCELL).

□ 1620

Mr. FASCELL. Mr. Chairman, I want to rise in support of H.R. 6790, the Foreign Service Act of 1980.

Mr. Chairman, I yield such time as he may consume to the chairman of the full committee, the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980.

At the outset, I want to commend those of our colleagues whose diligent and untiring efforts have brought this landmark legislation to the floor today. Particularly the joint floor managers of the bill, the Honorable DANTE B. FASCELL, chairman of the Subcommittee on International Operations; the Honorable PAT SCHROEDER, chairman of the Subcommittee on Civil Service; and their respective ranking minority members, the Honorable JOHN BUCHANAN and the Honorable JIM LEACH. I also want to express my thanks to the distinguished chairman of the full Committee on Post Office and Civil Service, the Honorable JAMES HANLEY for his cooperation in permitting our two subcommittees to meet jointly for the purpose of taking testimony on and marking up the legislation. Without this joint effort, it is doubtful whether action on the bill could have been completed this year.

Mr. Chairman, the distinguished joint managers of the bill have thoroughly explained the provisions of H.R. 6790. I would like, however, to emphasize the importance of three of the bill's features.

First, in the area of compensation, the bill mandates pay comparability linkage between the new Foreign Service pay schedule and the pay grades of the civil service schedule. By requiring a clear and precise linkage between the two pay schedules, the bill brings Foreign Service salaries into compliance with the intent of the Pay Comparability Act of 1970. Under the present system, salaries of Foreign Service personnel lag behind comparable civil service positions and the variance between the two schedules is increasing. By rectifying this inequity, we will halt the trend in declining applications for the Foreign Service by those American men and women best qualified to steward our relations abroad.

Second, the bill as reported by the Committee on Foreign Affairs, raises the mandatory retirement age for the Foreign Service from 60 to 65. By raising the mandatory age 5 years, the bill brings into balance the competing factors underlying this issue. First, it gives those members of the service who do not want to retire at age 60 an opportunity to stay on the job an additional 5 years. Moreover, the bill gives the Secretary of State the discretion to extend the service of Foreign Service personnel beyond the age of 65. Second, by retaining a specified mandatory retirement age, the provision insures that those men and women entering the Foreign Service will be able to advance their careers without the impediment of compaction at the top levels.

Finally, the bill sets forth worldwide availability as the fundamental criterion for membership in the Foreign Service. The bill requires that all career members of the service shall be obligated to serve abroad. The so-called domestic Foreign Service category will be abolished and those current members not willing to serve overseas will be converted to the civil service.

Mr. Chairman, I am pleased to note that all of the differences between the two versions of the bill as reported by the Foreign Affairs Committee and the Post Office and Civil Service Committee have been resolved except for the issue of benefits for former spouses which will be resolved by a vote of the Committee of the Whole when the committee amendments are offered. I am advised that the full Senate is ready to consider this legislation as soon as it clears the House. I would, therefore, hope that we can complete our action on the bill today.

Mr. Chairman, the enactment of H.R. 6790 will provide a much needed boost in the morale of the Foreign Service, attract the best qualified personnel to the Foreign Service and improve the conduct of our foreign policy. I strongly urge the adoption of the bill.

Mr. BUCHANAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 6790 and to associate myself with the remarks of the gentleman from Florida (Mr. FASCELL).

The bill before us today represents more than 18 months of work by our subcommittee and the Civil Service Subcommittee. At the same time, it also addresses issues with which our subcommittee has been concerned for many years.

In drafting this legislation, the subcommittee provided a forum for all who wished to be heard. We took all viewpoints into consideration in drafting this legislation and considered more than 100 proposed amendments. We worked closely with the agencies involved and with the unions representing their personnel.

In my judgment, the resultant legislation is a good bill which will help to strengthen and improve the Foreign Service with regard to both its efficiency and the morale of its members.

Because of mandated reductions in personnel levels, increased workloads, low pay and increased hardships involved with service abroad, the morale of the Foreign Service is extremely low.

These factors have resulted in increasing numbers of midlevel officers leaving the service for higher paying less demanding jobs in the civil service or in the private sector.

During the years that it has been my privilege to serve in this body, I have had the opportunity to meet many Foreign Service officers, both here and abroad. I continue to believe that the United States has the best Foreign Service in the world and I believe that we have not done right by these people who are putting their lives on the line for us every day.

The Foreign Service is unique in that its members are expected to spend the overwhelming majority of their careers abroad in cultures, climates and political conditions substantially different from and sometimes hostile to those in the United States.

I have here, in my hand, a newspaper article about a Foreign Service family and I think the headline reflects the reality of Foreign Service life today. The headline reads, "Overseas and Under Fire for Uncle Sam."

Mr. Chairman, the days of the pinstriped cookie pusher, if they ever existed, are long past. The days of terrorism, increasing family hardships and other problems are more reflective of the reality of the Foreign Service today.

With H.R. 6790, we attempt to address these realities—the realities of Foreign Service officers held hostage in Tehran who are paid less for performing their jobs than civil service personnel on a comparable level here in Washington; the realities of life abroad which contribute to increased divorce rate and separation of family members, the realities of Americans who are doing their best for our country but who are too often ignored or forgotten.

The numbers about which we are talking are not large. Indeed, the Department of State is the smallest Federal department. The Foreign Service personnel in the Department of State, the International Communication Agency, and the other agencies are fewer in number than the staff serving the Congress.

What we are addressing is a very small department with a very large mandate.

H.R. 6790 is an effort to address some of the most pressing problems facing personnel today. It tracks the civil service reform legislation enacted in 1978 with alterations to reflect the different nature of the Foreign Service. It is supported by the American Foreign Service Association which represents the majority of the Foreign Service members today.

I urge its adoption.

□1630

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe the Foreign Service Act of 1980, H.R. 6790, is sound, responsible, and progressive legislation properly focused on a number of problems which have afflicted the Foreign Service. Enactment of this legislation will—

Codify existing but far-flung laws governing the Foreign Service;

Provide increased promotion opportunities for members of the Service;

Simplify and rationalize the numerous current categories of employment;

Increase the compatability of the personnel systems in the various agencies authorized to use the Foreign Service personnel authorities;

Facilities interchange of employees between agencies and between personnel systems;

Link the pay of the Foreign Service to that of the general schedule, to assure comparable pay for comparable work;

Establish a senior Foreign Service, parallel to the Senior Executive Service created by the Civil Service Reform Act of 1978, in which increased pay is available for outstanding performance;

Foster broad employee participation in determination of the conditions of employment affecting them by establishing a statutory framework for labor-management relations;

Authorize pension benefits for former spouses of members of the Foreign Service; and

Strengthen provisions of law designed to minimize the disruptive effect of a Foreign Service career on family life.

The Committee on Foreign Affairs and the Committee on Post Office and Civil Service, to which this legislation was jointly referred, worked closely to iron out potential problems. The disagreements between the two committees are limited in number and, for the most part, not over central issues in the legislation.

There are, however, two significant issues which may be debated on the floor. First, both subcommittees adopted a provision, which I sponsored, to provide pension benefits to former spouses of members of the Foreign Service. Unlike spouses of private sector employees, who are covered by social security, spouses of Government workers gain no retirement benefits based on their working spouse's contributions. So, in traditional role model families, where the husband works for a salary and the wife works for free in the house, death of or divorce from a Government-employed husband could leave the wife penniless. In the Foreign Service, members are rotated throughout the world often on a biennial basis. The wife or husband, who follows his or her Foreign Service spouse, can never build an independent career and is unlikely to have a retirement plan of his or her own. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation reports on her performance of representational duties. In effect, Foreign Service wives were impressed into Government service as unpaid representatives. The tradition of unpaid service continues.

The subcommittee provision established a presumption of a prorata division, based on the number of years of marriage, for both retirement and survivor's benefits. Only spouses of over 10 years would be eligible for an automatic share. Further, the former spouse and any current spouse had the right to veto any waiver of survivor's benefits by the member of the Service. While this provision was retained by the Foreign Service Committee, the Post Office and Civil Service Committee, by a vote of 12 to 11, adopted a weakening amendment offered by Mr. FORD of Michigan.

Under the Ford amendment, State courts are permitted to divide both retirement and survivor's benefits, but without benefit of any Federal guidance on the appropriate division. Recent experience with State family law judges and lawyers makes it clear that only self-executing legislation of the type adopted by the subcommittees is certain to vindicate the rights of former spouses. By eliminating the right of the current and former spouse to veto waiver of survivor's benefits, the Ford amendment may render the purported availability of a survivor's benefits for a former spouse a fraudulent promise. Finally, in limiting the effectiveness to future divorces and retirements, the Ford amendment provides no relief for the dozens of Foreign Service former spouses, with whom I have personally talked, who are destitute.

For these reasons, I urge your support for the Foreign Affairs Committee provision on former spouse pension benefits and your opposition to the Ford (Post Office and Civil Service Committee) amendment.

Second, the subcommittee adopted a provision linking the pay of the Foreign Service to that of the general schedule. The original administration bill allowed the President to set the pay. We rejected this proposal because Foreign Service pay has, over the last decade, fallen well behind the general schedule. Unfortunately, the rather ill-defined concept of comparability has not been used to keep Foreign Service pay even with that of other Federal workers. Given the increased dangers faced by members of the Foreign Service and the decreased buying power of the dollar abroad, this erosion of Foreign Service pay is operating to make the Foreign Service a less desirable career.

At this point, it is not clear whether there will be an amendment to change the pay provisions of H.R. 6790 and keep down Foreign Service pay. There is a non-controversial Post Office and Civil Service Committee amendment to correct an oversight in the subcommittee adopted pay amendment. I will vigorously oppose any attempt to cut the pay of members of the Foreign Service and urge your opposition as well.

No agency will go out of business if we do not pass this bill today. No authorization will expire. Yet, I believe that there is a special sort of urgency to this legislation. The lot of a Foreign Service officer or staff member is on the decline. Pay is less attractive than a few years ago; career promotion opportunities are limited due to a glut of senior officers; being an American evokes hostility and suspicion, rather than friendship and respect, in an increasing number of posts; physical safety is a real and ever-present concern. If we need a Foreign Service, and I think we do, we must do something quickly to convince present and would-be members of the Service to pursue a career in the Foreign Service. The quality of our foreign policy depends in large part on the quality of those who implement it. If we do not act to maintain the quality of a Foreign Service career, we will only have ourselves to blame for poor international relations.

Mr. Chairman, I would like to compliment everyone involved in this whole process. I think we broke all records for the amount of time involved in legislation in both committees working together without the typical jurisdictional disputes or making witnesses duplicate their testimony. I think that was very noteworthy and everyone involved in the process should be really complimented.

Mr. Chairman, at this time I would yield such time as he may consume to our chairman of the Post Office and Civil Service Committee, JIM HANLEY. I also want to compliment him. This is probably one of the last major pieces of legislation coming out of his committee under his chairmanship, and he has been most cooperative during this whole process. I personally, therefore, would like to take the time of this body to compliment him and thank him. I yield to him such time as he may need.

Mr. HANLEY. Mr. Chairman, I would very much like to take this time to extend my congratulations to the gentlewoman for the yeoman work she has performed on this legislation. I would also like to thank again the gentleman from Florida (Mr. FASCELL) for his cooperation. This really is one of the classic demonstrations of teamwork.

Mr. Chairman, I take this time to congratulate and commend the Representative from Colorado and the Representative from Florida for their fine work on this legislation. This is much needed legislation, and I am hopeful that it will improve the Foreign Service personnel system and the conduct of the foreign affairs of the Nation.

This bill makes many improvements. It would:

Extend the "selection out" system, which allows for the removal of person-

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nel for poor performance or nonpromotion, to all American career personnel in the service, and extend certain due process protections to that system in accordance with recent court decisions;

Establish a bill of rights for members of the Foreign Service, prohibiting discrimination and granting protection from reprisal for dissenting political views or good faith disclosures of information concerning violations of law, mismanagement, and abuse of authority;

Create a Senior Foreign Service, similar to the Senior Executive Service with difficult entry requirements, performance pay for outstanding performance, and the possibility of limited career extensions for service beyond expiration of time in class;

Directly link the Foreign Service pay schedule to the general schedule;

Provide for the more extensive hiring of Foreign Service family members, as opposed to foreign nationals, in noncareer positions at overseas posts; and

Convert employees of the foreign affairs agencies who are not available for worldwide service over to the general schedule.

I particularly want to commend the Representative from Colorado for her work on the labor-management relations provisions of this legislation. As many Members will remember, during the last Congress we passed the Civil Service Reform Act, and a major portion of that legislation involved establishing a statutory basis for labor-management relations in the Federal Government. The Committee on Post Office and Civil Service spent many, many hours fashioning a labor-management relations title which is now known as title VII of the Civil Service Reform Act. When the bill reached the House floor, title VII was further refined, and the labor-management relations provisions which passed the House were adopted by a record vote of 381 to 0. The House position on all important aspects of labor-management relations, such as management rights, was sustained in conference and is now law.

I say all this by way of background because, frankly, it is my judgment that the labor-management relations provisions of the Foreign Service Act of 1930 (H.R. 4674) proposed by the administration would never have made it through our committee, the committee with jurisdiction over the labor-management relations program for the Federal Government. The administration proposal simply differed too much from title VII of the Reform Act, and in some instances, even attempted to place in law for the Foreign Service some administration proposals which this House, during the last Congress, rejected when those proposals were submitted as part of the Civil Service Reform Act.

It is here that the Representative from Colorado played a key role. She drafted a complete substitute for the labor-management relations provisions of the administration bill, a substitute which was based on title VII of the Reform Act, and which adopted the provisions of that act except for the few cases where the unusual nature of the Foreign Service personnel system justified different treatment. That substitute was adopted by both committees and incorporated as chapter 10 of H.R. 6790.

The substitute brought the Foreign Service under the umbrella of the Federal Labor Relations Authority, and by so doing, insures that labor law in the Foreign Service will be administered consistently with that in the rest of the civil service. It conformed the management rights provisions of the Foreign Service Act with those of the Civil Service Reform Act, and in construing those provisions the legislative history of the Reform Act and the report of the Committee on Post Office and Civil Service on H.R. 6790 should be consulted, as well as decisions of the Federal Labor Relations Authority. It is certainly not the intent of the legislation to undo any decisions of the Authority and the provisions of H.R. 6790 should be interpreted consistently with that intent.

In closing, I urge the House to adopt this legislation. The other body is likely to act on it this week, and the differences between the two Houses are few. Enactment of H.R. 6790 will be a mark on the right side for the 96th Congress, and the legislation deserves your support.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe the Foreign Service Act of 1980, H.R. 6790, is sound, responsible, and progressive legislation properly focused on a number of problems which have afflicted the Foreign Service. Enactment of this legislation will—

Codify existing but farflung laws governing the Foreign Service;

Provide increased promotion opportunities for members of the Service;

Simplify and rationalize the numerous current categories of employment;

Increase the compatability of the personnel systems in the various agencies authorized to use the Foreign Service personnel authorities;

Facilitate interchange of employees between agencies and between personnel systems;

Link the pay of the Foreign Service to that of the General Schedule, to assure comparable pay for comparable work;

Establish a Senior Foreign Service, parallel to the Senior Executive Service created by the Civil Service Reform Act of 1978, in which increased pay is available for outstanding performance;

Foster broad employee participation in determination of the conditions of employment affecting them by establishing a statutory framework for labor-management relations;

Authorize pension benefits for former spouses of members of the Foreign Service; and

Strengthen provisions of law designed to minimize the disruptive effect of a Foreign Service career on family life.

The Committee on Foreign Affairs and the Committee on Post Office and Civil Service, to which this legislation was jointly referred, worked closely to iron out potential problems. The disagreements between the two committees are limited in number and, for the most part, not over central issues in the legislation.

There are, however, two significant issues which may be debated on the floor. First, both subcommittees adopted a provision, which I sponsored, to provide pension benefits to former spouses of members of the Foreign Service. Unlike spouses of private sector employees, who are covered by social security, spouses of Government workers gain no retirement benefits based on their working spouse's contributions. So, in traditional role model families, where the husband works for a salary and the wife works for free in the house, death of or divorce from a Government employed husband could leave the wife penniless. In the Foreign Service, members are rotated throughout the world often on a biennial basis. The wife or husband, who follows his or her Foreign Service spouse, can never build an independent career and is unlikely to have a retirement plan of his or her own. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation reports on her performance of representational duties. In effect, Foreign Service wives were impressed into Government service as unpaid representatives. The tradition of unpaid service continues.

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Mr. LEACH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I will be brief. I would just make two observations.

There are two unique features of this presentation today. One is the manner in which the bill was brought to the House floor under joint jurisdiction of two committees. I have never before worked under that procedure, but I am most impressed and indebted for the work of the gentleman from Florida (Mr. FASCELL), the gentlewoman from Colorado (Mrs. SCHROEDER) and, of course, the ranking member from Alabama (Mr. BUCHANAN) for their work on this legislation.

The second feature is we are dealing with a very unusual institution, the U.S. Foreign Service. I happen to be a frequent critic of American foreign policy over the last several decades, but the fact is that the United States today has the finest Foreign Service in the world. We should be careful about doing anything that upsets the applecart, and the aim of this legislation is to improve and refine and make a service that is very strong even stronger.

Mr. FASCELL. Mr. Chairman, will the gentleman from Iowa yield?

Mr. LEACH of Iowa. I am delighted to yield.

Mr. FASCELL. I thank the gentleman for yielding, because I think he has made a very important point that needs to be emphasized. That is the reason I take this time. I would hope that our colleagues would follow the gentleman's advice and if they have disagreements with respect to foreign policy that they do not try to change the policy by voting against the Department of State and the people who are trying to do their very best to represent the U.S. Government; namely, the Foreign Service of the United States.

Mr. LEACH of Iowa. I appreciate that. I would just follow up with one final observation of perhaps prejudice of my own and that is that the primary problem in foreign policy in the last several decades has been the politicization of foreign policy. What we must strive to do in the decades ahead is to professionalize foreign policy decisionmaking, bring the people that are competent in the area into the forefront of policy determination as well as execution.

Mr. Chairman, with those comments I will be happy to yield such time as he may consume to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Chairman, I, too, want to commend the distinguished chairman of the subcommittee and the ranking members of both the Foreign Affairs Committee and the Post Office and Civil Service Committee, the two committees which considered this legislation.

Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980. As a member of the Committees on Foreign Affairs and Post Office and Civil Service, the two committees which favorably reported this legislation, I have had the opportunity to review the merits of this legislation and the needs it addresses.

Among the key aspects of this measure are provisions which: First, establish a set of merit principles governing personnel actions in the Foreign Service, and require protection against discrimination for applicants and employees of the Foreign Service; second, create a new Senior Foreign Service; third, link Foreign Service salaries to general schedule salaries; fourth, provide for performance pay compensation; and fifth, establish the Foreign Service Labor Relations Board, a statutory framework for labor-management relations in the Foreign Service.

The Foreign Service Reform Act of 1980 codifies and revises the various statutes governing Foreign Service operations and personnel administration. In light of the fact that the last major revision of Foreign Service legislation took place in 1946, it is clear that revisions are necessary to promote the effective conduct of our State Department and Nation's foreign policy.

There are several provisions of this measure that my colleagues must consider by way of amendment. However, I commend to my colleagues the general thrust of this comprehensive measure.

Accordingly, I urge my colleagues to support this important measure providing the Foreign Service with an effective and long overdue reorganization.

Mr. LEACH of Iowa. Mr. Chairman, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. PEPPER).

□ 1640

Mr. PEPPER. Mr. Chairman, in 1978 the Members will recall that upon the initiative of the Committee on Aging of the House, working in cooperation with the gentleman from Illinois (Mr. FINDLEY) we recommended to the House and the House and the Congress adopted, and the President signed, a bill banning mandatory retirement from Federal employment at any age and generally in non-Federal employment below 70. Since that time especially our Select Committee on Aging has worked very diligently to try to eliminate other ceilings on employment. That is to make possible anybody doing a creditable job, and qualified to do that job, who wanted to keep on doing it to do so without any mandatory retirement from either public or private authority. One of those who at first did not subscribe to the principle that we were pressing was the State Department because it did not feel at the time that the age limit should be lifted above 60. The mandatory retirement age for the Foreign Service was 60. There were many members of the Foreign Service in many parts of the world where I had the privilege to make a visit and listen to who told me about the hardships inflicted upon them by that mandatory retirement rule that they had to retire at age 60.

So we on the Aging Committee had some hearings about the matter. As a matter of fact, our counsel participated in a case before the U.S. Supreme Court. The Supreme Court held under existing law that that mandatory retirement provision was valid; but the committee that is handling this bill today, the subcommittee of which is chaired by my distinguished colleague, the gentleman from Florida (Mr. FASCELL) responded to an appeal that we addressed to them. Your committee through the very able and lovely gentlewoman from Colorado (Mrs. SCHROEDER) is going to offer an amendment that is agreed to now by the State Department as I understand it, raising the mandatory retirement age from 60 to 65. That is not everything we would like, but that is a good beginning.

I rise to commend your distinguished committee and all who had a part in making that salutary step forward to make it possible for more people to continue doing a good job when they are competent and qualified to do so, and not to be thrown out of that job because of some arbitrary and meaningless criterion of age. Thank you very much for the proposed amendment.

Mr. BUCHANAN. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Illinois (Mr. DERWINSKI).

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Mr. DERWINSKI. Mr. Chairman, I rise in basic support of H.R. 6790, the Foreign Service Act of 1980. This is the first major update and codification of Foreign Service laws and rules in 34 years. As the only member of both committees of jurisdiction, I call your attention to the fact that we have put over a year of work into this bill, and it is, for the most part, a balanced, progressive piece of legislation which should govern the Foreign Service well for many years to come. It is a necessary measure, I think, because although small as Government departments go the Department of State has become a cumbersome bureaucracy overaddicted to paper. There are significant defects in State Department personnel management, some of which this bill addresses.

Specifically, the reconciliation of civil service reform with the uniqueness of the Foreign Service and its mission was accomplished in a practical fashion at the subcommittee level.

The bill establishes statutory labor-management relations on the Civil Service reform model, but without ignoring the obvious differences between the 2.2-million employee domestic civil service and a 9,000-employee Foreign Service facing the responsibility of representing our country abroad.

We create a mandatory Senior Foreign Service as a rough equivalent of the voluntary domestic Senior Executive Service. The Senior Foreign Service is not a mere extension of the more loosely organized domestic group because the Foreign Service has long had a more grueling, up-or-out system than the civil service.

In the area of job classification the bill abolishes the so-called Domestic Foreign Service as it developed, rather by accident, over the years. We are all agreed that a Foreign Service career must mean that a person is worldwide available and willing to adjust himself and his family to whatever assignment he receives anywhere.

We further recognize the increasing incidence of divorce in the Foreign Service and authorize a new survivor benefit for former spouses, which a court may order the State Department to pay as part of a divorce settlement. The bill codifies the existing practice of awarding an annuity to an employee's former spouse when a court so orders.

Perhaps the most practical part of the bill is its raising of the mandatory retirement age from 60 to 65. Here we have succeeded, I believe, in balancing the issue of age discrimination with the decline in worldwide availability of older Foreign Service employees.

One of the important features of this legislation is its commitment to the principle of merit in recruitment and all aspects of Foreign Service employment. At the same time, the bill properly emphasizes the continued use of affirmative action, minority recruitment programs, and all other aspects of the Federal equal employment opportunity effort.

The Foreign Service was once justly criticized for its narrow base, a small select group which dominated the formation and conduct of U.S. diplomacy. Over the years, however, the Foreign Service changed as applicants—women, as well as men—of diverse ethnic, racial, and religious origins entered the diplomatic service. New forms of discrimination must not be permitted to deflect the thrust of further equal opportunity efforts. In this legislation, we make clear the intent of the Congress that the principle of merit will motivate the employment decisions of the Foreign Service. This concept is thoroughly compatible with a bona fide equal employment opportunity program which includes conscientious affirmative action and a vigorous minority recruitment program. We intend the Foreign Service of the future to be representative of the American people, free of discrimination by virtue of race, religion, gender, or ethnic origin and highly professional in character.

Our supplemental views in the Post Office and Civil Service Committee's report to this bill outlined three areas where the legislation could be improved. One of these areas, the unity of the Peace Corps personnel system, has already been settled pretty much to our satisfaction. In another, the Secretary's ability to acknowledge certain Selection Board decisions without merely rubberstamping them, compromise language will be offered and if the Department of State says it can live with such language, I will not oppose it. Third is the issue of pay. I maintain that it will always be a better idea to allow the President to administratively establish and revise the linkage of Foreign Service with civil service pay, under the general provisions of pay comparability. There are other problems, nonetheless, which are not addressed in the bill—cost-of-living allowances abroad and differences in posts around the world, for example.

My two committees have not reported identical versions of this bill, and as a member of both I will be taking positions on amendments as they are proposed. I will confine myself at this point to repeating to the House what I said so many times during our civil service reform debates in 1978: We must let managers manage in the executive branch if we expect to constructively criticize them later. Only if we give them the tools now will we be able to properly blame or commend them in the future.

Another important consideration is that, among other things, the Foreign Service Act of 1980 rearranges the categories and designations of Foreign Service employees. The Department of State's application of the FSO designation does not really take into account the complexities of the status of various U.S. Government officials who serve abroad. The Department should undertake to accommodate the real needs of the diverse Government agencies serving under Foreign Service aegis overseas and modify its career service designations accordingly.

Mr. Chairman, I will have further comments during the amendment procedure.

Mr. FASCELL. Mr. Chairman, I want to thank my colleagues for their participation in this legislation. As somebody said, it was kind of unique coming out here with two committees working on this bill, and the cooperation has, indeed, been excellent, the bulk of the work falling on the chairperson of the Subcommittee on Post Office and Civil Service and the Subcommittee on International Operations which held joint hearings and markup on the legislation, and the cooperation of the full Committee on Post Office and Civil Service and the full Committee on Foreign Affairs. It has been unusual for a bill of this magnitude.

Mr. Chairman, this is a large bill and as has already been pointed out, it is an attempt to modernize the legislation which has not been done since 1946. Those of us who have now worked on this bill can understand why our predecessors were reluctant to get into this complex area, which involves many agencies and many differing opinions.

I want to acknowledge on the record the excellent effort and hard work of the staff of both committees, the subcommittee and the full committee, as well as the organizational groups. I simply repeat this so that the record will reflect and my colleagues will get some of the flavor involved in what is really not only a major piece of legislation but a very important piece of legislation, with all of the agencies involved who have some responsibility in this area other than the State Department—the International Communication Agency, the Agency for International Development, the Arms Control and Disarmament Agency, Commerce, Agriculture, and the Peace Corps. Those are just the Agencies involved in this effort. There are also many different organizational groups who have some interest in what happens to the Foreign Service. All of their interests are affected by this.

Suffice it to say that there was a great deal of testimony, and a great many suggestions. I want our colleagues, Mr. Chairman, to know that between the two committees we considered every single suggestion that was submitted to the committees either by way of separate legislation, amendments or testimony. They totaled approximately 400 suggested changes. I just repeat that. They totaled 400. I have never been involved with a piece of legislation that received as much careful, thoughtful consideration, despite the fact that even at this moment there may be some differences of opinion about which is the best thing to do about one problem or another that still remains. We do not claim to be perfect; we just tried to get as perfect as we could get, but all of those elements were very carefully considered. Every single word of this bill was read by both committees. Every single word, sentence, paragraph and punctuation mark was analyzed as to where it came from, what it means, what changes were involved, what effect it would have. I cite that thoroughness and that careful approach to the problem because we are codifying all of this law applying to the Foreign Service in one place. Some of these provisions were law; some of them were regulations; some of them were executive orders; some of them were matters of precedent.

We then also provided pay comparability for the Foreign Service which we as Members of Congress laid down in the law, but which for 10 years has not been implemented. During this long process, we found that we were all going in the same direction, which was an admission—an admission that we in this country—and I say that in the broad general sense, not just the Congress—had literally ignored the people who represent us in the State Department, for whatever reason, whether it was bias or just because we did not want to get to it, or because we do not like the way things are going in foreign policy, or for whatever reason. The fact is that we put, rightly or wrongly, purposefully or not, an absolutely indescribable burden on people who were trying to do their very level best to represent the United States through our Foreign Affairs agencies—our Foreign Service.

In the smallest executive department with the fewest people—the State Department—the pay is not comparable to others in the Government. Involved are dangerous assignments, rotation, completely tearing up families, all kinds of personal psychological problems. We have arrived at the point where people coming into the Foreign Service who have any talent see no daylight and no reason to sacrifice his entire life for a career that could not promise him anything in 20 years. Today, ambassadors are shot, consuls are shot, people are kidnaped, terrorists take over, embassies are sacked, and we have 52 hostages.

□ 1650

The world has changed and this legislation is absolutely essential.

Mr. Chairman, in closing I want to again reiterate my gratitude to the gentlewoman from Colorado who chaired the Subcommitee on Civil Service of the Committee on Post Office and Civil Service, the staff on that committee and the staff on my own committee and all of the agencies and the organizations through their representatives who worked through the months to bring this piece of legislation to the point where it is today.

Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980. At any time, this legislation would be of vital importance. But it is particularly timely and significant today as we continue to count the days of captivity of our Foreign Service Officers and military personnel in Iran. It is now 310 days since the takeover of November 4, 1979. One of my former staff is the ranking officer being held.

Unfortunately, the present crisis is not the first instance of an attack on U.S. personnel and installations overseas. In the past 10 years, 14 U.S. officials, including 5 Ambassadors, were murdered overseas—an average of 1 death every 260 days. Thirty-eight kidnapings have occurred, making an average of 1 every 96 days. Thirty-two personnel have been seriously wounded—an average of 1 every 114 days. And in the same period, 208 attacks have been made on our people and our installations in 43 countries, making an average of 1 terrorist attack every 17½ days. In the past 12 months, more than 3,500 U.S. employees and their dependents have been evacuated from post under emergency circumstances. In the 13 years since 1967, we have lost almost as many people as in the first 180 years of this Nation's existence. It is my strong conviction, Mr. Chairman, that the dangers of the Foreign Service life can no longer be ignored.

Indeed, over the past few months, the American people have been shown graphically that the Foreign Service is not composed of so-called "striped-pants cookie pushers" who spend their time at cocktail parties. On the contrary, it is a small, very capable group of motivated and hard-working individuals who have been asked to accept increasing responsibilities overseas to represent U.S. foreign policy interests, but who have not been given the human and financial resources with which to do the job.

Mr. Chairman, this bill begins to address these problems by reorganizing the Foreign Service to encourage more workable career patterns, providing a more rational set of allowances and benefits, and finally providing pay comparability with the Civil Service—a 10-year requirement of law which has too long been ignored. There is much that we as a Congress need to do to provide the solid foundation on which U.S. foreign policy interests can be represented effectively and efficiently. This bill is a vital beginning.

H.R. 6790 is the product of 3 years of study and review within the executive branch, at the urging of the Foreign Affairs Committee, and a full additional year of deliberation on the part of our committee and the Post Office and Civil Service Committee, including 14 days of hearings, and 5 days of subcommittee and committee markup.

I would like at this point to express my deep appreciation to my colleague, JOHN BUCHANAN, the ranking minority member of the Subcommittee on International Operations for his invaluable help and expertise. I also want to thank Congresswoman PAT SCHROEDER, chairman of the Subcommittee on Civil Service, and her ranking minority member, Congressman JIM LEACH. Their patience and willingness to devote countless hours of member and staff time to this legislation has helped produce a bill of which we can justly be proud.

I also want to express my deepest appreciation and admiration especially to the Department of State and the International Communication Agency, as well as to the other agencies who have so ably assisted us. My respect for the unsung abilities of our foreign affairs agencies has reached new highs. Former Secretary of State Cyrus Vance and Under Secretary of State Ben Read made personal and long-standing commitments to this legislation which demonstrate the importance which they attach to it. Secretary of State Muskie has continued that commitment.

I also want to thank the American Foreign Service Association and the American Federation of Government Employees for their able assistance. Because of the significance of this legislation to the Foreign Service as a whole, their memberships should be proud of the hard work and productive suggestions made by those unions.

Mr. Chairman, as my colleagues can see, this legislation is the product of exhaustive efforts. We took some 400 suggestions made by every witness who appeared before us or who submitted a written statement and either adopted, rejected or modified them. We heard from every group who had any interest in this legislation, as well as from numerous individual members of the Foreign Service and personnel experts from across the country.

Mr. Chairman, this legislation is vitally important not only to individual Foreign Service members, but also to the Foreign Service as an entity responsible for representing U.S. foreign policy interests. The Foreign Service as a whole is this Nation's most important resource of qualified professional personnel available to assist the President and the Secretary of State in the formulation and conduct of the foreign relations of the United States. Yet today's Foreign Service is operating under the structure and philosophy of 1946, when the last comprehensive revision of Foreign Service legislation was accomplished.

At that time, the United States maintained relations with only 71 nations, and international organizations played a very limited role in international affairs. Today, the United States maintains relations with 144 nations and participates in approximately 46 international organizations. The Department of State and the other foreign affairs agencies provide the foreign policy personnel who staff 283 posts abroad. Ironically, they represent only 20 percent of the total American civilian presence overseas, while at the same time possessing the major foreign policy responsibility. Indeed, only the Department of State, among all the foreign affairs and nonforeign affairs agencies of this Government, staffs all 283 U.S. posts abroad.

In 1946, there were 4,285 Foreign Service officers and staff. The United States conducts its foreign relations today with almost the same number of Foreign Service members it had in 1959, 21 years ago, when the United States maintained relations with only 85 nations.

Further eroding our ability to mount an effective foreign policy effort are the problems of inflation and dwindling resources. While the Department of State is the senior department of Government, it has the smallest budget among the Cabinet departments. Since 1967, when the Department of State had a personnel level of 18,628, there has been an 8.4-percent decrease in personnel, while larger Cabinet departments have increased their personnel numbers, in some instances by as much as 44 percent.

This erosion has occurred at the same time that the responsibilities, burdens and risks of Foreign Service life have increased enormously. More Americans

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are traveling overseas than ever before, with resulting problems which must be handled by members of the Foreign Service. In the past 12 years, five U.S. Ambassadors and five Foreign Service officers have been killed by terrorists. As we debate this bill, 52 Americans are still being held hostage in Tehran.

The dangers and hardships endemic to the Foreign Service, taken together with the resource cutbacks of recent years, have produced the most serious morale problem in the 200-year history of the Foreign Service. In 1979, for the first time in its history, the Foreign Service received more rejections than acceptances from those who were offered positions. At the same time, only 11,000 people took the Foreign Service examination, compared with 20,000 in 1963. Ironically, the major reason for this new phenomenon is not the increased danger, but the low pay of the Foreign Service compared with the Civil Service, and the overwhelming fact that the Government service in these highly inflationary times, is no longer financially competitive with the private sector. The Foreign Service has always attracted highly intelligent and motivated people. Such individuals are equally attractive to the private sector. Yet today, only the private sector is willing to provide adequate salaries and benefits to able people, so it is not surprising that the Government is losing the battle for good personnel. This bill attempts to redress that imbalance by mandating pay comparability between the Foreign Service and the Civil Service and providing a more rational system of allowances and benefits which recognizes the realities of Foreign Service life.

At this point, Mr. Chairman, let me highlight the major provisions of the bill as reported by the Foreign Affairs Committee:

First. Requiring worldwide availability for all members of the Foreign Service and converting to the Civil Service those individuals who are not worldwide available.

Second. Extending to the Departments of Commerce and Agriculture the authority to utilize the Foreign Service Act for personnel serving overseas.

Third. Creating a Senior Foreign Service, similar to the Senior Executive Service, with vigorous entry requirements, performance pay for outstanding service, and the possibility of limited career extensions.

Fourth. Providing pay comparability for the Foreign Service with the civil service.

Fifth. Extending the "selection-out" system, which provides for removal of personnel for substandard performance, to all career U.S. personnel in the Service, and to provide due process protections for that system.

Sixth. Establishing a bill of rights for members of the Foreign Service which emphasizes existing prohibitions against discrimination, encourages recruitment of women and minorities, and provides protection from reprisals for dissenting views or good faith disclosures of information concerning violations of law, mismanagement or abuse of authority.

Seventh. Raising the mandatory retirement age for the Foreign Service from 60 to 65.

Eighth. Providing a legislative division of retirement and survivor's annuities for former spouses of member of the Foreign Service.

Ninth. Encouraging and facilitating the assignment of Foreign Service members to Government agencies, and to the private sector.

Mr. Chairman, this bill is vital to the Foreign Service and constitutes a very important recognition by the Congress of the need for a strong and motivated Foreign Service. The bill builds incentives into the foreign policy effort to stop the exodus of talented people and reverse the trend away from Government service.

Secretary of State Muskie's strong support for this bill reflects the foreign policy philosophy expressed by him during his confirmation hearings:

> The Secretary of State must make sure that the State Department and the Foreign Service, as a whole, are fully engaged in the processes by which policy is made and in discussion of foreign policy with the Congress and our public.

I urge my colleagues to support this bill.

● Mr. WOLFF. Mr. Chairman, I rise in support of the Foreign Affairs Committee amendment to raise the mandatory retirement age for Foreign Service officers from 60 to 65 years. In fact, Mr. Chairman, I would prefer to see the mandatory age lifted altogether.

Obviously, foreign service officers serve in sometimes dangerous posts, some of which demand top physical condition. However, all officers at 60 or 65 are not incapable of serving in such posts. Aging, like every other human factor, is a very individual matter. We should not toss aside the considerable expertise of an entire career simply because someone has reached a certain age. In addition, it seems that one should not have to leave the service simply because he or she cannot serve in a few difficult posts.

In lieu of lifting the mandatory nature of this provision, it is useful to raise the mandatory retirement age from 60 to 65. While many dream of the day of retirement, there are those who would prefer to work as long as they possibly can. Many people have such a personal investment in their work that mandatory retirement is literally a death sentence, not a release to freedom and leisure.

I have often seen the tragedy of bright and capable people who retire, only to drift and disintegrate, like a ship without anchor. Why must this Nation structure our work patterns as to make the years after 65, for some, simply a useless period—a professional put out to pasture.

Very appropriately, today is the birthday of one of our distinguished colleagues, Congressman CLAUDE PEPPER. Today he is 80 years old, and serving his country with distinction and competence. I would submit that the job of being a Member of Congress is every bit as demanding as any position in the Foreign Service—and after this summer the Washington, D.C., post may also qualify as a hardship assignment.

Throughout my 16 years in Congress, while I have had my disagreements with the State Department, I have recognized the top caliber of many Foreign Service officers. They have served their country well and competently. I do not agree that the expertise amassed during years of service should be lost to the Foreign Service and the country because of a mandatory retirement age.

Therefore, I support at least raising the mandatory retirement age to 65, and urge my colleagues to support the committee amendment.●

● Mr. HARRIS. Mr. Chairman, I rise in support of H.R. 6790 because it will assure that merit is the middle name of the Foreign Service. It will also simplify the diverse categories of employment and facilitate the most effective utilization of employees by making the divergent personnel systems of various agencies more compatible.

I want to commend Chairwoman SCHROEDER and Chairman FASCELL for the comprehensive approach they have used in considering this legislation which was referred jointly to two committees. I participated in the joint subcommittee actions which, although they were exhaustive, resulted in the two full committees acting favorably on very similar provisions.

I would like to direct the attention of my colleagues to an amendment which will be offered by the Post Office and Civil Service Committee concerning the recommendations of the selection boards. I successfully offered this amendment during full committee consideration. This amendment will insure that career appointments will be extended based on merit as recognized by duly established selection boards. This is the key to maintaining merit in the Foreign Service personnel system, and I urge my colleagues to support it.

Mr. FASCELL will be offering an amendment to allow management flexibility in extending appointments in very limited situations when such action is determined by the Secretary to be in the public interest or when Presidential appointees would be terminated due to time-in-class limitations. I have been assured that this flexibility could have no adverse effect on individuals recommended for extensions by the selection boards, and I have no problem with the amendment based on that assurance.

I think it is important that the House pass this legislation because it will make the Foreign Service personnel system more understandable, and aid in recognizing and rewarding the very valuable services performed by our career Foreign Service employees.

I am also pleased to offer full support for the proposed Simon amendment. I think that the time has come to establish at least two model foreign language competency posts. As a member of the House group studying the state of foreign languages and international studies in the United States and its impact on the Nation's internal and external strength, I realize the importance of having all embassy personnel proficient in their host country language. These models will be an excellent start.

This amendment is not a response to a specific threat, but a recognition that America will continue to be faced with political crises around the world whose solutions will definitely require a capacity to understand the language and cultures of other global actors. The ability to speak a foreign language and understand other cultures is an important tool in America's ability to conduct foreign policy. I want to assure my friends, Congressman SIMON and Congressman PANETTA, that I will continue to work with them in all ways to improve international education.●

● Mr. WOLFF. Mr. Chairman, I rise in opposition to the Ford amendment, and in support of section 814 as reported of H.R. 6790. Section 814 establishes Federal guidelines for the State divorce court to encourage equitable distribution of retirement and survivor's benefits for Foreign Service officers and their current and former spouses. It establishes a presumption that former spouses, married 10 years or longer, would be entitled to a pro rata share of the Foreign Service members' retirement and survivors annuities.

Mr. Chairman, the spouses of Foreign Service officers suffer from special hardships by virtue of the career of their husband or wife. Generally the spouse is not able to pursue a career or paid professional activity while the Foreign Service officer is overseas. Often the spouse performs voluntary work which supports the career of the officer. This work is an important service to our country, and to our diplomatic service.

In addition, Foreign Service spouses suffer the further hardship of frequent moves from the United States to various foreign posts. The impossibility of pursuing a continuous and consistent career is obvious.

There have been many tragic cases of spouses, primarily women, who have accepted the hardships of their husband's careers. These women have often fulfilled the demanding functions of homemaker in the sometimes difficult circumstances of foreign posts. When these marriages end in divorce, after many years, the divorced spouse has too often found herself completely out in the cold, without retirement or survivors benefits from her divorced spouse, without a career background, and thus without her own retirement benefits.

In addition to these considerations, we must remember that the Foreign Service career itself can cause added adversity for a marriage, creating pressures which may lead to divorce.

I think that the Schroeder provision, section 814 makes sense. The argument that this provision in any way infringes on State divorce courts does not hold water. The Schroeder provision establishes a presumption that former spouses who were married for 10 years or more would be entitled to a pro rata share of retirement or annuities, unless it is modified or revoked by court order.

Thus, what the Schroeder provision does is to provide Federal guidance, so that the outcome in each case does not depend entirely on the underlying marital property law of the State in which the divorce happened to be heard. Yet, it does not preclude the court from preventing the divorced spouse from receiving these funds, if the particular case is severe enough to require that step.

I urge the defeat of the Post Office and Civil Service Committee amendment.●

Mr. FASCELL. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. BUCHANAN. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. LEACH of Iowa. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read for amendment. It shall be in order to consider en bloc any of the amendments recommended by the Committee on Post Office and Civil Service now printed in the bill in an order recommended by the chairman of that committee.

The bill is as follows:

H.R. 6790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Foreign Service Act of 1980".

SEC. 2. TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. FINDINGS AND OBJECTIVES.—(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this Act is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum comparibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service personnel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. DEFINITIONS.—(a) As used in this Act, the term—

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency as defined in section 552(e) of title 5, United States Code;

(3) "chief of mission" means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) to be temporarily in charge of such a mission or office;

(4) "Department" means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) "employee" (except as provided in section 1002(8)) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atomospheric Administration;

(6) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) "Government" means the Government of the United States;

(8) "merit principles" means the principles set out in section 2301(b) of title 5, United States Code;

(9) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) "Secretary" means the Secretary of State, except that (subject to section 201 (b)) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such terms means the head of that agency;

(11) "Service" or "Foreign Service" means the Foreign Service of the United States; and

(12) "United States", when used in a geographic sense, means the several States and the District of Columbia.

(b) References in this Act or any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers.

SEC. 103. MEMBERS OF THE SERVICE.—The following are the members of the Service:

(1) Chiefs of mission, appointed under section 302(a)(1) or assigned under section 502(c).

(2) Ambassadors at large, appointed under section 302(a)(1).

(3) Members of the Senior Foreign Service, appointed under section 302(a)(1) or 303, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 302(a)(1), who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 303, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 303, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 303 by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. FUNCTIONS OF THE SERVICE.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

SEC. 105. MERIT PRINCIPLES; PROTECTIONS FOR MEMBERS OF THE SERVICE; AND MINORITY RECRUITMENT.—(a)(1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit prinicipies.

(2) For purposes of paragraph (1), the term "personnel action" means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation, and

(B) any decision, recommendation, examination, or ranking provided for under this Act which relates to any action referred to in subparagraph (A).

(b) The Secretary shall administer the provisions of this Act and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited under section 2302(b)(1) of title 5, United States Code;

(2) are free from reprisal for—

(A) a disclosure of information by a member or applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5, United States Code.

(c) This section shall not be construed as authorizing the withholding of information from the Congress or the taking of any action against a member of the Service who discloses information to the Congress.

(d)(1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5, United States Code.

(2) Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report, signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.

(e) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), prohibiting discrimination on the basis of handicapping condition; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. THE SECRETARY OF STATE.—(a) under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this Act.

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Director of the International Communication Agency, the Director of the United States International Development Cooperation Agency, the Secretary of Agriculture, and the Secretary of Commerce may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(b) Subject to section 201(b)—

(1) the agency heads referred to in subsection (a), and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other Act),

shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act.

SEC. 203. COMPATIBILITY AMONG AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this chapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

SEC. 204. CONSOLIDATED AND UNIFORM ADMINISTRATION OF THE SERVICE.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695)) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

SEC. 205. COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel sys-

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tem with other Government personnel systems to the extent practicable.

SEC. 206. REGULATIONS; DELEGATION OF FUNCTIONS.—(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.

(b) The Secretary may delegate functions under this Act which are vested in the Secretary to any employee of the Department or any member of the Service.

SEC. 207. CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(b) Any agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.

SEC. 209. INSPECTOR GENERAL OF THE FOREIGN SERVICE.—(a) There shall be an Inspector General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals exceptionally qualified for the position by virtue of their integrity, their knowledge and experience in the conduct of foreign affairs, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General shall report to and be under the general supervision of the Secretary of State. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe.

(b) Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the previous year;

(B) a description of the recommendations for corrective action made by the Inspector General during the previous year with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the previous year.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of the individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(f) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

SEC. 210. BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State and shall include one or more representatives of the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

SEC. 211. BOARD OF EXAMINERS FOR THE FOREIGN SERVICE.—(a) The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 301(b) to be given to candidates for appointment in the Service. The Board shall consist of 15 members appointed by the President (no fewer than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity). The Board shall include representatives of agencies utilizing the Foregin Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) The Board of Examiners shall periodically review the examinations prescribed under section 301(b) in order to determine—

(1) whether any such examination has an adverse impact on the hiring, promotion, or other employment opportunity of members of any race, sex, or ethnic group;

(2) methods of minimizing any such adverse impact;

(3) alternatives to any examinations which have such an adverse impact; and

(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 301(b).

(c) Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

CHAPTER 3—APPOINTMENTS

SEC. 301. GENERAL PROVISIONS RELATING TO APPOINTMENTS.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) The Secretary shall prescribe, as appropriate, written, oral, physical, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term "veteran or disabled veteran" means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(d)(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment.

SEC. 302. APPOINTMENTS BY THE PRESIDENT.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B) The President may confer the personal rank of ambassador, to be effective for a period not exceeding six months, upon an individual who is undertaking a special mission for the President if the President, before conferring such rank, transmits to the Committee on Foreign Relations of the Senate a written report of his intent to confer the personal rank of ambassador upon such individual and transmits with that report all relevant materials concerning any potential conflict of interest which the proposed recipient of such personal rank may have with regard to the special mission.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

SEC. 303. APPOINTMENTS BY THE SECRETARY.—The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 302(a)) in accordance with this Act and such regulations as the Secretary may prescribe.

SEC. 304. APPOINTMENT OF CHIEFS OF MISSION.—(a)(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(b)(1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such individual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), and the term "immediate family" means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

SEC. 305. APPOINTMENT TO THE SENIOR FOREIGN SERVICE.—(a) Appointment to the Senior Foreign Service shall be to a salary class established under section 402, and not to a position.

(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

SEC. 306. CAREER APPOINTMENTS.—(a) Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 303, or

(2) to recommend to the President that the candidate be given a career appointment under section 302.

(b) Decisions by the Secretary under subsection (a) shall be based upon the recommendation of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

SEC. 307. ENTRY LEVELS FOR FOREIGN SERVICE OFFICER CANDIDATES.—A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 404 to a salary class higher than class FS-5 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications and experience of the candidate and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class FS-4 in the Foreign Service Schedule.

SEC. 308. RECALL AND REEMPLOYMENT OF CAREER MEMBERS.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be called to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

SEC. 309. LIMITED APPOINTMENTS.—A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in section 311(a), may not be extended or renewed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

SEC. 310. REEMPLOYMENT RIGHTS FOLLOWING LIMITED APPOINTMENT.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5, United States Code.

SEC. 311. EMPLOYMENT OF FAMILY MEMBERS OF GOVERNMENT EMPLOYERS.—(a) The Secretary, when employing individuals abroad in positions to which career members of the Service are not customarily assigned (including, when continuity over a long term is not

a significant consideration, vacant positions normally filled by foreign national employees), shall give equal consideration to employing available qualified family members of members of the Service or of other Government employees assigned abroad. Family members so employed shall serve under renewable limited appointments in the Service and may be paid either in accordance with the Foreign Service Schedule or a local compensation plan established under section 408.

(b) Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.

(c) The Secretary of State shall prescribe regulations governing the employment at Foreign Service posts abroad of family members of Government employees by all agencies and other Government establishments (including establishments in the legislative or judicial branch).

SEC. 312. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary of State shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. SALARIES OF CHIEFS OF MISSION.—(a) Except as provided in section 302(b), each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, United States Code.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

SEC. 402. SALARIES OF THE SENIOR FOREIGN SERVICE.—The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

SEC. 403. FOREIGN SERVICE SCHEDULE.—(a) There is hereby established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this chapter.

(b) The Foreign Service Schedule shall have 10 salary classes, designated FS-1 through FS-10, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

Salary class:	Shall correspond to grade:
FS-1	GS-15
FS-2	GS-14
FS-3	GS-13
FS-4	GS-12
FS-5	GS-11
FS-6	GS-9
FS-7	GS-7
FS-8	GS-6
FS-9	GS-5
FS-10	GS-4

(c) Each class in the Foreign Service Schedule shall have 14 salary steps. The first 10 salary steps in each class shall be equal to the steps for the corresponding grade in the General Schedule and the remaining 4 steps shall be in increments equal to the average increment of the first 10 steps in that class.

(d) Salary may not be paid under the Foreign Service Schedule at a rate in excess of the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(e) The Secretary of State shall prescribe regulations to carry out this section.

SEC. 404. ASSIGNMENT TO A SALARY CLASS.—(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 407 or who are family members of Government employees paid in accordance with a local compensation plan established under section 408) to appropriate salary classes in the Foreign Service Schedule.

(b)(1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under chapter 5.

(2) Except as authorized by subchapter I of chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with chapter 6. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5, United States Code, and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

SEC. 405. PERFORMANCE PAY.—(a) Members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 402 and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other members of the Service shall not preclude the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 50 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary of that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed $10,000 in any fiscal year, except that payments of up to $20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.

(4) The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, as in effect at the end of that fiscal year.

(c) The Secretary shall determine the amount of performance pay available under subsection (b)(2) each year for distribution among the members of the Senior Foreign service and shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602.

(d) The President may grant awards of performance pay under subsection (b)(3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

SEC. 406. WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the Foreign Service Schedule shall be advanced to the next higher salary step in the member's class at the beginning of the first applicable pay period following the completion by that member of a period of—

(1) 52 calendar weeks of service in each of salary steps 1 through 9, and

(2) 104 calendar weeks of service in each of salary steps 10 through 13,

unless the performance of the member during that period is found in a review by a selection board established under section 602 to fall below the standards of performance for his or her salary class.

(b) The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

SEC. 407. SALARIES FOR FOREIGN SERVICE PERSONNEL ABROAD WHO PERFORM ROUTINE DUTIES.—(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule by section 403 for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by

Foreign Service personnel assigned to class FS-10 in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

SEC. 408. LOCAL COMPENSATION PLANS.—(a)(1) The Secretary shall establish compensation plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government employees. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to those family members of Government employees who are paid in accordance with such plans at a rate which is no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)). Any compensation plan established under this section may include provisions for leaves of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, United States Code.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this Act.

(c) The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

SEC. 409. SALARIES OF CONSULAR AGENTS.—The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

SEC. 410. COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

SEC. 411. TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

SEC. 412. SPECIAL DIFFERENTIALS AND PREMIUM PAY.—(a) The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements. A special differential may not be paid under this subsection with respect to work which is the basis for premium pay under subsection (b).

(b) Members of the Service (other than members of the Senior Foreign Service) shall be entitled to receive premium pay to the extent provided under subchapter V of chapter 55 of title 5, United States Code.

SEC. 413. DEATH GRATUITY.—(a) The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) A death gratuity payment under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) As used in this section—

(1) the term "Foreign Service employee" means any member of the Service or United States representative to an international organization or commission; and

(2) each of the terms "widow", "widower", "child", and "parent" shall have the same meaning given each such term by section 8101 of title 5, United States Code.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. CLASSIFICATION OF POSITIONS.—(a) The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salaries established under chapter 4. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

SEC. 502. ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a)(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 501 in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 102(a)(3) by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

SEC. 503. ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—(a) The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b)(1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expense of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

SEC. 504. SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 505. TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this chapter.

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in this Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 303 to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the foreign Service Schedule, are promoted by appointment under section 302(a) as career members of the Senior Foreign Service or by assignment under section 404 to a higher salary class in the Foreign Service Schedule.

(b) Except as provided in section 606(a), promotions of—

(1) members of the Senior Foreign Service, and

(2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 602, except that the Secretary may by regulation specify categories of career members, and categories of career candidates, assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c)(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class FS-1 in the Foreign Service schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 607(a)) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion to the Senior Foreign Service.

(2) Decisions by the Secretary on the number of individuals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

(A) a regular, predictable flow of recruitment in the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

SEC. 602. SELECTION BOARDS.—(a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selected boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 601;

(2) awards of performance pay under section 405(c);

(3) denials of within class step increases under section 406(a);

(4) offer or renewal of limited career extensions under section 607(b); and

(5) such other actions as the Secretary may prescribe by regulation.

(b) All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

SEC. 603. BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Foreign Service, performance evaluation reports of supervisors, records of commendations, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service.

SEC. 604. CONFIDENTIALITY OF RECORDS.—The records described in section 603(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

SEC. 605. IMPLEMENTATION OF SELECTION BOARD RECOMMENDATION.—(a) Recommendations for promotions made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 606. OTHER BASES FOR INCREASING PAY.—The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 302(a);

(2) promote a member of the Service under section 303;

(3) grant performance pay to a member of the Senior Foreign Service under section 405(c); or

(4) grant a within-class salary increase under section 406 to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 605(b), the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

SEC. 607. RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a)(1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, while they are in salary classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Any member of the Service—

(1) whose maximum time in class under subsection (a) expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 608. RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 609. RETIREMENT BENEFITS.—(a) A member of the Service—

(1) who is retired under section 607(c)(2); or

(2) who is retired under section 607(c)(1) or 608(b)—

(A) after becoming eligible for voluntary retirement under section 811, or

(B) from the Senior Foreign Service or while assigned to class FS-1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 806.

(b) Any member of the Service (other than a member to whom subsection (a) applies) who is retired under section 607(c)(1) or 608(b) shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2) a refund as provided in section 815 of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 806, commencing at age 60.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60, his or her death shall be considered a death in service within the meaning of section 809.

SEC. 610. SEPARATION FOR CAUSE.—(a)(1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service.

(2) A member of the Service who is a member of the Senior Foreign Service or is assigned to a salary class in the Foreign Service Schedule and who either (A) is serving under a career appointment, or (B) if separation is to be by reason of misconduct, is serving under a limited appointment, shall not be separated from the Service under this section until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing. The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 1106 and shall be in lieu of any other administrative procedure authorized or required by this or any other law.

(b) Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 815 of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 806, commencing at age 60.

SEC. 611. TERMINATION OF LIMITED APPOINTMENTS.—Except as provided in section 610(a)(2), the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule, or who is a family member of a Government employee serving under a local compensation plan established under section 408.

SEC. 612. TERMINATION OF APPOINTMENTS OF CONSULAR AGENTS AND FOREIGN NATIONAL EMPLOYEES.—(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. FOREIGN SERVICE INSTITUTE.—(a) The Secretary of State shall maintain and operate the Foreign Service Institute (hereinafter in this chapter referred to as the "Institute"), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The Institute shall be headed by a Director, who shall be appointed by the Secretary of State.

(b) To the extent practicable, the Secretary of State shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the Institute and otherwise.

SEC. 702.—FOREIGN LANGUAGE REQUIREMENTS.—(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the Institute or otherwise in order to assist in meeting the requirements established under subsection (a).

SEC. 703. TRAINING AUTHORITIES.—(a) In the exercise of functions under this chapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the Institute, including functional and geographic area specializations;

(2) correlate training and instruction furnished by the Institute with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the Institute, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4)(A) employ in accordance with the civil service laws such personnel as may be neces-

sary to carry out the provisions of this chapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations), the services of individuals to serve as language instructors, linguists, and other academic and training specialists (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipment as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

(b) In furtherance of the objectives of this Act, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 411) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(c) In the implementation of this chapter, the Secretary shall seek to design training programs which will encourage and foster career development for the various categories of members of the Service.

(d) The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 311.

SEC. 704. TRAINING GRANTS.—(a) To facilitate training provided to memebrs of families of Government employees under this chapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) If a member of the Service who is assigned abroad, or a member of his or her family, is unable to participate in language training furnished by the Government through the Institute or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 705. CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause.

(b)(1) The Secretary may facilitate the employment of spouses of members of the Service by—

(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and non-governmental employment opportunities available to them abroad; and

(C) otherwise assisting them in obtaining employment abroad.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. ADMINISTRATION OF THE SYSTEM.—In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this chapter referred to as the "System"), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 802. MAINTENANCE OF THE FUND.—The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this chapter referred to as the "Fund"), originally created by section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 803. PARTICIPANTS.—(a) The following members of the Service (hereinafter in this chapter referred to as "participants") shall be entitled to the benefits of the System:

(1) Every member serving under a career appointment or as a career candidate under section 306—

(A) in the Senior Foreign Service, or

(B) who is assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 805.

(b) Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

SEC. 804. DEFINITIONS.—As used in this chapter, unless otherwise specified, the term—

(1) "annuitant" means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim for such annuity;

(2) "child" means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an individual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age, on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) "court" means any court of any State or of the District of Columbia;

(4) "court order" means any court decree of divorce or amendment, or any court order or court-approved property settlement agreement incident to any court decree of divorce or annulment;

(5) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) "former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 816;

(7) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) "lump-sum credit" means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration, or a predecessor organization, after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service of that participant is of (B) the total number of years of such creditable service;

(11) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bona fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(12) "surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding his or her death or is a parent of a child born of the marriage; and

(13) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined.

SEC. 805. CONTRIBUTIONS TO THE FUND.—(a) 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participants shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c)(1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d)(1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited,

may make a special contribution to the Fund equal to the following percentages of basic salary received for such service:

Time of service:	Percent of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 816.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(e) Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 816 for periods of internment during World War II.

(f) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

SEC. 806. COMPUTATION OF ANNUITIES.—(a) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years, not exceeding 35, of service credit obtained in accordance with sections 816 and 817, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment under section 302(b) in a position to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 805(d) which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(b)(1)(A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participants shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 814(b), or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 814(b) if the spouse later qualifies as a former spouse under section 804(6)), or to reduce such survivor annuity by designating a portion of the annuity of the participant as the base for the survivor benefit.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect in writing to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the 12-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 814(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600. The reduction under this paragraph shall be calculated before any reduction under section 814(a)(5).

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(b)(4)(B).

(C) An annuity payable from the Fund to a surviving spouse under this paragraph shall commence on the day the participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c)(1) If an annuitant who was a participant dies and is survived by a spouse and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

(A) $900, or

(B) $2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

(A) $1,080, or

(B) $3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 826(c)(3), and

(B) the minimum specified in subsection (1)(2) of this section.

(d) If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an an-

nuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 804(12)). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b) (2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to some one other than that participant.

(i)(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 823 shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least one year at the time of death or who is a parent of a child born of the marriage.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 of this Act in any case in which an annuitant has a former spouse who was married to the participant during the period of recall service or who qualifies for an annuity under section 814 (a) or (b).

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 814(b)(5)), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) The Secretary of State shall, on an annual basis—

(1) inform each participant of his or her right of election under subsections (g) and (j); and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 814.

(l)(1) The monthly rate of an annuity payable under this chapter to an annuitant, other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) The monthly rate of an annuity payable under this chapter to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.) or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) This subsection does not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

SEC. 807. PAYMENT OF ANNUITY.—(a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this Act shall become effective on the day he or she attains age 60.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this chapter may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

SEC. 808. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 810 as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 815, except that he or she may elect voluntary retirement if eligible under section 811.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability

payments under section 8107 of title 5, United States Code. This subsection shall not bar the right to any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this subsection nor any provision of such subchapter shall be construed to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other individual.

(e) Notwithstanding any other law, the right of any individual entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this Act, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

SEC. 809. DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this Act, the lump-sum credit shall be paid in accordance with section 815.

(b) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 814(b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 806(a) and any surviving former spouse shall be entitled to an annuity under section 814(b) as if the participant died after being entitled to an annuity under this chapter. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant who elected a reduced annuity die in service after being recalled under section 308 and is survived by a spouse or former spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 823. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant during the period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 806(i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this chapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

(g) Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 814(b), the annuity of the spouse under this section shall be subject to the limitation of section 806(b)(3)(B).

(h) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 806, as appropriate.

SEC. 810. DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 815, or to leave his or her contributions in the Fund and receive an annuity, computed under section 806, commencing at age 60.

SEC. 811. VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 812. MANDATORY RETIREMENT.—(a) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant reaches age 60 if the participant has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and shall receive retirement benefits in accordance with section 806.

(b) Any participant who reaches age 60 while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated. In addition, whenever the Secretary determines it to be in the public interest, any participant who has reached age 60 may be retained on active service for a period not to exceed 5 years. Any participant who completes a period of service after reaching age 60 as authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 813. RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—If a participant completes an assignment under section 302(b) in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 814. FORMER SPOUSES.—(a)(1) Unless otherwise expressly provided by any court order under section 820(b)(1), a former spouse of a participant or former participant is entitled to an annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant through such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this title or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No court order under section 820(b)(1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such order relating to an annuity under this subsection be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant or former participant shall be reduced by the amount of an annuity under this subsection of any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this chapter, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 806(b)(3).

(B) If any annuitant whose annuity is re-

duced under subparagraph (A) is recalled to service under section 308, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 824, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the later of the date the participant would qualify on the basis of his or her creditable service for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 806(h) or any comparable provision of law.

(b)(1) Subject to any election under section 806(b)(1)(C) and unless otherwise expressly provided by any court order under section 820(b)(1), if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 806(a); or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 806(b)(3)) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806(a).

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 806(b)(3)) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 820(b)(1) may not adjust the amount of the annuity of any former spouse under this section.

(5) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless the participant is then married and elects in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b)(3) for any spouse of the participant.

(c)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a court order under section 820(b)(1) may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected or ordered under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 805(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(d) Section 806(l) shall not apply—

(1) to any annuity payable under subsection (a) or (b) to any former spouse if the amount of that annuity varies by reason of a court order under section 820(b)(1) from the amount which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such court order; and

(2) to any annuity payable under subsection (e).

SEC. 815. LUMP-SUM PAYMENTS.—(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this chapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i)).

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 823, the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i)).

(c) If all annuity rights under this chapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (f).

(d) If a participant or former participant dies and is not survived by an individual eligible for an annuity under this chapter or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Payments under subsections (c) through (e) shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 804(2)) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section 805 from the beginning of the first pay period after the participant has completed 35 years of service computed under section 816 (excluding service credit for unused sick leave under section 816(b)), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 805(d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (f).

(i) Unless otherwise expressly provided by any court order under section 820(b)(1), the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse.

SEC. 816. CREDITABLE SERVICE.—(a) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5, United States Code), shall be creditable for purposes of this chapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(b) In computing any annuity under this chapter, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 806(a)) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this chapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c)(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 805. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 805. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 805 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this chapter, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 815. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g)(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(l) of title 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited or annuity recomputed under this subsection of their entitlement to such credit or recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332(l) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this chapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i)(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this chapter relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this chapter a portion of the lump sum (or a court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant—

(A) for periods assumed to be creditable service under section 808(a) or section 809(e), or

(B) for any extra period of creditable service provided under section 817 for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.

SEC. 817. EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service.

SEC. 818. ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding $5,000 per year for the incidental expenses necessary in administering the provisions of this chapter, including actuarial advice.

SEC. 819. INVESTMENT OF THE FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 820. ASSIGNMENT AND ATTACHMENT OF MONEYS.—(a)(1) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3477 of the Revised Statutes of the United States (31 U.S.C. 203) or any other law, a member of the Service who is entitled to receive benefits under section 609(b)(1) may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be deposited with the Secretary of the Treasury by the member executing the assignment.

(b)(1)(A) In the case of any participant or annuitant who has a former spouse with respect to whom there is a court order—

(i) any right of any former spouse to any annuity under section 814(a) in connection with any retirement or disability annuity of

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the participant, and the amount of any annuity under such section 814(a);

(ii) any right of a former spouse to a survivor annuity under section 814(b) or (c), and the amount of any such annuity under section 814(b) or (c) for any surviving former spouse of the participant or annuitant; and

(iii) any right of any former spouse to any payment of a lump sum credit under section 815(a) or (b);

shall be determined in accordance with a court order, if and to the extent expressly provided for in the terms of that court order.

(B) This paragraph shall not apply in the case of any court order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

(2) Except with respect to obligations between participants and former spouses, payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this chapter for periods beginning after the date of receipt by the Secretary of State of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(4) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 804(b)(6), or any other provision of this chapter, shall not be construed to affect the rights any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this chapter.

(c) None of the moneys mentioned in this chapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 821. PAYMENTS FOR FUTURE BENEFITS.—(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 825;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 805(a).

SEC. 822. UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service.

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 821(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 823. ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 308(a) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 805. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 825 that became effective during the recall period.

(b) If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 815. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 806 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least 5 years, the annuitant may elect to have his or her annuity determined anew under section 806 in lieu of any other benefits under this section. Any annuitant who is recalled under section 308 may upon written application count as recall service any prior service that is creditable under section 816 that was performed after the separation upon which his or her annuity is based.

SEC. 824. REEMPLOYMENT.—(a) Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this chapter, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary the member was entitled to receive under this Act on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this subsection shall be entitled to such salary in lieu of benefits under this chapter.

(b) When any such retired member of the Service is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such member the salary of the position in which he or she is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this chapter.

SEC. 825. VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to the effective date of this Act by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

(1) returned in a lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a)(2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 815(f).

SEC. 826. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(c) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 609(b)(2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or decreased participant on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

(2) Effective from its commencing date, an annuity payable from the Fund to the survivor of an annuitant, except a child entitled to an annuity under section 806(c) or 809 (c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 806 (c) or (d) or 809 (c) or (d), the items $900, $1,080, $2,700, and $3,240 appearing in section 806(c) shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the annuity of the child becomes effective.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least $1.

(f) Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

SEC. 827. COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE RETIREMENT SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) to the Foreign Service Retirement and Disability System so that it applies in like manner with respect to participants, former participants, annuitants, or survivors under that System.

(b) The President shall by Executive order prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;

(2) authorized or required home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service for purposes of family visitation in situations where the family of the member is prevented by official order from acompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed two round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship;

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to succesive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States, including assignments under subchapter VI of chapter 33 of title 5, United States Code (notwithstanding section 3375(a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5, United States Code; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the port of entry in the contiguous 48 States which is nearest to that post.

SEC. 902. LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the

Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

SEC. 903. REQUIRED LEAVE IN THE UNITED STATES.—(a) The Secretary may order a member of the Service who is a citizen of the United States to take a leave of absence under section 6305 of title 5, United States Code (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Leave ordered under this section may be taken in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

(c) While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

SEC. 904. HEALTH CARE.—(a) The Secretary of State may establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or to provide survivor benefits under chapter 8.

(c) The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.

(e) Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

SEC. 905. REPRESENTATION EXPENSES.—Notwithstanding section 5536 of title 5, United States Code, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

SEC. 1001. LABOR-MANAGEMENT POLICY.—The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representating members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. DEFINITIONS.—As used in this chapter, the term—

(1) "Authority" means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) "Board" means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) "conditions of employment" means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 501;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) "dues" means dues, fees, and assessments;

(8) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) "General Counsel" means the General Counsel of the Authority;

(11) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) "management official" means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Foreign Service under section 209; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) "person" means an individual, a labor organization, or an agency to which this chapter applies.

SEC. 1003. APPLICATION.—(a) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b);

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(6) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

SEC. 1007. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligations to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

(c) In order to carry out its functions under this chapter—

(1) the Board shall be regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5, United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapter 71 of such title.

SEC. 1008. FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia, which shall conduct its review on the same basis as an appeal from a decision of a District Court.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

SEC. 1010. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);

(2) one individual employed by the Department of Labor;

(3) one member of the Federal Service Impasses Panel; and

(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

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(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

(c)(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

SEC. 1011. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit, or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

SEC. 1012. EMPLOYEES REPRESENTED.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1013. REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any separation described in section 1101(a)(1)(A) or any proceeding relating to such a separation; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to Government-wide or multi-agency matters affecting the rights, benefits, or obligations of individuals employed in agenices not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and

shall provide the exclusive representative a written statement of the reasons for taking the final action.

SEC. 1014. RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1015. UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the operations of the Department, but informational picketing in the United States which does not interfere with such operations shall not be considered an unfair labor practice; and

(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 1109(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure, issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

SEC. 1016. PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Any complaint under subsection (a) shall contain a notice—

(1) of the charge;

(2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and

(3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d)(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

SEC. 1017. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

(f) If the Board finds that any labor organization has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

SEC. 1018. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Department as a member of the Service; or

(3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a non-duty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 11—GRIEVANCES

SEC. 1101. DEFINITION OF GRIEVANCE.—(a) (1) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this chapter; and

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under chapter 10 (hereinafter in this chapter referred to as the "exclusive representative").

(b) For purposes of this chapter, the term "grievance" does not include—

(1) an individual assignment of a member under chapter 5, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 602, a tenure board established under section 306(b), or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 611, or the denial of a limited career extension or of a renewal of a limited career extension under section 607(b); or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1109(b).

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

SEC. 1102. GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in section 1101(a)(1)(G).

SEC. 1103. FREEDOM OF ACTION.—(a) Any individual filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b)(1) Except with respect to grievances described in section 1101(a)(1)(A), a grievant who is a member of a bargaining unit represented by an exclusive representative shall be represented at every stage of the proceedings only if represented by that exclusive representative. Such a grievant has the right to represent himself or herself under departmental procedures with respect to a grievance; however, the exclusive representative shall have the right to be present during the grievance proceedings.

(2) Any grievant who is not a member of a bargaining unit, or whose grievance is described in section 1101(a)(1)(A), has the right at every stage of the proceedings to representation of his or her own choosing.

(3) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) or a grievant who is not a member of such bargaining unit or whose grievance is described in section 1101(a)(1)(A) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under Section 5332 of title 5, United States Code.

(d) The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department of State for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

SEC. 1106. BOARD PROCEDURES.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Department of State.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5, United States Code.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

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SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceeding of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

SEC. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

SEC. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

SEC. 2101. PAY AND BENEFITS PENDING CONVERSION.—Except as provided in section 2104 (b), until converted under the provisions of this chapter, individuals who are in the Foreign Service immediately before the effective date of this Act and who could be converted under section 2102 or 2103 shall be treated for purposes of salary, allowances, and all other matters as if they had been converted under section 2102 or 2103, as the case may be, on the effective date of this Act.

SEC. 2102. CONVERSION TO THE FOREIGN SERVICE SCHEDULE.—(a) Not later than 120 days after the effective date of this Act, the Secretary shall, in accordance with section 2106, convert to the appropriate class in the Foreign Service Schedule established under section 403 of this Act those individuals in the Foreign Service who are serving immediately before the effective date of this Act under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

(1) Foreign Service officers, or

(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after the effective date of this Act, Foreign Service Reserve officers and staff officers and employees who the Secretary determines under subsection (a)(2) are not available for worldwide assignment shall also be converted, in accordance with section 2106, to the appropriate class in the Foreign Service Schedule established under section 403 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

SEC. 2103. CONVERSION TO THE SENIOR FOREIGN SERVICE.—(a) Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before the effective date of this Act, are serving under appointments a class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appointment to the Senior Foreign Service.

(b) Except as provided in subsection (d), if a request is submitted under subsection (a) by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(c) If a request is submitted under subsection (a) by a Foreign Service officer or, except as provided in subsection (d), a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(d) If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after the effective date of this Act and before the end of the 3-year period beginning on such effective date, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 402 of this Act, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe consistent with the provisions of

chapter 6 of title I of this Act relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit a request under subsection (a), or

(2) who submits such a request more than 120 days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),

may not remain in the Foreign Service for more than 3 years after the effective date of this Act. During such period, the officer shall be subject to the provisions of title I of this Act applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 405, and shall not be eligible for a limited career extension as described in section 607(b). Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits determined in accordance with chapter 8 of title I of this Act.

SEC. 2104. CONVERSION FROM THE FOREIGN SERVICE.—(a) In the case of any individual in the Foreign Service who, immediately before the effective date of this Act, is serving under an appointment described in section 2102(a) or 2103(a) and who is not converted under section 2102 or section 2103 because such individual does not meet the conditions specified in section 2102(b) or 2103(d), the Secretary shall, not later than 3 years after the effective date of this Act, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b)(1) In the case of individuals in the Foreign Service in the International Communication Agency who immediately before the date of enactment of this Act are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals, the 3-year period referred to in subsection (a) shall begin on July 1, 1981. Prior to that date, any individual in the Foreign Service exempted from conversion by this subsection may elect to remain in the Foreign Service and, notwithstanding any other provision of law, the status, promotion, class, and tenure of such individuals shall continue to be governed by the Foreign Service Act of 1946 and Public Law 90-494 (as those Acts were in effect immediately before the effective date of this Act). This Act (except sections 402, 403, 404, and 405) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 504, 610, and 803 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are temporarily excepted from conversion under this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

SEC. 2105. CONVERSION OF CERTAIN POSITIONS IN THE DEPARTMENT OF AGRICULTURE.—(a) Not later than 15 days after the effective date of this Act, the Secretary of Agriculture shall—

(1) designate and classify under section 501 of this Act those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5, United States Code, which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 103 which will apply to such individual.

(b) Each employee serving in a position at the time it is designated under subsection (a) shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c); or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) apply.

(c)(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent to the Senate, those employees who elect conversion under subsection (a)(1).

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1)

(d) Any employee who declines conversion under subsection (b)(2) shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

SEC. 2106. PRESERVATION OF STATUS AND BENEFITS.—(a)(1) Subject to paragraph (2), every individual who is converted under this chapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this chapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2)(A) Conversion under section 2102 of any individual in the Foreign Service to the Foreign Service Schedule shall in each case be to a class determined on the basis of the rank held immediately before the effective date of this Act, in accordance with the following table:

If the rank held immediately before the effective date is:	The individual shall be converted to the following class:
FSO-3, FSR-3, FSRU-3, or FSS-1	FS-1
FSO-4, FSR-4, FSRU-4, or FSS-2	FS-2
FSO-5, FSR-5, FSRU-5, or FSS-3	FS-3
FSO-6, FSR-6, FSRU-6, or FSS-4	FS-5
FSO-7, FSR-7, FSRU-7, or FSS-5	FS-6
FSO-8, FSR-8, FSRU-8, or FSS-6	FS-7
FSS-7	FS-8
FSS-8	FS-9
FSS-9	FS-10
FSS-10	FS-10

(B) Each individual converted to a class under subparagraph (A) shall be placed in the salary step in that class which is the numerical equivalent of the step that individual was in immediately before such conversion unless the individual is entitled to be in a higher step under the provisions of paragraph (1).

(C) Any individual converted under this subsection whose basic rate of salary immediately before conversion exceeds the salary rate for the step to which he or she is converted shall be entitled to continue to receive salary at the former rate at time of conversion. Such salary rate shall be increased by 50 percent of the amount of each increase in the individual's new salary step until the rate is equal to the rate which would be applicable but for this paragraph.

(D) Not later than 6 months after the effective date of this Act, each career member of the Foreign Service holding the rank of FSO-6, FSR-6, FSRU-6, or FSS-4 immediately before such effective date shall be evaluated and considered for promotion to salary class FS-4 by a Foreign Service selection board in accordance with chapter 6 of title I of this Act.

(3) An individual converted under section 2104 to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b)(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion under section 2104 may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Individuals who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this chapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Any individual who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service or

(2) in any other office or positon continued by this Act,

may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Any individual in the Foreign Service—

(1) who is serving under a career appointment on the date of enactment of this Act, and

(2) who was not subject to section 633(a) (2) of the Foreign Service Act of 1946 immediately before the effective date of this Act,

may not be retired under section 608 of this Act until 10 years after the effective date of this Act or when such individual first becomes eligible for an immediate annuity under chapter 8 of title I of this Act, whichever occurs first.

SEC. 2107. REGULATIONS.—Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this chapter.

SEC. 2108. AUTHORITY OF OTHER AGENCIES.—The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this chapter in accordance with regulations prescribed by the Secretary of State under section 2107. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

CHAPTER 2—AMENDMENTS RELATING TO FOREIGN AFFAIRS AGENCIES

SEC. 2201. BASIC AUTHORITIES OF THE DEPARTMENT OF STATE.—(a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, is amended by adding at the end thereof the following new sections:

"SEC. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service) or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.

"(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d)(2)), the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.

"(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.

"(d)(1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).

"(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.

"(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

"(f) The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 26. (a) The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry on the member's work efficiently.

"(b) The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 27. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.

"(b) Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—

"(1) would violate any law of such country or of the United States; or

"(2) could, as certified in writing by the United States chief of mission to such country, damage the interests of the United States.

"SEC. 28. The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.

"SEC. 29. Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.

"SEC. 30. (a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or

"(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

"(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

"(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, the United States Code, and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

"(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

"(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

"SEC. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292–300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

"(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

"(d) Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

"SEC. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.

"SEC. 33. This Act may be cited as the 'State Department Basic Authorities Act of 1956'.".

(b) Section 13(a) of such Act (22 U.S.C. 2684(a)) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2202. PEACE CORPS ACT.—(a) Section 5 of the Peace Corps Act (22 U.S.C. 2504) is amended—

(1) in subsection (f)(1)—

(A) in subparagraph (A) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1))," and inserting in lieu thereof "section 816(a) of the Foreign Service Act of 1980", and

(B) in subparagraph (B) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980"; and

(2) in subsection (h)—

(A) by striking out "section 1091 of the Foreign Service Act of 1946" and inserting in lieu thereof "section 30 of the State Department Basic Authorities Act of 1956", and

(B) by striking out "Director of ACTION" and inserting in lieu thereof "President".

(b)(1) Section 7(a) of the Peace Corps Act (22 U.S.C. 2506(a)) is amended—

(A) in paragraph (1)—

(i) by striking out ", who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established under section 402 or 403 of the Foreign Service Act of 1980";

(ii) by striking out "section 528" and inserting in lieu thereof "section 310"; and

(iii) by striking out "Reserve" the last place it appears and all that follows and inserting in lieu thereof a period; and

(B) by amending paragraph (2) to read as follows:

"(2) The President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—

"(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and

"(B) no individual whose Foreign Service appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.

Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (i) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe.".

(2) Section 7(a)(4) of the Peace Corps Act (22 U.S.C. 2506(a)(4)) is amended—

(A) by striking out "Until" and all that follows through "paragraph or" and inserting in lieu thereof "An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years";

(B) by striking out "such person" and inserting in lieu thereof "such individual"; and

(C) by striking out "substantially continuous basis" and inserting in lieu thereof "continuous basis without a break in service of more than three days".

(c) Section 13(b) of the Peace Corps Act (22 U.S.C. 2512(b)) is amended by striking out "section 872 of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 824 of the Foreign Service Act of 1980,".

(d) Section 14(b) of the Peace Corps Act (22 U.S.C. 2513(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(e) Section 15(a) of the Peace Corps Act (22 U.S.C. 2514) is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

SEC. 2203. FOREIGN ASSISTANCE ACT.—(a) Section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)) is amended to read as follows:

"(d) For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service.".

(b) Section 629(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2389(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(c) Section 631(b) of such Act (22 U.S.C. 2391(b)) is amended by amending the second sentence to read as follows: "Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

(d) Section 631(c) of such Act (23 U.S.C.

2391(c)) is amended by amending the second sentence to read as follows: "Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

SEC. 2204. ARMS CONTROL AND DISARMAMENT ACT.—(a) Section 42 of the Arms Control and Disarmament Act (22 U.S.C. 2582) is amended to read as follows:

"FOREIGN SERVICE PERSONNEL

"SEC. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—

"(1) the authority available to the Secretary under the Foreign Service Act of 1980, and

"(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.

"(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.".

(b) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2205. REPEALED PROVISIONS.—The following are repealed:

(1) The Act entitled "An Act to improve, strengthen, and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration", approved August 13, 1946, titles I through X of such Act being the Foreign Service Act of 1946 (22 U.S.C. 801–810, 816, 817, 821, 826, 827, 841–843, 846, 861, 866–873, 876, 877, 881, 882, 886 889, 890, 896, 900, 901, 902, 906–915, 921–924, 926–928 935–939, 946, 947, 951, 961–966, 968, 981, 986, 987, 991–996, 1001–1009, 1016, 1017, 1021, 1022, 1026–1028, 1031, 1036, 1037–1037c, 1041–1048, 1061–1065, 1071, 1076, 1076a, 1081, 1082, 1084, 1086, 1091, 1093, 1095, 1101, 1103–1106, 1111, 1112, 1116, 1121, 1131, 1136–1138a, 1139, 1148–1151, and 1156–60.

(2) Sections 401 and 413 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 981, 986).

(3) Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 857).

(4) Section 117, 120, and 522 of the Foreign Relations Authorization Act, Fiscal Year 1977 (90 Stat. 827, 829, 846).

(5) Section 6 of the Department of State Appropriations Authorization Act of 1973 (87 Stat. 452).

(6) The Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968 (22 U.S.C. 929–932, 1221–1234).

(7) Section 104(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)).

(8) Subsections (e), (g), (j), and (k) of section 625 of the Foreign Assistance Act of 1961 (22 U.S.C. 2385 (e), (g), (j), and (k)), except that the repeal of subsection (k) shall not become effective until January 1, 1982.

(9) Section 7(b) of the Peace Corps Act (22 U.S.C. 2506(b)).

(10) Sections 14 and 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2679a, 2680a).

(11) Section 124(a)(2) of the International Development and Food Assistance Act of 1977 (91 Stat. 542).

(12) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 21, 1952 (22 U.S.C. 1077, 1078).

(13) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 1, 1956 (22 U.S.C. 1079–1079f).

(14) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved September 2, 1958 (22 U.S.C. 1079g–1079j).

(15) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved July 12, 1960 (22 U.S.C. 1079l).

(16) The Foreign Service Annuity Adjustment Act of 1965 (22 U.S.C. 1079m–1079s).

SEC. 2206. OTHER CONFORMING AMENDMENTS.—(a)(1) Section 3(b) of the Asian Development Bank Act (22 U.S.C. 285a(b)) is amended by striking out the "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(2) The United Nations Participation Act of 1945 is amended—

(A) in section 2(g) (22 U.S.C. 287(g)) by striking out "sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) for chiefs of mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 8 (22 U.S.C. 287e) by striking out "section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(3) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor", approved July 30, 1946 (22 U.S.C. 287n), is amended by striking out "Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or provided for Foreign Service officers under section 403 of that Act,".

(4) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor", approved June 14, 1948 (22 U.S.C. 290a), is amended by striking out "provided by section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "established under section 402 or 403 of the Foreign Service Act of 1980".

(5) Section 203(b) of the African Development Fund Act (22 U.S.C. 290g–1(b)) is amended by striking out "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(6) Section 408 of the Mutual Security Act of 1954 (22 U.S.C. 1928) is amended—

(A) in subsection (a) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801)," and inserting in lieu thereof "Foreign Service Act of 1980";

(B) in subsection (b) by striking out "chief of mission, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)" and inserting in lieu thereof "chief of mission under the Foreign Service Act of 1980"; and

(C) in subsection (c) by striking out "section 529 of this Act who are appointed as Foreign Service Reserve officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)" and inserting in lieu thereof "section 628 of the Foreign Assistance Act of 1961 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980".

(7) The International Atomic Energy Agency Participation Act of 1957 is amended—

(A) in section 2(d) (22 U.S.C. 2021(d))—

(i) in the first sentence by striking out "sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 866, 867), for Chiefs of Mission" and inserting in lieu thereof "sections 401, 402 and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,", and

(ii) in the second sentence by striking out "by Chiefs of Mission" and inserting in lieu thereof "under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 5 (22 U.S.C. 2024)—

(i) by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980", and

(ii) by striking "Foreign Service Act of 1946, as amended;" and inserting in lieu thereof "Foreign Service Act of 1980;".

(8) Section 704(b) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056(b)) is amended by striking out "title X, part C of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 25 of the State Department Basic Authorities Act of 1956".

(9) Section 104(d) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(d)) is amended by striking out "section 528" and all that follows through "such persons" and inserting in lieu thereof "section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service".

(10) Section 5(a) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2605(a)) is amended—

(A) in paragraph (1) by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service";

(B) in paragraph (2) by striking out "Foreign Service Reserve officers" and inserting in lieu thereof "members of the Foreign Service serving under limited appointments"; and

(C) in paragraph (4) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "Foreign Service Act of 1980".

(11) Section 403(c) of the International Development Cooperation Act of 1979 (22 U.S.C. 3503(c)) is amended by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

(b)(1) Section 605A(h) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes", approved August 28, 1954 (7 U.S.C. 1765a(h)), is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

(2) Section 606D of such Act (7 U.S.C. 1766c) is amended by striking out "title IX of the Foreign Service Act of 1946" and inserting in lieu thereof "chapter 9 of title I of the Foreign Service Act of 1980".

(c)(1) Section 2002(a) of title 10, United States Code, is amended—

(A) in the text preceding paragraph (1) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(b) of the Foreign Service Act of 1980"; and

(B) in paragraph (2) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(a) of the Foreign Service Act of 1980".

(d) Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 906(a)(1)) is amended by striking out "section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2))" and inserting in lieu thereof "section 5924 of title 5, United States Code".

(e)(1) Section 104(a)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) is amended by striking out "section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)" and inserting in lieu thereof "section 808 of the Foreign Service Act of 1980".

(2) Section 170(1) of the Internal Revenue Code of 1954 (26 U.S.C. 170(1)) is amended by amending paragraph (6) to read as follows:

"(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.".

(3) Section 912(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 912(1)(A)) is amended to read as follows:

"(A) chapter 9 of title I of the Foreign Service Act of 1980,".

(4) Section 2055(f)(5) of the Internal Revenue Code of 1954 (26 U.S.C. 2055(f)(5)) is amended to read as follows:

"(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises or bequests to or for the use of the United States, see section 25 of the States Department Basic Authorities Act of 1956.".

(f) Section 235 of title 38, United States Code, is amended—

(1) in paragraph (1) by striking out "Section 1131 of title 22" and inserting in lieu thereof "Section 905 of the Foreign Service Act of 1980";

(2) in paragraph (2) by striking out "Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22" and inserting in lieu thereof "Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980";

(3) in paragraph (3) by striking out "Section 1138 of title 22" and inserting in lieu thereof "Section 901(13) of the Foreign Service Act of 1980";

(4) in paragraph (4) by striking out "Section 1148 of title 22" and inserting in lieu thereof "Section 903 of the Foreign Service Act of 1980"; and

(5) in paragraph (5) by striking out "Section 1156 of title 22" and inserting in lieu thereof "Section 904(d) of the Foreign Service Act of 1980".

(g) Section 415(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5055(c)) is amended—

(1) in paragraph (1) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other" and inserting in lieu thereof "any"; and

(2) in paragraph (2) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 2301. REEMPLOYMENT RIGHTS.—(a) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"§ 3597 Reemployment following limited appointment in the Foreign Service

"An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employees former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.".

(b) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"3597. Reemployment following limited appointment in the Foreign Service.".

SEC. 2302 SALARY FOR AMBASSADORS AT LARGE.—Section 5313 of title 5, United States Code, is amended by adding the following at the end thereof:

"Ambassadors at Large.".

SEC. 2303. ADVANCES OF PAY INCIDENT TO DEPARTURES FROM POSTS ABROAD.—(a) Section 5522(a) of title 5, United States Code, is amended—

(1) by striking out "evacuation" and inserting in lieu thereof "departure"; and

(2) by striking out "is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family" and inserting in lieu thereof "is officially authorized or ordered—

"(1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or

"(2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee".

(b) Section 5522(b) of title 5, United States Code, is amended by striking out "evacuation" and inserting in lieu thereof "departure".

(c) Section 5523(a)(1) of title 5, United States Code, is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) whose departure is authorized or ordered under section 5522(a) of this title; and"; and

(2) in subparagraph (B) by striking out "evacuation" and inserting in lieu thereof "departure".

(d) Section 5523(b) of title 5, United States Code, is amended by striking out "evacuation" both places it appears and inserting in lieu thereof "departure".

(e) Section 405a(a) of title 37, United States Code, is amended by striking out "evacuated" and "evacuation" wherever they appear and inserting in lieu thereof "to depart" and "departure", respectively.

SEC. 2304. PREMIUM PAY.—Paragraph (2) of section 5541 of title 5, United States Code, is amended—

(1) by striking out clauses (xiv) and (xv) and inserting in lieu thereof the following:

"(xiv) a member of the Senior Foreign Service; or"; and

(2) by redesignating clause (xvi) as clause (xv).

SEC. 2305. ATTORNEYS FEES IN BACKPAY CASES.—Section 5596(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A)(ii) by inserting "or under chapter 11 of title I of the Foreign Service Act of 1980," immediately after "chapter 71 of this title,"; and

(2) in paragraph (3)—

(A) by inserting "and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980" immediately after "section 7103 of this title"; and

(B) by inserting "and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980" immediately after "section 7116 of this title".

SEC. 2306. SEPARATE MAINTENANCE ALLOWANCE.—Section 5924(3) of title 5, United States Code, is amended—

(1) by inserting "or authorized" immediately after "compelled"; and

(2) by inserting "or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents," immediately after "for the convenience of the Government,".

SEC. 2307. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(i)" and by striking out "of the Department of State" and all that follows through "type of education".

SEC. 2308. POSTS REQUIRING SPECIAL INCENTIVES.—Section 5925 of title 5, United States Code, is amended—

(1) by striking out "A post" in the first sentence and inserting in lieu thereof "(a) A post";

(2) by inserting "under this subsection" immediately after "differential" in the last sentence; and

(3) by adding at the end thereof the following new subsection:

"(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

"(1) may be paid for each assignment to a post determined to have such conditions;

"(2) may be paid periodically or in a lump sum; and

"(3) may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment.".

SEC. 2309. ADVANCES OF PAY.—(a) Subchapter III of chapter 59 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5927. Advances of pay

"Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.".

(b) The analysis of chapter 59 of title 5, United States Code, is amended by inserting after the item relating to section 5926 the following:

"5927. Advances of pay.".

SEC. 2310. DANGER PAY ALLOWANCE.—(a) Subchapter III of chapter 59 of title 5,

United States Code, as amended by section 2309(a), is further amended by adding at the end thereof the following new section:

"An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee.".

(b) The analysis for chapter 59 of title 5, United States Code, as amended by section 2309(b), is further amended by inserting "§ 5928. Danger pay allowance"

after the item relating to section 5927 the following:

"5928. Danger pay allowance.".

SEC. 2311. LEAVE.—(a) Section 6301 of title 5, United States Code, is amended by adding at the end thereof the following new sentence:

"Notwithstanding clauses (x)–(xii) of paragraph (2), the term 'employee' includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position in the Department of State which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.".

(b) Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

(2) by adding at the end thereof the following new subsection:

"(g) Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

SEC. 2312. RETIREMENT CREDIT FOR IMPRISONED FOREIGN NATIONALS.—Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual.".

SEC. 2313. CONFORMING AMENDMENTS TO TITLE 5.—(a) Section 3323(c) of title 5, United States Code, is amended by striking out "Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22" and inserting in lieu thereof "member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980".

(b) Section 5102(c)(2) of title 5, United States Code, is amended by striking out "employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22" and insert in lieu thereof "members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980".

(c)(1) Section 5301(c) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(2) Section 5303(a) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by redesignating paragraph (3) as paragraph (2);

(C) by striking out "; or" at the end of such redesignated paragraph and inserting in lieu thereof a period; and

(D) by striking out paragraph (4).

(3) Section 5404 of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(d) Section 5724(g) of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(e) Section 5727(e)(2) of title 5, United States Code, is amended to read as follows:

"(2) This section, except subsection (a), does not affect section 403e(4) of title 50.".

(f)(1) Section 6301(2)(xii) of title 5, United States Code, is amended by striking out "an officer who receives pay under section 866 of title 22" and inserting in lieu thereof "a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980)".

(2) Section 6305(b) of title 5, United States Code, is amended by striking out "an officer" and inserting in lieu thereof "a chief of mission".

(g) Section 7103(a)(2)(iv) of title 5, United States Code, is amended by striking out "the Agency for International Development, or" and inserting before the semicolon ", the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce".

(h) Section 8501(1)(C) of title 5, United States Code, is amended by striking out "Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22" and inserting in lieu thereof "members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980".

CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

SEC. 2401. SAVING PROVISIONS.—(a) All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

(b) This Act shall not affect any increase in annuity or other rights to benefits, which was provided by any provision amended or repealed by this Act, with respect to any individual who became entitled to such benefit prior to the effective date of this Act.

(c) References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

SEC. 2402. CONGRESSIONAL OVERSIGHT OF IMPLEMENTATION.—(a) Within fifteen months after the effective date of this Act, the Secretary of State shall submit to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a report describing the implementation of this Act during the fiscal year 1981 by the agencies utilizing the Foreign Service personnel system. Such report shall—

(1) describe the steps taken and planned in furtherance of (A) maximum compatibility among such agencies, as provided for in section 203, and (B) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 204;

(2) indicate the progress made by each such agency in the conversion of personnel and position classifications in accordance with chapter 1 of this title; and

(3) specify the upper and lower limits planned by each such agency for recruitment, advancement, and retention of members of the Service, as provided for in section 601(c)(2), including with respect to each of the relevant promotion competition groups the projected ranges of rates of appointment, promotion, and attrition over each of the five fiscal years 1981 through 1985.

(b) Beginning in 1982, the Secretary of State shall submit each year to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a supplemental report describing any relevant developments with respect to the matters reported on under paragraphs (1) and (2) of subsection (a) and, with respect to paragraph (3) of such subsection, a revised projection of the ranges of rates of appointment, promotion, and attrition over each of the next five years, as well as a comparison of such projections with the projections for the preceding year and with actual rates of appointment, promotion, attrition. The report shall explain fully any deviations from projections reported in the preceding year.

(c) The Secretary shall consult, in accordance with the procedures set out in section 1013(g), with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 1003(a) with respect to steps to be taken in implementing this Act and reported under this section. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect on October 1, 1980.

(b)(1) Chapter 8 of title I of this Act shall take effect on the later of October 1, 1980, or the 90th day after the date of enactment of this Act. If such effective date is after October 1, 1980, the provisions of sections 519, 631, 632, and 636 and of title VIII of the Foreign Service Act of 1946, and the provisions of section 8 and 9 of Public Law 90-494, shall remain in effect until such effective date, notwithstanding the repeal of those provisions by section 2205.

(2) The provisions of such chapter regarding the rights of former spouses to any annuity under section 814(a) shall apply in the case of any individual who after such effective date becomes a former spouse of an individual who separates from the Service after such date.

(3) The provisions of such chapter regarding the rights of former spouses to receive survivor annuities under section 814(b) shall apply in the case of participants or former participants in the Foreign Service Retirement and Disability System who die after such effective date.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENT

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the committee amendment to page 18.

The Clerk read as follows:

Post Office and Civil Service Committee amendment: Page 18, strike out line 14 and all that follows down through line 21, and insert in lieu thereof the following:

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies, the Secretary of Agriculture with respect to the Foreign Agricultural Service, and the Secretary of Commerce with respect to those employees of the Department of Commerce performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979 may utilize the Foreign Service personnel system in accordance with this Act.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The CHAIRMAN. The gentlewoman from Colorado (Mrs. SCHROEDER) has 5 minutes to explain her amendment if that is her desire.

Mrs. SCHROEDER. Mr. Chairman, I would be more than happy to yield to the gentleman from Florida for his substitute. This amendment, which was adopted by the Committee on Post Office and Civil Service, was recommended by the administration. It places limits on the abilities of the Secretaries of Commerce and Agriculture to utilize the Foreign Service personnel authorities by saying that those authorities can only be used for certain foreign affairs related aspects of their Departments.

Subsequent to adoption by the committee, a series of discussions took place within the administration. As a result, the administration agreed to accept slightly more flexible language, which I understand will be offered by the gentleman from Florida (Mr. FASCELL). I have no problem with this change and will accept it.

AMENDMENT OFFERED BY MR. FASCELL AS A SUBSTITUTE FOR THE POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENT

Mr. FASCELL. Mr. Chairman, I offer an amendment as a substitute for the Post Office and Civil Service Committee amendment.

The Clerk read as follows:

Amendment offered by Mr. FASCELL as a substitute for the Post Office and Civil Service Committee amendment: In lieu of proposed new section 202(a) shown in italic type beginning in line 22 of page 18 and ending in line 8 of page 19, insert the following:

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a)(1) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to other personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment offered as a substitute for the committee amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. The gentlewoman from Colorado has explained what the substitute is about. The gentlewoman offered the committee amendment. This substitute represents a compromise between the two committee versions and would specifically permit use of the Foreign Service Act authorities by the Foreign Commercial Service and the Foreign Agricultural Service. It would also permit the President to direct the authorities to be used for other personnel in both Departments who serve abroad. This is consistent with our intent that a requirement of service abroad be central to the use of Foreign Service Act authorities. Therefore I urge support of the substitute.

Mr. BUCHANAN. Mr. Chairman, I rise in support of the substitute amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL) as a substitute for the Post Office and Civil Service Committee amendment.

The amendment offered as a substitute for the Post Office and Civil Service Committee amendment was agreed to.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendment, as amended.

The Post Office and Civil Service Committee amendment, as amended, was agreed to.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to observe that the committees involved would include at this point the Committee on Interior and Insular Affairs and the Ad Hoc Committee on Energy. They refer to this legislation as being on the fast track.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule which allows us to be on this fast track, I ask the Clerk to report the following committee amendments to be considered en bloc.

The amendments are to pages 47 and 222, relating to the Foreign Service schedule.

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Post Office and Civil Service Committee amendments: Page 47 in the table below line 19, strike out "GS-7", "GS-6", "GS-5", and "GS-4" and insert in lieu thereof "GS-8", "GS-7", "GS-6", and "GS-5", respectively.

Page 222, strike out line 3 and all that follows down through line 10.

Page 222, line 11, strike out "(D)" and insert in lieu thereof "(C)".

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, the amendment was adopted by the Committee on Post Office and Civil Service. It corrects a problem which we created in subcommittee in the statutory pay linkages. When we decided to link Foreign Service pay rates to the general schedule, we did so because the President has not used his authority over the past decade to keep Foreign Service pay rates comparable with the general schedule. However, in linking the rates, we pegged the lower paid Foreign Service staff to general schedule rates which were too low, given the knowledge, skill, and expertise of the positions. In the Post Office and Civil Service Committee, we corrected those linkages. This amendment makes the change.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were agreed to.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to page 60, relating to the designation of Foreign Service positions.

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Post Office and Civil Service Committee Amendments. Page 60, line 3, immediately before "The" insert "(a)". Page 60, after line 16, insert the following new subsection:

(b) A position in the United States may be designated as a Foreign Service position under subsection (a) only if the Secretary determines—

(1)(A) that the functions of the position cannot be performed without significant experience abroad in the conduct of foreign affairs, or

(B) that the position is required to be designated as a Foreign Service position—

(i) to provide opportunities for rotation of members of the Service from assignments abroad to assignments in the United States, or

(ii) to provide training for future assignments abroad, and

(2) that the advantages of continuity of incumbency or specialized skill in the position do not outweigh the advantages from its designation under this subsection.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, I now offer an amendment adopted by the Committee on Post Office and Civil Service which restricts the use of the Foreign Service personnel authorities to cases in which there is a clear need.

The amendment, adding a new section 501(b), serves as a limitation on authority of agency heads to use the Foreign Service personnel authorities. This section codifies existing regulations saying that positions in the United States can only be classified as Foreign Service positions if there is a need for foreign policy expertise, a need to provide rotational opportunities or a need for training for future overseas assignments. Also, the advantage of continued incumbency or specialized skills must be outweighed by the advantages of a Foreign Service designation.

The provision reflects a longstanding Federal policy of relying on the personnel authorities contained in title 5, United States Code, unless there is a strong reason to depart from these provisions. The need for rotation and the desirability of an up-or-out system serves to justify the existence of a Foreign Service personnel system. Where these factors are absent, employees should be subject to the same statutory requirements applicable to other government employees.

Despite the fact that section 501(b) is not intended to change the basic groundrules, some in the foreign affairs agencies have voiced concern that statutory limitations on use of Foreign Service authorities might invite legal action. They point to law suits that have been filed in the past on this issue, when there was no statutory limit.

I want to make my position clear: I oppose any unwarranted proliferation of use of the Foreign Service authorities. First, the primary motivation behind this bill was to clear up and simplify the existing rampant personnel categories in the Foreign Service. Currently, the Department of State has as many as 16 distinct personnel categories, each with its own rights and obligations. This chaos has resulted from the undisciplined way in which management has manipulated personnel rules to meet immediate needs or to respond to momentary shifts in personnel management philosophy. This legislation uses some strong medicine to cure this disease, including the involuntary conversion to the general schedule of some 1,200 to 1,500 Foreign Service employees who do not and are not required or expected to serve abroad. If we are going to clean up this system, let us do it right and prevent the recurrence of what has occurred over the last decade.

Second, the Foreign Service is designed for frequent rotation, worldwide availability, steady career progression within the system, and generalized skills. Under title 5 personnel authorities, employees develop specialized skills, are appointed to positions which contain clearly articulated duties, can only be assigned abroad with their consent, and win promotions through applying for new positions. The Foreign Service personnel system is designed for a specific and particular use, while the title 5 authorities are much more generally applicable. To use the Foreign Service authorities for other purposes undercuts the effectiveness or both systems and creates artificial distinctions between types of employees. Where misuse of the Foreign Service personnel authorities has occurred, poor morale and lower productivity has followed in its wake. Time and time again, agency management has failed to see the ramifications of sloppy usage of the Foreign Service personnel system. This bill is intended to preclude such sloppiness.

Mr. FASCELL. If the gentlewoman would yield, I do not have any problem with the philosophy behind this amendment. My problem is that I do not think these requirements should be in a statute. Rather, I think Congress should communicate its concern and oversee the Department's personnel management to make sure it complies with congressional intent.

There are numerous problems if we place these restrictions in statute. First, are we creating a new right of action by disgruntled employees against the foreign affairs agencies? At the least, I think this would certainly be tested in the courts.

Second, we just created a new personnel system at the Agency for International Development, under the Obey amendment to the foreign aid bill. Does this provision overrule the Obey amendment? The Post Office and Civil Service Committee Report indicates that the Obey amendment is not intended to be altered. Nevertheless, there are those in AID who are quite concerned about a possible change in the law.

Third, does this language cover the Peace Corps? Since 1965, the Peace Corps has had a unique personnel system which utilizes elements of the Foreign Service system for all employees. Does this amendment force the Peace Corps to create two personnel systems?

Because of all these problems, I would prefer to create legislative history on when it is appropriate to use the Foreign Service personnel authorities, rather than doing it by statute.

Mrs. SCHROEDER. I am sympathetic to what you suggest.

Let me clarify the three issues you raised. First, this position designation amendment is not intended to create any new legal rights. Indeed, the Office of Personnel Management, in answer to a query from Chairman HANLEY, believes that no new legal rights are created. I ask unanimous consent that a copy of that correspondence be made a part of the RECORD.

Second, our committee report is quite clear that this amendment does not change the Obey amendment. I know that concerns have been raised.

Third, our committee came out differently on this issue of the Peace Corps personnel system. The langauge in the Foreign Affairs Committee bill provides for a continuation of the status quo in the Peace Corps. I do not intend to contest this issue, although I find the current personnel system at the Peace Corps troublesome. If we adopt the Foreign Affairs language on the Peace Corps, I think our intention not to apply this section to the Peace Corps is quite clear.

Having said all that, I would be perfectly willing to agree to vote down this amendment with the understanding that we have created clear legislative direction to the agencies authorized to use the Foreign Service personnel authorities that they use those authorities in accordance with the criteria set out in the amendment; namely, that positions in the United States should be designated as Foreign Service positions only if the functions cannot be performed without significant experience abroad in the conduct of foreign affairs or if the position is needed for rotational purposes or for training for assignments abroad. Also, the advantage of continued incumbency or specialized skills must not outweigh the advantage of a Foreign Service designation.

Mr. FASCELL. That is fine with me. This gives the agencies the necessary flexibility to insure appropriate staffing.

Mr. Chairman, will the gentlewoman yield further?

Mrs. SCHROEDER. I will be happy to yield to the gentleman from Florida.

Mr. FASCELL. As the gentlewoman knows, I have had some reservations about writing this kind of concern explicitly in statute. I think that the general concept which is sought by the language is fine. I would have no trouble with that because it is rational and is essential.

The other aspect of it is, I just want to be sure we understand that there would be flexibility retained in making these decisions and the only way I could see that that could be done would be to oppose the amendment, although we would have the legislative history and the effort of the gentlewoman's committee to write it explicitly in the statute so that the agency knows exactly what the gentlewoman is talking about.

Mrs. SCHROEDER. Mr. Chairman, I certainly appreciate the gentleman pointing this out. I know we have had trouble deciding this. That is why I would like to put this in the debate as our legislative history on this position designation amendment.

I would be more than willing, I guess, to let the amendment go down to make sure we have not shutoff that flexibility about which the gentlemen from Florida is so concerned and I think rightfully so.

Basically, I guess what we are agreeing to do is create legislative history as to where it is we hope we go and yet not put this into the cement at this time because it is still developing.

Mr. FASCELL. I thank the gentlewoman. As usual the gentlewoman is very concise and very thorough. I would hope, therefore, Mr. Chairman, for this legislative history being established, that the committee amendments would then be disagreed to.

□ 1700

The CHAIRMAN. Is the gentleman opposing the amendments?

Mr. FASCELL. I am opposing this amendment specifically that is before us.

The CHAIRMAN. They are en bloc, and the gentleman is opposing them?

Mr. FASCELL. Yes, that is correct, Mr. Chairman.

Mrs. SCHROEDER. Mr. Chairman, they are the amendments that we are offering as committee amendments en bloc, but we are understanding the problems and the State Department's problems. We want the legislative history here, but we are willing to have them go down. We are just offering them.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were rejected.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to pages 86, 88, 89, 93, and 100 (beginning in line 25), 101, 102, 109, and 111 (relating to rights of former spouses).

The Clerk read as follows:

Post Office and Civil Service Committee amendments: Page 86, line 20, strike out "for not less than 10 years".

Page 88, strike out line 4 and all that follows down through line 10.

Page 88, line 11, strike out "(11)" and insert in lieu thereof "(10)".

Page 89, line 1, strike out "(12)" and insert in lieu thereof "(11)".

Page 89, line 6, strike out "(13)" and insert in lieu thereof "(12)".

Page 93, strike out line 17 and all that follows down through line 20 on page 95 and insert in lieu thereof the following:

(b)(1)(A) Any married participant who retires shall receive a reduced annuity and provide a maximum survivor annuity for his or her spouse unless the participant elects in writing at the time of retirement to waive or reduce the maximum survivor annuity for his or her spouse. Any election by any participant under the preceding sentence shall not be considered valid unless the participant establishes to the satisfaction of the Secretary of State (i) that the spouse has been notified of the loss of or reduction in survivor benefits or (ii) that the participant has complied with such notification requirements as the Secretary of State shall, by regulation, prescribe.

(B) If a participant or former participant has a former spouse for whose benefit a survivor annuity is required to be provided by the terms of any court order under section 820(b)(2), the participant shall receive a reduced annuity and provide a survivor annuity for that former spouse under section 814(a).

(2) The annuity of a participant or former participant, excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600.

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(A).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(a) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(a)(4)(B).

(4) An annuity payable from the Fund to a surviving spouse shall commence on the day after the annuitant dies and shall terminate on the last day of the month before (A) the death of the surviving spouse, or (B) if the surviving spouse remarries prior to attaining the age of 60 years, such remarriage. If a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

Page 100, line 6, strike out "804(12)" and insert in lieu thereof "804(11)".

Page 100, line 15, strike out "or surviving former spouse".

Page 100, line 23, strike out "(1)".

Page 100, beginning on line 25, strike out "and his or her spouse jointly elect" and insert in lieu thereof "elects".

Page 101, strike out line 11 and all that follows down through line 16.

Page 101, line 23, after "reduced" insert ", subject to any reduction required to provide a survivor benefit under section 814(a)".

Page 102, line 8, strike out "814(b)(5)" and insert in lieu thereof "814(a)(5)".

Page 109, lines 10 and 14, strike out "814(b)" and insert in lieu thereof "814(a)".

Page 111, beginning on line 3, strike out "or surviving former spouse who was married to the participant during the period of recall service".

Page 111, beginning on line 11, strike out "or such a surviving former spouse".

Page 111, line 15, after the period insert the following new sentence:

"Any surviving former spouse who was married to the participant during the period of recall service shall be entitled to have the same election rights with respect to an annuity under section 814(a) that a surviving spouse has under this subsection if and to the extent expressly provided in a court order under section 820(b)(2).".

Page 111, line 24, strike out "814(b)" and insert in lieu thereof "814(a)".

Page 114, strike out section 814, beginning on line 1 and ending on line 8 of page 121 and insert in lieu thereof the following:

SEC. 814. FORMER SPOUSES.—(a)(1) If a court order under section 820(b)(2) expressly so provides, in the case of any participant who is entitled to receive an annuity and who is survived by a former spouse, the former spouse shall be entitled to a survivor annuity in an amount which shall be determined by or in accordance with the provisions of that court order if the court order is consistent with the provisions of this chapter.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or annuities for any spouse or former spouse or combination of such survivor annuities, under this subsection (and section 806) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806.

(B) Once a survivor annuity has been provided for under this subsection (or section 806) for any spouse or former spouse of a participant or former participant, a survivor annuity may thereafter be provided for a spouse or former spouse of that participant under this subsection (or section 806) only for that portion (if any) of the maximum available which is not committed for survivor benefits for any spouse or former spouse whose prospective right to such annuity has not terminated.

(C) After the death of a participant or former participant, a court order under section 820(b)(2) may not adjust the amount of the annuity of any former spouse under this subsection.

(5)(A) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless an election is in effect under subparagraph (B).

(B) Subject to paragraph (4)(B), the participant may elect in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity

under section 806(b)(3) for any spouse of the participant.

(b)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (a) for a former spouse pursuant to a court order under section 820(b)(2), such participant may elect an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State, and any annuity under this subsection shall not be considered as a survivor annuity for purposes of the provisions of section 806(h) requiring an election of certain survivor benefits.

(c) Section 806(i) shall not apply to any annuity payable under subsection (a) or (b).

Page 125, beginning on line 22, strike out "(and to any former spouse" and all that follows down through line 23 and insert in lieu thereof a period.

Page 126, strike out line 7 and all that follows down through line 9 and insert in lieu thereof a period.

Page 129, strike out subsection (i) of section 815, beginning on line 2 and ending on line 18 of page 129.

Page 134, strike out subsection (i) of section 816, beginning on line 8 and ending on line 2 of page 135.

Page 136, strike out line 21 and all that follows down through line 24 of page 137 and insert in lieu thereof the following:

(b)(1) Payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary to another person to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(2) Any former spouse of a participant or former participant shall be entitled to a survivor annuity under section 814(a) of this chapter if and to the extent expressly so provided for in the terms of a court decree of divorce or annulment, or the terms of any court order incident to such decree.

(3) This subsection shall not apply in the case of any court decree or order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

Page 18, line 138, strike out "(3)" and insert in lieu thereof "(4)".

Page 138, line 24, strike out "(4)" and insert in lieu thereof "(5)".

Page 24, strike out line 1 and all that follows down through line 6 on page 139.

Page 267, strike out line 16 and all that follows down through line 25 and insert in lieu thereof the following:

(2) The provisions of such chapter regarding the rights of any former spouse to any annuity under 814(a) shall apply only with respect to an individual who, after such effective date, becomes the former spouse of a participant or a former participant in the Foreign Service Retirement and Disability System.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The CHAIRMAN. The gentlewoman from Colorado is recognized for 5 minutes in support of the amendments.

Mrs. SCHROEDER. Mr. Chairman, I oppose this amendment that I am offering. I would like to reserve my 5 minutes for later. Is that possible?

The CHAIRMAN. The gentlewoman will be protected.

Mr. FORD of Michigan. Mr. Chairman, I rise to speak in favor of the committee amendments.

Mr. Chairman, I quite understand the discomfort of the gentlewoman from Colorado. We have been discussing this issue for several years. What really is before us is really rather simple, in a way, but far-reaching in its impact.

The bill that was presented to our committee by the gentlewoman's subcommittee proposed that after the expiration of a fixed period of time, the spouse of a Foreign Service officer would have a vested right in that Foreign Service officer's pension rights so that if the Foreign Service officer were to serve for, say, 30 years—15 of which he or she was married to wife No. 1 or husband No. 1, and 15 of which he or she was married to wife or husband No. 2, that the two respective spouses were to share in a vested interest in the pension not only during the surviving period of the Foreign Service officer while he was on retirement, where they would divide the retirement between them and the former spouse, but also with respect to the benefits at the time that the Foreign Service officer passed on.

Now, how did this come about? Actually, prior to 1978, for many years the Federal Code in title V provided that annuity benefits of Federal employees were not reachable by any kind of court process. They were insulated from being determined or distributed in divorce proceedings or any other kind of legal proceedings. In the 95th Congress, the gentlewoman proposed that all Federal annuities be prorated between two parties to a marriage for those years or that part of a total pension that was accumulated during those years that one of them worked for the Federal Government.

We chose instead, in the committee, to provide that a court, when it was determining what should be done in a divorce separation or some other disposition of the property of the parties, should look at the individual parties, the circumstances pertaining to those parties, and be able to take into account all of their assets, including any rights they had in a pension fund. And so, as a result of that the House overwhelmingly passed the bill. The Senate agreed with us, and on September 15, 1978, we made annuities for all Federal employees except Foreign Service officers subject to legal process.

So, since that time all other Federal annuities can be the subject of consideration by the court when awarding property or support, and so forth, in a divorce proceeding. Now, there is no Federal divorce law. There are no Federal courts to grant divorces. That is a matter for State courts, and as the lawyers and others in this Chamber know, the variation between States is sometimes very great. As a matter of fact, that whole field of law has been turning over very rapidly in the last two or three decades, and old and very revered ideas about the respective rights of people because of their sex at the time of a divorce have been turned over very rapidly. We now see the phenomena of females paying child support, and males getting child custody—things that did not happen a few years ago.

What the gentlewoman is doing now is trying to extend this idea to the Foreign Service, and the argument Members will see in the committee report is that this is a little different because Foreign Service officers have spouses who have special kinds of duties, and as the report says, until 1972 the wife, but not the husband, of a Foreign Service officer used to get a report card on how nice she was in terms of entertaining at social events, and so forth. Thank goodness, that kind of archaic thinking has left most of our society, including the Foreign Service, so the gentlewoman's amendment is not intended to get to that problem. That is behind us.

What we discovered, however, was that after we enacted the law to permit all other annuities to be dealt with by the courts, it was discovered that unintentionally we had excluded Foreign

Service officers, so what we now are suggesting in the committee amendment that is before us is that we provide exactly what we have made the law to be for all other Federal annuitants, and apply that same law to Foreign Service officers.

Very simply, it is this: If a Foreign Service officer, just like any other person who acquires the right in the military and civilian service of the Federal Government, acquires a property right in an annuity, whether it be for retirement or payment as a survivor's benefit, that that interest can be examined by a court during a divorce proceeding, and the court can award a portion of that to the nonfederally employed spouse, whether it is male or female, if it is, in the opinion of the court, the appropriate thing to do.

A court might, on the other hand, decide that the $250,000 home that they have over here in Arlington should go to the wife, and that the Foreign Service officer, who has been living without his wife for 10 years overseas, should at least have his pension, even though he has no home.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. That is perfectly all right with me as long as that is what that judge, under those circumstances with respect to those people, believes is equity at that time. Plain and simple, what the committee amendments ask us to do is leave to the domestic relations courts, or court, the disposition of this property right as they dispose of other property rights, and I would suggest to those who are concerned about the plight of poor spouses who have not been able to acquire any rights heretofore, that since July of this last year, by Executive order signed by President Carter, Foreign Service officers' pension rights have been reachable by the courts.

The gentlewoman sent all of us a letter and said that this has not worked because only one court has given a wife a property settlement involving the pension, but the fact is that it has only been on the books since last July, and it has not had time to do much of anything yet. Some of the people involved, I suppose, have not had time to catch up with it. There have been very few divorces that have occurred since the change in the law, so if we come back a year from now and we find out that the courts are willy-nilly, wholesale disregarding this annuity and refusing to take it into account, that might be the time for us to meddle.

□ 1710

But I am pleading with the House not to get us into the domestic relations business and leave that to the State legislatures.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, let me ask, when would the property right vest under the amendment that is being considered now?

Mr. FORD of Michigan. Well, I understand it is still 10 years. After 10 years of marriage the nonfederally employed spouse, male or female, would have a vested interest in the pension, and that portion would be determined by the relative number of years they were married as against the total years the annuity accrued. In other words, if one worked for the Federal Government for 30 years and had a 30-year pension, the former spouse would be entitled to up to 50 percent. At the time of retirement 50 percent would go to the former spouse and 50 percent would be shared by the annuitant and possibly a new spouse or a new family.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, suppose there were children of the first marriage and the mother died within the 10-year period; would those children stand in the stead of their mother or the wife?

Mr. FORD of Michigan. No; I do not believe so. It would not affect the survivor's rights at all or the children.

Mr. HALL of Texas. It would not?

Mr. FORD of Michigan. This only creates a right for a surviving spouse, not for surviving family members.

Mr. HALL of Texas. If the party has a vested interest, how could we keep it from descending on the children upon the death of their mother?

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. HALL of Texas, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, in answer to the gentleman's question, I have to tell him honestly that I cannot give him a good legal reason for it. I can only tell him that it is in fact what happens at the present time, and am not really sure why.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, this is a personal right fixed by law. We are not talking about testimentary rights to property. Unless the statute makes it devolve on the children, it does not.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. Mr. Chairman, first, before I yield let me see if I can unscramble it in this way for the gentleman.

We are talking about two kinds of rights acquired. One is the so-called pension right for the person fortunate enough to live past retirement and collect a monthly annuity during the balance of their life. They leave to their spouse a survivor's right that goes only to that spouse, and that does not become a right until the annuitant dies. That is a separate right which we are not affecting with this amendent.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, the gentleman from Michigan (Mr. FORD) is correct because the law establishes this right.

If the annuity could be inherited by the wife and children, we would not need this law to start with; everything would be taken care of.

Mr. HALL of Texas. But, Mr. Chairman, if the gentleman will yield further, if the property vests in the wife and that wife dies, under the community property statutes of my State the interest that the mother had would vest by descendant distribution in her children or by a will to whomever she may will that property.

Mr. FORD of Michigan. Mr. Chairman, the property does not really vest. The right to collect the annuity vests, and the right to collect the annuity is still contingent upon the annuitant's reaching retirement age. What it really says is that if he or she, the Foreign Service officer, lives long enough to collect the pension, the former spouse, regardless of the vesting status, has the right to collect the vested portion of that.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has again expired.

(On request of Mr. HALL of Texas, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. HALL of Texas. Mr. Chairman, if the gentleman will yield for one additional question, may I ask, will this amendment, if it passes, affect the substantive law of the various 50 States in which rights to community property or separate property rights might exist presently in those States, or would it supersede what we now have?

Mr. FORD of Michigan. Only to this extent: The gentlewoman is opposing the committee amendments. If we strike the committee amendents and then go back to her original proposal, that creates a vested right without regard to what a court does in terms of the divorce.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. The gentlewoman is going to correct me and say, however, that a court could come in later and change it.

Mrs. SCHROEDER. No.

Mr. FORD of Michigan. Go ahead, Mr. Chairman, I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I think what we are saying is that there is an entitlement subject to a court review. I think what we are doing is just shifting the presumption.

I want to compliment the gentleman from Michigan (Mr. FORD). I think what we have is two different approaches to the problem. What the gentleman is saying is that the court must act in all cases first. I am saying there is a presumption of an entitlement after 10

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years of marriage subject to the court review. That is the difference.

Mr. FORD of Michigan. Mr. Chairman, if I may recapture a moment or a second of my time, I would just say that belongs in the closet with the presumption that the mother is always entitled to custody because mothers are better than fathers.

The domestic law in this country is changing more rapidly than anything else to reflect the changes in our society. I suggest that we have no business meddling in it. This is a perfect example of how dangerous it is for us to reach out there to the domestic relations courts and try to tell the judges what to do. We should let them take care of the divorce cases and effect proper settlements and the like, and we will do well if we can take care of those things that are within our jurisdiction.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition to the committee amendments.

Mr. Chairman, we have before us two somewhat different proposals for dealing with the same serious problem. I will, first, set out the problem and, then, explain why the Foreign Affairs Committee language is a better solution than the Post Office and Civil Service Committee scheme.

The need to provide pension benefits to former spouses of members of the Foreign Service was clearly spelled out in the hearings held on the Foreign Service Act. There is a general need to provide these benefits to the spouses of all Federal employees. In the private sector, employees are required to participate in the social security system. Nonworking spouses gain retirement benefits, based on the contributions of their working spouses. In the Federal sector, social security is not mandatory and the retirement systems for Federal workers do not provide retirement benefits for spouses. Hence, in traditional role model families; that is, where the husband works for a salary and the wife works for free in the house, a death of the husband or a divorce could leave the wife penniless.

The nature of the Foreign Service makes this need far more acute. All members of the Foreign Service are subject to frequent and continual rotation throughout their careers. The spouse has no opportunity to build an independent career, if he or she accompanies the member of the Service. Following death or divorce, the spouse has insufficient work experience to find a job, no retirement benefits in his or her own right, and no right to a portion of the benefits of the member of the Service.

Wives of Foreign Service officers have a special claim to this protection. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation report on their performance of representational duties. In effect, Foreign Service wives were impressed into service as unpaid representatives of the U.S. Government. This tradition of unpaid service continues, although the appraisals are no longer officially made.

The need is clear; the size of the problem is growing. No-fault divorce produces over a million divorces a year, nationwide. The ease with which these divorces can be achieved has left thousands of women without adequate economic protection. Indeed, only 5 percent of divorcees over aged 30 receive alimony and the mean level of child support received is a puny $2,430 per year.

Now, let me explain why the provisions of the Foreign Affairs Committee bill are better than those adopted by the Committee on Post Office and Civil Service.

H.R. 6790, as reported by the Committee on Foreign Affairs, provides for a pro rata division of retirement and survivor's benefits, based on the number of years of marriage, between the member of the Foreign Service and the former spouse. This pro rata division is a presumption, subject to affirmation, modification, or vitiation by the State family law court. The bill gives the current spouse and former spouses of over 10 years a right to sign off before the participant waives all survivor's benefits. Also, former spouses of all participants in the Foreign Service retirement system, whether active duty or retired, are able to use this law.

The Post Office and Civil Service Committee amendment changes these provisions. Rather than establishing a presumption for division, the Post Office amendment merely permits courts to divide both retirement and survivor's benefits without any Federal guidance. In a world of universally competent judges and well-informed domestic relations lawyers, the presumption for pro rata distribution would be unnecessary. Recent experience with reforms in divorce law makes it very clear that self-executing legislation, such as this pro rata distribution presumption, is essential to assure that the law is followed.

The Post Office amendment also eliminates the right of a current former spouse to sign off on a waiver of survivor's benefits. By so doing, the Post Office amendment may render the supposed ability of a former spouse to share in survivor's benefits a hollow right. Under the Post Office amendment, the member of the Foreign Service retains the unilateral right to cut off whatever share of survivor's benefits a spouse may have thought he or she had.

Additionally, the Post Office amendment only applies to future divorces and future retirements. This leaves numerous former spouses of Foreign Service officers destitute. By using this effective date, the Post Office amendment cuts off from benefits those already divorced.

Let me expand on the question of effective date. The Foreign Affairs version provides survivor's benefits in the case of former spouses of members of the Service and retirees who die after the effective date. It provides a retirement annuity for spouses who are divorced from active duty members of the Service after the effective date. Providing survivor's benefits for former spouses of current retirees is essential to reduce the hardship on dozens of former Foreign Service wives who are now living at or near poverty. This group of would-be beneficiaries are easily identified and clearly deserving. To provide benefits for these former spouses, however, requires a rule which may provide benefits for others who do not have the same equities on their side. This latter group includes former spouses who have been out of the picture for many years.

To deal with this dilemma, I intend to offer an amendment after the Ford amendment is, I hope, voted down. My amendment will assure that former spouses who were divorced prior to the effective date get notice of the new law. If they do not promptly file a claim, they will be cut off from all benefits. If they do file a claim, the active duty member or retiree can go back to the court of jurisdiction and seek to cut off the former spouse. Any slight reduction in current retirement benefits which might be needed to pay for previously unelected survivor's benefits for a former spouse would not be retroactive under this formula. This means that if a current retiree has a qualifying former spouse and if that retiree is one of the 5 percent who do not elect survivor's benefits, the maximum 10 percent reduction in retirement annuity would start from the the claim is honored.

One point should be made very clearly in connection with the foreign affairs language. It creates a new entitlement for a former spouse. The entitlement for survivor's benefits should be considered by state courts as newly discovered marital property. If the value of the survivor's benefits were not taken into account at the time of divorce and property settlement, State courts should be expected to reopen divorce decrees to include this property in a settlement. As I said before, I would prefer them State courts to allocate retirement benefits rather than relying on a somewhat arbitrary pro rata formula. Without the pro rata formula, however, I think it is very unlikely that state courts will consider retirement benefits as marital property.

The Post Office amendment also does not remove the prohibition on a Foreign Service retiree assigning his or her survivor's benefits to a former spouse. The Foreign Affairs Committee bill permits this freedom of choice to the retiree.

Adoption of the Post Office amendment would result in grossly unequal treatment of Foreign Service spouses, depending upon the practice and laws in the states in which they are divorced. The General Accounting Office recently released a report on the implementation of Public Law 95-366, the law enacted in 1978 to permit courts to divide Federal civilian pensions upon divorce. The GAO reports that in the first 1½ years after enactment, 261 court orders were received, 62 of which predated passage of the act. Moreover, 40 percent of these court orders came from three States—California, Texas, and Washington State. Even more alarming is the fact that there were no orders from Maryland or the District of Columbia, and only one from Virginia—all of which have large concentrations of Federal employees and retirees.

The most important point is that both H.R. 6790, as reported by the Foreign Affairs Committee, and the bill as reported from the Post Office and Civil Service Committee adopt the policy that retirement and survivor's benefits should be split between the member of the Foreign Service and his or her spouse, based on the equity of the situation. The language in the Foreign Affairs Committee bill is a far more effective way of accomplishing that policy than is the Post Office Committee amendment.

□ 1720

Mr. HALL of Texas. Mr. Chairman, will the gentlewoman yield for a question?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, the gentlewoman indicated forum shopping. As I understand the law of my State and other States, when a person is serving in Foreign Service, if he lived in Texas when he went to that foreign country, or if he lived in the State of Louisiana, or some other State, he cannot go back to anyplace except the State where he lived when he went into the Foreign Service, unless he or she might have established a residence at some other locale, at some other State.

Now, does the gentlewoman's amendment allow a Foreign Service officer or his spouse to go to any area of the United States and file a suit for divorce, or would they be relegated to go back to the State where they lived prior to going into the Foreign Service?

The CHAIRMAN. The time of the gentlewoman from Colorado has expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. We do nothing in the amendment to deal with where you are domiciled. That is a matter of State law. As the gentleman knows, there are as many different domicile laws as there are different States. We do not touch that at all. We are only trying to deal within the very narrow confines of retirement rights and survivors' rights. We are only saying that, in the case of the divorce, when it goes into the State court, where it will have to go, whatever State it is, dealing with domicile of whatever State they came from, or what have you, when they go in there, that there is a presumption that it should have vested some kind of entitlement after 10 years of marriage, unless the court finds a reason to go the other way. That is all.

Mr. HALL of Texas. If the gentlewoman will yield for one additional question, what is the basic reason for having a difference in the vestiture proceedings on a Foreign Service officer, as opposed to a civil service employee?

Mrs. SCHROEDER. The basic reason is not so much Foreign Service versus Civil Service because the civil service employee is, No. 1, stateside, and No. 2, not being moved all over the world. It is very possible for that spouse to have an independent career.

But, No. 3—and I think most important—is Foreign Service versus private sector. If these people were in the private sector, there would be a vesting after 10 years of marriage that we are extending to them. They are working in the States and they could have their own separate career. But for a Foreign Service spouse, who follows that Foreign Service officer around the world, it is almost impossible to have any kind of rights of your own.

So I think there is a much stronger case that could be made for that type of service versus someone who is in the continental United States.

Mr. HALL of Texas. If the gentlewoman will yield, do we have civil service employees who serve abroad? How would that be handled?

Mrs. SCHROEDER. This act is trying to deal with that.

The CHAIRMAN. The time of the gentlewoman from Colorado (Mrs. SCHROEDER) has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. I just want to answer the gentleman's question. One of the things we are trying to do in this legislation is clarify, so that Foreign Service authorities will be used for people who are abroad. That is one of the very important reforms in this act.

Mr. HALL of Texas. I have one additional question.

The date of marriage of the parties would not be a compelling determination of whether or not property acquired after the marriage would be community or separate, but whether or not they served in a particular locale would be the controlling interest?

Mrs. SCHROEDER. Whether they are in the Foreign Service, yes.

Mr. FASCELL. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, we have to clarify it, because the gentleman from Texas is talking about a particular locale for residence, which does not have a thing to do with the Foreign Service. It does not have anything to do with this bill. It does not have anything to do with the issue.

Mr. HALL of Texas. Why are we talking about it?

Mr. FASCELL. The State court, if and when the parties ever get into court, will make the decisions based on whatever the law of that court is.

The CHAIRMAN. The time of the gentlewoman from Colorado (Mrs. SCHROEDER) has expired.

(On request of Mr. FASCELL and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 4 additional minutes.)

Mr. FASCELL. By the way, Mr. Chairman, in case there is any doubt about it, I rise in opposition to the committee amendment offered by Post Office and Civil Service. On the Foreign Affairs Committee we went through this whole fight and we decided just the opposite of what the Committee on Post Office and Civil Service did. We felt there was a reason to make a distinction with respect to the presumptions that should apply to a spouse with respect to annuities and survivors' benefits, because of the fact that that individual, married to a Foreign Service officer, does not have the same opportunity or right that some other person would have to either establish a separate career or become a two-person working family or otherwise make an individual contribution toward earnings. The very nature of the service, the demand for responsibility on the spouse to the Service itself and to the individual Foreign Service Officer was that that spouse would have to make a contribution in terms of service.

Mrs. SCHROEDER. Mr. Chairman, I want to thank the gentleman from Florida for pointing that out. I would like to state that what the gentleman said is very, very important. We do nothing to domicile. We are just talking about the Foreign Service Retirement Survivors Act.

No. 2, in Post Office and Civil Service this amendment under consideration only passed by one vote. It was 11 to 12. The Senate has stayed with the original language. The Foreign Affairs Committee has stayed with the original language. I really urge this body to listen to my plea to turn down this amendment. I think it makes sense, and I think that the way the world has changed, we really, really need to take this into consideration.

Mr. LEACH of Iowa. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. Mr. Chairman, I would like to rise in support of the gentlewoman's position and say that this is an unprecedented position that this Congress is about to take and one of the most important women's issues, in a symbolic sense, that we will be voting on in this session. I would hope, on those grounds as well as on merit grounds, that this body deals with this amendment very seriously. I would only like to underscore what the gentlewoman has been saying.

Mrs. SCHROEDER. I thank the gentleman from Iowa. I think the gentleman from Iowa has seen how difficult it is for families who are in the Foreign Service to have two careers. They are paying a penalty that other people do not have to pay in the civilian sector and in the private sector. That is basically why we are saying that this is unique and this is different.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise to support the position of the gentleman from Michigan (Mr. FORD).

Mr. Chairman, let us appreciate the fact that this, by its very nature, is a difficult and emotional issue; but there are some facts to keep in mind.

First, as I understand it, as a general rule, divorce laws in the United States have always been under the jurisdiction of State legislative bodies and courts. I am not so sure that at this time in the Foreign Service personnel bill we should be involving ourselves in what could become, by virtue of taking the wrong position, a national divorce law. I really do not think we are moving in the right di-

rection unless we support the gentleman from Michigan (Mr. FORD).

Let me point out that the very difficulty of this lies in the understanding of what transpires in the Foreign Service.

In an individual divorce case, under all circumstances, courts will take into account the individual financial factors, the decision as to who was or was not at fault, the contribution or lack of a contribution of an individual, the individual financial position of one or the other parties. That is what the divorce court is for.

I am not aware that Foreign Service personnel are in any way shortchanged in the courts.

So the whole thrust of this amendment, as I see it, is to see to it that the decision as to how to divide the annuity properly be left to the court at the time of divorce settlement.

I do not think that the Congress should arbitrarily dictate a condition of settlement. That is the real issue before us.

I yield to the gentlewoman from Colorado (Mrs. SCHROEDER).

□ 1730

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Illinois for yielding.

I just want to say that I do not think we are changing one single divorce law in any State. I want to make it very clear that we are not doing a Federal divorce law. We are only talking about rights which we set out under the statute as to how they might vest in the same manner that we do with social security and other areas.

We have no intention of changing any State law. We leave it in there that it is subject to the court, so the court would clearly consider this as a portion of the property, but then when they get down to allocating it, they could clearly change it around.

I want the legislative history to reflect that if the gentleman's position loses and mine wins, that that is clearly what we had intended in my position and in the gentleman's committee's position, because we do not want to write a national divorce law. We have no intention of doing that. We want to leave it in the State court.

It is just that we want to have this fairness doctrine cranked in so that it can be considered, so that after 10 years of marriage, which I think is a long period of time and analogous to social security once again.

Mr. DERWINSKI. My summation of what the gentlewoman is trying to do is that she would dictate a condition in the divorce case. The Ford amendment, on the other hand, permits the equity to be settled in each individual case, which under normal circumstances I presume is the logical course of action.

Now, we did debate this vigorously in both committees. I think we would all be honest and say that there is a national emotional factor involved in a situation like this; but the Ford amendment, as I interpret the amendment, is an amendment of reason. It allows the laws of particular States to legitimately prevail.

The only possible concern that someone should have is that somehow, by the very virtue of being in the Foreign Service, a divorce proceeding involving a Foreign Service officer somehow would not have the legitimate attention of divorce authorities in any State. That is not so.

We have to assume, and I think properly so, especially in the case of negotiated settlements, that the legal rights of everyone are going to be fully protected. I would think then that the Ford amendment falls on the side of equity, practicality, and what would be really commonsense.

Mrs. SCHROEDER. Mr. Chairman, would the gentleman yield again?

Mr. DERWINSKI. If I have any time, I yield to the gentlewoman.

Mrs. SCHROEDER. I just want to say that maybe reasonable women might differ with reasonable men and hope that the gentleman will support my position instead of the Ford position.

Mr. DERWINSKI. Well, I would like to point out, and I realize that bad examples make bad law.

To recap, Mr. Chairman, this amendment authorizes the courts to divide the retirement and survivor benefits of a member of the Service to provide an annuity for a former spouse as part of an alimony or property settlement.

Divorce in the United States has always been a matter for State legislatures and the courts. For civil servants, the Congress limited itself to obligating the Office of Personnel Management to pay annuities to former spouses under State divorce decrees on a case-by-case basis. Under this amendment we are extending this requirement of law to the Department of State and the Foreign Service.

Perhaps the most emotional and misunderstood controversy in the Foreign Service Act, concerns annuities for former spouses of Foreign Service personnel. The Ford amendment, adopted by the Post Office and Civil Service Committee, logically and compassionately allows the divorce courts in each State to divide both retirement and survivor annuities in order to create separate annuities for former spouses in those cases where they are justified.

Neither the Ford nor the Schroeder language is going to make divorce less expensive or traumatic. The issue is whether we will defer to the State courts which examine these important matters on a case-by-case basis, or whether we plunge into legislating a national divorce law which blissfully ignores such crucial divorce factors as the independent wealth, desertion, or previous settlement advantages of the spouses.

For this reason, the American Foreign Service Association (AFSA), the only major Foreign Service union, rejects the Schroeder amendment and supports the Ford approach. Military personnel are also alarmed at the Schroeder amendment's precedent of partitioning annuities without regard to the circumstances of each case.

The Ford amendment lets the equities of each case dictate the existence and amount of any annuities, and I feel it is the only practical solution to a difficult issue.

Mr. BUCHANAN. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the Post Office Committee amendment.

Mr. Chairman, I would submit that the language in the bill which was stricken and replaced by the Post Office Committee amendment was carefully considered by both subcommittees, the Subcommittee on Post Office and Civil Service and the Foreign Affairs Subcommittee and approved by the Foreign Affairs Committee.

The gentlewoman from Colorado, I think in the language that we suggested, indeed, served a very important purpose and equity is on her side.

In the case of survivor annuity, this provision, I might say, is in line as the gentlewoman has made clear with existing provisions of the social security law, which permits nonworking spouses to acquire benefits based on the working spouse.

It is also in keeping with recent recommendations of the President's Commission on Pension Policy.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. BUCHANAN. Yes; certainly, I will yield.

Mr. FORD of Michigan. The gentleman is one of the dearest and closest friends that I have in this House. I know the gentleman would not want to mislead this House. He drew an analogy with the social security law. That is the best way to recognize what is wrong with what the gentlewoman is doing. In the social security law, the amendment originally was put in by the same gentlewoman who passed the ERA in this House, the gentlewoman from Michigan, Martha Griffiths. We from Michigan are very proud of her contribution in this regard. That provided that a woman who was unable to acquire a vested right in social security benefits because of years of taking care of children while the husband was out working would be able to draw as if she had been working during those years; but here is a distinct difference. In the case of a woman who is divorced from her husband after 10 or 15 or 20 years and then collects social security, if there is a second family and children in the second family, they also draw social security.

Under the gentlewoman's amendment, the Foreign Service officer would have half of his money go to him and his present family and half go to his former spouse, regardless of the circumstances that destroyed that marriage, regardless of fault, regardless of how many years they have been separated and what the equities might be. That does not happen with social security, I suggest to the gentleman from Alabama. There is no problem, because both the former spouse and the present spouse have equal rights and both of them get a full social security benefit.

The taxpayers paid for that treatment; but in this case you are taking away from the annuitant a part of his annuity and giving it to somebody as a property right.

I thank the gentleman for yielding.

Mr. BUCHANAN. Certainly, the gentleman is my dear friend, but let me respond in two ways.

First of all, let me respond as to why I believe equity would demand some consideration for the Foreign Service spouse. As too often has been the case, the wife has accompanied her husband on a tour overseas, giving up opportunities for a career of her own. Frequent transfers to posts around the world mitigate against the establishment of careers or the opportunity to develop marketable skills.

At the same time, this wife is expected to do things like planning and hosting social functions, attending various official functions and other duties that might interfere with an independent career.

A survey within the Department of State, I would point out to the gentleman, indicated that the wife of an Ambassador or Charge often devotes an estimated 167 hours per month, or more than a 40-hour week to official functions, for which she receives no compensation.

As the law now stands, this spouse can provide all of these functions for years and then, upon divorce, be left with nothing.

Up until 1972, the wives, although not the husbands of Foreign Service officers, were considered in the efficiency reports of those officers as a part of how they were rated in their own careers.

I would say that equity says these spouses should be covered and there should be a presumption that after 10 years they would begin to be vested with pension rights of their own.

I would point out that we in no way interfere with the divorce process or the actions of the courts. Indeed, the language which is stricken by the Post Office Committee language states, and I quote, in section 814(A)(1):

> Unless otherwise expressly provided by any court order under section 820(B)(1) a former spouse or participant is entitled to an annuity,

And so forth.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(By unanimous consent, Mr. BUCHANAN was allowed to proceed for 2 additional minutes.)

Mr. BUCHANAN. If you look over to the section to which that refers, in the case of any participant or annuitant who has a former spouse with respect to whom there is a court order, any right of any former spouse to any annuity under section 814, and so forth, shall be determined in accordance with a court order if and to the extent expressly provided for in the terms of that court order.

We do not disturb that in the least. We are seeking equity for spouses who have not received in the past and otherwise may not receive.

I urge defeat of the Post Office Committee amendment and support for the original language of the two subcommittees of the Foreign Affairs Committee.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for purposes of getting the attention of the distinguished chairman of the subcommittee, because I have a few questions I would like to ask him to try to clarify what this information does.

The first question is, does this amendment apply, I ask the attention of the gentleman from Florida (Mr. FASCELL), does this amendment apply to those foreign service officers who are already retired?

□ 1740

I think that is a fairly simple yes or no answer.

Mr. FASCELL. Well, now, let us not get carried away, Mr. DINGELL. I am just going to find the section in the law because you read it just as well as I did. So we will just read it again.

Mr. DINGELL. Does it apply to those retired?

Mr. FASCELL. At page 267.

Mr. DINGELL. I will yield to the gentleman if he can tell me.

Mr. FASCELL. That is what I thought the gentleman was doing. On page 267 it makes it quite clear that the provision is retroactive with respect to survivor annuities, but not retirement annuities. I just want our colleagues listening to understand.

Mr. DINGELL. Then it does cover those who are retired?

Mr. FASCELL. Why, of course—for survivor annuities.

Mr. DINGELL. Does it apply to those who are already divorced?

Mr. FASCELL. Sir?

Mr. DINGELL. Does it apply to Foreign Service officers who are already divorced?

Mr. FASCELL. Already what? Already in force?

Mr. DINGELL. Does this change in the law apply to Foreign Service officers who are already divorced?

Mr. FASCELL. Divorced?

Mr. DINGELL. Divorced.

Mr. FASCELL. For the purpose of survivors annuities, yes.

Mr. DINGELL. So a Foreign Service officer who might——

Mr. FASCELL. Retirement, no.

Mr. DINGELL. So if you have a Foreign Service officer who has been divorced for a period of 10 or 12 years and has a second family, it would already apply, it would apply to that Foreign Service officer and would permit his pension to be apportioned between his first wife and himself?

Mr. FASCELL. Just the survivor annuity, not his pension.

Mr. DINGELL. Not his pension?

What about the situation where a property settlement has already been made by the parties under a divorce?

Mr. FASCELL. If the court has jurisdiction, the court would still have jurisdiction.

Mr. DINGELL. But, as I understand it, then the provisions say that unless otherwise expressly provided by court order, so that the Foreign Service officer would then have to go into court.

Mr. FASCELL. He does not have to.

Mr. DINGELL. Well, if he was going to get relief, he would have to go back to court.

Mr. FASCELL. It depends on what you call relief.

Mr. DINGELL. If he had already paid alimony for years, if he had made a lump sum cash settlement.

Mr. FASCELL. But if you want to say it the other way, I am not being smart, I am trying to answer the gentleman's question.

Mr. DINGELL. Do you mind if I say it my way?

Mr. FASCELL. Just so you do not put words in my mouth, yes, you can say it any way you want to.

Mr. DINGELL. I am not trying to put words in your mouth. I am trying to find out what the proposal does. If the Foreign Service officer had already been divorced and had made a cash settlement in lieu of alimony, he would still be subject to the provisions of this proposal and compelled to then go into court to have this action set aside by the court; is that correct?

Mr. FASCELL. If he deemed it essential he could get the relief he wants.

Mr. DINGELL. So essentially what you are doing then is amending the earlier decree by this action in compelling the Foreign Service officer then to come back in to request that this action by the Congress be set aside; is that correct?

Mrs. SCHROEDER. Will the gentleman yield?

Mr. DINGELL. I will yield first to the gentleman from Florida who is handling the bill, I am told.

Mr. FASCELL. I am just handling one part of it.

Mr. DINGELL. I know.

Mr. FASCELL. I will say to my colleague from Michigan, there are two committees. I do not think I can help you. But the answer is yes, unless the court orders otherwise, the language is explicit.

Mr. DINGELL. So then a Foreign Service officer——

Mr. FASCELL. The presumption is rebutable, the gentleman knows that.

The CHAIRMAN. Let us have regular order.

Mr. FASCELL. I am trying to answer the question.

Mr. DINGELL. So if a Foreign Service officer had been divorced and had made a lump sum settlement with his former wife, to avoid coming under the provisions of the new language of the Foreign Affairs Committee bill he would have to go in then to court and ask to have himself expressly ordered excluded from this section, even though he might have made an earlier cash lump-sum settlement with his former wife? Is that not a fact?

Mrs. SCHROEDER. Will the gentleman yield to me?

Mr. DINGELL. I yield to the gentleman from Florida who is handling the bill.

Mr. FASCELL. I will yield.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am glad to, yes.

Is the answer yes or no?

Mrs. SCHROEDER. The gentleman

knows the State courts continue to entertain jurisdiction in divorce cases.

Mr. DINGELL. I am not unaware of that, but what I am trying to figure out is if he has made a lump-sum settlement earlier—maybe the gentleman from Michigan, (Mr. FORD) can help me. I do not think I am getting much help.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 5 additional minutes.)

Mr. FORD of Michigan. Will the gentleman yield?

Mr. DINGELL. I am glad to yield to the gentleman.

Am I correct in my understanding a lump-sum settlement that had been made in connection with the earlier divorce decree, that that is, in effect, set aside by this language and the individual who has made that lump-sum settlement, to come out from under the provisions of section 814 of the Foreign Affairs Committee bill, has to go in and has to solicit, has to solicit the court to remove him from the coverage?

Mr. FORD of Michigan. There is one further condition that the gentleman should add to his conditions, and that is that he must live long enough to get the court to do it after this bill is signed by the President because the right will be created when this act is passed. If he does not live long enough to go to court and get an order his annuity is going to be split between his former family that he may not have seen for the last 20 years and his present family.

Mr. DINGELL. I will yield to the gentleman, but first have some other questions and the gentleman from Michigan (Mr. FORD) has been giving me rather helpful answers. I would like to persist on that course.

Mrs. SCHROEDER. Will the gentleman from Michigan yield?

Mr. DINGELL. I will yield as soon as I finish with the gentleman from Michigan (Mr. FORD), I will assure the gentlewoman.

Now let us say that Mr. John F. Service has divorced his wife because she has abandoned him and his five minor children. Is he also still subject to the provisions of this if he has gotten a divorce?

Mr. FORD of Michigan. If the divorce——

Mr. DINGELL. So that his pension will be apportioned half to that former wife who has abandoned him and his minor children?

Mr. FORD of Michigan. No, with respect to the apportionment of the annuity paid during his lifetime. It will only be prospective. Divorces that occur after the active date of this law. It is the survivor's annuity that is retroactively disposed of.

Mr. DINGELL. But it would be, it would be retroactively apportioned even if he had had a lump-sum settlement?

Mr. FORD of Michigan. Exactly, without regard.

Mr. DINGELL. Or even if his former wife has abandoned him and his minor children; is that right?

Mr. FORD of Michigan. Without regard to any circumstances leading to divorce or that occurred during the proceedings or any determination made by the court.

Mr. DINGELL. Would the court be able to take these matters into consideration in connection with the negotiations which would go on between the parties regarding the property settlement?

Mr. FORD of Michigan. No; what would have to happen, I suppose, and it would depend on how long a court in a respective State would entertain jurisdiction. I suppose if you still had jurisdiction in the court in the State where you got the original order you could go back, as you do now, to modify the decision. I must caution my colleague by saying that, that many States will not let you reopen property settlements, they will only let you reopen life rights such as support or alimony where you have a changing circumstance to deal with. They will not let you go back and retry the facts on the property settlement.

Mr. DINGELL. So in many instances the question of reopening the property settlement would not be available to the person who was going to be compelled to pay additional benefits to a former wife; is that correct?

Mr. FORD of Michigan. I think the question should be addressed to the gentlewoman from Colorado. She is a competent and distinguished lawyer.

Mr. DINGELL. I am more comfortable getting the views of the gentleman from Michigan. I will yield to the gentlewoman in just a minute.

Now let us assume Mr. John F. Service has gotten divorced and he remarries and has a second spouse and children by the second spouse. Then he gets married a third time and gets divorce and has a wife and children by that third spouse. How is that annuity of his apportioned among the sundry partners?

Mr. FORD of Michigan. Each of the former wives or former husbands in the case of a female Foreign Service officer would be entitled to their respective proportion of the number of years it took to acquire the annuity that they were married to that person.

Mr. DINGELL. The next question is——

Mr. FORD of Michigan. If it is a 30-year annuity you could have a 10, 10, and 10 arrangement.

Mr. DINGELL. Does this amendment distinguish between the wife or the spouse who has his or her own retirement or who has substantial means where a subsequent spouse might not have these available and might be entirely dependent upon the Foreign Service officer's annuity?

Mr. FORD of Michigan. No, because the allocation of the right is based on time in service and not quality of service. It does not, it does not distinguish between a loyal spouse, a helpful spouse, a disloyal spouse, or a guilty spouse.

Mr. DINGELL. The gentleman says it does not distinguish between the helpful spouses and the disloyal spouses or the guilty spouses? In other words, under this a Foreign Service officer could divorce his wife because she had shot him and not killed him?

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 3 additional minutes.)

□ 1750

Mr. FORD of Michigan. If the gentleman will yield, I think that the gentleman should not pass this opportunity to recognize that the gentlewoman is now asserting the absolutely perfect example of perfection by seniority, because seniority is the only consideration that applies in acquiring these rights. It has nothing at all to do with the quality of service or the equity circumstances at the time of the divorce.

Mr. DINGELL. If I can ask another question here that troubles me, I note that a former spouse shall not become qualified for an annuity if before the commencement of the annuity, the former spouse marries after 60 years of age, but if a former spouse marries after 60 years of age, they continue to derive the benefits of this and are able to support their second husband in greater comfort because of the annuity which is being taken from a subsequent wife and children of the Foreign Service Officer; is that right?

Mr. FORD of Michigan. Yes; but in all kindness, one must expect that the kind of spouse that the gentlewoman is trying to protect would not do that.

Mr. DINGELL. Excepting that we are here passing a uniform law and taking from the courts the orderly discretion to consider divorces and to consider all aspects of the courts which the States have done splendidly, and which is a matter on which I am aware of no expertise in the Federal Government and no constitutional power in the Federal Government to deal with matters of domestic relations. Am I in error on this?

Mr. FORD of Michigan. The gentleman raises a good question which I posed a few moments ago. It is not at all clear to me what is meant in the gentlewoman's proposed language that you could overcome the presumption by going to court, since courts do not exercise jurisdiction over divorce proceedings in perpetuity. Usually if there are no children involved, once the property is disposed of and the status has been established, the court cleans its hands of the case.

Mr. DINGELL. Even where there are minor children the jurisdiction lies not over the marriage but lies over the persons and security of the minor children, and it expires when those minor children reach 18 years of age. Is that correct?

Mr. FORD of Michigan. Yes. So I do not know what court you would go to to overcome this presumption.

Mr. DINGELL. Now I yield to the gentlewoman from Colorado (Mrs. SCHROEDER). If she can help me, I will be very grateful on the points I raised.

Mrs. SCHROEDER. I thank the gentleman for yielding. I just want to make several points. I think the gentleman has got several things confused.

Mr. DINGELL. I do not believe I am confused.

Mrs. SCHROEDER. On the retirement portion prospectively is the only way it applies. The only thing it makes a difference in is with the survivor's benefits, and that is what we are talking about. I think we just want to make that very clear. We are not talking about amending State divorce laws.

Mr. DINGELL. That is a very good point. That is a very good point. I have this curiosity. The gentlewoman says this covers retirement.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. If Mr. John F. Service has, let us say, 29 years and 9 months at which time he divorces his wife of, let us say, 10 years standing. For that 1 month time does that wife procure full rights under this bill for that remaining 1 month of his 30-year service before he does retire?

Mrs. SCHROEDER. Will the gentleman yield?

Mr. DINGELL. Certainly I will yield.

Mrs. SCHROEDER. I think if the gentleman read the bill, it is 10 years of creditable service that counts, and that is what counts for the presumption. The courts can undo the presumption if the Member happens to marry someone who was terribly wealthy or did not follow him or her around. We are just talking about a presumption.

Mr. DINGELL. I am glad the gentlewoman raised that question, because what court would Mr. John F. Service go to to get the relief specified here? Would he go to a Federal court? Would he go to the court where he got his divorce 30 years ago?

Mrs. SCHROEDER. We do nothing to change State court jurisdiction. The jurisdiction of the courts is the State court. It has always been the State court. It will always be the State court. There is nothing in here dealing with that issue, because the State court has the jurisdiction.

Mr. DINGELL. If he comes from a State where the jurisdiction over the marriage is terminated by reason of a property settlement, a final divorce decree, and maturity of the children so that there is no jurisdiction of the court, coupled with the subsequent remarriage, what court does Mr. John F. Service go to to get this relief? Does he go to the court of his home State? Does he go to the Federal court? Does he go to the court of some other State? Let us say he got divorced in Nevada and retired in Washington, D.C.

Mrs. SCHROEDER. The gentleman goes to the court of competent jurisdiction. We are not overriding that decision. I think he would have to find that out.

Mr. DINGELL. What is the court of competent jurisdiction? I am trying to find out what is the court of competent jurisdiction he goes to? Is it the court that gave the divorce?

The CHAIRMAN. The time of the gentleman has expired.

The question is on the Post Office and Civil Service Committee amendments.

The question was taken, and the chairman being in doubt, the committee divided, and there were—ayes 16, noes 7.

RECORDED VOTE

Mrs. SCHROEDER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 229, noes 111, not voting 92, as follows:

[Roll No. 524]

AYES—229

Abdnor
Akaka
Albosta
Alexander
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Barnard
Bauman
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Boland
Boner
Brademas
Breaux
Brinkley
Brooks
Broyhill
Burlison
Butler
Carney
Carter
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Cotter
Coughlin
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dornan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edwards, Ala.
English
Erdahl
Erlenborn
Ertel
Evans, Ga.
Fenwick
Fish
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Frenzel
Fuqua
Gaydos
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Gradison
Gramm
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hammer-schmidt
Hanley
Hansen
Harkin
Harsha
Hefner
Heftel
Hightower
Holland
Hopkins
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Lewis
Livingston
Loeffler
Lott
Lujan
Luken
McCormack
McDade
McDonald
McEwen
McHugh
McKay
Madigan
Marlenee
Mathis
Mazzoli
Mica
Michel
Miller, Ohio
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Motti
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nichols
Nowak
O'Brien
Oberstar
Ottinger
Pashayan
Patterson
Paul
Pepper
Preyer
Price
Pritchard
Quillen
Regula
Rhodes
Roberts
Robinson
Roe
Roth
Rudd
Santini
Sawyer
Scheuer
Schulze
Sebelius
Sensenbrenner
Shelby
Shumway
Shuster
Simon
Skelton
Snyder
Solomon
Spence
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stratton
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Trible
Udall
Vander Jagt
Volkmer
Walgren
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Wilson, Tex.
Winn
Wright
Wyatt
Wylie
Yatron
Young, Fla.
Young, Mo.

NOES—111

Anderson, Calif.
AuCoin
Barnes
Bellenson
Bingham
Blanchard
Bolling
Bonior
Bouquard
Bowen
Brodhead
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Burton, Phillip
Byron
Carr
Cavanaugh
Collins, Ill.
Conable
Conte
Corcoran
Courter
Deckard
Dellums
Downey
Drinan
Early
Edgar
Edwards, Calif.
Evans, Ind.
Fascell
Fazio
Fisher
Fowler
Frost
Garcia
Gephardt
Gibbons
Gilman
Gore
Gray
Green
Hamilton
Hance
Harris
Hawkins
Heckler
Hollenbeck
Holt
Jacobs
Jeffords
Kazen
Kildee
Kostmayer
Leach, Iowa
Lloyd
Long, La.
Long, Md.
Lungren
McCloskey
Maguire
Markey
Marks
Martin
Matsui
Mikulski
Miller, Calif.
Mineta
Mitchell, Md.
Moakley
Murphy, Pa.
Oakar
Obey
Panetta
Pease
Petri
Pickle
Rahall
Rangel
Ratchford
Reuss
Rinaldo
Rosenthal
Roybal
Sabo
Schroeder
Seiberling
Sharp
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Stack
Stark
Stokes
Studds
Traxler
Van Deerlin
Vanik
Vento
Waxman
Weaver
Weiss
Wirth
Wolff
Wolpe
Yates
Zablocki

NOT VOTING—92

Addabbo
Ambro
Anderson, Ill.
Ashbrook
Baldus
Beard, R.I.
Beard, Tenn.
Biaggi
Boggs
Bonker
Burgener
Campbell
Chappell
Chisholm
Clay
Coelho
Conyers
Corman
Davis, S.C.
Dodd
Donnelly
Dougherty
Edwards, Okla.
Emery
Evans, Del.
Fary
Ferraro
Findley
Giaimo
Goodling
Grassley
Hall, Ohio
Hillis
Hinson
Holtzman
Hubbard
Ireland
Jenrette
Kastenmeier
Kelly
Kemp
Kogovsek
Leach, La.
Lederer
Lehman
Leland
Levitas
Lowry
Lundine
McClory
McKinney
Marriott
Mattox
Mavroules
Minish
Moffett
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nelson
Nolan
Patten
Perkins
Peyser
Porter
Pursell
Quayle
Railsback
Richmond
Ritter
Rodino
Rose
Rostenkowski
Rousselot
Royer
Russo
Satterfield
Shannon
Spellman
St Germain
Steed
Tauzin
Thompson
Ullman
Walker
Whitten
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wydler
Young, Alaska
Zeferetti

□ 1810

The Clerk announced the following pairs:

On this vote:

Mr. Nelson for, with Mrs. Chisholm against.

Mr. Moffett for, with Mr. Leland against.

Mr. WOLPE, Mrs. BYRON, Mr. MARKEY, and Mr. BLANCHARD changed their votes from "aye" to "no."

Mr. BURLISON and Mr. TAUKE changed their votes from "no" to "aye."

So the Post Office and Civil Service Committee amendments were agreed to.

Mr. DERRICK. Mr. Chairman, I move to strike the requisite number of words.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Florida.

through 2313 as relating to sections 2306 through 2314, respectively, and insert after the item relating to section 2304 the following:

Sec. 2305. Severance pay.

Page 15, line 18, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 22, beginning on line 13, strike out all of section 209 through line 15 on page 27 and insert in lieu thereof the following:

SEC. 209. INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(3) The Inspector General shall, in accordance with applicable law governing the civil service—

(A) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities under this section; and

(B) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities under this section.

(b) Inspection, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c)(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Controller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as responsibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General shall prepare the performance evaluation reports for such individuals.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

Page 45, strike out subsection (c) (beginning on line 9 and ending on line 13).

Page 57, line 22, after "the member" insert "and notwithstanding sections 5535 and 5536 of title 5, United States Code".

Page 68, line 20, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 73, beginning on line 7, strike out "in light of the recommendations of selection boards established under section 602 and the needs of the service" and insert in lieu thereof "in accordance with the recommendations of selection boards established under section 602".

Page 113, line 2, strike out "60" and insert in lieu thereof "65".

Page 113, lines 6, 11, and 14, strike out "60" and insert in lieu thereof "65".

Page 163, line 10, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 170, line 25, strike out "Columbia," and all that follows down through line 2, page 171 and insert in lieu thereof "Columbia.".

Page 257, after line 2, insert the following new section:

SEC. 2305. SEVERANCE PAY.—Section 5595(a)(2)(vi) of title 5, United States Code, is amended by inserting after "to receive" the following: "benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any".

Page 257, line 6, strike out "Sec. 2305." and insert in lieu thereof "Sec. 2306.".

Page 257, line 22, strike out "Sec. 2306." and insert in lieu thereof "Sec. 2307.".

Page 258, line 8, strike out "Sec. 2307." and insert in lieu thereof "Sec. 2308.".

Page 258, line 12, strike out "Sec. 2308." and insert in lieu thereof "Sec. 2309.".

Page 258, line 10, strike out "Sec. 2309." and insert in lieu thereof "Sec. 2310.".

Page 259, line 20, strike out "Sec. 2310." and insert in lieu thereof "Sec. 2311.".

Page 260, line 12, strike out "Sec. 2311." and insert in lieu thereof "Sec. 2312.".

Page 261, line 10, strike out "Sec. 2312." and insert in lieu thereof "Sec. 2313.".

Page 261, line 24, strike out "Sec. 2313." and insert in lieu thereof "Sec. 2314.".

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, the amendments I am now offering in bloc are the rest of the amendments agreed to by the Committee on Post Office and Civil Service. Included in this group are:

A provision for a strong and independent Inspector General of the Department of State and the Foreign Service, who is equipped with the authority that other Inspectors General, created by the Inspector General Act of 1978, possess. This amendment was worked out with the Committee on Government Operations, which reported the major Inspector General legislation.

A provision giving selection boards, and not the Secretary of State, authority to determine which senior members of the Foreign Service, serving on limited career extensions, will not be renewed based on the needs of the Service.

Numerous technical and conforming amendments.

Language raising the mandatory retirement age from 60 to 65. This reflects a compromise worked out between the two distinguished gentlemen from Florida (Mr. FASCELL and Mr. PEPPER). Both the Post Office and Civil Service Committee and the Foreign Affairs Committee made this change.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were agreed to.

AMENDMENTS OFFERED BY MR. FASCELL

Mr. FASCELL. Mr. Chairman, I offer a series of amendments.

The Clerk read as follows:

Amendments offered by Mr. FASCELL: Page 35, line 11, immediately after "Commerce," insert "the Department of Labor,".

Page 47, line 2, immediately before "The" insert "(a)"; and immediately after line 10, insert the following new subsection:

(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary of his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.

Page 53, line 12, immediately after "compensation" insert "(including position classification)".

Page 83, line 2, strike out "abroad"; and in line 4, strike out "abroad".

Page 153, line 25, immediately after "United States" insert "(or any territory or possession of the United States or the Commonwealth of Puerto Rico)".

Page 204, line 13, strike out "of State"; and on page 206, beginning in line 12, strike out "of State".

Page 213, line 15, strike out "Act." and insert in lieu thereof the following:

Act, except that any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act), as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

Page 233, line 17, strike out "the".

Page 258, strike out lines 8 through 11 and insert in lieu thereof the following:

SEC. 2308. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(1)" and all that follows through "each type of education" and inserting in lieu thereof "one annual trip each way for each dependent".

Page 259, line 22, strike out "2309(a)" and insert in lieu thereof "2310(a)" and on page 260, line 9, strike out "2309(b)" and insert in lieu thereof "2310(b)".

Page 260, line 7, immediately before the first period insert ", except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed twenty-five percent of the basic pay of the employee".

Page 260, beginning in line 18, strike out "in the Department of State".

Page 261, immediately after line 9, insert the following new subsection:

(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after "States" in the first sentence "(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)".

Page 267, strike out lines 6 through 15 and insert in lieu thereof the following:

SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).

(d) Section 812 of this Act, and the repeal of sections 631 and 632 of the Foreign Service Act of 1946, shall be effective as of the date of enactment of this Act.

Page 268, line 1, strike out "(2) The provisions of such chapter" and insert in lieu thereof "(e) The provisions of chapter 8 of title I"; line 2, insert "section" immediately before "814(a)"; and beginning in line 3, strike out "such effective date" and insert in lieu thereof "the effective date of this Act".

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, these amendments correct oversights and make conforming changes in a number of provisions of the bill some of which are necessitated by the adoption of the spousal annuity provision just discussed. The most significant are the changes necessitated in the effective date section because October 1, is almost here and the Foreign Affairs agencies will not be able to complete the regulations in time for the bill to take effect October 1.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take this time to engage in a colloquy with the gentlewoman from Colorado.

I would like to compliment the gentlewoman from Colorado (Mrs. SCHROEDER) on her drafting of chapter 10, setting out the groundrules for labor-management relations in the Foreign Service. As I read these provisions, they are, with a few exceptions having to do with the size of the bargaining unit and the makeup of the labor board, precisely the same as the provisions in title VII of the Civil Service Reform Act of 1978. These provisions are quite different from the labor law provisions that the administration first recommended in the introduced version of H.R. 4674. Am I correct?

Mrs. SCHROEDER. The gentleman is perfectly correct. We did not see any reason that members of the Foreign Service should have fewer rights to organize and bargain collectively than other Government employees. In the key area of management rights, we copied the language from the Civil Service Reform Act, which the gentleman worked so hard on. Only slight adjustments were made to accommodate the different personnel system used by the Foreign Service.

Mr. FORD of Michigan. When the For-

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eign Service Labor Relations Board and the courts interpret this legislation, do you think they should be bounded by the decisions of the Federal Labor Relations Authority?

Mrs. SCHROEDER. Absolutely. Section 1007(b) of the bill says that decisions under this law must be consistent with FLRA decisions, except where special circumstances require otherwise. I would expect the Foreign Service Labor Relations Board to construe this exception very narrowly and find special circumstances only in rare cases. Good labor-management relations throughout the Federal sector require consistent interpretation of the law.

Mr. FORD of Michigan. I thank the gentlewoman. The Foreign Affairs Committee report states that management does not have to negotiate over procedures so time-delaying as to negate the exercise of a management right. As you surely remember, when we went to conference on the Civil Service Reform Act, the Senate had a provision which read "except that such negotiation shall not unreasonably delay the exercise by management of its authority to decide or act,". We insisted that this language be dropped and the Senate receded. The conference report points out that "negotiations on such procedures should not be conducted in a way that prevents the agency from acting at all, or in a way that prevents the exclusive representative from negotiating fully on procedures."

The Federal Labor Relations Authority read this legislative history and held that the issue of providing hearings before removal or suspension was indeed negotiable. In holding for the union in the Fort Dix case (2 FLRA No. 16, November 29, 1979), the FLRA found the agency claim of unreasonable delay to be without support in the legislative history of the Reform Act. As the FLRA said in its decision:

> The committee on conference . . . specifically rejected a provision in the Senate Bill (S. 2640) which provided that negotiation on procedures should not "unreasonably delay" so as to "negate" the exercise of management's reserved rights. . . . Rather, as the Conference Report indicates, [Title VII] is intended to authorize an exclusive representative to negotiate fully on procedures, except to the extent that such negotiations would prevent agency management from acting at all.

The case is now on appeal in the U.S. Court of Appeals. I am concerned that, first, the language in the Foreign Affairs Committee report would limit negotiation in the Foreign Service to a smaller scope than exists for other Federal employees and second, that the language might be used as an indication of congressional intent in the pending appeal on the Fort Dix case. Could the author of the provisions of chapter 10 please respond?

Mrs. SCHROEDER. I entirely agree with the comments of the gentleman from Michigan (Mr. FORD). In the area of management rights, chapter 10 is intended to provide precisely the same scope of negotiation in the Foreign Service as title VII does for the rest of the Federal Government. What is said in the Foreign Affairs Committee report was not my intention, as drafter, and was never discussed in our joint subcommittee meetings. As the law stands right now, the decision of the FLRA in the Fort Dix case is the law and it should apply to the Foreign Service as well after the passage of chapter 10. If the Court of Appeals modifies or overrules the FLRA decision, the court decision will become the law and will be equally binding on the Foreign Service as on the rest of the Federal Government. Further, I think the FLRA properly stated the intent of this committee in the Fort Dix decision.

Mr. FORD of Michigan. In light of this discussion, is it your view that the report of the Committee on Post Office and Civil Service on H.R. 6790 accurately states the intent of the author of the labor-management relations provision of H.R. 6790?

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Mrs. SCHROEDER. If the gentleman will yield again, I certainly do, and I thank the gentleman from Michigan for pointing this out.

Mr. FASCELL. The gentleman's concern is commendable, especially since both our committees have spent 1 year on this bill and the Foreign Affairs Committee began work 3 years ago. However, when the language in the Foreign Affairs Committee report is read in context, it is quite clear in following the bill's language.

Legislative history is composed of the hearings, reports and other documents of both committees. I do not feel that a complete reading of both reports will be found to be inconsistent.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Florida (Mr. FASCELL).

The amendments were agreed to.

FOREIGN AFFAIRS COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the Foreign Affairs Committee amendments.

The Clerk read as follows:

Foreign Affairs Committee amendments: Page 238, beginning on line 9, strike out "In order to employ such individuals as may be necessary to perform duties that reasonably **require availability for worldwide assignment**, the" and insert in lieu thereof "The"; page 239, line 9 strike out "and" and insert in lieu thereof a comma; and page 239 line 13, immediately after "prescribe" and before the period insert the following: ", and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1))".

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, this language simply conforms the bill to the current provisions of the Peace Corps Act.

I would ask for the adoption of the amendments.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have reviewed this amendment and have decided, with some reluctance, to accept it. The bill's provision limiting the ability of the Peace Corps to utilize the Foreign Service personnel authorities was added in subcommittee on my recommendation. Although the Committee on Foreign Affairs voted to strike the limitation, the Committee on Post Office and Civil Service voted to retain it. Rather than occupy the time of the House with a controversy which involves fewer than 100 employees, I have decided to accept the amendment and maintain the status quo.

In so doing, I am not endorsing the personnel system in effect in the Peace Corps. Existing law permits the President to utilize Foreign Service personnel authorities for the Peace Corps, without actually placing Peace Corps employees in the Foreign Service. Rather, these employees are subject to a 5-year time limit on their employment, from which they gain no career rights. This system has produced inequities, inefficiencies, and bad morale. I hope that the Subcommittee on Civil Service or another subcommittee with jurisdiction will hold detailed oversight hearings soon on the strange personnel system at the Peace Corps.

The CHAIRMAN. The question is on the Foreign Affairs Committee amendments.

The Foreign Affairs Committee amendments were agreed to.

AMENDMENT OFFERED BY MR. GONZALEZ

Mr. GONZALEZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ: Page 225, after line 13, insert the following:

SEC. 2107. RECALL OF CERTAIN CAREER MEMBERS WHO WERE INVOLUNTARILY RETIRED.—(a) Any individual who was retired from the Service under section 632 of the Foreign Service Act of 1946 after February 22, 1979, shall be recalled for service by the Secretary under section 308 of this Act if (1) a request to be recalled is submitted to the Secretary by the individual within 60 days after the effective date of this Act, and (2) the individual passes the pre-employment physical for worldwide assignment.

(b) For purposes of this chapter, any individual who is recalled for service pursuant to this section shall be considered to have been serving in the Foreign Service immediately before the effective date of this Act at the salary class and step held by that individual immediately prior to the involuntary retirement.

(c) Subject to chapter 6 of title I of this Act, any individual recalled for service pursuant to this section shall be retained on active duty until the individual has reached age 65 and completed at least 6 months of recall service pursuant to this section.

(d) Individuals recalled for service pursuant to this section shall not be counted toward any personnel ceiling established for the Department by the Director of the Office of Management and Budget.

Page 225, line 14, strike out "2107" and insert in lieu thereof "2108"; in line 17, strike out "2108" and insert in lieu thereof "2109"; and in line 21 strike out "2107" and insert in lieu thereof "2108".

Conform the table of contents.

Mr. GONZALEZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. GONZALEZ. Mr. Chairman, at the very outset, let me say that I heartily and most sincerely congratulate the distinguished gentleman from Florida and his colleagues and the distinguished gentlewoman from the other committee and the gentlemen working on the other side of the aisle on this very difficult, rather complicated legislation. It is a 268-page bill. That indicates the complexity of it and the difficulty of it.

The discussions we have had on some of these amendments clearly indicate that into these little crevices that will come up when you have a general codification of a broad expanse of Federal law, that you might find that you are perpetrating some injustices. You will find that into these crevices there are some human beings that are being victimized.

My amendment simply would provide that those persons who have been compelled since the Supreme Court decision of February 22, 1979, Vance versus Bradley, because they were 60 years of age would have a chance to come back now that we are changing the mandatory retirement age to 65, if they so wish and if my amendment provides they satisfy the requirements of the service. That is, that they pass an entrance examination as they would as if they were starting out and they are not asking for reimbursement for retroactive pay or anything like that. It would affect no more than about 154 at the most and of those, I do not know how many would be interested in returning, but there are some who were caught in this fight here on pushing up the retirement from 60 to 65. It is an act of compassion, I think.

You know, our Government, if it is worthy of being a government, has to be compassionate. It has to be above all fair and equitable. This demands in turn that those of us in public service, particularly those of us that hold an elective office, must have a genuine passion for justice and compassion.

This is all that this would do. It would rectify a grievous error.

I was hoping that this amendment would be accepted by the two sides, because it is merely taking into account something that has been lost in this rather difficult transition embodied and reflected in the codification of all of this broad corpus of Federal jurisprudence.

Mrs. FENWICK, Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I would be delighted to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I thank the gentleman for yielding.

I just have one question. The gentleman said this applied to those who had been forced to retire because of the 60-year limit after February of 1979?

Mr. GONZALEZ. Yes, since February 22, 1979.

I was hoping the amendment would be accepted. I see no reason why it would not.

I yield back the balance of my time.

Mr. FASCELL. Mr. Chairman, after that appeal. I reluctantly rise to oppose this amendment in the strongest possible terms. In terms of equity, what the gentleman from Texas has so eloquently decided to do here is just hire everybody who is already out or rehire them or give them the right to be rehired. That affects AID, ICA, the State Department, everybody who has known since 1946 that the mandatory age of retirement was 60.

Now, in the gentleman's compassion, what the gentleman from Texas wants to do is give them another shot, which we would like to do all right, except for the fact that in the meantime you have got a lot of other people who have come into the system as a result of that who are going to be impacted most chaotically as well. You may be trying to rehire people, but what you would accomplish is the loss of younger members who would be forced out as a result of the rehiring and the personnel ceiling in the foreign affairs agencies. I would think under the circumstances with all the time that has gone by, in all fairness, we had better leave well enough alone and not provide in the law some statutory base to allow 285 people in four different agencies to come back into the Government service after they have now been out.

The Congress set the mandatory retirement age at 60 for very good reasons. We are now recognizing the changes in our society, the tendency of people to live longer, improved access to medical care, and modern transportation, among other factors. We are therefore persuaded that raising the mandatory retirement age to 65 is a rational response to these factors which preserves the concept of a predictable flow of recruitment, career development and separation which is served by a mandatory retirement age for the Foreign Service.

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. Yes, of course.

Mr. GONZALEZ. Well, I interrupted because I think from what the gentleman has said here, he has not had a chance to properly evaluate my amendment. My amendment does in no way compel the hiring.

The persons accepted and the total number is nowhere over 154, contrary to the distinguished chairman's figure of over 200.

Mr. FASCELL. Well, if I can reclaim my time just for a moment, I would say that our information is that 285 people are affected, 115 in the State Department, 71 in ICA, 99 in AID, who reached the age of 60 and were retired since February of 1979.

Also, I must say in all fairness to the gentleman, we did consider this amendment in the committee and we rejected it for the very reasons we are rejecting it right now, because the language in the gentleman's amendment says:

> Any individual who was retired from the service shall be recalled for service by the Secretary under this act, provided, however,

And then it sets certain conditions; but I admire what the gentleman is trying to do and in a humanitarian sense, I would like to take care of everybody, but I think in all fairness we have done what is best for the Foreign Service and the country.

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The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ).

The amendment was rejected.

AMENDMENT OFFERED BY MR. SIMON

Mr. SIMON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SIMON: Page 254, between lines 3 and 4, insert the following new section:

SEC. 2207. MODEL FOREIGN LANGUAGE COMPETENCE POSTS.—(a) In order to carry out the purposes of section 702 and to help ascertain the relationship between foreign language competence and the effectiveness of representation of the United States abroad, the Secretary of State shall designate as model foreign language competence posts at least two Foreign Service posts in countries where English is not the common language. Such designation shall be made no later than October 1, 1981, and shall be implemented so that no later than October 1, 1983, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the Foreign Service Institute.

(b) The posts designated under subsection (a) shall continue as model foreign language competence posts at least until September 30, 1985. The Secretary of State shall submit no later than January 31, 1986, a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the operation of such posts and the costs, advantages and disadvantages associated with meeting the foreign language competence requirements of this section.

(c) The Secretary of State may authorize exceptions to the requirements of this section if he determines that unanticipated exigencies so require. Such exceptions shall be annually reported to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

Mr. SIMON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. SIMON. Mr. Chairman, I will not take 5 minutes. We have demonstration projects of a great variety and I am asking for a demonstration project. I

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have discussed this with the State Department and what we are saying is let us pick two embassies where we require everyone in those embassies to have some competence in the language of those embassies and say at least two, and we have worked out the language with the State Department.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding. I would like first to commend the gentleman in the well for his fine leadership in the area of foreign language and international studies. I had the pleasure of serving with the gentleman on the President's Commission on Foreign Language and International Studies and was deeply impressed with his knowledge of the issues and his dedication to raising this very important matter for our country.

I have been working with you in helping to focus attention on the importance of foreign language competence in our diplomacy, in our trade balance, in our intelligence capabilities, and in our ability as a nation to understand and to cope with a turbulent world. The amendment before the House is truly an important contribution to this process. The question of staffing our Embassies abroad with people who have at least a minimum competence in the language and some understanding of the culture of the host country is extremely important. Right now, many of our Embassy personnel abroad remain isolated from the people of the host country, unable to communicate in the native language. This reality pesents us with a number of problems chiefly related to morale, but also touching on the ability of our personnel to respond well to possible crises at the Embassy such as terrorist attacks. Without an ability to communicate with the native population, our personnel are at a tremendous disadvantage.

I would like to ask the gentleman a few questions about his amendment. Is it not true that personnel from a number of agencies are stationed at our embassies abroad?

Mr. SIMON. Yes, that is correct. The International Communication Agency, the Department of Defense, the Agency for International Development, to name a few, all have personnel stationed at certain American Embassies.

Mr. PANETTA. My question then is: If we are to achieve a minimum proficiency requirement for all personnel in at least two embassies, will not there be a need for constructive interagency cooperation on this experiment?

Mr. SIMON. I am glad the gentleman raised that question because it strikes at the heart of my amendment. There is a tremendous need for all agencies with personnel stationed abroad to cooperate with the State Department in meeting the requirements of this amendment. I would urge the heads of these departments and agencies to support the thrust of this experiment by planning and consulting effectively with the State Department.

Mr. PANETTA. I thank the gentleman for his answer. Your amendment states that at least two embassies shall be designated as foreign language competence posts. I wonder if the gentleman is prepared to strongly encourage the State Department to assess its capabilities in this regard and to establish even more model embassies? Would you object to the State Department's establishing three, four, or even five such embassies?

Mr. SIMON. On the contrary, I would hope that my designation of "at least two" such embassies would not be regarded as a ceiling, but rather as a floor or a foundation upon which to make progress in other embassies. So, I would strongly encourage the State Department to begin this experiment with the maximum number of model embassies its resources can accommodate.

Mr. PANETTA. My last question relates to which languages and regions the gentleman is targetting. Would you prefer to see these model embassies in the same languages or in different languages, in the same regions of the world or different regions?

Mr. SIMON. Again, I compliment the gentleman from California for his insightful question. In discussions with State Department representatives I have made it clear that my interest is in having this experiment conducted in diverse settings, in diverse languages, in diverse regions. I would hope that the State Department would ensure that it spreads this experiment into as many different regions and language groups as possible. Only through that approach will we be able to assess adequately the resource implications, the personnel constraints, and the effectiveness of establishing foreign language competence posts abroad.

Mr. PANETTA. I thank the gentleman for his answers and urge adoption of his amendment.

Mr. SIMON. I thank the gentleman and want to express my gratitude to him for his work in shaping and supporting this amendment.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from Minnesota.

Mr. OBERSTAR. I want to compliment the gentleman from Illinois for offering this amendment. As the gentleman knows, I am a very strong proponent of foreign language competency in the Foreign Service. I think the gentleman's amendment will help advance that cause.

Mr. SIMON. I thank the gentleman. He is not only a proponent, he is a living example of that.

Mr. DANIELSON. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from California.

Mr. DANIELSON. I thank the gentleman for offering his amendment. I hope he will urge that Swedish be one of the languages that is practiced in these embassies.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am happy to yield to my colleague from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. I thank the gentleman and compliment him on his amendment. I support it.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Chairman, we have examined the amendment on this side for the committee and we agree with the amendment and accept it.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Chairman, I wish to associate myself with the gentleman's remarks and thank my colleague for yielding.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am happy to yield to my colleague from Alabama (Mr. BUCHANAN).

Mr. BUCHANAN. Mr. Chairman, we, too, have examined the gentleman's amendment and are pleased to accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. SIMON).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OBERSTAR: Page 217, line 16, strike out "In" and insert in lieu thereof "Except as provided in subsection (b), in"; page 218, line 18, strike out "the 3-year" and all that follows through "Notwithstanding" in line 22 and insert in lieu thereof "no mandatory conversion from the Foreign Service shall be made, and subsection (a) shall not apply with respect to those individuals. Notwithstanding"; in line 24, strike out "such individuals" and insert in lieu thereof "each such individual"; on page 219, line 2, immediately after "Act)" insert "unless and until the individual converts under section 2102 or section 2103"; in line 3, strike out "and 405" and insert in lieu thereof "405, and 504"; in line 5, strike out 504."; in line 8, strike out who are temporarily excepted from conversion under this subsection" and insert in lieu thereof "to whom this subsection applies"; and in line 11, immediately before the period insert ", except that such salary rates shall not be less than the salary rates which but for the enactment of this Act would take effect under those sections for the first pay period which begins on or after the effective date of this Act".

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, the purpose of this amendment is to preserve the rights of employees in the International Communication Agency, ICA, as established under their collective bargaining agreement with the agency in 1977. This agreement protects ICA employees from being involuntarily converted from the Foreign Service to the civil service and it has worked well. During the committee hearing both the agency, ICA and the employee organization, the American Federation of Government Employees, opposed the State Department's attempt to legislate this change to a mandatory conversion.

The people covered by this amendment are domestic specialists. They are writers, editors, broadcasters—people whose job is best done here in this country and who do not want to be forced into the Civil Service.

It seems to me very inappropriate at a time when these people in ICA were reporting on the strike of the Polish workers in the Gdansk shipyards that this committee and this State Department would be violating a workers' agreement. I think it is entirely inappropriate. I feel the collective bargaining agreement should be respected. I urge adoption of the amendment and hope the committee will accept it.

Mr. FASCELL. Mr. Chairman, I rise in opposition to the amendment. I want my colleagues to know this is a matter that was considered carefully over many months by the committee on the question of what to do with this issue on mandatory conversion. We believe the bill's provisions already represent a compromise between mandatory conversion without qualification and a purely voluntary conversion.

The largest group affected in this provision are 900 domestic specialists in ICA. If we allow these 900 people to convert voluntarily a major purpose of this bill would be defeated.

So I say in all fairness to everybody covered under the bill I urge my colleagues to defeat this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The amendment was rejected.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment Offered by Mr. OBERSTAR: Page 261, strike out section 2313 (lines 10 through 23) and insert in lieu thereof the following new section 2313:

SEC. 2313. RETIREMENT CREDIT FOR IMPRISONED FOREIGN NATIONALS AND FOR SERVICE WITH CERTAIN OVERSEAS BROADCASTING ORGANIZATIONS.—(a) Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon, and by inserting immediately after paragraph (9) the following new paragraphs:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual; and

"(11) subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Inc.; Free Europe, Inc.; Radio Liberation Committee; Radio Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Inc., Radio Free Asia; the Asia Foundation; or the American Forces Network, Europe (AFN-E).".

(b) Such section 8332(b) is further amended by adding at the end thereof the following new sentence: "The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type described in paragraph (11) of this subsection.".

On page 6, in the table of contents, strike out the item relating to section 2313 and insert in lieu thereof the following new item:

Sec. 2313. Retirement credit for imprisoned foreign nationals and for service with certain overseas broadcasting organizations.

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, our colleagues on the Foreign Affairs Committee and the Post Office and Civil Service Committee have done an enormous service in this legislation offering men and women of the Foreign Service benefits which are long overdue. But as the gentleman from Texas, Mr. GONZALEZ, earlier said, in a measure of such magnitude there are often injustices that creep in or may be overlooked.

One of those which I think has been overlooked and which has come to my attention, is that certain current or former employees of the International Communication Agency are being denied entitlement to their retirement credits. I have in mind those people who organized the binational centers in various countries outside the United States during the 1940's and 1950's.

I have some personal experience with people who operated these American and foreign country ethnic heritage and information centers. During a period when the U.S. Government was pursuing a variety of foreign policy objectives, these binational centers kept contacts between the United States and foreign nationals. Center staffs were paid on United States Government grants renewable on an annual basis. They were people who worked in very unhealthy areas of the world under very adverse conditions. They took on a very unpopular, sometimes risky task of defending their country and making friends for the United States overseas. I saw many of those individuals during the years when I lived and taught language in Haiti. They were the English speaking teachers, the cultural program directors and the librarians. Working at the binational centers, they created ties between America and the host community. Much of their work now continues through the mission and programing of the International Agency. I feel that those people ought to be given proper recognition for their retirement benefits.

Until the 1960's, the staff of these centers served in very tenuous yearly appointments because people who were making our foreign policy at that time feared that direct U.S. operation of the centers might backfire and cause anti-American feelings. Often, those centers were the target of anti-American feelings. They were bombed, they were firebombed, and they were attacked. Those people really had their lives on the line.

By the seventies, however, many of the staff employees had become career members of the Foreign Service. Those employees over the age of 50 were not offered unlimited appointments because they were very close to the traditional Foreign Service mandatory retirement age of 60. In 1974, a Federal court ruled that binational center grantees were entitled to retirement credits, but that decision has not been fully implemented.

My amendment would correct that discrimination at a very minimal cost of not even $100,000, according to estimates I have seen, and I hope the committee will accept the amendment.

□ 1900

Mrs. SCHROEDER. Will the gentleman yield?

Mr. OBERSTAR. I will be happy to yield.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition to the amendment.

The gentleman's amendment proposes to grant civil service retirement credit for service performed with certain radio broadcasting organizations such as Radio Free Europe and binational centers.

The Committee on Post Office and Civil Service and the Office of Personnel Management have consistently opposed legislative proposals to grant civil service retirement credit for periods of non-Federal service.

Although, in this case, the employees would be required to make a deposit to the civil service retirement fund to cover the non-Federal service, the service credits, nevertheless, would result in increasing the unfunded liability of the civil service retirement fund.

Mr. Chairman, the unfunded liability of the retirement fund now exceeds $130 billion. We simply cannot afford to incur additional liabilities, particularly for service which is not performed as a Federal employee. To do so in this case would result in an unfair burden on the American taxpayers and, most certainly, would open the door to a host of proposals for retirement credit for similar types of non-Federal service.

Mr. OBERSTAR. I am sorry the committee opposes the amendment. I think it is one that in all fairness should be accepted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The amendment was rejected.

AMENDMENT OFFERED BY MR. FASCELL

Mr. FASCELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FASCELL: Page 73, line 20, immediately before the period insert ", subject to any career extension under subsection (d) of this section"; and immediately after line 20, insert the following new subsection:

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(d) Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, this amendment seeks to correct a situation giving the Secretary some authority in certain cases to provide for limited extensions of service. It recognizes the desirability of preserving the current authority of the Secretary to extend temporarily the career appointment of a career member of the Service whose time in class or limited career extension expires. An example of this situation occurs when a Foreign Service officer who is part of a negotiating team reaches the end of his time in class and faces selection-out. In the interest of an effective and efficient foreign policy, the Secretary needs the discretion to grant a limited extension in such an instance. This provision permits such an extension for a maximum of 1 year.

This amendment also allows a career member of the Service to complete the term of a Presidential appointment even if his or her maximum time in class or limited career extension has expired. This is a recognition of the President's authority to make such appointment.

I urge support of the amendment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I compliment the gentleman and we certainly accept the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL).

The amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. KAZEN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 6790 to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, pursuant to House Resolution 695, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment of third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 239, nays 78, not voting 115, as follows:

[Roll No. 525]

YEAS—239

Akaka
Albosta
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
Atkinson
AuCoin
Bailey
Barnes
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bevill
Blanchard
Boland
Bolling
Boner
Bonior
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Brown, Calif.
Buchanan
Burlison
Burton, John
Burton, Phillip
Butler
Carr
Carter
Cavanaugh
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Conte
Corcoran
Cotter
Coughlin
Courter
D'Amours
Danielson
Daschle
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Dixon
Dornan
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Erdahl
Erlenborn
Ertel
Evans, Ind.
Fascell
Fazio
Fenwick
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Gaydos
Gibbons
Gilman
Gingrich
Glickman
Goldwater
Gore
Gradison
Gray
Green
Guarini
Gudger
Guyer
Hagedorn
Hamilton
Hance
Hanley
Harkin
Harris
Harsha
Hawkins
Heftel
Hightower
Hollenbeck
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Kildee
Kostmayer
Leach, Iowa
Lent
Lewis
Lloyd
Long, La.
Long, Md.
Lujan
Luken
McCloskey
McCormack
McDade
McEwen
McHugh
Maguire
Markey
Marks
Martin
Mica
Mikulski
Miller, Calif.
Mineta
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Moore
Moorhead, Pa.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patterson
Pease
Pepper
Petri
Pickle
Preyer
Pritchard
Rahall
Rangel
Ratchford
Regula
Reuss
Rinaldo
Robinson
Roe
Rosenthal
Roth
Roybal
Sabo
Santini
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Sensenbrenner
Sharp
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Stack
Staggers
Stanton
Stark
Stewart
Stokes
Studds
Swift
Synar
Tauke
Thomas
Traxler
Udall
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Winn
Wirth
Wolff
Wolpe
Wright
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—78

Abdnor
Applegate
Archer
Badham
Bafalis
Barnard
Bauman
Bethune
Bouquard
Brown, Ohio
Broyhill
Carney
Collins, Tex.
Conable
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Devine
Duncan, Tenn.
English
Glinn
Gonzalez
Grassley
Grisham
Hall, Tex.
Hammer-schmidt
Hansen
Holland
Holt
Hopkins
Ichord
Jacobs
Jones, Okla.
Jones, Tenn.
Kazen
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Lee
Loeffler
Lott
Lungren
McDonald
McKay
Madigan
Marlenee
Michel
Miller, Ohio
Montgomery
Moorhead, Calif.
Mottl
Nichols
Pashayan
Paul
Quillen
Rhodes
Roberts
Rousselot
Rudd
Schulze
Shelby
Shumway
Shuster
Snyder
Solomon
Spence
Stangeland
Stenholm
Stockman
Stratton
Stump
Symms
Taylor
Trible
Wyatt

NOT VOTING—115

Addabbo
Alexander
Ambro
Anderson, Ill.
Ashbrook
Baldus
Beard, R.I.
Beard, Tenn.
Biaggi
Bingham
Boggs
Bonker
Broomfield
Burgener
Byron
Campbell
Chappell
Cheney
Chisholm
Clay
Coelho
Conyers
Corman
Crane, Daniel
Davis, Mich.
Davis, S.C.
Dodd
Donnelly
Dougherty
Edwards, Okla.
Emery
Evans, Del.
Evans, Ga.
Fary
Ferraro
Findley
Frost
Garcia
Gephardt
Giaimo
Goodling
Hall, Ohio
Heckler
Hefner
Hillis
Hinson
Holtzman
Hubbard
Ireland
Jenrette
Kastenmeier
Kelly
Kemp
Kogovsek
Leach, La.
Leath, Tex.
Lederer
Lehman
Leland
Levitas
Livingston
Lowry
Lundine
McClory
McKinney
Marriott
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Minish
Moffett
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nelson
Nolan
Patten
Perkins
Peyser
Porter
Price
Pursell
Quayle
Railsback
Richmond
Ritter
Rodino
Rose
Rostenkowski
Royer
Russo
Satterfield
Shannon
Skelton
Spellman
St Germain
Steed
Tauzin
Thompson
Ullman
Walker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Wydler
Wylie
Young, Alaska
Zeferetti

□ 1910

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Young of Alaska.
Mr. Chappell with Mr. Dougherty.
Mr. Lederer with Mr. Goodling.
Mrs. Byron with Mr. Railsback.
Mr. Coelho with Mr. Porter.

Mr. Mattox with Mr. McClory.
Mr. Zeferetti with Mr. Livingston.
Mr. Lowry with Mr. Hillis.
Mr. Jenrette with Mr. Grassley.
Mr. Ireland with Mr. Kemp.
Mr. Kastenmeier with Mr. Quayle.
Mr. Rodino with Mr. Ritter.
Mr. Satterfield with Mr. Pursell.
Mr. Russo with Mr. Williams of Ohio.
Mr. Rostenkowski with Mr. Wylie.
Mr. St Germain with Mr. Royer.
Mr. Tauzin with Mr. Walker.
Mr. Ullman with Mr. Kelly.
Mr. Thompson with Mr. Wydler.
Mr. Rose with Mrs. Heckler.
Mr. Steed with Mr. Marriott.
Mr. Alexander with Mr. Bob Wilson.
Mrs. Chisholm with Mr. Hinson.
Mr. Beard of Rhode Island with Mr. McKinney.
Mr. Price with Mr. Findley.
Mrs. Boggs with Mr. Ashbrook.
Mr. Nelson with Mr. Beard of Tennessee.
Mr. Minish with Mr. Daniel B. Crane.
Mrs. Holtzman with Mr. Davis of Missouri.
Mr. Mavroules with Mr. Emery.
Mr. Skelton with Mr. Edwards of Oklahoma.
Mrs. Spellman with Mr. Cheney.
Ms. Ferraro with Mr. Burgener.
Mr. Garcia with Mr. Evans of Delaware.
Mr. Donnelly with Mr. Broomfield.
Mr. Corman with Mr. Campbell.
Mr. Kogovsek with Mr. Charles H. Wilson of California.
Mr. Leland with Mr. Matsui.
Mr. Williams of Montana with Mr. Leach of Louisiana.
Mr. Lundine with Mr. Lehman.
Mr. Charles Wilson of Texas with Mr. Leath of Texas.
Mr. Levitas with Mr. Bonker.
Mr. Mathis with Mr. Baldus.
Mr. Ambro with Mr. Clay.
Mr. Bingham with Mr. Mazzoli.
Mr. Biaggi with Mr. Peyser.
Mr. Richmond with Mr. Patten.
Mr. Giaimo with Mr. Frost.
Mr. Fary with Mr. Hubbard.
Mr. Evans of Georgia with Mr. Dodd.
Mr. Hefner with Mr. Hall of Ohio.
Mr. Moffett with Mr. Conyers.
Mr. Nedzi with Mr. Murphy of Illinois.
Mr. Murphy of New York with Mr. Nolan.
Mr. Perkins with Mr. Myers of Pennsylvania.
Mr. Shannon with Mr. Whittler.

Messrs. MADIGAN, BROWN of Ohio, and HAMMERSCHMIDT changed their votes from "yea" to "nay."

Mr. ROE changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1920

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AUTHORIZING CLERK TO MAKE CORRECTIONS AND TECHNICAL AND CONFORMING CHANGES IN ENGROSSMENT OF H.R. 6790, FOREIGN SERVICE ACT OF 1980

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill H.R. 6790, the Clerk is authorized to correct section numbers, punctuation, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending that bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

PERSONAL EXPLANATION RELATING TO COMMITTEE AMENDMENT TO H.R. 6790

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Mrs. SCHROEDER. Mr. Speaker, when the vote occurred on the Ford (Post Office and Civil Service Committee) amendment to H.R. 6790 dealing with the rights of former spouses, the floor message from the Democratic cloakroom initially misidentified it as the Schroeder amendment. Well, the Ford amendment struck the language of the Schroeder amendment. Obviously, I opposed the amendment. Yet, Members relying on the floor message might have assumed I supported it. Many Members were confused. The attached statement came from the cloakroom.

Schroeder Post Office and Civil Service Committee amendment to Section 814, Permits State courts on a case-by-case basis to determine the division of retirement benefits and survivor annuities to former spouses of Foreign Service officers.

(Four minutes after the vote began the identity of Mrs. SCHROEDER was deleted from the explanation.)

PERMISSION FOR COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO SIT DURING 5-MINUTE RULE ON WEDNESDAY OF THIS WEEK

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the Committee on Interstate and Foreign Commerce be permitted to sit during the 5-minute rule on Wednesday of this week, September 10, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE OF COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO SIT ON TOMORROW, TUESDAY, SEPTEMBER 9, 1980, DURING 5-MINUTE RULE

Mr. SCHEUER. Mr. Speaker, I ask unanimous consent that the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce be permitted to sit tomorrow afternoon, Tuesday, September 9, 1980, during the 5-minute rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, let me ask the gentleman, why is it so important to do this? We have a lot of legislation here to consider.

Mr. SCHEUER. Mr. Speaker, if the gentleman will yield, that is right, but we have been scheduled to hear testimony on H.R. 7791, the Reciprocity and Investment Act. We have many witnesses who are coming to the hearing.

Mr. ROUSSELOT. Is the request for witnesses only?

Mr. SCHEUER. For witnesses only.

Mr. ROUSSELOT. The gentleman can assure us, therefore, that there will be no markup of any bill?

Mr. SCHEUER. Absolutely not. I can assure the gentleman of that.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman's response, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

RADIOACTIVE WASTE DISPOSAL: THE EMERGING ISSUE OF STATES' RIGHTS

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SEIBERLING. Mr. Speaker, there is pending before the Committee on Interior and Insular Affairs of the House an extremely important piece of legislation dealing with the question of radioactive waste disposal.

Last year I wrote a Law Review article in the Akron University College of Law "Law Review" on the subject of radioactive waste disposal and the emerging issue of States' rights. While it may seem the reflection of a bit of pride of authorship to place my own writings in the RECORD, since the matter is current and since this does lay out the law on the subject, I am including the Law Review article for the benefit of my colleagues following these remarks:

RADIOACTIVE WASTE DISPOSAL: THE EMERGING ISSUE OF STATES' RIGHTS

(By Hon. JOHN F. SEIBERLING)*

March 28, 1979, marked the beginning of a new public awareness and attitude toward nuclear power. On that day, what some scientists, industry officials and government spokesmen said would never happen did happen—a serious accident of critical magnitude crippled a nuclear power facility, releasing undetermined amounts of radiation into the atmosphere. Communities within a fifty mile radius were threatened with unimaginable chaos and disruption in the event a core meltdown forced mass evacuation.

The events of Three Mile Island forced industry, government and the public to reassess the vision of nuclear power as a key

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solution to the energy crisis. As an outgrowth of this reassessment, the public began to demand a greater role in determining the development of nuclear power within their communities, and the public began to demand greater protection from the radiation hazards of nuclear waste transported through their communities. When the city of Cuyahoga Falls, Ohio for example, heard that radioactive waste from Three Mile Island was being trucked through the state, the city council passed an ordinance to place safety and security conditions on any such transports through city boundaries,[1] thus showing the concern which had already been expressed by officials in larger communities where accidents resulting in radiation leakage could result in a disaster of tragic proportions.[2]

States also have become increasingly responsive to public demands to prevent nuclear waste from being stored near their communities. State activity to prevent, limit, or prohibit outright the creation of nuclear waste facilities within the states' jurisdiction is not solely an outgrowth of Three Mile Island. Prior to March 28, 1979, sixteen states had approved legislation giving themselves either an equal role or a final say in federal decisions to store or dispose of radioactive waste within their boundaries.[3] Subsequent to March 28, 1979, the New Mexico legislature enacted a law prohibiting storage or disposal of radioactive waste in the state until and unless the state shall have concurred through a process to be established by a joint interim legislative committee. On May 30, 1979, the Ohio Senate approved legislation[3a] to prohibit the federal government from storing radioactive waste within the state at least through 1983.

If Ohio's bill is enacted into law, eighteen states will have claimed for themselves the authority to block federal decisions which may not adequately safeguard against accidents, leakage, spills or operational failures involving the transportation, storage and use of nuclear materials. Since radiation hazards which result from nuclear waste are not only potentially fatal but can endure literally for thousands of years, and with no national program of radioactive waste disposal on the horizon, this concern is well founded.

However, the laws passed by these states may run afoul of the Supremacy Clause of the Constitution. Regardless of the dimensions of the problem of disposing and safeguarding radioactive waste, the states' rights to impose conditions, or require prior consultation on potential waste disposal sites within their jurisdiction can be challenged in court, even in the absence of a federal solution, and have been challenged successfully. The purpose of this article is to examine the issue of the state role in federal nuclear programs and the need for Congressional action to insure that states will have an active role in federal decisions to dispose of radioactive waste within their jurisdictions.

I. THE ATOMIC ENERGY ACT

The Manhattan project brought a terrifying end to World War II and a hopeful beginning to the age of nuclear energy. However, since nuclear power was inexorably linked to weapons systems and national security, the federal government retained exclusive control over the development of atomic energy. In 1946, the Atomic Energy Act created the Atomic Energy Commission as the controlling federal agency, and restricted all private activity to fulfilling contractual obligations for the federal government.[4] Gradually, as nuclear power was developed to produce energy, and a domestic, peacetime application of the science became possible, the federal government invited industry to participate in making this application a reality. In 1954, Congress amended the Atomic Energy Act to allow increased participation by private industry through the establishment of a regulatory and licensing system.[5] It was later still that Congress approved legislation which gave states limited authority over certain kinds of nuclear materials, based on the recognition of state interest in "peaceful uses of atomic energy."[6] However, the policy Congress had established is based on the conclusion that the processing and use of nuclear materials is "vital to the common defense and security."[7] Thus, a federal agency (the Atomic Energy Commission, which in 1974, was designated the Nuclear Regulatory Commission) has been assigned full regulatory authority over the use of nuclear materials for commercial, peacetime purposes.

While the federal pre-emption over nuclear weapons development is a logical and defensible policy, it may be argued that continued federal pre-emption in uses of nuclear power for domestic purposes is an outdated application of the policy, especially in light of the expanded role of private industry. The nuclear industry asserts that excessive regulation by the federal government serves to impede the development of nuclear power as a major energy source in this country while states and citizen groups are more concerned about the dangers of nuclear power than ever before. From one side the federal government is being encouraged to smooth the way for the increased use of nuclear power for domestic energy needs, while from the other side the states are trying to cut from the federal regulatory fabric, on a state-by-state basis, a role for them to play, in partnership with the federal government, to represent the concerns of their citizens about the dangers of nuclear power and nuclear materials—including spent fuel—to public health and safety.

II. FAILURES OF FEDERAL REGULATORY SYSTEM

The problems of nuclear waste disposal are enormous. Currently, we have about seventy-four million gallons of radioactive waste in this country, all in temporary storage at plant-sited "pools"; and there are an additional eighty million gallons of defense nuclear waste which has accumulated since the military began producing nuclear weapons in the 1940's. The military high-level wastes have been stored at the Hanford Reservation in Washington State, the Savannah River reserve in South Carolina, and the Idaho National Engineering Laboratory in Idaho.[8]

The fission products contained in this waste are highly toxic elements, including the so-called transuranic elements; radioactive atoms heavier than uranium, which remain radioactive for extremely long periods of time. Plutonium-239, for example, has a half-life of almost twenty-five thousand years.[9] In human terms, the continued radioactive hazard is infinite. Even if radioactive waste storage could guarantee that no human exposure would occur for the life of the toxicity of the material, reactor waste must be isolated from the rest of the environment to prevent penetration and contamination of the biosphere, including food chains leading to man. This is a monumental problem, and even experts admit that no proven solutions to this problem exist at the present time.

The federal government, through the Department of Energy, has the prime responsibility for nuclear waste management.[10] However, the history of federal management of radioactive waste does not inspire public confidence in the existence of any long-term solutions to the problems of disposing nuclear waste, and the doubts expressed by the federal government itself through various agencies about current technological solutions to the radioactive waste problem point to the need for a thorough and public examination of all issues related to nuclear waste disposal.

The experience at the Hanford Reservation in Washington provides the best example of faulty assessments and planning by federal agencies for nuclear waste disposal. Millions of gallons of high-level waste were stored in liquid form in single-shell stainless steel and carbon tanks, which were originally expected to have a life expectancy of about fifty years. However, unexpected stresses resulted in failures before twenty years had passed, leaking over 423,500 gallons of high level wastes from sixteen tanks. The largest leak was discovered on June 8, 1973 when one tank was found to have leaked a total of 115,000 gallons amounting to 54,000 curies of radioactivity. The leak occurred over a period of months. (The extent of the leak was attributable in part to the absence of a key employee, whose substitute ignored signals from the monitoring system that something had gone wrong.)[11] The deficiencies in the storage technology at Hanford were previously known. In 1969, the General Accounting Office had warned that corrosion problems would exist with single-shell tanks,[12] but these warnings were ignored. Moreover, intermediate level radioactive wastes (up to 1 curie per gallon) were at first merely dumped in open trenches and absorbed into the sandy ground at Hanford.

The Department of Energy, which has authority to manage military as well as commercial radioactive waste, has embarked on a program to solidify the Hanford waste to prevent future leaks. Originally, as a part of the program, the Department of Energy proposed to store the military waste at a Waste Isolation Pilot Plant (WIPP) now being developed in New Mexico. The proposal has been modified since its initiation to use WIPP as a storage facility for transuranic wastes, such as contaminated clothing. While WIPP may be based on more advanced technology than was originally used at Hanford, past experience indicates that even technical experts have no confidence that their favored method of storing radioactive waste can be safely and surely implemented. Moreover, any disposal efforts would be subject to the hazards of accidents in transport, leaks of liquids pending solidification, or breakup or leaching into groundwater. (If the Administration lifts its current moratorium on reprocessing, additional hazards would be added to the problems of temporary and long term storage.)

Faulty selection criteria have further obstructed the government search for an "ideal" waste disposal site. In 1955, the National Academy of Science Research Council (NAS RC) was directed by the Atomic Energy Commission to examine the possibility of developing waste disposal facilities for radioactive materials. NASRC tentatively concluded in a 1957 research proposal that the best possibility was deep disposal in a geologic repository.[13] As a result of this initial conclusion, more engineering knowledge is available on salt mines than for any other method of radioactive waste disposal.[14] Some of the knowledge points to the potential instability of salt because of its plasticity and variable solubility.[15] Nonetheless, by 1970, the Atomic Energy Commission had spent one hundred million dollars and fifteen years to identify what they determined would be the final solution to the problem of disposing radioactive waste: an abandoned salt mine in Lyons, Kansas which would isolate radioactive waste permanently. The Kansas Geological Society, in an independent assessment of the selected site, raised questions about the site's safety, which was pockmarked with old oil and gas wells that penetrated the salt, providing an entrance for water from nearby operating mines. The Atomic Energy Commission later abandoned the site, admitting that the potential of water intrusion could leach out radioactive waste stored at the site.

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These experiences point to the faulty technology and criteria which have been employed by the federal government to develop a radioactive waste disposal program. In fact, the government no longer claims to possess solutions to the safety and security problems of long-term radioactive waste disposal. The most recent report on this issue, the Interagency Review Group report on Nuclear Waste Management[16] (a Presidential Commission which completed a report in March, 1979), had these conclusions concerning existing technology for preventing the potential exposure of humans to radioactive waste disposed of on a "permanent" basis:

"The risk assessments performed to date . . . have, with few exceptions, been based on idealized repository characteristics and are subject to significant uncertainties . . . Uncertainties associated with risk assessment derive from lack of data, lack of experience, inability to identify all release mechanisms for radionuclides, the natural variability in physical properties of geologic media, and the inability to predict long-term geologic and climatic process and social evolution. All of these uncertainties are neither additive nor of equal significance. An important aspect of the research remaining to be done is to understand how each enters into the overall uncertainty of the calculation of risk."[17]

The absence of federal solutions, following past failures, gives rise to another problem, which the Government Accounting Office described in a 1977 report:

"When it publicly announced its waste repository program objectives and goals the Department (of Energy) may have promised more than it can deliver. There are, we believe, formidable social, geological and regulatory problems which must be solved. Foremost among them is opposition of public and some political leaders. The Department may not be successful in gaining their acceptance unless it can convince the public that is has a sound waste management program and that geological disposal risks to man's environment are acceptably low."[18]

It is in this context—the absence of a federal program which promotes confidence—that seventeen states have already institutionalized their opposition to unilateral efforts by the federal government to bury radioactive wastes.

III. FEDERAL PRE-EMPTION

The state's laws giving them a role in federal radioactive waste management programs vary in the method, but essentially all achieve the purpose of reviewing and overriding a proposed federal action within their jurisdiction. However, in the absence of clear Congressional directive authorizing the states to have a role in such decisions, these state laws may be pre-empted by federal authority established under the Atomic Act as amended.[19]

In any inquiry into federal pre-emption it must first be established that the area is subject to federal regulation pursuant to authority designated by the Constitution. The findings of the Atomic Energy Act, as amended, clearly base the regulation of nuclear materials on constitutional powers over the common defense and security, interstate and foreign commerce and promotion of the general welfare.[20] As observed by the Eighth Circuit Court of Appeals in *Northern States Power Company* v. *Minnesota*, ". . . there can be no doubt but that Congress was acting within its constitutionally delegated authority in establishing a system of regulation over the entire spectrum of atomic energy, including the imposition of federal controls over health and safety standards."[21]

Once it has been established that the Constitution empowers the federal government to regulate the subject under question, it must be determined whether Congress intended or designed federal authority to preempt states from asserting their authority over the same subject.

"The doctrine of Federal pre-emption is based on Article VI, Clause 2 of the United States Constitution, the Supremacy Clause, which elevates federal law above that of the States."[22] The Clause states:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The Atomic Energy Act does provide for a state role in regulating health hazards of certain radioactive materials. In 1959, Congress approved provisions which recognized state interest in peaceful uses of nuclear energy, and to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.[23] The provision still requires the Commission to retain control over certain activities, including the management and disposal of such nuclear waste which, in the Commission's determination, cannot be disposed of without a license. Another provision states that no restrictions on state activity will prevent state or local authorities from regulating activities for purposes other than "protection against radiation hazards."[24] (As will be shown, these provisions have been interpreted by the courts not to be relinquishing federal authority to the states, but to narrowly define a subject over which the state can regulate.)

Federal pre-emption can be assumed if it is physically impossible to comply with both federal and state regulations. In such a situation "a holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design."[25] However, in the absence of a direct collision between the two regulatory systems, it must be determined whether Congress intended the federal regulatory scheme to be exclusive. This must be assessed on a case by case basis since, "there is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress."[26] Where this intent is express, states cannot exert authority over the same area.[27] Otherwise, Congressional intent may be gleaned by examining the statute, or its legislative history.[28]

For example, "the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it,"[29] or if "the state policy produces a result inconsistent with the objectives of the federal statute,"[30] or "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,"[31] then the state law and regulation is pre-empted by federal law. For where the federal government has, pursuant to its constitutional authority, enacted a system of regulation "States cannot, inconsistently with the purposes of Congress, conflict or interfere with, curtail, or complement, the federal law, or enforce law, or enforce additional or auxiliary regulations."[32]

The pre-emption of the Atomic Energy Act was challenged by the state of Minnesota in *Northern States Power Company*. In this case Northern was licensed by the Atomic Energy Commission to build a nuclear power plant in Minnesota. Northern applied to the state for a waste disposal permit. The state granted the permit upon the condition that Northern institute a program at the nuclear plant to detect and measure radiation releases, both liquid and gaseous. Since Northern was in compliance with federal law and with the radiation safety regulations required by the Atomic Energy Commission as a condition to licensing, Northern argued that Congress (in passing the Atomic Energy Act) intended for the Commission to have exclusive authority and control of nuclear plants, and therefore pre-empted enforcement of the state regulation. Minnesota argued, on the other hand, that it could regulate radioactive releases pursuant to the authority under section 2021(b) of the Atomic Energy Act, which defines the conditions under which states could enter into cooperative agreements with the Commission for the regulation of radiation hazards associated with by-products, source and special nuclear material.

The court examined this provision, and noted that the category of radioactive material under question—liquid and gaseous releases from operating nuclear plants—was not among the categories of material over which the state could assume control under section 2021(b). The court further examined the provision which specifically prohibited the Atomic Energy Commission, in transferring certain authority to the states, from relinquishing its authority over the construction and operation of any production or utilization facility.[33] Finding that the discharge of radioactive effluents fell under the regulation of production and utilization facilities, the court determined that the Minnesota law provided for dual control by state and federal authority in an area where the sole authority rested with the federal government.

The court found further indication that the federal act pre-empted Minnesota's law in the legislative history of section 2021, to provide for cooperative agreements between the Commission and states with respect to state assumption of regulation over certain materials. The court noted that, prior to the 1959 amendments, the regulation of all radioactive materials, including those for which regulation by agreement could be assumed by the state (pursuant to section 2021), was solely under the regulatory authority of the federal government:

"While the 1959 amendment does not use the term 'exclusive' or 'sole' in describing existing regulatory responsibilities of the Commission we think it abundantly clear that the whole tone of the 1959 amendment, upon examination of the statutory language alone, demonstrates Congressional recognition that the AEC at that time possessed the sole authority to regulate radiation hazards associated with by-product, source and special nuclear materials and with production and utilization facilities . . . If the States at that time possessed concurrent jurisdiction to regulate radiation hazards associated with these materials, it would have been unnecessary for Congress affirmatively to recognize their regulatory authority by virtue of a state-federal compact and to limit their authority for the duration of and subject to the provisions of such agreement."[34]

Thus the court concluded that the states' right to regulate radiation hazards is specifically limited to those materials defined in section 2021(b) and does not extend to any other areas.

The court also examined the legislative intent of section 2021(k) which states that "nothing in this section shall be construed to affect the authority of any state or local agency to regulate activities for purposes other than protection against radiation hazard." Since the radiation hazards which can be regulated by the states are clearly defined, the court interpreted this as restating the restriction against any other state regulation of radiation hazards of radioactive material.[35]

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Finally, the court found that the Minnesota law was preempted by the Atomic Energy Act[38] because Minnesota's law obstructed the achievement of the Act's goals "to encourage the development, use and control of atomic energy so as to make the maximum contribution to the general welfare and to increase the standard of living."[37] However, the Atomic Energy Act provided that these objectives were to be effectuated "to the maximum extent consistent with the common defense and security and with the health and safety of the public."[38] Congress determined that the achievement of these goals required a comprehensive Federal regulatory program which, the court concluded, prevented states from imposing stricter standards which may impede the development and use of nuclear power. The court held that "the federal government has exclusive authority under the doctrine of preemption to regulate the construction and operation of nuclear power plants which necessarily includes regulation of the levels of radioactive effluents discharged from the plants."[39]

In a more recent case, *Pacific Legal Foundation v. California Energy Commission*,[40] the United States District Court for Southern California held that the Atomic Energy Act pre-empted a state law which set conditions on the future licensing of nuclear power plants in the state.

California Public Resources Code section 25524.2 prohibited the State Energy Commission from licensing a nuclear power plant pending the designation by the Nuclear Regulatory Commission of an approved technology for disposing of nuclear by-products of plant operation. Under this section, the NRC was required to submit a report approving the designated radioactive waste disposal technology to the state legislature, which was empowered to "disaffirm" any recommendations or finding in the report.

In *Pacific Legal Foundation*, San Diego Gas and Electric Company terminated the proposed construction of the Sundesert nuclear power project in Southern California. Plaintiffs argued that the project had been terminated because the California Energy Commission had determined that the required findings on a radioactive waste disposal technology were not available, resulting, at least for the time being, in a moratorium on nuclear power plant licensing in the state.

The court, in examining the effect of California Public Resources Code section 25524.2, observed that the result of the requirements made on the NRC was to obstruct Congressional purpose in passage of the Atomic Energy Act.

"Congress' policy to encourage the development and utilization of nuclear energy would decidedly be frustrated if all fifty states had statutes similar to California Public Resources Code section 25524.2. Although the Atomic Energy Act certainly leaves room for the states to regulate on the subject of nuclear energy within the confines of section 2021(k) and 2021(b), the power to regulate is not necessarily the power to prohibit. There seems little point in enacting an Atomic Energy Act and establishing a federal agency to promulgate extensive and pervasive regulations on the subject of construction and operation of nuclear reactors and the disposal of nuclear waste if it is within the prerogative of the states to outlaw the use of atomic energy within their borders."[41]

In *Pacific Legal Foundation*, the court further elaborated on the arguments forwarded in *Northern States Power Company* concerning the limited application of section 2021 (k), the provision which reserves to the states the right to regulate "activities for purposes other than protection against radiation hazards." The defendants relied upon this section as delegating authority to the states to regulate for purposes other than radiation control. They argued that the provision allowed the state of California to enact a law which would insure that state citizens would not be forced to bear the financial risk of financing nuclear power plant construction if these plants were later closed because inadequate waste disposal facilities existed.[42] This broad interpretation of section 2021 (k) was rejected by the court based on an examination of legislative intent, since a wide scope for state authority would effectively undermine the regulatory scheme established by Congress in the Atomic Energy Act.

Rather, the court found that an examination of legislative history led to the conclusion that Congress commanded the courts to interpret section 2021 (k) in a manner consistent with section 2021 (c). To buttress this interpretation, the court referred to a letter sent in 1959 by the General Manager of the AEC by the Chairman of the Congressional Joint Committee on Atomic Energy. Regarding AEC's recommended language for section 2021 (k) the letter said: "[w]e did not intend to leave any room for the exercise of concurrent jurisdiction by the States to control radiation from those materials. Our sole purpose was to leave room for the courts to determine the applicability of particular State laws and regulations dealing with matters on the fringe of the preempted area in the light of all the provisions and purposes of the Atomic Energy Act, rather than in the light of a single sentence."[43] Since this interpretation was accepted by the Joint Committee, the court in *Pacific Legal Foundation* concluded that this indicated "Congressional approval of the position that the precise extent of preemption under the section is to be determined by the courts in the light of all the provisions and purposes of the Atomic Energy Act."[44]

In light of the fact that the opportunity for states to regulate nuclear materials under section 2021 (b) was clearly defined and concerned subject matter previously under the sole authority of a federal agent,[45] the court held that section 2021 (k) did not extend authority to the state to protect its citizens against nuclear plants which may lack adequate disposal facilities, since the effect of such protection would be to obstruct the use of nuclear power in the state contrary to the express purpose of the Atomic Energy Act. Further, because authority to regulate use of radioactive materials which present sufficient hazards to require licensing was retained by the Atomic Energy Commission by virtue of section 2021 (c) of the Act, the court held that "the state regulation on this subject is displaced. Accordingly, the court holds California Public Resources Code section 25524.2 impliedly pre-empted."[46]

These decisions certainly can be used as precedent to challenge state laws which would require state concurrence in decisions on radioactive waste disposal on the grounds that the Atomic Energy Act and regulation made pursuant thereto preempt state laws and regulations on the subject of the use and disposal of radioactive waste material.

In addition to the Atomic Energy Act, the Department of Energy Organization Act of August 4, 1977[47] gives specific authority to the Department of Energy over nuclear waste management, with the exception of those functions under the authority of the Nuclear Regulatory Commission. This means that DOE's authority does not cover the licensing of radioactive waste for permanent disposal or any functions covered by NRC-state agreements.

The Department of Energy Organization Act authorizes the federal agency to provide for:

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes.[48]

While a provision in the Act does require the Department to give "due consideration" to the needs of states where conflicts exist in the development of national energy plans,[49] there is no authority in this Act which gives the states a statutory basis for participating in the process of establishing nuclear waste facilities within their boundaries. In fact, the comprehensive and specific DOE authority defined in section 7311(8) over nuclear waste management would probably give considerable weight to arguments that the federal regulatory scheme is "so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it."[50] Any state law which regulated the disposal of radioactive waste could be challenged on the basis that such state action was preempted by federal authority under the Atomic Energy Act and the Department of Energy Organization Act.

III. STATES' RIGHTS AND NATIONAL GOALS

These ponderous legal obstacles do not seem to have dampened the efforts of the states to participate in radioactive waste disposal decisions to the extent of exercising authority to "veto" the selection of sites within their jurisdictions. Considering the risk assessments associated with disposal of radioactive waste, the duration of the hazard to public health and environment inherent in radioactive waste, the past failures in the federal government's efforts to manage radioactive waste and the growing public concern about the dangers associated with nuclear power in general, the states' interest is understandable. It also presents serious problems for the implementation of a national radioactive waste disposal management program, since without the cooperation of state and local officials, it could be politically impossible for the federal government to develop a radioactive waste disposal facility within a given state.

There is general agreement among federal officials that states must have some role in decisions to store radioactive waste if such facilities are to become a reality. In 1977, hearings before the House Interior Subcommittee on Energy and the Environment, then-Chairman of the Nuclear Regulatory Commission Marcus A. Rowden said: "The matter of where a repository is located is not simply a legal question. It is not simply a technological question. It is a political question, and a political decision is going to have to be made . . . My own view remains that the basic problems with regard to waste management are national scope. They will have to be addressed at the national level. Ultimately, it is going to be the Congress through legislation which makes the final determination."[51]

In 1979 hearings before the same Subcommittee, John M. Deutch, Director of Energy Research for the Department of Energy and Chairman of the President's Interagency Review Group on Nuclear Waste, in an exchange with the Chairman of the Subcommittee, Congressman Morris Udall, talked about the problems of providing a state role without authorizing a state veto:

DEUTCH. The position of the administration has been against a legislative veto right for States. On the other hand, we understand as a practical matter and as a matter of public interest, that when you are actually considering a specific facility in a specific State and locality, you must have the State and local officials supporting your program

Footnotes at end of article.

in terms of technical merit and consequences for their areas.

UDALL. It has been my own view, and maybe you will comment on this, that as a practical matter, whether you give it to them or not—if the Governor or the legislature or a large body of citizens in any State do not want an installation in their State, it is going to be extremely difficult for the federal government to force it upon them.

Would you agree that that is a practical statement?

DEUTCH. Absolutely, yes, sir.[52]

The final report of the Interagency Review Group on Nuclear Waste Management, issued in March 1979, reiterated the point that the federal government was bound in its development of a federal radioactive waste disposal program to work with the states. The final recommendations read: "The IRG believes that the technical and socio-political success of any federal waste management program is largely dependent on the States; and in particular the extent to which the states are involved early-on in program planning research and development, site identification, site characterization, (and) development of regional programs."[53] However, the report stopped short of recommending a state veto authority, finding that a state veto had the potential of allowing the state "at one specific moment—by one of several possible mechanisms—to approve or disapprove of federal site investigation activities or a proposal to site a repository or other facility."[54] Rather, the IRG recommended the establishment of a "consultation and concurrence" process whereby the state could participate on a continuing basis in all activities and "if it deems appropriate to prevent the continuance of federal activities."[55]

The Department of Energy currently follows an internal policy which subjects the approval of proposed locations for radioactive waste disposal facilities to state concurrence—in effect allowing the states to "veto" potential sites within their jurisdiction. In a letter dated June 19, 1978 from the Comptroller General of the United States to Congressman John D. Dingell, the Comptroller made reference to an agreement signed by the Governor of Louisiana and the Deputy Secretary of DOE which stated that, with respect to nuclear storage: "the Department of Energy will not construct any nuclear waste depository for long-term disposal in Louisiana if the State objects."[56] Since the legislative history of the Department of Energy Organization Act contained nothing to support a conclusion that the states could be given such a "veto" power by DOE, the Comptroller consulted an internal memorandum from the Department of Energy's Office of General Counsel which concluded that "the Secretary of Energy under existing law does not have the legal authority to enter into a binding agreement with a state pursuant to which the state would have the power to veto or forbid the establishment of a proposed nuclear waste repository in the state." The Comptroller further held that without statutory authority permitting such action, any agreements between officials of the Department of Energy and states giving the state the power to reject a potential disposal site selected by the Department would be legally unenforceable.

In further correspondence from the Department of Energy to Congressman Dingell, the Secretary of Energy James Schlesinger indicated that the Department was trying to develop a process for affected states to participate in the selection of potential sites for the disposal of radioactive waste. However, given the traditional Federal preemption of the states on all issues related to nuclear materials, as interpreted by the courts, DOE may require additional authority to implement a process for involving states in nuclear waste management decisions. It is unlikely that the courts would uphold the authority of DOE to create a role for the states if such a role could be construed to obstruct the implementation of a federal radioactive waste disposal program.

Several bills have been introduced in the 96th Congress to authorize a role for the states to participate in or veto decisions by the Federal government to create radioactive waste disposal facilities within their jurisdiction.[57]

Although the House Interior Subcommittee on Energy and the Environment held a day of hearings on H.R. 2762 in June, 1979, it is uncertain whether Congress will take any action to provide states an opportunity to participate meaningfully in federal decisions on nuclear waste facility siting. Opponents to state participation argue that enactment of such legislation would result in all fifty states objecting to radioactive disposal facilities proposed for their jurisdictions. However, the states are rejecting radioactive waste even in the absence of statutory authority, and this trend will, at the very least, delay the development and implementation of a national radioactive waste management plan. The courts may, and in the absence of a legislative solution, will dispose of the issue on the basis of legal considerations. But the problem is essentially technical and political. A final decision by Congress on nuclear waste disposal policy must accommodate both the national interest in solving the problem of radioactive waste disposal and the responsibilities of the states for health and safety of their citizens.

FOOTNOTES

* Member of Congress, 1971-present; LL.B., Columbia University, 1949. I am deeply indebted to Suzanne Goulet of my staff for her work in researching and preparing the initial draft of this article.

[1] Cuyahoga Falls, Ohio, Code § 17 (1979).

[2] New York, N.Y., Health Code, § 175.111 (1976).

[3] Alaska, California, Colorado, Delaware, Hawaii, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, North Dakota, Oregon, South Dakota, Texas and Vermont.

[4] S.B. 11, 113th Ohio Gen. Assemb., (1979). At the time of this writing (Feb. 1980) the bill is pending before the Ohio House Committee on Agriculture and Natural Resources.

[5] Atomic Energy Act of 1946, ch. 724, 60 Stat. 755.

[6] Atomic Energy Act of 1954, ch. 1073, 68 Stat. 919, as amended by 42 U.S.C. § 2011 *et seq.* (1976).

[7] Atomic Energy Act of 1959, U.S.C. § 2021 (a) (1976).

[8] Id. at § 2021(a)(1) (1976).

[9] United States Department of Energy, Report to the President by the Interagency Review Group on Nuclear Waste Management (App. D) (1979) [Hereinafter cited as Report to the President].

[10] A. Kudo & D. Rose, *Disposal of Nuclear Wastes*, 182 Science 1205–1211 (1973).

[11] Department of Energy Organization Act of 1977, 42 U.S.C. § 7133(a)(8) (1976).

[12] National Academy of Sciences, United States Energy Research and Development Administration, Radioactive Wastes at the Hanford Reservation (1978).

[13] United States Government Accounting Office, Report to the Joint Committee on Atomic Energy, Progress and Problems in Programs for Managing High-Level Radioactive Waste (1971).

[14] The National Academy of Science National Research Council. The Disposal of Radioactive Waste on Land (1957).

[15] D. Johnson & S. Gonzales, United States Department of Energy, Salt Deposits in the United States and Regional Geologic Characteristics Important for Storage of Radioactive Waste (1978); Report to the President, *supra* note 8, at 60.

[16] A. Kubo & D. Rose, *supra* note 9, at 1207; Department of Energy, Subgroup Report on Alternative Technology Strategies for the Isolation of Nuclear Waste (1978).

[17] H.R. Rep. No. 95–1090, 95th Cong., 2d Sess. 8 (1978).

[18] Report to the President, *supra* note 8, at 45–46.

[19] United States Government Accounting Office, Report to the Senate Committee on Environment and Public Works, Nuclear Energy's Dilemma: *Disposing of Hazardous Radioactive Waste Safely* (1977).

[20] U.S.C. § 2011 *et seq.* (1976).

[21] *Id.* at § 2012 (1976).

[22] 447 F.2d 1143, 1147 (8th Cir. 1971).

[23] *Id.* at 1145.

[24] 42 U.S.C. § 2021 (b) (1976).

[25] *Id.* at § 2021 (k) (1976).

[26] Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142–143 (1963).

[27] Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

[28] 447 F.2d at 1146.

[29] 373 U.S. at 146–152.

[30] Rice v. Sante Fe Elevator Corp., 331 U.S. 218, 230 (1947).

[31] *Id.*

[32] 312 U.S. at 67.

[33] *Id.*

[34] 42 U.S.C. § 2021 (c) (1976).

[35] 447 F.2d at 1149.

[36] *Id.* at 1150.

[37] 42 U.S.C. §§ 2011 & 2012 (1976).

[38] 447 F.2d at 1154.

[39] 42 U.S.C. § 2013 (1976).

[40] 447 F.2d at 1154.

[41] Civil No. 78–711–E (S.D. Cal. filed March 6, 1979).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] 447 F.2d at 1149.

[46] Civil No. 78–711–E.

[47] The Department of Energy Organization Act of 1977, 42 U.S.C. § 7101 *et seq.* (Supp. I 1977).

[48] U.S.C. § 7311 (A) (8) (1977).

[49] 42 U.S.C. § 7113 (1977).

[50] 331 U.S. at 230.

[51] Hearings before the Subcomm. on Energy and the Environment of the Comm. on Interior and Insular Affairs of the House on HR 18 et al., 95th Cong., 1st Sess. 55 (1977).

[52] Oversight hearings before the Subcomm. on Energy and the Environment of the Comm. of Interior and Insular Affairs on the House on Nuclear Waste Management, 96th Cong., 1st Sess. 11 (1979).

[53] Report to the President, *supra* note 8, at 95.

[54] *Id.*

[55] *Id.*

[56] Letter from R. F. Keller to John D. Dingell (June 19, 1978).

[57] At this writing, the bills are H.R. 1071, 96th Cong., 1st Sess., 125 CONG. REC. 463 (1979), introduced by Rep. Joseph Moakley, which would authorize state legislative actions or state referenda on storage proposal; H.R. 1791, 96th Cong., 1st Sess., 125 CONG. REC. 1666 (1979), introduced by Rep. James M. Hanley, which would subject federal proposals to store radioactive waste to state legislature's review; S.1443, 96th Cong., 1st Sess., 125 CONG. REC. 16893 (1979), introduced by Senator John Durkin, to authorize approval by state legislatures or Indian tribes of proposal radioactive waste disposal facilities; and H.R. 2762, 96th Cong., 1st Sess., 125 CONG. REC. 4417 (1979), to create a process for states to participate in proposed radioactive disposal facilities decisions, and to approve or disapprove of final disposal decisions.

COMMUNICATION FROM THE SERGEANT AT ARMS—SUBPENAS DUCES TECUM IN CASE OF UNITED STATES, DISTRICT OF COLUMBIA AGAINST STACY ABNEY

The SPEAKER pro tempore laid before the House the following communication from the Sergeant at Arms of the House of Representatives:

WASHINGTON, D.C.,
July 2, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: On July 1, 1980 I was served with a subpoena duces tecum; said subpoena was issued by the Superior Court of the District of Columbia.

The subpoena commands me to appear before the Criminal Division, Misdemeanor Branch on July 3, 1980 and requests the production of certain House records. The subpoena is available in my office for inspection by any Member.

Sincerely,

BENJAMIN J. GUTHRIE,
Sergeant at Arms.

The SPEAKER pro tempore. The Clerk will read the subpenas.

The Clerk read as follows:

[Superior Court of the District of Columbia; Docket No. M-3934-80, T-3190-80]

U.S. DISTRICT OF COLUMBIA *vs.* STACY ABNEY

To: Benjamin J. Guthrie, Sergeant at Arms, U.S. House of Representatives, U.S. Capitol.

You are hereby commanded to appear before the Criminal Division, Misdemeanor Branch, Courtroom 19, of the Superior Court of the District of Columbia at 9:00 a.m., on the 3d day of July, 1980, as a witness for defendant and bring with you all records pertaining to demonstration permits issued by the Capitol Police used for demonstrations on the U.S. Capitol grounds from January, 1980 to the present.

[Superior Court of the District of Columbia, Docket No. M3934]

U.S. DISTRICT OF COLUMBIA *vs.* STACY ABNEY

To: James Powell, Chief, Capitol Hill Police.

You are hereby commanded to appear before the Criminal Division, Courtroom 19, of the Superior Court of the District of Columbia at 8:00 o'clock a.m. on the 3d day of July, 1980, as a witness for the defendant and bring with you all permits issued to individuals or groups for demonstrations on the Capitol Grounds from January, 1980 to the present.

COMMUNICATION FROM THE SERGEANT AT ARMS—SUBPENA DUCES TECUM IN CASE OF UNITED STATES, DISTRICT OF COLUMBIA AGAINST STACY ABNEY

The SPEAKER pro tempore laid before the House the following communication from the Sergeant at Arms of the House of Representatives:

WASHINGTON, D.C.,
September 8, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: On September 8, 1980 I was served with a subpoena duces tecum; said subpoena was issued by the Superior Court of the District of Columbia.

The subpoena commands me to appear before the Criminal Division, Misdemeanor Branch on September 15, 1980 and requests the production of certain House records. The subpoena is available in my office for inspection by any Member.

Sincerely,

BENJAMIN J. GUTHRIE,
Sergeant at Arms.

The SPEAKER pro tempore. The Clerk will read the subpena.

The Clerk read as follows:

[Superior Court of the District of Columbia; Docket No. M-3934-8; T-3190-80]

U.S. DISTRICT OF COLUMBIA *vs.* STACEY ABNEY

To: Benjamin J. Guthrie, sergeant at arms, U.S. House of Representatives, U.S. Capitol.

You are hereby commanded to appear before the Criminal Division, Misdemeanor Branch, Courtroom 19, of the Superior Court of the District of Columbia, at 9:00 o'clock a.m. on the 15th day of September, 1980, as a witness for _____ and bring with you copies of applications for demonstration permits issued by Capitol Police Board from January 1980 to present.

SPECIAL PERMISSION RELATING TO SPECIAL ORDER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGRICH) will be recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I ask unanimous consent that my special order follow that of the gentleman from Florida (Mr. FASCELL).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

A TRIBUTE TO THE HONORABLE CLAUDE PEPPER ON HIS 80TH BIRTHDAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. FASCELL) is recognized for 60 minutes.

Mr. FASCELL. Mr. Speaker, I thank the gentleman from Georgia (Mr. GINGRICH) for the gracious deferral of his own special order so that I might, with my colleagues, take the floor at this time on a very rare and historical occasion, one which will give all of us, I am sure, great pleasure.

Mr. Speaker, we in the House of Representatives are privileged to count CLAUDE PEPPER as one of our most esteemed Members and it is with respect and affection that we honor him today on his 80th birthday. Our congratulations are offered on this milestone for his more than 50 years of public service and for his countless contributions to the United States and to the people he has represented so ably and so tirelessly. I invite our colleagues in the House to join with me in extending warmest birthday wishes to this distinguished gentleman from Florida.

It is certainly fitting that CLAUDE PEPPER was born at the dawn of the 20th century, the period of our country's most rapid growth. This era of intense progress has required the utmost adaptability and resourcefulness of the Nation and of the men and women who have led her. CLAUDE never declined the challenges of this time, but accepted them, welcomed them and answered them. CLAUDE witnessed the changes that advanced technology brought to industry, transportation and trade. He saw the changing human needs of our people and never ceased his efforts in support of programs to meet and anticipate these needs. He has been a man ahead of his time, a man willing to accept the advances of this age and eager to address the concomitant issues. His record is a remarkable one.

From the time that CLAUDE became a Floridian in 1925, he has served our State in many capacities and it was in the Florida House of Representatives that his legislative career began. In 1936, CLAUDE was elected to the U.S. Senate, where he served with distinction until 1951. And since 1963, CLAUDE has been a highly effective, valued and admired Member of the House. He is a skilled, experienced lawmaker, evidenced by his responsibilities as ranking member of one of our most important and technical committees, House Rules. He sees and understands the social problems of this century and, because of his ability as a legislator, is able to do something about them.

The list of reforms that CLAUDE PEPPER has shaped and guided through the Congress is lengthy and impressive. From the days of the New Deal to the present, CLAUDE has championed the needy of every age and station. But, his most recent efforts have been directed toward the welfare of older Americans and it is in this work that he has accomplished some of the most needed corrective action. Since he assumed the chair of the House Select Committee on Aging, many improvements in health and social progams have been brought about, the mandatory retirement law has been liberalized and a program designed to end abuses in the sale of health insurance to the elderly has been established. He has worked to demonstrate that persons over 65 have much to contribute to our society and his own life bears this out. CLAUDE proves to younger and older Americans alike that life can be full and productive at 80.

It has been an honor for me to know CLAUDE PEPPER and his dearly remembered wife Mildred. I am proud of the years we have worked together in the Congress and of what has been accomplished here. I wish CLAUDE every happiness today on his birthday and in the coming year. May we celebrate many such happy days.

Mr. BOLLING. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the distinguished Chairman of the Committee on Rules.

Mr. BOLLING. Mr. Speaker, I am delighted that the gentleman from Florida (Mr. FASCELL) has taken this special order, and I am delighted to have the opportunity to join with him.

I have said this many times to our dear friend, CLAUDE, that back when I graduated from a southern college in 1937, he was not only my hero but he was the hero of all the people of like mind in that college in Tennessee. I graduated from Sewanee.

I grew up in north Alabama, in Huntsville, and I had a special feeling for CLAUDE even in those days because he came from Alabama, too.

□ 1930

But I have not told him why I felt that way about him then, and I have not told him another fact, that in 1946, when most Democrats were very discouraged and were not venturing out from their safe places to campaign for others or for the party, CLAUDE PEPPER was out working as hard as a man could work, and I had the pleasure, as one of my first political acts in Kansas City, Mo., to introduce him at a dinner, a small dinner, at which he was the principal speaker. I had my first opportunity to see and hear this man I had admired so long. Now, of course, I have the privilege of serving on a committee with him, and I find that the qualities that endeared him to me in 1937 and in 1946 are still with him.

The gentleman from Florida (Mr. FASCELL) has said it very well. I would say it only a little bit differently: I know of no man in American politics at any time in my experience or now who has greater compassion, a stronger feeling for the people who needed help, the people who need help and are discriminated against in any way. He led the way in the South, in my opinion, in feeling that people should be treated fairly, all people. He did it in the most important possible way, by putting his record on the line time and time again.

I say without any hesitation that this country could only have been improved by CLAUDE PEPPER had his service not been interrupted. He is a person who, from the people that he served, always deserved the best, and the best is more than election victory. I am delighted that he is back in the Congress and has been for longer than most Members serve, having served a long time in the U.S. Senate and now a long time in the House of Representatives, and I hope I am as young as he is when I reach the age of 65.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding.

Mr. Speaker, there is so little that one can add to what has been said by these two eloquent speakers. I am only 5½ years in the House, and in that short time I have learned to respect and admire CLAUDE PEPPER. And more than that, I have the greatest affection for him. I tried like mad to get on his committee. I was not successful. If I am elected, I will try again. I can think of no greater honor and pleasure.

I have learned that the thing that really counts in political life is wholeheartedness, integrity and a true desire to do what you say you are doing. Of all of the people I have known here in the Congress, I think that this Member, this friend, this dear friend of ours, on his 80th birthday, has so clearly brought that home to each one of us.

I think that is the source of the affection which surrounds him every day and the respect and admiration that we have.

Mr. DRINAN. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from Massachusetts.

Mr. DRINAN. I thank the gentleman for yielding.

Mr. Speaker, it is with great pleasure that I join my colleagues in honoring our esteemed friend, CLAUDE PEPPER, on this his 80th birthday. It is difficult for me to think of CLAUDE as 80 since that is traditionally a time in life when many choose to slow down. I was amused by a recent press account which described CLAUDE as "galloping" toward his 80th birthday. Those of us who have worked closely with him know all too well that CLAUDE never slows down.

He is untiring and unyielding in his efforts to achieve a better, more dignified way of life for the elderly, the poor, the disenfranchised. At the national level he is best known for his advocacy of the rights of older Americans. Throughout the South he is remembered for his unrelenting efforts to achieve racial justice long before the civil rights struggles of the 1960's. And, within his own 14th District in Florida, he is associated at this time with efforts to provide decent and humane resettlement for thousands of Cuban refugees.

He has enjoyed an astonishing record of success in his role as chairman of the House Select Committee on Aging. There is no issue of importance to older Americans which that committee has not addressed. Under CLAUDE's command the committee serves as a vigilant watchdog for the concerns of older citizens in each and every piece of legislation that comes before the House.

Early in the 95th Congress, CLAUDE decided that a change in public policy on mandatory retirement was vital if we were truly going to end discrimination based on age. Many felt it would not be possible to bring about such a significant change in national policy within the short space of 2 years. On October 18, 1978, the Age Discrimination Act amendments were signed into law eradicating the age-based retirement of Federal employees and increasing the retirement age in private employment from 65 to 70. Without the forceful and able leadership of CLAUDE PEPPER that victory would not have been possible.

His triumphs are too numerous to mention, but they include extending the popular Meals-on-Wheels program to the housebound elderly; establishing a program to combat crime in public housing and obtaining Amtrak discounts for older citizens. He continues to wage a diligent campaign to provide alternatives to nursing homes. Next to age discrimination, I think nothing troubles CLAUDE more than the overinstitutionalization of our older citizens. I know he will not rest until federal policy emphasizes home health care and other support services aimed at allowing older citizens to remain in their homes and in their neighborhoods.

I know CLAUDE has much planned for the Committee on Aging and in his many other endeavors. I am glad that he has paused to enjoy this birthday. Like Robert Frost in his lovely poem "Stopping by Woods on a Snowy Evening," CLAUDE's life proclaims that he has promises to keep and miles to go before he sleeps.

Mr. FASCELL. I thank the gentleman for his remarks.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, it is with great pleasure that I rise to join my colleagues in extending to the gentleman from Florida (Mr. PEPPER) our very best wishes on this day, his 80th birthday and I commend the gentleman from Florida, (Mr. FASCELL) for taking this time on the House floor to honor our colleague in this manner.

Congressman CLAUDE PEPPER's record of service to this Nation, as we all know, is not only lengthy but is quite impressive. He first came to the Capitol in 1936 as a U.S. Senator and has served the people of Florida in many ways and in many capacities in the 44 years since that time. He has represented the 14th District of Florida since 1968 with a vigor and energy envied by his younger colleagues.

CLAUDE PEPPER's name is a household word in the homes of our senior citizens throughout our Nation, for it was he that successfully introduced and guided through the Congress a bill raising the mandatory retirement age from 65 to 70 for most jobs in the United States. As chairman of the Select Committee on Aging, he has followed that effort with the introduction of legislation to protect the health, safety, incomes, and rights of senior citizens.

Among the bills which he has authored are the Drug Benefits for the Aged Act, the Older Americans Civil Rights Act, the Long-Term Care Services Act, the Medicare Long-Term Care Act, the Space Technology for the Elderly Act, the Nursing Home Reform Act, and many others. It has been my privilege to join the distinguished gentleman from Florida in several of his efforts as a cosponsor of the Senior Citizens Health Insurance Reform Act and the Foreign Service Retirement Amendments.

It is obvious that Mr. PEPPER's own district and the House of Representatives have not been the only beneficiaries of his leadership and initiative. His dedication and tireless effort have had and continue to have a significant—and fa-

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vorable—impact on the elderly citizens of our Nation.

As he celebrates his birthday today, I take pleasure joining my colleagues in extending to CLAUDE PEPPER our congratulations, gratitude and respect, and our very best wishes for many more productive years.

Mr. ANDERSON of California. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from California.

Mr. ANDERSON of California. I thank the gentleman for yielding, and I want to congratulate the gentleman for giving us this opportunity to tell CLAUDE what we think of him today on his 80th birthday.

Mr. Speaker, I was listening to the remarks of the gentleman from Missouri a moment ago, and I want to also associate myself with his remarks. But I want to remind him that while he was introducing CLAUDE at some meeting in 1946, out in California we were sponsoring and advocating him for the Presidency.

Mr. Speaker, it is with some feeling of awe, and perhaps inadequacy, that we call attention to the 80th birthday of CLAUDE PEPPER. I expect that his 100th birthday will also be celebrated in this Chamber, and that in the intervening 20 years, he will have accomplished more than most of us in our whole lifetimes.

I will leave it to others to catalogue CLAUDE PEPPER's record, but it could be the standard for public service for all of us in the 20th century. While it may be appropriate that the congressional champion of senior citizens has the earliest date on his birth certificate, his actions certainly belie the statistic. He attacks problems with the zeal of a freshman. Combined with his experience, this means he usually gets results. There is hardly a committee of this House which has not felt his hand prodding legislation to benefit the elderly.

Because my own district has one of the highest proportions of elderly in the country, I am especially grateful that his attention in recent years has focused on the concerns of senior citizens. I have been pleased to join him in a variety of successful legislative efforts in medicare, social security, insurance, transportation, retirement and many other issues important to the growing number of senior citizens in my area.

Even my own Subcommittee on Aviation, as remote as it may sound, has not been immune to CLAUDE's influence. As the result of one of his bills, we are expecting in December to receive a report from the National Institute on Aging which may lead to later retirement ages for airline pilots.

In addition to my appreciation for his leadership, working with CLAUDE PEPPER has been one of the great personal pleasures of my career in the House.

Mrs. Anderson and I offer Congressman PEPPER our best wishes on his 80th birthday. I also wish the rest of us could do as well at any age as does this octogenarian.

□ 1940

Mr. FASCELL. I yield to my distinguished colleague, the gentleman from Florida (Mr. HUTTO).

Mr. HUTTO. Mr. Speaker, I appreciate my colleague taking this special order. I want to join in this tribute to the distinguished gentleman from Florida, Congressman CLAUDE PEPPER, my good friend and Member of the Florida delegation on the occasion of his 80th birthday.

This man without a doubt is one of the most beloved politicians who ever served the great Sunshine State of Florida. As a fellow Alabamian, I think it is noteworthy that CLAUDE even before coming to Florida had a rather distinguished career in his native state of Alabama. I was particularly pleased to learn to know that he taught in Dothan, Ala., back in 1917 and 1918. This was quite a while before I was born, but it is right near, just a few miles from my birthplace in Midland City, Ala., and later I worked in Dothan, as he did. I was in broadcasting.

I had heard of CLAUDE PEPPER for a long time, but I never personally had the opportunity to meet him until I began my service in the Florida legislature in 1972.

CLAUDE once served there in the Florida House. Each year he comes back to Florida to visit the chamber and to address the Members of the Florida Legislature during its session. He is the only Florida delegate member that does this on an annual basis.

Since he represented Taylor County in the Florida House, he always makes it a point, and this was back in 1930, but every year when he comes back he makes it a point to go and sit with the member who serves that county, Taylor County. It so happens that Representative James Harold Thompson now represents that county and I sat next to Representative Thompson so that CLAUDE would come down and sit between us. That is where I first met CLAUDE and I had the pleasure of visiting with him on a number of occasions. It was then that I learned why CLAUDE PEPPER is the distinguished and beloved statesman of which all the State of Florida is justifiably proud.

Needless to say, when I came to the Congress after my election in 1978, one of the first persons in the Florida delegation that I visited with was CLAUDE PEPPER. As a freshman, it has been a source of encouragement and strength to have his wise advice, counsel and wisdom. He has been very helpful to me, as I am sure he has been to all the Members in our delegation, particularly the freshmen.

CLAUDE PEPPER is a very compassionate man and it is apparent by looking at his record that he has been understanding and helpful to many, many people during his long tenure of public service. His latest thing, of course, is that of being chairman of the Select Committee on Aging, which has been mentioned here several times, and for his work in seeking to help our senior citizens, I applaud his sincere efforts.

I believe that the lives of our aging population will be made better and be enriched in the future because of the work of this man.

It was during his visits to the Florida legislature that I also had the privilege of meeting his beloved wife, Mildred. We all mourn with him the loss of her a year or so ago of this charming lady. CLAUDE is a fine family man. Just recently I enjoyed visiting with some other members of his family, his brother Frank, who is a television personality in Tallahassee, whom I have the pleasure of knowing, and other relatives as they visited here in the Capitol; so I consider it a distinct honor and privilege to know CLAUDE PEPPER and to serve in the same delegation with him.

I look forward to the pleasure of serving with you, CLAUDE, for the next 20 years. I am counting on you to have another special order on his 100th birthday.

Mr. FASCELL. Mr. Speaker, I yield to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, I thank the gentleman from Florida very much.

Mr. Speaker, I am pleased to join in this tribute to our colleague, CLAUDE PEPPER.

We all go back in our recollections. I can remember as a boy admiring CLAUDE PEPPER.

One other little footnote here, I believe I am correct in saying that no person in U.S. history after having served in the Senate has served as long as CLAUDE PEPPER has in the House, so that he deserves a little footnote in history for those numbers; but it is not those numbers or even the numbers of 80 years for which we really honor him. It is for what those years have represented.

Our colleague, the gentlewoman from New Jersey (Mrs. FENWICK) talked about genuineness, and there is not a phony bone in CLAUDE PEPPER's body. As I walked over here from the Cannon Building, I thought, how do you really honor someone like CLAUDE PEPPER? I think we really pay tribute to CLAUDE PEPPER by doing two things. One is looking in our own communities and saying, where are the CLAUDE PEPPERS in our communities that we have denied an opportunity to sit on a city council or a county board or whatever the organization might be, who could enrich those bodies as CLAUDE has enriched us here? That is one thing we can do.

The second is to make sure that we move ahead and show concern for people. Medicare, for example, just one minor change would mean an awful lot for a great many senior citizens, and that is to cover dentures, hearing aids, and eyeglasses under medicare; not a huge thing in the Federal budget, a small thing, but an important thing. Those are the kinds of things we need.

I want to thank my colleague, the gentleman from Florida, for setting up this Special Order. We determine whether we are a civilized society, not by how we help the rich and the powerful. It is easy to do that. Any government can do that. We determine whether we are really a civilized society by whether we help people who desperately need

help, who may not even know that we are in session here.

CLAUDE PEPPER has spent his life helping people, helping make us a civilized society. I am personally enriched by having the privilege of knowing and being able to call him a friend. Our House is enriched, our Nation is enriched. We are proud of you, CLAUDE PEPPER.

Mr. FASCELL. Mr. Speaker, I thank the gentleman.

I yield to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, I thank the gentleman from Florida for making this special order possible.

What I have to say is very informal and is based totally on a couple of reminiscences of mine. I recall, the first had to do with CLAUDE PEPPER's Senate service. The second was with his House service.

A good number of years ago, around 1948, I began to specialize in labor law way down at that time I was in Ft. Worth and later in Dallas and then back to Houston; but I did not know much about labor law, neither did hardly anybody else in the country, because the Taft-Hartley Act had just been passed in 1947. There were not any cases on it but there was a book put out by BNA, sort of a paperback volume that gave the history of the Taft-Hartley Act and it was from that that we interpreted this immensely complicated act.

Well, I did not know CLAUDE PEPPER at that time, but I had to study that book, because it was about all we had. I will tell you what I discovered from studying that book, and that is that there were only two people in the Senate that knew anything about the Taft-Hartley Act. One of them was Senator Bob Taft and the other was CLAUDE PEPPER. Of course, since CLAUDE liked to interpret the act more to my side than Bob Taft did, I was very, very interested in what he had to say about it.

□ 1950

But there was no one who had a fuller understanding of a piece of legislation than the gentleman that we honor today.

The other instance that I recall was in his House service. I was rather young here. I had just gotten on the Committee on Interstate and Foreign Commerce and we were dealing with a very thorny railroad question. The problem to try to accomplish was to prevent a lot of people in the country from being hurt by a strike and a lot of people who were working for the railroad from being hurt by a strike, too. We did not want to get them out on the pavement.

There were a lot of attempts that came out of the committee, there were a lot of viewpoints that came from across the aisle. All of a sudden CLAUDE PEPPER got up at the very opportune moment and offered an amendment which I think, as I recall, extended the waiting period, the cooling period for the strike. It suddenly was taken up by this entire body and passed.

My colleagues know how unusual it is for a person to be able to stand up and just at the opportune moment, and without ever having worked on the bill or lined up all of these special interest groups, to catch that moment and make it meaningful and swing this body.

I have seen that, and that is something that is so unusual that it bespeaks of a man of enormous legislative quality.

So what I am adding to what has been discussed here I think is an ingredient above his great kindness, his great standing as a person whom we all revere, his representation of his folks at home, and yet all of these things I think are also embodied in what I am trying to say here; that is, his enormous ability as a legislator, both in his service in the other body and in his service here.

I know I have seen some lawyers, particularly in criminal court actions, that seem to know exactly when to say a certain word and then the judge dismisses the whole case. CLAUDE PEPPER has that same sense of timing for this floor. He has taught me a great deal and I greatly revere and honor him and hold him in highest esteem for my period of having been able to watch his action here. He has taught me a lot and I thank him for it.

Mr. FASCELL. I thank the gentleman.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. I thank the gentleman for yielding because this is an occasion that we must all participate in.

First of all I associate myself with all the remarks of my colleagues which have heretofore been made because, in the first place, that enables me to hold the length of my little discourse down somewhat. Second, it simply is not possible for any one of us to remember even a portion of the good things about CLAUDE PEPPER.

I have a somewhat unique recollection of CLAUDE PEPPER. I just may have known him longer than anybody in this Chamber.

In 1940 during the 76th Congress, and that is a piece back, I was a special agent of the FBI. At that time the Capitol Building had no real police force. The war had broken out in Europe. We were not yet actively engaged in it. But the Architect of the Capitol and the Speaker, I have forgotten his name now, Speaker Bankhead, then Vice President, the one from Texas with the eyebrows, "Cactus Jack" Gardner, formed a police board and they sent down to the FBI and asked Hoover to send up a few agents to guard the Capitol because they had word that there were some marked people, marked men in the Senate and in the House who were going to get shot. One of them was CLAUDE PEPPER. He did not know it, but he knows it now.

So believe it or not, J. Edgar Hoover sent up two of us. I took the Capitol from that white stone in the middle of the Rotunda all the way through the Senate, and Herbie Brund, a friend of mine, took the Capitol from the white stone in the middle of the Rotunda all the way through the House. We were supposed to protect these 17 Members of Congress from assassination.

So he did not know it at the time, but I followed CLAUDE PEPPER around day in and day out and seldom let him out of my sight.

But I was enriched by that because I got to watch CLAUDE PEPPER in action over in the other body. That was before he had completed his training and come to the House. CLAUDE PEPPER was a magnificent Member of the other body.

I was particularly attracted because he was a good friend of my boyhood hero, Senator George W. Norris from Nebraska. In fact, they were very much alike. They were always in a fight for one reason or another. They never gave up for any reason whatsoever, and they accomplished a great deal.

Mr. Speaker, you will recall that in 1940 the Spanish Civil War had just been over a few months. Those Americans who had joined the Abraham Lincoln Brigade, and who had gone over to fight with the Loyalists, were somehow or other determined to be "Communistly inclined" or some such thing, and here when they returned to America they were the subject of contumely, opprobrium, hatred, and contempt of various sorts. But not by CLAUDE PEPPER.

CLAUDE PEPPER realized that as Americans they had a right to stand up for what they thought was good and decent in the world. I was so proud of CLAUDE PEPPER, along with Senator Norris, who would get down there on the floor and defend these Americans who did so much in the court of the Spanish Civil War to uphold the cause of people and liberty and freedom. I am happy to remember that less than 2 years later the United States of America was at war with the very people whom CLAUDE PEPPER and George Norris were protecting for having taken part in the war against Fascism from 1935 to 1939. I thank you today for that, CLAUDE. It was great.

But the important lesson is this: CLAUDE PEPPER saw that long ago and it was 2 years later when the Fascists forced us into war against them that the rest of the world recognized it.

Having worked there for a long time and watching this great man, my colleagues can imagine my pleasure on coming to the Congress 10 years ago and having an opportunity to work with, as a colleague, CLAUDE PEPPER. It was one of the great experiences when I arrived in Congress and has been ever since.

We have a little inside joke. I see CLAUDE once in a while and I say, "CLAUDE, I swear I met your father 40 years ago in the 76th Congress." Well, CLAUDE is laughing now. We kind of enjoy that little byplay.

But he has not gotten older. Forty years have gone by. He is wiser, but he is no older. He is still full of it. His whole personality is one of warmth and love and yet he fights like a tiger. For that reason I call him in my mind the tender tiger. That is just what he has been, what he will be.

CLAUDE, you are an old friend, you are a great friend. Everybody in the Congress loves you. We want you to stick around and give us a lot more guidance. There is no one in America, no one man, woman, or child who has not been en-

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riched by the fact that you have been here. I thank you.

● Mr. BAFALIS. Mr. Speaker, few States can boast a man with a record of public service to equal that of our colleague from Florida, the Honorable CLAUDE PEPPER, and I am delighted to have this opportunity to join the House in commemorating his 80th birthday.

CLAUDE PEPPER has a record of public service which dates back almost to Florida's beginnings. He began his career as a public servant in 1929 when he was elected to the Florida State House of Representatives. In 1936, he came to Washington as a U.S. Senator and won reelection in 1938 and 1944. He returned to Washington in 1962 as a Member of this body and has been an active, productive leader here ever since.

During that time he has compiled a list of citations and awards for public service virtually unparalleled. But more important, he has served his State and Nation so well, he has set a mark for all of us to aim for.

Few Americans are given an opportunity to be of real service to their country and then usually only for relatively short periods of time. But CLAUDE PEPPER has been of real service to this Nation for more years than many of us have been even aware of the need for public service.

His list of legislative accomplishments is long. His list of service to the people is even longer.

On this, has 80th birthday, I can only join my fellow Floridians in thanking him and wishing him many more years of active service.●

● Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to take this opportunity to pay tribute to my colleague in the House and on the Select Committee on Aging, CLAUDE PEPPER, on his 80th birthday. It is difficult to convey in words the admiration and great respect I have for CLAUDE PEPPER.

CLAUDE PEPPER was a Member of the House when I came to serve my first term, and I have worked with him in various capacities over 14 years now. We have a great Arkansas connection which goes back even farther than that. CLAUDE taught law at the University of Arkansas from 1924 to 1925, and we often discuss that one of his illustrious students was the great William Fulbright, former Senator and chairman of the Foreign Relations Committee. Even now his contemporaries in the Fayetteville area still inquire about CLAUDE.

I believe CLAUDE PEPPER is a statesman in the truest sense of the word. After suffering a defeat at the end of 14 distinguished years in the Senate, a man of lesser mettle might have been satisfied to return to Miami and to a comfortable law practice. Instead, CLAUDE worked hard for another chance to represent the people of Florida—this time in the House of Representatives. He has served a total of 32 years in the Congress and has touched more people's lives than any of us could hope to.

I have come to know CLAUDE best in working with him on the Select Committee on Aging. It has been my good fortune to serve with him since the committee's inception. The committee could ask for no finer chairman, and the elderly could ask for no more dedicated champion of their cause.

I am very proud of the accomplishments of the committee under the leadership of Chairman PEPPER. He successfully lead the fight to abolish mandatory retirement in the public sector and to extend the working lives of employees of the private sector. Under his guidance, the committee held the first national conference on mental health and the elderly and has taken a premier role in organizing the upcoming symposium on cancer research. And, just this year, his tireless efforts culminated in the establishment of a system which would protect unsuspecting elderly people from buying ineffective health insurance policies to supplement their medicare benefits. CLAUDE PEPPER continues to be concerned with the health, nutrition, housing needs, income, and overall welfare of all the people of this country.

It is my sincere wish that you have the happiest of birthdays, Senator, and a future which is as brilliant as your past.●

● Mr. RANGEL. Mr. Speaker, I rise today to join with my colleagues in paying tribute to our great colleague, CLAUDE PEPPER. As he celebrates his 80th birthday, I just would like to take a couple of moments to share with you some of the things that make him a great statesman.

Congressman PEPPER has been in the vanguard of the movement to provide the elderly within our Nation with the tools they need in order to live out their remaining years in dignity and happiness. It was as a result of his leadership that the House of Representatives established the Select Committee on Aging. As chairman of this committee, our dear friend has shepherded through the Congress the bill that raised the mandatory retirement age for most jobs in this land from 65 to 70 years of age. The implications of this major legislation will be seen for many years to come, especially when born during the baby boom move into their "golden years."

I have had the privilege of working with the "Senator" in several areas. I sat on the Select Committee on Crime, where I was able to learn of his compassion for people who are oftentimes neglected by those who attempt to legislate. That committee served as a catalyst for many of the anticrime programs that followed, in that his committee provided the legislative history that was necessary to document the need for the legislation.

At the beginning of the 96th Congress, I assumed the chairmanship of the Health Subcommittee of Ways and Means. In this new role I have again been brought closer to our colleague, as we both attempt to deal with the health problems which confront our seniors. Here again I have seen that the gentleman from Florida does have a full grasp of the issue and is totally committed to working with all groups to see that the Congress does its full share in providing for our senior citizens.

I have enjoyed the privilege of serving with my good friend, CLAUDE. On this your 80th birthday, I wish you well and many happy returns. The country and we here in the House need the benefit of your wisdom.●

● Mr. ANNUNZIO. Mr. Speaker, I am delighted to join my distinguished colleague, the Honorable DANTE FASCELL, in saluting our good friend and esteemed colleague, the Honorable CLAUDE PEPPER, on his 80th birthday.

Congressman PEPPER is the oldest Member of the House of Representatives, and I am honored to have served in the House with him since 1965 and to have benefited from his counsel and advice. He continues to give his best in service to his Florida constituents and to the people of our Nation. His oustanding dedication to high standards is an inspiration to his friends and fellow citizens and his record of excellence and creative accomplishment is most commendable.

CLAUDE began his career in Congress as a U.S. Senator from Florida during the years 1936–50, and was elected to his first term in the House in the year 1962. During his long career he has witnessed some of the greatest moments in the history of mankind and he has experienced, in a very real sense, the triumphs and the tragedies of our Nation.

CLAUDE PEPPER, as chairman of the Select Committee on Aging, has also given years of outstanding service to our senior citizens. He is dedicated to the well-being of every senior citizen in America. He is our watchdog, in the Rules Committee and on the floor of the House, on legislation that involves the concerns of senior citizens. CLAUDE PEPPER seeks the best for those people who were responsible for the building of America. I often have heard him say, "This is the least we can do for those who have done so much for America."

I have known CLAUDE PEPPER since 1948. I met him at the Morrison Hotel in Chicago in that campaign where he electrified the audience with his brilliant speech on the programs of the New Deal and how they involve each and every American. He has never lost that zeal and that fire as a champion of all the people by espousing that it is good and it is right for people to share in the wealth of America, because he believes that a productive citizen is what makes a Democratic country like ours strong. He firmly believes that each citizen who has produced for America and who has contributed to the wealth of America must be remembered by America in the twilight of their lives.

Again, CLAUDE, congratulations on this honor, and I extend to you my warmest best wishes for abundant good health and ever-increasing success as you continue to serve your State and your Nation in devotion to high principle.●

● Mrs. HOLT. Mr. Speaker, CLAUDE PEPPER has served in the Congress of the United States with honor and conviction. We have marvelled at his old fashioned oratory and delighted in his Southern wit. For unflinching commitment to civil liberties and passionate support for the

aged, this octogenarian has earned our unwavering respect. For service to his country we pay him tribute.●

● Mr. FORD of Tennessee. Mr. Speaker, it is indeed an honor to join my colleagues in a tribute to an esteemed Member of this House, Chairman CLAUDE PEPPER.

Mr. PEPPER is an extraordinarily dedicated, capable, and hard-working colleague, who has gained the respect and admiration of each House Member with whom he has served.

Over the past years, he has carved out a unique role in Congress, and has distinguished himself nationwide as a fighter for human rights and justice for all elderly Americans. Long before assuming the chairmanship of the Aging Committee, he has been in the forefront of legislative battles to provide programs and services needed by the elderly, especially the poor elderly.

He has helped to make history as well as legislate it. Chairman PEPPER was instrumental in the passage of the mandatory retirement bill which added dignity to the working life of the elderly. He is a constant leader in the struggle to secure full physical and mental health coverage under medicare for the elderly. Under his leadership the Aging Committee has accomplished much toward bringing to the surface and alleviating many hidden problems of the elderly, and it is a real honor for me to serve on the Select Committee on Aging with him.

I am honored to add my birthday salute to Chairman PEPPER. I wish him much joy and happiness on this his 80th birthday.●

● Mr. OTTINGER. Mr. Speaker, today, CLAUDE PEPPER, my distinguished friend, Rayburn neighbor, and colleague, celebrates his 80th birthday. In his more than 30 years of congressional service, Mr. PEPPER has served in the finest traditions of our political system and the Democratic Party. The city of Miami, the State of Florida, and the United States should be proud that they have been represented by such a distinguished public servant.

During his tenure in the Senate, Mr. PEPPER helped maintain the ideals and programs of the New Deal. Later, he worked to prepare our country to confront the growing Nazi menace in Europe.

As a nine-term representative of the 14th Congressional District in Miami, he has fought to protect the elderly, fight crime, and develop a more productive economy. He has been an important voice on the Rules Committee and a true ally of humanitarian causes. His leadership on the Select Committee on Aging has made a significant difference in the quality of life for older Americans.

Not only has his record of service been exemplary, but his sense of humor and vigor have earned the admiration of both political friends and adversaries. Anyone who has heard CLAUDE tell a fascinating tale or joke must surely share my great respect for his warmth of character.

On his 80th birthday, CLAUDE PEPPER stands as a model to all of the senior citizens of this country. He is living proof that "age is a state of mind." One need only observe CLAUDE to realize why he has fought so hard to raise the mandatory retirement age.

Today, I join my colleagues in sending good wishes to CLAUDE for a most enjoyable birthday and many more successful years in Congress.●

● Mr. HUGHES. Mr. Speaker, it is a privilege and pleasure to join with so many of my colleagues in the House of Representatives to wish our good and beloved friend, CLAUDE PEPPER, a most happy birthday.

CLAUDE PEPPER has enjoyed a rich and rewarding career in both the Senate and House. In this respect, the Senate's loss is most assuredly, the House's gain.

When CLAUDE PEPPER left the Senate after a long and distinguished career, he could have rested on his laurels, practiced law and enjoyed the good life but that is not CLAUDE's style. Public service is just too important to him.

Always a champion of the less fortunate, CLAUDE PEPPER has done more than anyone in either body of Congress to advance the cause of the Nation's elderly.

His awesome talents and energies have been directed toward advocating the rights of the elderly and he has proved to be a most able advocate indeed. I think that one reason he has been so successful in improving the quality of life for older Americans is the fact that he is not a 35-year-old social scientist but a shining example of maturity and wisdom. The list of legislative achievements including ending mandatory retirement on the Federal level is a long and impressive one. Yet he has only begun to fight.

CLAUDE has often said that some day he will retire. He likes the sound of the year 2000. I, for one, am skeptical that this will ever happen.

CLAUDE, let me wish you all the best on this special occasion and may you have many, many more.●

● Mr. LEHMAN. Mr. Speaker, I am pleased to join with my colleagues in honoring CLAUDE PEPPER on the occasion of his 80th birthday. We are all grateful for the many years of public service which CLAUDE has given to his country.

Most of my colleagues are well aware of the important role CLAUDE PEPPER has played in championing the cause of the elderly and standing up for other disadvantaged groups in this country. I would like to honor him also for his courage and foresight during his years as a U.S. Senator.

He was President Roosevelt's point man in the Senate on major foreign policy initiatives. He recognized the threat to world democracy posed by the Axis powers at a time when America was steeped in isolationism.

Without CLAUDE PEPPER's courageous efforts, there would not have been a lend-lease program. Without his leadership, congressional approval of Roosevelt's decision to exchange destroyers for bases would not have been forthcoming.

This exchange was extremely controversial in 1940 and 1941. It supplied the British with 50 U.S. destroyers while the United States gained bases in places like Bermuda and the Bahamas. Today most scholars agree that the destroyers were instrumental in saving Great Britain from the might of Nazi Germany. This action also put the United States on record as supporting the cause of Great Britain and the many countries which Hitler had ruthlessly conquered.

These were critical decisions and CLAUDE PEPPER was not afraid to press for what he thought was right. World War II became the proving ground for U.S. world leadership, and I believe that we would not have as great a country today if it were not for CLAUDE PEPPER's magnificent contributions as a U.S. Senator.●

● Mr. SEBELIUS. Mr. Speaker, I would like to join my colleagues in paying tribute to our distinguished Member from Florida, the Honorable CLAUDE PEPPER on the occasion of his 80th birthday.

CLAUDE PEPPER has not only been an inspiration to his fellows in the Congress, but has been the champion of senior citizens throughout our great country. Because of his efforts, many Americans have been able to remain on their jobs and not be forced into retirement at the arbitrary age of 65. CLAUDE PEPPER knows what an up hill battle older Americans have to face. He has served almost half his congressional career after his 65th birthday.

Congressman PEPPER is truly an example of a man with courage and stamina. After having served in the U.S. Senate from 1936 through 1950 and being defeated in that year, he went home to Miami. Ten years later, CLAUDE PEPPER was back on Capitol Hill, representing his district in the House at the age of 60. And now, 20 years later, he is still among us and celebrating his 80th anniversary.

I know I speak for the entire House when I offer my best wishes and many happy returns of the day.●

● Mr. PREYER. Mr. Speaker, I am happy to join my colleagues in hailing CLAUDE PEPPER's 80th birthday.

After all the praise heaped on him, CLAUDE must know how a pancake feels after the syrup has been poured over it.

I will not add much more to all the great things said about CLAUDE's remarkable career, but I did want to mention one side of his career that might otherwise be overlooked. That is the significant role he has played through the years in the Inter-Parliamentary Union.

He has played this role with his usual flair, exuberance, and warmth. He makes great speeches not only on the stump in the United States but also before representatives of Parliaments and Congresses of the world. He has been a superb ambassador of good will for our country. When he speaks, it makes you proud to be an American.

I want my colleagues to know that not only our country, but the world, loves CLAUDE PEPPER.●

● Mr. RATCHFORD. Mr. Speaker, it is with a sense of deep pride and great respect that I join my colleagues in the House today in honoring our distinguished colleague, CLAUDE PEPPER, as he celebrates his 80th birthday.

In the midst of these hectic final weeks of the session, it is most fitting that we

pause today to pay tribute to the senior statesman from Florida. As chairman of the House Select Committee on Aging and as the foremost advocate for older Americans in the House, we all marvel at the strength and the vitality which CLAUDE PEPPER brings to the Congress as he reaches this landmark 80th birthday. He serves as a continuing source of inspiration to all of us, and offers a living testament to the importance of his work on behalf of our older Americans.

As a member of Chairman PEPPER's Select Committee on Aging, I am struck by the sense in which my distinguished colleague has shaped and strengthened the role of the select committee in the House, defining a mandate for the committee which has placed it at the heart of the legislative process. Under his most able leadership, the select committee provides an essential focus on the needs of older Americans, a focus sorely lacking prior to the start of Chairman PEPPER's tenure as ranking member of the committee in the 95th Congress. Chairman PEPPER has already forged a record of commitment and accomplishment in the field of aging which will be long remembered in the halls of Congress and throughout the Nation.

The achievements of Chairman PEPPER in this Congress alone demonstrate the profound impact which he has had on legislation to improve the quality of life for older Americans. Chairman PEPPER has fought to insure adequate funding levels in this difficult year for elderly nutrition projects and emergency fuel assistance, both of which offer the most basic necessities to older Americans in need. He has championed changes in the medicare program which render home health care a meaningful alternative to institutionalization and he has led us through the first steps of a Federal response to the serious problem of fraud and misrepresentation in the sale of medical insurance supplementing medicare. Following the major policy theme of his successful effort to raise the mandatory retirement age from 65 to 70, Chairman PEPPER brought our attention to the problems associated with mandatory retirement for airline pilots and directed the National Institutes of Health to investigate relevant medical evidence in this important area. Finally, Chairman PEPPER won approval for fare discounts for older Americans on the AMTRAK system as a means of increasing ridership while meeting the real transportation needs of older Americans.

This list of achievements is only a glimpse of our colleague's outstanding record of service in the Congress. Chairman PEPPER's leadership in the field of aging is beyond dispute, and his fingerprints are to be found on virtually every major piece of legislation affecting the lives of older Americans. He continues to force us to look at the difficult questions of growing old—of how to provide an adequate income in retirement years, of how to meet the burdensome health care needs of an aging population, of how to provide opportunities for a life of dignity and security for our older Americans. Chairman PEPPER has come to serve as both our heart and our conscience, and in so doing he has earned our deepest respect.

Mr. Chairman, I am most honored to have the opportunity to join in this tribute to CLAUDE PEPPER as he celebrates his 80th birthday. I know I am joined by all of my colleagues in the House in wishing him many more years of health and service in the 1980's.●

● Mr. HOLLENBECK. Mr. Speaker, I join with many of my colleagues today to honor a man who has dedicated most of his life to public service—our distinguished colleague from Florida, CLAUDE PEPPER. On the occasion of his 80th birthday, it is indeed my honor to commend the gentleman for his long and outstanding service as a Member of Congress.

Along with holding a crucial position on the House Rules Committee, CLAUDE was the "driving force" behind the establishment of the House Select Committee on Aging. As a member of this committee I have had the privilege of serving with Chairman PEPPER for the last 2 years and have seen firsthand his sensitivity to issues affecting the aged. His strong leadership as chairman of the Aging Committee has led to the raising of the mandatory retirement age from 65 to 70 for most employees. Today, he still is a leader in the fight to abolish mandatory retirement altogether. His experience in Congress and his dedication to the service of this Nation serves notice that older Americans can and do contribute to the wealth of this country. It is therefore fitting that on his 80th birthday, we as Members of this body extend our best wishes and congratulations to CLAUDE and wish him continued success in the years to come.●

● Mr. OBEY. Mr. Speaker, I would like to share in this special order on behalf of our colleague, CLAUDE PEPPER.

CLAUDE PEPPER's service to the American people is probably unparalleled by anyone serving with him in this body today. He has been a voice for progress, humanity, and decency in Washington for over 40 years.

I will never forget appearing with CLAUDE on a platform in Chicago in 1976 when he and I received awards from the National Council of Senior Citizens. Without notes he gave a speech that was a model of clarity, humor, and emotional power. He is probably today the best stump speaker of anyone in the House of Representatives.

The Nation is fortunate that CLAUDE has used that gift for good purposes.

I wish him well for many years to come.●

● Mr. REUSS. Mr. Speaker, I am delighted to join my colleagues in extending the happiest of birthday wishes to our friend and colleague, CLAUDE PEPPER, who today celebrates his 80th birthday. His career, first in the Senate and since 1962 in the House of Representatives, has been one of the most distinguished in the history of Congress. I think, in particular, of his vigorous leadership as chairman of the House Select Committee on Aging, and his successful efforts to restrict mandatory retirement, so that people will have the choice of whether they want to work or to retire.

Chairman PEPPER is further proof that energy and ability are not limited by age. His experience is invaluable to us, and I hope that we will have the benefit of his service for many years to come. Happy birthday.●

● Mr. DOWNEY. Mr. Speaker, it is with great pleasure that I add my wishes to those of all my colleagues on the occasion of Chairman PEPPER's 80th birthday.

When I first came to Washington and joined the Aging Committee I was 25 years old—the youngest Member of the House of Representatives, and CLAUDE PEPPER was 74. Many things have changed since then. I have gained knowledge and insight from my association with the "Senator," and I have watched him inveigle and cajole Members into supporting legislation he believed in.

Eighty years used to seem very old to me. After working with my energetic colleague I know that these years can be fruitful and exciting. Looking back on these last 6 years, the list of major legislation that CLAUDE PEPPER is responsible for is very impressive. No longer is retirement at age 65 mandatory and, as I know from our long association, retiring at that age can be a significant loss to the employer and employee alike. Senior citizens no longer have to fear scare tactics when buying extra medical insurance to supplement medicare coverage. Chairman PEPPER's medigap bill will go a long way in saving older Americans needless fear and disappointment.

Again, my congratulations to the "Senator" and my best for the healthy and happy career I know still lies ahead.●

● Mr. WAXMAN. Mr. Speaker, I am honored to join with my colleagues in paying tribute to CLAUDE PEPPER on his 80th birthday. His career in Congress spans two generations; his legacy will last for generations to come. This great milestone in his life is not merely a personal one. It holds significance for all Americans. CLAUDE PEPPER's record of public service extends to so many areas—such as criminal justice, foreign policy, and environmental protection—but he is rightfully known as the champion of the rights and needs of our millions of senior citizens.

As chairman of the Select Committee on Aging, CLAUDE PEPPER has continually brought national attention to bear on the critical issues facing our elderly. His sole motivation has always been a firm belief that our Nation must live up to its commitment to the elderly to meet their needs in housing, health care, employment, and social services. There is no stronger or more determined voice in Congress on behalf of our senior citizens than CLAUDE PEPPER's.

At age 80, CLAUDE is a living testament to his greatest legislative achievement: The increase in the mandatory retirement age from 65 to 70. No other issue has greater relevance to the question of recognizing the ability of senior citizens to remain active in their later years—to continue to have lives that are rewarding, challenging, and productive.

More than half of CLAUDE's congressional career has occurred since his 65th birthday. Both the country and Congress would have been far poorer had an arbitrary barrier of age stood between CLAUDE's desire to serve the public and his eligibility to do so.

CLAUDE PEPPER was one of my heroes long before I ever was elected to Congress. It has been especially gratifying to have him as my chairman on the Select Committee on Aging. He is a courageous leader, an extremely sensitive and compassionate man, a committed individual, and a truly inspiring figure.

I extend my very best wishes on his birthday, and look forward to continuing to serve with him in the future.●

● Mr. JOHNSON of California. Mr. Speaker, it is a pleasure and an honor for me to join in paying tribute to my good friend, CLAUDE PEPPER, on the occasion of his 80th birthday.

Birthdays are times to reflect on the past and to anticipate the future. With CLAUDE PEPPER, both of these pursuits are pleasant undertakings. CLAUDE can look back on some 63 years of public service and tens of thousands of people whose lives have been made better by his work.

CLAUDE can look forward to even greater service in the years to come. He can look forward to providing inspiration to old and young alike.

Our older citizens will see in CLAUDE PEPPER an example to follow for continued productivity. They will see a living argument against manadatory retirement as this great American continues to lead an active life of leadership in the U.S. House of Representatives.

For the young, CLAUDE PEPPER will inspire early and lengthy involvement in public service, since he began teaching school at the age of 17 and was elected to the U.S Senate at the age of 36. His life provides a fine model for any young person to follow.

Like old wine on the table, old wood in the fireplace, and old friends for companionship, CLAUDE PEPPER has gotten better and more effective as the years have passed. We can look forward to many more years of solid contribution from this great American. I look forward personally to his continued friendship and his leadership, and I wish him the happiest of birthday celebrations.●

● Mr. CONYERS. It is a privilege to join my colleagues in the special orders honoring a dear friend and esteemed colleague, Representative CLAUDE PEPPER.

CLAUDE PEPPER has brought distinction to both the Senate and the House since the beginning of his legislative career in 1936. His dedication to public service and his particular legislative accomplishments in the fields of health care and matters concerning older Americans is unrivalled. He has brought to his work a rare intelligence, judgment, and experience which is and always will be an example for us all. As he celebrates his 80th birthday, he should know that we expect and look forward to many more years of his service and guidance.●

● Mr. GUDGER. Mr. Speaker, I have had the privilege of serving with the distinguished gentleman from Florida in this 96th Congress on his Select Committee on Aging. I feel fortunate to have had the opportunity to work with this remarkable patriot, who was elected to the U.S. Senate the same year I graduated from high school. CLAUDE PEPPER has so much political experience that this two term Congressman can but marvel.

I am sure of this. All Americans can be more comfortable in their awareness of the inevitability of advancing age, because of this man's efforts to improve the status and living conditions of our senior citizens. His dedication to their cause is tireless, his vision for their future unfading, and his progress toward that goal relentless. Who could help but be inspired by the Senator, who while approaching this the 80th anniversary of his birth likes to tell us that his concern for senior citizens stems from the fact that someday, he too might become elderly.●

● Mr. BENNETT. Mr. Speaker, today we celebrate Congressman CLAUDE PEPPER's 80th birthday. In the "Almanac of American Politics" it is said of him that he is "the grand old man of Florida politics." The "grand" part of that statement rings true in my estimation. Chronologically, CLAUDE is an "old" man because he was born 80 years ago but in every other way he is young. Certainly he is young in spirit, mind, and soul.

He is a pleasure to be with, always. His oratory is the best in Congress and his many well achieved honors for accomplishments as a statesman, should, I guess put one in awe of him. But his warm friendship, easily extended and there for the asking, make every minute with him a pleasure.

I am honored today, as the chairman of the Florida delegation in Congress, to pay not only my own tribute to him but to do this for all of the Florida delegation in Congress.

Every Member of Congress loves this great man for his leadership for human rights, his fight against crime, and for the aged, and for better health conditions in our country. He is a magnificent leader and we are all so glad that he stays among us to continue his battles for what is best for America and for mankind. Congratulations CLAUDE.●

● Mr. RINALDO. Mr. Speaker, I would like to take this opportunity to pay tribute to our esteemed and distinguished colleague CLAUDE PEPPER, who today celebrates the 80th anniversary of his birthday.

I want to express my own personal admiration for the fine example he has set during his more than 30 years of service in Congress, first in the Senate, and since 1962 in the House. Congressman PEPPER has won the plaudits of his colleagues for his unselfish and unswerving devotion in serving his fellow Americans.

While Representative PEPPER has sponsored a plethora of legislation over the years that somehow touches all of us, I believe that some of his most important legislation is aimed at benefiting and protecting our senior citizens. As chairman of the House Select Committee on Aging, he is keenly aware of the needs of our elderly, and has consistently sought to meet the needs.

He was responsible for a law providing for the voluntary certification of insurance policies supplementing medicare to protect the elderly against insurance frauds. He introduced legislation authorizing the congregate housing program, which allows senior citizens to receive the necessary support services to remain independent, and he was the author of the Older Americans Act to provide social services to the elderly in an organized and effective manner.

This is just the beginning of an endless list of outstanding services Representative PEPPER has provided America. He is a man of rare talent whose representation will be cherished long after he has left the service of his country.●

● Mrs. HECKLER. Mr. Speaker, this is a very special day for our colleague from Florida and a very special day for us. It is CLAUDE PEPPER's 80th birthday today—a time for him to celebrate his many years of achievements and outstanding service in both the House and the Senate. It is a special day for us because we have this opportunity to express our gratitude and appreciation for one of the kindest and most able persons to ever grace these Chambers.

I feel very fortunate because I have had the chance to work with CLAUDE on legislation geared to the needs of senior citizens. This special area requires insight and sensitivity. CLAUDE has both qualities. Add to this CLAUDE's own special brand of enthusiasm, charm, and wit and you have an unbeatable combination—which describes our colleague who today celebrates being 80 years young.

Ralph Waldo Emerson described an institution as the lengthened shadow of one man. I am sure we would all agree today that if we had to name one man who has cast his shadow on the institution of Congress in the most salutory and productive way, we would come up with the same name—CLAUDE PEPPER. May all good wishes and gifts come to him on this birthday. His enduring presence is a gift to a nation and to us.●

● Mr. VAN DEERLIN. Mr. Speaker, perhaps we do CLAUDE a disservice by calling attention to his birthday. His constituents never would have guessed that this man is 80.

I find it difficult to accept myself. Twice I have had the pleasure of traveling overseas with our Florida colleague—first in the Scandinavian countries, later in mainland China. On both trips our party remained no longer than 2 days at any stop; combined with jet lag, the brisk schedule left many younger Members weary. But CLAUDE PEPPER seemed to defy nature. When the rest of us were ready to collapse, he would often be leaving us for his own private inspection of a housing complex for the elderly, a children's hospital, or a farm commune.

On hearing criticism of congressional "junkets," I often wish voters could get a look at Congressman PEPPER in action.

The man's legislative achievements, of course, are legendary, spanning both

Houses of Congress and a career interrupted by a dozen years' absence from our legislative halls. Doubtless his greatest legacy will prove to be the new liberation he has won for elderly Americans through his Select Committee on Aging.

At this point, Mr. Speaker, I feel a conflict of interest. I expect to be leaving this body long before CLAUDE does—and I very much want him to stay on the job, protecting the interests of us retired folk.●

● Mr. PICKLE. Mr. Speaker, over its two centuries of existence, this great body has been blessed from time to time with exceptional Members who mark the pages of history—and our daily lives—by their wisdom and their compassion. In that league stands the House's own Senator, CLAUDE PEPPER. His life has spanned over one-third of the history of this Republic. But his reputation and his impact stand for all time. He is a Conscience to this House, reminding us always of our ultimate duty—concern for the people. He is an able legislator who never deviates from the highest code of fair play. He is a gentleman. And, today, on his 80th birthday, I am proud to have this opportunity to honor the distinguished member from Florida, Senator PEPPER, the Grand "Old" Man of the House, who remains young in his outlook, young in his energy, young in his enthusiasm, and young in our hearts and minds. His courage is well known. From the stormy days of the New Deal, through the controversies of the 1950's and back again into the fray in the 1960's and 1970's, he has never shied from battle or betrayed his own beliefs. It is fitting that this Congress commemorates its first year of a new decade with a new decade of service from one of its greatest and most beloved Members.

Senator PEPPER—and his late and beloved Mildred—were as loved and respected as any couple who ever served in this body. As a member of the 88th Club I can vouchsafe that Mildred and CLAUDE PEPPER brought happiness and love to every Member. CLAUDE PEPPER is doing that today.

On a personal basis, the Senator from Florida and I have joined in many a Pickle-Pepper bill, or amendments. We feel we have been progressive and helpful. I treasure my relationship with this outstanding gentleman.

I join many others in wishing Senator PEPPER a most happy birthday.●

● Mr. DERWINSKI. Mr. Speaker, it is a special pleasure for me to join this afternoon in wishing our colleague, CLAUDE PEPPER, much happiness on the occasion of his 80th birthday. CLAUDE has earned a great deal of respect from both sides of the aisle for his warmheartedness and for his outstanding legislative abilities. We all appreciate the great inspiration and guidance that he gives us.

On a number of occasions, I have traveled abroad with CLAUDE in connection with our assignment with the Interparliamentary Union, and I can attest to his excellent diplomatic representation of the United States and as being an effective voice of our foreign policy.

It is a pleasure to join in this special greeting to a very fine human being and a very loyal public servant to the people of Florida and the country. Thirty-one years in any career is a landmark, but CLAUDE has done more than put in his time. He has helped to make history by serving his country well. His great spirit and zest have impressed all of us who have had the opportunity to serve with him.

I extend my warmest wishes and sincere congratulations to CLAUDE on this memorable occasion. Best wishes for many more years of good health and service to your country.●

● Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in the House of Representatives in honoring CLAUDE PEPPER, my neighbor in the Rayburn Building, who is celebrating his 80th birthday today.

At 80, CLAUDE has given a total of 32 years of his life in service to the people of Florida and of the Nation in both Senate and House.

Presently the oldest Member of the House, CLAUDE PEPPER has served fully 15 of his 18 years in the House after reaching age 65, supposedly the "going out to pasture" age.

His leadership in raising the mandatory retirement age for most jobs in the United States has affected profoundly America's life and working patterns. It would be a fitting legislative memorial for most Members of Congress, but for CLAUDE, it is just the first of many more to come in his brilliant career.

I send best wishes for health and happiness to "Senator" CLAUDE on his 80th birthday.●

● Mr. WAMPLER. Mr. Speaker, I wish to extend my warmest birthday greetings to my friend and colleague, CLAUDE PEPPER. I have enjoyed serving with him since the 90th Congress. During those years, I have watched CLAUDE become a legend in his own time. We have worked together, hand in hand, on the Select Committee on Aging since it was created in 1974.

Under CLAUDE's leadership, we have seen age discrimination virtually eliminated, home health become a reality, and the Older Americans Act touch millions of lives daily through the expansion of nutrition programs and senior centers. He is truely an advocate for the well-being of our Nation's growing older population.

CLAUDE's commitment to making life better for all Americans and his success as a legislator and an orator have made him a true statesman of the people. I am honored to have him as my friend and wish him many more happy birthdays.●

● Mr. ROYBAL. Mr. Speaker, it is with great personal pleasure that I extend congratulations to the Honorable CLAUDE PEPPER on the occasion of his 80th birthday.

Clearly, Mr. PEPPER's record of achievement during his many years of service in the U.S. Congress has been extraordinary. As a member of the Select Committee on Aging, I have had the opportunity to work closely with Mr. PEPPER and can bear witness to his deep concern for the people of this country and his tireless efforts on their behalf. This concern has been evident ever since Mr. PEPPER's election to the U.S. Senate in 1936.

Even when many of his colleagues became disillusioned with F. D. R. and the New Deal, CLAUDE PEPPER had the courage to defend both the President and his domestic policies. This unpopular stand, as well as his ahead-of-the-times devotion to civil liberties earned him the nickname "Red Pepper" and cost him his Senate seat in 1950. Many people would have settled down to lucrative positions as consultants or lobbyists, but this was not the course that CLAUDE PEPPER chose. His great devotion to and concern for the people of this country led him to the House of Representatives in 1962. And this body has definitely benefited from his return.

I will not try to recount here CLAUDE PEPPER's long and impressive list of accomplishments. We all know of his successful efforts against crime and for the benefit of the elderly. Among his greatest accomplishments was passage of the bill raising the mandatory retirement age for most jobs from 65 to 70. This legislation will influence and improve the lives of the people of this country for generations to come.

Once again, I salute CLAUDE PEPPER on yet another great accomplishment. Happy 80th birthday, CLAUDE, and many more to come.●

● Mr. BROOKS. Mr. Speaker, I would like to join with other Members in honoring our esteemed colleague, the Honorable CLAUDE PEPPER on his 80th birthday. He has always been a great friend and a champion for the elderly and I look forward to continuing to work with him on his many, many efforts to improve the living conditions and economic situations of our senior citizens in the future.

Happy birthday, CLAUDE.●

● Mr. BRINKLEY. Mr. Speaker, I wish to join in this birthday salute to our friend and colleague, CLAUDE PEPPER, an uncommon man and outstanding American.

From humble origins in Alabama to the pinnacle of public service in Florida and the Nation, this man never forgot his beginnings, nurtured in principle and sustained by commonsense.

We learned to appreciate him even more deeply by the insight gained when he spoke on several occasions at the weekly prayer breakfast.

His concern for the aged, his urgent interest in cancer research, and his commitment to fairplay put CLAUDE's report card at the top of the class.

Hats off to him and happiest of birthdays.●

● Mr. FUQUA. Mr. Speaker, September 8, 1900, was an auspicious date. On that day, on a farm near Dudleyville, Ala., our distinguished friend and colleague, CLAUDE DENSON PEPPER, was born. In the 80 years since that date, CLAUDE PEPPER has accomplished enough to last three lifetimes and he is still going strong. It would take far too long to try and list

all of his accomplishments. His record of public service began in the Florida State House of Representatives in 1929 and includes 14 years of service in the U.S. Senate (1936–50) and service in the U.S. House of Representatives which began in 1963 and continues.

CLAUDE has always been in the public eye. He has sacrificed a private life in order to serve with selfless distinction. Throughout his career he has been the recipient of many awards and citations and he recently, very graciously, has announced that he will donate his public papers to Florida State University.

I think more than anything, as we say "Happy Birthday" to our dear friend, we should recognize the important work he is doing today. After giving so much of himself to his country. CLAUDE PEPPER continues to do outstanding work as chairman of the Select Committee on Aging. His committee is directly responsible for much of the good legislation approved by Congress in recent years to insure the rights of older Americans and, by serving as an example himself, he has demonstrated that age is no barrier. Nobody can look CLAUDE PEPPER in the eye and say to him someone is "too old" to get a job done or to make a valuable contribution. CLAUDE would simply stare back at you with his sharp, keen eyes and tell you that it's what is in the mind and in the heart that counts. I urge my colleagues to join me in pausing today to say "Happy Birthday, CLAUDE," and may you enjoy many more years of fruitful service.●

● Mr. ADDABBO. Mr. Speaker, I would like to take this opportunity to offer birthday congratulations and pay tribute to one of the finest public servants this Nation has ever known, my distinguished colleague CLAUDE PEPPER of Florida who today is celebrating his 80th birthday.

I have known and worked with CLAUDE PEPPER for many years and have come to the conclusion that there are few men in Washington who are as respected and admired than he. He is respected, admired, and loved because of the work he has accomplished and for the fine gentleman he has always been. I consider him one of the most valuable Members of Congress today and certainly the most likeable. He has proven that to reach the age of 80 is not the time to sit back and watch others take care of business, with his seemingly endless supply of energy and vigor all too often putting colleagues 20 years his junior to shame.

He has been involved in the enactment of countless pieces of legislation but I consider his tireless work on behalf of the senior citizens in this country to be his greatest accomplishment. His bill which raised the mandatory retirement age for most jobs in the United States to age 70, as well as his outstanding work as chairman of the Select Committee on Aging are two examples why many believe he has done more for the senior citizens of this country than any other member in recent memory and I am confident he will continue to represent their views.

On this, his 80th birthday, I wish him the very best for many more happy and healthy years to come and I will continue to look forward to serving with him.●

● Mr. LENT. Mr. Speaker, it is a great pleasure and distinct honor to joint in this well-deserved tribute to our most distinguished colleague from Florida, the Honorable CLAUDE PEPPER, on his 80th birthday.

What a record of public service our colleague has established during those 80 years. He has held a public office in seven of the eight decades of this century. He has served 14 years in the U.S. Senate and 18 years in the U.S. House of Representatives. His nine terms as a Member of this body alone establish him as one of the most experienced Representatives, outranking the vast majority of his colleagues.

This truly unique record of outstanding public service would, by itself, be sufficient to deserve the outpouring of admiration, affection and respect in which we are joining today. But, Mr. Speaker, the greatest tribute we can pay to CLAUDE PEPPER is to acknowledge the fact that in his eighth decade, he is among the most active Members in our legislative deliberations, both in committees and on the floor. Especially is this true in his work as chairman of the Select Committee on Aging, where his legislative studies and proposals have done much to benefit older Americans.

Furthermore, Mr. Speaker, CLAUDE PEPPER has never allowed the work of his Select Committee on Aging to become a partisan matter. Although I sit on the opposite side of the aisle from the gentleman from Florida, I can testify that he and his committee welcome legislative sugestions and give them careful consideration with not the slightest partisan constraint.

Mr. Speaker, if anyone ever deserved the title of Mr. Senior Citizen, U.S.A., it is our distinguished colleague, the Honorable CLAUDE PEPPER, who in his 80th year continues undiminished his productive and beneficial legislative career.

I know that my colleagues join me in the wish that our good friend will continue to offer us the benefits of his outstanding intelligence, his persuasive, articulate speaking abilities, his experience in public service, and, above all, his tremendous youthful enthusiasm, for many years to come.

A happy birthday to Mr. Senior Citizen, U.S.A.●

● Mr. CARTER. Mr. Speaker, I am pleased to join in wishing a happy birthday to one of my good friends and one of this body's most distinguished members, our colleague from Florida, CLAUDE PEPPER.

Few men have served as ably and honorably as has CLAUDE PEPPER in the U.S. Congress, nor won the admiration of so many. He is a gentleman and a fervent advocate of what he sees as right, especially as it relates to health matters and to that group of Americans for whom he has become a special supporter and role model, our senior citizens.

Fourscore years is a long time for the Lord to allow anyone to serve on this Earth. Like the good and faithful servant, CLAUDE PEPPER has used his years and his God-given talents to the fullest. May he have many, many more years in which to serve the people of Florida.

I wish the very best to a gentleman and a friend; it has been an honor and a privilege to have served with him. Happy birthday, CLAUDE.●

● Mr. GREEN. Mr. Speaker, today is the 80th birthday of one of our most distinguished colleagues, Representative CLAUDE PEPPER. As a longtime Member of Congress and one who once served in the Senate, Mr. PEPPER has demonstrated a tremendous commitment to the public he serves, and I would like to take this opportunity to express my great respect for Mr. PEPPER personally, and admiration for his career of service to our Nation.

As a member of the Select Committee on Aging, which Mr. PEPPER initiated, and of which he is chairman, I have had the opportunity to work with Mr. PEPPER on several issues which affect the seniors of our Nation. He has worked tirelessly toward the passage of legislation which seeks to eliminate the mandatory retirement age entirely, and has made an effort to promote programs which seek to make seniors full-time, participatory members of our society. Senior citizens as a group have been and are now productive contributors to our well-being as a nation. Mr. PEPPER has made an effort to restore dignity to the elderly and to allow them to participate in all aspects of our activities as a nation.

Mr. PEPPER himself is a senior who has demonstrated a capacity for productivity which should be an example to us all as we consider legislation which affects our Nation's elderly population. Throughout his long career, he has shown a commitment to the Nation and to the elderly which is admirable. His service should be an example to us all of the valuable contributions which seniors can make, and of the extent to which older Americans who care, and who have committed themselves, can perform.

I would emphasize my deep respect for Mr. PEPPER, and to extend to him my wishes for a joyful 80th birthday, and many more to come.●

● Mr. O'BRIEN. Mr. Speaker, I wish to extend my deepest personal congratulations to my distinguished colleague, CLAUDE PEPPER, as he celebrates his 80th birthday today.

Senator PEPPER should feel great achievement on this day because he has reached a very special point in his life. The fact that he is the oldest Member of the House of Representatives and has served almost half of his congressional career past the age of 65 is also cause for much pride.

At age 36, Senator PEPPER began his career as a young Senator whose Southern style and devotion to civil liberties earned him the name "Red Pepper." This name still holds true today as Senator PEPPER has fought continuously for legislation to benefit the aging.

His fight to raise the mandatory retirement age and to possibly get rid of mandatory retirement altogether will give many the choice of whether they wish to retire or to continue working.

Senator PEPPER has been called "the grand old man of Florida politics," and

on his special day I would like to say with great respect that this man has touched the hearts of many who have come to know him.

Again, I wish him only the very best in the years to come.●

Mr. FASCELL. I thank the gentleman from California. I think his last remarks there as well as everything else he said about the man we honor here today, CLAUDE PEPPER, very thoroughly summarizes what needs to be said or should be said about CLAUDE PEPPER.

I want to say to the gentleman from California (Mr. DANIELSON) that I might just add to his remarks by saying that CLAUDE has also created a problem all of the time that he has been here and it has made it tough for the rest of us because he has either thought of it or already done it. I do not care what the problem is, we will find that CLAUDE PEPPER has been out there somewhere on that problem, and I do not care how far we go back. But it exemplifies the kind of service that he has not only given but continues to give. Age does not mean a thing. It is certainly not any barrier, not in his case, that is for sure.

CLAUDE, I just want to say here as we conclude this special order this evening that you can tell from the remarks of your colleagues who are here, and I can tell you from the many, many remarks which have been put into the RECORD, which I know you will cherish, the esteem that all of us have for you which is very sincere, very earnest and it most certainly has been earned by any criteria or measurement or standard.

□ 2000

To have that kind of acknowledgement from your peers at any point in life has to be one of the most satisfying things that any individual could have. Goodness knows you have made enough sacrifices and you have given enough time to everybody and everything.

I must say I would imagine right now that you must feel kind of warm about all the good things that have been said and I think rightly so. They were well-deserved, CLAUDE. We all join in congratulating you on a remarkable life of achievement in these past 80 years. We wish you all the best for many, many more years and we just want to be around to celebrate them with you.

GENERAL LEAVE

Mr. FASCELL. Mr. Chairman, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on behalf of our honored and distinguished guest here this evening.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Again, Mr. Speaker, I want to thank the distinguished gentleman from Georgia for deferring his special order tonight so that we could pay proper homage and tribute to a great American.

THE CONCEPT OF GOVERNING AND THE CONCEPT OF ACCOUNTABILITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGRICH) is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I want to take this opportunity to talk about the concept of governing and the concept of accountability in American Government and the notion that the Congress is, in fact, run by teams. Individual Members may have an impact on American history, but the real effect and the real ability to change the laws by which we are governed and the Government which provides goods and services to the American people is inherent in a team system.

Mr. Speaker, I certainly want to talk about an event which will take place next Monday, September 15, which I think will be a unique event in American political history and which I hope will set a precedent for future efforts to communicate to the American people tne nature of team government and the concept of working together in a way that is accountable.

Next Monday, September 15, all of the Federal candidates for election and reelection in the Republican Party will be gathered on the Capitol steps to talk with the American people as a group, to offer a unified hope for real change, to create a covenant, a solemn pledge to achieve certain goals, to say in effect, "Give us a chance to govern and we will give you a chance to improve the quality of your life."

We will specifically indicate in a legislative platform what an executive branch and legislative branch working together under Republican control can attempt to do.

When this event occurs on September 15, the news media will undoubtedly focus on the substance of the pledges: What precisely did we Republicans choose; what precisely do we promise?

I would suggest that the pledges are not the real story. The real story is the gathering of all Republican Federal candidates in the Nation's Capital. It is a first in American history. The first time that the candidates for Federal office in both the legislative and executive branches have gathered from around the country in an act of unity and commitment.

The real story is that this is a major invention in the political process comparable to the invention of the National Convention system in the 1840's or the rise in the British political party's central office by Disraeli in the 1860's.

The real story is that this is the first step toward a de facto constitutional amendment that will give us accountable party government by giving us accountable party campaigns and accountable party records.

To appreciate how breathtaking this gathering on the steps is, we have to look at the American political tradition with which it breaks.

Our Founding Fathers' greatest fear was the tyranny of centralized power. They focused on the Whig tradition dating from the English civil war. Their grievances were with the strong Hanoverian kingship of George III.

Our Founding Fathers believed that power inevitably tended to concentrate and lose accountability. They feard the aloofness and uncontrollability of a monarch. They equally feared the raw passion and the violent swings in public opinion of democracies. As a consequence, the Founding Fathers invented an amazingly intricate and balanced system for the division of powers. They designed a system which is, frankly, engineering rather than philosophy, which sets out, in a series of very precise steps, ways for achieving goals they believed in, in this case, the goal of dividing power.

The other body is elected for 6 years, the Presidency for 4 years. They decided one branch should remain permanently scared and thus the House is elected every 2 years and is permanently accountable and permanently required to return home.

Not only were the three institutions elected for different periods, they represent radically different constituencies. The President speaks for the Nation, the other body speaks for States but the House speaks for individual constituencies, for people, and that is why early in its career the House was referred to as the people's body, the People's House. Having set up different schedules and different constituencies to guarantee that every interest was heard and every argument considered, the Founding Fathers then distributed power and legal responsibility in such a way that they had to cooperate to get anything done.

Not only could each branch check the other, but without all three agencies, the other body of the House and the Presidency cooperating, nothing was possible. This centrifugal system balanced against centripetal responsibilities diffused power and responsibility among all three agencies. While requiring teamwork to accomplish anything, it makes teamwork very difficult to achieve. As Americans we have wrestled with this problem of diffused power and tried to solve it in several ways over the last 200 years.

We have had strong Presidents such as Washington, Jackson, Theodore Roosevelt, and Franklin Roosevelt. We have had periods of congressional domination such as the 1850's and the 1880's. In fact, Woodrow Wilson, in his book "Congressional Government" in the 1880's, argued that since Congress was obviously going to dominate, the Cabinet officers should be Congressmen. He despaired of the Presidency gaining strength and gave up hope that power would ever leave the Congress.

Later, while Franklin Roosevelt led the country and the Congress from 1933 to 1937, his ability to get legislation passed declined dramatically after 1937, and the period of real domestic domination for Roosevelt was a very brief 4 years. In fact, in Richard Strout's collective essays entitled "T.R.B.," he laments the

difficulties of congressional Presidential relations in virtually every Presidency beginning with Franklin Roosevelt during World War II. Strout clearly despairs of our divided system and prefers a parliamentary style of government with clear lines of authority and responsibility.

Many people agree that our system lacks clear mechanisms for governing and for accountability. However, most proposed reforms are milder than Strout's. David Broder in his book, "The Party's Over," argues for a rebuilding of political parties, for a centripetal force that brings us together for responsibility in an institutional sense, for accountability that extends beyond individual careers and individual elections.

A wide range of political scientists including James McGregor Burns, Frederick Sonntag, Manning Dauer, Jack Saloma and others, have urged steps to strengthen the party system. There is a growing consensus that a weak party system leads to irresponsibility, to single issue politics and to domination by special interests. Furthermore, there is a growing belief that personality politics focused on individual candidates heightens irresponsibility and the lack of accountability.

Committee chairman of the governing party disclaim any burden of accountability, even in their own zones of responsibility. They say, "It is my effort to help you and it is other people's efforts that hinder you."

Individual Congressmen hide behind the mountain of incumbency advantages, and shirk the responsibility to bear the burden of governing and to remain accountable for their behavior in Washington. They blame someone else and blaming others becomes the height of incumbency reelection efforts. In effect, "We work for you, but someone bad stopped us."

Even Presidents disclaim responsibility for governing. Three Presidents in a row have blamed Congress for the country's woes. Presidents Nixon and Ford at least have some partisan plausibility in assailing Congress. From 1969 to 1977 we had genuinely divided Government. One party controlled the Congress, the executive branch and the other party controlled the legislative branch.

However, it boggles the mind to have President Carter in effect running against the Congress his party controls. The Democrats currently run the country but cannot admit it. The public is in no mood to reward a governing party for inflation, unemployment, high taxes and a weak defense structure. In fact, things are so bad that for the first time in 28 years the public favors a Republican Congress, according to some major polls.

□ 2010

Yet the reality is that individual Congressmen will be able to hide behind the advantages of incumbency and avoid responsibility. If we had a parliamentary system such as Great Britain's, Germany's, or Japan's, we would see a shift in 1980 of 60 to 90 seats based on the polls, but because of the fragmented nature of our system we are likely to see a shift of, at most, 15 to 30 seats.

The Presidential race reveals an even higher level of irresponsibility and lack of accountability than the congressional branch. President Carter is campaigning for reelection on new programs and new proposals, as though he were the challenger. He is attacking Governor Reagan as though the last 4 years were Reagan's fault. If we have economic decay, it is Reagan's irresponsible policies. If we have a weak national defense, it is Reagan who is dangerous.

The economic program recently announced by President Carter continues the tradition of fantasy and irresponsibility. According to one account, it is the eighth new economic policy in 4 years. Like its predecessors, this eighth edition economic policy has no hope of passing.

Despite 4 years of Democratic control of the White House and the Congress, there are no achievements they can run on. The recent Democratic National Convention illustrated the collapse of responsible self-government. The Speaker of the House was permanent chairman; the chairman of the Judiciary Committee in the other body was the challenger; the incumbent President became the nominee. The Democratic National Convention was in fact the gathering place of America's governing establishment.

However, no observer of that week's convention activities could detect any sense of responsibility or accountability. Everyone had drawn their paychecks, accepted their perquisites, and occupied their positions of power and visibility. Yet, no one wanted to say, "Taxes are high; we did it. Unemployment is rising; we did it. Bureaucracy has grown; we did it. Our defense establishment is falling apart; we did it."

Instead, the focus and the burden of the convention was on a man who had not been in power, had not been in Washington, and was not accountable for the last 4 years. The focus of the convention was as though the dominant governing party of this country were the challenging party. Since irresponsibility is the key to incumbent reelection campaigns, everyone runs away from their own record. Next Monday's gathering on the Capitol's steps is the first step toward rebuilding accountability. It is the first step toward reknitting the threads of party ties and rebuilding the structure of party behavior.

What we will do is simple. Federal candidates for election or reelection from across the country will gather. We will sign a covenant to take five steps to improve the quality of American life. We will, in effect, pledge to pass a set of measures in a joint effort between the legislative and the executive branch that will represent a change of direction for America. We will prove by the very act of standing together that we are a team, ready to govern.

The contrast between the current Democratic Party's inability to govern and our ability to do so will be made evident by contrasting our commitment with their confusion, our unity with their division. We will also focus attention on the reality that America needs more than the White House to govern here. For too many years Americans have focused on the Presidential speeches when it is congressional votes that change laws. If all the Presidential speeches on tax laws in the last 30 years were stacked one on top of the other and analyzed, and if all the votes of the Ways and Means Committee were stacked one upon the other and analyzed, it would be clear to every American where the real power in Government lies. For it is in the votes of the Ways and Means Committee in the House and in the other body that real law is made, not in the Thursday evening press conference or a Saturday afternoon speech by Presidents. Presidents propose—Congress diposes, and only together can they govern the country.

It is time to refocus the public's attention on the Constitution, on the need for joint executive-legislative cooperation. If you want change, you have to change the House and the other body, as well as the White House. However, just electing a party in both branches is not enough. The last 4 years proved that. The same group can in fact claim nominally to be in charge, and yet there is no teamwork. They can all wear the same uniform, and run in opposite directions. You have to also have a commitment to be a team to govern.

The concept of Government is something we have ignored for too long. For to long we focused on the good answer at the press conference, the good explanation of failure, and the glib ability to communicate through television that we mean to do better, that it is not our fault, that no one is in charge. It is time to go back to a basic civics lesson, to pose the great pragmatic American question: Does it work?

If it does not work, as a matter of habit, we should change the people in charge—not just in the White House, but in Congress—and demand of the new people, not just, "What will you do," but also, "Tell us so clearly that we can measure in 2 years whether or not to retain you, whether you have in fact kept your contract."

We intend to pose a simple question for the voter in November. One side has had all the reins of power, and if you like what they have done, you should relect them, but if you do not like the condition of your pocketbook, of your job, of your neighborhood, the condition of the national defense, then you should change the whole team, not just part of the team.

We are also setting up a yardstick for measuring us in 1982. "Should you elect us, look at our covenant and measure our achievements against what we say we will do as a team."

Taken all in all, a national event, attracting all the Federal candidates for the House, the other body, and the Presidency, offering accountability and team effort, a solemn covenant, focusing on the concept of governing, is in many

ways the biggest change in models of government since Franklin Roosevelt, at his peak, developed the strong Presidency. That is what September 15 is all about. The Republican Federal candidates standing on the steps represents a commitment to finding new and more effective ways of making the Constitution work in difficult times.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I think the gentleman has pointed out to us the significance that we hope to establish with respect to our activities on September 15. Whatever the failings that the parliamentary systems of European democracies may have, they are superior to our more loosely knit representative system in one respect: That respect the gentleman has referred to as accountability.

When a British worker goes to cast his vote for his representatives in the House of Commons, there is little doubt in his mind as to which party to hold accountable for the current state of affairs in his country.

But here in our country, where legislators are responsible for myriad constituent services; where regional, State, and ethnic identities are strong; where members of the legislative branch are not structurally tied to the Chief Executive of their own party, the accountability for the current state of affairs tends to be blurred in the minds of the citizenry. At present, with our economy reeling on the brink of chaos, with our national defense posture sagging, and with our continued vulnerability to the whims of foreign oil oligarchs, the members of the majority party are doing their best to further blur the sense of accountability in the minds of the electorate. Parenthetically, I guess I can say that I do not blame them, but really, is that the function of our system?

We members of the minority ought to be heard on the accountability question. Perhaps we have not done a good enough job in the past in pointing out that we have a job to do, to suggest an alternative, to suggest there is a different way to go and suggest that we have the courage and the guts to present that alternative. Members of the minority cannot allow that to go unchallenged because the undeniable truth is that members of the majority party have been marching in lock-step to the orders of their party who currently occupies the White House.

Just today, we found when we discussed one bill that is in the area of regulatory reform, we even had members of the majority party suggest that the major piece of regulatory reform, the regulatory reform bill before the committee I happen to serve on, the Judiciary Committee, has been taken off our consideration and has been held from us for about 6 weeks. Why? Because the White House objected to the fact that we would have really the assertiveness to suggest that there ought to be a legislative veto provision considered. It was not even a one-House legislation veto; it was a two-House legislative veto, and as soon as we adopted that on a very close vote in committee, the words came down from the White House and that was pulled from our committee and has not been seen since.

We were scheduled tomorrow to consider that very important legislation, and mysteriously that particular decision with respect to that committee was changed, and tomorrow we are not going to have that committee meeting and we are not going to go forward with regulatory reform, which the Carter administration has suggested to the American people is one of the things that is important and a priority on their schedule of things.

Even if we do have a lameduck session, which many of us hope we will not have because we do not think it will truly be representative, there is great question whether it would even get on the schedule at that time. So, we have an obligation here, I think, as members of the minority, to point out that we do have a leadership here in the majority party that is in lock-step with the White House and doing its bidding.

According to the 1980 Congressional Quarterly study of congressional support for President Carter, this legislative body chalked up a 76-percent level of support for Carter, in spite of the fact that members of the minority party voted in accord with the President's wishes only 34 percent of the time.

□ 2020

When President Carter wanted legislation to pave the way for the Panama Canal giveaway, his party colleagues in the House were behind him all the way. When Carter pushed the $14 billion Department of Education, his party colleagues were behind him all the way. When Carter opposed one substantive balanced budget proposal after another, his party colleagues in the House were behind him all the way. When Carter opposed attempts to clean up the wasteful and fraud ridden food stamp program, his party colleagues were behind him all the way.

If in fact they were not behind him all the way, he would not have been successful in doing those things, but unfortunately we, the members of the minority, have not done a good enough job of making that clear to the American people. But I truly wonder how many of these positions the members of the majority will boast about when they return home to hit the campaign trail. My guess is very few, perhaps none of them, because the positions are, in and of themselves, indefensible.

There are members of the majority party, I know, who chalked up levels of support for Carter approaching 80 percent, yet they are already going back to the people in their districts and trying to paint a picture of themselves as ardent foes of Jimmy Carter's excesses.

We of the minority have an obligation not to allow this to be done. We cannot allow them to get away with it.

We did not vote for these spending measures. We did not put obstacles in the way of meaningful tax relief. We did not support the gradual dismantling of our national defenses.

On so many occasions some of the leaders of the majority say that there is only one purpose for the minority party here, and that is to form a quorum, which is a backhanded way of saying that they want to take responsibility for the decisions that are made in this House. If that is the case, then they ought to accept the responsibility for the failures.

We do not say this for the sake of partisanship; we say this for the sake of our Nation, because the Nation will be benefited when we have both parties joined in debate about issues that are important to the American people.

To succeed, however, this message must clearly be brought home to the American people. They must know that, like the British worker voting for his representative in the House of Commons, they have a clear choice. They have a clear choice between the team that is responsible for the present state of affairs and the team that has ardently and very, very strongly worked to reverse the situation.

The majority team is to blame, and once the American people hear and understand the truth of that message, they will say to them, as Cromwell said to Parliament some three centuries ago:

You have sat here too long. No good has been done by it. Depart, I say, and let us have done with you. In the name of God, go!

Mr. Speaker, I thank the gentleman for yielding.

Mr. GINGRICH. Mr. Speaker, I thank the gentleman from California (Mr. LUNGREN) for his comments, and I yield back the balance of my time.

AMENDMENTS TO THE RAIL ACT OF 1980

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ECKHARDT) is recognized for 15 minutes.

● Mr. ECKHARDT. Mr. Speaker, this is in pursuance of my promise on the floor last Friday to notify you exactly what my substitute will be when offered at about 1 p.m. on Tuesday, September 9.

First: The major substance of the substitute remains unchanged. It will include exactly the language that was first printed in the Record on July 1, 1980, p. 18046, regarding striking of surcharges and inserting a requirement that new divisions of joint rates be decided

speedily by the ICC. Furthermore, the substitute on surcharges will contain no new material that has not hitherto been published. The only addition will be the acceptance of the Staggers-Rahall-Lee-Loeffler amendment provisions concerning the Rock Island and Milwaukee Railroads. I have all along indicated that I favor the labor protection provisions but I had not thought they were germane to title III until the chairman ruled on Friday that these provisions are germane to title III. Since it is so pressing that these emergent problems be taken care of, I think it desirable to remove them from controversy by placing them in my substitute.

To summarize, the major difference between the Eckhardt substitute and the Staggers, et al. amendment in the nature of a substitute is as follows: The Staggers amendment in the nature of a substitute would wipe out the action of the House taken on July 1 affecting the Eckhardt amendment which provided a 160 percent of variable cost threshold for ICC jurisdiction. Acceptance of the Eckhardt substitute would retain previous action on title II.

The Staggers amendment in the nature of a substitute would retain the surcharge provisions of section 301. It would not give reasonable or substantial relief to the shortline railroads from these provisions. It leaves in effect a surcharge provision by which shortline railroads may be forced to reduce their own rates in order to make a joint rate viable when a larger railroad has imposed a surcharge unilaterally. That is the effect of section 301 which the Eckhardt substitute would strike. Some 60 shortline railroads support my amendment because they feel they may be forced out of business by their larger railroad associates in joint rate situations.

Section 301 must also be considered with section 502 of the bill because a line which is subject to a surcharge then becomes vulnerable to de facto abandonment by ICC under these provisions of title V.

My amendment would substitute for section 301 of title III—which permits surcharges—the provisions of the Senate bill that expedite ICC action in reviewing joint rate agreements. This provision, which is the gravamen of my amendment, was printed in the RECORD on July 1, 1980, and was reinserted by Mr. FLORIO in the RECORD of September 5, 1980.

Thus, to summarize, the amendment:

First, leaves the previous action on title II alone;

Second, strikes out surcharges and substitutes expedited ICC procedure; and

Third, provides for saving the Rock Island and Milwaukee Railroads.

Mr. Speaker, I wish to insert here letters in support of my substitute from consumers, farm and labor groups and the joint letter of Senators MCGOVERN and DOLE encouraging my removal of the surcharge provisions of the bill.

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., September 4, 1980.

DEAR REPRESENTATIVE: H.R. 7235, the "Rail Act of 1980," is once again scheduled for consideration by the House on September 5. Support for the Eckhardt-Rahall amendment is strong and has been growing to include many consumer groups since its July 24th passage.

Consumers need your support of this amendment, which will serve as protection against imminent railroad monopolies that will drive smaller lines out of business, allow for discrimination against certain ports, force captive shippers to pay exorbitant rates and cost consumers millions of dollars. If Title 3 remains intact, railroads will acquire the power to surcharge at their discretion. Conrail alone has stated its intention to increase in excess of 285,000 rates.

The Rahall-Staggers-Lee compromise recently offered fails to protect consumers, captive shippers, and small railroads. A report submitted by the Public Interest Economics Center to the Federal Railroad Administration clearly substantiates these concerns as well as numerous other undesirable consequences that will materialize without inclusion of the Eckhardt-Rahall amendment as accepted on July 24.

The amendment has been incorporated into the Rail Bill, illustrating Congress' concern for consumer protection. The Consumer Federation of America urges you to continue supporting the Eckhardt amendment, and oppose the Rahall-Staggers-Lee "compromise" which will negate all virtues of the original Eckhardt-Rahall amendment.

STEPHEN BROBECK,
Executive Director,
Consumer Federation of America.

CONSUMER ENERGY COUNCIL OF AMERICA,
Washington, D.C., September 4, 1980.

Re: H.R. 7235 The Rail Act of 1980

DEAR REPRESENTATIVE: The House is once again considering H.R. 7235, The Rail Act of 1980. The Consumer Energy Council of America, a broad based coalition of major national consumer, labor, farm, public power, rural electric cooperative, urban, senior citizen and low income organizations urges you to support all aspects of the Eckhardt amendment—including those already adopted, and to reject the Staggers-Rahall amendment, which is a major step backward.

The bill, as amended on July 24, 1980, provided the minimum protection that consumers of heavy bulk commodities such as coal and grain deserve. Coupled with the other provisions of the Eckhardt amendment, which would protect small railroads and ports, the bill would strike a balance between shippers, consumers, and railroads. The Staggers-Rahall amendment is not a compromise in any sense of the word and it would remove the protection for the consumer, which the House has already voted.

We urge you to reject the Staggers-Rahall amendment and vote for the Eckhardt amendment which would prevent dramatic, inflationary increases in coal and grain prices. Should the Eckhardt amendment fail, we urge you to vote against the bill.

Sincerely,

ELLEN BERMAN,
Executive Director.

NATIONAL FARMERS UNION,
Washington, D.C., September 8, 1980.

Hon. BOB ECKHARDT,
U.S. House of Representatives,
Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: I am directing this letter to you because of the information I have received in regard to your concern over rail deregulation legislation—H.R. 7235.

As the Senate acted on this legislation, we were closely associated with Senator George McGovern, and he provided us with the leadership that established Farmers Union's position on the Senate-passed bill. We are still in consultation with members of his staff and are being guided as to our attitude on H.R. 7235.

We are very pleased to find that you apparently have been exercising leadership into some of the problems that this legislation would create for rural and farm America. We have serious problems with Section 301, and we understand that you also are attempting to amend the legislation to prevent defacto abandonments of rural branch lines through excessive surcharges that this section authorizes.

It appears that other members may have problems with the legislation, particularly with regard to how it would affect rural agricultural shippers. Irrespective of the problems with other provisions of the bill, H.R. 7235 is unacceptable to the Farmers Union unless Section 301 can be amended to prevent the problem that we have indicated above.

I would deeply appreciate it if you share our concern, as I understand you do, that you would make opposition known to other members of the House when the bill comes up for debate and vote. I would also appreciate having your response as to other action we could instigate to make known our views if you have any suggestions.

Best regards.

Sincerely,

REUBEN L. JOHNSON,
Director of Legislative Services.

THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA,
Washington, D.C., September 4, 1980.

DEAR CONGRESSMAN: The Seafarers International Union of North America, AFL–C.O. urges your support for an amendment to the Rail Act of 1980 that will be introduced during upcoming deliberation on the House floor. The amendment to be offered by Congressman Eckhardt is required to correct deficiencies in the legislation that would adversely affect the livelihood of SIU members throughout the country.

Congressman Eckhardt will offer language to amend Section 301 which deals with joint rate surcharges. This section, as presently drafted, would allow major rail carriers to arbitrarily cancel both joint rates and through rates. It also would lift the restraints of Interstate Commerce Commission regulations on unreasonable and discriminatory rail rates. These actions would result in the loss of jobs for SIU members who are employed by small line railroads in various port cities.

Congressman Eckhardt's amendment to strike Section 301 will correct this problem by substituting the language contained in Section 107 of the Senate version of the bill. This proposed amendment would provide protection to shippers and short haul railroads alike by maintaining existing recourse through ICC review of all joint rate surcharges and divisions.

We strongly urge your support for this amendment because it will insure that marine workers engaged in rail-related cargo movements will not be unfairly treated

through the imposition of arbitrary joint rate surcharges.

Sincerely,

FRANK DROZAK,
President.

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, D.C., September 5, 1980.

Hon. BOB ECKHARDT,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: As you well know, the House is expected to vote on the Rail Act of 1980, next Tuesday.

The new compromise proposal is a subject of great concern to many of us representing agricultural states. During the development of the Senate rail deregulation legislation earlier this year we worked hard with the Senate Commerce Committee to include provisions in the bill to protect captive shippers from excessive rates and accelerated abandonments.

The Senate bill as passed contains many of these provisions while allowing railroads increased regulatory freedom. We are deeply concerned, however, that the House version of this bill will create serious hardships for shippers and agricultural producers through dramatically increased rates.

We recognize that House compromise proposal contains acceptable general rate provisions which are in some ways similar to those contained in the Senate passed version. However, the House section pertaining to joint rates and surcharges could be devastating to thousands of shippers across the country, particularly those located on branchlines, as well as adversely impacting a number of bridge carriers that transport agricultural commodities.

Surcharges imposed by one carrier and affecting the traffic of another, can have serious financial consequences for the second carrier. Given the marginal nature of several "bridge" carriers, the surchage and joint rate provisions could result in additional rail bankruptcies or financial crises requiring increased federal assistance. Yet this deregulation proposal was initially predicated upon the need to allow railroads to regain their financial health in the marketplace, thereby reducing their dependence on the Federal treasury.

Moreover, the doubling of a rail rate through surcharges on a given commodity and line can result in de facto branchline abandonments.

Such surcharges, as authorized in the House bill, would result in substantial diversion of traffic to less energy efficient transportation modes, thus creating an atmosphere that would facilitate abandonment proceedings.

We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agricultural products through increased food prices.

Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provisions of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Sincerely,

ROBERT DOLE.
GEORGE MCGOVERN.●

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 10 minutes.

● Mr. NEAL. Mr. Speaker, I am submitting to the House today a notification on the U.S. Export-Import Bank's proposal to provide $150 million in loans and guarantees to help finance the purchase of five American-made Lockheed L1011-500 jet aircraft by Transportes Aereos Portuguese (TAP), Portugal's national airline.

The total value of the five jetliners, plus related spare parts and services, will be $250 million, so the Eximbank will be financing or guaranteeing 60 per cent of the purchase price. The Portuguese Government, which owns TAP, will guarantee payment of the airline's indebtedness under the Exibank financing.

This notification was referred to me as chairman of the Banking Committee's Subcommittee on International Trade, Investment and Monetary Policy. Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, requires that the Eximbank notify Congress of proposed loans or financial guarantees, or combinations thereof, of $100 million or more. Unless the Congress determines otherwise, the Exibank may give final approval to the transaction after 25 days of continuous session of the Congress following notification.

I am submitting for the RECORD at this time a copy of the Eximbank notification giving the terms and details of the proposed financing. I would welcome any comments or questions my colleagues might have on this proposal.

The Eximbank material follows:

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. STEPHEN L. NEAL,
Chairman, Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Finance and Urban Affairs, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

THE SPEAKER OF THE HOUSE,
The Speaker's Room,
H-209, U.S. Capitol,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Portugal.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $150,000,000 to Transportes Aereos Portuguese (TAP), Lisbon, Portugal. The purpose of the Eximbank Financing is to facilitate the purchase in the United States by TAP of five new Lockheed L-1011-500 jet aircraft and related spare parts and services. The total U.S. export value for this transaction is estimated to be $250,000,000.

2. Identity of the parties

(a) TAP

TAP, established in 1944, is Portugal's national air carrier and provides scheduled and charter service on both domestic and international routes. It is 100% owned by the Government of Portugal.

(b) Guarantor

The Government of Portugal, acting by and through its Ministry of Finance, will unconditionally guarantee payment of TAP's indebtedness under the Eximbank Financing.

3. Nature and use of goods and services

The principal goods to be exported from the United States are five commercial jet aircraft to be used by TAP on its international routes. The airframes for the L-1011-500's will be manufactured in California by the Lockheed California Company. In addition, other U.S. suppliers will furnish components and spare parts. The engines for the aircraft will be supplied by Rolls-Royce supported by official export credit financing provided by the United Kingdom.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reason

The Eximbank Financing of $150,000,000 will facilitate the export of $250,000,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their sub-contractors are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial aircraft.

The export of the five commercial jet aircraft which are the subject of this letter depends to a significant degree upon the availability of Eximbank support for the medium and long term maturities. Commercial lenders are unable to commit themselves in Portugal at fixed interest rates or for the full repayment term involved in this case, a ten year amortization after a four year delivery period. Therefore, the Eximbank Financing is necessary to provide repayment terms that would make the transaction economically feasible for TAP.

Lockheed estimates that the construction of each aircraft involves 600 man/years of employment evenly divided between Lockheed and its suppliers. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts and related equipment.

2. The financing plan

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$37,500,000	15
Unguaranteed private financing	62,500,000	25
Eximbank financing	150,000,000	60
Total	250,000,000	100

It is expected that forty percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank (Blended Eximbank Financing). The remaining sixty percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

(a) Eximbank Charges

The financial charge on the Blended Eximbank Financing to be paid by TAP will be 8% per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for TAP on July 5, 1979. A commitment fee of $0.5% per annum will also be charged on the undisbursed portions of the Eximbank Financing.

(b) Repayment Terms

The Eximbank Financing and the Unguaranteed Private Financing will be repaid by TAP in two schedules of 20 semiannual installments beginning October 25, 1983 and October 25, 1984. The Unguaranteed Private Financing will be repaid from the early installments of each such schedule.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. ALLEN.

PORTUGAL

Area: 92,072 sq. km.
Population (end 1979): 9.3 million.
Population Density: 101/sq/km.
GDP per capita (in 1979US$): 2,154.

GDP

[In percent]

Expenditure Structure (1979):	
Private Consumption	73
Government	15
Investment	22
Exports	25
Imports	−35
	100
Origin of GDP (1977)	
Agriculture	14
Industry	45
Services	41
	100

	1976	1977	1978	1979 (P)
GDP data:				
Millions of dollars (nominal)	14,821	15,730	16,994	20,028
Growth rate (real) (percent)	6.9	5.3	3.2	4.0
Fiscal and monetary data:				
Government deficit (millions of dollars)	1,585	1,142	1,941	1,981
Deficit as percent of GDP	10.7	7.3	11.4	9.9
Increase in money supply (M1) (percent)	8.4	11.8	14.5	25.9
Savings ratio (percent)	14.3	13.2	16.3	19.7
Price data (percent change over previous year):				
CPI	21.1	27.4	22.1	24.2
WPI	19.2	28.7	31.6	NA
Labor data:				
Wages (monthly earnings) (percent change)	11.9	12.0	11.0	NA
Unemployment rate (percent)	6.9	7.9	8.4	10.0
External debt (millions of dollars):				
Outstanding debt	2,892	4,427	5,420	6,583
Private	1,752	2,488	3,433	3,721
Public	1,140	1,939	1,987	2,862

	1976	1977	1978	1979 (P)
Debt service ratio (public debt only) (percent)	5.0	6.1	5.3	NA
Total debt/GDP (percent)	19.5	28.1	31.9	32.9
Balance of payments (millions of dollars):				
Exports, f.o.b	1,823	2,027	2,410	3,594
Imports, f.o.b	3,932	−4,533	−4,791	−6,016
Trade balance	−2,109	−2,506	−2,381	−2,422
Tourism (net)	186	268	431	695
Net services	−107	−863	−54	100
Unilateral transfers (net)	972	1,134	1,635	2,472
Of which emigrant remittances		1,174	1,671	2,446
Current account balance	−1,244	−1,499	−800	150
Capital account balance	277	636	760	1,259
Overall balance	−1,967	−863	160	1,352
Reserves (millions of dollars):				
Foreign exchange (excluding gold)	176	366	871	940
Gold (London average price)	3,454	3,562	4,276	12,262

Note: Exchange rate: Escudos/U.S. dollar—1976=31.549, 1977=39.855, 1978=46.010, 1979=49.781.

Sources: I.F.S., OECD Survey, IMF—Recent economic developments.

EXIMBANK EXPOSURE IN PORTUGAL

[As of July 31, 1980]

	Outstanding	Undisbursed
Direct loans	$75,295,058.21	$11,833,288.82
CFF loans	1,128,425.70	1,333,288.82
Financial guarantees	2,658,426.92	
Bank guarantees and other	111,093.95	1,521,280.00
Insurance:		
Medium term	260,637.98	499,959.00
Short term	1,699,026.76	93,543,202.48
Total exposure	81,152,669.52	108,731,019.10

DEFAULTS AND RESCHEDULINGS

In the past ten years there have been no defaults or reschedulings of Export-Import Bank direct credits for U.S. export sales in Portugal.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

THE SPEAKER OF THE HOUSE,
The Speaker's Room, H-209, U.S. Capitol,
Washington, D.C.

Dear Mr. Speaker:

Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Mexico.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing to Hylsa, S.A. in the form of loans and guarantees ("Eximbank Financing") of $178,110,000 covering U.S. costs of $151,393,500 and local costs of $26,716,500. The purpose of the financing is to facilitate the purchase in the U.S. for export to Mexico of various equipment and services required for the expansion of the Borrower's integrated steel facilities and port facilities at Tampico, Mexico. The total U.S. export value for this transaction is $178,110,000.

2. Identity of the borrower

Hylsa, S.A. is one of Mexico's leading producers of steel, and a wholly owned subsidiary of Grupo Industrial Alfa, S.A., which is Mexico's largest privately owned and most diversified company. Eximbank's experience with the Borrower has been satisfactory.

3. Nature and use of goods and services

Various items of equipment and services to be used in the expansion of the Borrower's steel port facilities.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank Financing of $178,110,000 will facilitate the export of that amount of U.S. goods and services. U.S. equipment firms are having a difficult time winning jobs against Japanese and European bidders, all of whom offer competitive pricing and financing. Eximbank has been informed by the U.S. suppliers that their backlogs are way down, particularly since there are no major expansions contemplated by U.S. steel plants; thousands of U.S. jobs are therefore dependent in large part upon the ability of the U.S. suppliers to compete for steel mill jobs overseas. Recent OECD exchanges make it clear that Japan and England are supporting financial packages for this project of 85% of fixed rate financing, in addition to 15% of local costs, all at an interest rate of 7.5%. The Eximbank Financing will assist in the generation of some 7,120 jobs in the U.S.

2. The financing plan

The total U.S. and local costs of the project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$26,716,500	15
Eximbank financing:		
(a) U.S. costs	151,393,500	85
Total		[1] 100
(b) Local costs	26,716,500	15
Total	204,826,500	

[1] U.S. costs.

It is expected that the Eximbank Financing for the U.S. Costs will consist of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

a. Eximbank Charges

The financial charges on the Eximbank Financing to be paid by Hylsa will be 8.25 percent per annum, payable semianually, a rate established in a Preliminary Commitment authorized by Eximbank for Hysla on March 6, 1980. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment terms

Hylsa will repay the Eximbank Financing in 20 semiannual installments, beginning on January 10, 1985.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.●

SOUTH AFRICA'S RACIAL POLICIES

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from Illinois (Mr. STEWART) is recognized for 30 minutes.

● Mr. STEWART. Mr. Speaker, recently, I wrote to the Honorable A. L. Schlebusch, M.P., Minister of Justice for South Africa. In my letter to the Minister I expressed my concern for Mr. Govindsamy Reddy, a political prisoner in South Africa. The Minister responded to my letter on June 10, 1980 and indicated that he was "not prepared to withdraw his (Mr. Reddy's) restrictions at this stage."

In his letter, the Minister also attempted to draw an analogy between the situation in South Africa and "the recent outburst in Miami."

I reject the analogy.

However, I did request the Congressional Research Service of the Library of Congress to review the Minister's letter. I am enclosing the Library's memorandum to me at this point in the RECORD.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., August 5, 1980.

To: Honorable Bennett Stewart. Attention: Coleman J. Conroy.

From: Brenda Branaman, Analyst in African Affairs, Foreign Affairs and National Defense Division.

Subject: A comparison of the racial situation in South Africa and the United States with particular attention to the causes of the Miami, Florida riots.

Both similarities and differences exist between the racial situation in South Africa and that of the United States. The most significant distinguishing feature between them is that South Africa pursues an official separate development policy while the United States in contrast has established legal guarantees of freedom and equality.

Until the early 1950's discrimination against blacks was practiced in both South Africa and the United States through legal measures and by a variety of informal social practices. Since that time the two countries have taken separate paths in the black struggle for equal rights. The United States began to move toward the elimination of discrimination with the 1954 Supreme Court's landmark decision in the case of *Brown* vs. *Board of Education of Topeka* which held that "separate but equal" educational systems are inherently unequal. This decision encouraged a campaign of nonviolent resistance against segregation laws in the South, culminating in the 1963 March on Washington. Subsequently civil rights legislation eliminated the legal barriers to racial equality and the position of many American blacks substantially improved. Problems in the implementation of this legislation continued through the late 1960's and 1970's, especially with respect to those laws which relate to social and economic rights. American blacks, however, now have the power of the vote with which to carry on their struggle, a political tool that continues to be denied to South African blacks.

In 1948 when the South African Nationalist Party came to power the policy of separate development was officially established. Implementing legislation began in 1949 which prohibited marriage and sex across racial lines and continued with a series of legislation that divided the population into racial categories, provided for separate racial residential areas in the cities and established the practice of banning organizations, publications and persons who disagreed with the government's apartheid policy. In 1952 South African blacks and Indians joined together to conduct a campaign of passive resistance to the apartheid laws. In 1956 they were joined in their resistance by the coloreds (those of mixed race). The three groups met to draw up a Freedom Charter, a document which laid down principles for a nonracial democratic South Africa. Authorities severly suppressed these peaceful resistance efforts and blamed the 1952 Port Elizabeth riots on the campaign. The government responded to periodic riots in the following years by passing progressively more restrictive legislation. This legislation established separate educational systems for each racial group, created the passbook system requiring blacks to carry identity documents, made strikes by black workers illegal and prevented black unions from participating in collective bargaining, established job classifications by race eroded the limited franchise previously enjoyed by Indians and coloreds, and established segregation in public places. After the 1960 Sharpville killing by South African police of blacks demonstrating against the passbook system, the government banned the African National Congress (ANC) and Pan-African Congress (PAC) and detained 1,900 people, including some whites. During the following two decades a small number of black leaders turned to violence as a method of resistance but their activities were effectively frustrated by the South African security forces.

The United States experienced its own pattern of violence in protest against economic deprivation and inequality beginning with the Harlem riot of 1964 and the Watts riot of 1965 and continuing through the late 1960's. The Black Panther Party and other separatist groups emerged during this period. They never gained widespread black acceptance, but neither did the ideas of these groups completely disappear. According to some observers the frustration and despair that produced the riots and these organizations in the sixties emerged again in 1980 in the form of the Miami riots.

REASONS FOR THE MIAMI RIOTS

The rioting which occurred in Miami's Liberty City in May 1980 was the immediate result of a number of trials by white juries whose verdicts were perceived as unjust by blacks. The specific case to which the black residents reacted was the McDuffie case. In that case an all-white jury found four white policemen not guilty of charges that they had beaten to death a black businessman. The trial was conducted in an atmosphere of extremely poor relations between the police and the black community. This incident provided only the spark which ignited a much more serious problem.

The underlying reasons for the May riot were frustration resulting from a high employment rate, especially among black youths, aggravated by frictions with Cuban refugees and government cutbacks in social programs intended to improve the quality of life in low-income areas. These conditions exist in other cities across the United States and it is the assessment of many black leaders that racial unrest similar to that in Miami could occur elsewhere in the country.

The Kerner Commission Report released under the Johnson Administration in March 1968 cited the lack of jobs as a factor contributing to violence in American cities in 1967. Some black leaders are saying that the government does not need new commissions to study the causes of riots but that the need is take effective action now. An official of the U.S. Commission on Civil Rights recently commented that all of the causes cited in the Kerner Commission Report were as relevant in 1980 as they were in 1968 and that the government should simply put a new date on it. The White House response to the Miami riot in May was to set up a task force to study the causes of the unrest.

The friction between American blacks and refugees appears to be a problem without a parallel in South Africa. Many American blacks believe that refugees are being hired for jobs that otherwise would be held by blacks. This belief is especially intense among black in Miami, a city which has experienced heavy influxes of refugees from Cuba and Haiti. The other problems underlying the Miami riots exist in South Africa, as well.

COMPARISON OF GENERAL CONDITIONS IN SOUTH AFRICA AND THE UNITED STATES

Legal system. In South Africa the legal barriers to racial equality remain in the forms of an intricate system of apartheid laws enforced by an extensive police and intelligence network. Although de facto discrimination remains in many cases in the United States, legal barriers to racial equality have been removed.

South Africa's system of government is highly centralized, and power is concentrated in the Executive Council consisting of the Prime Minister and his cabinet. This body controls parliament and the judiciary has no power to review legislation. Such a system make it extremely difficult for South African black to work for change through the legal system. On the other hand, American blacks have been able to appeal separately to any one of three branches of the more decentralized American government. They achieved legal changes through both litigation and legislation. Literature of the South African Foundation indicates that the changes made in South Africa within the last five years have come about as a result of executive policy in cooperation with the private business sector.

Focus of change. Since racial discrimination is incorporated into the South African legal system, groups working for change in that country focus their efforts on political and economic issues. The government of Prime Minister Botha has proposed the creation of a President's Council that could consider a new constitution. The council would include whites, Asians and coloreds. He has even indicated willingness to include an advisory role for urban blacks on the Council, but he also has made clear that blacks will not be granted the vote in the near future. Botha has focused most of his reform efforts on economic issues such as jobs and unions and changing petty apartheid laws which segregate public facilities. Some black leaders inside the country accept the idea of economic change and the postponement of political power sharing. But most black activists, both within and outside the country, oppose the "separate development policities of the government, which would channel black political activity into the homelands. These blacks want a unitary state with full political participation as well as economic changes. In short, they want the total elimination of apartheid.

Historically, American blacks have believed that acquisition of political power was necessary to obtain the economic benefits of U.S. prosperity. Consequently, for many years the black struggle for equality focused on obtaining the vote. Since the court decisions and legislation passed as a result of the civil rights movement in the 1950's and 1960's, the legal barriers to racial equality have been removed. The struggle by blacks in the United States now focuses on economic and sociological issues.

Values of society. The American value system includes a belief in political and social equality and equal economic opportunity. These values over time have come to include blacks and other minorities as well as whites. Blacks can therefore appeal to a segment of white public opinion to force a government response in the struggle for equal rights. In South Africa, the value system prevailing among whites treat differences between blacks and whites as divinely ordained and ineradicable. Consequently, there is no substantial element in white public opinion believing in equality of the races to which blacks can appeal.

COMPARISON OF SPECIFIC CONDITIONS IN SOUTH AFRICA AND THE UNITED STATES

This section will look at selected conditions which affect race relations in the two countries. It is not intended to be a comprehensive list.

Education. Equal access to education for blacks and whites remains a problem in both countries. The 1954 *Brown* decision and the 1964 Civil Rights Act promoted school desegregation in the United States as a means of providing quality education for blacks and other minorities on an equal basis with whites. Twenty-five years after the court decision half of all minority children in the United States still attend segregated schools according to the U.S. Civil Rights Commission. Desegregation has been more complete in the rural South than elsewhere in the country. In most big cities public schools remain primarily black because of a white exodus to the suburbs. Quality education has become a concern of black parents and leaders since these schools are producing large numbers of functionally illiterate dropouts and graduates. The Carter Administration has proposed a youth employment program that would attack the problem of illiteracy, a major cause of high minority youth unemployment. Despite these problems, American black participation in higher education has dramatically increased in recent years. In 1976 blacks composed 9.3 percent of the total college enrollment, compared to 11.5 percent of the total U.S. population.

In South Africa 90 percent of the white children attend public schools. The remaining 10 percent are mostly English-speaking students attending private schools run by the Catholic and Anglican churches. These private schools have been allowed limited integration in recent years, but this change has not improved the educational opportunities for the majority of non-white children. School attendance for white children between ages 7 and 16 is free and compulsory. Only since 1976 has schooling been compulsory for black children ages 7 through 11. Unlike whites, black parents must pay fees for tuition, textbooks, and uniforms for their children attending school.[1] During the recent school boycott initiated by the colored children, but later joined by many blacks, Prime Minister Botha acknowledged that there were inequalities in government spending on education for non-white groups and he promised to look into the matter. One of the most prominent inequalities in the segregated school system is the disparity between government educational expenditures on the racial groups.

The government spends 11.5 times more per student on whites than blacks. Until recently the government did not concern itself with this problem, but emphasized growing black enrollment, the growing number of new teachers and new schools. Even so, improvements in non-white school systems seem modest compared to their needs.

Employment/unemployment. In both the United States and South Africa black unemployment is a major problem and a direct result of past inequalities of education and general discrimination as well as the general state of the economy. However, the gap between black and white unemployment is smaller in the United States than in South Africa. In South Africa the level of black unemployment was at least four times as high as white unemployment in 1977. Government figures show 13.0 percent unemployment for blacks and 3.6 percent for whites, but unofficial estimates place black unemployment at between 20 and 25 percent counting underemployment and subsistence farmers in the homelands. In the United States black unemployment is consistently double that of white unemployment. In 1977 black unemployment was 13.9 percent and white unemployment was 6.2 percent. Youth unemployment for both blacks and whites was considerably higher but again figures for blacks are about double those for whites (1978—38.6 percent for blacks, 16.3 percent for whites).

There is a considerable wage gap between blacks and whites in the United States, but it is much smaller than the gap in South Africa. In 1978 the per capita income of black men in the United States was 59 percent of the per capita income of white men. In South Africa black per capita income was only 6.9 percent of white per capita income in 1975—a ratio of white-to-black per capita income of 14 to 1, according to the unofficial South African Institute of Race Relations. In South Africa a majority of black families live below the poverty level, while in 1977 28.2 percent of black families in the United States lived below that level. But poverty may not be defined the same way in both countries.

The United States has a substantial black middle class, partly as a result of the passage of the Civil Rights Act of 1964, which prohibited job discrimination on account of race, religion, or sex. American blacks still experience job discrimination but they have gained access to a number of jobs previously unavailable to them, especially in government (Federal, State and local) and the professions. South Africa on the other hand, has an extremely small black middle class because of a history of legally sanctioned job reservations for white workers. The Botha government in cooperation with the business sector has encouraged the gradual elimination of these job reservations, but recent legislation responding to recommendations of the government's Wiehahn Commission retained the use of "closed shop" contracts to prevent the hiring of blacks.

Freedom of movement. In the United States there have been no legal prohibitions on freedom of movement for blacks since the elimination of slavery. Discrimination against blacks in housing and employment was outlawed with the passage of the 1968 Fair Housing Act and the 1964 Civil Rights Act.

In South Africa, on the other hand, an intricate system of influx control is the mechanism by which the South African government enforces its separate development policy. The government has established nine ethnic homelands where blacks must live unless they are employed elsewhere. If found unemployed in the urban areas, blacks are forcibly returned to their homeland. Blacks who are able to get jobs in the urban areas must carry passbooks which identify them as having government permission to travel, reside, and work there. Large numbers of blacks are arrested each year for passbook violations since they migrate illegally from the homelands to the cities looking for jobs. There are an insufficient number of jobs available in the homelands and overcrowding makes subsistence farming very difficult. The South African government has attempted in recent years to develop industries near the homeland borders, but to date these efforts have failed to alleviate unemployment in the homelands.

Housing. Segregated residential housing exists in both countries but in sharply differing degrees. In the United States the 1968 Fair Housing Act gives blacks who can afford it access to housing on an equal basis with whites. Despite this legislation, discriminatory practices and separate neighborhoods persist, although integrated residential areas are growing. Efforts are being made in 1980 to pass legislation which would strengthen the Federal Government's fair-housing enforcement mechanisms, enabling it to more effectively implement the Fair Housing Act.

In South Africa the Group Areas Act of 1950 authorized the government to designate zones according to race in urban areas. Consequently there are no integrated neighborhoods, and even if a black family can afford to live in a white area it is prevented from doing so by law. Prime Minister Botha announced in 1979 that he was prepared to amend the Group Areas Act, but this has not been done. Urban blacks cannot own land or houses within their townships and are forced to rent, although this law was relaxed in 1979 to allow 99-year leases on land in the townships.

Both countries have problems concerning inadequate housing for low-income blacks. Shanty towns, also known as squatter camps, exist in South Africa, while the United States has inner city slums or ghettos. Both countries have public housing programs which have proved insufficient for the needs of low-income blacks. In both countries these blacks find it difficult to afford decent housing and must often live under conditions of severe overcrowding in unsafe buildings and with poor sanitation. Conditions in the two countries do differ, however. When it became clear that the government would be unable to provide enough units to keep up with the demand, the United States turned to methods other than construction of public housing such as a rent supplement program. South Africa, on the other hand, has continued to rely on public housing as the only solution and maintains a policy of restricting the number of units constructed as a means of encouraging blacks to remain in the homelands. The South African government continues to bulldoze the squatter settlements created by blacks illegally residing in urban areas.

Political participation. In South Africa only whites have the franchise and the privilege of full political participation. Blacks may vote and hold office within their respective homelands but not on a national basis. Asians and coloreds have no vote on a national level but have a limited franchise in selecting advisory councils to the government for their respective groups. In the United States blacks are guaranteed the right to vote. Poll taxes and other discriminatory practices hampered the exercise of this right until the passage of the Voting Rights Act of 1965. Since then, blacks have been elected to more public offices and have increasingly influenced Presidential elections. Currently, however, there are no black Senators.

Political prisoners and police/community relations. The United States has on occasion been charged by human rights organizations with having political prisoners and perhaps the best-known recent case involved the Wilmington 10. Cases involving American Indians have been publicized by Amnesty International. These cases are few in number, and many observers question the validity of charges that they amount to political imprisonment. South Africa, on the other hand, regularly arrests and detains without charge persons dissenting against the apartheid system, whites as well as blacks and other non-whites.

Most recently large numbers of colored school children were detained as a result of their boycott protesting the segregated school system. South Africa also regularly bans persons (legally restricts their movement, contacts, and rights to express themselves) especially blacks, and periodically bans organizations which work for the elimination of apartheid. In recent months several prominent blacks were banned, including religious leaders such as Bishop Tutu. In 1977 a large number of anti-apartheid organizations were banned following a government investigation of the death in detention of Steve Biko. During the 1970's there was a number of unexplained deaths

[1] The government several years ago promised to provide free textbooks for all students through grade 12 by the end of 1979.

in detention—deaths that were alleged by some observers to have been caused by brutal interrogation methods, but described by police as suicides.

Both South Africa and the United States are periodically charged with instances of police brutality. Police/community relations are generally poor in low-income black communities in both countries. Some American cities have attempted to improve these relations through police/citizen liaison groups and by increasing the number of blacks on the police force. Washington, D.C., for example, now has a 50 percent black police force and Detroit's force is more than 60 percent black. Most American cities, however, continue to have low proportions of blacks on their police force. In South Africa there are substantial numbers of blacks on the police force inside the urban black townships, but this does not appear to favorably affect relations between the black communities and the police.

CONCLUSION

A fundamental difference between the racial policies of the two countries exists. The South African government gives legal support to discrimination according to race and takes severe actions against those who dissent against the apartheid system. On the other hand, the United States has over the past 26 years worked toward eliminating discrimination through removal of segregation laws and the passage of laws guaranteeing equality.

Both governments claims that they are moving toward racial equality as quickly as possible, and South African Prime Minister Botha establishes commissions to make recommendations for change and delivers speeches instructing the white population to "adapt or die." American President Carter addresses the NAACP and notes his appointment of federal judges and his actions to curb inflation and proposes such programs and new youth employment program. Although the level of government commitment may be greater in the United States, many blacks in both countries, as well as other non-whites in South Africa, perceive that their respective governments are not moving fast enough to eliminate inequalities between the races. Some among them believe that the actions that have been taken are merely cosmetic and that their governments basically are not interested in creating a genuine equality. Whites in both countries, however, have a different view than non-whites. In the United States many whites believe that all racial barriers have been removed and do not see the need for continued government programs to assist blacks and other minorities. In South Africa large numbers of whites oppose Botha's reforms and it is for this reason many of his announced changes have been difficult to implement. However, some whites in both countries favor programs for equalizing opportunities available to blacks and other groups.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. PORTER (at the request of Mr. RHODES), for today, on account of a death in the family.

Mr. RUSSO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

Mr. RODINO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

Mr. NELSON (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. CORMAN (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. WOLFF, for September 9, on account of official business—Narcotics Committee.

Mr. CHAPPELL (at the request of Mr. BENNETT), for today, on account of official business in district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LOEFFLER) to revise and extend their remarks and include extraneous material:)

Mr. BETHUNE, for 10 minutes, today.

(The following Members (at the request of Mr. GUDGER) to revise and extend their remarks and include extraneous material:)

Mr. FASCELL, for 60 minutes, today.
Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. LEDERER, for 5 minutes, today.
Mr. ECKHARDT, for 15 minutes, today.
Mr. NEAL, for 10 minutes, today.
Mr. STEWART, for 30 minutes, today.
Mr. CONYERS, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. SEIBERLING and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,768.50.

(The following Members (at the request of Mr. LOEFFLER), and to include extraneous matter:)

Mr. VANDER JAGT.
Mr. CARTER in two instances.
Mr. GREEN in two instances.
Mr. DERWINSKI in three instances.
Mr. LIVINGSTON.
Mr. SHUMWAY.
Mr. LEWIS in two instances.
Mr. COLLINS of Texas in two instances.
Mr. DORNAN in two instances.

(The following Members (at the request of Mr. GUDGER) and to include extraneous matter:)

Mr. BLANCHARD.
Mr. MURTHA.
Mr. SIMON in two instances.
Mr. ANDERSON of California in 10 instances.
Mr. GONZALEZ in six instances.
Mr. BROWN of California in 10 instances.
Mr. ANNUNZIO in six instances.
Ms. HOLTZMAN in 10 instances.
Mr. JONES of Tennessee in 10 instances.
Mr. BONER of Tennessee in five instances.
Mr. ROBERTS.
Mr. PATTERSON in two instances.
Mr. BARNES.
Mr. DRINAN.
Mr. BRODHEAD.
Mr. OBERSTAR.
Mr. RANGEL.
Mr. MAZZOLI.
Mr. FORD of Michigan.
Mr. SKELTON.
Mr. RODINO.
Mr. MARKEY in five instances.
Mr. GIBBONS.
Mr. BEDELL.
Mr. MCDONALD.
Mr. OTTINGER.
Mr. AUCOIN.

ADJOURNMENT

Mr. FASCELL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 23 minutes p.m.), the House adjourned until tomorrow, Tuesday, September 9, 1980, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5236. A letter from the Director, National Institute of Corrections, transmitting the fourth annual report of the Institute, pursuant to 18 U.S.C. 4352(b); to the Committee on Education and Labor.

5237. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of the Federal Republic of Germany for permission to transfer certain U.S.-origin defense equipment to Greece, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5238. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

5239. A letter from the Acting Administrator, U.S. International Development Cooperation Agency, transmitting the annual report on military expenditures by recipients of U.S. economic assistance, pursuant to section 620(s) of the Foreign Assistance Act of 1961, as amended; to the Committee on Foreign Affairs.

5240. A letter from the Records Officer, U.S. Postal Service, transmitting notice of two proposed new records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5241. A letter from the Secretary of the Interior, transmitting notice of the leasing systems to be used in oil and gas lease sale No. 55, Eastern Gulf of Alaska, to be held on October 21, 1980, pursuant to section 8(a)(8) of the Outer Continental Shelf Lands Act, as amended; to the Committee on Interior and Insular Affairs.

5242. A letter from the Secretary of Health and Human Services, transmitting notice of a further delay in the submission of the report on the study of the establishment of a federal system to assist in locating individuals who have been or may have been exposed to hazardous substances to determine the effect on their health of such exposure and to assist them in obtaining appropriate medical care and treatment, required by section 306(l)(3) of the Public Health Services Act, as amended (92 Stat. 3453); to the Committee on Interstate and Foreign Commerce.

5243. A letter from the General Counsel, Department of Energy, transmitting notice of various meetings relating to the international energy program to be held on September 10, 11, and 12, 1980, in New York and on September 16 in Paris; to the Committee on Interstate and Foreign Commerce.

5244. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting reports concerning visa petitions approved according certain beneficiaries third and sixth preference classification, pursuant to section 204(d) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

5245. A letter from the Comptroller General of the United States, transmitting a report and recommendation concerning the claim of The Brooklyn Times against the United States, pursuant to the Meritorious Claims Act of April 10, 1928; to the Committee on the Judiciary.

5246. A letter from the Secretary of Commerce, transmitting the annual report for calendar year 1979 on implementation of the national voluntary laboratory accreditation program; to the Committee on Science and Technology.

5247. A letter from the Comptroller General of the United States, transmitting a report on progress in improving program and budget information for congressional use, pursuant to section 202(e) of the Legislative Reorganization Act of 1970, as amended (PAD-80-90, August 29, 1980); jointly, to the Committees on Government Operations, Appropriations, and the Budget.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 1316. A bill for the relief of Kuo-Yao Cheng (Rept. No. 96-1303). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 4139. A bill for the relief of Feeronath Abbosh; with amendment (Rept. No. 96-1304). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 4778. A bill for the relief of Seung Ja Kim and Lada Kim; with amendment (Rept. No. 96-1305). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 6739. A bill to confer U.S. citizenship posthumously upon Leopoldine Marie Schmid (Rept. No. 96-1306). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. PHILLIP BURTON (for himself, Mr. JOHNSON of Colorado, Mr. SEBELIUS, Mr. LAGOMARSINO, Mr. GUDGER, Mr. REUSS, Mr. JOHN L. BURTON, and Mr. MINETA):

H.R. 8087. A bill to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. GIBBONS:

H.R. 8088. A bill to amend the Internal Revenue Code of 1954 to allow individuals a 50-percent credit for retirement savings and to otherwise encourage, expand, and simplify independent individual savings for retirement; to the Committee on Ways and Means.

By Mr. BUCHANAN:

H.R. 8089. A bill to amend the Internal Revenue Code of 1954 to provide an additional personal exemption for the taxpayer, the taxpayer's spouse, or a dependent, who has a disability requiring the use of a wheelchair; to the Committee on Ways and Means.

By Mr. GINN (for himself and Mr. BARNARD).

H.R. 8090. A bill to amend the Consolidated Farm and Rural Development Act to require that the rate of interest applicable to real estate loans made for irrigation purposes not exceed 7 percent; to the Committee on Agriculture.

By Mr. IRELAND:

H.R. 8091. A bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such act the liability of owners, operators, or charterers of vessels engaged in activities on the Outer Continental Shelf shall be limited to damages attributable to their negligence; to the Committee on Education and Labor.

By Mr. PHILIP M. CRANE:

H. Res. 783. Resolution requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called Stealth technology for military aircraft; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of rule XXII,

525. The SPEAKER presented a memorial of the Legislature of the State of California, relative to the Philippine Scouts, which was referred to the Committee on Armed Services.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 204: Mr. LEACH of Iowa, Mr. TRIBLE, Mr. PETRI, Mr. HUBBARD, and Mr. VANDER JAGT.

H.R. 1785: Mr. WHITTEN, Mr. ALBOSTA, Mr. HARKIN, Mr. KILDEE, Mr. MYERS of Pennsylvania, Mr. GEPHARDT, Mr. ROTH, Mr. HAWKINS, Mr. CLAUSEN, Mr. STENHOLM, Mr. BEREUTER, Mr. RUDD, Mrs. SMITH of Nebraska, Mr. GRAY, and Mr. DASCHLE.

H.R. 1918: Mr. FITHIAN and Mr. GRASSLEY.

H.R. 2542: Mr. LEACH of Iowa and Mr. HARRIS.

H.R. 5099: Mr. MARKEY, Mr. BALDUS, Mr. BONER of Tennessee, Mr. QUAYLE, Mr. PORTER, Mr. DERWINSKI, Mr. FAZIO, and Mr. BOWEN.

H.R. 5305: Mr. LOWRY.

H.R. 5965: Mr. LEHMAN, Mr. DE LA GARZA, and Mr. WYATT.

H.R. 6203: Mr. PEYSER.

H.R. 6472: Mr. DOUGHERTY.

H.R. 6865: Mr. O'BRIEN and Mr. KOGOVSEK.

H.R. 6867: Mr. O'BRIEN and Mr. KOGOVSEK.

H.R. 6906: Mr. TAUKE, Mr. HANCE, Mr. FAZIO, and Mr. GILMAN.

H.R. 7069: Mr. ROE and Mr. FITHIAN.

H.R. 7129: Mr. GRISHAM.

H.R. 7287: Mr. WHITLEY and Mr. HEFNER.

H.R. 7485: Mr. MARRIOTT.

H.R. 7559: Mr. SEIBERLING.

H.R. 7688: Mr. TAUKE, Mr. WON PAT, Mr. BARNARD, Mr. DASCHLE, Mr. ALBOSTA, Mr. DODD, Mr. FITHIAN, Mr. GUARINI, Mr. MOLLOHAN, Mr. HUGHES, Mr. SEIBERLING, Mr. ROSE, Mr. MATSUI, Mr. FLORIO, Mr. SANTINI, Mr. HUBBARD, Mr. PANETTA, Mr. DIXON, Mr. DONNELLY, Mr. PEASE, Mr. HOWARD, Mr. BRODHEAD, and Mr. JENKINS.

H.R. 7704: Mr. SNYDER, Mr. TRAXLER, and Mr. GREEN.

H.R. 7773: Mr. MARLENEE.

H.R. 7781: Mr. LEACH of Louisiana, Mr. MUSTO, Mr. STUMP, Mr. UDALL, Mr. ANDREWS of North Carolina, Mr. CARTER, and Mr. OTTINGER.

H.R. 7793: Mr. WILLIAMS of Montana.

H.R. 7885: Mr. FAZIO, Mr. ROSE, Mr. LAGOMARSINO, and Mr. BOWEN.

H.R. 7891: Mr. BLANCHARD.

H.J. Res. 69: Mr. WOLFF and Mr. YOUNG of Florida.

H.J. Res. 389: Mr. BETHUNE, Mr. TAUKE, and Mr. MOLLOHAN.

H.J. Res. 511: Mr. HUGHES.

H.J. Res. 598: Mr. OBERSTAR, Ms. OAKAR, Mr. DUNCAN of Tennessee, Mr. ANDREWS of North Carolina, Mr. SAWYER, Mr. YOUNG of Missouri, Mr. MAGUIRE, Mr. WOLPE, Mr. MITCHELL of Maryland, Mr. KILDEE, Mr. STARK, Mr. BONIOR of Michigan, Mr. HUGHES, Mr. SIEBERLING, Mr. MOTTL, Mr. FORD of Michigan, Mr. MURPHY of Pennsylvania, Mr. MURPHY of Illinois, Mr. FORSYTHE, Mr. RAHALL, Mr. BENJAMIN, Mr. MURTHA, Mr. FROST, Mr. HOLLENBECK, Mr. FORD of Tennessee, Mr. HAMILTON, Mr. SNYDER, Mr. NEDZI, Mr. ROSE, and Mr. STRATTON.

H. Con. Res. 395: Mr. SIMON.

H. Con. Res. 399: Mr. MURPHY of Pennsylvania, and Mr. ZABLOCKI.

H. Res. 774: Mr. ROSENTHAL, Mr. OBERSTAR, Mr. WEISS, Mr. LOWRY, Mr. HARKIN, Mrs. CHISHOLM, Mr. JEFFORDS, Mr. MATSUI, Mr. DONNELLY, Mr. VENTO, Mr. DRINAN, Mr. SCHEUER, Mr. BONIOR of Michigan, Mr. MINETA, Mr. CORRADA, Mr. WOLPE, Mr. DELLUMS, Mr. FAZIO, Mr. MARKEY, Mr. LEHMAN, Mr. PEASE, Mr. MAVROULES, and Mr. PEPPER.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7235

By Mr. ECKHARDT:

(Substitute to the amendment of Mr. STAGGERS.)

—Page 125, strike out line 14 and all that follows through line 17 on page 138 (including the material between lines 17 and 18) and insert in lieu thereof the following:

EXPEDITED DIVISION OF REVENUE PROCEEDINGS

SEC. 301. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take the final action by the 180th day after completion of the evidentiary proceedings, except that—

"(A) when the proceding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(B) in all cases other than those specified in subparagraph (A) of this paragraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this subparagraph, it must report its reasons to Congress.".

Page 152, following line 13, insert the following new section:

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 310. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.), shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeals is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out 'and the Milwaukee Railroad Restructurign Act' and inserting in lieu thereof', the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act'".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(d)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(n)(1) All obligations to the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceleld when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1) (A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

By Mr. FRENZEL:

(Substitute to the amendment offered by Mr. STAGGERS.)

—On page 83, line 13 of the substitute, strike "SEC. 328—Loan Guarantees" through page 84, line 5.

And renumber the sections accordingly.

By Mr. LEVITAS:

—At the end of the bill, insert the following new section:

CONGRESSIONAL REVIEW OF PROPOSED RULES

SEC. 804. (a) Notwithstanding any other provision of law, simultaneously with prescribing any rule under subtitle IV of title 49, United States Code, relating to rail carriers (other than a rule relating to rates), the Interstate Commerce Commission shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives, and simultaneously with prescribing any rule relating to rail carriers, the Secretary of Transportation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives Except as provided in subsection (b), the rule shall not become effective, if—

(1) within 90 calendar days of continuous session of Congress after the date the rule is prescribed, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule prescribed by the _____ dealing with the matter of _____, which rule was transmitted to Congress on _____.", the first blank space therein being filled with the Interstate Commerce Commission or the Secretary of Transportation, as appropriate, and the other blank spaces therein being appropriately filled; or

(2) within 60 calendar days of continuous session of Congress after the date the rule is prescribed, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within 30 calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of 60 calendar days of continuous session of Congress after the date on which a rule described in subsection (a) is prescribed, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule, and neither House has adopted such a resolution, the rule may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule may go into effect not sooner than 90 calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a).

(c) Congressional inaction on, or rejection of, a resolution of disapproval under this section shall not be deemed an expression of approval of the rule involved.

(d) For purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 30, 60, and 90 calendar days of continuous session of Congress.

(e) For purposes of this section, the term "rule" has the same meaning such term has in section 551(4) of title 5, United States Code.

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EXTENSIONS OF REMARKS

WEAPONS STRATEGY: MORE? BETTER?—OR BOTH?

HON. GUY VANDER JAGT
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. VANDER JAGT. Mr. Speaker, today a great debate rages in the United States over the issue of defense preparedness. This issue involves both the level of spending and the quality of the American defense arsenal.

For years we in the United States have been assured that our military preparedness is more than adequate on the basis of our superior technology. We are now hearing more and more that this technological lead is evaporating, and evaporating quickly. Thus, we are urged to assume greater expenditures to meet new technology demands along with the need to assure adequate numbers of weaponry in view of vast defense expenditures by our potential foes.

A fine focus for this debate is the issue of the turbine engines slated for use in our newest generation of battlefield tanks, the XM-1. We have sacrificed an ongoing need for maintaining adequate numbers of conventional tanks in the field for the promise of the supertank. Many of us have felt that the questionable adequacy of turbines for battlefield conditions required simultaneous development of a standard engine of proven capability. While we have fiddled with new technology, our field commands have burned for the lack of adequate resources. I would be the first to say that if we can prevail through technology, we have an obligation to keep pace. However, we cannot and must not let the drive for technological superiority jeopardize our preparedness for the immediate future. I submit the recent analysis of this issue from Forbes magazine for the review of my colleagues. I hope that we will stand back a bit and take a look at the direction we are going. I am convinced that we must move more broadly to insure the preparedness of our military efforts, and I urge that the appropriate committees of the Congress take into account the considerations expressed in the attached article.

The article follows:

THE GREAT PUSH-BUTTON DELUSION

(By Subrata N. Chakravarty)

Beginning in July the U.S. airlifted 500 men and over 2,000 tons of equipment to Egypt. All this for a 90-day exercise for 12 F-4 jet fighters. That's right: 167 tons of equipment and 42 men per plane. Expensive? Staggeringly so. In today's high-technology military, the U.S. places its faith in small quantities of expensive, and highly complex, quality weapons with large support systems to counter the massive quantities of tanks, ships, planes and guns of the Soviet Union. Push-button warfare.

That's nothing new, of course. What's new is that the decision makers at the highest levels of the military are beginning to worry about the viability of that policy. In February of this year, in an internal memo to the Air Force and Navy that was leaked to the respected Armed Forces Journal International, Defense Secretary Harold Brown said: " . . . Because of our belief that we must compensate for a quantitative inferiority by ensuring qualitative superiority, that has been the direction we have emphasized in applying our technology. That choice has brought with it an increasing sophistication and complexity in equipment, as we understood it would. What we may not have understood as well were the consequences."

What are those consequences?

The U.S. military, which moans about manpower shortages, is now the most bloated in the world. A U.S. division with its high-techology weapons now utilizes over 40,000 men with nondivisional support personnel—roughly 10,000 combatants—compared with 26,000 for a European army division and 17,000 for the Soviets.

Because the weapons are so expensive, the U.S. can't afford many of them and is now not merely outnumbered, but far outnumbered, by the Soviet Union. In 1979 the U.S. had 12,700 tanks, for example, vs 50,000 for the Russians; 23,000 armored fighting vehicles vs 55,000; 18,000 pieces of artillery vs 40,700; 5,200 combat aircraft vs 7,800. In 1980, 123 submarines vs 357; 165 major surface combat ships vs 273. Only in aircraft carriers is the U.S. clearly ahead: 13 to 2.

The lineup is, of course, not merely the U.S. versus the U.S.S.R. but the U.S. and NATO versus the U.S.S.R. and the Warsaw pact nations. Add in those figures and the gap narrows, but only somewhat and, overall, the gap is widening. The 1980 figures due to appear shortly are expected to show an imbalance worse than 1979's. The Soviets are outproducing us every year. In fiscal year 1981, for example, the U.S. Army will order 569 of its XM-1 Abrams tanks; the Soviets produce around 2,600 tanks a year. The U.S. will produce 378 combat aircraft in fiscal 1981 to the Soviets' 1,000-plus; 530 armored vehicles to 3,600; 96 helicopters to 500. Only in shipbuilding are the figures even close: nine major fighting surface ships for the U.S. to ten for the Soviets, and two U.S. attack submarines to five Soviet ones.

A paradoxical result of the U.S. attempt to emphasize quality—or rather complexity—over quantity is that the U.S. often falls behind in quality as well for long periods of time. The current U.S. main battle tank, for example, is the M60, which appeared in 1959. The new Chrysler-built XM-1 will have a revolutionary engine, revolutionary armor, a revolutionary fire-control system and, eventually, a larger gun. But since 1965, while the U.S. fiddled with its ideal tank, the Soviets have introduced four new generations of tanks, each one a significant improvement over the last. The XM-1, when it arrives in quantity in 1982 or later, may well be better than the Soviets' current T72—indeed, Dr. William J. Perry, undersecretary of defense for research and engineering, says it will be 20 percent to 30 percent better. But for 15 years American soldiers have been facing progressively improved Soviet tanks in an increasingly obsolescent tank of their own. "American weapons development—in my opinion wrongly—goes for order of magnitude improvement and all-round improvement," says Edward Luttwak of Georgetown University's Center for Strategic & International Studies, an adviser on defense policy to Ronald Reagan. Luttwak, a highly regarded military analyst, adds: "In the Soviet case you improve the characteristics one by one in sequential modification."

Secretary Brown's February memo went further. It said:

"It is time to reexamine our technological emphasis on performance to see whether the improvement we sought in combat effectiveness exists now as much in fact as it did in theory when we made the choice. If it does not, as is strongly implied, we must consider redirection of our technology away from sheer performance in favor of less complex and more practical weapons that we can buy in greater quantity, that we can support generously in the field, that we can maintain easily with service personnel, that we can train realistically with in peacetime and that will be more reliable and available and, on balance, more effective in war."

Here's an irony: The less-is-better, quality-over-quantity, push-button-warfare concept represents a sharp break with the U.S. weapons policies that played such a major role in winning World War II. When Franklin D. Roosevelt electrified the world by calling for production of 50,000 airplanes in 1944 he was, in effect, saying to the Axis: We will bury you in sheer numbers of equipment, we will crush you under the weight of our steel. It was the Germans who led in jet aircraft technology and in missile technology, but German technology went down under the impact of workmanlike but workaday U.S. tanks, ships and aircraft. The Axis laughed at Roosevelt, regarding it as mere propaganda. In the end the U.S. made that goal look like peanuts, producing 104,000 airplanes in 1944 alone, 16,000 tanks a year and 104 ships in just 2 years.

These WWII machines weren't fancy. Henry Kaiser's famed Liberty Ships were unlovely tubs. But they were cheap and they did what they were supposed to do—they got the men and equipment to Europe in large numbers. In WWII the M4 Sherman tank was possibly the least impressive tank in Europe. But waves of them overwhelmed Hitler's outnumbered technological marvels, the Panthers and the Tigers. American equipment may not have been the best, but it carried the day because there was so much of it.

The U.S. has adopted exactly the opposite strategy since then. But the Soviet Union has not. "Quantity has a quality all its own," said V. I. Lenin. Soviet Admiral Gorshkov puts it another way: "Best is the enemy of good enough," meaning that insisting on the best equipment instead of good enough to do the job may jeopardize the ability to do the job at all. Says Professor John Erickson of Edinburgh University, an expert on the Red Army: "The Russian equipment is not so sophisticated, and it is soldierproof." The late General Creighton Abrams, after whom the XM-1 is named, once was reported as saying after inspecting a captured Soviet tank: "It didn't have all the fancy things the colonels want in our tanks, but it could do every damn thing you want a tank to do."

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

The difference in the two approaches involves things familiar to any businessman. One is the difference between the learning curve and the drawing board—between production and R&D.

The Soviets tend to produce a weapon and then improve it, not only in tanks but in ships and planes as well. Only in the past decade did they launch the first two of their Kiev-class aircraft carriers—small carriers with vertical-and-short-take-off-and-landing planes, much smaller than the U.S. huge nuclear Nimitz-class supercarriers. Now, however, a full-flight-deck nuclear-powered Soviet carrier is apparently on the way. Starting with submarines on average much smaller than those of the U.S., the Russians are due soon to deliver the first of their new Typhoon class; at 20,000 tons it is bigger then the U.S. Trident. They have introduced several new aircraft since 1970 and more are known to be coming.

The Soviets, don't avoid revolutionary improvements completely. The Soviet guided-missile ships were a revolutionary new response to aircraft carriers, and Russia's BMP mechanized infantry combat vehicle was designed from the ground up to replace the boxy armored personnel carriers of World War II.

But the Soviet Union clearly emphasizes evolution while the U.S. strives for revolution. It is rather like a race between a frog and a turtle. The turtle plods along while the frog sits still. Every once in a while the frog jumps, ahead of the turtle, it is to be hoped. But a just-released study by John M. Collins, senior specialist in defense at the Library of Congress, indicates that often the U.S.-Soviet military balance is otherwise. In many areas of practical technology, Collins says, the Soviets have moved ahead of the U.S.

"It has come to this," says one staff assistant for defense with a senator on the Armed Services Committee. "You get someone saying we shouldn't buy more improved Hawk air-defense missiles because we're going to have a Patriot air-defense system that will have all of these whiz-bang things. Okay, so you stop producing I-Hawks. Then the guy comes back and says it's taken us a little bit longer—20 years longer—to develop the Patriot than we thought it would. Then you find that the Patriot even after a 20-year development period does not have all the capabilities that were promised for it."

That's the disadvantage of staying on the drawing board instead of getting on the learning curve. It's not much different when an army does it than when a company does it—except that the stakes are so much higher.

Every high-technology company, too, knows how programs lag and reliability suffers when technology itself, instead of the market and the constraints of manufacturing, begins dictating the product line—when engineers begin doing things solely because nobody has ever done them before. Something like this may have been happening in the U.S. military ever since WWII. It was exacerbated by the McNamara era in the Pentagon, which saw the ascendancy of systems analysis in weapons-procurement decisions.

Like the McNamara computers that kept telling us we were winning in Vietnam, the McNamara systems analysis was increasingly theoretical. Add to that the constant pressure by Congress and the voters to reduce costs, and the temptation to stake all on state-of-the-art technology was overwhelming. "We all have a shared responsibility for the fact that the armed forces of this country are junkies for technology," says Frank Gaffney, staff assistant for defense affairs to Senator Henry Jackson.

It has led to such curious enterprises as the effort to get the F-4 up from Mach 1.7 (Mach 1 is the speed of sound) to Mach 2. In a recent article in the Naval War College Review, two Air Force officers, Major Charles Fox and Lieutenant Colonel D. A. Lorenzini, point out, "In representative combat situations, the F-4 will run out of fuel long before it gets to Mach 2."

Curious, too, is the Army's 9-year effort to develop a turbine engine for the XM-1 tank. Gas turbines have already been rejected by the Germans, the British and the Soviets because of their high susceptibility to dust (with which battlefields abound), their relatively poor fuel efficiency and need for large air intake vents, which makes the tank more vulnerable. These are strict battlefield criteria. The Army picked the gas turbine because it gives greater acceleration and therefore greater agility. But that advantage is offset by the additional fuel weight it must carry to range as far as a diesel-driven tank.

Says Luttwak: "The U.S. Armed Forces have drifted away from the values of the military profession, which is combat capability, and has been seduced into the pursuit of engineering and managerial efficiency for its own sake." Lieutenant General Orwin C. Talbott, former commander of the First Infantry Division, says the fascination with technology comes from "all these Pentagon scientists trying to get the last ounce out of technology whether or not they're able to apply that last ounce effectively on the battlefield. The longer a man is in a command position in the battlefield, the less enamored he is of the technological edge and the more obsessed he becomes with trying to make what he has work."

As any company trying to meet government antipollution standards will tell you, the cost of 85 percent compliance is relatively low; the last 15 percent may cost double or triple. The same in the military. In a 1978 article in Foreign Affairs, Air Force Colonel Richard G. Head estimated that the cost per unit of new weapons had increased an average of 4½ times every decade in constant dollars since 1950, while improvements in existing designs only increased by a factor of two.

Result: fewer of everything. When an F-14 costs close to $23 million, the Navy gets only 467 instead of the 521 it says it absolutely needs and the 700-plus it originally wanted. There can be only 729 of those $20 million F-15s, only 7,000 of the $1.5 million XM-1s, only one or two of the $2.4 billion nuclear aircraft carriers. Each generation, the number of weapons that can be purchased decreases because the costs increase.

Some of the consequences are almost ridiculous. Like a family in straitened circumstances insisting on serving champagne and caviar while it can't buy milk for its children, the U.S. splurges on high technology but actually runs short of ammunition (FORBES, Sept. 1). Because so much is spent on $20 million-plus airplanes, $1 million missiles and $2 billion carriers, supplies are short all along the line. When the U.S. resupplied Israel after the 1973 Mideast War, for example, it had to take equipment intended for front-line U.S. Army units in Europe and National Guard units at home; the Soviet Union, on the other hand, resupplied its Arab clients from its spare inventories.

That, in turn, reduces training. For example, the U.S., according to the Brown memo, has never conducted operational training with an F-14 fighter firing Phoenix missiles against multiple targets, its primary role for protecting the U.S. fleet from attack, because each Phoenix costs nearly $1 million. Although 1,400 to 1,500 aircraft carry the Maverick air-to-ground missile, the U.S. can afford to fire only 200 each year. In contrast, U.S. pilots flying the close-support A-10 aircraft are able to train with live ammunition because it is cheaper to use 30mm cannon shells. A decade ago, Air Force pilots flew 26 hours of training per month. In fiscal 1979 they flew far more complex planes only 16 hours.

The more complex the weapon, too, the more maintenance problems there are, as the Brown memo made clear and in today's volunteer army that maintenance is done by ever-less-capable military personnel. In fact, the task is often beyond them. "We're moving toward relying on factory manpower as opposed to blue-suit [uniformed] manpower to maintain sophisticated weapons systems," says Frank Gaffney. "I don't know how you fight a war when you have to send equipment back to the plant for spare parts."

The F-15 fighter. It has an "avionics intermediate shop" machine to test its highly complex systems. The diagnostic machine itself has over 40,000 parts, which fail frequently. Result: The Air Force has a problem just maintaining a parts inventory for the machine, which is down 50 percent of the time.

It is true, of course, that U.S. military equipment in the hands of the Israelis has beaten Soviet equipment manned by Arab armies. Does that vindicate quality over quantity? Not necessarily. The superior training, education and motivation of the Israeli citizen army undoubtedly plays the major role. It would be more than a little dangerous to assume that the Israelis win only because they have American equipment. Says Jeffrey Record of the Institute of Foreign Policy Analysis and another Reagan Adviser: "We've reached the point now where we may have the most elegantly equipped Army but one that is simply too small to be able to survive anticipated rates of attrition." Adds Luttwak: "It's not necessarily that numbers allow you to overwhelm the enemy. It's that numbers give you flexibility and maneuverability. That's why there is terrible danger in what we're doing—terrible danger."

Will the military's internal debate lead to any fundamental changes? The signs are mixed. Internally, Secretary Brown calls for a reexamination, but publicly, he has stated that our technology will "save" us. In congressional testimony in January Deputy Defense Secretary W. Graham Claytor Jr. said: "We intend to avoid the 'wonder weapon' syndrome that infatuated the Third Reich in the latter stages of World War II." Yet Pentagon-sourced stories proclaim the impending obsolescence of tanks and planes because of the arrival of "fire-and-forget" homing missiles. The fact is that precision guided munitions have not been nearly as effective in battle, where targets can react, as they promised to be in theory against sitting ducks. Missiles used in Vietnam has an accuracy of only 10 percent to 20 percent. The new generation of wonder weapons promises to be complex, hard to maintain and enormously expensive. The first fire-and-forget missile, the Sidewinder, cost $3,000 when it was used in Vietnam. The "improved" Sidewinder, according to one expert, will cost around $160,000.

Meanwhile, the XM-1 goes ahead at $1.5 million a copy, as do the $900 million Aegis cruiser and the F-15, along with a good deal of wishful thinking about—irony on irony—the increasing complexity of the *Soviet* military effort. "Ex-Defense Secretary James Schlesinger pointed out years ago that the Soviets are now in the grip of an R. & D. cartel that will make ours look like little Boy Scouts," says one former defense offi-

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cial. "They have now fallen prey to the complexity disease. The one encouraging thing about the whole trend is that we've sold complexity to the Russians and they'll do worse with it than we did."

Counting on one's opponent to make mistakes is a poor strategy, however. The superficially attractive idea that push-button technology can somehow eliminate the need for a citizen army and large-scale military production could well turn out to be ultimate, fatal opiate of American democracy.●

FRIENDSHIP DAY

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LEWIS. Mr. Speaker, I rise today to commend George Byer for his efforts on behalf of Friendship Day.

This year, June 22 was designated "Friendship Day" for nations across the world. Mr. Byer received support from all parts of the United States: from Senator TED STEVENS of Alaska; the Governors of Arkansas, New Mexico, Washington, Hawaii, Texas, Wisconsin, and Puerto Rico; Members of the U.S. House of Representatives and the California State Legislature; even from the White House. But he has reached even farther: C. A. Chevallez, President of Switzerland; T. H. Yeh, director of the information office, Republic of China; and R. J. Ellicott, minister of home affairs of Australia have all recognized his efforts on behalf of international friendship.

Seeking even more people-to-people contact, George Byer hopes to extend the effort to Friendship Days, June 22, 23, 1981. One can easily see the wide-based support for the activity of this former mayor of Anchorage, Alaska. Indeed, his exemplary work toward international communication and friendship is to be lauded and supported on behalf of all Americans.●

ELECTRONIC MAIL

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DERWINSKI. Mr. Speaker, valuable time has been squandered in the continuing controversy over the U.S. Postal Service's attempt to apply modern-day technology to the movement of mail. It now appears the Postal Service's entry into the electronic field will not come until January 1982, and then on a trial basis, unless the courts decide otherwise.

The Federal Times, one of the few publications to concern itself with the ramifications of electronic mail, views the latest development as a step in the wrong direction. The Federal Times September 1 editorial follows:

CLASSIC EXAMPLE

This newspaper has never been a big defender of the U.S. Postal Service board of governors, although in recent years we have not given the nod to those forces—both union and non-union—who have diligently lobbied to put the august governors on the endangered species list.

But we are having second thoughts, especially following the board's less-than-courageous stand on what amounts to a no-role for the postal service in electronic mail.

The board's endorsement of the Postal Rate Commission's electronic mail scheme is a classic example of how an articulate minority—that is, Governor William Sullivan—by standing pat for eight months was able to stampede the majority, his feckless colleagues, into accepting a "public policy" ruling that will be the death of the postal service.

And get this from the board:

"The governors' decision is made in the spirit of cooperation with the commission on the [electronic mail] system."

No matter that this "spirit" of questionable amity pulls the rug out from under Postmaster General William F. Bolger and board Secretary Lou Cox.

Dissident PRC commissioners James Duffy and Kieran O'Doherty have charged—for good reason—that the electronic mail ruling is both amateurish and unworkable. It also indirectly pumps some $50 million into the coffers of Western Union, which inexplicably left the postal service holding the regulatory bag just several weeks before Fritschler and Co. rejected the USPS electronic mail proposal and, instead, substituted their own destructive plan.

As for the U.S. Postal Service board, we wonder:

Whose side are you guys on?●

THE "ME DECADE" COMES HOME TO ROAST IN MIAMI

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SIMON. Mr. Speaker, the most perceptive comment I have read on the tragedy of the explosion in Miami was written by Robert D. Reid, a columnist for the Southern Illinoisan in my district and some other newspapers. Mr. Reid also teaches journalism at the University of Illinois.

He is asking for a less self-centered approach to the problems of society and, even more, he is asking that we are willing to face the tough questions and come up with the tough answers.

I cannot help but wonder, for example, if we had a policy of guaranteed job for all Americans, whether we would not only have reduced welfare rolls but we would have made much less likely the Miami type of explosion. But to achieve that we need to look at policies that are more than a response to an immediate situation.

I urge my colleagues in the House and Senate to read the Robert Reid column.

The column follows:

THE "ME-DECADE" COMES HOME TO ROAST IN MIAMI

Miami went up in smoke along with Mount St. Helens, and nobody seemed to have much of an idea about what to do about either disaster.

Futility in the face of tragedies brought about by the forces of nature is customary, bringing out the editorialists' reminders of the vulnerable nakedness of Technological Man in a cruel natural world.

For all America's failures in race relations and in bringing anything approaching justice to its inner cities over the past two decades, futility was not in the past the general response to explosions like that which occurred in Miami.

But as we begin the 1980s, America has no Martin Luther King, no John Kennedy nor Lyndon Johnson to summon American ideals and resources to deal with the continuing human crisis that our inner cities represent.

The voices of caring leadership are stilled across our land and on Capitol Hill. Budget cutting to allow more conspicuous consumption and more use of inflation-inducing foreign oil is the political order of the decade. What extra money might be available to deal with the human problems of America's tormented inner city residents is being thrown at defense projects that few believe will do much to promote our national security. Defense spending is to Capitol Hill and President Carter what the blanket is to Linus.

Political caring is out, political commercials are in.

Violence will solve nothing. President Carter tells the despairing of Miami, while he concedes Dixy Lee Ray's point when she reminds him that what the volcano-dusted people of Washington state need is "M-O-N-E-Y."

Yet Jimmy Carter is a compassionate man. He told us so in his campaign four years ago. He no doubt attempts to convey that message in his prayers. For those not convinced, there is the reminder embodied by Ronald Reagan that all things, even compassion, are relative.

Few in the Congress seem much disturbed by any of this, despite the thrashing about below the political surface in the Democratic Party to produce some alternative to Carter other than Ted Kennedy. Our congressmen, too, seem to feel a sense of futility, seem unable to muster a sense of outraged conscience sufficient to bind them together in some form of program of action, either behind Carter or to replace him.

Until the majority Democrats in Congress can somehow agree to do that, no president—not Jimmy Carter, not Ted Kennedy, not Ronald Reagan, not John Anderson—will be able to lead this country effectively, to save us from the tragedy of watching our civilization—our once-potent ideal of brotherhood and human decency—crash piece by piece before our eyes night after night on the evening news.

What's wrong with America is not the rising consumer price index nor the rising unemployment rate. Those are merely terrible symptoms of our problems, problems that in a more fundamental sense are rooted in the ways that those of us in America who are more affluent live and think.

For the fact is that despite years of public education about the problems of rural and inner city poverty, about the energy crisis, about what we are doing to our public environment and our private health, about the malnutrition and worse that stalk much of the Third World, we still want to return to a late 20th Century version of what Warren Harding once called "normalcy."

It won't work.

We have to change almost everything about the way we live—from our gas-guzzling cars to our air-conditioned skyscrapers and shopping malls to our non-benign neglect of the poor in our nation and in much of the rest of the world.

We have to, that is, if we wish to ease those problems of inflation, unemployment and insecurity that increasingly fluster America's great middle classes and make the future seem so empty of hope, or of noble challenges.

We need leaders who can lead in a sense other than manipulating the evening news or the Gallup Poll, and we need them not just in the White House, but on Capitol Hill, in governors' mansions, in legislative chambers, in county courthouses, city halls and local political caucuses.

We need more interest groups with a perspective broader than protecting the interests of one already-well-heeled group at the expense of others.

We need more educational leaders with a perspective for the nation, for their state and for the region of their university or school district that reaches beyond a scramble to come up with the money for the next budget.

Above all, we need from all these people, and from ourselves, enough boldness to ask basic questions that go beyond "who is ripping me off and what can I do about it?" We need instead the raw courage and the practical foresight to ask ourselves, "What am I, what are we doing to rip off other people and what can I, what can we, do about it?"

By itself, of course, that is no ultimate answer to the problems that face us as a people and as a society—a people and a society that for all our shortcomings still are the best, perhaps last hope for democratic institutions before something like George Orwell's 1984 descends upon mankind.

But we shall find no good answers until we begin asking tougher, more imaginative, less self-centered questions of ourselves, as a nation and as individuals, than either we or our politicians have been willing to ask in recent years.

What happened at Mount St. Helens was beyond our capacity to have prevented. What happened in Miami could have been prevented, not by tougher police work, for tougher police work was the spark that ignited the Miami fires of despair, destruction and death. What happened in Miami could have been prevented if our political leaders and our citizens had not squandered the decade-plus since Martin Luther King's death.●

McDONNELL TOWER OF SOUTHFIELD, MICH., PROVIDES GOOD LIVING FOR SENIORS

HON. WILLIAM M. BRODHEAD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BRODHEAD. Mr. Speaker, the people of Southfield, Mich., are justifiably proud of McDonnell Tower, a unique combination of housing and recreation/service center for senior citizens. Southfield seniors enjoy a spacious city recreation center which focuses the city's many services for retired citizens. At the same time, the adjoining apartments have been so popular that there is a 5-year waiting list. I would like to share with my colleagues a story about this remarkable project which appeared in the Detroit News on September 1, 1980.

The article follows:

Most people would resist—at first—the idea of moving into an apartment in something labeled "subsidized senior citizens housing."

It has a flavor of "over the hill to the poorhouse." And it conjures up a picture of a bunch of old people sitting around rocking and knitting, retired from the world and waiting to die.

In Southfield they've proved that does not have to be that way at all.

Residents of McDonnell Tower dance, shoot pool, bowl, swim, take part in civic and club affairs, garden, go shopping, take gym workouts, travel, entertain guests and even publish their own newspaper, among other things.

"Uncle Tom" Rosenberg, 77, a retired salesman, recalls being reluctant to move into "an old man's home" after his wife died. But he followed his son's advice and finally moved in two years ago.

"Most people have the same reaction to living in these places," he said. "They think of them as being the last stop. But I'm glad I moved here. You get more here than you could anywhere else."

Jean McDonnell, who retired this year after 22 years on the Southfield city council—and who fought 14 of those years against community and political opposition to get the complex built—calls it "Heaven on Earth built in the Garden of Eden."

Perhaps she's a little prejudiced—it's her baby and it was named after her—but most of the residents seem to agree that it's a great place to live.

Even more convincing evidence is that every one of McDonnell Tower's 345 one- and two-bedroom apartments is filled, and there's a five-year waiting list for vacancies.

The Tower—actually two high-rise apartment buildings called Phase I and Phase II—is the first development in Michigan to include both housing and a recreation and service center for older people.

The 9,000-square-foot community recreation center, called the Bright Spot, links the two buildings and is leased by the City of Southfield to serve not only the residents of the complex but the more than 13,000 people 60 or over in Southfield. It provides a full range of free services.

The complex is surrounded by 5.9 acres of wooded area at 24300 Civic Center Drive. Most of the apartment terraces on all four walls of both buildings are adorned with flowers, plants and even small vegetable gardens.

Groups of oldsters gather in roomy, carpeted lobbies, with windows lined with greenery.

The multimillion-dollar complex is privately owned by developers Stanley Berger and Arnold and Walter Cohen, but is operated by the Southfield Non-Profit Housing Corp., created by the city council and managed by Phyllis Snider of Southfield.

The 12-story Phase I building opened in 1975. Phase II, one story higher, opened three years later.

Nearby stand 62 townhouses for moderate-income families. A third senior citizens housing complex of 100 units, Wood Ridge Apartments on Grodan Drive, was finished and filled this year.

Ms. Snider said that to qualify, prospective tenants must be 62 or older, or handicapped. They also must be able to care for themselves. To qualify for an apartment in McDonnell Tower, Ms. Snider said, one need only be 62 or older, disabled or handicapped and be totally independent. Each apartment includes a walk-in closet, a private bathroom, one or two bedrooms, a living room and a kitchen complete with appliances.

Phase I apartments operate under a program which charges residents a basic rent and offers rental assistance according to individual income. Phase II and Wood Ridge, under another federal program, set rents at 25 percent of the tenant's total income.●

TRIBUTE TO FATHER DRINAN

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. RANGEL. Mr. Speaker, I would like to express my admiration and appreciation for one of the most distinguished and honorable Members of this body, Father ROBERT DRINAN. Father DRINAN's departure is a loss to us, to his constituents, but most of all, a loss to this Nation, which relies on the leadership and courage that he has always provided in times of crisis.

It is not necessary to list all of Father DRINAN's achievements since he entered the House with me in January of 1971. He has championed the efforts to achieve peace, beginning with his courageous opposition to the Vietnam war and continuing on to today. He has steadfastly and tirelessly advanced the cause of equal rights for all Americans, and is responsible for amendments to strengthen the Voting Rights Act and expanding the scope of the Fair Housing Act that recently passed the House. The poor, the handicapped, and the persecuted of all nations all had a voice in the House of Representatives in Father DRINAN.

While serving on the Judiciary Committee during the Nixon impeachment proceedings, I saw firsthand the brand of courageous leadership and integrity that Father DRINAN possesses. His principled voice, ringing strong and clear, provided impetus to the consideration of the articles of impeachment, and his performance will remain as a testament to our most cherished principles of democracy and obligation. The departure of this well-respected man from this House will leave a vacuum that will not be filled for a long time.●

TENANT TAX JUSTICE

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. GREEN. Mr. Speaker, in the midst of the current debate over which taxes should be cut and which tax exemptions should be granted, we should consider the deplorable tax treatment of people who rent rather than own their living space. The issue of renting versus owning and the long-time policy of the Federal Government to provide tax writeoffs only for owners has contributed to the housing crisis we are experiencing in this country today. Because I feel so strongly that this situation must be remedied, I

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testified before the House Ways and Means Committee. That testimony follows:

STATEMENT OF HON. S. WILLIAM GREEN

Mr. Chairman; seventy-four of my colleagues and I sent a letter to this committee last year urging that some measure of equity for renters be instituted in our tax laws.

Since the 1930's, the Government has allowed property owners to deduct local and State property tax payments from their taxable income. However, 35 percent of the households in this country rent and they do not receive similar treatment. The need for renters' tax relief is becoming more severe as inflation continues to outpace earnings. The cost of renting decent housing is, in many areas of the country, rising faster than the ability of moderate and lower income families to afford such housing.

A recent law in New York State tried to deal with this situation by stating that landlords pay real estate taxes as agents for their tenants. However, though it seems obvious that a portion of a tenant's rent covers the property taxes for the living space, the Internal Revenue Service recently ruled that this will not be the case for Federal tax purposes.[1] In light of this ruling, it is evident that the Congress will have to take the lead if any relief for renters is to be achieved.

In the 96th Congress, several bills have been introduced to establish equity for our renters. These bills cover a broad range of remedies to the present situation, but they share a common theme. The message implicit in all these bills is that the renters in our country deserve fairer tax treatment.

Any law implementing tax relief for renters will obviously affect housing in the United States, and such a change is drastically needed to address the present troubles in our rental housing market that is reaching crisis proportions. One of the reasons that rental housing has been decreasing is that middle-class renters are forced into home ownership because of the tax benefits and incentives for appreciation. As inflation pushes up the costs (and rents) of rental housing, the relative costs of ownership versus renting have been changed by our Tax Code. I do not suggest that owners lose their present tax benefits, but that renters receive equitable treatment. Furthermore, as rents need to rise to meet inflation, less affluent renters cannot pay sufficient rents, further discouraging the construction of rental housing geared toward this market.

The costs of tenant tax relief proposals are not insignificant, but neither are the costs of various rent supplement and operating subsidies that are in the embryonic stages in both the congressional and administrative branches of Government. While some may feel that tax policy should not be used as a vehicle to alter housing in this country, the simple truth is that tax policy already has changed the nature of housing.

The seriousness of the problem at hand cannot be overemphasized. I urge the Committee on Ways and Means to examine the effects our Tax Code is having on rental housing and consider possible changes to the code during this series of hearings on major tax legislation.●

[1] Rev. Rul. 79-180, I.R.B. 1979-23, p.7.

KEY ECONOMIC ISSUES

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. MURTHA. Mr. Speaker, for the information of people in the 12th Congressional District, these remarks outline the key economic issues facing Americans.

BUDGET

Earlier this year, Congress approved the first balanced budget resolution since the 1960's, but because of the recession and rising unemployment the Government will receive less revenue and pay more in programs for the unemployed, likely leading to another budget deficit. The balanced budget, though, remains a reachable and necessary goal in the near future.

TAXES

I endorsed a tax cut for 1981 aimed at increasing productivity and getting Americans back to work. Two key parts of a tax change should be: A business tax cut aimed at enlarging business investments to create plant expansion and job growth; and a stimulus for the auto industry by providing an incentive for Americans to purchase new American-built cars.

CONTROLS

No wage and price controls will be enacted in the near future because of opposition in Congress. If inflation declines, they are not needed, but if it restimulates, then they must be considered.

RETIRED

Another round of scare stories frightened many retired citizens about social security. I say very flatly, the system is and will remain sound. Also, no citizen need worry about rumors that benefits will be taxed.

RECESSION

A tax cut to stimulate jobs will help control unemployment. Americans must be put back to work by attacking specific unemployment pockets such as the auto, steel, and coal industries. Broad solutions from the past will not work; the country must attack specific unemployment problems in the 1980's.●

BLAME IT ON HAVANA

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DERWINSKI. Mr. Speaker, the continued abuse that the people of Cuba experience under the Castro dictatorship has never been more evident than in their recent exodus from that island to the United States.

In a very thoughtful and penetrating editorial of September 4, the Suburbanite Economist, serving suburban Cook County, Ill., comments on the series of airplane hijackings that have taken place recently. I insert the editorial at this point:

BLAME IT ON HAVANA

There is something bizarre about the rash of airline hijackings by Cuban refugees who want to go back where they came from. It is not surprising that some of the 120,000 Cubans who joined the boat-lift to Florida last spring have changed their minds. But why the desperate and reckless resort to hijacking planes from Miami?

The State Department says it has been trying to establish an "orderly and safe" way for disillusioned refugees to return to Cuba, but has received only rebuffs from Havana. Since Fidel Castro has made it clear he doesn't want any of the refugees back, why do the hijackers think their reception in Havana will be anything but hostile?

One can speculate that the hijackings are part of a plot—that the disgruntled refugees are actually "agents" assigned to cause embarrassment to the United States. But this is far-fetched, and the Federal Bureau of Investigation says it can find no evidence to back up such a scenario.

The American people owe no apologies to Cuban refugees who complain that their reception here was something other than what they expected. The sudden arrival of 120,000 homeless people put an extraordinary strain on our immigration services and refugee resettlement programs. The burden is especially heavy in the Miami area, where some 45,000 newly-arrived Cubans remain concentrated amid 15,000 Haitian refugees in an area with high unemployment among its native-born population.

Unless the government in Havana lets its door swing both ways and agrees to repatriate refugees with second thoughts, the stepped-up protection against hijackings on flights from Miami must continue. Recent experience indicates those measures had become too relaxed in the first place.

Both the Cuban boat-lift and this troubling aftermath can be traced to the same problem, which is living next door to a communist dictatorship.●

GREEN NOTES TAMA COUNTY FAIR

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. GREEN. Mr. Speaker, on Sunday, September 7, the Third Avenue Merchants Association sponsored the fifth annual TAMA county fair along Manhattan's Third Avenue from 14th to 34th Street to showcase the unique and diverse attractions of this historic and colorful avenue.

Each year hundreds of thousands of visitors from the tristate area attend this urban county fair and acquaint or reacquaint themselves with one of New York's most vital commercial and residential communities.

The Third Avenue Merchants Association, an organization of small business men and women on Manhattan's East Side, has contributed greatly to the financial well-being and to the overall neighborly ambiance of New York City with its many community projects.

This year TAMA paid special tribute to Grandparents Day in recognition of the many generations that have lived here as children, students, young adults, parents, and now grandparents. First recognized as a "day-set-aside" 6 years ago, Grandparents Day was first declared a holiday in 1978. Last year it was made a permanent day of recognition. I think this tribute is indicative of the sensitivity that TAMA shows year around to the neighborhood it serves.●

NEW MELONES WATER AND RIVER PROJECT

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SHUMWAY. Mr. Speaker, a misguided legislative effort exists to confer wild and scenic river status on a 9-mile section of the Stanislaus in California, thus precluding the full utilization of the New Melones water and power project.

Initially authorized by Congress in 1944, and reauthorized in 1962, New Melones has been completed at a cost to the taxpayers of nearly $350 million. The project now stands ready to provide hydroelectric power, water for irrigation, and the mitigation of ground water overdrafting, flood control, and environmental and recreational benefits.

To effectively deauthorize the New Melones project, as wild and scenic legislation would do, would be a contradiction of the express wishes of the people of California, who have consistently supported the project as authorized. In fact, the California Legislature, by an overwhelming margin, recently adopted a resolution calling upon the President and Interior Secretary Andrus to operate New Melones to its authorized capacity.

The devisive debate over New Melones has gone on for too long. The project has been completed, the benefits which will accrue are apparent, and the desires of the citizens of California are clear.

Mr. Speaker, I ask that a recent editorial which appeared in the Modesto Bee be printed in the RECORD at this time.

DEFINING THE ISSUE

Two days of testimony have been taken by Rep. Phil Burton's national parks and insular affairs subcommittee on the proposal to include a Stanislaus River section in the federal wild and scenic rivers system, and it is reported that those wanting to testify were given that opportunity and that pro and con arguments were pretty well balanced. So far, so good, but on the whole, the issue as argued tends to be oversimplified—to fill or not fill New Melones Reservoir—and needs more specific definition so we know just what Congress is being asked to approve.

Designating the Stanislaus a wild and scenic river now to prohibit water from rising in a nine-mile section used by commercial rafters would be like giving that designation to the Tuolumne River after New Don Pedro Dam was completed in 1971, canceling out the many benefits it has provided. New Melones was completed in 1978, but it hasn't been permitted to fulfill its mission due to countless challenges and resultant operating restrictions.

The time to legislate that label was before the dam was authorized, not after it was built. That is the crux of the issue, and there can be no compromise now without compromising the flood control, irrigation, hydroelectric power, water quality and recreation benefits designed into the $341 million project and authorized by Congress after many years of hearings and public input. While the special-interest lobbying which now obstructs the project's full implementation has risen in proportion to the growing popularity of rafting in the region, significant challenges were raised by environmentalists in 1972. Their input led to project revisions—before the dam's contract was awarded—which strengthened and expanded its multiple benefits. Then came the state voters' rejection of the proposed wild and scenic river classification in 1974—the same question before Congress now. That election should have ended once and for all time the special-interest obstructions.

Can it ever be too late to say, "We made a mistake and the dam shouldn't have been built?" Not necessarily. But that is not the case here.

While being generally sympathetic with wild and scenic river proposals where better resources conservation and management practices than exist are implied, we feel that, as a practical matter, two factors in the case of the Stanislaus proposal weaken the Friends of the River position in their campaign to prevent the intended use of the New Melones project: (1) California voters in 1974 by a large margin defeated a similar proposal—advanced before construction of the dam—and (2) there is some artificiality in labeling as wild and scenic a Stanislaus section whose white-water rapids depend on two upstream dams of the Tri Dam Project and the power-generation schedule of Pacific Gas & Electric Co.'s Stanislaus Powerhouse to produce the flow so valued by the rafters. Before the Tri Dam Project was completed, one could walk across the river under the Parrotts Ferry Bridge most summer days.

For Congress to ignore the long list of revisions in the New Melones Project to accommodate public input and the then-determined best interests of this region and to also overlook the 1974 mandate of California voters would be a disservice of great magnitude.

The project should not be compromised, as the state's resources director has proposed. To do so would compromise the will of Congress and the public, to say nothing of the project's integrity and maximum benefits.

Following the Labor Day recess, Burton's subcommittee is expected to consolidate 12 related pieces of legislation, including the Stanislaus proposal, into an omnibus bill and pass it on to the House Interior and Insular Affairs Committee. That panel is expected to approve it and move it to the House floor, where Reps. Tony Coelho, Harold T. "Bizz" Johnson, Norman Shumway and Charles "Chip" Pashayan will attempt to remove the Stanislaus River amendment from the bill, as well they should.

The New Melones issue, as Coelho aptly defined it in his testimony before Burton's subcommittee, is not the preservation of a "wild and scenic river;" it is the operation of a developed project as intended and authorized by Congress, starting three decades ago.●

PERSONAL EXPLANATION

HON. BOB LIVINGSTON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LIVINGSTON. Mr. Speaker, due to prior commitments in my district on September 4, I was not present for the final vote on H.R. 7765, the Omnibus Reconciliation Act of 1980.

Earlier this year, I voted against the first concurrent resolution because it was based on false economic assumptions and advocated, at that time, a balanced budget solely achieved by raising revenues through increased taxation. However, during consideration of the first concurrent budget resolution, I did support efforts to retain the reconciliation provision of that resolution because it is in principle terribly important to the budget process and to our need to truly balance the budget.

For these reasons, had I been present for the final vote on H.R. 7765, the Omnibus Reconciliation Act of 1980, I would have voted "aye."●

HAROLD B. SAY, JOURNALIST AND VETERANS' ADVOCATE

HON. RAY ROBERTS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. ROBERTS. Mr. Speaker, on Wednesday, September 3, the Nation, and most especially our Nation's veterans, lost a true advocate with the passing of Harold B. Say. Mr. Say combined a professional background in journalism with a long and distinguished career in the U.S. Navy. Upon his retirement with the rank of captain, he continued that service using his outstanding skills as a journalist, editor, and legislative analyst in support of those who had served with him in three wars.

A faithful member of the American Legion and the Veterans of Foreign Wars, he was a staunch supporter of all our Nation's veterans, but through his work gave special emphasis to the needs of those who fought in the First World War. He served for many years as legislative director of the Veterans of World War I and as editor of the organization's national magazine, the Torch. His work appeared in newspapers and leading veterans publications throughout the country.

Harold Say served with distinction in the U.S. Navy. He fought during the First World War with the 65th Artillery (CAC) and saw action from the Battle of St. Mihiel, September 12, 1918, until the end of the war. During World War II he was chief press and radio censor for the Navy Department,

participated in the operations of the Normandy invasion under Admiral Ramsay, and was later attached to the staff of Adm. Chester W. Nimitz in the Pacific.

Captain Say was recognized as one of the U.S. Navy's top security experts during the World War II years. After the war he served on the staff of three NATO fleet commanders on Atlantic-European maneuvers.

Throughout his career as a writer, an editor, or as a veterans advocate, Harold Say was a pro in every sense of the word. He understood the meaning of good journalism, the value of objective reporting, and the importance of the truth as expressed in the written word.

Mr. Speaker, the House Committee on Veterans' Affairs has had a long and a very productive relationship with Harold Say. As chairman, I was privileged to receive his good advice; the same good counsel that he so often shared with my predecessors and with many who serve on the committee at the present time. He was a student of the legislative process. He understood the problems and the difficult decisions confronting our committee during these many years. We will miss his active participation in our work. Our Nation's veterans of all ages and from all wars have lost a true friend.●

LATVIA WAS VICTIM OF SOVIET GENOCIDE

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DERWINSKI. Mr. Speaker, the Spotlight newspaper is a controversial publication, with which I often do not agree. However, in the area of foreign affairs, the publication reflects a very legitimate concern over the continued threat to freedom posed by the Soviet Union and its plans for world domination.

In its edition of September 15, 1980, columnist John Tiffany writes on the small nation of Latvia. It has now been 40 years since the three Baltic States, Estonia, Lithuania, and Latvia, were seized by the Soviet Union. Many Americans have little knowledge of the fate of these heroic Baltic peoples. Therefore, I would like to insert Mr. Tiffany's article at this point:

LATVIA WAS VICTIM OF SOVIET GENOCIDE

(By John Tiffany)

Some 4,000 or 4,500 years ago, an Indo-European people settled at the eastern shore of the Baltic Sea, in Central Europe (now called Eastern Europe). Gradually the Indo-European Baltic tribal states diverged into two nations: Lithuania in the south, and Latvia in the north.

(Just north of Latvia is a third Baltic nation, Estonia; but the Estonians speak a non-Indo-European language related to Finnish.)

The Lithuanians and Latvians are racially Nordic, as apparently has been true of all the Indo-European (Aryan) peoples in history—at least, before admixture with non-Aryans.

Although the Lithuanians and Latvians had their own religion, known as Dievturi, most of them converted (at least nominally) to Christianity in the 12th century. (The old religion, however, is still observed by Latvians in America, in Chicago, Milwaukee, New York, Boston and Philadelphia, and in Toronto.) Lithuania was the last nation in Europe to convert to Christianity. Lithuania, with a population of 2.7 million, is 80 percent Roman Catholic. Latvia (population 2 million) is about 57 percent Lutheran, 24 percent Catholic, and 9 percent Greek Orthodox. (Estonia, with a population of 1.2 million, is 78 percent Lutheran and 19 percent Greek Orthodox.)

Some scholars believe the Lithuanians inhabited the Baltic area as early as 2500 BC. In the 14th century the Jagellon dynasty established, by conquest, a Lithuanian empire reaching as far south as the Black Sea (Spotlight, Jan. 17, 1978; July 7, 1980). Today Lithuania is about the size of West Virginia, as are the other Baltic nations—and all three nations have been conquered by the oppressive Soviet empire.

Latvia's frontiers are defined by international treaties. There are no border disputes with the USSR nor any other adjoining state. Latvians are neither Teutons nor Slavs, but speak a language of their own, related closely to Sanskrit, and the ancient tongue of the Aryans who conquered India more than 1,000 years before Christ.

AN ANCIENT LAND

Latvia is an agrarian and seafaring country. The capital, Riga, existed as early as the 12th century. The crimson and white flag of Latvia was known by the 13th century. The Latvians have inhabited their land since at least 1500 BC—the Bronze Age. The country is divided into four provinces; from west to east, these are Kurzeme, Zemgale, Vidzeme, and Latgale. Kurzeme is better known to historians as Kurland, and Vidzeme is known as Livonia.

Latvia has had an unending struggle for survival. From 800 to 1150 AD, the vikings raided from the west, while the Russian bear beset the Latvians from the east. Of the 320 sites of castles in those days, some 160 were placed along the eastern border to protect against the Russian threat.

The southwest half of Latvia—up to the Daugava River, which is the dominant topographic feature of the country—was taken over by Poland in 1561. The Duchy of Kurland emerged (including Zemgale); and, while the duke was nominally a vassal of the king of Poland, Kurland remained practically independent, with its own army, navy, and currency, until the third partition of Poland in 1795.

For 68 years Poland held central Livonia until (in 1629) a defeat by Sweden made Livonia Swedish except for Latgale in the east, which fell to Russia in 1772.

The Great Northern War, involving Sweden on the one side, and on the other side a coalition of Russia, Poland-Saxony and Denmark, lasted from 1700 to 1721. Defeated, Sweden yielded Livonia and Estonia to Russia. But it was not until 1795 that Russia finally gained dominion over all of Latvia.

But the twin spirits of freedom and nationalism were abroad in the land. Serfdom was abolished in Kurland, Estonia and Livonia in 1817-1819, and the rest of Latvia in 1861.

When Russia had an abortive revolution in 1905, Latvia also revolted, and Latvians actually administered their own affairs for a short while, only to have their national revolution drowned in blood and tears a year later.

With World War I, in 1915, German armed forces occupied Kurland. More than half a million Latvians fled or were evacuated to the interior of Russia. To stem the German advance, the czar consented to forming purely Latvian rifle regiments. These regiments heroically defended the approaches to Riga for two years.

REDS OPPOSED FREEDOM

On November 29, 1917, Latvian patriots established a Provisional Latvian National Council in the town of Valka. The move was violently opposed by the new Soviet government and by Reds within Latvia. The National Council proclaimed that henceforth "Latvia shall be an independent, democratic republic . . . its future political status to be determined by a duly elected constituent assembly, free from interference by outside powers." This was a warning to Soviet Russia that Latvia would not be pushed around.

Formal recognition by Britain, France and Italy came on January 26, 1921. On September 22, 1921, Latvia (along with Lithuania and Estonia) was admitted to full membership in the League of Nations. The U.S. recognized Latvia on July 28, 1922.

Soviet Russia first tried to take over the Baltic nations from 1918 to the 1920's. Had the Bolsheviks been successful in this, the consequences for Europe would have been devastating. "Already then, the Bolsheviks would have begun their program of expansion, with the aim of conquering Scandinavia, as far as the Atlantic," writes Oskar Angelus ("ABN Correspondence," May-June, 1972). "At this time in particular it was shown to an exceptional degree what inner strength lived in the Baltic people, who in the shortest time built up their own armed forces and beat back the many-times stronger Russians. In this way, the great powers in Western Europe, weakened by the first world war, were given a breathing spell for 20 years."

According to the German-Russian Peace Treaty of Brest-Litovsk, signed on March 3, 1918 (and a supplementary agreement of August 27), Soviet Russia renounced any claim to sovereignty over the Baltic states, with an understanding that their future would be determined by the will of the people.

SOVIETS BEATEN BACK

Breaking its promise, as usual, the USSR formed a communist "Latvian government" in Moscow. In December, 1918, the Red army invaded Latvia, close on the heels of the retreating German army. On January 3, 1919, the Reds rumbled into Riga, and the Latvian provisional government retreated to Liepaja, in the westernmost corner of the country.

The free Latvians found an ally in the German forces. Led by the legendary Col. Oskars Kalpaks (who died in the course of the campaign), the Latvians and the allies advanced to Riga and succeeded in expelling the Soviet communist forces from the country. The remnants of the Red forces were mopped up from Latvia's eastern borderlands, in alliance with Poland, in January, 1920.

The Soviet dictatorship then entered into peace negotiations with Latvia, and on August 11, 1920, a peace treaty was concluded in which Soviet Russia renounced her sovereignty over Latvia "forever"—but this was as worthless as the Bolsheviks' earlier promise, as time was to prove.

Now Latvia forged forward as a successful and progressive nation. The last vestiges of feudalism were abolished in an agrarian reform program. Communal land was parceled into individual holdings. Diversification of the economy was encouraged. The populist program of the state included credit for farmers at low interest rates, with price supports. Advances in industry and trade were nurtured.

Latvia's economic position was sound, despite the worldwide Depression of the 1930s: Her foreign debts were small, and she had proven herself a good international credit risk. The currency, the lat, was based on the standard of the Swiss gold franc.

In 1932, Latvia signed a nonaggression pact with Soviet Russia; this was extended to another 10 years in 1934. In 1939, as World War II was starting, Latvia proclaimed her adherence to a policy of neutrality.

In April of 1939, Britain and France negotiated with Stalin to wage a two-front war against Germany. Stalin demanded, as his price, a free hand to seize the Baltic republics; but the Western Allies refused.

INDEPENDENCE CRUSHED

On September 17, Soviet troops invaded Poland. By encircling the Baltic lands with naval and army forces, the Reds were able to impose on the Balts so-called "pacts of mutual assistance"—allegedly against foreign aggression. The Latvian pact was signed on October 5, 1939. The pacts with the three Baltic victims were virtually identical: The Baltic republics were to "lease" military bases to the Reds for a period of 10 years and to admit Soviet garrisons of about 30,000 men each. The Soviets, in return, promised to provide the Baltic states with arms for their defense; but these arms never came. On June 17, 1940 the Red army invaded Latvia. Most of the Western World followed the lead of the U.S. and declined to recognize the illegal annexation of the Baltic states by the aggressor.

PRESIDENT KIDNAPPED

Private property was "nationalized," and the standard of living dropped. A ruthless war of oppression was waged on the churches and all resistance to communism. Study of the Russian language and Soviet communism were made compulsory subjects in the schools. Thousands of Latvian patriots, army officers and officials, including President Karlis Ulmanis and members of his Cabinet, were promptly arrested and deported to the USSR.

Large-scale deportations of tens of thousands of Balts to slave labor camps in Siberia, northeast Russia, Arctic regions, Central Asia and the Far East were carried out. Fifteen thousand Latvian citizens—men, women and children—were rounded up and loaded into cattle cars for deportation under the most inhumane conditions. Consequently, June 14 of each year has became known as Latvian Mourning Day.

The large-scale deportations were carried out in accordance with secret Soviet instructions. A list of those to be deported had been drawn up in advance. Stalin knew the Germans were about to invade, so he acted fast. People were taken from their homes in the middle of the night and were allowed to take almost nothing with them. Trucks transported families to the railroad station, where men and even children were separated from their families and put into freight-cars without even the most primitive facilities. Many died of hunger or thirst during the journey.

The names of 35,828 of those deported are known, but there are tens of thousands of others who were murdered, imprisoned, or deported. In 1940-1941, the Baltic countries lost about 130,000 inhabitants by deportation. Only a fraction of them were still alive by the mid-1950s.

During the first Soviet occupation of Latvia, 1940-'41, soldiers from the Latvian National Armed Forces were forcibly transferred to the newly established Soviet Latvian Territorial Corps. Many national-minded Latvian soldiers were murdered, along with many civilians, by the Soviets just prior to the Soviet retreat from the advancing German forces.

Hitler invaded in June, 1941. The Germans were greeted as liberators by the Balts. The swift German advance was aided by the spontaneous uprising of Baltic partisans against the Soviet overlords. But after a successful offensive in the winter of 1943-44, the Red army again overran the Baltic lands, aided by lend-lease assistance from the Western Allies—especially the U.S.

Many Latvian soldiers joined the German army to fight the hated Soviets and to revenge the murders and deportations of their people and the destruction of their land.

The Soviets well remember the Latvian legion, who inflicted many casualties and heavy defeats on the Soviet forces from 1943 till 1945. Nor are the Latvian soldiers and their deeds forgotten by enslaved Latvians at home and by free Latvians in exile.

LATVIA'S "ALAMO"

One Latvian legion division, along with a German army corps, was trapped by the Reds in Kurland. For seven months "Fortress Kurland" held out against savage assaults by the Soviets, and did not surrender until Germany surrendered to the Allies on May 7, 1945. Some legionnaires, hiding in the woods, escaped surrendering to the Reds, and harassed the occupation forces for years as guerrilla partisans. Of those legionnaires who did surrender, about 14,000 Latvians were captured and shipped to Soviet slave labor camps.

According to conservative estimates, at least 10 percent of Latvia's inhabitants were sacrificed to Soviet genocide until the death of Stalin in 1953. To this day, no one in Latvia is safe from the dread "midnight knock."

A second deportation wave rolled over the Baltic lands from 1944-45, as the Red army re-occupied the area. This time no list of deportees had been prepared; it was done by improvisation. The purpose, as before, was to remove elements of the population suspected of anti-Soviet tendencies. The total number deported in this wave, for all three Baltic peoples, is roughly estimated to have reached 200,000. These were mostly men.

Still, a third wave of deportation hit in 1948-49, with forced collectivization; farm families who "might resist" collectivization were listed for deportation. This time the families deported were kept mostly intact. They were shipped to collective farms or "kolkhozes" in Siberia and Central Asia; a higher percentage survived than in the earlier deportations.

The total number of deportees from the Baltic countries is estimated at 500,000 to 700,000. No mass deportations occurred after 1950, and beginning in the mid-'50s, surviving deportees were amnestied. But individual deportations go on even today.

ALIENS FLOCK IN

Today in Latvia, systematic russification is in full swing. In 1935, 75.5 percent of all 2 million people were ethnically Latvians. In 1966, only 58 percent of 2.3 million were Latvians. Only 23 percent of all radio programs in 1968 were in Latvian, 55 percent of all books, and 65 percent of all newpapers.

In 1972, in Latvia, there was already one Russian for every two Latvians. The Latvians have a low rate of reproduction, which aggravates the problem of their fading national identity as foreigners continue to flood in. Every year 14,000 outsiders settle in Latvia.

As of January, 1970, the population (combined) of the three Baltic Captive Nations had increased from 6 million in 1959 to 6.8 million. The increase is entirely due to an influx of Russians, Byelorussians, Ukrainians and others. The aim of this continuous flow of immigrants is to immerse the Baltic lands in the melting pot of russianization.

While the Establishment mass media continually harp on alleged "Nazi crimes," Soviet crimes in Latvia alone (not to mention the long list of other victim nations)—all unpunished and "OK" under the Genocide Treaty (Sen. William Proxmire's (D-Wis.) favorite)—have been worse than anything the Nazis did.

What lies ahead for Latvia? Despite half a century of Soviet communist dictatorial rule, nationalistic antagonism, especially between Russians and non-Russians, in the USSR is even greater today than ever. The Balts and other Captive Nations continue to yearn for independence; they are among America's best allies against the Kremlin. It is inconceivable that a civilized nation like Latvia should continue to have less independence than Outer Mongolia.

History has shown us that great empires can disintegrate overnight. In the Soviet empire, there are already cracks visible in the wall.●

PROJECTS WITH INDUSTRY

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SIMON. Mr. Speaker, in the effort to help handicapped Americans help themselves, making job training and employment opportunities more widely available has been of great importance.

I am pleased to be able to share with my colleagues a continuing success story in that regard: "Projects With Industry," administered by the Rehabilitation Services Administration.

Projects With Industry is a rehabilitation program designed to prepare persons with disabilities for specific skill needs identified by businesses and industries in each participating community. PWI is a cooperative venture, based on a partnership among 2,500 businesses, large and small, and 400 rehabilitation agencies.

Since its inception, Mr. Speaker, PWI has placed more than 25,000 handicapped persons into unsubsidized jobs in competitive employment. Of the 6,500 clients served just last year, fully 5,000 were placed into competitive jobs, a truly impressive record.

Herbert B. Mosher, director of rehabilitation programs for the Menninger Foundation in Topeka, Kans., has written an article in the Washington Post describing the achievements of Projects With Industry in somewhat more detail. I commend this most interesting article to the attention of my colleagues:

PROJECTS WITH INDUSTRY

(By Herbert B. Mosher)

"We used to hire only Greek gods," is how the personnel director of one of America's

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leading manufacturing firms explains his company's previous recruiting philosophy.

"Then I looked at our board of directors. The chairman has a heart condition and the president is a diabetic. Now we try to fit the right person to the best job regardless of a disability."

This about-face on accommodating handicapped workers is shared by many companies today.

International Telephone and Telegraph Corp. used to refuse applicants with epilepsy, cancer, and other disabilities as poor insurance risks. Recently, ITT dropped these restrictions and began to actively recruit workers with severe disabilities. Moreover, the company installed ramps, modified restrooms and put up brailled signs to bring aboard workers who have physical limitations.

Result? An ITT performance survey reveals that disabled employees show higher productivity and have fewer accidents and less absenteeism than other employees. And the modest cost of plant modifications was deductible under provisions of the Tax Reform Act.

Federal law requires affirmative action for the handicapped in all businesses receiving government monies. A key section requires employers to make "reasonable accommodation" to meet specific needs of disabled workers. Modifications may include adaptive equipment, job restructuring or alteration of the work site.

For blind secretary Caroline Christ, the Continental Bank of Chicago restructured certain clerical responsibilities to allow her to type from dictation and use a braille dictionary.

Thirty supervisors of the Xerox Corp. learned sign language to better communicate with deaf workers recently hired as technicians.

Security Benefit Life Insurance Co. offers its managers extensive training to help them become aware of problems encountered by workers with psychiatric or drug problems.

Can severely handicapped workers operate computers? International Business Machines thinks so. The company adapted its training and equipment for individuals with mental retardations, cerebral palsy or severe paralysis.

IBM was not surprised when demand for program graduates exceeded supply. Starting salaries for top programmers average $18,000 annually.

Employers and disabled individuals frequently need help pairing skills with a specific job. It's available through Projects With Industry, a federally funded program initiated by the government's Rehabilitation Services Administration.

Based on a partnership between 2,000 corporations and 400 rehabilitation agencies, Projects With Industry gives extensive career services to the disabled, as well as guiding employers on eliminating both architectural and attitudinal barriers to employing the handicapped.

"PWI looks at corporate needs, listens to career interests of disabled individuals and links good workers with cooperating companies," according to the program's national director, Thomas J. Fleming. More than 11,000 handicapped workers across the nation have entered competitive careers through PWI.

One such worker, Dwight Young, joined ARCO Pipeline. He sums up the feelings of many disabled people: Two years ago, I had a broken back, no job and little self-respect. Today I'm a well-paid technician in the expanding energy business. It meant my whole life to get this job."

American industry is beginning to see that disability is only a label—that the Greek-god hiring standard was itself a myth.

In ancient legends, Hephaestus—the Greek god of crafts—used his strong arms over the fires of his smithy to create marvelous crafts. He was lame.

For more information on Projects With Industry, write to Thomas J. Fleming, PWI, Rehabilitation Services Administration, 330 C St. S.W., Washington, D.C. 20201.●

LIEUTENANT GOVERNOR ORR, MAYOR McMAHAN, AND MAYOR DAILY TESTIFY BEFORE AUTO TASK FORCE

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. HILLIS. Mr. Speaker, on September 2, the Congressional Auto Task Force, of which I am cochairman along with Congressman WILLIAM BRODHEAD, held a hearing in Detroit in order to hear from State and local officials on the impact the auto industry's slump is having on their areas. We were fortunate to have Lt. Gov. Robert Orr of Indiana, Mayor Thomas McMahan of Anderson, and Mayor Stephen Daily of Kokomo appear before the task force.

In order to share with my colleagues the testimony from these Hoosier leaders, I am placing portions of their testimony in the RECORD at this point.

TESTIMONY OF LT. GOV. ROBERT ORR

Let me begin by expressing my appreciation to this group, and specifically to the distinguished Congressman from Indiana's Fifth District, Elwood H. (Bud) Hillis, for inviting me to appear here.

I do not come here as an expert on the auto industry. Neither am I here to suggest that I have definitive answers to problems currently being experienced by a troubled American auto industry.

Instead, I can speak from the perspective of a businessman who operated several enterprises before entering politics. I also can bring to your discussions the perspective of an individual who, as Indiana's Lieutenant Governor, has been deeply involved in job creation and economic development in the Hoosier state for nearly eight years.

What you are about is important. It is important to Indiana and to Michigan, both of which have heavy automotive industry concentrations, and it is important to the nation. Some people may claim that the advent of costly gasoline may have ended American's love affair with the automobile, but I don't believe it. The automotive industry still is the starter engine for our national economy. To the extent that the automotive industry runs sick, then the national economy also fails to hit on all eight cylinders.

In Indiana, we tend to feel the effects of recession in the auto industry as quickly as Michigan and more quickly than most states. Recession in that industry tends to drive up unemployment rapidly in our state to higher levels than most states. We also tend to recover more rapidly.

The current recession has been particularly severe in Indiana. Two major automotive industry centers—Kokomo and Anderson—recently have had the highest or nearly highest unemployment rates of any SMSA in the country. Other centers with automotive concentrations, such as Muncie, have unemployment nearly as high. There is a ripple effect in these communities when auto sales start skidding, since many other firms are suppliers or subcontractors of these major auto industry installations.

Perhaps the most serious effect of the recession in the auto industry has been the damage to other segments of the auto manufacturing and distribution chain. For example, almost daily for several months now, we see stories about auto dealers voluntarily quitting business, or going under, or going into reorganization under the bankruptcy laws.

These dealers have been caught in a squeeze which includes declining sales, skyrocketing interest rates and ever-inflating operation expenses. Some could not survive that squeeze and I suspect there are many more whose operations will become casualties before we are out of our current dilemma. These failures cost us jobs and economic strength, too, and they weaken the future ability of dealer organizations to sell and service automobiles.

I think it is important that we not allow ourselves to be deluded into thinking that a quick fix of the auto industry's problems also will be a quick fix on the nation's total economic problem.

The auto industry by no means is the only basic component of our economy adversely affected by the current recession.

We also see, in the Hoosier state, a dramatic effect on producers of non-automotive durable goods. The unsettled state of the economy, coupled with still-rampant inflation and still-high interest rates, seems to have encouraged people to make do with old dryers and dishwashers just as they are making do with their old cars.

And, finally, we in Indiana see a major recession in the construction industry, involving industrial, commercial and residential building.

Each of these components of the total economy is in trouble and their troubles translate into continuing difficulty for our nation as it strives to work its way out of the recession. More importantly, the troubles which afflict each basic industry translate into personal financial crises for hundreds of thousands of American families.

In these hearings, however, you are concerned solely with the automotive industry and I will target the remainder of my remarks to that industry.

Specifically, I would make these suggestions:

(1) Avoid quick-fix, band-aid approaches to the auto industry's problems. It's likely that normal recovery from the recession will occur before any surface approach can make a difference. There are, as I am sure many earlier witnesses have testified, major problems for the auto industry below the surface. It is these problems—such as overly-restrictive regulation of automobile manufacturers, which has forced car prices ever higher, and the factors which cause double-digit inflation and high interest rates—to which you should address yourself.

(2) Do something specific at the national level to encourage purchases of American-made cars. One example, which I support, is the proposal by Congressman Hillis and Dan Quayle, of Indiana's Fourth District, to provide, for a limited time period, a federal income tax credit for the purchase of fuel-efficient, made-in-the-U.S.A. autos.

(3) Do something specific to encourage American automakers to invest in newer, more technologically-advanced plants capable of greater productivity and likely to restore greater competitiveness to American-made cars. Investment credits are just one of several options available to you in this regard.

(4) Have the courage to hold spending in check and thereby bring interest rates down. Few Americans can finance the purchase of a car at today's interest rates, to say nothing of the 20-percent level that prevailed last April.

(5) From a humane standpoint, make certain that assistance is available to workers whose livelihood has been disrupted by a soured economy. This assistance should include retraining programs for displaced workers resulting from either foreign competition or the effect of technology.

I do not believe that you should erect barriers to trade by imposing still-higher tariffs on foreign-made cars. As Lieutenant Governor, Commissioner of Agriculture and Director of the Indiana Department of Commerce, I am acutely aware of the opportunities which exist for overseas market development. To the extent that we resort to higher tariff barriers for foreign-made cars in order to give our American automakers an advantage, we encourage other nations to erect similar barriers against our industry and agricultural products.

There is a much larger market for these American products worldwide than there is an American market for all foreign-made products. We need to exploit that potential, not endanger it by throwing up new barriers to competition by foreign firms in the United States.

I do not oppose, however, requiring foreign manufacturers to produce products in American plants. That may be an answer to some of the sting of foreign competition.

Thank you.

TESTIMONY OF MAYOR THOMAS R. MCMAHAN

My name is Tom McMahan, Mayor of Anderson, Indiana. We have experienced auto industry unemployment unsurpassed by any community in the nation.

Anderson is a "General Motors Town" and we're proud of it. Delco Remy and Guide Divisions both had their origins in Anderson in the early 1920's and have always been regarded as good citizens and good employers.

In June, 1979, employment at Delco-Remy stood at 15,300. Today, it's just over 11,000. 4,279 or 28 percent with seniority dates back to 10/27/65, are on lay-off. Guide's employment last June was 6,000. Now it is 4,880, with 1,120 or 19 percent on indefinite lay-off back to April 26, 1976. Other manufacturing in Anderson includes recreation equipment, pumps, glass machinery, corrugated paper boxes, meat packing, dairy products, mattresses, railroad equipment and springs for furniture. These firms constitute a total employment of about 2,500.

The downturn in employment in Anderson began in July, 1979, at which time the unemployment rate stood at less than 7 percent. It steadily worsened, reaching the double digits in November. By December it had reached 14.8. The rate hit its peak in June, 22 percent. Labor force estimates for July for the Anderson SMSA, to be announced this week, will indicate an unemployment rate of 20.2 percent. Our labor force stands at 58,900 with 47,000 working and 11,900 unemployed. In addition to the 5,399 auto workers laid off, it is conservatively estimated that the toll taken by the "ripple effect" is an additional 2,500.

Recent figures from the Anderson office of the Indiana Employment Security Division indicate 3,750 claims for regular unemployment benefits and 1,766 extended benefits are being processed weekly. From January to July, 1980, 3,328 persons have exhausted their regular benefits and approximately 1,500 have exhausted their extended benefits.

These are more than cold statistics on unemployment in the Anderson community. These are real people with families, homes, children, obligations and hopes for a decent, productive future. This should be the true perspective, the thrust, of our meeting today. This is why I am here!

A visit to Anderson would belie some of the cold facts which have been presented. The community has endeavored to anticipate unemployment as it increased. This has been accomplished by close communication and interaction between social agencies, churches, labor unions, financial institutions, utility offices, businesses and the city administration. Township and County Welfare agencies have been severely taxed. For example, the issuance of food stamps increased 60 percent the first six months of 1980.

The greatest salvation has been Supplemental Unemployment Benefits (SUB) paid to nearly 6,000 Delco Remy and Guide Division employees. However, over 1,100 have now exhausted their 52 weekly benefits. Furthermore, the SUB Credit Unit Cancellation Rate continues to increase: i.e., an employee with 5 to 10 years seniority now needs 2.0 units for each weekly benefit. Less than 5 years, the cancellation rate is 2.5! Depending upon the dollars of TRA payments reverting back to the SUB fund and the implementation of Federal Supplemental Benefit payments, most SUB benefits could cease by November!

With unemployment and extended benefits being used up at a rapid clip, the approaching exhaustion of SUB benefits, the uncertainties of the general economy and winter coming on, it is incumbent upon us all to sharpen our strategy to combat this critical problem.

STRATEGY—IMMEDIATE

1. Implement Federal Supplemental Benefits. The amount payable on an FSB Unemployment claim would equal the total maximum benefit amount of the original claim, with 26 weeks being the maximum number of weeks payable. This program was last used in 1975. It would relieve hardships among those who have exhausted regular and extended benefits and prolong life of SUB fund.

2. Appropriate funds for the Energy Crisis Assistance Program and release any unspent funds from 1980 appropriation now being withheld by the June 30th deadline. Energy assistance is critical to low income people and families. Through Project Safe last winter, 2000 Anderson households were assisted to the tune of $500,000.

3. Inventory and coordinate local sources of assistance—material, psychological and spiritual—for maximum utilization of resources.

4. Auto Community Adjustment Program—Phase I. Anderson will complete and submit its application to the Department of Commerce's Economic Development Administration to finance a strategy study leading to positive steps toward adjustment of the community to economic reality which it faces, or could face, as the result of transitions of the auto industry. We understand that funds are set aside, for 20 adjustment planning communities, that our application will be approved before September 30 and that we can proceed with our strategy study immediately. The amount of the grant is understood to be $75,000.

5. Demonstrate and encourage conservation of resources by individuals.

STRATEGY—SHORT RANGE

1. Recall of laid-off workers to Delco Remy and Guide Division—national level. These are among the best paying, highest benefit jobs in the world! No wonder we want them back. But they are in jeopardy.

The prospects for this recall depend first upon the transition of the nation's auto industry, the strength of the national economy and the moods of the buying public. Considering the multitude and multi-faceted causes leading to this dilemma, primary solutions must materialize through the close and prompt cooperation of the public and the private sectors.

Some of the major causes, in my opinion, are:

The rapid escalation and high cost of fuel.

Foreign imported cars and trucks.

High interest rates.

Unrealistic, excessive and counter productive federal regulations of emission and safety standards.

The sudden shift of customer demand to fuel-efficiency cars.

The high price of automobiles and inflation in general.

2. Recall of laid-off workers to Delco Remy and Guide Division—local level. Notwithstanding the causes leading to the downturn of the auto industry and the resulting unemployment, the trend will be reversed as the transition to more fuel-efficient cars takes place. But we need more than a "model change" of our product. We desperately need a "model change" of our attitude toward our jobs. The old attitudes have been left tied to the post. We've lost our competitive edge and our quality is no longer good enough. If we intend to compete in the market place we must meet our competition toe-to-toe.

This will require the teamwork of management, supervision, the worker in the office and on the assembly line and the labor union who represents them.

If we ever needed a complete and frank understanding and concurrence of the need for a new standard of productivity, quality and job appreciation, we need it now. The auto industry and its jobs are coming back. We expect them to come back to our Anderson plants.

3. Diversification of Business and Industry. The pitfalls of over-dependence on one industry by a community is graphically illustrated in the case of Anderson, Indiana. Unfortunately, we didn't get serious about diversification until this time last year. We formed a local development corporation called the Anderson Business Development Corporation (ABDC), funded by HUD through a community action block grant. Since then ABDC has acquired a vacated plant facility well situated on 36 acres of ground. The plant was a gift from the previous occupant and owner. Although prospective employees are scarce, few escape the watchful eye of ABDC. Activities of the group also include promoting the sale and imminent occupancy of another sizeable vacant factory site. Close cooperation exists with the Indiana Department of Commerce.

The city actively promotes the use of Industrial Revenue Bonds, Tax Abatement and other redevelopment tools.

STRATEGY—LONG TERM

1. Continuation of Business and Industry Diversification.

2. Auto Community Adjustment Program—Phase 2.

Taking a lesson from the present as well as the past, Anderson aims to pursue planning that will facilitate positive adjustment of the community to the new economic realities. We hope to earn help through Title IX grants and other assistance from the Economic Development Administration.

3. Youth Training and Employment Programs. We are particularly aware and disturbed by the perennial problem of youth

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unemployment in our community. With this in mind, we are watching with great interest the progress of HR 6711, a bill "to extend the authorization of youth training and employment programs". Dovetailed with our existing school system, technical vocational training facilities and the participation by the private sector, a comprehensive program would be a decided advantage to the future economic well-being of our community.

Finally, I am venturing the prediction that the community of Anderson will respond from this lapse in employment stronger than ever. It has learned to appreciate what it has and what it could lose—the challenge of pulling together and the need to plan ahead.

MAYOR STEPHEN DAILEY

Kokomo, Indiana is a lucky place. Our plants are not closing. Instead they are shifting the focus of their operation in order to remain competitive in an industry that is changing very rapidly.

So we're not going to die as a result of changes in the auto industry . . . but we are going to see important changes in the number and type of workers employed in our city.

And I want to emphasize one thing very strongly today. The City of Kokomo does not have its hand out. We come from an old and proud midwestern tradition which says that you solve your own problems.

We will do that in Kokomo.

Since January, Kokomo has undertaken intensive long range planning efforts aimed at diversifying our economy. We have worked with the federal Department of Housing and Urban Development in three of their programs. We have worked with the federal Economic Development Administration and the Indiana Department of Commerce. And we can solve our problems, given time.

Kokomo is familiar with the ups and downs of the auto industry.

We have come back, stronger and better than before, and I know, though this time the recession is longer, harder and more difficult than ever, Kokomo will return once more, stronger and better, and with a more diverse economy and more jobs for its citizens.

Our long range plans to improve our plight will work.

If we can keep the people of Kokomo from losing hope and moving on.

The City of Kokomo has struggled with an unemployment rate in excess of 10 percent for 8 of the last 9 months since November, 1979. In May of this year we led the nation at 23.9 percent.

With sub pay, unemployment and TRA, our workers have retained the ability to pay the most pressing of their bills, but they still represent over 20 percent of our food stamp recipients.

This figure will jump significantly when TRA runs out at the end of this week. The expected rush is so great that the food stamp people have opened a second office—in the union hall—to register them. They expect 1,500 additional applicants in one week. Approximately 1 in 10 people are presently on food stamps in Kokomo. That ratio will get worse.

The impact these lay-offs has had on the Welfare department and the Trustee's Office, on the restaurants and clothing stores, on school book rental collections and on apartment managers whose tenants are moving back in with their parents is devastating.

I said before that I do not have my hand out . . . and I meant it. But there are some things the federal government can do to make our jobs easier . . . and a little more possible.

You can help us keep our workers in Kokomo. Help us make it possible for people to wait out this decline as they have waited out others before.

1. Extend TRA benefits.
A. Longer period for auto workers.
B. Make auto related industries eligible.
2. Open up public works money.
A. Direct grants are best, but
B. Matches are O.K.
C. Anything to employ those who normally build plant expansions and new homes.

You can help business remain competitive in the new market place.

1. Give tax breaks to expansion.
2. Offer incentive to stay where they are.
3. Help people refinance their own retraining or let the industries retrain and help them do it.
4. Give the cities long term planning money to aid them in assessing the impact a changing auto industry will have . . . and prepare to deal with it.

In the longer range, you can:

1. Soften the requirements of HUD's UDAG program.
A. Cost per job—high technology, modern industries have high cost to job ratio. Yet they are the kind of industries—and jobs—we need. Present UDAG regulations practically limit UDAG's to shopping centers and new startups. We are more concerned with helping the industries we have modernize to remain competitive. Place more, reasonable emphasis on jobs retained.
2. Increase the risk that the SBA is allowed to assume under the loan guarantee programs. There seems to be too large a gap between programs too big for SBA and too small for UDAG or EDA.

And, finally, the federal government can liberally fund the one existing program which is specifically designed to handle financial emergencies like ours. That is the EDA's Sudden and Severe Economic Displacement program. For years this agency has had the smallest budget among the major funding sources. Now industry and government need those programs more than ever—and they should be funded accordingly.

I have said before that I'm not here to ask for a handout—only a hand. That is why I am here today.●

JIM DILLEY—SIGNIFICANT CITIZEN OF THE DECADE

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. PATTERSON. Mr. Speaker, the residents of Laguna Beach have selected Mr. Jim Dilley as their "Significant Citizen of the Decade" and will formally honor Mr. Dilley in a formal ceremony on September 21. Ten years ago, Jim had a vision of a major greenbelt which would surround the city of Laguna Beach and for 10 years he worked to make that dream a reality.

His personal persistence and commitment to the idea of saving our environment and his continual efforts to prevent the uncontrolled spread of asphalt throughout the county served as an inspiration to the people of Laguna Beach and fostered the birth of the Laguna Beach Greenbelt Committee. From this seed there grew a community-wide effort to preserve the green space which surrounded the city. The city effort grew to include county and statewide support and today there are plans for a large urban park.

The dedication and inspiration of Jim Dilley was a key force in making this dream a reality. His personal efforts and successes should serve as an inspiration to each of us. Mr. Speaker, I ask my colleagues to join with the residents of Laguna Beach in honoring this man of vision, who was also a man of action, for his many contributions to Orange County and the many generations of people who will live and visit the living monument he leaves behind.●

MARKEY SUPPORTS SEMIANNUAL COST-OF-LIVING ADJUSTMENTS

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. MARKEY. Mr. Speaker, due to a prior commitment in my district in Massachusetts I was not able to vote on the Bauman amendment to the Omnibus Reconciliation Act of 1980.

Had I been present on September 4, 1980, I would have cast my vote in favor of the Bauman amendment. I believe that there are better, more equitable ways to reduce Federal expenditures than by cutting sorely needed benefits for military and Federal retirees.●

FEDERAL ELECTION COMMISSION "WATCHDOGS" NEED WATCHING

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DORNAN. Mr. Speaker, for the information of my colleagues, and the public, I have included the following discrepancies which are written after a lengthy investigation of the FEC's inept review of Senator STEWART's and Carey Peck's campaign finances.

I am a firm believer that justice and truth will finally win out in this scandal. In my office I have assembled hundreds of pages of evidence on this matter, some of which I have already inserted in the RECORD, which I invite you to review.

The fact remains that the FEC has allowed a Member of the other body to keep corporate money, embezzled money at that. They have still not collected a fine, their largest ever, which they levied September 6, 1979. They have cleared these two campaigns of wrongdoing, without even the most obvious evidence—a canceled check, not one from either campaign.

As I mentioned on the floor of the House, I fully support the concept of campaign disclosure, as well as the concept of monitoring campaigns to keep them free of dirty money.

Hopefully my exposure of these discrepancies will bring to light the ineptness and conscious looking the other way for political reasons, of which I believe the FEC is guilty.

The material follows:

FEC DOES NOT CASH $2,000 CHECK FROM DENNIS AS PARTIAL PAYMENT OF FINE; FINALLY FILES CIVIL SUIT ON MAY 1, 1980, TO COLLECT FINE AFTER HEAVY CRITICISM

Charles N. Steele, currently is the General Counsel for the Federal Election Commission. He worked under William Oldaker who supervised the non-investigation of the Peck/Peck/Dennis/Stewart scandal and then subsequently left the Office of General Counsel to go immediately to work for the Edward M. Kennedy presidential campaign (In 1973, Oldaker was suspended for five weeks, and demoted from his position with the Equal Employment Opportunity Commission in Denver because of falsifying public records, according to an article in Rocky Mountain News).

On October 16, 1979, the F.E.C. received a letter and a $2000 check from James Dennis indicating that he was able to put up $2000 of the $18,000 fine, and that he would "send additional monies as I can spare them." (see MUR-970, Dennis letter to Hal Ponder, O.G.C., F.E.C.). The $2,000 was a draw on the General Client Trust Account of the law firm of Groendyke and Salter and made out by Steve Salter on October 15, 1979. It was made payable to "James H. Dennis, Sr., and the Federal Election Commission." The check and Dennis letter were sent via Federal Express (MUR-970). Dennis had endorsed the check and the check only needed an F.E.C. endorsement in order for it to be cashed.

On October 22, 1979, former General Counsel William Oldaker sent a memo to the Commission. He mentioned that Salter indicated a full payment "would be forthcoming. Mr. Oldaker recommended that the Commission give Dennis "a 30 day extension . . . for full payment of the civil penalty and to notify his lawyer . . ." Mr. Oldaker sent Dennis' lawyer, Steve Salter, a letter on October 25, 1979, acknowledging receipt of the $2,000 check and the Dennis request for an extension on the remainder of the civil penalty. Oldaker told Salter that "The Commission voted to give Mr. Dennis thirty days from receipt of this notification in order to submit full payment of the civil penalty to the Commission (see MUR 970)."

On December 14, 1979, Charles Steele himself (who had replaced Mr. Oldaker as General Counsel) sent Dennis' lawyer, Salter, a letter which stated in part, "As of this date, we have not received the outstanding portion of Mr. Dennis' civil penalty, $16,000." Mr. Steele also said that unless the Commission received the remainder of the money by Dec. 19, 1979, the Commission would go to Court. The Commission finally went to Court on May 1, 1980.

On December 20, 1979, Salter received the December 14, 1979 Steele letter and wrote back to Mr. Steele on the same day. He stated that Mr. Dennis had discharged him (Salter) from the case and "under the circumstances, I have stopped payment on the $2000 check previously forwarded to you." (See MUR 970).

On June 6, 1980, Congressman Dornan and one of his staff aides went to the F.E.C. on K Street in downtown Washington—a short drive from Capitol Hill. They asked Mr. Steele (O.G.C.) why the $2000 check remained uncashed for over 2 months. General Counsel Steele said that by cashing the $2000 check, Dennis would have interpreted that as the F.E.C. accepting the $2000 amount as full payment of the $18,000 fine. Why?

How Mr. Steele could say this in light of his experience with the matter and the numerous F.E.C. documents including a conciliation agreement signed by Dennis and the F.E.C. (agreeing to pay the $18,000) is puzzling to say the least. A reasonable person would naturally conclude that Mr. Steele and perhaps others, have something to hide in this matter.

To date, this so-called "watch dog" agency has not collected a cent of the $18,000 fine, even though the F.E.C. had two thousand dollars in their hand for two months. Please remember that the F.E.C. originally fined Dennis $36,000 which they later reduced to $18,000 at the "request" of James H. Dennis. The original fine of $36,000 would have been the biggest fine ever levied by the F.E.C., and remains the biggest scandal.

At one point in the so-called F.E.C. investigation, James H. Dennis told an Alabama Reporter that the F.E.C. would never really do anything to him because people "high up in Washington will make sure of it." It seems that Mr. Dennis' prophetic statement about "nothing happening to him" is still all too true.

FEC CLAIMS THEY STARTED INVESTIGATION OF ILLEGAL DENNIS CONTRIBUTIONS TO PECK AND STEWART "ON THEIR OWN"

The Conciliation Agreement proposed by the O.G.C./F.E.C. on August 16, 1979 stated: "This matter was initiated by the Federal Election Commission on the basis of information ascertained in the ordinary course of carrying out its supervisory responsibilities." (Simply not true!) The Conciliation Agreement originally signed by General Counsel Oldaker for the Commission and by James Dennis, also repeated this statement.

This is not correct. It is a deliberate distortion of truth. James Dennis himself was the one who initiated this case after a number of newspaper articles appeared in Alabama listing himself as a source of illegal money for Stewart, and eventually one story about illegal money for Carey Peck. And certainly there was no Sherlock Holmes at the F.E.C. who by his or her cunning, master-minded a confession from Dennis about his Peck contributions. Dennis volunteered some of the information to more than one Alabama reporter. Dennis had even said in front of the F.B.I. and Congressman Dornan that O.G.C./Oldaker said in his (OGC) office, "Don't you understand, we're not interested in Peck." Actually, the F.B.I. told the Congressman to ask Dennis about this incredible cover-up type statement.

And when James Dennis came to Washington on June 1, 1979 to go to the F.E.C.'s General Counsel William Oldaker, what kind of reception did he get? Dennis was put in a room by himself and was asked by then General Counsel Oldaker to find the names he used for the phantom illegal contributions given to Peck and Stewart. Dennis told Congressman Dornan he felt he was in charge of his own investigation. To repeat, "It was a joke," he laughed, "Me investigating myself."

While Dennis was presenting this information to Congressman Dornan in the Talledega prison interview, the F.B.I. agent present said, "Didn't Oldaker say, "We're not interested in Peck?" Dennis gleefully elaborated.

The entire F.E.C., O.G.C. non-investigation bears out this attitude. Even though Dennis used corporate money (a dummy corp.) to make his $13,000 contribution to Carey Peck, illegal under the F.E.C. Act, the O.G.C. was prepared to ask for only $12,000 back (see proposed F.E.C. letter to Peck. This letter omitted references to the illegal corporate origin of the Dennis money). This is also evident from Bill Oldaker's August 31, 1979 memo to the Commission. He states, based on hearsay evidence, "that Mr. Dennis was refunded $12,000 from the Carey Peck for Congress Committee . . . Mr. Salter stated that a "full return of the money had been received." (Salter) it seems, was "in the dark" and was apparently going on hearsay evidence or known lies.)

Yet, the Peck F.E.C. forms in the possession of the F.E.C. since July 11, 1979, listed the alleged return of the Dennis money, indicates a "return" of $13,000 to Dennis, not $12,000 as Oldaker insists. This same fetish also applied to the Dennis contribution to Stewart. The F.E.C. Office of General Counsel conciliation statement prepared by Bill Oldaker, and defended even now by the current F.E.C. General Counsel Charles N. Steele, was satisfied to let Dennis give Stewart $23,150 (actually $23,190) in illegal dummy corporate money and have Stewart "return" (as he claims) only $22,000 to Dennis. (To this day, September 8, 1980, the U.S. Senator retains the "stolen from California" dummy corporate illegal sum of $1,150) actually $1,190.

Neither General Counsel Oldaker or Steele ever wrote to the Peck and/or Stewart campaigns requesting a front and back copy of what may be the "U-turned" checks of $13,000 (Peck) and $22,000 (Stewart).

There are other omissions in the face of implicating evidence making it quite clear that the O.G.C. neither initiated, nor carried out anything even approaching a real investigation.

FED SAYS IT CANNOT COMMENT ON DENNIS CASE YET

An October 8, 1979 Montgomery Advertiser article reported that the F.E.C. could not publicly comment on the Dennis/Stewart case, as the files had not been made public yet. (By September 1979, the Los Angeles Herald Examiner is already working on the Peck angle to all this.)

However, Dennis himself had publicly outlined settlement of the case more than a month before the article is written. He told newsmen that he signed a Conciliation Agreement admitting three violations of F.E.C. law. He stated that he was fined $36,000. (A form of weird bragging. Big time operator.) In fact, an Alabama high federal official J. R. Brooks had also told a California reporter, Mike Quarles, that same week that Stewart had been "completely cleared." (Maybe this was the beginning of the cover up.)

The F.E.C.'s public record does not contain any evidence that Dennis or the "high federal official" were reprimanded for divulging information then under consideration by the 6 F.E.C. commissioners.

Congressman Dornan has been informed by the F.E.C. General Counsel that discussion of such matters "would be forbidden" if the Congressman were to file a complaint. And with the Office of General Counsel's policy of selective prosecution (based on political friendship and/or ideology?) we could suspect that the rules would be applied differently if a complaint were filed that required the O.G.C. to actually undertake a real investigation instead of what is probably a deliberate whitewash.

At one point, in order to induce Congressman Dornan into filing an F.E.C. complaint, and therefore, indefinitely silence him, F.E.C. General Counsel Charles Steele of-

fered to give Congressman Dornan the six known documents which were removed from F.E.C. MUR 970, and which he is now forced into a legal court challenge to obtain. (This very document the reader is studying is an expanded court challenge to force the F.E.C. to turn over to Congressman Dornan six "removed" documents.)●

JIM SLOAN

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LEWIS. Mr. Speaker, I would like to take this opportunity to recognize one of the truly fine men in my congressional district who is an inspiration to the youth and community of Redlands, Calif., and the entire Inland Empire.

James Sloan is a resident of Redlands for 54 years, and his many contributions to our community are highlighted by his dedication to Scouting. As a former Eagle Scout, he knows firsthand the benefits of Scouting. In an effort to pass on this legacy he has served as a Scoutmaster and served for 15 years on the executive board of the California Inland Empire Council of the Boy Scouts of America.

Given his extraordinary talent in photography, Jim Sloan has contributed monetarily to Scouting by publishing books of his photography and donating the proceeds to the Boy Scouts. For this and his many contributions to Scouting, he was awarded the Silver Beaver Award presented by the National Council of the Boy Scouts of America.

Beyond the Boy Scouts, Jim Sloan has contributed to the Redlands community in many ways. He has been president of the Redlands Boys' Club and president of the Redlands Chamber of Commerce. He has served his country as a naval photographer during World War II and later graduated from the University of Southern California. Because of these and countless other good works, James Sloan is being recognized as the Citizen of the Year at the annual Grayback Distinguished Citizen Dinner in Redlands.

Mr. Speaker, it is truly an honor to recognize James Sloan today and commend him to the House of Representatives.●

STIMULATING TECHNOLOGICAL PROGRESS

HON. LES AuCOIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. AuCOIN. Mr. Speaker, as chairman of the House Task Force on Innovation, I thought the Members of the House would be interested in the results of a recent study by the Committee for Economic Development. The study concludes that the United States must do much more to encourage technological growth if we want to improve productivity and slow inflation. The report, "Stimulating Technological Progress," states that while technological progress is perhaps the most important source of future economic vitality and social achievement, there are serious signs that the Nation is losing its technological edge.

It was because of this very concern that I formed the task force on industrial innovation more than 1 year ago. The members of the task force have common interest in passing legislation to boost productivity and stimulate innovation. The task force is helping to bridge the gaps which exist between committees having jurisdiction over an innovation program.

As chairman of the task force, I have reviewed a large number of articles and studies on the need to increase innovation. The report by the Committee for Economic Development is one of the best I have seen. The committee, which is an independent research and education organization whose 200 trustees are prominent business leaders and university presidents, has correctly concluded that unless there is speedy correction of public policies that inhibit the development and application of new products and procedures, the Nation will find it increasingly difficult to solve its other economic problems or achieve its social objectives.

At this time, I would like to insert in the RECORD a special summary of the CED report:

ECONOMIC PROBLEMS AND TECHNOLOGICAL PROGRESS

Control of inflation, employment growth, and improving real living standards are among the most important economic issues facing the nation.

The achievement of these goals requires the economy to have an innovative industrial base with the capacity to meet the demands of society and compete technologically with our international competitors.

United States productivity growth rate is declining and has been consistently lower than other industrial countries. Technologically, the United States is beginning to fall behind some other industrial countries.

Inadequate capital investment has held back the innovation rate in the United States.

As a proportion of output U.S. capital investment in manufacturing has for two decades been about one-third the rate for Japan, about one-half the rate for Germany, and lower than all major industrial nations.

Inflation has caused grave discrepancies between depreciation based on past costs and the actual current replacement cost of plant and equipment.

Current tax policies with outmoded capital-recovery allowances and failure to control inflation have lowered the real rate of return on investment in innovative plant and equipment.

Excessive and uncertain government regulatory activities have increased the risks to would-be investors and innovators and reduced the return on innovative investments.

Industry has been directed to divert resources to meet specific compliance methods rather than being allowed to achieve regulatory goals in the most efficient way.

The return on innovative investments has been reduced through regulatory delays in approving new processes and products.

Costs have been raised through unreasonable and frequent changes in regulatory standards.

The patent system only partially encourages innovation.

The patent system is unnecessarily complicated and unreliable.

It also imposes substantial costs on business and the public without adequately providing significant discoveries with the protection required to encourage innovation.

RECOMMENDED REMEDIES

INCREASING INNOVATION THROUGH THE MARKET ECONOMY

Innovation in the market economy is essential for productivity improvement and the long-run control of inflation.

Public policy should focus on creating an environment in which all sectors of the economy have the incentive to innovate.

The government should avoid trying to determine which specific types of innovation and industrial sectors should be stimulated.

RAISING INVESTMENT IN NEW PLANT AND EQUIPMENT THROUGH TAX POLICY CHANGES (CHAPTER 4, PAGE 29)

Tax changes to encourage innovation should be a top priority. These would stimulate commercialization of existing knowledge and diffusion of innovation throughout all sectors of the economy. Priority and consideration should be given to:

A more rapid capital recovery allowance by replacing the traditional method of depreciation over the useful life of assets. Write-offs would be more in line with replacement costs.

"Flexible depreciation" of fixed R&D assets. Assets could be fully depreciated in the first year or by any other method desired with the benefit of allowable tax credits being retained.

REDUCING REGULATORY UNCERTAINTIES AND CONSTRAINTS (CHAPTER 4, PAGE 43)

The Administration and Congress should increase their efforts to achieve regulatory reform.

Regulatory goals should be achieved through performance standards rather than design standards since this will encourage business to develop least cost regulatory techniques.

The government should achieve regulatory goals through a system of economic incentives and penalties whenever possible.

The potential adverse impact on future innovation should be taken into account when preparing regulations.

IMPROVING THE EFFECTIVENESS OF THE PATENT SYSTEM (CHAPTER 6, PAGE 51)

Several major reforms are necessary to make the patent system more efficient and effective.

Voluntary arbitration to speed up the settlement of patent disputes.

A single court of appeals for patent disputes to enhance uniformity in patent law.

A first-to-file patent system to reduce the cost of acquiring and defending patents.

DIRECTING FEDERAL R. & D. SUPPORT TOWARDS BASIC RESEARCH (CHAPTER 7, PAGE 58)

Increased public support for basic research in universities should be made. Federal involvement in applied research aimed at commercial application should only be undertaken under extremely limited circumstances which might include applied research to meet direct government needs (i.e., defense, space) and research to meet national priorities (i.e., energy).●

JACK O. WHEELER

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SKELTON. Mr. Speaker, recently, a well-known Missourian and good friend of mine passed away. Jack O. Wheeler, Kansas City, Mo., who was most successful in the stock brokerage business, displayed dedicated loyalty to ideas that helped better our American way of life.

He was most active in the Sigma Chi fraternity, which recognized him with its highest awards—Significant Sig and Constantine Sig. Sigma Chi was a dominant interest with Jack after the time he graduated from the University of Missouri until his death.

In the area of sports, Jack worked on both the college and professional level. When college basketball was having times of trial over gambling, cheating, and fixing, Jack urged the Blue Hills American Legion Post to commend the school that displayed the best sportsmanship during the season and recognize excellent qualities in the players by awarding a trophy. The award was given to those outstanding players and school at an inspiring dinner each year.

Jack also worked on the board of management for the Kansas City Chiefs and founded the Committee of 101 which consisted of 100 boosters and Lamar Hunt, Chief's owner. They met yearly at an elaborate dinner and chose the leading figures from the football world for recognition and acclaim.

Working with the Blue Hills American Legion Post, Jack was a commander, organizer, and leading life sustainer.

Jack Wheeler was a dreamer, organizer, and doer. He will be remembered for the high standards for which he lived and worked; his beliefs in the good causes of life and his ability to always recognize the best in his fellow man will long be remembered.●

THE HIGHER EDUCATION CONFERENCE REPORT: FABLES BY JANE BRYANT QUINN

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. FORD of Michigan. Mr. Speaker, last Wednesday, September 3, on CBS "Morning News," Jane Bryant Quinn, a business columnist, commented on the Higher Education Act conference report. This commentary is a tissue of falsehoods and deceptive innuendoes. I would like to address point by point some of the most egregious statements contained in the transcript of Ms. Quinn's commentary, which I include at the conclusion of my remarks.

Ms. Quinn—The higher education bill "makes it almost unnecessary for anyone to save money for a college education."

Fact—The maximum annual borrowing limit for a student and that student's parents is $5,500—not, incidently, $5,000 as Ms. Quinn states. The college board estimates that the average cost of attendance for the coming school year at a public 2-year college will be $3,123, at a public 4-year college $3,409, and at a private 4-year college $6,082. Thus, a student and his or her family could theoretically borrow enough to cover the average cost of a public 2- or 4-year college. They clearly could not borrow enough to pay the bills at an average 4-year private college. They also could not meet the cost at some of the more costly public colleges. They would be a very long way indeed from paying at the most expensive private colleges, where the cost ranges as high as $10,000 per year. In addition, loans are not grants. They have to be paid back with interest. The only real difference between saving or borrowing for a college education is that, in one case, money was put in a bank in the past and drew interest and, in the other case, money is paid to a bank in the future with interest.

Ms. Quinn—"The Carter administration has opposed this bill."

Fact—The Carter administration has opposed some provisions of earlier versions of this bill. The Carter administration supports the bill as embodied in the conference report.

Ms. Quinn—Parents borrowing under the new parent loan program "can pay nothing at all for 4 years, and then repay at 11 percent. A family can pay back nothing at all for 4 years. It pays to use the Government free money and keep your own money in the bank earning interest."

Fact—If parents elect to begin repayment on a parent loan within 60 days, the interest rate will be 8 percent. If they choose to begin repayment more than 60 days after taking out the loan, they are charged an interest rate of 11 percent during the entire period prior to beginning repayment on the principal of the loan. They can choose to begin repayment on the principal as long as 4 years after taking out the loan—provided that the student is in school that long. During this period the parents can either pay the 11 percent right along or they can have it deferred until they begin repayment of the principal. At that point, the deferred interest which has accrued must either be paid in a lump sum or it is added to the principal amount of the loan. Then repayment would be on the principal—with or without the accrued interest—at 11 percent interest. At no time will parents have "free money" from the Government. If there is a period during which parents will be paying "nothing at all," it is only because the interest is being deferred and accrued.

Ms. Quinn—The "new maximum" on loans to students is $2,500.

Fact—The annual loan maximum for undergraduate dependent students was set at $2,500 in 1972. The bill retains that limit through 1985. Thus, under the bill this limit will not be increased during a highly inflationary period of 13 years. Indeed, this limit was not raised precisely in order to encourage more borrowing by parents, since loans to parents will be much less subsidized and therefore much less costly to the Government.

Ms. Quinn—"Even if you don't need a loan, it pays to use the Government's free money and keep your own money in the bank earning interest."

Fact—Putting aside the issue of "free money," which I commented on above, "if you don't need a loan," it is a Federal crime to get one. The maximum amount of a loan to a student or to a student and his or her parents in combination may not exceed the cost of attendance at the college minus other aid that the student receives. See section 177.401(b)(2)(iv) of the program regulations and section 419 of the conference report, page 62. Thus, for example, if the student is attending a college with a cost of $3,500, that student and his or her parents could not together borrow more than that amount, assuming the student received no other aid. They could not borrow up to the full limit of their combined eligibility, $5,500. A student and a parent borrower will be required to file a statement that the loan "will be used solely for expenses related to attendance or continued attendance" at the higher education institution. This is also true for students under current law. See section 498 of the Higher Education Act and section 451 of the conference report, page 89. Current law, as continued by the conference report, provides for a criminal penalty of not more than 5 years imprisonment and a $10,000 fine for anyone who obtains a student loan by making a false statement either with respect to the amount needed or with respect to the purpose of the loan. See section 440(a) of the Higher Education Act and section 451 of the conference report, page 94. It only pays to take out a student loan if you don't need one if you want room and board in a Federal prison.

Ms. Quinn—In the conference report, Congress "has stretched the meaning of needy to cover people of greater wealth" under the grant program.

Fact—Under current law the discretionary income of a family is assessed at a rate of 10.5 percent to determine how much they can be expected to contribute for the education of their child and, therefore, what grant assistance, if any, the student is eligible for. The conference report makes a

number of adjustments in the determination of a family's discretionary income to make this calculation more fair and equitable. However, the conference report actually increases the assessment rate on the discretionary income of a family from 10.5 percent to 14 percent. The result is that a student from a typical family with an adjusted gross income of $25,000 will receive the minimum basic grant of $200 under both current law and the conference report. In short, the conference report seeks to maintain the status quo with respect to eligibility for grants and does not expand it to "cover people of greater wealth."

Ms. Quinn—"If you own a house, no matter how valuable it is, it will no longer be counted in figuring what you ought to pay for your child's education. What this means is that a parent with a big house but no money in the bank may be considered needy by the Government, but a parent who saved money and lived in a smaller house might not get a grant, because of the size of his bank account."

Fact—First, it is absurd to imply that families will purchase large expensive houses to increase the eligibility of their children for student grants. Second, the value of a family's house should not be counted in determining their ability to pay for their children's education. Highly inflated home values are not a liquid asset that can be used to finance a higher education for your children. You cannot sell your child's bedroom to pay the education bills when he or she goes off to college.

Finally, Mr. Speaker, there runs through Ms. Quinn's entire commentary an implication that the Federal student aid programs are biased in favor of the wealthy or are being exploited by the affluent. With the exception of the guaranteed student loan program, all of the student aid programs under the Higher Education Act provide grants, loans, and work opportunities to students based on their demonstrated financial need. The guaranteed student loan program often serves the same purpose of meeting the financial need of students beyond what is provided by Federal programs or from other sources. In addition, this program enables students and some parents from hard-pressed working and middle-income families to meet through borrowing their need for liquidity and their need to spread out the costs of higher education. The Subcommittee on Postsecondary Education, which I chair, held 35 days of hearings, including 7 days exclusively on the student loan programs, in preparation for the reauthorization of the Higher Education Act. The 1,106 pages of the record of the hearings on the loan program contain no evidence that the rich and affluent are abusing or manipulating these programs for their own enrichment.

Ms. Quinn's commentary follows:

TRANSCRIPT

JANE BRYANT QUINN. Thank you, Bill. I have some news for parents who are sending children to college. Congress is putting the finishing touches on an amazing new student aid bill. It makes it almost unnecessary for anyone to save money for a college education. Furthermore, if you are old-fashioned enough to save anyway, you may even be penalized for it. The Carter Administration has opposed this bill, but Congress felt that it's what the American people want. For the school year starting next September, there is a brand new taxpayer-subsidized parent loan program. These loans are open to everyone, even the rich. Parents can now borrow up to $3,000 a year at participating banks. You're charged only eight percent interest if you repaying right away. Or you can pay nothing at all for four years, and then repay at 11 percent. Students themselves can still get subsidized student loans. The interest rate is up one point to eight percent, for a new maximum of $2,500 a year. Counting both loans, a family can now borrow as much as $5,000 a year for college and pay back nothing at all for four years. Even if you don't need a loan, it pays to use the government's free money and keep your own money in the bank earning interest.

Moving right along, Congress has also enlarged the free grant program for needy students. And it has stretched the meaning of needy to cover people of greater wealth. If you own a house, no matter how valuable it is, it will no longer be counted in figuring what you ought to pay for your child's education. What this means is that a parent with a big house but no money in the bank may be considered needy by the government, but a parent who saved money and lived in a smaller house might not get a grant, because of the size of his bank account.

You know, in this election year, we keep hearing that people want government to do less. But on student aid, Congress is definitely getting the message that people want more and more and more.●

LEE KEARNEY—TESTIMONIAL

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. PATTERSON. Mr. Speaker, the City of Hope, an institution renowned for its great achievements toward finding cures to catastrophic maladies like cancer and leukemia, heart, blood and lung diseases, diabetes, and other disorders of heredity and metabolism, honors, on occasion, an individual for his dedication, his sacrifice, and leadership to humanitarian causes.

This year the City of Hope honors with their Humanitarian Award a pillar of our community and a personal friend, Mr. Lee Kearney.

Lee is best known as the secretary-treasurer of the Teamsters Union Local 952, a position he has held for 31 years. In that time local 952 has become one of the largest locals in the International Brotherhood of Teamsters. Lee and local 952 have taken some great strides and obtained impressive accomplishments together.

Under Mr. Kearney's leadership, local 952 has constructed one of the largest group practice dental facilities in Orange County and has comparable facilities for medical, vision, and prescriptions, serving all of the teamsters and their families.

Lee Kearney has demonstrated skilled statesmanship and determination in the many contract negotiations he made on behalf of his membership. His skills and dedication have earned the respect and admiration of both management and labor. It was out of this respect and admiration that Orange County labor recognized Lee as "Labor Man of the Year in 1973." In addition Lee has accepted the great responsibility of serving as a trustee on the western conference of Teamster's pension trust.

Mr. Speaker, there is also another facet to Lee Kearney. Aside from his commitment to the working man and woman, Lee has dedicated himself to helping those who suffer, a commitment best described by the credo of the City of Hope that "Health is a human right for all."

Lee's work extended further when he was appointed by Governor Jerry Brown to a term on the California Hospital Advisory Council which disbursed Hill-Burton funds for new hospital construction. He was instrumental in establishing the first Leukemia Society chapter in Orange County and has served on the National Leukemia Society Board of Trustees. Lee has served on a number of other charity boards including the United Way of Orange County Board of Directors.

Mr. Speaker, it is with great honor I ask my colleagues in Congress to join me, his friends and family, and the City of Hope in bestowing the 1980 Humanitarian Award to Lee Kearney, leader, statesman, and humanitarian.●

A REVISED BILL TO EXPAND INDIVIDUAL RETIREMENT SAVINGS INCENTIVES

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. GIBBONS. Mr. Speaker, in July of this year, I introduced the Gibbons work and savings incentive plan, a 5-point tax cut proposal. This plan would expand individual retirement accounts and open them up to participants in pension plans and nonworking or low-earner spouses. It would also, for the first time, make IRA's attractive to modest income workers by significantly increasing the incentives for IRA savings by these individuals, who are too often shortchanged in their efforts to obtain private retirement benefits. In addition, my tax cut plan would eliminate the marriage penalty, spur trade by decreasing the tax on Americans working abroad, provide for greater business investment through faster depreciation, and liberalize the earned income credit.

Today I am introducing a new version of my bill to expand individual retirement savings incentives as part of my work and savings incentive package. Amendments have been made to allow employees to receive the 50-percent tax credit I have proposed not only for contributions to an IRA, but now also for voluntary contributions to an employer's pension plan. The same increased limit on contributions of $3,000 would apply in both cases. Subsequent distributions of credited contributions to a plan would be treated similarly to such distributions from a regular IRA. These changes will serve to maintain parity and balance in the tax law treatment of individual retirement accounts and pension plans, and thus will help to preserve our system of private pensions.

In addition to introducing the revised bill today, I am also making available a detailed explanation of its specific provisions. My proposal offers us the means to achieve a tremendous step forward in providing Americans with adequate retirement income, while at the same time greatly assisting capital formation. I invite your support for this proposal, and for the other elements of my work and savings incentives plan, H.R. 7871, 7872, and 7935.

The section-by-section analysis of H.R. 8088 follows:

SECTION-BY-SECTION ANALYSIS OF H.R. 8088, RELATING TO EXPANDED INCENTIVES FOR INDIVIDUAL RETIREMENT SAVINGS

Section 1. Short Title: "IRA Work and Savings Incentive Act of 1980."

Section 2. Allowance of Credit. This section provides a tax credit to replace the present law IRA deductions, which are based on a contribution limit of the lesser of $1,500 or 15 percent of compensation.

Subsections (a) and (b) of the new Section 44F allow any individual to contribute up to $3,000 of compensation to an IRA or a qualified employee plan and receive a 50 percent nonrefundable tax credit on such contribution, for a maximum credit of $1,500.

Other rules added by Section 2 of the bill to Section 44F are as follows:

No credit is allowed for contributions to an IRA for any taxable year ending after an individual has attained age 59½. (Persons who have attained 59½ are still permitted to make tax deductible contributions to an IRA, up to the new $3,000 limit.) Section 44F(b)(3).

In the case of a simplified employee pension, the employee is allowed the credit for employer contributions to the SEP, but only to the extent of the employee's contribution limit as reduced by all other contributions made by or on behalf of the employee to an individual retirement plan. Section 44F(b)(4).

No credit is permitted for any rollover contribution to an IRA. Section 44F(b)(6).

The credit is available with respect to voluntary contributions that an employee makes to a tax-qualified plan, so long as the employee designates that such contributions are creditable before the close of his taxable year. Employers, however, are given the option to not accept creditable contributions to their plans. If an employer decides to accept creditable contributions, then reports on the amount of such contributions must be made to the IRS. Section 44F(c).

The current spousal IRA rules are repealed and instead, each spouse may contribute up to $3,000 to a separate, independent IRA. The 50 percent credit is then allowed separately for each individual for contributions made to an IRA. Nonworking or low-earner individuals are permitted to make such IRA contributions based on the greater of their own or their spouse's compensation. Section 44F(d)(2).

Present law rules are retained which permit an individual to establish and make contributions to an IRA for a year up to the time for filing the individual's tax return for the year, including extensions. This rule, however, does not apply in the case of contributions to qualified plans. Section 44F(d)(3).

Present rules concerning excess contributions are retained; however, the phrasing of these rules is changed to reflect the new 50 percent nonrefundable credit available for certain IRA contributions. Section 44F(d)(4).

In order to maintain the present level of penalties for premature IRA distributions while reflecting the change in the level of tax subsidy to be provided IRA contributions, Section 2(d) of the bill also modifies the current rules on the taxability of premature distributions. If any portion of a distribution made prior to age 59½ is attributable to contributions for which the 50 percent credit was received, then such portion is not includible in gross income but is taxed at a special 50 percent rate to recapture the credit received. The portion of a distribution attributable to deductible contributions is includible in gross income, as per present law. In addition, the present 10 percent penalty tax is retained for all premature distributions, whether of creditable or deductible contributions. Section 2(b) of the bill provides similar rules for premature distributions of creditable contributions from tax-qualified plans.

Section 3. Increase in Deduction for Plans for Self-Employed. This section increases the maximum deduction allowed for employer contributions to a qualified plan on behalf of self-employed individuals, i.e., for contributions to "Keogh" or "H.R. 10" plans. The maximum deductible amount is increased from $7,500 to $10,000. This section also provides an identical increase in the amount that may be excluded from gross income by a shareholder-employee in the case of a contribution by a Subchapter S corporation to a qualified plan on behalf of such shareholder-employee.

Section 4. Revision of Section 219. This section increases from $1,500 to $3,000 the maximum annual deduction for contributions to an IRA. The IRA deduction is retained for those individuals who do not qualify for the 50 percent credit, namely, IRA owners who have attained age 59½ before the close of the taxable year. As under present law, contributions to an IRA are no longer deductible by the IRA owner starting with the taxable year in which age 70½ is attained. For individuals in the same age bracket, a new deduction is provided for voluntary employee contributions to tax-qualified plans. Rules for such contributions are similar to those applicable in the case of creditable contributions to qualified plans.

This section also repeals the eligibility restrictions under present law. Thus, active participants in qualified plans, government plans and Section 403(b) tax-sheltered annuities are permitted to contribute to an IRA, up to the increased contribution limit of $3,000.

In the case of a simplified employee pension, this section increases the maximum deduction for employer contributions to $10,000. In addition the employee is allowed to contribute an additional $3,000 to the same or a different IRA and obtain the 50 percent credit with respect to the contribution if the employee is under age 59½, or a deduction if age 59½ or over. If the employee does not himself contribute the full $3,000, employer contributions in an amount equal to the unused balance are eligible for the 50 percent tax credit in the case of an employee under age 59½.

Section 5. Technical and Conforming Amendments. This section makes a series of technical and conforming amendments necessary to accomplish the described purposes of the preceding sections.

Section 6. Effective dates are established for taxable years beginning after December 31, 1980.●

IT IS ABOUT TIME

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. McDONALD. Mr. Speaker, more and more these days the fresh winds of sanity and reason are blowing through the clouded intellect of liberaldom. With the moral outrage of middle America finally having broken out of its media, establishment corral, shock waves are being felt all over. One can only say, it is about time. The country is alive with a revitalized commitment to still live what their overwhelming sense of right declares proper. This tenacious impulse is finally being felt at the polls, according to the early returns in this election year and also in a balancing of reason by even those who for years have embraced in mindless stupor the unembraceable.

The following article by Meg Greenfield entitled "The Feds and the Family," Newsweek, September 8, 1980, is a perfect example of the reformation that has just been addressed. The shrill battle cry of feeble, pointy headed liberalism is found broken in midsentence by the jerking realization that they have been standing in front of the whole world with their intellectual pants down for nigh on 50 years or longer. And again I can only repeat, it is about time. It might also be observed, too, that having the Newsweek article also printed on the Op-Ed page of the Washington Post, come from such an unexpected source demonstrates how far-reaching this reform has come. Let us now hope that not too much water has passed over the dam, making impossible any civil or peaceful return to a more sane and honest sense of Government and society. I commend "The Feds and the Family" to the attention of my colleagues:

THE FEDS AND THE FAMILY

(By Meg Greenfield)

The evangelicals are coming. Not since Genghis Khan rode west, we are informed, has anything so ominous been in prospect. These are said to be the values-police, the would-be enforcers of rigid, outmoded morality, an unenlightened, vengeful, churchy crew that has worked its will on the Republicans' platform and is now propelling Ronald Reagan into office.

What's the truth of it? Certainly there is a component of the growing right-wing reaction on social issues—I don't know how big—that fits this description. But there are also vast numbers of people sympathizing with the trend who are merely reacting in predictable, normal and valid ways to various terrible features of modern life. And what interests me most is that, in a way, we asked for it. By "we" I mean that mild, moderate, liberalish majority that has been roosting near the center of the nation's politics for years. Our first contribution to the phenomenon was the promiscuity and mindlessness with which we have made private-values questions Federal-government business. The second was our flight from moral judgment in the face of some of our most gross handiwork.

It is true that some private-values questions can only be resolved in the Federal-government context. Once the Supreme Court had ruled against formal prayer in schools, for instance, or once it had in effect "decriminalized" abortion, it was inevitable that the consequences of these Court rulings would be fought out in the national political arena—and that is as it should be. But relatively few of the private-values issues that have got entangled in our national politics have comparable constitutional connections.

Concerns: In the horror now being expressed over the Republican intrusion into the web of delicate private and personal concerns that these values-issues represent, it is useful to remember that Federal-government support and sustenance of the family was pronounced a principal issue by the Carter-Mondale campaign last time. Thus was going to be a very big deal in their Administration, both men promised, and so it has been. There has been terrible warfare among the Administration organizers of the White House Conference on Families and practically everyone else: pro- and anti-gay groups, pro- and anti-abortion groups, innumerable other organized lobbies and even Administration staff named to serve the conference.

It figured, and that is the point. Do-good governmental meddling at the national level can be in its own way as destructive an influence as do-bad efforts to use government to enforce social and moral conformity. Both engage the state where it has no business and in what it does worst. Still, it seems as though every group in the country has by now come to believe that its interests can only be served and its worth affirmed by some kind of national—i.e. Federal government—involvement.

I was going to say that I don't know how the state—the central authority, the guys with the jails and the guns—got to be so well beloved of liberaldom and its middle-right, middle-left constituency, but I do. Past struggles over eradicating brutal racial repression in particular and a variety of crimes of indifference to public welfare in general in the states led a lot of people to assume, automatically, that you needed the Feds to get anything reasonable, fair, humane or generous done. It is a concept that has demonstrably outlived its usefulness, at least as a generally applicable rule. But it has gotten bigger, not smaller, as a shared national assumption.

What is wrong with it is obvious. Here is a recommendation of the White House family conference: "Delegates . . . agreed on the vital need for family-life education, and that government at all levels should assist the public and private sectors by providing appropriate courses for children and parents." Who needs government courses in family affairs? Why should this be? I don't think we're just talking about something harmless or anodyne here. All that high-class palaver about how presidents are helping us to find our values has got it absolutely backward: they should be expressing our better values; we should not be buying the ones they work out in committee.

New Conservative Wave: Government grown values are by definition and necessity spiritually deformed. They tend to be lowest-common-denominator generalities or pressure-group-cooked outrages. Whoever lays it on them, whatever qualifies as "a problem" and has a few lobbyists (maybe only people who profit from curing the "problem") prevails. I haven't yet heard of a White House conference on kinky sex or an International Year of the Transvestite. But then I haven't turned on the 6 o'clock news yet.

How could those of us who have been pushing this stuff for years ever have thought that in a national context, a referendum of sorts, anything but what is now happening would? Fundamental, stabilizing personal and family values represent the real majority and, when ridiculed or grossly affronted, they will compel revenge. And that raises the second way in which the antagonists of the new conservative wave have asked for it. We have refused to view practically any indecency, outrage or pathological assault on our sense of rightness in any way except as a civil-liberties problem—protecting the abstract right of the sickos to come to dinner.

I don't mean this concern should be forgotten or abandoned. But it has become an instead-of, a dodge. It relieves us, we think, of saying what our feelings are about much of what we are defending in dissent and First Admendment terms. We are even afraid sometimes to render negative judgments, knowing the illogical leap will at once be made by our listeners who suppose we are recommending repression of the deviates, illiberality and—it is always mentioned next—genocide.

If those of us in the complaisant liberal middle don't want to be known (justly) in time as the wonderful folks who brought you President Jerry Falwell, then we will have to stop inviting the Feds into people's every personal decision and we will have to assert a moral sensibility of our own.●

UNION OF COUNCILS FOR SOVIET JEWS HONORS REPRESENTATIVE DRINAN IN SPECIAL HOUSE CEREMONY

HON. MICHAEL D. BARNES

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BARNES. Mr. Speaker, this morning I participated in a special ceremony with other colleagues, members of the Union of Councils for Soviet Jews, and close associates of the Washington Committee for Soviet Jewry to honor Representative ROBERT F. DRINAN'S decade in Congress.

I commend these organizations for sponsoring this tribute to our outstanding and dedicated colleague, Mr. DRINAN, and I submit for the RECORD remarks made earlier today by Representative ANDREW MAGUIRE and myself on Father DRINAN'S global human rights leadership:

STATEMENT OF CONGRESSMAN ANDREW MAGUIRE

This morning I find myself the grateful legatee of the responsibilities originally accorded our colleague Lester Wolff who was first asked to host this morning's salute to our friend Bob Drinan. Lester is preparing for an important hearing and so I gladly accepted the offer tendered by the Union of Councils for Soviet Jews to function as moderator for this important event.

This year I am chairman of the "Spirit of Helsinki Vigil," the congressional monitoring group which acts as an advocate for the rights of Soviet Jews (and in fact Russian citizens of all faiths) to emigrate to dissent and to exercise their moral, political and religious rights which are ostensibly protected in the Soviet Union by that country's acceptance of the Helsinki accords. Bob Drinan is a stellar member of our group, but it is more appropriate to say that we act to emulate him. For since Bob came to Congress in 1971 on an antiwar, pro-human needs platform, he has always acted—consistently and persistently—as a forceful advocate for human rights.

The great moral philosopher Reinhold Neibuhr once said, "Man's capacity for justice makes democracy possible, but man's inclination toward injustice makes democracy necessary." Bob Drinan has used his forum in the House of Representatives—the people's House—to plead the cases of important causes time and again. One of his most important achievements is the manner in which his advocacy of the case of Anatoly Shcharansky (although we haven't been successful in freeing him) has elevated the Soviet's treatment of dissident Jews high into the consciences of Americans.

In 1975, Anatoly Shcharansky served as Bob Drinan's guide and translator during a visit to the Soviet Union to examine Soviet policies toward Jews and other minorities. Two years later, on March 15, 1977, KGB agents burst into Anatoly's apartment and placed him under arrest. After one year's imprisonment, Shcharansky was convicted and sentenced to 13 years incarceration for "anti-Soviet" activity. It was another case of Soviet abuse of the human rights of one of their Jewish citizens. But it wasn't merely another case to Bob Drinan. And so, for the last three years, Bob has been applying his valuable skills and unusual personal resources to publicize Shcharansky's case. His efforts have been so extraordinary that Shcharansky's name is synonomous with all victims of religious persecution everywhere. Bob's work, too, is a metaphor for congressional action on human rights issues in general.

Most of the participants in today's ceremonies are familiar with many of Bob Drinan's very personal efforts in the Shcharansky case. There is a committee in New York called International Committee to Save Anatoly Shcharansky that Bob chairs which has worked to raise the consciousness of caring people the world over regarding Anatoly Shcharansky's fate. We have participated in special orders organized by Bob which have brought this message to Congress. Many of us cosponsored Bob's resolution which urged the U.S. to move the Olympic games out of Moscow which was introduced on January 15, 1979. His cry was "Olympics DA, Moscow NYET," and no one can question that events bore him out. Bob has been instrumental in showing comfort to Avital, Anatoly's wife, and in providing her with forums from which she communicates the personal side of this on-going political and human rights tragedy.

Most recently, in March, 1980, when the House remembered the anniversary of Anatoly Shcharansky's arrest, Bob talked about the responsibility we have of keeping the pressure up in hopes of securing Shcharansky's release. He said: "We cannot allow the world to forget the Shcharansky case. We must lodge our protests with greater and greater intensity until the Soviet Government hears and understands that we will not rest until Shcharansky is free and allowed to rejoin his wife, Avital, in Israel."

Bob, I think that you can tell from the impressive gathering we have here this morning that your colleagues intend to take your lead to insure that the Soviet Government does not forget. Similarly we are not going to forget your courage and the examples you have set with the stands you have taken and the tough votes you have cast. Your dedicated concern for the welfare of Soviet Jewry will be remembered and we intend to keep the struggle alive.

"Ideas," as William O. Douglas once said, "have been the most dangerous forces in the history of mankind." What you have taught us is that in the struggle against repression, ideas can be as powerful as any weapon. From whatever forum you choose in the future, we will look to you as a wellspring for more powerful ideas to help us fight the battle that has brought us together today.

I would be happy to yield to any of my colleagues who would like to speak at this time.

REMARKS OF MICHAEL D. BARNES IN TRIBUTE TO ROBERT F. DRINAN

I am deeply touched to be asked to speak here today in honor of my extraordinary and gifted colleague, Robert F. Drinan, the great Massachusetts Congressman.

As I stand before you on the floor of the House of Representatives, I find it hard—even painful—to accept the fact that after a decade of service to his Nation and his fellow man in Congress, Robert Drinan's last term is coming to a close.

Congressman Drinan has been more than a colleague during my own freshman term. He has been my friend, my model, and my inspiration—especially in the work of the House Judiciary Committee, where I have had the privilege to serve with him, and in the field of human rights.

It was he who urged me to seek out the Judiciary Committee, which I did—and as I serve especially on the Immigration, Refugees, and International Law Subcommittee, I realize the tremendous impact that the Congress of the United States does have on the lives of people who are remote from our own continent, but who share the same time span, the same destiny on this earth, the same hopes, needs, and dreams for freedom, dignity, and a meaningful existence that characterize humanity.

In his outstanding accomplishments on the Judiciary Committee, as chairman of the Subcommittee on Criminal Justice, and as a spokesman for global human rights causes—it is certainly his own personal sense of fairness, his respect for the rights of the individual, and his reverence for life that have prompted his contributions to the American people and—in a larger sense—to the family of man.

When Father Drinan came to Capitol Hill as a freshman Congressman, he was one of the first Members to emerge and be elected on an anti-Vietnam war platform, sponsoring much of the original legislation aimed at ending U.S. military involvement in Indochina.

It was from his earliest days in these halls that Father Drinan stood apart from the crowd to speak—often in a lone voice—of his convictions and of truth, as he so correctly perceived it. And some of us learned to listen to this prophet of justice, this prophet of caring, to listen, to learn, and to act in an equitable and responsible manner toward all.

We learned about men and women in remote villages and steppes in Russia, who were deprived of their rights to be themselves. And he taught us to care about them and to know how relevant their lack of liberty was to our own full lives . . . to know that while one man is deprived of his inalienable right to be free, so does all mankind suffer.

Worldwide, there is no more dedicated champion of Soviet Jews, Christians, and dissidents than Congressman Robert Drinan, who is the founder of the National Interreligious Task Force on Soviet Jewry and who chairs the International Committee for the Release of Anatoly Shcharansky.

Through Father Drinan's intercession, we have come to know, for example, Anatoly and Avital Shcharansky—not only as victims of oppression, but as real people, as lovers forced to live their married years nations apart, perhaps never to bear children together, perhaps to be separated for eternity.

Here on the Hill, there is no question that Father Drinan is the dean of human rights causes. And his magnificent presence—though it can never be replaced—must somehow be filled. In the past, we have looked to Father Drinan and to his outstanding staff for leadership and new ways to aid prisoners such as Shcharansky, Joseph Mendelevich, Ida Nudel, Vladimir Slepak, Andrei Sakharov, and other exiled and jailed martyrs. Frankly, his dedication and zeal has inspired much of our own recent efforts on behalf of Soviet Jewish emigration.

Together—with the help of organizations such as the Union of Councils for Soviet Jews (celebrating its tenth anniversary this year), the Washington Committee for Soviet Jewry, Amnesty International, and the National Conference on Soviet Jewry, we have made some strides. But the road ahead is rugged. Tyranny, hate and ignorance are still with us. And we need new directions to fulfill our purpose.

Father Drinan, you who have been our heart and our conscience, must continue to challenge us from the outside and be our harbinger of change to meet the test of these difficult times. Only in this manner can we bear the fact that you are leaving . . . even though we understand that you will continue your mission on behalf of humanity in other equally important ways.

You must keep reminding us of life's soundest values so that we who remain in the political arena can reconsecrate ourselves to the nobler and more fundamental needs of society that you have so beautifully and effectively espoused.

Congress must not view your taking leave of us as a loss, but rather as our opportunity to pay you our finest tribute . . . to carry on your good work from this day on. To that I pledge myself, and I know that I speak for literally hundreds of your colleagues.●

FAIRNESS AND THE FOREIGN SERVICE ACT

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. OBERSTAR. Mr. Speaker, the Western World has watched the recent events in Poland with great attention and hope. The image of Polish workers demanding to have free and independent trade unions and, with steady courage, simply exercising the right to strike has electrified working people around the globe.

From the docks of Duluth to the mines of the Iron Range, my own home district has been enriched by the labor of thousands of immigrants from all the ancient states of Eastern Europe and the Baltic. In my district, the kinship we claim with those in the shipyards of Gdansk and the mines of Silesia is more than spiritual. We cannot resist sharing the pride which the Poles have earned the right to feel.

We are also proud of the efforts of Radio Free Europe and the Voice of America to insure that the people of Poland and those in the other captive nations get accurate information about these historic events. For decades, the Voice, Radio Free Europe, and Radio Liberty have provided the only consistent source of free news and information for millions of Europeans. Recently, the effectiveness of these broadcasts was readily demonstrated when the Soviet Union so feared the truth's effect on its people that it, in another violation of a solemn international agreement, resumed jamming Western broadcasts.

The people who prepare and present these broadcasts are often refugees from the very countries who are served by their current efforts. With great interest they are also watching developments on the Foreign Service Act of 1980, H.R. 6790.

When that bill comes to the floor later today, I will offer an amendment to preserve the rights of employees in the International Communication Agency's Voice of America under an agreement between the Agency and the employees' bargaining representative. The agreement established the right of these employees to be free from being involuntarily converted from the Foreign Service to the civil service.

This 1977 agreement has worked well and, during House hearings, both the Agency and the employee organization opposed the State Department's attempt to legislate a change to mandatory conversion.

For the Congress to enact legislation which violates the conditions of employment established by a free agreement between an agency and its employees, especially when both parties oppose such a violation, would be particularly inappropriate in light of the recent events. At the very moment that ICA employees are broadcasting to Eastern Europe about the efforts of Polish workers to obtain basic labor rights from their government, these employees know that their own department of state is attempting to overturn a collective-bargaining agreement between ICA and their elected representative. While ICA employees broadcast to the world the advantages

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of the free and fair system of labor relations in America, they should not be burdened by an action which would destroy the work of both their employer and their own labor representative.

For the benefit of my colleagues, I wish to present some background information on this ICA amendment. Although the amendment would change only 2 lines in a bill which is 268 pages long, the amendment will prevent a substantial injustice from being committed.

In 1977, the International Communication Agency and the representative of its employees entered into a negotiated agreement pursuant to the Nixon Executive order on labor-management relations. In essence, this agreement provided three central features. One, the Foreign Service "domestic specialists" at ICA would at no time be forced to convert to civil service status. Two, these employees were given the option until June 1981 to voluntarily convert with the terms and conditions of their willing conversion guaranteed by the agreement until that date. Three, ICA would discontinue hiring new employees as domestic specialists.

The proposed act would violate the agreement's open-ended prohibition against forced conversions. Both ICA and the representative testified at the hearings on the bill, and both Agency management and the employee representative opposed this agreement. The facts can best be summarized by presenting excerpts from their testimony.

The Honorable John Reinhardt, Director of the International Communication Agency, stated the basic facts succinctly:

(W)e have over 900 Agency employees classified as Foreign Service "domestic specialists," known as FAS employees. They work as Voice of America technicians and broadcasters, magazine editors, exhibit designers, and in many of the positions are essential to the support of our missions overseas. Experience has shown that the features of the civil service personnel system are more suitable for this class of employees than are the procedures of the Foreign Service system. For example, promotions for a domestic complement can be made more equitably under the rank-in-job system than under the rank-in-person system. For these reasons, we have moved in recent years toward the use of civil service procedures for domestic personnel, regardless of whether they are categorized as Foreign Service or civil service.

In 1977 we entered into an agreement with Local 1812 of the American Federation of Government Employees, the exclusive bargaining representative of our Foreign Service personnel. That agreement provides that USICA's Foreign Service "domestic specialists" would not be subject to mandatory conversion to civil service, though they have the option, through June 30, 1981, of converting voluntarily. Under the agreement, those who do not exercise this option would remain in the Foreign Service. A corollary provision states that no new domestic specialists would be brought into USICA's Foreign Service.

Because of USICA's agreement with AFGE, special provision is made in the proposed act for the temporary exemption of USICA "domestic specialist" employees from mandatory conversion until July 1, 1981, the period allowed for voluntary conversion under the contract. Thus, the proposed legislation endeavors to preserve the essential thrust of the agreement with AFGE, while providing better personnel management and following the policy and procedures proposed for other foreign affairs agencies.

However, I must be candid in stating that in the discussions regarding the preparation of this bill, and in view of the agreement with AFGE, I have opposed the application of this provision to our employees. Many of the affected employees have expressed strong objection to mandatory conversion. I am sure you will hear the testimony of their representatives.

Mrs. SCHROEDER. Thank you very much, Mr. Reinhardt. We are very pleased to have you again with us this morning.

Let me yield first to my colleagues for questions, and we will proceed on, then. Congressman FASCELL, do you have any questions?

Mr. FASCELL. Thank you very much, Madam Chairman.

I am just trying to catch up with a contract for which a special exemption has been made in the proposal. Did I understand you correctly?

Mr. REINHARDT. You did, sir.

Mr. FASCELL. And this contract runs out on July 1, 1981?

Mr. REINHARDT. Only as it applies to the voluntary conversion portions of the agreement. That is, the approximately 900 employees in USICA have until June 30, 1981, to make a decision as to whether they want to convert to the civil service or remain in the Foreign Service.

Mr. FASCELL. You mean that is in the contract?

Mr. REINHARDT. That is in our agreement with the union.

QUESTIONS SUBMITTED IN WRITING TO HON. JOHN REINHARDT, DIRECTOR, INTERNATIONAL COMMUNICATION AGENCY, AND RESPONSES THERETO

Question. Exactly what does the USICA-AFGE agreement seek to protect?

Answer. The USICA-AFGE agreement outlines the Agency's revised personnel system for Foreign Affairs Specialist employees (comprising Foreign Service Reserve officers with limited and unlimited tenure, and some Foreign Service Staff personnel) and guarantees the conditions under which domestic FAS employees can convert to GS until June 30, 1981. After June 30, 1981 the option to convert to GS will not necessarily be foreclosed, but the requirements and conditions for conversion will be based on the Agency's personnel situation at that time and could be very different from the conditions outlined in the circular. It was a specific concern and intent of the union and management that these employees would not be forced to convert to GS and thereby be deprived of the advantage of Foreign Service status, but that such conversions would be made strictly on a voluntary basis.

Mr. Speaker, the employee representative also appeared at the hearings and testified:

Within a brief time, the weaknesses of the program became apparent, even to management. A new administration in USIA finally proposed that the program be brought to an end. Local 1812 heartily agreed and together union and management negotiated a way to phase out the program in a manner preserving the rights of all parties: First, the Agency stopped hiring FAS employees and agreed to bring all new domestic employees into the civil service. Second, selection boards ceased to decide promotions and FAS employees were brought under a new merit promotion plan incorporating civil service principles and applying to all domestic employees. Third, FAS employees were offered the opportunity to convert back to civil service by a transfer to the civil service retirement system. With regard to voluntary conversion, the Agency wanted a cutoff date for employees to make their decision and the union agreed to make that date June 30, 1981.

With regard to other elements of the agreement—the voluntary nature of conversion, the merit promotion procedures, et cetera—these the parties intended to continue beyond June 1981 unless other terms were agreed to.

Since the date of this agreement, many employees have converted to the civil service and, by this means, and through attrition, the number of FAS employees has begun to decrease. It was in the midst of this process that we received the State Department proposal to force conversion to the civil service of not only its employees but those at USICA as well.

We objected and still object to this effort to cancel a negotiated agreement by legislation—an agreement based on the good faith judgments of both the union and management that a voluntary conversion system is likely to do the least amount of violence to both the rights and sensibilities of a group of employees who are wearied by a succession of personnel experiments undertaken at their expense and never in their interests.

Mrs. SCHROEDER. I have many further questions. I think what we might do is offer to keep the record open and have people submit questions for the record. I just wanted to ask one brief one. Do you have a collective bargaining agreement between the ICA and AFGE that will expire on June 30 of 1981?

Mr. ABE HARRIS. No.

Mrs. SCHROEDER. What is going to happen?

Mr. ABE HARRIS. The agreement was open ended. Just as Mr. Koczak explained, 1981 was purely the date where you could convert the GS voluntarily and basically at that time USIA, when this agreement was made, could live with the fact it would take 15 years to 20 years to phase out this FAS program whereas now apparently State Department has continued this program up to about 6 months ago, I believe, when they stopped hiring people. AMSA wants to terminate very quickly.

Mrs. SCHROEDER. So you have a real contract problem.

Mr. ABE HARRIS. We think the fundamental issue, if the State Department does not like a labor management agreement that USIA and local 1812 concluded, should they come to Congress and ask them to rewrite that agreement?

Mr. Speaker, finally, I would like to point out the language used by the U.S. Information Agency—now ICA—when it announced the agreement in a December 1977 circular. The Agency first noted:

The agency has negotiated with AFGE, the exclusive bargaining representative for USIA's Foreign Service employees, a revised personnel system that will replace the Foreign Affairs Specialist (FAS) program. The purpose of this circular is to announce the revised personnel system.

The circular summarized those rules governing voluntary conversion to the civil service general schedule. The circular clearly stated in its conclusion

that "The time limit for submitting applications for conversion to General Schedule under the conditions described in this circular is June 30, 1981." Following the summary of rules for voluntary conversion, the circular stated:

These conversion rules will remain in effect until June 30, 1981. It is felt that this 3½ year period provides a reasonable time for present FS employees to decide whether they wish to convert to GS or to remain in the Foreign Service. Conversion to GS after June 30, 1981, will be subject to whatever requirements and conditions may be established at that time for conversion.

Consistent with the later congressional testimony of both the agency and the employee representative, the circular prohibited mandatory conversion without any time limit. It stated, in underlined text: "Conversion from FS to GS will be entirely voluntary at the option of the employee."

I believe this information needs no further explanation, and I appreciate the support of my colleagues from both sides of the aisle.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 9, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 10

9:00 a.m.
Finance
Taxation and Debt Management Generally Subcommittee
To hold hearings on H.R. 6883, to revise certain provisions relating to the tax treatment of installment sales of realty and incidental sales of personal property, and on miscellaneous tax bills, S. 2512, 2900, 2915, 2916, 3076, 3080, and 3070.
2221 Dirksen Building

9:30 a.m.
Judiciary
Business meeting, to consider pending legislation and nominations.
S-145, Capitol

Labor and Human Resources
Handicapped Subcommittee
To resume oversight hearings on the implementation of Education For All Handicapped Children Act (Public Law 94-142).
4232 Dirksen Building

Veterans' Affairs
To hold hearings to review current studies conducted by certain Government agencies on the long-term health effects of agent orange.
412 Russell Building

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

Finance
International Trade Subcommittee
To resume hearings on the trade and economic issues confronting the United States, and on an international trade strategy for the United States.
6226 Dirksen Building

Foreign Relations
To hold open and closed hearings on proposed nuclear fuel shipment to India; and to consider Senate Concurrent Resolution 109, disapproving the proposed export of low-enriched uranium to India.
4221 Dirksen Building

Governmental Affairs
Business meeting, to consider pending calendar business.
3302 Dirksen Building

Rules and Administration
To hold hearings on S. 16 and 964, providing for changes in the Presidential primary system, and Senate Joint Resolution 189, establishing a Commission on Presidential Nominations; and to consider other legislative and administrative business.
301 Russell Building

10:30 a.m.
Appropriations
Interior and Related Agencies Subcommittee
To continue hearings on H.R. 7724, appropriating funds for fiscal year 1981 for the Department of the Interior and related agencies, focusing on the Department of Energy's gas rationing policy.
1114 Dirksen Building

Judiciary
Criminal Justice Subcommittee
To hold hearings on S. 252, to improve and coordinate Federal strategy of assistance to State and local governments in arson fighting training and technical assistance.
2228 Dirksen Building

3:00 p.m.
Conferees
On S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.
5302 Dirksen Building

3:30 p.m.
Select on Ethics
To resume closed hearing to discuss FBI allegations involving Senator Williams in a bribery scheme.
S-126, Capitol

SEPTEMBER 11

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate calendar).
235 Russell Building

10:00 a.m.
Energy and Natural Resources
Parks, Recreation and Renewable Resources Subcommittee
To hold hearings on S. 2630, establishing the Martin Luther King, Jr., national historic site in the State of Georgia, and S. 3091, establishing the Chaco Culture National Historical Park in the State of New Mexico.
3110 Dirksen Building

Finance
To hold hearings on provisions of section 5, to establish in the Treasury of the United States a hazardous substance response fund, of S. 1480, proposed Environmental Emergency Response Act.
2221 Dirksen Building

Rules and Administration
Business meeting, to consider Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.
301 Russell Building

2:30 p.m.
Appropriations
Business meeting, to mark up H.R. 7584, appropriating funds for fiscal year 1981 for the Departments of State, Justice, Commerce, and the Judiciary, and H.R. 7583, appropriating funds for fiscal year 1981 for the Department of the Treasury, the Postal Service, and general Government programs.
S-128, Capitol

SEPTEMBER 12

9:30 a.m.
Commerce, Science, and Transportation
To continue hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate Calendar).
235 Russell Building

10:00 a.m.
Labor and Human Resources
Business meeting, to consider S. 2887, to provide statutory assurance of confidentiality to respondents participating in statistical programs of the Bureau of Labor Statistics; and pending nominations.
4232 Dirksen Building

SEPTEMBER 15

9:30 a.m.
Judiciary
To hold hearings on pending nominations.
2228 Dirksen Building

SEPTEMBER 16

10:00 a.m.
Energy and Natural Resources
To hold oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

Labor and Human Resources
To hold oversight hearings on the implementation of certain compensation programs for longshoremen.
4232 Dirksen Building

• Special on Aging
To hold hearing to examine proposals for possible changes to the social security system.
5110 Dirksen Building

SEPTEMBER 17

9:30 a.m.
Labor and Human Resources
To hold hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.
4232 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

Rules and Administration
Business meeting, to resume consideration of Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.
301 Russell Building

SEPTEMBER 18

9:30 a.m.
Agriculture, Nutrition, and Forestry
Foreign Agricultural Policy Subcommittee
To hold hearings to examine ways of encouraging further increases in U.S. agricultural exports in the coming decade.
324 Russell Building

Labor and Human Resources
To continue hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.
4232 Dirksen Building

10:00 a.m.
Energy and Natural Resources
To resume oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

SEPTEMBER 19

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold oversight hearings on the scope of science and technology policy
235 Russell Building

SEPTEMBER 23

10:00 a.m.
Labor and Human Resources
To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.
4232 Dirksen Building

11:00 a.m.
Veterans' Affairs
To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion
318 Russell Building

2:00 p.m.
Office of Technology Assessment
The Board to meet and discuss pending business items.
EF-100, Capitol

SEPTEMBER 24

10:00 a.m.
• Labor and Human Resources
To hold oversight hearings on the implementation of the home energy assistance program.
4232 Dirksen Building

10:30 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries.
235 Russell Building

SEPTEMBER 25

10:00 a.m.
Commerce, Science, and Transportation
To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries.
235 Russell Building

CANCELLATIONS

SEPTEMBER 12

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
Business meeting, to resume markup of title II, providing financial assistance to meet basic and employment skills needs of secondary school youth of S. 2385, proposed Youth Act.
4232 Dirksen Building

SENATE—*Tuesday, September 9, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

Rabbi Stanley Rabinowitz, Adas Israel Synagogue, Washington, D.C., offered the following prayer:

Dear friends, let us pray.

God of Heaven and Earth, make real the dreams that rainbow our Nation's history.

Let there come to pass a day when no person shall be hostage for the land of his birth, and none shall suffer for his father's color, nor his mother's faith.

May those who strive for a world in which vine and fig tree will shelter each household find their vision strengthened by our example.

We pray not to be relieved of burdens, but for strength to bear them; not for evasion of challenges, but for courage to meet them.

Long may our land be bright, with freedom's holy light, Great God, our King. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 9, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HOWELL HEFLIN, a Senator from the State of Alabama, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. HEFLIN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MILITARY REGISTRATION

Mr. ROBERT C. BYRD. Mr. President, Selective Service System Director Bernard Rostker has announced that 93 percent of the individuals who are required to register for the draft this year have registered. Most of the remaining individuals are expected to register during the remainder of this year.

This is a very high success rate, particularly since the registration program was started late in the calendar year, and under considerable controversy. By comparison, the corresponding figure for the last full year of registration—1973—was 83 percent.

This year, men born in 1960 and 1961 are required to register. These men form a targeted population of 3.88 million individuals. Of those, the Selective Service has been able to register 3.59 million.

One of the top priorities of our military forces today is preparedness—the ability to respond quickly to unforeseen emergencies of a military nature. Two Members of the Senate—Senator STENNIS and Senator NUNN—have taken the lead in strengthening our readiness. The contribution of military registration to readiness was first brought to the attention of the Senate last year by Senator STENNIS and Senator NUNN. Last January, President Carter proposed the resumption of military registration in his state of the Union address to Congress. Later in the year, after a full and public debate, Congress appropriated the necessary funds.

I congratulate the President and I congratulate Senator STENNIS and Senator NUNN for their role in getting the military registration program started again, and for its impressive initial success.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, does the Senator from Wisconsin wish some time?

Mr. PROXMIRE. I appreciate the courtesy of the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Wisconsin.

Mr. PROXMIRE. I thank the distinguished majority leader.

THE TECHNOLOGY OF GENOCIDE

Mr. PROXMIRE. Mr. President, one of the most disturbing accompaniments to scientific progress is the ever greater ease and efficiency with which man can exterminate masses of his fellows. The increased sophistication of deadly gasses, lasers, radiological devices, and biological weapons invite a repetition of the gruesome genocide we have known as the holocaust.

It is too often overlooked that weapons of even the most devastating character exist for only one purpose: To be used. The atomic bombing of Hiroshima and the apparent use of gas in Afghanistan by the Soviets indicate that few States can resist the appeal of the latest, most deadly inventions. Today's remarkable hardware of human destruction stands as a warning: We must not let another holocaust occur, for the scale of future acts of genocide will dwarf what has gone before.

The quality of these new weapons, as well as the quantity of their destructive potential, is a second source of alarm. One of the stark features of the Nazi holocaust was the cleanliness of the gassing process. Men were spared the rivers of blood that otherwise would have flowed from the death of 6 million. Gas enabled the Nazis to accomplish the massive task of transport and extermination with a minimum of human involvement.

Less than a dozen armed soldiers were able to dispose of a trainload of human cargo containing over a thousand individuals. The almost hygienic quality of the holocaust enabled men to play key roles in carrying out the final solution, men who may have balked at the gore and cruelty of messier forms of murder.

The typical bureaucrat crucially involved in the execution of the final solution need never have seen a dead Jew, much less murdered one himself. In fact, it is well known that Jews themselves were enlisted to operate the chambers and ovens of Auschwitz and Buchenwald.

To sum up, Mr. President, genocide is, physically and psychologically, a much easier act to commit than we might think. And scientific progress is making it easier all the time. Our lust for new technology is not dimmed by the harmful purposes to which it is so often put.

A German playwright, Rolf Hochhuth, exposed this problem in his efforts to portray on stage the spectre of the camps:

> We lack the imaginative faculties to be able to envision Auschwitz, or exploratory flights into space, or even more mundane matters such as industrial capacity and speed records. Man can no longer grasp his own accomplishments.

We are in a catch-22 situation, Mr. President. Because our accomplishments are so huge and so terrible, we have not

• This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

concerned ourselves with our own destructive potential. Yet, because that destructive capability is so great, we must act to see that it is never used.

In an age when the push of a button can mean the end of a continent, a treaty that condemns and punishes acts of a logical first act—a small and affordable gesture. If we could accord to the prevention of genocide a small fraction of the effort that we now expend on the weapons of genocide, the future might be free of the terrors of the past.

Mr. President, once again, I thank my good friend, the majority leader, and yield the floor.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. The Senator from West Virginia has the floor.

Mr. ROBERT C. BYRD. Mr. President, does the Senator from North Dakota wish any time?

Mr. BURDICK. No, Mr. President.

Mr. ROBERT C. BYRD. Does the minority leader wish any time?

Mr. BAKER. Mr. President, I have no request for time.

Mr. ROBERT C. BYRD. Mr. President, I yield back my time.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader is recognized.

Mr. BAKER. Mr. President, I have no need for my time and no requests. Therefore, I yield back my time.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of H.R. 7590, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill (H.R. 7590) which had been reported from the Committee on Appropriations with amendments.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business for not to exceed 10 minutes, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The Senate continued with the consideration of H.R. 7590.

Mr. COHEN. Mr. President, I ask unanimous consent that Thomas Heyerdahl of my staff be granted privilege of the floor during consideration of the energy and water development appropriation bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PRYOR). Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I am pleased to bring before the Senate today the first of the 13 regular, annual appropriation bills for the fiscal year 1981 which begins on October 1, 1980 and ends September 30, 1981.

And, I am especially proud and pleased that the first appropriation bill for the ensuing fiscal year to be considered by the Senate is the energy and water development appropriation bill. Our Appropriation Subcommittee on Energy and Water Development, which I have the honor of chairing, has worked many hours in hearings, study, examination and markup to produce a well-balanced and sound bill. Our subcommittee membership approaches our work and responsibilities in a totally nonpartisan manner, acting on hundreds and hundreds of individual items. At the outset of my remarks, I want to say a special word of appreciation to our distinguished ranking member, the Senator from Oregon (Mr. HATFIELD) for his leadership on our subcommittee.

It is a real pleasure to work with him, with his very capable staff. I can say without any fear of contradiction, Mr. President, that the bipartisan effort as displayed between our staffs and the ranking minority member and myself and, indeed, with all the members of the committee is something that I would like to see emulated throughout the Senate and throughout the Congress. I believe our committee acts in the national interest without regard to partisan politics, and that is a big mouthful to say, but I think it is exactly true.

We have an excellent subcommittee, Mr. President. Our membership is extremely interested in this jurisdiction. We had present at the markup, if I recall correctly, 13 members, which is a full quorum of the full committee, and we had 13 members throughout the markup of the subcommittee, which shows the seriousness with which our subcommittee approaches this work.

Mr. President, as stated in previous years, energy and water are the fundamental, inseparable subjects of this appropriation bill. Simply stated these resources are the Nation's lifeblood. Only with secure supplies and careful management of these, our most precious resources, can our Nation be assured of a secure, stable, and prosperous future. And, the wise use, development and management of these resources for current needs and thoughtful conservation for future needs are essential.

What we have here, Mr. President, is a capital investment bill, an investment bill, not an expenditure bill.

The purpose of this bill is to provide appropriations for the fiscal year 1981 beginning October 1, 1980, and ending September 30, 1981, for energy and water development, and for other related purposes. It supplies funds for the Department of Energy (except for fossil fuel programs, and certain conservation and regulatory programs) in title I; for water resources development programs and related activities of the Department of the Army, civil functions—U.S. Army Corps of Engineers' civil works program in title II, for the Department of the Interior's water and power resources service in title III; and for related independent agencies and commissions, including the Appalachian Regional Commission and Appalachian regional development programs, the Nuclear Regulatory Commission, the Nuclear Safety Oversight Committee, the Tennessee Valley Authority, and the Water Resources Council in title IV.

The Subcommittee on Energy and Water Development of the Committee on Appropriations held 27 sessions of hearings (19 different days) in connection with the fiscal year 1981 appropriation bill. One closed hearing session was held on classified matters in this bill. Witnesses included officials and representatives of the Federal agencies; numerous Members of the Senate and House of Representatives, Governors, State and local government officials and representatives; and hundreds of citizens of

all walks of life from throughout the United States. Testimony, both for and against many items, was presented to the subcommittee.

The subcommittee, by unanimous vote of a quorum present, on August 26, 1980, recommended that the bill, as amended, be reported to the full Committee on Appropriations.

The committee, by unanimous vote of a quorum present on September 4, 1980, recommended that the bill, as amended, be reported.

SUMMARY OF BILL

The President's fiscal year 1981 budget estimates, as amended, for this bill total $11,988,111,000 in new budget (obligational) authority. The recommendation of the committee totals $12,054,520,163. This is an increase of $66,409,163 over the amended budget estimates and $99,407,163 more than the House bill, which totaled $11,955,113,000 as passed by the House. However, the committee considered additional budget estimates not considered by the House totaling $136,252,000. Thus, on a comparable basis, the bill would be under the House-passed bill.

Mr. President, I will not undertake to elaborate on the details of the recommended bill as the report accompanying the bill fully explains the changes recommended. I will summarize or highlight the major programs and activities.

BILL HIGHLIGHTS

ATOMIC ENERGY DEFENSE ACTIVITIES

The amount recommended in the bill includes $3,508,828,500 for atomic energy defense activities. Major programs and activites include:

Inertial confinement fusion	$213,000,000
Naval reactors development	303,350,000
Weapons activities	2,083,523,000
Nuclear materials production	541,700,000
Defense waste management	295,160,000

ENERGY SUPPLY, RESEARCH, AND DEVELOPMENT

The bill recommended by the committee provides a total of $2,648,912,000 for energy supply, research, development and demonstration programs including:

Solar energy	$564,886,000
Geothermal energy	153,021,000
Hydropower	21,800,000
Nuclear fission	787,255,000
Magnetic fusion	394,117,000
Environmental research	235,794,000
Basic energy research	267,285,000

GENERAL SCIENCE AND RESEARCH

The committee recommendation also provides $514,215,000 for general science and research activities in life sciences, high energy physics and nuclear physics including:

Life science and nuclear medicine applications	$46,900,000
High energy physics research	358,845,000
Nuclear physics	108,470,000

REGULATORY AND OTHER INDEPENDENT AGENCIES

Also recommended in the bill is $1,177,978,000 for various regulatory and independent agencies of the Federal Government. Major programs and activities include:

Appalachian regional development programs	$329,300,000
Federal Energy Regulatory Commission	74,374,000
Nuclear Regulatory Commission	452,520,000
Tennessee Valley Authority	287,563,000
Water Resources Council	32,777,000

	1980 enacted to date	1981 budget estimates	1981 House bill	Committee recommendation	Recommendation compared with— 1980 enacted	1981 budget estimates	1981 House bill
Title I—Department of Energy	$6,802,237,000	$7,304,054,000	$6,943,725,000	$7,247,670,500	$445,433,500	−$56,383,500	+$303,945,500
Title II—Department of Defense—Civil	3,251,076,000	2,872,914,000	3,108,671,000	2,926,692,000	−324,384,000	+53,778,000	−181,979,000
Title III—Department of the Interior	615,941,000	806,752,000	814,690,000	789,878,000	+173,937,000	+16,874,000	−24,812,000
Title IV—Independent agencies	1,006,658,000	1,004,391,000	1,088,027,000	1,107,604,000	+100,946,000	+103,213,000	+19,577,000
Title V—General provisions				−17,324,337	−17,324,337	−17,324,337	−17,324,337
Grand total of the bill	11,675,912,000	11,988,111,000	11,955,113,000	12,054,520,163	+378,608,163	+66,409,163	+99,407,163

In conclusion, Mr. President, we believe this is an excellent, well-balanced bill reflecting high priority requirements but fiscally prudent. Over $400 million worth of items requested by the public and Members of the House and Senate could not be accommodated—and most of these are very meritorious, needed projects and activities. The bill is within our allocation from the amount allocated from the first budget resolution; $12.1 billion in budget authority and $12 billion in outlays. And we simply do not have any room left in our allocation.

We request that the Senate support the committee's recommendations, act on and pass the bill as soon as possible in order that we can get the bill to conference with the House—resolve the differences, and agree to a conference report—all between now and October 1.

WATER RESOURCES DEVELOPMENT

The committee has also recommended appropriations totaling approximately $3,780,737,000 for Federal water resource development programs. This includes projects and related activities of the U.S. Army Corps of Engineers—civil, the water and power resources services, and the Tennessee Valley Authority. The Federal water resources development program provides lasting benefits to the Nation in the areas of: flood control, municipal and industrial water supply, irrigation of agricultural lands, water conservation, commercial navigation, hydroelectric power, recreation, and fish and wildlife enhancement.

Major programs related to water resources development include:

Corps of Engineers—Civil:	
General investigations	$137,112,000
Construction activities	1,695,973,000
Operations and maintenance activities	978,817,000
Water and power resources service:	
General investigations	36,946,000
Construction activities	603,665,000
Operations and maintenance activities	111,117,000
Tennessee Valley Authority:	
Construction activities	50,032,000
Operating expenses	14,135,000

Mr. President, I want to point out that our recommendations for the fiscal year 1981 provide for a total net increase of approximately $378.6 million over the levels provided for the current fiscal year 1980. However, when one considers that about a $500 million increase over fiscal year 1980 is budgeted and approved for atomic energy defense activities, nuclear weapons production, dealing with our national security requirements, it is easy to see that we are providing less funds for energy supply research and development and water resources development than are available for the current fiscal year. I will review these changes by titles in the bill.

Mr. President, I am pleased to say that we have brought this bill in under the limit as established by the Budget Committee and as allocated by the Appropriations Committee. The Appropriations Committee, acting with the Budget Committee, allocated to us budget levels of $12.1 billion in budget authority, and $12.0 billion in outlay authority. We have brought this bill in under those totals.

The President's fiscal year 1981 budget estimates, as amended for this bill, total $11,988,111,000 in new budget obligational authority. The recommendation of the committee totals $12,054,520,163. This is an increase of $66,409,163 over the amended budget estimates, and $99,407,163 as passed by the House.

However, the committee considered additional buget estimates, not considered by the House, totaling $136 million. Thus on a comparable basis this bill is under the House bill.

Mr. President, I will not detail all of the moneys provided under this bill to the myriad of different agencies. I have left that to the record to point that out, but I do want to emphasize that we have brought this bill on a comparable basis

at less than the House bill. We have brought this bill in under the budget target and within the appropriation allocation.

It was a most difficult thing to do, Mr. President, to pare down the various functions of Government in both energy and water resources to fit within those Budget and Appropriations Committee allocations.

It is a curious, a ridiculous, thing, in my view, that at a time of energy crisis the Budget Committee, and Congress later, should cut these functions back so far on the amount of money available to it in budget authority. It just simply does not make sense. Our rhetoric does not match our actions in this Senate on that score.

When the windfall profit tax was up we had wonderful speeches about the uses of the windfall profit tax money for the purpose of helping energy projects.

However, when the reality comes through the budget process, with the allocations made and that, in turn, are allocated by the Appropriations Committee, it gives us not only insufficient room to do many things we would like to do, but we have to pare down and eliminate in some cases many very important and useful projects.

The gas-cooled breeder reactor program, for example—a good program—was completely eliminated from this budget and zeroed out of future Government operations for lack of money.

The Portsmouth centrifuge project. We would have liked to have added another $170 million on that project, which would have completed the first phase a year earlier. But there simply was not enough money to go around.

We cut water resources projects from the House level by $200 million, cutting down and in some cases eliminating many very good projects, projects which I and the committee believe in but we simply did not have the money to go around.

So, Mr. President, to say that this is a tight budget is to very much understate the fact. The fact is that it is a barebones budget with some of the bones eliminated and broken. It is so bare bones because of the fact that the Budget Committee and the Congress, acting on the budget resolution, and our committee's allocation simply did not afford the degree of priority to these essential functions of Government, energy and water, that they deserve.

I hope the Senate will quickly approve this bill this morning. I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I know that we go through a normal litany here on the floor at the beginning of the presentation of a bill between the chairman and the ranking member complimenting one another for extraordinary work and so forth. But I think what the Senator from Louisiana has already stated this morning in reference to the harmonious working relationship that exists on this committee and its nonpartisan character is really something far beyond the normal litany that is exercised here on the floor.

I think part of this is due to the extraordinary capability and devotion of our staff. And I am not in any way saying that other staffs on other committees are less devoted, but certainly on our committee, Proctor Jones and Keith Kennedy, representing the majority and minority staff, have both the professional competence to handle the work and certainly have the devotion to the cause of good legislative procedure.

I not only wish to thank the staff but also express my appreciation for the thoughtfulness and consideration of the Senator from Louisiana in working out these very complex matters.

Mr. President, I rise to support H.R. 7590 and urge its prompt adoption by the Senate. This bill provides $12,054,520,163 in new budget authority for fiscal year 1981 for energy and water development through the activities of the Department of Energy, the Corps of Engineers, the Water and Power Resources Service, and several independent agencies.

The bill also provides for a gratuity for Mrs. Dorothy Runnels, the widow of the late Representative Harold Runnels of New Mexico.

The amount recommended is the result of long hours of testimony from agency officials and private citizens during 27 hearings and two markup sessions.

I know of no committee that has more citizen participation—county commissioners, local government officials generally and citizens at large, preservation organizations, conservation organizations, professional organizations. An amazing array of citizens participate in our hearings, and their testimony is most helpful.

While I do not agree with all the individual matters addressed in the bill—and I do not think anyone really would if they looked in detail at each and every item—I believe, it is fair and reasonable on the whole, providing necessary funds for the urgent national priorities of energy and water development while exercising restraint in less critical areas.

I must emphasize that this committee was under a fiscal restraint, not only in terms of ceilings under the budget resolution, but in its whole approach to these requests in these projects, in keeping with Chairman JOHNSTON's and my concern for responsible Federal spending.

The recommended bill is very close to our subcommittee's allocation by the full committee under the first concurrent resolution on the budget. Our allocation is $12.1 billion in budget authority and $12.0 billion in outlays; this bill provides $12.055 billion in budget authority and $11.8 billion in outlays. Being this close to the allocation ceiling, it will be most difficult to accommodate any floor amendments proposing significant increases without making offset reductions elsewhere in the bill.

And I have to again underscore this particular point. We are at that ceiling level or so close to it that it will not be possible to do anything other than reject, I think, most amendments that will be offered if they are offered to add funds to this subcommittee budget.

If any of my colleagues is looking for a place to cut, may I suggest looking at the $3.5 billion provided for atomic energy defense activities, nearly 30 percent of the amount provided in the entire bill, and an amount greater than that provided for energy supply, research, and development.

Atomic energy defense activities is the one account where we have provided increases over the budget request sufficient to keep pace with inflation. The level of effort in other areas will decline despite some increases over fiscal year 1980, because the increase does not offset the erosion of inflation.

But not in this area. Let me emphasize again that nearly 30 percent of the total amount provided in the bill is dedicated to this weapons program.

Some of my colleagues may not be aware that this bill provides funds for naval reactor development, warhead production, testing of nuclear devices, and production of the special nuclear materials required to fabricate and maintain our nuclear arsenal. I direct their attention to pages 24–27 and 52–62 of our committee report for a description of these programs and the funds provided, and remind them that when we labor under the allocation ceiling of the first concurrent resolution, every dollar added for construction or testing of a nuclear warhead is $1 less for energy research and development. That is the tradeoff. And I do not think we need to play games or try to create illusions that somehow we are overfunding the energy development needs of this Nation when we have these overcommitments to the development of a greater capacity to kill.

I submit that energy security is every bit as important to our national strength and security as is our nuclear weapons stockpile. And I do not say it is an either/or, but I do think that we have tended to think of our national security exclusively in terms of hardware, whereas our national security incorporates and must incorporate many components, including less energy dependence and certainly a stronger and less inflation-ridden economy as two examples of important components to our total national security picture.

But we have become so mesmerized, so fascinated, by the sophisticated weapons provided here in this budget and others, that we have, I think, become caught up in this fallacious reasoning that somehow our whole national security is dependent solely on military hardware.

I sometimes refer to that as a "Shah of Iran mentality," sort of a maginot line mentality. It has been proven to be fallacious in the past. It would be just as fallacious if we adopt it in the 1980's.

In the pursuit of energy security through the development of new and improved energy sources, the committee

is recommending $564,886,000 for solar energy, $153,021,000 for geothermal energy, $394,117,000 for fusion, and $21,800,000 for hydropower.

Funds for nuclear waste management and the breeder base program, among others, are included in the $787,255,000 provided for nuclear fission programs.

Within the funds for nuclear fission, $10,000,000 is recommended under the plant and capital equipment account to initiate preliminary activities and allow negotiations for acquisition of away-from-reactor (AFR) storage capacity for domestic spent fuel pursuant to the provisions of S. 2189.

The Senate is aware that we went through a great debate period and a number of votes to finally adopt an amendment that I offered on the floor during the debate of S. 2332 in order to stress the importance of moving with some commitment and some strength of commitment to the objective of controlling and developing a domestic spent fuel storage and handling program. I stress that these funds are for preliminary activities and the initiation of negotiations for AFR acquisition.

Again, as my amendment incorporated during that debate, the committee has directed that no final contracts, transfer arrangements, or agreements on AFR acquisition can be consummated without further congressional approval. This was agreed to by Senator JOHNSTON, our subcommittee chairman, as we raised this question in committee, and we have reached, I believe, a common agreement and complete understanding that we are, in effect, respecting the amendment that was offered and passed by this Senate to S. 2332 in this appropriation measure.

It is the clear intent of the committee as expressed on page 44 of our report and the intent of the Senate, should it enact this bill, that no final contract or transfer or title or final agreement on acquisition can be consummated without further express approval by Congress.

I must underscore that as strongly as possible.

Funds provided are for preliminary activities and negotiations only, so we can begin to address the serious problem of AFR storage.

It would seem to me, Mr. President, and I made clear at the time of the debate on S. 2332, we could not make commitments until we had in place knowledge of what our policy was to be. Otherwise, it was putting the cart before the horse.

In the area of water development, Mr. President, I would like to highlight a few projects.

First, the Tennessee-Tombigbee Waterway project. On every Senator's desk will be found a committee print which addresses all the numerous allegations that have been made against this project, and successfully rebuts everyone of them. Total cost, interest rate, authorized width of channel, benefit-cost ratio, environmental impact, future traffic projections, are all discussed in this committee print. This print was prepared at my suggestion, and I commend its reading to every Senator and concerned staff. The Tenn-Tom is a sound project with the promise of lasting benefits to the Nation, and it should be finished.

Next, Orme Dam. This component of the central Arizona project has been the subject of some controversy, and was on the so-called "hit list" a few years ago, the Carter "Hit List." As a result of that dispute, a study was commissioned to examine the alternatives to Orme, a structure which would provide significant flood control protection to Phoenix, Ariz., but would also flood out a substantial portion of the Fort McDowell Indian Reservation. Our committee recommendation provides for funds to continue the study, and also funds for preconstruction planning of some structure at the Orme site, in anticipation of that being the study's recommendation. No options are foreclosed by this committee directive.

Finally, Mr. President, this bill provides $185,000 for advanced engineering and design of the jetty modifications at the Siuslaw River and Bar, Oreg. This project is of great importance to me and the people on the coast of Oregon, and I want to thank Chairman JOHNSTON for his special cooperation and help on this matter.

And, in closing, Mr. President, I want to express my appreciation to Chairman JOHNSTON and all members of the subcommittee, and all staff, including those mentioned before and Cathy O'Connor of the minority staff and Dave Gwaltney and Gloria Butland of the majority staff for the hours of hard work that have gone into this bill.

Mr. President, I think this is a fair, lean, and responsible bill. I would hope the Senate would see fit to act upon it expeditiously and keep this bill as clear as possible of amendments that add funds to a bill that has already reached the ceiling of its allocation authority and budget authority.

Mr. President, I yield the floor.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I will not detain the Senate but for just a very few minutes.

Mr. President, I have been a long time member of the subcommittee that considered and reported this bill. I would be derelict if I did not warmly thank the chairman of the subcommittee, the Senator from Louisiana, and the ranking minority member, the Senator from Oregon, for the long months and months of work, learning, know-how, diligent application they have put into this bill.

Just about 6 years ago, this bill started changing rapidly in legislation, and now it encompasses our enormous energy program for which we have authorized many, many billions of dollars. We have appropriated many of those billions of dollars in this new problem field. It is the most sweeping thing that has ever come before the Senate, in my opinion, I know since I have been here.

There is this proposition of adjusting to new conditions, further utilizing our energy sources that we do have, and developing new energy sources, handling them, how far we are going to subsidize, how far we are going in the laboratories with the scientific developments that are necessary.

In this bill, and I do not have the figures in mind, there are many, many millions of dollars which are included, and they will be coming.

It was one of the most amazing discoveries I made 5 or 6 years ago, when I saw how this was going to add up.

For someone to manage this bill, to steer it on its course, is absolutely indispensable to our entire economy. There is no doubt about it. That includes all of our major preparedness programs.

When we talk about what we are going to do on one side of the world, what we are going to do in the Pacific, what we are going to do at home, what we are going to do in the Mediterranean and the other trouble spots of the world, we are not going to be able to be effective in any of them unless we are effective, sound, and timely on these energy programs.

We are greatly indebted in our authorizing committee to these distinguished Senators, though there was slow progress made for a while when we could not get the bill agreed upon and passed, and they are entitled to a tremendous amount of credit. I point this out with pride as to what these two men have done, and what other members of the subcommittee have done.

If I may say, I can look back upon the work of this committee here at home concerning water resources, water development, and all the things that go with it, and now in this energy field, and I look upon that with more satisfaction than anything else it has been my privilege to deal with.

I am glad of a chance to say these few words. Again, I appreciate very much what these gentlemen and the other members of this subcommittee have done.

I yield the floor. I thank the Senator again.

Mr. COHEN addressed the Chair.

Mr. JOHNSTON. Mr. President, I yield to the distinguished Senator from Maine.

Mr. COHEN. Mr. President, I have an unprinted amendment which I send to the desk and ask for its immediate consideration.

Mr. JOHNSTON. Mr. President, will the Senator withhold so we can adopt some of the committee amendments?

Mr. COHEN. I withhold that, Mr. President.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the committee amendments, except the amendments

appearing on page 2, line 9 under "Energy Supply R. & D. Operating Expenses;" page 5, line 7 to line 12; page 5, line 24; and page 15, line 10, be agreed to en bloc and that the bill be considered as original text for the purpose of further amendment, provided that no point of order shall be considered as having been waived by reason of this unanimous-consent agreement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The committee amendments agreed to are as follows:

On page 2, line 19, strike "$1,007,040,000" strike "$1,009,040,000";

On page 3, line 3, after "collections" insert a colon and the following:

Provided further, That this appropriation as well as all prior year balances are merged with the Uranium Supply and Enrichment Activities Plant and Capital Equipment Appropriation

On page 3, line 11, strike "$367,515,000" and insert "$382,015,000";

On page 3, line 17, strike "$2,756,023,000" and insert "$2,890,623,500";

On page 3, beginning with line 20, strike through and including page 4, line 3;

On page 4, line 5, strike "general management, program administration, field office and program support functions" and insert "departmental administration";

On page 4, line 9, after "vehicles" insert "and official reception and representation expenses" (not to exceed $35,000);

On page 4, line 11, strike "$388,572,000" and insert "$397,443,000";

On page 6, line 7, after "collections" insert a colon and the following:

Provided further, That this appropriation as well as all prior balances are merged with the Uranium Supply and Enrichment Activities Operating Expenses Appropriation

On page 6, line 21, strike "$120,100,000" and insert "$132,200,000";

On page 7, line 11, strike "$533,205,000" and insert "$618,205,000";

On page 8, line 9, beginning with the colon, strike through and including line 13 and insert a period;

On page 11, line 7, strike "$72,949,000" and insert "$74,374,000";

On page 14, line 16, strike "$140,238,000" and insert "$133,367,000";

On page 14, line 16, after "expended" insert a colon and the following:

Provided, That $200,000 is available for cooperative efforts with foreign governments pertaining to river and harbor and flood control improvements: *Provided further*, That none of the funds made available in this paragraph shall be obligated or expended for the study of Diversion of Lake Michigan at Chicago, if such study would result in any diminution of generation at hydro-electric facilities on the Niagara or St. Lawrence Rivers

On page 15, line 24, strike "$1,500,000" and insert "$1,800,000";

On page 16, line 1, after "and" insert "for revetment repairs nearby, and";

On page 16, line 2, after "expended" insert a colon and the following:

Provided further, That funds appropriated for the Siuslaw River and Bar, Oregon navigation project, authorized by the Rivers and Harbors Act of 1910, as amended and modified, shall be used to design and construct further modifications to that project in accordance with the Report of the Division Engineer, North Pacific Division, dated 16 June 1976

On page 16, line 13, strike "$239,324,000" and insert "$228,970,000";

On page 17, line 8, after "officials" insert a colon and the following:

Provided further, That funds in this Act for the Tensas Basin Red River Backwater Area, Louisiana project are to be used to construct features for flood control and allied purposes for Sicily Island and Below Red River including pumping stations and such other modifications of these or existing features in this area as the Chief of Engineers determines advisable, subject to non-Federal cooperation for each separable feature of such work at the time of construction as is required for work pursuant to the August 18, 1941, authorization

On page 18, line 5, strike "$951,259,000" and insert "$900,397,000";

On page 18, line 6, after "expended" insert a colon and the following:

Provided, That not to exceed $1,000,000 shall be available to reimburse non-Federal public interests for the costs of diking dredged disposal areas at Federal projects provided by non-Federal public interests and for funds contributed or advanced to the Secretary of the Army by non-Federal public interests for diking of dredged disposal areas at Federal projects, during the period October 1, 1978, to December 3, 1979, where the Secretary of the Army, acting through the Chief of Engineers, determines that such costs of diking or funds contributed or advanced and expended were not specifically required of such non-Federal public interests by project authorization.

On page 18, beginning with line 19, strike through and including line 20, and insert in lieu thereof the following:

For design and construction of hopper dredges, and for the purchase of one aircraft, $43,225,000, to remain available until expended: *Provided*, That approximately $8,500,000 of this amount will be used for the purchase of one aircraft for replacement of the existing aircraft of the Chief of Engineers.

On page 21, line 3, strike "$40,079,000" and insert "$36,946,000";

On page 21, line 4, strike "$40,029,000" and insert "$36,896,000";

On page 21 line 11, strike "$596,216,000" and insert "$580,741,000";

On page 22, line 20, after "safety" insert a colon and the following:

Provided further, That no part of the funds herein approved shall be available for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument: *Provided further*, That of the amount herein appropriated not to exceed $6,000,000 for the Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona, shall be available for improvement of the Gila River Channel to facilitate drainage of lands within the District under a repayment obligation heretofore established by existing contract between the Secretary of the Interior and the District.

On page 23, line 12, strike "$114,117,000" and insert "$111,117,000";

On page 24, line 4, strike "$26,128,000" and insert "$22,924,000";

On page 29, line 20, strike "$339,300,000" and insert "$329,300,000";

On page 29, line 21, strike "$214,600,000" and insert "$209,600,000";

On page 31, line 16, strike "$437,220,000" and insert "$452,520,000";

On page 32, beginning with line 3, insert the following:

NUCLEAR SAFETY OVERSIGHT COMMITTEE

For expenses necessary for the Nuclear Safety Oversight Committee, $1,500,000, to remain available until expended.

On page 32, line 23, strike "$290,563,000" and insert "$269,563,000";

On page 33, line 8, strike "$17,000,000" and insert "$18,000,000";

On page 33, beginning with line 10, insert the following:

WATER RESOURCES COUNCIL

WATER RESOURCES PLANNING

For the Water Resources Council for expenses necessary in carrying out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a–4(5), and hire of passenger motor vehicles (42 U.S.C. 1962a–4(6)), $32,777,000 to remain available until expended, including $4,748,000 for expenses in administering the Act (42 U.S.C. 1962d(b)), $4,186,000 for preparation of assessments and plans (42 U.S.C. 1962d(c)), $3,443,000 for expenses of river basin commissions under title II of the Act (42 U.S.C. 1962d(a)), $18,000,000 for grants to States under title III of the Act (42 U.S.C. 1962c(a)), and $2,400,000 for Upper Mississippi Comprehensive Management Plan (42 U.S.C. 1962b–3).

On page 34, beginning with line 18 strike through and including line 23, and insert in lieu thereof the following:

SEC. 504. (a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—or any major administrative subdivision thereof, during the fiscal year ending September 30, 1981, to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than 45 days after the end of each quarter of the fiscal year, the head of each department and establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(c) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department and establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

SEC. 505. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving questioned expenditures, arising after the enactment of this Act shall be resolved within 6 months of completing the initial audit report.

SEC. 506. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to

the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

SEC. 507. (a) Notwithstanding any other provision of this Act, the amounts otherwise available to agencies under the Act for procurement of consultant services shall be reduced by the following amounts: Nuclear Regulatory Commission, $897,000; Corps of Engineers, $3,455,000; and Department of Energy, $13,033,000.

(b) For fiscal year 1982 and thereafter, a department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which such funds are located; and a brief description of the needs for consulting services, including a list of major programs that require consulting services.

(c) For fiscal year 1982 and thereafter, the Inspector General of such department or establishment, or comparable official, or if there is no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

SEC. 508. There is appropriated, out of any money in the Treasury not otherwise appropriated, for payment to Dorothy Runnels, widow of Harold Runnels, late a Representative from the State of New Mexico, $60,663.

Mr. JOHNSTON. Mr. President, the first amendment is that of the distinguished Senator from Maine, dealing with the Dickey-Lincoln project. I ask unanimous consent that it be in order to consider the amendment of the Senator from Maine with respect to the Dickey-Lincoln project at this point, before acting on the other committee amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. COHEN. Yes.

Mr. DOMENICI. I ask unanimous consent that Harold Brayman, Paul Gilman, and Steve Bell be granted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1552

(Purpose: To eliminate funds relating to the Dickey-Lincoln hydroelectric project on the St. John River, Maine)

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from Maine (Mr. COHEN) proposes an unprinted amendment numbered 1552:

On page 15, line 10, strike out "$1,534,703,000" and insert in lieu thereof "$1,533,908,000".

On page 16, line 8, immediately before the period at the end of the line, insert a colon and the following: "*Provided further*, That none of the funds appropriated under this paragraph may be obligated or expended in connection with the proposed Dickey-Lincoln hydroelectric project on the St. John River, Maine".

Mr. COHEN. Mr. President, I intend to ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. There is not a sufficient second at this time.

Mr. JOHNSTON. Will the Senator repeat his request?

Mr. COHEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. COHEN. Let me state to the Chair that, rather than suspend the proceeding at this point, at the conclusion of the debate, I shall call for the yeas and nays.

Mr. President, this amendment returns the Senate to an all too familiar locale—the banks of the St. John River in northern Maine. We are here, once again, to debate the future of the Dickey-Lincoln School hydroelectric project, an issue that has been before this body on many occasions since 1965.

It is hardly arguable that Dickey-Lincoln is in deep trouble in Congress. Our colleagues in the other body have voted no fewer than 14 times since 1965 to terminate the project, including a deauthorization vote earlier this year. For the third year in a row, the House-passed energy and water resource development appropriations bill includes no money for Dickey-Lincoln.

The Senate, which has been a traditional bastion of support for Dickey-Lincoln over the years, narrowly rejected an amendment I offered last July denying funds for the project. In both Houses of Congress, a solid majority of the New England delegation is strongly opposed to construction of the Dickey-Lincoln project.

Opposition to Dickey-Lincoln extends far beyond the Halls of Congress. Former Maine Gov. James B. Longley—who recently passed away—after an extensive review, outlined his strong objections to Dickey-Lincoln in a comprehensive report to President Carter who, incidentally, initially included the project on his now famous—or infamous—"hit-list," which the Senator from Oregon referred to earlier.

In 1977, a blue-ribbon panel of Maine citizens assembled by Governor Longley to study Dickey-Lincoln voted 6 to 4 against construction of the project.

Nearly every major newspaper in the State of Maine has taken an editorial position against Dickey-Lincoln, even in the face of my State's serious energy problems.

The U.S. Fish and Wildlife Service, after assessing the large-scale destruction of terrestrial and aquatic resources that would result from construction of Dickey-Lincoln, has recommended that the project not be built.

The Environmental Protection Agency has continually expressed grave reservations over the project's impact on Maine's environment during the environmental review process on the project.

Last, but certainly not least, an increasing number of Maine and New England citizens, the presumed beneficiaries of Dickey-Lincoln, have said "no" to the project after weighing its environmental, economic, and social costs against its projected power benefits.

Mr. President, several factors are responsible for the erosion of support for Dickey-Lincoln in and out of Congress. In a sentence, they include the cost-effectiveness of the project, New England's rapidly changing energy situation, the massive devastation Dickey-Lincoln would inflict on Maine's landscape, and the increasing attractiveness of alternative sources of power generation for Maine and New England. Each of these factors merits further discussion and consideration.

To date, over $11 million has been spent studying Dickey-Lincoln. Most of these funds have been earmarked for the preparation of a final environmental impact statement, which will be filed within weeks. No further appropriations are required for this effort. The $795,000 which the Appropriations Committee has recommended for Dickey-Lincoln are designated for fish and wildlife mitigation planning, further engineering and site geology work, road relocation surveys, real estate studies, and administrative expenses. Approval of my amendment to strike these funds will in no way jeopardize the filing of the final environmental impact statement.

At October 1979 price levels, the Corps of Engineers estimates that the total price tag for constructing Dickey-Lincoln would be $862.4 million, based on an interest rate of 3¼ percent, and $954.8 million using an interest rate of 7⅛ percent. Significant, neither interest rate accurately reflects present money market conditions, where the Federal long-term cost of borrowing is running in the 10-percent range. I doubt whether even the most ardent supporter of Dickey-Lincoln would argue that the project could pass economic muster at 10 percent. After all, the project barely passed the Corps' economic analysis at 7⅛ percent.

When Congress assigns an absurdly low interest rate to a project such as Dickey-Lincoln in order to produce an artificially favorable benefit-cost ratio, it is engaging in a fiscal sleight of hand which is deceptive at best, and dishonest at worst.

I challenge the supporters of Dickey-Lincoln to tell the Members of the Senate and the American taxpayers where the Federal Government is going to borrow roughly a billion and a half dollars—the true cost of Dickey-Lincoln—at 3¼ percent interest. All of us who are forced to pay double-digit interest rates on home, auto, and personal loans would love to get a piece of the action at such a favorable rate.

If ever a truth-in-lending statement was in order, here is the case.

In determining which power projects are sound investments, the private sector appropriately takes into account the impact inflation will have on the ultimate cost of the facility. The Federal Government, hesitant to acknowledge that inflation will be part of our lives in the future, conveniently ignores this possibility altogether. In essence, we pro-

vide the Army Corps of Engineers with a signed blank check with little or no notion of what the final tab will be. This is the out of sight, out of mind school of economics at work.

In the past year alone, price escalation has driven up the cost of constructing Dickey-Lincoln by $76 million. Should inflation average 7 to 8 percent a year between now and 1990, the earliest date by which Dickey-Lincoln could become operational, the total price tag for the project will almost certainly approach a billion and a half dollars. This is the dollar figure the Senate needs to keep firmly in mind when weighing the fate of Dickey-Lincoln.

I hardly need to remind my colleagues that questionable billion and a half-dollar projects such as Dickey-Lincoln make easy targets for extinction, particularly as the pressure to balance the Federal budget increases, and will continue to increase in the future. In fact, this project has already been rejected in the other body, and I believe it is only a question of time before the Senate follows suit.

Beyond its enormous price tag, Dickey-Lincoln has fallen victim to the energy transformation now taking place in Maine and New England. Long-range forecasts of electrical energy demand have been significantly adjusted downward in recent years, reflecting the conservation efforts of our citizens. The New England region has experienced an average annual growth rate of only 1.4 percent for winter peak, a figure which traditionally rose at an annual rate of 7 percent or higher prior to 1974. In its latest load and capacity report for the 1980–95 period, the New England Power Pool Planning Committee has again revised its winter peak projections downward, this time by a full 1.1 percent below the previous year's forecast.

Mr. President, I ask unanimous consent that excerpts from the New England load and capacity report (1980–95) appear in the RECORD at this point, along with an April 2, 1980 Boston Globe article entitled "New England Utilities Cut Projected Demand."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NEW ENGLAND POWER PLANNING,
West Springfield, Mass., March 14, 1980.
NEPOOL Planning Committee Members.

GENTLEMEN: This "New England Load and Capacity Report—1980–1995" dated April 1, 1980 summarizes forecasts of electrical peak load, capabilities and reserves for the period and the 1979 summer and winter peak information. The summer peak of 14341 MWs occurred on August 2, 1979 and the 1979/80 winter peak of 15311 MWs occurred on December 19, 1979.

The "NEPOOL Model for Long Range Forecasting of Electrical Energy and Demand" has been used to produce this regional forecast, incorporating, for the first time, some load management concepts. Specificially, controlled storage-type electrical space heating and water heating are assumed for the region resulting in about an 800 MW decrease in the otherwise expected 1995 winter peak. The resultant annual compound growth rate for 1979 through 1995 is 2.0 percent for summer peak, 2.7 percent for winter peak and 2.6 percent for energy. This is a decrease in the growth rate of about 1.1 percent in winter peak and energy and 1.7 percent in summer peak from the April 1, 1979 report.

Adequate reserves are indicated for the expected peak loads through 1991/92, assuming all five "NEPOOL Planned" units are in service as scheduled, even though two units do not, as yet, have construction permits. Additional capacity will be required for 1992/93 and beyond.

However, with approximately 60 percent of the existing capacity in oil-fired units, energy deficiencies could occur in the mid 1980s. It is especially critical that all non-oil-fired capacity be built as scheduled and that conservation and loan management efforts be continued to prevent energy deficiencies and to achieve the lowest possible price for electric energy.

Appendix "B" details the schedule of "NEPOOL Planned" units, as well as some of NEPOOL's planned commitments to other than oil-fired generation (such as hydro, wood, refuse and coal).

This report includes the latest data available at the time of publication and is intended as a long-range planning guide to meet the future electrical energy and demand requirements of New England.

Sincrely,

JAMES R. SMITH,
Secretary, NEPOOL Planning Committee.

SUMMARY—SYSTEM CAPABILITIES AND ESTIMATED PEAK LOAD, WINTER 1980/81–1995/96

[Megawatts]

	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96
Total capability,[1] item No. 25	21,977	22,237	22,556	23,718	23,692	25,790	26,723	26,596	26,596	27,166	27,166	27,166	27,122	27,120	27,120	27,120
Total peak load, item No. 26	16,110	16,250	16,590	16,960	17,390	17,870	18,420	18,960	19,500	20,040	20,650	21,280	21,930	22,620	23,370	24,170
Reserve before maintenance	5,867	5,987	5,966	6,758	6,302	7,920	8,303	7,636	7,096	7,126	6,516	5,886	5,192	4,500	3,750	2,950
Reserve before maintenance (percent)	36.4	36.8	36.0	39.8	36.2	44.3	45.1	40.3	36.4	35.6	31.6	27.7	23.7	19.9	16.0	12.2
Scheduled maintenance, item No. 27	242	133	913	133	1,000	500	500	500	500	500	500	500	500	500	500	500
Reserve after maintenance, item No. 28	5,625	5,854	5,053	6,625	5,302	7,420	7,803	7,136	6,596	6,626	6,016	5,386	4,692	4,000	3,250	2,450
Reserve after maintenance (percent), item No. 29	34.9	36.0	30.5	39.1	30.5	41.5	42.4	37.6	33.8	33.1	29.1	25.3	21.4	17.7	13.9	10.1

[1] Additions include only "NEPOOL Planned" and company authorized generation capacity. Refer to p. 60 for Summary of Deactivated Reserve Units.

SUMMARY—GENERATION ADDITIONS, RERATINGS AND RETIREMENTS, WINTER

[Megawatts]

	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96
Existing capability	21,672	21,669	21,588	21,725	21,722	21,696	21,515	21,299	21,172	21,172	21,174	21,174	21,174	21,129	21,128	21,128
Retirements	−17	−14	−19	−5	−6	0	−17	−126	0	0	0	0	−45	0	0	0
Reratings	+5	0	+13	0	−1	0	+1	0	0	2	0	0	0	−1	0	0
Adjustments for purchase and sales	+9	−90	+143	+2	−20	−2	0	−1	0	0	0	0	0	−1	0	0
Mepco/NB purchase change						−200	−200									
Net capability (active)[1]	21,669	21,565	21,725	21,722	21,696	21,494	21,299	21,172	21,172	21,174	21,174	21,174	21,129	21,128	21,128	21,128
Deactivated reserve	296	296	273	273	273	273	252	252	252	252	252	252	252	252	252	252
COMPANY AUTHORIZED SMALL UNITS																
Dwight & Bantam HY (January and June 1980)	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Barker Mill HY (February 1980)	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Chicopee D, Nos 1, 2, 3 (November 1980)	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Lawrence HY Nos. 1, 2 (July 1981)		17	17	17	17	17	17	17	17	17	17	17	17	17	17	17
Garvins HY Nos. 1, 2 (November 1981)		6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Brunswick Topsham HY (February 1982)			12	12	12	12	12	12	12	12	12	12	12	12	12	12
Hadley Falls HY No. 2 (June 1983)				15	15	15	15	15	15	15	15	15	15	15	15	15

	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96
NEPOOL PLANNED UNITS																
Stony Brook CC (November 1981)		341	341	341	341	341	341	341	341	341	341	341	341	341	341	340
Stony Brook GT (November 1982)			170	170	170	170	170	170	170	170	170	170	170	170	170	170
Seabrook No. 1 NP (April 1983)				1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Seabrook No. 2 NP (February 1985)						1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Pilgrim No. 2 NP (December 1985)						1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Millstone No. 3 NP (May 1986)							1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Sears Island No. 1 COL (November 1989)											568	568	568	568	568	568
Total capability[1][2]	21,977	22,237	22,556	23,718	23,692	25,790	26,723	26,596	26,596	27,166	27,166	27,166	27,122	27,120	27,120	27,120

[1] All figures are shown rounded to the nearest whole number, thus summing the rounded capabilities may differ from the indicated totals.

[2] Additions include only "NEPOOL Planned" and company authorized units. Deactivated reserve detail is shown on p. 60.

[From the Boston Globe, Apr. 2, 1980]

N.E. UTILITIES CUT PROJECTED DEMAND

(By Jerry Ackerman)

New England's electric utility companies yesterday said energy conservation efforts and increasing prices have led to a sharp cutback in the growth expected in the region's demand for electricity over the next 15 years.

The utilities' planning arm, the New England Power Pool (NEPOOL) said demand for electricity is now expected to increase only an average of 2.6 percent a year through 1995.

This projection represents a reduction of 40 percent from last year's forecast of 4.3 percent annual growth over the same period. That forecast became outdated in less than a year as 1979 sales of electricity in New England rose by barely 2 percent.

NEPOOL's forecasts, often criticized for their optimism by opponents of new nuclear power plants, are used by member companies and public officials for scheduling new power-plant construction and retirement of obsolete generating equipment.

The projections have been declining annually since 1973, when an oil embargo started driving up prices and encouraging conservation by customers. Before then NEPOOL consistently projected sales growth at 7 percent a year and more.

NEPOOL said in the report it filed yesterday with the Massachusetts Energy Facilities Siting Council that with completion of plants now being built or planned, the region will have excess, or reserve, generating capacity through 1992.

That reserve capacity will reach its peak in 1986–87 at 42.4 percent, or more than double what the power-generating industry considers to be a safe margin, if four nuclear plants now under construction are completed on schedule.

Those four, and their scheduled completion dates, are the Public Service Co. of New Hampshire's two reactors at Seabrook, N.H. (April 1983 and February 1985); Boston Edison Co.'s Pilgrim 2 reactor at Plymouth (December 1985), and Northeast Utilities' Millstone 3 reactor at Waterford, Conn. (May 1986).

Until then, however, NEPOOL planning director James R. Smith said, the region will remain heavily dependent on oil for its electrical generation. "It is especially critical that all non-oil-fired capacity be built as scheduled . . . to prevent energy deficiencies and to achieve the lower possible price . . .," he said.

Smith said the largest adjustment incorporated into the long-term forecast this year is an expectation of a surge in use of controlled storage space heating and water heating equipment.

Widespread use of these devices, which draw electricity intermittently to even out present twice-a-day peak demands for power will reduce the needs for new generating capacity by 800 megawatts, about equal to one large coal-fired or nuclear plant.

Mr. COHEN. Mr. President, while the downward trend in electricity growth rates in New England is very encouraging, it does not obviate the need for additional nonoil-fired baseload capacity to replace existing oil-fired units. It does, however, call into serious question the need for large scale, costly peaking power projects such as Dickey-Lincoln which are designed to operate only a few hours a day.

As the April 1980 New England power pool forecast clearly shows, insufficient electrical generating capacity is not, I repeat not, New England's problem. If peak demand should continue to grow at the same rate that it has since 1974, the reserve margin in the NEPOOL system could rise to near 50 percent in 1990, or more than double what the power-generating industry considers a safe margin. That is an enormous amount of excess capacity which, of course, has to be paid for by electric power consumers.

The issue that New England must concern itself with is that approximately 60 percent of existing capacity is in oil-fired units. This condition has not only led to electrical costs which are 37 percent higher than the national average, but has placed the region at a serious disadvantage in competing with other parts of the country for industrial development and economic growth.

To some, it may appear that this point alone is persuasive evidence that Dickey-Lincoln should be built. However, a closer look at oil consumption patterns in the New England utility sector shows clearly why Dickey-Lincoln is an inappropriate response to the problem.

According to data compiled by the Department of Energy, in 1979, New England utilities burned nearly 73 million barrels of oil to produce electricity. Approximately two-thirds of this total was burned by utilities in one State, Massachusetts.

Over 99 percent of the 73 million barrel total was used by utilities to fuel baseload and intermediate generating units. Less than 1 percent of the total was used to fuel peaking units. Stated differently, New England utilities used an average of less than 1,900 barrels of oil a day to meet peak energy demands, or a minute fraction of the oil used daily in the region.

Mr. President, the message could not be clearer. The essence of the energy challenge confronting New England utilities is to replace existing oil-fired baseload units with nonoil fired baseload capacity. And that is precisely what is reflected in the present building plans of investor-owned utilities in the region. A peaking power project such as Dickey-Lincoln, which would displace only 2.3 million barrels of oil annually, is clearly not geared to the present needs of Maine and the rest of New England. This point has been emphasized over and over in recent discussions I have conducted with power planners in my State.

I do not know who the Corps of Engineers and the Department of Energy are talking to, but they have obviously failed to consult with those parties who have the responsibility for assessing the power needs of New England. Had they done so, they could only conclude that Dickey-Lincoln is unnecessary.

Mr. President, the Department of Energy's most recent power marketing feasibility study for Dickey-Lincoln pointedly demonstrates that the peaking capacity provided by the project is not an urgent requirement in New England. Let me take just a moment to discuss the report's findings.

According to DOE, Dickey-Lincoln would be able to produce a total of 100 megawatts of intermediate power and 800 megawatts of peaking power. The 100 megawatts of intermediate power and 100 megawatts of peaking power would be reserved for sale in the State of Maine. The balance of 700 megawatts of peaking power would be marketed in the other New England States.

By DOE's own admission, the so-called "preference customers" throughout New England, to whom Dickey-Lincoln power would be sold, could not even absorb one-half the power made available by the project when it is initially scheduled to come online in 1990. Even assuming generous growth rates, DOE concluded that Maine preference customers would not be able to fully utilize the intermediate power produced by Dickey-Lincoln until 1996 at the earliest.

That still leaves the Department of Energy with the task of disposing of the

100 megawatts of peaking power reserved for Maine for which there is no market in the foreseeable future. Of the remaining 700 megawatts of peaking power available to the other New England States, DOE found that only 350 megawatts could be absorbed by preference customers in 1990.

As my colleagues know, Federal law requires that the total costs of power production and transmission, including annual operation and maintenance expenses, be repaid with interest over 50 years. If there is no market for as much as one-half of the power Dickey-Lincoln would generate, this obviously raises some serious questions.

Perhaps the proponents of the project could enlighten the Senate as to how the taxpayers of this country are going to recover their billion and a half dollar investment in Dickey-Lincoln if large quantities of power go unsold, which is certainly a possibility, at least in the State of Maine. It would also be interesting to learn how Dickey-Lincoln power is going to be used in a system which may have a 50-percent reserve margin in 1990.

Is the sharp cutback in electricity demand that New England has experienced since 1974 an aberration? Is the rate of growth for peak demand likely to rise to pre-1974 levels in the years ahead?

Most power planners in New England do not think so.

New England Electric System (NEES), one of the largest utilities in New England, has unveiled an innovative and ambitious plan which assumes an average annual peak load growth rate of only 1.9 percent between now and 1995. At the heart of the plan is a major conservation and load management program which is expected to reduce the need for additional generating capacity some 300 megawatts.

Commenting on the NEES plan, the chairman of the Maine Public Utilities Commission wrote to me as follows:

> We are aware that the New England electric system, operating in Massachusetts, New Hampshire, Vermont and Rhode Island has set a long-term peak load growth goal at 1.9 per cent as stated in their NEESPLAN. The Commission has made no determination as to the reasonableness or appropriateness of NEESPLAN type goals for Maine, although I can say that I personally believe the plan has considerable merit.

Let me quote from a letter I received in March from the executive secretary of the Division of Public Utility Control for the State of Connecticut:

> Meeting projected peaking power needs of the residents of Connecticut does not appear to be a major problem at this time and we expect that Northeast Utilities, Connecticut's largest electric utility, will cotinue to operate at an average 18 per cent excess capacity through the year 2000.

Finally, the assistant to the president of Bangor Hydro-electric offered the following observation in a recent letter to me: "Peaking (power) is not New England's problem. New England needs non-oil base loaded (not peaking) capacity to reduce its dependence on oil."

Mr. President, one of the most significant energy bills approved by the Congress in recent years is the Public Utility Regulatory Policies Act of 1978. This act requires State utility regulatory agencies to consider a number of alternative rate structures and load management techniques, many of which are being employed successfully by electric utilities throughout the Nation. By altering the pattern of electric use, these techniques can improve the efficiency of existing electric energy systems, reduce reserve requirements for generation and transmission capacity, improve reliability of service, and even lower the cost of power to consumers.

The attractiveness of conservation increases with each hike in oil prices. Implementation of a strong conservation and load management effort, while still in its infancy in this Nation, is already beginning to have a significant effect in reducing the need for large-scale peaking power projects such as Dickey-Lincoln. It represents a philosophical departure from traditional utility practices, but it can pay big dividends to both utilities and their customers. It should be given a chance to work before we proceed with large-scale projects such as Dickey-Lincoln.

Mr. President, I ask unanimous consent that a recent National Journal article entitled "Utilities Turn to Conservation—With a Little Help From the Feds" be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. EXON). Without objection, it is so ordered.

(See exhibit 1.)

Mr. COHEN. Mr. President, while replacing existing oil-fired generation in New England with nonoil fired capacity is going to take time and money, I can report many encouraging developments on this front.

Coal is returning to the New England energy scene, and is expected to make a significant contribution to reduced oil use in the utility sector in the years immediately ahead. An exhaustive study completed by the New England Congressional Caucus in August of 1978 concluded that converting to coal could save up to 31 million barrels of oil annually.

Wood, New England's "green gold," has been reborn as an energy source, and now provides heat to one-third of all households in the region. Estimates are that as much as 4 percent of New England's energy demand is met by wood for an oil displacement savings of between 21 and 24 million barrels of oil per year.

A recent study conducted by the New England River Basins Commission concluded that of the nearly 11,000 existing dams in the region, approximately 1,750 could provide a practical contribution to New England's power needs and to the reduction of the region's dependence on foreign oil. In the State of Maine alone, 465 sites were identified as having feasible hydropower potential, including several sites in the Dickey-Lincoln area.

An estimated 6,000 homes in New England now depend in whole or in part on solar energy for heating and cooling. Federal tax incentives and low-interest loans can only accelerate solar energy use in New England in the future.

A recent study completed by the energy research group for the New England Electric System indicates that there is a potential of 400 megawatts of generating capacity from solid waste in New England based on refuse availability.

The potential output of projected resource recovery plants in New England, if used only to fuel electric generating plants, could cut present residual fuel imports by 22 percent. For a fraction of the cost of Dickey-Lincoln, New England could generate enough electricity from solid wastes by the year 2000 to displace over 2 million barrels of oil annually, or over three times as much oil as Dickey-Lincoln would displace. The capacity to cogenerate steam and the additional service performed by reducing community disposal and landfill dilemmas does indeed promise an attractive economic potential for solid waste electricity generation over the next 20 years.

The dream of harnessing the great tides in the Cobscook Bay region of Maine as a means of generating electrical energy remains very much alive today. Officials of the Army Corps of Engineers are now preparing an updated assessment of the economic and environmental feasibility of a tidal project in Cobscook Bay, and will report their findings to the Congress later this year. On another front, the Department of Energy has funded a feasibility study of a smaller tidal power project in the Half Moon Cove area in eastern Maine.

Finally, earlier this summer, the Department of Energy agreed to support feasibility studies of several promising synthetic fuels projects in New England. Included in the awards are study funds for a combined-cycle, coal gasification facility with 1,000 megawatts electrical generating capacity proposed for Fall River, Mass., and a 480 megawatt combined-cycle medium Btu coal gasification facility at Sears Island, Maine. These extremely promising projects, along with other innovative energy proposals now under active consideration, offer the possibility of further accelerating New England's shift away from insecure and expensive foreign oil supplies.

Mr. President, it should be abundantly clear that New England's energy future is not inextricably linked to construction of Dickey-Lincoln as proponents of the project suggest. We have a number of alternatives which are cheaper, more economically efficient, and less environmentally destructive. Most importantly, these alternatives can produce the type of power New England needs—baseload power.

Before commenting on the environmental consequences of Dickey-Lincoln, I would like to take a moment to clarify certain misunderstandings which have arisen in connection with the project. Two points in particular deserve attention: Who will benefit from construction of the project and will Dickey-Lincoln serve as a magnet attracting new industry to economically depressed areas of Maine?

The answer to the first question lies in the Federal requirement that publicly-owned utilities and cooperatives receive preference in the sale of power from Government built facilities. There are presently 79 so-called "preference agencies" in New England, including nine in the State of Maine.

I ask unanimous consent to have printed in the RECORD at this point a State-by-State listing of the preference agencies in New England.

There being no objection, the material was ordered to be printed in the RECORD as follows:

PREFERENCE AGENCIES IN THE NEW ENGLAND STATES

MAINE

Houlton, Kennebunk, Lubec, Madison, Van Buren, Eastern Maine EC, Fox Islands EC, Swan's Island EC, Union River EC.

NEW HAMPSHIRE

Ashland, Littleton, New Hampton, Wolfeboro, Woodsville.

New Hampshire EC.

VERMONT

Barton, Burlington, Enosburg Falls, Hardwick, Hyde Park, Jacksonville, Johnson, Ludlow, Lyndonville, Morrisville, Northfield, Orleans, Readsboro, Stowe, Swanton.

Vermont EC, Washington EC.

MASSACHUSETTS

Ashburnham, Belmont, Boylston, Braintree, Chester, Chicopee, Concord, Danvers, Georgetown, Groton, Groveland, Hingham, Holden, Holyoke, Hudson, Hull, Ispwich, Littleton.

Mansfield, Marblehead, Merrimac, Middleboro, Middleton, North Attleboro, Norwood, Paxton, Peabody, Princeton, Reading, Rowley, Russell, Shrewsbury, South Hadley, Sterling, Taunton, Templeton, Wakefield, Wellesley, West Boylston, Westfield.

RHODE ISLAND

Pascoag Fire District.

CONNECTICUT

Groton, Jewett City, Norwalk, Norwich, South Norwalk, Wallingford.

Mr. COHEN. Mr. President, at the present time, private utilities in Maine provide 97 percent of the electricity which is consumed annually in the State. Preference customer loads total only about 3 percent. Because of the Federal requirement that I referred to earlier, 97 percent of my State's electrical consumers are not likely to receive any tangible benefits from Dickey-Lincoln. Their power costs will be unaffected by Dickey-Lincoln, even if they happen to live next door to the project but are served by a private utility, as are most consumers in the project area. Only the small percentage of Maine electrical consumers served by preference agencies are likely to experience any savings in their power costs over the 50-year repayment period of the project.

The situation does not appear to be much different in the five remaining New England States. Rhode Island has only 1 preference customer, Connecticut and New Hampshire each have only 6, and Vermont has 17. While there are 40 preference customers in Massachusetts, they account for only a small percentage of the electrical power consumed in the Commonwealth.

The inflated claims relative to Dickey-Lincoln's job creating potential are dismissed in the corps' own environmental impact statement. Let me quote from the report:

> A few energy intensive industries are usually attracted by the availability of low cost power. However, peaking power is not particularly suited to fulfilling this need. To the extent that baseload power is better utilized through load diversification, peaking power may be helpful in keeping existing industry and encouraging new light industry.

As I acknowledged earlier, 100 megawatts of intermediate power from Lincoln School will be reserved for sale in Maine. This power, however, is not expected to yield the significant cost differential necessary to attract industry.

That construction of the Dickey-Lincoln project would result in unparallelled environmental destruction in the St. John River basin—the last great near wilderness ecosystem in the northeast United States—is obvious to anyone familiar with the corps' environmental impact statement.

I ask unanimous consent that an excerpt from the revised draft environmental impact statement on Dickey-Lincoln detailing the adverse effects of the project which cannot be avoided be included in the RECORD at the conclusion of my remarks

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. COHEN. Mr. President, let me briefly highlight the corps' findings for my colleagues.

Dickey-Lincoln would destroy 278 miles of the St. John River, the last great free-flowing river in the Northeast United States. The project would also flood 30 ponds and lakes, and destroy acres of valuable wetlands and deer yards.

Construction of the project would severely erode the forest resource base of Maine. Nearly 90,000 acres of timberland would be flooded, an additional 124,210 acres would be taken from production for wildlife mitigation purposes, and over 200,000 acres of harvestable timber would be isolated from Maine by the reservoir behind Dickey Dam. The proposed mitigation lands are a source of employment for approximately 150 personnel at the present time—jobs which could be permanently lost if Dickey-Lincoln is built.

The extension transmission network that would be necessary to carry Dickey-Lincoln power from the far reaches of northern Maine to markets hundreds of miles to the south will cut a wide swath through Maine, New Hampshire, and Vermont. A ditch-type environment will replace the beautiful fields and countryside which now characterizes this area of New England.

An estimated 161 families and 16 commercial facilities would have to be relocated as a result of the project. Unavoidable economic, physical, psychological, and social hardships would inevitably occur. At a public hearing in Fort Kent, which is near the Dickey-Lincoln site, a vast majority of witnesses expressed strong opposition to the project.

Inundation caused by the project would result in the total destruction of over 88,000 acres of terrestrial habitat and its associated aquatic ecosystem. Involved in the loss of this habitat is all current use of this area by all forms of life, including man.

Were Dickey-Lincoln capable of generating truly significant amounts of electrical energy now provided by oil, the environmental and societal tradeoffs might be more palatable. But it will not.

Were Dickey-Lincoln the most cost-effective way of meeting the future energy needs of New England consumers, the environmental and societal costs might be acceptable. But it is not.

Were Dickey-Lincoln to yield widespread economic benefits throughout Maine and New England, the environmental and energy equation might be balanced differently. But it will not.

Were Dickey-Lincoln an affordable and appropriate response to New England's energy problems, today's debate might not be necessary. But it is not.

Mr. President, I was a first year law student when Dickey-Lincoln was initially conceived. The project was authorized at a time in which Federal spending had still not topped the $100-billion mark. Eight different Congresses have debated Dickey-Lincoln at length, and over $11 million has been spent studying the project.

Clearly, it is time to write the final chapter in the long and tortuous history of Dickey-Lincoln. We have studied the project from every possible angle, and it just does not measure up.

The St. John River is among Maine's most valuable energy and environmental assets. I am not unalterably opposed to harnessing the hydroelectric potential of this great river as long as it can be done in a responsible manner.

But I will not stand idly by and allow the Federal Government to preempt this resource to build a project which is not structured to my State's power needs.

I cannot urge my colleagues too strongly to approve my amendment and terminate the marathon debate on Dickey-Lincoln. Let us put the project to rest, once and for all, and end the divisiveness which has impeded efforts to plan an imaginative, responsible, and affordable energy future for Maine and New England.

Mr. President, I ask unanimous consent that a letter from Governor Longley addressed to President Carter be printed in the RECORD at the conclusion of my remarks along with several editorial pieces expressing their strong opposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. COHEN. Mr. President, I thank my colleagues for their consideration, and I urge the adoption of the amendment.

EXHIBIT 1

UTILITIES TURN TO CONSERVATION—WITH A LITTLE HELP FROM THE FEDS

(By Neal R. Peirce and Carol Steinbach)

Like many other utilities, the New England Electric System has discovered energy conservation.

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Rejecting the traditional strategy of building more power plants to meet the growing demands of its customers, it is embarking on a course that combines techniques for cutting energy use with reliance on nontraditional sources of energy production.

It has patented a remote-control system for turning large commercial air conditioners on and off during hot summer afternoons, thus reducing electrical consumption at a time when demand is greatest. In the winter, it is exploring using electricity at night, when demand is lowest, to produce heat that can be stored in ceramic bricks or water and released the next day.

It is not only converting its oil-burning plants to coal but also beginning to use hydroelectric plants, solar and even wind-driven generators. The planned payoffs: reducing the utility's reliance on foreign oil from 73 to 10 percent of its fuel needs and trimming its capital costs from $6.6 billion to $5.1 billion, thus cutting the U.S. balance of payments deficit by $5 billion and saving its own customers $1.2 billion during the next 15 years.

Public utilities such as New England Electric, and the state commissions that regulate them, have hardly had a reputation over the years as innovators of energy policy. But in the past two years, many of them, prodded both by new economic realities and by the federal government, have begun following the same trail as New England Electric.

In legislation enacted in 1978 and 1980, Congress ordered utilities and utility commissions, which traditionally had promoted energy consumption, to help their customers conserve electricity and to find new and less expensive ways to generate power. And with the arrival last year of Secretary Charles W. Duncan Jr. and deputy secretary John C. Sawhill, the Energy Department has stressed conservation as never before.

For some states, the high cost of generating electricity prompted conservation even before the federal government got into the act. "The days of cheap energy are gone forever," said Lee Calloway, director of conservation services for Pacific Gas & Electric Co. in San Francisco. "Now it's cheaper to save energy than to buy or generate it tomorrow."

California has been a leader among states that have moved on their own to substitute energy conservation for construction of more and bigger power plants. "If our projections come out the same for building a new power plant or for putting attic insulation in 100,000 homes, we're going with the attic insulation," said John Bryson, president of the California Public Utilities Commission.

Like Bryson, many utility company officials and state utility commissioners are finding that it's not only cheaper but also less risky to resort to conservation than to rely on power plants—particularly nuclear plants—that can take years to build and may have to be shut down for safety reasons. Conservation also means less pollution, and it lets utility companies avoid the political controversies that usually swirl around power plant construction.

"In 15 years, the utility industry will be dramatically different from today," said Richard Cotton, special counsel to Sawhill at the Energy Department. "The change will go gradually, utility by utility. More building was the absolute byword of the first three-quarters of this century, but utilities are not plunging unthinkingly into building any more. Over the next two decades, they're going to be asking a whole series of new questions."

ECONOMIC PRESSURES

Those new questions are already being raised now that the good old days when electricity cost next to nothing to produce are gone.

"For years, every time we added a new power plant, the average cost of electricity came down," Calloway said. "The more electricity people used, the cheaper it got."

But during the 1970s, escalating fuel costs, high interest rates, inflation and increasing construction costs associated with stricter federal and state environmental and safety regulations halted nearly a century of unfettered economic inducements to utility growth. Today, expensive new power plants are undertaken at enormous financial risk. Generating capacity that cost $150 a kilowatt to build only a decade ago now costs 10 times that amount or more.

In addition, demand for new power, which grew steadily at about 7 per cent annually for many years, has now dropped about in half in the United States—and by considerably more in some areas of the country.

"The whole underlying economics have changed so dramatically that utilities are in flux," said Bryson.

Because of the time required by state utility commissions to approve rate increases, some utilities have had to borrow funds to build new generating capacity at interest rates higher than the rate of return that the commissions permit them to earn. Under those conditions, "no utility in its right mind had better invest in new capacity because you're diluting your stockholders' equity," said Clark Bullard, former director of the Energy Department's conservation and solar policy office. "If this practice continues, the resource utilities may find scarcest is people to buy their stock."

The transition to conservation has proved difficult for many utility executives who remain unconvinced that the build-more philosophy is out of date. A California Public Utilities Commission official said many executives question whether investors will accept a shift "from big plants and big capital investments to an industry with dinky little things on people's roofs and insulation in their walls."

The utility industry still has some of "the most troglodytic, traditional utility managers to deal with," added a House subcommittee staff member.

Most state commissions have also been slow to push conservation programs or order utilities to revise traditional pricing practices. As a result, the over-all record of utility conservation remains spotty.

The three largest utilities in the conservation-minded Pacific Northwest, for example, have weatherized only 5 per cent of the 276,000 electrically heated homes in their service districts since 1978, at a total investment by the utilities of about $19 million. By comparison, according to a report by Roger Cavanaugh in *Amicus Journal*, public utilities will pay $20 million per month as a result of construction slippages predicted for 1980 for two nuclear facilities in Washington.

The value of conservation varies significantly from state to state and even among utilities within a state. Factors include the state's growth rate, the climate, the season of peak energy use, the kinds of fuel the utility burns, the percentage of homes and businesses using electricity or gas, the price of producing or purchasing added power and the amount of the utility's reserve electrical generating capacity.

Conservation is likely to be especially attractive in growing regions where capacity is running out and utilities soon must purchase more high-priced fuels or construct more power plants. But even here, programs that are cost-effective in one state may be of lesser value to another.

Attic insulation is very useful in Portland, Ore., where electrical demand is greatest during the cold winter months. But attic insulation is not as effective in keeping a house cool, and so for utilities that are busiest during the summer—and the majority probably are—programs to cycle air conditioners on and off are more valuable. Utilities with large reserve generating capacity and slow growth in demand—Consolidated Edison Co. of New York Inc., for instance—may not find any form of conservation compelling, at least in the short run.

But even utilities in states with high energy reserves may find weatherization and other conservation measures desirable under some circumstances. By conserving, utilities can delay the time when worn plants have to be replaced with expensive new ones. And, said Bryson, "you can't name one state without some reliance on oil and gas and where some plants won't have to be phased out" to comply with the gradual but mandated shift from oil and gas to coal required by the 1978 Power Plant and Industrial Fuel Use Act.

FEDERAL PRESSURES

That act is one of five parts of the omnibus 1978 National Energy Act, which signaled an end to the federal government's traditional hands-off approach to electrical utility regulation.

In addition to mandating conversion to coal, the 1978 act requires the states to prepare residential conservation plans (the National Energy Conservation Policy Act), provides tax credits for investments in energy conservation (the Energy Tax Act) and requires state regulatory commissions to move toward rate structures that encourage conservation (the Public Utility Regulatory Policies Act).

In the conservation policy act, Congress gave the states until June of this year to draw up energy conservation plans for their regulated utilities. At a minimum, the utilities had to provide consumers with information about conservation, audit homes for energy efficiency and agree, as a "project manager," to arrange for installing and financing improvements chosen by customers.

The law specifically prohibited utilities from selling or installing the improvements themselves. Utilities might make loans for some consumer conservation measures, but only up to $300. The only exception to the financing ban was for utilities such as the Tennessee Valley Authority (TVA) and Oregon's Pacific Power & Light Co. that were already operating financing programs or had announced plans for them.

The law also forbade utilities from paying for their conservation programs by including their costs in their rate base—the technique by which they finance new power plants and other capital investments.

These prohibitions grew out of several concerns. Some Members of Congress viewed the utilities as poor innovators and opposed allowing them too much involvement in the conservation business. Banking groups were upset at the prospect of utilities poaching on their territory by becoming lenders to small depositors. Environmental and solar groups expressed fear that utilities were embracing conservation solely out of a desire to profit from the new market.

The most serious objection was that if they were allowed to finance and install conservation equipment and alternative energy devices, the utilities might use their status as monopolies to engage in anticompetitive practices and freeze out smaller independent businesses.

But by late 1979, most of the opposition to greater utility company involvement had dissipated. Fears associated with utility financing, many conservation advocates felt, had been overblown.

"Whether we like utilities or not, they reach just about every building in America and provide the best potential delivery system for conservation measures that is presently available," TVA chairman S. David Freeman told the House Interstate and Foreign Commerce Subcommittee on Energy and Power in October.

Other witnesses before that committee confirmed that in the absence of one-stop shopping, homeowners did not bother to invest in energy conservation. Existing federal and state weatherization incentives had induced less than 6 percent of the population to install conservation materials, said John H. Gibbons, director of the congressional Office of Technology Assessment.

Most homeowners who were taking advantage of the new tax credits, in fact, had high incomes. Middle-income homeowners who realized the value of conservation did not have the means to take advantage. "All the price signals in the world are not going to help somebody making $12,000 a year who doesn't have any capital to respond," Freeman said.

Energy Department officials testified that there was probably $100 billion in residential weatherization and other conservation improvements waiting to be done. That was enough, they said, to save yearly the equivalent of two oil fields the size of Alaska's North Slope by 1990.

In this year's synthetic fuels law, Congress included provisions withdrawing the ban on utility company financing of conservation measures and relaxing the prohibition on utility company installation. Conservation advocates such as Bryson, who had complained that the financing ban threatened to hamstring California's plans for utility financing of homeowner weatherization and solar equipment, felt they had scored a major victory.

Under the synfuels act, utilities can supply and install conservation equipment, but only by working through independent contractors. The act directs the Federal Trade Commission to work with the Energy Department to prevent anti-competitive practices.

The new law also removes the 1978 provision that prohibited companies from including in their rate base the cost of the utilities' weatherization programs. This means that utilities can invest in conservation on an equal footing with new power plants—"a real conceptual leap," according to Calloway, that allows utilities to earn profits and stockholders to earn dividends on conservation investments.

In addition, the synfuels act also expands the energy audit requirements of the 1978 conservation program to include, beginning in 1982, small commercial buildings and apartments, and it allows utilities to charge up to $15 for audits.

RATE REFORMS

Perhaps the most significant piece of the 1978 omnibus energy legislation will prove to be the Public Utility Regulatory Policies Act, which requires the states to hold hearings on a variety of utility rate and regulatory reforms and decide by November 1981 whether to impose them on their utilities. Although the reforms are not mandated, a few states have already begun to discard pricing policies that have impeded conservation.

Among the new pricing strategies is the "lifeline" system, which the California Public Utilities Commission adopted as long ago as 1976. Lifeline pricing reverses traditional utility pricing by offering the cheapest rates not to the heaviest users of power but rather to those that economize in their use of energy. Customers whose energy consumption does not exceed estimates of basic need (hence the term "lifeline") pay as little as half as much per kilowatt as those who use more.

"The system has an equity factor by protecting those least able to pay for these very sharp price increases generated by foreign oil," Bryson said, "and it provides a conservation incentive." The commission has asked utilities to print a notice in block letters on bills: "Consumption above lifeline is twice as costly."

According to a survey of state conservation policies by Common Cause last December, 16 states had prohibited or restricted the use of declining rates for additional increments of electrical consumption. "Declining block rates" were devised when utilities could produce additional electricity more cheaply than their basic production. Declining block rates reward large power consumers, and six states—Idaho, Michigan, New York, Oregon, Texas and Wisconsin—have banned them across the board. TVA has tentatively joined in the ban.

Four states—California, Colorado, Oregon and Wisconsin—have instituted "time of day" pricing for at least their large industrial and commercial customers. Under this reform, users pay higher rates during the hours (generally between noon and 6 p.m.) when the greatest demand is placed on the utility's generating capacity. Because utilities must have enough capacity to meet peak demand, this reform is aimed at reducing the need for additional power plants. At least 22 other states are experimenting with time-of-day pricing, and TVA plans shortly to phase it in.

Helping to pioneer this reform was the Wisconsin Public Service Commission, which imposed it on Wisconsin Power & Light Co. in 1976. When the utility reported the following year that 20 megawatts of electrical demand (1.6 per cent of total peak demand) had been shifted from peak to off-peak hours, the commission ordered all other utilities to impose time-of-day pricing.

Because of the success of experiments such as this, some states are considering whether to require their utilities to charge higher rates during peak seasons.

The Common Cause survey showed that 31 states had instituted "load management" programs that permit utilities to control electrical demand during peak hours. Generally, utilities offer customers discount rates for allowing them to use remote-control radio signals to turn off their air conditioners, water heaters and other appliances for brief cycles during peak load hours.

Pacific Gas & Electric plans to install such devices on 47,000 air conditioners—8 per cent of its service area—and 8,000 electric hot water heaters within the next two years in hopes of saving an estimated 50 megawatts of peak power. It is also offering swimming pool owners a free pool chemical test kit if they will let the utility shut off pool heaters during peak times.

In determining the rates their utilities will be allowed to charge, public utility commissions have historically averaged in all the costs of generating power. Known as "average cost pricing," this approach made sense when each new unit of power cost less than the last. Today, however, average cost pricing disguises the true cost of supplying additional power and encourages consumers to demand more energy than they would if they had to meet the full costs of the added generating capacity.

So utility commissions in California, New York and Oregon, according to the Common Cause survey, are experimenting with "marginal cost pricing," which is designed to reflect the true cost of supplying each additional unit of power. Five other states are examining this technique.

The 1978 regulatory policies act requires the states to consider adopting lifeline rates, time-of-day pricing, seasonal rates, marginal cost pricing, bans on declining block structures, load management techniques and several other rate and regulatory reforms. In addition, it mandates that utilities pay a higher price for power supplied through "cogeneration," in which waste heat, steam and gas resulting from industrial and commercial processes are fed into generating turbines to produce electricity. The process also works in reverse, with the waste steam left over from electrical generation put to use a second time in adjacent or nearby commercial or industrial applications.

The concept has been employed for decades: co-generation supplies up to a third of the power in Sweden and significant percentages in other European nations. It was once used more widely in the United States, but since the 1930s few U.S. industries have used waste heat for power, primarily because electricity from utilities was so cheap. Dow Chemical Co. and some oil refineries, paper mills and lumber mills still co-generate their own power. Today, with rising power costs, co-generation has the potential to be industry's "Alaskan oil strike," write Robert Stobaugh and Daniel Yergin of Harvard University in Energy Future (Random House, 1979).

Traditionally, utilities have paid extremely low prices for electricity supplied by co-generators, even while charging a co-generating industry high rates for necessary backup power. The 1978 law requires utilities to pay co-generators the "avoided cost" for their electricity—the price the utilities would otherwise have to spend to produce or purchase the power. In areas where co-generators displace high-priced fuels or obviate the need for expensive new generating capacity, the avoided cost could be significant.

The law also exempts co-generators and small power producers from state and federal regulation, which had inhibited many industries.

PIONEERS

Even before the federal government began promoting conservation, several utilities and state regulatory commissions were hard at work. Among them: the commissions in California, Minnesota, New York, Oregon, Rhode Island and Wisconsin and such utilities as New England Electric, Pacific Gas & Electric, Pacific Power & Light and TVA.

TVA rivals California for the lead as the national innovator in utility and residential conservation. Its conservation programs include a broad interest-free weatherization plan for homes that resulted, as of May, in 200,000 audits and 93,000 loans. Eventually, Freeman hopes to insulate 400,000 or more homes at a total cost of $200 million, making it unnecessary to build a nuclear power plant for $1.5 billion. An independent study of the first 27,000 homes weatherized under the TVA program showed an energy saving of about 20 percent.

TVA also provides homeowners with loans at 8.5 percent to install heat pumps, which it says can cut energy used for heating by a third.

TVA's weatherization activities also include its 290,000 commercial and industrial customers—consumers of two-thirds of its power. TVA offers them free energy audits and loans up to $100,000 at an interest rate 1 percentage point above the cost of money to TVA.

"We have 160 distributors of TVA power, old-line power people who have been in the business for 45 years," Freeman said. "[They] tell me almost without exception that our conservation program is the most popular thing we have done in decades."

Two utilities in the Northeast, New England Electric and General Public Utilities Corp., represent "the first significant migration eastward" of conservation by investor-owned utilities, according to Cotton.

On March 28, 1980—a year to the day after the celebrated accident at its Three Mile Island nuclear plant—General Public Utilities asked the Pennsylvania and New Jersey utility commissions to approve an inch-thick conservation and load management plan that the utility hopes will save its customers about $1 billion dollars over the next decade. With part of its nuclear capacity inoperate and its reputation tarnished, the utility wants to reduce the growth of electrical con-

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sumption from the current 3 per cent to 1.5 per cent annually, using time-of-day pricing, solar technology, free energy audits, load management and expanded co-generation. The program, directed especially at the commercial sector, has a budget of nearly $600 million over the next decade. General Public Utilities is the first utility to seek federal funds to help defray program costs; the Energy Department is considering its $500,000 loan request.

New England Electric, the largest in its part of the country, has explicitly rejected the traditional pattern of building more power plants to meet unlimited growth, said executive vice president Bruce McCarthy.

McCarthy said state utility commissions will have to reorient rate structures to provide greater rates of return for conservation-minded companies. "We're saving investment dollars and reducing sales, which has the effect of reducing revenues," he said. "In the long range, we know that will pay off and save our customers a lot of money. But in the short range, you have to keep a company healthy."

With the exception of TVA utilities in the South have not pushed conservation as strongly as elsewhere—partly because that part of the country enjoys the greatest advantages from relatively inexpensive natural gas. But Arkansas is currently contemplating a utility-financed program of interest-free weatherization loans to homeowners similar to Oregon's and TVA's.

The North Carolina Utilities Commission has become apparently the first to establish a quasi-public, nonprofit corporation to cut power plant construction by encouraging conservation and solar alternatives. Called the Alternative Energy Corp., it will be financed by ratepayers and is expected to generate conservation investments of about $2 million in its first year, according to a report in *Electrical Week*.

Finally, the Georgia Power Co. may team up with the Columbia Nitrogen Corp. to build a co-generation facility that would use garbage as part of its fuel—another possible first in the nation.

A NEW LOOK

Only in the past year or so has the Energy Department vigorously joined the effort to promote conservation by utilities. "It's been slow in coming, to be sure," said Cotton. "It's really a dramatic change."

Sawhill has designated Cotton to coordinate a department-wide review of current programs and possible federal initiatives to encourage utility conservation. He has asked the department's program offices to examine barriers, financial and otherwise, to conservation. The end product will be a policy paper embodying suggestions from the review and from meetings Sawhill has held with utility executives, consumer groups and state regulatory commissioners.

The Energy Department has asked Congress for $24.6 million to conduct a demonstration program in the utility conservation field. It may propose a bill to eliminate federal tax barriers inhibiting investments by some utilities in co-generation.

It may also ask to expand two programs of its Economic Regulatory Administration, one that provides $10 million to $20 million annually to demonstrate conservation-oriented rate reforms and one that dispatches department officials to testify in support of rate reforms before state commissions.

Cotton said the department is not contemplating legislation that would impose new conservation requirements on utilities. But he did not rule it out in the future.

"Over the next year or two, it will be up to the states," he said. "It will be up to the utilities, at least at this point, without the club of federal legislation. It will be a time of testing, to see how much the utilities will do on their own and how much they will do in cooperation with state commissions. Depending upon whether that is more or less, you may find another round of federal legislation."

CONSERVATION OF ELECTRICITY—IT ALL BEGAN IN CALIFORNIA

SAN FRANCISCO.—When Pacific Gas & Electric Co. (PG&E), the nation's largest residential utility, announced it was delaying construction of a $5 billion coal plant near here for up to two years, it offered none of the usual reasons—siting delays, environmental protests and cost overruns. Instead, it said conservation had temporarily made the new plant unnecessary.

That was good news to the California Public Utilities Commission, which is setting the national standard for utility conservation in the 1980s much as California did in air pollution control in the 1960s and 1970s.

"Every state has some conservation programs, but no other has approached energy conservation as seriously as has California," wrote Mary Ellen Leary last year in *California Journal*. "When the national energy program was signed into law by President Carter [in 1978], its principal recommendations read like a report card on the California [commission]."

Just within the past year, the commission and the utilities it regulates have inaugurated:

Free energy audits and zero-interest loans for residential weatherization—steps that could reduce homeowners' gas and electricity demands by 25 per cent;

Significantly higher payments by utilities to industrial co-generators and small power producers that produce excess energy to feed into the power grid;

A broad utility program to equip more than 250,000 California homes with solar water heating by 1983—the largest solar demonstration ever undertaken.

All three programs have their roots in a computer model of the Environmental Defense Fund Inc. that purported to show two years ago that aggressive conservation policies, more co-generation of electricity and expanded solar programs could meet PG&E's power needs at less cost than new generating facilities. When utility industry and state regulatory consultants confirmed the validity of the Environmental Defense Fund's model, the Public Utilities Commission ordered the programs. (The environmental group is now preparing similar cost analyses for Michigan and other states.)

The commission is stocked with conservation-minded appointees of Gov. Edmund G. (Jerry) Brown Jr. under the direction of 36-year-old John Bryson, who earned a reputation for innovation while chairman of the state's Water Resources Control Board. Before that, he helped found the Natural Resources Defense Council Inc.

"Conservation is so terrifically attractive vis-a-vis other energy sources that it becomes our No. 1 priority," said Bryson. "Conservation isn't free, but in a dynamic system in which there's going to be growth, it's clearly the least costly way of adding supply."

Like virtually all state public utility commissions, California's has been buffeted by utilities seeking rate increases—$2 billion in one year—and angry consumers demanding relief from rising utility bills. "Utilities are struggling with immense added costs which don't add to their profits but add enormously to their grief," said Joseph Bodovitz, the commission's executive director. "We're besieged with utilities wanting to be made whole."

California adopted its conservation-first approach in 1975, when the commission informed utilities that it intended "to make vigor, imagination and effectiveness of a utility's conservation efforts a key question in rate proceedings." That admonition, according to Lee Calloway, director of conservation services for Pacific Gas & Electric, "got our attention."

As the state's population has grown by about 1.5 per cent annually and its economy has flourished, demand for electricity has rocketed. But electric utility reserves, particularly in northern California, are well below those that most utilities like to maintain as cushions against blackouts or unexpected plant failures. To construct electric generating facilities can cost as much as $2,000 per kilowatt.

One option that appears shut off is nuclear. Virtually no California utilities are contemplating nuclear plants—beyond some already on the drawing board—because of exorbitant costs, strong anti-nuclear public sentiment and time-consuming regulatory procedures. One finished plant, the earthquake-troubled Diablo Canyon facility, could become a $1.5 billion white elephant, never allowed to operate because of environmental concerns.

When the commission ordered utilities to develop a low-interest plan for financing homeowner conservation improvements, Pacific Gas & Electric borrowed the zero-interest weatherization financing plan from Oregon's Pacific Power & Light Co. PG&E is testing the plan in 10 counties in San Joaquin Valley at a cost to the utility of $10 million. It expects to expand the program next year to its entire system, encompassing 9.1 million people in 45 counties.

Responding to requests, utility officials audit customer's homes and measure the potential of more than 50 energy-saving measures: insulation, storm windows and doors, automatically timed thermostats, weather stripping and caulking, more efficient lighting systems, insulation of ducts and water heaters. The utility offers interest-free financing for all improvements calculated to cost less than the electricity they save in up to 20 years. Because federal law prohibits it from doing the work itself, it refers consumers to approved contractors and offers to arrange to have bids solicited and the work done.

When the work has been completed, a utility technician certifies that the materials and workmanship meet approved standards. The utility pays the contractor directly—the average cost is expected to be about $1,500. Consumers can pay the utility in monthly payments added to their utility bills or in a lump sum when the house is sold. Pacific Gas & Electric will recoup its entire investment—an estimated $150 million annually—by increasing its rates enough to cover the interest costs.

Critics charge that the utility has unfairly raised all customers' rates to finance weatherization loans for a relative few. That argument doesn't hold up, according to utility officials. "Even if your rates do go up a little to help pay for insulation in other people's houses, they are going up less than if you have to pay for a new power plant to serve other people's houses," said Bodovitz.

In another move, California's four major investor-owned utilities began submitting plans this spring for a mammoth solar water heating demonstration ordered by the commission. PG&E proposed putting solar panels on the homes of nearly 100,000 customers within three years, making loans to homeowners at low or no interest. Southern California Gas Co. proposed zero-interest financing of solar water heating for more than 77,000 of its customers.

Rate reforms ordered by the commission may reward consumers who conserve. They include low rates for economizing households, time-of-day pricing for commercial customers, bans on some declining block rates, marginal cost pricing for certain customers and load management techniques. "We're putting our money where our mouth is by providing people with the financial incentive to reduce their energy consumption," said Gray Davis, a top aide to Brown. "The energy efficient are being subsidized by the conspicuous consumers of energy."

Last December, 15 months before a similar federal order was set to take effect, the commission ordered utilities to pay the same price to industry for cogenerated electricity that they would have to pay for electricity generated by their own facilities. The commission recently penalized Pacific Gas & Electric $7 million in a rate proceeding for not moving aggressively enough on cogeneration. The utility can recoup the fine if it obtains commitments for new cogeneration facilities capable of producing 2,000 megawatts of power.

Some California utilities have also moved on their own to institute conservation programs. This spring, Pacific Gas & Electric announced a pilot program to award three California cities $10,000 for every percentage point they reduce energy consumption during peak hours this summer and next compared to 1978. The maximum each can receive is $100,000 per year. A committee of local residents will determine how the money is to be spent.

Another Pacific Gas & Electric innovation, begun in 1978, is the nation's first weatherization training center, in Stockton. Partially supported with federal and state funds, the center trains mostly minority citizens in auditing and installing energy conservation equipment in homes. The 500 graduates are being dispatched to weatherize the homes of California's low-income, elderly and handicapped residents.

EXHIBIT 2

EXCERPTED FROM REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT ON DICKEY-LINCOLN SCHOOL LAKES, SEPTEMBER 1978

5.00 ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

5.01 General.—Adverse impacts which would arise from project implementation fall into two general categories. These categories are those impacts which arise from inundation and those which arise from the construction and operation of the proposed facilities. Some of the adverse effects can be mitigated to some extent but mitigation in itself does not eliminate the effect.

5.02 Adverse Effects Caused By Inundation.—Inundation caused by project implementation would cause the total destruction of 88,000+ acres of terrestrial habitat and its associated aquatic ecosystem. Involved in the loss of this habitat is all current use of this area by all forms of life now indigenous to it. This includes man.

Although the known gravel and sand deposits are of low quality, they are still used in a sporadic manner. Inundation would cover the known sites and render them unusable. The reservoir system would act as a trap for the transportation of these materials downstream thus slowing the replenishment of any deposits located further downstream.

Impoundment would raise the local groundwater levels. This is expected to create localized ponding by altering drainage patterns and creation of new springs. The use of water at shallow depths downstream of Dickey Reservoir, such as dug wells and septic systems, is expected to be adversely impacted.

Climatically, the creation of a reservoir of this magnitude would be expected to create local fogging conditions during the late summer. This condition would be for early morning hours and is not expected to be any different than other sizeable lakes in northern Maine.

A major adverse impact that would arise from project implementation involves the relocation of 156 households and 12 commercial facilities for the reservior systems. These families would be required to move at Government expense into facilities which are anticipated to be much different than those to which they are accustomed. These homes may be more expensive to maintain and may create economic hardships. The reality of the loss of their old homes, land and habits is expected to create a sense of real loss for their old homes. The proposed transmission line could cause the relocation of up to six households depending upon the exact alignment of the route.

The impacts of inundation on the timber management and industry are of prime concern to the region. Project implementation would disrupt current management plans. Disruption would come in several forms such as the loss of approximately 75 miles of existing access roads now in use for hauling cut timber, the shifting of emphasis in harvesting and a replanning process to account for the lost timber. Opportunity costs due to timber lost include lost wages, taxes, and other income. The lost jobs in the timber industry are estimated as being comparable to a small to medium size sawmill. There is anticipated a general increase in the cost of transportation of timber should the project be implemented. The timber management companies consider the project area as being prime land for timber production. This consideration is borne out by the data. Loss of this prime land would impact future intensive management schemes. The costs to manage the remaining land would be higher due to more difficult terrain and poor accessibility. The loss of this prime land would create a more costly program of management in order to obtain the same productivity. At present, the loss of annual net growth would be between 25,825 and 34,525 cords.

Taxes accrued to the townships and state on lands which would be acquired would be partially lost. Partial reimbursement as outlined in Section 4.08.2.4.1.2 would mitigate some of the loss.

White water canoeing would be eliminated and replaced by flatwater boating. The project would inundate the prime stretch of river for canoeing. The freeflowing upper St. John River would be eliminated as a unique and irreplaceable recreation resource. Both above and below the project area, the numbers and magnitude of the rapids are small. Approximately 2300 user days of canoeing were recorded for 1975. This usage would be lost.

Inundation would cause the loss of some 267 miles of freeflowing streams and river within the Dickey impoundment. These waterways provide habitat for a native brook trout fishery. In addition to the loss of flowing waters, the project would flood 30 ponds and lakes and numerable beaver ponds. All of these waterways provide a source of habitat which would be adversely impacted.

Wildlife populations residing within the reservoir area would be adversely affected in varying degrees. Those forms which are relatively non-mobile would be lost in their entirety. These include burrowing forms as well as tree dwellers. Approximately 80,455 acres of terrestrial habitat would be lost and an additional 6030 acres would be modified by the transmission line. Inundation would destroy 36,893 acres of deer wintering habitat with the resulting loss of approximately 50 percent of the deer herd and those species dependent upon it for survival. Other species in the area would be affected to varying degrees. Fauna ending up on islands would stress the habitat and as a result decline in number due to a lowering of the carrying capacity.

Cultural resources would be adversely affected and salvage of the known sites would be required to mitigate a total loss of this resource.

Rare and unique plants would lose their habitat. The majority of these forms are found along the interface of the land and water. One species of plant life which would be adversely affected would be the Furbish lousewort. This plant is currently known only from the St. John River Basin. Inundation would destroy the majority of the known populations. More important is the loss of the unique zone along this river where the majority of these plants reside. There is documentation in the popular literature that claims this ecotone to be unsurpassed for its variety and uniqueness.

5.03 Adverse Effects Caused by Construction and Operation.—Impacts of sedimentation and nutrient loading attributable to the dams and reservoirs on downstream waters are expected during the construction phase. These impacts would be controlled to lessen their severity. Sediments would reduce the productivity and cause the loss of bottom dwellers not tolerant to inputs of sediments. Nutrient enrichment in small amounts can have positive effects, but usually the impacts are negative. An unavoidable short-term increase in runoff and erosion would result from vegetation removal and surface compaction during construction of transmission line facilities. Soil would be permanently displaced. Subsoil disturbance would occur at tower locations and where footing excavations and access road cuts and fills are required. This would result in the disruption of soil profiles. The rate of erosion would decrease as revegetation progresses. Adverse impacts on hydrological resources include increased surface runoff and erosion, increased turbidity and sedimentation, the possible introduction of small amounts of herbicides, and possible channel alteration by vehicular traffic. Slight increases in water temperature could have secondary impacts on other ecological resources where vegetation has been removed from stream and pond banks. Most of the impacts would occur during construction and would disappear shortly after the construction is completed.

Operational releases would alter the hydrologic regimes of the downstream reaches. This change would increase the amount of shoreline inundated and adversely affect the existing shoreline vegetation. This impact would be realized for a distance downstream to Fort Kent, Maine.

Although no historic properties would experience direct impacts from the construction or operation of the transmission line and despite the intensive survey which would be made, the increased accessibility to some areas would increase pothunting and vandalism. Disturbance or destruction of undisclosed archaeological sites is possible due to construction activities, and such impacts are not totally avoidable.

Debris would be a continual problem although to a lesser extent after the first few years. The adverse effects would be in the form of navigation hazards to boating and to the aesthetic appeal of the reservoir. Disposal of the debris would create local and short term adverse impacts, but if the disposal is done correctly, these impacts would be negligible.

During construction some unavoidable adverse impacts on air quality would be caused by dust from disturbed soils, combustion byproducts from the burning of unmerchantable wood products, vehicle and equipment exhaust emissions and fumes and odors from various operations. These impacts are expected to be localized and short-lived. Small amounts of ozone would be introduced into the atmosphere during line operation.

During construction, wildlife populations would be subjected to severe stress from many different points. Clearing operations and man's presence would drive the existing populations out to other habitat. This would cause an overcrowding condition in that habitat. The results of this overcrowding would be overbrowsing to the detriment of the habitat, mortality of the populations due to starvation, increased predation and

interspecies competition for the available habitat.

Existing vegetation would be disturbed or removed along the entire transmission line route. The primary impacts that would result from this loss of vegetation include the alteration of growth patterns and forms, disruption of successionary stages, changes in community composition both within and outside the rights-of-way, and possible disturbance of rare or sensitive plants. Secondary impacts from snowmobile and other recreational vehicle use of rights-of-way and access roads are largely unavoidable. The amount of habitat would be reduced for some forest species, directly reducing their numbers and, in turn, their overall productivity. Increased disturbance of certain species during construction would result in significant stress and the possible temporary abandonment of preferred habitat. Disturbance would continue after construction, owing to human activity along new access roads.

Impacts on aquatic wildlife from changes in stream temperature primarily due to transmission line development and maintenance would be long term and potentially quite adverse. The effect of herbicides introduced into the food chain will depend on the type used and the methods used to control vegetation. Aquatic wildlife could experience intense, though short-term and localized, impacts from increased turbidity, sedimentation and disturbance of streambeds.

Lake ice during the winter on the reservoirs would present another stress on those organisms moving about during the winter. Animals venturing out onto the ice would be subjected to falling, standing, predation and drowning.

Adverse microclimatic changes may occur along the rights-of-way where forest vegetation has been altered. Removal of this vegetation would cause minor, long-term microclimatic changes in air temperature, solar radiation and wind velocities. Some windthrow around the edges of the reservoirs is expected and unavoidable.

The agricultural and forest industries would be adversely impacted by demand for skilled workers. The resulting job gaps would be filled by less skilled unemployed.

A major adverse impact on current timber landowners would be large capital gains which would be taxed. There is no shelter available for these large windfalls of unwanted monies nor are there lands available for reinvestment. Landowners owning small parcels of land would be similarly affected but they would be assisted in purchasing new lands under the Uniform Relocation and Assistance and Real Property Acquisition Policy Act.

Loss of economic production on cultivated lands would occur at tower sites along the transmission line. The long-term, unavoidable loss of economic production on forest lands within the rights-of-way would be more severe.

Flooded reservoir areas and rights-of-way clearing would cause 81,946 acres of timber land to be removed from production resulting in a net loss of annual growth of timber of 25,825 to 34,525 cords. Opportunity costs due to foregone timber lost would be significantly below the previously reported $216 to $322 million range over the 100-year economic life of the project. The required downward revision of the potential opportunity cost is based on an analysis of the impact of the spruce budworm on the proposed project area timber stands.

Adverse impacts on human communities during construction are associated with an influx of construction workers to the area. There are several adverse impacts related to construction which include: construction noise, minimal housing available, value systems clash, overburden of municipal services, recreational facilities, and highway use.

Social problems of alcoholism, crime, and drug abuse are expected to increase slightly during the construction phase. This increase is a function of population density and is expected to subside with the end of construction.

The proposed plan would restrict land use within the right-of-way to types compatible with high voltage transmission lines. Land use at substation and tower sites would also preempt current and future proposed land use.

Local noise levels would increase during construction. Though unavoidable, these impacts are expected to be intermittent and of short duration. Line and substation operation would result in minor, long-term increases in local noise levels. Overall, such noise levels are considered annoyances with no adverse health effects.

The aesthetic appeal of the river would be adversely impacted. Construction scars and a change in the overall appearance of the valley would be an adverse effect to those that currently recreate and reside in the valley. Construction scars would be minimal after project completion but nevertheless they would have an adverse impact on the aesthetics. Summer drawdown of the power pool would expose 1500 acres of shoreline. Drawdown would also adversely impact the plants and animals of the nearshore regions of the reservoir. This impact and the winter ice scour precludes the successful development of shoreline vegetation.

The transmission lines would be built through areas looked upon as having "wilderness character." Many recreational activities in these areas along the proposed route focus on natural visual amenities. Thus, views of the lines would conflict with these activities and detract from the recreation experience. The line would be visible from several scenic highways, a small portion of the Allagash Wilderness Waterway, and from several other rivers which are candidates for inclusion in the National Wild and Scenic River System. Towers, lines and rights-of-way, together with the visual consequences of certain necessary construction practices, would result in unavoidable visual impacts. Varying degrees of impact are expected on the quality of the visual landscape, the visual attractiveness of individual sites, and on recreation, residential, and transportation-related viewers. The introduction of visual elements out of character with historic properties could possibly alter their settings.

EXHIBIT 3

OFFICE OF THE GOVERNOR,
Augusta, Maine, October 26, 1978.

Re Dickey-Lincoln Water Project.

President JIMMY CARTER,
White House,
Washington, D.C.

DEAR PRESIDENT CARTER: First of all, I want you and the staff at the White House to know that I am deeply appreciative for the input, suggestions and counsel provided me as Governor of Maine with respect to the Dickey-Lincoln and related type water projects. As a matter of fact, very early in my deliberations on this proposed project, which many feel could either be the best thing to happen to Maine or the worst thing to happen to Maine for present and future generations of Maine people, I was provided a copy of a handwritten memo by Governor Jimmy Carter dated October 1, 1973 as it relates to the Spewrell Bluff Dam, by some of our mutual friends who felt your and my approach in matters of consequence and government are similar; as is the problem you faced and I am now facing with respect to the Dickey-Lincoln Project.

More than coincidentally, I have referred to and read your memo a number of times and now have it before me and there is also a similarity to the extent of our mutual experiences. I say this because your very opening sentence in your memo states to wit: "My decision on whether Spewrell Bluff Dam should be built is one of the most difficult I have had to make with the exception of state government reorganization which has been the most time-consuming." With the exception of the fact that I have spent much more time on the unfortunate Indian Land Claim than state government reorganization, my experience has unfortunately been the same as your own experience as Governor of Georgia.

I too "have personally read all the written reports and transcripts of oral testimony made available to me" as you indicated in your memo. I too have consulted with many people and delegations and I too have read and analyzed thousands of letters and telegrams and petitions and resolutions. I too have traversed the river and area by foot, by vehicle, canoe, as well as by helicopter. My family, too, has used the privacy of our homes to receive as well as discuss differing views.

While your memo also indicates "there is no way to win politically because of the large number of people who insistently and intensely either favor or oppose construction of this dam," I too have tried to divorce politics from my determination and perhaps as an Independent Governor not concerned with or seeking re-election or election to any office, I have had some relief from pressure groups and what you also refer to as "special interests" to the extent that I have probably been spared some of the pressure that was applied to you in your decision.

On that note, as you are undoubtedly aware, there is considerable speculation that the White House is currently directly or indirectly playing "political games" on this question by virtue of the fact they have "impounded" or at least "embargoed" the Final Environmental Impact Statement which was promised as late or as early as August 17th by the Corps of Engineers. However, I want to be extremely fair to the Corps and specifically to Colonel Chandler who I think has been outstanding and a credit to the United States Army, the White House and to the people of America.

I say this because you are well aware and one or more mutual friends have told you and I, that the press frequently reports the Corps of Engineers "plays games" or has been accused in the past on other projects of having total disregard for the land or the water or the environment, and that it wants to build projects anywhere or everywhere to justify its existence and its budget and too frequently proceeds on the basis that "the end justifies the means." From my standpoint, this type of accusation and criticism is totally unfair as it relates to Colonel Chandler and the Corps of Engineers regarding the Dickey-Lincoln Project. I have nothing but commendation as well as pride and appreciation for the fair method and manner with which Colonel Chandler has treated the citizens of Maine and this Governor during the course of his studies and hearings and his responsiveness on the Dickey-Lincoln Project.

Therefore, while I do not want to lend any credence to criticism of you or the White House, I would say that if politic games are being played in withholding the FEIS until after the present election on November 7th or later, or until there is a new Congressional Delegation and/or Governor of Maine. . . . I have already received sufficient information relative to the FEIS so that I feel I am able to make a final decision and my recommendation to you as President. In other words, even though I am advised there is some unhappiness on the part of your staff with

the Corps of Engineers or the FEIS on a Section 404 problem or sufficient detail concerning wet lands or fisheries and wildlife, I am advised that they are inconsequential and de minimus as it relates to the total project and the overwhelming facts and factors that we have already studied.

As a matter of fact, based on your previous expression on water projects and budgetary concerns for waste and bureaucracy and your excellent anti-inflationary challenge, I cannot believe you would follow any different approach as Governor of Maine or as Governor of Georgia than I am forwarding today.

Also, more than coincidentally, I share completely and unequivocally the additional statements contained in your memorandum of October 1, 1973 on the Georgia project, which convey my strong and unequivocal feelings on the State of Maine project, to wit: "As Governor, as an outdoorsman, as a businessman interested in the optimum economic development of Georgia (Maine), and as one who perhaps will make the final decision on this project, I have tried to assess fairly all factors involved." Very candidly, I feel this applies equally to the State of Maine—unless you now as President of the United States apply a different standard to an independent Governor of Maine than you expected and obviously received from a Republican President out of respect to you as the Democratic Governor of Georgia in 1973.

Another excellent sentiment and quote from your very judicious memorandum demonstrates once again there is a very strong similarity of resolution as well as in approach between one Jimmy Carter and one Jim Longley to the extent you also said:

"In my mind there is no doubt that I have made the correct recommendation or decision."

As a former Governor, now the President of the United States, you have also indicated and I will now reiterate that "it is impossible to analyze in a brief statement all the complicated and constantly changing issues" . . . but you will find enclosed herewith an in-depth analysis of the major points of consideration and my conclusion based on the best expertise provided me and my own analysis and research that . . .

"The proposed Dickey-Lincoln water project, as presently constituted, would be grossly unfair to the present and future generations of Maine people and a waste of Federal and State of Maine taxpayer dollars . . . and I, therefore, as Governor of Maine, do in fact express my opposition to this project and respectfully request that you as President support this recommendation."

More than coincidentally, I felt that it would also be inflationary as well as a slap-in-the-face and a breach of faith to the voters of Maine for this Governor, or any Governor of Maine for that matter, to do other than strongly oppose this project as presently contemplated based on the facts and the overwhelming expression of the voters of Maine in opposition to a public power question in 1973. Furthermore, my recommendation that you deny this project or avoid further waste of taxpayer dollars on this specific project is based on the following additional specifics:

(1) The voters of Maine in 1973 overwhelmingly voted against public power and at the very least, a Governor should not approve or even condone or support any effort toward state or federal public power projects in Maine, in denial of the due process as demonstrated at the ballot box by the voters of Maine in 1973, without allowing the voters of Maine to vote on any public power project, federal or state.

(2) Separate and apart from the public power issue, I oppose this project because despite very obvious advantages of federal dollars and/or job benefits, the adverse impacts of "the bust cycle" and the destruction, or at the very least, negative disruption of a beautiful river plus the land and natural resources combined with a negative social economic impart on present and future generations of Maine people far outweigh any present short range economic advantages.

(3) Despite repeated attempts and requests of supporters of the project and despite diligent research and analysis by independent and state government expertise, I have been provided with very little evidence, almost totally speculative, that there is any substantial economic or environmental benefit for the people of Maine once the project is completed. On the other hand, I have given great consideration to an excellent point made by our mutual good friend, Senator Ed Muskie, to the effect that "once the project is completed and water starts flowing, it is very unlikely the unit cost(s) will ever increase."

(4) Despite extensive research and development of cost benefit data as it relates to present and future energy considerations, there is lack of convincing evidence that this is the best present form of energy development for the State of Maine and the region or the nation as it relates to either long range or short range energy advantage(s) and/or even a comparative advantage as it relates to the potential for one or more alternatives in the form of improved conservation, nuclear, tidal, wood, solar, wind, methanol, hydro, including present small dam capability here in Maine, let alone exciting developments my research has uncovered in the areas of improved technological and scientific developments in refinery capability, offshore both surface as well as ocean floor development, predicated on the submarine expertise and experience with which you are familiar, which could actually lead to ocean floor refineries and/or communities involved with energy as well as aquaculture development.

Yes, we have done both our homework and the time spent in research and in studying this problem is at least the equal of what you indicated directly and I have heard indirectly you invested in behalf of the people of Georgia. I want you to know that I have done this not only in behalf of the people of Maine, but by virtue of the changing energy picture since your decision in 1973. I have also very carefully considered the problem and the potential benefit of Dickey-Lincoln as it relates to the region and the nation as well, by virtue of the emergence of the energy program even though I am not certain I agree with your extreme position that it is "the moral equivalent of war."

However, to the extent your statement was a challenge to America, then I think Americans—including this Governor—have tried to be responsive and as Dr. Schlesinger well knows, this Governor was among the first—if not the first—to initially embrace your energy objectives, subject to minor refinements, and I was also most responsive to the calls from your staff, including Dr. Schlesinger in recent months, in seeking the support of the Maine Congressional Delegation and others, for your program. So, I am as delighted as you must be to see that the Congress has finally passed energy legislation.

For your further information and background, I am also sharing with you additional specifics with respect to the research and thinking, and factors we carefully studied and analyzed in the following areas:

(1) Thousands of Maine citizens have expressed themselves through numerous forums, including the National Environmental Protection Act (NEPA) process on this project. Additionally, I commissioned a blue-ribbon panel of Maine citizens as a project review committee to consider the project from the widest possible perspective. The State Department of Conservation, the State Office of Energy Resources and the State Development Office have each conducted independent reviews. Finally, I have spoken to hundreds of Maine citizens and individuals from all over our Country with specific expertise relating to this project; and personally journeyed to the project site on a number of occasions to assure a first-hand knowledge of the location and geography before I reached the conclusions and decisions and recommendation as already stated.

(2) Mr. President, the decisions I have reached are in consonance with Maine's Energy Plan which provides for developments only when economically sound and environmentally feasible. The economics of this project are questionable at best. Numerous benefit-cost studies have been done, each with a different conclusion. The myriad of possibilities and the overwhelming uncertainties of the 100-year projections precludes definitive economic analysis and thus leaves one the opportunity to pick his own expert with his figures to support almost any position. Even the most ardent proponents of the Dickey-Lincoln project agree that the environmental impact of Maine's land resources are a major consideration. One land use consultant has estimated that the area directly affected would be at least 500,000 acres.

(3) I have come to the conclusion that the St. John River may well be essential to our economic health and energy requirements. However, I am not satisfied that we have in the Dickey-Lincoln Project the optimum use of the River's resources. Approximately 33 percent of any power benefit derived for Maine from Dickey-Lincoln would not come from the project per se, but from downstream Canadian generation at the discretion of the Canadians at a cost to be set at some future date. Additionally, Dickey-Lincoln is designed primarily as a peaking-power project. A Maine-oriented base-load development on the St. John would be much more important to Maine's long-term economic health than would the present proposal. I am advised that very little if any industrial development is influenced by peaking power as contrasted by base load power.

(4) We have embarked on serious considerations of several alternate energy sources for Maine. We are anxious to pursue several viable energy opportunities to reduce our State's dependence on oil energy. We are convinced that proper integration of the many diverse sources available to us can provide a solution that will improve the economy immeasurably without the cost or risk of Dickey-Lincoln. Conservation alone can save the equivalent of 11,600,000 barrels of fuel by 1985. Conservation should not be viewed as going without or reducing our standard of living or economic growth, but as an attack on wasted energy. Proper building insulation alone would be a major investment; however, the results are semi-permanent and significant.

A recent study indicates that 56 percent of Maine homes now use wood in some form for heating. One of Maine's major industries recently chose to build a wood fuel-fired facility over oil or a hydro-electric plant. The use of wood for fuel is moving swiftly, and surely now is the time to consider the implications of 100 percent use of Maine's timber growth. These and the integrated and proper use of Maine's existing dam sites, the proper utilization of coal, solar, wind, nuclear and co-generation are urgent considerations.

Every day the Maine Yankee Plant at Wiscasset simply dissipates heat equivalent to 960,000 gallons of No. 2 fuel into the river.

These alternate sources of energy require an injection of research and implementation effort because they contribute positively to our Balance of Payments and inflation problems and reduce our dependence on OPEC.

(5) One of the major impacts of this project, and one that has not received sufficient attention is the devastating impact of the transmission system which would cut a swath through some of Maine's most wild and scenic areas and across free-flowing rivers for 206 miles with a 150 foot right-of-way and require 4,080 acres.

In addition to the information which we have supplied in this letter, we have also prepared supplemental data and attachments which will be provided you.

My request, Mr. President, is that you will appreciate the integrity of my decision, to oppose this project for my reasons as already stated to wit:

"The proposed Dickey-Lincoln water project, as presently constituted, would be grossly unfair to the present and future generations of Maine people and a waste of Federal and State of Maine taxpayer dollars . . . And, I therefore, as governor of Maine, do in fact express my opposition to this project and respectfully request that you as President support this recommendation."

Very truly yours,

JAMES B. LONGLEY.

[From the Bridgton News, May 17, 1979]

DICKEY-LINCOLN

Senator Bill Cohen has introduced a bill in the U.S. Senate to terminate the Dickey-Lincoln hydroelectric project in northern Maine. He said he made this move in order to insure a full debate of the issue in the Senate.

Sen. Cohen has been a long-time opponent of the project and sees no justification for spending additional money on it. Already Congress has poured $10 million into the project.

He feels the economic benefits do not justify spending billions of dollars for construction of Dickey-Lincoln when the return would be only 67 cents in power benefits for every dollar invested. He feels the environmental damage the project would cause does not justify the project.

We agree with Sen. Cohen that it's high time to turn attention away from Dickey-Lincoln and concentrate on developing additional energy alternatives that are more feasible. To mention a few—Tidal power now being investigated in Passamaquoddy Bay, energy potential of wood and existing small dams throughout Maine, purchasing excess power from Canada, a possible run-of-the-river hydro project on the St. John River.

If Dickey-Lincoln project goes forward, the loss to the taxpayer would be 33 cents on every dollar invested. At a time when Congress is budget-conscious, surely a loss such as this will be weighed heavily when Dickey-Lincoln is debated.

[From the Bangor Daily News, July 17, 1980]

DEAUTHORIZE DICKEY-LINCOLN

Sen. George Mitchell, having assumed the office and mantle of Secretary of State Edmund Muskie, is trying valiantly and honestly to dispose of one of the most onerous burdens that came with the job: Dickey-Lincoln.

Once an issue of legitimate debate and serious contention, the hydroelectric project has become a forlorn matter—even in light of the continuing energy dilemma its proponents in the labor movement and construction industry cannot muster a convincing argument in its behalf.

Lugging this slippery pork-barrel albatross around the Senate was a formidable challenge for Sen. Muskie. Even with the advantages of seniority, his positon on the budget committee and the opportunities for backroom quid pro quos afforded him, the Dickey thing must have been a strain.

George Mitchell is an intelligent and savvy individual. He has watched his friend and mentor struggle with and for Dickey these many years—without success. He has seen what it did for William Hathaway.

It did not take Sen. Mitchell long to size the situation up and decide to dispose of this carcass with as little ceremony as possible.

If he appears to be acting hastily or precipitously, he isn't. He will be in the thick of a re-election fight in little more than a year. He would probably prefer to do battle on his own terms—choose his own weapons and issues.

The compromise offered by Mitchell, and which has been curiously seconded by Robert Gardiner and the Natural Resources Council, is for abandonment of the Dickey portion of the project and construction only at the Lincoln School site.

Since the NRC has done a creditable job of remaining, or at least appearing, nonpartisan, it can only be assumed that Gardiner and his group have tired of the fight. But with Muskie out of the way and Mitchell clearly not enamoured of the project, it remains something of a mystery why that group would choose to negotiate an end to one of the most serious environmental challenges in the state's history when they had the decision almost won.

Both incumbent Republican congressmen in the state, David Emery and Olympia Snowe, have long been on record opposing the dams, and their two opponents this November, Democrats Hal Pachios and Harold Silverman, appear determined to have this thing die a partisan issue.

Which is too bad, really. Both Silverman and Pachios would benefit from allowing this thing to expire without further tainting either party.

Why not compromise?

Very simply, the Dickey-Lincoln plan was a poor one, and should be scrapped in its entirety before efforts are made to salvage portions of it.

If Lincoln School is the appropriate site for a dam to generate power for Aroostook County, and it appears to have this potential, it should be examined on its merits—not prejudiced by its affiliation with the total Dickey-Lincoln package.

It is easy to forget that most of the country and the majority of the New England delegation are against Dickey-Lincoln's construction. A scaled-down version, sans the power lines and impoundments, might fare better if it were clearly divorced from the original project.

In addition, there is also the realistic fear that the federal government and the Army Corps of Engineers might not get the Dickey message clearly if it is diverted onto the Lincoln School dam issue too soon.

The Dickey-Lincoln project should be done in, formally, clearly and unambiguously so that there can be no confusion later as to what, exactly, was intended.

[From the Bangor Daily News, Oct. 29, 1979]

THE FINAL SOLUTION

Last week was a difficult one for proponents of Dickey-Lincoln. The report on alternative hydroelectric sites from Congressman David Emery's office and the tough stand of Maine officials on the issue of salvaging fish and wildlife from the area that would be rendered uninhabitable by the project dramatically made a key point in the controversy:

The mammoth Dickey-Lincoln scheme is assailable and extremely vulnerable as a concept; but its most serious flaws are where it should be strongest, in the area of fundamentals.

Dickey-Lincoln is a proposal for generating electricity that will cost $1.2 billion or more and take 88,000 acres out of service for wildlife habitat, recreation and timber production.

It is a significant one-time investment by the American taxpayer and a tremendous perpetual sacrifice by the people of the state.

A basic question that begged an answer was this: Is there a better, more efficient and less harmful way that a significant portion of northern Maine's latent hydro potential can be tapped?

According to Emery's office and a 177-page study produced by his three student interns from Worcester Polytechnic Institute, six smaller dams could be built in Aroostook County that would have a combined generating capacity equal to 72 percent of the power Maine would be allocated from Dickey-Lincoln.

The important finding by Emery's group is that this substantial generating capacity can be accomplished for one-third the investment in Dickey-Lincoln and by inflicting less than one-fifth the damage to the forested area that would be sustained under the larger project.

Maine still makes sacrifices, the taxpayer will still be committed to an expensive hydro program, but both the state and the taxpayer will realize a return in hydro energy more commensurate with what they are giving up.

On the issue of mitigation, the official act of softening the blow to wildlife, habitat and recreation, the Corps of Engineers is already trying to mitigate the impact this will have on the total Dickey budget by trimming the recommendations made by other federal agencies.

Following its own appraisal of Dickey's impact, the Interior Department's Fish and Wildlife Service proposed that the federal government purchase 160,000 acres for wildlife management and construct a $6.5 million fish hatchery.

The engineers want to cut this back to a 100,000-acre purchase and no hatchery, a decision that most state officials, even those toeing the official administration line on the dam, find unacceptable.

The Corps may be right on one point. No hatchery will ever replace the 258 miles of running water, habitat for native species, that will be destroyed by the dam.

But the piece de resistance in the Corps' mitigation plan is its final solution for the 3,000 deer which would be casualties of the dam: a special season.

The logic of this proposal is that deer in the impoundment area could be relentlessly hunted for two or three years before flooding occurs. Cloven-hoofed critters thus exterminated will not die when Dickey's gates are finally closed.

We should all be so thoughtfully mitigated.

[From the Lewiston Evening Journal, July 20, 1979]

DICKEY-LINCOLN VOTE

Once again the U.S. Senate has approved additional funding for the Dickey-Lincoln hydroelectric project. But the vote against deleting $710,000 for further study of the proposal was close. The count stood 51 against deletion and 46 in favor. Of at least equal significance was the 6–5 margin by which New England senators approved of cutting the funds.

The Journal article Wednesday by Nancy Grape disclosed a dramatic shift in the Senate's position from the last major debate in 1975. Then only 13 senators favored dropping the project.

Maine's senators split. Senior senator Edmund S. Muskie continued his solid voting record to pursue Dickey-Lincoln, while Senator William S. Cohen voted for deletion. Their votes were predictable.

Now the issue will go to a joint conference committee with the House, which approved

an end to funding. While the Senate position has prevailed in previous years due to the one-sided support given the project, this year's close vote in the upper chamber may signal at least a temporary end to the plan.

We believe there are serious questions about the viability of Dickey-Lincoln. The cost of building the two dams has escalated enormously since the idea surfaced. This reduces the benefits to cost ratio. It may be some other plan for the St. John River would make more sense. Certainly a breathing period to consider alternatives seems logical.

In earlier years the Journal backed Dickey-Lincoln. At that time the benefits to cost ratio was appraised at approximately 2–1 on a cost under $300 million. Now the project would run at least $800 million, and probably closer to a billion dollars.

Also warranting consideration is the fact Maine's neighbor to the north, Quebec Province, has a surplus of power. It may prove much less expensive to import Canadian power than to undertake the construction of a hydroelectric complex that would flood over a substantial acreage of timber and occasion other environmental damage.

[From the Journal Tribune (Biddeford), Feb. 5, 1980]

CUT DICKEY FUNDS

When Congress looks for ways to cut the $616 billion federal budget submitted last week by President Carter it should lock its collective eyes on the $800,000 ear-marked for a feasibility study of the proposed Dickey-Lincoln hydroelectric dam project in northern Maine.

The first thing many of the members might have to stop and consider is why is another feasibility study needed now, in 1980, for a project that was first dreamed up in the New Deal days of President Franklin Delano Roosevelt? If it was such a good idea, wouldn't the opposition have been dissuaded by now?

Ironically, the Dickey-Lincoln proposal surfaced in the 1930s as a supplement to a scheme to harness the tides in Maine's Passamaquoddy Bay. The tidal drop would turn turbines in the dams and generate electricity.

Planners soon decided Passamaquoddy was impractical, because the generation of electricity, dependent as it was on the tides, was too irregular, looked upstream at the idea of damming up the St. John River, a vast wilderness area which has been preserved almost in its natural state.

World War II put off the proposals and then conservationist groups in Maine organized to stop the dam proposals. The Natural Resources Council came into being to halt the construction of Dickey-Lincoln and of another project, the Rankin Rapids dam, that was shelved without too much of battle. The Allagash Wilderness Waterway was created and the Rankin idea went down the river.

But Dickey-Lincoln lived on. It was authorized by Congress and once a project is authorized it lives until it can be deauthorized.

Another push to bring the project to fruition came with the Arab oil embargo in 1973 as Dickey-Lincoln was cited as a good way to bring cheap energy to the region.

Unfortunately, Dickey-Lincoln would provide only an estimated five percent of New England's energy needs by the middle of the decade (if work were to start right away). To provide this it would mean the flooding of 82,000 acres of timberland, the destruction of 278 miles of rivers and streams and some 30 lakes and ponds.

It would forever destroy lands that should remain forever wild.

There are alternatives: putting some of the 10,000 dams along New England rivers to work generating electricity is one. The New England River Basin Commission has estimated that 2,000 of these dams have considerable potential to add to our energy production capabilities. Tides are another. The Passamaquoddy tides are still rising and falling. Congress would be well advised to channel its funds toward re-investigating the possibilities of harnessing the huge amounts of tidal energy available for free in the Bay of Fundy.

We support the statement the other day of Sen. William S. Cohen who pledged himself to ". . . strenuously oppose the inclusion of funds for Dickey-Lincoln, which has become a perennial and pointless expenditure."

Any budget needs to be cut and this one can be cut by beginning at the top of the country, up by the Canadian border, and putting to rest a project that has not been able to get off the ground in half a century.

[From the Bangor Daily News, Feb. 21, 1980]

THE SUNSHINE

Sen. William Cohen has set the stage for what could be a lively, significant and perhaps historic confrontation over the Dickey-Lincoln hydroelectric project. He plans to introduce a measure that would deauthorize Dickey funding.

After a recent vote in the House in which a deauthorization amendment was passed, supporters of Dickey, notably those in the office of Democratic Sen. Edmund Muskie, appeared unruffled because for anti-Dickey forces, marchining on the Senate has had the historical success of military marches on Moscow.

The Senate has been Dickey's bastion.

Now, however, Maine's two senators are on opposing sides in this issue, and the ensuing debate, should there be any, may be spirited.

And, if it is considered by the Senate, the hope here is that it will be considered out in the open and not in recesses and shadows.

Dickey is an immensely expensive project to the taxpayers, and for that reason deserves public airing, but a more selfish reason for wanting the sunlight to shine on the proposal is that it will not be able to stand the exposure, the scrutiny.

It is an anachronism, a concept that should have been superseded by superior alternatives or abandoned for its own lack of merit years ago, but wasn't for one reason: Politics.

The rest of the country, the people footing the bill, must be aware of this so they can hold their own senators accountable.

[From the Aroostook Republican and News, Aug. 8, 1979]

A PORK BARREL PROJECT

It's getting so it's not easy to work up some dismay at Gov. Joe Brennan's recent endorsement of the Dickey-Lincoln project—or rather, his endorsement of Sen. Ed Muskie's hysterical push for the project.

It's even getting so one doesn't expect a Democrat to be reasonable on the question.

What's the sense in suggesting the decision should be made on the grounds of whether the project is worth it: would it produce enough energy to justify the cost of the project and the destruction of thousands of acres of woodland?

Of course, some politicians don't care what a project would cost if they think it would earn them some votes or support of a fellow politician. Why should they? They make a good living and give themselves healthy raises whenever they want them. In their bureaucratic cocoons, they are protected from the problems and concerns that affect the rest of us, the sweaty public that pays their salaries and funds their projects ad nauseam.

Because the project rests so clearly in the hands of politicians, let's hope the Republican forces fighting against the dam have enough clout to talk Congress into an end to funding for studies of the project, which is demonstrably too expensive for the temporary benefits it would give Aroostook County in terms of jobs.

The project has been condemned by the federal Environmental Protection Agency and by the Northern Maine Regional Planning Commission, among others. Might that not indicate it is somewhat lacking environmentally and economically?

Brennan talks about using the project as a "psychological catalyst" to show the state is concerned with some form of development—this, mind you, at the cost of all U.S. taxpayers. We suggest he talk to Leighton Cooney, his liaison with the Loring Readjustment Committee, and learn that the state, Aroostook in particular, is indeed concerned with a wide range of development, but development that pays for itself with concrete rather than psychological benefits.

Dickey-Lincoln is a pork barrel project. Let's salt it away and have done with it.

[From the Maine Sunday Telegram, Sept. 11, 1977]

NO TO DICKEY-LINCOLN

The Dickey-Lincoln hydroelectric power project on the St. John River in northern Maine should not be built.

We're persuaded that the construction of what has been called the largest public works project ever proposed in New England would not be in the best interests of either Maine or the nation.

On the one hand, construction of a world class dam at Dickey on a scale rivaling the Aswan Dam in Egypt, the creation of an 88,000-acre reservoir, and the construction of a huge transmission network through the forestlands of western Maine, would result in environmental damage on a scale which cannot be justified.

And, on the other hand, the giant project can barely be justified either on the amount of electricity which it would produce or on the basis of cost projections which are widely believed to be artificially low.

Moreover, if the project is approved by Congress, Maine will be asked to absorb virtually all of the negative aspects of the project in return for a relatively small percentage of the benefits. Maine alone would bear the burden of the massive environmental scars but the bulk of the electricity generated by the dams at Dickey and at Lincoln School would be marketed outside the state.

Our decision to oppose Dickey-Lincoln is not lightly made. We recognize that the demand for electrical energy in Maine and New England is growing rapidly and that peak load demand (the kind Dickey-Lincoln would partially satisfy) is expected to more than double in the region over the next decade. And we are all too painfully aware that New England now must rely on increasingly expensive and scarce petroleum for the generation of approximately three-fourths of all the electricity we consume.

Nonetheless, Dickey-Lincoln extracts far too high a price in terms of economic, social and environmental costs in order to partially meet the region's increasing energy requirements. It would ask Maine and its people to pay far too much in return for far too little.

The chronicle of environmental devastation which would accompany the construction of Dickey-Lincoln is enormous. It would forever destroy 278 miles of free-flowing streams and rivers, flood 30 lakes and ponds, inundate 36,893 acres of deer yards and cut a giant swath through western Maine in order to accommodate high voltage transmission lines. The magnitude of that kind of en-

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vironmental upheaval would irretrievably alter the character of much of Maine's land mass.

Were Dickey-Lincoln capable of generating truly significant amounts of electrical energy the environmental and societal tradeoffs might be more palatable. But it will not. Dickey-Lincoln's output—even conceding the importance of the peaking power which it would largely generate—would equal only two per cent of all the electricity produced in New England in 1975.

In addition, the cost estimates developed by the Army Corps of Engineers are suspect. The initial price tag of $757.5 million is based on a thoroughly unrealistic 3.25 per cent interest rate. The cost immediately soars to $822.4 million if the prevailing interest rate of nearly 6.5 per cent is used. Finally, the cost estimates are based entirely on March 1977 price levels and do not include any consideration of inflation. Even conservatively projecting the inflation rate between now and 1988 when the project is targeted for completion brings the total price tag into the billion dollar range.

In short, Dickey-Lincoln asks Maine to make an enormous sacrifice for a meager return. And those few scant benefits simply aren't worth the destruction of the last remaining major wild river in the eastern United States.

[From the Katahdin Times]

FORGET IT!

The proponents of the Dickey-Lincoln School Dam proposal continue to believe the myth that the destruction of 80,000 acres and more of Maine wilderness will ease Maine electrical costs, provide essential energy resources and stimulate decent jobs and an opportunity for Maine to enjoy a better future.

Neither the proponents nor the U.S. Army Corps of Engineers, primary architects of the scheme, will statistically refute the evidence that insists the billion dollars boondoggle would, in fact, provide little employment for Mainers, would generate an insignificant amount of electrical energy and would inflict a needless measure of destruction upon the quality of Maine's natural resources.

Dickey-Lincoln should be laid to rest and forgotten for all time. And Maine's distinguished congressional delegation should push diligently for the harnessing of the tides at "Quoddy Bay." Is anyone in Washington listening?

[From the Maine Sunday Telegram, Feb. 24, 1980]

DICKEY AND TIMBER

Maine's 17 million acres of forest seems immense, its timberland seemingly so vast as to be beyond depletion. And, historically, that's been true; for decades Maine has had a surplus of wood.

Recently, however, all that's been changing. The pulp and paper plants and our sawmills increasingly need all the timber they can lay their hands on in order to meet growing demand.

That fact oughtn't to be lost in the latest congressional debate over funding for the proposed Dickey-Lincoln hydroelectric power project on the St. John River in Northern Maine. For whatever may be said of Dickey-Lincoln's ability to supply inexpensive electricity for peak-time use in Maine and New England, the dams would destroy a significant amount of productive timberland.

Fully 88,000 acres of valuable timberland would be flooded by the giant reservoir behind the two dams. Another 5,000 acres would be destroyed by the network of transmission lines needed to carry the electricity to market. And another 100,000 acres or so would be removed from private ownership to establish a wildlife habitat to "replace" the land flooded by the reservoir.

That's a sizable amount of acreage to lose even if the government does permit harvesting in the wildlife habitat area.

Face it, there's a growing market for the timber which would be destroyed by Dickey-Lincoln. Within the past 10 years or so the major paper companies in Maine have doubled their total plant capacity in an unparalleled modernization program. Just a few days ago a Madison paper mill announced plans for a $185 million expansion program which will quintuple its cordage consumption.

In short, there's no longer a surplus of timber in Maine. There may soon be a commercial need for every tree the state can grow. If that's the case Dickey-Lincoln would hardly seem to constitute the best possible method of protecting our forest resources.

[From the Portland Evening Express, Apr. 6, 1978]

DICKEY ON ITS LAST LEGS

Although most of Maine's political leaders have long since taken a firm stand for or against construction of the Dickey-Lincoln power project, Governor Longley has yet to make his feelings known.

Whatever the governor's decision, it appears less and less likely that it will have a significant impact on whether the project goes forward.

True, if he comes out against the project it could be the coup de grace for the badly wounded dam proposal, but if he decides to support the project, it is highly doubtful that would be enough to rescue the controversial proposal from eventual oblivion.

For one thing, the governor's influence in Washington has necessarily been weakened considerably by his announced decision not to run for another term.

Even more to the point, the fact that the Maine congressional delegation is split right down the middle over Dickey all but assures that the project will not go forward.

The northern Maine hydroelectric power project had difficulty enough getting feasibility study funds over the years when the Maine delegation was united behind it. Now that both Representatives Emery and Cohen have taken positions against the proposal, the likelihood of its winning many further stays of execution is practically nil.

The two Maine congressmen are not alone in their opposition. Rep. Sylvio O. Conte of Massachusetts, who has fought Dickey from the very outset, recently released a poll indicating a majority of his congressional colleagues from all six New England states are against the power project.

Conte appeared before a House Appropriations subcommittee Monday to argue against a $1.7 million budget request by the Corps of Engineers for "advanced engineering and design work" for Dickey.

Said Conte: "The corps is leaping ahead of the prescribed process by asking for funding for the next stage of activity, which should be considered only after Congress reviews the final environmental impact statement."

Exactly. There is no possible justification for approving engineering and design funds before a decision is made whether to go ahead with construction of the huge power project.

If the budget item reaches the House floor, both Reps. Emery and Cohen are expected to fight for its deletion.

That kind of opposition—coming from representatives of both the state and the region slated to benefit most from a public works project of this kind—surely will not be lost on the full House.

Regardless of which way the governor goes on this issue, Dickey-Lincoln appears to be in the final throes of its checkered life.

[From the Bangor Daily News, Oct. 11, 1979]

AROOSTOOK POWER

In the methodical and deliberate way that is his trademark, Rep. David Emery is tackling the issue of alternatives to the Dickey-Lincoln hydroelectric project—seizing a theme that the state will likely hear much more of in the months ahead.

Emery, regarded as a pragmatist and a conservative, is opposed to the Dickey project, but true to his instincts and his philosophy he is attempting to dispose of the two problems that are at the root of the Dickey controversy.

Problem One is Dickey-as-boondoggle—a political item that would eventually waste $1 billion or more in receipts from the federal taxpayers in order to fatten the collection of Democratic IOU's.

The problem is handled in Washington.

The second problem is equally important and urgent. Although Dickey deserves to fall on its lack of merit, Maine still needs new sources of non-petroleum energy. In Northern Maine hydro power is used extensively but a tremendous latent potential remains untapped, unexploited.

In its report "Energy in Northern Maine" the Northern Maine Regional Planning Commission acknowledged this situation and cited hydro power as one of a diverse collection of alternatives that could contribute significantly to the region's energy future.

The commission's approach, observations and recommendations jibe closely with Emery's on at least one key point:

The hydro potential of that region would be best and most efficiently used in the northern part of the state. In the trade-off of wood power lost in transmission and the other elements that are an integral part of dam construction and impoundment flooding, the positive aspect of hydro generation, electrical energy, should accrue to local communities.

The commission has endorsed the floating of state bonds to finance a scaled-down hydro project at Lincoln School and Emery's office is backing the efforts of a three-student team from Worcester Polytechnical Institute that is examining the small dam potential of Aroostook County.

Among the sites that the students have examined and been favorably impressed with are Lincoln School and Castle Hill and Aroostook River location also mentioned by the planning commission as a good site for development in the near future.

Although it is not the responsibility of opponents to Dickey, or any other undesirable or ill-conceived project, to provide alternatives along with their criticisms, it is important that constructive proposals emerge from these controversies.

It is not enough to be right when the basic job remains undone.

[From the Bangor Daily News, Jan. 2, 1980]

THE GOLD MINE

The U.S. Army Corps of Engineers deserves tribute for its perseverance in relentless pursuit of the Dickey-Lincoln Hydroelectric Project, but despite its best efforts it is still unable to make a convincing case for such a destructive and expensive project.

In its latest announcement, the Corps has elevated the series of dams and impoundments to the status of an energy gold mine. And it is, for a few unions, a handful of politicians, some contractors and a few businesses—they'll get the gold.

The average taxpayer, the Maine resident, the forest industry workers and the river and forest land detrimentally affected by the project will get what remains . . .

The Corps has pointed out that the cost of oil is going up four times as quickly as the cost of the Dickey project. In the year ending in October the projected cost of the hydro project went up by 11 percent while

power costs in this part of New England leapt 45 percent.

All very true probably, but such numbers hardly transform Dickey into a figurative gold mine. Gold, don't forget, has increased in value by 100 percent during the same period.

The Maine forest, a vital component of the Dickey equation, is also becoming more valuable with each passing month. The same inflation that is driving up the cost of concrete and oil is pushing up the price of paper, building materials and, to a lesser extent, fuelwood.

In rebuttal to the Corps' gold mine pronouncement, the Natural Resources Council reminded the engineers that Dickey might look impressive when compared one-on-one with OPEC oil, but it fares not so well when compared with some of the other alternatives, including hydro.

A variety of hydroelectric projects have been proposed for the Aroostook County area, all of them in total being less costly and bringing more direct benefit to Maine.

Congressman David Emery has promoted a scaled down Dickey project with additional hydro sites on the Fish and Aroostook rivers. Emery, himself an engineer and a deliberate individual, made his recommendations following a survey done through his office by a group of engineering students.

True, the price of oil makes Dickey look better, but it also improves the appearance of its alternatives.

And the spate of OPEC increases does not negate the fundamental objection to Dickey: it does too much damage and is too expensive an investment for the return in power.

Given our technology, for $1 billion there are far better ways to produce or conserve an equal amount of energy on an annual basis.

[From the Lewiston Sun, June 26, 1979]

SCALED DOWN PROJECT

There is renewed interest in a scaled-down version of the Dickey-Lincoln School hydroelectric project on the St. John River, in northern Maine, which would involve only one dam, at Lincoln School, and virtually no flooding of the wilderness. It certainly deserves full study, in view of today's energy needs.

The single-dam project initially was proposed by former Senator William D. Hathaway of Auburn in 1972. He considered it an acceptable alternative to the full scale project which involves the flooding of 88,000 acres of Allagash forestland. But the emphasis has been on the full project.

Recently, the Northern Maine Regional Planning Commission gave a tentative outline of the single-dam plan to Gov. Joseph E. Brennan. The proposal has the strong support of John Joseph, the director of the state Office of Energy Resources.

The estimated cost of the single-dam proposal is $100 million, to be financed entirely by state bonds and private funds. Dickey-Lincoln cost is estimated at between $800 million and one billion dollars, all federal funds.

Whereas most of the peaking power from Dickey-Lincoln would go out of state, the power from the single dam would provide about one half of the energy needs of Aroostook County.

Maine Public Service, the state's third largest electric facility which services northern areas, has been invited to join the Lincoln School dam project and is giving it serious consideration, according to a spokesman.

Meanwhile, our congressional delegation sharply is divided on the Dickey-Lincoln project, on party lines. Senior Senator Edmund S. Muskie favors the project and is leading the fight in the Senate for a $710,000 appropriation for a final environmental impact study. Sen. William S. Cohen and House members Olympia Snowe and David Emery, all Republicans, are opposed to the project and to spending any more money on studies by the Army Corps of Engineers. The very fact of the division in our delegation practically rules out favorable action in Congress.

The proposal now being studied by Gov. Brennan and delegation members may provide the vehicle for agreement at the state level of development.

[From the Kennebec Journal, Oct. 24, 1979]

THE CORPS TRIES A HAND AT "MITIGATING"

The Army Corps of Engineers continues to play wild cards in efforts to get its sweaty hand on the upper St. John River. The New England Division last week submitted what it called a "project mitigation" on the Dickey-Lincoln hydroelectric proposal.

"Mitigation," by one definition, means to render less painful. There is nothing in the Army's attempt at "mitigating" the murder of a wild river that renders it in any way less painful. On the contrary, it succeeds in making the suggestion even more unthinkable.

The Army proposes now that the federal government buy about 100,000 acres in the vicinity of the Allagash Waterway System for "fish and wildlife management to offset the loss of wildlife habitat which would be eliminated" if Dickey-Lincoln is built.

Such a proposal would add $15,700,000 to the cost of building a hydro generating plant on the St. John, already estimated at about $800,000,000 in addition to $50,000,000 a year to operate.

But, but, you expostulate, that is an acceptable price to pay for an alternative energy source.

Consider what the price entails, and what it buys:

It would make a flooded wasteland of 84,600 acres of which about 54,000 are regular producers of a tree crop.

It would kill a wild river, a river that enriches us and posterity because it is there even though we ourselves may never see it.

The two dams—a large one at Dickey and a smaller downstream at Lincoln School—would also flood out some of the East's best spawning beds for brook trout;

They would isolate from the rest of Maine an additional 200,000 acres of producing timberland;

They would drown forever an estimated 35 deer wintering yards.

And for what? To produce electricity for 2½ hours a day; the volume of water on the St. John will allow no more.

The cruelest cut of all in this dam-the-St. John business is that the Corps' own financial study indicates less than a third of the generated power would be for Maine's use. The balance will be shipped via a broad swath of transmission line to the air conditioners and Water Piks of southern New England.

The key words that keep this monster alive (still viable thanks to fresh money for preconstruction planning in the appropriations measure signed by the president only last month) are peaking power. Anyway, the obvious key words, discounting another potent pair: Democratic politics.

At any rate, the need for peak load capacity is used by utilities to justify new facilities. This argument is hollow in the face of such practical alternatives as energy conservation laws and utility rate structures that would inhibit peak load demand. If the peak load users had to pay a premium price for their habits it is reasonable to expect the peaks would be leveled very quickly without the need for bulldozing and consequently drowning an enormous tract of Maine woodland.

The Army Corps of Engineers wants to dribble away $15,700,000 more of your money to "mitigate" Dickey-Lincoln, not to mention another million dollars annually to manage the new tract. Their plan sets aside an unspecified number of acres for "deep woods" conservation, thus removing even more producing land from the economy. Far from mitigating anything, the Army proposal compounds the felonious assault still being plotted against the north Maine woods.

[From the Bangor Daily News, July 30, 1979]

DICKEY COMPROMISE

Thursday's action by the House Public Works Committee—its surprise 24–17 vote to deauthorize funds for further study of the Dickey-Lincoln—would be more encouraging if the Congress as a whole were not so schizophrenic in the issue.

Although we heartily applaud the committee's courage and good sense, we would feel better if we were certain that Congress had at long last seen the light on this proposal and that this was not just another flourish of sanity that will be smothered later by the oppressive politics of the Dickey controversy.

Just a few days prior to the Public Works Committee vote, the see-saw was on its way down.

Despite overwhelming opposition from the New England delegation and a lopsided 3–1 show of non-support by the elected representatives of the State of Maine, the Senate and conference committee of senators and congressmen voted to prop up the shaky hydro project for another year.

The big losers were not the state or regional delegates, who argued and lobbied in vain, but the public, whose representatives were ignored and who were expected to cough up another substantial sum, $710,000, for further study of a project they didn't want.

A week before that action, Sen. William Cohen's attempt to delete funds for the study was narrowly rejected, 51–46, by the Senate.

Following the conference committee vote, which was not preceded by debate, an aide to Sen. Edmund Muskie, the only Maine delegate who favors the project, remarked that both the Senate and the conference committee were persuaded of the merits of the dam proposal.

Not at all.

What these votes represented were triumphs of political strength, with roots deep in partisanship and the darker aspects of Washington politics, the favors and deals and reciprocal backscratching.

There was no conviction there, no victory through persuasive argument or presentation of evidence.

In fact, if there was any moral victory—a small consolation to losing another $710,000 to balm a party and an ego—it was won by opponents of the Dickey project.

The public works vote was a tactical surprise that outmaneuvered but didn't outgun the formidable political and institutional forces behind Dickey.

The real test of congress' new conviction on the dam will come in the full House and Senate.

In spite of the almost oppressive weight and preoccupation with energy matters, the willingness of government and the electorate to squeeze oil out of rocks, harness the tides, grow alcohol fuel stocks, tap the sun and tinker with the basic building blocks of matter, support for Dickey-Lincoln remains slim and lukewarm.

The preponderance of political power has been behind it, the Corps of Engineers and other formidable agencies of government have wanted it, but the millions of dollars invested in studies and reports have failed miserably to present a convincing case for that dam.

We're running out of time.

There are too many imperatives and too much at stake for this delegation and this country to be stumbling over the Dickey

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boondoggle every time it attempts to improve the energy situation for this region.

Egos and partisanship must be shelved.

Edmund Muskie, Rep. Edward Boland of Massachusetts and those others who still cling to this threadbare proposal need to demonstrate a willingness to compromise on such alternatives as a more modest dam on the St. John River which would provide flood control and baseload power at a substantially lower cost in money, timber resources and environmental destruction.

Dickey, as originally conceived and promoted, does not make sense, economically, environmentally or in terms of our need and latent ability to produce energy.

Some reportedly big and unarguably powerful members of the New England congressional delegation need to accept that reality.

[From the Lewiston Evening Journal, Oct. 27, 1977]

AS WE SEE IT—DICKEY-LINCOLN REPORT

The study of the proposed Dickey-Lincoln hydroelectric project undertaken by the state Department of Conservation with assistance from the Planning Department was made public Wednesday at Governor James B. Longley's press conference. It revealed benefits would exceed costs.

It is important, however, to recognize the fact that a $53 million benefit over a period of 100 years, which is what the report indicated, isn't a tremendous amount of money. Conservation Commissioner Richard E. Barringer put this in perspective by saying it represented a benefit of approximately 50 cents a year to each Maine resident. Even prior to the rapid inflation of the past 20 years, an annual award of 50 cents hardly would set anyone's heart racing.

At the same time, Barringer said the study did not indicate the building of the dams would have any major impact on economic development within the state. So arguments that Dickey-Lincoln would bring in a lot of new industry seemingly cannot be based on solid ground.

If the project has to rest solely upon its monetary benefits or what it would do to encourage economic growth, then the conclusions one is to draw from the study have to be that it probably isn't worthwhile. There is one additional area deserving consideration. Indeed, it represents the most significant concern at the present time.

We refer to the fact our New England area needs more energy; particularly energy not resulting from the use of oil. Dickey-Lincoln may be justified in terms of this need. The dams would provide peaking power quite faithfully. They would serve in the place of some new oil or coal-fired steam plant.

Yet even here there is reason to question the practicality of the project. The amazing advances science already has made toward utilizing the unlimited energy pouring in on the earth daily from the sun suggests the proposed hydroelectric complex might be of little worth 10 or 20 years from now. Certainly there is no assurance the dams would be offering a benefit a century from now.

Originally we supported Dickey-Lincoln strongly. At the time the cost benefit ratio was far superior to the one outlined in the Conservation Department study Wednesday. The reason was that the project could have been completed at that time for between a quarter and a third of the cost required today. This latest report indicates the project may be feasible, but it really doesn't disclose compelling reasons why it should be carried out.

[From the Maine Sunday Telegram, Dec. 12, 1979]

SAVE THE FORESTS

The proposed Dickey-Lincoln hydroelectric power project on the St. John River is a bad idea. And it's made worse, not better, by the proposal to set aside more than 100,000 acres as a wildlife habitat.

Dickey-Lincoln dams would flood 88,000 acres of valuable timberland, including almost 37,000 acres of deer yards. The federal government proposes the wildlife habitat as a means of counteracting the loss of the flooded land.

It can't be done. Not even Washington can create land by buying it. All the government's plan will do is take even more valuable and productive forestland out of private ownership.

It's difficult to imagine a worse time than now to further deplete the state's timberland. Although Maine has 17 million acres of forest there is no longer a huge surplus of wood here.

Within the past decade the state's major paper companies have undertaken a vast modernization program which has almost doubled plant capacity. The number of sawmills has increased substantially during the same period. This increased demand for timber, when coupled with losses caused by the spruce budworm epidemic, means the paper industry needs about all the timber it can grow. As an example, Great Northern Paper, which owns at least 40 percent of the land in the proposed wildlife habitat area, now uses all the spruce and fir it can lay its hands on.

In short, the state's best long range interests aren't served by flooding 88,000 acres of productive timberland and removing another 100,000 acres or so from private ownership to establish a wildlife habitat.

We'd be better off forgetting Dickey-Lincoln and concentrating instead on preserving our forest resources.

[From the Bangor Daily News, Sept. 3-4, 1977]

DICKEY STUDY

"All forms of life now indigenous" to 88,000 acres of Maineland, including man, will no longer find the land habitable.

Some 88,455 acres of wildlife habitat, including 36,893 acres of deer wintering grounds, will be wiped out. The effect will be to cut by one-half the number of deer in the area.

Seventy-five miles of logging road and 76,173 acres of timberland will be permanently destroyed—lost forever to a state that derives its economic base from its woodlands. In cords and dollars and cents, that works out to 50,351 cords of wood generated each year for a value of up to $311 million over the next century.

What could do such damage to the Maine woodlands? An earthquake? Flood? Meteor? Nuclear weapon?

All of the above could do the job quite nicely, but the culprit in this instance is the Dickey-Lincoln Dam, and the figures quoted above are the hard facts about the dam contained in the environmental impact statement on the $700 million project.

Released this week, the 196-page study creates a depressing scenario that would follow construction of the hydroelectric project.

In addition to lost habitat and timberland, 278 miles of flowing streams and rivers will be erased from the face of Maine along with some 30 lakes and ponds.

Among the assets that would be an "irreversible and irretrievable" loss to Maine if the project goes through, is some 55 miles of the St. John River.

Instead of miles of freely flowing water where man can enjoy recreational activity using canoe, arms, gravity and falling water, this energy program will create a mammoth lake where mile-to-the-gallon inboards and outboards will predominate.

The lake itself will be an alien form in Maine. The study predicts that there will be "a continual problem" each summer as the power pool is drawn down, exposing 1,500 acres of shoreline debris.

A subjective but no less important point: The St. John Valley, a beautiful piece of real estate by anyone's standards, will lose its looks to the scars of construction and or will be washed out by the new lake.

The report also contains a message for those who live in northern Maine and who see, in the dam, the potential for relatively short-run economic gain during the construction phase.

The influx of workers, says the report, will have an adverse impact on housing. Municipal services will have to be beefed up (that's taxes folks), recreational facilities will need to be improved and so will highways. (While the latter might be welcome, it should be remembered that that is just more money out of the public till and it must be weighed against all the other considerations—$700 million will pave a lot of road.)

For those concerned about their way of life, the report predicts increased problems with prostitution, alcoholism, crime and drug abuse during the construction phase.

Somewhat hidden in a portion of the study that isn't likely to attract much attention or sympathy, is the essence of the problem with Dickey-Lincoln.

The report relates that when the government takes the land necessary for construction of the dam, the major landowners will be left with large amounts of money on which they will wind up paying substantial capital gains taxes.

"There is no shelter available for these large windfalls of unwanted monies," says the report, "nor are there lands available for reinvestment" of the unwanted income from the eminent domain acquisitions.

Land is a finite commodity. When there isn't any more, you can't make any more. You can't grow trees on a lake.

Mr. COHEN. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATFIELD. Is there any time limitation or time agreement on the amendment?

The PRESIDING OFFICER. There is no time limitation on the amendment.

Mr. MITCHELL. Mr. President, we are faced here today with an amendment offered by my colleague and friend, Senator COHEN, which would delete $795,000 from the energy and water resources appropriations bill and preclude the expenditure of funds related to the Dickey-Lincoln hydroelectric and flood control project on the St. John River in northern Maine. His intent, as I understand the amendment, is to terminate completely and finally all work toward development of this project, specifically the environmental studies, the fish and wildlife mitigation studies and the preconstruction engineering studies which are funded by this appropriation.

Senator COHEN has truly been a friend during my early months in the Senate. My respect for his skill as a legislator has increased as we have worked together. I regretfully disagree with him on this issue and rise to oppose his amendment. I do so because I am persuaded that he is wrong. The adoption of his amendment would be contrary to the interests of our State, our region, and our country.

The issue presented by Senator COHEN's amendment is not new to the Senate. It has been debated over the last decade and his position has been consistently rejected. It was rejected by rollcall vote when he offered it last year and it was rejected in 1975.

The Senate has heard extensive debate and is familiar with the views of both sides. I do not intend to restate all of the arguments here today, but I will set forth some of the basic reasons why I believe this amendment should be rejected.

President Carter in his budget request of 1981 asked Congress to provide $795,000 for fish and wildlife mitigation studies and for preconstruction engineering studies on the Dickey-Lincoln project. I have talked to OMB officials and can report that the administration continues to support the appropriation provided in this bill.

The Subcommittee on Energy and Water Resources and the full Appropriations Committee voted, I believe without dissent, to include these moneys requested by the President in the energy and water development appropriations bill after hearings on the project earlier this spring.

First, this project has widespread support in the State of Maine.

At hearings earlier this year, Maine's Gov. Joseph E. Brennan submitted testimony in support of this appropriation, as did then Senator MUSKIE, the speaker of the House in Maine, and numerous members of the Maine Legislature. This appropriation is supported by the Northeast Public Power Association, representing municipal and cooperative electric systems in Maine and New England, the Maine and National AFL–CIO and the American Public Power Association and the Rural Electric Cooperative Association. I shall submit for the RECORD statements of support from many of these individuals and organizations.

Mr. President, I ask unanimous consent to have printed in the RECORD the material to which I have made reference.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF MAINE,
OFFICE OF THE GOVERNOR,
Augusta, Maine, March 25, 1980.

Hon. J. BENNETT JOHNSTON,
Senate Appropriations Committee, Chairman, Subcommittee on Energy and Water Development.

DEAR MR. CHAIRMAN: This statement is being provided to inform you and the members of your subcommittee of my continued support for the Dickey-Lincoln hydroelectric project in Aroostook County, Maine, and for the preconstruction funds necessary to carry this project forward.

My support is based primarily on the energy cost and supply problems which I believe to be of urgent importance to the State of Maine and New England.

This project is one of the few opportunities available in New England to develop a native, renewable, significant energy source. Now Maine is a net energy-importer State, even though we are rich in natural resources that could be utilized in the production of energy in this State. One of our more important natural resources is our hydroelectric power potential. As a hydroelectric project, Dickey-Lincoln energy would have the compelling characteristics of being a continuous, safe, clean, and virtually inflation proof source of electricity.

We in Maine are still dependent on oil to a degree perhaps greater than that of any other state. We have in Maine made significant strides in the area of energy conservation. Maine has been a leader in reducing its oil consumption. For example, it is estimated that there has been a 20 percent decrease in fuel oil consumption this winter compared to last. However, notwithstanding all the attention paid to conservation in the past few years, despite the 55-mile-an-hour speed limit, despite a dramatic increase in the use of wood for primary or supplemental home heating in Maine, we have to face the stark reality that this State and the region remain overly dependent on petroleum for their energy needs.

This project offers real promise for Maine and New England. It offers potential to decrease our over-reliance on petroleum. The plant at Dickey-Lincoln dam would generate 1.4 billion kilowatt-hours of electricity to meet projected peaking power needs. I remain impressed by figures which show that it would take 2.3 million barrels of oil to produce an equivalent amount of electrical energy. Dickey-Lincoln would provide 20 percent of New England's estimated peaking power needs in the 1980's. This represents a significant amount of renewable energy for the State and the region.

We, of course, recognized the obstacles to the development of this potential source of energy. There have been many proposals for projects to help lessen our energy problems. Each has been strongly opposed by the large segments of our population, and Dickey-Lincoln is among them. Nevertheless, I agree with the logic of Senator Muskie, who has said that if we are truly serious about meeting our future energy needs, we cannot oppose everything—the Pittston Company's proposed refinery at Eastport, expanded reliance on nuclear power, greater use of coal, Dickey-Lincoln and others. We must make choices based on a careful consideration of what serves both the immediate and long-range interests of the State of Maine and New England and the Nation. With the continued escalation of oil prices and the uncertain future of nuclear power, it has become even more imperative that we seek realistic alternative sources of power to meet the State's and region's energy needs.

In summary, I support the continued funding of the Dickey-Lincoln hydroelectric project. I can think of no better investment to federal energy and public works dollars than this, which would develop the renewable, indigeneous power of the St. John River to further the energy independence of Maine, New England and the Nation.

Thank you for your courtesy and consideration.

Sincerely,

JOSEPH E. BRENNAN,
Governor.

DICKEY-LINCOLN HYDROELECTRIC PROJECT

We, the undersigned members of the 109th Maine Legislature, wish to express our hope that the United States Congress will act favorably during the current session on the proposed Dickey-Lincoln hydroelectric project in northern Maine.

We favor the construction of this energy project for the following reasons:

1. The project would provide 45 percent of its output in the form of base and intermediate load power to be consumed within the State of Maine.

2. The project would provide 55 percent of its output in the form of peaking power to meet 17 percent of the region's peaking power needs.

3. The two main dams, at Dickey and at Lincoln School, would provide invaluable assistance to the citizens and businesses of the St. John Valley in controlling the annual spring run-off which frequently floods low-lying areas and does millions of dollars of damage.

4. The project, unlike other real alternatives available to Maine, provides clean, dependable energy at reasonable and inflation-proof prices.

5. The project would reduce our dependence on imported oil and uranium.

6. The project would allow and facilitate the development of additional sources; alternatives to current, conventional, nonrenewable energy sources, many of which must be imported from outside the United States.

7. The project would provide reliable power to stabilize our increasingly unstable energy supply system which all too frequently suffers from plant shut-downs, oil embargoes and international political chaos.

We recognize that the State of Maine has a responsibility and an obligation to share the energy burden of the United States to the extent that our state is able. Our state has no proven oil reserves, no coal deposits and no sources of uranium. The only major energy project feasible in Maine is the hydroelectric project at Dickey-Lincoln. All other possible projects currently being considered require either non-renewable or foreign sources of fuel, thus further increasing our dependence on other nations for our energy supply.

We ask for your assistance in placing funds in the Federal Budget for 1980–81 to begin the construction phase of the Dickey-Lincoln hydroelectric project. Each year of delay raises the cost of the project and sets back the time when Maine, New England and the United States will begin to benefit from the power to be generated by the project.

Thank you for considering this important matter.

Yours truly,

Signed by 50 members of the Maine Legislature.

STATEMENT OF THE NORTHEAST PUBLIC POWER ASSSOCIATION

Mr. Chairman and members of the Energy and Water Development Subcommittee on Appropriations, my name is Jack Wark. I am information director of the Northeast Public Power Association, a non-profit service organization based in Wellesley, Massachusetts and representing the 81 consumer-owned electric utilities in New England. I appreciate the opportunity to appear here today to express my organization's enthusiastic support for Dickey-Lincoln, the hydroelectric project planned for the St. John River in northern Maine, and, more specifically, for the President's proposed $795,000 advanced planning and engineering appropriation now being considered by this subcommittee.

New developments make Dickey-Lincoln more attractive—and more necessary—than ever before. Foreign oil supplies are becoming more costly and less reliable. Domestic energy options are shrinking. Fossil fuels are being consumed at an alarming rate. Set against this gloomy backdrop, the case for Dickey-Lincoln becomes especially compelling. Dickey-Lincoln would utilize a "fuel"—namely, the waters of an American river—that costs nothing, that is inflation-proof, that is safe, abundant, clean and renewable.

That Dickey-Lincoln's value is growing, is a reality that can be expressed in terms of real dollars, real jobs and real energy. Consider, if you will, some of Dickey-Lincoln's economic advantages:

First, the U.S. Army Corps of Engineers has determined that the value of Dickey-Lincoln's power is increasing four times faster than is the cost of constructing the 830 megawatt facility. Between Fall, 1978

and Fall, 1979, the estimated construction cost of the project increased about 11 percent to $825.5 million. Meanwhile, Federal Energy Regulatory Commission statistics indicate that, as a result of oil price hikes, power costs in New England are 45.2 percent higher this year than last for the type of power that Dickey-Lincoln would supply.

Second, Dickey-Lincoln's low-cost power would help stabilize New England's electric rates, which are, according to a recent U.S. Department of Energy report, 31 percent above the national average. Various studies support this point. One such study, commissioned by Municipal Electric Association of Massachusetts and performed by R. W. Beck and Associates of Wellesley, Massachusetts, indicated that Dickey-Lincoln would save Massachusetts consumers some $20 million in the project's first year of operation, with escalating annual savings for the 100-year life of the project. Another study, this one made by Robert V. Clark, Eastern Maine Electric Cooperative, Inc. general manager, showed that Dickey-Lincoln would save Maine consumers more than $20 million in the project's first year of operation and that the savings would annually escalate for the project's life. Another study, this one conducted by the Maine Department of Conservation, showed that the benefits of Dickey-Lincoln to Maine would outweigh its costs by $53 million.

Third, Dickey-Lincoln is particularly valuable because its primary function would be to provide peaking power—that is, power used when electric demand is greatest. The project would provide 17 percent of New England's peaking requirements in the 1980's, a fact whose significance is underscored by projections indicating that the region's demand for peaking power will leap by more than 70 percent in the 1980's.

Fourth, Dickey-Lincoln would lessen New England's economically debilitating dependence on imported oil. To generate the same amount of power as Dickey-Lincoln, would require 2.3 million barrels of oil annually, or about 230 million barrels over the project's 100-year life. The value of this oil—using the extemely conservative assumption that oil prices will not rise above current levels—is well over $4 billion.

Other factors argue for Dickey-Lincoln's construction. Among them are these:

Although it would probably cost the Federal Government close to $1 billion to build Dickey-Lincoln, the Government would recoup about 98 percent of its construction costs through the sale of power from the project. Moreover, the power would sell for prices consideraby lower than if the project were built by a privately-owned utility.

The project would mean jobs—about 2,000 on-site construction jobs plus thousands of others that would result from the improved New England economy that Dickey-Lincoln could be expected to foster.

Dickey-Lincoln offers numerous advantages to Maine, the State in which it would be built. First, of the power generated by the project, 44 percent would remain in Maine—or, in other words, Maine, with less than 10 percent of New England's population, would receive almost half of the power output from a regional project financed by Federal money. Moreover, Dickey would provide 25 percent of Maine's total peaking power requirements. In addition, the project would provide badly-needed protection from floods that now, on an almost annual basis, devastate communities along the St. John River.

Opponents of the project have advanced many arguments which are incorrect, incomplete or entirely misleading. For example, they have claimed that there is no public support for Dickey-Lincoln. In fact, every major public opinion poll of Maine residents shows more people support the project than oppose it. A survey, conducted late in 1979 by the University of Maine's Social Science Research Institute at the request of the Maine Office of Energy Resources, showed 41.5 percent of the Maine public favoring the project's construction and 35.8 percent opposing it. Another poll—this one commissioned by L. L. Bean, a Maine-based manufacturer of outdoor clothing and equipment and avowed opponent of Dickey-Lincoln—showed 38 percent for the project; 30 percent against; and 32 percent undecided. A poll by U.S. Senator Edmund S. Muskie, the Maine Democrat, found 48 percent supporting Dickey-Lincoln, 40 percent opposing it and 12 percent undecided. In the county where Dickey-Lincoln would be built, the Aroostook County commissioners found 57 percent in favor of the project, 20 percent against, and 23 percent undecided.

Opponents claim that Dickey-Lincoln is not worth the environmental damage that it would cause. This claim, in our view, smacks of "environmental extremism." The area that would be altered by Dickey-Lincoln represents less than one-half of one percent of Maine's total wilderness area and more than 90 percent of Maine is forest. This is not to suggest that the 127,000 acres that Dickey-Lincoln would alter, is insignificant; rather, it is to place in perspective the amount of land at issue. Second, inundation by the Dickey reservoir does not represent the utterly destructive action that project opponents claim. In fact, it will produce a lake suitable for various recreational activities and, thus, represents a relatively benign form of land use.

A third consideration about the environmental impact is that the project area simply is not a pristine wilderness. As anyone who has visited the area knows, it has been fairly ravaged by wood-cutting operations, with hauling roads and skid trails sometimes just yards apart.

Another claim advanced by project opponents is that conservation and the so-called "soft" technologies represent alternatives to Dickey-Lincoln. This claim misses the point of Dickey-Lincoln, which of course is to reduce New England's oil dependence. To substitute one oil-saving alternative for another, is, in our judgment, a self-defeating enterprise. We need all oil-saving energy alternatives. We need Dickey-Lincoln and conservation and the "soft" energy forms.

Worth noting is that Dickey-Lincoln could enhance the use of such energy forms as low-head hydro, solar, wind, etc. These alternative energy forms, though obviously valuable, tend to be erratic in their production of energy. Dickey-Lincoln, with its enormous and reliable reserve potential, could provide necessary back-up capacity for smaller, less reliable alternative energy projects.

Another energy alternative which Dickey-Lincoln would enhance is the possibility of importing Canadian power. The transmission facilities from Dickey-Lincoln would be only 40 or 50 miles from an interconnection point on the Canadian power grid. Having Dickey-Lincoln, in other words, would open the door for a valuable exchange of electric power between this country and Canada.

Our conclusion is that we need Dickey-Lincoln and that we need it as soon as possible. The Northeast Public Power Association urges this Subcommittee to act favorably on the proposed budget request for Dickey-Lincoln. Thank you for your consideration.

STATEMENT OF PHILIP MERRILL, MAINE CITIZENS FOR DICKEY-LINCOLN

Mr. Chairman, I want to thank you for the opportunity to appear here today on behalf of Maine Citizens for Dickey-Lincoln. Our group represents a cross section of Maine people; businessmen, professionals, bankers, leaders of labor unions and average citizens who want to see the St. John River used to produce electric power for the Northeast.

No issue is more on the mind of the American people than energy, and the attention given the subject by this Congress reflects that fact. And if energy is an issue here, you can imagine our intensity of concern in the Northeast corner of the country. Our cold climate and disparate population intensify our need for energy. And we are not a region rich in indigenous energy resources. The bulk of our electricity in the Northeast is produced with oil. Most of that is imported. Most of our homes are heated with oil, and most of that is imported.

In my state, people have responded to the energy crunch by sharp cutbacks in oil use through conservation and the burning of wood. We are working now to put our low-head hydro dams back into use and as an attorney, I'm involved in that effort.

These efforts are important and they will continue because they must and because Maine people are, by nature, conserving people who will do their share to help solve this national problem. But these efforts only mark a beginning of what must be done to free our region and our country from its frightening reliance on foreign oil.

As every member of Congress knows, we pay a high price for every gallon of oil we burn. A price measured in consumer dollars, in trade deficits, in inflation, and in weakening our defense posture and our hopes for peace. Construction of the Dickey-Lincoln School Dams would replace the need for 2.6 million barrels of oil a year, over 110 million gallons. At the present cost of oil, at $35 a barrel, that savings would offset the cost of construction in 10 years.

Now, of course, there is a cost to money itself—anyone trying to buy a home today knows how important this fact is. And this question of the cost of interest is a favorite of the opponents of all water projects. I won't join in the debate today about what is the real cost of money on which these projects should be based; there are experts that work for you that know more of this than I do, but let me suggest that the real cost of money, the real interest rate, is the difference between the interest rate paid and the inflation rate of oil. I think it is conservative to say that oil prices will increase over the next 20 years at a rate in excess of 4 percent ahead of the average inflation rate. If the percent increase of the oil Dickey-Lincoln replaces is subtracted from the actual interest rate paid by the Federal government to build this project, the project will certainly have paid back the American taxpayers in less than 20 years.

Beyond these direct economic benefits, there is the indirect benefit of reducing the demand for oil. The recent highly publicized energy study done by the Harvard Business School spent considerable time developing the case that every barrel of imported oil saved represented a savings of several dollars by reducing the tension on the supply demand curve. These savings will be enjoyed by all Americans, in all regions.

The critics of Dickey-Lincoln attack the project as being too small and, at the same time, without so much as a nod to consistency, as being too big. Too small, they say, because it will generate only 1 percent of New England's energy needs. Let me say that even if this characterization were accurate, we should not eliminate this project from consideration. Big bang, single-stroke solutions to our energy problems do not exist. The solution will involve thousands of pieces to the puzzle. But, in fact, this project will expand New England's grid capacity by 18 percent. The foes of the project miss the figure by 1,800 percent because they refuse to recognize the fact that Dickey-Lincoln would produce most of its kilowatts in the form of

peaking power. The fact that we need more electricity during some periods of the day than others, or during certain periods of the year, isn't going to go away because some Pollyanna wishes it were so. Our need for peaking power is increasing in Maine. Over half the homes being built are being built with electric heat because it is cheap to install and it is compatible with wood as a backup. Many of the new low-technology energy resources like solar, wind, and hydro are not reliable on a 24-hour, 365-day-a-year basis. The fact is, our new increasing reliance on these soft energy sources will greatly increase the fluctuation in the electricity demand curve. I don't say this to criticize these new sources; I have worked for their development in both my public and private professional life, but advocates of solar, small hydro and wind must face facts, and if they do, they will put a high premium on Dickey-Lincoln's ability to provide economic power on demand.

Dickey is attacked as too big because it would be a costly project, would produce a lake of 88,000 acres, and would involve construction of a large dam, 10,000 feet long, with a maximum height of 335 feet. Opponents hold that if smaller is beautiful, then the contra positive is true; not small is ugly. In fact, the glaciers brought by the ice age created hundreds of lakes in our state; none are considered ugly. My family owned a camp on such a lake in more populous southern Maine—Sebago Lake, a lake of about 85,000 acres. Thousands of people visit that lake every year. No one, to my knowledge, ever suggested draining that lake as an aesthetic improvement or to restore the area to forest production.

The St. John River does offer good white water canoeing for a few weeks early every summer. And construction of the dam will end that. This is a real loss, but I suggest it's a tolerable one. Recent times have seen people enjoy this sport for 447 visitor days a year . . . a total roughly comparable to the number of people on free pass at any given Red Sox game. When measured in comparison to the cost of oil replaced by the project, the cost would equal $1.6 million dollars per canoe day.

The area that would be flooded is not virgin forest. It has, in fact, been heavily harvested by Canadian companies; work that is done primarily with Canadian labor with very little benefit to Maine or this country.

It should be further noted that this project will prevent flooding downstream in Fort Kent; flooding which is now almost an annual occurrence.

In short, Dickey-Lincoln will bring environmental change, but compared to the real tough energy U.S. environmental decisions we face, this one is easy. It will produce no acid rain, no radioactivity waste with a half life of thousands of years, and does not expose us to the threat of war in order to assure its continued availability.

Dickey-Lincoln is not a new issue. These studies being funded here have gone on for some time. During that time, opposition from several so-called environmental organizations has been constant. One of their favorite themes has been that the people of Maine don't want the project, and that, I can tell you with certainty, is not the case. Maine support for the project remains strong. Polls still favor the project. The project is most strongly supported in Aroostook County, the county in which it will be constructed.

The Governor of the State supports the project, and defeated a candidate who opposed it in his 1978 campaign.

I have personally traveled throughout the St. John Valley and talked to the people there. They want this project—they need the power it will produce. In fact, the most often stated concern is why it has taken so long to get to construction. With your continued support, that day is near and we look forward to it.

STATEMENT OF SENATOR HAROLD SILVERMAN

Senator SILVERMAN: I was born and raised in rural Washington County in northern Maine. It is one of the most beautiful spots on earth, and one of the most rugged.

Growing up in Maine is a wonderful experience. Maine people are unique, I believe. They must learn at an early age to use what resources are available. For many years Maine people have fished and farmed. They have heated their homes with wood, because wood is plentiful

What we do not have in Maine is oil, or coal, or natural gas, or uranium. When oil was cheap, we imported it, just as other people in other areas have done. But Maine people are turning away from the fossil fuels. They are returning to the woodlot, to the resources that are close by and available.

One resource that we have underdeveloped is our water resources. Maine has many streams and rivers that could be harnessed to produce electrical energy.

The Saint John, which would host the Dickey Lincoln project, is such a river. Each year the Saint John carries one trillion gallons of water to the sea. That water could produce 20 per cent of new England's peaking power needs during the 1990s if Dickey Lincoln is built. About 45 per cent of the power generated would stay in Maine, for the benefit of Maine people.

The cost would be high. But the benefits would be substantial.

Dickey Lincoln would be paid for in 50 years, but it would produce dependable, inflation proof power for 100 years. It would save 2.3 million barrels of oil per year. And at $30 per barrel, we would spend more on oil in just 12 years than we would spend to build Dickey Lincoln.

The people of northern Maine want Dickey Lincoln. I know that first hand. Two years ago I campaigned in northern Maine for election to the Maine Senate. I ran as an independent, against a Republican opponent and a Democratic opponent. I campaigned strongly for Dickey Lincoln at that time. And I was elected to the Senate, the first independent member of that body since 1880.

As our energy picture looks darker, the future of Dickey Lincoln looks brighter. Maine will need dependable, inflation proof power in the decades to come. Dickey Lincoln can provide that power.

Mr. MITCHELL. Mr. President, I have only recently joined this institution and I am the most junior of the 100 Members of this distinguished body. I am humbled by the fact. Yet I feel that my experience can be of value in approaching the question before us. I came to the Senate after serving as U.S. district court judge for Maine and before that as U.S. attorney for Maine. I always found it useful as a judge and a practicing attorney, when confronted with conflicting emotional and sometimes distorted arguments, to focus on the specific issue in dispute. Narrowing the question carefully increased my confidence in the decisions I was required to make as judge and allowed me to carefully hone the arguments in support of my case as U.S. attorney.

I have observed in my brief experience in Washington an inclination here to do precisely the opposite—to translate specific narrow questions into broad symbolic issues. I am afraid that too much of our public policymaking has become embroiled in expansive gesturing and rhetoric with too little attention to what specifically is at stake. I would venture further that our energy policy and our environmental policy have been particular victims of this process and that the debate on Dickey-Lincoln on both sides has been an outstanding example.

So let me state precisely what I think is the question before the Senate in the most direct, narrow terms.

The question before the Senate is, "Shall we continue to evaluate the environmental implications and engineering features of a controversial but significant energy source in northern Maine?"

The President has asked for $795,000 for studies of fish and wildlife mitigation requirements and preconstruction engineering studies on Dickey-Lincoln and the Appropriations Committee has agreed and provided those funds in this bill. Senator COHEN has proposed to delete funds from the bill so that there will be no studies in the next fiscal year.

That is the sum total of the issue. Construction of Dickey-Lincoln is not proposed in this bill, and none of these funds are directed toward that end.

We are not deciding the fate of the upper St. John River or of hydroelectric power. We are deciding whether this project is worth further examination. The Federal Government has spent $11,500,000 on evaluating the project since 1973. During that time both energy concerns and environmental values have heightened, so the process has been thorough, tedious, and expensive.

New environmental concerns have arisen and environmental standards have increased over this period. These concerns have been addressed and the project measured against those standards. During the same period energy economics have changed drastically, and the value of the power Dickey-Lincoln could produce for consumers in Maine and New England has dramatically increased.

We still do not have all the information that environmental analysis or budget planners desire for a decision on whether or not to commit the Federal Government to construction of this project. They are nearing a conclusion, but the requirement for extensive fish and wildlife mitigation studies needs to be addressed further and engineering updates estimated.

This money will allow those studies to continue. Whatever reservations you may have about a final construction decision, I urge you to recognize that it deserves to be evaluated on the environmental and economic criteria we have established. To vote for deletion of funds is to vote for abandonment of the very procedures and standards Congress has used to measure such projects.

I am sure that some have urged this amendment upon you as a critical environmental issue, determining variously the fate of a white water canoeing river, the Maine timber industry or the Maine deer and moose herds. I must tell you that the funds provided here will not be used to move one shovelful of dirt or stir the fur of one moose. These funds will allow us and decisionmakers at all levels

to reach a better and more informed judgment on this project and the future of the resources in this part of my State.

If I may stretch an analogy from my courtroom experience, the amendment by Senator COHEN is in the nature of a motion to dismiss before the evidence has been presented. He carries a very heavy burden, and he has not met it. His amendment to strike these funds should be rejected.

But broader issues of energy policy and environmental policy have been raised in this debate and the underlying merits of Dickey-Lincoln have been seriously challenged. I would like to respond to those broader issues even though I do not believe they are directly involved in the vote to be cast today.

We are still struggling to shape a national energy policy which is consistent with the needs of our people and our economy, and with environmental values. I share the concern of every Senator in this difficult area. Indeed, I have special concerns. My State is poor, it is energy dependent and it is environmentally vulnerable-dependent on the resources of the land and the sea. We in Maine face some crucial decisions which will affect the future of Maine for decades to come. I approach those decisions knowing they will be difficult, knowing compromise will be necessary and useful. But I refuse to approach those decisions by closing off opportunity for my State or for my country because the decisions will be controversial. I accept controversy as inherent in any tough decision and tough decisions are necessary if we are to achieve sound policies.

Rejecting Dickey-Lincoln or any other project from consideration because it is controversial would be a failure of leadership and is inconsistent with our responsibilities in this body. I urge you to reject that course and this amendment.

The ultimate decision on the merits of this project will be decided at a later time. We are deciding here only whether to continue to evaluate the project. But the merits of Dickey-Lincoln have been raised, so I would like to discuss them briefly.

Dickey-Lincoln is a hydroelectric and flood control project which will be constructed on the upper St. John River in northern Maine. It will consist of two dams: A large storage dam which will capture the spring runoff from the snowmelt, provide flood control to eliminate floods in the St. John Valley which cost an average of $6.5 million per year, and generate 1,183,000,000 kilowatt-hours of power as required for New England consumers.

The second dam will be a regulating dam downstream which will capture the water released from Dickey and discharge it over a period of time to generate 262 million kilowatt-hours of energy annually and provide a steady flow on the river. That regular flow will enhance generation at existing downstream dams by an additional 350 million kilowatt hours per year. The total annual power resulting exceeds 1.8 billion kilowatts.

In current dollars, the total cost for construction of the project, including both dams and transmission lines, is $825.5 million.

The Federal Government will build the project with funds appropriated by Congress. The cost will be repaid to the Federal Government with interest over the first 50 years of the project. Because much of our region's peaking power is now generated by burning heating oil, the project will reduce oil consumption in New England by 2.3 million barrels a year. At today's prices, it would displace more than $60 million a year in oil that will otherwise be imported to New England.

No one knows what oil might cost in 10 or 20 years, but even at today's prices, New England will spend $850 million in 15 years for the oil Dickey-Lincoln would have displaced if it were on the line. Dickey-Lincoln would pay for itself with the sale of power in less than 50 years. And it would still be producing power in 100 years—quite literally free, inflation-proof power. The Department of Energy reaffirmed this in a report last month. I submit a Corps of Engineers statement summarizing that report for the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

GOVERNMENT EXPECTS TO RECOVER DICKEY-LINCOLN POWER COSTS FROM ENERGY SALES TO NEW ENGLAND UTILITIES

WALTHAM, MASS.—Electrical energy from the proposed Dickey-Lincoln School hydropower project in Northern Maine could be sold at competitive wholesale rates to New England utility customers according to an updated financial feasibility report prepared by a Federal power marketing agency for the U. S. Army Corps of Engineers.

The Southeastern Power Administration (SEPA), an arm of the U.S. Department of Energy, reaffirmed its previous finding that all of the Federal power investment required to build and operate the project would be recovered during the first 50 years of the project's life through the sale of power at rates competitive with other sources. (The Department of Energy is responsible for transmission and sale of power produced at Federally-funded facilities.)

SEPA's new analysis reflects changes in energy consumption which have reduced the projected rate of growth in demand in the six-state New England region.

Confirmation that Dickey-Lincoln continues to be financially feasible from a marketing viewpoint could be a major consideration in the recommendation of the Corps of Engineers will submit when it forwards a final environmental impact statement later this year.

Colonel Max B. Scheider, New England Division Engineer for the Corps, noted that questions have been raised about the need for a large hydro station on the Upper St. John River in Northern Maine to supply peaking power on a regional scale.

"This finding by the Department of Energy is a factor in answering that question," Colonel Scheider said, adding that "we still need to be sure that the project is cost effective and preferable to other types of peaking generation before making a recommendation on the project."

Previous proposals for the allocation of power between Maine and the rest of New England are unchanged in the updated study. Two hundred megawatts, roughly, 22 percent of the total capacity of the project will be reserved for Maine utilities providing 533,000,000 kilowatt hours of electricity yearly. The latter figure is approximately 44 percent of the project's net annual output of 1.2 billion kilowatt hours available for sale. The remaining 700 megawatts of peaking capacity and energy would be marketed within the other five states of the New England region.

Federal policy requires that preference be given to publicly-owned utilities and cooperatives in the sale of power produced at Government built power plants, at rates sufficient to repay all costs associated with the production and distribution of electrical energy.

The exact price and terms for the sale of Dickey-Lincoln power by the Federal Government to utility customers would be subject to negotiations after a firm date is set for the project to begin producing power. A construction commitment by Congress is needed, to meet a proposed schedule of bringing Dickey-Lincoln on line in 1990.

The DOE marketing report advances the opinion that customers purchasing power from the project would receive worthwhile savings in their power costs over the 50-year repayment period of the project.

Mr. MITCHELL. Dickey-Lincoln actually entered public debate as something of a stepchild. Initial interest in Federal energy development in Maine was directed at the potential for generating electricity from the tides in eastern Maine and New Brunswick. The Federal Government, under President Roosevelt, actually began construction of the Passamaquoddy project in the thirties, but stopped development after 1 year.

When President Kennedy took office in 1961, he agreed to take another look at Passamaquoddy. In the course of those studies, it became clear that tidal power would not be economically feasible on its own, but might be if accompanied by a conventional hydro project that could "smooth out" the 12-hour tidal cycle. So we looked at the upper St. John River in the early sixties and reached a point where President Johnson, in July of 1965, recommended construction of the Dickey-Lincoln project. Congress authorized construction of Dickey-Lincoln in the Flood Control Act of 1965.

Dickey-Lincoln is the first major Federal hydroelectric project authorized for construction east of the Mississippi and north of the Mason-Dixon line. New England consumers pay a tremendous price for that anomaly. It is a price we can no longer afford. New England is 80 percent dependent on oil for its energy, compared to a national average of 47 percent. Most of New England's oil is imported, and most of that is from OPEC. New England's energy costs are 26 percent higher than the national average.

Recent international events clearly demonstrate the vulnerability of oil supplies abroad. Disruptions and continuing price increases are weakening our national economy, driving inflation up and complicating our international relations. The entire Nation is affected. But in many ways, Maine is affected most directly and most severely.

Mr. President, last night the Washington Star carried a story describing the average per capita income levels of the various States. In that listing, Maine was ranked as the fourth poorest State; 47th among the 50 States. And when energy costs are factored in, Maine may well be the poorest State in the country.

The debate in which we are engaged relates very much to those energy costs

and to the economic future of my State. The same story which reported Maine as the fourth poorest State in the country listed our sister State in the northwest corner of the United States, Washington, as the seventh wealthiest in terms of per capita income.

There are a number of factors which influence the economic vitality of a State, but it is noteworthy as we contemplate the relative status of Maine, the northeasternmost State in the continental United States and Washington, the northwesternmost State, that Washington's energy, commerce, and agriculture industries and consumers enjoy a tremendous advantage in the rates they pay for electricity due to the presence of one of the largest hydroelectric projects in the country—the Bonneville Power System on the Columbia River. Maine enjoys no such Federal hydroelectric development and, along with New England, pays some of the highest energy costs in the country. A potato processing plant in Aroostook County pays a mill rate of 70.83 for electricity, while a competitor in Washington State, which enjoys the benefit of Federal power, pays a mill rate of 17.5. I do not pretend that Dickey-Lincoln is the whole answer to the economic problems of Maine, but those potato processors have testified that energy costs are a major disadvantage to them and that Dickey-Lincoln is a significant part of the answer to their problems.

So the question before us is critical to the future of Maine and New England, and particularly to the future of my constituents in some of the more depressed parts of my State, northern and eastern Maine.

The current interest rate established by the Water Resources Council for Water Projects is 7⅛ percent. Applying that interest, Dickey-Lincoln enjoys a benefit-to-cost ratio of 1.5 to 1. Because Dickey-Lincoln was authorized in 1965 and received local commitments for cost sharing in 1968, it has an authorized rate of 3¼ percent. At that rate, Dickey-Lincoln's benefit-to-cost ratio is 2.7 to 1.

At either rate, it is clear that Dickey-Lincoln is a potentially sound investment we should not reject before all the evidence is in.

The lakes created by Dickey-Lincoln will cover 88,000 acres of the St. John Valley, 55 miles of the St. John River and 200 miles of tributaries would be flooded to create the reservoir behind Dickey Dam. That impoundment represents a significant alteration to the face of northern Maine. But we have harnessed rivers throughout Maine for more than a century, creating lakes and providing power. We can accept that as a potential tradeoff on this river in northern Maine and may find the enhanced access to previously remote areas provided by this lake a boon to hunting, fishing, and canoeing.

The St. John Valley is truly beautiful. But it is not a pristine wilderness of virgin forests. It has been heavily and continuously cut in the last century, largely by Canadians. And although the valley will be changed by the Dickey impoundment, it will not be destroyed and may well be enhanced; it will certainly be accessible to more people.

We do not have to decide those questions here today. But I submit that the economic and energy benefits of Dickey-Lincoln are substantial to Maine and New England, with every dollar returned to the Federal Government with interest. And the environmental tradeoffs are neither so clear nor so overwhelming that we should refuse to look at mitigation potentials.

I am new among you and I cannot claim the expertise enjoyed by my predecessor. I can and do ask you to look carefully at the questions before you and to evaluate it on the merits. I am confident that on that basis, you will reject this amendment.

Mr. President, I would like to make a couple of brief extemporaneous remarks.

There is implicit throughout all of the debate on Dickey-Lincoln, which has gone on in this body for several years, that those who support Dickey-Lincoln are not concerned with the environment while those who oppose Dickey-Lincoln are.

I would like to cite a little bit of the history of the project to refute that implication.

When this project was first conceived it contemplated a single dam to be built below the confluence of the St. John and Allagash Rivers. That dam would have flooded both of those rivers. Valid environmental objections were raised, and I was one raising them, as was then Senator Muskie, and others.

To meet and to accommodate those objections, the location of the dams was moved to above the confluence so the Allagash River would not be flooded, and thereafter through the efforts of then Senator Muskie and State Senator Elmer Viollette, as the leaders, the Allagash Wilderness Waterway was created, a unique concept in this country of a State wilderness waterway funded initially with Federal funds.

The Allagash Waterway is a priceless heritage to the State and the Nation, and it is largely the result of efforts by persons who support the Dickey-Lincoln project. So those who support Dickey-Lincoln have no less concern for the environment and conservation values than those who oppose Dickey-Lincoln.

Let me say finally that there have been over 170 public power projects built in this Nation's history throughout all of the country except in the Northeast. Those projects were built with taxpayers' money from Maine and New England. We supported those projects because we believe, as most American political leaders have believed throughout this Nation's history, that what is good for Washington is good for the country. What is good for Oregon and New Mexico and Nebraska and Louisiana and Mississippi and Tennessee is good for the country, because we are all Americans in the last analysis, and I say that that principle applies to the Northeast. What is good for Maine, what is good for New England, is also good for the country, and I say it is about time that we in the Northeast had a public power project to enable us to have lower electricity rates.

It is no coincidence that the State of Washington, which has 90 percent of its power produced through hydro, has the lowest electrical rates in the country. The Northeast, which has no major power projects, and which has the lowest percentage of hydropower in the country, has the highest electric rates in the country.

I urge the Members of the Senate to apply now the same standard they have applied over many past decades in approving projects for other parts of the country because the people of Maine and the Northeast are Americans too, and what is good for them is good for all Americans.

I thank the Chair.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I might say for the benefit of my colleagues that in just about 2 minutes I will move to table the amendment.

Let me just give you the very barebones argument for this project. In about 2 weeks, a referendum will be held in Maine on whether they are going to shut down nuclear power already existing in Maine. The argument against nuclear power is "Let us take up its place with hydroelectric." Well, this is the hydroelectric, and it is 830 megawatts, Mr. President, 1.4 billion kilowatts annually.

This is actually the last phase of planning money, only $795,000 after which time this project will be in a position so that Congress can make a decision to construct or not to construct this project.

I believe we ought to construct Dickey-Lincoln because it is 830 megawatts, almost as big as a large-scale nuclear plant and as large as the average coal-fired generating plant.

There is a cost/benefit ratio of 2.7 to 1. This hydroelectric power is clean, it is nonpolluting, it is not dangerous, it emits no radiation, it is noninflationary, it is not subject to strikes. This project would produce the most highly valuble power increment—that is peaking power—which is so costly to produce. How in the world we could be seriously considering here in 1980 shutting down such a project in the planning stage when it produces 830 megawatts I do not know.

Mr. President, I hope the Senate will have the good sense not to do so, and I therefore move to table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana to lay on the table the amendment of the Senator from Maine. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

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Mr. BIDEN (after having voted in the negative). Mr. President, on this vote, I have a pair with the distinguished Senator from North Carolina (Mr. MORGAN). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. KENNEDY (after having voted in the negative). Mr. President, on this vote I have a pair with the distinguished Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from New Hampshire (Mr. DURKIN), the Senator from Colorado (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 46, nays 37, as follows:

[Rollcall Vote No. 393 Leg.]

YEAS—46

Baucus	Ford	Nunn
Bayh	Glenn	Pell
Bellmon	Gravel	Randolph
Bentsen	Hatfield	Ribicoff
Boren	Heflin	Riegle
Bumpers	Huddleston	Sarbanes
Burdick	Inouye	Sasser
Byrd, Robert C.	Jackson	Stafford
Cannon	Johnston	Stennis
Chiles	Laxalt	Stevenson
Church	Magnuson	Talmadge
Cranston	Matsunaga	Williams
Culver	Melcher	Young
DeConcini	Metzenbaum	Zorinsky
Eagleton	Mitchell	
Exon	Moynihan	

NAYS—37

Baker	Hayakawa	Pryor
Boschwitz	Helms	Roth
Byrd, Harry F., Jr.	Heinz	Schmitt
Chafee	Humphrey	Schweiker
Cochran	Kassebaum	Simpson
Cohen	Leahy	Stevens
Danforth	Levin	Thurmond
Dole	Lugar	Tower
Domenici	McClure	Tsongas
Durenberger	Nelson	Wallop
Garn	Packwood	Warner
Hatch	Pressler	Weicker
	Proxmire	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Biden, against.
Kennedy, against.

NOTING VOTING—15

Armstrong	Hollings	McGovern
Bradley	Javits	Morgan
Durkin	Jepsen	Percy
Goldwater	Long	Stewart
Hart	Mathias	Stone

So the motion to lay on the table UP amendment No. 1552 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I yield to the distinguished floor manager.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order for Senator CRANSTON to offer an amendment out of order at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 1553

Mr. CRANSTON. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator will suspend until the Senate is in order. The Senate will please be in order.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON), for himself and Mr. HAYAKAWA, proposes an unprinted amendment numbered 1553.

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 16, line 8, add *Provided further*, That the Chief of Engineers is directed to spend not more than $3 million to provide beach nourishment to replenish the authorized project for beach erosion control at Oceanside, San Diego County, California to its previous configuration from any materials that he may reasonably obtain for that purpose.

Mr. CRANSTON. Mr. President, this is a noncontroversial amendment that has no effect on the spending level in the bill. There is already authorized in Public Law 87–9, March 29, 1961, that a project for beach erosion control at Oceanside in San Diego County, Calif., may be carried on by the Corps of Engineers. The language of that present authorization would apparently limit the acquisition of sand to Camp Pendleton. It is difficult to carry on the Oceanside project only with sand taken from Camp Pendleton. This amendment would remove that limit and make it possible to get the sand at any convenient place.

There is a problem in the city of Oceanside, in San Diego County, because a breakwater built at Camp Pendleton has caused erosion of sand on the beaches south of there that needs to be replenished. There are funds available for that purpose.

This amendment simply makes plain that the sand can be gotten anywhere. Senator HAYAKAWA, of California, is a cosponsor of my amendment. I have discussed it with the distinguished floor leader, and I gather it is acceptable.

The PRESIDING OFFICER. The Senate will please be in order.

The Senate has heard the amendment offered by the Senator from California.

Without objection, the amendment is agreed to.

The amendment (UP No. 1553) was agreed to.

Mr. JOHNSTON. This is the amendment of the Senator from California?

Mr. CRANSTON. That is right.

Mr. JOHNSTON. Mr. President, I was going to accept the amendment. It is a technical clarification. We did not agree to it at the subcommittee level or at the full committee level because there was a question about whether or not there was full authority for this. Obviously, the amendment is either one of two things: It has now been changed by a clarification of that authority, or the question of authority has been obviated by legislation on an appropriation bill. In either event, we are for it. So, ex post facto or posthumously, I ask the Senate to approve the amendment.

Mr. CRANSTON. I thank the Senator very much.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I say for the benefit of my colleagues that I understand there is a Republican policy luncheon, so we shall have no votes until 2 p.m., according to the usual procedure. So the bill is open for speeches or amendments. We are ready for third reading.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1554

(Purpose: To provide funds for small community solar demonstration projects)

Mr. DOLE. Mr. President, I ask unanimous consent that I be permitted to offer an amendment at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Kansas.

Mr. DOLE. Mr. President, I understand that the floor managers of the bill are temporarily away from the Chamber. It has been suggested I just offer the amendment, make the statement, and wait until they return before disposition.

Is that satisfactory to the Senator from Mississippi?

Mr. STENNIS. That is the way I understand the situation. It will be satisfactory.

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) for himself, Mrs. KASSEBAUM, Mr. GOLDWATER, Mr. MCGOVERN, Mr. PRESSLER, Mr. INOUYE, and Mr. MATSUNAGA proposes an unprinted amendment numbered 1554.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SMALL COMMUNITY SOLAR DEMONSTRATION PROJECT

For carrying out the demonstration program for small communities authorized by section 4 of the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978 (Public Law 95–590) $3,750,000 to remain available until expended.

Mr. DOLE. Mr. President, I am pleased to have Senators KASSEBAUM, GOLDWATER, MCGOVERN, PRESSLER, INOUYE, and MATSUNAGA join me in attempting to restore much-needed funds for the development of solar energy.

Mr. President, the intent of this amendment is quite simple and straight forward. Those of us who support the restoration of $3.75 million for community solar demonstration projects feel very strongly that solar is an integral ingredient in any overall national energy program. Now there has been some concern that due to the fact that these funds were cut in a House subcommittee and not restored by the Senate Appropriations Committee that there is little hope the funds will be retained if this bill goes to conference. Well, I can assure my colleagues, as most are already aware, no one can accurately predict what will ever come out of a conference committee. It would be irresponsible for this body to act on the premise that the other body will not go along with our decision. We have never been guided by that premise before, and we must not be guided by it today.

But it would seem to me that the responsible thing to do is restore the funds and see what happens.

At a time when all are asking for as much budget restraint as possible $3.75 million may seem like a large sum, but when that figure is related to bringing about energy independence for our Nation, it is a very small sum indeed. If this Congress can appropriate $88 billion for a massive synthetic fuels program, can we in good conscience deny the appropriation of $3.75 million for community solar projects?

Mr. President, virtually every form of energy sold in this country with the notable exception of solar energy has received massive Federal subsidies for development, transmission, and use. Nuclear power, for example, has received a generation's worth of Government-sponsored research and development at no metered cost to those buying electricity from a nuclear powerplant. Every stage of the nuclear fuel cycle from the enrichment of uranium to the disposal of radioactive waste continues to receive Federal subsidies.

When the House passed the energy and water appropriation bill, the $3.75 million requested for the small community demonstration project planned by the Department of Energy for fiscal year 1981 were deleted. Last week the Senate Appropriations Committee followed suit and the funds were not restored. I am asking for your help in getting these funds restored.

A transition to solar resources as a major energy source must be catalyzed by Federal incentives. Americans are beginning to appreciate the social, environmental, and economic advantages of solar energy. Recent polls suggest that in an era when most new energy sources are deeply embattled with a hostile public 94 percent of the American people favor the rapid development of solar sources.

Economic history demonstrates that two major energy transitions have swept the United States in the last 125 years. First, coal replaced wood as the dominant source of commercial energy. Then coal itself was displaced by oil and gas. Both these changeovers occurred in a short period of time. In 1850 coal contributed only 10 percent of the U.S. energy supply; just 25 years later, it provided more than half the Nation's fuel. In 1910 less than 10 percent of the U.S. energy supply came from oil and gas; 35 years later oil and gas accounted for half the Nation's energy.

We are entering another transition. Renewable energy sources are the key to this Nation's energy future. The critical question is whether this transition will proceed fast enough to enable us to avoid massive economic and social disruptions. The amendment which I propose to offer would add $3.75 million to the energy and water appropriation bill and is a step in the right direction toward insuring energy independence for our country.

Mr. President, in accordance with the understanding, I suggest the absence of a quorum until Senators HATFIELD and JOHNSTON return to the floor.

The PRESIDING OFFICER (Mr. BOREN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may, on behalf of my colleague, Senator RANDOLPH, and myself, called up an amendment out of order, that the pending amendment be laid aside temporarily, and that the rules be suspended to permit an amendment legislative in nature. I have cleared this with Mr. BAKER. Mr. HATFIELD is here and Mr. JOHNSTON is here.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1555

(Purpose: To authorize and direct the design and construction of flood control projects in West Virginia and Kentucky)

Mr. ROBERT C. BYRD. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) for himself and Mr. RANDOLPH, Mr. HUDDLESTON, and Mr. FORD proposes an unprinted amendment numbered 1555.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 20, between lines 14 and 15, insert the following:

FLOOD CONTROL PROJECTS

SEC. 202. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to design and construct, at full Federal expense such flood control measures at or in the vicinity of—

(1) Pikesville, Kentucky, and of Grundy, Virginia, an the Levisa Fork of the Big Sandy River,

(2) Pineville, Kentucky, on the Cumberland River, and

(3) Williamson and Matewan, West Virginia, on the Tug Fork of the Big Sandy River,

as the Chief of Engineers determines necessary and advisable to afford these communities and other flood damaged localities and their immediate environs on both the Levisa and Tug Fork of the Big Sandy River and Cumberland River a level of protection against flooding at least sufficient to prevent any future losses to these communities from the likelihod of flooding such as occurred in April 1977, at an estimated cost of $284,000,000. Non-Federal interests shall hold and save the United States free from damages due to construction works referred to in this section, and maintain and operate all such works after their completion in accordance with regulations prescribed by the Secretary of the Army.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(c) The Congress finds that the benefits attributable to the objectives set forth in section 209 of the Flood Control Act of 1970 exceed the cost of the flood control measures authorized by this section.

Mr. ROBERT C. BYRD. Mr. President, this amendment is legislation that has passed the Senate three times. As my distinguished senior colleague, the chairman of the Public Works Committee, will state, it has passed the Senate three times.

Mr. RANDOLPH. It has actually been four times, I say to the majority leader.

Mr. ROBERT C. BYRD. Four times.

Mr. RANDOLPH. Most recently last year.

Mr. ROBERT C. BYRD. So the Senate has already acted on this amendment four times, and it has run into obstacles in the other body.

For that reason my colleague and I feel that the Senate is justified in passing this legislation again.

It authorizes $284 million in flood protection measures for a water resource project vital to our country.

The Tug Fork River Valley of West Virginia is a vital energy-producing area and is highly flood prone.

Mr. President, I made a pledge to the people of the Tug Fork Valley of West Virginia.

That pledge is this: I would do my best to see that the Nation recognizes the suffering this valley has sustained, and that this Senate would react by providing flood relief to the beleaguered area.

Four times the U.S. Senate has responded to my plea, along with the requests of my colleague, Senator RANDOLPH, and has provided authorization for extensive flood relief.

The legislation bogged down in the House of Representatives three times, and once was vetoed by the President.

While I have kept my pledge, the hopes of these people remain unfulfilled. For this reason, my colleague and I feel that the Senate is justified in passing this legislation again.

It authorizes $284 million in flood protection measures for a water resource project vital to our Nation.

It is, perhaps, a little known fact that 5 percent of this country's recoverable coal comes from the Tug Fork Valley Area. It is a mother lode of energy potential.

Yet, on the other hand, the area is "another disaster" waiting to happen. The valley today is no more protected from a flood disaster than it was in April 1977, when $200 million in damages and untold misery were caused.

At the time, the U.S. Army Corps of Engineers labeled it a 500-year flood. However, to the people of Mingo County, when one is visited by floods 13 times in 66 years, as those people have been, each threatening rain cloud portends a disaster.

All floods are devastating. They all mean a virtual cessation in coal production. They all mean unemployed workers. They all mean businessmen will have to go into debt to get a new start.

It was only 9 months after the so-called 500-year flood, in January 1978, that another major flood caused $9 million in damages to the valley.

For the price of those two floods within a year of one another, we could have paid the bill for flood protection, and it would have been a down payment on our energy future. But inflation has since greatly increased the cost.

I have visited with the people of the Tug Fork Valley. On numerous occasions they have been in my Capitol Building office. I have met untold times with the Corps of Engineers, and with the agency people involved in flood relief.

We have worked together. I have watched with amazement and admiration as the people of the Tug Fork Valley have rebuilt their lives and their businesses after each crushing blow.

On their last visit to Washington, D.C., the publisher of the Williamson Daily News, Lou Harvath, pointed with pride to current pictures of Mingo County towns and communities.

He showed vibrant, thriving communities. But the question on his mind that day, as well as on the minds of Williamson Mayor Sam Kapourales, Mingo County Commissioner Truman Chafin and others was—what happens the next time? What is the future of Mingo County?

Following the great flood of 1977, I visited Mingo County. I saw firsthand the destruction. On my return, I began working for disaster relief.

I was able at that time to secure lower interest rates on small business loans being sought by businessmen who had had their stores destroyed.

But that was only a partial remedy to the suffering, not a solution to the cause of the problem.

So, I, along with Senators RANDOLPH, HUDDLESTON and FORD, attempted to secure authorization to expend money for a flood relief project in the Tug Fork Valley.

On four previous occasions we were successful in our endeavors in the Senate. But no matter how badly needed the legislation is, it still has not become law.

During this Congress, the House included $100 million for the Tug Fork Valley in its massive public works bill. However, this measure is laden with projects and the administration has promised a veto.

Mr. President, the people of the Tug Fork Valley have come so close, yet continue to be so far away from the safety and security that all Americans deserve.

This is why I am asking today that we once again approve this authorization.

By attaching this amendment to an appropriations bill, it should stand as good a chance, or a better chance, than our four previous efforts.

Mr. RANDOLPH. Mr. President, the majority leader is correct in focusing attention on the crucial problem that we face in the southern area of West Virginia and in the neighboring State of Kentucky. It is very important to realize that this project has been in the Senate as recently as January of this year when we acted favorably on this matter of the Tug Fork and the adjacent areas from the standpoint of programing adequate flood control to protect the people, to protect the industries, to protect an energy-producing section of the United States that is highly important.

We have been spending huge sums of money to take care of the cleanup program and the rehabilitation program that follow the floods that continue to plague the area.

I commend to my colleagues, with all the persuasion at my command, the amendment before us again proposing authorization for flood control measures in the Tug and Levisa Forks of the Big Sandy River in West Virginia and Kentucky.

This action is long overdue. These activities have already been authorized by the Senate on four previous occasions in substantially the same form. Legislation containing the Tug Fork program, however, has failed, for various reasons, to become law.

The need for this measure has been obvious and urgent since the dark days of April 1977, when storms literally devastated the Tug Fork Valley and inspired the type of comprehensive emergency program which I introduced shortly thereafter.

That urgency has increased, rather than diminished, with the passage of time. There have been other storms and threats of storms that have clouded the economic posture and prospects for the area in the succeeding years, compounding the problems of business, industry, and the people of the region.

The cumulative cost of these recurring storms has been immense—some $200 million by the last accounting—and the price incalculable in terms of human resources.

A practical, workable, and innovative approach to correction of these conditions is being devised by the Army Corps of Engineers. It can be initiated without undue additional delay under the authority provided by this amendment.

I urge that the Senate make it available so that the region can fulfill its economic and energy-related potential and that the people who call it home can be assured of security from the constant fear under which they now live.

Mr. JOHNSTON. Mr. President, the two able Senators from West Virginia are correct. This matter has passed the Senate on—I thought three times, but I am told and have been advised on—four occasions. It is a flood control project in one of the valleys of West Virginia where the water has no place to go. There is not a big flood plain; they have mountains on both sides.

There is huge property damage and loss of life associated with this which will be obviated by giving the Corps of Engineers this authority which, of course, would be subject to annual appropriations.

But it involves a combination of methods, including levees, snagging, clearing, rediversion channels, nonstructural measures, floodwalls, a whole series of things which are designed to relieve this river valley of the misery which the floods do inflict there.

It is quite an unusual project or an unusual situation, should I say, because of the acute nature of the danger particularly to life and, to a great extent, property, which is the reason, of course, why the Senate on four different occasions has approved the legislation.

Mr. President, it is, as I say, a much-needed project, and we are pleased to accept the amendment.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished manager of the bill.

Mr. HATFIELD. Mr. President, I am aware of the past history of this amendment, and I am disposed to support it and, hopefully, we can support it in conference with the House.

Mr. JOHNSTON. Mr. President, I might add that we had over 400 people from the environs of this project, mainly people of very modest means, who chartered trains, buses, and automobiles to come to testify on this project before our committees in the past.

To say it is a matter of priority interest in West Virginia is to put it very mildly and understate the case.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

Mr. ROBERT C. BYRD's amendment (UP No. 1555) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I wish to express my gratitude to Mr. HATFIELD also, again to both managers, for their having accepted the amendment.

Mr. RANDOLPH. I join in that appreciation because I think you have acted as leaders of this legislation in a well-reasoned manner on a problem that continues to deepen each day that we allow it not to be attended to as you are doing today.

UP AMENDMENT NO. 1554

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Kansas.

Mr. JOHNSTON. Mr. President, I wonder if I might engage in some conversation with the able Senator from Kansas on this matter?

Mr. DOLE. Surely.

Mr. JOHNSTON. Mr. President, this matter was originally an administration request which was deleted by the House and not appealed by the Department of Energy. It is for small community assistance applications experiment No. 1.

The problem that the House had, and the problem we had, on this matter is that the definition phase and the details of this project have not been completed and submitted.

I think our committee and, indeed, the Senate, are very much for solar energy. Indeed we have a total of about $1.7 billion for solar energy this year, both directly through appropriations and through tax credits and tax relief, this year, $1.7 billion. So our commitment to solar energy is very strong.

But we simply do not know the details at this point. What is the definition of the project? How many cities? When is it to be phased in? What is the cost, the total cost? Therein lies the problem.

If the Senator could, perhaps, tell us of those—frankly I do not think the project has been defined and, if not, I wonder if the Senator would consider deferring this until next year, at which time we will have the details where we might be in position to look at it more favorably?

Mr. DOLE. I think the Senator is correct. I do not think it has been defined. I am just checking with staff.

It was, as the Senator has indicated, properly requested, but it was deleted from the fiscal year 1981 appropriation in the House, and last week, as I understand, the Senate Appropriations Committee followed suit.

I am just suggesting that we take it to conference and try to figure out some way to accomplish it there. We are talking about a very minimal sum, $3.75 million. It does not do violence, as I understand it, to the limit or the lid of the budget requirements, and it would seem to me that that is a matter that could be resolved in conference, and I hope my colleague from Louisiana might look at it in that way.

Mr. JOHNSTON. Mr. President, I am not adverse to taking a good matter to conference where some details might be fleshed out in the meantime, but I am hesitant on this project because there is no definite plan as we understand it, the details of which can be furnished. If it were a question of acquiring more information between here and the conference, that is one thing. But I think it would be a very bad precedent to approve a matter without the details being fleshed out.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. HATFIELD. I think the Senator has a point, but I would urge the manager of this bill to accept this amendment on this basis: that we take this amendment to conference, and I have a feeling it will be like on other occasions when we have experienced in the past that taking it to conference will force the agency's hand whereas, if we continue to wait upon the agency, we may be waiting for an indeterminable period of time.

I think we have a good chance of accepting this amendment, taking it to conference, and in that way we can put the pressure and leverage upon the agency to come up with the details of the plan.

It has been authorized, I remind the manager of the bill, so there has been planning and thought given to this. This is not a proposal that is created on the spur of the moment, but we have had some good study on it, and I really believe this may well be the very specific leverage we could apply on the agency. We do not lose anything by accepting this and taking it to conference on that basis, and I think we have much to gain.

Mr. DOLE. I appreciate the Senator from Oregon's comments, if he will yield, Mr. President.

It is my understanding that there are five States which have already fulfilled every requirement, made the application, studies have been had. These are South Dakota, Washington, Arizona, Hawaii, and, of course, the State of Kansas, so it is not something we are searching for. The application has been completed. It is my understanding that all the work has been done, and I hope there will be some way in conference to finally get it resolved.

I think that is what it needs is a little push. I think that is what the Senator from Kansas is doing here.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that Senators HUDDLESTON and FORD be added as cosponsors to the Tug Fork amendment just accepted previous to this one.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that Senator INOUYE be added as a cosponsor to my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I have expressed the misgiving I have about this amendment, but I think there is logic, in effect, in giving a chance to the Department to flesh out the details of this amendment so that we can evaluate it properly before conference

I want the Senator from Kansas to understand that if they cannot flesh out those details, it will have, probably, a tough time in conference at this time. On the other hand, if they can flesh out the details and it appears to be good, I, for one, would be most happy to take it.

Under that arrangement, Mr. President, and because of the strong support of my revered ranking minority member, on behalf of the committee, I will accept this amendment.

Mr. DOLE. Mr. President, I wish to thank my colleagues, both Senators JOHNSTON and HATFIELD. We will do all we can to make certain we can flesh it out between now and the time of the conference.

Mr. MATSUNAGA. Mr. President, as a cosponsor of the Dole amendment, I rise in its support and urge the restoration of $3.75 million for the small community solar thermal program.

The small community solar thermal program combines the best of both worlds—an innovative high solar technology which is geared for the small community. A sum of nearly $120 million has been appropriated this year for solar thermal energy conversion. Unfortunately, the lion's share of this amount will go to the Barstow power tower, a project which, on the one hand, I support in concept, but on the other hand, cannot accept as a total substitute for the small community program.

However, I fully appreciate the critical minimums required to continue and complete those solar thermal programs to be supported under the $120 million, and rather than cannibalize from this appropriated amount, would like to urge my colleagues to augment this sum by 3 percent to allow the small community solar thermal program to blossom into the promise it has shown thus far.

Mr. President, let me expand on why I am so optimistic about this direct solar option. Our Sun daily makes available 20,000 times as much energy as is needed by all the peoples of the world.

In the United States alone, the Department of Energy has pinpointed at least six sites deemed ideal for utilization of the principal of solar thermal energy conversion: South Dakota, Washington, Kansas, South Carolina, Arizona, and Hawaii. It is obvious, then, that any State in the Union will be able to gather the rays of the Sun in any small community by the process of solar thermal energy conversion.

Mr. President, it makes good commonsense to foster this renewable, indigenous energy alternative which can be utilized across the country. The sum in question, $3.75 million, is a responsible one during this time of budgetary crunch, and worthy of support by my colleagues.

I urge adoption of the pending amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas (Mr. DOLE).

The amendment (UP No. 1554) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1556

(Purpose: To allow the North Fremont Gravity Pressure Irrigation Committee to participate in the federal Rehabilitation and Betterment Program)

Mr. CHURCH. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator ask unanimous consent to set aside the pending committee amendment?

Mr. CHURCH. Mr. President, I ask unanimous consent that the pending committee amendment be temporarily set aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Idaho (Mr. CHURCH), for himself and Mr. MCCLURE, proposes an unprinted amendment numbered 1556:

On page 23, line 5, strike the period at the end thereof and insert the following ": *Provided further*, That of the amount herein appropriated not to exceed $10,000 shall be available to the Fremont-Madison Irrigation District to initiate a rehabilitation and betterment program under the Act of October 7, 1919, (63 Stat. 724), as amended, to be repaid in full under conditions satisfactory to the Secretary of the Interior."

Mr. CHURCH. Mr. President, this is a simple amendment to allow a very worthwhile project in southeastern Idaho to proceed under the water and power resources service's rehabilitation and betterment program.

Earlier this year, I was contacted by representatives of the North Fremont Gravity Pressure Irrigation Committee, an organization comprised of five irrigation canal companies located along the Henry's Fork of the Snake River in Idaho.

These irrigation committees have banded together in order to develop a gravity pressure irrigation system to take the place of the out-dated system of open ditches and canals which serves some 32,000 acres of land in this vicinity.

According to the data already compiled by the irrigators, the new gravity pressure system would not only conserve water and decrease the demand for electricity for pumping, but it would actually provide a net gain in electricity for the area. The preliminary engineering study they have sponsored indicates that replacing the existing system will enable them to conserve some 25,000 acre feet of water and produce an extra 56 million kilowatts of electricity each year. In an era of scarce water and energy supplies, such savings are significant.

Because the project is estimated to cost approximately $77 million, the North Fremont irrigators are not eligible for Federal assistance under the small reclamation projects loan fund. Similarly, the project does not qualify for assistance under the rehabilitation and betterment program, because the irrigators themselves will do the project work.

In the past, when similar situations have arisen, Congress has provided assistance to meritorious projects by adopting provisions in the public works appropriations legislation which provide specific eligibility for irrigation districts to participate in the rehabilitation and betterment program. For example, back in 1971, we enabled three irrigation districts—two in Oregon and one in Washington—to participate in the R. & B. program notwithstanding the fact that those projects were not constructed by the Government.

My amendment follows up on a request I made to the Public Works Subcommittee on June 30 of this year. On that date, I wrote to the distinguished floor manager of this bill, Senator JOHNSTON, laying out the merits of the North Fremont project. I never received a response to my letter, and I felt it only appropriate to reiterate my request when the present bill was called up.

This amendment does not affect the funding levels contained in the bill. All it does, is earmark $10,000 under the "construction program" category so that a feasibility investigation of the proposed project can be prepared. The construction program category includes a $1 million appropriation for continued work at the Teton Dam project on the Teton River. As you will recall, the Teton Dam failed in 1976, and we have been continuing to provide appropriations for this project for necessary work ever since. It is my opinion that $10,000 of the amount which the Appropriations Committee has earmarked for the Teton project, would be better spent for the initiation of the feasibility investigation of the North Fremont gravity pressure irrigation project on the nearby Henrys Fork of the Snake River. My amendment is offered with the assumption that such a change will be made. Ninety-nine percent of the money earmarked for the Teton Dam project would still be spent there.

Mr. President, I ask unanimous consent that a copy of my June 30 letter to Senator JOHNSTON, a summary of the project, and a legal opinion used by the Department of the Interior to justify denying the North Fremont committee's participation in the R. & B. program, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD as follows:

JUNE 30, 1980.

Hon. J. BENNETT JOHNSTON,
Chairman, Subcommittee on Public Works, Committee on Appropriations, U.S. Senate.

DEAR MR. CHAIRMAN: I have recently been in touch with members of the North Fremont Gravity Pressure Irrigation Committee, an orgazination comprised of five irrigation canal companies located along the Henrys fork of the Snake River in Eastern Idaho.

This committee has proposed a gravity pressure irrigation system be installed on some 32,000 acres of land in Fremont County to take the place of the present system of open ditches and canals. Such a move would not only conserve precious water supplies, and decrease the demand for electrical energy for pumping, but provide a net gain in the generation of electrical energy. Preliminary engineering studies indicate that by replacing the existing system, local irrigators will be able to conserve an estimated 25,000 acre feet of water per year, and provide a net power increase of some 56 million kilowatt hours per year. The additional electrical energy will be most important for residential and industrial uses in Fremont County, where the project lands are located.

Because of the size of the cost of the anticipated project ($77.6 million) the North Fremont Committee is not eligible for assistance under the WRP's Small Reclamation Projects loan program. Similarly, the Committee is not eligible for direct assistance through the Rehabilitation and Betterment (R&B) program.

In the past, when similar situations have arisen, Congress has provided assistance through the R&B program by adopting language in the Public Works Appropriations bill. I have enclosed, for your information, a copy of P.L. 91-439, where eligibility for three irrigation districts to receive assistance under the R&B program was established.

Mr. Chairman, I fully realize the extraordinary demands placed upon your Subcommittee this year. However, in light of the water and energy savings which could accrue from the proposed gravity pressure project, I would hope that you could adopt language in the fiscal year 1981 appropriations bill which would declare the North Fremont project eligible for assistance under the R&B program. It is my understanding that an appropriation of $10,000 under the "construction and rehabilitation" category would be sufficient to begin the preparation of a feasibility investigation of the proposal.

Please let me know if there is any way that I can be of assistance to your subcommittee as you consider this request.

With best wishes,

Sincerely,

FRANK CHURCH.

NORTH FREMONT GRAVITY PRESSURE IRRIGATION PROJECT FEASIBILITY STUDY: A SUMMARY

INTRODUCTION

In recent years, Idaho canal companies in the Fremon-Madison Irrigation District, part of the Minidoka Project on the upper Snake River, have become increasingly concerned about rising power costs and the declining efficiency of their open ditch distribution systems. The Marysville, Farmer's Own, Yellowstone, Squirrel Creek, and Silky canal companies have spearheaded investigations to determine the feasibility of conserving both energy and water by converting their open ditch system to a gravity pressurized pipe system.

In May 1979, representatives from the five participating canal companies formed the North Fremont Gravity Pressure Irrigation Committee. Together, these companies provide water to about 32,000 acres near Ashton. In April 1979, the Idaho Water Resources Board authorized matching grant funds for the Commitee's use in conducting a reconnaissance-level feasibility study to evaluate and determine the technical feasibility, cost, and possible hydropower generating potential of a gravity pressurized pipe system. CH2M HILL, an international engineering firm with special expertise in agricultural engineering, was retained by the Committee to conduct the reconnaissance study out of its Boise Office.

THE PROBLEM

In 1979, Fremon County farmers paid about $10 to $15 per acre for water pumped from canals and ditches to irrigate their potato, alfalfa, and small grain crops. By the beginning of 1980, a 40 percent increase by the Fall River REA and a 23 percent rate hike by Utah Power had already increased Fremont irrigation costs to $14 to $18 per acre.

The multitude of individual pumps used for sprinkler irrigation in the project area consume about 20 million kWh annually, valuable power that could be utilized for other purposes. In addition, the open ditch system currently loses an estimated 40 to 50 percent of its diverted water to seepage and evaporation before it reaches the headgate. These heavy irrigation losses have forced farmers at the extreme ends of the system to resort to pumping out of springs, wells, or streams to obtain a more reliable water source.

THE PROPOSED SOLUTION

The solution identified by CH2M Hill engineers incorporates the service areas of all five canal companies, plus three outlying areas. Total project acreage is estimated at 32,000 acres, with a seasonal water requirement of up to 64,000 acre-feet and a peak flow rate of up to 395 cubic feet per second (cfs).

The proposed project will allow irrigators to convert from pump to gravity pressurization, eliminating nearly all of their previous power consumption. Excess pressure in the system will be used to generate approximately 36 million kWh of hydroelectric power annually. Considering all the potential energy benefits represented in the project, a net increase in power availability of 56 million kWh can be realized by the Fremont County area.

The project would involve the construction of two power generation facilities. The first is a 3.5 MW in-line generator located in a 96-inch pipe that will produce more than 25 million kWh annually. The other generator will be located south of the in-line generator along Falls River. An overflow pipe will be installed immediately following the in-line generator to carry excess flow to the power plant. This 2.2 MW generator will produce approximately 11 million kWh annually.

In addition to the potential for significant energy savings, the system could result in an estimated savings of up to 25,000 acre-feet of water currently being lost to seepage and evaporation. The closed pipe would reclaim these water losses, and each irrigator would be assured of receiving his full entitlement.

FINANCING

Total construction costs for the North Fremont Gravity Pressure Irrigation Project are estimated at $77.6 million, based on a projected 1985 construction completion date. The project is proposed to be financed by a combination of two sources. The first, administered by the Water and Power Resources Service (WPRS) under the Rehabilitation and Betterment (R&B) Act, would provide the necessary funding for upgrading the irrigation system. The Fremont-Madison Irrigation District will be the responsible contracting agency for the R&B loan. A second source of funding would be used for construction of the two hydropower plants. Possibilities are: (1) the Department of Agriculture's Rural Electrification (REA) loan program, administered through the Fall River REA; (2) participation from investor-owned public utilities; and (3) other cooperatives.

By financing the project through a combination of these services and revenues generated by the sale of power, the annual per acre costs are estimated to range from $25 to $30. Since power costs per acre for pumping out of canals and ditches are expected to double to $20 to $30 by 1985, costs to each individual irrigator in that year should be about the same with the new gravity pressurization system as without it. After 1985, the gravity system will actually cost less than continued use of the canal system.

PROJECT SUMMARY

The open ditches will be replaced with a pressure pipe, 6 to 144 inches in diameter.

Irrigated area: Approximately 32,000 acres within the Fremont-Madison Irrigation District, which is part of the Minidoka Project on the Upper Snake River.

Power saved by eliminating sprinkler pumps: 11,000 kW, or 20 million kWh/year (the equivalent of 33,000 barrels of oil).

Power generated through new hydroelectric facilities: 8,000 kW, or 36 million kWh/year (60,000 barrels of oil).

Net power increase: 19,000 kW, or 56 million kWh/year (93,0000 barrels of oil).

Water saved: 25,000 acre-feet (estimated).

Project cost (1985): $77.6 million.

Additional benefits:

Some canal right-of-way can be reclaimed for crop production.

Irrigation system reliability will be improved.

The open-ditch safety hazard will be eliminated.

Funding for irrigation improvements:

Rehabilitation and Betterment Act loan.

Possible funding for power plants:

REA loan, administered through Fall River REA.

Investor-owned public utilities.

Other cooperatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., June 10, 1977.

MEMORANDUM

To Commissioner of Reclamation.

Through Assistant Secretary-Land and Water Resources.

From Acting Associate Solicitor, Energy and Resources.

Subject Eligibility of Settlers Irrigation District for Rehabilitation and Betterment Funding.

You have asked for an opinion as to whether the Settlers Irrigation District, a privately constructed irrigation system organized under State law, is eligible for rehabilitation and betterment funding under the Rehabilitation and Betterment Act of October 7, 1949 [R&B Act], 43 U.S.C. § 504. For the reasons set forth below it is our opinion that the District is not eligible for rehabilitation and betterment funding under the R&B Act.

Although the District's irrigation system is privately developed, in order to assure a dependable water supply it contracted under the Warren Act of February 21, 1911, 43 U.S.C. § 523, to purchase surplus water from a Reclamation reservoir, Arrowrock. As a precondition to the delivery of that water, the District agreed to the acreage limitations set out in section 2 of the Warren Act. In later years, the District purchased storage rights in Arrowrock and Anderson Ranch reservoirs and assumed a repayment obligation as a general obligation of all lands in the District.

Based on these facts, the Field Solicitor, Boise, concluded in a memorandum to the Regional Director of April 1, 1977, that the District was now "governed by the Federal reclamation laws," as required in the R&B Act, and was therefore eligible for R&B funding. We regret that we cannot concur with that conclusion.

A privately developed irrigation district such as Settlers does not become eligible for R&B funding merely by purchasing water from our storage capacity in a Reclamation reservoir and agreeing to certain conditions in connection with such purchase. The R&B Act was intended to apply only to irrigation systems constructed by the United States and which the United States is authorized to operate and maintain. In explaining the purpose of the Act, the Senate Report stated:

"H.R. 1694 would not authorize any work on reclamation projects since the performance of necessary maintenance is already authorized by law. It merely authorizes the Secretary of the Interior to make the necessary repayment arrangements with the water users." S. Rep. 501, 81st Cong., 1st sess., at 1.

We interpret this statement to mean that Congress intended the funding provisions of the R&B Act to apply only to the rehabilitation of projects for which maintenance work was already authorized by other legislation. Such work is authorized on Reclamation-constructed projects—either in specific authorizing acts or generally (see section 6 of the Reclamation Act of June 17, 1902, 43 U.S.C. § 491)—but not on privately constructed irrigation systems like Settlers.

This interpretation is confirmed by the House and Senate Reports accompanying P.L. 94-102, Act of October 3, 1975, which amended the R&B Act to include projects funded under the Small Reclamation Projects Act, 43 U.S.C. § 422a *et seq.* The Senate Report stated:

"In 1949, the Congress recognized the need to provide a mechanism for funding rehabilitation and betterment activities associated with irrigation projects *constructed* under Federal reclamation laws." S. Rep. 94-380, 94th Cong., 1st sess., at 1. [Emphasis added]

Likewise, the House Report stated:

"The Rehabilitation and Betterment Act of 1949, as amended, provides that the Secretary of the Interior may make loans to entities operating irrigation systems, *constructed* under the Federal Reclamation law, for the purpose of rehabilitating and betterment of such systems." . . . H.R. Rep. 94-102, 94th Cong., 1st sess., at 2. [Emphasis added]

In view of this restriction under the 1949 R&B Act, the 1975 amendment was necessary to fund R&B work programs on privately constructed small reclamation projects. Without such express authorization, a small reclamation project would not have been eligible for R&B funding, and we must conclude that a privately constructed project like Settlers would be similarly ineligible.

In like manner Congress has in some cases authorized R&B work on privately constructed irrigation systems. In these cases the authorization was expressly provided in an appropriation act, such as P.L. 91-439, 84 Stat. 890, at 894. The latter legislation, in addition to appropriating funds for the rehabilitation of Reclamation projects generally, specifically approved R&B work on the Westland and Tumalo Districts in Oregon and the Ellenberg District in Washington, notwithstanding that those projects were not constructed under the Reclamation laws. For this purpose, however, the congressional intent must be clear, and it would not be enough merely to point to other assistance that such projects may have received from Congress through the appropriation process, such as limited expenditures for the emergency repair of certain project's facilities. See memorandum of March 12, 1956, from Acting Associate Solicitor to Commissioner, "Proposed supplemental repayment contract for rehabilitation and betterment work—Arnold Irrigation district—Arnold Project."

We conclude, therefore, that Settlers is not an irrigation system "governed by the Federal Reclamation laws" within the meaning of the R&B Act, so as to permit R&B funding of its maintenance work. We note, however, that Settlers would appear to be eligible for such funding under the Small Reclamation Projects Act, which is specifically designed

to apply to privately constructed irrigation systems such as Settlers.

Your note on this subject, with attachments, is returned herewith.

JOHN C. MCDOWELL.

Mr. CHURCH. Mr. President, in summary, all my amendment does is to obtain eligibility for the North Fremont project under the R. & B. program and earmark enough money to allow the Water and Power Resources Service to work with the irrigators in initiating the feasibility efforts required for the formal application for the project. Approval for the project and construction funding will have to be worked out in the future, through normal channels. I urge the adoption of the amendment.

Mr. JOHNSTON. Mr. President, I think the Senator from Idaho correctly states the amendment, and on behalf of the majority side we have no objection.

I yield to my colleague from Oregon.

Mr. HATFIELD. Mr. President, I want to be cooperative and assist in every way possible our friends and neighbors in Idaho.

This amendment by the Senator from Idaho (Mr. CHURCH), supported by the junior Senator from Idaho (Mr. MCCLURE), as I understand calls for a transfer of $10,000 from the Teton project in Idaho so that it is not really an add-on amendment but, rather, a matter of sharing out of the item I referred to, the Teton project.

Is that correct?

Mr. CHURCH. The Senator is correct. It would not add to the total amount of the bill.

Mr. HATFIELD. Mr. President, on behalf of the minority, I am very happy to accept the amendment.

Mr. CHURCH. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The amendment (UP No. 1556) was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will state the first committee amendment not agreed to.

The legislative clerk read as follows:

On page 2, line 9, strike "$2,268,754,000" and insert "$2,262,575,000";

Mr. JOHNSTON. Mr. President, this is the appropriation that I believe the Senator from Massachusetts (Mr. TSONGAS) wanted to amend. We will withhold and suggest the absence of a quorum at this point.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I shall like to ask the distinguished subcommittee chairman, Mr. JOHNSTON, a question or two regarding the breeder base program. It is my understanding that the actions of the House and Senate Appropriations Committees have resulted in a decrease in the operating funds for this important activity without any recognition of the high rate of inflation impacting research activities. Is it the intention of the Senator to try to maintain the highly trained technical team that is essential to a viable national breeder program?

Mr. JOHNSTON. Yes, Mr. President, I support the breeder program with an enthusiasm approaching or equal to that of the senior Senator from Idaho, whose support is unsurpassed. The committee report gives the Department of Energy latitude to move funds from the plant and capital equipment account to operating expenses to mitigate the impact of a tight budget on key personnel.

Mr. CHURCH. I ask the Senator if he will carefully monitor and review the impact on the program during the first few months of the fiscal year and support a supplemental appropriation for the LMFBR base program if serious problems then exist for the program.

Mr. JOHNSTON. Yes, Mr. President, I will carefully review the status of the program early next year, with a clear intent to provide as much additional support as this extremely tight budget situation will permit.

Mr. CHURCH. With these understandings, I shall not offer an amendment to this bill for additional funds for the LMFBR base program.

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LEVIN). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1557

Mr. JOHNSTON. Mr. President. I have an amendment, which I intend to offer shortly, on behalf of myself and the distinguished Senator from Massachusetts (Mr. TSONGAS), the effect of which will be to add $6 million for solar energy in research and development, principally for solar applications, including biomass, photovoltaics, wind, and ocean systems. We have a number of differences in our mix of items as shown in the report on the solar energy budget.

What we would be doing, Mr. President, is working out an arrangement—the Senator from Massachusetts and I—whereby we could increase the amount in solar applications in research and development by the sum of $6 million, which would bring the total Senate R. & D. appropriation amount up to the total House amount in this overall account of Energy Supply R. & D. operating expenses appropriations.

We wanted to be sure that the $6 million went into the account of solar energy applications R. & D., because there are other programs in this overall account for which the Senator from Massachusetts had prepared an amendment and which he intended to offer.

What we have done is worked out an amendment in lieu of the committee amendment which will insure not only that we add the $6 million for the account that the House had but also will insure that the $6 million goes to solar energy R. & D.

Does the Senator from Massachusetts have any comment, before I offer the amendment?

Mr. TSONGAS. No.

Mr. JOHNSTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON), on behalf of himself and Mr. TSONGAS, proposes unprinted amendment numbered 1557.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 9, in lieu of the matter proposed to be inserted, insert the following: "$2,262,575,000, and in addition, $6,000,000 for solar energy research and development and solar applications, including biomass, photovoltaics, wind and ocean systems.".

Mr. JOHNSTON. Mr. President, the amendment has been explained. It insures that we increase this appropriation account by the $6 million, but it insures that this $6 million will go to solar energy applications and research and development; and we particularly flag those subaccounts that were of interest to the Senator from Massachusetts, which are solar applications, biomass, photovoltaic, wind, and ocean systems.

This compromise amendment has the principal advantage of keeping our total bill within the amounts allocated to us by the Appropriations Committee. The original amendment which the Senator from Massachusetts had proposed, which would have increased the solar budget by a larger amount, would have thrown us out of balance and would have possibly prevented us from having the bill enrolled.

So I thank the Senator from Massachusetts for working this out, which is a victory for solar energy, by increasing it by a small amount, but it still allows us to keep this under the budget allocations and restrictions.

Mr. TSONGAS. Mr. President, the Senate has debated the energy issue back and forth. No one here questions how critical a problem the energy crisis is. We recognize that our national economic crisis is closely tied to our energy dilemma. We recognize that our national security crisis, brought on by the unstable political situation in the Middle East, and by our Nation's heavy dependence on oil production in that part of the world, is also closely tied to our energy dilemma. Consequently, I believe there are many Senators who would seek major new energy programs and significant increases in existing programs in this year's budget. But we are coming to understand that we are in a zero sum game with regard to balancing the budget, providing tax incentives for investment, and controlling the money supply.

The distinguished floor manager knows that I would like to see a significant increase in funding in real dollars for solar programs. He knows of my reservations about the $20 billion to be spent on synfuels and the billions on backing out imported oil. But I do not seek to redress what I perceive to be an imbalance in our energy policy. The goals of this amendment are modest.

This amendment seeks only to restore DOE solar funding to the level of the House-passed bill. It should be noted that as it passed the House, H.R. 7590 was already some $19 million below the President's revised budget request and more than $48 million below the administration's initial budget request. In addition, the solar program just suffered a $22 million cut in the last quarter of fiscal year 1980.

The President established last year the goal of 20-percent solar by the year 2000. The Harvard Business School Energy Future report said this is realistic. The Office of Technology Assessment said this is realistic. The Council on Environment Quality said this is realistic. When the administration announced its fiscal year 1981 budget, it was criticized as insufficient to meet the 20-percent goal. The committee's bill goes well below even that level. It would result in major delays in many critical areas.

I have supported the efforts of my distinguished colleagues to pare the fat from bloated Federal programs. But I believe that this reduction of Federal solar funding cuts into the very muscle of a program vital to our national security.

The programs cut by the committee's bill constitute the Government's side of a critical Government-industry partnership aimed at creating new growth industries in wind, photovoltaics, OTEC, passive solar, biomass, and solar thermal. These are sunrise industries that need Government support at the early stages. Many of the DOE solar programs are being carried out in cooperation with industry. What the committee's bill does is send a signal to industry that you cannot rely on the Government's contribution. If funding levels are not predictable—or at least stable—industry cannot reasonably make investment decisions. If we want these investments in our country's energy future, we must show Government commitment to existing programs. Our amendment has no new starts. It merely tries to mitigate the budget cut in ongoing programs.

Briefly, our amendment does the following. It restores $18 million to the solar applications program, $11.7 million to the biomass program, $3 million to the photovoltaics program, $1 million to the wind program, and $1.5 million to ocean systems, for a total of $35.2 million.

The solar applications money would be restored to programs designed specifically to get solar energy off the drawing boards and into public use. These programs have a very high "bang for the buck" ratio. In fact, DOE has estimated that for every $1 that taxpayers save in 1981 through solar applications budget cuts, they will pay over $30 in 1985 for imported oil (or its equivalent) which would not be needed if the programs are fully funded. (The actual figures are: $18 million saved in fiscal year 1981, $559 million spent for oil in fiscal year 1985.)

The funds for photovoltaics would keep the residential demonstrations of this exciting technology on schedule. Without them, the tests of these solar cells that convert sunlight directly into electricity would be seriously delayed. The funds would also keep the search for cheaper production processes on schedule. The proposed cut would have required a significant reduction in the industry-Government effort to reduce the costs of producing silicon, the raw material for photovoltaic cells.

The biomass restoration would continue the research into small scale production of methane and other liquid fuels. These will be needed to support the commercialization activities mandated by Congress in S. 932. Much of this work is being done with Energy Department funds by farmers and farm cooperatives, through an agreement with the Department of Agriculture. If the proposed cut is not restored, this work, as well as research at several agricultural universities, will come to a halt.

The wind money, if restored, would keep DOE's large wind machine program on schedule. This program has the single highest near-term potential of any solar electric program. Otherwise, the program will be delayed significantly, despite the fact that the House of Representatives gave overwhelming approval to an aggressive wind energy bill last year.

The ocean systems money allows continued research on a series of alternate ocean energy technologies—wave power, current power, and salinity gradient.

Mr. President, we speak so often these days about reinvestment in America—investing in our future to make us competitive and productive. These solar programs are just such programs. They are investments in our energy future. Cutting back such investments is pennywise and pound foolish. An internal DOE study found that for every dollar spent in the solar applications program, $30 is saved in 1985. For every million dollars we cut today, we will pay $30 million in 1985 for imported oil.

The funding in this amendment is a commonsense investment in our own self-interest. It is a basic step that addresses America's energy dependence and the strategic weakness caused by our dependency. Quite simply, we must now invest in a safe energy future. Otherwise, the future economic cost of our inaction will be many times higher. For this Nation's economy and our very security, I urge my colleagues to restore this vital investment.

Mr. President, I ask unanimous consent to have printed in the RECORD a table which sets out where our proposed amendment would make its restoration.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

[In thousands of dollars]

	H.R. 7590 House allowance	Senate mark	Mathias amendment
SOLAR APPLICATIONS			
Systems development:			
Operating expense	$49,500	147,500	+$2,000
Capital equipment	1,500	1,500	
Subtotal	51,000	49,000	+2,000
Market test and application:			
Operating expense:			
Buildings	17,000	15,300	+1,700
AIPH	20,800	19,000	+1,000
PV	20,200	15,200	+5,000
Capital equipment	1,000	1,000	
Subtotal	59,000	51,300	+7,700
Market development and training: Operating expense	39,500	31,200	+8,300
Solar international: Operating expense	4,000	4,000	
Program direction: Operating expense	2,786	2,786	
Total, solar applications	156,286	138,286	+18,000
SOLAR TECHNOLOGY			
Biomass:			
Operating expense:			
Alcohol fuels	15,100	19,100	
Other biomass	47,650	35,950	+11,700
Capital equipment	750	750	
Construction funds	2,500	2,500	
Subtotal	66,000	58,300	+11,700
Solar thermal:			
Operating expense	$83,100	$83,100	
Capital equipment	3,500	3,500	
Construction funds	5,800	5,800	
Subtotal	92,400	92,400	
Photovoltaics:			
Operating expense	133,000	130,000	+$3,000
Capital equipment	7,000	7,000	
Subtotal	140,000	137,000	+3,000
Wind:			
Operating expense	77,900	76,900	+1,000
Capital equipment	2,100	2,100	
Subtotal	80,000	79,000	+1,000
Ocean:			
Operating expense	38,300	36,800	+1,500
Capital equipment	700	700	
Subtotal			+1,500
Solar international: Operating expense	8,000	8,000	
Solar information: Operating expense	1,400	1,400	
SERI facility: Construction funds	7,000	7,000	
Tech. support and util			
Program direction	4,000	4,000	
Total, solar technology	437,800	424,600	+17,200
Total, solar energy	594,086	562,886	+35,200

Mr. TSONGAS. Mr. President, I ask unanimous consent to have printed in the RECORD three tables showing the House categories and the proposed amendment's Senate categories.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

FISCAL YEAR 1981 CROSSWALK

BUDGET AUTHORITY OPERATING FUNDS

[In thousands of dollars]

Previous solar budget structure	H.R. 7590 House allowance	Proposed Senate solar budget structure and Senate marks: Buildings: Active	Buildings: Passive	Buildings: PV	Industry: Biomass	Industry: Thermal	Power: Wind	Power: Ocean	Alcohol fuels	International	SERI facility	Information	Program direction
SOLAR TECHNOLOGY													
Biomass:													
Alcohol fuels	15,100								19,100				
Other biomass	47,650				35,950								
Subtotal	62,750												
Solar thermal	83,100					83,100							
Photovoltaics	133,000			130,000									
Wind	77,900						76,900						
Ocean	38,300							36,800					
Solar international	8,000									8,000			
Solar information	1,400											1,400	
Program direction	4,000												4,000
Subtotal solar technology	408,450	0	0	130,000	35,950	83,100	76,900	36,800	19,100	8,000	0	1,400	4,000
SOLAR APPLICATIONS													
System development	49,500	15,750	13,500			18,250							
Market test and applications:													
Buildings	17,000	10,300	5,000										
AIPH	20,800				5,000	14,800							
PV	20,200			15,200									
Market development and training	39,500	11,400	11,700		2,000	3,800	2,300						
Solar international	4,000									4,000			
Program direction	2,786												2,786
Subtotal solar applications	153,786	37,450	30,200	15,200	7,000	36,850	2,300	0	0	4,000	0	0	2,786
Total solar energy	562,236	37,450	30,200	145,200	42,950	119,950	79,200	36,800	19,100	12,000	0	1,400	6,786

BUDGET AUTHORITY CAPITAL EQUIPMENT

[In thousands of dollars]

Previous solar budget structure	H.R. 7590 House allowance	Proposed solar budget structure: Buildings: Active	Buildings: Passive	Buildings: PV	Industry: Biomass	Industry: Thermal	Power: Wind	Power: Ocean
Solar technology:								
Biomass	750				750			
Solar thermal	3,500					3,500		
Photovoltaics	7,000			7,000				
Wind	2,100						2,100	
Ocean	700							700
Subtotal solar technology	14,050	0	0	7,000	750	3,500	2,100	700
Solar applications:								
System development	1,500	750				750		
Market test and applications	1,000	500	500					
Subtotal solar applications	2,500	1,250	500	0	0	750	0	0
Total solar energy	16,550	1,250	500	7,000	750	4,250	2,100	700

BUDGET AUTHORITY CONSTRUCTION FUNDS

[In thousands of dollars]

Previous solar budget structure	H.R. 7590 House allowance	Proposed solar budget structure: Industry: Biomass	Industry: Thermal	SERI facility	Alcohol fuels
Solar technology:					
Biomass	2,500				
Solar thermal	5,800		5,800		2,500
SERI facility	7,000			7,000	
Total solar energy	15,300	0	5,800	7,000	2,500

Solar applications for buildings:

To restore $5 million for active systems, $2.7 million for passive systems, and $8 million for photovoltaics (restoring the second silicon pilot plant and funds according to the following: $700,000 for market test and applications and $2 million for market development and training).

Solar applications for industry:

To restore $13.5 million for biomass activities, along the lines of the committee's reductions in market test and applications, technology, and applications.

Solar power technology:

To restore $6 million, of which $4.5 million is for wind energy conversion systems, and $1.5 million is for ocean systems.

Mr. TSONGAS. Mr. President, I ask unanimous consent that the names of Senators MATHIAS, PACKWOOD, MATSUNAGA, KENNEDY, WILLIAMS, LEAHY, DURKIN, STEWART, SARBANES, and BUMPERS be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TSONGAS. Mr. President, I note for the record that the amendment is supported by the solar lobby and the American Wind Energy Association, which comes as a surprise to nobody. It is also supported by the AFL-CIO, the Sheetmetal Workers, ARCO, Exxon Solar, Lockheed, GE, Boeing, and Bethlehem Steel. So, clearly, there is a broad base of support.

The original amendment, which I intended to have brought up today, which was put together by me and Senator MATHIAS principally, would have offered to restore $35.2 million for research in commercialization of solar energy, and that would have brought it up to where the House-passed bill is at this point. Because of the concern over the budget resolution and the budgetary and parliamentary situations in which we find ourselves, and after discussions with the Senator from Louisiana, we have decided to increase it by only $6 million.

We have discussed the position of the Senator from Louisiana vis-a-vis the conference, in which he has indicated that he will take a hard look at the House position and perhaps, to the extent possible, nod toward the House position when it comes to conference. I accept that as a good faith effort. I am sure that when he has a chance to look at the merits of the issue in conference, the House position will be acceded to by the Senate conferees. I appreciate the willingness of the Senator to accommodate my wishes and those of the other 11 cosponsors.

I thank the Senator from Louisiana.

Mr. HATFIELD. Mr. President, I should like to engage in a brief colloquy with the Senator from Louisiana.

Do I correctly understand that by the adoption of this amendment, we are still within the budgetary limitations and the allocation limitations of the committee?

Mr. JOHNSTON. The Senator is correct.

Mr. HATFIELD. Do I correctly understand that this in no way impinges upon the present allocation and commitments we have made to the program for geothermal and other renewable sources of energy?

Mr. JOHNSTON. The Senator is correct. It does not change the allocations shown in the report for energy supply R. & D. operating expenses. The additional $6 million was not taken from any of those accounts but simply was added on, as an addition for these solar applications and R. & D. programs only.

Mr. HATFIELD. Mr. President, on behalf of the minority, I am happy to accept the amendment, predicated on those two points.

I have long been a strong advocate of alternative systems of energy development, especially renewable sources of energy, the potential we have there and not realized; but I want to make certain that we not make this at the expense of the other ongoing programs.

I would have liked to have seen this brought about through deducting that $6 million from the warhead program, but I realize the political realities of that problem. So, in lieu of having it brought about through that system, I am happy to accept this amendment, as stated, by the Senator from Louisiana and the Senator from Massachusetts.

Mr. TSONGAS. Mr. President, I share the sentiment that that opportunity will arise in conference.

Mr. MATSUNAGA. Mr. President, I rise in strong support of the Tsongas amendment, as one of its cosponsors.

We have a very serious energy problem which is only going to get much worse during the decade of the eighties. Our import oil bill has skyrocketed by 3,000 percent in 10 years, and worse still, while in 1973 only 15 percent of this importation came from Arab countries, in 1980 half of our imports will have this origin.

According to the Institute of Gas Technology, the "true" cost of imported oil is really $80 to $109 per barrel. The analysis took into account the effects of U.S. oil imports on world oil prices, trade balance, value of the dollar, inflation, output of the economy and national security costs. If this is true, then our import oil bill for this year will not approach $100 billion, but will, in fact, be three times this amount.

The Congress has reacted with reasonable dispatch, having passed the National Energy Act in 1978 and both the Windfall Profit Tax Act and Energy Security Act this year. We have authorized in response to the impending national and world energy crisis, but in reaction to the hysteria of a cyclical budget crunch, have become ultraconservative in appropriating this sum. While energy headlines have saturated the media, in fiscal year 1979 only 1.6 percent of the total Federal budget went for energy. In fiscal 1981, the energy outlay percent is expected to shrink to 1.4 percent. Mr. President, I ask my colleagues, what are our priorities?

The solar budget epitomizes our skewed sense of priorities. Every analysis and review of our Federal solar energy program has underscored the obvious—our national goal of the renewables providing 20 percent of the Nation's total energy in the year 2000 will not be met at the present level of support. The restoration of $35.2 million for research and commercialization of solar energy is absolutely necessary to maintain the momentum toward energy independence, but perhaps even more so as a symbol, to show that we are serious about finding a solution to our energy problems.

Mr. President, I urge my colleagues to vote with me in support of this pending amendment which would in effect accept the House appropriation for the solar budget.

Mr. President, it is my understanding that a compromise amendment has been agreed to by the Senator from Massachusetts and the Senator from Louisiana. In the further understanding that the Senator from Louisiana will agree in conference to a restoration of a major portion of the funds for solar energy programs, this Senator from Hawaii will not object to the compromise amendment.

I appreciate the correction.

Mr. JOHNSTON. If the Senator will withhold a moment—the original Tsongas amendment that was proposed is not being offered. We have now a compromise. Mr. President, the situation is a little more complicated than just not putting up a fight, but I will do what is necessary and appropriate to try to get this additional $6 million over our amounts for solar energy, whether it means accepting the House amounts or fighting for the additional dollars for solar energy.

Mr. TSONGAS. Mr. President, as a point of clarification, $6 million is in here because of the amendment. The issue raised is between this and the House position in this particular category.

Mr. JOHNSTON. I say to my friend that the House of Representatives had a total of $2,268,000,000 for an overall account which includes a number of things, including geothermal, nuclear, hydro, basic sciences programs and other matters which are nonsolar. So what we have done is added onto that total Senate amount to bring the total amount up to the House, which is $2,268,000,000, and then we have in our amendment specified the part of the total account in which that would be spent.

I believe that we will be successful in being able to do that, but simply acceding to the House level would probably not do it. We have to insist that the additional $6 million be spent in the solar account which I believe we can do, I hope and I trust, without a great deal of difficulty.

But the point I am making to the Senators from Massachusetts and Hawaii is that I will do my very best for what is in their interest to get this money allocated to the solar accounts.

Mr. TSONGAS. If I may pursue it just for a moment, what is the Senator's position as to the difference be-

tween what will now be the Senate position and the House position? My understanding of our discussion was that although not committed to the House position the Senator would be inclined to give the Senate position to the House position as to the remaining $29 million.

Mr. JOHNSTON. The Senator is correct. We will very sympathetically look at all of those items.

Mr. TSONGAS. I appreciate the Senator's statement.

Mr. DOMENICI. Mr. President, I wonder if the Senator from Massachusetts will yield.

The PRESIDING OFFICER. Does the Senator from Louisiana seek recognition?

Mr. DOMENICI. Has the Senate passed the Tsongas amendment? I was going to ask to be added as a cosponsor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senators from Louisiana and Massachusetts.

Mr. DOMENICI. Mr. President, I object. I was trying to be added as a cosponsor. That is why I arose.

Will the Senator from Massachusetts add the Senator from New Mexico as a cosponsor?

Mr. TSONGAS. Yes.

Mr. DOMENICI. And I commend him for his efforts.

Mr. TSONGAS. Mr. President, I so ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico will be added as a cosponsor.

The Chair misunderstood the Senator from New Mexico, and I apologize.

Mr. DOMENICI. I thank the Chair.

Mr. JOHNSTON. Mr. President, I now move adoption of the second-degree amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senators from Louisiana and Massachusetts.

The amendment (UP No. 1557) was agreed to.

Mr. JOHNSTON. Mr. President, I now move the committee amendment, as amended.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment, as amended, was agreed to.

Mr. MATSUNAGA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I wonder if my good friend from Louisiana will discuss with me the so-called waste isolation pilot project. I believe it is referred to on page 61 of the report.

Mr. JOHNSTON. Will the Senator withhold momentarily on that? I promised the distinguished senior Senator from Mississippi I would meet with him immediately after this, if the Senator could withhold for a moment.

Mr. DOMENICI. I am pleased to withhold.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. The clerk will state the next committee amendment.

The legislative clerk proceeded to read the amendment.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 6, strike "$330,837,000," and insert "$376,337,000 and in addition, $10,000,000 for the construction or acquisition by the Secretary of Energy of capacity for the away from reactor storage of spent nuclear fuel from electric powerplants licensed under the Atomic Energy Act of 1954, pursuant to the Nuclear Waste Policy Act (S. 2189) as passed by the Senate on July 30, 1980, all";

Mr. JOHNSTON. Mr. President, I am not aware of any amendment to this committee amendment. I have not been informed of any.

Mr. President, the pending amendment relates to plant and capital equipment for energy supply research and development activities on page 5. I am not aware of any proposed amendment to this. None has been offered. That is now the pending business. With the concurrence of the Senator from Oregon, I shall move its adoption.

Mr. HATFIELD. Mr. President, I support the motion.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the next committee amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 5, line 24, strike "$275,760,000" and insert "$276,760,000."

Mr. JOHNSTON. Mr. President, this amendment relates to uranium supply and enrichment activities. I notice the Senator from Ohio, at one point, had some interest in this. I have not been told of any amendment to be offered, but the Senator from Ohio is in the chair. I ask whether he is ready for us to have this considered.

The PRESIDING OFFICER (Mr. METZENBAUM). Speaking in my capacity as the Senator from Ohio, let me state that the senior Senator from Ohio has indicated that he wishes to come to the floor to offer an amendment which I shall cosponsor. I would appreciate it if the Senator from Louisiana would be good enough to lay this aside until we can check that.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that this amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the next committee amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 15, line 9, strike "$1,657,095,000" and insert "$1,534,703,000."

Mr. JOHNSTON. Mr. President, I shall not ask that this amendment be agreed to, but that it be the pending business. I ask unanimous consent that it be temporarily laid aside. This amendment would be the appropriation account in which the Tenn-Tom amendment would come. I therefore ask unanimous consent that it be temporarily laid aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1558

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1558.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Provided, however, That up to $180,000 and six additional positions shall be included in the Division of Safeguards for the regulatory improvement of material control and accounting safeguards and the development of improved regulatory requirements for safeguarding the transportation of spent fuel.

Mr. McCLURE. Mr. President, this amendment simply provides that of the money appropriated to the Nuclear Regulatory Commission, up to $180,000 and six additional positions shall be included in the Division of Safeguards for the regulatory improvement of material control and accounting safeguards, and the development of improved regulatory requirements for safeguarding the transportation of spent fuel.

Mr. President, the only reason I am offering this amendment is not that there is any disagreement among the people in the Nuclear Regulatory Commission or the people in industry, because there is substantial agreement that they need to go forward, and are going forward with the adoption of regulations in these two areas, the accounting for nuclear materials within the various processing and industrial areas of the country, and second, the transportation of the spent fuels on the highways or railroads within the United States.

My concern and the concern of many people is that in spite of this uniform demand that regulations be developed, it is proceeding far too slowly.

We have a contract in one of these areas and the contract performance schedule keeps being changed and lengthened. We keep operating under an interim regulation, or interim regulations, and the NRC says that they are willing to go forward, and are going forward. But still we see a stretchout in the schedule for what I think everybody says must be attained and the NRC agrees will be attained.

All I seek to do in this amendment is to provide that they may, not that they have to or that they shall, but that they may, use up to $180,000 of the money appropriated to them and may, out of the additional positions which have been allocated to them, go up to six additional positions dedicated to these two areas of the development of regulation.

I hope, if the amendment is adopted, and I see no reason why it should not be, that the NRC would take this as a signal that we want them to complete the work they have started on in these two areas.

I hope the managers of the bill on both sides would see fit to accept the amendment. I am, personally, prepared to answer any questions which might be addressed to me on this amendment, on either of the suggestions embraced in it.

Mr. JOHNSTON. Mr. President, I do not know of any particular problem areas with this amendment. None have come to our attention. I believe the Senator from Idaho correctly states the amendment.

We will be glad to take it to conference, determine if there are any problem areas, and if not, I think it can accomplish all the things the Senator from Idaho has said.

So, on behalf of the majority, we will be pleased to take it to conference.

Mr. HATFIELD. Mr. President, on behalf of the minority, I think the Senator from Idaho has raised a very legitimate concern and expresses here in this amendment what we all have. I think it may well accomplish his purposes.

I would accept it on behalf of the minority.

Mr. McCLURE. I thank the Senator.

Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The amendment (UP No. 1558) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1559

(Purpose: To maintain the Portsmouth Gas Centrifuge Plant on the schedule submitted by the Department of Energy in its January 1980 budget request)

Mr. GLENN. Mr. President, I send to the desk an unprinted amendment and ask for its consideration.

The PRESIDING OFFICER. By unanimous consent, the section of the bill pertaining to this matter has been set aside. Does the Senator from Louisiana wish to bring the issue back before the Senate?

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order for the Senator from Ohio to bring up at this time his amendment to the uranium supply, resource, and enrichment activities and make it the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. I thank the Chair, and I thank the distinguished Senator from Louisiana.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. GLENN), on behalf of himself, Mr. METZENBAUM, Mr. BAKER, and Mr. SASSER, proposes an unprinted amendment numbered 1559.

Mr. GLENN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 24, strike "$275,760,000" and insert in lieu thereof, "$445,760,000".

Mr. GLENN. Mr. President, this amendment is submitted on behalf of myself as well as the current occupant of the chair, the Senator from Ohio (Mr. METZENBAUM), and the Senators from Tennessee (Mr. BAKER and Mr. SASSER).

This amendment provides an additional $170 million for the Portsmouth Gas Centrifuge Enrichment Plant (GCEP), as requested by the Department of Energy in its January 1980 budget submission. The gas centrifuge technology being developed at Portsmouth is highly energy efficient, using only 4 to 5 percent of the tremendous amounts of energy required by the gaseous diffusion enrichment process currently utilized.

Timely completion of the Portsmouth GCEP is a key component of the Department of Energy's highly successful uranium enrichment program. This program supplies all defense requirements for highly enriched uranium including the requirements of the Nation's naval nuclear propulsion fleet. The program has also been the sole supplier of all enrichment services to domestic civilian reactor customers since the Shippingport reactor started up in 1957 as the first U.S. power reactor. In addition, the uranium enrichment program has supplied much of the free world's uranium enrichment needs as well.

The statistics generated by the U.S. uranium enrichment program are impressive. To date, we have provided more than 100 million separative work units (SWU) for U.S. and foreign civilian nuclear power facilities, representing over 90 percent of the total free world production. To produce the equivalent electrical energy from this quantity of enriched uranium would have required about 10 billion barrels of oil. Foreign sales of enriched uranium have contributed about $2.8 billion to the U.S. balance of trade. Our total enrichment revenues for fiscal years 1980 and 1981 are projected to be about $1.1 billion each year.

Today, some 10,000 people are employed in the operation, maintenance and support of the three diffusion plants at Oak Ridge, Tenn.; Paducah, Ky.; and Portsmouth, Ohio. In addition, there are now in excess of 3,000 people at all locations, engaged directly in the design and construction of the Portsmouth GCEP. These GCEP numbers do not include the subcontractors who supply components, materials and services—perhaps another 5,000 to 7,000 people—nor do they include the indirect activities induced by these primary activities not only in my State of Ohio, but also in the home States of the contractors and subcontractors. These States include, among others, Alabama, California, Connecticut, Georgia, Kentucky, Maryland, Michigan, Minnesota, New Jersey, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, and West Virginia.

It is clear that uranium enrichment has an important economic impact, as measured in U.S. jobs, balance of trade, and efforts here and abroad to reduce dependence on oil. It is also clear that the Portsmouth GCEP is truly a national effort, and one that cuts across narrow State or regional interests.

President Carter stated in 1978 that "the United States must restore confidence to the world in its ability and willingness to supply enriched uranium enrichment services for commercial applications." I agree with the President's statement.

It is vitally important for the United States to remain a principal supplier of foreign enrichment needs for several reasons. First, we will be able to exert maximum influence on foreign users to cooperate in our nuclear nonproliferation objectives. If nations continue to develop their own enrichment capability, then this could also be a source of nuclear weapons materials. Second, we will continue to reap the benefits of helping to reduce our balance-of-payments deficit. Third, we will be able to optimize the use of our available enrichment

capacity in order to minimize the cost for all customers, both domestic and foreign.

To provide further assurance to our domestic and foreign customers that the United States is the most economical and reliable source of enriched uranium, the Department of Energy plans to expand its uranium enrichment capacity by the 8.8 million SWU per year provided by the Portsmouth GCEP. Even this additional capacity may not be enough. As recently as the August 4, 1980 project review of the Portsmouth GCEP, officials from the Department of Energy stated the following:

> We now have 298 contracts for enrichment services with U.S. and foreign utilities, extending beyond the year 2000, with a total value of $75 billion. To sustain this contract level at a tails assay of less than 0.25 percent U235 will require more than the full 8.8 million SWU year capacity projected to be supplied by GCEP. We anticipate that some of these contracts will be terminated and the scheduled delivery for others will be vulnerable to further delays, but we are confident that our marketing efforts, supported by advanced technologies and the resulting SWU cost-reductions, will offset contract terminations. Nevertheless, more than enough contracts exist which are firm or solidly on schedule to require most of the 8.8 million SWU GCEP plant capacity. And our demand projections indicate additional capacity beyond GCEP may be needed in the late 1990's.

The Department of Energy's January budget submission for fiscal year 1981 requested a total of $319 million so as to complete the first 2.2 million SWU's of the GCEP by 1988 in order that the GCEP could, in the words of DOE's Assistant Secretary for Resource Applications, Dr. Ruth Davis:

> Be operated integrally with our gaseous diffusion plants, and moreover bring to the enriched uranium marketplace the prominent advantages of the centrifuge separation process. These centrifuge separation advantages include: (1) operation using only 5 percent of the power of the diffusion process; (2) adaptability to construction in increments consistent with market expansion; and (3) opportunity to develop and utilize second generation centrifuges which promise even more attractive economics when fully developed in mid to late 1980's.

The administration, in its March 1980 budget revision, deleted $170 million from the GCEP. This will result in a year's delay in completion of all phases of the project. As I see it, this 1 year delay will be very, very costly for the following three reasons:

First. Contracts in excess of one-half billion dollars have been placed and are in work. A 1-year stretch-out will, in addition to inflation, add an additional year of overhead, capital, and administrative costs to these contracts. The total additional costs could be as much as $80 million on this alone.

Second. If the first 2.2 million SWU of GCEP are delayed by a year and if electricity costs rise at a moderate rate of 12 percent per year, there will be a need for an additional 5 billion kilowatt hours of electricity to be generated for nuclear enrichment purposes at a cost of almost $300 million in the 1987–88 timeframe.

Third. A schedule slide could result in a reduction of production rates of centrifuge machines and other hardware needed for GCEP. The degradation of efficiencies resulting from a schedule slide could cost as much as $50 to $100 million if manufacturing rates are significantly impacted.

In addition, Mr. President, there is the question of jobs. The total number of jobs nationally involved in this project would be on the order of 2,500 jobs in various parts of the country and not all of them in Ohio due to the national character of the project.

At a time when our economy could use a shot in the arm, it appears to me we should do all we can to boost the job market, and this project is clearly significant in that respect. Finally, Mr. President, all of the relevant Senate and House authorizing committees have stated their objection to this budget reduction and the subsequent delay in the project.

Mr. President, I yield the floor for any further statements or any comment that the distinguished floor manager of the bill might wish to make. I know the Acting President of the Senate wishes to make a statement on this, and I yield the floor to whomever might wish to make comments.

Mr. JOHNSTON. Mr. President, does the Acting President wish to make a statement at this time?

The PRESIDING OFFICER. He does.

(Mr. MOYNIHAN assumed the chair.)

Mr. METZENBAUM. I thank the Senator from Ohio (Mr. GLENN) and the Senator from Louisiana.

Mr. President, I do indeed wish to address myself to this subject because it is of major concern to my State and to the country.

Mr. President, earlier today, the distinguished chairman of the Appropriations Subcommittee on Energy and Water Development stated that the legislation before us does not provide adequate funding for a number of vital energy projects.

I fully agree with the Senator. And I share the view he has often expressed that this Nation cannot afford a skinflint approach in the absolutely vital area of energy development.

It is for that reason that I join Senator GLENN in offering this amendment today which will go a small way toward putting some flesh on what the Senator from Louisiana has himself described as a "barebones" budget.

Our amendment will restore funding for the gas centrifuge uranium enrichment plant at Portsmouth, Ohio, to the level authorized by the Committee on Energy and Natural Resources.

By so doing, it will permit this absolutely vital project to move ahead on schedule.

Our amendment will save a vast amount of energy. The gaseous diffusion enrichment technology currently in use at Portsmouth consumes fully 20 times the energy that is required by the centrifuge process.

In electric power alone, the cost of delaying the centrifuge plant will come to a staggering $500 million. And DOE has itself estimated that a year's delay will add two hundred million fiscal year 1980 dollars to the total cost of the project.

Mr. President, we have been told that the delay is an economy move, that it will cut $170 million from the fiscal year 1981 budget. But it is a false kind of economy.

It is beyond my comprehension that anyone—even the financial geniuses we have at DOE—would propose to "save" this money in the sure and certain knowledge that "saving" $170 million is going to cost the taxpayers $700 million.

Is there anyone here who wants to make that kind of a "saving" for the people of this country? I think not. But unless our amendment is accepted, that is precisely what we will be doing.

Mr. President, more than money is at stake. When we enacted the Nuclear Non-Proliferation Act of 1978—and no one knows this legislation better than my distinguished colleague from Ohio—we did so on the assumption that this country could and would be a reliable supplier of enrichment services to other nations.

Yet it is clear, Mr. President, that a growing number of countries do not consider us reliable.

Since June 1978, DOE has had 10 terminations of foreign enrichment contracts at a loss to this country of $29 billion over what would have been the period covered in those agreements.

Some foreign customers have gone to suppliers in Western Europe. Others have turned to the Soviet Union.

And each year between now and 1995, we stand to lose $90 million in foreign orders as contracts expire and are not renewed.

Yet we are told that we can afford to delay the Portsmouth project. I recognize that the question of delay is in and of itself a debatable issue, and I know that the distinguished chairman of the subcommittee feels that there will not be any delay involved in the project, and in a colloquy I hope to explore that further with him.

I ask him is it his understanding that with the appropriation as provided for in this legislation there will be no delay caused so far as going forward with the project is concerned?

Mr. JOHNSTON. Mr. President, that is our understanding. For example, there were some contracts this spring which were slipped, not due to underfunding but due to the human inability of those who were running the project to meet the schedule. So even if we added back in this money we doubt if it could be put back on the original full schedule.

We do not believe this would result in a further delay on the project. We believe that we can make the revised schedule, which is 140,000 SWU's by 1985, and the completion of the first train, which is, what, some four modules, by 1989, which would be the full 2.2 million SWU's, separative work units.

Mr. President, we do not believe this would result in any delay in the project.

Shall I tell the Senator also some of our thinking at this point?

Mr. METZENBAUM. Please do.

Mr. JOHNSTON. Mr. President, I would point out that we have in this budget $284 million for fiscal year 1981. If you look at the level of funding from the time we started the project in 1976, this is a tremendous increase over any prior year.

Prior year funding has been for the years 1976 through 1981, both inclusive, as follows: $12 million, $167 million, $150 million, $150 million, $187 million, and $284 million. So we are at an increase of about $100 million, $97 million, over 1980, almost double what we were in 1979. That is, of course, including the money which was deferred, which is available for this year.

I might also point out that we actually cannot spend the full $284 million. The uncosted obligations exceed $300 million.

I know of the great interest of the Senator from Ohio in seeing that the employees during the coming fiscal year will be increased under this budget, not only increased over last year, but increased over the amount that would result from the Senator's amendment.

How could that be that you would add money and lose employees? Well, the reason for that is if you added in this $170 million you would divert efforts and attention from the ongoing work to get out new contracts and apply that money actually in obligational authority, the entering into of contracts which would involve planning, design, architecture, and engineer work, whereas through this method we will be able to concentrate on those contracts already let which will require large numbers of employees. So that as contradictory as it may sound, we understand it to be a fact that total man-years of employment will be higher in fiscal year 1981 under the administration's and our formula for funding than would be employed under the accelerated schedule or formula of the Senators from Ohio. That is, as I say, due to existing employment levels being maintained and increased in 1981 as recent construction awards and those scheduled for 1981 are fully manned and carried out.

I might point out that most important, Mr. President, is that our commitment to this project on the committee is completely undiminished. This is an excellent project. What the Senators have said about energy efficiency is very much true. Uranium enrichment through a centrifuge uses only a minimum of electric power as compared with enrichment through gaseous diffusion, which is the primary reason for going to the centrifuge as opposed to the gaseous diffusion. It is not that we lack energy, but because this is so energy inefficient, and that is why we are so committed on the committee to following this through, meeting this revised schedule and, if possible, moving the schedule up.

Frankly, I think in the real world we can stay on the revised schedule not through funding—we intend to provide the funding—but if we can stay on the revised schedule in the sense of getting all the architects, all the engineers, all the contractors, all the project managers to move efficiently and in unison we will be doing very well, we think, to meet that schedule of 140,000 SWU's by 1985, and 2.2 million by 1989, and I can tell the Senators from Ohio that it is our commitment on the committee to do so.

Our agreement with the administration on the slipping of the money has nothing to do with a diminishing of our commitment to this project, and I want to underline and emphasize that. We will fight for this project and to keep it on the revised schedule.

I might also add that there is about a $1 billion commitment already available, including the fiscal year 1981 amounts, some spent, but a good portion of it in uncosted obligations. Of that, $350 million is uncosted obligations at this time. So we have a tremendous commitment ongoing with an additional budget authority of $284 million in this budget for fiscal year 1981.

Mr. METZENBAUM. I appreciate the comments of the Senator from Louisiana and his indication of recognition that we are concerned about the unemployment problem in Portsmouth and the need for additional jobs.

His assurances with respect to the fact that there will be more payroll, more jobs during this period rather than less in spite of the fact that there will be less money are reassuring. But more important than that is the fact that this Senator from Ohio has worked with the Senator from Louisiana for several years and knows that the Senator from Louisiana has consistently been a supporter of the Portsmouth enrichment plant and knows from previous conversations I had with him that he has indicated if there is need for additional funding, if there is a readiness to use it, if there is a demand for the uranium, if there is a reason to provide additional funds, that he would not turn a deaf ear to those of us who are particularly concerned with this subject, and I hope the Senator from Louisiana can indicate that I have interpreted his position in the past accurately as I have expressed it now on the floor.

Mr. JOHNSTON. Mr. President, the Senator is correct. I can even go stronger than that. And that is, under the conditions the Senator has outlined, I would not only not turn a deaf ear, but I would be helping to lead the fight to expedite the project over and above this revised schedule.

I believe that this revised schedule will put the additional enriched uranium supply from this centrifuge project make it available, and it will be available at the time it is needed. But if world indications depend on supply or domestic indications are that we need more than this, then I think we ought to give whatever funds are necessary to meet it.

I believe that the revised schedule, however, puts it on the critical path, so that it does not anticipate unduly the need for the enriched uranium to be produced by this.

Mr. METZENBAUM. I thank the Senator from Louisiana. I yield back the floor to Senator GLENN.

Mr. BAKER. Mr. President, I wish to commend the Committee on Appropriations for the commitment to America's energy development program which the committee has displayed in the Energy and Water Development Appropriations Act of 1981.

In particular, I note the very positive statement made in the committee report in support of the gas centrifuge enrichment plant, in Portsmouth, Ohio, is a most appropriate congressional affirmation of a most worthwhile project.

Furthermore, I applaud the efforts of the distinguished Senator from Ohio (Mr. GLENN) for his concern expressed in this amendment, which I am pleased to cosponsor, that the funding of the centrifuge project be consistent with the most rapid possible timetable.

In several energy-related areas, and I am thinking specifically of the Clinch River breeder reactor program in my own State, the Federal Government in recent years has been less than wholly enthusiastic in the development of much-needed new technology.

And while I sympathize with President Carter's desire to reduce Federal spending, this project is of such importance we must press ahead with it as rapidly as possible. Thus, I was pleased that the committee report recommended its continuation on the most efficient and expeditious timetable and funding level possible.

With every day of delay in the centrifuge complex, the Government incurs further losses in construction costs of the facility, as well as the additional financial burdens of inflation, overhead, administrative costs, and the higher cost of continued enrichment by the current diffusion process.

As private industry in Oak Ridge, Tenn., will be manufacturing the centrifuge machines to be utilized in the Portsmouth plant, I know firsthand of the benefits this new technology will bring to our campaign for energy independence.

Once operational, the centrifuge facility will save 5.6 billion kilowatt-hours of electricity each year over the same quantity of diffusion enrichment, while the process will consume only about 4 to 5 percent of the electricity needed by the diffusion process. This level of energy conservation is far too significant for us to pass it by or delay its attainment one day longer than necessary. Surely, we know by now that there is no time to lose. Indeed, too much time has already been lost by our failure to push forward with such energy conservation measures.

This gas centrifuge enrichment project, Mr. President, will conserve energy, will produce revenue, will indicate to the private sector that the Federal Government is truly enthusiastic and encouraged about private sector energy development programs. Finally, it will demonstrate to the world that the United States has every intention of remaining a competitive, reliable supplier of enrichment services.

In conclusion, I believe this to be a most worthy project in every aspect, and I am delighted the Appropriations Committee shares that belief. I particularly wish to thank my distinguished colleague, the Senator from Louisiana (Mr. JOHNSTON) for recognizing and support-

ing the concern I share with my good friends, the Senators from Ohio, that the Portsmouth gas centrifuge enrichment program to be kept on the most expeditious possible timetable.

● Mr. SASSER. Mr. President, I want to lend my support to the efforts of Senator GLENN to restore funds for the Portsmouth Gas Centrifuge Enrichment project. The reduction of funds to $170 million below the original fiscal year 1981 budget request will result in a delay of this project and the first increment of enrichment capacity by 1 year. This will ultimately add to the costs of the project—some say by as much as $700 million.

In addition, the delay will reduce the revenues which the Federal Government can collect upon completion of the plant from the sale of enriched uranium.

I would point out to the Members of the Senate that this particular project has substantial support from the private sector. Industrial capacity is being built by private sector firms at their own expense to fabricate the centrifuge machines and other hardware for the project. Over 1,100 jobs are impacted in the subcontracts on this project which are located in Ohio, Tennessee, Alabama, Maryland, Washington, California, Michigan, and Pennsylvania.

The activities of these private sector firms have been based on a schedule calling for the completion of the first train in 1984. I feel strongly that we should make every effort in the Senate to insure that this project be kept on schedule. We need to be encouraging the support of private industry in this project—without their contribution we will have no project.

This new enrichment capacity will improve the ability of the United States to meet foreign competition by providing the needed evidence of our intention to remain a reliable supplier of enrichment services—a goal which is in support of our nuclear nonproliferation policy.

The cost of production of enriched uranium in gaseous diffusion plants is increasing annually with the cost of electricity. The new centrifuge enrichment capacity will produce enriched uranium at substantial savings.

I think the facts are clear. We need the additional enrichment capacity which will be provided by this project. We need the enrichment capacity on line with the minimum delays. I want to join my colleagues on this amendment in supporting sufficient funding to maintain the gas centrifuge enrichment project on schedule with the first production train online in 1984.●

Mr. GLENN. Mr. President, I would like to ask the distinguished floor manager a question or two. I had understood, and it had been my information from the Department of Energy, that if we were able to retain this $170 million, that that would have been sufficient to keep us on the original schedule. Is that the Senator's understanding?

(Mr. METZENBAUM assumed the chair.)

Mr. JOHNSTON. Mr. President, we believe that the original schedule was lost by other factors, principally the contracts which were not met and slipped this spring before the $170 million was taken out in the revised budget.

Now, whether or not adding $170 million would advance the project or not could be argued. But we do not believe it could be advanced sufficiently to keep the original schedule. There are many factors other than funds, as we all know too well, impacting on schedules.

Mr. GLENN. Mr. President, I would add that Senator METZENBAUM and I and the other Senators from the Portsmouth area are obviously very much concerned about the impact on employment and jobs and general business welfare in that part of the country. In addition, from a national standpoint I think it is well to note that this is one Government program that is a moneymaker. We sell nuclear fuel abroad to foreign plants. We have contracts, as I indicated, on the order of 298 existing contracts for enrichment services with United States and foreign utilities extending beyond the year 2000, with a total value of $75 billion.

If I may digress for a moment, I might add that I have other legislation pending before the Senate now which would set up a revolving fund enabling the program to be supported by enrichment revenues. Then we would have some of these appropriation difficulties on a year-in and year-out basis. But debate on that will come at a later time.

Returning to the matter at hand, Mr. President, I did want to point out that this project could be a significant moneymaker for the Government over the long haul. If you have confidence that, once we absorb all the lessons of Three Mile Island, we will get back to the building of more nuclear plants around the world, then this will mean more requirements for uranium enrichment services; services which this plant provides. This will, in turn, mean profits for the U.S. Government and help out with our balance-of-payments problem.

I have been very glad to hear the distinguished Senator, the manager of the bill, indicate his support and relay his impression of the Appropriations Committee's support for this project and for the need for these enrichment services in the future.

Mr. President, I am very much aware of the budgetary limitations this year. I realize that the climate being what it is with regard to desires for a balanced budget, that there is no realistic chance of this amendment being adopted without the support of the Appropriations Committee and the administration. I have been, however, very glad to hear the expressions that the Appropriations Committee will be supportive of the spirit of this amendment.

In the interest of expediting the Senate's business and knowing the likely outcome of a rollcall vote if I went ahead with such a record vote, Mr. President, I ask that the amendment be withdrawn.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. JOHNSTON. Mr. President, I thank the distinguished Senators from Ohio. I think they have contributed to the knowledge of the Senate on this most important subject matter.

I reiterate that I am a strong supporter of this, as our committee is, and we will stay behind the Portsmouth centrifuge project and do everything possible and appropriate to keep it on the revised schedule. I want the Senator to know that it is the revenues from uranium enrichment services which support the program now. These revenues are an offset now.

Mr. President, I move the committee amendment at this time.

The PRESIDING OFFICER. The question is on agreeing to the third committee amendment.

The third committee amendment beginning on page 5, line 24, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

UP AMENDMENT NO. 1560

Mr. McCLURE. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

Mr. JOHNSTON. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. The fourth committee amendment has been temporarily laid aside.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the fourth committee amendment be again temporarily laid aside in order that the Senator from Idaho may bring up his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1560.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13 following line 21 add the following new section:

"SEC. 104. In carrying out the responsibilities of Sec. 31(a)(5) of the Atomic Energy Act of 1954, as amended, and within the amounts appropriated to the Department of Energy herein, the Secretary shall establish a research, development, and demonstration program for improving the safety of nuclear powerplants. As part of such program, the Secretary shall—

(1) develop potentially cost-effective concepts for improving the generic design and operation of nuclear powerplants that can (A) significantly reduce the risks from unintentional release of radioactive material from nuclear powerplants, and (B) reduce radiation exposure to workers during plant operation and maintenance;

(2) develop potentially cost-effective methods and concepts that will significantly improve the performance of operators of nuclear powerplants under routine as well as abnormal and accident conditions;

(3) determine the effect of total or partial automation of nuclear powerplant systems on plant safety, operation, reliability, economics, and on operator performance;

(4) support applied science and technology useful in the improvement of nuclear powerplant safety;

(5) identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions;

(6) provide for the examination and analysis of any nuclear powerplant fuels, components, and subsystems which the Secretary deems to offer significant improvement in plant safety; and

(7) in cooperation with other appropriate Government agencies, conduct an in-depth study and evaluation and prepare a report which identifies for each significant and potentially significant electrical energy source, the health and safety risks associated with all aspects of using, or not using, each such source; and the probability of serious accidents occurring within each portion of the fuel cycle, including the production, handling, and storage of fuels and wastes; and

(8) the Secretary shall initiate a study of the feasibility of creating a reactor engineering simulator facility at a national laboratory for the purpose of improving the simulation of the performance of various types of reactors under off-normal conditions and other associated activities.

(a) In performing the study, the Secretary shall consider relevant factors including, but not limited to—

(1) the savings of cost and time that would accrue from the establishment of such a versatile national simulator facility;

(2) the extent to which such a facility would further the generic safety research and development programs established by this Act;

(3) the importance of such a facility in emergencies to limit the extent of any future nuclear powerplant excursions;

(4) the potential for international cooperation in the generic safety research and development program;

(5) the opportunities for cost sharing by nongovernmental entities in the construction and operation of such a facility.

(b) The Secretary shall submit by July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the study and the resulting conclusions and recommendations.

(9) In carrying out the research, development, and demonstration program established under this Act, the Secretary—

(1) shall, to the extent practical, coordinate his activities with those of other Government agencies, foreign governments, and industry, to utilize their expertise, to minimize duplication of effort, and to ensure that information useful for improved concepts applicable to nuclear powerplant safety can be applied in a timely manner. The Secretary may enter into agreements to accomplish these ends, but no such agreement shall have the effect of delaying the development and implementation of programs under consideration;

(2) shall make such recommendations as are practical to minimize the complexity of nuclear powerplant systems (including secondary systems) and operations; and

(3) shall utilize, to the extent feasible, federally owned research facilities, along with the associated personnel.

(10) The Secretary shall assure that full and complete information with respect to any project or other activity conducted under this Act is made available in a timely manner to appropriate committees of Congress, Federal, State, and local authorities, relevant segments of private industry, the scientific community, and the public.

(11) The Secretary is authorized and directed to prepare an annual comprehensive program management plan for the conduct of research, development, and demonstration activities under this Act, consistent with the provisions of section 104. In the preparation of such plan, the Secretary shall consult with the heads of such other Government agencies, and such public and private organizations as he deems appropriate.

(12) Of the amounts appropriated to the Department of Energy, not less than $5,000,000 shall be available for the purposes of this section, to remain available until expended.

Mr. McCLURE. Mr. President, I have given both of the floor managers of the bill a copy of the amendment which I have proposed.

Mr. President, today I am offering an amendment to the energy and water appropriations bill which is intended to improve nuclear powerplant safety and establishes specific responsibilities for DOE in the area of nuclear safety research, development, and demonstration. This amendment parallels H.R. 7865, the Nuclear Safety Research, Development, and Demonstration Act of 1980, which was passed by the House of Representatives on August 25. H.R. 7865 was introduced by Congressman MIKE McCORMACK and cosponsored by 34 Members of Congress. It was reported out of the Committee on Science and Technology by a 35 to 1 vote.

I might add that the McCormack bill is in a sense a response to the accident at Three Mile Island. The bill is the result of more than a year's work by the Subcommittee on Energy Research and Production. The subcommittee determined that the accident at TMI has demonstrated that in spite of considerable attention to safety in the design and operation of nuclear plants, that there are improvements that can and should be made to further improve the safety of nuclear powerplants.

Since the greatly increased focus on nuclear safety is a direct result of the TMI accident, I think it is appropriate to focus briefly on the primary conclusions of the two Senators who ran the TMI investigation. Those conclusions, as included in their individual remarks on July 2, were:

First. That nuclear power is an absolutely necessary, critical, and essential element in the energy supply of the United States through the remainder of this century,

Second. That nuclear powerplants now operating and under construction should go forward without any interruption in activity while remedial actions are being taken,

Third. That the industry and Government can make the necessary improvements to continue to operate existing and new plants safely, and

Fourth. That the industry and Government have already made an important start in taking the actions necessary to remedy identified deficiencies and are doing so with a clear commitment to achieving that end.

I strongly endorsed the conclusions of Senator HART and Senator SIMPSON; and I believe that it is extremely noteworthy that the two Senators most intimately involved in this investigation of TMI both have reached these same conclusions. Further, I would hope that these conclusions will settle once and for all many of the unfounded fears and concerns which have surrounded much of the media and public discussion of TMI over the last year.

I also want to point out that this Senator, in June of last year after TMI, offered a nuclear safety R. & D. amendment in the full committee markup of S. 688, last year's Department of Energy authorization. The amendment would have authorized and directed the Secretary of Energy to proceed immediately to develop a program quite similar to that in H.R. 7865. The amendment was deferred to the Senate floor after opposition was expressed to the effect that such an effort was premature. Certainly, the administration was less than enthusiastic about the amendment.

Six months later, the President in his response to the Kemeny Commission called for an increased emphasis on nuclear safety R. & D. by government and industry. Typical of this administration, however, his DOE budget request for fiscal year 1981 actually proposes a reduction in funding for the applicable budget category from the fiscal year 1980 appropriation. Also, the administration continues to oppose further commitments to the safety research facility—commitments made personally by the President.

So, here we are; another year has passed and still no emphasis has been made on nuclear safety research. I hope that this amendment will mark a fresh start in attempting to achieve that emphasis.

Substantial improvements in nuclear safety have already been made in the wake of TMI by the nuclear industry, the NRC, and the DOE. Other improvements will require extensive evaluation to consider their real merit and further research, development, and demonstration should be done on still other changes based on the evaluation of old and new information as it rises.

Mr. President although the DOE already has the generic authority under the Atomic Energy Act of 1954 to conduct nuclear safety research programs, there is no specific legislative directions relative to the type of program envisioned in H.R. 7865. Therefore, the DOE has not pursued nuclear safety research, development and demonstration with the type of commitment that is necessary.

My amendment directs DOE to undertake eight primary activities in the areas of research, development, and demonstration.

First. Develop potentially cost-effective concepts for improving the generic design and operation of nuclear powerplants that can significantly reduce the risks from unintentional release of radioactive material from nuclear powerplants, and reduce radiation exposure to workers during plant operation and maintenance;

Second. Develop potentially cost-effec-

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tive methods and concepts that will significantly improve the performance of operators of nuclear powerplants under routine, as well as abnormal and accident conditions;

Third. Determine the effect of total or partial automation of nuclear powerplant systems on plant safety, operation, reliability, economics, and on operator performance;

Fourth. Support applied science and technology useful in the improvement of nuclear powerplant safety;

Fifth. Identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions;

Sixth. Provide for the examination and analysis of any nuclear powerplant fuels, components, and subsystems which the Secretary deems to offer significent improvement in plant safety; and

Seventh. On cooperation with other appropriate Government agencies, conduct an indepth study and evaluation and prepare a report which identifies for each significant and potentially significant electrical energy source, the health and safety risks associated with all aspects of using, or not using, each such source; and the probability of serious accidents occurring within each portion of the fuel cycle, including the production, handling, and storage of fuels and wastes.

Eighth. The Secretary shall initiate a study of the feasibility of creating a reactor engineering simulation facility at a national laboratory for the purpose of improving the simulation of the performance of various types of reactors under abnormal conditions.

To summarize, Mr. President, let me characterize it in this fashion as briefly as I can.

As I said, this amendment parallels H.R. 7865, the Nuclear Safety Research, Development, and Demonstration Act of 1980, which has been passed by the House of Representatives on August 25 of this year. It was introduced by Congressman MIKE MCCORMACK, was cosponsored by 34 Members of the other body, and reported out of the Committee on Science and Technology by a vote of 35 to 1.

I would say that that bill which has just been acted on by the other body was the response, in a sense, to the accident at Three Mile Island. But I think it is more important for us to look at the recommendations that have been made by the investigating committee in this body, the Committee on Environment and Public Works and its subcommittee chaired by Senator HART, on which Senator SIMPSON is the ranking minority member, with respect to nuclear power plants and the need for enhanced safety.

I strongly endorse the conclusions which they stated in their report, which I have already noted in my statement in more detail.

I also want to point out that this Senator, the junior Senator from Idaho, in June of last year, after TMI, offered a nuclear safety R. & D. amendment in the full committee markup of S. 688, last year's Department of Energy authorization.

As you know, Mr. President, we have been conducting this activity in the Department of Energy on a continuing resolution and under the original authorization. Until this year, we have never passed the DOE authorization bill. We had directed DOE by way of the appropriation acts and continuing resolutions and directions on continuing resolutions. So that, in spite of the fact that it was offered last year, we never had an opportunity to vote on it on the floor of the Senate.

Since that time, many of the recommendations which have been made were merged into and covered in the same way by H.R. 7865 and are embodied in this amendment.

At that time, in June of 1979, the President was not as supportive of this action as he has since become with the filing of the Kemeny Commission report. He now states his full support for most, if not all, of the initiatives taken in this amendment which I offer today.

But this amendment is to direct the Department of Energy to do what the Department of Energy has the authority to do under the Atomic Energy Act of 1954.

It does not add authority; it simply says that that authority which they have shall be used and they shall do these things which are required by that act. I outline a number of things which must be done, in my judgment, in connection with the development of nuclear safety programs. I think they need to be doing these things. I think they need to look at cost-effective concepts for improving generic design and operation of nuclear power plants. They need to be developing potentially cost-effective methods and concepts and the need to determine the effect of total or partial automation in nuclear powerplant systems.

They need to support applied science and technology, and they have to look at personnel attitudes and training and planning levels. I think they must look at examination and analysis of nuclear powerplant fuels and components, and so on.

I think they need to cooperate with other Federal agencies in developing these programs.

Finally, Mr. President, it seems to me, and this amendment would so authorize, the Secretary should, in carrying out the requirements of the Atomic Energy Act of 1954, initiate a study of the feasibility of creating a reactor engineering simulation facility at a national laboratory for the purpose of improving the simulation of the performance of various types of reactors under abnormal conditions.

Mr. President, if there is one thing we learned as a result of TMI it was that we needed to do a number of these things, not the least of which was to use the engineering facilities which are already in place to be able to deal with the rapid changing of conditions during an event of the nature of Three Mile Island.

Mr. President, as I said earlier, I have given a copy of this amendment to the floor managers of the bill. I originally suggested that the total operations account be increased by $5 million to accommodate what I think might be reasonably spent during fiscal 1981 on this activity. That would be subject to a point of order because that total figure has already been adopted under the procedures that have been followed and as a committee amendment is, therefore, not subject to further amendment.

Therefore, I will have stricken from that the increase of $5 million and it would simply be taken out of the total operating accounts of $2,262,575,000.

(Mr. MITCHELL assumed the chair.)

Mr. HATFIELD. Will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. HATFIELD. As I understand the amendment of the Senator, it raises some rather far-reaching and very significant policies, matters, and issues.

Am I not correct that this has not been really discussed or handled by the authorizing committee? It seems to me that the Senator has made an excellent record here, but I wonder if the Senator would consider letting this matter be referred to the Energy Committee for consideration rather than try to crank in all this rather significant, detailed language into the appropriations bill, which seems to me to be perhaps not the right vehicle, and particularly in light of the fact that the authorizing committee of the Senate has not taken this matter up. I think it deserves a great deal of attention. I sincerely believe that the Senator has put his finger on a very important matter that should be brought up on the authorizing committee's agenda.

I would certainly support the Senator strongly in his effort to bring it before the Energy Committee in bill form or other vehicle. But I do question the propriety of putting this kind of language on an appropriation measure.

Mr. McCLURE. If the Senator will yield, I am quite aware of that, and in other circumstances I perhaps would not have attempted to do it, other than simply to make the record. But the Senator from Oregon knows, as does the Senator from Louisiana, that we are now in the season, with the election approaching us, and with the legislative schedule being what it is, that the likelihood of legislating in this field in the remainder of this year is very, very slight.

Since I first raised this issue, both in the committee and at various times in various forums over the last 15 months or more, we have received no congressional action and with no prospect of final action during the remainder of this year. It seemed to me that rather than wait until the next legislative year I ought to take this opportunity to move us forward on the beginnings of a program that I am certain we are going to adopt. As I say, in the other body the House committee reported it out by a vote of 35 to 1. It was adopted by the other body last month.

We have had one hearing in the Energy and Natural Resources Committee on this general subject. But the likelihood of us being able to go through a further markup and get it through conference with the House and into form for final passage seems to me to be very remote.

Mr. HATFIELD. If the Senator will yield once more, will the Senator agree that this also has a great vulnerability in that it could well be raised as a point of order on the floor as a matter of legislating on an appropriation bill?

Mr. McCLURE. Let me say this: I think it is right on the fulcrum point of that judgment. Is it new legislation or is it simply directing the Secretary as to what shall be done with an appropriation, how shall he spend the money to carry out a responsibility which he already has in the 1954 act?

Regardless of how an individual Member of this body or an individual Member of the other body might act with respect to raising a point of order, it might be raised and it might be sustained. I would hope it was not raised or would not be sustained because I would hope there is a feeling of urgency on the part of people both in this body and the other body to start moving ahead on what I think are not very arguable initiatives in the field of nuclear safety, plant design, and so on. I think these things are going to be done.

All we have gained here is a few months' time in getting the Department of Energy moving toward that goal following October 1 of this year and before we could get authorizing legislation to them next year that would more specifically direct them.

Mr. HATFIELD. I appreciate the Senator's comments on that. I would only point out one further complexity that I see in this. As the Senator realizes, this is September 9 and we are scheduled to go out of here on October 4. There is a wonderful rumor floating around today that we may even go out earlier. I think, for the sake of the Republic, that might be a little better.

Whatever we may end up doing as far as recessing or adjourning, what have you, I think this bill has a fairly good chance of moving through conference to final adoption before the recess or the adjournment. Otherwise, we are going to be thrust back into a continuing resolution status for these agencies. Then the Senator would agree that the whole matter would become moot anyway.

All I am pointing out is that the more we encumber this bill in matters of this kind, as I view it, the more difficult that conference is going to be, and the less likely the time available for us to get any bill out.

I acted on the basis of trying to keep this bill as free from those controversial matters as possible in the hope that we could get this to the White House for signature.

I am really rather doubtful that we are going to find any bills from the 13 appropriations measures passing through both Houses of the Congress and getting down to the White House by October 4, September 26 or September 27, or whatever date we may finally adjourn. Therefore, I again urge the Senator to consider this seriously in terms of the time frame and the practicalities that we just have to face up to on that basis.

Mr. McCLURE. Mr. President, I appreciate the point the Senator makes in that it deals with my desire not to complicate this process, either for the managers of the bill on the floor now or in the conference. I think I recognized when I drafted this amendment and offered it that if it ran into any controversy, it was not going to fly. If anybody really does not want it, it is not going to go. I think I recognize that.

I guess I can candidly state my hope that the subject matter, being not controversial—and I do not think it is. I do not think there is any argument in the field of nuclear safety about operating the plants except for the fact that we do not have enough of it.

Mr. JOHNSTON. Will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. JOHNSTON. Mr. President, I am advised that a bill of this same subject matter is ripe for markup in the morning in the Energy Committee and that this could be amended into that. I do not know in what respects it does differ.

I think the Senator very correctly gages the sentiment here. I value very, very highly the advice and the initiatives in the nuclear field of the Senator from Idaho, as he knows. We are almost never on opposite sides. My hesitancy here, of course, is that this is a new matter which would probably not survive the conference, anyway, even if we were to override the Energy Committee and draft it as legislation here, because there is extreme jurisdictional jealousy in the conference.

Mr. McCLURE. Will the Senator yield on that point?

Mr. JOHNSTON. Yes.

Mr. McCLURE. Mr. President, may the Senator from Idaho make this suggestion? Again, I do not want to put the Senator from Louisiana or the Senator from Oregon in an untenable position on this amendment at all. I will, of course, accede to their wishes.

As I said earlier, the only reason I offered the amendment today is the legislative time and the legislative procedures seem to me to make it very unlikely that additional authorizations proceeding through committees will get to the floor and be then sent to conference, then agreed upon in conference, in time for us to act before we go out, whenever it is we go out this fall, whether it be October 4 or prior to that time. Because I thought this was an item that should not wait until next year, I decided to try to present it today.

My suggestion would be that, rather than reject the amendment now, accept the amendment with the understanding that, if the authorizing committee moves expeditiously on it and we have the prospect of getting that through, we shall drop it when we get to conference, or if, as a matter of fact, the House conferees object to it, we shall drop it anyhow, not make a major fight about it in the conference if it is going to be an obstruction to agreement in the conference on this bill. But do not abandon the opportunity to get it through in the event the authorizing legislation does not move in committee tomorrow or on the floor later or in conference later.

Mr. JOHNSTON. Mr. President, let me say to the Senator that, while we occasionally violate the rule of no legislation on an appropriations bill, it is, to my knowledge, never done by engrafting, in effect, a whole bill but, rather, some explanatory little matter in connection with the expenditure of some dollars. So, while I do not want to plead purity in allegiance to the principle of nonlegislation on an appropriation bill, I would say it has never been as egregiously violated as this amendment would do.

Mr. McCLURE. I say to my friend from Louisiana—and I realize he said that in good faith and with a smile on his face—I would hate to read back from the Record how many times we have done this and more—I suspect, upon occasions, on the suggestion of the Senator from Louisiana. Again, I say that with a smile on my face.

I think we can do it if we want to do it. The question is, if we do not want to do it, let us not.

Mr. JOHNSTON. I hope that the Senator will, in the one instance, let us join with him in urging expediting consideration of this measure in the Energy Committee. There are three of us—actually, four of us—on the floor here who are on the Energy Committee and two others, Senators JACKSON and CHURCH, have a bill covering this subject matter. This may well be, and I hope it will be, one of those matters that can be quickly adopted in the committee and fly through the Senate on the noncontested calendar and through the House in the same way.

I think that is probably the most expeditious way to get it enacted.

Mr. McCLURE. As I say, I accept the advice of my friend from Louisiana knowing that, as a matter of fact this causes us some problems. I do not want to cause us those problems.

The other side of it is that we are taking a chance in an area that I do not think we can afford to take a chance in. We are taking a chance that the legislative process may, as a matter of fact, not yield that result. The Senator knows what the jam is on the markup calendar, he knows the difficulty of getting a quorum to act in the Energy and Natural Resources Committee. We have a markup session tomorrow. I hope this will come up and be acted on. If it is acted upon, I shall assist and I shall applaud and then ask to take those other steps. But we are taking a chance that it cannot. We are setting aside what might be done now in the hope that it may be done in the future. I think in this area, we ought to be getting on to it.

Mr. President, if the advice of the Senator from Louisiana and the continued encouragement of the Senator from Oregon is to pull the amendment down, I shall do so.

Mr. JOHNSTON. Mr. President, I very much thank the distinguished Senator from Idaho, not only for his cooperation but for his bringing this very important matter up and highlighting it for future action. I think he is going to get more than cooperation; I think he is going to get some help in

the Energy Committee on this matter. I thank him for his cooperation.

Mr. HATFIELD. Mr. President, I express my appreciation to the Senator from Idaho as well, because I certainly have no great problem in accepting his thesis or his proposal to remedy the problem as established by his thesis. I, too, as a member of the Energy Committee, will be there at the markup session tomorrow. I have a WAPA bill and a few others that I am personally concerned about. I think we can get a quorum. I shall write that in as a member of the committee and assist the Senator from Idaho in getting that considered.

Mr. McCLURE. Mr. President, I thank the Senator from Oregon and the Senator from Louisiana.

Again, Mr. President, I want to point out that that committee agenda is loaded tomorrow with things that various members of the committee want to get done this year. There is going to be a contest for the time and attention of that committee if, as, and when a quorum is established. It is going to be difficult, at best, for that committee to complete the agenda. It certainly cannot complete all of the agenda items on tomorrow.

That is the reason that I took the opportunity to bring forth this legislation. With the assurances given and the comments of the managers of the bill, Mr. President, I withdraw the amendment.

The amendment (UP No. 1560) was withdrawn.

UP AMENDMENT NO. 1561

Mr. DOMENICI. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending amendment previously temporarily laid aside be further laid aside for consideration of the Domenici amendment at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI) proposes an unprinted amendment numbered 1561.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 3, line 6, strike the period at the end thereof and insert in lieu thereof the following: ": *Provided additionally*, That none of the funds appropriated in this Act or any other Act making appropriations for Energy and Water Development may be used to enrich feed material of foreign origin which is intended to be used in a domestic utilization facility, where the fraction of feed material furnished by the enrichment customer which is foreign origin exceeds ten percent (except for any contract for enrichment services entered into prior to October 1, 1980):

Provided further, That such sums as are necessary shall be available for the Secretary to conduct as expeditiously as possible a rulemaking on the record after an opportunity for an agency hearing, pursuant to 5 U.S.C. 553, 556 and 557, to establish restrictions on enrichment of foreign origin uranium for domestic use pursuant to the provision of subsection 161. v. of the Atomic Energy Act of 1954, as amended, requiring that the Secretary, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer enrichment services for materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States."

Mr. DOMENICI. Mr. President, I have discussed this amendment with the distinguished majority floor manager, the Senator from Louisiana, and the distinguished minority manager, the senior Senator from Oregon. It is my understanding that they are willing to accept this amendment. I am not going to go into any great detail except to say that this country has seen recently the specter of high unemployment. For example, when automobiles that are being imported into this country become such an economic force that American competitors have to close down and thousands and thousands of people are without work.

In a sense, I am concerned about a very small industry, but one that is vital to America's energy future and to its security. That is, the stability of the uranium industry in America.

The facts are serious. Exploration is down 1979 by 15 percent as compared with 1978. Exploration projections are down another 14 percent for 1981, and with the exception of Texas and Utah, drilling and development is down.

Unemployment has risen 20 percent in some areas for miners and local processors of uranium. Prices have dropped. Four mines have closed in the last month. The largest open pit mine where uranium was first found in the United States of America on the Pueblo of Laguna has been announced for closure only recently.

This amendment is a serious expression of concern about that and merely says that we will not spend, with the enrichment moneys here, more money in this appropriation than that which is required for 10-percent share of foreign uranium for domestic use.

In addition, it says, however, if there are long-term contracts, that they will be excluded from this restriction.

It is my understanding we are at about 7- or 8-percent foreign-source uranium in domestic use now.

The problem is that under a 1973 action by the Atomic Energy Commission which we did not begin to implement until 1977, the previous restriction on all enrichment of foreign uranium for domestic use was eased and is now up to an allowable of 30 percent, and it will go up 20 percent each year, all the way up to 100 percent allowable of imported uranium going through our enrichment facilities in 1984.

This amendment says two things. First, we will only spend money under the enrichment program up to 10-percent foreign source uranium for domestic use, unless there are existing long-term contracts. Then it proceeds to say that the Secretary shall proceed forthwith with rulemaking, and do that as quickly as possible, to determine the viability of the uranium industry in the United States with a rule toward a percentage, or some kind of policy for allowable levels for imports of uranium into this country that is related to a present day analysis of the viability of uranium and uranium mining, the uranium industry in this country.

I do not want to spend a great deal of time. I am very concerned about this issue, Mr. President. I am aware that there are many reasons for the extreme slump, the so-called extreme softness in the uranium industry today.

But, obviously, the United States of America has an adequate supply of uranium for many, many years to come, in terms of its reserves.

While I do not want to be one that totally protects from imports, I am very concerned that while this industry is going through that kind of a slump I have just described in terms of exploration and mines closing, I am very concerned we are acting under a policy that was adopted basically in 1973, that was deferred for implementation then because we had a soft market.

It started in 1977, but we are now on a path that is extreme. It will allow imports for domestic use to go up to 100 percent, increasing on an annual basis of our enrichment capacity. I merely want to make a stop, look, and listen, and do a current evaluation of the viability of the American uranium industry in light of this softness in the market here in America. This amendment will do that.

I hope that the managers will take it. Hopefully, it will begin the process of reevaluating the viability of this very important energy ingredient and piece of America's future energy policy. We need to review the ability of our domestic mining and processing industry to meet future domestic needs of uranium for the nuclear energy aspect of America's energy policy for the future.

Mr. President, unless there are any questions from the floor managers, I will yield the floor and move adoption of the amendment.

Mr. JOHNSTON. Mr. President, the Senator's amendment deals with a very acute problem. That is, the decline of the American uranium resource industry. It attempts to deal with that in a constructive way.

I have some hestitation and some questions on the amendment because it has newly come to our attention. We have not had time fully to study it.

But it appears to be going in the right direction, Mr. President. So, therefore, because of that constructive direction, I would be willing to take this matter to conference, to study carefully the language, the effect of the amendment, and either, hopefully, to have it accepted in conference, or if not, modified or deferred until some later date.

In that spirit, Mr. President, I believe we can take it to the conference table.

I am advised that Senator HATFIELD will also accept the amendment.

Mr. DOMENICI. Mr. President, I am most appreciative of the statement by my good friend from Louisiana, and also the previous indication by the good Senator from Oregon that he would accept it.

I am certain the analysis of it is absolutely right. Something has to be done. We have to begin to move in some way in this direction.

As the Senator knows, when we find an acute problem like this, we have to attempt to solve it as best we can.

I do say to the floor managers, it is not my habit to come to the floor on appropriations and do this because we would have had an opportunity to study and explore it. But I think the situation is critical and should not compound it, while providing enrichment appropriation funds under an allowable that is going up every year for importation, while our domestic industry is critical, as it is, is literally drying up in a bind without somebody taking a good hard look as to why.

Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (UP No. 1561) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the last committee amendment.

Several Senators addressed the Chair.

Mr. DOMENICI. Mr. President, I wonder if the floor manager would agree to lay that amendment aside while he and I engage in a dialog about the waste isolation pilot project funding in this bill?

Mr. JOHNSTON. I think the Senator said he wanted to enter into a colloquy?

Mr. DOMENICI. At this point I want to enter into a colloquy. I am hopeful it will promote some thought over the evening as to making this part of the bill more specific. But I do not have that in mind this evening, just to point out some very serious concerns I have about this section of the bill.

Mr. JOHNSTON. If the Senator would proceed, I would not want to lay the amendment aside at this point, unless it is necessary; if the Senator would proceed.

Mr. DOMENICI. Mr. President, I wonder if my good friend from Louisiana would find page 61 of the report of the energy and water development appropriations bill for 1981. I will be referring specifically to the last item on the bottom of the page, "Terminal Storage":

Terminal storage.—The Committee recommends an appropriation of $15,000,000 to continue Project 77-13-F, the Waste Isolation Pilot Plant (WIPP) Delaware Basin, N. Mex., in accordance with section 213 of Public Law 96-154 and the Department of Energy National Defense Programs Authorization Act of 1981. The Committee concurs with the Committee on Armed Services' views and comments contained in Senate Report 96-920 concerning the WIPP project.

I say to my good friend from Louisiana, first of all, that this bill refers to the 1981 authorization for the waste isolation program, and it is true that that has not been adopted as yet by both parties. It is not law. Is that correct?

Mr. JOHNSTON. The Senator is correct.

Mr. DOMENICI. What concerns me is that since the administration did not recommend any additional funding for 1981, we do not have anything in the appropriations bill of the Senate as to what we will use the $15 million for.

It is very critical to us in our State that we have a clear understanding of what we will use the money for, because what has happened, as the Senator knows, is that the 1980 authorization bill provided a mechanism for consultation and cooperation by way of an agreement between the United States of America and the State of New Mexico. Clearly, that agreement contemplates that certain steps be taken before money is used to begin actual construction of this project.

We also know that a great deal of the land involved that will have to be banked is presently under mineral lease and will have to be acquired.

Our State is genuinely concerned in exercising the rights it already has under the 1980 authorization bill with reference to cooperation and consultation before construction of this project commences.

So I must object, unless we end up being very specific about what this money will be used for.

Second, while the Armed Services Committee has reported a bill which will reauthorize for 1981, and while that is pending on the calendar, we are now negotiating with them as to whether or not there will be any amendments to the so-called consultation and cooperation language in light of the bill we passed in the Senate on nuclear waste, which, as the Senator will recall, dealt with both military and civilian permanent disposal, and certainly dealt with both military and civilian deep geological permanent disposal.

There were a few additional rights that the States received under that generic law that we have to negotiate with the Armed Services Committee, to see whether, in equity, they will give that to New Mexico, also, even though WIPP is the subject matter of a very precise and specific authorization.

So what I am saying is that this Senator cannot watch a broad appropriation, although it is not for a great deal of money, go through on WIPP, without better defining its use and without further negotiations with the Armed Services Committee as to what they are going to do about the consultation and cooperation sections of the WIPP authorization bill.

I say to the Senator tonight that while I certainly do not have an amendment in mind for the reasons I have stated, I want him to know and I want the minority leader to know, as well as Senator JACKSON, Senator TOWER, and Senator STENNIS, who are on the Armed Services Authorization Committee, that it is very important that we get some agreement as to what the authorization is going to permit the money to be used for and what they are going to do about providing New Mexico with the same kind of basic rights that they are going to give other States on military disposal projects of this type.

In all sincerity, we must get that worked out, or we will be adding more confusion to a situation which is rather confused, precisely because of administration decisions years ago and statements by a former Secretary of Energy about State veto rights and the like.

We seem to be on a track that might lead to some successful negotiations with New Mexico. We would not want to find that the bureaucracy has an open, free hand as to what they do next, while New Mexico is working under a 1980 authorization. We hope that before permanent construction starts, there will be an opportunity to finish up an agreement between the States and to understand what our ultimate rights are going to be regarding this disposal, the military waste disposal, which gives the States some additional remedies, such as final appeal to Congress and the like, which we worked out on the generic and historic nuclear waste bill we passed here.

Mr. JOHNSTON. Mr. President, as the Senator from New Mexico knows, this money is made available under existing law for the waste isolation pilot project, which is a military waste facility only in New Mexico. Quite frankly, were this money to be withdrawn, I believe there is a large body of opinion that WIPP would be a dead project, simply having run out of steam. It is a monument, I believe, to the skill of all those involved, both in the Department of Energy and in the State of New Mexico, that they have been able to sort of reincarnate this moribund project to work out the details, as we understand, under which at least we will be able to continue the work on this project as authorized.

The money here would not be a new start; it would not be new construction. It would be for three purposes and three purposes only: to continue the advanced engineering and design, to do site characterization work, and to initiate work on the test shaft.

It is our understanding that within the framework of last year's act, the Energy Department and the State of New Mexico have established consultative arrangements that appear to be working well. We hope that is true.

In any event, this money really just keeps the project going on advanced engineering and design, the test shaft, the site characterization, and related purposes, and it is not full blown construction of the project.

I hope I am correctly advised that consultative procedures and processes have worked out successfully. If not, while work is being done on the advanced engineering and design, the test shaft, the site characterization, and related purposes, there will be time to flesh out further the terms of whatever agreement

they now have or intend to make. But in no event would it provide for the taking of action, the construction of the actual full facilities to which the State of New Mexico would or might have any objection. It is only for these purposes the advanced engineering and design mainly and limited by a rather modest sum of money.

Frankly, we understood that there was strong support for this action of the committee in New Mexico.

I hope that allays any concerns the Senator from New Mexico has about this project. It is not to initiate full blown or all out construction.

Mr. DOMENICI. I ask this of my good friend from Louisiana: The purposes for which the $15 million can be used, to which the Senator has alluded, I take it, are the authorized uses that were included in the 1980 authorization bill. Is that correct?

Mr. JOHNSTON. The Senator is correct.

Mr. DOMENICI. So that while we refer in this bill to a not-yet-passed 1981 authorization bill, the Senator is saying that the purposes for which this money is being appropriated are to complete the advanced engineering, site characterization, and other items, but not permanent construction, not to start the permanent construction of this deep geological waste isolation pilot project. Is that correct?

Mr. JOHNSTON. The Senator is correct with the one exception that he did not mention, we understand the test shaft work is included. He did not mention related purposes. But those are the three subjects for which this $15 million would be used.

Mr. DOMENICI. Yes. But the test shaft has always been characterized as site characterization.

Mr. JOHNSTON. That is correct, I understand.

Mr. DOMENICI. There is engineering and actual construction work, but all aimed at site characterization.

Mr. JOHNSTON. That is correct. I mentioned that, and I wish to underline it, because some would say that is some sort of construction. I think it is site characterization. I think it should be characterized as site characterization, but in any event it would cover the drilling of the test shaft.

Mr. DOMENICI. I say to my good friend it has been carried technically on the Department of Energy ledgers as site characterization work. The National Academy of Science has indicated that that kind of a shaft would have to be put in place not as part of permanent construction but rather to adequately evaluate such a facility.

Mr. JOHNSTON. The Senator is correct.

Mr. DOMENICI. The Senator knows we do not have a new authorization yet and we are going with an appropriation. I wish to make sure that we are in no way in the middle of this process of consultation saying that we are changing the rules in an appropriations process and saying we can begin construction. As long as the Senator can assure me of that, I will have no objection to including this money in this manner.

I still have great concern as to whether or not the authorization language is going to be changed. Obviously the Senator cannot do that here. But I will continue to seek the same kind of equity in terms of ultimate appeal to Congress, if they have an objection with the Department of Energy such as we worked out in the new generic military and civilian permanent waste bill that passed the Senate by rather significant margins the other day.

Mr. JOHNSTON. Mr. President, I think the concerns of the Senator from New Mexico are fully answered by the intent of this bill as well as the language of the prior year authorization.

I believe that this simply keeps the matter going and, more than that, I believe and hope that the consultative process, satisfactory to both the Department of Energy and the State of New Mexico, will be worked out for this matter which is extremely sensitive, of course, since it is a defense waste management facility.

But I believe it can, will, and hopefully has been worked out. I thank the Senator for bringing these matters to our attention.

Mr. DOMENICI. I am most appreciative of the comments and that disposes of the concerns of the Senator form New Mexico in this area.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Is an amendment which would modify page 15 by striking language in order at this point?

The PRESIDING OFFICER. Page 15, what line?

Mr. DOMENICI. Page 15, line 10. Is that amendment in order at this point?

The PRESIDING OFFICER. Does the proposed amendment change the figure on page 15, line 10?

Mr. DOMENICI. No, it does not change the overall figure.

The PRESIDING OFFICER. Until the pending committee amendment is disposed of it will not be in order except by unanimous consent.

Mr. DOMENICI. The floor manager has the amendment before him. I ask unanimous consent that the pending amendment be set aside and that I be permitted to offer this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1562

(Purpose: To delete language authorizing expenditures out of the Inland Waterways Trust Fund)

Mr. DOMENICI. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The clerk will report.

Mr. DOMENICI. Before the clerk reports, I ask unanimous consent that the pending amendment be temporarily set aside so that the Senator from New Mexico's amendment might be considered.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI), for himself and Mr. MOYNIHAN, proposes an unprinted amendment numbered 1562:

On page 15, on line 10, strike all beginning with the word "*Provided*," through "95–502:" on line 15.

Mr. DOMENICI. Mr. President, I believe the amendment is self-explanatory, and unless the floor managers have questions I move its adoption.

Mr. HATFIELD. Mr. President, on behalf of the minority I would be willing to accept the amendment and take it to conference.

Mr. DOMENICI. I thank my friend from Oregon.

Mr. JOHNSTON. Mr. President, the waterways trust fund will begin to collect money on January 1. There is provided in Public Law 95–502 a list of certain navigational projects for which this money can be spent.

In making available $30 million from this fund, which is the estimated amount that could be utilized for construction and rehabilitation expenditures as authorized in section 204 of the public law just referred to for those navigation projects specified, we had thought we were acting fully in consonance with that public law.

A question has now arisen, which is raised by the amendment of the Senator from New Mexico, as to whether that, in fact, is the proper intent and effect of that section 204 of the public law referred to.

It would call for a further examination of the intent of the law. It is a legal question. It is one that our colleagues in the House will be very much interested in, and I, for one, would be willing to take it to conference and try to unravel this legal meaning involved.

I would be surprised if the Senator from New Mexico would be opposed to what we are trying to accomplish as a substantive matter, and I will certainly work with him in trying to unravel the meaning of the law.

If, in fact, he is correct on this law, we will probably have to go back on other authorization bills and make them more clear than they are now. Perhaps there is an ambiguity. In any event, we are willing to take it to conference and work it out there.

Mr. DOMENICI. I thank the Senator. That is precisely the point. As the Senator from Louisiana knows, and as the Senate knows, I engaged in the adoption of this law for 2½ years, and I truly believe specific authorization was required. But if we will strike it for the time being then we can proceed as described by the Senator from Louisiana to iron out the legal difficulties and perhaps decide in

the final bill what the Senate and the House collectively think the intent of the basic bill was in terms of how the money can be spent, and I so move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

Mr. DOMENICI's amendment (UP No. 1562) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1555

Mr. MOYNIHAN. Mr. President, I thank the Chair for his courtesy in recognizing me.

I rise at this moment, seeing that our distinguished and so greatly admired majority leader is on the floor, so that he might wish to at least hear what the Senator from Louisiana and the Senator from Oregon may have to say in response to a number of simple queries that I would like to make with respect to the unprinted amendment which was adopted this morning. This amendment, No. 1555, submitted by the two Senators from West Virginia, deals with what is commonly known as the Tug Fork flood control program in Kentucky and West Virginia.

I rise in my capacity as chairman of the Subcommittee on Water Resources of the Committee on Environment and Public Works to say, first, that the majority leader was altogether open and direct in the way he proceeded.

I can imagine the impatience which he, as a West Virginian, must feel with an enterprise that will have four times passed this Senate and has not yet passed the House; which one disastrous flood after another only brings once again to the official and institutional mind, yet nothing ever seems to happen.

I wanted him to know that the subcommittee has been marking up a water resources bill which some might say is considerably smaller in scope than had been previously contemplated, smaller than that which has already been adopted in the House. The administration made it clear it could not accept it, the President would not accept either of these previous versions. Our hope is that he will accept the version we are working on.

In this legislation, which we have now about finished—we intended to finish this afternoon, to be precise—we have a provision to authorize the Tug Fork flood control program.

Our committee is concerned that the authorizations of major programs originate in the authorizing committee. If not, we can do with just the Budget Committee and the Appropriations Committee and we will not need any other structure in the Senate. Maybe that is a good idea. It is not one as yet agreed to by the majority of the body and certainly not by the majority leader and, a point of which I am sensitive.

The measure we authorized this morning contemplated expenditures in excess of $1 billion. One billion dollars—a large sum. A billion minutes ago St. Peter was 10 years dead. So these are not just zeros on the end of integers.

The population involved is not large. The Tug Fork project itself, for example, contemplates the relocation of approximately—3,772 houses—perhaps, 12,000–13,000 people—a third of a billion dollars for 13,000 people directly involved.

Now, I wish to make two points. The first point is that the project taken up by unanimous consent and then agreed to this morning is not the project which we have approved at this moment in the Subcommittee on Water Resources. It is not incompatible with, but it is less than, the project that we have talked about.

As the distinguished Senators managing this legislation will know, there has been for some time a basic dispute in the theory and practice of flood control between structural solutions and nonstructural solutions. It is the view of the Corps of Engineers that a nonstructural approach to Tug Fork and to the Virginia and Kentucky aspects of this legislation is in order. Of course, by "structural" I mean a large impoundment structure is not contemplated.

What we have authorized this morning is something that I was not aware of—although I wish I had been. I genuinely wish that the chairman of the committee had been informed that this was taking place, because it would have given me the opportunity to address this question at the time. We have authorized those aspects of the solution and program which are incorporated in our bill. We have authorized the structural aspects, because they are small, and deal with the structures to contain the water as it moves in certain areas. This being principally a cutoff at Matewan in order to solve the problem of a large bend in the river which has invariably produced flooding on the plain on either side.

Those minimal structural provisions are incorporated in this amendment. The relocation activities, which are contemplated in the measure we have adopted, are not in this amendment.

The cost per person, if anybody would like to know, at this point is roughly $76,923 based on the ultimate $1 billion project. I would like the Chair to hear that, because it is not without some relevance that we are talking about a project which the Federal expenditure per capita is $76,923. That is an item of spurious precision. Nobody knows whether that last $23 will be $24, $25, or $26. But a quarter of a million dollars per family of four is a large sum.

While the structural matters are provided for, the relocation program is not. I think the true course of policy in this field is to move away from protecting floodplains to getting people off of floodplains.

And for the information of the majority leader and my distinguished and beloved chairman, who I see is in the Chamber, the present estimate of the Corps of Engineers for the Matewan Big Bend cutoff is $12,195,000 to dig the cut and $91,000,575 to relocate the persons who will need relocation in order for that cut to be effective. So relocation is the heart of this enterprise.

We have not provided for it in this measure. That does not trouble me for two reasons. One reason is that we have provided it in the other bill that is being marked up in our commitee and which was to have been finished this afternoon. We scheduled a 2 o'clock meeting, and, having only a few things remaining, thought that we would be finished by now. But this does not trouble me for two reasons. First, because as I say, this matter is making its way through the authorization committee. Second, because the distinguished majority leader has assured me that he would hope to see a water bill come to the floor of the Senate during this Congress, which means in the remainder of this month.

We are ready, I can tell the majority leader. The House has passed a bill. Both the majority leader and the distinguished Senator from Louisiana knew that we have not passed a water bill during the Presidency of Jimmy Carter. It is not a system that is working well.

My friend from New Mexico and I have proposed alternate and parallel arrangements which we think would make the system work well. This is a system that has broken down, that has blocked itself. But it is possible, as it was 4 years ago when President Ford was in a not altogether different situation, to get a small bill through. We think we can get a small bill through.

I would like to inform the Senate that the measure that was authorized this morning is not the measure now contemplated. I would conclude with two additional points: First, that the measure now contemplated is in our bill being marked up; and, second, the majority leader has indicated his hope and expectation that that bill will be on the floor before we adjourn sine die.

(Mr. BUMPERS assumed the chair.)

Mr. DOMENICI. Will the Senator yield?

Mr. MOYNIHAN. I am happy to yield to the Senator.

Will the Senator from New Mexico allow me to yield to the majority leader? The Senator from West Virginia was on his feet and he was asking for recognition and he is the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I would be glad to wait for the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will take only a couple of moments to state for the distinguished majority leader and the distinguished chairman of the full committee, I am the ranking Republican on the Water Subcommittee. As Senators know, we suffer under some very serious impediments, not the least of which has been described here, that we just cannot seem to reach an agreement between the Congress and the President on some matters that not only concern projects but also some evaluation mechanisms that the White House insists be part of the water law of this country.

While we are working under some serious impediments, we have, on a number

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of occasions, as a matter of authorizing legislation, recognized the enormous problem that the States of West Virginia and Kentucky have, and that the two distinguished Senators, including our majority leader and my distinguished chairman, the chairman of the Public Works Committee, with whom I have served since the day I arrived here, have been constantly working on. I sympathize with them.

I, too, want to say I have very great concerns. We go to work with the Corps of Engineers and they go out into the field in the States of Kentucky and West Virginia. Then they come and testify before our subcommittee. They tell us that they are going to try a nonstructural solution, that they are going to try relocation. They tell us what it is they are doing about it. They will hire some personnel to make sure their appraisals are right.

We are going to do our best to report out a bill that will make this a truly historic approach to helping some of the problems of Kentucky and West Virginia.

Then I must say today on an appropriation bill nobody sought any money for this project. We just come along and put a brand new authorization into this appropriation bill. It really is not what is presently being contemplated in the authorization committee, which is a dramatic change from where we were before.

If my good friend from New York will remember, every time we supported the majority leader and our chairman on the floor it has been with reference to a bill that was then thought to be the best approach. In the meantime, we have a whole new approach that is being recommended by the experts, and that is not the approach in this new authorization language.

I am concerned because I know Senators want us in the authorizing committee to get on with this business. We have tried against very difficult odds. We spent 2 days last week going through Tug Fork. We know that the Senate has approved it in the past, so we very meticulously thought through with the corps how to put authorizing language in that will do the job.

I just want to say there is nothing that can be done now. It has been authorized and there has been a motion to reconsider and table so that is in the law. But I am very concerned that we would come along at this point and put this into an appropriation bill in a much different form than is being contemplated by the experts who are advising us, who, I think, have the best interests of West Virgina and Kentucky at heart. It leaves us in an awkward position, I say to the leader and the chairman. I say that for myself, the Senator from New Mexico.

It makes the whole process we are working under very awkward and very difficult. I wanted to share that with Senators on the floor, making sure that while I said that, that the Senators know I know they have serious problems. I have not raised objections in the past and I will not here today, but I thought I had to mention how I felt about it in the light of the work we are trying to do. I thank my friend, the majority leader, for permitting me to speak.

Mr. ROBERT C. BYRD. Mr. President, may I begin by saying that I have a very great regard, respect, and admiration for the distinguished Senator from New York (Mr. MOYNIHAN), who is so ably chairing the subcommittee which has jurisdiction over the authorization of projects such as the Tug Fork flood control project. He is moving with dispatch in marking up a bill. I hope that he will continue to do that. I know he will.

I would like to see the water resources bill taken up and disposed of before this Congress adjourns. I hope it will be possible to do that.

I appreciate very much his feelings concerning the action that has been taken by the Senate in adopting the amendment which I offered in behalf of my distinguished senior colleague (Mr. RANDOLPH) and the two Senators from Kentucky (Mr. HUDDLESTON and Mr. FORD).

His concern is not that the Senate has taken an action that is worthwhile and which is needed, but his concern is that the bill on which he is working, in which Mr. DOMENICI has joined, is nearing the completion of markup, and is the normal and proper approach to securing authorization for water projects.

So what I say now is not at all in denigration of his position, but in recognition of his position and in appreciation of it.

On the other hand, so he may understand better the position that I am in, and the situation that confronts the two West Virginia Senators and the two Kentucky Senators, and more importantly the people who are represented by these four Senators—the people of Tug Fork Valley have waited and waited and waited. They have seen their homes washed away. They have seen their property destroyed. They have been thrown out of work. They have been prevented from producing the coal which this country needs. They live in constant fear of repetitions of these devastating floods that have ravaged the area.

Each time a summer cloud approaches on the horizon, they have visions of the devastation that could come from a flash flood. Each time the snow thaws in the spring they have visions of the devastation caused by floods.

Why they would have the heart and the courage to go back into the homes that are left standing and shovel out the black mud, clean up the place again, buy new furniture, go into debt for new furniture, and live at the same place is beyond me to understand. But they nevertheless do it. I have seen them do it time and time again. They go back into those homes, shovel out the black mud, clean up the place, spend many dollars in repairs and in refurnishing their homes, only to live in constant danger of new devastations.

My good friend from New York quite appropriately said that $1 billion represents $1 for every minute since 10 years prior to the death of Saint Peter. But what he did not say when he spoke of the $284 million was that the cost to the taxpayers of the last flood in 1977 was over $200 million. That represents $1 for every minute going back 400 years prior to the settlement of Jamestown, prior to the publication of the King James version of the Bible—$1 for every minute; $200 m liion down the river, washed out.

Mr. DOMENICI. Did the leader just do that calculation right then?

Mr. ROBERT C. BYRD. Oh, yes.

Mr. DOMENICI. That is very good.

Mr. ROBERT C. BYRD. Here is how I did it: It has been 1 billion minutes since Jesus Christ was born 2,000 years ago. Two hundred million being one-fifth of 1 billion, then one-fifth of 2,000 years is 400 years—the year 1580. Jamestown was settled after 1580, and the King James version of the Bible, which first appeared in 1619, was already 29 years in use.

These are ways in which people can better grasp an understanding of what we are talking about when we speak of millions of dollars and billions of dollars.

The Senate has, four times previously, passed this legislation, only to see it flounder on the rocks of obstruction, defeat, and oblivion in the other body. With time running out and the sands dropping faster and faster in the hourglass as far as this Congress is concerned, my colleagues and I sought, in desperation and out of necessity—necessity being the mother of invention—to send the same authorizing language back to the House again and, in this instance, choose a vehicle that, we hope, will give the amendment a little better chance of survival.

Having said that, I want to assure the distinguished Senator from New York that I support the work he is doing as chairman. I commend him on his work, on his dedication and sense of purpose. He has only been chairman of the subcommittee for a few weeks. But he has worked long and hard, and I express the hope again that the Senate can pass the bill which he expects to report out of his subcommittee and out of the full committee that is chaired by my distinguished senior colleage. I hope that the Senate can pass that legislation before the Senate adjourns.

We do not have much time, however, Mr. President. The Senate will adjourn, I would say, no later than October 2. So that does not give us much time.

I can appreciate the Senator's frustration, but I want to assure him that the work of the two Senators from West Virginia and the two Senators from Kentucky today has not been out of any doubt on our part that the Senator is doing his work well and expeditiously. He has moved with dispatch since he has become chairman, and I respect him for that. I hope, however, that he will have some empathy—as I know he does—with the frustrations that the senior Senator from West Virginia (Mr. RANDOLPH) and the junior Senator (ROBERT C. BYRD) have continued to experience as we have, time after time after time and, after the fourth time, decided that we ought to try again as the fleeting last moments of this Congress are passing.

Mr. MOYNIHAN. Mr. President, I

thank the majority leader for his generous remarks to me and to my distinguished colleague, the Senator from New Mexico (Mr. DOMENICI). I have the majority leader's attention. That is a rare commodity that is in great demand and I want to be sure of one thing. I have already lost his attention. I have it back. One does not get that often.

My concerns were only marginally jurisdictional. That does not interest me very much in life. I wanted the majority leader to know that the program approved and incorporated in this bill is not, I think, the program that he will think the best one, not the one which the corps is now approving or has now proposed, and not the one which our subcommittee has incorporated in its legislation.

Mr. President, this measure adopted today is costed at $284 million. The majority leader will want to know that the measure we have proposed and incorporated in our drafted bill is costed at $340,000,000. It is a large project, because it involves relocation and, absent relocation, I think the case can be made that there is no hope in the situation. So he should know that it is to the quality which I speak. We have what we think is a better program coming along.

Mr. ROBERT C. BYRD. I appreciate that and I hope that the "better program" to which the Senator alluded will pass the Senate. I want to support it. But suppose it does not? At least the amendment is in the appropriations bill, and perhaps we can begin to see some light at the end of the tunnel.

I am advised that the two approaches are not incompatible.

I shall yield now to my senior colleague (Mr. RANDOLPH).

Mr. MOYNIHAN. Mr. President, the two are not incompatible. One supplements the other in the more important aspect, however; without the first phase, the second would not get you a very good solution.

Mr. RANDOLPH. Mr. President, it is my understanding that the Senator from New York (Mr. MOYNIHAN) has the floor. Am I correct, or has he yielded the floor?

Mr. MOYNIHAN. Mr. President, I yield the floor to the chairman, if I do have the floor.

Mr. RANDOLPH. Mr. President, I shall try to put first things first. I think it is very important for us to realize that a project of this kind and of a similar nature, although in different localities of the country, have not been the reason why, over and over again, we have been unable to have the approval of the President of the United States on measures that are passed by the House and Senate to do with water resources. I think that Senator DOMENICI, if he is on the floor, would indicate to all of us that, not once but many, many times, we have had a series of worthwhile projects agreed to in the House and Senate by comfortable margins; yet they have been turned down at the White House. So I bring in that element as a very important matter in connection with the very painstaking work that is being carried on now by the knowledgeable Senator from New York who chairs our Subcommittee on Water Resources and also by his colleague, the ranking minority member of the subcommittee, who has been long at this effort, the Senator from New Mexico (Mr. DOMENICI).

Mr. President, I am only mentioning this to say that this is only a part of what we have had to contend with, years upon years. I remember very well the words of Senator GARY HART, speaking about a project in the West. He said that if we did not have these public works projects, these water resource projects, these irrigation projects, these flood control projects—and I am almost quoting his words—that a great area of the United States would have remained a desert.

Mr. President, that is exactly true. California knows it. The majority whip (Mr. CRANSTON) knows what has happened from the standpoint of projects that have benefited the State of California as well as the other areas which were included in the thinking of GARY HART, who is a member of our committee.

This Congress has a responsibility which Members of the Senate, like those on the floor now, in the committee, and on the committee handling this bill, to develop programs of projects to meet the water resources needs of this country. I have heard it over and over again—these projects being called pork barrel projects. Pork barrel projects are projects which are an investment where not only the 100 cents in the project are returned with the dollar, but dividends in better living and safer living for the people of the areas which are involved.

I commend Senator MOYNIHAN. This is not a pleasantry. I commend him for the work he is doing in the effort now underway. I say to him that I hope he will not misunderstand, or any Senator in the Chamber will not misunderstand, I do not believe there is any chance to pass an overall water resources bill in this session, the 2d session of the 96th Congress. I do not believe it.

I believe we are going to have a veto by the President of the United States. I cannot speak, of course, for anyone, not the President, or any of his advisers. But I think that is what we are faced with in connection with what we call new subject matter by way of water resources.

Mr. MOYNIHAN. Did I understand my beloved chairman to mean, when he said that there is no chance to pass, that there is no chance to see it enacted?

Mr. RANDOLPH. That is a better phrase.

Mr. MOYNIHAN. Because we might very well pass it.

Mr. RANDOLPH. Yes. We might very well, as we have in times past.

Over and over again we have been thwarted at the White House, not here on the Hill.

There are differences of opinion about projects. I understand that very well. I know that in what we are doing today, the last act I would want to commit is to try to go around and cut corners. I do not want to do that. I have not done it here on the Hill.

It would appear here that perhaps we have moved in with an amendment I am privileged to cosponsor with the Senators from Kentucky, and under the leadership of Senator ROBERT C. BYRD, and if that is involved I would not want to be taxed with such an effort.

Mr. MOYNIHAN. I will restate what I remarked earlier, unanimous consent was requested that this be done openly and in the clear light of day.

Mr. RANDOLPH. I am very grateful for that observation, which is true.

Now, we need the Tug Fork project, as the majority leader said. We need it now. We can come back later to modify this authorization to include the relocation aspect to which the Senator has correctly called our attention.

Has not the Corps of Engineers discussed the relocation proposal?

They have discussed it with the Senator, I want to be certain about that.

Mr. MOYNIHAN. It has been adopted by our subcommittee, incorporated in the draft language.

Mr. RANDOLPH. I had the feeling, and I can be incorrect, that the corps had not given the Senator, or the subcommittee, or to us, enough information to authorize more than just the first phase. I am not certain of that, but I believe that is factual.

We will need more specific information before we can authorize the full project that is currently being finally developed, as I understand it, by the Corps of Engineers. I think it is correct to say that we hope to have a report by the middle of next year which will be in sufficient detail on which the Congress can act.

But I come back to the words I used a moment ago, "We must act now."

When I say this, we must look to this legislation to initiate construction of such a project, in connection with the structural elements of the best project to alleviate the flooding which has been referred to by the majority leader.

We have mentioned certain costs, and the cumulative costs are now running well over, perhaps, $200 million, $250 million. I believe, if we take all these floods in recent years.

So we have these costs that come with the recurring floods, and I can well understand the concern. In fact, I agree with the concern of the Senator from New York, who is knowledgeable in these matters. I can say without reservation that he has applied himself to this subject matter, and within our committee and the structure of it, members both Democrat and Republican, there has been nothing but the most careful attention to this project, as well as other projects.

Perhaps I have not addressed myself to all the issues that we could use to bring this matter into focus. But I say that what we are doing here now will be helpful. What we can do later will be helpful.

But I fear that water resources legislative proposal passing the Senate and the House will not be signed by the President of the United States. Here, on this legislation, I believe the majority leader would say that, hopefully, this measure can become law.

Mr. ROBERT C. BYRD. I would hope so.

Mr. RANDOLPH. I would hope so.

Having said this, I again, not as a pleasantry, but as a truism, thank the Senator from New York (Mr. MOYNIHAN), the Senator from New Mexico (Mr. DOMENICI), and all the members of our committee who labored to cooperate together.

In this instance, we do not want to vitiate such a program that we have had. We want to keep it intact.

I thank the Senator very much for this opportunity to comment in connection with what has been done earlier today.

Mr. MOYNIHAN. Mr. President, I thank my incomparable chairman for his remarks; and I thank our distinguished majority leader.

I think this matter is settled. I think it is clear. I would hope that we have contemplated the full program. If it does, and I know it does, we will need more from the corps as the program develops.

I have not lost faith in the President of the United States, not in the last week of the election campaign. We could be amazed by the perceptions that settle in the Oval Office.

President Ford, a man who previously had been impervious to arguments in these matters, saw in October of 1976 opportunities where previously he had seen only waste and dissipation of scarce public resources.

We shall press on because the Senator from Louisiana has made the point which needs to be repeated. We are not spending enough money on water resources. We are at the edge of disinvestment.

If we are serious about producing, consuming, and exporting coal, we have an extraordinary set of projects ahead of us in inland waterways and in harbor development.

It is, in its effort, in its enterprise, not that much smaller than the construction of the interstate highway program.

We do not have any conception of how large it is, and we will have to learn it.

On the other hand, it is intensely regional. These whole programs have been altogether too regional, and the reason they are not passing is that they do not have that wide base of support which is necessary for decisionmaking in a democracy.

I am not complaining one bit, but here is yet another appropriations bill for which the State of New York, if one consults the Treasury, will put up 12 percent of the money in revenues; we get 8/10ths of 1 percent. That is high for us. If we ever grossed 1 percent in one of these projects, I could seek a second term with some prospect of worthiness.

The majority leader has risen.

Mr. ROBERT C. BYRD. I just want to remind my congenial, delightful, amicable friend that it is those coal mines in the Tug Fork Area of West Virginia that supply the black power to provide the lights for New York City and New York State and Washington, D.C., and the great cities of the East. Without that coal, the lights would go out.

Mr. JOHNSTON. Broadway would not glitter. [Laughter.]

Mr. ROBERT C. BYRD. Broadway would not glitter.

Mr. MOYNIHAN. The Senator would be surprised by the resources to which civilization would turn if the prospect of turning out the lights on Broadway were to become realized someday. The whaling industry would be revived. There was a Broadway before whaling, and it can be that again. However, I do not wish to enter into a parochial discussion.

One cannot explain the pall that has settled over the enterprise of water resources development except by the regional imbalance, that plus the advent of environmental concerns of a kind that are legitimate, too.

I make the point, once again, that we have to break out of this institutional deadlock or we are not going to produce the water transportation and facilities we need to export and consume coal.

In the coal conversion bill that passed this body about 3 months ago, 25 percent of the oil burning capacity for power generation that was to be converted to coal was in the State of New York. We were more than happy to have it. We cannot do it unless we have harbor facilities and railroad facilities.

In one particular specific, we had asked that the largest power generating plant in the Nation be taken off the list because it is on Long Island. Long Island is an island in the North Atlantic, and we have a small commuter railroad called the Long Island Railroad, which evidently the Department of Energy thought would be transporting 1,000 carloads of coal a day out to this Northport plant. But better transportation would have got coal there, and we would have welcomed coal there.

We will have to make this system work, and it is not working.

Mr. HUDDLESTON. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I yield the floor.

Mr. HUDDLESTON. Mr. President, I commend the distinguished Senator from New York not only for the job he is doing as subcommittee chairman in this very important area but also for his scope of understanding of the problems with which we are confronted in this country, including our transportation system; also, for his great breadth of understanding and consideration for the needs of the rest of the country, in addition to those of his own area, New York State, not only in this instance but also in many other areas that have come before this body. I want him to know that we appreciate that.

Mr. MOYNIHAN. I thank the Senator from Kentucky, and I should like to make a further point.

We will have to develop a shipbuilding industry. We must build a supertanker for coal.

Mr. HUDDLESTON. That is correct.

Mr. MOYNIHAN. It is being built in Japan.

Mr. HUDDLESTON. We also need the waterways on which to carry it, which includes the Tennessee-Tombigbee.

Mr. MOYNIHAN. There may be some discord on that—but waterways, yes.

Mr. HUDDLESTON. The Senator refers to possibly returning to the whaling industry. He is not suggesting that we nuke the whales, is he?

Mr. MOYNIHAN. There are those on both sides of the question.

Mr. HUDDLESTON. Mr. President, I strongly support the amendment of the majority leader, my colleague from West Virginia.

For more than 30 years, the people who live along the Tug and Levisa Forks of the Big Sandy River and those who live in the Upper Cumberland River Valley have been subject to periodic, devastating floods. These floods have caused millions of dollars worth of damage, have ruined thousands of homes, and have taken many lives.

I have been to these flooded areas and seen first hand the terrible devastation. The people whose homes were ruined will spend years and thousands of dollars trying to put their lives back together. According to the Corps of Engineers, during the past 5 years there have been 85 floods in Kentucky causing actual damages amounting to more than $182 million. It is estimated that the floods in April 1977 caused property damages of well over $100 million to 15 southeastern Kentucky counties and took the lives of four people.

Two years ago, more than 700 people from the area came to Washington to express their frustration and their desire to see some action taken on this problem. I told them then and I will tell you now that I share their frustration; I have been working on this problem during my entire 8 years in the Senate and my colleagues from West Virginia have been working on it even longer than that.

The cost-benefit ratio does serve a useful purpose, but I do not believe it was meant to be cast in stone. This is an exceptional case, and exceptional cases do not always fit into Government formulas and ratios.

It is only logical and humane to try to prevent these floods in the first place. We have waited already far too long, and I urge my colleagues to support this amendment.

Mr. President, as to the procedure that has been adopted here by the Senate today in moving forward with this very much needed and studied and worked on project, providing some flood control assistance to sections of West Virginia and Kentucky, it is unusual, as the majority leader has indicated; but he also has indicated the dire circumstances that prevail which call for unusual action.

I believe that as these measures proceed through the legislative process—the bill that is being marked up by the distinguished Senator from New York and his subcommittee—we will have an opportunity to reconcile these two approaches and come forward with what I hope to be the best for the area and the best for the country.

These people have suffered a long, long time, as the distinguished Senators from West Virginia already have indicated. They have exhausted nearly every remedy they know of in dealing with

their Government, in trying to secure some assistance.

When they see us appropriate here more than $500 million, for example, to accommodate the Cuban refugees who have come to this country very recently, just for the period between now and October 1, it is hard for them to understand why there cannot be some assistance that will provide for long-range correction of a difficulty with which they have suffered for generations.

So while the approach by the Senator from West Virginia, who has offered the amendment that was accepted, is somewhat ingenious, the problem requires it, and I believe we should proceed with it as the Senate already has acted. I am happy to join him in support of that amendment.

Mr. ROBERT C. BYRD. I thank my distinguished friend.

Mr. FORD. Mr. President, will the Senator yield me 10 seconds?

Mr. ROBERT C. BYRD. Mr. President, am I recognized?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. I yield to the Senator from Kentucky.

Mr. FORD. Mr. President, I take this opportunity to once again express my strong support for the Tug Fork project. It is my pleasure to cosponsor this measure which will greatly assist people who have suffered the agony of disastrous flooding, year in and year out.

This legislation authorizes additional flood protection to the people of eastern Kentucky and southern West Virginia. Under the bill, the Army Corps of Engineers is authorized to design and construct new flood control measures to prevent another disaster of similar magnitude and severity from occurring again.

This bill which authorizes $284 million will make the much needed improvements in the area and let the local people know that we care about the problems they are facing and that a solution is within reach.

Mr. President, we have tried four previous times to include this provision in legislation and to get it into law. We have an obligation to help relieve the ever-present threat of severe flooding for the people in that area.

ORDER OF PROCEDURE TOMORROW—UNANIMOUS CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I propound a unanimous-consent request which has been discussed with the distinguished minority leader, Mr. BAKER, the distinguished ranking manager, Mr. HATFIELD, and the disinguished manager, Mr. JOHNSTON, as follows.

Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 tomorrow morning; that the time of the two leaders be reduced to 10 minutes, to be equally divided; that upon the disposition of the standing orders for the recognition of the two leaders or their designees, the Senate resume consideration of the pending measure; that Mr. CHAFEE be recognized at that point to call up his amendment; that there be 2 hours for debate of the amendment, the time to be equally divided in accordance with the usual form; that upon the disposition of the amendment by Mr. CHAFEE, the junior Senator from West Virginia then be recognized to make a motion to suspend the rules of the Senate—paragraph 4 of rule XVI—for the purpose of proposing an amendment to the bill.

I will file the notice in writing to suspend the rules before this day is out, and on tomorrow I will make the motion to suspend the rules. If that motion is agreed to by a two-thirds vote, then I will offer an amendment which is legislative in nature but against which no point of order then could be made.

The purpose of the amendment would be to disallow the proposed pay increase that otherwise would be accorded to the executive, judicial, and legislative branches on October 1.

So my consent agreement entails the making of the motion to suspend the rule and not to exceed 20 minutes to be equally divided between the majority and minority leaders, or their designees, for discussion of that motion, and if the motion carries by two-thirds vote, the calling up of the amendment by the junior Senator from West Virginia with no further debate thereon, a vote on the amendment up or down and immediately upon the disposition of that vote on that amendment if the rules are suspended or in any event the Senate will then proceed to third reading without further amendment, without further debate or motion, and immediately to final passage of the bill without further motion or debate and that any motion to reconsider the vote by which the bill is passed have no time for debate thereon.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the reservation is simply for the purpose of clarifying a few points that I have already discussed with the majority leader and spreading them on the RECORD as I understand them.

To begin with, the majority leader has indicated his intention to file the notice of his intention to move to suspend the rules on tomorrow. He has that right. Members on this side have been notified of the majority leader's intention so to do.

I prefer that method, frankly, I may say, to that which we have sometimes followed in submitting questions to the Chair and then voting on the ruling of the Chair in respect to germaneness.

On tomorrow, under any circumstances pursuant to that notice the majority leader, on being recognized, could move to suspend the rules, as I understand the situation. In any event the unanimous consent agreement does provide for his recognition and does provide for 20 minutes to be equally divided on the motion to suspend and assuming that the motion to suspend is carried by the requisite two-thirds vote, and I expect that it will be, then to proceed immediately to the consideration of the amendment which could be adopted, as I also expect it to be, by a simple majority vote. Following on that, there would be a third reading of the bill and we would proceed to final disposition.

Mr. President, I think this is a good arrangement. It does provide that anyone who has amendments, other than the Chafee amendment which will be considered tomorrow under this arrangement, might do so this evening and no one's right to offer amendments is being truncated or extinguished by this agreement. Indeed and in fact, we have gone to some lengths to try to find out if there are other amendments that other Members wish to offer.

Mr. President, I have just been advised, if the majority leader will bear with me for a moment, the distinguished Senator from Alaska, the assistant Republican leader, is on his way to the Chamber, and I observe that the Senator from Louisiana may have a reservation. I wonder if we could forgo putting down this order until the distinguished Senator arrives.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. PROXMIRE. I do not wish to object, but I wish to have 5 minutes to make a speech on the bill before it passes at any time. Will the Senator provide for that in the unanimous-consent agreement?

Mr. ROBERT C. BYRD. Yes. I ask unanimous consent that Mr. PROXMIRE may have 5 minutes on the bill immediately prior to passage, that Mr. JOHNSTON may have 5 minutes, and that Mr. HATFIELD may have 5 minutes on the bill immediately prior to passage.

Mr. JOHNSTON. Mr. President, reserving the right to object, the agreement should be modified to provide that immediately upon the adoption of the disposition of the Tenn-Tom amendment, then we adopt the committee amendment which the Tenn-Tom amendment seeks to change.

Mr. ROBERT C. BYRD. Very well.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Chair rescinds the order. The Senator from Oregon has reserved the right to object.

Mr. HATFIELD. Yes; I only reserve the right to object to give an opportunity to the Senator from Alaska to make his view known if he wishes.

Mr. CHAFEE. Mr. President, I wish to reserve the right to object if I may.

Mr. STEVENS. Mr. President, I reserve the right to object. I have been trying to get an opportunity to review the amendment that the distinguished majority leader intended to offer concerning the pay raise to see if we could have it analyzed by the staff of the Governmental Affairs Committee that works on this matter of impact of pay raises on the Federal Establishment.

I am not opposed to the concept of limiting it as far as the legislative branch is concerned, particularly elected members, but I do think we run into a serious problem in Government if we start compacting the problem of denying pay increases to those who are impacted by a pay cap and it has a pyramiding effect year by year which is a disincentive to keeping good people in the Government.

So I wish an opportunity to discuss with my good friend and see what the version of the amendment is and how i' affects the executive branch and how i' affects the judicial branch employees.

Could my friend tell me is it going to be an all-encompassing amendment?

If the distinguished Senator from Rhode Island wishes to reserve the right to object, I will take a moment or two to examine this.

Mr. CHAFEE. Mr. President, I wonder if I might direct a question to the distinguished majority leader.

One, I understand that on the time before the Tombigbee amendment we cut that 2 hours equally divided starting around 9:40. The Senate is coming in at 9:30.

Mr. ROBERT C. BYRD. Yes.

Mr. CHAFEE. The earlier we come in the better as far as I am concerned but the majority leader decided 9:30?

Mr. ROBERT C. BYRD. Yes.

Mr. CHAFEE. I ask a question on this pay raise. As I understand, the idea is to put a cap on the pay of the legislators, that is, the Members of Congress and also some of the civil service; is that right, the general service?

Mr. ROBERT C. BYRD. Yes; and in the judicial and the executive branches.

Mr. CHAFEE. That as I am sure the Senator has given attention to has a lot of adverse effects. Let us set aside Congress. But in the top people in the executive it works out to a situation where there is a tremendous inducement for top people to retire where they get the COLA semiannually or annually, however it works out, and their retirement does not increase if they stay on the job since their pay is frozen. I wonder why the majority leader feels that we have to restrict those people. If we want to suffer, I am not enthusiastic about it, but I can understand it. But I do not quite understand why we work the same onerous effects on the top civil servants.

Mr. ROBERT C. BYRD. I can appreciate the compressor effect, and I share with the distinguished Senator his feeling of concern about those employees.

We had the same problem, of course, that accumulated over time some few years ago.

It was I, I think, who led the fight as much as anyone to support the pay increase across the board.

As to the judicial branch, I think so far as I am concerned that it is pretty obvious why I have included that branch. With all due respect to the members of the judiciary they have about the best thing going. They pay nothing, not 1 penny, into their retirement; yet, when they retire they retire at full pay, so I for one am not going to shed any tears with respect to the judicial branch.

(Mr. MATSUNAGA assumed the chair).

Mr. CHAFEE. I join the majority leader in not shedding any tears for that group.

Mr. ROBERT C. BYRD. If we merely limit this to Congress there will be a saving of about $6 million. If we apply it across the board there will be a saving of something like $90 million to $95 million. So it represents a clear saving of more money.

Then, too, while I personally feel there are people in the executive branch who are entitled to the pay increase that would otherwise go into effect, on the other hand, there are thousands of people there who, if the increase is allowed to go into effect, would not be very far from receiving salaries that would be higher than Members of Congress, and I am not yet quite ready to state that I believe that members of the executive branch in general are entitled to more money than are the Members of Congress.

I happen to be one who believes that there are Members of Congress who are entitled to every dollar they receive, and more. I do not have one bit of compunction about looking into the mirror when I receive my paycheck. But I do not believe we ought to, at this time, eliminate the Members of Congress and the judiciary and not also eliminate the top grades in the executive branch, notwithstanding the fact that a very strong argument can be made for the Senator's viewpoint, and I share it to a great extent, because there comes a time when the compressor effect is so damaging that good people, very able people, leave the service of Government.

Mr. CHAFEE. If I might say to the majority leader, it is not only the compressor effect, in other words, of the person who works for the leader of the unit earning as much, but it is this retirement situation.

It is my understanding that recently 80 people in the Central Intelligence Agency retired because of this effect. We lost a lot of very fine talent because if they are going to retire in 4 or 5 years there is no incentive for them to stay on since their retirement is based upon their highest pay, and the highest pay has to be in effect for 3 years. If we keep postponing this, there is every reason in the world for them to retire immediately.

I have a great reservation. What is the rationale for proceeding with a pay cap for Members of the Legislature? Is it that it would be unacceptable in these times to receive the pay raise?

Mr. ROBERT C. BYRD. Well, as I said, as far as I am personally concerned I have no compunction about seeing a pay raise go into effect for the Members of the Senate. I have no compunction about that. I think they earn their pay, and I do not know of any board of directors in this country that is as important as this board of directors that represents 223 million people.

But I do not think the mood of the country is such that it would look with favor upon an increase in the pay of Members of Congress at this time, and especially in light of the inflation the country faces, in face of the unemployment that the country faces, and in face of the need for restraint in Government spending. I think we have to set the example. That is, of course, an old story which has been played and replayed, but again I say I did not look for any rock to hide under. I took a stand, an open, frank, candid stand, in support of the pay increase that went into effect a couple of years ago and, by the way, Congress had only had—at that time—about 10 or 15 pay increases since 1789, and some of those were not permanent increases.

But, in any event, I took a stand then and I do not hesitate to take a stand today. It can be justified. But I think the right thing to do is to limit this increase and to exempt at this particular time in history the Members of Congress, and, along with the Members of Congress, the members of the judiciary and those in the upper levels of the executive branch, as much as I recognize the validity of the argument made by the distinguished Senator.

Mr. CHAFEE. Might I ask this of the majority leader: Obviously I have some thoughts on this and do not have my ammunition all prepared, but is it necessary that we proceed with this tomorrow? Is there something essential that we have got to attach this to, to move forward, this pay situation?

Mr. ROBERT C. BYRD. It is necessary that we proceed before October 1, otherwise the pay increase will take effect, and I think it would amount to something like over a 9-percent increase. So it is necessary that there be some haste about it, and I know of no better way to proceed than now.

I will turn the question around. Why wait?

Mr. CHAFEE. Well, I would like to wait just to—I am not saying to postpone it forever. I am just saying I think this is a matter of some import, and I would like to wait a week or something like that. I am not trying to upset the majority leader's schedule on this, but I personally would prefer to wait and, perhaps the Senator could find some convenient time which would give us a little chance to analyze this and think about it.

Mr. ROBERT C. BYRD. May I suggest to the distinguished Senator if he wishes he may offer an amendment to my amendment, and he can have a vote on it. But I intend to file the notice today to suspend the rules.

Whether the Senate wants to by a two-thirds vote suspend the rules on tomorrow is a matter for the Senate. But any Senator, including my distinguished friend—and we have stood together on many things here—may also file a notice to suspend the rules to amend my amendment tomorrow.

Mr. STEVENS. Mr. President, will the Senator yield to me right there? That is my problem, and I was trying to address the majority leader about it.

It is my understanding that this notice is filed to suspend the rules that pertain to this amendment, and this amendment cannot then be amended

without a similar notice; is that not correct?

Mr. ROBERT C. BYRD. It could be amended.

Mr. STEVENS. Would not that be the effect?

Mr. ROBERT C. BYRD. It could be amended by striking out—in other words, any Senator could, without filing a notice to suspend the rules, for example, strike out the word "executive." But for a nongermane amendment to my amendment, a notice of suspension of the rules would have to be filed today.

Mr. STEVENS. I might say to my good friend the problem is again that we have got a very difficult situation because this will be attached to an appropriations bill. We have a committee that has the staff, and we pay a great deal of money to our staff to keep up with the whole problem of pay and pay increases, and the impact of these increases that we call compression, the compressor effect the Senator from West Virginia has mentioned.

As I understand the amendment the Senator has graciously allowed me to review, it would, in fact, bring about an acceleration of the compression effect because it would say that the pay is limited to the pay level of level 5 for the executive schedule as it existed on September 30 of 1980. The pay increase will not go into effect, as I understand it, until October 1. So this is, in effect, saying that any person whose pay would be raised above the level 5 level now could not have this pay raise. That puts the ribbon of compression into effect in the executive branch and the legislative branch and the judicial branch.

I do not argue with the Senator from West Virginia about those of us who are in political life with a decision for not to have the pay raise for elected members of the legislative branch, to appointed members of the judicial branch, of those who hold offices confirmed by the Senate, and those in the executive branch who are there by virtue of the executive schedule.

But the amendment could be drawn so it does not affect those who are in career positions and, at the same time, in effect, give them that pay raise which they would be entitled to up to the cap that we establish.

I am reminded of the long argument that we have had before on this floor about those affected by compression. But when the compression was in effect previously, we saw the situation that we could not get ahead of NIH for 4 years. We saw the maximum number of middle-level career people leaving the Government. The impact of compression on the Government means that, in effect, we are sending a signal out to midcareer people that you have reached the top level of your compensation and they leave the Government so rapidly that we lose management capability.

I think this amendment could be drawn so that it would not have a compression effect on those who are in career service.

Mr. JOHNSTON. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. JOHNSTON. I am advised that if the Senate does vote pursuant to the notice to suspend the rules tomorrow, which then puts the Byrd amendment in order, that the Byrd amendment would then be amendable in the second degree by germane amendments, either to strike the provision or otherwise modify it with respect to Government employees which, frankly, I would favor.

I am not going to object to the majority leader's unanimous-consent request, because he has the responsibility of running this shop. I would urge him to consider putting this on another bill, because I think it does deserve a little more mature consideration.

Just to be plain about it, we are not going to approve the pay raise for us because it is an election year. And that sums it all up. That, plus the mood of the American people. We may never get another pay raise if we wait for the mood of the American people to be right. And I suspect that we are going to be very attentive to that mood of the American people.

But we should not, it seems to me, hurt Federal employees just because we want to deny ourselves that right. We have ranting and railing here on the floor about using outside consultants. One of the reasons is we cannot get the top people in Government any more. We cannot retain them.

It seems to me that we need to be very attentive to those topmost people in Government who provide the highest kinds of skills and not let them escape.

I commend that to the consideration of the majority leader. I am not going to object, because we can have this debate tomorrow. I would prefer we have it on another bill so that we have more time to consider this and maybe we even have the time to consider this in the Appropriations Committee.

Mr. STEVENS. Mr. President, I might say to both of my good friends that the difficulty I have is simply I am the last surviving member of the Post Office and Civil Service Committee who has elected to stay with the Governmental Affairs Committee when the reorganization took place. I see more and more of the work of that former committee being done here on the floor without regard to the fact that we have kept the staff there as a subcommittee of the Governmental Affairs Committee.

I do not know how many people this will affect. I do not know how to reduce the compression factor so that the impact on the career service would be lessened until we get a chance to analyze it and get some opportunity to talk to members of the executive branch and the Office of Management and Budget.

I agree with what the Senator from Louisiana states, that from a political point of view we are going to pass a bill that says we are not going to take this pay increase. Anyone that disputes that does not read the mood of the Senate or the leadership as I see it.

But why should that create more problems now for us in terms of the disincentives here? The President just signed a bill that gives the military branch a 10.1-percent increase. That means that generals and colonels and all of those people have already received 10.7 percent. Now, we are saying to the executive branch, to the legislative branch, and to the judicial branch: "But this does not mean you. You do not get the 9.1 percent."

The disincentives here, in terms of the career service, are going to be immense unless we take pains to be sure what we are doing with the compression factor. I think this could be drawn to eliminate it. I think this could be drawn to say that what we mean to say is everyone gets his part of the raise up to the cap, whatever the cap is.

But what this says is, "No, you are not going to get it because you can't get any more than a level 5 as of September 30 and the pay raise does not take place until October 1." So it is a real technical problem I have with the amendment.

With all due respect to my friend from West Virginia, I hope that we could get some understanding that we do not want to have those adverse effects of the compression take place. We can list it as a cap and say: "No one in the executive branch or the judicial branch of the legislature branch is going to get more than $52,000." If you want to say that, it is a simple matter.

Mr. ROBERT C. BYRD. Mr. President, perhaps there should be some time for debate tomorrow on my amendment. I would be glad to add that provision to the request.

The matter can be resolved in conference. If there should be some changes made, that can be done in conference.

In addition to that, as I say, any Senator may file a notice of a suspension of the rules and provide for amendments in the second degree.

May I have a clarification from the Chair? I am under the impression that certain amendments might be in order, one striking out a word there, for example, the word "executive," that would be in order without a motion to suspend being filed?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. Mr. President, I might say to my good friend that to my knowledge I am the only one that would do that and I do not have the time to draft the amendment, because I would have to file it at the same time as the Senator has his.

I do not have right now the capability of analyzing this amendment and coming up with an amendment to it that would carry out what I consider to be the proper procedure for the Senate to go through. It is too technical. Obviously, the Senator's amendment is very well drawn. It is a very technical amendment. In order to amend that to take out the compression factor, it would take some time to make sure that I did not cause more problems than I tried to eliminate. I just could not do that. I do not intend to do that.

I hope that we would not proceed with this at this time and give us a chance to agree on an amendment that would carry out what I think it intends to do without getting back into compression again.

Mr. ROBERT C. BYRD. Mr. President, I intend to file the notice.

In fairness to the distinguished Senator from Alaska, however, I would have no problem with asking unanimous consent that one amendment in the second degree be in order, to be offered by the distinguished Senator, with the clear understanding of what that amendment would comprehend. Not in detail, but certainly a general understanding of what it would comprehend.

Mr. STEVENS. I thank the Senator. I would state for the record that it would be my intention, if we can prepare such an amendment in the second degree to this amendment, to offer an amendment which would limit the impact of this so that it, in fact, would set a pay cap without having a compression factor upon those people in career service in the three branches of Government. If that can be done, I would request that that unanimous consent be granted and that we do attempt to do that, if it is possible, so that we do not get back into the situation.

I am sure the Senator knows—and maybe other Members of the Senate do not realize it—that if you do this this year and then do it the next year, each year the compression factor lowers it down further. At one time, we got down to the point where a grade 14 was impacted because of the way these amendments were drawn. I think everybody intended that there be a pay cap at a particular level of Government.

Mr. ROBERT C. BYRD. Mr. President, we could debate this ad infinitum tonight.

I would not agree to a unanimous consent that an amendment would be in order in the second degree as explained by the distinguished Senator. As I understood it, he would make it cover all three branches, judicial, executive, and legislative.

Mr. STEVENS. It would say that the limits of the basic pay for level 5 would be the limit of pay for the three branches of Government, in effect. That is what I would seek to do. That would eliminate the compression factor.

Mr. ROBERT C. BYRD. The three branches trouble me. Let me temporarily withdraw the request and maybe we can work something out.

The PRESIDING OFFICER. The request is withdrawn.

Mr. ROBERT C. BYRD. The President, I have not yielded the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I want to accommodate the distinguished Senator in some way, but I do not want to give away all my bargaining strength here.

Mr. STEVENS. Mr. President, I am not going to object to the Senator's unanimous-consent request, but I will seek tomorrow to see if I can get unanimous consent to offer an amendment in the second degree if we can frame it in the proper way.

Mr. ROBERT C. BYRD. Or even before this day is over.

I present my request again.

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Reserving the right to object, I wonder if the distinguished majority leader would be willing to amend his request to provide for 1 hour of debate on the amendment itself, assuming that the rules are suspended, because the only time that has been requested is for 20 minutes to be equally divided between the two leaders on the question of suspending the rules. It seems to me we ought to have some opportunity to get into the substance of the amendment once those rules are suspended.

Mr. ROBERT C. BYRD. Mr. President, I think that is a good suggestion and I add that proviso to my request, with the additional proviso that, if unanimous consent is given to allow the offering of one amendment in the second degree, there be 30 minutes equally divided on such amendment in the second degree.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, I hate to ask this, but I wonder if the Senator would restate the whole request, if that is not unreasonable.

Mr. ROBERT C. BYRD. Not at all.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that when the Senate convenes at 9:30 in the morning, the time of the two leaders be limited to 5 minutes each; that immediately upon the consumption of that time, or the yielding back thereof, the Senate resume consideration of the pending business, at which time the Senator from Rhode Island (Mr. CHAFEE) be recognized and that he call up his amendment, the Tombigbee amendment, at that time, that there be a time limitation thereon of 2 hours to be equally divided in accordance with the usual form; that upon the disposition of the amendment by Mr. CHAFEE, without further debate, motion, or amendment, the committee amendment to which that amendment is directed be disposed of; that upon the disposition of the committee amendment, as amended, if amended, the junior Senator from West Virginia be recognized to make a motion to suspend the rules; that there be 20 minutes to be equally divided on that motion to suspend the rules to allow the calling up of a legislative amendment to this appropriation bill; that if the motion carries, which would require two-thirds vote, the junior Senator from West Virginia then call up his amendment; that there be 1 hour for debate on that amendment to be equally divided in accordance with the usual form, and that if unanimous consent is granted for the calling up of an amendment in the second degree to the amendment in the first degree by Mr. ROBERT C. BYRD, there be a 30-minute time limitation on such amendment in the second degree to be equally divided in accordance with the usual form; that upon the disposition of the Byrd amendment, as amended, if amended, there be 15 minutes of debate—5 minutes under the control of Mr. PROXMIRE, 5 minutes under the control of Mr. JOHNSTON, and 5 minutes under the control of Mr. HATFIELD—after which the Senate proceed without further debate or motion to passage of the bill, and that there be no time for debate on any motion to reconsider action on the bill.

The PRESIDING OFFICER. Is there objection?

ORDER TO CONVENE AT 9:30 A.M. TOMORROW

Mr. HATFIELD. Mr. President, reserving the right to object, could I ask the indulgence of the majority for one other point? That is, instead of 9:30, would the Senator agree to coming in at 9:15 in the morning?

Mr. ROBERT C. BYRD. I make that change, Mr. President. 9:15.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators.

UP AMENDMENT NO. 1563

(Purpose: To make available $6,000,000 only for certain flood control projects)

Mr. ROBERT C. BYRD. Mr. President, I send an amendment to the desk on behalf of my colleague, Senator RANDOLPH, and the two Senators from Kentucky (Mr. HUDDLESTON and Mr. FORD), and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself, Mr. RANDOLPH, Mr. FORD, and Mr. HUDDLESTON, proposes an unprinted amendment numbered 1563.

On page 16, line 8, immediately before the period insert the following: "*Provided further*, That within available funds under this paragraph, $6,000,000 shall be available to carry out the purposes of section 202 of this Act".

Mr. ROBERT C. BYRD. Mr. President, the reading of the amendment explains the amendment. I suggest the amendment to the managers of the bill. I hope they will accept it.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I am not sure what this does.

Mr. JOHNSTON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Rhode Island yield to the Senator from Louisiana?

Mr. CHAFEE. Yes.

Mr. JOHNSTON. Mr. President, this makes available some $6 million from within available funds, which might be from savings, slippages, or other available funds, $6 million to begin work on the Tug Fork project, which has just been adopted by the Senate. That is all it does. It is acceptable to the majority.

Mr. CHAFEE. We have previously authorized this today?

Mr. JOHNSTON. That is correct.

Mr. ROBERT C. BYRD. For the fifth time.

Mr. CHAFEE. And now we are appropriating for it?

Mr. ROBERT C. BYRD. Not appropriating, but just making provision that out of available funds, slippages, savings, et cetera, up to $6 million may be used on Tug Fork.

Mr. CHAFEE. That is very fast work.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1563) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1564

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON), for himself and Mr. STONE, proposes an unprinted amendment numbered 1564.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 18, line 17 add the following: *Provided further*, That the authorized project dimensions for East Pass Channel, Florida, are hereby modified to provide a channel length of approximately 3800 feet in lieu of 2000 feet from the East Pass Channel into Old Pass Lagoon, with no changes in width and depth.

Mr. JOHNSTON. Mr. President, I am offering this amendment for myself and the distinguished Senator from Florida (Mr. STONE) to clarify the Army Corps of Engineers' authority to perform maintenance dredging at the East Pass Channel in Florida. This amendment will enable the corps to continue to serve the basic purpose of the project, which is to maintain a channel from the East Pass into Old Pass Lagoon.

This amendment has been, as I understand it, cleared with Senator MOYNIHAN, chairman of the Authorization Subcommittee.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1564) was agreed to.

THE TENNESSEE-TOMBIGBEE

Mr. CRANSTON. Mr. President, I rise briefly to support construction of the Tennessee-Tombigbee Waterway. I know of no project that has been studied and restudied as much as the Tennessee-Tombigbee. This project is being built to provide an important link in our national transportation system and inexpensive water transportation for coal and agricultural commodities to the Gulf of Mexico.

The Senate has voted to fund construction of this project since 1972. To date, Congress has appropriated $879 million for the construction of the Tennessee-Tombigbee project. This is over half of the projected Federal cost of $1.75 billion. It is my understanding that 46 percent of the project's navigation features have been constructed thus far and that over 70 percent of the total Federal cost has been expended or is committed in ongoing contracts.

Thus, one-half of the project's costs have already been invested and are unrecoverable. If the project were stopped, the expenditure of $879 million plus the termination costs of $130 million would be lost.

But the vast majority of the project's benefits—some estimate that it will yield as much as $100 million annually—will come from providing transit navigation. This can, of course, only be realized if the project is completed. Given this Federal investment in the Tennessee-Tombigbee Waterway, it does not make good economic sense to stop the project now. I, for one, am going to support its completion.

NOTICE TO SUSPEND RULE XVI

Mr. ROBERT C. BYRD. Mr. President, I send to the desk the notice in writing which I referred to in earlier colloquy.

The PRESIDING OFFICER. The clerk will state the notice.

The assistant legislative clerk read as follows:

Mr. President, I submit the following notice in writing: "In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of Rule XVI for the purpose of proposing to the bill (H.R. 7590), making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes, the following amendment; namely:

AMENDMENT NO. 2302

(Purpose: To impose a ceiling on pay of certain higher paid Government employees)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, between lines 6 and 7, insert the following new section:

SEC. 509. (a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is—

(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1980, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

(c) None of the funds appropriated by this Act or any other Act shall be used to pay performance awards in fiscal year 1981 under section 5384 of title 5, United States Code, or any comparable personnel system established on or after October 13, 1978, to more than 25 per centum of the number of Senior Executive Service or comparable personnel system positions in any such agency.

(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

TENNESSEE-TOMBIGBEE

The PRESIDING OFFICER. The Senator from Missouri (Mr. DANFORTH) is recognized.

Mr. CHAFEE. Mr. President, will the Senator from Missouri yield to me for 1 minute?

Mr. DANFORTH. I am happy to yield.

Mr. CHAFEE. Mr. President, we have heard some discussion this evening on the Tennessee-Tombigbee project. I submit for the RECORD a series of editorials, not all from the frost belt by a long shot. The lead one is from the Atlanta Constitution and there are a variety of others, including one from the Raleigh News Observer. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Atlanta (Ga.) Constitution, July 3, 1980]

ROBBERS WITHOUT GUNS

The most famous of American boondoggles, the Tenn-Tom dredging project, has been down many times but never out. The supporters of this project have successfully raided the national treasury on so many different occasions and with such brashness that they no longer even need masks or guns.

And they are about to do so again. Last weekend the Senate voted some $58 million in supplemental allocations for Tenn-Tom, despite the growing suspicion that dollars generated by the waterway will flow into the pockets of wealthy landowners rather than into the hands of the jobless poor.

The idea behind Tenn-Tom is to connect Alabama's Tombigbee and Tennessee rivers by means of a 250-mile-long barge canal and a complex series of locks, dams and "fixed crest" spillways, creating thereby a vast inland waterway that will carry ocean-going vessels into the heart of America's corn and wheat country.

The Tenn-Tom has been a Deep South dream ever since the time of the first French explorers. It was an issue at various times all during the 19th century and finally became a reality in the time of President Nixon, who viewed it as a worthy cog in the much-vaunted "Southern strategy" by which he hoped to transform the South into a reliable outpost of the Republican Party.

But, in trying to make amends for the folly of 19th century Republican carpetbaggers, Nixon may have overreached himself. True, there will be plenty of economic benefit for the wealthy plantation owners whose property straddles the sluggish Tombigbee—sites for cattle feeding lots and marinas and roadside tourist attractions. And all day long barges loaded with wheat and coal and fertilizer will float up and down the barge canal, in and out of the locks and "fixed-crest" spillways. But the industrial boom that was supposed to spread through the river valley in the wake of Tenn-Tom, creating jobs for former tenants and sharecroppers, may never really materialize.

All that quite leaves aside the disastrous environmental impact of Tenn-Tom. The lovely "slack water impoundments" built by the Corps of Engineers will be sure to bring in the tourists and fly fishermen and water skiers, and may even attract the attention of migrating flocks of waterfowl. But the destruction of rare species of fish life goes on apace—even as politicians are wrangling and courts adjudicating—while back in the dense forests that line the river banks the swamp owls and loons and beasts of prey busily flee the unceasing clangor of bulldozer and pile-driver.

The Senate knows all that. But it voted for the supplemental appropriation anyway, mostly, one suspects, because the nation has already invested so much money in this Nixon hoax that it can't afford to stop now. The Watergate scandal spread into some unexpectedly exotic corners of our national life. But for some inexplicable reason it never did spread to the Tenn-Tom.

[From the Wichita (Kan.) Eagle, July 29, 1980]

MONEY DOWN THE TENN-TOM

The Tennessee-Tombigbee Waterway project, perhaps more appropriately called the Old-Boy Network Memorial Ditch, is an insult to the American taxpayer. Its estimated cost has ballooned by more than a billion dollars in a year's time, to $3 billion, and as columnist James Kilpatrick says elsewhere on this page, even that figure may be "as phony as all the estimates that have gone before."

The Senate soon will have a chance to end this nonsense, and we hope Sen. Bob Dole, R-Kan., will add his voice to the growing outrage over the Tenn-Tom taxpayer ripoff, as his colleague, Sen. Nancy Kassebaum, R-Kan., did on an earlier vote. Interestingly enough, it generally has been the newer members of Congress who have opposed this certifiable boondoggle, and the older members who have rallied to the defense of the entrenched Southern congressmen who have promoted the scheme over the years.

The plain truth is that there is no defense for a project:

That is not needed, its few major potential customers either having gone out of business or expressed no interest in using the Tenn-Tom canal instead of the nearby Mississippi River.

Whose favorable cost-benefit ratio is calculated by using an archaic 3¼ percent interest rate, when independent analysis shows the project would lose 70 cents on every dollar spent.

When the affected states have not agreed to defray their share of the cost of highway bridges and recreation developments, expenditures that would be in the hundreds of millions of dollars.

That would eliminate 40,000 acres of prime hardwood timber and associated wildlife habitat, and 17,000 acres of productive farmland; and that would mix the ecosystems of the Tennessee and Tombigbee rivers, with unknown results.

The Tenn-Tom project originally was conceived to speed barge traffic between the Tennessee River system and the Gulf of Mexico, with the savings to shippers to come from the taxpayers' pockets. The waterway wasn't justified then—when the estimated cost was $323 million—and it hardly is justified now, at almost 10 times the original cost.

Though the project is about a quarter completed, "there is no point," as the National Taxpayers Union says, "in throwing good money after bad." Sens. Dole and Kassebaum can do something about that when the Senate votes on a $225 million proposed additional contribution to the Tenn-Tom money pot in the fiscal year 1981 water development appropriations bill.

[From the Los Angeles Times, July 27, 1980]

GOOD MONEY FOR A BAD PROJECT

When members of Congress return to Washington this week after their recess, they must decide whether to waste another $283 million on the Tennessee-Tombigbee Waterway.

The project, in construction since 1972, eventually will cost more than $3 billion, although its benefits can never justify such a massive outlay of public funds. Its scope is just as massive, the Army Corps of Engineers would have to move as much earth as it did to build the Panama Canal.

The waterway is being built for only one reason—three powerful southern politicians want it—and the Corps of Engineers, to its discredit, is going along with the boondoggle.

The plan is to connect the Tennessee and Tombigbee rivers with a canal, then deepen and widen them to allow coal barges to pass 450 miles from southern Tennessee through Alabama and Mississippi to the Gulf of Mexico at Mobile.

Never mind that railroads of the Southeast now transport the coal from Tennessee to the gulf. Never mind that a parallel waterway already exists—the Mississippi River. Never mind that the corps' cost justification requires maximum use of the waterway for half a century, although the volume of traffic that the engineers project would exhaust the coal in southern Tennessee in 15 years.

Congress continues to throw good money after bad—$600 million already has been spent—because of the political muscle of Sen. John C. Stennis (D-Miss.), Rep. Jamie L. Whitten (D-Miss.) and Rep. Tom Bevill (D-Ala.). Stennis heads the Senate Armed Services Committee and is a ranking member of Appropriations. Whitten chairs the House Appropriations Committee, and Bevill runs the Public Works Committee.

Their clout—and nothing else—has kept the project alive, and only because the construction dollars help the economy in poorer sections of Mississippi and Alabama.

But the bulldozers and dredges are destroying 100,000 acres of farms and forests, and are causing irreparable damage to wildlife and to the river environment—and all for nothing. The project can yield nothing but deficits, and could cost the competing railroads up to $70 million a year.

The waterway would have no flood control, irrigation or energy benefits, yet Congress continues to vote money for what has to be the most dubious pork-barrel project in the nation's history. The latest request is for a supplemental appropriation of $58 million for this year and a new appropriation of $225 million for 1981.

The $800 million already spent is not a total waste. Work on the Tombigbee has made it more navigable, and the government could recoup much of its investment by selling off its huge land acquisitions for the waterway at much higher prices than were paid.

Every additional dollar for the project makes it more certain that the taxpayers eventually will be stuck for the full $3 billion or more.

The good faith of Congress and the Carter Administration in declaring that they are determined to halt unnecessary expenditures is now at stake. It is time to cut the losses on Tennessee-Tombigbee, and that can be done only by refusing further appropriations.

[From the Washington Star, July 29, 1980]

WHY THIS $3 BILLION BOONDOGGLE?

(By James J. Kilpatrick)

A critical vote is approaching in the Senate in the matter of the Tennessee-Tombigbee waterway. If this $3 billion boondoggle ever could have been defended, it has become indefensible now. The Senate should kill it.

The Tenn-Tom, as it is known, first was authorized by Congress in July 1946. The idea was to dig a ditch 100 miles long, 170 feet wide and not less than 9 feet in depth, that would connect the Tombigbee River at Demopolis, Ala., with the Tennessee River at a point west of Florence near the Mississippi-Tennessee border.

Proponents never could justify the Tenn-Tom, in terms of flood control or hydroelectric power. Some recreational benefits were thrown in as a make-weight, but the project was defended almost entirely for the barge traffic that would be created. Vast quantities of coal and other bulk cargoes, it was said, could be moved down the Tenn-Tom to Mobile at significant savings to shippers and ultimately to consumers. In 1971, when Congress at last got around to appropriating funds to get the work under way, the cost was estimated at $323 million.

The cost now is estimated at $3 billion, and the end is not in sight. Under intense scrutiny from knowledgeable critics, the supposed barge traffic has tended to evaporate. It transpired that one large potential shipper of coal had gone out of business entirely; other prospective users have denied that they would shift their cargoes from the Mississippi. Where are the positive, demonstrable benefits? They cannot be found.

Other objections loom almost as large. Almost from its inception, the Tenn-Tom has been tainted by political and bureaucratic manipulation. The original authorization was for a canal 170 feet wide. Somehow, somewhere, sometime, the Corps of Engineers changed the specifications to read 300 feet instead.

The project would lose most of its value unless the Tombigbee were widened from Demopolis south of Mobile; without specific congressional authorization, somehow this costly addition got factored in. Time after time, the corps has withheld its honest estimates of cost from public consideration.

"I would recommend," wrote the supervising engineer in 1974, "that we hold the federal cost under $1 billion. Say $975 million. Considering the size of the estimate, $975 million is no less accurate than $1 billion, and it has less emotional impact."

At that time, the actual internal estimate within the Corps of Engineers was $1.159 billion.

Perhaps duplicity is too strong a word to apply, but internal memoranda that surfaced during a suit brought by the Louisville & Nashville Railroad, seeking to halt the Tenn-Tom, suggest a pattern of fiscal rejiggering to make benefits fit the spiralling costs. Partly because of this litigation, truly searching inquiries by congressional committee or by the General Accounting Office repeatedly have been stalled.

In the pale light of this murky record, proponents of the Tenn-Tom lately have been reduced to a single bad argument: So much money already has been spent in land acquisition and construction that it would be wasteful to stop now.

To be sure, there are times when it is best to throw good money after bad; the case of the Tellico Dam on the TVA system, which was 95 per cent complete when a court order suspended work, provides a melancholy example. But the Tenn-Tom is not even half complete, and the record strongly suggests that the latest $3 billion estimate is as phony as all the estimates that have gone before.

Congress use to be agreeable to going along with such influential Southerners on the Hill as John Stennis and Jamie Whitten of Mississippi. Now support is fading rapidly. On June 25 the Tenn-Tom survived a House test by a margin of 216 to 196. Three days later the Senate kept the project alive in fiscal '80 by a vote of only 47-36. Now a vote is coming up on a water development appropriations act for fiscal 1981. The act would invest another $225 million in the venture.

At a time when Treasury faces a deficit of $60.9 billion in the current fiscal year and another $29.8 billion next year, surely second thoughts should compel a suspension. In the name of fiscal sanity, enough is enough.

[From the New York Times, June 24, 1980]

RIVER OF NO FINANCIAL RETURN

Anyone credulous enough to believe that Congress seriously wants to hold down expenditures had better take a close look at the $3-billion Tennessee-Tombigbee Waterway. The estimated cost of this pork barrel rises higher every year while its alleged benefits fade. Yet Congress keeps appropriating more funds to push the waterway onto depressed areas of Mississippi and Alabama. It is a triumph of political muscle over common sense.

The waterway has been a boondoggle from the start. It would create a barge route from the Tennessee River to the Gulf of Mexico, paralleling another perfectly usable route—known as the Mississippi River. Calculations of benefits and costs have repeatedly been jiggered to justify the construction while unfavorable audits have been suppressed. Yet the project advances, apparently because the Army Corps of Engineers is eager to build and powerful Southern legislators are determined to see it built.

The only encouraging news is that this Federal beneficense is becoming so embarrassingly expensive that other members of Congress are having second thoughts. The waterway's northern section, the only part so far authorized, would cost almost $2 billion; the southern section, which would be needed to complete the route, would cost at least $1 billion more. Mississippi and Alabama have shown little enthusiasm for putting up their own money, as required by law, for related costs. In fact, they have contrived to get some other Federal funds for bridge construction counted as their contribution.

The House approved a supplemental appropriation for the waterway last week, by a surprisingly close vote of 230 to 185. Another key vote is due this week. The project's supporters contend that it is too far along to stop now. Indeed, about $800 million has been appropriated. But half that amount could probably be recovered by selling off the already acquired land. It seems wiser to cut the nation's losses now, at $400 million, than to waste $2 billion more.

[From the Washington Post, June 28, 1980]

THE $3,000,000,000 DITCH

"Everybody agrees that we are going to complete the [Tenn-Tom]," Rep. Jamie L. Whitten told his colleagues in the House the other day. A few minutes later, the votes revealed that everybody does not agree. The Tennessee-Tombigbee Waterway—the nation's most expensive ditch—is in trouble. Support for its completion is wobbling in the House and a full-scale assault is under way in the Senate.

The Tenn-Tom was a bad idea when it was first proposed a century ago. It has not improved with age. Designed to create a 449-mile waterway from Tennessee to the Gulf of Mexico about 150 miles east of the Mississippi River, this project has never made economic sense. That fact is slowly settling in on members of Congress who have finally become concerned about the way federal money is spent on the pet projects of powerful members.

Construction of the Tenn-Tom was authorized by Congress in 1946. During the 1950s and 1960s, the House Appropriations Committee refused to provide funds for it because the projected return on the government's investment was marginal, at best. On its fourth try, however, the Corps of Engineers came up with a cost/benefit study that the committee (and Congress) found sufficiently persuasive to appropriate the first construction money in 1971.

Since then, almost everything about the Tenn-Tom has been seriously questioned. The cost estimates have gone from $323 million in 1970 to $2 billion last year to $3 billion this year. The validity of the Corps' projection on how many barges the new waterway would attract (and, therefore, the validity of its cost/benefit analysis) is in hot dispute.

These complaints, and even a request for a GAO study, have been routinely turned aside. Federal spending on the Tenn-Tom has passed the three-quarter-billion mark, and the House just voted to give it another quarter billion—$58 million of that as supplemental funding to be spent in the next three months.

It was in the debate over that supplement appropriation that Rep. Whitten made his confident statement about the Tenn-Tom's future. Two relatively junior members of the House, Reps. Joel Pritchard and Robert Edgar, had challenged the appropriation on the House floor. They lost 210 to 185, that day and lost again, 216 to 196, last Wednesday when they challenged the 1981 appropriation.

But Mr. Whitten had to pull out all the stops to keep Tenn-Tom alive. There were veiled threats, and some not so veiled, about the fate of other water projects. For some reason, comments about Mount St. Helens and the money's being appropriated to help victims of its eruption kept cropping up in the debate: Rep. Pritchard is from Seattle. Yet, a majority of the members of the House elected since 1970 voted to defy Mr. Whitten's wishes and only the 2-to-1 support he got from the body's more senior members kept Tenn-Tom in the budget.

The effort to kill the Tenn-Tom and start reclaiming about half the federal investment in it by selling the land the Corps has acquired now shifts to the Senate. We wish it well. The idea of building an alternative to the Mississippi River makes even less sense now than it did in 1874.

[From the Raleigh News & Observer, July 14, 1980]

IN THE TENN-TOM DITCH

U.S. taxpayers have been given the privilege of anteing up another $225 million for the Tennessee-Tombigbee Waterway project, which The Atlanta Constitution calls "that most famous of American boondoggles." The Atlanta editors are turned off mainly by the adverse environmental impact of the 232-mile canal through Mississippi and Alabama. But the public can hardly rejoice, either, over the ultimate $2 billion cost and distorted cost-benefit ratio of the project.

Despite its recent frenetic efforts to balance the fiscal 1981 budget, Congress blanched when faced with lopping off some of the pet public works projects of its members. The House came close on Tenn-Tom, defeating an amendment for a $200 million 1981 reduction by a 20-vote margin—but it still gets no cigar. The vote continued the politically charmed life of this regional greased pig of a project.

But Congress wasn't alone in allowing this slab of Dixie porkbelly to slip through its fingers. President Carter put Tenn-Tom on his 1977 water project hit list and then backed off when the squealing from his fellow Southerners began. The White House didn't even attempt to take on the Mississippi-Alabama politicos in this election year. Besides, Tenn-Tom has become something of a North-South issue, and with hundreds of millions of dollars already invested in the barge canal, the taxpayers almost certainly will be kept in the ditch until the bitter end.

Years ago, not long after Richard Nixon gave the Tenn-Tom a green light to buttress his Southern strategy, the General Accounting Office got the canal in its sights for underestimated costs and overestimated benefits. Sen. John Stennis, D-Miss., stymied the GAO with a few deft turns of the thumbscrew. The Tenn-Tom lobby has enjoyed success ever since.

The moral, perhaps, is that the only way to make certain you don't have to live with a boondoggle is to pinch off its head at birth.

[From the Fort Myers (Fla.) News-Press, July 19, 1980]

HERE'S A PLAN FOR SPEWING $3 BILLION DOWN THE DRAIN

Federal fish and wildlife officers over-burdened taxpayers and more than five million conservationists have said no to the Tennessee-Tombigbee Waterway.

But the Carter Administration continues to say yes to what has appropriately been described as "the nation's biggest pork barrel project." (The ultimate project cost has skyrocketed from $1.8 billion to over $3 billion in a single year.)

Meanwhile, the U.S. Fish and Wildlife Service has raised grave questions about the project. Among other things, there's evidence that the U.S. Army Corps of Engineers has illegally restricted its environmental review to only half of the project area.

Wildlife officers predict horrendous environmental destruction; so much so, in fact, that the acquisition of up to one million acres may be necessary to mitigate the loss of fish and wildlife habitat caused by the barge canal.

Dozens of major environmental groups have formed a Coalition for Water Project Review (1412 16th St. N.W., Washington, D.C. 20036), to try to stop the devastation.

Taxpayers who advocate a balanced budget also are alarmed. And rightfully so. Any hope for a balanced budget can only be undone by continued efforts to pump even more money into the barge canal.

Since existing rail lines and waterways presently link Tennessee and Alabama, some experts say the project is designed solely for the benefit of a few barge companies—at the expense of nature and the nation's taxpayers.

National pressure is mounting to put an end to the devastation. Nevertheless, the Carter Administration is seeking even more money to speed up the Tennessee-Tombigbee project.

Happily, U.S. Rep. L.A. "Skip" Bafalis, R-Fort Myers Beach, is likely to oppose that effort. Bafalis has consistently voted against the boondoggle.

Unfortunately, Florida Senators Richard Stone and Lawton Chiles—both Democrats—have voted in favor of the project. They'll get a chance to change their minds in a final vote on or before July 27. We recommend that they do so.

[From the Gainesville Sun, July 21, 1980]

STROKING THE TURKEY

The U.S. Corps of Engineers, some wag observed, does what God would do if he had the money.

The Corps' big ongoing project is to clone the Mississippi River, placing it along the Alabama-Mississippi line and ending at Mobile. Any correlation between the routing and certain congressmen in key committee spots is totally deliberate.

The project is called the Tennessee-Tombigbee Waterway, or Tenn-Tom for short. It involves digging a 40-mile canal in northern Mississippi to link the Tennessee River to the Tombigbee River. Then the Tombigbee is to be dammed, dredged and widened for a whopping 400 miles, before it empties into the Gulf of Mexico.

The Tenn-Tom is a tax-paid abomination. But with waterways, as Washington Swamp observers well know, congressmen scratch each other's back—ultimately expecting to call in the chips at a later date. So these turkeys are popular with congressmen, because one politician's turkey is another politician's peacock—and ultimately vice versa.

Tenn-Tom has the support of Florida's two Senators, Lawton Chiles and Dick Stone. It also has the support of U.S. Rep. Don Fuqua of North Florida. Examine the facts and gauge their breathtaking error.

Tenn-Tom is one of those silly century-old dreams, like the late unlamented Cross Florida Barge Canal. It was just that, a dream, until President Richard Nixon decided he would like re-election in 1972 by acclamation. He induced Congress to put Tenn-Tom on the federal dole in 1971.

It took some conniving, because even the ever-ready Corps of Engineers could not make this turkey fly fiscally in less than four attempts. And get this. The cost was to be a whopping $300 million.

Whopping? Here it is, nine years later. Tenn-Tom already has claimed $926 million, and the total bill is to be a staggering $3 billion—of your tax money.

Why such a magnificent escalation? It starts with absolute deception by the Corps of Engineers, which unilaterally proceeded to double the width of the project without congressional approval. It got away with it because of the personalities involved, who are Southern congressmen sitting in catbird seats because of their seniority.

Among these include Mississippi's Rep. Jamie Whitten who chairs appropriations and Sen. John Stennis who chairs armed services and defense appropriations. Also Alabama's Rep. Tom Bevill, chairman of energy and water development, formerly deemed public works but relabeled because it stank of wet turkey feathers.

The Corps is sticking to its guns, making wild claims about barge traffic which will be generated. It figures Tenn-Tom will return $2.50 of economic benefit for each dollar spent. But don't hold your breath, because outside experts call that sheer fabrication, deeming 30 cents on the dollar more like it.

Tenn-Tom was in the federal budget this year for $165 million. The Corps was running out of money so Congress in the past few weeks provided $58 million more—with an assist from Florida's Chiles and Stone and Fuqua. That's $223 million for this year alone.

And the bird is down for $225 million more in 1981 budget, which will come before the Senate in early August. This is a magnificent opportunity to end it all—a savings of $2 billion, thereby kissing off $1 billion as tuition for the pickpocketing education provided by President Nixon and his congressional cohorts.

That means a turnabout for Florida Sens. Chiles and Stone and North Florida's Rep. Fuqua. But what are those fellows doing with their shovels in Tenn-Tom anyway?

Each and every one claims to be a fiscal conservative. Would Sen. Chiles, who makes such a big thing of unused desks warehoused in Washington Swamp by the General Service Administration, boast about wasting your money? No he would not. Would Sen. Stone, up for re-election against stiff opposition this year, throw tax dollars from the Washington Monument for kicks? No he would not. Would Rep. Fuqua, who claims to pinch pennies until Lincoln bites his ear, boast about lighting cigars with tax dollars? No he would not.

So why in heaven's name are they voting to throw away $3 billion—when the economy is painfully crimped, when governmental thrift is deemed essential to combat inflation—for stroking the ego of a handful of congressional roosters ostentatious enough to covet a frontyard ditch?

Messrs. Chiles and Stone and Fuqua can stroke this turkey until Hogtown Creek freezes solid, but it never will grow peacock feathers.

[From the Courier, July 17, 1980]

DUMP TENN-TOM

The Tennessee-Tombigbee Waterway was a bad idea when it was proposed more than 100 years ago. And the 449-mile barge and pork-barrel canal from the Volunteer State to the Gulf of Mexico remained a bad idea when Congress authorized its construction in 1946, and when it appropriated the first millions for it in 1971. Now it's risen to the level of being preposterous.

Since 1971, the cost-benefit aspects of the project have been vigorously disputed because of questionable data supplied by the U.S. Army Corps of Engineers. The corps, as many know, is known to have its own interests in such projects; indeed, so do some senior federal lawmakers and others from the proposed waterway area that stretches from Tennessee, through Mississippi and Alabama, to the Gulf.

But with costs now about 10 times the original estimate, and rising, the Tenn-Tom has become an insane boondoggle, an economic threat, an environmental nightmare. Its exorbitant cost alone threatens truly worthwhile projects.

In the context of what Congress has been saying about strengthening the economy, the Tenn-Tom also constitutes a threat to the legislative body's credibility if it is pursued any farther. In 1971 the waterway was estimated to cost $323 million; new estimates are more than $3 billion.

Already Congress has spent three-quarters of a billion dollars of taxpayers' money on the partially undertaken project—that's more than twice the original estimate for the whole project. The House recently voted to give it a supplemental $58 million to cover the next three months' work. That vote was hard won, we are glad to say, because support for the project has been melting away steadily.

It is, of course, reasonable to ask why the Tenn-Tom project is a bad idea. The answer is that it is and always was unnecessary. It closely parallels a superb engineering and construction effort completed eons ago and still in operation: The Mississippi River.

Congress can never hope to cut its spending, balance the federal budget and bring economic sanity back to this nation with wasteful efforts like the Tenn-Tom Waterway. Its members would do themselves and the American public a great boon if they scrapped this expensive boondoggle before it costs yet more deficit billions this country can't afford.

As the matter moves on to the Senate and an expected showdown vote, perhaps this month, we fervently hope that realistic minds prevail. Let's end the Tenn-Tom project once and for all, sell the land already acquired, the business of running this country sensibly, to recoup the money spent, and get back to

[From the Chattanooga News Free Press, June 29, 1980]

WHO NEEDS TOMBIGBEE?

(By J. B. Collins)

City and county officials are on record as favoring financing to complete the multi-billion-dollar Tennessee Tombigbee Waterway project, which would cut off some 681 river miles between Chattanooga and the Gulf Coast.

The project, the officials say, will be a boon to this area's economy.

But at least one local businessman isn't all that enthusiastic about it. In fact, W. C. Hudlow, Jr., who has been in the river transportation business here some two decades, just isn't turned on by those three magic words: Tennessee Tombigbee Waterway.

"The simple facts," he said recently in a letter to a leading area planner, "are that the completion of the . . . project will have, at best, minimally advantageous effect on the Chattanooga area, and it is much more likely to have, over the long haul, some detrimental effect."

He said that most of the riverborne commodities originate on the Mississippi River above Memphis and on the Missouri, the Illinois and the Ohio rivers and on certain of their tributaries.

"It is absurd to think that any of this traffic would use the Tennessee Tombigbee to the Chattanooga area."

And it is "almost as absurd," Hudlow added, to think that any of the petrochemical industry or other traffic in salt, sulphur, etc., originating west of New Orleans on the Texas Ship Canal would use the Tenn-Tom. This traffic, he said, would use the Mississippi River instead.

Maneuvering barges through locks is a major problem for river transportation, Hudlow said. "It simply takes a lot of time."

The proposed Tenn-Tom route between Mobile and Chattanooga would include some 17 locks, compared with only six on the alternate (Mississippi) route.

And the Tombigbee River is "a six-barge river," said Hudlow, while 40, 50 even 60 barge tows are not uncommon on the Mississippi.

Most of Chattanooga's river transportation business comes from ports above the Tombigbee not below it, according to the Chattanoogan.

In support of his contention that the completed Tenn-Tom could actually be a detriment to the Chattanooga area rather than a boon, Hudlow said:

"Consider the hundreds of miles of river bank available to industry in areas in Alabama and Mississippi that the Tenn-Tom will create. These will be closer than Chattanooga to river tonnage from the North, West and Southwest, with consequent rate and time advantages on all river traffic, including that moving on the Tenn-Tom.

"As a matter of fact, our terminal, as well as other existing terminals in Alabama, have already lost business to the new terminal at Yellow Creek at the mouth of the Tennessee Tombigbee Waterway on the basis of barge rate savings plus comparative motor freight rates to Alabama points."

Also in his letter Hudlow claimed that the proposed location for the riverport here is in the wrong place. In fact, he said the site (along the south bank near the Quaker Oats plant on Amnicola Highway) is "one of the worst."

Because of federal water and air quality standards "heavy and medium industry cannot be located there." And why, he wants to know, would you locate a riverport and industrial area where you can't have heavy and medium industry?

He said the Staley Manufacturing Co. local officials and community leaders are urging to locate a plant here wouldn't accept "that

location" even if Southern Railroad (which owns it) gave it to Staley free.

Staley people claim they can't meet air quality standards in that "containment" area, even if it spent up to $15 million for air pollution control equipment, which it would be prepared to do.

Hudlow is opposed to spending public money to build a riverport here. He said it isn't needed and, further, he doesn't want to be placed in the position of being taxed to finance a facility that would be competing with his own business.

But if a public riverport and industrial park should be built here, it should be located on Mocassin Bend, where the city and county already own the property, or on Williams Island.

Williams Island could be developed into an area like Memphis' Presidents Island, he said.

"But," he urged, "don't waste the taxpayers' money on the site at Amnicola."

In a lighter vein, Hudlow has converted an old river boat into a tug he plans to use to push barges back and forth between Chattanooga and Knoxville.

He refurbished it, adding "a nice galley and a guest room."

And he has named the boat *The Joann H*, after his wife.

Now, how is she going to escape the inevitable nickname: Tugboat Joannie?

When Uncle Sam asks you to move he says "please," and he has a special way of saying it.

During the recent public hearing on a proposal to redevelop and rehabilitate a 400-plus-acre area in the Fort Wood section it was pointed out that families, individuals and businesses that would be required to move would be compensated beyond actual costs.

Not only would the owners be paid (and usually well) for their property, they could receive an extra $15,000 each toward buying another home. A renter would get up to $4,000 to relocate in another apartment. This is tax-free money.

And each family or individual moved would be paid up to $500 each for moving expenses. Businesses would get up to $10,000 each.

Those who stay and qualify may get a tax-free grant of up to $5,000 each to improve their property to meet standards, or may borrow up to $27,000 for 20 years at an interest rate as low as 3 percent to remodel.

It almost makes one wish he were living in that area so he would be required to move out.

Uncle Sam is quite generous some times. But he can afford to be. It isn't his money.

It's yours!

[From the Champaign-Urbana News Gazette, June 22, 1980]

ANOTHER PLACE TO CUT THE BUDGET

Imagine being the owner of a trucking company or a railroad. You'd like to develop a faster, cheaper route to transport one of your more lucrative commodities to a major market.

But you don't want to pay for it.

Tough luck, buster. But if you own a barge company. . . . Well, sit down, maybe we can help you out.

That scenario is going on right now but Congress will get another chance to end this outrageous freebie this week when the House votes on an amendment to cut off nearly all funding to the Tennessee-Tombigbee Waterway in Alabama and Mississippi.

This waterway project, which has the blessing of that budget-cutting crusader, Jimmy Carter, already has drained $800 million from the U.S. treasury. When it's all over, it will cost at least $3 billion.

But the House will vote on an amendment this week to cut off $200 million of the $225 million budgeted this year for the project. The amendment also urges the General Accounting Office to take a look at this pork barrel project. (The GAO was looking at the water project until Sen. John Stennis, D-Miss., let it be known that he didn't want any bad publicity for Tennessee-Tombigbee. The GAO "investigation" was terminated.)

An identical amendment failed in the House last week but the vote was so close that opponents have undertaken a renewed effort to beat the boondoggle.

Among those who still need to be convinced of the folly of the project are Congressmen Edward Madigan (who was absent in last week's vote), George O'Brien of Joliet and Paul Findley of Springfield.

The Tenn-Tom project, as it has been known since being authorized in 1946, is the largest Army Corps of Engineers project ever. It proposes to construct a 300-foot wide channel through about 250 miles of Mississippi and Alabama. It would give the barge company boys a faster route to the Gulf of Mexico.

It also would cut through 40,000 acres of timber, 17,000 acres of farmland and eliminate more rich river flora and fauna. The project has no flood control or hydroelectric benefits.

Almost as important, it would present another federally subsidized competitor to the railroads. It would threaten now-profitable lines like the Illinois Central Gulf route to the Gulf.

The project is opposed by dozens of conservation and environmental groups, the National Taxpayers Union, the League of Women Voters, Common Cause and several railroad union groups.

But the barge companies have proven to be tough cookies to crack. They won the battle over Lock and Dam 26 and helped kill a side issue that would have levied a 10-cent tax on each gallon of diesel oil they purchased—the only user fee the barge owners pay. The barge operators are paying a 4-cent-a-gallon levy—but only on fully completed rivers or channels.

If the Congress is looking for places to cut its so-called balanced budget, here's a place to save at least $200 million and maybe $2.2 billion.

[From the Memphis Commercial Appeal, July 3, 1980]

TENN-TOM CRITICS BECOME EMBARRASSING

(By John Bennett)

WASHINGTON.—Mississippi and Alabama members of Congress find it tough this year standing up against a growing number of critics of the Tennessee-Tombigbee Waterway project.

The questions have been more difficult, more embarrassing, about a project whose costs have risen dramatically and whose benefits are viewed as doubtful by many responsible lawmakers.

This year Southerners with seniority and power have resorted to reminding their colleagues from other parts just how much they've done for water projects in their areas.

These reminders by Rep. Jamie Whitten (D-Miss.), chairman of the House Appropriations Committee, and Rep. Tom Bevill (D-Ala.), chairman of the subcommittee with control over Tenn-Tom, come across as slightly veiled threats of reprisal.

It marks the first time many members can recall Whitten and Bevill getting so worked up and out front—a chink in the armor of Southern power over pork barrel.

Rep. Bob Edgar (D-Pa.), leading House critic of the Tenn-Tom, calls it an exercise in the good-old-boy manhood ritual that says join the team, scratch my back and I'll scratch yours. He charges many Tenn-Tom votes were cast from fear of the pork-cutting power of the Democrat from Mississippi.

Critics raised a series of questions in debates—some of which were either dodged or glossed over by Southerners—that helped them get more votes against Tenn-Tom than ever before.

Their major charges against the project include:

Lack of validity of claimed navigation benefits and benefit-cost ratios; dramatic increases in project width and design without explicit authorization from Congress; the "suppression" of large cost increase estimates by the U.S. Engineers; failure of the states of Mississippi and Alabama to meet their share of project costs; the need for another $1 billion on the lower Tombigbee to make the waterway functional; the acceleration of the construction schedule; additional costs that could be in the hundreds of millions to comply with the Fish and Wildlife Coordination Act, and the true impact on transportation once the project is complete.

What about the unpublished U.S. Engineers audit report that Mississippi and Alabama may fall short by as much as $170 million in local contributions to the Tenn-Tom?

Why has Mississippi been allowed to spend only $8 million to meet its share of costs, and Alabama even less?

Since the authorizing act for Tenn-Tom requires local sponsoring agencies in Alabama and Mississippi to fully defray costs of highway bridges for the project, how could they not do so?

Why wouldn't Congress get upset when its members read testimony by Whitten himself explaining how the federal law was rewritten to allow those two states to use the federal bridge money as the state share, in effect matching federal dollar with federal dollar?

"When we got this change in the law, and it was written because of the Tennessee-Tombigbee project, then there was a matter of the appropriation," Whitten said in committee testimony this year. "This action shows the support and the knowledge of the Congress in not only passing the authorization but the appropriations that have been made through the years."

One critic described the "action" another way.

"Rather than paying for their legally-required share of the project, the states of Alabama and Mississippi have secured a federal 'bailout' of those responsibilities which rivals any given to American industry," charged Rep. Floyd Fithian (D-Ind.). "This abject failure of local efforts is especially noteworthy at a time when we are being asked to throw more federal money at the project. Until they get their own houses in order, it would be a grave error for this Congress to continue a high rate of funding for the project."

Why wouldn't Congress also have grave doubts about allegations that another Mississippian—Sen. John Stennis (D-Miss.)—suppressed a General Accounting Office (GAO) study on the cost-benefits of Tenn-Tom?

Who would really doubt those allegations when an auditor for GAO writes them on a report detailing how Stennis and his office staff succeeded in halting the GAO study in 1977?

Why wouldn't America's most expensive civil works project—one estimated to eventually cost $3 billion—deserve a full and objective cost-benefit review by a federal agency?

When Mississippians can insist on federal scrutiny of food stamp programs, school lunch programs, health programs and other social service programs, then why not the Tenn-Tom?

When Mississippians are in the lead for cutting the federal budget, why wouldn't they be interested in finding out if there's any waste, present or future in Tenn-Tom?

[From the Lexington Herald, July 17, 1980]

TRYING TO CLONE THE MISSISSIPPI IS A $3 BILLION PORK-BARREL WASTE

From the beginning, the Tennessee-Tombigbee Waterway didn't make a whole lot of sense. Just 150 miles to the west, the Mississippi River was fulfilling the purpose the Tenn-Tom was designed for—providing a waterterway from the Ohio and Tennessee river valleys to the Gulf of Mexico. And the Mississippi was doing it naturally, by just rollin' along.

That wasn't good enough for the U.S.Army Corps of Engineers, which doesn't like the way nature designed the United States. And it wasn't good enough for some powerful Southern members of Congress, who can think of no better way to justify their existence than by sending federal dollars back home through massive pork barrel projects.

So, we have Tenn-Tom, a $3-billion monument to political clout and government waste. Approved in 1946 and funded first in 1971, the project includes the damming, dredging and widening of the 400-mile Tombigbee River in Mississippi and Alabama and the construction of a 40-mile canal connecting that river with the Tennessee River.

The project has been under attack from its inception—and with just cause—by a diverse coalition including environmental groups, railroad unions, Common Cause, the League of Women Voters, the National Taxpayers Union and others. That it has survived this long and cost the taxpayers $800 million already demonstrates to the power of people like U.S. Sen. John Stennis, D-Miss., who just happens to have a financial interest in a company that will benefit from the project and who intimidated the General Accounting Office into withholding a report critical of the corps' cost-benefit analysis of the project.

Although there are environmental questions involved—including loss of farm land and the potential for increased flooding along the Tombigbee—it is the corps' cost-benefit analysis that has generated the most criticism.

The corps would have Congress and the public believe the project will produce $2.50 in benefits for every $1 spent on construction. Two independent analyses have concluded that benefits will be about 30 cents for every $1 of cost.

How can there be such a disparity? An unsuccessful suit to stop the project made public corps documents that showed the corps had withheld the full cost of the project from Congress to lessen the "emotional impact" of that cost. The corps' cost-benefit analysis, for instance, does not include $1 billion in work on the lower Tombigbee that would be necessary for the project to be viable.

The corps' analysis was also based on estimates of shipping from coal firms and other businesses, some of which no longer exist, never mined coal in the first place or had never been asked if they would use the canal and had no intention of doing so if they were asked. Coal industry spokesmen have called the corps' estimates a "pipe dream." Even the U.S. Army Audit Agency has criticized the corps' analysis as unrealistic "because costs were either not adjusted for price level increases or the adjustments made did not reflect actual market conditions."

A strong congressional opposition to Tenn-Tom has been mounting. The opponents of the project are getting closer to stopping it on each vote that is cast. Supporters of Tenn-Tom have changed their arguments from saying its benefits are worth the cost to saying too much has been spent on it already to stop it now. However, about half the money already spent could be recovered by selling the land condemned by the government for the project.

The next vote on Tenn-Tom will come in the Senate later this month when a $225 million appropriation for fiscal year 1981 is considered. Both of Kentucky's senators, Wendell Ford and Walter Huddleston, have supported Tenn-Tom in the past. We think it is time they stopped supporting a $3 billion boondoggle. We also think it is time Kentuckians concerned about rising taxes and wasteful government spending let the senators know it's better to cut our losses now than waste another $2.5 billion on Tenn-Tom.

[From the Chicago Tribune, July 22, 1980]

FROM YOUR CONGRESS—MISSISSIPPI RIVER No. 2!

(By Michael Kilian)

WASHINGTON.—Despite mounting budget deficits, your Congress is moving ahead with plans for completion of the $1.8 billion Tennessee-Tombigbee Canal, which would give the South a new long-distance waterway just a few miles east of the Mississippi River.

As this is an election year, your Congress would be interested in knowing if you agree that this vital project fills an urgent need. Also, your Congress would appreciate your suggestions on other worthwhile ways to spend your billions.

Please fill out the following questionnaire and send to: "Austerity," c/o Sauna Room 9, Newest Senate Office Building, Washington, D.C.

1. The Tennessee-Tombigbee project was first proposed in 1876. What do you think about the Congress' completing it now?

A. This seems unusually fast for Congress.

B. Who proposed it, Mark Twain?

C. Does this have something to do with the Bicentennial?

2. What other projects proposed more than a century ago would you like to see Congress spend billions on to complete?

A. Finding the Northwest Passage.

B. Providing federally-funded balloon service between Paducah, Ky., and Cape Girardeau, Mo.

C. Extending the Erie Canal to Erie, Pa.

D. Providing the nation with a network of passenger railroads.

3. Establishing yet another waterway next to the Mississippi River will be a tremendous boon to the American barge industry. Can you think of any other advantages?

A. The post office can institute barge-class mail service for letters going from Ohio to Pascagoula, Miss.

B. If they did institute barge-class mail service they could fill the barges with all the junk mail I get.

C. If they instituted barge-class mail service it would probably be faster than it is now.

4. One advantage cited during Senate debate was that the canal would permit Appalachian coal to be shipped from West Virginia all the way to Japan. Isn't that nice?

A. Shipped how, through the Tombigbee and around the Straits of Magellan?

B. Why not dig a canal from West Virginia to the Atlantic via Washington, D.C.? They could make it 30 miles wide.

C. Would this stop the Japanese from sending us all those cars?

5. How do you suppose the Tombigbee got its name?

A. It was named for this big bee named Tom.

B. It's the Indian word for boondoggle.

C. It's the Indian word for brothels patronized by bargemen.

6. This is another project of the United States Army Corps of Engineers. Who do you suppose is in command of the Corps?

A. Sen. Howard Baker.

B. The outboard motor industry.

C. Why can't the army master anything besides digging holes in the ground?

7. The clash in the Senate over approving the project was between Southerners in support of it and Northerners against it. How do you explain this regional split?

A. The South is secretly trying to win the Civil War by bankrupting the federal government.

B. The Northerners were holding out for authorization for the Corps to dig another Great Lake.

8. How will you feel having two Mississippi Rivers in America?

A. Worse.

B. Proud because the godless Commies don't even have one.

C. Confused, especially if I was a barge captain.

9. Do you expect to make use of the Tennessee-Tombigbee Canal?

A. Yes, I am going to get in my outboard and flee the country before inflation goes over 50 percent.

B. Yes, I'm going to get a houseboat just like the one Elizabeth Ray said she visited congressmen on.

C. Yes, I'm going to send in my income tax returns via barge-class mail.

[From the St. Louis Post-Dispatch, Dec. 12, 1970]

A WASTEFUL WATER PROJECT

Members of the U.S. Senate, who have done a lot of talking this year about budget-balancing and cutting wasteful expenditures, will have a chance to show whether they really mean it when they vote late this month on an $11.7 billion appropriations bill for energy and water development for fiscal 1981. The bill contains a $225 million allocation for the $3 billion Tennessee-Tombigbee (Tenn-Tom) Waterway, which has been aptly characterized as one of the most wasteful projects ever to be promoted by pork barrel lawmakers. It also holds the potential for sweeping environmental damage.

The proposed Tenn-Tom Waterway involves damming, dredging and widening the Tombigbee River in Mississippi and Alabama and linking it, via a 40-mile canal and a series of 17 locks, with the Tennessee River in northwest Mississippi. The project—designed to provide a 450-mile water link from Tennessee to the Gulf of Mexico about 150 miles east of the Mississippi—was estimated in 1970 to cost $323 million; the estimated cost rose to $2 billion last year and to $3 billion this year. If completed, it would be the most expensive civil works project in the nation's history. And for what? To create at enormous cost a water transportation route that parallels one (the Mississippi) already in existence. Completion of the project moreover would, among other things, violate water quality standards, fill 51 valleys with 160 million cubic yards of excavation dirt, destroy extensive groundwater supplies and eliminate 67,000 acres of farm land, scenic forest and unique wildlife habitat.

Despite growing opposition in Congress, Tenn-Tom continues to command enough support from pork barrel vote traders among the lawmakers to retain its momentum. Last month the House voted, 230–135, for $58 million in supplemental funds for Tenn-Tom in fiscal 1980; and a little later it voted, 216–196, for the fiscal 1981 energy and water development bill that includes Tenn-Tom. On June 28 the Senate voted, 47–36, for the 1980 supplemental appropriations bill—with the four senators from Missouri and Illinois, to their credit, voting to strike the $58 million for Tenn-Tom. In its vote later this month on the full 1981 appropriations bill, the Senate will have another chance to express its view on the project.

Powerful Tenn-Tom supporters, like Sen. Stennis and Rep. Whitten of Mississippi, maintain that the project is too far along to be stopped now. But of the $300 million so far appropriated, perhaps $400 million could be recovered by selling off land that has been acquired. It would be far better to lose $400 million than to squander $2.2 billion more—and perhaps far in excess of that—on a boondoggle that has been sold on the basis of phony cost/benefit analyses by the Army Corps of Engineers. One study, for example, projects use of the waterway by shippers who say they have no intention to do so.

President Carter, who has crusaded as a budget-cutter and an opponent of water projects of undemonstrated value, has so far given Tenn-Tom his blessing. If the president were to apply to this dubious project the same disqualifying criteria he has applied to other water projects, he would be working to defeat it and at the same time helping to bring the budget into balance or at least to save funds for more worthwhile causes.

[From the Philadelphia Inquirer, July 19, 1980]

A CRUCIAL BATTLE CONTINUES AGAINST THE PORK BARREL

At a time when members of both chambers of the Congress have made loud noises about fiscal responsibility, they have rejected efforts to cut appropriations for one of the most wasteful federal public works projects in history: the Tennessee-Tombigbee Waterway, now estimated to cost $3 billion, up $1 billion from 1979 estimates.

On two occasions in the House and once in the Senate, amendments to appropriations bills that would have sharply reduced funds for the 440-mile waterway were voted down. Opponents of the project were somewhat encouraged by the closeness of the vote and have vowed to continue their fight when Congress returns for final voting on the fiscal 1981 budget next September.

Every taxpayer in the United States has the right, and the responsibility, to challenge votes by their elected officials in Washington to continue financing this immense pork-barrel project. By and large, the Congressmen from the Pennsylvania, New Jersey, Delaware area properly voted to cut back funds. There were exceptions, however, and the pork-barrel waste supporters should hear from irate constituents. The residents of the northeastern United States have special reason to criticize these appropriations, for many of the programs eliminated by the congressional budgetcutters were those of tremendous importance to this region, involving jobs, social programs and economic benefits.

The Tennessee-Tombigbee Waterway, which would link the Tennessee River with the Gulf of Mexico, has been the pet project of several powerful congressmen, who have used their positions of authority to threaten and intimidate those who oppose funding the barge canal. Coupled with the tradition on Capitol Hill that nobody challenges a public works project in another congressman's district, the waterway has had a gilded life. That all may be changing, due to the spirited efforts of U.S. Rep. Robert Edgar (D-Pa.), who has forged an active and dedicated coalition of colleagues in the House as well as in the Senate.

The federal government has already spent more than $800 million for the project. The 1980 budget contained an appropriation of $240 million. The Army Corps of Engineers, concerned about growing criticism in Congress, speeded up work on the project this year hoping it could add new weight to its recurrent argument that too much work and money had been expended to abandon the project. That overtime exhausted the 1980 appropriation and the Corps of Engineers returned to Congress for a supplemental appropriation of $53 million, which was approved in the House on June 18 by a vote of 230–185, and in the Senate on June 28 by a vote of 47–36.

Reps. Edgar and Joel Pritchard (R-Wash.) then sought to slash by 90 percent the $192 million budgeted for the waterway in fiscal 1981. That amendment was defeated on June 25 by a narrow vote of 216–196.

Although the measures lost, the growing discontent in Congress with the project is apparent, especially among junior members, who have solidly voted to reduce the appropriations. In addition, Sen. Daniel P. Moynihan (D-N.Y.), the new chairman of the subcommittee on water resources of the Environment and Public Works Committee, has announced he will hold hearings on the project this summer to explore, among other things, serious discrepancies in cost-benefit statistics used by the Corps of Engineers to justify the project and those prepared by private consultants.

Although the hearings should demonstrate to those unenlightened members of Congress that the waterway is a boondoggle of stupendous magnitude and even greater wastefulness, the public also must make its sentiments known.

These Congressmen voted in favor of continued funding for the project. The vote in the House involved the 1980 supplemental appropriation as well as the 1981 budget appropriation; in the Senate, the vote was on supplemental funds. The vote on the 1981 budget has not yet been taken.

PENNSYLVANIA

Sen. Richard S. Schweiker (R).
Rep. Michael O. Myers (D).
Rep. Charles F. Dougherty (R).
Rep. Richard T. Schultz (R).

NEW JERSEY

Rep. James J. Howard (D).

Reps. Frank Thompson Jr. (D., N.J.,) and Raymond F. Lederer (D., Pa.) voted for the supplemental appropriation but against the 1981 budget appropriation.

Those Congressmen voting against the appropriations for the waterway were: Pennsylvania: Sen. H. John Heinz 3d (R), Rep. William H. Gray 3d (D), Rep. Robert W. Edgar (D), Rep. Peter H. Kostmayer (D), Rep. Lawrence Coughlin (R), and Rep. Gus Yatron (D), New Jersey: Sen. Harrison A. Williams Jr. (D), Rep. James J. Florio (D), Rep. William J. Hughes (D), Rep. Millicent Fenwick (R) and Rep. Edwin B. Forsythe (R), Delaware: Sen. William V. Roth Jr. (R), Sen. Joe Biden (D), Rep. Thomas B. Evans Jr. (R).

Sen. Bill Bradley (D., N.J.) was absent when the Senate vote was taken.

[From the St. Petersburg Times, July 1, 1980]

WASTE WINS AGAIN

Florida's congressmen soon will be trooping home to boast how they have fought waste and corruption.

Give them a Bronx cheer.

With three lonely exceptions, the Floridians put their consciences and good sense in mothballs last week and voted to continue building the Tennessee-Tombigbee Waterway.

That waterway will cost at least $3 billion, and never were so many taxed so much for the sake of so few. Nobody will benefit but the builders, the bureaucrats and the barge lobby. The project is an environmental desecration predicated on economic falsehoods.

The Army Corps of Engineers deliberately deceived Congress as to the probable cost and proceeded to build the canal at nearly twice the width that Congress had authorized. To show a favorable cost-benefit ratio, the Corps put in barge traffic that will not exist and left out the $1 billion that it will cost to dredge the Tombigbee River to accommodate big barges.

The waterway survives only because of the particular influence of its sponsors in Congress. Its most powerful patrons are Mississippi Democrats Jamie Whitten, chairman of the House appropriations committee, and John Stennis, chairman of both the Senate armed services committee and the defense appropriations subcommittee.

That's why the public lost when the House and Senate, after years of avoiding the issue, were finally forced to vote on stopping the project. Party loyalty and pork-barrel politics won out.

Last week the House took up a $225 million appropriation for fiscal 1981 and defeated, 216 to 196, a motion to kill the canal by deleting nearly all the money. The Senate then voted 47 to 36 to invest another $58 million for the current fiscal year.

Of Florida's 15 House members and two senators, only the three Republicans in the House—C. W. Bill Young, Richard Kelly and L. A. "Skip" Bafalis—voted against the waterway.

Mark the others: Senators Lawton Chiles and Richard Stone, and Representatives Charles Bennett, William Chappell, Dante Fascell, Don Fuqua, Sam Gibbons, Earl Hutto, Andy Ireland, William Lehman, Dan Mica, Bill Nelson, Claude Pepper and Edward Stack. All voted to continue throwing the public's money away.

Had Florida's 12 Democratic House members voted the other way, the waterway would be dead.

It is hyprocrisy for Chiles to battle fraud and waste in the General Services Administration (GSA) only to reward it in the Corps of Engineers. What is the difference? Is it that the Corps has friends in Congress and the GSA does not?

The waterway would link the Tennessee River with the Gulf of Mexico, bypassing the Mississippi. A 232-mile-long canal would connect the Tennessee and Tombigbee Rivers. The Tombigbee would be "improved" for 217 miles south of Demopolis, Ala.

Stone is campaigning for reelection as a born-again fiscal conservative. Will the real Richard Stone please stand up?

Stone is campaigning for reelection as a born-again fiscal conservative. Will the real Richard Stone please stand up?

And what of Fascell, Gibbons, Ireland, Lehman, Mica, Nelson and Stack? They were supposed to be the bright, tough, public-spirited members of Florida's House delegation. If they can't vote against waste as flagrant as the Tennessee-Tombigbee, when will they earn their keep?

If there is any bright side to all this, it is that the fight is not over and the boondoggle is losing support. Two weeks ago, the margin in the House was almost twice as great on a motion to delete the $58-million supplemental appropriation for the current fiscal year.

That fight is over. Both houses have approved it. By year's end the public will have lost a total of $926-million on the waterway. But the issue of continuing beyond 1980 remains open in the Senate; a vote is expected this month.

Stopping the project would save the taxpayers more than $2-billion. Much of the $926-million that has already been spent could be recovered by selling land that was acquired for right-of-way.

The nation can't afford to drop another $2-billion on the whims of Whitten and Stennis. For Florida's delegation, the choice should be clear.

Mr. CHAFEE. Mr. President, we have just heard from the distinguished majority whip that we have spent so much, so let us keep going. That is a standard argument that we always hear around here for every expenditure project. We are going to hear it a good deal tomorrow in connection with a matter which we shall be debating. I alert Members to the fact that that is a rosy path down

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which we have been led many, many times, with the result that there have been all kinds of wasteful expenditures on public projects by this Nation.

I thank the Senator from Missouri for yielding me the time.

THE HARRY S TRUMAN DAM AND RESERVOIR

Mr. DANFORTH. Mr. President, I have considered and still may offer an amendment relating to the hydropower facilities at the Harry S Truman Dam and Reservoir in west-central Missouri. It is my present intention not to offer that amendment, but I should like to proceed to the subject and perhaps engage the manager of the bill in a short colloquy on this question.

Mr. President, the bill includes $800,000 for the Harry S Truman Dam and Reservoir to begin work to mitigate the impacts of water stage fluctuations due to hydropower operations. The Truman Dam, near Warsaw, Mo., is an example of overreach of authority by the U.S. Army Corps of Engineers. The dam was originally authorized in 1954 as a flood control project with no power. In 1962, plans for the dam were changed to provide a multipurpose project that would include power production in a larger lake than that originally envisioned. The 1962 plans called for a powerplant of a 100-megawatt capacity that required no pumpback facility. In fact, the Corps of Engineers noted the potential problems that pumping would create; although corps officials said that pumping would be studied for possible inclusion at a later date, it was only a footnote to the 1962 authorizing document.

In the midsixties, however, the corps went on to make important design changes in the dam, increased its capacity to 160 megwatts, and added a pumping operation. These changes—which according to the GAO, the corps made without fully informing the appropriate congressional committees—greatly increased the amount of water released by the dam into the Lake of the Ozarks, and herein lies a very serious problem of the Truman Dam.

According to Missouri State agencies, between 20 and 30 miles of the Lake of the Ozarks shoreline will be subjected to extensive erosion, loss of vegetation and interference with recreation due to the vast fluctuations in water levels created by the pumping system. The corps completely ignored the potential for damage until the late 1970's. Now, corps officials insist they have addressed the damage problem adequately by mitigating damages caused by flooding in a 1.6 to 2.6 mile area immediately downstream from the dam. But the Missouri Departments of Natural Resources and Conservation and the Missouri attorney general disagree. Experts from the State's leading agencies for environment, energy, and recreation foresee great harm occurring in the future, and they share the fear that the corps will not accept responsibility for it.

Mr. President, in an effort to get to the bottom of this disagreement, I held hearings in July. The Missouri State officials who testified in those hearings cited specific examples of the extensive damage which they expect to occur. High water velocities resulting from the operation of the powerplant are expected to ruin fish habitats, erode shoreline, damage riparian woods, and eliminate boat recreation. Above the dam, dense weedy areas along the shoreline of the shallow pool are expected to inhibit recreation and create mosquito infestation. In short, these experts believe that the overall environmental impact of the Truman Dam operating at full hydroelectric capacity will be a catastrophe for the Lake of the Ozarks, and will create unsightly and unhealthy shorelines above the dam.

At those same hearings, we heard testimony from the Corps of Engineers. As could be expected, corps officials did not share the assessment of the State officials.

The corps does not agree that the level of damages is that described by the Missouri agencies responsible for the State's environment and recreation. As I noted in the hearing, maybe the corps is right. If it is, that would be wonderful—the Truman Dam may in fact create a fisherman's paradise, and become a hydroelectric miracle. But if the corps is not right—if the projections of the Missouri State agencies are correct, then the question is this: Will the Corps of Engineers act as an insurer of the project it constructed? Will the corps set things right?

Mr. President, in answer to that question, General Heiberg of the corps responded:

> If it is a direct result of our project, we do try to do our best to make it right. We have a responsibility for the effects of our project.

My question now, Mr. President, is what is the committee's position on this issue?

Mr. President, the problem that I want to call to the attention of the Senate today is, suppose the State officials are correct, suppose that the Truman Dam proves to be an environmental disaster, suppose that extensive erosion occurs because of greatly varying changes in the water level, suppose the rush of water from the dam when it is fully operating is of such high velocity to make boating dangerous, create fishkills, and the like, suppose mud flats are created above the dam?

Then, is it the position of the managers of this bill that Congress is not just going to turn its back and walk away, that we are not going to simply appropriate funds for the creation of what amounts to an experimental hydroelectric plant, conduct minimal mitigation within 1.6 to 2.6 miles below the dam, without paying any attention to the greater problems that exist for 25 or 30 miles below the dam, and also above the dam, will we turn away from the problem or, instead, do we recognize that we have a continuing obligation in the Congress not to create a Frankenstein's monster?

Mr. JOHNSTON. Mr. President, the corps is now prepared to undertake remedial or mitigation work for downstream discharges.

We believe, Mr. President, that the corps has sufficient authority and funding for taking care of all expected difficulties that may arise by virtue of the operation of the Harry S Truman Dam.

However, to the extent that additional funding is required, or additional authority would be required, in the event of unexpected adverse downstream effects, I, for one, and I think I could speak for the committee, would consider that to be an obligation undertaken by virtue of the Harry S Truman Dam.

I think if we look at our record, that we have in other instances, in effect, completed the project.

We do not believe that will happen. We certainly are hopeful it will not happen, Mr. President. But to the extent that the corps lack money or authority, which we believe they have sufficient of both to take care of the adverse effects from these discharges, then we on the committee, I am certain, will support it.

Mr. DANFORTH. Mr. President, I very much thank the Senator from Louisiana for his assurance.

I agree with him. I hope this does not occur. The Corps of Engineers does not think that the problems will occur to the extent that the State officials do.

I am not interested, as I said at the time of the hearing, in trying to unscramble an egg, and once a project is in place, we cannot very well, responsibly, simply tear it down.

But I do believe that if things go sour, and there are those who have a degree of expertise in State government who believe it will go sour, I very much appreciate the assurance of the Senator from Louisiana that we will not turn our backs on the people who are affected.

Mr. EAGLETON. Mr. President, I have long been a strong supporter of the Harry S Truman Dam and while I respect Senator DANFORTH's concerns over the environmental effects of hydropower generation, I must nevertheless oppose the amendment he contemplated offering. I shall speak in terms as if Senator DANFORTH's amendment were before us.

I have two major reasons for my opposition. The first of these concerns, the pressing need for alternative energy resources in our Nation—energy which can be generated at home without reliance on costly fossils fuels from abroad or from domestic supplies.

In light of this, the 160,000 kilowatts to be generated at Truman is a vital contribution to our goal of energy independence. Senator DANFORTH's proposal to limit hydropower generation to 100,000 kilowatts not only ignores the energy needs of the region, but is also fiscally irresponsible.

The need for full power generation at Truman Dam has been documented by the Southwest Power Administration, the Federal agency responsible for marketing power from 23 corps lakes in Arkansas, Missouri, Oklahoma, and Texas. The total capacity of the entire system is 2,140,800 kilowatts. And the agency has requests pending for an additional 2.5 million kilowatts.

Let us be mindful that there are just two projects now underway to meet this huge demand—Harry S Truman and Cannon Dam, both in Missouri, which will add a total of 218,000 kilowatts to meet these major energy needs.

My second objection to Senator DANFORTH's amendment involves the cost of energy produced at Truman Dam, which will double if power generation is reduced. If the dam output is cut back, power costs will increase from 10 cents per kilowatt-hour to 20 cents per kilowatt-hour. This will come at a time when consumers are already hard pressed by inflation and skyrocketing energy costs.

Moreover, reducing the output of Truman Dam, as Senator DANFORTH has proposed, would be like shooting ourselves in the foot. Cutting back Truman Dam is not going to make the demand for those 2.5 million kilowatts requested from the Southwest Power Administration disappear.

In fact, the loss will have to be made up at a time when we are being held hostage by foreign oil producers—at a time when we are fighting to make ourselves energy self-sufficient.

I have shared Senator DANFORTH's concern over the downstream effects of power generation and I have been especially critical of the corps' procrastination over developing a plan to protect the city of Warsaw, Mo., from flooding.

Always supportive of the project for the benefits of the region as a whole, city officials patiently worked with the Army Corps of Engineers to come up with a plan that would protect the city from flooding when power was reduced at Truman. Thirteen frustrating years of diligent effort were finally rewarded this summer when the corps agreed it could undertake the protection plan with current project authority. I am pleased that the committee has recognized the need for this mitigation work by including in this appropriation bill $800,000 to initiate construction of the plan for the city of Warsaw.

Despite the shortcomings and mistakes that have plagued Truman Dam from the beginning, I think we have been able to solve the most serious ones. The original purposes for which Truman Dam was conceived are still sound and valid. In the case of hydropower benefits, which are even more necessary to our national security than ever before, I can find no justification for reducing the power output at Truman when we need every kilowatt we can develop from sources which provide alternatives to our dependency on foreign oil or other costly fuels.

Mr. JOHNSTON. Mr. President, I do not believe there are further amendments.

I would make one comment before we shut the Senate down for the night. That is, to call the attention of Senators to the Senate printed hearing and the Senate documents placed on all Senators' desks entitled "Tennessee-Tombigbee Waterway Allegations, Responses and Discussions."

Mr. President, these documents fully, completely, fairly, dispassionately, definitively, dispose of all the allegations made against the Tennessee-Tombigbee Waterway.

I say, Mr. President, that I have never seen an issue so misunderstood and misrepresented. I have been leafing through some of these editorials that have been brought to our attention. We find such egregious statements, errors of fact. For example, the Washington Post editorial on the $3 billion ditch.

Mr. President, it is not a $3 billion project. It is a $1,760,000,000 project. It has never been a $3 billion project. I would hope the opponents will correct these assertions.

For it to be a $3 billion project, the Congress of the United States would have to undertake a brand new, different authorization bill.

That is not authorized, it is not necessary for the Tenn-Tom project, and it is not contemplated for authorization. It is not essential to carry out the Tenn-Tom project which is authorized.

I simply mention that as one fact which is totally destroyed by the hearing and the facts as shown by these documents which we have prepared.

I wish we had all Senators on the floor to at least hear that comment. They will, at least, have the benefit of the RECORD tomorrow. I would commend these documents to my colleagues and to members of the press. My hope is that they will be educated and will be sorry for all the wrong things they have said about the Tennessee-Tombigbee Waterway.

● Mr. TALMADGE. Mr. President, I want to express my support for H.R. 7590, the Energy and Water Development Act, and, in particular, the provisions which include funding for the Dalton Lake project in northwest Georgia.

Although the Corps of Engineers, in 1974, gave this project a highly favorable rating and described the benefits as being numerous, to date, no funds have been appropriated to initiate the corps' general design memorandum.

This funding is badly needed because of the increase in industrial and recreational development in the northwest Georgia area, particularly in the carpet and related industries, which require heavy volumes of water. I am very pleased that the Senate Appropriations Committee followed the recommendations which Senator NUNN and I made to include $200,000 in funding in fiscal year 1981 to conduct a reconnaissance report to update the findings of the original authorization. This appropriation is very important to the continued growth of Whitfield County, Ga., and surrounding counties. The maintenance of adequate water resources is vital to future industrial and recreational development of this area of my State.

I am most appreciative of the efforts of the Walton-Whitfield County Chamber of Commerce and the elected State and local officials in this area for their continuing cooperation in working on this important project.●

CORRECTION TO UNPRINTED AMENDMENT 1549—S. 1188

Mr. CRANSTON. Mr. President, last week during Senate consideration of S. 1188, the disabled veterans rehabilitation bill, a provision was inadvertently omitted from an amendment which I offered with Senator SIMPSON although, during my floor statement on the amendment, I described the amendment as if the missing provision were included in it.

Mr. President, the original amendment was adopted without any opposition. This correction has been cleared on all sides, and I thus ask unanimous consent that, in the engrossment of S. 1188, the proposed Disabled Veterans Rehabilitation Act of 1980, the provision, which I send to the desk, on behalf of myself and Mr. SIMPSON, be considered adopted as part of my unprinted amendment No. 1549 to that legislation which was adopted during Senate consideration on September 4.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Reserving the right to object, Mr. President, I shall not object. I reserve only for the purpose of advising the assistant majority leader that the change in the engrossment requested in the request for unanimous consent has been cleared with the principal author on this side (Mr. SIMPSON), and there is no objection.

Mr. CRANSTON. I thank the distinguished minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

The provision follows:

At the end of Unprinted Amendment No. 1549 add the following:

"(C) The Administrator may, in carrying out the study provided for by paragraph (A) or the review and analysis of the literature provided for by paragraph (B), or both, enter into such contracts or agreements with private or public agencies or persons for such necessary services, including design of the protocol for or the conduct, in whole or part, of such study, or both, or such review and analysis of the literature, or both, as the Administrator may deem practicable and necessary.".

SENATOR MARGARET CHASE SMITH

Mr. MITCHELL. Mr. President, Newsweek magazine this week published an article on a former colleague and a great lady known and loved throughout the State of Maine and the Nation, Senator Margaret Chase Smith.

Senator Smith's 32-year-long congressional career spanned a particularly important and formative period in our Nation's history. Senator Smith was the first—and remains the only—woman elected in her own right to the House of Representatives and to the Senate, and her career amply illustrates the qualities that made this achievement possible. Her Senate votes on some of the most controversial issues of the time—the ABM, the SST—reflected her astute grasp of public policy and her principled stand on the issues. Senator Smith was, indeed, "the conscience of the Senate."

Today, her students reap the benefits of her knowledge, her experience, and her sound commonsense, as she pursues an active and vigorous career in the educational field.

The principles, the intelligence, and the integrity that Margaret Chase Smith brought to her Senate work remain very appropriate guidelines for this Senate, as well. It is for this reason that I ask unanimous consent that the Newsweek article be printed in the RECORD at this point.

There being no objection, the article

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was ordered to be printed in the RECORD, as follows:

THE FEISTY LADY FROM MAINE

She was the first Republican woman senator and the first woman to serve both in the Senate and the House. But in 1972, after 32 years in office, Maine's Margaret Chase Smith lost her bid for re-election. Although she was disappointed at the time, says Smith, now 82, she has since adjusted so well to private life that her defeat seems like "a blessing in disguise."

Smith, who divides her time between Silver Spring, Md., and Skowhegan, Maine, still sounds off on the issues—sometimes angering the liberals and sometimes the conservatives. She co-sponsored the Equal Rights Amendment in 1927, yet disapproves of the special treatment it got when Congress extended the time limit for ratification until 1982. She is a strong advocate of drafting women into the military, but believes such draftees should have the right to choose—or refuse—combat duty. She also thinks something must be done to eliminate waste in the welfare system. "There are people in Skowhegan buying lobsters with food stamps," complains the ex-senator. "The American creed is becoming, 'If my neighbor does it, why shouldn't I?' "

Simple and Useful: A tireless worker who once set a record of 2,941 consecutive Senate roll-call votes, Smith still puts in full days. She is a board member of the Medical College of Pennsylvania, has been a visiting lecturer at several schools (including Notre Dame and the University of Oklahoma) and even now spends hours letting students pick her brain. In fact, she laughs, "I'll just about write their papers for them if they ask me enough questions."

One of her fondest projects is the Margaret Chase Smith Memorial Library, located in six rooms of her Skowhegan home. Smith has already deeded the house and 12 acres to the Northwood Institute, the Michigan-based liberal-arts center that operates the library. She has long respected the institute, and it has agreed to let her live in the remaining two rooms rent-free for life. When finished, the library will contain film clips, copies of her speeches and Smith's private papers on such matters as her unsuccessful run for President in 1964. The library, says Smith, should be "simple and useful—like my life."

LABOR DAY 1980—CONTRASTS WITH WORKER UNREST IN POLAND

Mr. RANDOLPH. Mr. President, on Labor Day, throughout this country, there were many celebrations. There were events that called attention to the development of not only the understanding, which I always hope for, between management and labor, and labor and management, as a foundation stone to the well-being of this country—among people everywhere, throughout all of our States. It was my privilege to be in the House of Representatives and to participate in the work that was done in 1935 in the preparation and passage of the National Labor Relations Act.

My reason for mentioning that law at this time is to refer to the fact that, as I talked to perhaps 3,000 or 4,000 West Virginia coal miners on Labor Day afternoon at Grandview Park, in Raleigh County, near Beckley, I could not help but think of those miners and other laborers throughout the United States of America who have trade unions, who were given not only the right by the National Labor Relations Act but the responsibility of furthering collective bargaining, negotiations back and forth between management and labor and labor and management.

The Labor Day celebration near Beckley was the largest in the State of West Virginia, and was sponsored by District 29 of the United Mine Workers of America. Gov. Jay Rockefeller and a number of other public officials appeared during the daylong event. The formal program included an invocation by Rev. Wesley Grose, pastor of the Beckley Conference Freewill Baptist Church at Mount Tabor, and remarks by Beckley Mayor John Howard McCulloch. Dennis Saunders, president of District 29, UMWA, gave the welcoming address, and UMWA International President Sam Church delivered a major speech in which he urged both labor and management to employ both reason and understanding in approaching negotiations for a new contract agreement. The present contract expires next March.

I was thinking of faraway Poland, where the coal miners of that country are attempting to secure at least partially from not an elective government in the sense we have in this country, but a satellite of the Soviet Union, those coal miners in Poland are working together in what I believe to be a worthwhile cause to have what had been established by the action of the Senate and the House of Representatives in 1935.

It was a Magna Carta for labor when it was signed into law by President Franklin Roosevelt.

I refer to Poland only to indicate that I trust that those within that country and other countries of the world can come to that period of understanding and development that gives the workers not only the opportunity but the responsibility, not for violence, that is not involved, not for the mere act of striking, that often is important, but for legislation grounded in the legislative history of this country which challenged management and labor to proceed as partners in the economic strengths of this country and the productivity of the workers of our Nation.

Again, I refer to Poland and the coal miners of that country who are now struggling for the same privileges and responsibilities given in this country in 1935 and exercised in the Nation, as we know, as a part of our process of production in 1980.

URANIUM SHIPMENTS TO INDIA

Mr. GLENN. Mr. President, tomorrow, September 10, 1980, the Senate Foreign Relations Committee will mark up a resolution disapproving President Carter's decision to permit the export of 38 tons of enriched uranium for the Tarapur reactors in India. Under the terms of the Nuclear Non-Proliferation Act of 1978 (NNPA) the full Senate would then consider the resolution pursuant to expedited procedures prior to September 27.

I have previously expressed at length my view that permitting these exports to go forward would result in a devastating blow to our worldwide efforts to curb the spread of nuclear weapons. See CONGRESSIONAL RECORD of July 25, 1980. The essential point that I made at that time is that under the terms of the NNPA nuclear exports are forbidden to nations which after March 10, 1980, have not accepted inspections—"safeguards"—of the International Atomic Energy Agency on all their nuclear facilities. These comprehensive safeguards, which have been accepted by over 116 nations, help to ensure against the development of nuclear weapons. India, however, has adamantly refused to accept them and possesses a number of critical installations, including those used to produce material for her 1974 nuclear detonation, not subject to these international inspections. This gives India an ongoing option to produce nuclear weapons, a matter of grave concern in light of Mrs. Gandhi's recent refusal to rule out further nuclear explosive tests "in the national interest."

The pending exports are the first after the NNPA deadline to a nation which has refused comprehensive safeguards. As such, these exports represent a crucial first test of our commitment to this vital nonproliferation regime, a test which will have worldwide repercussions. For this reason I have repeatedly urged that the Senate reject these exports. As a CRS analysis shows, such rejection would be legally permissible under the fuel supply arrangements agreed to by the United States and India.

Since the time of my last remarks, Dr. Joseph Nye, formerly Deputy Under Secretary of State for Security Assistance, Science, and Technology, and now a professor at Harvard University, and certain Members of the House and Senate have suggested possible "compromise" arrangements for dealing with the Tarapur exports. In fact, however, these compromises would severely undercut our broader nonproliferation efforts and would have an impact virtually indistinguishable from that of approving both of the pending fuel exports.

Under Dr. Nye's approach, Congress would not disapprove either of these shipments, which as a legal matter would give the President the right to authorize the exports at any time. Congress would, however, urge the President by resolution to hold the second license for approximately 1 year (or until such time as it was specifically needed by the Indians) and then to issue the license only if India had not moved any further toward the development of nuclear weapons than she is today. In other words, India would get one license now, even though she is not in compliance with the requirement of U.S. law that she accept international inspections on all her nuclear facilities, and she would get the second license a year or so from now even though she took no steps whatsoever toward fulfilling this requirement. Moreover, Congress would have no control over the President's subsequent authorization of the second export, since there would be no right of congressional disapproval.

What makes the proposal particularly invidious is that it drastically redefines the type of control necessary to obtain U.S. nuclear cooperation. Under the Nye proposal, a country could, first, actually test a nuclear device (as India did in 1974) and, second, fully preserve the option to develop nuclear weapons in the future by keeping some facilities outside the international inspection regime and still be eligible for U.S. exports, as long as we could not ascertain that the country had not actually begun manufacturing or otherwise acquiring weapons. The Nye proposal, if adopted, would set the clock back at least 3 years in terms of the development of nonproliferation policy in the United States. The vacuousness of this "compromise" is underscored by noting that the test to be used by the President on the second shipment represents an abandonment of one of the most important provisions of the NNPA, and is therefore totally consistent with the position taken by the State Department on this issue. In the end, this abandonment of the full-scope safeguards criterion would mean the United States would be giving up its nuclear export standard established by law only 2 years ago, giving up an important test for determining a country's proliferation intentions, and giving up in its attempts to establish a clear and consistent foreign policy on this issue.

That, of course, is not coincidence. Dr. Nye is a paid consultant to the State Department, and it would have been a surprise if his testimony before the House Foreign Affairs Committee reflected anything other than the substance of the State Department position.

Mr. President, as time goes on, we will undoubtedly hear more talk about "compromise" in which at least one shipment of uranium would be sent to India with no conditions attached. Such proposals are essentially equivalent in their effect (or lack of it) to the Nye proposal and the State Department position for the following reasons:

First. There is no evidence that sending one shipment will have any substantive effect on India's foreign policy orientation. The President's decision to send both shipments has been followed by Indian decision to enter into a trade agreement with Iran, to sign a $1.6 billion arms agreement with the Russians, and to give recognition to the Soviet-backed regime in Kampuchea.

Second. Sending one shipment does have the effect of increasing the Indian fuel stockpile to at least a 3-year supply. That provides enough time for the Indians to develop a mixed-oxide fuel capability, that is, use of plutonium, in order to render ineffectual any future interruption of U.S. supply; and

Third. Arguments to the contrary notwithstanding, outside observers will make no distinction between one shipment and two. The sending of any fuel at this time without any conditions attached and in the absence of any discernible progress in negotiations after 2 years will send a signal around the world that a substantive change has occurred in the U.S. commitment to its nonproliferation policy.

Mr. President, the most effective way to demonstrate our commitment to full-scope safeguards as the basic and essential requirement for continued nuclear exports from the United States is for the Congress to reject the pending licenses. As I have stressed in my previous remarks, the Indians do not currently need the fuel at issue. It could be exported as late as February 1982, and the Tarapur reactors would still have sufficient fuel to be operated without interruption. During this interim period negotiations on the full-scope safeguards question could continue under circumstances where the United States had made it absolutely clear to the Indians that this standard was, in fact, the basic requirement for U.S. exports. If progress is achieved or some material change in circumstances occurs, the President could resubmit these licenses and Congress could permit them to go forward at that time.

In the meantime, it is important to bear in mind that U.S. nuclear cooperation with India is but one of many economic and political ties we have with that country. We are India's largest commercial trading partner, importing from her approximately $1 billion worth of goods each year and exporting a similar amount to her. Last year, for example, India imported from the United States hundreds of millions of dollars' worth of aircraft and spare parts, fertilizers, and vegetable oils and exported to the United States similar quantities of food products, textiles, and other manufactured goods. Our assistance program of development grants and loans for India also amounts to hundreds of millions of dollars each year and we have recently concluded an important military sales agreement with her involving some 3,700 TOW antitank missiles. What this means is that while our decision on these exports is of vital importance to our worldwide efforts to stop the spread of nuclear weapons, in the overall fabric of United States-Indian relations rejection of these exports, though not trivial, would be of relatively limited importance.

Mr. President, editorial comment on the pending exports to Tarapur has been overwhelmingly against permitting these shipments. I have identified at this time 90 editorials that have been published arguing against these ill-conceived exports. I ask unanimous consent that the list of editorials expressing opposition to these shipments be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

EDITORIALS OPPOSING FUEL SHIPMENT TO INDIA

1. Wall Street Journal Editorial, May 9, 1980.
2. Philadelphia Bulletin Editorial, May 1980.
3. Worcester Gazette Editorial, May 10, 1980.
4. Cincinnati Post Editorial, May 12, 1980.
5. Pittsburgh Press Editorial, May 12, 1980.
6. Toledo Blade Editorial, May 13, 1980.
7. Northern Virginia Sun Editorial, May 15, 1980.
8. Hartford Courant Editorial, May 16, 1980.
9. Benton Harbor Herald-Palladium Editorial, May 16, 1980.
10. Norwalk Hour Editorial, May 17, 1980.
11. Terre Haute Star Editorial, May 19, 1980.
12. Boston Globe Editorial, May 20, 1980.
13. Shreveport Times Editorial, May 20, 1980.
14. Washington Post Editorial, May 20, 1980.
15. Wall Street Journal Editorial, May 21, 1980.
16. Philadelphia Inquirer Editorial, May 24, 1980.
17. Poughkeepsie Journal Editorial, May 24, 1980.
18. Philadelphia Bulletin Editorial, May 26, 1980.
19. Los Angeles Times Editorial, May 26, 1980.
20. Providence Journal Editorial, May 26, 1980.
21. New York News Editorial, May 29, 1980.
22. Norfolk Ledger-Star Editorial, May 30, 1980.
23. Palm Beach Post Editorial, May 31, 1980.
24. El Paso Herald-Post Editorial, June 4, 1980.
25. Florence News Editorial, June 7, 1980.
26. Waterbury Republican Editorial, June 8, 1980.
27. Sacramento Bee Editorial, June 12, 1980.
28. Hattiesburg American Editorial, June 13, 1980.
29. Toledo Blade Editorial, June 14, 1980.
30. San Jose News Editorial, June 20, 1980.
31. Richmond Times Dispatch Editorial, June 20, 1980.
32. Pine Bluff Commercial Editorial, June 20, 1980.
33. Wichita Eagle Editorial, June 20, 1980.
34. Los Angeles Times Editorial, June 20, 1980.
35. San Jose Mercury Editorial, June 20, 1980.
36. Cheyenne, Wyoming State Tribune Editorial, June 20, 1980.
37. Garden City Newsday Editorial, June 20, 1980.
38. Tallahassee Democrat Editorial, June 21, 1980.
39. Martinsburg Journal Editorial, June 21, 1980.
40. Cleveland Plain Dealer Editorial, June 21, 1980.
41. Hutchinson News Editorial, June 22, 1980.
42. Haines City Herald Editorial, June 22, 1980.
43. Cocoa Today Editorial, June 22, 1980.
44. New York Times Editorial, June 22, 1980.
45. Washington Post Editorial, June 22, 1980.
46. Los Angeles Times Editorial, June 22, 1980.
47. Macon Telegraph Editorial, June 22, 1980.
48. Salt Lake City Desert News Editorial, June 23, 1980.
49. Bethlehem Globe-Times Editorial, June 23, 1980.
50. Oklahoma City Oklahoman Editorial, June 23, 1980.
51. Little Rock Arkansas Gazette Editorial, June 23, 1980.
52. McKeesport News Editorial, June 24, 1980.
53. Seattle Post-Intelligencer Editorial, June 24, 1980.
54. Philadelphia Bulletin Editorial, June 24, 1980.
55. Toledo Blade Editorial, June 24, 1980.
56. Westerly Sun Editorial, June 24, 1980.
57. Youngstown Vindicator Editorial, June 25, 1980.
58. Asbury Park Press Editorial, June 25, 1980.
59. West Palm Beach Post-Times Editorial, June 25, 1980.
60. Albany Times-Union Editorial, June 25, 1980.
61. Fresno Bee Editorial, June 26, 1980.
62. Fullerton Daily News Tribune Editorial, June 26, 1980.
63. Roanoke Times & World-News Editorial, June 26, 1980.
64. Cincinnati Enquirer Editorial, June 27, 1980.

65. Wichita Falls Times Editorial, June 27, 1980.
66. Milwaukee Sentinel Editorial, June 27, 1980.
67. San Antonio Light Editorial, June 27, 1980.
68. Lebanon Valley News Editorial, June 27, 1980.
69. Casper Star-Tribune Editorial, June 27, 1980.
70. Harrisburg Patriot Editorial, June 28, 1980.
71. Richmond Times-Dispatch Editorial, June 28, 1980.
72. Little Rock Arkansas Gazette Editorial, June 29, 1980.
73. Framington So. Middlesex News Editorial, June 30, 1980.
74. Norristown Times Herald Editorial, June 30, 1980.
75. Austin American-Statesman Editorial, July 1, 1980.
76. Lynchburg Advance Editorial, July 2, 1980.
77. Palatka News Editorial, July 3, 1980.
78. Huntington Herald-Dispatch Editorial, July 7, 1980.
79. Houston Chronicle Editorial, July 14, 1980.
80. Newport Plain Talk Editorial, July 16, 1980.
81. New York Times Editorial, July 23, 1980.
82. Dayton News Editorial, July 28, 1980.
83. Washington Post Editorial, August 3, 1980.
84. Wilkes-Barre Times-Leader-News-Record Editorial, August 5, 1980.
85. Miami Herald Editorial, August 12, 1980.
86. Garden City Newsday Editorial, August 15, 1980.
87. Wall Street Journal Editorial, August 19, 1980.
88. Philadelphia Inquirer Editorial, August 19, 1980.
89. Freeport Journal Standard Editorial, undated.
90. Melbourne Age Editorial, May, 1980.

THE SALE OF NUCLEAR FUEL TO INDIA

Mr. HARRY F. BYRD, JR. Mr. President, tomorrow, the Senate Committee on Foreign Relations will make a critical decision. The committee must decide whether to recommend to the Senate the disapproval of the Carter administration proposal to sell nuclear fuel to India or whether to recommend approval.

If the committee fails to act, the committee will automatically be discharged from further consideration of the submission of the President, and it will be in order to introduce a concurrent resolution of disapproval to be placed immediately on the Senate calendar.

I urge the Committee on Foreign Relations to face the issue squarely, and to recommend disapproval of the proposed sale of enriched uranium to India. I have introduced such a resolution and it has been referred to the Foreign Relations Committee; I am also cosponsor of a similar resolution offered by the Senator from Ohio, Mr. GLENN.

The central point of the issue is this: In this highly dangerous nuclear age, we must do everything possible to prevent the spread of nuclear weaponry. The Carter proposal would put in jeopardy the containment of the spread of nuclear weapons. In 1974, India exploded a nuclear weapon in open defiance of an agreement with the United States. Since then, India has consistently refused to permit nuclear safeguards or international inspection.

The U.S. Nuclear Regulatory Commission determined that the proposed export of 38 tons of enriched uranium to India did not satisfy the requirements of the Nuclear Non-Proliferation Act.

The President declined to abide by the Nuclear Regulatory Commission decision; therefore, Congress should act to block the sale.

The alleged justification for shipping nuclear material to India is to seek improved relations with that nation. But the United States has been seeking improved relations with India for decades and has nothing to show for its efforts but the expenditure of more than $10 billion in aid.

Again, I say, that President Carter's proposal would put in jeopardy the containment of the spread of nuclear weapons.

Again, I urge the Foreign Relations Committee to recommend disapproval of the Carter administration's proposal to sell nuclear fuel to India.

I ask unanimous consent to have printed at this point in the RECORD an editorial from the New York Times of September 9, 1980, dealing with this subject.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

DON'T RELOAD TARAPUR

Two years ago, with the aim of slowing the spread of nuclear weapons, Congress barred shipments of nuclear fuel to countries that refuse to open their civilian nuclear facilities to outside inspection. India, which used Canadian reactor fuel to build its first atomic bomb in 1974, has made clear that it will not comply with that requirement. But President Carter wants to continue selling uranium to India, arguing that good relations on the subcontinent take precedence over efforts to contain nuclear weapons. Now Congress has until Sept. 27 to stop the shipment—and save what remains of the Administration's nonproliferation policy.

The United States has been shipping enriched uranium to India since 1963 to load, and reload, two American-built power reactors at Tarapur. The agreement with India includes strict inspection of the Tarapur project, and India has thus far honored that agreement. But the Indians did divert fuel from *other* reactors to build their bomb, and have resisted pressures to halt the weapons program.

The 1978 Nuclear Non-Proliferation Act gave America's nuclear customers two years to negotiate safeguards against the military use of nuclear fuel from any civilian project, American or not—or face a fuel cutoff. Yet no agreement has been reached with India, which refuses to slow weapons development in return for secure fuel supplies. So the Nuclear Regulatory Commission voted unanimously in May to stop a reload shipment of 38 tons of uranium.

The law lets the President overrule the commission, provided both houses of Congress go along. Hence Mr. Carter's dilemma: alienate the Government of India or help undermine his own policies against nuclear proliferation. In June, he chose the latter course, authorizing the Tarapur shipments and leaving the final decision to Congress.

Although the State Department has made some effort to cast the Administration's case in legalistic terms, the real issues are practical and diplomatic. Administration officials assert, correctly, that blocking this particular shipment will not prevent India from building more bombs; it already has 250 tons of spent reactor fuel to draw upon. Moreover, at a time when Soviet arms have moved southward in Asia, the United States wants to avoid pushing India still closer to Moscow.

This second argument is weaker than it may appear. A fuel cutoff is sure to anger New Delhi. But for India to turn to the Soviet Union for fuel on less guarded terms is easier said than done. The Russians, in fact, have always imposed tough safeguards on nuclear fuel exports. Besides, America's economic and military ties with India go far beyond the nuclear issue and are unlikely to be ruined by a nuclear embargo. If Mr. Carter wants to please Mrs. Gandhi more surely than by providing uranium, he might consider lowering American barriers to Indian textiles, which irritate New Dehli more than than any nuclear issue.

The basic question, in any case, is whether the United States will stick by its non-proliferation policy when it is diplomatically inconvenient. That policy is already under attack from European exporters of nuclear reactors, who see the American position as a way of stifling competition for sales in third world countries. To sell uranium now to defiant India would risk the collapse of practical efforts to limit nuclear weapons, there and elsewhere. President Carter seems ready to take that risk. We hope Congress is not.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—PM 238

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I am pleased to transmit to you the 15th Annual Report of the Department of Housing and Urban Development. It contains a narrative record of the major activities under all of the programs administered by the Department during 1979.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

PROPOSED LEGISLATION TO AMEND THE INTERNAL REVENUE CODE—PM 239

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States;

which was referred to the Committee on Finance:

To the Congress of the United States:

I have determined that the provision of Canadian tax law which denies a deduction for the cost of advertising placed with a foreign broadcaster and directed primarily at the Canadian market is an unreasonable practice which burdens U.S. commerce within the meaning of section 301(a)(2)(B) of the Trade Act of 1974 (19 U.S.C. 2411). The Canadian law was intended to strengthen the Canadian broadcast industry as an aspect of Canadian culture. However, the law places the cost of attaining its objectives on U.S. companies and thus unreasonably and unnecessarily burdens U.S. commerce. It is estimated that U.S. broadcasters have lost access to more than $20 million in advertising revenues annually as a result of this law.

Therefore, I am proposing legislation which would amend the Internal Revenue Code to deny a deduction, otherwise allowable under the Code, for expenses of an advertisement placed with a foreign broadcast station and directed primarily to a market in the United States if a similar deduction is denied to advertisers, in the country in which such station is located, for the costs of advertising directed primarily to a market in that country when placed with a U.S. broadcast station. The effective date of the proposed amendment would be for taxable years beginning after December 31, 1981.

This legislation will establish a disincentive for the transfer of U.S. advertising revenues to foreign broadcasters only if the laws of the country in which such broadcasters are located create a similar disincentive vis-a-vis U.S. broadcasters. Thus, if Canada should repeal its law, this amendment will cease to apply to Canada.

I urge the early passage of this legislation.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

REVIEW OF EXPORT PROMOTION AND DISINCENTIVES—MESSAGE FROM THE PRESIDENT—PM 240

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs, jointly, by unanimous consent:

To the Congress of the United States:

In accordance with the requirements of Section 1110(a) of the Trade Agreements Act of 1979, I have had a review conducted of Executive Branch export promotion functions and of potential programmatic and regulatory disincentives to exports. I am submitting today my report on these matters along with the full text of the comprehensive review, which was prepared by the Secretary of Commerce and the U.S. Trade Representative. Their detailed review, while not a statement of Administration policy, reflects an extensive canvass of the views of our exporting community which should assist the Congress and the Executive Branch in the development of policies in this area. My report expresses this Administration's policies.

The expansion of U.S. exports has been, and continues to be, a high priority objective of my Administration. Global events have made international trade substantially more important to the United States than in earlier years, and a strong export position has become a matter of great significance to the economic strength and welfare of our Nation, to the strength of the dollar, and to employment. Exports now account for one in every eight jobs in America's factories, and one in every four on America's farms I am pleased to be able to report that our recent export performance has been strong. The value of America's merchandise exports has grown 50 percent in the last two years. In the same period, the volume of U.S. merchandise exports has grown at an annual rate of 10 percent, compared to a 6 percent annual growth rate for world trade.

Largely because of this export growth, we achieved a virtual balance in our current account in 1979, despite huge increases in the price of oil imports. It is vitally important that our international accounts be kept in balance. That goal cannot be reached without strong export growth. Over the longer run, the United States has suffered a declining share of world trade and a rate of export growth that has not kept up with imports. Business, agriculture, labor and government must work together to ensure that this historical trend is reversed.

The successful conclusion of the Multilateral Trade Negotiations—the Trade Agreements Act was ratified by Congress in 1979—makes this effort all the more important. The MTN agreements pose challenges to some producers in the form of tougher import competition. But they also present dramatic new opportunities for U.S. exports through the reduction of foreign trade barriers. The average tariff rate for most developed countries will fall by about 30 percent over the coming seven years, and roughly $21 billion in foreign government purchasing will now be opened to international competition. Other countries are moving aggressively to take advantage of these new trade opportunities. We must do the same.

However, strong export growth depends on the competitiveness of the American economy. We need more innovation, faster growth in productivity, and greater investment in more efficient plant and equipment. And we must reduce the rate of inflation lest we price ourselves out of competition with foreign producers. Only when inflation is under control will our economy be on a sound footing to undertake greater investment. U.S. producers and labor must retain the ability to offer the world high quality goods and services at attractive prices.

Government policies also affect our export position. Improving incentives and reducing or eliminating unintentional disincentives to exports is a continuing and complex process, for policies to encourage exports sometimes conflict with other national goals—such as budgetary soundness, national security, nuclear non-proliferation, health and safety, human rights, discouraging aggression and maintaining respect for diplomatic immunity. Our task is to reduce negative effects on exports without weakening other national objectives.

In response to this challenge, my Administration announced a National Export Policy in September 1978. We assigned exports a higher priority within the Executive Branch, we called on business and labor to devote more effort to exporting, and we initiated a set of measures confirming our commitment to export growth.

In 1979, in order to strengthen and centralize the government's ability to address the export needs of the Nation, my Administration proposed and Congress agreed to a reorganization of trade functions in the Executive Branch. The authority of the United States Trade Representative was expanded to cover export policy and other trade-related policies for which responsibility had previously been scattered among various agencies. Responsibility for the operational aspects of international trade, for the day-to-day implementation of the MTN, and for other trade policy decisions regarding nonagricultural products was concentrated in the Commerce Department.

This reorganization—in effect only since January 1980—has already begun to produce solid results. We are beginning to pursue vigorously our rights and opportunities under the MTN. We have also begun to act more quickly and decisively on matters of export policy, as shown by the Administration's timely interaction with the Congress on the Export Trading Company proposal and on legislation to preserve the confidentiality of Shipper's Export Declarations. Within the interagency mechanisms of government decision-making, we are providing a stronger voice in support of actions to promote our export growth.

In charging the Secretary of Commerce and the U.S. Trade Representative to review export promotion and export disincentives, I asked them to consult with other agencies and with business and labor. I also asked the President's Export Council for its views.

The review, now completed, shows significant progress in combining our promotion programs with the implementation of the MTN agreements. For example, the Commerce Department has initiated programs to publicize the opportunities stemming from the MTN and to help U.S. companies take advantage of those opportunities. Promotion initiatives are being targeted to the U.S. industries with the greatest potential to expand their exports. The Agriculture Department's Foreign Agricultural Service is working to ensure that the agricultural sector benefits fully from concessions received in the MTN. The Office of the U.S. Trade Representative has set up a trade policy coordination mechanism to guard our rights under the MTN codes.

In the area of potential programmatic

and regulatory disincentives, however, there is no question that certain government policies and programs are perceived as having a detrimental effect on the ability and willingness of U.S. companies to export. Our national interest requires that such policies and programs be reviewed.

In February 1980 I released an interim progress report on the reduction of export disincentives. That report announced certain procedural reforms to reduce further the burden of government requirements and stated that I would convey additional views on export promotion and disincentives to the Congress. On the basis of the review just completed, I have concluded that further actions are necessary to ensure a better balance between our trade policy and other national objectives.

SMALL BUSINESS

The participation of small businesses in exporting must be increased. One hundred companies account for approximately 50 percent of our manufactured exports, and only 10 percent of the nearly 300 thousand U.S. manufacturing firms are exporters. Thousands more produce goods that could be exported but are not. All of the export promotion resources of the Small Business Administration and most of those of the Commerce Department are aimed at encouraging small and medium-sized companies to market their products abroad. But we must do more to encourage these companies to export.

For this reason, my Administration has worked with Congress to develop the Export Trading Company proposal, which would greatly increase the attractiveness of export marketing for thousands of small and medium-sized firms. Export trading companies buying and selling on their own account and offering one-stop service to exporters could materially increase our exports. The key features of this proposal are: (1) to provide U.S. firms limited anti-trust immunity in competing abroad, immunity that would not adversely affect competition within the United States; and (2) to permit U.S. banks to invest in export trading company ventures, as foreign banks are allowed to do, bringing the vast international experience and financial resources of our banking industry more fully to bear on developing U.S. exports.

I believe this proposal is essential to the increased participation of small and medium-sized firms in export markets, and it has the full support of my Administration. I call on the Congress for speedy consideration and passage of this important legislation.

EXPORT FINANCING

Eximbank financing is the most important official incentive for U.S. exports, and my Administration has consistently supported an effective and adequately funded Eximbank. I asked Congress to increase Eximbank lending authority to $5.1 billion for FY 1980. This increase is made essential by present economic and competitive conditions and was approved by both the House and the Senate on August 18. However, while awaiting Congressional action on its authorization, Eximbank exhausted nearly all of its direct lending authority for this fiscal year, and many worthwhile requests for export support have had to be deferred. Congress and the Administration must work together to alleviate this kind of budgetary problem and to ensure adequate and reliable Eximbank financing in the future.

In addition to providing timely and adequate funds for Eximbank, my Administration seeks to reduce the financial subsidies given by our competitor nations and to move to a more market-related system of export credit interest rates. I pursued this matter vigorously at the Venice Economic Summit, and the six other major industrial nations agreed that a new international credit arrangement should be negotiated by December 1, 1980. Such an agreement would substantially lessen the difficulties now faced by many American exporters trying to cope with heavily subsidized foreign credits.

But we must also seek to avoid a recurrence of this year's shortfall. Accordingly, I will be working with Congressional leaders and members of my Administration this fall to determine how best to ensure adequate and reliable Eximbank financing in the years ahead, taking into account progress in international negotiations.

TAXATION OF AMERICANS ABROAD

The Internal Revenue Code (sections 911 and 913) provides special deductions for extraordinary living expenses incurred abroad, a deduction for hardship conditions, and an alternative $20,000 exclusion of foreign earnings for individuals living in camps in remote hardship areas. These provisions were enacted in November 1978, in the Foreign Earned Income Act of 1978.

Many U.S. companies have pointed out that the United States is the only major nation that taxes the earnings of its citizens abroad and have criticized the current rules as insufficiently generous, excessively complicated, and discouraging to exports.

The Secretary of Commerce and the U.S. Trade Representative have undertaken a review of this matter. They report an increasing tendency to replace Americans overseas with foreign nationals, since, in many cases, our tax laws make it more expensive for American firms to employ Americans than foreigners.

Most of our competitor nations exempt from tax all or many of their nationals who reside and work abroad. The tax liability of American citizens employed abroad makes it more costly to hire Americans wherever the local income tax is lower than the U.S. tax. Various segments of the exporting community argue that these additional costs have some or all of the following consequences:

1. U.S. companies are replacing many of their American personnel with foreign personnel.

2. When American companies engaged in engineering or construction work abroad hire Americans in spite of the greater cost—because the companies are more confident of the skills and reliability of American employees—the companies risk losing contracts for overseas projects as a result of the higher cost of employees, and U.S. exports are lost.

3. When companies hire the nationals of other countries instead of Americans, they may gain the contracts, but much of the valuable followup exports of supplies and equipment are lost because foreign nationals favor foreign suppliers who are more familiar to them.

4. Foreign operations by American companies tend to create exports from the United States and also to generate substantial earnings that benefit the U.S. balance of payments. Some companies feel they can conduct such operations more successfully if they are free to use American rather than foreign employees.

5. American companies operating abroad sometimes pick up or develop valuable technology in the course of their foreign operations. This technology is less likely to be lost with American employees than with foreign employees, who are more apt to move to foreign-owned companies when they change employment.

6. The present detriment to competitiveness has a snowballing effect on future competitiveness as foreign companies gain strength at our expense.

7. The special deductions allowed for foreign living costs and hardship conditions under present law are insufficiently generous and too complicated.

The cornerstone of U.S. tax policy has always been that all citizens must share in the obligation to finance their government. This policy must not be set aside lightly. In addition, it is difficult to quantify the effect of U.S. tax policy on exports in the aggregate. Not all Americans working abroad have an effect on exports. Many pay high foreign taxes, and therefore pay little or no U.S. tax after the foreign tax credit. And of course other factors, such as increased foreign competition, affect the success of U.S. exports as well. Taxation of U.S. employees working abroad is not solely responsible for the difficulties exporters are encountering.

The U.S. tax is most likely to be significant where employees are in a position to influence exports, where the foreign tax is low (so the foreign tax credit does not eliminate the U.S. tax liability), where compensation is necessarily high to offset hardship conditions (so the tax bracket is also high), or where the industry in question is labor intensive (so the tax cost of U.S. personnel is a significant component of total costs). Various combinations of these and other factors can give the U.S. tax greater impact than it might otherwise have.

Clearly, those who single out the tax factor as a serious export disincentive are convinced that further tax relief for Americans overseas is desirable and important. It is also clear that the consequences of recent changes in the tax laws affecting overseas Americans are likely to vary with the taxpayer's situation. Americans subject to a high foreign tax can be expected to profit little from changes in sections 911 and 913, because their foreign income tax presently offsets most or all of their U.S. tax liability.

It is difficult to measure the aggregate effects of taxation with any precision.

The attempts undertaken to date have been inconclusive. Political factors, such as the removal of the U.S. presence from Iran, and other economic factors such as marketing technology and quality control, complicate the picture. We do not yet have data on how the new tax provisions are operating. (Data will be available in the spring of 1981.)

Although we do not have answers to all the relevant questions, the evidence gathered in preparing this report does illustrate the importance that the export community attaches to this tax issue. U.S. taxes on the earned income of U.S. individuals abroad do clearly have an adverse effect on the ability of some U.S. exporters to compete in some markets. Accordingly, I will propose to the Congress, in my 1981 legislative program, revisions of the current law in order to deal with this problem.

FOREIGN CORRUPT PRACTICES ACT

The Foreign Corrupt Practices Act (FCPA) was passed unanimously by the Congress in the wake of disclosure of widespread illicit payments by many American companies. The Administration and the Congress have taken the unequivocal position that corruption in international business transactions is morally repugnant and economically unnecessary. I remain deeply committed to the principles of the Act and am steadfastly opposed to weakening the intent of the Act. Eliminating illicit payments in international business should be a matter of concern to all nations. My Administration has been pressing—unsuccessfully to date—for a multilateral agreement in the United Nations.

At the Venice Economic Summit meeting in June 1980 I urged that these seven industrial democracies renew efforts to work in the United Nations toward an agreement to prohibit illicit payments by their citizens to foreign government officials; and, if that effort falters, to seek an agreement among themselves, open to other nations, with the same objective. While we did not set a time by which an agreement should be reached in the United Nations, I believe that one further year of negotiation should be sufficient. Accordingly, if an agreement has not been obtained in the United Nations General Assembly, I intend to ask the other heads of government at the 1981 Economic Summit to direct the prompt negotiation of such an agreement among our seven nations, but open to others.

Some in the business community have expressed their uncertainty about what conduct is prohibited and what conduct is not prohibited by the FCPA. Because of this uncertainty, some businessmen say that they are acting with a degree of caution that is resulting in the needless loss of exports. In an effort to deal with the problem of uncertainty, I announced in February 1980 the Justice Department would begin providing guidance under the Act to inquiring companies on proposed international transactions. This guidance is now available through the FCPA Review Procedure, and I urge business to use that procedure.

I also announced in February that the effectiveness of this procedure would be examined by the Attorney General and the Secretary of Commerce after one year of operating experience. I believe that, until the review is completed, it is premature to judge the effectiveness of the Review Procedure. I am transmitting the review conducted by the Secretary of Commerce and the U.S. Trade Representative for the information of the Congress and not as a final judgment on the effectiveness of the Review Procedure.

I have directed that the Attorney General and the Secretary of Commerce report to me by March 1, 1981, not only their assessment of the first year of operation of the FCPA Review Procedure, but also their recommendations of whatever actions may then be necessary to remove any ambiguities in the Act. Uncertainties should not be allowed to hamper exports, but in no event will I propose nor will I support any amendments which would weaken the Act's proscription of bribery or which would result in loopholes for bribery of foreign government officials.

EXPORTS CONTROLS

Another key concern of exporters has to do with the use of export controls when the goods being controlled are available from other supplier nations. I addressed this concern in my February 27 statement on export disincentives. In considering new export controls to achieve foreign policy objectives and in reassessing current sanctions—except in the field of arms exports—my Administration would be highly selective in the use of controls where the affected country has access to alternative supply. I reaffirm that position today.

In addition, my Administration continues to confront the problem of the administrative costs and delays associated with export control licensing. Based on the present review, I have decided on a change in the licensing requirements for our national security export controls that will lessen the burden on business without weakening the effectiveness of our controls or our ability to protect vital national security interests. The change is that we will stop issuing a separate U.S. reexport license in cases where we have already approved reexport of the same product as part of the COCOM process (the multilateral review procedure which oversees exports of strategic commodities to certain communist countries). In such cases, the separate U.S. licensing procedure is redundant.

We will continue to examine the export control system to seek additional ways of streamlining the process while assuring that national security needs are met.

FUTURE ACTION

The just completed review of export promotion and potential disincentives to exports is the most comprehensive study of its kind ever undertaken by the U.S. government. It contains a considerable amount of information that must be weighed and examined, and will serve as a solid basis for future actions by the Federal government. I look forward to close cooperation with the Congress in this important process.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message received from the President of the United States today, pursuant to the provisions of the Trade Agreements Act of 1979, relative to a review of export promotion and disincentives, be jointly referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPETITIVE POSITION OF THE UNITED STATES IN WORLD MARKETS—MESSAGE FROM THE PRESIDENT—PM 241

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs, jointly, by unanimous consent:

To the Congress of the United States:

In accordance with the requirements of Section 1110(b) of the Trade Agreements Act of 1979, I hereby submit to the Congress a study of the factors bearing on the competitiveness of U.S. producers and the policies required to strengthen their relative competitive position in world markets. This study is submitted in conjunction with a report reviewing Executive Branch export promotion activities and potential programmatic and regulatory disincentives to exports, as called for in Section 1110(a) of the Trade Agreements Act. The greater part of the present study was prepared by the staff of the Department of Labor under the guidance of the Trade Policy Staff Committee, chaired by the Office of the United States Trade Representative. Contributions to this study were also made by several other agencies.

The study outlines the broad dimensions of various aspects of the competitiveness of U.S. producers in world markets. It also delineates our competitive position relative to our various competitors on a sectoral basis. Finally, the study directs attention toward the most important general areas for economic and trade policy formulation to strengthen our export competitiveness.

The study finds that during the past two decades there was an erosion in U.S. competitiveness in foreign and domestic markets. The increased international competition facing U.S. producers is in large part the result of increasing supplies of human and capital resources and expanding technological capabilities. Because of higher rates of growth in investment and expanded research activities in other countries, their competitive positions improved, and the United States experienced a relative decline in its trade performance even though the value of U.S. exports increased substantially, particularly in recent years. That decline has not affected all products, nor has it continued steadily. However, there remains much room for improvement in our competitive position through improvements in productivity.

Problems in our international competitiveness have combined with rapid

increases in the cost of oil imports to create persistent merchandise trade deficits.

Despite the reduced U.S. role in world trade and our trade deficits, the United States remains the world's largest exporter. Approximately one dollar out of every five dollars worth of goods produced in the United States is now exported. Further, the United States continues to be competitive with other countries in a wide range of products. Record trade surpluses were recorded in our strongest export sectors in 1979: $18 billion in agriculture and $33 billion in industrial capital equipment.

The evidence presented in the study suggests the following three areas where policies should be considered to improve the competitive position of U.S. producers in world markets:

1. Expanded investment and innovation to enhance the productive capacity of the U.S. economy and raise the productivity of the labor force;

2. Strengthened programs to assist workers in adjusting their skills to shifts in the sectoral structure of the U.S. economy brought about by changes in trade;

3. New policies and programs to implement the Tokyo Round agreements liberalizing access for U.S. exports and, further, identification of the significant remaining barriers to U.S. exports in certain sectors and negotiation to eliminate them.

I believe that export expansion is critical to the health of our economy. The policy emphasis that I have given to increasing exports has been demonstrated in three areas:

1. The National Export Policy that I announced on September 26, 1978;

2. The successful completion of the Tokyo Round of Trade Negotiations and signing of the Trade Agreement Act of 1979; and

3. The reorganization of the trade functions of the Executive Branch carried out earlier this year.

The National Export Policy articulated this Administration's intention to expand exports by increasing direct assistance to U.S. exporters, reducing domestic barriers to exports, and reducing foreign obstacles to our exports. The Tokyo Round agreements allow our exporters to take advantage of greater access to markets overseas through the liberalization of foreign nontariff restrictions and the reduction of foreign tariffs. The Executive Branch trade reorganization centralizes U.S. trade policy functions in the Office of the United States Trade Representative and places trade administration and export promotion functions in the Department of Commerce. This reorganization has greatly enhanced the ability of the Federal government to implement policies for meeting the competitive trade challenges of the 1980s.

This study is the most comprehensive and detailed analysis of the competitive position of the United States in world markets ever undertaken by the U.S. Government. Its findings will be of immediate assistance to me and, I believe, to the Congress as we consider both broad economic policies and special measures to encourage more vigorous gains in our industrial productivity and to improve our international competitive position. I expect to address these matters extensively in the months ahead.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message received from the President of the United States today, pursuant to the provisions of the Trade Agreements Act of 1979, relative to a study of the relative competitive position of the United States in world markets, be jointly referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 10:36 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks announced that the House has passed the bill (S. 1650) to provide for the development of aquaculture in the United States, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

At 2:30 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks announced that the House has passed the following bill, without amendment:

S. 299. An act to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 121. Concurrent resolution to correct the enrollment of S. 299.

At 3:26 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1981 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ASHLEY, Mr. MURPHY of New York; Mr. BIAGGI, Mr. OBERSTAR, Mr. HUGHES, Mr. ULLMAN, Mr. ROSTENKOWSKI, Mr. VANIK, Mr. CORMAN, Mr. MCCLOSKEY, Mr. PRITCHARD, Mr. EVANS of Delaware, Mr. CONABLE, and Mr. DUNCAN of Tennessee were appointed as managers of the conference on the part of the House.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 6940) to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that act to assure the safety and nutrition of infant formulas, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HUDDLESTON, from the Committee on Appropriations, with amendments:

H.R. 7592. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 96-931).

By Mr. BAYH, from the Committee on Appropriations, with amendments:

H.R. 7831. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 31, 1981, and for other purposes (Rept. No. 96-932).

By Mr. BAYH from the Committee on Appropriations without amendment:

S. Res. 517. An original resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 7831. Referred to the Committee on the Budget.

By Mr. CHURCH, from the Committee on Foreign Relations:

Special report entitled "Report of the Committee on Foreign Relations Pursuant to Section 302(b) of the Congressional Budget Act of 1974" (Rept. No. 96-933).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as follows:

By Mr. DURENBERGER:

S. 3103. A bill to provide for a study committee to examine methods by which federal, state, regional and local governments can cooperate to enhance the recreational opportunities along the Mississippi, Minnesota and St. Croix Rivers which traverse the Twin Cities Metropolitan Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI:

S.J. Res. 202. Joint resolution to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week"; to the Committee on the Judiciary

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURENBERGER:

● S. 3103. A bill to provide for a study committee to examine methods by which Federal, State, regional, and local governments can cooperate to enhance the recreational opportunities along the Mississippi, Minnesota, and St. Croix Rivers which traverse the Twin Cities Metropolitan Area, and for other purposes, to the Committee on Energy and Natural Resources.

METRO RIVER CORRIDORS STUDY

Mr. DURENBERGER. Mr. President, today I am introducing a bill which would authorize a study of the three major river corridors within the seven-county metropolitan area of Minneapolis and St. Paul.

The purpose of the study authorized in this bill would be to examine methods by which Federal, State, regional, and local governments could cooperate with

each other and with private interests and citizens of the area to improve and enhance the recreational opportunities along the Mississippi, Minnesota, and St. Croix Rivers which traverse the Twin Cities Metropolitan Area.

The Lower St. Croix River was designated by Congress in 1972 as a component of the National Wild and Scenic Rivers System; the Lower Minnesota River Valley was designated by Congress in 1976 as a National Wildlife Refuge and Recreation Area. The Mississippi in the Twin Cities Area was recognized as early as 1970 by then Secretary of Interior Walter Hickel as a possible national recreation area.

Minneapolis/St. Paul is the head of river navigation and commerce on the Mississippi and is the confluence of the Minnesota River providing both an historical and contemporary fountainhead for one of the world's greatest commodity transportational systems.

Minnesotans have long recognized that the three rivers which traverse the Twin Cities metropolitan area provide tremendous recreational opportunity for the citizens of the State/region and the Nation. State and local grants, with the assistance of the metropolitan council and its park and open space board, have designated thousands of acres along the corridors for park and open space use and land and developed much of it. The study provided in the bill is an opportunity for the citizens of the region, in partnership with the Federal agencies, to look at the three metropolitan river corridors as a whole and make recommendations for use of this resource.

With the energy crisis we are facing, it is crucial that we examine, encourage and stimulate the use of recreational opportunities where people live—in urban areas. The population of the metropolitan area of Minneapolis and St. Paul is 2 million and the pressure on the natural resources is intense in some areas while underdeveloped in others. For example, on the St. Croix, a recent Minnesota-Wisconsin Boundary Area Commission study found that recreational boating use increased 133 percent between 1970 and 1977. In fact, boating usage has increased so dramatically that on weekends and holidays overcrowding has become a serious issue. Providing other recreational boating opportunities on the Mississippi could help alleviate this problem.

The St. Paul Dispatch recognized the need and stated it clearly in an August 7, 1980, editorial in support of the metropolitan reconnaissance study when they noted that:

> Certainly the Twin Cities can use all the help available to provide greater recreational opportunities along the river. As the cost of travel continues to increase, more metropolitan area residents will be spending their vacations in their own backyards. Managed properly, the Mississippi can be close-to-home refuge from the concrete and bricks of the city.

In addition, expanding energy demands and expanding exports for the Nation's agricultural breadbasket have substantially increased the transportation use of the rivers. This increased usage has magnified the need to utilize river corridor lands for transportation-related activities. The community has experienced the problem of potentially conflicting uses as it faced the decisions necessary to meet the demand for increased recreation and open space, and the demand for increased river transportation.

Those of us who have worked with the river and have worked with those who have policy responsibility for implementing its future know that this incredible resource is not limited to one or the other use. The three rivers have been and can be more accessible to the public need for both, if only this public finds a way to chart a logical course through the layered Government goals and policies which relate to river corridor planning, preservation, and utilization.

A look at all three river corridors is essential to develop a systems approach for their use. In the fall of 1979, I formed an ad hoc advisory committee composed of Federal, State, regional and local government officials, and interested citizens to explore areas for intergovernmental and private sector cooperation to determine ways by which the recreational opportunities could be enhanced.

In January 1980, four other members of the Minnesota congressional delegation—Congressmen SABO, HAGEDORN, VENTO, and ERDAHL—joined me in requesting a reconnaissance study of these metropolitan river corridors. The National Park Service is conducting this study out of available funds. The ad hoc committee has been assisting the National Park Service over the last few months in this effort which is now nearing completion.

The bill is an outgrowth of the work by the ad hoc committee and the reconnaissance study. It would establish a 15-member study committee composed of Federal, State, regional, and local government officials and private citizens. Members would be appointed by the Secretary of Interior upon recommendations submitted by the Governor, the mayors of Minneapolis and St. Paul, and the chairman of the metropolitan council. The study committee would be in existence only for the 2-year life of the study and would be administered through the metropolitan council, the regional planning agency.

The objectives of the study would be to make recommendations to the President, Congress, and appropriate governmental units regarding the long-term recreational management of these river resources. This would include recommendations, findings, and conclusions with respect to:

First, actions which would be taken to preserve, enhance, and utilize these recreational resources;

Second, any institutional changes which should be made to provide permanent management of these recreational areas;

Third, specific areas where local, regional, State, and Federal agency cooperation would help achieve better management of designated recreational areas; and

Fourth, actions which should be taken by governmental units in furtherance of the purpose and existing designations by Congress of the Minnesota and St. Croix Rivers.

Perhaps the most unique aspect of this proposal is that it involves developing a consensus of governmental and private sector interest at the local level, with the participation of the Federal Government.

Through this process, the Federal Government's role has been to facilitate the solution. In contrast, when this grassroots approach is not used the Federal Government is seen as a part of the problem, not an answer to the concerns of local government and citizens.

The State, regional, and local governments have already made outstanding contributions toward the preservation, enhancement, and recreational use of these rivers.

In addition, funding from private foundations has been utilized to assist in the public participation effort to develop consensus on a course of action which would provide a more coordinated approach to meeting these public needs.

In short, what the people of the region and the State are asking for from the Federal Government is a helping hand, not a handout, in reviewing the three river corridors of the region which have a heavy overlay of Federal programs and defined national significance.

Considerable time has already been invested in this process by all levels of government and the private sector. I believe it has been time well spent. This bill will enable this process to continue to its logical conclusion within 2 years.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. FINDINGS. The Congress finds that those portions of the Mississippi, St. Croix and Minnesota River corridors lying within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, State of Minnesota.

(a) represent a significant recreation resource, which would benefit a large population in the immediate vicinity;

(b) represent a significant historical and cultural resource worthy of preservation for the enjoyment and benefit of present and future generations;

(c) contain significant natural and scientific values that enhance the diversity and aesthetic character of the metropolitan area;

(d) are important commercial resources vital to the continued economic well-being of the region and the nation;

(e) are of national significance and constitute an area of national concern;

(f) are in need of cooperative recreational planning and management so as to improve efforts to further the preservation, enhancement and use of these recreational resources.

SEC. 2. (a) STUDY COMMITTEE. A Study Committee consisting of 15 members shall be established to examine methods by which

federal, state, regional and local governments can cooperate to enhance the recreational opportunities along those portions of the Mississippi, Minnesota, and St. Croix Rivers described in Sec. 1 of this Act. The members of the Study Committee shall be selected as follows:

(1) A Chairperson shall be appointed by the Secretary of the Interior. The Secretary shall appoint the Chairperson from a list of nominees submitted by the Governor of Minnesota;

(2) A representative designated by the Secretary of the Interior shall serve as Vice Chairperson;

(3) One representative shall be designated by each of the following: The Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Secretary of Defense;

(4) Nine other members shall be appointed by the Secretary of the Interior. The Secretary shall appoint these members from a list of nominees submitted by the Governor of Minnesota, the Metropolitan Council, and the Mayors of Minneapolis and St. Paul;

(5) The nominations and appointments required by Sec. 2(a) shall include representatives of each of those interests set forth in Sec. 4(e).

(b) The Governor of Minnesota, the Metropolitan Council, and the Mayors of Minneapolis and St. Paul shall submit the nominations called for in Sec. 2(a) within 45 days of the date on which this Act is signed into law. All appointments called for in Sec. 2(a) shall be made within 60 days of the date on which this Act is signed into law.

(c) Each member of the Committee who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Study Committee.

(d) All members of the Study Committee shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in the performance of the duties invested in the Study Committee from funds appropriated for this purpose.

(e) The Chairperson of the Study Committee, if other than one to whom paragraph (c) applies, shall receive per diem at the maximum daily rate for a GS 11 of the general schedule when engaged in the actual performance of duties vested in the Study Committee from funds appropriated for this purpose.

(f) The Study Committee shall terminate within two years and two months from the date on which the initial appropriation for this Act is signed into law. The funds appropriated under this Act shall be available until expended.

SEC. 3(a). REGIONAL PLANNING AGENCY. If a multifunctional regional agency authorized by state law to plan for and coordinate the development of the seven counties described in Sec. 1 is in existence on the date this Bill is signed into law, the Governor of the State of Minnesota shall designate such multifunctional regional agency to assist in carrying out the study directed in this Act. This Agency shall hereinafter be referred to as "Regional Planning Agency".

(b) The Regional Planning Agency shall assist the Study Committee in carrying out the study mandated in Sec. 4 of this Act.

(c) From funds appropriated for this purpose, the Regional Planning Agency shall provide the Study Committee with Financial, administrative and other necessary support services.

(d) The Regional Planning Agency, after consultation with the Study Committee, shall have the power to appoint and set compensation of such additional personnel as may be necessary to carry out its duties under this Act without regard to the provisions of the civil service laws and the Classification Act of 1949; from funds appropriated for this purpose.

(e) The Regional Planning Agency, after consultation with the Study Committee, may also procure without regard to civil service laws and the Classification Act of 1949, temporary and intermittent services to the same extent as is authorized for the executive departments by Section 15 of the Administrative Expenses Act of 1948, within available appropriations for this purpose, but at rates not to exceed $100 per diem for individuals, as necessary to carry out the duties under this Act.

(f) To the extent of available appropriations, the Regional Planning Agency may obtain, by purchase, donation or lease, facilities, equipment and services as may be needed to carry out the duties under this Act.

(g) To the extent feasible and practicable, the Regional Planning Agency may utilize personnel available under the authority provided in the Intergovernmental Personnel Act of 1970 as amended to assist in carrying out its duties specified in this Act.

(h) No later than 45 days after receiving the report required by paragraph 4(b), the Regional Planning Agency shall provide the Study Committee with written comments on that report. Upon receipt of those comments, the Study Committee shall submit the report, along with the written comments, to the President, the Congress, and appropriate state, regional, and local government units.

SEC. 4(a). RESPONSIBILITIES OF THE STUDY COMMITTEE. The Study Committee shall conduct a study on the preservation, enhancement, protection, and use of the designated recreation areas along the river corridors described in Sec. 1 of this Act. For the purpose of this Bill, designated areas shall be defined as those park, open space, recreation or historical sites designated in an adopted federal, state, regional or local government plan.

(b) No later than two years from the date on which the initial appropriation for this Act is signed into law, the Study Committee shall provide the Regional Planning Agency with a written report on the findings and conclusions of this study, along with recommended policies.

(c) In its report, the Study Committee shall make recommendations as to the policies which should be adopted, and actions which should be taken to optimize the recreational, fish and wildlife, historic, natural, scientific, scenic, and cultural values of the river corridor areas referred to in Sec. 1 of this Act. The study may also include, but need not be limited to, recommendations for institutional changes, if any, which the Study Committee deems desirable and feasible to provide permanent management of the designated recreational areas along these river corridors. The report may also include recommendations for specific areas of local, regional, state and federal agency cooperation for river corridor management of the designated recreational areas. However,

(1) The Study Committee shall recommend no policy or action which would place unreasonable restrictions on existing or compatible economic uses of these resources.

(2) All policies and actions recommended by the Study Committee shall be compatible with, and maintain the integrity of, existing federally designated management programs and units on the St. Croix and Minnesota River corridors.

(d) The Study Committee shall review and utilize existing studies, and consider existing plans, programs and policies as they affect the present and future recreational use of the river corridors described in Sec. 1 of this Act.

(e) The Study Committee shall provide for public participation in the planning process in order to account for the concerns of recreational, commercial, cultural and environmental interests, and state, regional and local governments.

SEC. 5 AUTHORIZATION. There are hereby authorized to be appropriated $300,000 for the purposes of this Act.●

By Mr. DOMENICI:

S.J. Res. 202. Joint resolution to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week," to the Committee on the Judiciary.

ITALIAN-AMERICAN HERITAGE WEEK

● Mr. DOMENICI. Mr. President, our Nation is marked by a most unique history. Immigrants from every country in the world made these United States a "melting pot" of cultures, skills, ideas, religions, and people. Together, these immigrants formed the greatest free democratic society in history. Today, Mr. President, on behalf of the Order of the Sons of Italy in America, I request that Congress recognize the contributions of Italian-Americans to this great American society.

As the oldest and largest Italian organizations, the Order of Sons of Italy in America proudly represents a group of Americans that have made significant achievements to the development and growth of this country. Since its founding, by Christopher Columbus, Italians have played major roles in American history. The Western Hemisphere is named for the renowned Italian explorer Amerigo Vespucci. During the late 19th and early 20th centuries, Italians immigrated to this country to share in the American way of life. They left their home to build better lives for themselves, their children, and their fellow Americans. Through their hard work, sweat, and hopes, they added significantly to make this country the greatest Nation.

Mr. President, the Italian-Americans have proven themselves to be patriotic and loyal citizens of the United States of America. When American ideals and values were being threatened during World Wars I and II, the Korean war, and the Vietnam war, they distinguished themselves as courageous people along with all the other ethnic groups in this country.

We should recognize the national and cultural heritages and contributions of all peoples of the United States. Today, on behalf of the Order of the Sons of Italy in America, I request that Congress recognize the heritage of millions of Italian-Americans. Therefore, I am introducing a joint resolution to establish October 12 to October 19, 1980, as "Italian-American Heritage Week." This designation coincides perfectly with the traditional celebration of Columbus Day October 13, which has a special meaning for all Americans. I request the support of Congress in establishing this week in recognition of the contributions that the Italian-Americans have made to this great Nation of ours.●

ADDITIONAL COSPONSORS

S. 1867

At the request of Mr. DURENBERGER, the Senator from New Hampshire (Mr. HUMPHREY) was added as a cosponsor of S. 1867, a bill to amend the Internal Revenue Code of 1954 to provide that the amount of the charitable deduction allowable for expenses incurred in the operation of a motor vehicle will be determined in the same manner Government employees determine reimbursement for use of their vehicles on Government business.

S. 2818

At the request of Mr. TALMADGE, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 2818, a bill to amend the Internal Revenue Code of 1954 with respect to the treatment of mutual or cooperative electric and telephone companies.

S. 2857

At the request of Mr. PACKWOOD, the Senator from Kentucky (Mr. FORD) and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 2857, a bill to amend the Social Security Act to provide for interfund borrowing between old-age, survivors, disability and hospital insurance trust funds.

S. 2920

At the request of Mr. RANDOLPH, his name was added as a cosponsor of S. 2920, a bill to amend the Internal Revenue Code of 1954 to provide an income tax credit for social security taxes paid in 1981 and 1982.

S. 3087

At the request of Mr. SASSER, the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

SENATE JOINT RESOLUTION 114

At the request of Mr. STONE, the Senator from Maine (Mr. COHEN), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Utah (Mr. GARN), the Senator from Wyoming (Mr. WALLOP), and the Senator from Minnesota (Mr. BOSCHWITZ) were added as cosponsors of Senate Joint Resolution 114, a joint resolution to provide for the orderly restructuring of the Milwaukee Railroad, and for the protection of the employees of such railroad.

UP AMENDMENT NO. 1467

At the request of Mr. CHAFEE, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of UP amendment No. 1467 proposed to S. 1076, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, for the purpose of improving retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, authorizing plan preservation measures for financially troubled multiemployer pension plans, and revising the manner in which the pension plan termination insurance provisions apply to multiemployer plans.

SENATE RESOLUTION 517—ORIGINAL RESOLUTION REPORTED TO WAIVE CONGRESSIONAL BUDGET ACT

Mr. BAYH, from the Committee on Appropriations, reported the following original resolution, which was referred to the Committee on the Budget.

S. RES. 517

Resolved, That pursuant to section 303(c) of the Congressional Budget Act of 1974, the provisions of section 303(a) of such Act are waived with respect to the consideration of H.R. 7831, a bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

Such waiver is necessary to permit the appropriation of $166,000,000 to become available for a fiscal year for which the first concurrent resolution on the budget has not been agreed to. Specifically, the spending authority would become available for fiscal year 1982 for the capital program of the National Railroad Passenger Corporation. This advance appropriation as authorized under the provisions of Public Law 96-73, the Amtrak Reauthorization Act of 1979. The legislation recognizes that in purchasing passenger equipment, Amtrak must be able to make multiyear commitments, and that Amtrak has successfully initiated cost-effective purchasing programs using this authority.

AMENDMENTS SUBMITTED FOR PRINTING

FOREIGN SERVICE ACTS AMENDMENTS OF 1980—S. 3058

AMENDMENT NO. 2290

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to the bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

AMENDMENT OF INTERNAL REVENUE CODE PROVISIONS RELATING TO FEDERAL UNEMPLOYMENT TAX—H.R. 4007

AMENDMENT NO. 2291

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BOREN submitted an amendment intended to be proposed by him to the bill (H.R. 4007) to amend the Internal Revenue Code to provide that the provisions which increase the Federal unemployment tax in States which have outstanding loans will not apply if the State makes certain repayments.

ENVIRONMENTAL EMERGENCY RESPONSE ACT

AMENDMENT NO. 2292

(Ordered to be printed and to lie on the table.)

Mr. RANDOLPH submitted an amendment intended to be proposed by him to the bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

AMENDMENT NOS. 2293 THROUGH 2301

Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD) submitted nine amendments intended to be proposed by them to the bill S. 1480, supra.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981—H.R. 7590

AMENDMENT NO. 2302

(Ordered to be printed and to lie on the table.)

Mr. ROBERT C. BYRD submitted an amendment intended to be proposed by him to H.R. 7590, an act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

NOTICE TO SUSPEND RULE XVI

Mr. ROBERT C. BYRD submitted the following notice in writing:

In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of Rule XVI for the purpose of proposing to the bill (H.R. 7590), making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes, the following amendment:

AMENDMENT NO. 2302

On page 38, between lines 6 and 7, insert the following new section:

SEC. 509. (a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is—

(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1980, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

(1) by the President in the case of any office or position within the executive branch

or in the government of the District of Columbia;

(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate in the case of any office or position within the legislative branch; or

(3) by the Chief Justice of the United States in the case of any office or position within the judicial branch.

(c) None of the funds appropriated by this Act or any other Act shall be used to pay performance awards in fiscal year 1981 under section 5384 of title 5 United States Code or any comparable personnel system established on or after October 13, 1978, to more than 25 per centum of the number of Senior Executive Service or comparable personnel system positions in any such agency.

(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution or which imposes any requirement or limitation on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

(The remarks of Mr. ROBERT C. BYRD when he submitted the notice and amendment appear elsewhere in today's proceedings.)

NOTICES OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, the Committee on Labor and Human Resources will hold an oversight hearing on the Longshoremen's and Harbor Workers' Compensation Act on Tuesday, September 16, 1980, from 9:30 a.m. to 12:30 p.m., and from 1:30 to 3:30 p.m., in room 4232, Dirksen Senate Office Building. The hearing will focus on the Department of Labor's administration of the Longshore Act and problems which have arisen under the act. For further information regarding the hearing, please contact Darryl Anderson of the committee staff, at (202) 224-3674.

SUBCOMMITTEE ON ENVIRONMENT, SOIL CONSERVATION, AND FORESTRY

Mr. MELCHER. Mr. President, I wish to announce that the Subcommittee on Environment, Soil Conservation, and Forestry has scheduled another in its series of hearings on the Resources Planning Act assessment report submitted earlier this summer by the U.S. Department of Agriculture.

At our previous hearings, the subcommittee heard from the administration, but for the upcoming hearing, I have requested testimony from the public sector.

The hearing will be held on Tuesday, September 16, beginning at 9:30 a.m. in room 1202, Dirksen Senate Office Building.

Anyone wishing further information should contact the Agriculture Committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE TO INVESTIGATE INDIVIDUALS REPRESENTING INTERESTS OF FOREIGN GOVERNMENTS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee to Investigate Individuals Representing Interests of Foreign Governments of the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold an executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ANTITRUST, MONOPOLY, AND BUSINESS RIGHTS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Antitrust, Monopoly and Business Rights Subcommittee of the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold a hearing on the Small Business Motor Fuel Marketer Preservation Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WATER RESOURCES

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Water Resources Subcommittee of the Committee on Environment and Public Works be authorized to meet during the session of the Senate today to hold a markup session on the omnibus water resources amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee on Energy Resources and Materials Production of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider legislation to amend section 21 of the Mineral Leasing Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PARKS, RECREATION AND RENEWABLE RESOURCES

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee on Parks, Recreation and Renewable Resources of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider legislation to establish a Rattlesnake National Recreation Area in the State of Montana.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 10, 1980, to hear Secretary of State Edmund Muskie on proposed nuclear fuel shipment to India (Tarapur).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, September 10, 1980, to hold a markup session on the Power Marketing Revolving Fund Act; legislation to expand the Indiana Dunes and other pending calendar business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, September 10, 1980, to hold a hearing on legislation concerning the nomination of the President of the United States; an original resolution relating to the U.S. Capitol Historical Capital Calendars; and Senate Resolution 494, legislation authorizing the printing of a report entitled "Progress in the Prevention and Control of Air Pollution in 1978 and 1979" as a Senate Document.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

DOMESTIC SUGAR POLICY

● Mr. CHURCH. Mr. President, the sugar beet industry in Idaho and across the Nation has weathered some very rough years. However, due to increasing world consumption of sweeteners and declining sugar harvests in the Soviet Union, Brazil, Cuba, India, and Thailand, domestic growers are finally doing much better.

For 6 years, our Nation has been without a domestic sugar policy. Since 1974, the Senate has responded repeatedly to the need to provide adequate supplies of sugar at reasonable, stable prices, while protecting domestic producers from foreign sugar being dumped on U.S. markets. Beet growers appreciate the support in the Senate repeatedly given to my efforts to enact an adequate sugar bill. Unfortunately, the House has rejected sugar legislation, and we have seen our domestic industry further crippled by unfair trade practices, documented by the International Trade Commission.

Next year, the Congress will consider a new, 5-year omnibus farm program. As I have earlier indicated, this will present the occasion to put in place a sugar policy that will be fair both to growers and consumers. The 1980 summer issue of the Sugar Producer contains an article in which Mr. Clyde Greenwell, president of the Idaho Beet Growers Association, discusses the issues surrounding the need for domestic legislation. Clyde is an articulate, hard-working farmer who has a clear grasp of the sugar beet industry and how it works. I commend his views to my colleagues and ask that the article be printed in the RECORD.

The article follows:

GROWER, CLYDE GREENWELL

(By Lyman Hafen)

Clyde Greenwell has been growing sugar beets in the Paul, Idaho area since he "was a kid." He's seen a lot of good years of sugar beet growers and some that weren't so good.

Even though this year hasn't started out well—he recently had a bout with pneumonia—he is confident and optimistic about the prospects for a good return on his crop in 1980.

Greenwell has served "a good many years" as president of the Idaho Beet Growers Association and of the Minidoka Beet Growers Association. In fact he says he's served so many

terms as president of the two organizations that he can't put a number on them without going back through years of records.

Presently he is serving again as president of the two associations.

The Idaho Beet Growers Association is comprised of four associations including the Minidoka, Cassia County, Twin Falls and Jerome growers associations.

This experienced Idaho beet grower says he puts in about 100 acres of sugar beets each year. Beets are his main crop and he rotates hay and grain with them.

Growers in the area take their beets to the Amalgamated Sugar Company factory in Paul, Idaho for processing. The company has its head offices in Ogden, Utah and has three other factories besides the ones in Paul. The Paul factory was built in 1917. A factory in Twin Falls, Idaho was built in 1916, one in Nampa, Idaho in 1942 and one in Nyssa, Oregon in 1938. Greenwell said the first factory built in the area was in Burley, Idaho in 1912 but it was closed down after the factory in Paul was remodeled and enlarged.

On the topic of the depressed sugar situation over the past few years, Greenwell said, "As long as we had the Sugar Act, up until 1974 when we lost it, we always made a little money." He said after the 1973-74-75 period when sugar prices went out of sight there was only one way sugar could go and that was down.

"It couldn't stay down though," he said, "there was no way it could stay down."

Greenwell said he predicted that sugar prices would get back up again and "Now they are up," he said. He's optimistic about this year, "Sugar will get higher," he said. "It'll get higher before it gets lower."

"I hope we can get some kind of domestic sugar program worked out so we can stabilize the sugar situation to where we can stay in business and make a little money and not have to close down any more sugar plants," he said, referring to the closure of four U&I Sugar Company plants in 1978.

"We need a stable sugar act; a good domestic program," he said.

"With the United States only producing 50 percent of the sugar consumed, we should have worlds of room of our production and a little profit and still have cheap sugar," he said.

Greenwell said in his opinion the International Sugar Agreement has helped the overall sugar situation. "The ISA shows we have good faith in dealing with the foreign countries," he said.

He is confident that the Idaho Congressional Delegation will be instrumental in getting a domestic sugar program attached to the next farm bill. A program that growers "can live with," he said.

"I think we'll get a domestic program and I think we need one," he said. "We just can't continue growing beets without one.

On the topic of the Carter Administration, Greenwell said he doesn't feel the president has given much help to sugar beet growers. "You see what OPEC has done to the oil industry, the sugar industry could end up the same way," he said. Greenwell says the administration hasn't seen the sugar situation in the same light as the oil situation and is not making provisions to prevent the same thing happening to sugar as happened to oil.

Speaking of oil, Greenwell said with fuel prices as high as they are and with the prospects of continued rises in fuel prices as well as other production costs such as machinery, interest rates, fertilizer and labor, it is almost impossible for beet growers or any other farmer to realize a profit. "This is the reason we need a good domestic sugar program to compensate for rising fuel costs and rises in other production costs," he said.

"There is plenty of gas," he said. "If they'd just let us have it."

On the much discussed topic of gasohol Greenwell is very optimistic. "I think growers will be making a lot of their own fuel in the future," he said. "I think the prospect of alcohol production for fuel is a wonderful thing if we can just get it off the ground." With all the red tape the government requires, Greenwell questions whether alcohol production for fuel will be rolling on a large scale in the near future.

"But we need it," he said, "We need it bad." He said fuel costs are getting to the point now where gasohol production can pay off. "I think eventually a lot of the bigger farmers will put in their own plants," he said.

Even though fuel and other production costs are up considerably this year, Greenwell feels the sugar prospects are good in his area. He speaks highly of the Amalgamated Sugar Company and says that they are one of the keys to their success. "We've got a good healthy company here with good men at the helm running it," he said. "If we didn't have a company like this we wouldn't be in business."

Greenwell said the growers are not involved in the management of the Amalgamated factories. "We're on a participating contract and when the sugar is refined we get a percent and they get a percent," he said.

"But, what we the growers think is very important to the company officials and when we all agree on a contract everybody that is growing beets knows where his crop is going," Greenwell explained.

There have been no problems with labor at the Amalgamated factories, Greenwell said, but if it ever came to it, he says the growers would go in and process their own beets. "We've never had to do it before and I don't anticipate we ever will have to," he said. "Labor has always been helpful in getting the beets processed in an efficient manner," he added.

Amalgamated officials are forecasting a good business cycle in the sugar beet industry for the next few years and this optimism is common among most Southern Idaho growers.

The U&I Sugar Company, which closed its doors in November of 1978, had a factory in Idaho Falls, Idaho that served many growers in the Southeastern Idaho area. Many Southeastern Idaho growers who grew beets for the factory are no longer in the beet business. But some of the growers are continuing to grow beets and are now under contract to Amalgamated.

Greenwell said he isn't aware of all the reasons U&I closed down but he said, "I don't think they should have closed." He went on, "Sugar was pretty well depressed at the time they closed, but the situation was bound to turn around and the closing put a lot of growers and factory workers out of business and out of jobs."

With the beet growing future looking brighter, growers in Southern Idaho are taking steps in preparing for that future. Greenwell said sugar beets are a mainstay in the area. "This area has an ideal climate for beets, they adapt well here and the sugar is good," he said.

An example of the importance the growers have placed on the beet industry in their area is evident in a project brought about by the efforts of the Minidoka Beet Growers Association. The Association and the University of Idaho are funding a University of Idaho sugar beet specialist to do research and aid the growers in their sugar beet production.

John Gallian, a University of Idaho plant pathologist, has been working in sugar beet research in the Southern Idaho Area since April of 1979. Through his work sugar beet research throughout the state is being coordinated.

Some of the research being conducted by Gallian includes variety testing of commercial and experimental lines of sugar beets, weed control testing, pest management studies, chemical control of nematodes, powdery mildew spray and resistance trials, and many other sugar beet research projects.

Greenwell said the research is coordinated with a research committee of the Minidoka growers association chaired by Clarence Bellem of Rupert.

Both Greenwell and Bellem were instrumental in bringing the whole program about and according to Gallian, "The first year has been very successful and the grower's support and enthusiasm has been tremendous."

Another joint venture that the beet growers of Magic Valley and Upper Valley are taking part in is the upcoming construction of a $21,000 greenhouse facility at Kimberly, Idaho on the U of I farm under the direction of John Gallian and the grower's research committee. Gallian said some of the first research activities that will take place in the greenhouse facility will include experimenting to improve stand establishment through testing of various chemicals for disease control. Also he will be approaching the soil crusting problem that is prevalent in some areas.

Gallian's sugar beet research has and will continue to include the study of various varieties of fodder beets in a cooperative program with the USDA Crops Research Lab in Logan, Utah. Gallian said about 50 varieties of fodder beets from all over the world are being studied to evaluate their potential for use in alcohol production.

Greenwell is happy with the progress the sugar beet research program is making and is proud to have been a part on the creation of this unique grower-university relationship. Gallian said, "This is something Clyde worked very hard for, he was instrumental in getting the project going; he ought to be proud."

With the optimism of growers like Clyde Greenwell and the positive efforts of the Amalgamated Sugar Company, beet growers in Southern Idaho can't help but have a good year this year.

"We'll have a big crop this year, as big as last," Greenwell said. We're working hand in hand with the company and getting along well with them; they do a good job of getting the beets out and we don't have to wait on our money," he added.

"We've got some tremendous growers in this area, both big and small," he said. "Without all these good growers and without the good company we have to grow for, we wouldn't be in business."

Clyde Greenwell is no doubt one of those "good growers." He knows the business well and cares about its future. With his positive leadership of the Idaho Beet Growers Association, the growers can look forward to a bright future.●

GRAND OPENING OF THE RAILROADERS MUSEUM IN ALTOONA, PA.

● Mr. HEINZ. Mr. President, I am pleased to announce an event which will have strong appeal for railroad enthusiasts, students of American history and citizens everywhere who take an interest in our heritage. This is the grand opening, on September 21, of the Railroaders Memorial Museum in Altoona, Pa.

The museum promises to be both instructive to the children of the community, who will find there the background of their railroad heritage, and to all citizens with an interest in rail history. Exhibits include the "Loretto," a beautiful private railroad car built in 1917 for Charles Schwab, with a private dining room, parlor and bedroom pan-

eled in walnut, marble baths, service quarters and a complete kitchen; a K4 locomotive; a large working model train layout; and a variety of railroad memorabilia.

It is altogether fitting that Altoona should be the site of this major new museum. The town itself was originally laid out in 1849 to meet the need for servicing the additional locomotives required to haul freight over the nearby mountains. And since that time, the citizens of Altoona have faithfully and skillfully kept our rail lines operating, gradually progressing from repairing locomotives to building them as well. By 1890, the famous Juniata Shops were constructed to handle the growing demand for service and construction of rail hardware, and Altoona became the site of one of the largest roundhouses in the world. Immigrants from around the world flocked to the city for the work they could find there. Today, the city and surrounding Blair County remain a vital center for Conrail activities.

The museum which memorializes this history is itself a tribute to the effort and community pride of the citizens of Altoona. A distinguished group of Blair County citizens formed the Railroaders Memorial Museum Building Fund Campaign and launched a massive local fundraising campaign in the spring of 1979. Over 280 businesses, individuals and service organizations have generously responded, and the Railroaders Museum is now a reality. In an age all too eager to turn to the Federal Government for the solutions to any and all problems, I salute the Altoona community for its initiative and independent spirit. I encourage my colleagues and their constituents to visit this new and interesting museum.●

HUMAN RIGHTS MUST REMAIN A MAJOR ISSUE AT MADRID CONFERENCE

● Mr. CHURCH. Mr. President, we have recently marked the fifth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe by the United States, Canada, and 33 European nations at Helsinki, Finland. In signing that document, both we and the Soviet Union committed ourselves to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief for all without distinction as to race, sex language or religion."

One of the principles embodied in the Final Act confirms the right of the individual to know and to act upon his rights and duties. In conformity with that principle, citizens of many signatory nations have formed public groups to monitor and promote full implementation and compliance.

An American group known as the Commission on Security and Cooperation in Europe recently released a report to the Congress on implementation of the Helsinki Final Act which reveals that the Soviet Union and its East European allies have failed to live up to many of their commitments made at Helsinki, particularly in the area of human rights. What is especially appalling is that the Governments of the Soviet Union, Czechoslovakia, and other countries have imprisoned, exiled, and harassed members of monitoring groups.

Since 1978, the commission report shows, more than 280 Soviet human rights activists have been imprisoned. Just since January of this year, 57 persons have been imprisoned by Soviet authorities for seeking to exercise the basic human rights guaranteed them under the Helsinki accords. Persecution of Soviet religious activists is increasing, with 180 jailed in 1979 and 264 in prisons this year.

By its brutal military intervention in Afghanistan last December the Soviet Union violated at least 5 of the 10 principles of international behavior contained in the Helsinki Final Act. The invasion was followed by the banishment to internal exile of Nobel Peace Prize laureate Andrei Sakharov, a respected scientist who has won worldwide acclaim for his courage and devotion to the cause of human rights.

Both the provisions of the Final Act relating to the reunification of families, and article 12 of the International Covenant on Civil and Political Rights which guarantees the right of emigration are intended to insure that all persons have the right to leave any country, including their own. This right still does not exist in the Soviet Union and many other countries.

One has only to consider the case of Vladimir Kislik, a distinguished Soviet scientist who was denied the right to emigrate to Israel with his wife and son in 1973 and has been subjected to the most brutal harassment ever since. Like so many others, Kislik has endured beatings, interrogation, and even commitment to a mental hospital. His mistreatment is intended to discourage others from seeking official permission to leave the Soviet Union.

In a few weeks time, representatives of the 35 Helsinki signatory countries will meet in Madrid to prepare for a November conference to review implementation of the Final Act and to discuss new measures to advance European cooperation and security.

The Soviet Union and its allies are making a concerted effort to avoid discussion of Afghanistan, Andrei Sakharov and human rights issues at Madrid. They are warning that if so-called "disagreeable issues" are stressed by the United States and the Western powers, the Madrid conference could end in stalemate. The Russians are determined to have the conference focus on security issues and to endorse a Warsaw Pact proposal for a European conference on disarmament.

I think the Russians are in for a surprise at Madrid. There will be no sidestepping of human rights issues. The U.S. delegation has been instructed to insist on a balanced agenda and a balanced conference. This means a fair review of every element of the Helsinki accords.

By signing the Helsinki Final Act, the U.S.S.R. assumed certain obligations and subjected itself to international scrutiny and criticism on the human rights issue. If it will not live up to those obligations then let it pay the consequences in terms of the international opprobrim that it deserves.●

THE REGULATORY FLEXIBILITY ACT—AN IMPORTANT REFORM FOR SMALL BUSINESSES

● Mr. CULVER. Mr. President, the 96th Congress today scored a great victory for America's small businesses when the House of Representatives adopted S. 299, the Regulatory Flexibility Act.

I am very pleased that the House of Representatives today overwhelmingly passed S. 299, which will cut redtape and paperwork for the Nation's small businesses and small cities. I first introduced the Regulatory Flexibility Act 3 years ago and the Senate has passed it twice—the last time on August 6. Now the measure can go to the President for his signature.

S. 299 creates a more fair, efficient, and responsive Federal regulatory system for America's small businesses—the innovative and productive heart of our economy. It establishes the principle that Federal regulations should be tailored to fit the size and scale of the businesses, organizations, and governments subject to those rules. It institutionalizes the important concept that the same rules designed for General Motors often make no sense when applied to a small machine shop in Des Moines.

With the passage of this act, Federal regulations will have to be developed only after agencies thoroughly assess their impact on small businesses, small organizations or small governmental jurisdictions.

Agencies will be required to assess the cost of compliance with regulations for small entities. They will have to prepare an assessment of the paperwork burden which a new regulation would impose. And they will have to give small concerns a greater opportunity to participate in shaping rules which would affect them.

Over the past two decades, our country has made great strides in providing safer places for our citizens to work, cleaner air to breathe and water to drink, and insuring the manufacture of safer products. Many of these benefits are the result of new laws which Americans still support and which continue to provide important safeguards for all of us. It is not the intent of regulatory flexibility legislation to undermine these important achievements.

Rather it is a recognition that we can do better in implementing these laws. In our efforts to secure benefits for the public at large, we often have created conflicting standards or needlessly complex reporting or compliance requirements for small businesses. This legislation requires agencies to address that problem squarely and directly.

Mr. President, the passage of this bill is the culmination of 3 years of work on regulatory flexibility. I wish to thank my distinguished colleagues, Senator GAYLORD NELSON of Wisconsin, who, with me, first introduced the bill in August 1977, as S. 1974. His leadership, as

chairman of the Senate Small Business Committee, has helped establish a range of new Federal policies and programs to benefit small business. I would also like to thank Senator PAUL LAXALT of Nevada, whose work on regulatory reform and regulatory flexibility has proved invaluable.

In S. 299, we have established a series of measures which can assure that agencies address the special needs of small entities.

First, we require each Federal agency to prepare a regulatory flexibility analysis of proposed rules, in which they must estimate the economic and paperwork impacts of proposed rules before they are issued and develop alternatives which can be less burdensome for small businesses, small organizations and small governmental jurisdictions. And this analysis will be subject to appropriate judicial oversight.

Second, to insure timely notice of pending actions, S. 299 requires agencies to publish a regulatory flexibility agenda once every 6 months. The agenda is designed to give people outside of Washington, D.C., the time and opportunity to comment on proposed agency rules which will have a significant impact on a substantial number of small entities.

Third, to further assure that small businesses, organizations, and governmental units are given an appropriate role in the regulatory process, agencies will be directed to develop a number of outreach programs such as more public hearings and open conferences.

Fourth, the bill establishes a procedure for reviewing significant regulations at least once every 10 years to determine whether they can be rewritten to minimize their impact on small businesses, organizations, and local governments.

Finally, the bill permits the Office of Advocacy in the Small Business Administration to appear in court cases involving Government regulations to present the small business perspective.

Mr. President, S. 299 passed the Congress with the support of a broad coalition of interested persons and groups. Particular credit should be given to the National Federation of Independent Business, the National Small Business Association, and the Office of the Chief Counsel for Advocacy in the Small Business Administration. The bill also has had the continued and constructive cooperation of President Carter, organized labor, and public interest groups.

In the House of Representatives special thanks goes to the Speaker, my friend, Chairman NEAL SMITH of the House Small Business Committee, and all the other members of that committee who worked hard for the passage of S. 299. Special mention should be made of the efforts by Congressmen ANDY IRELAND and MARTY RUSSO. Also instrumental in this accomplishment were Chairman PETER RODINO, Congressman ROBERT KASTENMEIER, and other members of the House Judiciary Committee who have labored long and hard on regulatory reform legislation.

Finally, I wish to thank the staff of the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee, including Bob Nichols, John Podesta, Jim Davidson, and Al Regnery, and Tom Cator of the Small Business Committee for their tireless efforts in drafting the version of S. 299 which the Congress has now adopted. In addition, I appreciate the fine staff work performed by Jim Morrison, George Gilbert, and Chuck Nelson on earlier versions of this bill.●

THE SALE OF TRIDENT TO GREAT BRITAIN

● Mr. CHURCH. Mr. President, on July 15, the Governments of Great Britain and the United States announced a decision which will insure a viable independent British nuclear force well into the next century.

I refer to the decision made to modernize the British Polaris submarine-launched ballistic missile force, beginning in the early 1990's, with MIRV'ed Trident I missiles. The greater range of these missiles will permit British submarines to patrol much wider areas of the Atlantic, evading Soviet efforts to locate and track them and, in the event of hostilities, to destroy them. The additional warheads on the MIRV'ed Trident I will bring the number of British strategic nuclear weapons back up to approximately the same percentage of United States and Soviet warheads as it had in the early 1970's when the four British Polaris boats were first put to sea.

On July 21, the Congress received formal notification of the proposed sale pursuant to section 36(b) of the Arms Export Control Act. Thirty calendar days have now elapsed since that notification and the sale will go forward.

Mr. President, this is an extremely important strategic decision for Great Britain and the United States, culminating a very lengthy bilateral discussion and analysis. Since the dawn of the nuclear age the United States has cooperated intimately with Great Britain on the full range of nuclear matters. During the Second World War American and British scientists worked together on developing the first nuclear weapons. In 1962 President Kennedy agreed at Nassau to assist the development of an independent British nuclear deterrent, by selling Polaris missiles to the United Kingdom. The U.S. decision to assist Great Britain in modernizing its deterrent with the Trident missile signals a continuation of this historic relationship, which is a central element in the close security cooperation between our two countries.

Mr. President, I believe all Senators are well aware that the British strategic nuclear force is committed to the North Atlantic Alliance and that it makes an important contribution to the ability of NATO to deter Soviet aggression. I would add that this joint step by our two nations is only a part of our broader efforts, with our European allies, to strengthen NATO's defense capabilities in the face of continuing Soviet military buildup. These efforts, including 3 percent real growth in defense budgets, the NATO long-term defense program, and modernization of long-range theater nuclear forces, insure the continued security of Western Europe and the maintenance of world peace.

To be sure, modernization of the British strategic nuclear force represents a substantial expenditure, which must be balanced with other NATO and British security needs. Although Britain will pay a share of Trident I research and development costs, by purchasing these missiles from the United States the United Kingdom is saving up to $4 billion from the cost of independently developing a new British missile. In that regard I was pleased to note that Prime Minister Thatcher, in a letter to the President, reiterated her government's continued support for strengthening NATO's conventional forces. The British Government specifically intends to take advantage of the economies made possible by the purchase of Trident in order to reinforce its efforts to upgrade British conventional forces.

Mr. President, the conclusion of effective, equitable arms control agreements with the Soviet Union can also contribute importantly to Western security. As my colleagues are aware, the United States and the Soviet Union are currently preparing to hold informal, preliminary discussions on limiting long-range theater nuclear forces. Although there are many differences between the two sides and any future negotiations on theater nuclear forces are bound to be long and difficult, both sides agree that the British strategic nuclear force should not be included in these theater nuclear discussions or, indeed, in the next round of SALT negotiations.

Nor is the proposed sale of Trident inconsistent with the pending SALT II treaty. During the Committee on Foreign Relations hearings on the treaty last year, the relationship between SALT and our nuclear cooperation with our allies was thoroughly examined. Many members of the committee—including me—were concerned that article XII of the treaty, the noncircumvention provision, could be interpreted in such a way as to interfere with the existing patterns of collaboration and cooperation with our allies. Thus the committee unanimously recommended to the full Senate an understanding to the treaty which made clear that such cooperation would not be prevented by SALT II. Since that time, I believe actions taken by the United States have amply demonstrated our will and determination to continue to cooperate with our allies when it is in our overall security interests. I refer specifically to both the sale of Trident I missiles to the United Kingdom, and the decision of NATO ministers last December to modernize NATO's theater nuclear forces with the deployment of 572 additional intermediate-range missiles in Europe.

Mr. President, I heartily support both the British decision to modernize their nuclear forces, and the U.S. decision to assist British modernization with the Trident. I believe it is the correct course for our two nations to follow. It is important that Great Britain continue to maintain its independent deterrent, to

do so within the framework of the NATO Alliance and our historic relationship. I welcome this step as a means of strengthening our collective security.●

THE DEPORTATION OF MOHAMMED MILHEM

● Mr. STEVENSON. Mr. President, voices of restraint and moderation are lost in the much publicized comments of Palestinian and Israeli extremists. Thus, I was pleased to find in the Washington Post of August 28 a letter from Merle Thorpe, Jr., President of the Foundation for Middle East Peace. He singles out a Palestinian moderate, Mayor Mohammed Milhem, for recognition. I ask that his letter be printed in the RECORD.

The letter follows:

THE DEPORTATION OF MOHAMMED MILHEM

The Israeli Supreme Court's ruling last week, upholding the deportation of West Bank Mayor Mohammed Milhem, prompts comment on the interesting op-ed column by Nick Thimmesch ["A Plea to the Palestinians," July 8], in which he asked the whereabouts of peace-minded Palestinians.

"Only last week," Mr. Thimmesch wrote, "a group of 56 prominent American Jews issued a statement urging Israeli concessions . . . I am still looking for Palestinian counterparts to the fair-minded, intelligent Jews who want to resolve the Palestinian question."

Mr. Thimmesch identified, appropriately, three outstanding Jewish spokesmen for peace and recognition of a Palestinian state—Nahum Goldmann, Mattityahu Peled, Simha Flapan. I won't attempt to analyze certain Palestinian counterparts, such as Walid Khalidi, Edward Said and Issam Sartawi, but I would like to identify, by reference to this foundation's experience with one Palestinian, a problem facing peace-oriented Palestinians who are directly involved in the conflict.

Mr. Milhem was, early this year, together with a distinguished Israeli, to have been the recipient of a $10,000 peace award of this foundation. He was selected on the basis of acts and statements that showed him prepared for peace with Israel. The appropriateness of the selection was borne out by subsequent remarks he made to 150 Israelis (The Monday Night Club) in West Jerusalem in March. I believe you will agree that the following extracts from the transcript's question-and-answer period are representative.

"I want to bring the Palestinians to a Palestinian state, you want to bring Israelis to an Israeli state. We'll have to watch, both of us, that those who come will not determine the states—Jews or Arabs. . . .

"These boundaries of 1967 can be the boundaries of the state, provided the refugees get compensation and the return of the number that would be accepted by Israel.

"We won't want [expect] to see the Israeli army withdraw in one month. It can't happen. It may take 5, 6 or 10 years to withdraw. This is enough time to put the minds of the Israelis at rest and to test the good will of the Palestinians."

Mr. Milhem, who was applauded vigorously, was not speaking as a Palestinian-American or as a "friend" of a peace group. He was speaking as one in the center of the conflict, the elected representative of Palestinians in Halhoul, a West Bank municipality under occupation.

On May 3, following the Hebron shootings, Mr. Milhem (together with Hebron's Mayor Kawasmeh) was deported to Lebanon, unceremoniously, in the middle of the night, without trial or hearing, for prior, unspecified "inflammatory remarks." (Of Hebron, Mr. Milhem had told his Monday Night Club audience: "The time is not mature for Jewish owners to live in the middle of Hebron. Once we prepare the ground for it, everyone can live. . . . I'll take an Israeli passport and abide by Israeli laws, and you'll take an Arab passport and abide by their regulations.")

Mr. Milhem's offensive appears to have been his strong advocacy of peace with Israel on the basis of Palestinian self-determination in the 28 percent of Palestine represented by the West Bank and Gaza, an approach advocated by virtually all nations of the world except the United States and Israel.

One doesn't have to accept all of Mr. Milhem's views to acknowledge that he spoke constructively. Israeli journalist Amos Elon has written in Ha'aretz:

"They [Mr. Milhem and Mr. Kawasmeh] told whoever was willing to listen that they are prepared for a full peace with Israel, but in their own independent state . . . We were wrong in expelling two of the most outstanding and serious of these new leaders."

In conclusion, at least as to Palestinians under occupation, there are severe obstacles to the type of peace expression that Mr. Thimmesch seeks.

Typo

In my letter ["The Deportation of Mohammed Milhem," Aug. 28] a typographical error, unfortunately, left a key Milhem quote rather confusing. Milhem said:

"I want to bring the Palestinians to a Palestinian state, you want to bring the Israelis to an Israeli state. We'll have to watch, both of us, that those who come will not *undermine* [not 'determine'] the states—Jews or Arabs."

MERLE THORPE, Jr.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million, or in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that 15 such notifications were received: one on August 21, two on August 25, two on August 26, nine on August 28, 1980, and one on September 2.

Interested Senators may inquire as to the details of these preliminary notifications at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 21, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 26, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 26, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 26, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by

Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to an African country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 2, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications which have been received. The classified annex referred to in one of the covering letters is available to Senators in the office of the Foreign Relations Committee, room S-116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the

Arms Export Control Act, we are forwarding herewith Transmittal No. 80-93, concerning the Department of the Army's proposed Letter of Offer to Sudan for defense articles and services estimated to cost $14.5 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-93]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Sudan.

(ii) Total estimated value: Major Defense Equipment,* $13.0 million; Other, $1.5 million; Total, $14.5 million.

(iii) Description of articles or services offered: Eighty full tracked armored personnel carriers, M113A2, including ammunition and logistics support.

(iv) Military department: Army (UAM).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 Report: Included in report for quarter ending 31 March 1980.

(viii) Date report delivered to Congress: August 25, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.

In reply to: I-6564/80 ct

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-95, concerning the Department of the Army's proposed Letter of Offer to Sudan for defense articles and services estimated to cost $9.5 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-95]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Sudan.

(ii) Total estimated value: Major Defense equipment,* $8.5 million; Other, $1.0 million; Total, $9.5 million.

(iii) Description of articles or services offered: Eight M163A1 self-propelled Vulcan air defense guns.

(iv) Military department: Army (UAP).

(v) Sales commission, fee, etc. Paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 report: Included in report for quarter ending 31 March 1980.

(viii) Date report delivered to Congress: August 25, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-89, and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter of Offer to Malaysia for defense articles and services estimated to cost $38.2 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-89]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Malaysia.

(ii) Total estimated value: Major Defense Equipment,* $36.2 million; Other, $2.0 million; Total, $38.2 million.

(iii) Description of articles or services offered: Two RF-5E reconnaissance aircraft with government furnished aeronautical equipment spare parts, and support equipment.

(iv) Military department: Air Force (SLA).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: See Annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date Report Delivered to Congress: August 28, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-92, concerning the Department of the Army's proposed Letter of Offer to Egypt for defense articles and services estimated to cost $31.9 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-92]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS CONTROL ACT

(i) Prospective purchaser: Egypt.

(ii) Total estimated value: Major Defense Equipment,* $29.9 million; Other, 2.0 million; Total, $31.9 million.

(iii) Description of articles or services offered: Fifty-two improved TOW combat vehicles, M901, with TOW launchers, missiles, ancillary and support equipment, ammunition, related spare parts, training and other associated services.

(iv) Military department: Army (UBE).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 report: Case not included in Section 28 report.

(viii) Date report delivered to Congress: August 28, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 4, 1890.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-118, concerning the Department of the Army's proposed Letter of Offer to Greece for defense articles and services estimated to cost $12.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620c(d) of the Foreign Assistance Act of 1961 that this action is consistent with Section 620c(b) of that statute.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-118]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Greece.

(ii) Total estimated value: Major Defense Equipment,* $11.6 million; Other, $.4 million; Total, $12.0 million.

(iii) Description of articles or services offered: Ten M728 combat engineer vehicles and 12 M113A2 armored personnel carriers.

(iv) Military department: Army (WIV).

(v) Sales commission, fee, etc. paid, offerred or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 Report: Included in report for quarter ending 30 June 1980.

(viii) Date report delivered to Congress: September 4, 1980.

UNDER SECRETARY OF STATE,
Washington, D.C.

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended, and the authority vested in me by section 1(a)(1) of the Department of State Delegation of Authority No. 145, I hereby certify that the provision of M-728 engineer vehicles and M113A2 armored personnel carriers to the Government of Greece is consistent with the principles contained in Section 620(b) of the Foreign Assistance Act of 1961, as amended.

This certification will be made part of the certification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and is based on the justification accompanying said certification, and of which such justification constitutes a full explanation.

MATTHEW NIMETZ.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 4, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-115, concerning the Department of the Army's proposed Letter of Offer to Austria for defense articles and services estimated to cost $117.6 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-115]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(B) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Austria.

(ii) Total estimated value: Major defense equipment*—$113.8 million; Other, $3.8 million; Total, $117.6 million.

(iii) Description of articles of service offered: One hundred twenty M60A3 turrets, 80 M60A1 turrets, and 120 modification kits (M60A1 to M60A3).

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iv) Military Department: Army (UTB).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense Services proposed to be sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date report delivered to Congress: September 4, 1980.●

JANE HART

● Mr. HUDDLESTON. Mr. President, I am certain all my colleagues in the Senate will be most interested in a book recently published by Penguin Books and cowritten (with Beverly Jones) by my friend and constituent, Jane Hart of Frankfort, Ky. Jane's book, entitled "Where's Hannah," is her personal story of living with and dealing with a problem that concerns us all: the education, development, and care of learning-disabled children.

"Where's Hannah" gives clear evidence that a severely developmentally disabled person can grow, learn, and change through proper attention so difficult for many to find. It explores Movigenics, the theory that examines the relationship between movement and learning efficiency for the "special child." There are thousands of children like Hannah and thousands of parents who have faced the same problems as Jane and her husband, Ken. Hannah is but a single representative of these thousands of children labeled "special" who must face an educational maze. As Jane states:

> Only when we stop dividing the population into arbitrary, usually hurtful, categories and start looking at all people as living beings will no children be condemned to special classes, special categories, special institutions and special places in society.

Jane Hart assisted in establishing the first public-school class in Kentucky for perceptually handicapped children and for the past decade has worked for the Kentucky Department of Mental Health developing educational materials. She is to be personally commended. But more importantly, Jane's book is of value to our society because of the guidance and insights it offers to others who struggle with these problems and questions daily. I recommend "Where's Hannah" as an important book to all of us who are interested in the education and care of learning-disabled children.●

CELLULOSE INSULATION

● Mr. McCLURE. Mr. President, the process of Government regulation of the economy is a major issue of our time. Regulatory rigidity and incompetence has been identified as a significant cause of declining productivity and increasing costs.

The Consumer Product Safety Commission seems to be well on its way to providing us with another example of just that kind of counterproductive regulation. In 1978, with the support of most manufacturers of cellulose insulation, Congress directed the CPSC to adopt a standard for cellulose insulation that would assure that it was not subject to dangerous flammability or corrosion. We directed that CPSC follow existing GSA specifications, and to follow GSA modifications, unless it decided otherwise. Well, CPSC did decide otherwise, and adopted a different set of tests, which have proved to be wildly variable and unreliable in actual operation.

Cellulose insulation has been made in America for over 50 years. With the growing emphasis on energy conservation, it has become an important source of energy savings—especially in the "retrofit" market. The files of the CPSC contain only one instance of injury attributed to this insulation: someone stepped on smoldering insulation that had been thrown out of a house.

Cellulose insulation is made by a host of small manufacturers across the country. Perhaps 200 to 500 exist today, though there were more than 800 before CPSC began its crusade against cellulose. Most of these manufacturers subscribe to testing programs by major independent testing laboratories, such as Underwriters' Laboratories, Factory Mutual, and others. They also conduct repeated periodic testing for quality control by their own employees.

What has been happening throughout the country now is that a manufacturer, having passing test results from a private certifying laboratory, finds that CPSC has found his product out of compliance, and told him to close up shop. In fact, in the first round of its enforcement testing conduced in late 1979, over 75 percent of all manufacturers tested by the CPSC failed. In many of these cases, the business has taken from the assembly line the very next bag to that taken by CPSC, had it tested privately, and found that it passed.

Yet the tests that mean life or death for many small businesses are very widely variable. When CPSC asked 10 labs, including its own, under NBS supervision, to test each of 7 samples, in only 3 of the 7 cases could the labs agree on whether the material passed or failed, let alone agree on what the exact results were. Analysis of these tests reveal that the results of the tests can vary by up to 58 percent.

These results are hardly surprising when you consider some of the tests. One of them tests cellulose insulation's resistance to smoldering. This test is begun by placing a cigarette in a box of insulation. CPSC is apparently uninterested in the fact that the heat of the cigarette can vary by over 70 percent, from under 500° to over 850°. In other cases, CPSC's own material indicates that highly important conditions, such as temperature and humidity, have not been held constant as required by the test manual. It is little wonder that the outcome for any individual manufacturer is little better than a lottery.

Let me emphasize that this is not a case where the regulated industry wants to do away with a standard or regulation. The industry wants a consistent, scientifically accurate standard and tests that can accurately distinguish between complying and noncomplying insulation.

Nor is this a case where the regulators have said, "You failed because of this defect—do it this other way." If that were the case, the beleaguered manufacturer could at least try to comply, even if he did not agree. Here, however, CPSC gives no clue as to why the material is failing its tests.

After the very large failure rate on the first round of tests, CPSC has been giving people to believe that it worked to help bring companies into compliance, and that it is essentially only a few malcontents who continue to complain. This is not true. In fact, in the second round of testing, earlier this year, the failure rate at CPSC was essentially unchanged, ranging over 75 percent.

CPSC has been unwilling to accept an offer by members of the cellulose industry to participate in, at the industry's expense, a program to "calibrate" all testing laboratories who wanted to participate, so that consistent results could be obtained.

Apparently stymied by bureaucratic inertia, these small businesses turned to Congress. I have spoken to companies in my State, and I am sure some of my colleagues have done the same. The Appropriations Subcommittee now considering the CPSC budget has noted in its report that:

> We encourage the Commission to strive for scientific consensus on the means and procedures for conducting tests under the amended standard. The Commission should continue to work with independent testing laboratories and the industry to insure that all tests conducted on the same material will yield consistent results. The Commission should also continue its efforts to assist manufacturers to comply with the standard, including explaining deficiencies in product characteristics that lead to test failure.

Although this is couched in the cautious language appropriate to the Appropriations Committee, its meaning is clear, and I welcome this display of concern with the CPSC program. Congress simply should not support an agency that is unwilling to submit itself to scientific scrutiny, an agency that will attempt to ruin small business based on tests that do not meet standards of scientific accuracy.

We are dealing here with essentially a technical scientific problem, not primarily a political or legal one. However, CPSC has made it political. If CPSC were willing to participate in a program with private testing labs and industry to assure that all labs were calibrated to produce the same results on the same material, the largest part of the problem would disappear. I trust that the wisdom of that course will soon break through the bureaucratic shell of the CPSC, and allow reason and science to alter the current course of the CPSC's administration of its cellulose insulation standard.●

MARINE PROTECTION, RESEARCH AND SANCTUARIES AUTHORIZATIONS—TITLE II

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1123.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1123) entitled "An Act to amend section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations for title II of such Act for fiscal year 1980", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That section 203 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1443) is amended to read as follows:

"SEC. 203. (a) The Administrator of the Environmental Protection Agency shall—

"(1) conduct research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of—

"(A) determining means of minimizing or ending, as soon as possible after the date of the enactment of this section, the dumping into ocean waters, or waters described in section 101(b), of material which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities, and

"(B) developing disposal methods as alternatives to the dumping described in subparagraph (A); and

"(2) encourage, cooperate with, promote the coordination of, and render financial and other assistance to appropriate public authorities, agencies, and institutions (whether Federal, State, interstate, or local) and appropriate private agencies, institutions, and individuals in the conduct of research and other activities described in paragraph (1).

"(b) Nothing in this section shall be construed to affect in any way the December 31, 1981, termination date, established in section 4 of the Act of November 4, 1977 (Public Law 95-153; 33 U.S.C. 1412a), for the ocean dumping of sewage sludge.".

SEC. 2. Section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1444) is amended—

(1) by striking out "and" immediately after "fiscal year 1977,", and

(2) by striking out "fiscal year 1978," and inserting in lieu thereof the following: "fiscal year 1978, not to exceed $11,396,000 for fiscal year 1981, and not to exceed $12,000,000 for fiscal year 1982,".

UP AMENDMENT NO. 1565

(Purpose: Add section relating to scientific assessment of damages to natural resources from spills of petroleum or petroleum products)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate concur in the House amendment with an amendment, which I send to the desk, and I ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. CANNON, proposes an unprinted amendment numbered 1565.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of such Act, insert the following new section:

"SEC. 3. Section 202(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1442(a)) is amended by inserting the following immediately after the first sentence thereof: 'These responsibilities shall include the scientific assessment of damages to the natural resources from spills of petroleum or petroleum products.' ".

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FISH AND WILDLIFE CONSERVATION ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 3292, the Fish and Wildlife Conservation Act of 1980, be discharged from the Committee on Environment and Public Works and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3292) to assist the States in developing fish and wildlife conservation plans, and for other purposes.

UP AMENDMENT NO. 1566

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CULVER, I send to the desk an amendment to H.R. 3292 in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), on behalf of Mr. CULVER, proposes an unprinted amendment numbered 1566 in the nature of a substitute.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Fish and Wildlife Conservation Act of 1980".

SEC. 2. DECLARATION OF FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares the following:

(1) Fish and wildlife are of ecological, educational, esthetic, cultural, recreational, economic, and scientific value to the Nation.

(2) The improved conservation and management of fish and wildlife, particularly nongame fish and wildlife, will assist in restoring and maintaining fish and wildlife and in assuring a productive and more esthetically pleasing environment for all citizens.

(3) Many citizens, particularly those residing in urban areas, have insufficient opportunity to participate in recreational and other programs designed to foster human interaction with fish and wildlife and thereby are unable to have a greater appreciation and awareness of the environment.

(4) Historically, fish and wildlife conservation programs have been focused on the more recreationally and commercially important species within any particular ecosystem. As a consequence such programs have been largely financed by hunting and fishing license revenues or excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the conservation needs of nongame fish and wildlife.

(5) Each State should be encouraged to develop, devise, and implement, in consultation with appropriate Federal, State, and local and regional agencies, a plan for the conservation of fish and wildlife, particularly those species which are indigenous to the State.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife; and

(2) to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, th furtherance of the provisions of this Act.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) The term "approved conservation plan" means the conservation plan of a State approved by the Secretary pursuant to section 5(a) of this Act.

(2) The term "conservation plan" means a plan developed by a State for the conservation of fish and wildlife which meets the requirements set forth in section 4.

(3) The terms "conserve", "conserving", and "conservation" mean to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the ecological, educational, esthetic, cultural, recreational, and scientific enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(4) The term "designated State agency" means the commission, department, division, or other agency of a State which has primary legal authority for the conservation of fish and wildlife. If any State has placed such authority in more than one agency, such term means each such agency acting with respect to its assigned responsibilities but such agencies, for purposes of this Act, shall submit a single conservation plan.

(5) The term "fish and wildlife" means wild vertebrate animals that are in an unconfined state, including, but not limited to, nongame fish and wildlife.

(6) The term "nongame fish and wildlife" means wild vertebrate animals that are in an unconfined state and that—

(A) are not ordinarily taken for sport, fur, or food, except that if under applicable State law, any of such animals may be taken for sport, fur, or food in some, but not all, areas of the State, any of such animals within any area of the State in which such taking is not permitted may be deemed to be nongame fish and wildlife;

(B) are not listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362 (5)).

Such term does not include any domesticated species that has reverted to a feral existence.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SEC. 4. CONSERVATION PLANS.

The conservation plan of any State must—

(1) provide for the vesting in the designated State agency of the overall responsibility for the development and revision of the conservation plan;

(2) provide for an inventory of the nongame fish and wildlife, and such other fish and wildlife as the designated State agency deems appropriate, that are within the State and are valued for ecological, educational, esthetic, cultural, recreational, economic, or scientific benefits by the public;

(3) with respect to those species identified under paragraph (2) (hereinafter in this section referred to as "plan species"), provide for—

(A) the determination of the size, range, and distribution of their populations, and

(B) the identification of the extent, condition, and location of their significant habitats;

(4) identify the significant problems which may adversely affect the plan species and their significant habitats;

(5) determine those actions which should should be taken to conserve the plan species and their significant habitats;

(6) establish priorities for implementing the conservation actions determined under paragraph (5);

(7) provide for the monitoring, on a regular basis, of the plan species and the effectiveness of the conservation actions determined under paragraph (5);

(8) provide for plan review and revision, if appropriate, at intervals of not more than 3 years;

(9) ensure that the public be given opportunity to make its views known and considered during the development, revision, and implementation of the plan; and

(10) provide that the designated State agency consult, as appropriate, with Federal agencies, and other State agencies during the development, revision, and implementation of the plan, in order to minimize duplication of efforts and to ensure that the best information is available to all such agencies.

SEC. 5. APPROVAL OF CONSERVATION PLANS AND CERTAIN NONGAME FISH AND WILDLIFE CONSERVATION ACTIONS.

(a) APPROVAL BY SECRETARY OF PLANS.—(1) Any State may apply to the Secretary for approval of a conservation plan.

(2) Applications for the approval of conservation plans shall be made and reviewed by the Secretary in such manner as the Secretary shall by regulation prescribe.

(3) As soon as practicable, but not later than 180 days, after the date on which a State submits (or resubmits in the case of prior disapproval) an application for the approval of a conservation plan the Secretary shall—

(A) approve the conservation plan, and designate it as an approved conservation plan, if he determines that the plan—

(i) meets the requirements set forth in section 4, and

(ii) is substantial in character and design; or

(B) disapprove the conservation plan if he determines that—

(i) the plan does not meet the requirements set forth in section 4, or

(ii) to implement any part of the plan on the basis of the specifications, determinations, identifications, or priorities therein would threaten the natural stability and continued viability of any of the plan species concerned.

If the Secretary disapproves a plan, he shall give the State concerned a written statement of the reasons for disapproval and provide the State opportunity for consultation with respect to deficiencies in the plan and the modifications required for approval.

(b) EFFECT OF APPROVAL OF PLANS.—If the Secretary approves the conservation plan of any State under subsection (a)—

(1) that portion of such plan that pertains to wildlife conservation shall be deemed to be an approved plan for purposes of section 6(a)(1) of the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act; and

(2) that portion of such plan that pertains to fish conservation shall be deemed to be an approved plan for the purposes of section 8(a)(1) of the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(c) CONSERVATION ACTION.—If the Secretary approves the conservation plan of any State under subsection (a), those conservation actions set forth in the plan which pertain to nongame fish and wildlife shall be deemed to be eligible as nongame fish and wildlife projects for which reimbursement is available under section 6.

(d) NONGAME CONSERVATION ACTIONS IN THE ABSENCE OF AN APPROVED PLAN.—In the absence of an approved conservation plan, and on a showing of need by the State, the Secretary may deem certain conservation actions to be nongame fish and wildlife projects for which reimbursement is available under section 6(a)(3) if they—

(1) are consistent with such of the requirements set forth in section 4 as may be appropriate, including, but not limited to, the requirements in paragraphs (3), (4), (5), and (7) of such section; and

(2) are substantial in character and design.

SEC. 6. REIMBURSEMENT OF STATE COSTS FOR DEVELOPING, REVISING, AND IMPLEMENTING CONSERVATION PLANS AND IMPLEMENTING CERTAIN NONGAME FISH AND WILDLIFE CONSERVATION ACTIONS.

(a) IN GENERAL.—Any State may apply to the Secretary for reimbursement under this section for costs incurred by the State for the following:

(1) The development of a conservation plan.

(2) The revision of an approved conservation plan.

(3) The implementation of nongame fish and wildlife conservation actions approved under sections 5(c) and (d).

(4) The implementation of conservation actions specified in an approved conservation plan.

(5) The coordination, consolidation, or implementation of the conservation plan or conservation actions approved under this Act with other related plans or actions developed pursuant to the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act and the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(b) APPLICATIONS.—Application for reimbursement under this section shall be made in such manner as the Secretary shall by regulation prescribe and shall contain such information whether the State meets the eligibility requirements set forth in subsection (c).

(c) ELIGIBILITY.—No State is eligible for reimbursement under this section unless the Secretary finds that the costs, for which reimbursement is sought, have been incurred by the State as follows:

(1) If reimbursement is sought under subsection (a)(1), such costs have been incurred in developing a conservation plan that meets the requirements set forth in section 4.

(2) If reimbursement is sought under subsection (a)(2), such costs have been incurred in revising the plan in a manner consistent with such requirements.

(3) If reimbursement is sought under subsection (a)(3), such costs have been incurred in implementing the conservation actions as approved by the Secretary.

(4) If reimbursement is sought under subsection (a)(4), such costs have been incurred in implementing conservation actions specified in, and in a manner consistent with, the approved conservation plan.

(5) If reimbursement is sought under subsection (a)(5), such costs have been incurred in consolidating, coordinating or implementing conservation plans and actions approved under this Act with approved plans and actions under the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act and the Act of September 2, 1950 (16 U.S.C. 6690e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act in a manner consistent with sections 2 and 4 of this Act.

(d) REIMBURSEMENT.—Subject to the limitations in subsection (c) and the terms and conditions imposed under section 7, and to the availability of funds appropriated under section 11, the Secretary shall reimburse each State which the Secretary finds to be eligible therefor under subsection (c).

(e) LIMITATIONS.—(1) The total amount of the reimbursement paid to any State under this section with respect to any fiscal year may not exceed the allocation available to the State under section 8 for such year.

(2) No reimbursement may be paid under this section to any State for any cost incurred by the State during any fiscal year—

(A) after September 30, 1991, in developing a conservation plan;

(B) after September 30, 1986, for costs incurred in implementing certain nongame fish and wildlife actions approved under section 5(d);

(C) in which less than 80 percent of the costs to be reimbursed are for the principal benefit of nongame fish and wildlife or the users of nongame fish and wildlife;

(D) in implementing an approved conservation plan, unless the cost was incurred in implementing actions approved under section 5 (c) or (d);

(E) in implementing an approved conservation plan covering only nongame fish and wildlife, or any nongame fish and wildlife conservation action aporoved under section 5 (c) or (d), to the extent that more than 10 percent of such costs are paid for with moneys collected during such year by the State—

(i) from the sale of hunting, fishing, and trapping licenses, and

(ii) as penalties (including forfeitures) for violations of the hunting, fishing, and trapping laws of the State; or

(F) in implementing an approved conservation plan or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that—

(i) more than 10 percent of such costs are applied for purposes of conservation law enforcement under any such plan or action, and

(ii) more than 10 percent of such costs in

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any such year are accounted for by personal service or other inkind contributions.

(3) The amount of the reimbursement paid to any State under this section with respect to any fiscal year—

(A) may not exceed 75 percent for the development of a conservation plan except that during fiscal years 1982, 1983, and 1984 such amount shall not exceed 90 percent;

(B) for the implementation of nongame fish and wildlife conservation actions approved under section 5 (c) or (d), may not exceed 75 percent of the cost of implementing the action during such fiscal year, except that if such action is undertaken by two or more States such amount shall not exceed 90 percent;

(C) during and after the fiscal year in which the conservation plan of the State is approved under section 5(a), may not exceed 75 percent of the cost of implementing and revising the conservation plan during such fiscal year, or if two or more States cooperate in implementing or revising such plan, such cost shall not exceed 90 percent, and

(D) after September 30, 1991, may not exceed—

(i) 50 percent of the cost of implementing and revising the plan during the fiscal year, if the approved conservation plan of the State covers only nongame fish and wildlife, or

(ii) 75 percent of the cost of implementing and revising the plan during such fiscal year, if the approved conservation plan of the State coordinates and consolidates planning for fish and wildlife.

(4)(A) In computing the costs incurred by any State during any fiscal year in developing or revising conservation plans, in implementing approved conservation plans, or in implementing nongame fish and wildlife conservation actions approved under section 5 (c) or (d), for which reimbursement may be available under this section, the Secretary shall—

(i) take into account, in addition to each outlay, the value of inkind contributions and real and personal property received and applied during such year by the State for such purposes; and

(ii) not include any other Federal moneys received by such State and applied by it, directly or indirectly, for such purposes.

(B) For purposes of subparagraph (A), inkind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies regarding fish and wildlife. The Secretary shall by regulation establish (i) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as inkind contributions; and (ii) the standards under which the Secretary will determine the value of inkind contributions and real and personal property for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be final and conclusive.

SEC. 7. TERMS AND CONDITIONS OF REIMBURSEMENT.

Reimbursements made to the States under section 6 shall be subject to such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. Such terms and conditions shall include, but not be limited to, the following:

(1) Each State and each designated State agency shall keep such records as the Secretary shall require as being necessary or appropriate for fully disclosing the amount and purposes of costs incurred by the State for which reimbursement under section 6 is, or may be, sought. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to such records.

(2) Upon a finding by the Secretary, after notice and opportunity for an agency hearing on the record, that any State has received reimbursement under section 6 for which it is not eligible, or has violated any term or condition imposed under this section, the State shall thereafter be ineligible to receive reimbursement under such section until restitution satisfactory to the Secretary is made, such violation ceases, or adverse effects resulting from such violation are remedied.

SEC. 8. ALLOCATION OF FUNDS FOR ADMINISTRATION AND REIMBURSEMENT OF STATES.

(a) IN GENERAL.—The total amount appropriated pursuant to section 11 for any fiscal year shall be available for administration and for allocation among the States as provided in this section.

(b) ALLOCATION FORMULA.—Of the total amount appropriated for any fiscal year pursuant to section 11—

(1) the Secretary shall deduct so much, but not to exceed 8 percent thereof, as may be necessary for administering during such fiscal year the provisions of this Act relating to the purposes for which so appropriated;

(2) less the deduction under paragraph (1), the Secretary shall allocate—

(A) for the District of Columbia and the Commonwealth of Puerto Rico each a sum equal to not more than one-half of 1 percent of such amount; and

(B) for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands each a sum equal to not more than one-sixth of 1 percent of such amount; and

(3) less the deduction under paragraph (1) and the sums allocated under paragraph (2), the Secretary shall allocate for each of the States (other than those provided for in paragraph (2)) a sum—

(A) one-third of which is based on the ratio to which the area of such State bears to the total area of all such States, and

(B) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States,

except all sums allocated under this paragraph shall be adjusted equitably so that no State shall be allocated a sum which is less than one-half of 1 percent of the amount available for allocation under this paragraph for any fiscal year or more than 5 percent of such amount.

(c) TREATMENT OF AMOUNTS ALLOCATED BUT NOT USED FOR ANY FISCAL YEAR.—(1) That portion of any amount deducted by the Secretary under subsection (b)(1) for administrative purposes for any fiscal year and not expended during such fiscal year shall remain available for administrative purposes until the close of the next succeeding fiscal year and if not obligated or expended by the close of such succeeding fiscal year shall be available for disbursement by the Secretary without regard to subsection (b), to the States to carry out the purposes of this Act.

(2) That portion of any amount allocated to any State under subsection (b) (2) or (3) for any fiscal year and not disbursed to the State for such fiscal years under section 6 shall remain available for disbursement to the State under such section for the next succeeding fiscal year and if not disbursed for such succeeding fiscal year shall be available for disbursement by the Secretary, without regard to subsection (b), to the States to carry out the purposes of this Act.

SEC. 9. OTHER FEDERAL ASSISTANCE AND ACTIONS.

The Secretary and the chief executive officer of any other appropriate Federal department or agency may loan to any State such personnel and equipment of the department or agency, share such scientific or other appropriate information, and provide such other assistance as the Secretary or officer determines appropriate for purposes of assisting any State to develop or revise conservation plans.

SEC. 10. DISCLAIMERS.

Nothing in this Act shall be construed as affecting—

(1) the authority, jurisdiction, or responsibility of the States to manage, control, or regulate fish and resident wildlife under State law;

(2) any requirement under State law that lands, waters, and interests therein may only be acquired for conservation purposes if the owner thereof is a willing seller; and

(3) the authority of the Secretary of Agriculture under the Act of March 2, 1931 (46 Stat. 1468–1469; 7 U.S.C. 426–426b).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for purposes of making reimbursements under section 6 to States for the development and implementation of conservation plans and for administration of this Act under section 8 not to exceed $5,000,000 for each of fiscal years 1982, 1983, 1984, and 1985.

SEC. 12. STUDY.

The Director of the United States Fish and Wildlife Service, in consultation with affected parties, shall conduct, out of funds available for the administration of this Act a comprehensive study to determine the most equitable and effective mechanism for funding State conservation plans and actions under this Act, including, but not limited to, funding by means of an excise tax on appropriate items. On or before the expiration of the 30-month period following the date of enactment of this Act, the Director shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives the results of such study, together with his recommendations with respect thereto.

Amend the title so as to read: "A bill to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CULVER, I am authorized to say that this legislation, which would encourage States to develop management programs for nongame species of wildlife, is similar to the bill S. 2181 which passed the Senate on May 22, 1980. The Senate bill was passed after H.R. 3292 had been approved and sent to the Senate for consideration. The intention of today's action is to pass the House bill with provisions to which both the House and Senate can agree.

Essentially, the compromise bill would encompass the provisions of the Senate bill except that the discretion of the States to establish management programs for invertebrate species would be deleted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

● Mr. CHAFEE. Mr. President, I believe that H.R. 3292 is a landmark in U.S. conservation efforts. With this approval Congress is recognizing that conservation and management of a broad spectrum of wildlife species not only makes good scientific sense but is also in the national interest. Today's legislation will allow State wildlife agencies in the future to coordinate, integrate and design complimentary programs for both traditional game species and so called nongame species of wildlife. In reality this will mean the States now have the opportunity to manage major portions of ecosystems. This broader management flexibility should result in major benefits to both consumptive and nonconsumptive users of our wildlife resources.

On the committee we have seen a tremendous amount of support for this particular legislation from all the States and from organizations throughout the wildlife conservation community. The committee has held two hearings and the testimony we received indicates that in addition support for the legislation exists among other interest groups, such as agriculture and forestry.

The bill the Senate is approving today is the result of efforts made over the last few weeks to resolve differences between Senate and House bills, both of which have been approved on this subject. I believe the legislation resulting from these efforts retains the best characteristics of both bills and at the same time recognizes that realistic limits must be placed on this new program. The final version retains two elements of the Senate-approved bill which are significant. It contains as did the Senate bill an authorization for programmatic moneys so that existing State "nongame" programs or approvable portions of State "nongame wildlife" plans can apply for Federal aid in fiscal year 1982. It is the committee's understanding that this will be of immediate benefit to perhaps 21 States.

Today's bill also includes a study of potential financing mechanisms for the programs envisioned in this legislation. Many witnesses who testified before the committee believed it to be both practical and equitable to finance this new program with an excise tax similar to that used to finance the Dingell-Johnson and Pittman-Robertson programs. The committee will be interested in receiving the results of this study and hopes that some mechanisms other than appropriated funds can be identified.

One of the major changes from the Senate bill which is contained in the final legislation is the deletion of invertebrates from the coverage of the law. While I understand the rationale for this position—the potential number of invertebrate species could quickly exhaust the money and overwhelm the planning process of the proposed programs—this deletion should not be viewed as an indication that invertebrates are not important parts of any wildlife management schemes. It should be remembered that the States can apply their own resources to invertebrates if such species appear to be in need of management efforts.

In addition, the committee would point out that when such species are threatened or endangered or crucial to the survival of another threatened or endangered species it is possible that the conservation management funds under section 6 of the Endangered Species Act may be available for management of the species. Such use of these funds would be consistent with the philosophy in today's legislation: effective and wise management of wildlife and the ecosystem on which they depend will avoid such species being a candidate for either threatened or endangered species.

Finally, I would note that both the House and Senate bills which were approved were consistent on the point that in the future the States should make every effort to expand in scope and integrate all their wildlife planning efforts. Both bills agreed that wise "ecosystem" management would be in the best interest of this Nation's wildlife resources and those who wish to enjoy these resources. The final version of this legislation retains this concept and provides incentives to the States to move their programs toward such a comprehensive management scheme. I hope the States will respond positively to this challenge, and I am sure they will.

Mr. President, before closing, I would also like to compliment Senator CULVER, chairman of the Environment and Public Works Committee's Subcommittee on Resource Protection for this support and concern regarding this legislation. I also would like to mention the hard work and attention given this subject by Congressmen FORSYTHE and BREAUX, ranking member and chairman of the Subcommittee on Fisheries and Wildlife of the House Merchant Marine and Fisheries Committee. The staffs, both majority and minority, of both committees have been tireless in their efforts on this bill and I would also like to thank them for their help and advice.

Thus, Mr. President, I wholeheartedly support this legislation we are passing today and the landmark steps it envisions. I urge each of my colleagues to do the same.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HARLEY O. STAGGERS FEDERAL BUILDING

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 6511 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

it is so ordered.

The legislative clerk read as follows:

A bill (H.R. 6511) to designate the building know as the Federal Building in Morgantown, West Virginia, as the "Harley O. Staggers Federal Building".

UP AMENDMENT NO. 1567

(Purpose: To provide an effective date for the authorization)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I send to the desk an amendment to H.R. 6511.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. RANDOLPH, proposes an unprinted amendment numbered 1567:

On page 2, after line 3, insert the following:

SEC. 2. The authorization contained in section 1 of this Act shall become effective on January 15, 1981."

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR H.R. 6372, H.R. 7466, AND H.R. 7666 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as they arrive in the Chamber, H.R. 6372, H.R. 7466, and H.R. 7666 be held at the desk pending further disposition by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 990, 1004, 1011, 1012, and 1013.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the purpose of the reservation is to provide an opportunity to advise the majority leader that the five calendar items identified by him have been cleared on our calendar and we have no objection to their consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader.

SOUTHWEST POWER ADMINISTRATION ADMINISTRATIVE PROVISIONS

The Senate proceeded to consider the bill (S. 1519) to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs in-

curred by the Southwestern Power Administration, to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 2, line 7, strike "all other reimbursable costs of said system have been returned to the Treasury" and insert "January 1, 2027";

On page 2, line 19, after "Act" insert a colon and "*Provided*, That nothing in this Act is intended to endorse the rate limitation provisions of said contract";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Energy (hereinafter referred to as the "Secretary") is authorized and directed to adjust the power system average rate and repayment schedule of the Southwestern Power Administration System to defer for repayment until all other reimbursable costs of said system have been returned to the Treasury, January 1, 2027, an amount representing the difference in revenue realized from past and future sales of power and energy to the Arkansas Power and Light Company, an Arkansas corporation, pursuant to contract numbered Ispa-514, dated January 29, 1952, and the revenues that would have been or would be received from sales of an equal amount of power and energy marketed under established system rate schedules.

SEC. 2. The Secretary is further authorized and directed to waive all interest charges heretofore or hereinafter incurred on such amounts the repayment of which is authorized and directed to be deferred by this Act. Act: *Provided*, That nothing in this Act is intended to endorse the rate limitation provisions of said contract.

SEC. 3. Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) is amended by removing the period at the end of the second sentence and inserting a comma in its place and adding the phrase "and, in the case of the Southwestern Power Administration, that period shall not exceed sixty years.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-908), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The purpose of this measure, as reported by the Committee on Energy and Natural Resources, is to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration (SWPA), to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944.

In 1952, SWPA signed a contract with Arkansas Power & Light Co. and the Reynolds Aluminum Co. in which SWPA was required to furnish 150 megawatts of power to the power company for resale to the aluminum company. Most of the power was, and still is, being used for the production of aluminum at a plant located at Arkadelphia, Ark.

This contract is for a fixed term of 30 years, and contains provisions which have not allowed the establishment of rates high enough to compensate SWPA for the cost of investments and operation. The contract provides for an annual limitation on rate increases as distinct from the normal contract used by the Federal Power Marketing Administrations in which rates are allowed to be adjusted from time to time by the Administration to cover such costs. In the case of the Arkansas Power & Light contract, this special arrangement was deemed to be warranted in the interest of strengthening aluminum production for meeting defense needs during the Korean war.

However, because of the contract limitation on rate increases, the proceeds from the sale of this resource to Arkansas Power & Light Co. have been much less over the past twenty-seven (27) years than would have been realized if SWPA had sold the power to preference customers in the area under normal contract provisions. At the present time, the deficiency in revenue for repayment of the cost of the SWPA system resulting from this contract is approximately $18,500,000.

Also, the effect of this revenue shortfall has been to increase interest on unpaid investment by approximately $13,500,000; thus, increasing the total balance to be repaid to about $32 million above the balance that would now be on the books if the contract had not been executed. By the end of the 30-year contract term (1983), this sum will have escalated to about $49 million. In the proposed rate increases for the preference customers of SWPA, the Administration proposes to make up this existing and potential revenue deficit by increasing the rates to the preference customers by the system.

Currently, a suit brought by Arkansas Power & Light Co. is pending against SWPA regarding the rates to be paid for the remaining term of the contract. Contrary to the contract terms, SWPA proposes to raise power rates to AP&L to correspond to prevailing systemwide rates, arguing that the original contract rate provisions are illegal.

The committee believes that section 1 of this legislation codifies established policy with regard to the scheduling of repayment of debts incurred by SWPA due to the Arkansas Power & Light contract by delaying the repayment. That policy was established in 1956 when a White House directive specified that SWPA customers would not be asked to bear the financial burden of making up the losses from the contract during the repayment period. That policy had been followed by the Administration until 1978 when SWPA proposed a general increase in wholesale rates which included an assessment for the AP&L contract debt. The committee finds the remedy provided by S. 1519 to be necessary in order to ease the financial burden on SWPA customers created by the sharp rise in power rates required for the collection of past debts during the system repayment period. Deferral of the repayment of this debt would smooth the price effects of debt reimbursement.

The policy changes embodied in section 2 and 3, the waiving of interest charges on the deficit created by the AP & L contract and the extension of system repayment periods reflects the committee's intent to assist SWPA customers in the repayment of accumulated SWPA debts.

This debt accumulation has resulted not only from the AP & L contract, but also from several other noncompensatory contracts entered into by SWPA between 1950 and 1962.

Because SWPA did not begin to repay principal debts on a number of projects from which power was sold under these contracts until 1975, SWPA customers are now obligated to repay this principal and accumulated interest on a foreshortened repayment period. The provisions of section 2 and 3 are designed to provide relief to customers by waiving the interest on a major component of this debt, the AP&L contract, and extending the repayment period for other obligations.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

POLITICAL CONTRIBUTIONS

The Senate proceeded to consider the bill (H.R. 6702) to amend section 603 of title 18, United States Code, with respect to certain political contributions, which had been reported from the Committee on Rules and Administration with an amendment to strike all after the enacting clause and insert the following:

That section 603(a) of title 18, United States Code, is amended by inserting "immediate" before "employer or employing authority".

SEC. 2. The provisions of this Act shall become effective January 1, 1981.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-922), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

When the Senate passed H.R. 5010, the Federal Election Campaign Act Amendments of 1979, one of the provisions was an amendment to 18 U.S.C. 607 (redesignated by the bill as 18 U.S.C. 603). The provision generally allowed Federal employees of all branches of the government to make voluntary campaign contributions to Federal candidates, but prohibited such contributions to a Member of Congress or the President from persons in his or her employ.

The language of the provision prohibiting contributions by executive branch personnel to the President unintentionally cast some doubt on which executive branch personnel were included within the scope of that prohibition.

H.R. 6702, as passed by the House of Representatives, would limit the applicability of this prohibition on political contributions to employers to the legislative branch, and would not apply to the executive branch employees.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

The resolution (S. Res. 504) to waive section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3027, authorizing funds for fiscal year 1981 for the Disaster Relief Act, was considered and agreed to as follows:

Resolved, That section 402(a) of the Congressional Budget Act of 1974 is waived with respect to the consideration of S. 3027. The legislation, which was unanimously approved by the Environment and Public Works Committee on July 25, 1980, authorizes a simple one-year extension of the disaster relief program.

The bill recognizes the continuing need for Federal assistance to mitigate the effects of natural or physical disasters. The committee did not report the legislation prior to May 15 because of problems with the administration on clarification of the type occurrences to be covered by the Act. This problem was satisfactorily resolved by a letter from the administration on July 8, 1980.

Therefore, a budget waiver is requested for consideration of fiscal year 1981 funding.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

The resolution (S. Res. 507) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3059, was considered and agreed to as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 3059, a bill to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

Such waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

For the foregoing reasons, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to S. 3059 as reported by the Committee on Armed Services.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

The resolution (S. Res. 511) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3074, was considered and agreed to as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 3074, a bill to authorize appropriations to the Department of Energy for national security programs for fiscal year 1981 and fiscal year 1982, and for other purposes.

Such waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

For the foregoing reasons, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to S. 3074 as reported by the Committee on Armed Services.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HIGHER EDUCATION AMENDMENTS OF 1980—H.R. 5192

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, on behalf of Mr. PELL, that with regard to H.R. 5192 the Senate further insist upon its amendments and request a further conference with the House of Representatives on the disagreeing votes thereon and that the Chair be authorized to appoint conferees on the part of the Senate, this request having been cleared through Mr. PELL, Mr. METZENBAUM, and Mr. HOLLINGS.

There being no objection, the Presiding Officer appointed Mr. PELL, Mr. WILLIAMS, Mr. RANDOLPH, Mr. KENNEDY, Mr. EAGLETON, Mr. STAFFORD, Mr. SCHWEIKER, and Mr. JAVITS conferees on the part of the Senate.

RECESS UNTIL WEDNESDAY, SEPTEMBER 10, 1980, AT 9:15 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 9:15 a.m. tomorrow morning.

The motion was agreed to; and the Senate, at 7:13 p.m., recessed until Wednesday, September 10, 1980, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate September 9, 1980:

GOVERNMENT PRINTING OFFICE

Gerald R. Dillon, of Minnesota, to be Public Printer, vice John J. Boyle, resigned.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. William Joseph Hilsman, 500-30-3135, Army of the United States (brigadier general, U.S. Army).

IN THE AIR FORCE

The following Air National Guard of the U.S. officers for promotion in the Reserve of the Air Force under the provisions of section 593 (a) title 10 of the United States Code, as amended:

LINE OF THE AIR FORCE

To be lieutenant colonel

Maj. James H. Addy, 426-68-7159.
Maj. James H. Bassham, 432-72-8202.
Maj. Walter R. Bono, 047-32-3049.
Maj. Laurence N. Brady, 015-26-2509.
Maj. Donald F. Brown, 196-30-7637.
Maj. Gordon J. Buchanan, 339-24-3475.
Maj. Davis H. Crenshaw, 424-46-0161.
Maj. Thomas A. Crozier, 282-32-2267.
Maj. Paul H. Deaderick, 411-42-0895.
Maj. Thomas G. Deroche, 006-40-7115.
Maj. Larry A. Drury, 553-52-7048.
Maj. Edward L. Grace, 495-38-9800.
Maj. John V. Greene, 181-32-5989.
Maj. James H. Greshik, 501-44-6691.
Maj. Manuel A. Guzman, 581-84-4734.
Maj. Joseph D. Helsing, 346-30-7305.
Maj. John C. Herringshaw, 458-72-2750.
Maj. Blaine Hiatt, 528-46-2809.
Maj. James K. Iwamura, 575-44-1348.
Maj. Jerre L. Kauffman, 519-48-2217.
Maj. Robert Kennedy, 139-30-8504.
Maj. Richard S. Kenney, 009-28-4868.
Maj. Albert C. Lloyd, Jr., 183-28-9068.
Maj. Woodrow D. Malone, 453-36-3600.
Maj. Joseph M. Marlar, 429-72-2779.
Maj. William F. McGaffin, 220-28-6515.
Maj. Ronald E. McGlothlin, 234-62-5543.
Maj. Raymond E. Meshell, 466-48-9241.
Maj. Thomas J. Monforte, Jr., 126-32-5286
Maj. Allan W. Ness, 525-00-5428.
Maj. Robert R. Neville III, 195-30-0318.
Maj. Thomas F. Noel, 173-32-7225.
Maj. Joseph F. O'Donnell, Jr., 485-32-0848.
Maj. William H. Page, 286-44-8027.
Maj. Daniel S. Percival, Jr., 261-44-1867.
Maj. Maxey J. Phillips, 428-84-3670.
Maj. James L. Pollnow, 388-32-9387.
Maj. James H. Renschen, 498-44-2048.
Maj. James H. Scarbrough, 428-90-0262.
Maj. Loran S. Schnaidt, 521-56-1892.
Maj. Howell B. Simmons, 224-48-4603.
Maj. Arthur H. Smith, Jr., 118-30-3396.
Maj. Sam R. Smith, 366-34-0759.
Maj. Rodney A. Stecher, 355-30-3575.
Maj. David L. Van Winkle, 511-46-4179.
Maj. Aurelio Vazquez-Flores, 580-22-3951
Maj. Roy A. Veal, 423-52-4746.
Maj. Salvatore Villano, 522-48-0719.
Maj. Charles J. Wolf, 558-44-6740.
Maj. Kinsley N. Wood, 064-30-8559.

JUDGE ADVOCATE

Maj. Thomas G. Mooney, 402-52-4986.

MEDICAL SERVICE CORPS

Maj. Ronald F. Flanders, 204-30-2028.

MEDICAL CORPS

Maj. Reynaldo A. Aseron, 099-36-3962.
Maj. Boyd N. Cole, 529-60-1779.
Maj. Meade O. Davis III, 513-44-6992.
Maj. Albert T. Lojko, 042-34-8406.
Maj. Priscillano V. Parilla, 141-36-2213.
Maj. William F. Ryckman, 113-34-4367.

DENTAL CORPS

Maj. Ronald C. Szarlan, 025-32-0548.

HOUSE OF REPRESENTATIVES—*Tuesday, September 9, 1980*

The House met at 12 o'clock noon.

Rev. Andrew Leigh Gunn, senior pastor, John Wesley United Methodist Church, offered the following prayer:

Eternal God, our Father, whose love will not us go and whose light follows us all our days, help us to begin this session of Congress conscious of Thy presence and ready to work diligently for the welfare of our Nation.

We ask Thy divine blessing on these Representatives. Guide their deliberations, give them wisdom and understanding, that their work will preserve our Republic.

We pray for our beloved country. With gratitude we remember the faith and fortitude of our forefathers who worked so hard to make the dream of freedom a blessed reality in our land. May we with the same faith and fortitude continue to labor to make liberty and justice a living reality in our own day. And may freedom's holy light continue to burn brightly in our noble land.

In the spirit of Him who set men free, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Saunders, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) entitled "An act to improve and expand the Federal crop insurance program, and for other purposes."

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 6940. An act to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that Act to assure the safety and nutrition of infant formulas, and for other purposes.

The message also announced that the Senate insist upon its amendments Nos. 1, 2, and 3 to the amendment of the House of Representatives to the amendment of the Senate to the bill (H.R. 3904) entitled "An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes", disagreed to by the House of Representatives, and agree to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. WILLIAMS, Mr. RANDOLPH, Mr. METZENBAUM, Mr. LONG, Mr. MATSUNAGA, Mr. BOREN, Mr. SCHWEIKER, Mr. JAVITS, Mr. DOLE, and Mr. CHAFEE to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 1625. An act to amend the Act of December 20, 1944, as amended.

The message also announced that the Vice President, and upon the recommendation of the minority leader, pursuant to the provisions of section 276 of title 22, United States Code, as amended by Public Law 95–45, appointed Mr. PRESSLER to attend the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16–24, 1980.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 988) entitled "An act entitled the 'Health Sciences Promotion Act of 1980,'" requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, and Mr. HUMPHREY to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 121. Concurrent resolution to correct the enrollment of S. 299.

REV. ANDREW LEIGH GUNN

(Mrs. BYRON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BYRON. Mr. Speaker, it is my pleasure to be able to introduce to my colleagues the Rev. Andrew Gunn, who is the senior pastor of the John Wesley United Methodist Church in Hagerstown, Md. Reverend Gunn and his family are relative newcomers to Hagerstown, yet the reverend is no stranger to Washington, having served as chairman of the legislative committee of the General Board of Church and Society of the United Methodist Church.

Reverend Gunn has also been called upon to testify before Senate and House committees on various issues.

Reverend Gunn is here today because of the guidance that he received from one of Chaplain Ford's former colleagues, Reverend Latch.

Reverend Gunn is a graduate of Oberlin College and Yale Divinity School, and continued his graduate studies at American University and Wesley Theological Seminary. He has served as chairman of the Baltimore Annual Conference Council on Ministries, and has worked on the publication of Church and State, a magazine with which many of you are familiar.

I would like to thank Reverend Gunn for sharing his thoughts and his prayers with us today.

SYLVANUS THAYER AWARD PRESENTED TO REV. THEODORE M. HESBURGH

(Mr. BRADEMAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BRADEMAS. Mr. Speaker, few Americans have contributed so much in so many constructive ways to the life of our country as has the Reverend Theodore M. Hesburgh, C.S.C., the distinguished president of the University of Notre Dame.

It is therefore, Mr. Speaker, most fitting that Father Hesburgh should this week be presented the Sylvanus Thayer Award by graduates of the U.S. Military Academy.

This award is given to those who exemplify the motto of the Academy, "Duty, Honor, Country."

Mr. Speaker, every President of the United States since President Dwight D. Eisenhower has called upon Father Hesburgh to serve in positions of important responsibility. Father Hesburgh has served as Chairman of the U.S. Commission on Civil Rights and Chairman of the Select Commission on Refugee and Immigration Policy as well as a member of a number of special commissions to study major concerns, such as an All-Volunteer Army, the future of higher education in the United States, and foreign aid. He also served on the panel judging clemency petitions from persons who rejected the draft during the Vietnam war and is a member of the U.S. council to recommend a memorial to victims of the holocaust.

There are many reasons that I count it a privilege to represent the people of the Third Congressional District of Indiana but certainly, Mr. Speaker, one of those reasons is that one of my constituents is the Reverend Theodore M. Hesburgh, C.S.C.

I congratulate Father Hesburgh on the Sylvanus Thayer Award as I know will all those who know him.

At this point in the RECORD, Mr. Speaker, I include a list of other outstanding Americans who have received this award:

SYLVANUS THAYER AWARD RECIPIENTS

Doctor Ernest O. Lawrence, 1958.
The Honorable John Foster Dulles, 1959.
The Honorable Henry Cabot Lodge, 1960.
President Dwight D. Eisenhower, 1961.
General of the Army Douglas MacArthur, 1962.
The Honorable John J. McCloy, 1963.
The Honorable Robert A. Lovett, 1964.
Doctor James B. Conant, 1965.
The Honorable Carl Vinson, 1966.
Francis Cardinal Spellman, 1967.
Mr. Bob Hope, 1968.
The Honorable Dean Rusk, 1968.
The Honorable Ellsworth Bunker, 1970.
Mr. Neil A. Armstrong, 1971.
Doctor William F. Graham, 1972.
General of the Army Omar N. Bradley, 1973.
The Honorable Robert D. Murphy, 1974.
Governor W. Averell Harriman, 1975.
The Honorable Gordon Gray, 1976.
The Honorable Robert T. Stevens, 1977.
Doctor James R. Killian, Jr., 1978.
The Honorable Clare Boothe Luce, 1979.

PUBLIC BROADCASTING SYSTEM'S OBJECTIVES

(Mr. VANIK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, in earlier times the Public Broadcasting System was criticized for leaning toward so-called liberal doctrines and positions. However, more recently we have been overwhelmed with the economic positions of Milton Friedman, William Buckley, and Ben Wattenberg who, as I understand it, is due for a new series on conservative policy.

It would be as wrong for Public Broadcasting to become a rightwing network as it would to become a leftwing network. It should become and continue as a fair, objective, and unbiased news source which gives to the public solid, factual, and balanced reporting on current economic and political issues so that the citizen can come to an informed decision on the critical issues of the day. An example of what I refer to is "Washington Week in Review," "Wall Street Report," and "Agronsky and Company."

Public Broadcasting must be what the name implies—broadcasting to the public the facts which are the essential tools of decision—with balanced analysis from all sides of the opinion spectrum. Public Broadcasting should seek always to maintain the highest standards of fair and impartial reporting and balanced analysis.

STALL ON REGULATORY REFORM

(Mr. LEVITAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVITAS. Mr. Speaker, I am again trying to find out whatever happened to the regulatory reform legislation that was the centerpiece of the administration's streamlining of Government. The bill, which has widespread support in this House, has been languishing in the Judiciary Committee, waiting for a final markup, since May of this year. I understand that there was to be a markup of this bill today, and suddenly yesterday it was canceled. I had been told, incorrectly, that it had been canceled at the insistence of the White House. I am now told that the White House did not intervene to block the markup. The administration has decided that it will not try to impede the markup of this bill. But I am now told that the markup was canceled at the request of the AFL–CIO.

Now, who is running this House? Is it the White House? Is it the AFL–CIO? Is it big business? I thought this House was supposed to be run by the Members of this body. The time for getting regulatory reform legislation reported to the House is long past due, and I hope it will be reported out forthwith. Let the voice of the people be heard. Let this House of Representatives work its will on the important and needed regulatory reform bill. Let us do it now.

□ 1210

ESTABLISHING A COMMITTEE OF PROCEDURES FOR ELECTION OF THE PRESIDENT

(Mr. JOHN L. BURTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHN L. BURTON. Mr. Speaker, today I am introducing a resolution calling for the establishment of a Select Committee on Procedures for Elections of the President.

In the event it is thrown into the House of Representatives, the duties of the committee would be to review existing statutes, rules and procedures, and precedents relating to the election of the President under the 12th article of the amendment. The extent to which statutes, rules, procedures, and precedents are appropriate for the present conduct of such an election by the House of Representatives and any changes or suggestions that might be made by the House before November 4, 1980, as such statutes, rules, and procedures may not be relevant to the present term, it calls for the appointment of a 10-member committee selected by the Speaker, with 4 persons of those 10 to be nominated by the minority leader.

I think it is very important if the election is thrown into the House that we know exactly and specifically what rules and procedures will guide us, for it has been since, I believe 1825 was the last time the House had this pleasure, and we may well have this task on us again.

SMALL BUSINESS HAS ROUGH SLEDDING UNDER CARTER ADMINISTRATION

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, over 13 million small businesses in this country have had rough sledding under the Carter administration. Let us look at the facts. First, last year small business bankruptcies increased by 48 percent; second, nearly 700,000 small businesses will fail this year; third, the interest rates for small business loans have more than doubled since President Carter took office; fourth, the small businessman and American labor force will lose some 3 million jobs this year; and fifth, Government paperwork has cost the small businessmen between $15 and $20 billion this year. Soaring business failures, interest rates out of sight, inflation run wild, and a declining share of the shrinking market are the issues for American small business.

I hope that President Carter will address his record on the campaign trail.

RESOLVE THE FLCRA PROBLEM

(Mr. GOODLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOODLING. Mr. Speaker, I am pleased to participate in the effort to solve the problems with the Farm Labor Contractor Registration Act.

On August 26, 1980, I introduced H.R. 8026, which would restore the act to its original intent as we amended it in 1974. My colleague, Mr. ASHBROOK, the ranking Republican on the Education and Labor Committee, joined me in introducing the bill.

My bill is identical, except for technical improvements, to the Panetta bill and the Boren amendment to the child nutrition bill. I felt it was important to introduce the bill to demonstrate that members of the Education and Labor Committee are prepared to take action on the matter.

The Labor Department's interpretation and application of law has been a serious and widespread problem in Pennsylvania and there is a potential for an even greater problem in the State. The Department has incorrectly tried to regulate Pennsylvania farmers, mushroom growers, apple growers and processors as farm labor contractors under the act. These agricultural employers have had to register, be fingerprinted, get a special medical examination, comply with numerous and unwarranted requirements, and fill out a great deal of paperwork under the act. This is all contrary to the intent of Congress.

As the ranking minority member on the Subcommittee on Elementary, Secondary, and Vocational Education, I will

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

be a conferee on the child nutrition bill, and specifically, on title III of the bill. The conference should be scheduled in the near future.

I hope we can adopt the Boren amendment and resolve this problem.

THE PRESENCE OF CUBAN MILITARY ADVISERS IN AFGHANISTAN

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, once again, we have reports of Cuban troops involved in military adventures far from Castro's island in the Caribbean. This time, the State Department says there are about 100 Cuban military advisers helping the Soviets in Afghanistan.

Although other reports have indicated as many as 10,000 Cubans in Afghanistan, in this case, we probably can accept the State Department assessment for a change.

We have already heard that Castro told U.N. Ambassador McHenry that he would be quiet and be a good boy during the Presidential elections. Apparently, Fidel Castro wants to make sure he does not do anything that would help elect Reagan as President.

Whatever the real number of Cuban military advisers in Afghanistan may be, there is no doubt that their presence in that country, in Angola and Ethiopia and in Nicaragua and other Caribbean and Central American countries only serves to further the goals of Soviet expansion in the world.

A TRIBUTE TO LENCOLA SULLIVAN, MISS ARKANSAS

(Mr. BETHUNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BETHUNE. Mr. Speaker, last Saturday night all Arkansas was proud of our Miss American candidate, Lencola Sullivan, who is from my district in the center of Arkansas. She was elected, as the Members know, the fourth runner up to Miss America. She impressed a nationwide TV audience just as she has impressed so many Arkansans with success after success, in her young but blossoming career.

She has been Miss UCA, Miss White River, and Miss Arkansas; and judging by this latest accomplishment, she is destined for even greater things in the future. We in Arkansas are proud of her.

ANOTHER 79-PERCENT INCREASE IN FEDERAL SPENDING IF PRESIDENT CARTER IS ELECTED FOR 4 MORE YEARS

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, President Carter's Budget Director, James McIntyre, complained to the House Budget Committee yesterday that Governor Reagan's tax cut proposals would not allow a proposed increase of more than 78 percent in certain Federal spending that a Carter administration would promote over the next 4 years.

Mr. McIntyre said that under President Carter's spending projections through 1985 three of the largest social welfare programs would increase $150.6 billion—or 78.3 percent above their projected 1981 levels—and that defense spending would increase $142.5 billion—or 90.5 percent over next year's level.

At least the American people have a clear choice this November.

Governor Reagan wants to cut taxes and reduce the overall size and cost of the Federal Government.

President Carter, if one is to believe his top administration officials, would bring us a further gigantic increase in Government spending if elected for another 4 years.

THE POLITICS OF AMNESIA

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. MICHEL. Mr. Speaker, I understand that President Carter has caught up with Ronald Reagan in at least one of the popularity polls.

Jimmy Carter is the master of underdog politics. Now that he is no longer the underdog, I hope we can get him to quit turning somersaults and fetching sticks long enough to answer a few questions about his last 4 years in office.

He's gotten away with the politics of amnesia long enough.

Maybe he will tell us why 2 million people have lost their jobs since January. Maybe he can tell us why he used those people to slow down inflation. Maybe he can tell us why inflation is still more than double the 4 percent he promised it would be 4 years ago. Maybe he can tell us why the budget is not balanced like he said it would be. Maybe he can explain why Federal revenues have gone up more than $250 billion in 4 years. Maybe he will tell us why he raised taxes to record heights when he promised 4 years ago there would be no tax increases at all.

President Carter is the only one in this country on the gravy train. It is high time for him to do more than simply roll over and play dead every time these serious issues are raised.

□ 1220

RELEASE THE HOSTAGES, LET YOUR PEOPLE GO

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, it is not often that a Member from this side of the aisle feels compelled to speak out for Members of the majority. They usually do a fine job on their own. However, as an empathetic viewer of the plight of certain members of the silent majority, I feel I must speak out.

Some Members of the Democratic side have confided to me that they do not wish—nor believe necessary—a lameduck session. Yet they dare not speak out publicly. I suspect they fear the hand of majority party discipline if they do so.

So, Mr. Speaker, on behalf of some of your comrades, I say "release the hostages."

Mr. Speaker, "Let your people go."

JAPANESE STEEL

(Mr. O'BRIEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. O'BRIEN. Mr. Speaker, Japanese steel companies recently have been awarded six out of eight contracts for construction of synthetic fuels plants being built in this country with Federal loan guarantees.

What these six contracts mean is that out of approximately 18,500 tons of steel, approximately 15,700 tons will be fabricated in Japan.

This will only contribute to the rising cost of our economy in terms of lost corporate, Federal, and State taxes, purchasing power, wages and salaries, individual Federal, State, and local sales taxes, and social security taxes. Along with the higher unemployment levels we will continue on our inflationary spiral.

Is it not ironic? Would it not seem reasonable that a program designed to provide energy self-sufficiency for the United States would require that orders for heavy capital equipment would be placed with U.S. companies—revitalizing our Nation's economy—rather than tend to increase our dependence on foreign steel?

I have written the President strongly urging that he take whatever corrective action is necessary and ask my colleagues to do the same.

CARTER'S FAILURE—TIME FOR A CHANGE

(Mr. DEVINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEVINE. Mr. Speaker, last night former President Gerald Ford explained why America must elect a new President this year.

He said:

The Carter Administration has failed this country and our national security forces. . . . The Carter administration has failed this country in mastering the domestic economy.

Mr. Speaker, it is obvious to millions of Americans that President Carter has failed. His economic policy of wreckless deficit spending has produced the worst inflation in over a generation.

Mr. Carter and his allies in Congress have given us the highest interest rates in this century. Millions of Americans cannot buy homes because Carter's economic policies have failed.

In 1976 Mr. Carter said: "Why not the best?" Well, if this performance in the past 3½ years is the best he can do, it is time for a change. America deserves something better.

PROVIDING FUNDS FOR MEMBERS' ELOCUTION LESSONS

(Mr. MITCHELL of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MITCHELL of Maryland. Mr. Speaker, I have mentioned fairly frequently about the quality of the 1-minute speeches that come from the other side when they are purely partisan. Unfortunately, the quality continues to deteriorate.

I would recommend that we find a small bill and get some money for elocution lessons for those who want to make purely partisan 1-minute speeches. A 1-minute speech is difficult to deliver. You have to start from a sort of calm mood and move to an emotional crescendo, and they just are not pulling it off.

First, let us get the minority some help. Let us find some money for elocution lessons.

Second, I would strongly suggest that maybe some of the Members on the other side might do a wee bit better in their purely partisan speeches if they wrote them themselves. Maybe they do, but it sounds like these are canned speeches, written by someone else, and they come off in a very desultory, I really kind of fashion.

Find some money, let us get some elocution lessons for these makers of partisan 1-minute speeches. I am sure the whole Nation will be benefited by the new oratorical heights.

H.R. 7824, FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PANETTA. Mr. Speaker, I would like to thank my colleagues for their remarks in support of H.R. 7824, the Farm Labor Contractor Registration Act. As you know, this issue will be decided shortly by the House and Senate conference committee on the Child Nutrition Act. I am hopeful that the remarks we have heard today will impress upon the House conferees the importance of adopting the provisions of H.R. 7824 which has already passed the Senate by a vote of 57 to 37.

I would also like to add the names of 111 of my colleagues who have asked to be cosponsors of H.R. 7824. Upon examining this list, I think my colleagues will find that this legislation enjoys broad bipartisan support.

Mr. Speaker, H.R. 7824 preserves and enhances some very important protections that the law provides for farmworkers. It does this by forcing the Department of Labor to focus on the real problem—the elusive and noncooperative farm labor contractor—instead of harassing farmers and fixed site agricultural employers.

It is easy to understand why the Department of Labor has directed its efforts on registering and regulating farmers and their supervisory employees. Farmers and fixed site agricultural employers are easy to find, and when they are located and fined, they can and do try to comply with Department of Labor demands an court orders. By contrast, crew leaders are hard to find, uncooperative, and wrongs can frequently be remedied only through legal actions. Statistics show almost all Department of Labor activity in the last several years has been devoted to suing farmers and their field employees for lack of registration or other document deficiencies. Very few cases have been made against elusive crew leaders for substantive abuses of workers.

My legislation would turn this around. It would force the bureaucracy at Department of Labor to undertake the difficult and unpleasant task of going after those who are truely abusing our Nation's farmworkers. Through the Department of Labor's failure to focus on the real targets, farmworkers are actually being denied the protections the Congress sought to provide for them.

I urge your support for H.R. 7824.

PERMISSION FOR AD HOC SELECT SUBCOMMITTEE ON MARITIME EDUCATION AND TRAINING OF COMMITTEE ON MERCHANT MARINE AND FISHERIES TO SIT DURING 5-MINUTE RULE

Mr. AUCOIN. Mr. Speaker, I ask unanimous consent that the Ad Hoc Select Subcommittee on Maritime Education and Training of the Committee on Merchant Marine and Fisheries be permitted to sit while the House is proceeding today under the 5-minute rule.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

MISCELLANEOUS REVENUE ACT OF 1980

Mr. ROSTENKOWSKI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7956) to make various changes in the tax laws, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE

(a) SHORT TITLE.—This Act may be cited as the "Miscellaneous Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—AMENDMENTS RELATING TO INCOME TAX GENERALLY

SEC. 101. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART.

(a) GENERAL RULE.—Part I of subchapter B of chapter 1 (defining gross income, adjusted gross income, taxable income, etc.) is amended by adding at the end thereof the following new section:

"SEC. 66. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART.

"(a) GENERAL RULE.—If—

"(1) 2 individuals are married to each other at any time during a calendar year;

"(2) such individuals—

"(A) live apart at all times during the calendar year, and

"(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

"(3) one or both of such individuals have earned income for the calendar year which is community income; and

"(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

"(b) DEFINITIONS.—For purposes of this section—

"(1) EARNED INCOME.—The term 'earned income' has the meaning given to such term by section 911(b).

"(1) from a nonmember telephone 'community income' means income which, under applicable community property laws, is treated as community income.

"(3) COMMUNITY PROPERTY LAWS.—The term 'community property laws' means the community property laws of a State, a foreign country, or a possession of the United States."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 66. Treatment of community income where spouses live apart."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 1979.

SEC. 102. AMORTIZATION OF START-UP EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 194. START-UP EXPENDITURES.

"(a) ELECTION TO AMORTIZE.—Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the business begins).

"(b) START-UP EXPENDITURES.—For purposes of this section, the term 'start-up expenditure' means any amount—

"(1) paid or incurred in connection with—

"(A) investigating the creation or acquisition of a trade or business, or

"(B) creating a trade or business, and

"(2) which, if paid or incurred in connection with the expansion of an existing trade or business (in the same field as the trade or business referred to in paragraph (1)), would be allowable as a deduction for the taxable year in which paid or incurred.

"(c) ELECTION.—

"(1) TIME FOR MAKING ELECTION.—An election under subsection (a) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the business begins (including extensions thereof).

"(2) SCOPE OF ELECTION.—The period selected under subsection (a) shall be adhered to in computing taxable income for the tax-

able year for which the election is made and all subsequent taxable years.

"(3) MANNER OF MAKING ELECTION.—An election under subsection (a) shall be made in such manner as the Secretary shall by regulations prescribe.

"(d) BUSINESS BEGINNING.—For purposes of this section, an acquired trade or business shall be treated as beginning when the taxpayer acquires it."

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 194. Start-up expenditures."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date.

SEC. 103. REVISING AND MAKING PERMANENT RULES ALLOWING DEDUCTION FOR CONTRIBUTIONS FOR CONSERVATION PURPOSES.

(a) IN GENERAL.—Paragraph (3) of section 170(f) (relating to denial of deduction in case of certain contributions of partial interest in property) is amended by striking out subparagraphs (B) and (C) thereof and inserting in lieu thereof the following new subparagraph:

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

"(i) a contribution of a remainder interest in a personal residence or farm,

"(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

"(iii) a qualified conservation contribution."

(b) QUALIFIED CONSERVATION CONTRIBUTION DEFINED.—Section 170 is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

"(h) QUALIFIED CONSERVATION CONTRIBUTION.—

"(1) IN GENERAL.—For purposes of subsection (f)(3)(B)(iii), the term 'qualified conservation contribution' means a contribution—

"(A) of a qualified real property interest

"(B) to a qualified organization,

"(C) exclusively for conservation purposes.

"(2) QUALIFIED REAL PROPERTY INTEREST.—For purposes of this subsection, the term 'qualified real property interest' means any of the following interests in real property:

"(A) the entire interest of the donor other than a qualified mineral interest,

"(B) a remainder interest, and

"(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

"(3) QUALIFIED ORGANIZATION.—For purposes of paragraph (1), the term 'qualified organization' means an organization which—

"(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

"(B) is described in section 501(c)(3) and—

"(i) meets the requirements of section 509(a)(2), or

"(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

"(4) CONSERVATION PURPOSE DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'conservation purpose' means—

"(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

"(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

"(iii) the preservation of open space (including farmland and forest land) where such preservation is—

"(I) for the scenic enjoyment of the general public, or

"(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

"(iv) the preservation of an historically important land area or a certified historic structure.

"(B) CERTIFIED HISTORIC STRUCTURE.—For purposes of subparagraph (A)(iv), the term 'certified historic structure' means any building, structure, or land area which—

"(i) is listed in the National Register, or

"(ii) is located in a registered historic district (as defined in section 191(d)(2) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

"(5) EXCLUSIVELY FOR CONSERVATION PURPOSES.—For purposes of this subsection—

"(A) CONSERVATION PURPOSE MUST BE PROTECTED.—A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

"(B) NO SURFACE MINING PERMITTED.—In the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

"(6) QUALIFIED MINERAL INTEREST.—For purposes of this subsection, the term 'qualified mineral interest' means—

"(A) subsurface oil, gas, or other minerals, and

"(B) the right to access to such minerals."

(c) DEDUCTION FOR CONTRIBUTIONS FOR CONSERVATION PURPOSES MADE PERMANENT.—Section 309(b)(1) of the Tax Reduction and Simplification Act of 1977 and section 2124(e)(4) of the Tax Reform Act of 1976 are each amended by striking out ", and before June 14, 1981".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to transfer made after the date of the enactment of this Act in taxable years ending after such date.

SEC. 104. INVESTMENT TAX CREDIT ALLOWED FOR CERTAIN REHABILITATED BUILDINGS LEASED TO TAX-EXEMPT ORGANIZATIONS OR TO GOVERNMENTAL UNITS.

(a) USE BY TAX-EXEMPT ORGANIZATIONS.—Paragraph (4) of section 48(a) (relating to property used by certain tax-exempt organizations) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to any property which is treated as section 38 property by reason of paragraph (1)(E) of this subsection and which is used by the tax-exempt organization pursuant to a lease."

(b) USE BY GOVERNMENTAL UNITS.—Paragraph (5) of section 48(a) (relating to governmental units) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to any property which is treated as section 38 property by reason of paragraph (1)(E) of this subsection and which is used by the governmental unit pursuant to a lease.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to uses after July 29, 1980, in taxable years ending after such date.

SEC. 105. REVISION OF SOURCE RULES FOR INCOME FROM CERTAIN LEASED AIRCRAFT, VESSELS, AND SPACECRAFT.

(a) IN GENERAL.—Subsection (e) of section 861 (relating to election to treat income from certain aircraft and vessels as income from sources within the United States) is amended to read as follows:

"(e) INCOME FROM CERTAIN LEASED AIRCRAFT, VESSELS, AND SPACECRAFT TREATED AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

"(1) IN GENERAL.—For purposes of subsection (a) and section 862(a), if—

"(A) a taxpayer owning a craft which is section 38 property (or would be section 38 property but for section 48(a)(5)) leases such craft to a United States person, other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer, and

"(B) such craft is manufactured or constructed in the United States,

then all amounts includible in gross income by the taxpayer with respect to such craft for any taxable year ending after the commencement of such lease (whether during or after the period of such lease), including gain from sale, exchange, or other disposition of such craft, shall be treated as income from sources within the United States.

"(2) CERTAIN TRANSFERS INVOLVING CARRYOVER BASIS.—If the taxpayer transfers or distributes a craft to which paragraph (1) applied and the basis of such craft in the hands of the transferee or distributee is determined by reference to its basis in the hands of the transferor or distributor, paragraph (1) shall continue to apply to such craft in the hands of the transferee or distributee.

"(3) CRAFT DEFINED.—For purposes of this subsection, the term 'craft' means a vessel, aircraft, or spacecraft."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property first leased after the date of the enactment of this Act.

SEC. 106. TAXATION OF HOMEOWNERS ASSOCIATIONS.

(a) GENERAL RULE.—Subsection (b) of section 528 (relating to tax imposed with respect to certain homeowners associations) is amended to read as follows:

"(b) TAX IMPOSED.—A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1980.

SEC. 107. TREATMENT OF CERTAIN INCOME OF MUTUAL OR COOPERATIVE ELECTRIC AND TELEPHONE COMPANIES.

(a) TREATMENT OF CERTAIN INCOME OF PURPOSES OF TAX-EXEMPT STATUS.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended—

(1) by striking out "(12)" and inserting in lieu thereof "(12)(A)",

(2) by striking out the second sentence, and

(3) by adding at the end thereof the following new subparagraphs:

"(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

"(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

"(ii) from qualified pole rentals, or

"(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

"(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

"(D) For purposes of this paragraph, the term 'qualified pole rental' means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

"(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

"(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term 'rental' includes any sale of the right to use the pole (or other structure)."

(b) ENGAGING IN POLE RENTALS TREATED AS NOT ENGAGING IN UNRELATED TRADE OR BUSINESS.—Section 513 (defining unrelated trade or business) is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN POLE RENTALS.—In the case of a mutual or cooperative telephone or electric company, the term 'unrelated trade or business' does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D))."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to all taxable years to which the Internal Revenue Code of 1954 applies.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1969.

SEC. 108. EXEMPTION FOR CERTAIN SUBSISTENCE ALLOWANCES RECEIVED BY CERTAIN POLICE OFFICERS BEFORE JANUARY 1, 1978.

(a) GENERAL RULE.—Subsection (b) of section 3 of the Act of October 7, 1978, entitled "An Act to prohibit the issuance of regulations on the taxation of fringe benefits, and for other purposes" is amended—

(1) by striking out "January 1, 1977" and inserting in lieu thereof "January 1, 1974", and

(2) by striking out "calendar year 1977" and inserting in lieu thereof "calendar year 1974, 1975, 1976, or 1977".

(b) STATUTE OF LIMITATIONS.—In the case of any allowance received during calendar 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 shall be applied by substituting the date one year after the date of the enactment of this Act for "April 15, 1979" each place it appears.

SEC. 109. TREATMENT OF CERTAIN EXPENSES INCLUDABLE IN THE INCOME OF THE RECIPIENT.

(a) IN GENERAL.—Subsection (e) of section 274 (relating to specific exceptions to application of disallowance of certain entertainment, etc., expenses) is amended by inserting after paragraph (9) the following new paragraph:

"(10) EXPENSES INCLUDABLE IN INCOME OF PERSONS WHO ARE NOT EMPLOYEES.—Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any expenses paid or incurred after December 31, 1980, in taxable years ending after such date.

TITLE II—AMENDMENTS RELATING TO PENSION PLANS

Subtitle A—Prevention of Abuse of Certain Pension Plan Provisions

SEC. 201. PREVENTION OF ABUSE OF CERTAIN PENSION PLAN PROVISIONS THROUGH THE USE OF SEPARATE CORPORATIONS OR OTHER ORGANIZATIONS.

(a) IN GENERAL.—Section 414 (relating to definitions and special rules relating to pension plans, etc.) is amended by adding at the end thereof the following new subsection:

"(m) EMPLOYEES OF AN AFFILIATED SERVICE GROUP.—

"(1) IN GENERAL.—For purposes of the employee benefit requirements listed in paragraph (7), all employees of the members of an affiliated service group shall be treated as employed by a single employer.

"(2) AFFILIATED SERVICE GROUP.—For purposes of this subsection, the term 'affiliated service group means a group consisting of—

"(A) a specified service organization, and

"(B) one or more adjunct service organizations which are related to the specified service organization.

"(3) SPECIFIED SERVICE ORGANIZATION DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'specified service organization' means an organization the principal business of which is the performance of one or more specified services.

"(B) SPECIFIED SERVICES DEFINED.—The term 'specified services' means services in any of the following fields:

"(i) health,

"(ii) law,

"(iii) engineering,

"(iv) architecture,

"(v) accounting,

"(vi) actuarial science,

"(vii) performing arts,

"(viii) consulting, or

"(ix) any other service field which the Secretary designates by regulations as a field in which separate organizations are used to avoid any employee benefit requirement listed in paragraph (7).

"(4) ADJUNCT SERVICE ORGANIZATION DEFINED.—For purposes of this subsection, the term 'adjunct service organization' means an organization a significant portion of the business of which is the performance of services—

"(A) for the specified service organization, and

"(B) of the kind historically performed by employees of this type of specified service organization

"(5) RELATIONSHIP OF ORGANIZATION.—For purposes of this subsection, an adjunct service organization is related to a specified service organization if—

"(A) the specified service organization regularly uses the services of the adjunct service organization or is regularly associated with the adjunct service organization in performing specified services for third persons, and

"(B) 10 percent or more of the interests in the adjunct service organization is owned by persons who are—

"(i) individuals performing specified services for such specified service organization, or

"(ii) owners of such specified service organization.

"(6) CERTAIN SHAREHOLDERS AND PARTNERS IN SPECIFIED SERVICE ORGANIZATION TREATED AS PART OF AFFILIATED SERVICE GROUP.—For purposes of this subsection, all specified service organizations which are shareholders or partners in a specified service organization and which are regularly associated with the specified service organization in which they are shareholders or partners in performing specified services for third persons shall be treated—

"(A) as part of the specified service organization in which they are shareholders or partners, and

"(B) as members of an affiliated service group which includes the specified service organization in which they are shareholders or partners.

"(7) EMPLOYEE BENEFIT REQUIREMENTS.—For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

"(A) paragraphs (3), (4), and (7), and (16) of section 401(a),

"(B) sections 408(k, 410, 411, and 415,

"(C) section 105(h), and

"(D) section 125.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) ORGANIZATION DEFINED.—The term 'organization' means a corporation, partnership, or other organization.

"(B) OWNERSHIP.—In determining ownership, the principles of section 267 shall apply.

"(9) PREVENTION OF AVOIDANCE.—The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance with respect to service organizations, through the use of separate organizations, of any employee benefit requirement listed in paragraph (7)."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (8) of section 105(h) (relating to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan) is amended—

(A) by striking out "subsection (b) or (c) of section 414" and inserting in lieu thereof "subsection (b), (c), or (m) of section 414", and

(B) by striking out "CONTROLLED GROUPS" in the paragraph heading and inserting in lieu thereof 'CONTROLLED GROUPS, ETC.".

(2) Paragraph (4) of section 125(g) (relating to special rules for cafeteria plans) is amended—

(A) by striking out "subsection (b) or (c) of section 414" and inserting in lieu thereof "subsection (b), (c), or (m) of section 414", and

(B) by striking out "CONTROLLED GROUPS" in the paragraph heading and inserting in lieu thereof "CONTROLLED GROUPS, ETC.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years ending after July 30, 1980.

(2) PLANS IN EXISTENCE ON JULY 30, 1980.—In the case of a plan in existence on July 30, 1980, the amendments made by this section shall apply to plan years beginning after July 30, 1980.

Subtitle B—Amendments Relating to Employee Stock Ownership Plans

SEC. 221. CASH DISTRIBUTION OPTION AND PUT OPTION FOR STOCK BONUS PLANS.

(a) IN GENERAL.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting immediately before the last sentence thereof the following new paragraph:

"(23) A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409A(h)(2)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to plan years beginning after December 31, 1980.

SEC. 222. LIMITATION ON ANNUAL ADDITIONS TO PARTICIPANT ACCOUNTS UNDER EMPLOYEE STOCK OWNERSHIP PLANS.

(a) IN GENERAL.—Subparagraph (A) of section 415(c)(6) (relating to special limitation for employee stock ownership plan) is amended by inserting ", or purchased with cash contributed," after "contributed".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to years beginning after December 31, 1980.

SEC. 223. VALUATION OF EMPLOYER SECURITIES IN TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

(a) IN GENERAL.—Clause (i) of section 48(n)(6)(B) (defining value for employer securities) is amended by striking out "the due date for filing the return for the taxable year (determined with regard to extensions)" and inserting in lieu thereof "the date on which the securities are contributed to the plan".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall with respect to taxable years beginning after December 31, 1980.

SEC. 224. PARTICIPATION OF SUBSIDIARY CORPORATION IN TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.

(a) IN GENERAL.—Paragraph (4) of section 409A(1) (defining controlled group of corporations) is amended—

(1) by striking out the caption and inserting in lieu thereof "(4) APPLICATION TO CONTROLLED GROUP OF CORPORATIONS.—",

(2) by striking out "COMMON PARENT MAY OWN ONLY" in the caption of subparagraph (B) and inserting in lieu thereof "WHERE COMMON PARENT OWNS AT LEAST", and

(3) by adding at the end thereof the following new subparagraph:

"(C) WHERE COMMON PARENT OWNS 100 PERCENT OF FIRST TIER SUBSIDIARY.—For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to qualified investment for taxable years beginning after December 31, 1980.

SEC. 225. PARTICIPATION RULES FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN WHICH IS ONLY EMPLOYER-PROVIDED ALTERNATIVE TO INDIVIDUAL RETIREMENT SAVINGS.

(a) IN GENERAL.—Subsection (b) of section 410 (relating to eligibility) is amended—

(1) be redesignating paragraph (2) as (3),

(2) by striking out "paragraph (1)" in paragraph (3) (as so redesignated) and inserting in lieu thereof "paragraphs (1) and (2)", and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) SPECIAL RULE FOR CERTAIN PLANS.—A trust which is part of a tax credit employees stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of paragraph (1) if—

"(A) it benefits 50 percent or more of all the employees who are eligible under the plan (excluding employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation), and

"(B) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year."

(b) CONFORMING AMENDMENTS.—

(1) The last sentence of section 401(a)(4) is amended by striking out "section 410(b)(2)(A)" and inserting in lieu therof "section 410(b)(3)(A)".

(2) Subparagraph (B) of section 401(d)(3) is amended—

(A) by striking out "section 410(b)(2)(A)" and inserting in lieu thereof "section 410(b)(3)(A)", and

(B) by striking out "section 410(b)(2)(C)" and inserting in lieu thereof "section 410(b)(3)(C)".

(3) The last sentence of section 408(k)(2) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)".

(4) Clause (i) of section 408(k)(3)(B) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1980.

SEC. 226. APPLICATION OF CASH OR DEFERRED ARRANGEMENT RULES TO CAFETERIA PLANS.

(a) IN GENERAL.—Paragraph (2) of section 125(d) (relating to deferred compensation plans excluded) is amended by adding at the end thereof the following: "The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1980.

TITLE III—AMENDMENTS RELATING TO ESTATE TAX

SEC. 301. ALLOWING ELECTION TO USE THE ALTERNATE VALUATION DATE ON RETURN FILED LATE.

(a) IN GENERAL.—Subsection (c) of section 2032 (relating to election of alternate valuation) is amended to read as follows:

"(c) TIME OF ELECTION.—The election provided for in this section shall be exercised by the executor on his return not later than the time such return is filed."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to estates of decedents dying after December 31, 1980.

SEC. 302. ADDITIONAL 2 YEARS ALLOWED TO AMEND GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFT OF SPLIT INTEREST TO CHARITY.

(a) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF ESTATE TAXES.—The first sentence of paragraph (3) of section 2055(e) (relating to disallowance of deductions in certain cases) is amended by striking out "December 31, 1978" each place it appears and inserting in lieu thereof "December 31, 1980".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply in the case of decedents dying after December 31, 1969.

(2) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE USE OF INCOME AND GIFT TAXES.—Section 514(b) (and section 514(c) insofar as it relates to section 514(b)) of the Revenue Act of 1978 shall be applied as if the amendment made by subsection (a) had been included in the amendment made by section 514(a) of such Act.

The SPEAKER. Is a second demanded?

Mr. DUNCAN of Tennessee. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Illinois (Mr. ROSTENKOWSKI) will be recognized for 20 minutes, and the gentleman from Tennessee (Mr. DUNCAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

□ 1230

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7956 makes a number of miscellaneous changes in the tax laws. The bill was introduced to consolidate 13 minor bills on which individual hearings have been held by the Subcommittee on Select Revenue Measures and which were approved by the subcommittee in July.

Both the underlying policy and the technical operation of these changes were carefully reviewed by the subcommittee in close consultation with the Treasury Department, and I know of no provision which has substantive opposition. With minor amendments, this legislation was approved by the full committee 36 to 0.

In general, this bill clarifies the treatment of startup costs for new businesses, extends and improves the expiring provision regarding gifts of partial interests of property for conservation purposes, broadens the availability of the investment credit to rehabilitate older structures, and makes various other minor income tax changes. In the pension area, the bill addresses one area of abuse—where some professional corporations have attempted to avoid the rules regarding coverage of their employees, and makes several technical changes in the employee stockownership plans and similar benefit plans.

Finally, two estate tax changes, though minor in nature, help to promote flexibility in this area.

Mr. Speaker, I will very briefly review the individual provisions of this legislation:

Section 101 (originally H.R. 6247) amends current law to provide that community property laws would be disregarded for income tax purposes when spouses have lived apart for the entire year and no portion of the income earned by one spouse has been transferred to the other. This provision is intended to provide relief for abandoned spouses who are presently taxed on a portion of the income earned by the other spouse but have received no benefit from that income.

Section 102 (originally H.R. 5729) provides an election to amortize certain expenditures incurred in the investigation, creation or acquisition of a new trade or business. This provision addresses an area of law that is unclear and provides a straight-forward approach to the treatment of these costs.

Section 103 (originally H.R. 7318) revises current law allowing deductions for charitable contributions of easements and other partial interests in real estate contributed for conservation purposes. This section would expand the types of partial interests which qualify to include the entire interest of the donor in real property other than the rights to subsurface minerals. This provision makes permanent these types of deductions in recognition of the increasingly important role that conservation easements are playing in the efforts to preserve the Nation's natural resources and cultural heritage.

Section 104 (originally H.R. 7276) would make the present exception denying the investment tax credit in the case of rehabilitated buildings leased to tax-exempt organizations and governmental units inapplicable in the case of qualified rehabilitation expenditures to rehabilitate existing buildings. This provision eliminates a significant obstacle to the rehabilitation of the older commercial areas of this country and simplifies compliance with, and administration of, the tax law.

Section 105 (originally H.R. 4634) provides that income from aircraft, vessels, and spacecraft leased to a U.S. person and manufactured or constructed in the United States shall be treated as U.S. source income. This provision makes an improvement in the source rules of present law, providing a more rational result for these unique types of property.

Section 106 (originally H.R. 4511) provides that the taxable income of a homeowners association shall be subject to a 30-percent rate of tax. This more closely approximates the average marginal income tax rate of the members of these associations than the 46-percent rate applicable under present law.

Section 107 (originally H.R. 7520) provides that income from qualified pole rentals or from display listings in a telephone directory is to be disregarded in applying the 85 percent membership income test to mutual or cooperative electric and telephone companies. It also provides that income from qualified pole rentals would not be subject to the tax on unrelated business income.

Section 108 (originally H.R. 6935) provides for a refund or credit of tax paid by a State police officer for cash meal allowances during calendar years 1974, 1975, and 1976. In 1978, the Congress enacted legislation (Public Law 95-427) in response to the Supreme Court's determination in *Commissioner* v. *Kowalski* (434 U.S. 77 (1977)) that meal allowances received by State troopers were taxable. The 1978 legislation addressed primarily those troopers who in the past had failed to treat such allowances as income. In granting relief from tax to these individuals for years before the Court's definitive ruling, Congress did not allow troopers who had included such payments in income pending the Court's ruling to receive relief other than for 1977. This provision corrects that inequity.

Section 109 (originally H.R. 7392) provides that disallowance of deductions for entertainment, amusement, or recreation expenses does not apply to expenses which are includible in the gross income of the recipient as compensation for services or as a prize or award if the payor files any required information return. This makes permanent a temporary rule enacted as part of the 1979 Technical Corrections Act.

Section 201 (originally H.R. 6140) would expand the pension aggregation rules with respect to the treatment of certain professional and service organizations for purposes of satisfying requirements for qualified retirement plans. This change prevents the avoidance of employee benefit requirements designed for rank-and-file employees through the use of separate entities which is possible under present law.

Sections 221–226 (originally H.R. 7606) make six technical modifications of the rules dealing with employee stock ownership and similar employee benefit plans. Generally, these changes improve the operation of these benefit plans by providing additional flexibility for both the employer and employee.

Section 301 (originally H.R. 4544) permits the executor of a decedent's estate to elect the alternate valuation date for purposes of establishing the value of property in the estate on the first estate tax return filed. This change promotes flexibility in the operation of this election.

Section 302 (originally H.R. 7220) extends for 2 years, until December 31, 1980, the time to amend instruments of both charitable lead trusts or charitable remainder trusts which were executed before December 31, 1977, in order to conform such instruments to the Tax Reform Act of 1969 requirements for a charitable deduction. This extension provides additional time not only for taxpayers to correct document errors but also for Treasury which is studying the possibility of a permanent rule to eliminate the problems that keep occurring in this area.

Mr. Speaker, it is estimated that H.R. 7956 will reduce revenues by $26 million in fiscal year 1981. This amount is well within the budget revenue figures for the upcoming fiscal year. In fact, excluding the revenue loss attributable to the treatment of business startup costs under section 102, all the other provisions of the bill combined have a net positive revenue impact in the long run.

Mr. Speaker, I urge the prompt adoption of H.R. 7956.

Mr. Speaker, I yield such time as he may require to the gentleman from New Jersey (Mr. MINISH).

Mr. MINISH. Mr. Speaker, I rise in support of H.R. 7956. I am particularly interested in section 108, the exemption for certain subsistence allowances received by certain police officers. Let me explain briefly why this provision is necessary.

Section 108 corrects an apparent oversight in Public Law 95-427, a law which we passed in 1978 to prevent retroactive taxation of State police subsistence allowances. Until that time, on the basis of a 1954 court of appeals decisions, troopers all over the country had not included such allowances in their taxable income. In 1977, however, the Supreme Court handed down its decision in the Kowalski case that these subsistence allowances, which were paid to troopers in 15 States, did constitute taxable income. On June 28, 1978, the House passed Public Law 95-427 by a vote of 386 to 12, with the Senate later concurring by a voice vote. Congress recognized that troopers who had continued to exclude subsistence income during the lengthy Kowalski litigation period of 1970–77 would otherwise be liable to back tax assessments which in many cases would have been disastrous. The new law directed that the taxation of subsistence allowances would, in effect, begin as of the 1977 Supreme Court ruling. Thus troopers who had excluded this allowance all along were relieved of the prospect of crippling tax payments and possible bankruptcy.

However, many troopers had included their subsistence income in their tax returns all along on the advice of the Internal Revenue Service. I am informed that IRS uniformly granted refunds to these taxpayers, who had filed amended returns for the disputed years. In New Jersey, however, a particular problem arose. The Newark office of the IRS had advised troopers there who included subsistence in their taxable income that they could keep the matter open pending the outcome of the Kowalski litigation simply by filing form 872, an in-house IRS time extension form, rather than filing amended return for the years in question. After the Supreme Court decision and the passage of Public Law 95-427, these troopers learned that the advice which they had followed was not correct, and that the forms 872 which they had submitted did not in fact guarantee them refunds for 1974, 1975, and 1976, which amended returns for those years would have guaranteed. These 200 or so troopers were denied the refunds which their colleagues elsewhere had received.

The Treasury Department has recognized that this latest IRS ruling is not compatible with the intent of Public Law 95-427 but says that it cannot remedy matters without corrective legislation. Assistant Secretary for Legislative Affairs Gene E. Godley has assured the New Jersey Governor's office in writing that Treasury will not oppose legislation which would relieve these particular taxpayers, who should be allowed refunds to achieve treatment equal to that given their colleagues under Public Law 95-427. Treasury has repeated this assurance before the Subcommittee on Select Revenue Measures and before the full Ways and Means Committee. I understand that the Treasury, recognizing an

inequity, will not oppose appropriate legislation to correct it.

I should mention here that the bill which I originally submitted has been amended at the request of Treasury to provide specifically for their principle of a statute of limitations. I understand that, as amended, what is now section 108 of this bill still guarantees refunds to those individuals who extended their returns for 1974, 1975, and 1976 by means of the form 872. Thus these taxpayers will now get the same treatment under Public Law 95-427 as those who filed amended returns for the years in question.

I wonder if the chairman would respond to a question.

Mr. Speaker, is it the Chairman's understanding that the language of section 108 of H.R. 7956 as it is now amended will correct this inequity and allow these troopers refunds for their 1974, 1975, and 1976 returns?

Mr. ROSTENKOWSKI. Mr. Speaker, will the gentleman yield?

Mr. MINISH. I yield to the Chairman.

Mr. ROSTENKOWSKI. The gentleman from New Jersey is correct. That is my understanding.

Mr. MINISH. I thank the Chairman, and I yield back my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee (Mr. GORE).

Mr. GORE. Mr. Speaker, I would like to urge my colleagues to support H.R. 7956, the Miscellaneous Revenue Act of 1980, which contains a provision which I introduced. Section 107 of this bill is a slight variation of H.R. 5643 which was cosponsored by 130 of my colleagues and is identical to H.R. 7520 which was sponsored by Congressman ULLMAN and myself. Section 107 is designed to preserve the tax exempt status of rural electric and telephone cooperatives by allowing these cooperatives to disregard income from pole rentals and display listings in unrelated business income determinations. I want to commend Chairman ULLMAN, and Mr. ROSTENKOWSKI for their leadership in pursuing this important issue.

Electric and telephone cooperatives are the backbone of rural America. Congress helped nurture the growth of co-ops in the 1930's and 1940's in order to improve the quality of life in rural areas. Privately owned utilities brought necessary services to urban centers, but they either could not or would not furnish the needs of rural areas.

The goal of cooperatives is not to make profits but to bring reliable service at the lowest possible price. This is one of the principal reasons why we have seen co-ops on the forefront of major technological changes and innovative, cost-cutting measures.

There are more than 1,000 electric co-ops in this country in 46 States. They provide service to 25 million people and cover more than 50 percent of the land area in the United States. Telephone co-ops operate in 30 States and provide telephone service to more than 750,000 people. Co-ops are an indispensable part of rural life and continue to provide opportunities for growth and development.

Unfortunately, it seems that the Internal Revenue Service does not share the enthusiasm of Congress for cooperatives. Recent technical advice memoranda by the IRS have attempted to chip away at their tax-exempt status and have placed unnecessary and unreasonable burdens on cooperatives. The IRS memorandums have said that income from pole rentals and display listings in "Yellow Page" directories is unrelated business income and therefore taxable.

The IRS actions have two adverse implications for co-ops. First, co-ops will be required—for the first time—to pay taxes on this type of income. In Tennessee, our 22 electric cooperatives could have to pay as much as $800,000 in additional taxes from pole rental income. Similar costs can be expected from other States. While this may not add up to a large tax revenue for the IRS, it is the type of unnecessary cost which causes electric rates to soar.

Second—and more importantly—these IRS rulings could jeopardize the tax-exempt status of co-ops altogether. Under present law, a rural electric or telephone cooperative is tax exempt provided that 85 percent or more of its income consists of amounts collected from members for the sole purpose of meeting losses and expenses. If the IRS position is allowed to stand, many co-ops may be faced with losing their tax-exempt status. Worse still, if an electric cooperative is in danger of reaching the 15 percent limit because of pole rental income, it may be forced to tell the telephone cooperative to build its own poles. Imagine the esthetics, to say nothing of the stupidity, of having two poles side by side, one providing electricity and one providing telephone service.

The IRS technical advice memorandum on pole rentals argues that the leasing of space on utility poles does not have a substantial causal relationship to the achievement of the exempt purpose of the cooperative. I believe that, even in the absence of this legislation, a strong case can be made that this ruling is erroneous. And on the face of it, the ruling strains simple logic.

Leasing pole space is integrally related to the purpose of cooperatives. The purpose of electric cooperatives, as seen by the legislative history of the Rural Electrification Act, is to promote the public good by providing area service to the largest number of people at the lowest possible cost. To effect this purpose, REA has urged co-ops to enter into reciprocal agreements for the joint use of poles. The legislative history of the 1949 amendments to the Rural Electrification Act is replete with expressions of congressional intent to cut costs by encouraging joint pole use.

The purpose of joint pole use is to eliminate duplication, to reduce maintenance expenses, to promote sound engineering practices, and to reduce the need to obtain new rights-of-way. All of this is precisely within the purpose REA and Congress envisioned for cooperatives.

However, the issue becomes clouded because Congress did not enact the first unrelated business income tax until 1950, and cooperatives were not subject to it until 1969. Thus, IRS can correctly argue that Congress did not speak to this precise point despite the fact that the intent to encourage joint pole use is very clear.

Yet by looking to the policy behind the unrelated business income tax, there is further evidence that pole rentals should not be included. The tax was designed to prevent unfair competition with taxable businesses. The IRS, for example, would argue that money gained at a church supper is taxable because the church is in competition with the local restaurant. But there is no such competition with utility poles. Once one set of poles is erected, all other utilities will want to share that pole, not build one of their own.

I regret that IRS, in my opinion, misconstrued the congressional intent in its recent technical advisory opinions. Unfortunately, Congress must now reaffirm its intent to exclude pole rentals and display listings from unrelated business income definitions. Otherwise, co-ops around the country are going to have to dig into their pockets and ultimately increase rates to consumers.

I applaud IRS efforts to tighten the tax laws, but I am afraid their efforts in this area are totally misguided. Enactment of this bill will not provide any revenue loss to the IRS because very little, if any, money has been collected yet. However, if this ruling is allowed to stand, it will ultimately be translated into significant costs for co-ops, and it will frustrate their efforts to meet the needs of their customers.

On behalf of the 130 cosponsors of my original bill and the many supporters of the revised bill, I urge my colleagues to act favorably on this important measure.

Mr. ROSTENKOWSKI. Mr. Speaker, I reserve the balance of my time.

Mr. DUNCAN of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 7956 which makes several significant changes to the Internal Revenue Code of 1954.

The bill also clarifies a number of important tax issues. For example, it is currently unclear how certain expenses incurred in establishing a new business are to be treated. The bill clarifies this area and will reduce needless litigation.

Another area clarified by the bill relates to certain kinds of income earned by mutual or cooperative telephone and electric companies. The Internal Revenue Service has adopted positions that could revoke the tax exemption of many mutual or cooperative telephone and electric companies. The bill establishes special rules which will prevent this revocation and allow the telephone and electric companies to function more effectively.

H.R. 7956 also encourages the preservation of our environment by establishing new rules concerning the charitable contribution deduction allowed for the donation of easements and other partial

interests in real estate for conservation purposes.

Last Congress we passed legislation that allowed tax refunds to certain State troopers in very limited situations. The bill expands this treatment to include certain State troopers who were inadvertently omitted from the earlier legislation.

Recently, two court decisions have highlighted certain pension plan avoidance devices. If allowed to continue many employees could be deprived of their pension and the Treasury could lose millions of dollars of revenues. The bill corrects this situation by establishing more comprehensive rules and guidelines.

H.R. 7956 also clarifies several provisions of the Code relating to employee stock ownership plans as well as making additional substantive changes in the tax laws.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. CONABLE), senior Republican member on the Committee on Ways and Means.

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, as Chairman ROSTENKOWSKI and other Members have already described the legislation, it consolidates several bills addressing various minor but worthwhile changes in the tax law.

I would like to focus on section 102 of the bill regarding the amortization of startup expenses where we have had some problems. Section 102 embodies the substance of H.R. 5729, a bill on this issue which I introduced on October 29 of last year.

Section 102 is designed to provide a more generous tax treatment of business startup expenses than is allowed under current law. Many times the investigatory and startup expenses of a business are not currently deductible but have to be capitalized. This means these expenses are added to the taxpayer's basis in the business and recouped only when the business eventually is sold. Examples of preopening expenses are market surveys, advertising, employee training, legal and accounting services in setting a business up.

Section 102 would allow taxpayers to elect to amortize preopening startup expenses over 60 months. This would allow the taxpayer to recoup these expenses in the early years of the business and not have to wait until the business is sold.

For many businesses a 60-month amortization period may be more desirable than immediate deductibility. This is because the first few years of a business operation often show low profits so that immediate deductibility might generate a net operating loss. A net operating loss can be complicated for a small businessman to handle. Thus, spreading the deductibility of startup expenses over 5 years may correspond more closely to the earnings growth of a new business.

Mr. Speaker, I believe the amortization of startup expenditures contained in section 102 will assist in the formation of competitive new businesses and, therefore, will help the competitiveness of our economy.

Mr. DUNCAN of Tennessee. Mr. Speaker, I thank the gentleman for his contribution, and I yield 5 minutes to the gentleman from Minnesota (Mr. FRENZEL), a member of the committee.

Mr. FRENZEL. Mr. Speaker, H.R. 7956, as has been indicated by the distinguished chairman of the subcommittee, the gentleman from Illinois (Mr. ROSTENKOWSKI), and the distinguished ranking member, the gentleman from Tennessee (Mr. DUNCAN), is a good bill. However, passage of this bill under the suspension procedure is exactly the wrong way for the House to be operating.

There has been a great deal of criticism from both sides of the aisle and from outside observers about misuse, and overuse, and abuse of the suspension procedure. Nevertheless, the leadership of this House continues to use the process without limitation, usually whenever it feels it is necessary to avoid a difficult decision.

No bills dealing with significant sums of money should ever be handled by this body under a process that limits debate and eliminates amendments. This particular bill, H.R. 7956, contains about $120 million of lost revenue. As I said earlier, Mr. Speaker, I do not regret the loss of that revenue. It is a good bill. The provisions are fair and reasonable.

The suspension procedure was created to handle minor, noncontroversial bills. Yet, every week our leadership here uses the process merely because the handling of a bill in the right way is inconvenient.

The bill itself is worthwhile. The committee amalgamated 13 separate bills into one single bill. There is nothing wrong with that strategy because the other body has a habit of giving cavalier treatment to our smaller bills.

But what is wrong with the procedure is there cannot be any vote on a rule, there cannot be any amendments, and debate on this particular measure is restricted only to 40 minutes.

□ 1240

There are no substantive features of the bill that I oppose. I do, however, continue to oppose any attempt to gag this body or to shortcut the regular order. It is only for this reason that I object. The bill ought to be defeated so that it can be brought before the body under the normal procedures.

I yield back the balance of my time.

Mr. DUNCAN of Tennessee. Mr. Speaker, I reserve the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield so much time as he may require to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, I rise in strong support of the bill. I wish to thank my distinguished friend and colleague, the chairman of the subcommittee, the gentleman from Illinois (Mr. ROSTENKOWSKI), who has handled this bill with rare distinction and ability, and also his staff, and the gentleman from Oregon, the chairman (Mr. ULLMAN).

The provisions in which I am most particularly interested contained in section 103, are formerly the provisions of H.R. 4611 and H.R. 7318, cosponsored by my good friend, the gentleman from Indiana (Mr. JACOBS), which has the support of most of the major conservation organizations of the United States and will establish a mechanism whereby large amounts of land could become available for donation to the Government of the United States, to the governments of the States, local units of government, and also to the private nonprofit organizations like the Nature Conservancy, the Audubon Society, and so forth. It is a fine piece of conservation legislation for which the gentleman from Illinois (Mr. ROSTENKOWSKI) may take a great deal of credit. I again commend him for the fine and capable way in which he worked. It has been a privilege, I wish it to be known, for me to have worked with the gentleman from Illinois.

● Mr. FISHER. Mr. Speaker, I would like to make a few comments on section 103 of this bill, which deals with the current tax treatment on conservation easements. Through the easements program, individuals can keep the land itself, but make a promise, in exchange for a tax deduction, not to use the land in any way which would interfere with the conservation purpose.

This section represents an improvement over current law in that the easement program is permanently established in the Tax Code, whereas it would have terminated in 1981. Furthermore, landowners will be allowed a deduction if they give up all the interests in the land except the mineral interests, so long as the minerals are not removed from the land by strip mining methods. This is the type of accommodation which is necessary and proper if we are to preserve the environment while at the same time meet our Nation's energy needs.

In addition, the current law is tightened up in order to prevent it from being exploited by those individuals looking for tax loopholes. Under the legislation which we are considering today, the entities which are allowed to receive these easements are limited to governmental units, publicly supported charities, or any private organization controlled by publicly supported charity or government unit. This will help to prevent the creation of sham transfers to organizations which are not really interested in seeing that the promise is kept to preserve the land for conservation purposes.

Finally, the definition of an "open space easement" for conservation purposes is also clarified by this bill so as to insure that the purposes which have already been allowed by the IRS will still be allowed in the future. I am pleased that the committee agreed to my request that the report accompanying this bill specify in what cases easements for the preservation of open space, including farmland and forest land, qualify for a tax deduction. I am glad to see

that items such as water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in or related to a Government-approved master plan or land management plan now clearly meet the test as to whether the donation of a real estate interest is pursuant to a clearly defined governmental conservation policy and yields a significant public benefit.

In the final analysis, aside from the conservation benefits which will result from this legislation, the conservation easements provided for also constitute an economy move. It would cost the Government much more to buy the land and preserve it than is lost in terms of revenue through giving the tax deduction.

I urge my colleagues to support this worthwhile piece of legislation.●

● Mr. HUGHES. Mr. Speaker, there is a provision in this bill which will be well received by New Jersey State troopers and those in other States who paid back taxes on their meal allowances.

This is an issue that has bounced around the courts and the legislature for 10 years. In 1970, a New Jersey State trooper filed suit to determine the policy on taxing subsistence allowances. In 1977, the U.S. Supreme Court reached a decision in favor of the Internal Revenue Service's position that meals given to the State troopers were taxable. Since there was no clear-cut position during the 7 years before the Supreme Court decision, troopers were left to their own discretion whether or not to declare this as income on their Federal tax returns. Some paid taxes on this allowance others did not. As a result, many troopers found themselves liable for 7 years of back taxes on those meals.

In 1978, Congress passed legislation to relieve those individuals liable for the back taxes and to reimburse those who chose to go ahead and pay the taxes. Unfortunately, the 1978 law was deficient and the New Jersey troopers who paid income taxes on their subsistence allowances for 1974, 1975, and 1976 were not relieved at all. In fact, by being good guys and trying to do the right thing, they found themselves out a substantial amount of money.

This is one of those horribly ironic situations that all of us in Congress dread, giving with one hand and taking away with the other. That is why Congressman MINISH and I introduced legislation in this Congress to clear up the situation once and for all.

Perhaps one could even say that this is an example of how the good guys finally won. With the passage of this bill, those who did the right thing will be rewarded finally by either a tax credit or a refund for the taxes they paid on their meals. There are about 150 such State troopers in New Jersey who paid as much as $1,800 in taxes on their subsistence allowances. State troopers do not earn a great deal of money and these back taxes caused many of them a good deal of financial hardship. While it is true that justice is its own reward, it is also nice to know that your Government will not continue to penalize you because you did the right thing. I urge my colleagues to join with me and support this bill.●

Mr. ROSTENKOWSKI. I thank the gentleman for his comments.

Mr. Speaker, I have no further requests for time.

Mr. DUNCAN of Tennessee. Mr. Speaker, I have no further requests for time and yield back the remainder of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. ROSTENKOWSKI) that the House suspend the rules and pass the bill, H.R. 7956, as amended.

The question was taken.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 375, nays 6, not voting 51, as follows:

[Roll No. 526]

YEAS—375

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Cheney
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Gaydos
Gephardt
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rancel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wyatt
Wydler
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—6

Bennett
Cleveland
Dannemeyer
Frenzel
Kelly
Mottl

NOT VOTING—51

Addabbo
Anderson, Ill.
Beard, R.I.
Boggs
Breaux
Buchanan
Campbell
Chappell
Chisholm
Ferraro
Garcia
Giaimo
Gibbons
Grassley
Hance
Harsha
Hinson
Holtzman
Ireland
Jenkins
Jenrette
Jones, Tenn.
Kemp
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McKinney
Marriott
Mattox
Moorhead, Pa.
Murphy, N.Y.
Nolan
Ottinger
Patten
Pepper
Railsback
Richmond
Royer
Russo
St Germain
Steed
Tauzin
Thompson
Traxler
Wilson, C. H.
Wolff
Wylie
Young, Alaska
Zeferetti

□ 1250

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Young of Alaska.
Mrs. Boggs with Mr. Railsback.
Mr. Giaimo with Mr. Royer.
Mr. Murphy of New York with Mr. Wylie.
Mr. Pepper with Mr. Kemp.
Mr. Thompson with Mr. Marriott.
Mr. Zeferetti with Mr. Leach of Iowa.
Mr. Wolff with Mr. McKinney.
Mr. Russo with Mr. Harsha.
Mr. Lederer with Mr. Hinson.
Mr. Chappell with Mr. Grassley.

Mrs. Chisholm with Mr. Campbell.
Mr. Patten with Mr. Beard of Rhode Island.
Mr. Mattox with Ms. Ferraro.
Mr. Moorhead of Pennsylvania with Mr. Buchanan.
Mr. Jones of Tennessee with Mr. Charles H. Wilson of California.
Mr. Jenrette with Mr. Traxler.
Mr. Breaux with Mr. St Germain.
Mr. Gibbons with Mr. Steed.
Mr. Ottinger with Mr. Garcia.
Mr. Tauzin with Mr. Richmond.
Mr. Lehman with Mr. Nolan.
Mr. Jenkins with Mr. Leland.
Mr. Ireland with Ms. Holtzman.
Mr. Hance with Mr. Leach of Louisiana.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule on Wednesday, September 10, 1980, be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

INFANT FORMULA ACT OF 1980

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 6940, to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that act to assure the safety and nutrition of infant formulas, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

□ 1300

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Infant Formula Act of 1980".

SEC. 2. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 411 the following new section:

"REQUIREMENTS FOR INFANT FORMULAS

"SEC. 412. (a)(1) An infant formula shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (g);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the quality control requirements prescribed by the Secretary under this section.

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (g);

"(B) revise the required level for any nutrient required by subsection (g);

"(C) establish requirements for quality factors for such nutrients; and

"(D) establish such quality control procedures as the Secretary determines necessary to assure that an infant formula provides nutrients in accordance with this section and establish requirements respecting the retention of records of procedures required under this clause (including maintaining necessary nutrient testing records). Quality control procedures prescribed by the Secretary shall include the periodic testing of infant formulas to determine whether they are in compliance with this section.

"(b)(1) On the 90th day after the date of the enactment of this section, and on each 90th day thereafter, a manufacturer of infant formula shall notify the Secretary that each infant formula manufactured by such manufacturer provides the nutrients required under subsection (g). Such notification requirement shall expire upon the effective date of regulations relating to quality control procedures prescribed by the Secretar under subsection (a)(2)(D).

"(2) Not later than the 90th day before the first processing of any infant formula for commercial or charitable distribution for human consumption, the manufacturer shall notify the Secretary whether—

"(A) such infant formula provides nutrients in accordance with subsection (g) and meets the quality factor requirements prescribed by the Secretary; and

"(B) the processing of such infant formula meets the quality control procedure requirements prescribed by the Secretary.

"(3) Before the first processing of any infant formula for commercial or charitable distribution for human consumption—

"(A) after a change in its formulation, or

"(B) after a change in its processing,

which the manufacturer reasonably determines may affect whether the formula is adulterated as determined under subsection (a)(1), the manufacturer shall notify the Secretary of such change and that the formula provides nutrients in accordance with subsection (g) and meets the quality factor requirements prescribed by the Secretary and that the processing of such infant formula is in compliance with the quality control procedures prescribed by the Secretary.

"(c)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (g); or

"(B)(i) may be otherwise adulterated or misbranded, and

"(ii) if so adulterated or misbranded presents a risk to human health,

the manufacturer shall promptly notify the Secretary of such noncompliance or risk to health.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(d)(1) If a recall of an infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary may prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(e)(1) Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. No manufacturer shall be required under this subsection to retain any record respecting the distribution of an infant formula for a period of longer than 2 years from the date the record was made.

"(2) To the extent that the Secretary determines that records are not being made or maintained in accordance with paragraph (1), the Secretary may by regulation prescribe the records required to be made under paragraph (1) and requirements respecting the retention of such records under such paragraph. Such regulations shall take effect on such date as the Secretary prescribes but not sooner than the 180th day after the date such regulations are promulgated. Such regulations shall apply only with respect to distributions of infant formulas made after such effective date.

"(f)(1) Any infant formula which is represented and labeled for use by an infant—

"(A) who has an inborn error of metabolism or a low birth weight, or

"(B) who otherwise has an unusual medical or dietary problem,

is exempt from the requirements of subsections (a) and (b). The manufacturer of an infant formula exempt under this paragraph shall, in the case of the exempt formula, be required to provide the notice required by subsection (c)(1) only with respect to adulteration or misbranding described in subsection (c)(1)(B), and to comply with the regulations prescribed by the Secretary under paragraph (2).

"(2) The Secretary may by regulation establish terms and conditions for the exemption of an infant formula from the requirements of subsections (a) and (b). An exemption of an infant formula under paragraph (1) may be withdrawn by the Secretary if such formula is not in compliance with applicable terms and conditions prescribed under this paragraph.

"(g) An infant formula shall contain nutrients in accordance with the table set out in this subsection or, if revised by the Secretary under subsection (a)(2), as so revised:

"NUTRIENTS

"Nutrient	Minimum*	Maximum*
Protein (gm)	1.8†	4.5.
Fat:		
Gm	3.3	6.0.
Percent cal	30.0	54.0.
Essential fatty acids (linoleate):		
Percent cal	2.7	
Mg	300.0	
Vitamins:		
A (IU)	250.0 (75 µg)‡	750.0 (225 µg).‡
D (IU)	40.0	100.0.
K (µg)	4.0	
E (IU)	0.7 (with 0.7 IU/gm linoleic acid)	
C (ascorbic acid) (mg)	8.0	
B_1 (thiamine) (µg)	40.0	
B_2 (riboflavin) (µg)	60.0	
B_6 (pyridoxine) (µg)	35.0 (with 15 µg/gm of protein in formula).	
B_{12} (µg)	0.15	
Niacin (µg)	250.0	
Vitamins—Continued		
Folic acid (µg)	4.0	
Pantothenic acid (µg)	300.0	
Biotin (µg)	1.5**	
Choline (mg)	7.0**	
Inositol (mg)	4.0**	
Minerals:		
Calcium (mg)	50.0††	
Phosphorus (mg)	25.0††	
Magnesium (mg)	6.0	
Iron (mg)	0.15	
Iodine (µg)	5.0	
Zinc (mg)	0.5	
Copper (µg)	60.0	
Manganese (µg)	5.0	
Sodium (mg)	20.0	60.0.
Potassium (mg)	80.0	200.0.
Chloride (mg)	55.0	150.0.

*Stated per 100 kilocalories.
†The source of protein shall be at least nutritionally equivalent to casein.
‡(Retinol equivalents.
**Required to be included in this amount only in formulas which are not milk-based.
††Calcium to phosphorus ratio must be no less than 1.1 nor more than 2.)"

SEC. 3. Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

"(aa) The term 'infant formula' means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.".

SEC. 4. Section 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)) is amended—

(1) in the first sentence, by inserting "(1)" before "For purposes" and by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(2) in the third sentence, by inserting "or by paragraph (3)" after "preceding sentence";

(3) in the sixth sentence, (A) by striking out "The provisions of the second sentence of this subsection" and inserting in lieu thereof the following:

"(2) The provisions of the second sentence of paragraph (1)",

and (B) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(4) by adding at the end the following:

"(3) An officer or employee making an inspection under paragraph (1) for purposes of enforcing the requirements of section 412 applicable to infant formulas shall be permitted, at all reasonable times, to have access to and to copy and verify any records—

"(A) bearing on whether the infant formula manufactured or held in the facility inspected meets the requirements of section 412, or

"(B) required to be maintained under section 412.".

SEC. 5. (a) Section 301 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new paragraph:

"(s) The failure to provide the notice required by section 412(b) or 412(c), the failure to make the reports required by section 412(d)(1)(B), or the failure to meet the requirements prescribed under section 412(d)(2).".

(b) Section 301(e) of such Act is amended (1) by striking out "section 703" and inserting in lieu thereof "section 412 or 703", and (2) by striking out "section 505" and inserting in lieu thereof "section 412, 505".

(c) Section 301(j) of such Act is amended by inserting "412," before "505".

SEC. 6. Section 412 of the Federal Food, Drug, and Cosmetic Act (added by section 2) shall apply with respect to infant formulas manufactured on or after the 90th day after the date of the enactment of this Act.

SEC. 7. (a) The Secretary of Health and Human Services shall conduct a study to determine the long-term effect on infants of hypochloremic metabolic alkalosis resulting from infant formulas deficient in chloride. The Secretary shall report the results of such study to the Congress.

(b) The Secretary of Health and Human Services shall conduct a review of existing Federal requirements for the labeling of infant formula to determine the effect of such requirements on infant nutrition and proper use of infant formula. Not later than the 180th day after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives containing the results of the review and including recommendations for any legislative or administrative action with respect to the labeling of infant formula as the Secretary determines appropriate.

(c) The Secretary of Health and Human Services shall conduct a review of issues concerning the export of infant formula that, if marketed in the United States, would be in violation of section 412 of the Federal Food, Drug, and Cosmetic Act. Not later than the 180th day after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, containing the results of the review and including recommendations regarding appropriate legislative or administrative action to improve current export policies, as the Secretary determines appropriate.

SEC. 8. (a) Section 503 of the Controlled Substances Act (21 U.S.C. 873) is amended by adding at the end the following new subsection:

"(c) The Attorney General shall annually (1) select the controlled substance (or controlled substances) contained in schedule II which, in the Attorney General's discretion, is determined to have the highest rate of abuse, and (2) prepare and make available to regulatory, licensing, and law enforcement agencies of States descriptive and analytic reports on the actual distribution patterns in such States of each such controlled substance.".

(b) Section 203 of the Psychotropic Substances Act of 1978 (Public Law 95-633) is amended by striking out subsection (d).

(c) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) by striking out "except as provided in paragraphs (4) and (5) of this subsection" in the first sentence of subsection (b)(1)(B) and inserting in lieu thereof "except as provided in paragraphs (4), (5), and (6) of this subsection"; and

(2) by adding after paragraph (5) of subsection (b) the following new paragraph:

"(6) In the case of a violation of subsection (a) involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, and in addition, may be fined not more than $125,000. If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title, title III, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, and in addition, may be fined not more than $250,000.".

Mr. WAXMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. MOAKLEY). Is there objection to the request of the gentleman from California?

Mr. CARTER. Mr. Speaker, reserving the right to object, I am most happy to yield to the most distinguished gentleman from Tennessee (Mr. GORE), one of the original authors of the bill.

Mr. GORE. Mr. Speaker, I thank my colleague for yielding. I would like to thank him and the subcommittee chairman, the gentleman from California (Mr. WAXMAN), and urge my colleagues to allow this unanimous-consent request to go through.

Mr. Speaker, this legislation's purpose is to correct serious shortcomings in the design, testing, and marketing of infant formulas. Under current law, any substance whatsoever can be mass-marketed as the sole source of nourishment for infants. As a result, infant formulas that were deficient in vital nutrients were sold to unsuspecting parents. Thousands of American infants consumed deficient formulas and of these at least 150 suffered growth and developmental abnormalities directly attributable to the inferior formulas. Several months after this tragedy was discovered, the adulterated formulas were still being sold.

This legislation will require for the first time that all infant formulas sold in the United States contain all the ingredients essential to a child's proper development and growth. It also requires that formulas be tested before they are marketed. The bill also authorizes the Food and Drug Administration to prescribe procedures for removing adulterated formulas from store shelves, authority that hopefully will be unnecessary after these new nutritional quality standards are in place. Specifically, FDA will be authorized to issue a mandatory, high-priority recall of any defective formula found on the shelves. The FDA would also be required to insure complete compliance with the recall.

The infant formula legislation represents a significant effort to alleviate the problems that led to the physical harm that was needlessly inflicted upon these infants.

Mr. MOTTL. Mr. Speaker, will the gentleman yield?

Mr. CARTER. Mr. Speaker, I yield to the distinguished gentleman from Ohio (Mr. MOTTL), also one of the authors of the legislation before us.

Mr. MOTTL. Mr. Speaker, I rise in enthusiastic support of the Senate amendment to H.R. 6940. Approval of the amendment will avoid the need for a conference committee and will speed this critical legislation to the President for his signature.

I want to commend and express my personal thanks to the distinguished subcommittee chairman, Mr. WAXMAN, and the ranking minority member, Dr. CARTER, and Congressman AL GORE, for their effort and success in encouraging swift consideration of this bill at every stage in the legislative process. I would also like to take this opportunity to express my sorrow that Dr. CARTER has announced his retirement from Congress. He is certainly one of the finest doctors in the United States and one of the greatest legislators we have in the House of Representatives. We are going to miss him dearly.

Mr. Speaker, I would like to note and express strong support of provisions contained in the Senate amendment which would clarify the definition of "quality control procedures." The amendment provides the Secretary with clear authority to require the periodic testing of infant formula prior to marketing. While this authority was provided in the original House bill, I do not believe it hurts to increase legislative clarity on an issue of such importance.

One of the major findings of the Subcommittee on Oversight and Investigations' study of this issue was that inadequate premarket testing was a major factor in the sale last summer of two formula products critically deficient in chloride. Chloride is a nutrient vital to sustain life. The tragic event afflicted over 150 infants with a rare and potentially fatal blood disorder known as hypochloremic metabolic alkalosis. In combination with mandatory ingredient standards, conscientious and periodic testing of infant formula during the manufacturing process is the best protection against a repetition of last summer's tragedy.

Mr. Speaker, H.R. 6940 is a bill of which we can all be proud. It is legislation which was carefully crafted in close cooperation with pediatricians, consumers, and industry. It has wide endorsement and that is no insignificant achievement. I think the overwhelming level of support for this legislation underscores our common concern as legislators and parents about the need to protect this Nation's most valuable natural resource—our children.

The passage of H.R. 6940 will restore the confidence of thousands of parents that the infant formula upon which their children depend for nourishment is safe and effective. We have corrected a grievous deficiency in the Federal Food, Drug and Cosmetic Act and have taken a major step toward upgrading the quality of infant nutrition in this country.

I am proud of this achievement in which I had the opportunity to play a major roll and pledge to work closely with the Subcommittee on Oversight and Investigations and the Subcommittee on Health and the Environment to see that this new law is carefully enforced.

Mr. Speaker, I urge support for the Senate amendment.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, I am pleased to have this opportunity to present H.R. 6940, the Infant Formula Act of 1980 and accompanying Senate amendment to the House of Representatives. The amendment represents an amicable compromise between the original House passed bill and S. 2490, Senate companion legislation. The compromise was the result of lengthy negotiations between the Subcommittee on Health and the Environment and the Senate Labor and Human Resources Subcommittee on Health and Scientific Research. Approval of the Senate amendment will speed final passage and avoid the necessity of a conference on an issue which possesses overwhelming bipartisan support.

Mr. Speaker, this legislation is a popular measure. The bill was approved by unanimous vote of the Interstate and Foreign Commerce Committee and approved by the full House—388 to 15—on May 22, 1980. Yesterday, the Senate endorsed passage of H.R. 6940 by unanimous consent.

In every respect the Senate amendment reflects the spirit and content of H.R. 6940. In addition to minor technical and conforming changes, the amendment adds four provisions not contained in the original House-passed bill. The first provision clarifies the definition of "quality control procedures" in subsection (a)(2)(D) to permit and encourage the Secretary to prescribe by regulation the periodic testing of infant formulas to insure safety and nutritional quality. The second provision, contained in subsection (b)(1), provides that until such time as these regulations become effective, manufacturers must notify the Secretary every 90 days that their infant formulas are in compliance with the required nutrient standard.

The notification provision is intended to encourage manufacturers to voluntarily develop premarket testing protocols prior to the establishment of mandatory quality control procedures. The committee strongly supports these provisions as the promulgation of quality control procedures may be a lengthy process and testing of infant formula prior to marketing is a critical factor in manufacturing a high quality product. The committee recognizes that the absence of effective quality control procedures and particularly premarket testing standards lead to the sale of two nutritionally deficient formulas last summer.

The remaining provisions not contained in the original House passed bill are contained in section 7 (b) and (c) of the amendment and relate to the preparation of reports by the Secretary of the Department of Health and Human Services. The first report entails a thorough review of Federal requirements respecting the labeling of infant formula. The Department is expected to study and make recommendations to Congress on whether incidents of formula misuse could be deterred through adoption of various label alternatives such as color coding or the use of picturegraphs. Formula misuse appears to most often occur among illiterate or non-English speaking Americans who confuse formula "concentrate," which requires dilution, from "ready to feed" preparations.

The committee recognizes that formula misuse can result in serious health effects and therefore believes this is an appropriate topic for further inquiry.

The second report involves a study of the nutritional quality of infant formula manufactured in this country for export. In particular, the report seeks an analysis of the impact of a Federal prohibition on the export of infant formula which does not comply with U.S. nutritional and processing standards.

Mr. Speaker, these Senate provisions are noncontroversial and greatly strengthen H.R. 6940. The committee has discussed their impact with industry representatives, the American Academy of Pediatrics, the Food and Drug Administration and consumer groups. I know of no objection to their inclusion in H.R. 6940 and therefore strongly recommend support of the Senate amendment.

Mr. Speaker, several Members have expressed interest in the status of the miscellaneous drug enforcement provisions contained in H.R. 6940. The original House bill contained three provisions which provided for continuing existing

reporting requirements for the PCP precursor piperidine, the expansion of technical assistance provided States to control retail diversion of dangerous drugs and increasing criminal penalties for trafficking in large quantities of marihuana. The provisions were included in H.R. 6940 to obtain swift Senate consideration and enactment.

I am pleased to report that the Senate included all three House provisions in S. 2490 as well as the Senate amendment to H.R. 6940.

Mr. Speaker, I want to take this opportunity to once again recognize three members of the committee for their dedication and tireless efforts in working to see this vital bill through the legislative process. On behalf of the committee and the House I want to recognize the efforts of Representatives ALBERT GORE, RONALD MOTTL, and Dr. TIM LEE CARTER, ranking minority member of the Subcommittee on Health and the Environment. This legislation is a reflection of their thoughtful input.

I also want to note that Representatives GORE and MOTTL were personally responsible for writing the first legislative proposals on this issue following an extensive inquiry conducted by the Subcommittee on Oversight and Investigations of which they are leading members. They, as much as any member, deserve credit for first calling attention to serious deficiencies in the Federal Food, Drug, and Cosmetic Act and for giving birth to the legislation currently under consideration by this body. As Members of Congress, their dedication to duty—to serving the public interest—is of a caliber the House of Representatives can be justly proud.

Mr. Speaker, I would also like to express my appreciation to the Senate floor manager and author of the Senate amendment to H.R. 6940, Senator HOWARD METZENBAUM. Senator METZENBAUM's efforts were critical in gaining swift Senate consideration of this legislation and reflect favorably upon the high standards of comity and commitment to duty which have characterized relationships between the two Houses of Congress.

Mr. Speaker, parents must have confidence in the quality of formula upon which their children depend. They must be assured that formula contains all essential nutrients and that it has been adequately tested prior to marketing. The adoption of H.R. 6940 will restore public confidence in the safety and quality of infant formula. It deserves every Member's support.

Mr. CARTER. Mr. Speaker, further reserving the right to object, I would like to indicate my strong support for the infant formula bill and the Senate amendments thereto. This legislation would help safeguard the early growth and development of millions of our youngsters who rely upon infant formula as their primary source of nutrition in their early months of life. This measure would also help address the concern that many parents have about the quality and safety of infant formulas.

The need for this legislation became apparent when we found that 100 babies across the country developed a condition known as metabolic alkalosis, a condition which inhibits growth and development. This condition was traced to the infant formula fed these children which, it was later determined, contained an insufficient amount of chloride.

More than 10 million cans of this formula were produced in the first 6 months of 1979, and to this date we do not know precisely how many babies were affected by this deficient product. Months after the manufacturers initiated a recall, cans of it were still found on shelves of stores around the country.

Under present law the FDA has authority only to assure that the formulas are produced under sanitary conditions and are properly labeled.

This bill would go a long way toward assuring that infant formulas meet accepted nutritional standards and that good manufacturing practices are followed in their production.

The legislation provides the FDA with enough flexibility to adjust nutritional standards for formulas so they comply with the latest scientific knowledge and allow for variations for infants with special dietary needs such as phenylketonuria, called in common parlance PKU.

On addition, it will allow the FDA to more closely monitor recalls of formula and will provide for a long-term study of the infants who suffer from taking the chloride deficient formula. Actually, we have known of the necessity of chlorides for many years, and it seems passing strange that sufficient chlorides should not have been included in the formula up to this time.

This legislation requires that the chlorides, as well as every other essential element be included in infant formulas. The American Academy of Pediatrics will be consulted regularly as to the sufficiency of the proteins, vitamins, and minerals which are included in the formulas.

Mr. Speaker, today there is an amendment to this bill which would increase the penalties for persons trafficking in marihuana in quantities of over 1,000 pounds. Mr. Speaker, in 1970, I was a member of the Commerce Committee when it passed the Controlled Substances Act. Unfortunately, we did not make the penalties for marihuana as strict as they should have been.

In the past few years the sale of marihuana has become a big business. It is said that planes come into our country and dump tons and tons of marihuana. In order to receive pay for the marihuana delivered, the traffickers' money is weighed, not counted, to pay for the marihuana.

The people who may be caught and taken to court as a result of the sale of marihuana or having possession of it are usually let out on bail and, because the money they make from the sale of marihuana is so great, they skip bail. They make hundreds of thousands of dollars on each delivery. For this reason this bill increases the penalty for trafficking in marihuana in amounts greater than 1,000 pounds to 15 years and a fine of no less than $125,000 for that offense. Also if the accused were a second offender, then he would be fined $250,000 and he could be sent to the penitentiary for as long as 30 years.

In my opinion, Mr. Speaker, this legislation is necessary today to stop this monopoly, this wealthy group of people who are violating our laws and bringing marihuana into this country. We must take action now to halt the increasing threat of marihuana trafficking to our society.

Mr. Speaker, young adulthood, from age 18 to 25, represents the peak period for marihuana use. Three out of five in that age group have reported having ever used marihuana. Among children between ages 12 and 13, 8 percent have used marihuana, a figure which climbs to 29 percent for 14- and 15-year-olds and to 47 percent for those ages 16 and 17. These percentages have all significantly increased in the last 3 years. Clearly, we are faced with an epidemic of marihuana use among our young people.

The marihuana trafficking amendment only affects those trafficking in more than 1,000 pounds of marihuana—an amount worth approximately $250,000—using a conservative estimate. The amendment does not affect a small-time seller of the drug.

The marihuana trafficking amendment will insure that these people are sent to prison long enough to get them out of the business. Most importantly it will make the penalties commensurate with the possible gains.

For those reasons, Mr. Speaker, I think it is extremely necessary we pass this legislation.

● Mr. STAGGERS. Mr. Speaker, few bills in my recollection have enjoyed the broad base of support possessed by H.R. 6940. The Infant Formula Act of 1980 was passed by the House on May 20, 1980 by the overwhelming vote of 388 to 15. Yesterday our colleagues in the Senate considered this same legislation and following the inclusion of several minor amendments, ordered it reported by acclamation.

The legislative history indicates the H.R. 6940 is an enormously popular measure. It provides important new authority to the Secretary of the Department of Health and Human Services to insure the safety and quality of infant formula.

Mr. Speaker, this legislation is vitally important to the health of our most important constituency—our children. Each day, tens of thousands of infants, many under the age of 6 months, depend upon formula as their sole source of nourishment.

Like many members of our committee, I was deeply disturbed to learn that existing law does not require that infant formula contain all nutrients known to be essential. I believe parents have a right to expect that every reasonable step will be taken in the manufacturing process to insure that formula is safe and will promote healthy growth.

Today, no one enjoys advocating Government regulation. However, the information developed by the committee during its consideration of this legislation strongly indicates that Federal authority in this area of food policy is inadequate and in need of revision. Infant formula is a unique food product which deserves the special attention provided by this legislation.

Mr. Speaker, H.R. 6940 is good for the health of our country. I urge the support of every Member.●

Mr. CARTER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their own remarks on the bill, H.R. 6940, just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed on Monday, September 8, 1980, in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R.7817, by the yeas and nays;
H.R. 6629, de novo;
S. 299, de novo.

The Chair will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all the additional motions to suspend the rules on which the Chair has postponed further proceedings.

CRIMINAL PROCEDURE AND EVIDENCE RULES AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 7817, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. DRINAN) that the House suspend the rules and pass the bill, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 241, nays 145, not voting 46, as follows:

[Roll No. 527]

YEAS—241

Akaka
Albosta
Alexander
Ambro
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Barnard
Barnes
Bedell
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Burlison
Burton, John
Burton, Phillip
Byron
Carr
Carter
Cavanaugh
Clay
Coelho
Collins, Ill.
Conte
Conyers
Corman
Courter
D'Amours
Danielson
Daschle
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Downey
Drinan
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Calif.
Ertel
Evans, Del.
Evans, Ga.
Fary
Pascell
Fazio
Fenwick
Fish
Fisher
Fithian
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Gephardt
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Gore
Gradison
Gramm
Gray
Green
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Holland
Hollenbeck
Horton
Howard
Huckaby
Hughes
Hutto
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Kastenmeier
Kazen
Kelly
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lent
Levitas
Lloyd
Long, Md.
Lowry
Luken
Lundine
McCloskey
McCormack
McDonald
McHugh
Maguire
Markey
Marks
Mathis
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Moore
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Pa.
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patterson
Paul
Pease
Perkins
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quillen
Rahall
Rangel
Ratchford
Reuss
Rinaldo
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Sabo
Scheuer
Schroeder
Seiberling
Shannon
Sharp
Shelby
Simon
Skelton
Smith, Iowa
Solarz
Spellman
Stack
Staggers
Stangeland
Stark
Stenholm
Stewart
Stokes
Studds
Swift
Synar
Traxler
Udall
Ullman
Van Deerlin
Vanik
Vento
Walgren
Waxman
Weaver
Weiss
White
Williams, Mont.
Williams, Ohio
Wirth
Wolpe
Wyatt
Yates
Yatron
Young, Mo.
Zablocki

NAYS—145

Abdnor
Anderson, Calif.
Applegate
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bereuter
Bethune
Bouquard
Bowen
Broomfield
Brown, Ohio
Broyhill
Burgener
Butler
Campbell
Carney
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Cotter
Coughlin
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, Mich.
Derwinski
Devine
Dickinson
Dougherty
Duncan, Oreg.
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Evans, Ind.
Findley
Florio
Frenzel
Gaydos
Gingrich
Goldwater
Goodling
Grisham
Guyer
Hagedorn
Hansen
Hillis
Holt
Hopkins
Hubbard
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jones, Okla.
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Lewis
Livingston
Loeffler
Long, La.
Lott
Lujan
Lungren
McClory
McDade
McEwen
McKay
Madigan
Marlenee
Martin
Michel
Mitchell, N.Y.
Montgomery
Moorhead, Calif.
Mottl
Myers, Ind.
Natcher
Neal
Nedzi
Pashayan
Petri
Pritchard
Quayle
Regula
Rhodes
Ritter
Roberts
Robinson
Roth
Rousselot
Rudd
Santini
Satterfield
Sawyer
Schulze
Sebelius
Sensenbrenner
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Solomon
Spence
Stanton
Stockman
Stratton
Stump
Symms
Tauke
Taylor
Thomas
Trible
Vander Jagt
Volkmer
Walker
Wampler
Watkins
Whitehurst
Whitley
Whittaker
Whitten
Wilson, Bob
Wilson, Tex.
Winn
Wydler
Young, Fla.

NOT VOTING—46

Addabbo
Anderson, Ill.
Beard, R.I.
Boggs
Breaux
Buchanan
Chappell
Chisholm
Ferraro
Garcia
Giaimo
Grassley
Harsha
Hinson
Holtzman
Ireland
Jenrette
Jones, Tenn.
Kemp
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McKinney
Marriott
Mattox
Moorhead, Pa.
Murphy, N.Y.
Nolan
Patten
Pepper
Railsback
Richmond
Royer
Russo
St Germain
Steed
Tauzin
Thompson
Wilson, C. H.
Wolff
Wright
Wylie
Young, Alaska
Zeferetti

□ 1310

The Clerk announced the following pairs:

On this vote:

Mr. Chappell and Mr. Lederer for, with Mr. Jones of Tennessee against.

Until further notice:

Mr. Addabbo with Mr. Young of Alaska.
Mr. Jenrette with Mr. Wylie.
Mr. Thompson with Mr. Royer.
Mr. Zeferetti with Mr. Kemp.
Mr. Wolff with Mr. Leach of Iowa.
Mr. Wright with Mr. Railsback.
Mr. Pepper with Mr. Marriott.
Mrs. Boggs with Mr. Hinson.
Mr. Breaux with Mr. McKinney.
Mr. Mattox with Mr. Harsha.
Mr. Murphy of New York with Mr. Grassley.
Mr. Lederer with Mr. Buchanan.
Mr. Richmond with Mr. Nolan.
Mr. Lehman with Mr. Charles H. Wilson of California.
Mr. Moorhead of Pennsylvania with Mr. Steed.

Mr. Patten with Mr. Tauzin.
Mr. Beard of Rhode Island with Mr. St Germain.
Mrs. Chisholm with Mr. Leach of Louisiana.
Mr. Giaimo with Mr. Leland.
Mr. Ireland with Mr. Garcia.
Ms. Ferraro with Ms. Holtzman.

Messrs. DINGELL, MURPHY of Pennsylvania, MYERS of Pennsylvania, and SHARP changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b)(3), rule XXVII, the Chair announces he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on the additional motions to suspend the rules on which the Chair has postponed further proceedings.

INDIAN HEALTH CARE PROGRAMS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 6629, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 6629, as amended.

The question was taken.

RECORDED VOTE

Mr. ASHBROOK. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 311, noes 70, not voting 51, as follows:

[Roll No. 528]

AYES—311

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N. C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnes
Bedell
Bellenson
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Carney
Carr
Carter
Cavanaugh
Cheney
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Corman
Courter
D'Amours
Danielson
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Dickinson
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Dougherty
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Fary
Fazio
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hamilton
Hammer-schmidt
Hanley
Harkin
Harris
Harsha
Hawkins
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Levitas
Lewis
Livingston
Lloyd
Long, La.
Long, Md.
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
Madigan
Maguire
Markey
Marks
Martin
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Murphy, Ill.
Murphy, Pa.
Musto
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patterson
Pease
Perkins
Peyser
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Rudd
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Shannon
Sharp
Shelby
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Spellman
Stack
Staggers
Stangeland
Stanton
Stark
Stewart
Stockman
Stokes
Studds
Swift
Synar
Tauke
Taylor
Thomas
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
White
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wydler
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NOES—70

Archer
Ashbrook
Badham
Barnard
Bauman
Beard, Tenn.
Benjamin
Bouquard
Brown, Ohio
Butler
Campbell
Cleveland
Collins, Tex.
Cotter
Coughlin
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Derwinski
Devine
Evans, Ga.
Evans, Ind.
Gingrich
Gramm
Hall, Tex.
Hance
Hansen
Holt
Hopkins
Hubbard
Ichord
Kelly
Kramer
Latta
Leath, Tex.
Lee
Lent
Loeffler
Lott
McDonald
Mathis
Michel
Miller, Ohio
Moorhead, Calif.
Mottl
Murtha
O'Brien
Paul
Petri
Pickle
Ritter
Robinson
Rousselot
Satterfield
Sensenbrenner
Shumway
Skelton
Snyder
Solomon
Spence
Stenholm
Stratton
Stump
Symms
Walker
Wampler
Whitehurst
Wyatt

NOT VOTING—51

Addabbo
Anderson, Ill.
Beard, R.I.
Boggs
Breaux
Buchanan
Chappell
Chisholm
Downey
Fascell
Ferraro
Garcia
Giaimo
Grassley
Heckler
Hinson
Holtzman
Ireland
Jenrette
Jones, Tenn.
Kemp
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McKinney
Marlenee
Marriott
Mattox
Moffett
Moorhead, Pa.
Murphy, N.Y.
Nolan
Patten
Pepper
Railsback
Richmond
Royer
Russo
St Germain
Steed
Tauzin
Thompson
Whitten
Wilson, Bob
Wilson, C. H.
Wolff
Wylie
Young, Alaska
Zeferetti

□ 1320

The Clerk announced the following pairs:

On this vote:

Mr. Chappell and Mr. Lederer for, with Mr. Jones of Tennessee against.

Until further notice:

Mr. Addabbo with Mr. Young of Alaska.
Mr. Moorhead of Pennsylvania with Mr. McKinney.
Mr. Zeferette with Mr. Wylie.
Mr. Murphy of New York with Mr. Royer.
Mr. Pepper with Mr. Bob Wilson.
Mr. Fascell with Mr. Railsback.
Mrs. Boggs with Mr. Kemp.
Mr. Giaimo with Mr. Leach of Iowa.
Ms. Ferraro with Mr. Marlenee.
Mr. Ireland with Mr. Hinson.
Mr. Jenrette with Mr. Marriott.
Mr. Russo with Mrs. Heckler.
Mr. Thompson with Mr. Buchanan.
Mr. Whitten with Mr. Grassley.
Mr. Patten with Mr. Garcia.
Mr. Lehman with Ms. Holtzman.
Mr. Mattox with Mr. Leach of Louisiana.
Mr. Nolan with Mr. Charles H. Wilson of California.
Mr. Moffett with Mr. Tauzin.
Mr. Leland with Mr. Steed.
Mr. Breaux with Mr. St Germain.
Mr. Downey with Mr. Beard of Rhode Island.
Mr. Richmond with Mr. Wolff.
Mrs. Chisholm with Mr. Anderson of Illinois.

Mr. BETHUNE changed his vote from "no" to "aye."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1330

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2728) to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2728

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asesmbled, That (a) this Act may be cited as the "Indian Health Care Amendments of 1980".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other

provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (90 Stat. 1400).

DEFINITIONS

SEC. 2. (a) Section 4(a) is amended by striking out "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Secretary of Health and Human Services".

(b) Section 4(h) is amended by striking out "composed of urban Indians" and inserting in lieu thereof "governed by an Indian controlled board of directors".

INDIAN HEALTH MANPOWER

SEC. 3. (a) Section 102(c) is amended by striking out the last sentence and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out this section $2,300,000 for the fiscal year ending September 30, 1981, $2,600,000 for the fiscal year ending September 30, 1982, $3,000,000 for the fiscal year ending September 30, 1983, and $3,500,000 for the fiscal year ending September 30, 1984.".

(b)(1) Section 103(b) is amended to read as follows:

"(b) Scholarship grants made pursuant to this section shall be for the following purposes:

"(1) Compensatory preprofessional education of any grantee, such scholarship not to exceed two years.

"(2) Pregraduate education of any grantee leading to a baccalaureate degree in an approved premedicine, predentistry, preosteopathy, preveterinary medicine, preoptometry, or prepodiatry curriculum, such scholarship not to exceed four years.".

(2) Section 103(c) is amended by adding the following new sentence at the end thereof: "Scholarship grants made pursuant to this section shall be awarded by such day certain that grant money shall be received by each grantee at least fifteen days prior to the date such grantee shall register for classes.".

(3) Section 103(d) is amended by striking out the last sentence and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out this section $3,510,000 for the fiscal year ending September 30, 1981, $4,000,000 for the fiscal year ending September 30, 1982, $4,620,000 for the fiscal year ending September 30, 1983, and $5,300,000 for the fiscal year ending September 30, 1984.".

(c) Section 105(d) is amended by striking out the last sentence thereof and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out this section $990,000 for the fiscal year ending September 30, 1981, $1,140,000 for the fiscal year ending September 30, 1982, $1,310,000 for the fiscal year ending September 30, 1983, and $1,510,000 for the fiscal year ending September 30, 1984.".

(d)(1) The first sentence of section 757(a) of the Public Health Service Act is amended by striking out " and for each of the succeeding four fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting in lieu thereof "$9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 the fiscal year ending September 30, 1984.".

(2) Section 757(b)(1) is amended by adding the following new sentence at the end thereof: "Scholarship grants made pursuant to this section shall be awarded by such day certain that grant money shall be received by each grantee at least fifteen days prior to the date such grantee shall register for classes.".

(3) Section 757(b)(2) is amended—

(A) by striking out "his" and inserting in lieu thereof "the applicable"; and

(B) by striking out "him" and inserting in lieu thereof "the Secretary".

INDIAN HEALTH SERVICES

SEC. 4. (a)(1) Section 201(c)(1) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $20,250,000 for the fiscal year ending September 30, 1981, $23,000,000 for the fiscal year ending September 30, 1982, $26,500,000 for the fiscal year ending September 30, 1983, and $30,500,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year."

(2) Section 201(c)(2) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $6,400,000 for the fiscal year ending September 30, 1981, $7,350,000 for the fiscal year ending September 30, 1982, $8,450,000 for the fiscal year ending September 30, 1983, and $9,700,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(3) Section 201(c)(3) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $1,875,000, for the fiscal year ending September 30, 1981, $2,150,000 for the fiscal year ending September 30, 1982, $2,500,000 for the fiscal year ending September 30, 1983, and $2,875,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(b)(1) Section 201(c)(4)(A) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $2,500,000 for the fiscal year ending September 30, 1981, $2,875,000 for the fiscal year ending September 30, 1982, $3,300,000 for the fiscal year ending September 30, 1983, and $3,800,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(2) Section 201(c)(4)(B) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $750,000 for the fiscal year ending September 30, 1981, $870,000 for the fiscal year ending September 30, 1982, $1,000,000 for the fiscal year ending September 30, 1983, and $1,150,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(3) Section 201(c)(4)(C) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $2,350,000 for the fiscal year ending September 30, 1981, $2,700,000 for the fiscal year ending September 30, 1982, $3,100,000 for the fiscal year ending September 30, 1983, and $3,600,000 for the fiscal year ending September 30, 1984, and such further positions are authorized as may be necessary for each such fiscal year.".

(4) Section 201(c)(4)(D) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $460,000 for the fiscal year ending September 30, 1981, $525,000 for the fiscal year ending September 30, 1982, $600,000 for the fiscal year ending September 30, 1983, and $690,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(5) Section 201(c)(4)(E) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $250,000 for the fiscal year ending September 30, 1981, $285,000 for the fiscal year ending September 30, 1982, $325,000 for the fiscal year ending September 30, 1983, and $375,000 for the fiscal year ending September 30, 1984.".

(c)(1) Section 201(c)(5) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $16,500,000 for the fiscal year ending September 30, 1981, $19,000,000 for the fiscal year ending September 30, 1982, $22,000,000 for the fiscal year ending September 30, 1983, and $25,100,000 for the fiscal year ending September 30, 1984.".

(2) Section 201(c)(6) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1981, $5,750,000 for the fiscal year ending September 30, 1982, $6,600,000 for the fiscal year ending September 30, 1983, and $7,600,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(3) Section 201(c) is amended by striking out paragraph (7).

INDIAN HEALTH FACILITIES

SEC. 5. Title III is amended by adding the following new section at the end thereof:

"SEC. 305. There are authorized to be appropriated to carry out sections 301 and 302 for the fiscal year ending September 30, 1981, for the fiscal year ending September 30, 1982, for the fiscal year ending September 30, 1983, and for the fiscal year ending September 30, 1984, such sums as may be necessary.".

ACCESS TO HEALTH SERVICES

SEC. 6. Title IV is amended by adding the following new section at the end thereof:

"GRANTS TO AND CONTRACTS WITH TRIBAL ORGANIZATIONS

"SEC. 404. (a) The Secretary, acting through the Service, shall make grants to or enter into contracts with tribal organizations to assist such organizations in establishing and administering programs on Federal Indian reservations and trust areas and in Alaska Native villages to assist individual Indians to—

"(1) enroll under section 1818 of part A and sections 1836 and 1837 of part B of title XVIII of the Social Security Act;

"(2) pay monthly premiums for coverage due to financial need of such individual; and

"(3) apply for medical assistance provided pursuant to title XIX of the Social Security Act.

"(b) The Secretary, acting through the Service, shall place conditions as deemed necessary to effect the purpose of this section in any contract or grant which the Secretary makes with any tribal organization pursuant to this section. Such conditions shall include, but are not limited to, requirements that the organization successfully undertake to—

"(1) determine the population of Indians to be served that are or could be recipients of benefits under titles XVIII and XIX or the Social Security Act;

"(2) assist individual Indians in becoming familiar with and utilizing such benefits;

"(3) provide transportation to such individual Indians to the appropriate officers for enrollment or application for medical assistance;

"(4) develop and implement a schedule of income levels to determine the extent of payment of premiums by such organization for coverage of needy individuals; and

"(5) make recommendations to the Secretary and Federal, State, and local agencies with respect to methods of improving the participation of Indians in receiving the benefits provided pursuant to titles XVIII and XIX of the Social Security Act.

"(c) There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1981, $5,750,000 for the fiscal year ending September 30, 1982, $6,615,000 for the fiscal year ending September 30, 1983, and $7,610,000 for the fiscal year ending September 30, 1984.".

HEALTH SERVICES FOR URBAN AND OTHER NONRESERVATION INDIANS

SEC. 7. (a) Section 506 is amended to read as follows:

"AUTHORIZATIONS

"SEC. 506. There are authorized to be appropriated for contracts with urban Indian organizations under this title $18,750,000 for the fiscal year ending September 30, 1981, $21,500,000 for the fiscal year ending September 30, 1982, $24,725,000 for the fiscal year ending September 30, 1983, and $28,500,000 for the fiscal year ending September 30, 1984.".

(b) Section 507 is amended to read as follows:

"OTHER NONRESERVATION HEALTH PROJECTS

"SEC. 507. (a) The Secretary, acting through the Service, is authorized to provide such assistance as deemed necessary to make health services more accessible to any individual who is an Indian, or any group of individuals who are Indians, within the meaning of section 4(c) and who are not currently receiving health services from the Service nor are entitled to receive services from an urban Indian organization under a contract made pursuant to section 502 of this title.

"(b) There are authorized to be appropriated to carry out this section $9,375,000 for the fiscal year ending September 30, 1981, $10,750,000 for fiscal year ending September 30, 1982, $12,362,500 for the fiscal year ending September 30, 1983, and $14,250,000 for the fiscal year ending September 30, 1984.".

(c) Section 508 is amended to read as follows:

"REVIEW OF PROGRAM

"SEC. 508. Not later than the date six months after September 30, 1983, the Secretary, acting through the Service and with the assistance of the urban Indian organizations that have entered into contracts under this title and other nonreservation Indians, shall review the program established under this title and submit to the Congress an assessment thereof and recommendations for any further legislative efforts the Secretary deems necessary to meet the purpose of this title, including section 507. Such report shall contain an assessment of the unmet health needs of the urban Indian population and the Indian population in other nonreservation areas, including the needs of urban centers not previously serviced by an urban Indian organization under a contract entered into under this title.".

(d) The heading of title V is amended by inserting "AND OTHER NONRESERVATION" after "URBAN".

MISCELLANEOUS

SEC. 8 (a) Section 704 is amended by adding the following new sentence at the end thereof: "Property leased by the Secretary from an Indian tribe may be reconstructed or renovated by the Secretary pursuant to an agreement with such Indian tribe.".

(b) Title VII is amended by adding the following new sections at the end thereof:

"RESOURCE ALLOCATION PLAN

"SEC. 706. Within one year from the date of the enactment of this section, the Secretary shall submit to the Congress a resource allocation plan. Such plan shall explain the future allocation of services and funds among the service population of the Service and shall provide a schedule for reducing deficiencies in resources of tribes and nontribal specific entities.

"NUCLEAR RESOURCE DEVELOPMENT HEALTH HAZARDS

"SEC. 707. (a) The Secretary and the Service shall conduct, in conjunction with other appropriate Federal agencies and in consultation with concerned Indian tribes and organizations, a study of the health hazards to Indian miners and Indians on or near Indian reservations and in Indian communities as a result of nuclear resource development. Such study shall include—

"(1) an evaluation of the nature and extent of nuclear resource development related health problems currently exhibited among Indians and the causes of such health problems;

"(2) an analysis of the potential effect of ongoing and future nuclear resource development on or near Indian reservations and communities;

"(3) an evaluation of the types and nature of activities, practices, and conditions causing or affecting such health problems, including uranium mining and milling, uranium mine tailing deposits, nuclear powerplant operation in construction, and nuclear waste disposal;

"(4) a summary of any findings and recommendations provided in Federal and State studies, reports, investigations, and inspections during the five years prior to the date of the enactment of this section that directly or indirectly relate to the activities, practices, and conditions affecting the health or safety of such Indians; and

"(5) the efforts that have been made by Federal and State agencies and mining and milling companies to effectively carry out an education program for such Indians regarding the health and safety hazards of such nuclear resource development.

"(b) Upon completion of such study the Secretary and the Service shall take into account the results of such study and develop a health care plan to address the health problems studied under subsection (a). The plan shall include—

"(1) methods for diagnosing and treating Indians currently exhibiting such health problems;

"(2) preventive care for Indians who may be exposed to such health hazards, including the monitoring of the health of individuals who have or may have been exposed to excessive amounts of radiation, or affected by other nuclear development activities that have had or could have a serious impact upon the health of such individuals; and

"(3) a program of education for Indians who, by reason of their work or geographic proximity to such nuclear development activities, may experience health problems.

"(c) The Secretary and the Service shall submit to Congress the study prepared under subsection (a) no later than the date eighteen months after the date of enactment of this section. The health care plan prepared under subsection (b) shall be submitted in a report no later than the date one year after the date that the study prepared under subsection (a) is submitted to Congress. Such report shall include recommended activities for the implementation of the plan, as well as an evaluation of any activities previously undertaken by the Service to address such health problems.

"(d)(1) There is established an Intergovernmental Task Force to be composed of the following individuals (or their designees): the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Director of the Bureau of Mines, the Assistant Secretary for Occupational Safety and Health, and the Secretary of the Interior.

"(2) The Task Force shall identify existing and potential operations related to nuclear resource development that affects or may affect the health of Indians on or near an Indian reservation or in an Indian community and enter into activities to correct existing health hazards and insure that current and future health problems resulting from nuclear resource development activities are minimized or reduced.

"(3) The Secretary shall be Chairman of the Task Force. The Task Force shall meet at least twice each year. Each member of the Task Force shall furnish necessary assistance to the Task Force.

"(e) In the case of any Indian who—

"(1) as a result of employment in or near a uranium mine or mill, suffers from a work related illness or condition;

"(2) is entitled to receive diagnosis and treatment services from a Service facility; and

"(3) by reason of such Indian's employment, is entitled to medical care at the expense of such mine or mill operator;

the Service shall, at the request of such Indian, render appropriate medical care to such Indian for such illness or condition and may recover the costs of any medical care so rendered to which such Indian is entitled at the expense of such operator from such operator. Nothing in this subsection shall affect the rights of such Indian to recover damages other than such costs paid to the Service from the employer for such illness or condition.

"(f) There is authorized to be appropriated $300,000 to carry out the study as provided in subsection (a), such amount to be expended by the date eighteen months after the date of the enactment of this section.

"ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 708. (a) The State of Arizona shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to Indians in such State.

"(b) The Service shall not curtail any health care services provided to Indians residing on Federal reservations in the State of Arizona if such curtailment is due to the provision of contract services in such State pursuant to the designation of such State as a contract health service delivery area pursuant to subsection (a).".

EFFECTIVE DATE

SEC. 9. The provisions of this Act shall become effective October 1, 1980.

MOTION OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves to strike out all after the enacting clause of the Senate bill, S. 2728, and to insert in lieu thereof the provisions of H.R. 6629, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the Indian Health Care Improvement Act (90 Stat. 1400) to reauthorize appropriations for the various programs therein.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 6629) was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The SPEAKER pro tempore. The unfinished business is on the question of suspending the rules and passing the Senate bill, S. 299.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

INSTRUCTING SECRETARY OF SENATE TO MAKE CHANGE IN ENROLLMENT OF S. 299

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 121) instructing the Secretary of the Senate to make a change in the enrollment of S. 299, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. LEVITAS. Mr. Speaker, reserving the right to object, would the gentleman from California (Mr. DANIELSON) explain what this does.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from California.

Mr. DANIELSON. I will be pleased to explain.

This is simply to make a correction in the enrollment of the bill as it left the other body, and it follows upon the passage of S. 299 here in order that both Houses concur in correcting the enrollment of the bill. It does not make an amendment in substance. It cross-references two sections of the bill.

Mr. LEVITAS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. DANIELSON)?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 121

Resolved by the Senate (the House of Representatives concurring), The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made: In section 608(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . .".

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 4310, RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1979

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York? The Chair hears none, without objection, appoints the following conferees: Messrs. ASHLEY, MURPHY of New York, BIAGGI, OBERSTAR, HUGHES, ULLMAN, ROSTENKOWSKI, VANIK, CORMAN, MCCLOSKEY, PRITCHARD, EVANS of Delaware, CONABLE, and DUNCAN of Tennessee.

There was no objection.

RAIL ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7235) to reform the economic regulation of railroads, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7235, with Mr. AUCOIN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, September 5, 1980, title III was open for amendment at any point. Pending was an amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I ask unanimous consent to be allowed to proceed for 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. STAGGERS. Mr. Chairman, I take one moment to say to one of my colleagues, the gentleman from Florida (Mr. GIBBONS) that I am very sorry about the remarks I made to the gentleman the other day concerning this bill. I was misinformed about the gentleman's intentions and what he was trying to do.

The gentleman from Florida, SAM GIBBONS, is one of the real gentlemen of this House, one who has served his Nation well, who has been a good friend and a great American, and I am sure that whatever he decides to do will be for the right, as he sees it. I believe that his constituents were wise in sending him here, and certainly I hope that they will send him back as he deserves to be reelected to the House.

Mr. Chairman, I rise in support of my amendment, an amendment that has been carefully crafted since H.R. 7235 was last on the House floor in July. Mr. RAHALL and Mr. LEE are also cosponsors of this compromise—they have worked diligently to turn out a bill that is supported by groups as diverse as the AFL-CIO and the American Farm Bureau. I believe this compromise deserves the support of each and every Member of the House who is concerned about the deteriorating condition of our Nation's rail system.

What we have attempted to do in this amendment is give the railroads the flexibility to price transportation services according to the marketplace, up to a certain threshold level. Over that threshold level, the ICC retains jurisdiction over rates. The amendment gradually lifts that threshold level over a period of 4 years, but the threshold never rises above 180 percent of variable cost. Similarly, we have provided a zone of freedom for railroads to raise rates without the fear of having such increases suspended or investigated unless the rate is 20 percentage points above the threshold. I emphasize that these are indeed gradual, orderly forms of pricing flexibility that will not bring chaos to rail shippers.

Other provisions of the compromise are also significantly improved. The surcharge proposal permits a railroad to recover its costs expended in making a particular movement, but provides protection for short-line railroads and shippers. Members from agricultural States have impressed upon us the need to repeal demand-sensitive rates and the need for a shipper's needs board to address the continuing concerns of rail shippers. This we have done. Intrastate rail movements rates will continue to be regulated by State regulatory agencies with uniformity and consistency. Provisions are included in the compromise that provide transaction assistance for lines of the Rock Island and the Milwaukee Railroads that have been abandoned and for which there are purchasers and the necessary legal protections for the Rock Island Railroad to permit the benefits we enacted in the Rock Island Transition Act to flow without further delay.

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I would just like to mention a few of the cosponsors of this bill, the ones who are for it now:

The American Farm Bureau supports this compromise.

The United Mine Workers.

The Railroad Labor Executives Association.

The Brotherhood of Railway and Airline Clerks.

The American Short Line Railroad Association.

The American Association of Railroads.
The United Transportation Union.
The AFL-CIO.
The Chemical Manufacturers Association.
Sears, Roebuck & Co.
The Mining and Reclamation Council.
The coal industry.
The Aluminum Manufacturers Association.
The Sierra Club.
American Association of State Highway and Transportation Officials.
The National Wildlife Federation.
Environmental Action.
The Audubon Society.
Friends of the Earth.
Amtrak.
National Railroad Passenger Association.
National Grange.
American Feed Manufacturers Association.
The Pacific-Northwest Traffic League that represents over 1,000 shippers in the Northwest.
The Farm Land Industries.
The Cotton Council.
The California Association of Port Authorities.
The Northwest Marine Terminal Association.
The Committee of Rail Shippers, such as the Georgia-Pacific, General Motors, Ford, Bethlehem Steel, Republic Steel, Du Pont, Union Carbide, Allied Chemical and Corning Glass.
The National Governor's Association.
The State of New York, the State of Pennsylvania, the State of Massachusetts, the Congress Watch, and the Transportation Consumer Action project.
Such others as K-Mart, Whirlpool, Carnation, Lever Brothers, City Products Corp., American Retail Federation, Western Traffic Conference; the Georgia Freight Bureau, which represents 425 Georgia shippers and receivers, and the Fertilizer Institute. All these groups support the Staggers-Rahall-Lee-Loeffler compromise amendment.

I would like to add that I have four letters here in support: one from the White House, one from the Department of Agriculture, signed by the Secretary; one from the Secretary of Transportation and we have one from the Secretary of Energy, all supporting this legislation.

Mr. Chairman, I submit these letters, as follows:

THE WHITE HOUSE,
Washington, September 4, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Having just returned to the city, I have been studying the compromise amendment which you and Congressman Rahall have proposed to H.R. 7235, the Harley O. Staggers Rail Act of 1980. I know how difficult your job has been and I congratulate you on your success. As you know, consumers have an important stake in the health of the railroad industry and that industry is not healthy. Reform of Federal regulations is a vital element of renewed health for the rail industry and I consequently support your proposed compromise amendment. The bill, as modified by your compromise, will benefit both consumers and railroads.

Your proposal assures that H.R. 7235 will balance the competing demands for legislation to modernize rail regulatory policy. It assures competitive pricing wherever possible, and provides necessary protection for captive shippers. It phases in rate flexibility to avoid harshly imposing the burden of reforms, and responds to concerns raised about the level of the "cost recovery percentage".

It appears to me that the bill, as amended by your proposal, is a fair compromise that addresses and meets the needs of consumers. As workers, as taxpayers, as purchasers of goods and as users of energy resources, consumers need an efficient, healthy railroad industry. A sound rail system is a critical element of our economy and consumers should support this legislation which provides for phased reforms resulting in a more rational rail policy. The alternative for consumers is not attractive: higher transportation costs as railroad service declines, additional bankruptcies, and repeated demands for Federal subsidies.

I urge approval of your amendment and passage of H.R. 7235 without further amendment.

Sincerely,

ESTHER PETERSON,
Special Assistant to the President for Consumer Affairs.

THE WHITE HOUSE,
Washington, September 4, 1980.

Hon. BOB ECKHARDT,
House of Representatives, Washington, D.C.

DEAR BOB: When we first discussed the issue of railroad regulatory reform earlier this summer, you raised three major objections to the captive shipper provisions of H.R. 7235. I am pleased to see that those issues have been addressed by the compromise being proposed by Congressmen Rahall and Staggers.

First, the revenue threshold for ICC rate jurisdiction has been lowered and the rate freedom contained in the bill is phased in to avoid harsh increases for shippers. A reasonable limit is specified for the "cost recovery percentage." Second, the bill distinguishes profitable and unprofitable railroads for the purposes of the 4 percent zone of rate flexibility. Third, your concern about the "reasonable transportation alternative" concept has been addressed. Your efforts have made an important difference in this legislation and assured that the compromise covers these issues. With the resolution of these issues, I can now support the bill and I have indicated this support in a letter to Congressman Staggers, a copy of which I have enclosed.

We all recognize the pressing need for rail regulatory reform. The months of work on this bill by you and your staff have helped lead to the Staggers-Rahall compromise which will benefit not only railroads and shippers, but consumers as well. I am grateful for your work and your patience in dealing with this difficult issue.

Sincerely,

ESTHER PETERSON,
Special Assistant to the President for Consumer Affairs.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., September 4, 1980.

Hon. HARLEY O. STAGGERS,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: I am pleased to add my voice of support to H.R. 7235, the Harley O. Staggers Rail Act of 1980, as it will be modified by the Rahall-Staggers compromise. As Secretary of Agriculture and a former member of Congress from an agricultural State, I am acutely aware of the importance of a strong rail system to the success of the agricultural economy of this country. However, I am similarly aware of the difficulties farmers and grain elevators, particularly the smaller shippers, have had in getting adequate rail service at nondiscriminatory and reasonable prices.

Many agricultural shippers expressed concern that H.R. 7235, as reported by the Interstate and Foreign Commerce Committee, did not afford them adequate protection. They feared having to bear an unreasonable portion of the dislocation associated with a movement toward a more flexible system of railroad rates and services. While I was, and am, of the opinion that the amendments offered by Mr. Madigan on the floor responded to these concerns, agricultural shippers continued to have some difficulty with the bill, perhaps because those amendments relied on new concepts to deal with highly complicated issues.

I am pleased that the Rahall-Staggers compromise responds to the expressed needs of agriculture so fully. First, removing the "reasonable transportation alternative" test and retaining existing law on market dominance, combined with the decreased revenue-to-variable cost ratio threshold for determining ICC review, will assure shippers a forum to protest rates they believe to be noncompetitive. Second, the contracts provision has been revised to retain, for agricultural shippers, the right to protest a proposed contract as unfairly discriminatory. Third, the provisions of existing law regarding demand-sensitive rates, which have troubled agricultural interests, will be repealed. Fourth, the Shipper Needs Board will be established to study and make recommendations on some carefully defined and important agricultural transportation issues. Finally, this Department will be given authority to establish regional agricultural transportation representatives to assist agricultural shippers in getting the best and most reasonably priced rail or alternative transportation, and to help them with any transitional problems that may develop.

I am pleased to support H.R. 7235, as modified by the Rahall-Staggers compromise. I urge all members, particularly those representing agricultural districts, to vote for a strong but fair railroad system by voting for the Rahall-Staggers compromise and for H.R. 7235 with no further amendments.

Sincerely,

BOB BERGLAND,
Secretary.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 3, 1980.

Hon. HARLEY O. STAGGERS,
House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR HARLEY: On behalf of the Administration, I am most pleased to support, and urge the enactment of, H.R. 7235, the Harley O. Staggers Rail Act of 1980, as it will be modified by the Staggers-Rahall-Lee compromise. The bill, as amended, will be an extremely important step forward toward meeting the twin goals of reducing unnecessary regulation and improving the financial health of the railroad industry, an essential element of the nation's economy.

As you are undoubtedly aware, the railroad industry has been plagued in recent years by extremely low rates of return on investment. The result has been decreased maintenance, poor service, more accidents and higher rates. Although it is clear that overregulation is not the sole cause of this problem, it is a significant part of it. And H.R. 7235, with the Staggers-Rahall-Lee compromise, is a vital part of the solution.

We recognize that many shippers, as well as some of the smaller railroads, were concerned that as reported by the Interstate and Foreign Commerce Committee, the bill would not have adequately protected their interests. It is clear that in a transition to a more flexible rate and service system for railroads, there is a potential for some individual difficulties. The original bill attempted to balance the competing interests. The Staggers-Rahall-Lee compromise builds on this, and should, in our opinion, provide adequate reassurance to shippers that the burden of the transition will not fall unfairly upon them.

In particular, in lieu of the initial threshold for Interstate Commerce Commission (ICC) review of rail rates provided by the bill as reported (estimated to be 200 percent of variable cost), the Staggers-Rahall-Lee compromise would set the threshold level at 160 percent for the first year after enactment, increasing gradually to a maximum of 180 percent after five years. In addition, a major source of concern to shippers, the "reasonable transportation alternative test" (proposed section 10709(c)(2)(A)(ii)), has been eliminated, and the Staggers-Rahall-Lee compromise would maintain existing law on market dominance. This agreement recognizes the need for further study and analysis by the ICC of the difficult concepts of product, market and geographic competition.

The compromise also explicitly responds to the particular concerns of agricultural shippers and ports. The compromise language will make clear that the new rate and service flexibility (particularly surcharges) will not abrogate or in any way adversely affect existing law as it relates to inter- and intra-port relationships. In addition, the compromise strikes existing law permitting the establishment of demand-sensitive rates, and will, for agricultural shippers and ports, allow a proposed contract to be challenged on the grounds that it unfairly discriminates against other similarly situated shippers. These changes, together with the elimination of the reasonable transportation alternative test, respond to the major concerns voiced by agricultural shippers.

The surcharge section, section 301 of H.R. 7235, would be amended in several important respects to respond to the concerns of small railroads, ports, and small shippers. In essence, the revised provision would limit surcharges to the level needed to cover the direct operating costs of a movement. Thus, shippers will no longer have to suffer poor service from a railroad that loses money on every shipment, and short line railroads will be assured that larger carriers will not be able to use unreasonably high surcharges to divert traffic away from smaller carriers. In addition, the total joint rate that results from a surcharge would be subject to review by the ICC under the maximum rate provisions discussed above. I wish to emphasize that the surcharge provision under the compromise does no more than guarantee a railroad that it will no longer be forced to carry goods at less than its out-of-pocket costs. This proposition is essential to a strong and sound railroad system and I urge you to vote against any attempt to weaken it.

In summary, our economy needs a financially healthy and productive railroad system, in private hands. In an age of diminishing energy resources, the energy-efficient railroads are essential. H.R. 7235, as modified by the Staggers-Rahall-Lee compromise, will move us closer to a healthy railroad industry, with manifest benefits for shippers, employees, and consumers. The Administration strongly supports the bill. I urge all Members to vote for the Staggers-Rahall-Lee compromise, and for H.R. 7235 with no further amendments.

Sincerely,

NEIL GOLDSCHMIDT.

THE SECRETARY OF ENERGY,
Washington, D.C., September 4, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I urge the House of Representatives to adopt H.R. 7235, the Harley O. Staggers Rail Act of 1980, as it will be amended by the Rahall-Staggers compromise. This legislation is necessary if the Nation is to move toward an adequate rail transportation system in the 1980s which will link producers with domestic and foreign consumers.

We have sufficient coal resources to lessen our over-dependence on expensive imported foreign oil—imports that are estimated to cost more than $80 billion in 1980. For coal to meet our Nation's energy needs, however, our railroad industry must be revitalized. Railroads will have to invest substantial capital over the next decade to upgrade rail facilities and equipment to meet the expected growth in domestic and foreign coal demand. Without meaningful regulatory reform railroads will have great difficulty in undertaking this commitment. There is a need for a regulatory environment in which railroads are allowed to earn or borrow investment capital needed to fulfill national energy goals and which ensures that coal is available at reasonable rates.

The Rahall-Staggers amendment balances the needs of railroads and shippers. It permits railroads to adjust rates to meet competition while encouraging them to provide better service. This will enable railroads to attract additional capital for needed investment. The Rahall-Staggers amendment also maintains adequate regulatory oversight to assure reasonable rail rates for coal-burning utilities. Specifically, the compromise provides a threshold at which a rate becomes subject to ICC review that is significantly lower than the revenue-to-variable cost ratio under the original House bill. It also eliminates the alternative transportation test definition of a captive shipper that was of concern to utilities and some other shippers.

The regulatory system governing railroads needs to be brought up to date so that the railroads can obtain needed capital while captive shippers continue to be assured of reasonable rates. The Rahall-Staggers compromise accomplishes these objectives. It will help us to achieve national energy goals. I urge the House of Representatives to adopt the compromise and agree to final passage of H.R. 7235.

Sincerely,

CHARLES W. DUNCAN, Jr.,
Secretary.

Mr. Chairman, all of those are responsible people that I know of. I do not say those are irresponsible who are not supporting the amendment, but we have tried to be fair to one of the great industries of America that we need. We do not want any more Milwaukee situations coming up or any more Conrail situations coming up.

We think that when a shipper uses the railroad that the shipper should be treated fairly and this is why the shippers, and these associations have backed the compromise.

In time of emergency we need the railroads of this land. If we had an emergency now and had to transport large machinery anywhere across the Nation, we need the railroads. We need them to transport troops across this Nation. We would have to have railroads in order to do that. So I think we need a healthy railroad system.

I think anyone if they would think about it will say that we have tried to be fair to every section of the country.

I know that there have been some of those in some parts of the country that have been persuaded that they will be charged exorbitant rates, but we have tried to take care of that and the surcharges that it will bring to railroads to insure them that the railroads will not have to carry freight at a loss nor will the shippers lose service.

Now, I cannot see how anybody would object to this as being unfair. I just cannot do it, because if they do, they are viewing it from a different point than I am.

I have travelled in practically every nation that has railroads. Ours as a system is less than healthy, right here in America: even in China they have far better railroads than we have.

So I just cannot understand why we do not try to pass a bill that will see that the railroads are healthy and try to protect the shippers, too. The shippers have endorsed this compromise almost entirely down the line.

So I cannot understand why anyone would vote against the compromise at all.

I know that there are those who want to offer amendments to it. I would say let us turn all those amendments down and vote on this bill and pass it, because in my view it is one of the most important bills we can have for the future of transportation in America.

Mr. Chairman, I urge the Members of the House to support this compromise without further amendment, as it represents a truly balanced bill that is a great step forward to the improvement of the safety and service of our Nation's railroads.

Mr. Chairman, I yield my remaining 3 minutes to the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Mr. Chairman, I thank the distinguished chairman for yielding.

Mr. Chairman, I am delighted to join with the distinguished chairman of the Commerce Committee and my senior colleague from the State of West Virginia, HARLEY STAGGERS, in cosponsoring the compromise amendment with him and the distinguished gentleman from New York, Mr. GARY LEE.

This amendment to H.R. 7235 in the nature of a compromise I believe injects a vital balance in provisions of this bill in order to meet both rail carrier and shipper needs and allow this important legislation to move forward.

We can quote from various ICC figures, Mr. Chairman, that show the financial condition of our Nation's railroads. From all these figures, we can certainly see the

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clear signal that in many instances the financial health of U.S. railroads must be restored in order to forestall unconscionable deterioration and critical loses of basic railroad services across the United States.

At the same time, Mr. Chairman, we cannot disregard the fact that shippers who have no practical alternative to railroad transportation, no alternate means of competition—for instance, chemicals, coal, fertilizers, grain, ore, steel and other heavy bulk commodities in particular—and thus are captive to one railroad in many instances, must not be faced with unreasonably high rail rates and no readily available source of immediate relief from such damaging circumstances. As an example, coal, which is the leading commodity carried by U.S. railroads representing almost 30 percent of all railroad freight tonnage, now relies on railroad transportation to move about 65 percent of total annual production from mines to electric utilities, industrial plants, and coastal ports for transfers to ocean vessels in service to foreign customers.

Furthermore, about 85 percent of the coal that is moved by the railroads has no practical alternative mode of transportation available, a clear case which shows the importance of having a sound system of railroads to carry this valuable domestic resource, coal, to its user destinations, as well as an effective point for recourse against unjustifiably high railroad rates, a major role for the Interstate Commerce Commission, now and in future years as provided in this compromise.

As our railroads are called upon to haul our increased coal production, it must be realized that the captive shippers must have timely access to the Interstate Commerce Commission for review of exorbitantly high rates charged by the railroads.

H.R. 7235, as originally brought to the floor, had substantial merits in eliminating counterproductive railroad regulations, but the bill did not furnish this critical captive shipper protection and, therefore, along with the gentleman from Texas (Mr. ECKHARDT) with whom I have worked closely on this legislation, the distinguished subcommittee chairman, the gentleman from New Jersey (Mr. FLORIO), the committee chairman, the gentleman from West Virginia (Mr. STAGGERS); the ranking member, the distinguished gentleman from Illinois (Mr. MADIGAN) and with other parties, we have worked out what I believe is an effective compromise.

The CHAIRMAN. The time of the gentleman from West Virginia has expired.

(By unanimous consent, Mr. RAHALL was allowed to proceed for 5 additional minutes.)

Mr. RAHALL. Mr. Chairman, the original Eckhardt-Rahall amendment that was adopted by this House on July 24 by a 7-vote margin created what I believe is a solid foundation for moving forward with a balanced railroad deregulation bill. I regretted at that time that the sponsors of the bill pulled the legislation from further floor consideration. I supported the Eckhardt-Rahall amendment at that time and still support the principles upon which that amendment is based.

This compromise amendment today is not undoing what the original Eckhardt-Rahall amendment accomplished.

□ 1350

We are not "selling out" as was described last Friday on the floor of this House. We are using reason and logic in what I believe is a sound attempt to move this railroad deregulation bill forward. Many other Members have worked with us in an attempt to pass a meaningful rail deregulation bill, a bill which all will admit is in the best interests of all parties, the railroad shippers, labor, consumers, and the many other groups that the distinguished chairman has listed as supporting this measure.

As a direct result of this legislative process, it has become possible to achieve a just solution. I earnestly hope that this amendment is adopted. It will provide guidance for the Interstate Commerce Commission from this Congress. It will assure that the Interstate Commerce Commission does not proceed headlong into deregulation without guidelines and without a bill from the Congress. If this measure were allowed to die, the circumstances that face captive shippers across our Nation would be in much more dire circumstances. This compromise amendment starts at the previously adopted Eckhardt-Rahall threshold level of 160 percent revenue-variable a cost percentage above which ICC review would be triggered. This revenue variable cost percentage, of 160 percent compares with the original 200-percent threshold level that previously existed in the original bill. The 160-percent level for 1981 is followed by 170 percent for 1982, 175 percent—or the cost recovery percentage, whichever is less—for the year ending September 1983.

After 1984 the threshold level that triggers access to the ICC and timely review of unreasonable rates for captive shippers, would be set at the cost recovery percentage, which in any event would not be less than 170 percent or more than 180 percent. I believe this is an effective compromise. It is a much better rate than the original 200-percent level that existed in the original legislation from date of enactment. It would assure a healthy, viable system of railroads across the United States, and yet it would provide timely review to the Interstate Commerce Commission by captive shippers who feel they are facing exorbitant rates in the transportation of coal or other bulk commodities.

In conclusion, Mr. Chairman, I want to issue this warning as we enter into this legislative debate on this complex and very timely compromise amendment. As coal production and coal markets grow in the future, any boom for both the coal industry and the railroad industry with its related increase in employment of men in both fields, will never be achieved unless domestic rail rates are kept at reasonable levels to permit U.S. coal to compete in world markets.

The Staggers-Rahall compromise will protect captive shippers by increasing over a 4-year period the jurisdictional threshold at which a rate would be reviewed by the ICC, and it preserves the market dominance test which exists under present law. It reduces the zone of flexibility for rates subject to ICC jurisdiction. It provides protective provisions for shippers under section 301 surcharges and cancellations.

I believe that this compromise is good. It is good for not only coal upon which our national security depends in the future, but it is good for consumers and the many other parties that have endorsed this legislation. I would hope that the House sees fit to adopt this compromise and pass this deregulation bill today.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. RAHALL. I will be glad to yield to the gentleman from Texas.

Mr. ECKHARDT. The gentleman used my name, and he used it in a very complimentary way, and I thank him for it. There is one thing, however, that he mentioned that I do not know the derivation of, and that is that someone has "sold out." I do not recall anybody saying that. I certainly did not.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MADIGAN, and by unanimous consent, Mr. RAHALL was allowed to proceed for 1 additional minute.)

Mr. MADIGAN. Will the gentleman yield?

Mr. RAHALL. I yield to the gentleman from Illinois.

Mr. MADIGAN. I thank the gentleman for yielding. I would respond to the gentleman from Texas (Mr. ECKHARDT) by saying that that comment was made in the debate Friday afternoon by a colleague of his from Texas who is sitting here acknowledging being the man responsible for making the comment. I believe at that time that the other gentleman from Texas who is standing had some laudatory things to say about the comment.

Mr. ECKHARDT. If the gentleman will yield, I did not understand the last statement of what I did in connection with the statement.

Mr. MADIGAN. I believe that the gentleman had some laudatory comments to make about the other gentlemen from Texas, the one who made the comment to which the gentleman from West Virginia has referred.

Mr. ECKHARDT. If the gentleman will yield further, if I may say so, making a laudatory statement about my colleague, the gentleman from San Antonio, I do not join in all his views.

Mr. MADIGAN. Specifically, if the gentleman will yield further——

The CHAIRMAN. The time of the gentleman has expired.

Mr. MADIGAN. Mr. Chairman, I rise in support of this compromise.

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield for clarification?

Mr. MADIGAN. Certainly, I will be happy to yield to the gentleman from Texas.

Mr. GONZALEZ. The record will show that I did make the statement that this did not represent a compromise; it was a sellout. I reiterate it because I cannot think of any other term to describe it adequately.

Mr. MADIGAN. I want to thank the gentleman for acknowledging the remark he made last Friday.

Mr. RAHALL. Will the gentleman yield?

Mr. MADIGAN. I would be happy to yield.

Mr. RAHALL. I thank the gentleman for yielding. I might say in response to my distinguished colleague, the gentleman from Texas, that I view this as an effort to inject reason and logic in this legislative process in order to reach a solution to this problem; reason and logic that I feel the gentleman from Texas has used very effectively over his 10 terms in Congress. I offer this amendment in that same spirit.

Mr. MADIGAN. Mr. Chairman, before we get too far off the track, I rise in support of the Staggers-Rahall-Lee-Loeffler compromise which, as has been indicated by the chairman of the Committee on Interstate and Foreign Commerce, is a compromise that enjoys broad support now, not only from the railroad industry but from the short line railroad associations, from the major railroad bulk shippers across the country and the agriculture community. I want at this time to yield to the gentleman from New York (Mr. LEE), the minority sponsor of the amendment, such time as he may consume.

Mr. LEE. Mr. Chairman, I rise in support of the compromise amendment offered by the distinguished chairman of our full committee, the gentleman from West Virginia (Mr. STAGGERS), and our distinguished colleagues, the gentleman from West Virginia (Mr. RAHALL), and the gentleman from Texas (Mr. LOEFFLER), who are cosponsors of this.

Mr. Chairman, H.R. 7235, the Rail Act of 1980, may be the most important Federal legislation concerning the railroads since the enactment of the Interstate Commerce Act in 1887. Within the last year and a half the Transportation and Commerce Subcommittee, of which I am a member, spent countless hours in hearings and meetings concerning the problems facing America's railroads.

We in the Northeast know firsthand about the problems facing railroads. It was but a few years ago that the six major railroads in the Northeast were bankrupt. With the establishment of Conrail, Congress provided some relief for shippers in the Northeast. However, it also became apparent that overregulation of railroads continues to make it very difficult for shippers to get good service.

During this Congress we have seen that the problems experienced in the Northeast have also been experienced in the Midwest. We have had to enact the special legislation because of the Milwaukee bankruptcy and the Rock Island bankruptcy. The situation will continue to be bleak unless there is change in railroad regulation.

This legislation frees up the regulation of railroads. It will permit them to provide service tailor made to the shipper needs. It will permit railroads to use the marketplace rather than a hearing room for pricing decisions. Above all, it will permit railroads to earn an adequate return on investments, so as to put some money back into the railroad industry.

The present system of rate regulation for the railroad industry creates inflexibility in pricing. It also causes some railroads to have to carry traffic below cost. That is the reason for section 301 of the bill, which permits surcharges and route cancellations.

As you know, Mr. Speaker, that section caused great concern for short line railroads. I had an amendment adopted in committee which partially solved the problem. In addition, Mr. MADIGAN, Mr. FLORIO, Mr. BROYHILL, Mr. STAGGERS and I have worked with the short line railroads since that time. With the adoption of the Staggers-Rahall-Lee substitute amendment the Short Line Association wholeheartedly endorses this bill. Mr. Speaker, it is important that this legislation be enacted as soon as possible. I hope that the House will approve the bill.

I rise in support of the compromise amendment offered by the distinguished chairman of our full committee, Mr. STAGGERS. I believe that the compromise represents a true middle ground which can be supported both by the supporters of the bill as reported from committee and supporters of the Eckhardt amendment. Mr. STAGGERS and I were both supporters of the bill as reported from committee. Mr. RAHALL and Mr. LOEFFLER, who have joined us in this amendment, had voted for the Eckhardt-Rahall amendment.

The chairman of the subcommittee (Mr. FLORIO) and the ranking minority member (Mr. MADIGAN) and the ranking minority member of the full committee (Mr. BROYHILL) join us in supporting this compromise.

The compensatory joint rate provision of the committee bill caused concern for many smaller railroads. Because of that concern, I worked closely with the short line railroads in my district and the American Short Line Railroad Association. Together, we considered ways and means for making certain that larger carriers could not use the surcharge and cancellation provisions to the detriment of small railroads. Had we proceeded with consideration of the committee bill last July 24, I was prepared to offer an amendment which had been endorsed by the American Short Line Railroad Association as providing significant protection for short line railroads. The compromise amendment we are offering today contains all of those protections. In addition, provisions have been added to afford shippers and short line railroads additional protection against unreasonable surcharges or cancellations of joint rates by railroads.

Let me take a minute to describe the protections afforded short line railroads. As you know, the surcharge and cancellation provisions only come into play when a railroad is not covering its costs for a particular movement.

Furthermore, if a railroad is earning adequate revenues over its system as a whole, it may not utilize the surcharge provisions. Since 70 percent of the railroad traffic is handled by two or more railroads, the pricing system used is one of joint rates and predetermined divisions of revenue. Under existing law, once a joint rate has been established, it cannot be changed without the concurrence of all the railroads participating in that particular movement. Likewise, the division of revenues formula cannot be changed without the agreement of all the carriers participating in the movement. This pricing mechanism has created such inflexibility that some of the participating carriers have been forced to carry traffic at below cost.

The surcharge provision represents a simple way to insure that each carrier is covering his cost. For determining cost, 110 percent of variable costs, as reported on rail form A—the standard form used for reporting costs to the Interstate Commerce Commission—is used to provide a simple method of calculating the revenue to variable costs ratio for a particular movement. Any railroad that can demonstrate that its division of revenues from a particular joint rate gives it less than 110 percent of its variable costs can apply a surcharge.

The objective of this surcharge is to provide the carrier with revenues equal to 110 percent of its variable costs for the movement. Other carriers involved in the movement in question, or shippers under the compromise amendment, can challenge a surcharge in a variety of ways.

For example, any other carrier participating in a movement can adjust the division of revenues or propose a new rate in lieu of accepting a surcharge. Simply stated, anything can be done to bring the surcharging carrier's revenues up to 110 percent of its variable cost, thereby alleviating the need for the surcharge. In addition, a shipper or a carrier can bring the surcharge down so that revenues are no more than 110 percent of variable cost if the surcharging carrier has published a surcharge which is too high.

The cancellation provisions work in a similar way. Even though a carrier with revenues less than 110 percent of its variable cost can propose to cancel a joint rate, the other participating carriers can prevent the cancellation by providing a new rate or a new division which gives the canceling carrier revenues equal to 110 percent of its variable costs. In addition, a shipper or a carrier can prevent the joint rate from being canceled by providing a surcharge which will bring the surcharging car-

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rier's revenues up to 110 percent of its variable costs.

In recognition of the public interest in preserving short line railroads as effective competitors, short line railroads are given additional protections whenever a surcharge or cancellation affects the short line's ability to compete effectively with a trunkline. The short line can obtain review by the Commission of either a surcharge or a cancellation if the surcharge or cancellation will have an adverse effect on the ability of a short line railroad or one of its shippers to compete effectively, or if it will affect the short line railroad's last available route for a particular movement, or if it will produce higher rates for shippers or receivers located on the short line than for a competitor in the same geographic area.

The Commission may rescind the surcharge or cancellation and may require the surcharging or canceling carrier to carry the traffic at less than 110 percent of its variable costs if necessary to preserve competition or service by the short line railroad. The committee intends that these extraordinary provisions for short line railroads are to be interpreted and applied by the Commission to prevent anticompetitive, predatory, destructive, or unwarranted surcharges or cancellations which would impair the vitality of short line railroads.

In addition, the committee intends that short line railroads will have the Federal antitrust laws available to protect against improper use by larger railroads of the compensatory joint rate relief provisions and the contract provisions of the bill.

I want to thank all the members of the American Short Line Railroad Association and a number of individual short lines for the time and effort they put in on working out this compromise. With this compromise, we have been able to preserve a simple and fair method for assuring that railroads involved in joint rates and through routes at least recover their costs, except in those situations where the special circumstances of a short line railroad's operations justify requiring rates below 110 percent of variable costs. I believe that that was the goal every member of the Commerce Committee wanted to achieve and section 301 of the compromise provides the means for achieving that goal.

All members have received a copy of the letter from the American Short Line Railroad Association endorsing the compromise and the bill. I think that the last sentence of that letter sums up the attitude of the short line railroad industry and the attitude of all of us who are pleased with this compromise. That sentence states:

> We genuinely appreciate the efforts by everyone to assure the future strength of not only the short line railroads, but the entire railroad industry.

The section 301 joint rates portion of this legislation has, as you know, been one of the most complicated provisions in the bill and has been a matter of considerable debate within the railroad industry. This provision reflects a compromise reached between railroad and shipper interests and contains a number of specific protections for class III carriers and for shipper interests.

There is still discussion over specific impacts of portions of the provision and I am committed to look at further problems which may arise under this section as the bill moves to the Conference Committee. I would like to mention one such matter to the House and will discuss it further with you as the bill moves through the conference. It involves the truly captive shipper who makes an overall contribution to a railroad.

In many cases the traffic from a specific large shipper will be overwhelmingly profitable for the railroads carrying that traffic. However, a small portion of the traffic generated by that shipper may be marginal or even fall below the 110 percent of variable costs established by section 301 as the point at which surcharges may be applied. In those instances where a very small portion of the traffic generated by a shipper falls below the 110 percent figure, the underlying reason is generally a competitive one. I strongly feel that railroads which are, overall, making a very healthy profit on the traffic generated by a shipper should not place surcharges on the limited amount of traffic that shipper generated which is being carried at a lower rate. This is particularly true when such a surcharge will cost the shipper the business and will put him at a serious competitive disadvantage.

I note that the committee consistently has argued that railroads must have the ability for differential rate structures based on competitive circumstances. The situation which I have described certainly fits within the concepts our committee has set forward in order to provide maximum service and opportunity for rail service to the Nation's shippers.

I intend that the conference committee would give consideration to this situation and look for language which would clarify congressional intent that overall contribution of a shipper to the income of a railroad be considered by that railroad in the imposition of surcharges.

A purpose of this legislation is to foster a healthy and diverse railroad system composed of large and small carriers. In my activities on the Subcommittee on Commerce and Transportation I have given special attention to insuring that the new regulatory freedoms will not be used to stifle the development of our smaller class II and class III carriers which are an important element, and a growing element, in the national rail network.

Most of my attention has been directed to section 301, joint rate surcharge and cancellations, because that is the area where there is room for the greatest mischief. I want to be clear, however, that it is our intent to promote development of class II and class III carriers and other sections of this legislation are not to be used by the Interstate Commerce Commission or any other entity in a fashion that intends an adverse impact on one or more class II or class III carriers. It is not desirable to try to cover every eventuality by statutory language. This generally creates more problems than it solves. Our intent is clear, and I wish to underscore it here.

As a general guideline, I will cite some examples of the kinds of actions that would not be acceptable as tools against class II and III railroads by class I carriers. In this bill we broaden the exemption clause creating a simpler standard. In no case should the exemption clause be allowed in a circumstance that would allow a large carrier to utilize its market power to squeeze a smaller carrier on a joint rate or division or to force a de facto cancellation. In other words the exemption clause should never be used to "end run" the joint rate provisions contained in section 301. Another example is the entry and reciprocal switching provisions easing the way for entry if the public interest "permits." These provisions must never be used by a large carrier to force its way into traffic originated or terminated by a class II or III carrier and interchanged with the large carrier.

This kind of action would be anticompetitive and would enhance the potential for growing dominance and abuse of a few gigantic rail carriers against the smaller carriers. A third example is the deregulation of car service orders. Over a period of time the ICC has developed the car service order as a tool to provide interim operating authority over lines that would otherwise be abandoned until it is possible to issue permanent authority. This has been useful and it is entirely appropriate for the Commission to treat any potential abandonment, where there is an offer of continued service, as an "emergency" of appropriate magnitude to allow issuance of a car service order.

The above examples are by no means a complete list. Simply put, we do not intend that the various sections of this legislation be used so that the expanded power and flexibility given large carriers can be applied against class II and class III carriers in an adverse fashion that would impair a smaller carrier's ability to attain financial health.

The Rail Act of 1980, represents a comprehensive effort to provide financial stability to America's freight railroad system, so that it can flourish within the private sector of our economy. Most of the debate on this legislation revolves around our efforts to reform the regulatory process to allow hard-pressed railroad companies to function more like other businesses. However, we must not lose sight of the reality that railroads, in major portions of this Nation, are in financial distress and it is unlikely that regulatory reform will, in the short term, produce the necessary added income to allow railroads like Conrail and the Milwaukee to become viable and self-sustaining.

Our subcommittee has identified a capital shortfall of between $16 and $20 billion in the railroad industry by 1985. There are only three ways to address the problems of rail deterioration, poor service, and unsafe conditions that result from the deferred maintenance and rundown plant condition of this grossly undercapitalized industry. The first is to do nothing. The second is to allow railroads

to price their transportation product so that enough revenue is generated from the shippers to allow the industry to make the necessary investment. The third is Government financial assistance adequate to address the problem.

The first solution, to do nothing, is unacceptable. That is the kind of policy that ultimately led to the reorganization of the northeast bankrupts with massive Federal financial obligations and the liquidation of the Rock Island. The second alternative, increasing the financial stability of the industry through regulatory reform, is a principal goal of this act.

Let us not delude ourselves however. Knowledgeable railroad marketing and operating people tell me that even full rate deregulation will have a limited impact on corporate revenues, at least in the early years. H.R. 7235 only deregulates rates in the case of competitive traffic. Because rail shippers have large and sophisticated marketing divisions, a high percentage of this competitive traffic is already regulated by the marketplace. In the case of the truly captive shippers, this bill continues regulation. As we all know, efforts by various categories of shippers, including agricultural, coal and chemical companies among others, has resulted in a lower threshhold rate for regulation that was originally approved by the House Commerce Committee.

Therefore, railroads can not expect any significant windfall from rate deregulation. In fact, I have heard directly from New England railroad chief executives that the ICC has not held down rates to any significant degree and for practical purposes, there has been a de facto upward rate flexibility for several years. Northeast railroads, while for the most part supporting rate freedom, see little real world benefit in the near term. This is a region that has not experienced any region-wide, ordinary operating income for over a decade.

Therefore, if we are going to realistically address deferred maintenance and overall railroad deterioration, we must, at least for an interim period of probably a decade or so, move to address the problem at least partially through Federal financial assistance involving both loans and grants.

I wish to make two overview observations at this point. The first is that I have no philosophical difficulty in recommending a continuation and expansion of financial assistance for the upgrading of railroad rights-of-way. A fundamental reason that our railroads are in the condition they are is because of the hundreds of billions of dollars of Government money that have gone into the highway and waterway systems, creating a subsidy for truck and barge, putting railroads at an enormous economic disadvantage.

On a graph, you can track the decline of the Northeast railroads with the construction of the Interstate Highway System and the St. Lawrence Seaway. Here we have two choices. One is to take away that subsidy, leaving each mode fully paying its own way; or two, we can establish an equal subsidy account for railroads based on a standard of rough equivalency in Federal treatment of the freight modes. Because of the political realities, the second is the only practical choice.

My second observation is that after a good start by President Ford in establishing the Conrail program and the national Federal loan program of the 4R Act, the Carter administration has failed to develop a comprehensive approach to financial assistance to the freight railroad system.

In H.R. 7235 we propose to continue the existing redeemable share program, which allows financial assistance to reduce deferred maintenance on essential track segments, and we adopt the administration's proposal for restructuring assistance which is a 5-year program with an authorization level of $1.75 billion.

With this bill, we put into place a basic structure of loans and other repayment credits that will allow essential track work and restructuring to continue.

Within the framework we establish in H.R. 7235, we should initiate in the next Congress a major reassessment of the appropriate role of Federal assistance to rehabilitate railroads.

At this time I wish to highlight two of the policy issues identified in a June 27, 1980, report to the Congress by the Comptroller General. The first issue is whether or not there is a need for continued assistance to end deferred maintenance, and the second is the need for restructuring assistance.

The first issue is whether there is a continuing need for assistance to overcome deferred maintenance. The existing program has furnished, so far, $518 million to rehabilitate more than 2,100 miles of track and to restore 8,800 freight cars. This has been an important and productive program. That work would not have been done without it. Yet, this program has not kept the overall system from falling farther and farther behind, as evidenced by the failures of the Rock Island and the Milwaukee and the overall capital shortfall in the industry, which approaches $20 billion. Regardless of whether or not there is restructuring, there will be a need to cure the deferred maintenance problem on the essential track of many railroads.

The GAO concludes that Federal assistance to end deferred maintenance is not essential because there has been limited demand for the existing program. The Department of Transportaion apparently disagrees and feels that Federal assistance solely to overcome existing deferred maintenance continues to be essential.

I agree with the view of the DOT on this critical issue. My own investigations show that the reason for the limited demand—is that statutory and regulatory restrictions on the program have posed insurmountable barriers to all but those railroads in the most unfortunate financial circumstances. For those eight participants in the program, there have been stringent security findings that must demonstrate to the Government the ability to pay back the loan. Therefore, if a railroad has a need for a $100 million program of rehabilitation of essential roadbed, they may only be able to qualify for a $25 million loan because of the security finding. These two factors, that is the terms and conditions that make the program unattractive to most carriers, and the security findings for marginal carriers, have coalesced to drastically limit the effectiveness of the program. Only 30 percent of the funds authorized under the Ford program have been committed. The need however, is undeniable. If we do not move to clear the roadblocks to the program's effectiveness, I greatly fear we will experience more Rock Islands throughout the country.

I am confident in saying that the Commerce Committee agrees with my own view on the need to continue "deferred maintenance" financing since it unanimously accepted my amendment to continue this important program. The Senate Commerce Committee also unanimously reported and the Senate passed a financial assistance bill which continue the program for curing deferred maintenance. We must and will however, in the next Congress, address the important policy issues here and in the Comptroller General's report.

The next and more complex area is the need for financial assistance to aid in the restructuring of the railroad system. In this area, the GAO report concludes that Federal assistance to achieve restructuring for an efficient national rail system is useful. The restructing concept is at the heart of the administration's program.

The critical policy issue here is whether the restructuring proposals should be generated from within the industry or whether the Federal bureaucracy should define the national rail system that would be eligible from Federal financial assistance. The GAO believes that a Government framework for the restructured system is desirable. The DOT counters that the framework, or map drawings if you will, of the restructured systems should be initiated from within the industry, including requests for appropriate financial assistance which would be passed upon by the DOT.

I agree that this is a critical issue and firmly identify myself with the viewpoint expressed by the DOT. To the maximum extent possible, the shape and structure of the future rail system should be designed from within the private sector. The last thing we need is Government bureaucrats, with all the political pressures to which they must respond, designing the national rail network. This is indeed a critical policy issue and it runs to the very core of whether we can retain a private sector railroad system.

If we turn the design of the system over to the Government planners, I submit it will be ultimately run by those planners and other bureaucrats. Further, it will not be run very well. Government can be efficient in raising and dispensing funds. It is not efficient as an operator of enterprises. I would hope that the ultimate restructured system which results from private enterprise planning, will give us a sleek racehorse. If it is designed by Government, we will end up

with, at best, a lumbering camel—probably with three humps.

H.R. 7235 make a good beginning at a new multiyear financial assistance authorization. With it the railroads can begin to develop longer term projects that can be accomplished within a 5-year time frame. The need is clear. In the midwest there must be adequate funds in title V for the acquisition and rehabilitation of Rock Island and Milwaukee lines. This will be expensive. For example, the price tag to rehabilitate the Rock Island line from the Twin Cities of Minnesota to Kansas City, Mo., and the grain lines in Iowa that feed into it, is estimated at $178 million. But it is the breadbasket of America and public policy can not allow this Rock Island mainline and its essential feeder lines to be abandoned. The marginal economics of these lines makes private financing impossible. Government financing is the only alternative.

Likewise, in the New England and upstate New York which I represent, studies and railroad analyses have identified better than $150 million of essential rehabilitation work that is critical to the non-Conrail, New York and New England railroads, if those systems are to end the cycle of deferred maintenance and service deterioration. While I am hopeful that there will be substantial restructuring in this area, the track involved here is a part of the essential national system and will continue in service regardless of whether the corporations presently operating that track survive. This track must be fixed and Federal assistance is the only alternative for the foreseeable future.

I am pleased that H.R. 7235 makes a good step forward in assisting with the financing of the rehabilitation of the rail system, but it is only one step. There are other important policy issues with which we have not yet come to grips. For example, we have begun the financing of social objectives such as labor protection and the acquisition and maintenance of feeder lines that may not be economically viable but are important to local communities. What should the extent and scope of these "social" programs be?

Second, the relationship of these title V programs to our national energy goals must be addressed and decided. Section 511 loan guarantees seem particularly appropriate for encouraging investments that will result in increased capacity to move coal to meet our goal of energy independence. A third issue is the relationship of Conrail and its financial needs to the rest of the railroad industry.

Mr. LEE. Mr. Chairman, in the Staggers-Rahall-Lee amendment there is clarification of congressional intent with regard to abandonments under the Milwaukee Act. There is one ambiguity in the language that I would like to have clarified at this time.

The amendment refers to "major" rail carriers. It is my understanding that the thrust of this amendment is to address the specific situation in the Midwest which gives rise to the Milwaukee and Rock Island Acts. The word "major" does not have a specific meaning in the law and history of the Interstate Commerce Commission. I understand that this amendment is directed to major or larger carriers—that is, class I carriers such as the Rock Island. Is my understanding correct?

Mr. FLORIO. The gentleman is correct.

Mr. LEE. I thank the gentleman from New Jersey. There is a great deal of law and legislative history and administrative history relating to the subject of labor protection. My major involvement in this legislation has been to insure that the smaller class II and class III carriers who are such an important part of our national railroad system will benefit and not be harmed by deregulation legislation. With much of our railroad industry in trouble, one answer in continuing service on troubled major railroads is going to be development of light density railroads. One carrier that operates in upstate New York, northern Pennsylvania, and northern New Jersey, the Delaware Otsego System, operates several lines as independent shipper controlled railroads that would otherwise be lost to the rail system. Our congressional policy is to encourage transactions involving class III carriers especially in situations where the alternative to continuation of service may well be liquidation of service.

Because of the importance of this segment of our railroad system, I feel it is important to clarify that this amendment is making reference to abandonment of class I rail carriers and that the Milwaukee Restructuring Act was intended to impose employee protection on such abandonments and not in cases where there has not traditionally been such protection. I was prepared to offer an amendment to clarify this point, but if the gentleman can assure me that my understanding is correct, I will not offer the amendment.

Mr. FLORIO. The gentleman's understanding is correct on the purpose and intent of this amendment.

Mr. LEE. I thank the gentleman. Mr. MADIGAN, do you agree?

Mr. MADIGAN. I agree.

Mr. LEE. Thank you.

□ 1400

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MADIGAN) has again expired.

(At the request of Mr. LEE and by unanimous consent, Mr. MADIGAN was allowed to proceed for 5 additional minutes.)

Mr. MADIGAN. I should like to thank the distinguished gentleman from New York (Mr. LEE) for all of his assistance on this bill throughout the year and a half period of time that we have been working on it.

Mr. Chairman, I want to take this opportunity to point out that Chairman JOHNSON of the Public Works and Transportation Committee has been most helpful to us in resolving the differences between the interested parties with respect to this bill. He has demonstrated that he is truly the senior statesman of northern California in assisting us in placating the fears of ports with respect to the surcharge provisions of this bill. Chairman JOHNSON has spent considerable time in helping us. He has met with a number of port authorities, the administration, and railroads in working out provisions which protect ports. Those provisions are contained in the compromise amendment and I would be remiss if I did not acknowledge the considerable help of Chairman JOHNSON.

Mr. LOEFFLER. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I will yield at this point, Mr. Chairman, to the minority sponsor of the compromise, the gentleman from Texas (Mr. LOEFFLER).

Mr. LOEFFLER. Mr. Chairman, I rise in support of the Staggers-Rahall-Lee-Loeffler amendment. The details of this compromise have been ably explained, so I will limit my remarks to the reasons why I feel the compromise is reasonable and workable—why it goes a long way toward achieving the balance needed to allow the railroads sufficient ratemaking flexibility while at the same time providing those shippers who are completely dependent on the railroads for service the necessary protections.

I opposed this legislation when it was considered in the Commerce Committee on which I served and I supported the amendment offered by my colleague from Texas (Mr. ECKHARDT) during floor debate last July. I am not, however, against the concept of fair and equitable deregulation.

While the railroads deserve and should receive a fair return on investment, what I want to make crystal clear is that I am dead set against a monopolistic railroad taking obvious advantage of a situation in which it can basically insure its system's financial health by gouging a captive shipper. I make no bones about the fact that I represent a city that is uniquely sensitive to just this situation. San Antonio, Tex., after being subjected to what the ICC has referred to as "bait and switch" tactics regarding the originally proposed rate for the transportation of its coal, nevertheless went on to convert, in the period from mid-1977 to the first of this year, over 65 percent of its municipally owned utility from oil and gas to coal. The city of San Antonio has seen its transportation rate increased by some 260 percent. For this reason, adequate steps are taken in this compromise to grant deserved relief in this case.

While this case is unique, however, its lessons point to the need for a well reasoned approach to deregulation that treats both industry and consumers fairly.

Since July, efforts have been ongoing to arrive at such an approach—one that is truly farsighted and equitable. The compromise we have before us approaches this description—it provides meaningful ratemaking flexibility while at the same time leaving open a shipper's access to protest rate increases it feels are unwarranted. The bill as reported from committee would have effectively prohibited the ICC from exercising jurisdiction over rates below 190 to 200 percent of variable costs and would have

permitted 10 percent incremental raises without challenge. This was absolutely unacceptable to me. The compromise we have before us today provides for deregulation in orderly stages by raising the jurisdictional level of the ICC from a starting point of 160 percent with annual increments of 5 percent up to 180 percent of variable costs. The ICC would maintain jurisdiction over rates above the threshold.

This compromise opens the door, which was definitely not open in the committee bill, for shippers to cross the threshold into the regulatory jurisdiction of the ICC. It no longer leaves captive shippers virtually at the mercy of the railroads as did the committee bill.

In addition, the compromise means that our Nation's long term energy goals will be taken into account in determining whether or not a proposed rate increase should be investigated.

The compromise also precludes the use of foreign coal as a competitive alternative, thereby closing a gap that would have adversely affected certain captive shippers.

Further, the compromise mandates the Department of Transportation to rule on a pending loan guarantee application that could result in vastly increased competition for the transportation of coal to the southern parts of our country.

The compromise allows those shippers whose rates are currently tied up in court challenges to benefit from favorable judicial determinations.

For these reasons, I support the compromise and urge its adoption, all parts of which are essential to insure that equity is achieved for industry and consumer alike.

Mr. Chairman, I wish to offer my expression of thanks to the distinguished chairman of the Interstate and Foreign Commerce Committee (Mr. STAGGERS), to the gentleman from West Virginia (Mr. RAHALL), the gentleman from New York (Mr. LEE), and to the distinguished subcommittee chairman and the distinguished ranking minority member for their assistance in this very effective and workable compromise approach.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MADIGAN) has again expired.

(By unanimous consent Mr. MADIGAN was allowed to proceed for 5 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I am happy to yield to the gentleman.

Mr. ECKHARDT. I thank the gentleman for yielding. I want to thank the gentleman in the well for his statement concerning the fight against monopoly prices in railroad rates. I think he has conducted a splendid battle in that area. Though he may disagree with me with respect to the desirability of this substitute, there is no question but that he has done yeoman's work in bringing the amendment in that nature of a substitute to the point where it is, providing a threshold for ICC jurisdiction at 160 percent of variable cost within the first year of its operation. He has also done yeoman's work with respect to protecting his area against one of the greatest depredations I think I have ever seen by a railroad against a community.

□ 1410

I thank the gentleman for his support on my first amendment.

I also have the same attitude toward the gentleman from West Virginia (Mr. RAHALL) and others who have supported my first amendment but do not support me now. There is no scintilla of resentment on my part toward those who have sought to obviate their opposition to the Rail Act by obtaining needed correction that initially very severly and adversely affected many sections of the country and many groups. We may disagree on our procedures but we do not disagree on our major direction.

Mr. Chairman, I thank the gentleman for yielding.

Mr. LOEFFLER. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Texas.

Mr. LOEFFLER. Mr. Chairman, I thank the distinguished ranking minority member for yielding and I, too, would like to say to my colleague from Texas that it has been my pleasure to work with the gentleman. There will be other times we will again be working together. I also concur with the gentleman's final statement, that while we do not agree with regard to the present means available, we do agree and have worked together toward common end results.

Mr. FLORIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the compromise that is proposed. I would like to begin my statement in support by noting that it is important to appreciate what this controversy is all about. It is not about the reasonableness of a particular rate. Rather, it is about the point at which the ICC becomes involved in reviewing those rates as to reasonableness.

There is a strong argument that can be made—and I have made it—that the Interstate Commerce Commission's involvement in ratemaking over the years has been so all pervasive that it has effectively strangled the railroad industry. By imposing regulation upon regulation upon regulation, to the point that the railroad industry has lost traffic to competing modes, the industry currently finds itself in a situation where it is earning, on average, a 2-percent return on investment. This, of course, does not allow the railroad industry to grow or to prosper. The result is the continued deterioration of the railroads' physical plant and service declining further, as I am sure each and every Member of this body knows.

The Staggers proposal sets a series of thresholds below which rates can be adjusted without regulatory intervention. The justification for this approach is that those thresholds represent the approximate point at which the railroads begin to recover their costs. If a rate is not even contributing to the costs of the railroad, to say nothing of profits, there is no reason for saying that a rate is unreasonable. Accordingly, the rate should not be subjected to a prolonged regulatory proceeding.

The compromise threshold that is contained in the Staggers proposal starts out at a ratio of 160 percent of revenues to variable costs. This, as has been stated, is the level the gentleman from Texas advocated under the amendment he previously offered before this House and that this House has accepted.

It is important to explain what we are talking about when we refer to 160 percent of variable costs. The significance of 160 percent is that the 100-percent component means that the railroad is simply earning revenues sufficient to meet variable costs. Variable costs refer to fuel, labor costs, and other out-of-pocket costs of the movement. Anything above the 100-percent level is the amount of revenues which contribute to the fixed costs of the railroad. As one can appreciate in a very capital intensive industry such as railroads, those fixed costs are rather substantial.

The level in this proposal then increases, I think rather modestly, over a 4-year period at the rate of 5 percent a year until the cost recovery percentage is reached. The cost recovery percentage is kept within a certain range in order to protect shippers when the rail industry is earning adequate revenues and to allow more rate flexibility when the industry is not earning adequate revenues.

To prevent undue fluctuations, the cost recovery percentage contained in this compromise is not permitted to rise above 180 percent or to sink below 170 percent. This amendment also permits the ICC to allow rate increases within a 6-percent zone. Incidentally, this is a reduction from the 10-percent zone which is included in the original proposal, and is above the jurisdictional level.

The ICC still retains jurisdiction over those rates and may, in fact, deny any railroad even the 6-percent increase.

Mr. Chairman, this is a meaningful compromise which protects shippers and others from unreasonable price increases by railroads.

Mr. Chairman, I commend the hard work of the sponsors of this amendment and believe that the broad base support of this amendment that was indicated by the gentleman from West Virginia (Mr. STAGGERS) is recognition of the fairness of the approach. All of the members of the subcommittee worked very hard to perfect this amendment. I would like to single out a number of other people who worked very hard in perfecting this compromise. I would mention the gentleman from Iowa (Mr. HARKIN), the gentleman from Montana (Mr. WILLIAMS), the gentleman from Montana (Mr. MARLENEE), the gentleman from Kansas (Mr. GLICKMAN), and the gentle from New York (Mr. HANLEY).

After spending 1½ years working on this subject, I can assure you that this legislation is critical to the transportation needs of the Nation. Without it we will inevitably see more railroad

bankrupticies and bailouts, all calling for more Federal expenditures.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. FLORIO was allowed to proceed for 5 additional minutes.)

Mr. FLORIO. As has been mentioned on numerous occasions, this Federal Government in the last 5 years has spent some $11 billion in rail subsidies. The end of that generosity is near. If the railroad industry cannot survive in a free enterprise system then perhaps it should not survive. I believe it can. The proposed amendment will put the railroads to the test in the marketplace. This compromise does not—I emphasize "not"—remove rate regulation over railroads. It maintains the control of the Interstate Commerce Commission but at a reasonable level. Shippers will continue to be able to go to the ICC to ask for relief from unreasonable rate increases.

What this amendment does do is create a more flexible regulatory system which will permit railroads to respond to the challenge of competition from other modes and other rail carriers. With this legislation as amended by the Staggers compromise, we create a climate where Federal regulation will allow railroads to respond innovatively to the marketplace and to meet competition. Without this proposal, we will see the continued deterioration of rail service. We will undoubtedly see more bankruptcies and, most assuredly, we will see more railroads and their supporters coming to the Congress asking for more Federal money to bail out railroads.

Mr. Chairman, I would urge support for the amendment.

Ms. MIKULSKI. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentlewoman from Maryland, an important member of the subcommittee.

Ms. MIKULSKI. Mr. Chairman, I thank the gentleman for yielding and I would like to associate myself with the remarks he has just made. I, too, along with the gentleman, support the Staggers-Rahall-Lee compromise. I carefully examined the amendment and find that it meets the very important test that I had on how it would affect the ports of America. I am satisfied that the economic viability of ports will be protected. I think it especially does a service to ports like my own, ports hope to be engaged in the coal export business.

Mr. Chairman, I thank the gentleman for his leadership in the committee as well as the leadership of the chairman of the Committee on Interstate and Foreign Commerce.

Mr. BRADEMAS. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Indiana.

Mr. BRADEMAS. Mr. Chairman, I would like to ask the gentleman from West Virginia about two sections of his amendment. First, with respect to section 301 in general, the surcharge section, is it not the case that these surcharges are only a temporary solution to the joint rate problem?

Mr. STAGGERS. That is correct, and that is why the surcharge authority is limited to 3 years, and why we have adopted the Senate's language which would speed up divisions cases. A number of carriers have a very severe problem right now, caused by 100 years of incremental regulation, in that they are carrying large amounts of interline traffic at less than the out-of-pocket cost to haul it. The surcharge section is meant to give them a chance to get out of that bind, so they have an incentive to provide better service to shippers. On the other hand, it is clear that in many cases, what is needed more than a surcharge is a change in the division of the joint rate. The restrictions on the amount of the surcharge, the time limitation, and the speed up in divisions cases are all meant to assure that surcharges will merely be an incentive to a rationalization of the basic joint rate structure.

Mr. BRADEMAS. I thank the gentleman. Now, let me ask about proposed section 10707a(h), added by section 305 (a) of the bill. That section says that the authority of the ICC to determine rules, classifications and practices cannot be used to limit rates to which carriers would otherwise be entitled under the bill. Am I correct that this is not meant to restrict the Commission's ability to prevent railroads from making arbitrary changes in commodity classifications, demurrage rules, and so forth, which would do nothing other than increase rates more than is allowed under the bill?

Mr. STAGGERS. The gentleman is correct. Just as the Commission may not put extra restrictions on the carriers that would contradict the rate freedom granted in the bill, so the carriers may not, by arbitrary changes in rules and classifications, get around the restrictions on that freedom.

□ 1420

Mr. BRADEMAS. I thank the gentleman from West Virginia, and I am grateful to the distinguished chairman of the subcommittee for allowing me to engage in this colloquy.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I should like to pursue the questions of the gentleman from Indiana for a moment with respect to the 3-year period in which surcharges may be applied. I understand that a surcharge may be applied only for the first 3 years, but the surcharge having been applied, is not terminated within the 3 years. It may continue after that period of time, may it not?

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(At the request of Mr. ECKHARDT and by unanimous consent, Mr. FLORIO was allowed to proceed for 5 additional minutes.)

Mr. FLORIO. Could the gentleman pose his question again?

Mr. ECKHARDT. The question is this: As I understand it, the surcharge may not be applied for a period of over 3 years, but a surcharge once applied within that window of 3 years is not terminated at the termination of the 3 years.

Mr. FLORIO. That is correct.

Mr. ECKHARDT. Another question I would like to ask the gentleman is with respect to the 180 percent of revenue to variable cost ratio which constitutes the upward limit, as I understand, in the proposed amendment in the nature of a substitute which we are now considering. As I understand, the 180-percent revenue to variable cost threshold may go into effect if, at that time, the formula reaches that point or higher. Is that correct?

Mr. FLORIO. If we are talking about the end of the 4-year period, it will go up to the cost recovery threshold point or 175 percent, whichever is lower. Beyond that, time period, the cost recovery percentage will be the threshold level, with the limitation that it not be in excess of 180 percent.

Mr. ECKHARDT. So the effect of that is, if the cost recovery percentage is in excess of 180 percent, then the figure will be 180 percent as the threshold figure at that time?

Mr. FLORIO. That is correct.

Mr. ECKHARDT. I note in the dear colleague letter that was sent on August 28, the gentleman stated that rates above that 180-percent level may be challenged as unreasonable, as under existing law. Now, I want to ask the gentleman if he does not wish somewhat to modify that statement. Let me go back just a moment. Under existing law, as I understand it, the ICC may at any time institute an investigation of a rate if it is a rate instituted by carrier possessing market dominance. Is that correct?

Mr. FLORIO. That is my understanding.

Mr. ECKHARDT. If an investigation is instituted respecting a rate, is it not true that the burden of proof is on the carrier to justify the rate?

Mr. FLORIO. That is correct.

Mr. ECKHARDT. Now, do I not also understand that even after the 4-year period, and when the 180-percent figure as a threshold for ICC consideration goes into effect, that there is what you call a zone of reasonableness which may, if the carrier has not previously used up that opportunity, go to 6 percent additional above the 180 percent? That does not change the threshold, I understand that.

Mr. FLORIO. This has been a point in dispute, that perhaps has confused Members as they read the differing dear colleague letters that were circulated. The 6 percent does not in any way mean that 6 percent above 180 percent would now be the new threshold. One hundred and eighty percent is the absolute threshold, and shippers would be able to go before the ICC to test the reasonableness of a rate at 180 percent.

Mr. ECKHARDT. I understand that, but there is a zone of reasonableness that would go, if the entire 6 percent were used at that time—it is approximately 190 percent of variable cost. Now, up to 190 percent of variable cost, as I understand under this bill, the ICC may not institute an investigation. The shipper may institute or file a complaint, but the ICC may not institute an investigation as it could presently do in any dominant carrier situation, is that correct?

Mr. FLORIO. No, that is not correct. As the gentleman will recall from reading the proposal, by the time we get to the 180-percent level we are no longer dealing with the 6-percent zone of reasonableness. We have shifted into a 4-percent zone, and that 4 percent is only for railroads that have not earned adequate revenues as determined by the ICC.

Mr. ECKHARDT. What if the carrier has not used any of his 6-percent figures prior to that time; may he use that at that time?

Mr. FLORIO. The answer is no.

Mr. ECKHARDT. He may not?

Mr. FLORIO. That is correct.

Mr. ECKHARDT. We may be assured that the gentleman's bill so provides?

Mr. FLORIO. The gentleman may be assured.

Mr. ECKHARDT. But after that period of time there is a 4-percent figure that may be used the first year, and another 4-percent figure the second year, and so on down the line in the case of revenue in adequate railroads.

Mr. FLORIO. Just to emphasize that point, that is only for railroads that have not yet reached a level of adequate revenues, as determined by the ICC.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(By unanimous consent, Mr. FLORIO was allowed to proceed for 1 additional minute.)

Mr. FLORIO. In fact it has no impact upon the threshold; the threshold is still 180 percent.

Mr. ECKHARDT. I understand that, but about two-thirds of the class I railroads are now revenue-inadequate railroads, as I understand it. Now, after that period of time you have got a 4-percent-per-year figure going upward, in which level the burden must be on the shipper to show that the rate is unreasonable. Is that not correct?

Mr. FLORIO. That is correct, unless the rate exceeds the Long-Cannon provision, which I am sure the gentleman is familiar with, that is if we have rates beyond the 20-percent range.

Mr. ECKHARDT. That is right, but up to that point you do change the burden of proof from what existed in existing law, so you would have to slightly amend your statement here, that rates above that level may be challenged as unreasonable, as under existing law. You change the standard within the range of flexibility so that in that range the burden would have to be on the shipper. Is that not correct?

Mr. FLORIO. I do not agree with the gentleman's interpretation.

Mr. GLICKMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from West Virginia, (Mr. STAGGERS). I think the real issue in this entire debate, once we get through some of the technicalities of the progression of rate increases is, can this Nation have a safe, efficient, modern railroad system as part of a larger, modern transportation system in America? Can the shippers of this country have not only access to reasonable rates, but can they have access to a viable, energy-efficient rail system to move their goods?

The answer is that they cannot without some additional, fare flexibility that this bill provides. The bill also provides reasonable protection to shippers from arbitrary and excessive rate increases. The Staggers amendment also includes the Glickman rail safety amendment adopted by the full House during the initial consideration of this bill, and which I will describe at the end of my remarks.

I think that the work that the gentleman from West Virginia (Mr. STAGGERS), the gentleman from Illinois (Mr. MADIGAN), and my colleague from New Jersey (Mr. FLORIO) have done is to strike that balance so that shippers have reasonable protection against arbitrary rate increases, but at the same time known that we can develop viable railroads in America so that my grain operators and elevators in Kansas know that 20 years from now they are going to have railroads to ship their grain.

□ 1430

Coal companies will know 20 years from now that there will be more than one railroad left in America to ship their coal. There is just no way that can be done without the regulatory flexibility provisions in the bill, and particularly those in the substitute amendment.

I have the Rock Island in my area, and I predict that we are going to have Rock Island after Rock Island in America unless we give our railroads the same degree of regulatory flexibility we have given our airlines, our trucking units, and all other modes of transportation. At the same time we do have to protect our shippers, and I think this amendment has done it.

Now, Mr. Chairman, I would like to talk about an issue in which I have made a bit of a crusade in this House, and that is rail safety, and the relationship between rail deregulation and rail safety. We have seen in America a situation develop where we are having train derailment after derailment, where much of the track in America is downgraded, where we cannot get grain cars because we cannot move them fast enough to get to other places because of bad trackage, where the economy has been made less productive because of ill-maintained trackage in many parts of the country, where thousands of Americans have been injured or killed over the past 10 years as a result of rail accidents, where businesses have lost billions of dollars because of inadequate movement of goods and commerce, and where we have seen slowdowns because our whole rail transportation system, and particularly our maintenance, has seriously deteriorated in the last 20 years.

In my judgment, the only way the railroads are going to be able to build their tracks, make them safe, and keep American citizens and my constituents safer from derailments of all sorts of materials, including dangerous toxic materials, is to have financially strong, viable railroads.

We need railroads which are not only strong, but railroads which will plow back these increased revenues we are giving them under rail deregulation into new track, into safer operations, and into better equipment. That is the only way in America that we are going to have a rail system that works and is safe over the long term.

I had offered an amendment to the original bill which the gentleman from New Jersey (Mr. FLORIO) and the gentleman from Illinois (Mr. MADIGAN) accepted, and which is now incorporated in this substitute to provide the assurance that these increased revenues will be plowed back into making the railroads safer. I just thought I would like to alert my colleagues to it. It amends the safe railroad reinvestment provisions of the bill to make them much stronger.

My amendment deals with the need to strengthen the provisions in the basic bill relating to track safety and maintenance, and my amendment, which is incorporated in this substitute, does the following things:

First, it says that the Secretary of Transportation is required to report railroad violations of safety standards to the ICC. Therefore, if there are track safety or other railroad maintenance problems that the Secretary of Transportation and the Federal Railroad Administration are aware of, they must report these safety violations to the ICC.

Second, the amendment requires annual inspections of track under the direction of the Secretary of Transportation, and the reports which are based on this section are to be made at least once a year. Now these inspections are made, in many cases, rarely if ever. Much of the track in this country is never inspected, and that is the same track where we have derailment after derailment. This bill and this substitute provides that these tracks are going to be inspected in America, and I think that is an important point.

Finally, the amendment would clarify that DOT rail safety reports to the ICC could definitely include information with regard to those railroads that excessively have deferred their maintenance without good cause, and the ICC will have the authority to consider the deferral of railroad maintenance when it deals with and considers rail rate increases. What we are saying here is that with the benefits of deregulation, if the ICC sees that those railroads are not putting their money back into track maintenance, the ICC can retain jurisdiction over increased rail rates.

Given the very mixed record that the various railroads have in terms of committing the financial resources which they do have available to necessary track maintenance work, this clarification will reinforce the point that the Federal Railroad Administration and the Department of Transportation will be watching them more carefully to insure that the railroads do what is expected of them. We say, "Yes, we are going to give you more regulatory flexibility in revenues, but at the same time you had darned better well improve your track, your maintenance, your equipment, and your general safety standards or we may review more carefully your rate increases and route changes.

Because of these provisions which are included in the substitute and which are part and parcel of deregulation, we cannot give the railroads this kind of deregulation without providing this clarification. The health and safety of our constituents demand at least this much.

The CHAIRMAN. The time of the gentleman from Kansas (Mr. GLICKMAN) has expired.

(By unanimous consent, Mr. GLICKMAN was allowed to proceed for 2 additional minutes.)

Mr. GLICKMAN. Mr. Chairman, it just seems to me that we cannot give railroads deregulation without insuring that they plow this money back into their track, their equipment, their maintenance, and their operations. That is what the substitute amendment offered by the gentleman from West Virginia (Mr. STAGGERS) does as amended by the Glickman amendment.

In conclusion, I think this substitute amendment is a responsible one. There is a balancing of interests here. We must and will protect consumers and shippers. However, we cannot keep price controls on freight rates forever without jeopardizing the survivability of this Nation's railroads. That just cannot be done in a free market system and in the economy in which we operate.

Mr. Chairman, I think this is the best possible solution. I commend it to my colleagues. I urge adoption of the Staggers substitute as modified by the Glickman rail safety amendment, and I urge rejection of the Eckhardt amendment.

Mr. HARSHA. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield to me?

Mr. HARSHA. I am happy to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, the pending business is the Staggers compromise, which will be followed by the Eckhardt substitute. Is it the gentleman's intention to speak for the Staggers compromise?

Mr. HARSHA. Mr. Chairman, the gentleman is correct. I was under the impression that the substitute of the gentleman from Texas (Mr. ECKHARDT) was in order at this time. I wish to speak in behalf of the Staggers-Rahall-Lee amendment to the initial amendment offered by the gentleman from Texas.

Mr. Chairman, let me say to the Members of the Committee that I normally, as they know, do not get up very often and speak on matters that do not appear before the committee on which I have the privilege of serving. But because the issues involved in this legislation correlate with those involved in the truck deregulation, I think it is important for me to make a few observations.

Mr. Chairman, the Committee on Interstate and Foreign Commerce has worked very long, very diligently, and very effectively in trying to formulate a balanced bill. Obviously, when we get legislation that is this technical and involves so many segments of our economy, touching upon so many special interests, it is utterly impossible to satisfy all of those interests in legislation of this magnitude.

If we are going to have meaningful rail deregulation, we have to accept the bill that was reported out by the committee with the Staggers-Rahall-Lee amendment added to it. Otherwise we are not going to have meaningful rail deregulation. I say that simply because, having gone through the trauma and the experience of trying to resolve all of the various issues that were presented in the truck deregulation and dealing with the industry, with the unions and labor involved, with the consumers, with the shippers, with the agricultural movement, and with many other special interests in addition to the administration and the other body, I know it is extremely difficult to fashion a bill that will satisfy all of those various interests and segments of the economy. It is utterly impossible.

So the best we can do is to try to achieve a balance where each segment of the economy has to yield somewhat, where each segment has to give a little and some segments get a little. But we strike a balance, and no particular segment gets an advantage over the other.

In my judgment, the bill that is now fashioned, with the Staggers-Rahall-Lee amendment, achieves that balance, and if we want meaningful deregulation and rail regulatory reform, we have to give the railroads an opportunity to become competitive with other modes of transportation in today's economy. The only way to do that is to support the Rahall-Staggers-Lee amendment to the committee bill.

Mr. Chairman, I urge the Members of the House to join me in that support, and I yield back the balance of my time.

Mr. HARKIN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, this amendment is very long and very complex. I do not agree with every line. I suspect that no Member agrees with every provision.

I am hopeful that it will provide the impetus to get our railroads moving again.

I know that in my part of the country, we have experienced a major collapse of two of our most significant railroads. Our other railroads continue to face major difficulties. It has been argued that shippers may pay more under this amendment. Well, right now they have no service at all. Hopefully, with this amendment some of those shippers will again receive service. We must allow our railroads to have the flexibility to succeed. We must create a climate that will see railroads desiring to expand, not looking to get out of the business.

I would like to point out that the amendment provides language that will enable Rock Island employees to finally receive their severence pay which they have long been denied by court procedures.

With the collapse of the Rock Island and Milwaukee Railroads, many grain elevators and farmers face real hardships. The cost to move grain by alternative means is excessive. It is not unusual for the extra transportation cost of truck versus rail to amount to 10 percent of the gross price of the crop. In many cases, this is the whole profit and sometimes more than what would have been profit.

The loss of a local line can cause a permanent loss of efficiency. Farmers will pay more to move crops and fertilizer, most of it in fuel which we have to import. This will cause increased food costs and less profits for the farmer. The economy of the small towns will also be seriously damaged.

Many lines do not look profitable to the major railroads. The line may have poor historical cost-benefit ratios. Often the cars are not available. The bankrupt railroads, in many instances, did not have the locomotives. In my area, there are new grain-producing areas that used to be grazing areas. Now they have gone to row-cropping and there is a lot of grain shipment out of the area, so you cannot look at the historical patterns.

Railroads are now being asked to decide what portions of the Rock Island and Milwaukee they would like to purchase. The railroad industry is critically short of capital. Comparatively healthy railroads are operating at well below a reasonable return. In 1979, railroads averaged only a 2.6 percent return on investment. Adding to the problem are the high rate of interest, the tight credit situation, and the beginning of a recession. This is perhaps the worst time to seek private capitalization of major railroad projects.

The Congress in the Rock Island Transition and Employee Assistance Act recognized a need to aid those who found no major carrier with an interest in operating their track. It provided an earmarking of funds specifically for shippers, railroad employees, governments, or some combination of those groups who could put together a viable plan to purchase and operate a line. It is a case where the Government is providing loan money so these people can help themselves.

The amounts provided by the Rock Island bill was small—$25 million was

earmarked for the Rock Island and $18 million for the Milwaukee. I had prepared an amendment to increase these amounts by $13 million for the Rock Island and $9 million for the Milwaukee, an increase of 50 percent for this transaction money. I am happy to see that the gentleman from New Jersey, Mr. FLORIO, and the gentleman from Illinois, Mr. MADIGAN, have included this amendment in the Staggers-Lee-Rahall amendment.

Another point of major concern to the upper Midwest is the Rock Island grain corridor.

On January 30, 1980, the Carter administration made a commitment to the people of the upper Midwest to improve grain transportation in the Corn Belt and repair the track of the bankrupt Rock Island Railroad through a $100 million loan guarantee program.

A high percentage of our grain crops in Iowa are grown for the export market. This market is entered primarily through the gulf ports of Louisiana and Texas—reachable only by rail or railbarge corridors paralleling the Mississippi River. Because of the limited barge capacity and the perishable nature of some of these commodities, the bulk of these grain movements depend upon the service of the north-south line of the Rock Island system, connecting Minneapolis-St. Paul to rail service at Kansas City. The grain-gathering branch lines which feed the north-south line are in some cases under directed service: in other cases, not being operated at all. The main line itself, while in directed service, is in terrible condition, increasing by many days the turn-around time to the gulf ports.

We are in a perilous position. The harvest of export grain is only a very few weeks in the offing. The bankrupt condition of more than half our rail system in Iowa will sharply accentuate the seasonal overload which the Midwest rail system normally suffers under even the best of conditions. Realistically, nothing can be done about the problem this year. Legal questions on the Milwaukee and acquisition of both Rock Island and Milwaukee lines are not to be soon resolved. And for all practical purposes, this year's maintenance season is over. Yet we can and must look to the future so next year is not a repeat of the current crisis. To this end, the people of Iowa were much encouraged by Vice President MONDALE's commitment in behalf of the administration that loan guarantees would be available for the rehabilitation of the most vital link in this system, the north-south line.

Funds for facilities maintenance, rehabilitation, improvement, and acquisition on the 500-mile Rock Island line between Minneapolis-St. Paul and Kansas City will be made available by the Federal Railroad Administration. FRA officials estimate that approximately 4 years of intensive rehabilitation activity will be needed to unclog the region's badly congested grain transportation network. The program would reduce by about one-third (to about 6 days) the time it takes to get a grain-laden hopper car from Iowa to the ports on the Gulf of Mexico. Rehabilitation would boost the annual capacity of the route to approximately 40 million tons of goods.

Vice President MONDALE's announcement presumed additional appropriations for the operation of FRA's rail fund. Those appropriations have not yet materalized in this Congress, however, and may be jeopardized by the budget process. What has materialized in the meantime is an even more aggressive commitment on the part of both the administration and the Congress to the revitalization of the Nation's railroads through expenditure of the windfall profit tax proceeds. Section 102 of the Crude Oil Windfall Profit Tax Act of 1980 dedicates 15 percent of net revenues for energy and transporation programs—a sum in the many billions of dollars which is more than adequate to deal with essential energy development and the rehabilitation of key transportation corridors.

The Rock Island grain corridor received "first notice" in this administration's evaluation and recognition of rail bankruptcy priorities. I would welcome a commitment from my colleagues, then we will work together over the next few years to restore a vital chain in the production and marketing of the abundant offering of grains which Iowa and the Midwest offer this Nation and the world.

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Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. HARKIN. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I appreciate the statement of the gentleman from Iowa. His singular efforts were the prime reason for the increase in transaction assistance which has been included in the amendment. His work on behalf of those who have been adversely affected by the collapse of the Rock Island and Milwaukee are well known to those who serve on the Commerce Committee.

Regarding your concerns for the rehabilitation of the north-south line of the Rock Island, I have been consulting with the administration on a regular basis in an effort to establish priorities and resolve the crisis of the bankrupt railroads. As a matter of fact, the legislation we are considering today contains a number of provisions which are essential to that effort.

My colleague is correct in noting that the north-south line of the Rock Island is one of the most vital rail links in the Nation's agricultural transportation system. Recognizing the high priority which must be placed on its rehabilitation, the administration—speaking through Vice President MONDALE—has made a forceful commitment for the availability of Federal funds to restore and modernize that line.

I want to assure my colleague from Iowa that the Subcommittee on Transportation and Commerce, along with our leadership on the full committee, are similarly committed to early rehabilitation of the north-south line. The problem is not one of limited regional concern; it is national in scope and deserving of the full cooperation of this Congress. I thank my colleague for bringing it to our attention at a most appropriate point.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I just want to clarify one point that was made by the distinguished gentleman from West Virginia, my distinguished chairman, for whom the bill is named. I believe he stated in his presentation that the shippers supported the amendment. I am sure that he did not mean that all shippers support the amendment. As a matter of fact, I have here a considerable list of shippers that do not support the amendment.

I shall more appropriately point it out with respect to the substitute that I shall offer. But I think he also stated that Congress Watch supported it.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman.

Mr. STAGGERS. I only mentioned some of the big railroad shippers of America, such as General Motors, Ford, Bethlehem Steel, Republic Steel, du-Pont, Union Carbide, Allied Chemical, Corning Glass, and several others that are nationally known and really use the railroads to a great extent all the time and have to use them. I have a complete list here.

Mr. ECKHARDT. United States Steel is on the other side.

Mr. STAGGERS. U.S. Steel is opposed to Bethlehem Steel and Republic Steel and General Motors and Ford and a lot of others, that is true.

Mr. ECKHARDT. And all of the utilities, who are also shippers, that have taken a stand are opposed to the amendment, as I understand.

Mr. STAGGERS. That could be.

Mr. ECKHARDT. At any rate, we have considerable division among shippers, I think we can agree to that.

Mr. STAGGERS. I think we have the important ones of America. We have letters from them saying they are in complete accord, complete support. I think they are the major shippers of the land.

Mr. ECKHARDT. Did I also understand that Congress Watch supported the amendment?

Mr. STAGGERS. Congress Watch is listed as one of the supporters.

Mr. ECKHARDT. I have a letter here from Ralph Nader, dated September 5, that says:

> In the competing amendments to the railroad deregulation bill, Congress Watch believes that the Eckhardt amendment is superior.

Mr. STAGGERS. They could have changed, that is true.

Mr. ECKHARDT. And I believe it is also true that all of the other consumer groups are opposed to the amendment, including the Consumer Federation, the Consumer Energy Council and, of course, the Congress Watch group.

I think it is very significant that those

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who oppose the amendment are those who are ratepayers, those who are consumers, or those who are utilities on the frontline to the consumers, they must deal directly with the consumers. I think that that ought to be pointed out. It has been very difficult, to oppose the position of the committee, when it has been constantly said in the halls that everyone but a very few of us—sometimes I am mentioned as alone—oppose this amendment.

I just want to point out that there are a great number of persons, agricultural groups, consumers and utilities that oppose the amendment, but I shall mention them in detail when I offer my amendment.

I would like to take this time, though, in going back to the question that was argued by the distinguished gentleman from New Jersey, the chairman of the subcommittee, concerning the virtue of his bill as stemming an inordinately high rate by railroads to be charged their captive shippers. It is true that in the original bill the cost recovery percentage formula of title II provided for a threshold of about 200 percent of variable costs. That point had to be reached before one could even go before the ICC. My amendment cut that threshold back to 160 percent. The gentleman from New Jersey pointed out that his own amendment had finally yielded to that position in the first year. I think it is now obvious that the original figure had to be cut back in order for the bill to get the votes necessary to pass it. So now, in the first year of the amendment which is now being offered the threshold figure would be 160 percent of variable cost.

Now, let us talk a little about a threshold of 160 percent of variable cost and see what it is.

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 5 additional minutes.)

Mr. ECKHARDT. It is very difficult for most people to conceive about what the variable cost, or what a percentage of variable cost is in real terms. The ICC has estimated that a rate of about 150 percent of variable cost results in a return on equity after taxes of about 16 percent. Now, that is a whopping big earning for any corporation today. A rate of 160 percent of variable cost, according to the ICC's estimations, results in a return of approximately 22 percent of earnings on equity after taxes. That is enough to provide a very significant rate cushion to permit a railroad to compete at closely clipped earning in areas where it must meet stiff competition. But if one goes up to the figure that this bill would permit, before there can be an effective contest by the shipper of the ICC's rate, which figure is approximately 187 percent of variable cost that equates to about 37 percent earning on equity after taxes; 187 percent is 180 percent plus the range of zone of flexibility, 4 percent of 180 percent. It must be understood that when you get into the zone of flexibility, the ICC may not institute an investigation. The ICC comes in only on a shipper complaint. When the matter comes up in this way the burden is on the shipper to prove that the rate is not reasonable.

□ 1450

So, practically speaking, 187 percent of variable cost must be reached in 1984 before a rate can even have a chance of a successful challenge.

That means that captive shippers all over this country, captive shippers who must depend on a single railroad to haul coal for instance from Wyoming to San Antonio like the Burlington Northern, captive shippers who must depend on railroads who haul wheat out of Kansas on a single railroad, like the Sante Fe, captive shippers who must depend on the hauling ore or coal in the East to the steel mills, all of those captive shippers will be stuck for an earning on investment for that particular haulage of around 37 percent on equity after taxes. That constitutes a very big subsidy of other competitive haulages.

What we are talking about in the provisions that are being offered in the Staggers amendment is a substitute for about 22 percent on equity, and a handsome opportunity for railroads to pull themselves out of the hole, because 22 percent is far above what most corporations earn. But a figure at which ICC enters the field at 37 percent of earnings on equity is really a shockingly high earning. It may be that some railroads do need that much to double up and catch up, or to steal from Peter to pay Paul, to make up for certain deficiencies in their existing lines and indeed, deficiencies in their management. I think ConRail is in that boat. I think we are going to have to keep on subsidizing ConRail anyway to keep it going whether this bill passes or not. I say to my colleagues that we should not draft a bill that creates a threshold figure for ICC consideration that is designed to take care of ConRail. We should set a threshold which is low enough for the ICC to treat differently those railroads that are rich and prosperous, that will use that 37-percent earning on equity to stick in their pockets, or pay to their stockholders, or to buy coal interests rather than spending their earnings on track and railway equipment.

We should permit the ICC to look into the specific question. It has been said that my amendment that we passed on the 24th of July, increases ICC control rather than reducing it.

I ask my colleagues, how in the world can we come to that conclusion when the RRRR Act permitted ICC review of every rate by any dominant carrier, no matter what the earning may have been?

What I did in the amendment that was offered on July 24 is recognize that an earning around 22 percent on equity was not going to be challenged. That is pretty high, but when one runs that figure up to 180 percent for the threshold and 7 percent above that as a margin, that is excessive and really an outrageous yielding to monopoly power.

Mr. GONZALEZ. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the railroads already know what they will do if this particular version passes. The general public does not. Our responsibility as representatives is to ask if this bill meets the test of promoting the general welfare. Within a very few years this country will have just about five gigantic railroads. In the parlance of the industry, they are known as megarailroads. Some of the mergers required to create these giants have already taken place. Others are well along in the planning stage. If this bill with this version passes, the process of railroad mergers will accelerate and the business will be transformed almost overnight. It will happen just as fast as the lawyers and the accountants and corporate chieftains can make it happen.

At the same time the number of railroads start diminishing, there will be an accelerating number of service abandonments. Lines that do not make a profit will be abandoned even if they provide an essential service, unless the shippers can pay enough to make those lines profitable. There will be hundreds of communities or thousands of shippers who will find that they neither have an alternative to rail shipment, nor can afford to pay what the railroads will demand as a price of keeping the service. While that is going on, the cost of railroad service will increase dramatically. This bill guarantees that the railroads will not just have a profit, but a handsome and a quite unconscionable profit regardless. In anticipation, for example, the rail stocks are being bid up by investors who are expecting a very rich profit. This is reality.

In this bill the House would not just guarantee the right of railroads to operate. We would guarantee that they can never lose any money no matter how inefficiently they operate. We allow the railroads to exercise virtually all the power a monopoly can get, and where there is competition, the bill assures that it will never be competition harsh enough to cut profits.

In the ordinary free market business, profitmaking is a function of risk, but this bill removes risk from railroading by guaranteeing fat profits.

The end result of this bill is easy to see. We will have fewer railroads with fewer lines providing less service at vastly higher cost. How can we say that this serves the public interest or advances the general welfare of the Nation?

I am particularly distressed that some of my colleagues have been persuaded to abandon their support for the amendment of the gentleman from Texas (Mr. ECKHARDT), which was passed by the House on July 24 through the device of section 305(c) in this amendment, which prescribes a favorable coal rate for my particular area, the city of San Antonio only.

The fact is that section 305(c), as most anybody here would recognize, would have a pretty hard chance to survive in conference and practically little to survive a court test. I think that is a fair statement. This provision is vigorously, incidentally, opposed by the rail industry. I think every Member of this body

probably received a mailogram by now indicating that. It would be shortsighted of me or anybody else to back away from the Eckhardt amendment on the basis of the chimerical promise, illusory promise, of section 305(c).

The so-called compromise presented today actually is a simple splitting of the difference between the Eckhardt amendment we adopted in July and the original committee bill. The so-called compromise weakens protection for American consumers and industry by half. We are being invited to think that consumers might not noticed being choked, whereas, they would object to being hanged.

I suggest that the people of my State recognize that there is no essential difference between a hangman's noose and a Spanish garrote and would find, equally most uncomfortable.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. I recall that the leadership in favor of the deregulation of gas and oil was led by the Texas delegation.

It seems to me that the leadership against deregulation of the railroads at this time is being led by Texans.

The CHAIRMAN. The time of the gentleman from Texas (Mr. GONZALEZ) has expired.

(At the request of Mr. CHARLES H. WILSON of California and by unanimous consent, Mr. GONZALEZ was allowed to proceed for 2 additional minutes.)

Mr. CHARLES H. WILSON of California. If the gentleman will yield further, I would like to know in the case of this particular bill, what is the problem in Texas that causes those folks to be opposed to this particular bill as it came from the committee.

Mr. GONZALEZ. First, may I explain to the gentleman from California that I was in the minority with the Texas delegation on deregulation of gas.

□ 1500

I was most unorthodox from that standpoint.

The real essential thing here is represented by this attempt to address itself to the specific, the unconscionable situation confronting the city of San Antonio, where it was and is the first major city in the United States—after all, San Antonio is No. 10 in the country, No. 3 in Texas—it was the first one at a cost of half a billion dollars to provide for the conversion from gas firing to coal burning to fire up the boilers to produce electricity, even though we are surrounded by the gas producing fields of the United States that produce 40 percent of the total production in the United States. If somebody from Mars were to study us, they would know that we are insane, because here we are in the city of San Antonio, surrounded by gas, having to go a thousand miles to Wyoming to ship coal, only to find that the rail monopoly on the shipping of coal reneged on its original contract, which was around $7 a ton, to the astronomical fee of $21 which, of course vitiates the national policy of conversion from gas to coal burning by making that practice impossible.

Essentially, this is the problem. It is one that is beginning to be felt in other sections of the country, because the railroad has the monopoly in the shipment of coal.

The CHAIRMAN. The time of the gentleman from Texas has expired.

(At the request of Mr. FLORIO, and by unanimous consent, Mr. GONZALEZ was allowed to proceed for 1 additional minute.)

Mr. FLORIO. Mr. Chairman, would the gentleman yield?

Mr. GONZALEZ. Certainly.

Mr. FLORIO. In response to one of the points the gentleman made, he expressed some concern, as a matter of fact, he went further than that, to say he was convinced that section 305 would not survive the conference committee process.

I represent to the gentleman, and I think I can speak authoritatively for the minority in this matter, that it is our intention to go into conference to preserve each and every part of this bill. We will work very, very diligently to preserve section 305 and all other sections of the bill as it is finally enacted into law by this body.

Mr. GONZALEZ. Oh, I am pretty sure that is correct, but the gentleman cannot tell this House that he can guarantee that the Senate, that the Senators on their part of the conference, have given the gentleman a written assurance. Senator MAGNUSON has not given an assurance that he is going to abide by it.

Mr. FLORIO. If the gentleman will yield further, of course, no one gives written assurances about anything when one goes to conference.

Mr. GONZALEZ. That is the point.

Mr. FLORIO. I just wanted to make it clear that it is the intention of the conferees, as I understand who the conferees may be, to go forward and make every effort to keep everything that is in this bill when we conclude in the House in the conference report.

Mr. GONZALEZ. Let me say, I do not doubt the gentleman's word.

Mr. LOEFFLER. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

With respect to the unique situation with the city that I represent, San Antonio, Tex., we have what has often been referred to as "bait and switch" tactics that occurred regarding the originally proposed rate for coal transportation, which brings about the uniqueness of the particular situation. As a result of this action we have seen the transportation rates escalate 260 percent since 1973. At the same time, the city of San Antonio in the period from 1977 through the first of this year has converted from total reliance on oil and gas to 65 percent reliance upon coal to fire the municipally owned utility burner tips.

I support this compromise. I support it because it is in the best interests of the country and also in the best interests of the city which I represent.

I know that the gentleman from Illinois and I have been in discussion with respect to the conference.

I would like to yield to the gentleman for that purpose.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and just state for the benefit of the understanding of everyone that is assembled here that the commitment that I have made to the gentleman from Texas is that I will not sign or support any conference report that does not contain the provision which the gentleman has put in this bill.

Mr. LOEFFLER. Mr. Chairman, I thank the gentleman from Illinois, and as I understand it, the subcommittee chairman has made the same commitment, so I yield to the subcommittee chairman to also verify that.

Mr. FLORIO. Well, if the gentleman will yield, it is our full intention to go forward and we are committed to including this provision in the bill, along with the rest of the bill.

Mr. LOEFFLER. Mr. Chairman, I thank the gentleman.

I yield to the distinguished gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. I just wanted to reassure the House that when we go to conference we will try to protect every item that is in the bill. We have always done that and we will continue to do that. We have never tried to knock anything out of a bill.

Mr. LOEFFLER. Mr. Chairman, reclaiming my time, I would like to emphasize what the particular provisions dealing with San Antonio really do for the future. In the most conservative interpretation, the savings to the San Antonio consumers in the first 7 years is approximately $45 million. Therefore, millions of additional dollars in savings will be realized as annual increments not to exceed 4 percent plus inflation will be allowed until the rate reaches the cost-recovery percentage. Therefore, with respect to the city of San Antonio and the uniqueness of the situation, what we have done is provide protection where a monopolistic railroad has absolutely gouged the consumer. We have now the assurances from the subcommittee chairman, as well as the ranking minority member, that every effort will be made to preserve the San Antonio language, the language which I have authored.

Mr. RAHALL. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to my good friend, the gentleman from West Virginia.

Mr. RAHALL. Mr. Chairman, I thank the gentleman from Texas for yielding. He has mentioned the benefits to the consumers in his area of this compromise amendment.

I would like to draw the attention of my colleagues to a letter from the leading consumer advocate in the administration, Esther Peterson, in support of this compromise amendment and in her letter she expresses the belief that this

will benefit both the consumers and the railroads; so I draw that to the attention of my colleagues.

Another point I would like to address myself to, if the gentleman still yields.

Mr. LOEFFLER. I yield to my colleague.

Mr. RAHALL. That is the comment made by the other two gentlemen from Texas that the return on equity at the 160-percent threshold level at which the Staggers-Rahall compromise amendment begins provides a return to the railroads of 20 or 22 percent return on equity. With this handsome return, the railroads would be sticking it in their pockets. I believe was the quote.

I would like, if I might, to draw the attention of my colleagues to the work that is being done in many of the ports on the eastern seaboard at the present time, work that shows that the railroads are returning and are using a great deal of capital investment in the construction and in the upgrading of port facilities to try to cut down on the backlog of railroad cars that are lined up at these ports to ship coal to foreign buyers. The delays of several weeks sometimes are costing the buyers of American coal as much as $15,000 a day. It is adding $4 or $5 to the delivery price of coal and the efforts that are being made by both the rail industry and the coal industry to upgrade these ports. I refer specifically to efforts that are being made at the piers at Hampton Roads in Baltimore, efforts that are being undertaken by Conrail and Shell Oil and A. T. Massey Co. and Norfolk & Western Railroad, the Chessie System and many such projects of this nature, Mr. Chairman, are helping to cutback on the delay of delivered coal to the foreign buyers. This shows that the railroad companies are, indeed, putting any return on equity they have at the present into good usage.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

(By unanimous consent, Mr. LOEFFLER was allowed to proceed for 1 additional minute.)

Mr. LOEFFLER. Mr. Chairman, to conclude my remarks with respect to the city I represent, San Antonio, there is also language in addition to the Loeffler language which is most important to the city of San Antonio. There is provided an opportunity whereby we can have competing lines coming out of the Powder River Basin. This is with respect to language that deals with the mandate of the Department of Transportation to rule on a pending loan guarantee in order that another rail might be in position to compete with the Burlington-Northern.

In addition, when we talk about competitive alternatives, it is important to the city of San Antonio that there be access to foreign coal in the event they wish to purchase it without jeopardizing the opportunity of being able to acquire the coal within the United States at a reasonable rate. In other words it is necessary to pass the protection currently contained in the Staggers compromise amendment.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

(By unanimous consent, Mr. LOEFFLER was allowed to proceed for 1 additional minute.)

Mr. ABDNOR. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to my colleague, the gentleman from South Dakota.

Mr. ABDNOR. Mr. Chairman, quite apart from the issue of rates, which is the central focus of the debate over the Eckhardt amendment, South Dakotans have an overriding concern in the context of this legislation. I would like to discuss that concern further.

We could lose service on virtually all of the 1,320 miles of the bankrupt Milwaukee Railroad in our State. Certain of these lines are absolutely essential to our agriculturally based economy, as well as to the transport of coal to a major electric powerplant. The State of South Dakota is taking decisive action to preserve service on these lines, but the State cannot do so without Federal rail rehabilitation financing under section 505 of the Railroad Revitalization and Regulatory Reform Act.

Section 505 is scheduled to expire at the end of this fiscal year, on September 30th, and a 2-year extension is contained in the measure before the House again today. It is vital to the interests of my State that this authority be extended and that additional funding be provided for the coming fiscal year. The Appropriations Committee has assured me that additional funding will be considered on a timely basis, despite its exclusion from the fiscal year 1981 transportation appropriations passed by this body; but those funds cannot be provided until the legislative authority is extended.

Thus, it is imperative that the authority for the section 505 program be extended as soon as possible, and I would like to engage the distinguished chairman of the Subcommittee on Transportation and Commerce in a colloquy on that point.

If I may ask the gentleman from New Jersey (Mr. FLORIO), what are the prospects for extending the 505 program if the measure before the House today is not enacted?

Mr. FLORIO. Mr. Chairman, if the gentleman will yield, I recognize the concern of my colleague from South Dakota, and I would say to him that there is little chance the 505 program will be extended this year if the Rail Act cannot be passed in an acceptable form.

Mr. ABDNOR. Do I understand the gentleman to say that H.R. 7235 as amended by the Eckhardt amendment will not be enacted?

Mr. FLORIO. That is my view. Enactment of the Eckhardt amendment would be a significant step backward, and it will not happen. The committee is offering more acceptable language, and I would say to my colleague that adoption of this language is the best way to insure extension of the 505 program this year.

Mr. ABDNOR. I thank the chairman for those comments, but there are a couple additional points which must be addressed as well if the rail transportation interests of my State are to be served.

At this point in the RECORD I would like to include the text of a letter from the Washington counsel of the South Dakota Division of Railroads:

BILLIG, SHER & JONES, P. C.,
Washington, D.C., August 19, 1980.

Re H.R. 7235, Sections 304(e) and 309.

Hon. JAMES ABDNOR,
1224 Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN ABDNOR: This letter responds to the request made on your behalf by John C. Wiles, Special Counsel, South Dakota Department of Transportation for a brief overview of the potential impact of sections 304(e) and 309 of H.R. 7235 on state rail service continuation programs undertaken in response to the bankruptcy of the Milwaukee Road and other major railroads.

Faced with the loss of essential rail services as a result of these major railroad bankruptcies, the State of South Dakota and other states similarly situated are now in the process of implementing rail service continuation programs under which a state or its subdivisions acquire abandoned lines of the bankrupt railroad and arrange for continued service over these lines by private operators. Whether such programs are to prove ultimately successful is, of course, largely dependent upon the ability of the private operators contracting with the state or its subdivisions to realize operating efficiencies sufficient to overcome the necessarily marginal nature of the newly-acquired lines. On the assumption that these efficiencies can be obtained by operators free to tailor service to the demonstrated needs of involved shippers, without the mandatory imposition of labor restrictions and requirements, South Dakota and other states are committed to the expenditure of substantial public funds for the purpose of acquiring and rehabilitating lines abandoned by the bankrupt railroads which are deemed essential to state transportation needs.

Under existing law, the full cost of mandatory labor protective conditions in favor of employees of the bankrupt railroads adversely affected by the authorized abandonments is borne by the bankrupt's estate, with the result that states and other non-carrier acquiring entities will not be required to divert scarce investment and start up capital to finance employee benefits, wage rates, work rules, and similar conditions imposed without regard to the extent to which they are required by market conditions. Furthermore, new operators are provided with the opportunity to determine for themselves their labor-related costs in order that they might succeed in achieving profitability despite the necessarily marginal nature of the lines over which they will operate.

Both sections 304(e) and 309 of H.R. 7235 may be read to allow the imposition of labor protective conditions on newly-formed operators contracting with states and other non-carrier entities acquiring previously abandoned railroad lines for operations pursuant to state rail service continuation programs. Thus, while section 304(e) appears to change existing law to provide for the mandatory imposition of labor protective conditions in proceedings conducted pursuant to section 10901 of the Interstate Commerce Act, 49 U.S.C. §10901, only where approval for construction and operation of a railroad line is sought, the present wording of this provision may allow a broader interpretation which could result in the imposition of such conditions on new operators seeking authority to provide service over previously abandoned lines acquired by states pursuant to a rail service continuation program.[1] Similarly, section 309, as presently drafted, may be viewed as allowing a bankruptcy court to look beyond the abandoning carrier in allocating the burden of labor protective conditions in favor of adversely affected employees of the bankrupt, with the result that newly formed carriers contracting with states for operations over the subject lines may be required to bear all or part of the burden of such conditions.

The imposition of labor protective conditions on newly-formed operators providing essential rail service over abandoned lines acquired by states pursuant to rail service continuation programs would significantly limit the effectiveness of such programs, and may in some situations render continued rail service wholly infeasible. It is certainly doubtful whether a new operator could be obtained, absent heavy state subsidization, if it must operate subject to the same labor benefits and conditions applicable to the bankrupt railroad. Substantial increases in the amount of public funds expended by the states solely to finance union pay scales, work rules, working conditions and benefits which may not otherwise be required would place a serious strain on limited state resources. Finally, it is highly unlikely that any potential operator with employees at other locations not subject to such conditions would risk the obvious problems which would arise if only part of its work force became subject to them. In short, it is doubtful whether states and their operators could succeed where the bankrupts failed if they are to be saddled with many of the same burdens which contributed to the bankruptcies in question.

It is the position of South Dakota, as well as other states, that the interests of employees adversely affected by abandonments granted bankrupt railroads are adequately protected under existing law without further impairment of the ability of the states to effectively deal with the adverse effects of such abandonments on their local economies, and for this reason South Dakota opposes sections 304(e) and 309 of H.R. 7235 as presently drafted.

Very truly yours,

JACOB P. BILLIG.

[1] It is the position of the State of South Dakota that under existing law, the Commission is without statutory authority to impose such conditions upon a grant of authority pursuant to 49 U.S.C. § 10901. See, Finance Docket No. 29392, State of South Dakota—Petition for Declaratory Order.

This letter points out that the current language of sections 304(e) and 309 of H.R. 7235 could preclude implementation of the plans of the State of South Dakota, even if the 505 program is extended and funding is provided. It is my understanding, however, that the committee will offer changes in these sections to insure that neither the State nor any operator the State may retain will be burdened with labor protection costs in maintaining service on rail lines abanboned by other carriers.

Mr. FLORIO. That is correct. The committee will offer language to alleviate the concern of the State of South Dakota with regard to labor protection costs.

Mr. ABDNOR. Again, I thank the chairman for his recognition of the vital interests of my State in the legislation before us today.

Mr. FLORIO. I assure the gentleman from South Dakota that the committee is well aware of the rail transportation interests of his State. We understand, too, that the Federal Railroad Administration is working closely with the State and is very receptive to providing 505 program assistance for the so-called Miles City line in particular. It is the committee's intent in including in H.R. 7235 a 2-year extension of the 505 program that both the Miles City line and other lines the State deems to be essential shall receive every consideration for Federal rehabilitation financing.

Mr. ABDNOR. With those assurances, Mr. Chairman, it is my belief the best interests of my State will be served if I support the amendments offered by the committee today. It is no benefit to my constituency to quibble over ratemaking procedures if the means to preserve rail service itself is denied. With the committee's support for the interests of my State, I intend to support the committee's amendments, so that H.R. 7235 can be passed and taken to conference with the Senate-passed bill (S. 1946) without delay. Despite any flaws which may remain in H.R. 7235, my overriding concern must be to obtain extension of FRA's authority to provide rail rehabilitation financing under the section 505 program.

● Mr. FLORIO. Mr. Chairman, I have just received the following letter from Chairman Darius Gaskins, of the Interstate Commerce Commission:

DEAR CHAIRMAN FLORIO: This is in response to your request that we analyze the potential effects on abandonments of H.R. 7235 and the Proposed Compromise Amendment offered on September 2, 1980. In that time is short, I offer my personal views, not those of the Commission as a whole.

In my view, there is no provision in either of these pieces of legislation that makes abandonment procedures is a comparison of under current legislation. Indeed, the bill may reduce the frequency of abandonments.

Today a carrier is generally permitted to abandon a route if it can show that it is losing money by continuing to operate over the route and that the prospects for earning additional revenues are unlikely to improve. There is no provision in the draft legislation that would change this policy.

However, there are several provisions that may affect it indirectly. Central to current abandonment procedures is a comparison of revenues and costs. The legislation gives carriers greater rate flexibility in general and specifically gives them flexibility to assess surcharges on lightly-used branch lines that are losing money. If carriers use the greater rate flexibility offered by the legislation to increase revenues on money-losing lines, the effect would be to forestall abandonments that would otherwise occur.

Further, the contracts provision of the bill permits shippers to assure carriers of continued revenues for a set period of time. Such legally enforceable assurances will make the investment of funds in line rehabilitation a more attractive business proposal for many railroads.

In sum, the legislation has no impact on a carriers' ultimate ability to abandon money-losing lines. However, to the degree that the legislation offers carriers greater ratemaking flexibility, it can only increase the revenue potential of such lines, thereby diminishing the likelihood that carriers will seek to abandon lines.

Sincerely yours,

DARIUS W. GASKINS, Jr.,
Chairman.

□ 1510

Mr. ALBOSTA. Mr. Chairman, I move to strike the requisite number of words, and rise in opposition to the amendment.

Mr. Chairman, I do not believe the changes proposed in the amendment offered by the distinguished chairman of the Interstate and Foreign Commerce Committee and others will really make a difference in the way carriers like Conrail can impose surcharges that will hurt the traffic carried on short line railroads. I believe the amendment could very well lead to some of these lines going out of business.

Within my own State of Michigan we have a number of short lines that strongly support the elimination of section 301 from the Rail Act. Lines such as the Hillsdale County Railroad Co., The Lenawee County Railroad and, within my own district, the Michigan Northern Railroad and the Ann Arbor Railroad oppose section 301. These railroads believe that carriers such as Conrail will put a surcharge on the traffic they handle with these short lines that will then encourage shippers to either use other routes or other types of transportation to get their goods to market.

The reason Conrail might very well impose a surcharge is so that they can abandon lines that they, Conrail, find unprofitable for their system. In doing so, areas of the country will see their rail service either cut back or eliminated to the detriment of the local economy.

As one example, I have a letter from the Michigan Northern Railroad with me which clearly describes the problems the imposition of surcharges has caused the railroad in the last 3 years. I would like to read parts of the letter because I feel they are important in considering whether to keep section 301 in the present bill we are considering today.

The letter states:

In the interest of competition as set forth by proponents of H.R. 7235, Michigan Northern has had reduced freight rates on all joint routes in which it has been a participant since the 5 percent general increase of 1977 which it declined to effectuate.

As a result, a relatively small but most welcome volume of west to east traffic has resulted, mostly lumber, uses our Mackinac Gateway route. Included in this traffic was Canadian originated lumber movements. A number of larger U.S. railroads attempted, through the Interstate Commerce Commission, to close rates and routes using the Michigan Northern.

Mr. Chairman, this is important because:

Michigan Northern battled successfully and the routes are still open and beneficial to the railroad and its customers.

However, in 1979 the two major Canadian railroads used their Canadian authority to unilaterally terminate the routes in which the Michigan Northern was a part. The immediate effect of this was to cut our transcontinental traffic by about 40 percent. The result for their U.S. customers was to increase their freight bill about 6¼ percent because of the higher rates the remaining routes carried.

Under the present de-regulation bills in the House and Senate, Michigan Northern traffic could be terminated in one or more of the following ways:

(1) A surcharge added to the freight bill by Conrail and this would abolish the present discount and only create an actual increase over other routes.

(2) Closing the routes, including the Michigan Northern, since a Chicago interchange has always been the preferred one by several transcontinental carriers.

(3) Refusal to accept freight from the Michigan Northern because it did not com-

pensate to the level of 110 percent of variable costs.

The Chicago Gateway is an old American institution but it must be remembered because it is the only high capacity gateway in the northern part of the country. If this bill results in abolishing the Mackinac gateway, this country's rail transportation alternatives will be severely limited in the future.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent Mr. ALBOSTA was allowed to proceed for 2 additional minutes.)

Mr. ALBOSTA. If I could now point out on this map to the Members what is happening and going to happen in Michigan:

We have this rail system here which feeds into this gateway in Chicago and if we lose that, for one reason or another, we have no way of bringing this traffic across except through the upper peninsula of Michigan and down through the center part of Michigan. The Northern Railroad goes from Cadillac down to Grand Rapids. That railroad may very well be put out of business if section 301 stays in this bill. There is no question in the minds of any of the people on that railroad and there is no question in the minds of the people who have designed this particular bill that the short-line railroad's future could be jeopardized. It is the only railroad there and closing it will not only hurt the local economy of Michigan but affect this country's ability to bring rail traffic through another route besides the Chicago gateway.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. Yes.

Mr. MADIGAN. I thank the gentleman for yielding. If I may, I would like to read to the gentleman two paragraphs from a letter which I have just received today from the Chairman of the Interstate Commerce Commission. This is a copy of a letter that the Chairman of the Interstate Commerce Commission has written to the gentleman from New Jersey (Mr. FLORIO), the chairman of the subcommittee.

In the first paragraph the Chairman of the Interstate Commerce Commission says:

This is in response to your request that we analyze the potential effects on abandonments of H.R. 7235 and the Proposed Compromise Amendment offered on September 2, 1980.

In my view, there is no provision in either of these pieces of legislation that makes abandonments more likely than they are under current legislation. Indeed, the bill may reduce the frequency of abandonments.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent Mr. ALBOSTA was allowed to proceed for 2 additional minutes.)

Mr. MADIGAN. Will the gentleman yield further?

Mr. ALBOSTA. I will continue to yield.

Mr. MADIGAN. Earlier the gentleman from Kansas (Mr. GLICKMAN) made the point, as did the gentleman from Iowa (Mr. HARKIN) make the point that if it is not possible to make money on these lines, these lines are going to be abandoned. In fact, these surcharge provisions provide the shippers another opportunity to keep the service, and that is to pay enough for the service that the railroads actually recover their cost of providing the service.

It is our intention to join in and to encourage them to stay in business and not to abandon.

Mr. ALBOSTA. I would disagree with the gentleman on the short line railroads having the capability of providing the surcharge. The surcharges can only be imposed by the major lines, the major carriers, if I understand the bill correctly.

Mr. MADIGAN. Later in the day, if the gentleman will yield further, I intend to speak specifically on this. However, at this time I would like to insert for the record some remarks discussing the importance of providing transportation to agricultural shippers.

Agricultural shippers are important not only to railroads but also to the welfare of the country. Year after year one of the most positive signs in our Nation's balance of payments ledger is the sale of agricultural commodities to other countries. Railroads play an important role moving agricultural commodities from the farm to storage facilities, and from storage facilites to ports.

Both the bill and the compromise amendment recognize the important link between agriculture and railroads. The key element in maintaining fairness to agricultural shippers and the continued growth of the agricultural export market is the common carrier responsibility that railroads have with respect to agricultural shippers. In the contract provision of the bill, for example, it is made clear that railroads continue to have a common carrier responsibility. That common carrier responsibility is assured by requiring each and every contract to have approval by the Interstate Commerce Commission. Moreover, the Commission has a responsibility to assure that railroads go so far with contracts so as to lose their capacity to carry out their common carrier responsibility. The contract approval provisions are, in fact, a monitor on preserving the railroads' ability to carry out their common carrier responsibilites.

Once a contract has been approved, the railroad has an obligation to carry out the terms of that contract. Similarly situated agricultural shippers may, in timely fashion, request and obtain a contract from a railroad. Shippers who do not enter into a contract, however, cannot allege discrimination if the contract has been approved by the Commission. Those shippers can, however, expect and receive service from the railroad as a common carrier using published tariffs.

This bill is to the shipper new bargaining power with the railroad. The contract provision is but one example of that bargaining power. The section on permissive limited liability gives the shipper the ability to voluntarily accept the limit or deductible on the railroad's strict liability for lading. It is the shipper, not the railroad, who has the power to decide whether or not to accept a limit on liability in exchange for some other consideration.

Shippers on branch lines are given two new alternatives to traditional bad service or abandonments. The first protection is in the surcharge provision which applies to lines carrying less than three million gross tons a year. Under that provision railroads are given the opportunity to apply a surcharge which can be distributed among the shippers on that particular branch line. The surcharge is only designed to make the railroads whole by providing compensatory rates and the reasonably expected cost for improving or maintaining a branch line. The reasonably expected costs will vary depending upon the level of quality wanted by the shippers or carriers for the branch line involved. Obviously 40 miles per hour track will be more expensive than 15 miles per hour track. In either case shippers should have a voice in conjunction with the carriers involved or the State or local government in deciding how much improvement should be made on a branch line.

It is anticipated that the shippers will have a strong voice in deciding such things as the level to which they expect the branch line to be improved and the apportionment or allocation of the surcharge between and among the various shippers served by the branch line. Moreover, States or local government should be encouraged to help branch line shippers pay the added cost, if needed. States already are given funds under the branch line subsidy program which could be used to cover some costs.

Compare that situation with the present law. Under the present law, if a railroad is losing money on a branch line, it will inevitably begin slow motion abandonment. Slow motion abandonment is divided into two phases. Phase 1 is where the railroads stop spending any money to maintain a branch line, causing it to literally fall apart. As it falls apart, service becomes progressively worse. Finally, trains cannot be operated safely on the line, and the need to spend money in order to keep the line operative becomes clear. At that point, the railroad enters phase 2. Phase 2 is the filing of an application for abandonment which the Commission almost always approves. Any shippers on the line are driven away from using rail service during phase 1 because the service is so poor. The shippers that are left are usually shippers of goods or commodities for whom the railroad is a necessity. Once the line is abandoned, those shippers either go out of business or are faced with very high transportation costs by truck.

Under the new law, shippers should not be faced with slow motion abandonment because the railroad can apply surcharge in order to recover their costs.

In the event shippers are given poor service, the bill provides the second alternative to abandonment. The second alternative to abandonment is contained in the Madigan amendment establishing a feeder railroad development program. Under the feeder railroad development program, a railroad providing inadequate service to a shipper on a branch line can

lose his operating rights in that territory through a Commission proceeding. Whenever a shipper, a group of shippers, or a governmental entity finds that service is inaedquate on a branch line, they may decide to take over the operation of the line themselves. The feeder line development program establishes a method for them to do just that.

Under the feeder line program any financially responsible person can petition the Commission for a proceeding to require the railroad to sell to it the branch line property at the constitutional minimum value. If the Commission finds that the service is inadequate and that the transfer of the property is called for, it can set the price and transfer the property to the new owners. The new owners may then operate a feeder railroad which is given certain privileges under the new law.

In my judgment, these two alternatives are preferable to the present law which permits railroads to downgrade and then abandon service. With the enactment of H.R. 7235, shippers are given great leverage to demand and expect good service from the railroad. In fact, these provisions put some teeth into the traditional requirement that a railroad has a responsibility as a common carrier to provide adequate service.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman. I think the gentleman from Michigan has made a very important point, and that is that the bill does lend strong reason to one who reads it to assume that, first of all, if a surcharge is imposed on a rail carrier which transports less than 3 million ton miles a year, the ICC may find that a "de facto abandonment" has taken place.

□ 1520

The phrase "de facto abandonment" is not defined or mentioned anywhere in the bill. This leads me as a lawyer to read that the ICC may either, at is discretion, or by compulsion of the language of the bill, be compelled to find that the line has, in fact, been abandoned with all the circumstances that are attendant thereon.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. DINGELL and by unanimous consent, Mr. ALBOSTA was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Will the gentleman continue to yield?

Mr. ALBOSTA. I do yield to the gentleman from Michigan.

Mr. DINGELL. I rise in support of the Eckhardt amendment, particularly with respect to its provisions to strike section 301 of the Staggers-Rahall-Lee substitute.

What you have before you is a clear choice. If you go with the Staggers-Rahall-Lee substitute, you will endorse a proposal written at the request of Conrail—and other larger railroads—and one which allows for blatant discrimination aganst small short line railroads, shippers, utilities and consumers. If you go with the Eckhardt amendment, you reaffirm the prudent decision made by this House on July 24 to retain a reasonable threshold on rates and allow the ICC the flexibility to resolve joint rate divisions between railroads.

The proponents of the so-called compromise argue that a surcharge and cancellation provision is necessary to insure that railroads do not have to operate at a less-than adequate level of revenues. And I agree that railroads ought not be forced to operate in the red.

However, the Staggers-Rahall-Lee compromise attempts to solve the problem of a minor dislocation with major surgery. The compromise does, in fact, create a system whereby larger railroads—the Conrails and the Southerns—can enrich their incomes. But it is a Machiavellian scheme where the end attempts to justify the means.

The provisions of the Staggers-Rahall-Lee compromise can be used in a discriminatory fashion to allow large railroads the ability to surcharge and cancel joint rates and can be used to force small shippers to use other modes of transportation to pay exorbitant rates thereby making them noncompetitive.

At the same time, rates for competing traffic can be held down leaving shippers with no other alternative than to abandon the service of certain small short line railroads to the whim and caprice of a larger monopolistic railroad.

The end result of this arbitrary and offensively discriminatory rate manipulation is clear to me—wholesale abandonment of hundreds of small short line rail carriers across the Nation, straight into the hand of the railroad monopoly.

Furthermore, the ability to engage in discriminatory rate practices will certainly result in long-range inefficiencies in the shipment of goods in the process of running unwanted short line railroads out of business. Such practices, as I have stated before, will have detrimental impacts on railroads, shippers, and major industries, as well.

I offer an example of how the Staggers-Rahall-Lee compromise section 301 might adversely affect the automobile industry in Michigan, an industry which is already on the brink of economic collapse:

Today there is a basis of rates to Los Angeles, Calif., via cross-lane car ferry routes which saves an auto company in my district $50 to $100 per new automobile delivered to the west coast.

This company has based its entire effort to compete with import cars on the availability of these rates. It permits this company to save $2 million to $4 million per year. Without these rates, it could not compete with Japanese cars. The company will ship 26 carloads of 18 automobiles each to the Los Angeles area next year. The average revenue per car will be $4,045. This will generate $10,500,000 in freight revenue to the railroads. Ann Arbor Railroad, a short line carrier in Michigan, has a rate division of $400 per car. If, for example, $1,000 per carload surcharge is imposed to equalize with current rail rates via Chicago, Ann Arbor Railroad could not asbsorb this amount and the auto marketing plan would be seriously jeopardized or fail. The end result would be to provide Japanese importers with a distinct competitive advantage because of cheap water transportation to Los Angeles.

The proponents of the compromise argue that shippers have the right to challenge a surcharge. However, the only remedy is that a surcharge may only be brought down to 110 percent of variable cost. It is important to note that disruption of competitve relationships does not qualify as a prerequisite for challenging a rate. It should be noted that provisions of the Staggers-Rahall-Lee compromise create an exemption for the provisions of this provision from rate discrimination. (See p. 58 of amendment.)

Under the Staggers-Rahall-Lee amendment, class III railroads are offered only marginal protection—and that is only limited to those class III short lines which originate and terminate traffic. Under the provisions of this "compromise" the Ann Arbor Railroad which transports Ford motor cars would have virtually no protection from the arbitrary rate discrimination permitted by this bill.

I reiterate that my colleagues have a choice. You can support the Eckhardt amendment which provides for a fair and expedited rate proceeding in rate division cases of rate divisions between railroads or you can accept the Staggers-Rahall-Lee Conrail compromise which promotes arbitrary rate discrimination, demise of smaller railroads, and wholesale abandonments of short line carriers.

The choice is clear in my mind.

Mr. Chairman, moreover, I would hope that my colleagues would understand that the law now contains crystal clear provisions with regard to burdens, obligations, the rights and the duties of all parties, carriers, and shippers alike, with regard to abandonment.

The language relating to de facto abandonments in this compromise is of such character that I am not able to tell my colleagues whether or not that the provisions, in fact, amend the conventional language contained in the Interstate Commerce Commission Act.

Mr. Chairman, it is the position of the gentleman from Illinois that that is not so. I am told he intends to offer clarifying language. This I applaud. I am told by my good friend, Mr. FLORIO, the distinguished chairman of the subcommittee for whom I have the highest regard, that while not the intended, the bill is ambiguous. It does leave this unfortunate misconception in the minds of many and it is a rich load of potential litigation involving the rights of shippers and involving the rights of railroads.

Now, if an amendment was offered to do away with this it would help the bill.

Mr. ALBOSTA. Mr. Chairman, I do want to point out the gentleman is correct. I will refer to a letter sent from Mr. P. H. Croft, president of the American Short Line Railroad Association, to the subcommittee chairman, the gentleman from New Jersey (Mr. FLORIO). The letter reads in part as follows:

Particularly, class 2 railroads are not

accorded a number of protections contained in the Staggers-Rahall-Lee amendment.

If they are going to afford protection by classes of railroad in this particular amendment, what chance is a second- or a third-class railroad in this country going to have? Where are the second- and third-class railroads in this country? This is one right here, the Michigan Northern. We have the Ann Arbor. We have these little railroads down in the section of the country where all the red lines are. Most every one of those are going to be second- or third-class railroads. We may have much less second- and third-class railroads left in this country should this bill pass with section 301.

Mr. Chairman, I believe very strongly that we ought to defeat this amendment, that we ought to go ahead with the substitute that the gentleman from Texas (Mr. ECKHARDT) offers and we ought to try to get this bill in its proper form so that we do not damage every small railroad in this country, damage our national defense posture, and lose thousands of miles of track. In a few years we may not have anything but a couple of lines across the country and three or four railroads.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. I do yield to the gentleman from Texas.

Mr. ECKHARDT. The gentleman from Illinois was addressing the argument of the gentleman from Michigan a moment ago with a letter that referred to both the Staggers amendment in the nature of a substitute and my substitute.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. ECKHARDT and by unanimous consent, Mr. ALBOSTA was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman continue to yield to me?

Mr. ALBOSTA. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the gentleman correctly stated the letter's statement that the question of abandonment is not directly addressed in either of these instruments. The thing is, though, that the provisions by which a surcharge may be granted are linked with section 502 of the bill, that say that where a surcharge has been made, this may be treated by the ICC as de facto abandonment.

I am not quite sure whether the authors of the bill are willing to withdraw from their position in section 502 and remove that section or not, but if it is not removed what occurs is a rather truncated procedure for abandonment in which shippers are not brought into the game but ICC may act on relatively short notice and without the ordinary protests that are usually available to both shippers and communities. Perhaps if that is to be removed we should know that it is to be removed.

Mr. ALBOSTA. Mr. Chairman, I will yield to the subcommittee chairman to respond to that question.

(At the request of Mr. FLORIO and by unanimous consent, Mr. ALBOSTA was allowed to proceed for 3 additional minutes.)

Mr. FLORIO. Will the gentleman yield, Mr. Chairman?

Mr. ALBOSTA. I yield to the gentleman from New Jersey.

Mr. FLORIO. To get the definitive word as to what the ICC regards as the abandonment impact potential of, not the amendment of the gentleman, but the original bill, H.R. 7235, and the proposed Staggers compromise. I have here a letter directed to the committee by the Chairman of the Interstate Commerce Commission, Mr. Darius Gaskins. This is a response to my request for him to analyze the potential effect on abandonment of the original bill and the Staggers compromise. This is the response:

> In my view, there is no provision in either of these pieces of legislation that makes abandonments more likely than they are under current legislation. Indeed, the bill may reduce the frequency of abandonments.
>
> Today a carrier is generally permitted to abandon a route if it can show that it is losing money by continuing to operate over the route and that the prospects for earning additional revenues are unlikely to improve. There is no provision in the draft legislation that would change this policy.

Mr. Chairman, I think that is directly addressed to the gentleman's point.

> However, there are several provisions that may affect it indirectly. Central to current abandonment procedures is a comparison of revenues and costs The legislation gives carriers greater rate flexibility in general and specifically gives them flexibility to assess surcharges on lightly-used branch lines that are losing money. If carriers use the greater rate flexibility offered by the legislation to increase revenues on money-losing lines, the effect would be to forestall abandonments that would otherwise occur.
>
> Further, the contracts provision of the bill permits shippers to assure carriers of continued revenues for a set period of time. Such legally enforceable assurances will make the investment of funds in line rehabilitation a more attractive business proposal for many railroads.
>
> In sum, the legislation has no impact on a carriers' ultimate ability to abandon money-losing lines. However, to the degree that the legislation offers carriers greater ratemaking and marketing flexibility, it can only increase the revenue potential of such lines, thereby diminishing the likelihood that carriers will seek to abandon lines.

Mr. Chairman, I thank the gentleman for yielding the time to clarify this matter.

Mr. ALBOSTA. First of all, we are not necessarily talking about a railroad that is losing money. The Michigan Northern is not a railroad that is losing money. The Michigan Northern is a railroad that is making money. This railroad is going to be put out of business simply because someone else is going to say that you must have a surcharge on any freight that you take through its line and thereby lose profitable rail traffic. There is no other way that it can be done except that the surcharge is put on by another carrier and that line then loses enough business out of operation.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. I cannot yield at this point, Mr. Chairman. If we stop the traffic that is coming from the west coast up through this area here and across through the upper part of Michigan by putting a surcharge on that freight, then that freight is going to come down through here.

I talked to the Chesapeake & Ohio Railroad people in my office the other day. They went back to their office, checked through it all, they said, "You are correct." The Michigan Northern Railroad will be hurt, so will the Soo Line, so will most of the lines that are in this whole section of Michigan. The only place we will have enough lines left will be in this area here where there is a great amount of freight to justify it. You are going to cut off all-through freight in this part of this State. So you are going to lose the service because with the surcharges we cannot generate enough of it locally.

Mr. ANDREWS of North Dakota. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have listened to this debate with a good deal of interest. I have the utmost respect for the men who are handling this legislation on both sides of the aisle but I am frankly concerned. I am concerned because of a number of things that have come up. Back when our State was first settled, the railroads were known as robber barons. I think they are still so considered in the bones and sensitivities of those of us who are farmers. The rates continue to go up and up and up and we need some protection so we can move our grain.

Mr. Chairman, a moment ago the gentleman from Michigan had a chart in the well of the House that was put together by our colleague, the gentleman from Michigan (Mr. DINGELL), or, at least, the gentleman from Michigan is the one who showed it to me first. Outlined in red were the rail lines that could be abandoned under this bill. It includes everything in the State of North Dakota with the exception of the old mainline of the Northern Pacific and the old mainline of the Great Northern.

I look at the section of the bill, and I have been given an explanation on branch line surcharges and I would like to try to clarify it because, quite frankly, I am confused, and, when we get confused when we compose this type of legislation, then after the bill passes and goes into effect what happens, tragically, is that the railroads have those very competent and well-paid attorneys to solve our confusion and the local country elevator does not have quite that well-paid an attorney. The decision always seems to come down on the side of the railroad.

□ 1530

Now, as I read this—and I would like some explanation—any line that carries less than 3 million tons per year can apply for a surcharge, and that surcharge can take into effect, as it says in the bill on page H8342, 110 percent of such carrier's variable cost in transporting the traffic plus 100 percent of such carrier's reasonably expected cost of continuing to operate such line, which shall include all costs necessary to sustain service on the line. I would assume that means

building new bridges, upgrading the embankments, and all the other things and these costs will be determined by railroad management.

In the case of a short line railroad, that is one problem, but in the case of the Burlington Northern, which runs through my State, and in the case of the unique grain traffic that we have, or the coal traffic, the branch line is a 50-mile section from which the grain cars originate. They get to the main line, and go 1,950 miles to the west coast or the gulf coast or the east coast. They travel some 2,000 miles. They derive as revenue let us say for an example, about $4,000 per car. That is about what it costs to ship a car of grain to the west coast. If we take that $4,000, that is $2 per mile.

Does that mean that they can have a surcharge on the 50-mile branch line to get it up to a $10 a mile cost to ship it over the branch line? Attorneys have told me that that is what the bill would do. That is what bothers me, because if the bill does that, and if the railroad says, "Although we take $4,000 revenue from this car; total journey, we have got to charge $10 or $20 per mile for the first 50-mile branch line segment that brings it from Pingree, N. Dak., or wherever, down to the main line where it then moves the balance of 1,950 miles of its journey on the heavily used main line, and none of the income from that main line applies back," we are going to see abandoned, on the chart the gentleman from Michigan has shown the House, every branch line in the State of North Dakota; every branch line in the State of South Dakota, and chaos will result because local elevators will then be forced to load the grain into trucks, pass it down to some central receiving point on the main line where it will be transshipped into the cars, and all we will have left is the main line.

Is this what this legislation does? Does this bill allow the railroads to determine the separate cost on the branch line sufficient to cover the costs of moving the grain over that branch line, or does the total revenue of the car have to be applied?

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I will be glad to yield.

Mr. MADIGAN. If I may in broad sense speak to two of the concerns that have been raised: First, the surcharge. When it is applied, shippers may get redress from the Commission in order to determine the proper level of the surcharge, and whether or not the surcharge is being fairly allocated and among the various shippers. In other words, these provisions assure that the surcharge has a ceiling, first of all, of 110 percent of variable cost.

The CHAIRMAN. The time of the gentleman from North Dakota has expired.

(By unanimous consent, Mr. ANDREWS of North Dakota was allowed to proceed for 5 additional minutes.)

Mr. ANDREWS of North Dakota. Could I interrupt just for a second on that? That is what I read, the 110 percent of cost, but then does it not also automatically apply the 100-percent cost of sustaining service on that rail line? Cannot that carrier—in this case, Burlington Northern—go out and say it is going to cost $750,000 to rehabilitate this 20-mile section of track, and therefore they have to apply that surcharge against any grain originating on that track?

Mr. MADIGAN. Yes, that is the case, but if that is the cost of providing the service, and if the railroad is not able to recover the cost of providing the service then, as has been pointed out in the letter from the Chairman of the Interstate Commerce Commission to the gentleman from New Jersey, the likelihood is that the railroad is going to abandon the line.

Consequently, the service is not going to be there at all. So, that is the decision that has to be made, but both the bill and the Staggers compromise are crafted so that there is a limit upon that surcharge of 110 percent of its cost. The limit may be caused to come into play by the Interstate Commerce Commission upon complaint of another railroad or shipper, either one.

Now, this particular provision is not so different than the existing law, because surcharges can be applied under the existing law. What is substantially different here is that we are calling for this 110-percent cap of variable cost, with the right of both another railroad or shipper to go to the Commission and see that this cap will be applied.

If I may, while I am on my feet, if the gentleman will yield further, respond to the concerns raised by the gentleman from Michigan about section 502. It is the intention of the gentleman from California (Mr. ANDERSON) and myself to strike section 502; not because I believe that it does what has been suggested here, because there is a legitimate question of opinion about that, but instead to remove the doubts from the minds of people like the gentleman in the well and the gentleman from Michigan (Mr. DINGELL). We intend to strike section 502 and substitute for that the branch line or feeder line development program, which I think the gentleman has been exposed to.

I thank the gentleman.

Mr. ANDREWS of North Dakota. I appreciate the explanation. Yet, the explanation still leaves us with the fact that this bill will, in effect, authorize wholesale branch line abandonments by applying to traffic over the branch line the total cost of originating on the branch line, but not applying the total revenue the railroad gains from the 1,900 miles of travel that car is going to go on over their regular line. So, if the railroad is charging $4,000 to ship this car of wheat to the west coast and makes a $2,000 profit, it will apply, if it is a 2,000-mile haul, it will only apply 50 miles worth toward the cost of the branch line, as I understand it.

Mr. MADIGAN. The Commission has authority to determine whether or not what the railroad proposes to do is reasonable, and the Commission has the authority to determine what the limit of the surcharge should be.

Mr. ANDREWS of North Dakota. But, for the purposes of making legislative history, does the gentleman then state that the committee's intent is that in the case of this freight car I am talking about, with a $4,000 charge to go 2,000 miles, that that charge will not be allocated evenly at $2 per mile?

Mr. MADIGAN. If the gentleman will yield——

Mr. ANDREWS of North Dakota. Be glad to.

Mr. MADIGAN. It would be the intention of the gentleman from Illinois, as the cosponsor of the bill and as a supporter of the Staggers compromise, that the Commission would have, upon complaint from a shipper, the opportunity to investigate situations like the gentleman is describing, and determine whether or not the surcharge would be reasonable; and if not reasonable, set it at a level that would be reasonable.

Mr. ANDREWS of North Dakota. But the gentleman cannot assure me that the intention of the committee is to make sure that the total $2,000 revenue, if that part of the $4,000 is profit, is applied over the entire shipment distance, or if it is done on a mile-by-mile basis. That is my problem, because if we abandon the first 50 miles of branch line because it costs more per mile to move it over that 50 miles than it does to move it over the main line, you are not going to have any branch lines around. You are going to have more and more overloaded trucks crowding smaller and smaller cars over inadequate highways in my State. We are going to have to open up new central elevators on the main line, and we are going to have to go through a whole lot of expenses that we cannot afford.

The CHAIRMAN. The time of the gentleman from North Dakota has again expired.

(At the request of Mr. ECKHARDT and by unanimous consent, Mr. ANDREWS of North Dakota was allowed to proceed for 3 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, there are several things I think need clearing up here. I would like to ask if the gentleman understands the bill the same way as I do; that is, that the Conrail case held that surcharges may not be imposed by one of the participants in a division, but may only be imposed by agreement of all parties to the division. That is what this amendment I offer is all about. There is no authority now to surcharge unilaterally as I understand it.

□ 1540

Mr. ANDREWS of North Dakota. Mr. Chairman, I am afraid that if we do not adopt the Eckhardt amendment, we are going to allow Conrail and the Burlington Northern and other railroads like them to shed themselves of branch lines all over this country, at tremendous impact and cost to the grain shippers, the hardware shippers, the automobile shippers, and the rest of this Nation.

That is what concerns me with this bill as I have read it.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I am glad to yield to the subcommittee chairman.

Mr. FLORIO. Mr. Chairman, to clarify the point the gentleman from Texas (Mr. ECKHARDT) makes, it is because of the lack of clarity that we need the legislation. The concern he has is addressed by the protective features we have in this bill providing that the connecting carriers can unilaterally lower the rate and cancel the rate beyond 110 percent. The 110 percent is regarded by all as that amount needed to cover the variable costs of the movement.

To admit the contrary is to say by statute or, administratively by operation of the ICC, that railroads should be required to carry traffic at a loss. I do not think anybody here wants that to happen. We have protection in the bill—and this addresses the other gentleman's concerns—that the connecting carrier can terminate the increase if it goes beyond 110 percent.

Mr. ANDREWS of North Dakota. Mr. Chairman, the gentleman has made an excellent point. The problem that I have with this is that the railroads, as the gentleman said, should not be forced to carry grain at a loss, that is right, but if they are getting an average of $2 per-mile revenue for moving that grain for its total trip and it costs them $5 a mile to move it over the branch line, but it would only cost them a dollar a mile to move it over the main line, they should not be allowed to shut down the branch line because they make a profit on the total trip.

I do not think it is in the interest of this Nation for them to be able to shut down that branch line because they are going to complain then and say, "We cannot afford just a $2 per-mile revenue we get for that 50 miles, although we only ship it on the branch line for 5 percent of the total trip."

Mr. FLORIO. Of course, Mr. Chairman, it is not done on the per-mile basis. I do not purport to be an expert with regard to grain freight rates, but the gentleman is able to assure us, I am sure, that the present rates we are talking about are far in excess of 110 percent of variable costs.

Mr. ANDREWS of North Dakota. Mr. Chairman, the problem I have is the second paragraph. We have not only 110 percent of the variable costs but the 100 percent of reestablishing the validity of that branch line. They can then go in willy-nilly and arbitrarily say, "It costs us $10 per mile to move it the 50 miles over the branch line," and they can up the rate that much for the shipment over the branch line.

The CHAIRMAN. The time of the gentleman from North Dakota (Mr. ANDREWS) has expired.

(On request of Mr. ECKHARDT, and by unanimous consent, Mr. ANDREWS of North Dakota was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the point that the gentleman has just made is exactly the issue. The bill does not only say that the railroad may surcharge up to 110 percent without review by the ICC—or indeed if there is review or the ICC does review it to determine if it is in excess of 110 percent—but it also provides in the case of branch lines that the railroad may recover in its costs—and I quote from the language of the bill—the reasonably expected costs of continuing to operate such line.

The point is simply this: that if we permit that kind of surcharging both to shippers and to small line railroads, they are put in jeopardy by the railroad which may in any case go up to 110 percent without any effective review.

Mr. ANDREWS of North Dakota. Mr. Chairman, that is right, and as the gentleman points out, it says, "plus any reasonably expected cost necessary to bring the branch line up to a certain standard," which means that they can arbitrarily arrogate unto themselves ruinously high shipping rates for traveling over that 50 miles of branch line. That would force everybody to revert to trucks to go to the main lines and carry all shipments on the main lines, which would be tragic in a State like mine and tragic in the bulk handling of grain.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. ANDREWS of North Dakota. I am glad to yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, there is another point. It is true that the Conrail case, in saying that surcharges cannot be unilaterally made, did say that there could be cancellation, but in the case of the cancellation two processes are activated:

No. 1, the other railroads affected by the cancellation have an opportunity to protest the cancellation before the ICC. The second thing that can happen is that after a cancellation a local rate must be estbliished by the canceling railroad, in which case the shippers have an opportunity to come in and protest that right if a dominant carrier is involved.

Mr. Chairman, there is a lot of difference between these processes under existing law and the summary and ex parte process of section 301 providing for a surcharge.

The CHAIRMAN. The time of the gentleman from North Dakota (Mr. ANDREWS) has expired.

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I rise to see if we cannot set some kind of a reasonable limit on debate. We have talked and talked on this now. I think that we have completely talked this compromise to death.

I would suggest that we limit the discussion on this part, because that would then allow the gentleman from Texas (Mr. ECKHARDT) to offer his substitute.

Mr. Chairman, I ask unanimous consent that we limit the debate on this amendment and all amendments thereto to 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. ECKHARDT. Mr. Chairman, reserving the right to object, I had wanted to get recognition, and I had spoken to the Chair to get recognition immediately on the substitute at this time.

Mr. STAGGERS. Mr. Chairman, I would be very happy for the gentleman to get recognition at this time.

Mr. FRENZEL. Mr. Chairman, reserving the right to object, may I be heard?

Mr. STAGGERS. Mr. Chairman, I withdraw my request.

Mr. FRENZEL. Then, Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from West Virginia (Mr. STAGGERS) withdraws his unanimous-consent request.

AMENDMENT OFFERED BY MR. ECKHARDT AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. ECKHARDT. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT as a substitute for the amendment offered by Mr. STAGGERS: Page 125, strike out line 14 and all that follows through line 17 on page 138 (including the material between lines 17 and 18) and insert in lieu thereof the following:

EXPEDITED DIVISION OF REVENUE PROCEEDINGS

SEC. 301. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(A) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(B) in all cases other than those specified in subparagraph (A) of this paragraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this subparagraph, it must report its reasons to Congress.".

Page 152, following line 13, insert the following new section:

ROCK ISLAND AND MILWAUKEE RAILROAD'S AMENDMENTS

SEC. 310. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.),

shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out "and the Milwaukee Railroad Restructuring Act" and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistatnce Ace".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(a)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(b)(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and cancelled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1)(A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

Mr. ECKHARDT (during the reading). Mr. Chairman, since this amendment has been previously printed in the RECORD, I

ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 5 additional minutes.)

The CHAIRMAN. The gentleman from Texas (Mr. ECKHARDT) is recognized for 10 minutes in support of his amendment.

Mr. ECKHARDT. Mr. Chairman, I want to explain very carefully what my substitute does. The substitute does three major things.

First, the substitute does not touch title II, so, therefore, if it is adopted, we would in effect leave title II as we amended it on July 24. Title II contains a threshold for ICC review of rate reasonableness of 160 percent of variable costs for a period of 3 years, and thereafter utilizes the cost recovery percentage as the formula for determining the threshold.

The Staggers amendment puts the cost recovery percentage in effect in 1984, except that it gives an absolute guarantee to the railroads that the cost of recovery percentage will not go below 170 percent.

Now, what we have attempted to do in the original amendment is assure the shipping public—and, of course, to give assurance to the railroads, too—that the threshold rate of 160 percent will be the threshold at which the ICC may come in to consider the rate and below which the ICC will not enter the field. As I have previously said, that a rate of 160 percent of variable cost represents for a railroad an earning of about 22 percent on equity after taxes. I think that is a pretty generous percentage.

However, it does not mean that the ICC could not grant a railroad like Conrail a recovery of perhaps 200 or 210 percent on variable costs if it needs it. ICC review of rate reasonableness at the 160 percent revenue to variable cost ratio insures that railroads that do not need more revenues may not automatically draw that exorbitantly high rate.

Mr. Chairman, it is because of this protection provision that the amendment is supported by a number of utilities and public power groups such as the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperatives.

Also, as I have said previously, all of the consumer groups which have spoken on the subject have opposed the Staggers amendment and have supported the Eckhardt substitute. It is, of course, true, as the gentleman from West Virginia (Mr. RAHALL) said, that the consumer spokesperson for the administration and indeed, I think, all administration spokesmen have supported the Staggers amendment, but I think that is pretty understandable under the circumstances. All of those who are free, all of those who are not connected with the administration and who have spoken have come out in favor of the Eckhardt substitute.

The amendment does a second thing. This is what we have been discussing in the last several minutes, and it is the reason the amendment is so important to groups like the National Council of Farmer Cooperatives, the American Association of Port Authorities, the American Feed Manufacturers Association, the American Soybean Association, the National Corn Growers Association, and the grain and feed dealers' associations of 11 States.

□ 1550

It does this: It strikes out the provision of section 301 that would permit one railroad in a division, without any ICC action whatsoever, to apply a surcharge up to 110 percent of variable cost.

In the case of a branch line it does more than this. It permits the railroad to receive its 100 percent of variable cost and then an extra 10 percent. In addition the railroad may charge what is the reasonably expected cost of continuing to operate such line.

Well, who knows what are the reasonably expected costs to operate such a line? Who can answer that question other than the railroad itself? The facts necessary for the ICC to review a contest of such a surcharge are so peculiarly within the ability of the railroad to show, that the shipper is in a bad position when he must come in before the ICC and say that a given rate is more than 110 percent of variable cost. And unless he can show that there has been an excess cost above that permitted in the bill, then the railroad may absolutely impose that cost.

Now, who may impose the costs? In the case of routes of under 3 million tons per year, any railroad may surcharge. In the case of routes above 3 million tons per year—a revenue-inadequate railroad may do so even in that event. Now, that means that every shipper in this country is put in jeopardy if one of the railroads in a division decides unilaterally to put into effect an additional cost which he says is necessary for his anticipated costs to continue the operation of that route plus 110 percent of variable cost.

It also creates a very, very difficult situation for other members of the division. Let us say that there are three railroads in the division and a railroad such as like Conrail which is asking for 190 percent of variable cost, has most of the line, the largest percentage of the division.

When it applies a surcharge—which it may do without contest as long as it stays within the limitation of the provision—it is very likely that if that particular route is to be viable, the two shortline railroads on the route are going to have to absorb the difference; in other words, when Conrail goes up and its percentage of the total revenue is, say, 50 percent, then in order to offset that, the other railroads will have to go down in their rates to a greater extent than Conrail goes up to reach its 190 percent of variable cost. That will be necessary in order to continue to invite use of that particular line as against perhaps a line to another port or another location in which a single railroad reaps the entire rate. That means the freezing out of many of the short lines.

There are many reasons why this is advantageous to the larger line which may in that way put the short lines at jeopardy.

Now, let me answer a point that has been made here that I think incorrectly states the facts of this situation, I am sure inadvertently.

It is, of course, true that under the present law, under the Conrail case, a member of a division may cancel the entire rate. But it may not surcharge, it may not put into effect a surcharge which is substantially without any review by ICC. If it cancels, it subjects itself to ICC review at two points, and that is the reason these lines want the surcharge and that is the reason the agricultural organizations I have named say it makes a difference. If a railroad cancels the rate, first of all, the cancellation itself is challengable by the other railroads.

They are put in a disadvantageous position when their partner is no longer willing to haul its share of the traffic. The cancellation could be refused by the ICC, or it could be granted, and it probably would be, with the present ICC, if the rate were below 120 percent of variable cost.

The second attack that may be made in case of a cancellation is that if the railroad cancels the joint rate, it must then put into effect——

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 5 additional minutes.)

Mr. ECKHARDT. If the railroad puts into effect a local rate, that railroad rate is itself challengeable, if the railroad is a dominant carrier, before the ICC. The ICC may then hear the shippers' complaints and the shippers may get relief from ICC at that point.

What shippers are concerned about is a surcharge in which they have no opportunity to have a voice unless the surcharge pierces the 110 percent of variable cost and the surcharge goes above the limitations placed on reasonably expected costs of continuing to operate such line.

Mr. FLORIO. Mr. Chairman, will the gentleman yield for a question at that point?

Mr. ECKHARDT. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Through all of the testimony that we had before our committee—and the gentleman testified before our committee—no one until this very point has raised the suggestion that 110 percent of variable cost was anything other than the actual cost of the movement over a line and that in fact if the gentleman is now talking about piercing 100 percent, is he in fact saying that there should not be a system whereby the railroad should have the opportunity to get back at least the costs of movement?

Mr. ECKHARDT. The costs include, under the language of the gentleman's bill, the reasonably expected cost of continuing to operate such line. Now, that

might be folded into the 110 percent. But the point which I am making here is, what is a reasonably expected cost to continue to operate such line is so peculiarly within the ability of the railroad to establish and so difficult and remote from the shippers' opportunity to prove, that in effect the surcharge may be put into effect without reasonable restraint.

Now, what I am suggesting is that the gentleman's committee has not sufficiently looked into this question. This question, as I recall, first originated—this whole idea—in the Senate bill on a floor amendment. Then it was given consideration at a relatively late stage in the development of this bill in the committee on the House side.

What I am suggesting here is simply to strike out that section of this bill at this time. This is a question of great difficulty and complexity, as we can see from our discussion here. Strike it out at this point, but provide relief for the legitimate complaints of both the railroads and the shippers, and that is that the ICC has frequently taken as many as 15 months or more to act as an umpire with respect to the division rate. Of course, nobody thinks that a railroad should be compelled to carry goods at a loss. But who should be the umpire? Should it be that railroad that is the biggest and the strongest in the division?

Indeed, I agree that the cancellation process that is now available is not an adequate answer to the question. But it is even worse to permit one of the railroads to put into effect up to 110 percent of variable cost without regard to what it does to the railroad that derives nearly all of its revenue from the short line. It is wrong to permit that one railroad to squeeze out its smaller partners and get rid of the umpire.

□ 1600

All we are saying here is let us keep the umpire—let us keep the ICC—but let us make the umpire make a ruling on the ball field and not wait until he gets home and has spent 2 or 3 months or maybe a year or so studying the question.

Now, I am not against doing something about what section 301 attempts to do. But I am against doing it without understanding what its effect would be on shippers all over the country.

I have here a letter from two extremely separate and diverse sources in the U.S. Senate: Senator GEORGE MCGOVERN and Senator DOLE.

I suppose the only thing these gentlemen can come together on is a question involving agriculture.

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. They state:

We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agriculture products through increased food prices.

Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provisions of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Mr. Chairman, I yield back the balance of my time.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I will attempt to be as brief as possible, because I think most of the issues have been discussed rather thoroughly.

It is sufficient to say there are three major provisions of the gentleman's substitute that differ from the compromise that has been offered by the gentleman from West Virginia. The first is the pricing mechanism. We have talked about that.

The gentleman effectively repeals everything that has been done in the compromise provisions and reverts back to his proposal that is in title II of the bill. There is a difference of opinion on this point; however those of us who feel that the gentleman's approach provides for more regulation than now exists would vigorously oppose this amendment on the basis of that provision alone.

The second part that the gentleman addresses is the need to expedite divisions. I would say that that is important. It is something that is very effective as a means of achieving some regulatory reforms. This is why we have that provision in the bill already. His provision adds nothing to the bill. We have included the provisions for expediting division cases in the proposal we are talking about.

The heart of the gentleman's amendment is his elimination of the surcharge mechanism in 301.

I would emphasize a number of points. One is that it is a 3-year provision that will authorize the surcharge device to be utilized over the next 3 years.

The significance of that period is that another provision in this bill provides for uniform accounting provisions and in 3 years we fully expect to have that uniform accounting system in operation. This addresses the gentleman's concerns about the fact that one cannot rely upon information that may be coming from railroads.

Another very important and key point that has to be emphasized is that the surcharge is only able to be applied by a railroad that has inadequate revenues as determined by the ICC, the "umpire," as he expressed.

Surcharges are needed to allow the railroads to recover their variable costs on a freight movement. That seems fundamental. But the concern of some is whether the surcharge be used to the detriment of other carriers or used to the detriment of other shippers. We believe the answer is no.

With regard to other shippers, the connecting carrier has the unilateral authority to reduce any surcharge that goes above 110 percent. If there is a dispute as to whether it is above 110 percent or not, clearly the ICC has jurisdiction under our proposal to review and to make the ultimate determination as to whether it is above or below 110 percent, that is the effective cost of the movement.

Shippers have almost the same rights as do the connecting carriers. They are protected with the forum of the ICC and the opportunity to insure that a rate does not go beyond recovering the variable costs of that movement.

A lot has been made about shortlines. The American Shortline Association supports the bill because they know that they have the same rights as the connecting carrier as well as some extra rights. That is, it says that if a shortline determines that the surcharge is in excess of 110 percent, they can not only have the surcharge rolled back to 110 percent, but they can have it rolled back to 100 percent. There is added protection for the shortlines.

I think what we come to is whether this Congress is going to stand for the proposition that the existing law should stand, which allows and, in fact, requires railroads to carry shipments of materials at a loss. Further, what we ultimately come to is whether those lines are going to be required to be maintained by the railroad and carried at a loss and whether the people who use the railroads are not going to be required to pay for the operation of the railroads. We have two choices. The railroads will go under or the railroads and their supporters will come to the Congress periodically, as they do, and ask for more money.

I do not think that either of those two choices is acceptable to the American people. They are not acceptable and should not be acceptable to us if we want a healthy railroad system as part of a good transportation system.

Accordingly, this provision is not acceptable to those who want a good transportation system. The Eckhardt proposal should be defeated. The Staggers proposal should be supported.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. I would like to join in the remarks which the gentleman has just made.

I look at this bill and the various amendments and substitutes which have been brought to the floor from a particular vantage point as I guess all of us do.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. FLORIO) has expired.

(At the request of Mr. DUNCAN of Oregon and by unanimous consent, Mr. FLORIO was allowed to proceed for 3 additional minutes.)

Mr. DUNCAN of Oregon. If the gentleman will yield further, I look at it from my position as chairman of the Committee on Appropriations subcommittee dealing with transportation.

When the gentleman talks about the

railroads and the shippers and those of his constituents who are interested in the continuation of a particular service, says that they are going to come down here to the Congress of the United States and ask us to put the money in it—he is absolutely right.

We have had to deal with bankruptcy after bankruptcy. I have checked some figures, and I find that this Congress has been asked to and has put over $3½ billion into the bankrupt railroads of the Northeast alone. That includes this operation which we know as Conrail.

Having difficulty? Why? Because of the precise thing that the chairman of the committee mentioned, being required to haul goods and commodities at less than the avoidable cost of actually hauling it. We have not only had Conrail, but we have had to put money here in these last 2 years into the bankrupt operation of the Milwaukee and the bankrupt operation of the Rock Island.

The information I have is that there are three and possibly four more railroads in the Middle West that are following along the precise path of the Milwaukee and the Rock Island.

I have not even mentioned the cost we have had in trying to preserve a passenger rail system which has not been able to meet the economic test. I totalled up the amount of your taxpayers' dollars that you have been putting into these nonviable uneconomic railroads as well over $9 billion.

My colleague from New Jersey has the figure up to where? Eleven, I guess.

Mr. FLORIO. It is $11 billion that we have spent over the last 5 years. The Department of Transportation projects a $15 billion capital shortfall in the needs of our railroads over the next 5 years.

Mr. DUNCAN of Oregon. If the gentleman will yield further, I think that is a very, very serious problem that we ought to look at from the standpoint of our shippers and our local communities as well as the health of the railroads. Abandonment and bankruptcies do not help shippers or your communities.

□ 1610

Now, it seems to me that there have been three major problems that the railroads have had. One has been some antiquated work rules that involve labor-management relations. Another is management which has been locked, as some say, into the 19th century.

The third thing has been the impact of Government regulations on the railroads ability to operate an economic transportation system.

Now, it has been my observation that labor and management are getting together and the work rules are in the process of being revised. I think the brotherhoods are beginning to take the lead because they look at their membership and they see they have got about a half a million members now and 10 or 15 years ago they had a million and a half. If they are going to make this a productive enterprise for their own people to furnish jobs, they have got to do something about it.

We find management beginning to move into the 20th century. The thing that we can do here is attempt to strike some of the shackles that are presently inhibiting the revitalization of the railroads.

While I do not believe the gentleman's bill is perfect and we are going to need to work it over in the next few years, it is a substantial start and I think it would be a mistake for the Congress not to avail itself of this opportunity to strike a real blow for a balanced and economically viable transportation system.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

(At the request of Mr. ECKHARDT, and by unanimous consent, Mr. FLORIO was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Texas.

Mr. ECKHARDT. I would like to ask a question of the gentleman from New Jersey. On page 6 of the amendment in the nature of a substitute, it is said that a rail carrier may apply for a surcharge which can cover: 110 percent of such carrier's variable cost of transporting the traffic involved to or from such line plus 100 percent of such carrier's reasonably expected costs of continuing to operate such line, which shall include all costs necessary to sustain service on the line.

Now, ordinarily we consider that as a part of a 100 percent variable cost; but do I assume that certain fixed costs, certain additional capital investments, like additional trackage, new trackage, heavier tracks, a bridge or something of that nature, could be included in addition to what would be variable costs, 100 percent of variable costs?

Mr. FLORIO. Mr. Chairman, if the gentleman would yield, the gentleman is making reference to the branch line provision of the amendment. I hope the gentleman is clear on that.

With respect to the surcharge in general the 100-percent limitation applies on all lines.

The gentleman is making reference only to the branch-line provision when he adds the second consideration.

Mr. ECKHARDT. That is right. With respect to lines other than branch lines, the 110 percent is an absolute cutoff, if I understand correctly.

Mr. FLORIO. That is correct.

Mr. ECKHARDT. But with respect to the branch line, what does (B) include? It would seem to me to include certain capital investment in addition to what is ordinarily called variable costs.

Mr. FLORIO. The gentleman is correct with regard to capital costs.

The determination as to what are appropriate capital costs to maintain the traffic over that branch line, should there be a dispute, would certainly be resolved by the ICC.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(By unanimous consent, Mr. FLORIO was allowed to proceed for 1 additional minute.)

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield further, it could be actually, say, 160 percent or 170 percent of variable costs and could include some of the fixed costs involved with respect to the branch line.

Mr. FLORIO. The answer is no to the gentleman's last hypothetical situation. We are talking about 110 percent, which is effectively the cost of the movement over the branch line.

The second provision deals with the moneys needed for rehabilitation of that branch line so as to be able to move the traffic over it.

Mr. ECKHARDT. That sounds to me like fully allocated costs, rather than simply variable costs, because we are taking into account, as I understand here, fixed costs and additional investment with respect to the branch lines.

Mr. FLORIO. With respect to branch lines, the 100 percent, if the gentleman is implying that the 10 percent over the actual 100 percent will deal with all the fixed costs needs of the movement over the branch line, I do not agree with that supposition.

Mr. HILLIS. Mr. Chairman, I move to strike the requisite number of words, and I rise to oppose the Eckhardt substitute amendment and in support of the Staggers amendment. The need for railroad deregulation is generally well recognized. The issue before us is how to write the best possible deregulation legislation. That is, how to best balance the need to ease railroad rate regulation with the necessity of protecting those who must rely on and/or use the railroads during their course of business.

Many railroads are hard-pressed financially. They are unable to raise the requisite capital to rebuild and modernize. This is because the rates the railroads have been allowed to charge under ICC regulation have been woefully inadequate.

The dilemma we are faced with is to best cojoin higher revenues for the railroads with the desire to minimize the inevitable impact on consumers. Obviously, consumer prices will have to increase if the railroads are to realize a better return. But to argue that consumer prices will not increase if we restrict the railroads from increasing their revenues is unsound. Without adequate rail transportation, shippers will be forced to use other more expensive modes of transportation if they are to continue to supply their services. That is the reality of the situation.

The only reasonable option we have is to accept the fact that consumer prices will have to be increased. Once we accept that premise, then there are three factors to be taken into consideration, rate flexibility, joint rates, and antitrust immunity.

Railroads must be able to change their rates to reflect changes in the marketplace without having to contend with a labyrinth of bureaucratic regulations. Second, railroads must be able to negotiate with each other in order to establish joint rates. And last, under deregulation, railroads should be prohibited from collective ratesetting.

The Staggers amendment presents us with a means of appropriately interfacing these various aspects of ratemaking. Unlike the Eckhardt amendment, the amendment offered by Mr. STAGGERS will allow Federal intervention in the ratemaking process to be minimized. Under the Eckhardt amendment, bulk shippers are overly protected by denying railroads the right to reasonably charge more than the average cost of the service without having to go before the ICC.

The Staggers amendment represents a good compromise from what was originally in the bill. It allows the railroads to earn sufficient revenues to maintain and improve or modernize our rail system. At the same time it more adequately restricts the increase in rates the railroads may charge without ICC review.

In short, the Staggers amendment goes a long way in addressing the concerns expressed about the original bill. It provides the necessary regulatory freedom to allow for future improvements without unnecessary Federal involvement. I urge passage of the Staggers amendment.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Eckhardt amendment and in opposition to the Staggers amendment.

Mr. Chairman, my good friends, the gentleman from New Jersey, the chairman of the subcommittee, has, I think, moved a long way in the proper direction. I commend him for that. I also commend the chairman of the Commerce Committee, my distinguished friend of long standing, the gentleman from West Virginia (Mr. STAGGERS) for the movement that he has made on this. I believe it is very good. I believe it is very desirable.

The regrettable thing that compels me to rise in opposition to their amendment and in support of the amendment which has been offered by my good friend, the gentleman from Texas (Mr. ECKHARDT) is that the proposal offered as a compromise is, in fact, not a compromise, but is afflicted with the defects which I found plaguing the original bill.

The bill as originally construed was written as a sort of private relief bill for Conrail and some of the larger other railroads. That situation remains a fact. The original proposal allowed for the first time since the 1880's the railroads to lay in place differentials between rates which would make long hauls less costly to shippers than short hauls.

In addition to that, the proposal is discriminatory and hurtful to the short line railroads and it permits discrimination between shippers.

In addition to this, because of the admitted ambiguities in that proposal, it permits a strong potential, if not a certainty, that the amendment would permit discontinuation of service outside the scrutiny of ICC, triggered by the potentially discriminatory actions of the carriers themselves.

□ 1620

In addition to this, the proposal contains a surcharge and cancellation provision, which has been argued to be necessary to assure that railroads do not have to operate at less than adequate levels of revenue.

The argument has been made that railroads ought not be forced to operate in the red. That fact, regrettably, is now the law.

The so-called compromise before us attempts to solve the dislocations that they find here by major surgery. The compromise, in fact, creates a system whereby larger railroads, Conrail, Southern, and others, can enrich their income; but they can do so not only at the expense of shippers, especially in cases where such a shipper is held "captive" by a rail carrier, but also at the expense of the short line carriers to which I want to address myself shortly.

It appears to me that the surcharge and cancellation provision of the Staggers-Rahall-Lee compromise can be used in discriminatory fashion to allow large railroads the ability to surcharge and cancel joint rates and can be used to force small shippers to use other modes of transportation, to pay exorbitant rates, thereby making them noncompetitive.

It should be pointed out that it only takes a matter of a few cents per ton mile or a fraction of a cent per ton mile to move the grain milling industry anywhere in this country that it wants. At the same time, it must be remembered that the so-called compromise permits the rates for competing traffic to be held down, leaving shippers with no alternative other than to abandon the service of certain small shortline railroads to the whim and caprice of the very large railroads, which are achieving striking new freedoms with regard to competing fairly or unfairly with the short lines that carry commodities and that are an essential part of the rail service and transportation system of this country.

The end result of this arbitrary and offensively discriminatory rate manipulation is clear to me—wholesale abandonment of hundreds of shortline rail carriers across the country. The problem is exacerbated by reducing costs to some shippers on one hand and increasing charges on the other, taking the movement of freight away from small carriers and the short lines across the country. Such discriminatory action is placed in the hands of the railroad and laid at the judgments of the major rail carriers of this country.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. DINGELL) has expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 5 additional minutes.)

Mr. DINGELL. Mr. Chairman, it has been said that the shortline railroads are now content with the arrangements which have been made with regard to the compromise. I would like first of all to read a letter from Mr. George Smathers, on his letterhead, speaking as an attorney and client for a large number of shortline railroads, in which he states as follows:

SMATHERS, SYMINGTON & HERLONG,
ATTORNEYS AND COUNSELLORS AT LAW,
Washington, D.C., August 22, 1980.

Hon. JOHN DINGELL,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DINGELL: As you are aware from the urgent pleas of the many small railroads in Michigan, the surcharge and cancellation of joint rates provision of the Rail Deregulation Bill, Section 301 of H.R. 7235, even as amended by the proposed "Lee Amendment" presents the utmost danger for small railroads, their shippers, ports and receivers of goods throughout the United States.

Perhaps most revealing is the fact that the Chairman of the Subcommittee actually wrote to the Chairman of Conrail expressing the fear that the surcharge and cancellation powers would be abused by the large railroads. Unfortunately, Mr. Florio's response to that fear is a mere annual reporting requirement by the ICC to the Congress. Small railroads and small shippers could be forced out of business between the time a surcharge is imposed and the time that the Congress receives, reads and acts upon a report from the ICC.

The small railroads strongly object to the surcharge and cancellation power because it can be used in an extremely discriminatory fashion against them. While the alleged ceiling on a surcharge is 110% of variable costs and while cancellation of a joint rate can be nullified by giving the cancelling carrier 110% of its variable costs, in point of fact the economic leverage provided by Section 301 can be enormous.

Surcharges can be imposed on certain rates and withheld on competing rates even though the latter could be below 110% of variable costs. The dominant railroads could do this in order to favor certain shippers or certain areas of the country where in the long run they will make more money either through creating a monopoly or because they will be able to reduce their costs through increased traffic. Shippers, small railroads, ports and the communities in which they are located will suffer drastically. The minor increases in revenues to the large railroads will be greatly overshadowed by the costs to the state and federal governments in supporting these communities.

As you are aware there are endless examples of the methods by which large railroads can injure the smaller railroads using these powers. We would be most happy to describe them should you so request. An attempt to include them in this letter would make it unduly lengthy.

Attached is a list of railroads which are opposed to Section 301 even as it is proposed to be changed by the "Lee Amendment." You will note that the list includes nine members of the Board of Directors of the American Short Line Association which, when it stood alone without the support of the thousands of shippers and many ports now opposing Section 301, adopted the Lee Amendment. In addition we have been advised directly by at least ten other railroads located throughout the country that they oppose Section 301 as amended by Mr. Lee; that they are contacting their Congressional representatives to urge them to support Eckhardt's substitute; but that for very understandable reasons do not wish to be included in the attached list.

In closing, we wish to thank you for previous efforts on behalf of the small railroads on this issue and urge you to continue this most important effort.

Very truly yours,

GEORGE A. SMATHERS.

SMALL RAILROADS WHICH SUPPORT ELIMINATION OF SURCHARGE AND CANCELLATION PROVISION, 301

*Green Bay and Western Railroad Company, Wisconsin.

Ahnapee and Western Railway Company, Wisconsin.
McCloud River Railroad, California.
Hartford and Slocomb Railroad Company, California.
Apalachicola Northern Railroad Company, Florida.
New York Dock Railway, New York.
Hillsdale County Railway Company, Inc., Michigan.
Lenawee County Railroad, Michigan.
Florida East Coast Railway Company, Florida.
Chippewa River Railroad Company, Wisconsin.
Ann Arbor Railroad System, Michigan.
*Minneapolis, Northfield and Southern Railway, Michigan.
*Brooklyn Eastern District Terminal Railroad, New York.
Brillion and Forest Junction Railroad Company, Wisconsin.
Chicago, Madison and Northern Railway Company, Wisconsin.
Nicolet, Badger and Northern Railroad, Wisconsin.
Railroad Task Force Northeast Region, Inc., Pennsylvania.
Little Rock and Western Railroad, Arkansas.
Michigan Northern Railway Company, Michigan.
Massachusetts Central Railroad Company, Massachusetts.
*North Louisiana and Gulf Railroad Company, Louisiana.
Prairie Trunk Railway, Illinois.
*East Camden and Highland Railroad Company, Arkansas.
*Stockton Terminal & Eastern Railroad, California.
Roscoe, Snyder and Pacific Railway Company, Texas.
Tulsa-Sapulpa Union Railway Company, Oklahoma.
Transkentucky Transportation Railroad, Inc., Illinois.
Toledo, Peoria and Western Railroad, Inc., Illinois.
*Canton Railroad Company, Maryland.
La Salle and Bureau County Railroad, Illinois.
Gettysburg Railroad Company, Pennsylvania.
Mercersburg Railroad Company, Pennsylvania.
Texas Central Railroad Company, Texas.
Madison Railroad, Indiana.
New Hope and Ivyland Railroad Company, Pennsylvania.
Louisiana Midland Railway, Louisiana.
Lamoille Valley Railroad, Vermont.
The Vermont Railway, Inc., Vermont.
Wisconsin and Southern Railroad, Wisconsin.
*Denver and Rio Grande Western Railroad, Colorado and Utah.
Green Mountain Railroad Corporation, Vermont.
Bath and Hammondsport Railroad Company, New York.
Kansas City Southern Railway Company, Missouri.
Port of Tillamook Bay Railroad, Oregon.
Soo Line Railroad Company, Minnesota.
*South Buffalo Railway Company, New York.
Longview, Portland & Northern Railroad, Oregon and Washington.
*Georgetown Railroad Company, Texas.
*Salt Lake, Garfield & Western Railway, Utah.
Yancey Railroad Company, North Carolina.

It has been stated that the so-called substitute or compromise takes care of the Milwaukee and the Rock Island Railroad. That same language is present in the Eckhardt amendment.

It has also been stated that there are labor protection provisions in the Staggers-Rahall provision, and I would point out to my colleagues that, again, that identical same language is in the Eckhardt provision.

The House, after very lengthy debate, and I think intelligent and enlightened debate, adopted the Eckhardt proposal, wisely so, because the Eckhardt proposal makes it very clear that whenever a monopoly situation on fairly disadvantaged captive shippers there should be reasonable regulatory oversight by the ICC. Mechanisms should remain in the bill which will protect not only the consumers against excessive prices but also which will protect other railroads and other carriers and other forms of transportation from the kind of sharpshooting that railroads have engaged in over the years.

Let us understand what is available to us here; it is a choice between the ability of railroads to engage in discriminatory rate practices as opposed to reasonable controls where monopoly is found to exist. What is really at stake here is the question of high bulk commodities on which railroads are being freed up, not where there is no competition, but freed up where there is no competition. If my colleagues want to see to it that the consumers and the industries of this country which are dependent on iron ore, on coal, on limestone, on grain, and to see whether the farmers of this country and others who are dependent on grain movement are fairly treated, I think they must in good conscience vote for the Eckhardt amendment.

Let me tell my colleagues about one set of circumstances which has come to my attention. It is with regard to the cancellation and surcharge provisions of the bill which might adversely affect the automobile industry in Michigan, an industry which I point out to my colleagues is in substantial economic difficulty. Today there are a series of rates between shorthaul carriers in Michigan and longhaul railroads carrying automobiles to the west coast, an area which is subject to intense penetration by Japanese imports because of cheap water transportation. This line utilizes the services of a shortline railroad, the Ann Arbor in Michigan. The savings to the auto producers is about $50 to $100 per new automobile. The U.S. company which is manufacturing the cars and trying to market them on the west coast has constructed its marketing plan based on the availability of these rates. This permits the company to save something like $2 million to $4 million a year. There is a potential, according to this company, that a surcharge of as much as $1,000 a freight car could be imposed on rates charged by Ann Arbor Railroad. This surcharging action could increase the costs of that company to market its product to the point where, in its view, it could probably not compete with the Japanese imports on the west coast.

The proponents of the compromise argue that the shippers have the right to challenge a surcharge. However, the only remedy that I find in the bill is that a surcharge may only be brought down to 100 percent, 110 percent of variable costs.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. Mr. Chairman, it is also important to note that the disruption of competitive relationships does not qualify as a prerequisite for challenging a rate. It should be noted that the provisions of the so-called compromise would create an exemption for the provisions of this substitute from being defined as rate discrimination. Under the so-called compromise class III railroads are offered only marginal protection, and that protection is only limited to those class III shortlines which originate and terminate traffic. Under the provisions of this compromise the Ann Arbor Railroad in Michigan, which transports automobiles, to which I used in my example, would have virtually no protection from arbitrary rate discrimination permitted by this bill.

□ 1630

I reiterate that my colleagues have a choice here. We can support, as we have I think wisely done, the Eckhardt amendment which provides for fair and expedited rate proceedings in cases of rate divisions between railroads, or the House can accept the so-called compromise which permits, in my view, arbitrary rate discrimination, the possible demise of smaller railroads, and the wholesale abandonment of shortline carriers. The choice, I think, is clear.

Mr. LOEFFLER. Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman, I rise in opposition to the amendment basically for three primary reasons: No. 1, the Eckhardt amendment eliminates or deletes the provision of the Staggers-Rahall-Lee-Loeffler compromise which would provide competition for coal transportation from the Powder River Basin to areas in Texas, as well as the southwestern part and the southern part of the United States. What we need to prevent the outrageous price gouging that has occurred throughout the South and Southwest in the past several years, as one railroad has been the monopolistic rate setter of the area, is to have true and lasting competition. I believe in competition, and the Eckhardt amendment does not provide for expeditious treatment with respect to providing an opportunity for an additional line out of the Powder River Basin.

No. 2, the Eckhardt amendment does not exclude foreign coal as a competitive alternative in determining effective competition in many areas in the Southwest, such as the city of San Antonio. There are currently pending negotiations to purchase coal from abroad. In the event we do not have this exclusion that currently is embodied in the Staggers-Rahall-Lee-Loeffler amendment, we would be in a position whereby utilities would attempt to purchase coal from abroad and thereby lose the protection against exorbitant price increases that could be occurring on the domestic side.

Finally, the Eckhardt amendment deletes the Loeffler language which provides relief in the unique situation of the city of San Antonio.

Mr. Chairman, I believe in the Staggers-Rahall-Lee-Loeffler amendment because it provides a workable and a reasonable approach to phased deregulation, one that protects the industry as well as the consumer itself. I urge my colleagues to vote down the Eckhardt amendment and to support the Staggers, et al., compromise amendment to this particular bill.

Mr. RAHALL. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to my good friend, the gentleman from West Virginia.

Mr. RAHALL. I thank the gentleman from Texas for yielding.

Mr. Chairman, I rise in reference to the comments made by my distinguished colleague, the gentleman from Michigan (Mr. DINGELL), a man for whom I have a great deal of respect. He has mentioned the problems in the auto industry and the reason why the Eckhardt substitute should be supported by those concerned with the problems of the auto industry. I sympathize with those problems. The ups and downs of the auto industry certainly affect my home State of West Virginia and many other portions of this country. I would remind my colleagues that the General Motors Co. and Ford, as part of the Committee of Rail Shippers, are in support of the Staggers-Rahall-Lee-Loeffler compromise amendment, and opposed to the Eckhardt substitute. Not only are these two major automobile manufacturers in support of the Staggers compromise, but also Bethlehem Steel, Republic Steel, and other companies that do provide many goods and materials that are so vital to the functioning of the auto industry.

I thank my colleague for yielding.

Mr. LOEFFLER. I thank the gentleman.

Mr. Chairman, I yield back the remainder of my time.

Mr. LEE. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the Eckhardt amendment.

Mr. Chairman, I oppose the Eckhardt amendment for several reasons, but I would like to focus on one particular aspect more substantially than the others. It explicitly revolves around the point of the short-line railroads. There have been several references by some of the distinguished speakers who have gone in the last several minutes making significant reference to the fact that there is a serious deficiency pertaining to the short-line protection, and I think that the House should be assured that there have been extensive efforts in work by the committee to insure that the appropriate protections are written into the Staggers Substitute; to insure that capricious and arbitrary actions cannot be taken by class 1 or class 2 railroads against the so-called short-line railroads through abandonment procedure or through the surcharging procedure; that there is appropriate protection through the 45-day notification, when such action is taken by one of the Class 1 railroads to implement a surcharge or an abandonment procedure; to insure that the ICC is brought into the situation under a 30-day timetable to make a final decision to prevent against, a capricious or arbitrary action via the cancellation or surcharge mechanisms.

Second, my distinguished colleague, the gentleman from Michigan (Mr. DINGELL) made reference to a list of groups that are opposed to the so-called Staggers-Rahall-Lee compromise. I think that he conceivably misspoke, because some information that I have indicates, for example, that the Florida East Coast Railway is a class 1 railroad, not a short-line railroad, and I think his information to be in error.

The other aspect I would make is that the Short Line Railroad Association, constituted of some 250 members, supports this amendment, the Staggers amendment, as does the American Farm Bureau and numerous other organizations too lengthy to review.

Mr. DINGELL. Mr. Chairman, will the gentleman yield. The gentleman used my name.

Mr. LEE. Yes, sir, I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman. I will put the entire list of short line and small railroads opposed to this proposal into the CONGRESSIONAL RECORD, together with the letter enclosing it so that it may speak for itself. I count 50 railroads. They are reported to me to be different classes short-line railroads. I assume they are short-line railroads, and they are opposed to section 301 of the Staggers-Rahall compromise. They are represented in the letter as opposed to section 301 of the Rail Act of 1980, even as amended by the Lee amendment.

Mr. LEE. I will say to the gentleman from Michigan that the reference I make is to the Florida East Coast Railway, which is one I think the gentleman referred to, which is a class 1, not a short-line railroad.

Mr. DINGELL. I am talking about short lines of which there are class I, class II, and class III categories.

Mr. LEE. Regarding the short lines, there is a letter dated September 3 addressed to the gentleman from New Jersey (Mr. FLORIO) and the gentleman from Illinois (Mr. MADIGAN) supporting the Staggers-Rahall Act of 1980 and the compromise, citing, "As you know, this association and its more than 250 members have been greatly concerned with the potential impact of this legislation." They do give their support to this.

Mr. DINGELL. Included in the list that I have submitted is a list of 9 short-line railroads which have representation on the board of the American Short-Line Railroad Association, and 50 railroads in toto which are opposed. I am advised that were they not afraid of retribution if this bill passes, 10 more railroads would have signed the letter in expressing their opposition to the proposal.

Mr. LEE. I thank the gentleman.

● Mr. SEBELIUS. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Texas (Mr. ECKHARDT).

Before dealing with the specific provisions of the proposed substitute, I would like to focus attention on an aspect of this proceeding which troubles not only me, but also others of my colleagues as well.

On May 15, the Committee on Interstate and Foreign Commerce reported H.R. 7235, the bill before us today. It was not until May 29 that copies of that 100-page document were made available. Then, the committee leadership, working with the House leadership and the Carter administration, attempted to bring this bill to the floor for action the first week of June. We asked for a 1-month delay to study the highly technical provisions of this bill so we could understand how passage would affect shippers and consumers in this country. We received no commitment from the leadership that we would have an opportunity to study this bill.

As a result, we spent a great deal of time—time which easily could have been spent studying and understanding the provisions of this bill—working with a coalition of shippers to delay consideration until we had had time to study it.

I want to stress, Mr. Chairman, that we never received a commitment from the leadership that this bill would be delayed so we could work with the committee to understand it and, if necessary, to improve it. The committee exerted constant pressure for immediate consideration.

During the July recess, we had an opportunity to study the provisions of this bill and a number of us did not like what we found. We suggested amendments to the committee staff—amendments which would have made this bill more acceptable to many of us—but our suggestions were ignored. For that reason, our coalition moved forward under the leadership of the gentleman from Texas (Mr. ECKHARDT). On July 24, the House adopted a number of the amendments we suggested and the bill was pulled from the floor.

It was only then that the committee staff indicated what I would consider to be a genuine interest in working with us. I appreciate that and I want to commend the gentlemen from New Jersey (Mr. FLORIO), Illinois (Mr. MADIGAN) and West Virginia (Mr. STAGGERS) for some of the provisions in the amendment before us today.

However, my concern, and the concern of many of my colleagues, is the same as it was that first week of June. Once again, we are confronted with a massive document—made available in final form just 2 hours before it was to be considered Friday—on which we are asked to vote. The intent of the gentleman from New Jersey (Mr. FLORIO), as stated in the RECORD of last Friday, was to

*Members of the Board of Directors of the American Short Line Railroad Association.

bring that amendment up for a vote at that time. I understand his concern. But, after reviewing the document, I find I have concerns of my own.

It is my understanding that section 328 requires final action within 45 days on an application for millions of dollars in Federal loan guarantees so two railroads can build a new line into the Powder River Basin of Montana and Wyoming to transport coal. That area already is served by the Burlington Northern. At a time when railroads all over the country are short of funds for rehabilitating existing lines, why are we encouraging construction of new lines to serve areas already served by an existing line, particularly an existing line which spent millions of private capital to upgrade its track without the kind of assistance we are proposing.

What is worse is that we are waiving provisions of the 4-R Act which: First, require justification by the present and probable demand for rail service; second, that the guarantees meet demonstrable needs for rail service; and third, that the prospective earning power of the United States with reasonable security and protection.

Now, I would like to deal with the amendment offered by my colleague from Texas (Mr. ECKHARDT). It is my understanding that this substitute amendment would strike section 301 of the bill. This section relates to surcharges and the cancellation of rates.

Mr. Chairman, this morning I received a copy of a letter from Senators BOB DOLE and GEORGE MCGOVERN to my colleague from Texas (Mr. ECKHARDT). The letter states:

DEAR CONGRESSMAN ECKHARDT: As you well know, the House is expected to vote on the Rail Act of 1980, next Tuesday.

The new compromise proposal is a subject of great concern to many of us representing agricultural states. During the development of the Senate rail deregulation legislation earlier this year we worked hard with the Senate Commerce Committee to include provisions in the bill to protect captive shippers from excessive rates and accelerated abandonments.

The Senate bill as passed contains many of these provisions while allowing railroads increased regulatory freedom. We are deeply concerned, however, that the House version of this bill will create serious hardships for shippers and agricultural producers through dramatically increased rates.

We recognize that House compromise proposal contains acceptable rate provisions which are in some ways similar to those contained in the Senate passed version. However, the House section pertaining to joint rates and surcharges could be devastating to thousands of shippers across the country, particularly those located on branchlines, as well as adversely impacting a number of bridge carriers that transport agricultural commodities.

Surcharges imposed by one carrier and affecting the traffic of another, can have serious financial consequences for the second carrier. Given the marginal nature of several "bridge" carriers, the surcharge and joint rate provisions could result in additional rail bankruptcies or financial crises requiring increased federal assistance. Yet this deregulation proposal was initially predicated upon the need to allow railroads to regain their financial health in the marketplace, thereby reducing their dependence on the Federal treasury.

Moreover, the doubling of a rail rate through surcharges on a given commodity and line can result in de facto branchline abandonments. Such surcharges, as authorized in the House bill, would result in substantial diversion of traffic to less energy efficient transportation modes, thus creating an atmosphere that would facilitate abandonment proceedings.

We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agricultural products through increased food prices.

Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers, we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates surcharge provision of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Sincerely,

ROBERT DOLE.
GEORGE MCGOVERN.

Mr. Chairman, as this letter indicates, a number of our colleagues here and in the Senate are concerned about the provisions of the bill before us. Since the committee and the House leadership has not seen fit to work with us in helping us understand the provisions of this legislation prior to floor action, I must, with deepest regrets, urge my colleagues to oppose the amendment offered by the gentleman from West Virginia (Mr. STAGGERS) and to join me in supporting the amendment offered by the gentleman from Texas (Mr. ECKHARDT).●

● Mr. DEVINE. Mr. Chairman, I rise in opposition to the most recent Eckhardt amendment. On July 24, you will recall, Mr. ECKHARDT had another one of his substitute amendments. That amendment nearly killed the rail bill. The managers of the bill withdrew it from further consideration because the Eckhardt amendment created far more opposition than approval. It created opposition because his amendment was upon reflection not a well-reasoned compromise amendment, even though it prevailed by a slim 204 to 197 margin.

The Staggers-Rahall-Lee-Loeffler amendment is a compromise that has been hammered out over the past month and a half. It has broad-based support, including:

American Farm Bureau.
United Mine Workers.
Railroad Labor Executives Association.
Brotherhood of Railway & Airline Clerks.
American Short Line Railroad Association.
American Association of Railroads.
United Transportation Union.
AFL-CIO.
Chemical Manufacturers Association.
Sears, Roebuck & Co.
Mining and Reclamation Council.
Coal industry.
Aluminum Manufacturers Association.
National Cattlemen's Association.
Sierra Club.
National Wildlife Federation.
Environmental Action.
Audubon Society.
Friends of the Earth.
Amtrack.
National Railroad Passengers Association.
K-Mart.
Whirlpool.
Carnation.
Lever Bros.
City Products Corp.
American Retail Federation.
Western Traffic Conference.
Georgia Freight Bureau, (represents 425 Georgia shippers and receivers).
Fertilizer Institute.
National Grange.
American Feed Manufacturers Association.
Pacific-Northwest Traffic League (represents 1,000 shippers in the Northwest).

COMMITTEE OF RAIL SHIPPERS

Georgia Pacific.
General Motors.
Ford.
Bethlehem Steel.
Republic Steel.
National Steel.
DuPont.
Union Carbide.
Allied Chemical.
Corning Glass.
National Governors' Association.
State of New York.
State of Pennsylvania.
State of Massachusetts.
Congress Watch.
Transportation Consumer Action Project.

Railroad service now gets worse and worse every year. Mr. ECKHARDT would assure a continuation of that trend. I think the time has come for us to reverse that trend.

The committee bill with the Staggers compromise continues the policy of orderly deregulation which was begun in the Ford administration. I urge you to vote against the Eckhardt substitute so that we can vote for the Staggers compromise. The time has come for the leadership of this body to stop stalling railroad deregulation. This side of the aisle has supported railroad deregulation and will continue to do so.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT) as a substitute for the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ECKHARDT. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending

question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 529]

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Boling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Marks
Marlenee
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Roe
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

□ 1650

The CHAIRMAN. Three hundred and seventy-two Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Texas (Mr. ECKHARDT) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 83, noes 296, answered "present" 1, not voting 52, as follows:

[Roll No. 530]

AYES—83

Albosta
Ambro
Anderson, Calif.
Andrews, N.Dak.
Annunzio
Ashbrook
Baldus
Bauman
Bennett
Bereuter
Blanchard
Brooks
Carr
Chappell
Conyers
Davis, Mich.
de la Garza
Dicks
Dingell
Eckhardt
Edwards, Okla.
English
Evans, Ga.
Fary
Fascell
Ford, Mich.
Frenzel
Frost
Fuqua
Gibbons
Ginn
Gonzalez
Goodling
Gore
Gramm
Hagedorn
Hall, Tex.
Hightower
Huckaby
Hutchinson
Hutto
Ireland
Jacobs
Jenkins
Jones, Okla.
Kastenmeier
Kazen
Kildee
Leath, Tex.
McKay
Mathis
Mica
Michel
Mottl
Murphy, Ill.
Nedzi
Nelson
Oberstar
Pickle
Patterson
Purcell
Rosenthal
Rostenkowski
Scheuer
Sebelius
Sensenbrenner
Smith, Nebr.
Stangeland
Stark
Stenholm
Synar
Traxler
Vander Jagt
Vanik
Vento
Watkins
Weiss
White
Wilson, Tex.
Wright
Wyatt
Yates
Young, Fla.

NOES—296

Abdnor
Akaka
Andrews, N.C.
Anthony
Applegate
Archer
Ashley
Aspin
AuCoin
Badham
Bailey
Barnard
Barnes
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bethune
Bevill
Biaggi
Bingham
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, S.C.
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Emery
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Gaydos
Gephardt
Giaimo
Gingrich
Glickman
Goldwater
Gradison
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hall, Ohio
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Hughes
Hyde
Ichord
Jeffords
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Kemp
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
Madigan
Maguire
Marlenee
Martin
Matsui
Mavroules
Mazzoli
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKinney
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Murtha
Myers, Ind.
Myers, Mich.
Myers, Pa.
Natcher
Neal
Nichols
Nowak
O'Brien
Oakar
Obey
Panetta
Pashayan
Pease
Perkins
Petri
Porter
Preyer
Price
Pritchard
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Roe
Roth
Rousselot
Rudd
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Seiberling
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stanton
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Tauke
Taylor
Thomas
Thompson
Trible
Ullman
Van Deerlin
Volkmer
Walgren
Walker
Wampler
Waxman
Weaver
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Winn
Wirth
Wolff
Wolpe
Wydler
Wylie
Yatron
Young, Mo.
Zablocki

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—52

Addabbo
Alexander
Anderson, Ill.
Atkinson
Beard, R.I.
Boggs
Boland
Brown, Ohio
Chisholm
Cotter
D'Amours
Fish
Garcia
Gilman
Grassley
Hinson
Holtzman
Hopkins
Howard
Jenrette
Jones, Tenn.
Kelly
Kramer
Latta
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lent
Marriott
Mattox
Mollohan
Moorhead, Pa.
Murphy, N.Y.
Nolan
Patten
Pepper
Peyser
Railsback
Richmond
Roberts
Rose
Royer
Russo
St Germain
Steed
Tauzin
Udall
Young, Alaska
Zeferetti

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□ 1700

The Clerk announced the following pairs:

On this vote:

Mr. Leland for, with Mr. Lederer against.

Mr. Jenrette for, with Mr. Jones of Tennessee against.

Mr. Garcia for, with Mrs. Boggs against.

Mr. Tauzin for, with Mrs. Chisholm against.

Mr. Leach of Louisiana for, with Mr. Pepper against.

Mr. EVANS of Delaware and Mr. WOLFF changed their votes from "aye" to "no."

So the amendment offered as a substitute for the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. BOLAND. Mr. Chairman, on rollcall 530, I was unavoidably detained by a briefing on an intelligence matter and thus was not recorded. Had I been present, I would have voted "no" on the Eckhardt amendment to the Staggers amendment to H.R. 7235, the Rail Act of 1980.

AMENDMENT OFFERED BY MR. FRENZEL TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. FRENZEL. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL to the amendment offered by Mr. STAGGERS: On page 83, beginning with line 13, strike all that follows through page 84, line 5.

And renumber the following sections accordingly.

Mr. FRENZEL. Mr. Chairman, the amendment that I am proposing repeals section 328 of the Staggers-Rahall-Lee amendment. That section refers to loan guarantees and provides a special fast track for a loan guarantee application made to serve the Powder River Basin by two railroads acting in a kind of an amalgam. The current law provides that when there is a loan application, the Secretary of Transportation conducts a hearing and makes a determination, taking into account certain procedures and conditions.

Mr. Chairman, the normal procedure is for the Secretary to make a determination based on some conditions which are required under the 4-R Act: That is, with reference to the taxpayers' security interest, that the loan be secured, that the payment be made over a certain time, that the financing be justified by demand, that the facilities be efficiently used, that the earning power be sufficient for the security protection of the taxpayers' interest, and that there will be improvements in hauling freight.

□ 1710

This amendment, however, repeals all of those conditions for just this one special intent application.

The Secretary is also required under the act to consult with other departments and with the States, in case any of the land in question may be dedicated to wildlife protection or have esthetic beauty or may have historical or recreational use. And if any land is to be used that comes under those categories, the Secretary must show that there is no alternative for such use other than the transportation plan in question.

For some reason, this special fast track has eliminated both the environmental and esthetic and recreational protection and taxpayer protection for this one loan application of $300 million. The principal beneficiaries on this application are the Chicago Northwestern Railroad and the Union Pacific. In my judgment, the Union Pacific is the major beneficiary.

It happens to be one of the wealthiest corporations in the United States, because it happens to be, fortunately, the owner of some oil properties and some coal properties, as well as its rail-hauling facilities. For that reason, it has been a very successful company.

It seems to me that there is no good reason to waive the security interests of the taxpayers and to waive the environmental considerations, which the Secretary is obligated to consider under the National Transportation Act, for the benefit of this one company. As a matter of fact, the $300 million loan, as I described it in my letter to my colleagues, is one that will duplicate services from the Powder River Basin throughout the country.

The original loan guarantee program under the 4-R Act was created by this Congress to improve railroad facilities where we needed them for a single service. It was supposed to make up the difference for the deferred maintenance that had allowed our facilities to deteriorate. But here we have a situation in which there is one perfectly good service, and still we are going to use $300 million of the taxpayers' money as a guarantee to provide a duplicate service, and this for a company which is one of the richest in the United States.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to my colleague, the gentleman from Minnesota.

Mr. OBERSTAR. I thank the gentleman for yielding.

Is not this Union Pacific Railroad the one that is owned by the Brown Brothers and the Harriman Trusts, one of the wealthiest corporations in America?

Mr. FRENZEL. I do not have any information on that, but I will take the gentleman's word.

Mr. OBERSTAR. And is not one of the arguments for the upcoming Staggers amendment that there will be competition on these various routes, particularly movement of coal from Wyoming and Montana into the Upper Great Lakes, competition that will be provided by this new rail line to haul coal out of the Powder River Basin, and that this competition is going to be provided by the generosity of Uncle Sam in giving a loan guarantee to one of the wealthiest corporations in America?

Mr. FRENZEL. That is my understanding. We have rail service all over the United States that is not adequate with one carrier, and now we are going to use the taxpayers' money for a very wealthy carrier where there is adequate service already.

The CHAIRMAN The time of the gentleman from Minnesota (Mr. FRENZEL) has expired.

(By unanimous consent, Mr FRENZEL was allowed to proceed for 3 additional minutes.)

Mr. OBERSTAR. If the gentleman will yield further, it strikes me as preposterous that this Congress should approve legislation to establish competition for an area where we are already providing some protection from competition. We are just doing contradictory things in this same piece of legislation.

I think the gentleman's amendment makes good sense, and I hope that the body will support the gentleman.

Mr. FRENZEL. I thank the gentleman for his contribution.

There has been a hearing on the application for a loan. The testimony has been closed. The Secretary is going to make his decision. I am not telling him to make a negative decision. I am merely saying: Let the normal procedure go forward, do not in this bill direct the Secretary to do something, particularly waiving these important environmental and taxpayer security interests.

Mr. ANDREWS of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from North Dakota.

Mr. ANDREWS of North Dakota. Mr. Chairman, I appreciate the contribution of the gentleman, and this is doubly confounding when we see that this bill provides $300 million in loan guarantees to the wealthiest corporate railroad, or one of the wealthiest corporate railroads in the Nation, the Union Pacific, to duplicate existing service into the Powder River Basin, when in our own area of Minnesota and North and South Dakota, the Milwaukee Railroad is bankrupt and there is a power generating plant, a 437-megawatt station that will have to be shut down if there is no infusion of funds to that section of road because it is the only way the railroads can bring the coal in.

Does this bill provide any relief for this particular generating plant owned by a number of electric utilities?

Mr. FRENZEL. If I may respond, as near as I can figure, this section 328 applies to only one area and only two roads through an application of an outfit called the Western Railroad Properties, Inc., of whom the beneficial owner is the Union Pacific, and there is also a loan application to CNW. I do not know of any other application, even though there is great need around the country, that is covered in this bill.

Mr. ANDREWS of North Dakota. If the gentleman will yield further, I have a brochure put together by the public utilities of Minnesota and North and South Dakota, pointing out that electric rates could double if this plant is forced to shut down, a virtually new plant that is on the end of 180 miles of railroad track about to be abandoned by the Milwaukee, and instead of providing relief for that much needed area where there is no substitute, this bill specifically provides $300 million to duplicate already existing service.

I appreciate the fact that the gentleman is bringing this up, and I would hope that our colleagues would address this and tell us why $300 million for one area for duplication and not 1 cent to save a powerplant that represents about 22 percent of the generating capacity of our area.

Mr. FRENZEL. I thank the gentleman for his statement.

The CHAIRMAN. The time of the gentleman from Minnesota (Mr. FRENZEL) has again expired.

(By unanimous consent, Mr. FRENZEL was allowed to proceed for 1 additional minute.)

Mr. FRENZEL. I think it would be wise for this body to let the normal procedures take their course. We have had a hearing, there is an application in process. We should not waive these special restrictions which we as a body decided were very important, that is, the taxpayers' security interest. We should not leave the taxpayers on the hook. And we should not waive all of those environmental, recreational, wildlife, historical and esthetic considerations. They also need the close scrutiny of the Secretary.

I hope that the amendment will be adopted.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the discussion that we have just heard is very interesting, and I am sure it is very significant. Unfortunately, it has no relevance whatsoever to the amendment that is being offered here in terms of changing the law. Whether there should be another line running out of the Powder River Basin or not, running to other areas, is a matter of debate. I am sure our friends from Texas would feel very strongly that there should be; others feel that there should not be. We are not talking about making the decision here. We are talking about the integrity of the process.

There is an application on file before the Federal Railroad Administration. The application has been pending for 2½ years. This is a very important decision for them to make as to how this money should be allocated, whether it should or should not be provided to have a competitive line going down to Texas, or wherever else it is going to go, whether it should or should not be granted to the applicant or to another railroad. What we are saying is that in fact a decision should be made.

I would like to correct one misimpression that I are sure inadevertently was conveyed that the environmental laws are somehow being waived categorically. That is not the case. So I am just saying, particularly for my friends on the other side of the aisle, who constantly lament regulatory delays and the fact that the bureaucracy takes too long, what we are saying is that the bureaucracy should make a decision, make a decision on the merits, make a decision on how they see fit to make that decision, but make it.

This is a procedural vote, and I would ask for opposition to the gentleman's amendment.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, the gentleman said this application has been pending for 2½ years. The applicant, which is this Western Railroad Properties, Inc., was only formed in May. The application has only been pending since May.

Now, there have been previous applications which have been turned down and withdrawn. But in this particular case, I think the gentleman will agree that this is a new application.

Mr. FLORIO. The Chicago & North-Western Railway put this application in 2½ years ago. The gentleman is making the point that since that time the same body is working in conjunction with another entity. But this is the same application that has been pending for 2½ years.

Mr. FRENZEL. If the gentleman will yield, it is a different applicant and a different line. That is just plain fact.

□ 1720

Mr. ECKHARDT. Mr. Chairman, I rise in opposition to the amendment.

Our Subcommittee on Oversight and Investigations considered in considerable depth the problem of the Chicago & Northwestern attempts to go into the Powder River Basin. There is only one line which controls access to the Powder River Basin, the Burlington Northern. That line is in a complete monopoly position in the situation involved.

Certainly the position of the committee and of the subcommittee is a correct one. It calls for competition in that area, and it is at least in part an answer to the arguments and the positions that we have been taking here on the floor. I think the area of the gentleman from Texas (Mr. LOEFFLER) is very strongly affected by this provision. I think on this point we can all agree with the committee and the subcommittee that the language of the bill is good.

Mr. ANDREWS of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from North Dakota.

Mr. ANDREWS of North Dakota. I thank the gentleman for yielding.

I have been told time after time by experts in the field of railroad legislation that one of the problems is overbuilding in the first place; 100 years ago we overbuilt. Now we are planning to build an extra line into the Powder River Basin so they can have two lines in that area, when we have not taken care of the needs of the Big Stone powerplant that has only one source of getting coal to it. All I am saying is before we put priorities in a bill to, in effect, double the service to one area, we ought to maintain original service to another area that has no other choice.

Mr. ECKHARDT. If the gentleman will examine a map of that area, there are many railroads that come within a reasonable distance of the Powder River Basin, but the bottleneck is Burlington Northern. There are many railroads that, if there were means of competitive transportation out of the Powder River Basin through other railroads feeding into the Union Pacific and others, we could have real competition in rail service out of the basin.

Under the present circumstances, Burlington Northern carries the coal out of the Powder River Basin, does not connect with the other railroads, and carries it on their own lines all the way to Fort Worth, where they then send it on on Southern Pacific or Sante Fe. But if there were another line in there to compete, one could send coal on many other roads that would compete. It is not a matter of many duplicating lines over long distances. It is the situation of a bottleneck only that would be duplicated, and duplication for competition's sake is most valuable and necessary.

Mr. LOEFFLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would like to associate myself with the remarks of my friend and colleague from Texas (Mr. ECKHARDT). The gentleman has precisely laid out the position with respect to the interest of Texas and other areas in the country that are currently becoming very dependent upon the richest low-sulfur coal deposit in the United States.

What we are seeking is competition, and the colloquy earlier pointed out that the Union Pacific was very sound financially. I say the Burlington Northern is, too. Why is the Burlington Northern so worried about possible competition in the Power River Basin?

Mr. Chairman, at this time, I would like to yield to the gentleman within whose district the Powder River Basin lies.

Mr. CHENEY. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to the gentleman from Wyoming.

Mr. CHENEY. Mr. Chairman, let me say, there has been a little bit of confusion over exactly what is involved here. The bill does not require that the line be built. It does, in fact, instruct the Secretary to make a speedy and a timely decision. It does not tell him what decision to make. The chief beneficiary of the loan guarantee that has been applied for is the Chicago & Northwestern Railroad, not the Union Pacific Railroad.

It is true that the purpose of the connector line is to provide competition for moving coal out of the Powder River Basin, but, to respond to the comment of the gentleman from North Dakota about being overbuilt, the fact of the matter is that the 110-mile connector line that has already been constructed in the area by Burlington Northern with some support from Chicago Northwestern, is the first major addition of track in this country in the last 50 years. What we are talking about here is a relatively short connector line. It would provide for competition to move coal out of the Powder River Basin. If we are serious about developing the resources of States like Wyoming, if we are serious about developing our energy capability, if we are serious about developing our coal re-

sources, then this is exactly the kind of proposal we ought to move forward with.

I would hope, speaking on behalf of the district that is specifically directly affected by it, that the committee would defeat the Frenzel amendment.

Mr. LOEFFLER. Mr. Chairman, again, as the distinguished subcommittee chairman pointed out, this merely expedites the decision, a decision up or down, but a decision so we know whether there can be competition or there cannot be. Present monopolistic pricing strategies on Powder River coal moving to the Southwestern and Southern part of the United States and rising consumer prices for energy establish a clear need for head-to-head competition. Further delay in the initiation of this project will cause its cost to increase while the electric ratepayers are burdened with the cost of not having effective transportation that will provide competition.

As long as the final decision is delayed, the cost of the project mounts and electric ratepayers are burdened with the cost of a monopolistic coal carrier.

I urge the defeat of the pending amendment, Mr. Chairman, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. FRENZEL).

The question was taken and on a division (demanded by Mr. FRENZEL) there were—ayes 11, noes 42.

Mr. FRENZEL. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. HANLEY TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. HANLEY. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. HANLEY to the amendment offered by Mr. STAGGERS: On page 84 of the amendment, in proposed section 329, insert "(a)" immediately after "SEC. 329." and add at the end thereof the following new subsections:

(b) Section 211(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)(2)) is amended by striking out "$4,000,000" and inserting in lieu thereof "$7,500,000".

(c) The last sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by striking out "1980" and inserting in lieu thereof "1981".

□ 1730

Mr. HANLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. ERTEL. Mr. Chairman, would the gentleman yield so that I might have a brief colloquy with the gentleman from New Jersey (Mr. FLORIO)?

Mr. HANLEY. I would be delighted to yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, I thank the gentleman from New York.

Mr. Chairman, I would like to ask the gentleman from New Jersey (Mr. FLORIO) a question. The legislation before us contains a provision permitting the ICC to exempt rail transportation as part of a continuous intermodal movement which is part of the gentleman's amendment.

Was it the gentleman's understanding in accepting the amendment, as it was in mine, in offering it, that the provisions of section 803 of H.R. 7235 apply to my amendment?

Mr. FLORIO. The gentleman's understanding is my understanding as well.

Mr. ERTEL. I thank the gentleman and I thank the gentleman for yielding. I appreciate his indulgence.

Mr. HANLEY. The gentleman is most welcome.

Mr. Chairman, the purpose of this amendment is to make certain technical changes in wording contained within the Staggers-Rahall substitute which would allow the Delaware and Hudson Railway to continue receiving Government-guaranteed loans, while the Department of Transportation moves to implement a just completed study to reorganize the D. & H., and maintain it as a competitive force in the Northeastern rail transportation network. From our discussions with the U.S. Railway Association, the lending agency, it became clear that the wording contained within the Staggers-Rahall substitute would not be adequate. I urge adoption of this clarifying language which will help assure continued effective competition in the Northeast.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I would be delighted to yield to the chairman of the committee.

Mr. FLORIO. I thank the gentleman for yielding.

The amendment does not authorize any new money. It reallocates money already authorized.

Accordingly, I have no difficulty with the amendment.

Mr. HANLEY. Mr. Chairman, I thank the gentleman for his support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. HANLEY) to the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was agreed to.

Mr. DUNCAN of Oregon. Mr. Chairman, I move to strike the last word.

I do so for the purpose of engaging in a colloquy with the distinguished chairman of the committee, the distinguished ranking minority member.

I have some questions about the meaning of some terms in the bill. I am referring to section 204 of the original bill which amends 49 U.S.C. 10–712. I believe, but I am not certain, that it is contained in section 309 of the Staggers amendment.

I want to know if the term in that section, those sections, "purchasers of rail services" mean not only the direct purchasers for their own account, but also middlemen or freight forwarders.

For example, could a trucking company or a barge operator or a co-op or a company which is formed for the purpose of consolidating shipments or which does, in fact, consolidate shipments enter into a contract or contracts with the railroads for the transportation of the goods of its own clients?

I yield to the chairman.

Mr. FLORIO. The gentleman is correct in his interpretation.

Mr. DUNCAN of Oregon. I yield to the ranking minority member.

Mr. MADIGAN. I would say that I am in complete agreement with the gentleman from New Jersey. That is our interpretation.

Mr. DUNCAN of Oregon. I thank the gentlemen for their answers.

I would also like to ask both gentlemen another question regarding a component of this same contract section 204 in the original bill. I think it is specifically 204(f), where the reference is to the term "agricultural commodities."

I would ask if the term "agricultural commodities," as it appears in that section and elsewhere in the bill includes all forest products?

I yield to the gentleman.

Mr. FLORIO. That is the committee's intention.

Mr. DUNCAN of Oregon. I yield to the gentlemen for their answers.

Mr. MADIGAN. I concur in that answer.

Mr. DUNCAN of Oregon. I thank the gentleman for their answers.

AMENDMENT OFFERED BY MR. CHENEY TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. CHENEY. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. CHENEY to the amendment offered by Mr. STAGGERS: Page 84 of the amendment, line 5 following "." insert:

(d)(1) The Secretary of Transportation shall review the proposed Chicago & North Western connector line route and shall not approve any route which requires the use of any agricultural land unless (A) there is no feasible and prudent alternative to the use of such land and, (B) the proposed route construction plan requires all possible planning to minimize harm to such agricultural land resulting from such use; provided, however, that the Secretary of Transportation may not otherwise disapprove a proposed route for the Chicago & North Western line on the authority of this subsection. This review of a proposed route shall be conducted within ninety days after the "final action" specified in subsection (a);

(2)(A) The Secretary shall review the use of any agricultural land used in any route for newly constructed line and shall require, to the maximum extent prudent and feasible, that such railroad provide a private grade crossing for the convenience of each land owner whose agricultural holdings are divided by such newly constructed line when the Secretary finds that such division of property will cause a substantial disruption to the agricultural use of such land. The owners of such property shall file a request for such grade crossing with the Secretary within 180 days of "final action" as described in subsection (a) of this section. The finding of the Secretary under this subsection shall be final.

(B) The Secretary shall render a decision on each request for grade crossing under this paragraph within 180 days of its receipt. Such review shall not require the delay of construction of new line under subsection (a) of this section.

(C) When the Secretary requires the construction of a grade crossing under this paragraph, he shall require that the land holder and the railroad enter into an agreement which shall limit the liability of such railroad for accidents at such crossing to $25,000, provided that such railroad has constructed such grade crossing in a manner calculated to avoid reasonably foreseeable accidents to persons and livestock. Maintenance of safety features such as fences for such crossings shall be the responsibility of the land holder.

Mr. CHENEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

Mr. CHENEY. Mr. Chairman, my amendment simply provides a needed degree of protection for the agricultural interests that will be affected should the Chicago-Northwestern Railroad construct its proposed connector line from Crandall, Wyo., to Joyce, Nebr. Farmers and ranchers in eastern Wyoming and western Nebraska have been extremely concerned about what effects the connector line would have on such things as irrigation patterns and land access. These concerns have a right to be addressed and my amendment does exactly that.

My amendment primarily does two things. First, it grants the Secretary of Transportation the authority to review Chicago-Northwestern's final route proposal and to determine within 90 days whether or not the route minimizes the harm such use will inflict on agricultural operations. It also insures that the route is the most prudent and feasible alternative to the use of such land. Simply put, this amendment attempts to guarantee that the final route will have as little harmful effect on agriculture as possible.

Second, my amendment grants the Secretary of Transportation the authority to require Chicago-Northwestern to provide a private grade crossing to each landowner whose land is divided by the connector line when the Secretary finds that such division causes substantial disruption to the agricultural use of the land. The landowners must file a request for the grade crossing within 180 days of the final action taken by the Secretary on Chicago-Northwestern's application for loan guarantees and the Secretary must then render a decision on each request within 180 days of its receipt. This portion of my amendment commits the railroad to address the problems the landowners may face in accessing portions of their property as a result of the connector line. Neither of these amendments are designed to unnecessarily impede the construction of the connector line but are simply designed to grant needed protection for agricultural interests of the area.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. CHENEY. I would be happy to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and say that we have had an opportunity to review the amendment and think that it is a good addition to the bill and intend to support it.

Mr. CHENEY. I thank the gentleman

Mr. FLORIO. Mr Chairman, will the gentleman yield?

Mr CHENEY. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I concur in the representations made by the gentleman from Illinois (Mr. MADIGAN). We think it is a helpful amendment and do support it.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. CHENEY. I would be happy to yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I presume if the Secretary makes such a determination that the rail line will have to use its own money?

Mr. CHENEY. That is correct. It would require the railroad to build crossings using their own funds. It does not involve any Federal funds.

Mr. FRENZEL. They would not be able to use, as the gentleman interprets the amendment, the taxpayers' loan guarantees to provide those crossings?

Mr. CHENEY. Well, if they were to acquire the loan guarantees, presumably they would then go into the private sector, the private market, and borrow money to construct the rail lines.

The amendment does not specify which part of the money they would be required to use.

Mr. FRENZEL. It is the gentleman's intention that this be the contribution of private moneys to the railroad companies.

Mr. CHENEY. That is correct.

Mr. FRENZEL. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wyoming (Mr. CHENEY) to the amendment offered by the gentleman from West Virginia (M. STAGGERS).

The amendment to the amendment was agreed to.

Mr. MATSUI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to enter into a colloquy with the distinguished chairman of the subcommittee and the ranking minority member of the subcommittee also.

It is my understanding under section 309 that a port may file a complaint if the contract between the shipper and the carrier results in unreasonable discrimination. Subsection (H) of 309, however, states that if a contract is approved by the ICC, it may not be challenged.

It is my understanding that if a contract is amended or modified, however, it would then result in the ability of the port to file a complaint within a 30-day period. Is that the understanding of the chairman and the distinguished ranking minority member?

Mr. FLORIO. The gentleman is correct.

Mr. MADIGAN. If the gentleman will yield, I agree with the understanding reached by the two gentlemen.

Mr. MATSUI. I have one other colloquy, if I may. This pertains to section 314, subparagraph (e). As the chairman and ranking minority member know, the ICC cannot exempt a carrier from certain liability standards under this section; however, on page 60 of the report language it states that the amendment applies prospectively. It uses the phrase "prospective change."

It is my understanding that this section applies to exemption orders issued before the enactment of this legislation. Is this, in fact, correct?

Mr. FLORIO. That is correct as well.

Mr. MADIGAN. Mr. Chairman, if the gentleman would yield, again I concur with the answer given to the gentleman by the gentleman from New Jersey.

Mr. DASCHLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to voice my support for the Harley O. Staggers Rail Act of 1980 and the Staggers-Lee-Rahall amendment to it. Like many members from agricultural States, I voted for the Eckhardt amendment when this bill was on the floor several weeks ago. Many Members were concerned that the Rail Act did not provide adequate protection for shippers, especially captive shippers against unfair pricing by the railroads. This is a very difficult issue as the railroads and the agriculture and coal industries are dependent upon one another.

As a Representative of South Dakota and a member of the Agriculture Committee my energies are largely focused on efforts to insure a fair deal for the family farmer. That is why I support parity, why I authored legislation to help beginning farmers, why I introduced a bill which the House passed last April to encourage subterminal planning and construction, why I am very active in the area of alcohol fuels which enable the farmer to be more independent regarding his energy needs, and why I was a party to discussions with Canadian officials concerning a wheat agreement between our two countries.

But without a viable rail system, farmers, coal dependent utility companies and other shippers are up a creek. The trucking industry cannot handle the coal traffic and is not the best vehicle for long hauls of grain. Farmers in South Dakota are currently suffering the effects of 900 miles of embargoed rail line. I am hopeful that the South Dakota plan to purchase the lines and contract with a rail carrier will be successful and that service on some of those lines can begin again. Any new rail carrier in South Dakota will and should expect an adequate rate of return. On the average, railroads do not receive an adequate rate of return, and a rate of 2.7 percent for an industry is simply not acceptable. The current regulatory system is not the only reason for the bad financial condition of many of our railroads, but to the extent that the regulatory system has caused an unfair rate of return, then we should correct it.

I congratulate the members and staff of the Commerce Committee for their diligent work with the railroads and those who utilize the railroads in working out a revised rate provision which provides better protection for shippers while at the same time allowing the railroads some necessary flexibility. I would

also like to thank the committee for their cooperation in making two technical wording changes which, while not of a substantative nature, were necessary to clarify the provisions in question.

This legislation is of particular importance to South Dakota because it is the reauthorization of the 505 and the authorization of the 518 programs which provide loan money for rail rehabilitation. The Milwaukee Road is currently in a reorganization process—the Milwaukee trustee has said that keeping the Milwaukee line from the Twin Cities to Miles City, Mont., in any reorganization plan is dependent upon their obtaining loan money to rehabilitate this line. This line is vital to South Dakota as it is our only main line and our link to the west coast.

Other provisions in the Rail Act provide for forgiveness of a low priority ERSA loan to the Milwaukee if the railroad is successfully reorganized or purchased. This loan is of such a low priority that the bankrupt Milwaukee may not have been able to repay it anyway, but it will be helpful in the effort to fight off liquidation of the entire 10,000-mile railroad. And finally, this legislation provides for an additional $9 million (bringing the total to $27 million) in transaction assistance available to States and other groups for purchase, lease or rehabilitation of Milwaukee lines.

I urge my colleagues to join me in voting for the Harley O. Staggers Rail Act.

Mr. O'BRIEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take this opportunity to address a rather lengthy question to my long time friend, the gentleman from Lincoln, Ill. (Mr. MADIGAN).

On May 31, 1980, the Rock Island Transportation and Employee Assistance Act was passed into law. That act contained certain provisions for the protection of the Rock Island employees who were laid off in the course of the bankruptcy of the line.

It is my understanding that the Federal trial court, enjoined the application of the employee protection provision of that act as being in the nature of an improper preference and doing an injustice to creditors' rights. That decision was tentatively approved in the Supreme Court. Following the Court decision I introduced a bill (H.R. 7834) which is directed at overcoming the Court's objection.

I have also prepared an amendment which in substance is similar to my bill (H.R. 7834); however, as I review the Staggers bill, as amended by the Staggers-Rahall-Lee-Loeffler amendment, I draw certain conclusions which would, if correct, render my amendment unnecessary. I would like to know if you concur in these conclusions.

First, the bill as now constituted grants to the Rock Island employees substantially the same benefits that we provided to the employees, laid off the Milwaukee Road reorganization.

Second, approximately the same sum of money, $75 million, would be provided as was intended under the Transition and Assistance Act of May 31, 1980.

Finally, should a creditor of the Rock Island deem itself aggrieved by the passage of this bill into law, it is clear that such creditor has a clear remedy under the Tucker Act. Am I correct in those conclusions?

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. O'BRIEN. I would be happy to yield to the gentleman from Illinois.

Mr. MADIGAN. At the outset in responding to the gentleman, I would like to thank the gentleman and also our colleague, the gentleman from Illinois (Mr. RAILSBACK) for all the assistance that the gentleman has given us in our various efforts in trying to move forward with a comprehensive rail bill that would also take care of these very special problems that the Rock Island employees have and about which the gentleman has been concerned and to which the gentleman has referred.

□ 1740

Specifically responding to the gentleman's question, the same benefits, and the same number of dollars as was provided for the Milwaukee employees is provided here for the Rock Island employees. The gentleman's specific reference to the Tucker Act remedy is correct.

Mr. O'BRIEN. I thank the gentleman.

AMENDMENT OFFERED BY MR. TAUKE TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. TAUKE. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. TAUKE to the amendment offered by Mr. STAGGERS: Page 86 of the amendment, line 7, strike out "and" after "Labor;".

Page 86, line 8, immediately after "Commission" insert ", and two shipper representatives from national agricultural organizations appointed by the President".

Mr. TAUKE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. TAUKE. Mr. Chairman, I rise today to offer this amendment adding two agricultural shipper representatives appointed by the President to the Rail Shipper Needs Board which is newly created by the Rail Act of 1980. It is vital to our Nation's agricultural community that Congress provide effective oversight of the impact this legislation has on agriculture and rural America.

It is my belief that the newly created Rail Shipper Needs Board will play a significant role in this oversight responsibility. Therefore, it is important that agricultural shippers be included as representatives to add their expertise and first hand experience to the Board's deliberations and final report. It only makes sense that agricultural shippers be represented when Congress creates a Shipper Needs Board to review the effects this legislation has on agricultural communities.

By enactment of this legislation, agricultural shippers are entering into a new world of lessened Federal regulation of our Nation's railroads. Provisions of this legislation such as the "captive shipper" situation, contracts surcharges, and consolidation and merger of railroads will greatly change the manner in which railroads and shippers do business. Therefore, in order for Congress to better judge the impact this legislation has on agriculture and rural communities, I ask that this important amendment be adopted.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. TAUKE. I am pleased to yield to the chairman of the subcommittee.

Mr. FLORIO. I have reviewed the amendment and the amendment is very helpful. I am prepared to support the amendment.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. TAUKE. I am happy to yield to the ranking minority member.

Mr. MADIGAN. I want to thank the gentleman for yielding and state we have had an opportunity to review the amendment and believe it is a good amendment to the bill. I intend to support it.

Mr. TAUKE. I thank the gentlemar

Mr. BREAUX. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am not certain whether I rise in opposition to the amendment or in support of the amendment, but I rise to talk on the amendment and, quite frankly, I do not know what the amendment does. But I take this time to try and see if someone who has spent so much time working on this railroad deregulation bill, which I may be for, and I may be for the substitute of the chairman of the committee who has worked so hard to put this together, to try to see if someone can tell me what will happen when we have another little piece of legislation that we have been working on and that the railroads also have been working on, and that is the coal slurry pipeline bill. The reason I think it is appropriate to maybe try and get an answer at this point is I want to know what position are we going to be in in this body in 1 week or 2 weeks when we try and come to the floor with a coal slurry pipeline bill to provide another means of transporting coal in this country in competition with the existing means of transporting coal, which right now just about the only means is the railroads, are we going to be in a position, can anyone who is for railroad deregulation answer this, are we going to be in a position of on Tuesday deregulating the railroads and then on Tuesday of next week have every person who is trying to do something for the railroads do everything they can to kill a coal slurry pipeline bill?

I think this is important because I do not want to be caught saying I support deregulation, I support the chairman, and I support the gentleman from New Jersey (Mr. FLORIO) in their great efforts to get the Government out of the business and let the railroads run deregulated, and then as soon as we bring this coal slurry pipeline bill to the floor have the railroads do everything they can, legitimately, in a lobbying effort to assure that we do not have a coal slurry pipeline bill because it is unfair competition. I think that is a legitimate question.

If I do not get an answer I do not know how I am going to be able to vote to deregulate the railroads. If they are going to be truly deregulated on Tuesday, on Tuesday or Friday of next week, they should not be afraid of some additional competition from yet another segment and means of providing transportation for coal in this country.

I do not know if anyone can answer, and I will be glad to yield to the chairman if he can.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the chairman.

Mr. FLORIO. I will just make my representation that I will not insist that the entire bill be read.

Mr. BREAUX. I am not in that battle at all. I am just trying to find out something which I think is a legitimate question and whether you read the coal slurry bill or the railroad bill, that is for somebody else in a different forum to decide. I am just trying to say, are these people who are now advocating deregulation going to be in the battlefield leading the fight against another form of competition to the railroads next week. I am sorry I am messing up everybody's time. I think it is a legitimate question to ask.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I am happy to yield to the gentleman.

Mr. STAGGERS. I would say to the gentleman we certainly will listen with interest when it comes up.

Mr. BREAUX. I am listening with interest today.

Mr. STAGGERS. I never cross a bridge until I get there and I would not buy a pig in a poke until we listen to what is going on.

Mr. BREAUX. The problem, Mr. Chairman, is we might not get to that bridge if we do not have enough people who are convinced today that maybe we would vote to deregulate the railroads if we could get some kind of fair treatment from them when another form of open competition is offered on the floor of this House. No one can make promises and we are all oging to give it real consideration, but I will bet anybody who is here today, or maybe even in our listening audience who is somewhat concerned about these two issues, they know what we are talking about. So I am not sure whether I support the gentleman's amendment, but I am trying to make up my mind and get answers.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I am glad to yield to the gentleman from Texas.

Mr. ECKHARDT. I join the gentleman in everything he has said and I would like to point out in sort of indirect response from the chairman's question that neither the gentleman in the well nor I in any way supported any delay on this bill, nor did we intend any other person to do it, as I understand it. I think the gentleman would say that is true on his part.

Mr. BREAUX. I know that no one can accuse this person of having people sit up here and read. I think it is something that is unnecessary, I do not like it, and I would not stay here long enough anyway. I guess my final point is that I do not know what I am going to do because I cannot get any final assurance that if we are going to deregulate today then tomorrow or next week we are going to have the same people that voted for deregulating today leading the fight against another form of legitimate competition.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I had published in the RECORD an amendment to the amendment in the nature of a substitute of Mr. STAGGERS which he had conceived of as being something of a real compromise with respect to rates. It essentially permitted rates to go up to 180 percent after 4 years, as the bill now does, but did not permit the exhorbitant increase after that, which may carry rates rapidly to up to 200 percent of variable costs.

I do not in any way want to slow down the process of this bill. I must say that I feel somewhat like the gentleman from Louisiana (Mr. BREAUX) last in the well about the question of those who call for competition as the only means of controlling price and, at the same time, oppose competition. But we will have to see how that comes out, as the distinguished chairman of the full committee has said, when the bill comes up.

I shall not, therefore, offer at this time the amendment I had to this amendment in the nature of a substitute—I see no point in fighting this battle essentially over again.

Furthermore, we all know here, I think, that the difference between the bill as it will be after the Staggers amendment in the nature of a substitute and the Senate bill is sufficiently wide in order for us to further attempt to fashion some reasonable bill, taking care of the shortline railroads and also taking care of exhorbitant rates to shippers.

□ 1750

Therefore, I think we should get along with this matter. I shall not offer the amendment, and I shall do everything I can to facilitate the rapid passage of this measure. I may not be able to support it unless I get some kind of assurance, as the gentleman from Louisiana (Mr. BREAUX) has indicated, that there will be some opportunity for competition. Yet I think procedurally we should move as rapidly as we can.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa (Mr. TAUKE) to the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was agreed to.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment offered by Mr. STAGGERS: Page 23, line 7, strike the word "quarterly" and insert in lieu thereof "annually".

Mr. MADIGAN. Mr. Chairman, I reserve a point of order. We have not had an opportunity to see the amendment and I would have to reserve a point of order.

Mr. GONZALEZ. The gentleman should have a copy there as of at least 2 hours ago.

Mr. Chairman, the amendment is very simple. It is about a half sentence long. The gentleman from Illinois (Mr. MADIGAN) should have a copy of a series of amendments. It is very simple. If the gentleman would like to have another reading, I am perfectly willing to agree to that because what I have to say will not take all of the 5 minutes. In effect under the existing substitute now, the railroads are given the right to jack up their variable costs on a quarterly basis.

I suggest that this is too much. Even the big bad devil, OPEC, raises its prices only once a year. We allow retired employees an inflation adjustment only twice a year, and that is being fought. The unions get a wage increase only once a year, if that often at all. Why should the railroads be permitted to adjust their variable cost formula every quarter? Their costs do not increase all that much. The answer is that the substitute amendment is giving them the right not just to compensate for cost increases but to charge the public a kind of compound interest—the right to add to inflation, not merely compensate for its costs.

It makes sense to have some kind of an adjustment. An annual adjustment, I believe, is realistic. It is right. It is just. But four times a year is too much. I think it is a shame. I think it is an outrage.

The CHAIRMAN. Does the gentleman from Illinois (Mr. MADIGAN) insist on his point of order?

Mr. MADIGAN. I withdraw my reservation of a point of order, Mr. Chairman.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment. I would oppose the gentleman's amendment on the basis of the fact that the Staggers amendment includes a well-thought-out provision that seems to have the concurrence of all parties. This is identical to the provision that is in the bill in the other body, and the quarterly determination is the practice. At this 11th hour, without some thought being given to it, it seems to me inappropriate to modify this time-honored practice. I would oppose the provision.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Illinois.

Mr. MADIGAN. I want to thank the gentleman for yielding and say that I agree with his comments. I understand the gentleman from Texas now has some three or four amendments to offer, some of which do the same thing. No one has made any attempt to discuss these things with us and give us any amount of time to think about them. Consequently, and unfortunately, I must oppose them.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ) to the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was rejected.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment offered by Mr. STAGGERS: Page 45, line 21, strike the word "quarterly" and insert in lieu thereof the word "annually".

Mr. FLORIO. Mr. Chairman, I reserve a point of order. I do not have a copy of the amendment, and I would appreciate receiving it.

Mr. GONZALEZ. I am really surprised, Mr. Chairman, and I certainly do not want to be guilty of that which I protested last Friday. I thought that both the majority chairman, the subcommittee chairman and the minority had copies of this as of at least 2 hours ago. I am sure somebody on the gentleman's staff was delivered these copies at least 2 hours ago. They may not have been brought to the gentleman's attention, even though the page was instructed.

Mr. FLORIO. Mr. Chairman, I withdraw my point of order.

Mr. GONZALEZ. Mr. Chairman, this is a similar or identical amendment to the amendment I offered the first time, except that it has to do with inflation-based rate increases.

In the committee bill, this section says that the Interstate Commerce Commission can jump rail rates four times a year to compensate for inflation.

We have been told that giving a twice-yearly pension adjustment to retirees actually results in their getting a bigger adjustment than inflation actually justifies. We have been told that this twice-yearly adjustment for retirees creates a compounding effect, much like compounding of interest, so that the retirees in the final analysis get more than they should, to compensate for inflation. If that is the case with people, is it not also the case with railroads?

We all know that the rail unions get a pay increase of once a year, if that often. We know that even OPEC increases its prices only once a year (or twice, if the conditions are right). Yet here we are offering the railroads a boost four times a year. That is too much. A once-a-year adjustment is all that is necessary, and my amendment provides that the railroads ought to be allowed only a one-time a year rate adjustment for inflation. The bill is more than generous to the railroads already. There is no need to slap the public in the face an additional four times a year. The railroads can survive with the same kind of once-a-year increase that their employees get along on, or a once-yearly increase that most working people—if they are lucky—have to take. If the rest of us have to swallow the cost of inflation, the railroads should, too. The committee bill gives railroads the right not only to compensate for inflation, but to profit on it. There is no need for us to let them charge us compound rates, when their revenue needs are already more than amply provided for in this bill. Surely it is enough to allow them to have all the cookies. I seek only to give consumers a fighting chance to at least hold onto the cookie jar. Surely the committee and this House would allow the public that much.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment. I renew my arguments I made on the previous amendment. The principle is the same, and I would oppose the amendment on the same basis.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ) to the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was rejected.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment offered by Mr. STAGGERS: Page 86, line 1, insert a new section 332 and renumber succeeding sections accordingly:

PLAIN LANGUAGE RATE PUBLICATION

SEC. 332. (a) All rates, tariffs, charges, surcharges and inflation adjustments issued pursuant to this Act shall be published in written form and made available to all shippers. Any shipper who is a person having limited command of the English language shall be entitled to have such rates, tariffs, charges, surcharges and inflation adjustments translated into the language of his choice, at the expense of the carrier.

(b) All publications of rates, tariffs, charges, surcharges, and inflation adjustments shall be printed in language clearly understandable to a lay person. Carrier charges shall be expressed in terms of tonmiles as well as such other terms as may be most useful and informative to shippers and the general public.

Mr. GONZALEZ. Mr. Chairman, I would like to inquire of the respective Members handling the bill if they have copies of this amendment.

This is what is known as the plain language of plain English and non-English-language amendment. It specified that the carriers have to publish their charges, and that those publications have to be in language that people can understand, and that they have to be readily available.

The object of this amendment is to give shippers and the public an easy way to understand what the cost of rail transportation is, so that they will have an easy basis for comparison.

We have in other statutes required that language minority persons receive published information in their own language. In my State, for example, all important public rulemaking proposals and voting information have to be offered in Spanish as well as English. This amendment likewise provides that the carriers must do everything in their power to inform the shipping public of their charges, in the plainest and simplest language possible, including a language other than English, if the shipper desires it.

I do not know how many of my colleagues have ever tried to read a tariff schedule. If you have, you will sympathize with my aim to give shippers information that they can use without having to employ a transportation specialist or renowned lawyer for interpretation. If shippers are going to make informed choices, those choices have to start with adequate information, which is all that my amendment asks for.

My amendment deals specifically with rates and the publication thereof. The Chair ruled last Friday that we are dealing with a broad issue and that an amendment that deals "inter alia, with the subject of railroad rates * * * even though they may be applicable only to specific railroads or to specific commodities transported by rail" is germane.

I rely upon the specific decision of the Chair last Friday that this amendment dealing with rates is in fact germane.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment. I would say that in the 2 years that I have been chairman of this subcommittee, in the multitude of hearings that we have had about this bill and other bills, this subject has never been brought to our committee as a subject of serious concern.

□ 1800

I would, in deference to my respect for the gentleman, indicate to the gentleman that I will go forward from this point, and I think the gentleman from Illinois (Mr. MADIGAN), the minority member of the subcommittee, will go forward from this point with a diligent concern for the possibility of this problem arising. We will continue to exercise oversight over this matter and, should this matter be brought to our attention with some degree of detail, we will be happy at that point to consider modifications in the law.

Mr. Chairman, I thank the gentleman, but I think it is probably premature to act on this amendment, and accordingly we would oppose it.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I will be happy to yield.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and regrettably join in opposition to this amendment because as I read it a French company doing business in the United States could demand that all rates, tariffs, charges, surcharges and adjustments could all be prepared in French; that a German company could demand that it all be done in German and a Chinese trading company could demand that it all be done in Chinese. This seems to make an unreasonable demand upon the railroad and for that reason I would have to oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ) to the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was rejected.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment offered by Mr. STAGGERS. On page 90, line 14, insert new section 333:

ABANDONMENT

SEC. 333. Whenever a railroad elects to abandon service pursuant to this Act, all such real property as is abandoned for railroad use shall revert to public ownership. Abandoned real property within incorporated city or town limits shall revert to ownership of such city or town. Abandoned property outside of incorporated city or town limits shall revert to ownership of the county in which it lies. Such property shall be used or disposed of in a manner that will directly benefit the public.

Mr. GONZALEZ. Mr. Chairman, by way of preface I would like to say I appreciate the remarks of the distinguished subcommittee chairman with regard to the last amendment. It may have appeared to contain levity but we must also remember that this Member did not have a chance to do anything about examining and proposing amendments except when the amendment was read and I had a copy in my hands 2 hours after it was read and, therefore, I spent the weekend examining four amendments, regardless of the outcome of the so-called Eckhardt amendment. My amendments are offered in good faith. Perhaps the amendments are not written as well as they may have been had I been able to give them further thought. I might have changed the contents of this amendment but the thrust of the amendment is offered in seriousness and earnestness because tariff scheduling in legible language readily understood, I think, is a vital necessity.

Mr. Chairman, this amendment simply says that railroads abandoning their property, when they abandon the rail line, turn it over to where it came from to begin with. To public use and benefit. The vast majority of all railroad right-of-way and related property was given to the railroads to begin with at no cost. This property came, most of it, from land that was publicly dedicated and owned. Most of what came from private ownership came from people who were eager to have rail service and so gave up their land, free, simply in order to have rail service which is not being abandoned.

The railroads were formed and still operate to provide public service. This is constantly forgotten. Public use and convenience is still the phrase. Their holdings and right-of-way came from the public. Those holdings, if they are no longer used for public benefit or to serve public convenience and necessity ought to revert to the same people whose forebearers provided them and underwrote building of the railroads. The people are entitled to have their property back if they lose the benefits for which it was intended.

Unused railroad right-of-way can be used in cities, towns, areas or hamlets for strip parks, for bike paths or picnic areas. Station property and yard property could be used for redevelopment or to provide sites for public parks and buildings. Abandoned rail property not otherwise used for public benefit could be sold and the proceeds used to reduce local tax burdens.

What started with gifts from the public ought to be ended with a benefit to the public. If the people can no longer get rail service, they are at least entitled to get some return on the land that the railroads generally took from the public trust in the first place, or got from private owners free of charge, all for the same reason—to gain access to a necessary public service. With that service gone, the public is entitled to get its original investment back, at least so much of it as exists in the form of property that is now used for rail service.

I do not ask that the railroads give up the millions of acres of land that went to them to entice the construction of lines—all I ask is that they give up that small segment of their bounty that was actually turned into railways, stations, and yards, and which now stands subject to abandonment.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield to me?

Mr. GONZALEZ. I will be delighted to yield.

Mr. HALL of Texas. Without the gentleman's amendment, where would the property revert to in the event of the happening that the gentleman mentions, under the present structure of this bill?

Mr. GONZALEZ. I believe it would be conceded it is just abandoned and in possession of the railroads.

Mr. HALL of Texas. Mr. Chairman, could I ask the gentleman from New Jersey (Mr. FLORIO) if he would attempt to answer the question?

Mr. FLORIO. Mr. Chairman, will the gentleman yield to me?

Mr. GONZALEZ. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, upon abandonment, the property is still the property of the railroad. The railroad then has the option of doing whatever it wants to do with the property.

We have established a number of programs, some established in this bill, to facilitate the transfer of abandoned lines to other railroads, to shippers groups and other organizations that could use it as rail property or conceivably could use it as nonrailroad property, for community or other purposes.

Mr. Chairman, to save some time at this point I would express my opposition to the bill on the very fundamental ground that this constitutes a taking. In effect, what this amendment says is that the railroad property shall be taken from the railroad without compensation. I think that violates the due process provision of the Constitution and would clearly be unconstitutional.

Mr. GONZALEZ. Let me reply quickly. The whole purpose of this bill is to return to public use that which was given by the people something for the stated purpose of public service use and convenience and which is now being abandoned for that purpose and is retained wholly as part of a private profitmaking venture.

I say, if you are not going to use it as it was given to you to use, let it revert back to the people, to the public.

The CHAIRMAN. The question is on the amendment of the gentleman from Texas (Mr. GONZALEZ) to the amendment of the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was rejected.

● Mr. HANLEY. Mr. Chairman, I rise in support of the Staggers-Rahall substitute amendment to H.R. 7235. This amendment is the result of a serious good faith effort to reach a compromise that will both maintain regulatory protection for this Nation's shippers while allowing the deregulation so necessary to assure a healthy railroad industry in the coming decade. Chairman STAGGERS, Mr. RAHALL, and Chairman FLORIO are to be congratulated and supported. Through their efforts we meet the challenge set for us by the President to remove burdensome regulations and promote effective competition. The public and all sectors of industry and labor are well served by this amendment.

The Staggers-Rahall amendment also contains a provision of vital interest to New York State through the promotion of effective rail competition in the Northeast. Contained within the amendment is language that will allow the U.S. Railway Association to continue providing Government-backed loans to the Delaware & Hudson Railway. The D. & H. is the last true competitor to Conrail in the Northeast. Continuance of these loans will allow it to operate while a Federal reorganization study is implemented and a healthy, profitable railroad is created to overcome the failures of the basic restructuring of Northeastern railroads carried out under the Regional Railroad Reorganization Act of 1973. The goal is continued competition in the Northeast and a viable means of meeting national policy.

In summary, I strongly support the Staggers-Rahall substitute and I ask that you join me in moving to create a strong, competitive rail system.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia (Mr. STAGGERS), as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. RUDD. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 369, noes 6, answered "present" 1, not voting 56, as follows:

[Roll No. 531]

AYES—369

Abdnor	Bellenson	Burlison
Akaka	Benjamin	Burton, John
Albosta	Bennett	Burton, Phillip
Alexander	Bereuter	Butler
Anderson, Calif.	Bethune	Byron
Andrews, N.C.	Bevill	Carney
Andrews, N.Dak.	Biaggi	Carr
Annunzio	Bingham	Carter
Anthony	Blanchard	Cavanaugh
Applegate	Boland	Chappell
Archer	Bolling	Cheney
Ashbrook	Bonior	Clausen
Ashley	Bonker	Clay
Aspin	Bouquard	Cleveland
AuCoin	Bowen	Clinger
Badham	Brademas	Coelho
Bailey	Breaux	Coleman
Baldus	Brinkley	Collins, Ill.
Barnard	Brodhead	Collins, Tex.
Barnes	Brooks	Conable
Bauman	Broomfield	Conte
Beard, Tenn.	Broyhill	Conyers
Bedell	Buchanan	Corcoran
	Burgener	Corman
		Coughlin

Courter	Hutto	Rahall
Crane, Daniel	Hyde	Railsback
Crane, Philip	Ichord	Rangel
Daniel, Dan	Ireland	Ratchford
Daniel, R. W.	Jacobs	Regula
Danielson	Jeffries	Reuss
Dannemeyer	Jenkins	Rhodes
Daschle	Johnson, Calif.	Rinaldo
Davis, Mich.	Johnson, Colo.	Ritter
Davis, S.C.	Jones, N.C.	Roberts
de la Garza	Jones, Okla.	Robinson
Deckard	Jones, Tenn.	Rodino
Dellums	Kastenmeier	Roe
Derrick	Kazen	Rosenthal
Derwinski	Kemp	Roth
Devine	Kildee	Rousselot
Dickinson	Kindness	Roybal
Dicks	Kogovsek	Rudd
Dixon	Kostmayer	Sabo
Dodd	LaFalce	Santini
Donnelly	Lagomarsino	Satterfield
Dornan	Leath, Tex.	Sawyer
Dougherty	Lee	Scheuer
Downey	Levitas	Schroeder
Drinan	Livingston	Schulze
Duncan, Oreg.	Lloyd	Sebelius
Duncan, Tenn.	Loeffler	Seiberling
Early	Long, La.	Sensenbrenner
Edgar	Long, Md.	Shannon
Edwards, Ala.	Lott	Sharp
Edwards, Calif.	Lowry	Shelby
Edwards, Okla.	Lujan	Shumway
Emery	Luken	Shuster
English	Lundine	Simon
Erdahl	Lungren	Skelton
Erlenborn	McClory	Smith, Iowa
Ertel	McCloskey	Smith, Nebr.
Evans, Ga.	McCormack	Snowe
Evans, Ind.	McDade	Snyder
Fary	McDonald	Solarz
Fascell	McEwen	Solomon
Fazio	McHugh	Spellman
Fenwick	McKay	Spence
Ferraro	McKinney	Stack
Findley	Madigan	Staggers
Fisher	Maguire	Stanton
Flippo	Markey	Stark
Florio	Marks	Stenholm
Foley	Marlenee	Stewart
Ford, Mich.	Martin	Stockman
Ford, Tenn.	Matsui	Stokes
Forsythe	Mavroules	Stratton
Fountain	Mazzoli	Studds
Frost	Mica	Stump
Fuqua	Michel	Swift
Gaydos	Mikulski	Symms
Gephardt	Miller, Calif.	Synar
Giaimo	Miller, Ohio	Tauke
Gibbons	Mineta	Taylor
Gingrich	Minish	Thomas
Ginn	Mitchell, Md.	Thompson
Glickman	Mitchell, N.Y.	Traxler
Goldwater	Moakley	Treible
Gonzalez	Moffett	Udall
Goodling	Montgomery	Ullman
Gore	Moore	Van Deerlin
Gradison	Moorhead, Calif.	Vander Jagt
Gramm	Mottl	Vanik
Gray	Murphy, Ill.	Vento
Green	Murphy, Pa.	Volkmer
Grisham	Murtha	Walgren
Guarini	Myers	Walker
Gudger	Myers, Ind.	Wampler
Guyer	Natcher	Watkins
Hagedorn	Neal	Waxman
Hall, Ohio	Nedzi	Weaver
Hall, Tex.	Nelson	White
Hamilton	Nichols	Whitehurst
Hammer-schmidt	Nowak	Whitley
Hance	O'Brien	Whittaker
Hanley	Oakar	Whitten
Hansen	Oberstar	Williams, Mont.
Harkin	Obey	Williams, Ohio
Harris	Ottinger	Wilson, Bob
Harsha	Panetta	Wilson, C. H.
Hawkins	Pashayan	Wilson, Tex.
Heckler	Patterson	Winn
Hefner	Paul	Wirth
Heftel	Pease	Wolff
Hightower	Perkins	Wolpe
Hillis	Petri	Wright
Holland	Pickle	Wyatt
Hollenbeck	Porter	Wydler
Holt	Preyer	Wylie
Horton	Price	Yatron
Hubbard	Pritchard	Young, Fla.
Huckaby	Pursell	Young, Mo.
Hughes	Quayle	Zablocki
Hutchinson	Quillen	

NOES—6

Dingell	Frenzel	Weiss
Eckhardt	Stangeland	Yates

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—56

Addabbo	Hinson	Mollohan
Ambro	Holtzman	Moorhead, Pa.
Anderson, Ill.	Hopkins	Murphy, N.Y.
Atkinson	Howard	Myers, Pa.
Beard, R.I.	Jeffords	Nolan
Boggs	Jenrette	Patten
Brown, Calif.	Kelly	Pepper
Brown, Ohio	Kramer	Peyser
Campbell	Latta	Richmond
Chisholm	Leach, Iowa	Rose
Cotter	Leach, La.	Rostenkowski
D'Amours	Lederer	Royer
Evans, Del.	Lehman	Russo
Fish	Leland	St Germain
Fithian	Lent	Steed
Fowler	Lewis	Tauzin
Garcia	Marriott	Young, Alaska
Gilman	Mathis	Zeferetti
Grassley	Mattox	

□ 1820

Mr. MINISH changed his vote from "no" to "aye."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

Mr. KASTENMEIER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take this time to propound a question of the distinguished gentleman from New Jersey (Mr. FLORIO), the floor manager of the bill.

Mr. Chairman, a number of State and local officials in Wisconsin have brought to my attention a provision in H.R. 7235 which could have an adverse impact on short line carriers who are seeking to continue service on branchlines abandoned by the Milwaukee Road Railroad. These officials have a vital stake in the continued operation of these lines because the State has purchased the lines as part of Wisconsin's branch line preservation program. This State program was primarily established in response to the bankruptcy of the Milwaukee Road. The State and local governments in partnership with short line operators hope to revitalize and rehabilitate these lines so that they may remain part of the Wisconsin transportation system.

Specifically, State and local officials are concerned over section 304(e). They have questioned whether this provision will require a short line operator who takes over an abandoned line to accept responsibility for providing employment protection under section 11347 for those employees of the previous operator who were affected by the abandonment. They contend that such an interpretation of this provision would destroy the economic viability of most short line operations.

I would appreciate it if the distinguished floor manager would explain whether this provision will require a short line which operates lines, such as those I have described in Wisconsin, to provide employment protection under section 11347 of title 49 of the United States Code.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I am happy to provide some guidance for my colleague from Wisconsin on this point. Section 304(e) mandates the Interstate Commerce Commission to impose labor protection requirement on any rails carrier or other entity proposing to construct and operate a railroad line under section 10901 of the United States Code. Although ICC approval to either construct or operate a new rail carrier must be sought under section 10901, it has never been the intention of the committee to apply section 304(e) to a rail carrier or other entity that is proposing solely to operate or acquire an existing line. Section 304(e) is intended to apply only to new construction or an extension of an existing line.

Mr. KASTENMEIER. Mr. Chairman, I thank the gentleman from New Jersey (Mr. FLORIO) for that interpretation, and I yield back the balance of my time.

AMENDMENT OFFERED BY MR. HANCE

Mr. HANCE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HANCE: Page 144, line 25, insert after "of this title" the following: "when such carrier is transporting grains, soybeans, rice, cotton or".

Mr. HANCE. Mr. Chairman, I have an amendment that reinstates the long haul short haul provision as it is in existing law. This will protect the small country elevators from outrageous rate increases. It will require that the same discount and/or rate be charged for a short haul as it is for a long haul over the same route.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. HANCE. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, we have had an opportunity to review the amendment offered by the gentleman from Texas (Mr. HANCE), and we intend to support it on this side of the aisle.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. HANCE. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I concur in the statement of the gentleman from Illinois (Mr. MADIGAN). We accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. HANCE).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title III?

If not, the Clerk will designate title IV.

Title IV reads as follows:

TITLE IV—RAILROAD COST DETERMINATIONS

UNIFORM ACCOUNTING SYSTEM

SEC. 401. Section 11142 of title 49, United States Code, is amended to read as follows:

"§ 11142. Uniform accounting system

"The Interstate Commerce Commission may prescribe a uniform accounting system for classes of carriers providing, and brokers for, transportation subject to the jurisdiction of the Commission under subchapters II, III, and IV of chapter 105 of this title.".

RAILROAD COST ACCOUNTING

SEC. 402. (a) Chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"§ 11161. Railroad Accounting Standards Board

"(a)(1) There is established a Railroad Accounting Standards Board which shall be

within and responsible to the legislative branch of the Federal Government.

"(2) The Board shall be composed of the Comptroller General of the United States, who shall serve as chairman, and six members to be appointed by the Comptroller General.

"(3) The Comptroller General shall appoint members of the Board from among persons who are well qualified for such position by virtue of experience in or knowledge of rate regulation, accounting, or cost determinations. Of the members of the Board so appointed—

"(A) one shall be from the accounting profession;

"(B) one shall be from the railroad industry;

"(C) one shall be a representative of major rail shippers;

"(D) one shall be from the Interstate Commerce Commission;

"(E) one shall be a representative of small rail shippers; and

"(F) one shall be from the economics profession.

"(4) The term of office of each appointed member of the Board shall be three years, except that any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

"(5) The Board shall not act in the absence of a quorum, which shall consist of three members.

"(b) Each appointed member of the Board shall receive compensation at a rate equal to $\frac{1}{260}$ of the rate prescribed for level IV of the Executive Schedule, under section 5315 of of title 5, for each day (including traveltime) in which he is engaged in the actual performance of duties vested in the Board.

"(c)(1) The Board may utilize personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities under this subchapter.

"(2) Individuals appointed by the Board under this subsection may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(d) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

"(e) Members and employees of the Board and all other individuals appointed under this subsection having or having had access to information in the possession of the Board shall be subject to the provisions of section 1905 of title 18.

"(f) The Board shall cease to exist three years after the effective date of the Rail Act of 1980.

"§ 11162. Cost accounting standards

"(a) Within two years after the effective date of the Rail Act of 1980, the Railroad Accounting Standards Board shall establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, principles for obtaining economically accurate railroad costs directly and indirectly associated with particular movements of goods, identifying the variable costs associated with particular movements of goods or such other costs as the Board believes most accurately represent the economic costs of such movements, including principles to govern the compilation of actual cost data, and to what degree of reliability indirect costs can be attributed to particular movements of goods. Such principles shall govern the determination of all railroad costs for specific regulatory proceedings under this title.

"(b) In developing cost accounting standards under this section, the Board shall take into account the following considerations:

"(1) The specific regulatory purposes for which railroad costs are required.

"(2) The degree of accuracy of the cost information which is needed to meet regulatory purposes.

"(3) The existing capability and the probable future capability of rail carriers to provide such information and the relative benefits and costs of requiring development of additional capability.

"(4) The means by which the degree of economic accuracy required can be obtained at the least possible expense and with the least possible information reporting.

"(5) The means by which the confidentiality of such costs can best be maintained while meeting the need for such information in regulatory proceedings.

"(c) The cost accounting standards established by the Board shall require that cost information be reported or disclosed only for the essential regulatory purposes defined by the Board.

"§ 11163. Implementation of cost accounting standards

"Upon the establishment of cost accounting standards by the Railroad Accounting Standards Board under section 11162 of this title, the Interstate Commerce Commission shall immediately promulgate rules to implement and enforce such standards. Not less than once every five years after the promulgation of the original rules, the Commission shall review the standards of the Board and shall, by rule, make such changes in such standards as are required to achieve the regulatory purposes of this title and the goals of this subchapter. The Commission shall insure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes.

"§ 11164. Certification of rail carrier cost accounting systems

"(a) Within 180 days after the effective date of the Rail Act of 1980, each rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a request for preliminary certification of its cost accounting system. The Commission shall grant such preliminary certification if it determines that the cost accounting system of such rail carrier is in compliance with the accounting standards of the Commission in effect on the day prior to the effective date of the Rail Act of 1980.

"(b)(1) As soon as practicable, but not later than 9 months, after the promulgation of rules by the Commission under section 11163 of this title, each rail carrier described in subsection (a) of this section shall file with the Commission a request for final certification of its cost accounting system.

"(2) Within 90 days, or such additional time as the Commission finds necessary, after a rail carrier files its request for final certification under paragraph (1) of this subsection, the Commission shall grant such final certification to such carrier if the Commission determines that the cost accounting system of such carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title. If the Commission denies such final certification, the rail carrier shall revise its cost accounting system and file a new request for certification within 90 days after the date of such denial. The Commission shall thereupon grant final certification if it determines that such cost accounting system, as revised, is in compliance with such rules. If the Commission again denies final certification to the rail carrier, the Commission shall prescribe a cost accounting system which such carrier shall adopt within a reasonable time and which shall be considered a finally certified cost accounting system for purposes of this section.

"(c) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Commission under section 11163 of this title.

"(d)(1) Certification under this section that the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title shall be valid until the promulgation of new rules by the Commission.

"(2) After the cost accounting system of a rail carrier is certified under this section, such rail carrier may, after notifying the Commission, make modifications in such system unless, within 60 days after the date of notification, the Commission finds such modifications to be inconsistent with the rules promulgated by the Commission under section 11163 of this title.

"(e) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission, the Commission shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers, and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

"§ 11165. Cost availability

"Consistent with the rules of the Interstate Commerce Commission governing discovery in Commission proceedings, rail carriers shall make a relevant cost data available to shippers, States, ports, communities, and other interested parties that are a party to a Commission proceeding in which such data is required.

"§ 11166. Accounting and cost reporting

"(a) To obtain expense and revenue information for regulatory purposes, the Interstate Commerce Commission may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, prescribing expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers. To the extent such rules are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings pursuant to this title, such rules shall be promulgated in accordance with the cost accounting standards established by the Railroad Accounting Standards Board under section 11162 of this title.

"(b) Any reports required by the rules established by the Commission under this section shall include only information considered necessary for disclosure under the cost accounting standards established by the Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission.

"§ 11167. Reports

"The Railroad Accounting Standards Board shall, within 2 years after the effective date of the Rail Act of 1980, submit the following reports to the Congress:

"(1) A report comparing the probable costs of the implementation of cost accounting standards established under section 11162 of this title, including any inflationary effects, to the possible benefits of the implementation of such standards, including the availability of more precise data for use by rail carriers and shippers in proceedings before the Commission.

"(2) A report setting forth any recommendations of the Board for appropriate legislative or administrative action in order to integrate the cost accounting standards and the cost accounting system certification process under this subchapter into existing rail carrier rate regulation under this title, including determinations of the absence of effective competition under section 10709 of this title.".

(b) The analysis of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"11161. Railroad Accounting Standards Board.
"11162. Cost accounting standards.
"11163. Implementation of cost accounting standards.
"11164. Certification of rail carrier cost accounting systems.
"11165. Cost availability.
"11166. Accounting and cost reporting.
"11167. Reports.".

CIVIL PENALTIES FOR VIOLATIONS OF ACCOUNTING STANDARDS PROVISIONS

SEC. 403. (a)(1) Chapter 119 of title 49, United States Code, is amended by inserting immediately after section 11913 the following new section:

"§ 11913a. Accounting standards violations

"Any rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that fails to obtain final certification of its cost accounting system under section 11164(b) of this title shall be fined not less than $50,000.".

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by inserting immediately after the item relating to section 11913 the following new item:

"11913a. Accounting standards violations.".

(b) Section 11910 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A person that knowingly discloses confidential data made available to such person under section 11165 of this title by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall be fined not more than $50,000.".

□ 1830

The CHAIRMAN. Are there amendments to title IV? If not, the Clerk will designate title V.

Title V reads as follows:

TITLE V—RAILROAD MODERNIZATION AND RESTRUCTURING ASSISTANCE

COORDINATION OF FEDERAL ASSISTANCE

SEC. 501. (a) The Secretary of Transportation, in administering the provisions of this title, shall be guided by the goal of achieving a safe and efficient transportation system by providing transitional financial assistance which facilitates—

(1) restructuring of railroad facilities and related projects that emphasize higher density operations and the elimination of uneconomical plant;

(2) improved asset and manpower utilization; and

(3) the encouragement of a strong system of self-supporting shipper-operated or State-operated rail lines.

(b) Within 90 days after the end of each fiscal year, the Secretary shall submit a report to the Congress listing the specific Federal assistance provided the railroad industry during such fiscal year. Each such report shall set forth the reasons for each Federal loan or grant and explain the way in which such loan or grant contributed to the overall goal or providing a safe and efficient transportation system.

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 502. (a) Section 10906 of title 49, United States Code, is amended—

(1) by inserting "(a)" immediately before "When"; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) When the Commission finds under section 10903 of this title that the present or future public convenience or necessity require or permit abandonment or discontinuance, and an offer to purchase is made by a purchaser other than a class I or class II carrier, and the Commission finds that the potential purchaser will continue to provide rail service, the Commission shall require the abandoning carrier to sell such property at net liquidation value, as established by the Commission, but in no event for less than the constitutional minimum.

"(2) For any line subject to sale under paragraph (1) of this subsection, the Commission may, to allow the purchasing carrier a reasonable interchange with the abandoning carrier, require the abandoning carrier to provide to the acquiring trackage rights to a reasonable interchange point or points, as determined by the Commission, with such compensation as the Commission may require.

"(3) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with the line subject to the sale.

"(4) Until a purchasing carrier under this subsection has revenues from the purchased line adequate to provide the carrier a rate of return on the purchased line equal to that established by the Commission under 10704(a)(2) of this title, all traffic and operations on that line shall, if such carrier so chooses, be exempt from all or any of the provisions of this subtitle, other than paragraph (3) of this subsection.

"(5) Whenever a rail carrier applies a surcharge under section 10705a(b) of this title, the Commission may find that there has been a de facto abandonment and require such carrier to be subject to the provisions of this subsection.".

(b) Section 10904(d)(2) of title 49, United States Code, is amended by adding, without paragraph indentation, the following new sentences after subparagraph (B):

"No carrier may identify a line under subparagraph (B) of this paragraph unless such carrier certifies to the Commission that it has attempted to find a potential purchaser for such line who will operate such line and continue to provide rail service. If the Commission finds, in a proceeding under this section, that the abandoning carrier did not make a reasonable effort to find a potential purchaser, the Commission shall not issue a certificate under this section.".

RESTRUCTURING ASSISTANCE

SEC. 503. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et. seq.) is amended by adding at the end thereof the following new section:

"RESTRUCTURING ASSISTANCE

"SEC. 518. (a) GENERAL.—The Secretary is authorized to provide financial assistance to any railroad or subsidiary of a railroad to pay any share of the cost of restructuring its facilities, including related labor protection costs, and acquiring securities pursuant to a restructuring. Financial assistance under this section shall be through repayable credits constituting a debt or equity financing, and shall be made available by the Secretary only if the Secretary determines that—

"(1)(A) the assistance will result in significant railroad restructuring and such restructuring would not be likely to be achieved unless such assistance is provided; and

"(B)(i) the railroad has agreed to restructuring under a plan submitted in accordance with subsection (h) of this section, or (ii) the assistance will be used to fund a project approved by the Secretary under section 5(a)-(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)), and the railroad shows that such project will result in significant restructuring; or

"(2) the assistance will be used for purchase or rehabilitation of feeder lines.

"(b) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance under this section by purchasing a fixed debt obligation issued by a railroad, except that if the Secretary determines that an equity financing is essential to a restructuring, the Secretary may provide financial assistance under this section by purchasing senior preferred stock. The Secretary may purchase a fixed debt obligation issued as a trustee certificate by the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act, but only if the Secretary determines that the restructuring is necessary for the establishment of a self-sustaining railroad.

"(c) CHARACTERISTICS OF FIXED DEBT OBLIGATIONS.—(1) A fixed debt obligation purchased by the Secretary under this section shall provide that—

"(A) on the 5th anniversary of the date of original issuance, interest (at three-fourths of the rate established by the Secretary of the Treasury as of the most practicable date immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) shall begin to accrue; and

"(B) beginning on the 6th anniversary of the date of original issuance, accured interest and principal shall be payable annually in equal aggregate installments such that on a date not later than the 20th anniversary of the date of original issuance, the principal and all accrued interest shall have been repaid.

"(2) Consistent with subsection (f) of this section, the Secretary may require a railroad or a subsidiary receiving assistance under this section to convey to the Secretary a security position which accords the Secretary a lien and priority of payment which are subordinate to those of the railroad's or subsidiary's present and prospective secured creditors (and any claims having a priority of payment senior to secured creditors) but are first in time and right to those of all present and prospective unsecured creditors.

"(d) EXCHANGES.—Where the Secretary makes a determination under subsection (b) of this section, the Secretary may, in purchasing trustee certificates or at any time thereafter, agree with the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act to exchange trustee certificates for senior preferred stock issued in connection with a plan of reorganization approved by the reorganization court.

"(e) CHARACTERISTICS OF SENIOR PREFERRED STOCK.—Senior preferred stock purchased by the Secretary under this section shall be an equity security issued by a railroad or its subsidiary. Each share of senior preferred stock shall—

"(1) in accordance with laws of the issuer's State of incorporation governing dividends on and redemption of preferred stock—

"(A) be subject to redemption at par commencing no later than the 6th anniversary of the date of original issuance and ending not later than the 20th anniversary of the date of original issuance in amounts which will aggregate the initial par value of the share and return the aggregate of dividends cumulated and due;

"(B) have dividends payable annually (at one-half the rate established by the Secretary of the Treasury as of the most practicable date immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) beginning on the 6th anniversary of the date of original issuance and computed on the average outstanding par amount of the share for the 12 months preceding each payment; and

"(C) have dividend and redemption declarations and payments which are cumulative and not subject to the discretion of the issuer's board of directors or shareholders;

"(2) be optionally redeemable by the issuer, and upon any optional redemption, shall return the outstanding par value plus the aggregate of dividends cumulated and due (pro rata for any part of a year after the 5th anniversary of the date of original issuance) as of the date of an optional redemption;

"(3) be nonvoting and have an initial par value of $10,000;

"(4) be senior in right with respect to dividend and redemption payments and in case of any liquidation or dissolution of the issuer only to all of the issuing corporation's equity securities whenever issued; and

"(5) be issued by the corporation (A) that owns all of the facilities to be rehabilitated or improved, or (B) that will, at the completion of an acquisition, own all of the facilities acquired in whole or in part with assistance provided under this section and that has a capitalization at the time of issuance which consists solely of equity.

"(f) TERMS AND CONDITIONS.—Before providing any financial assistance under this section, the Secretary shall require the railroad or the subsidiary receiving assistance to agree to such terms and conditions as are sufficient, in the Secretary's judgment, to assure that—

"(1) significant restructuring will occur;

"(2) all financial assistance provided under this section will be used as prescribed by the Secretary; and

"(3) that there is a reasonable likelihood that such financial assistance will be repaid.

"(g) DEFAULT.—Whenever a railroad or a subsidiary receiving assistance under this section defaults on any provision of a financing agreement or a security purchased pursuant to this section, the Secretary may (but is not required to) appoint from time to time two members to the board of directors of the railroad or the subsidiary (or both), at the Secretary's option, who shall serve until the financial assistance has been repaid in full or for a lesser period as determined by the Secretary. The Secretary may also exercise all remedies in law or equity and may request the Attorney General of the United States to commence a civil action for damages, specific performance, or any other available remedy in any appropriate court.

"(h) RESTRUCTURING PLANS.—(1) Each railroad or subsidiary which applies for assistance under subsection (a)(1)(B)(i) of this section shall submit a restructuring plan that—

"(A) has been approved by the railroad's board of directors;

"(B) demonstrates the railroad's or the subsidiary's ability to repay the financial assistance; and

"(C) identifies specific coordinations, consolidations, or other restructuring actions which the railroad or the subsidiary proposes to undertake.

"(2) The Secretary shall establish regulations governing the scope, content, and format of the restructing plan.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 504. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this title, is further amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 519. There is authorized to be appropriated to the Secretary for purposes of providing financial assistance under section 518 for fiscal years 1980 through 1984, without fiscal year limitation, such sums as are necessary, not to exceed $1,475,000,000, of which no less than 5 percent shall be available for the purchase or rehabilitation of feeder lines. Sums appropriated under this section are authorized to remain available until expended.".

EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 505. Sections 505(e), 507(a), 507(d), and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(e), 827(a), 827(d), and 829) are each amended by striking out "September 30, 1980" and inserting in lieu thereof "September 30, 1982".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 506. (a) Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821) is amended—

(1) in paragraph (6), by inserting "trustee certificate," after "note," and by inserting ", or to facilitate a restructuring" after "improvement"; and

(2) by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(9) 'subsidiary' means any corporation in an unbroken chain of corporations beginning with a class I railroad, if each corporation other than the last corporation in the chain owns voting securities possessing more than 50 percent of the total combined voting power in one of the other corporations in the chain.".

(b) Section 510 of such Act (45 U.S.C. 830) is amended—

(1) by inserting ", obligations, or senior preferred stock" after "shares"; and

(2) by inserting "to the Federal Government" after "railroads".

(c) The table of contents for title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by adding at the end thereof the following new items:

"Sec. 518. Restructuring assistance.
"Sec. 519. Authorization of appropriations.".

The CHAIRMAN. For what purpose does the gentleman from Illinois (Mr. MADIGAN) rise?

Mr. MADIGAN. Mr. Chairman, I have an amendment at the desk.

Mr. ECKHARDT. Mr. Chairman, am I not entitled to recognition as a senior Member on the floor?

The CHAIRMAN. For what purpose does the gentleman from Texas (Mr. ECKHARDT) rise?

Mr. ECKHARDT. To offer an amendment, Mr. Chairman.

The CHAIRMAN. The Chair will state to the gentleman from Texas that the gentleman from Illinois (Mr. MADIGAN) was on his feet. The Chair heard the gentleman from Illinois first, and the has the prerogative of recognizing Members at his discretion. The Chair is attempting to be fair. I think the Chair has been fair in this instance.

Mr. ECKHARDT. The gentleman from Texas was on his feet also.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. MADIGAN).

AMENDMENT OFFERED BY MR. MADIGAN

Mr. MADIGAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MADIGAN: Page 164, strike out line 6 and all that follows through line 5 on page 166 and insert in lieu thereof the following:

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 502. (a) Subchapter I of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new sections:

"§ 10910. Railroad development

"(a)(1) Whenever the Interstate Commerce Commission finds—

"(A) (i) under section 10903 of this title, that the present or future public convenience or necessity require or permit the abandonment or discontinuance of a railroad line, or (ii) under subsection (b) of this section, that transportation provided over a particular line of railroad by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title is inadequate; and

"(B) that an application to purchase such line has been filed, in accordance with section 10911 of this title, by a financially responsible person (including a governmental authority) other than a class I or class II rail carrier, and that such person will continue to provide railroad transportation over such line,

the Commission shall require the rail carrier owning the line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

"(2) For purposes of this subsection—

"(A) the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater; and

"(B) a financially responsible person is a person who (i) is capable of paying the constitutional minimum value of the line proposed to be acquired, and (ii) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

"(b)(1) For the purposes of this section, transportation over a particular railroad line shall be deemed to be inadequate if the Commission determines, after a hearing that—

"(A) the transportation over such line is unacceptable to and for the majority of shippers who can transport traffic over such line;

"(B) the rail carrier operating such line is not making reasonable efforts, as judged on the basis of the performance of an efficient rail carrier providing quality transportation, to provide service sufficient to meet the needs of shippers who can transport traffic over such line;

"(C) the sale of such line will not impair the financial ability of the rail carrier providing transportation over such line to perform its obligations to the public;

"(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier providing transportation over such line; and

"(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such

"(2) In a proceeding under this subsection, the burden of proving that rail transportation over a particular line is inadequate is on the person filing the application to acquire such line. If the Commission finds under this subsection that rail transportation over a particular line is inadequate, the Commission shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

"(c) In the case of any line subject to sale Commission may, to allow the purchasing carrier a reasonable interchange with the selling carrier, require the selling carrier to provide to the acquiring carrier trackage rights to a reasonable interchange point or points as determined by the Commission. The Commission shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

"(d) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a line subject to a sale under this section.

"(e) Whenever a purchasing carrier under this section petitions the Commission for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Commission shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable compensatory joint rates and divisions over such route.

"(f)(1) Any person operating a railroad line acquired under this section shall be exempt (A) from the provisions of sections 10901 and 10903 of this title and (B) except with respect to interstate traffic or participation in a joint rate from the provisions of chapter 107 of this title.

"(2) This subsection applies only to a railroad line acquired pursuant to this section and section 10911 of this title.

"(3) Nothing in this subsection shall preclude a person acquiring a railroad line under this section from applying for a certificate of public convenience and necessity under section 10901 or section 10903 of this title for such line.

"(g) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased line such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made as adjusted to reflect inflation.

"(h) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

"(i) Nothing in this section or section 10911 of this title shall be construed as affecting any obligation imposed or remedy available under subchapter I of chapter 111 of this title.

"§ 10911. Filing and procedure for acquiring railroad lines

"(a) A financially responsible person proposing to purchase or otherwise acquire a railroad line under section 10910 of this title shall, at least 30 days prior to filing an application under this section, notify the Commission, the rail carrier owning such line, and other interested parties that such person intends to file such application.

"(b) A financially responsible person proposing to purchase or otherwise acquire a railroad line under section 10910 of this title shall file an application with the Commission in accordance with this section. Such application shall include the following information:

"(1) The name and address of the person proposing to operate the line and, unless such operator is an existing rail carrier—

"(A) its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its formation;

"(B) the names and addresses of its officers and directors and a statement indicating any present affiliation each may have with a rail carrier; and

"(C) Sufficient information to establish its financial responsibility.

"(2) The exact dates of the period of operation which have been agreed upon by the operator and the financially responsible person that owns the line (including a copy of any written agreement between such parties).

"(3) A description of the transportation to be provided, including, where applicable, a description of—

"(A) the line over which transportation is to be provided;

"(B) all interline conections, including the names of the connecting railroads;

"(C) the nature and extent of all liability insurance coverage, including binder or policy number and name of insurer; and

"(D) any preconditions which shippers must meet to receive service.

"(4) The name and address of any person subsidizing the operation of transportation over the line.

"(5) Sufficient information to establish the financial responsibility of any person proposing to subsidize such operation, and, if such person is a State, information establishing that it has authority to enter into the agreement to provide such subsidy.

"(c) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, the rail carrier owning such line shall promptly provide to such person—

"(1) the constitutional minimum purchase price for the line;

"(2) an estimate of the amount of funding necessary each year to keep the line in operation;

"(3) the rail carrier's most recent reports on the physical condition of the line; and

"(4) any other information that the Commission considers necessary to allow a potential offeror to calculate the constitutional minimum purchase price.

"(d)(1) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, such person shall also file a notice of intent to acquire, which shall include—

"(A) an accurate and understandable summary of such person's application and the reasons for proposing to acquire the line;

"(B) a statement indicating that any interested party is entitled to recommend to the Commission that it approve, deny, or take other action with respect to such application; and

"(C) a statement that other interested parties may also propose to acquire the line.

"(2) A financially responsible person that files an application to acquire a railroad line under section 10910 of this title shall—

"(A) send by certified mail a copy of the notice of intent to the chief executive officer of each State that would be directly affected by the proposed acquisition;

"(B) post a copy of the notice in each terminal and station on each portion of the line proposed to be acquired;

"(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each portion of such line is located;

"(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Commission) of the line during the 12 months preceding the filing of the application; and

"(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A) through (D) of this paragraph have been satisfied, and certifying that clauses (A) through (D) have been satisfied within the most recent 30 days prior to the date application is filed.

"(e)(1) Within 30 days after an application to acquire a line is filed under this section (other than a line described in section 10910(a)(1)(A)(i) of this title), any interested party may file with the Commission a protest of the sale of such line.

"(2) If protest is not filed within the 30-day period described in paragraph (1) of this subsection, and the Commission determines—

"(A) that, under section 10910(b) of this title, service over the line to be acquired is inadequate; and

"(B) that the application has been filed in accordance with this section and the financially responsible person filing the application will continue to provide rail transportation over such line,

the Commission shall, within 45 days after the date such application is filed, issue a certificate permitting the applicant to acquire the line.

"(2)(A) If a protest is filed within 30 days after the date an application to acquire a line is filed, the Commission shall, within 45 days after the date such application is filed, determine whether an investigation is needed to assist in determining the appropriate disposition to make of such application.

"(B) If the Commission determines that an investigation is not needed, the Commission shall, within 75 days after the date the application is filed, determine whether it is able to make the findings set forth in paragraph (1) of this subsection. If the Commission makes such findings, it shall, within 90 days after the date the application is filed, issue a certificate permitting the applicant to acquire such line within 120 days after such date.

"(C) If the Commission determines that an investigation is needed, it shall complete the investigation within 135 days after the date the application is filed, and render an initial decision within 165 days after such date.

"(D) The initial decision of the Commission under subparagraph (C) of this paragraph shall, at the end of the 30-day period beginning on the date it is rendered, become the final decision of the Commission, unless during such period the Commission decides to hear appeals. If an initial decision is appealed and considered by the Commission, the Commission shall render a final decision within 255 days after the date the application was filed.

"(C) Whenever the Commission renders a final decision making the findings set forth in paragraph (1) of this subsection, the Commission shall, within 15 days after the date of such final decision, issue a certificate permitting the applicant to acquire the line within 75 days after such date.

"(f) The Commission shall give preference to any application filed by a shipper under this section to acquire a railroad line under section 10910 of this title.

"(g) Section 10505 of this title does not apply to transportation provided over a line of railroad acquired under this section and section 10910 of this title. The Commission shall not construe the issuance of a certificate under this section as grounds for granting an exemption under such section 10505.".

(c) The section analysis of chapter 109 of title 49, United States Code, is amended by adding immediately after the item relating to section 10909 the following new items:

10910. Railroad development.
10911. Filing and procedure for acquiring railroad lines.

Page 173, immediately before the period on line 7, insert the following: ", except that no such funds shall be authorized for appropriations for the purchase or rehabilitation of a line of railroad unless such purchase or rehabilitation is consistent with the rail plan (as defined under section 5 of the Department of Transportation Act) of the State in which such line is located".

Page 173, after line 16, insert the following new section:

GOVERNMENT INCLUSION

SEC. 506. (a) Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this Act, is further amended by adding at the end thereof the following new section:

"GOVERNMENT INCLUSION

"SEC. 520. The Secretary of Transportation, in administering the provisions of this title and the Department of Transportation Act, may allocate financial assistance provided under section 511 and section 518 of this title and section 5(f)-(p) of the Department of Transportation Act to Government entities or private entities if the Secretary finds that—

"(1) rail shippers would be denied rail transportation over a rail line but for such assistance; or

"(2) service provided by a private rail carrier on a rail line is inadequate to or for a majority of rail shippers.".

Redesignate the following section accordingly.

Page 174, in the matter between lines 17 and 18, strike out the closing quotation marks and the following period after "appropriations" and insert below the item relating to section 519 the following new item:

"SEC. 520. GOVERNMENT INCLUSION.".

Page 98, after the item relating to section 505, insert:

Sec. 506. Government inclusion.

Redesignate the following item accordingly.

Mr. MADIGAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. MADIGAN. Mr. Chairman, I rise in support of my feeder line amendment.

The branch lines in America today are in a state of perpetual decline. As existing lines continue to deteriorate, shippers either move of find alternative transportation modes. Once a line deteriorates, it is unlikely that good service will ever be resumed. Each year more and more of these transportation arteries are abandoned.

Under existing law, States may offer financial assistance to lines scheduled for abandonment. However, there is no requirement that the rail carrier must accept a reasonable offer of financial assistance to continue the service. Furthermore, if a State or shipper wants to insure good service by purchasing the line for rail purposes, the rail carrier is under no obligation to sell the line.

My amendment addresses the problems of deteriorating service on branch lines in several ways.

First, it provides a mechanism where a rail carrier must turn over a feeder line to a Government entity, short-line railroad, or a shipper group, for the constitutional minimum amount, if the line is scheduled for abandonment or if service upon a line is inadequate as determined by the Commission.

Second, it gives shippers the power to acquire the branch lines prior to the total deterioration of the service on such line.

Third, it provides incentives for the creation of short lines by giving them a special status under the act.

Fourth, short-line railroads may require connecting carriers to enter into compensatory joint rates. This means that all railroads participating in the joint rate shall at least recover their costs of providing that service.

The Interstate Commerce Commission has, by regulation, already exempted lines approved for abandonment by the Commission or a bankruptcy court from many Commission regulations if States provide financial assistance to these lines. My amendment extends certain exemptions to the person acquiring a line. Only exemptions authorized in the section may be granted. Moreover, my amendment will give preference to feeder lines proposed by shippers who are financially responsible and have applications in competition with governmental agencies.

This amendment, along with the authorization in the bill for financial assistance to feeder lines, will go a long way toward improving the deteriorating branch lines in America today.

I urge the adoption of this amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the chairman of the subcommittee, the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. Chairman, this provision is one of the really truly innovative new programs that is being incorporated into this legislation. I think it addresses the concerns that some have expressed with regard to the abandonments, and I think it is a very fine amendment. I am happy to support it.

Mr. MADIGAN. I thank the gentleman for his comments.

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the cosponsor of the amendment, the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of this amendment to section 502 of the Rail Act. Several months ago, upon reviewing the bill as reported from committee, I noticed a particular provision that would permit the de facto abandonment of rail lines without certificates of public convenience and necessity from the Interstate Commerce Commission.

Such de facto abandonments could be triggered by a railroad's unilateral decision to impose a surcharge on a line as permitted under section 301 of the bill.

In response to this problem, I had prepared an amendment which would strike that language in section 502 which I deemed offensive. And to help illustrate the problem to our colleagues, I obtained a map from the Department of Transportation that indicated those lines which could, without my amendment, become eligible for abandonment. In discussions and correspondence, I brought the problem to the attention of the White House, DOT, and the Committee on Interstate and Foreign Commerce.

As reported from committee, those rail lines directly serving the ports of Los Angeles and Long Beach, and nearly all lines serving other ports in California and the Nation, could have been eligible for de facto abandonment.

So, I am pleased that our able colleague from Illinois (Mr. MADIGAN) is introducing this amendment today. The amendment before us eliminates the de facto abandonment provision while maintaining other provisions from section 502 which the committee finds necessary.

De facto abandonment should be eliminated from the Rail Act. I, again, congratulate the gentleman from Illinois for introducing this amendment, and am pleased to sponsor and support its passage.

I recommend its adoption to all our colleagues.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for his assistance throughout this process, especially with regard to this amendment.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I want to compliment the gentleman for offering this amendment. I had intended to offer an amendment striking section 502, but I recognize that this amendment is superior to that approach. I particularly want to compliment the gentleman from California (Mr. ANDERSON) for leading in this fight.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MADIGAN) has expired.

(On request of Mr. ALBOSTA and by unanimous consent, Mr. MADIGAN was allowed to proceed for 1 additional minute.)

Mr. ALBOSTA. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Michigan.

Mr. ALBOSTA. Mr. Chairman, I, too, would like to compliment the gentleman from Illinois (Mr. MADIGAN). I think I can see some of the problems that I had with short-line railroads might be solved with the gentleman's amendment, or at least it certainly will help. I want to commend the gentleman. I think it is a real addition to this bill.

Mr. MADIGAN. I want to thank the gentleman from Michigan for his kind remarks.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. MADIGAN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WILLIAMS OF MONTANA

Mr. WILLIAMS of Montana. Mr. Chairman, I offer an amendment.

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The Clerk read as follows:

Amendment offered by Mr. WILLIAMS of Montana: Page 173, after line 9, insert the following new section:

TRANSACTION ASSISTANCE

SEC. 505. Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended by adding at the end thereof the following new paragraphs:

"(5) Financial assistance made available under paragraph (1)(B) of this subsection may be used to purchase for purposes of rail banking, properties of the Milwaukee Railroad located in the State of Montana with respect to which an interest in future rail common carrier operations has been evidenced.

"(6) Applications for rail banking shall be treated equally with other applications for transaction assistance."

Redesignate the following sections accordingly.

Page 98, immediately after the item in the table of contents relating to section 504, insert the following new item:

Sec. 505. Transaction assistance.

Redesignate the following sections accordingly.

Mr. WILLIAMS of Montana (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Montana?

There was no objection.

Mr. WILLIAMS of Montana. Mr. Chairman, over the past year and a half there have been two major efforts to maintain rail service over the Milwaukee System in Montana. While neither has succeeded, we intend to continue the effort. The loss of Milwaukee has left Montana at the mercy of a single rail carrier.

Because of the widespread concern about the effects of deregulation in Montana, this bill is an especially appropriate vehicle for my amendment, to help guarantee that competitive rail service may one day be reestablished in Montana.

The fiscal year 1980 supplemental appropriations bill contained $15 million of 4R section 505 funds for acquisition of Milwaukee lines. The Staggers-Rahall-Madigan substitute authorizes use of the $15 million. My amendment simply broadens that authorization so that these funds can also be used for railbanking purposes.

It has become apparent in these past months that nearly everyone, the State of Montana, New Milwaukee Lines and even the Milwaukee Road itself agree on one point—that someday a profitable, transcontinental railroad can be operated over the Milwaukee lines. The Milwaukee Road's own Booz, Allen, and Hamilton analysis of eight system configurations identified the Louisville-Transcontinental alternate as having not only the highest potential long-term net return on investment (NROI) but the second highest short-term NROI as well. The Milwaukee lines span a growing region whose abundant resources of food, timber, and particularly coal are in increasing demand worldwide. The State of Montana is fully committed to railbanking these lines if adequate funds are available. According to estimates by the Montana Department of Agriculture, a combination of the funds in this legislation and State funds would be adequate to railbank the Montana portion of the Milwaukee main line.

I urge the adoption of my amendment as a prudent, sound decision to help preserve this transportation corridor that in the not too distant future may once again become a vital link in our Nation's transportation network.

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Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Montana. I yield to the gentleman from New Jersey.

Mr. FLORIO. We have had an opportunity to review the gentleman's amendment. The gentleman's amendment is discretionary with regard to broadening the scope of the funds. Accordingly, I have no difficulty supporting it.

Mr. WILLIAMS of Montana. I appreciate the gentleman's support.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Montana (Mr. WILLIAMS).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. GRAY

Mr. GRAY. Mr Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GRAY: Page 173, after line 16, insert the following new section:

ELECTRIFICATION LOAN GUARANTEES

SEC. 506. Section 211(l) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(l)) is amended—

(1) by inserting "or any other railroad" immediately after "The Corporation" the first place it appears;

(2) by inserting "or such railroad" immediately after "the Corporation" the second and third places it appears; and

(3) by inserting immediately after the first sentence the following new sentences: "Upon application by the Corporation or any other railroad, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of such Act, guarantee obligations of the Corporation or such railroad for purposes of making capital improvements to achieve the goals of the national energy policy. In guaranteeing obligations pursuant to the preceding sentence, the Secretary may waive the requirements of section 511(g) of such Act."

Redesignate the following section accordingly.

Page 98, immediately below the item in the table of contents relating to section 506, insert the following new item:

Sec. 506. Electrification loan guarantees.

Redesignate the following item in the table of contents accordingly.

Mr. GRAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GRAY. Mr. Chairman, under the 3-R Act, the Regional Rail Reorganization Act, $200 million of loan guarantees were made available to Conrail for electrification of Conrail lines. It has become clear that it is not economical for Conrail to use those funds for electrification.

This amendment would achieve the same purpose as that intended by the original authorization of loan funds. It would help to achieve the goals of our national energy policy by reducing dependency on oil and encouraging the use of coal.

The amendment, which is also cosponsored by my colleague from Pennsylvania (Mr. LEDERER), would allow the Secretary to guarantee loans to Conrail for capital improvement which would further national energy policy. We are all aware that we have vast coal deposits in the country. Even in the eastern part of the country, in the State of Pennsylvania, we have large reserves. Yet, we need a transportation system to move the coal and facilities to store it. We are improving our coal mining capacity in the East, and we must continue to improve our ability to transport and export coal. This amendment will give the Secretary of Transportation the authority to guarantee loans to Conrail and other carriers for the development of needed facilities and other capital improvements.

I would also point out that these are loan guarantees, not grants. These projects have the potential to earn significant revenues for all involved, earn a return more than sufficient to justify the loan.

The loan funds are made available at near prevailing rates, so the Federal Government is not subsidizing these projects. It is simply insuring that capital will be made available to undertake the projects.

We have a great coal reserve, not only in the eastern part of this country, but elsewhere. We must begin to use them. Energy independence can only be achieved if we use the resources we have.

In addition, if electrification projects are feasible, not only on Conrail, but on other carriers, this amendment would still allow other carriers and Conrail access to loan guarantees.

I urge support of the amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. GRAY. I yield to the gentleman from New Jersey.

Mr. FLORIO. I am in support of this amendment. I think it is a very important amendment and would urge the body to support the amendment as well.

● Mr. LEDERER. Mr. Chairman, I rise in support of the amendment.

Under the 3R Act (the Regional Rail Reorganization Act), $200 million of loan guarantees were made available to Conrail for the electrification of Conrail lines. At the time of this original legislation, it was believed that electrification was an economically feasible way to move large amounts of rail cargo. However, this has not been proven to have been a correct assessment. The expense of electrification of rail lines is now too expensive except in the case of passenger rail lines, as along the Northeast corridor.

The amendment I have offered would achieve the purpose intended by the Original 3R authorization of guaranteed loan funds. This amendment would help to achieve the goals of our national energy policy by allowing Conrail and other railroads to apply for the guaranteed loan funds for capital improvements. And these improvements would further our national energy policy and help to reduce our dependence on oil by encouraging the mining and transportation of our coal from our Western States.

Even in the eastern part of the country, in my own State of Pennsylvania, we have vast coal resources. Yet, we need a transportation system to move that coal, and facilities to store it.

We are improving our coal mining capacity in the East, and we must continue to improve our ability to transport and export coal. This amendment will give the Secretary of Transportation the authority to guarantee loans to Conrail for the development of needed facilities and other capital improvements.

The States, cities, and ports involved can join with Conrail to create a transportation system that is capable of handling the coal which we mine. The city of Philadelphia is currently embarked on the development, with Conrail, the port, mining companies, workers, and related industries, of a port storage and shipping facility that would handle coal. This amendment would make such a project, and the future development of Port Richmond, Camden, and other coal storage and handling facilities, easier through the guaranteeing of capital improvement loans.

I would also point out that these are loan guarantees, not grants. These projects have the potential to earn significant revenues for all involved, and earn a return more than sufficient to justify the loan. The loan funds are made available to near the prevailing rate, so the Federel Government is not subsidizing these projects, it is simply insuring that capital will be available to undertake the projects.

This amendment would make loan guarantee funds available to all railroads, and would allow Conrail to use the funds for any capital improvements which will help achieve the goals of national energy policy. In guaranteeing obligations for such capital improvements, the Secretary may waive the requirements of a section of the 511 loan program, which under the regulations, establishes conditions under which loans will be made. This waiver authority is necessary to insure the loan funds can be used for facilities such as coal loading and storage facilities.

Opponents of this amendment raise three points:

The amendment is likely to help only Camden;

The amendment will jeopardize the opening of a coal facility at Port Richmond, and the amendment will undermine efforts to find financing for the electrification of the Harrisburg-Pittsburgh rail line.

In response to the first point, Camden is not the only facility that will benefit. In fact, all of the coal facility projects being discussed at present were initiated and are supported by Pennsylvania and local business and labor groups, and are located in Pennsylvania, as well as New Jersey.

In response to the second point, we believe that the Port Richmond facility will be constructed, as the total tonnage possible through Camden is considerably less than the potential output of coal from the Pennsylvania coal mining regions. In fact, facilities in addition to Port Richmond will be necessary in order to handle Pennsylvania's future coal production. Inasmuch as financing must be arranged, this amendment will allow for the application of guaranteed loan funds for all these projects.

In response to the third point, we believe that the electrification and energy-related capital improvement projects all have great merit. The largest facility under consideration at the Port of Philadelphia is estimated to cost $80 million, only a part of which would be eligible for financing by Conrail, thus leaving a considerable pool of the $200 million of federally guaranteed loan funds available as a base or cornerstone for an electrification project. The Harrisburg-Pittsburgh electrification project is estimated to cost at least $770 million, only a part of which can come from the $200 million loan pool.

This Pennsylvania amendment only states that the kind of projects eligible to apply for guaranteed loan funds should include energy-related capital improvements, as well as electrification projects. Conrail, and other railroads, must still decide whether to apply for such loan guarantees and the Secretary of Transportation must also decide whether the recommended projects comply with our Nation's energy policy.

We have great coal reserves in the western part of this country, and we must begin to use them. Energy independence can result only if we use the resources we have.

In addition, if electrification projects are feasible, not only on Conrail but on other carriers, this amendment would allow other carriers access to the loan guarantees.

I urge your support of the amendment.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. GRAY).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ALBOSTA

Mr. ALBOSTA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ALBOSTA: Page 166, after line 5 insert the following new section:

RAIL BANK

SEC. 503. (a) Section 10906 of title 49, United States Code, is amended to read as follows:

"§ 10906. Rail banking

"(a) When the Commission finds under section 10903 of this title that the present or future public convenience or necessity requires or permits abandonment or discontinuance of rail properties and such properties are not disposed of under sections 10910 and 10911 of this title, the Secretary shall either (1) enter into appropriate arrangements to acquire property rights, other than fee simple title, with respect to such properties to ensure their future availability for railroad purposes, including, but not limited to, the leasing of the property or the acquisition of easements, or (2) if no arrangements described under clause (1) are feasible, purchase such properties. Any property rights or properties acquired under the preceding sentence shall be included in the Railroad Land Bank established under section 503(b) of the Harley O. Staggers Rail Act of 1980. In the event that sufficient funds are not available in any fiscal year to acquire all such property rights or properties, the Secretary shall determine which property rights or poperties will be acquired for inclusion in the Railroad Land Bank on the basis of the factors set forth in paragraph (3)(A) of such section 503(b). In no event shall the amount paid for the acquisition of such property rights or properties exceed the net liquidation value, as established by the Commission.

"(b) As used in this section and in section 503(b) of the Harley O. Staggers Rail Act of 1980, the term 'rail property' shall not include railroad cars, engines, or other rolling stock or property other than real property, fixtures thereto, and any appurtenant rights.".

(b)(1) The Secretary of Transportation shall, within 90 days after the effective date of this Act, establish within the Department of Transportation a Railroad Land Bank for purposes of holding, preserving, and facilitating the return to service of abandoned rail properties. The Secretary shall include in such Railroad Land Bank all rail properties and property rights acquired under section 10906 of title 49, United States Code (hereinafter in this subsection referred to as "rail properties").

(2) The Secretary shall encourage the use of rail properties included in the Railroad Land Bank established under this subsection to the extent that such use does not substantially impair the future availability of such properties for railroad purposes. Such use shall include, but need not be limited to, bicycle paths, power transmission lines, and forms of mass transportation and communication that do not require removal of substantially sound railroad track. The Secretary may require reasonable fees for the use of such rail properties.

(3) The Secretary shall, at the end of the four-year period beginning on the effective date of this Act and at the end of each subsequent four-year period, submit a report to the Congress containing—

(A) his recommendations with respect to which rail properties acquired for the Railroad Land Bank during the preceding four years should continue to be included in such Bank because—

(i) the benefits afforded by retaining such properties in such Bank are significantly greater than the costs of such retention; or

(ii) the availability of such properties for future rail service is important to energy production and conservation, the national defense, or agricultural production; and

(B) a listing of any rail properties acquired for the Railroad Land Bank during the preceding four years which are not recommended for retention under subparagraph (A).

In making the determination described under subparagraph (A), the Secretary shall take into consideration, to such extent as he determines to be appropriate, the factors used by the States in the development of their rail services plans under section 1654(j) of title 49, United States Code.

(4) If, during the ninety-day period beginning on the date of the submission of any report to the Congress under paragraph (3),

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either House of the Congress passes a resolution—

(A) disapproving any recommendation for retention of rail property made in such report, such property shall be subject to disposition under paragraph (5); or

(B) disapproving any recommendation for the sale of rail property made in such report, such property shall not be subject to disposition under paragraph (5).

(5) (A) After submission of each report to the Congress under paragraph (3), the Secretary shall, after the end of the ninety-day period referred to in paragraph (4), provide for the sale of—

(i) any rail properties which are listed in the report, pursuant to paragraph (3) (B), as properties not recommended for retention in the Railroad Land Bank, unless the recommendation to dispose of such property was disapproved by a resolution of either House of the Congress under paragraph (4); and

(ii) any rail properties recommended for retention in the report, pursuant to paragraph (3) (A), but subject to disposition under this paragraph as the result of a resolution of either House of the Congress under paragraph (4) disapproving of the Secretary's recommendations.

Such property shall, in accordance with any other applicable requirements of law not inconsistent with the provisions of this paragraph and after adequate public notice thereof, be sold by the Secretary to any person submitting an offer to purchase of the highest amount, subject to subparagraph (B).

(B) In disposing of property under this paragraph the Secretary shall give priority to any reasonable offer to purchase submitted by any person who indicates an intention to use such property for the purpose of providing rail service. If more than one person submits an offer to purchase such property for such purpose at an amount determined by the Secretary to be reasonable, the Secretary shall sell the property to the person intending to use the property for rail service who submits such an offer to purchase for an amount higher than any amounts offered by other persons intending to use the property for such purposes. If the case of any sale made under this subparagraph, the property shall be sold subject to the condition that the property shall be used for the purpose of providing rail service during a period of 20 years beginning on the date of the sale of the property under this subparagraph and that before the property may be sold or used for any other purpose during such period, the owner thereof shall first provide the Secretary with the right to purchase such property at its net liquidated value.

(5) There are authorized to be appropriated for fiscal years 1981, 1982, 1983, and 1984 not to exceed $50,000,000 per year for purposes of carrying out the provisions of this subsection and for the acquisition of rail properties under section 10906 of title 49, United States Code.

Mr. ALBOSTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. ALBOSTA. Mr. Chairman, my amendment would create a Federal Railroad Land Bank. This bank would preserve rights-of-way, track, and other real property that would otherwise be abandoned.

This amendment does not change the current process, and it does not change the many improvements in the process contained in the Rail Act we are considering today: It simply adds one final stop before we abandon, forever, rights-of-way that can never be replaced.

My amendment would require the Secretary of Transportation to evaluate lines that are about to be abandoned. The potential costs and benefits of keeping them on hand would be weighed along with their significance for agriculture, energy production and conservation, and the national defense. The Secretary would then acquire whatever rights are necessary to preserve the best real property, not the rolling stock, that the bank can afford. After 4 years we would be able to judge what to keep and what not to keep for the long run based on a study and report by the Secretary to the Congress, and based on the 4 years of experience with the new process provided by this legislation. At that point, the Secretary could sell the properties that are not to be retained, but either House of Congress could veto the sale. Either House could force a sale of unneeded property, as well.

In 1976, a Railroad Land Bank was established, but it was abandoned 2 years later when the States were given a greater role in rail planning. We now give over $80 million a year to the States for rail planning and rehabilitation.

Although States are allowed to bank rail lines, most spend what funds they have to preserve operating lines, and not every State has the authority to purchase these properties.

Now that we are proposing to embark on a major deregulation, it is essential that we not go ahead with mass abandonments when there is no way to protect national interests and future needs.

There are those who say that the Rail Act will not result in increased abandonment. I say to them that if that is so, then they should not be worried about a Railroad Land Bank that will not have to acquire much property in the long run. If only worthless rights-of-way are to be abandoned, then we will not have to pay much to begin with, and we certainly will not have to keep it long. If, on the other hand, there is a value to the Nation now, or in the foreseeable future, in holding that rights-of-way, then we will be very glad we had the means to hold it.

In the meantime, the Secretary will encourage the use of these properties in ways that preserve their character and allow them to be returned to service. Transmission lines for electricity, telephones, and newer technologies can be allowed; bicycle paths, hiking trails, or even occasional rail traffic might be allowed. The fees afforded by some of these uses would help pay for the Railroad Land Bank.

Furthermore, when the decision to dispose of the properties, or return them to service is made, the bank can recover the costs of acquiring them in the first place, so the net costs of the rail bank will be very small.

The cost that is far too high for this country to pay is the cost of building railroads or even acquiring rights-of-way where old lines have been abandoned and built over. Los Angeles once had miles of rail that are now highways—as little as 20 years ago they thought they would never need rail lines, but now that they need rail transportation, they expect that they may have to pay as much as $100 million a mile for subways. This is a more dramatic example than some, but the principle is still the same: We should cross off these tracks with caution, for we may never be able to bring them back, even in an emergency.

The Rail Act is like major surgery; we are allowing railroads to cut off limbs to save the trunk. Yet we could someday have the need and the ability to go back and save those limbs. Why destroy them without at least waiting to see whether we truly need each limb, or whether we can save the health of the American railroad system and bring it back to a point where its arteries are full of life again, and the trunk can support the limbs again?

COSTS OF RAIL LINES

Over the past 10 years, the average number of miles abandoned each year has been about 2,100.

Recent prices for rail lines have varied widely but average at $40,000 per mile.

Therefore, if we paid the market price, and if the number of abandonments did not exceed the average by much, it would cost about $84 million per year to buy up all the abandoned lines each year.

However, the costs will not be quite the same for the Rail Bank:

There probably will be more miles abandoned in the next few years than in the past due to easier abandonment;

But the bank is authorized to pay only "net liquidation value" which is less than fair market value. Therefore, the cost per mile will be less—but we do not know how much less; and

Furthermore, these lines will be less valuable at the moment than the lines that have been purchased recently, so that will make the average cost lower as well.

So, we are not asking for enough money to buy all lines abandoned. We are asking for funds to purchase only a substantial portion of the lines expected to be abandoned if we ask for $50 million a year.

In fact, all the lines that are subject to present or future potential abandonment proceedings total 18,438 miles (October 1979). At the average market price, they would cost a total of $737 million.

That boils down to the fact that we could buy all the track to be abandoned in the country for the price of 10 miles of urban subway. We are asking for only a small part of that.

I am asking the chairman if he has changed his mind. Has the gentleman a position on this particular amendment?

Mr. FLORIO. No. We will ask for time when the gentleman concludes.

Mr. ALBOSTA. I thank the gentleman.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I sympathize with the gentleman's concern about abandonments, but I think we have more than fully addressed that problem in this legislation, as well as in previous legislation. We have a multitude of programs, branch line assistance programs, and a rail banking provision in the Amtrak Act. We have the new programs of the gentleman from Illinois (Mr. MADIGAN) and the gentleman from California (Mr. ANDERSON) dealing with the opportunities to stop inappropriate abandonments.

What the gentleman is saying is that we should direct DOT to acquire all those lines that may be abandoned and he authorizes some $50 million a year for the next 4 years.

I just think the amendment is inappropriate and reluctantly have to oppose it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. ALBOSTA).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ALBOSTA. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 532]

Abdnor
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Butler
Byron
Carr
Carter
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dodd
Donnelly
Dornan
Downey
Drinan
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Jacobs
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Roe
Rosenthal
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

□ 1910

The CHAIRMAN. Three hundred and thirty-nine Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Michigan (Mr. ALBOSTA) for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair will advise Members that 5 minutes will be allowed to record the vote.

The vote was taken by electronic device, and there were—ayes 45, noes 310, answered "present" 1, not voting 76, as follows:

[Roll No. 533]

AYES—45

Abdnor
Albosta
Andrews, N.Dak.
Baldus
Bedell
Blanchard
Bonior
Brodhead
Carr
Clinger
Conyers
Daschle
Davis, Mich.
Dingell
Eckhardt
Erdahl
Ferraro
Ford, Mich.
Gonzalez
Gore
Harkin
Hutchinson
Kastenmeier
Kildee
Kogovsek
Leath, Tex.
Long, Md.
Maguire
Marlenee
Murphy, Pa.
Oberstar
Obey
Roe
Sabo
Simon
Stangeland
Tauke
Traxler
Vento
Volkmer
Weiss
Williams, Mont.
Wirth
Wolpe
Young, Mo.

NOES—310

Akaka
Alexander
Anderson, Calif.
Andrews, N.C.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bailey
Barnard
Barnes
Bauman
Beard, Tenn.
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Boland
Bolling
Boner
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Butler
Byron
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dodd
Donnelly
Dornan
Downey
Drinan
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Findley
Fisher
Florio
Foley
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Goodling
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kemp
Kostmayer
LaFalce
Lagomarsino
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Markey
Marks
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Price
Pritchard
Purcell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Rosenthal

Roth	Spellman	Vanik
Rousselot	Spence	Walgren
Roybal	Stack	Walker
Rudd	Staggers	Wampler
Santini	Stanton	Watkins
Satterfield	Stark	Weaver
Sawyer	Stenholm	White
Schroeder	Stewart	Whitehurst
Schulze	Stockman	Whitley
Sebelius	Stokes	Whittaker
Seiberling	Stratton	Whitten
Sensenbrenner	Studds	Williams, Ohio
Shannon	Stump	Wilson, Tex.
Sharp	Swift	Winn
Shelby	Synnms	Wolff
Shumway	Synar	Wright
Shuster	Taylor	Wyatt
Skelton	Thomas	Wylie
Smith, Iowa	Thompson	Yates
Smith, Nebr.	Trible	Yatron
Snowe	Udall	Young, Fla.
Snyder	Ullman	Zablocki
Solarz	Van Deerlin	
Solomon	Vander Jagt	

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—76

Addabbo	Grassley	Moorhead, Pa.
Ambro	Harsha	Murphy, N.Y.
Anderson, Ill.	Hinson	Myers, Pa.
Atkinson	Holtzman	Nedzi
Beard, R.I.	Hopkins	Nolan
Bingham	Howard	Pepper
Boggs	Ichord	Peyser
Bowen	Ireland	Quayle
Brown, Ohio	Jeffords	Richmond
Burton, Phillip	Jenrette	Roberts
Campbell	Kelly	Rose
Carney	Kindness	Rostenkowski
Chisholm	Kramer	Royer
Cotter	Latta	Russo
D'Amours	Leach, Iowa	Scheuer
Davis, S.C.	Leach, La.	St Germain
Dixon	Lederer	Steed
Dougherty	Lehman	Tauzin
Duncan, Oreg.	Leland	Waxman
Evans, Del.	Lent	Wilson, Bob
Fish	Lott	Wilson, C. H.
Fithian	Lowry	Wydler
Ford, Tenn.	Marriott	Young, Alaska
Garcia	Mathis	Zeferetti
Giaimo	Mattox	
Gilman	Mollohan	

Mr. DICKS and Mr. BONKER changed their votes from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title V? If not, the Clerk will designate title VI.

Title VI reads as follows:

TITLE VI—CONRAIL TITLE V LABOR PROTECTION

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 601. Section 505(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to such employee's compensation, in accordance with the following provisions:

"(1)(A) Effective on the effective date of the Rail Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a maintenance-of-way employee) who has been deprived of employment or adversey affected with respect to such employee's compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the rate described in the preceding sentence, and will be (i) the actual hourly rate for hourly rated employees, (ii) the daily rate divided by 8 for daily rated employees, and (iii) the monthly rate divided by the working days in the claim month, further divided by 8, in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the positions relieved. Extra list employees will be guaranteed the extra list rate.

"(B) In the event a protected employee's position is abolished or such employee is displaced and is thereby required to occupy a position paying an hourly rate that is less than such employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position such employee is occupying and his guaranteed hourly rate for all hours included in the straight time work schedule of such employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(C) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid such employee's guaranteed hourly rate for the number of hours such employee would have worked in the straight time work schedule of such employee's previously held position.

"(D) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified therefrom, the higher rate shall become such employee's protected rate.

"(2) Notwithstanding paragraph (1) of this subsection, effective on the effective date of the Rail Act of 1980, a protected maintenance-of-way employee shall be afforded his average monthly compensation, which is defined as the total compensation received by such employee for service actually performed on a straight-time basis basis (which shall be construed to include vacation and holiday allowances but to exclude monthly compensation guarantees), during the 12 calendar months immediately preceding January 1, 1978, and divided by 12. If a protected employee is deprived of employment or if the employee's straight-time compensation in his current position is less in any month than the employee's average monthly compensation, the employee shall be paid 75 per centum of the difference between his straight-time earnings, if any, and the average monthly compensation, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual straight-time compensation, monthly displacement allowance payments and offsets applicable pursuant to this title is less than the employee's average monthly compensation multiplied by 12, the employee shall receive an additional payment representing the difference. If in the previous calendar year an employee has received displacement allowance payments in excess of his annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(3) Effective on the effective date of the Rail Act of 1980 a protected operating employee (as defined in Interstate Commerce Commission classifications 107 through 128) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be afforded his average monthly compensation computed in accordance with this subsection as in effect prior to such date of enactment, but subject to a maximum amount equal to one-twelfth of the average annual earnings per employee, computed by cumulating the employee earnings reported to the Commission by the Corporation on a monthly basis for calendar year 1977 for the Interstate Commerce Commission classification of operating service in which such employee performed the preponderance of such employee's work in calendar year 1974, increased by applicable general wage increases. If the employee performed no operating service in 1974, the Interstate Commerce Commission classification shall be determined by the preponderance of such employee's operating service in an immediately preceding calendar year. If the average monthly compensation of a protected operating employee exceeds the maximum amount described in the first sentence of this paragraph, the average monthly compensation of the employee will be reduced to such maximum amount for purposes of computing such employee's monthly displacement allowance, if any. If the average monthly compensation of a protected operating employee is less than such maximum amount, the average monthly compensation of the employee will be used to compute such employee's monthly displacement allowance, if any. If a protected employee is deprived of employment, or if the employee is adversely affected with respect to his compensation such that the compensation in such employee's current position is less in any month than the average monthly compensation of the employee or such maximum amount, whichever is less, the employee shall be paid 75 per centum of the difference between such employee's earnings, if any, and the lesser figure, minus any time lost on account of voluntary absences other than vacations. If at the close of the calendar year the sum of the protected employee's annual earnings, monthly displacement allowance payments, and offsets applicable pursuant to this title is less than such employee's average monthly compensation subject to the maximum amount and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the annual payment, if during the calendar year an employee has been forced, assigned to, or has been required to exercise seniority to, a position in an Interstate Commerce Commission classification with a lesser maximum amount than the maximum amount applicable to such employee's 1974 Interstate Commerce Commission classification, such employee shall be paid the difference without credit being taken for compensation earned by virtue of actual working hours in the calendar year in excess of the number of hours paid for in such emoloyee's average monthly compensation multiplied by 12 or such employee's annual 1977 maximum amount, whichever is less. An employee's compensation for purposes of this subsection shall not include savings sharing productivity payments received pursuant to paragraph (t) of the Crew Consist Agreement between the Corporation and the United Transportation Union dated September 8, 1978. If, in the previous calendar year, an employee has received displacement allowance payments in excess of such employee's annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by subsection (g) of this section.

"(4) Effective on the effective date of the Rail Act of 1980 a protected noncontract employee who has been deprived of employment or adversely affected with respect to such employee's compensation shall retain his average monthly compensation and monthly displacement allowance computed in accordance with this subsection as in effect prior to such date of enactment. In the event such noncontract employee exercises or has exercised seniority in a craft or class of operating employees, such employee's entitlement to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be the same as the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised. In the event such noncontract employee exercises or has exercised seniority in a craft or class of nonoperating employees, the entitlement of such employee to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be consistent with the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised, except that the protected rate of pay shall be based on the rate of pay of the position first obtained through the exercise of seniority, rather than the rate of any position held on or prior to September 1, 1979.

"(5) Notwithstanding the preceding provisions of this subsection, employees who, prior to September 1, 1979, accepted transfer to positions requiring a change of residence pursuant to subsection (d) of this section, shall retain their average monthly compensation and monthly displacement allowance computed in accordance with this subsection prior to the effective date of the Rail Act of 1980.

"(6) In determining compensation in a protected employee's current employment, such employee shall be treated as occupying the position producing the highest rate of pay to which such employee's qualifications and seniority entitle the employee under the applicable collective bargaining agreement and which does not require a change in residence. A protected operating employee will be considered to be occupying the position producing the highest rate of pay if the employee occupies a position producing compensation equal to such employee's average monthly compensation, subject to the maximum amount.

"(7) With respect to a protected employee who has been deprived of employment, the monthly displacement allowance shall be reduced by (A) the full amount of any unemployment compensation benefits received by such employee, and (B) an amount equivalent to any outside earnings of such employee.

"(8) A protected employee's average monthly compensation or protected rate of pay shall be adjusted from time to time thereafter to reflect subsequent general wage increases.

"(9) The average monthly compensation or protected rate of pay provided by this section shall in no event exceed $2,500 in any month, except that such amount shall be adjusted to reflect general wage increases subsequent to April 1, 1976.

"(10) A protected employee and his representative shall be furnished with such employee's protected rate of pay, or average monthly compensation and average monthly time paid for, subject to the maximum amount, computed in accordance with the terms of this subsection. Each protected employee who has been deprived of employment or his representative and the employer shall agree upon a procedure by which the employee shall keep the employer currently informed of the unemployment compensation benefits received by such employee and the earnings of such employee in employment other than with such employer.".

DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

SEC. 602. Section 505(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(c)) is amended to read as follows:

"(c) DURATION OF MONTHLY DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall, in the case of a protected employee with 5 or more years of service on the effective date of this Act, continue until the attainment of age 65 by such employee, and shall, in the case of a protected employee who has less than 5 years of service on such date, continue for a period equal to the employee's total prior years of service, except that such monthly displacement allowance—

"(1) shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause;

"(2) shall not be paid with respect to any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to the employee by the exercise of such employee's seniority rights in accordance with the provisions of this section;

"(3) shall not be paid to a protected employee deprived of employment with respect to any period of failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions (but the payment of monthly displacement allowances shall be resumed upon termination of the emergency); and

"(4) shall not be paid with respect to any month that commences after the effective date of the Rail Act of 1980 for which the employee has failed to make a claim for such allowance within 3 full calendar months (unless otherwise agreed upon by the employee or his representative and the employer) after the last day of the month for which such allowance is sought.

The entitlement of an employee to an allowance shall be approved or denied within 150 days (unless otherwise agreed upon by the employee, or his representative, and the employer) after the claim therefor is made.".

TRAINING AND TRANSFER

SEC. 603. (a) Section 505(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 755(d)(4)) is amended by adding at the end thereof the following new paragraph:

"(D) When no bona fide vacancies exist in a marine craft or class on the Corporation's system, or in the craft or class of an employee of Penn Truck Lines, Incorporated, the Corporation may offer such employee comparable employment for which the employee is qualified, or for which the employee can be trained, in another craft or class. The Corporation shall first attempt to locate a comparable position in a seniority district which encompasses the employee's last work location, and if successful, a transfer notice may be tendered pursuant to subparagraph (A) of this paragraph. If no such position exists, the Corporation may tender the employee a transfer notice involving a position elsewhere on the system pursuant to subparagraph (B) of this paragraph. In the event it is necessary to train an employee after such employee's acceptance of a position pursuant to this subsection, such training shall be provided by the Corporation at no cost to the employee.".

(b) Section 505(1)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(1)(1)) is amended by adding at the end thereof the following new sentences: "The Corporation may simultaneously offer a position to not more than 4 protected noncontract employees. The position shall be given to the protected employee accepting transfer whom the Corporation considers to be best qualified for the particular position involved. Other protected employees who have accepted the transfer shall retain their previous status. Employees who have elected a voluntary suspension of employment at their home location in lieu of protective benefits or a severance of employment shall retain the option elected.".

PAYMENT, AUDIT, AND REPORT

SEC. 604. Section 509 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779) is amended to read as follows:

"PAYMENT, AUDIT, AND REPORT

"SEC. 509. (a) PAYMENT.—The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title (including such amounts paid by the employer prior to the effective date of the Rail Act of 1980 and training costs incurred by the Corporation pursuant to section 505(d)(4)(D) of this title), other than provisions with respect to employee pension benefits, not to exceed an aggregate sum of $485,000,000, by the Railroad Retirement Board, upon certification to such Board in such detail as the Board may reasonably require, by the Corporation, the Association (where applicable), replacement operators, and acquiring railroads, of the amounts paid such employees, except that the aggregate amount of reimbursements made by the Board for the payment of monthly displacement allowances in the period after the effective date of the Rail Act of 1980 shall not exceed $180,000,000. There is authorized to be appropriated to the Secretary annually such sums as may be required to meet the obligations payable under this title, not to exceed the aggregate sum of $485,000,000. Upon the exhaustion of such authorization, the Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall retain responsibility for the payment of benefits otherwise reimbursable under this title, but they shall not be reimbursed therefor. There is further authorized to be appropriated to the Secretary such sums as may be necessary to provide for additional administrative expenses to be incurred by the Railroad Retirement Board in the performance of its functions under this section. Appropriations authorized under this section may be allocated by the Secretary to the Railroad Retirement Board.

"(b) AUDIT.—Beginning October 1, 1980, the Association shall conduct a program audit of the payment of benefits pursuant to this title and shall evaluate the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances. Such audits and evaluations shall be conducted in accordance with such rules and regulations as the Association may prescribe. The representatives of the Association shall have access to all books, accounts, records, reports, files, and other papers, things or property belonging to or in use by or in connection with the Corporation, replacement operators, acquiring railroads, or the Railroad Retirement Board which pertain to the benefits provided protected employees pursuant to this title and which are necessary to facilitate such audit and evaluation.

"(c) REPORT.—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on the payment of benefits under this title and the effectiveness of the provisions of this title in improving the Corporation's management

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of certain protected employees in its workforce who are entitled to receive monthly displacement allowances.".

TECHNICAL AMENDMENTS

SEC. 605. (a) The item relating to section 509 in the table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C 701 et seq.) is amended to read as follows:

"SEC. 509. Payment, audit, and report.".

(b) Section 102(16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (16)) is amended to read as follows:

"(16) 'Secretary' means the Secretary of Transportation or the designated representative of the Secretary;".

(c) Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended—

(1) by amending subsection (d)(2) to read as follows:

"(2) three Government members, who shall be the Secretary, the Chairman of the Commission, and the Secretary of the Treasury, acting directly or at any time through their respective designated representatives and, in the case of the Chairman, through the Vice Chairman of the Commission; and";

(2) in the first sentence of subsection (i), by striking out "Deputy Secretaries" and inserting in lieu thereof "designated representatives"; and

(3) by striking out the first sentence of subsection (j)(4).

(d) Section 501 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771) is amended—

(1) in paragraph (6), by inserting immediately after "disability," the following: "failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions,"; and

(2) by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) 'compensation' means earnings in employment subject to the Railroad Retirement Act.".

(e) Section 507 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 777) is amended by inserting ", section 509(b), or section 509(c)" immediately after "section 504(d)".

EFFECT ON OTHER LAWS

SEC. 606. Nothing in this title is intended to affect any law, regulation, court order, or obligation relating to equal employment opportunity.

□ 1920

AMENDMENTS OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FLORIO: Page 175, line 8, strike out "Effective on" and insert in lieu thereof "Effective the first day of the first month commencing after".

Page 177, line 9, strike out "effective on" and insert in lieu thereof "effective the first day of the first month commencing after".

Page 177, strike out lines 12 through 18 and insert in lieu thereof the following: "is defined as the total compensation received by such employee during the 12 months immediately preceding January 1, 1975, divided by his total time paid for during that period and multiplied by 174 or by his average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. If a protected employee is deprived of".

Page 177, strike out lines 22 and 23 and insert in lieu thereof the following: "employee shall be paid the difference between his straight-time earnings, if any, and 80 percent of the".

Page 178, line 14, strike out "Effective on" and insert in lieu thereof "Effective the first day of the first month commencing after".

Page 181, line 11, strike out "Effective on" and insert in lieu thereof "Effective the first day of the first month commencing after".

Page 184, line 8, strike out the closing quotation marks and the following period.

Page 184, after line 8, insert the following new paragraph:

"(11) In the case of a supplemental transaction—

"(A) with respect to an employee described in paragraph (1) of this subsection who was not employed on September 1, 1979, the protected rate of pay of such employee shall be based on the rate of pay of the position held by such employee on the first day of the first month after September 1979 in which such employee was employed;

"(B) with respect to an employee described in paragraph (2) of this subsection who was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of the first 12-month period after January 1, 1974 during which such employee was employed; and

"(C) with respect to an employee described in paragraph (3) of this subsection—

"(i) if such employee was employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of such 12-month period; and

"(ii) if such employee was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employer shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed.

Page 185, immediately before the period on line 25, insert the following: ", except that such 3-month limit shall not apply to any claim which is the subject of or is based upon an arbitration decision issued pursuant to section 507 of this title".

Page 186, strike out lines 1 through 4 and insert in lieu thereof the following: "Unless otherwise agreed upon by the employee or his representative and the employer, the entitlement of an employee to an allowance shall be approved or denied within 150 days after the claim therefor is made if such claim is filed during the 12-month period beginning on the effective date of the Staggers Rail Act of 1980, and within 90 days after the claim therefor is made if such claim is filed after such 12-month period. Any claim not approved or denied at the expiration of the time limits described in the preceding sentence shall be deemed approved.".

Strike out title II of the bill, as inserted by the amendment offered by Mr. Eckhardt, redesignate the following titles accordingly, and make appropriate changes in the table of contents.

Strike out title II of the bill, as inserted amendment offered by Mr. Staggers, redesignate section 332 as section 331, and make appropriate changes in the table of contents.

Page 190, after line 6, insert the following new section:

RAILROAD HIRING

SEC. 605. Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.) is amended by adding at the end thereof the following new section:

"RAILROAD HIRING

"SEC. 510. Any protected employee of the Corporation and any employee of the Corporation who is separated or furloughed from his employment with the Corporation (other than for cause) shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.".

Redesignate sections 605 and 606 as sections 606 and 607, respectively.

Page 190, line 8, insert "(1)" immediately after "(a)".

Page 190, after line 10, insert the following new paragraph:

(2) The table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by inserting immediately after the item relating to section 509 the following new item:

"Sec. 510. Railroad hiring.".

Page 98, insert after the item in the table of contents relating to section 604 the following new item:

Sec. 605. Railroad hiring.

Redesignate the following items in the table of contents for title VI accordingly.

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, could the gentleman from New Jersey tell us what are his plans for the evening so that the rest of us can make our plans? I understand there are six amendments still pending.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I do yield to the gentleman from New Jersey.

Mr. FLORIO. I can tell the gentleman what my understanding is for the proceedings for the rest of the evening. I know of six amendments, all of which are acceptable to the committee. There may be other amendments, but those are the amendments I know of. It is my hope we can proceed and be done within an hour.

Mr. BAUMAN. Further reserving the right to object, Mr. Chairman, I yield to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. Yes.

Mr. LEVITAS. Mr. Chairman, I have filed amendment at the desk relating to a matter in title VIII. I believe I do not know whether the statement of the gentleman from New Jersey, that amendments are acceptable, applies to that amendment as well.

Mr. FLORIO. My remarks did not include the gentleman's amendment to title VIII. Therefore, there would be seven amendments remaining.

Mr. BAUMAN. Further reserving the right to object, it appears to me if you have seven amendments pending, one of which is going to be controversial and a likelihood of rollcalls on amendments, we may be here until 9 or 10 o'clock so the gentleman is saying we will stay and finish the bill tonight?

Mr. FLORIO. It is my understanding the Speaker has suggested that we finish this bill this evening. I will be happy to go forward as rapidly as possible in order that we may conclude as soon as possible.

Mr. BAUMAN. I thank the gentleman and I withdraw my reservation of objection.

Mr. BREAUX. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I will be happy to yield if I may first ask the chairman to state the parliamentary situation.

The CHAIRMAN. The amendments are considered as read and will be considered en bloc.

Mr. FLORIO. I will be happy to yield to the gentleman from Louisiana.

Mr. BREAUX. Mr. Chairman, I thank the gentleman for yielding. I ask the gentleman to yield for the purpose of entering into a colloquy with the gentleman from California (Mr. ANDERSON).

The committee has already adopted what seems to be a related amendment in the Staggers-Rahall compromise to the one which you offered to title I of the bill. In explaining your first amendment, you referred to a report by the Subcommittee on Transportation and Commerce regarding the constitutional obligations of rail carriers having the power of eminent domain. In fact, several pages of that Committee Print 95–56 appear in the RECORD of July 2 at pages 18281–18283. Mr. Chairman, those pages indicate opposition to coal pipelines and a view that contracts for the carriage of coal and common carrier status are somehow mutually exclusive. Does the gentleman from California cite the provision in support of those contentions?

Mr. ANDERSON of California. To answer the gentleman, Mr. Chairman, I must state that I did not cite that report of the Subcommittee on Transportation and Commerce either in opposition to eminent domain powers for coal pipelines or in support of the contention that common carriers cannot employ ratemaking with contractual features. I cited that report for the effective manner in which it sets forth the constitutional dimensions of common carrier obligations and the Supreme Court decisions, in particular. I certainly do not agree with its characterization of coal pipeline transportation.

No court has ever arrived at those conclusions regarding some inherent conflict between common carrier status and contract ratemaking. In all these matters, I believe the Congress must maintain the common carrier obligation, including the prohibition against unreasonable discrimination. Furthermore, I believe that a common carrier railroad may and should offer contracts for transportation services. Section 10741 of title 49 does not prohibit contract ratemaking and neither does the constitutionally imposed common carrier obligations.

Simply stated, contract ratemaking, like all common carrier ratemaking, must not unreasonably discriminate. However, in no way does contract ratemaking inherently violate the Interstate Commerce Act—any arcane reading of this body of law to the contrary notwithstanding. The Interstate Commerce Commission permits contract ratemaking by railroads today and section 10741 is the law of the land today.

Mr. BREAUX. Mr. Chairman, I thank the gentleman for his explanation, and I thank the chairman of the subcommittee for yielding.

Mr. MADIGAN. Mr. Chairman, will the gentleman from New Jersey yield?

Mr. FLORIO. I will be happy to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, we have had an opportunity to review the amendments on this side. They are technical amendments, and we would urge that the committee support the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New Jersey (Mr. FLORIO).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. MATSUI

Mr. MATSUI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MATSUI: Page 190, after line 18, insert the following new paragraph:

(1) in subsection (d), by striking out "11 individuals" and inserting in lieu thereof "12 individuals";

Page 190, line 19, strike out "(1)" and insert in lieu thereof "(2)".

Page 190, line 21, strike out "three" and insert in lieu thereof "four".

Page 190, line 22, strike out "and".

Page 190, line 23, immediately after "Treasury," insert "and the Attorney General of the United States,".

Page 191, line 3, strike out "(2)" and insert in lieu thereof "(3)".

Page 191, line 6, strike out "(3)" and insert in lieu thereof "(4)".

Page 192, after line 4, insert the following:

(f) The first sentence of section 403(d)(1) of the Rail Passenger Service Act (45 U.S.C. 563(d)(1)) is amended by striking out "if such State" and all that follows through "service".

USRA AUTHORIZATION OF APPROPRIATIONS

SEC. 606. Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed $28,500,000. Sum appropriated under this subsection are authorized to remain available until expended.".

Redesignate the following section accordingly.

Page 98, immediately below the item in the table of contents relating to section 605, insert the following new item:

Sec. 606. USRA authorization of appropriations.

Redesignate the following item in the table of contents for title VI accordingly.

Mr. MATSUI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MATSUI. Mr. Chairman, this amendment authorizes $28.5 million for the expenses of the U.S. Railway Association for fiscal year 1981.

The amendment contains an authorization identical to the substance of H.R. 7320, which was reported out of the Commerce Committee unanimously. The amendment is germane to this bill, and will allow the House to dispense with dealing with this as a separate bill.

The amendment also includes the Attorney General among the USRA Board of Directors, and makes a minor change concerning commuter rail.

All Members are aware of the extraordinarily tight schedule facing us for the remainder of the year. Instead of considering this as a separate piece of legislation, I believe it is in the best interests of all to consider it here.

The amount authorized is the same as last year and $300,000 less than that requested by the President in his budget.

I urge the adoption of the amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. MATSUI. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, the gentleman's suggestion as to how to proceed in this matter is appropriate. We are expediting the calendar of the House and I, therefore, support the bill.

Mr. MADIGAN. Will the gentleman yield, Mr. Chairman?

Mr. MATSUI. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I thank the gentleman for yielding and I urge that the committee accept the man from California (Mr. MATSUI).

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MATSUI).

The amendment was agreed to.

The CHAIRMAN. The Clerk will designate title VII.

Title VII reads as follows:

TITLE VII—SUPPLEMENTAL TRANSACTIONS

SUPPLEMENTAL TRANSACTIONS

SEC. 701. (a)(1) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended to read as follows:

"SUPPLEMENTAL TRANSACTIONS

"SEC. 305. (a) PROPOSALS.—(1) If the Secretary determines upon his own initiative or upon the request of a State, a railroad, a shipper, or a group of shippers, that further restructuring of rail properties in the region through transactions supplemental to the final system plan would promote the establishment and retention of financially self-sustaining rail service in the region, the Secretary shall develop a proposal or proposals for such supplemental transactions as are necessary.

"(2) The Secretary shall develop a proposal under this section only if he determines that—

"(A) restructuring of rail properties in the region through a supplemental transaction or transactions would preserve and enhance rail service in the region;

"(B) any proposed transferee rail carrier or carriers under such a transaction or transactions would be financially and operationally capable of assuming the operations and serv-

ice obligations of the transferor carrier on a financially self-sustaining basis; and

"(C) if the proposed transaction involves the transfer of property of the Corporation, such transaction will either—

"(i) not have any adverse effect on the Corporation's financial and operating performance; or

"(ii) result in a net financial benefit to the Federal Government, if such transaction is to be consummated prior to—

"(I) any redemption of certificates of value or the determination of the base value of such certificates of value pursuant to section 306(c) of this Act; or

"(II) the consummation of any agreement, between the transferors of properties transferred to the Corporation pursuant to section 303(b) of this Act and the United States, with respect to the obligations of the United States to such transferors arising out of such transfers.

The determination described in subparagraph (C) of this paragraph shall not be required if the Secretary finds that the insolvency of the Corporation is imminent.

"(3) Any commitment by the Finance Committee to forgive, cancel, or return to the Corporation pursuant to section 216(e) of this Act securities or obligations of the Corporation held by the Association may be considered by the Secretary in determining, under paragraph (2)(C) of this subsection, whether a proposed transfer will have an adverse effect on the Corporation's financial or operating performance or result in a net financial benefit to the Federal Government. For purposes of this paragraph, any securities or obligations of the Corporation that are forgiven, canceled, or returned shall be valued at their present value at the time of the transaction involved.

"(4) Each proposal developed by the Secretary under this section shall state and describe any transactions proposed, the rail properties involved, the parties to such transactions, the financial and other terms of such transactions, the manner in which such terms are consistent with this section, and such other information incidental thereto as the Secretary may prescribe. Each proposal shall be submitted to the Association and the Commission, and the proposal, with a summary, shall be published in the Federal Register.

"(5) If the Secretary fails to develop a proposal for a transaction under this section in response to the request of a State, the Secretary shall, within 90 days after the request is made, publish in the Federal Register the reasons why the Secretary finds such proposal should not be developed

"(6)(A) Each proposed supplemental transaction requiring the transfer of properties from the Corporation shall provide that the Corporation shall receive as compensation—

"(i) not less than the minimum value of such properties which the Corporation would be entitled to receive, at the time such transaction, under constitutional principles, taking into account the common carrier obligation under subtitle IV of title 49, United States Code; or

"(ii) if such transaction is to be consummated prior to an event described in paragraph (2)(C)(i) of this subsection, not less than the difference between the value of the net financial benefit of such transaction to the Federal Government and the minimum value of such properties which the Corporation would be entitled to receive, at the time of such transaction, under constitutional principles, taking into account the common carrier obligation under subtitle IV of title 49, United States Code.

"(B) Any forgiveness, cancellation, or return of securities or obligations of the Corporation pursuant to paragraph (3) of this subsection shall be considered as compensation for purposes of this paragraph.

"(b) EVALUATION BY THE ASSOCIATION.—The Association shall analyze each proposal containing one or more supplemental transactions developed under subsection (a) of this section, and shall, within 120 days after transmittal of the proposal to the Association, submit its comments to the Secretary. Such comments shall include the Association's analysis of the effects of the proposal on the Corporation. The Association shall afford the Corporation the opportunity to comment, and shall give due consideration to its comments.

"(c) REVIEW BY THE COMMISSION.—Within 120 days after receipt of a proposal from the Secretary, the Commission shall submit its comments to the Secretary with respect to the proposal. The Commission shall afford interested parties the opportunity to comment, and shall include in its comments to the Secretary a summary of the comments made by the interested parties. The Commission may recommend such conditions with respect to such supplemental transaction as it considers to be in the public interest.

"(d) DETERMINATION BY THE SECRETARY.—(1) Within 90 days after receipts of comments from the Association and the Commission, the Secretary may make such modifications as he considers necessary after reviewing the comments of the Association and the Commission, and shall publish the proposal, with any modifications, in the Federal Register.

"(2) If any proposed transferor (other than the Corporation) or transferee fails to notify the Secretary before the Secretary petitions the special court that any proposal supplemental transaction requiring the transfer of any property from such transferor or to such transferee is acceptable to it, no further administrative or judicial proceeding shall be conducted with respect to such proposed supplemental transaction.

"(3) The Secretary shall determine, within 30 days after making any modifications in a proposal or within 120 days after receipt of comments from the Association and the Commission, whether to petition the special court for the approval of such proposal. If the Secretary determines not to petition the special court, he shall publish his reasons therefor in the Federal Register.

"(e) SPECIAL COURT PROCEEDINGS.—(1)(A) Within 180 days after the filing of a petition under subsection (d) of this section, the special court shall decide, after a hearing (i) whether the proposed supplemental transaction is consistent with subsection (a)(2) of this section, and (ii) whether the compensation to be received complies with subsection (a)(6) of this section.

"(B) If the special court determines that a proposed supplemental transaction is consistent with subsection (a)(2) of this section and complies with subsection (a)(6) of this section, the court shall issue such order as may be necessary to direct the Corporation to consummate such transaction.

"(C) If the special court determines that the compensation to be received in a proposed supplemental transaction does not comply with subsection (a)(6) of this section, it shall file an opinion stating its conclusion and the reasons therefor. In such event the Secretary may, within 120 days after the filing of such opinion, certify to the special court that the terms and conditions of the proposal have been modified consistent with the opinion of the court and are acceptable to each proposed transferor (other than the Corporation) or transferee, and may petition the special court for reconsideration of the proposal as so modified. Within 90 days after the filing of such petition, the special court shall decide, after a hearing, whether the proposal as modified by the certification complies with subsection (a)(6) of this section.

"(2) The Corporation is authorized to petition the special court and to be represented with respect to any proposed supplemental transaction contained in any proposal developed by the Secretary which involves the properties of the Corporation.

"(3) In proceedings under this subsection, the special court is authorized to exercise the powers of a judge of a United States district court with respect to such proceedings and such powers shall include those of a reorganization court.

"(4) Any proposal or evaluation by the Secretary, the Association, or the Commission shall not be reviewable in any court except the special court in accordance with the provisions of this section. The supplemental transactions shall not be restrained or enjoined by any court nor shall they be otherwise reviewable by any court other than by the special court to the extent provided in this section.

"(5) Notwithstanding any other provision of this Act, no findings, determinations, or proceedings shall be required with respect to any proposal for supplemental transactions other than as expressly set forth in this section.

"(6) A final order or judgment of the special court entering or denying an order pursuant to this subsection shall be reviewed in the same manner as provided in section 209(e)(3) of this Act.

"(f) SUBSEQUENT TRANSFERS.—Whenever a rail carrier that acquires property of the Corporation pursuant to a transaction under this section proposes, within 5 years after the date of such transaction, to sell such rail properties, the Federal Government shall have the right of first refusal to purchase such properties at a price equal to the compensation received by the Corporation in such transaction, as adjusted to reflect inflation.

"(g) EXPEDITED PROPOSALS.—Within 180 days after the effective date of the Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. The Secretary shall develop such a proposal if he determines that the conditions of subsection (a)(2) of this section can be met with respect to such transaction.".

(2) The item relating to section 305 in the table of contents of the Regional Rail Reorganization Act of 1973 is amended to read as follows:

"Sec. 305. Supplemental transactions.".

(b) Section 102(19) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (19)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation under section 303(b) of this Act,".

(c) The second sentence of section 508(a)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 778(a)(1)) is amended by striking out "purchase agreements pursuant to section 206(d)(4)" and inserting in lieu thereof "supplemental transactions under section 305".

AMENDMENT OFFERED BY MR. DODD

Mr. DODD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DODD: Page 192, strike out line 9 and all that follows through line 5 on page 201 and insert in lieu thereof the following:

TITLE VII—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

SEC. 701. (a) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended by adding at the end thereof the following new subsection:

"(g) EXPEDITED PROPOSALS.—(1) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

"(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

"(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

"(C) the proposed transfer is consistent with the goals set forth in section 206(a)(8) of this Act, the Secretary shall develop such a proposal and may, after providing the Association and the Commission an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

"(2) In complying with the requirements of subsection (d)(7) of this section with respect to the application of the provisions of title V of this Act to supplemental transactions, the parties to an expedited supplemental transaction under this subsection and the representatives of the employees affected thereby shall enter into a new agreement pursuant to section 508 of this Act and shall not be bound by the terms of any agreement executed under such section 508 and in effect on the date of enactment of the Harley O. Staggers Rail Act of 1980.".

(b) Section 102(19) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (19)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation under section 303(b) of this Act,".

Page 98, strike out the items relating to title VII and section 701 and insert in lieu thereof the following new items:

TITLE VII—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

SEC. 701. Expedited supplemental transaction proposals.

Mr. DODD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. DODD. Mr. Chairman, at the outset, I would like to extend my congratulations to my colleague, the gentleman from Connecticut (Mr. MOFFETT) for his assistance on this amendment in the committee. I would also like to thank the chairman of the subcommittee and the ranking minority member for their assistance in working out the language of this amendment.

Briefly, the amendment does two things. It strikes title VII of the committee bill and replaces that with a process that establishes a process which permits the Secretary of Transportation to initiate and consider the feasibility of transferring Conrail property in the States of Connecticut and Rhode Island to another railroad. Since title VII was adopted by the committee there have been serious concerns raised by everyone involved including Conrail, the Department of Transportation, the USRA, and labor organizations.

The major problems are all very complex and involve the constitutional rights of Conrail shareholders, the rights of Conrail as a corporation, the rights of employees of Conrail, and the rights of an acquiring railroad. Despite these problems the committee recognizes the need for a new title VII.

Mr. Chairman, the amendment that I am offering would, as the current provision in title VII, provide "permits the Secretary of Transportation to initiate an expedited supplemental transaction proposal for Connecticut and Rhode Island."

This new transfer process would apply only to the two States of Connecticut and Rhode Island.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. DODD. I will be glad to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, we have had an opportunity to review this amendment. We urge the committee to support the Dodd amendment.

Mr. DODD. Mr. Chairman, I thank the gentleman for his comment.

Mr. Chairman, I would add this is only for a limited period of time. It would run 180 days and no longer than that. The criteria that must be established by the acquiring railroad are rather stringent, including their own financial feasibility among other things.

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Mr. MOFFETT. Mr. Chairman, will the gentleman yield?

Mr. DODD. I yield to my colleague from Connecticut.

Mr. MOFFETT. Mr. Chairman, I congratulate the gentleman on his amendment.

The hour is late and the Members are understandably weary, but this is a very important amendment.

Unlike some areas of the country, we in Connecticut do not have large, successful, private railroads. We are basically in the hands of a bankrupt-bound Conrail, a Conrail that has needed a rather incredible Federal subsidy in the past, and from all projections will need still more if some action is not taken.

We do, however, have a small railroad, the Providence and Worcester, and other regional railroads that have indicated an interest in taking over Conrail lines. Various assurances have been made that these lines will be given a fair chance to make it under the control of these private carriers.

Mr. Chairman, I have more than a little skepticism about the feasibility of running railroads in our area on a strictly profitable basis. We have handicaps that other regions do not have: We have shorter distances between stops. It is difficult for our rail service to be as efficient as in other areas. We are also at a disadvantage whenever a narrow definition of profitability is used to gage the feasibility of various lines. I have faced this in my own district with the Waterbury-to-Torrington line, long in line for Conrail abandonment, and the Berkshire Line, long since abandoned.

It remains to be seen whether the P. & W. or other private lines can provide the kind of service we need. But it is clear that this Congress has grown increasingly impatient with more and more subsidies for Conrail in our region. There is little assurance that funding at appropriate and necessary levels would continue.

So we are really in the position here of being forced to try something new. Deregulation is nearly a reality. We have to face that. This amendment merely gives us a better chance under deregulation to continue service in our area. That is why I offered it in the committee. That is why my colleague (Mr. DODD) offers it here tonight.

Mr. RATCHFORD. Mr. Chairman, will the gentleman yield?

Mr. DODD. I yield to my colleague.

Mr. RATCHFORD. Mr. Chairman, it is a pleasure to rise today to support the Dodd amendment to the Rail Act of 1980. I am pleased to note that the Dodd amendment has a wide range of support from both the Connecticut and Rhode Island delegations. This amendment will insure that any transfer of lines will be made to rail companies that are financially, and operationally, capable of assuming, and most importantly, continuing existing freight services in Connecticut and Rhode Island. In addition, the Dodd amendment makes sure that the transfer of these rail lines in Connecticut and Rhode Island will provide for a financially self-sustaining rail service.

I need not remind my colleagues from the Northeast region of the importance of freight transportation services, which are presently provided by Conrail. The Dodd amendment to the Rail Act of 1980 will assure the businesses in these States that they will not lose a vital freight transportation mode. I welcome the incorporation of the Dodd amendment in the Rail Act which will permit the purchase, and operation, of the rail freight system in Connecticut and Rhode Island.

In the last 20 years, New England businesses have been deserted by numerous rail companies that could not provide services to freight shippers. This unfortunate trend may continue because Conrail may have no alternative but to abandon a number of rail lines in Connecticut and Rhode Island. Only the adoption of the Dodd amendment will assure the operation of a freight system in New England which has a direct link to markets throughout the Nation.

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I am pleased to know that the small companies in my district, which are dependent on freight transportation, will have an alternative to the disruption of rail services. A study recently sponsored by the Federal Railroad Administration, and the U.S. Railway Association, entitled "Alternatives to Conrail" indicated that an independent rail company could provide the same services to this region that Conrail does today. The Dodd amendment will assure the sound transfer of Conrail's lines to an independent rail company that will not abandon small shippers.

The Providence & Worcester Rail Co. (P. & W.) has indicated a willingness to purchase and operate Conrail lines in Connecticut and Rhode Island for a period of at least 5 years without any Federal or State subsidies. The P. & W. has already proven its economic strength, purchasing several bankrupt rail lines, and securing an increasing share of the region's rail market after only seven years of independent operation. This company has pledged to provide services to any users currently threatened with discontinuation of rail services. Today, the P. & W. owns all its own facilities and trackage and remains debt free. I applaud P. & W.'s initiative in this important area, and welcome its interest in purchasing the rail lines in Connecticut and Rhode Island.

I am most pleased to note that the approval of the Dodd amendment to the Rail Act of 1980 will assure the employees of Conrail in Connecticut and Rhode Island that their jobs will not be lost. Congressman DODD's amendment assures Conrail's employees that their labor contracts will reach full agreement before the transfer of any rail lines. The inclusion of this important section of the Dodd amendment will make sure that employees of Conrail will not have to go to the unemployment lines because of labor disputes.

Today, the House of Representatives has the opportunity to enact the Rail Act of 1980, and thus remove the restrictions that have kept this industry from becoming profitable. If the House fails to follow the initiative of the Senate and pass this important bill, I fear that this country will be in jeopardy of losing freight services.

The Rail Act of 1980 is an important step in assuring the continued viability of our rail transportation system: A system that offers businesses, and consumers, a maximum of efficiency and dependability at a minimum cost. The Rail Act of 1980 is crucial to the survival of key industries in this country which have grown as the railroads have grown, and which will be threatened by the continued inhibitions to growth overregulation have imposed on the railroads.

It is in this context, Mr. Chairman, that I join my colleagues and urge the passage of the Rail Act of 1980. This Nation must have a fully utilized freight transportation system. We cannot abandon a system that was the backbone of our economy for more than a century. The railroads must be deregulated, as the Congress has so wisely done for the airlines and trucking industries before them. I strongly urge my colleagues in the House to join the Senate and pass this historic initiative. If we believe in the record and the promise of efficient rail transportation in our country, we can send no clearer signal of support for that system than an overwhelming vote for the Rail Act of 1980.

Mr. DODD. I thank the gentleman for his comments.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. DODD. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, this is a very valuable amendment. I accept the amendment.

Mr. DODD. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. DODD).

The amendment was agreed to.

The CHAIRMAN. The Clerk will designate title VIII.

Title VIII reads as follows:

TITLE VIII—MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 801. (a) Except as provided in subsection (b) of this section, the provisions of this Act and the amendments made by this Act shall take effect October 1, 1980.

(b) Sections 601, 602, 603, 605, and 606 of this Act shall take effect on the date of enactment of this Act.

EFFECT ON PENDING MATTERS

SEC. 802. Any application, action, or proceeding pending before the Secretary of Transportation, the Interstate Commerce Commission, or any court on the effective date of this Act shall be adjudicated or determined as if this Act had not been enacted.

CONSTRUCTION OF AMENDMENTS

SEC. 803. With respect to the relationship between water carriers and rail carriers, none of the amendments made by this Act shall be construed to modify the application of existing law with respect to competition and coordination or to make lawful a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it would ordinarily be at this point when a substitute would be offered to the entire bill. Frankly, I had thought that one should be offered, particularly to take care of two questions: First, a reasonable compromise on the title II threshold for ICC jurisdiction; and second, a reasonable approach to the question of surcharges and their relation to short-line railroads.

But, there is no question that this bill and the Senate bill are far enough apart to permit a resolution of these questions in conference. Indeed, I doubt that the mood of this body is sufficiently reflective at this time to provide much reasonable compromise in the area. Therefore, I shall not offer my substitute.

At the same time, I would like to say that the bill is a very imperfect bill in its present stage, and I would hope that this body would consider very seriously trying to remedy some of those imperfections from here on out, as this body has remedied some of them over the period of time since this bill has laid fallow. I am glad to say that perhaps I have influenced the committee somewhat in its movement away from a jurisdictional threshold of 200 percent of variable cost that would have absolutely denied captive shippers an audience before the ICC. I think that much more needs to be done. There is more than one position in conference, and I hope that fact would be considered as we move forward on this bill.

AMENDMENT OFFERED BY MR. SHUSTER

Mr. SHUSTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SHUSTER: At the end of the bill add a new section:

SEC. 804. Notwithstanding any other provision of law, those rail corporations which receive direct Federal monetary support, shall be considered a Federal agency for the sole purpose of Department of the Army Regulations 735-5, Paragraph 1-16. Said Rail Corporations may enter into a contract under the authority granted by this section only when they determine that the safety of the public so requires.

Mr. SHUSTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, I do so only because I just discovered while walking into the cloakroom for a minute that one of the amendments that was whizzed through here added $28 million for the U.S. Railway Administration authorization, which is by most measures extraneous to this endeavor.

I would like to know what the rest of the amendments are tonight, if that is the way we are operating. I do not want to in any way cause concern to my colleague from Pennsylvania, but could he explain what his amendment does before we dispense with the reading?

Mr. SHUSTER. I will be happy to explain it.

Mr. BAUMAN. I yield to the gentleman.

Mr. SHUSTER. Mr. Chairman, this amendment would make a railroad eligible to borrow excess equipment from the Department of the Army. Now, the affected community must pay a rental fee of the fair market value, which is too high for most local communities. The amendment would set up a two-step process for obtaining the needed equipment (bridge, for example). The first would be an application by the railroad to the Army for a contract to borrow the bridge; this would occur only after the railroad has determined that public safety required such action. After the railroad and the Army have concluded negotiations, the railroad would enter into a contract with the local community to pay for the transportation of the bridge to the site and for routine maintenance.

Mr. Chairman, it should be emphasized that this amendment originated with

Congressman LYLE WILLIAMS of Ohio. Congressman WILLIAMS did the work on this and asked me to offer the amendment because of my involvement in transportation matters in the House. While the language of the amendment is general, it is specifically aimed at solving a problem in the city of Niles, Ohio, where the West Park Avenue Bridge going over Conrail tracks was damaged and traffic is now being rerouted through a public park. This creates a hazardous and dangerous condition for the many children in the area.

Congressman WILLIAMS, although only a freshman Member, has aggressively worked to solve this problem and I am pleased to support his efforts on behalf of the people of Trumbull County, Ohio.

Mr. BAUMAN. I thank the gentleman very much for the explanation.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the distinguished chairman of the subcommittee.

Mr. FLORIO. Mr. Chairman, this is an amendment that I support.

Mr. SHUSTER. I thank the gentleman.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the distinguished ranking minority member.

Mr. MADIGAN. Mr. Chairman, I thank the gentleman for yielding, and I also support the amendment.

Mr. SHUSTER. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. SHUSTER).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. PANETTA

Mr. PANETTA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PANETTA: Page 201, after line 25, add the following new section:

EFFECT OF MERGERS ON COMPETITION

SEC. 804. (a) Section 11344(b) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.".

Mr. PANETTA. Mr. Chairman, with the support of the American Farm Bureau, I am offering an amendment to the Rail Act of 1980 to specifically direct the Interstate Commerce Commission to consider the question of rail competition whenever making a determination of a railroad merger transaction.

The escalation of rail mergers now taking place in the industry is causing concern among our Nation's farmers and ranchers as well as other rail shippers. The Interstate Commerce Commission is facing decisions on several mergers that would have the effect of eliminating or nearly eliminating rail competition within entire sections of the country. I think it is important, therefore, that the ICC consider the question of competition as a regular part of the process of evaluating whether to allow mergers.

My amendment is not intended to in any way tie the hands of the ICC on the question of mergers. There is no question but that in many areas of the country we have too many lines and that restructuring is needed to build and sustain a viable rail system.

The Chairman of the ICC, Mr. Darius Gaskins, has made it clear that competition plays an important role in the Commission's decisionmaking on railroad mergers. This is as it should be. My amendment would insure that this remains the case.

I propose to add a new paragraph to section 11344(b) of the Interstate Commerce Act, the section dealing with consolidation, merger, and acquisition of control: General procedures and conditions of approval. The new paragraph would require the ICC to consider, as a part of its assessment of the public interest, the effect a proposed merger would have on competition between and among rail carriers within a region.

I urge your support for my amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, certainly competition is the essence of what this bill is about, and the gentleman's concerns are legitimate. We accept the amendment.

Mr. PANETTA. I thank the gentleman.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and for his earlier coming over to explain the amendment. We had an opportunity to review it, and would urge that it be supported.

Mr. PANETTA. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. PANETTA).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Chairman, I offer and amendment.

The Clerk read as follows:

Amendment offered by Mr. FLORIO: Page 201, after line 25, insert the following new section:

STUDY OF ALASKA RAILROAD RATES

SEC. 805. Within 6 months after the effective date of this Act, the Interstate Commerce Commission shall commence and complete a study to determine whether the rates charged by the Alaska Railroad pursuant to ICC-ARR Freight Tariffs 4108 and 4109 (as supplemented by supplements 1-4) would, if such rates had been entered into after the effective date of this Act, have constituted a violation of section 10701a(c)(1) of title 49, United States Code, as amended by this Act.

Page 99, after the item in the table of contents relating to section 803, insert the following new section:

Sec. 905. Study of Alaska railroad rates.

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, is this the Alaska amendment?

Mr. FLORIO. Correct.

Mr. BAUMAN. I thank the gentleman, and withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. FLORIO. Mr. Chairman, this amendment is simply a study. I think it is a noncontroversial one. There have been allegations made that the Alaska Railroad is engaged in predatory pricing practices. This amendment directs the ICC to investigate such allegations and report back to the Congress within 6 months.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and concur that it is merely a study and, as the gentleman has said, noncontroversial. I would hope that the committee would support the amendment.

Mr. FLORIO. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. FLORIO).

The amendment was agreed to.

Mr. ALBOSTA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I had an amendment—at least a study; I do not know if it needs to be put into an amendment, but of course my Rail Bank amendment failed. I think we obviously did not do our homework well enough or people would have been informed better of it, but what I would like to propose, and the chairman of the subcommittee has agreed with me, is that we should get a study by the Transportation Department as to whether or not these lines should be abandoned and have a report back to Congress in 4 years.

I would like to offer that as an amendment, and get the chairman to agree to it.

The CHAIRMAN. Does the gentleman have an amendment at the desk?

Mr. MADIGAN. Mr. Chairman, who has the time?

The CHAIRMAN. The gentleman from Michigan is recognized.

Mr. MADIGAN. For what?

The CHAIRMAN. The gentleman is recognized to strike the last word.

Mr. MADIGAN. Would the gentleman from Michigan yield to the gentleman from Illinois?

Mr. ALBOSTA. Yes, I yield.

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Mr. MADIGAN. Mr. Chairman, I wonder if the gentleman will agree on the essentials, and if the gentleman from New Jersey (Mr. FLORIO) would concur

with me, that we might best resolve this matter by simply having the gentleman accept the commitment from the two of us that we will have hearings of the subcommittee on the subject in which the gentleman is interested.

Mr. FLORIO. Mr. Chairman, will the gentleman yield further?

Mr. ALBOSTA. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, the whole concept of rail banking is one that this committee has concerned itself with. As I indicated before, the rail banking concept has been enacted into law in certain pieces of legislation that Congress has previously passed.

The suggestion of the gentleman from Illinois (Mr. MADIGAN), is a very good one. It is a good way of our expediting the business tonight and providing the gentleman with the assurance that this committee will have oversight hearings and will continue to follow the operation of this legislation and see how it impacts on the question of abandonments.

As I represented on a couple of occasions, we think we have done what should be done to be concerned about that area. I will represent that we will go further and make a point of investigating how this law affects abandonments and then formulate some decisions as to whether further rail banking is required.

Mr. ALBOSTA. Mr. Chairman, if the gentleman would allow me to reply, I do not mean to question the fact that he did agree to this study prior to my running a vote on the rail banking amendment that I proposed. I do not think that we should create hard feelings here on the floor because of that. I do not disagree that the word of the committee members on the majority side and the minority side is good.

But it is not only hearings that we want. It is a study that we want to have done by the Department of Transportation. I think that can be requested in the bill or just in our discussions, and that could take place, because I think they have the authority to do it as long as they know it is to be done, if the subcommittee chairman would agree and if the minority side would agree.

Mr. Chairman, I withdraw the amendment. I can see that the Members here want to vote, and I withdraw the amendment.

The CHAIRMAN. The Chair will state that the amendment to which the gentleman referred was not offered.

Are there further amendments to title VIII?

Mr. LEVITAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have an amendment which was published in the CONGRESSIONAL RECORD of yesterday which would provide an opportunity for the Congress to review the regulations issued by the Interstate Commerce Commission with respect to rail carriers and, where appropriate in the judgment of the Congress, veto those regulations.

The reason or a reason for this amendment is that an examination of the legislation before us indicated to me that the Interstate Commerce Commission is being given rather significant powers with respect to legislating the issues that will be resolved under this legislation. For example, section 204 of the legislation provides that the ICC can issues rules to define the term, "agriculture or other bulk commodities," in relation to entering into contracts.

Section 306(c)(1) of the legislation provides that the ICC shall establish conditions and terms of compensation for switching agreements and joint service agreements.

Another provision, section 402, provides that the ICC shall insure that rules promulgated under the section will deal with accounting standards which are the basis for all of the rates which are made.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I will be happy to yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I am going to ask the gentleman, is he going to propose an amendment or is he not?

Mr. LEVITAS. I am probably going to propose an amendment.

Mr. JOHN L. BURTON. Could we expedite matters and save time by doing it, then?

Mr. LEVITAS. Mr. Chairman, I am trying to give an opportunity for some other Members to come to the floor so that maybe we can resolve this issue.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I will be happy to yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the gentleman has also not mentioned another extremely important provision in this bill, and that is that not only the power of ratemaking may be taken away from the States but also powers outside the area of ratemaking, an authority that the ICC has never before dared to exercise.

I merely submit that this is a very important change in the bill.

Mr. LEVITAS. Mr. Chairman, the gentleman from Texas (Mr. ECKHARDT) is correct. In fact, I took occasion to cite some of the areas where the ICC presently does not have the authority to regulate and which have traditionally been the subject of State regulation.

For example, the ICC under section 212(a)(c) would be able to establish, through rulemaking, rules relating to guidelines for authorized business solicitation and entertainment expenses. That is in addition to regulations which would deal with abandonment of railroad lines, company uniform systems or accounts, discontinuance or change of operations, rail service continuence of subsidies, and the like.

I will be quite candid about this. Frankly, I would prefer that this matter be dealt with in an arena or in a forum outside this legislation. I think the opportunity for dealing with this problem would easily be resolved, for example, if this House had an opportunity to consider and vote on the Regulation Reform Act which has been languishing in the Committee on the Judiciary since May of this year rather than dealing with it in this particular piece of legislation.

But, Mr. Chairman, I do believe that it is important that the Congress ultimately have the say-so about which regulations become law and which are put in place by unelected bureaucrats.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Chairman, I thank the gentleman from Georgia for yielding.

Mr. Chairman, I have read the gentleman's amendment. The language in the Levitas amendment is similar to other amendments which we vote for in every piece of legislation that comes down the pike.

Mr. LEVITAS. Or that comes down the track.

Mr. BAUMAN. Excuse me. In this case, that is correct. In every piece of legislation that comes down the track, as in this one, we provide for a congressional review of proposed rules.

I hope that the gentleman from Georgia (Mr. LEVITAS) will offer the amendment, and that it will be embraced by the proponents of the bill as part of this complex legislation, because certainly we do want to review these regulations.

So, Mr. Chairman, if the gentleman from Georgia will yield further, I note that the gentleman from California (Mr. JOHN L. BURTON) has urged that the gentleman offer the amendment, and I also urge that he offer it.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman for his observations and for his ardent support.

AMENDMENT OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: At the end of the bill, insert the following new section:

CONGRESSIONAL REVIEW OF PROPOSED RULES

SEC. 806. (a) Notwithstanding any other provision of law, simultaneously with prescribing any rule under subtitle IV of title 49, United States Code, relating to rail carriers (other than a rule relating to rates), the Interstate Commerce Commission shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives, and simultaneously with prescribing any rule relating to rail carriers, the Secretary of Transportation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b), the rule shall not become effective if—

(1) within 90 calendar days of continuous session of Congress after the date the rule is prescribed, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule prescribed by the dealing with the matter of , which rule was transmitted to Congress on .", the first blank space therein being filled with the Interstate Commerce Commission or the Secretary of Transportation, as appropriate, and the other blank spaces therein being appropriately filled; or

(2) within 60 calendar days of continuous session of Congress after the date the rule is prescribed, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within 30 calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of 60 calendar days of continuous session of Congress after the date on which a rule described in subsection (a) is prescribed, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule, and neither House has adopted such a resolution, the rule may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule may go into effect not sooner than 90 calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a).

(c) Congressional inaction on, or rejection of, a resolution of disapproval under this section shall not be deemed an expression of approval of the rule involved.

(d) For purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 30, 60, and 90 calendar days of continuous session of Congress.

(e) For purposes of this section, the term "rule" has the same meaning such term has in section 551(4) of title 5, United States Code.

Mr. JOHN L. BURTON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. FLORIO. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk concluded the reading of the amendment.

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Mr. LEVITAS. Mr. Chairman, as the gentleman from Maryland has stated, this is the amendment which has been offered on a number of occasions and which has been accepted by this body overwhelmingly. I have explained the purpose for the offering of this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I reluctantly rise in opposition because of the hour; I enthusiastically rise because of the merits. This is certainly the opposite direction that we should be going in. We are trying to deregulate. We want the marketplace to make the determinations in the rail industry. All of the same arguments that prevailed when we dealt with trucking deregulation when this amendment was rejected by this House apply equally here.

We are not talking about a system that is going to provide for regulations that result in greater Government regulation. What we are trying to say is that we want to get out of the regulatory framework. We want the railroads and the shippers to make decisions based upon marketplace conditions. This is the direct opposite way we want to go.

Accordingly, I would ask for those who believe in the free enterprise system, those who believe in the marketplace, to reject this so that we can go forward with true deregulation legislation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. LEVITAS).

The amendment was agreed to.

● Mr. DINGELL. Mr. Chairman, I wish to commend and thank my colleague from New Jersey (Mr. FLORIO) for including in the contract provisions of the bill a section which will insure that existing contracts have the same force and effect as the bill provides for new contracts entered in accordance with its terms. I refer to subsection (i) to new section 10713. This subsection dispels any doubt about the standing and enforceability of previously entered rate contracts, particularly those which were entered before the ICC announced its 1978 policy favoring contracts between railroads and shippers.

The electric utility serving the people of the Greater Detroit area has such a contract with the railroad which, under its terms, will carry the 170 million tons of western coal still to move under a 26-year take-or-pay coal purchase contract running through the year 2001.

In prescribing the maximum reasonable rate that Burlington Northern Railroad could charge Detroit Edison for Montana Coal shipments, the ICC, in March, relied upon the rate stipulated in a so-called letter of understanding between the two parties. In subsequent action, in the Superior Coal case, the ICC refused to grant Burlington Northern authority to impose an outrageous 41-percent increase in excess of the stipulated agreement in the letter of understanding. Burlington Northern attempted to implement this policy after Detroit Edison had spent millions of dollars in the development of support facilities which effectively committed it to the Burlington Northern-carried western coal. Detroit Edison made these commitments on the strength of Burlington Northern's previous rate quotations and signed its 26-year coal contract in Burlington Northern's own offices.

The provision I support was designed to preserve rights related to preexisting rate agreements whether or not such agreements were previously enforceable. It gives to such contracts the same standing and enforceability as if they were negotiated and signed after the contract provisions of the bill were enacted into law. But it also preserves the legitimate rights of the railroads by guaranteeing that they will be able to challenging the existence of a previously entered lawful contract.

This amendment was not intended to worsen the existing situation of any railroad, but only to preserve the status quo ante insofar as it concerns the level of rates lawfully maintainable hereafter where rates in effect when the bill is passed reflect those stipulated in an existing agreement. The provision accomplishes this end and I again compliment the gentleman's wisdom for its inclusion in the bill.●

● Mr. ANDERSON of California. Mr. Chairman, after many weeks and months of work, the House today will shortly be completing its work on H.R. 7235, the Rail Act of 1980. This legislation has been frequently referred to as the "railroad deregulation bill" and that would also certainly be an apt title for it. The bill is really all about deregulating the railroad industry, by allowing its companies increased flexibility to help meet public needs, and in establishing a rate structure to determine the cost to the public for rail service.

The railroad industry today is in deep trouble. In the 96th Congress alone, we have seen the demise of two great railroads; the Milwaukee and the Rock Island. And I do not think there is one of us here who is not sick and tired of subsidizing Conrail. Clearly, something must be done, because railroads play a vital role—and let us make no mistake about that—it is an absolutely vital role, in the transportation of cargo in our Nation. Rail lines provide a key link in the tying together of the continental United States. They must be preserved.

It is interesting. In these past few months that I have been actively working on the bill, nonrail parties whose interests have not always coincided with those of the railroads, have all agreed that our rail industry must be allowed to exist. It cannot be permitted to strangle and die in a mass of Federal regulations. Everyone agrees that when a railroad dies, nobody benefits.

As you know, I have been working hard to try and protect the interests of our Nation's ports in this legislation. The ports of Long Beach and Los Angeles, and ports throughout California and the Nation, all had grave concerns about the effects that this legislation would have on their wellbeing. And this concerned me, because just as our Nation must also maintain a strong port industry.

And anything Congress would do to help the rails but damage the ports needs to be closely examined and evaluated. My evaluation of the situation indicated that our ports and our Nation could not afford the enactment of the rail bill with the so-called 208(f) section pertaining to discrimination intact.

So, I offered an amendment on the House floor to delete that provision. Unfortunately, my amendment was defeated. But now, I am pleased to say, the bill we will soon be voting on includes language which does address the problem my amendment would have solved.

I have worked very closely with the California Association of Port Authorities, and they approve of this language. It does not go as far as they might have liked, but it does meet their needs. It does coincide with their "bottom-line" position.

I know that there is no unanimity among the ports nationally on this matter. I make no claims to speak on behalf

of the Congressional Port Caucus or the port industry in general. But I will make the claim that the bill which is before us now is considerably improved over the one we were looking at a month ago. It is a fact that this bill would have been made stronger still with the passage of the Eckhardt amendment, but that amendment failed.

This legislation was strengthened by the adoption of an amendment I offered to title 1 of the bill, reaffirming the preeminence of the Constitution in the application and implementation of railroad deregulation. Article I, section 9, clause 6 of the Constitution begins, "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another." When interpreting the intent of this legislation years from now, courts will look at the instructions we have given them in this amendment when deciding on matters such as the port discrimination issue which I have already mentioned.

Mr. Chairman, this bill has also been strengthened by our adoption earlier today of our Illinois colleague's (Mr. MADIGAN) amendment eliminating that language in section 502 which would have permitted the de facto abandonment of certain rail lines under specified conditions. Those rail lines which might have been eligible for this de facto abandonment included all the lines directly serving the ports which I represent, as well as most other ports around the country. This was a crucial amendment, and one which I was pleased to help sponsor and support.

So, with these changes now made in the bill, we must ask ourselves, "Is our Nation better off if this bill passes in its present form, or if it fails?" On an issue so complex, the answer to this question does not come easily. But that answer, when we really study the issue, is affirmative.

Our Nation needs a healthy rail system. Our port industry depends on a healthy rail system. This legislation is no panacea. It will not assure all that its sponsors purport. I think that, with or without its passage, in a decade there will be far fewer railroads in existence than there are today. We will continue to see mergers, we will continue to see bankruptcies and failures.

But the passage of H.R. 7235 should help minimize these failures. And, as I have said, it does help assure the legitimate interests of many of our Nation's ports.

I do not want to disparage those port leaders who might not agree with my assessment of the situation. I do simply want to point out to them that there are many other port officials who believe that ports, with our hard work, are adequately protected, and that with this protection, we must now get on with the business of passing the Rail Act of 1980.

Mr. Chairman, 2 months ago, I had serious problems with this bill. Despite my strong belief in the need to deregulate transportation industries in this country, and the role I played in successfully helping deregulate the air and trucking industries, I was hesitant to support this bill.

But through our work with the California Association of Port Authorities, and those who initially supported this bill, I feel that the bill before us today is a stronger one. Despite the fact that the Eckhardt amendment did not pass, it is now legislation which is worthy of our support.●

The CHAIRMAN. Are there further amendments to title VIII? Are there further amendments to the bill? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BROWN of California) having assumed the chair, Mr. AUCOIN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7235) to reform the economic regulations of railroads, and for other purposes, pursuant to House Resolution 716, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the Committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Mr. FLORIO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 337, nays 20 answered "present" 1, not voting 74, as follows:

[Roll No. 534]

YEAS—337

Abdnor
Akaka
Albosta
Alexander
Anderson, Calif.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Carr
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
Erdahl
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Heftel
Hillis
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Martin
Mathis
Matsul
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Roe
Rosenthal
Roth
Rousselot
Rudd
Sabo
Satterfield
Sawyer
Schroeder
Schulze
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Weaver
Whitehurst
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Zablocki

NAYS—20

Andrews, N. Dak.
Brooks
Dingell
Eckhardt
English
Frenzel
Gonzalez
Hightower
Holland
Hutchinson
Kazen
Marlenee
Roberts
Stangeland
Traxler
Vanik
Watkins
Weiss
Williams, Mont.
Young, Mo.

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—74

Addabbo
Ambro
Anderson, Ill.
Andrews, N.C.
Atkinson
Beard, R.I.
Boggs
Brown, Ohio
Buchanan
Campbell
Carney
Carter
Chisholm
Cotter
D'Amours
Dixon
Dodd
Duncan, Oreg.
Evans, Del.
Fish
Ford, Tenn.
Garcia
Giaimo
Gilman
Grassley
Harsha
Hefner
Hinson
Holtzman
Hopkins
Howard
Ichord
Ireland
Jeffords
Jenrette
Kelly
Kramer
Latta
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lent
Lowry
Marriott
Mattox
Mollohan
Moorhead, Pa.
Murphy, N.Y.
Myers, Pa.
Nolan
O'Brien
Pepper
Peyser
Quayle
Richmond
Rose
Rostenkowski
Roybal
Royer
Russo
Santini
Scheuer
Sebelius
St Germain
Steed
Tauzin
Waxman
White
Wilson, Bob
Wilson, C. H.
Young, Alaska
Zeferetti

□ 2010

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Young of Alaska.
Mrs. Boggs with Mr. Kramer.
Mr. Ambro with Mr. Latta.
Mr. D'Amours with Mr. Brown of Ohio.
Mr. Zeferetti with Mr. Fish.
Mr. Jenrette with Mr. Kelly.
Mr. Tauzin with Mr. Grassley.
Mr. Rostenkowski with Mr. O'Brien.
Mr. Roybal with Mr. Sebelius.
Ms. Holtzman with Mr. Lent.
Mrs. Chisholm with Mr. Royer.
Mr. Giaimo with Mr. Quayle.
Mr. White with Mr. Leach of Iowa.
Mr. Lehman with Mr. Marriott.
Mr. Leach of Louisiana with Mr. Buchanan.
Mr. Mollohan with Mr. Carney.
Mr. Scheuer with Mr. Evans of Delaware.
Mr. Moorhead of Pennsylvania with Mr. Hopkins.
Mr. Richmond with Mr. Harsha.
Mr. Murphy of New York with Mr. Jeffords.
Mr. Ichord with Mr. Campbell.
Mr. Hefner with Mr. Carter.
Mr. Mattox with Mr. Gilman.
Mr. Pepper with Mr. Hinson.
Mr. Lederer with Mr. Myers of Pennsylvania.
Mr. Waxman with Mr. Peyser.
Mr. Dodd with Mr. Russo.
Mr. Atkinson with Mr. Santini.
Mr. Howard with Mr. Steed.
Mr. Lowry with Mr. Ireland.
Mr. Cotter with Mr. Garcia.
Mr. Andrews of North Carolina with Mr. Ford of Tennessee.
Mr. Beard of Rhode Island with Mr. Dixon.
Mr. Nolan with Mr. Rose.
Mr. Duncan of Oregon with Mr. Charles H. Wilson of California.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE TECHNICAL AND CONFORMING CORRECTIONS IN THE ENGROSSMENT OF HOUSE AMENDMENT TO S. 1946, RAILROAD TRANSPORTATION POLICY ACT OF 1980

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that, in the engrossment of the House amendment to the Senate bill S. 1946, the Clerk be authorized to correct section numbers, punctuation, and cross references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the House bill, H.R. 7235.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7235.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

RAILROAD TRANSPORTATION POLICY ACT OF 1980

Mr. FLORIO. Mr. Speaker, pursuant to the provisions of House Resolution 716, I call up from the Speaker's table the Senate bill (S. 1946) to reform the economic regulation of railroads, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. FLORIO moves to strike out all after the enacting clause of the Senate bill, S. 1946, and to insert in lieu thereof the provisions of the bill, H.R. 7235, as passed, as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Harley O. Staggers Rail Act of 1980".

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Sec. 1. Short title.
Sec. 2. Findings.
Sec. 3. Goals.
TITLE I—RAIL TRANSPORTATION POLICY
Sec. 101. Rail transportation policy.
TITLE II—RAILROAD INTER-CARRIER PRACTICES
Sec. 201. Compensatory joint rate relief.
Sec. 202. Expedited division of revenues proceedings.
Sec. 203. Regulation of railroad rates.
Sec. 204. Determination of market dominance.
Sec. 205. Zone of rate flexibility.
Sec. 206. Rate regulation proceedings and study.
Sec. 207. Inflation-based rate increases.
Sec. 208. Investigation and suspension of rates.
Sec. 209. Contracts.
Sec. 210. Demand sensitive rates.
Sec. 211. Phaseout of capital incentive rates.
Sec. 212. Permissive limited liability rates.
Sec. 213. Rate discrimination.
Sec. 214. Exemption.
Sec. 215. Intrastate rates.
Sec. 216. Customer solicitation expenses.
Sec. 217. Efficient marketing.
Sec. 218. Rate bureaus.
Sec. 219. Long and short haul transportation.
Sec. 220. Railroad entry.
Sec. 221. Service during periods of peak demand.
Sec. 222. Reciprocal switching.
Sec. 223. Car service compensation.
Sec. 224. Car service orders for exigent circumstances.
Sec. 225. Employee protection.
Sec. 226. Safe railroad reinvestment requirements.
Sec. 227. Rock Island and Milwaukee Railroad amendments.
Sec. 228. Loan guarantees.
Sec. 229. Amendment to the Regional Rail Reorganization Act of 1973.
Sec. 230. Savings provisions.
Sec. 231. Rail Technology and Shipper Needs Board; other shipper assistance.
TITLE III—RAILROAD COST DETERMINATIONS
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Sec. 302. Railroad cost accounting.
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Sec. 403. Restructuring assistance.
Sec. 404. Authorization of appropriations.
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Sec. 704.
Sec. 705. Effect of mergers on competition.
Sec. 706. Study of Alaska Railroad rates.
Sec. 707. Congressional review of proposed rules.

FINDINGS

SEC. 2. The Congress hereby finds that—

(1) historically, railroads were the essential factor in the national transportation system;

(2) the enactment of the Interstate Commerce Act was essential to prevent an abuse of monopoly power over captive traffic by railroads and to establish and maintain a national railroad network;

(3) today, while much transportation within the United States is competitive, some amount of traffic is alleged to be captive to rail;

(4) many of the Government regulations affecting railroads have become unnecessary and inefficient;

(5) nearly two-thirds of the Nation's intercity freight is transported by modes of transportation other than railroads;

(6) earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements;

(7) by 1985, there will be a capital shortfall within the railroad industry of between $16,000,000,000 and $20,000,000,000;

(8) failure to achieve increased earnings

within the railroad industry will result in either further deterioration of the rail system or the necessity for additional Federal subsidy; and

(9) modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization of railroads in order to save energy and combat inflation.

GOALS

SEC. 3. The purpose of this Act is to provide for the restoration, maintenance, and improvement of the physical facilities and financial stability of the rail system of the United States. In order to achieve this purpose, it is hereby declared that the goals of this Act are—

(1) to assist the railroads of the Nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense;

(2) to reform Federal regulatory policy so as to preserve a safe, adequate, economical, efficient, and financially stable rail system;

(3) to assist the rail system to remain viable in the private sector of the economy;

(4) to provide a regulatory process that balances the needs of carriers, shippers, and the public; and

(5) to assist in the rehabilitation and financing of the rail system.

TITLE I—RAIL TRANSPORTATION POLICY

RAIL TRANSPORTATION POLICY

SEC. 101. (a) Chapter 101 of title 49, United States Code, is amended by inserting after section 10101 the following new sections:

"§ 10101a. Rail transportation policy

"In regulating the railroad industry, it is the policy of the United States Government, consistent with and subject to those obligations which the Constitution of the United States imposes on rail carriers having the power of eminent domain—

"(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

"(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

"(3) to promote a safe and efficient rail transportation system by allowing efficient rail carriers to earn adequate revenues, as determined by the Interstate Commerce Commission while maintaining reasonable rates;

"(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

"(5) to foster sound economic conditions in transportation and to insure effective competition and coordination between rail carriers and other modes;

"(6) to provide rate regulation where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

"(7) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the automatic passthrough of inflationary cost increases through rate increases of general applicability;

"(8) to encourage fair wages and safe and suitable working conditions in the railroad industry;

"(9) to prohibit predatory pricing and practices and to avoid undue concentrations of market power;

"(10) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

"(11) to cooperate with the States;

"(12) to encourage honest and efficient management of railroads and, in particular, the elimination of noncompensatory rates for rail transportation;

"(13) to encourage and promote energy conservation; and

"(14) to encourage and promote energy conservation and reasonably priced rail transportation of coal in accordance with the nationally stated objectives of energy independence.".

(b) With respect to the transportation of commodities that are manufactured or produced by a rail carrier, none of the amendments to title 49, United States Code, made by the Harley O. Staggers Rail Act of 1980 shall be construed to modify the application of existing law with respect to prohibiting a rail carrier from transporting an article or commodity that: (1) is manufactured, mined, or produced by the rail carrier or under its authority; or (2) is owned by the rail carrier or in which it has an interest.

(c) With respect to the relationship between rail carriers and water carriers, none of the amendments to title 49, United States Code, made by the Harley O. Staggers Rail Act of 1980 shall be construed to modify the application of existing law with respect to competition and coordination or to make lawful a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

(d) Section 10101(a) of title 49, United States Code, is amended by striking out "To ensure" and inserting in lieu thereof "Except where policy has an impact solely on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure".

(e) The section analysis of chapter 101 of title 49, United States Code, is amended by inserting after the item relating to section 10101 the following new item:

"10101a. Rail transportation policy.".

TITLE II—RAILROAD INTER-CARRIER PRACTICES

COMPENSATORY JOINT RATE RELIEF

SEC. 201. (a)(1) Chapter 107 of title 49, United States Code, is amended by inserting after section 10705 the following new section:

"§ 10705a. Joint rate surcharges and cancellations

"(a)(1)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier providing transportation subjects to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may publish and apply a surcharge increasing or decreasing the through charge applicable to any movement between points designated by the surcharging carrier subject to a joint rate. Such a surcharge may be applied without the concurrence of the other carriers that are party to such joint rate.

"(B) A carrier earning adequate revenues (as defined in section 10704(a)(2) of this title) may not apply such a surcharge to any movement on a line operated by such carrier which carried more than 3,000,000 gross ton miles of traffic in the preceding calendar year.

"(C) Any surcharge applied pursuant to this subsection must be applied in equal dollar amounts to the movement subject to the surcharge over all routes between the points designated by the surcharging carrier which such carrier participates in under the joint rate involved, and, when the surcharge increases the through charges, under any of such carrier's single line rates between the same points.

"(2)(A) Whenever a rail carrier applies a surcharge increasing a through charge pursuant to paragraph (1) of this subsection, any other rail carrier that participates in any movement subject to such surcharge may cancel the application of such surcharge to any route participated in by such carrier, if such carrier makes the demonstration described in subparagraph (B) of this paragraph.

"(B) A rail carrier may cancel the application of a surcharge under this paragraph if such carrier demonstrates to the Commission that the surcharging carrier's share of the revenues, at the time the surcharge was filed with the Commission, from its participation in the movement over the route involved would have been equal to or greater than 110 percent of its variable costs of providing service over such route, under either—

"(i) the applicable joint rate, in effect at the time the surcharge was filed with the Commission, without the surcharge;

"(ii) a new rate division increasing the share of the surcharging carrier;

"(iii) a new higher lawful rate published by the canceling carrier; or

"(iv) a new, lesser surcharge which shall be prescribed by the Commission upon and in conformity with the request of the carrier proposing to cancel the surcharge. Any such prescribed surcharge shall, in conjunction with the surcharging carrier's division of the joint rate in effect on the date the original surcharge was filed with the Commission, provide the carrier proposing the original surcharge revenues equal to or greater than 110 percent of such surcharging carrier's variable cost of providing service over such route.

"(C)(i) The cancelling tariff shall only become effective if the rail carrier proposing to cancel the application of the surcharge makes the demonstration described in subparagraph (B) of this paragraph.

"(ii) If the demonstration described in clause (i) of this subparagraph is made on the basis of the applicable joint rate in effect at the time the surcharge was filed with the Commission, without the surcharge, the tariff shall become effective on one day's notice.

"(iii) If the demonstration described in clause (i) of this subparagraph is made on the basis of a new rate, division, or surcharge prescribed pursuant to subparagraph (B)(iv) of this paragraph, the tariff shall become effective the date such new rate, division, or surcharge becomes effective.

"(D) The remedy available to a rail carrier cancelling the application of a surcharge under this paragraph shall be in addition to any other remedy available to such carrier under this chapter.

"(3)(A) The Commission may cancel the application of a surcharge to a route to which such surcharge applies if a shipper moving traffic over such route demonstrates to the Commission that—

"(i) there is no competitive alternative to such route for the movement of the traffic involved that is not subject to such surcharge; and

"(ii) the surcharging carrier's share of the revenues from its participation in the movement over the route to which such surcharge applies, under the applicable joint rate in effect at the time the surcharge was filed with the Commission, with the surcharge, would be greater than 110 percent of its variable cost of providing service over such route.

"(B) If the Commission cancels the application of a surcharge to a particular route pursuant to subparagraph (A) of this paragraph, the Commission shall determine the level of surcharge which, in conjunction with the surcharging carrier's division of the joint rate in effect at the time the surcharge was filed with the Commission, would equal 110 percent of the surcharging carrier's variable cost of providing service over such route, and shall authorize such carrier immediately to apply such a surcharge without

any further proceedings under this subsection.

"(4) A rail carrier may not apply a surcharge under this subsection unless, for the one-year period preceding the surcharge, such carrier has concurred in all rate increases of general applicability applicable to the joint rate to which such surcharge applies and agreed to by all other carriers that are party to such joint rate.

"(5) A rail carrier may not apply a surcharge under this subsection increasing a through charge applicable to a particular movement more than once each calendar year.

"(6) Notwithstanding any other provision of this subsection, a rail carrier may, by tariff, reduce the total charges applicable to a movement over any specific joint line or single line route or routes in which such carrier participates, if such reduction does not lower the total charges applicable to such movement to a level that is less than the lowest total charges applicable to the same movement over a competing route. Any such reduction may be made without the concurrence of any other rail carrier, and shall be borne solely by the carrier reducing the charge.

"(b)(1) Notwithstanding subsection (a) of this section, a rail carrier may publish and apply a surcharge applicable to traffic originating or terminating upon any of its lines that carried less than 3,000,000 gross ton miles of traffic per mile, in the more recent calendar year for which traffic data is available. Such a surcharge may be applied without the concurrence of any connecting rail carrier.

"(2) A rail carrier may apply a surcharge under this subsection if, prior to the application of such surcharge, that portion of the charges applicable to traffic to and from the line to which the surcharge applies and accruing to the surcharging carrier does not provide such carrier revenues adequate to cover—

"(A) 110 percent of such carrier's variable cost of transporting the traffic involved to or from such line; plus

"(B) 100 percent of such carrier's reasonably expected costs of continuing to operate such line, which shall include all costs necessary to sustain service on the line.

"(3)(A) Upon petition of a shipper located upon a line to which a surcharge under this subsection is applied, the Commission may cancel the application of a surcharge under this subsection if such shipper demonstrates to the Commission that, after application of the surcharge, the surcharging carrier's revenues from all traffic originating or terminating upon the line to which the surcharge applies exceed 110 percent of such carrier's variable cost of transporting all traffic to or from such line plus such carrier's reasonably expected costs of continuing to operate such line.

"(B)(i) A rail carrier's revenue from all traffic originating or terminating upon a line shall be presumed to exceed 110 percent of its variable cost of transporting all traffic to or from such line plus its reasonably expected costs of continuing to operate such line if the complaining shipper demonstrates that the carrier is earning revenues from all traffic originating or terminating upon such line equal to or greater than the percentage set forth in section 10701(e)(1) of this chapter (as adjusted therein) of its variable costs.

"(ii) A surcharging carrier may rebut the presumption set forth in clause (i) of this subparagraph by demonstrating to the Commission that its reasonably expected costs for operating the line to which the surcharge applies exceed the percentage of variable cost set forth in such clause (i).

"(C) Upon a finding by the Commission that application of the surcharge will produce revenues in excess of 110 percent of the surcharging carrier's variable cost of transporting traffic to or from the line plus its reasonably expected costs for operating the line, the Commission shall determine the level of surcharge which would produce revenues equal to such figure and shall authorize such carrier immediately to apply such surcharges as will generate such revenues without any further proceedings, subject only to the right of a shipper to proceed under paragraph (4) of this subsection.

"(4)(A) A rail carrier may not apply a surcharge under this subsection that results in any shipper being required to bear more than a reasonable proportion of the reasonably expected costs of continuing to operate the line to which such surcharge applies.

"(B) Upon complaint of a shipper, the Commission shall determine whether the shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph.

"(C) If the Commission finds that a complaining shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph, the Commission may reallocate the surcharge among the traffic originating or terminating on the line to which the surcharge applies, but may not order relief which would result in the surcharging carrier earning revenues less than those which the carrier would have earned had the surcharge been applied as filed.

"(5) A shipper may, in a single complaint, seek relief under paragraphs (3) and (4) of this subsection. In any such complaint, the Commission shall first determine the right to relief under paragraph (3) and shall grant such relief as is appropriate under such paragraph.

"(6) In any proceeding brought before the Commission challenging the application or amount of a surcharge under this subsection, whether the surcharge is claimed to violate this subsection or some other provision of this chapter, the Commission shall not suspend the application of any such surcharge unless the person filing the verified statement required by section 10707(c) of this title, in addition to the matters required by such section, also makes the demonstration required by paragraph (3)(A) of this subsection. If the demonstration required by paragraph (3)(A) is made, the Commission may suspend the application of only so much of the surcharge as will produce revenues in excess of the amount so demonstrated.

"(c)(1) Notwithstanding any other provision of this title, any prior agreement in effect on the effective date of the Harley O. Staggers Rail Act of 1980, or any requirement of the Commission, a rail carrier may cancel the application of a joint rate to a through route in which it participtaes, without the concurrence of any other rail carrier that is a party to such joint rate, unless another rail carrier that participates in such through route or a shipper that has no competitive alternative to such route makes the demonstration described in paragraph (2) of this subsection.

"(2) The application of a joint rate to a through route may not be canceled under this subsection if a rail carrier that participates in such through route or a shipper that has no competitive alternative to such route from an origin or destination served by such route demonstrates to the Commission that the canceling carrier's share of the revenues, under the joint rate in effect at the time the application of the joint rate is canceled, is equal to or greater than—

"(A) 110 percent of the canceling carrier's variable cost of providing service over such route; or

"(B) such lesser percent of the canceling carrier's variable cost as such carrier earns over a competing through route to which application of the joint rate has not been canceled, or over a competing single line route.

"(3) When a complaining party is unable to make the demonstration required by paragraph (2) of this subsection, the Commission may suspend the tariff canceling the joint rate only if—

"(A) a complaining carrier publishes a new rate division or a new higher lawful rate which increases the canceling carrier's share of the revenues over such route to the amount calculated under paragraph (2)(A) or (2)(B) of this subsection, whichever is less; or

"(B) a complaining carrier or shipper petitions the Commission and the Commission imposes a surcharge, in conformity with such petition, upon the joint rate which will accrue solely to the canceling carrier and which, in conjunction with the canceling carrier's division of the joint rate in effect on the date the tariff canceling the joint rate was filed, will provide the canceling carrier revenues equal to or greater than 110 percent of its variable cost of providing service over such route.

Unless a new rate, division, or surcharge described in this paragraph becomes effective within 120 days after the proposed effective date of the rate cancellation, the canceling tariff shall, nevertheless, become effective.

"(4) If the demonstration described in paragraph (2) is made or a new rate, division, or surcharge described in paragraph (3) becomes effective, the tariff canceling the joint rate shall be considered by the Commission in accordance with section 10705 of this title. The existing joint rate or the new rate, division, or surcharge, as appropriate, shall remain in effect during the pendency of the Commission's consideration.

"(5) Whenever the application of a joint rate to a through route is canceled under this subsection and a rate other than a joint rate is or has been published by the canceling carrier to apply to such route, such rate shall thereafter apply in lieu of all other rates (except joint rates subsequently agreed to by such carrier) and any through rate of which such rate is a factor shall divide as the separate factors of such rate are made.

"(6) Nothing in this subsection shall be construed to limit the authority of the Commission under section 10705(a) of this title to prescribe joint rates which provide a rail carrier participating in such joint rate revenues equal to or greater than 110 percent of its variable cost of providing service over each route to which such rate applies.

"(d)(1) Except as provided in paragraph (2) of this subsection, any increase or decrease in revenue resulting from the application of a surcharge under subsection (a) of this section, or from the cancellation of the application of a joint rate under subsection (c) of this section, shall accrue solely to or be borne solely by the carrier applying the surcharge or canceling the application of the joint rate, as the case may be.

"(2) Whenever a class III rail carrier which participates in a through route to which a surcharge has been applied under subsection (a) of this section by a carrier operating in the same rate territory as such class III carrier demonstrates to the Commission that the application of such surcharge to such route provides, in the absence of any increase in the joint rate in effect on the date the surcharge was filed with the Commission, revenues from traffic moving over such route to such surcharging carrier in excess of 110 percent of its variable costs over such route, such surcharging carrier shall, from the date of such demonstration, share those revenues from such route, from the surcharge and the applicable joint rate in effect on the date the surcharge was filed with the Commission, in excess of 110 percent of its variable costs with all class III rail carriers

participating in such route, on the basis of their existing divisions of the joint rate to which the surcharge applies.

"(e)(1) Except as provided in paragraph (2) of this subsection, whenever a rail carrier proposes to apply a surcharge under subsection (a) of this section or to cancel the application of a joint rate under subsection (c) of this section and another rail carrier subsequently agrees to a new rate division or a new lawful rate that increases the surcharging or canceling carrier's share of the total through charges for a movement over a particular through route subject to a joint rate, such other rail carrier shall also agree to any other new rate and new lawful rate—

"(A) that is proposed within 120 days after the date of the first agreement; and

"(B) that increases the surcharging or canceling carrier's share of the total through charges for movements over a competing through route subject to such joint rate.

"(2) A rail carrier shall not be required to agree under this subsection to any proposed new division or new rate which would—

"(A) reduce such carrier's share of the total through charges for a movement over any through route to less than (i) 110 percent of its variable costs of providing service over such route, or (ii) such lesser percent of its variable costs as such carrier earns from such movement over a competing through route with respect to which such carrier has agreed to a new division or rates.

"(B) increase the surcharging or canceling carrier's share of the total through charges for a movement over any through route to an amount in excess of 110 percent of its variable costs of providing service over such route;

"(C) reduce such carrier's share of the total through charges for a movement over any through route by a dollar amount in excess of the greatest dollar reduction which such carrier has agreed to make, for purposes of increasing the surcharging or canceling carrier's share, to its share of the total through charges for a movement over any competing through route; or

"(D) reduce such carrier's share of the total through charges for a movement over any through route in an amount in excess of such carrier's pro rata share (based on established divisions for movements over such route) of the increase of the surcharging or canceling carrier's share of the total through charges for movements over such route.

"(f) A rail carrier applying a surcharge or canceling the application of a joint rate under this section shall file a tariff with the Commission in accordance with section 10762 of this title. Such a tariff may not become effective until the expiration of the 45-day period (or such longer period as the filing carrier specifies) beginning on the date such tariff is filed.

"(g)(1) Any rail rate to which a surcharge is applied under this section shall be subject to section 10701a and 10709 of this title, and any such surcharge shall constitute a rate increase for purposes of such section.

"(2) For purposes of rate regulation under section 10701a of this title—

"(A) only the rail carrier proposing a surcharge under this section shall be required to defend such surcharge; and

"(B) the reasonableness of the surcharge and the revenues received by the rail carrier proposing the surcharge under the joint rate to which the surcharge applies shall be determined without regard to amounts received and services performed by other rail carriers that are party to such joint rate.

"(3) Except as provided in subsection (i), (j), or (k) of this section, if the application of a surcharge or the cancellation of the application of a joint rate under this section is found to constitute a violation of any provision of this title, such violation shall not be ordered remedied in any manner which—

"(A) requires the carrier applying a surcharge under subsection (a) of this section or canceling the application of a joint rate under subsection (c) of this section to provide service over any route under a rate that provides revenues to such carrier that are less than 110 percent of its variable costs of providing such service; or

"(B) which requires the carrier applying a surcharge under subsection (b) of this section to provide service over the route to which such surcharge applies in a manner that provides revenues to such carrier that are less than 110 percent of such carrier's variable cost of transporting the traffic involved to or from the line to which the surcharge applies, plus such carrier's reasonably expected costs of providing service over such line.

"(h) Within 5 days after the request of a rail carrier participating in a joint rate subject to a surcharge or cancellation under this section, a shipper moving traffic over a route to which such surcharge or cancellation applies, or an affected port, the Commission shall make available to such carrier, shipper, or port the Commission's determination of the variable costs and revenues, over the route or routes to which the surcharge or cancellation applies, of the carrier applying the surcharge or canceling the application of the joint rate.

"(i)(1) Whenever a class III rail carrier, in a protest filed with the Commission, makes a prima facie showing that the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section will have an adverse effect on competition, the Commission shall investigate such protest. If on the basis of such investigation the Commission finds that the protested surcharge or cancellation is, or is intended to be, anticompetitive, the Commission shall, within 30 days after the date such protest is filed, enter an order rescinding such surcharge or cancellation, and may, on presentation of an adequate record, prescribe new joint rates or divisions of joint rates.

"(2) No order prescribed under this subsection shall require a carrier to provide service over any route under a rate which provides revenues less than 110 percent of the viarable cost of providing such service unless the Commission determines that the public interest requires a lesser revenue to variable cost ratio to avoid anticompetitive action and to preserve service on the route involved.

"(j)(1) Any class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section may protest such surcharge or cancellation whenever—

"(A) such surcharge or cancellation affects the sole remaining route available to that carrier for that traffic; and

"(B)(i) such carrier demonstrates that alternative transportation is available or that a shipper dependent on that carrier will suffer significant market loss because of such surcharge or cancellation; or

"(ii) such surcharge or cancellation, alone or when considered in conjunction with other surcharges or cancellations affecting the carrier, is likely to unduly impair a carrier's ability to earn an adequate rate of return

"(2)(A) The Commission may, after an investigation on the basis of a protest under this subsection, prescribe a lesser surcharge or a different division of the joint rate. The Commission shall grant the surcharging or cancelling carrier revenues not less than 110 percent of its variable cost of the movement involved, unless it determines that the public interest requires a lesser revenue to variable cost ratio to preserve service on the route involved. Any action by the Commission based on a protest under this subsection shall be taken within 30 days after the date such protest is filed.

"(B) If the Commission prescribes a different division of a joint rate under this paragraph, the Commission shall, upon petition of the surcharging or cancelling carrier or the protesting class III rail carrier, reopen the proceeding in which such division was prescribed to reconsider whether such prescribed division is reasonable. If, on the basis of such reconsideration, the Commission determines that such division is not reasonable, it shall prescribe a new, reasonable division of the joint rate to which the surcharge or cancellation applied.

"(k)(1) Upon the complaint of a class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section that such surcharge or cancellation will result in differences or greater differences in rates, including any surcharges, for the traffic to which the surcharge or cancellation applies over different routes in which the surcharging or cancelling carrier participates—

"(A) from a single origin point to destination points within a 75 mile direct radius from the destination point on such class III rail carrier; or

"(B) to a single destination point from origin points within a 75 mile direct radius from the origin point on such class III rail carrier,

the Commission shall investigate such complaint and shall, within 30 days after the date such complaint is filed, take such actions, including rescinding surcharges or cancellations or prescribing new joint rates or surcharges, as it determines are required to eliminate such differences in rates, unless it finds that such actions are not warranted by the public interest in ensuring effective competition among rail carriers or in the preservation of rail service on the route involved.

"(2) No action taken by the Commission under this subsection shall require a carrier to provide service over any route under a rate which provides a revenue to variable cost ratio over such route less than that provided under the joint rate to which the surcharge or cancellation was applied or less than 110 percent, whichever is greater, unless the Commission determines that the public interest in ensuring effective competition among rail carriers or in preserving service over such route warrants requiring the surcharging or cancelling carrier to provide service at a lesser revenue to variable cost ratio.

"(3) Notwithstanding subsection (m)(1) of this section, if, in a proceeding under this subsection or under subsection (i) or (j) of this section, the Commission considers whether to require the revenues of a carrier applying a surcharge under subsection (a) of this section or cancelling the application of a joint rate under subsection (c) of this section to be less than 110 percent of its variable costs (as calculated using the Commission's Rail Form A cost finding methodology), such surcharging or cancelling carrier may prove its actual variable costs on the basis of evidence other than unadjusted costs calculated using such Rail Form A cost finding methodology. Such evidence shall be prepared in accordance with generally accepted accounting principles.

"(l) Whenever the application of a joint rate to a through route is cancelled under subsection (c) of this section, the Commission shall, upon petition by a class II or III rail carrier participating in such route, prescribe a new compensatory through rate or rates over such route within 30 days after the date such petition is filed.

"(m) For purposes of this section—

"(1) variable costs for a class I rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates;

"(2) variable costs for a rail carrier other than class I shall be presumed to be the average variable costs of all class I rail carriers in the region in which such carrier operates (as determined under paragraph (1) of this subsection) unless a rail carrier reports such presumption with other proof of variable costs; and

"(3) at the option of a carrier applying a surcharge or cancelling the application of a joint rate under this section, revenue share may be determined by reference to past revenue settlements actually made in the most recent calendar year by connecting lines.

"(n)(1) The authority to apply a surcharge under subsection (a) of this section, and (except as provided in paragraph (2)) the authority to cancel such a surcharge, shall expire 3 years after the effective date of the Harley O. Staggers Rail Act of 1980 unless extended for one additional year by the Commission upon petition of any rail carrier and for good cause shown.

"(2) Any surcharge lawfully applied under subsection (a) of this section shall remain in effect in accordance with its terms following the expiration of the provisions of this section. Any such surcharge applied during the 45-day period immediately preceding the date of the expiration of the provisions of this section shall, notwithstanding such expiration, be subject to cancellation under subsection (a)(2) or (a)(3) of this section during the 45-day period beginning on the date such surcharge is applied.".

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10705 the following new item:

"10705a. Joint rate surcharges and cancellations.".

(b) For purposes of section 10705a of title 49, United States Code, the Interstate Commerce Commission shall classify all rail carriers on the basis of revenues, shall from time to time review its regulations setting forth revenue-based classifications for rail carriers, and shall make appropriate changes in such regulations in order to reflect inflation. The Commission shall not reclassify switching and terminal carriers, or any other rail carriers not classified on the basis of revenues on the effective date of this Act, for any purpose other than for purposes of such section 10705a.

(c)(1) The Interstate Commerce Commission shall include in its annual report to the Congress under section 10311 of title 49, United States Code, a report with respect to the application of surcharges and the cancellation of the application of joint rates by the Consolidated Rail Corporation and other rail carriers, during the preceding year, under section 10705a of title 49, United States Code. Each such report shall include—

(A) an analysis of the effect of application of surcharges and the cancellation of the application of joint rates under such section 10705a on shippers, ports, class II and class III rail carriers, railroad employees, and other elements of the rail system;

(B)(i) the number of surcharges applied by the Consolidated Rail Corporation and all other rail carriers under such section 10705a and the amount of revenue received by the Corporation and all other rail carriers from the application of such surcharges, (ii) the number of surcharges applied by the Corporation and all other rail carriers that were canceled under the procedures of such section 10705a, and (iii) the number of cancellations of the application of a joint rate by the Corporation and all other rail carriers under such section 10705a; and

(C) an analysis of the operation of the remedies made available to class III rail carriers under subsections (i), (j), and (k) of such section 10705a and to class II and class III rail carriers under subsection (l) of such section 10705a.

(2) The Interstate Commerce Commission shall, within 2 years after the effective date of this Act, submit a report to the Congress with respect to whether the provisions of section 10705a of title 49, United States Code, have adequately addressed the joint rate problems of rail carriers. The report shall include such recommendations with respect to such joint rate problems as the Commission considers necessary and appropriate.

EXPEDITED DIVISION OF REVENUES PROCEEDINGS

SEC. 202. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1)(A) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(i) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(ii) in all cases other than those specified in clause (i) of this subparagraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this clause, it must report its reasons to Congress.

"(B) The provisions of this paragraph imposing time limitations upon Commission action shall not apply to any division proceeding involving a joint rate participated in by a class III rail carrier.".

REGULATION OF RAILROAD RATES

SEC. 203. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10701 the following new section:

"§ 10701a. Standards for rates for rail carriers

"(a) Except as provided in subsection (b) or (c) of this section and unless a rate is prohibited by a provision of this title, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may establish any rate for transportation or other service provided by the carrier.

"(b)(1) If the Commission determines, under section 10709 of this title that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

"(2) In any proceeding to determine the reasonableness of a rate described in paragraph (1) of this subsection—

"(A) the shipper challenging such rate shall have the burden of proving that such rate is not reasonable if—

"(i) such rate (I) is authorized under section 10707a of this title, and (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; or

"(ii) such rate does not meet the description set forth in clause (i) of this subparagraph, but the Commission does not begin an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable; and

"(B) the rail carrier establishing the challenged rate shall have the burden of proving that such rate is reasonable if—

"(i) such rate (I) is greater than that authorized under section 10707a of this title, or (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; and

"(ii) the Commission begins an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable.

"(3) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Commission shall recognize the policy of this title that rail carriers shall earn adequate revenues, as established by the Commission under section 10704(a)(2) of this title.

"(c)(1) Any rate established after the effective date of the Harley O. Staggers Rail Act of 1980 for transportation by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that does not contribute to the going concern value of such rail carrier is not reasonable.

"(2) A rate for transportation by a rail carrier that equals or exceeds the variable cost of providing the transportation is conclusively presumed to contribute to the going concern value of such rail carrier.

"(3)(A) Upon the filing of a complaint alleging that a rate is in violation of this subsection, the Commission shall take final action thereon by the 90th day after the date such complaint is filed.

"(B) If the Commission determines, based on the record after opportunity for a hearing, that a rate is in violation of this subsection, the Commission shall order such rate to be raised, but only to the minimum level required by this subsection. The complainant shall have the burden of proving that such rate is in violation of this subsection.".

(b)(1) The first sentence of section 10701(a) of title 49, United States Code, is amended by inserting "(other than a rail rate)" immediately after "A rate".

(2) Section 10701(b) of title 49, United States Code, is repealed.

(3) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately below the item relating to section 10701 the following new item:

"10701a. Standards for rates for rail carriers.".

DETERMINATION OF MARKET DOMINANCE

SEC. 204. Section 10709 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In this subsection—

"(A) 'fixed and variable cost' means all cost incurred by rail carriers in the transportation of freight, but limiting the return on equity capital to a rate equal to the embedded cost of debt.

"(B) 'cost recovery percentage' means the lowest revenue-variable cost percentage which, if all movements that produced revenues resulting in revenue-variable cost percentages in excess of the cost recovery percentage are deemed to have produced only revenues resulting in the cost recovery per-

centage, would produce revenues which would be equal, when combined with total revenues produced by all other traffic transported by rail carrier, to the total fixed and variable cost of the transportation of all traffic by rail carrier.

"(C) 'revenue-variable cost percentage' means the quotient, expressed as a percentage figure, obtained by dividing the total revenues produced by the transportation of all traffic received by rail carriers for rail transportation by the total variable cost of such transportation.

"(2) In any proceeding under this section, the Commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than—

"(A) 160 percent during the period beginning on the effective date of the Harley O. Staggers Rail Act of 1980 and ending September 30, 1981;

"(B) 165 percent during the period beginning October 1, 1981, and ending September 30, 1982;

"(C) 170 percent during the period beginning October 1, 1982, and ending September 30, 1983;

"(D) 175 percent or the cost recovery percentage, whichever is less, during the period beginning October 1, 1983, and ending September 30, 1984; and

"(E) the cost recovery percentage, during each 12-month period beginning on or after October 1, 1984.

For purposes of subparagraphs (D) and (E) of this paragraph, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of 170 percent or more than a revenue-variable cost percentage of 180 percent.

"(3) A finding by the Commission that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the applicable percentage under paragraph (2) of this subsection does not establish a presumption that (A) such rail carrier has market dominance over such transportation, or (B) the proposed rate exceeds a reasonable maximum.

"(4)(A) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980 and on an annual basis thereafter, the Commission shall determine the cost recovery percentage for transportation of all traffic received by rail carrier. The Commission shall make such determination after considering each individual revenue-variable cost percentage resulting from the revenues and costs of a valid and reliable statistical sample of all movements of commodities transported by class I rail carriers during the most recent calendar year for which such information is available.

"(B) If, on the basis of calculations under subparagraph (A) of this paragraph, the Commission determines that revenues earned by all class I rail carriers during the previous calendar year do not exceed the fixed and variable costs of such carriers, then the cost recovery percentage for purposes of this section shall be deemed to be equal to the cost recovery percentage last determined by the Commission.

"(C) The Commission shall, in its annual report submitted to the Congress under section 10311 of this title, set forth the cost recovery percentage determined for that year under subparagraph (A) of this paragraph.".

ZONE OF RATE FLEXIBILITY

SEC. 205. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10707 the following new section:

"§ 10707a. Zone of rail carrier rate flexibility.

"(a) In this section—

"(1) 'base rate' means the rate in effect on the effective date of the Harley O. Staggers Rail Act of 1980 for the transportation of a particular commodity. If no rate exists for the transportation of a particular commodity on such effective date, the base rate for the transportation of such commodity shall be the rate established by the rail carrier, unless such rate is found to be unreasonable by the Commission, in which case the base rate shall be the rate authorized by the Commission.

"(2) 'adjusted base rate' means the base rate, as adjusted on a quarterly basis to reflect inflation.

"(b)(1) Except as provided in paragraph (2) of this subsection, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may, in addition to rate increases authorized under subsection (b) or (c) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title in order to cover cost increases due to inflation, so long as the increased rate is not greater than the adjusted base rate for the transportation involved.

"(2) A rail carrier may not increase a rate under this subsection to the extent that the cost increases to such carrier due to inflation are recovered through (A) general rate increases pursuant to section 10706 of this title, or (B) inflation-based rate increases under section 10712 of this title.

"(c)(1) During the 12-month period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 6 percent of the base rate. During each of the 3 succeeding 12-month periods, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any such rate by an annual amount of not more than 6 percent of the adjusted base rate, except that in no event shall the total increase under this subsection result in a rate which is more than 118 percent of the base rate.

"(2) If any portion of a rate increase under this subsection is not implemented in the year in which it is authorized, such portion may be implemented only in the next succeeding year.

"(d)(1) Except as provided in paragraph (3) of this subsection, during the 12-month period beginning on October 1, 1984, and during each succeeding 12-month period, a rail carrier may, in addition to rate increases under subsection (a) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 4 percent of the adjusted base rate.

"(2) No portion of any rate increase under this subsection which is not implemented in the year in which it is authorized may be implemented in any other year.

(3) The provisions of this subsection shall not apply to (A) a rail carrier proposing to increase a single line rate if such carrier earns adequate revenues, as established by the Commission under section 10704(a)(2) of this title, or (B) rail carriers proposing to increase a joint rate if all carriers participating in the route to which the joint rate applies earn adequate revenues, as established under such section.

"(e)(1) Notwithstanding the provisions of section 10707 of this title, in the case of any rate increase by a rail carrier that is authorized under this section—

"(A)(i) the Commission may not suspend such rate increase pending final Commission action; and

"(ii) except as provided in paragraph (2) of this subsection, the Commission may not begin an investigation proceeding under section 10707 of this title with respect to the reasonableness of such rate increase; but

"(B) an interested party may file a complaint under section 11701(b) of this title alleging that such rate increase violates the provisions of this subtitle;

"(2)(A) If a rate increase authorized under this section in any year results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable in that year under section 10709(d) of this title, the Commission may, on its own initiative or on complaint of an interested party, begin an investigation proceeding to determine whether the proposed rate increase violates this subtitle.

"(f) In any proceeding under this section, evidence of the underlying rail carrier rate is admissible.

"(g) A finding by the Commission that a rate increase exceeds the increase authorized under this section does not establish a presumption that the proposed rate exceeds a reasonable maximum.

"(h) The authority of the Commission to determine and prescribe reasonable rules, classifications, and practices may not be used, directly or indirectly, to limit the rates which rail carriers are otherwise authorized to establish under this section.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10707 the following new item:

"10707a. Zone of rail carrier rate flexibility.".

(c)(1) Any rail carrier rate which increased over 70 percent between 1976 and 1979 inclusive for the transportation, in shipper owned equipment over a distance exceeding 1,550 miles between points within the United States, of coal pursuant to a tariff calling for an annual volume of more than 2,000,000 tons per year purchased by a municipally owned utility for the generation of electric power under a 20-year purchase agreement entered into by such utility in the year 1974 shall not be increased so long as coal is purchased under such original agreement, except that—

(A) during the period beginning October 1, 1980, and ending September 30, 1987, the Interstate Commerce Commission may permit increases in such rate which result in a revenue-variable cost percentage of not more than 162 percent; and

(B) after October 1, 1987, such rate shall be subject to section 10101a of title 49, United States Code, and related provisions of such title governing regulation of rail carrier rates, except that until such rate results in a revenue-variable cost percentage that equals or exceeds the revenue-variable percentage applicable under section 10709(d) of such title, such rate may not be increased more than 5 percent, in addition to inflation, in any year.

(2) Neither the provisions of this subsection nor any rate subject to this subsection shall be admissible as evidence or considered in any way in any proceeding involving any other rail carrier rate that is commenced to determine market dominance under section 10709 of title 49, United States Code, or to determine reasonableness under section 10701a of such title.

RATE REGULATION PROCEEDINGS AND STUDY

SEC. 206. (a)(1) The Interstate Commerce Commission shall commence a proceeding for purposes of determining whether, and to what extent, product competition should be considered in proceedings under subtitle IV of title 49, United States Code, to determine the reasonableness of rail carrier rates. The Commission shall complete its proceeding under this subsection within 230 days after the effective date of this Act.

(2) On the basis of the proceeding conducted under this subsection, the Commission may find that, in determining the reasonableness of rail carrier rates—

(A) proof of product competition should be considered as a factor to the same extent as it is considered under existing law on the effective date of this Act;

(B) proof of product competition should be given greater weight than that described in subparagraph (A) of this paragraph; or

(C) proof of product competition should be conclusive.

(3)(A) For purposes of this subsection, the term "product competition" means the availability to a consignee, at a competitive delivered cost and in sufficient quantities, of products or commodities which are of the same type as the commodity or product to which the rate in question applies, without regard to whether such products or commodities are available from the same or a different origin as those to which the rate applies.

(B) In determining the availability of alternative sources of a particular commodity for purposes of this subsection, such commodity must be capable of being effectively utilized by the consignee.

(C) In determining the availability of alternative sources of coal for purposes of this subsection, such coal must be capable, by reason of similar specifications such as Btu's, sulfur content, and ash content, of being effectively utilized by the consignee.

(D) For purposes of this subsection, any coal imported in the United States for the generation of electricity by utilities shall not be taken into account in the determination of whether coal is available to a consignee from another source.

(4)(A) Nothing in this subsection shall be construed as requiring the Commission to modify its determination of the reasonableness of rail carrier rates under existing law and procedures.

(B) Nothing in this subsection shall be construed as altering the meaning, use, or interpretation by the Commission, the courts, or any party of the term "market dominance", as defined in section 10709(a) of title 49, United States Code. No determination under this subsection shall in any way alter the meaning of such term, even if such meaning denies the Commission jurisdiction over the transportation of commodities where product competition exists.

(b)(1) The Interstate Commerce Commission shall, within 3 years after the effective date of this Act, submit a report to the Congress setting forth its recommendations with respect to the appropriate jurisdictional threshold to be used for purposes of determining those cases in which the Commission will have jurisdiction to determine whether a proposed rail carrier rate is reasonable.

(2) The report submitted under this subsection shall include a consideration of feasibility of utilizing, as the criteria for establishing the jurisdictional threshold described in paragraph (1) of this subsection—

(A) the cost recovery percentage, as defined in section 10709(d) of title 49, United States Code;

(B) a specific revenue-variable cost percentage;

(C) a reasonable transportation alternative test;

(D) a revised statutory or administrative market dominance test;

(E) a test based on rail carrier return on investment; or

(F) such other criteria as the Commission considers appropriate.

(c)(1) The Interstate Commerce Commission shall, within 180 days after the effective date of this Act and thereafter as necessary, establish standards for determining what constitutes adequate revenues for rail carriers under section 10704 of title 49, United States Code.

(2) On the basis of the standards established under paragraph (1) of this subsection, the Commission shall, within 180 days after the effective date of this Act and on an annual basis thereafter, determine which rail carriers are earning adequate revenues.

(d) The rail carrier rate level resulting from any case pending in any Federal court on July 22, 1980 (including any case on remand), shall be considered to be the rate for purposes of determining permissible rate increases under chapter 107 of title 49, United States Code.

INFLATION-BASED RATE INCREASES

SEC. 207. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10712. Inflation-based rate increases

"(a) After the elimination of general rate increases under section 10706 of this title, the Commission may, on a quarterly basis and consistent with the rail transportation policy set forth in section 10101a of this title, prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases. Such percentage rate increase or rate index may be applicable on an industrywide or on a carrier-by-basis.

"(b) Within 60 days after the date the Commission prescribes a percentage rate increase or rate index under subsection (a) of this section, each rail carrier or group of rail carriers shall notify the Commission of any rate or group of rates which such carrier or carriers intend to be excluded from the application of such percentage rate increase or rate index.

"(c) For purposes of this section, a percentage rate index may permit rate increases within a specified range to allow carriers to recover a total revenue increase specified by the Commission as necessary to compensate for inflationary cost increases.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10711 the following new item:

"10712. Inflation-based rate increases.".

INVESTIGATION AND SUSPENSION OF RATES

SEC. 208. (a) Section 10707(b)(1) of title 49, United States Code, is amended to read as follows:

"(b)(1) The Commission must complete a proceeding under this section and make its final decision by the end of the 5th month after the rate, classification, rule, or practice was to become effective, except that if the Commission reports to the Congress by the end of such 5th month that it cannot make a final decision by that time and explains the reason for the delay, it may take an additional 3 months to complete the proceeding and make its final decision.".

(b) Section 10707(c) of title 49, United States Code, is amended to read as follows:

"(c)(1) The Commission may not suspend a proposed rate, classification, rule, or practice during the course of a Commission proceeding under this section unless it appears from the specific facts shown by the verified statement of a person that—

"(A) it is substantially likely that the protestant will prevail on the merits;

"(B) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

"(C) because of the peculiar economic circumstances of the protestant, the provisions of subsection (d) of this section do not protect the protestant.

"(2) The burden shall be on the protestant to prove the matters described in paragraph (1)(A), (B), and (C) of this subsection.".

(c) Section 10707(d) of title 49, United States Code, is amended to read as follows:

"(d)(1) If the Commission does not suspend a proposed rate increase under subsection (c) of this section, the Commission shall require the rail carrier to account for all amounts received under the increase until the Commission completes its proceedings under subsection (b) of this section. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

"(2) If a rate is suspended under subsection (c) of this section and any portion of such rate is later found to be reasonable under this title, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days, except that this paragraph shall not apply to general rate increases under section 10706 of this title.

"(3) If any portion of a proposed rate decrease is suspended under subsection (c) of this section and later found to be reasonable under this title, the rail carrier may refund any part of the portion of the decrease found to comply with this title if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.".

(d) Section 10707(e) of title 49, United States Code, is repealed.

CONTRACTS

SEC. 209. (a) Subchapter I of chapter 107 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new section:

"§ 10713. Contracts

"(a) One or more rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

"(b) Each contract entered into under this section shall be filed with the Commission, together with a summary of the contract containing such nonconfidential information as the Commission prescribes. The Commission shall immediately make a summary of each such contract available to interested persons.

"(c) A contract filed under this section shall be approved by the Commission, as pro-

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vided in subsection (e) of this section, unless the Commission determines in a proceeding under subsection (d) of this section that such contract is in violation of this section.

"(d)(1) No later than 30 days after the date of filing of a contract under this section, the Commission may, on its own initiative or on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

"(2)(A) In the case of a contract other than a contract for the transportation of agricultural commodities, a complaint may be filed—

"(i) by a shipper only on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

"(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

For purposes of this paragraph, the term 'unreasonable discrimination' has the same meaning as such term has under section 10741 of this title.

"(B) In the case of a contract for the transportation of agricultural commodities, in addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper on the grounds that such shipper individually will be harmed because—

"(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

"(ii) the proposed contract constitutes a destructive competitive practice.

"(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Commission may establish, the Commission shall determine whether the contract that is the subject of such proceeding is in violation of this section.

"(B) If the Commission determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a carrier, the Commission shall order such carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

"(e) Approval of a contract filed under this section shall be effective—

"(1) on the date the Commission expressly approves such contract, but in no event before the end of the 30-day period beginning on the date such contract is filed or after the end of the 60-day period beginning on such date; or

"(2) if the Commission has not disapproved such contract by the end of the 60-day period beginning on the date such contract is filed, at the end of such 60-day period.

"(f) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under this section, except to the extent necessary to comply with section 11128 of this title.

"(g) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

"(h)(1) A contract that is approved by the Commission under this section may not be subsequently challenged before the Commission or in any court on the grounds that such contract violates a provision of this subtitle.

"(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

"(i) The provisions of this section shall not affect the status of any lawful contract between a rail carrier and one or more purchasers of rail service that is in effect on the effective date of the Harley O. Staggers Rail Act of 1980. Any such contract shall hereafter have the same force and effect as if it had been entered into in accordance with the provisions of this section. Nothing in this section shall affect the rights of the parties to challenge the existence of such a contract.

"(j)(1) During the 3-year period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC), except that in the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment utilized on the average during the prior 3-year period may be used for such contract without prior authorization by the Commission.

"(2) Any rail carrier or other party may seek relief from the limitations of paragraph (1) of this subsection, and the Commission may grant such relief as it considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier's ability to meet its common carrier obligations under section 11101 of this title.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10712, as added by this Act, the following new item:

"10713. Contracts.".

DEMAND SENSITIVE RATES

SEC. 210. Section 10727 of title 49, United States Code, and the item relating to such section in the section analysis for chapter 107 of such title, are repealed.

PHASEOUT OF CAPITAL INCENTIVE RATES

SEC. 211. (a) Section 10729 of title 49, United States Code, and the item relating to such section in the section analysis of chapter 107 of such title, are repealed.

(b) Notwithstanding any other provision of law, any rate established by a rail carrier under section 10729 of title 49, United States Code, prior to the effective date of this Act shall remain in effect in accordance with its terms, but for no longer than 5 years after the date it became effective, unless the parites otherwise agree. However, the Interstate Commerce Commission may, during the period such a rate is in effect, order such rate revised to a level equal to the incremental cost of providing the transportation if the Commission finds that the level then in effect reduces the going concern value of the rail carrier.

PERMISSIVE LIMITED LIABILITY RATES

SEC. 212. (a) Section 10730 of title 49, United States Code, is amended—

(1) by inserting "(a)" immediately before "The";

(2) by inserting "(other than a rail carrier)" immediately after "carrier" the first place it appears; and

(3) by adding at the end thereof the following new subsection:

"(b) A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish rates for transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier, and may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.".

(b)(1) Section 11707(c) of title 49, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(5) The liability of a rail carrier under subsection (a) of this section shall not exceed the value of the physical loss of or damage to the property transported, or the cost of repair to such property, to the extent that the loss or damage thereto is caused by the rail carrier. Any other or special damages shall not be recoverable.

"(6) If property transported by a rail carrier is lost, damaged, or delayed by reason of the act or negligence of both the carrier and the shipper, owner, or consignee, such carrier shall not be liable for the portion of loss, damage, or delay caused by the act or negligence of such shipper, owner, or consignee.".

(2) Section 11707(d) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(d)";

(B) by inserting "(other than a rail carrier)" immediately after "delivering carrier"; and

(C) by adding at the end thereof the following new paragraph:

"(2) A civil action under this section may be brought either against the originating rail carrier in a court having jurisdiction over the point of origin or against the delivering rail carrier in a court having jurisdiction over the point of destination. Such action may be brought in a district court of the United States or in a State court, and in any such action Federal law and Federal court decisions shall be applied. No other cause of action shall exist to recover for loss, damage, or delay to property.".

(3) Section 11707(e) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(e)";

(B) by inserting "(other than a rail carrier)" immediately after "A carrier"; and

(C) by adding at the end thereof the following new paragraph:

"(2)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier may not provide by rule, contract, or otherwise a period of less than six months for filing a claim against such carrier under this section or a period of less than one year from the date such carrier declines such claim for bringing a civil action against it under this section. The period for filing claims shall be computed from the date of the loss of or damage to the property transported, and the period for bringing a civil action shall be computed from the date the person filing the claim receives notice that such claim is declined.

"(B) The limitations set forth in this paragraph shall not apply whenever a rail carrier

has entered into a contract for the provision of transportation or service and such contract is filed with the Commission as a tariff under section 10762 of this title.".

RATE DISCRIMINATION

SEC. 213. Section 10741 of title 49, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) Differences between rates, classifications, rules, and practices of rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title do not constitute a violation of this section if such differences result from different services provided by rail carriers.

"(f) This section shall not apply to—

"(1) rates and conditions set forth in contracts approved under section 10713 of this title;

"(2) surcharges or cancellations under section 10705a of this title;

"(3) separate rates for distinct rail services under section 10728 of this title;

"(4) rail rates applicable to different routes; or

"(5) expenses authorized under section 10751 of this title,

except that with repect to rates described in paragraphs (2), (3), and (4), nothing in this subsection shall affect the authority of the Commission under this section with respect to rate relationships between ports or within the same port.

EXEMPTION

SEC. 214. Section 10505 of title 49, United States Code, is amended to read as follows:

"§ 10505. Authority to exempt carrier transportation

"(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service when the Commission finds that the application of a provision of this subtitle—

"(1) is not necessary to carry out the transportation policy of section 10101a of this title; and

"(2) either (A) the transportation or service is of limited scope, (B) the application of a provision of this subtitle is not needed to protect shippers and receivers where there is an absence of effective competition, or (C) there is effective competition.

"(b) The Commission may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party.

"(c) The Commission may specify the period of time during which an exemption granted under this section is effective.

"(d) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of section 10101a of this title.

"(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11707 of this title. Nothing in this subsection or section 11707 of this title shall prevent rail carrier from offering alternative terms nor give the Commission the authority to require any specific level of rates or services based upon the provisions of section 11707 of this title.

"(f) The Commission may exercise its authority under this section to exempt transportation that is provided by a rail carrier as a part of a continuous intermodal movement.

"(g) The Commission may not exercise its authority under this section (1) to authorize intermodal ownership that is otherwise prohibited by this title, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this suotitle.".

INTRASTATE RATES

SEC. 215. (a) Section 11501(a) of title 49, United States Code, is amended—

(1) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(2) by striking out "subchapter I or subchapter IV" and inserting in lieu thereof "subchapter IV";

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(4) by striking out paragraph (2).

(b) Section 11501 of title 49, United States Code, is amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting immediately after subsection (a) the following new subsections:

"(b)(1) A State authority may only exercise jurisdiction over intrastate transportation provided by a rail carrier providing tarnsportaion subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title if such State authority exercises such jurisdiction exclusively in accordance with the provisions of this subtitle.

"(2) Within 120 days after the effective date of the Harley O. Staggers Rail Act of 1980, each State authority exercising jurisdiction over intrastate rates, classifications, rules, and practices for intrastate transportation described in paragraph (1) of this subsection shall submit to the Commission the standards and procedure (including timing requirements) used by such State authority in exercising such jurisdiction.

"(3)(A) Within 90 days after receipt of the intrastate regulatory rate standards and procedures of a State authority under paragraph (2) of this subsection, the Commission shall certify such State authority for purposes of this subsection if the Commission determines that such standards and procedures are consistent with the procedures applicable to regulation of rail carriers by the Commission under this title. If the Commission determines that such standards and procedures are not consistent, it shall deny certification to such State authority, and such State authority may resubmit new standards and procedures to the Commission for review in accordance with this subsection.

"(B) The standards and procedures existing in each State on the effective date of the Harley O. Staggers Rail Act of 1980 for the exercise of jurisdiction over intrastate rail rates, classifications, rules, and practices shall be deemed to be certified by the Commission from that date until the date an initial determination is made by the Commission under subparagraph (A) of this paragraph.

"(4)(A) Any State authority which is certified by the Commission under this subsection may use its standards and procedures in exercising jurisdiction over intrastate rail rates, classifications, rules, and practices during the 5-year period commencing on the date of such certification. Any State authority which is denied certification may not exercise any jurisdiction over intrastate rates, classifications, rules, and practices until it receives certification under this subsection.

"(B) Any intrastate transportation provided by a rail carrier in a State which may not exercise jurisdiction over an intrastate rate, classification, rule, or practice of that carrier due to a denial of certification under this subsection shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

"(5)(A) Certification of a State authority under this subsection is valid for the 5-year period beginning on the date of such certification. Prior to the expiration of such 5-year period, the State authority shall resubmit its intrastate regulatory standards procedures to the Commission for subsequent certification in accordance with this subsection.

"(B) During any 5-year certification period, a State may not change its certified standards and procedures without notifying and receiving express approval from the Commission.

"(6) Notwithstanding any other provision of this section, a State authority may not exercise any jurisdiction over general rate increases under section 10706 of this title or inflation-based rate increases under section 10712 of this title.

"(c) Any rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may petition the Commission to review the decision of any State authority in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined on the grounds that the standards and procedures applied by the State were not consistent with the provisions of this subtitle. The Commission shall dispose of any such petition within 30 days after the date it is received. If the Commission determines that the standards and procedures were not in accordance with the provisions of this subtitle, its order shall determine and authorize the carrier to establish the appropriate rate, classification, rule, or practice.".

(c)(1) Section 11501(d)(2) of title 49, United States Code, as redesignated by subsection (b) of this section, is amended by inserting "and chapter 107 of this title" immediately before the period at the end of the first sentence.

(2) Section 10103(a) of title 49, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided in this subtitle, the".

(3) Section 10501(a)(2) of title 49, United States Code, is amended by inserting "such jurisdiction is not limited by subsection (b) of this section or the extent" immediately after "to the extent".

(4) Section 10501(b)(1) of title 49, United States Code, is amended by inserting "other than transportation which is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title" immediately after "(other than the District of Columbia)".

(5) Section 10501(c) of title 49, United States Code, is amended by striking out "transportation by carriers" and inserting in lieu thereof "transportation (other than transportation which is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title) by carriers".

(6) Section 10501 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) The jurisdiction of the Commission and of State authorities (to the extent such authorities are authorized to administer the standards and procedures of this title pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this title with respect to the rates, classifications, rules, and practices of such carriers, is exclusive.".

CUSTOMER SOLICITATION EXPENSES

SEC. 216. (a) Subchapter III of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10751. Customer solicitation expenses

"(a) Any business solicitation or entertainment expense incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not constitute a violation of section 10741 or 10761 of this title if such expense would not be unlawful if incurred by a person or corporation not subject to the jurisdiction of the Commission.

"(b) Any business entertainment expense authorized under this section that is paid or incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not be taken into account in determining the cost of service or the rate base for purposes of this title.

"(c) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Commission shall institute a rulemaking proceeding pursuant to which it shall issue rules establishing appropriate standards and guidelines for authorized business solicitation and entertainment expenses under this section. Such standards and guidelines shall be consistent with standards and guidelines applicable under existing law to persons not subject to this title, including competing unregulated surface transportation carriers.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10750 the following new item:

"10751. Customer solicitation expenses.".

(c) Section 10761 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) This section shall not apply to expenses authorized under section 10751 of this title.".

EFFICIENT MARKETING

SEC. 217. (a) Section 10762(c)(3) of title 49, United States Code, is amended by striking out the second sentence and inserting in lieu thereof the following: "In the case of a carrier other than a rail carrier, a proposed rate change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier, a proposed rate change resulting in an increased rate or a new rate shall not become effective for 10 days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for 5 days after the notice is published, except that a contract authorized under section 10713 of this title shall become effective in accordance with the provisions of such section.".

(b) Section 10762(d)(1) of title 49, United States Code, is amended by striking out "30-day" and inserting in lieu thereof "notice".

RATE BUREAUS

SEC. 218. (a) Section 10706(a)(1) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(C) 'practicably participates in that movement' shall have such meaning as the Commission shall by regulation prescribe".

(b) Section 10706(a)(2)(A) of title 49, United States Code, is amended—

(1) by inserting "publication," after "initiation," in the first sentence; and

(2) by striking out "section 10101" in the second sentence and inserting in lieu thereof "section 10101a".

(c)(1) Section 10706(a)(3)(A) of title 49, United States Code, is amended to read as follows:

"(3)(A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—

"(i) permit a rail carrier to discuss, to participate in agreements related to, or to vote on single line rates proposed by another rail carrier except that for purposes of general rate increases only, if the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part;

"(ii) permit a rail carrier to discuss, to participate in agreements related to, or to vote on rates related to a particular interline movement unless that rail carrier practicably participates in that movement; or

"(iii) if there are interline movements over two or more routes between the same end points, permit a carrier to discuss, to participate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. This clause shall take effect on January 1, 1984, or on such earlier date as the Commission determines. If the Commission finds, at any time, that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

(2) Section 10706(a)(3)(B) of title 49, United States Code, is amended to read as follows:

"(B) Until January 1, 1983, subparagraph (A)(ii) and (iii) of this paragraph does not apply to (i) general rate increases or decreases for joint rates if the agreement gives shippers, under specified procedures, at least 15 days notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission, or (ii) board tariff changes that are of at least substantially general application throughout the area when the changes will apply, except single line rate where subparagraph (A)(i) of this paragraph prohibits the participation of carriers with single line rules. If the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

(3) Section 10706(a)(3)(C) of title 49, United States Code, is amended—

(A) by inserting "(i)" immediately after "(C)"; and

(B) by adding at the end thereof the following new clause:

"(ii) In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of a Federal law cited in subsection (a)(2)(A) of this section or of any similar State law, the party making the allegation shall have the burden of showing by clear and convincing evidence that the agreement, conspiracy, or combination occurred. Proof of the violation may not rest on or be inferred from evidence that two or more carriers acted together with respect to a rate, division, rule, classification, or practice applicable to an interline movement and that a party to such action took similar action with respect to a rate, division, rule, classification, or practice applicable to a competitive route or traffic.".

(4) Section 10706(a)(3) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(D) An organization described in subparagraph (A) of this paragraph shall provide that transcripts or sound recordings be made of all meetings, that records of votes be made, and that such transcript or recordings and voting records be submitted to the Commission and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus, except that such material shall be kept confidential and shall not be subject to disclosure under section 552 of title 5.".

(d) Section 10706(a) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Commission approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Commission may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Commission may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.".

(e) Section 10706(h)(1)(B) of title 49, United States Code, is amended by striking out "section 10101" and inserting in lieu thereof "section 10101a".

(f) The Interstate Commerce Commission shall require rail carrier members of a rate bureau to provide the employees of such rate bureau who are affected by the amendments made by this section with fair arrangements no less protective of the interests of such employees than those established pursuant to section 11347 of title 49, United States Code. For purposes of this subsection, the term "employees" does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions.

LONG AND SHORT HAUL TRANSPORTATION

SEC. 219. (a) Section 10726(a)(1) of title 49, United States Code, is amended—

(1) by striking out "I or"; and

(2) by adding at the end thereof the following new sentence: "The provisions of this paragraph shall apply to a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title when such carrier is transporting grains, soybeans, rice or cotton or when the Commission determines that there is competition between a rail and water service or route and the application of this paragraph is necessary to prohibit anticompetitive behavior.".

(b) Section 10726(c) of title 49, United States Code, is repealed.

RAILROAD ENTRY

SEC. 220. (a) Section 10901(a) of title 49, United States Code, is amended by striking "will be enhanced by" and inserting in lieu thereof "permit".

(b) Section 10901 of title 49, United States Code, is further amended by adding at the end thereof the following new subsections:

"(d)(1) Where a rail carrier has been issued a certificate of public convenience and necessity by the Commission authorizing the construction or extension of a railroad line, no other rail carrier may block such construction or extension by refusing to permit the carrier to cross its property if (A) the construction does not unreasonably interfere with the operation of the crossed line, (B) the operation does not materially interfere with the operation of the crossed line, and (C) the owner of the crossing line compensates the owner of the crossed line.

"(2) If the carriers are unable to agree on the terms of operation or the amount of payment for purposes of paragraph (1) of this subsection, either party may submit the matters in dispute to the Commission for determination.

"(e) The Commission shall require any rail carrier proposing both to construct and operate a new railroad line pursuant to this section to provide a fair and equitable arrangement for the protection of the interests of railroad employees who may be affected thereby no less protective of or beneficial to the interests of such employees than those established pursuant to section 11347 of this title.

"(f) If, after construction of a railroad line pursuant to this section, a rail carrier rearranges or adjusts its work force in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this title, the provisions of this title will apply to such employee.".

SERVICE DURING PERIODS OF PEAK DEMAND

SEC. 221. Section 11101(a) of title 49, United States Code, is amended by adding at the end thereof the following new sentence: "A rail carrier shall not be found to have violated this section because it fulfills its commitments under agreements approved under section 10712 of this title before responding to reasonable requests for service.".

RECIPROCAL SWITCHING

SEC. 222. Section 11103 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) The Commission may require rail carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Commission shall establish such conditions and compensation.

"(2) The Commission may require reciprocal switching agreements entered into by rail carriers pursuant to this subsection to contain provisions for the protection of the interests of employees affected thereby.".

CAR SERVICE COMPENSATION

SEC. 223. (a)(1) Section 11122(b)(2) of title 49, United States Code, is repealed.

(2) Section 11122(b)(1) of title 49, United States Code, is amended by striking out "(1)" immediately before "The rate".

(b) Section 10706(a) of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(5)(A) Whenever two or more shippers enter into an agreement that relates to the amount of compensation such shippers propose to charge rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Commission for approval of that agreement under this paragraph. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101a of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the terms required by the Commission, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement.

"(B) If the Commission approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers, under payment by such carriers or under a published allowance are unable to agree upon the amount of compensation to be charged for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Commission. The Commission shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Commission.".

CAR SERVICE ORDERS FOR EXIGENT CIRCUMSTANCES

SEC. 224. Section 11123(a) of title 49, United States Code, is amended to read as follows:

"(a)(1) When the Interstate Commerce Commission finds that a shortage of equipment, congestion of traffic, or other failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States, the Commission may, for a period not to exceed thirty days—

"(A) suspend any car service rule or practice;

"(B) take action during the emergency to promote service in the interest of the public and of commerce regardless of the ownership (as between carriers) of a locomotive, car, or other vehicle on terms of compensation the carriers establish between themselves, subject to subsection (b)(2) of this section;

"(C) require joint or common use of facilities, on terms of compensation the carriers establish between themselves, subject to subsection (b)(2) of this section, when that action will best meet the emergency and serve the public interest; and

"(D) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

"(2) The Commission may extend any action taken under paragraph (1) of this subsection beyond the thirty-day period provided in such paragraph only if the Secretary of Transportation certifies that a transportation emergency exists.

"(3) In carrying out the provisions of this subsection, the Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with the traffic subject to the action of the Commission.".

EMPLOYEE PROTECTION

SEC. 225. (a) Section 11347 of title 49, United States Code, is amended by inserting "or pursuant to section 1172(b) of title 11" immediately after "this title".

(b) In authorizing any abandonment of a railroad line under section 1170 of title 11, United States Code, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11347 of title 49, United States Code.

(c) Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this Act.

SAFE RAILROAD REINVESTMENT REQUIREMENTS

SEC. 226. (a) The Secretary of Transportation shall, on the basis of inspections of the track, physical facilities, and operations of a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, notify the Commission that such carrier (1) does not meet the safety requirements of applicable Federal statutes, and (2) is not maintained and operated in a manner which protects the public health and safety and the health and safety of railroad employees. The Secretary may include in his notification to the Commission that, for purposes of reviewing rate increases over which the Commission has jurisdiction, a rail carrier has excessively deferred its maintenance without good cause. For the purposes of this subsection, inspection of track shall be conducted at least once each year.

(b)(1) Upon receipt of the Secretary's notification under subsection (b) of this section with respect to a rail carrier, the Interstate Commerce Commission may, to the extent of its authority under chapter 113 of title 49, United States Code, review the financial arrangements of such carrier and prohibit any financial transactions which would unreasonably impair the ability of such carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

(2) The Commission may exercise its authority under this subsection with respect to a rail carrier until such time as the Commission determines that the safety deficiencies of such carrier which were the basis of the Secretary's notification have been remedied. In exercising such authority, the Commission shall take all steps necessary to avoid impairing the ability of such carrier to obtain financing.

(c) The Interstate Commerce Commission shall submit an annual report to the Congress setting forth its findings with respect to whether rail carriers that are subsidiaries of other companies are involved in financial transactions with the parent company which (1) result in the transfer of funds or assets, directly or indirectly, from the rail carrier to its parent company, and (2) impair the ability of the rail carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 227. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.), shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Rail-

road Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out 'and the Milwaukee Railroad Restructuring Act' and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(d)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(h)(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and cancelled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1)(A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

LOAN GUARANTEES

SEC. 228. (a) To promote competition in the transportation of coal, the Secretary of Transportation shall, no later than 45 days after the date of enactment of this Act, take final action of any application for loan guarantees, under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, to be used in connection with joint ownership, construction, or rehabilitation of any facilities (including support facilities) for a second rail carrier to serve the Powder River Coal Region in Montana and Wyoming.

(b) The Secretary of Transportation may waive the provisions of section 511(g) of the Railroad Revitalization and Regulatory Reform Act of 1976 in making the loan guarantees described in subsection (a) of this section.

(c) The provisions of section 4(f) of the Department of Transportation Act shall not apply to any loan guarantee described in subsection (a) of this section.

(d)(1) The Secretary of Transportation shall review the proposed Chicago & North Western connector line route and shall not approve any route which requires the use of any agricultural land unless (A) there is no feasible and prudent alternative to the use of such land and, (B) the proposed route

construction plan requires all possible planning to minimize harm to such agricultural land resulting from such use; provided, however, that the Secretary of Transportation may not otherwise disapprove a proposed route for the Chicago & North Western line on the authority of this subsection. This review of a proposed route shall be conducted within ninety days after the "final action" specified in subsection (a);

(2)(A) The Secretary shall review the use of any agricultural land used in any route for newly constructed line and shall require, to the maximum extent prudent and feasible, that such railroad provide a private grade crossing for the convenience of each land owner whose agricultural holdings are "divided by such newly constructed line when the Secretary finds that such division of property will cause a substantial disruption to the agricultural use of such land. The owners of such property shall file a request for such grade crossing with the Secretary within 180 days of "final action" as described in subsection (a) of this section. The finding of the Secretary under this subsection shall be final.

(B) The Secretary shall render a decision on each request for grade crossing under this paragraph within 180 days of its receipt. Such review shall not require the delay of construction of new line under subsection (a) of this section.

(C) When the Secretary requires the construction of a grade crossing under this paragraph, he shall require that the land holder and the railroad enter into an agreement which shall limit the liability of such railroad for accidents at such crossing to $25,000, provided that such railroad has constructed such grade crossing in a manner calculated to avoid reasonably foreseeable accidents to persons and livestock. Maintenance of safety features such as fences for such crossings shall be the responsibility of the land holder.

AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 229. (a) The second sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by inserting "is not required to make the findings with respect to subsections (e)(3) and (f) and" immediately after "the association" the first place it appears.

(b) Section 211(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)(2)) is amended by striking out "$4,000,000" and inserting in lieu thereof "$7,500,000".

(c) The last sentence of section 211(d) of the Regional Rail Reorganizational Act of 1973 (45 U.S.C. 721(d)) is amended by striking out "1980" and inserting in lieu thereof "1981".

SAVINGS PROVISIONS

SEC. 230. (a) Any rate that is in effect on the effective date of this Act for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, may, during the 180 day period beginning on such effective date, be challenged in a complaint filed with the Interstate Commerce Commission by any interested party alleging that the rail carrier has market dominance over the transportation to which the rate applies, as determined under section 10709 of such title, and that the rate is not reasonable under section 10701a of such title.

(b) Any rate described in subsection (a) of this section—

(1) which is not challenged in a complaint filed within the 180-day period provided in such subsection; or

(2) which is challenged in such a complaint, but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable,

shall be deemed to be lawful and may not thereafter be challenged in the Commission or in any court.

(c) The provisions of this section shall not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date of this Act did not exceed 500 net tons and has increased ten-fold in the 3-year period immediately preceding the bringing of a challenge to the increase of such rate.

(d) The burden of proof in any proceeding under this section shall be on the complainant.

ASSISTANCE

SEC. 23D. (a)(1) There is hereby established a Rail Technology and Shipper Needs Board (hereinafter in this section referred to as the "Board"), which shall be composed of the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Labor, the Chairman of the Interstate Commerce Commission, and two shipper representatives from national agricultural organizations appointed by the President. The Secretary of Transportation shall serve as Chairman of the Board and shall have the responsibility for expediting the proceedings of the Board.

(2)(A) The Board shall select personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees, task forces, and advisory panels. Such individuals shall be selected on the basis of their proven expertise in transportation related fields.

(B) Individuals selected under this section may be compensated for their services at the discretion of the Board, but in no event shall any such individual receive compensation in excess of 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of title 5, for each day (including travel time) in which he is engaged in the actual performance of duties vested in the Board.

(b)(1) The Board may conduct studies of technological means to improve rail productivity and of the continuing transportation needs of urban and rural rail shippers, and shall submit reports to the Congress, in accordance with paragraph (2) of this subsection, on the results of such studies. Such reports shall include—

(A) an assessment of current rail technology limitations, with recommendations for rail technological innovations and improvements designed to—

(i) reduce rail operating and future investment costs;

(ii) reduce consumer prices, including food prices;

(iii) reduce energy consumption;

(iv) promote inter-modal and intra-modal coordination;

(v) provide financially self-sustaining and continuing rail service to light traffic density agricultural areas; and

(vi) enhance the competitive position of United States exports (including agricultural products) in world markets;

(B) estimates of future labor and capital investment requirements to rehabilitate the essential rail system of the United States.

(C) a recommendation with respect to the need to develop and disseminate, on a continuing basis, information, and analysis on projected transportation needs of urban and rural shippers for the purpose of improving private and public investment decisionmaking;

(D) an analysis of the effect of the provisions of this Act on urban and rural shippers, including so-called "captive" shippers;

(E) recommendations with respect to improving economic, regulatory, and legislative conditions to enhance the acquisition and financially self-sustaining operation of rail feeder lines by cooperative organizations; and

(F) an analysis of potential and existing urban and rural Federal rail programs which need to be coordinated in order to insure the maximum utilization of Federal funds.

(2) The Board shall submit an interim report to the Congress under this subsection no later than January 1, 1982, and shall submit a final report to the Congress no later than January 1, 1984.

(c)(1) The Board shall cooperate with existing Federal departments and agencies to assure that sufficient resources and facilities exist to assist agriculture shippers in forming cooperative shipper associations and in taking advantage of expanded opportunities for contracting.

(2) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

(d) The Board shall cease to exist 5 years after the effective date of this Act.

(e) In evaluating restructuring plans submitted under section 518(h) of the Railroad Revitalization and Regulatory Reform Act of 1976, the Secretary of Transportation shall consult with the Secretary of Agriculture with respect to any aspect of such a plan that impacts upon the provision of transportation services to agricultural and rural areas.

(f) The Secretary of Agriculture, in cooperation with the Secretary of Transportation, may establish regional agricultural transportation representatives to assist shippers in securing railroad or alternative transportation services on the most favorable possible terms.

(g)(1) The Secretary of Transportation and the Secretary of the Treasury shall jointly submit to the Congress, within 9 months of the effective date of this Act, a comprehensive report on the anticipated effect (including the loss of revenue to the Federal Treasury) of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines. Such report shall also include such criteria as may be necessary to prevent the abuse of such special tax status.

(2) For purposes of this section, railroad feeder line rehabilitation includes the acquisition, construction, reconstruction, or erection of any feeder line roadbed, track, trestle, depot, switching, and signalling equipment, or any other rail equipment (other than rolling stock).

(h) There are authorized to be appropriated for purposes of carrying out the provisions of this section not to exceed $2,000,000.

TITLE III—RAILROAD COST DETERMINATIONS

UNIFORM ACCOUNTING SYSTEM

SEC. 301. Section 11142 of title 49, United States Code, is amended to read as follows:

"§ 11142. Uniform accounting system

"The Interstate Commerce Commission may prescribe a uniform accounting system for classes of carriers providing, and brokers for, transportation subject to the jurisdiction of the Commission under subchapters II, III, and IV of chapter 105 of this title.".

RAILROAD COST ACCOUNTING

SEC. 302. (a) Chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"§ 11161. Railroad Accounting Standards Board

"(a)(1) There is established a Railroad Accounting Standards Board which shall be within and responsible to the legislative branch of the Federal Government.

"(2) The Board shall be composed of the Comptroller General of the United States, who shall serve as chairman, and six members to be appointed by the Comptroller General.

"(3) The Comptroller General shall appoint members of the Board from among persons who are well qualified for such position by virtue of experience in or knowledge of rate regulation, accounting, or cost determinations. Of the members of the Board so appointed—

"(A) one shall be from the accounting profession;

"(B) one shall be from the railroad industry;

"(C) one shall be a representative of major rail shippers;

"(D) one shall be from the Interstate Commerce Commission;

"(E) one shall be a representative of small rail shippers; and

"(F) one shall be from the economics profession.

"(4) The term of office of each appointed member of the Board shall be three years, except that any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

"(5) The Board shall not act in the absence of a quorum, which shall consist of three members.

"(b) Each appointed member of the Board shall receive compensation at a rate equal to 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of title 5, for each day (including travel-time) in which he is engaged in the actual performance of duties vested in the Board.

"(c)(1) The Board may utilize personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities under this subchapter.

"(2) Individuals appointed by the Board under this subsection may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(d) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

"(e) Members and employees of the Board and all other individuals appointed under this subsection having or having had access to information in the possession of the Board shall be subject to the provisions of section 1905 of title 18.

"(f) The Board shall cease to exist three years after the effective date of the Harley O. Staggers Rail Act of 1980.

"§11162. Cost accounting standards

"(a) Within two years after the effective date of the Harley O. Staggers Rail Act of 1980, the Railroad Accounting Standards Board shall establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, principles for obtaining economically accurate railroad costs directly and indirectly associated with particular movements of goods, identifying the variable costs associated with particular movements of goods or such other costs as the Board believes most accurately represent the economic costs of such movements, including principles to govern the compilation of actual cost data, and to what degree of reliability indirect costs can be attributed to particular movements of goods. Such principles shall govern the determination of all railroad costs for specific regulatory proceedings under this title.

"(b) In developing cost accounting standards under this section, the Board shall take into account the following considerations:

"(1) The specific regulatory purposes for which railroad costs are required.

"(2) The degree of accuracy of the cost information which is needed to meet regulatory purposes.

"(3) The existing capability and the probable future capability of rail carriers to provide such information and the relative benefits and costs of requiring development of additional capability.

"(4) The means by which the degree of economic accuracy required can be obtained at the least possible expense and with the least possible information reporting.

"(5) The means by which the confidentiality of such costs can best be maintained while meeting the need for such information in regulatory proceedings.

"(c) The cost accounting standards established by the Board shall require that cost information be reported or disclosed only for the essential regulatory purposes defined by the Board.

"§ 11163. Implementation of cost accounting standards

"Upon the establishment of cost accounting standards by the Railroad Accounting Standards Board under section 11162 of this title, the Interstate Commerce Commission shall immediately promulgate rules to implement and enforce such standards. Not less than once every five years after the promulgation of the original rules, the Commission shall review the standards of the Board and shall, by rule, make such changes in such standards as are required to achieve the regulatory purposes of this title and the goals of this subchapter. The Commission shall insure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes.

"§ 11164. Certification of rail carrier cost accounting systems

"(a) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, each rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a request for preliminary certification of its cost accounting system. The Commission shall grant such preliminary certification if it determines that the cost accounting system of such rail carrier is in compliance with the accounting standards of the Commission in effect on the day prior to the effective date of the Harley O. Staggers Rail Act of 1980.

"(b)(1) As soon as practicable, but not later than 9 months, after the promulgation of rules by the Commission under section 11163 of this title, each rail carrier described in subsection (a) of this section shall file with the Commission a request for final certification of its cost accounting system.

"(2) Within 90 days, or such additional time as the Commission finds necessary, after a rail carrier files its request for final certification under paragraph (1) of this subsection, the Commission shall grant such final certification to such carrier if the Commission determines that the cost accounting system of such carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title. If the Commission denies such final certification, the rail carrier shall revise its cost accounting system and file a new request for certification within 90 days after the date of such denial. The Commission shall thereupon grant final certification if it determines that such cost accounting system, as revised, is in compliance with such rules. If the Commission again denies final certification to the rail carrier, the Commission shall prescribe a cost accounting system which such carrier shall adopt within a reasonable time and which shall be considered a finally certified cost accounting system for purposes of this section.

"(c) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Commission under section 11163 of this title.

"(d)(1) Certification under this section that the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title shall be valid until the promulgation of new rules by the Commission.

"(2) After the cost accounting system of a rail carrier is certified under this section, such rail carrier may, after notifying the Commission, make modifications in such system unless, within 60 days after the date of notification, the Commission finds such modifications to be inconsistent with the rules promulgated by the Commission under section 11163 of this title.

"(e) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission, the Commission shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

"§ 11165. Cost availability

"Consistent with the rules of the Interstate Commerce Commission governing discovery in Commission proceedings, rail carriers shall make relevant cost data available to shippers, States, ports, communities, and other interested parties that are a party to a Commission proceeding in which such data is required.

"§ 11166. Accounting and cost reporting

"(a) To obtain expense and revenue information for regulatory purposes, the Interstate Commerce Commission may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, prescribing expenses and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers. To the extent such rules are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings pursuant to this title, such rules shall be promulgated in accordance with the cost accounting standards established by the Railroad Accounting Standards Board under section 11162 of this title.

"(b) Any reports required by the rules established by the Commission under this section shall include only information considered necessary for disclosure under the cost accounting standards established by the Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission.

"§ 11167. Reports

"The Railroad Accounting Standards Board shall, within 2 years after the effective date of the Harley O. Staggers Rail Act of 1980, submit the following reports to the Congress:

"(1) A report comparing the probable costs of the implementation of cost accounting standards established under section 11162 of this title, including any inflationary effects, to the possible benefits of the implementation of such standards, including the availability of more precise data for use by rail carriers and shippers in proceedings before the Commission.

"(2) A report setting forth any recommendations of the Board for appropriate legislative or administrative action in order to integrate the cost accounting standards and the cost accounting system certification process under this subchapter into existing rail carrier rate regulation under this title, including determinations of the absence of effective competition under section 10709 of this title."

(b) The analysis of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"11161. Railroad Accounting Standards Board.
"11162. Cost accounting standards.
"11163. Implementation of cost accounting standards.
"11164. Certification of rail carrier cost accounting systems.
"11165. Cost availability.
"11166. Accounting and cost reporting.
"11167. Reports.".

CIVIL PENALTIES FOR VIOLATION OF ACCOUNTING STANDARDS PROVISIONS

SEC. 303. (a)(1) Chapter 119 of title 49, United States Code, is amended by inserting immediately after section 11913 the following new section:

"§ 11913a. Accounting standards violations

"Any rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that fails to obtain final certification of its cost accounting system under section 11164(b) of this title shall be fined not less than $50,000.".

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by inserting immediately after the item relating to section 11913 the following new item:

"11913a. Accounting standards violations.".

(b) Section 11910 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

(d) A person that knowingly discloses confidential data made available to such person under section 11165 of this title by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall be fined not more than $50,000.".

TITLE IV—RAILROAD MODERNIZATION AND RESTRUCTURING ASSISTANCE

COORDINATION OF FEDERAL ASSISTANCE

SEC. 401. (a) The Secretary of Transportation, in administering the provisions of this title, shall be guided by the goal of achieving a safe and efficient transportation system by providing transitional financial assistance which facilitates—

(1) restructuring of railroad facilities and related projects that emphasize higher density operations and the elimination of uneconomical plant;

(2) improved asset and manpower utilization; and

(3) the encouragement of a strong system of self-supporting shipper-operated or State-operated rail lines.

(b) Within 90 days after the end of each fiscal year, the Secretary shall submit a report to the Congress listing the specific Federal assistance provided the railroad industry during such fiscal year. Each such report shall set forth the reasons for each Federal loan or grant and explain the way in which such loan or grant contributed to the overall goal or providing a safe and efficient transportation system.

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 402. (a) Subchapter I of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new sections:

"§ 10910. Railroad development

"(a)(1) Whenever the Interstate Commerce Commission finds—

"(A)(i) under section 10903 of this title, that the present or future public convenience or necessity require or permit the abandonment or discontinuance of a railroad line, or (ii) under subsection (b) of this section, that transportation provided over a particular line of railroad by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title is inadequate; and

"(B) that an application to purchase such line has been filed, in accordance with section 10911 of this title, by a financially responsible person (including a governmental authority) other than a class I or class II rail carrier, and that such person will continue to provide railroad transportation over such line,

the Commission shall require the rail carrier owning the line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

"(2) For purposes of this subsection—

"(A) the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater; and

"(B) a financially responsible person is a person who (i) is capable of paying the constitutional minimum value of the line proposed to be acquired, and (ii) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

"(b)(1) For the purposes of this section, transportation over a particular railroad line shall be deemed to be inadequate if the Commission determines, after a hearing, that—

"(A) the transportation over such line is unacceptable to and for the majority of shippers who can transport traffic over such line;

"(B) the rail carrier operating such line is not making reasonable efforts, as judged on the basis of the performance of an efficient rail carrier providing quality transportation, to provide service sufficient to meet the needs of shippers who can transport traffic over such line;

"(C) the sale of such line will not impair the financial ability of the rail carrier providing transportation over such line to perform its obligations to the public;

"(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier providing transportation over such line; and

"(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

"(2) In a proceeding under this subsection, the burden of proving that rail transportation over a particular line is inadequate is on the person filing the application to acquire such line. If the Commission finds under this subsection that rail transportation over a particular line is inadequate, the Commission shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

"(c) In the case of any line subject to sale under subsection (a) of this section, the Commission may, to allow the purchasing carrier a reasonable interchange with the selling carrier, require the selling carrier to provide to the acquiring carrier trackage rights to a reasonable interchange point or points, as determined by the Commission. The Commission shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

"(d) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a line subject to a sale under this section.

"(e) Whenever a purchasing carrier under this section petitions the Commission for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Commission shall, within 30 days after the rate such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable compensatory joint rates and divisions over such route.

"(f)(1) Any person operating a railroad line acquired under this section shall be exempt (A) from the provisions of sections 10901 and 10903 of this title, and (B) except with respect to interstate traffic or participation in a joint rate, from the provisions of chapter 107 of this title.

"(2) This subsection applies only to a railroad line acquired pursuant to this section and section 10911 of this title.

"(3) Nothing in this subsection shall preclude a person acquiring a railroad line under this section from applying for a certificate of public convenience and necessity under section 10901 or section 10903 of this title for such line.

"(g) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

"(h) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

"(i) Nothing in this section or section 10911 of this title shall be construed as affecting any obligation imposed or remedy available under subchapter I of chapter 111 of this title.

"§ 10911. Filing and procedure for acquiring railroad lines

"(a) A financially responsible person proposing to purchase or otherwise acquire a railroad line under section 10910 of this title shall, at least 30 days prior to filing an application under this section, notify the Commission, the rail carrier owning such line, and other interested parties that such person intends to file such application.

"(b) A financially responsible person proposing to purchase or otherwise acquire a

railroad line under section 10910 of this title shall file an application with the Commission in accordance with this section. Such application shall include the following information:

"(1) The name and address of the person proposing to operate the line and, unless such operator is an existing rail carrier—

"(A) its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its formation;

"(B) the names and addresses of its officers and directors and a statement indicating any present affiliation each may have with a rail carrier; and

"(C) sufficient information to establish its financial responsibility.

"(2) The exact dates of the period of operation which have been agreed upon by the operator and the financially responsible person that owns the line (including a copy of any written agreement between such parties).

"(3) A description of the transportation to be provided, including, where applicable, a description of—

"(A) the line over which transportation is to be provided;

"(B) all interline connections, including the names of the connecting railroads;

"(C) the nature and extent of all liability insurance coverage, including binder or policy number and name of insurer; and

"(D) any preconditions which shippers must meet to receive service.

"(4) The name and address of any person subsidizing the operation of transportation over the line.

"(5) Sufficient information to establish the financial responsibility of any person proposing to subsidize such operation, and, if such person is a State, information establishing that it has authority to enter into the agreement to provide such subsidy.

"(c) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, the rail carrier owning such line shall promptly provide to such person—

"(1) the constitutional minimum purchase price for the line;

"(2) an estimate of the amount of funding necessary each year to keep the line in operation;

"(3) the rail carrier's most recent reports on the physical condition of the line; and

"(4) any other information that the Commission considers necessary to allow a potential offeror to calculate the constitutional minimum purchase price.

"(d)(1) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, such person shall also file a notice of intent to acquire, which shall include—

"(A) an accurate and understandable summary of such person's application and the reasons for proposing to acquire the line;

"(B) a statement indicating that any interested party is entitled to recommend to the Commission that it approve, deny, or take other action with respect to such application; and

"(C) a statement that other interested parties may also propose to acquire the line.

"(2) A financially responsible person that files an application to acquire a railroad line under section 10910 of this title shall—

"(A) send by certified mail a copy of the notice of intent to the chief executive officer of each State that would be directly affected by the proposed acquisition;

"(B) post a copy of the notice in each terminal and station on each portion of the line proposed to be acquired;

"(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each portion of such line is located;

"(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Commission) to the line during the 12 months preceding the filing of the application; and

"(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A) through (D) of this paragraph have been satisfied, and certifying that clauses (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

"(e)(1) Within 30 days after an application to acquire a line is filed under this section (other than a line described in section 10910(a)(1)(A)(i) of this title), any interested party may file with the Commission a protest of the sale of such line.

"(2) If protest is not filed within the 30-day period described in paragraph (1) of this subsection, and the Commission determines—

"(A) that, under section 10910(b) of this title, service over the line to be acquired is inadequate; and

"(B) that the application has been filed in accordance with this section and the financially responsible person filing the application will continue to provide rail transportation over such line,

the Commission shall, within 45 days after the date such application is filed, issue a certificate permitting the applicant to acquire the line.

"(2)(A) If a protest is filed within 30 days after the date an application to acquire a line is filed, the Commission shall, within 45 days after the date such application is filed, determine whether an investigation is needed to assist in determining the appropriate disposition to make of such application.

"(B) If the Commission determines that an investigation is not needed, the Commission shall, within 75 days after the date the application is filed, determine whether it is able to make the findings set forth in paragraph (1) of this subsection. If the Commission makes such findings, it shall, within 90 days after the date the application is filed, issue a certificate permitting the applicant to acquire such line within 120 days after such date.

"(C) If the Commission determines that an investigation is needed, it shall complete the investigation within 135 days after the date the application is filed, and render an initial decision within 165 days after such date.

"(D) The initial decision of the Commission under subparagraph (C) of this paragraph shall, at the end of the 30-day period beginning on the date it is rendered, become the final decision of the Commission, unless during such period the Commission decides to hear appeals. If an initial decision is appealed and considered by the Commission, the Commission shall render a final decision within 255 days after the date the application was filed.

"(C) Whenever the Commission renders a final decision making the findings set forth in paragraph (1) of this subsection, the Commission shall, within 15 days after the date of such final decision, issue a certificate permitting the applicant to acquire the line within 75 days after such date.

"(f) The Commission shall give preference to any application filed by a shipper under this section to acquire a railroad line under section 10910 of this title.

"(g) Section 10505 of this title does not apply to transportation provided over a line of railroad acquired under this section and section 10910 of this title. The Commission shall not construe the issuance of a certificate under this section as grounds for granting an exemption under such section 10505.".

(c) The section analysis of chapter 109 of title 49, United States Code, is amended by adding immediately after the item relating to section 10909 the following new items:

10910. Railroad development.
10911. Filing and procedure for acquiring railroad lines.

RESTRUCTURING ASSISTANCE

SEC. 403. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) is amended by adding at the end thereof the following new section:

"RESTRUCTURING ASSISTANCE

"SEC. 518. (a) GENERAL.—The Secretary is authorized to provide financial assistance to any railroad or subsidiary of a railroad to pay any share of the cost of restructuring its facilities, including related labor protection costs, and acquiring securities pursuant to a restructuring. Financial assistance under this section shall be through repayable credits constituting a debt or equity financing, and shall be made available by the Secretary only if the Secretary determines that—

"(1)(A) the assistance will result in significant railroad restructuring and such restructuring would not be likely to be achieved unless such assistance is provided; and

"(B)(i) the railroad has agreed to restructuring under a plan submitted in accordance with subsection (h) of this section, or (ii) the assistance will be used to fund a project approved by the Secretary under section 5(a)–(d) of the Department of Transportation Act (49 U.S.C. 1654(a)–(d)), and the railroad shows that such project will result in significant restructuring; or

"(2) the assistance will be used for purchase or rehabilitation of feeder lines.

"(b) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance under this section by purchasing a fixed debt obligation issued by a railroad, except that if the Secretary determines that an equity financing is essential to a restructuring, the Secretary may prvoide financial assistance under this section by purchasing senior preferred stock. The Secretary may purchase a fixed debt obligation issued as a trustee certificate by the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act, but only if the Secretary determines that the restructuring is necessary for the establishment of a self-sustaining railroad.

"(c) CHARACTERISTICS OF FIXED DEBT OBLIGATIONS.—(1) A fixed debt obligation purchased by the Secretary under this section shall provide that—

"(A) on the 5th anniversary of the date of original issuance, interest (at three-fourths of the rate established by the Secretary of the Treasury as of the most practicable date immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) shall begin to accrue; and

"(B) beginning on the 6th anniversary of the date of original issuance, accrued interest and principal shall be payable annually in equal aggregate installments such that on a date not later than the 20th anniversary of the date of original issuance, the principal and all accrued interest shall have been repaid.

"(2) Consistent with subsection (f) of this section, the Secretary may require a railroad or a subsidiary receiving assistance under this section to convey to the Secretary a security position which accords the Secretary a lien and priority of payment which are subordinate to those of the railroad's or subsidiary's present and prospective secured creditors (and any claims having a priority of payment senior to secured creditors) but are first in time and right to those of all present and prospective unsecured creditors.

"(d) EXCHANGES.—Where the Secretary makes a determination under subsection (b) of this section, the Secretary may, in purchasing trustee certificates or at any time thereafter, agree with the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act to exchange trustee certificates for senior preferred stock issued in connection with a plan of reorganization approved by the reorganization court.

"(e) CHARACTERISTICS OF SENIOR PREFERRED STOCK.—Senior preferred stock purchased by the Secretary under this section shall be an equity security issued by a railroad or its subsidiary. Each share of senior preferred stock shall—

"(1) in accordance with laws of the issuer's State of incorporated governing dividends on and redemption of preferred stock—

"(A) be subject to redemption at par commencing no later than the 6th anniversary of the date of original issuance and ending not later than the 20th anniversary of the date of original issuance in amounts which will aggregate the initial par value of the share and return the aggregate of dividends cumulated and due;

"(B) have dividends payable annually (at one-half the rate established by the Secretary of the Treasury as of the most practicable data immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) beginning on the 6th anniversary of the date of original issuance and computed on the average outstanding par amount of the share for the 12 months preceding each payment; and

"(C) have dividend and redemption declarations and payments which are cumulative and not subject to the discretion of the issuer's board of directors or shareholders;

"(2) be optionally redeemable by the issuer, and upon any optional redemption, shall return the outstanding par value plus the aggregate of dividends cumulated and due (pro rata for any part of a year after the 5th anniversary of the date of original issuance) as of the date of an optional redemption;

"(3) be nonvoting and have an initial par value of $10,000;

"(4) be senior in right with respect to dividend and redemption payments and in case of any liquidation or dissolution of the issuer only to all of the issuing corporation's equity securities whenever issued; and

"(5) be issued by the corporation (A) that owns all of the facilities to be rehabilitated or improved, or (B) that will, at the completion of an acquisition, own all of the facilities acquired in whole or in part with assistance provided under this section and that has a capitalization at the time of issuance which consists solely of equity.

"(f) TERMS AND CONDITIONS.—Before providing any financial assistance under this section, the Secretary shall require the railroad or the subsidiary receiving assistance to agree to such terms and conditions as are sufficient, in the Secretary's judgment, to assure that—

"(1) significant restructuring will occur;

"(2) all financial assistance provided under this section will be used as prescribed by the Secretary; and

"(3) that there is a reasonable likelihood that such financial assistance will be repaid.

"(g) DEFAULT.—Whenever a railroad or a subsidiary receiving assistance under this section defaults on any provision of a financing agreement or a security purchased pursuant to this section, the Secretary may (but is not required to) appoint from time to time two members to the board of directors of the railroad or the subsidiary (or both), at the Secretary's option, who shall serve until the financial assistance has been repaid in full or for a lesser period as determined by the Secretary. The Secretary may also exercise all remedies in law or equity and may request the Attorney General of the United States to commence a civil action for damages, specific performance, or any other available remedy in any appropriate court.

"(h) RESTRUCTURING PLANS.—(1) Each railroad or subsidiary which applies for assistance under subsection (a)(1)(B)(i) of this section shall submit a restructuring plan that—

"(A) has been approved by the railroad's board of directors;

"(B) demonstrates the railroad's or the subsidiary's ability to repay the financial assistance; and

"(C) identifies specific coordinations, consolidations, or other restructuring actions which the railroad or the subsidiary proposes to undertake.

"(2) The Secretary shall establish regulations governing the scope, content, and format of the restructuring plan.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this title, is further amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 519. There is authorized to be appropriated to the Secretary for purposes of providing financial assistance under section 518 for fiscal years 1980 through 1984, without fiscal year limitation, such sums as are necessary, not to exceed $1,475,000,000, of which no less than 5 percent shall be available for the purchase or rehabilitation of feeder lines, except that no such funds shall be authorized for appropriations for the purchase or rehabilitation of a line of railroad unless such purchase or rehabilitation is consistent with the rail plan (as defined under section 5 of the Department of Transportation Act) of the State in which such line is located. Sums appropriated under this section are authorized to remain available until expended."

TRANSACTION ASSISTANCE

SEC. 405. Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended by adding at the end thereof the following new paragraphs:

"(5) Financial assistance made available under paragraph (1)(B) of this subsection may be used to purchase for purposes of rail banking, properties of the Milwaukee Railroad located in the State of Montana with respect to which an interest in future rail common carrier operations has been evidenced.

"(6) Applications for rail banking shall be treated equally with other applications for transaction assistance."

EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 406. Sections 505(e), 507(a), 507(d), and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(e), 827(a), 827(d), and 829) are each amended by striking out "September 30, 1980" and inserting in lieu thereof "September 30, 1982".

ELECTRIFICATION LOAN GUARANTEES

SEC. 407. Section 211(i) of the Regional Reorganization Act of 1973 (45 U.S.C. 721(i)) is amended—

(1) by inserting "or any other railroad" immediately after "The Corporation" the first place it appears;

(2) by inserting "or such railroad" immediately after "the Corporation" the second and third places it appears; and

(3) by inserting immediately after the first sentence the following new sentences: "Upon application by the Corporation or any other railroad, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of such Act, guarantee obligations of the Corporation or such railroad for purposes of making capital improvements to achieve the goals of the national energy policy. In guaranteeing obligations pursuant to the preceding sentence, the Secretary may waive the requirements of section 511(g) of such Act."

GOVERNMENT INCLUSION

SEC. 408. (a) Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this Act, is further amended by adding at the end thereof the following new section:

GOVERNMENT INCLUSION

"SEC. 520. The Secretary of Transportation in administering the provisions of this title and the Department of Transportation Act, may allocate financial assistance provided under section 511 and section 518 of this title and section 5(f)–(p) of the Department of Transportation Act to Government entities or private entities if the Secretary finds that—

"(1) rail shippers would be denied rail transportation over a rail line but for such assistance; or

"(2) service provided by a private rail carrier on a rail line is inadequate to or for a majority of rail shippers.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 409. (a) Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821) is amended—

(1) in paragraph (6), by inserting "trustee certificate," after "note," and by inserting ", or to facilitate a restructuring" after "improvement"; and

(2) by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(9) 'subsidiary' means any corporation in an unbroken chain of corporations beginning with a class I railroad, if each corporation other than the last corporation in the chain owns voting securities possessing more than 50 percent of the total combined voting power in one of the other corporations in the chain.".

(b) Section 510 of such Act (45 U.S.C. 830) is amended—

(1) by inserting ", obligations, or senior preferred stock" after "shares"; and

(2) by inserting "to the Federal Government" after "railroads".

(c) The table of contents for title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by adding at the end thereof the following new items:

"Sec. 518. Restructuring assistance.
"Sec. 519. Authorization of appropriations.
"Sec. 520. Government inclusion.".

TITLE V—CONRAIL TITLE V LABOR PROTECTION

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 501. Section 505(b) of the Regional Rail Reorganizataion Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to such employee's compensation, in accordance with the following provisions:

"(1)(A) Effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a mainte-

nance-of-way employee) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the rate described in the preceding sentence, and will be (i) the actual hourly rate for hourly rated employees, (ii) the daily rate divided by 8 for daily rated employees, and (iii) the monthly rate divided by the working days in the claim month, further divided by 8, in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the positions relieved. Extra list employees will be guaranteed the extra list rate.

"(B) In the event a protected employee's position is abolished or such employee is displaced and is thereby required to occupy a position paying an hourly rate that is less than such employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position such employee is occupying and his guaranteed hourly rate for all hours included in the straight time work schedule of such employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(C) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid such employee's guaranteed hourly rate for the number of hours such employee would have worked in the straight time work schedule of such employee's previously held position.

"(D) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified therefrom, the higher rate shall become such employee's protected rate.

"(2) Notwithstanding paragraph (1) of this subsection, effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980, a protected maintenance-of-way employee shall be afforded his average monthly compensation, which is defined as the total compensation received by such employee during the 12 months immediately preceding January 1, 1975, divided by his total time paid for during that period and multiplied by 174 or by his average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. If a protected employee is deprived of employment or if the employee's straight-time compensation in his current position is less in any month than the employee's average monthly compensation, the employee shall be paid the difference between his straight-time earnings, if any, and 80 percent of the average monthly compensation, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual straight-time compensation, monthly displacement allowance payments and offsets applicable pursuant to this title is less than the employee's average monthly compensation multiplied by 12, the employee shall receive an additional payment representing the difference. If in the previous calendar year an employee has received displacement allowance payments in excess of his annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(3) Effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980 a protected operating employee (as defined in Interstate Commerce Commission classifications 107 through 128) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be afforded his average monthly compensation computed in accordance with this subsection as in effect prior to such date of enactment, but subject to a maximum amount equal to one-twelfth of the average annual earnings per employee, computed by cumulating the employee earnings reported to the Commission by the Corporation on a monthly basis for calendar year 1977 for the Interstate Commerce Commission classification of operating service in which such employee performed the preponderance of such employee's work in calendar year 1974, increased by applicable general wage increases. If the employee performed no operating service in 1974, the Interstate Commerce Commission classification shall be determined by the preponderance of such employee's operating service in an immediately preceding calendar year. If the average monthly compensation of a protected operating employee exceeds the maximum amount described in the first sentence of this paragraph, the average monthly compensation of the employee will be reduced to such maximum amount for purposes of computing such employee's monthly displacement allowance, if any. If the average monthly compensation of a protected operating employee is less than such maximum amount, the average monthly compensation of the employee will be used to compute such employee's monthly displacement allowance, if any. If a protected employee is deprived of employment, or if the employee is adversely affected with respect to his compensation such that the compensation in such employee's current position is less in any month than the average monthly compensation of the employee or such maximum amount whichever is less, the employee shall be paid 75 per centum of the difference between such employee's earnings, if any, and the lesser figure, minus any time lost on account of voluntary absences other than vacations. If at the close of the calendar year the sum of the protected employee's annual earnings, monthly displacement allowance payments, and offsets applicable pursuant to this title is less than such employee's average monthly compensation subject to the maximum amount and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the annual payment, if during the calendar year an employee has been forced, assigned to, or has been required to exercise seniority to, a position in an Interstate Commerce Commission classification with a lesser maximum amount than the maximum amount applicable to such employee's 1974 Interstate Commerce Commission classification, such employee shall be paid the difference without credit being taken for compensation earned by virtue of actual working hours in the calendar year in excess of the number of hours paid for in such employee's average monthly compensation multiplied by 12 or such employee's annual 1977 maximum amount, whichever is less. An employee's compensation for purposes of this subsection shall not include savings sharing productivity payments received pursuant to paragraph (t) of the Crew Consist Agreement between the Corporation and the United Transportation Union dated September 8, 1978. If, in the previous calendar year, an employee has received displacement allowance payments in excess of such employee's annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefit afforded by this title, exclusive of benefits afforded by subsection (g) of this section.

"(4) Effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980 a protected noncontract employee who has been deprived of employment or adversely affected with respect to such employee's compensation shall retain his average monthly compensation and monthly displacement allowance computed in accordance with this subsection as in effect prior to such date of enactment. In the event such noncontract employee exercises or has exercised seniority in a craft or class of operating employees, such employee's entitlement to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be the same as the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised. In the event such noncontract employee exercises or has exercised seniority in a craft or class of nonoperating employees, the entitlement of such employee to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be consistent with the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised, except that the protected rate of pay shall be based on the rate of pay of the position first obtained through the exercise of seniority, rather than the rate of any position held on or prior to September 1, 1979.

"(5) Notwithstanding the preceding provisions of this subsection, employees who, prior to September 1, 1979, accepted transfer to positions requiring a change of residence pursuant to subsection (d) of this section, shall retain their average monthly compensation and monthly displacement allowance computed in accordance with this subsection prior to the effective date of the Harley O. Staggers Rail Act of 1980.

"(6) In determining compensation in a protected employee's current employment, such employee shall be treated as occupying the position producing the highest rate of pay to which such employee's qualifications and seniority entitle the employee under the applicable collective bargaining agreement and which does not require a change in residence. A protected operating employee will be considered to be occupying the position producing the highest rate of pay if the employee occupies a position producing compensation equal to such employee's average monthly compensation, subject to the maximum amount.

"(7) With respect to a protected employee who has been deprived of employment, the monthly displacement allowance shall be reduced by (A) the full amount of any unemployment compensation benefits received by such employee, and (B) an amount equivalent to any outside earnings of such employee.

"(8) A protected employee's average monthly compensation or protected rate of pay shall be adjusted from time to time thereafter to reflect subsequent general wage increases.

"(9) The average monthly compensation or protected rate of pay provided by this section shall in no event exceed $2,500 in any month, except that such amount shall be adjusted to reflect general wage increases subsequent to April 1, 1976.

"(10) A protected employee and his representative shall be furnished with such employee's protected rate of pay, or average monthly compensation and average monthly time paid for, subject to the maximum amount, computed in accordance with the terms of this subsection. Each protected employee who has been deprived of employment or his representative and the employer shall agree upon a procedure by which the employee shall keep the employer currently informed of the unemployment compensation benefits received by such employee and the earnings of such employee in employment other than with such employer.

"(11) In the case of a supplemental transaction—

"(A) with respect to an employee described in paragraph (1) of this subsection who was not employed on September 1, 1979, the protected rate of pay of such employee shall be based on the rate of pay of the position held by such employee on the first day of the first month after September 1979 in which such employee was employed;

"(B) with respect to an employee described in paragraph (2) of this subsection who was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed; and

"(C) with respect to an employee described in paragraph (3) of this subsection—

"(i) if such employee was employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of such 12-month period; and

"(ii) if such employee was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employer shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed.

DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

SEC. 502. Section 505(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(c)) is amended to read as follows:

"(c) DURATION OF MONTHLY DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall, in the case of a protected employee with 5 or more years of service on the effective date of this Act, continue until the attainment of age 65 by such employee, and shall, in the case of a protected employee who has less than 5 years of service on such date, continue for a period equal to the employee's total prior years of service, except that such monthly displacement allowance—

"(1) shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause;

"(2) shall not be paid with respect to any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to the employee by the exercise of such employee's seniority rights in accordance with the provisions of this section;

"(3) shall not be paid to a protected employee deprived of employment with respect to any period of failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions (but the payment of monthly displacement allowances shall be resumed upon termination of the emergency); and

"(4) shall not be paid with respect to any month that commences after the effective date of the Harley O. Staggers Rail Act of 1980 for which the employee has failed to make a claim for such allowance within 3 full calendar months (unless otherwise agreed upon by the employee or his representative and the employer) after the last day of the month for which such allowance is sought, except that such 3-month limit shall not apply to any claim which is the subject of or is based upon an arbitration decision issued pursuant to section 507 of this title. Unless otherwise agreed upon by the employee or his representative and the employer, the entitlement of an employee to an allowance shall be approved or denied within 150 days after the claim therefor is made if such claim is filed during the 12-month period beginning on the effective date of the Staggers Rail Act of 1980, and within 90 days after the claim therefor is made if such claim is filed after such 12-month period. Any claim not approved or denied at the expiration of the time limits described in the preceding sentence shall be deemed approved.".

TRAINING AND TRANSFER

SEC. 503. (a) Section 505(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 755(d)(4)) is amended by adding at the end thereof the following new paragraph:

"(D) When no bona fide vacancies exist in a marine craft or class on the Corporation's system, or in the craft or class of an employee of Penn Truck Lines, Incorporated, the Corporation may offer such employee comparable employment for which the employee is qualified, or for which the employee can be trained, in another craft or class. The Corporation shall first attempt to locate a comparable position in a seniority district which encompasses the employee's last work location, and if successful, a transfer notice may be tendered pursuant to subparagraph (A) of this paragraph. If no such position exists, the Corporation may tender the employee a transfer notice involving a position elsewhere on the system pursuant to subparagraph (B) of this paragraph. In the event it is necessary to train an employee after such employee's acceptance of a position pursuant to this subsection, such training shall be provided by the Corporation at no cost to the employee.".

(b) Section 505(i)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(i)(1)) is amended by adding at the end thereof the following new sentences: "The Corporation may simultaneously offer a position to not more than 4 protected noncontract employees. The position shall be given to the protected employee accepting transfer whom the Corporation considers to be best qualified for the particular position involved. Other protected employees who have accepted the transfer shall retain their previous status. Employees who have elected a voluntary suspension of employment at their home location in lieu of protective benefits or a severance of employment shall retain the option elected.".

PAYMENT, AUDIT, AND REPORT

SEC. 504. Section 509 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779) is amended to read as follows:

"PAYMENT, AUDIT, AND REPORT

"SEC. 509. (a) PAYMENT.—The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title (including such amounts paid by the employer prior to the effective date of the Rail Act of 1980 and training costs incurred by the Corporation pursuant to section 505(d)(4)(D) of this title), other than provisions with respect to employee pension benefits, not to exceed an aggregate sum of $485,000,000, by the Railroad Retirement Board, upon certification to such Board in such detail as the Board may reasonably require, by the Corporation, the Association (where applicable), replacements operators, and acquiring railroads, of the amounts paid such employees, except that the aggregate amount of reimbursements made by the Board for the payment of monthly displacement allowances in the period after the effective date of the Harley O. Staggers Rail Act of 1980 shall not exceed $180,000,000. There is authorized to be appropriated to the Secretary annually such sums as may be required to meet the obligations payable under this title, not to exceed the aggregate sum of $485,000,000. Upon the exhaustion of such authorization, the Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall retain responsibility for the payment of benefits otherwise reimbursable under this title, but they shall not be reimbursed therefor. There is further authorized to be appropriated to the Secretary such sums as may be necessary to provide for additional administrative expenses to be incurred by the Railroad Retirement Board in the performance of its functions under this section. Appropriations authorized under this section may be allocated by the Secretary to the Railroad Retirement Board.

"(b) AUDIT.—Beginning October 1, 1980, the Association shall conduct a program audit of the payment of benefits pursuant to this title and shall evaluate the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances. Such audits and evaluations shall be conducted in accordance with such rules and regulations as the Association may prescribe. The representatives of the Association shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to, or in use by or in connection with the Corporation, replacement operators, acquiring railroads, or the Railroad Retirement Board which pertain to the benefits provided protected employees pursuant to this title and which are necessary to facilitate such audit and evaluation.

"(c) REPORT.—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on the payment of benefits under this title and the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances.".

RAILROAD HIRING

SEC. 505. Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.) is amended by adding at the end thereof the following new section:

"RAILROAD HIRING

"SEC. 510. Any protected employee of the Corporation and any employee of the Corporation who is separated or furloughed from his employment with the Corporation (other than for cause) shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.".

TECHNICAL AMENDMENTS

SEC. 506. (a)(1) The item relating to section 509 in the table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended to read as follows:

"SEC. 509. Payment, audit, and report.".

(2) The table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by inserting immediately after the item relating to section 509 the following new item:

"SEC. 510. Railroad hiring.".

(b) Section 102(16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (16)) is amended to read as follows:

"(16) 'Secretary' means the Secretary of Transportation or the designated representative of the Secretary;".

(c) Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended—

(1) in subsection (d), by striking out "11 individuals" and inserting in lieu thereof "12 individuals";

(2) by amending subsection (d)(2) to read as follows:

"(2) four Government members, who shall be the Secretary, the Chairman of the Commission, the Secretary of the Treasury, and the Attorney General of the United States, acting directly or at any time through their respective designated representatives and, in the case of the Chairman, through the Vice Chairman of the Commission; and";

(3) in the first sentence of subsection (i), by striking out "Deputy Secretaries" and inserting in lieu thereof "designated representatives"; and

(4) by striking out the first sentence of subsection (j)(4).

(d) Section 501 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771) is amended—

(1) in paragraph (6), by inserting immediately after "disability," the following: "failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions,"; and

(2) by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) 'compensation' means earnings in employment subject to the Railroad Retirement Act.".

(e) Section 507 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 777) is amended by inserting ", section 509(b), or section 509(c)" immediately after "section 504(d)".

(f) The first sentence of section 403(d)(1) of the Rail Passenger Service Act (45 U.S.C. 563(d)(1)) is amended by striking out "if such State" and all that follows through "service".

USRA AUTHORIZATION OF APPROPRIATIONS

SEC. 507. Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed $28,500,000. Sums appropriated under this subsection are authorized to remain available until expended.".

EFFECT ON OTHER LAWS

SEC. 508. Nothing in this title is intended to affect any law, regulation, court order, or obligation relating to equal employment opportunity.

TITLE VI—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

SEC. 601. (a) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended by adding at the end thereof the following new subsection:

"(g) Expedited Proposals.—(1) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

"(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

"(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

"(C) the proposed transfer is consistent with the goals set forth in section 206(a)(8) of this Act, the Secretary shall develop such a proposal and may, after providing the Association and the Commission an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

"(2) In complying with the requirements of subsection (d)(7) of this section with respect to the application of the provisions of title V of this Act to supplemental transactions, the parties to an expedited supplemental transaction under this subsection and the representatives of the employees affected thereby shall enter into a new agreement pursuant to section 508 of this Act and shall not be bound by the terms of any agreement executed under such section 508 and in effect on the date of enactment of the Harley O. Staggers Rail Act of 1980.".

(b) Section 102(19) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (19)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation.

TITLE VII—MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 701. (a) Except as provided in subsection (b) of this section, the provisions of this Act and the amendments made by this Act shall take effect October 1, 1980.

(b) Sections 601, 602, 603, 605, and 606 of this Act shall take effect on the date of enactment of this Act.

EFFECT ON PENDING MATTERS

SEC. 702. Any application, action, or proceeding pending before the Secretary of Transportation, the Interstate Commerce Commission, or any court on the effective date of this Act shall be adjudicated or determined as if this Act had not been enacted.

CONSTRUCTION OF AMENDMENTS

SEC. 703. With respect to the relationship between water carriers and rail carriers, none of the amendments made by this Act shall be construed to modify the application of existing law with respect to competition and coordination or to make lawful a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

SEC. 704. Notwithstanding any other provision of law, those rail corporations which receive direct federal monetary support, shall be considered a federal agency for the sole purpose of Department of the Army Regulations 735-5, Paragraph 1-16. Said Rail Corporations may enter into a contract under the authority granted by this section only when they determine that the safety of the public so requires.

EFFECT OF MERGERS ON COMPETITION

SEC. 705. (a) Section 11344(b) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.".

STUDY OF ALASKA RAILROAD RATES

SEC. 706. Within 6 months after the effective date of this Act, the Interstate Commerce Commission shall commence and complete a study to determine whether the rates charged by the Alaska Railroad pursuant to ICC-ARR Freight Tariffs 4108 and 4109 (as supplemented by supplements 1-4) would, if such rates had been entered into after the effective date of this Act, have constituted a violation of section 10701a(c)(1) of title 49, United States Code, as amended by this Act.

CONGRESSIONAL REVIEW OF PROPOSED RULES

SEC. 707. (a) Notwithstanding any other provision of law, simultaneously with prescribing any rule under subtitle IV of title 49, United States Code, relating to rail carriers (other than a rule relating to rates), the Interstate Commerce Commission shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives, and simultaneously with prescribing any rule relating to rail carriers, the Secretary of Transportation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b), the rule shall not become effective, if—

(1) within 90 calendar days of continuous session of Congerss after the date the rule is prescribed, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule prescribed by the ——— dealing with the matter of ———, which rule was transmitted to Congress on ———.", the first blank space therein being filled with the Interstate Commerce Commission or the Secretary of Transportation, as appropriate, and the other blank spaces therein being appropriately filled; or

(2) within 60 calendar days of continuous session of Congress after the date the rule is prescribed, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within 30 calendar days of continuous sessions of Congress after such transmittal.

(b) If, at the end of 60 calendar days of continuous session of Congress after the date on which a rule described in subsection (a) is prescribed, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule, and neither House has adopted such a resolution, the rule may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule may go into effect not sooner than 90 calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a).

(c) Congressional inaction on, or rejection of, a resolution of disapproval under this section shall not be deemed an expression of approval of the rule involved.

(d) For purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 30, 60, and 90 calendar days of continuous session of Congress.

(e) For purposes of this section, the term "rule" has the same meaning such term has in section 551(4) of title 5, United States Code.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 7235) was laid on the table.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 1125, TO IMPROVE AND EXPAND FEDERAL CROP INSURANCE PROGRAM

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 96-1308) on the resolution (H. Res. 784) waiving certain points of order against the conference report on the Senate bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION REQUESTING INFORMATION CONCERNING DISCLOSURE OF CLASSIFIED INFORMATION RELATING TO SO-CALLED STEALTH TECHNOLOGY

Mr. PRICE, from the Committee on Armed Services, submitted a privileged report (Rept. No. 96-1309) on the resolution (H. Res. 777) requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called stealth technology for military aircraft, which was referred to the House Calendar and ordered to be printed.

APPOINTMENT OF CONFEREES ON S. 988, HEALTH SCIENCES PROMOTION ACT OF 1980

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 988) Health Sciences Promotion Act of 1980, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

Mr. ECKHARDT. Mr. Speaker, reserving the right to object, this is the Health Promotion Act?

Mr. STAGGERS. Mr. Speaker, if the gentleman will yield, it is the Health Sciences Promotion Act of 1980.

Mr. ECKHARDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia? The Chair hears none and, without objection, appoints the following conferees: Messrs. STAGGERS, WAXMAN, SATTERFIELD, PREYER, MAGUIRE, LUKEN, and WALGREN, Ms. MIKULSKI, Messrs. BROYHILL, CARTER, DEVINE, and STOCKMAN.

There was no objection.

PERSONAL EXPLANATION

Mr. PORTER. Mr. Speaker, I was granted official leave yesterday to attend the funeral of my wife's brother, who died at age 23. Unfortunately, I missed three rollcall votes.

Had I been present and voting on rollcalls Nos. 523, 524, and 525, I would have voted "aye" in each instance.

I ask unanimous consent that these remarks be inserted in the permanent RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

MARTIN LUTHER KING, JR., NATIONAL HISTORIC SITE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that the Committee on the Interior and Insular Affairs be discharged from further consideration of the bill (H.R. 7218) to establish the Martin Luther King, Jr., National Historic Site in the State of Georgia, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. LUJAN. Mr. Speaker, reserving the right to object, I reserve the right to object to ask the gentleman what is involved in this bill? There have been several different memorials on behalf of Martin Luther King. I wonder which one that is, the gentleman is talking about.

Mr. PHILLIP BURTON. Mr. Speaker, will the gentleman yield?

Mr. LUJAN. I would be glad to.

Mr. PHILLIP BURTON. This bill is not, as pursued by a number of our colleagues, is not involved with all the national holiday proposals.

This bill in all particulars, without a scintilla of difference, includes exactly that which we passed on two occasions, in H.R. 3 as passed by this House and I believe, as I best recall, S. 2363 by this House.

This is an effort on behalf of the House to see that the House version, rather than the Senate titled bill be considered by the Senate; but there is absolutely no difference in any respect from this bill and that which has been passed twice by the House.

Mr. LUJAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. PHILLIP BURTON)?

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, do I understand the gentleman to respond that this has nothing to do with a national holiday, but rather the establishment of a national historic site in Atlanta?

Mr. PHILLIP BURTON. Mr. Speaker, if the gentleman will yield, the gentleman from Maryland is absolutely correct.

Mr. BAUMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. PHILLIP BURTON)?

There was no objection.

The Clerk read the bill, as follows:

H.R. 7218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to protect and interpret for the benefit, inspiration, and education of present and future generations the places where Martin Luther King, Junior, was born, where he lived, worked, and worshipped, and where he was buried, and in recognition of the unique contribution of the Martin Luther King, Junior, Center for Social Change, in fostering such efforts, there is hereby established the Martin Luther King, Junior, National Historic Site in the State of Georgia. The national historic site shall consist of that real property in the city of Atlanta, Georgia, within the boundary generally depicted on the map entitled "Martin Luther King, Junior, National Historic Site Boundary Map," numbered NASM/SERO/20,109-A, and dated April 1980, together with the property known as 234 Sunset Avenue, Northwest: *Provided*, That the property in front of the Martin Luther King, Junior, Community Center of Atlanta shall not be deemed to be included within the site unless and until such property is donated to the United States for the purposes of the site by the city of Atlanta. The map referred to in this section shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(b) In furtherance of the purposes of the national historic site the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to establish the Martin Luther King, Junior, Preservation District, which shall consist of the properties within the Martin Luther King, Junior, Historic District.

SEC. 2. (a) The Secretary shall administer the Martin Luther King, Junior, National Historic Site and Preservation District in accordance with the provisions of this Act, the Act of August 25, 1916 (39 Stat. 538), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666), as amended. Within the national historic site the Secretary is authorized—

(1) to acquire by donation, purchase with donated or appropriated funds, transfer or exchange, lands and interests therein, except that property owned by the State of Georgia or any political subdivision thereof, property owned by the widow of Martin Luther King, Junior, and property owned by the Martin Luther King, Junior, Center for Social Change may be acquired only with the consent of such owner: *Provided*, That with respect to properties owned by the Center for Social Change, the Secretary shall have the first right of refusal to purchase such property for a purchase price not exceeding the fair market value of such property on the date it is offered for sale. Property may be acquired pursuant to this Act subject to such conditions and reservations as in the judgment of the Secretary are not inconsistent with the purposes of this Act and the administration of the national historic site, including, in the event that the burial site of Martin Luther King, Junior, is acquired, the condition that his widow may be interred therein;

(2) to convey a freehold or leasehold interest in any property, for such sums as he

deems appropriate, and subject to such terms and conditions and reservations as will assure the use of the property in a manner which is, in the judgment of the Secretary, consistent with the purposes of this Act and the administration of the national historic site. The Secretary shall offer the last owner of record a reasonable opportunity to purchase or lease, as appropriate, the property proposed to be conveyed prior to any conveyance under this paragraph;

(3) to enter into cooperative agreements with the owners of properties of historical or cultural significance, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties. Such agreements shall contain, but need not be limited to, provisions that the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes, and that no changes or alterations shall be made in the property except by mutual agreement. The authorities in this paragraph shall also be available to the Secretary with respect to properties within the Martin Luther King, Junior, Preservation District; and

(4) to provide security and law enforcement services as authorized by law.

(b) The Secretary may, in carrying out his authorities with respect to the interpretation of properties within the national historic site and the preservation district, accept the services and assistance, with or within reimbursement therefore, of qualified persons and entities to the extent he deems necessary and appropriate. Funds appropriated for the purposes of this Act may be expended for the improvement, restoration, and maintenance of properties in which the Secretary has acquired a leasehold interest.

(c) Notwithstanding any other provision of law, the Secretary shall give first preference to the Martin Luther King, Junior Center for Social Change with respect to any contract for a concession to sell books, postcards, tapes or similar type mementos within the historic site, provided that agreement can be reached on terms and conditions acceptable to the Secretary.

SEC. 3. (a) There is established in the Department of the Interior the Martin Luther King, Junior, Advisory Commission (herein after referred to as the "Commission"). The Commission shall consist of nine members, seven of whom shall be appointed by the Secretary for terms of three years as follows:

(1) three members appointed from recommendations submitted by the governing body of the Martin Luther King, Junior, Center for Social Change;

(2) one member appointed from recommendations submitted by the Governor of the State of Georgia;

(3) two members appointed from recommendations submitted by the mayor of the city of Atlanta, Georgia; and

(4) One member appointed by the Secretary who shall be Chairman of the Commission.

In addition to the foregoing members, Mrs. Coretta Scott King, or such other appropriate family member as may be designated by the immediate family of Martin Luther King, Junior, and the Director of the National Park Service shall be ex officio members of the Commission.

(b) Any vacancy in the membership of the Commission shall be filled in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses of Commission members reasonably incurred by them in carrying out their responsibilities under this Act upon presentation of vouchers signed by the Chairman of the Commission. Necessary administrative services and expenses shall be provided to the Commission by the Department of the Interior.

(c) The function of the Commission shall be to advise the Secretary with respect to the formulation and execution of plans for the national historic site and the preservation district, including advice with respect to the consummation of cooperative agreements, the interpretation of properties, and the use and appreciation of the national historic site and the preservation district by the public. The Secretary shall consult with the Commission from time to time with respect to the development of plans for and the administration of the national historic site and the preservation district.

(d) The Commission shall terminate ten years from the date of enactment of this Act.

SEC. 4. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

AMENDMENT OFFERED BY MR. PHILLIP BURTON

Mr. PHILLIP BURTON. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PHILLIP BURTON: Page 1, line 3, strike all after the enacting clause, and insert in lieu thereof:

That (a) In order to protect and interpret for the benefit, inspiration, and education of present and future generations the places where Martin Luther King, Junior, was born, where he lived, worked, and worshipped, and where he is buried, there is hereby established the Martin Luther King, Junior, National Historic Site in the State of Georgia. The national historic site shall consist of that real property in the city of Atlanta, Georgia, within the boundary generally depicted on the map entitled "Martin Luther King, Junior, National Historic Site Boundary Map," numbered NASM/SERO/20, 109–C, and dated May 1980, together with the property known as 234 Sunset Avenue, Northwest. The map referred to in this subsection shall be on file and available for public inspection in the local and Washington, District of Columbia offices of the National Park Service, Department of the Interior.

(b) In furtherance of the purposes of this Act, there is hereby established the Martin Luther King, Junior, Preservation District, which shall consist of the area identified as "Preservation District" in the map referred to in subsection (a) of this section.

SEC. 2. (a) The Secretary of the Interior (hereinafter referred to as "the Secretary") shall administer the Martin Luther King, Junior National Historic Site and Preservation District in accordance with the provisions of this Act, and the provisions of law generally applicable to national historic sites, including the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–7).

(b)(1) Within the national historic site the Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, transfer, or exchange, lands and interests therein, except that property owned by the State of Georgia or any political subdivision thereof may be acquired only by donation.

(2) Notwithstanding the acquisition authority contained in paragraph (1), any lands or interests therein which are owned wholly or in part, by the widow of Martin Luther King, Junior, or by the Martin Luther King, Junior, Center for Social Change, shall be acquired only with the consent of the owner thereof, except that—

(A) the Secretary may acquire such property in accordance with the provisions of this section if he determines that the property is undergoing or is about to undergo a change in use which is inconsistent with the purposes of this Act, and

(B) with respect to properties owned by the Center for Social Change, the Secretary shall have the first right of refusal to purchase such property for a purchase price not exceeding the fair market value of such property on the date it is offered for sale.

(3) Property may be acquired pursuant to this section subject to such conditions and reservations as in the judgment of the Secretary are not inconsistent with the purposes of this Act and the administration of the national historic site, including, in the event that the burial site of Martin Luther King, Junior, is acquired, the condition that his widow may be interred therein.

(4) Any and all legal or equitable title, interests or encumbrances, if any, held by the Department of Housing and Urban Development in the property designated "parcel A" on the map referenced in section one are hereby conveyed to the Secretary to be administered in accordance with the purposes of this Act.

(5) Structural space requirements of the National Park Service to meet its administrative, operational and interpretive functions for the national historic site and preservation district shall, to the maximum extent feasible without displacing residents, be met within the district through the adaptive use of existing structures.

SEC. 3. (a) Within the national historic site, the Secretary may convey a freehold or leasehold interest in any property, for such sums as he deems appropriate, and subject to such terms and conditions and reservations as will assure the use of the property in a manner which is, in the judgment of the Secretary, consistent with the purposes of this Act and the administration of the national historic site. The Secretary shall offer the last owner or tenant of record a reasonable opportunity to purchase or lease, as appropriate, the property proposed to be conveyed prior to any conveyance under this subsection, and in the case of a lease to such tenant of record, the initial rental charge shall not be substantially more than the last rent paid by the tenant for that property, with any future increases not to exceed the general escalation of rental rates in the surrounding area.

(b) The Secretary may enter into cooperative agreements with the owners of properties of historical or cultural significance as determined by the Secretary, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties. Such agreements shall contain, but need not be limited to, provisions that the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes, and that no changes or alterations shall be made in the property except by mutual agreement. The authorities in this subsection shall also be available to be Secretary with respect to properties within the Martin Luther King, Junior Preservation District.

(c) The Secretary may, in carrying out his authorities with respect to the interpretation of properties within the national historic site and the preservation district, accept the services and assistance, with or without reimbursement therefor, of qualified persons and entities to the extent he deems necessary and appropriate. Funds appropriated for the purposes of this Act may be expended for the improvement, restoration, and maintenance of properties in which the Secretary has acquired a leasehold interest.

(d) Notwithstanding any other provision of law, the Secretary shall give first preference to the Martin Luther King, Junior, Center for Social Change with respect to any contract for a concession to sell books, postcards, tapes, or similar types of appropriate mementos related to the purposes of this Act, on facilities operated and maintained by the Secretary within the historic site:

Provided, That agreement can be reached on terms and conditions acceptable to the Secretary.

(e) The Secretary is authorized to take only such actions within and upon the grounds of the Ebenezer Baptist Church as will directly support appropriate public visitation to and within the church in accordance with the purposes of this Act, or which will assist in the maintenance or preservation of those portions of said church which are directly related to the purposes of this Act.

SEC. 4. (a) There is hereby established the Martin Luther King, Junior, National Historic Site Advisory Commission (hereinafter referred to in this section as the "Commission"). The Commission shall consist of thirteen members, eleven of whom shall be appointed by the Secretary as follows:

(1) Three members appointed for terms of three years from recommendations submitted by the governing body of the Martin Luther King, Junior, Center for Social Change;

(2) Two members appointed for terms of four years from recommendations submitted by the Governor of the State of Georgia, one of whom shall have professional expertise in historic preservation matters;

(3) Two members appointed for terms of five years from recommendations submitted by the mayor of the city of Atlanta, Georgia, one of whom shall represent the economic and cultural interests of the Sweet Auburn Historic District;

(4) One member appointed for a term of five years from recommendations submitted by the governing body of the Ebenezer Baptist Church;

(5) The Chairman of the Atlanta Urban Design Commission and one additional member from the Commission to be chosen by the Commission; and

(6) One member, appointed for a term of five years by the Secretary, who shall chair the Commission. In addition to the foregoing members, Mrs. Coretta Scott King, or such other appropriate family member as may be designated by the immediate family of Martin Luther King, Junior, and the Director of the National Park Service shall be ex officio members of the Commission.

(b) Any vacancy in the membership of the Commission shall be filled in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses of Commission members reasonably incurred by them in carrying out their responsibilities under this section upon presentation of vouchers signed by the Chair of the Commission. Necessary administrative services and expenses shall be provided to the Commission by the Department of the Interior.

(c) The function of the Commission shall be to:

(1) Advise the Secretary with respect to the formulation and execution of plans for and the overall administration of the national historic site and the preservation district, including advice with respect to the consummation of cooperative agreements, the interpretation of properties, and the use and appreciation of the national historic site and the preservation district by the public.

(2) Prepare a generalized impact area plan for a one-mile radius outside the District which shall examine overall community development goals, plans, and efforts within that area, including historic preservation, transporation, parking, housing, urban revitalization, and parks and recreation functions, in order to maximize beneficial relationships between these goals, plans, and efforts and the district herein established.

(3) Prepare, on the basis of the findings and recommendations of the impact area plan required by the preceding paragraph, a detailed development plan for the neighborhoods and outlying commercial areas immediately outside the district for such development, conservation, preservation, rehabilitation activities and transportation, parking, and land use planning as would complement and enhance the District and the purposes for which the District is established.

(d) The Secretary is directed to provide the appropriate planning agency of the city of Atlanta an amount of the local planning funds authorized by section sufficient for that agency to provide such staff and technical assistance to the Advisory Commission as are required for it to develop the plans required by subsection (c) of this section. Such plans, prepared in full coordination with and opportunities for participation by, all revelant public agencies and private groups, shall be delivered to the Secretary in a timely fashion for use in preparing the general management plan for the district.

(e) The Commission shall terminate ten years from the effective date of this Act.

SEC. 5. Notwithstanding any other provision of law, no fees shall be charged for entrance or admission to the national historic site or the preservation district established by this Act.

SEC. 6. Effective October 1, 1980, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, but not to exceed $1,000,000 for development, $100,000 for local planning, and $3,500,000 for the acquisition of lands and interests therein. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

SEC. 7. (a) In order to better integrate the east and west portions of the Martin Luther King, Junior, Preservation District, the Federal Highway Administration, in cooperation with the Georgia Department of Transportation, is hereby directed to insure that any design and reconstruction of the North Interstate 85 and Interstate 75 Expressway over Auburn and Edgewood Avenues in the city of Atlanta, Georgia, and the interchange at Edgewood Avenue, shall minimize the adverse impacts on the preservation district.

In carrying out the provisions of this subsection, the Federal Highway Administration shall require that, where feasible, any major change required for the Auburn Avenue overpass results in a design which permits a wide distance between overpass support structures and the disposition of understructure development rights for appropriate business or recreation uses.

(b) Plans for the construction, exterior renovation, or demolition of any structure or change in land use within the preservation district by the National Park Service or any Federal agency must be submitted to the Atlanta Urban Design Commission in a timely fashion for its review and comment.

SEC. 8. Within three complete fiscal years from the effective date of this Act, the Secretary shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, a comprehensive general management plan for the historic site and the preservation district consistent with the provisions of this Act and pursuant to the provisions of section 12(b) of the Act of August 18, 1970 (84 Stat. 825), as amended (16 U.S.C. 1a–1 et seq.).

Mr. PHILLIP BURTON (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the amendment be dispensed with and that it be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

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THE 15TH ANNUAL REPORT OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking, Finance and Urban Affairs:

(For message, see proceedings of the Senate of today, September 9, 1980.)

PROPOSED LEGISLATION TO AMEND THE INTERNAL REVENUE CODE—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 96–369)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means and ordered to be printed:

(For message, see proceedings of the Senate of today, September 9, 1980.)

STUDY OF FACTORS BEARING ON COMPETITIVENESS OF U.S. PRODUCTS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the committee on Ways and Means:

(For message, see proceedings of the Senate of today, September 9, 1980.)

REVIEW OF EXECUTIVE BRANCH EXPORT PROMOTION FUNCTIONS UNDER TRADE AGREEMENT ACT OF 1979—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means and the Committee on Foreign Affairs:

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(For message, see proceedings of the Senate of today, September 9, 1980.)

FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. BOWEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOWEN. Mr. Speaker, as chairman of the House Agriculture Subcommittee on Cotton, I want to join my colleagues in expressing concern over the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act.

The Department's actions in citing farmers, ranchers, and other agricultural employers for failing to register as farm labor contractors and subjecting them to civil and criminal penalties are clearly contrary to congressional intent. The fact that Congress never intended farmers and others to register as farm labor contractors, be fingerprinted, disclose salaries, or comply with other such requirements is reflected in the legislative history of the act. Further, the act itself provides for very specific exemptions.

The Department's actions appear to be based solely on its own extremely narrow interpretations. For example, the Department defines the term "migrant worker" to mean anyone employed in agriculture. Let me quote from the Field Operations Handbook of the Department of Labor's Wage and Hour Division:

> Any employee who is performing agricultural work is a migrant worker for purposes of the FLCRA. There is no distinction between the worker who moves about the country within the stream of production and the worker who remains at his home and works in his own area year round.

The fact that there is no distinction between the worker who moves about and the worker who remains at home is even underlined in the Department's handbook.

Mr. Speaker, clearly the Department of Labor's interpretation is ridiculous. Not everyone employed in agriculture is a migrant worker. By this definition, even members of an individual farmer's family, if employed on the farm, could be considered migrant workers for purposes of FLCRA. The fact is that the overwhelming majority of the agricultural work force lives on the farm or in surrounding communities. According to USDA statistics, migrant farmworkers represent less than 5 percent of the total agricultural work force.

While migrant farmworkers represent a small percentage of the work force, they do not deserve any less protection. That is why we enacted the Farm Labor Contractor Registration Act. Its protective provisions aimed at curbing abuses by certain independent crew leaders should be maintained. At the same time, needless and unnecessary regulations should not be imposed on farmers, ranchers, and others. Consistent with this view, I have joined in supporting H.R. 7824.

This measure is strongly supported by the entire agricultural community and, I believe, it enjoys broad bipartisan support in the House. An identical measure has already passed the Senate. It is important that we act on this legislation, and I strongly urge my colleagues who have not done so to join as cosponsors of H.R. 7824.

FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. WATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATKINS. Mr. Speaker, I want to join my colleagues in expressing concern with regard to the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act. Because of that concern I have joined as a cosponsor of H.R. 7824, the bill introduced by the gentleman from California (Mr. PANETTA), along with the distinguished chairman of the Committee on Agriculture (Mr. FOLEY), the gentleman from California (Mr. COELHO), and the gentleman from Idaho (Mr. SYMMS). The purpose of this legislation is simply to clarify the original intent of Congress to insure that the present law is properly administered and enforced.

When the Farm Labor Contractor Registration Act was first enacted in 1963 and later amended in 1974, there was little disagreement from agriculture. For one reason, the act applied only to independent farm labor contractors, or crew leaders. Still another reason was that the act was also aimed at protecting farmers and other agricultural employers. Evidence showed that in some cases farmers suffered reduced harvests and loss of income as a result of certain practices by irresponsible crew leaders. That the act applied only to independent farm labor contractors, or crew leaders, was clearly established by both the legislative history and by adding specific exemptions for farmers and other agricultural employers, including their employees.

It appears now, that the Department of Labor has been requiring farmers and other agricultural employers to register as farm labor contractors or be subject to civil and criminal penalties. The Department's actions have left migrant farmworkers with little or no protection from those independent crew leaders who continue to engage in exploitive practices.

The Department's actions, Mr. Speaker, appear to be based solely on its own interpretations. One example, which may have been pointed out, is the fact that the Department of Labor defines the term "migrant worker" as anyone employed in agriculture. By this definition even members of the farm family, if on the payroll, could be considered migrant workers. The same definition would also apply to high school students and teachers who are often temporarily employed in many areas during the summer months. The same is true for year around and seasonal employees who reside on the farm or in nearby communities.

Another example is the situation where farmers or other agricultural employers have been forced to register as farm labor contractors on the basis that they are incorporated. The act does not make such a distinction. To do so would result in discriminatory treatment for farms of equal size and operation.

Still another example is where the Department of Labor has held that a farmer or other agricultural employer is not engaged in hiring "solely for his own operation" if he does not have title to the particular commodity. By this reasoning, a feedlot operator was cited as a farm labor contractor on the basis that since he did not have title to the cattle placed in the lot he, in effect, was furnishing migrant workers to individual ranchers. These so-called migrant workers were actually full-time employees working in and around the feedlot.

Mr. Speaker, no wonder the entire agriculture community is concerned with the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act. The law needs to be clarified to end actions which place a burden on our farmers, ranchers, and other agricultural employers. The bill which I have cosponsored, H.R. 7824, addresses this issue completely. While it maintains existing regulations for independent crew leaders, it eliminates needless regulations for farmers and other agricultural employers. I strongly urge my colleagues to join with me in supporting this needed legislation.

FARM LABOR CONTRACTOR REGISTRATION ACT AMENDMENTS

(Mr. WAMPLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. WAMPLER. Mr. Speaker, as the ranking minority member of the Committee on Agriculture I rise to reiterate my support of H.R. 7824, introduced by the gentleman from California (Mr. PANETTA) and over 100 Members of the House (myself included), which is the same as the bill sponsored by Senator BOREN and 39 other Members of the other body and passed by that body as an amendment to the Child Nutrition Act (H.R. 7664).

The purpose of H.R. 7824 is to restore the Farm Labor Contractor Registration Act to its original legislative intent—namely to stringently regulate irresponsible and unscrupulous contractors or crew leaders—and thus to provide protection to migrant workers. By attempting to bring most of the Nation's agricultural work force, including many who work in food processing plants, under this act, the Department of Labor seeks to legislate by regulation so as to broaden its jurisdiction. It may inevitably end up giving less protection to the true migrant workers that really need the protection.

It has been pointed out that if H.R. 7824 prevails, most agricultural employers would be exempt from the act, including the prohibition against knowingly employing illegal aliens. The answer to that argument is that when and if the Congress decides it is necessary to single out all agricultural employers and food processing employers in this country and subject them to such requirements and prohibitions, Congress should pass legislation to do so. The Department of Labor should not "legislate" by regulation beyond the authority delegated to it by the Congress.

If the time comes when the Congress decides it may be necessary or in the public interest to stop all agricultural employers from employing illegal aliens, then I am of the opinion that such a law should apply to all employers, not just agricultural employers. After all, if we have over 10 million illegal aliens in this country, we surely must realize that only a small percentage of them are employed on farms.

It is true that the language contained in H.R. 7672, the alternative bill to H.R. 7824, would totally exempt "some" so-called small family farms, but only a small fraction of agricultural employment would be exempted by the language in that bill. We have a complex situation in the ownership and operation of farms in this country. A great many farms are leased, in which the families that operate the farms are not the owners. We have situations in which a family has taken in a nonmember of the family as a partner so as to secure investment capital. And we have situations in which farms are inherited by several members of the family but operated by one member of that family. These and other complicated ownership and operational situations on farms make the so-called small family exemptions in H.R. 7672 highly restrictive and largely meaningless.

It is clear from my analysis of the two proposals that—in the interest of fairness to agricultural and food processing employers, in the interest of better protection for migrant farmworkers, and in the interest of eliminating unnecessary regulation of consumers and taxpayers—the language in title IV of H.R. 7664, the Child Nutrition Act, should be supported by the House conferees by receding to the Senate conferees.

FLCRA PROBLEM NEEDS SOLUTION

(Mr. SEBELIUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SEBELIUS. Mr. Speaker, I am pleased to join in supporting and cosponsoring legislation to clarify the Farm Labor Contractor Registration Act.

Those of us from agricultural areas have already had a great deal of experience with this act.

For example, in 1975, the Department of Labor said that anyone with a custom combine, a hay-harvesting or sheep-shearing operation must register as a farm labor contractor. It was clear to us on the Agriculture Committee that those engaged in custom combining, hay harvesting, or sheep shearing were not farm labor contractors. Neither were they migrant workers.

In early 1976, the Congress adopted an amendment that specifically said the term "farm labor contractor" shall not include "any custom combine, hay harvesting, or sheep shearing operation."

Then in 1976, the Labor Department tried to say that anyone engaged in a custom poultry harvesting, breeding, debeaking, sexing, or health service operation is a farm labor contractor. Again, it was clear to us in the Agriculture Committee that those persons were neither farm labor contractors nor migrant workers, and Congress had to adopt an amendment to specifically say that they are not covered by the term "farm labor contractor."

Yet a third time, in 1978, the Labor Department said that students and other young persons engaged in detasseling and roguing hybrid seed corn or sorghum are migrant workers and that the persons involved in organizing them or transporting them are farm labor contractors. Yet again, the Agriculture Committee recognized that that was not the case, and for the third time, Congress adopted an amendment to specifically say so.

We should not have to continue clarifying the act one sector of agriculture at a time. We should adopt a comprehensive clarification.

The clarification proposed in the Panetta bill, H.R. 7824, and the identical Boren amendment should resolve the problem of what Congress intended.

I understand that the Boren amendment, which was approved by the other body, will be going to a conference committee soon. I hope the amendment will be adopted there.

FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, I want to take this opportunity to say that I share my colleagues' concern with regard to the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act. Subjecting farmers, ranchers and other good-faith agricultural employers to civil and criminal penalties for failing to register as farm labor contractors clearly was not the intent of Congress when it enacted this important legislation.

Our intent, and this is explicit in the statute itself, was to protect "producers of agricultural products, migrant agricultural laborers, and the public generally" from certain irresponsible independent farm labor contractors, or crew leaders. To make it clear that the law applied only to these independent crew leaders, specific exemptions were provided for farmers and other agricultural employers, including their employees.

Unfortunately, Mr. Speaker, the statute's provisions and the legislative history apparently are not clear to the Department of Labor. An increasing number of farmers, ranchers, feedlot operators, cotton ginners, tobacco warehousemen, and other agricultural employers are being cited by the Department of Labor for failing to register as farm labor contractors. The Department's actions have led to a growing number of complaints not only from farmers and others in Arkansas, but from all across this great Nation.

Through its own rather narrow interpretation of the act, the Department of Labor has expanded the scope and coverage of the act to all of agriculture. Not only has this resulted in needless regulations for the vast majority of farmers and other agricultural employers, but it has lessened the protections against unscrupulous independent crew leaders. To the extent that these crew leaders continue to engage in exploitive practices reflects the misplaced emphasis of the Department of Labor's enforcement policy. Instead of concentrating its limited resources on farmers and other agricultural employers, the Department should aggressively act to eliminate continued abuses by certain independent crew leaders.

Mr. Speaker, no one believes more than I do in the need to maintain the protections of the Farm Labor Contractor Registration Act. But without proper administration and enforcement, those protections just do not exist. For these reasons I have joined with over 100 of my colleagues in a broad bipartisan effort to clarify the intent and purpose of the Farm Labor Contractor Registration Act. The bill, which I have joined as a cosponsor, is H.R. 7824. Introduced by my colleague from California (Mr. PANETTA), along with the distinguished chairman of the Committee on Agriculture (Mr. FOLEY), the gentleman from California (Mr. COELHO) and the gentleman from Idaho (Mr. SYMMS), H.R. 7824 serves to target the Department of Labor's enforcement actions on those crew leaders who continue to engage in exploitive practices. At the same time, it eliminates needless regulations for the Nation's farmers and other agricultural employers. In this regard it is both reasonable and balanced.

The Senate has already acted on similar legislation. An identical bill introduced by Senator David Boren, along with 39 cosponsors, was adopted as an amendment to the Child Nutrition Act by a 57 to 37 vote. It is now pending before a House-Senate conference. I hope my colleagues will join me in encouraging the conferees on the part of the House to accept the Boren amendment by cosponsoring H.R. 7824.

STATUS OF THE 1980 BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. GIAIMO) is recognized for 10 minutes.

● Mr. GIAIMO. Mr. Speaker, the House Budget Committee today is notifying the Speaker of the House on the status of the 1980 budget. This report compares current levels of congressional action on the budget to the spending ceilings and revenue floors established by the revised second budget resolution for fiscal year 1980. In order to keep Congress advised of the effect of its spending and revenue actions compared to the overall totals set in the most recently adopted budget resolution, periodic reports are required by

section 308(b) of the Budget Act. Under the Budget Act a point of order lies against any measure that would cause the spending ceilings or the revenue floor established by a concurrent resolution to be breached.

Current spending levels are based on the economic forecast and spending and revenue reestimates for fiscal year 1980, as incorporated in the revised second budget resolution that was approved by Congress on June 12, 1980. Today's report reflects changes resulting from enactment of Public Law 96–334, the Export-Import Bank supplemental program authorization bill. A revised forecast based on more recent economic assumptions and revised reestimates of spending will be submitted shortly.

The current level aggregates, as compared to the revised second budget resolution, are:

First. Budget authority: $658,573 million—$277 million below the resolution ceiling.

Second. Outlays: $572,631 million—$19 million below the resolution ceiling.

Third. Revenues: $525,790 million—$90 million over the revenue floor.

A copy of my letter to the Speaker, as well as a copy of the committee's report, are attached.

COMMITTEE ON THE BUDGET,
Washington, D.C., September 9, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: On January 30, 1976, the Committee on the Budget outlined the procedure which it had adopted in connection with its responsibilities under Section 311 of the Congressional Budget Act of 1974 to provide estimates of the current level of revenues and spending. I am herewith transmitting the status report under H. Con. Res. 307, the Revised Second Budget Resolution for Fiscal Year 1980. This report reflects the resolution of June 12, 1980, and estimates of budget authority, outlays, and revenues based on all completed action on spending and revenue measures as of the close of legislative business September 5, 1980.

Sincerely yours,

ROBERT N. GIAIMO,
Chairman.

REPORT TO THE SPEAKER OF THE U.S. HOUSE OF REPRESENTATIVES FROM THE COMMITTEE ON THE BUDGET ON THE STATUS OF THE FISCAL YEAR 1980 CONGRESSIONAL BUDGET ADOPTED IN H. CON. RES. 307 REFLECTING COMPLETED ACTION AS OF SEPT. 5, 1980

[In millions of dollars]

	Budget authority	Outlays	Revenues
Appropriate level	658,850	572,650	525,700
Current level	658,573	572,631	525,790
Amount over resolution			90
Amount under resolution	277	19	

BUDGET AUTHORITY

Any measure providing budget or entitlement authority for fiscal year 1980 of more than $277 million, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in H. Con. Res. 307 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and which would result in outlays for fiscal year 1980 of more than $19 million, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 307 to be exceeded.

REVENUE

Any measure that would result in a revenue loss for fiscal year 1980 of more than $90 million, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in H. Con. Res. 307.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 8, 1980.

Hon. ROBERT N. GIAIMO,
Chairman, Committee on the Budget, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311(b) of the Congressional Budget Act, this letter and supporting detail provide an up-to-date tabulation of the current levels of new budget authority, estimated outlays and estimated revenues in comparison with the appropriate levels for those items contained in the revised second concurrent resolution on the budget for 1980.

Since my last report the supplemental appropriation providing additional program authority for the Export-Import Bank was signed by the President (P.L. 96–334). This report is tabulated as of close of business September 5, 1980.

Sincerely,

ALICE M. RIVLIN,
Director.

[In millions of dollars]

	Budget authority	Outlays	Revenues
1. Enacted	658,573	572,631	525,790
2. Entitlement authority and other mandatory items requiring further appropriation action			
3. Continuing resolution and other authority			
4. Conference agreements ratified by both Houses			
Current level	658,573	572,631	525,790
Second budget resolution as revised by H. Con. Res. 307	658,850	572,650	525,700
Current level is:			
Over resolution by			90
Under resolution by	277	19	

PARLIAMENTARIAN STATUS REPORT SUPPORTING DETAIL FISCAL YEAR 1980 AS OF CLOSE OF BUSINESS SEPT. 5, 1980

[In millions of dollars]

	Budget authority	Outlays
I. Enacted:		
Permanent appropriations and trust funds	342,177	295,050
Previously enacted	376,916	337,850
Offsetting receipts	−78,347	−78,347
Enacted this session:		
Aviation and Noise Abatement Act (Public Law 96–193)	57	
Interest forgiveness on loan repayments from Guam (Public Law 96–205)	2	2
Increase participation in farmer held reserve program (Public Law 96–234)		−42
Federal Trade Commission financing:		
Public Law 96–219:		
Transfer from International Communications Agency	−12	−10
Transfer to FTC	12	10
Public Law 96–240:		
Transfer from State Department	−8	−6
Transfer to FTC	8	6
Public Law 96–261: Federal Trade Commission appropriation, 1980	50	42
Food stamp supplemental appropriation (Public Law 96–243)	2,556	2,556
Disability insurance amendments (Public Law 96–265)		−7
Adoption Assistance and Child Welfare Act (Public Law 96–272)		−10
Transfer for the Selective Service System (Public Law 96–282)		−2
1980 supplemental appropriation and rescission bill (Public Law 96–304)	15,935	15,520
Additional program authority for Export-Import Bank (Public Law 96–334)	128	19
Total, enacted	658,573	572,631
II. Entitlement authority and other mandatory items requiring further appropriation action		
III. Continuing resolution [1]		
IV. Conference agreements ratified by both Houses		
Total current level as of Sept. 5, 1980	658,573	572,631
2d Budget Resolution as revised by H. Con. Res. 307	658,850	572,650
Amount remaining:		
Over ceiling		
Under ceiling	277	19

[1] Foreign assistance appropriations and the appropriations for certain ongoing Labor-HEW programs are funded under continuing resolution authority (Public Law 96-123) for the full fiscal year and, therefore, are included in the enacted category of this report.

Note: Detail may not add due to rounding.●

TRIBLE CALLS FOR REFORM OF SEA PAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. TRIBLE) is recognized for 15 minutes.

Mr. TRIBLE. Mr. Speaker, as a recent series in the Washington Post indicated, our Navy is in crisis. This crisis most profoundly affects the heart and soul of our fleet—those who go down to the sea in ships.

The extraordinary long deployments, the lengthy separation from family and loved ones, and the domestic strains imposed on Navy families have resulted in serious problems—morale and discipline. As we ask for ever greater sacrifices from our sailors, these problems will only worsen.

There can be no denying that we demand too much from all our military personnel and pay them too little. The result is an unprecedented exodus of skilled military personnel from the Navy. All the billions of dollars we spend for new ships and planes will be to no avail if we do not have a sufficient number of good people to operate them.

To remedy this shameful situation, CHARLES BENNETT and I have introduced the National Defense Compensation Act, H.R. 7441—which would grant an across-the-board pay increase to all military personnel.

I am convinced that this is the single most important step we can take to attract and retain qualified personnel.

Nevertheless, the rigors of life at sea, the hardship, and the deprivation all require the special attention of the Congress. In no other service are personnel reportedly assigned to long tours entailing 18-hour days at inadequate salary levels.

Sea duty necessitates leaving home and

family, and working in cramped quarters, adapting to the unpredictability of ship operating schedules, the most limited recreational opportunities, and in-port duties to maintain a ship's readiness.

Our Nation has long recognized the arduous and unique character of duty at sea by providing additional compensation in the form of sea pay. The awareness that service at sea is a singular form of military duty led to a specific entitlement for our sailors.

It is unfair and unrealistic to argue that the living conditions and burdens of service at sea are the normal and expected consequences of life at sea. Beyond the obvious fact that added hardship requires some reward, insufficient compensation leads to ever lower retention rates.

The harshness of life at sea is one of the most frequently cited reasons for leaving the service. The retention rate for sailors serving their second tour of duty has dropped from 71 percent in 1971 to 53 percent this year. The Navy retention rate for officers is now 40 percent as opposed to a goal of 60 percent in 1978 and 1979. There is a shortage of 16,000 persons in grades E–5 through E–9 authorized for sea duty.

As a consequence, lack of qualified seagoing personnel threatens to debilitate the fleet.

In April, the Navy was forced to tie up the U.S.S. *Cannisteo*, a vital fleet oiler because of the lack of qualified personnel.

In June, the 7th Fleet was forced to deploy an entire carrier battle group in a C–4 state of readiness—C–4 categorization by the Navy means that the ship is judged unready for combat. The U.S.S. *Kennedy*, *Daniels*, and *Koontz* went to sea short of boiler technicians, machinists mates, operations specialists and electricians.

This month, Atlantic Fleet commanders proposed a new triad concept. Essentially, this pools the sailors from two frigates to make a third combat ready. To continue these Goldberg personnel policies jeopardizes the security of our Nation and of our allies.

There is, of course, little that can be done to make life at sea more commodious or amenable. A deep ocean environment is necessarily inhospitable and the mobility required of our fleet means unpredictable and long hours.

Sea pay today is simply inadequate. It is inadequate both in the rates of pay and the limited number of skilled and experienced personnel eligible to receive sea pay. The present system of compensation for duty at sea is both anachronistic and unjust.

Prior to passage of Nunn-Warner an enlisted man would have to spend 3 years on sea duty to earn an additional $25 a month. With Nunn-Warner the amount will rise to only $29 per month. These sums cannot begin to compensate for life at sea.

Moreover, officers receive no sea pay at all. Not one additional cent. It is clear that officers at sea assume increased responsibilities; yet they receive no additional money.

Congress can no longer permit this condition to continue. An equitable and reasonable approach to sea pay for our sailors must be considered at the earliest possible moment. The modest increase provided in Nunn-Warner simply will not do. Our readiness will continue to decline, and our ability to project our power and presence diminish.

This week, I am visiting the Atlantic Fleet Headquarters in Norfolk with senior enlisted personnel. I hope to gain an in-depth and personal perspective of the problems as they understand them. Following this visit, I may have specific recommendations to make to the Congress restructuring our system of sea pay. The inadequacies of sea pay are obvious; what we in Congress need to know is what concrete proposals will raise retention rates and morale.

We face a growing challenge from a confident, aggressive, and modern Soviet Navy on the oceans of the world. Our capacity to respond requires not only ships, but the personnel to man them as well. If we do not act to alleviate the inequities now existing in sea pay, the personnel will be unavailable to us.

CONTINUING APPROPRIATIONS, 1981

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi (Mr. WHITTEN) is recognized for 15 minutes.

● Mr. WHITTEN. Mr. Speaker, the House has now passed 11 of the 13 annual appropriation bills but as of yesterday none had been passed by the other body. While the other body is today beginning to consider the appropriation bills for the fiscal year which begins October 1, it is apparent that a continuing resolution will be required to provide interim financing authority for a very large portion of the Federal Government.

I wish to advise Members of my intention to seek a closed rule on a House joint resolution which is absolutely essential to continue the operations of Government. The committee will develop a schedule for the continuing resolution in the near future.●

A TRIBUTE TO JAMES A. BYRNE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HANLEY) is recognized for 5 minutes.

● Mr. HANLEY. Mr. Speaker, it is with great sadness that I rise to join in tribute to a dear personal friend and former colleague, the late James A. Byrne.

For two decades, Jimmy Byrne served in this House as a talented, able and effective legislator. In his home district in Philadelphia, he and his accomplishments are legendary.

Throughout his years of public service, Jim was dedicated to the cause of civil rights and the needs of the elderly. He was a friend and a champion of the working man. He diligently maintained close contact with the people back home, and became known as a man never too busy to meet with a constituent.

He was respected and admired by his colleagues on both sides of the aisle, and his delightful sense of humor knew no party line. Yet, his philosophy was that his constituents were a hard-working people, and the Democratic Party was the party to best represent their needs and interests.

Mr. Speaker, it was a joy to know Jimmy Byrne, and an honor to be his friend. We all will be the poorer for his passing.●

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 5 minutes.

● Mr. NEAL. Mr. Speaker, I am notifying the House today of a U.S. Export-Import Bank proposal to help finance the sale of 12 Boeing 767–200 jet airliners and related equipment, valued at more than $575 million, to Air Canada, Canada's Government-owned airline.

The Eximbank would provide loans and guarantees totaling $460,173,000 to make possible the sale. This transaction would carry out the first part of an agreement under which Air Canada proposes to buy 24 Boeing 767–200's and related equipment for more than $1 billion. Last year, the Eximbank made a preliminary commitment for more than $828 million of financing under this arrangement.

This notification was referred to me as chairman of the Banking Committee's Subcommittee on International Trade, Investment and Monetary Policy. Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, requires that the Eximbank notify Congress of proposed loans or financial guarantees, or combinations thereof, of $100 million or more. Unless the Congress determines otherwise, the Eximbank may give final approval to the transaction after 25 days of continuous session of the Congress following notification.

I am submitting for the RECORD at this time a copy of the Eximbank notification giving the terms and details of the Air Canada transaction. I would welcome any comments or questions my colleagues might have on this proposed financing.

The Eximbank letter follows:

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 29, 1980.

Hon STEPHEN L. NEAL,
Chairman, Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Finance and Urban Affairs, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(1) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 29, 1980.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
The Speaker's Room, U.S. Capitol, Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(1) of the Export-Import Bank Act of

1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Canada:

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available to Air Canada financing in the form of loans and guarantees (Eximbank Financing) of $460,173,000 to facilitate the purchase in the United States by Air Canada of 12 Boeing 767–200 jet aircraft with related spare engines, spare parts and services. The total U.S. export value of these purchases is estimated to be $1,035,000,000.

This transaction is the first proposed credit under a Preliminary Commitment issued by Eximbank to Air Canada for financing of Air Canada's purchases of jet aircraft referred to in our letter of August 23, 1979. In that Preliminary Commitment, Eximbank indicated to Air Canada the terms and conditions under which it will be prepared to extend up to $828,000,000 of financing (including the Eximbank Financing proposed in this transaction) to Air Canada to assist in the purchase of up to 24 Boeing 767–200 jet aircraft (including the 12 mentioned above) to meet that airline's needs for increased traffic on its domestic and North American routes and replacement of its aging fleet. Including the transaction mentioned above, the total U.S. export value of these purchases is estimated to be $1,035,00,000.

2. Identity of the borrower

Air Canada, Canada's largest airline, was established in 1937 as a corporation owned by the Canadian National Railroad and was reorganized in 1978 under the ownership of the Government of Canada. Its routes are worldwide, the principal routes being to Europe and North America, in addition to extensive operations throughout Canada. Eximbank has previously made 6 loans to Air Canada and repayments have been made on a timely basis.

3. Nature and use of goods and services

The principal goods to be exported from the United States are 12 Boeing 767–200 commercial jet aircraft to be used by Air Canada, together with the additional commercial jet aircraft contemplated by the Preliminary Commitment, to handle increased traffic on its domestic and North American routes and to replace its aging fleet. The aircraft will be exported under various schedules during the period 1982–1986.

The airframes for the 767's will be manufactured in the Seattle-Renton-Everett area by the Boeing Company of Seattle, Washington. The engines for the 767's will be manufactured by the Pratt and Whitney Aircraft Division of United Technologies Corporation in Hartford, Connecticut. In addition, other U.S. firms will furnish spare parts. Non-U.S. components manufactured in Japan and Italy will cost about $60,901,000, or approximately 11% of the United States goods, and are not included in the financing plans set out below.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank financing support of $460,173,000 contemplated in this transaction will facilitate the export of $575,216,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their subcontractors are heavily dependent upon exports.

During the next two to three years, several large foreign airlines will be undertaking major reequipment programs, and through 1990 aircraft purchases by foreign airlines are expected to account for approximately 40% of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80% of the world market for commercial jet aircraft, and Eximbank believes it must be sensitive to purchasers' needs during this period of new product selection to insure that U.S aircraft and engine manufacturers are able to offer attractive financing which helps them to sustain their position as a leading U.S. export sector.

The export of 12 Boeing 767–200 jet aircraft will have been achieved in the face of strong competition from the A–310–200 jet aircraft manufactured by Airbus Industrie. The A–310–200 was determined by Air Canada to be technically and economically competitive with the B767–200 for Air Canada's domestic and North American routes. To be competitive and to break into the important North American market with the A–310–200 type of aircraft, Airbus arranged special financing with support by the Governments of France and Germany. Adequate, comparable financing from U.S. sources was necessary to offset the A–310–200 financing. Air Canada's selection of the 767 over the Airbus will govern a substantial portion of Air Canada's fleet acquisition plans for the period through 1990. The Eximbank financing, therefore, was a decisive factor in winning this sale for the U.S. suppliers.

Boeing estimates that the sale of 12 B767–200 jet aircraft will provide 12.2 million man/hours of work for Boeing and its subcontractors, including 1.8 million for Pratt and Whitney in Connecticut for production of the engines. Additional benefits which will flow to the United States from the transaction include follow-on sales of up to 12 additional B767–200 jet aircraft and related exports of spare parts, ground support and other auxiliary equipment.

will be financed as follows:

2. The financing plan

The cost of the 12 B767–200 jet aircraft

	Amount	Percent of U.S. costs
Cash payment	$115,043,000	20
Eximbank financing	460,173,000	80
Total	575,216,000	100

It is expected that the Eximbank Financing described above will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

(a) Eximbank Charges

The financial charge on the Eximbank Financing to be paid by Air Canada will be 8.7 percent per annum, payable semiannually until the start of principal repayments as set forth in subparagraph (b) below. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

(b) Repayment Terms

The Eximbank Financing, together with interest thereon, will be repaid in 2 schedules of 24 equal semiannual installments beginning (i) January 15, 1984 for aircraft to be delivered in 1982 and 1983 and (ii) January 15, 1985 for aircraft to be delivered in 1984. Repayments will be computed on the basis of an actuarial annuity method requiring level installment payments composed of decreasing amounts of interest and increasing amounts of principal in each installment, with interest accruing prior to the start of principal repayments being payable semiannually.

Attached is certain additional information on Eximbank activity in, and economic data about, Canada.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN CANADA (AS OF JULY 31, 1980)

	Outstanding	Undisbursed
Direct loans	266,265,082.89	139,286,880.20
Financial guarantees	0	0
CFF loans	289,555.58	0
Bank guarantees	253,870.60	0
Insurance:		
Medium	1,036,208.53	815,871.70
Short	113,820,916.29	

DEFAULTS AND RESCHEDULINGS

In the past ten years there have been no defaults or reschedulings of Eximbank direct credits financing U.S. export sales to Canada.

APPENDIX—AUGUST 1, 1980

CANADA

Area (1000 sq. km.) = 9,976.
Population (beg. 1979): 23.5 million.
Population Density: 2/sq. km.
GNP per capita (1979): $9,464.

[In percent]

Expenditures of GNP (1979):	
Consumption	63
Government	17
Capital formation	24
Exports	24
Imports	−28
Total	100
Origin of GDP (1978):	
Agriculture	3
Industry	29
Services	61
Other	7
Total	100

	1976	1977	1978	1979	1980(P)
GNP data:					
Nominal (billions of U.S. dollars)	$194.2	$197.6	$203.2	$222.4	$249.3
Rate of change (real GNP) (percent)	5.4	2.4	3.4	2.7	0.3
Fiscal and monetary data:					
Government deficit (millions of U.S. dollars)	$3,246.5	$6,965.6	$9,526.6	$9,906.2	$2,191.8
Deficit as a percent of GNP	1.7	3.5	4.8	4.5	0.9
Increase in money supply (M2) (percent)	12.6	14.0	10.7	2	NA
Savings ratio (percent)	10.2	10.1	10.4	10.3	NA
Price data (annual changes):					
CPI (percent)	7.5	8.0	8.9	9.1	9.7
WPI (percent)	4.2	9.2	9.4	13.9	10.9
Labor data (annual changes):					
Wages (hourly earnings) (percent)	14.0	10.5	7.1	9.0	NA
Productivity (percent)	5.1	0.4	0.4	−0.9	0.6
Unemployment rate (percent)	7.1	8.1	8.4	7.5	7.8
External debt:					
Net international indebtedness (billions of U.S dollars)	$19.9	$25.8	$40.1	$42.1	$41.2
As percent of GNP	10.2	13.1	19.7	18.9	16.5
Debt service ratio (total debt) (percent)	4.1	4.8	6.1	7.4	NA
Balance of payments (millions of U.S. dollars):					
Exports	$38,534	$40,396	$44,276	$55,785	$61,012
Imports	−37,127	−37,896	−41,424	−52,374	−60,098
Trade balance	1,407	2,500	2,852	3,411	914
Services (net)	5,331	−6,810	−7,358	−8,237	−9,268
Transfers (net)	$488	$381	$36	$531	$513
Current account balance	−3,435	−3,929	−4,470	−4,295	−7,846
Capital balance	4,425	2,630	1,689	5,750	NA
Overall balance	989	−1,299	−2,781	1,455	NA
Reserves (millions of U.S. dollars):					
Foreign exchange (excluding gold)	4,964	3,672	3,560	3,056	
Gold (average London price)	2,698	3,251	4,276	12,278	

Sources: OECD Survey, IMF, and IFS.●

REINDUSTRIALIZING AMERICA: TOWARD A FEDERAL POLICY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

● Mr. VANIK. Mr. Speaker, as chairman of the Ways and Means Trade Subcommittee, it has become increasingly clear to me that the United States needs an industrial policy on a sector-by-sector basis if we are to begin to compete effectively internationally. If the present trends continue, more and more American industries will find that they are losing competitiveness internationally. The result will be the erosion of remaining support for a system of open trade; and protectionist legislation will be enacted which will push the world downward into a permanent state of depressed economic activity.

I would like to include in the RECORD at this point an excellent, brief column which appeared in the August 21 Baltimore Sun. It was written by Dr. Joel S. Hirschhorn, who recently completed a major, innovative analysis of the steel industry for the Office of Technology Assessment and the Subcommittee on Trade. Dr. Hirschhorn's article makes a well-reasoned contribution to the growing debate on industrial policy:

REINDUSTRIALIZING AMERICA: TOWARD A FEDERAL POLICY

We hear a great deal of talk about the need for a national industrial policy—about a "Marshall Plan" for American industry—about nothing less than the "reindustrialization" of America. These are, indeed, ringing phrases, and they might rouse more of us from our boredom, if, after all the ringing has stopped, we could figure out what, in fact, does "industrial policy" mean, what are its goals, and what policy choices are there?

Some might say that we already have a *de facto* "industrial policy" which consists of the mosaic of federal policies, laws and regulations that affect industry. Most would agree, however, that, whatever such an often contradictory assortment of policies may add up to, it is not a policy which seeks to achieve defined goals. For many decades federal laws and regulations have affected major industries like steel and automobiles. But when these industries became national disasters it was clear that what may be needed are coherent, comprehensive policies sometimes called "sector policies"—specifically tailored to the needs of particular industries. The recent bunch of quick fixes for the automobile industry does not amount to a sector policy. Is there a clear understanding of where we're going? Is there a national commitment?

Proposed aid for the automobile industry (like the 1977 Solomon Report recommendations for the then very troubled steel industry) represents the customary, incremental, *ad hoc* approach to crisis. It has emphasized protectionist trade policies, special loan guarantees to keep ailing companies afloat and reductions in depreciation schedules. But the recommendations do not contain the critical ingredients of industrial sector policy—goals, strategies and encouragement of technological innovation and more basic research. That's why the 1977 fixes for the steel industry did not work. The problems remain.

Ideally, policy should precede action. With U.S. industrial "policy," it's the reverse. We respond hastily to crises and adopt specific measures to deal with a single aspect of a complex problem, and these *ad hoc*, incremental and unrelated actions persist long after the crises are gone. And chronic problems remain.

The United States has enjoyed incredible industrial success. But the world changes. Our competitors grow stronger. And their growing strength cannot simply be traced to lower production costs, lower prices, better technology or higher labor productivity. Foreign industries are supported by better engineered government policies.

In several nations, notably Japan, industrial sector policies consist of a comprehensive, balanced set of short- and long-term goals and strategies with a strong emphasis on technology to make new and better products at lower cost. Japan has achieved much success with steel and automobiles and its well planned, long-range assault on electronics is frightening U.S. electronics industry leaders.

Such sector policies express and embody a national commitment to an industry, and provide offensive rather than defensive responses to foreign competition. Moreover, sector policies also provide an orderly means of phasing out a declining industry for which new technology cannot offset uncompetitive production costs, a lack of domestic resources or a shrinking market. Japan has done this for its chemicals industry. Because sector policy reduces uncertainty about the future through a series of planned actions, it allows problems of layoffs and social dislocations to be solved far more decisively—though not painlessly—than the crisis management approach does. All these benefits could happen here.

What are the disadvantages of the general approach to industrial policy?

First, with federal actions that apply to all or most of American industry, such as monetary policy, tax laws and environmental regulations, specific problems of particular industries do not necessarily, or, many would argue, usually get proper attention.

Second, the costs of general measures can be too high, such as recent proposals to give accelerated depreciation to increase capital recovery to all industries.

Third, advocates of industrial sector policy do not necessarily want more government aid for industry, but rather less conflicting policies and variable interpretation in government. They argue that government actions emanating from many bureaucracies are frequently at cross purposes with each other for particular industries. This creates massive inefficiencies, resentment toward government, attempts by industry to eradicate generally worthwhile measures and increased cost to consumers.

If the United States were to choose the sector approach, it would be necessary to create within the executive branch an office with the capability for continuing analysis of particular industries. No single solution approach such as tax, trade or technology will work. Viewpoints and information from outside government must make sector policy formulation a public, co-operative process, yet independent analyses must also exist. There should be strong liaison with Congress.

Implementation of a sector policy must be monitored and a mechanism must exist to change goals and strategies if necessary. A key issue in implementation is where in government to have sector policy managed. Existing executive agencies tend to have relatively narrow interests and viewpoints which are likely to be difficult to change. A special assistant to the president or someone attached to an existing White House group, such as the Council of Economic Advisers, offers better access to the president, better participation from the private sector and the ability to co-ordinate activities of executive agencies rather than replace them.

The president could give annual "State of the Industry" reports to keep the Congress and the nation posted on the progress of sector policies, to stimulate and maintain public interest in the problems of American industry and to make it clear to our competition that we have things under control.

The sector approach has risks, including insufficient resources to deal with all qualified industries, an inability to establish criteria for selecting particularly troubled or promising industries and a potential for neglecting local concerns such as sudden unemployment, worker health and safety and pollution. Moreover, industries not benefiting from a sector policy or smaller companies with little political influence could be put at a disadvantage. There could be government inroads into management and decision-making that rightfully belong to industry, and a poorly conceived or executed sector policy might be worse than having none at all.

The worry that government planning is a step toward government direction and ownership of industry should be tempered by the prospect that the continued decline of our industries could bring us to the brink of catastrophe, which in turn could bring on government ownership and management.

Congress, the president and other presidential candidates should discuss and debate solutions to the declining international competitiveness of the United States. A comprehensive industrial policy or selective sector policies—or both—may be required to restore our competitive position.

Time is running out on our crisis-motivated and piecemeal approach to industrial policy. We must debate and design a purposeful and coherent course of action for the nation. Let politics shape policy, not replace it. The U.S. system does not need to be redesigned; it just needs better direction and organization. It is time to stop blaming our foreign competition and to start strengthening our muscles—to make American industry strong again.●

☐ 2030
ALASKA LANDS BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. WEAVER) is recognized for 20 minutes.

Mr. WEAVER. Mr. Speaker, I would like to take this opportunity to bring to the attention of the House certain information on a matter on which the House has worked long and hard—the Alaska lands bill. As we all know, the differing versions passed by the House, and recently by the Senate, have all been scorned and opposed by every Member of the Alaska congressional delegation, the Governor of that State and everyone else who claims to speak for the interests of Alaska.

This opposition frequently has been expressed in the loudest and most extreme rhetoric. So grievous are the injustices Congress would visit upon Alaska by this legislation, some of them say, that Alaska would be denied the rights of statehood. Some in Alaska have gone so far as to suggest secession from the Union itself.

Yet meanwhile, back in Alaska, these same officials, in defending the expenditure of millions of taxpayer dollars in a lobbying campaign directed at this Congress, are very quietly and discreetly telling their people something different—"Read the Senate bill carefully. You will see that our money has been spent wisely."

Well, Mr. Speaker, in the past week or so I have done just that. I took the time to review the House and Senate Alaska lands bills to determine for myself just what all the hubbub is about. I stand before my colleagues today a truly shocked and dismayed man. Before last week, I never knew that Alaska could possibly be treated so differently than any other State. Because what I found in this 448-page bill passed by the Senate is a staggering litany of giveaways and generosity to Alaska that is virtually tantamount to a first-ever grant from the Congress of a "most favored State" status.

I cannot now understand why, instead of excoriating the Congress for even considering this legislation, Alaskans are not doing everything they possibly can to have the Senate's version passed today, before anyone figures out just what this bill does.

I wish to emphasize that I do not begrudge the State most of what it stands to get from this bill. They can have it. But I think we should lay aside this notion that the Congress is trampling all over the State's interests in order to protect the national interest on the most vast, wild and beautiful land the American people own. Allow me to enumerate just a partial list of what the State of Alaska stands to gain by passage of an Alaska lands bill:

State land selections and conveyances. Under its Statehood Act, Alaska was given the right to pick, under certain conditions, 104 million acres of Federal land, or an area bigger than California, for its own. About 35 million acres would be instantly conveyed by the Senate bill, nearly completing the State's entitlement. Fine. But the bill also grants the State millions of acres of land that it otherwise has no right whatsoever to select, including 2.5 million acres that are within the boundaries of the House's conservation system units, including the Douglas Arctic Range additions, the Yukon Flats, Selawik and Nowitna wildlife refuges, and the McKinley, Lake Clark, and Bering Land Bridge National Parks.

In addition, other provisions virtually guarantee future State in-holdings in the parks and wildlife refuges, which when combined with unprecedented acres provisions, would wreak havoc on Federal land managers.

The Senate bill also allows the State to "overselect"—in other words, to file selections of up to 25 percent more than the 104 million acres promised by the Statehood Act. The State can even "top file" on areas where it now has no selection rights. This means that if in the future the Congress changes the status of land in Alaska that the State previously had no right to, but has expressed an interest in, the State could claim title to that land. And if the Federal Government does not convey that land, it arguably could be subject to a suit claiming a "taking" of the State's interests.

Furthermore, in the Senate bill the State wins the right to simply relinquish selections if it feels like it and the Interior Department has not already tentatively approved such a selection. It could then identify other lands elsewhere in the State, a kind of State land selection shell game that would continue the very uncertainty over Alaska lands that the bill is supposed to end. And, the Senate bill is gracious enough to extend the uncertainty for an additional 10 years by extending the Statehood Act deadline for land selections to 1994.

But this is just the beginning.

As chairman of the Forestry Subcommittee, I am especially concerned about what would happen in southeast Alaska where the Tongass National Forest, the Nation's largest, is located. In order to protect the jobs of southeast's two lumber mills, which export all of their product to Japan, the Senate bill would:

Provide an unprecedented mandate for an average annual timber sale of 450 million board feet, exclusive of timber on Native lands that also will be harvested and sold to local industry. This level is much higher than the previous 10-year average.

To guarantee that the timber is made available, an annual entitlement of at least $40 million is granted in perpetuity; it is to come off the top of national oil, gas, and timber receipts, it is not subject to the Budget Act and it is not subject to the appropriations process. Furthermore, section (6K) of the National Forest Management Act, which regulates investments of funds for the marginal timber lands in national forests, is waived.

What about mineral development on the Tongass? Noranda's Greens Creek claims are given a 20,000-acre exclusion from wilderness on Admiralty Island. More importantly, it appears the Senate could hardly think of enough things to do for our familiar friend, U.S. Borax, that wholly owned subsidiary of a London-based conglomerate named Rio Tinto Zinc. In order to promote Borax' "world class" deposit of a mineral—molybdenum—that is exported by the United States in large quantities—the bill gives Borax a totally unjustified exclusion of 150,000 acres from the Misty Fjords Wilderness, it says that anything Borax wants to do that is not compatible with the surrounding wilderness it can go ahead and do anyway and, to top it off, it even apparently validates Borax' highly doubtful mineral claims by stating that the corporation is deemed to have filed for mill sites although it did not do so.

Mr. Speaker, if you think this Christmas tree is getting awfully gaudy, just wait, I am still at the top of the list.

The Senate version of the bill revokes President Carter's and Secretary Andrus' courageous national monument and other emergency land withdrawals. It forbids forever any future similar executive withdrawals of 5,000 acres or more unless Congress ratifies them within 1 year. It exempts the public lands in Alaska from the mandatory wilderness review provisions of the BLM Organic Act. It provides "release" or "sufficiency" language which, for all practical purposes, would preclude the designation of any further wilderness on the Tongass and Chugach National Forests beyond that which is designated by the bill.

It establishes a Bristol Bay Cooperative Region in southwest Alaska which would convey to the State its top-priority Federal lands interests in the Iliamna area and give the State a significant voice in the future management of other Federal lands there.

It allows the construction of fish hatcheries in national forest wilderness areas, even though they should be totally unnecessary. The Senate bill requires seismic studies of the oil and gas potential of the coastal plain of the Douglas Arctic Wildlife Range, while, unfortunately, eliminating the House's mandate for private oil and gas leasing in the National Petroleum Reserve.

It mandates a transportation corridor across the so-called boot of the Gates of the Arctic National Park to accommodate Anaconda's mining interests in the Ambler region.

It has a section granting inholders on national forest and BLM lands unprecedented access rights. This provision apparently applies not only to Alaska but also to the entire United States and was never subject to 1 minutes of public hearings.

The State of Alaska is currently contending in court that it is different from every other State where local governments have the right to 25-percent of revenues from oil and gas leasing on national wildlife refuges, while the rest goes to the refuge system and contributions to payments-in-lieu-of-taxes. No, the State contends that it should get 90 percent of these revenues and the Senate bill, by remaining silent on this issue, leaves the door wide open for the State to extend that claim.

Both House and Senate bills go to great lengths to assure continuation of the so-called Alaska lifestyle. But the Senate bill goes several extra miles. The Senate would allow anyone who built a cabin in a national park before 1974 to keep and use that cabin even though he or she had no right to do so and are, in effect, trespassers. In addition, these trespassers can pass on their unique privilege until the death of the last immediate family member residing in the cabin. The bill also gets so specific about permitting continuation of so-called traditional uses—such as snowmobiles, airplanes, and even temporary campsites, tent platforms, and shelters—no matter where they occur that the ability of Federal land managers to exercise flexibility and discretion in regulating the public lands will be severely reduced.

Mr. Speaker, as I say this is only a partial list. And I have not even raised the benefits of the trans-Alaska pipeline, the conveyance of Prudhoe Bay to the State, the Alaska Native Claims Settlement Act, and the fact that the State treasury is so awash, in oil revenues that it is predicting a surplus of at least $44 billion by 1990, probably much more, and has eliminated the State income tax.

But, Mr. Speaker, the truly amazing thing about all this is that the leaders of the House on this issue do not propose to delete or significantly amend many of these provisions. Some of them already are in the House bill some Alaskan officials say they hate so much.

All we are asking for is recognition of the House's right to discuss some of these major land management policy issues and to reach further reasonable compromises on some of these outstanding issues so that the final bill will respect the years of hard work the House has devoted to this issue and will be something of which we can be proud.

That is not much to ask for—unless you are asking an Alaskan or the leaders of the U.S. Senate. Like a wailing child that wants to eat its dessert but will not touch its peas, to date, they have not budged 1 inch from their ultimatum to this body. "Take it or leave it," they say. "We will not even discuss any changes. We will filibuster anything." Mr. Speaker, I feel, and I think the House as a body feels, insulted at this arrogance. I know that the House will stand behind our own balanced position while continuing to seek a fair and reasonable compromise on this historic measure.

FARM LABOR CONTRACTOR REGISTRATION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. FOLEY) is recognized for 10 minutes.

● Mr. FOLEY. Mr. Speaker, as chairman of the Committee on Agriculture. I want to say that I share my colleagues concern regarding the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act.

The Department's actions requiring farmers, ranchers, and other agricultural employers to register as farm labor contractors or face civil and criminal penalties are completely contrary to congressional intent. There has been a storm of protest from the entire agricultural community and with good reason. Representatives of migrant farmworkers have also criticized the Department. Their concern, which I also share, is that the Department of Labor is not concentrating its full resources on cracking down on those independent farm labor contractors, or crew leaders, who continue to exploit migrant farmworkers.

Because of these concerns. Mr. Speaker, I joined my colleague and good friend, the gentleman from California (Mr. PANETTA), in introducing legislation to clarify the original intent of Congress when it enacted this important and needed legislation. I believe the bill, H.R. 7824, is carefully drafted so that it maintains existing protections for migrant farmworkers. It eliminates the Department's needless regulations of farmers, ranchers, and other agricultural employers by clarifying the existing exemptions contained in the present act. Further, it addresses the concerns expressed by many in that it targets the Department of Labor's enforcement actions on those independent crew leaders who continue to engage in exploitive practices.

Mr. Speaker, H.R. 7824 has been endorsed by every major farm organization and agricultural employer group. At the end of my remarks, I would like to insert a list of those organizations. I am also pleased to say that with over 100 cosponsors, the bill enjoys broad bipartisan support in the House. It is identical to legislation which the Senate adopted as an amendment to the Child Nutrition Act. I hope my colleagues will join with me in support of this much needed legislation.

FARM ORGANIZATIONS AND REPRESENTATIVES OF AGRICULTURAL EMPLOYERS WHO HAVE ENDORSED H.R. 7824 AND S. 2875

The American Soybean Association.
The American Farm Bureau Federation.
The American Frozen Food Institute.
The American Mushroom Institute.
The American Seed Trade Association.
The American Sod Producers Association.
The American Sugar Beet Growers Association.
The Florida Citrus Processors Association.
The International Apple Institute.
The National Broiler Council.
The National Association of Wheat Growers.
The National Cattlemen's Association.
The National Cotton Council.
The National Council of Agricultural Employers.
The National Council of Farmer Cooperatives.
The National Food Processors Association
The National Grange.
The National Meat Association.
The National Peach Council.
The Pennsylvania Food Processors Association.
The Rio Grande Valley Sugar Growers Cooperative.
The Society of American Florists.
The United Fresh Fruit and Vegetable Association.
The Western Growers Association.●

PERSONAL EXPLANATION

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. BRADEMAS. Mr. Speaker, on Friday, September 5, I missed rollcall No. 521, a vote on a motion that the House resolve itself into the Committee of the Whole for consideration of H.R. 7235, the Rail Act of 1980. The motion was agreed to by vote of 333 to 2. Had I been present, I would have voted "yea."●

PERSONAL EXPLANATION

(Mr. WEISS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. WEISS. Mr. Speaker, I was unable to be present for rollcall votes Nos. 482 and 483. The following is an explanation of how I would have voted on these measures on Friday, August 22, 1980.

Rollcall No. 482. A vote on the motion offered by Representative DANNEMEYER to recommit H.R. 7299, the Mental Health Systems Act. The measure failed by a vote of 223 to 75. If I had been present, I would have voted against the motion.

Rollcall No. 483. A vote on final passage of H.R. 7299, the Mental Health Systems Act. The measure passed by a vote of 277 to 15. If I had been present, I would have voted in favor of the measure.●

LEAVE OF ABSENCE

Mr. FARY (at the request of Mr. WRIGHT), for Monday, September 8, on account of a death in the family.

Mr. RUSSO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. GIAIMO (at the request of Mr. WRIGHT), for 10 minutes on today.

(The following Members (at the request of Mr. LEWIS) to revise and extend their remarks and include extraneous material:)

Mr. TRIBLE, for 15 minutes, today.

Mr. PETRI, for 5 minutes, September 10.

(The following Members (at the request of Mr. WEAVER) to revise and extend their remarks and include extraneous material:)

Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. NELSON, for 5 minutes, today.
Mr. BEDELL, for 5 minutes, today.
Mr. WHITTEN, for 15 minutes, today.
Mr. HANLEY, for 5 minutes, today.
Mr. NEAL, for 5 minutes, today.
Mr. VANIK, for 5 minutes, today.
Mr. WEAVER, for 20 minutes, today.
Mr. FOLEY, for 10 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DINGELL, and to include extraneous material notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $884.25.

Mr. SEBELIUS, immediately prior to vote on Eckhardt amendment.

(The following Members (at the re-

quest of Mr. LEWIS), and to include extraneous matter:)

Mr. BEREUTER.
Mr. CONTE.
Mr. LEE.
Mr. BADHAM.
Mr. BOB WILSON.
Mr. KEMP in three instances.
Mr. BROOMFIELD.
Mr. SAWYER.
Mr. SEBELIUS.
Mr. JOHNSON of Colorado.
Mr. DORNAN.
Mr. HYDE.

(The following Members (at the request of Mr. WEAVER), and to include extraneous matter:)

Mr. WEISS.
Mr. COTTER.
Mr. IRELAND.
Mr. HAWKINS.
Mr. HEFNER.
Mr. BLANCHARD.
Mr. RODINO.
Mr. KILDEE.
Mr. MAZZOLI in two instances.
Mr. WAXMAN.
Mr. SOLARZ.
Mr. OTTINGER in three instances.
Mr. GAYDOS in two instances.
Mr. MCDONALD in two instances.
Mr. EDGAR in two instances.
Mr. ROE.
Mr. ECKHARDT in two instances.
Mr. SCHEUER in two instances.
Mr. EDWARDS of California.
Mr. STRATTON.
Mr. SKELTON.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1625. An act to amend the act of December 20, 1944, as amended.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on September 5, 1980, present to the President, for his approval, bills of the House of the following titles:

H.R. 2538. An act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes, and

H.R. 4627. An act to authorize the enlistment of citizens of the Northern Marina Islands in the Armed Forces of the United States of America.

ADJOURNMENT

Mr. WEAVER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 33 minutes p.m.), the House adjourned until tomorrow, Wednesday, September 10, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5248. A letter from the Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice of the proposed conversion to contractor performance of the protective coating function at Chanute Air Force Base, Ill., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5249. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment to Korea (transmittal No. 80-96), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5250. A letter from the Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice of the proposed conversion to contractor performance of the family housing maintenance function at Maxwell Air Force Base, Ala., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5251. A letter from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), transmitting notice that a decision has been made to convert the installation support functions at Selfridge ANGB, Mich., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5252. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report on loan, guarantee and insurance transactions supported by Eximbank during June 1980 to Communist countries; to the Committee on Banking, Finance and Urban Affairs.

5253. A letter from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to extend authorizations of appropriations for programs under the Child Abuse Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and for other purposes; to the Committee on Education and Labor.

5254. A communication from the President of the United States, transmitting notice of his determination that it is in the national interest to extend for 1 year the Foreign Assets Control Regulations, prohibiting certain transactions with North Korea, Vietnam and Kampuchea; the Transaction Control Regulations, restricting sales of strategic goods located abroad to most Communist countries; the Cuban Assets Control Regulations; and the Foreign Funds Control Regulations, pursuant to section 207(d) of Public Law 95-223; to the Committee on Foreign Affairs.

5255. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment and services to Canada (transmittal No. 80-97), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5256. A letter from the Secretary of Commerce, transmitting a report on restrictions on exports to Afghanistan, pursuant to section 6(e) of the Export Administration Act of 1979; to the Committee on Foreign Affairs.

5257. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Austria (transmittal No. 80-115), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5258. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Greece (transmittal No. 80-118), pursuant to section 36(b) of the Arms Export Control Act, together with certification that the sale is consistent with the principles contained in section 620C(b) of the Foreign Assistance Act of 1961, as amended, pursuant to section 620C(d) of the act; to the Committee on Foreign Affairs.

5259. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Korea (transmittal No. 80-96), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5260. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of a license for the export of certain defense articles and services sold commercially to Saudi Arabia (transmittal No. MC-27-80), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5261. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Ambassador-designate Fernando E. Rondon, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5262. A letter from the Associate Director, Bureau of Land Management, Department of the Interior, transmitting notice of the proposed sale of certain public land without competition to the Intermountain Power Agency for development of a generating plant, pursuant to section 203(c) of the Federal Land Policy and Management Act of 1976; to the Committee on Interior and Insular Affairs.

5263. A letter from the Secretary of Labor, transmitting a report on the feasibility and cost of requiring that each Federal agency budget and pay for any unemployment compensation payments made to its former, furloughed, or active employees; jointly, to the Committees on Government Operations and Post Office and Civil Service.

5264. A letter from the Comptroller General of the United States, transmitting a report on Federal-State environmental programs (CED-80-106, August 22, 1980); jointly, to the Committees on Government Operations, Agriculture, Interstate and Foreign Commerce, Public Works and Transportation, and Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DERRICK: Committee on Rules. House Resolution 784. Resolution waiving certain points of order against the conference report on S. 1125 to improve and expand the Federal crop insurance program, and for other purposes (Rept. No. 96-1308). Referred to the House Calendar.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. KASTENMEYER: Committee on the Judiciary. H.R. 6933. A bill entitled: "To amend the patent and trademark laws"; with amendment; referred to the Committee on Government Operations for a period ending not later than September 23, 1980, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee under clause 1(l)(2), rule X (Rept. No. 96-1307, pt. I). And ordered to be printed.

ADVERSE REPORTS

Under clause 2 of rule XIII,

Mr. PRICE: Committee on Armed Services. House Resolution 777. A bill requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called Stealth technology for military aircraft (Adverse Rept. No. 96-1309). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FISHER:

H.R. 8092. A bill to amend the Internal Revenue Code of 1954 to repeal the Family Rental Tax; to the Committee on Ways and Means.

By Mr. WHITTEN:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980; to the Committee on Appropriations.

By Mr. JOHN L. BURTON:

H. Res. 785. Resolution establishing a Select Committee on Procedures for Election of a President in the House of Representatives; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII,

526. The SPEAKER presented a memorial of the Legislature of the State of California, relative to Federal summer job programs, which was referred to the Committee on Education and Labor.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. JOHN L. BURTON introduced a bill (H.R. 8093) for the relief of Zenaida Porte Rebultan, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 2048: Mr. MCKAY.
H.R. 3442: Mr. KINDNESS.
H.R. 4731: Mr. OBERSTAR.
H.R. 6254: Mr. STRATTON.
H.R. 6637: Mr. FINDLEY.
H.R. 7046: Mr. BEDELL, Mr. BENJAMIN, Mr. PORTER, Mr. HUGHES, and Mr. MAGUIRE.
H.R. 7338: Mr. BONKER and Mr. MARKEY.
H.R. 7420: Mr. MCCORMACK.
H.R. 7422: Mrs. SPELLMAN, Mr. BAILEY, Mr. BEDELL, Mr. ROE, Mr. CORCORAN, Mr. ERDAHL, Mr. MURPHY of Pennsylvania, Mr. NOLAN, Mr. MINETA, Mr. VENTO, Mr. PHILLIP BURTON, Mr. GRAY, Mr. MAGUIRE, Mr. ROSENTHAL, Mr. STARK, Mr. MITCHELL of Maryland, and Ms. MIKULSKI.
H.R. 7505: Mr. SAWYER.
H.R. 7811: Mr. JENKINS and Mr. FOWLER.
H.R. 7813: Mr. CARTER.
H.R. 7824: Mr. DERWINSKI, Mr. WHITE, Mr. WYATT, Mr. DANIEL B. CRANE, Mr. BEDELL, Mr. BARNARD, Mr. PREYER, Mr NICHOLS, Mr. LOEFFLER, Mr. LIVINGSTON, Mr. VOLKMER, Mr. MICA, Mr. STUMP, Mr. DICKS, Mr. ROYER, Mr. MCCORMACK, Mr. HAMMERSCHMIDT, Mr. MURPHY of Pennsylvania, Mr. JONES of North Carolina, Mr. STANGELAND, Mr. PEASE, Mr. BROYHILL, Mr. BEVILL, Mr. FOUNTAIN, Mr. CHARLES WILSON of Texas, Mr. SHELBY, Mr. SATTERFIELD, Mr. WHITTAKER, Mr. HANSEN, Mr. CHAPPELL, Mr. MCDONALD, Mr. EVANS of Delaware, Mr. FLIPPO, Mr. HAGEDORN, Mr. WHITEHURST, Mr. HUCKABY, Mr. ALBOSTA, Mr. BALDUS, Mr. PASHAYAN, Mr. FORSYTHE, Mr. ERDAHL, Mr. KASTENMEIER, Mr. BETHUNE, Mr. RUDD, Mr. GILMAN, Mr. BURGENER, Mr. BADHAM, Mr. DAVIS of South Carolina, Mr. BREAUX, Mr. SPENCE, Mr. RHODES, Mr. YATRON, Mr. CARTER, Mr. BEARD of Tennessee, Mr. SHUMWAY, Mr. LOTT, Mr. MCKAY, Mr. JENKINS, Mr. CLAUSEN, Mr. HOPKINS, Mr. LEATH of Texas, Mr. GOLDWATER, Mr. DANNEMEYER, Mr. LATTA, Mr. SOLOMON, Mr. PETRI, Mr. GUDGER, Mr. DAN DANIEL, Mr. FUQUA, Mr. HOLLAND, Mr. LONG of Louisiana, Mr. JONES of Oklahoma, and Mr. BEREUTER.
H.R. 7833: Mr. LEDERER, Mr. OTTINGER, Mr. LUNDINE, Mr. WOLFF, Mr. DASCHLE, Mr. MINISH, Mr. NOLAN, Mr. BROWN of California, Mr. DRINAN, Mr. VENTO, Mr. STACK, Mr. MAGUIRE, Mr. GUARINI, Mr. DANIELSON, Mr. CONTE, Mr. MITCHELL of New York, Mr. WOLPE, Mr. MURPHY of New York, Mrs. SPELLMAN, Mr. SOLARZ, Mr. LAFALCE, Mr. HUGHES, Mr. SIMON, and Mr. CORCORAN.
H.R. 7900: Mr. HILLIS.
H.R. 7903: Mr. BLANCHARD.
H.R. 7928: Mr. CARR, Mr. COELHO, Mr. MURPHY of Pennsylvania, Mr. BEILENSON, Mr. WEISS, Mr. BURGENER, and Mr. STARK.
H.R. 8027: Mr. BLANCHARD.
H.J. Res. 511: Mr. EVANS of Delaware, and Mr. HOWARD.
H. Con. Res. 383: Mr. COTTER, Mr. LEDERER, Mr. GEPHARDT, Mr. GUARINI, Mr. MAVROULES, Mr. ADDABBO, and Mr. CARTER.
H. Con. Res. 405: Mr. HALL of Texas, Mr. CARTER, Mr. HUBBARD, Mr. BADHAM, Mr. PHILIP M. CRANE, Mr. MOLLOHAN, Mr. BURGENER, Mr. ROBERT W. DANIEL, JR., Mr. STUMP, Mr. FORSYTHE, Mr. HOPKINS, and Mr. DANIEL CRANE.
H. Con. Res. 409: Mr. MURPHY of Illinois, Ms. HOLTZMAN, Mrs. SCHROEDER, Mr. AUCOIN, Mr. MAGUIRE, Mr. SCHEUER, Mr. KILDEE, Mr. FROST, Mr. GLICKMAN, Mr. HOLLENBECK, Mr. DE LA GARZA, Mr. SOLARZ, Mr. LEHMAN, Mr. CONYERS, Mr. FAZIO, Mr. WHITEHURST, Mr. ERTEL, Mr. CLINGER, Mr. DERWINSKI, Mr. WHITE, Mr. HUGHES, Mr. LENT, Mr. CLEVELAND, Mr. DOUGHERTY, Mr. FRENZEL, Mr. COELHO, Mr. LEVITAS, Mr. DANIEL B. CRANE, and Mr. PICKLE.
H. Con. Res. 421: Mr. GOLDWATER.
H. Con. Res. 422: Mr. DICKINSON and Mr. FLORIO.
H. Res. 525: Mr. ERTEL and Mr. MADIGAN.
H. Res. 759: Mr. MCCLORY, Mr. RAILSBACK, Mr. PASHAYAN, Mr. GILMAN, and Mr. CARTER.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

419. By the SPEAKER: Petition of H. G. Rickover, aboard the U.S.S. *Arkansas* (CGN-41), at sea, North Atlantic, relative to nuclear-powered surface warships; to the Committee on Armed Services.

420. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to single-family residential energy audits; to the Committee on Banking, Finance and Urban Affairs.

421. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to State energy severance taxes; to the Committee on Government Operations.

422. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to strategic petroleum reserves; to the Committee on Interstate and Foreign Commerce.

423. Also, petition of the Board of Chosen Freeholders, Essex County, N.J., relative to amendments to the Fair Housing Act of 1968; to the Committee on the Judiciary.

424. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to the census; to the Committee on Post Office and Civil Service.

425. Also, petition of the Board of Chosen Freeholders, Essex County, N.J., relative to highway routing of radioactive and hazardous materials; to the Committee on Public Works and Transportation.

426. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to the crude oil windfall profits tax; to the Committee on Ways and Means.

427. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to hazardous waste; jointly, to the Committees on Interstate and Foreign Commerce, Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. WYATT:

(Amendment to the amendment to H.R. 85 offered by the Mr. BREAUX.)

—Page 37, after line 14, insert the following:

IXTOC I OILSPILL

SEC. 114. (a) Claims may be asserted by any United States claimant against the Oil Pollution Trust Fund established in section 521 of this Act for any compensable damage (within the meaning of section 531 of this Act) incurred by such claimant and arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979.

(b)(1) Compensation shall be provided by the Secretary from amounts appropriated pursuant to this subsection to any State or political subdivision thereof for any loss of tax revenue for a period not to exceed one year due to injury to real or personal property arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of IXTOC I, Bay of Campeche, Mexico, on June 3, 1979. Claims for compensation under this subsection shall be submitted to the Secretary, in such manner and form as the Secretary may prescribe.

(2) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(c) The provisions of this title, other than those provisions determined by the Secretary to be inconsistent with this section, shall apply to claims under subsections (a) and (b).

(d)(1) Except as provided in paragraphs (2) and (3) of this subsection, no United States claimant shall be eligible to receive compensation under subsection (a) or (b) of this section for any damage referred to in such subsection for which such claimant has not been compensated if such claimant has presented a claim for compensation for such damage under any other Federal or State law.

(2) Any United States claimant who presents a claim for any damage referred to in subsection (a) or (b) of this section, under any other Federal or State law, which is not reduced to judgment before the date of enactment of this Act may be eligible to receive compensation under such subsection. Presentation by such claimant of a claim for compensation under subsection (a) or (b) of this section shall be irrevocable, shall constitute the exclusive relief which may be granted with respect to the damage for which such claim is presented, and shall constitute a waiver by such claimant of any

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right to relief to which such claimant may be entitled under such other Federal or State law with respect to such damage.

(3) Any United States claimant who presents a claim for any damage referred to in subsection (a) or (b) of this section, under any other Federal or State law, which is reduced to judgment before the date of the enactment of this Act may be eligible to receive compensation under such subsection. Such claimant may present such judgment to the Secretary. If the Secretary determines that such claimant is entitled to receive compensation under either such subsection, then the Secretary shall offer to pay such compensation, not to exceed the amount of any award made in such judgment, in satisfaction of such judgment. Acceptance of such offer by such claimant shall constitute full satisfaction of such judgment with respect to each claim for any damage which is referred to in subsection (a) or (b) of this section and which is merged in such judgment.

(e) The Secretary is authorized to make a grant in an amount not to exceed $6,000,000 to the Texas Parks and Wildlife Department of the State of Texas for the construction and operation of a saltwater fish hatchery for the purpose of restoring the red drum fishery which was damaged by oil pollution caused by the discharge of oil in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979.

H.R. 7020

By Mr. ECKHARDT:

—Page 29, after line 13, insert:

"(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from contamination associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

EXTENSIONS OF REMARKS

SUPERFUND: CRUCIAL PROTECTION FOR GROUND WATER

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. WAXMAN. Mr. Speaker, superfund legislation, H.R. 7020 and H.R. 85, will reach the floor of the House in a very few days. I am proud that part of the package, H.R. 7020 dealing with hazardous waste disposal sites, originated in our House Commerce Committee.

The need for superfund, to cope with releases from dump sites, and spills of oil and hazardous substances into the environment, speaks for itself.

However, as chairman of the Commerce Subcommittee on Health and the Environment, with special concern for ground water protection, I want to alert my colleagues to the emerging realization that this Nation's supplies of ground water, still considered by the majority of the American people as safe and pure, are in fact terribly threatened, from a variety of sources of contamination including hazardous waste sites, liquid waste impoundments, and spills, all of which would be addressed by superfund.

In many cases it is too late: Wells have already been closed, and in all probability cannot be restored. Elsewhere, the aquifer has been contaminated, but that contamination has not yet reached the wells.

In other cases, protection can still be achieved by the kind of clean up of sites and spills that superfund offers.

The Environmental Protection Agency, in recent testimony before my subcommittee, and the Subcommittee on Transportation and Commerce addressed the threats to ground water.

Because superfund, which I strongly urge my colleagues to support, is a major step forward in protecting the Nation's aquifers against future contamination, this is an opportune time to share with the House that testimony:

STATEMENT OF SWEP T. DAVIS, ASSOCIATE ASSISTANT ADMINISTRATOR FOR WATER AND WASTE MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY—AUGUST 22, 1980

My name is Swep T. Davis. I am Associate Assistant Administrator for Water and Waste Management of the Environmental Protection Agency. Mr. Chairman, I want to thank you and the members of both Committees for this opportunity to come before you with a report on ground water contamination and our plans for developing a ground water protection strategy.

THE EMERGING PROBLEM OF GROUND WATER CONTAMINATION

I come before you today with the distressing news that one of this nation's most vast and vital natural resources is in serious jeopardy. Our ground waters, long considered virtually pollution-free, are threatened by ruinous contamination. The problem is national, for the potential sources and routes of contamination may be found wherever people live and work. The problem is serious, for the intruding contaminants are often highly toxic, sometimes cancer-causing. More than one hundred million of our citizens depend in whole or in part on underground sources of drinking water. Each day more than ten billion gallons of ground water are withdrawn for use in American homes. Another seventy billion gallons are drawn for agricultural purposes. The prospect that that water may contain high concentrations of toxic chemical compounds compels our immediate attention and action. The story of hazardous wastes and vulnerable ground waters is just beginning to be written, but the opening chapter is enough to predict that this will become the environmental horror story of the eighties—with after-effects reaching into the next millenium.

GROUND WATER CONTAMINATION

The initially surprising aspect of ground water contamination is that it is happening at all. The conventional wisdom passed down through the centuries and surviving into our own day is that the ground acts as a natural filter, screening out impurities and ensuring a pristine source of fresh, pure drinking water. We know now that that natural process can be overwhelmed by the burden our industrial society imposes on it. Let me cite a few cases where that has happened.

Forty-four communities in Massachusetts have been found to have private or public water supplies severely contaminated with one or more synthetic organic compounds; 25 incidents have occurred in Connecticut, 25 in Pennsylvania, 24 in New York, over 200 wells in California have been contaminated and one or more incidents have been reported in each of 20 other States. The remaining States cannot be presumed to be untouched, of course; we simply do not have data on them.

Approximately 100 drinking water wells surrounding a municipal landfill in Jackson Township, New Jersey, have been closed because of organic chemical contamination. Analysis of water samples there showed chloroform, benzene, toluene, trichlorloethylene, ethylbenzene, and acetone—all of them toxic if not carcinogenic compounds.

As of March 1980, the Office of Drinking Water compiled and analyzed over 8,000 tests for volatile organic compounds which had been performed on well waters by State agencies. Chlorinated organic solvents were found most frequently, sometimes at high levels. Trichloroethylene, an industrial solvent and degreaser sometimes also used as a septic tank cleaner, was found in one-third of the samples tested.

Last year in Connecticut, a State survey of water plants serving a thousand people or more resulted in the detection of some quantity of volatile organic contamination in 87 percent of the wells tested. One limited example dramatizes the problem. In early 1979, benzene was discovered in eleven private drinking water wells in Brookfield, Conn. This contamination was severe enough that citizens were warned not to drink, bathe, or use the water while the Connecticut Departments of Health and Environmental Protection tried to remedy the situation. Since that time the gasoline station responsible for the underground storage tank leak has been working with the State agencies to effect a ground water recovery and flushing system for the aquifer and to provide the affected families with potable water. It has been frustrating for the citizens and for the experts that there are not "quick fix" technologies available to provide relief from this sort of contamination.

Because of synthetic organic contamination, Nassau and Suffolk Counties, in New York, closed 23 and 13 public water supply wells, respectively. Nearly two million people are served by those contaminated supplies. The New York Public Interest Research Group (NYPIRG) has recently issued a major study of Long Island's ground water problems, drawing on EPA data and other sources. That report confirms that all three of the island's principal aquifers are seriously and dangerously contaminated.

Note that the contaminants in all these cases were synthetic organic chemicals. We know that some of these compounds are cancer-causing in laboratory animals. Some are suspected carcinogens. Many are highly toxic. But there are hundreds of thousands of chemical compounds and we know very little about the health effects of most of them. There are too many of them, coming too fast, for research to keep up. And we know least of all about the impact on human health of various combinations of compounds. The possible synergistic effect of mixed contaminants is a question as elusive as it is frightening.

But we do know that the most frequently found industrial solvents are dangerous to human health. When they appear in ground water they are often in high concentrations. Aquifers do not provide the natural dilution or flushing that occurs in surface waters. A contaminant that penetrates ground water tends to form a "plume" of highly contaminated water, moving slowly through the aquifer for years, decades, and even longer. We measure river flow in feet per second, ground water movement in feet per year.

Determining that a plume exists is enormously difficult. Monitoring wells are expensive and may easily miss narrow streams of contamination in a large aquifer. And if you should happen to find a contamination plume, what are you going to do about it? In most instances, the answer is "Shut down the water supply wells." In some cases, it is possible to cleanse contaminated segments of aquifers but it involves large quantities of water, usually costly treatment techniques, and it is not always practicable, either economically or technically.

In a typical case, such as South Brunswick, New Jersey, determining the extent and severity of a plume emanating from one single source in a shallow aquifer requires dozens of monitoring wells and hundreds of samples. It also takes a great deal of time and several hundred thousand dollars. If the geology is more complex or several potential contamination sources exist, the cost will be on the order of $.5 million. In a case where the aquifer is deep or surface features cannot help in determining the hydrogeology, costs could soar to two or three million dollars. Therefore the more common alternative of closing the wells and seeking

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

water elsewhere is the inexorable solution for most communities.

I should also point out that treating contaminated ground water is not a viable option for most systems. The new equipment for treatment processes and increased operating costs would be far out of reach for the typical ground water system. The hard economic realities would lead to the same conclusion: shut down the water wells.

Ben Franklin's axiom, "An ounce of prevention is worth a pound of cure", certainly applies in this situation. The economic impact of a badly contaminated aquifer has repercussions that extend far beyond detection costs; it may include the expense of a new water supply and treatment plant, effects on property values, production losses and health expenses. The prevention of ground water pollution has a price tag attached to it, yes, but that price ought to be paid in advance by the polluter, not passed on to the citizen-victims of the year 2000 or 2100. No industry has a natural right to dispose of its hazardous wastes or operate in ways that threaten the environment today and in years to come. The people, on the other hand, and indeed the land itself, have a compelling right to reasonable protection from practices and substances that jeopardize human health and natural resources.

SOURCES OF CONTAMINATION

What, then, are the sources of ground water contamination? Ground water is vulnerable to contamination from a variety of sources. Subsurface waste disposal systems and buried storage tanks are a primary concern because of the large number of sites and the potential for bacterial and chemical contamination.

Improper disposal of municipal and industrial wastes also contaminates ground water. During the past several years, various studies have reported or confirmed aspects of the problem. One EPA report estimated that 15 percent of 378 million tons of liquid and solid industrial waste generated in 1978 was hazardous, a figure expected to grow 3.5 percent per year. There are studies estimating that 75 percent of all active and inactive disposal sites leak contaminants into the ground and ground water. A report by Fred C. Hart Associates estimates the number of active identified landfills at 75,500, abandoned landfills at 100,000, and of these active and inactive sites, 54,644 contain potentially dangerous amounts of hazardous wastes.

Other potential sources of contaminants of ground water include radioactive waste disposal sites, highway de-icing salts, contamination from abandoned wells, improper disposal of municipal waste water and injection wells of various kinds. Ground water can also be contaminated naturally with radium or radon, arsenic and other inorganic toxic chemicals. And we are concerned about the possible effects of depletion, or over-withdrawal of ground water that may lead to salt water intrusion, for example.

Worthy of special note are surface impoundments, commonly referred to—even in the Safe Drinking Water Act—as pits, ponds, and lagoons. Such facilities are used for disposal, treatment, and storage purposes; they range in size from a few hundred square feet to hundreds of acres. I understand the Committees have a particular interest in these constructions and are aware of the study the Agency conducted of them. Our study, done in cooperation with the States, was designed simply to make an initial assessment of the number of surface impoundments and their potential for contaminating ground water. We wanted to get a general idea of the dimensions of the problem that might be posed by such impoundments. The data generated to date are preliminary but sufficient to offer the following information.

Almost 181,000 active impoundments have been identified. In the industrial category 10,800 sites containing a total of 25,750 impoundments have been located.

Analyses of the data on 8,200 industrial sites which have been assessed show that 72% are unlined and only 700 are known to be monitored. At 35% of the sites one or more impoundments contain liquid wastes that may be considered hazardous according to a ratings system based on the Standard Industrial Classification Code.

Nearly 30% (2166) of the assessed sites are unlined and located in areas where thin or very permeable soils afford little protection to usable aquifers. About one third of these unlined sites (728) may be located, according to preliminary investigation, within one mile of a water well which would be in the path of contaminated ground water flowing from these sites.

We think our Surface Impoundment Assessment (SIA) was a worthwhile, if sobering, effort. When all the data have been analyzed and studied, we'll have a better insight into what needs to be done about the problem. RCRA, of course, gives us authority to deal with at least some of them. The final SIA report will be out by the end of the year. Should additional regulatory requirements be indicated, we shall, of course, inform the Congress, the States, and the public and involve all of them in the rulemaking process.

THE PROBLEM IN PERSPECTIVE

I think it is important to put all the facts and figures I have cited into perspective. Just how serious and extensive is the occurrence of ground water contamination? The fact is we don't know precisely. The actual magnitude of the problem is unknown, which leaves us with the dual problem of detection and protection. As I mentioned, monitoring is a difficult and costly undertaking. Our most conservative estimates would suggest that only a small percentage of the nation's aquifers have been irretrievably impaired by contamination. These happen to be in highly populated areas, so the impact of their ruination is disproportionately high. However, we know that the kinds of sources and practices that led to their loss can be found in many parts of the country. Some contaminants are so ubiquitous we are planning to set maximum allowable levels for them in drinking water.

The important point, I think, is that the proven instances of contamination clearly establish the potential for similar contamination elsewhere, wherever similar conditions exist. Our studies of surface impoundments, waste disposal sites and other potential pollution sources demonstrate that we are faced with a national problem. However, it is a problem that can be stopped. We can do nothing about the most seriously damaged aquifers, those known and those not yet discovered, but we can act to prevent the same loss from occurring elsewhere.

This, then, Mr. Chairman, is an argument in support of preventive action, the very approach provided by the Congress in Part C of the Safe Drinking Water Act. Our Underground Injection Control program and Sole Source Aquifer program are preventive measures to ensure that ground water contamination does not happen in the first place. Obviously, these two programs do not address every threat to ground water quality. I cite them to emphasize the importance of preventive action and to pay tribute to the Congressional foresight and leadership that has already established the need for and legitimacy of governmental action before the predictable damage is done.

Part B of the Safe Drinking Water Act provides, in the drinking water standards, the last bastion of defense against human consumption of dangerous contaminants, but as mentioned above, systems drawing on ground water typically cannot afford the treatment required to bring chemically contaminated water into conformity with national standards of public health safety.

SUPERFUND

There are gaps in existing authorities. With the proposed Superfund legislation we can fill in many of the gaps.

Let me relate how Superfund will help resolve problems caused by abandoned waste disposal sites. The program embraces four principles of action:

First, it provides the federal government with both the authority and the resources to clean-up abandoned sites.

Second, it permits speedy action, prior to long drawn-out judicial proceedings, to abate environmental and public health threats posed by spills of oil and hazardous substances and by abandoned hazardous waste sites.

Third, it imposes joint, several, and strict liability on those who caused or are causing the problem. This provision serves as both a deterrent and as a means of recovering clean up costs.

Fourth, it restricts Federal action to those instances in which the responsible party will not act or cannot be promptly identified.

We feel that enactment of Superfund is crucial to solving many major contamination problems in our entire environment.

CONCLUSION

By way of a final word, Mr. Chairman, I would only say that the ground water contamination problem is very real and quite serious. Yet we have discovered it soon enough to give us time to act, to prevent the predictable corruption of the larger part of that vital and irreplaceable resource. We hope the Committee will agree that the development of a Ground Water Protection Strategy holds promise and that the Congress's previous commitment to preventive action is a policy that should be continued. The evidence that ground water is vulnerable is abundant. The likelihood of further deterioration nationally is clear. The need for preventive action is compelling. We seek your support and your advice. If the members of the Committees have any questions about the problem or our responses to it, I shall be pleased to try to answer them.●

PERSONAL EXPLANATION

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. HAWKINS. Mr. Speaker, on September 4, 1980, due to official business in the 29th District of California, I was not present for votes on the Budget Reconciliation Act. On rollcall No. 517, I was incorrectly paired as being in favor of the rule. For the record, I would like to state that I was opposed to the rule.

In addition, I would like to state for the record that I was in favor of the Bauman amendments to the Budget Reconciliation Act, which struck the provisions in the bill which provided on a one-time basis only that retirement benefits for military and civilian retirees be adjusted to match the rise in the cost of living only once a year rather than the usual twice a year—rollcall No. 518.●

A PRAYER FOR PEACE

HON. JAMES P. (JIM) JOHNSON

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. JOHNSON of Colorado. Mr. Speaker, there are strident voices today that claim righteousness and morality which in reality are using an age-old practice—cloaking political ambition and lust for power in religious and Biblical terms.

A characteristic of these charlatans is to argue that Christians must become politically involved so the country will return to a morality that includes militarism of the highest degree. God, they imply, is against the SALT II Treaty, the Panama Canal Treaty, communism, and abortion; while He favors an arms buildup, military superiority, a rapid deployment force to put American troops on foreign shores on short notice, and a generally aggressive foreign policy that supports military dictatorships all around the world.

These so-called religious leaders and groups, who operate outside organized churches, raise enormous amounts of money, espouse right-wing causes, and preach a form of intolerant self-righteousness which is devoid of Christ's teachings of peace, love, and forgiveness.

Walter F. Murphy, a Princeton University law professor, has written a best selling novel entitled "Vicar of Christ." In this book, a fictitious pope makes an appeal to mankind based upon Christ's teachings which is in direct contrast to the drivel coming from the aforementioned moralists.

I am including a portion of this book in the form of a speech given by the novel's main character which is a simple, eloquent reflection of a religious faith of the highest type. The quotation follows:

We have all heard too many speeches against war. Every decent person appears to be appalled at the prospect of the use of modern weapons. But their use is as likely today as in any time in the past. The time is long gone for general condemnation of mass slaughter. We must be more specific. We must return to the teachings of Christ in this regard as well as in others. We must return to pacifism as the moral stance of the true Christian; we must reject violence, especially mass violence, and embrace love and trust. The injunctions to love our neighbor and to turn the other cheek are not compatible with red telephones that can trigger hydrogen-tipped missiles or germ warfare.

In the past, before the horrors of modern weapons were known, some theologians differentiated between just and unjust wars. We concede that some wars may be more immoral than others. But the least immoral war fought with modern weapons remains an abomination before God and before man. We do not understand how anyone professing the Christian faith—and though we know less about them, the other great religions of the world that join us in respecting the sanctity of human life—we do not know how any moral man or woman can participate in modern war without damning his or her immortal soul. Further, we do not understand how such a person can take part in preparations for holocaust by serving in the armed forces even in time of peace.

We call out for peace now just as we have called out for peace before the United Nations, before the Arabs and the Israelis, and, privately, before the diplomats of every major nation on this planet. We call out for peace again. But now we call out not only to governments; we call out directly to you, to the people, especially to the young men whose souls as well as bodies war would most searingly condemn. We call for a return to Christ's pacifism. Without armies, governments have no alternatives to peace. We can be certain that old men will not risk their own lives or property.

My message to you is old: Love thy neighbor. Do not kill him; do not make ready to kill him. Love, trust in God's mercy. Let us pray as did St. Francis:

Make me a channel of Your peace, O Lord.
Where there is hatred let me sow love,
Where there is injury, pardon,
And where there is doubt, faith. . . .
For it is in giving that we receive;
It is in pardoning that we are pardoned;
And it is in dying that we are born to eternal life.●

MORE DOUBLETALK IN ALABAMA

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. DORNAN. Mr. Speaker, when the Federal Election Commission appropriations bill comes before the House, the Members will recall that I stated there was a possible coverup within certain parts of the Justice Department and the FEC pertaining to the matter involving campaign contributions and related issues.

Besides a slipshod presentation in the Alabama coal scandals and a Federal judge sealing the record to State Prosecutor James Evans, I now discover that U.S. Attorney J. R. Brooks is denying that his original referral letter to the FEC even mentioned the possibility of a cash contribution to DONALD STEWART.

Just read what was reported in the August 29, 1980, Birmingham News article by Andrew Kilpatrick and Tom Scarritt:

Brooks sent a letter to the FEC in April 1979, summarizing the Dennis matter for the FEC.

An Associated Press story Thursday quoted an FEC report as saying that Brooks' letter noted some of the Dennis contributions may have been contributed in cash rather than check. Cash contributions are illegal.

That FEC document obtained by The Birmingham News—prepared by the FEC's general counsel and dated May 2, 1979—says that Brooks' letter alleges that some $11,000 was made in cash.

Brooks says that is not so. Brooks said his letter doesn't say anything about cash contributions by Dennis to Stewart.

Brooks did say his letter has information on matters he cannot discuss, but he indicated that reasons for that include keeping sources confidential—not that there has been a suggestion of cash contributions.

"The primary focus of the letter was the fact of the contributions—the fact of contributions by one person in excess of $1,000 rather than on the form of the contributions," Brooks said.

Another article appearing in the Birmingham Post Herald of August 29, 1980, stated:

Brooks denied a report published yesterday by the Associated Press that the memo reported an illegal $11,000 cash contribution by Dennis to Stewarts 1978 campaign. He also denied the coverup charge made by U.S. Rep. Robert Dornan, R–Calif.

"The Justice Department is just not covering up anything. The allegation that the Justice Department is covering up any information that I gave the FEC is just not true," Brooks said.

"I did not say then (in the memo) and did not say to you now that the letter outlined cash contributions. The contents of the letter are confidential and I would not divulge the contents of the letter except to say that is was a report to the FEC relaying allegations about contributions made by James Dennis."

Contrast Brooks' denial, or very slippery finesse, about his original referral to the FEC with the following relevant excerpts taken from documents on the FEC public record (MUR 970):

FEDERAL ELECTION COMMISSION,
Washington, D.C., May 4, 1979.

Memorandum To: The Commission.
From: William C. Oldaker, General Counsel.
Re Pre-MUR 32.

On April 24, 1979, the Office of General Counsel received a referral from the U.S. Attorney's Office for the Northern District of Alabama regarding fifteen individuals whose names appeared on the disclosure reports for the 1978 campaign of Senator Donald Stewart. According to the referral, the individuals did not actually contribute to the campaign. Instead, it is alleged that James Dennis, a fund-raiser for the campaign, contributed $15,000, $11,000 of which may have been contributed in cash, using the names of the fifteen individuals.* * *

FIRST GENERAL COUNSEL'S REPORT

Date and time of transmittal by OGC to the Commission: May 30, 1979.

MUR No. 970. Date complaint received by OGC: May 10, 1979. Staff Member Thedford.

Source: Referral from the Department of Justice.

Respondent's Name: James H. Dennis, Sr., Friends of Donald Stewart.

Relevant Statute: 2 U.S.C. §§ 434(b)(2), 441a, 441f, 441g 11 CFR § 110.4(c) (1) and (2).

Internal Reports Checked: Donald Stewart, Friends of Donald Stewart, Carey Peck, Carey Peck for Congress.

Federal Agencies Checked:

BACKGROUND

On April 20, 1979, the U.S. Attorney's Office for the Northern District of Alabama forwarded to the General Counsel a referral regarding fifteen individuals whose names appeared on the disclosure reports for the 1978 campaign of Senator Donald Stewart (Attachment I). According to the referral, the individuals did not actually contribute to the campaign. Instead, it was alleged that James Dennis, a fundraiser for the campaign, contributed $15,000, $11,000 of which may have been contributed in cash, using the names of the fifteen individuals.

FEDERAL ELECTION COMMISSION,
Washington, D.C., June 20, 1979.

Re MUR 970.

Mr. JAMES STEWART, Jr.,
Treasurer, Friends of Donald Stewart Anniston, AL.

DEAR MR. STEWART: Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission has found reason to believe that the Friends of Donald Stewart may be in violation of 2 U.S.C. § 434(b) and 11 CFR § 110.4(c)(2).

A summary of the evidence is as follows:

(3) Mr. James H. Dennis, Sr. made contributions to the committee totalling $22,000 in the names of other individuals, of which $11,000 was alleged to be in cash. The committee would, therefore, be in violation of 11 CFR § 110.4(c)(2) for not "promptly" returning cash contributions in excess of $100.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely,

WILLIAM C. OLDAKER,
General Counsel.

In light of the above public documents, how can J. R. Brooks now insist that he said nothing about cash contributions? I find it fascinating that both convicted felon James Dennis and Justice official J. R. Brooks now publicly change their stories at the same time. Are they marching in locked step?

I think my colleagues will also find it interesting to learn what an excellent investigative reporter Rich Connell of the Daily Breeze had to say, in part, on September 8, 1980:

But Dornan has tripped Peck up.

Peck first said the cashiers checks arrived by mail. Later, he admitted his father hand-carried two back from Alabama.

Peck also said initially that he had only met Dennis once. He characterized the session as a "short sit-down over coffee."

Later, he acknowledged meeting Dennis twice at his father's Beverly Hills home, one time going to a dinner party with Dennis.

Peck admits he did not give complete, accurate details initially. Peck claims he was only trying to protect his father.

"Dornan's original charges deal with campaign mismanagement. I didn't want to involve my father," he said.

Peck also said initially that he had made an effort to contact some of the businesses of the "donors" to verify their occupations.

Now he says his campaign probably only contacted Dennis' secretary. "I had no reason to suspect the guy," he said.

A big turn in the complicated affair came in April when Dornan visited Dennis in federal prison at Taladega, Ala.

Dennis, who is now free pending an appeal, was serving a six-month jail term at the time.

Dornan claims that in this presence of his wife, Sallie, an aide, an FBI agent and a U.S. Attorney, Dennis said he gave $13,000 in cash back to Peck after cashing in Peck's check in a Los Angeles bank.

Peck strongly denies the charge, though he acknowledges Dennis came to Los Angeles to get the $13,000 back. Peck produced a canceled check, which shows Dennis cashed it in Los Angeles. But he did not meet with Dennis during the trip, Peck said, and the return of the money was handled by his attorney.

Efforts by the Daily Breeze to contact Dennis have been unsuccessful, but Dennis reportedly denies giving the cash back to Peck.

Columnist Jack Anderson reported recently that the FBI had launched a "quiet investigation" of Dennis' claims.

The FBI would neither confirm nor deny the report.●

DOD MILITARY CONSTRUCTION AUTHORIZATION

HON. BOB EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. EDGAR. Mr. Speaker, as chairman of the Northeast-Midwest Congressional Coalition, I would like to enter into the RECORD the results of a recent study released by the Northeast-Midwest Coalition which is pertinent to the issue we have before us today. The results follow:

REGIONAL AND STRATEGIC IMBALANCES IN DEFENSE SPENDING PATTERNS

Concern over the impact of reductions in defense expenditures on the Northeast-Midwest economy first was raised by the members of the Northeast-Midwest Congressional Coalition in 1977. In response to this concern, Coalition members asked the Northeast-Midwest Institute to conduct a comprehensive examination of defense expenditure policy. The Institute, in conjunction with the CONEG Policy Research Center, initiated a four-part research project which examined defense expenditure patterns, military base closures, defense facilities, and the economic effects of defense spending.

The issues raised by these studies continue to be of vital interest to those concerned with the economy of the Northeast-Midwest region. The current study provides new analysis of the regional implications of defense expenditures, examining both economic and military preparedness concerns.

The long-term pattern of regional inequities in defense spending first was brought to public attention by the Northeast-Midwest Congressional Coalition over three years ago. Since that time, the disparities have continued—but their consequences have become even more alarming. The findings of three years ago remain strikingly true today. The 18 states of the Northeast-Midwest region have lost a disproportionate share of the defense dollar since the 1950s and continue to receive a lower level of military expenditures than any other region in the nation (see summary table). This persistent pattern of defense spending further jeopardizes an already troubled regional economy, and now endangers our nation's military preparedness.

SUMMARY TABLE

[In percent]

Region	Population 1979	Tax burden 1979	Principal installations 1979	Base closures 1969-79	Personnel 1979	Wage and salary disbursements 1979	Prime contracts 1979
United States	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Northeast	24.4	25.8	17.7	26.4	11.5	11.2	30.2
New England	5.6	5.7	5.0	8.0	2.7	3.3	13.7
Mid-Atlantic	18.8	20.1	12.7	18.5	8.8	7.9	16.6
Midwest	21.9	23.5	7.4	17.2	7.0	6.3	10.9
Northeast-Midwest	46.3	49.3	25.1	43.6	18.5	17.5	41.2
South	30.4	26.5	38.6	21.6	47.5	47.3	23.8
South without District of Columbia	30.1	26.1	36.5	21.0	41.4	46.0	22.8
West	23.3	24.2	36.2	34.8	33.9	35.3	35.0

The current analysis examined the regional trends in defense spending from 1950 to 1979 over a wide spectrum of expenditures. The study revealed the following striking disparities:

The Northeast-Midwest region, which contains only one-quarter of all defense facilities, has suffered 43.6 percent of all base closings;

New York state alone has lost 36 facilities since 1965, resulting in a net loss of 44,270 jobs;

The Northeast-Midwest region consistently has received the lowest level of military construction funds; in fiscal year 1981 the Northeast will receive only 10.9 percent ($194.1 million) and the Midwest a mere 5.2 percent ($92.8 million);

In fiscal year 1981, California received more in military construction funds than the entire Northeast-Midwest region;

While the number of DOD personnel nationwide has increased by 30 percent since 1950, the Northeast region actually *lost* personnel, a reduction of 52,460 employees. The South and the West combined received an increase of 535,675 employees, while the Midwest had a modest increase of 16,685; and

Since 1955, about 20 percent of all DOD prime contract dollars have gone to one state, California.

This unbalanced pattern of expenditures has serious economic and military preparedness consequences. The continued decline of military expenditures and frequent base closures in the Northeast-Midwest region have caused increased unemployment and economic decline in a region already in economic distress. The repercussions of these economic ills are not confined to one region, but threaten the vitality of the entire national economy. In the past few years, however, there has been some progress in preventing continued base closures in the Northeast and Midwest.

The present distribution of U.S. continental forces contains a high concentration of combat personnel, facilities, and weapons systems in the South and the West. As a result, our current military resources provide only minimal protection for the Northwest and Midwest, and more importantly indicate an overall weakness in U.S. defense posture. Specifically, the study found that:

No major combat divisions are located in the Northeast or the Midwest, although the area provides the best strategic location for deployment to the NATO theatre;

Only one of the present 13 major U.S. combat divisions trains in a climate similar to its probable combat environment;

One-half of the Army National Guard (the Northeast divisions) is unable to train alongside the active Army;

Our expensive fighter-interceptor aircraft (the F-14 and the F-15) could provide a defense against Soviet bombers if they were appropriately based while in the U.S.; however, as currently positioned they are vastly underutilized;

Over 60 percent of the planned emergency producers are industrial plants in the Northeast and the Midwest, yet the economy of these regions continues to be drained of defense dollars; and

The present pattern of expenditures is moving to concentrate defense industries and facilities in the South and the West, giving an opponent an "easy target" and rendering the U.S. more vulnerable to attack.

The military construction budget for the Department of Defense provides for all new buildings, additions, and structural improvements required outside normal facility operations and maintenance. Funds are appropriated by individual project, and thus there is considerable variability in the composition of the military construction budget from year to year. Analysis of the budget, however, provides an important indication of DOD priorities for capital investment and its commitment to key facilities.

The Trends:

Absolute Amount: Fiscal year 1980 appropriations for military construction in the U.S. totaled approximately $1.8 billion. Of this sum, projects in the Northeast will receive 10.9 percent ($194.0 million) and in the Midwest 5.2 percent ($92.8 million). Almost one-half—49.4 percent—of the military construction budget ($881.6 million) will go to projects in the West. Construction projects in the South total 34.6 percent ($618.0 million). California alone will receive $328 million (18.4 percent), which is more than the entire Northeast-Midwest region. This low level of construction investment allowed the older facilities of the Northeast and Midwest to deteriorate further, making them more likely candidates for base closings and phase-downs. While the general pattern is quite discouraging, some modest improvement has occurred in the region's share of military construction expenditures in recent years. In 1975, projects in the Northeast and Midwest were allotted only 13 percent of the total appropriations, and in 1977 only 10 percent.

These findings represent only an initial listing of the military problems resulting from the current pattern of defense spending. However, both these economic and military concerns strongly suggest the need to examine our defense expenditure policy more comprehensively. The Defense Department will spend $158.7 billion this coming year to meet U.S. military needs. Expenditures of this magnitude will have a profound and lasting impact on the economy, and on the current strength and future preparedness of U.S. military forces. Current methods of Defense Department decisionmaking must be scrutinized more thoroughly and both economic and strategic consequences more completely explored to insure that our defense dollar is spent both efficiently and effectively.●

CLARIFICATION OF REMARKS IN SUPPORT OF THE RULE FOR THE CONSIDERATION OF H.R. 3904, THE MULTIEMPLOYER PENSION PLAN AMENDMENTS OF 1980

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. GAYDOS. Mr. Speaker, during the debate on August 25, 1980, on the rule, House Resolution 764, which would have made it in order to strike all nongermane Senate amendments from H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1980, I addressed the House and in my remarks referred to the fact that two of the industry organizations that were pushing the nongermane MSHA amendment which would have excluded surface stone and sand and gravel mines from the jurisdication of the Mine Safety and Health Administration (MSHA), did not appear before the subcommittee in 1977 when the present MSHA law was under consideration, but merely submitted a statement for the record.

Recently, I received a letter from Mr. William L. Carter, president, National Crushed Stone Association, accusing me of misrepresenting to the House the position of his organization in that "you stated that the National Crushed Stone Association did not appear before your subcommittee in 1977 when the present MSHA law was under consideration."

The pertinent remarks which Mr. Carter refers to appear on page 23006 of the CONGRESSIONAL RECORD for August 25, 1980. They are as follows:

The Subcommittee on Health and Safety has been conducting extensive oversight hearings on MSHA this Congress. To date we have held 21 days of hearings with two more scheduled. We have heard from Members of Congress as well as various industry organizations including two of the organizations which are pushing this amendment. Let me just say a word about those two organizations. They did not appear before the subcommittee in 1977 when the present MSHA law was under consideration. Instead, they submitted statements for the record and their main opposition was to the transfer of jurisdiction over sand and gravel mines from MESA in the Department of the Interior to the Department of Labor. They stated that MESA has "done an outstanding job of educating both management and employees on new developments in safety" and that "the transfer of mine safety enforcement responsibility will disrupt already successful procedures or programs which have been brought about by the effective mutual effort of MESA and the mining industry, working in harmony toward a common objective."

Well, MESA was transferred to the Department of Labor, lock, stock and barrel, and has been administered as a complete separate entity from OSHA.

Also in 1977 neither of these organizations questioned the fact that stone and sand and gravel operations are "mining operations." Today, however, they would have us believe that such operations are not "mining" operations. They would have us conveniently forget that for over 100 years Federal laws and Federal courts have clearly held them to be mining operations.

Yet, it appears that the sand and gravel industry now wished to switch its affiliation to OSHA.

But what about the other industry organizations representing stone and sand and gravel operators. While the National Crushed Stone Association supports the transfer, the National Limestone Association, which has more members than all other national aggregate associations put together, is unalterably opposed to the MSHA amendment.

Mr. Speaker, well, Mr. Carter is wrong.

If he had not been so quick to shoot from the hip and charge me with misrepresentation, he could have easily checked pages 543-556 of the subcommittee hearings on the Federal Mine Safety and Health Act of 1977 for the 95th Congress and quickly realized that I was referring to the National Sand & Gravel Association and the National Industrial Sand Association.

In my remarks I referred to the fact that these two organizations in 1977 opposed the transfer of jurisdiction over sand and gravel from the Department of the Interior to the Department of Labor. There was no reference to crushed stone.

Furthermore, if Mr. Carter had checked out the quotations included in my remarks of August 25, 1980, he would have realized that they were not from his witnesses, but rather from the statement of the National Sand & Gravel Association. From Mr. Carter's letter it appears that he did check the hearings with respect to the testimony of representatives of his organization.

Finally, when I did mention the National Crushed Stone Association, it was in conjuction with the National Limestone Association, which I referred to as, "the other industry organizations representing stone and sand and gravel operators."

But shooting from the hip without full knowledge of the true facts seems to be a habit of Mr. Carter and some of his colleagues.

For example, when the National Crushed Stone Association appeared before the Subcommittee on Health and Safety on June 25, 1979, one of their witnesses testified that the training modules that were provided by MSHA, "* * * were of little value. We had to go from scratch." Yet it is interesting to note that the National Crushed Stone Association in its November 1978 edition of Stone News announced it was making available MSHA's model training plan for crushed stone procedures for $10. It stated, "* * * while each company will have to develop its own training plan for each operation, the model plan provides valuable insight into what MSHA is expecting and, more importantly, what each company's plan will be judged against."

If the training plan was of little value, why did they sell it to their members? I will leave it up to the members of the National Crushed Stone Association to determine whether they or the U.S. Congress were getting the correct story.

Additionally, another witness for the association on June 25, 1979, testified at length regarding the extensive training which a mine operator must provide a vending machine salesman who visited a mine site to service a soft drink vending machine. This occurred notwithstanding the fact that the myth of the need for such training surfaced early in 1979 and the subcommittee as well as Assistant Secretary of Labor for MSHA, Mr. Lagather, had been on record several times in deny-

ing there was any truth to this myth. After an extensive colloquy with the association representative, a member of the subcommittee asked if the witness could cite an instance where somebody had been cited because the Coke machine man did not receive training. The witness replied that there was such an instance involving a Coke machine serviceman who did not have hard-toed shoes on when he left his truck to fill a Coke machine. For this, the operator was cited.

The witness was asked to furnish a copy of the citation to the subcommittee and he agreed to do so.

After a followup request to the association, for the citation, the association, on October 29, 1979, stated it had requested the citation from MSHA.

To date, the subcommittee has heard nothing further from the National Crushed Stone Association on this matter.

What does this all mean?

It means that after an extensive colloquy with the association's witness in an attempt to sift through the fiction and find if there was any merit to the association's criticism of MSHA's training standard, the witness attempted to support his argument with a specific case, one which he has been unable to furnish to the subcommittee over 1 year later. In simple terms, the witness' bluff was called.

Finally, during his appearance on behalf of the association on June 25, 1979, Mr. Carter was asked concerning his relationship with Assistant Secretary Lagather. He replied that, "We have had continuing contacts with all the top officials in MSHA on a regular basis".

I have been informed by Assistant Secretary Lagather that since August 1978, he has met with Mr. Carter on five occasions. This does not appear to be a "continuing contact" for an organization which has so aggressively sought to have its members excluded from MSHA jurisdiction. It would appear that, as a responsible Washington-based industry trade association, it would have been endeavoring to solve its members' problems by initiating a continuous dialog with Assistant Secretary Lagather.

With all the varied and complex legislative issues that Congress must consider on a continuous basis, it is vitally necessary that informed and responsible organizations must exist to provide input to Congress and the administration, as well as to properly keep its own membership apprised of the impact of the activities of Congress and the administration.

I shall leave it to the Members of this body as well as to the membership of the National Crushed Stone Association to determine if that organization qualifies as informed and responsible.

The text of Mr. Carter's letter follows:

The purpose of this letter is to correct your misrepresentation of the National Crushed Stone Association's position with respect to the Mine Safety and Health Administration and our past participation in the development of the 1977 Federal Mine Safety and Health Act.

In the statement you made on the House floor during the debate on the rule on the multiemployer pension plan legislation (Congressional Record, Vol. 126, No. 132, August 26, 1980, page H7886) you stated that the National Crushed Stone Association "did not appear before your subcommittee in 1977 when the present MSHA law was under consideration."

This is not true.

On March 22, 1977, a panel of four representatives of the National Crushed Stone Association appeared before you and the Subcommittee on Compensation and Health and Safety. We direct your attention to the hearing record on the Federal Mine Safety and Health Act of 1977 for the first session of the 95th Congress. The formal statement presented by Mr. Newell T. Crolius begins on page 132. An extensive question and answer session then followed, which is found on pages 163-186 of that hearing record. Mr. Gaydos, NCSA's primary concern set forth at that hearing, as found on page 137 of the hearing record, was "• • • we strongly protest the intended repeal of the Metal and Nonmetallic Mine Safety Act of 1966 and the proposal in H.R. 4287 to place stone quarries under the provisions of the Federal Coal Mine Health and Safety Act."

In the quest for fairness, we ask you to correct the record.●

CONGRESSIONAL SALUTE TO REPRESENTATIVE CLAUDE PEPPER, DEMOCRAT OF FLORIDA, ON HIS 80TH BIRTHDAY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. ROE. Mr. Speaker, I take great pleasure today in rising to salute CLAUDE PEPPER, our beloved colleague from Florida, on the occasion of his 80th birthday.

During his 32 years of service to the public in both the Senate and the House of Representatives, CLAUDE PEPPER has rightfully earned the title "champion" of the Nation's senior citizens.

It has been through his tireless work as chairman of the House Select Committee on Aging that the elderly have won major advances in such areas as health, housing, nutrition, and economic well-being.

Though CLAUDE PEPPER may be the oldest member of the House in chronological years, his ideas to better the life of all Americans are indeed young at heart. He is an inspiration to us all as we strive to achieve our best on a daily basis.

As a member of the highly important Rules Committee, Congressman PEPPER has been a guiding force in helping to bring vital pieces of legislation dealing with pressing social issues to the House floor for quick consideration.

Mr. Speaker, CLAUDE PEPPER's concern for the common man goes back to his early years as a lawyer in his home State of Florida. That belief in the basic dignity of all men led him to a successful Senate victory in 1936 at 36 years of age.

PEPPER's devotion to civil liberties cost him his Senate seat in 1950.

But 12 years later our country was blessed with the reemergence of CLAUDE PEPPER on the political scene when he was elected to the House.

Of all CLAUDE PEPPER's achievements, none is probably more noteworthy than his successful battle to secure passage of a bill which upped the mandatory retirement age for most jobs from 65 to 70.

It is his belief, as it is mine, that persons who are healthy enough to do so, should not be put out to pasture because they have reached the unfairly predetermined retirement age of 65.

Mr. Speaker, CLAUDE PEPPER is living proof that age should not be a detriment to employment. More than half his congressional career took place after he was 65 years old.

We salute you, our good friend. And all of us in the House look forward to many more years of your guidance and inspiration as we tackle the difficult problems facing our great Nation in the years ahead.●

NERVE GAS CONTROVERSY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. OTTINGER. Mr. Speaker, I would like to express my concern over the fact that this country may be getting back into the business of producing nerve gas weapons.

In an article for today's Washington Post, Senator DAVID PRYOR, Democrat from Arkansas, urges that we continue our 10-year moratorium on the production of chemical weapons.

Senator PRYOR makes a strong case that the production of the binary chemical weapons—as advocated by the Army—would not bring us any military advantages. The Secretaries of Defense and State both oppose the production of these weapons—and with good reason. We already have an enormous supply of chemical weapons, our allies in Europe may not let us stockpile any kind of chemical weapons on their territory, and protective clothing and masks make soldiers almost invulnerable to nerve gas. Civilians, on the other hand, would be totally defenseless.

As Senator PRYOR notes, there is no evidence to support the contention that the Soviets are now producing chemical weapons. In fact, our chemical warfare experts believe that the U.S.S.R. has also been observing a moratorium on the production of these weapons of mass destruction.

Once again we are confronted with a proposal that will be immensely costly without improving our security one iota; indeed, again, as with the MX, we will end up much less secure as the Soviets are forced to resort to a chemical warfare potential too.

I commend the Senator's article to the attention of my colleagues:

LET'S STAY OUT OF THE NERVE GAS BUSINESS

Ten years ago, this country adopted a new policy when it banned the further production of chemical weapons. In addition to making a humanitarian statement with this move, the United States also made a rather sound and sensible decision from an economic and military standpoint. In the 1950s and 1960s, the Army had manufactured and stored enough nerve gas, shells, bombs and other munitions to kill or maim many times over just about every warm-blooded thing over an area of thousands of square miles.

But now the Army wants to resume production of nerve gas and reverse the decade-old policy. At this point it appears that the decision may be made without debate or the extensive scrutiny that such a reversal warrants.

The Army justifies the new entry into nerve gas production on the grounds that the new gas would be "binary," i.e., the gas would need two non-lethal chemicals combining to create a lethal gas. The two chemical agents would be stored in different places and combined during the carrier's flight to its target. If the production of binary gas comes on line, according to the Army, then the old stockpiles could be destroyed and we would have safer "gas." The whole process would cost more than $2 billion.

In effect, our new policy would take us down the road of trading in old, conventional chemical stockpiles for a new type of binary gas. There is no military advantage to binary gas—the advantages are merely those of additional safety in storage and transport.

Not even the president (as required by law) has taken a public position on getting us back into the nerve gas business. The Joint Chiefs of Staff have mumbled half-hearted support, while the secretaries of defense and state have publicly opposed such a step at this time. Yet the House of Representatives has recently appropriated funds to construct a nerve gas production facility in Pine Bluff, Ark. Thus we find ourselves today "backing into" what could be an intractable position with worldwide implications. This snipe hunt should be stopped in its tracks and a reexamination of this position initiated immediately. The facts available to us simply do not justify a direct reversal of our prior policy on nerve gas.

First, as mentioned, we now have an enormous supply of nerve gas and chemical weapons. Most of these supplies are not obsolete and have not deteriorated; they can kill just about as many people as they could before. Even though the Army maintains we need "nerve gas" for our allies in Europe, the truth is that our allies won't even let us store additional nerve gas stockpiles on their soil. The West Germans, in fact, find nerve gas usage so repugnant and unacceptable that they have gone even further and decided that none of their troops will even be trained to use these weapons. Therefore, it is highly unlikely that any newly produced nerve gas would ever leave U.S. shores.

Second, it is foolish to argue that our resumption of nerve gas production is necessary for our defense capabilities. Nerve gas doesn't kill soldiers. It kills civilians—men, women and children who do not possess masks and the protective clothing necessary to defend themselves from this colorless, odorless poison that causes violent convulsions and asphyxiates its victims.

Protective clothing and masks are standard issue in the European theater for not only Soviet troops but also our own. This special protection makes soldiers practically invulnerable to nerve gas.

Third, advocates of resuming nerve gas production point to the Soviet use of lethal gas in Afghanistan. To date, there is no way to confirm this allegation. Our own CIA has not found any evidence that is considered conclusive in answering this question. We simply do not know.

Those same proponents argue that the Soviets are manufacturing massive stockpiles of nerve gas weapons but, again, no proof exists. The abundance of evidence supplied by those who attempt to monitor this area seems to be that the greatest Soviet effort to date is defensive in nature; i.e., early detection, protective clothing, shelters and mass education. Once again, the facts elude the argument—and rumors, confusion and misinformation now set the stage for hasty and precipitous action by an election-year Congress that has not debated the issue and by an administration that sits aloof and silent.

Finally, there are those who espouse the cause of nerve gas as a means to right what they term our "second-rate" military capability as a nation. Of them I ask: just how will the resumption of nerve gas make us sleep better at night? It wouldn't. In fact, it will detract from those essential needs our military must have to keep on a par with the Soviets.

If the sad day ever comes when this country is forced to use nerve gas, let us pray that we have secured our gas masks and zipped our suits—and hope that the wind doesn't change direction.

The consequence of a nerve gas war could be so tragic as to defy imagination. We must never lose sight of the fact that our battlefields are no longer confined to the Little Big Horns or the beaches of Normandy—they are nations and continents.●

H.R. 7824

HON. W. G. (BILL) HEFNER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. HEFNER. Mr. Speaker, I would like to urge my colleagues to join Congressmen FOLEY, PANETTA, and me in cosponsoring and supporting H.R. 7824, which would amend the Farm Labor Contractor Registration Act of 1963.

In these days of bureaucratic proliferation, support of this legislation will do much to relieve what I believe to be unfair and ridiculous requirements being placed on farmers everywhere.

The Labor Department has seen fit to extend its protective hand to require all farmers who hire workers, even his next door neighbor, to register as farm labor contractors. This bill, H.R. 7824, exempts farmers from this and other burdensome requirements and frees the Department of Labor to carry out the intent of Congress which is to protect real migrants.●

NEW EVIDENCE FOR INCOME TAX RATE REDUCTION

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. KEMP. Mr. Speaker, Peter Grace, president of W. R. Grace & Co., has produced statistical evidence of the drastic decline in real after-tax income in the past 8 years, due to the collision of high inflation with our unadjusted, steeply progressive Tax Code.

Mr. Grace's figures compare these automatic tax increases with supposed tax cuts which have been enacted. The evidence points to the need for across-the-board tax rate reduction of the sort proposed by Governor Reagan and the Republican Party.

Discretionary tax changes, Mr. Grace shows, have not even begun to make up for these automatic tax increases. Even allowing for these tax cuts, a taxpayer beginning with $10,000 in income in 1972 has lost nearly one-half of the automatic tax increases to the Government. Those taxpayers earning $50,000 in 1972, if they have kept up with inflation, have suffered a loss of after-tax income equal to more than 80 percent of the tax increase caused by inflation.

I believe Congress should adjust income tax rates to remove these growing disincentives to growth. Unfortunately, the 30-percent cut in personal income tax rates proposed by Senator BILL ROTH and myself would make up, in dollar terms, only for planned future Federal tax increases on personal income for at least the next 5 years. Therefore, as Governor Reagan said today, "In the second half of the decade ahead we are going to need, and we must have, additional tax rate reductions."

Peter Grace's new evidence was analyzed recently in the National Review. I commend this article to my colleagues.

The article follows:

[From National Review, Sept. 5, 1980]

JIMMY'S TAX FANTASY

In his nomination acceptance speech Jimmy Carter told a national TV audience that Kemp-Roth-Reagan is a "fantasy" tax cut that "offers rebates to the rich, deprivation for the poor, and fierce inflation for the rest of us." But, candidate Carter, the rest of us are already experiencing fierce inflation—the fiercest in anyone's memory—and without the benefit of a tax cut. The real problem is what will happen to us if we continue the present trend of inflation without offsetting tax cuts. Statistics developed by Peter Grace, President of W. R. Grace & Co., show that reality is even worse than Jimmy Carter's campaign rhetoric.

Inflation pushes all taxpayers into higher brackets of the progressive income tax, resulting in the same amount of purchasing power's being taxed at ever higher rates. The occasional tax cuts, Mr. Grace discovered, don't come close to offsetting the devastating effect of taxflation on the taxpayer's purchasing power. During 1972-79, the

government kept 46.8 percent of the revenues that it gained by pushing people with $10,000 incomes (constant 1972 dollars) into higher tax brackets. Everyone else fared even worse. Inflation raised taxes on $15,000 incomes by $546 (of which the government kept 51.3 percent), on $30,000 incomes by $1,827 (of which the government kept 74.1 percent), and on $50,000 incomes by $3,679 (of which the government kept 81.5 percent).

Mr. Grace calculates that if the taxflation of 1972-79 continues, every taxpayer who has an income of $20,000 or higher (in constant 1972 purchasing power) will be in the 50 percent marginal tax bracket by 1986. Already since 1972 the top tax bracket on a $20,000 real income has risen from 25 percent to 32 percent. It is this sort of tax bracket "creep" that Kemp-Roth-Reagan offsets. One has difficulty understanding how a tax rate reduction that stops ordinary incomes from being taxed at the top rate is a "rebate to the rich." Candidate Carter, please explain.●

GREATER NEWARK BETTER BUSINESS BUREAU CELEBRATES 10TH ANNIVERSARY

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. RODINO. Mr. Speaker, this week the Greater Newark Better Business Bureau is marking 10 years of progress in protecting consumers and enhancing the business environment in northern New Jersey.

It was exactly one decade ago when I kicked off the opening of the first better business bureau office in my home city of Newark. Today I am proud of the record it has compiled in helping people. The bureau began when about 20 companies took the initiative in Newark, with an eye toward serving Essex, Union, Hudson, and Morris Counties. Now, 1,400 companies participate in the bureau which has an annual budget of $175,000.

The Greater Newark Better Business Bureau helps consumers and businesses in a variety of ways. It has an outstanding record of settling over 70 percent of all customer complaints. When it is unable to settle a complaint, it offers free arbitration service which is honored by the courts.

The bureau also assists the U.S. Postal Service and Justice Department to spot misleading advertisements and other ripoff operations. Over the years, the bureau's cooperation with law enforcement authorities has resulted in several thousand dollars being refunded to consumers.

By disseminating consumer information through the local media, and providing speakers for schools and civic groups, the better business bureau has contributed greatly to a better informed public.

Mr. Speaker, the Greater Newark Better Business Bureau will celebrate its 10th anniversary at a luncheon on Friday, September 12, at Newark's Robert Treat Hotel. At that time the bureau will honor its founder, Robert D. Lilley, who is past president of New Jersey Bell Telephone and American Telephone & Telegraph Co. The bureau will present its founder with the first Robert D. Lilley Award for outstanding service to the Greater Newark area and support for the better business bureau.

I am so pleased that President Carter also will recognize Mr. Lilley for his efforts to start the Greater Newark Better Business Bureau and the significant work carried on by the bureau for the last 10 years.

Mr. Speaker, I am sure that all my colleagues will want to take note of this community effort by the businesses in the Newark area, and I am grateful for this opportunity to recognize their work.●

THE EXAMINER OF INDEPENDENCE, MO.

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SKELTON. Mr. Speaker, the Examiner, Independence, Mo., daily newspaper, recently moved its operation to a new and spacious building. The dedication ceremony, held at the new site, featured comments by Pete Esser, publisher of the Examiner. At that time, he made some very important remarks regarding freedom of the press and the role of newspapers in our society. I wish to share excerpts of Mr. Esser's remarks with this body:

Good morning. Thanks to all of you for joining us at the Examiner's dedication and open house.

I think it is fitting that your newspaper chose to remain in the core area of Independence. It is also fitting that we are located on the old Santa Fe Trail.

Not many cities west of the Mississippi can boast of a history such as Independence. Once a rough, tough outfitting post, it is now a city of homes, churches and really fine people. All of us who claim Independence as home can take pride that we are citizens of this great community. Now, I hope that pride also extends to your newspaper, the Examiner.

Today, when freedom of the press is being threatened, I would like to quote what two of our former presidents' had to say about newspapers. Thomas Jefferson said and I quote, "I would rather live in a country with newspapers and without government than in a country with a government and without newspapers." President John Kennedy on the occasion of National Newspaper Week in 1962 remarked, "Newspapers play a vital role in our society. They have been called the universities of the people and rightly so. With all the great advances of our educational system and the spread of its benefits to an ever greater part of the population, the free press remains the most important source of Popular political education without which a democracy cannot function."

The Examiner, which was founded in 1898 by Col. William Southern, was not started because there was a need for a newspaper in Independence. There were 3 weeklies and a daily being published here at the time.

In that period of history, the nation was still reeling from the effects of a deep recession and it was a most inopportune time to start any business venture.

Perhaps Col. Southern summed up his reason for starting the Examiner in his first issue editorial which read in part, "I want to say distinctly that in the publication of this paper, I shall have my opinions of men and measures and shall express them freely." This credo continued through the years even up to now. And when Stauffer Communications acquired the Examiner in 1951, the credo of its founder and board chairman, Oscar Stauffer was added. It states, "Count the day lost when your newspaper has not done something to benefit the community it serves."

As you know, a newspaper is thought of as a semi-public utility. You might describe a newspaper as a private business enterprise that functions as a public institution.

If you will join me and several of my Examiner associates, we will make a tour of the building. Again, may I say Thank You for joining us here today.●

CONGRESSMAN BONKER EXPRESSES CONCERN OVER CONTINUED MARTIAL LAW IN SOUTH KOREA

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SOLARZ. Mr. Speaker, recently Congressman DON BONKER, the able chairman of the Foreign Affairs Subcommittee on International Organizations called our attention to recent shifts in the South Korean Government which have effectively halted the progress of that nation toward establishing a constitutional democracy with full civil and human rights for all its citizens.

A vigilant defender of the security interests of the United States, as well as basic human rights, Congressman BONKER expressed grave concern at the South Korean Government's reimposition of martial law and the arrest of dissidents, and now its refusal to allow representatives of Amnesty International or the International Commission of Jurists to attend the show trials of Kim Dae Jung and other opposition leaders.

Mr. Speaker, I insert Congressman BONKER's statement on these troubling events in South Korea in the RECORD.

STATEMENT OF HON. DON BONKER

I asked to appear today in order to continue to add my voice to the growing number of voices who are deeply concerned and disappointed about recent events in South Korea.

I am very concerned about the role of South Korea's military, very concerned about the extreme violations of human rights in that troubled land, and very concerned about the show trials of dissidents, especially the trial of Kim Dae Jung.

Most would agree that long-term stability and security of Korea can be accomplished by a continuing process of political liberalization. I am sad to say that process has been harshly interrupted. Today, we are witnessing a constitutional and political charade as General Chun attempts to legitimize his rule. First, he takes over the government but leaves in place a figurehead civilian president. Next, he savagely represses the opposition. Then he forces the figurehead president to resign. Finally, General Chun resigns from the army and has himself selected as the new president.

Making a mockery out of the constitutional process by observing it in form but not in substance, the next thing we will be told is that the former general has come to power legitimately.

Several months ago, when I visited South Korea, I was impressed by the determination of most segments of Korean society to work together to bring about greater progress towards democracy. Every sign pointed in the direction of instituting a truly democratic system. In meeting after meeting, Koreans from all walks of life, in an out of government, expressed the hope that the provisional government would be able to manage an orderly and constitutional transition under civilian rule. They spoke of looking forward to the constitutional changes and free elections which would give them a new government broadly supported by all segments of Korean society. All of us who advocate the cause of human rights in the world were encouraged by what seemed to be a very promising situation leading to the political liberalization of South Korea.

Now these hopes lie shattered as the Korean military moved quickly to reinstate a severe martial law, which curbed the incipient political process, led to the closing of the national assembly and universities, forced the abandonment of all political activity, and led to the arrest of many major political figures.

I had the pleasure of meeting most of the civilian leaders but Kim Dae Jung is easily the most popular figure in Korea. He is being tried on charges of violating anti-sedition, national security and anti-communist laws. There is great fear about his safety. The fear is that Kim's show trial will automatically lead to his conviction. Then Kim Dae Jung will either face a certain long-term confinement or execution.

We must continue to emphatically make clear to the regime in South Korea that this would be a terrible mistake. Force should not be the answer to legitimate dissent. Discontent in South Korea will not disappear until all Koreans are assured the full protection of their basic human rights and a fair voice in their Government. Unless this takes place, it will be increasingly difficult to justify to the American people the continuation of our close relationship.

As a recent editorial in the New York Times of August 18 notes:

"Most Americans who care about South Korea are dismayed by Gen. Chun's brutality and look upon his show trial of Kim Dae Jung as morally indistinguishable from what passes for justice in Communist North Korea."

The State Department has characterized the charges against Kim Dae Jung as "far-fetched." Most observers of the sorry state of events in South Korea are very concerned that Kim Dae Jung will not receive a fair trial. The fact that international observers from Amnesty International and the International Commission of Jurists have been prohibited from attending his trial and the fact that its proceedings are being censored only help to underscore those fears.

South Korea's national security is dependent on stability and stability can be best ensured by a broad national consensus. In fact, South Korea's future growth and development are dependent on the support of the people rather than on measures which restrict their civil and political liberties. If the South Korean government is perceived by its own people as a renegade government, who will defend it if an emergency should arise? Facing a hostile enemy, how will it survive if its own population is hostile as well?

Our democratic ideals and our security interests make it essential for us to use our influence to guide South Korea back on the road to constitutional reform, elections and a new government with broad public support.

The State Department must be commended for its efforts to get that message across. But words are not enough. There is a notion prevalent that it is really General Wickham and the Export-Import Bank which speak for our Government and not the Secretary of State. I for one do not believe that. The time has come for our Administration to back up its words with forceful action. The President should instruct the Export-Import Bank to deny any further credits to South Korea. Such action will not only show the Korean regime that we mean business but this is also an action without any destabilizing security implications.

We have to continue to impress upon the regime in South Korea that the mutually productive relationship which has developed between our two countries will be irreparably harmed if it continues its repressive policies.

We must continue to emphasize to Korea's rulers that the stability of their Government, indeed, its security, as well as our own, is dependent on domestic tranquillity, which can only be achieved by a broad national consensus.

I share with my colleagues a deep commitment to the political independence and territorial integrity of South Korea. I feel compelled, however, to remind all that it has never been the lack of weapons but internal discord and insensitivity to human needs that threaten repressive governments, and often, our own security interests.●

TRIBUTE TO CLAUDE PEPPER

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SCHEUER. Mr. Speaker, no history of the Congress of the past 40 years would be complete without a lengthy description of the solid contributions made in both the House and the Senate by that grand old man of Florida politics, CLAUDE PEPPER. All of us know that CLAUDE PEPPER neither looks, acts, nor thinks anywhere near the 80 years of age which he celebrated Monday. His long years of service and his high degree of effectiveness are a goal that many of us in the House aspire to.

CLAUDE PEPPER is a great humanitarian and a personal friend whom I have always admired for the new initiatives, the new thrusts he has taken in dealing with the complex issues which we in the Congress face every day. He has always brought youthful insights and enthusiasm to the job.

We Democrats remember CLAUDE PEPPER's loyalty to the liberal principles of the party—dating back to his defense of President Roosevelt's policies when it was not always popular to do so.

I have worked with Congressman PEPPER on many projects and issues, and I have found him to be a trusted colleague, a man of perceptive judgment, and the courage of his convictions when under fire. I join with my fellow Members of the House in saluting a distinguished colleague who has just attained the youthful age of 80. May he have many more years of productive, valued service to his country and to the Congress.●

A CHEMICAL ARMS RACE?

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. EDWARDS of California. Mr. Speaker, I would like to express my grave concern that this country might soon reverse its present policy of not producing chemical weapons.

I am inserting in the RECORD an article from the Guardian of July 24, 1980, entitled: "The Invisible Chemistry of Death" by Julian Perry Robinson, a senior fellow at the University of Sussex in England.

As Professor Robinson points out, the U.S. Army has decided that the present stockpile of chemical weapons—large enough for about 100 days of warfare—is inadequate and obsolete. Yet our nerve gas supplies are as deadly today as they were when first produced in the 1950's and 1960's.

According to the author, the Army favors binary munitions—a particular type of chemical weapon made up of two nonlethal chemical agents—over the present chemical munitions because they are supposedly safer to store, transport and, if necessary, destroy.

Opponents of binary munitions point out, however, that these new weapons have never been tested or produced and their safety is a matter of conjecture. Some concede that it is probably safer to store, others note that the present storage of chemical weapons has never resulted in a major accident. Opponents also note that the ease with which binaries are produced and stored makes them more dangerous than standard chemical munitions, as it is likely to make chemical weapons more accessible to those who do not now have them.

What the proponents of binary fail to point out is that protection against chemical weapons is presently good enough to negate their military effectiveness. Unlike other weapons of mass destruction, chemical weapons would single out civilians who do not possess masks and other protective equipment.

Professor Robinson makes a strong case that approval by the House of a binary munitions program would jeopardize the progress already made by the United States and the U.S.S.R. during their bilateral talks aimed at

the prohibition of the production and stockpiling of any lethal chemical weapons.

I commend this article to the attention of my colleagues.

THE INVISIBLE CHEMISTRY OF DEATH

Chemical warfare in which the latest types of nerve gas are used could prove as destructive of human life as nuclear-fission weapons. But recent developments in the nuclear field have tended to obscure the subject, and the policy-decisions which some governments will shortly have to take, including the British Government, may well escape serious public and parliamentary scrutiny. Use of chemical weapons, like that of biological weapons (which employ germs rather than poison gas), has long been outlawed by international treaty, the 1925 Geneva Protocol. But the sanction which lends most force to this agreement is retaliation in kind, thus justifying possession of the weapons. Of the few Governments which maintain stocks, some have declared publicly that their weapons are meant solely to deter. Others have offered no public explanation, their motives remaining a subject of disquieting speculation. The United States is in the former category, the USSR in the latter.

Last month the House of Representatives wrote money for nerve-gas production into the 1981 US defence budget, even though the Administration had not formally requested it. The House had been stirred up by chemical-warfare lobbyists riding the wave of the new militarism and the general alarm about the Soviet Union. Whether the Senate will concur remains to be seen. If they do, Washington will soon be seeking locations in Europe where it can "pre-position" yet another new brand of mass-destruction weapon.

There are large quantities of chemical weapons here already. Apart from those of France, which is the only European NATO country to have manufactured them on any scale since the war, there are American stocks already in Germany, last added to during the 1960s. They comprise some hundreds of thousands of artillery projectiles, land mines and aircraft bombs charged with nerve and mustard gases. Exactly where they are is secret, as was the fact of their arrival, but it is probably Hanau, on the outskirts of Frankfurt. They are sufficient to support one to two weeks of battlefield chemical warfare. Not enough, in some people's minds, but since they represent only about five per cent of the total American stockpile there is an immense reserve for NATO to draw upon if necessary. Even so the Pentagon has decided that it must now manufacture new weapons.

The reasons for this do not lie in any shortness of shelf life of nerve gas. The supplies remain, as deadly now as they were when they were produced during the 1950s and 1960s. The munitions into which the gas is loaded have a shorter lifetime, and some designs are now deteriorating badly, but not in fact the most heavily stockpiled ones. Also relevant is the degree of compatibility between existing munitions and newly introduced delivery systems—new artillery pieces, aircraft, etc. Here there are more solid grounds for modernisation.

The chief impulse behind the United States programme is, however, only partly related to these factors. The weapon development laboratories have come up with a device for making chemical munitions safer to store, transport and, ultimately, destroy. The problems presented in each of these respects by the existing stockpile have proved a serious, political liability in American domestic affairs since the late 1960s. The solution is to load the munitions, not with actual poison gas, but with retractable canisters of relatively harmless precursors that react together only when the munition is on its way to the target. It is these "binary munitions" which the Pentagon now wishes to produce.

As weapons, the binaries that are now ready for mass-production are actually less effective than the munitions they are to succeed. The poisons which they will disseminate are the same nerve gases now in the arsenals, namely sarin and VX—immensely toxic substances that can kill rapidly in minute and imperceptible amounts whether inhaled into the lungs or absorbed through the skin. But of course only a fraction of the binary payload can end up as nerve gas, and the remainder, being highly irritant and evil-smelling, may provide clear warning of its presence. In terms of range and accuracy when fired from the latest cannons, the binary artillery rounds do not provide any of the advantages over their predecessors that were originally promised.

There are other drawbacks as well, but the binary programme now seems to have acquired so much momentum that little notice is being taken of them, still less of the dubiousness of the military-cum-political rationale for continuing to deploy any sort of poison gas in Europe.

Protection against chemical weapons, a field which Britain leads, is now good enough to negate their mass-destructiveness. Binaries are nonetheless being sold as a necessary safeguard against the Russians, and much has therefore been made by their vendors of Soviet poison-gas activities. Some months ago we were continually being told that the Russians were using nerve gas in Afghanistan. Now the CIA tell us that there is no firm evidence for this after all. We have been told time and again that the Russians have long been expanding their chemical warfare capabilities. But it turns out that what they have been expanding is their capacity for protecting their own forces against poison gas, and that in fact there is no evidence for any augmentation of the Soviet chemical-weapons stock since around 1970, a year or two after the Americans stopped production.

It thus appears that if the Americans do indeed resume production—aided and abetted, perhaps, by Mr. Pym—they will be denouncing not merely their own self-imposed moratorium but also a tacit U.S.-Soviet one of a decade's standing. The stakes may thus be considerably higher than Congressmen last month realised.

One probable consequence would be a chemical arms race, each side's moves stimulating the other's fears and appearing to confirm them. Observe that the instigating decisions behind the Soviet chemical build-up of the latter 1960s must have been taken during the highpoint of the last round of American poison-gas production. The US was not then a party to the 1925 Geneva Protocol. The Administration had, moreover, secretly abandoned its long-standing chemical-weapons policy of no first use, and to the Congress was proclaiming Soviet poison-gas superiority, notwithstanding the absence of firm intelligence on the matter which State papers of the period now reveal.

So far poison gas has not become assimilated into that process of competitive armament which has driven other forms of weapon technology to their present obscene levels of sophistication, extravagance and brutality. The key scientific discoveries which today's chemical weapons exploit were all made prior to 1955. The molecular and life sciences have advanced very rapidly since then. Should a chemical arms race now begin in earnest, it is all but certain that these advances will eventually show up in the arsenals.

Speculation on the precise forms which the new weapons might take is inappropriate here, but something of the possible range can be illustrated in general terms. Towards the more remote end we may observe that ethnicity is becoming increasingly definable in biochemical terms, thus lending plausibility to the notion of chemical-warfare agents which exploit natural differences in gene frequencies among specific population groups. The spectre here is of race-selective weapons. Much closer to realisation are weapons armed with chemicals that can interfere at the cellular level less with vital function than with behaviour, perception or motor function. They would cause casualties more by incapacitation than by death. In the form of the hallucinogens phencyclidine and 3-quinuclidinyl benzilate (agents SN and BZ respectively in United States Army parlance), such substances have already been introduced into chemical arsenals, only to be abandoned later. Successor agents more amenable to military operations would hold out the attraction of possibly reducing combat fatalities. But their danger is that for precisely this reason the application of armed force could become less costly in political terms and therefore more frequently resorted to.

The alternative to a chemical arms race is chemical disarmament. Active negotiations to this end between the United States and the USSR have been continuing since 1977. But in spite of the lengthy progress report released jointly by the two sides on July 7, this effort is now in jeopardy. It is threatened both by the pressure of the binary programme and by the West's associated crisis of confidence as to Russia's real negotiating intentions, a crisis exacerbated by the so-far unproven allegations that the USSR has been violating the 1972 Biological Weapons Disarmament Convention.

It is by no means inconceivable that these allegations have been stimulated by the binary programme, as Soviet press-releases have been claiming. But one way or another Moscow has done little in public to alleviate the situation, and its counter-propaganda has been at least as mendacious and inflammatory as any to have emerged from the West.●

HEALTH STUDIES AMENDMENT TO H.R. 7020, THE HAZARDOUS WASTE CONTAINMENT ACT OF 1980

HON. BOB ECKHARDT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. ECKHARDT. Mr. Speaker, when the House of Representatives considers H.R. 7020, the Hazardous Waste Containment Act of 1980, I intend to offer two amendments. The first, which I will discuss in this statement, would provide funds for health studies at hazardous waste sites.

Specifically, the amendment would permit the expenditure of up to $10 million a year from the superfund to conduct studies of the health effects resulting from contamination associated with any hazardous waste site that has not received a final permit from the Environmental Protection Agency. The amendment reads as follows:

Page 29, after line 13, insert:

(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from contamination associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

Mr. Speaker, the amendment is grounded in the 13 days of hearings that my Subcommittee on Oversight and Investigations has conducted on the subject of hazardous waste disposal during the 96th Congress. Many of our specific findings were incorporated into H.R. 7020, a bill I strongly support. However, 1 week after the Commerce Committee reported H.R. 7020, my subcommittee joined with the Government Operations' Subcommittee on Environment, Energy, and Natural Resources to conduct a hearing on EPA's decision to relocate 700 families from the Love Canal for health purposes. The hearing revealed a state of confusion as to what studies should have been done, when and by whom. The quality of the studies actually done over the 3-year period varied tremendously and the State of New York and the Federal Government squabbled continuously over what studies should be done and who should pay for them. While the two governments were playing Alphonse and Gaston, the residents of the Love Canal area initiated one of the most important studies. Then the Federal Government initiated a study to use in its litigation against the Hooker Chemical Co. The study, which was intended for litigation and not as a scientific study, revealed chromosomal damage to some of the area's residents and set off a panic there which resulted in the residents holding two Government officials hostage for a brief period of time. Even though this study lacked sufficient safeguards to provide definitive evidence of actual harm, the Federal Government made a political decision amidst the chaos to relocate the remaining 700 Love Canal families—although I should add that there had been more than enough evidence produced by the numerous other studies to have justified moving the residents a year earlier. The overall effort was disgraceful, causing the Love Canal residents undue anguish and probably further harm, and delaying for about 2 years the initiation of the kind of studies necessary to determine the full extent of the problem.

It was during our May 22 hearing that the subcommittee carefully examined H.R. 7020 to determine if it contained adequate funds for health studies. Much to our chagrin and surprise, the provision for health studies that had been contained in the earlier version of H.R. 7020 was not included in the bill reported by our committee. Therefore, Congressman ALBERT GORE, JR., who has been enormously forceful in pursuing this issue, and I drafted this amendment to provide a source of funds for independent health studies of possibly dangerous hazardous waste sites by competent professionals in the environmental health field. I am pleased to say that our effort is being supported actively by Congressman NORMAN LENT, the ranking minority member of the Oversight Subcommittee; Congressmen TOBY MOFFETT and PETE MCCLOSKEY, the chairman and ranking minority member of the Government Operations' Subcommittee on Environment, Energy and Natural Resources, that joined us in conducting the hearing on the removal of the Love Canal residents for health reasons; Congressman ANDY MAGUIRE and Congressman GEORGE BROWN.

We believe that the amendment will further two very important provisions of the bill. First, it will help the Federal Government set priorities among possibly dangerous hazardous waste sites, as required by section 3032(b) of the bill. The setting of such priorities will then trigger the cleanup of those sites that present or may present a threat to public health or the environment. Second, the health studies will help State and Federal authorities determine when to relocate people away from such dangerous sites, as provided for in sections 3041(a)(2)(A) and 3041(e)(2)(A).

I hope all of you will join us to insure that H.R. 7020 provides State and Federal officials with the best possible information to make the important decisions as to what sites should be cleaned up and when people should be removed from the site area to assure their health.

Tomorrow, I will include a statement in the extensions that discusses my other amendment, which would provide for a comprehensive inventory of all hazardous wastes sites, both inactive and active.●

NUCLEAR INSANITY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. OTTINGER. Mr. Speaker, no game of Russian roulette is more dangerous than the one we are playing by revising our nuclear strategy. Presidential Directive 59 will result in an incredible proliferation of arms and add some chilling words to our vocabulary, such as "winnable nuclear war" and "prolonged nuclear exchange." In short, we will find ourselves in the midst of a game with mythical options but only one outcome—devastation.

Clearly the catastrophic implications of Presidential Directive 59 deserves the scrutiny of Congress, the State Department, and the Arms Control and Disarmament Agency.

Tom Wicker eloquently discussed the administration's misperceptions in promulgating Presidential Directive 59 in an article for the New York Times.

I commend this article to my colleagues' attention:

TERROR IN DISGUISE

(By Tom Wicker)

Suppose that sometime in the next few years, when they are expected to have the ability to do so, the Soviets should contrive to deliver about 2,000 nuclear warheads with a high degree of accuracy upon the 1,000 Minuteman missiles in the United States ICBM force, effectively wiping it out?

What should an American President do in response? What could he do?

At that point, he would have lost about 25 percent of his strategic nuclear forces. But with perhaps 10 percent of the megatonnage that would remain to him in airborne and underwater launchers, he could order the assured destruction of 200 Soviet cities, containing more than 60 percent of the Soviet industrial base and 30 percent of the Soviet population (about 90 million people).

The trouble with that, numerous defense analysts now insist, is that the Soviets would retain, even after such retaliation, the power to launch a second strike against American cities that would be equally devastating. Since the President would know that, these analysts ask, would he in fact order that retaliatory attack? Or, to spare American cities, would he accept the loss of his ICBM's and bow to whatever demands the Soviets might make?

Secretary of Defense Brown and President Carter insisted this week that Mr. Carter's Presidential Directive 59 was designed to cope with such an apocalyptic dilemma by giving a President more options for nuclear response and making it clear to the Soviets "that any or all of the components of Soviet power can be struck in retaliation, not only their urban industrial complex" (as Mr. Brown put it to the Naval War College).

He said the resulting "countervailing strategy" stressed "being able to employ strategic nuclear forces selectively" and put the Soviets on notice "that if they chose some intermediate level of aggression, we could, by selective, large (but still less than maximum) nuclear attacks, exact an unacceptably high price in the things the Soviet leaders appear to value most—political and military control, military force both nuclear and conventional, and the industrial capability to sustain a war."

All this may seem persuasive and as Mr. Brown noted, the United States has for years been aiming its nuclear power at a range of military targets as well as at Soviet cities. But both the basic assumptions and the practical conclusions need to be questioned outside the narrow world of defense specialists. For example:

Granted the agonizing quandary in which the cited example would place a President, would it be any greater than that of his Soviet opposite in deciding to launch the first strike? Whatever that leader's policy goal, he would be taking the calculated risk that his attack might and probably would result in the destruction, for all practical purposes, of modern Soviet society—including at least 60 percent of that industrial capacity he supposedly values so highly.

Mr. Brown said Soviet leadership "appears to contemplate at least the possibility of a relatively prolonged" nuclear exchange and that "in some circles at least they seem to take seriously the theoretical possibility of victory in such a war."

That's pretty thin stuff to go on, but assuming a Soviet leader so utterly unconscionable or mad as to chance it, might he not be even more likely to go ahead if he thought the American response would be on military targets only? If he envisioned a "relatively prolonged" but thus limited nuclear exchange might he not see more possibility of ultimate advantage than in having his cities and industrial base pulverized?

And though Mr. Brown strongly denied that the "countervailing strategy" sought a "first strike" capacity, are the Soviet leaders—particularly if they can conceive of a "winnable" nuclear war—likely to accept his assurances? If we think they might launch a first strike on military targets, why shouldn't they think we might, particularly as we "stress" our capacity for selective strikes? And if both sides think that of the other, isn't one ultimately likely to try it before the other can?

If these and other questions raise doubts about the "countervailing strategy" as a deterrent, what about its emphasis on the capacity to wage "limited" nuclear war, if necessary? Mr. Carter called that an "improvement in our nation's defense capability," but Mr. Brown conceded to the War College "the immense uncertainties involved in any use of nuclear weapons" and added, chillingly:

"We know that what might start as a supposedly controlled, limited strike could well—in my view would very likely—escalate to a full-scale nuclear war. Further, we know that even limited nuclear exchanges would involve immense casualties and destruction."

So the "improvement" comes down to much the same old threat, the same old balance of terror, made dangerously more "thinkable" in the guise of "additional options" for "flexibility"—and requiring, of course, vast new weapons programs. More about that in another article.●

COMPROMISING OUR SPIES

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. HYDE. Mr. Speaker, by an overwhelming majority of 21 to 8, the Committee on the Judiciary, in a bipartisan effort, recently reported H.R. 5615, the Intelligence Identities Protection Act, in the form in which it was sequentially referred to us by the Permanent Select Committee on Intelligence. H.R. 5615 prohibits the unauthorized disclosure of information identifying certain intelligence agents and informants under carefully narrowed circumstances. Legislation of this nature is imperative because of intensive efforts by some to unmask our covert agents in order to destroy our intelligence-gathering network. Assassinations triggered by these disclosures have been widely publicized. The damage to our national security interests has been equally devastating and permanent.

As the ranking minority member of the Subcommittee on Civil and Constitutional Rights, I have been extensively involved in the committee's delicate effort to balance the "clear and present dangers" presented by these disclosures to our national security and our intelligence agents, against the precious first amendment guarantees of free speech and press. We firmly believe that H.R. 5615 is an efficacious and constitutional remedy to the problems created by these unconscionable revelations.

Some of the treatment that H.R. 5615 has received in the press demonstrates a singular misunderstanding of the bill. For instance, an editorial in the Washington Post incorrectly suggests that the bill affords journalists only one defense to prosecution—that they lacked an intent to impede or impair U.S. intelligence activities. On the contrary, H.R. 5615 contains so many defenses and obstacles to any undesirable application of its penalties that some of its supporters have suggested that it is not far-reaching enough. These obstacles include, but are not limited to: First, a defense that the Government publicly acknowledged the information; second, a defense that the information was transmitted to the Intelligence Committee of this body or the other body; and third, a requirement that the disclosure was made as part of an effort to identify and disclose the identities of covert agents with an intent to impair U.S. intelligence activities.

Those with an absolutist approach to the first amendment where the press is concerned have engaged in a hysterical campaign to paint this important piece of legislation as an unconstitutional and chilling infringement of the right of free speech. In marked contrast to these journalistic thrashings, an editorial which appeared in the Washington Star on September 5, 1980, recognizes the fact that "we can't have it both ways." Where a clear and present danger exists, the first amendment permits narrowly drawn restrictions on free speech. This is the essence of H.R. 5615.

I am inserting into the RECORD this commendable and responsible editorial.

THE BOUNDARIES OF FREE SPEECH

Those who are resisting the current effort in Congress to protect U.S. intelligence agents against the marauding of Philip Agee and Louis Wolf offer two disclaimers. They are, they claim, as outraged as the rest of us by the disclosures of Mr. Agee and his freelance protege, Mr. Wolf, who make it their business to identify covert agents and expose them to injury or death. They also protest that they do not consider First Amendment rights absolute, and ask only that the legislation not "chill" legitimate reportorial inquiry.

These disclaimers must be taken at face value; and Congress would indeed waste its time if it passed a bill that would be easy prey for the first court to take formal notice of it.

Nonetheless, we may be sure that if the cavils of the ultra-libertarians are heeded, Congress will leave itself small leeway for effective legislation. If the handiwork of the Wolfs of this world is to be curbed, we must face the risk that legislation strong enough to curb it could tempt adventurous prosecutors to interfere with legitimate reporting.

But while the danger to be dealt with is real and present, the worries about a "chilling effect" on the press are, as we shall suggest below, dim and hypothetical. Moreover, the libertarians may have met their forensic match this time. There is no more zealous advocate of strong protective legislation for U.S. covert intelligence agents than Sen. John Chafee of Rhode Island, whose uncle, the late Zechariah Chafee of Harvard Law School, was in his day a pre-eminent authority on free speech. With those credentials, Senator Chafee is not easily depicted as an enemy of the First Amendment. In defense of the Senate bill he is co-sponsoring, he cites his uncle's dictum that "the boundary line of free speech . . . is fixed close to the point where words will give rise to unlawful acts."

If that is the proper boundary line, as we in fact believe, there is no doubt that the Agee and Wolf disclosures have crossed it. The 1975 assassination of Richard Welch, then the CIA's station chief in Athens, followed within a month the disclosure of his covert function in the Greek press; and that information came directly from Agee's Counterspy magazine. "Public identification of Richard Welch," as was said at the time, "was tantamount to an open invitation to kill him."

More recently, Wolf's bizarre public identification of 15 CIA agents serving in Jamaica (complete with details) was immediately followed by a nocturnal attack on the residence of one with submachine guns and explosives. No life was lost, but several U.S. agents and their families had to be evacuated.

Those who make it their ghoulish business to furnish the enemies of the U.S. with information that invites and facilitates violence against its public servants obviously do not approve of what those servants are doing. It is their right to disapprove; it is their right to agitate against the authority and policy that authorizes their activities.

But the issue before Congress is more basic; it has nothing at all to do with the free play of opinion or dissent and everything to do, rather, with outrageous disclosures that place the authorized intelligence operatives of the U.S. in physical peril and thereby tend to confound and thwart a function that Congress has seen fit to sanction. In the present state of the law, the Agees and Wolfs are apparently free to make these disclosures under cover of the First Amendment.

The absolutism of the First Amendment, so interpreted, lies in the impractical refusal of its interpreters to recognize the boundary line that commended itself years ago to Zechariah Chafee ("where words . . . give rise to unlawful facts") and still commends itself to most of us. Or indeed any other boundary line, for that matter.

The debating trick by which this absolutism is argued by critics of remedial legislation is familiar. It consists in raising endless hypothetical possibilities, all objectionable, which might eventuate if the law were misused. That way lies not free speech and press but constitutional paralysis.

The ultra-libertarians, dwelling upon their unsavory side-effects, in effect mount the disabling argument that we are powerless to defend the cover of U.S. intelligence agents abroad for fear of "chilling" legitimate inquiry and publication. Yet, interestingly, their objections, hypothetical as they are, have been heeded and reasonably answered, by Senator Chafee and others.

Consider one example. In a memorandum of August 4, the American Civil Liberties Union cites, among the conceivable "situations" that might arise from passage of the pending bills, the following: "An investigative reporter seeks to determine if the Watergate burglars have CIA connections. She discovers that several of them do and that one is a CIA agent. She prints that fact, naming the person."

Obviously, no such reporting should be thwarted. Would the bills now before Congress do so? The Senate bill supported by Senator Chafee and others—and more carefully drawn, as we see it, than the bill approved this week by the House Judiciary Committee—lays down a number of conditions designed to distinguish between malicious disclosure and mere reporting.

If the name of an agent, not previously acknowledged, were disclosed, the disclosure would be unlawful only if it were within "a pattern of activities intended to identify and expose covert agents . . . with reason to believe that such activities would impair or impede the foreign intelligence activities of the U.S." In view of these provisos, the Senate intelligence committee's report of August 13 specifically rejects the ACLU's contention. "A journalist," it declares, "writing stories about the CIA would not be engaged in the requisite 'pattern of activities' even if the stories . . . included the names of one or more agents, unless the government proved that there was intent to identify and expose agents . . . with reason to believe it would impair or impede foreign intelligence activities." To meet the bill's standard of prosecution, the Senate report says, "a discloser must be engaged in . . . the business of 'naming names.'"

Probably no legislation can be both effective and foolproof; and there are fools about. But effective government is often a matter of choices, sometimes distressing and imperfect choices. The present no-holds-barred license for disclosure that covers everyone, while permitting the Agees and Wolfs to pursue their seditious business, is of debatable usefulness to free speech and press legitimately understood. But its perils and costs are not debatable. It tends to disarm and cripple U.S. intelligence capacity and to jeopardize the lives and limbs of U.S. agents serving in dangerous and sensitive missions.

No other free government on earth—to say nothing of others unfree—remotely begins to tolerate the casual (and sometimes malicious) interference with its intelligence services that Americans have come to countenance in the name of protective "exposure," by those who may or may not have the nation's interest at heart. We think Congress should do whatever is necessary, taking due but not paralyzing heed of constitutional scruples, to protect our covert intelligence and counterintelligence agents. Otherwise, it would be well to admit that we are too paralyzed by constitutional scruples to conduct an effective foreign intelligence system in this dangerous world, and stop asking our people to risk their lives in its service.

We can't have it both ways.●

GOVERNMENT MUST ACT ON SMOKING PROBLEMS

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SCHEUER. Mr. Speaker, cigarette smoking is America's largest preventable cause of death. Almost 350,000 Americans will die this year as a result of smoking-related illness, and smoking will cause a loss to the economy of $12 to $18 billion in lost wages, productivity, and absenteeism.

Tragically, Congress has failed to forthrightly address this major problem.

Our distinguished colleague from the State of Massachusetts, Representative DRINAN, has written a characteristically thoughtful article on this controversial area of public policy.

I commend this excellent article to my colleagues' attention.

GOVERNMENT MUST ACT ON SMOKING PROBLEMS

(BY ROBERT F. DRINAN)

What is to be the role of the government in formulating and generating the remedial action on smoking called for by the Surgeon General in 1964?

In the period from 1919 to 1933, the federal government unwisely addressed the problems involved in the consumption of alcohol by prohibiting the manufacture, sale, and transportation of intoxicating liquors in the United States. Although fourteen separate states actually banned all smoking around the turn of the century, prohibition clearly is not an appropriate method in any effort to discourage the cigarette habit. In a free society, such outright government paternalism is traditionally and rightly viewed with apprehension.

As former HEW Secretary Joseph A. Califano testified to a House committee, our efforts to reduce smoking must be "grounded in persuasion and information that appeal to the common sense of our citizens • • • not efforts based on coercion and scare tactics." Government can and must act to utilize more effectively its resources, within its carefully limited role, to address the serious problems engendered by cigarette smoking.

Perhaps the most important and effective tool is education. In 1965, the Congress required that the packages of all cigarettes sold in this country were to carry a warning label. That act and others by thirty-five state legislatures to require school systems to provide education on the health hazards of smoking contributed to the present general recognition of the unhealthfulness of the smoking habit.

But how many smokers actually read and pay attention to the warning label and how many students heed the classroom admonitions? A dim perception of long-term health effects often cannot compete with present realities of glamorous advertising, perceived sophistication, and peer pressure. Thanks to the effectiveness of the tobacco and advertising industries, one soon knows of any new cigarette introduced on the market. But very few are similarly aware that 90 percent of all lung cancer cases occur in smokers or that tobacco is more difficult to give up than heroin or alcohol.

From 1967 to 1971, these and other salient facts were effectively communicated to the American public through public service messages on television. Under a ruling of the Federal Communications Commission (FCC), television stations accepting cigarette advertisements were required under the "fairness doctrine" to provide equal time to groups with anti-smoking messages. Media experts have pointed to these "counter-advertisements" as one very important reason for the major decline in cigarette consumption during those 4 years.

Unfortunately, the prohibition by Congress of cigarette advertising on television and radio removed the legal basis for these "equal time" messages, which were thus no longer aired. During the year the ban went into effect, cigarette sales increased by 13 billion, after having declined for the previous few years. Further testimony to the popularity and effectiveness of these messages is the recommendation of the Federal Trade Commission (FTC) that Congress Consider legislation approaching funds for cigarette public information campaigns conducted via the mass media. Such a program would serve to heighten public awareness of the consequences of smoking and would counter the massive print media advertising campaigns of the tobacco industry.

The FTC has also recommended consideration of the implementation of a rotating label warning system, as utilized in Sweden. Since 1977 in that country, sixteen different warning statements—each conveying one aspect of the problems associated with smoking—have been displayed interchangeably on the cigarette package. This use of a number of specific warnings not only communicates to the smoker more facts regarding the pernicious effects of the smoking habit, but in so doing also discourages the practice of overlooking and ignoring a too-familiar standard warning.

In the 96th Congress I have reintroduced legislation I authored in 1977 that would mandate a strengthening of the present warning language now required on labels and in advertisements in the United States. In addition, this legislation, the Public Health Cigarette Smoking Act, would require that the tar and nicotine content of each brand be listed with the health warning and that these facts be printed in the native language of each country to which they are exported, and would repeal the present prohibition on state legislation regarding cigarette warning labels.

RESTRICTION OF ADVERTISING

Many have suggested that perhaps the single most important anti-smoking measure would be the restriction of cigarette advertising. One suggestion would limit print advertisements to a straightforward "tombstone" solicitation including no scenes of rugged adventurers or the like: simply the brand, the health warning, the tar nicotine contents, and any legitimate solicitations. A total ban on cigarette advertising has already been imposed in Finland, Iceland, Italy, Norway, and Sweden. (Not coincidentally, all but the first of these countries have higher life expectancies than the United States.) In addition to eliminating much of the false aura of glamour surrounding cigarette smoking, an outright ban would free newspapers and periodicals now accepting such advertising to be less hesitant to publish investigative findings regarding the tobacco habit.

One such finding is that, in addition to the tremedous health cost of cigarette smoking, the habit imposes a very real financial cost to the federal government and to the American economy. The most recent report of the U.S. Surgeon General states that health care now costs the nation approximately $205 billion per year, of which the federal government pays $59 billion.

Despite the tremendous financial burden placed on the federal treasury and the economy by the 54 million Americans who smoke, the federal cigarette excise tax has not been increased since 1951, when it was set at eight cents per package. As we struggle to reduce unnecessary government spending, the government can no longer afford to subsidize the multi-billion dollar public health cost of cigarette smoking.

This year I have introduced legislation in the House of Representatives that would increase by 10 cents a package the federal excise tax on cigarettes. The measure would increase the tax per pack from 14 percent of the average retail price to 27 percent—still

well below the 37 percent level established in 1951 when retail prices were much lower. This modest proposal, which has been cosponsored by thirty-one members of Congress, would yield an additional $3 billion in revenues (assuming that consumption is not affected), bringing the total revenue from the sale of cigarettes to $5.4 billion—barely equivalent to the direct health care cost to the government of cigarette smoking.

SMOKERS SHOULD BEAR BURDEN

It is altogether fitting that those who choose to smoke should bear the full burden of their habit. Studies cited in the Surgeon General's report, moreover, indicate that some six million smokers would quit if the tax increased the price of a package by 10 cents, as I have proposed. Teenage smoking in particular would be discouraged by such a tax, as the cigarette demand of young people has been found to be more sensitive to the price.

Representative Gephardt and Senator Danforth of Missouri have also introduced legislation to increase the federal cigarette excise tax. Representative Harkin of Iowa has authored legislation that would adjust for inflation this cigarette excise tax and other federal income and excise taxes. Had such a measure been in place in 1951, the cigarette excise tax would have increased automatically to about twenty-five cents per package today.

In addition to these legislative initiatives, regulatory agencies of the federal government have contributed to the efforts to reduce smoking and improve public health. The Interstate Commerce Commission (ICC) has prohibited smoking in two-thirds of the seats on interstate buses and in all but designated cars on interstate and intercity trains. The Civil Aeronautics Board (CAB) has ruled that designated non-smoking areas must be provided in every class of service. In each case, the carrier is subject to fines for non-compliance. The Federal Trade Commission has vigorously enforced the regulations prescribed by Congress, and, as noted earlier, has called upon that body to strengthen and expand its authority regarding cigarette marketing and trade.

States and localities have also acted to protect the rights of non-smokers through the restriction of smoking. Through these initiatives, smoking is often prohibited in elevators, on public transportation, and in public places of recreation, entertainment, education, and health. These regulations range from those relying on voluntary compliance and having no enforcement mechanism to one with a maximum $500 fine and 6-month jail sentence.

In Congress at this time there are sixteen bills designated to address some of the major problems associated with cigarette smoking. In addition to those already mentioned is legislation to require that burning cigarettes extinguish themselves if left unattended, eliminate racketeering of cigarettes, allow individuals to deduct as a medical expense amounts expended on stop-smoking courses, and disallow cigarette advertising to be deducted as a business expense.

None of these worthy, common-sense measures has been acted upon by the committee or subcommittee to which it was originally referred. Congress has thus far failed in its ongoing responsibility to protect the health and promote the general welfare of the people of the United States.

Through the diligent and productive efforts of the medical and scientific communities, the ominous facts concerning cigarette smoking have been—and continue to be—revealed. To counter the tremendous financial resources and political influence of the tobacco industry and the indifference of too many of our elected officials, the public must express its deep concern for the health and well-being of this country. We must join together to take long-overdue appropriate remedial action.●

THE FOUR DISCIPLINES AND THE TWO ENCOURAGEMENTS: KARL BRUNNER ON PRESIDENT CARTER'S ECONOMICS

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. KEMP. Mr. Speaker, serious economists have a hard time keeping up with President Carter's economic policy. Just when they have digested his most recent plan, he introduces another one. There is a compensating consistency, however, as economist Karl Brunner of the University of Rochester so eloquently points out:

The central fact which needs to be recognized is that President Carter's "anti-inflation policies" exhibit the same sense of substantive irrelevance with respect to the inflation problem as all the preceding plans.

In reading Professor Brunner's analysis of President Carter's fourth "new" economic program recently, I was struck at how valid the same analysis is for the fifth "new" economic program which quickly succeeded it. Professor Brunner lays out several principles of President Carter's economics.

First, President Carter still does not understand the relation between his budget and inflation.

The rapid expansion of the budget over the past 15 years was dominated by the explosion of social programs," Professor Brunner writes.

This massive and increasing redistribution has by itself comparatively little effect on the rate of inflation. Its direct effect on inflation operates via the disincentives on supply and investment in both human and nonhuman capital * * *. The combination of incentives and disincentives associated with an arbitrary, continuous, and unpredictable revision in the society's structure of resource entitlements gradually retards productivity and productive investment.

In other words, the impact of Federal spending on inflation is not limited to the mechanical and oversimplified link between budget deficits and monetary expansion. The way the Government spends its money, especially on transfer payments, profoundly affects the society's structure of relative prices: the choice between work and leisure and the choice between saving and consumption.

Second, there is "the current administration's basic principle: in case of a problem, raise taxes." President Carter's approach is to keep marginal tax rates high and rising, and to dole out any tax relief through nonincentive rebates and spending programs.

The following statement is prophetic of the latest Carter economic program, which is mostly a repackaged and recycled melange of rebates, subsidies, loan guarantees, capital allocation and other gimmicks:

The encouragement of productivity and savings remains, as in the fall in of 1978, at the level of pious incantations. Even an array of special tax rebates and subsidies hardly reverses the basic trend in our policies, which increasingly discourage efforts directed to the efficient use and development of productive resources * * *. The political need for an anti-inflation program is essentially exploited to sell the administration's pet projects under a false label. The proposals only enlarge the budget, expand the government sector and the government's control over our resources, and impair the growth of productivity.

Finally, as Professor Brunner points out, President Carter has not yet understood that the ultimate source of inflation is not fiscal policy, but monetary policy. The proper formula for economic policy is the exact opposite of President Carter's monetary restraint to stop inflation, and a removal of tax, budgetary and regulatory disincentives to employment, investment, production and growth.

Professor Brunner's analysis first appeared in the May-June 1980 issue of Challenge magazine. I commend this excellent article to the attention of my colleagues.

The article follows:

THE FOUR DISCIPLINES AND THE TWO ENCOURAGEMENTS: PRESIDENT CARTER'S ECONOMIC RECOVERY PLAN

(By Karl Brunner)

President Carter announced in late January the details of an "austere and responsible" budget. These plans thoroughly disavowed the promise he had made on October 24, 1978. The expansion in federal expenditures continues at a high rate with persistent deficits during full employment and potentially massive deficits in phases of mild recession. The promise of retardation in the budget's momentum was replaced by the prospect of a further increase in the real tax burden. The President's plans foresee an increase in federal real taxes to 21.7 percent of real GNP by 1981. This would be the highest level ever observed during peacetime in the history of the USA. The new plans also revised the projected total federal outlays for 1984 from $674 billion to $839 billion. This revision raised the projected budget, within one year, by $165 billion, or about 25 percent. The economic assumptions made by the administration contradict, moreover, the promise made by the Chairman of the Board of Governors of the Federal Reserve System on October 6, 1979. The budget planners' assumptions require a substantial acceleration of monetary growth and a firm commitment to a permanent inflation policy. They are not consistent with the course of monetary policy repeatedly affirmed during the winter by the Chairman of the Board.

The President's evident disavowal of previously made promises unavoidably induced some broad and far-reaching revisions in longer-run assessments of our economic course. A permanent inflation proceeding at a level of at least 10 percent per annum seemed more nearly to express relevant expectations for the next decade. Thus ensued a "bond market crash" which essentially reflected the revisions of dominant longer-run expectations, surrounded by a diffuse and volatile uncertainty produced by the erratic course of our policies with shifting inherent

inconsistencies. The message in the budget, mostly conveyed to the bond market, was reinforced by the remarkable bulge of the inflation rate measured by the Consumer Price Index (CPI) during this winter. However temporary the bulge may be, its dramatic effect and political impact amplified the message from the "bond market crash." So emerged another anti-inflation program revealed by President Carter on March 14 to the American public.

THE NEW PROGRAM

The program may be described as constituted by "the four disciplines and the two encouragements." President Carter implored us to use greater discipline with regard to the budget and the deficit, credit, price or wage behavior, and energy conservation. Encouragement was given, however, to productivity and savings. We were promised once more a balanced budget and better containment of its growth. The Credit Control Act of 1969 was invoked in order to impose constraints on consumer credit, most particularly that associated with the use of credit cards. New reserve requirements affecting selected institutions and involving new procedures (based on assets) appeared under this heading. The President rejected mandatory price and wage controls. But he advocated "voluntary" measures guided by standards of "appropriate behavior." The staff of the Council of Wage and Price Stabilization (COWPS) was to be expanded threefold for this purpose. The President mentioned the prenotification of all price increases planned by large firms. The discipline in the use of energy means lower imports of oil and better conservation. Windfall profits taxes, energy mobilization boards, and synthetic fuel developments were all mentioned as important cures of an "inflation disease." But a new "gasoline conservation fee" imposed on oil imports used in the production of gasoline forms the centerpiece of the anti-inflationary contribution expected from the energy sector. The revenues from the gasoline tax would be held in reserve and would not be applied to balancing the budget. Lastly, President Carter favored "long-term structural changes" in order to overcome a threatening stagnation in productivity and reverse the erosion of private savings and capital formation.

AN ASSESSMENT OF THE PROGRAM

The central fact which needs to be recognized is that President Carter's "anti-inflation policies" exhibit the same sense of substantive irrelevance with respect to the inflation problem as all the preceding plans. It follows that we have no good reason—nor did we in the previous cases—to expect from President Carter's policies pursued over the next five years any relevant change in our inflationary reality. That reality will be obscured, however, with intermittent bouts of anti-inflationary rhetoric.

1. The budget. Let us begin with the budget. The analysis of the inflation problem requires separation of all social transfers from budget expenditures involving absorption of goods and services by the government sector. A change in the proportion of real government expenditures on goods and services relative to real GNP by one percentage point modifies the inflation rate on the average, by itself, by somewhat less than one percentage point. This is a negligible magnitude when juxtaposed to our inflation problem. We also note that this proportion fell over the past ten years from about 23 percent to slightly below 20 percent. Federal expenditures on goods and services scarcely offer, under the circumstances, a relevant handle on the inflation problem. The necessity of strengthening our military posture will most likely raise the recently stagnant level of real federal expenditures on goods and services. But even an increase in the real military budget by about 4 to 5 percent a year, combined with the trend of nonfederal real expenditures on goods and services and of federal real nonmilitary expenditures, would affect the inflation rate by a negligible amount compared to the magnitude of the problem.

The rapid expansion of the budget over the past fifteen years was dominated by the explosion of "social programs." This massive and increasing redistribution has by itself comparatively little effect on the rate of inflation. Its direct effect on inflation operates via the disincentives on supply and investment in both human and nonhuman capital. This disincentive effect is augmented by the incentives fostered in the political market to invest resources in the political game of wealth extraction, in contrast to socially productive investment in wealth creation. The combination of incentives and disincentives associated with an arbitrary, continuous, and unpredictable revision in the society's structure of resource entitlements gradually retards productivity and productive investment. Even a comparatively large decline in the trend of real growth produced by the negative sum game of political redistribution raises the inflation rate at the very most by one percentage point, in the present context. The cumulative effect of this decline in real growth on our real per capita income would, in contrast, operate with a substantial margin. There remains, however, the indirect significance of surging transfer payments. They raise the likelihood of persistent deficits and thus lower the probability that the Federal Reserve authorities will maintain an anti-inflationary monetary policy beyond a traditionally short horizon.

2. Credit controls, price-wage discipline, and the encouragements. Beyond their irrelevance as instruments of anti-inflationary policies, the measures invoked under the Credit Control Act also suffer from the inefficiencies created in our financial system. They impose arbitrary taxes on selected institutions, and on liabilities or assets of financial intermediaries in the form of various reserve requirements. The revenues collected from these taxes are eventually channeled through the Federal Reserve Banks to the U.S. Treasury. We encounter here a comparatively minor application of the current administration's basic principle: in case of a problem, raise taxes. The problem solved, of course, is not inflation but some unhappy consequences of inflation for many financial intermediaries. It is grotesque to pretend that the credit controls contribute in any way to lowering future rates of inflation. They exert no influence on monetary growth and only negligibly affect the rate of total credit expansion. They reshuffle and distort the channels of credit at a social cost, enlarge opportunities for the political manipulation of the financial system, and potentially impair even further the requirements for an effective monetary control traditionally opposed by an established Federal Reserve bureaucracy.

It is noteworthy that President Carter rejected mandatory controls over prices and wages. He appeared to recognize that they fail to tame inflation in the absence of monetary controls while they foster inefficient resource utilization and obstruct the development of our potential resources. They combine "anti-inflationary" failure with lower productivity and real growth—and a loss of freedom. But there remains his gesture expanding the Council of Wage and Price Stabilization. This would naturally induce a corresponding increase in private investment of resources designed to influence the behavior of COWPS. The magnitude may be comparatively small, but it is still a measure of the price paid for a gesture deemed necessary in the political marketplace.

The encouragement of productivity and savings remains, as in the fall of 1978, at the level of pious incantations. Even an array of special tax rebates and subsidies hardly reverses the basic trend in our policies, which increasingly discourage efforts directed to the efficient use and development of productive resources. We should not underestimate the great importance of a reversal in this trend for our future welfare. But this importance does not establish the relevance of the productivity issue with respect to the inflation problem. The same holds for President Carter's fixation on "energy policy." The political need for an anti-inflation program is essentially exploited to sell the administration's pet projects under a false label. The proposals only enlarge the budget, expand the government sector and the government's control over our resources, and impair the growth of productivity.

THE "SONG AND DANCE APPROACH"

A closer examination of the last proclamation in our (unending?) series of anti-inflation programs yields little assurance. The "eclectic array" of measures contributes, apart from the indirect effect of a small deficit, essentially nothing to the solution of the inflation problem. There is only one way to cope effective with our inflationary heritage: lower monetary growth to less than 2 percent per annum. Advocates of eclectic positions find this idea repugnant. We hear incantatory condemnations of "naive monocausality." But the evidence is quite clear. There are good reasons for some looseness in the short-run relation between monetary growth and changes in the general price level, but the longer-run pattern is remarkably persistent and pervasive. The facts about any inflation ever observed demonstrate that sufficiently lower monetary growth produces a stable price level whatever the budget, the corporate technostructure, energy prices, and aspirations may do. And when we fail to lower monetary growth, inflation persists in spite of all the anti-inflation programs and earnest invocations. Whatever intractability inflation appears to have developed does not result from "deep sociological forces." It was produced by a long series of irrelevant programs adopted and relevant policies abandoned. Ancient medicine men knew that the song and dance of a fertility ritual was hardly sufficient to obtain a crop. You needed also to plant a seed. But the song and dance of latter-day political rituals seem to have replaced the substance of the matter in our enlightened age.

Of course, more respectable objections acknowledge the potential usefulness of monetary control but deplores its social cost in the form of higher unemployment and lower output. Advocates of monetary control are accused of wishing a recession in order to lower the rate of inflation. But this characterization distorts the issue. Lower inflation does not, per se, require a recession. It requires a lower monetary growth. The occurrence of a recession, and particularly its magnitude and length, depend on the credibility of the announced anti-inflationary policy. A large social cost of anti-inflationary policy thus results from a heritage of low credibility produced by a lengthening sequence of irrelevant programs and abandoned attempts to lower monetary growth. But the same pattern raises the social cost of permanent inflation even higher.

During a panel discussion in Manchester, New Hampshire, arranged for the Republican candidates, Howard K. Smith asked what they proposed to do about inflation considering "that everything had been tried." Mr. Smith was mistaken. A sustained lowering of monetary growth to below 2 percent a year has never been tried. Will we ever do it? It seems that our chances depend on a single man, the Chairman of the Board of Governors of the Federal Reserve System.●

A TRIBUTE TO MARK STEVEN LIEBLIN

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BOB WILSON. Mr. Speaker, I wish to call my colleagues' attention to an outstanding young constituent of mine, Mark Steven Lieblin, who has been named the most outstanding high school senator in the United States by the National Forensic League. According to his coach, this is the first time that anyone from San Diego has taken first place in a National Forensic Tournament.

In the 7-day, nonstop speech tournament, 1,200 students from 49 States took part, and Mark emerged from the competition in first place. The dedication and the excellence he displayed are most deserving of our admiration and attention. I congratulate him for his outstanding record of success in the art of public speaking and extend sincere best wishes for his every success in his future endeavors.●

MAYORS O'REILLY, COOGAN, AND BOVITZ TESTIFY BEFORE THE AUTO TASK FORCE

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. DINGELL. Mr. Speaker, the hardship and full impact of the economic recession on our local communities was vividly and poignantly expressed in the testimony of three mayors from my 16th Congressional District, who appeared before the auto task force in Detroit on September 2. In no other geographic area, as in the downriver communities of Detroit, has the current plight of the auto industry been so devastating and demoralizing. In the communities of Dearborn, Melvindale, Trenton, River Rouge, Lincoln Park, Riverview, Wyandotte, Ecorse, Grosse Ile, Southgate, and Allen Park, as well as Detroit, unemployment has reached staggering proportions affecting all segments of the local economy and community life. The problems and human needs of these communities are voiced in the testimony of Mayor John B. O'Reilly of Dearborn, Mayor Thomas J. Coogan of Melvindale, and Mayor Robert L. Bovitz of Trenton, which I am pleased to include in the RECORD:

TESTIMONY OF MAYOR THOMAS J. COOGAN, CITY OF MELVINDALE

Thank you Congressman Dingell for allowing me to address the Auto Task Force on behalf of the Mayors and Supervisors of the Downriver Community Conference Board of Directors and the 14 municipalities represented in that organization.

I think that we could probably retitle this public hearing, "Where do we go from here?" How do we put the people who put America on the move—back to work! As a nation, we have always been very proud of our ability to roll up our sleeves and get the job done. At this time, however, particularly in the Detroit Metropolitan area we have a "good news"—"bad news" situation. The bad news is obviously the nationwide reduction in the American car sales market has put thousands of our residents out of work. This is combined with the fact that since our area has been involved in the manufacturing of automobiles and trucks for some 30-40 years—a large number of our factories and plants are obsolete for the production need of the 80's. And, as could be expected, the downturn of our major industry has triggered a reduction in the productivity of industries and businesses which feed into the auto industry—ranging from suppliers to industrial waste contractors and even companies that provide packaged food to the plants. This whole situation puts us between a rock and a hard place. American-made cars aren't selling well, therefore people in various businesses and industries aren't working—so they don't have the money to buy new cars—and the cycle goes on.

As the auto industry has turned down, our unemployment rate in the Downriver has gone up. We estimate our current real unemployment rate to be 25 to 30 percent (well in excess of MESC's reported figures which lag several months in time). Our communities acting through the Downriver Community Conference have created a pilot program on our own initiative to assist a portion of our employees with job search, retraining and relocation services. The federal government has now agreed to help this effort with $1,700,000 of Department of Labor funds. Even with these funds, however, we barely make an impact on the needs of our area. We hope the federal government can support our effort further.

The Downriver area has many things to offer which can put us back in the ballpark as a major employment area for the 1980's and 1990's. As a developed, industrial area we have the roads, the sewers, the utilities and the waterways to move supplies and products. More than that—we have one of the most highly skilled labor forces in the world.

The issue then becomes—how do we use the positives to minimize the negatives. First of all, federal, state and local governments must continue to offer financial (primarily tax credit) incentives to businesses and industries to either expand their operations and locate into our area.

Secondly, public dollars must be combined with private sector investments to update obsolete facilities or prepare sites for new development. Since we have recently been made aware of the huge problems of toxic waste in our land and water—we must utilize the strongest forces of government and industry to rectify this problem—this brings me to my third recommendation—that government and business form—not a blueribbon committee—but a working team to immediately respond to this problem of toxic waste and pollution. If previous misuse of the land and water keeps us from putting people back to work—then it is the responsibility of all levels of government (with industry imput) to act on reclaiming this land for reuse.

My last suggestion is—very basic to the American spirit—that of engenuity and exploration. The world we have grown accustomed to has gone through some radical change. Unlimited energy sources is a thing of the past and, very frankly, the one person—one car—ride to work—may also be part of history. This however, can work to our advantage—Mass Transit—particularly light and heavy rail—brings us both jobs and more energy independence. Where Detroit is now the "auto capitol" of the world, why can't it become the "mass transit capitol" of the world in the next decade. Also we have just begun to explore new and effective methods of producing and saving energy. Producing efficient and independent energy also creates jobs for our people.

There's no question that the next couple of years are going to be difficult for all of us. But we must begin the groundwork for the future—NOW.

I thank you for the opportunity to speak and look to this committee to carry our concerns back to Washington and develop sound public policy for our economic growth.

TESTIMONY OF MAYOR JOHN B. O'REILLY, CITY OF DEARBORN, MICH.

Thank you, Mr. Chairman. My name is John B. O'Reilly, Mayor of the City of Dearborn, Michigan, a community of nearly 100,000 residents whose past, present and future has been, is now and will be directly linked to that of the automobile industry.

Dearborn is proud to be the Home Town of Henry Ford and the headquarters community for the Ford Motor Company. Ford's executive, engineering, design, manufacturing, credit and related operations form the backbone for our city's economy and most certainly provide a financial spillover that touches every sector of community life. While one of every six American workers are employed in an auto-related job, our estimates are that one of every two Dearborn workers collects a paycheck from a firm—large or small—that directly or indirectly relates to the automotive industry.

That means, quite simply, that when the auto industry is hurting, our community is hurting.

The human suffering that results from high unemployment and uncertain economics cannot be measured by fancy charts and graphs alone. When we are talking about people's livelihoods and their lives, we have a special obligation to do everything possible to make government work to see there is a job for every able-bodied American who wants one.

I firmly believe that the core of our current economic crisis is our inability to deal effectively with the seemingly-limitless influx of imported vehicles from Japan. So far this year, Japanese car and truck exports to the U.S. are up 32 per cent while U.S. production is down more than 35 per cent. It is abundantly clear that while these Japanese vehicles are being built on overtime in constantly-expanding Japanese facilities, two of every five American auto workers is out of his or her job.

This is not right, and the American People should not be expected to put up with it.

In my judgment, the first Congressional priority ought to be legislative action which would bring about immediate negotiations between our two governments to limit the exports of Japanese cars and trucks to their share of the market here between 1974 and 1976 before the most recent turnabout in the industry. I encourage you to work as hard as you know how to see that Senate Joint Resolution 193 and its House counterpart, HR 598, are given speedy affirmative consideration.

Once this legislation is enacted, I hope the President has enough good sense to take it to heart and to hammer out the hard terms that will keep our American auto industry in business.

I would also urge the International Trade Commission to act as quickly as possible on the petitions of the Ford Motor Company and the United Auto Workers union for immediate relief. In reading Section 201 of the Trade Act of 1974, it seems clear to me that the intent of the law is to deal with situations exactly as we now have before us.

We are not abandoning our American philosophy of "free trade" when we argue for "fair trade." We are simply sending a message to those who would take unfair advantage of a windfall sales opportunity during an abrupt shift in American automotive market demand.

American products can compete with those of any nation on earth, but there must be a fair competition based on a moral and legal commitment of firms to contribute employment and investment to the economies of countries whose markets are large enough to justify them.

Japan is not competing fairly at present. A look at domestic auto protections imposed by other nations makes it painfully obvious that our national policies have welcomed this tidal wave of Japanese cars and trucks into the American marketplace. For example, Brazil requires that automakers use 95 percent local content or pay a 185 to 205 percent duty on foreign autos; Australia has an 85 percent local content or 58 percent duty fee with the added limit of 20 percent of the market; Britain has a 11 percent duty and an agreement with Japan to restrict the car market share to 10-11 percent or less; France has a 11 percent duty and an informal Japanese limit of 3 percent of the car market; Germany has a 11 percent duty; and Canada has a 14 percent duty.

What does America have? A paltry 3 percent duty. In my view, this represents an open invitation for Japanese automakers to expand their industry—in Japan—at the expense of our workers in the domestic auto industry. And I view this as a tragic and unfortunate abandonment of the values that have kept American people working and have kept America strong.

In addition to seeking adjustments to the Japanese-American trade imbalance, I believe there are other legislative remedies which should be given swift consideration.

I strongly favor the Brodhead Tax Credit Bill which would stimulate auto purchases by offering a $500 federal tax credit to consumers of domestic fuel-efficient vehicles. This would be a one-time only tax credit aimed at bringing American consumers back into the auto market during the critical transition period we are now experiencing.

I also favor quick adoption of the President's recommended tax credits for firms that are not now showing profits but have made sizeable capital investments. The bonus tax credit system for companies in high-unemployment areas is also worthy of your support, as are accelerated depreciation schedules.

All of these remedies have the effect of stimulating industrial investment which would have the effect of putting people back to work.

The Congress of the United States should also take a more realistic look at auto emissions and safety standards so that a balanced perspective is offered. It does no good to force new standards on the auto industry if this action would kill or severely cripple the industry—and throw thousands of Americans out of work. I encourage you to employ the wisdom of Solomon in your deliberations regarding any automotive regulations, particularly during the next 18 to 24 months when this changeover in the American auto industry will be taking place.

Specifically, I encourage the members of Congress to urge the Senate to approve the establishment of a conference committee this month to consider Senate Bill 2475. The provisions of this bill of great interest to our people have already been approved by both Houses but are now awaiting a conference committee to iron out other differences.

If passed, this law would allow Ford Motor Company and other producers to carry forward and carry back fleet fuel economy mileage gains so that these earned credits would enable a smoother transition into overall higher mileage standards at a more realistic and legal timetable. The passage of this bill may mean the difference between survival and failure of auto firms.

Beyond this, I stand strongly in favor of general economic stimuli in areas most impacted by the automotive marketing transition. This includes expansion of the CETA job training program, particularly those proposals aimed at youth unemployment and those who are in need of retraining because of industrial conditions. The City of Dearborn is a CETA prime sponsor and stands ready, willing and able to administer these expanded programs.

We are also the selected contractor for the state's special federally-funded weatherization program, and I strongly urge additional funding for this activity. It not only helps senior citizens and others in need of this aid; it enhances the quality of housing stock, cuts fuel bills, conserves energy use and puts people to work.

One more piece of legislation much needed in our area is the proposed $2 billion countercyclical local public works program under the Economic Development Administration. I am hopeful that the Senate Budget Committee moves quickly to approve this standby program because I am convinced that communities such as ours are greatly in need of the catalytic effect it would have on the local economy.

All of these things would be helpful since every dollar put back in the hands of our citizens—including those through extended unemployment benefits and federal tax cuts—will be circulated into the community and will help the revitalization of all of our industrial and commercial segments.

Dearborn has worked hard at our level to bring about reindustrialization. Our Economic Development Corporation has offered inducements to 13 projects which would add 1,442 jobs, with construction costs over $30 million. Our City Council has gone out on a political limb and approved tax abatement requests that have protected 1,780 jobs, mostly in the industrial sector, and added $229.4 million in construction. We have just formed a Local Development Company which will assist small business people in processing Small Business Administration 502 loans. And we've intensified our efforts to revitalize business districts and attract new investment in our community.

We stand ready to do our share to rebuild America's economy, protect jobs and join in the effort to become energy independent. But Dearborn is not an island and obviously we are greatly dependent on your actions for long term success in these efforts.

I know that the Auto Task Force has the interests of the people of this area—including the City of Dearborn—at heart and as Mayor of the City of Dearborn I thank you for your past support and encourage your continued vigilance in addressing the problems that are now confronting the auto industry, its workers, local communities and indeed the entire American economy.

Thank you.

TESTIMONY OF MAYOR ROBERT L. BOVITZ OF TRENTON

Mr. Chairman, members of the Committee, I am Robert L. Bovitz, Mayor of Trenton, Michigan and Chairperson of the Southeast Michigan Council of Governments.

I am sure you will hear today, and in future hearings, from many speakers who will be able to address the broad impact of what has happened as a result of the decline in auto sales. So let me direct my remarks to the problems faced on the local and regional levels in Southeast Michigan.

My city, Trenton, is a city of 25,000 residents with strong commercial, industrial and residential sectors. It is located 12 miles south of Detroit, in an area rich in heritage and ethnic tradition.

The Southeast Michigan region covers seven counties and 4800 square miles of land, has a population of about 4.7 million people, and has an economy based on agriculture, recreation, and industry—most significantly the auto industry.

As both a mayor and as chairperson of a 137-member regional council of governments, I have personally witnessed the effect of auto plant closings and layoffs on local governments. Let me describe it to you.

Picture what happens to a community when an auto plant, often its main employer, closes down.

Property taxes, income taxes, sales taxes and revenue sharing all decrease. The commercial and residential area around the plant deteriorate. The reduced purchasing power of laid-off workers affects the fabric of the entire community.

A number of skilled workers and professionals will seek jobs elsewhere, leaving the community with a less skilled labor force.

Because of the declining tax base, the community finds itself unable to fund essential services at necessary levels. The quality of education is jeopardized by diminished funding. And, in many cases, police and fire protection must be reduced.

But it is the human factor which concerns me the most. In the homes of the laid-off workers you will find an atmosphere of stress that often results in increased physical illness, depression, sometimes suicide, spouse and child abuse, marital break-ups, alcoholism and drug usage.

Laid off workers and their families will need increased services at a time when this community and this state are least able to fund them.

A community in such a state of decline often finds itself unable to attract new businesses, at a time when it needs them the most.

A cycle of unemployment and of deterioration has begun in our community. Once caught on the plant closing and unemployment treadmill it is extraordinarily difficult to escape. Southeast Michigan is becoming caught on that treadmill.

There is much the Federal government could and should do for Southeast Michigan and other regions in similar straits.

A recent Congressional study has shown that Michigan ranked 50th out of the 50 states in federal tax dollars returned from state tax dollars sent. The midwestern and northeastern states, and in particular Michigan, have financed the growth of this nation. Yet, even though the unemploy-

ment rate in the Detroit Metropolitan area has gone over 18 percent and currently stands at 14.4 percent. Michigan received the smallest return in federal dollars of all 50 states from 1972-79: 66 cents return for every dollar sent to Washington.

Michigan manufacturing and retailing companies, its banks, its investment and insurance companies, as well as numerous other businesses helped build this nation. The hard working people of Michigan helped make this country strong. Now, is the time for Michigan to get back some of those dollars, it has so freely given. Michigan must begin receiving its fair share in return of federal tax dollars. I am not asking for charity from the federal government for Michigan, I am asking for equity.

I believe the federal government should be giving increased federal dollars to states with high unemployment. These federal dollars could come through increased countercyclical dollars, federal revenue sharing, funding for public works projects, CETA, and for job retraining programs.

Tax incentives should be offered to businesses which choose to locate in high unemployment areas. Low interest loans should be made available to industries which update or build new facilities in economically-distressed communities.

Trade Readjustment Assistance (TRA) should be continued, and federal unemployment compensation aid extended.

Congress could give tax breaks to consumers who purchase fuel efficient American-made autos.

Congress should mandate that a significant portion of any product sold in this country be produced in this country.

Finally, the issue of foreign imports taking a significant portion of the American car market needs to be resolved. Foreign markets should be as open to American products as American markets are to foreign products. The competitive advantage that imported cars have over American made cars must be reduced. At the same time the Federal government should encourage foreign car manufacturers to locate production plants in this country.

There are no simple answers and no one answer. I hope that when you return to Washington, that you will carefully consider the suggestions that I and other speakers have made here today.

Thank you for giving me the opportunity to speak on this most timely and critical subject.●

TRIBUTE TO JUSTICE FRANK DEL VECCHIO

HON. GARY A. LEE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. LEE. Mr. Speaker, I rise today to bring to your attention my community's loss of a dedicated civil servant and respected jurist, the Honorable New York State Supreme Court Justice Frank Del Vecchio, who passed away in his home city of Syracuse in these recent days.

Judge Del Vecchio was the kind of community influence which every busy city would like to reproduce. He was a native of Syracuse who attented school there, began his legal career there, and throughout his life contributed significantly to the well-being of his neighbors and friends. As a tireless supreme court justice through two terms of service on the State bench, he distinguished himself admirably, while maintaining activities in many service organizations. He also served as a trustee of St. Peter's Roman Catholic Church.

My condolences are extended today to the family and friends of Judge Del Vecchio throughout New York State.●

COTTER PENSION PLAN

HON. WILLIAM R. COTTER

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. COTTER. Mr. Speaker, this morning I had the privilege of addressing the National Association of Mutual Savings Banks on the issues of taxes and the economy. I believe my remarks would be of interest to my colleagues, and I am enclosing them at this point in the RECORD:

SPEECH BY HON. WILLIAM R. COTTER TO THE NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS

Thank you for the opportunity to speak to you this morning. As you all know, strange events occur in an election year. This year is no exception. The Senate Finance Committee drafted a $39 billion tax bill in four days!

I am sure we can all agree that a tax cut should be enacted. The issues which must be resolved are the timing of the cut, and its content. Whether these issues will be resolved this year, or next spring, remains unclear. The Senate seems to have a definite opinion on this matter. I believe, on the other hand, that it would be irresponsible to write a tax bill during the last month of this session, or during a lame duck session in November.

It is my view, and one shared by many Members of the Ways and Means Committee, that a tax cut should be the first order of business of the Committee during the new 97th Congress.

At this time a reborn Carter Administration or a new Reagan Administration, and the new Congress, will be able to address the most important domestic question facing our government—where do we cut federal expenditures in order to make room for a tax cut, while at the same time reducing or eliminating the federal deficit.

Furthermore, it is not realistic for us to expect either presidential candidate to detail before November 4th their "hit list" of programs they will cut. But the message we in Congress are receiving from taxpayers is—"Cut government first, then cut my taxes." No campaign slogans or media hype will drown out this message.

This, in turn, brings up a very significant question which might be neglected in the rush for a tax cut this year—the role of our federal tax policy in achieving broad social objectives.

One clear objective of the tax cut will be to promote saving in order to build reserves of capital for investment purposes. One clear roadmark along this path was the section of the Windfall Profit Tax that gave a tax exclusion of $200 ($400 a couple) of interest and divided income in order to stimulate saving. Although I approved of this provision in the Conference Committee, I remain, quite frankly, skeptical that this will lead to a net increase in saving and investment. I hope it does, and will watch the impact of the exclusion carefully during its two-year test period.

Those debating the method to be used to increase saving and investment are using new ideas and concepts—or perhaps old ideas with new names—like "supply-side economics," "reindustrialization," and "production tax incentives."

Underlying these concepts is a broad movement to utilize the Internal Revenue Code to aid in changing our basic economic structure. While this may be a significant policy turn in the broad sense, it is important to keep a clear head about these different proposals.

Even the most expansive business tax incentive, the 10-5-3 Depreciation Proposal, will not provide all the needed capital to change our industrial and productive base. While depreciation schedules need to be revised, those industries that are most in need of change do not have enough internally generated capital to purchase the new machinery and equipment that they need to carry them through the 1980s and beyond. Industries that show little or no profit, such as auto, steel, rubber, and textiles, will find limited economic leverage in depreciation changes alone. These industries will increasingly rely, for the near term at least, on external borrowing. One can even make the case that, for the crucial near term, an overemphasis on revising depreciation schedules will hurt our basic industries.

In the same way, a government that increases deficit financing will put pressure on capital markets and drive up the cost of money for these battered industries. Therefore, rather than using all our revenue to revise depreciation schedules, I believe we should be looking with equal vigor at stimulating individual savings and investment. I do not have to remind this group that the rate of saving is presently at an all-time low—3.4 percent according to the latest figures. If this continues, the capital will not be there for "reindustrialization." And it is up to you to make this concern known on Capitol Hill.

There is a second social objective which needs to be addressed when we talk about using the tax code to implement broad government policy, but which has yet to receive the attention it deserves. This is using the tax code to encourage people to save for their retirement.

As a Member of the Social Security Subcommittee, I have been greatly concerned about the impact of the shifting composition of our Nation population on the social security trust funds.

Our population is aging, and a higher proportion of elderly in our population will be a cause for governmental and private concern for the next generation. You are, I am sure, aware of the numbers involved. Currently, there is one retiree receiving social security for every three workers paying into the system. This will change drastically. By the end of the century, there will be only two workers for every social security recipient.

The social security system will come under an increasing strain as a result, especially at the turn of the century when the children of the post-World War II baby boom retire.

The cost of social security for 1980 is expected to be $124 billion. By the middle of the 21st Century, actuaries estimate the cost of current benefits will increase to $22 trillion. By the time your children retire during the second quarter of the next century, the social security tax for working individuals may be 25 percent of their gross income. Employers will pay the same

amount—25 percent of their payroll. Just think—25 percent of gross income for social security alone—without adding in other federal, state, or local taxes.

Our aging population will not only severely strain the social security system, but it will bring increasing pressure to bear on the private pension system. For example, private pension obligations that must be paid rose from 5.5 percent of total assets of companies to 14 percent between 1978 and 1979 alone. Pension liabilities of some major companies, such as Ford, General Motors, LTV, and Lockheed now represent 30 percent of all their assets. And the funding problems of multiemployer pension plans are just as serious.

Moreover, large gaps exist in covered workers. According to the President's Commission on Pensions, 70 percent of workers earning under $10,000 have no pension, while 70 percent earning over $20,000 are covered by pensions.

Therefore, in worrying about funding benefits for future retirees, and sources of capital for pumping up our economic system, I worked out a plan that would encourage working men and women to save more money over a longer period of time. My plan uses a tax incentive to stimulate long-term saving while providing tax relief for a portion of a worker's actual salary.

I believe that many of the problems I have described can be eased by my plan. The Cotter Plan, as it is becoming known, is in effect, an individual retirement account for everyone, even those with qualified pension plans.

This proposal provides benefits, and requires sacrifices, from those participating in it.

My plan requires an individual worker to commit a portion of his salary to a retirement account for a long period of time. The maximum annual amount that can be contributed is $500 for an individual and $1,000 for a couple. The worker cannot take out this money without a stiff tax penalty. In return, both the money in the account and the interest which accrues will be free from all federal taxes until it is withdrawn after age 59½.

While the annual amount may seem small, a worker putting aside $1,000 per year for thirty years at 10 percent interest will have $181,000 in his retirement account. This worker could withdraw $21,253 a year from this account for twenty years.

The federal government will also be required to sacrifice. My proposal will lose an estimated $1½ billion in federal revenue in 1985. In return, our future elderly population will be in a better financial position to meet their financial needs. This will relieve some of the pressure on the government to meet these needs.

Institutions that handled these Cotter accounts will have a long-term source of funds to lend to meet the demand for capital. However, these institutions will be expected to provide the depositor with a fair rate of return. To encourage this, I provide for a liberal rollover provision and require an annual "rate of return" reporting requirement. This will give the depositor the information and the ability to transfer funds between competing accounts to get the best deal for his retirement.

In return, institutions, such as yours, should have a stable source of funds for many years. Long-term savings in Cotter accounts could lessen the disintermediation of the past and I am informed that even during the recent disintermediation existing IRA accounts were among the most stable source of income in your institutions.

Let me make one aspect of this plan very clear. Since I believe this should be a retirement plan, I have made no provision for an early tax-free withdrawal or for catastrophic illness. However meritorious, early withdrawal will defeat the purpose of this concept—to make sure that money is available when individuals retire.

Given our population shift, government must encourage and help people to save for their retirement. I believe the Cotter Plan is a reasonable step in this direction. It also helps the capital formation problem which is of immediate concern. I believe this proposal will be part of the next major tax bill, and hope you will support this proposal.●

PERSONAL EXPLANATION

HON. BILL NELSON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. NELSON. Mr. Speaker, due to official business in my district, I was not present to vote on rollcalls Nos. 523, 524, and 525. Had I been present I would have voted "yes" on rollcall No. 523, the motion to resolve the House into the Committee of the Whole to consider H.R. 6790, the Foreign Service Act of 1980; "yes" on rollcall No. 524, the amendment that modifies the provisions of the bill regarding benefits for former spouses of Foreign Service officers; and "yes" on final passage of H.R. 6790.●

U.S. HOLOCAUST MEMORIAL COUNCIL

HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BLANCHARD. Mr. Speaker, as a former member of the President's Commission on the Holocaust and a current member of the U.S. Holocaust Memorial Council, I was especially pleased to join with 100 of my colleagues in introducing legislation to establish the U.S. Holocaust Memorial Council as a permanent body.

The Council is the outgrowth of the President's Commission on the Holocaust which was set up almost 2 years ago with the purpose of recommending a fitting memorial to victims of the Nazi holocaust and to others who have faced persecution. In its final report to the President, the Commission recommended establishing a National Holocaust Memorial Museum in Washington, D.C., an educational foundation, and a Committee on Conscience to alert the world to potential acts of genocide anywhere around the globe. The Commission also urged that "Days of Remembrance to Victims of the Holocaust" be permanently established as a time for national commemoration.

The legislation introduced last Thursday, H.R. 8081, is the first step toward making the Commission's recommendations a reality. A permanent Holocaust Council would be an appropriate body to oversee and implement the Commission's goals. The Holocaust Council now exists for a limited period of time under Executive order. It has already formed the Holocaust Remembrance Foundation, Inc. to raise funds for memorial projects from private contributions. Most of the funding for the projects recommended by the Commission will come from private sources.

It is important for us to insure that the valuable work done by the President's Commission on the Holocaust does not simply gather dust. We owe it not only to victims who perished, but also to current and future generations who must be given the opportunity to understand and learn the painful, but important lessons of the holocaust.

I urge all of my colleagues to join with the 100 members of the House who are sponsoring this legislation to create a permanent Holocaust Memorial Council.

In addition, Mr. Speaker, I would like to share with my colleagues a copy of the statement made at the swearing in ceremonies of the U.S. Holocaust Memorial Council by our distinguished colleague, majority whip, Congressman JOHN BRADEMAS. I am also including the remarks of the distinguished Chairman of the U.S. Holocaust Council, Mr. Elie Wiesel, which he made at the Council's first meeting this past May.

The statements follow:

REMARKS BY CONGRESSMAN JOHN BRADEMAS AT SWEARING IN CEREMONIES, U.S. HOLOCAUST MEMORIAL COUNCIL

I count it a great honor to participate in these ceremonies establishing the United States Holocaust Memorial Council.

President Carter has chosen some of America's most distinguished leaders to serve on the Council, and I am glad that among them are several dear friends of mine, including my remarkable constituent, Father Hesburgh of Notre Dame.

Indeed, only ten days ago I joined in welcoming to Notre Dame, where he was awarded an honorary degree, your distinguished Chairman, Elie Wiesel, who, I know, will give powerful, prophetic leadership to your efforts.

Chairman Wiesel, President Carter has charged you and the other members of this Council to undertake a mission of great difficulty but of equally great significance.

You are to establish a memorial to the victims of the greatest atrocity in history, a tragedy that defies comprehension but that nonetheless must be understood . . . and never forgotten—the Holocaust.

The memorial you select to 6 million Jews—and to other victims of genocide in our century—must recall for all who live hereafter not only the acts of savagery and inhumanity. The memorial must proclaim the indomitable spirit of both those who were murdered and those who survived; it must teach us lessons that will make impossible another Holocaust . . . for any people.

The memorial must commemorate not only the 6 million Jews and 3 million Poles who were destroyed but the Gypsies and Hungarians who were also barbarously killed.

The memorial must remind us not only of the victims but of the failure of the nations of the world—including the United States—to acknowledge what was happening.

Only last year, I visited Auschwitz and I felt again, but still more deeply, the anger and revulsion I experienced as a school boy

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in Indiana when I first learned of the Holocaust.

Chairman Wiesel, you and your Council must show us, in the face of such barbarism, how not to forget, how not to be silent.

In his letter to President Carter transmitting the report of the President's Commission on the Holocaust, of which this Council is the outgrowth, Elie Wiesel wrote, "We hope to share our conviction that when war and genocide unleash hatred against any one people or peoples, all are ultimately engulfed in the fire."

That fire must not burn again.

REMARKS OF CHAIRMAN ELIE WIESEL, U.S. HOLOCAUST MEMORIAL COUNCIL

On behalf of the United States Holocaust Memorial Council, it is my privilege to express to you, Congressman Brademas, our profound gratitude for joining us on this solemn occasion. You, Congressman Brademas, will be remembered by us, and our children, and their children.

The President's Commission on the Holocaust was sworn in some fifteen months ago by the Speaker of the House Thomas P. O'Neill. It is only fitting that its successor body be sworn in by yet another distinguished leader of the House, the Speaker Pro Tempore, our esteemed and cherished friend, The Honorable John Brademas from Indiana.

Your presence in our midst is, to us, both valuable and symbolic. You have devoted your public life to building and strengthening humanism in an era which has been preoccupied mainly with technology. Who, better than you, could understand that with the Holocaust in the background, all issues and all endeavors have moral implications? In the shadow of the burning shadows that inhabited Auschwitz, Treblinka, Babi Yar, we must affirm man's right and man's need to be measured in terms of human suffering and human compassion, and we must affirm man's right to be remembered.

Thus, for us, Congressman Brademas, no task is more urgent than the one that has been entrusted to us by the President of the United States, and now confirmed by you.

In an age tainted by violence, we must teach this generation and those who follow the origins and consequences of violence. In a society of distrust, skepticism, and moral anguish, we must tell our contemporaries that whatever the answer, it must grow out of human compassion and reflect man's basic quest for justice. The Holocaust was possible because the law had been violated by the state itself, and its principles distorted by it leaders. From the Holocaust, we have learned that we are responsible for one another. We are responsible for the past and for the future as well.

For some of us, this is the most solemn and awesome day in many, many months and, perhaps, in our lives. We are going to delve once more into the darkest recesses of our memory, only to confront a vanished universe surrounded by flames and penetrated by silence.

The living and the dead are locked together—young and old, princes and madmen, sages and wanderers, beggars and dreamers. On this day we shall close our eyes and we shall see them—an erie procession which, slowly, meditatingly, walks toward angels of death carried on wings of night into night. We see them now as you see us. We are the link between you and them. And for allowing us to be that link, we thank all those who have made this project a project of their lives. We must realize the immensity of our task.

We, here, represent a broad spectrum of the American people. There are in our midst illustrious academicians and businessmen, artists and statesmen, Christians and Jews, survivors and non-survivors. But all share a passion for truth, a commitment to memory, a dedication to justice.

Let us hope that we shall do our work in harmony; that we shall learn from one another and help one another overcome obstacles and fears that are inherent in the project itself. In spite of our various origins and vocations, let us form a cohesive group bent on bringing back to life, in words and images, in memory—in memories alone—a desperate world filled with multitudes of courageous victims, their last hopes and their despair. Our task will not be an easy one, for whatever we do, we involve burning memories. We must show the world at large that we are capable of transcending petty divergencies, that we are capable of absolute quest for justice. We must remind the world that one generation ago, six million men, women, and children—all Jews—were forsaken, betrayed, massacred. As a Jew who belongs to a tormented and traumatized generation, I do not view the memory of the Jewish victims as a forum to exclude the others. I have said it before, I shall say it again. Although all Jews were victims, not all victims were Jews. And the other way around—not all victims were Jews, but all Jews were victims.

As Jews, we therefore shall remember the others as well. Our friends who perished because they gave us shelter must be remembered. And the resistance fighters from all over occupied Europe must be remembered and will be. And we shall remember them all with gratitude. No people is, or has been, so grateful as the Jewish people. But to mix all the victims together is unfair and unjust. There was something unique—uniquely Jewish—about the Holocaust. The event was Jewish, yet the implications are universal.

To our non-Jewish colleagues here, I therefore address my humble plea: try to understand our sensitivity as we shall try to understand yours.

And to you, Congressman Brademas, we thank you sincerely, from the depths of our being, for helping us take these first steps today. And, therefore, we here pledge that we shall fulfill our mission.●

NATO ROLE OF GREECE

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BROOMFIELD. Mr. Speaker, the strategic significance of Greece to the interests of the United States and the NATO alliance cannot be underestimated. Greece's position in the eastern half of the Mediterranean makes it a vital component of NATO's southeastern flank. Greece is situated to provide essential sealane security and serves to inhibit Soviet adventurism in the Mediterranean. Moreover, Greece provides NATO with critical warning and communication facilities in addition to airbases and naval ports, including Suda Bay, which is capable of accommodating the U.S. 6th Fleet. At this time strategic installations in Greece are threatened if a new effort does not remove the obstacles blocking the reentry of Greece into NATO's military wing, which it left in protest over the Turkish invasion of Cyprus.

In this regard, I commend to my colleagues the following article which appeared in the September 5 edition of the New York Times.

GREECE SAYS NATO ROLE IS ITS PRICE FOR U.S. BASES

(By Nicholas Gage)

The long, deep harbor outside this town on the northwest coast of Crete has an anchorage almost large enough to accommodate the entire United States Sixth Fleet. The area around the harbor holds a complex of installations that forms one of the most important American military bases in the Mediterranean.

But if a new effort to bring Greece back into the military arm of the North Atlantic Treaty Organization fails, the United States is in danger of losing its Suda Bay facilities, as well as other military bases in Greece.

The Suda Bay base is a major support center for the United States Navy as well as other NATO forces. The American air station at Herakleion, also called Candia, on the north-central coast of Crete serves as the communications center for all of the Middle East, North Africa and the eastern Mediterranean, and includes an electronic listening post to monitor Soviet activities in the Mediterranean.

NEW EFFORT BY NATO CHIEF

Hellenikon, the military aircraft command base in Athens, supports installations throughout the Middle East and had a key role in the evacuation of Americans from Iran. Nea Makri, near Marathon Bay, northeast of Athens, is a major naval communications center with an electronic net that monitors all ships in the Aegean. There are also five NATO early-warning sites in northern Greece following the military activities of the Russians and the Warsaw Pact nations.

All these strategic installations will be threatened if a new effort being prepared by Gen. Bernard W. Rogers, the commander of NATO forces in Europe, does not remove the obstacles blocking the reentry of Greece into NATO's military wing, which it left in 1974 in protest over the Turkish invasion of Cyprus.

Four previous efforts, including three by General Rogers' predecessor, Gen. Alexander M. Haig Jr., failed because Greece wants to return on its original terms. But its archrival, Turkey, like every other NATO member, has veto power over Greece's reentry and insists on assuming defense responsibility over parts of the Aegean previously allocated to Greece.

The urgency of finding a solution to Greece's re-entry was increased when Athens officials said recently that they would close down the American bases if Greece was not soon allowed back into NATO's military wing on acceptable terms. The problem is especially serious because of the increasing prospect that Greece's opposition party, the Panhellenic Socialist Movement, could come to power in elections scheduled next year. A major plank of the opposition's foreign policy platform is the elimination of American bases in Greece.

The ruling New Democracy Party has concluded that if Greece is not a full member of NATO by next year the bases will be a crushing political liability. "When we face elections next year, either we have to be back in NATO's military wing or the bases must be shut down," said Foreign Minister Constantine Mitsotakis.

KEY INFORMATION CENTER

The American installations are closely tied to bases in Turkey and Italy. Herakleion is a relay station for all intelligence gathered in Turkey and a major intercept center where all coded radio communications in the area are taped and transmitted to the National Security Agency center in Maryland. It is also at Herakleion that the manifests of airline flights throughout the Middle East, the eastern Mediterranean and North Africa are intercepted as they are telexed by the airlines. Herakleion also supports air reconnaissance flights and air tanker refueling operations of American military forces, and the electronic surveillance station there monitors military activities of the Soviet Union in the eastern Mediterranean.

The Suda Bay complex would be the most difficult loss to replace, because in addition to its harbor and its role as a supply center housing fuel and ammunition for the United States Navy and NATO members, it includes an airfield that is used for staging military reconnaissance operations. Nearby, at Namfi, is the NATO missile-firing range where military training and testing exercises are conducted. From Suda Bay the movements of ships and submarines in the Mediterranean are monitored by naval aircraft. The natural strategic strength of the harbor, which frustrated capture by the Germans for weeks during World War II, is equaled nowhere else in the Mediterranean.

Nea Makri is a major link between military communication complexes in Italy and Spain for the United States defense communications system. Its intelligence center is focused northward, monitoring the Balkans, and it includes an electronic net that follows the movement of all ships in the area.

LINKED WITH THE SIXTH FLEET

The Kato Souli terminal, seven miles northeast of Nea Makri, is linked with the United States Sixth Fleet afloat and with terminals in Naples and Spain. The Mount Pateras terminal, about 20 miles west of Athens, connects Greece with a terminal near Izmir, Turkey, on the Turkish west-central coast, and with the Mount Ehedri terminal in northeast Crete and the Levkas Island terminal in the Ionian Sea, which is itself a connecting point to a terminal in southern Italy.

The Hellenikon Air Base, near the Athens airport, is used as a headquarters and support installation for other Air Force facilities in Greece. It serves as a staging point for air transport operations and as a support base for the United States military airlift command.

Mr. Mitsotakis said he had explained to Secretary of State Edmund S. Muskie that Greece had no alternative but to close the bases if it did not return to NATO. Mr. Muskie expressed understanding for Greece's views and concern about the bases.

Other State Department officials appear less worried, saying that if Greece closes the bases the United States can move them to Turkey. Other American military officials do not think that Turkey would provide a good solution. "The bases in Greece were built to complement those in Turkey," said an Air Force officer here. "Many of their functions just can't be transferred. Besides, the political instability in Turkey may soon force us to consider moving bases from there to Greece, not the other way around."●

PRIVACY PROTECTION IMPORTANT ITEM ON AGENDA FOR 96TH CONGRESS

HON. HAROLD S. SAWYER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SAWYER. Mr. Speaker, the right to privacy in our homes and offices is the keystone of our Bill of Rights. On May 30, 1980, the House Judiciary Committee approved landmark legislation to protect those rights both for the press and individuals in passage of H.R. 3486, the Documentary Materials Privacy Protection Act of 1980. This bill was a direct response to the Supreme Court's decision in Zurcher against Stanford Daily.

The implications of the Stanford Daily decision are readily apparent in a recent incident in Boise, Idaho. I believe that protecting the rights of individuals is one of the most important pieces of legislation to be considered in the remaining days of the 96th Congress.

The following editorial clearly presents a very disturbing threat which makes passage of H.R. 3486 a priority item this year.

The editorial follows:

[From the Editorial Voice of WZZM-TV, Grand Rapids, Mich.]

THE STANFORD DAILY PRECEDENT

(By George Lyons)

An outrageous supreme court decision has had exactly the disquieting impact we predicted. In the now notorious Stanford Daily Case, the high court ruled in favor of the rights of prosecutors and police to initiate raids into newsrooms to seek out evidence.

Recently, in Boise, Idaho, a prosecutor led police into a television newsroom, and, armed with a search warrant, walked off with a year's worth of video tapes. It was a fishing expedition. No specific tapes were listed in the search warrant and the station had no right or opportunity to appeal for restraint.

The prosecutor was seeking evidence regarding a recent prison revolt since a station news crew had been brought inside the walls at the request of prisoners staging the takeover.

The prosecutor took it upon himself to determine that rather than journalists, the news crew members had become agents of the convicts. Therefore, he decided any information or video tape obtained by them was, in fact, fair game. Actually, by being forced to turn over the tapes, the free press was compromised and became, instead, an unwilling arm of law enforcement.

Other similar incidents have resulted from the Stanford Daily case and immediate legislation is warranted to protect the First Amendment from such official and court sanctioned abuse. Our lawmakers are elected to uphold the Constitution so it would seem that to stem such police raids would be a high and immediate priority.

I'm George Lyons.●

AN AMERICAN FARMER MET THE SANDINISTAS AND BARELY ESCAPED WITH HIS LIFE

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. McDONALD. Mr. Speaker, many things have been reported from Nicaragua before and after the Sandinistas took over, but one of the more chilling tales I have heard is that of an American farmer, Mike Meyer. He was in Nicaragua for 4 years to help the people there. Mike had to flee for his life with his family when the Sandinistas took over. He and his family had been helping the local natives make the land arable and were beloved by them. It was only through their help that the Meyer family survived. Mike has been telling his story in service clubs around the Atlanta area. I think what he has to say ought to lay to rest the Department of State myths concerning Cuban involvement for once and for all. Therefore, I am inserting a copy of his speech in the RECORD at this point:

Mr. President, I deeply appreciate the opportunity to address the Kiwanis Club today, and I only hope that what I'm about to relate will be taken in the spirit in which it is presented.

To begin with, I wish to state that neither I nor my family have any political ties, affiliations, or special interests in the government of the United States, Nicaragua, or any other country. We are simply United States citizens, natural born, free born, and, by the grace of God, hope to die in freedom.

In the summer of 1976, my wife, Jane, my two sons, Patrick, Robbie, and myself purchased a farm in Puerta Cabezas, Nicaragua. The land was more affordable than it was here, and this Central American country has not only proven to have a stable government, but was closely alined with the United States.

We came to know, work with, befriend, and develop a deep affection for the people in Puerta Cabezas, more especially, the Mesquito Indians who comprised the bulk of the population.

We grew vegetables and planted cacao trees during our 3½-year stay, and taught the people how to cultivate their land and make it productive. We later learned that we had accomplished the impossible; nothing is supposed to grow in that area except hemp and savannah grass.

The people were now growing their own vegetables and introduced to a healthier diet which they were quite happy with. Because of this, and our genuine love for the people, we were soon labeled as exceptional gringos. We loved them, and they loved us. We were as a part of their individual families, and, for that reason, my family and I are alive today.

In the spring of 1979, we heard of British influence in the area. The English were in Nicaragua and were in the process of training a designated member of the Mesquito Indians to be the tribe's king. Please understand that these people had long wanted a king; and they loved the British people and trusted them. We later found out that the new king designate was being taken by submarine to London where he was being taught the proper way in which to rule and guide his people. All of this sounded somewhat unbelievable to us. We later found out that these "Englishmen" were, in fact, Russians who spoke the English language, and were taking the king designate not to London, but to Havana, Cuba.

Early last summer, the news came to Puerta Cabezas. The government is changing hands • • • there is nothing to fear • • • the blacks were promised supremacy • • • the Mesquito Indians were promised land and equality • • • and, all were promised running water and electricity.

In July of 1979, the forces of the new government arrived in Puerta Cabezas. There were about 130 of them. These armed soldiers were not Nicaraguan, they were not Sandinistas, nor were they American or British • • • they were, in fact, Cuban.

On July 19, 1979, our farm was taken from us, and we were put under house arrest inside a small restaurant we owned in

Puerta Cabezas. Our crime? We were United States citizens. The Mesquito Indians gathered around our restaurant for the 5 days we were held in captivity shouting "this is our mama, this is our papa" to the Cuban soldiers so as to prevent any harm from coming to us.

On the morning of July 24, 1979, a friend of ours who cooked for the people next door came in to see us. She embraced my son, Patrick, and started crying. She said we would be shot at midnight.

About an hour later, a Church of God minister came in and explained to us that life is like a candle * * * when it is lit, the flame emits democracy and socialism. But, when the flame burns down, at its base is communism. This is the way it is, and the way it must be, for it is written in the bible. About two hours later, another friend who had crossed over from the Somoza government to the new government came by. He approached my wife and most sincerely offered her the hospitality of his home for the night explaining that it might be best if she were not with us that evening. At that point, there was no doubt * * * my sons, my wife, and myself would be shot to death at midnight.

In the heat of the day, with temperatures around 110°, a flat bed truck loaded with people pulled up between the guard house and our restaurant. We were beckoned to quickly leave through the window and board the truck. These people were our friends, the Mesquito Indians. Well outside the town, we left the truck and crossed through the jungles of Nicaragua into Honduras and to safety. Our journey was not a pleasant one. We were being hunted every step of the way. During our trek to safety, my oldest son and I did things which we did not want to do, but our family's survival depended on it * * * and we did what we had to do.

Finally, we were out of the communist hell which we had left behind. We lost everything; we had nothing except the clothes on our back. We went to work farming for a Baptist mission in order to earn enough to make our way back to the United States. During this time, we learned of 5 schools, each one containing some 2,000 children ranging in age between 8 and 16 in Nicaragua. These children are not being taught the three "R's", but how to use Russian made weapons, and to kill. They are fed on an 800 calorie per day diet while at these schools. If they do not perform, they do not eat.

Eventually, we arrived in the United States on Easter Sunday of this year. On May 23, 1980, we moved to Cobb County. Last month, in a telephone conversation with a close friend of ours in Honduras, we learned that the Russians have completed two jet air strips in Nicaragua * * * one near Bonaza and Rosita, and the other in Puerto Cabezas. He tells us there are more Cuban soldiers in Nicaragua than can be counted.

While in captivity, our captors taunted us not only by pointing their rifles at our heads and pulling triggers with the chambers empty, but by joyously proclaiming they were coming to the United States. They told us how they were coming, but not when. They obviously felt secure doing this as we were marked for death.

Not quite a month ago, in a restaurant here in Smyrna, my son, who was working busing tables and who, by the way, speaks fluent Spanish, overheard a conversation involving six people. These people were from Panama, Nicaragua, Cuba, a South American country, and a United States citizen who was a pilot. The two from Nicaragua had been flown into the United States via Costa Rica under the guise of being citizens of that country. They gave every indication of being Sandinista terrorists.

On Saturday, July 26, 1980, I was convinced that instead of keeping quiet, I must relate what has happened and what is happening now to further assure the safety of my family. At the encouragement of Mr. Yow, we met with your Congressman, Larry McDonald, and related the whole story in detail. The Congressman then made a request of us. Presently, at his request, we shall go to Washington where we are to meet with members of Congress to relate the story.

The basis for his concern is that the administration has told the Congress that Nicaragua is enjoying a democracy, with few problems, and we can expect to have a close ally in that part of the world. For that reason, we are told that the Congress has appropriated several million dollars to help that country develop.

I have capsulized our story because of the time element involved. At the same time, I hope that everything has been put in proper perspective. I am not comfortable doing this, but I have been assured that by making this information public, the chances of my family's survival will be greater than it is now. I love my country. I love my freedom more than ever, because, for a short period of time, my family experienced the horror of losing it. Thank you for your hospitality.●

ROSH HASHANAH AND YOM KIPPUR

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. ANDERSON of California. Mr. Speaker, I would like to take this opportunity to remind my colleagues that this week and next mark the holiest days of the Jewish year. With sundown tomorrow begins the Jewish new year. This 2-day festivity is followed by the 10 days of repentance, culminating with the day of atonement, the most solemn day of the Jewish faith.

At the onset of a new year, one assesses past actions and decisions. As a result of careful reflection, some old directions are reaffirmed and new goals are set. As all of us here in Congress are constantly beset with having to make a myriad of decisions each day, it is gratifying to know that a period of time exists where man can reflect upon both his religious and professional ethics and his personal relationships with friends and neighbors, and with his God.

Thus, Mr. Speaker, what is written in Ecclesiastes seems particularly apt at this time of year. It says:

To everything there is a season * * * a time to be born, and a time to die * * * a time to weep and a time to laugh * * * a time to cast away stones, and a time to gather stones together * * *

My wife, Lee, and I wish our Jewish friends and colleagues a most happy new year, with the hope that they are inscribed in the "Book of Life," and that the year 5741 is the sweetest and most fruitful for all.●

PUBLIC FINANCING OF ELECTIONS

HON. BOB EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. EDGAR. Mr. Speaker, on August 21, the New York Times carried an Op-Ed piece on the issue of public financing of elections. I recommend it as an articulate discussion of a current and complex issue. I am especially interested in it because it was written by Charles Tidmarch, an associate professor of political science at Union College, who worked in my congressional office last year. I hope my colleagues will find the time to read the article.

EXTENDING PUBLIC FINANCING OF CAMPAIGNS TO THIRD-PARTY AND INDEPENDENT CANDIDATES

A major flaw in the Federal campaign-financing law is its lack of provision for advance funding of Presidential candidates other than the major-party nominees.

When Congress passed the law in 1974, there was virtually no support for public subsidy of third-party or independent candidates, and the memory of George Wallace's campaign in 1968 was still vivid.

Now, however, as even the few ardent champions of the two-party system must admit, the existing arrangements are inherently unfair to serious, responsible candidates such as John B. Anderson.

Although Mr. Anderson may speak optimistically about raising enough money to mount a respectable campaign, the chances are that he will be outspent by both of his opponents by a ratio of three to one. Worse, the Federal Election Commission has recently ruled that, unlike third-party candidates, independents are not eligible for partial reimbursement after the election.

What is most troublesome about all of this is the absence of concern about how to remedy the unfairness. While it is certainly too late to do anything about 1980, it is not too early to begin serious discussion of possible reforms.

Three critical issues must be addressed in the course of revising the system.

First, we must determine the proper mode of financing third-party and independent candidates; the principal options are the problematic direct subsidy, the low- or no-interest Federal loan, and the federally guaranteed private loan. Second, we must develop meaningful criteria for candidate eligibility; surely we do not want to encourage dozens of frivolous candidates. Third, we must ascertain an appropriate level of funding for a competitive campaign on a national scale.

The essentials of my plan are these: Interest-free loans may be offered by the Federal Election Commission to the candidate on a rolling basis as that candidate obtains access to the general-election ballot in the states. The size of the loan would be proportionate to the size of the estimated voting-age population of the particular state. The serious national candidate will of course be under constraint to qualify in most, if not all, states. Once having achieved that goal, he will find himself in a position of near financial parity with his major-party adversaries. Complete parity may be unattainable because of the considerable costs of the ballot-access drive, which might erode the loan base prematurely. If the candidate proceeds in the general election to obtain a prescribed percentage of the popular vote in each state (15 or 20 percent is reasonable), his loan for that state would be forgiven. Additionally, if the candidate achieved a somewhat higher share of the national vote, say 25 to 30 percent, the entire loan would be forgiven, irrespective of sub-par performances in certain states.

Cynics may ask what would be done if the candidate ran very weakly in a great many states and was ineligible for loan cancellations.

To begin with, acceptance of loans would not preclude continued efforts to solicit private contributions. These contributions, minus a predetermined maximum that is creditable to ballot access costs and fund-raising and legal-compliance costs, would be placed in escrow in anticipation of the "worst case"—nonqualification for forgiveness. If the candidate qualified for cancellation in each state, all of the voluntary contributions would be returned. If the candidate failed to qualify in certain states, the escrow fund could be drawn upon to repay loans. Computerized record-keeping would allow for meticulous financial management and could facilitate pro-rated refunds to each donor. The Federal Election Commission would exercise oversight.

The "gun behind the door" in this plan is the requirement of loan repayment. If nonqualification occurs and the candidate's escrow account is insufficient to meet obligations, the Government would, after a decent interval, sue for recovery of funds. This could become protracted and messy, as well as embarrassing for the unsuccessful candidate, but the possibility of such sanctions is integral to the success of the plan. The refusal or inability of the candidate to repay his loan could very well put an end to the individual's career—a forboding thought indeed.

An occasional "spoiler" or single-interest candidate might attempt to obtain the loans in order to conduct regional or single-state campaigns, but the vast majority of voters would recognize this ploy and deny their support to hopeless causes.

We should not be surprised to find states toughening the standards for ballot access so as to keep truly peripheral candidates ineligible for the loans and eventual subsidies. If this were to result in the exclusion of numerous minor parties that typically draw, in the aggregate, less than 2 percent of the national vote, it might be worth the sacrifice in order to provide the electorate with legitimate third-party and independent alternatives to the wheezing two-party system. This plan would cost millions of dollars. But how many of us are prepared to argue that the current system constitutes a great political bargain?●

FORMER AMBASSADOR GIVES HIS VERSION OF WHO LOST IRAN

HON. ROBERT E. BADHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BADHAM. Mr. Speaker, vacillation and ineptness are terms that have been employed in an effort to describe President Carter's foreign policy, or lack thereof. The failures of the Carter administration, as they pertain to Iran, are clearly put forth in a recent article by William H. Sullivan. As the U.S. Ambassador to Iran during the fall of the Shah, Mr. Sullivan's account of what took place should not be taken lightly by this or any other body.

The Sullivan article describes how the U.S. Government undermined and subverted the Shah's regime. Mr. Sullivan's statements add to the mounting evidence that the United States, through its actions, hastened the Shah's fall from power, which in turn has thrown the entire Persian Gulf area into turmoil and the world that much closer to war.

I ask that my colleagues take a few minutes out of their day to read the Sullivan article and discover the Carter administration's lack of understanding in the foreign policy arena. After absorbing the contents of this article, can any American cry out for "4 more years?"

I insert the Sullivan article at this point in the RECORD:

ZBIGNIEW BRZEZINSKI ASKED IF I COULD ARRANGE A MILITARY COUP

(By William H. Sullivan)

In 1925, when Reza Khan founded the Pahlavi dynasty, Persia was a country in name only. The writ of the Qajar Shahs had run little beyond the limits of Tehran. Regional, local and tribal chieftains ran the rest of the country just as they had in most of the 19th Century, when they were manipulated by Russian and British agents, as the two contending empires played their "great game" across the entire sweep of Southwest Asia.

During the first 15 years of his regime, Reza Shah, often at the head of his own troops, enforced and established his authority through all the country, which he renamed Iran to stress its Aryan origins and to distinguish it from its Hittite and Semite neighbors. He acquired a number of enemies among his countrymen in the process but on the eve of World War II, he had restored his nation's integrity and independence in a form that it had not known for centuries.

Then, just as this achievement took form, it was snatched away when British and Soviet forces invaded and occupied Iran, dividing it between them for the duration of the war and replacing the deposed Reza Shah with his 21-year-old son, Mohammed Reza Pahlavi. With this history, the young man matured into a ruler who was preoccupied with restoring and maintaining the integrity of Iran, and who shared the Iranian xenophobia with respect to all foreign states.

In recent years, the United States has come to depend upon the Persian Gulf for 30% of its oil imports. Western Europe's dependency is over 60% and Japan's is over 70%. Therefore, the integrity and independence of Iran have become of significant importance to the United States and to its allies. Conversely, in strategic terms the disintegration of Iran or its economic dependence upon the Soviet bloc would represent a major gain for the Soviet Union.

Consequently, the policy of the United States in an Iranian crisis should have been guided primarily by concern for the preservation of the territorial integrity of that nation and its independence from Soviet control or manipulation. Other concerns, such as the well-being and the political as well as the human rights of the Iranian people, should also have been of importance in view of America's long-standing association with Iran.

The crisis that came in 1978 developed rapidly, but not so suddenly as to have precluded a careful assessment of U.S. options and the formulation of a policy to enhance American interests. But to decide among those options required a mature understanding of the nature of the revolution that was sweeping Iran in 1978 and the factors that contributed to its rapid success. It was far more complex than the simplistic Islamic revolution label accorded it by much of the press.

Rather, the 1978 crisis was an uprising that was joined by all the enemies of the Pahlavis. These included the old aristocrats from the Qajar regime—the feudal landholders who had lost their villages in the land-reform programs; the social democrats who had been suppressed with Prime Minister Mohammed Mossadegh in 1953; the bazaaris—the traditional merchant class—who felt left out of the shah's industrialization program; the young, rootless industrial workers who had never been able to adjust to their vagrant life in the cities; the various radical Islamic groups such as the Mujahadeen and the Fedayeen; the separatists in Kurdistan, Azerbaijan and elsewhere; the old tribal chieftains who flocked back from exile; the pro-Soviet communists of the Tudeh party; and the other communist groups who eschewed Moscow's direction.

All of these opponents of the Pahlavi dynasty, for their own individual reasons, were willing to band together for the purpose of overthrowing the shah. All were under the ostensible leadership of the Ayatollah Ruhollah Khomeini, who, fired by his own personal animosity toward the Pahlavis, was able to give the movement the coloration of a religious crusade.

The American embassy in Tehran attempted in its reporting to convey the complex and negative nature of this revolution and to express the view that the direction Iran would take in a post-shah period was far from preordained. I believe the State Department, in general, understood and accepted those reports. There were, however, those at the State Department who were so strongly opposed to the shah because of the human rights abuses of his regime that they wished to see him collapse no matter what the consequences for the United States or its allies.

Therefore, when the State Department advanced the view that the shah's regime would not survive, there were many others in the Washington bureaucracy, particularly on the National Security Council (where the revolt was simplistically believed to be an Islamic revolution), who attributed the State Department's perception, and indirectly that of the embassy, to an expression of wishful thinking on the part of those whose vision was blurred by their zeal for human rights.

This division in perceptions within the Washington bureaucracy also extended to the nature of instructions that were sent to the embassy or, more often, to the absence of any instructions whatsoever because the bureaucracy could not agree upon their terms. Most significant in these divisions was the difference in perception about the shah's willingness to use force to suppress the revolution.

Time and again the shah told me that he would not use force because a "king cannot murder his own people." With what I regarded as more convincing logic, he told me that if he used force, he could suppress the spreading revolution only as long as he himself lived. Since he reckoned his mortality in a short time frame, he felt the suppressed forces would blow up in the face of his son, and the dynasty would, in any event, be blasted away.

In Washington, these embassy reports were apparently received with divided conclusions. The State Department—and eventually the Central Intelligence Agency—accepted them objectively and believed the shah would follow a policy of concession

rather than force. Other elements of the bureaucracy, led by National Security Adviser Zbigniew Brzezinski, apparently thought that I had abandoned 32 years of professional objectivity and was subjectively tailoring my telegrams to fit what they conceived to be the mood of the State Department.

In this pernicious atmosphere, U.S. policy formulation broke down. By November 1978, Brzezinski began to make his own policy and established his own "embassy" in Iran. That embassy materialized in the person of Ardeshir Zahedi, the shah's ambassador in Washington, who returned to Tehran at Brzezinski's behest with the explicit mission of pulling the shah's resolve together so that he could suppress the revolution. Zahedi arrived on the scene full of zeal and confidence. He saw the shah frequently and reported daily (on the open international telephone monitored by the Soviets) to Brzezinski. He also began to telephone reports to me, but I soon preferred to see him at his home to better evaluate what he was saying and doing.

The shah continually told me to warn Washington not to pay attention to Zahedi because he did not understand the current situation. Naturally, my reports of this warning served only to deepen the divisions and heighten the suspicions that beset Washington at that time.

The confusion also contaminated the Iranians. Brzezinski reportedly encouraged Zahedi to urge the shah to use force. These messages were doubtless embroidered in being relayed to their high destination. When the shah turned to me for confirmation of these appeals, I could point only to platitudinous cables that leaned toward concession.

Matters came to a head in mid-November. A military government, headed by Gen. Gholam Azhari, had been installed on Nov. 5, 1978, after rioting and arson had left Tehran in a shambles. On Nov. 9 I sent a message to Washington saying that this was the last chance for the shah to control the revolutionary process. If this government failed, I stated that we should anticipate the collapse of the shah and look for alternate means to protect and preserve our interests. I defined those interests in terms of the territorial integrity and independence of Iran and said that, given the nature of the revolution, the only instrument that could advance those objectives was the armed forces.

We should act, therefore, to preclude the armed forces from being chewed up in the revolution. Because of our special relationship, we should determine whether we could broker an arrangement that would permit the armed forces to remain intact. They would have to be under the direction of a government that would enjoy the support of the groups that wou'd prevail after the success of the revolution and that would have the blessing of Khomeini. I anticipated (correctly, as it turned out) that the first government to emerge from the shock of the revolution would be headed by Medhi Bazargan, a benevolent social democrat.

I never received a reply to this fundamental message. Instead, it soon became apparent that my views were no longer welcome at the White House. Emissaries of various types began to arrive from Washington to assess the situation *de novo* and to encourage the shah to use force.

On Dec. 20 the leader of the military government suffered a heart attack, and the situation that I had anticipated on Nov. 9 came to pass. As if to underline this fact, Azhari summoned me to his sickbed to tell me that the regime was lost "due to the indecision of the king." I duly reported this to Washington and then went on to say that I intended to move along the lines I had recommended in my cable of Nov. 9. There were no instructions to the contrary, and so I began to steer the embassy through a series of actions that sought to establish the ground rules under which the Iranian armed forces, purged of some of their more controversial leaders, would be accepted by a Bazargan government.

At the same time, we sought to determine on what terms the armed forces would accept such an arrangement. Detailed understandings were reached between the armed forces and revolutionary leaders in Tehran: A number of senior officers would have been allowed to leave the country with the shah, and a transfer of allegiance of the remaining armed forces would have been made in a way that would have preserved their integrity. Because the United States controlled the logistics for all sophisticated elements of the armed forces, there were means to assure the implementation of these arrangements.

About this time, the internecine squabbling in Washington began to impinge upon my communications. I began to discover that any sensitive message I sent, no matter how highly classified, that digressed from the views of the National Security Council staff would appear, almost verbatim, in the New York Times. I therefore had to use the secure telephone exclusively to communicate with the State Department.

When plans for the peaceful transfer of military authority had sufficiently matured and when the shah had decided to leave the country and hand over a fig-leaf of authority to a government headed by a man he despised—Shahpour Bakhtiar—I felt it was important that the nature of the proposed transition be discussed with and understood by Khomeini, who was in Paris. This was especially important because Bakhtiar jauntily took the position that he, rather than Khomeini and the victorious revolution, would excerise governmental power despite the fact that he had no constituency and no popular support.

Accordingly, I proposed that an authoritative emissary be sent from Washington to consult with Khomeini. We already knew from contacts with his entourage that he was concerned about bloodshed between the revolutionaries and the armed forces when he returned to Tehran after the planned departure of the shah. We also assumed that he had given general sanction to the arrangements we had made with the revolutionary leaders in Tehran, but felt it was important that we have his first-hand acceptance of these understandings.

I discussed this suggestion on the secure telephone directly with Secretary of State Cyrus R. Vance. He approved the general idea and then sent me, by a system called secure telecon, a talking paper for use by our emissary. When I had agreed to its terms, he then instructed me to discuss the entire enterprise with the shah, whose departure was less than two weeks away. After I received the shah's acquiescence, Vance informed me that he had selected as our emissary Theodore Eliot, the inspector general of the Foreign Service, former ambassador to Afghanistan, former economic counselor in Tehran, and a fluent Farsi linguist. I applauded the choice. Here was a man who understood Khomeini and the nuances of the Iranian situation. He could convey in a forceful manner the full dignity of American purpose as well as American sincerity.

I then turned my attention toward a refinement of plans for the evacuation of American officials and civilians. I believed the revolutionary transition could occur peacefully and therefore exercised considerable selectivity in choosing those Americans who should leave because of their association with Pahlavi-controlled enterprises, and those who might stay because their presence would be needed to help the new regime in its economic and security programs.

During the first week of January, I received an urgent nighttime message from Washington informing me that the Eliot mission had been canceled and that President Carter had directed that the shah be so informed. The President, who had stayed in Guadeloupe after the economic summit meeting with West European leaders to do some deep-sea fishing, was accompanied in his retreat only by Brzezinski. I sent an impassioned reply to the secretary of state imploring reconsideration and stating that cancellation of the Eliot mission would be an "irretrievable" mistake. I received a curt rejection that cited all the cabinet officers who agreed with the President. When I told the shah, he reacted with incredulity and asked how the United States expected to influence "these people," if it would not even deal with them.

As far as I could determine, the United States, on the eve of the shah's departure, was left with no policy. I immediately thought of all the American citizens who would be caught up in the confrontation that would result if no arrangements were worked out for a peaceful transition. We had to move immediately from a situation in which we foresaw a controlled transfer of power to one in which I could perceive nothing but chaos, for the shah had already fixed the date when he would swear in Bakhtiar as prime minister and then leave the country.

However, I overlooked the Brzezinski factor. It appears that he had a plan in mind. He had already sent to Tehran Gen. Robert Huyser, deputy commander of U.S. forces in Europe and deputy to Alexander Haig, supreme allied commander in Europe. I had used Huyser frequently in the past to help us guide the Iranians in the restructuring of their armed forces' command-and-control system so that they would be able to utilize some of the sophisticated equipment we had sold them. When it was proposed that Huyser came to Iran at the time of the shah's departure, Haig telephoned me on the secure line to say that he was opposed to the mission and would resign if it were undertaken. It was undertaken, and he resigned.

Huyser, every inch a straightforward good soldier, arrived in Tehran somewhat flustered by the nature of his mission and by Haig's resignation. He moved in with me, and we shared all our message traffic and our common concerns. We did not always agree. But when we differed, we did so openly and with due respect.

Huyser's mission, as described in the brief official order he received, was to assist in maintaining the integrity of the armed forces and in transferring their loyalty from the departing shah to the Bakhtiar regime.

Parallel to this order, I received terse instructions telling me that the policy of the U.S. government was to support the Bakhtiar government without reservation and to assist its survival. I replied by pointing out that the Bakhtiar government was a chimera that the shah had created to permit a dignified departure, that Bakhtiar himself was quixotic and would be swept aside by the arrival of Khomeini and his supporters in Tehran. Moreover, I argued that it would be feckless to transfer the loyalty of the armed forces to Bakhtiar because this would cause the destructive confrontation between the armed forces and the revolutionaries that we hoped to avoid. It would result in the disintegration of the armed forces and eventually in the disintegration of Iran. It would be directly contrary to U.S. interests.

By this time, my exchanges with Washington had become increasingly acerbic. The reply I received to this message, in my judgment, contained an insulting aspersion upon my loyalty and instructed me, in no uncertain terms, to support Bakhtiar no matter what reservations I had. At this point I decided, like Haig, to resign. However, I still was responsible for protecting about 15,000 remaining Americans in the face of enveloping chaos. I therefore quenched my Irish temper, sent my wife out of the country, prepared for the worst, and delayed my resignation until after the anticipated holocaust.

As the confrontation between Bakhtiar and Khomeini quickened, Huyser received continuing instructions to prepare the armed forces for conflict in defense of the Bakhtiar regime. On the basis of his observations, he offered to Washington his opinion that in such a confrontation the armed forces would prevail. But he always tempered this observation by stating that I disagreed and that I believed the army would disintegrate when ordered to fire on revolutionaries, some of whom were relatives of the soldiers. As a result, their arms would be dispersed throughout the whole tangled and conflicting fabric of the revolutionary forces, making it impossible for the Bazargan government to assume quick and effective control when it inevitably took over.

The armed forces understood this also. When Gen. Abbas Gharabaghi, their commander-in-chief, decided to resign, Bakhtiar, who had been assured by Washington that I was under instructions to support him, called me into the actual meeting during which Gharabaghi attempted to submit his resignation. Like two characters in a Greek tragedy in which both knew the futility of their actions, I remained true to my ambassadorial oath by urging the general to withdraw his resignation, and he agreed to do so. It was a sickening performance for both of us.

Within a matter of days, the confrontation we had feared took place. It began when the junior air force officers and enlisted men at the Doshen Toppeh Air Base mutinied and overwhelmed an imperial guard armored unit. The captured tanks were turned on the headquarters building of the armed forces where many U.S. military officers, including the general in charge of the Military Assistance Advisory Group, were stationed.

Well into that night, I worked with our contacts among the revolutionaries to arrange for the extraction of these Americans from the bunker in which they were trapped. Just as I was at the point of achieving their rescue, I received a telephone call in the clear over the international circuit from Washington relaying a meassage from Brzezinski who asked whether I thought I could arrange a military coup against the revolution. I regret that the reply I made is unprintable.

Thus, chaos descended on Iran. The armed forces disintegrated, their weapons fell into the hands of all those disparate elements in the revolution who in turn fell to fighting among themselves once the shah had gone. Bazargan and his government had no means to enforce order; and Khomeini, in his desire to remain the nominal leader of the revolution, would issue no directions that would be substantially disobeyed. This situation meant that the extremists would be able to set the pace, and in most matters, that has been the pattern ever since. The disintegration of the nation is well advanced and a growing economic dependence on the Soviet Union has begun.

I have no way of stating categorically that the road not taken would have averted what has happened in Iran. But perhaps I can end this article by quoting Bazargan from an interview that he gave to Italian journalist Oriana Fallaci: "Then think of the deplorable state in which the army, police and security forces find themselves, all of them indispensable bodies for establishing law and order . . . . The revolutionary committees and the revolutionary guards cannot perform their duties because they're not trained, they quarrel among themselves and they refuse to take orders from us . . . . I say that these are things that would paralyze any government."●

CONGRESSMAN CLAUDE PEPPER—A GREAT LEADER AND AMERICAN TURNS 80

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BIAGGI. Mr. Speaker, yesterday a number of my colleagues observed the birthday of one of our most illustrious and beloved colleagues, Congressman CLAUDE PEPPER of Florida, who is now 80 years young.

CLAUDE PEPPER is a multigenerational legend in Congress. He began his service during the time of Franklin Roosevelt and four decades later continues to be one of the most active and important Members of Congress.

My association with CLAUDE PEPPER has been an especially meaningful one, encompassing 12 years. For the past 5, we have worked extremely close together as original members of the House Select Committee on Aging. CLAUDE PEPPER has been the only chairman our committee has ever had. In my congressional career rarely have I seen a Member commit himself as completely and effectively to an issue as CLAUDE PEPPER has to improving the quality of lives for America's senior citizens.

This commitment has been manifested through a number of landmark legislative accomplishments. Perhaps the most important one is the one CLAUDE PEPPER is the most proud of—the legislation ending mandatory retirement at age 65. What better proof is there than CLAUDE PEPPER at the age of 80—active, contributing on a daily basis in Congress, that mandatory retirement is wrong. It has been because of CLAUDE PEPPER's leadership that older Americans can be judged on their abilities not their age of employment.

To pay tribute to CLAUDE PEPPER is to pay tribute to a friend, and for many in this Congress, a true inspiration. His vast experiences in public life make him one of the most invaluable Members in the Congress. Yet he is also a man with a vision for the future—a future when the number of other young people like himself will increase rapidly. CLAUDE PEPPER worked closely with me in developing a special Aging Committee report on the "Future Directions for Aging Policy—A Human Service Model." The chairman was especially interested in the year 2000 and how well our Nation will treat its older citizens. I expect that CLAUDE PEPPER will be here to see the year 2000 which will also happen to be his 100th birthday.

CLAUDE has our affections on his 80th birthday and our respect always.

I wish him continued good health and productivity.●

HOLY REDEEMER PARISH TO CELEBRATE ITS 40TH ANNIVERSARY

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. KILDEE. Mr. Speaker, on September 14, Holy Redeemer Catholic Church of Burton, Mich., will celebrate its 40th anniversary. The anniversary Mass will be celebrated by the Most Reverend Kenneth J. Povish, Bishop of Lansing, and by

Holy Redeemer's pastor since 1970, the Reverend Sylvester L. Fedewa.

Holy Redeemer received diocesan approval on September 10, 1940, and its first pastor was the Reverend Louis P. Gauthier. The first two Masses were celebrated in a theater. Father Gauthier's residence and the old Bendle School also were utilized for Mass in those early days. Ground was broken on July 25, 1941, for the new church, and Mass already was being celebrated there by Christmas Day.

Father Gauthier was tirelessly dedicated to the spiritual welfare of his parishioners, and under his leadership as pastor from 1940 to 1957 he built not only the church but also the parish school and convent, both of which were completed in 1946. Like most of the rest of the parish buildings, the convent was built mostly with parish labor, with Father Gauthier recruiting parishioners laid off from the General Motors plants. The elementary school opened with teachers provided by the Sisters of the Holy Cross, with more grades being added as the school and parish grew until Holy Redeemer graduated its first high school class in 1956. The high school was discontinued in 1970 when the Luke M. Powers Educational Center was opened.

When Father Gauthier passed away in 1957 he already had begun construction of the present church building. It was completed under the pastorship of the Reverend John A. Blasko, with the first Mass being celebrated there in November 1959. Later, a new rectory and convent also were built, both being completed by 1968.

In his letter of congratulations to the parish on the occasion of its 40th anniversary, Bishop Povish noted the many years of community service provided by the parish since its founding and its confident future. Under Father Fedewa's pastorship, faith and deep

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social concern continue to grow in this area of Genesee County.●

ANNA RAMIREZ

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. ANDERSON of California. Mr. Speaker, as you and the rest of our colleagues know, turbulence in congressional offices is high. We accept that, as to get bright young men and women at the salaries we pay them, we cannot expect to keep them forever. But, once in a while we are blessed with a degree of retention and longevity of a key staff person that provides us with the continuity and stability necessary for an efficient office. But, at the same time, we all recognize that some day that person will leave—and that has just happened to me. The person I am speaking of is the lady who has been my strong right arm, my confidant and adviser on many matters, and my district representative, Anna Ramirez.

Anna M. Ramirez started working with me during my first campaign for Congress back in 1968. She has been with me ever since, first as a volunteer on my campaign staff, and then on my district office staff. From observing her early work in the office, her talent, dedication to her duties, and willingness to work long hours rapidly became evident. As a result, I made her my office manager in 1971 and my district representative in 1975, a position she has occupied ever since. And, I might add, occupied it in a most distinguished manner. During this period, in addition to her office duties, she attended night school and earned her undergraduate degree.

Anna has been able to establish a truly magnificent rapport with all elements of the widely divergent ethnic communities that I represent. She treated everyone who came to my office seeking assistance or advice with an even hand—be they black or white, Hispanic or Yugoslav surnamed, deckhand on a fishing vessel or president of a bank, they were all made to feel equally at home and received the same courteous treatment.

But Anna did not limit her activities to my own office. She was widely recognized, not only throughout the local South Bay area, but throughout the State for her talent and ability. I would like to share with you just a few—and I emphasize a few—of her many appointments, designations, and other activities, and some of the accolades she has received. And, before I forget, as a part of or maybe I should say as an adjunct to her public life, Anna has been mother of four. And her offspring reflect the same interest in the community as do their mother and father, her husband, Arnold.

In 1973, she was named "The Hispanic Woman of the Year." In this same year she was presented with a certificate of commendation by the Los Angeles County Board of Supervisors for "Dedicated Service to the Affairs of the Community." This award was followed in 1974 by her receiving "The Golden Tortilla Award" for outstanding services to the Spanish-speaking community. In 1975, the mayor and the city council of Los Angeles presented her with a certificate of appreciation for "Outstanding Citizenship Activities Enhancing Community Betterment." And as a logical follow-on to this award, she was appointed by the Governor a commissioner on the California Fair Employment Practices Commission, a position which she still holds.

She has been a delegate to two White House Conferences, in 1968 the White House Conference on the Needs of Spanish Speaking Persons, and in 1970 the White House Conference on Children. She has represented her country internationally as a delegate to the United States-Mexico Sister Cities International in 1974.

Always active politically, in 1973, she was elected the first chairperson of the California State Democratic Chicano Caucus. In 1979 she was elected secretary of the State Democratic Party, and that year was also appointed cochair for Delegate Selection to the Affirmative Action Committee of the California Democratic Party. She is currently the State president of the Chicano Political Caucus.

One of the most valuable services she has performed while in my office has been that of training new staff persons, not only in the normal office routine, but more particularly in how to deal with constituents and how to recognize the various problems that are bothering people when they come to the office. For her, there was no such thing as a trivial problem—if it was a problem to the constituent, then it was a real problem that we had to solve. And I think it is noteworthy that every one of the individuals she trained has left my office and moved on to a position of greater responsibility and higher remuneration.

I know that having heard of all of her accomplishments, you may wonder why I am letting her go. As a simple matter of fact, I have no choice. Anna and her husband recently invested in a new business venture, and this is proving so successful that they are having to devote more and more time to it. And Anna Ramirez is not a person who will do anything halfway. She has recognized that she cannot give my office her full support and at the same time run her business as she wants to run it. Much to my regret, the business has won out.

I know I speak for myself and for many thousands in the South Bay area whom she has helped, either directly or indirectly, when I say that she will be sorely missed from her present position. And, I am equally sure, that I can speak for those same individuals as well as for my wife Lee and myself in wishing Anna and her husband, Arnold, her son Tom, and her two daughters, Barbara and Judith, the very best in the future. While you may be gone, Anna, to use the old cliche, you certainly will not be forgotten. And in a newer vein, "Baby, you've got a long way to go."●

A TRIBUTE TO THE HARRISON LIBRARY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. OTTINGER. Mr. Speaker, for over 75 years, the Harrison Public Library has served both Harrison and its surrounding communities. It has been a meeting place for both young and old, and its outreach programs have touched the physically and mentally handicapped.

On October 13, along with several of my esteemed colleagues from Westchester, I will have the distinct honor of joining with my friends at the library to celebrate their diamond jubilee.

The library has reason to celebrate as does its dedicated staff and a town committed to the advancement of learning.

However, the Harrison Library refuses to stand still and look back on its accomplishments. Rather, it is committed to continued growth, learning, and scholarship. And, if its past is any indication of its future, the next 75 years will be even more fruitful for the library than its first 75.

The following statement indicates that, on its diamond jubilee, the Harrison Library has achieved an extraordinary level of excellence.

HARRISON PUBLIC LIBRARY AND WEST HARRISON BRANCH 1905-1980

The Library today known as the Harrison Public Library has given proud service to Harrison for seventy-five years. Founded December 15, 1905 as the Harrison Free Reading Room, it became the Harrison Free Library by Charter granted by the Regents of the University of the State of New York on September 25, 1913, and its status changed again on September 23, 1955 when it was chartered as the Harrison Public Library. Finally, on December 15, 1967, the Absolute Charter was granted by the Regents, and in that year too, the Silver Lake Free Library was incorporated with the Harrison Public Library and together proclaimed the Harrison Public Library and West Harrison Branch.

Known for their outstanding public relations and service to the community, the Main Library and Branch were awarded the B'Nai B'rith Brotherhood Award in 1974; in 1978, the Westchester County Recreation and Park Society honored the Children's Librarians of the Harrison Public Library with a Public Service Award for outstanding programming in the community in cooperation with the Harrison Recreation Department. Although these were very visible rewards, the dedicated staffs of both libraries perform their duties day in and day out without thought of such recognition. They love their work for the people they serve and they love Harrison. It is the aim of every library employee to make their library users feel this is their library, and indeed many people in the community make it their "second home."

The Main and Branch libraries are proud of their fresh-looking clean collections, for being known for the new and timely book and for their current Italian and Japanese bookstock. They are known, too, for their programming, particularly for the children, while for the adults there are monthly art exhibits and displays, the well-known third Thursday of the month travel programs (now going into their eighth year), and for their ability to reach out into the community to serve the schools, the senior citizens and the handicapped.

In the last decade the Main Library has doubled its circulation, while in the Branch it has quadrupled. In 1976, 1977 and 1978, the Harrison Libraries were seventh in circulation in Westchester out of 38 libraries. In 1979, they were sixth, a success story of quality service and public relations.

One of the main functions of the Harrison libraries is to bring people together. There are fine opportunities for a cross-section of the community to meet on common ground (other than in the supermarket) to discover the riches of the library and to share them with each other. There is constant awareness of the many interesting and knowledgeable people who carry library cards, and whose lives are enhanced by meeting one another, for these are the opinion leaders of the community.●

CANCER—WHY DOES THE UNITED STATES BLOCK THIS NEW TREATMENT PROGRAM?

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. McDONALD. Mr. Speaker, I have placed several items—see pages 23083, August 25, 1980; 23091, August 25, 1980; 22563, August 21, 1980; and 28610, September 9, 1977—in the CONGRESSIONAL RECORD in support of my bill, H.R. 7963, to assist Dr. Lawrence P. Burton in bringing his cancer treatment back to the United States for a fair hearing. In support of what some of us are doing the editorial page editor of The Day of New London, Conn., wrote a very fine editorial on Dr. Burton and what we are trying to accomplish. It is included in the RECORD for the edification of my colleagues at this point:

CANCER—WHY DOES U.S. BLOCK THIS NEW TREATMENT PROGRAM?

Cancer wears no political label. It afflicts people of all philosophies, all age and ethnic groups in every economic circumstance and heedless of geography.

Today's society has no greater medical enigma than the control of this disease. Yet, although cancer is a medical issue, it calls for far-sighted political decisions. The federal government has an obligation to encourage cancer research, both pure and applied. It also is involved because some of its own regulations actually impede research.

A number of congressmen are actively exploring the needs and attempting to find solutions, among them Rep. Christopher J. Dodd of Connecticut.

Rep. Larry McDonald, a physician who represents the district around Marietta, Ga., recently introduced a potentially valuable bill, H.R. 7936. It is direct and to the point: "That during the five-year period beginning on the date of enactment of this act the blood fractions used in the immuno-augmentation therapy by the Immunology Researching Centre, Limited, of Freeport, Grand Bahama Island, Bahamas, shall not be considered to be a drug for purposes of the Federal Food, Drug and Cosmetic Act."

Many have heard of the center's work either from those Americans who have undergone treatment there or from the CBS-TV program "60 Minutes," which described it last May.

Its director is Dr. Lawrence Burton, a researcher who works with two physicians at the center. Burton's work is conceded to be in the experimental stages but it is based on 20 years of mouse cancer studies and in the recent past has employed its findings in treating human victims.

One of Dr. Burton's few supporters in the U.S. medical community, Dr. John Thurston Beaty, an internist who practices in Cos Cob, describes the program thusly: "He (Burton) does not consider it a 'cure', but a significant help to the natural cancer defense system we all have. Therefore, if the disease is not too far advanced and if previous treatment has not too severely impaired the patient's own immune mechanism, in many cases (I would estimate about one-half), this treatment can bring the disease under control. So far, it has not been possible to predict with certainty which patients will do well, but certain types of malignancy appear to respond better than others."

The process involves, in Beaty's words, "receiving numerous small, carefully calculated injections of non-toxic extracts of human blood, in the attempt to maximize each patient's own immune defense systems." The extracts come from fractionating (breaking down) small quantities of the patient's own blood and reintroducing the appropriate ones into his system. Burton has identified three separate fractions which can be used for this purpose. Follow-up treatment, much of which can be done by the patient at his own home after discharge from the clinic, examination and treatment are essential.

Neither narcotics nor chemotherapy are involved. Yet, under the present interpretation of the Federal Food, Drug and Cosmetic Act, this treatment is not permitted in the United States. There has been strong and organized physician resistance to it here. Ironically, however, Burton began his work in animal experimentation on Long Island before being forced to go to the Bahamas to treat patients.

The treatments are not inexpensive. Generally, they are not covered by government or private health insurance. But they do represent an avenue of hope for those with diagnosed cancer.

They also represent a forward step in the understanding of how the body's cells interact. A growing number of medical researchers are looking to development of cell research to improve chances of successfully dealing with cancer.

Federal Food and Drug laws are necessary to prevent quacks and magic potions. And certainly it is inhuman and downright cruel to offer cancer patients false hope. Dr. Burton's work does not fit into these categories by any stretch of the imagination.

People who have cancer ought to have some degree of freedom of choice as to treatment. But even if the patient's physician agrees with the Burton approach, it cannot be used in the U.S. The Burton program, which is constantly being refined and improved as knowledge expands, cannot be characterized as drug-related, and this raises the question of why the Federal Food, Drug and Cosmetics Act should deny Americans its benefits.

Congressman McDonald's bill offers a way to allow Dr. Burton to return to his homeland, the better to share what he has learned in years of successful research and treatment.●

AUSTIN HIGH SCHOOL—A PROUD 100 YEARS

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. PICKLE. Mr. Speaker, the city of Austin, Tex., is a center of education. Austin, of course, is the home of the University of Texas, along with other colleges and universities. The city has a total college student enrollment of over 50,000.

But Austin is also known for its excellent public school system, which has its own distinguished history. This Friday, that history will come alive at an event kicking off the centennial year of Austin High School, the city's first institution at the secondary level.

As the capital city of Texas, Austin's school system was the first in the State which operated with public funds, back in 1876. High school classes were conducted from the outset, but the first local school board was elected in 1880, and high school classes under local control opened for business September 12, 1881, with 48 students. It is this occurrence we are celebrating to kick off the centennial year of Austin High this Friday.

For decades, Austin High School was Austin's only secondary institution. The name Austin High School identified the school until 1953, when the school board adopted the name Stephen F. Austin High School after the city's namesake and first Texas settler. By contrast, students are attending classes in nine high schools in 1980.

Austin High is prominent not only because of age, but because of its tradition of academic excellence and the caliber and prominence of its graduates. Some 28,000 people have graduated from Austin High School. The sons and daughters of Governors and other State officials have sat side by side with the children of old Austin families, along with newcomers to our city. Austin High has produced thousands of leaders who have become prominent in their own right.

But Austin High is more than just a tradition. This Friday's assembly kicking off several centennial events is more than a study in nostalgia. The continued flourishing of Austin High is a real example of democracy at its finest. One of the tenets of our democracy is our strong public school system, providing education to people

of all races, backgrounds, and social strata. The public school system has given young people the opportunities to excel and find their own places in society.

Across the decades and throughout the challenges, Austin High School has stood as a bedrock of public education, upholding the concept which began as a revolutionary byproduct of our State and country, but which is now one of our most cherished institutions.

We salute the students, faculty, and parents of Austin High School, as well as the thousands of graduates whose lives were enriched by the education received at this institution, which will soon begin its second hundred years of service to Texas capital city.●

A NATIONAL MATERIALS POLICY

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. RITTER. Mr. Speaker, last December the House passed H.R. 2743, the National Materials Policy Research and Demonstration Act, by a margin of 398 to 8. This wide margin indicates, in my view, the great importance placed on this legislation by the Members of this body. And rightly so, for there are few areas of greater importance than assuring that the United States have an adequate supply of certain vital materials such as iron, cobalt, nickel, tin, steel, tungsten, and numerous others. This legislation would help assure a future supply of imported materials vital to American industry. Currently, H.R. 2743 is pending in the Senate Energy Committee and floor action is expected later this year.

Recently, I spoke with Mr. E. F. Andrews, who is the vice president of materials and services with the Allegheny Ludlum Industries, Inc., and a recognized authority in materials policy. I would like to share with my colleagues the text of an address Mr. Andrews gave before the American Society of Metals in Washington on September 4, 1980.

Statement of Mr. E. F. Andrews follows:

A NATIONAL MATERIALS POLICY

I have devoted most of the last 30 years working in and being concerned about the materials supply problems of my company and my country. For many years I have been calling for a national materials policy and a higher profile on this general subject. I believe it is finally beginning to move to the top of the national agenda, and I am very pleased to have it do so. In the past decade, we have gone through the National Materials Policy Commission, National Commission on Supplies and Shortages, and now, the interagency study of the materials problem.

I recognize that there are some authorities who are concerned that we may be consuming basic resources of this world at a faster rate than we should. I do not wish to get into that argument; however, I am one who believes that the world is not really running out of raw materials. It has been said that the first pound of copper ever discovered in this world is probably still here somewhere. Of course, all and everything is finite. If somehow or other, we consume or destroy until there is no place to stand on this planet, then I guess we could say the raw materials are gone. But I do not believe that is within our time frame of thinking. I do not anticipate that we are likely to encounter any serious natural constraints on the existence of raw material, at least in the next 25 to 50 years and possibly 25 decades. In the case of those raw materials that may run out, if there are any, we will merely let the system work as we reach deeper into the bowels of the earth for less yielding ores. Costs will rise. As the cost to extract these materials rises, the price to the consumer will rise. As the price rises, consumers will be forced to design away; and by the time the supply is exhausted, the need for the product will be gone also. It really is a self-correcting system, if we will just let it alone and let it happen.

Let me say further here that I am fully aware that research and technological breakthroughs will also affect the future. Think of what frozen foods did to cut down the need for tin cans; what satellite communications did to cut down the need for copper wire. We could look to the ocean bed or to the moon's surface to bail us out of the long-term and mid-term needs but to count or plan on those things would be, I think, too risky. As I have said, I really do not think any lack of existence of material will constrain us in the immediate future. The problem will be the limits we choose to put on ourselves, our imagination, our will, and our incentives to succeed; the priorities we will choose in our pursuit of a better life for all the people; and our willingness to recognize, coordinate, and manage the materials problem that we will face.

From the beginning of this nation 200 years ago, we thought we were absolutely self-contained. We had all the iron, coal, water, cotton, timber, and tobacco we could use—who could ask for anything more? For the first 150 years this was pretty much true, but then, our consumption began to rise at a terrific rate, and the sophistication of that consumption began to change. Whereas we still had iron, coal, cotton, timber, and water, we began to find that to make things we required in this new, modern, sophisticated life, we needed chromium, cobalt, nickel, tin, and tungsten. While I do not believe that the world is running out of these materials, God somehow or another did not see fit to spread them around very well. The United States is virtually import dependent for a long list of those items, as shown in the attached Exhibit 1.

Within the past 25 or so years, the countries that do contain these more sophisticated minerals and metals have changed due to a process known as decolonization. Whereas heretofore we went to Belgium to get cobalt from the Belgium-Congo, we now go to Zaire and deal with a third world country that does indeed have its own nationalism and its own priorities, thus changing the rules of the game.

On those materials that are indigenous to the United States, we began placing on ourselves a set of priorities that deeply affected the availability and use of these materials, such as our environmental and safety regulations. It is because of these changing patterns, that I have been calling for a national materials policy.

Chromium presents a good example of why such a policy is needed. The United States has virtually no chromium indigenous to this country. But at the same time, we were in an accelerating, high level of consumption, we passed a group of environmental laws that virtually mandated an additional increase in the consumption of chrome to make the clean air and clean stream equipment and converters on our automobiles. After we had mandated this increase in the consumption of chrome, we then unilaterally, in another part of government, placed an embargo on the importation of chromium from what was then our largest supplier, Rhodesia. At the same time, we applied stricter environmental enforcement on the antiquated ferrochrome industry, reducing its productive capabilities. Also at the same time, we allowed unlimited export of stainless steel scrap, each ton of which contained 400 pounds of chrome. Truly, a good example of the need for a coordinated materials policy.

That policy would have to be a two-part policy, one for those things we have, and one for those things we do not have. For those things which are indigenous to the United States, we have several avenues open to us when problems develop. We can change the tax policy to stimulate exploration, control the use, free-up the land use, give temporary environmental relief, subsidize, nationalize, impose export controls—many avenues are open to us on those items over which we have control of our own supply and are self-sufficient in that supply, such as molybdenum. However, virtually none of these will work on items over which we do not have control of the supply, such as chromium, cobalt, platinum, manganese, etc. This is the area about which I am primarily concerned.

One might ask—what is important about chromium or cobalt? I can do without trim on my automobile or my refrigerator. Well, in today's technology without chromium and cobalt, we could not build a jet engine, build an automobile, run a train, build an oil refinery, or build a nuclear or conventional power station. We could not process food under present laws. We would have to repeal all of our clean air and clean stream laws. We would have to repeal our sanitary hospital codes. We could not build a computer, cutting tool, mine tool, magnet, or process crude oil, just to mention a few things. Chrome is required in order to carry on our present standard of living under the technology we have. In fact, the National Research Council, in its 18-month study, ended with a statement by Dr. Parker, of the University of California at Berkeley, that the United States is strategically far more vulnerable to a long-term chromium embargo than to an embargo of any other natural resource, including petroleum. In that report, Dr. Parker and his colleagues say that preparing the United States to overcome a chromium embargo will take a minimum of 5 and possibly up to 15 years.

Is there any threat to the supply of these very critical and strategic materials of which we have virtually no indigenous supply? I believe there is. We are beginning to see what is called resource diplomacy. We have seen cartels formed in the oil business, and I truly believe that there are several other commodities potentially "cartelable." Look at the southern Africa area and the amount of the world's reserves that are in that part of the world, from Shaba Province in Zaire down through South Africa. I like to call it the Persian Gulf of metals. I have heard others refer to it in the same way. We have already seen an invasion of the Shaba Province threatening the cobalt supply from that particular part of the world. There are those in the United Nations and in this country who would extend the economic sanctions to the country of South Africa. If that part of the world fell into the hands of unfriendly nations, either by military force or by decision on the part of the Southern Africans to join in a cartel with the Soviet Union, for example, the ability to deny us access would be devastating.

Exhibit 2 shows you the percentage of the world's reserves that would be controlled by such a cartel, if it should come about.

A recent study from Germany lists chromium, manganese, cobalt, platinum, and others as being in high risk, politically unstable parts of the world and indicates that they are beginning to be highly concerned about it. There has been a growing presence of the Soviet Union in the role of a buyer in that part of the world. The world is beginning to wonder if Russia is as self-sufficient in these metals as we have been led to believe. If so, why are they buying—to stockpile or because their own reserves are less viable than we have known them to be in the past?

I believe that ideological differences and political change will affect the availability of critical raw materials to us in the future far more than any lack of existence of such materials. For this reason, I have opposed economic sanctions as an instrumentality of political change. Embargoes have virtually a perfect record of failure in bringing that change. Fidel Castro is still in Cuba. Embargoes have hurt the people they were intended to help. They usually have hurt the imposer. They usually are violated by everyone in the world, except the United States. Probably most important, they are hypocritical. We said don't buy chrome from the Rhodesians because they violated human rights; buy it from the only two alternative sources, Russia and South Africa. It seems to me that selective morality is, per se, hypocrisy and, therefore, beneath a great nation like the United States.

We should be looking toward a coordinated, nationwide materials policy that would somehow encompass research, substitution, recycling, conservation, new methods of processing low grade ores, a review of our data base, a review of our duty and import laws, a review of our export laws, and a review of our antitrust laws. It should cover a re-study of our tax policy and our depletion policy. It should somehow examine the problems of the multinational corporation in the third world. How do we go into those countries to help them with the capital, technology and skills that we have and yet not exploit them but also not have our own assets confiscated when we get there? We have to reexamine the problem of sending an American business into a world living by a different code of ethics than our own. We should tell the world that, just because we do business with a country, it does not in any way imply that we embrace or condemn their internal policies.

Finally, for absolutely essential commodities with high import dependency from politically unstable parts of the world, the final, and probably only protection would be a minimal economic stockpile.

I believe the United States must move quickly and wisely or be shut out of critical materials resources vital to our economy, indeed to our existence. It is true that the trade-off among social, political, and economic considerations sometimes will be agonizing; but, if we are to survive as a competitive nation in the world marketplace and to remain secure, then I think government, business, consumers, and labor must join hands and realistically face this worldwide problem and aggressively seek answers to it. The rules, the policies, and the thinking that served us well when we had everything we needed will not serve us in this changing world, a world in which we must import from and depend upon other nations for our vital needs.

EXHIBIT 1.—PERCENTAGE OF UNITED STATES MINERAL REQUIREMENTS IMPORTED IN 1978

Commodity	Percent
1. Columbium	100
2. Mica (sheet)	100
3. Strontium	100
4. Tin	100
5. Rutile	100
6. Chromite	100
7. Manganese	99
8. Cobalt	98
9. Tantalum	95
10. Antimony	94
11. Bauxite	91
12. Nickel	90
13. Asbestos	86
14. Aluminum	85
15. Fluorine	82
16. Bismuth	80
17. Platinum group metals	80
18. Mercury	73
19. Zinc	64
20. Tellurium	59
21. Selenium	58
22. Tungsten	54
23. Beryllium	51
24. Cadmium	50
25. Potassium	49
26. Gold	45
27. Gypsum	39
28. Vanadium	36
29. Iron ore	35

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THE ROYAL ULSTER CONSTABULARY AND U.S. ARMS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BIAGGI. Mr. Speaker, it was just over 1 year ago when the Department of State announced that they had invoked an indefinite suspension of all U.S. arms shipments to the Royal Ulster Constabulary (R.U.C.), the main police force in Northern Ireland. This decision grew out of an amendment which I sponsored to the Department of State fiscal year 1980 appropriations bill seeking a similar ban.

My amendment was prompted by a decision of the State Department's Office of Munitions Control to approve the sale of some 3,500 U.S. weapons to the R.U.C. This despite the fact that the R.U.C. had been cited on several occasions by leading international organizations such as Amnesty International and the European Commission and Court of Human Rights for violations of human rights against prisoners and prison suspects. Section 502(b) of the Foreign Assistance Act of 1961 is very explicit against selling U.S. arms to any nation or organization with a proven record of human rights violations.

Apparently the Department of State concurred with the sentiments of the ad hoc Congressional Committee for Irish Affairs, which supported my amendment. Since the suspension took effect there have been a number of efforts to lift it but it has been reaffirmed at the highest levels of our Government including President Carter who as recently as December of 1979 refused to lift the ban while the matter was under review.

Throughout this year, we have continued to hear reports of R.U.C. brutality and disregard for human rights. Perhaps one of the most graphic examples presented to us came in the form of a letter from Fathers Denis Faul and Raymond Murray, two highly respected Northern Ireland priests who have done extensive human rights works with the Association for Legal Justice. I have had the distinct pleasure of meeting these two fine priests while traveling in Northern Ireland. They have presented a case in the form of a letter to the ad hoc committee and the Irish National Caucus. I wish to insert the text of the letter for the consideration of my colleagues.

It is vital that all violence in Northern Ireland whether carried out by civilian or official elements be ended if there is to be any real likelihood for peace. I am somewhat discouraged by the recent sharp reduction in activity aimed at a political solution.

It is this type of political vacuum that breeds violence. Important steps were being taken earlier this year by both the British and Irish Governments. The need for this type of activity is as important today as ever and I urge both Governments and all political elements to rekindle the discussions toward a lasting peace solution.

The letter from Fathers Denis Faul and Raymond Murray follows:

IRISH NATIONAL CAUCUS, INC.,
July 7, 1980.

From: Fr. Denis Faul, Dungannon, and Fr. Raymond Murray, Armagh

DEAR FRIENDS: On Wednesday night, July 23, 1980, at about 10:15 p.m., the RUC shot dead a 16-year-old Catholic boy, Michael McCartan in the Ormeau Road district of Belfast where there is a small Catholic enclave who have suffered heavily from sectarian assassinations.

There has been almost no comment on this case outside of Belfast; in the South of Ireland it rated hardly a mention; in England a line or two. That is why we appeal to you who have been so helpful to the Catholics of N. Ireland in the exposure of torture in RUC interrogation centres, biassed Diplock courts and ill-treatment of prisoners in the H Blocks of Long Kesh and in Armagh.

The Catholics of N. Ireland have not got an effective voice to expose systematically and continuously the daily violations of their human rights contrary to law. Most of the spectators outside of the six-county area are preoccupied with placating the British and their Unionist allies and any attempt to expose the non-stop ill-treatment of the Catholics is branded as "aiding and abetting the IRA."

We appeal to you because we know that you are against violence, both the violence of the British and the IRA and that you are working for human rights and the peaceful unification of Ireland. We appreciated your help against Castlereagh and your interest in the case of The Birmingham Six. We know that you will work for the individual case. Please join with our friends in France and Germany to defend the Catholic youth from this latest peril.

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Michael McCartan was alleged to have been one of a group of youths painting slogans in a district that was completely quiet on the night in question. As the local representative said: "painting slogans is not a capital crime." From the age and stature of 16-year olds it was obvious that they were not carrying guns.

Why did the RUC shoot him? It seems clear that the younger elements in the RUC are being allowed to take a paramilitary approach to the Catholic districts, inspired by the speeches of ranting Unionist leaders and encouraged by the recent release of RUC members convicted of kidnapping, bombing and shooting while off duty. No RUC man has been jailed since 1968 for killing or brutality while on duty.

Please ensure that the RUC do not obtain guns from the USA to shoot down Catholics. We know that you are opposed to illegal groups obtaining guns from the USA and Canada for activities in Ireland. Our people who have no effective voice in Ireland need the unwearying efforts of genuine Irishmen of Christian compassion in the USA who will prevent innocents being killed, tortured and deprived of jobs, houses and basic human rights in their own land.●

H.R. 7824

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. IRELAND. Mr. Speaker, during the past few weeks, I have received communications, both written and oral, from farmworkers' advocate organizations claiming that any amendment, however small, to the Farm Labor Contractor Registration Act would gut the act and leave farmworkers exposed to all manner of abuse.

I am intrigued that the usual examples of abuses suffered by farmworkers are concerned with failure to keep proper records and failure to pay at least the Federal minimum wage. In nearly every such instance such failures are correctable under the Fair Labor Standards Act. Such abuses could, and should, be corrected by the Secretary of Labor even though the FLCRA did not exist.

H.R. 7824 of which I am a cosponsor does not gut the FLCRA. It merely amends the act to make it clear that this Congress wants the Secretary to seek out and correct abuses of migrant farmworkers and agricultural day-haul workers. It amends the act to make it clear that this Congress does not want the Secretary expending his limited resources to seek out every employer of agricultural labor and to force such employers to register as farm labor contractors.

Mr. Landgrebe, one of the sponsors of the 1974 amendments to the FLCRA, stated in this Chamber that:

The bill under consideration will now, to an extent, cover "growers" or large "farmers" that deal with a crew leader. We are not attempting to make the growers joint employers with the crew leaders, nor are we attempting to make them responsible for the crew leader's unlawful actions. What we require of these growers is only that each grower observe a certificate of registration in the possession of a crew leader at the time the grower contracts with a crew leader.

Mr. Speaker, I join others in supporting the amendments to the Farm Labor Contractor Registration Act as set forth in title III of H.R. 7664, in H.R. 7824, and in H.R. 8026. I urge my colleagues to do likewise.●

OPEN RULE URGED ON CRIMINAL CODE REVISION

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. WEISS. Mr. Speaker, 34 of my colleagues have joined me in urging the Rules Committee to report an open rule on H.R. 6915, the Criminal Code Revision Act of 1980. We have taken this step because we believe that all Members of the House should have the opportunity to fully consider each of this complex bill's provisions and to offer any amendments they feel are appropriate and necessary.

I recently received a copy of a letter, signed by 50 national organizations, that was sent to the Rules Committee also urging an open rule. I bring it to the attention of my colleagues and insert it into the RECORD:

AUGUST 4, 1980.

Hon. RICHARD BOLLING,
2365 Rayburn House Office Building,
Washington, D.C.

DEAR MR. BOLLING: H.R. 6915, the Criminal Code Revision Act of 1980, was approved by the House Judiciary Committee on July 2, 1980. It is now up to the Rules Committee to determine the amount of time to allot for House floor consideration of this legislation and the scope of amendments to be offered. We urge that the Committee recommend an open rule for debate of H.R. 6915.

Reform of the federal criminal laws has been an issue for many years. Prior to the Judiciary Committee vote of July 2, however, no comprehensive reform legislation has ever progressed far enough to be considered by the full House. The issues in H.R. 6915 are neither simple nor unimportant. They represent the Judiciary Committee's judgment about a fundamental question: which actions by citizens shall be prohibited and punished by the criminal law and which shall be legal? H.R. 6915 addresses the relationship among the federal, state, and local law enforcement authorities, and it creates new, untried federal sentencing procedures.

The impact of such legislation on our criminal justice system is likely to be vast, yet unpredictable. It is crucial that all members of Congress, not only those privileged to sit on the Judiciary Committee, have the opportunity to review the complex and intricate provisions of H.R. 6915 and be allowed to offer amendments which they believe to be necessary. In particular, many substantive reforms of the federal criminal laws have been considered at earlier times in this process, but are not now incorporated in H.R. 6915. The opportunity for the House to debate and approve these reforms must be insured.

We recognize that issues addressed by the Judiciary Committee and likely to be considered on the House floor are controversial and inspire strong emotional responses on all sides. Nevertheless, we believe that only through full and informed debate will Congress arrive at a revision of our criminal laws that is most responsive to the needs of our criminal justice system and protective of our basic constitutional freedoms.

The Subcommittee on Criminal Justice and the House Judiciary Committee invested great time and care in the drafting and the markup of H.R. 6915. If this legislation is to be scheduled for floor debate, the full House should be given the same chance, without the limitations of a closed or a modified open rule. We hope that you will take our concerns into account when you consider H.R. 6915 and recommend a rule that will allow open and in-depth debate.

Thank you.

Sincerely,

American Ethical Union, Washington office; American Friends Service Committee; American Friends Committee Third World Committee; Another Mother For Peace; Center for Constitutional Rights; Central Committee for Conscientious Objectors; Church of the Brethren, Washington office; Citizen Soldier; Citizens' Commission on Human Rights; Citizens' Energy Project; Coalition to End Grand Jury Abuse; Committee to Abolish Prison Slavery; Committee to Re-Involve Ex-Offenders; Fellowship of Reconciliation; Friends of the Earth; Fund for Open Information and Accountability, Inc.; Gray Panthers; Mennonite Central Committee, Peace Section, Washington office; Mobilization for Survival; National Alliance Against Racist and Political Repression; National Association of Social Workers; National Committee Against Repressive Legislation; National Conference of Black Lawyers; National Council on Crime and Delinquency; National Emergency Civil Liberties Committee; National Interreligious Task Force on Criminal Justice; National Lawyers Guild; National Legal Aid and Defender Association; National Ministries, American Baptist Churches in the U.S.A.; National Moratorium on Prison Construction; National Organization for Reform of Marijuana Laws; New American Movement; New Democratic Coalition; Pen American Center, Freedom to Write Committee; Peoples Alliance; Presbyterian Church in the U.S., Task Force on Criminal Justice; Prison Law Monitor; Socialist Party; Unitarian Universalist Association, Washington office; Unitarian Universalist Service Committee; United Church of Christ, Office for Church in Society; United Methodist Church, Department of Law, Justice, and Community Relations of the Board of Church and Society; United States Student Association; Universal Fellowship of Metropolitan Community Churches, Office of Institutional Ministry; United Electrical, Radio, and Machine Workers of America (UE); United Presbyterian Church, Washington office; Women Against Violence Against Women, National Coordinating Committee; Women in Communications, Inc.; Women Strike for Peace; Women's International League for Peace and Freedom, U.S. Section.●

HOUSE OF REPRESENTATIVES—*Wednesday, September 10, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We pray, O God, for the welfare of all Your people, trusting that You will guide and guard this Nation in the paths of peace. Make us conscious of Your promise that You are with us always, even to the end of the age, and thus support us with Your spirit that we will be faithful in the tasks given to us. Enable us to stand for the right, to speak the truth, and to act with compassion that we may be Your instruments in doing the work of justice and mercy. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2977. An act to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes;

H.R. 6511. An act to designate the building known as the Federal Building in Morgantown, W. Va., as the "Harley O. Staggers Federal Building"; and

H.R. 6702. An act to amend section 603 of title 18, United States Code, with respect to certain political contributions.

The message also announced that the Senate insist upon its amendments to the bill (H.R. 2977) entitled "An act to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. CRANSTON, Mr. WILLIAMS, Mr. NELSON, Mr. RIEGLE, Mr. HUMPHREY, Mr. HATCH, and Mr. SCHWEIKER to be the conferees on the part of the Senate.

The message also announced that the Senate further insist upon its amendment to the bill (H.R. 5192) entitled "An act to amend and extend the Higher Education Act of 1965, and for other purposes," disagreed to by the House of Representatives, request a further conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. PELL, Mr. WILLIAMS, Mr. RANDOLPH, Mr. KENNEDY, Mr. EAGLETON, Mr. STAFFORD, Mr. SCHWEIKER, and Mr. JAVITS to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendments of the House with an amendment to a bill of the Senate of the following title:

S. 1123. An act to amend section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations for title II of such Act for fiscal year 1980.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1519. An act to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration, to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944.

THE LATE HONORABLE WILLIAM M. COLMER

(Mr. LOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, last night America lost one of the finest gentleman and dedicated statesman I have ever known, Bill Colmer of Pascagoula, Miss.

Mr. Colmer represented the Fifth District of Mississippi in this august body that he loved and revered so much for 40 years. He served as chairman of the powerful Rules Committee his last 6 years in Congress.

Bill Colmer was a man who believed deeply in principle and his conservative philosophy of government. He was truly a humble man of the highest degree of integrity. To many of us here in this House he was a wonderful friend, enjoyable companion, confidant, even father figure.

He lived a full life of 90 years and I know he enjoyed the past 8 years at home with his family in Mississippi. My last visit with him some 3 weeks ago revealed, however, an undiminished interest in and concern for his country.

Our sympathy goes out to Mrs. Ruth Colmer, and all the family and many friends of Congressman Bill Colmer. We will truly miss him, Mr. Chairman, and the credit he brought to that title and this institution.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Speaker, I would like to be associated with the gentleman's remarks about Mr. Colmer and also say that this side of the aisle is saddened to learn about the passing of this wonderful man. Mr. Colmer has been a part of American history and everyone that knew him will miss this kind, capable, and thoughtful man.

He lived a full life and enjoyed every minute of it. I also express my sympathy to Ruth Colmer and his two sons.

I know the gentleman in the well will give the House the information on the funeral arrangements when they are finalized.

GENERAL LEAVE

Mr. LOTT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the life, character, and public service of the late Honorable William M. Colmer.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

GALLUP POLL RESPONDENTS WANT TAX RELIEF NOW

(Mr. SCHULZE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHULZE. Mr. Speaker, the respondents to a recent Gallup poll favor a tax cut this year by almost 2 to 1. The American people are calling for tax relief in 1980. As usual, the Carter administration is not listening.

Instead of tax relief now, James Earl Carter is offering more economic hot air for next year. We are told to be patient, after all, Carter's last four plans have resulted in double-digit inflation, outrageously high unemployment and a negative rate of productivity.

Meanwhile, the Carter surrogates in Congress are holding more than 1,000 tax relief measures hostage in the Ways and Means Committee, despite the largest peacetime increase in tax revenues during a single administration.

Mr. Speaker, the American people are tired of your promises. They want tax relief, and they want it now.

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

COST OF BUYING A HOME

(Mr. MARTIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARTIN. Mr. Speaker, the cost of buying a home in the United States has more than doubled since Jimmy Carter has been President. We all know how nearly three decades of deficit spending following Keynesian theories of demand stimulation has devalued our currency like this shrunken toy money in my hand. But let us look at what it has done to housing.

When Jimmy Carter took office in January 1977 the FHA interest rate was at 8 percent and the average sales price of a new single family home was $51,300. The monthly payment to amortize the loan on the average new home based on a $50,000 mortgage for 30 years at 8 percent was $367.

Today, the FHA interest rate is 12 percent, down from 14 percent in April and up from 11½ percent in early August, and the latest average sales price of a new single family home, June, is $77,900. The monthly payment necessary to amortize the loan on the average new home based on a $75,000 mortgage for 30 years at 12 percent is $771.

While these figures are generous toward the record of the Carter administration, in that today's FHA interest rate is widely regarded as being too low and the September average sales price is undoubtedly higher than June's, the figures show an increase of at least 110 percent in the monthly payment necessary to purchase the average price new home in the approximately 3½ years since Jimmy Carter became President. These figures do not take into account the points charged to buyers and sellers in order to bring the FHA rate up to a market yield, except insofar as those requirements have further escalated the prevailing selling price.

A RESOLUTION OF INQUIRY INVOLVING BILLY CARTER

(Mr. McCLORY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, in a few moments we are going to discuss a resolution of inquiry involving perhaps one of the most bizarre incidents in our Nation's entire history, the incident involving Billy Carter. I hope that the Members, while not overplaying this subject will at the same time consider the debate on this resolution of inquiry responsibly.

Mr. Speaker, I feel confident the discussions here this morning will indicate that while we have received a great deal of material, there are notable omissions. Likewise, I think there may be some discussion as to the manner in which information which is of a classified nature is handled in the executive branch of Government.

Mr. Speaker, I do not want to predict what the House will do at this time, but I think we should understand that this investigation should not stop here. It will be pursued both by the Senate subcommittee, especially established for that purpose, and by the Department of Justice, or possibly by other further action initiated by the House, or by the Judiciary Committee.

A $1 TRILLION TAX BURDEN BY 1985

(Mrs. HOLT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. HOLT. Mr. Speaker, the Carter administration is using slick and even fraudulent devices to portray the Reagan tax-cut proposals as irresponsible and causing a $285 billion revenue loss in 1985.

First, the number bears no resemblance to the actual program of tax reductions that will be phased in. Second, the number fails to include the revenues that would be recovered from the economic growth stimulated by the tax cuts. Administration witnesses before the House Budget Committee have been admitted this failure.

So, the administration is using a bogus estimate as a scare tactic, but I will tell you what is even scarier.

In the July report of OMB, you will find that the Carter administration plans to have the tax burden double to more than $1 trillion by 1985. They want to add $500 billion to the tax burden in just 5 years.

Well, we Republicans are saying a loud "no" to that trillion-dollar tax burden that Mr. Carter wants. Our first priority is to provide tax relief for the people and their businesses, which means more jobs and better living for American families.

RESOLUTION OF INQUIRY IN THE MATTER OF BILLY CARTER

Mr. RODINO. Mr. Speaker, I call up a privileged resolution (H. Res. 745) of inquiry in the matter of Billy Carter, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 745

Resolved, That the President, to the extent possible, is directed to furnish to the House of Representatives, not later than seven days following the adoption of this resolution, full and complete information on the following:

(1) any record and date of all conversations and actions of the President with Billy Carter relating to the latter's role as an official or unofficial agent of the Government of Libya;

(2) whether the President and/or White House officials intervened in the investigation conducted by the Justice Department in regard to Billy Carter's role as an agent of the Government of Libya;

(3) any record or memorandum containing the President's instructions to Zbigniew Brzezinski, Lloyd N. Cutler, Philip J. Wise, Junior, and Susan Clough in regard to the policy to be followed in dealing with Billy Carter's activities for and relationship to the Government of Libya;

(4) whether the President and/or White House officials knew or assisted Billy Carter in his relationship with Charter Oil Company including any commissions and monetary advantages which he would receive therefrom;

(5) the exact date on which the President learned of the Justice Department's proposed prosecution of Billy Carter, and the exact date on which the President learned of the $220,000 payment to Billy Carter by the Government of Libya;

(6) any record or memorandum containing the President's or White House official's instructions to State Department officers and employees in regard to Billy Carter's involvement with and relationship to the Government of Libya;

(7) any documents containing the State Department's findings and recommendations in regard to the foreign policy implications of Billy Carter's two visits to Libya, contained in the files of said Department or transferred to the White House;

(8) any documents relating to the Justice Department's findings and recommendations in regard to the investigations conducted by the Department into Billy Carter's activities as an unregistered agent of the Government of Libya, contained in the files of said Department;

(9) the authority under which the Justice Department accepted a "consent order" as opposed to pursuing civil or criminal proceedings against Billy Carter resulting from his role as an unregistered agent of the Government of Libya.

The information requested in this resolution shall be made available to each Member of the House of Representatives in accordance with the applicable rules of the House.

□ 1010

COMMITTEE AMENDMENTS

The SPEAKER. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 3, line 10, after the word "Department's" insert "investigation and".

Page 3, line 19, strike the word "containing" and insert "relating to".

Page 3, line 25, strike the words "findings and recommendations in regard to the investigations conducted by the Department" and insert "investigation, including findings and recommendations,".

Page 4, line 6, strike the words "the authority under which the Justice Department accepted a 'consent order' " and insert: "any record or memorandum relating to the decision of the Justice Department to file a complaint for injunctive relief, which resulted in a consent decree,".

Page 4, line 10, strike "civil or."

Page 4, line 13, strike "Libya." and insert "Libya;" at the end of the line.

Page 4, line 14, insert: (10) any record and the date of all conversations in the Billy Carter matter between the President and the Attorney General;

Page 4, line 17, insert: (11) any record and the date of all conversations regarding Billy Carter between the Department of Justice and White House officials between January 1979 and the date of adoption of this resolution;

(12) any record and the date of all meetings that took place between President Carter or members of the White House staff and representatives of the Libyan Government arising out of Billy Carter's relationship with the Libyan Government; and

(13) any State Department cables and other communications or memorandums which were furnished to Billy Carter, and the name of the person or persons who furnished such cables, communications, or memorandums.

Page 5, line 6, strike:

The information requested in this resolution shall be made available to each Member of the House of Representatives in accordance with the applicable rules of the House.

And insert:

The information requested in this resolution shall be submitted to the House and disposed of in accordance with the Rules of the House.

Mr. RODINO. Mr. Speaker, I ask unanimous consent that the committee amendments be considered en bloc, considered as read, and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

Mr. McCLORY. Mr. Speaker, reserving the right to object, I merely make this reservation so that I may inquire as to the division of time with respect to the resolution itself. It was my understanding that there would be 15 minutes accorded to me and 15 minutes accorded to the ranking minority member of the House Foreign Affairs Committee with the other half hour to be controlled by the respective committee chairmen.

Mr. RODINO. Mr. Speaker, if the gentleman would yield, if the gentleman is interested in using 15 minutes, then I would yield to the gentleman for purposes of debate only, even as I will yield to the ranking minority member of the Foreign Affairs Committee such time as has been established, but only for purposes of debate. There are some other Members who are interested.

Mr. McCLORY. Other Members have asked me yield to them, so I would be consuming only a small part of the 15 minutes myself. I thank the gentleman.

It is my understanding that the time will be divided so that I will have 15 minutes for debate only, and the ranking minority member of the Foreign Affairs Committee will have 15 minutes.

Mr. RODINO. That is correct.

Mr. McCLORY. I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The committee amendments were agreed to.

CALL OF THE HOUSE

Mr. BAUMAN. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 535]

Abdnor
Addabbo
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashbrook
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Burgener
Burlison
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Chappell
Cheney
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gingrich
Ginn
Gonzalez
Goodling
Gore
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kostmayer
Lagomarsino
Latta
Leath, Tex.
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCormack
McDade
McEwen
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Motl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Oakar
Oberstar
Obey
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Satterfield
Sawyer
Schroeder
Schulze
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Van Deerlin
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

□ 1030

The SPEAKER pro tempore (Mr. BOLLING). On this rollcall, 330 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

RESOLUTION OF INQUIRY IN THE MATTER OF BILLY CARTER

The SPEAKER pro tempore. The Chair recognizes the gentleman from New Jersey (Mr. RODINO), the chairman of the Committee on the Judiciary.

Mr. RODINO. Mr. Speaker, it is my intention to yield to Members whom I have already designated, the gentleman from Illinois (Mr. McCLORY), the ranking minority member on the Committee on the Judiciary, for 15 minutes, for purposes of debate only; the gentleman from Michigan (Mr. BROOMFIELD), the ranking minority member on the Committee on Foreign Affairs, for 10 minutes, for purposes of debate only; the gentleman from Wisconsin (Mr. ZABLOCKI), the chairman of the Committee on Foreign Affairs, for 2 minutes; and the gentleman from Massachusetts (Mr. BOLAND), chairman of the Permanent Select Committee on Intelligence, for 2 minutes.

Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in calling up House Resolution 745, we are discharging our responsibilities on the resolution of inquiry dealing with the matter of Billy Carter. It is important that the Members recognize the specific and limited legislative function which action on the resolution of inquiry entails. The resolution itself provides that—

The President, to the extent possible, is directed to furnish to the House of Representatives * * * full and complete information * * * regarding the Billy Carter matter.

The resolution was introduced on July 22 and it included language directing the President to furnish to the House of Representatives, not later than 7 days following the adoption of the resolution, full and complete information on the following:

First. Presidential conversations with Billy Carter concerning his becoming an agent for the Government of Libya;

Second. The degree of White House involvement with Billy Carter in his activities as an agent of the Government of Libya;

Third. Any memorandums or instructions from the President to Mr. Cutler or Mr. Bzezinski or Ms. Clough concerning

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Billy Carter's activity involving the Government of Libya;

Fourth. Whether the President or White House officials knew or assisted Billy Carter in his relationship with Charter Oil Co.;

Fifth. The date on which the President learned of the Justice Department's proposed prosecution of Billy Carter, and the date on which the President learned of the payment to Billy Carter by the Government of Libya;

Sixth. Any record or memorandum containing the President's or White House officials' instructions to State Department officers in regard to Billy Carter's involvement with the Government of Libya;

Seventh. Any documents concerning the State Department's findings and recommendations about Billy Carter's visits to Libya;

Eighth. Any documents relating to the Justice Department's findings and recommendations concerning Billy Carter's activities as an unregistered agent for the Government of Libya;

Ninth. The authority under which the Justice Department accepted a consent order concerning Billy Carter's role as an unregistered agent.

Prior to the Judiciary Committee's markup on the resolution, I wrote to the President, as did Chairman ZABLOCKI, requesting that he provide the committee, to the extent possible, with the information sought in the resolution of inquiry. We requested the information be provided prior to our markup date.

On July 25, I received a letter from Frank Moore, Assistant to the President for Congressional Liaison, acknowledging receipt of my letter concerning the resolution and indicating that we could expect a detailed response from the President shortly.

On July 28, 1980, the committee received a letter from Alan Parker, Assistant Attorney General, responding to points eight and nine of the resolution (matters within the purview of the Department of Justice) as they concerned the Department's investigation and handling of the case. In that letter, Mr. Parker indicated that the Department would make accessible for review by the Committee on Foreign Affairs and the Committee on the Judiciary, on July 29, three copies of all unclassified, classified and "third agency" materials that the Department had available concerning points eight and nine of the resolution, except for certain intelligence materials which were to be handled separately. Point nine of the resolution requested information about "the authority under which the Department accepted a consent order as opposed to pursuing a civil or criminal proceeding against Billy Carter." Mr. Parker's letter cites the Foreign Agent Registration Act, 22 U.S.C. 611, et seq., and specifically 22 U.S.C. 618(f) which provides for injunctive relief.

On July 29, the Justice Department made materials, in response to items eight and nine in the resolution of inquiry, available to members of the committee for their review under secure conditions in the rooms of the Judiciary Committee. The materials were submitted in four volumes and were reviewed by a number of members on July 29.

On July 29, the President wrote to the committee indicating—

> It is my desire that all relevant information be made available to the Congress and to the public in a timely and complete manner, and I assure you that the information requested will be produced as soon as it can be reasonably assembled and after appropriate arrangements can be made for the handling of classified materials . . . I shall, however, respond specifically to all the enumerated questions in my formal response to the committee.

The Foreign Affairs Committee met on July 29 to receive testimony from Congressmen BAUMAN, WALKER, and GREEN concerning the resolution of inquiry and marked up the resolution with two amendments. The Foreign Affairs amendments (which were also subsequently adopted by the Committee on the Judiciary) directed the President to provide information concerning any record of conversations of the Billy Carter matter between the President and the Attorney General and any record and date of conversations regarding the Billy Carter matter between the Department of Justice and White House officials between January 1979 and the present.

Prior to the markup in the Committee on the Judiciary, we received documents from the Justice Department concerning the Billy Carter matter. These materials were circulated to all members of the Committee on the Judiciary. On July 23, 1980, the committee received a letter from Assistant Attorney General Alan Parker, the Office of Legislative Affairs, which enclosed the following documents:

A copy of a cover letter from Alan Parker to Senator KENNEDY, chairman of the Senate Judiciary Committee, dated July 23, 1980, which forwarded copies of the following documents:

First. A complaint for injunctive relief in the case of the Attorney General of the United States against William A. (Billy) Carter III;

Second. A copy of the final judgment of mandatory and permanent injunction as to William A. (Billy) Carter III in the same caption matter;

Third. A stipulation and consent on the same caption matter; and

Fourth. A registration statement filed by William A. Carter with attachments and exhibits.

The committee also received a letter on July 29, 1980, from Eric L. Hirschhorn, Deputy Assistant Secretary for Export Administration, Department of Commerce, concerning material being submitted to the committee regarding the sale of Boeing 727 aircraft to Libya in 1978. That information was being provided subject to the confidentiality provisions of section 12c of the Export Administration Act.

The Department of Justice also supplied a chronology of events in the entire Billy Carter affair for review of the members prior to the markup, as well as the previously mentioned records.

The Judiciary Committee met to mark up the resolution on July 30, 1980, and after considerable discussion proceeded to mark up the resolution. The committee then amended the resolution in several respects. The committee amendments to the resolution are as follows:

First. Any record and the date of all conversations in the Billy Carter matter between the President and the Attorney General;

Second. Any record and the date of all conversations regarding Billy Carter between the Department of Justice and White House officials between January 1979 and the date of adoption of this resolution;

Third. The information requested in this resolution shall be submitted to the House and disposed of in accordance with the rules of the House;

Fourth. Any record and the date of all meetings that took place between President Carter or members of the White House staff and representatives of the Libyan Government arising out of Billy Carter's relationship with the Libyan Government;

Fifth. Any State Department cables and other communications or memorandums which were furnished to Billy Carter, and the name of the person or persons who furnished such cables, communications, or memorandums;

Sixth. Any record or memorandum relating to the decision of the Justice Department to file a complaint for injunctive relief, which resulted in a consent decree, as opposed to pursuing criminal proceedings against Billy Carter resulting from his role as an unregistered agent of the Government of Libya;

Seventh. Any documents relating to the Justice Department's investigation into Billy Carter's activities as an unregistered agent of the Government of Libya, contained in the files of said Department;

Eighth. The exact date on which the President learned of the Justice Department's investigation and proposed prosecution of Billy Carter, and the exact date on which the President learned of the $220,000 payment to Billy Carter by the Government of Libya;

Ninth. Any documents relating to the State Department's findings and recommendations in regard to the foreign policy implications of Billy Carter's two visits to Libya, contained in the files of said Department or transferred to the White House.

During the committee's markup of the resolution on July 30, certain Members requested that the documents relating to items eight and nine, which had been made available on July 29 in rooms of the committee, be again provided for the review of any Members who wished to see them. The materials were again made available by the Justice Department on July 31, 1980, and all Members who requested to review

these documents were permitted to do so.

On July 31, 1980, both the Committee on the Judiciary and the Committee on Foreign Affairs filed their reports with the House of Representatives on House Resolution 745. Supplemental views with further questions were added to the Judiciary Committee's report by Messrs. MCCLORY and BUTLER.

Additionally, on July 31, 1980, I wrote to the President to inform him that "certain questions were raised, subsequent to the introduction of the resolution and prior to our markup, concerning matters not covered by the resolution. Those questions prompted members of the committee to amend the resolution to call for certain additional information." I enclosed a copy of the resolution, as amended, and a copy of the Judiciary Committee's report, so that he might be fully apprised of what information was being requested.

During the period between the filing of the report on the resolution and the submission of the documents by the President, I instructed my staff, in conjunction with the minority staff, to coordinate with the White House staff and the Justice Department and State Department. This was to facilitate matters in order to insure that the materials being provided would be as fully responsive as possible and that they would be in a format that could be easily utilized by the Members. In conjunction with Foreign Affairs Committee staff, the Judiciary Committee staff worked out arrangements whereby sensitive and classified material could be forwarded to the Committee on Intelligence for their safekeeping and so that the Intelligence Committee might, under its normal procedures, provide for secure access to the materials by members.

The Judiciary Committee staff met with members of the President's counsel staff in order to finalize the procedures by which the materials would be forthcoming to the committees. The White House staff provided us with the report of the President to the subcommittee of the Committee on the Judiciary of the U.S. Senate concerning the matter of Billy Carter's relationship with the Libyan Government as soon as it was available on August 4, 1980.

Pursuant to the discussions between the committee staff and the White House provided an entire volume of material specifically indexed to be responsive to the individual items in the resolution of inquiry. That volume is entitled "Statement of the President and Report of Counsel on H. Res. 745 to the Committee on Foreign Affairs and the Committee on the Judiciary, United States House of Representatives," dated August 18, 1980. The volume includes a transmittal letter, a statement by the President, certain documents and a tabbed index volume keyed to the sections of the resolution of inquiry. Additionally, the President also responded to Mr. MCCLORY's supplemental views to the Judiciary Committee's report on the resolution.

It was agreed that the White House would provide 500 copies of the "Statement of the President and Report of Counsel" so that each Member would be assured of having his or her own complete copy. The statement was submitted on August 18, 1980. Chairman ZABLOCKI and I immediately circulated a dear colleague letter with the statement attached to all Members.

In order to insure that the Members received access to all of the material responsive to the resolution of inquiry, Chairman Zablocki, and myself, and the ranking minority members of the two committees, sent a dear colleague letter on August 20, informing the Members of the availability of other portions of the President's response which were made available under separate cover by the White House, the Justice Department and the State Department. Due to the sensitive nature of some of the documents, these materials were made available to all Members for their review under secure conditions in rooms 2170 and 2226 of the Rayburn House Office Building from 8 a.m., to 6 p.m., Thursday, August 21 through Wednesday, August 27.

Certain materials which were highly sensitive in nature were supplied to the House Intelligence Committee by the Executive. The Intelligence Committee prepared a summary of those materials, which is unclassified and which was made available on August 28.

Let me now turn my attention to the nature of the legislative vehicle involved here—the resolution of inquiry. Since 1932, the resolution of inquiry has been used 33 times. Motions to table resolutions of inquiry have carried in 25 of those instances. With the exception of two resolutions concerning school busing, and one concerning energy, no resolution of inquiry has been adopted by the House since December 1947. Our review of the precedents concerning resolutions of inquiry, going back to 1932, indicates that the standard procedure of the House has been that when there has been substantial compliance to the committee of jurisdiction of the terms of the resolution of inquiry, a motion to table will be agreed to.

The question now before the House is whether or not the President is in substantial compliance with the terms of House Resolution 745. The specific language of the resolution of inquiry is that "the President, to the extent possible, is directed to furnish to the House of Representatives, not later than 7 days following the adoption of the resolution," the information requested in the resolution. If, in the judgment of the Members, the totality of the President's response, which I have detailed, is in substantial compliance with the resolution of inquiry, then passing the resolution would be a fruitless gesture because the issue is moot.

I have reviewed the voluminous material supplied by the President, including that which was submitted by the Department of Justice, the Department of State and the statement of the President and report of counsel and it is my judgment that the President has substantially complied with the parameters of the resolution of inquiry by any reasonable interpretation of the word "substantial." After a review of the entirety of the materials made available to each Member of Congress by the executive branch concerning the resolution of inquiry, House Resolution 745, it is my judgment that the resolution is moot. Therefore, I shall, at the end of debate today, make a motion to table the resolution. I urge my colleagues to support that motion.

Mr. Speaker, I include in the RECORD a copy of all the correspondence to which I have referred in my statement:

COMMITTEE ON THE JUDICIARY,
Washington, D.C., July 23, 1980.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am writing to advise you that H. Res. 745, a copy of which I enclose, was introduced in the House of Representatives on July 23, 1980. This Resolution of Inquiry has been jointly referred to the Committee on the Judiciary and the Committee on Foreign Affairs.

In order to discharge its responsibilities, the Committee on the Judiciary must act on this Resolution of Inquiry within seven legislative days, beginning July 23, 1980. Accordingly, we request that you provide the Committee, to the extent possible, with the information sought in the accompanying Resolution of Inquiry, in addition to any relevant comments you may wish to make. The Committee must file its report on this resolution by Thursday, July 31 in accordance with the Rules of the House of Representatives and, therefore, we would appreciate your supplying this information by the aforementioned date.

Respectfully,

PETER W. RODINO, Jr.,
Chairman.

COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C., July 23, 1980.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am writing to request your comments on H. Res. 745, a resolution of inquiry which was introduced in the House on July 2, 1980 and referred jointly to the Committee on Foreign Affairs and the Committee on the Judiciary.

Enclosed are two copies of the resolution. H. Res. 745 directs the President to furnish the House of Representatives full and complete information regarding the role of Billy Carter with respect to the Government of Libya and certain related matters.

As you know, the committee must act on this resolution within 7 legislative days, beginning July 23, 1980. Therefore, I would appreciate receiving your comments no later than Monday, July 28.

With highest regards, I am

Respectfully,

CLEMENT J. ZABLOCKI,
Chairman.

UMI

THE WHITE HOUSE,
Washington, D.C., July 25, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The President asked me to acknowledge his receipt of your letter of July 23 forwarding a copy of House Resolution 745, a resolution of inquiry requesting information on the relationship between Billy Carter and the government of Libya and on any involvement by White House officials. The President has been apprised of the requirement that your Committee must act by Thursday, July 31.

The President appreciates your courtesy in bringing this Resolution to his attention. He has asked me to share your correspondence with his counselors for further consideration. You can expect a more detailed response shortly.

Sincerely,

FRANK MOORE,
Assistant to the President for Congressional Liaison.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 28, 1980.

Hon. PETER RODINO, Jr.,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Attorney General has asked me to respond to your letter of July 24 concerning H. Res. 745, the resolution of inquiry in the matter of Billy Carter. I will address points eight and nine of the resolution as they concern the Department's investigation and handling of the case.

Point eight of the resolution of inquiry requests any documents in the Justice Department's files relating to findings or recommendations in the Billy Carter investigation. As discussed today with the leadership of the Judiciary and Foreign Affairs Committees, we shall make accessible for your review at the House of Representatives on Tuesday morning, July 29, three copies of all copies of all unclassified, classified and "third agency" materials that we have been able to assemble, except for certain intelligence materials which the leadership of the Committees has agreed should be handled separately.

It is our intention to make available to the House Judiciary and Foreign Affairs Committees all documents and records called for by points eight and nine of the resolution. However, in hurrying to assemble and deliver the Department's records by the July 28 deadline set by the Committees, it is not inconceivable that some material may have been overlooked. If so, any such material will be made available as soon as it is located.

Point nine of the resolution asks about "the authority under which the Justice Department accepted a 'consent order' as opposed to pursuing civil or criminal proceedings" against Billy Carter. The Foreign Agent Registration Act, 22 U.S.C. 611 et seq., authorizes enforcement action by criminal prosecution or by civil injunction. 22 U.S.C. 618. In this case, the Department determined that a criminal prosecution was inappropriate on the basis of available facts, a decision which was made as part of the exercise of the Department's prosecutorial discretion. The Department determined it would instead seek the full civil remedy available under the Foreign Agents Registration Act, which is simply injunctive relief. 22 U.S.C. 618(f).

When a civil suit is filed, a defendant can of course agree to accept the full relief and judgment sought by the plaintiff. In this case, Mr. Carter consented to a judgment that provided the full measure of injunctive relief that the government sought under the Registration Act. If he had not so consented, the Department would have litigated the suit to a conclusion, seeking the same injunctive relief.

If the Committee desires any further information before acting on H. Res. 745, kindly let me know.

Yours truly,

ALAN A. PARKER,
Assistant Attorney General, Office of Legislative Affairs.

U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., July 29, 1980.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Department of Commerce, the Department of Justice is today furnishing you with certain documents relating to the licensing of the sale of two Boeing 727 aircraft to Libya in 1978.

This information is being provided subject to the confidentiality provisions of Section 12(c) of the Export Administration Act of 1979. This section is designed to facilitate the export licensing process and protect commercial interests by permitting exporters to submit information in connection with license applications on a confidential basis.

Section 12(c) provides, with respect to the protected material furnished to a committee of Congress:

"No such committee or subcommittee shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding thereof is contrary to the national interest."

I shall accept your receipt of this letter as an acknowledgment of these restrictions and as assurance that custody and access will be controlled so as to avoid disclosure of information protected by Section 12(c).

Sincerely,

ERIC L. HIRSCHHORN,
Deputy Assistant Secretary, for Export Administration.

THE WHITE HOUSE,
Washington, D.C., July 29, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: I am responding to your letter of July 23, 1980, requesting that I provide the Committee, to the extent possible, information sought in House Resolution 745 together with relevant comments in time for the Committee to file its report on this resolution by Thursday, July 31, 1980.

It is my desire that all relevant information be made available to the Congress and to the public in a timely and complete manner, and I assure you that the information requested will be produced as soon as it can be reasonably assembled and after appropriate arrangements can be made for the handling of classified materials. The information sought in categories 8 and 9 are readily at hand and I understand the Department of Justice has informed the Committee these materials will be made available for review today.

The balance of the materials will be delivered to the Committee not later than August 18. As I am sure you can appreciate, compiling the information requested in many of the categories will require counsel to interview a substantial number of White House personnel and to review a large number of documents. This process is presently underway.

In previous public statements and releases most of the questions in the resolution directed specifically to me have been answered. I shall, however, respond specifically to all the enumerated questions in my formal response to the Committee.

Sincerely,

JIMMY CARTER.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 23, 1980.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: At your request and for your information I am enclosing a copy of my most recent letter to Senator Kennedy and its enclosures.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

Enclosure.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 23, 1980.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Senator Dole's request and my letter to you of July 22, 1980, I am pleased to enclose copies of:

(1) Complaint for Injunctive Relief in *Attorney General of the United States* v. *William A. (Billy) Carter, III.*

(2) Final Judgment of Mandatory and Permanent Injunction as to William A. (Billy) Carter, III, in the same captioned matter.

(3) Stipulation and Consent on same captioned matter.

(4) Registration Statement filed by William A. Carter with attachments and exhibits.

Mr. Carter has not reported the dissemination of any political propaganda through the mails or by any means or instrumentality of interstate or foreign commerce, therefore no such propaganda has been filed with the Department of Justice as provided by 22 U.S.C. 614 and 28 C.F.R. 5400 and 5401.

Similarly, Section 615 requires the agent to maintain certain books and records relating to his activities. This is to afford the oportunity for the Department to inspect the books and records should it desire to do so. It does not require their submission and no books or records are in the possession of this Department provided pursuant to provisions of Section 615.

I believe this answers Senator Dole's and the Committee's request. If there is anything else desired or we can be helpful in any other way, please let me know.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General, Office of Legislative Affairs.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 31, 1980.

The PRESIDENT,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: The Committee on the Judiciary held a mark-up session yesterday on H. Res. 745, the resolution of inquiry dealing with the matter of Billy Carter. Certain questions were raised, subsequent to the introduction of the resolution and prior to our mark-up, concerning matters not covered by the resolution. Those questions prompted Members of the Committee to amend the resolution to call for certain additional information.

In order that you may be fully apprised of what information is being requested, I am enclosing a copy of the amended resolution as reported favorably by the Committee.

With best personal regards, I am,

Sincerely yours,

PETER W. RODINO, Jr.,
Chairman.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 18, 1980.

DEAR COLLEAGUE: We are attaching for your perusal the materials submitted by the President in response to our letters to him concerning the information requested in the Resolution of Inquiry, H. Res. 745, regarding Billy Carter.

Floor action on this resolution will be scheduled consistent with the desire of Members to have sufficient time to review the materials.

Sincerely,

CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs.

PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 20, 1980.

DEAR COLLEAGUE: The President, in response to our letters, has submitted his report and report of counsel concerning H. Res. 745. Certain materials which are called for in specific items in the resolution, as amended, have been submitted under separate cover by the White House, the Justice Department and the State Department. These additional materials will be made available to Members under special procedures.

Classified material from all three sources will be available to all Members through the auspices of the House Intelligence Committee. The material from the State Department and the Justice Department will be made available for Members' review in rooms 2170 and 2226 Rayburn House Office Building from 6:00 a.m. to 6:00 p.m., Thursday, August 21 through Wednesday, August 27, excluding Saturday and Sunday.

We are thereby making all of the materials available to the Members that have been made available to us.

Sincerely,

CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs.

WILLIAM S. BROOMFIELD,
Ranking Minority Member, Committee on Foreign Affairs.

PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary.

ROBERT MCCLORY,
Ranking Minority Member, Committee on the Judiciary.

□ 1050

Mr. MCCLORY. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Illinois.

The SPEAKER pro tempore. The gentleman from New Jersey has consumed 15 minutes.

The gentleman from Illinois (Mr. MCCLORY) is recognized for 15 minutes.

Mr. MCCLORY. Mr. Speaker, I yield myself such time as I may consume.

First of all, Mr. Speaker, I want to commend the members of the Committee on the Judiciary and of the Committee on Foreign Affairs, particularly those who took occasion to examine the documents that were delivered in response to the resolution of inquiry.

As I said earlier during the 1-minute period, this is one of the most bizarre incidents in our entire history and involves some of the most bizarre, if not improper and illegal, conduct on the part of persons in the executive branch or related to those in the executive branch.

Mr. Speaker, this resolution of inquiry symbolizes a very legitimate exercise of a basic congressional prerogative, that is, the seeking of facts and information with respect to possible conflicts of interest, illegal activities and unethical behavior on the part of executive branch officials. Since the Judiciary Committee reported this resolution on July 31, the White House and State Department have submitted documentary materials responding to the relevant paragraphs listed in the resolution of inquiry.

Prior to our committee's action, the Justice Department had already submitted voluminous materials to both our committee and the Foreign Affairs Committee.

I took the opportunity to scrutinize those documents and memorandums very carefully and to interrogate those who came over and delivered the documents. In my view there has been something less than substantial compliance with the terms of the resolution. There are several crucial questions to be answered. Our review of this matter should not be concluded.

For example, there was one very egregious omission from the materials that were presented to the respective committees when they considered the resolution—namely, the President's conversation on June 17, 1980, with the Attorney General concerning the Billy Carter investigation.

In his August 4 news conference, President Carter appears to have temporarily defused public opinion with respect to his unusual activities. However, it is also apparent that the President has not answered many of the questions that have been generated by this controversy.

The House and the other body have a responsibility to complete this investigation with respect to the role of the President, the White House, the White House staff, and the Justice Department in this case. Possible illegalities, while obviously important, are not the sole issue. In recent years Congress has passed numerous laws underlining our concern about the possible appearance of impropriety on the part of high government officials. These would include the Ethics In Government Act, the Privacy Act, the Government in the Sunshine Act.

On this point, a serious question of ethical judgment and appearance of impropriety surrounds the President's meeting with Attorney General Benjamin Civiletti in the Oval Office of the White House. The President's June 17 conversation with the Attorney General regarding the investigation of the President's brother by the Department of Justice was, at least in my view, inappropriate.

Subsequent to this conversation, the President discussed the ongoing investigation with his brother twice. The subcommittee in the other body now investigating this case should actively pursue this matter during their deliberations.

Americans need to be assured that no illegalities were involved.

Another example of bad judgment is the President's decision to use his brother as an intermediary to try to secure release of our hostages in Iran, another abortive attempt. To say the least, this is an unusual manner in which to conduct foreign policy. The President himself has admitted that this action may have legitimatized Billy Carter in the eyes of the Libyan Government.

Did it encourage their favorable response to Billy Carter's demands for money? This also needs to be further explored.

The so-called loan has been the source of a series of inconsistent statements on the part of Billy Carter. I guess the press has put that to rest today by stating that it was, indeed, a gift of money and not a loan.

Billy Carter, first of all, said that he merely wanted to be reimbursed for a reception he hosted for a Libyan delegation in Atlanta, Ga. His original estimate of the cost of the reception was $6,000 or $7,000. Then it "escalated" to $40,000, during his June 11 interview with Justice Department investigators.

Questions remain as to who paid for this reception and how much it actually cost. Material furnished to the House Select Committee on Intelligence suggests the need for diligent inquiries directed to Billy Carter, President Jimmy Carter, and others to identify the financial interests surrounding the entertainment of Libyan officials in this country and who specifically was benefited.

The President has stated that at no time did his brother influence the decisions of Government policy regarding Libya. In the report submitted to our committee, the President says:

> I can also state that Billy has never asked me to take any step that would affect any of these actions or policies.

Yet the files submitted by the Department of Justice to our committee and the Foreign Affairs Committee revealed an equivocal and evasive Billy Carter on this very same point.

An even more important matter is how White House officials have acted in this matter. First, the President's National Security Adviser, Mr. Brzezinski, received "highly sensitive" intelligence information about Billy Carter's business dealings with Libya in March and April 1980. Mr. Brzezinski admits that he subsequently spoke to Billy Carter about the information he had received, even though Billy Carter had no security clearances justifying such a discussion with him. This matter bears our careful study and investigation.

Second, a key question which repeatedly arises is whether or not Billy Carter was "tipped off" by certain White House officials, or other executive department personnel, concerning the fact that the money payments to him were known to the FBI and the Department of Justice. It appears that Justice Department investigators first learned of the Libyan payments on May 30, 1980. It was a little more than a week later that Billy Carter, on his own initiative, sought a meeting with the Justice Department in order to come down and register as a foreign agent after having resisted registering for a year and a half.

The question as to whether or not intelligence or law enforcement sources may have been compromised by the use

of inside information must be completely resolved. Are we to leave these unanswered questions to the media's investigative reporters? Are we to relinquish that responsibility? I hope not.

Mr. Speaker, I certainly want to commend the Intelligence Committee having received highly classified information and not being the source of compromising any of it, notwithstanding that I cannot say that about those in the executive branch.

Mr. Speaker, a motion to table is a final, adverse disposition of a measure. I cannot support such a motion, for there are too many unanswered questions. Before we vote on this resolution we should give the executive branch a second chance to comply fully. Thus, it is my intention to offer a motion to postpone further consideration until October 1 if and when the motion to table is defeated. I urge a "no" vote on the motion to table.

Mr. Speaker, at this time I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the House of Representatives, and in particular the House Judiciary Committee, earned the respect of most Americans in the dreary Watergate era by its relentless and measured investigation of Executive wrongdoing. This House has had only limited involvement in the many matters concerning the President's brother, and I wonder why?

The crusading zeal of the House for executive purity is hardly a whisper in this present investigation. To assume that the matters under investigation are insignificant belies the headlines that are emanating almost daily from the other body. Serious questions remain unanswered, such as:

First. Was Billy Carter tipped off by someone in the White House?

Second. Can we seriously be expected to believe that he was given $220,000 by the Libyians for nothing? Was it a loan or for services rendered? Or to be rendered?

Third. In January 1979, Billy Carter hosted an elaborate reception for a visiting Libyian delegation. He has provided several versions about who picked up the check. Did the Libyians reimburse him for out-of-pocket expenses, or did they pay the entire cost of the reception? If not, who did? Intelligence files show that a private company might have been involved. If so, what company and why?

Fourth. Questions remain about Billy Carter's efforts, if any to pressure the United States into releasing the C-130 airplanes to Libya—a government that advocates and engages in terrorism.

I had hoped for leadership on the part of the House. We are a coequal branch of Government, coequal with the executive branch, and coequal with the other body. This means we have coequal responsibilities which ought to be fulfilled. Have we neglected that equal responsibility in deference to the other body? This is curious and certainly regrettable.

In the days of Watergate, this committee was a raging tiger in its relentless zeal to get at the truth—our tiger is now caged and tranquilized—I suggest tabling this resolution is premature.

□ 1100

Mr. McCLORY. Mr. Speaker, I thank the gentleman for those very important statements.

I yield to the gentleman from New York (Mr. FISH).

Mr. FISH. Mr. Speaker, I know that many Members on both sides of the aisle feel that too much may have already been said and written about the "Billy Carter affair." However, we should not lose sight of the basic principles involved here.

We are talking about the brother of the President of the United States, who has established a financially intimate relationship with a foreign government. A foreign government with which we are far from being in complete accord. Libya's leaders have advocated international terrorism in the past and have often frustrated our peace efforts in the Middle East.

This episode—this relationship—has raised some serious questions. The Department of Justice and the White House have been cooperative with the Judiciary Committee, the Foreign Affairs Committee and the Select Committee on Intelligence. I have no reason to believe that anything but an honest effort has been made to supply materials and documents responding to the various items listed in the resolution of inquiry. However, in my view, questions have been raised which remain unresolved. Hopefully, the investigation currently being conducted in the other body will elicit all the necessary facts and answers.

Even if House Resolution 745 is tabled here today, this House should continue to monitor developments in this case. The inquiry is not over. I would like to share with my colleagues what I consider to be the principle remaining questions in this case.

Billy Carter has received a total of $220,000 from the Libyan Government. This transaction has been described by him as a loan, yet, there is no written document attesting to such an arrangement. No collateral has been designated or tendered. The Libyans have characterized it as a "gift." The obvious question is whether or not this was a bona fide loan or gift. Is it reasonable to believe that the Libyans expected to receive nothing in return?

Billy Carter now admits that his first payment—$20,000—from the Libyans was received in December 1979. Yet when he was interviewed by officials from Justice and the FBI in January 1980 just 3 weeks after the first installment was received, he made no mention of it. This was on January 18, 1980, and, at that point, Justice officials had not learned of the payments. During the course of the interview Carter adamantly denied that he had any formal relationship with the Libyans and stated that he had not received anything of value from them.

The files clearly reveal a Billy Carter repeatedly reluctant and resisting to registration as a foreign agent. The Justice Department first contacted Carter concerning his possible status as a "foreign agent" in January 1979. Nevertheless, he continuously avoided registering—even after the payments had been received in December 1979 and April 1980. Then, in early June, Carter strangely took the initiative to make contact with the Justice Department and request a meeting in Washington. This meeting occurred on June 11 and it was during the course of this meeting that he finally admitted having received the money, as well as his having a commission arrangement with the Charter Oil Co. Why did his pattern of resistance to registering suddenly change?

From my review of the files it appears that the FBI first found out about the payments to Billy Carter on May 30. It further appears that this information came through a foreign intelligence source. One must wonder if it is just mere coincidence that within a week after this information became known to the investigators at the Department of Justice, Billy Carter became more cooperative with those officials responsible for the enforcement of the Foreign Agents Registration Act. The President and National Security Adviser Brzezinski have denied that anyone in the White House may have "tipped off" Billy Carter, concerning the fact that the payments to him were known to the FBI and Department of Justice. Yet, last week, in testimony before the special Senate subcommittee the Justice Department officials in charge of this investigation confirmed the possibility of a White House "tip." If the timing of Billy Carter's sudden cooperation is concidence, we should be convinced that is the case. Further delving into this key question is necessary.

Congress should not be looking for another Watergate. Nevertheless we should not prematurely dismiss this controversy simply because it may not be a scandal of Watergate dimensions. This is not a Republican issue. What we are talking about here is the behavior and judgment of Government officials at the highest level. We are talking about possible conflicts of interest and even possible criminal behavior. Every Member of this House should be concerned that a thorough and complete investigation of this matter will result.

Mr. McCLORY. I thank the gentleman for his very important statement.

Mr. Speaker, I reserve the balance of my time.

Mr. RODINO. Mr. Speaker, I yield 10 minutes to the gentleman from Michigan (Mr. BROOMFIELD) for purposes of debate only.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WALKER).

The SPEAKER pro tempore. Without objection, the gentleman from Pennsylvania is recognized for 2 minutes.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding. I hope we are not going to table the resolution of inquiry today. I think we need to take a look at specifically what the resolution of inquiry asks for.

The resolution of inquiry asks the Justice Department to "provide any documents relating to the recommendations in regard to the investigation conducted by the Department into Billy Carter's activities as an unregistered agent of the Government of Libya contained in the files of said Department."

Just this morning, just this morning, Mr. Speaker, I received word from the Justice Department in a letter from Alan Parker, Assistant Attorney General, saying "We did not, in fact, receive all of the materials voluntarily." In this letter he says that "we have received the materials that were in the Criminal Division of the Justice Department but not other materials."

One of those materials to which I refer is a memorandum that was in the FBI which indicated that the Attorney General of the United States delayed this case for 10 days. He delayed it for 10 days during which time he went to the President of the United States and discussed the case of Billy Carter with the President. That is a key memorandum. I cannot imagine a more key memorandum than that one.

The test we are asked to accept here on the floor is did the Justice Department substantially comply. Fine. Does that mean that they just send us a lot of material but none of the key material and they have substantially complied? I do not think so, Mr. Speaker. I think we ought to have the key material. I think to abandon the resolution on the day that the Justice Department admits it did not fully comply with the resolution voluntarily would be a travesty. It would be an affront to justice.

I think, Mr. Speaker, this House should keep the resolution alive until we are sure we have gotten everything we have asked for.

Mr. BROOMFIELD. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. GREEN).

The SPEAKER pro tempore. Without objection, the gentleman from New York (Mr. GREEN) is recognized for 3 minutes.

Mr. GREEN. Mr. Speaker, I thank the gentleman for yielding. I think the question is: Did we, in fact, get substantial compliance from the administration?

I submit that there is much that we did not get. I have reviewed the record that was provided to the Judiciary Committee. I have not reviewed the files that were provided to the Committee on Intelligence, so I am making my remarks strictly on the basis of what has appeared in public print, plus what was available to the Judiciary Committee, material which the chairman of the Judiciary Committee, the gentleman from New Jersey (Mr. RODINO), very graciously permitted me to examine as one of the principal sponsors of the resolution of inquiry.

First, as the gentleman from Pennsylvania (Mr. WALKER) has pointed out, we did not get the material within the Justice Department relating to the 10-day postponement of the investigation at a time when the Attorney General then went to the President and discussed the investigation with him. Certainly that is crucial material.

Second, it is clear that we did not get any material relating to the grand jury investigation now going on in the southern district of New York where it is now a matter of public record that Billy Carter did appear and testify. I hasten to add that the press accounts say he was not a target of that investigation. But what its relevance is to this inquiry we really do not know.

We know also that, at least in the material supplied to the Judiciary Committee, we did not get any material relating to the fact that at a time when the Attorney General was withholding from his own subordinates, who were fully cleared for access to classified information, the information that he had received with respect to the payments by the Libyan Government to Billy Carter, Dr. Brzezinski was giving that same information to Billy Carter. Why were people cleared for classified information denied this information when someone with no such clearance and so totally unreliable as Billy Carter was given it? Surely the material in the Justice Department with respect to that, and they are conducting an investigation of it, is relevant. If that is material that the Judiciary Committee has to look at behind closed doors, so be it. But that matter certainly should be pursued.

Finally, one has to look no further than today's newspaper to see that a target of another investigation by the Justice Department relating to narcotics and currency matters was one who helped arrange the alleged loan to Billy Carter by the Libyan Government. Again, there was no material with respect to that investigation in the materials that I was able to see at the Judiciary Committee.

In short, I would say to my colleagues that there is a great deal of information that was not made available to the Judiciary Committee. I would suggest along with the distinguished ranking minority member (Mr. McCLORY) that that ought to be pursued and the motion to table should be defeated.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Idaho (Mr. HANSEN).

The SPEAKER pro tempore. Without objection, the gentleman from Idaho (Mr. HANSEN) is recognized for 2 minutes.

Mr. HANSEN. Mr. Speaker, This resolution of inquiry, of which I am also a sponsor, is vital to a clear picture of the involvement of the administration in the Libyan adventures of Billy Carter. The resolution sets out the concerns of this body that all the facts surrounding the involvement of Billy in Libya and the involvement of the administration in giving him credibility be brought forth.

In addition to the clarification of whether this administration used the public trust for the private gain of relatives and friends, my personal concern goes to whether opportunities to free our hostages were ignored or supressed as part of such misuse of trust. Billy's fruitless involvement in the Iranian crisis at a time when others, closer to the events and more competent to aid in their resolution, were available deserves a more complete investigation. The disasterous consequences of the use of this notorious man for less than evident purposes are only now becoming clear.

American foreign policy and the frustrating situation involving our hostages in Iran were thrown into a new state of controversy when it was revealed that President Carter's brother Billy was involved in a multimillion-dollar business deal with the Libyan Government and he had already accepted $220,000 of an expected $500,000 loan.

Two regular committees of the House and two in the Senate, including one specially formed committee, are investigating what connection Billy's actions might have with Carter administration activities and if there has been improper effect on White House policies.

This is not the first embarrassment to the President by Billy's activities, but each time the administration claims Billy to be a maverick who cannot be controlled or effectively dealt with and that there is no connection.

Now it has been shown by long ongoing investigation by the U.S. Department of Justice and other Government agencies that there has been considerable connection between Billy and high Government officials. And in the situation where he was receiving large sums of money under very questionable circumstances, Billy was being invited into, not out of, the White House and foreign policy involvement.

Certainly Billy's image of having clout in the White House did not suffer in the eyes of Libyan officials when Rosslyn Carter encouraged her husband to utilize his brother's Libyan connections on behalf of the hostages in Iran. President Carter's own national security advisor Zbigniew Brzezinski arranged the November 27 meeting with Billy and the Libyan representative in Washington, Ali El Houdari.

Mr. Speaker, to summarize my remarks which deal with Billy Carter's impact on Americans held hostage in Iran, I must point out that the President's self defense for involving Billy, with all the risks of dignifying and encouraging a brother with whom he seems unable to reason, is that freeing the hostages was an "absolute, total obsession." He told the press, "my major preoccupation was the release of the hostages, and I was ready to try any channel that could help us reach this goal." This however, is not consistent with the truth. The Senate special committee investigators have noted the glaring fact that I was in Tehran on November 27, at the very time of the Billy Carter Libyan meeting in the White House, trying to get an unresponsive Carter administration to respond to obvious conciliatory gestures by the Iranian Government which could get the hostages released.

I had been in Tehran for several days meeting with top Iranian officials and visiting groups of hostages with the express approval of Bani Sadr, the Revolutionary Council, the militant students and the Ayatollah Khomeini himself.

Also in Tehran at the time were other channels available to the President for securing release of the hostages far more

reliable than Billy Carter. Included were former Democratic Senator James Abourezk and Nobel Peace Prize winner Sean McBride of Amnesty International, not to mention congressional and United Nations possibilities proposed.

Why would the President close the door to Congress, to the U.N. and to the many legitimate opportunities available to reduce or resolve the Iran crisis while seeking avenues through less reputable groups under bizarre circumstances, is what these committees of Congress are attempting to discover and why this resolution of inquiry is necessary.

In addition to the clarification of whether this administration used the public trust for the private gain of relatives and friends, my personal concern goes to whether opportunities to free our hostages were ignored or suppressed as part of such misuse of trust. Billy's fruitless involvement in the Iranian crisis at a time when others, closer to the events and more competent to aid in their resolution, were available deserves a more complete investigation. The disasterous consequences of the use of this notorious man for less than evident purposes are now only becoming clear. I strongly urge that this resolution of inquiry be adopted.

Mr. BROOMFIELD. Mr. Speaker, I yield the balance of my time to the gentleman from Maryland (Mr. BAUMAN).

The SPEAKER pro tempore. Without objection, the gentleman from Maryland (Mr. BAUMAN) is recognized for 3 minutes.

Mr. BAUMAN. Mr. Speaker, I strongly urge a vote against the motion to table the resolution of inquiry now pending before the House. I think that would be one of the worst possible things that we could do in this body today.

If the motion to table is defeated, a motion to postpone further consideration of the resolution will be offered that will postpone consideration until October 1, 1980. Let me address myself to that alternative choice. If the vote to table this resolution today, you say you do not want to know, you have made the judgment that all of the information is in, all of the facts are known, and that you care to know no more about the matter of Billy Carter and his dealings with Libya.

□ 1110

A resolution of inquiry by the House of Representatives is one of the most serious forms of inquiry that can come from the legislative branch directed to the executive branch. Our history shows few instances where the seriousness of events have dictated that Congress take such a course.

The gentleman from New Jersey (Mr. RODINO) referred to the fact that it has been several decades since the House actually adopted such a resolution directed to the President. But can we meet here today on this floor and say, as the morning newspapers tell us, that Billy Carter is about to receive another quarter of a million dollars from the Government of Libya on top of the $220,000 already given him, that no questions remain?

Mr. Speaker, why is a gas station operator from Plains, Ga., getting half a million dollars from Libya? For what? Can we say that the investigation of the other body has been concluded, that all questions have been answered?

Mr. Speaker, this morning the gentleman from Pennsylvania (Mr. WALKER) received a letter—I have the letter here and Members are welcome to read it—from Mr. Allan Parker of the Department of Justice in which he admitted that one of the documents requested by this resolution was not sent. How many more were not sent?

Let me read what the resolution of inquiry of which I am the principal sponsor says. I read from page 3, paragraph (8).

8. any documents relating to the Justice Department's investigation, including findings and recommendations, into Billy Carter's activities as an unregistered agent . . .

9. any record or memorandum relating to the decision of the Justice Department to file a complaint for injunctive relief . . .

So, what has the Justice Department written to the gentleman from Pennsylvania (Mr. WALKER)? They say, "We did not know it was in the FBI's files."

Mr. Speaker, I thought the FBI was a part of the Justice Department. The last time I looked it was still there. Why did they not, if they were so concerned about giving us full information, look at all the files at their command? They apparently did not.

Mr. Speaker, what I am saying is, let us take this issue out of the political arena. Let us not table this because the orders have come from the White House to do so. Let us postpone this matter until at least October 1 and let the other body's investigative committee have a chance to address the questions. Let Bert Lance not thumb his nose at the Congress of the United States but testify and give us information that the other body thinks is appropriate. Let us find out why another quarter of a million dollars is already possibly on the way to Billy Carter. Let us answer the questions that are not answered today. Let us not table this resolution. That would be the political way out. Let us get the answers to the questions and hope that the President and all of the officials of the Justice Department have done the right thing in these circumstances.

Mr. Speaker, to vote to table this resolution today is to vote in ignorance of the full facts, of the full case and to say to your constituents as you face reelection that you do not want to know the truth.

Mr. Speaker, I urge a vote against the motion to table.

Mr. McCLORY. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would like to indicate my support for a motion to postpone consideration to which the gentleman from Maryland made reference. I say that because just today we learned about some significant material that was omitted from the documents delivered by the Department of Justice to the Committee on the Judiciary and to the Committee on Foreign Affairs.

Likewise I might say as a member of the Intelligence Committee, the materials that were delivered there came in dribs and drabs. In fact, at our last meeting we received material which had just been delivered to the committee the previous day. So, it is uncertain at this time as to whether or not all of the materials that we have requested have or have not been received. It seems to me it would be very cautious on our part to postpone action on this resolution to a date certain, such as October 1, to determine whether there has been full compliance with the resolution of inquiry.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. McCLORY. I do yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman yielding.

Mr. Speaker, it must have been a Freudian slip which resulted in the listing of this resolution on one of the tentative schedules opposite the Hazardous Waste Disposal Act, a slip which seems to have been corrected in due course by the leadership. It is apparent that the objective of the leadership in seeking to table this resolution today is to bury the Billy Carter matter, in an effort to insure that there will be no further embarrassment to the Carter administration. What this House will be saying if this resolution is tabled is that we are satisfied with the President's response and that if there is anything more we should know about the Billy Carter matter, we would rather not find out about it, and in any case we will not inquire about it.

I will resist the temptation to speculate today as to the ultimate implications of what is now known about the Billy Carter matter. It is evident that the President has used his personal and official family extensively in the conduct of foreign policy, that he has cloaked them with the indicia of Presidential power, and that a number of strange business transactions have occurred, coincidentally or otherwise, between some members and friends of the Carter family and certain foreign interests.

The only way that the vast array of unresolved questions concerning the Billy Carter matter can be resolved is for an authority which is totally independent of the administration to conduct an inquiry whose scope would not be limited in any manner which would prevent the authority from pursuing all significant leads. Perhaps the investigation now being conducted by a special subcommittee of the Senate can serve this purpose. Perhaps an independent special prosecutor will be required, for experience has shown that this administration can not be trusted to investigate itself.

If this House cannot make a constructive contribution to the investigation of the Billy Carter case and related cases, then the least it should do is to refrain from taking any action which may impede the investigation process or which may encourage the White House to be less than forthcoming in responding to requests of the investigating authority for information. I am concerned that the action which the leadership is about to take will send an unfortunate signal to the White House. I am afraid the

White House may have reason to believe that this House is saying, "Jimmy, we're proud of you." If there is any significant likelihood that our action will be interpreted in this manner, then I am afraid we will regret it.

We never know what new disclosures this afternoon's or tomorrow's newspapers will bring. A startling example occurred today, when a highly respected military authority, and a Democrat, Adm. Elmo Zumwalt (retired), was reported to have accused the President himself of having ordered the leaking of information pertaining to the Stealth bomber. Admiral Zumwalt has offered to present testimony and evidence to congressional committees in support of his charges. There is no telling when someone in a position to know the answers to the myriad of unanswered questions in the Billy Carter case may decide to come forward and cooperate. This House should not take any action which might have the effect of discouraging potential witnesses from providing such information. We should not table this resolution today.

One final word. Congress and the American people owe a debt of gratitude to the talented ladies and gentlemen of the press who have demonstrated the diligence to unearth the vital leads in this case and the courage to ask the crucial questions.

Even though this resolution may be tabled today, we can rest assured or rest uneasy, as the case may be, that the resolve and dedication of the members of the fourth estate will not be tabled.

Let me review some additional questions that need a response:

Among the innumerable questions which remain to be answered are the following:

First. What was the true relationship of Billy Carter to the Libyan Government and what did Billy Carter undertake to do for Libya in return for the $220,000 in payments and for whatever future considerations Billy Carter received from the Libyans?

Second. Why did the Justice Department delay for more than a year before taking any serious action with regard to Billy Carter's failure to register as a foreign agent? What was the role of Attorney General Civiletti in determining to delay action and to refrain from prosecution of Billy Carter? Was an improper warning given to Billy Carter, his associates, or attorneys that the Department had learned of the payments to Billy Carter by the Libyans? Was justice obstructed in this case and, if so, by whom?

Third. Did the President's national security advisor, Dr. Brzezinski, or anyone else in the administration provide sensitive information to Billy Carter or his associates to which they would not have been entitled had it not been for Billy Carter's relationship with the President?

Fourth. Did the Libyans receive any undue consideration from the administration, such as a promise to change administration policy with respect to the Palestine Liberation Organization or the release of aircraft which the Libyans have attempted to purchase?

Fifth. Was there any relationship between the Billy Carter matter and any other case in which influential members of the administration have had substantial financial dealings with foreign interests, such as the Bert Lance case?

Sixth. What was the full extent of the knowledge and involvement of the President of the United States in the Billy Carter case and related matters?

With regard to this last question, it is admittedly possible for the President's brother and several high level officials to be involved in a matter while the President himself may know little or nothing about it. Still, there comes a point where the evidence suggests that it is more reasonable to conclude that the President has a greater knowledge or involvement than has been revealed so far, than to conclude that full disclosure has been made. The President has offered to testify personally concerning the Billy Carter matter and to provide additional information which may be required. It is my hope that the Senate subcommittee or other investigating authority will insist that all pertinent information concerning White House involvement in this and related cases be disclosed.

The House should not table House Resolution 745, but should indeed bring it up and vote now.

Mr. RODINO. Mr. Speaker, I yield 2 minutes to the chairman of the Committee on Foreign Affairs, the distinguished gentleman from Wisconsin (Mr. ZABLOCKI), for purposes of debate only.

Mr. ZABLOCKI. Mr. Speaker, I thank the chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO) for yielding.

Mr. Speaker, I rise in support of the motion to table House Resolution 745 which will be offered at the end of the debate on this matter.

The distinguished gentleman from New Jersey, the chairman of the Committee on the Judiciary, has thoroughly explained the resolution of inquiry. The executive branch's response to the requests for information that were contained therein to the Committee on Foreign Affairs and to the Committee on the Judiciary, to which the resolution was referred have been made available. I shall, therefore, not repeat the statements and arguments that the gentleman from New Jersey has presented to the House.

Mr. Speaker, I fully concur with the judgment of the gentleman from New Jersey that the material supplied by the President and the Department of State and the Department of Justice to the committees and indeed to all the Members of the House is in substantial compliance with the resolution of inquiry as amended.

Mr. Speaker, I would like to add an observation that over the course of my membership as a member of the Committee on Foreign Affairs, and in my tenure as chairman, that committee has been involved in the consideration of the bulk of the resolutions of inquiry that have been introduced in the House during that period of time. In my view, the President's response to the pending resolution is the most thorough, straightforward and cooperative that I have seen.

Mr. RODINO. Mr. Speaker, I yield 1 additional minute to the gentleman from Wisconsin.

Mr. ZABLOCKI. To repeat, this is the most cooperative executive branch response to a resolution of this nature that we have received.

Therefore I say, Mr. Speaker, the arguments that some of the information was not received are not entirely valid. In fact the data alluded to in debate were not covered in the resolution of inquiry.

Mr. Speaker, I urge my colleagues to support the motion to table the resolution because I firmly believe that the executive branch has been in substantial compliance with the resolution of inquiry.

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. BOLAND), the distinguished chairman of the Permanent Select Committee on Intelligence, for purposes of debate only.

Mr. BOLAND. Mr. Speaker, the Permanent Select Committee on Intelligence issued a report concerning the classified material requested in House Resolution 745. The committee acted in this fashion pursuant to the request of the Committees on the Judiciary and Foreign Affairs.

The arrangement was that the Permanent Select Committee on Intelligence would review all the classified material responding to the requests of the resolution of inquiry and issue a public, unclassified report based on its review of that material.

The committee issued its report on August 28. The report was printed in the RECORD that day and was printed by GPO and made available to all the Members of the House and to the public.

The committee was unanimous in the adoption of its report. The committee believes—and the report so states—that the information provided to it substantially complies with the requests of House Resolution 745.

The report states further, that should any additional material turn up, the committee will examine it carefully.

The body of the committee's report portrays the substance of the classified material submitted to it, described in a way that protects the sources or methods employed to collect the information.

I will conclude my remarks by noting that it was the unanimous judgment of the committee that classified material submitted to it, the substance of which is reflected in its report, constitutes some of the country's most sensitive and valuable national security secrets.

The committee's efforts in this matter—receipt and examination of the classified material and issuance of a report—were undertaken to protect these secrets and ongoing investigations.

The committee report indicates that the committee's review pointed to several unresolved issues in the Billy Carter case.

These are all matters now being explored by the Senate subcommittee.

The committee will shortly send a classified letter to the Senate subcommittee and to the Department of Justice laying out these issues and urging their resolution within the parameters of these investigations.

□ 1120

Mr. McCLORY. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. ROBINSON), the ranking minority member of the House Intelligence.

Mr. ROBINSON. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as ranking minority member of the House Permanent Select Committee on Intelligence I support and endorse the remarks of the chairman of that committee, the gentleman from Massachusetts.

Our committee carefully examined all the classified materials provided to it concerning Billy Carter's relationship, directly and indirectly, with the Government of Libya. The classified information used in preparing its report came from the White House, the Department of State, the Department of Justice, the Federal Bureau of Investigation, and the intelligence community.

It is important to note, however, that the committee report reflects an analysis of only the classified material that was received as of the report date.

Any additional material that may be received by the committee will be examined on the same basis as that received earlier.

The committee found that the classified material reached many of the items of inquiry reflected in House Resolution 745.

The major concern of the committee is the enormous sensitivity of the information it received and its greater interest in protection of the sources and methods used to obtain it.

Finally, a number of unresolved issues have arisen from the committee effort that warrant further attention within executive and legislative branches. The committee will make every effort to seek the resolution of these issues in the most expeditious manner, but until they are this member will certainly not vote to table this resolution.

Mr. RODINO. Mr. Speaker, I yield 1 minute for purposes of debate only to the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. Mr. Speaker, since the Foreign Affairs Committee reported out this resolution of inquiry at the end of July, the investigation of Billy Carter has proceeded with full cooperation of the White House.

I would just like to reiterate my views on this issue, views which I expressed during the full committee consideration. What we are dealing with here is not "Billygate," but "Billygoat." Billy Carter has often filled the role of the "clown," and in this instance, the question of Libyan influence on the U.S. Government, as measured by Billy Carter, is akin to missing the whole circus to watch the jester in the stands.

The Congress must broaden this inquiry, and take a hard look at the extent of Libyan penetration into the foreign policy decisionmaking in the United States. Since the advent of the Billy Carter affair, there have been several articles in the newspaper discussing this very point. I am convinced about the whole question of oil blackmail, and I am concerned that our national interests, or a moral basis for foreign policy formation does not fall by the wayside. A case study of Libyan influence could not be more illuminating on this question.

Libya's subversion of our foreign policy, and the extent of her involvement in international terrorism, and just plain international mischief are matters of public record. A discussion of the range of this involvement was lucidly outlined in a July 27 article in the Washington Post, entitled "Beyond Billy: The Importance of Investigating Libya's Treacheries." Some examples of Libya's role in international mischief include:

The Munich massacre of the Israeli Olympic Team;

Support for Idi Amin of Uganda (to the present);

Funding assassination or coup attempts against virtually every nation in northern Africa, notably against President Sadat of Egypt in an attempt to undermine the Camp David accords;

Support for international terrorism, including the PLO and Black September;

Allegations of bankrolling Pakistan's nuclear development program with an eye to acquiring an "Islamic bomb"; and

Bankrolling and encouraging the Moro insurgency in the southern Philippines

The list of Libyan treachery could go on and on. I do not think that this country should have any dealings with a government like that, and I think that any involvement by Government officials with Libyan agents should be thoroughly investigated.

Mr. RODINO. Mr. Speaker, I yield 1 minute for purposes of debate only to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I appreciate the time the gentleman has yielded to me. It has been brought up that there is certain information that was not available to the two committees, and was not available to some Members of the House regarding these investigations. I think it ought to be pointed out that this resolution of inquiry deals with a certain point in time. Information that was available and known to the parties against whom this resolution was sent before that date did respond.

There is always going to be new information that comes up because of the extensiveness of these probes and the breadths of the investigations.

I would like to address a question to the chairman of our committee. Certainly, it is our intention, Mr. Chairman, is it not, on the committee to make available information that we receive, that comes after the ending of this resolution of inquiry?

Mr. RODINO. Whatever information which is made available would certainly be then made available to Members of the House, just as this chairman and this committee and the Committee on Foreign Affairs, and the Committee on Intelligence, have been making available to all the Members material that has been requested.

The SPEAKER pro tempore. The time of the gentleman from Kentucky has expired.

Mr. RODINO. Mr. Speaker, I yield myself 1 minute.

We might also say, in response to the gentleman from Kentucky, that any fair-minded evaluation of the resolution of inquiry which is before this House, and the questions that have been directed to the President, can only result in a conclusion that the material requested was provided when it was available. One must also recall with emphasis that the resolution directs the President to respond "to the extent possible." I believe, that there has been more than substantial compliance, and I think that any fair-minded individual, aside from any partisan politics, is going to consider that this matter that we are debating now, this resolution of inquiry—has been substantially complied with.

I would urge the Members to act with that kind of responsibility that I think this House should have.

The SPEAKER pro tempore. The time of the gentleman from New Jersey has expired. The gentleman from New Jersey has 12 minutes remaining.

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. GONZALEZ) for purposes of debate only.

Mr. GONZALEZ. Mr. Speaker, I thank the distinguished chairman for yielding to me. I rise in support of tabling this, but I had intended to ask a question of the gentlemen on the other side and take their time.

The reason that I am intrigued by the positions taken here, I recall that the gentleman from Pennsylvania a few days ago, on a personal privilege plea, demanded to know why there was no access to certain information. I notice that the gentleman from New York made that the burden of his plea today. I notice this is a justification given by the speakers on the other side for continuing the Carter family saga as a political, exploitable deal at this time, but I am intrigued by the fact that in neither case—because I was the only one who voted no—did the gentlemen say anything about——

The SPEAKER pro tempore. The time of the gentleman from Texas has expired.

Mr. RODINO. Mr. Speaker, I yield 30 additional seconds to the gentleman from Texas.

Mr. GONZALEZ. They said nothing when they voted for the resolution pertaining to the Committee on Standards of Official Conduct, or the Ethics Committee, wherein for the first time in the history, that I know of, we provided that a Member could be denied—even a member of that committee—could be denied information obtained by that committee. Now, who is going to make that determination was never clarified. That was the reason I voted no. Why now are you all complaining about inaccessibility of information? You sanctioned that.

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. DANIELSON) for purposes of debate only.

Mr. DANIELSON. Mr. Speaker, I thank the chairman for yielding.

Mr. Speaker, this matter has been pending before us now, before the Congress, for many weeks, and I respectfully submit that the President, the White House, has supplied us with all of the information we asked for. It has been available for inspection by the Members of the House. Very few have taken advantage of the opportunity to inspect it, which is in itself eloquent proof that Members of the House did not consider it to be terribly important.

I respectfully submit that the inquiry which has been made, has been complied with fully and reasonably. There is nothing that has been turned down that has been asked for. The very fact that the Members show no interest in examining it is a pretty good measure of the value of this inquiry in the minds of most of us.

I urge that we close off this chapter and go on with the important business of the House of Representatives. We and the Nation have many grave problems which are crying for attention.

● Mr. BIAGGI. Mr. Speaker, I rise in support of House Resolution 745, a resolution directing President Carter to furnish the House with full and complete information regarding his brother's role as a Libyan agent.

This resolution seeks to demonstrate the resolve of this body to complete the investigation of the Billy Carter affair in a prompt and expeditious manner. The President and his administration have already provided this Congress with the overwhelming majority of information requested in the resolution. In addition, the President has pledged the full cooperation of his administration with the congressional investigation into Billy Carter's activities on behalf of Libya. To date, the President has carried out his pledge to the fullest.

House Resolution 745 is not intended to cast aspersions on the President's willingness to act in good faith. On the contrary, it is consistent with his desire for a prompt and full disclosure of the Billy Carter affair. Under the provisions of this legislation, the President must furnish the House with all information pertinent to the investigation within 7 days of the resolution's adoption. Based on the President's longstanding policy of fairness and openness, I am confident he will be more than willing to comply.

Certainly, Billy Carter's role as a Libyan agent is a very serious matter that warrants close scrutiny. President Carter has clearly indicated his support for such an investigation and has done everything possible to insure that it could be conducted in the prompt and thorough manner that it deserves. Passage of House Resolution 745 would further help to achieve this crucial goal. I urge my colleagues to join me in supporting this important resolution.●

□ 1130

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. RODINO) has 9½ minutes remaining, and the gentleman from Illinois (Mr. McCLORY) has 2 minutes remaining.

The Chair recognizes the gentleman from New Jersey (Mr. RODINO).

Mr. RODINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before we conclude this debate I am going to move a call of the House. I believe this matter is of sufficient importance that the membership be here in order to know what we are voting on.

But before I make that motion, Mr. Speaker, I would like to say again—and this is said at the risk of being repetitive—that I think it is important that we do know what we are about here, and that is to make a determination, based on our best and fair judgment, as to whether or not the materials supplied by the President, by the State Department acting under the direction of the President, by the Justice Department, and by the intelligence areas of the Government, were materials that responded in substantial compliance to the questions which were included in the resolution of inquiry.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentlewoman from New Jersey for the purpose of asking a question.

Mrs. FENWICK. Mr. Speaker, I thank my colleague for yielding.

I just want to say that I regret very much that into this very difficult and interesting debate has been injected the question of motive. I intend to vote against the motion to table, but it is not because of partisan politics, any more than I would attribute the motive of partisan politics to those on the other side of the aisle in desiring to table.

Mr. Speaker, I think we have got to rise above imputing motives to other Members as to why they are voting in certain ways.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Illinois for the purpose of asking a question.

Mr. RAILSBACK. Mr. Speaker, I want to thank the chairman of the committee for yielding.

I believe that many of us, Mr. Speaker, who did review the materials—and I am one of them; I spent as much time on it as did the gentleman from California (Mr. DANIELSON) or any other Member—are very much troubled by the fact that we just learned that there was a rather important memorandum that apparently was produced and still has not been produced, one which in my opinion is required to be produced under the terms of the resolution of inquiry.

Let me just say that here is the answer that was given by the Department of Justice. They say this in the letter of September 10:

> The memorandum you refer to was apparently prepared by an employee of the Federal Bureau of Investigation and was unknown to us and not included in any files or material of the Criminal Division pertaining to Billy Carter.

The questions that raises in my mind are: How many other memorandums are there, how many other documents are there, and what is wrong anyway with a postponement?

Mr. Speaker, I strongly urge that we at least postpone this to October 1 to make sure that the Department of Justice does get any relevant information and provide it to us. They still have not provided it to the House of Representatives.

Mr. RODINO. Mr. Speaker, some Members may have concluded that certain material may not have been provided. Each will have to make a judgment based on whether or not they have concluded that the questions that were put to the President have been responded to. I stated that in my original presentation.

I believe that the House should also be alerted to the fact that while a letter from the U.S. Department of Justice was referred to making mention of a certain memorandum which was not included and which may have been requested—and I do not know that there was any such specific request in the resolution of inquiry—on a careful study of mine I find that same letter from the Assistant Attorney General addressed to the Honorable ROBERT S. WALKER, there is a concluding paragraph which states:

> The matter you referred to was covered completely by the testimony of the Attorney General before the Senate Special Subcommittee to Investigate Individuals Representing the Interests of Foreign Governments on Friday, September 5, 1980.

And I believe all of that material was also reported in the newspapers.

But even beyond that, Mr. Speaker, I think one must ask this question: After the initial introduction of this resolution of inquiry and the submission of all this material and having made all this material available to all the Members of this House, I must state once again—and I think this is an important matter and an important item to consider—there were not more than a dozen or two dozen Members, and we have a record of all the Members, who sought to review, to consider, or to judge whether or not there had been a substantial response.

Mr. Speaker, I leave that issue before the House.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Pennsylvania for the purpose of asking a question.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. RODINO) has 4 minutes remaining.

Mr. WALKER. Mr. Speaker, I think the gentleman for yielding .

My question goes to the fact that the resolution of inquiry specifically demanded all materials in the Department, not just in the Criminal Division. This

letter to which the gentleman referred says they did not provide all materials within the Department; they only provided what was in the Criminal Division.

I wonder how the gentleman can say the resolution of inquiry did not demand the memorandum which referred to the 10-day delay the Attorney General ordered in the Bill Carter case. How could that not be a part of the resolution of inquiry?

Mr. RODINO. Mr. Speaker, how I would like to respond to the gentleman in making reference to that is to say that with regard to the Special Subcommittee to Investigate Individuals which heard all of this matter, all of that testimony was reported in the newspapers and is public knowledge at this time. So the question has to be whether or not the failure to act, if there was a failure indeed, was in response directly to that. If there was that, then the question is whether or not that was a material failure so as to not be in substantial compliance.

The SPEAKER pro tempore. The gentleman from New Jersey has 3 minutes remaining.

CALL OF THE HOUSE

Mr. RODINO. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 536]

Abdnor
Addabbo
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashbrook
Ashley
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Collins, Tex.
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kogovsek
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCormack
McDade
McHugh
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Rudd
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Winn
Wirth
Wolff
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

□ 1150

The SPEAKER pro tempore. On this rollcall, 349 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

RESOLUTION OF INQUIRY IN THE MATTER OF BILLY CARTER

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, during committee consideration my original inclination was to support a motion to table this resolution of inquiry. But I changed my mind and then urged the adoption of the resolution when the story broke and the press reported that the President had a private conversation with the Attorney General of the United States about the Billy Carter case.

The reason why I am going to offer a motion to postpone, if the motion to table is defeated, is that I just learned today that there has been another omission from the materials that were delivered by the Department of Justice: A memorandum of June 13 from the Attorney General suggesting that the FBI postpone its investigation for 10 days. It was during that 10-day period that the Attorney General conferred with the President with regard to the Billy Carter case.

In addition, we learned from the press that National Security Adviser Brzezinski communicated intelligence information to Billy Carter. This is a very serious matter. The question arises whether or not the espionage laws were breached by the National Security Adviser or the President. There are unanswered questions. These relate to materials and documents and information which I believe this body should have.

I urge a "no" vote on the motion to table. I will then offer a motion to postpone until October 1.

Mr. RODINO. Mr. Speaker, again, I want to point out to the House that the matter before us is a resolution inquiry which directs the President to reply to the extent possible to certain questions which had been presented through the resolution of inquiry as introduced and those questions which had been added to the resolution by both the Committee on the Judiciary and the Committee on Foreign Affairs.

The precedents indicate that resolutions of inquiry will, if substantially complied with, then be laid at rest by a motion to table, because any further action would be fruitless and moot.

I believe that the gentleman has inquired into a matter which requires evaluation of certain items. It does not go to whether or not the President has responded to the questions included in the resolution of inquiry.

□ 1200

The other body is examining the question as to whether or not Billy Carter may have violated the law. This question is not before the House.

As a result, Mr. Speaker, I am going to urge and I now move that we table the resolution of inquiry before this House.

MOTION TO TABLE OFFERED BY MR. RODINO

Mr. RODINO. Mr. Speaker, I offer a motion to table House Resolution 745.

The Clerk read as follows:

Mr. RODINO moves to table House Resolution 745.

PARLIAMENTARY INQUIRY

Mr. McCLORY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The Chair will entertain the parliamentary inquiry.

Mr. McCLORY. Mr. Speaker, is it not true that a favorable vote on the motion to table would be a final adverse resolution or disposition of the resolution of inquiry?

The SPEAKER pro tempore. It would dispose of the resolution by laying it on the table.

The question is on the motion to table offered by the gentleman from New Jersey (Mr. RODINO).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 124, nays 260, not voting 48, as follows:

[Roll No. 537]

YEAS—124

Addabbo
Akaka
Alexander
Annunzio
Anthony
Applegate
Ashley
Aspin
Bailey
Baldus
Bellenson
Benjamin
Biaggi
Bingham
Boland
Bolling
Bonior
Bowen
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Burton, Phillip
Cavanaugh
Coelho
Collins, Ill.
Conyers
Corman
Danielson
Davis, S.C.
Derrick
Dixon
Donnelly
Drinan
Early
Eckhardt
Edwards, Calif.
Evans, Ga.
Fary
Fascell
Fazio
Ferraro
Flippo
Ford, Mich.
Garcia
Gaydos
Gephardt
Gibbons
Ginn
Gonzalez
Gray
Guarini
Hall, Ohio
Hanley
Hawkins
Heftel
Holland
Huckaby
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Kastenmeier
Long, La.
Lundine
Mathis
Matsui
Mikulski
Mineta
Moakley
Mollohan
Montgomery
Murphy, Ill.
Murphy, Pa.
Musto
Nedzi
Nichols
Nowak
Oakar
Oberstar
Obey
Patten
Pease
Pepper
Perkins
Preyer
Price
Rahall
Rangel
Ratchford
Reuss
Roberts
Rodino
Rose
Rosenthal
Rostenkowski
Roybal
Sabo
Scheuer
Seiberling
Simon
Solarz
Stack
Staggers
Stewart
Stokes
Stratton
Swift
Synar
Van Deerlin
Vanik
Vento
Volkmer
Watkins
Waxman
Weiss
Whitley
Whitten
Williams, Mont.
Williams, Ohio
Wirth
Wolff
Wright
Wyatt
Yates
Young, Mo.
Zablocki
Zeferetti

NAYS—260

Abdnor
Albosta
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Archer
Ashbrook
Atkinson
AuCoin
Badham
Bafalis
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bereuter
Bethune
Blanchard
Boner
Bonker
Bouquard
Broomfield
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Butler
Byron
Campbell
Carr
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derwinski
Devine
Dickinson
Dicks
Dodd
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fenwick
Findley
Fish
Fisher
Fithian
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Gingrich
Glickman
Goldwater
Goodling
Gore
Gramm
Green
Grisham
Gudger
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hansen
Harkin
Harris
Harsha
Heckler
Hightower
Hillis
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jones, Tenn.
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Mavroules
Mazzoli
Michel
Miller, Calif.
Miller, Ohio
Minish
Mitchell, N.Y.
Moffett
Moore
Moorhead, Calif.
Mottl
Myers, Ind.
Natcher
Neal
Nelson
O'Brien
Ottinger
Panetta
Pashayan
Patterson
Paul
Petri
Peyser
Pickle
Porter
Pritchard
Pursell
Quayle
Quillen
Railsback
Regula
Rhodes
Rinaldo
Robinson
Roe
Roth
Rousselot
Rudd
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shannon
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
Stangeland
Stanton
Stark
Stenholm
Stockman
Studds
Stump
Symms
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Vander Jagt
Walgren
Walker
Wampler
Weaver
Weiss
White
Whitehurst
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolpe
Wydler
Wylie
Yatron
Young, Fla.

NOT VOTING—48

Ambro
Anderson, Ill.
Bevill
Boggs
Breaux
Buchanan
Carney
Chisholm
Clay
Cotter
Dingell
Giaimo
Gilman
Gradison
Grassley
Hefner
Hinson
Holtzman
Howard
Jenrette
Johnson, Colo.
Kelly
Kramer
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McDonald
McKay
Marriott
Mattox
Mitchell, Md.
Moorhead, Pa.
Murphy, N.Y.
Murtha
Myers, Pa.
Nolan
Richmond
Ritter
Royer
Russo
St Germain
Steed
Tauzin
Wilson, C. H.
Wilson, Tex.
Young, Alaska

□ 1210

Messrs. TRAXLER, DELLUMS, PICKLE, and THOMPSON changed their votes from "yea" to "nay."

So the motion to table was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. RODINO. Mr. Speaker, I move the previous question on the resolution.

The SPEAKER. Without objection, the previous question will be considered as ordered.

There was no objection.

The SPEAKER. The question is on the resolution.

Mr. BAUMAN. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The Chair is in the middle of a vote.

The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

POINT OF ORDER

Mr. RODINO. Mr. Speaker, I was on my feet requesting a rollcall vote.

The SPEAKER. In the opinion of the Chair, the gentleman had not requested the rollcall vote in a timely manner.

APPOINTMENT OF CONFEREES ON H.R. 5192, EDUCATION AMENDMENTS OF 1980

Mr. PERKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 5192, the Education Amendments of 1980, with a Senate amendment thereto, insist on disagreement to the Senate amendment, and agree to a further conference with the Senate thereon.

□ 1220

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair has been informed that the gentleman from New Jersey (Mr. RODINO) rose to his feet and asked for the yeas and nays on adoption of the resolution of inquiry.

The House will be in order.

The Chair will expect the Members to please act with dignity.

The Chair did not hear the gentleman seek recognition. The time having elapsed the only way the Member can ask for the yeas and nays is by unanimous consent. Is there an objection?

Mr. BAUMAN. Mr. Speaker, I object.

The SPEAKER. The Chair hears an objection.

The Chair regrets the Chair did not hear the gentleman, the gentleman from New Jersey.

Is there objection to the request of the gentleman from Kentucky (Mr. PERKINS)?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I do so to allow my chairman to state why it is necessary to go back to conference.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Speaker, let me state to my distinguished colleague from Ohio that the Senate rejected the conference report by one vote. They later reconsidered and on yesterday afternoon agreed to go to conference and appointed their conferees yesterday.

The subcommittee met this morning, and it was the decision of our committee that we should go back to conference with the Senate.

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, I fully agree with this position. I took this reservation for the purpose of letting the Members know why this was necessary.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there further objection to the request of the gentleman from Kentucky (Mr. PERKINS)? The Chair hears none, and appoints the following conferees: Messrs. PERKINS, THOMPSON, BRADEMAS, FORD of Michigan, GAYDOS, BIAGGI, SIMON, MURPHY of Pennsylvania, WEISS, PEYSER, RATCHFORD, MILLER of California, ASHBROOK, BUCHANAN, JEFFORDS, EDWARDS of Oklahoma, TAUKE, and PETRI.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO HAVE UNTIL MIDNIGHT TOMORROW TO FILE PRIVILEGED REPORT ON DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tomorrow night to file a privileged report on the bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

Mr. EDWARDS of Alabama reserved all points of order on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 2977, DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT

Mr. PERKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2977) to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees:

For consideration of titles I, II, III, and IV of the Senate amendment, and modifications thereof committed to conference: Messrs. PERKINS, BRADEMAS, HAWKINS, BIAGGI, SIMON, BEARD of Rhode Island, MILLER of California, STACK, ASHBROOK, COLEMAN, KRAMER, and ERDAHL.

And for the consideration of sections 501, 502, 503, and 505 only of title V of the Senate amendment to H.R. 2977 and modifications thereof committed to conference: Messrs. BROOKS, EDWARDS of California, CONYERS, HYDE, and SENSENBRENNER.

And the consideration of section 504 only of title V of the Senate amendment to H.R. 2977 and modifications thereof committed to conference: Messrs. ULLMAN, CORMAN, and CONABLE.

IN TRIBUTE TO THE LATE ALDO BECKMAN

(Mr. ROSTENKOWSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROSTENKOWSKI. Mr. Speaker, it is with a sense of great loss and sorrow that I announce to this Chamber the passing of a distinguished journalist, Aldo Beckman. Late last night, Aldo lost his private struggle with cancer.

Every profession has its small minority of individuals who combine both intellect and class. Aldo Beckman clearly demonstrated these two qualities and in so doing brought distinction to his profession and himself.

While he was only 45 at his death, Aldo's achievements are, to say the least, quite substantial. His career seemed to move at an ever-quickening pace. After graduating from Western Illinois University, Aldo worked for United Press International, then in 1959 moved to the Chicago Tribune. In 1965 he was promoted to the Washington bureau of the Tribune. Once in Washington, Aldo wasted no time in establishing himself and in 1966 was awarded the Tribune's Beck Journalism Award for distinguished national journalism. In 1970 he was assigned to cover the White House and in 1972 was awarded his second Beck Journalism Award for his coverage of President Nixon's trip to China. In 1976 Aldo was named the Tribune's Washington bureau chief and from that time to his death, served in that capacity covering various Washington issues in all branches of the Government.

He was hard working and conscientious to the very end. He could not be bothered by his own physical infirmities, but rather he tried to work to his last days.

Aldo Beckman—a dedicated journalist, a man of unquestioned integrity, my dear friend—will long be missed by this Member of Congress.

● Mr. ANNUNZIO. Mr. Speaker, I am honored to join my good friend and colleague, the Honorable DAN ROSTENKOWSKI, in paying tribute to Aldo Bruce Beckman, the Washington bureau chief of the Chicago Tribune, who died this morning of cancer.

Aldo Beckman's passing is especially tragic because he was only 45 years of age, was married and had five beautiful children, and still had some of the best years of his life ahead of him. His loss is a tremendous one for the citizens of Chicago who were acquainted with his work, and his distinguished career of service will long be remembered by all of us who had the good fortune of knowing him.

Aldo Beckman began his career in journalism in 1958 as a writer and reporter with United Press International in Chicago, after graduation from Western Illinois University in 1956, and service with the U.S. Army from 1956–58. He joined the Chicago Tribune in 1959 and was a correspondent in the newspaper's Washington office through the decade of the sixties. In 1970, he became the Tribune's White House correspondent, and became its Washington bureau chief in 1977.

Mr. Beckman received the Chicago Tribune's Edward Scott Beck award in 1966 and 1972; Western Illinois University's Alumni Achievement Award in 1973, the Merriman Smith Award in 1976, and in 1978 was the president of the White House Correspondents Association.

Mrs. Annunzio and I extend our deepest sympathy to his wife, Marijo, and his children, Theresa, Patricia, Jennifer, Mary Kay, and Eugene, of the Washington area.●

● Mr. PORTER. Mr. Speaker, we in Illinois feel an especially keen loss in the death this morning of Aldo Beckman, chief of the Washington bureau of the Chicago Tribune.

Although Mr. Beckman is known to all of official Washington for the reputation of aggressive and impartial reporting he developed in the 15 years since his transfer from Chicago to the Tribune's Washington bureau, many of us in Illinois recall with affection and respect his coverage of the Criminal Courts Building in Chicago, and his work on many other major Chicago-area stories, during the 6 years he served the Tribune in its home city.

Mr. Beckman had been a reporter for the Tribune for 2 years when he wed Mari Jo Walsh of Wilmette in 1961. They reared four daughters and a son, to whom the death of a father at the comparatively young age of 45 comes as an unwelcome reminder of the fragility of all human life.

Mr. Beckman's colleagues knew of his poor health these past months, and their already high respect for him grew even greater as they watched him covering what he knew would be his last major stories—the 1980 national conventions of the Republican and Democratic parties.

Mr. Beckman has won many awards, the most recent in 1976, when he was given the Merriman Smith Memorial Award for his spot reporting of the attempt to assassinate President Ford by Sarah Jane Moore. He won the Tribune's prestigious Beck Journalism Award twice, the more recent in 1972 for his coverage of President Nixon's trip to China.

Many in this Congress grew to know Mr. Beckman in his capacity as president of the White House Correspondents Association last year. Others knew him as the writer of a brilliant weekend commentary on the Washington scene.

But in Illinois, there are many today who grieve another, a younger, Aldo Beckman. They remember the eager student at Bradley University and Western Illinois University in the mid-1950s. I am sure there are even some veterans on the Quincy (Illinois) Herald-Whig who remember the enthusiastic student who worked college summers for their newspaper.

Mr. Beckman was a product of Illinois farmland, a native of Lima. His friends say he was proud of this heritage and never tried to lose his rural Midwest twang. Illinois has every right to be proud of the achievements of this great journalist. His family, his colleagues on the Tribune, and his associates in government share in the emptiness left by his death.●

PERMISSION FOR COMMITTEE ON FOREIGN AFFAIRS TO HAVE UNTIL MIDNIGHT, FRIDAY, SEPTEMBER 12, 1980, TO FILE REPORTS ON HOUSE CONCURRENT RESOLUTION 367 AND HOUSE CONCURRENT RESOLUTION 368, AND TO FILE ADDITIONAL SUPPLEMENTARY AND MINORITY VIEWS ON MONDAY, SEPTEMBER 15, 1980

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that the Committee on Foreign Affairs have until midnight on Friday, September 12, 1980, to file its reports on House Concurrent Resolution 367 and House Concurrent Resolution 368, and that additional, supplemental, and minority views on such resolutions may be filed on Monday, September 15, 1980, and printed in the reports as if filed with them.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

EDWARD DEBARTOLO AND THE CHICAGO WHITE SOX

(Mr. ANNUNZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANNUNZIO. Mr. Speaker, the Chicago White Sox baseball club is an illustrious part of the city of Chicago and the tradition of baseball. The team's future, therefore, is of much interest to the people of our city and baseball fans everywhere.

We in Chicago want to be certain that the White Sox will remain in our city and we would like to see the ball club acquired by a management which could lead it to an American League pennant.

On August 22, 1980, the board of directors of the White Sox voted unanimously to recommend the sale of its franchise to Mr. Edward J. DeBartolo, Sr., of Youngstown, Ohio. Meeting again on September 7, 1980, the board unanimously reaffirmed this recommendation.

Mr. DeBartolo, chairman of the board and chief executive officer of Edward J. DeBartolo Corp., is an outstanding citizen and business leader. He has publicly pledged that the White Sox will remain in Chicago and that he will provide the necessary leadership abilities and financial resources to bring a pennant to Chicago.

I, therefore, urge the American League baseball owners and the commissioner of baseball, in the interest of baseball and the city of Chicago, to approve the sale of the White Sox to Mr. DeBartolo. I know that many thousands of baseball fans look forward with me to welcoming him to Chicago where he will lead the White Sox to a pennant and a World Series championship.

IS CHICAGO FOR SALE?

(Mr. DEVINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. DEVINE. Mr. Speaker, a story in the Washington Post this morning was shocking, and immediately suggests President Carter is trying to buy the election with taxpayer funds.

Chicago Mayor Jane Byrne was widely reported in bitter opposition to Carter, but a sudden change of heart followed a number of announcements of Federal aid.

Carter's Commerce Secretary Phil Klutznick just last week announced a million dollar grant for a new program from the Commerce Department.

Then last Friday, a $13.2 million Federal loan to the financially troubled Chicago Housing Authority was awarded.

Federal approval of a land grant transfer, that had been dormant since last fall, suddenly was approved to allow construction of a new O'Hare Airport international terminal.

Carter's Transportation Secretary Goldschmidt, originally suggesting Chicago might suffer in terms of Federal aid when Mayor Byrne switched her allegiance to TED KENNEDY, last Monday denied Federal funds are withheld for political reasons. Nevertheless, yesterday a $91.8 million transportation grant was suddenly announced for Chicago.

Mr. Speaker, this smells to high heaven. Can a President, with immunity, bestow largesse from the people's Treasury to curry favor for his candidacy?

Nobody is suggesting bribery, but when there is an apparent switching of allegiance to a person in a position to bestow over one hundred million dollars of taxpayer money, the public has a right to know, and have a complete explanation.

Carter's image as a "nice guy," et cetera, is seriously tarnished by this type of election year generosity. Moreover, a biography entitled, "In Search of the Great White House," by Betty Glad, professor of political science at the University of Illinois, should be must reading for all persons seeking an insight on the character of the real Jimmy Carter.

Following is the Washington Post story this morning as reported by Edward Walsh, Washington Post staff writer:

AS FEDERAL FUNDS FLOW TO CHICAGO, MAYOR BYRNE RETURNS TO CARTER FOLD

(By Edward Walsh)

CHICAGO, September 9.—Mayor Jane Byrne, who flirted with an endorsement of President Carter last fall only to end up jilting him in favor of Sen. Edward M. Kennedy (D-Mass.), was coaxed back into the Carter fold today with the help of more than $100 million in federal largesse.

Byrne, one of Kennedy's strongest supporters during his primary challenge to Carter, showed up at Chicago's Midway Airport this afternoon to welcome Vice President Mondale for a series of campaign appearances in the Chicago area.

The mayor followed up that initial signal of a new change of heart by introducing Mondale tonight at the Illinois Democratic Convention.

However, it appeared that is was more than the chance to offer Mondale the city's hospitality that moved Byrne away from her bitter opposition to Carter. Specifically, the vice president was preceded here by a number of announcements of federal aid clearly meant to smooth his way.

Last week, for example, Commerce Secretary Philip Klutznick was in town and on the same day city officials announced that they had received a $1 million grant from Klutznick's department for a new program.

Last Friday, the day Byrne returned to Chicago from a trip to Europe, officials here learned of a $13.2 million federal loan to the financially troubled Chicago Housing Authority. The city learned the same day of the final approval of the transfer of a parcel of federal land to Chicago that will allow construction of a new international terminal at O'Hare Airport.

The president last fall had all but committed the administration to approving the land transfer at a political dinner at which Byrne all but endorsed him for renomination. But shortly thereafter, Byrne changed her mind and endorsed Kennedy, and until last week nothing more was heard of the land transfer.

Transportation Secretary Neil E. Goldschmidt was among those most outraged by Byrne's abrupt change of allegiance. He publicly suggested at the time that the city might suffer in terms of federal aid because of the mayor's switch.

Goldschmidt was here on Monday denying that what the federal government withholds for political purposes it might also provide for the same reasons. "I will not fly over Chicago dropping money for this election," he told the editors of the Chicago Sun-Times.

Today, however, the Sun-Times reported word from Rep. Dan Rostenkowski (D-Ill.) of $91.8 million in federal transportation grants to the city.

The Carter strategy here is to gain the benefit of the local Democratic organization by courting Byrne without alienating the anti-Byrne forces that joined with the president to defeat Kennedy in Chicago and throughout Illinois in the primary.

The strategy sometimes calls for a delicate balancing act. For example, Byrne is still feuding with state Sen. Richard M. Daley, son of the city's late mayor Richard M. Daley. Young Daley, the Democratic candidate for Cook County state's attorney, backed Carter in the Illinois primary, and to show that the Carter campaign does not forget its friends Mondale's first stop here was at a Daley rally in suburban Blue Island.

The mayor was left at the airport.

Carter campaign operatives here clearly also do not want to be associated too closely with Byrne. Many of them believe Byrne, then embroiled in a series of local controversies, ended up hurting Kennedy during the primary and they are not anxious for a repetition of that in November.

"We don't want her with her arm around Jimmy Carter," said the president's Illinois campaign coordinator, Michael Casey. "What we want is her people and for her to tell her people to work for Jimmy Carter."

DEMOCRATIC CAMPAIGN FILM CLIP

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, I want to note something that happened last night on television, one of those rare occasions when I watch it. I saw President Carter's reelection ad. It was a very well done ad. It only had one mistake. It showed the President in a town meeting. It gave the impression he was listening to the people and that everything they wanted was exactly what he subscribed to. They made one glaring mistake. It showed the President receiving a question from a woman in Steubenville, Ohio, regarding coal and coal mines. The President's response was, "Well, you have your Congressman"—he mentioned our good friend the gentleman from Ohio (Mr. APPLEGATE)—"bring you to the White House and we'll talk this over."

Mr. Speaker, that left a very good impression. Only one thing was wrong. When that woman came to the White House, she left in tears. That is what the ad does not show. She left in tears because the President flatly turned down everything she wanted for eastern Ohio coal.

Mr. KAZEN. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I will yield to the gentleman from Texas.

Mr. KAZEN. I happened to see that ad this morning on the Today Show. The President did not say, "Bring her to the White House." He said, "Bring her to Washington with you," and he did not promise to do anything personally but for her to sit with his advisers. I saw the thing this morning.

Mr. ASHBROOK. I am sure the gentleman knows the impression left was that the President listens to the people as they speak and then acts. It was a totally erroneous impression.

The SPEAKER. The time of the gentleman has expired. The Chair will only allow the Republican and Democratic politicals 1-minute speeches for the first half hour of the session and the House will continue on with the legislative business.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1981

Mr. NEDZI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Michigan (Mr. NEDZI).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 346, nays 1, answered "present" 2, not voting 83, as follows:

[Roll No. 538]

YEAS—346

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Derwinski
Devine
Dickinson
Dicks
Dixon
Dodd
Donnelly
Dornan
Dougherty
Drinan
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCormack
McDade
McDonald
McEwen
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
O'Brien
Oakar
Oberstar
Obey
Panetta
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Railsback
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stokes
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—1

Lloyd

ANSWERED "PRESENT"—2

Emery
Ottinger

NOT VOTING—83

Addabbo
Anderson, Ill.
Applegate
Beard, Tenn.
Bevill
Biaggi
Bingham
Boggs
Buchanan
Carney
Chisholm
Clay
Cotter
Daschle
Davis, S.C.
Dellums
Derrick
Dingell
Downey
Duncan, Oreg.
Ferraro
Fountain
Garcia
Gilman
Gingrich
Gradison
Grassley
Hanley
Hefner
Hinson
Holtzman
Howard
Jenrette
Johnson, Colo.
Kelly
Kramer
LaFalce
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lundine
McCloskey
McHugh
McKay
McKinney
Marriott
Mathis
Mattox
Mavroules
Mitchell, Md.
Moorhead, Pa.
Murphy, N.Y.
Murtha
Myers, Pa.
Nolan
Nowak
Pashayan
Pepper
Peyser
Pritchard
Rangel
Richmond
Ritter
Rosenthal
Royer
Russo
Satterfield
Shannon
Solarz
St Germain
Steed
Stewart
Stockman
Stratton
Tauzin
Vander Jagt
Weiss
Wilson, C. H.
Wilson, Tex.
Young, Alaska
Zeferetti

So the motion was agreed to.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will state that in view of the fact that we have made an earlier commitment, the Committee will rise at 2:45 and the House will adjourn by 3 o'clock in order that we may keep the commitment that has been made.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7301, with Mr. PICKLE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Michigan (Mr. NEDZI) will be recognized for 1 hour, and the gentleman from Virginia (Mr. WHITEHURST) will be recognized for 1 hour.

The Chair recognizes the gentleman from Michigan (Mr. NEDZI).

Mr. NEDZI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today the Committee on Armed Services presents H.R. 7301, the military construction authorization bill for fiscal year 1981.

The purpose of the bill is to provide new military construction authorization and related authority in support of the military departments and defense agencies.

At this point, Mr. Chairman, I want to thank the ranking member of the Subcommittee on Military Installations and Facilities, the distinguished gentleman from Virginia (Mr. WHITEHURST) and all the members of the subcommittee, for their tireless efforts during the hearings and markup sessions on the bill.

Overall, we believe that H.R. 7301 is a good bill. It is a balanced measure that meets the most pressing requirements. It is a bill that reflects the efforts and judgment of the Armed Services Committee.

The Defense Department requested new authorization in the amount of $5,294,073,000 for fiscal year 1981. In addition, the Department of Defense submitted a fiscal year 1980 supplemental authorization request which contained a total request of $23,500,000. Also, the Department submitted a fiscal year 1981 budget amendment which included $221,137,000 in additional authorization for Indian Ocean region basing initiatives, fleet support activities and increased operation and maintenance costs in the family housing program. Combined, the requests provided new authorization in the amount of $5,538,710,000.

Instead of reporting out a separate supplemental bill, the committee decided to make adjustments in the fiscal year 1981 bill. Therefore, H.R. 7301 is a combination of the requests. The bill as approved by the committee totals $5,538,003,000 in new authorization. This total is $707,000 below the requested authorizations.

After extensive hearings in 10 separate sessions and close review of each requested project, the committee was able to determine those proposals that in its view could be deferred without impairing the operational effectiveness of the armed services.

Our committee did not cut projects just for the sake of cutting, but deleted projects that it felt could be deferred without impairing our national security. In certain instances, we added projects where it was determined either by testimony or supporting documentation that the priority was great enough to warrant inclusion in the bill. As such, the construction proposals for the Active Forces cover approximately 715 projects at approximately 394 major military installations within the United States and overseas.

Major items included in the bill are: $270,377,000 for Indian Ocean region basing initiatives; $656,395,000 for major NATO related construction, including $317,500,000 for the NATO infrastructure program; $248,870,000 for energy conservation, air and water pollution abatement; $816,504,000 for health care, housing and community facilities; $409,174,000 for operational and training facilities; $158,891,000 for construction of 2,651 new units of military family housing; and $3,150,000 to start construction of a binary munitions production facility at Pine Bluff Arsenal, Ark.

For the individual services, the committee reduced the Army request of $843,331,000 to $773,310,000, increased the Navy request from $989,510,000 to $1,070,640,000, and increased the Air Force request from $737,690,000 to $794,082,000.

Turning to the individual titles, the Army in title I requested $843,331,000. The committee is recommending $773,310,000. Under this title, the committee approved $63,550,000 for operational and training facilities, $116,830,000 for housing and community facilities, $172,350,000 for maintenance and production facilities, and $123,300,000 for air and water pollution control and energy conservation.

In title II, the Navy portion of the bill, there was a total request of $989,510,000. The committee approved $1,070,640,000. Major items included $110,910,000 for housing and community facilities, $108,160,000 for maintenance and production projects, $74,240,000 for air and water pollution control and energy conservation efforts, $316,000,000 for medical care facilities, and $148,167,000 for operational and training facilities.

In title III, the Air Force portion of the bill, $737,690,000 was requested. The committee approved $794,082,000. Major items included $180,167,000 for operational facilities, $172,850,000 for supply facilities, $127,750,000 for research, development and test facilities, including $97.2 million for the Space Shuttle program, $75,304,000 for housing and community support projects, and $55,520,000 for pollution control and energy conservation efforts.

□ 1250

Mr. YATES. Mr. Chairman, will the gentleman yield for a question?

Mr. NEDZI. I yield to the gentleman from Illinois.

Mr. YATES. There are provisions made in here for the construction of sites for the MX missile system, are there not?

Mr. NEDZI. They are not sites for the deployment of the MX missile system. These are test facilities.

Mr. YATES. Test facilities.

As chairman of the Appropriations Committee for the Department of the Interior, I received a visit last week by representatives of the Duckwater Shoshone Tribe of Nevada, who are protesting the installation of MX missile clusters, as they describe them, on their lands. The Air Force agreed to move the missiles off the reservation itself but to move it to the land adjoining the reservation, to which the Duckwater Shoshone Tribe claims water rights.

The subject of those water rights is in a court case which is being very seriously contested, and the installation of these sites on that land, if they actually take place, will add possibly millions of dollars to the Federal Government's budget.

I am wondering if the gentleman is aware of this situation or can tell us what is proposed here.

Mr. NEDZI. I can say to the gentleman that I am not aware of the problem to which the gentleman has alluded. However, the money which is included in this particular bill has nothing to do with the deployment of those missiles. The money here is for construction of test facilities and, to my knowledge, they are not going to be anyplace near the land in dispute.

Mr. SANTINI. Mr. Chairman, will the gentleman yield?

Mr. NEDZI. I yield to the gentleman from Nevada.

Mr. SANTINI. In response to the very well-taken inquiry of my friend, the gentleman from Illinois, I am advised that we have now an ongoing environmental impact statement. That statement will be concluded sometime in the month of December of this year. Presumably that statement would take into consideration the water impact issue as it relates to our friends on the Shoshone Reservation in Duckwater and be able to provide at least some response on whether or not there will or will not be a conflict of water use there.

Mr. YATES. I thank the gentleman, and I thank the chairman of the committee.

Mr. NEDZI. To continue, Mr. Chairman, in title IV, for defense agencies, the total request was $593,860,000. The committee approved $546,110,000. The largest authorization in this title is $317,500,000 for the NATO infrastructure program. Also included is $106.2 million for a new Defense Intelligence Agency facility and $47 million for the overseas dependents school program.

In title V, military family housing, there was a total request of $2,195,982,000. The committee recommends approval of $2,156,860,000. Of this amount, $1,880,760,000 is for operation and maintenance, leasing, and debt payment. Authorization in the amount of $158,891,000 is for construction of 2,651 new units of military family housing, $108,840,000 for improvements of existing units, and $8,369,000 for planning and design.

In title VI, administrative provisions, the committee extended the cost variation authorities and increased the per square foot cost of barracks and unaccompanied officer quarters to $52 and $56, respectively. The present cost limitations are $48 and $52, respectively.

In title VIII, general provisions, the committee approved the following major items:

Five land conveyances;

Amendment of the existing community impact assistance program to include the East Coast Trident Base area and MX weapons system areas;

The reversion of the land held by the United States for the San Diego Naval Regional Medical Center to the city of San Diego in the event the United States ceases to use the land for such purposes; and

Authority for the Secretary of the Navy to arrange for transportation on a temporary basis for military personnel assigned to the Naval Submarine Base, Kings Bay, Ga., between their residence and places of work until adequate on-base family housing is available. This authority will expire on January 1, 1982.

Mr. Chairman, this conludes my statement on H.R. 7301.

I strongly urge my colleagues to support the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. WHITEHURST. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, before I proceed with my statement, I just want to call the attention of my colleagues to the fact that this is the last military construction authorization bill that our colleague, the gentleman from Michigan (Mr. NEDZI), will be offering to this body.

I have had the privilege of serving with LU NEDZI since he became the chairman of this subcommittee, and I can say with enthusiasm that no colleague of mine in the House has served with greater distinction, with more evenhandedness, than he has in chairing this subcommittee. It requires great patience sometimes, I think, to proceed with the business that is brought before this subcommittee. Yet he has always been temperate, logical, a reasonable man. I take this occasion this afternoon to salute LU NEDZI on the occasion of his chairing this, his last military construction authorization bill.

Mr. FINDLEY. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Illinois.

Mr. FINDLEY. I thank the gentleman for yielding.

Mr. Chairman, I welcome this opportunity to join in this salute to our friend, the gentleman from Michigan (Mr. NEDZI). I have seen him not from the vantage point of the Armed Services Committee but from others. Over the years the gentleman from Michigan and I have joined together in many a cause, and I regret very much his departure from this Chamber and I wish him well.

□ 1300

Mr. WHITEHURST. Mr. Chairman, I rise in support of H.R. 7301, the Military Construction Authorization Act for fiscal year 1981.

This legislation has evolved through a series of careful, detailed reviews of each of the 715 projects proposed by the military services during 2 weeks of intensive hearings. The Armed Services Committee's primary concern during those hearings was to assure that the project as requested by the Department of Defense was not only essential to meet a valid and urgent military need, but represented the most cost effective and feasible method for achieving the objective.

As a result, the committee has brought to you a military construction program for fiscal year 1981 that provides a balanced level of new facilities to support deployment of weapons systems, to continue emphasis on European readiness, to improve the quality of life for military personnel and their families, and to meet defense commitments to high priority national requirements such as energy conservation and pollution abatement. At the same time, we have made a measured advance toward the goal of modernizing or replacing many of the older structures.

Since our distinguished chairman, the gentleman from Michigan, has so adequately explained the major items in the bill, I will not go into detail on individual projects. However, I would like to comment briefly on several areas of interest.

Events in the past year have intensified the country's concern for protecting U.S. interests in the Persian Gulf/Indian Ocean area. Our committee supports the policy of developing capabilities in this area to assure the continuation of the flow of oil from the region and to demonstrate our concern for the independence of foreign states. Included in this bill is $270,377,000 for the development of logistical bases to support personnel, aircraft, and ships associated with rapid deployment in the Persian Gulf and to expand the naval support facility at Diego Garcia in the Indian Ocean.

The committee is aware that this action represents a new and expanding commitment for the United States in another part of the world. As such, the committee has directed that the Department of Defense provide the Committees on Armed Services with a semiannual report on the construction projects undertaken in the Indian Ocean region, the costs involved, the status of execution of the construction, the operation and maintenance costs of the facilities, the U.S. share of such costs, the frequency and type of use of the facilities by the United States, the frequency and type of use of the facilities by the host nation or other nations, and the names and location of the contractors performing the construction.

The committee was further concerned that U.S. contractors should receive as much of the construction work as possible and stated its intent through report language to insure that U.S.-owned contracting firms have an opportunity to compete for the construction and dredging at Diego Garcia and construction in Indian Ocean littoral countries on an equitable basis, subject to and in accordance with negotiated agreements.

The committee continues to be concerned about the estimated $1.5 billion backlog in the modernization program for the eight naval shipyards, some of which are operating with 40-year-old powerplants and utility systems that must be replaced. At the current rate of funding, total modernization will not be realized before the mid-1990's.

The committee added $27.3 million to the fiscal year 1981 military construction program for seven projects at four of the naval shipyards in an attempt to speed up these vitally needed improvements. This action by no means addresses the critical shortfall, but it is a step in that direction.

As my colleague from Michigan has pointed out, $649,501,000 is included in this bill for health care, housing and community facilities which are critically needed to improve the quality of life of our men and women in uniform and, hopefully to improve recruitment and retention.

Mr. Chairman, we feel this is a good bill which represents a carefully balanced approach to the twin problems of providing new facilities required by changes in weapons, advancing technologies, and national security policy, and the continuing effort to upgrade or replace much of the substantial inventory of aging and obsolescent facilities. I urge my colleagues to support this legislation.

We are prepared to answer any questions the Members may have.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I address these remarks to the chairman of the subcommittee and the ranking member on the subcommittee, because I am concerned about one aspect of this bill that concerns the construction of a binary munitions plant in Pine Bluff, Ark., which is about 30 to 35 miles as the crow flies from my district in central Arkansas.

This proposal concerns me for a number of reasons. As the commitee knows, I have been a staunch supporter of every military spending project which has come to the floor. I would match my record with anybody's in the House. I believe in the division of labor and that all of us cannot be experts on all subjects that come here to the floor. I put a lot of weight in committee reports.

In looking over this report I see some references to the binary munitions project. I believe that the committee report is entitled to great weight until such time as we discover that perhaps the deliberations in the committee were not as extensive as one would presume that they would be in this body.

In looking into this matter a little bit further, I have discovered that this is the first step in a project that one day will likely cost a billion dollars. I have also discovered that there were no extensive hearings in this Congress in the House. I have discovered that in the other body the Secretary of Defense actually opposed funding of this project for this particular year.

So, it seems to me, that the committee report has lost some of its credibility in the face of those findings.

I would ask the committee, why should I, as a Member who does not serve on the committee, rely on this report? Why should this Member place great weight on this report? Can the committee assure this gentleman that it knows what it is doing?

Mr. WHITEHURST. In 1975, the committee did have extensive hearings on this subject. Indeed, at that time it included a provision in the bill for preparation of the manufacture of binary gas. By amendment it was taken out.

On the basis of conditions as they now exist in Europe and given the keen Soviet threat, the committee is of the opinion now that the environment has changed sufficiently, the threat is sufficiently severe to warrant going forward with this project at this time.

I would remind the gentleman that we are not going into the production of binary gas. We are simply trying to get into the position of going into production if that is deemed necessary by the President. And indeed, it will take 3 years, as the project is so outlined in the bill, before the production time would even be upon us.

I would just read to the gentleman:

> Under curent law funds may not be used for the production of lethal binary chemical munitions unless the President certifies to the Congress that such production is essential to the national interest. Insofar as the committee is concerned, the prohibition does not apply to the development of a production facility.

Mr. BETHUNE. If the gentleman will continue to yield, I understand the law as it is now constituted would require the President to certify before any production of the munitions do begin.

Mr. WHITEHURST. That is correct.

Mr. BETHUNE. And this is for the construction of a facility wherein the munitions could be produced at a later date. I understand that.

My concern here is, is this Congress foregoing its opportunity to make a certification to the people that it has studied the proposition and that it is convinced that this is the policy decision upon which we should embark for the next decade?

Mr. WHITEHURST. I will yield to the gentleman from Missouri (Mr. ICHORD), who has been a very outspoken member of our committee in this body with regard to this threat.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Missouri.

Mr. ICHORD. May I say, in reply to the distinguished gentleman from Arkansas, this certainly is not a matter to which the Committee on Armed Services, both the Subcommittee on Research and Development and the subcommittee chaired by the distinguished gentleman from Michigan, have given very little time. This has been debated extensively in the Congress and studied intensely by the Armed Services Committee long before the distinguished gentleman from Arkansas came to this body.

I do apologize to the gentleman from Arkansas for not conferring previously with the gentleman. I would state that I have conferred with the gentleman from Arkansas (Mr. ANTHONY), the gentleman in whose district this facility will be located. He is fully familiar with the problem, and he supports it, I might state very strongly.

The gentleman has had briefing after briefing on the subject and is extremely well informed.

I would state further that the gentleman from Virginia has answered the gentleman from Arkansas correctly. We are not making a decision to go into binary production at this particular time. All we are doing at this time is authorizing approximately $3.15 million for facilitation at Pine Bluff, Ark.

Also, if I may continue, if the gentleman will yield further, three subcommittees, I would state to the gentleman from Arkansas, have already examined this matter very closely. We are also appropriating $19 million for equipment to go into that plant

Now, there has been a lot of false information, misinformation and utter nonsense circulated in the newspapers and on the Hill and off the Hill, about this particular issue.

I would state to the gentleman from Arkansas further that the $3.15 million appropriation has already been passed and approved by this body. It is something that the Subcommittee on Military Construction has looked into very deeply. In fact, I appeared before the Subcommittee on Military Construction and laid this matter out. This essentially is what has happened, I would state to the gentleman from Arkansas. The Research and Development Subcommittee and the full Armed Services Committee have also studied the issue in detail.

I would observe that I have seen accusations that the three committees of the House are proceeding too rapidly and without adequate reflection but I assure you that definitely is not the case.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Arkansas.

□ 1310

Mr. BETHUNE. Mr. Chairman, I thank the gentleman for yielding.

Just a couple points. First of all, I do not think that I am proceeding out of hysteria. I read the gentleman's "Dear Colleague" letter today imploring Members of this body not to knee jerk on the issue, and I am not doing that.

Mr. ICHORD. I did not mean to infer that the gentleman was doing that.

Mr. BETHUNE. The point that I am trying to make here today with respect to the production of this binary munition, the nerve gas, is that I think the burden of bringing this matter forward is on the committee. The burden is on the committee to convince me as a Member who does not sit on that committee that the committee has studied every aspect of it and has heard the pro and the con of the issue.

Now, the record that I read indicates that the committee has not done that this year. The gentleman says three committees have examined it closely. As a matter of fact, that is not the case.

Mr. ICHORD. Mr. Chairman, if the gentleman will yield further, I can assure the gentleman that is not the case.

Mr. BETHUNE. Let me finish my point, and then I will yield.

As a matter of fact, three committees have not examined this closely this year.

As a matter of fact, no committee has examined this closely this year. The gentleman's committee took it up, but the only testimony was about four or five pages long and was from the gentleman from Missouri who then attached a copy of his own statement and who attached a Reader's Digest article and from that the committee voted it out.

Let me finish this point also; that is, that I think the gentleman from Missouri is the resident expert on this issue. I have read the gentleman's writings and I think the gentleman knows more about it than the rest of us in the House put together; but I do not serve on the committee. I serve on the Banking Committee. I serve on the Small Business Committee. I am trying to get up to speed on the issue.

I do not choose to rely on the expertise of the gentleman from Missouri on an issue of this complication. I choose to rely on credible committee reports that have been studied.

The Department of the Army did not testify in this Congress on this. Secretary Brown opposed funding this year in the Senate. There is an interagency study underway on this.

Mr. ICHORD. The gentleman is laboring under a misapprehension.

The CHAIRMAN. The gentleman from Virginia has the time.

Mr. WHITEHURST. Mr. Chairman, I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, I would like one final point and then I would be delighted if the gentleman from Missouri would answer.

The gentleman suggests this is just a first step and it will not lead necessarily to the completion of the entire project. I think that was the impression that was conveyed here; but in the brief hearing that was held, the committee chairman, the gentleman from Michigan (Mr. NEDZI) after some discussion about the fact that this would eventually cost a billion dollars said that there is no point in going ahead with it unless we go ahead with the whole program.

And then the gentleman from Missouri (Mr. ICHORD), responded that that is true; so I sense that there was a rather veiled commitment that the committee was deciding to go for the whole program at that time. That is what concerns me. I think the burden is on the committee to tell me that this is a credible position.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Missouri.

Mr. ICHORD. I must tell the gentleman from Arkansas what the committee has done. He has looked only at the hearing record of the House Committee on Military Construction.

We have several committees on the House Armed Services Committee. Another committee that has responsibility in this field is the committee on R. & D. which I happen to chair. We have heard from many witnesses in this regard and I can provide the gentleman with the record that has been made in that regard.

I apologize again to the gentleman, since he represents a district in the State of Arkansas, for not getting with him and giving him this information.

I would state to the gentleman from Arkansas, and I will yield in just a minute, that all three of the Joint Chiefs of Staff have said that the lack of a sufficient offensive retaliatory capability in chemical warfare is one of the greatest military deficiencies we suffer.

General Rogers has also appeared before the committee, and this was the full committee if my memory serves me correctly, saying that we should proceed as rapidly as we possibly can with getting ready to produce, if we have to produce.

I would state that Secretary Brown has also stated before the committee that this is one of the greatest deficiencies we have.

Now, it is true, as the gentleman stated, Secretary Brown did appear before the Senate committee recently, but he was stating the position of the White House staff whatever that position is and I must frankly state that the position to me is incomprehensible if not reprehensible. He was not stating the Defense Department position as he related in a conversation with me yesterday and again early this morning.

Secretary Brown has stated before the committee that this is one of the greatest shortcomings we have in defense. Those in the Defense Department who have studied the problem are literally scared to death and justifiably so.

I would state to the gentleman from Arkansas that if we proceed without any interruption whatsoever, we could not produce any binary chemicals until late in 1983 and probably not until 1984.

Mr. Chairman, I do not have the time, but I think the gentleman from Arkansas in whose district this facility is located should be recognized.

Mr. WHITEHURST. I yield to the gentleman from Arkansas (Mr. ANTHONY).

Mr. ANTHONY. Mr. Chairman, I thank the gentleman for yielding.

I would like to reaffirm personally that I am in strong support of this particular piece of legislation. I have examined the issue very closely. Upon being elected last year, I did go to the arsenal and I did receive a very detailed briefing on two different occasions from the personnel, one from the Commandant and then after they had a change of Commandants there, it turns out that the first person that I received the briefing from has now been transferred to the Pentagon and happens to be in this particular area of expertise within the Pentagon.

My colleague, the gentleman from Arkansas, and I have had conversations within the last day or two concerning this very issue. I know of the gentleman's concern procedurally as to how it has developed; but I would like to put on the record the fact that I have closely examined this issue, both from a safety and a military standpoint.

I have also examined it very closely with my constituents within the Pine Bluff area. The constituents within the Pine Bluff area are solidly behind this project and I can detect no opposition within the community at this time.

I have worked with my colleague, the gentleman from Missouri, in trying to educate myself and I have also worked with other members of the Arkansas delegation concerning this matter. With the exception of my colleague, the gentleman from Little Rock, I think that we are probably solidly behind it on the House side.

As I understand, the gentleman has not made a decision on the merits, but has some concern about the procedural matters in which it came before this body. Since it is within my district, I would just like for the gentleman to know that I have studied the issue very closely. I have no personal concern about it. I would be more than happy to engage in any type of colloquy and/or debate on the merits in addition to our colloquy with the gentleman from Missouri.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Maryland.

Mr. BAUMAN. I just want to say to the gentleman from Arkansas (Mr. BETHUNE) that he is doing the House a service in raising this issue, particularly as a new Member.

I want to indicate to him that I faced the same concern that he has expressed today several years ago when I was elected to the House. At that time the Aberdeen Proving Ground, including the Edgewood Arsenal in Harford County, Md., included what was then part of the operations of the Defense Department dealing with chemical warfare.

I availed myself of a more than 2-hour classified briefing and learned the extent of the massive development of the Soviet Union in this area and the total lack of our defensive capability, as well as offensive capability in the area of chemical warfare. As a result of that, I have tried to study the issue thoroughly. I have read many of the writings of the gentleman from Missouri.

I think we are moving too slowly. I think that we are totally undefended today against Soviet chemical warfare capability. I know that Soviet chemical warfare is being used apparently on a tests basis in Cambodia and in Afghanistan and thousands are suffering and dying. That is why we should move much more quickly.

I understand the emotional nature of this issue with the Dugway accident some years ago, sheep being killed by the accident that occurred and so on; but I also believe chemical munitions are an important part of our defense capability.

The gentleman is to be commended for raising the issue, but I hope he resolves it as I did in favor of this facility and further expansion of our defense capabilities in the field of chemical warfare.

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman rom Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, first, I, too, want to congratulate my colleague, the gentleman from Arkansas (Mr. BETHUNE) for having concerns about the procedural aspects of this subject matter; however, I have had the opportunity to be familiar with this subject matter over a period of time and have had some rather high-level briefings. I discussed it more specifically with the distinguished gentleman from Missouri (Mr. ICHORD).

I want to join with my colleague, the gentleman from Arkansas (Mr. ANTHONY) in strongly supporting this.

As the gentleman from Maryland said, as a result of his briefings and as the result of briefings that I have had from discussions with the gentleman from Missouri (Mr. ICHORD), I am concerned about the great disparity between our capability and that of the Soviet Union; so I want to strongly suoport the idea that the gentleman from Missouri (Mr. ICHORD) has proposed.

Mr. Chairman, the subject of establishing a facility in the State of Arkansas for the production of binary nerve gas has become somewhat controversial within our own delegation, with the highest respect for the motives and ability of those who differ with my view I wish to express my own understanding of why there are varying opinions and to examine both sides of the question. I have again taken advantage of the Army's expert knowledge and have asked them for a recent high-level briefing which I received yesterday.

This statement worried me:

> This country adopted a new policy when it banned further production of chemical weapons. . . . Army wants to resume production . . . and reverse the decade-old policy.

I discovered that the facts are:

Presidential decision in November 1969 renounced biological warfare; reaffirmed long-lasting U.S. policy not to be first to use lethal chemical weapons; and extended the policy to include incapasitating chemicals.

Did not ban further production of chemical weapons.

Another policy objective, in the same statement, was to provide a chemical retaliatory capability if deterrence fails.

Subsequent congressional actions require the President to certify that chemical munitions production is essential to the national interest.

The Army completed production of the current stockpile in the same year (1969) the policy declaration was made.

I examined this statement:

> The whole process would cost more than $2 billion.

I discovered the facts to be:

True, when spread over a 15-year time frame. Cost estimates for weapons modernization with binary munitions and disposal (when a reasonable assurance level stockpile is attained) range from $2.6 billion to $3.6 billion.

Modernization costs account for over half of the above amount. Would provide a flexible range of retaliatory options with artillery projectiles, medium range rockets, and air-delivered munitions.

Construction of the facilities for production and storage would span at least 5 years (fiscal year 1982–85). This is the planned production facility that would be located in Pine Bluff, Ark.

Production of binary munitions would span an 11-year period beginning no sooner than fiscal year 1984 and extending to the middle of the decade ahead (1990's) to modernize the stockpile.

Disposal and demilitarization of the current stockpile will also extend well into the 1990's. Continuing obsolescence and deterioration of munitions filled in the 1960's will require this program to be funded regardless of whether or not a decision is made to modernize with binary munitions.

With no binary modernization, the cost of maintaining an aging stockpile to provide a facade of a retaliatory capability will continue to grow.

I read this statement:

> The Joint Chiefs of Staff have mumbled half-hearted support, while the Secretaries of Defense and State have publicly opposed such a step at this time.

In looking closer at the record, I found that:

The Chairman of the JCS military posture statement for fiscal year 1981 stated:

> The United States has only a marginal capability to retaliate in-kind to enemy first use of lethal chemical weapons. The serviceable munitions stockpile is decreasing through aging and obsolescence and will be unusable by the late 1930s unless improvements are made. An option for improving the chemical retaliatory force stockpile is the binary munition system, which would provide the proper carrier container and chemical agent mix to counter the threat.

Subsequent JCS actions have affirmed the need for binary munition in order to maintain a credible chemical warfare retaliatory capability.

The Secretary of Defense, in public statements, has indicated that the inclusion of MILCON funds in the fiscal year 1981 appropriation bill would be "premature" because the issue of binary modernization was under study; and the results would be used in the fiscal year 1982 budget formulation process.

I looked into this concern:

> We now have an enormous supply of nerve gas and chemical munitions. Most of these supplies are not obsolete and have not deteriorated.

From my briefing I learned that:

There are currently over 730,000 rounds of chemical munitions that cannot be utilized. These munitions have either through obsolescence (M55 rockets and 155mm gun ammo) or deterioration, become unusable. These munitions cannot be repaired and are currently in storage awaiting destruction. The quantity of munitions which are considered serviceable, and those which can be returned to serviceable condition through the ongoing maintenance program, would not be considered enormous. World War II type mustard agent composes a large portion of the current stockpile. Mustard freezes at a temperature which makes it operationally less desirable in Europe during much of the year.

The current stocks were designed to have a shelf life of 20 years. Much of the stockpile has either reached or exceeded that figure. Mustard stocks were manufactured between 1952 and 1959. Nerve agent GB was produced between 1955 and 1967. The artillery—105 millimeter, 155 millimeter, and 8 inch—are now an average of 19 years old. The GB aerial munitions were produced in 1962 to 1964 and are now approaching their original shelf life. The Weteye GB bombs are the newest in the inventory, being produced in 1969. Nerve agent VX munitions, the most modern in the stockpile, with exception of the Weteye, were produced between 1961 and 1968; on the average, they are 17 years old.

There were statements made about our NATO arrangement such as:

> Our Allies won't even let us store additional nerve gas stockpiles on their soil! The West Germans, in fact, find nerve gas usage so repugnant and unacceptable that they have gone even further and decided that none of their troops will ever be trained to use these weapons. . . . highly unlikely that any newly produced nerve gas would ever leave U.S. shores.

In further study of this claim, I believe a more valid observation would be:

The West German policy in regards to NBC weapons is based in part on the October 23, 1954, protocol to the 1948 Treaty of Brussels which prohibits Germany from manufacturing chemical, atomic, and biological weapons. However, if the defense of Europe requires the use of these weapons, the Western European Council can, by a majority vote, cancel this prohibition.

The issue of forward deployment of the binary weapons system has not really been addressed as yet with our allies. It would appear, however, that some of the fears associated with the storage and transport of current types of chemical munitions, for example, contamination of the environment or harm to citizens as a result of leakage would not be a stumbling block when discussing binary weapons.

The following statement to me indicates a lack of understanding of why we need to maintain a CW capability:

> It is foolish to argue that our resumption of nerve gas production is necessary for our defense capabilities. Nerve gas doesn't kill soldiers. It kills civilians—men, women and children who do not possess masks and the protective clothing necessary to defend themselves from this colorless, odorless poison that causes violent convulsions and asphyxiates its victims. Protective clothing and masks are standard issue for not only Russian troops but also our own. This special protection makes soldiers practically invulnerable to nerve gas.

I believe the following reasoning more nearly presents the facts:

Chemical agents are employed in war as force multipliers. They cause casualties and they degrade the operational effectiveness of military forces.

Casualty effects are most pronounced against unprotected personnel, but we expect casualty rates as high as 10 percent against fully protected soldiers due to equipment failures, improper fitting and individual errors in the use of protective devices.

Perhaps more importantly, when military units assume a CW protected posture, they reduce their operational effectiveness by 25 percent or more. Communication becomes more difficult, physical movement becomes more difficult due to the encumbrance of protective clothing, and weapons are harder to sight and aline on target because of the interference of the protective mask. In warm climates, heat casualties are a secondary bonus effect of the employment of chemicals.

The contamination of materiel—trucks, tanks, rations, ammunition—further degrades military operations. Resources must be diverted to decontamination efforts. Delivery of supplies to fighting units is delayed. Some supplies must be destroyed. Maintenance operations become slower and more difficult.

The ultimate impact of a chemical attack on military operations must be viewed as a composite of some or all of the above factors. In no case will the result be negligible, regardless of the level of protection provided.

A military force that can impose such penalties without fear of retaliation in-kind has a substantial advantage in battle. By developing a credible chemical warfare capability of our own, we negate that advantage, introduce a degree of uncertainty, and make the use of the enemy's chemicals less likely. It is this aspect—reducing the likelihood of use of chemicals—that will save the lives of the civilian men, women and children for whom concern is expressed.

Again an apparent misunderstanding or oversimplification of the possible Soviet intention:

> The greatest Russian effort to date is defensive in nature.

I believe a better explanation would be that:

A sound chemical defense posture is fundamental to an effective chemical warfighting capability. Given the United States and other nations reservations to the Geneva Protocol, the Soviets would be foolish to establish an offensive capability without first developing a sound defense.

A more appropriate question might be, "Why are the Soviet defensive preparations so extensive? Whose chemical capability do they fear?" Their efforts go far beyond what would be expected in response to the U.S. retaliatory capability, an assessment of which we must assume they are capable of developing.

The intelligence indicators which point to the Soviet CW capability are abundant. The day we must scour the scene of the first attack will be too late to solve the problem. I would oppose eliminating the establishment of the Arkansas binary production facility.

Mr. Chairman, I thank the gentleman from Virginia (Mr. WHITEHURST) for his courtesy and for his time.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Missouri.

Mr. ICHORD. I would also state to the gentleman from Arkansas (Mr. HAMMERSCHMIDT) and the gentleman from Arkansas (Mr. BETHUNE) that I think that the production of binaries could be justified solely on the grounds of safety.

□ 1320

The gentlewoman from Colorado in that respect is facing a real danger, in my opinion, in Colorado. She has been following this problem for a long period of time. The amount of chemical agents we have in that State is classified and I cannot mention it, but many of the munitions have been there as long as 25 years. All of the chemical agents are slowly deteriorating. The production of binaries could well solve her problem, I would observe. I know the gentleman from Arkansas is aware what a binary is. It will be safe both in the State of Arkansas and in the State of Colorado, Johnson Island, and any other place where we may have chemical agents stored.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

Lest I be misunderstood as to my own awareness of the particulars of the binary munition project, I have had the Pentagon briefing and I have read the gentleman from Missouri's article on the subject and the Readers Digest article and I have read and have with me all of the committee report language from the House as well as the other body.

Obviously there are differences of opinion between the House and the other body. I would like to rely on the soothing assurances of the committee members that they know everything about this subject and that it has been debated as extensively as it should have been in the committee. But in all honesty, when I look at the facts and discover that the President of the United States, or at least the White House, has come down against funding this year, and that the Secretary has, for whatever reason, and that the other body has, and that these committees here have had no witnesses to argue against the proposition, it occurs to me that it is not a credible committee proceeding. For that reason I think that we have reduced ourselves to the proposition that each Member must then satisfy himself because the committee report is not credible, in my judgment.

That being the case, each of us should have the opportunity to express ourselves as to whether we are satisfied that this is the policy of the country. It occurs to me that an amendment to delete this would be in order for that reason, so each Member can express himself and let this body know whether, in fact, he is satisfied with the committee report or because of his own findings.

I really do not think Members know that much about it and, as I have said, with all due respect, I think the committee gave this short shrift this year in its examination.

Therefore, at the appropriate time, I will tender an amendment to that effect.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding. I hesitate to speak because I have missed so much of this debate, being involved with some of my Foreign Affairs Committee responsibilities. But I have talked to, although I have not seen, those who have lived under the bombardment of Russian poison gas, in Laos, specifically in the village of Prabia. Anyone who has heard what happens to human beings in this inhuman form, more terrible it seems to me than any other, must hesitate before encouraging his country to move in this direction. It is so terrible on those helpless people in the highlands of Cambodia and Laos, particularly Laos where this man came from. These three kinds of poison gas are loosed out of the Mig airplanes, yellow and red, and red the most terrible of them all, a hemorrhagic gas causing death in a very few minutes.

I hate to see our country moving to follow this hideous path. I think we should bend every effort at research and intelligence to find out how to counter the use of gas, what kinds of chemicals should be put in bathwater perhaps for those who have been subjected to it, what kind of things we can give as sprays to help in the pulmonary invasion of the gas, anything in the way of protection or nullification to make ineffective these horrible, this horrible weapon.

I hope we will have a chance to vote against any use of chemical warfare or development in this country. Defense against it, yes. Research into it, yes. But to develop our capacity for it, I think it is beneath what this country ought to be.

Mr. ANTHONY. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman.

Mr. ANTHONY. I would just like to make the following comment, that this is a weapon that would be in our arsenal as a defensive weapon and not as an aggressive weapon. It would not be a first strike weapon, but it would be available in the United States in the event U.S. troops were attacked. It seems to me that everyone can agree that war is horrible and that all elements of war cause grievous damage and injury. But the truth of the matter is if we are engaged in a war then we must be able to defend ourselves with all capabilities, and that is the reason I have decided to support this particular piece of legislation, because it does fulfill our entire military capabilities. Without it we are not a well-rounded country for total military capabilities to defend our troops if we engage in war.

Mr. WHITEHURST. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama (Mr. DICKINSON).

Mr. DICKINSON. Mr. Chairman, let me say first that I would like to join in the comments of my distinguished colleague from Virginia, and a fond adieu to the distinguished chairman of the Military Construction Subcommittee, the gentleman from Michigan (Mr. NEDZI). When I first came to the Congress 16 years ago it was my lot and my pleasure to be put on the House Administration Committee and, 2 years later, the House Armed Services Committee. Sitting across the table from me in both of these committees, by happenstance, has been the very distinguished gentleman from Michigan (Mr. NEDZI).

Mr. NEDZI and I have served together now for lo these many years and I have come to know, to respect, to admire, and to be very genuinely fond of the gentleman for his wit, his capabilities, his knowledge, his dedication and hard work. We have sat across the table now for these many years, voting together sometimes, against each other sometimes. But I cannot think of anyone in the House whom I have higher regard for and have enjoyed working with more than the chairman of my Military Construction Subcommittee, on which I serve, and the House Administration Committee, on which I am the ranking member.

He has always been very courteous and considerate of me as a minority member and I join with all of his friends and everyone in the House in saying that his retirement is going to be a loss to the Congress and, in my opinion, a loss of the defense of this country, because he has been a stalwart person and an advocate for a strong defense in this country. His departure will leave a vacancy that will be a long time in filling.

Getting to the bill at hand, the military construction bill, I support this legislation. I think it is ridicuous that, for the second or third time, we have had to come in after the fact when the Appropriations Committee has already decided what level of funding will be available and we come in then with the authorization. I hope that some remedy will be forthcoming in the following Congress to see this does not occur again since this is contrary to the House rules.

Just recently the NATO Subcommittee of the Armed Services Committee made a tour of the northern flank of NATO where we visited England, Denmark, Norway, and then I as the senior minority member of the Research and Development Committee, went on to visit installations in Germany.

□ 1330

The point that I want to make is that we have trouble in this country, first in recruitment, but secondly and more importantly is in the retention of our military personnel. We bring them aboard, we spend thousands upon thousands of dollars to train them, particularly enlisted personnel and, when they get mid-career and when they develop an expertise and a capability to deal with the sophisticated weapons systems we have now they leave the service. These people in whom we have invested so much are getting out in droves.

We find in talking with our NATO allies particularly in England, they had the same problem which they feel they have now remedied and they are very pleased with the results. By recognizing that they have not been dealing fairly with those in uniform, they have increased pay and allowances and increased their standard of living within the service.

Mr. Chairman, I think we have been shortsighted in this country in not doing so. I think the Nunn-Warner amendment, which was passed over the objection of the President but what he now tries to take credit for, was a step in the right direction. I think if more attention were to be paid to our military construction bill—which we are doing here today—that is certainly another major step in the right direction toward retaining the people that we need in the service.

Mr. Chairman, I have three military installations in my district. I have the U.S. Army Aviation Center at Fort Rucker and Maxwell and Gunter Air Force Bases. Mr. Chairman, in my 16 years in the Congress, I have been to many, many other bases. When you go on the bases in my district and see the conditions under which enlisted men have to live—World War II barracks, buildings where you can slam a metal locker in one end and completely disrupt the thoughts of students studying at the other end.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WHITEHURST. Mr. Chairman, I yield the gentleman from Alabama 5 additional minutes.

Mr. DICKINSON. Mr. Chairman, our buildings are cold in the wintertime, hot in the summertime. They are supposed to be in an academic atmosphere, but the surroundings are not conducive at all to studying.

I think we are being pennywise and pound-foolish to do other than provide adequate living conditions for those who are in uniform.

Mr. Chairman, on the Military Construction Subcommittee we have tried to address this subject. I think we have done so in this bill. We cannot do it all at one time but I think we are making meaningful progress toward this end and I would certainly commend the chairman and our committee for the long hours of work that have gone into this and the comprehensive studies that were made toward achieving the end that we

desire. I rise in very strong support of the military construction bill.

Mr. Chairman, I might add, after massaging, refining and scrubbing the bill, we wound up $707,000 under the budget request—not over—which indicates to me the committee has done its work. It has studied the problem well and has come up with a very meaningful and responsible bill.

As to the binary chemical aspect, I would just like to say to my friend and colleague, the gentlewoman from New Jersey (Mrs. FENWICK) who just favored us with a few observations, that the gentlewoman is entirely correct in half of what she says. When the gentlewoman points out how horrendous chemical warfare is, that it has been used in Cambodia and in Laos and in Afghanistan and how terrible it is, she is right. But to say to close your eyes to it or to stick your head in the sand and believe it will all go away if we do not produce a similar capability, is the most ludicrous thing. We are told in our briefings in the Intelligence Subcommittee and the Research and Development Subcommittee that Adolph Hitler had an adequate supply of chemical munitions in World War II and only the threat—only the fact that he was convinced that we had a similar capability—deterred him from using this in World War II. If he thought he could have done it with impugnity—that he would not have to worry about retaliation from us—he would have done so. He was a crazy man.

Mr. Chairman, indeed we are crazy if we do not at least develop a capability to have a deterrent if the Soviets decide they want to use chemical warfare. The Soviets train with it, they have organic CBW units within each division that daily train with chemical warfare. They are equipped for it. They are equipped mechanically, in their dress, their gasmasks, everything that is necessary for an offensive capability, the Soviets have. To think they will not use it in the event of an all out war is asinine. The only thing that is going to keep the Soviets from using a chemical capability is the threat of a similar capability to be used against them.

Mr. Chairman, we are attempting to go forward and provide a facility to enable us to produce a binary round if the President makes a determination that it is in the interests of this country.

We are not going forward with production. We are simply saying we are going to be in a position to go forward if the President ever wakes up and makes such a decision.

I would say, Mr. Chairman, this is a good bill. We would be extremely shortsighted if we did anything to take away this first step toward building a retaliatory capability. This is a deterrent. The only reason we have an ICBM system is as a deterrent. To consciously deny us this ability is asinine, it is shortsighted, it is stupid.

Mr. Chairman, if the Soviets should decide to start rolling across the NATO countries, going into Europe, using chemical capability—which ability they have and which they have demonstrated—what then would be the response of NATO? We have no credible deterrent with the possible exception of the nuclear. Not to have this capability lowers the threshold of nuclear war. It is just that simple.

Mr. Chairman, I rise in strong support of the bill and I would hope the House would do the same.

Mr. WHITEHURST. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WALKER).

NEW DISCLOSURE ON BILLY CARTER

(By unanimous consent, Mr. WALKER was allowed to speak out of order.)

Mr. WALKER. Mr. Chairman, I do not intend to take a lot of time here, but I did want to respond to an incident that took place just before this debate began. I thank the gentleman from Virginia for yielding to me.

Mr. Chairman, let me say at the outset that I am fully supportive of the bill that the gentleman from Virginia (Mr. WHITEHURST) and the gentleman from Michigan (Mr. NEDZI) have brought to the floor. I think it is a good piece of legislation.

Mr. Chairman, I was disappointed by the Speaker's refusal to allow me to address the House in the period of 1-minute speeches.

I am sure the Speaker was upset by the vote that had taken place previously on the floor and perhaps even was upset by my small part in seeing to it that the resolution of inquiry was passed.

My reason for rising during the period of 1-minute speeches was to simply point out that the House had gone on record in favor of gathering more material with regard to the Billy Carter investigation. There had been a story, over the wire service just after that vote which indicated that we were perfectly right in voting the way we did. The story indicates the President's General Counsel today has told the Senate that he had not provided them with all the material that he previously said was provided. That, in fact, he had failed to mention a conversation with Billy Carter's lawyers in which the negotiations which led to the consent decree were evidently discussed. In light of that disclosure, I think the House was perfectly proper in going ahead with the resolution of inquiry and once again I thank the gentleman for yielding.

Mr. WHITEHURST. Mr. Chairman, I have no further requests for time and I will reserve the balance of my time.

□ 1340

Mr. NEDZI. Mr. Chairman, I yield myself such time as I may consume.

I take this time to endeavor to allay some fears that the gentleman from Arkansas may have, or others in the body may have, with respect to having to do something on this bill concerning binary production facilities. I would like to point out to the membership that we are in an unfortunate position with respect to the timing on this legislation of really engaging in kind of a futile exercise on many of these issues.

The appropriation for this particular project has been enacted by the House, and the place where this issue is really going to come down as to whether it is a go-ahead or not is going to be in the conference. Whether we authorize or deauthorize here today is of no moment. The authorization is already gone, so that if we are interested in concluding the bill today, we might take that into consideration.

I am not suggesting that this is not a subject that is serious and worthy of debate. However, as a practical matter, there is nothing we can do here today to alter a course of events which are already in place.

Mr. Chairman, at this time I would like to yield such time as he may consume to the distinguished gentleman from Wisconsin (Mr. ZABLOCKI), the chairman of the Foreign Affairs Committee.

Mr. ZABLOCKI. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, at the very outset let me state that I wholeheartedly support the many construction projects in the military construction authorization for fiscal year 1981, H.R. 7301, because they improve the military defense capability of our Nation. I want also to join my colleagues who have commended our dear friend and esteemed colleague from Michigan, the chairman of the subcommittee, Mr. NEDZI. Although I have never served on a committee with him, I do know of his very conscientious and very sincere efforts on whatever committee he has served—and he has served on some very important and difficult committees. I have rarely been in differences of opinion with him, and I am not really in any difference with him regarding the legislation before us today, Mr. Chairman.

But, I think I would be remiss if I would not point out some of the foreign policy implications of going ahead with the authorization of $3.15 million for a binary chemical plant in Pine Bluff, Ark. In this respect, I join with many of our colleagues, Mr. Chairman, in congratulating and extending our appreciation to our colleague from Arkansas (Mr. BETHUNE) who has brought the attention of the House to this particular plant.

As was stated, the President must make a certification and finding before a binary chemical can be produced—something which the President has not done. But I submit, Mr. Chairman, that no one has said that this plant is a multipurpose plant. It is not. It is being constructed for the explicit purpose of a binary chemical production. So, what does that tell not only the people of this country and our allies in NATO, but the world at large? It says that we are departing from our policy of a ban on use of chemical weapons in war.

I must be the first to admit that a binary chemical is safer, at least in the transportation or in storage, but it is just as deadly, and more. I think our priority should be to ban the use of chemicals in warfare. Therefore, I must point out that the position of the ad-

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ministration, the President, Secretary Brown, and Secretary Muskie, is that we should not authorize this program this year until we have an opportunity to fully study it, to have an opportunity to discuss it with our allies in Europe and achieve their concurrence which is currently lacking on this very issue. Otherwise, we will stir up another neutron bomb type of controversy between the United States and NATO. This would not only weaken our position in Europe but would only give comfort to the Warsaw Pact countries at the expense of NATO.

We should pursue such a course only after full and careful consideration by the administration and the Congress—something which neither the administration nor Congress has done to date.

In addition, a decision now to start production of a new generation of lethal chemical munitions would meet with strong opposition from our closest European allies and thereby severely complicate our present efforts to maintain the united front within NATO to accept the deployment of needed tactical nuclear weapons in Western Europe. Emphasizing this very point last week in testimony before the Armed Services Committee in the other body, Secretary of Defense Brown, in opposition to starting this construction project in fiscal year 1981, said:

> Any decision would have to allow our prior consultations with our allies. European sensitivities will be a major factor at any time, but—in light of our ongoing discussions on TNF basing—this is a particularly inopportune time to undertake such consultations.

In response to my request for the justification of the State Department's position on this matter Secretary Edmund Muskie replied September 8, 1980, with the following letter:

THE SECRETARY OF STATE,
Washington, D.C., September 8, 1980.

Hon. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs, House of Representatives

DEAR CLEM: In response to your request, I am writing to apprise you of the Administration's position on whether Congress should authorize funds in the FY 81 budget to begin construction of a binary chemical munitions production facility at Pine Bluff Arsenal.

As Harold Brown emphasized in his testimony before the Senate Armed Services Committee on September 4, the Administration is not seeking such funds in Fiscal Year 1981. A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.

All of these considerations are now part of a careful interagency examination which has already begun. This examination will be completed and a decision will be made on this issue in time for the Fiscal Year 1982 budget process. In the meantime, any such funding at this juncture would be premature.

I hope this information will be helpful to you in your evaluations of the issue.

With best wishes, I am,

Sincerely,

EDMUND S. MUSKIE.

Further, the administration is actively pursuing efforts to obtain an international investigation of Soviet chemical warfare practices. Based on hearings conducted this past spring by my Subcommittee on International Security and Scientific Affairs and the Asian and Pacific Subcommittee, chaired by my colleague Representative LESTER WOLFF, we encouraged the administration to actively pursue such an effort. Currently, the State Department is working with our allies and friends to obtain the necessary support for a U.N. resolution this fall calling for such an international fact-finding mission. A decision now to start construction of a new generation of lethal chemical munitions in fiscal year 1981 would be in contradiction to these efforts and jeopardize the credibility of our foreign policy.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield on that one point?

Mr. ZABLOCKI. I did not mention the gentleman's name, but I did refer to a statement he made, so I will be happy to yield to him.

Mr. DICKINSON. It was not on that point, but just let me say to the gentleman in regard to the point he just made as to NATO and other participation. I have served on the Disarmament Conference. I have attended the hearings at Geneva. I was there when they signed the papers to banish biological warfare, and if we do not at least give our Soviet neighbors and potential adversaries the perception that we are capable, that we are serious, then when we get down to the negotiating table and want to negotiate a treaty to ban it, since they have it and we do not have it, what do we have to negotiate?

Mr. ZABLOCKI. I might advise the gentleman, Mr. Chairman, that we will be negotiating and we are negotiating with the Soviets and any other adversary from a position of adequate supply of the very chemical weapons that we want to some day ban. To the best of our knowledge, the Soviets do not have a binary chemical weapon in their inventory at the present time. So, it is not a matter of negotiation.

But, I must point out another point of foreign policy. The administration, Mr. Chairman, is actively pursuing efforts to obtain an international investigation of Soviet chemical warfare practices. We heard references to Afghanistan. Our intelligence sources do not really confirm, cannot confirm that lethal chemicals were indeed used in Afghanistan or in Cambodia; a nonlethal chemical, yes, but as far as lethal chemicals, that is not confirmed or substantiated by anyone.

What we are trying to do in the upcoming months, later this year when the United Nations reconvenes, is to have our allies and our friends in the United Nations join with us on a resolution of investigation of the use of chemicals by the Soviet Union. If we take this step today of authorizing $3.15 million for a binary chemical plant, our decision now to start construction of a new generation of lethal chemical munitions in fiscal year 1981 would be in contradiction to these efforts that we are trying to bring about in the United Nations, thereby jeopardizing the credibility of our foreign policy.

□ 1350

Another area of concern is the adverse impact such a decision would have on the foreign policy objective of the last three administrations to pursue the achievement of a verifiable agreement with the Soviets to ban the production and use of lethal chemical munitions in warfare. A decision now to start the construction of a binary chemical production facility in fiscal year 1981 would substantially mitigate the progress achieved to date in the negotiations as well as minimize, if not eliminate, the prospects of reaching a final meaningful agreement. To date, neither the administration nor the Congress has assessed the arms control impact of this military construction program. This must be done before any final decision is rendered by Congress.

Finally, Mr. Chairman, and perhaps most ominous, is the globally destabilizing effect the inclusion of this $3.15 million program will have for the short term as well as the future. It would be interpreted by the American people and the rest of the world as an abandonment of America's deeply held commitment and efforts to a complete and effective ban on the use in war of lethal chemical weapons. It would encourage other nations, currently opposed to lethal chemical weapons, to consider producing them. It would remove another deterrent to the usage of lethal chemical weapons by terrorists groups worldwide. At best, it would make our longstanding foreign policy efforts to ban lethal chemical warfare a sham and at worst a potential human tragedy.

In sum, Mr. Chairman, adoption of this military construction project in fiscal year 1981:

Unnecessarily complicates our present efforts to maintain positive relations with our NATO allies to preserve an effective deterrent to the Soviet threat in Europe;

Undermines our longstanding commitment to the ban on production and use of lethal chemical warfare through negotiations; and

Undermines our efforts to reduce the proliferation of arms worldwide, especially those most susceptible to use by terrorists.

These major foreign policy issues, along with others, have not been adequately reviewed or considered by the administration or the Congress. Accordingly, I support Secretary Brown's and Secretary Muskie's calls to defer the commencement of the construction of a new binary lethal chemical facility in fiscal year 1981. In addition, I endorse the administration's decision earlier this year to conduct a comprehensive interagency review of our entire lethal chemical warfare program which should be completed later this year. Only based on such an effort can the administration then make any recommendations on chemical warfare for fiscal year 1982 which must then of course receive the full and careful consideraiton of the Congress.

Mr. Chairman, I believe my colleagues in the House know my consistent record in support of an adequate defense of our country. I have opposed and continue to oppose unilateral disarmament. In this instance I say, let us not invite an additional problem. The United States has an adequate stockpile of chemical weapons.

As to concerns about the adequacy, safety, and viability of our present chemical weapons stockpiles, I would only mention the following unclassified facts:

In terms of higher lethality, our current stockpiles of nerve gas agents have been calculated as providing a total battlefield target area capability four times greater than those available in World War II;

The present U.S. stockpile is already large enough for 50 divisions to wage chemical warfare for over 100 days; and

Our chemical stockpiles are already being upgraded with new parts and current needs could be significantly addressed by repainting and insertion of new fuses. Such steps would significantly raise our chemical warfare capability since none of the chemical payload of the so-called obsolete weapons has been affected.

Mr. ICHORD. Mr. Chairman, will the gentleman yield on that point?

Mr. ZABLOCKI. Mr. Chairman, what is currently inadequate is not the status of our chemical stockpile, which is adequate, but, rather, the status of our chemical warfare defensive capability, which is inadequate in both the United States and in Europe. We do not have an adequate defensive capability against chemical warfare.

I would prefer to see us double that amount spent for purposes of preparing ourselves defensively against the use of chemical warfare and preparing our allies against the use of chemical warfare. That would really be a deterrent, and to repeat one statement that was made, it is true that in this area the Soviets are making a more effective defensive effort than we are.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. Mr. Chairman, I submit that we do not need a new plant for the production of binary chemicals for use in war. What we need desperately is an improved defense against chemical warfare, and that is where our focus should now be.

It is my understanding that the other body will not include authority for the binary chemical plant, and the subcommittee chairman, the gentleman from Michigan (Mr. NEDZI), has, I think, succinctly pointed out what the situation is in that body. I hope we will not have an amendment to strike the amount because the outcome is dubious. I would support such an amendment nevertheless, but I believe that since the other body will strike the authority, as well as the appropriation, I accordingly offer the hope that the beginning of the construction of a binary lethal chemical facility would be taken out in conference and not be mandated for fiscal year 1981.

Mr. Chairman, I will now yield to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Chairman, let me state to the members of the committee that I have known and respected the chairman of the Committee on Foreign Affairs for the 20 years that I have served in the House, and as he stated, he has been a strong proponent of a strong national defense.

I do, however, feel—in fact, I would state this—that the logic of the rationale of the gentleman in not making this decision at this time completely escapes me. I just do not understand why we should negotiate with the Soviet Union from a position of weakness, and that is what the result would be.

Mr. Chairman, if the gentleman will yield further, what was the source of his statement that we do have a sufficient retaliatory capability? Where did the gentleman get that information?

Mr. ZABLOCKI. Mr. Chairman, if I may reclaim my time, I got the information from the same source from which the gentleman has received his information, and the gentleman cannot reveal the source any more than can the gentleman from Wisconsin, because of its high sensitivity.

Mr. ICHORD. Mr. Chairman, if the gentleman will yield further, I would state that I can give the Members of this House the information they need without violating security. We now only have 25 percent of the Joint Chiefs of Staff stated requirement to have a sufficient retaliatory capability. There is nothing classified about that at all.

I did ask the gentleman from Wisconsin to place a call to General Rogers, the Commander of NATO, to see how bad the situation is. Has the gentleman been able to make that call yet?

Mr. ZABLOCKI. Mr. Chairman, if I may reclaim my time, it is true that the gentleman has made a call to the general, and I understand that he is in Brussels. But I have learned from a person who should be in a position to reflect General Roger's views that he has never come out in support of the binary chemical plant.

Mr. Chairman, I yield back the balance of my time.

Mr. NEDZI. Mr. Chairman, I yield 6 minutes to the gentlewomen from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Michigan (Mr. NEDZI) for yielding this time to me, and I want to join with my other colleagues in saying how very sincere I am in conveying how much we are going to miss him next year. He really has been a gentleman and a good person to work with during my many years on the committee.

Mr. Chairman, I rise to talk about an issue that is very near and dear to my heart, one that is in the Senate bill and not in the House bill. I was going to offer an amendment, but after talking to the staff and to the chairman, I do not think it is really needed at this point.

In the Senate bill, in section 808(a), there is discussion of a sensitive problem that we have in Denver, Colo., and that is that we have a chemical munitions arsenal at the end of our runway at Stapleton International Airport, one of the major international airports in the country. I understand that at the time this arsenal was put there, there obviously was not the traffic there is today. Denver had not grown then the way it has today.

But we now have a very dangerous situation there. I understand that "20/20", the ABC television news show, will soon do a whole revelation on this.

We started talking about this in 1972 as soon as I came to Congress, and the Army agreed it was a terrible situation and agreed to detoxify everything there. They did do that to everything that belonged to the Army, and these were obsolete munitions. The only trouble was that they ran into some Navy munitions and did not think they should do that to those munitions because they belonged to the Navy. So we still have these weapons sitting at the end of the runway.

They are leaking. They are weteyes, they are old gravity fall bombs from the Korean war era. They are really unusable, and we are faced with several very difficult situations.

One answer to the problem is that we can move to another State. The only problem with that is that in any State that is asked to consider the suggestion we are confronted with strong objections, and that is that. Perhaps we may have to create a 51st State and agree to let them in the Union only on condition they accept these materials. That would be the only way we could find one that is willing to take the materials.

The other thing we can do is spend a slight fortune, which has already been recommended by the Pentagon, to build all kinds of storage units underground, because they are above ground and they do heat up. The metallurgical reports show this is forcing them to leak more and more. So we may be faced with having to commit a tremendous amount of money to keep them safe. And then what have we got? Something that is, in fact, obsolete. We have spent a lot of money to store.

The third possibility is to detoxify them. I think that is what may have to be done, because they are obsolete.

In the Senate bill section 808(a) deals with that issue. I talked with the subcommittee chairman about this, and I wanted to have a colloquy with him at this point and ask him about this.

I know the gentleman has looked at this, and I will ask him and the staff to please continue to look at that when we go into conference and try to get the very best perusal possible.

Mr. NEDZI. Mr. Chairman, if the gentlewoman will yield, I am well aware of the fact that the gentlewoman has been diligently pursuing this problem for a long period of time. She has brought it to my attention, and as I indicated to her, we have put the staff to work on it in an effort to be of as much assistance as possible.

This does happen to be a problem that deserves our attention, and we will do all we can to be cooperative.

Mrs. SCHROEDER. Mr. Chairman, I

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thank the gentleman very much for that assurance.

Mr. Chairman, I also want to engage in a colloquy with that gentleman from Missouri (Mr. ICHORD), because he is the expert in this area and he probably knows more about the Weteye bombs than anyone else around here.

Mr. ICHORD. Mr. Chairman, if the gentlewoman will yield, I would state to the gentlewoman from Colorado that the Weteye bombs are so dangerous that the Navy will not even haul them around in their airplanes.

□ 1400

Mrs. SCHROEDER. If I may ask the gentleman another question, then: If the gentleman were a Russian planner and understood that the Americans had some Weteye bombs at the end of the runway in Denver, Colo., would the gentleman consider that any kind of a deterrent for European use?

Mr. ICHORD. I certainly would not. Let me say to the gentlewoman from Colorado that I cannot state how many tons of chemical agents we have in munitions, I cannot state how many tons we have in storage. And some of these are stored in the State of the gentlewoman from Colorado. As the gentlewoman from Colorado knows, many of those weapons, many of the storage containers, are now 25 to 30 years of age. They are rapidly deteriorating and, as the gentlewoman says, they do become dangerous. What we should be doing is replacing the capability that we have with something that is safe.

I fully sympathize with the gentlewoman from Colorado. I think she has a legitimate complaint, and this is one of the many reasons why I think we should proceed with binaries as quickly as possible. It will enable us to destroy all of those dangerous weapons in Colorado and other places and still have a retaliatory capability. Otherwise, I would suggest to the gentleman from Arkansas, we are slowly but surely indulging in unilateral disarmament, and I know that the gentleman from Arkansas is not in favor of unilateral disarmament. I will address myself further to that point later on.

Mrs. SCHROEDER. I thank the gentleman.

Mr. NEDZI. Mr. Chairman, I yield 7 minutes to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Chairman, I do agree with the gentleman from Arkansas. This is a matter which should be debated. Unfortunately, I only see about 20 or 25 Members of the 435 Members of the House, 434 I believe now, who are present. I do not know how many are listening to the debate over TV, but it is an issue of vital importance not only to our own Nation, I would say, but the whole free world. It is one of the most important defense issues we have faced since I have been in Congress. Even the survival of Western civilization could well depend upon the decision that this body makes in this regard.

The point is, I would say to the gentleman from Wisconsin and the gentleman from Arkansas, we have only a miniscule retaliatory capability. Our stocks are in fact only 25 percent of the stated needs by the Joint Chiefs of Staff. I would state to the gentleman from Wisconsin that the argument he has just made has been made repeatedly since 1975. 'Let us not do it, we might rock the boat." I heard that in 1975, I heard that in 1976, I heard it in 1977, I heard it in 1978, I heard it in 1979, and now we are again hearing it in 1980. This is what I refer to as the Carthagenian mentality of defense. Do you really think we can negotiate a successful treaty from our present position? I am in favor of negotiating a treaty just as strong as the gentleman from Wisconsin, just as strong as the gentlewoman from New Jersey. God knows that I wish we lived in a society where we did not have to spend a single dime for defense. But unfortunately God has not afforded us that luxury.

I would say to the gentleman from Wisconsin that we can not delay any longer. Even if we take this action and the gentleman from Wisconsin joins the committee in pushing the construction of this facility, we will still not have binaries until 1984. If we take no action, those chemical agents scattered around the country will have to be destroyed. Can the gentleman tell me how we can negotiate an effective treaty with the Soviet Union from such a position of weakness?

The gentlewoman from New Jersey I think was in error when she stated, as I understood her, that the Russians have conclusively used lethal chemicals in Afghanistan. However, there is good evidence, I would say to the gentleman from Wisconsin, that they have. The gentleman from Maine (Mr. EMERY) visited Afghanistan refugees on the spot. He came to the conclusion that they had used either Soman or something similar to Soman. There is some evidence that they did use it. We do have intelligence that they moved lethal chemical agents into Afghanistan. Whether or not they used them has not been conclusively proved. I would say to the gentleman from Wisconsin there is almost conclusive evidence that they have used an incapacitating agent, something like a knock-out gas, something much stronger than tear gas.

But this is the situation. Chemical warfare is an integral part of the doctrine of the Soviet Army. They have 100,000 troops devoted to chemical warfare. They train in it daily, in a real toxic environment. It is absolutely ridiculous, in view of the facts, to think that the Soviets would not use it.

Let me say to the gentleman from Arkansas what happened to me back in 1977 in a close-air-support investigation. I asked this question of 35 officers from colonel on down to lieutenant. My question was: If the balloon went up tomorrow in NATO, do you think that the Warsaw Pact nations would use chemical warfare? Thirty-three answered in the affirmative, that they felt the Soviets would use chemical warfare. Two stated no. One was a full colonel, and he stated, "I do not think the Russians will use it because they do not have to use it. They have the conventional capability to reach the English Channel in a matter of days." The other one stated, "I do not think they will use it, Mr. Chairman, because they know the only response which we have is a nuclear response."

This is the exact reason why we must proceed as quickly as possible in retaining a retaliatory capability. We have lowered the threshold of nuclear war if we do not maintain a retaliatory capability.

Let me now proceed with a detailed analysis of the issue which faces us.

> Whether or not gas will be employed in future wars is a matter of conjecture, but the effect is so deadly to the unprepared that we can never neglect the question.

Those words were delivered by General Pershing, as Chief of Staff, in his annual report to the Congress in 1919. Regrettably, I believe that we have, in fact, neglected the question and it is my intent today to try to correct that omission.

While there may be a question in the minds of some people whether chemical warfare will be employed, there exists little doubt in the minds of the military.

In a March 17 interview on BBC, General Rogers stated, and I quote:

> It is expected, in my opinion at least, that they (the Soviet Union) will resort to the use of chemical weapons.

On January 20, 1977, the then Chairman of the Joint Chiefs of Staff, General Brown, testified:

> The Soviets have the capability to use CW weapons in a war with NATO forces, even on a first strike surprise basis.

Later that year, Army Deputy Chief of Staff for Research and Development, Lt. Gen. Howard Cooksey stated:

> Chemical warfare to the Soviet leadership is just another means of winning.

Any lingering doubts on whether or not chemicals will be employed in future wars certainly must have been removed by events reported in Yemen and Egypt as well as more recently in Laos, Cambodia, and Afghanistan.

Historically, chemicals have been employed against nations having no retaliatory capability.

By the Germans against allied forces in World War I.

By the Italians in Ethiopia in 1935.

By the Japanese in China in 1937.

By the United Arab Republic in Yemen in 1967.

By the Vietnamese against Meo tribesmen in Laos and against Cambodian forces in Kampuchea, and most recently by the Soviets against Afghan freedom fighters.

The effect of chemical warfare is, as General Pershing pointed out, extremely deadly. The Soviets suffered 475,000 chemical casualties in World War I. Our losses to chemical warfare were 70,552, 27 percent of our total. The Soviet Union has not forgotten this hard-learned lesson and has amassed the most devastating chemical warfare capability in history.

The Soviet Union today outnumbers the United States 35 to 1 in chemical units, 11 to 1 in personnel, 10 to 1 in decontamination equipment, better than 8 to 1 in chemical munitions, 5 to 1 in CW capable ground delivery systems, and 14 to 0 in production facilities. In terms of capability, the Soviets could sustain a high level of chemical warfare in excess of 30 days delivering munitions from the forward edge of the battle area to a depth of 500 kilometers. Soviet troops receive extensive training in operating in a toxic environment. Soviet doctrine makes employment of chemicals a part of normal fire planning and authority for usage has been delegated down to their division commanders.

On our side, U.S. policy is to retain a chemical warfare capability designed to deter the use of these weapons against us or our allies, and should deterrence fail, to permit us a reasonable degree of retaliation with chemical weapons. This policy of deterrence/retaliation has been enunciated by eight Presidents since World War II.

The components of such a deterrent/retaliatory capability are achievement of a credible chemical weapons stockpile and an effective defensive posture. Defensive or protective measures, while essential, are not and will not be sufficient to deter the use of chemicals. So where are we with respect to the achievement of a credible stockpile? We have not produced a chemical munition in over a decade, we have no active production capability, and our meager stockpile is diminishing through deterioration and obsolesence to the point that by 1990 we will no longer possess any militarily usable weapons. This situation has been described by General Jones on January 29 when he stated before the Armed Services Committee:

> The potential (offensive chemical) is there but it is very limited and quite antiquated.

Secretary Brown added:

> The existing chemical offensive stocks are, indeed, obsolete but they are better than nothing. To destroy them would leave us with nothing.

And finally it was General Rogers who stated:

> The weakness on our side is that we do not have an adequate retaliatory capability to deter the use of chemical weapons, and, therefore, the Soviets can exploit that weakness. The stockpile we have is running into a wall of obsolesence.

Our response to this deplorable state of preparedness has been one of moralistic hand wringing and neglect. The Army has for the past 5 years attempted to obtain the necessary preproduction and facilitization money to establish a binary chemical production facility at Pine Bluff Arsenal. In 1975 the Congress denied their request in a highly emotional response against "bugs and gas." Subsequent Army efforts have been thwarted in the executive branch. This year the Army again asked for funding in its fiscal year 1981 budget request and even with the backing of DOD was ultimately directed to delete binary preproduction funding from its program.

Mr. Chairman, the Defense Department's inability to obtain approval for establishment of binary production capability is a result of the misplaced logic of the State Department and the arms control community that to forego plans for production will provide us some ill defined but perceived to be significant psychological advantage over the Soviets. It is this type of logic which has taken us from strategic superiority to parity to today, and I quote General Jones, "the edge of strategic inferiority." Applied to chemical warfare this logic will lead us to unilateral disarmament.

Secretary Brown has testified that he believes chemical warfare is a real threat warranting a real response. General Haig, General Rogers and the last three Army Chiefs of Staff have all supported binary production. As far back as 1977 Gen. George Brown testified:

> The Joint Chiefs of Staff strongly support the improvement of our chemical munitions stockpile as an essential element in the necessary overall improvement of our ability to deter and, if necessary, fight in a toxic environment.

General Rogers on March 17 this year, publicly called for the production of chemical weapons to deter Soviet use.

Mr. Chairman, let me for a moment describe the dilemma that confronts us. If we were to start today it will be some 7 years before we have a full binary production capability. Even the first phase, the production of 155 millimeter GB rounds will not start until 1983 or 1984. Can we afford not to have any chemical production capability in the face of the massive Soviet threat? Can we afford to allow our stockpile to continue to deteriorate? Unless we are advoacting further unilateral disarmament, I would submit that we can no longer defer a decision on this vital issue.

The alternatives of hoping for an arms control agreement banning the production, stockpiling or acquisition of chemical weapons or relying on the deterrence of nuclear retaliation are just not viable. We have been negotiating now for a period of 4 years with little progress on the substantive issues such as verification and the prospect of achieving any near term agreement is doubtful. However, even with an agreement, stockpiles could not possibly be eliminated prior to 1990. The second alternative, that of relying on nuclear retaliation as a deterrent is in the words of General Rogers "just not an appropriate response." And I think we all would agree that it is not desirable to lower the nuclear threshold.

Mr. Chairman, binary munitions are operationally safe, free of complex and costly production, handling, transportation, maintenance, and disposal problems. They are also potentially more politically acceptable for storage in areas now denied to current chemical munitions.

Mr. Chairman, this bill contains $3.15 million for construction and modification of facilities at Pine Bluff Arsenal, Ark., to establish a binary chemical munitions production capability. The Appropriations Committee added a similar amount to H.R. 7592, the fiscal 1981 military construction appropriations bill, reported on June 17. That bill has already passed the House. I would hope that the gentleman from Arkansas would see fit to withdraw his amendment in view of the debate that has now transpired.

The CHAIRMAN. The Chair would observe that the gentleman from Michigan (Mr. NEDZI) has 20 minutes remaining and the gentleman from Virginia (Mr. WHITEHURST) has 20 minutes remaining.

□ 1410

Mr. NEDZI. Mr. Chairman, I yield 3 minutes to the gentleman from Nevada (Mr. SANTINI).

Mr. SANTINI. Mr. Chairman, I wish to express my appreciation to the chairman of the principal committee for yielding me time to comment for the record and engage in colloquy with the distinguished chairman.

As the lone representative from the State which is being considered for 65 percent of the MX missile system, I would like to direct a few comments and questions about section 801 of title VIII of this bill.

It is no secret to any Member of this body that Nevada is targeted as the principal host to the "largest project in the history of mankind."

I do feel, however, that whichever area receives the blessing of the MX missile program, adequate economic assistance will be absolutely mandatory. This is no ordinary military project with numerous States clamoring to get on board. To draw comparisons with other projects is to recognize that we are indeed talking about a new world in terms of military development.

Just in terms of the land encompassed by the proposed MX missile lavout, you could place over 1,000 State of Washingington Trident submarine bases in the deployment area of the MX. You could locate about 300 Fort Dixes or 100 Fort Sills in this same geographical area.

The MX and all its consequences is unlike anything this Congress or this Nation has ever considered or deliberated on implementing.

I wish to join with my colleague from Utah (Mr. MCKAY) and my colleague from Michigan (Mr. NEDZI) in reaffirming this body's commitment in providing economic assistance for MX imports by including MX in section 608 legislation.

This is indeed a very positive first step.

I have met and spoken with Air Force officials about this issue just last week. I am convinced that those representatives have a sincere desire to promote impact aid in the most expeditious manner.

The Air Force readily agrees to the so-called 608 system of impact aid such as that used in Kitsap County, Wash., needs improvement.

Along with my colleagues, I, therefore, call upon the Department of Defense to study and make recommendations to Congress next year about the legislative changes needed to streamline the economic assistance process for MX.

The State and local officials who represent those areas which will be seriously affected by MX would like very much to work with the Department of Defense in formulating these legislative recommendations to improve on the "608" process.

In particular, they are concerned, and I am concerned about cutting down on the time lag between appropriating the funds and actually delivering them to the communities who need them.

The CHAIRMAN. The time of the gentleman from Nevada (Mr. SANTINI) has expired.

Mr. NEDZI. Mr. Chairman, I yield 1 additional minute to the gentleman from Nevada (Mr. SANTINI).

Mr. SANTINI. Mr. Chairman, on behalf of myself and the gentleman from Utah (Mr. MCKAY), who is not present due to prior commitments in his district, I would like to ask the distinguished gentleman from Michigan if he would be willing to secure in conference an agreement that these kinds of changes are necessary and would the chairman be further willing to secure conference language directing the Department of Defense to recommend legislative, procedural, and other changes that would allow them more adequately and expeditiously to address the needs of the community that will be impacted by MX and the east coast Trident programs?

Mr. NEDZI. Mr. Chairman, I yield myself 1 minute in order to assure the gentleman from Nevada (Mr. SANTINI) and incidentally, the gentleman from Utah (Mr. MCKAY) has also expressed similar concerns, that during the conference we will be mindful of the concerns expressed about the need for an effective and responsive community impact assistance program and to the extent possible will try to have the statement of managers' language in the conference report include the requested study that the gentleman is interested in.

Mr. SANTINI. I thank the distinguished chairman very much.

● Mr. MCKAY. Mr. Chairman, I rise for purposes of a colloquy with the gentleman from Michigan.

As you know, Mr. Chairman, construction of the MX project is scheduled to begin next year in my State and the State of Nevada. I am determined to see that this Congress does all it can to assist those States in meeting construction and long-term impacts of that system.

Earlier this year I asked your committee to authorize impact assistance for areas of the country affected by MX. I am pleased and grateful that you have honored that request. By amending section 608 of Public Law 93–552 to include the MX weapon system, you have made communities in Utah and Nevada eligible for impact assistance from the Department of Defense.

In all likelihood, especially with the recent slippages on the MX deployment schedule, this authority will not be needed this year. Nevertheless, it will be somewhat reassuring to citizens in Utah that the Congress is committed to their welfare as well as the MX.

I believe the chairman recognizes that as the construction schedules comes closer we will have to adopt certain changes in the law governing impact assistance.

Late last year, delegations from Utah and Nevada met with officials in Kitsap County, Wash., where a large Trident submarine base was recently constructed. The experiences of the Kitsap County communities indicates that there are two major problems when it comes to dealing with rapid defense-related growth under the authorities of section 608.

First, funds were not available to meet the costs of operating expenses except in some minor instances involving law enforcement personnel. Second, the established procedures for funding capital facilities—in other words, the existing Federal channels—were far too time consuming. If the Trident base construction schedule had not slipped significantly, the demands for community services and facilities would have far outstripped local capacity and the results would have been catastrophic.

Procedures under section 608 must be streamlined, and changes must be introduced to help communities meet new capital and operating costs until local resources develop sufficiently to take over.

Would the chairman be willing to indicate in the report accompanying this bill that these and perhaps other changes in existing laws and procedures are necessary?

Would the chairman be further willing to direct the Department of Defense to recommend legislative, procedural, and other changes which would allow them to more adequately and expeditiously address the needs of MX-impacted communities as well as those impacted by the east coast Trident program?

To assist the chairman I have provided his staff with a report and additional details on this problem as I see them from my perspective as chairman of the Military Construction Appropriations Subcommittee.●

Mr. NEDZI. Mr. Chairman, would the gentleman from Virginia care to yield some time?

Mr. WHITEHURST. I will be happy to yield 10 minutes to the chairman.

Mr. NEDZI. I do not mean to me. Does the gentleman have any further speakers?

Mr. WHITEHURST. Just one last brief statement on this time, Mr. Chairman, if I may.

Mr. NEDZI. I thank the gentleman.

Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. VAN DEERLIN).

Mr. VAN DEERLIN. Mr. Chairman, I rise to mention a matter which has not received national attention, but which is of the utmost importance to my constituents in San Diego.

It concerns the location of a new naval medical facility in San Diego which, when constructed, will be the largest in the world. While there is general agreement that the hospital is urgently needed, a storm of controversy has arisen over whether that facility should be in Balboa Park, the site referred to in this legislation, or at an alternative site known as Helix Heights. Both locations are within my congressional district, the 42d of California.

Mr. Chairman, I shall not go into the relative merits and demerits of the two locations, except to mention that a ballot proposition which was decided in the June primary election suggests that a substantial majority of San Diego residents favors Helix Heights.

The Senate companion bill to H.R. 7301 contains some highly commendable provisions aimed at ensuring that San Diego community interests are given the attention they deserve by the Navy before a final decision is made on location of the facility. The Senate bill would require that the Navy submit a report on the two locations to the Armed Services and Appropriations Committees in each House. That report would contain an evaluation of the proposed sites, a statement of the Navy's preference, and a justification for that preference. I am happy to say that the Navy is already well along on this study.

My purpose in speaking today is to call attention to provisions in the Senate bill which follow those I have just mentioned. After the report has been submitted to the four committees, construction on the preferred site could not begin until each of the four committees has approved that site. Mr. Chairman, some such provision is crucial to insure that the Navy study is thoroughly reviewed and is, in fact, an adequate justification for the selected site. If such approval is not required, the whole concept of the report would seem innocuous.

Certainty that its decision—as well as its justification therefor—will bear close scrutiny, surely means the Navy will ignore no detail in assembling the pertinent information.

I have no intention of offering an amendment to conform the House bill to the Senate bill. If the conferees can come up with a more adequate method for meeting these needs than that contained in the Senate bill, I certainly would not want to tie their hands.

However, I do wish to emphasize that this matter is of the utmost concern to my constituents. The decision concerning location of this hospital will have far-reaching implications for the San Diego community and for the Navy, reaching well into the next century. San Diego, which has served the Navy well, deserves the strongest provisions possible for insuring that its interests are respected.

The CHAIRMAN. The Chair would observe to the gentleman from Michigan (Mr. NEDZI) and the gentleman from Virginia (Mr. WHITEHURST) that the Speaker has indicated that the Committee would rise at 2:45 or 3.

The Chair would inquire if there are other requests for time, because I know it would be the intention of the gentleman to complete consideration of the bill, if possible.

Mr. NEDZI. There are additional requests for time, Mr. Chairman, and any admonition should be directed to the Members who have requested the time. Perhaps they can speed up the amount of time that they are going to consume.

Mr. Chairman, I yield such time as he may consume to the gentleman from Connecticut (Mr. DODD).

Mr. DODD. Mr. Chairman, I rise in strong support of H.R. 7301, the military construction authorization for fiscal year 1981. I am particularly supportive of this legislation because it contains funding for a U.S.S. *Nautilus* memorial in Groton, Conn.

The U.S.S. *Nautilus*, the world's first nuclear-powered submarine, was built in Groton, Conn., and homeported there for her entire 25-year career. Returning the *Nautilus* to Groton is consistent with the naval tradition of retiring historic ships to areas of the country with strong historical associations with those ships. Moreover, Connecticut has, in fact, committed itself to helping the Federal Government pay for the costs of siting the *Nautilus* in Groton and designing a proper memorial. I might add that while other localities have sought to have the *Nautilus* retired elsewhere, no other area has offered to help pay for any of the siting costs.

I am pleased that both the House Armed Services Committee and the House Appropriations Committee have recognized Connecticut's significant historical association with the *Nautilus* and Connecticut's substantial offer to help pay for the siting costs in deciding that the *Nautilus* deserves to be retired in Groton.

President Carter has also recognized these facts and supports returning the *Nautilus* to Groton. I am confident that when this bill comes before a conference committee the House position on siting the *Nautilus* will prevail.

□ 1420

Mr. NEDZI. Mr. Speaker, I yield such time as he may consume to the gentleman from Arkansas (Mr. ALEXANDER).

Mr. ALEXANDER. Mr. Chairman, I rise in opposition to any amendment to H.R. 7301 which would limit this Nation's ability to meet the growing Soviet threat in chemical warfare.

Two years ago, I traveled to Europe as part of a congressional delegation observing NATO defense installations. What I saw and heard there casts serious doubt on the arguments I am hearing in favor of curtailing plans for development of binary chemical weapons by this country.

Two years ago, our intelligence had good evidence that every Soviet division in the European theater possessed a well-trained chemical warfare battalion equipped with the most modern offensive and defensive equipment.

Today, 2 years later, our current intelligence reports reflect the same information.

Two years ago, our own troops were equipped only with passive chemical warfare defense equipment like gas masks and protective clothing. At our vital forward air bases like the one at Ramstein, Germany, only a few, specially designated disaster control personnel, were equipped with protective clothing. Maintenance crews, weapons loaders, and other people vital to our ability to launch our fighters were issued only gas masks.

Today, 2 years later, the situation is virtually the same—even though Soviet chemical warfare methods have reportedly improved.

Mr. Chairman, I have heard all the arguments in favor of curtailing the construction of our own binary chemical warfare facility.

Those who support the amendment say that if we develop our own modern chemical warfare capability, that it will damage our negotiations with the Soviet Union for limiting or banning lethal chemicals.

As a designated adviser by the House of Representatives for the Conference of the Committee on Disarmament in Geneva and for the United Nations Special Session on Disarmament in New York, I would remind my colleagues that unilateral disarmament actions by the United States have never served as an incentive for Soviet restraint.

The reports from Afghanistan of Soviet use of lethal chemicals have done little to shore up my confidence in the good faith of Soviet negotiators. Supposedly, the use of deadly chemicals was denounced during the Vladivostok meetings with President Ford in 1976. Yet their observed tactics in Afghanistan reveal that chemicals remain an important part of their battlefield doctrine.

Supporters of this amendment also say that development and deployment of our own offensive chemical weapons is tantamount to an intention to use them.

No one in this Chamber is more concerned than I am over the necessity for finding ways to abolish these deadly gases, but I am convinced that unless we are prepared to use them offensively, we may be doomed to have to deal with them defensively.

We should also remember that even if we are able to develop an effective defense against lethal chemicals—and there is some evidence we cannot—we will be relieving the Soviet Union of the burden of providing its own defenses if we neglect our offense.

In that regard, it is reliably estimated that in order to mount a defense against chemicals, the Soviets would have to be prepared to burden each of their combat divisions with an additional 30 tons of defensive equipment and supplies for each day of combat in a chemical warfare environment. Without that additional burden the mobility of their troops would be increased while our mobility would be decreased.

But most important, Kremlin military planners would have little incentive to pursue chemical warfare if we possessed comparable strength.

The best defense to chemical warfare, Mr. Chairman, is a strong chemical offense. In view of the fact that we are at least 5 years from developing that offense, it would be shortsighted to fail to take this first, preparatory step toward building an effective deterrent.

If negotiations should prove successful—as they are more likely to if we do not unilaterally tie our own hands—there is no reason why the construction authorized in H.R. 7301 could not be curtailed or diverted to some other essential use.

Mr. Chairman, all too often in recent years we have let our defenses drift into a condition of neglect. I suggest it is not too soon to reverse this policy of neglect by acting on the side of prudence instead of cockeyed optimism about Soviet intentions.

I urge my colleagues to defeat this amendment and help serve notice on the Soviet Union that what they cannot win through negotiation, they will not gain through our neglect.

Mr. NEDZI. Mr. Chairman, I yield 3 minutes to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. Mr. Chairman, I rise in support of this very important authorization bill. On behalf of the people I represent and myself personally, I want to praise the chairman of the subcommittee for his years of devoted service.

I come from Bremerton in the State of Washington. In the home part of my district, there are three major naval bases, including the new Trident submarine base. Over the last 6 years the people in that area have witnessed the construction of the Bangor facility. I can tell you that Kitsap County appreciates what this committee has done to provide Trident community assistance money over those years. I can report to the committee that the construction of the base is nearly completed. But more importantly, I think the community has been left whole. Sometimes, we forget that when you get a military base, it presents burdens as well as opportunities. We forget about the roads, the schools, the sewers, and the libraries that are necessary when thousands of new people come into a rural area.

This is probably going to be the last year of the Trident assistance program; and this committee has been very, very supportive. The chairman, in particular, has been very, very understanding, and I again want to pay my respects to him.

I think it has proven to be one of the best programs that the Federal Government has ever put together. It has been a cooperative effort between the Federal agencies, the local government, and the State government.

I was not here when my colleague, the gentleman from Nevada (Mr. SANTINI) was on the floor. I can tell the gentleman that the problems he is going to have with the MX program are immense, truly immense.

I am delighted that this committee has seen fit to expand section 608 to take care of the MX project and the east coast Trident base, because it is not just a bed of roses when a military base is built in your area. There are problems that are caused for the community.

I think it is very important that the Federal Government play a constructive role in working with local government to solve their problems. The section 608 program is an excellent example of such a cooperative effort.

So I want to thank both the subcommittee chairman and all the members of the committee for their understanding about the difficulties caused when a base is built in an area and want to reiterate my support for this bill.

Mr. NEDZI. Mr. Chairman, I want to thank the gentleman for his kind and generous comments.

Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina (Mr. JONES).

Mr. JONES of North Carolina. Mr. Chairman, I thank the chairman for allotting me this time.

First of all, I want to commend the members of the Committee on Armed Services for a job well done in bringing out H.R. 7301.

I rise to support H.R. 7301, the military construction authorizations for fiscal 1981. The legislation will make a significant contribution to our national defense. I commend the members of the Armed Services Committee for a job well done.

I would like to discuss a much-needed construction project in my congressional district at the Cherry Point Naval Air Rework Facility. It is a $4,150,000 project known as the Cryogenics Generating Plant and Support Equipment Repair Facility, MILCON project P-515 (revised). It calls for the construction of a desperately needed building to house repair and laboratory facilities essential to the maintenance of our naval and Marine Corps aircraft.

The present bill does not contain an authorization for this project. I considered offering an amendment, but because of the committee's understandable desire to hold its bill within budgetary limits and because design on the project has not reached the threshold for authorization. I will not offer same, but, I hope that this discussion will lay the groundwork to enable me to appear before the Subcommittee on Military Installations and Facilities next spring to seek authorization in fiscal 1982.

The Cherry Point NARF is responsible for maintenance and repair of cryogenics generating plants, that is, equipment which produces liquid oxygen and nitrogen for military aircraft. These generating plants can be deployed at bases, in the field, or at sea to produce breathing oxygen for air crews. They also generate liquid oxygen and nitrogen required for servicing aircraft and meeting various medical needs.

Another function of this facility is to overhaul, examine, disassemble, and make ready various equipment used to maintain military planes. This equipment includes air compressors, hydraulic jacks, aero stands, and other items vital for the proper care and operation of the Navy and Marine aircraft.

Finally, the Materials Engineering Laboratory provides research and analysis of materials associated with aircraft operations. It is involved in the fields of metallurgy, chemistry, high polymer repairs, and analysis of gasses, oils, and fuels.

The Cherry Point NARF sorely needs a new building designed to accommodate these functions. Presently these activities are housed in two small "temporary" buildings constructed in 1964 for storage purposes. Because of the large size of the generating units, only a few can be worked on simultaneously in the cramped quarters. Work on some of the equipment must be done outdoors in uncovered areas, weather permitting. Tools and materials have to be stored away from the shop because of lack of space. The utilities are inadequate; heating and ventilation systems are poor. Some jobs, such as welding, painting, and steam cleaning have to be done away from the shop because of safety and pollution requirements.

Despite these trying conditions, the personnel at Cherry Point do a remarkable job. Nevertheless, the deficient physical facilities take their toll in productivity and efficiency. Authorization of this project will be a modest investment in maintaining the quality of our military air defense. I commend the attention of the Armed Services Committee to this project and look forward to working with you to include it in next year's military construction authorization.

Mr. WHITEHURST. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. BOB WILSON).

Mr. BOB WILSON. Mr. Chairman, I thank the gentleman for yielding.

I have two reasons for taking a short time here.

First of all, I want to join those who have praised the leadership of the chairman of the subcommittee. I have had the privilege of working with him during his entire stay on the committee. I was his ranking minority member when he was chairman of the Intelligence Committee and I must say I have always been impressed with his judicious temperament and his kindness, but his attention to detail as well.

Not many people realize that the Intelligence Committee during the time of Watergate held the same kinds of hearings that were held by other committees that got a lot of publicity, but we purposely did not seek publicity. We called all the same witnesses. We had Haldeman and Erlichman, Dean and very many others appearing before our committee, chaired by the chairman of this subcommittee. I must say he did an exceptional job. I am going to recommend to the next President of the United States, whoever he may be, that he consider our chairman of this subcommittee for the Supreme Court because of his judicious capability.

Now, second, Mr. Chairman, I am rising to engage in somewhat of a rebuttal or at least a colloquy with my good friend and colleague, my next door neighbor in California, regarding a new medical center planned for the community which is in his district and in our great city of San Diego. Although the gentleman from California (Mr. VAN DEERLIN) and I have been political adversaries through the years, we have also worked hard together on many projects to benefit our community and we have been working particularly hard together on this project, the naval regional medical center.

Today, however, I am compelled to disagree with him on two important points about the location of the new hospital.

First, the June ballot proposition to which my colleague refers did not specifically ask San Diego voters if they favored Helix Heights as the preferred hospital site. Rather, the proposition asked if the city should release its reservation of Helix Heights for a cemetery so that it could be used for other potential uses. The new hospital was only one of the possible purposes. Another possible use was for minority housing. So I believe it is an overstatement to say that San Diego voters prefer Helix Heights over the proposed Florida Canyon site in Balboa Park.

In fact, in an earlier ballot proposition, a majority of San Diego voters did indeed indicate their support for the city to lease the Florida Canyon site to the Navy for the specific purpose of siting the hospital there; but, like my good friend and colleague, I do not rise to debate the relative merits or demerits of the two locations. This will be done in the evaluation of the two sites now under way by the Navy and due to be concluded in late November.

This brings me to the second point. The House is already on record as supporting a thorough review of the two sites before the Navy settles on a final site selection. That review was ordered by the House when it recently passed the military construction appropriations bill.

The Senate companion bill to the measure we are considering today orders a similar Navy review and submission of the findings to the Armed Services and Appropriations Committees of both the House and the Senate. I believe that makes good sense, if it stopped there, but the Senate provision referred to by my colleague also requires that each of the four committees has to formally approve the site selection before the Navy can begin construction. There is no deadline as to when they must act. In effect, any one of the committees could veto the project for whatever reason it chooses to quarrel with the Navy's choice of location for the hospital.

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This is a dangerous precedent; for a hassle among committees over the siting would be very costly to the taxpayer. With inflation alone it would boost the project's cost by $2 mililon for every month it is delayed. The American taxpayer is already overburdened. He deserves better legislating procedures than that offered in the Senate provision.

Mr. WHITEHURST. Mr. Chairman, I yield 3 minutes to the gentleman from Maine (Mr. EMERY).

Mr. EMERY. Mr. Chairman, I want very much to commend my colleague from Missouri (Mr. ICHORD) who unfortunately has chosen not to return with us next year for the work that he has done in pointing out the necessity for improving our capabilities in the area of chemical warfare, both offensive and defensive.

He also referred a few moments ago to a visit that I made, along with some

of our colleagues, to Pakistan and the Afghanistan border earlier this year. He was quite correct when he pointed out that I and others of us here in the House had an opportunity to talk with some Afghanistan refugees who described in horrifying detail the results and the procedures of what appeared to be a chemical attack from Soviet aircraft on this pathetic band of poorly armed, poorly prepared and poorly trained refugees fighting for their homeland.

I know that there have been some disagreements in the intelligence community as to the nature of Soviet chemical warfare technology, but I frankly think it would be naive in a dangerous way for us to ignore that evidence that I have seen and others have seen in this area. Even assuming that we could not prove that this, in fact, was a gas attack, using sophisticated chemical agents and others, I think we would be well advised to consider the potential for use of a massive chemical attack in a NATO-Warsaw Pact confrontation or some other confrontation.

I do not think there is any thinking person in this Chamber or on the Armed Services Committee or in any part of the Federal Government that does not recognize the horror of such an effort, the horror of a chemical attack that could result in the devastation of our forces and maybe the tipping of the balance in such a confrontation. So I feel that we need to develop our chemical warfare technology, at least in a defensive capability, so that we will be able to construct our combat vehicles and equip our troops in the field with lightweight, effective equipment that will allow them to operate in a chemical environment. It is absolutely essential and I commend the gentleman from Missouri for his efforts in this regard.

Mr. WHITEHURST. Mr. Chairman, I had a ringing peroration to conclude the debate on this side but, for the purposes of expediting this bill, I yield back the balance of my time.

Mr. NEDZI. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. MILLER).

Mr. MILLER of California. Mr. Chairman, I rise to bring to the attention of the committee a problem which has occurred in my district which is a question which the community has expressed about the adequacy of safety and evacuation procedures in those communities near which nuclear weapons are being stored. I understand that this question is not unique to the community of Concord, Calif., but also has arisen in Hawaii, Michigan, and other areas.

It is not my intent to question whether or not nuclear weapons are present or not present at the Concord Naval Weapons Station, because there are legitimate national security questions involved. But local government officials are understandably concerned about their ability to prepare for the potential of a radiological disaster or accident in the absence of adequate advice and cooperation. As I understand it, the procedures, according to the GAO and the NRC, by which the local communities are prepared to respond to a potential problem are almost nonexistent. This situation has been brought to the attention of this subcommittee that better communication should take place so that local communities would know what would be expected of them in the event that weapons are stored and that an accidental leak takes place.

It is not my intent in any way to disturb the existing law which simply does not allow for the public disclosure as to the existence or nonexistence of weapons at any given facility in this country. I know that this committee, under the leadership of the distinguished chairman, held hearings in May of 1979. The hearings had great relevance to the situation at Concord Naval Weapons Station. Several witnesses strongly stated that people in surrounding communities could be at risk, and that current preparedness programs (especially coordination with State and local governments) are insufficient.

Dexter Peach (General Accounting Office):

> We certainly feel that they (military installations where nuclear weapons are stored) fit into the category of having a potential for a nuclear accident to happen . . . From the standpoint of the work we did . . . we found just the lack of communication that existed between these types of facilities and the surrounding community.

Joseph Hendrie (Nuclear Regulatory Commission):

> With respect to existing facilities, it is fair to say that the level of preparedness in county governments for coping with radiological emergencies should be substantially improved.

Captain Basolo (Deputy Director, Emergency Services, Michigan State Police):

> Local government must be able to mobilize and coordinate its own resources to meet specific threats that they may find in their communities. If you have communities with air bases or a nuclear plant or large railroad lines or gas lines running through, we would advise them in their planning process to provide for this eventuality.

Dr. James P. Wade, Jr. (Assistant Secretary of Defense for Atomic Energy):

> At present, there are no formal requirements for agreements between local Department of Defense facilities and States or localities concerning joint response to a radio-logical accident. . . . However, most installations do have formal agreements for general disaster situations.

Based on these hearings, I would like to ask the chairman whether his committee did recognize that this is a problem in coordination between the military and local government? I would like to know whether or not the chairman believes that this serious situation is worthy of further consideration by this subcommittee so that we are sure that adequate information, consistent with the national security, is provided local and State preparedness and safety personnel?

Mr. NEDZI. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the chairman.

Mr. NEDZI. As the gentleman has indicated, this has been a matter of continuing concern on the part of the committee, the question of safety in areas where nuclear material may be present. I can assure the gentleman at least for the balance of my tenure, and I am certain any successor of mine will respond in similar fashion, that these matters will be thoroughly reviewed to assure that local officials do have some opportunity to present their concern to Federal officials that have control over these matters.

Mr. MILLER of California. I thank the chairman very much for his consideration of this matter.

● Mr. KOSTMAYER. Mr. Chairman, I rise in support of the bill and particularly in support of an increase in funding for the Willow Grove Naval Air Station which is located in my district in southeastern Pennsylvania.

This important Defense Department aviation facility serves the Army, Navy, Marine Corps, Air Force, and Pennsylvania National Guard. One of the primary missions of NAS Willow Grove is the training of aviation reserve forces. In the event of the need for NATO reinforcement or some other contingency action, military forces at NAS Willow Grove are identified as essential elements of our national defense posture.

In 1977, the Navy conducted an air installations compatibility use zones or AICUZ study at NAS, Willow Grove. As you know, an AICUZ is a comprehensive study of the installation's air operations and its impact on the community. The goal of the AICUZ program is to obtain compatible land use in the area adjacent to the Naval Air Station. The Navy recognizes the need to limit encroachment upon its air station so that its mission is not impaired, and a compatible land use pattern is developed to protect the well-being of those people who live and work nearby. The plan provides a means to protect both the air station and its neighbors.

The AICUZ outlined a number of land use zones around the Naval Air Station and detailed the type of development, if any, which should be permitted in these zones. The zone with the highest accident potential is the area directly beyond the runways.

This area is called the clear zone. This zone has traditionally been acquired by the Navy either through easement or outright purchase in order to be kept clear or obstructions to flight.

The Horsham Elementary School, which was built before the Naval Air Station, lies in the clear zone, 200 yards south of the main runway. The school was closed in June 1979 due in large part, to community concern about its hazardous location as identified in the AICUZ study. The Navy supported the closing of the school and made a commitment to seek funds to acquire the site. The Navy recognizes that it bears a large measure of the responsibility for the closing of the school and therefore has an obligation to purchase it. If this acquisition does not take place soon, the school district will have to consider sale of the site to commercial interests for uses which

are not compatible with the AICUZ study.

The Navy has requested $1.1 million in the fiscal year 1981 military construction authorization bill to begin critical clear zone property acquisition. Unfortunately, those funds are not sufficient to permit acquisition of the Horsham School.

Three properties were indentified by the AICUZ for acquisition. The Horsham Elementary School is one of those properties, but it is the third priority within that package. It is estimated that it will take $2.1 million to acquire the first two priority properties alone. The cost projections of these acquisitions have risen dramatically in recent years due to inflation, and to imminent development at one of the priority sites. It is estimated that an additional $600,000 would be required to purchase the elementary school.

I would respectfully request that the House support this increase in the military construction funds for the Naval Air Station at Willow Grove to $2.7 million in fiscal year 1981 in order that the acquisition of the Horsham Elementary School can go forward. These funds will enable the Navy to acquire the two properties it has identified as the most critical in the clear zone, and enable it to keep faith with the people of Horsham and Hatboro by acquiring the third site, the school.

This naval air station is a vital part of our Reserve component and if the Navy is to carry out its mission there, we must do all we can to aid in that effort. The continued success of this facility which is important to all of us, depends upon limiting incompatible land use in the area, and minimizing public exposure to aircraft hazard. This policy is in the best interests of the Navy and the community.

I want to thank the distinguished gentleman from Michigan (Mr. NEDZI), the chairman of the Subcommittee on Military Installations, and his colleagues on the subcommittee for their consideration and support of this amendment. I know the hard work and dedication of the gentleman, who is retiring at the end of this session, will be greatly missed by all House Members.●

Mr. NEDZI. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. There being no further requests for time, pursuant to the rule the Clerk will now read the bill by titles.

Mr. NEDZI. Mr. Chairman, I ask unanimous consent that titles I through VII be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Titles I through VII read as follows:

H.R. 7301

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Military Construction Authorization Act, 1981".

TITLE I—ARMY

AUTHORIZED ARMY CONSTRUCTION PROJECTS

SEC. 101. The Secretary of the Army may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction.

INSIDE THE UNITED STATES

UNITED STATES ARMY FORCES COMMAND

Fort Bragg, North Carolina, $16,350,000.
Fort Campbell, Kentucky, $14,200,000.
Fort Carson, Colorado, $42,600,000.
Fort Devens, Massachusetts, $1,000,000.
Fort Douglas, Utah, $2,200,000.
Fort Drum, New York, $5,900,000.
Fort Gillem, Georgia, $2,600,000.
Fort Hood, Texas, $21,170,000.
Fort Hunter-Liggett, California, $5,100,000.
Fort Lewis, Washington, $16,000,000.
Fort Ord, California, $4,700,000.
Fort Polk, Louisiana, $14,800,000.
Fort Riley, Kansas, $890,000.
Fort Sam Houston, Texas, $3,750,000.
Fort Stewart/Hunter Army Air Field, Georgia, $26,500,000.

UNITED STATES ARMY WESTERN COMMAND

Schofield Barracks, Hawaii, $3,820,000.
Tripler Army Medical Center, Hawaii, $84,500,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND

Fort A. P. Hill, Virginia, $930,000.
Fort Belvoir, Virginia, $510,000.
Fort Benning, Georgia, $10,460,000.
Fort Bliss, Texas, $2,400,000.
Fort Dix, New Jersey, $4,510,000.
Fort Eustis, Virginia, $1,100,000.
Fort Gordon, Georgia, $2,500,000.
Fort Jackson, South Carolina, $2,690,000.
Fort Knox, Kentucky, $5,400,000.
Fort Leavenworth, Kansas, $7,750,000.
Fort Leonard Wood, Missouri, $7,900,000.
Fort Rucker, Alabama, $30,580,000.
Fort Sill, Oklahoma, $4,100,000.

UNITED STATES ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND

Anniston Army Depot, Alabama, $3,550,000.
Badger Army Ammunition Plant, Wisconsin, $2,100,000.
Corpus Christi Army Depot, Texas, $1,600,000.
Fort Monmouth, New Jersey, $2,000,000.
Holston Army Ammunition Plant, Tennessee, $4,690,000.
Indiana Army Ammunition Plant, Indiana, $2,800,000.
Iowa Army Ammunition Plant, Iowa, $1,650,000.
Jefferson Proving Ground, Indiana, $960,000.
Letterkenny Army Depot, Pennsylvania, $9,250,000.
Lone Star Army Ammunition Plant, Texas, $4,350,000.
Louisiana Army Ammunition Plant, Louisiana, $1,050,000.
McAlester Army Ammunition Plant, Oklahoma, $620,000.
Picatinny Arsenal, New Jersey, $1,400,000.
Pine Bluff Arsenal, Arkansas, $3,150,000.
Red River Army Depot, Texas, $3,800,000.
Redstone Arsenal, Alabama, $12,190,000.
Rock Island Arsenal, Illinois, $10,620,000.
Rocky Mountain Arsenal, Colorado, $10,400,000.
Sacramento Army Depot, California, $1,930,000.
Sierra Army Depot, California, $550,000.
St. Louis Support Activity, Illinois, $3,050,000.
Tobyhanna Army Depot, Pennsylvania, $680,000.
Tooele Army Depot, Utah, $2,050,000.
Twin City Army Ammunition Plant, Minnesota, $820,000.
Umatilla Army Depot, Oregon, $620,000.
Volunteer Army Ammunition Plant, Tennessee, $2,150,000.
White Sands Missile Range, New Mexico, $1,000,000.
Yuma Proving Ground, Arizona, $2,650,000.

AMMUNITION FACILITIES

Holston Army Ammunition Plant, Tennessee, $300,000.
Indiana Army Ammunition Plant, Indiana, $3,570,000.
Iowa Army Ammunition Plant, Iowa, $2,300,000.
Lake City Army Ammunition Plant, Missouri, $220,000.
Lone Star Ammunition Plant, Texas, $540,000.
Longhorn Army Ammunition Plant, Texas, $260,000.
Louisiana Army Ammunition Plant, Louisiana, $380,000.
Milan Army Ammunition Plant, Tennessee, $210,000.
Radford Army Ammunition Plant, Virginia, $5,890,000.

UNITED STATES ARMY CORPS OF ENGINEERS

Cold Regions Laboratory, New Hampshire, $6,100,000.

MILITARY DISTRICT OF WASHINGTON

Cameron Station, Virginia, $930,000.
Fort McNair, Washington, District of Columbia, $690,000.
Fort Myer, Virginia, $1,150,000.

UNITED STATES ARMY COMMUNICATIONS COMMAND

Fort Huachuca, Arizona, $4,650,000.
Fort Ritchie, Maryland, $1,750,000.

UNITED STATES ARMY HEALTH SERVICES COMMAND

Fort Detrick, Maryland, $1,350,000.
Fitzsimmons Army Medical Center, Colorado, $790,000.

MILITARY TRAFFIC MANAGEMENT COMMAND

Bayonne Terminal, New Jersey, $660,000.
Sunny Point Terminal, North Carolina, $1,800,000.

OUTSIDE THE UNITED STATES

EIGHTH UNITED STATES ARMY, KOREA

Various Locations, $62,074,000.

KWAJALEIN MISSILE RANGE

National Missile Range, $5,440,000.

UNITED STATES ARMY FORCES COMMAND

Panama Area, Canal Zone, $8,100,000.

UNITED STATES ARMY, JAPAN

Kawakami, Japan, $3,000,000.

UNITED STATES ARMY, EUROPE

Various Locations, $176,840,000.

UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND

Korea, $1,186,000.

EMERGENCY CONSTRUCTION

SEC. 102. The Secretary of the Army may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate,

or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Army, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 103. The Secretary of the Army is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $44,560,000.

DEFICIENCY AUTHORIZATION FOR FISCAL YEAR 1979 PROJECTS

SEC. 104. Section 602(1) of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 580), is amended to read as follows:

"(1) for title I: inside the United States $503,794,000; outside the United States $232,510,000; minor construction $35,365,000; for a total of $771,669,000.".

TITLE II—NAVY

AUTHORIZED NAVY CONSTRUCTION PROJECTS

SEC. 201. The Secretary of the Navy may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

MARINE CORPS

Marine Corps Air Station, Beaufort, South Carolina, $930,000.
Marine Corps Base, Camp Lejuene, North Carolina, $24,700,000.
Marine Corps Base, Camp Pendleton, California, $6,950,000.
Marine Corps Air Station, Cherry Point, North Carolina, $16,700,000.
Marine Corps Air Station, El Toro, California, $11,500,000.
Marine Corps Air Station, Kaneohe Bay, Hawaii, $620,000.
Marine Corps Recruit Depot, Parris Island, South Carolina, $6,800,000.
Marine Corps Development and Education Command, Quantico, Virginia, $5,800,000.
Marine Corps Air Ground Combat Center, Twentynine Palms, California, $9,400,000.
Marine Corps Air Station, Yuma, Arizona, $2,200,000.

OFFICE OF NAVAL RESEARCH

Naval Research Laboratory, Washington, District of Columbia, $7,300,000.

CHIEF OF NAVAL OPERATIONS

Naval Submarine Base, Bangor, Bremerton, Washington, $11,160,000.
Naval Submarine Support Base, Kings Bay, Kingsland, Georgia, $18,000,000.
Commandant Naval District, Washington, District of Columbia, $790,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Air Station, Brunswick, Maine, $4,100,000.
Naval Station, Charleston, South Carolina, $13,200,000.
Naval Air Station, Jacksonville, Florida, $3,830,000.
Naval Amphibious Base, Little Creek, Virginia, $8,100,000.
Naval Station, Mayport, Florida, $37,620,000.
Naval Submarine Base, New London, Groton, Connecticut, $8,030,000.
Headquarters Support Activity, Atlantic Fleet, Norfolk, Virginia, $3,400,000.
Naval Air Station, Norfolk, Virginia, $1,550,000.
Naval Station, Norfolk, Virginia, $15,500,000.
Naval Air Station, Oceana, Virginia, $19,350,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Station, Barbers Point, Hawaii, $2,500,000.
Naval Air Station, Fallon, Nevada, $330,000.
Naval Air Station, Lemoore, California, $5,810,000.
Naval Magazine, Lualualei, Hawaii, $6,600,000.
Naval Air Station, Miramar, California, $1,200,000.
Naval Air Station, North Island, California, $850,000.
Naval Submarine Base, Pearl Harbor, Hawaii, $1,900,000.
Naval Station, San Diego, California, $4,950,000.
Navy Submarine Support Facility, San Diego, California, $4,150,000.
Naval Air Station, Whidbey Island, Washington, $2,390,000.

CHIEF OF NAVAL EDUCATION AND TRAINING

Fleet Ballistic Missile Submarine Training Center, Charleston, South Carolina, $1,100,000.
Fleet Combat Training Center, Atlantic, Dam Neck, Virginia, $4,700,000.
Naval Submarine School, Groton, Connecticut, $1,150,000.
Naval Education and Training Center, Newport, Rhode Island, $620,000.
Naval Training Center, Orlando, Florida, $7,050,000.
Fleet Combat Training Center, Pacific, San Diego, California, $540,000.
Naval Submarine Training Center, San Diego, California, $4,450,000.
Naval Air Station, Whiting Field, Florida, $3,680,000.

BUREAU OF MEDICINE AND SURGERY

National Naval Medical Center, Bethesda, Maryland, $23,000,000.
Naval Regional Medical Center, San Diego, California, $293,000,000.

NAVAL MATERIAL COMMAND

Puget Sound Naval Shipyard, Bremerton, Washington, $32,000,000.
Naval Supply Center, Puget Sound, Bremerton, Washington, $2,200,000.
Naval Fuel Annex, Casco Bay, Maine, $3,900,000.
Charleston Naval Shipyard, Charleston, South Carolina, $6,600,000.
Naval Weapons Station, Charleston, South Carolina, $3,410,000.
Polaris Missile Facility, Atlantic, Charleston, South Carolina, $8,400,000.
Naval Weapons Center, China Lake, California, $11,900,000.
Naval Construction Battalion Center, Davisville, Rhode Island, $550,000.
Navy Public Works Center, Great Lakes, Illinois, $8,400,000.
Naval Undersea Warfare Engineering Station, Keyport, Washington, $860,000.
Portsmouth Naval Shipyard, Kittery, Maine, $13,880,000.
Long Beach Naval Shipyard, Long Beach, California, $4,400,000.
Naval Ordnance Station, Louisville, Kentucky, $2,050,000.
Naval Supply Center, Norfolk, Virginia, $13,150,000.
Navy Public Works Center, Norfolk, Virginia, $1,560,000.
Naval Supply Center, Oakland, California, $4,600,000.
Navy Public Works Center, Pearl Harbor, Hawaii, $5,783,000.
Naval Air Rework Facility, Pensacola, Florida, $1,550,000.
Philadelphia Naval Shipyard, Philadelphia, Pennsylvania, $10,710,000.
Pacific Missile Test Center, Point Mugu, California, $8,750,000.
Norfolk Naval Shipyard, Portsmouth, Virginia, $11,500,000.
Naval Supply Center, San Diego, California, $2,900,000.
Navy Public Works Center, San Diego, California, $670,000.
Mare Island Naval Shipyard, Vallejo, California, $9,500,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Winter Harbor, Maine, $1,150,000.

OUTSIDE THE UNITED STATES

CHIEF OF NAVAL OPERATIONS

Defense Installations, Mariana Islands, $28,200,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Facility, Brawdy, Wales, United Kingdom, $3,600,000.
Naval Station, Keflavik, Iceland, $49,200,000.
Naval Station, Roosevelt Roads, Puerto Rico, $10,500,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Facility, Atsugi, Japan, $1,000,000.
Navy Support Facility, Diego Garcia, Indian Ocean, $125,977,000.
Naval Station, Subic Bay, Republic of the Philippines, $780,000.
Various locations, $35,000,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communications Area Master Station Western Pacific, Guam, Mariana Islands, $1,900,000.
Naval Communication Station, Keflavik, Iceland, $3,600,000.

EMERGENCY CONSTRUCTION

SEC. 202. The Secretary of the Navy may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Navy, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 203. The Secretary of the Navy is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $33,010,000.

DUAL PURPOSE AIR TERMINAL, KEFLAVIK, ICELAND

SEC. 204. (a) The Secretary of the Navy may contract for the construction of the Air Passenger Terminal in Keflavik, Iceland, in accordance with this section and any agreement which may be made between the Government of Iceland and the Government of the United States. Of the amount authorized in section 201 for the Naval Station, Keflavik, Iceland, no more than $20,000,000 may be contributed by the United States as the United States share of the cost of such construction.

(b) A contract for construction may not be entered into until the Government of Iceland agrees (1) to provide to the Government of the United States funds equal to the difference between the amount required to complete the construction and the amount of the United States share authorized in subsection (a), and (2) to make those funds available, in advance of the time when payments are due, in such amounts and at such times as may be required by the Government of the United States.

TITLE III—AIR FORCE

AUTHORIZED AIR FORCE CONSTRUCTION PROJECTS

SEC. 301. The Secretary of the Air Force may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $9,650,000.
Kelly Air Force Base, Texas, $650,000.
McClellan Air Force Base, California, $12,350,000.
Robins Air Force Base, Georgia, $4,850,000.
Tinker Air Force Base, Oklahoma, $11,870,000.
Wright-Patterson Air Force Base, Ohio, $3,700,000.

AIR FORCE SYSTEMS COMMAND

Brooks Air Force Base, Texas, $4,200,000.
Buckley Air National Guard Base, Colorado, $900,000.
Cape Canaveral Air Force Station, Florida, $22,300,000.
Edwards Air Force Base, California, $10,500,000.
Hanscom Air Force Base, Massachusetts, $7,200,000.
Port Hueneme Naval Installation, California, $16,700,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $17,738,000.
Lackland Air Force Base, Texas, $10,590,000.
Laughlin Air Force Base, Texas, $1,100,000.
Lowry Air Force Base, Colorado, $840,000.
Mather Air Force Base, California, $860,000.
Maxwell Air Force Base, Alabama, $11,184,000.
Randolph Air Force Base, Texas, $7,850,000.
Reese Air Force Base, Texas, $4,290,000.

ALASKAN AIR COMMAND

Elelson Air Force Base, Alaska, $5,190,000.
Elmendorf Air Force Base, Alaska, $14,820,000.
Galen Air Force Base, Alaska, $930,000.
King Salmon Airport, $1,000,000.
Shemya Air Force Base, Alaska, $2,900,000.

MILITARY AIRLIFT COMMAND

Andrews Air Force Base, Maryland, $4,240,000.
Charleston Air Force Base, South Carolina, $1,740,000.
Dover Air Force Base, Delaware, $2,350,000.
Kirtland Air Force Base, New Mexico, $1,200,000.
McChord Air Force Base, Washington, $5,500,000.
Norton Air Force Base, California, $11,200,000.
Pope Air Force Base, North Carolina, $9,250,000.
Scott Air Force Base, Illinois, $4,000,000.
Travis Air Force Base, California, $1,080,000.

PACIFIC AIR FORCES

Hickam Air Force Base, Hawaii, $580,000.

STRATEGIC AIR COMMAND

Barksdale Air Force Base, Louisiana, $3,200,000.
Beale Air Force Base, California, $2,670,000.
Blytheville Air Force Base, Arkansas, $6,141,000.
Carswell Air Force Base, Texas, $13,920,000.
Castle Air Force Base, California, $16,400,000.
Dyess Air Force Base, Texas, $10,300,000.
Ellsworth Air Force Base, South Dakota, $17,560,000.
Fairchild Air Force Base, Washington, $20,360,000.
Grand Forks Air Force Base, North Dakota, $22,650,000.
Griffiss Air Force Base, New York, $14,850,000.
K. I. Sawyer Air Force Base, Michigan, $3,700,000.
Loring Air Force Base, Maine, $7,450,000.
McConnell Air Force Base, Kansas, $4,040,000.
Minot Air Force Base, North Dakota, $2,570,000.
Offutt Air Force Base, Nebraska, $4,580,000.
Pease Air Force Base, New Hampshire, $4,500,000.
Rickenbacker Air Force Base, Indiana, $6,300,000.
Vandenberg Air Force Base, California, $75,300,000.
Whiteman Air Force Base, Missouri, $990,000.
Wurtsmith Air Force Base, Michigan, $34,970,000.

TACTICAL AIR COMMAND

Bergstrom Air Force Base, Texas, $1,910,000.
Davis Monthan Air Force Base, Arizona, $3,200,000.
George Air Force Base, California, $640,000.
Holloman Air Force Base, New Mexico, $5,800,000.
Homestead Air Force Base, Florida, $670,000.
Langley Air Force Base, Virginia, $3,892,000.
MacDill Air Force Base, Florida, $1,160,000.
Moody Air Force Base, Georgia, $1,470,000.
Myrtle Beach Air Force Base, South Carolina, $780,000.
Nellis Air Force Base, Nevada, $6,250,000.
Shaw Air Force Base, South Carolina, $3,800,000.
Tyndall Air Force Base, Florida, $2,300,000.

OUTSIDE THE UNITED STATES

MILITARY AIRLIFT COMMAND

Lajes Field, Portugal, $30,100,000.

PACIFIC AIR FORCES

Camp Zama, Japan, $1,100,000.
Clark Air Base, Republic of the Philippines, $13,050,000.
Kadena Air Base, Japan, $10,280,000.
Kunsan Air Base, Korea, $4,400,000.
Kwang-Ju Air Base Korea, $5,900,000.
Misawa Air Base, Japan, $1,930,000.
Naval Support Facility, Diego Garcia, Indian Ocean, $23,700,000.
Osan Air Base, Korea, $16,800,000.
Taegu Air Base, Korea, $8,350,000.

UNITED STATES AIR FORCES IN EUROPE

Various Locations, United Kingdom, $2,200,000.
Various Locations, $102,770,000.

EMERGENCY CONSTRUCTION

SEC. 302. The Secretary of the Air Force may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Air Force, or the Secretary's designee, shall notify the Committee on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 303. The Secretary of the Air Force is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $24,870,000.

DEFICIENCY AUTHORIZATION FOR FISCAL YEAR 1979 PROJECTS

SEC. 304. Section 602(3) of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 580), is amended to read as follows:

"(3) for title III: inside the United States $490,327,000; outside the United States $78,278,000; minor construction $30,721,000; for a total of $599,326,000.".

TITLE VI—DEFENSE AGENCIES

AUTHORIZED CONSTRUCTION PROJECTS FOR THE DEFENSE AGENCIES

SEC. 401. The Secretary of Defense may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for defense agencies for the following acquisition or construction:

INSIDE THE UNITED STATES

DEFENSE INTELLIGENCE AGENCY

Bolling Air Force Base, District of Columbia, $106,200,000.

DEFENSE LOGISTICS AGENCY

Defense Electronics Supply Center, Dayton, Ohio, $730,000.
Defense Fuel Support Point, Norwalk, California, $2,000,000.
Defense Fuel Support Point, Searsport, Maine, $3,000,000.
Defense Personnel Support Center, Philadelphia, Pennsylvania, $750,000.
Defense Storage Facility, Bayonne, New Jersey, $1,450,000.

DEFENSE MAPPING AGENCY

Hydrographic/Topographic Center, Brookmont, Maryland, $1,500,000.

NATIONAL SECURITY AGENCY

Fort George G. Meade, Maryland, $5,065,000.
Kunia, Oahu, Hawaii, $2,700,000.

OFFICE OF THE SECRETARY OF DEFENSE

Classified Activity, Fort Belvoir, Virginia, $16,500,000.

OUTSIDE THE UNITED STATES

DEFENSE LOGISTICS AGENCY

Defense Property Disposal Office, Bitburg, Germany, $1,350,000.

NATIONAL SECURITY AGENCY

Classified Location, $674,000.

OFFICE OF THE SECRETARY OF DEFENSE

CLASSIFIED LOCATION

Classified Activity, $3,500,000.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Aschaffenburg, Germany, $1,110,000.
Baumholder, Wetzel Housing Area, Germany, $3,065,000.
Bermuda, Naval Air Station, $2,580,000.
Clark Air Base, Republic of the Philippines, $1,650,000.
Iwakuni, Marine Corps Air Station, Japan, $6,060,000.
Osan Air Base, Korea, $1,900,000.
Pruem Air Station, Germany, $1,150,000.
Sagamihara, Japan, $3,220,000.
Seoul, Yongsan Garrison, Korea, $4,500,000.
Taegu, Korea, $4,100,000.
Wiesbaden, Germany, $10,176,000.
Yokota Air Base West, Japan, $7,500,000.

EMERGENCY CONSTRUCTION

SEC. 402. The Secretary of Defense may establish or develop installations and facilities which he determines to be vital to the security of the United States and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $30,000,000. The Secretary of Defense, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public works undertaken under this section including real estate actions pertaining thereto.

MINOR CONSTRUCTION

SEC. 403. The Secretary of Defense is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $6,180,000.

NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

SEC. 404. The Secretary of Defense is authorized to incur obligations in amounts not to exceed $317,500,000 for the United States share of the cost of multilateral programs for the acquisition or construction of military facilities and installations (including international military headquarters) for the collective defense of the North Atlantic Treaty Area. Of such amount, $17,500,000 is designated as the United States share of the European Comand Headquarters which is to be funded by the North Atlantic Treaty Organization Infrastructure program. Within thirty days after the end of each calendar-year quarter, the Secretary of Defense shall furnish to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a description of obligations incurred by the United States for the United States share of the cost of such multilateral programs.

TITLE V—MILITARY FAMILY HOUSING

AUTHORIZATION TO CONSTRUCT OR ACQUIRE HOUSING

SEC. 501. (a) The Secretary of Defense, or the Secretary's designee, is authorized to construct or acquire sole interest in existing family housing units in the numbers and at the locations hereinafter named, but no family housing construction shall be commenced at any such location in the United States until the Secretary shall have consulted with the Secretary of Housing and Urban Development as to the availability of suitable private housing at such location. If agreement cannot be reached with respect to the availability of suitable private housing at any location, the Secretary of Defense shall notify the Committees on Armed Services of the Senate and House of Representatives, in writing, of such difference of opinion, and no contract for construction at such location shall be entered into for a period of thirty days after such notification has been given. This authority shall include the authority to acquire land, and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise.

(b) With respect to the family housing units authorized to be constructed by this section, the Secretary of Defense is authorized to acquire sole interest in privately or Department of Housing and Urban Development-held family housing units in lieu of constructing all or a portion of the family housing authorized by this section, if the Secretary, or the Secretary's designee, determines such action to be in the best interests of the United States, but any family housing units acquired under authority of this subsection shall not exceed the cost limitations specified in this section for the project nor the limitations on size specified in section 2684 of title 10, United States Code. In no case may family housing units be acquired under this subsection through the exercise of eminent domain authority, and in no case may family housing units other than those authorized by this section be acquired in lieu of construction unless the acquisition of such units is hereafter specifically authorized by law.

(c) Family housing units:

Marine Corps Air Station, Yuma, Arizona, one hundred thirty-two units, $8,050,000.
Defense Housing Complex, South Bay, San Francisco, California, two hundred seventy units, $19,045,000.
Marine Corps Air Station, El Toro, California, three hundred units, $17,483,000.
Fort Ord, California, five hundred units, $30,808,000.
Naval Complex, New London, Connecticut, four hundred units, $24,608,000.
Fort Stewart, Georgia, two hundred units, $9,716,000.
Fort Polk, Louisiana, two hundred units, $11,173,000.
Naval Air Station, Brunswick, Maine, sixty-two units, $3,956,000.
Naval Complex, Norfolk, Virginia, two hundred and thirty-two units, $12,093,000.
Lajes Field, Azores, one hundred and fifty units, $9,768,000.
Incirlik Air Base, Turkey, two hundred units, $11,723,000.
Classified location overseas, five units, $168,000.

(d) The amounts specified in this section may, at the discretion of the Secretary of Defense, or the Secretary's designee, be increased by 10 per centum, if he determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress. The amounts authorized include the costs of shades, screens, ranges, refrigerators, and all other installed equipment and fixtures, the cost of the family housing unit, supervision, inspection, overhead, land acquisition, site preparation, installation of utilities, and solar energy systems.

IMPROVEMENT OF EXISTING QUARTERS

SEC. 502. (a) The Secretary of Defense, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law, to existing public quarters at a cost not to exceed—

(1) for the Department of the Army, $42,436,000, of which $27,150,000 shall be available only for energy conservation projects;

(2) for the Department of the Navy, $13,562,000, of which $2,819,000 shall be available only for energy conservation projects;

(3) for the Department of the Air Force, $52,819,000, of which $17,000,000 shall be available only for energy conservation projects; and

(4) for the Defense Agencies, $23,000.

(b) The first sentence of section 610(a) of the Military Construction Authorization Act, 1968 (42 U.S.C. 1594h-2), is amended by inserting "adjusted by the area construction cost index (as developed by the Department of Defense) for the location at the time the contract is awarded," after "$20,000 per unit".

(c) The Secretary of Defense, or the Secretary's designee, within the amounts specified in subsection (a), is authorized to accomplish repairs and improvements to existing family housing in amounts in excess of the dollar limitation prescribed in section 610(a) of the Military Construction Authorization Act, 1968 (42 U.S.C. 1594h-2), as follows:

Redstone Arsenal, Alabama, forty units, $891,000.
Navy Public Works Center, Pearl Harbor, Hawaii, one hundred and forty-six units, $5,468,000.
Fort Knox, Kentucky, one hundred units, $2,592,000.
Loring Air Force Base, Maine, one hundred and sixty-five units, $3,042,600.
Kirtland Air Force Base, New Mexico, one hundred and twenty-five units, $2,458,100.
Marine Corps Development and Education Command, Quantico, Virginia, fifty-two units, $1,910,000.
Warren Air Force Base, Wyoming, one hundred and sixty-two units, $3,150,000.
Hahn Air Base, Federal Republic of Germany, twenty-eight units, $980,000.
Ramstein Air Base (Vogelweh and Landstuhl), Federal Republic of Germany, twenty units, $993,000.
Yokota Air Base, Japan, two hundred and sixty-eight units, $9,054,800.

ADVANCE PLANNING AND DESIGN

SEC. 503. The Secretary of Defense, or the Secretary's designee, may carry out advance planning and construction design and may obtain architectural and engineering services in connection with any family housing construction, including improvements, authorized or not otherwise authorized by law at a total cost of not to exceed—

(1) for the Department of the Army, $3,993,000;

(2) for the Department of the Navy, $2,994,000;

(3) for the Department of the Air Force, $1,380,000; and

(4) for the Defense agencies, $2,000.

LEASING OF FAMILY HOUSING

SEC. 504. (a) Subsection (c) of section 2686 of title 10, United States Code, relating to leases for military family housing in the United States, is amended to read as follows:

"(c)(1) Except as provided in paragraph (2), expenditures for the rental of such hous-

ing facilities (including the cost of utilities, maintenance, and operation) may not exceed $515 per month for any unit.

"(2) The Secretary of Defense may lease not more than five hundred housing units under this section for which the expenditure for the rental of such facilities (including the cost of utilities, maintenance, and operation) exceeds $515 per month but does not exceed $600 per month.".

(b) The first sentence of section 2675(d)(1) of such title relating to leases in foreign countries, is amended to read as follows: "Expenditures for the rental of family housing in foreign countries (including the cost of utilities and maintenance and operation) may not exceed $1,115 per month for any unit.".

OCCUPANT LIABILITY FOR DAMAGES TO FAMILY HOUSING

SEC. 505. (a) When any family housing unit (or equipment or furnishings incidental to any family housing unit) furnished to a member of an Armed Force is damaged and it is determined that such damage was caused by the abuse or negligence of the member or a dependent of the member, the amount of the damage or the cost of repair or replacement shall be charged to the member and may be deducted from the member's pay.

(b) In the case of a member who is an officer, the final determination of any amount to be deducted from the member's pay under this section shall be deemed for the purpose of section 1007(a) of title 37, United States Code, to be a special order authorizing such a deduction.

(c) The Secretary of Defense shall prescribe regulations to carry out this section.

CONSTRUCTION OF FAMILY QUARTERS; LIMITATIONS ON SPACE

SEC. 506. Section 2684 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Subsection (a) is not applicable to family quarters obtained by the Department of State for personnel of the Department of Defense.".

INCREASED AUTHORIZATION FOR CONSTRUCTION, OAHU, HAWAII

SEC. 507. Notwithstanding the limitations on costs contained in sections 501(a) and 502 of the Military Construction Authorization Act, 1974 (Public Law 93-166; 87 Stat. 673) and sections 501(a) and 502 of the Military Construction Authorization Act, 1975 (Public Law 93-552; 88 Stat. 1757, 1758), the Secretary of Defense is authorized to complete construction of two thousand six hundred family housing units in support of Department of Defense requirements in Oahu, Hawaii, at a total cost of not to exceed $117,150,000.

DEFICIENCY AUTHORIZATION FOR NEW CONSTRUCTION

SEC. 508. (a) Section 501(c) of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 577), is amended—

(1) by striking out "$1,509,000" in the item relating to the Naval Facility, Centerville Beach, California, and inserting in lieu thereof "$2,030,000"; and

(2) by striking out "$4,307,000" in the item relating to the Marine Corps Base, Twentynine Palms, California, and inserting in lieu thereof "$6,069,000".

(b)(1) Section 505(1) of such Act is amended by striking out "$139,105,000" and inserting in lieu thereof "$140,867,000".

(2) Section 602(5) of such Act is amended by striking out "$1,701,605,000" and inserting in lieu thereof "$1,703,367,000".

AUTHORIZATION OF APPROPRIATIONS

SEC. 509. (a) There is authorized to be appropriated for fiscal years beginning after September 30, 1980, for support of military family housing, including operating expenses, leasing, maintenance of real property, payments of principal and interest on mortgage debts incurred, payment to the Commodity Credit Corporation, and mortgage insurance premiums, an amount not to exceed $1,880,760,000.

(b) The amount authorized to be appropriated in subsection (a) may be increased to the extent additional funds are necessary for increased pay costs associated with actions taken pursuant to law.

FAMILY HOUSING MANAGEMENT ACCOUNT

SEC. 510. Subsection (b) of section 501 of Public Law 87-554 (42 U.S.C. 1594a-1) is amended to read as follows:

"(b) The management account shall be administered by the Secretary of Defense as a single account. There shall be transferred into such account (1) appropriations made to the Department of Defense for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operating and maintenance, and disposal of family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c) of the National Housing Act (12 U.S.C. 1715m(c)), (2) proceeds from the rental of family housing and mobile home facilities under the control of the Department of Defense, reimbursements from occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the management account, and (3) notwithstanding any other provision of law, proceeds of the handling and the disposal of family housing of the Department of Defense, including related land and improvements, whether effected by the Department of Defense or any other Federal agency, but less those expenses payable pursuant to section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)), to remain available until expended.".

TITLE VI—AUTHORIZATION OF APPROPRIATIONS AND ADMINISTRATIVE PROVISIONS

WAIVER OF RESTRICTIONS

SEC. 601. The Secretary of each military department may proceed to establish or develop installations and facilities under this Act without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on land includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes, as amended (40 U.S.C. 255), and even though the land is held temporarily. The authority to acquire real estate or lands includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government owned land, or otherwise.

AUTHORIZATION OF APPROPRIATIONS

SEC. 602. There are authorized to be appropriated for fiscal years beginning after September 30, 1980, such sums as may be necessary for the purposes of this Act, but appropriation for public works projects authorized by titles I, II, III, IV, and V shall not exceed—

(1) for title I: inside the United States $472,110,000; outside the United States $256,640,000; minor construction $44,560,000; for a total of $773,310,000.

(2) for title II: inside the United States $777,873,000; outside the United States $259,757,000; minor construction $33,010,000; for a total of $1,070,640,000.

(3) for title III: inside the United States $529,625,000; outside the United States $220,587,000; minor construction $24,870,000; for a total of $775,082,000.

(4) for title IV: a total of $546,110,000, including $6,186,000 for minor construction.

(5) for title V: a total of $276,100,000, including $5,471,000 for minor construction.

COST VARIATIONS

SEC. 603. (a) OVERALL TITLE TOTAL LIMITATION.—Notwithstanding the provisions of subsections (b), (c), (d), and (g), the total cost of all construction and acquisition in each of titles I, II, III, and IV may not exceed the total amount authorized to be appropriated in that title.

(b) VARIATIONS IN INSTALLATION TOTALS—UNUSUAL VARIATIONS IN COST.—Except as provided in subsections (c) and (d), any of the amounts specified in titles I, II, III, and IV of this Act (other than in sections 103, 203, 303, and 403) may, at the discretion of the Secretary of the military department or Director of the defense agency concerned, be increased by 5 per centum when inside the United States (other than Alaska or Hawaii), and by 10 per centum when outside the United States or in Alaska or Hawaii, if the Secretary of the military department or Director of the defense agency concerned determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress.

(c) VARIATIONS IN INSTALLATION TOTALS—ONLY ONE PROJECT AT AN INSTALLATION.—When the amount named for any construction or acquisition in title I, II, III, or IV of this Act involves only one project at any military installation and the Secretary of the military department or Director of the defense agency concerned determines that the amount authorized must be increased by more than the applicable percentage prescribed in subsection (b), the Secretary of the military department or Director of the defense agency concerned may proceed with such construction or acquisition if the amount of the increase does not exceed by more than 25 per centum the amount named for such project by the Congress.

(d) VARIATIONS IN INSTALLATION TOTALS—REPORTS BY THE SECRETARY OF DEFENSE.—When the Secretary of Defense determines that any amount named in title I, II, III, or IV of this Act must be exceeded by more than the percentages permitted in subsections (b) and (c) to accomplish authorized construction or acquisition, the Secretary of the military department or Director of the defense agency concerned may proceed with such construction or acquisition after a written report of the facts relating to the increase of such amount, including a statement of the reasons for such increase, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either (1) thirty days have elapsed from the date of submission of such report, or (2) both committees have indicated approval of such construction or acquisition. Notwithstanding the provisions in prior Military Construction Authorization Acts, the provisions of this subsection shall apply to such prior Acts.

(e) COST AND SCOPE VARIATIONS OF INDIVIDUAL PROJECTS; REPORTS TO CONGRESS.—No individual project authorized under title I, II, III, or IV of this Act for any specifically listed military installation for which the current working estimate is greater than the statutory upper limit for minor construction projects, may be placed under contract if—

(1) the approved scope of the project is reduced in excess of 25 per centum; or

(2) the current working estimate, based upon bids received, for the construction of such project exceeds by more than 25 per centum the amount authorized for such project by the Congress;

until a written report of the facts relating to the reduced scope or increased cost of such project, including a statement of the reasons for reduction in scope or increase in cost, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either thirty days have elapsed from the date of submission of such report, or both committees have indicated approval of such reduction in scope or increase in cost, as the case may be.

(f) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, or the Secretary's designee, shall submit an annual report to the Congress identifying each individual project (other than a project authorized under section 103, 203, 303, or 403) which has been placed under contract in the preceding twelve-month period and with respect to which the then current working estimate of the Department of Defense, based upon bids received, for such project exceeded the amount authorized by the Congress for that project by more than 25 per centum. The Secretary shall also include in such report each individual project with respect to which the scope was reduced by more than 25 per centum in order to permit contract award within the available authorization for such project. Such report shall include all pertinent cost information for each individual project, including the amount in dollars and percentage by which the current working estimate based on the contract price for the project exceeded the amount authorized for such project by the Congress.

(g) COST AND FLOOR AREA VARIATIONS—SOLAR ENERGY.—The Secretary of Defense shall encourage the utilization of solar energy as a source of energy for projects authorized by this Act where utilization of solar energy would be practical and economically feasible. In order to equip any project authorized by this Act with solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, the Secretary of Defense may authorize increases in the cost limitations or floor area limitations for such project by such amounts as may be necessary for such purpose. Any increase under this section in the cost or floor area of a project authorized by this Act shall be in addition to any other increase in such cost or variation in floor area limitations authorized by this or any other Act.

CONSTRUCTION SUPERVISION

SEC. 604. Contracts for construction made by the United States for performance within the United States and its possessions under this Act shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army, the Naval Facilities Engineering Command, Department of the Navy, or such other department or Government agency as the Secretaries of the military departments recommend and the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective accomplishment of the construction herein authorized. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives a breakdown of the dollar value of construction contracts completed by each of the several construction agencies selected together with the design, construction supervision, and overhead fees charged by each of the several agents in the execution of the assigned construction. Further, such contracts (except architect and engineering contracts which, unless specifically authorized by the Congress shall continue to be awarded in accordance with presently established procedures, customs, and practice) shall be awarded, insofar as practicable, on a competitive basis to the lowest responsible bidder, if the national security will not be impaired and the award is consistent with chapter 137 of title 10, United States Code. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives with respect to all contracts awarded on other than a competitive basis to the lowest responsible bidder. Such reports shall also show, in the case of the ten architect-engineering firms which, in terms of total dollars, were awarded the most business; the names of such firms; the total number of separate contracts awarded each firm; and the total amount paid or to be paid in the case of each such action under all such contracts awarded such firm.

REPEAL OF PRIOR YEAR AUTHORIZATIONS: EXCEPTIONS

SEC. 605. (a) As of October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, all authorizations for military public works, including family housing, to be accomplished by the Secretary of a military department in connection with the establishment or development of installations and facilities, and all authorizations for appropriations therefor, that are contained in titles I, II, III, IV, and V of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 928), and all such authorizations contained in Acts approved before November 26, 1979, and not superseded or otherwise modified by a later authorization are repealed except—

(1) authorizations for public works and for appropriations therefor that are set forth in those Acts in the titles that contain the general provisions; and

(2) authorizations for public works projects as to which appropriated funds have been obligated for construction contracts, land acquisition, or payments to the North Atlantic Treaty Organization, in whole or in part, before October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, and authorizations for appropriations therefor.

(b) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 944), authorizations for the following items authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 565) shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Energy Control System construction in the amount of $3,300,000 at Fort Jackson, South Carolina.

(2) Regional Sewage Treatment Plant Upgrade construction in the amount of $1,209,000 at Fort Bliss, Texas.

(3) Regional Sewage Treatment Plant Upgrade construction in the amount of $550,000 at Fort Monroe, Virginia.

(4) Barracks with Dining construction in the amount of $4,603,000 at Fulda, Germany.

(5) Improvements to Heating System in the amount of $394,000 at Kansas Army Ammunition Plant, Kansas.

(6) Energy Control System in the amount of $1,372,000 at Fitzsimmons Army Medical Center, Colorado.

(7) Hospital addition, alteration, and upgrade in the amount of $30,283,000 at 2d General Hospital, Landstuhl, Germany.

(8) Facilities Modernization in the amount of $1,782,000 at Christensen Barracks, Bindlach, Germany.

(9) Facilities Modernization in the amount of $7,731,000 at Ferris Barracks, Erlangen, Germany.

(10) Barracks without dining facilities in the amount of $2,299,000 at Conn Barracks, Schweinfurt, Germany.

(11) Small Arms Maintenance and Storage Facility in the amount of $3,645,000 at Fort Benning, Georgia.

(12) Cargo Handling Training Facility in the amount of $3,666,000 at Fort Eustis, Virginia.

(13) Petroleum Storage Facilities in the amount of $2,437,000 at Fort Leonard Wood, Missouri.

(14) Tactical Equipment Shop and Facilities in the amount of $2,272,000 at Fort Polk, Louisiana.

(15) Contaminated Waste Incinerator construction in the amount of $620,000 at Kansas Army Ammunition Plant, Kansas.

(16) Contaminated Waste Incinerator Plant construction in the amount of $501,000 at Iowa Army Ammunition Plant, Iowa.

(17) Contaminated Waste Incinerator construction in the amount of $637,000 at Milan Army Ammunition Plant, Tennessee.

(18) Contaminated Waste Incinerator construction in the amount of $518,000 at Sunflower Army Ammunition Plant, Kansas.

(19) Tactical Equipment Shop and Facilities in the amount of $1,037,000 at Wildflecken Training Area, Germany.

(20) Facilities Modernization in the amount of $7,000,000 at Mannheim, Germany.

(21) Facilities Modernization in the amount of $14,000,000 at Baumholder, Germany.

(22) Flight Simulator Building in the amount of $1,739,000 at Mannheim, Germany.

(23) Explosive Waste Incinerator construction in the amount of $763,000 at Sunflower Army Ammunition Plant, Kansas.

(24) Missile Maintenance Facility in the amount of $863,000 at Fort Polk, Louisiana.

(25) Effluent Land Irrigation System construction in the amount of $6,933,000 at Fort Ord, California.

(c) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 944), authorizations for the following items authorized in section 201 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 567) shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Energy Monitoring and Control System in the amount of $765,000 at the Naval Air Station, Jacksonville, Florida.

(2) Municipal Sewer Connection construction in the amount of $2,500,000 at the Naval Education and Training Center, Newport, Rhode Island.

(d) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 944), authorizations for the following items authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572) shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Space Transportation System airfield facilities in the amount of $32,100,000 at Vandenberg Air Force Base, California.

(2) Energy—Alter Lighting System in the amount of $850,000 at Hill Air Force Base, Utah.

(3) Energy Monitoring and Control System in the amount of $3,300,000 at Kelly Air Force Base, Texas.

(4) Fire Station in the amount of $1,031,000 at Tinker Air Force Base, Oklahoma.

(5) Energy—Alter Mechanical, Electrical and Structural Systems in the amount of $1,120,000 at Wright-Patterson Air Force Base, Ohio.

(6) Energy Monitoring and Control System in the amount of $3,350,000 at Wright-Patterson Air Force Base, Ohio.

(7) Propulsion Wind Tunnel—16T High Angle Automatic Sting in the amount of $2,710,000 at Arnold Engineering Development Center, Tennessee.

(8) Energy Monitoring and Control System in the amount of $2,750,000 at Edwards Air Force Base, California.

(9) Insulate Heating and Cooling Controls and Insulate Buildings in the amount of $650,000 at Edwards Air Force Base, California.

(10) Chapel Center in the amount of $1,190,000 at Eglin Air Force Base, Florida.

(11) Energy Monitoring and Control System in the amount of $2,000,000 at Hanscom Air Force Base, Massachusetts.

(12) Aircraft Corrosion Control Facility in the amount of $7,310,000 at Dover Air Force Base, Delaware.

(13) Chapel Center in the amount of $1,240,000 at Castle Air Force Base, California.

(14) Energy Monitoring and Control System in the amount of $610,000 at Grand Forks Air Force Base, North Dakota.

(15) Air Installation Compatible Use Zone in the amount of $314,000 at Grissom Air Force Base, Indiana.

(16) Air Installation Compatible Use Zone in the amount of $357,000 at March Air Force Base, California.

(17) Sewage Main Regional Connection in the amount of $946,000 at Rickenbacker Air Force Base, Ohio.

(18) Energy Monitoring and Control System in the amount of $540,000 at Holloman Air Force Base, New Mexico.

(19) Energy Monitoring and Control System in the amount of $900,000 at Nellis Air Force Base, Nevada.

(20) Add to and Alter Cadet Library in the amount of $4,000,000 at the United States Air Force Academy, Colorado.

(21) Special Operation Facilities in the amount of $2,800,000 at Various Locations, Pacific Air Forces.

(22) Telecommunications Facility in the amount of $6,515,000 at Various Locations (Ramstein Air Base), Germany.

UNIT COST LIMITATIONS

SEC. 606. None of the authority contained in titles I, II, III, and IV of this Act shall be deemed to authorize any building construction projects inside the United States in excess of a unit cost to be determined in proportion to the appropriate area construction cost index, based on the following unit cost limitations where the area construction index is 1.0:

(1) $52 per square foot per permanent barracks; or

(2) $56 per square foot for unaccompanied officer quarters;

unless the Secretary of Defense, or the Secretary's designee, determines that, because of special circumstances, application to such project of the limitations on unit cost contained in this section is impracticable. Notwithstanding the limitations contained in prior Military Construction Authorization Acts on unit costs, the limitations on each costs contained in this section shall apply to all prior authorizations for such construction not heretofore repealed and for which construction contracts have not been awarded by the date of enactment of this Act.

EFFECTIVE DATE FOR PROJECT AUTHORIZATIONS

SEC. 607. Titles I, II, III, IV, and V (other than sections 505 and 509) shall take effect on October 1, 1980.

TITLE VII—GUARD AND RESERVE FORCES FACILITIES

AUTHORIZATION FOR FACILITIES

SEC. 701. Subject to chapter 133 of title 10, United States Code, the Secretary of Defense may establish or develop additional facilities for the Guard and Reserve Forces, including the acquisition of land therefor, but the cost of such facilities shall not exceed the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $27,505,000; and

(B) for the Army Reserve, $39,721,000.

(2) For the Department of the Navy: for the Naval and Marine Corps Reserves, $30,550,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $80,500,000; and

(B) for the Air Force Reserve, $18,725,000.

WAIVER OF CERTAIN RESTRICTIONS

SEC. 702. The Secretary of Defense may establish or develop installations and facilities under this title without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on lands includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes, as amended (40 U.S.C. 255), and even though the land is held temporarily. The authority to acquire real estate or land includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 21, line 21, strike out "$102,770,000" and insert in lieu thereof "$121,777,000".

Mr. NEDZI (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments in titles III and VI be considered as read, printed in the RECORD, and considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The committee amendments are as follows:

Committee amendments: Page 38, line 21, strike out "$220,587,000" and insert in lieu thereof "$239,587,000".

Page 38, line 22, strike out "$775,082,000" and insert in lieu thereof "$794,082,000".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

The CHAIRMAN. Are there further amendments to titles I through VII?

Mr. BETHUNE. Mr. Chairman, I move to strike the last word.

Mr. BETHUNE. Mr. Chairman, I am convinced that with respect to the binary munitions proposition that we are on the threshold of making an important policy decision which will involve over a 10-year period of time an expenditure in the neighborhood of $10 billion. Some people in this body are very sure that we need to go forward. On the other hand, some Members of the body are very sure that we should not go forward.

I happen to think from my own conversations that most Members in this Congress are unsure about what we ought to do and, in fact, they are very uncomfortable about the whole proposition.

For that reason I raise this issue today. I think it needs further study. I think it needs a detailed and extensive debate among the Members of the House as opposed to intense study by just a few Members in the House and in the other body.

As I pointed out in earlier remarks, I really do not think we have a credible committee report, one upon which we can rely, because the testimony seems to be against the proposition and, as I pointed out in earlier remarks, the Army has not testified to this Congress and the Secretary of Defense has testified against funding this year. The President has taken an equivocal position as usual. A number of other factors indicate to me that there really has not been an extensive inquiry into the matter this year.

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I listened very carefully to the remarks on the distinguished gentleman from Wisconsin (Mr. ZABLOCKI), the distinguished chairman of our Committee on Foreign Affairs. I respect the gentleman very much. As a newcomer here, I have tried to listen carefully and there are many Members who make sense. The gentleman from Wisconsin makes a lot of sense to me.

As I listened to the remarks of the gentleman from Wisconsin, the gentleman indicated his concern that if we go to a vote on this proposition, today, that it may be untimely. It may somehow prejudice the activity of the Congress. It may somehow interfere with both Houses working their will on this issue.

I have already said I think the committee report lacks credibility. That is my opinion. The gentleman from Missouri (Mr. ICHORD) observed there were only 20 or 30 Members on the floor who have listened to our debate today. For that reason, were I to offer an amendment on this subject, I would be forcing a great many Members, possibly those who are unsure about the matter, to come in and cast a vote in, indeed, a knee jerk fashion. I do not think that is the way we should be doing business here. I think by raising the subject today we have launched a public discussion into the matter. I know that the junior Senator in the other body from the State of Arkansas, Senator PRYOR, intends to hold fast because he does oppose it.

Honestly, at this point I do not know whether I am for this or against this. I am just now getting into it as many Members are. I know that it will be discussed in the conference because it has been discussed here and because the gentleman from Wisconsin (Mr. ZABLOCKI) tells me it will be discussed and because the gentleman from Michigan (Mr. NEDZI) has told me it will be discussed.

I commend, too, all those people who will participate in the conference to the deliberations and discussions here today.

With that, Mr. Chairman, I think the appropriate thing for me to do, the thoughtful thing for me to do in this particular matter is not to offer the amendment at this time, and that is my intention.

Mr. PRICE. Mr. Chairman, I move to strike the last word.

LUCIEN N. NEDZI

(By unanimous consent, Mr. PRICE was allowed to proceed out of order.)

Mr. PRICE. Mr. Chairman, it is with regret that I address the committee at this time. I say regret because this bill, H.R. 7301, marks the last major piece of legislation our colleague the Honorable LUCIEN N. NEDZI will manage before his retirement.

In my view, few Congressional retirements impact on this Chamber as does LOU NEDZI's. I know of few Members who are as dedicated and capable as the gentleman from Michigan. I am certain that I speak for the whole membership of the House when I say LOU NEDZI will be sorely missed.

Whether one agrees with him or not on all of the issues, LOU NEDZI has always brought a sense of fairness, sound judgment, and reason to the business at hand. His integrity, balanced approach and commonsense are attributes that all of us admire and respect.

As chairman of the House Armed Services Committee, I have counted on LOU NEDZI on many occasions. He has always delivered. I know that his constituents feel the same way. Earlier this year he was responsible for the passage of legislation that will put a marginal defense manufacturing plant into full production of compact automobiles. LOU NEDZI's effort will result in the successful conversion of an unneeded defense asset into peacetime productive use and jobs for Americans.

To LOU NEDZI, his lovely wife Peggy and the five Nedzi children, you have my very best wishes for the future.

Mr. NEDZI. Mr. Chairman, I want to thank our committee chairman very much for his touching comments.

Mr. Chairman, I ask unanimous consent that title VIII be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Title VIII reads as follows:

TITLE VIII—GENERAL PROVISIONS

COMMUNITY IMPACT ASSISTANCE

SEC. 801. (a) Subsection (a) of section 608 of the Military Construction Authorization Act, 1975 (Public Law 93-552; 88 Stat. 1763) is amended—

(1) by inserting "the East Coast TRIDENT Base, or the MX Weapon System," after "Bangor, Washington,"; and

(2) by inserting "or the MX Weapon System, as the case may be," after "TRIDENT Weapon System".

(b) Subsection (d) of such section is amended to read as follows:

"(d)(1) Funds appropriated to the Department of Defense for any fiscal year beginning after June 30, 1975, for carrying out the TRIDENT Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provisions of this section with respect to communities located near the TRIDENT Support Base Bangor, Washington, to the extent that funds are unavailable under other Federal programs.

"(2) Funds appropriated to the Department of Defense for any fiscal year beginning after September 30, 1980, for carrying out the TRIDENT Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provisions of this section with respect to communities located near the East Coast TRIDENT Base, to the extent that funds are unavailable under other Federal programs.

"(3) Funds appropriated to the Department of Defense for any fiscal year beginning after September 30, 1980, for carrying out the MX Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provisions of this section with respect to communities located near the MX Weapon System, to the extent that funds are available under other Federal programs.".

AUTHORITY TO PROVIDE TRANSPORTATION AT KINGS BAY, GEORGIA

SEC. 802. (a) Notwithstanding section 5 of the Act of July 16, 1914 (31 U.S.C. 638a), and section 2632 of title 10, United States Code, the Secretary of the Navy may arrange for transportation for military personnel who are assigned to the Naval Submarine Support Base, Kings Bay, Georgia, to be provided between the residences and places of work of such personnel until construction of adequate onbase family housing (as determined by the Secretary of the Navy) is completed or until January 1, 1982, whichever occurs first.

(b) This section shall take effect on October 1, 1980.

AUTHORIZATION TO MAKE CONTRIBUTION TO THE INTERNATIONAL INSTITUTION OF STRATEGIC STUDIES

SEC. 803. The Secretary of Defense may authorize the expenditure of not more than $350,000 from funds authorized to be appropriated for minor construction under title I, II, III, or IV for the purpose of making a capital contribution for a new headquarters for the International Institution of Strategic Studies.

MODIFICATION OF PRIOR AUTHORITY FOR LAND CONVEYANCE, SOUTH CHARLESTON, WEST VIRGINIA

SEC. 804. Section 609 of the Military Construction Authorization Act, 1977 (Public Law 94-431; 90 Stat. 1365, is amended)—

(1) by striking out "a section of land" in the first sentence and inserting in lieu thereof "three parcels of land";

(2) by striking out "4.5 acres" in the first sentence and inserting in lieu thereof "eight acres";

(3) by striking out "eight acres" in the second sentence and inserting in lieu thereof "approximately ten acres"; and

(4) by striking out the period at the end of the last sentence and inserting in lieu thereof "or the Department of the Navy.".

MODIFICATION OF PRIOR LAND ACQUISITION, SAN DIEGO, CALIFORNIA

SEC. 805. (a)(1) Subject to paragraph (3), the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") shall amend the declaration of taking described in paragraph (2) by substituting for the interest described in such declaration of taking which is condemned for the use of the United States an interest consisting of all right, title, and interest of the City of San Diego, California, in and to the tract of land described in such declaration subject to a possibility of reverter of such tract of land (including improvements thereon) to the City of San Diego in the event that the United States ceases to use the land for hospital or medical purposes (or purposes related thereto).

(2) The declaration of taking referred to in paragraph (1) is the declaration of taking signed by the Secretary on December 26, 1979, and filed in Civil Action No. 80-0021-E in the United States District Court for the Southern District of California under the authority of section 809 of the Military Construction Authorization Act, 1980 (Public Law 96-126; 93 Stat. 950), condemning for the use of the United States all right, title, and interest of the City of San Diego, California, in and to a certain tract of land consisting of 40 acres, more or less, in Balboa Park, San Diego, California.

(3) The amendment to such declaration of taking authorized by paragraph (1) may not be made without the consent of the City of San Diego.

(b) The Secretary may convey to the City of San Diego as consideration, in whole or in part, for the acquisition under the declaration of taking described in subsection (a) all right, title, and interest of the United States, or any lesser interest, in and to all or any part of the real property (including improvements thereon) of the Naval Regional Medical Center, San Diego, California, that has been conveyed, leased, or otherwise made available to the United States by the City of San Diego other than through the acquisition under such declaration of taking.

(c) Notwithstanding any other provision of law, the Secretary may construct on the land referred to in subsection (a) or on any other land acquired by the United States from the City of San Diego which is contiguous to such land and in which the United States has less than a fee simple absolute interest any military construction project for a hospital or other medical facility which is otherwise authorized by law.

(d) The provisions of subsections (c) and (d) of section 809 of the Military Construction Authorization Act, 1980, shall apply to the acquisition under the declaration of taking described in subsection (a), as amended under such subsection.

LAND ACQUISITION, SAN DIEGO, CALIFORNIA

SEC. 806. (a) The Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to acquire by exchange all right, title, and interest of the San Diego Unified School District (hereinafter in this section referred to as the "District") in and to certain parcels of land in the County of San Diego, State of California, comprising approximately 5.11 acres of land (together with improvements thereon) known and identified as the Fairhaven School, San Diego, California, as shown and more particularly described on a map entitled "Naval Station San Diego, California, Acquisition of Fairhaven School", on file at the Western Division, Naval Facilities Engineering Command, San Bruno, California.

(b) In consideration for the acquisition under subsection (a), the Secretary is authorized to convey to the District all right, title, and interest of the United States in and to land and improvements having a fair market value (as determined by the Secretary) equal to or greater than the fair market value (as determined by the Secretary) of the improvements on the property to be acquired. If the fair market value of the land and improvements conveyed by the Secretary exceeds the fair market value of such improvements, the difference shall be

paid by the District to the United States and shall be covered into the Treasury as miscellaneous receipts.

(c) The exact acreages and legal descriptions of the properties to be acquired or conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

LAND ACQUISITION, SACRAMENTO COUNTY, CALIFORNIA

SEC. 807. (a) The Secretary of the Air Force (hereinafter in this section referred to as the "Secretary") is authorized to acquire by exchange all right, title, and interest in all or any part of three tracts of land contiguous to McClellan Air Force Base, Sacramento County, California, consisting of a total of approximately 443.3 acres.

(b) As consideration for any acquisition under subsection (a), the Secretary is authorized to convey to the owners of the property to be acquired all right, title, and interest of the United States in and to real property of the United States under the jurisdiction of the Secretary (including any improvements thereon) having a fair market value of not more than the fair market value of the property to be acquired.

(c) The exact acreage and legal description of any real property acquired or conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

LAND EXCHANGE, WABASHA, MINNESOTA

SEC. 808. (a) Subject to subsection (b), the Secretary of the Army (hereinafter in this section referred to as the "Secretary") is authorized to convey to the City of Wabasha, Minnesota (hereinafter in this section referred to as the "City") all right, title, and interest of the United States in and to the land and improvements comprising the United States Army Reserve Center, Wabasha, Minnesota.

(b) In consideration for the acquisition under subsection (a), the City shall convey to the United States all right, title, and interest of the City in and to a certain tract of land of approximately seven acres owned by the City. If the fair market value of the land conveyed by the City under this subsection is less than the fair market value of the land conveyed by the United States under subsection (a), the City shall pay to the United States the amount of the difference between such fair market values. Any amount received under the preceding sentence shall be covered into the Treasury as miscellaneous receipts.

(c) The conveyances under subsections (a) and (b) shall not be made until a new Army Reserve Center has been constructed on the land to be conveyed to the United States under subsection (b) and the existing Army Reserve Center referred to in subsection (a) has been vacated. Before such conveyances are made, the City shall make available to the Secretary without charge the lands to be conveyed under subsection (b) for the purpose of allowing the construction of the new Army Reserve Center.

(d) The exact acreages and legal descriptions of any property acquired or conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

(e) The Secretary is authorized to accept and administer any real property conveyed to the United States under this section.

LAND CONVEYANCE, GUAM, MARIANAS ISLANDS

SEC. 809. (a)(1) Subject to subsections (b) and (c) the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey, without monetary consideration, to the Government of Guam all right, title, and interest of the United States in and to the lands (or any part of the lands) described in paragraph (2), together with the improvements thereon.

(2) The lands referred to in paragraph (1) consist of approximately 927 acres of land located on Cabras Island and within the northern portion of the Apra Harbor Naval Complex, Guam, Marianas islands, as shown and more particularly described on a map entitled "Apra Harbor Complex, Guam, Marianas Islands, Conveyance of 927 Acres of Land to the Government of Guam" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii.

(b) Conveyance of the property described in subsection (a) shall be made at such times, and shall be subject to such terms and conditions, as the Secretary considers to be in the interest of national defense.

(c) The exact acreages and legal descriptions of all lands to be conveyed under this section shall be determined by surveys which are satisfactory to the Secretary. The cost of such surveys, together with all other direct and indirect costs related to any conveyance under this section, shall be borne by the Government of Guam.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the committee amendments.

Mr. NEDZI. Mr. Chairman, I ask unanimous consent that the committee amendments to title VIII be considered en bloc, considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The committee amendments are as follows:

Committee amendments: Page 56, strike out lines 16 through 23.

Page 57, line 3, strike out "804" and insert in lieu thereof "803".

Page 57, line 19, strike out "805" and insert in lieu thereof "804".

Page 59, line 17, strike out "806" and insert in lieu thereof "805".

Page 60, line 21, strike out "807" and insert in lieu thereof "806".

Page 61, line 14, strike out "808" and insert in lieu thereof "807".

Page 62, line 23, strike out "809" and insert in lieu thereof "808".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

Mr. NEDZI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the chairman of the Committee on Government Operations had indicated to members of the committee that he had an amendment to offer. In view of the fact that he is not here, I would like to offer the amendment inasmuch as it is acceptable to both sides, in behalf of the gentleman from Texas (Mr. BROOKS).

AMENDMENT OFFERED BY MR. NEDZI

Mr. NEDZI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NEDZI: Page 63, line 14, insert "(1)" immediately after "(b)", and after line 17 insert the following:

(2) Conveyance of the property described in subsection (a) shall be subject to the condition that any disposal by sale or lease of any part or all of the property by the Government of Guam shall only be for a monetary consideration equal to or in excess of the fair market value (at the time of the disposal) of the property concerned, or of the leasehold interest therein, as determined by the Administrator of General Services, and any such monetary consideration received by the Government of Guam, minus any reasonable development costs incurred by such Government in preparing the property concerned for disposal, shall be paid to the United States.

(3) The United States shall reserve easements for all existing utilities and navigation aids in the conveyed parcels as exist on the date of conveyance of the property whether or not such utilities and facilities are specifically mentioned in the conveyance documents for the property. The Government of Guam, for as long as it owns the conveyed lands, shall agree to issue easements not interfering with their facilities and operations to the United States at no cost for the future facility installations including, but not limited to, construction, installation, reconstruction, operation, maintenance, and removal of water, oil, gas, fuel, and other pipelines, drainage and sewage systems, power and telephone transmission lines, water sewage, and other utility lines, navigation aids, and all things incident thereto, in, on, under and over the conveyed land together with all necessary rights and privileges for the full enjoyment of the foregoing, including without limitation, the right of ingress and egress. The Government of Guam shall agree that for as long as it owns the conveyed lands, it will bear all costs of relocation of existing and future utility lines and other facilities owned by the United States in the conveyed lands requisite to construction on the conveyed lands by the Government of Guam and authorized other parties.

(4) All leases, licenses, easements, and other property interests affecting the conveyed lands at the time of conveyance issued by the United States shall be honored by the Government of Guam until their final expiration dates. All rents due to be collected under such contracts shall be remitted to the United States for all periods prior to the date the property is conveyed, after which date the rents will be the property of the Government of Guam.

(5) All leases, licenses, easements, conveyances of land, and other real estate interests granted by the Government of Guam after conveyance, shall be subject to the terms, conditions, covenants, and reservations stated in this subsection and shall recite the same in the contractual documents.

Mr. NEDZI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. NEDZI. Mr. Chairman, the amendment merely provides that in the event the government of Guam sells or conveys the property to another party, attempts to sell or convey, the proceeds shall revert to the Federal Government. This is an amendment that is acceptable to all parties concerned.

● Mr. BROOKS. Mr. Chairman, I want to express my serious reservations about section 808 of H.R. 7301, the Military Construction Authorization Act for fiscal year 1981. Section 808 authorizes the Secretary of the Navy to transfer to the government of Guam, without reimbursement, 927 acres of valuable land at the Apra Harbor complex in Guam. Transfer of this property, which the Navy has estimated to be worth roughly $31 million, would be "subject to such terms and conditions as the Secretary of the Navy considers to be in the interest of national defense."

Mr. Chairman, I have a number of serious problems with this transfer. First, this provision circumvents the procedures established in the Federal Property and Administrative Services Act of 1948 setting conditions for disposal of excess Government property. In 1974 the Congress made Guam eligible to participate in the excess and surplus property programs of the Federal Government on an equal footing with other governmental jurisdictions. Section 808 of this bill conflicts with that system and hands this land over to Guam under procedures not available to any other governmental entity.

Second, it is not at all clear that the land under discussion really is excess or surplus to the needs of the U.S. Government at this time. According to the hearing record, the Navy wants to relocate an ammunition pier that presently occupies this site to another location in Apro Harbor. However, no funds have been appropriated for this relocation, and until they are the Navy will continue to need that portion of the land to be transferred.

Finally, I oppose this transfer on a more general basis because of its effect on the American taxpayer. I understand that the government of Guam is extremely interested in obtaining this land as a means of encouraging economic development on the island. I am certain that all the Members join me in applauding efforts by Guam to become economically self-sufficient, but this goal should be achieved by means other than indirectly subsidizing the economic development of Guam in this backdoor fashion.

Despite my serious reservations about the wisdom of the transfer provision, I recognize that Guam's status, location and economic conditions constitute exceptional circumstances. Therefore, I am offering an amendment to achieve the twin goals of permitting economic development in this harbor area which the government of Guam and its distinguished delegate, Mr. WON PAT, seek, while at the same time protecting the interests of the U.S. Government and the U.S. taxpayers.

My amendment permits the government of Guam to convey the property to third parties, but in a manner that will avoid windfall profits accruing either to Guam or the third party purchasers at the expense of the U.S. taxpayer. The amendment provides that any transfer by Guam shall be at fair market value and that any proceeds shall be paid into the U.S Treasury. In addition, the United States would reserve easements on the conveyed land and the government of Guam would be required to honor all such leases, licenses, and easements until the final expiration dates.●

● Mr. WON PAT. Mr. Chairman, I rise in support of the military construction bill for fiscal year 1981. This measure incorporates my amendment to convey 927 acres of Navy land not used to the government of Guam without cost. It is a very important amendment because by its passage, this Congress will allow Guam to undertake a very significant step in the road to economic development and self-sufficiency. I want to thank the chairman and members for their support of my amendment. Also I want to commend the staff for working out the technicalities with the Navy. Guam, like other dependent territories, depends on the United States for much of its economy. Under our current political status, it is extremely difficult to become economically self-sufficient due in large part to lack of natural resources, but also due to Federal constraints imposed by the Federal Government and to our remoteness from the U.S. mainland.

Studies after studies show that the only logical and viable economic venture for Guam to undertake would be to develop the one and only resource we have and that is the ocean around us. We believe that the creation of port-related industries such as fishing, boating, canning, and water recreation would attract outside investors which would bring private financing to the island.

The 927 acres of land located at Cabras Island is an ideal area for these types of projects. The Navy who owns the land is supportive of this move and has made its position known. This transfer is also consistent with the findings and recommendations of the Presidential Task Force review of the territories which was conducted recently. According to the report, Guam should make every effort to seek to develop its economy and lessen its dependence on Federal subsidies. The fragile economy of our island coupled with the tightening of Federal assistance have indeed placed us in a very precarious position. We need jobs for our people. We want to earn our living and not continue to depend upon Federal subsidy and welfare.

Guam cannot and should not be a ward of the United States. We have to move in the direction of self-sufficiency through economic development, but we need your help in making this land available to us by the military which is not actively using it for any defense purpose. One-third of our land is controlled by the military and we do not object to any land used for national defense or security purpose. I want to emphasize that transfer of this property to the local government will be a giant step forward in our efforts to move from one of economic dependency to self-sufficiency.

Thank you.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. NEDZI).

The amendment was agreed to.

● Mr. SEIBERLING. Mr. Chairman, while I will support H.R. 7301, the Military Construction Act, I want to make clear that my vote should not be construed as support for the production of binary nerve gas. In fact, I strongly oppose that provision. The only reason I am not voting against H.R. 7301, and the reason I did not vote against the appropriations bill, is that most of the other provisions contained in the bills are worthwhile. Also, it is my understanding that neither the Senate nor the administration will go along with the resumption of nerve gas production.

There are several reasons I oppose the proposal to start production of a binary chemical weapons plant. First, at a total cost of $2 billion, it is undesirable from a budget standpoint. Second, it is against our national policy to use poison gas, and, moreover, its use would be a violation of international law. Finally, nerve gas would add very little to our military capabilities. It is the kind of weapon which troops can easily prepare against with appropriate masks and protective clothing. Therefore, the principal victims of nerve gas would be civilians, not soldiers. The best defense against nerve gas is not the production of more nerve gas by our side, but the improvement of our soldiers' protective equipment and training.●

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. PICKLE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes, pursuant to House Resolution 696, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 337, nays 22, not voting 73, as follows:

[Roll No. 539]

YEAS—337

Abdnor	Badham	Bonior
Addabbo	Bailey	Bonker
Albosta	Baldus	Bowen
Alexander	Barnard	Brademas
Ambro	Barnes	Breaux
Anderson, Calif.	Barman	Brodhead
	Beard, R.I.	Brooks
Andrews, N.C.	Beard, Tenn.	Broomfield
Andrews, N.Dak.	Bedell	Brown, Calif.
	Benjamin	Brown, Ohio
Annunzio	Bennett	Broyhill
Anthony	Bereuter	Burgener
Applegate	Bethune	Burlison
Archer	Biaggi	Butler
Ashbrook	Bingham	Byron
Ashley	Blanchard	Campbell
Aspin	Boland	Carr
Atkinson	Bolling	Carter
AuCoin	Boner	Cavanaugh

Chappell	Harkin	Petri
Cheney	Harris	Peyser
Clausen	Harsha	Pickle
Clinger	Hawkins	Porter
Coelho	Heckler	Preyer
Coleman	Heftel	Price
Collins, Tex.	Holland	Pursell
Conable	Hollenbeck	Quayle
Conte	Holt	Rahall
Corcoran	Horton	Ratchford
Corman	Hubbard	Reuss
Coughlin	Huckaby	Rhodes
Courter	Hughes	Rinaldo
Crane, Daniel	Hutchinson	Roberts
Crane, Philip	Hutto	Robinson
D'Amours	Hyde	Rodino
Daniel, Dan	Ichord	Roe
Daniel, R. W.	Ireland	Rose
Danielson	Jacobs	Rosenthal
Dannemeyer	Jeffords	Rostenkowski
Daschle	Jeffries	Roth
Davis, Mich.	Jenkins	Rousselot
Davis, S.C.	Johnson, Calif.	Roybal
de la Garza	Jones, N.C.	Rudd
Deckard	Jones, Okla.	Santini
Derrick	Jones, Tenn.	Satterfield
Derwinski	Kazen	Sawyer
Devine	Kemp	Scheuer
Dickinson	Kildee	Schroeder
Dicks	Kindness	Sebelius
Dingell	Kogovsek	Seiberling
Dixon	Kostmayer	Sensenbrenner
Dodd	LaFalce	Sharp
Donnelly	Lagomarsino	Shelby
Dornan	Latta	Shumway
Dougherty	Leath, Tex.	Shuster
Drinan	Lee	Simon
Duncan, Oreg.	Lent	Skelton
Duncan, Tenn.	Levitas	Smith, Iowa
Eckhardt	Lewis	Smith, Nebr.
Edgar	Livingston	Snowe
Edwards, Ala.	Lloyd	Snyder
Edwards, Okla.	Loeffler	Solarz
Emery	Long, Md.	Solomon
English	Lott	Spellman
Erdahl	Lowry	Spence
Erlenborn	Lujan	Stack
Ertel	Luken	Staggers
Evans, Del.	Lungren	Stangeland
Evans, Ga.	McClory	Stanton
Evans, Ind.	McCloskey	Steed
Fary	McCormack	Stenholm
Fascell	McDade	Stewart
Fazio	McDonald	Stockman
Ferraro	McEwen	Stokes
Findley	McHugh	Stratton
Fish	Madigan	Stump
Fisher	Marks	Swift
Fithian	Marlenee	Symms
Flippo	Martin	Synar
Florio	Mathis	Tauke
Foley	Matsui	Taylor
Ford, Mich.	Mazzoli	Thomas
Ford, Tenn.	Meeds	Thompson
Fountain	Michel	Trible
Fowler	Mikulski	Udall
Frenzel	Miller, Calif.	Ullman
Frost	Miller, Ohio	Van Deerlin
Fuqua	Mineta	Vander Jagt
Garcia	Minish	Vanik
Gephardt	Mitchell, N.Y.	Volkmer
Giaimo	Mollohan	Walgren
Gibbons	Montgomery	Walker
Gilman	Moore	Wampler
Ginn	Moorhead, Calif.	Watkins
Glickman	Murphy, Pa.	White
Goldwater	Musto	Whitehurst
Gonzalez	Myers, Ind.	Whitley
Goodling	Natcher	Whittaker
Gore	Neal	Whitten
Gramm	Nedzi	Williams, Mont.
Gray	Nelson	Wilson, Bob
Green	Nichols	Winn
Grisham	Nowak	Wolff
Guarini	O'Brien	Wolpe
Gudger	Oakar	Wright
Guyer	Oberstar	Wyatt
Hagedorn	Obey	Wydler
Hall, Ohio	Panetta	Wylie
Hall, Tex.	Pashayan	Yates
Hamilton	Patten	Yatron
Hammer-schmidt	Patterson	Young, Fla.
Hance	Pease	Young, Mo.
Hansen	Perkins	Zablocki

NAYS—22

Bellenson	Kastenmeier	Sabo
Burton, John	Lundine	Stark
Burton, Phillip	Markey	Studds
Conyers	Mitchell, Md.	Vento
Dellums	Moffett	Weaver
Downey	Ottinger	Weiss
Edwards, Calif.	Paul	
Forsythe	Rangel	

NOT VOTING—73

Akaka	Holtzman	Myers, Pa.
Anderson, Ill.	Hopkins	Nolan
Bafalis	Howard	Pepper
Bevill	Jenrette	Pritchard
Boggs	Johnson, Colo.	Quillen
Bouquard	Kelly	Ralisback
Brinkley	Kramer	Regula
Buchanan	Leach, Iowa	Richmond
Carney	Leach, La.	Ritter
Chisholm	Lederer	Royer
Clay	Lehman	Russo
Cleveland	Leland	Schulze
Collins, Ill.	Long, La.	Shannon
Cotter	McKay	St Germain
Early	McKinney	Tauzin
Fenwick	Maguire	Traxler
Gaydos	Marriott	Waxman
Gingrich	Mattox	Williams, Ohio
Gradison	Mavroules	Wilson, C. H.
Grassley	Moakley	Wilson, Tex.
Hanley	Moorhead, Pa.	Wirth
Hefner	Mottl	Young, Alaska
Hightower	Murphy, Ill.	Zeferetti
Hillis	Murphy, N.Y.	
Hinson	Murtha	

□ 1500

The Clerk announced the following pairs:

Mrs. Bouquard with Mr. Marriott.
Mr. Akaka with Mr. Ralisback.
Mr. Howard with Mr. Royer.
Mr. Pepper with Mr. Cleveland.
Mr. Russo with Mr. Buchanan.
Mr. St Germain with Mr. Gradison.
Mr. Moakley with Mr. Johnson of Colorado.
Mr. Mavroules with Mr. Kramer.
Mr. Maguire with Mrs. Fenwick.
Mr. Bevill with Mr. Carney.
Mrs. Boggs with Mr. Pritchard.
Mrs. Chisholm with Mr. McKinney.
Mr. Clay with Mr. Regula.
Mr. Leland with Mr. Williams of Ohio.
Mr. Lederer with Mr. Hillis.
Mr. Jenrette with Mr. Hopkins.
Mr. Moorhead of Pennsylvania with Mr. LaFalce.
Mr. Murphy of New York with Mr. Leach of Iowa.
Mr. Murtha with Mr. Gingrich.
Mr. Richmond with Mr. Hinson.
Mr. Tauzin with Mr. Kelly.
Mr. Traxler with Mr. Ritter.
Mr. Nolan with Mr. Schulze.
Mr. Shannon with Mr. Young of Alaska.
Mr. Brinkley with Mr. Quillen.
Mrs. Collins of Illinois with Mr. Cotter.
Mr. Hefner with Ms. Holtzman.
Mr. Gaydos with Mr. Mattox.
Mr. Early with Mr. Murphy of Illinois.
Mr. Hanley with Mr. Mottl.
Mr. Zeferetti with Mr. Wirth.
Mr. Charles Wilson of Texas with Mr. McKay.
Mr. Waxman with Mr. Leach of Louisiana.
Mr. Long of Louisiana with Mr. Charles H. Wilson of California.
Mr. Myers of Pennsylvania with Mr. Lehman.
Mr. Hightower with Mr. Anderson of Illinois.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 7301, MILITARY CONSTRUCTION AUTHORIZATIONS, FISCAL YEAR 1981

Mr. NEDZI. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 7301, the Clerk be authorized to make necessary technical corrections, including section numbers, punctuation, and cross-references.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

GENERAL LEAVE

Mr. NEDZI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

MAKING IN ORDER ON MONDAY NEXT OR ANY DAY THEREAFTER CONSIDERATION OF HOUSE JOINT RESOLUTION 607, URGENT SUPPLEMENTAL APPROPRIATION FOR VETERANS' ADMINISTRATION, 1980

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that it may be in order on Monday next or any day thereafter to consider in the House as in the Committee of the Whole, the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

MAKING IN ORDER ON MONDAY NEXT CONSIDERATION OF DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, FISCAL YEAR 1981

Mr. ADDABBO. Mr. Speaker, I ask unanimous consent that it may be in order on Monday next to consider in the Committee of the Whole House on the State of the Union the bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from New York?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, may I ask the gentleman from New York (Mr. ADDABBO) this question: A copy of the tentative program indicates that general debate only will occur if the defense appropriations bill is brought up on Monday, and any votes would be taken on Tuesday or thereafter?

Mr. ADDABBO. Mr. Speaker, if the gentleman will yield, that is correct.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

A TRIBUTE TO THE HONORABLE LUCIEN N. NEDZI OF MICHIGAN

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute.)

Mr. GONZALEZ. Mr. Speaker, I have asked that I may be permitted to address the House to commemorate the achievements of our distinguished colleague, the gentleman from Michigan (Mr. NEDZI).

Mr. Speaker, I wish to call to the attention of the House the fact that this has probably been the last formal bill handled by the distinguished chairman of the Subcommittee of the Committee on Armed Services, the gentleman from Michigan (Mr. NEDZI).

My colleague, the gentleman from Michigan, was sworn in with me for the 2d session of the 87th Congress on January 10, 1962. It is with a great deal of sadness and regret that I call the attention of the House to the fact that he has given us notice that he is retiring after this Congress.

I want to compliment the gentleman on the tremendous job that he has done. I regret that he is quitting on us. I was hoping that he would last as long as some of us intend to. I merely wish to sincerely congratulate him on the very fine job he did today on this comprehensive bill and for all the fine, outstanding legislative work he has done during the course of his career as a Member of this House.

WHEAT EXPORTS RESOLUTION

(Mr. STANGELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STANGELAND. Mr. Speaker, the American farmer needs help, and today we are taking an important step in providing that assistance. Those of us in the House and Senate who attended a meeting in Ottawa this summer with our counterparts in the Canadian Parliament have introduced a resolution whose purpose is to provide our farmers some economic return on their investment. Those who farm—and I am one of them—realize that farming is a way of living as well as a way of earning a living. However, if they are to survive and continue to supply the world with a reliable source of food, they can no longer continue to sell their products at prices below the cost of production.

Our resolution calls for the creation of a joint Canadian-United States Wheat Export Coordinating Commission which will work to export wheat at prices above the cost of production, to promote long-range market development, to increase commitments to food assistance programs, and to encourage wheat importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves. This Commission would be the vehicle for coordinating American efforts with our northern neighbor; this coordination is necessary since our two countries supply more than two-thirds of the world's wheat trade.

I am particularly pleased to be a sponsor of this proposal. For well over a year I have worked with the Canadians through the Canadian-United States Interparliamentary Group to foster a closer relationship which will work to the mutual advantage of our farmers. As producers, we must not accept policies which benefit everyone except those who invest their money and energy. We can and must work to obtain prices which allow our farmers to continue to produce. I urge the prompt approval of this resolution.

LEGISLATIVE PROGRAM

(Mr. RHODES asked and was given permission to address the House for 1 minute.)

Mr. RHODES. Mr. Speaker, I take this time to inquire of the distinguished acting majority leader as to the program for the balance of the week and for next week.

Mr. BRADEMAS. Mr. Speaker, will the distinguished minority leader yield?

Mr. RHODES. I yield to the acting majority leader.

Mr. BRADEMAS. Mr. Speaker, the program for the House of Representatives for the week of September 15 is as follows:

On Monday, the House will meet at noon. We will consider bills on the Consent Calendar, and there will be 10 bills to be considered under suspension. All recorded votes will be postponed until Tuesday, September 16.

□ 1510

Those bills are as follows:

H.R. 3765, walnuts and olives marketing bill;

H.R. 3580, Rural Development Policy Act;

H.R. 7626, uniformed services benefits package;

H.R. 3806, court of appeals;

H.R. 7974, judicial discipline;

H.R. 7084, United States Code amendments for pretrial services;

H.R. 6672, Coast Guard authorization, fiscal year 1981;

H.R. 6796, private sector initiative program for CETA;

H.R. 6865, West Valley nuclear waste; and

H.R. 6686, Congressional Reports Elimination Act.

Following completion of the debate on the suspension bills, the House will consider the defense appropriations bill for fiscal year 1981, but there will be general debate only on that bill.

On Tuesday, September 16, the House will meet at noon and will consider the Private Calendar. There are no bills to be considered under suspension of the rules.

Recorded votes will be held on suspensions that will have been debated on Monday, September 15, and the House will complete consideration of the defense appropriations bill for fiscal year 1981.

On Wednesday and the balance of the week, the House will meet at 10 a.m., and will take up the following bills:

The continuing appropriations bill for fiscal year 1981, subject to a rule being granted;

H.R. 7244, to increase U.S. quota in the International Monetary Fund, an open rule with 1 hour of general debate;

H.R. 85, Comprehensive Oil Pollution Liability and Compensation Act, a modified rule with 3 hours of debate;

H.R. 7020, Hazardous Waste Containment Act of 1980, a modified rule with 2 hours of debate;

H.R. 5615, Intelligence Identities Protection Act, subject to a rule being granted;

H.R. 7265, DOE authorizations of defense programs, an open rule with 1 hour of debate, the rule already having been adopted;

H.R. 4370, Coal Pipeline Act of 1980, an open rule with 2 hours of debate; and

H.R. 7668, Intelligence Oversight Act of 1980, an open rule with 2 hours of debate.

The House will adjourn by 3 p.m. on Friday. Adjournment times on all other days will be announced.

Conference reports may be brought up at any time, and any further program will be announced later.

I thank my colleague for having yielded.

Mr. RHODES. I thank the gentleman from Indiana.

Mr. Speaker, could the gentleman from Indiana dispel some of the rumors that are going around on the floor as to the probable date of the recess which we intend to take prior to the election?

Mr. BRADEMAS. No.

Mr. RHODES. The gentleman from Arizona had occasion to talk to the distinguished Speaker this morning, and I think I know what the plans are but, apparently, nobody else does. I am wondering if it would not be a good idea if we would in some official way indicate, as the Speaker told me this morning, that the plans are to recess, hopefully, on October 2, and on October 3 at the very latest, and that, further, the plan would be to come back sometime around November 12, although it is my understanding that that is not yet a firm date.

I know the gentleman from Indiana, if he disagrees with my understanding, will tell me so.

Mr. BRADEMAS. I rarely, if ever, disagree with the distinguished Speaker of the House of Representatives. I can only say to the gentleman that the date that had earlier been announced as the target date for the recess is the 4th of October which is, of course, a Saturday. If we can get out a day or two before that, of course, we would all be pleased to do that. I have been present in conversations at which the Speaker has expressed a similar hope.

Mr. RHODES. I thank the gentleman.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Georgia.

Mr. LEVITAS. I thank the gentleman for yielding.

Mr. Speaker, I would like to direct several questions, if I may, to the acting majority leader. They relate to the status of the Regulatory Reform Act which has been marked up by subcommittee, a number of days of markup in the full Committee on the Judiciary. But it has been strangely languishing there since the early part of May of this year. Can the gentleman from Indiana explain what the status of this legislation is? Is it expected to be reported out of committee? Will there be a markup in the foreseeable future?

Mr. BRADEMAS. No, the gentleman cannot. The bill, as the gentleman knows, is in the subcommittee, as the gentleman has suggested. But the probable or possible action on the bill is, of course, within the jurisdiction of the subcommittee, as is the case with the many other bills that are under consideration in the House of Representatives.

The gentleman from Georgia is very well informed on this legislation, so the gentleman from Indiana would not be able to add anything further to the knowledge that the gentleman has already articulated.

Mr. DERWINSKI. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. I thank the gentleman for yielding.

Mr. Speaker, I am wondering if, via the distinguished minority leader, we could inquire of the acting majority leader if the general revenue-sharing bill will soon reach the floor.

Mr. RHODES. I would be glad to yield to the gentleman from Indiana for the purpose of a reply to the gentleman's question.

Mr. BRADEMAS. Mr. Speaker, I think the answer to the gentleman's question is: Hopefully, soon.

Mr. DERWINSKI. Before the recess?

Mr. BRADEMAS. Again, the gentleman from Indiana would respond: Hopefully, yes.

Mr. RHODES. Of course, the gentleman from Illinois is aware, I believe, that there is a time problem as far as revenue sharing is concerned. In fact, I think that the date of expiration is September 30. So I would echo the hope of the gentleman from Indiana that the bill would be brought up just as soon as we could possibly do it.

Mr. BURGENER. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from California.

Mr. BURGENER. I thank the distinguished minority leader for yielding.

Mr. Speaker, the 1902 reclamation law, reorganization of the reclamation law, has passed the Senate, it has passed our committees. It is now in the Rules Committee. It is exceedingly important to the 17 Western States and to agriculture. Is there any prediction about when that may emerge from the Rules Committee?

Mr. BRADEMAS. If the gentleman will yield, I have no knowledge, if I may respond to the gentleman from California, about a time certain when it is expected that the Rules Committee would consider and act on that bill. There are, of course, many or several bills that are before the Committee on Rules. I, too, would hope that there can be expeditious action on that bill. But I would have no specific date to give to the gentleman.

Mr. BURGENER. I thank the gentleman from Indiana, and I thank the distinguished minority leader.

Mr. RHODES. Mr. Speaker, I yield back the balance of my time.

REQUEST TO DISPENSE WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

Mr. LEVITAS. Reserving the right to object, Mr. Speaker, I do so for the purpose of inquiring whether the acting majority leader and the leadership of the House could utilize their efforts to take this bill, the regulation reform, which is the centerpiece of the administration's regulatory reform proposal, and make certain that the one remaining day of markup needed in the full committee could be held so that this bill could be voted on rather than be held up, as I understand it, by persons not Members of this House.

Mr. BRADEMAS. If the gentleman will yield, I am not in a position to make certain that the gentleman's request is agreed to. All I can assure the gentleman, however, is—and I shall be glad to do that—I will relay his concerns and his entreaties to the appropriate persons and do so in as clear and expeditious a fashion as I can.

□ 1520

Mr. LEVITAS. Further reserving the right to object, I hope that it will be as clear as possible. I think that we ought to do everything we can to make it very clear that this House expects to have the opportunity in the very near future to vote on this legislation.

For that reason, as part of sending that message, I do object to the unanimous-consent request.

The SPEAKER. Objection is heard.

ADJOURNMENT FROM THURSDAY, SEPTEMBER 11, 1980, TO MONDAY, SEPTEMBER 15, 1980

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that when the House adjourns on Thursday, September 11, 1980, it adjourn to meet on Monday, September 15, 1980, at 12 o'clock.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

NUCLEAR WASTE

The SPEAKER pro tempore (Mr. FARY). Under a previous order of the House, the gentleman from Wisconsin (Mr. PETRI) is recognized for 5 minutes.

Mr. PETRI. Mr. Speaker, nuclear waste is becoming one of our most crucial national problems, for we continue to produce waste from powerplants and defense systems without an adequate disposal program.

At some point the House will consider legislation to establish Federal policy on the storage of hazardous nuclear wastes. I have cosponsored a bill to give States power to block the Federal Government from building nuclear waste sites within their borders.

I plan to offer a version of that bill as an amendment to the nuclear waste legislation.

This amendment will insure that the individual States are included as full partners with the Federal Government in the decisionmaking process regarding nuclear waste disposal sites. By including all people in this matter I feel we have the best chance of finding a workable solution.

The main argument against the State veto is that no State will want a disposal site and the veto will make it impossible to deal with the problem. I am not sure this would happen, but it could.

The disposal sites supposedly will be safe, but why should a State accept any risk, no matter how small, for nothing in return? The answer is that it may be necessary to give them something in return such as a right to tax the facility or some other compensation whose cost would be charged to the utility or other entity generating the wastes.

In this way it should be possible to locate a site at an acceptable cost, probably in some sparsely populated State where the risks are lower and the per capita benefit is higher. If this approach is tried and found unworkable we can always go back and alter the State veto provisions of the law. But at least in the meantime we will have had the best consultation and concurrence system we could devise.

Under my amendment a State could halt construction of a nuclear waste site through a vote by the legislature or a referendum within 120 days after the Energy Department has announced selection of a disposal location.

Since the Federal Government has not yet selected a site for a waste repository, now is the time to work to guarantee that all interested parties have a role.

ABUSE OF OFFICE BY ADMINISTRATION OFFICIALS TO HELP THE CARTER POLITICAL CAMPAIGN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. RUDD) is recognized for 5 minutes.

Mr. RUDD. Mr. Speaker, top administration officials have paraded before the House Budget Committee this week, in a staged dog-and-pony show, to attack Governor Reagan's proposals to cut Federal taxes and Government overspending.

Typical of this effort was the use of absolutely false figures and misrepresentations by Budget Director James McIntyre, and Treasury Secretary G. William Miller, in an attempt to put the Reagan proposals rather than the Carter administration's sorry economic record on trial before the committee.

These Carter administration misrepresentations are also contained in a supposedly "official" but unfactual Office of Management and Budget report on the Reagan proposals which was really prepared for the Carter campaign and used as handout material during the President's campaign swing yesterday in New Jersey.

The American people will not be fooled by deceitful propaganda tactics. They will not be fooled by this abuse of governmental office, and by the Carter administration officials who are working in a purely political effort, to gloss over failures and mistakes of President Carter that have helped bring our country this economic recession.

FARM LABOR CONTRACTOR REGISTRATION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. COELHO) is recognized for 5 minutes.

Mr. COELHO. Mr. Speaker, farmers in California and throughout the Nation have been plagued by the U.S. Department of Labor's interpretation of the Farm Labor Contractor Registration Act. Remedial legislation, H.R. 7824 and S. 2875, will reaffirm the intent of Congress in preventing abuse of migrant farmworkers.

As a cosponsor of the House legislation I recently received a letter from Charles Kelso of the prestigious Atlanta, Ga., law firm of Fisher & Phillips, which lucidly explains the thrust of the House bill. I believe that those of my colleagues who have not yet cosponsored would be enlightened by Mr. Kelso's analysis, so I am including the letter for the RECORD following my remarks.

Already there are 120 Members on the bill, and I salute their wisdom in endorsing a proposal which will more effectively bring to account those in violation of the law. At the same time, those farmers who are in compliance will be protected from unnecessary Department of Labor requirements.

Next week the conference committee on the child nutrition bill will convene. Part of their task will be to deliberate the section of the bill dealing with the Farm Labor Contractor Registration Act. I am certain that I speak for all the cosponsors of H.R. 7824 in recommending passage of the FLCRA language. Without burdening agricultural employers, those who violate the laws which extend to migrant laborers can be sanctioned.

Thank you, Mr. Speaker. Mr. Kelso's letter follows:

FISHER & PHILLIPS,
Atlanta, Ga., September 4, 1980.

Re Farm Labor Contractor Registration Act (FLCRA) Amendments in H. 7824.

Hon. TONY COELHO,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN COELHO: As a management labor lawyer actively engaged in representing many farmer and agribusiness employers, I want to thank you for co-sponsoring H. 7824 with Congressman Panetta. The provisions of that Bill are greatly needed amendments to FLCRA, and I urge your continued active support for its final enactment as part of the Child Nutrition Bill (S. 2675 and H.R. 7664).

While my farmer and other agricultural clients acknowledge that a proper FLCRA Bill is needed to regulate and provide a mechanism for sanctions against itinerant, judgment-proof crew leaders who are in the personnel business, they strenuously object to the law placing them and their supervisory employees in the same category as these independent contractors. FLCRA as presently written is being construed by the Department of Labor to include as "farm labor contractors" these farmers and agribusinessmen and their common law supervisory employees.

FLCRA NOT INTENDED TO COVER EMPLOYERS OF FARMERS OR OTHER AGRIBUSINESSES

We are firmly convinced that FLCRA was never intended to regulate the normal employer-employee relationships between farmers and other agricultural businesses and their employee workers. They, like industrial employers, are generally solvent and are heavily committed to fixed assets. When they are sued they can be easily located for service of court process. Where individuals are employees of a farmer or other business, the entire employment relationship, including the actions of supervisors, is subject to numerous legal protections. Labor statutes imposing obligations on employers (but not those with whom workers have only independent contractor status) are the Fair Labor Standards Act, the Child Labor Act, the Equal Pay Act, the Wagner-Peyser Act, the Occupational Safety and Health Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and other federal, state and local statutes and regulations. In addition, farm employers, like industrial employers, are subject to lawsuits by employees based on breach of contract, fraud, misrepresentation and other common law actions. For example, in *Collazo v. John W. Campbell Farms, Inc.*, 213 F.2d 255, 258 (5th Cir. 1954), the Court recognized that the farmer employer could be held liable for its supervisor's false imprisonment and beating of a farm worker employee. Applying well-established law, the Court said:

"A master is liable for the torts of his servant or agent committed in the scope or range of his employment or in the pursuit of his employer's business . . . [citations omitted]. This liability also extends to acts committed by an employee or agent who has deviated slightly from his employer's business or instructions . . .; and even to willful acts or crimes committed by an employee when they are done within the scope of employment or in the interest of the business of the employer."

Similarly, in *Abraham v. Beatrice Foods Co.*, 418 F. Supp. 1384, 1390 (E.D. Wisc. 1976) plaintiffs sued their employer on claims of peonage, over-recruitment, inadequate housing, breach of contract and excessive deductions of pay. Where workers and employers' rights and responsibilities are governed by contracts, the parties are entitled to Court enforcement and damages for breach of contract. The *Beatrice* case illustrates the combination of statutory rights, e.g., under the Wagner-Peyser Act, and common law actions, e.g., false imprisonment, which employees have against their employers.

Advocates of broader coverage for FLCRA suggest workers need to be protected from fraudulent and deceitful employers; but it has long been recognized that such an action already lies directly against employers. See, e.g., *Gardner v. Celanese Corporation*, 88 Ga. App. 642, 76 S.E. 2d 817 (1953) where the Court found the plaintiff had stated a cause of action in his claim that the corporation's management employee fraudulently, falsely, willfully and with full knowledge misrepresented to him that he would be returned to work from his furlough status.

The Fair Labor Standards Act has since 1977 required that agricultural employees be paid at least the federal minimum wage applicable to industrial workers, now $3.10 per hour, and it imposes detailed record keeping obligations on employers. Farm employers, like industrial employers, may not make deductions from wages for repayment of loans that reduce free and clear wages below the statutory minimum. See, e.g., *Hodgson v. Clark*, 69 Lab. Cas. ¶ 32,736 (M.D. Ala. 1972). Deductions for tools of the trade, rent and other employer-provided facilities are also subject to FLSA limitations. *Walling v. Peavy Wilson Lumber Co.*, 497 F. Supp. 846 (W.D. La. 1943); *Shultz v. Hinojosa*, 432 F.2d 259 (5th Cir. 1970). Where farmers have employed children in violation of the Child Labor Act, Courts have entered judgments against them. *Goldberg v. Daniels*, 45 Lab. Cas. ¶ 31,314 (S.D. Ga. 1962); *Mitchell v. Munier*, 38 Lab. Cas. ¶ 65,781 (S.D. Cal. 1958). Under recent amendments adding 29 U.S.C. § 216(e), employers can be held liable for up to $1,000 for each such violation.

Finally, while some states continue to exclude farm workers from mandatory coverage under workers' compensation acts, employees of canneries, packinghouses and many other FLCRA covered businesses are under state industrial workers' compensation laws. Moreover, farm employees have frequently been awarded compensation under common law tort theories. See generally Annot. "Master's Liability to Agricultural Worker Injured Other Than by Farm Machinery," 9 ALR3d 1061 (1966); Annot. "Master's Liability to Servants Injured by Farm Machinery," 67 ALR2d 1120 (1959).

As discussed more fully below, FLCRA's existing provisions do not provide for substantive protections or actions against employers in addition to existing statutory and common law rights. They are chiefly aimed toward keeping up with and obtaining court jurisdiction over itinerant crew leaders who have neither fixed assets nor fixed places of business and toward assuring that workers who must travel long distances to gain employment have adequate information concerning the nature of the work promised by the contractor. Where agricultural workers are employees of the farmer, as shown above, they can and do file suits for contract breach, misrepresentation and other wrongs directly against their employers, just as in industrial employment situations. It is crew leaders as a class, not farmers and not farm supervisors as a class, which Congressional hearings have shown require special legislation in addition to the statutory and common law governing all employers.

S. 2875 FOCUSES DOL ON REAL PROBLEM

During the last two years DOL has sought greater evidence of its FLCRA enforcement efforts after being sued by various farm worker organizations. In its efforts to achieve statistics showing thousands of FLCRA cases, the agency has focused its efforts on registering and regulating farmers and their common law supervisory employees, and it is easy to understand why. Farmers and their employees are stationary, easy to locate, and when they are located and fined, they can and do try to comply with DOL demands and court orders. By contrast, crew leaders are hard to find, uncooperative, and wrongs can frequently be remedied only through legal actions. Statistics show almost all DOL activity in the last several years has been devoted to suing farmers and their field employees for lack of registration or other document deficiencies. Very few cases have been made against elusive crew leaders for substantive abuses of workers.

The campaign against farmers and other agribusinessmen has, however, diverted enforcement efforts away from the real and proper target of the Act—these elusive,

nomadic, noncooperative crew leaders. Not only are farmers and agricultural processors being abused by regulations not intended to cover them, but through failure to focus on the real targets, farm workers are actually being denied the protections that Congress sought to provide for them.

Support for the S. 2875 amendments is thus not contrary to farm workers' best interests. We think the farm workers who are employed by the independent middlemen will gain when the DOL's vast resources devoted to fingerprinting and to prosecuting nonregistered farmers and to shuffling farm vehicle insurance and safety inspection papers are instead devoted to the more difficult but needed task of tracking down the real crew leaders and prosecuting their abuses of farm workers.

To the extent that the amendments encourage farmers to hire crew leaders and farm workers directly as their own employees, workers gain because of the common law and statutory obligations of employers for their own and their supervisors' actions, as described above. Farm workers are thereby taken out of the legal "no-man's land" they occupy as employees of elusive, judgment-proof crew leaders.

SENATOR JAVITS' BILL HIGHLY UNDESIRABLE

Enactment of amendments based on Senator Javits' Bill (S. 2789) would serve only to take FLCRA further from its intended path. While it removes the affirmative obligation that farmers and supervisors register, S. 2789 generally requires their compliance with the Act's obligations. As a practical matter, what this means is that farmers must tell workers they will be picking corn or working at some other task "at piece rates meeting or exceeding the Fair Labor Standards Act minimum wage." Such a disclosure provides no substantive protection to workers, and it is certainly not meaningful information when applied to the vast majority of farm employees who are employed year after year by the same farmer. The only real information provided in the required disclosures is the farmer's net profit, and that is none of the workers' business. FLCRA does not contain any record keeping obligations that employers do not already have under FLSA. It adds no health or safety requirements not already provided under OSHA and state laws. Farmers are already subject to court action for injuries caused in their work places or in their work vehicles under workers' compensation statutes or under common law tort theory. In fact, in the increasing numbers of states which require workers' compensation for farm workers (now 33 states), workers are prohibited by law from collecting on the vast coverages required by FLCRA—i.e., a ridiculous nonproductive expense.

The only real substantive requirement imposed on farmers by FLCRA and the Javits Bill that is not already imposed on them by some existing law is the prohibition against employment of illegal aliens. Presently, the Department of Labor is construing the requirement that contractors not knowingly employ illegal aliens to mean that the contractor must conduct an affirmative inquiry to obtain specified documentary proof from each individual showing that he is a citizen or a legal alien entitled to work. 29 C.F.R. § 40.51(p). It makes sense to hold a "coyote" crew leader responsible for knowingly bringing illegal aliens from Mexico or Texas to Florida; it is unjustifiable to impose such an affirmative obligation on a Florida farmer who is employing workers locally, even if some of them are illegal. If such employers should be held liable for employment of illegal aliens, there is no basis whatsoever not to require that restaurants, garment factories and other industries have the same obligation.

Congress has wrestled with this larger alien worker problem for years, but it has been reluctant to require Americans to have official identification papers as Europeans do. The Secretary of Labor should not be permitted to "legislate" an identification paper requirement by regulation as he has done under FLCRA. Furthermore, until the government shoulders its responsibility to identify alien wokers and until it imposes the same obligation on all employers, farmers alone should not have to carry this burden.

Another major objection to Senator Javits' Bill is that it adds "supervising" as one of the duties which makes an individual a "farm labor contractor." Congress was originally assured that field supervisors would not be covered by FLCRA. See colloquy between Senator Nelson and Senator Chiles at 120 Cong. Rec. 35902 (Oct. 16, 1974). This proposed expansion of the Act is totally unwarranted and was never intended by Congress as 52 Senators made clear in a letter of November 26, 1979, to Secretary Marshall (published at 126 Cong. Rec. S. 9794–95 (July 24, 1980.))

Contrary to Senator Javits' opening comments at 126 Cong. Rec. S. 6268 (June 24, 1980), his amendments are opposed by every farm and agricultural organization and employer with whom I am familiar. They are contrary to the intention of the majority of Congress and to effective regulation of the independent crew leader middlemen FLCRA was designed to control.

CONCLUSION

The proposed H. 7824 amendments:

1. Focus FLCRA on the real problem and the intended target—the some 6,000 often abusive but elusive crew leaders;

2. Assure real protection of farm workers by requiring the DOL to use its resources to tackle these itinerant crew leaders who otherwise evade the law rather than shuffling papers on farmers and other stationary employers who already are subject to effective regulation and legal sanctions under existing statutes and the common law.

We appreciate your support and urge you to continue your efforts to achieve enactment of these amendments.

Very truly yours,

CHARLES KELSO.●

HIGH HOLY DAYS 5741

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, September 11 is a significant day for those of the Jewish faith for it marks the beginning of the Jewish religious New Year 5741.

I am happy to join my colleagues in the Congress and my constituents and friends of the Jewish faith in observing the advent of the Jewish high holy days beginning with Rosh Hashana on September 11 and 12 and ending with Yom Kippur on September 20.

Rosh Hashana is a solemn day of reflection, prayer, and penitence. It is a holy day on which Jews all over the world assemble in synagogues to ask God's forgiveness for man's sins and to pray for the unification of mankind. "Unite all of us in the bond of brotherhood" is the beginning of one of the ancient and beautiful prayers associated with this holy day.

On Rosh Hashana the shofar, or ram's horn, is sounded. The blowing of the ram's horn on this day has a deep symbolism. It is considered so important that the day has been called "the day of the clarion call." Only a man of outstanding character is permitted to sound the shofar, and its shattering sound is meant to awaken man's conscience to renew his faith and to return to God.

September 20, the Day of Atonement, or Yom Kippur, is always observed with deep seriousness as the climax of 10 days of penitence. This is the most sacred day of all for it is at this time that the Lord judges each individual. Jews fast all day, confess, repent, and request forgiveness from God and their neighbors. In turn, they forgive their fellow man and look forward to new life.

The fact that for thousands of years Jews all over the world have united in prayer and repentance on the very same day is immeasurable in its significance, particularly when one realizes the impediments that have been in the way of Jewish religious observances and the oppressive religious persecution to which the Jews have been subjected for centuries.

It is for this reason that I have contacted Soviet leaders over the years on behalf of Jews who wish to leave the Soviet Union and who wish to reunite with members of their families in other parts of the world. Especially during the High Holy Days, the Jewish people look to the universal establishment of the principles of compassion and tolerance for which Judaism has so long and painfully fought, and the Soviet Union has signed many international agreements such as the Final Act of the Conference on Security and Cooperation in Europe which pledges to respect basic human rights of the individual.

Jews have not always received this same compassion and tolerance in return, but instead, under Nazi persecution, have suffered incomprehensible brutality and genocidal mass murder. I have asked that my name be added as a cosponsor of legislation to establish the U.S. Holocaust Memorial Council as a permanent entity to plan and oversee the construction and operation of a memorial museum and other actions in commemoration of the millions of victims who were massacred during that terrible time.

During the celebration of the Jewish high holidays, we recall once again the suffering endured by the Jewish people, and mankind's conscience cries out against the betrayal of human rights which they have tragically experienced.

As the Congressman for the 11th District of Illinois, where many of my friends and constituents of the Jewish faith reside, I take pleasure, with the advent of the High Holy Days 5741, in extending my greetings and best wishes to them for the new year.●

JUSTICE DEPARTMENT SUBPENA OF NEW YORK TIMES PHONE RECORDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. PREYER) is recognized for 5 minutes.

○ Mr. PREYER. Mr. Speaker, recent reports in the press indicate that the Department of Justice obtained the telephone toll records of an office of the New

York Times and the home telephone records of one of its reporters without the knowledge of the paper or the reporter.

Employing a grand jury subpena duces tecum, departmental investigators acquired the phone records of the Times' Atlanta bureau and of one of its reporters. Three months after the records were taken by the Department, Southern Bell notified the paper and the reporter. Neither the newspaper nor the reporter was suspected of any crime or was the target of any investigation, according to Justice Department officials. Rather, an investigation of possible wrongdoing by Department employees triggered the subpena for the telephone records. At no time did the Government notify the paper or the individual reporter that it was going to look at the records. Nor do the Justice Department officials involved, including the Assistant Attorney General for the Criminal Division, appear to have considered the policies of the Department reflected in its regulations regarding the seizure of information and records from the press. Perhaps most unsettling, the actions by the Department suggest a lack of attention to the protection of basic first amendment and privacy interests of all American citizens.

As chairman of the Government Information and Individual Rights Subcommittee which has oversight responsibilities for the Department of Justice and a key role in preserving personal privacy and the free flow of information, I find the actions of the Department in this matter particularly troubling.

Following the decision of the U.S. Supreme Court in *Zurcher* v. *Stanford Daily* [98 S. Ct.(1970)], the Department strengthened and reaffirmed its guidelines and policies regarding access to the records of news organizations and reporters. Those policies were accompanied by statements from Attorney General Civiletti and other officials of the Department indicating genuine concern for the public interest in a free press. The recent subpena by the Criminal Division call into question the effectiveness of these policies and statements of departmental intent. Granted, the issuance of these subpenas may not have technically violated the guidelines of the Department. The guidelines were written to protect materials belonging to the media from subpenas, and the telephone records in Atlanta "belonged" to the phone company. However, the subpenas certainly appear to have stretched the policy underlying the specific language of the regulations to its limits.

The actions of the Department in this matter require the fullest and most careful scrutiny. Were the officials involved in the decision to subpena the telephone records violating either departmental regulations or guidelines? Did they consider not only the question of technical compliance with the regulations, but adherence to the broader policy intent as well? Were the subpenas for press records an isolated incident or have the telphone records of news organizations, publishers, and reporters been subpenaed by the Department in the past?

A second series of questions exists, of less immediate concern but of no less importance. Are the policies and regulations which exist adequate? Is additional legislation needed to protect first amendment interests in situations of this kind—legislation beyond that which grew out of the Zurcher against Stanford Daily decision? What should the elements of any new policies, regulations, or legislation be?

In my capacity as chairman of the Government Information and Individual Rights Subcommittee, I have written the Attorney General and sought his help in answering these questions. In the letter to him, I also posed the broader question of the appropriate limits on the ability of the Government to obtain the telephone records of any citizen, regardless of any association with the press. Specifically, the letter asks if the Government should be permitted to obtain the telephone records of a citizen without some review by a court or other neutral arbiter.

This last question is a vital one. Elements of it have been debated by the Judiciary Committee in its deliberations on reform of the criminal code. It is a matter of current debate within the administration as an element of the President's privacy initiative. The Privacy Protection Study Commission also wrestled with it in its examination of the limits which ought to be placed on Government access to private records. In its final report to the Congress and the President, the Commission recommended that access to telephone records by Government agents be permitted only through the use of a subpena with notice to the customer identified in the records and with the right for that customer to challenge the Government's action. The Commission recognized that telephone toll records "provide independent documentation of communications which, before the telephone, were considered uniquely private in character. Indeed, our present legal system severely restricts access to the contents of such communications. Since the mere fact of communication is often as revealing as the content, the Commission believes that toll records should be protected as well."—"Personal Privacy in an Information Society," the report of the Privacy Protection Study Commission (Washington, 1977), page 356. While the Commission's solution to the problems of unlimited Government access to telephone records is not the only answer, it does serve as a starting point for discussion and debate.

In that vein of discussion and debate, I plan to offer a bill as an alternative to the Commission approach. It is a beginning for inquiry, by no means the final product. However, I hope it will receive the careful consideration of the Congress and the administration and serve as a focus for efforts to reestablish and preserve the privacy of American citizens.

I will keep this House informed on the progress of the subcommittee inquiry and, in particular, share with you the Attorney General's reply to the subcommittee.●

GENERAL LEAVE

Mr. HARKIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the subject of the 1-minute speech today by the gentleman from Illinois (Mr. ROSTENKOWSKI).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

CHILEAN PLEBISCITE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. HARKIN) is recognized for 15 minutes.

Mr. HARKIN. Mr. Speaker, as I stated in my September 3 "Dear Colleague" letter, the country of Chile will undergo a fraudulent plebiscite called by General Pinochet on September 11.

I would like to take this opportunity to discuss the plebiscite and the deteriorating political and human rights climate in Chile.

The New York Times published a sarcastic commentary last month about the plebiscite which sums up the fraud:

On September 11, the people of Chile will be herded to the polls to approve a new constitution that will let them vote for anyone for President so long as he is General Augusto Pinochet. The general has assented to serving eight years, after which he may yield to popular demand and agree to a second eight-year term. So certain is he of the high regard in which he is held that he is sparing Chileans the discomfort of choice. His supporters call this tidy system "neo-democracy".

Seven years ago General Pinochet had to shoot his way to power by deposing an elected government headed by the socialist Salvador Allende. As head of the ruling junta, General Pinochet has tried to deal kindly with an incorrigible people. Those who failed to appreciate his reign were sent to jail. Chile's labor movement, once the strongest in South America, was abolished, ending wasteful strikes and inflationary wage demands.

Anyone familiar with modern Spanish history will find all this familiar. Francisco Franco over-threw a leftwing republican regime in the 1930's and instituted a system that assured his personal rule until his death four decades later. He eliminated free labor unions, filled prisons with dissidents, sterilized the press. But Franco did not say his system had anything to do with democracy—a term he disdained—and did not stage elections to show the world that his people loved him.

General Pinochet might earn notice for candor, if not respect for his principles, if he would call his new order by the term it deserves: neo-fascism.

Pinochet's plebiscite has a hilarity of its own. But the iron will of Pinochet to remain in power, possibly until 1997, and the iron fist he and his supporters still wield in Chile, represents a continuing tragedy for Chile's people.

As if to deliberately insult Chile's 164-year democratic tradition, Pinochet and his junta have scheduled the plebiscite for September 11, the seventh anniversary of the 1973 military coup that ended Chilean democracy, abolished its constitution, and brought terror and repression

to the Chilean people. This was the coup that left in its wake an estimated 20,000 to 80,000 executions, more than 100,000 political prisoners, almost a million political exiles, and over 2,500 disappeared political prisoners. This coup has caused the slow impoverishment of Chile's working people and middle sectors and the demolition of the Chilean labor movement.

And the repression continues.

Today's New York Times reports that according to an Amnesty International report:

Arbitrary arrests and systematic torture have increased dramatically in Chile in the last two months. Spokesmen for the private human rights group said that since July 15, more than 1,000 and possibly as many as 2,000 people have been rounded up by the Chilean secret police. Detailed reports coming out of Chile confirmed a pattern of systematic torture, including severe beatings, near drownings, prolonged administration of electric shocks and burning with cigarettes, to which most detainees were subjected. Many others, Amnesty International said, have not been heard from since their arrests. The report spoke of doctors overseeing the torture.

Citing one such case, a July 10 New York Times article recalls the case of Adriana Hortensia Vargas, a 29-year-old housewife, who was taken off a bus and held in an undisclosed place of detention, where she was hooded, interrogated, stripped, and subjected to electric shocks. Her statements were made under oath to a court after she was released.

Another similar incident was reported in a more recent, September 9 New York Times article, documented by Amnesty International. A 25-year-old university student, Angelica Diaz Tapia of Santiago was seized from a cafe by no less than 12 armed men. She later testified after her release to have been stripped and tied to a metal grid and given inhuman amounts of electrical shocks. This barbarism continued between interrogation sessions until she fainted and was eventually revived by each additional shock. On top of the electrical abuse, Ms. Tapia said she was burned with cigarettes, beaten, and verbally harassed.

General Pinochet has been forced to modify his tactics of repression, eliminating some of the grosser abuses of human rights that made the early years of his regime infamous. He was forced to "moderate" by world public opinion and international repugnance at the involvement of Chile's secret police in the 1976 car-bombing assassinations of Orlando Letelier and Ronnie Moffit here in Washington, D.C. Furthermore, democratic forces around the world continue to protest the repression and there have been overwhelming condemnations by the United Nations in five successively yearly censures, and statements, resolutions, and legislative amendments by this U.S. Congress.

International censure, however, has not been enough. According to the Chilean Commission of Human Rights, repression in Chile is not over. It continues and has in the last 3 months been intensifying. Headed by Mr. Jaime Castillo Velasco, former president of the Christian Democratic Party, this private human rights monitoring group also asserts that the use of torture in Chile today is still widespread and increasing.

On July 29, in a statement for the Commission, Mr. Velasco stated:

Electricity, rats, and dogs are the normal tools utilized by the secret police to interrogate prisoners.

In the first week of August, Chile Democratico, the Chilean exile organization headquartered in New York, condemned the new wave of repression sweeping Chile in these words:

The climate of terror created by the Junta is aimed at the intimidation and physical annihilation of the opposition. It uses the pretext of looking for "extremists" to perpetuate new crimes and violate the rights of thousands of Chileans. The events of the last few days clearly show a growing and bloody struggle within the Junta. The dismissal of the head of the secret police, the appearance of ultra-right wing commandos, and the lack of internal support for Pinochet's so-called constitution, indicate that all is not well at the top level of the dictatorship.

The tension and the official terror make an atmosphere favorable to a democratic election in Chile impossible. But the junta has taken extra precautions to be sure that the election will go their way.

Do the people of Chile actually have a free choice on Thursday the 11th? The facts are clear:

First. After 7 years, Chile is still under a "state of emergency." All opposition political activity is forbidden.

Second. There is no genuine access of opposition groups to the pro-junta press and government-controlled electronic media.

Third. The country's voting rolls were burned in 1974. The so-called constitution, which voting for Pinochet will bring into effect, was prepared at his orders in secret by a hand-picked panel.

Fourth. The plebiscite will be held with less than 1 month's notice.

Fifth. Those who abstain by staying away from the polls face 3 months in jail, in addition to receiving heavy fines.

Sixth. Those who go to the polls and, in an act of conscience, mark neither "yes" nor "no," will have their ballots counted as a "yes" vote.

Seventh. And finally, it is Pinochet's own military commanders and appointed officials who will present the results of polling in their areas to the authority commissioned to count the votes "impartially."

Crucial to Pinochet's reelection of himself is the second issue of concern here—the reactionary constitution itself. Far from being a vehicle for a return to genuine, civilian democratic government, the new legal fiction will instead institutionalize the presence of the armed forces in the Senate, in constitutional courts, and in a National Security Council. The new constitution will also allow Pinochet, with the approval of the National Security Council made up of 66 percent armed forces members, to abrogate the constitutional rights of anyone.

The constitution's "transitory articles," key parts of which will go into effect when Pinochet wins the plebiscite, specify the following:

First. Upon the approval of this plebiscite of the new constitution, Pinochet will continue ruling Chile for 8 more years—1981 to 1989.

Second. During this 8-year period the military junta will constitute both the executive and legislative bodies. In other words, there will be no elections for even a rubber-stamp-Pinochet-dominated Congress until 1989.

Third. All political parties will be outlawed until the promulgation of a junta-established law that will govern their operations, and

Fourth. At the end of Pinochet's 8-year term, the junta will be called upon to appoint a president, undoubtedly the enduring Mr. Pinochet. At that time, a second plebiscite will be held. Only if Pinochet were repudiated, a rather unlikely probability, would an open election be held.

Pinochet and his supporters call their exercise in demagogy and fraudulence, "neo-democracy." I feel it should be termed "no-democracy." I urge my fellow Members of the House to join me in sending a message to General Pinochet, rejecting the degradation of a cherished tradition and human right. Our protest is also voiced by the Catholic Church of Chile, the Chilean Trade Unions, the democratic opposition in Chile, and the mass sentiment of our own citizenry which I believe rejects fascism as a solution to any political problem, rejects torture as an official policy, and rejects terrorist assassinations as a way to quell dissent.

THIRTY SEVEN MEMBERS OF CONGRESS DENOUNCE CHILEAN PLEBISCITE

Congressman TOM HARKIN and 36 other Members of the House of Representatives today denounced Chile's September 11 plebiscite.

Thursday's plebiscite rules out congressional elections in Chile until 1989, and guarantees President Pinochet at least 8 more years, with an additional 8-year term possible. Voting in the plebiscite is mandatory, and the balloting will be supervised by Chile's mayors, all of whom have been handpicked by Pinochet.

In a letter to General Pinochet, the Members stated that the plebiscite is "transparently fraudulent" and "an affront" to the people of Chile. The Members urged Pinochet to return freely elected government to Chile and to end the repression which characterizes the 7-year-old dictatorship.

The text of the letter is attached below:

DEAR MR. PRESIDENT: As democratically elected representatives of the United States, we want to take this opportunity to express our regret and dismay about the planned plebiscite in Chile.

The electoral procedures which your supporters refer to as "neo democracy" are an affront to the people of your country and the people of every democracy. We particularly regret the increase in arrests and detention over the past six months.

In increasing repression and in implementing a transparently fraudulent plebiscite, you may solidify your own power. But you cannot convince your people or the world that there is any semblance of democracy in Chile.

We urge you and members of your junta to return to Chile a freely elected government which is truly the expression of the people's choice.

Sincerely,

Tom Harkin, Stewart McKinney, John Conyers, Andy Maguire, George Brown, Robert Drinan, Howard Wolpe, Ron Dellums, Norman Mineta, George Miller, Shirley Chisholm, James Scheuer, Pete Stark, Don Edwards, Tom Daschle, Morris Udall, Ted Weiss, John Seiberling, Bob Garcia, Walter Fauntroy, Berkley Bedell, Mickey Leland, Cappy Hollenbeck, Dave Bonior, Richard Ottinger, Jim Weaver, Tom Downey, Gus Hawkins, Dan Glickman, Pat Schroeder, Rick Nolan, Bruce Vento, Ed Markey, Bob Kastenmeier, Jim Oberstar, Doug Walgren, J. J. Pickle.

THE 22D OBSERVANCE OF CAPTIVE NATIONS WEEK

(Mr. STRATTON asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. STRATTON. Mr. Speaker, incoming reports on the 1980 Captive Nations Week suggest that this year's commemoration was, once again, a great success. In all the regions of our country, as well as abroad, the 22d observance of Captive Nations Week was marked by rallies, parades, TV and radio coverage, church prayers, and addresses on behalf of the more than two dozen captive nations in Eastern Europe, Asia, and the Caribbean. Much note was made of the Soviet invasion of Afghanistan, which has added that country to the list of captive nations.

Mr. Speaker, I ask unanimous consent that the following items be printed in the RECORD as examples of the strength and breadth of sentiment toward the captive nations that exists in our country: Proclamations by Gov. John D. Rockefeller IV of West Virginia, Gov. Bruce King of New Mexico, Gov. J. Joseph Garrahy of Rhode Island, Gov. Fob James of Alabama, and Mayor Ernest N. Morial of New Orleans.

In addition, as examples of the newspaper coverage of the 22d observance of Captive Nations Week, I ask also unanimous consent to include articles from the following publications: The Free China Weekly, the New York Daily News, the News World, the Catholic Standard, the Ukranian Catholic Daily, and the Truth. Also I ask unanimous consent to insert with my remarks, an article written by Vera A. Dowhan of the Captive Nations Committee on the meaning of this year's observance.

The articles cited follow:

A PROCLAMATION BY THE GOVERNOR

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, Afghanistan, and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States, as leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86-90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples.

Now, therefore, I, Dixy Lee Ray, Governor of the State of Washington, do hereby proclaim that the week commencing July 13, 1980, be observed as "Captive Nations Week" in Washington, and call upon the citizens of Washington to join with others in observing this week by offering prayers and dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION: CAPTIVE NATIONS WEEK IN RHODE ISLAND

Whereas, The imperialistic policies of Russian Communists have led, through direct and indirect aggression to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, Afghanistan, and others; and

Whereas, The desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, The freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States as leaders in bringing about their freedom and independence; and

Whereas, The United States Congress, by unanimous vote, passed Public Law 86-90, establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies, and activities, expressing their sympathy with and support for the just aspirations of captive peoples.

Now, therefore, do I, J. Joseph Garrahy, Governor of the State of Rhode Island and Providence Plantations, proclaim July 13-19, 1980, as "Captive Nations Week in Rhode Island" and urge all Rhode Islanders to join with others in observing this week by dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION BY THE GOVERNOR

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovania, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States as leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86-90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples;

Now, therefore, I, Fob James, Governor of the State of Alabama, do hereby proclaim that the week commencing July 13 through July 19, 1980 be observed as "Captive Nations Week" in Alabama, and call upon the citizens of Alabama to join with others in observing this week by offering prayers and dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czecho-Slovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, Afghanistan, and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States as leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86-90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples;

Now, therefore, I, Bruce King, Governor of the state of New Mexico, do hereby proclaim the week of July 13, 1980, as: "Captive Nations Week."

A PROCLAMATION BY THE GOVERNOR

Whereas, the imperialistic politics of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of many countries; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom loving peoples of the captive nations look to the United States as the citadel of human freedom and human rights and to the people of the United States as the leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86-90 establishing the third week in July each year as Captive Nations Week and inviting

the people of the United States to observe such week with appropriate prayer, ceremonies and activities; expressing their sympathy with and support for the just aspirations of the captive nations.

Now, therefore, I, John D. Rockefeller IV, Governor of the State of West Virginia, do hereby proclaim the week of July 13 through July 20, 1980, as "Captive Nations Week" in West Virginia, and call upon our citizens to join with others in observing this week by offering prayers and dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION

Be it known that the Mayor of New Orleans has this day proclaimed July 13-19, 1980, to be "Captive Nations Week" in New Orleans.

ERNEST N. MORIAL,
Mayor.

[From the Free China Weekly, July 20, 1980]

BIG RALLY HIGHLIGHT OF CAPTIVE NATIONS WEEK

A rally to mark the 1980 Captive Nations Week in the Republic of China was held July 17 at the Sun Yat-sen Memorial Hall in Taipei, presided over by Dr. Ku Cheng-kang, honorary chairman of the World Anti-Communist League.

Premier Sun Yun-suan delivered a speech at the meeting, which was attended by more than 3,000 government officials, members of the diplomatic corps in Taipei, foreign guests from 29 countries and areas, and civic leaders.

Premier Sun said he hoped all free nations would renounce the mistaken strategy of "uniting with Red China against Russia" and refrain from helping the Chinese Communists to perpetuate their tyranny.

U.S. Congressman Mario Biaggi; Jetro M. Mamba, speaker of the Lower House of Swaziland; Blas Cells, president of the National Assembly of Representatives of Panama, and concurrently president of the National Congress of Correction and Legislation; Jean-Pierre Grafe, Belgian parliamentarian; Khir Johari, Malaysian parliamentarian; and John Gamble, Canadian parliamentarian, all delivered speeches at the meeting.

[From the New York Daily News, July 14, 1980]

PLEA FOR CONCERN OPENS CAPTIVE NATIONS WEEK

(By Sheryl McCarthy)

Urging Americans to be "good Samaritans" to, and not merely "silent observers" of, the millions of oppressed people of the world, the Rev. Edwin O'Brien led a special memorial Mass at St. Patrick's Cathedral yesterday for the citizens of the more than 30 countries under Communist rule.

The service was among the activities here marking the start of Captive Nations Week. In a colorful Fifth Ave. parade, hundreds of persons—whose roots reach back to lands including Byelorussia, Croatia, Poland, Estonia, mainland China, North Vietnam, East Germany and the Ukraine—donned their native costumes and called for an end to political oppression in their homelands.

"How can we pretend to be good Samaritans and followers of Jesus when we choose to be blind or oblivious to the millions of enslaved human beings behind Iron Curtains of repression?" the Rev. O'Brien told more than 2,000 members of the congregation.

NEED NOT LOOK FAR

"And we need not look across the seas or up to the heavens for opportunities to remove convenient blinds of blindness," he said. "Do we choose to be involved good Samaritans or rather silent observers when governments and other powerful institutions continue brazenly to look upon as nonpersons the captive behind the Iron Curtain, the unborn on our doorstep, the minority and the poor and the elderly in our neighborhood?"

[From The News World, July 13-19, 1980]

CAPTIVE NATIONS' RANKS SWELL TO 42 WITH AFGHANISTAN

(By Lev E. Dobriansky)

At least for a while, the brutal Soviet Russian rape of Afghanistan stunned and concerned governments and peoples throughout the non-totalitarian world. The reactions varied; some were sharp, others bland. But, unquestionably, the strangest expression of rude awakening was provided by President Carter himself.

On Dec. 31, he reacted with this: "My opinion of the Russians has changed more drastically in the last week than even the previous 2½ years." By this statement one would think the long and persistent record of Soviet Russian conquest and domination over non-Russian lands were non-existent. In all of this it was strange, too, that no official reaction in the non-totalitarian world saw Afghanistan as a new, emerging captive nation.

Several weeks later, in his State of the Union address, the president spoke in somewhat unique terms about Moscow's "East European empire" and "its colonial domination of others." He declared in part, "The vast majority of the nations on Earth have condemned this latest Soviet attempt to extend its colonial domination of others . . ."

These thoughts fall, of course, in the right direction and find few presidential precedents in the post-World War II period. However, as a perfect example of conceptual confusion, in the same address the president refers to the U.S.S.R. as "a nation," thereby suggesting that the concepts of "empire" and "colonial domination" do not apply to the majority non-Russian nations within the U.S.S.R.

The basic facts which this confusion cannot beclouds are that, at the very least, the U.S.S.R. is a contrived multinational state and certainly not a "nation"; that the "East European" empire of Soviet Russia extends from the Danube to the Urals and includes the largest single segment of it, Ukraine itself; and that Moscow's empire reaches into Central Asia and, with more refined meaning, into East Asia and Cuba.

THE 22ND CAPTIVE NATIONS WEEK

By way of introduction these are just some salient preliminary thoughts for the 22nd Observance of Captive Nations Week (July 13-19). The annual week is provided for in Public Law 86-90, the Captive Nations Week resolution passed by Congress and signed into law by President Eisenhower in July 1959. In the eyes of some critics, PL 86-90 is supposed to be a "cold war relic," whatever this implies. Yet it intelligibly accommodates, more than any other outlook, the fate of an Afghanistan and future Afghanistans, and rationally affords a captive nations ideology that sooner or later must ground our foreign policy. Whether we like it or not, this outcome is inevitable. The accelerated aggressiveness of Moscow will underwrite its necessity.

Fortunately, the Afghanistan episode has spurred necessary and long outstanding reassessments at the West's military posture vis-a-vis the menace and its satraps. Why the episode should have served as a catalyst for the belated step-up is another question. The dominant facts on the growing, across-the-board military disparities between the two groupings have been known for over a decade.

On this, in his 1980 assessment presented to Congress, Defense Secretary Harold Brown painted a bleak picture of the situation, indicating that Moscow might soon be able to field enough forces to fight three wars at once. In sharp contrast, the United States hasn't had the capability of fighting even a one-and-a-half war.

Put in other terms, the military component is only one important factor in the overall balance of forces. Behind guns and missiles, in planes, subs and tanks, is the ever-present and predominant human factor, in all its diversity, institutional loyalty and disloyalty, and volcanic unpredictability. Through sufficiency, nay, superiority on our side should be desired and attained, the military is essentially an instrument, relatively rigid and usable as the users may determine.

Based on PL 86-90, the captive nations ideology has always stressed the indispensable requirement of this integrative, politico-economic approach, interlocking the political, the economic, the military, the national, the religious, the broadly human and other essential components of the overall balance. On this totalistic scale, the real forces are in our favor, not Moscow's, but they require proportionate actualization by a strategy founded on historical experience, keen perceptions into Moscow's fundamental vulnerabilities, and the will and courage to see it through.

LISTING OF CAPTIVE NATIONS

In brief, the captive nations ideology provides this firm ground. For those who understand it, the Afghan episode is only an additional one in a long series of similar and related episodes, dating back to the teens. The National Captive Nations Committee in Washington which maintains the CNL—the Captive Nations List—was really not too hasty in declaring Afghanistan another captive nation.

The strictly documented record for the period since World War II also will show that no idea has concerned Moscow more than that of the captive nations in toto and its ideological foundation. Khrushchev, Suslov, Arbatov and others have incessantly protested against it.

Why? "Provocation" is the standard term. Yes, reality and truth are provoking, and no exercise in diplomacy or any foreign policy can be successful without the subtle underpinnings of such reality and truth.

Plainly, despite their massive military strength and accelerated aggressions, the Kremlin's imperio-totalitarians scare most when these central facts are conveyed in varying forms: (1) the nature of the U.S.S.R. is that of a basic empire within itself; (2) the real force threatening nations is Soviet Russian imperialism operating behind the ideological facade of mythical communism; (3) the global threat of Soviet Russia wouldn't be possible without the gross politicoeconomic exploitation of the resources of the non-Russian nations, both within and without the U.S.S.R.; and (4) our *natural* allies, who thirst for freedom, are the more than two dozen captive nations which, directly or indirectly, have been the victims of Soviet Russian imperialism. All of this and more can be logically derived from PL 86-90.

THE AFGHANISTAN ADDITION

The Russian technique of being invited to invade a country is as old as the illegitimate Bolshevik regime. In 1918, for example, the quisling communist government in Kharkiv, Ukraine, also needed assistance from Trotsky's Red Army to destroy the Ukranian National Republic. Essentially, the fate of Afghanistan is no different from that of Ukraine and others 60 years ago.

According to President Carter, Brezhnev lied to him about Afghanistan. Not really—he was simply attesting to the operation of an old imperial Russian technique of providing "assistance" and "liberation" to others. A reading of Marx's articles on the Russian Empire should suffice on this. The "invitation" to invade Czecho-Slovakia in 1968 is just a recent example.

Historically, traditional Russian imperialism moved in the direction of the Persian Gulf, the Indian Ocean and the Mideast. The current move is scarcely new.

Strategically, as part of its campaign to isolate the Mideast from American influence, Moscow can intensify its subversive activities in Iran and Pakistan. The well-disciplined Tudeh communist party in Iran and the autonomy demands of the Kurds, Azerbaijani, Baluchis, Turkmen and Arabs are conduits for old-styled Russian operations. The Baluchi problem overlaps into Pakistan, and the goal of a separate Baluchistan carved out of both Iran and Pakistan is not unattainable. In short, the prospect for more captive nations in the region is real.

Also as in the long past—and in the case of Afghanistan—the trumped-up Brezhnev doctrinal explanation will be invoked. Read this cynical sophistry, one among many: "Loyal to its international duty, the Soviet Union has always rendered and continues to render fraternal aid and support to peoples struggling for their independence and sovereignty and for revolutionary gains." This is by Dimitri Ustinov, the U.S.S.R.'s minister of defense.

Ustinov avoids relating the atrocities of Soviet Russian barbarism in Afghanistan—the massacre of unarmed men, women, girls and boys, the use of poison gas, nightly executions, "liberating Russians" raping and looting, and napalm, high explosives and rocket grenades heaped upon resisting Afghan patriots.

For captive nations analysts, this is an old story repeated on a new stage. Tragic, too, is the lack of focus by the West on this latest of Soviet Russian savagery. In addition, what help is being given to the Afghan nationalists in their struggle for freedom?

NEW DIRECTIONS IN U.S. POLICY

Unless Moscow lulls us again, Afghanistan as a new captive nation may signify new directions in U.S. foreign policy. One of these is the sudden interest in the Moslem nations in the U.S.S.R.

Over 20 years ago captive nations ideology pointed in this direction, but few listened. A policy concentration on the non-Russian nations in the U.S.S.R. would accommodate this and more.

Radio Liberty and VOA should be strengthened in this area, with significant effect on Moslem nations from Morocco to Indonesia. Congressional measures S. Con. 9 and H. Con. 72, highlighting the Russification and genocide of the Ukrainian Orthodox and Catholic Churches, should be pressed.

There are no TV cameras for the American tube to focus on Russian savagery in Afghanistan. As NCNC long ago advocated, imagine what could be done with a Congressional committee on the captive nations, gathering information from Afghan refugees in Pakistan.

These are only a few of the many ideas that deserve attention today. If we were in direct confrontation with Moscow, the captive nations ideology would be fully invoked. Why not use it intelligently to prevent one?

[From the Washington (D.C.) Catholic Standard, July 10, 1980]

CAPTIVE NATIONS WEEK

Sunday, July 13, opens Captive Nations Week, which asks prayers for those in Communist nations who are unable to exercise their right to religious freedom. Bishop Thomas Lyons has asked that parishes in the Archdiocese offer prayers for members of what Pope John Paul II called "the silent Church" this Sunday.

[From the Ukrainian Catholic Daily, July 24, 1980]

AMERICAN DAILY IN NEW YORK FEATURES CAPTIVE NATIONS ON 21ST ANNIVERSARY OF PUBLIC LAW 86-90

NEW YORK, N.Y.—The Sunday July 13, 1980 issue of The News World contained, a 12-page center-fold supplement, dedicated to the captive nations of Europe and Asia.

Among the authors of articles is Prof. Lev E. Dobriansky, President of the Ukrainian Congress Committee of America, who has a lead editorial and stresses the growth of once-free countries, which are falling now under the domination of Moscow. There is a long register of the captive nations, compiled by Dr. Walter Dushnyck and Miss Sara Tow, and editor of the popular New York daily.

Other authors include Anthony R. Dolan, winner of a Pulitzer Prize for journalism in 1976, David Hulme, Tinley Nyandak, Zlatko Pemper and Martin Mawyer.

Dr. Dushnyck's contribution deals with the enslavement of Ukraine, Byelorussia, the three Baltic States of Estonia, Latvia and Lithuania; Georgia, Armenia and Azerbaijan, and the five Moslem republics of Turkestan. He also covers the satellite countries of Poland, East Germany, Czechoslovakia, Hungary, Romania and Bulgaria. Miss Towe analyzes the enslavement of Albania and Yugoslavia in Europe, and Cuba, Cambodia, Vietnam, Laos, Afghanistan, China, North Korea, Tibet, and Mongolia.

It is the first comprehensive list of all captive nations in the world, with brief descriptions as to the population and historical background.

[From the Ukrainian Catholic Daily, July 24, 1980]

IMPRESSIVE OBSERVANCE OF 21ST ANNIVERSARY OF CAPTIVE NATIONS WEEK IN NEW YORK CITY

NEW YORK, N.Y.—On Sunday, July 13, 1980, an impressive observance of the 21st anniversary of the Captive Nations Week Resolution, in which the Ukrainian community took an active part, was held in New York City.

Prior to the Liturgy at St. Patrick's representatives of captive nations organizations, dressed in their national costumes and carrying their national flags, marched from 59th Street down Fifth Avenue to the Cathedral. The Ukrainian group, headed by UCCA Administrative Director Ivan Bazarko, was in the lead.

During the Liturgy the Rev. Edwin O'Brien delivered a moving sermon on the plight of the captive nations, enumerating a number of them, including Ukraine.

Immediately after the Liturgy several hundreds of participants formed columns and marched to the "Bandshell" in Central Park, where a two and a half hour program was held. The Parade's Grand Marshal was Lt. Gov. Mario Cuomo of New York State, while its chairman was Al Mannari, of the Catholic War Veterans of Queens, N.Y. Again, the Ukrainian group was at the head of the marching columns. Lt. Governor Cuomo was the principal speaker at the 80th anniversary of Ukraine's independence observance last January in New York City.

Despite the heat, several hundreds of people packed the "Bandshell" open-air area. The program began with the rendition of the American national anthem by Helmi Mandsalu (Estonia), while the "Pledge of Allegiance" was executed by Jerry Bianchi, past State Commander of the Catholic War Veterans. Rev. Clint Padgitt, pastor of the German Seamen's Mission in New York, delivered the invocation.

In turn, Horst Uhlich, chairman of the Captive Nations Committee of New York, delivered introductory remarks, stressing the importance of the captive nations, especially now, when the USSR in a blatant invasion conquered Afghanistan and made it a new captive nation.

He also introduced Mrs. Mary Dushnyck, UNA vice president and a member of the UCCA National Council, to act as master of ceremonies, who subsequently conducted the program.

SPEECHES BY PROMINENT LEADERS

Most of the speakers assailed the Soviet Union for its brutal treatment of the captive nations, its insidious policy of Russification and genocide and its continuous direct and indirect aggression. These speakers included: Lt. Governor Mario Cuomo, Dr. Ivan Docheff, honorary chairman of the Captive Nations Committee of New York; Dr. K. C. Dunn, Republic of China (Taiwan), Al D'Amato, Supervisor of Hempstead, who is a Republican candidate for the office of U.S. Senator from New York; Dr. Askold Lozynsky, a UCCA vice-president and its coordinator of youth and student organizations; S. Sultan Mansur, president of the Turkestani National Organization in the U.S.A., and Dr. B. A. Zikria, professor at Columbia University's College of Physicians and Surgeons, who represented Afghanistan.

Dr. Zikria in his high-pitched and powerful address assailed the Soviet Union for its outright genocide of the Afghan people. He charged that scores of thousands of Afghan men, women and children were killed at random, that the Soviet secret police arrested over 100,000 Afghan political prisoners and that at least 1,000,000 Afghans were made homeless and forced to flee abroad. He called on the free world to give unstinted support to all captive nations which fight Soviet Russian imperialism and slavery. He was interrupted with enthusiastic applause at several points.

Special Proclamations on Captive Nations Week were read.

President Carter's Proclamation—Doris Neugebaur (Germany); Governor Carey's—Silvia Bogdanovics (Latvia) and Mayor Koch's—Adriana Manta (Romania). A letter from the White House to Mr. Uhlich was read by Mrs. Dushnyck. The Resolutions were read by Dr. Edward Rubei (Estonia), and which were adopted unanimously.

ENTERTAINMENT PART

In the entertainment part of the program, coordinated by Mrs. Frederike Tanner (Estonia), the following groups took part:

The Ukrainian American Youth Association (SUMA) dance group of Yonkers, N.Y. coordinated by M. Burchak, and directed by Volodymyr Uzdeychuk and accompanied by accordionist Stefan Shcherbiy; Mrs. Perus Janatan, Turkestani dancer, accompanied by Messrs. Kemal and Batou; the Chinese Dance Studio Association under the direction of Mrs. Bibiana Shieh; the Estonian Long Island Dance Group, directed by Rauno Joka, and the Young Romanian Vocal Group, accompanied by Mihai Ionescu.

Mr. Uhlich then presented Captive Nations gold pins to Lt. Governor Cuomo, Dr. Dunn and Dr. Docheff, and to members of the Committee in recognition of their work for the captive nations. Also, Mrs. Helga Ozolins (Latvia) presented a bouquet of roses to Mr. Cuomo.

Representatives of the Ukrainian organizations included Ivan Bazarko and Dr. Walter Dushnyck, (UCCA Executive Board); Michael Spontak, president of the United Ukrainian American Organizations of Greater New York, (UCCA), who also is a vice-chairman of the Captive Nations Committee of New York; Fornel Wasylyk, head of the SUMA Center of New York, who brought several SUMA members in uniform; Dr. Alexander Sokolyszyn, press chairman of the Captive Nations Committee of New York; Oleksa

Kalynyk from SVU (Union for the Liberation of Ukraine), and others.

At the end of the program it was announced that on Sunday, July 20, 1980 another program-observance of Captive Nations Week, sponsored by Americans to Free the Captive Nations, headed by Dr. Valentyna Kalynyk, will be held at Liberty Island in New York.

Also, on that same day, July 20, 1980, at noon a protest-demonstration against the Moscow Olympics on East 67th Street in New York City, sponsored by some 50 American and ethnic organizations.

The New York popular daily, The News World, published on Sunday July 13, 1980 a 12-page supplement dedicated to the captive nations. Among the authors of several articles is UCCA President Prof. Lev E. Dobriansky and Dr. Walter Dushnyck, editor of The Ukrainian Quarterly.

New York dailies, such as the Daily News on Monday, July 14, 1980, and The News World had a coverage of the captive nations Liturgy at St. Patrick's Cathedral and a whole page of pictures, including the Ukrainian dancers from Yonkers, N.Y., respectively. Also New York's Channel 4 TV Station covered the program in Central Park briefly on its news broadcast at 6:00 P.M. on Sunday.

EMPIRE WITHIN EMPIRE (EXCLUDING SATELLITES): SOVIET RUSSIA COMPRISED OF 14 CAPTIVE NATIONS

There are 50 nationality groups within the Soviet Union with populations of 100,000 or more, and 22 have more than a million each. The Soviet Union is called the Union of Socialist Soviet Republics (USSR). This is a "paper fiction." They are in actuality colonies. Ronald Reagan recently wrote . . . "The central authorities try, sometimes cruelly, sometimes subtly, to replace the national languages and traditions with common Soviet traditions and the Russian language."

There are 14 'republics' within the USSR. All of these are former countries which attempted to establish their independence of Russia after the revolution in 1918. The so-called Baltic states, Lithuania, Latvia, and Estonia, were immediately successful, and were able to remain independent until 1939 when they were occupied by the Russians on a pretext. The balance lost their freedom between 1918 and 1924. All these countries had established their independence and their efforts were cruelly and ruthlessly crushed by Lenin as soon as he consolidated his power.

UKRAINE

Perhaps most cruelly persecuted was Ukraine, the largest Slavic nation within the USSR, which contains 50 million people, comprised 77 percent of nationalistic, patriotic Ukrainians. The balance are Jews, Poles, Germans, Greeks, and Albanians. After some 200 years of Russian domination, Ukraine proclaimed its full independence on January 22, 1918, and for more than three years it fought for its preservation, but succumbed to the superior force of the Communists in 1920. One eye witness recounts concerning those grim days: "Twelve Ukrainian doctors were shot in the streets, even though they were wearing armbands . . . Also 400 pupils of the Ukrainian high school, aged about 14, were shot at the time merely for wearing insignia of the state school in their lapels. At least 5,000 people were executed within a period of three days."

Although Ukraine had suffered from famine after the revolution, it was nothing when compared to the famine of 1932 and 1933, which was artificially induced by the Russian government. Food products were forcibly taken away not only from those farmers who refused to participate in the collective system, but also from the collectives and their members. It was reported, "any item which could possibly be eaten or was of commercial significance was seized from the hungering peasants. Millions of Ukrainians, including tiny children, suffered and died because of this famine. For the past half century Ukraine has suffered untold oppression, famine, and religious persecution. However, the struggle goes on, as attested to by mass arrests of Ukrainian intellectuals.

UKRAINIAN LOVE AFFAIR

The Ukrainian youth have maintained a very strong national consciousness. This is reflected in the writing of young authors like the poet Vasyl Symonenko, who died in 1963 at the age of 29. He wrote of his love affair with Ukraine as follows:

When I speak with you Ukraine!
Ukraine, you are my prayer,
My eternal desperation
For your holy name, I am ready
To pour forth my last drop of blood!

Ukrainian youth have organized and serve as a rallying point for the populace; the Ukrainian people are still singing the national anthem. The workers have also made known their opposition through sabotage, strikes, and protests. They also fight for religious freedom. A flag was recently raised on the church tower of a village in the Skole district which read, "Christ is risen. Ukraine will arise. Death to Moscow and its lackeys."

BYELORUSSIA

This is the largest Slavic nation in the USSR, after Russia and Ukraine, and has a population of 12 million. Enslaved by czarist Russia, Byelorussia shook off its foreign yoke and proclaimed its independence on March 26, 1918, which was eventually destroyed by Russia in 1920. Nominally 'sovereign and independent,' the Byelorussian SSR is a colonial appendage of Moscow with rampant persecution of the people, their culture, language and religion.

ARMENIA

Armenia is one of the oldest countries in Europe, with a population of 2.5 million. After a long period of independence, the country was divided into 'Russian Armenia' and 'Turkish Armenia', where large numbers of Armenians were massacred by the Turks. Armenia declared its independence on May 28, 1918, but after three years of fighting, it was again divided between Turkey and Russia.

AZERBAIJAN

This country has 5.1 million people and occupies the eastern part of Transcaucasia. The Azerbaijans are Azeri Turks and of Islamic faith. The land was occupied by the Russians early in the 18th century. It declared its independence on May 28, 1918, together with Armenia and Georgia, but was defeated and absorbed into the USSR.

[From the Truth, July 1980]

DR. DOBRIANSKI CONCEIVED CAPTIVE NATIONS WEEK IDEA

WASHINGTON.—Dr. Lev. E. Dobrianski, 60, a professor of Russian economics at Georgetown University, is the man who conceived the Captive Nations Week idea that aroused the ire of Nikita Khrushchev in 1959, when it was proclaimed by President Eisenhower.

At the time the resolution was passed by Congress, Dr. Dobrianski, who was born in New York City of Americans of Ukrainian descent, said: "The impact of the Congressional Resolution lies in the fact that it includes not only the names of recognized satellites of Russia, but also countries that are now a part of the Union of Socialist Soviet Republics. The resolution marks the first time that the United States has recognized by public law that captive nations exist within the USSR."

In addition to the satellite nations were listed White Ruthenia, Armenia, Azerbaijan, Georgia, Idel-Ural, Turkestan, Ukraine, Latvia, Lithuania, and Estonia. According to Dobrianski, these nations form the basis of the Russian empire and that if they hadn't been taken by force, "Russia would be a third rate power."

When interviewed by the Chicago Tribune in 1950, Dr. Dobrianski said he got the idea for a congressional resolution recognizing the plight of captive nations at the time of Imre Nagy, premier of Hungary at the time of its unsuccessful revolt against the Kremlin.

He said his first attempt in 1958, consisted of a resolution introduced in the House by Rep. Albert Cretella (R. Conn.), which called for Presidential proclamations on independence or constitution days of 19 captive nations. The resolution died in the House judiciary committee on a tie vote. In 1959, he lumped recognition into one Captive Nations week.

[From the Truth, July 1980]

CONGRESS LENDS RINGING SUPPORT

WASHINGTON.—On the occasion of the 20th Anniversary of the proclamation of Captive Nations Week, which was signed by President Eisenhower in July, 1959, there was a general outpouring of support by members of Congress. The parade of speakers in the House of Representatives was led by Congressman Derwinski of Illinois who, as a freshman Congresaman, was one of the co-sponsors of Public Law 86 90 which created Captive Nations Week.

Congressman Derwinski is recognized as the leading friend of the 'Captive Nations', and had led the fight in Congress for 20 years, seeking to make the country more aware of its responsibilities to regaining freedom for the peoples living under communist oppression. In his remarks on the floor last year, he noted, "In only 60 years, communist imperialism has swallowed up over 2 million square miles of free nations and territories with a population close to one billion, which would never have chosen to live under the communist hammer and sickle.

CAPTIVE NATIONS—"ACHILLES HEEL" OF THE SOVIET EMPIRE

"The free world continues to be threatened by Communist military activities, subversions, espionage, and diplomatic maneuvering, but we must not lose sight of the captive peoples who suffer under the harshness of Communist rule. Given the opportunity, the peoples of the captive nations will reject the Communist dogma and the Communist governments, and our annual commemoration of Captive Nations Week and our yearlong emphasis on this subject will ultimately produce the breakup of the Soviet Empire and bring about the restoration of freedom and legitimate government to those captives of communism."

JULY 1980 AND ANOTHER CAPTIVE NATIONS WEEK

(By Vera A. Dowhan, executive secretary, National Captive Nations Committee, Inc.)

Twenty-one years ago a historic resolution was passed by the Congress of the United States and signed as a law of the land by President Dwight D. Eisenhower. Is it because Public Law 86-90, the Captive Nations Week Resolution, was passed over two decades ago in a climate when moral ethics and pride in self and country prevailed and were the zenith of the standards we set for ourselves, but no longer do or care, that twenty-one years later there are those who still ask, "What's that?", or others who dismiss it with "Ho-hum, another Captive Nations Week"? To be sure we've lived in a time of pervading acquiescence since that historic document was signed, but once again we commemorate Captive Nations Week this July 13-19.

CAPTIVE NATIONS WEEK RESOLUTION

The principles of the Captive Nations Week Resolution authorizing the annual commemoration of the Week, are as timely today as they were when first written. Briefly, the Resolution emphasizes the values and merits of our own democratic process, our love and respect for freedom, and though diverse in "racial, religious, and ethnic backgrounds," our American character spurs us on to espouse that other nations be given the opportunity to enjoy the same.

The Soviet Russian Empire through its Godless communism, has purloined the most personal liberties, including the right to worship freely. Although this was pointed out in the Resolution in 1959, Soviet Russian imperialism continues down to the present. A realistic understanding of this last remaining empire is imperative vis-a-vis our own national security.

Not only do the captive nations exist, but from the time the Resolution first listed them, their numbers have grown. Independent Statehood, the life line of a nation, is what they have lost.

The Resolution concludes with the President of the United States being "authorized and requested to issue a proclamation designating the third week in July 1959 as 'Captive Nations Week' and inviting the people of the United States to observe such week with appropriate ceremonies and activities. The President further authorized and requested to issue a similar proclamation each year until such time as freedom and independence shall have been achieved for all the captive nations of the world."

The Captive Nations Week Resolution is a public document and is available to anyone who wishes to read it.

CAPTIVE NATIONS

What constitutes a captive nation? A captive nation is a nation under Red Communist domination, including those nations within the USSR who were the first victims in the 1920 period, those in Eastern and Central Europe, in Asia, and only 90 miles from our own shores, Cuba. Once free and independent, these nations whether by political chicanery or expediency, sell-outs, outright aggression and/or invasion, were all "hugged" by the bear; certainly not an endearing hug.

For those nations within the Soviet Union things are far worse but for Ukraine, the largest non-Russian nation (50 million), even more so. Certainly no one at this stage could be totally unaware of the fact that a totalitarian government has no place in its system for basic human, civil, or religious rights. But how many are aware that in Ukraine the Catholic and Orthodox Churches have been completely genocided? The Ukrainian Catholic Church was immediately annihilated and its hierarchy and clergy incarcerated or murdered. If at this time it exists at all, it is in the catacombs. The Ukrainian Orthodox Church met the same fate, but through the years, whatever semblance of the Church remained was forceably incorporated into the present-day Russian Orthodox Church.

National identities are denied these peoples. They have been grouped into something called the "Soviets" or the "Soviet people", to imply that the Union of Soviet Socialist Republics (USSR) is a nation-state, as our United States, with one common language, Russian. Nothing could be further from the truth. They are even referred to in some circles here as Russia's "minorities", though how one can be a minority in his own country boggles the imagination; and even more ridiculous, that they are "Russia's" minorities. One need only look at a map to see that that land mass is not "Russia". The map would indicate, however, the Russian SFSR, and the captive non-Russian nations separately as either the Armenian SSR, Georgian SSR, Ukrainian SSR, Estonian SSR, Latvian SSR and so on. Common sense would dictate then, that this being so, the nations and peoples are there and could hardly be minorities. The USSR is a multinational state within whose periphery live people with neither linguistic, cultural nor racial ties with one another.

Except for the Communist governments of Albania and Yugoslavia, who for the moment still manage to stay at arm's length, the so-called satellite nations of Eastern and Central Europe—Soviet Russia's outer aggregate—though retaining their identities, were nevertheless conceived and are indirectly supported by Moscow. Red China has its own home-grown brand of communism. The captive nations of Indochina are either under the control of Soviet Russia, Red China, or are being torn apart by both. And let's not deceive ourselves, Castro's "technicians" may be in Africa, but he is totally dependent upon Moscow.

THE CAPTIVE NATIONS LIST (CNL)—WHO'S NEXT

Since 1959 the National Captive Nations Committee in Washington, D.C., has monitored the nations already captive and those vulnerable or ripe for Soviet Russia's "invitation to protect" governments of freedom-loving peoples. As a result, she has either installed herself in these lands through puppet governments, divided countries in half, or has grand designs on countries whose governments are weak and ready for plucking.

The Captive Nations list (CNL)—Who's next?

Country, People, and Year of Communist Domination	
*Armenia	1920
*Azerbaijan	1920
*Byelorussia	1920
*Cossackia	1920
*Georgia	1920
*Idel-Ural	1920
*North Caucasia	1920
*Ukraine	1920
*Far Eastern Republic	1922
*Turkestan	1922
Mongolia	1924
*Estonia	1940
*Latvia	1940
*Lithuania	1940
Albania	1946
Bulgaria	1946
Yugoslavia (Serbs, Croats, Slovenians, etc.)	1946
Poland	1947
Rumania	1947
Czechoslovakia	1948
North Korea	1948
Hungary	1949
East Germany	1949
Mainland China	1949
Tibet	1951
North Vietnam	1954
Cuba	1960
Cambodia	1975
South Vietnam	1975
Laos	1975
Afghanistan	1980

(*Denotes countries absorbed into U.S.S.R.)

Who's next? Iran? Nicaragua? Pakistan? North Yemen? Angola? Ethiopia? Saudi Arabia? Mozambique? Republic of China? South Korea?

Now that we have seen the list what has changed, or what, purported to have changed, remains the same after all this time. If the captive nations list is any indication, nothing has changed and everything remains the same and in Moscow's favor as evidenced, by the inclusion this year, of Afghanistan as a captive nation.

PERPETUATED MYTHS

Our Chairman, Dr. Lev E. Dobriansky of Georgetown University, was once told that what he was trying to teach was a Herculean task. Education is always a Herculean task. A personal friend of mine, Edward C. Smith who teaches at American University and the Heights Study Center in Washington, D.C., wrote an excellent article on "How to Teach", published in the June 19 issue of the *Catholic Standard*. His theme dealt with "the rigors and rewards of the teaching profession" and he explained three methods of instruction available to teachers. He said, "they can either teach themselves, teach their subjects' or teach their students."

His last two points are basic to teaching and learning whether in a classroom environment or not. Of importance is the desire to learn; the desire to increase one's collection of knowledge. Fundamentally, the subject of the captive nations is totalitarianism versus democracy, and the facts and figures collected over the years substantiate each concept's worth. Those who choose to remain arrogant and foolish would debate any teacher under any circumstances.

Preconceived, perpetuated myths on "Russia" and the captive nations abound—within our bureaucracy, academia and extremely sad, our media, which seems to derive an almost hubristic delight in either ignoring or denigrating this vital issue. Although information has been made available to them over the years, they prefer to view the situation as they perceive it. Whether they realize the disservice they are rendering our country is anybody's guess.

When Josep Broz Tito died earlier this year, the accolades showered upon him were overwhelming. Along with being hailed as a great leader, he was lauded for having saved Yugoslavia for the Yugoslavs. At what price? For those eager to beatify him, lest they have forgotten. Tito was also a totalitarian and a murderer. In our Washington newspapers at least, I followed the account carefully. I saw no mention of Cardinal Aloysius Stepinac's house arrest and confinement when religion, as always, was the first to be persecuted; or on murdered (on direct orders of Tito), General Draza Mikhailovich, the Partisan leader who fought for a non-Communist Yugoslavia; nor on the Yugoslavian masses—those fortunate enough to survive concentration camps, make it to displaced persons camps and eventually, resettlement in the diaspora—and those less fortunate who perished.

I have great respect for Aleksandr Solzhenytsin and he remains a giant among men. He is a prolific writer. Nobel prize recipient, a former prisoner of the Gulag Archipelago, a defender of dissidents' rights both Russian and non-Russian, and a man with great spiritual values. But of late he, too, has been making indiscriminate statements.

In September, 1973 Solzhenytsin wrote a letter to the Kremlin leaders and, among other things, told them to face the fact that Communism was bankrupt and advocated that they withdraw to their own natural Russian borders. Very simply, to remove themselves from the non-Russian Republics. Suddenly, however, Solzhenytsin's aesthetic and moral values seem to have turned into almost polemic travesty. In the Spring 1980 issue of *Foreign Affairs*, he denounces the Captive Nations Week Resolution as "notorious." He seems to have re-developed the age-old "Mother Russia" complex in defending her imperialism. He even questioned why Russia is not considered a captive nation. He's obviously read the Resolution, but how he reasons that a country can invade itself is highly speculative even though, as in the

case of Russia, the Russian people have been captive of their own barbaric system of government first under the Czars and now under the Commissars. In light of Afghanistan, his sudden insensitivity toward continued Soviet Russian expansionism is questionable. Ripe is the Middle East, Africa—especially the strategic sea lanes of the Indian Ocean and the Horn—and Latin America.

Castro's Cuba has failed. The recent mass exodus attests to this. From the original 10,000 on the grounds of the Peruvian Embassy, the number grew to well over 100,000 boating their way out of his Caribbean paradise. How unfortunate that our Government did not have an effective policy to cope with the situation and turn it around to our advantage. To be sure, stories could have been told that would have perked up even the ears of those who dispute (and let's face it, they offered precious little opportunity to refute) the Soviet Russian government's designs for Red lakes in the Caribbean, and South and Central America. For many of the Cuban refugees, an outdoor Mass was the first they had ever attended.

Today, many consider the above reflections as "relics" of a "Cold War" long ended, and "warmonger" has become a popular cliché against those who advocate practical reality rather than an imaginative concept. Yet Soviet Russia Imperio-Colonialism is as alive today as the captive nations whose list, since 1920, continues to swell.

In conclusion, if anyone understands totalitarianism it is Pope John Paul II, who lived with it first under the Nazis and then the Russians. His expressions of sadness and regret were reflected last year during his extraordinary visit to Poland when he prayed for the "Silent Church" within the USSR and for the peoples of the neighboring Communist countries whose governments would not permit them to travel to Poland to participate in the sacred services. Constantly, he pleads for freedom with justice for all the peoples of the world.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. RUSSO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LOEFFLER) to revise and extend their remarks and include extraneous material:)

Mr. RUDD, for 5 minutes, today.

Mr. STANGELAND, for 5 minutes, today.

Mr. DOUGHERTY, for 60 minutes, on September 16.

Mr. DERWINSKI, for 60 minutes, on September 16.

(The following Members (at the request of Mr. STENHOLM) to revise and extend their remarks and include extraneous material:)

Mr. COELHO, for 5 minutes, today.

Mr. GONZALEZ, for 15 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. PREYER, for 5 minutes, today.

Mr. WOLFF, for 15 minutes, today.

Mr. HARKIN, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. WON PAT (at the request of Mr. NEDZI), immediately preceding vote on the Nedzi amendment to H.R. 7301 in the Committee of the Whole today.

Mr. BROOKS, preceding vote on the Nedzi amendment to H.R. 7301 in the Committee of the Whole today.

Mr. SEIBERLING, immediately preceding vote on final passage of H.R. 7301 in the House today.

Mr. STRATTON, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $4,695.

Mr. BIAGGI, immediately prior to the vote on House Resolution 745, today.

(The following Members (at the request of Mr. LOEFFLER) and to include extraneous matter:)

Mr. SEBELIUS.

Mr. BROWN of Ohio.

Mr. DOUGHERTY.

Mr. ROUSSELOT in two instances.

Mr. BROOMFIELD.

Mr. PAUL.

Mr. COUGHLIN.

Mr. ASHBROOK in two instances.

Mr. LEE.

Mr. GILMAN.

Mr. MARLENEE.

Mr. CONTE.

Mr. DORNAN.

Mr. SHUSTER.

Mr. FORD of Michigan.

(The following Members (at the request of Mr. STENHOLM) and to include extraneous matter:)

Mr. WOLFF in two instances.

Mr. ADDABBO.

Mr. HAMILTON.

Mr. EDWARDS of California.

Mr. EDGAR.

Mr. FAUNTROY.

Mr. PEPPER.

Mr. ENGLISH.

Mr. FOUNTAIN.

Mr. BOLAND.

Mrs. SCHROEDER.

Mr. STARK.

Mr. ECKHARDT.

Mr. MCDONALD in four instances.

Mr. KOGOVSEK.

Mr. HARRIS in two instances.

Mr. AMBRO.

Mr. STUDDS.

Mr. OBERSTAR.

Mr. THOMPSON.

Mr. CORRADA.

Mr. ASHLEY.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1519. An act to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration, to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944; to the Committee on Interior and Insular Affairs.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 299. An act to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

ADJOURNMENT

Mr. HARKIN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 35 minutes p.m.), the House adjourned until tomorrow, Thursday, September 11, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5265. A letter from the Assistant Secretary of the Army (Installations, Logistics, and Financial Management), transmitting notice of the proposed conversion to contractor performance of the total installation functions at Hawthorne Army Ammunition Plant, Nev., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5266. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment to Germany (transmittal No. 80-99), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5267. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment to Australia (transmittal No. 80-100), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5268. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Jack R. Binns, Ambassador-designate to Honduras, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5269. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Germany (transmittal No. 80-99), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5270. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Australia (transmittal No. 80-100), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5271. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Australia (transmittal No. 80-101), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5272. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment and services to Belgium (transmittal No. 80-102), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5273. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment to Canada (transmittal No. 80-104), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5274. A letter from the Vice President for Government Affairs, National Railroad Passenger Corporation, transmitting a report covering the month of June 1980, on the average number of passengers per day on board each train operated, and the ontime performance at the final destination of each train operated, by route and by railroad, pursuant to section 308(a)(2) of the Rail Passenger Service Act of 1970, as amended; to the Committee on Interstate and Foreign Commerce.

5275. A letter from the Attorney General, transmitting a report on the formulation of priorities for the investigation and prosecution of white collar crime; to the Committee on the Judiciary.

5276. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of certain aliens, pursuant to section 212(d)(6) of the Act; to the Committee on the Judiciary.

5277. A letter from the Assistant Secretary of the Army (Civil Works), transmitting a Corps of Engineers report on the Raritan River, and the Washington Canal and South River, N.J., in response to resolutions by the Committees on Rivers and Harbors adopted November 13, 1945, and the Committee on Public Works adopted August 25, 1960, of the U.S. House of Representatives; to the Committee on Public Works and Transportation.

5278. A letter from the Comptroller General of the United States, transmitting a report on the foreign tax credit and its effect on U.S. energy policy (EMD-80-86, September 10, 1980); jointly, to the Committees on Government Operations and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BENNETT: Committee on Armed Services. H.R. 7878. A bill to authorize the transfer of certain naval vessels; with amendment (Rept. No. 96-1310). Referred to the Committee of the Whole House on the State of the Union.

Mr. WHITTEN: Committee on Appropriations. House Joint Resolution 607. Making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980. (Rept. No. 96-1311). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS: Committee on the Judiciary. H.R. 7084. A bill to amend chapter 207 of title 18, United States Code, relating to pretrial services; with amendment (Rept. No. 96-1312). Referred to the Committee of the Whole House on the State of the Union.

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 7974. A bill to revise the composition of the judicial councils of the Federal judicial circuits, to establish a procedure for the processing of complaints against Federal judges, and for other purposes. (Rept. No. 96-1313). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 7825. A bill to establish the Ice Age National Scenic Trail, and for other purposes; with amendment (Rept. No. 1314). Referred to the Committee of the Whole House on the State of the Union.

Mr. NICHOLS: Committee on Armed Services. S. 91. A bill to amend title 10, United States Code, to remove certain inequities in the Survivor Benefit Plan provided for under chapter 73 of such title, and for other purposes; with amendment (Rept. No. 96-1315). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 7941. A bill to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act (Rept. No. 96-1316). Referred to the Committee of the Whole House on the State of the Union.

SUBSEQUENT ACTION ON A BILL SEQUENTIALLY REFERRED UNDER TIME LIMITATION

Under clause 5 of rule X, the following action was taken by the Speaker:

The Committee on Interior and Insular Affairs consideration of the bill (H.R. 6959) to provide for the conservation and enhancement of the salmon and steelhead resources of Washington State, assistance to the treaty and nontreaty harvesters of those resources, and for other purposes, extended for an additional period ending not later than September 19, 1980.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

Mr. ULLMAN:

H.R. 8094. A bill to clarify the tax treatment of the proceeds from the condemnation of certain forest lands in trust for the Klamath Indian Tribe; to the Committee on Ways and Means.

By Mr. ASHLEY:

H.R. 8095. A bill authorizing certain Great Lakes maritime programs to extend the traditional shipping season, to provide for the filing of tariffs by common carriers by water in the foreign commerce of the United States, to eliminate St. Lawrence Seaway financial inequities, and for other purposes; jointly, to the Committees on Public Works and Transportation and Merchant Marine and Fisheries.

By Mr. PHILLIP BURTON:

H.R. 8096. A bill to amend the Wild and Scenic Rivers Act to provide for the study of certain river segments for potential inclusion in the national wild and scenic rivers system and to designate certain river segments for inclusion in such system; and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. DAVIS of Michigan:

H.R. 8097. A bill to amend Public Law 94-565, relating to payments in lieu of taxes, to provide that the amount of the Federal payment to units of local government within a State for certain Federal property located within their jurisdiction shall not be less than the amount which such unit would be eligible to receive from the State as a State payment in lieu of taxes with respect to such property if the property were owned by the State rather than by the United States; to the Committee on Interior and Insular Affairs.

By Mr. DUNCAN of Tennessee:

H.R. 8098. A bill to require the Internal Revenue Service to follow *Frederick v. United States* in the administration of the Internal Revenue Code of 1954 with respect to transportation expenses; to the Committee on Ways and Means.

By Mr. HARRIS:

H.R. 8099. A bill to amend the Internal Revenue Code of 1954 to allow an individual to establish a tax-exempt trust fund for the support of a handicapped dependent; to the Committee on Ways and Means.

By Mr. PETRI (for himself, Mr. PAMETTA, and Mr. DUNCAN of Tennessee):

H.R. 8100. A bill to amend the Internal Revenue Code of 1954 to encourage the production of alcohol for fuel use by repealing the occupational tax on manufacturers of stills and condensers; to the Committee on Ways and Means.

By Mr. STOCKMAN:

H.R. 8101. A bill to amend the Solid Waste Disposal Act to provide for a 5-year program of assistance to the States to address abandoned and inactive hazardous waste sites which pose a significant threat to public health and safety, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. SYNAR:

H.R. 8102. A bill to convey certain Chilocco Indian school lands at Chilocco, Okla., to the Cherokee Nation; to the Committee on Interior and Insular Affairs.

By Mr. THOMPSON (for himself, Mr. MINETA, and Mr. CONTE):

H.R. 8103. A bill to provide for the designation of the Smithsonian Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History respectively; to the Committee on House Administration.

By Mr. WYDLER:

H.R. 8104. A bill to amend the research and development provisions X of the Resource Conservation and Recovery Act of 1976, to provide for a study of the problem of toxic chemical and hazardous waste and for research in and development of possible solutions, and for other purposes; Jointly, to the Committees on Interstate and Foreign Commerce and Science and Technology.

By Mrs. HOLT (for herself, Mr. BOWEN, Mr. EDWARDS of Oklahoma, Mr. FAZIO, Mr. HORTON, Mr. LAGOMARSINO, Mr. MCCLORY, Mr. MCDONALD, Mr. PEPPER, Mr. SPENCE, and Mr. WINN):

H.J. Res. 608. Joint resolution to authorize and request the President to issue a proclamation designating January 25, 1981, the birthday of Robert Burns, as Scottish Heritage Day; to the Committee on Post Office and Civil Service.

By Mr. ENGLISH (for himself, Mr. STANGELAND, Mr. HIGHTOWER, Mr. STENHOLM, Mr. DASCHLE, Mr. HANCE, Mr. MARLENEE, and Mr. JEFFRIES):

H. Con. Res. 431. Concurrent resolution expressing the sense of the Congress with respect to the export of wheat, and for other purposes; jointly, to the Committee on Agriculture and Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 76: Mr. BEARD of Tennessee, Mr. LEACH of Louisiana, Mr. HYDE, Mr. STANGELAND, Mr. MOTTL, Mr. EVANS of Georgia, Mr. LIVINGSTON, Mr. BROYHILL, Mr. MARKS, Mr. COLLINS of Texas, Mr. GILMAN, Mrs. BYRON, Mrs. HOLT, Mr. GINGRICH, Mr. GARCIA, Mr. WINN, and Mr. COURTER.

H.R. 1568: Mr. AKAKA.

H.R. 2342: Mr. YATRON.

H.R. 5225: Mr. LEWIS.

H.R. 7050: Mr. APPLEGATE, Mr. BAILEY, Mr. BENJAMIN, Mr. CONYERS, Mr. ROBERT W. DANIEL, JR., Mr. FITHIAN, Mr. GAYDOS, Mr. GOLDWATER, Mr. JENRETTE, Mr. KOGOVSEK, Mr. O'BRIEN, Mr. RAHALL, Mr. RUDD, and Mr. SHUMWAY.

H.R. 7505: Mr. SHUMWAY.

H.R. 7541: Mr. SEIBERLING, Mr. VENTO, and Mr. STOKES.

H.R. 7568: Mrs. SPELLMAN.

H.R. 8079: Mr. HUTCHINSON, Mr. RAHALL, and Mr. STAGGERS.

H.J. Res. 69: Mr. CHARLES WILSON of Texas and Mr. TRAXLER.

H.J. Res. 471: Mr. LEDERER, Mr. SCHEUER, Mr. CORRADA, Mr. CARTER, Mr. LUNDINE, and Mrs. COLLINS of Illinois.

H.J. Res. 511: Mr. WIRTH.

H.J. Res. 568: Mr. ANDERSON of California, Mr. FAZIO, Mr. TAUKE, and Mr. MITCHELL of New York.

H.J. Res. 579: Mrs. SNOWE, Mr. RHODES, Mr. ULLMAN, Mr. CONABLE, Mr. BOLAND, Mr. ASHLEY, Mr. HAMILTON, Mr. STARK, Mr. WAXMAN, Mr. WEISS, Mr. CORCORAN, Mr. WHITEHURST, Mr. FAZIO, Mr. WOLFF, Mr. WOLPE, Mr. OTTINGER, Mr. BEREUTER, Mr. BARNES, Mr. PORTER, Mr. WINN, Mr. EDGAR, Mr. MAGUIRE, Mr. GUDGER, Mr. MCKINNEY, Mr. LEHMAN, Mr. STUDDS, Mr. HUGHES, Mr. SEIBERLING, Mr. ERTEL, Mr. LAGOMARSINO, Mr. SWIFT, Mr. MOFFETT, Mr. SIMON, Mr. FORD of Tennessee, Mr. BEDELL, Mr. DUNCAN of Oregon, Mr. BRODHEAD, Mr. PANETTA, Mr. MITCHELL of Maryland, Mr. KOSTMAYER, Mr. FITHIAN, Mr. KASTENMEIER, Mr. COELHO, Mr. PEPPER, Mr. MOORHEAD of Pennsylvania, Mr. CONYERS, Mr. JEFFORDS, Mr. APPLEGATE, Mr. CARR, Mr. MCCLOSKEY, Mr. KILDEE, Mr. BEILENSON, Mr. PHILLIP BURTON, Mr. HEFTEL, Mr. GOODLING, Mr. SPENCE, Mr. GORE, Mr. LOTT, and Mr. SYNAR.

H.J. Res. 590: Mr. MATTOX.

H.J. Res. 605: Mr. EVANS of the Virgin Islands.

H. Con. Res. 409: Mr. BROOMFIELD, Mr. FOUNTAIN, Mr. GOODLING, Mr. PRITCHARD, Mr. WINN, Mr. BAUMAN, Mr. MCDONALD, and Mr. DUNCAN of Tennessee.

H. Con. Res. 422: Mr. ERDAHL and Mr. ROBINSON.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

428. By the SPEAKER: Petition of the national convention, Reserve Officers Association of the United States, Pittsburgh, Pa., relative to national defense; to the Committee on Armed Services.

429. Also, petition of the national convention, Reserve Officers Association of the United States, Pittsburgh, Pa., relative to the American hostages in Iran; to the Committee on Foreign Affairs.

430. Also, petition of the Board of Supervisors, Milwaukee County, Wis., relative to investigation of the incarceration of Japanese Americans during World War II; to the Committee on the Judiciary.

431. Also, petition of the national convention, Reserve Officers Association of the United States, Pittsburgh, Pa., relative to extending the earned income credit to U.S. servicemen stationed overseas; to the Committee on Ways and Means.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3580

By Mr. FOLEY:

—Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

Section 1. This Act may be cited as the "Rural Development Policy Act of 1980".

RURAL DEVELOPMENT POLICY

SEC. 2. The Rural Development Act of 1972 (Public Law 92-419; 86 Stat. 657) is amended by adding at the end thereof a new section as follows:

"SEC. 607. RURAL DEVELOPMENT POLICY.—(a) The Secretary of Agriculture shall provide leadership within the executive branch for, and shall assume responsibility for coordinating, a nationwide rural development program using the services of executive branch departments and agencies, including, but not limited to, the agencies, bureaus, offices, and services of the Department of Agriculture, in coordination with rural development programs of State and local governments.

"(b) POLICY DEVELOPMENT.—(1) The Secretary shall conduct a systematic review of Federal programs affecting rural areas to (A) determine whether such areas are benefiting from such programs in an equitable proportion to the benefits received by urban areas and (B) identify any factors that may restrict accessibility to such programs in rural areas or limit participation in such programs.

"(2) Subject to the Privacy Act of 1974, the Secretary may secure directly from any Federal department or agency information necessary to carry out the Secretary's duties under this section. Upon request of the Secretary under this paragraph, the head of any such Federal department or agency shall furnish such information to the Secretary.

"(3) The Secretary shall develop a process through which multistate, State, substate, and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis. Such process may include the use of those rural development experts, advisors, and consultants that the Secretary deems appropriate, as well as the establishment of temporary advisory committees under the terms of the Federal Advisory Committee Act.

"(4) The Secretary may undertake cooperative efforts with other Federal departments and agencies to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas. The Secretary may request the heads of other Federal departments and agencies to participate in any working groups that the Secretary deems necessary to carry out the purposes of this section.

"(5) The Secretary may hold public hearings and receive comments on any matter that the Secretary determines may have a significant impact on rural development or the economic development of rural communities.

"(c) RURAL DEVELOPMENT STRATEGY.—(1) The Secretary shall prepare a comprehensive rural development strategy based on the needs, goals, objectives, plans, and recommendations of local communities, substate areas, States, and multistate regions, which is designed to—

"(A) maximize the effectiveness, increase the responsiveness, and improve the delivery of Federal programs to rural areas;

"(B) increase the coordination of Federal programs with the development needs, objectives, and resources of local communities, substate areas, States, and multistate regions; and

"(C) achieve the most effective combinations of Federal, State, and local resources to meet the needs of rural areas for orderly growth and development.

"(2) The rural development strategy shall take into account the need to—

"(A) improve the economic well-being of all rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

"(B) improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

"(C) improve State and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for State and local officials, particularly in small rural communities;

"(D) strengthen the family farm system; and

"(E) maintain and protect the environment and natural resources of rural areas.

"(3) The rural development strategy developed under this subsection shall be for the fiscal year ending September 30, 1982, and updated for each fiscal year thereafter.

"(4) The Secretary shall hold public hearings and receive such suggestions and recommendations as the Secretary deems appropriate during the preparation of the rural development strategy and the annual updates to the strategy.

"(5) The rural development strategy and the annual updates to the strategy shall be transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry by January 31 of the calendar year immediately preceding the beginning of the appropriate fiscal year.

"(6) The rural development strategy and each annual update of the strategy shall contain an analysis of the budget recommendations of the President for the fiscal year following the transmittal of the strategy or update of the strategy and of all the available budget projections of the President for subsequent fiscal years, and projections regarding the budget that are relevant or essential to the rural development policy and the rural development strategy developed under this subsection. Each annual update shall also contain a detailed statement of the findings and conclusions of the Secretary regarding the implementation during the preceding fiscal year of the rural development strategy, including any revisions of the strategy, any recommended legislation to improve the rural development effort of the Federal government, and an evaluation of and recommendations regarding the rural development information system required under section 306(a)(12) of the Consolidated Farm and Rural Development Act.

"(d) STRATEGY IMPLEMENTATION.—The Secretary shall ensure the effective implementation of the rural development strategy and maximize coordination of Federal programs affecting rural areas through a systematic effort to—

"(1) improve communication and encourage cooperation among Federal departments and agencies in the administration of rural development programs;

"(2) eliminate conflicts, duplication, and gaps in program coverage, and resolve contradictions and inconsistencies in the objectives, administration, and effects of rural development programs;

"(3) facilitate the sharing or common location of field offices of Federal agencies administering similar or complementary programs and unification of delivery systems, where feasible, to maximize convenience and accessibility of such agencies and programs to rural residents;

"(4) facilitate and expedite joint funding of rural projects through Federal programs;

"(5) correct administrative problems in Federal programs that delay or hinder the effective delivery of services, assistance, or benefits to rural areas; and

"(6) simplify, standardize, and reduce the complexity of applications, reports, and other forms required under Federal rural development programs.

UNDER SECRETARY OF AGRICULTURE FOR SMALL COMMUNITY AND RURAL DEVELOPMENT

SEC. 3. (a) There is hereby established in the Department of Agriculture the position of Under Secretary of Agriculture for Small Community and Rural Development to be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary of Agriculture for Small Community and Rural Development may exercise such functions and perform such duties related to small community and rural development, and shall perform such other duties, as may be required by law or prescribed by the Secretary of Agriculture.

(b) Secretary 5314 of title 5, United States Code, is amended by adding at the end thereof a new paragraph as follows:

"Under Secretary of Agriculture for Small Community and Rural Development.".

RURAL DEVELOPMENT ACT REAUTHORIZATION AND AMENDMENTS

SEC. 4. The Rural Development Act of 1972 is amended by—

(1) in section 503(a) (7 U.S.C. 2663(a)), striking out "three" and "1979" and inserting in lieu thereof "five" and "1981", respectively;

(2) in section 503(c) (7 U.S.C. 2663(c)), striking out "and September 30, 1979" and inserting in lieu thereof "September 30, 1979, September 30, 1980, and September 30, 1981";

(3) in section 503(f) (7 U.S.C. 2663(f)), inserting immediately after the first sentence a new sentence as follows: "In those States that contain more than one institution or university accepting the benefits of the Morrill Act of 1862 or 1890 (or both), including Tuskegee Institute, such annual plan and budget shall be jointly developed by mutual agreement of the chief administrative officers of all such institutions or universities.";

(4) in section 507(b) (7 U.S.C. 2667(b)), inserting ", Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands of the United States," after "several States"; and

(5) in section 603(c), repealing paragraph (2); in paragraph (1), striking out "(1)" after the subsection designation; and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

REVISED STATUTES AMENDMENTS

SEC. 5. Section 526(b) of the Revised Statutes (7 U.S.C. 2204(b)) is amended by—

(1) striking out the first and second sentences thereof;

(2) in the third sentence striking out "and" before "rural industrialization" and inserting before the period at the end thereof the following: ", and technology appropriate to small and moderate-sized family farming operations, and any other problem that the Secretary may determine has an effect upon the economic development or the quality of life in rural areas".

ELIMINATION OF REPORTS

SEC. 6. Section 901 of the Agricultural Act of 1970 (Public Law 91-524, 84 Stat. 1303; 42 U.S.C. 3122) is amended by striking out the last sentence of subsection (b) and repealing subsections (c) through (f).

TECHNICAL ASSISTANCE AND INFORMATION SYSTEM

SEC. 7. Section 306(a) of the Consolidated Farm and Rural Development Act (Public Law 87-128, 75 Stat. 307; 7 U.S.C. 1926(a)) is amended by—

(1) amending paragraph (11) to read as follows:

"(11) The Secretary may make grants, not to exceed $15,000,000 annually, to public bodies or such other agencies as the Secretary may select to provide rural development technical assistance, rural community leadership development, and community and areawide rural development planning.";

(2) redesignating paragraphs (12), (13), and (14) as paragraphs (13), (14), and (15), respectively; and

(3) inserting immediately after paragraph (11) a new paragraph (12) as follows:

"(12)(A) The Secretary shall, in cooperation with institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, establish a system for the dissemination of information and technical assistance on Federally sponsored or funded programs. The system shall be for the use of institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, and other persons concerned with rural development.

"(B) The informational system developed under this paragraph shall contain all pertinent information, including, but not limited to, information contained in the Federal Procurement Data System, Federal Assistance Program Retrieval System, Catalogue of Federal Domestic Assistance, Geographic Distribution of Federal Funds, United States Census, and Code of Federal Regulations.

"(C) The Secretary shall obtain from all other Federal departments and agencies comprehensive, relevant, and applicable information on programs under their jurisdiction that are operated in rural areas.

"(D) Of the sums authorized to be appropriated to carry out the provisions of this Act, not more than $1,000,000 per year may be expended to carry out the provisions of this paragraph.".

LIMITATIONS

SEC. 8. No funds are authorized to be appropriated pursuant to sections 4 and 7 of this Act and the amendments made by those sections for the fiscal year ending September 30, 1980, in excess of such amounts as have been appropriated on or before the date of enactment of this Act for such fiscal year.

WEB RURAL WATER DEVELOPMENT PROJECT

SEC. 9. (a) There are authorized to be appropriated to the Secretary of the Interior for the fiscal year ending September 30, 1981, $1,900,000, which shall be used to plan and construct a rural water treatment and distribution system in portions of, but not limited to, Walworth, Edmunds, Brown, Campbell, Potter, McPherson, Faulk, Hand, Spink, and Day Counties in South Dakota that will furnish water for domestic and other purposes, hereafter referred to in this section as "the WEB Rural Water Development Project", as generally proposed by the WEB Water Development Association, Incorporated, and as described in the special report by the Association of January 1980.

(b) Effective October 1, 1981, there are authorized to be appropriated to the Secretary of the Interior for the planning and construction of the WEB Rural Water Development project $68,100,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 1980, as indicated by the engineering cost indices applicable to the types of construction involved herein: *Provided*, That such authorization for appropriations shall not become effective until such time as legislation has been enacted deauthorizing the Oahe Unit, initially authorized by the Act of August 3, 1968 (Public Law 90-453; 82 Stat. 624): *Provided further*, That if that Act has not been enacted by September 30, 1981, the authorization for appropriations provided for in this subsection shall terminate.

(c) Any funds appropriated under this section shall remain available until expended.

(d) Any funds appropriated under this section shall be transferred by the Secretary of the Interior to the Secretary of Agriculture when such funds are appropriated. The Secretary of the Interior may enter into cooperative memoranda of understanding with the Secretary of Agriculture as may be required to provide services to carry out the purposes of this section.

(e) The Secretary of Agriculture shall use any funds transferred under subsection (d) for necessary administrative expenses, and to provide financial assistance to plan and develop the WEB Rural Water Development Project under the terms and conditions of the Consolidated Farm and Rural Development Act and the rules and regulations promulgated by the Department of Agriculture under that Act. Such funds shall be made available in a combination of grants and loans that will provide grants for not less than 75 per centum of eligible development costs and such loans as may be necessary to plan and construct the WEB Rural Water Development Project.

EFFECTIVE DATE

SEC. 10. The provisions of this Act shall become effective October 1, 1980.

And amend the title to read: "A bill to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes."

H.R. 7020

By Mr. ECKHARDT:

—Page 7, line 14, after "site" insert: "or other hazardous waste site which is not operating pursuant to a permit under section 3005(a)".

Page 7, line 24, strike out "inactive".

Page 9, line 5, strike out "inactive".

Page 10, line 14, strike out "inactive".

Page 10, line 15, before the period insert: "to which this section applies".

By Mr. GORE:

—Page 47, line 17, strike out "an" and insert in lieu thereof "a negligent"

Page 47, line 17, after "party" insert: "other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant,"

Page 48, after line 4, insert the following new paragraph, renumbering as appropriate.

(2) For purposes of subparagraph (1)(C) a defendant (including a generator, transporter, shipper, or disposer) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of any third party and that he exercised due care in light of all relevant facts and circumstances, including:

(A) exercised due care in the selection and instruction of a responsible person engaged by such defendant for the transportation, storage, treatment or disposal of said hazardous waste;

(B) provided adequate information as to the identity, quality, composition, condition, characteristics and potential hazard of the waste to such person;

(C) took reasonable measures to assure and verify that such person properly carried out the activities for which he was engaged;

(D) properly labeled, loaded and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste, and

—Page 48; line 6, after "establishes" insert "by a preponderance of the evidence".

Page 48, line 11, after "establishes" insert "by a preponderance of the evidence".

Page 48, strike out lines 16 through 20 and insert in lieu thereof:

(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the remaining costs among the parties if the court deems such apportionment appropriate. In apportioning liability under this paragraph, the court may consider factors, including:

(i) the ability of the party to demonstrate that this contribution to a discharge, release, or disposal of a hazardous substance can be distinguished;

(ii) the amount of hazardous substance involved;

(iii) the degree of toxicity of the hazardous substance involved;

(iv) the degree of involvement in the manufacture, treating, transporting, disposing of the hazardous substance; and

(v) the degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment.

Page 48, line 21 strike "this paragraph" and insert "subparagraph (A)".

—Page 47, line 25, after "costs" insert ", damages, and losses".

Page 48, in lines 2, 6, 11, and 23 after "costs" insert ", damages, and losses".

Page 49, line 1, after "COSTS" insert "DAMAGES, AND LOSSES" and after "costs" insert "damages, and losses".

Page 49, line 3, after "are" insert "(1)".

Page 49, line 9, before the period insert: ", and (2) all damages for personal injury, injury to real or personal property, and economic loss, resulting from such release or threatened release".

Page 49, line 10, after "TO WHOM LIABLE.—" insert "(1)".

Page 49, line 11, after "(b)" insert "(1)".

Page 49, after line 19, insert:

(2) The liability for damages or loss described in subsection (b)(2) shall be to the person who sustained such damages or loss. In the case of any such damages or loss to natural resources owned, controlled, or managed by the United States or by a State or local government, the liability shall be to the United States, the State, or the local government, as the case may be. No action may be brought under this section for any damages or loss described in subsection (b)(2) after the date three years after the date on which the plaintiff discovers such damages or loss, or after the date three years after the date of the enactment of the Hazardous Waste Containment Act of 1980, whichever is later.

By Mr. STOCKMAN:

(Substitute offered by Mr. STOCKMAN.)

—Strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective clean-up of dangerous hazardous waste sites is necessary to protect public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"COVERAGE O PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"PURPOSES

"SEC. 3022. (a) IN GENERAL.—The purposes of this part are to provide, through the use of Federal financial and technical assistance, for the establishment and implementation of elective State programs to assure the clean-up and containment of inactive hazardous waste sites by—

"(1) carrying out investigation and evaluation of the inactive hazardous waste disposal sites in the State;

"(2) establishing clean-up priorities among the sites, based on the danger they present to public health and safety; and

"(3) undertaking, based upon such priorities, the necessary remedial action for the protection of public health and safety from the hazardous waste associated with such sites.

(b) RECOVERY OF CLEAN-UP COSTS.—It is also a purpose of this part to assist the States in recovering, from persons liable under otherwise applicable law, the costs of State clean-up and containment activities with respect to inactive hazardous waste sites.

"DEFINITION

"SEC. 3023. For purposes of this part, the term 'inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(1) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(2) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under section 305 (including subsection (e) thereof) is required.

"FORMULA GRANTS

"SEC. 3024. (a) STATE PLAN.—Each State may, not later than 180 days after the date of the enactment of the Hazardous Waste Containment Act of 1980, submit to the Administrator a plan—

"(1) providing for the discovery and investigation by the State of inactive hazrdous waste sites;

"(2) providing for the evaluation by the State of the threat to public health and safety posed by such sites and establishing clean-up and containment priorities among those sites which present, or may present, a substantial threat to public health and safety;

"(3) containing proposed methods and criteria for determining the appropriate emergency response to, containment of, and other remedial measures to be carried out for, releases or threatened releases of hazardous waste from inactive hazardous waste sites where such releases or threatened releases pose a substantial danger to public health and safety;

"(4) setting forth appropriate roles and responsibilities for Federal, States, and local governments and for interstate and nongovernmental entites, in carrying out the plan; and

"(5) establishing an active and effective program for recovering, from persons liable under otherwise applicable law, the costs incurred by the State in the clean-up and containment of inactive hazardous waste sites.

The provisions included in the plan under paragraph (3) shall provide that the State shall have the primary responsibility for carrying out the plan. The provisions included in the plan under paragraph (5) shall insure that the State will have sufficient investigative powers, financial resources, and legal expertise to recover the maximum feasible amount of clean-up and containment expenses incurred by the State.

"(b) EPA APPROVAL.—The Administrator shall approve a State plan described in subsection (a) and submitted under this section unless he determines that the plan—

"(1) does not comply with the requirements of subsection (a) or is otherwise generally inconsistent with the purposes of this part; or

"(2) would not result in a cost-effective use of Federal funds to be made available to the State under this section.

Any State may submit to the Administrator a modification of any State plan described in subsection (a), and any such modification shall be approved by the Administrator unless he makes the determination referred to in paragraph (1) or (2) of this subsection. Each State having a plan approved under this section shall be eligible for grants under subsection (c) unless the Administrator suspends such eligibility on the basis of his determination that the State is not carrying out the plan in good faith or has not properly used prior grants under subsection (c).

"(c) GRANTS.—Upon the application of any eligible State (as determined under subsection (b)), the Administrator shall make grants to such State to assist the State in carrying out the State plan approved under this section. Such grants shall be made not more frequently than annually and shall be allocated among such States on the basis of a formula based upon population and industrial production. The Administrator shall, by rule, prescribe such formula not later than 60 days after the date of the enactment of the Hazardous Waste Containment Act of 1980. For any fiscal year after the first fiscal year in which a grant is made to a State under this section, grants shall be made by the Administrator to any State which applies for such a grant and certifies that the State plan approved under this section is being implemented.

"SUPPLEMENTAL GRANTS

"SEC. 3025. (a) GUIDELINES.—The Administrator shall promulgate guidelines for making supplemental grants to eligible States (as determined under section 3024) for purposes of assisting such States in undertaking remedial action with respect to inactive hazardous waste sites. Such guidelines shall provide that the supplemental grants shall be made only for purposes of addressing emergency situations or for purposes of assisting States which have a disproportionate number of inactive hazardous waste sites which pose substantial threats to public health or safety. The guidelines shall provide for the allocation of supplemental grants under this section among the eligible States on the basis of the Administrator's determination as to the relative amounts required to be expended by the State for cleanup and containment of inactive hazardous waste sites,

the significance of the threats to public health and safety posed by such sites, and the ability of the State to undertake remedial action without such supplemental Federal assistance.

"(b) GRANTS.—Upon the application of any eligible State (as determined under section 3024, the Administrator may make a grant to such State under this section in accordance with the guidelines prescribed under subsection (a). Any grant made to a State under this section in a fiscal year after the first fiscal year in which any grant was made to such State under this section or section 3024 shall be based upon such guidelines and on the Administrator's determination that the State has acted properly in its expenditure of funds made available to the State under this section and section 3024 in prior fiscal years.

"TECHNICAL ASSISTANCE

"SEC. 3026. The Administrator shall undertake a program of (1) research with respect to hazardous waste management and (2) providing training and technical assistance to State officers and employees engaged in hazardous waste management activities. Such program shall include research, training and technical assistance with respect to—

"(A) the evaluation of hazardous waste associated with inactive hazardous waste sites; and

"(B) emergency response actions which may be taken with respect to releases or potential releases of hazardous waste.

For purposes of the program under this section, the Administrator shall develop equipment, manuals, and other materials which will have a wide application to State programs for cleanup and containment of inactive hazardous waste sites.

"ASSISTANCE TO STATES ATTORNEYS GENERALS

"SEC. 3027. The Administrator may make grants to State attorneys general for purposes of providing not more than 50 percent of the costs of training and technical assistance for State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States.".

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 3028. (a) GRANTS.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of making grants to the States under section 3024 and section 3025:

"(1) $75,000,000 for the fiscal year 1981;

"(2) $150,000,000 for the fiscal year 1982;

"(3) $150,000,000 for the fiscal year 1983;

"(4) $75,000,000 for the fiscal year 1984; and

"(5) $50,000,000 for the fiscal year 1985.

Not less than 80 percent of the amounts appropriated under this section for any fiscal year may be used only for grants under section 3024.

"(b) RESEARCH AND TECHNICAL ASSISTANCE.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of research and technical assistance under section 3026:

"(1) $10,000,000 for the fiscal year 1981;

"(2) $15,000,000 for the fiscal year 1982;

"(3) $15,000,000 for the fiscal year 1983;

"(4) $5,000,000 for the fiscal year 1984; and

"(5) $5,000,000 for the fiscal year 1985.

"(c) ASSISTANCE TO STATE ATTORNEYS GENERAL.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of recovery assistance under section 3027:

"(1) $10,000,000 for the fiscal year 1981;

"(2) $10,000,000 for the fiscal year 1982;

"(3) $10,000,000 for the fiscal year 1983;

"(4) $10,000,000 for the fiscal year 1984; and

"(5) $10,000,000 for the fiscal year 1985.".

(b) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"Sec. 3021. Coverage of part.
"Sec. 3022. Purposes.
"Sec. 3023. Definition.
"Sec. 3024. Formula grants.
"Sec. 3025. Supplemental grants.
"Sec. 3026. Technical assistance.
"Sec. 3027. Assistance to States attorneys general.
"Sec. 3028. Authorization of appropriations.".

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SENATE—*Wednesday, September 10, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the Honorable ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Hear the words of the prophet Isaiah when he wrote:

Seek ye the Lord while He may be found, call ye upon Him while He is near: Let the wicked forsake his way, and the uprighteous man his thoughts: And let him return unto the Lord, and He will have mercy upon him; And to our God for He will abundantly pardon.—Isaiah 55: 6,7.

As we seek Thee, O Lord, so may we find Thee in this moment of prayer. May Thy spirit brood over us, indwell us, saturate our beings and so shape our lives that we may choose Thy will as our will, Thy way as our way, Thy peace as our peace. Instruct our minds. Control our thoughts and feelings. Make this day a day of obedience, a day of spiritual joy and peace. May our work be the work of Thy kingdom, for it is in Thy name we work and in Thy name we pray. Amen.

APPOINTMENT OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER (Mr. MITCHELL). The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 10, 1980.
To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable GEORGE J. MITCHELL, a Senator from the State of Maine, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. MITCHELL thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority and minority leaders are recognized for not to exceed 10 minutes to be equally divided and controlled.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

GOVERNOR REAGAN'S ECONOMIC PROPOSALS

Mr. BAKER. Mr. President, yesterday, Governor Reagan delivered a statement on his economic position, a statement which he made in Chicago.

Mr. President, I would like to, this morning, commend for my colleagues' reading the text of an economic policy statement made by the Republican Presidential nominee, Governor Reagan, yesterday, in Chicago.

It is as thoughtful and concise an assessment of what must be done to restore growth and stability to our economy as I have ever read.

It offers the Congress and the Nation a program which will encompass the very policies and attitudes that Governor Reagan and so many of us in this Chamber have advocated for so long: Controls on the growth of Government spending; significant, permanent tax relief for all Americans; the elimination of stifling and unwarranted Government regulation of our business and industry; a sound, predictable monetary policy and a consistent economic policy from which American business and industry can regain a sense of security and confidence inducive to investment, expansion, modernization, and increased production.

And this economic recovery package, Mr. President, has as perhaps its greatest strength its clarity and stability. It is a far cry from the whimsy, uncertainty, and piecemeal tinkering which have become the hallmarks of President Carter's economic programs.

Governor Reagan understands and is the eloquent spokesman for the millions of Americans whose lives are being shattered by the President's economics: Those hundreds of thousands of Americans who have lost their jobs to Jimmy Carter's intentional recession; those millions of working Americans who have watched their standard of living decline steadily because of Jimmy Carter's high taxes and high interest rates; those millions of Americans on fixed incomes who must watch helplessly as Jimmy Carter's inflation consumes their life savings.

In the words of Governor Reagan yesterday:

Mr. Carter's economical failures are an assault on the hopes and dreams of millions . . . We are dealing with an unprecedented crisis that takes away not only wages and savings, but hopes and dreams.

And as important as restoring wages and savings and jobs is to the future of this Nation, restoring the hopes and dreams of the American people that they and their children can have a better life is so much more important.

Governor Reagan has given us a blueprint to do all these things, Mr. President. And I urge my colleagues to carefully consider his message and his proposal.

I therefore now ask unanimous consent that the text of Governor Reagan's speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

[Address by the Honorable Ronald Reagan]

A STRATEGY FOR GROWTH: THE AMERICAN ECONOMY IN THE 1980s

Almost two months ago, in accepting the presidential nomination of my party, I spoke of the historically unique crisis facing the United States. At that time I said:

"Never before in our history have Americans been called upon to face three grave threats to our very existence, any one of which could destroy us. We face a disintegrating economy, a weakened defense and an energy policy based on the sharing of scarcity."

Since I first spoke those words, no action has been taken by President Carter to change this grave, unprecedented situation.

In fact, during the last few months the overall economic situation in the United States has deteriorated markedly. The cumulative effect of the economic policies the Carter administration has followed over the last three and one-half years has damaged our economy much more than virtually anyone could have foreseen.

Interest rates and inflation have become unconscionably high. Almost two million Americans have lost their jobs this year alone. And the tax burden continues to steadily increase.

In effect, Mr. Carter's economic failures are an assault on the hopes and dreams of millions of American families.

These are more than just economic failures. They are essentially an unprecedented failure of presidential leadership that strikes at the very heart of every American family, every factory, every farm, every community.

Make no mistake about it: what Mr. Carter has done to the American economy is not merely a matter of lines and graphs on a chart. Individuals and families are being hurt badly. Factories are empty; unemployment lines are full.

Every American family has felt what the Carter inflation means to hopes for a better life. Every visit to the supermarket reminds us of what Mr. Carter's policies have done. We pay the price of Carter's inflation every time we buy food or clothing or other essentials.

We are dealing with an unprecedented crisis that takes away not only wages and savings, but hopes and dreams.

And what is Mr. Carter's response to this tragedy?

Words. And more words.

Two weeks ago he gave us his latest in a series of economic policy shifts. This one is the fifth "new economic program" in the last three and one-half years. It contains rhetoric that Mr. Carter apparently hopes will lead us to believe he has finally discovered free enterprise.

Hearing him and members of his administration use the language of free enterprise reminds me of one of the stories of Mark Twain. He had a habit of using foul language, which distressed his wife no end. She decided on a form of shock treatment to cure him of his habit. She came up to him one day and recited every word of the salty language she had ever heard him use. He listened patiently and when she was finished, said: "My dear, you have the words all right, you just don't have the tune."

I'd like to speak to you today about a new concept of leadership, one that has both the words and the music. One based on faith in the American people, confidence in the American economy, and a firm commitment to see to it that federal government is once more responsive to the people.

That concept is rooted in a strategy for growth, a program that sees the American economic system as it is—a huge, complex, dynamic system which demands not piecemeal federal packages, or pious hopes wrapped in soothing words, but the hard work and concerted programs necessary for real growth.

We must first recognize that the problem with the U.S. economy is swollen, inefficient government, needless regulation, too much taxation, too much printing press money. We don't need any more doses of Carter's eight- or ten-point programs to "fix" or fine tune the economy. For three and one-half years these ill-thought-out initiatives have constantly sapped the vitality of the most productive economic system the world has ever known.

Our country is in a downward cycle of progressive economic deterioration that must be broken if the economy is to recover and move into a vigorous growth cycle in the 1980s.

We must move boldly, decisively and quickly to control the runaway growth of federal spending, to remove the tax disincentives that are throttling the economy, and to reform the regulatory web that is smothering it.

We must have and I am proposing a new strategy for the 1980s.

Only a series of well-planned economic actions, taken so that they complement and reinforce one another, can move our economy forward again.

We must keep the rate of growth of government spending at reasonable and prudent levels.

We must reduce personal income tax rates and accelerate and simplify depreciation schedules in an orderly systematic way to remove disincentives to work, savings, investment, and productivity.

We must review regulations that affect the economy, and change them to encourage economic growth.

We must establish a stable, sound and predictable monetary policy.

And we must restore confidence by following a consistent national economic policy that does not change from month to month.

I am asked: Can we do it all at once? My answer is: We must.

I am asked: Can we do it immediately? My answer is: No, it took Mr. Carter three and one-half years of hard work to get us into this economic mess. It will take time to get us out.

I am asked: Is it easy? Again, my answer is: No. It is going to require the most dedicated and concerted peacetime action ever taken by the American people for their country.

But we can do it, we must do it, and I intend that we will do it.

We must balance the budget, reduce tax rates, and restore our defenses.

These are the challenges. Mr. Carter says he can't meet these challenges; that he can't do it. I believe him. He can't. But, I refuse to accept his defeatist and pessimistic view of America. I know we can do these things, and I know we will.

But don't just take my word for it. I have discussed this with any number of distinguished economists and businessmen, including George Shultz, William Simon, Alan Greenspan, Charls Walker and James Lynn. The strategy I offer is based on solid economic principles and basic experience in both government and the marketplace. It has worked before and will work again.

Let us look at how we can meet this challenge.

One of the most critical elements of my economic program is the control of government spending. Waste, extravagance, abuse and outright fraud in federal agencies and programs must be stopped. Billions of the taxpayers' dollars are wasted every year throughout hundreds of federal programs, and it will take a major, sustained effort over time to effectively counter this.

Federal spending is now projected to increase to over $900 billion a year by fiscal year 1985. But through a comprehensive assault on waste and inefficiency, I am confident that we can squeeze and trim 2 percent out of the budget in fiscal year 1981, and that we will be able to increase this gradually to 7 percent of what otherwise would have been spent in fiscal year 1985.

Actually, I believe we can do even better. My goal will be to bring about spending reductions of 10 percent by fiscal year 1984.

Crucial to my strategy of spending control will be the appointment to top government positions of men and women who share my economic philosophy. We will have an administration in which the word from the top isn't lost or hidden in the bureaucracy. That voice will be heard because it is a voice that has too long been absent from Washington—the voice of the people.

I will also establish a citizen's task force, as I did in California, to rigorously examine every department and agency. There is no better way to bring about effective government than to have its operations scrutinized by citizens dedicated to that principle.

I already have as part of my advisory staff a Spending Control Task Force, headed by my good friend and former Director of the Office of Management and Budget, Casper Weinberger, that will report on additional ways and techniques to search out and eliminate waste, extravagance, fraud and abuse in federal programs.

This strategy for growth does not require altering or taking back necessary entitlements already granted to the American people. The integrity of the Social Security system will be defended by my administration and its benefits will once again be made meaningful.

This strategy does require restraining the congressional desire to "add-on" to every old program and to create new programs funded by deficits.

This strategy does require that the way federal programs are administered will be changed so that we can benefit from the savings that will come about when, in some instances, administrative authority can be moved back to the states.

The second major element of my economic program is a tax rate reduction plan. This plan calls for an across-the-board three-year reduction in personal income tax rates—10 percent in 1981; 10 percent in 1982; and 10 percent in 1983. My goal is to implement three reductions in a systematic, planned manner.

More than any single thing, high rates of taxation destroy incentive to earn, to save, to invest. They cripple productivity, lead to deficit financing and inflation, and create unemployment.

We can go a long way toward restoring the economic health of this country by establishing reasonable, fair levels of taxation.

But even the extended tax rate cuts which I am recommending still leave too high a tax burden on the American people. In the second half of the decade ahead we are going to need, and we must have, additional tax rate reductions.

Jimmy Carter says it can't be done. In fact, he says it shouldn't be done. He favors the current crushing tax burden because it fits into his philosophy of government as the dominating force in American economic life.

Official projections of the Congressional Budget Office show that by fiscal year 1985, if the current rates of taxation are still in effect, federal tax revenues will rise to over one trillion dollars a year.

Surely Jimmy Carter isn't telling us that the American people can't find better things to do with all that money than see it spent by the federal government.

Assuming a continuation of current policies in government, congressional projections show a huge and growing potential surplus by 1985. These surpluses can be used in two basic ways: 1) to fund additional government programs, or 2) to reduce tax rates.

That choice should be up to the American people.

The most insidious tax increase is the one we must pay when inflation pushes us into higher tax brackets. As long as inflation is with us, taxes should be based on real income. Federal personal income taxes should be based on real income. Federal personal income taxes should be indexed to compensate for inflation, once tax rates have been reduced.

We also need faster, less complex depreciation schedules for business. Outdated depreciation schedules now prevent many industries, especially steel and auto, from modernizing their plants. Faster depreciation would allow these companies to generate more capital internally, permitting them to make the investment necessary to create new jobs, and to become more competitive in world markets.

Another vital part of this strategy concerns government regulation. The subject is so important and so complex that it deserves a speech in itself—and I plan to make one soon. For the moment, however, let me say this.

Government regulation, like fire, makes a good servant but a bad master. No one can argue with the intent of much of this regulation—to improve health and safety and to give us cleaner air and water—but too often regulations work against rather than for the interests of the people. When the real take-home pay of the average American worker is declining steadily, and 8 million Americans are out of work, we must carefully re-examine our regulatory structure to assess to what degree regulations have contributed to this situation. In my administration there should and will be a thorough and systematic review of the thousands of federal regulations that affect the economy.

Along with spending control, tax reform and deregulation, a sound, stable and predictable monetary policy is essential to restoring economic health. The Federal Reserve Board is, and should remain, independent of the Executive Branch of government. But the President must nominate those who serve on the Federal Reserve Board. My appointees will share my commitment to restoring the value and stability of the American dollar.

A fundamental part of my strategy for economic growth is the restoration of confidence. If our business community is going to invest and build and create new, well-paying jobs, they must have a future free from arbitrary government action. They must

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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have confidence that the economic "rules-of-the-game" won't be changed suddenly or capriciously.

In my administration, a national economic policy will oe established and we will begin to implement it, within the first 90 days.

Thus, I envision a strategy encompassing many elements—none of which can do the job alone, but all of which together can get it done. This strategy depends for its success more than anything else on the will of the people to regain control of their government.

It depends on the capacity of the American people for work, their willingness to do the job, their energy and their imagination.

This strategy of economic growth includes the growth that will come from the cooperation of business and labor based on their knowledge that government policy is directed toward jobs, toward opportunity, toward growth.

We are not talking here about some static, lifeless econometric model—we are talking about the greatest productive economy in human history, an economy that is historically revitalized not by government but by people free of government interference, needless regulations, crippling inflation, high taxes and unemployment.

Does Mr. Carter really believe that the American people are not capable of rebuilding our economy? If he does, that is even one more reason—along with his record—that he should not be President.

When such a strategy is put into practice, our national defense needs can be met because the productive capacity of the American people will provide the revenues needed to do what must be done.

All of this demands a vision. It demands looking at government and the economy as they exist, not as words on paper, but as institutions guided by our will and knowledge toward growth, restraint, and effective action.

When Mr. Carter first took office, he had sufficient budget flexibility to achieve these goals. But he threw away the opportunity to generate new economic growth and strengthen national security. Now the damage to the economy by his misguided policies will make the achievement of these crucial objectives far more difficult.

Nevertheless, this nation cannot afford to back away from any of these goals. We cannot allow tax burdens to continue to rise inordinately, inflation to take a stronger hold, or allow our defenses to deteriorate further—without severe consequences.

This task is going to be difficult but our goals are optimistic—as they should be. Success is going to take time, as well as work.

There is only one phrase to describe the last three years and eight months. It has been an American tragedy.

It isn't only that Mr. Carter has increased federal spending by 58 percent in four years, or that taxes in his 1981 budget are double what they were in 1976, the equivalent of a tax increase on an average family of four of more than $5,000.

The tragedy lies as much in what Mr. Carter has failed to do as in what he has done.

He has failed to lead.

Mr. Carter had a chance to govern effectively. He had a sound economic base with an inflation rate of 4.8 percent when he took office.

But he failed. His failure is rooted in his view of government, in his view of the American people.

Yet he wants this dismal view to prevail for four more years.

The time has come for the American people to reclaim their dream. Things don't have to be this way. We can change them. We must change them. Mr. Carter's American tragedy must and can be transcended by the spirit of the American people, working together.

Let's get America working again.

The time is now.

Mr. BAKER. Mr. President, I yield back the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business not to extend beyond 10 minutes and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DEATH OF FORMER REPRESENTATIVE WILLIAM M. COLMER OF MISSISSIPPI

Mr. STENNIS. Mr. President, I am saddened to announce that former Representative William Colmer of Mississippi, who was Chairman of the Rules Committee in the House of Representatives for 10 years where he served a total of 40 years as a Representative from the Gulf Coast District of Mississippi, passed away last night. I know that some Members of the present Senate, knew him personally and all who knew him respected him greatly.

I valued him greatly as a lifelong friend and a highly valuable counselor. He helped me greatly when I came to the Senate and in the years that followed as a counselor and friend.

I mourn the passing of this fine man, and I extend my sympathies to his wonderful wife and all other members of his family.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. RANDOLPH. Mr. President, I add to the thoughtful tribute of our colleague as to the friendship he had with Bill Colmer. It was my privilege to serve with Representative Colmer. We came to the House of Representatives in 1933 as Members of the 73d Congress. During 14 years we labored together. Bill continued his long and excellent career but we kept in touch with each other. He was a truly remarkable legislator with a commitment to service. I thank the Senator from Mississippi for permitting me to join in remembering the passing of this good man.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there morning business? If not, morning business is closed.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 7590, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. What is the time situation under the order?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Rhode Island (Mr. CHAFEE) is to be recognized to call up an amendment on which there shall be 2 hours of debate.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask that the time not be charged against either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, the Senator from Rhode Island (Mr. CHAFEE) is recognized to call up an amendment on which there shall be 2 hours debate.

UP AMENDMENT NO. 1568

(Purpose: To delete funds for the Tennessee-Tombigbee Waterway project)

Mr. CHAFEE. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE), for himself, Mr. CULVER, Mr. DURENBERGER, Mr. EAGLETON, Mr. NELSON, Mr. PERCY, Mr. PROXMIRE, and Mr. SIMPSON proposes an unprinted amendment numbered 1568.

On page 15, line 10, delete "$1,534,703,000, to remain available until expended:" and insert in lieu thereof the following: "$1,334,703,000, to remain available until expended, provided that no funds shall be available for work on the Tennessee-Tombigbee Waterway, Alabama and Mississippi, north of Columbus Lock and Dam, Mississippi:"

Mr. CHAFEE. Mr. President, the amendment I have introduced today will eliminate $200 million from the requested funding for the Tennessee-Tombigbee Waterway project for fiscal year 1981.

When we in the Senate are trying hard to hold the line on spending and act in a fiscally responsible manner, it is unconscionable to continue funding a $3 billion project that may never fulfill its proposed benefits.

Mr. President, I think we ought to put in focus the size of this project. I do not think people understand how big it is. This Tennessee-Tombigbee Waterway project is going to move more earth than was moved in the construction of the Panama Canal. Do not let anybody think it is just a little canal we are digging here. This thing is 232 miles long. In addition, there is a further 217 miles that goes from Demopolis, Ala., south to Mobile which we will consider in the course of this discussion.

Mr. President, this project is very interesting. It reminds me of the cartoon

in the New Yorker magazine at the time we were debating the Panama Canal Treaty. The cartoon shows a man leaning against the bar confiding to the bartender: "I didn't think of the Panama Canal for 40 years and now I can't live without it."

Here is this project which suddenly has assumed some importance on behalf of those who espouse it, yet it is astonishing to me that rarely has a Senator in this Chamber been down to visit the project.

I took the trouble last Sunday to go down—it can be done in a day to go down and visit it—to see what it is. Nothing beats an onsite inspection. So I went down, Mr. President, last weekend, last Sunday. I must say, it was very warm down there. I flew from New York to Atlanta, spent the night in Atlanta; went over to Birmingham; from Birmingham up to Savannah, Tenn.; and then we flew in a helicopter along the canal and terminated at Columbus. Then we got in a fixed-wing aircraft and flew the length down to Demopolis and from Demopolis down to Mobile. So I think I have a pretty good concept of what this is all about.

Mr. President, I am convinced—and so are my cosponsors—that this project simply does not make sense for the country until two critically important questions are answered. What is the ultimate price tag of it? What are its real benefits?

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. CHAFEE. I would like to, if I might, continue my presentation, unless the Senator feels there is something very important he wishes to get into at this point.

Mr. JOHNSTON. I was just going to answer the questions.

Mr. CHAFEE. Well, the Senator will have plenty of time.

I am deeply concerned, Mr. President, that the Senate is being asked to spend $208 million on only the first portion of a project which ultimately will cost $3 billion and probably more. The commitment of this money we are making today, if we make it, will lock us into yearly appropriations in excess of $200 million for each of the remaining years of the 1980's.

My conclusion that this is a $3 billion project whose scope is twice that originally authorized is based on the official documents provided this Congress by the Corps of Engineers, which is currently constructing the project.

First, let me say that I join in the highest esteem in which the Corps of Engineers is held by all in this Chamber. I read with some interest the Senate hearings before the Committee on Appropriations in which high tribute was paid to General Morris and that is deservedly so. I know General Morris' associate, General Ellis. He was good enough to come with me last Sunday. We spent an excellent day with General Ellis and Colonel Ryan. They are all top notch. They are doing their job and they are doing it in an absolutely outstanding fashion.

So whatever we say today on the floor of this Senate in criticism of this project is not criticism of the Corps of Engineers, which is one of the great prides of the U.S. military services, and justifiably so.

Budget data submitted by the corps during January this year shows quite clearly that the Tenn-Tom consists of an "initial" project with a price tag of $1.9 billion and an "ultimate" project with a price tag of over $3 billion.

According to the corps figures, about $868 million has already been spent, less than half of the cost of the initial project and less than one-third the cost of the ultimate project. We will hear bandied about on the floor of the Senate today, and I heard it last evening, that 70 percent of the funds have already been committed, do not stop now.

I do not know whoever came up with that 70 percent figure because in the testimony before the Committee on Appropriations, if one looks in that material, on page 7, General Morris testified:

At this point in time we have actually spent on this project $805 million. We have obligated $867 million through July 31, 1980.

I do not know how you can have any more current figure than that. Then he goes on to talk about the remaining cost-benefit ratio, and so forth.

Mr. JOHNSTON. Mr. President, I hate to interrupt the Senator, but this is important. Will the Senator agree that General Morris pointed out that the dunk cost is approximately $997 million?

Mr. CHAFEE. I will agree that General Morris goes on to talk about what he believes will be the cost to terminate the contracts and he then gets into speculation as to how much the land could be sold for if the project were terminated. But I am talking about the sums that are obligated and the sums that have actually been spent.

Let us take the obligated sums. Based on the $2 billion cost of the project, 43 percent is obligated, and based on the $3 billion cost of the ultimate project, and we all know that that is what is going to come—I know that the distinguished chairman of the subcommittee talks, on page 3 of that hearing, about, "I don't expect that" the ultimate project "will be done under the present recalcitrance" of the Senate in approving water projects.

Well, I do not share his views on the present recalcitrance of the Senate on water projects. Yesterday we accepted another mammoth water project in West Virginia for, I think, a price tag of $284 million. So I have not seen any recalcitrance on the part of the U.S. Senate or the Appropriations Committee when it comes to dealing with water projects.

If you take the $3 billion open cost, the amount that has been obligated is 29 percent. Let us not have any figures bandied about about 70 percent.

With the initial waterway project totaling 232 miles and the cost of that being $1.9 billion, Tenn-Tom turns out to be $9 million a mile, or $5,000 a yard. When initially proposed in 1946, the Tenn-Tom project's estimated cost was $120 million. In 1970 it tripled to $323 million. In 1979 it became an astounding $1.9 billion. This year the cost the corps estimates, the ultimate cost—I know there will be debate over the ultimate cost—will be $3 billion.

The initial project estimated to cost $2 billion would link the Tennessee River to Demopolis via the Tombigbee River. Barge traffic using this part of the project would still face a 217 mile journey down the river to the Port of Mobile before the vast majority of project benefits could be achieved. The problem is that the portion of the river south of Demopolis, the Tombigbee, is very convoluted. It has been aptly called more crooked than a barrel of snakes. I urge everybody to go down and take a look at it, fly over it.

I have placed on everyone's desk some photographs. This is with the material I submitted dealing with the editorials from a whole series of newspapers.

Here is a critical editorial of the project by the Atlanta Constitution. There is one here from the Raleigh News Observer. It is a whole series of crucial editorials, including one from the Fort Myers, Fla., News Press.

With that material, in the back I have attached some pictures of the lower Tombigbee, that is, pictures of the Tombigbee from Demopolis south. These are from the Corps of Engineers, with their projected canal cutoffs. That is, the cutoffs across the loops of the convoluted Tombigbee. I would urge everybody to take a look at these so they get a pretty good idea of what a really twisting, winding river that is.

This brings us to the ultimate project. In order to accommodate better the traffic which the corps predicts will develop on the project north of Demopolis, the corps has indicated it will need to spend over $500 million to straighten out the river south of Demopolis, and another $500 million on the expansion of two locks which lie on that part of the river. Thus, the ultimate project, which includes this work on the Tombigbee River between Demopolis and Mobile going south, in addition to the work between Demopolis north to the Tennessee, will total in excess of $3 billion.

Not all of these costs are meant to be incurred by the Federal Government. In fact, the local share is presently $165 million for bridges and other relocations. I saw those relocations, not only of highways but of the railroad.

But as of 1979, local sponsors in Mississippi and Alabama had together committed only $23 million to the project, and the Federal Government had spent $100 million of its money on the States' local share. This is what you call winning both ways.

The astounding cost of the Tenn-Tom brings me squarely to the second essential question: Will this project produce any significant benefits? I doubt it.

Fully 90 percent of the Tenn-Tom benefits are based on savings to barge traffic predicted to use the completed project. No one is suggesting that the project will produce hydropower. No one is suggesting it is going to be used for flood control. Less than 10 percent of its benefits are based on area redevelopment. It is therefore vital that the navigation benefit projections are accurate;

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in other words, that the predictions are right.

I have reviewed many of these navigation benefit claims and have been astounded by what I have learned. It would appear that a very significant part of these navigation benefits are based squarely on companies that do not exist or on movements that will not take place.

For example, fully 60 percent of the initial year navigation benefits are based upon predicted coal movements. Yet, nearly half of those movements are impossible because they are based on nonexistent companies, nonexistent coal mines, or nonexistent coal traffic.

An interview in the St. Petersburg Times with spokesmen of the companies involved reported that the corps projects that the Gulf Power Co. will ship nearly 3 million tons of coal from Harriman, Tenn., and Shawneetown, Ill., to power plants in Florida during 1987, the project's first year of operation. However, officials of Gulf Power say they will ship no coal whatsoever on the waterway.

It has also been reported that the corps estimates the Kentucky Energy Development Corp. will ship 2.4 million tons of coal via the Tenn-Tom. However, Kentucky Energy Development Corp. is out of business and the coal mine relied upon by the corps has never been in existence.

The corps also lists Hawley Fuel Co. of New York as a coal shipper to the tune of 1.5 million tons a year. However, Hawley Fuel owns no mines anywhere in Alabama. It has no plans to use the waterway. We called up Hawley Fuel yesterday to check and that was the answer they gave us.

In addition to these major economic questions about the Tenn-Tom project, grave environmental problems have been raised by this waterway. Thousands of acres of wetland have already been destroyed, and I think it is extremely sad that that has taken place.

That is where the spoil disposal from the waterway is dumped, in the wetlands, thereby ruining fertile lands that previously supported precious animal and plant life.

Mr. President, if there is one thing we have learned in Congress over the years, it is the importance of wetlands. Yet they are being destroyed at a prodigious rate for the transportation of the spoil.

All the damage has not been done and we ask, How are you going to keep the lower part of the river open, particularly when you make these cut-throughs? The Corps of Engineers will have dredges with which they will be dumping the soil out of the bottom of the river and dumping it again on the wetlands. Mr. President, let us stop it before more damage is done.

In addition, the water quality of the river has been degraded from the runoff from dredging. In the area between Demopolis and Mobile, the river's twists and turns will be cut off in 44 different places. I am talking now about the lower part of the river—44 cutoffs creating oxbow sections—that is, the part of the river that is cut off becomes stagnant, killing the river life such as fish and freshwater mussels.

There are other problems with the river as well, Mr. President. First, there is the question whether the Tenn-Tom will provide significant benefits by acting as a cheap method for transporting massive amounts of coal. Indeed, project sponsors have recently asserted that the project is essential to prevent us from suffering from "cold, darkness, and deprivation." Yet it has been reported in Coal Week magazine that if the projections are accurate, all of the recoverable coal in southern Tennessee will be exhausted within the first one-third of the project's 50-year life.

In other words, in projects like this, they take a 50-year useful life in order to work out the cost-benefit ratio. But Coal Week magazine says if they have the movements of coal that they predict on this waterway, that would exhaust all the coal supplies in southern Tennessee in about 16 years.

Although the Corps of Engineers estimates the waterway will carry 18 million tons of coal in 1986, its initial year, it has been reported that a draft study by the Department of Transportation and the Department of Energy reveals that the Tenn-Tom is expected to carry only 2 million tons by 1990.

Second, there is the question of whether the Tenn-Tom will provide dramatic economic stimulus to the States of Mississippi and Alabama, through which it will operate. One expert on the local economic impact of waterways testified at hearings before a subcommittee chaired by Senator MOYNIHAN in July that the area directly affected by the project simply lacks the economic resources necessary to support any dramatic economic growth.

In view of all these unresolved problems with the Tenn-Tom project, we should not irresponsibly commit over $200 million a year for the next decade to a project that has been so seriously questioned on so many grounds. We are talking about spending $3 billion on the biggest water project in this country's history.

Mr. President, the funds consumed by this project represent one-seventh of the amount that the Corps of Engineers is spending this year. One-seventh of all the money we are spending all over the Nation on construction by the Corps of Engineers is being dumped into this project. As I say, we are talking about $3 billion on the biggest water project in this country's history, in which the Corps of Engineers is moving more dirt than was necessary to dig the Panama Canal.

At a time when inflation and excessive Government spending are the issues most on the minds of the American people, the Tenn-Tom is a symbol of wasteful spending on a superfluous water project. The distinguished junior Senator from New York, who now chairs the Subcommittee on Water Resources of the Committee on Environment and Public Works, has termed this project, with much justification, "the cloning of the Mississippi." In it the corps attempts to improve on nature by constructing a narrow, shallow, lock-filled barge canal which parallels that mighty river on its path to the gulf.

Surely, there are better ways to improve the transportation system of this country. Suspension of project funding now would allow the Congress to commission the General Accounting Office to conduct a thorough review of the true benefits and the true costs of this project before we irrevocably commit billions of dollars to a scheme that could very well prove worthless. Equally important, such an action would signal that the Senate of the United States is finished with the excesses of projects such as this.

At oversight hearings held in July by Senator MOYNIHAN, the testimony demonstrated that many economic experts are convinced the Tenn-Tom is a loser. Two respected economists—one from Pennsylvania State University, Joseph L. Carroll, and the other from the University of Wisconsin, Robert H. Haveman—have stated that the project would be fortunate to return 20 cents on the dollar. The corps itself conceded that its benefit/cost projections for such projects as this are frequently inaccurate.

One cause for the inaccuracy of the corps benefit/cost projection is the fact that the corps uses the obsolete 3¼ percent interest rate in its justification.

Mr. President, I must say, the chairman of the Subcommittee on Appropriations must be dazzled by that figure. I wonder if anyone could go out and borrow money at 3¼ percent. That is a splendid rate. Actually, what it is costing the U.S. Government to raise that money is 7⅛ percent. So we figure, on this project, 3¼ percent. Yet the actual interest rate currently is 7⅛ and is going to be more. If either of the distinguished floor leaders of this measure knows where any money can be obtained at 3¼ percent, I do wish they would enlighten the rest of us.

It is high time that this costly project was given a thorough and accurate assessment by Congress. Some will suggest that this matter has been settled by the courts. That is not accurate. The matter that went before courts and has been decided is the question of the congressional authorization. The answer to that is that the court did not decide it on the merits, they decided that the claim had been brought too late—the old doctrine of laches.

Until Congress and the GAO answer the serious questions about the project, funding should be halted.

Let us not be diverted by those who say too much money—and we are going to hear this a lot today, Mr. President and Members of the Senate—that so much money has been spent that it would be foolish to stop. That is a shopworn shibboleth that has been used to justify many a questionable project, time after time. And it is not only on water projects. I was familiar with it in the past when we would get into shipbuilding contracts: It is too late to stop, so much money has been spent.

Mr. President, let us not be beguiled by that. Even if this project were completely halted now, less than 30 percent of the ultimate cost—and that is what we are talking about, the ultimate cost—would have been spent. So I urge my colleagues to support this amendment.

I reserve the remainder of my time, Mr. President.

Mr. JOHNSTON. Mr. President, I yield myself 5 minutes.

Mr. President, none is so blind as he who will not see; none is so deaf as he who will not hear; and none can be so ignorant as he who will not read.

Mr. President, we keep getting facts, at least paraded under the guise of facts—about Tennessee-Tombigbee which are just not true and which have been destroyed time and time again. Let me, if I may, deal with those dispassionately and clearly, because they have been established and they have been put in writing in the reports and documents which are furnished to each Senator.

We are told, Mr. President, that this is a $3 billion project. Mr. President, that is plainly wrong. That is not factual. It has no basis in fact. In fact, we were told this morning that the project has a first-phase cost of $1.9 billion. That is just not true, Mr. President. It is not true.

The facts are that this project will cost $1,760,000,000, Federal cost, which for the first time includes a $100 million estimated inflation rate—estimated inflation increment—between now and completion, which everybody, I think, concedes is a reasonable estimate. One billion seven hundred sixty million dollars. Not $1.9 billion, not $3 billion, but $1,760,000,000, Federal cost by the Corps of Engineers.

Now, that gives the complete project, 282 miles long, which connects up with the existing Black Warrior Tombigbee navigation project, which there is a capacity of handling barge tows six in number, and, in fact, is presently handling barge tows from time to time six in number.

That is what is authorized. That is what is going to be built. That is what is planned.

If this Congress wanted to build another new, different, incremental project involving improvements to the existing Demopolis-to-Mobile waterway, and if they wanted to authorize a $3 billion project, the first step would be to put in a bill and bring it up before the committee of the distinguished Senator from Rhode Island where it would have to be voted on. Then if it was voted in both Houses, voted on the floor and signed by the President, then, and only then, would the project be authorized.

Mr. President, it is like saying that because we vote for one bill, we must, therefore, necessarily, be for another bill of new and different and incrementally increased bills.

This is a $1.76 billion Federal project, and it is not larger. I hope we can establish that fact, Mr. President, because those are the facts. Anything to the contrary is wrong.

Would the Congress, under any circumstances, come in and expand this project with a new bill, a new authorization, a new vote of Congress? I, frankly, do not think so.

That was the sense in which I said that the Congress was recalcitrant in water projects. After all it has been 6 years since Congress passed a major authorization bill for construction of water projects.

However, Mr. President, if in the late 1980's or early 1990's this project is so successful, the need to export steam coal, which was not included in this cost-benefit ratio, if that need were so manifest, the traffic so crowded, then, and only then, might the Congress, in my judgment, want to take another look.

But at this point, Mr. President, it is not contemplated under this authorization. It is not authorized, and before it would be authorized it would have to go before the committee on which the distinguished Senator from Rhode Island and other critics of this project serve.

Mr. President, I will say a word about the cost because this again, is facts.

The Senator was correct in what he read. He just did not read it all.

The ACTING PRESIDENT pro tempore. The Senator's 5 minutes have expired.

Mr. JOHNSTON. Two additional minutes.

There are some $867 million obligated. Termination costs, Mr. President, are estimated at $130 million. That is from the Corps of Engineers, based not upon some fanciful, arbitrary figures out of the air, but based on the experience of the Corps of Engineers, which transcends almost 2 centuries, and an experience which, as the distingiushed Senator from Rhode Island pointed out, the Corps of Engineers enjoys a very high reputation in engineering circles.

So, $867 million obligated, $130 million minimum termination cost, which is a total sunk cost of $997 million. Those sums exclude approximately $130 million sunk by the States in bridge relocations.

Now, the land which was purchased at $45 million, in the opinion of the Chief Engineers could be sold for about $30 million. The reason for the decreased amount of cost are about three in number. First of all, most of the digging has been done. We have huge amounts of dirt that has been moved, right-of-way dug, trees cleared, timber which has been removed, which, in itself, had great value.

More than that, the Government would have to sell it under distressed conditions.

While they bought it, going to Federal court on individual bargaining bases, they would have to sell it in lump, under distressed conditions.

In any event, in the opinion of the Corps, we could sell it for $30 million. So that gives an overall sunk cost, in the opinion of the Chief Engineer, of $967 million which, if we stop work today, would be the investment of the Federal Government, against a project which is slated to cost $1,760 million, which is about 60 percent.

The Senator from Louisiana has never said that there were 70 percent sunk costs. The 70 percent figure would represent the total amount of contracts entered into and there could be some savings on those contracts. So I would quite agree with the Senator from Rhode Island that there is not 70 percent sunk.

There is about whatever $967 million represents as a percentage of $1,760 million, and I think that is about 62 percent. That is the sunk cost in this project which we would not be able to recoup.

Indeed, the Chief Engineer said that if we walked away from this project, simply planting the grass, replanting the trees, and trying to erase as much environmental damage as an uncompleted project would require, he said that the percentage of benefits remaining would be "virtually nil."

The ACTING PRESIDENT pro tempore. The Senator's 2 minutes have expired.

Mr. JOHNSTON. One more word, Mr. President, before I yield the floor.

I want to talk about the cost-benefit ratio. Cost-benefit ratio is the most misunderstood concept on the floor of the Senate, and the competition for that award is very keen.

Mr. President, the 3¼-percent cost-benefit ratio, set by law the percent or discount rate used on the cost-benefit ratio, was not unrealistic when used. What the 3¼ percent represents is supposed to be the real cost of money, the real interest rate.

That is the incremental which a person gets over and above inflation for the use of his money. Inflation is a neutral thing and it is supposed to affect both benefits and costs.

So, in formulating, years ago, the cost-benefit ratio, the corps, on the advice of economists, came up with a real cost of money at 3¼ percent, and under their methods they keep benefits neutral with respect to inflation.

That is, those benefits, whether they be a rate on the transportation of goods or the value of a home protected from flood damage, or any other kind of benefit, that cost is fixed as of the time of the completion of the project and does not inflate, and contrarywise, the costs themselves are not inflated because they are fixed.

So, in that context, 3¼ percent is a very realistic rate of interest because it represents real interest and is neutral with respect to inflation.

When we use the 7⅛-percent rate, used for current planning, some would say that, also, is unrealistic because the cost of money, actually the cost of money to the Government, is slightly higher. But, in any event, it is unrealistically conservative because we do not use, we do not inflate, the benefits.

So that instead of inflating benefits at 7⅛ percent, we keep the costs where they are at the time that the project is completed, whereas the cost of money continues to be calculated at 7⅛ percent.

So, Mr. President, what we really ought to do is, in my judgment, get a cost-benefit ratio employing whatever percentage rates we want, it really does not matter, so long as we inflate both benefits and costs on the same basis.

As a matter of fact, on this particular project, benefits have increased greater than costs. Using the same interest rates, the corps recalculated, and using the same facts and figures the corps recalculated, the cost-benefit ratio of this project last year.

The ACTING PRESIDENT pro tempore. The Senator's 2 additional minutes have expired.

Mr. JOHNSTON. I yield myself 1 additional minute.

They found that the cost-benefit ratio had increased by 0.3 percent, simply because of the effect of escalating benefits as opposed to costs.

Mr. President, the cost-benefit ratio of this project right now, using the original assumptions, is 7.8. Using a 7⅛-percent interest rate, the remaining benefits to remaining costs give you a 4 to 1 cost-benefit ratio. Using the overall costs plus future costs, it is 1.3. So, if you use the original assumptions, there is a 7.8 to 1 cost-benefit ratio, or 4 to 1 at 7⅛ percent.

Mr. President, for this Congress, $1 billion into a project which has a remaining benefit-cost ratio of somewhere between 4 and almost 8 to 1, to terminate that project and walk away and say, "We made a mistake," would be the height of silliness.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JOHNSTON. I yield the floor, and I reserve the remainder of my time.

Mr. COCHRAN. Mr. President, is the time equally divided between the Senator from Louisiana and the Senator from Rhode Island?

The PRESIDING OFFICER. That is correct.

Mr. COCHRAN. Will the Senator yield me 5 minutes?

Mr. JOHNSTON. Mr. President, I yield 5 minutes to the distinguished Senator from Mississippi.

Mr. COCHRAN. I thank the Senator.

Mr. President, we must not overlook the importance of this waterway to the development of the full potential of this Nation's transportation system and its capacity to handle commodities that must be moved in domestic and foreign commerce if our economy is to continue to grow.

The Tennessee-Tombigbee Waterway will be of particular benefit to American agriculture. Its completion will provide a vital link in the system of waterways and ports that now serve mid-America. This system, without question is one of the major factors contributing to American agriculture's rise to its present position of dominance in world trade in agricultural products.

American agriculture has enjoyed a phenomenal growth rate in exports over the last two decades. We have had a positive trade balance in agriculture every year since 1960. This year, food and fiber exports will total nearly $40 billion—a $20 billion net surplus.

The large trade surpluses in the agricultural sector since 1972 have helped keep our overall trade balance somewhat manageable in the face of sharp increases in automobile and petroleum imports.

I mention this in order to put into context the relationship between an efficient transportation system and our ability to meet the potential for future exports from our agricultural sector.

We had hearings last year in our Agriculture Committee. One of the witnesses, Mr. Thomas Saylor, Associate Administrator of the Foreign Agriculture Service in USDA, gave his assessment of how the United States was able to meet foreign market needs, as compared with other countries which compete with us for export dollars in the sale of agricultural commodities around the world. He had this to say:

> While world demand has grown very rapidly, the United Sttes has been in a unique position to capitalize on a major share of that growth. While production in the United States was up 45 percent, exports increased 300 percent. Other major exporters, such as Canada, Australia, and Argentina, increased production only 20 percent and exports by only 45 percent. I think one of the factors that has been very important in terms of the U.S. capability to respond to the increased demand abroad has been the fact that there has been investment in our marketing system.

In other words, Mr. President, until now, we have had the capability to move our products from the farm to the international markets, and this has set us apart and made us different from Canada, Australia, Argentina, Brazil, and others who compete with us.

It is because of ths system of inland waterways, of ports, together with our railroad and highway systems, that we have attained this unique position.

What are we going to do for the future? Are we going to stop this investment? We should not.

Every indicator points to continued growth in the demand for U.S. agricultural production. World population is expected to total 6.5 billion by the end of this century. This is an increase of over 50 percent in only 20 years. When this increase in population is combined with projected improvements in per capita income around the world, demand for food will outstrip the ability of many nations to provide it. This means that the demand for U.S. food and fiber production will continue to increase.

Chase Econometric Associates took a look at the potential demand for grain and soybean exports by the year 2000 based on expected increases in population and income in the world. They concluded that wheat exports would increase about 70 percent, corn over 50 percent and soybeans over 45 percent.

Mr. President, in light of this tremendous increase in demand for our agricultural production in world markets, we must insure that our transportation system is capable of meeting the resulting burdens. If we are to provide the farmers in America's heartland access to world markets for their corn, soybeans, wheat, cotton, and other agricultural commodities, we must continue to invest in our transportation system—particularly the waterways that will provide the most efficient movement of bulk commodities.

A recent USDA report, titled "Transportation System's Capacity To Meet Grain Export Demand," concluded that heavy movement of grains and soybeans for export has aggravated the U.S. inland transportation network and that this network may be a limiting factor in meeting current grain export demand. Let me emphasize—to meet current grain export demand—to say nothing of the future demands which we already have identified.

This means that we are in trouble even before we complete the Tennessee-Tombigbee Waterway and add its capacity to our total transportation system. With the projected increase in volumes for agricultural trade by the year 2000, there is no doubt in my mind that the additional capacity associated with the Tennessee-Tombigbee Waterway is essential to the orderly development of export markets for our agricultural products.

Mr. President, if we support continued expansion of the export of agricultural commodities and the efficiency with which they move in commerce, then it is essential that the Tennessee-Tombigbee Waterway be completed on schedule.

Therefore, Mr. President, I urge my colleagues to support this effort to help meet the needs of American agriculture and to vote in opposition to this amendment, which, in effect, would kill the waterway.

Mr. CHAFEE. Mr. President, I ask for the yeas and nays on my amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE. Mr. President, I have listened to the two distinguished proponents of the waterway, and I must say that they do very well with a weak case.

The important point that should be examined here is not the figures that are used to work out the cost-benefit ratio but what goes into those figures.

Testimony was presented before the Committee on Environment and Public Works, in hearings held in July of this year, by Dr. Joseph L. Carroll, of Pennsylvania. He went into the question as to whether the information as to shipments that the Army Corps of Engineers relied on to come up with the total movements on the river was accurate. I should like to read from his testimony.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. BOREN). The Senator has 35 minutes and 28 seconds.

Mr. CHAFEE. Mr. President, I yield myself 5 minutes.

This is what Dr. Carroll says on page 6 of his testimony:

> Movements of large volumes of coal are absolutely essential to the economic justification of the TTW, accounting for over one-half of the tonnage and savings claimed by the Corps. There is an abundance of evidence, however, that very little if any of the coal traffic projected by Kearney and the Corps will materialize.

Kearney was the company who did this study for the Corps of Engineers and if Senators read the testimony that was before the Senate Appropriations Committee, they will see reference to the Kearney in the hearings frequently.

> For example, two "future" movements of coal to Alabama Power's Greene County plant near Demopolis account for over $20.6 million of the $86.6 million in average annual navigation benefits claimed in 1978. Projected by Kearney to commence in 1976 and 1977, these moves have never developed and are not likely to since the company plans on continuing to barge coal a short distance down the Warrior River to the plant. Furthermore, the savings claimed were significantly bloated by Kearney's use of a hypothetical barge rate for the Mississippi River routing rather than the actual rate the shipper was paying. Also, Kearney's projected coal tonnage being shipped to the plant exceeded by a large amount the plant's existing and planned future coal-burning capability.
>
> Movements of coal to two plants operated by Gulf States Power were also improperly included in the benefit base and account for $3.4 million in benefits. Savings for the movement of Ohio River coal to the company's plant at Pensacola are based on a hypothetical rate via the Mississippi River. If Kearney had used the actual rate the shipper was paying as required by law and Corps regulations, there would have been no savings. In the case of the plant at Panama City, all of coal requirements since 1976 have been met with South African coal under long-term contract.

What we are saying here today is let us go behind these figures and let us get the information out. I am not questioning what the Corps of Engineers says on the assumptions that they adopt. They adopt certain assumptions based on the studies that have been referred to here by the testimony of Dr. Carroll and then based on that they work out a cost-benefit ratio which comes out favorably; that is, if we do not pay any attention to the ultimate project which the distinguished Senator from Louisiana has told us to ignore.

I know and I think he must realize also that if this project is approved, we are not going in to be back in the Chamber with the ultimate project. I think we can see that. That is from Demopolis south to Mobile.

So, Mr. President, that is what we are asking in this amendment: Hold everything. Let us go behind the figures and see what is there. Now either the coal shipments are going to be made or the plants are there or they are not there, and if, for example, as Dr. Carroll charges that the Alabama powerplant at Greene County does not have the existing capacity nor do they have any plans in the future for the coal-burning capacity as alleged by the Kearney report, then that should be very clear. It is either yes or no, and let us find it out.

Mr. FORD. Mr. President, will the Senator yield?

Mr. CHAFEE. So that is what I suggest we are attempting to do in this amendment.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. CHAFEE. I have completed. I will yield now and reserve the remainder of my time.

Mr. FORD. It is a "yes" or "no" answer.

Mr. CHAFEE. I am glad to answer a question if the distinguished Senator has one.

Mr. FORD. I wish to ask a question.

Did the doctor include in his report any reference to exports? Just answer "yes" or "no."

Mr. CHAFEE. Yes. I understand he does.

Mr. FORD. Does he take into consideration the Chase Manhattan recent outlook as relates to export of coal south to Latin American countries?

Mr. CHAFEE. In this testimony I believe he does not.

Mr. FORD. These are added facts that the Senator is not bringing before us. I think they are very important to the Tennessee-Tombigbee.

Mr. CHAFEE. That is fine. I will be delighted to hear all the facts. I think that is what we are trying to do here. I hope that we will go behind the projections that are made, that is, behind the figures that are assembled to arrive at the cost-benefit ratio and see if they are there.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CHAFEE. Mr. President, I yield myself 1 additional minute.

If it turns out that there are more exports of coal projected down this waterway to South America, fine. Let us hear them. If there are these large shipments of food as the distinguished junior Senator from Mississippi indicated as a potential, that is fine. But I think we should know, and that is what we are trying to find out here.

Mr. President, I reserve the remainder of my time.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, on the Kearney report, the A. T. Kearney Co. is an international company recognized for their integrity and for their ability throughout the world.

The Corps of Engineers says that their cost-benefit ratio information is the best obtainable.

Should we go behind all of the facts and figures? The corps would be glad to discuss individual movements, but they cannot as the opponents know because of a court order. The court rendered an order in this case that none of the individual movements could be discussed by either party, because to do so would be to reveal proprietary information.

As a matter of fact, the opponents led by the railroads did leak to the press and others many of these matters by individual shippers.

Suffice it to say that there has been more changes on the plus side of the cost-benefit ratio than there has been on the minus side.

With respect to Drs. Carroll and Haverman who said that this was not a good water project——

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. JOHNSTON. Mr. President, I yield myself another 30 seconds.

Mr. President, that is the same pair who have always testified for the railroads, and they are always opposed to water projects. It is the same group who said that there would never be sufficient grain shipments that would materialize at Locks and Dam 26, and I can challenge you to go up and look at Locks and Dam 26 and the backlog right now. It is hard to get through Locks and Dam 26 without long waiting times.

In any event, the A. T. Kearney Co. and the cost-benefit ratio and the studies done by them are the best obtainable worldwide. They are conservative, and I challenge anyone to look at the Corps of Engineers and their record on cost-benefit ratios through the years. They have been conservative by a ratio of about 2½ to 1.

Mr. President, I yield 5 minutes to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Mr. President, I thank the distinguished Senator from Louisiana for allowing me 5 minutes. I am not sure that is long enough; but I shall attempt to do the best I can within that period.

Mr. President, I hope the distinguished Senator from Rhode Island will understand where I come from and where those of us who are supporting Tennessee-Tombigbee come from. There is a vital reason why the funding levels for the Tennessee-Tombigbee waterway must not be reduced and that is because of the increased ability this project will give our country to transport coal at cheaper costs than it now can be moved.

Even though the United States has displayed a certain reluctance to do so, other industrialized countries are turning toward coal as one sure means of ending their dependence on the OPEC cartel. We joined with these countries at the Venice Economic Summit with a commitment to double world production and the use of coal in the 1990's.

Already, those nations are moving in that direction and many of them are looking to the United States to supply the coal to meet the increased demand. Indeed, U.S. steam coal exports soared during the first half of 1980, doubling foreign sales during the same period a year ago.

Mr. President, I wish to have printed in the RECORD at this time the U.S. Commerce Department coal and coke export data for July, which substantiates the point I am making, and I ask unanimous consent to have that material printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF COMMERCE—COAL AND COKE EXPORT DATA, JULY 1980

Destination	Volume (short tons)	F.A.S. value (U.S. dollars)
METALLURGICAL BITUMINOUS		
Canada	606,212	35,917,171
Mexico	47,834	2,476,685
Brazil	347,523	19,538,281
Sweden	132,450	6,952,424
Norway	5,294	464,184
United Kingdom	170,352	9,318,677
Neitherlands	28,227	1,578,861
Belgium	297,418	13,270,573
France	317,622	16,544,816
West Germany	203,146	10,840,264
Spain	300,863	14,930,213
Italy	528,348	28,330,860
Albania	50,559	2,463,189
Turkey	89,777	4,354,214
South Korea	32,967	1,643,342
Japan	1,524,560	87,611,466
Algeria	66,557	3,687,573
Egypt	118,346	6,791,474
Total (July 1980)	4,958,455	266,714,467
Total (July 1979)	4,473,255	245,868,613
Total (June 1980)	5,903,255	326,000,857
NONMETALLURGICAL BITUMINOUS		
Canada	1,487,958	59,342,364
Mexico	2,209	113,439
Chile	92,593	3,328,834
Brazil	1	2,656
Denmark	263,923	10,596,623
United Kingdom	186,133	7,817,691

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Destination	Volume (short tons)	F.A.S. value (U.S. dollars)
Ireland	26, 451	1, 416, 470
Netherlands	211, 398	8, 882, 421
Belgium	136, 282	4, 979, 668
France	296, 957	10, 863, 876
West Germany	21, 285	1, 085, 535
Spain	70, 685	3, 543, 072
Italy	53, 064	1, 895, 736
Romania	74, 565	2, 656, 651
Taiwan	63, 419	2, 197, 190
Japan	126, 641	5, 833, 419
South Africa	160	6, 388
Total (July 1980)	3, 113, 724	124, 562, 033
Total (July 1980)	1, 775, 728	71, 605, 251
Total (June 1980)	2, 808, 026	111, 913, 455
Total Bituminous (7/80)	7, 972, 179	391, 276, 500
Total Bituminous (7/79)	6, 248, 983	317, 473, 864
Total Bituminous (6/80)	8, 711, 084	437, 914, 213
COKE (SUITABLE FOR FUEL)		
Canada	83, 202	3, 272, 030
Mexico	5, 829	765, 547
Guatemala	212	21, 036
Honduras	90	17, 999
Venezuela	21, 115	1, 688, 908
Belgium	20, 414	1, 103, 407
France	28, 006	1, 309, 299
Philippines	24, 456	954, 006
Australia	19	3, 515
Egypt	11, 552	1, 624, 418
Total (July 1980)	194, 895	10, 760, 165
Total (July 1979)	154, 929	8, 243, 525
Total (June 1980)	219, 437	12, 998, 006
COKE (NOT SUITABLE FOR FUEL)		
Canada	1, 435	195, 395
Mexico	2, 397	368, 329
Total (July 1980)	3, 932	563, 724
Total (July 1979)	6, 855	967, 194
Total (June 1980)	6, 214	930, 298
Total coke (July 1980)	198, 727	11, 323, 889
Total coke (July 1979)	161, 784	9, 210, 719
Total coke (June 1980)	225, 651	13, 928, 304

Mr. FORD. Mr. President, there are several reasons behind the increased demand for American coal. European and South American countries are converting to coal at a much faster rate than the United States. Meanwhile, coal industries in Europe and South America cannot keep pace with the increase in demand and, furthermore, the cost of domestic production for them usually is greater than the delivered cost of U.S. coal.

The United States already is the largest coal exporter in the world. With nearly one-third of all the world's recoverable coal reserves, this country can continue to be expected to furnish the lion's share of the coal that is needed worldwide.

Now, that is good news as far as I am concerned because every ton of coal we sell—we have been looking at the cost/benefit ratio, we have been looking at some of these things on paper. Let us look at the expanded view of it, if we may, because every ton of coal we sell to somebody else is one less barrel of oil the OPEC countries can use as a lever over the western world's economy.

Let us look at it on the international level, if you will, for a minute. The U.S. Department of Energy conservatively estimates that the export of steam coal for electrical generation could grow from 5 million tons to between 80 and 100 million tons annually by the end of the decade. Exports at this level could generate 38,000 new mining jobs and an additional 190,000 jobs in coal-mining communities. Think about this now, exports could generate 38,000 new mining jobs. Is that in the cost/benefit ratio and an additional 190,000 jobs in coal mining communities. That is 280,000 new jobs that we can direct at this export possibility.

An early study by an international advisory board from 16 different countries recommended that the world consumption of coal be tripled by the year 2000 to 7.5 billion tons.

The United States will never realize the full potential of these increased overseas export opportunities unless we begin now to substantially improve our inland transportation system and port handling facilities to accomodate this new commerce.

Mr. President, I would like to quote the junior Senator from New York (Mr. MOYNIHAN) as he spoke here yesterday afternoon. Maybe the distinguished Senator from Rhode Island was here to listen to him.

He said, and I quote from yesterday's RECORD:

> We shall press on because the Senator from Louisiana has made the point which needs to be repeated. We are not spending enough money on water resources. We are at the edge of disinvestment.

That is the distinguished Senator from New York. He continued:

> If we are serious about producing, consuming, and exporting coal, we have an extraordinary set of projects ahead of us in inland waterways and in harbor development.
>
> It is, in its efforts, in its enterprise, not that much smaller than the construction of the interstate highway program.

So what the Senator from New York was saying was that we ought to look at the waterways like an interstate highway system and use that type of effort as it relates to the transportation by water.

He goes on to explain:

> One cannot explain the pall that has settled over the enterprise of water resources development except by the regional imbalance, that plus the advent of environmental concerns of a kind that are legitimate, too.

So, Mr. President, if you look at what the distinguished Senator from New York says, he says we are not spending enough on waterways, yet we want to stop one of the most important waterways that we have developed.

Bottlenecks already exist on many waterways and at deepdraft terminals. Inadequate rail services and high rail transportation overload rates also have a negative impact on the ability of U.S. producers to compete with foreign suppliers of coal for even use in this country.

It is a sad commentary that some electric utilities can now purchase coal cheaper from Poland and Australia than from U.S. mines.

The Tenn-Tom Waterway will offer an efficient alternative transportation route for a region that has one-third of this country's coal reserves. It is estimated that Gulf ports will need to handle about one-third of all future coal exports, if we are to accommodate all of the coal that we are capable of exporting.

By using the Tenn-Tom, coal shipments from Kentucky, Tennessee, Ohio, Indiana, Illinois and other States will be able to save from 400 to 800 miles to travel. This will result in significant transportation savings for the movement of coal to southern points of export.

Waterways have been shown to be the most energy-efficient mode for transporting bulk commodities to market. One gallon of fuel will move a ton of commerce 514 miles by barge compared to 202 miles by rail and 90 miles by truck.

I have statements presented by various companies and organizations during the Public Works Committee's recent oversight hearings on the Tenn-Tom, attesting to the importance of this waterway as a major alternative route for shipping coal and at this point I would like to enter those statements in the RECORD.

I ask unanimous consent to have printed in the RECORD a statement from the West Kentucky Coal Operators Association; from a coal company that gives the reduction of the cost per ton of coal to be shipped as it relates to Tennessee-Tombigbee; a statement from the Port Authority of Lyon County, which is a very small county that shipped nearly three-quarters of a million tons of coal, and can increase their tonnage to 3 million tons in the next 3 or 4 years as a result of Tennessee-Tombigbee, and it will cut the cost nearly 300 ton miles for export. I also have other letters which I ask unanimous consent to have printed in the RECORD.

There being no objection, the documents were ordered to be printed in the RECORD, as follows:

WEST KENTUCKY COAL OPERATORS' ASSOCIATION, INC.,
Madisonville, Ky., July 18, 1980.

To Whom it May Concern:

On behalf of the West Kentucky Coal Operators Association and coal operators all over Western Kentucky, I would like to express our positive position on the continued development of the Tennessee-Tom Bigby Water Ways Project.

As one must be aware, the least expensive way to transport massive amounts of coal is by barge. Millions of tons of coal are moved each year by barge from West Kentucky to ports and utilities. The access to these ports and utilities and the development of other ports were made possible through the Tom Bigby Project and other similar programs.

In this age of the energy problems with oil, this country has no alternative but to develop its coal resources which also must include adequate transportation; one of the best modes we feel is the barge.

I also feel that this development must be continued because we need and are using the system now. Future coal markets are expanding now and will reach a production scale that this industry has never experienced before. Utilities that are presently burning oil are being required to change to coal, opening new markets to the Southeast. These new markets must have access to water transportation in order to serve their needs better at the least expense. There are also many new markets from over seas being developed that we in the coal fields will need again to use adequate water ways to service these markets.

In summary, we again request that this project be continued without delay. This will not only help our economy as well as the country's, but will also make us more energy independent, and help put our national security in a better position.

Yours Very Truly,

JAMES T. LUDWICZAK,
Chairman of the Board.

PORT AUTHORITY OF LYON COUNTY,
Eddyville, Ky., July 25, 1980.

To Whom It May Concern:

The Kentucky Port and River Commission authorized the construction of Port of Lyon County in 1976, based primarily on the fact that it is within a 50 mile radius of 75% of Western Kentucky coal, and only one lock must be traversed to reach the Tennessee-Tombigbee Waterway.

The port, with an investment of over two million dollars, is presently shipping nearly ¾ million tons of coal per year.

Projections show this will increase to 3 million tons per year by 1984.

Much of this tonnage will go to southern utilities and the export market, via the Ohio and Mississippi rivers.

With the opening of the Tennessee-Tombigbee Waterway, our transportation cost will be cut nearly 300 ton-miles for export, and open many other inland southern markets not now being served efficiently.

We sincerely believe the Tennessee-Tombigbee Waterway will provide a vital link in the coal transportation system of our nation and the world.

CHARLES L. BACCUS,
Chairman.

G&W NATURAL RESOURCES GROUP,
July 21, 1980.

(Statement for the Honorable DANIEL P. MOYNIHAN, Chairman of Water Resources Subcommittee of the Senate Committee on Environment and Public Works)

Mr. Chairman, I am Vice President of the Natural Resources Group of Gulf & Western Industries, Inc. My company is headquartered in Nashville, Tennessee, and is in the business of producing and shipping cement, zinc, chemicals and coal products throughout the nation and the world.

We are very supportive of the early completion of the Tennessee-Tombigbee Waterway, and plan to utilize its low cost transportation facilities when the waterway is completed.

My company presently receives about 20,000 tons per year of zinc concentrate and upgraded ilmenite ore from Gulf ports to Clarksville, Tennessee and Ashtabula, Ohio. Without the Tenn-Tom, this tonnage will be transported by rail or barge at a higher cost.

These movements were not known in 1975, and therefore, these transportation savings have not been included in the benefits now estimated for the waterway by the Corps of Engineers.

This is only one example of the transportation benefits offered by the Tenn-Tom. Our business, as well as others, is greatly dependent upon future economic and market conditions, therefore, it is somewhat difficult to precisely predict the full extent of our use of the Tenn-Tom, some six years away from its completion. Nevertheless, we do know that the Tenn-Tom will be of significant benefit to my company and others in mid-America for shipping bulk type commodities. It will, undoubtedly, become a vital link in our national transportation system.

Thank you for the opportunity of presenting this statement in support of the Tennessee-Tombigbee Waterway.

PETER E. RUMSEY,
Vice President—Distribution.

KOPPERS COMPANY, INC.,
Pittsburgh, Pa., July 22, 1980.

Subject: Tennessee-Tombigbee Waterway.

Mr. GLOVER WILKINS,
c/o the Madison Hotel, 15th and M Streets, NW., Washington, D.C.

DEAR MR. WILKINS: Completion of the subject should open up opportunities for Koppers and others to export coal from East Tennessee through the port of Mobile. With the growing world market for coal, the limited capacity of ports on the east coast to handle coal, and high freight costs in moving it in other directions for export, we believe the completion of the waterway will be an asset toward this end.

Very truly yours,

B. OTTO WHEELEY,
Board Chairman.

ARCH MINERAL CORP.,
St. Louis, Mo., July 21, 1980.

To Whom It May Concern:

Arch Mineral Corporation strongly believes in the importance of economic development and growth for the United States. Arch also strongly believes in supporting the maintenance of high environmental standards.

One of the most important economic development projects under construction in our country is the Tennessee-Tombigbee Navigation Project. In addition to the importance of this project to the south central United States, this project is of great importance to our entire nation. We are convinced that the opening of this vital new artery will allow the economic movement of millions of tons of coal from the coal fields of Ohio, Kentucky, West Virginia, Tennessee, Illinois to the Gulf of Mexico. It is crystal clear to those in the energy business that there is a very large export market of coal developing in Europe. The completion of the Tennessee-Tombigbee Navigation Project will allow this coal to be transported from mine to ocean-going port for further shipment to Europe at a deliverable price that will be competitive with coal from Australia and South Africa.

This project must be fully funded to be completed on schedule in 1985. We need it today.

Without the economic savings afforded by this navigation project, the costs of transportation might not allow American coal to compete in the European market. We are in a position to assist European nations to attain a much greater independence of the Middle Eastern oil producers. At the same time we will be creating new jobs in our country, contributing toward a balance of trade.

Sincerely,

LEE MCKINNEY,
Assistant to the President.

HARBERT CONSTRUCTION CORP.
July 23, 1980.

To Bill Satterfield.
From Les Hudgins.
Re Tenn-Tom Waterway.

There has been a fairly recent development in the export coal market which I do not believe could have been considered in the original cost-benefit study of the Tenn-Tom Waterway.

Prior to 1979, practically 100 percent of the coal exported from US Atlantic and Gulf ports was metallurgical grade coking coal. In late 1978 and in 1979 power generating plants in Western European and some far Eastern countries began converting from petroleum fuels to coal and began planning and building new units to burn coal due to the ever increasing prices of OPEC fuels. Apparently, these conversions and new facilities are coming on stream at a rapid pace because for the most part foreign power producers are not encumbered with multitudes of environmental and other delaying rules and regulations as U.S. producers are.

The preponderence of Harbert coal reserves are of the best steam coal grades. Harbert has invested millions of dollars in new equipment which will increase production in excess of two million tons over last year's production of 6.5 million tons. Therefore, Harbert expects to gain its market share of export steam coal provided it can compete with other producers in one of the most vital cost factors—inland transportation cost and services.

Unfortunately, Harbert mines are captive to one railroad which is one of the most powerful opponents of the Waterway. Their contention is that they can handle any increase in transportation capacity required, when in fact they can barely provide the services required to fill today's soft domestic market.

Harbert is now pricing coal for the export market. Access to ocean going ships will be rail to Ghent, Kentucky on the Ohio River and barge to loading facilities below New Orleans on the Mississippi River. The distance from Ghent to the transfer facility is approximately 1349 miles, and the rate is $8.00 per ton or .0059 cents per ton mile. From Ghent to Mobile via the Tennessee River and the completed Tenn-Tom Waterway, the distance would be 1079 miles and using the same ton/mile cost the rate would be $6.47 per ton, or a savings of $1.53 per ton.

As you know, Harbert owns and operates a rail to barge transfer at Harriman, Tennessee which is close to the East Kentucky coal fields. The distance from Harriman to Mobile via the Tenn-Tom would be 847 miles and again using the ton/mile formula would produce a rate of $5.08 per ton, a savings over the New Orleans route of $2.92 per ton and $1.39 per ton from the Ghent, Kentucky loading point.

These savings in today's dollars, by using the Tenn-Tom, would not only allow us to compete with coal producers in South Africa and Australia, but would save fuel vs the longer Mississippi route and also provide additional jobs for citizens of East Kentucky.

Bill, due to the time frame, this is rather hastily written, so if you have questions please call.

Mr. FORD. The Tenn-Tom will directly link the eastern coal fields with the port of Mobile, Ala., which is the third largest point of coal exports in this country. It is estimated that loading facilities now underway or planned will enable the port to handle 20 million tons a year by 1990.

Even the strongest proponents of the Tenn-Tom recognize that this waterway will not solve our coal transportation needs entirely. A combination of new initiatives will be required, but the Tenn-Tom waterway remains a key element in this Nation's effort to improve its overall coal transportation network.

At the same time, however, we must also improve the carrying capacity of all our inland waterways as well as improve our rail services from mines to other markets and transfer points in both the East and South. We must develop and improve the entire transportation infrastructure, with better working relationships between all involved.

Only then can we expect U.S. coal pro-

duction to be able to meet the future demands, both at home and abroad

Whether the United States can now—or ever in the future—take advantage of the new international opportunities will hinge on two basic factors:

The capacity of our transportation system to move the coal to market in a timely and cost-efficient manner.

The ability of U.S. ports to handle the increased traffic.

The expansion of our international coal markets is not only critical to the future of the coal industry, but will be a major factor as to whether or not other oil importing nations can reduce their reliance on OPEC.

By all rights, the United States should gain the largest part of the increased export market.

The Tenn-Tom project will play a major role in putting this country in a position where it can realize the full benefit of these new export opportunities.

That is why I must regard any attempt to delay the progress of this project as ill-considered and ill-timed. The project is now 50 percent completed and can be in full service by 1986.

Let us not block the progress that has been made.

Let us not stifle yet another opportunity to bring stability and security to the U.S. coal industry.

Let us not pass over a golden opportunity to help this country improve its balance of trade situation. Remember, every ton of coal we export helps reduce our trade deficit abroad—and when we are sending $90 billion overseas this year for oil alone, we need all the help we can get.

I urge my colleagues to take all these factors into consideration and firmly reject any and all efforts to delay completion of this project which is so very important to the economic future of my region and our Nation.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. I yield the Senator from Wyoming (Mr. SIMPSON) such time as he may require.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I have previously entered the fray on this issue and have indicated that is a perilous place for a western Senator to be. But just let me take a few minutes—and I do not mean to be repetitive—I just want to state that I remain deeply troubled by the fact that much of the alleged benefit from the Tennessee-Tombigbee project just cannot and will not materialize.

It would appear that a very significant percentage of the project's navigation benefits are a myth. A look at the history of those benefits I think is somewhat instructive.

I am puzzled as to why in 1975 with project costs skyrocketing beyond $1 billion, the corps apparently realized that the benefits of the project were insufficient to offset the new costs. Therefore, they commissioned a new benefits study for the waterway, an action which is really quite unprecedented for an ongoing project.

The previous economic study, which was done in 1966, had estimated that the project would carry 8 million tons of traffic in its first year, and that 80 percent of the traffic would be northbound.

Less than 2 million tons of coal were projected to be shipped on the waterway.

The new economic analysis, which was completed in 1976, reached several surprising conclusions. First, it estimated the project would carry 28 million tons of traffic in the initial year of operation; second, it projected that the waterway would carry 18.5 million tons of coal in its initial year; and, third, it estimated that 90 percent of the traffic would be southbound—a complete reversal of flow from the 1966 study.

Even with those surprising findings, the benefit/cost ratio remained marginal.

A careful analysis of the 1976 study reveals it to be utterly, I think, baseless. The conclusions of the study relating to traffic volumes and flows resulted from a series of interviews with prospective shippers on the waterway, and I have heard the reference to confidentiality, and so on. But to determine who is to use it one has to talk to them. That is the best way I know of to find out.

The corps then selected 121 annual movements of commodities as the base tonnage for the project. Thus, the accuracy of those movements is absolutely critical to a favorable benefit/cost ratio for the project, and the evidence is overwhelming that many of those projected traffic movements are absolutely illusory.

Some of them have been named in the debate, and I will touch on them lightly again. The corps estimates that the Gulf Power Co. will ship nearly 8 million tons of coal from Harriman, Tenn., and Shawneetown, Ill., to powerplants in Florida during 1987, the project's first year of operation. However, officials of Gulf Power say they will ship no coal whatever on the waterway.

The corps estimates that Kentucky Energy Development Corp. will ship 2.4 million tons of coal via the Tenn-Tom. However, Kentucky Energy Development Corp. is out of business, and the coal mine relied on by the corps has never been in existence.

The corps lists Hawley Fuel Co. of New York as a coal shipper on Tenn-Tom to the tune of 1.5 million tons a year. However, Hawley Fuel owns no mines anywhere in Alabama and has no plans to use the waterway.

The corps states that Hammermill Paper Co. will abandon rail transportation and instead ship 22,000 tons of wood pulp on the waterway. However, officials at Hammermill have stated that they do not intend to use the waterway.

The corps estimates that Freeport Sulfur Co. will ship 350,000 tons of sulfur on the waterway. However, officials of the company state that such shipments are extremely unlikely.

Officials of coal companies and barge companies have stated that the corps estimated coal movements on the project will never materialize, and some of those reasons have been given, and I would just state that they are, I think, very evident. Such movements would require a 500-percent coal production increase in the Chattanooga area in a mere 7-year span. Terminal facilities in Mobile and elsewhere are insufficient to handle such an increase. Coal production—I think this is critical, coal production—in the entire State of Tennessee would be required to double or triple in order to reach the levels of movements on the project that are projected.

A study by the 3R Corp. showed Tennessee coal production actually may decline from 10.3 million tons in 1977 to 10 million tons in 1986.

I join with what my colleague, Senator FORD, is saying with regard to America's commitments on coal.

Out in my part of the country, Wyoming has 50 billion tons of coal in reserve. That will take care of this country for many years to come.

I feel no sense of competition about West Virginia coal or Kentucky coal or Tennessee coal. That is something that we must all work together to promote.

But if we take all of southeastern Tennessee's current recoverable reserves, they will be depleted in 15 years, and yet the lifespan of the Tenn-Tom project is 50 years.

All the economic basis is given about this great coal production from Tennessee, but if you got it all—and you are going to get it all in 15 years, because that is all there is, and yet you have a project that lasts 50 years.

Amax, of course, has shelved their major coal development plans in the project area for various environmental reasons.

Mr. President, based upon that type of evidence, experts have concluded that nearly three-quarters of the claimed navigation benefits for the project are spurious and fictitious. Without those benefits, the benefit-cost ratio for the project sinks well below one to one.

In addition, an unreleased report of the General Accounting Office has concluded that the corps actually "double-counted" navigation benefits on the portion of the project from Mobile to Demopolis by failing to account for traffic congestion in this reach of the river. Adjustment of that benefit-cost ratio based on correction of this error alone would, by itself, bring the benefit-cost ratio down close to unity.

I simply believe that the Congress should be exceedingly careful about increasing the level of funding for a project whose benefits are so thoroughly questionable. The whole concept strains reason to me and I, therefore, urge support for the amendment.

Mr. JOHNSTON. Mr. President, I yield myself 2 minutes.

Mr. President, again, all of these matters were totally and definitively answered in the written documents we put out—each Senator has a copy of those.

On the question of coal, for example, there are some 15.8 billion tons of coal identified by the National Coal Association with an overburden of less than 3,000 feet. Fifteen point eight billion tons, which is many times the amount in Tennessee and Alabama necessary to support the amount that has been projected here.

Mr. President, what the opponents of this thing have done is found some individual people who were interviewed as part of the Kearney study and found that some of those have changed their plans, some have perhaps gone bankrupt and others are in a different business. Mr. President, that always happens in each and every economic analysis. Some move in, some move out; some go bankrupt, some come in business. That is expected as it is part of any survey. That is the way a survey is done.

Now in the Moynihan hearings, they actually identified much more potential traffic coming into the system than that which was identified as going out.

If you will just take one figure, Mr. President, this from an opponent of this project, the L. & N. Railroad. The L. & N. Railroad testified that they would lose 30 to 50 million tons to the Tenn-Tom. That information was received from its marketing survey offices. And they backed it up by actual figures. Thirty to 50 million tons annually.

Now, the Corps of Engineers actually made their estimates based upon 25.9 million tons. So if the L. & N. Railroad, a great opponent of this project, is to be believed, and they operate in the real world, then the cost-benefit ratio by the corps was low by a ratio of somewhere between 100 percent and 20 percent. Because they used only 25.9 million tons a year and, according to the L. & N. Railroad—just one source—it will be 30 to 50 million tons.

Mr. President, for the opponents of this project to say, "Let's stop the project and go make a new cost-benefit ratio," is really silly. Mr. President, it is disingenuous. They do not want a new cost-benefit ratio. They want to stop this project.

Mr. President, can you imagine the height of silliness which this would be to stop the project, commission a new study, and in the meantime paying termination costs, termination costs of those ongoing contracts—I do not know what those termination costs would be, maybe $50 million, maybe $100 million—while we had a new study commission?

There is no better study group than A. T. Kearney Co., which is internationally recognized. And to have some new set of hearings with some new spurious information about a $3 billion project, paying all these costs and then find out that we were right to begin with—which we would find that out—then what do we do? Say, "That is too bad. We lost $100 million in inflation. We lost another $100 million in termination costs, but that is all right, we satisfied the curiosity of some of the opponents of this project."

Mr. President, that is asinine and that is silly and the Senate, I am confident, is not going to be so silly as to do so.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 5 minutes to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, newspapers and public relations people generally seek some eye-catching slogan or label to a proposal. I have been thinking about this: The Chafee-Simpson $1.1 billion Senate ditch.

To stop this mighty project when it is more than 50 percent completed, when there has already been obligated $867 million of Federal funds, when there has been obligated by State governments where bond issues have been issued another $135 million, it comes to over $1 billion that will, in effect, go down the drain if this project is terminated.

Maybe I am calculating it wrong. Maybe I ought to term it a $1.5 billion or $1.2 billion ditch, because of the fact, according to testimony, it would take approximately another $130-some million to terminate the project.

Some say, "Well, that could be. You could have some land recoupment." This question was put to Gen. John Morris in the Senate Appropriation's Committee hearings, about the idea that purchasers would come and buy the land. General Morris sort of flippantly made the remark, "Well, why would a man want to buy a ditch?" But it is more than just a flippant remark.

So I think that when we are considering this, that we ought to consider the fact that we are considering the distinct possibility of a label which the news media will be writing and talking about when they say "There lies the $1 billion Senate ditch."

I want to talk just briefly about the benefit-cost ratio associated with the Tennessee-Tombigbee Waterway. General Morris, who is highly respected, used the figures of 2 to 1. Trying to get the most favorable ratio and use the factors that would give you this, you can take his figures, use them in a manipulated manner, and it could come out to be a 10 to 1 cost-benefit ratio. And I challenge you that that formula is being used on the other side. General Morris testified the favorable benefit-to-cost ratio was calculated by the formula provided by law. But the formula provided by law does not allow for inflation in regards to benefits.

So if you would then take the inflationary factors and add them to benefits, General Morris testified that it would amount to 4 to 1 favorable cost-benefit ratio. General Morris further testified that the history of the Army Engineers in their cost-benefit ratio analysis, reveals that they had always been very, very conservative in arriving at their estimates and that history had proven that they were 2½ times wrong; that it has turned out that the benefits on water projects, historically, had proven them to be 2½ times more than the Army Engineers had estimated in regards to benefits. Taking that 2½ times, plus the 4 to 1, you have 10 to 1, if you want to go to an extreme type of formula.

Now I point this out to show that opponents of the Tennessee-Tombigbee project are using the opposite extreme in the attempt to kill the project.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HEFLIN. Would the Senator give me 2 more minutes?

Mr. JOHNSTON. Yes.

Mr. HEFLIN. Mr. President, I want to mention inflation. General Morris testified that if you are interested in the environment and if there were an environmental problem, the environmental insult has already occurred, that they have provided for restoration. But if you do not go through the restoration, whatever environmental insult was to occur with the Tennessee-Tombigbee has already occurred.

I want to mention court cases involving the Tennessee-Tombigbee Waterway. The matter has been taken to court six times and six times the courts have decided that the Army Engineers has complied with the laws having to do with the project. I repeat, the courts have held that the Army Engineers have not violated the statutes in the planning and construction of the Tennessee-Tombigbee Waterway.

In 1971, suit was filed in the U.S. District Court of the District of Columbia seeking to enjoin the Corps of Engineers from commencing construction on the Tennessee-Tombigbee Waterway. Plaintiffs were the Environmental Defense Fund, a local environmental organization known as CLEAN (Committee for Leaving the Environment of America Natural), and several individual plaintiffs who were college professors. Discovery procedures in the present litigation have shown that the L. & N. Railroad was very much a "behind the scenes" activist in the promotion and pursuit of that original litigation. A preliminary injunction was issued by the D.C. District Court. Venue was transferred to the Northern District of Mississippi and after extensive motions, briefs, arguments and a 3-week evidentiary hearing, the injunction was dissolved and the suit dismissed. On appeal to the Fifth Circuit Court of Appeals, the District Court's dismissal was affirmed and the legal roadblocks to construction of the Waterway were removed.

This first lawsuit made three basic allegations: First, that the waterway was an environmental disaster and the corps had failed to comply with the requirements of the National Environmental Policy Act to make a detailed environmental impact statement and to protect the environmental interests in its decision to construct the waterway; second, that the benefits had been overstated, costs underestimated and an unrealistic interest rate employed to produce an inaccurate benefit/cost ratio and analysis; third, that the corps had failed to consider alternative methods of the transportation of commodities, that is, existing railroads and thus,

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committed a violation of the NEPA mandates.

The district court resolved these issues against the plaintiffs in the following manner:

First. It held that the environmental impact statement produced and circulated by the corps was sufficiently detailed to constitute procedural compliance with NEPA.

Second. That NEPA did not provide for court review of the substantive decision to proceed with the project but only procedural compliance review.

Third. That the costs/benefit analysis was subject to very limited judicial review and the use of the assumed benefits and costs and the discount rate set by statute was not an abuse of discretion on the part of the corps, but was within the provisions of applicable statutes; and

Fourth. That the environmental studies done by the corps sufficiently considered alternative methods of transportation.

The court of appeals in affirming held that the district court was technically incorrect in assuming that NEPA provided no judicial review of substantive decisions, but went on to hold that all of the adverse environmental impacts claimed by the plaintiffs had been pointed to the Congress in the extensive debate over construction funding for the waterway and that the Congress was, in fact, the decisionmaker on the decision to proceed with the waterway; that congressional decisions are not subject to NEPA review by the courts and that, therefore, the decision of the district court to dismiss the suit was legally correct and should be affirmed.

Opposition to the continued construction of the waterway was apparently dormant from the time of the first litigation until November 1976, when two identical suits were filed in the U.S. District Court in the District of Columbia—one by the environmental defense fund, CLEAN and individual plaintiffs alleging environmental concerns and a second suit by the Louisville & Nashville Railroad alleging economic and environmental injury from the continued construction of the waterway. These suits were consolidated and venue once again transferred to the northern district of Mississippi. After some discovery proceedings, the plaintiffs filed an amended complaint in January 1978, containing 15 separate counts in which they sought an injunction against the completion of the waterway.

In count I, plaintiffs sought an injunction to prevent the continuing "unlawful and unauthorized" construction of the waterway and to require all defendants to comply with applicable Federal laws. Plaintiffs alleged that since 1974, the corps has intentionally withheld vital information, continued to construct the waterway after receiving advice that the channel width being constructed is illegal and unauthorized, that the corps has submitted false and inaccurate information to Congress in support of its annual budgetary proposals and has violated numerous statutory and regulatory mandates to conceal its violations. In this count I, plaintiffs alleged that the corps committed the following specific illegal acts:

First. Withheld high price costs and submitted false and misleading cost data to lessen the "emotional impact";

Second. Failed to disclose its lack of authority to construct a 300-foot channel;

Third. Studied its lack of authority to dredge a 300-foot channel, studied alternative actions, but never disclosed the study or alternatives to Congress or the public;

Fourth. Illegally segmented the project into two parts—north and south Demopolis—rather than halting construction while seeking congressional authority to extend a 300-foot channel to Mobile;

Fifth. Submitted false and unsubstantiated benefit claims to justify enormous costs and manipulated data under its control in order to concoct benefits to meet the costs;

Sixth. Withheld Army Audit Agency findings and reports which showed misleading activity on the part of the corps;

Seventh. Failed to disclose economic and environmental damage caused by the project which were different from those contained in the 1971 EIS.

In count II, plaintiffs alleged that the project was illegal and unauthorized in that the corps had departed substantially from the plan of construction contained in the authorizing legislation and that the commerce clause of the U.S. Constitution forbids the delegation to or usurpation by the executive branch of the exclusive congressional legislative powers.

Counts III through XV of the amended complaint will be discussed later because the district court, in effect, bifurcated the issues and elected to try counts I and II as a separate evidentiary matter withholding consideration of counts III through XV pending disposition of counts I and II.

Two weeks of trial contained testimony from witnesses for plaintiffs, officials of the U.S. Army Corps of Engineers ranging up to the Chief of Engineers, General Morris, and testimony from witnesses for the defendant-intervenors, including the Tennessee-Tombigbee Waterway Development Authority, the Tombigbee River Water Management District, and the State of Alabama. This trial resulted in an order of the district court in March 1979, dismissing counts I and II. This dismissal was based on an opinion which contained the following holdings:

First. The modifications, except for channel width, including chain of lakes, changes to design to the canal section, changes from certain dams to locks and dams, bend easing and cutoffs were all within the discretionary authority of the Corps of Engineers and created no cause of action on the part of the plaintiffs.

Second. The increase of channel width from 170 feet to 300 feet was highly publicized by the corps when the decision was made by the Secretary of the Army in 1967, was communicated to Public Works and Appropriations Committees of the House and Senate, was discussed by the Congress, was known to the Congress in connection with both Tenn-Tom funding and with the discussion and authorization of other projects such as the highway corridor program and the Appalachian regional programs. The increased width was revealed in the 1971 environmental impact statement and was specifically referred to by the court in its decision in the earlier lawsuit.

The increased width was found to have been well-known to the L. & N. Railroad by virtue of its activities as Chairman of the Association of American Railroads, Committee on the Tennessee-Tombigbee Waterway, and testimony given by L. & N. officials to Congress in opposition to construction funds. Thus, the courts concluded that the plaintiffs were barred from pursuing the authorization issue by virtue of the doctrine of laches, having raised this issue in its amended complaint some 11 years after the width widening decision was made and publicized.

Third. The court held that the plaintiffs so-called segmentation argument was without merit. This is the argument that the Tennessee-Tombigbee Waterway is dependent upon unauthorized improvements to the Black Warrior-Tombigbee between Demopolis and Mobile. The district court held that the projects are two separate waterways and the court did not err in considering the Tennessee-Tombigbee construction dependent upon yet unauthorized improvements to the BWT below Demopolis.

An appeal was taken on these findings to the Fifth Circuit Court of Appeals and that court affirmed the district court's opinion in every detail in a decision in April 1980. The plaintiffs have now filed a petition to the U.S. Supreme Court for a writ of certiorari to review that holding and the petition is now under consideration, responsive brief having been filed by the Tennessee-Tombigbee Waterway Development Authority and responsive brief to be filed in the near future by the Justice Department on behalf of the Federal defendants.

District Judge Keady has taken under consideration motions for summary judgment and judgment on the pleadings filed by both sides as to the allegations of remaining counts III through XV. The defendants and defendant-intervenors have taken the basic position that all of the remaining issues are barred by the doctrines of res judicata, collateral estoppel and laches, have been raised or within issues that should have been raised and put to rest in the initial 1971 litigation. Judge Keady's announced schedule of disposition of these matters came at a hearing which preceded the filing of plaintiff's petition for certiorari to the U.S. Supreme Court and it is not known at the present time whether Judge Keady will feel disposed to withhold any further action on counts III through XV until the Supreme Court has acted on the petition or whether he will proceed with dispositive action on the remaining counts.

A brief summary of counts III through XV follows:

Count III of the amended complaint alleges that the corps deliberately submitted inflated and false benefit data and unrealistically low cost estimates in violation of the regulatory requirements called principles and standards. In the court hearing, corps personnel, including Lt. Gen. John Morris, denied any misleading of the Congress. General Morris testified to the same effect before Senator MOYNIHAN's Oversight Subcommittee after which Senator MOYNIHAN expressed satisfaction saying:

> General, therein we resolve this matter certainly to this Senator's satisfaction. I, for myself, put this matter behind.

In count IV, the plaintiffs allege that the court violated applicable laws by the use of the lower interest rate prescribed by statute for those projects authorized prior to January 1969, alleging that appropriate non-Federal interests must have, prior to December 21, 1969, given satisfactory assurances to pay the required non-Federal share of project costs.

These allegations have been thoroughly aired and the facts are that not only was the Tennessee-Tombigbee Waterway authorized by Congress in 1946 but the States of Mississippi and Alabama both enacted legislation founding the respective local sponsoring agencies, funded those agencies and authorized the issuance of construction bonds for bridges and highways required long prior to the deadline set by the statute.

In fact, the statute clearly mandates the continued use of the initial interest or discount rate throughout the course of construction of the project once the rate has been established by the authorization date and assumption of local sponsorship responsibilities. It would have been and would be now a clear violation of the statute (42. U.S.C. 1962) for the corps to change the discount rate being used during the on-going construction period.

Count V is closely related in that it alleges a violation of the requirements of the Rivers and Harbors Act of 1970 requiring written agreements of cooperation from participating non-Federal interests prior to commencing construction of water resources projects after January 1, 1972. Not only was this project commenced prior to January 1, 1972, but written agreements and assurances were given by the State sponsoring agencies to the corps.

Count VI alleges that 33 U.S.C. 701, et seq., requires that the project possess a positive benefit to cost ratio and requires the Corps of Engineers to report accurately to Congress the true ratio. Again, in this count, the plaintiffs allege that the Federal defendants have misrepresented the costs in order to conceal from Congress the fact that the waterway benefit-cost ratio is below parity. Again, General Morris specifically denied this allegation in testimony before Judge Keady in January 1979, and on July 28, 1980, told Senator MOYNIHAN and other members of the Oversight Subcommittee:

> I can tell you categorically, we did not. I can personally attest to the fact that our objective was to give information, not to withhold it.

He went on to detail the in-depth reanalysis of the project costs and benefits in which the corps developed three different estimates based on varying assumptions of projected cost increases. A $1.4 billion cost estimate was finally approved on the basis of this reanalysis and General Morris stated that he personally informed the Senate Appropriations Committee as soon as this estimate was adopted.

Count VII alleges a violation of NEPA and the Rivers and Harbors Act of 1970 by virtue of information concerning studies conducted in 1975 to analyze the alternatives to the continued construction of the 300-foot wide channel, including the possibility of reducing channel width to 170 feet or 200 feet and the possibility of suspension or termination of the project.

The 1972 district court decision recognized that the environmental impacts of a project of this magnitude could not be exhaustively examined prior to the beginning of construction and gave specific approval to the corps' plan of ongoing environmental studies and efforts to reduce adverse impacts. There is simply no requirement that the corps continually produce and circulate formal environmental impact statements because it is continuing to critically analyze and reevaluate the waterway, its dimensions and its features. At any rate, it was concluded that construction should proceed and be completed with a 300-foot wide channel which was the channel dimension revealed and circulated in the 1971 EIS in accordance with the 1967 decision by the Secretary of the Army. This count is, in effect, a restatement and second shot at the authorization issue which has been laid to rest by both district and appellate courts.

Count VIII alleges a violation of NEPA because of an alleged presumption that a 300-foot wide channel will be built all the way to Mobile. This is the count which plaintiffs refer to as the "segmentation issue," stating that the corps cannot legally or logically segment the portion of the waterway above Demopolis from that south of Demopolis. Judge Keady in his March 12, 1979, opinion clearly dealt with this allegation with finality:

> Much has been said about the Corps' erroneous assumption that it had general statutory authority, under 33 USC, Section 5, to make navigation improvements to the BWT, which is a historically different navigation project extending southward from Demopolis to Mobile. The BWT has been in operation for many years and antedates the 1946 authorization of the TTW. The fact is that the Corps, in the face of the 1974 *Callaway* decision, has readily acknowledged that it is without authority to eliminate the constraints presently existing in the BWT project and, after proper studies, must secure congressional approval to increase the channel width, eliminate numerous cutoffs, increase lockage capacity and remove other hindrances now existing in the BWT in order to efficiently accommodate 2-way navigation for 8-barge tows. Not only do the defendants concede the necessity for congressional approval for making these modifications to the existing BWT but they further acknowledge that, assuming the future grant of such authorization, the duty will rest upon them to comply with NEPA and all other applicable laws before such navigation improvements could be made. Suffice it to say that these developments, though of recent origin, have no bearing upon the Corps' lawful prosecution of the TTW project in accordance with the current design.

The plaintiffs made no effort to raise the correctness of Judge Keady's findings in this regard in their appeal to the Fifth Circuit. Nor have they included any complaint concerning it in their petition for certiorari. It, therefore, stands as the law of this case that the Tennessee-Tombigbee Waterway is factually and legally independent of the Black Warrior-Tombigbee Waterway.

Count IX alleges that NEPA requires separate environmental impact statements to be circulated on major component parts of this project. This argument was not only totally rejected by Judge Keady in his approval of the ongoing environmental studies, likewise approved by the Fifth Circuit in 1972, the self-same argument has been specifically rejected by the Fifth Circuit in a 1978 case styled *Save Our Sycamore* v. *MARTA*, 576 F.2d 573. In that case opponents of the Atlanta Rapid Transit System sought to require an environmental impact statement on the construction of a major MARTA station. The Fifth Circuit held that the terminal was not an independent project but one feature of the overall system and that a separate environmental impact statement would be inappropriate.

Count X alleges the discovery of adverse environmental impacts since the original EIS and argue that construction should be halted until supplemental impact statements are prepared analyzing these discovered impacts. In fact, all of the alleged impacts were raised in the first lawsuit and have been fully anticipated and considered by the corps. They include acid drainage problems, water quality problems, mitigation of the destruction of wildlife habitat and alleged economic losses to alternative transportation modes. There is absolutely nothing new in this charge.

Count XI alleges the necessity for the corps to prepare environmental impact statements to accompany each annual funding request. This argument has been specifically rejected by the U.S. Supreme Court and this count subsequently withdrawn.

Count XII alleges the necessity for the corps to prepare additional environmental impact statements in order to comply with the Clean Water Act of 1977 and the Federal Water Pollution Control Act. The completion of this project with the use of on-going supplemental environmental studies has been discussed above and approved by district and appellate courts.

Count XIII alleges a violation of the Fish and Wildlife Coordination Act, stating that the corps has not prepared

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or filed a wildlife mitigation report. This charge was, in effect, made in the 1971 litigation and rejected; and the corps has, in fact, contracted with the Fish and Wildlife Service to perform and submit a wildlife mitigation study.

Count XIV of the amended complaint alleges a failure on the part of the corps to publish plans and design information in the Federal Register. There is absolutely no statement in this count from which one can determine which documents are said to be required to be published in the Federal Register and which are not. The corps has published numerous regulations, circulars and other documents which they believe within the purview of the publication requirements of the Administrative Procedure Act but they have not published those design and planning memoranda which are not suitable for such publication.

Count XV is a catchall allegation that the Federal courts are required to set aside and hold unlawful any agency action which is arbitrary or capricious by virtue of the Administrative Procedure Act (5 U.S.C. 706). Obviously, the Tennessee-Tombigbee Waterway has had the benefit of judicial review under the Administrative Procedure Act since the first suit was filed in 1971 and the courts have, by seven separate holdings, determined that the project passes APA muster and is not being built in an unlawful, arbitrary or capricious manner.

Overall, the most repeated argument of waterway opponents is that the anticipated shipments are "illusory" and the benefits based upon them are consequently nonexistent. In an amazing contradiction to this argument, officials of the plaintiff Louisville and Nashville Railroad estimate, in their testimony, that the need for transportation of coal from the Kentucky, Tennessee, and West Virginia coal mines to the gulf south will increase severalfold by the time of the completion of the waterway.

They testify that their own diversion studies show that 25 percent of this increased future coal traffic, which would otherwise be transported by their railroad, will be carried instead by the waterway. This is not an anticipated loss of 25 percent of present rail volume but a loss of future increased traffic which railroad officials admit that they are not presently equipped to handle. A 1978 Department of Transportation study revealed that the costs of upgrading the railroad equipment sufficiently to handle the anticipated coal traffic would cost many times the benefits. It is perfectly obvious that if the traffic were not there in amounts as great or greater than those anticipated by the corps in its calculation of benefits and costs, the economic interests now fighting the waterway would not be spending the sums they have in court and in lobbying efforts to halt its construction.

Mr. SIMPSON. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield 2 minutes.

Mr. SIMPSON. I thank my colleague.

In response to what my good friend from Louisiana and my good friend from Alabama are saying, and I see one smiling at this time, which I hope he continues to do when I conclude. The issue is, yes, and I make no apology, I am out to stop the project. I think we ought to use what we have in it and cut it off. Land sales alone will pick up a tremendous amount of the loss. Project operation will pick up the rest.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. SIMPSON. I just have 2 minutes.

I agree with my colleague from Alabama, you would not want to buy a place on a ditch, but you sure would want to buy a place on a multimillion dollar silver- and concrete-lined canal. That is what people will be buying their land on, not a ditch.

It is easy to reflect flippantly on the issue, easy to inject ridicule into it, a little sarcasm, but that does not solve it at all and I do not think it is helpful in the debate. To me there is something a lot sillier than all of that, and that is putting $3 billion down a rat hole. That is the silliest result of all.

If the issue stood on itself, we would not be dragging in these extraneous things about regional development, national defense, affirmative action programs. If it stood on its own, it would make it, but it cannot.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute. I want to ask the Senator a question. We put into the record that the Corps of Engineers and the Chief of Engineers have testified that land would be calculated to produce maybe $30 million. Does the Senator have any information which disagrees with the land sale item?

Mr. SIMPSON. Mr. President, I think that anyone would concur that on the land values in that area, since the project was first studied and since the second revision was done it would be disclosed that that land has gone up in value tremendously, even from 2 years ago, even from 1 year ago. That is the issue that I would refer to in regard to that.

Mr. JOHNSTON. Does the Senator not recognize that it has been cut up, dug up, the timber cut, rendered in many instances useless?

The corps testified that it has a sale value of maybe $30 million. Is the Senator just saying that inflation has gone up, and therefore, in the Senator's opinion, it is worth more?

Mr. SIMPSON. General Morris said, "I don't know. We might get $45 million back." There is the difference between $30 million and $45 million. If we are going to use those types of figures, who is going to believe it?

That is the testimony of General Morris.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JOHNSTON. I yield myself 1 additional minute, Mr. President.

If you use $45 million, you still have a sunk cost of $950 million. If it is $950 million or $967 million, the point is that the sale of land would not bring back a major part of the cost here. You have a sunk cost of around $967 million. Are we together on that, or does the Senator have information contrary to that?

Mr. SIMPSON. Mr. President, we are presenting figures. We are presenting ours, which are not accepted by the opposition. I do not accept the Senator's figures because of a little deficiency like the General's remarks, with the $30 million the Senator is using and the General says we might get $45 million. There is a 50-percent divergence on the computations.

I have sat on the Public Works Committee, and one thing you learn is to not believe anybody's figures.

Mr. JOHNSTON. I will ask the Senator from Wyoming, what are his figures? I have given him my figures based on the testimony of the Chief of the Corps of Engineers of a sunk cost of $967 million. I challenge the Senator to give me his figures.

Mr. SIMPSON. My figures would certainly equate when you consider the actual value of land based on comparable sales and the use of the partial project that is completed when you work in the return on tariffs and fees.

Mr. JOHNSTON. What the Senator is saying is he does not have any figures. The Chief of the Corps of Engineers said that the amount of the completed work on project would not even support the cost of maintenance. It would be, to use his figures, "virtually nil" if you stopped it now. He has testified $967 million is the sunk cost. I ask the Senator from Wyoming to give me his figures, and he does not have any, Mr. President. For the Senator to say it is silly for us to cast aspersions on this and to let us get down to the real facts, the fact is the opponents of this project do not have any facts. The facts are all on our side.

It is whimsical, it is imaginary.

Mr. President, I hope the Senate is not going to be silly enough—and, yes, I do say it would be silly—to take their arguments, because their arguments are silly.

Mr. STENNIS. Will the Senator yield?

Mr. CHAFEE. I yield.

Mr. STENNIS. If the Senator from Louisiana will yield me 2 minutes, I would appreciate it.

Mr. JOHNSTON. I yield.

Mr. STENNIS. Mr. President, with all deference to everyone, and the fine good faith of our friends here about the possible value of this land, I have been through all those counties in Alabama, going north from Mobile. I have been through there dozens of times. Coming up further, I have tried suits in Livingston, Ala., and in Anniston, Ala., as a practicing lawyer. I know that country. I have been there, through Columbus, Miss., through all of those counties through all these years.

So far as the value of this land which will be left compared to what has been spent in hard money, it is just going to be a relatively very small sum. There is no way out of that.

In talking about the inflated value of land generally, this land, if it is turned back now, is in such a condition that that would highly deflate the value.

So let us not be mistaken about that.

The traffic from Columbus, Miss., south, without the through traffic cannot materialize so as to have an appreciable value compared to the $970 million investment already made. I yield back any remaining time.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I yield myself 5 minutes.

How much time have I remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. CHAFEE. Mr. President, the proponents of this project are relying on two well-known methods of debate in an activity such as this, both of which they have used.

The first is we cannot stop, we have spent so much money.

The second is the ridicule argument. "This is assinine," says the distinguished Senator from Louisiana. Try to ridicule, make fun of, the others. Do not get the facts.

The facts are that the amount contracted for this project is $967 million. Then you go to General Morris' testimony and the Senator from Louisiana asked him. "What do you think it will cost to terminate?"

GEN. MORRIS. We figure termination of the project would cost about $130 million.

On that alone, Mr. President, I should like to ask how anybody can contract on behalf of the United States of America for a greater amount than has been authorized for a project. I would be most interested if the Senator could respond to that. They have contracted for so much, $967 million, and, somehow, we are obligated for more than we have contracted for and more than we have authorized and appropriated. That is point 1.

Point 2 is that this is a $3 billion project. Let us not get away from that. I know the proponents of the project are delighted to put that aside, saying, oh, we are only talking about $2 billion; we are only talking about the Tennessee River down to Demopolis, and forget the other part. Forget the other part of the waterway that has to be built. This is all projected on eight-barge traffic and what can the river south of Demopolis accommodate? Four barges, a maximum six, in some locations.

Mr. President, take a look at it. Has anybody taken a look? No. Nobody goes down to take a look. They believe everything that is brought in.

I think that it is important that I have included these pictures. I hope the proponents will look at these pictures and see what the Corps of Engineers themselves say is going to be required—44 cutoffs on the lower part of the river, from Demopolis south.

Let us not lower this to a debate involving ridicule or "asinine," or words like that. Let us stick to the facts, Mr. President.

I reserve the remainder of my time.

Mr. FORD. Mr. President, will the Senator yield for one question?

Mr. CHAFEE. I shall yield to any question, Mr. President.

Mr. FORD. I believe that more people who support the project have been there than those who oppose the project. I doubt if the Senator from Wyoming knows where the Tennessee River is. The Senator from Rhode Island has been there, I know. But the Senator from Wyoming is opposing it and he has never been there and he does not know what he is opposing, except in dollar figures. That is all.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

The Senator has asked a question, which is a legitimate one, where does the $130 million termination costs come from? If the Senators will turn to page 13 of the green-covered hearing which we put out, there is a detailed statement of where the $130,750,000 estimated termination costs come from. Some of it involves obligations to contracts. You cannot terminate a contract where a contractor has put forth a great deal of cost, put his equipment out there, and just say, too bad. You have some obligation to him, demobilization costs. You have to restore the area—replant trees, replant grass. You cannot just leave a big scar out there.

The corps, at our request, has done a study on it and $130,750,000 is the cost. That is the basis on which we arrive at a total sunk cost of $997 million, less a $30 million estimated cost of being able to sell the land.

One final point, Mr. President, is that this is not a $3 billion project, never was a $3 billion project. There is no evidence to support that. I do not understand how my esteemed friends from Rhode Island and Wyoming can continue to call this project a $3 billion project. That is not even authorized. It is a $1,760,000,000 project in Federal cost, of which over 60 percent is sunk costs, from which we get no benefits if we stop.

Mr. LEVIN. Mr. President, will the Senator from Rhode Island yield for a question?

Mr. CHAFEE. Yes, Mr. President.

Mr. LEVIN. Then I shall ask the Senator from Louisiana if he will also yield for a question.

Mr. President, to the Senator from Rhode Island, I wonder if he has computed the benefit-cost ratio of completing the project north of Demopolis based upon the remaining costs of the project north of Demopolis. He can do that either at a 3¼ percent interest rate or a 7⅛ percent interest rate. If it has been computed, would the Senator give us that benefit-cost ratio?

Mr. CHAFEE. It will take a minute to get that information.

In answer to the question of the Senator from Michigan, I do make one point here, which has been overlooked. There is a lot of discussion on the floor that we are just leaving a great big ditch there of no value to anybody. Again, take a look and you will see that from Columbus south has been completed and that the so-called ditch can be used. The locks and dams are there. They are not only there, at Columbus, they are farther down, including in Demopolis itself, where there is a lock and dam that has been constructed. So I wish we would not have any additional talk about just and empty ditch lying there, incomplete, in the event this project is terminated.

Mr. HEFLIN. Will the Senator yield?

Mr. LEVIN. I believe I have the floor, Mr. President.

While awaiting the answer to the first question, let me ask, is the 0.8 cost-benefit ratio that the opponents of this project have used based on completion costs north of Demopolis or on the total costs north of Demopolis?

Mr. President, with the permission of the Chair, I wonder if the Senator from Louisiana would yield for a couple of questions I have of him while the Senator from Rhode Island is obtaining the answer to those questions.

Mr. JOHNSTON. Yes, Mr. President. If I may answer the question, we have the Senate hearing green-covered book, which is on the Senator's desk. If he will turn to page 10, he will find that, using the discount rate of 3¼ percent, the cost-benefit ratio, using not the full sunk cost but only the contracted cost, is 7.8 to 1. Using that same cost at 7⅛ percent, it is 4 to 1.

Using the full cost—that which is already spent and the future spending—it is 1.3 to 1.

As I stated earlier, Mr. President, the 3¼ percent is not an unrealistic percent, because that does not represent the cost of money, that represents the incremental interest cost, because when cost and benefits are both neutral to inflation, then you should use a real interest rate, which is the cost of money. That is all explained in the hearing book.

Mr. LEVIN. I thank the Senator from Louisiana and I have some questions for him if he will yield for that purpose.

Mr. JOHNSTON. Yes, Mr. President.

Mr. LEVIN. As he knows, I am troubled by the absence of a GAO report in this matter. I am wondering whether or not, whatever happens here this morning, the Senator from Louisiana will either request or support a request for the expedited completion of the GAO study in his capacity as chairman of the Subcommittee on Appropriations?

Let me add for the record that I talked to General Staats about this matter. I am satisfied that, in their termination of that report, stopping it in the middle, they followed the policy that they usually follow about not writing reports, at least on their own initiative, on matters that are in litigation. I do not think there is any problem about that, at least in my mind. However, upon the request of a committee chairman or subcommittee chairman, General Staats indicated that he believed he could work out a policy with the Justice Department so that he could complete a report in an expedited way.

My question of the floor manager, Mr. President, is, Will he support or initiate a request of GAO to finish those reports?

Mr. JOHNSTON. I will, indeed. I think that is an excellent idea.

The Senator properly referred to the fact that it is under a longstanding practice of GAO to avoid matters when in litigation. If that part can be worked out, that is GAO's problem, or the Justice Department, if they can work that out.

I will request it, anyway, because we welcome the study. The facts will support us.

Mr. LEVIN. I thank the floor manager for that.

My other question, the Senator alluded to this before in a slightly different way. If the Congress is asked to authorize a project south of Demopolis at some later date, will the Senator defend that project based on its own cost-benefit, or the cost-benefit including the value north of Demopolis?

Mr. JOHNSTON. The cost-benefit ratio is a system analysis, the method of arriving at it is stated here in the documents.

Frankly, the Tenn-Tom project does not help my region. It is in competition directly with the Port of New Orleans. I have no reason to foster it, other than the fact it is good for the country. It is not in my jurisdiction. I have studied it.

Mr. LEVIN. Do I understand, it would affect, if the Senator does support an authorization at a later date, south of Demopolis, the Senator would only seek to justify this on its own cost-benefit basis?

Mr. JOHNSTON. The Senator is correct.

Let me say, that is not even in our committee. That is over in the committee of the distinguished Senator from Rhode Island. Whether or not that would ever be authorized, maybe in the 1990's somewhere, I frankly doubt.

The only way it would be is for it to be so successful, for the export of steam coal to be so tremendous, that we need additional capacity south of Demopolis, more than the six barge tows which it can now accommodate to make the entire system more efficient.

Mr. LEVIN. I thank the Senator.

Can the Senator from Rhode Island help me?

Mr. CHAFEE. Yes. Here are the figures, on page 31 of the green pamphlet. They state that the benefit-cost ratio on the remaining costs, which essentially are north of Columbus, would be 2.5, but, remember, that is at 3¼ percent and it does not include south of Demopolis.

Now, the costs, which are an additional $1 billion, and so to include the cost-benefit ratio, to have a cost-benefit ratio, at 3¼ percent and not include $1 billion, seems to me, to use the words of the distinguished Senator from Louisiana, ridiculous, foolish, and the other adjectives he used.

But that is the answer to the Senator's question.

Mr. LEVIN. The Senator would agree, if we could limit this waterway to the area north of Demopolis, that a 3.2-percent interest figure, cost-benefit analysis, for completion, which is that the completion cost would be 2.5, and the cost-benefit for completing that area, that 7.125-percent figure, would be——

Mr. CHAFEE. That is a big assumption.

Mr. LEVIN. Yes.

Mr. CHAFEE. The assumption is, one, that the traffic is there as projected, which we have shown is not going to be there.

Second, that we do not do any of the work south.

That is the mistake being made here, because the work south is absolutely essential if we are going to get the use of this waterway. The locks are the standard locks, 600 feet by 110 feet, and those are to accommodate eight barge tows.

But the river south will not accommodate eight barge tows. It will accommodate, at the maximum, six, and that is extremely difficult.

We are working with a little sleight of hand here in suggesting we will have this mammoth traffic north, which cannot proceed south of Demopolis.

Mr. President, I reserve the remainder of my time.

Mr. LEVIN. I thank the Senator.

Mr. MOYNIHAN. Will the Senator from Rhode Island consider yielding 4 minutes to the Senator from New York on this matter?

Mr. CHAFEE. Mr. President, how much time do I have left?

The PRESIDING OFFICER. Ten minutes, 20 seconds.

Mr. CHAFEE. I am glad to yield 4 minutes to the Senator.

Mr. MOYNIHAN. Mr. President, I asked the Senator from Louisiana if he would yield time as well, and he suggested that I was in opposition and that would not be appropriate. I am sorry he takes that view.

The Senator from Rhode Island will recall that when this matter was debated on June 28, as the newly arrived, if you will, chairman of the Subcommittee on Water Resources of the Committee on Environment and Public Works, I said that we would hold a hearing on the question of the Tennessee-Tombigbee and the related and larger question of the provision of adequate water transportation for coal in view of our 10-year plan the President had announced just previously.

Mr. President, that hearing was held July 25 and 28, a very expensive hearing. I would hope it was a useful one.

I am sorry to say that because the Army Corps of Engineers has not been able to return to us the transcript of that hearing corrected, with answers to questions and information that was requested during the hearing, that we do not have a printed copy of the transcript and a report to submit to the Senate.

I cannot but be struck by the fact that a hearing of the Appropriations Committee, at which the Corps appeared, that took place August 21, 1 month later, the Corps managed to get the Appropriations Committee transcripts back, but they could not get ours.

General Heiberg assured me this morning that this was an oversight, that there was nothing intentional about this. I accept the words of General Heiberg.

I note the fact that there are two, not one, but two, printed reports from the Corps on Senator's desks in favor of this matter. Our effort to have an impartial inquiry with pros and cons somehow has not made its way into print.

Therefore, Mr. President, I ask unanimous consent that a summary extract, Xeroxed by our staff, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TENNESSEE-TOMBIGBEE WATERWAY

(Statement by Senator DANIEL PATRICK MOYNIHAN)

Mr. Chairman, on June 28, 1980, the subject of the Tennessee-Tombigbee Waterway was discussed at some length during the debate on the Supplemental Appropriations bill for fiscal year 1980. Apart from the obvious divergence of views on such a large public undertaking as the Tenn-Tom, there was a notable lack of agreement on the basic economic facts of the project. The Army Corps of Engineers was accused of deliberately deceiving the Congress by withholding cost estimates of greater than $1 billion.

As Chairman of the Water Resources Subcommittee, which has jurisdiction over the entire civil works program of the Army Corps of Engineers, I announced during the course of debate that our Subcommittee would conduct an oversight hearing on the Tennessee-Tombigbee Waterway project and report back to the Senate when the Energy and Water Appropriations bill for fiscal year 1981 was brought to the floor.

Our hearing was held on July 25, 1980. Opponents and proponents of the project had an equal opportunity to present their case to the Subcommittee. The Corps of Engineers was represented by General E. R. Heiberg, Director of Civil Works, and General John Morris, Chief of Engineers. Unfortunately, the printed and bound transcript of the hearing is not yet available. I, therefore, submit to the Senate the following excerpts from our hearing record.

OPPONENTS OF PROJECT

1. Dr. Robert H. Haveman, Professor Economics, University of Wisconsin at Madison.
2. Dr. Joseph L. Carroll, Director, Transportation Institute, Pennsylvania State University.
3. Dr. Carol Pfrommer, Department of Economics, University of Alabama at Birmingham.
4. Dr. Thomas O. Claflin, Professor of Biology, University of Wisconsin at Lacrosse.
5. Richard E. Briggs, Executive Vice President, Association of American Railroads.

PROPONENTS OF PROJECT

1. Glover Wilkins, Administrator, Tennessee-Tombigbee Waterway Development Authority.
2. Hunter Gholson, Attorney, Tennessee-Tombigbee Waterway Development Authority.
3. Dean Gerald McLindon, School of Environmental Design, Louisiana State University.
4. James A. Skinner, President, Herbert Materials Inc., of Nashville, Tennessee.
5. Mark Smith, Vice-President, Weyerhaeuser Paper Corporation.
6. David Dyar Massey, Business Manager of a community newspaper in Knoxville, Tennessee.

THE POTENTIAL FOR COAL MOVEMENTS

BRIGGS. ". . . the railroad industry as a whole objects to this project . . . we are opposed to it because of the massive diversion that it would create from railroads. Some 50 million tons of freight is the final estimate on that, some 30 million tons of present traffic."

HEIBERG. "The support in Mississippi is every bit as strong for the Mississippi River as for the Tennessee-Tombigbee as a logical improvement. The point is . . . to save the distance and cost of the coal that would have to travel by more expensive means or more circuitous route. Much of the coal used in the United States will be used in Southern Alabama and Florida. If it has to go by the Mississippi, it has a longer route.

CARROLL. ". . . even though distances from inland points to say the Gulf will be much less via the Tennessee-Tombigbee Waterway than via the Mississippi River, shippers would have to pay more in many cases. . . . (F)ull accounting for operating constraints on the TTWW and the Black Warrior Waterway and for economics of operating on the Mississippi River will reveal that it may actually be cheaper to ship export coal from origins above the confluence of the TTWW and the Tennessee River at Pickwick to New Orleans than to Mobile."

CALCULATION OF TRANSPORTATION BENEFITS

CARROLL. "The Corps' savings to shippers calculations totally ignore the nationality of the shipper."

"Violations of the Corps regulations include claiming benefits for hypothetical and highly speculative traffic described as 'future traffic.' Two, using hypothetical rather than actual rates being charged shippers for existing traffic movements by alternative modes or routes. Three, failing to account for other non-transport costs that represent differences in the quality of service between modes of transportation. Projecting traffic that cannot materialize because of physical constraints, such as the inability of utility plants to burn the forecasted coals. Also, Kearney and the Corps failed to consider the impacts of projected Tennessee-Tombigbee traffic, such as the loss of benefits on connecting rivers which would be constrained because of Tennessee-Tombigbee traffic. . . . (A) final violation was a 10 percent allowance to account for undisclosed traffic in savings, a practice that General Morris himself had disallowed in the case of the Cross-Florida Barge Canal."

HAVEMAN. "(The Tennessee-Tombigbee) is justified with a benefit-cost ratio of 1.09, which is based on the most shoddy, inaccurate benefit study that I have seen in my 15 years of scrutinizing and analyzing Corps of Engineers analyses . . . I did my Ph.D. thesis on this. In addition, I have written, as I recall, four books having to do with economic analysis as practiced by the Corps of Engineers, and probably something like 18 to 20 journal articles on this same topic."

COHN: "What we do is conduct a so-called traffic survey. What that amounts to is interviewing a number of potential shippers in order to see, first, what they are shipping today and, second, whether or not there is any potential that they might ship it by the waterway were it in existence today; that is, today of the survey. Today means 1975. That is the current survey. That is when it was conducted.

"Once we have established that, in other words, what potential traffic movement there is based on interviews, we then conduct a rate study based on prevailing rates by different modes as well as by alternate routes and intermodal combinations to establish what the likely cost is today and what the cost would be were the new waterway constructed.

"And on the basis of that, we established a rate savings, a savings in shipment costs, in effect. That number, multiplied by the relevant tonnage, becomes the basic benefit in the base year. That is then projected into the future based upon standard projection techniques which involve using a larger area of projection, some indicator of general economic activity, projections of, say GNP into the future and assuming the traffic will flow at the same rate as that indicator.

"For example, most of the indicators used on the Tenn-Tom and in most of our studies are so-called OBERS, O-B-E-R-S, indicators, in capital letters. They are published through the auspices of the Water Resources Council and are produced by the Office of Business Economics, now the Bureau of Economic Affairs, which is part of the Department of Commerce, as well as the Economic Research Service, which is part of the Department of Agriculture, and these are standard projections for use in water resources published by the Water Resources Council pursuant to their statutory authority to do so.

"They were dominantly the ones that were used on the Tenn-Tom and indeed most of our studies."

CAPACITY OF THE WATERWAY

CARROLL. ". . . I came across an article that appeared in the Sunday, April 8, 1979, Commercial Dispatch from Columbus, Mississippi. . . . There was a movement of soybeans out of the Aliceville Pool which is just above Demopolis. I will quote from this article. 'Voyauer and Gulf Navigation Company Fleet Captain, Bedford Slaughter, on board for this maiden voyage said, 'It is a good four barge river.' He added that 'once the cutoffs were finished, the channel may take six barges.' "

HEIBERG. "Captain Slaughter was mentioned and his movement of four towboats on a portion of the waterway. Now he was, when he made that report, in the Gainesville pool. That is part of the Tennessee-Tombigbee project. Last year, when he made that projection, that pool had not been dredged to the depth it is being dredged to now as part of the project. We opened it for some experimental movements for those who wanted to try it. His company tried four barge tows."

HAVEMAN. ". . . below Demopolis is a windy, tortuous river permitting no more than four barge tows on a regular basis. . . ."

HEIBERG. "We also read the Mississippi papers, and, in fact, we did check with Captain Slaughter's firm (Voyauer and Gulf Navigation Company), and, in fact, they are now using six barge tows below Demopolis, and in this year expect to have 60 percent of their movements on six barge tows below Demopolis."

REGIONAL DEVELOPMENT BENEFITS

PFROMMER. "In 1975, the Appalachian Regional Commission . . . forecast over 200,000 new jobs would be created by the Tennessee-Tombigbee Waterway. Because the figure seemed high, the Appalachian Regional Commission the next year, in 1976, asked that a second study be done. The second study forecast 20,000 jobs would be created. . . ."

"The waterway plan does not address the traditional deterrents to growth in rural Alabama and Mississippi—a poorly educated labor force with low skills and low productivity, an underdeveloped business sector severely hampered by inadequate internal highway system and a dispersed rural population scattered thinly across a large area."

"Because the Tennessee-Tombigbee Waterway's only service is transportation, its effect is more likely to be redistribution of firms already located in the area rather than attraction of new or expanding firms into it. In fact, according to the University of Arkansas's Bureau of Business and Economic Research, this is true of the area around the McClellan-Kerr Waterway in Arkansas and Oklahoma."

SUNK COSTS

GHOLSON. "As of June 30th of this year, nearly $825 million has been spent on the waterway. Of that amount, about $46.5 million has been spent on land acquisition. It is estimated by the Corps of Engineers that if all the land acquired in fee were sold, it would total only about $28.8 million in recovery . . . If the project were terminated, nearly $800 million would be wasted, not including an additional $130 million which the States of Alabama and Mississippi have spent on high-level highway bridges . . . In addition, about $144 million of additional federal funds would be spent, according to Corps estimates, to terminate these contracts, to pay contractor claims, and for other costs."

HAVEMAN. "First of all, $200 million of the $700 to $800 million has been spent to create what I have just described as a four-barge waterway up to Columbus, a waterway which is now moving some traffic. It is not legitimate to take the $200 million that has created that and claim that it has produced nothing . . . Secondly, there is from $50 to $100 million worth of land now owned by the United States Government through purchases by the Corps of Engineers, which can be resold. That land as well is not legitimately included as a nonrecoverable sunk cost.

As a result, in my view, we are looking at somewhere in the neighborhood of $450 to $500 million of truly sunk, unrecoverable costs, many of which can be viewed as income transfers to construction contractors and their workers, some of whom would have in the absence of this project been unemployed."

HEIBURG. "In regard to what portions of the project are presently usable or could be made usable at negligible cost, there are currently two. One portion includes restricted navigation along 110 miles of the River Section from Demopolis to the mouth of the Luxapalila Creek at Columbus, Mississippi. The restrictions consist of width limitations at the several bridges which require relocation and along the portions of the navigation channel where the necessary widening and cutoff construction are incomplete. The restrictions at some locations limit the size of the tow to two or possibly three barges due to width limitations in the natural river bends. An additional cost of $8,343,000 after FY 1980 would increase this portion of the waterway to project dimensions.

HEIBERG. The other portion of the waterway usable for navigation includes 6.5 miles of channel from the Tennessee River to Highway 25 in the Yellow Creek Embayment area of the Divide Section. An additional cost of $2,000,000 would open up an addition 5,000 feet of channel to project dimensions south of the Yellow Creek Embayment.

Lastly, in regard to the amount of property on which significant work has not begun and thus would be available for sale, if the project was halted, I would like to note that as of July 1, 1980, a total of 90,902 acreas have been acquired, consisting of 70,427 acres in fee and 20,475 acres in easements. It is estimated that 46,524 acres (32,603 fee and 13,921 easements) have been directly affected by construction activities (locks, spillways, dikes, new channels, etc.) which would render them unrecoverable for any use similar to pre-project conditions. It is also estimated that 9,866 acres (5,433 fee and 4,433 easements) of land have been altered by construction activities (deposition of dredge material, reservoir clearing, and public use facility development) but are recoverable with some loss in utility value. Therefore, of the lands acquired to date, approximately 34,512 acres (32,391 fee and 2,121 easements) have not been affected by construction activities and could be recovered and returned to prior use.

ALLEGATIONS OF DECEPTION

HAVEMAN. Let me make one final point having to do with how the Congress is in the current fix. This point . . . has to do with the history of the deception of the Congress by the Corps of Engineers . . . . I will now tell one story that characterizes a portion of this deception. The story I am telling is verified by a report of the Army Audit Agency . . . .

In 1972, the Corps of Engineers testified that the cost of the project was $386 million. In 1974 they testified that the cost was $732 million. And then in that year a discovery was made; namely, that the real costs of this enterprise would be over $1 billion. This discovery and the basis for it was well known to high officials in the Corps of Engineers—Colonel Wilson, General Lattalla, and

General Morris. However, from mid-1974 to January 1976, a conscious decision was made to report a cost on this project of $815 million—a withholding of $334 million of required costs from the Congress.

HERRING. "A Federal cost estimate going back to the $815 million was presented to Congress in support of the fiscal '76 budget request. Part of this estimate was based on conceptual design and part of it based on actual bids received from contractors. Congress was informed in '75 that the fiscal '76 benefits were outdated and were being reanalyzed. We didn't have the numbers decided as an institution at that point. A cost estimate of $1.4 billion was reported to the Appropriations Committees of Congress before the '76 appropriations legislation was finalized by Congress, and included in its executive branch support of the fiscal '77 budget request . . . There is an issue of credibility in whether you believe we intended to deceive . . . I am saying we did not. I am saying what we do as an institution sometimes makes it difficult for us to make a decision. We do not like going from $815 million to $1.4 billion, and there was some time (when) we were shifting our gears inside.:

MORRIS. ". . . I can state categorically we did not withhold information. "I can personally attest to the fact our objective was to give information to the Congress and not to withhold it."

MORRIS. ". . . I, personally, took a $1.4 billion figure to the Appropriations Committees of this Congress before the full Congress ever saw the appropriation bill and had a chance to debate it."

Mr. MOYNIHAN. Mr. President, I would like to make just two general points about the matter. Senators can make their own judgment about the charges of bad faith and inadequate preparation. I will not at this point attempt to make any view, but simply note the Senator from Louisiana says that this is a $1.76 billion project and denies it is a $3 billion project.

Seven years ago, this was a $386 million project. It has increased fivefold in 7 years. I would have to say, before we ever make this an economical enterprise, it will be a $3 billion project.

By "economical" I mean worthwhile for the use of water transport firms.

I have only 4 minutes. I am sorry it is that brief a period. I would like to make two points, no more.

In our law, we require that benefits under the water transportation program be calculated as savings to shippers.

This is elemental, economic bad sense, because what is of savings to a shipper may be a loss to a surface transportation system, as well.

We have to ask the benefits to transportation, not to one mode.

Invariably, to subsidize one mode is to penalize another. We have learned nothing if we find that by building a waterway and bankrupting a railroad there is an advantage to people who use the waterway. That is elementary.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MOYNIHAN. May I have 1 minute more, not more?

Mr. CHAFEE. Yes.

Mr. MOYNIHAN. The second point is to say what, again, should be obvious to us, that the planning process here is in woeful disorder.

We are dealing with a waterway authorized in 1946 on the basis of a study made in 1938.

There was much dispute before our committee on whether we could use four or six barges on this waterway. The normal barge tow on the Mississippi is now 30 and upward.

We are producing a tinker toy of a canal which, nonetheless, has turned out to be the largest such enterprise in the history of the country. If you build a 1930 project in the 1980's, you must expect that.

I thank my colleague from Rhode Island for yielding me this time.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. I yield the Senator from Wyoming 1 minute.

Mr. SIMPSON. Mr. President, I appreciate the careful analysis of the situation by the Senator from Michigan. We have had some good points presented on both sides.

I should like to conclude with this fact—from which we seem to stray. One-seventh of the entire Corps of Engineers' construction costs is going to be sunk into this project. Then we will pay $200 million a year for 10 years—we will go on that way for a decade; and when we are through, we will have moved more dirt than we moved when we built the Panama Canal. Let us keep those facts before us.

I cannot help but reflect lightly on the comments by my colleague from Kentucky. Knowing his propensity for that stuff he chews in that neck of the woods, I think his vision has been clouded by that particular pungent brand of tobacco when he speaks of my knowledge of the area. I served in the Armed Forces in that area, and I know the area. I guess I will have to bring him to Wyoming, and we will show him the distinction between the Tetons and Teapot Dome.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I am prepared to vote on this matter, and I am prepared to yield back the remainder of my time, if the opponents are ready to do so.

Mr. JOHNSTON. Mr. President, I yield 2 minutes to the distinguished Senator from Alaska.

Mr. GRAVEL. Mr. President, having been chairman of the Water Resources Subcommittee for about 8 years, this is a subject with which I have some familiarity.

I believe it is very important that we look upon this type of development as an investment in the transportation system of the Nation. A lot of the opposition with respect to this legislation has come forward by the railroad interests, who feel that they will be disadvantaged competitively. That is an unfortunate error. I have found that, economically, when you have one mode of transportation that increases economic activity, other modes will benefit. They have joined forces with an interesting group of environmentalists who are essentially a part of the no-growth syndrome this Nation has been experiencing.

We have a group of people who want to see a diminution of economic activity, a diminution of growth in one part of the country which offers a great potential.

When we have the possibility of being able to link 16,000 miles of waterway to a key break-in cargo point on the Gulf of Mexico, to add to our transportation and industrial capability, with the amount of employment that will ensue, I believe that not to go forward with that decision, with all the capital and investment we have expended, will be a tragic error.

We have seen the benefits of this in the great State of New York, with the Erie Canal, the first major transportation link in that part of the country, a canal in a waterway system.

We have a waterway system that should not be diminished but should be increased, and further investments should be made in it, so that we can strengthen its sinews and the economic fibers. These are the capital areas, the veins, the arteries, of this great Nation of ours.

To try to turn back the clock in this kind of effort is most tragic. We have seen it happen in legislation affecting my State, and we are now seeing it happen in other areas.

Mr. JOHNSTON. Mr. President, I say to the Senator from New York that I am sorry he is not with me on this matter. I hope I did not hurt his feelings by not yielding time to him, but the way this works is that the proponents control one side and the opponents control the other side. I have not been around here very long and perhaps am not an astute Senator, but I know better than to yield my time to an opponent.

Mr. President, I yield 5 minutes to the distinguished Senator from Tennessee.

Mr. BAKER. I thank the distinguished manager of the bill.

Mr. President, let me set something straight right quick—and I say this semi-seriously and semifacetiously, but it should be said.

This thing is called the Tennessee-Tombigbee project, and it is indeed the Tennessee-Tombigbee project, and we are proud of that; but there are about 60 feet of this project in Tennessee.

I support this project because it is a good project for the mid-South, not because I have a parochial interest in it from the standpoint of the State of Tennessee. Virtually none of this project is in Tennessee. I have traditionally supported it, and I will continue to do so, because I believe it will contribute materially to the welfare of our region and of the entire United States.

Mr. President, I appreciate the opportunity to offer a brief statement in support of the Tennessee-Tombigbee Waterway. I favor inclusion of funding for this project because it will provide a new and vital link between 16,000 miles of existing waterways in the heart of coal-bearing and agriculture regions of mid-America with the deepwater ports along the Gulf of Mexico. The transportation improvements provided by the waterway will be important to the development of industries and jobs within those inland regions, and, in addition, the project will provide a vital element to the future energy security of the Nation.

One of my primary interests in the project has been the potential for enhancement of socioeconomic opportunities to the disadvantaged and minorities who live in the vicinity of the project.

Mr. President, the Senate Environment and Public Works Committee's Subcommittee on Water Resources just this week has approved a proposal that I have sponsored that will establish a Human Resources Center to monitor progress in utilization of disadvantaged and minority groups at the project. I might add that I introduced the same proposal during the 95th Congress. I am sure it would have been approved had it not been caught in the legislative logjam at the end of the Congress.

The Tennessee-Tombigbee Waterway transverses some of the most economically depressed areas of the United States. It is indeed unfortunate that most of the debate over the merits of this project has obscured its potential regional development impact. The substantial benefits which will accrue to the historically deprived population through the construction of the project and through subsequent economic growth in the project area are almost totally discounted by those who oppose the project.

At present, the percent of minority hiring at Tenn-Tom is near 27 percent. I might point out that in 1976 an affirmative action plan set Tenn-Tom's goal at 20 percent minority hiring with 2-percent increases through the 1980's. I am proud of what has been achieved thus far and look forward to improvements in those statistics as work on the waterway progresses.

I also understand that at least $42 million has been identified in Tenn-Tom plans for contracting to minority-owned businesses over the next 4 years and that such groups have already received over $15 million in similar contracts.

Mr. President, I have an attachment that gives specific details on these minority programs which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAKER. Mr. President, my colleagues should also be aware that there are numerous environmental and wildlife conservation benefits associated with this project. Many efforts have and will be made in the design and construction of the waterway to minimize environmental losses and to maximize environmental protection and enhancement. I support these efforts and have encouraged the waterway authority to make every effort to avoid deleterious impacts of this project.

Thus far the waterway has adopted a chain-of-lakes concept in the canal section to maximize the aesthetic and recreational potential of the waterway. A number of recreational amenities and facilities, including two environmental centers are included in the project design. Shifts in channel alignments and selection of specifically suitable dredge spoil disposal sites have and will continue to be made to protect valuable wildlife resources. The waterway has also adopted a policy of selected clearing to improve wildlife, waterfowl and fishing habitats, and in addition special wildlife management ponds are being constructed.

Finally, possibly most importantly, an overall wildlife mitigation study is underway in conjunction with the U.S. Fish and Wildlife Service and the participating States. This study will result in recommendation of measures that should be taken at the waterway to enhance wildlife management or mitigate for losses of wildlife habitat that have been incurred in constructing the waterway. The supporters of Tenn-Tom are looking forward to receiving these recommendations and intend to insure that they are incorporated into the efforts to finalize the project.

I support these efforts and hope they can be increased as work continues on the project. If they do the Tenn-Tom will be an example of how projects in the future should address environmental and conservation issues.

In conclusion, I would like to make use of another important point. Mr. President, a substantial commitment of Federal funds has already been committed to this project and this Congress simply cannot say, "I am sorry I made a mistake with a billion dollars of taxpayers money." Surely there is a requirement that the Congress should attempt to finish this job it has begun, to capitalize and to realize a benefit from the investment already made. I feel strongly that there is and believe that most of my colleagues, on further examination, will agree, and thus should support funding for Tenn-Tom.

Mr. President, may I also point out this project, which was conceived many years ago, which has been carefully designed and which has been redesigned to accommodate the environmental requirements of advancing social conscience in this country, has contributed much not only to the region but to the improvement and enhancement of our view of the environmental values. It has been an important project in terms of the demonstration of our ability to enhance environmental quality in Federal projects.

It is no disparagement of my region of the country to point out as well that this project goes through the most economically depressed area of the United States. It goes through the area of heaviest black population in the United States. There is a positive affirmative action requirement to employ minorities. I know because I introduced the bill.

I urged its adoption in the Public Works Committee and indeed and in fact the Tennessee-Tombigbee project has had a splendid record in championing the cause of minority employment and the cause of minority contractors.

EXHIBIT 1

TENN-TOM WATERWAY PROGRAM OF HIRING MINORITIES

Jobs are an important byproduct of the Tennessee-Tombigbee Waterway project. The provision of jobs to minority members of our population during the construction stage of the waterway is foremost in the minds of the Corps of Engineers, the Tennessee-Tombigbee Waterway Development Authority and a number of other organizations dedicated to equal job opportunities.

Some years ago the Corps set escalating hiring goals for workers in the project area, women and minorities. At least 80 percent of those hired for the construction are local. Furthermore minority goals approaching 30 percent are being met.

The Tenn-Tom project is going up in some of the most economically depressed counties in our country. The makeup of these counties is predominately rural; the population, predominately black. Counties near or adjacent to the project in West Alabama had an average per capita income of only 54 percent of the national average and only 73 percent of the Alabama average when project construction began in 1973. Since then the area's average per capita income has risen from $2,693 to $3,600. The states of Mississippi and Alabama rank 50th and 48th, respectively, in per capita income.

Through the economic stimulation of Tenn-Tom this economically distressed area has a chance to boost its living standard to a level comparable to other parts of the nation.

Already the annual payroll for about 3000 construction site workers and 1500 off site workers is $50 million. New housing starts are swinging upward. Unemployment rates are falling. Sales receipts have experienced substantial increases. New businesses have gone into operation.

Because of the heavy minority population concentration in the area, job opportunities never dreamed of before have fired the hopes of these people. Minority businesses have received over $15 million in contracts. A total of 27 percent of those employed on the project are minorities.

While the progess made on minority inclusion of minority contractors has been slowly but steadily upward, their involvement has fallen below expectations due to lack of financial capabilities and bonding. Nevertheless, significant increases are expected.

The Department of Labor, the Tennessee-Tombigbee Waterway Development Authority, the Corps of Engineers and others involved in developing the waterway are exploring every possible route to better job benefits for minorities in the area. Unprecedented for Federal projects, the sponsors are plowing new ground in the search for equal job opportunities.

MINORITY HIRING GOALS FOR WATERWAY CONSTRUCTION

An unprecedented Affirmative Action Plan (AAP) for Federal projects was established in August 1976. Hiring goals in this plan, unlike other AAP's foresee upward mobility of minorities into the higher income construction trades. The goal was set at 19–20 percent minority hiring but increased 2 percent yearly to 30 percent in 1980. Goals apply to individual crafts as well as individual contracts. Necessary changes dictated by the 1980 census will be made when census results are available.

For women a separate goal has been set, with goals of 3.1, 5 and 6.9 percent employment respectively for the first three years.

With respect to the overall goals, contractors, in many cases, have met these annual increases. Some difficulty has been encountered, meeting goals for electricians, ironworkers and other trades which traditionally have not had many minority members.

Aaron E. Henry, President, Mississippi State Conference NAACP, has made the following observations on hiring goals in a letter to the Tenn-Tom Authority dated August 14, 1980:

"The fact that we have not yet reached the minimum goal of 30 percent is still disturbing, but with the progress made during the past six months to close this gap gives me

hope that the minimum goals are obtainable and will very soon be reached. . . .

"We of the Mississippi State Conference of the NAACP feel very strongly that the Tennessee-Tombigbee project is a major employment project in Mississippi. It has a large number of Blacks employed that would be without obtainable employment should the project be curtailed or halted. . . .

". . . At this time on a scale of 10 we will record you with a 7. That is a pretty good grade. . . We look forward to continually working with you and will help see this project thru. It means a lot to us also."

MANPOWER TRAINING

While the percent of minority hiring hovers at 27 percent, just 3 points short of the 1980 goal, the outlook for reaching the 30 percent goal during the next 3½ months is good. Manpower training programs have already graduated 500 skilled black workers. The Department of Labor and trade unions are training prospective Tenn-Tom workers as laborers, carpenters, ironworkers, electricians and heavy equipment operators.

However, the availability of local workers may become more critical when Tenn-Tom construction peaks. Unfortunately, the Tenn-Tom peak will coincide with rising activity at the proposed TVA nuclear plant near the northern terminus of Tenn-Tom in Tishomingo county.

Ongoing training programs are turning out workers to meet the rising demand for skilled crafts. A program to train heavy equipment operators at Mary Holmes College in West Point, Miss., has graduated 107 trainees under a program conducted by union personnel with a Federal grant. Local Vo-Tec schools are training boilermakers. Recruiting of minority youths from such places as Memphis and Nashville is in the planning stages. TVA and the Corps of Engineers are cooperating to establish a construction/training village near the proposed nuclear plant. The purpose is to train workers for Tenn-Tom and the power plant. In the general area, the Carpenters, Laborers and Ironworkers unions operate training programs.

MINORITY BUSINESS OPPORTUNITIES

While minority business involvement has been disappointing, a new bid condition now implemented in all major waterway contracts requires that a certain percentage of the work will be subcontracted by the prime contractor to minority contractors. This procedure is unprecedented for Federal construction projects. Under this new procedure minority contracting should increase by an additional $15 to $20 million shortly.

TENN-TOM AFFIRMATIVE ACTION COMMITTEE

Because attempts to increase the role of minority businesses and workers in building Tenn-Tom surpass Federal, State, local and organizational responsibilities and jurisdictions, the Southeastern Federal Regional Council in Atlanta organized a Tennessee-Tombigbee Affirmative Action Committee (TTAAC). A total of 37 Federal, State and local organizations comprise the committee. It has attacked such minority problems as (1) bonding and financial difficulties of minority contractors, (2) contractor compliance with hiring goals, (3) minority participation in waterway-related planning, (4) manpower training, (5) use of minority businesses, and (6) workforce requirements.

With the South Atlantic Division Engineer chairing the TTAAC, major issues have been identified. Task groups have been assigned to these issues to study and resolve them. The groups are:

(1) Compliance—to review compliance of contractors in meeting hiring goals.

(2) Planning—to identify and recommend ways to ensure meaningful minority participation in planning for development of Tenn-Tom.

(3) Workforce Requirements—to determine the number of trained and untrained workers in the Waterway area as well as the total workforce requirements for the project.

(4) Minority Business Enterprise Utilization—to devise ways of matching minority firms with available work.

(5) Training—to develop recommendations for a comprehensive training program.

(6) Bonding—to learn what can be done to reduce or eliminate bonding requirements for minority firms or locate additional bonding resources.

Meeting regularly the committee and its various task forces have developed promising approaches to solving minority hiring and contracting problems.

PREFERENCE FOR LOCAL HIRING

All Tenn-Tom contracts stipulate that the contractor must try to hire at least 80 percent of his workforce from the local area. This provision insures that local personnel get the jobs. Also, it insures that rural areas are not adversely impacted by sudden large influxes of workers.

Corps of Engineers efforts and those of others to promote local hiring, include minorities and stimulate local economic development have received White House attention. Mr. Jack Watson, who at the time was assistant to President Carter for intergovernmental affairs and secretary to the cabinet, personally appeared in Columbus, Miss., last March to announce that Tenn-Tom will serve as a model for all future large federally funded projects. Watson said Tenn-Tom was one of four demonstration projects designated to maximize area development around such projects with as little red tape as possible.

The major objectives of this Tenn-Tom initiative by the White House is (1) to maximize the employment of persons living in the area, especially minorities, women, and the economically disadvantaged; (2) to insure a high degree of use of project area small and minority businesses in the procurement of project-related goods and services and in longrange economic growth and activities; (3) to encourage greater economic development benefits from the stimulus and resources provided by the construction projects and other investments in the area, and to enhance future development; and (4) to alleviate the adverse impacts of project construction on community services and facilities, and to improve the living environment.

TENN-TOM AFFIRMATIVE ACTION COORDINATING COMMITTEE

In addition to the Tennessee-Tombigbee Affirmative Action Committee (TTAAC), a Federal-State-local group, a Tennessee-Tombigbee Affirmative Action Coordinating Committee, was organized during the early days of Tenn-Tom construction. This committee represents various trade unions, contractors, the Corps, minority and other organizations. Chairing the committee is the head of the Southern Area Civil Rights Department of the AFL-CIO. The driving force behind adoption of the current Affirmative Action program, this ad hoc group monitors contractor minority hiring compliance and addresses manpower training problems.

TENN-TOM CONSTRUCTION ASSISTANCE CENTER

The Tenn-Tom Construction Assistance Center promotes the use of minority contractor and business interests in the construction of the project. Meeting quarterly it tackles such problems as minority contracting and bonding and financing capabilities. The board of directors and advisory board consists of representatives from the principal Federal, State and local agencies and organizations involved in the project.

The State of Mississippi cooperates in promoting minority participation in the Tenn-Tom activities. The Office for Black Economic Development (OBED) was established in 1975. Tenn-Tom-related OBED program goals include:

1. Increasing the amount of organized effective participation by black citizens in community economic development programs.

2. Ensuring that blacks are appropriately involved in local or regional planning activities.

3. Encouraging black investors or investment groups to invest in job and income creating ventures.

4. Identifying opportunities that result in business, industry and government purchasing of goods and services from black businesses.

Mr. Leslie G. Range, Manager of Mississippi's Office for Black Economic Development, in a July 16, 1980 letter to the Tenn-Tom Authority, noted the following pertaining to black involvement in the project:

"The OBED . . . was establish toward the end of 1975 when a review of the state's economic data clearly indicated that black citizens were not sharing equally in the economic gains made by the white population. . . .

"There has been significant improvement in minority involvement in the planning process since 1977. . . .

"Blacks are active members of the Tenn-Tom Planning and Coordinating Committee. . . . A black state planner from Tennessee has served as chairman of this group.

"Minorities are actively involved in the U.S. Army Corps of Engineers Corridor Study. Two minorities serve as at-large members of the Executive Committee. . . .

". . . there is a . . . black member of the Tenn-Tom Waterway Development Authority Board from Mississippi and other of the compact states. . . .

"Organized minority participation, such as the type now emerging, can lead to blacks getting a fair share of any benefits that do occur as a result of the project."

While the emphasis of my remarks has been on the current status of Tenn-Tom in improving the plight of minorities in the project area, I do wish to dwell briefly on what lies ahead for minorities.

Of course, the future has its foundation in the facts that I have reported to you today. The factors are in place, the events of the last few years are conducive to a growing, harmonious involvement of minorities in Tenn-Tom's construction and in the economic well-being that will surely follow.

A report just placed in my hand indicates that through the efforts of all of the groups I have mentioned a total of $42 million has been identified in Tenn-Tom plans for contracting to minority businesses over the next two years. As training programs mature, more minorities will get job opportunities on this project.

Of significance is the fact that the President has designated the Tenn-Tom project as a model for maximizing the comprehensive use of area development on a coordinated basis but without a hundred miles of strings and enough red tape to wrap all of the world's Christmas presents. This means that the eyes of the nation are on Tenn-Tom.

We want the nation to like what it sees.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 3 minutes to the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I shall not detain the Senate.

Let me just say this about the minute examination of this project or any project. We can always find certain gaps or things not fully explainable.

This is a conception to start with as is all the others that have ever been built. It took someone's planning, imagination,

and engineering skill. It took a Congress with faith in those plans and in the engineering skills to stand up and appropriate the money and take chances. Why? Because they wish to build, build, grow, expand. These are sound policies. If there is ever a time we needed sound policies in transportation, in new sources of energy, and expansion of those sources, it is now. Someone has to take a chance.

As to the argument opposing the project, although all of it is made in good faith, some of it is arguing about just chickenfeed compared to the objective served by the waterway.

How many billions of dollars have we authorized since 1974 when we saw that we had to start trying to do something about energy? How many far-reaching regulations, subsidies, and everything else have we passed with reference to energy in various forms, research and development? How many more are going to have to be recognized?

I learned as a member of this subcommittee it was going to take hundreds of billions of dollars to make this transition. But we finally have gotten on our way.

Now, contrary to all the progress and steps in the right direction, it seems to me we are going to turn around and knock down a major contribution here to the national transportation system regardless of what State it goes through. Dissipate it. Abandon it. Just leave it. And not ever give it a chance to serve its purpose.

Is that the kind of leadership that is going to bring us through this energy situation?

We need growth. As I said, we need development. We need expansion. It is something that the American people are going to have to have. Otherwise we lose the strength of our economy, our high standard of living in which everyone benefits. And just as certain as night follows day we will lose our ability for a proper kind of a strong military preparedness program. There is no speculation about that. That is a certainty.

Mr. President, I shall appreciate it if the well could be cleared. I am trying to address my colleagues.

I have supported this project since its beginning and will speak straight to the facts. This waterway, which has been under construction since 1971, will link up the Ohio and Tennessee Rivers with the Gulf of Mexico, providing a shorter, more energy-efficient route to the Gulf of Mexico. The shortcut will save 829 miles from points on the Tennessee River system and 399 miles from points on the Ohio River system to the Port of Mobile. The benefits of the waterway in these times when energy is the Nation's biggest problem are compelling. The increased efficiency of transporting bulky cargo a shorter distance, using less fuel, and particularly transporting coal from the Appalachian region, one of the largest deposits of coal in the world, via this waterway is the benchmark of this project.

There are some who doubt this waterway will be fully utilized. But when one examines the facts of the tonnage currently on the Tennessee and Ohio Rivers plus the great abundance of coal which we expect to be shipping in the near future—both for export and for our own use—it becomes abundantly clear that it will be utilized to its full capacity.

There are charges that the waterway is an environmental disaster, but I have been there and have talked with the planners on this project, and I am personally convinced that a great deal of care and sensitivity to the needs for enhancing the environment and enhancing the habitat of fish and wildlife have been considered.

The economic benefits of having a shorter route to the gulf will induce new businesses, provide greater employment opportunity, and will help hold down prices borne by the consumer.

These benefits will more than offset any environmental costs. Now let me get to the bottom line, Mr. President. The bottom line is that this great benefit to our Nation is 50 percent completed, I repeat, 50 percent, physically complete, and more than 70 percent of the contracts are completed or are now working. In other words, we must spend 70 percent of the total ultimate cost of this project even if we stop it today. And now, even in the face of being this far along, there are some of our colleagues who say that we should stop construction of the waterway.

It is inconceivable to me that when this great waterway is 50 percent complete and 70 percent of the money is spent, that we would consider stopping construction of the waterway and forego the enormous benefits of completing the waterway. Now let me make myself a little clearer, Mr. President, because there has been a great deal of erroneous information put out in the newspapers and here and there by various letters to our colleagues that would make one believe that there is more to gain from stopping the project than by finishing the project. Here are the basic facts:

Through this current fiscal year of 1980, $879 million has been appropriated for construction of the project. The President's request for this coming fiscal year is $208 million. This request has been approved by the House and this request was confirmed by the Senate full Appropriations Committee and is before the Senate today. Due to the controversy surrounding this request, hearings were conducted by Senator MOYNIHAN and by Senator JOHNSTON of the Senate Energy and Water Resources Subcommittee. The full Appropriations Committee in view of these hearings recommended the project to the Senate without objection or reservation. The balance to be funded after this fiscal year is $663 million, which includes inflation during the remaining construction period. When completed, the total Federal investment with inflation taken into account will be $1,760,000,000. This total investment will yield a benefit-to-cost ratio of $1.30 for each dollar invested. The remaining investment, which includes this year's request of $208 million and totals $881 million, will yield $2.50 for each dollar invested. Now if we stop this project, the termination cost would be $130 million, and no significant benefits would be realized.

This great artery from the Appalachian coalfields of West Virginia, Tennessee, Ohio, Kentucky, Indiana, and Pennsylvania would never carry one single chunk of coal from these States. This great opportunity for linking these coalfields by a more efficient means of transportation to the ocean would be lost. It would be a crime and a shame of the first order to report to the people of the United States that we stopped this valuable capital investment with no other reason given for such actions except that the project would harm the environment and that the costs were too high.

Perhaps the greatest single concern of the world today is the availability of a ready source of energy. It is evident that the best chance we have to solve the immediate energy crisis is with the great coal deposits found in the Appalachian region. Methods of transportating this coal poses a most serious economic problem which can only be solved by all modes of transportation working together. It is impossible for all these other modes of transportation to move this coal to market and for export without the Tennessee-Tombigbee Waterway in place.

The farsighted decision by Congress and the executive branch to build this waterway was made over 13 years ago. We are now 9 years into actual construction. With the completion date very near, coal and other commodities can soon be moved over this less costly waterway route to and from the heartlands of America.

The urgency of achieving energy independence confirms the vision and foresight of the planners and the legislators who recognized the strategic and economic importance of linking the waters of the Tennessee, Ohio, and upper Mississippi Rivers in the north to the Port of Mobile and the Gulf Intracoastal Waterway in the south.

I urge my colleagues to join me in supporting the completion of this vital project.

The PRESIDING OFFICERS. Who yields time?

Mr. CHAFEE. Mr. President, I am prepared to use 2 minutes and then yield back the remainder of my time if the opponents are prepared to do something similar.

Mr. JOHNSTON. Mr. President, I think there are only 3 minutes on each side remaining. We would use our full 3 minutes.

The PRESIDING OFFICER. The Senator from Louisiana only has 2 minutes remaining. The Senator from Rhode Island has 3 minutes remaining.

Mr. CHAFEE. Mr. President, I am prepared to wind up.

Mr. President, the issue before the Senate today is do we wish to proceed with a $3 billion project? There is no getting around that. They will say that the lower part of the river does not count, but, of course, it counts, if this is going to be made a viable waterway. The additional mileage below Demopolis has to be completed at a cost of $1 billion. So we are talking about a $3 billion project.

The question is do we want to go ahead with that, a project of very questionable value, because some money has already been spent?

I think clearly the vote should be not to proceed. It is as though there are resources locked up there that there is no other way of getting at them. That is not true. Any resource that is in the Kentucky-Tennessee area can get to the sea via the existing waterways, including the Mississippi.

It is also true there are alternate methods of transportation beside that waterway, namely railroad transportation.

I think that the point that the junior Senator from New York made is a very valuable one, that we are proceeding full blast with a canal, a waterway of doubtful value, when already there exist alternate methods which with some modest investment could be even improved further.

So that is it. Are we going to strike a blow in defense of the American taxpayer or are we going to proceed full speed, spend another $2 billion merely because we spent some before? If we do we will follow that old line, "We spent so much we cannot stop."

Mr. President, I think the argument clearly is in favor of stopping this project and for approval of this amendment.

Mr. JOHNSTON. Mr. President, I have 2 minutes remaining. I yield 1 minute to the distinguished Senator from Oregon.

Mr. HATFIELD. Mr. President, I do not understand why we have to argue this every year. The same old challenges have been raised each year. They have been disproven. They have been refuted. They have been rebutted.

Yet we sit here and hear the same old arguments used year in and year out.

No. 1, this project does not cost $3 billion. There is absolutely no evidence and there is no truth to that claim whatsover. This project costs $1.7 billion. I wish we would get the record clear on that.

We hear an argument made about the interest rate of 3¼ percent.

Mr. President, the Subcommittee on Energy and Water Development which brings this bill to the floor each year does not set the interest rate. The committee upon which the distinguished Senators from Wyoming, Rhode Island, and New York sit establishes in law the procedure by which the interest rate is set. We have not struck any deal with anyone on our committee or any other colleague. This is set in law.

If there is an unhappiness about this rate, let these men who bring this issue to the floor take it up in their own committee and change the law.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. HATFIELD. Mr. President, will the Senator yield me an additional 30 seconds?

Mr. JOHNSTON. Mr. President, I yield the Senator an additional 30 seconds.

Mr. HATFIELD. Mr. President, one last thing, and that is we hear about these environmental questions, and I believe that there is no one who can stand on this floor and defend a better environmental record than the Senator from Oregon.

But let me say every one of those environmental questions has been answered in the Federal courts of this Nation and has survived the suits. The courts have determined in law that the Corps has complied with all statutes in regard to these matters, and have dismissed the opponents' charges.

These charges are refuted with evidence. Our arguments are not empty claims as the opponents have asserted on this floor.

Mr. SASSER addressed the Chair.

Mr. JOHNSTON. Mr. President, three quick points.

First, it is a cost of $1.76 billion, not $3 billion. That is a fact.

Second, there is a sunk cost of $967 million—that is a fact—for which benefits would be virtually nil, almost $1 billion sunk cost. And the cost-benefit ratio of the remaining costs to benefits is 7.8 to 1, using 3¼ percent interest or 4.0 to 1 using 7⅛ percent interest.

The figures and the facts do not lie.

I hope the Senate will support it.

Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report on the Tennessee-Tombigbee Waterway, containing Allegations, Responses, and Discussions, which was submitted by the Subcommittee on Energy and Water Development to the Committee on Appropriations.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

TENNESSEE-TOMBIGBEE WATERWAY: ALLEGATIONS, RESPONSES, AND DISCUSSIONS

INTRODUCTION

The U.S. Senate Committee on Appropriations is responsible for insuring that public funds appropriated for construction of authorized water resources development projects are expended properly and give our Nation's taxpayers good value for their investment. In recent months considerable controversy has arisen concerning the Tennessee-Tombigbee Waterway (TTW or Tenn-Tom) Project in Alabama and Mississippi: those opposed to completing the project have made numerous allegations, claiming that the Tenn-Tom should be abandoned for economic, legal, and environmental reasons. Unfortunately, the news media across the nation have often repeated these allegations as if they were proven facts, and have thereby disseminated many untruths and distortions about the project. To set the record straight on these allegations, the Subcommittee on Energy and Water Development has held hearings, which have resulted in the following report.

After examining the controversies and the litigation concerning the Tenn-Tom project the subcommittee feels obligated to make the following observations. First, the current controversies clearly have not arisen from any recent discoveries or revelations concerning the project. Instead, the same attacks and allegations have been advanced time after time by representatives of competing modes of transportation which have always opposed the Tenn-Tom: many of these allegations were presented to Congressional Committees before and during 1946, when the project was authorized, and repeatedly when Congress has held hearings on appropriations for the project, and again in two protracted lawsuits in the Federal courts. None of these allegations have ever been found to have substance, even though the Federal courts, congressional committees, the Executive Office of the President, and the Department of the Army have examined these charges in several thorough and independent reviews of the project in recent years.

Second, we are convinced that the current controversies surrounding the Tenn-Tom do not arise from any lack of merit of the project, or even from the substantial investment of public funds needed to complete the project. Instead, the ongoing controversy apparently has been generated by a well-organized and orchestrated campaign by one or more corporations with a vested interest in stopping the project to avoid the competition in freight rates the waterway would provide. The opponents' failure to convince the Federal courts that any of these allegations are valid after two protracted lawsuits has led to a new strategy, one of bombarding the Congress and the news media with these same allegations and charges to convince Congress to discontinue funding this half-completed project.

Third, we recognize disturbing similarities between the present controversy focused on Tenn-Tom and the recent battle over Locks and Dam 26 on the Mississippi River at Alton, Ill. In that instance, certain railroad companies and environmentalist groups lobbied heavily against and financed expensive litigation to stop the Locks and Dam 26 project, which was—and remains—absolutely essential to prevent nothing less than the breakdown of navigation on the Mississippi River and the Illinois Waterway.

This subcommittee has the highest regard for the American railroad industry, and commends the important role the railroads play as part of our country's total transportation network. Nevertheless, the subcommittee expresses its disappointment and regret that a few corporations persist in spending large sums of their stockholders' and customers' money in legal and lobbying campaigns to stop vital navigation projects like Locks and Dam 26 and Tenn-Tom. These navigation projects are absolutely necessary to provide a low-cost, energy-efficient water component of our overall transportation system. Moreover, the subcommittee knows of no creditable study which demonstrates that the healthy competition in freight rates which water carriers provide to railroads is anything other than beneficial to the nation as a whole and to the long-term interests of both water carriers and competing transportation modes.

With this background in mind, the subcommittee proposes to respond with facts to the principal allegations against the Tenn-Tom Waterway put forward in recent months by opponents of the project.

In its action on the subcommittee's recommendations for the Fiscal Year 1981 Energy and Water Development Appropriation Bill, H.R. 7590, the Committee on Appropriations ordered this report to be printed. Senate Report 96-927 accompanying H.R. 7590 includes the Committee views in recommending appropriations for continued construction of the Tenn-Tom project.

Allegation: That the Tenn-Tom Waterway is not being constructed in accordance with the project's legal authorization.

Response: This allegation is false, as demonstrated by a review of the law and the legislative history of the project, and by the judgments of the Federal courts on this issue.

Discussion: The Tennessee-Tombigbee Waterway was authorized in 1946 by Public Law 79-525 in accordance with the recommendations contained in House Document 486, 79th Congress. As stated in that document, the Tennessee-Tombigbee Waterway "connection between the Warrior-Tombigbee system and the canalized Tennessee River will not only make water transportation accessible to the local tributary area in Alabama, Mississippi, and Tennessee but will also provide a direct barge route for through traffic between gulf coast ports and the improved inland waterway system of the North Central States * * * to permit the transit of tows of normal size without breaking formation." The general plan provided for 110 feet by 600 feet locks and a "channel of *not less than* 9 feet in depth and a *minimum bottom width* of 170 feet in river and canal sections and 150 feet in the divide cut." (Italic added.) The authorizing document also permitted "such modifications thereof as in the discretion of the Secretary of War may be advisable." In 1951 the Tennessee-Tombigbee Waterway was placed in a deferred-for-restudy category, so project planning was discontinued. The 1957 Public Works Appropriations Act mandated a restudy of the Tenn-Tom, which led to a report designated General Design Memorandum No. 1 (GDM No. 1). This report was approved by the Department of the Army on April 12, 1962, and submitted to Congress. In the 1965 Public Works Appropriation Act, Congress mandated a reevaluation of the Tennessee-Tombigbee waterway's economics. The study, designated as the 1966 Supplement to GDM No. 1, retained the lock plan and dimensions from the previous design but considered the relative merits of both 200 and 300 foot width channels. Although both channel widths were found to be economically justified, the 300 foot channel width was recommended, since this plan increased project efficiency and safety, and produced the greater net benefits.

On March 30, 1967, Secretary of the Army Stanley Resor exercised his discretionary authority to make post-authorization changes in the project, and formally approved the 300 foot width channel. On the same day the Secretary submitted his reports on the project, which report explained his decision to authorize a 300-foot channel width, to the Public Works Committees and the Appropriations Committees of both the House and Senate. Subsequently the Congress approved allocation of available funds to resume preconstruction planning for the Tennessee-Tombigbee Waterway.

On December 31, 1969, the Secretary of the Army recommended that the Tennessee-Tombigbee Waterway be included as a new construction start in the President's fiscal year 1971 budget. This recommendation was accepted: the "new start" construction funds portion of the fiscal year 1971 Budget included $1 million for the Tennessee-Tombigbee Waterway. Under the heading of "Major Changes Since Project Authorization", the Corps Justification Sheet supporting this request noted that the plan contained "* * * a reduction in the number of navigational structures * * * and widening the navigation channel from 170 to 300 feet."

As the Corps of Engineers planned and designed the Tenn-Tom project, the Corps used the statutorily granted discretionary authority to make post-authorization changes in the project to modify many project features from those contained in the preliminary plan submitted to Congress in 1945. All these changes either reduced project costs or enhanced project efficiency or environmental quality. Some examples are: the reduction in the number of locks from 18 to 10; providing cutoffs in the river section to improve alinement and reduce excavation; increasing depths in the Aberdeen and Columbus pools to 12 feet to aid in barge maneuverability; and a change from a perched canal section to a chain-of-lakes concept.

In 1976 the Louisville & Nashville Railroad Co. and the Environmental Defense Fund initiated a lawsuit in the Federal courts alleging that many features and dimensions of the Tenn-Tom project were being constructed in a manner not authorized by Congress. Four years of litigation ensued, in which the plaintiffs conducted exhaustive discovery proceedings against the Department of the Army and the Corps of Engineers and examined literally truckloads of Corps documents concerning Tenn-Tom. Following 2 weeks of hearings, the Federal trial court ruled that all but one of the many features and dimensions of the Tenn-Tom which plaintiffs had alleged to be illegal were in fact entirely legal and proper, and that the Corps of Engineers and the Department of the Army had used their discretionary authority to alter project design responsibility and legally.

Only one of the many challenged design features of the project did not receive the court's explicit endorsement: concerning that issue—the 300 foot channel width—the court held that no decision was necessary or possible, because the plaintiff's challenge to the 300-foot width was barred by the equitable doctrine of laches. The plaintiffs appealed the trial court's decision, but it was affirmed on appeal by the U.S. Court of Appeals for the Fifth Circuit, which later denied the plaintiffs' request for a rehearing en banc. The plaintiffs have recently petitioned the U.S. Supreme Court to hear their discredited allegations on the authorization issues; the U.S. Department of Justice is opposing that petition on the grounds that the plaintiff's case is totally without merit. As of today, the Federal court's careful examination of the Tenn-Tom's authorization status has not found valid even one of the project opponents' many allegations of illegality. The Committee agrees with the views of the Department of the Army and the Department of Justice, that the project is being constructed fully in accordance with its legal authorization.

Allegation: That the Tenn-Tom is an economic disaster.

Response: Every reevaluation by the Corps since project authorization has had a favorable benefit-cost ratio.

Discussion: The 1945 Corps report used for authorization contained a benefit-cost ratio of 1.05. In every subsequent reevaluation by the Corps, the project has had a favorable benefit-cost ratio. The latest evaluation demonstrates that the project will return annually $1.30 in benefits for every $1 in cost. The Corps benefits have generally turned out to be quite conservative. The most recent example of this is the McClellan-Kerr Arkansas River Navigation Project which (a) was recommended with a favorable benefit cost ratio of 1.08, then (b) is achieving benefits significantly higher than that today. A study of that project is available from the Corps of Engineers.

The benefit cost ratios for the Tenn-Tom project since the Kearney Study in 1975 are as follows:

Fiscal year:	*Benefit-cost ratio*
1977	1.1
1978	1.15
1979	1.19
1980	1.2
1981	[1] 2.5 (1.3)

[1] Remaining benefit to cost ratio. (1.3 is comparable to others in this tabulation.)

Allegation: The evidence is overwhelming that many of the projected traffic movements are illusory.

Response: Whether specific firms have gone out of business or not (since 1975)—is irrelevant; the issue is a red herring.

Discussion: The purpose of interviews is to establish base year traffic which might use the Tenn-Tom. It is not a marketing study of the future prospects for a specific, given firm. It is fully to be expected that some firms, over a period of 5 years, will go out of business, and some will come in; and that specific plans and opinions may change.

For example, the Louisville & Nashville Railroad testified, at the recent hearings of the Senate Subcommittee on Water Resources of the Committee on Environment and Public Works, that it did a survey of its marketing offices and found that 30-50 million tons will be diverted. Much of this is for movements Kearney did not count and the 30-50 million tons are more than sufficient to justify the project. Kearney did not include any tonnage originating or terminating west of New Orleans. Yet it is clear that chemicals can reach the Tennessee Valley more cheaply via Tenn-Tom than via any other route. Therefore Kearney missed some movements.

Other witnesses at these hearings revealed still more new movement not in the Kearney base traffic.

The Corps held a public meeting in Columbus in 1977 as a part of President Carter's Review of Water Projects. New shippers, not in Kearney's base Traffic, spoke or submitted letters.

The first users of the existing constructed part of the Tenn-Tom do not represent movements included in the Kearney base traffic. Opponents know the Corps cannot, because of a court order, discuss individual movements.

There is a need for bulk movement in the tributary area. The Tenn-Tom will carry its share because it is cheaper. It is cheaper because it is shorter and hence it saves time and energy.

Further, Corps tonnage estimates have almost always been less than actual experience.

Allegation: That the true benefit-cost ratio is far below unity because it is based on an unrealistically low interest rate.

Response: The Tenn-Tom interest rate is prescribed by law and exceeds the "real" rate of return in the economy.

Discussion: In 1969, the Water Resources Council, pursuant to statute, promulgated 18 CFR 704 as a legally binding regulation. It requires an interest rate of 3¼ percent for all authorized projects for which satisfactory assurances of local cooperation had been received by 31 December 1969: this includes the Tenn-Tom.

The Council's regulation was confirmed and specifically adopted as statutory law by Congress and the President in Section 80(b) of the Water Resources Development Act of 1974.

Local assurances were received from the Tombigbee River Valley Water Management District on 26 March 1964 and from the Tombigbee Valley Development Authority on 18 April 1968.

The real rate of interest has varied from 0 to 4 percent during the 20 year period 1959 to 1979, according to Dr. Paul Samuelson of MIT. In 1971, the year construction began on the Tenn-Tom, the real rate was 3 percent. In 1976, when Tenn-Tom opponents brought their second, and currently pending, lawsuit, the real rate was 1½ percent.

A long-standing practice in water resources planning is to hold benefits and costs free of inflation. Therefore, the discount rate should also be free of inflation. Inflation is built into the kinds of market interest rates mentioned earlier. As stated by Dr. Samuelson:

"Thus, once we expect to rise at 9 percent per year, my pension funds invested in bonds and mortgages will tend to pay 12 percent rather than 3 percent * * * In the 1980s, one sees something of a similar inflation premium built into American and European interest rates."

The same point can be made, if inflation is added to benefits, costs and the interest rate. Assume a 5 percent rate of inflation for benefits and costs; the current discount rate for survey studies, 7⅛ percent, the remaining BCR for the entire authorised Tenn-Tom project is 4.0 to 1. The remaining BCR using 3¼ percent and no inflation is 2.5 to 1. This result occurs because one uses a real rate of only 2⅛ percent (7⅛ percent–5 percent) to compute the 4.0RBCR, while one uses a real rate of 3¼ percent (3¼ percent to 0 percent) to compute the 2.5 BCR.

Allegation: "Remaining Costs." Without rationale or explanation the Corps uses only the "remaining" costs. The simple fact is that

using the traditional and required manner would have relegated the project to the scrap heap.

Response: The remaining benefit cost ratio is the economically correct ratio. The Tenn-Tom's total benefit-cost ratio is above unity.

Discussion: The remaining BCR for the Tenn-Tom is 2.5. The total BCR is 1.3.

Sound economic analysis requires that unrealized benefits be compared to uncommitted costs in determining the economic justification of any water resources project.

Existing guidance requires the use of the remaining (incremental) BCR. It is stated at page 8 of Senate Document 97, the operative guidance for Tenn-Tom benefit analysis:

"Net benefits are maximized when the scope of development is extended to the point where the benefits added by the last increment of scale . . . are equal to the costs of adding that increment of scale."

President Carter recognized the remaining BCR during his 1977 Review of Water Resources projects. The criteria was: "Ratio of remaining direct benefits to remaining direct costs exceeds unity" at the current rate. The remaining BCR for the Tenn-Tom at 7⅛ is 1.3.

In response to a criticism from Mr. Brent Blackweider of the Environmental Policy Center, Assistant Secretary of the Army Michael Blumenfeld reaffirmed the correctness of the remaining benefit-cost criteria, stating:

"The remaining benefit/remaining cost ratio presentation is preferred for the total project because it is the appropriate indicator of the relationship between unrealized benefits and uncommitted costs." (Letter May 3, 1980).

Computation of the RBRCR in connection with budget submissions was originally suggested several years ago by OMB Staff. The justification sheets for fiscal year 1981 display the remaining benefit remaining cost ratio (RBCR), at the applicable discount rate. This was concurred in by the Army, OMB and the Committees on Appropriations of the House and Senate.

Allegation: That the Corps told its economic consultants to make unjustified, unauthorized assumptions.

Response: Absolutely false. The Corps used a nationally recognized management consultant firm to evaluate transportation benefits. This consultant used accepted and appropriate methods.

Discussion: Corps studies are prepared with the knowledge that the process is open for review and that these studies are subject not only to their internal review but also to the review of the Office of the Secretary of the Army, OMB and Congress. Neither the Corps nor the reputable consulting firm employed for this study would ever operate in the unethical manner implied by the allegation.

Allegation: Kearney's assumptions were always made to favor the TTW analysis.

Response: Not true; the necessary assumptions were in a professional manner with the data available at the time.

Discussion: The assumptions for the analysis were made in a professional manner. It is clearly evident, however, that they are not all favorable to the justification of the TTW. For example, in the market survey, movements with origins or destination points west of New Orleans, La., were excluded. It is evident that movement between the Tennessee River and the West GIWW would move at a savings over a Mississippi River routing.

A second example which has even a larger impact is the waterway diversions rule. The basic assumption was that the traffic which was expected to be moving when capacity was reached would continue to use the waterway. An alternative assumption would be that low savings traffic would be diverted as demand increased allowing the benefits to the waterway to rise.

Similarly, the assumption regarding alternative modes was one of unlimited capacity at current prices. It is evident that congestion on any mode has the effect of raising costs.

Allegation: Inclusion of movements which are not existing traffic are prohibited by the Corps' own regulation ER 1120-2-114.

Response: Neither ER 1120-2-114 nor common sense exclude projections of future traffic.

Discussion: ER 1120-2-114, quoting Section 7a of the Department of Transportation Act of 1969 (Public Law 89-670), states that the agency will make an:

"estimate of traffic that would use the waterway will be based on such freight rates, taking into account *projections* of the economic growth of the area." (italic supplied)

Paragraph 8 of ER 1120-2-114 specifically discusses how to compute savings for movements not actually existing at the time of the traffic survey:

"The alternative modes of transportation to be used in estimating savings to shippers are those actually in use at the time of the study for moving the traffic in question, or, *where there are no existing movements*, those modes that would most likely be used for such movement." (italic supplied)

All Corps navigation (and other) studies project future tonnage, because that's the only sensible way to plan projects for future use.

The Water Resources Council publishes demographic projections (OBERS) as a framework for specific projections.

The "prohibitive" statement in Section 7a cited by the opponents is "the traffic that is estimated to move via the proposed waterway will be based on a thorough analysis of the existing traffic movements in the tributary area." The clear intent is that an analysis of existing movements is a starting point for benefit analysis, not the end point.

Kearney did find a large number of future movements for which firms had positive plans in 1975 and properly included them in the 1968 traffic base.

Allegation: That "the Corps has never analyzed impacts on competing transportation modes. Thus, the negative secondary impacts of project construction on surrounding communities have never been addressed."

Response: Analysis of alternative modes is implicit in the benefit analysis procedure.

Discussion: The very basic purpose of providing the waterway is to provide a more economical alternative transportation route for the movement of bulk commodities. The implicit assumption that the railroads have unlimited capacity at current prices is the most favorable assumption to the railroads for purposes of the benefit analysis. This assumption similarly results in identifying the maximum possible negative impacts for the railroads. Due to a generally recognized lack of data regarding specific costs for railroad movements, it is not possible at this time to definitively calculate the impacts on railroad viability or the relevance of these revenue shifts on the benefit analysis.

In the TTW lawsuit the plaintiffs have alleged that the failure to analyze the impacts on other transportation modes renders the economic analyses of the TTW invalid. This particular line of attack has been found deficient from a legal standpoint. It is axiomatic that the waterway will be a competing mode and therefore will have some effects on other modes. Congress is well aware of this fact.

In affirming the District Court decision in the previous litigation on the TTW, the Fifth Circuit Court of Appeals stated as follows in regard to the railroad being a viable alternative to the waterway: "The mere fact that rail transportation was not 'developed' and the plaintiffs can suggest the possibility that rail traffic may have been appropriate is insufficient to overcome the Court's finding. The plaintiffs made no attempt to demonstrate that the transportation function which the waterway proposed to provide—low cost, slow, bulk movement—is one which has been displaced, in whole or in part, by rail, highway, air or pipeline technology in any area wherein water carriage is available. The appropriateness of such a transportation scheme in the Tennessee-Tombigbee project area remains technically, economically, and ecologically speculative." The Fifth Circuit Court of Appeals also recognized in affirming the District Court of Appeals also recognized decision maker on whether the TTW should be constructed. Congress has authorized and funded an extensive and broadly scoped study on the TTW and its potential effects on the waterway environs including the communities along the actual waterway route as well as effects in the areas above and below the route. This study (Tennessee-Tombigbee Waterway Corridor Study) should be very helpful to local communities as they evaluate the alternative futures and prepare for the waterway and its associated impacts.

Allegation: The Corps has completely failed to recognize and account for differences in inventory, storage, handling and other logistics costs as between TTW barge and the alternative mode (rail and truck).

Response: All important logistic factors were considered in construction of rates and are explained in the Kearney study.

Discussion: Kearney explicity considered these factors (except for inventory costs) and states so on page V-4 of its final report. On page V-10, Kearney states that even inventory costs were considered in a category called "other rates and charges," which were added to the constructed rate if they were considered to be important by the firm making the shipment.

The effects of different logistics costs were also screened by the use of acceptance criteria Kearney did not accept a diversion from water to the Tenn-Tom unless the savings per ton was 15 cents or more; and from rail to the Tenn-Tom, unless the savings per ton was 50 cents or more. These criteria are considered highly conservative.

Use of inventory costs would not significantly impact upon project benefits. (Estimated to be less than 1 percent of the total annual benefits).

Allegation: Kearney used hypothetical rates for existing movements, and not actual rates.

Response: This procedure used by the A. T. Kearney Co. is a highly acceptable one, and does not violate regulations or policies.

Discussion: Corps regulations state that transportation savings will ordinarily be developed by comparing the full charges for movement from origin to destination via the waterway being studied. If the rate for the prevailing movement is not available or if the characteristics of the movement differ from those anticipated on the waterway, the rate via the present mode must also be constructed. Reliable existing rates are difficult to obtain in a traffic survey because those surveyed are reluctant to provide rates they have negotiated. Kearney used constructed rates for this and other reasons:

(1) The waterway would not come into existence until 1986 and rail rates were based on 1975 data.

(2) The waterway is entirely new and constructed rates had to be computed. It is appropriate to use comparable procedures for developing future rail rates.

(3) A large portion of the potential movements were future movements for which no rate existed.

Kearney tested the constructed rate model against available rail rates and found a high degree of correlation.

Allegation: There are numerous errors and

inconsistencies in the Kearney study's benefit calculations.

Response: This is not true. Kearney followed Corps prescribed procedures and regulations.

Discussion: This allegation is made to discredit the study and is totally without any supportive evidence.

Allegation: That "A. T. Kearney Corp. was hired to overcome the rapidly escalating project costs by finding more project benefits" and that Kearney "manufactured the extra project benefits they needed" to offset project cost increases.

Response: A. T. Kearney is an internationally recognized transportation consulting firm with a flawless record of integrity.

Discussion: It is inconceivable that this firm would risk its reputation by fraudulently creating unwarranted benefits. In fact, Kearney was not told what the project costs were.

The Chief of Engineers, Lt. General J. W. Morris, ordered an economic study because he did not want to proceed with a project with a benefit-cost ratio (BCR) less than 1.0. He has testified in court and before Congress that he was prepared to recommend against further construction had the project economic viability not proved out.

A. T. Kearney used sound and appropriate procedures to predict the traffic that will use the Tennessee-Tombigbee Waterway. A. T. Kearney firm conducted its study in full compliance with the professionally accepted standards of economics and with the terms of its contract with the Corps of Engineers.

Those that make the charges have not provided supportive information. The contract and the memoranda of meetings between the Corps and the contractor do not support this allegation.

Allegation: That it is unwise to fund a project which will lead to the exporting of U.S. coal.

Response: U.S. foreign policy favors free-world coal trade.

Discussion: The U.S. pledged to increase coal exports at the Tokyo Economic Summit in 1979, and to join 19 other industrialized countries to increase coal use as a substitute for oil—May 1979 International Energy Agency meeting.

The President recently announced that Deputy Secretary Sawhill (Department of Energy) would convene and chair an Interagency Coal Exports (ICE) Task Force to determine means to: Substantially increase U.S. coal exports; identify impediments to such increases; and recommend appropriate government and private sector actions to achieve them.

Secretary Sawhill stated April 14, 1980: "There can be no argument that we must export more coal to improve the balance of trade, take pressure off the dollar and dampen inflation, as well as to lift the burden of oil from the backs of our allies, who are far more dependent upon imports than we are."

In *Coal Bridge to the Future, Report of the World Coal Study* (WOCOL), 1980, a distinguished international group of experts, under Carroll L. Wilson, Project Director, MIT, projected U.S. coal exports to increase from a 1977 base of about 50 million tons to a current expected range of 125 to 200 million tons by 2000. Potential expanded exports could increase to 350 million tons.

Allegation: A DOT and DOE estimate is said to be coming out in the next 30 days. That report allegedly will show that rather than getting 18 million tons of coal a year moving on the TIW in 1986 there may be only 2 million tons.

Response: The 30 days have gone by and a report is still not available; therefore, we cannot comment on the specific charges.

Discussion: There are innumerable sets of projections available on coal movements, because of the fluid nature of the current energy situation. Projections have been made based upon a set of alternatives which favored western coal for export. Using the assumption that western coal were to be exported, a low number might be projected for this waterway. Using an assumption that eastern coal will be exported, high projections for the Tenn-Tom would be developed.

The Report of the World Coal Study (WOCOL), 1980, indicates that U.S. exports of coal could increase from 50 million tons in 1977 to an expected range of 125 to 200 million tons by 2000. Further, the report indicated a potential export level of 350 million tons by 2000.

A coal resources study of the Tenn-Tom area conducted for the Corps in 1978 found that the supply areas included enough recoverable coal to meet the primary market areas, that export coal through Mobile Harbor is likely to increase significantly.

Clearly, all indications are extremely favorable that substantial levels of steam coal will be transported on the Tenn-Tom to Mobile Harbor for export.

Allegation: There are not sufficient coal reserves in the region to meet Kearney's projected movements.

Response: Reserves are sufficient to meet the expected demand.

Discussion: The Kearney report projected approximately 11-12 million tons of coal from the Tennessee Basin to move on the TTW annually. This is approximately 600 million tons over the economic life of the project. The National Coal Association has identified resources of 15.8 billion tons of coal in Tennessee and Alabama with overburden of 0-3,000 feet. They have also estimated total identified and hypothetical coal resources to be 45.8 billion tons for Tennessee and Alabama and the coal resources in the Appalachian Region and Ohio Basin are obviously several times greater.

The amount of coal which is economically recoverable is less than the full amount of the resource and is dependent on the characteristics of the seam, mining technology and sale price. The amount of the economically recoverable coal therefore can be expected to change over time with changes in price and technology.

The Corps contracted with the 3R Corporation for a specific study of this issue:

The study modeled generalized supply/demand relationships for the coal using both quality and quantity criteria and considered the waterway as one feature of the overall transportation network. The 3R study team delineated a primary supply region consisting of Alabama, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, Tennessee and West Virginia. The primary demand for the coal was expected to encompass the foreign markets as well as markets in nearly all of Alabama, Southeast Mississippi and the Panhandle and West Central portions of Florida.

The major conclusions of the study were:

1. A large domestic demand for steam coal is projected for the 1986-2036 period, particularly in the primary market area;

2. The supply areas contain large amounts of recoverable coal, enough to meet the needs of the primary market areas;

3. All modes of transportation are likely to be strained at times in meeting future coal demands;

4. Export coal through Mobile Harbor is likely to increase significantly over current levels; and

5. Utilities will be the largest consumers of coal in the primary market areas.

Allegation: The bottom has fallen out of the metallurgical coal market and there will be no increase in exports.

Response: There was a dip in the amount of metallurgical coal exports in the 1970's. However, this was a short run situation; metallurgical coal exports are expected to significantly increase during the next 20 years.

Discussion: Metallurgical coal has been traded internationally for many years due to its limited supply sources and lack of substitutes. There was a decline in U.S. exports of metallurgical coal during the 1970's because of world-wide economic conditions. However, the same reasons for our past exporting of metallurgical coal continue to exist and they are the same reasons why metallurgical coal exports will increase in the future. The present emphasis is on the export of steam coal, however, the World Coal Study (WOCOL) has projected U.S. exports of metallurgical coal to increase from 39 million tons in 1977 to the level of 60 to 70 million tons by the year 2000.

Allegation: A coal slurry pipeline will be built from Tennessee to Mobile.

Response: Numerous routes for coal slurry pipelines have been considered, including the one mentioned. However, implementation of coal slurry pipeline does not seem possible in the near future.

Discussion: Eminent domain legislation to give developers the power to acquire rights-of-way, is required before coal slurry development will receive serious consideration. Legislation is under consideration and has been for several years. There are many other problems yet to be resolved. Dewatering of the coal slurry at the receiving terminal requires considerable storage area and introduces environmental problems. Obtaining water for the slurry, and the problems of interbasin water transfers are other major issues. A coal slurry pipeline does not appear to be a near-term alternative for moving coal in this area.

Allegation: "The cost of the Tenn-Tom project has gone up tenfold in 8 years from $323 million to $3 billion."

Response: This is false. The total estimated Federal (Corps of Engineers) cost for the Tenn-Tom as of today is $1,750 million, of which $879 million has already been appropriated. This $1,750 million figure includes $100 million representing inflation through the remaining construction period.

Discussion: The Department of the Army's first budget submittal for Tenn-Tom construction was for fiscal year 1971, and the total first cost was then $323 million—July 1969 price level. The comparable cost in the fiscal year 1981 budget submittal is $1,650 million (Note: Neither of these figures includes the $100 million allowance for future inflation). This represents about a five-fold increase over the last 10 years, and 66 percent of this increase is the result of inflation. Much of the remaining increase can be attributed to improvements in project design to increase efficiency and to enhance environmental quality.

The claim that the Tenn-Tom project will cost $3 billion, is both false and misleading. The Corps of Engineers budget justification sheet for fiscal year 1981 does present a $3,030 million figure, but that is not the cost of the Tenn-Tom project only; that fact is clearly indicated on the sheet. The $3,030 million figure represents both the total Federal and non-Federal cost of the Tenn-Tom (including $111 million added to represent inflation before construction is completed); and future (about year 1997) recreation development costs of $145 million (of which $105 million represents inflation; and $960 million for unauthoried modifications that could expand the capacity of the Black-Warrior-Tombigbee Waterway in Alabama between Demopolis and Mobile. Out of this $960 million cost, $537 million is for inflation. The Tenn-Tom project will be fully useful and will produce its expected economic benefits even if the nearly $1 billion of work on the Black-Warrior-Tombigbee is never authorized or constructed.

Allegation: The Corps deliberately misled Congress about increased costs.

Response: Totally false. The Corps did not suppress cost increases. The costs have always been prepared in accordance with current procedures and represent the best

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estimate based on information available at the time.

Discussion: In mid 1974 it became apparent that cost increases were greater in the 1972–74 time frame than had been anticipated on major items of work. Public documents generated by the Corps for the express purpose of informing Congress of escalating costs, are being used out of context as the basis for the criticism.

A federal cost estimate of $815 million was presented to Congress in support of the fiscal year 1976 budget request. Part of this estimate was based on conceptual designs and part based on actual bids received from contractors. Congress was informed in 1975 that the fiscal year 1976 benefits and related costs were outdated and were being reanalyzed. A cost estimate of $1.4 billion was reported in August 1975 to the Senate Appropriation Committee before the fiscal year 1976 appropriation legislation was finalized by Congress. A federal cost of $1.36 billion was included in the data supporting the fiscal year 1977 budget request. This cost was the result of the reanalysis, based upon more detailed examination of all project features.

Allegation: If the project were to be ended today, a very substantial portion of the moneys that have been expended are fully recoverable. Fifty percent of the costs that have already been expended on the waterway can be recoverable through the sale of land.

Response: This allegation is simply not true. Funds allocated to date for the waterway are approximately $879 million. Of this total, $56 million has been spent on the acquisition of land. It is estimated that the sale of these lands would return only about $29 million, because much of the real estate has no known use except as a navigation project (for example, The Divide Cut).

Discussion: Sale of the land would represent only 3½ percent of the allocations to date, rather than the 50 percent claimed by the opponents of the project. In addition to the funds already allocated, termination costs of about $130 million would be spent, and $105 million in annual navigation benefits would be lost.

The following table provides a breakdown of the termination costs:

[In millions of dollars]

Item	Section of project			
	River	Canal	Divide cut	Total project
(a) Contract termination costs and claims	17.1	25.4	31	73.5
(b) Protection of completed works [1]	14.2	5.2	30	49.4
(c) Real estate settlements and deficiency judgments	3.4	4.45	.....	7.85
Total	34.7	35.05	61	130.75

[1] Includes environmental restoration.

Note: Estimated total termination costs, $130,750,000.

Allegation: The project is less than 25 percent complete.

Response: Through fiscal year 1980, about 50 percent of the Federal (Corps of Engineers) funds have been allocated—$879 million out of $1,750 million. Over 70 percent of the total federal cost has been expanded or is committed in ongoing contracts.

Discussion: As of July 31, 1980, the features necessary for navigation (lands, relocations, locks and dams, and channels and canals) are 46 percent physically completed. About 190 miles out of the 232 miles of the channel are either completed or under way (82 percent).

Allegation: The Tenn-Tom is an environmental disaster.

Response: Just the opposite is true. The project is in compliance with all applicable environmental laws.

Discussion: The TTW is one of the first large Civil Works water resource projects to be developed under the auspices of NEPA. The EIS for the waterway was filed with CEQ in 1971 and was debated in Congress; its adequacy was upheld by two federal courts. The environmental studies on this project have been extensive and continuous. Supplemental Environmental Reports, updating the EIS, were issued in 1975 and 1978.

In 1971 a continuing environmental study process was established by the Corps to place more emphasis on environmental considerations in the design and construction of the waterway. An Environmental Board of Consultants was established to review these activities and to recommend opportunities for minimizing environmental losses and to maximize environmental protection and enhancement. This process led to numerous changes and refinements in the construction of the waterway.

The Congress has mandated that special efforts be taken to insure that environmental resources are protected. The Corps has made every effort to fulfill these mandates. For example, all of the disposal sites for the excavated material have been selected in accordance with guidelines promulgated by EPA as directed by the Federal Water Pollution Control Act (Public Law 92–500). The U.S. Fish and Wildlife Service has participated in the selection of the disposal sites under the auspices of the Fish and Wildlife Coordination Act. In addition, state water quality certifications have been obtained for all waterway related activities under the Clean Water Act provisions.

There are no federally listed endangered or threatened species which would be adversely affected by the waterway.

Extensive measures have been taken to insure compliance with the Archeological and Historic Preservation Act and the National Historic Preservation Act. Where possible, important sites have been protected. Where sites had to be disturbed, appropriate mitigation measures were undertaken in consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Officers.

Requirements are included in all contracts that the contractor will comply with all applicable state and federal regulations. Thus the Corps has taken every effort to comply both with the spirit and intent of all applicable laws.

Allegation: The Corps of Engineers has proceeded with the project in the absence of a legally required mitigation plan called for in the Fish and Wildlife Coordination Act. Further, the U.S. and Wildlife Service indicates that "up to one million acres of land" would have to be acquired to compensate for the loss of fish and wildlife habitat, and the cost of this required mitigation could be as much as several hundred million dollars.

Response: The Corps is not legally required under the Fish and Wildlife Coordination Act to have such a plan before proceeding with the project. However, for the last several years, the Corps and the Fish and Wildlife Service have been involved in a three phase mitigation study for the project. This study will lead to a report that could recommend to Congress the purchase of lands for mitigation, if the study determines mitigation is appropriate.

Discussion: A preliminary analysis contained an estimate of 118,000 acres needed for mitigation. A subsequent estimate was significantly lower. The Corps and the Fish and Wildlife Service have reached agreement on the approach to use in revising the preliminary draft analysis, and the study is proceeding on schedule with a report completion date of December 1981.

Allegation: Additional spoil disposal is required in the divide section; therefore, a supplement to the EIS is required.

Response: This is not a major change and a supplement is not required.

Discussion: Spoil disposal was considered in the original E.S. The methods of spoil disposal now being utilized have proved to be environmentally sound, actually offering opportunities for wildlife mitigation and enhancement.

Allegation: Shortening of the river section with cut-offs and straightening the channel requires an EIS.

Response: This is not a major design change, and a Supplement to the EIS is not required.

Discussion: The travel distance was shortened some 21 miles with the cutoffs. This design required less excavation than would be needed for the longer route. The recent court decision found that the cut-offs did not affect the scope, purpose or plan of improvement of the Tenn-Tom in any material way.

Allegation: Various water quality problems will develop with the completed project because of sediment depositions within the reservoirs.

Response: The Tenn-Tom reservoirs are run of the river type which allow for constant flow through the impoundments: this fact, plus normal maintenance dredging, will insure that sedimentation will never impair navigation or recreation on the Tenn-Tom.

Discussion: Studies have been conducted to determine the rates of sedimentation that can be expected in the impoundments for the TTW: these studies have not revealed any significant adverse effects from sedimentation. Routine maintenance dredging will insure that the navigation channels are maintained to proper dimensions. Moreover, water quality was discussed adequately in the project's EIS, which revealed no serious water quality problems.

Allegation: The project will result in the waterlogging of 122,000 acres of land. This impact requires an EIS.

Response: The EIS on file discusses waterlogging, and demonstrates that waterlogging will not present serious problems or impact significant acreages of land.

Discussion: The claim that 122,000 acres will be impacted is not supportable. The figure was developed by opponents from a map and data contained in a U.S. Geological Survey Report. The author of this report has stated in a sworn affidavit filed in Federal Court that the map and data from which the 122,000 figure was developed are not suitable for making this determination. The Federal Courts have ruled that the Corps' Tenn-Tom EIS adequately discusses waterlogging, and shows that it will not be a significant problem.

Allegation: The 105,000 acres of land required for the project is an increase from the 70,000 acres initially planned. This constitutes destruction of additional fish and wildlife habitat, not covered in the EIS.

Response: Much of the additional land—20,000 acres in the canal section alone—will remain unaffected by construction and therefore maintain its value for wildlife. Much of the increased acreage is for the purpose of maintaining better environmental control. Moreover, any destruction of fish and wildlife habitat which can be attributed to the project will be evaluated and rectified pursuant to the terms of the Fish and Wildlife Mitigation Act. The Corps of Engineers and the U.S. Fish and Wildlife Service are working together now on a three-phase study to determine how to mitigate measures for losses to fish and wildlife caused by construction of the Tenn-Tom.

Allegation: The "Chain-of-Lakes" design is a major change, made since the original

EIS was filed; therefore, a supplement to the EIS is required.

Response: A supplement is not required. In the recent trial, the court found this modification was not a major change, in fact, it represents an effort to mitigate environmental impacts in a limited portion of the project.

Allegation: As many as 14 endangered species will be affected.

Response: Totally false. Not a single species listed by the Federal Government as endangered or threatened, or proposed to be listed as either, has been shown to be adversely affected by Tenn-Tom construction or future operation.

Allegation: A study by the Army Audit Agency (AAA) demonstrates that the Corps is guilty of deceit in withholding known cost increases from the public and the Congress.

Response: Totally false. The Corps did not suppress cost increases. The costs reported have always represented the best estimate based on information available at the time and were prepared in accordance with the then-current procedures; any inferences to the contrary drawn from the AAA report would be misleading.

Discussion: Lt. Gen. John W. Morris, Chief of Engineers, has recently testified twice on this subject. On July 28, 1980 before the Subcommittee on Water Resources of the Senate Committee on Environment and Public Works, and on August 21, 1980, before Subcommittee on Energy and Water Development of the Senate Committee on Appropriations, General Morris stated that in mid 1974 it became apparent that cost increases were greater in the 1972–74 time than had been anticipated on major items of work, not only for the TTW but for all large construction projects. For the fiscal year 1976 budget request, a cost estimate for the TTW was prepared which followed current procedures, except that for those items on which construction contracts would be awarded in fiscal year 1976, the cost estimates were increased to reflect recent bid experiences. Congress was informed during hearings on the fiscal year 1976 appropriation requests that the costs and benefits were outdated and were being reanalyzed. In August 1975, General Morris personally informed the staff of the Senate Committee on Appropriations that the estimated costs for the TTW would be $1.4 billion. This came before the Committee marked up the fiscal year 1976 appropriation bill. A Federal cost of $1.36 billion was shown in the fiscal year 1977 budget request, which cost was the result of the reanalysis. In fact, the Corps of Engineers has been highly responsible and forthcoming in informing Congress about the costs of Tenn-Tom at every stage of project planning and construction. The AAA report mentioned above does contain language which, taken out of context, can be used to imply that the Corps withheld cost information from Congress. That language reflects the fact that the AAA report was based on very incomplete data. When all relevant documents and testimony are assessed, it becomes clear that the Corps never withheld known cost data from Congress.

Allegation: A GAO report was started then stopped on this extremely controversial project. This unreleased report concluded that the Corps double-counted navigation benefits on the portion of the project from Mobile to Demopolis by failing to account for traffic congestion in this reach of the river.

Response: In response to the GAO, the Office of the Secretary of the Army stated that while growth on traffic on the Tenn-Tom Waterway may eventually inhibit growth on the Black Warrior-Tombigbee (BWT) Waterway, the Tenn-Tom project may eventually relieve congestion of other locations throughout the inland waterway system. Because a systems analysis had not been made, an assessment of the net effect on the total navigation system could not be estimated at that time. However, the GAO was advised that the TTW would be reevaluated and consideration to the impacts on the BWT would be given in on-going studies of the BWT. Nevertheless, numerous studies and affidavits of the Department of the Army and reputable independent consulting firms prove that the economic and functional aspects of the TTW are sound, both independent of and as a complement to the BWT.

Discussion: The GAO selected the Tennessee-Tombigbee Waterway as a part of a survey of Corps procedures for preparing benefit-cost analyses of inland waterway projects. They suspended this work when the lawsuit was filed against it on 30 November 1976. Their reason for the suspension was • • • "It has long been our practice to avoid reviewing matters which are in litigation." Consequently, there is no reason to believe that the GAO would have been critical of the Tenn-Tom's economic analysis if it had proceeded beyond its preliminary research stages. The Department of the Army and highly reputable independent consultants have repeatedly confirmed the facts that the economics of the TTW are sound, and that no considerations relating to the BWT require a different conclusion.

Allegation: The Corps plans the Tenn-Tom Waterway to extend southward from Demopolis to Mobile.

Response: The authorized plan now under construction contemplates no work southward of Demopolis on the Black Warrior-Tombigbee Waterway (BWT).

Discussion: Studies indicate that improvements on the lower BWT would eventually provide for a more efficient waterway system, but these improvements are not included in the TTW project. Judge Keady in his 12 March 1979 decision noted that the Corps "has readily acknowledged that it is without authority to eliminate the constraints presently existing in the BWT project and, after proper studies must secure Congressional approval to increase the channel width, eliminate numerous cutoffs, increase lockage capacity and remove other hindrances now existing in the BWT in order to efficiently accommodate 2-way navigation for 8-barge tows. Not only do the defendants concede the necessity for Congressional approval for making these modifications to the existing BWT but they further acknowledge that, assuming the future grant of such authorization, the duty will rest upon them to comply with NEPA and all other applicable laws before such navigation improvements could be made. Suffice it to say that these developments, though of recent origin, have no bearing upon the Corps' lawful prosecution of the TTW project in accordance with current design."

The authorized plan in the 1975 economic restudy included no benefits for traffic downstream of Demopolis Lock and Dam beyond its existing capacity. Tow configurations were changed from 8 barges to 6 barges at Demopolis and appropriate fleeting charges were included because of this change. Also, the study indicated that the capacity of the existing locks and dams would be reached in 1991 at Demopolis and Coffeeville; therefore, no projections of commodity movements for the project were considered after that point in time.

The Tenn-Tom project from Pickwick Pool to Demopolis will function effectively as now being designed and constructed. Economic analyses of the Tenn-Tom project included no benefits or costs for modification of the river from Demopolis to Mobile.

Allegation: Six barge tows cannot operate below Demopolis during high flows—stage 28 feet—which is 21 percent of the time.

Response: Six barge tows can and do operate with regularity. Affidavits from two barge towing firms testify they presently use six barge tows and that the use of six barge tows is increasing dramatically.

Discussion: This allegation is apparently based upon the comments of one barge operator in 1975 and cannot be taken to represent the entire industry. For a given horsepower towboat, the statement may be true. Dr. Anatoly Hochstein, an internationally known expert in the field of waterway transportation, was hired to do a study of channel dimensions and tow speeds on the TTW and BWT. His study revealed that an eight barge tow can operate on the TTW and BWT under the various flows and do so at speeds greater than Kearney estimated in the economic reanalysis. Thus the use of the Kearney two speeds and six barge tows on the BWT result in a conservative estimate of navigation benefits.

Allegation: Local sponsors in Alabama and Mississippi are not meeting the requirements of local cooperation because of inadequate funding. The Federal Aid Highway Act of 1976 provided a bailout for the States.

Response: Absolutely false. The local sponsors in Alabama and Mississippi have met all obligations for non-Federal participation on schedule and thereby have allowed the Corps to proceed with construction in orderly fashion.

Discussion: To date the sponsors have expanded or committed $133.8 million, about 80 percent of the total non-Federal relocations costs of $165 million. Of this amount, $89.5 million came from Federal Highway funds. The local funds have been, therefore $44.3 million, a sizable investment.

The intent of Section 132 of the Federal Aid Highway Act of 1976 was to correct inequities which have arisen because of the changes that came about since the project was authorized in 1946 and to reflect the cost sharing principles applicable to other navigation projects. In 1945 there were 13 highway bridges requiring alterations, and, as authorized, the costs were all non-Federal. Since 1945, the requirements for bridge, highway, and utility modifications have changed. The increase in waterway width and modern standards for Federal and state bridge construction have increased the costs for bridge modifications far beyond what was anticipated in 1945. Generally, navigation projects authorized since 1952 provide Federal participation in highway bridge modifications costs in accordance with the cost sharing principles of Section 6 of Public Law 67–647 as amended, commonly referred to as the "Truman-Hobbs Act." Section 132 of the 1976 Federal Highway Act was an effort to provide a measure of equity to the local sponsors, by treating the project similarly with those currently being authorized.

SUMMARY OF LOCAL EXPENDITURES—AS OF 30 JUNE 1980

	Expenditures	Committed	Total
Alabama	$22,377,796	$4,693,994	$27,071,490
Mississippi	61,169,924	45,563,486	106,733,410
Total	83,547,420	50,257,480	133,804,900

Allegation: Users of the waterway will not pay one dime in construction or operation and maintenance costs. In addition, the O. & M. costs will be much greater than the 86.7 million estimated by the Corps.

Response: Only completed segments of the inland and intracoastal waterway system have been designated for user charges, not projects under construction. The current estimated Federal annual O. & M. cost is $6.3 million; all foreseeable costs associated with

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the Federal O. & M. responsibilities are included. Once the Tenn-Tom has been completed and placed in operation, we have no reason to believe that the waterway user charge will not be extended by statute to Tenn-Tom.

Discussion: Public Law 95-502 created the Inland Waterways Trust Fund for the construction and rehabilitation expenditures for navigation on the inland and intracoastal waterways described in section 206 of the act. The funds for the trust are derived from the fuel used in commercial transportation on the designated waterways.

All of the 26 segments of the inland and intracoastal waterway system designated in section 206 were completed operational projects at the time of the act. Projects under construction, such as the Tenn-Tom, were not included. However, under the provisions of the act, projects which are not in section 206 cannot benefit from the trust fund proceeds.

The current estimated Federal annual O. & M. costs of $6.3 million include all costs associated with dredging, bank stabilization, lock operation, and Coast Guard maintenance of aids to navigation. All foreseeable costs associated with Federal O. & M. responsibilities are included.

Allegation: That the project is already obsolete.

Response: The project is sized to conform to modern-sized barge and tow configurations.

Discussion: The waterway is compatible with traffic moving on the Tennessee River and the inland waterway system, and with the Black Warrior Tombigbee River and Gulf Intracoastal Waterway.

Allegation: No one will use the Tenn-Tom when the Mississippi River, a "super-highway" is available. The Tenn-Tom is a "clone" of the Mississippi River.

Response: Shippers will tend to ship by the least costly means; the A. T. Kearney Co. claimed benefits in cost savings for such shippers.

Discussion: All the advantages and disadvantages of the Mississippi route and of the Tenn-Tom were calculated into the Kearney rate model. Advantages of Tenn-Tom are shorter distances (550 miles on average) and hence, less time and energy expended, and avoidance of congestion at Inner Harbor Lock Canal and limited tow-size capacity on GIWW.

Advantages of the Mississippi River are faster underway speed, larger tows and open channel.

All of the advantages and disadvantages were specifically computed and put into the cost of shipping via the two water routes.

Allegation: The TTW failed to meet the President's environmental and economic criteria during the 1977 review of major water resources projects. Even so, federal funding was not discontinued.

Response: The President's 1977 review of major water resources projects recommended continued funding of the TTW project.

Discussion: This review also made recommendations to develop a method so that waterway users pay a fair share, stress efforts to minimize and mitigate adverse environmental impacts, and assure proper employment opportunities for local residents and minorities. Factors in the decision were important local development features and strong local financial support.

The remaining benefit-cost ratio at the 6⅜ percent rate used in the President's Review of 1977 was 0.87. The remaining benefit-cost ratio at a 7⅛ interest rate is now 1.3.

Mr. JOHNSTON. Mr. President, I also ask unanimous consent to have printed in the RECORD a letter from Alabama Power addressed to me under date of September 8, 1980.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ALABAMA POWER,
Birmingham, Ala., September 8, 1980.

Hon. BENNETT JOHNSTON,
Chairman, Senate Public Works Appropriations Committee, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR JOHNSTON: Alabama Power Company now consumes approximately eleven million tons of coal annually for the production of electric energy which it uses in serving the almost one million customers in the southern 80 percent of Alabama. It appears certain that the use of coal as an energy source will increase substantially during coming years, as it will be the mainstay of new major generating plants in our area during the next decade. Cost in transporting coal to our coal-fired steam plants is an important factor in the use of coal.

With the completion of the Tennessee-Tombigbee Waterway in five or six years, we believe that the waterway will present numerous opportunities for significant savings in the cost of shipping coal into Alabama from outside the state; and coal, which is not now competitive because of transportation cost, will be competitive on the opening of the waterway, not only for ourselves but for other coal-fired plants in the Southern Electric System located along the Gulf Coast.

Since the waterway is now only about 50 percent complete, it is premature for us to conduct detailed cost and rate analyses on moving coal via the Tennessee-Tombigbee Waterway as compared with other forms of transportation. We do believe, however, that coal shipments and other bulk commodity shipments will be able to move with substantial savings which will make Alabama coal competitive to the North, as well as make out-of-state coal competitive here.

We recognize that the project has become controversial in the eyes of some. Our company and its personnel are convinced that early completion will be an asset to our company and to the economy of Alabama and the region. Our Industrial Development (which was the first such department created by any utility in the United States) is convinced that economic and industrial development will promptly follow completion and is, in fact, even now benefiting from projected completion. The high unemployment in some parts of our service area makes us mindful of the need for such development. We hope that you and your colleagues will continue funding this important project at full measure. We believe that this waterway linkage to a substantial part of the balance of the country is a worthwhile endeavor.

I appreciate the opportunity of presenting our views on this matter.

Sincerely,

JOSEPH M. FARLEY.

Mr. CHAFEE. Mr. President, I submit for the RECORD a table entitled "Appropriation Title: Construction, General-Locks and Dams (Navigation); Project: Tennessee-Tombigbee Waterway, Alabama and Mississippi," and I refer to the final figure, total estimated project cost for ultimate development, $3,030,000,000.

Mr. President, I ask unanimous consent to have printed in the RECORD the table to which I have made reference.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

APPROPRIATION TITLE: CONSTRUCTION, GENERAL—LOCKS AND DAMS (NAVIGATION)

Project: Tennessee-Tombigbee Waterway, Alabama and Mississippi (Continuing).

Location: The project is located in west-central Alabama and northeastern Mississippi: in Marengo, Sumter, Greene, and Pickens Counties, Ala.; and Noxubee, Lowndes, Clay, Monroe, Itawamba, Prentiss, and Tishomingo Counties, Miss.

Authorization: 1946 River and Harbor Act.

Remaining benefit—Remaining cost ratio: 2.5 initial; 2.3 ultimate.[1]

SUMMARIZED FINANCIAL DATA

	Amount
Estimated total appropriation requirement	$1,750,000,000
Estimated Federal cost:	
Initial CofE	1,750,000,000
U.S. Coast Guard	600,000
National Park Service	9,400,000
Estimated non-Federal cost	165,000,000
Cash contribution	None
Other costs	165,000,000
Total, estimated project cost (initial)	1,925,000,000
Total, estimated project cost for ultimate development	[1] 3,030,000,000
Federal cost	2,737,500,000
Non-Federal cost	292,500,000

	Amount	Accumulated percent of estimated Federal (CofE) cost
Allocations through Sept. 30, 1979	[2] $621,747,000	
Conference allowance, fiscal year 1980	165,000,000	
Allocation fiscal year 1980	[3] 216,500,000	
Allocations to date	868,274,000	50
Appropriation requested, fiscal year 1981	209,000,000	62
Balance to complete after fiscal year 1981	672,753,000	

[1] Includes $585,000,000 for channel improvements below Demopolis (not authorized), $145,000,000 for authorized future recreation development in about year 1997, and $375,000,000 for future lock construction at Demopolis and Coffeeville in about year 2002 (not authorized). These amounts include $742,000,000 for an estimated inflation allowance from Oct. 1, 1979, through the construction period.

[2] Includes $2,100,000 transferred to the National Park Service for excavation of a portion of Pool E.

[3] Reflects transfer of $23,500,000 to the project and proposed transfer and/or supplemental appropriation of $58,000,000 to the project.

Note: Division—South Atlantic. District—Mobile. Region—South Atlantic-Gulf. Tennessee-Tombigbee Waterway, Alabama and Mississippi.

Mr. SASSER. Mr. President, I oppose the amendment. Now is not the time to talk of cutting or terminating the Tennessee-Tombigbee Waterway. That time has long past. Previous Congresses decided that the project should be built, and it was initiated 13 years ago. Every Congress since then has approved funding for the Tennessee-Tombigbee.

Projects should be halted before they are ever initiated. If the Tenn-Tom is a bad project, it should never have been started. But I say to my colleagues, that this project has been started. It is physically more than 50-percent complete and over 70 percent of the Federal costs is already committed. So now is not the time to stop this project.

Halting this project will not save the American taxpayer one thin dime. To the contrary it will cost the American taxpayer untold millions. I do not think we should lose sight of the fact that over $1.2 billion has been committed to the project. And testimony before the Senate Appropriations Subcommittee on Energy and Water, of which I am a member, indicates that less than $30 million of that investment is recoverable. So to terminate the project now makes absolutely no economic sense. If this project is halted at this point, 90 percent of the full project benefits will never be realized. Most of the funds spent to date would simply be wasted.

Now, I do not want to merely repeat what has been said several times on the floor, but there are certain facts which are worth underscoring.

This is the most studied and restudied water resource project in the history of the Army Corps of Engineers.

Testimony before the committee indicates that there are no federally listed endangered species or threatened species which would be adversely affected by the project.

The project is economically sound—the benefit-to-cost ratio on the remaining cost is 2.5 to 1, a sound benefit-cost ratio.

Mr. President, often we lose sight of the fact that major water projects such as the Tennessee-Tombigbee are really national projects which enjoy national benefits.

This project will connect directly some 14 States and mid-America's 16,000 miles of inland waterways with ports along the Gulf of Mexico.

Many States will realize direct economic benefits. Water-borne transportation is a very cost efficient and energy efficient mode of transportation. And every mile which can be saved is an additional benefit.

I would like to point out some of the savings which will be accomplished by this project—310 miles will be saved from St. Louis to Mobile, Ala.; from Kansas City to Pensacola, 252 miles will be saved; from Chattanooga to Mobile, 832 miles; and from Pittsburgh to Mobile, 402 miles.

So this project directly affects many of our States.

I would like to say further that to halt this project now would be nothing short of a breech of faith by the Federal Government.

Substantial investments have been made in anticipation of this project.

It has been estimated that the Tennessee-Tombigbee will result in 135,000 new jobs being added to the American economy.

Already $1 billion in new investments, new and expanded industrial development, have been made. Industrial opportunities are opening up in some of the most depressed areas of this Nation, simply because of the Tennessee-Tombigbee Waterway.

It is estimated that a total of $2.9 billion in personal income and private investment will be generated by this project by the turn of the century. I personally think that based on the experience of other waterways, economic growth created by the Tenn-Tom will be much greater. I would point out that since 1950, over $56 billion in economic growth has taken place along the Ohio River.

Mr. President, the Tennessee-Tombigbee Waterway has withstood the test for 13 years. It has withstood the congressional tests. It has withstood the tests of the Corps of Engineers.

It has withstood the tests of the courts.

This project should now be completed. We should not look to slow it down or halt it, but accelerate it so we can get the benefits on line as soon as possible.

Former Congressman Joe L. Evins of Tennessee, who served as the chairman of the Energy and Water Subcommittee for many years in the House, calls the Tennessee-Tombigbee Waterway "an investment in America's future." I concur in that assessment.

I urge the amendment be defeated.

Mr. HUDDLESTON. Mr. President, in order to understand the economic desirability of the Tennessee-Tombigbee Waterway project, an overview of the nature of inland water transportation and its role in our national transportation system is necessary.

Many of my colleagues saw the series on transportation that began in the Washington Post on August 24, 1980. I quote briefly from that article:

> Highways are crumbling, railroads are shrinking, waterways are clogged at critical points and the last frontier of transportation freedom, the sky, is becoming so crowded that federal officials are talking seriously about "allocating airspace."

In view of the criticality of our transportation system, I really do not see how so much opposition has been generated against the Tenn-Tom Waterway. All the project proposes to do is try to relieve this ailing transportation system that shames us all when compared to the finely honed efficiency of transportation in Great Britain, Europe and Japan.

What we are talking about is a clearly established need—an addition to our 25,543-mile freight-carrying waterway system, a shorter route to the Gulf of Mexico from the heart of mid-America.

The chief advantage of barge transportation over other kinds is the low cost. Perhaps the most pointed example of the savings in barge transportation comes from the pioneer canal days when a mule on a tow path could pull 50 tons in a barge compared with 1 ton in a wagon.

Today's towboat might more aptly be described as a pushboat, because it pushes rather than pulls its barges.

While railroads move large volumes of freight economically due to the high ratio of cargo to horsepower, a single jumbo barge holds from 1,200 to 1,500 tons—the equivalent of 24 to 30 railcars. The resultant economy is obvious.

The 232-mile waterway will provide such economic transportation, connecting mid-America's 16,000 navigable waterway miles with ports along the Gulf of Mexico.

Of course Tenn-Tom will help my State of Kentucky in many ways, but especially so in transportation savings. Although I am always glad to get everything that I can for my State, the larger consideration is that this is a national project with 14 States gaining direct benefits and another nine States substantially affected by the opening of a new shorter route to the Gulf as well as to domestic ports.

What precisely will Tenn-Tom do for our national waterway system?

The key to the project is transportation. Transportation where and at what savings?

Many people do not realize it, but about 132 miles of this project, from Columbus, Miss., to Demopolis, Ala., are now open for limited transportation, with some navigation cost savings already being experienced in the shipment of soybeans. However, the larger part, that with national significance, will not open until the mid-1980's. This part, under construction now, will link the Tennessee River from Pickwick Lake via a man-made canal southward to the existing completed link at Columbus, Miss.

When this link is made, Tenn-Tom is expected to become one of the Nation's busiest waterways. Over 28 million tons are expected to move on the waterway during its first year of operation, according to an independent study conducted by A. T. Kearney Co. of Chicago.

In Kentucky, industries and port facilities already in place will save on distance and cost in the transport of commodities along the waterway. As compared to using the present Mississippi River route, the mileage savings from Paducah to Mobile will be 389; to Panama City, Fla., 342; to Birmingham, Ala., 802; and from Pittsburgh, Penn., to Mobile, 389 miles.

Tenn-Tom-induced transportation savings for Kentucky in the first year of the project's operation will reach $3.3 million. Nationally, first-year savings will total $82,039,000, rising to an estimated $105 million annually each year after the first year of operation. First year savings for the other 13 States directly involved follow: Alabama, $37,456,000; Florida, $4,122,000; Illinois, $9,155,000; Indiana, $269,000; Iowa, $113,000; Louisiana, $3,165,000; Minnesota, $454,000; Mississippi, $5,494,000; Missouri, $282,000; Ohio, $73,000; Pennsylvania, $257,000; Tennessee, $17,670,000 and West Virginia, $276,000.

Recent studies indicate that the following transportation developments will occur in Kentucky once Tenn-Tom becomes operational:

A total of 9.4 million tons of additional traffic will occur on Kentucky Lake.

An estimated 1-percent increase each in towing activity, in barge construction and in storage handling activities by west Kentucky ports.

A $4,027,370 increase in income to river traffic firms and ports in west Kentucky by 1986.

Savings resulting from cheaper barge transportation via Tenn-Tom will result in a more competitive free enterprise system, generating greater demand for Kentucky goods and industrial expansion.

About 2.5 million tons of Kentucky coal will be shipped the first year via Tenn-Tom.

Fifty percent of our country's population lies within 500 miles of western Kentucky. The development potential for the State is significant.

Again I emphasize that while Kentucky will be richly blessed by Tenn-Tom, that blessing by no means is restricted to the Blue Grass State. Similar

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predictions are made for other States affected by the waterway.

Actually, the transportation benefits projected by the Corps of Engineers are conservative. The corps, in calculating transportation benefits, is restricted by Federal regulation to including only shipments from existing companies and those that have announced plans for location in the waterway area. Furthermore, consideration of future—other than those formally announced—or waterway-induced industrial development is disallowed in predicting transportation benefits.

The Gulf Intracoastal Waterway was originally predicted by the corps to have a potential of 7 million ton-miles of commercial freight annually. In 1979 the Gulf Intracoastal Waterway carried 100 million ton-miles of commercial freight. The Buttermilk Channel, New York, was expected to transport 252,000 tons yearly. Instead it transports 1,000,000 tons annually. The Dillingham Harbor, Alaska, project was expected to serve 40,000 tons annually but has actually served 118,000 tons annually. The Kahului Harbor, Hawaii, project was expected to serve 178,000 tons annually but serves 600,000 annually.

Various charges about the validity of the transportation claims have been leveled at Tenn-Tom.

CHARGE

The project should be stopped because the area is well served by existing rail service.

REBUTTAL

Railroads generally are having some problems but are in what is hoped to be the early stages of a comeback. The Washington Post has noted that 10 railroads carry 85 percent of the business and that those 10 are in pretty good physical condition. However, the Post advised, those carrying the other 15 percent for the most part are overbuilt, have immense deferred maintenance problems and, in some cases, should be abandoned, in the view of some Federal officials.

One railroad in the Tenn-Tom area has been condemned by the Federal Railroad Administration as to its operation and maintenance.

A Battelle Institute analysis and other studies indicate that the rail lines doing the best financially operate alongside navigable waterways, suggesting a profitable relationship.

CHARGE

The benefits claimed for transporting coal on Tenn-Tom are overstated.

REBUTTAL

It is likely that these benefits are underestimated. A. T. Kearney's 1975 economic restudy foresaw about 21-million tons of coal movements on Tenn-Tom resulting in significant transportation savings. The predictions were based on metallurgical coal for export. In 1975 there was no perceived demand for steam coal. More recent study of the situation sees coal having to supply between one-half and two-thirds of world energy needs in the next 20 years. Unfortunately, U.S. coal producers cannot compete with their foreign counterparts without efficient transportation—just what we are trying to offer with the Tenn-Tom waterway.

Transportation Secretary Neil Goldschmidt suggested last November that better performance and efficiency by the national transportation system is critical as the Nation expands its exports in part to offset the cost of importing oil.

Transportation, of course, goes hand in hand with population: The more people, the more transportation needed to transport them and the things they need.

U.S. population, despite some contention to the contrary, is growing dramatically. Between 1790 and 1970 our population grew from 4 million to 206 million. By 1975 it had reached 213.6 million. The U.S. Census Bureau estimates that by the year 2000, U.S. population could soar as high as 322 million. Presently, U.S. population is not such a great problem from a people-per-square-mile viewpoint, density, with only 57 per square mile. However, a look at density, on a geographic basis, reveals that 67 percent of the people live on 10 percent of the land—indeed a basis for consternation.

The implications for transportation are obvious. The implications for onschedule completion of Tenn-Tom are crystal clear.

Just 20 years from now 2 billion more people will have been added to the 4.4 billion people in the world now, according to the August 18, 1980 edition of U.S. News & World Report.

Imagine the spiraling need for what the United States has to offer, coal, food, manufactured items—especially food. Our transportation system must grow to meet the challenge of exporting to meet these needs.

America, as breadbasket of the world, can become the OPEC of food production, provided we can develop adequate transportation to world markets. Already soybeans are being shipped on Tenn-Tom. Grain shipments are projected.

Surely, with so much for Tenn-Tom to do, this body is not going to stop construction of America's last great water transportation project.

Mr. STEWART. Mr. President, 13 years ago, Congress and the President of the United States decided it was a good idea to construct a waterway connecting the Tennessee River and the Tombigbee River. Thirteen years later, it is still as good an idea as it was then. The 232-mile waterway will connect 16,000 miles of inland waterways with ports of the eastern Gulf of Mexico. Construction of the waterway began in 1972 and is now almost 50 percent complete with nearly 70 percent of the total costs of the project under contract.

TENNESSEE-TOMBIGBEE SHOULD HAVE GAO REVIEW

Mr. RIEGLE. Mr. President, I am today voting against any further advance funding on the Tennessee-Tombigbee Waterway project until new and independent economic data is developed which would show a clear economic justification for completing this project. I believe a thorough analysis must be done by the General Accounting Office, and I am disturbed that such an analysis is not presently available for review. I will be joining with other colleagues in seeking this GAO analysis.

Until such independent data is available, I do not feel I can support this project in the face of the questions that have been raised against it on both economic and environmental grounds. I did vote in June of this year for the supplemental appropriations on this project in order to pay for work already completed and for which payment by the U.S. Government was required.

Many of my good friends here in the Senate are strong proponents of this project and I respect their zeal and the arguments they advance. However, with the urgent need to limit nonessential Federal spending in the effort to fight inflation, and given the other urgent human needs currently receiving inadequate funding, I cannot, in good conscience vote the additional $208 million required by this project until a GAO analysis is completed.

If future cost benefit analyses provide a compelling rationale for further funding, and if I think we can afford the expenditure at that time, I will reconsider my position.

● Mr. LEVIN. Mr. President, Congress is often attacked—and rightly so—for practicing "pork barrel" politics on major water projects. As a result, I believe it is necessary to carefully examine each water project on its merits in order to be certain the project serves national rather than strictly regional interests. I reject the "horse-trading."

In the past 2 days, the Senate has considered two particularly controversial projects—the Dickey-Lincoln Dam in Maine, and the Tennessee-Tombigbee Waterway project in Alabama and Mississippi. I voted against the Dickey-Lincoln project because I do not believe it serves the national interest to begin the project. Based on the information before the Senate, however, I did vote for the Tenn-Tom appropriation because I do not think it is in the national interest to discontinue it.

I am deeply troubled by the Tenn-Tom project and, accordingly, I have invested a good deal of time in studying it. The issues associated with it are not clear cut. In my discussions with both proponents and opponents, I have been concerned by major disputes about basic facts.

I regret the Senate did not have benefit of an independent study by the General Accounting Office (GAO) of these factual disputes. During the Senate floor debate on an amendment to delete $200 million for project construction, I was able to secure a commitment from Senator BENNETT JOHNSTON, as chairman of the Subcommittee on Energy and Water Development of the Senate Appropriations Committee, that he would support a request for such a study even though the matter is now in litigation. Prior to the Senate debate, I spoke with Elmer B. Staats, Comptroller General of the General Accounting Office. I was assured that, if requested by a committee or subcommittee chairman, he would begin negotiations with the Justice Department that would allow study of the disputed issues without prejudicing the various lawsuits currently before the courts. Mr. Staats also indicated that no committee or subcommittee chairman, either far or against the project has requested completion of the partially completed GAO study.

I look forward to reviewing that completed GAO report. I am making it clear again by this statement that my support for future appropriation requests are dependent upon that report being delivered to Congress. I believe the report should study the benefit cost claims of the Army Corps of Engineers to determine whether these claims are realistic.

In the absence of the independent analysis prepared by GAO, I have been forced to base my decision on the available evidence. I oppose the Chafee amendment based on several factors. Cost-benefit analysis presented by the corps indicates the authorized project has a positive benefit-cost ratio. Negative benefit-cost ratios are based upon the assumption that additional work south of Demopolis will be necessary in the future to make the project viable. However, work on the river south of Demopolis is not currently authorized by Congress. This assumption is explicitly rejected by the corps which suggests that, while additional work would be desirable in this area, it will not be necessary in order to achieve an economically viable transportation system in the authorized northern portion of the river.

In addition, the Federal Government has already invested $867 million in the 232-mile authorized project. Much of this expenditure is for construction begun on part of the project which would be unusable if terminated. This amount is about half of the estimated cost of the authorized project. Termination of the project at this point would leave a total Federal expenditure of $997 million.

Furthermore, there appears to be, on the basis of information available, sufficient demand to make Tenn-Tom a viable waterway. It is true that many companies who initially indicated they would use the waterway have changed plans or gone out of business. But other firms, not originally surveyed or who originally indicated they would not use the system, have since indicated that they probably would find Tenn-Tom more economical in terms of both time and energy than their current transportation routes.

Finally, while I am concerned about environmental damage, six court decisions affirm that environmental laws and requirements have been met.

In sum, every water project has to be considered on its own merits. Some projects—like Dickey-Lincoln—cannot be justified. Others, like Tenn-Tom, appear economically justified based on available evidence. But the central issue regarding Tenn-Tom is whether it should be completed, based upon available information, not whether it should be begun.

While I continue to be troubled regarding the many controversial issues surrounding this project, I have taken steps to obtain additional information. I hope will provide some definitive answers. I hope this information will be available before the Senate is next asked to provide additional funding for the Tennessee-Tombigbee Waterway.

A great deal of time has been spent by opponents of this project on the issue of the benefit/cost ratio of the waterway. I would like to spend a moment clearing the muddy water on this issue. First, I think it is important to remember that of all the projects in the United States for which Federal funding is utilized, none goes through as stringent an analysis to assure that the cost to the taxpayer does not exceed the benefits as does a water project. Most federally funded projects go through no benefit/cost analysis whatsoever.

Detractors of Tenn-Tom claim that the benefit/cost ratio is inaccurate because it uses a low rate of interest in its calculation. The discount rate of 3¼ percent used in determining the benefit/cost ratio for Tenn-Tom is proscribed by law; first by regulation of the Water Resources Council, and then by Congress in the Water Resources Development Act of 1974. When using the 3¼ percent discount rate, the remaining cost benefit ratio for Tenn-Tom is 2.5 to 1. A benefit/cost ratio for the entire project, including that which has been completed, is still above unity at 1.3 to 1. Even when computed at a discount rate of 7⅛ percent, the remaining benefit/cost ratio is still above unity at 1.3 to 1.

When computing a benefit/cost ratio, the Corps of Engineers makes an assessment of future commerce generated by a water project. A review of projected navigation tonnages by the corps in past years shows their estimates to be very conservative. As General Morris of the corps stated in testimony before Senator JOHNSTON's subcommittee, "Every waterway we have looked at, with few exceptions, has greater tonnages than projected."

The benefit/cost ratio is a guideline for the corps, an attempt to insure that no waterway will cost more than it is worth in generated commerce. But there are many more benefits to water projects, especially the Tennessee-Tombigbee, which are not included in the benefit/cost ratio. The benefits to regional growth as a result of the waterway are not included in the benefit side of the ratio, induced regional water traffic is not included, energy saved by using the waterway as opposed to less energy efficient means of travel is not included, the effect of the waterways as opposed to less energy efficent means of travel is not included, the effect of the waterway in increasing our export trade is not included, the benefits through increased jobs to many of our Nation's rural areas is not included. It depends on how one quantifies these unincluded benefits, but clearly these are positive benefits to our Nation as a result of the Tennessee Tombigbee waterway.

In 1976, barges on our Nation's waterways moved nearly 16.9 percent of total intercity ton-miles of freight for only 2.3 percent of the total freight costs. At that same time, railroads moved 34 percent of the tonnage for 37 percent of the costs. I do not intend to indicate here that use of waterways will replace the need for rail freight transportation. We need the freight services provided by rail transportation, but I do not believe we should shy away from a more energy-efficient means of travel simply because it interjects some competition into the total picture of freight shipping. The farmers of this Nation who are playing an increasingly active role in export deserve any shipping alternatives available.

Clearly, the demand for the use of the waterway for a variety of commodities is on the rise. When the waterway was first conceived, there was little indication that the demand for agricultural exports could be as great as it is today. Agricultural exports are the one bright spot on a rather bleak export picture. The Tenn-Tom Waterway will allow for further increases in exports from vital Middle West, Midwest, and Southern agricultural States.

The benefits of this waterway to my own States of Alabama are many. The Tenn-Tom will tie the port of Mobile, the Nation's eighth busiest port, to the Great Lakes and the Ohio and Tennessee Rivers. The waterway will give 23 States direct connections to Alabama's outlet in the Gulf of Mexico. One out of every 11 jobs in Alabama in some way relate to import and export activity through the Port of Mobile. The payroll for import/export-related jobs in the State is over $1 billion. One of the benefits I mentioned earlier that is not included in the benefits-cost ratio is the number of jobs created by the Tennessee-Tombigbee.

In Alabama alone, the Tenn-Tom is expected to create 15,000 new jobs by 1986, and the projection for the year 2000 is more than 55,000 jobs. Under the impetus of the Tenn-Tom, Alabama will receive a savings in navigation that will total $37.5 million in the first year; 13 other States will save transportation costs totaling $4.5 million in the first year. The savings per year in the State of Alabama could reach a level as high as $448 million per year.

In addition to the Mobile area in Alabama, the region with the greatest potential for development is that along the route of Tenn-Tom in west Alabama. Like many areas through which the Tenn-Tom will travel, this is one of the least developed and poorest sections in my State. Development of this waterway offers the people of this economically depressed area of Alabama a chance to work and improve the quality of life in that area.

Alabama, with its more than 1,300 miles of navigable waterways, stands on the threshold of helping improve the Nation's transportation system through integration of the inland waterway system, combining railways, highways, and the airways.

But while the Tenn-Tom will surely benefit Alabama and allow Alabama to make an even greater contribution to other States, the benefits which will accrue as a result of this project are national in scope. If we stop this worthy

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project now, which is 50 percent complete, we will lose the $827 million already invested by the American taxpayer.

For the 2 years I have served in the Senate, much debate has centered on the need to plan ahead for America's economic future. We must not be caught in the shortsighted trap that cutting immediate dollars from the budget would also slash economic growth potential in the future. This Nation suffers the severe economic consequences of an unfavorable balance of trade and a dependency on inflationary imported oil supplies. The Tenn-Tom will directly address both these crucial issues. By providing a cost-efficient means of transporting America's vast coal reserves, the Tenn-Tom will be working to reduce our dependency on the foreign oil imports that have steadily fueled the inflation rate in this country. And, by opening vast new export opportunities for thousands of American firms and farmers, the Tenn-Tom will be working to bring back home some of those dollars currently trapped abroad by our own exporting deficiency.

And, there is a growing third concern in this country that the Tenn-Tom directly touches—the issue of jobs and unemployment. In my travels across Alabama, I have seen thousands of workers enduring the hardship and frustration of unemployment triggered by the current recession. I have no doubt that we will soon be discussing various kinds of job programs to attack this nationwide unemployment problem. Before we start talking about how much we are going to fork out to fund some expensive job creating programs, let us not first begin by abolishing the many thousands of productive jobs connected with the Tenn-Tom Waterway.

Today, I ask Senators to cast their votes for the Tenn-Tom Waterway and for the economic future of this country.

Mr. PERCY. Mr. President, I rise in support of the amendment offered by Senator CHAFEE, and of which I am a cosponsor. This amendment would strike $200 million from the energy and water development appropriation bill earmarked for the Tennessee-Tombigbee Waterway project.

I can think of few projects that has generated as much discussion and debate than this one. Numerous questions have surfaced about the project's being constructed without regard to numerous Federal and State statutes and regulations. Only last month hearings held by the Senate Subcommittee on Water Resources reaffirmed that the barge traffic necessary to justify completing the project will almost surely fail to materialize. Cost estimates have ranged from anywhere between $2 to $3 billion and the actual cost undoubtedly will be much higher.

We are debating today the costliest water project in American history. This project involves the moving of 280-million cubic yards of earth, more dirt than was moved from the divide cut for the Panama Canal. The Tennessee-Tombigbee Waterway would involve major environmental damage.

Mr. President, there are many water development projects and public works projects of value that have to be cut back because of the current spending crisis. We are proposing here to spend $200 million in fiscal year 1981 for this wasteful and unsound project; $200 million that could be spent in other areas. We cannot continue business as usual in this area. We are in a perilous budgetary situation and this is a proper place to cutback. The Tennessee-Tombigbee project is so wasteful that more money could still be saved by phasing out construction now despite the fact that several hundred million dollars have already been expended.

I call upon my colleagues to support this effort to show the American people we are serious about cutting back on wasteful and unnecessary Government spending. There is no better opportunity than this one to make that commitment.

Mr. CHAFEE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is an agreeing to the amendment of the Senator from Rhode Island. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. RIBICOFF (when his name was called). Mr. President, on this vote I have a live pair with the distinguished Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Iowa (Mr. JEPSEN), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from New Hampshire (Mr. HUMPHREY) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. HUMPHREY) would vote "yea."

The PRESIDING OFFICER. Are there any Senators desiring to vote?

The result was announced—yeas 37, nays 52, as follows:

[Rollcall Vote No. 394 Leg.]

YEAS—37

Bayh	Javits	Proxmire
Biden	Kassebaum	Riegle
Boschwitz	Kennedy	Roth
Chafee	Leahy	Sarbanes
Church	Lugar	Simpson
Cohen	Mathias	Stafford
Culver	Metzenbaum	Stevenson
Danforth	Moynihan	Tsongas
Domenici	Nelson	Weicker
Durenberger	Packwood	Williams
Eagleton	Pell	Zorinsky
Heinz	Percy	
Helms	Pressler	

NAYS—52

Baker	Ford	Melcher
Baucus	Garn	Mitchell
Bellmon	Glenn	Morgan
Bentsen	Gravel	Nunn
Boren	Hatch	Pryor
Bradley	Hatfield	Randolph
Bumpers	Hayakawa	Sasser
Burdick	Heflin	Schmitt
Byrd, Harry F., Jr.	Hollings	Stennis
	Huddleston	Stevens
Byrd, Robert C.	Inouye	Stewart
Cannon	Jackson	Talmadge
Chiles	Johnston	Thurmond
Cochran	Laxalt	Tower
Cranston	Levin	Wallop
DeConcini	Magnuson	Warner
Dole	Matsunaga	Young
Exon	McClure	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Ribicoff, for.

NOT VOTING—10

Armstrong	Humphrey	Schweiker
Durkin	Jepsen	Stone
Goldwater	Long	
Hart	McGovern	

So Mr. CHAFEE's amendment (UP No. 1568) was rejected.

(Later the following occurred:)

Mr. BAYH. Mr. President, I note for reasons that are not fully clear to me that on rollcall vote No. 394 the Senator from Indiana was listed as "nay," when I thought I voted, at least I intended to vote, "yea."

I ask unanimous consent that the RECORD show that the Senator from Indiana was recorded "yea" on rollcall vote No. 394.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the Senator from Indiana discussed this matter with me which I appreciate. He knows of my concern for this practice.

I am told that the change of that vote on that rollcall would not change the outcome of the rollcall. I will not object to it.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The above tally has been changed to reflect the foregoing order.)

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I move the committee amendment.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment on page 15, lines 9 and 10, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Under the previous order, the Senator from West Virginia, the majority leader, is recognized to move to suspend rule

XVI, paragraph 4, for the purpose of offering an amendment on which motion there shall be 20 minutes of debate.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Will Senators please take their conversations outside the Chamber?

Mr. ROBERT C. BYRD. Mr. President, some Senators have engagements, and they will be accommodated if we have this vote within 5 or 10 minutes rather than 20 minutes. I would be willing to cut my time down to 3 or 4 minutes and then have debate on the amendment in the event the motion is agreed to.

Mr. BAKER. Mr. President, if the majority leader will yield to me, I am afraid that we have Members on this side who are temporarily absent from the Chamber on the assumption that there would be 20 minutes of debate on this motion. I am afraid under those circumstances we cannot accommodate the distinguished majority leader.

While the majority leader has yielded to me, Mr. President, might I say, so I will not have to interrupt him again, that it is my intention to support the majority leader's motion to suspend the rules pursuant to the notice delivered on yesterday. I also intend, assuming that the rules are suspended, to support the amendment. I understand there is a colloquy arranged between the distinguished Senator from Alaska and the majority leader on the question of interpreting this amendment. I have taken this time to advise my colleagues of that position so I will not be interrupting the majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

MOTION TO SUSPEND PARAGRAPH 4 OF RULE XVI

Mr. President, since the notice was entered on yesterday, I now move to suspend paragraph 4 of rule XVI of the Standing Rules of the Senate to permit the offering of an amendment which is both legislative in nature and which is not germane to the subject matter of this general appropriation bill.

The amendment, I think, probably is known to all Members by now, but, for the record, the amendment would freeze, during fiscal year 1981, the salaries of Members of Congress, judges, Federal executives, and high-level civil servants in the three branches of Government at the current rate. Specifically, it provides that the rate of basic pay or salary will be kept at the rate payable on September 30, 1980, which is the last day before the 1980 comparability adjustment is to take effect.

This amendment affects every individual whose rate of pay is $50,112.50 or more annually, which is equal to or greater than level V of the executive schedule.

It also covers those individuals whose rate of pay was directly affected by the 1977 quadrennial increase, such as judges, Members of the House and Senate, secretaries and assistant secretaries of the executive branch departments, as well as individuals whose rates of pay are administratively set at rates above $50,112.50, such as high-level positions in the post office.

This amendment also covers those individuals whose rates of pay are limited to a maximum rate equal to or greater than the rate for level V by reason of a statutory or other salary ceiling. For example, the maximum rate for GS-18 is limited to the rate for level V which, under existing law, is $50,112.50. The amendment maintains this provision. The amendment also maintains existing ceilings on rates of pay for committee staff, officers, and administrative assistants of the House and Senate whose maximum rate of pay is limited by congressional resolution.

This amendment affects employees paid less than the level V rate of $50,112.50 only in this way. For example, a GS-16, step 2, employee presently makes $49,485. Under this amendment, he could not receive his entire comparability increase, since his pay would be frozen at the $50,000 level. However, his salary would increase until it reaches that point.

If Congress takes no action at all, then the pay of Members of Congress, Federal judges and 30,000 high-level civil servants would rise by approximately 18 percent at a cost of $185,000,000. This amendment will freeze all those high-level salaries and save the taxpayers $185,000,000.

Mr. President, the living standard of the average American citizen is being constantly eroded by inflation, although inflation has moderated somewhat in the last few months. Nevertheless, I believe strongly that this pay cap is necessary to demonstrate that the Members of the Senate and other highly paid Federal officials are willing to share in the economic burden that all Americans are enduring.

I do not believe, Mr. President, that the time is at hand, and of course, there is no good time to increase the salaries of the top level officials, but at this particular point in time, I believe it would be a mistake to do it. Certainly, this entire subject matter should be reviewed early next year, when the report of the President's Quadrennial Pay Commission becomes available.

Mr. President, I could have offered the amendment as is usually done and, in my judgment, inappropriately done. I could have offered the amendment and, if a point of order had been raised against it, the Chair would have had to rule that the amendment was not in order, that it is both not germane to the subject matter of the bill and that it constitutes general legislation on an appropriation bill. The Senate then might well have overridden the Chair. Or a question of germaneness could have been raised and the Senate probably would have voted that it was germane when, obviously, it is not germane.

I have gone about the matter in the right way. To wit, I have filed, on yesterday, a notice in writing to suspend the rules to allow me to call up the amendment and if the Senate, by a two-thirds vote, sustains the motion that I made—and that will require a two-thirds vote, as I say—then the amendment will be in order.

No point of order can then legitimately be raised against the amendment on the basis that it is legislation on an appropriation bill or that it is not germane, because the Senate, by a two-thirds vote, will have suspended that rule, paragraph 4 of rule XVI.

That is the appropriate way that I think we should go about amending appropriations bills by adding legislation. If we would do that, we would not have so much legislation on an appropriation bill. But it takes two-thirds of the Senate to suspend that rule.

I feel that the distinguished chairman of the committee will agree. He has to face this problem all the time on appropriations bills—every time we bring up appropriations—amendments legislative in nature being offered to an appropriation bill, points of order being raised, the Chair being overridden, the Senate trampling on the rule and adding legislation to appropriation bills.

I have gone the right way by filing the notice. It takes two-thirds of the Senate to approve this, but that is what this motion is all about.

Mr. President, I have explained the amendment. I hope the Senate will support the motion to suspend the rules by a two-thirds vote.

I yield to the distinguished Senator from Washington.

(Mr. LEVIN assumed the chair.)

Mr. MAGNUSON. Mr. President, we are plagued in the Appropriations Committee with legislation on appropriations bills. The distinguished Senator from Alaska knows that. We try to keep away from it. But there is a rule, and if two-thirds of the Senate want to legislate on an appropriation bill, that is satisfactory to me. But so many of the legislative proposals do not request the two-thirds. They just come down and use it.

This is a perfectly legitimate amendment and a perfectly legitimate rulemaking way to go at the thing. If two-thirds of the Senate want to attach a legislative proposal to an appropriation bill, I guess so be it.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. MAGNUSON. I am pretty sure the Senator from North Dakota agrees with me.

Mr. YOUNG. Mr. President, I agree thoroughly with the position taken by the chairman of the Appropriations Committee. We are faced with this problem quite often and it is the only practical way to handle it, as I see it.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. STEVENS. Will the Senator from West Virginia yield?

Mr. ROBERT C. BYRD. Mr. President, the minority has 10 minutes.

Mr. STEVENS. I am happy to yield to myself on that time.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I have a question that I would like to ask the distinguished majority leader regarding the intent of his amendment. As I un-

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derstand it, the intent of the majority leader's amendment is to freeze all salaries which presently are equal to or exceed the executive level V salary, which is now $50,112.50. As the majority leader knows, the law prohibits any general schedule position from receiving pay that exceeds the pay for executive level V. At this time, most of the GS-16 and all the GS-17 and 18 steps are frozen at the executive level V pay.

However, there are many Federal employees who are presently receiving pay that is just under the frozen amount. For instance, a GS-15-7 currently receives $48,998. If he received the full 9.1-percent pay adjustment for this grade, his pay would be $53,457, which is above the executive level V amount of $50,112.50 and is clearly prohibited by this amendment.

My question to the majority leader is this: Under his amendment, would this individual and others in a similar situation be entitled to receive an adjustment that would raise their pay to the $50,112.50 level?

Mr. ROBERT C. BYRD. Yes. The answer is "yes". Mr. President, this amendment would entitle such individuals' pay to be raised to $50,112.50 level, at which point the cap would take effect.

Mr. STEVENS. Mr. President, I am pleased with that response. That means that the compression, if it takes place, takes place at a cap level and not a stepdown level, as was the interpretation prior to 1977.

I ask my distinguished friend from West Virginia, the majority leader, another question. There is a provision in his amendment that deals with a 25-percent limitation on the senior executive service for performance awards. I have been informed that there are some agencies where there are fewer than four senior executive service or comparable personnel positions. It would be my request that he consider amending his amendment or allow me to offer a technical amendment to his amendment which would provide that, in agencies where there are fewer than four senior executive service or comparable personnel system positions, one career appointee may be paid a performance award under the bill that we previously enacted.

Mr. ROBERT C. BYRD. Mr. President, I certainly would support that amendment.

If the Senator will yield, may I ask the Chair if such a technical amendment would be in order, would it be germane, or would it require unanimous consent? Or would it require previous notice in writing?

The PRESIDING OFFICER. No previous notice in writing is necessary. Under the precedents, germane second degree amendments are in order.

Mr. ROBERT C. BYRD. May I ask, Does the Chair say committee amendments are in order?

The PRESIDING OFFICER. Germane amendments are in order.

Mr. ROBERT C. BYRD. May I ask the Chair if under the agreement of yesterday the amendment would be in order, or would it require unanimous consent?

The PRESIDING OFFICER. Germane amendment would be in order.

Mr. ROBERT C. BYRD. I believe under the agreement of yesterday it is not in order. I believe that under the agreement of yesterday, upon the expiration of the time, 10 minutes, without further—I probably am wrong. I thought I had said that without further amendment, motion, or debate, the Senate proceed to vote on my amendment. But I think I am in error.

Mr. STEVENS. Mr. President, I am prepared to ask unanimous consent, it was my understanding that was the intent of the agreement we entered into, that this or any amendment I might be offering be available only on the basis of a unanimous consent. I would be pleased to ask unanimous consent I be permitted to modify the amendment which the Senator notified the Senate he would offer today, and that on page 2, at the end of line 22, I would strike the "." and add the following: "Except that in any agency with fewer than four Senior Executive Service or comparable personnel system positions, one career appointee may be paid a performance award."

Mr. President, I send that amendment to the desk.

The PRESIDING OFFICER. The amendment will be in order without unanimous consent.

Mr. ROBERT C. BYRD. Mr. President, I support the amendment. It has been read by the distinguished Senator. I ask that further reading by the clerk be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the amendment.

Mr. STEVENS. I offer that on behalf of myself and the Senator from Virginia (Mr. WARNER).

Mr. ROBERT C. BYRD. Mr. President, do we not have to dispose of my motion first?

Mr. STEVENS. Yes, we do. I think the amendment——

Mr. ROBERT C. BYRD. I think the amendment cannot even be offered at this point.

Mr. STEVENS. I think the Senator is correct.

The PRESIDING OFFICER. The amendment of the Senator from West Virginia is not yet before the Senate. When and if it is before the Senate, it will be subject to germane amendments in the second degree.

Mr. STEVENS. Mr. President, I state to my good friend that I do not oppose his motion to suspend the rules. It is the proper procedure to utilize under these circumstances, and he has been very gracious to me.

I do want him to understand I will oppose the amendment itself on the basis that I think it should have come from our committee first. But I understand the procedure he is following is the correct one.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, in order to protect those Senators to whom the distinguished minority leader referred earlier, I shall ask unanimous consent that the Senate stand in recess briefly.

In the meantime, I yield back the remainder of my time.

RECESS FOR 7 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 7 minutes, that upon reconvening, the vote immediately occur on the motion, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

There being no objection, the Senate, at 12:13 p.m., recessed until 12:20 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. LEVIN).

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Iowa (Mr. JEPSEN), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The yeas and nays resulted—yeas 84, nays 5, as follows:

[Rollcall Vote No. 395 Leg.]

YEAS—84

Baker	Ford	Packwood
Baucus	Garn	Pell
Bayh	Glenn	Percy
Belmon	Hatch	Pressler
Bentsen	Hatfield	Proxmire
Biden	Heflin	Pryor
Boren	Heinz	Randolph
Boschwitz	Helms	Ribicoff
Bradley	Hollings	Riegle
Bumpers	Huddleston	Roth
Burdick	Inouye	Sasser
Byrd, Harry F., Jr.	Jackson	Schmitt
Byrd, Robert C.	Javits	Simpson
Cannon	Johnston	Stafford
Chafee	Kassebaum	Stennis
Chiles	Kennedy	Stevens
Church	Laxalt	Stevenson
Cochran	Leahy	Stewart
Cohen	Levin	Talmadge
Cranston	Lugar	Thurmond
Culver	Magnuson	Tower
Danforth	Matsunaga	Tsongas
DeConcini	McClure	Wallop
Dole	Metzenbaum	Warner
Domenici	Mitchell	Williams
Durenberger	Morgan	Young
Eagleton	Moynihan	Zorinsky
Exon	Nelson	
	Nunn	

NAYS—5

Hayakawa	Melcher	Weicker
Mathias	Sarbanes	

NOT VOTING—11

Armstrong	Hart	McGovern
Durkin	Humphrey	Schweiker
Goldwater	Jepsen	Stone
Gravel	Long	

The PRESIDING OFFICER. On this vote there are 84 yeas and 5 nays. Two-thirds of the Senators present and voting having voted in the affirmative, the motion is agreed to.

AMENDMENT NO. 2302

(Purpose: To impose a ceiling on pay of certain higher paid Government employees)

Mr. ROBERT C. BYRD. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) proposes an amendment numbered 2302.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, between lines 6 and 7, insert the following new section:

SEC. 509. (a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is —

(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1980, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

(c) None of the funds appropriated by this Act or any other Act shall be used to pay performance awards in fiscal year 1981 under section 5384 of title 5, United States Code, or any comparable personnel system established on or after October 13, 1978, to more than 25 per centum of the number of Senior Executive Service or comparable personnel system positions in any such agency.

(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

Mr. THURMOND. Mr. President, will the Senator yield to me?

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I support this amendment to freeze at current levels the salaries of the top Federal Government employees in all branches of the Government, including Members of Congress.

This amendment would save the taxpayers nearly $100 million in fiscal year 1981, which is extremely important at a time when the total Federal budget is projected to show a multibillion-dollar deficit. Mr. President, if we are ever to be successful in stopping this pattern of excessive spending with huge deficits every year, we must start making substantial cuts somewhere. This is a logical place to start—by refusing to endorse what otherwise would be an automatic pay increase for Congress, the judiciary, and the highest paid Federal executives.

Mr. President, I am strongly opposed to the present system which grants automatic cost-of-living increases to all Federal employees, including Congress, unless Congress acts before the beginning of a new fiscal year to vary the rate of increase recommended by the President or to stop any salary raise from going into effect. This is an irresponsible way of proceeding, which permits Congress to effectively dodge the issue of determining, in a straightforward, responsible fashion, the most desirable levels of pay increases for Federal employees, considering all the circumstances. I have introduced legislation to change this practice, and I hope that this proposal will receive the serious consideration it deserves by the Senate Governmental Affairs and Budget Committees, to which the bill (S. 2061) has been referred.

My proposal would halt the practice of automatic pay raises, requiring Congress to take affirmative action before any salary increase recommended by the President could take effect. The bill would also postpone any pay increase which Congress might vote for itself until after the next general election, and finally, it would prohibit Congress from granting its Members or the top Federal executives in policymaking positions any pay increase until the Federal budget is balanced. Mr. President, I believe this proposal offers a far more responsible method of facing up to this recurrent issue of compensation adjustments for Congress and other Federal employees.

In the meantime, Mr. President, since my comprehensive pay reform proposal has not been enacted, I believe this amendment ought to be adopted. Given the current double-digit inflation rates and the huge budget deficit, this is no time to be granting substantial salary increases to those who are already paid at levels far higher than the average American citizen, who ultimately pays for these Federal Government salaries out of his own hard-earned tax dollars.

UP AMENDMENT NO. 1569

Mr. STEVENS. Mr. President, I have an amendment at the desk, and I inquire if it is in order at this time to ask that that amendment be considered.

The PRESIDING OFFICER. The amendment will be in order after the time on the pending amendment is used or yielded back.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Alaska may call up his amendment now.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) for himself and Mr. WARNER proposes an unprinted amendment numbered 1569 to amendment numbered 2302:

On page 3 at the end of line 7 strike the "." and add the following: "Except that in any agency with fewer than four Senior Executive Service or comparable personnel system positions, one career appointee may be paid a performance award."

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield?

Mr. STEVENS. I am happy to do so.

Mr. ROBERT C. BYRD. Mr. President, I have to attend a meeting and I ask that the Chair be designated—I designate the Chair—to allocate the time that is under my control. Is that agreeable with everyone?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, may I ask when the time expires, we are going to leave the full time of the amendment run, is that correct?

Mr. ROBERT C. BYRD. Is that the will of the Senate?

The PRESIDING OFFICER. The Chair will point out that the Senators are now on the Stevens amendment which has a 30-minute time limitation.

Mr. ROBERT C. BYRD. I did not waive the hour, but I am perfectly happy to do so.

Mr. STEVENS. The Chair is authorized to yield back the remainder of the Senator's time on his amendment?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. What is the status of the time arrangement now, the full hour allocated to the majority leader is still intact?

The PRESIDING OFFICER. There was 1 hour allocated to the majority leader's amendment on which 1 minute has been used, and the hour was to be equally divided.

Then by unanimous consent the Senator from Alaska offered his amendment on which there is a 30-minute time limit, and that is the pending amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me so that I can yield to the distinguished minority leader? I would like to yield to the distinguished minority leader, if the Senator will yield to me so that he can make his position known.

Mr. BAKER. Mr. President, I thank both the Senator from Alaska and the majority leader, and I will take just a moment.

There are Members on this side who are under the impression that it will be at least an hour, perhaps as long as an hour and a half, before we vote on either

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the Stevens amendment or the Byrd amendment. The reason I rose at this point to make the inquiry was to ascertain whether or not time had been reduced. I have no objection to reducing it as long as we do not reduce it to 1 hour before the first vote.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendment by Mr. STEVENS be included in my amendment and that the vote on my amendment, as amended, then occur at the hour of 2 p.m. today.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DANFORTH. Mr. President, reserving the right to object, are further amendments to this amendment in order?

The PRESIDING OFFICER. Not without unanimous consent until the hour of 2 o'clock.

Mr. DANFORTH. Pardon?

The PRESIDING OFFICER. Not without unanimous consent until the hour of 2 o'clock.

Mr. BAKER. They would be at 2 o'clock?

Mr. ROBERT C. BYRD. May I ask the Chair would any amendment be in order at 2 o'clock?

The PRESIDING OFFICER. Germane amendments would be in order at 2 o'clock but would not be debatable.

Mr. STEVENS. Mr. President, may I continue with my discussion and, perhaps, this other discussion——

The PRESIDING OFFICER. The Chair has a question of the Senator from West Virginia. Is it the intention of the Senator from West Virginia that the time be equally divided between now and 2 o'clock?

Mr. ROBERT C. BYRD. Yes, between Mr. STEVENS and the Chair representing me.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alaska.

Mr. STEVENS. Mr. President, the amendment I have offered is an amendment to deal with a situation where an agency has less than four Senior Executive Service employees or similar positions. The effect of my amendment, which the majority leader so kindly included in his amendment now, is to make certain that the bonus provisions of existing law are available to those agencies which have less than four Senior Executive Service employees or comparable positions.

Let me point out that yesterday the Senior Executive Service bonuses were announced. One of the recipients is employed with the U.S. Air Force saved, through his efforts, the Federal Government $28 million by improving Air Force logistics.

Another Federal employee, with the Department of Transportation, saved the Federal Government $100 million by restructuring the Amtrak routes.

These examples of outstanding service convince me we should not look to capping Federal pay as effecting substantial reductions in Government expenditures.

Those reductions come about by virtue of attracting to and keeping in the Federal Government qualified managers, managers who are willing to make their career out of running this democracy, following the policy decisions of people who are elected, either in the executive branch or in the Congress.

The impact of putting a pay cap on salaries is that we do, in fact, bring about a pay compression. Because of the statement that has been made by the majority leader, this amendment will not have the same type of compression that those in the past have had, because this time everyone who is below $50,112.50, will, when the pay raise comes into effect, be raised up to that level. Now we will have a situation where everyone will be at that level that is impacted by this cap.

But let me tell you what this means. This means that we are dealing with individuals at grade 15, step 5, receiving no future pay raises next year. Just think of that. In the Federal Executive Service, once you reach the level of grade 15, step 5, under this amendment you never again get another raise unless you get into the executive level, unless you go and get an appointment to executive level IV. But you can never go above executive level V.

Think of the impact on those people who are in the mid-career position when we tell them that when they are at level 15, step 5, even though they may get a promotion to take on more responsibility, a greater area of management capability, they will not get any greater remuneration. As a matter of fact, in some instances, where those people have been in Government long enough, it would be to their advantage to retire, because they would actually get the cost-of-living allowances in full after they retire. Even though those who are in active employment are limited, those in retirement are not limited. As a consequence, this is a stimulus to retirement.

I understand what the majority leader is trying to do. He is trying to send a signal to the country that we are trying to hold down the cost of Government and we are trying to combat inflation. I respectfully suggest that the imposition of arbitrary annual pay caps is a disincentive to holding down expenditures. Because the type of people we want to acquire and keep in Government are those who really are subject to upward mobility by the desire to earn more money, the desire to improve their position and the position of their families.

I think we have to look at this situation. The Consumer Price Index has risen in the past 10 years by 99 percent. The salary increases for private sector managers have risen in excess of 100 percent. The salary increases for Government managers have risen less than 50 percent. So that the people who are bearing the greatest burden of inflation are in fact those that are in the managerial level of the Federal Government. And it is because we as politicians impose upon them our decision that we do not want to go home and face our voters, having raised our own pay.

I pointed out once before, I think, that this is a difficult decision for anyone that is up for election to make. But why should we make it for those people who are in the career level of Government service? Mind you, this amendment applies to the executive branch, to the legislative branch, and to the judicial branch.

Look at the problem we are having attracting capable judges now. There is not a lawyer in the country that is worth his or her salt that cannot earn more in private practice than they can already get in the judiciary. What we are doing now is we are sending out a signal that we want to attract incompetence to the Federal judiciary, because we are going to put them even further under a pay cap. I think that pay caps are misunderstood. I think the general public may think that this is a step toward efficiency.

Let me tell you why it is not. This covers life insurance coverage and retirement benefits. If you stay in Government under a cap, a person is going to lose insurance coverage. A GS–18 who retired September 30, 1978, after 30 years of service, would lose $14,000 worth of life insurance and $6,000 a year in initial annuity if he stayed in after that cap that we put into effect.

This action will increase the rash of early retirements. And it is going to cause a rash of early retirements at a time when we are going to face a hiring freeze. That is the next thing that is going to come on top of this. And the Federal Government is going to be managed by those people who are below grade 15, step 5. They are the only people who have any incentive left in Government because they are the only people who could still get a pay raise. Everyone else is just marking time until he is eligible for retirement. And this is going to bring about early retirements.

I know of nothing that is going to be more of a disincentive. We have had all kinds of exit interviews with executives as they have decided to leave. Most of them are in fact leaving because of the fact that the incentives they thought would exist in the Senior Executive Service are not there. We created the Senior Executive Service as an incentive to keep people at a time when there was a severe exit going on from the Federal Government.

I pointed out in a statement here 2 years ago that we had an associate director of the office of OMB, the personnel management office, for compensation. That was open for 7 months. And everyone who was offered the position declined it because a comparable level in the private sector was compensated much higher. Why take such a job? That was a new job we created. We could not fill it.

The Director of the Army Materiel Systems Analysis retired. He cited the pay cap as the reason. That executive was employed in the private sector at a salary which doubled the amount that he was receiving in the Federal Government. And yet he was the one in charge of analyzing the systems to see how we could accomplish the result that both the executive and legislative branch directed the DOD to accomplish at a savings to the taxpayer. And he left because of a

pay cap. Where is the savings to the Government under those circumstances?

The general counsel of the Corps of Engineers retired. He cited the pay cap as the reason for his retirement.

The person who was the expert that was sought to be in charge of the Army Development and Readiness Command in terms of treatment of burns refused the job because he went to a university, Harvard University, and got more money in the first instance than he could have gotten as being the governmental expert in terms of that readiness command.

I could go on and on. One of the most significant examples, I think, is the example of a Federal judge who left the bench, the former Attorney General, Griffin Bell. He left the court of appeals. And at the time he cited the low pay of a court of appeals judge as one of the reasons.

It does not seem to me that we are accomplishing anything by putting an arbitrary pay cap on employment. We ought to try means of giving incentives to managers to reduce the cost of Government and, if they do it, give them a bonus for doing it. That was the whole concept of the Senior Executive Service, that if you brought about a substantial savings to the Government in management, you would earn a bonus. And now we are saying, "No. Anyone that is in this level, grade 15, step 5, or above, you are frozen. And you are frozen really because of political reasons."

I will argue with those reasons directly. I argue with the concept of the Legislature restricting its own salary.

I have been a Member of the Senate just short of 12 years. In those 12 years, 71 Senators who were here ahead of me have left. I am now 29th on the seniority list in 12 years. Name me one major business in this country where 71 percent of the personnel have left in that period of time who were the senior personnel of that type of business.

I do not think the country sees the impact of what we have done. We now have 50 Senators in their first term. The Constitution provided 6 years for the Senate. It was to be the body of continuity in our Government, 6 years. It is a longer term than the House and a longer term than the President. We were to be the place where the continuity of democracy resided.

What do we see? We see a more rapid turnover now than ever in the history of the United States. I think it is time that the Senate addressed the question of why that turnover is taking place.

It is taking place because of the burdens that have been placed upon the office of a U.S. Senator in terms of all of the reforms which have taken place in these last 12 years, plus the burdens of meeting the cost of raising a family and living under the system we live under, with two homes, one here and one in our State, maintaining automobiles in both States, maintaining the whole cost of being a Senator without recognizing it, and here is an example. Because for political reasons we seek to limit ourselves, we are going to limit everybody else, judges, and so forth.

Mr. President, I know there are others who wish to discuss this matter. I voted for the waiver of the rules in order that this may be before the Senate because I believe that is the best way to approach legislation on an appropriations bill, but I intend to oppose the amendment to put on a pay cap.

I am one who realizes that when the majority leader offers such an amendment in all probability it is going to pass, but I want to be certain the Senate understands what it is doing when it votes for this. It does not just limit us, it does not just limit the elected Members of the Senate. Such action ought to be sufficient right now if we want to send a signal of our desire.

As a matter of fact, I would rather see us reduce our own pay than destroy the effectiveness of government by limiting everybody else. As much as I would hate to see the pay of Senators reduced, I would rather see that happen and send that kind of signal to the country than to have us send a signal to the country that we are prepared to accept mediocrity in management. That is what this amendment brings about. I do not believe it is what the Senator from West Virginia desires to bring about, but that is the effect of it, because it destroys the concept of increased compensation for increased responsibility.

I hope the Members of the Senate will examine it carefully.

Just to conclude my remarks, I ask unanimous consent that "The Federal Diary" column by Mike Causey, dated September 4, as it appeared in the Washington Post, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SALARY NO LONGER SEPARATING CHIEFS

(By Mike Causey)

Rank has its privileges in government, but salary isn't always one of them. It is getting harder all the time to tell chiefs from subchiefs simply by examining their pay stubs. For instance.

The number of "frozen" federal executives—people getting the same salary—will nearly double next month when the 9.1 percent pay raise goes into effect. More than 7,300 executives, most of them career types, will move up to the maximum $50,112.50 pay level already occupied by 7,908 executives in the super-grade levels. The latter get no raise this year. Many of their subordinates will get only that portion of the 9.1 percent that bring them up to the $50,112.50 level.

Government-wide there will be about 25,200 federal executives at the $50,000 per year ceiling once the pay raise is effective. That will be the first pay period beginning on or after Oct. 1.

Included in that total of 25,200 frozen souls are about 6,300 members of the Senior Executive Service. A handful make more than $50,112.50, but the vast majority of the elite corps—which promised higher than normal civil service pay in its recruiting ads—are frozen and will remain so, probably until October 1981.

There are also around 3,000 top-paid people under the Veterans Administration medical schedule, and Foreign Service pay system who are frozen in place.

In the white collar service, the same-pay situation covers all Grade 18 personnel, all Grade 17 employes, most Grade 16 personnel and extends down to long-service people in Grade 15.

If one must be frozen in pay, there are much worse places to be than in the $50,000 bracket. Many civil servants and private industry workers would agree with that. On the other hand, there often is a big, big difference in responsibility between a Grade 15 U.S. employe and a Grade 18. That includes time on the job, extra hours put in, gray hair and experience.

Nevertheless, presidents and different congresses have produced the system whereby a growing number of officials make the same salary, despite very different jobs.

If pay freezes continue, and rank-and-file workers keep getting pay raises, the day isn't too far off when the government will have more top-paid officials than it does clerks and typists.

Mr. STEVENS. The article points out that salary no longer separates the chiefs from those they supervise. This is a good example of what is happening. We have to ask ourselves why would anyone step up? Why would anyone take the burden of staying longer, supervising, hiring and firing, taking the burdens of increased management responsibilities if they get no further increase in compensation, no further increase in benefits, not even an increase in life insurance or retirement benefits, or salary, no increased compensation at all, no increased benefits at all, once they reach grade 15, step 5. This is the limit of increased benefits or compensation.

I think it is wrong. I do not know when we are going to be able to stop it but I think we better stop it because it is bad government. It is bad economics and it is bad government to have this kind of a system develop.

Does anyone seek time?

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I am a cosponsor.

Mr. STEVENS. Mr. President, I yield to the Senator from Virginia such time as he may wish. The majority leader is controlling the time of those who favor the amendment.

Mr. WARNER. Mr. President, I rise in opposition to the amendment. I wish to associate myself with the remarks of my distinguished colleague from Alaska so long as that association is limited to the Federal employees. I feel most strongly that we are not giving the Senior Executive Service a chance to work. It is for that reason that I rise in opposition to the amendment.

The technical amendment that the Senator from Alaska and I cosponsored is one which corrects inequities, for the smaller agencies of the Federal Government, should the majority leader's amendment prevail today. I once headed a very small agency and my agency would have been affected adversely without the benefit of the clarifying amendment.

I wish to express appreciation to the majority leader for accepting it.

Mr. STEVENS. Will the Senator yield?

Mr. WARNER. I yield.

Mr. STEVENS. Mr. President, I ask unanimous consent that the remaining time that has been allowed to me allotted to the Senator from Virginia. He is a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER Mr. President, I also express my thanks to the majority leader for accepting the clarification that the

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Senator from Alaska and I brought forward today, the clarification enables those career grades to at least get the benefit of the bonuses up to the imposed level of pay for level V.

Mr. President, I have been privileged in my lifetime to have been a Federal employee at the very lowest levels and then at one time as Secretary of the Navy being in pay grade 2. So I have seen the spectrum from top to bottom.

I have spent many happy years in association with Federal employees. I have found them to be among the most dedicated individuals in the United States.

The distinction that I wish to make today is that these persons who have joined the civil service ranks have done so on a career basis, quite distinct from those of us in the legislature. Every man and woman in the Congress is here as a volunteer. Likewise, the vast majority of the Presidential appointees who are in the senior grades, level V and above, are there as volunteers, most of them for short periods of time. In sharp distinction the civil service individual usually looks at a career plan of 30 years of service.

The effect of this legislation would be to discourage many of those individuals at their mid-term to go on and contribute what would be in most instances the most valuable years of their service, the most productive, the wisest years, to their government.

I am anxious for the Congress to explore more and more ways to encourage the better qualified civil service employees to remain, because they are the ones, quite often, who bring to the attention of the Members of Congress ways and means to eliminate waste in the Federal Government.

The elimination of waste should be the No. 1 priority of the Congress, and we need the assistance of those dedicated civil servants in that everlasting challenge to this body.

This amendment would assist the executive and judicial branches of government in recruiting and maintaining experienced, highly qualified public servants. It would not raise the pay of Members of the House and Senate.

Therefore, Mr. President, I object to the amendment of the distinguished majority leader.

I thank my colleague from Alaska for his efforts to clarify the amendment and also to amend it in such a way as to inflict the minimum disadvantages to certain of the smaller agencies.

Mr. DANFORTH. Mr. President, will the Senator yield a little time at this point or is this a bad point?

Mr. WARNER. No, no, I think this is a good time.

The PRESIDING OFFICER. Would it be easier for the Presiding Officer to recognize the Senator from Missouri?

Mr. DANFORTH. If I may have 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. DANFORTH. Mr. President, it is my understanding that under the unanimous-consent agreement, amendments to the pending amendment would be in order at 2 o'clock. However, that amendment would not be debatable at that time. Therefore, I want now to call the attention of the Senate to the fact that, at 2 o'clock, it is the intention of Senator MOYNIHAN and me to offer an amendment to the pending amendment which would strike out the words, "executive, or judicial branch, or in the government of the District of Columbia."

Mr. President, if I have to, I shall vote for the amendment in its present form, but I hope I shall not have to. As a matter of principle, since I have been in the Senate, I have always voted against increasing my own salary. I do not think that the people of Missouri have elected me to come here and vote myself a salary increase. I have never done it, and I do not intend to do so now. I would be eager, as a matter of fact, to vote to put a cap on my salary.

The problem, Mr. President, is that this particular amendment is so all-encompassing that it includes not only myself but an awful lot of other people as well. Particularly, it includes members of the executive branch and of the judicial branch who are very skilled people and very able people, people who are competitive in ability with those in the private sector.

If we want to place a limit on the Federal payroll, I should be all for doing that. I think that it would be very possible to reduce the Federal payroll by numerous people who are leaning on brooms. I do not think the taxpayers want, for example, in the Congress to pay the cost of people who stand outside of automatic elevators in order to push the buttons that say "up" or "down" so the Members of the Senate do not have to push the buttons that say "up" or "down."

I have made the point on the Senate floor that I am not sure we need to have two or three policemen standing around talking to each other on every corner in the Capitol complex.

Mr. President, what we are talking about in this particular amendment is not people who are leaning on brooms and not doing anything. We are talking about the most skilled, proficient, technical employees of the Federal Government. In the judiciary, we are talking about Federal judges. For better or worse, Federal judges are now making decisions for this country which previously had been made by the legislative branch of the Government, and they are affecting the way people live. The least we can do is assure ourselves that the very finest talent available is appointed to the Federal judiciary and that the Federal judiciary does not become a dumping ground for those who cannot do anything else, or become a place of employment for people who are so wealthy that the Federal bench becomes an avocation as opposed to a vocation.

Similarly, with respect to the executive branch of Government, it may be possible that we need fewer people, and I would be prepared to make that argument. But I do not think that we need lower quality people, and I do not think that is reasonable to expect that we are going to attract the kind of quality in leadership positions in the executive branch of the Federal Government if we are paying these people salaries which are substantially below what they could earn in the private sector.

Therefore, if the amendment that Senator MOYNIHAN and I offer fails, reluctantly I shall vote for the amendment offered by the majority leader, simply because I have established a precedent for myself of not voting to increase my own salary and believing in the principle of capping it. But, Mr. President, I think that is far too sweeping. I think that the effect of the approach of this amendment is going to be a reduction in the quality of people who are employed by the Federal Government. It seems to me what the taxpayers are asking for is not lower quality in the Federal Government but perhaps lower quantity and less waste.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. EXON). The Chair yields to the Senator from New York on the time of the majority leader. How much time does the Senator from New York need?

Mr. MOYNIHAN. If the Chair would be kind enough to yield me 5 minutes, I believe that will be sufficient.

The PRESIDING OFFICER. The Senator is yielded 5 minutes on the majority leader's time.

Mr. MOYNIHAN. Mr. President, I join with my friend and colleague (Mr. DANFORTH) in discussing this amendment which we shall offer at 2 o'clock. I wish to make two concise points, one about which I shall ask his judgment.

By way of preface, Mr. President, may I say that I believe it is a matter of record that I have consistently voted in the Senate to restrict the size of the executive branch of our Government and to reduce the size of the legislative branch in in terms of its staff, which I feel has become much too large and is beginning to inhibit its effectiveness as an institution.

As an example, it is a fact that we ought to be discussing the second budget resolution right now and, contrary to our own statutes, are going to let it pass over until after the election.

There are two principles at stake here, Mr. President. The first is the principle of comparability in the Federal executive service. By way of personal history, I was Assistant Secretary of Labor under President Kennedy in 1962 when, under the leadership of John Macy—one of our distinguished executive servants who has returned to the private sector as head of FDMA—the principle of comparability was adopted by Congress and the executive branch as basic principle of American Government. People legitimately made decisions with the expectation of comparability. This has been maintained at the lower levels, but not at the executive level, the members of which we are now denying a 9.1 percent cost-of-living pay raise.

This, in effect, means that we are choosing to reduce executive salaries in the range of 7 to 8 percent.

Mr. President, we must know this constitutes a breach of faith with persons without whom we are not going to have an efficient executive branch. We are not going to have a social security system

which mails out nearly 14 million checks a month, and rest assured they will arrive. It is an enormously complex system. Anybody doing that kind of work in the private sector would get five times that compensation. All we are asking is to maintain the value of the existing service.

Second, to the point of the judiciary, I make the argument, and I hope my friend from Missouri might comment, because he is a learned man, an attorney, and a former Attorney General, that we deal here not with a breach of faith, but, very possibly, a breach of Constitution.

Article III, section I states that:

> Judges . . . shall . . . receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Mr. President, the Constitution so holds. We are here acting to diminish their compensation in a way we understand truly to be a diminishment. Their dollar amounts will not be diminished, but the value of their compensation.

I would like to ask my friend if he does not share this feeling.

I observe that there are three cases in the courts now which argue just this point, carried by Federal judges who would not casually invoke the Constitution if they were not earnestly persuaded that the point is a just and a constitutionally accurate one.

I wonder if my friend from Missouri would advise me in this matter, as he is certainly the more able to do so.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MOYNIHAN. May I ask for 3 additional minutes?

The PRESIDING OFFICER. Three additional minutes are granted to the Senator from New York.

Mr. MOYNIHAN. I thank the Chair.

Mr. DANFORTH. One thing I learned practicing law and serving as attorney general of my State is that it is dangerous to try to predict how a court is going to decide a case in litigation.

I do not really have an opinion as to the constitutional argument. The fact is that for most of our history as a country we did not have an inflation rate at 13½ percent and, therefore, the question really did not arise.

When the inflation rate is 1 percent, 1½ percent, the question of diminishing a salary is because of actually reducing the paper amount, the dollar amount. But it is quite true if we put a cap on a person's salary now at the inflation rate of 13½ percent, maybe even a higher inflation rate as we had earlier his year, the practical effect is that the person is going to be making less money, that he will have a lower standard of living, and that a Federal judge is not going to be able to do what a member of the bar is able to do in the private practice of law, simply pass on his increased cost of living to his clients by way of increased billings.

Mr. MOYNIHAN. Or work longer hours, take less vacation, and therefore increase his income accordingly.

Mr. DANFORTH. That is exactly correct.

The one thing I believe very strongly is that the Federal bench, which is so crucially important in this country, has to be made up of the finest possible personnel, and that this is not a matter to be treated lightly.

I think that it would be asking for a little too much sacrifice if we fixed a cap on Federal judges who were willing to make a sacrifice, in any event, a financial sacrifice to become Federal judges. But to say now that they are frozen in, I think would be a real deterrent to getting people on the Federal bench.

Similarly, and I think the Senator from New York could address himself to this question, when we are talking about the higher levels of the executive branch of the Federal Government we are not dealing with people who have minimal tests to perform. A great deal of responsibility is placed on the shoulders of these people. A great deal of judgment is called for.

As a former member of the executive branch, is it not true that we get what we pay for, and that if we were to take the position that we were going to freeze the salary of people in the executive branch of the Federal Government that the quality of performance might be substantially less than any of us want?

Mr. MOYNIHAN. I very much agree with my friend from Missouri.

I would like to point out that this is not just a question of what happens this year or the next. It is a question of with what confidence a capable young man or woman judge can make the decision to enter the career service of the U.S. Government? Can they expect to have an experience comparable to one in the private sector, or rather must they expect to have the rules regularly changed on them?

That is the expectation we create by such action as we take today; contrary to those of 20 years ago when we did otherwise.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MOYNIHAN. Two additional minutes?

Mr. WARNER. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Virginia has 14 minutes and 33 seconds, and the Chair yields 2 additional minutes.

Mr. WARNER. I am happy to yield some time, also, to my colleague.

Mr. President, I would like to ask to be listed as a cosponsor.

(Mr. MITCHELL assumed the chair.)

Mr. MOYNIHAN. We are honored to do so, and particularly appreciate the Senator from Virigina, whose experience in these matters was at the very top of the executive branch, where he was responsible for civilian and military personnel and made decisions involving not just millions of dollars, but the security of the United States itself. The capacity to retain and compensate such people is fundamental, and he knows it.

I make a point, if I may, Mr. President, concerning the judiciary. I wish to be indirect in this matter and yet I do not wish to be misunderstood.

I have had the honor to recommend district court judges these past 4 years. In doing so I do not believe I have recommended a person to the bench who has not reduced his income by at least half to accept the bench, and often by three-quarters. Such private salaries are not all out of order for first-rate men and women in New York, and yet they take the public appointment.

But this is an inexorable fact. If the compensation of the bench continues to be so far below that of the bar, we will either begin to diminish the quality of the bench or turn to persons of personal wealth to a degree that is not appropriate to, or promising for, a democratic society.

The bench ought to be representative of the polity with respect to property. If we, by withholding a fair compensation, distort that representativeness, how shall we be judged?

I cannot imagine that anyone in the Senate would want a bench disproportionately occupied by persons of property, of great personal wealth.

When we make the kind of decision we are making today, we pass on that question as well.

I hope my colleagues might give thought to the amendment that Senator DANFORTH and I, now joined by Senator WARNER, are offering. It would allow us to withhold from ourselves an emolument increase of any kind, such that the understandable political pressure of election year would be avoided. But we would maintain the comparability, now two decades in place, in the Federal branch, and we would address ourselves properly to the question of seeing that the Federal bench is representative of the American people and not disproportionately a position of power assessible, through certain realities, only to persons of privilege.

I wish to make a final point, Mr. President, with respect to the levels of legislative salaries and of judicial salaries. In our neighbor, Canada, members of the Supreme Court receive more than twice the compensation of Members of Parliament, it being understood that the roles are different. And the Canadian democracy pokes along, does pretty well; does, indeed, very well, such that we ought not be overly sensitive about the relationship of the salaries of Members of Congress as against salaries of the Federal judiciary.

Mr. DANFORTH. Mr. President, will the Senator from New York entertain a question?

Mr. MOYNIHAN. I am happy to do so.

Mr. DANFORTH. When I graduated from law school, I started out in my career as a lawyer in the city of New York—as a matter of fact, practicing law with the very fine firm of Davis Polk & Wardwell. When I graduated from law school in 1963 and went to that firm, my starting salary, as I recall, was $7,200.

The starting salary for young lawyers going to a firm such as Davis Polk & Wardwell or Cravath, Swayne & Moore is now what?

Mr. MOYNIHAN. I believe the starting salary for graduates high in their class, who are the ones who would be chosen

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for such firms—as indeed the Senator from Missouri was chosen—is approaching $30,000 for the first year. The implication of this is that in the first year out of law school, a young lawyer will make half as much as a Federal judge.

Mr. DANFORTH. That is exactly the point, because a Federal judge is now making $54,500.

Mr. MOYNIHAN. That is correct.

Mr. DANFORTH. A person who has just graduated from law school, who has not even taken the bar exam——

Mr. MOYNIHAN. Has not even taken the bar exam.

Mr. DANFORTH (continuing). And goes to New York City to practice law is making more than half the salary of a U.S. district judge or a judge on the court of appeals.

Mr. MOYNIHAN. That is likely to be the case. That would be a commonplace occurrence.

Mr. DANFORTH. Would it be fair to say that a partner in one of those firms would be making substantially more than that?

Mr. MOYNIHAN. I think it probably would be fair to say—I am not privy to this in any precise way. But I know it is so in some cases because I have had to deal with this when asking persons to join the bench. A partner typically makes four times the salary of a Federal district judge.

Mr. DANFORTH. And even a lawyer in a relatively small city—say, in New York or Missouri—would likely be making as much or more than a Federal judge is now making.

Mr. MOYNIHAN. A mature lawyer, as our judges are mature—by that I mean a person in the late forties or fifties—would almost certainly be making more.

There are compensations, but they cannot overcome a great disparity of conditions between the bench and bar.

The inexorable tendency will be that persons who go on the bench and stay on—because people do leave the bench—will be persons of property.

There was a time in this Republic when such an issue as this, which holds that the bench ought not to be disparate from the polity, set apart by wealth, would arouse the concern of the Senate on the best republican principles. That is what we ask for today. I hope we will be heard.

The Senator from Missouri has been an attorney general of his great State. I am sure he has some thoughts on that subject.

Mr. DANFORTH. Mr. President, I have no doubt in my own mind on the points that Senator MOYNIHAN has made.

Let me just make a further point, and that is not the absolute amount of salary but the effect of placing a total cap on people. One thing an employer says to an employee in setting salary each year is, "You are doing well," or "You are not doing well."

A salary is not simply a method to make it possible for somebody to buy food, clothing, and shelter. A salary and a salary increase, in fact, in our capitalist system, are a method of rewarding people and saying to people, "You are doing very well, and we want to show you that you are doing very well," or "You are not doing so well." That is the purpose of salary differentials. It is the purpose of calling somebody in the office and saying, "You are getting a raise this year."

I wonder whether the Senator from New York has any thoughts about the effect of saying to a Federal judge or a person who has the most responsible position in the executive branch of the Federal Government, "You get no raise at all."

Mr. MOYNIHAN. Exactly.

I call to the mind of the Senator from Missouri, who is a Latinist as well as many other things, that the word "salary" derives from the Roman "salarium," which was the salt payment to the Roman legionnaires.

Back in Missouri, I am sure we often will hear this phrase about someone: "Is he worth his salt?" It is deep in the imagery and memory of the race.

If we decide a person is not worth his salt, we reduce his "salarium"; we cut his salary. We are cutting the salaries of the Federal bench. We are not declining to increase them; we are reducing them.

One of the things the Senator so rightly points to is that, in any system, compensation is a measure of the value which is placed upon a task—the prestige, if you will; the honor, if you wish.

With respect to a great point about the Federal judiciary, the matter was settled when President Jackson said that John Marshall had made the decision, let him enforce it. It turned out that John Marshall did not have to enforce it, because people obeyed it; such was the prestige of the Court. The Court has no power save the respect in which it is held. When we diminish its compensation, we diminish, in a degree, that respect, and we imperil something precious, which is the authority of judicial decisions.

These are small sums with which we are dealing, required for the increased compensation to maintain the true value of the Federal bench.

Mr. DANFORTH. I add that it seems logical to me that, to the extent that salary becomes a disincentive for service on the Federal bench or service in the Federal bureaucracy, other personal wants, such as the wielding of power, the exercise of raw power, may become the incentives which draw people to the Federal bench or to the Federal bureaucracy.

It seems to me that what we want to get into the highest levels of Government service are people who have the best motives; that if we are making it terribly unattractive for people to get into positions of authority, then we likely will attract authoritarian people to positions of authority.

So it may be that those people who complain about the runaway Federal bureaucracy or the runaway Federal judiciary are leading with their chins by trying to impose this kind of artificial cap.

Mr. MOYNIHAN. I believe the Senator has made a profoundly important point about the psychology of public service, and it is the point the Founders made in the first section of article III on the judiciary. They said judges shall hold their offices during good behavior. They shall be given the security of life tenure. The idea was that persons in a secure condition will be balanced minds, restrained in their search for other satisfactions. Provision of life tenure and adequate compensation are part of the same judgment that we want persons of balance, persons who are equable in their nature and, within a degree, easy in their circumstances.

We do not want a Savonarola on our bench. We do not want persons so driven by power, as we see all around us in the world, that they will abandon and risk anything for its attainment.

Mr. DANFORTH. Savonarola would be an example of an undercompensated, overzealous public servant.

Mr. MOYNIHAN. And Florence paid dearly.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. MOYNIHAN. I yield.

Mr. WARNER. Mr. President, I am privileged to join with my colleagues in support of this amendment.

I, myself, a member of the bar, once a law clerk to a Federal judge, have the highest respect for the bench; therefore, I am delighted that we have taken this initiative today together.

Members of Congress often rely on associations of individuals to bring to their attention the need for a corrective measure such as the one we are addressing today, but to the best of my knowledge judges as such either as individuals or in their associations do not come to us with such petitions or pleas for a corrective action. Therefore, it is incumbent on us sui spondeo, as we say in the court, to rise on their behalf and address this issue.

If our colleagues are wondering why they may not have heard from members of the judiciary, it is my understanding that there is no organization that actively comes here on such matters as this. Therefore, it is a double measure of responsibility that rests on our shoulders to bring it up on their behalf.

Mr. MOYNIHAN. How absolutely correct the Senator from Virginia is to point to the behavior of the Federal bench in this regard. There has not been a scintilla of suggestion from the bench that they would wish us to move one way or the other. They are persons bound to the Constitution and committed to the separation of powers. We alone can set their salaries, and we have a responsibility to see that they are done justly by us.

But I also point out to my friend from Virginia who is so knowledgeable in these matters that something truly extraordinary has happened in our time, which is that the judges have gone to court with respect to this matter. I once had the honor to serve under Justice Arthur Goldberg, and he later became an Associate Justice of the Court. He left the Court for further service, and Justice Goldberg on behalf of the Federal bench took such a case. They have done something without precedent but confining it to their own realm, not ever wishing to breach that separation.

But the Senator from Virginia speaks eloquently and well. We have a responsibility in this Chamber to the tripartite system of government for which we make the laws.

Mr. WARNER. Mr. President, I wish to bring to the attention of my colleagues——

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. WARNER. The Senator from Virginia has time still available, does he not?

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is in the Chamber, and he has approximately 16½ minutes.

Mr. WARNER. What time do I have remaining?

The ACTING PRESIDENT pro tempore. None.

Mr. ROBERT C. BYRD. Mr. President, how much time does the Senator from Nebraska desire?

Mr. EXON. Mr. President, I thank my friend from West Virginia. I wish to have 5 minutes if I could have it.

Mr. ROBERT C. BYRD. I yield 5 minutes to the distinguished Senator.

Mr. EXON. Mr. President, I have been listening with great interest to the debate on the amendment being offered by the majority leader, and I rise in support of this.

There has been very little discussion from those who are in support of the amendment being offered by the Senator from West Virginia, and undoubtedly he is going to make some remarks in the next 15 minutes.

I have listened to the fact that we do have good public servants, and I agree with my colleagues in the Senate that we have excellent public servants serving this Nation in appointive and elective positions in Washington, D.C.

I have heard a statement about a breach of faith. I have heard statements about judges being frozen in.

I recognize that those are very legitimate concerns for all of us here, and I join in the statements by my colleagues who have addressed themselves to the fact that we must have and need a high quality judiciary.

I have noticed over the years, though, that there never seems to be any dearth of people who seek appointment to judgeships at all levels. Therefore, I think that we would have to say while there probably have been some instances to the contrary, by and large, we have attracted the right type of legal scholar to serve in our judiciary at almost all levels of government.

What we are talking about here, of course, is the fact that when we talk about compensation for people who are in the public sector we are addressing ourselves basically to the situation of what is fair and what is not fair. I think by and large we in the Senate always try to be fair.

However, let us not overlook the fact that one of the reasons that people are attracted to Federal service is the fact that we have one of the best retirement programs that there is. Let us not overlook that when we talk about additional compensation.

The 9-percent increase that would go into effect if the suggestion by the Senator from West Virginia is not adopted by this body would be somewhat below the inflationary rate as it exists today. But that goes to the very heart of the problem. While I think that many of us could agree that a 9-percent increase for Federal judges might be in order, we also must realize, recognize, and ask the question, Who is going to make the first sacrifice to the ever-spiraling increases in the cost of Government?

I am not particularly proud of some of the votes in this body with regard to an attempt to control inflation and ever-escalating future costs which certainly, to a considerable extent, continue to fuel the fires of inflation.

I call to your attention, Mr. President, and that of other Members of this body, that only recently this body rejected by a fairly substantial vote the recommendation of the Budget Committee which suggested that we take a minor step to do something about controlling inflation, and that was to go to once a year rather than twice a year on the cost-of-living increase for all people who qualify for the Federal pension or retirement fund. No. That was voted down. I point out that there are few if any other pension programs that have a twice-a-year cost-of-living adjustment automatically built in. But we could not get that done.

I also point out that if we are really concerned about fighting inflation and getting control of Government costs we had better be more realistic than we have been in recent days.

The ACTING PRESIDENT pro tempore. The Senator's 5 minutes have expired.

Mr. EXON. Mr. President, will the majority leader yield me 2 additional minutes?

Mr. ROBERT C. BYRD. Mr. President, I yield 2 additional minutes to the distinguished Senator from Nebraska.

Mr. EXON. Mr. President, I point out that in this Chamber within the last few days we defeated by only one vote or succeeded by one vote, depending upon how one views it, returning a bill to conference that would have further expanded the ever-increasing obligation that we have for the overall funding of higher education, and that particular bill was very appropriately described in this Chamber as a bill that would simply transfer money from the Federal Treasury to those in this country who need it the least.

The point I want to make, Mr. President, is the fact that I am not sure where we should start to control inflation, but it might be a good signal for us to send to this country as a whole that the U.S. Senate is saying that for 1 year we are going to ask the people who make $50,000 or more to set the pace, to set the record, to make the sacrifice that is going to have to be made by others if we, who have major responsibilities in this area, are ever going to take the first tiny step toward controlling inflation.

I yield back the remainder of my time to the majority leader.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. WARNER. Mr. President, will the Senator entertain a question on the remainder of his time?

Mr. ROBERT C. BYRD. I beg the Senator's pardon.

How much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 9 minutes and 30 seconds.

Mr. ROBERT C. BYRD. I want to reserve 2 minutes for the distinguished Senator from Maine (Mr. MITCHELL), and I want to reserve a minute or so for myself.

I yield another 2 minutes to the Senator from Nebraska so that Mr. Warner may ask a question.

Mr. WARNER. My question to the Senator from Nebraska is: We he present on the floor when our distinguished colleague from Missouri, together with our distinguished colleague from New York, talked about the starting salaries for persons just out of law school? They were established at, was it, $30,000 or $32,000 in New York?

Mr. DANFORTH. It is my impression that the starting salary for people right out of law school in New York City is in the neighborhood of $30,000.

Mr. WARNER. I just made some calls here to the leading law firms in Washington, including my former firm, and it is $30,000 for persons right out of law school.

My question to my colleague from Nebraska is: Young people in their early twenties out of law school are receiving $30,000, and if that is so, how do you explain to persons who have dedicated their lives in the Federal judiciary, making less than twice that, and are here being denied by this action the opportunity to just maintain their fight against inflation?

Mr. EXON. My answer to my friend from Virginia would be very simple and very brief. The question goes to the thrust of the point that I was trying to make. Which comes first the chicken or the egg? The fact of the matter is, in my opinion, for somebody out of law school to be making $30,000 a year is too much money.

I suppose the answer to that would be, "Well, that is the going rate."

But the going rate that we have in the United States of America is one of the problems we have with inflation. So I think it is wrong to say that just because somebody out of law school makes $30,000 that is automatically what they are worth and, therefore, we should base the salaries of our Federal judges on that.

I would have to agree with the basic thrust of what you are trying to get across. If a starting wage for somebody out of law school is $30,000, then I think we could agree that it should be at least $90,000 for a Federal judge.

The problem is, and it goes to the heart of the whole situation, that we are always trying to keep up with the Joneses and until we get away from that philosophy we are never going to cut the basic issue of what we are going to do, in my opinion, about costs of Government.

Mr. WARNER. In reply to my colleague, we want the very best on the

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Federal benches, and if we are going to receive the very best, the ones who decide not only issues relating to our property but our very lives and our existence, then we need to find ways to compensate these people.

Mr. ROBERT C. BYRD. Mr. President, I yield 2 minutes to the distinguished Senator from Maine (Mr. MITCHELL).

The PRESIDING OFFICER (Mr. EXON). The Chair recognizes the Senator from Maine.

Mr. MITCHELL. Mr. President, prior to my appointment to the Senate I was privileged to serve as a U.S. district judge. During that brief time I had the opportunity to meet many of the men and women who serve as district judges throughout the Nation.

They are generally persons of distinction, intelligence, and integrity, and with a high degree of public-spirited motivation. They perform an extraordinarily important role in our society, which is uniquely one of and by the law.

Recently the Washington Post carried an article by a foreign journalist commenting on American society, and the headline, interestingly enough to me, as one who left the bench to come to the Senate, was, "Judges are the ruling class in America; politicians are irrelevant." While that may have been an exaggeration it is literally true that few persons play as important a role in shaping American society as do Federal judges.

I, for one, do not believe that many persons refuse a Federal judgeship or leave a Federal judgeship solely on account of money. But I am afraid if the present trend continues, an increasing number will do so, and the people of this country will be denied the very highest quality in these very important positions.

Perhaps I can best illustrate by example. The people of Maine have for a quarter of a century been served by one of the great judges in the Nation, Chief Judge Edward Gignoux. He is a truly public-spirited man who, I am confident, will not leave the bench no matter what transpires here. But, at the same time, we should ask ourselves what Edward Gignoux will we be losing in the future without our knowledge if we do not properly compensate Federal judges for the important role that they play?

I think they are unique in our society. Indeed, the framers of the Constitution felt they were unique in our society, so they established them in lifetime positions to insure their complete integrity and independence in order to insulate them from the pressures of society. That unique circumstance has served the Nation well.

But the structure will not succeed if the persons are not of the highest quality.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. MITCHELL. Will the Senator yield 1 more minute, Mr. President?

Mr. ROBERT C. BYRD. I yield 2 more minutes.

The PRESIDING OFFICER. The Senator has 2 minutes and 45 seconds remaining.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. MITCHELL. I will take 1 minute.

I do not agree with all of this amendment because I do not support exempting members of the executive branch from the action that we propose to take with respect to the legislative branch. I really do think that the judiciary is unique and ought to be treated as such, and I merely stand to say that I think it is a serious error for this body to deny ourselves the opportunity to get the very best people in what is uniquely in this Nation and, indeed, uniquely in the world, one of the most important positions in any society, that of an independent judge serving for lifetime, and because of the structure of our society, shaping our society to an extent unparalleled in the world.

I hope that role, that unique situation, will be recognized by the Senate.

There is not a great deal of money involved. I am confident that the man to whom I referred, Judge Gignoux, who now makes $54,500, could tomorrow in the private practice of law earn five times that amount. One may say all one wants about whether that is right or wrong, but that is the reality of life today. I think we should recognize that reality and deal with Federal judges properly.

I thank the majority leader for the time and I thank the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I hope the Senate would reject the amendment in the second degree which will be offered, as I understand, by Mr. MOYNIHAN, Mr. WARNER, and Mr. DANFORTH.

The saving to the taxpayers if that amendment is adopted will be $10 million or less. The savings to the taxpayers if my amendment is adopted will be at least $90 to $95 million. If Congress did not act at all it would be $180 million. So my amendment represents a much, much greater savings to the taxpayers, and I think there is a matter of equity involved here. I do not think at this particular time Congress should be the sole branch of the Government which would be eliminated from the pay increase. I think the people would expect not only the legislative branch but the executive branch and the judicial branch to bear equally the burden.

Mr. President, I have no time remaining. I yield the floor.

The PRESIDING OFFICER. All time has expired.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

UP AMENDMENT NO. 1570

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself, Mr. MOYNIHAN, and Mr. WARNER, proposes an unprinted amendment numbered 1570 to amendment numbered 2302.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 4, after the word "legislative" insert the word "branch", and on line 4, beginning with the word "executive" strike all through the words "District of Columbia" on lines 5 and 6.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Iowa (Mr. JEPSEN), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The PRESIDING OFFICER (Mr. HEFLIN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 34, as follows:

[Rollcall Vote No. 396 Leg.]

YEAS—55

Baucus	Ford	Nunn
Bayh	Garn	Pressler
Bentsen	Glenn	Proxmire
Biden	Hayakawa	Pryor
Boren	Heflin	Randolph
Bumpers	Helms	Ribicoff
Burdick	Hollings	Roth
Byrd, Harry F., Jr.	Huddleston	Sasser
Byrd, Robert C.	Inouye	Simpson
Cannon	Jackson	Stafford
Chiles	Laxalt	Stennis
Church	Leahy	Stewart
Cochran	Magnuson	Talmadge
Cranston	Matsunaga	Thurmond
Culver	McClure	Tower
DeConcini	Metzenbaum	Wallop
Dole	Mitchell	Young
Exon	Morgan	Zorinsky
	Nelson	

NAYS—34

Baker	Heinz	Percy
Bellmon	Javits	Riegle
Boschwitz	Johnston	Sarbanes
Bradley	Kassebaum	Schmitt
Chafee	Kennedy	Stevens
Cohen	Levin	Stevenson
Danforth	Lugar	Tsongas
Domenici	Mathias	Warner
Durenberger	Melcher	Weicker
Eagleton	Moynihan	Williams
Hatch	Packwood	
Hatfield	Pell	

NOT VOTING—11

Armstrong	Hart	McGovern
Durkin	Humphrey	Schweiker
Goldwater	Jepsen	Stone
Gravel	Long	

So the motion to lay on the table UP amendment No. 1570 was agreed to.

The PRESIDING OFFICER. The Senator from Maine is recognized.

UP AMENDMENT NO. 1571

Mr. MITCHELL. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. MITCHELL) for himself, Mr. MOYNIHAN, Mr. DANFORTH, and Mr. WARNER, proposes an unprinted amendment numbered 1571.

On page 1, lines 4 and 5, strike "or judicial branch,".

Mr. MITCHELL. Mr. President, I ask for 1 minute to explain the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, this amendment would exempt Federal judges from the cap which is to be applied to the legislative and executive branches. It would recognize the unique position in our society of the judiciary. I have heard it said here that, since we are not going to get the raise, we ought not to give it to the judges. While that is understandable in human terms, it is not a sound basis for high public policy.

Mr. President, Federal district judges now make substantially less than Members of Congress. Acceptance of this amendment would permit a restoration of an approximate balance between the salaries of Members of Congress and U.S. district judges.

Mr. President, we are uniquely a Nation of and by the law. We ought to have the very best people serving in the Federal judiciary. I ask the Members of the Senate not to let personal disappointment at our inability to vote ourselves a raise operate to deny deserving members of the judiciary a raise that they are fully entitled to on any reasonable, rational basis.

Mr. WARNER. Mr. President.

The PRESIDING OFFICER. The Senator from Virginia is recognized. However, there is no debate on this amendment.

Mr. WARNER. I ask unanimous consent, as cosponsor of this amendment, to have 30 seconds to speak on it.

Mr. ROBERT C. BYRD. Mr. President, I ask that the Senator may have 1 minute and I have 2 minutes.

The PRESIDING OFFICER. The Chair asks: Is that a unanimous-consent request?

Mr. ROBERT C. BYRD. It is, Mr. President.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. WARNER. Mr. President, I rise as a cosponsor of the amendment sponsored by the distinguished Senator from Maine. Mr. President, our lives, our property, every day, are in the hands of the Federal judiciary. We need to encourage only the finest from among the bar to come forward and take these positions. It is for that reason that I think they should not be deprived of this pay cap or bonuses such that they can fight inflation.

I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, equity, I think, would require us to treat the three branches equally. The Federal judges pay not 1 penny, not 1 thin dime, into their retirement funds—not 1 thin dime. Yet, they are appointed for life. They do not have to run for reelection. They do not have to face the diatribes of the columnists or the editors or the commentators or their colleagues. And when they retire, they retire at full pay. Not 1 dime for retirement, retirement at full pay.

My friend from Maine, I am sure, represented the very finest in the judiciary, and there are many fine men and women in the judiciary. But I have no problem in West Virginia in getting nominees for the judiciary. I have no problem in getting lawyers who want to be appointed to the Federal judiciary.

Mr. President, I stood for the congressional pay increase 2 years ago, led the fight for it. So I have no compunctions about leading a fight for a congressional pay increase. But we have indicated that we would not accept this pay increase and I think it ought to be equitable across the board.

I do not think that Congress should be forced to bear the burden alone. The American people want to see the example set. We should set it. The Federal judges should set it. And those in the top levels of the executive branch should also set the example.

I hope the amendment will be voted down. I shall not move to table the amendment, but I hope it will be voted down.

The PRESIDING OFFICER. The time has expired.

Mr. PERCY. Mr. President, I ask unanimous consent that I may have 30 seconds to speak on behalf of the amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so granted.

Mr. PERCY. Mr. President, I need only remind my colleagues that, in many instances, we have had extremely well qualified people turn down judicial positions because they simply cannot afford to do so. The judicial branch is the only branch of Government that cannot come in and fight for a pay increase. The executive branch has the opportunity to do it. The legislative branch can do it. But the judicial branch cannot.

Many of us have had the experience of trying to encourage outstanding lawyers from our own States to allow themselves to be considered for judicial openings, only to be told by them that the financial sacrifice would be too great. With families to support, and with inflation on the rampage, who can blame them? But losing top quality people for the bench hurts all of us, and hurts our system of justice.

This amendment is a symbolic gesture, but, nevertheless, an important one. We should, at least, let the Federal judges of this Nation keep up with the cost of living.

I ask unanimous consent that I be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent that I may be added as cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (UP No. 1571) was rejected.

Mr. RIBICOFF. Mr. President, I regret to find myself in disagreement with our distinguished majority leader. However, I believe that the adoption of a cap on Federal executive pay will cause the retirement and departure from the Federal Government of many talented and competent employees. It was only a few years ago that Congress corrected a situation in which Federal managers were making no more salary than some of those employees under their supervision. We are facing that very same problem again and this amendment will worsen it. If enacted, this amendment will place more than 25,000 senior employees at a $50,000 ceiling. Pay compression is real and it is also demoralizing when—no matter what the additional responsibility—an individual is paid at the same rate as those for whom he is responsible.

I ask that an article from today's Washington Post be printed at this point in the RECORD.

The article follows:

SALARY NO LONGER SEPARATING CHIEFS

(By Mike Causey)

Rank has its privileges in government, but salary isn't always one of them. It is getting harder all the time to tell chiefs from subchiefs simply by examining their pay stubs For instance:

The number of "frozen" federal executives—people getting the same salary—will nearly double next month when the 9.1 percent pay raise goes into effect. More than 7,300 executives, most of them career types, will move up to the maximum $50,112.50 pay level already occupied by 7,908 executives in the supergrade levels. The latter get no raise this year. Many of their subordinates will get only that portion of the 9.1 percent that brings them up to the $50,112.50 level.

Government-wide there will be about 25,200 federal executives at the $50,000 per year ceiling once the pay raise is effective. That will be the first pay period beginning on or after Oct. 1.

Included in that total of 25,200 frozen souls are about 6,300 members of the Senior Executive Service. A handful make more than $50,112.50, but the vast majority of the elite corps—which promised higher than normal civil service pay in its recruiting ads—are frozen and will remain so, probably until October 1981.

There are also around 3,000 top-paid people under the Veterans Administration medical schedule, and Foreign Service pay system who are frozen in place.

In the white collar service, the same-pay situation covers all Grade 18 personnel, all Grade 17 employes, most Grade 16 personnel and extends down to long-service people in Grade 15.

If one must be frozen in pay, there are much worse places to be than in the $50,000 bracket. Many civil servants and private industry workers would agree with that. On the other hand, there often is a big, big difference in responsibility between a Grade 15 U.S. employe and a Grade 18. That includes time on the job, extra hours put in, gray hair and experience.

Nevertheless, presidents and different congresses have produced the system whereby a growing number of officials make the same salary, despite very different jobs.

If pay freezes continue, and rank-and-file workers keep getting pay raises, the day isn't too far off when the government will have more top-paid officials than it does clerks and typists.

● Mr. LEVIN. Mr. President, I am all in favor of symbolic acts designed to show the country that we take our fiscal responsibilities seriously. Last year I voluntarily returned to the Treasury the pay raise that was given to U.S. Senators and I supported the two amendments which the Senate just disposed of which would have had the effect of denying a pay increase to Senators and selected Senate staff this year. I hope, then, that my opposition to this amendment will not be interpreted as an attempt to vote myself a pay increase.

On the contrary, I am voting against this amendment not because it denies me a pay raise, but because it denies any pay increase to key members of the judicial and executive branches of Government. The plain fact is that we consistently complain because programs are not well run and not well administered. And then we say to the people we need to bring into Government that not only will we not pay them what many could get in the private sector; we will not give them any wage increase even in the face of significant double digit inflation. It makes no sense to me, Mr. President, to say that we are willing to entrust the public welfare to people and then deny them any pay increase at all. Even the proposed 9.1 percent, would have represented a loss in income from the previous year. We just are not going to get good government unless we are willing to pay for it. We can get good Senators and Representatives because we at least get "psychic pay" in the form of recognition and prestige. That psychological "pay," however, is denied to the people we call "bureaucrats" and now we deny them any monetary equity as well.

Similarly, Mr. President, if we want to attract the best legal minds to the Federal bench, we need to persuade them to leave lucrative positions in private practice. We cannot match the salaries they make there—but we cannot ask them to give up as much as we are asking them to give up in this bill. Mr. President, symbolism is fine until it begins to interfere with the effective implementation of public policy—and I fear that in denying any pay raise to the judicial and executive branches we have, in fact, let symbolic values get in the way of public needs.●

AMENDMENT NO. 2302

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from West Virginia, as amended.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. DURKIN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Hampshire (Mr. HUMPHREY), and the Senator from Iowa (Mr. JEPSEN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 78, nays 13, as follows:

[Rollcall Vote No. 397 Leg.]

YEAS—78

Baker	Exon	Nelson
Baucus	Ford	Nunn
Bayh	Garn	Packwood
Bentsen	Glenn	Pell
Biden	Hatch	Percy
Boren	Hatfield	Pressler
Boschwitz	Hayakawa	Proxmire
Bradley	Heflin	Pryor
Bumpers	Heinz	Randolph
Burdick	Helms	Riegle
Byrd, Harry F., Jr.	Hollings	Roth
Byrd, Robert C.	Huddleston	Sasser
Cannon	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Javits	Simpson
Church	Johnston	Stafford
Cochran	Kassebaum	Stennis
Cohen	Laxalt	Stewart
Cranston	Leahy	Talmadge
Culver	Lugar	Thurmond
Danforth	Magnuson	Tower
DeConcini	Matsunaga	Tsongas
Dole	McClure	Williams
Domenici	Metzenbaum	Young
Durenberger	Mitchell	Zorinsky
Eagleton	Morgan	
	Moynihan	

NAYS—13

Bellmon	Melcher	Wallop
Gravel	Ribicoff	Warner
Kennedy	Sarbanes	Weicker
Levin	Stevens	
Mathias	Stevenson	

NOT VOTING—9

Armstrong	Hart	Long
Durkin	Humphrey	McGovern
Goldwater	Jepsen	Stone

So the amendment of the Senator from West Virginia (No. 2302) was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for 5 minutes.

Mr. PROXMIRE. Mr. President, I will vote against the energy and water development appropriations bill for fiscal year 1981. I cannot support this appropriation for three principal reasons. First, it continues to fund numerous water development projects which harm the environment and cost far more than benefit. It also calls for greatly increased defense-related spending based on insufficient information and discussions. Finally, worst of all, this bill busts the budget. It exceeds the budget by more than $66 million and goes $376 million over last year's appropriation. It even surpasses the House appropriation by $99 million.

Just when the Senate was about to get its head above water on funding water projects, we have been thrown the anchor and not the life preserver. Heavy ballast like the Tennessee-Tombigbee Waterway, which has the honor of being our most expensive water project, loads down this bill. No matter which version of project costs you subscribe to, this boondoggle will cost several billion dollars and produce very little real benefits. We have a chance to extricate ourselves from this waterway morass. We can stop funding this project now, sell back condemned land, and terminate contracts. We still would come out way ahead.

The Dickey-Lincoln Dam proposed for northern Maine is another loser. The House has voted 14 times to terminate this project. It would cost $1.5 billion to build, yet it would displace only 2.3 million barrels of oil annually—not daily, but annually. Dickey-Lincoln still idles along in the planning stages. If we stop it now, we will not have to lament later about our sunken costs.

If we are serious about cutting spending and balancing the budget, what better place to start than water projects? To continue to throw money down the drain for projects that would return little financially insults the American taxpayer.

In addition to civilian energy applications, this bill contains about $3.5 billion in defense-related spending. Of this, $2.9 billion funds the atomic energy defense activities. This means that weapons research production absorbs 30 percent of this bill.

This bill calls for increased nuclear testing. It includes new nuclear weapons development and increases nuclear materials production. In most of these cases, we cannot even discuss the details of these programs due to their highly classified nature. We cannot, here, debate, in any detail the necessity or lack of necessity in increasing the nuclear materials programs above the administration's request. We cannot discuss the details of the nuclear warhead production program. How many warheads do we really need for Europe? What schedule do we need for efficient production? Do we need to store enhanced radiation components now, before the President decides to move ahead with the neutron bomb?

Why do we not secure the same detail we insist on in the defense authorization and appropriations bills? Surely this would provide a better base for evaluating the proposed budget levels of this bill.

I will vote against this bill because of specific defects in both energy and water appropriations, and I will also vote "no" to protest the total cost exceeding the budget by $66 million.

Mr. President, when are we going to get serious about balancing the budget? I suggest that time has come. That is why I will vote against this bill.

Mr. PERCY. Mr. President I urgently request that, during the conference on H.R. 7590, conferees set aside some highly necessarly funding from the general facilities fund included in this bill to initiate rehabilitation and restoration work at our Nation's first general research laboratory, the Argonne National Lab.

Mr. President, our Nation's national research laboratories are among America's most impressive and indispensable scientific assets. Far too often, unfortunately, Congress has ignored them, and allowed them to physically deteriorate. In so doing, we have threatened to rob them of the one element that makes them so valuable to us in the first place: the creative spark and inspiration for research that is held by the people who are employed within them. We can expect the quality of work in our national labs to be no better than the physical quality of the labs themselves. Sadly, in recent years this quality has been disappointing at best. Our national laboratories have succeeded in spite of themselves.

The Senate took an important step in July by recognizing that this decline could not continue, by recognizing that our national labs were in danger of losing the people who have made them so valuable. In July, we passed an authorization bill which specified important funding levels for general facility improvements at Brookhaven National Lab, at Oak Ridge National Lab, at the Argonne National Lab which is located in my home State, and at others.

I cannot speak for the present quality of facilities at many of these institutions, Mr. President. I can speak about Argonne, however, and I can report how relieved and thankful its employees were when S. 2332 was passed. That bill did not assure them of everything they would have liked to revitalize Argonne, but it made some very important starts: $15 million was allocated to revamp and improve the quality of its physical plant; $7.4 million was provided to install a new steam-driven cogenerating system, capable of producing electric power as well as chilled and hot water for the lab; $4.1 million was revamp and improve the quality of its fire safety system; and other programs were included as well. These are not especially interesting line items, I realize, but they are highly crucial ones. I looked forward to their inclusion in the pending legislation.

Unfortunately, very few rehabilitation projects have been tabbed for funding in H.R. 7590. The Appropriations Committee recommended that $35 million total be spent on construction of general purpose facilities like research labs. The committee named particular improvement projects that it wished to see provided with funds from this total, remaining funds could be distributed to labs in a manner selected by the Department of Energy.

I believe strongly that the committee chose its preferred projects wisely, Mr. President. I cannot stress, though, the importance of initiating projects that are so badly needed at our other national labs as well. No additional funds are required for appropriating to do this. There is a margin of several million dollars that the DOE will have available to begin these projects.

I urge the conferees on this legislation to direct that a minimal amount of funding be directed to guarantee that preliminary work begins at the oldest of our national laboratories, the Argonne National Lab. It is my hope that they would provide that $1 million—less than 10 percent of the amount that is needed for this project—be directed to make a small dent in that lab's drive to rehabilitate its general purpose plant. It is also my hope that they would provide that $1 million be offered to begin Argonne's drive to create a cogeneration system for itself, one that could produce electricity and hot and cold water for 10 of the lab's buildings. The energy savings for this project, by the way, has been conservatively estimated to be 33,000 barrels per year, with resultant energy savings of over $930,000 per year. The total cost of this project is about $7.4 million, meaning that the project could pay for itself in only 8 years. I am not expecting the Senate to provide enough money to complete either project this year, or even to get halfway there. I am asking only that we begin.

Again, Mr. President, this allocation adds no money to this bill. It takes no direction that the Senate has not already taken—we voted for seven major improvements at Argonne only 2 months ago. All it does is insure that two of these improvements are begun, that Argonne does not continue to deteriorate, losing perhaps its spirit and the very men and women who have made it such an important part of America's scientific community. Such assistance would help Argonne, and America, a great, great deal.

● Mr. TOWER. Mr. President, today the Senate is considering H.R. 7590, the energy and water development appropriations bill for fiscal year 1981. This legislation which contains over $12 billion primarily for energy and water projects also contains appropriations for atomic energy defense activities. This year the Senate Armed Services Committee, which has authorizing jurisdiction over Department of Energy national security programs, has recommended to the Senate S. 3074. These initiatives included authorization for fiscal year 1981 of an additional $156.9 million for nuclear materials production. This authority related to the conversion of the N-reactor at Richland, Wash., to production of weapons grade platonium along with upgrading of the L-reactor at Savannah River, S.C., and the Purex fuel processing plant also at Richland, Wash.

A total of $94 million was authorized for an enhanced nuclear weapons test program which is designed to insure that the United States will not fall behind the Soviet Union in this vital technology as a result of the limited U.S. nuclear test program in the face of large-scale Soviet testing. For nuclear waste management the committee has recommended the addition of $38 million in authority for operation and construction related to the waste isolation pilot plant for demonstration in New Mexico of long-term defense nuclear waste storage. Also the committee has authorized an additional $10 million for design of a slagging pyrolysis incinerator for the Idaho National Engineering Laboratory which could reduce the volume of transuranic defense nuclear wastes and make them easier to transport and store. Of course this legislation also contains significant general provisions not directly related to specific authorizations.

The appropriations bill before the Senate today is being considered prior to consideration of the Department of Energy national security programs authorization bill. Thus, highly important defense related appropriations are being considered by the Senate prior to Senate action on the authorizations to which they are related.

While this practice is legal, I am concerned that appropriating funds before they are authorized is a dangerous practice which not only undermines the oversight responsibilities of key Senate committees but also prevents consideration in logical order by the Senate of important issues, in this case, vital defense issues.

I understand that the Appropriations Committee has recognized that the executive branch has been reviewing requirements for special nuclear materials production and has urged that "the ongoing review be completed as quickly as possible in order that the committee can consider the executive branch recommendations during this session." Certainly a supplemental Department of Energy Appropriations request would be necessary to fund initiatives in this area under consideration by the executive branch and in many cases already recommended by the Senate Armed Services Committee.

However, our ability to address these problems in supplemental appropriations does not detract from the clear logic institutionalized in the Budget Act that appropriations should generally follow related authorization legislation.

Mr. President, at this time I would also like to address a related issue. The Senate Armed Services Committee has concluded that Department of Energy national security programs have been inadequately funded in recent years because these essential activities competed for funds, not with other defense programs, but with civilian energy programs. This has been institutionalized not only within the Department of Energy but also within the Office of Management and Budget where defense nuclear programs are reviewed for funding in competition with civilian energy programs. Frankly, the same institutionalized arrangement exists in the Senate where the Defense Appropriations Subcommittee does not consider the Department of Energy national security programs.

For my part, I along with other members of the Senate Armed Services Committee, will continue to examine the management structure within the execu-

tive branch for dealing with Department of Energy national security programs and will work closely with my colleagues in the Senate on the best way for Congress to structure authorization and appropriations of Department of Energy defense nuclear activities.●

CORPS STUDY OF CHICAGO FLOODING NEEDS SHARPER FOCUS

● Mr. PERCY. Mr. President, title II of H.R. 7590, the energy and water development appropriation bill for fiscal year 1981, includes an appropriation of $2.5 million for the Army Corps of Engineers to continue its phase I study of the Chicagoland underflow plan. I supported initiation of this study in fiscal year 1979, and I continue to support the corps' efforts. I am concerned, however, that the corps has embarked on a far-reaching survey of potential solutions to flooding and pollution in metropolitan Chicago without first defining the nature of the problems to be solved.

Based on hypothetical computer modeling, the corps estimated in 1978 that the citizens of metropolitan Chicago suffer $475 million in flood damages each year. In 1979 the General Accounting Office published a survey showing that actual flood damages in the Chicago area are less than $25 million each year. Though neither flood damage estimate can be considered definitive, it is clear that no one has adequately defined what an "alternative" to the current proposal should be expected to do.

I do not accept the assertion of those who say that an alternative to the tunnel and reservoir plan is one that provides the same degree of storage and conveyance capacity as the current design. TARP was designed without any concrete knowledge of the extent and severity of flooding in the metropolitan area. The corps has now spent 2 additional years examining "solutions" without precisely defining the problems.

Flooding and pollution in metropolitan Chicago seriously degrade the urban environment and impair the region's economic well-being. They are of first importance to the hundreds of thousands of Chicago-area homeowners who must periodically dredge millions of gallons of raw sewage out of residential basements. The corps must effectively concentrate its efforts on identifying the Chicago neighborhoods and suburbs that are most afflicted by sewer backups, and then focus its attention on innovative technology that will target relief where it is most needed.

As the GAO survey indicates, flooding and pollution do not affect each and every community in the Chicago area. A monumental, capital-intensive, multibillion dollar construction project may not be appropriate to the problem at hand. Yet, until the problem is adequately defined, it is impossible to evaluate any proposed alternative.

The corps should also evaluate what degree of relief can be expected from various approaches to flood and pollution control. The current $11 billion approach may well be the most "cost-effective" means of completely eliminating the entire problem. Yet, using smaller scale technology that focuses on the neighborhood or the community level, we may be able to alleviate a large percentage of the flooding and pollution problems at a tiny fraction of the cost for TARP.

I concur with the Appropriations Committee report that this study should be completed as expeditiously as possible. The citizens of metropolitan Chicago should not have to wait another two decades before receiving any flood relief. The corps must devise an affordable program that can be implemented quickly and effectively, and that can be actively supported by the Federal Government. Chicago area taxpayers have had to wait far too long for a realistic waste water management proposal.●

Mr. THURMOND. Mr. President, I wish to comment on H.R. 7590 which contains the Department of Energy national defense programs appropriation for fiscal year 1981.

This important bill provides for the research, operation, and production of our nuclear weapons programs. The seven programs in the Energy Department involving national defense matters include naval reactors development, inertial confinement fusion, weapons activities, verification and control technology, materials production, defense nuclear waste management, and nuclear materials safeguards and security.

Mr. President, this bill inadequately funds the necessary nuclear weapons program sufficient to meet our national security interests. The bill sent to Congress by the administration was decidedly unfunded and did not follow many key recommendations of the Secretary of Defense and the Joint Chiefs of Staff.

The Senate Budget Committee recognized these shortfalls and passed budget resolutions increasing these accounts by up to $400 million. Yet it appears the Appropriations Committee has diverted these increases to other less important programs.

Mr. President, our committee was very concerned that the administration viewed the nuclear weapons budget as just another category subject to artificial budget ceilings imposed by the Office of Management and Budget. It appears little consideration was given to our real weapons needs, to the need for plant modernizations, to the need for increased amounts of nuclear weapon materials, to the need for more nuclear weapon testing, research and so on.

Some of the concerns of the Senate Armed Services Committee are too sensitive for discussion on the Senate floor. However, a careful reading of our committee report should enable those interested to realize that the administration is taking the country along a high-risk policy by not adequately funding these nuclear weapon programs. It appears from the bill now before us that the Appropriations Committee has not significantly rejected that policy.

KEY WEAPONS NEEDED

When nuclear material production facilities lack modernization, when insufficient amounts of nuclear weapon materials are being produced, when nuclear weapons testing is cut to the bone, when new weapon development is slowed or stopped, then someone had better sound the alarm. Our committee was attempting to sound that alarm.

Mr. President, the policy of the Carter administration in the nuclear weapons program is bordering on unilateral disarmament. It is clearly necessary for the Congress to take the initiative in this vital matter as Congress has already done in increasing defense spending.

The Senate Armed Services Committee took these initiatives, but it appears from my reading of the Appropriations Committee bill that these vital national security actions have not been funded.

For instance, the Armed Services Committee increased the administration budget request by about 6 percent to accelerate nuclear materials production, to prepare current facilities for increased production and to boost needed research activities.

PENDING BILL INADEQUATE

The nuclear weapons budget request came in at $3.7 billion and our committee increased this amount to $4 billion. However, the Appropriations Committee has provided for appropriations of only $3.5 billion. Possibly some of the authorizations do not require appropriations in fiscal year 1981, but it is obvious that this bill does not provide sufficient additional money for vitally needed nuclear material production, modernization of aging production facilities, more nuclear weapons testing, or reactivation of currently inactive facilities.

The report of the Appropriations Committee has just become available and while it appears a number of these increased authorizations were not funded, I would like to hear from the bill manager if I am incorrect. Assuming I am correct, I would also like to hear from the bill manager as to why the additional funds allocated by the Budget Committee in recognition of our shortages were not applied to these programs as proposed in the authorization bill.

IMPORTANT STUDIES IGNORED

Mr. President, two important studies—one by the National Security Council and the other by Gen. Alfred Starbird—have already indicated that shortfalls in special nuclear materials can be anticipated under even the most conservative assumptions related to future weapons' requirements.

Mr. President, the projected shortages of special nuclear materials are of such potentially serious concern to our national security interests that the hesitation by the Appropriations Committee to act is not easily understood.

NUCLEAR WEAPON TESTING

Another important area neglected in the administration budget request is that of nuclear weapons testing. In recent years there has been a significant decline in the number and types of nuclear weapons tests conducted. I fear this policy is based upon budget constraints and the possibility of a comprehensive test ban treaty, neither of which can justify the necessary protection of our national security interests.

The nuclear testing program of the Soviet Union, on the other hand, has increased significantly in the last 2 years. Furthermore, it appears the Soviets are testing in excess of the 150-kiloton ceiling of the Threshold Test Ban Treaty. Many experts in this field believe that if a treaty is concluded we will not have done the testing necessary to safely enter into the treaty.

In thorough hearings on this subject, the Senate Armed Services Committee concluded that the administration has overly constrained our nuclear weapons testing program. Once again we acted, by providing authority that testing should be accomplished at a level consistent with the nuclear weapons requirements of the United States. The Appropriations Committee has wisely matched increases in the House bill for this account.

Even our military leaders admit that we have now lost strategic equivalence with the Soviets. Furthermore, we have a number of highly important new programs nearing development, including the cruise missile, the MX mobile missile, and Pershing II. We must test to provide for the safety and effectiveness of these new systems so vital to our national security.

NEEDS RECOGNIZED

Mr. President, I note from the committee's report that there is an expressed willingness to consider new requests from the administration later in the year based upon the findings of ongoing studies. This recognition of the shortfalls in our nuclear weapons programs, specifically materials production, is noteworthy. However, I believe there is more than adequate testimony on the record and already revealed through these studies for Congress to take the initiative and not await already overdue administration findings.

Certainly the modernization or upgrading of our nuclear weapons facilities needs no further study. The needs are obvious, and they have been before us for the last 10 years. We must act to restore these facilities for reasons of safety, continuity, efficiency, and the basic requirement of modernization. I regret the committee has not authorized the $84 million approved by the Senate Armed Services Committee for facility upgrading, a significant increase over the $34 million recommended for authorization in the budget. Our committee recommended appropriation of the full $84 million to meet these urgent needs.

In conclusion, Mr. President, I believe there is a need for closer collaboration between the two Senate committees on these vital nuclear weapons programs. I strongly urge that we begin that work immediately in order that our serious needs in this vital national security area can be addressed promptly.

● Mr. LEVIN. Mr. President, I want to use my "nay" note as a way of registering my opposition to several critical decisions on this bill.

First, I cannot agree with the decision of the Senate in regard to the Lincoln-Dickey project in Maine. I said earlier today that each water project has to be approached on its own merits and, on the basis of merit, I voted to continue a more expensive program along the Tennessee-Tombigbee Waterway. Even though Dickey-Lincoln will cost less, it has less justification both in terms of its merits and in terms of the fact that so little has been committed to it. It is, in the words of one of my colleagues, a "real turkey" which in its present form ought not be gobbling up public funds.

Second, I cannot agree with the decision made today regarding the pay cap as applied to members of the executive and judicial branches. As I said prior to that vote, I fear we have engaged in symbolism to the point of denying ourselves the human resources we need to effectively administer and implement public policy.

Third, I am disturbed by the way in which many of these projects were considered. Reservations were raised yesterday by my colleague from New York concerning the manner in which one such project was considered by the Senate even prior to his subcommittee completing action on it. He was correct—amending the bill on the floor the way it was done is not the way to legislate.

The economic climate which now confronts us is filled with unemployment and inflation. It is also filled with cries for a balanced budget or at least fiscal restraint. This bill does little to deal with the very real and pressing human and economic crisis which we face. In a number of instances, it does damage.

The margin of victory this bill will enjoy testifies to the many strengths it contains. But I do want the minority in this vote to be a little larger than it normally might be—because I think that this bill contains flaws which should be highlighted, and can be highlighted without damage.●

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JOHNSTON. Mr. President, very briefly, this bill is under the 1980 appropriations, if we take away atomic energy defense activities nuclear weapons. We have an increase of $485 million for atomic energy defense activities, principally nuclear weapons in this bill, an increase over 1980. The reasons for this are principally classified.

The Senator from Wisconsin is a member of the Appropriations Committee, with access to those classified documents. Suffice it to say that that is not only needed in the interests of national defense; it is absolutely essential.

All I can say is this: Look at the documents, and I believe that if we would vote on that increase by itself on the floor of the Senate, it would be overwhelming.

Mr. President, if we take away that $485 million increase in the nuclear weapons program and look at the energy supply and water accounts, we come in in a dollar amount less than 1980. We have a total increase of $378 million over 1980, but a $485 million increase in nuclear weapons program, so we are actually more than $100 million less than 1980, and that excludes inflation. If we add inflation factors into that we are probably a half billion dollars under 1980 on this budget.

We have cut over $200 million from the House allowance in the water account. We are within the committee projections with the crosswalks. We are in fact below the Appropriations Committee allocation. We are less than the House on a comparable basis when we consider the budget request that was given to us.

Mr. President, if every appropriations subcommittee does as well as our subcommittee, then we will be well under the budget targets. We will be well within the allocation set by the Appropriations Committee.

I hope the Senator from Wisconsin does as well with the HUD and independent agencies budget.

I can say that in the Chamber we have added only $10 million to this bill which is really peanuts when we compare it to a $12 billion budget.

Mr. President, I am proud of the Appropriations Committee and particularly of our subcommittee and of the Senate for funding those measures which are of great importance, but principally for exercising such fiscal restraint.

One final word. Mr. President, I commend our great colleague, Senator MILTON YOUNG. This will be his last appropriations bill on energy and water development. He has been a stalwart. We are going to miss him. We are going to miss him personally. We are going to miss him for his wise counsel. We are going to miss his participation on this bill. He is faithful in his attendance at our meetings and in all his duties—we should emulate him in our work here in the Senate.

We have said it in the committee several times and I say it here in the Chamber. If there is a man who is most beloved among all Senators, I am not sure who it would be, but I know Senator MILTON YOUNG would be at the very top of the list. We will miss him greatly.

Mr. President, I yield to the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I shall take less than 1 minute.

I point out to the membership the amount of work, the enormity of the work, the items, the matters, and the policies that go into this appropriations bill. It has doubled, tripled, quadrupled in the last few years. It carries most of the money, as we know, with a great deal of the energy program, for instance, and these water matters become more and more important and complicated.

We are served best here by these two men, the chairman and the ranking minority member, and the other members on the subcommittee who helped us.

I commend them and point out to the whole membership what, I will not say problem, but a burden this bill has become.

I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, the appropriations measure which the Senate considered yesterday and today, H.R. 7590, making appropriations for energy and water development for fiscal year 1981, is the first of 13 appropriations bills for fiscal year 1981 to be considered by the Senate. I commend

the distinguished chairman of the Appropriations Subcommittee on Energy and Water Development, Mr. JOHNSTON, and its distinguished ranking minority member, Mr. HATFIELD, for the numerous hours of hearings and hard work that have gone into preparing this bill. I thank the subcommittee and the full Appropriations Committee for the expeditious action they took in reporting this bill last week.

The guideline for developing this bill has been restraint. As reported by the Appropriations Committee, this bill is below the amount allocated by the first budget resolution. The committee sought savings where it could, and increases were selective and restrained.

The funds provided in H.R. 7590 will support certain programs conducted by the Department of Energy, such as advanced energy technology research, uranium supply and enrichment activities, and others. The Corps of Engineers, which is responsible for programs to develop and improve our waterways, is also funded in this bill. And the Water and Power Resources Service of the Department of the Interior, which oversees flood control projects, dams projects, and other water resources-related activities is funded as well.

In addition to these departmental programs, the bill also funds a number of independent agencies, such as the Nuclear Regulatory Commission, which has the vital and important responsibility of developing nuclear safety standards and regulating nuclear energy activities. The bill funds Appalachian regional development programs, which are important to my own State of West Virginia. It funds the Tennessee Valley Authority, the Water Resources Council, the Susquehanna River Basin Commission, and others.

Yesterday the Senate passed authorizing language for the Tug Fork Valley flood control project. This marks the fifth time that the Senate has passed an authorization for the vitally important series of flood control measures in the Tug Fork Valley. A total of $284 million is authorized by the amendment which I offered, along with my colleague from West Virginia, JENNINGS RANDOLPH, and the two Senators from Kentucky, WENDELL FORD and DEE HUDDLESTON.

The Tug Fork Valley is one of the largest coal-producing areas in the Eastern United States. More than 5 percent of the entire recoverable coal reserves in the entire country are in the valley. Considering the awesome size of American coal resources, this amounts to an energy supply of major proportions.

Unfortunately, the Tug Fork Valley is subject to serious and repeated flooding. In 1977 and 1978, two devastating floods caused more than $200 million in damages to property in the valley. Hundreds of families were driven from their homes. A great deal of human misery resulted from these overwhelming floods. The Senate wisely adopted my amendment yesterday in order to protect the lives and property of the families in the valley, and to protect an outstanding energy resources.

This legislation moves use closer to energy self-sufficiency by providing funding to strengthen our energy research and development programs and to develop and improve our water resources. The committee's rcommendations represent a wise and prudent approach toward the development and conservation of our energy resources. The legislation seeks to meet our present energy and transportation needs and looks ahead to our future needs. It seeks to secure for this Nation a stable, prosperous and energy-independent future.

Once again, I thank Senator JOHNSTON, Senator HATFIELD, the members of the Energy and Water Appropriations Subcommittee and the full Appropriations Committee for the considerable time and attention they have brought to his very important bill.

Mr. President, I also wish to express appreciation to Mr. MILTON YOUNG who is the ranking member of the Appropriations Committee for the time and attention that he and others have given to this very important bill. Its positive impact will be recognized during the coming fiscal year and for many years to come.

Mr. BAKER. Mr. President, will the Senator yield to me 30 seconds?

Mr. HATFIELD. I am happy to yield a minute to the Senator from Tennessee.

Mr. BAKER. Mr. President, I would like to commend several of my colleagues for the exemplary leadership they have displayed in the management and debate on the Energy and Water Development Appropriations Act of 1981, which we have just approved.

The scope and foresight of this legislation is testimony to the diligence and thoughtful consideration it received in the Appropriations Committee and I applaud the efforts in that regard to the Senator from Washington (Mr. MAGNUSON), the chairman of that committee, and the always-stellar performance of my good friend, the distinguished Senator from North Dakota (Mr. YOUNG), who serves so capably as the ranking member of the Appropriations Committee.

Senator YOUNG, of course, will be taking his leave of the Senate at the end of this year and we will miss the steady imprint of his commonsense so evident on this legislation and all that he has been involved in during his distinguished career.

Furthermore, I would commend the distinguished Senator from Louisiana (Mr. JOHNSTON) and the distinguished Senator from Oregon (Mr. HATFIELD) for their usual efficient and knowledgable management of this legislation on the floor of the Senate. I know of the countless hours Senator JOHNSTON and my good friend, Senator HATFIELD, have spent preparing for the consideration of this bill. The ease with which its consideration progressed to overwhelming passage is testimony to the effectiveness of this preparation.

This is good legislation, Mr. President. We have allocated monies judiciously and we will enjoy a healthy return on a wise investment.

And at this time, Mr. President, as we near the end of this session of the Congress and as I have been speaking of Senators YOUNG and HATFIELD, I would like to again express my appreciation and that of all the Members of this side of the aisle for not only the wise counsel they have provided the Senate on this legislation, but for their same, generous contributions of time, talent, advice, and energy which we have received throughout the 96th Congress.

They embody the best traditions of the U.S. Senate.

Mr. JOHNSTON. Mr. President I yield to the distinguished Senator from Montana.

Mr. BAUCUS. Mr. President, I thank the Senator from Louisiana.

As the Senator knows, on page 106 of the report there are two items concerning the Libby Dam in here.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

There are 5 minutes remaining to the Senator from Oregon. Perhaps he will yield some time to the Senator from Montana.

Mr. HATFIELD. Mr. President I yield 30 seconds to the Senator from Montana.

Mr. BAUCUS. I thank the Senator.

As the Senator knows there are two entries on page 106 of the committee report. Is it the Senator's understanding that the money to be spent for this bill is to be spent only on the additional generators and on the main dam and none of the funds in this bill are to be spent on the proposed reregulating dam?

Mr. JOHNSTON. The Senator is correct. There is no money for activities not permitted under the court order as the reregulating dam.

Mr. BAUCUS. I thank the Senator and I thank the Senator from Oregon.

Mr. HATFIELD. Mr. President, I am very proud of this appropriations bill. I think it is noted and distinctive for what it did not do as well as for what it did do.

I wish to point out that out of the bill that contains $12.1 billion of programs and projects there were only $10 million added in amendments on the floor. I think that is a remarkable tribute to our leader, Senator JOHNSTON, as well as to the staff.

So this does provide for funds for energy and water development, two of our most important natural resources.

Mr. President, I shall use 1 or 2 minutes to pay tribute to a gentleman who has been in Congress for 35 years and has been on this committee, I believe, for 25 years, Senator MILTON YOUNG of North Dakota.

Senator YOUNG in all that period of time has been one of the guiding lights and directors of the water resources program of this Nation.

Senator YOUNG made an observation that in all of his 35 years in Congress this was the first bill that he ever helped mark up to which he did not offer an amendment. So I guess that in itself is a rather remarkable record as well as the fact that many of the amendments that he did offer over the years had significant impact on the water and land policies of the entire Nation far beyond the constituency of North Dakota which he has served so well.

Senator YOUNG has been the ranking member of the full Appropriations Committee and a man who has given opportunity for junior members coming on that committee for the first time to take positions of responsibility.

I came to this Senate ranking number 100 out of 100. That is about as low seniority as one can have and still be in the club. From the time I arrived here, Senator YOUNG, with all the seniority that he had and had earned, was most kind, most thoughtful, and most sensitive to my needs. When I first came on the Appropriations Committee I was there again impressed by the fact that I was privileged to appoint a staff person to the committee, and I was given a choice of my ranking position on a subcommittee, all of this because of the great generosity, love, and compassion with which this man operates on that committee and throughout his political life.

So I am very grateful for the friendship, the contribution to the committee, and the great service to the Nation that Senator YOUNG has rendered these years in the Senate, and I for one am going to miss his counsel, his presence, and his great demeanor which has added so much to my life.

Mr. YOUNG. Mr. President, I am most appreciative of the very generous comments of my friend chairman JOHNSTON of the subcommittee on Energy and Public Works and too from my friend from Oregon Mr. HATFIELD.

I wish I were only half deserving of all the nice things that they had to say about me. It has been a great pleasure working with them and other members of the committee, and with the Chairman, Mr. MAGNUSON. This is a great committee. I think some of the best talent in the Senate has served on that committee in my time.

The public works projects this committee has sponsored have done so much to advance the progress of our country in many important ways—water for cities, irrigation flood control, navigation and hydroelectric power, it has done more to make this a better country than any other program I know. One of the good examples is the development of the Missouri River basin.

We have five huge dams on that river now that made possible hydroelectric power, recreation, navigation, and flood control. Those dams could not be constructed today under present environmental restrictions. Yet they have added so much to the wealth and the well-being of that whole area.

You could say the same thing for many other areas of the United States. The western part of the United States today would not have had the opportunity for these millions and millions of people if it had not been for the water projects of years past.

Some who have moved out there in recent years have forgotten about how all those projects came there. They seem to be satisfied with what they have, and so they oppose most new projects now.

But I remember not so long ago when I came here—it is quite a while ago but it does not seem so long—most Senators from those dry States knew getting water projects was then a major problem. They had to get water projects for their States, and if it was not for their efforts in securing these water projects, there would not have been much opportunity in Arizona and California and many other Western States today.

I want to commend Senators JOHNSTON and HATFIELD again for the great job they have done in handling what I believe to be the most difficult and most complicated of all the appropriation bills. Mr. President, I just can't find words to express my deep appreciation for their gracious comments about me.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time.

The PRESIDING OFFICER. The question is, shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

UNANIMOUS-CONSENT AGREEMENT—LEGISLATIVE PROGRAM FOR THE REMAINDER OF THIS WEEK AND NEXT WEEK

Mr. ROBERT C. BYRD. Mr. President, I am sorry to impose on Members who want to vote, and it will only be a minute or 2, but while the minority leader is here I would like to try to get a time agreement.

I ask unanimous consent that after the energy and water development appropriation bill is disposed of today the Senate proceed to consider the Foreign Service reform bill, with the proviso that no vote occur on the Helms substitute until Monday next, but with the understanding that in the meantime there could be votes on other amendments today.

Also with the proviso that on tomorrow there can be debate on the bill and amendments thereto, and there could be voice votes on other amendments tomorrow, but with no rollcall votes on tomorrow.

Provided, further, that if this agreement is entered into there will be no session Friday; provided, further, that on Monday the action on the Foreign Service bill will be resumed, and after 1 hour of debate the vote will occur on the Helms substitute.

If the substitute fails, Mr. HELMS may have other amendments to the bill. If the Helms substitute passes, the Senate would proceed to final passage of the bill immediately. I think we would have to accord to other Senators the same right to offer amendments to the bill in the event the substitute failed.

It is my understanding that the matter will not take, probably not take, long or not require much time on Monday, but in the event the Helms substitute failed, he and other Senators would have the right to offer other amendments.

The next proviso would be that upon the disposition of the Foreign Service bill on Monday, the Senate will proceed to the HUD appropriation bill. Mr. PROXMIRE will manage that bill on this side of the aisle and Mr. MATHIAS on the other side, of course.

Upon the disposition of the HUD appropriation bill, the Senate would proceed to the consideration of the military construction authorization bill.

Provided, however, if action is not completed on the HUD appropriation bill prior to noon on Tuesday, the Senate will temporarily lay aside the HUD appropriation bill and proceed to the military construction authorization bill, on the disposition of which the Senate would then in that event return to the consideration of the HUD appropriation bill.

Provided, further, that the Senate would then—meaning after the disposition of the military construction bill and the disposition of the HUD appropriation bill—proceed to the consideration of the military construction appropriation bill.

Provided, further, that after the military construction appropriation bill, but not before Wednesday of next week, the Senate then would proceed to the consideration of the Department of Transportation appropriation bill.

So that if the agreement as entered is agreed to, the Senate will have acted on four appropriation bills by the time this order is consummated.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object but, on the contrary—I will announce that the majority leader and I have been negotiating for the better part of today and yesterday trying to work out some arrangement for the balance of the week and next week, with special emphasis on the need to pass the appropriations bills as they become available—the request just put by the majority leader I think is a good synthesis of that effort, that responsibility, and the conveniences we were trying to serve on both sides of the aisle.

I have two or three questions I believe I can clarify with just an inquiry without any change in the agreement.

I think it is implicit in the majority leader's request, but I would ask if he would agree with me, that if we enter into this agreement for this sequence of events that this will be the calendar of business for the Senate during the time stated, and no other matter would be taken up without unanimous consent.

Mr. ROBERT C. BYRD. That is correct. The order would implicitly provide for such.

I would hope, and I am sure the distinguished Republican leader will make every effort to do so, that if we run into a problem here in which we have to juggle the bills about a bit and reverse the order, perhaps, that the leader on the other side of the aisle will do what he can to help me achieve that.

Also the last proviso, to wit, that the DOT appropriation bill would not be taken up before Wednesday, I doubt that we are going to find ourselves Tuesday without business, but in that event I would need his help in scouting about to help me, to assist me, in finding something to fill that day.

Mr. BAKER. Mr. President, I thank the majority leader. Indeed I will do that.

As he knows, and as we have discussed the reason for the Wednesday proviso, it is the complication in drawing the amendments by a Member on

this side of the aisle, and I believe we can overcome that difficulty. In any event, I will cooperate with the majority leader in providing the maximum flexibility of trying to proceed in the sequence of the appropriation bills as we have described.

There is one other matter, Mr. President. On Monday there will be a political function here at the Capitol involving many Members on this side of the aisle that will run until 12 o'clock, and the majority leader may wish to address this at a later time, but I hope the hour provided for on Monday for debate on the Helms amendment might begin running at, say 12:15 on Monday.

Mr. ROBERT C. BYRD. Mr. President, I hope the Senator will not press me at this time on that particular matter. I would like to see him smile. [Laughter.]

Mr. BAKER. I would like to, but I cannot. It really is a matter of urgent importance, Mr. President, and I expect it will deal as much with the time for the convening of the Senate on Monday as it will for this. But it is a matter that will engage the attention, I believe, of virtually every Member on this side of the aisle, including the Senator from North Carolina, and it was brought to my attention by a note handed me after the majority leader had stated his request. Otherwise I would have mentioned it earlier.

Mr. President, I think there is a good likelihood that the majority leader and I can work this out in one of two or three ways, and I think it is important that we nail down this schedule so that if the majority leader can assure me, as I am sure he will, that we will try to work this out on a mutually satisfactory basis, I will withdraw my inquiry in that respect.

Mr. ROBERT C. BYRD. Mr. President, I say to the Senator on how to work this out, I am always angling, if I can, to get something in return.

Mr. STEVENS. Mr. President, I have become the No. 1 "Byrd" watcher in Washington and I sensed that that might be the case. And now while I prepare myself to do battle, I will withdraw that inquiry and will state, on reservation, that I have no objection to the request as put and with the clarifications stated by the majority leader.

Mr. NUNN. Mr. President, reserving the right to object, and I will not object, when the Senator from West Virginia, the majority leader, was speaking about the schedule on Monday, I did not hear that portion.

Mr. ROBERT C. BYRD. On Monday, the Senate will complete action on the Foreign Service bill. It will then go to the HUD appropriations bill.

There will be, I would contemplate, some rollcall votes on Monday.

Mr. NUNN. Is there any beginning hour or ending hour for votes in the unanimous-consent request?

Mr. ROBERT C. BYRD. There is not. That is open.

Mr. NUNN. I thank the Senator.

Mr. BURDICK. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BURDICK. Does the Senator anticipate rollcall votes before noon on Monday?

Mr. ROBERT C. BYRD. The question is, Do I anticipate rollcall votes on Monday before noon? I do not.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators for their patience and cooperation.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The Senate resumed consideration of the bill (H.R. 7590).

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, may I say that if Senators are leaving feeling there are no more rollcall votes tonight, there is no assurances to that effect whatsoever, because the Foreign Services bill will be coming up and there may be rollcall votes.

The legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Hampshire (Mr. HUMPHREY), and the Senator from Iowa (Mr. JEPSEN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 83, nays 9, as follows:

[Rollcall Vote No. 398 Leg.]

YEAS—83

Baker	Gravel	Pell
Baucus	Hatch	Percy
Bayh	Hatfield	Pressler
Bellmon	Hayakawa	Pryor
Bentsen	Heflin	Randolph
Boren	Heinz	Ribicoff
Boschwitz	Hollings	Riegle
Bradley	Huddleston	Sarbanes
Bumpers	Inouye	Sasser
Burdick	Jackson	Schmitt
Byrd, Robert C.	Javits	Schweiker
Cannon	Johnston	Simpson
Chiles	Kassebaum	Stafford
Church	Kennedy	Stennis
Cochran	Laxalt	Stevens
Cohen	Leahy	Stevenson
Cranston	Lugar	Stewart
Culver	Magnuson	Talmadge
Danforth	Mathias	Thurmond
DeConcini	Matsunaga	Tower
Dole	McClure	Tsongas
Domenici	Melcher	Wallop
Durenberger	Metzenbaum	Warner
Durkin	Mitchell	Weicker
Exon	Morgan	Williams
Ford	Moynihan	Young
Garn	Nunn	Zorinsky
Glenn	Packwood	

NAYS—9

Biden	Eagleton	Proxmire
Byrd, Harry F., Jr.	Helms	Roth
Chafee	Levin	
	Nelson	

NOT VOTING—8

Armstrong	Humphrey	McGovern
Goldwater	Jepsen	Stone
Hart	Long	

So the bill (H.R. 7590), as amended, was passed.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer (Mr. BRADLEY) appointed Mr. JOHNSTON, Mr. STENNIS, Mr. MAGNUSON, Mr. ROBERT C. BYRD, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. BURDICK, Mr. SASSER, Mr. DECONCINI, Mr. HATFIELD, Mr. YOUNG, Mr. SCHWEIKER, Mr. BELLMON, Mr. MCCLURE, Mr. GARN, and Mr. SCHMITT conferees on the part of the Senate.

FOREIGN SERVICE ACT OF 1980

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 3058, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The Senate proceeded to consider the bill.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the provisions of Public LAW 96-296, appoints the following Senators to the Motor Carrier Ratemaking Study Commission: the Senator from Nevada (Mr. CANNON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Oregon (Mr. PACKWOOD).

FEDERAL BOAT SAFETY ACT AMENDMENTS—CONFERENCE REPORT

Mr. CANNON. Mr. President, I submit a report of the committee of conference on H.R. 4310 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. CANNON. Mr. President, I know of no opposition to the conference report. I urge its immediate adoption.

Mr. PACKWOOD. I have no objection to its adoption, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEATH OF BEN STONG

Mr. MELCHER. Mr. President, last Saturday morning, Ben Stong, my administrative aide for a little over 11 years, passed away at Sibley Hospital of cardiac arrest. He had a long and distinguished career on the Hill—25 years, as a matter of fact—first as a professional staff member on the Senate Interior Committee for Senator Murray, then chairman. He also stayed on the committee when Senator Murray retired and Senator Anderson became chairman. He was with Senator MCGOVERN for a number of years before joining my staff as administrative assistant.

Ben was recognized as the dean of agricultural advisers on the Hill. He was active in the conservation movement all during his career on the Hill and prior to coming to the Hill. Many called him the father of the Wilderness Act, he having convinced Senator Murray to start hearings in the late fifties in the Senate Interior Committee on that proposal, which was eventually enacted in 1964.

We shall miss him greatly in my office, as will a great number of people throughout Government, both in the executive and legislative branches.

Mr. President, I ask unanimous consent to have printed in the RECORD a eulogy I gave at Ben's memorial service last evening.

There being no objection, the eulogy was ordered to be printed in the RECORD, as follows:

EULOGY TO BEN STONG

(By Senator JOHN MELCHER)

Family of Ben, Friends of Ben:

Last Saturday morning Ben's sojourn with us came to a close.

It was 75 years and a few months. Ben's was an active life—until only one week before, from the last Saturday in August when he entered Sibley Hospital on his own power until Saturday morning September 6 when cardiac arrest ended three-quarters of a century during which Ben was many things to many people.

Ben was wise.

Ben was experienced. He was real.

Ben was articulate.

Ben was resourceful—his memory remarkable.

Ben was helpful—always available.

Ben was strong—always compassionate.

Ben was fun.

Ben loved people.

Ben loved life.

He lived with zest.

He relished confrontation,

Engaged in debate with good humor, honor and truth.

The very essence of Ben was the combination of all these attributes. All joined and blended into his character.

Then all of it was coupled with his remarkable energy that sorted Ben out from the pack and distinguished him among men. as the—Stalwart sage of agriculture;

Leader of the conservation movement;

An expert on water development;

An effective proponent of rural electrics; and

A determined advocate of a better economy and a better life for all of rural America.

How did this man come to mean so much to so many?

What gave Ben his drive, his vigor in pursuing goals—to continually strive to help and to prod and to persuade people in government to make good, honest and progressive decisions?

Let's look back—his roots were in Iowa—born in the village of Keosauqua in 1905, the son of Ben and Ada Stong and the brother of Phil and Jo. Ben, Sr. ran the town's general store and was the Postmaster. His grandfather had tried the California Gold Rush but was known better in Iowa as the founder of Iowa's first State Fair. That may have been an inspiration to Ben's brother Phil, who wrote the novel, later a great screen play—"State Fair." Brother Jo became a banker-lawyer—two professions Ben loved to chide with puckish, populist flair.

Ben received a degree in Journalism from Drake University, Class of 1927. He reported first for the Des Moines Register. He was confident, energetic, brash, fun-loving, occasionally a hell-raiser, and he pursued with enthusiasm a highly successful journalistic career for a decade or more with Scripps-Howard papers. These included first their paper in Cleveland, Ohio, then State Capitol Bureau Chief at Nashville, Tennessee, editor of the News Sentinel at Knoxville, and later as Scripps Howard's Washington correspondent.

Ben's style of writing was direct and clear. His style was honest and pointed—depth and plenty of punch. That style came natural for Ben because that was the way his thoughts flowed from his mind. No phoniness—he did not need gimmicks—he had truth, knowledge, experience on his side.

There was for Ben during the 40's a time of striving for the basics for western agriculture. Ben was at the very grassroots, organizing for the Farmer's Union in Rocky Mountain states.

He understood the crying need for farmers to organize—a need that, till the end, he held high in his priorities and in his hopes for the future to assure agriculture producers a sufficient voice to assert and claim adequate policies for price and management for this, our best, biggest and most basic of American industries.

Ben never gave up on that. Farmers' Union and National Farmers' Organization knew his efforts firsthand, but all farm and agricultural commodity organizations benefitted from Ben's progressive influence in drafting major farm legislation covering a span of more than two decades.

His style was as refreshing as spring. When he drafted legislative language, bill or amendment, it was concise, clear, direct—a welcome relief from much of the foggy legislative language we see in what we sometimes call "Foggy Bottom."

We cannot understand Ben's strength of character and will unless we relate it to the strength and will power he demonstrated to reject the personal use of alcohol during the last half of his life. It was his strength to overcome what had been for him an abuse—his rejection of personally indulging in alcoholic beverages was complete, and he persistently was willing to assist others who needed and would accept guidance on the use of alcohol.

Ben was at home with the soil and growing plants. His dahlias were sweepstakes winners—they reflected the magnificent beauty he understood and appreciated in the harmony of earth and water—plant and animal life.

In 1955, when Ben joined Senator James Murray and the Senate Interior Committee staff, his conservation leadership blossomed and bore fruit.

He fathered the Wilderness Act, convincing Murray that the Senate Committee should hold hearings. And out of those initial hearings in the 50's the Wilderness advocacy of a few became the national will and passage of the Wilderness Act resulted in 1964.

By then, Ben was with Senator George McGovern and drafted the Voluntary Wheat Certificate Plan, successfully sponsored and brought to enactment by Senator McGovern.

Ben's honors included recognition in 1967 as a lifetime member of the Soil Conservation Service, American Motors Conservation Award in 1964, East River Co-op Service Award in 1968, George W. Norris Award of Western States Water and Power Consumers' Conference in 1966.

Ben was proud of membership in the Darrow Conference on Mathematical Probabilities—he listed it in all of his resumes. He should also have noted he was one of the founders of this illustrious group that met periodically to out-bluff or out-draw each other in the mathematical probability of poker.

He was good at poker and attempted to pass on this skill to his grandchildren when a big blizzard made him snowbound with Norma and Joe Lyon on their Iowa farm. Ben ran the poker game during those 5 days, teaching the grandkids the mathematical probabilities, using toothpicks for poker chips.

Ben was a most generous person with his time. He was patient and although many sought his help, his counsel or his judgment that kept him always busy, he gave of his time to all of his friends and fellow workers. Of an early morning or late evening sitting at his desk with his feet propped on a corner, puffing on a cigarette (he loved nicotine) and with his fancy, attractive cuff links, one could find the almost unbounded range of Ben's interests and the depths of his understanding of the need of people for government—a better government.

Ben staunchly advocated balanced growth for the U.S. with reasonable regulations that did not interfere unduly or stymie the free enterprise system. Above all, he had faith in the ability of people to come together and discern what was in the public interest and for the common good.

He was concerned for the underprivileged, for the poor and the hungry.

He related trade policies to needs of people.

He related Food Stamps as essential for the hungry poor.

Food for Peace for starving people abroad.

Compassion for refugees seeking our help—not a popular issue right now but one on which Ben spoke out.

Health needs for all who were in need.

Ben knew and practiced Charity in the broadest sense.

He had no time for grudges. While I do not believe he hated anyone, he had firm disdain for fraud or phoniness.

His time was spent in doing good for people. He did that without restriction and for

so many that it can be said "If each person for whom he did some kind and loving service would bring a blossom to Ben's grave, he would sleep forever beneath a cover of flowers that he loved so much."

Often he was asked, "Ben, why don't you write a book?"

He was too busy with all of us to write that book.

But in a sense he wrote a book—a big book—

He gave of himself so much that each of us are a chapter in his book.

Ben's only book.

How good a book Ben left us depends upon us.

It depends upon whether we preserve the counsel, the love, he gave us.

It depends on how we pursue the goals he guided us toward.

It depends on us to successfully advance the principles he wrote and spoke—for which he continually fought.

We have all gained from Ben.

Did I tell you "Thanks, Ben?"

We do thank you, Ben.

Did I tell you "I love you, Ben?"

We do love you, Ben.

Thanks, God, for letting us have Ben as long as we could—

But, Oh, how we miss you, Ben.

God love you, Ben.

Mr. YOUNG. Mr. President, I wish to join in the well-deserved tribute to the late Ben Stong. When I came to the Senate more than 35 years ago, I came as one who had, not long before, gone broke in the farming business during the Depression years. I was naturally interested in farm legislation. One of the first men I became acquainted with when I came here was Ben Stong. He, and about a half-dozen other men like him, had as much as anybody to do with the writing of the farm legislation then and in all the years since. Ben Stong had a major role in writing practically all the price support legislation, during the years I have been here.

Ben Stong was a friend of farmers. He knew farm legislation and the need of it. He always contributed new ideas and ways of doing things, not only to help farmers, but to help the whole economy. Our agriculture today is the most efficient in the world. Much of that is due to the farm legislation which Ben Stong helped to write.

Mr. President, Ben Stong was a wonderful person, one of the best friends I ever had. There is so much I could say about him and so much that could and should be said, but I shall just say in closing that I shall miss Ben Stong. I know all the Members of the Senate who knew him, and especially those people in agriculture, will miss Ben Stong. He was a great American and a wonderful friend.

Mr. BAUCUS. Mr. President, a lot of us are going to miss that growl at the other end of the line.

Ben was many things to those of us fortunate enough to know him and work with him. He was an encyclopedia of knowledge about agriculture, water, conservation and a host of other issues. He was a teacher, patient, but direct.

He was the voice of experience who knew what had been tried and what had not and why. And he was the voice of reason who knew what would work and what would not and why.

But most of all, Ben was an inspiration. He inspired us to accomplish lofty goals, to help our fellow men, and savor life.

He showed us what can be accomplished by dedication, creativity, and plain hard work. The Wilderness Act, the wheat certificate program, and a host of other bills and amendments—those are just a few of his accomplishments at an age when most people are in their rocking chairs on their porches.

He showed us that there is always time for others. Nobody on Capitol Hill was busier than Ben. But he always had time to listen and counsel—whether for the Secretary of Agriculture, a striking Great Plains farmer, a U.S. Senator, or a green young legislative aide.

He helped us remember the less fortunate. He was an advocate for programs to help feed people both at home and around the world.

And, he helped us remember the land. He worked hard and effectively to make sure that soil and water are conserved, and that our children and grandchildren experience and appreciate wilderness.

He helped us remember farmers. Ben thought farmers ought to have decent incomes and conveniences like electricity and telephones that cityfolks take for granted. He worked outside Government to help farmers organize, and he worked inside to help Government help farmers.

If we could all live our lives as fully and productively and compassionately as Ben, the world would be a darn sight better place to live.

He was a giant of the Earth.

Mr. MELCHER. Mr. President, I thank my colleagues, the Senator from North Dakota (Mr. YOUNG) and the Senator from Montana (Mr. BAUCUS), for their fine tribute to Ben Stong.

FOREIGN SERVICE ACT OF 1980

The Senate continued with the consideration of S. 3058.

Mr. PELL. Mr. President, in 1978, the Congress enacted the Civil Service Reform Act (Public Law 95-454), an attempt to improve the management and efficiency of the Federal civil service. S. 3058, the Foreign Service Act, is intended to be a companion measure designed to strengthen and improve the Foreign Service of the United States by reorganizing and consolidating the components of the Service which exist in six executive departments and agencies under one law governing all Foreign Service operations and personnel administration.

The basic legislation under which the Foreign Service officer corps operates today is the Foreign Service Act of 1946. The fundamental purposes for establishing a separate Foreign Service were to provide the President and the Secretary of State with an exceptionally able corps of disciplined officers and staff who could effectively represent U.S. policies and interests overseas, and assist the Secretary and his senior advisors at home in the formulation of foreign policy. In enacting the 1946 Act, Congress expressed the belief that if the Foreign Service were to accomplish its mission, its personnel policies would have to be adjusted to that mission. Therefore, the 1946 legislation incorporated a number of unique features considered necessary to assure continued high quality staffing in the variety of U.S. missions throughout the world, and drew from the civil service and military personnel systems as appropriate. The features which distinguish the Foreign Service from the civil service are the rank-in-person system, the requirement to serve overseas, the "up or out" principle, and mandatory retirement at age 60.

The Foreign Service was patterned after the military service and is closer to the military services than it is to the Civil Service. The Foreign Service is, however, different from the military services in that it is a civilian and not a uniformed service, it has a somewhat different system of pay and allowances, and its purpose is to preserve peace instead of waging war.

S. 3058 retains the above features and adds new provisions needed to improve the effectiveness of the Foreign Service.

This bill would:

First, provide a clear distinction between Foreign Service and Civil Service employment, and to eliminate the anomalous "domestic" Foreign Service personnel category;

Second, simplify and rationalize the various categories of Foreign Service personnel and establish a single Foreign Service salary schedule;

Third, make more uniform the statutory terms and conditions of Foreign Service employment;

Fourth, establish a senior foreign service (SFS) with rigorous entry, promotion, and retention standards based on performance, and with performance pay for outstanding service;

Fifth, provide a statutory basis for labor-management relations in the Foreign Service;

Sixth, improve interagency coordination in the interest of maximum compatibility among agencies employing Foreign Service personnel, and compatibility between the Foreign Service and the Civil Service; and

Seventh, consolidate the various laws relating to Foreign Service personnel which have been enacted outside the framework of the existing Foreign Service Act.

This bill has been the subject of extensive consultations and deliberations. Its provisions reflect comments and suggestions which have been received from interested agencies within the executive branch, and from the members of the Foreign Service and the organizations which represent them. The Foreign Relations Committee has held extensive hearings, considered numerous proposals, engaged in widespread consultation with interested groups and individuals, and incorporated numerous technical drafting changes to clarify and perfect the bill.

It should be noted that this bill is similar in most respects to H.R. 6790, which passed the House on Monday, September 9, 1980. It should, also be noted that this bill does not authorize new appropriations. Any increases in Federal

spending which might result from the passage of this bill would require separate authorizing and appropriating legislation. Nothing in this bill should be construed as authorizing the enactment of new budgetary authority.

Mr. President, I would like to add a further clarifying point with respect to the use of these authorities by other agencies. In particular, I wish to elaborate on the use of these authorities by the Agency for International Development (AID). It is our intent that the current level of development of personnel policy for AID and the exercise of AID's personnel management functions, including senior-level appointments, will remain the responsibility of the administrator for AID and that this will continue to be reflected in relevant delegations of authority. The continued exercise of this authority by the AID Administrator is consistent with the intent of the reorganization plan which established the U.S. International Development Cooperation Agency.

Under the reorganization plan, the IDCA Director is able to provide policy direction to and coordination of U.S. foreign assistance activities, while delegating responsibility for management and operations to the administrator of AID.

Mr. President, in conclusion, I urge my colleagues to support the passage of this bill. The future mission of the Foreign Service will be complex and difficult. This legislation will provide the organizational framework for a strong Foreign Service, staffed by people of uncommon professional ability, experience, and dedication.

Mr. JAVITS. Mr. President, I urge the Senate to support S. 3058, the Foreign Service Act of 1980, which carries out a consolidation and administrative reform of our entire Foreign Service system. This legislation is the product of several years of careful discussions between the executive branch and the Congress, as well as a long history of experience and incremental changes in the system created by the Foreign Service Act of 1946. In particular, the detailed provisions on grievance procedures, labor-management relations, retirement and disability, and a bill of rights for the Service, are based upon years of negotiations, discussions, and trial-and-error within the system.

The principal administrative reform in this legislation concerns the creation of a Senior Foreign Service, comparable in conception to the Senior Executive Service established by the Civil Service reform bill 2 years ago, including the institution of an incentive, or "performance pay," system for the Senior Foreign Service. Though I know that my colleague, Senator PELL, and some members of the Foreign Service itself have serious reservations about the application of this system to the Service, I am prepared to support it as an experiment in administrative reform which can be modified in the future if experience does not justify this approach.

The performance pay system is my only serious difference with Senator PELL, the chief sponsor of this legislation in the Senate. I would therefore like to commend him for his strong initiative and careful craftsmanship in developing the Foreign Service Act. Having served in the Foreign Service himself, Senator PELL is in a unique position within the Senate to understand the needs of the Service and we have all given the greatest weight to his views on these matters.

Mr. President, let me just mention two provisions of this legislation which I have had a hand in developing: A new system of awards for the Foreign Service and a change in the handling of the 6-month ambassadorial appointments. Section 613 directs the President to establish a system of awards to recognize in an appropriate manner the outstanding contributions of individuals in the Foreign Service. I share the views expressed by Senator PELL during our discussion of this legislation that Foreign Service officers share much in common with men and women of the armed services. In particular, appropriate commendations and public recognition of outstanding performance can be a greater incentive than monetary bonuses to patriotic Americans who take pride in service to the country. I trust the President will fully develop this opportunity to increase public awareness of the outstanding performance of Foreign Service officers.

On the issue of limited ambassadorial appointments which do not come before the Senate for confirmation, we have revised the reporting requirements in existing law to give earlier and fuller notice of the justification for such 6-month appointments. Our intention at the present time is not to deny the President the authority to make such limited appointments. However, I have become concerned lately about a possible tendency to abuse this authority and therefore want to tighten the reporting requirements to make certain that we keep better tabs on such appointments.

Mr. President, I urge my colleagues to vote for the Foreign Service Act, and once again commend Senator PELL for his leadership in its drafting and bring it to the Senate floor.

Mr. PELL. Mr. President, I ask unanimous consent to have printed in the RECORD the following material indicating endorsement of this bill: a letter from Secretary of State Edmund Muskie; a letter from Alan K. Campbell, Director of the Office of Personnel Management; a letter from former Secretary of State Cyrus Vance; a communication from former majority leader and present Ambassador to Japan, Mike Mansfield; the text of a statement adopted by the Board of the Foreign Service; a statement by Hon. George Ball, former Under Secretary of State; a statement by Richard I. Bloch, chairman, Foreign Service Grievance Board; a statement by former Secretary of State Henry A. Kissinger; and a statement of the American Foreign Service Association.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington.

Senator PELL: I am writing to urge your support of the Foreign Service bill (S. 3058) which will be up for Senate action shortly.

Since assuming the duties of Secretary of State four months ago, I have become keenly aware of the desirability of enactment at this session of this comprehensive and important bill to strengthen and to improve the Foreign Service. My predecessors strongly share this view as does a preponderant majority of the members of the Service. A brief description of the proposal is attached.

I want to give you my personal assurance that the Foreign Service bill is a completely non-partisan measure which has gained the overwhelming support of the Senators and Representatives who conducted extensive hearings and markups in 1979 and 1980. On September 8 the House passed the bill by a substantial bipartisan majority.

It is the direct result of five years of efforts begun during the last part of the Ford Administration in response to a Congressional demand in 1976 for a "comprehensive plan" for the improvement and simplification of the personnel system of the Foreign Service.

Your support will be greatly appreciated.

Sincerely,

EDMUND S. MUSKIE.

FOREIGN SERVICE BILL: MAIN FEATURES

(A bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes)

The bill provides a closer linkage between performance and all aspects of Foreign Service personnel management: recruitment, tenure, advancement, incentive pay, and retention, as judged by impartial selection boards of career and public members.

It simplifies the present overly complex personnel structure of the Foreign Service and converts to Civil Service status those who have not and will not serve abroad with full protection of pay and rights.

It establishes a Senior Foreign Service compatible with the special needs and role of the Foreign Service and yet responsive to the purposes and goals which were sought through the creation of the Senior Executive Service under the Civil Service Reform Act of 1978.

Employee-management relations are placed on a sound statutory basis.

The bill replaces the Foreign Service Act of 1946 and codifies an accumulation of 34 years of legislation on the subject in one comprehensive new charter.

It effects numerous other reforms relating to the rights and benefits of the dedicated members of the Foreign Service and their families who are called upon daily to serve this country in increasingly dangerous and difficult circumstances abroad.

UNITED STATES OF AMERICA,
OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., September 10, 1980.

Hon. CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR CLAIBORNE: As the Senate nears floor action on S. 3058, "The Foreign Service Act of 1978," I would like to note my continued strong support for this legislation which I believe will be highly beneficial to the Foreign Service.

Since early in 1979 when OPM became heavily involved with the Department of State in advising it during the formulation of the Administration's proposal, we have been enthusiastic about many of the features of this legislation which opens new opportunities for flexibilities in the management of the Foreign Service personnel system. Key to this forward looking legislation is the Senior Foreign Service with its opportunities for rewarding outstanding performance. We are also very happy with the bill's clear delineation of those positions which are appropriately under the Foreign Service personnel system.

The Senate report on S. 3058 carries the

additional views of Senator Helms along with the substitute measure which he is sponsoring. Although Senator Helms has the good of the Foreign Service in mind, I must take issue with his proposal because of several features which I believe to be unsound from the standpoint of Federal personnel policy.

Section 3 of Senator Helms' bill, S. 2986, provides, in a revised section 413 of the Foreign Service Act of 1946, an additional lump sum payment to each member of the Foreign Service equal to 15 percent of the basic salary for such member within the limits of $2,500 and $7,500. The bill would further exempt this lump sum payment from taxation.

I strongly disagree with this concept. First, Senator Helms would offset the expense of this provision by deleting the Senior Foreign Service performance pay provisions. It is obvious to those of us who have studied and worked with compensation systems that rewards should go with performance. Senator Helms, in deleting the performance award system proposes a step backward in the progress toward pay-for-performance which is to be found under the Civil Service Reform Act, passed overwhelmingly by the Senate, and section 405 of S. 3058.

Further, there is no reason to believe that the added bonus would accomplish anything constructive in struggling with the problem of members of the Service who are reluctant to go overseas. Senator Helms explains in the committee report that "by providing the 15 percent tax-exempt incentive, it would reduce the resistance of married personnel to accept foreign assignments . . .". There can be no such direct effect from a bonus which goes to all members, without regard to their willingness to move to "undesirable" posts. The proposal would simply raise the level of compensation without a return benefit to the Government. Members of the Foreign Service receive post differentials provided under title 5, U.S.C., which are meant to compensate for the difficulties in recruiting at hardship posts. These differentials would be increased under S. 3058 and the House passed bill.

Section 6 of Senator Helms' bill would revise the retirement formula to increase the annuity of members of the Service from the current 2 percent for each year of service to 2½ percent. The bill would apparently provide this increased computation benefit to all service so that those retiring immediately after the Act's passage would receive a windfall the bill despite the knowledge that Senator Helms apparently does not intend that the increased benefit apply to service prior to the enactment date.

I do not find Senator Helms' analogy between the Foreign Service and the FBI and Air Traffic Controllers valid. The present computation of retirement for members of the Foreign Service already exceeds the normal Civil Service computation. The special computation provided for Air Traffic Controllers and other special occupations in which early retirement has been mandated, is meant to adjust the annuity to a normal level in the face of a career which is curtailed at a point of service which would otherwise provide an inadequate annuity. The increased computation in Senator Helms' bill for members of the Foreign Service is unnecessary. They do not normally have early retirement. Also, the House passed version of the Foreign Service bill raises the mandatory retirement age to 65, which indicates a trend toward longer service, rather than early retirement.

I have not touched on all of my concerns with Senator Helms' bill, but have indicated some of my primary concerns. I urge the Senate to move ahead on its consideration of S. 3058. Thank you for the consideration of my comments.

I have provided a similar letter to Senator Percy.

Sincerely yours,

ALAN K. CAMPBELL,
Director.

THE SECRETARY OF STATE,
Washington, D.C., June 20, 1979.

Hon. WALTER F. MONDALE,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I transmit herewith on behalf of the Administration a Bill to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States and for other purposes.

The Congress took a major step last year to improve the management and efficiency of the federal service by enacting the Civil Service Reform Act. This Bill is a companion measure to increase the effectiveness of the foreign policy arm of the government. It also responds to a Congressional directive (Sec. 117 of PL 94-350) to prepare a "comprehensive plan for the improvement and simplification" of the personnel systems of the Department of State and the United States International Communication Agency (previously the United States Information Agency). In addition, the Bill contemplates use of the Foreign Service personnel system by the proposed new International Development Cooperation Agency.

The last comprehensive Foreign Service personnel legislation was the Foreign Service Act of 1946. The need is clear, after more than three decades, for substantial legislative changes to strengthen and improve the Foreign Service to enable it to fulfill its essential role and mission now and in the years ahead.

I believe that this new Foreign Service Act is needed:

To provide a clear distinction between Foreign Service and Civil Service employment, and to convert to Civil Service status without loss those Foreign Service personnel who are obligated and needed only for domestic service;

To improve efficiency and economy by simplifying and rationalizing the various categories of Foreign Service personnel and by establishing a single Foreign Service salary schedule;

To establish a Senior Foreign Service (SFS) with rigorous entry, promotion and retention standards based on performance, with performance pay for outstanding service;

To make more uniform the statutory terms and conditions of Foreign Service employment based on merit principles;

To provide a statutory basis for labor-management relations in the Foreign Service;

To consolidate and codify the various laws relating to Foreign Service personnel which have been enacted both within and outside the framework of the existing Foreign Service Act;

To improve interagency coordination by promoting compatibility among the personnel systems of the agencies employing Foreign Service personnel and with those of other departments and agencies.

I am confident the Congress will agree that it is in the national interest to maintain and strengthen a professional Foreign Service, representative of the American people, to assist the President and the Secretary of State in managing the country's foreign relations.

I believe this Bill strengthens the professional character of the Foreign Service of the United States by:

(1) limiting Service status to those who accept its discipline including the obligation to serve anywhere in the world often under dangerous or unhealthy circumstances;

(2) requiring that all persons seeking career status pass successfully through a strict but fair tenuring process; and

(3) establishing closer links between performance and promotion, compensation and incentive payments, and retention in Service.

The Bill will also improve the management of the Foreign Service and promote economy and efficiency by reducing the number of personnel categories under a single pay schedule, establishing a Senior Foreign Service comparable to the Senior Executive Service of the Civil Service, and by encouraging interchange and maximum compatibility of personnel systems among the foreign affairs agencies.

The Bill has been the subject of extensive consultations. Its provisions reflect comments and suggestions which have been received from the members of the Foreign Service and the employee organizations which represent them, and from interested agencies within the Executive Branch.

The Bill is divided into two titles. Title I, made up of twelve chapters, is the Foreign Service Act of 1979, a permanent body of law concerning the Foreign Service personnel system. Title II consists of transitional and technical provisions, and amendments to and repeals of other laws.

The Office of Management and Budget has advised that enactment of this legislation would be consistent with the Administration's objectives.

Sincerely,

CYRUS VANCE.

[From Ambassador for Director General Harry Barnes]

FOREIGN SERVICE ACT

Would you be good enough to transmit the following letter from me to Senate Majority Leader Robert Byrd:

"DEAR ROBERT: Having now worked three and a half years with the Foreign Service of the United States, I have become more convinced than ever that it is a group of high caliber, dedicated men and women whose record of service to the United States Government is unexcelled. In the course of my years here in Tokyo I have become familiar with the provisions of the proposed new Foreign Service Act which I understand is now awaiting Senate action. It is my understanding also that differences within the Congress on the bill have been resolved and that, with everyone's help, a good bill has been produced.

"The concern now is whether the crowded congressional calendar will permit passage of the bill during this session of Congress. I believe that with all of the effort which has been put into the development of this new basic charter for the foreign service, it would be a tragedy to see it die when this Congress adjourns in October. I sincerely hope that you might be able to consider the possibility of working out a time agreement which could permit it to be brought to the floor during September. I know, better than most, the competing pressures you face in the month ahead, but I believe the passage of this bill would be in the best interests of our Government.

"With affection, respect and warm good wishes to you and Erma from Maureen and me.

"Sincerely,

MIKE MANSFIELD."

TEXT OF STATEMENT ADOPTED BY THE BOARD OF THE FOREIGN SERVICE, JUNE 20, 1980

The Board believes that the Bill represents a well considered effort to meet existing anomalies in the present Foreign Service personnel structure and should be supported.

STATEMENT OF HON. GEORGE BALL, FORMER UNDER SECRETARY OF STATE

The Foreign Service Act of 1979 which this committee is now considering should enhance the effectiveness of the Foreign Service while at the same time preserving the interests of the civil service employees who perform invaluable roles in the Department of State.

Although I do not profess a mastery of the details of the proposed legislation, it seems to me to achieve several essential purposes.

The first is that it would make a clear distinction between the Foreign Service and the Civil Service and provide for transferring out of the Foreign Service the purely domestic employees who are not prepared to commit themselves to overseas assignments. I think that is a useful move. It would give the Foreign Service greater homogeneity with a consequent improvement in the spirit of the Corps.

A second provision of the proposed legislation which could serve also to encourage the Foreign Service and increase its attractiveness to potential entrants is the proposed creation of a Senior Foreign Service which would provide not only greater rewards but also more vigorous performance standards for our older diplomats. Coupled with the other provisions of the proposed legislation, this would facilitate the absolutely indispensable process of selection out—the clearing out of deadwood which invariably accumulates in any career service.

I have not had either the time or occasion to study these measures in detail, but I did want to bring to this committee my sense that at least in its broad thrust this is a very useful and indeed necessary piece of legislation if we are to maintain the integrity and the spirit and the effectiveness of our Foreign Service.

STATEMENT OF RICHARD I. BLOCH, CHAIRMAN, FOREIGN SERVICE GRIEVANCE BOARD

I serve as the umpire and arbitrator for a number of Federal agencies including the Internal Revenue Service, the Labor Department, the Treasury Department, Community Services Administration, Justice Department, and a number of others. I am familiar in general with arbitration systems both in and out of the Federal sector.

My judgment and it is a unanimous one, I might add, is that this system we have now even on the basis of the old legislation is the single best Federal sector system we know. We think the act is well structured and for the most part adequately responsive to the needs of the parties.

I have been impressed with both the quality of the presentations of the parties and the responses of our Board.

STATEMENT OF FORMER SECRETARY OF STATE HENRY A. KISSINGER

I cannot be said to have been one of the greatest admirers of the Foreign Service when I was serving in the White House as a National Security Advisor. But when I had to work with the Foreign Service as Secretary of State I became convinced that it is one of the most dedicated and one of the ablest and one of the most indispensable groups of men and women in our Government.

In our system with its frequent alternation in high office, it is indispensable to have a professional corps that represents the continuity of our foreign policy, that operates professionally, that looks at foreign policy from the point of view of the general interest and while of course there are exceptions in any large organization, in my experience I have never worked with as able a group and as dedicated a group. As I read this proposal, this proposed legislation, it is an attempt to strengthen the professionalism.

It seeks to insure a recognition of measure and it attempts to open up the career ladder to the most promising men and women.

Although I do not claim familiarity with some of the detailed personnel provisions of the bill, I am satisfied that it would effect the three changes most needed to strengthen the Foreign Service and to enable it to meet more effectively the challenges ahead.

First, the bill recognizes the clear distinction between the Foreign Service and the civil service. As recognized in the interim report filed in January of 1977 by then Deputy Under Secretary Larry Eagleburger at my direction, earlier efforts to induce into the Foreign Service persons whose skills and services are needed only in domestic assignments were ineffective and unrealistic.

Second, the administration proposal would consolidate and codify the personnel system and laws of the Foreign Service—as also suggested in the 1977 interim report. The present multiple array of personnel categories and subcategories deters good management and makes individual inequities hard to avoid. The hundreds of amendments passed to the Foreign Service Act of 1946 and the many personnel laws which affect Service personnel need restatement and updating.

The pending bill provides a contemporary reaffirmation of the role of the Foreign Service, which should provide an excellent charter for many years to come.

Finally, and most importantly, the pending measure would provide needed closer linkage between granting career status, advancement, compensation, and retention in the Foreign Service and continuing high performance requirements. I am frank to say that although this was the intent of the 1946 act, it has not always been reflected in practice. The intended "up or out" principle has been breached too often. Officers at the top career ambassador and career minister ranks have been immune from performance evaluations and selection out, and sometimes stay on long past their prime periods of service.

In summary, I would urge your support for the proposed new Foreign Service Act. It will preserve and strengthen the best traditions of the Service, and make it possible for its members to better perform their essential role and missions now and in the future.

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, D.C.

(The American Foreign Service Association Representing 11,000 Foreign Service People Urges Prompt Passage of the Foreign Service Act of 1980.)

This is an Act to strengthen the foreign policy of the United States by strengthening and improving the Foreign Service of the United States. It comes at a time when the United States faces increasingly complex challenges abroad which will require the best skills we can bring to bear to meet them. It also comes at a time when our people face increasing dangers, hardship and family dislocations by following careers of service wherever their country sends them, whenever they are needed.

The new Act is important because in the thirty-three years since the existing Foreign Service Act was enacted, the personnel structure of the Foreign Service has become overly complex; it is becoming increasingly difficult to recruit and retain top candidates; promotion rates have slowed and increasing responsibilities placed on our people have not been accompanied by increasing resources to meet them.

The new Act would:

A. Reaffirm the need for a separate career Foreign Service, characterized by the highest standards, able to advise the Secretary and the President on the formulation of foreign policy, and to implement the full range of programs to advance United States interests abroad.

B. Provide a strong voice for the members of the Service in protecting their own careers from political abuse and arbitrary action through specific application of merit principles, collective employee representation, and legislated grievance procedures.

C. Provide more equitable compensation between the Foreign Service and Civil Service based on a thorough comparability study mandated by the Congress in the FY 1979 State Department authorization and provide other incentives for a lifetime of service abroad under difficult circumstances.

The House Foreign Affairs Committee and the Post Office and Civil Service Committee have spent a year examining this legislation in depth, after years of study by the Foreign Affairs Agencies and concerned employee organizations. Both Committees unanimously reported out similar bills.

While there is broad support for the Bill among the concerned House and Senate Committees, the Administration and employee organizations, there are a few areas to which particular attention should be paid.

A. Provisions guaranteeing full pay comparability to conform to the 1970 Pay Comparability Act are essential to the Bill. Denial of equity in the interest of saving a marginal amount of money would be a blow to the career service at a time when it is already under severe assault abroad.

We urge you to oppose: any attempt to dilute Section 403 providing for long overdue comparability.

B. Section 501(b) in the Post Office and Civil Service Committee markup would establish the principle that positions should be declared Civil Service unless there is a positive reason why Foreign Service designation is required, even for Foreign Affairs agencies. This establishes a presumption of guilt against the Foreign Service in Foreign Affairs agencies. We urge you to vote against Section 501(b).

C. We support proposals for a statutory Committee to review Ambassadorial candidates.

We urge you to support this amendment when offered.

The men and women of the Foreign Service will consider your support for all the essential provisions of the Foreign Service Act of 1980 as the greatest single demonstration that the sacrifices they are making around the globe are appreciated by their countrymen.

UP AMENDMENT NO. 1572

Mr. MATHIAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an unprinted amendment numbered 1572.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 205, line 4, strike out "(a) In" and insert in lieu thereof "(a) Except as provided in subsection (b), in".

Page 206, line 1, strike out all through line 2 on page 207 and insert in lieu thereof the following:

(b) (1) Notwithstanding any other provision of law, the status, promotions, class, and tenure of individuals who, immediately before the date of enactment of this Act are in the Foreign Service in the International Communication Agency and are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals shall, continue to be governed by the Foreign Service Act of 1946 and Public Law 90-494 (as those Acts were

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in effect immediately before the effective date of this Act.) This Act (except sections 402, 403, 404, 405, 504) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 610, 803, 1002, 1101 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are covered by this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall not be less than those rates in effect on the effective date of this Act and shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

Mr. MATHIAS. Mr. President, I am pleased to offer an amendment to section 2104 of the proposed Foreign Service Act of 1980.

Let me say before I discuss the amendment, however, that I express my appreciation for the work which the managers of the bill, the distinguished Senator from Rhode Island and the distinguished Senator from New York, have vested in bringing this bill to the floor.

One of the sources of pride at being a Senator from Maryland is that I am privileged to probably represent more Foreign Service officers than any other Member of Congress. Many, of course, have their home of record in the State of Maryland. They may be dispersed at embassies and other diplomatic posts around the globe, but we are very proud that so many of them have chosen to make the State of Maryland their permanent home.

Mr. PELL. Mr. President, if the Senator will yield at that point, knowing the Senator's partiality for the word "anomaly," I suggest it is an anomaly that the State of Rhode Island is the only State whose constituents are represented by an ex-Foreign Service officer also.

Mr. MATHIAS. I do not know that I would consider that an anomaly on my list of anomalies. I think it is a matter for which the citizens of Rhode Island are to be congratulated.

Mr. President, this amendment affects only 15 lines in a bill that has 254 pages as reported by the Committee on Foreign Relations. But in those 15 short simple lines it will prevent a substantial injustice from being imposed.

In 1977 the International Communications Agency and the representative of its employees entered into a negotiated agreement pursuant to the Nixon Executive order on labor-management relations. This agreement has three central features.

One, the Foreign Service "domestic specialists" at ICA would at no time be forced to convert to civil service status.

Let me repeat that because I think it is important that the Senate understand it.

It was agreed that at no time would the domestic specialists at ICA be forced to convert to civil service status. This was the word of the United States of America. This was the contract.

Second, these employees were given the option until June of 1981 to voluntarily convert, with the terms and conditions of their willing conversion guaranteed by the agreement until that date.

The third feature of this agreement was that ICA would discontinue hiring new employees as Foreign Service "domestic specialists." In time, therefore, this particular category of public servant would be phased out.

If the Senate will carefully peruse section 2104 of this bill, it will be observed that the bill would violate the agreement's open-ended prohibition against forced conversions.

What the bill does very simply is to break the word of the United States of America to its own employees.

This amendment would retain the status quo, would allow the agreement to remain in force, and would thereby prohibit the mandatory conversion to the civil service of these employees.

Of course, I am sure that all of the arguments that can be raised will be raised, such as "Well, this would establish a precedent; this would create problems in the future."

But those arguments are hollow when you consider that you are dealing with a very small group of people whose extinction is guaranteed by the terms of the agreement. They are going to be gradually phased out. There will be no more Foreign Service "domestic specialists."

The amendment would not affect the application of section 2104 to employees in the Department of State or the International Development Cooperation Agency nor would this amendment affect any other provisions of this bill.

The point of the amendment is so simple that I wonder that it really has to be raised, and that is the United States of America keeps its word to its own employees as well as to everyone else, and we are not keeping our word. This is not a case of some misunderstanding. It is a contract made by the Government of the United States and the only way to honor that contract is to adopt this amendment. I hope the Senate will do just that.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, the Senator from Maryland knows the regard and respect in which he is held in this body and that I hold for him.

I have gone over his amendment. I see his purpose, and I would like to be in agreement with him. But, alas, I cannot.

In the first place, as a matter of equity if this amendment were passed it should apply not only to ICA but to the other five agencies of the Government that are also involved.

But the argument against the passage of this amendment is that there is a fundamental principle in the bill that there be a very clear division of employees into Foreign Service and civil service components.

From the viewpoint of administering the agency, it would be impossible to have employees who are neither one nor the other. Great effort has been expended to insure that individuals who move from Foreign Service to civil service, because they will not be serving overseas, are fully protected with respect to their grade, status, pay, and retirement system.

I think the International Communications Agency has estimated that it would take as long as 20 years to achieve a clean system if conversion proceeds only on a voluntary basis. So for this period of time we will have this very multihued system which is just exactly what we are trying to avoid with this legislation. This legislation, I might add, has been worked on for some years by both Republican and Democratic administrations, and it meets the needs that the Foreign Service and the American Government must have to be responsive to modern diplomatic demands.

Speaking in a more personal way, I have often thought that if the act of 1946 had been properly implemented, we would not have had to have this pending legislation. Unfortunately, it was not adequately applied. This was the reason for this proposal which was the original creation of, I think, Assistant Secretary Eagleburger. It was he who talked to me about it first, then Secretary Kissinger, and through the years it has developed as a nonpartisan effort. In my view, it is a pretty excellent bill.

The 3 years that are provided by this bill for people to convert to civil service should provide ample time for individuals to make decisions about their future careers and to move either to the worldwide Foreign Service category if there is a need for their services or into the civil service if they are to remain domestic employees.

For all these reasons I find myself compelled to oppose the amendment.

Finally, with respect to the so-called breach of word of the United States—and I am trying to get the text of the union contract now—we all know that such contracts or ruling are not immutable pledges for the life of the Government of the United States.

Mr. MATHIAS. Mr. President, if the Senator will yield, I do not believe it was a ruling. It was an agreement, it was a contract. This bill without my amendment will break that agreement.

Mr. PELL. Does the Senator have a copy of the agreement, by any chance?

Mr. MATHIAS. I will try to secure one for the Senator. Let me, while we are doing that, just explain a few other aspects of how this bill will operate for this small group within the International Communication Agency.

The bill excludes these employees from the increased pay provisions of the new act. Therefore, under the bill as reported, these employees will not be able to receive the higher level of pay which is given to the Foreign Service because of hardships attendant on service abroad.

Section 504 would require these domestic specialists to serve abroad, although the bill would prohibit them from receiving the compensation guaranteed others who fulfill this obligation.

The head of the Agency testified—and the Senator may recall his testimony—that although domestic specialists are technically available for worldwide assignment, the Agency has not and does not intend to force these employees to serve abroad, partly because there are

no positions abroad. These domestic specialists serve the Agency's worldwide mission by their work as writers, broadcasters and engineers—work which is primarily performed domestically.

In line with these concerns expressed by the Agency, this amendment removes the bill's inconsistency between, on the one hand, denying the domestic specialist the pay rate that would be available to them if they served overseas, while, on the other hand, requiring them to be available for such services.

Mr. PELL. Mr. President, I believe, going back to this question of the word of the United States, I think a commitment was given in a contract between the American Federation of Government Employees, AFGE, and the U.S. Information Communications Agency.

The bill before us takes full account of this agreement. S. 3058, the bill before us, has provided that conditions of conversion are radically changed and that statutory authority to save pay, status, protection of Foreign Service retirement, and protection against downgrading are all provided to those who will convert. But here is the interesting point: None of these would have been possible under the AFGE–ICA agreement which constitutes the basis for what the Senator is talking about.

In fact, S. 3058 takes into full account the 1977 agreement, which is the so-called word of the U.S. Government, by providing that the conversion period will not begin until July 1, 1981.

Mr. MATHIAS. The Senator is exactly right. The bill does look to many provisions of the contract. That is why I am so distressed that this little group of people, this group of domestic specialists in the ICA, should be the only group whose rights under the contract are violated. I am not suggesting that the committee has ridden roughshod over the rights of the employees in general.

The Senator has suggested the word "anomaly." Perhaps this is, in fact, an anomaly that this group—which had certain specific rights guaranteed under that contract, finds that those rights are violated by this provision.

I am not suggesting that the Congress does not have the ability to break that contract. I am just saying by this amendment that we ought not to break that contract.

Mr. PELL. Mr. President, I understand the Senator's point. What really happened here was that an agreement was made that until 1983 nobody would be required to convert.

Mr. MATHIAS. Exactly.

Mr. PELL. But after that time, it was left absolutely blank. The contract was silent on it.

The Senator's interpretation is that it was an implicit commitment. That is like saying that in any union-management contract there is an implicit commitment to extend the terms indefinitely into the future enough for the term of the contract.

Mr. MATHIAS. Mr. President, I think it is clear that this group of employees was given the right until June of 1981 to convert. But I think it is equally clear that they were at no time to be forced to convert, either before or after June of 1981.

In the CONGRESSIONAL RECORD of September 8, 1980, there is an excerpt from the testimony of Mr. Reinhardt, head of the Agency, in which a Representative, Mr. DANTE FASCELL is asking a question. Mr. FASCELL asked the question:

And this contract runs out on July 1, 1981?

Mr. REINHARDT. Only as it applies to the voluntary conversion portions of the agreement. That is, the approximately 900 employees in USICA have until June 30, 1981, to make a decision as to whether they want to convert to the civil service or remain in the Foreign Service.

Mr. FASCELL. You mean that is in the contract?

Mr. REINHARDT. That is in our agreement with the union.

So there it is in black and white. I do not see how there could be any other interpretation than that which I have given to it.

There is another aspect to this, Mr. President. The reported bill contains a list of the provisions for which the employees who would be covered by this new subsection are to be considered members of the Foreign Service. My amendment makes two changes in the list.

First, it adds section 1102 on labor-management relations and 1101 on grievances, thereby continuing the present status of these employees under the existing grievance legislation and the Nixon Executive order on labor relations. Adding these two sections removed an unintentional ambiguity, because no one has suggested that these employees should have their existing status revoked.

I have a further excerpt from that RECORD of September 8, 1980, where the statement is made:

Consistent with the later congressional testimony of both the agency and the employee representative, the circular prohibited mandatory conversion without any time limit. It stated, in underlined text: "Conversion from FS to GS will be entirely voluntary at the option of the employee."

Now, that is pretty clear, Mr. President. But let me just make this final observation. The second change made by the amendment is add section 504 of the bill to those sections of the new act, which would not apply to the employees protected under this amendment by the collective bargaining agreement. The reported bill already excludes the employees converted by this subsection from the increased pay provisions of the act.

If these people are not going to get higher pay for serving overseas, then they ought not to be subject to such service under this section. This amendment, with all deference to the authors of the bill, I think makes the bill consistent. These employees will not be paid the higher rates and they will not be forced to serve abroad.

I hope, Mr. President, that the Senate will adopt this amendment which observes commonsense, logic, and consistency but, most important of all, keeps the word of the Government of the United States to its own employees.

Mr. PELL. Mr. President, I appreciate the articulate presentation of the Senator from Maryland. I think there are many arguments that can be made back and forth. I repeat again that the contract certainly covers the period of the contract, and should not bind us in the exercise of our legislative responsibilities.

Mr. MATHIAS. Mr. President, I have no desire to prolong this debate, a debate which may involve a small group of people, who, as a class, are headed for phasing out. But this is important to them. I do not like to have this decision, which is important to 900 faithful servants of the United States, made by two Members of the Senate. I say that in deference to the Chair because he is prevented by the rules from participating in this debate.

Though I am reluctant to disturb Senators who are busy doing many other things in other places, how can we avoid a rollcall?

Mr. PELL. Does the Senator want to ask for a rollcall vote?

Mr. MATHIAS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. MATHIAS. Mr. President, I make the point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Nebraska (Mr. EXON), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Oklahoma (Mr. BELLMON), the Senator from Arizona (Mr. GOLDWATER), the Senator from California (Mr. HAYAKAWA), the Senator from New Hampshire (Mr. HUMPHREY), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

The PRESIDING OFFICER (Mr. TSONGAS). Are there other Senators who wish to vote?

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The result was announced—yeas 52, nays 34, as follows:

[Rollcall Vote No. 399 Leg.]

YEAS—52

Baker	Hefin	Riegle
Baucus	Heinz	Roth
Bayh	Helms	Sarbanes
Boren	Inouye	Sasser
Boschwitz	Javits	Schmitt
Burdick	Jepsen	Schweiker
Chafee	Kassebaum	Simpson
Cochran	Laxalt	Stafford
Cohen	Leahy	Stevens
Culver	Levin	Stewart
Danforth	Lugar	Thurmond
Dole	Mathias	Tower
Domenici	McClure	Wallop
Durenberger	Melcher	Warner
Garn	Metzenbaum	Weicker
Gravel	Moynihan	Young
Hatch	Percy	
Hatfield	Pressler	

NAYS—34

Bentsen	Durkin	Nunn
Biden	Eagleton	Pell
Bradley	Ford	Proxmire
Bumpers	Glenn	Pryor
Byrd, Harry F., Jr.	Hollings	Randolph
Byrd, Robert C.	Huddleston	Ribicoff
Cannon	Jackson	Stevenson
Chiles	Johnston	Talmadge
Church	Matsunaga	Tsongas
Cranston	Mitchell	Williams
DeConcini	Morgan	Zorinsky
	Nelson	

NOT VOTING—14

Armstrong	Hayakawa	McGovern
Bellmon	Humphrey	Packwood
Exon	Kennedy	Stennis
Goldwater	Long	Stone
Hart	Magnuson	

So Mr. MATHIAS' amendment (UP No. 1572) was agreed to.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was adopted.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, what is the will of the Senate?

The PRESIDING OFFICER. Who seeks recognition?

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business and that Senators may speak therein for a period not to extend beyond 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m. tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UPON COMPLETION OF BUSINESS TOMORROW UNTIL MONDAY, SEPTEMBER 15, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow it stand in recess until Monday next. I will decide a time for convening a little later.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OF WALLS, CANALS, PIPELINES, AND PYRAMIDS; AND THE MX

Mr. PROXMIRE. Mr. President, the official Department of Defense MX office has updated the cost of the MX system in constant and appropriated dollars. The figures make for interesting if not alarming reading.

The R. & D. military construction, and deployment costs of the MX, in 1980 dollars, total $33.8 billion. The cost of maintaining these missiles over a 20-year period is $8.9 billion. This makes a 1980 life cycle cost of the MX program at $42.7 billion.

Of course any calculation in 1980 dollars does not factor in inflationary changes over the years. The Congress does not get an opportunity to appropriate for any program, domestic or foreign, in constant dollars.

Think of it, Mr. President, if we could appropriate in constant dollars, we could hold the budget in balance. We could make true calculations of alternative programs. There would be no hiding large program increases in the "noise" of inflation.

But sadly, we must appropriate in the kind of dollars the taxpayers pay annually. So, we must consider the amounts the Congress will be called upon to approve for any weapons system, or water project, or education program.

The total acquisition costs of the MX in appropriated dollars will be $52.7 billion. Adding in operation and maintenance costs over 20 years in appropriated dollars gives the grand total of $78.6 billion.

As one Air Force official has been quoted, "the MX deployment will be man's largest project, larger than the Great Wall of China, larger than the pyramids, larger than the Alaska pipeline or the Panama Canal."

Will, I hope that the MX, if built, turns out more like the Panama Canal than the Great Wall of China, or the Alaska pipeline or the pyramids.

Why? Because the Panama Canal was completed in 1914 at a cost of about $352 million or some $23 million under the original estimate in 1907. Furthermore, it was open 6 months early. Now that is a story we do not hear much anymore.

The Alaska pipeline, in contrast, had an original estimate of $900 million, later amended to $3 billion, and a final cost of $8 billion. If the MX program follows the pipeline example, the MX will cost $142 billion and be years late, and that would not surprise this Senator one bit.

Or maybe the MX will fit into the mold of the Great Wall of China. The Great Wall started out, perhaps as early as the fifth century B.C., as a system of small walls protecting the northern borders. With consolidation and unification in 221 B.C. the Wall stretched to its fullest extent. The Great Yellow Emperor of the Chin dynasty reportedly diverted so much government revenue and labor service to consolidate the wall that many historians cite this as the principal reason for bringing his downfall and that of his successor son. There was rebellion in the land and control gradually fell to various generals.

It is hard to resist the temptation to draw an analogy, but I will resist.

And what of the pyramids? Herodotus claims that the Great Pyramid required 100,000 workers for 20 years, probably on 3-month a year shifts plus another 10 years for the associated minor construction. Other estimates state that for the six major pyramids, on average 74,000 people were required each year for one century—100 years of labor. No matter which estimate is assumed correct, there can be no doubt of the labor intensive requirement for pyramid building.

So what do we end up with? If the MX is the world's largest public works project, can we conjecture that it will suffer the manpower problems of the pyramids? Will it divert the national treasure as with the Great Wall so that a political system will fall? Will it have the cost overrun of the Alaskan pipeline?

Or will a miracle happen and it be built under budget and ahead of schedule like the Panama Canal?

With $78.6 billion in tax dollars at stake, it is a question with more than a little importance.

HEROINE OF THE VILNA GHETTO

Mr. PROXMIRE. Mr. President, Anna Simaite served both the physical and the spiritual needs of the Jews imprisoned in the Vilna ghetto. She knew that human life consists of more than physical survival. She knew the importance of a flower to a woman struggling against despair. And she knew the importance of guns to those planning resistance.

When the war engulfed Lithuania, Anna was working in the catalog department of the Vilna University Library. Her fame as a literary critic was well-established. She easily could have detached herself from the degradation of the Jews. Yet she would not accept

her own safety while others suffered. As she said 10 years later:

> I was ashamed that I was not Jewish myself. I had to do something. . . . I realized the danger involved, but . . . a force much stronger than myself was at work.

The plan she devised temporarily escaped Nazi suspicion. Claiming that many University library books were in the possession of Jewish students then imprisoned in the ghetto, she was granted immunity to travel freely between the ghetto and the outside in order to reclaim the books. Once past the wired and guarded ghetto walls, Anna began her underground work. Each day she would smuggle in flowers and guns, letters and forged Aryan papers. Each day she would calmly pass the guards while carrying out documents, a few books, and diaries of the imprisoned Jewish martyrs. She arranged for the housing of many Jewish children, and then helped them escape the ghetto. Her free passage mocked the purpose of the ghetto wall.

But in April of 1942, the Nazis began to suspect this tireless librarian. Though warned by friends that her arrest was imminent, Anna refused to desert the Jews. Total extermination was the unquestioned fate of the ghetto-dwellers. Her own arrest seemed a small risk in comparison. For 2 years she evaded the Gestapo, but in 1944 she was arrested, beaten, and sentenced to death. A friend bribed a high Nazi official to spare Anna, and she was deported to Dachau. The allies found her, skeletal and barely alive, in a concentration camp in southern France.

Anna was not forgotten by the children she had saved. Those who knew of her survival wrote letters of thanks. One persuaded Anna to go to Israel, where in 1953 she was warmly acclaimed. The works she has written since the war and those she smuggled out of the Vilna ghetto have enlightened our understanding of the war years.

Mr. President, I have recounted the story of Anna Simaite for one reason. I believe that her example makes a strong argument for ratification of the Genocide Convention. Her actions show the highest regard for human life and a most personal opposition to genocidal policies. Her actions reveal that she could not remain inactive while suffering surrounded her. Mr. President, this body also has a high regard for human life. I ask my colleagues to remain inactive no longer. In light of Anna's example, I urge the immediate ratification of the Genocide Convention.

GRAIN EMBARGO HURTING RUSSIANS

Mr. PROXMIRE. Mr. President, on August 20 and 21 the Committee on Banking, Housing, and Urban Affairs, which I chair, held hearings on the effects on Russia of President Carter's decision to suspend partially U.S. grain sales. The purpose of the President's action was to make the Russians pay a price for their ruthless attack on the independent nation of Afghanistan. The hearing record shows clearly that the embargo is imposing significant economic and political costs on the Russians. Now we have additional information which supports that conclusion.

Prof. Gregory Grossman of the University of California at Berkeley, who is a leading academic expert on the Soviet economy has submitted a statement to the committee. Professor Grossman points out that the U.S. embargo does not have to be fully effective to be costly to the Russians. No one ever expected the Russians would be unable to replace part of the 17 million metric tons of grain the United States denied them. The shortfall, even if it is much less than 17 million tons, can still be quite expensive for the Russians. Professor Grossman states:

> I submit that the short-term effect of the embargo on the Soviet economy may be considerable, even if it is only partially effective; and, further, that the longer-term effects on the Soviet economy may be more important yet. These effects largely derive from the central position of the meat supply in the Soviet scheme of things (and, for that matter, in East Europe generally, as this summer's Polish events have once again demonstrated).

Professor Grossman goes on to say that:

> The gravity of the situation from the Soviet standpoint must be seen, of course, not only in economic terms. In the USSR—as throughout Eastern Europe—no problem has concerned the mass of consumers more than the price and availability of meat in official stores, and the price of meat in unofficial outlets. And probably no problem has been seen by the public and the rulers alike more than this one to be a leading test of the efficacy—and even political legitimacy of the regime.

Professor Grossman also argues that the grain embargo adds to the difficulties the Russians face in allocating resources to the major problem sectors of their economy: agriculture, energy and transportation. There are no easy choices for the Russians. As Professor Grossman says:

> It must be emphasized that should the embargo enhance the Soviet search for long-term grain independence, the near-term pressure on Soviet resources might be appreciably increased, the energy, transport, and other major bottlenecks may be aggravated, and the course of the Soviet economy significantly affected for some time to come.

Mr. President, just yesterday the New York Times reported that the Russians are not going to have nearly as big a grain harvest this year as they had planned. They had hoped to raise 235 million tons of grain. The latest estimate is no more than 200 to 210 million tons. As the correspondent for the New York Times concludes:

> This means that the already tight supply situation in feed grains, the controlling factor in the Government's hopes of increasing meat production, will be that much tighter, and the impact of the American embargo on grain sales to the Soviet Union will be that much sharper.

The fact is, as the New York Times article points out, that despite the Soviet leadership's public commitment to increase meat production, the increase has only kept up with population growth, and the average Soviet citizen is getting no more meat now than he did in 1976. In many areas of the country beef is not available at all in the state stores.

The New York Times article says:

> More than an improvement in diet is involved in the Government's promises to increase meat supply. The promises go to the heart of the entire economic plan.

The Defense Intelligence Agency estimates that the Soviets have had to pay $1 billion in higher prices for the grain that it purchased in the world market to make up for the loss of U.S. supplies.

The grain purchased to substitute for the U.S. grain, as the New York Times points out, is often lower quality and has caused the Soviets additional problems with feed formulas for their livestock.

The partial grain sales suspension has been effective and ought to be continued. Certainly it ought not to be rescinded by act of Congress as some of my colleagues have proposed. Professor Grossman reminds us that the strikes in Poland were partially caused by hikes in meat prices, and he makes what seems to me to be the clinching argument:

> A termination of the embargo by Congressional vote at this time would be likely to be interpreted by the peoples of Poland and the rest of Eastern Europe as essentially a discouraging signal, and to this extent would tend to relieve the economic as well as political pressure on the Kremlin from that side.

The decision to impose the grain embargo was a prudent and meaningful response to the Soviet invasion of Afghanistan. The embargo is forcing the Soviets to pay a heavy price for that transgression.

The embargo is not just a symbolic action. It is a positive, forceful, and tangible action and a costly one for the Soviets. If the Soviet harvest is as bad as is now being forecast the embargo will prove to be even more costly.

Mr. President, I ask unanimous consent that the statement by Professor Grossman and the New York Times article entitled: "Soviet Grain Prospects Worsening; Embargo by U.S. May Cut Deeper" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY GREGORY GROSSMAN

My name is Gregory Grossman. I am professor of economics at the University of California, Berkeley, and a long-time student of the Soviet economy and related matters. I am very pleased to have the opportunity to submit the following remarks for inclusion in the record of these Hearings. I am doing so entirely in my private capacity.

There seems to be some misunderstanding in our media and among some of our public figures in regard to the economic effects of our grain embargo on the Soviet Union. It is sometimes said that the embargo is "ineffective", has "failed", because much of the grain denied to the Soviets by us has been seemingly replaced by other non-communist countries. (I say "seemingly" replaced, because we cannot know exactly how much the Soviets would have bought anyway from the third countries in the absence of our embargo.) This conclusion is at best hasty, as I shall try to show. It is occasionally also assumed that the Soviets can fairly easily rearrange their priorities and reallocate their resources so as to substitute from domestic production the grain that otherwise they would buy from us in future years. The assumption is of doubtful validity.

It is also argued by some in this country that the use of food as a weapon in international relations is illegitimate. That is to

say, we act immorally when we deprive the citizens of another country of food, thereby jeopardizing the survival of some of them, even when the object of our embargo, the Soviet government, is killing hundreds of civilians in Afghanistan. One can certainly respect this moral stand, but, in my opinion, it is not germane in the present instance.

I

Let me address the moral argument first. Even if our embargo of 17 million tons of grain were entirely effective, the civilian (let alone military) population of the USSR would not be denied its necessary subsistence. In fact, it would still enjoy a relatively high calorie diet from the country's domestic production of grain and other foodstuffs. No one in the USSR need die of starvation because of our embargo—except through the callousness, inhumanity, or inefficiency of the Soviet authorities themselves (which all our food cannot guarantee against). The effect of our grain embargo would be almost entirely in the form of a reduction in the supply of livestock products in the Soviet Union, and primarily of meat. By dint of the embargo we are not starving people—and would not be even if it were fully effective. We are, at most, starving only Soviet livestock. In other words, the effect of the embargo is to make the Soviet diet, already heavily loaded with carbohydrates as against animal protein, even less well balanced and less palatable to the consuming public. But it would not become inadequate for human sustenance or work.

In this sense, a grain embargo against the USSR has a completely different moral meaning than might an embargo against, say, some underdeveloped country near the edge of subsistence. It may be even argued that to the extent our grain embargo indirectly diverts grain from the Soviet Union to some of the poorer countries of the world, which cannot normally outbid the USSR in the world grain market, the force of the moral argument is on the side of the embargo.

II

Yet to argue that the grain embargo even at its most effective will not cause a calorie shortage in the Soviet diet is far from asserting that it has no economic effect. I submit that the short-term effect of the embargo on the Soviet economy may be considerable, even if it is only partially effective; and, further, that the longer-term effects on the Soviet economy may be more important yet. These effects largely derive from the central position of the meat supply in the Soviet scheme of things (and, for that matter, in East Europe generally, as this summer's Polish events have once again demonstrated).

The Soviet diet has all along been drab and monotonous, and especially short of animal proteins. Soviet consumers have consistently striven to rapidly increase their purchases of meat, dairy products, and other high-value foods as their purchasing power rose. Soviet grain output took off rather quickly after the middle 1950's, and an increasing proportion of grain has been diverted to animal feed (periodically supplemented by large importation from the West). The rapid growth of effective consumer demand could be satisfied to a large extent. According to official statistics, between 1965 and 1975, consumption of meat (including fat and by-products) increased from 41 to 57 kilograms per capita per year, i.e. at a rate of 3.3 percent per annum. During the same ten years, per capita real disposable personal incomes increased, on the average, at 4.6 percent per year (estimates by M. Elizabeth Denton, OER, CIA). In other words, meat consumption increased at an annual rate about 70 percent as high as the rate of increase of real incomes (3.3:4.6=0.717).

Despite the rather fast increase in per capita meat supply, there existed a visible, and at times severe, persistent shortage of meat in the official stores. A considerable part of the meat consumed by Soviet people is purchased in unofficial outlets, farmers markets and black markets, where the price for equivalent quality is typically considerably higher and fluctuates freely in response to changing demand-supply balance. Some meat is self-supplied. The reason for the chronic shortage in official stores and the high prices in unofficial markets is, of course, that thanks to rapidly rising nominal incomes and the public's quest for a better diet, demand has tended always to run a few steps ahead of supply.

It should be noted that during this period the Soviet government pursued the policy of keeping official retail prices of meat and meat products fairly stable. Accordingly, the price mechanism (at least in the official market) was not allowed to regulate demand in response to changes in supply, thereby significantly complicating the government's problems. Official prices of meat (as well as other products), have been subsidized on a large and increasing scale to this day. In 1975, the total meat subsidy amounted to 11.2 billion rubles, equalling about 5.2 percent of the aggregate expenditures of the consolidated Soviet budget, and about 4.5 percent of aggregate household incomes. (In the same year, 1975, subsidies to official retail prices on all consumer goods, but excluding those to transport, housing, amounted to almost twice the subsidies to meat alone, namely, 20.1 billion rubles, according to the estimates of Professor V. G. Treml of Duke University.)

Inadequate though it has always been, the supply of meat reached a peak in 1975, and has been falling behind the growing demand since. Per capita consumption, which—as mentioned—had been rising 3.3 percent per year in the preceding ten years, at best remained level between 1975 and 1979 (and, even without the embargo, this year would probably also show little improvement if any). At the same time, since 1975, per capita real disposable incomes have continued to rise—slower than before but still, by our rough estimates, some 2.5–3 percent per year, for a total rise of perhaps 13–16 percent over the five years, 1975–1980.

Applying the already mentioned 70 percent factor, we would expect meat consumption in the current year to have reached a level 9–11 percent above that of 1975, per capita. In fact, as we just saw, it is practically the same as in 1975.

In other words, we may perhaps say that during 1975–1980 demand for meat seems to have outrun supply by some 10 percent. This is not a small gap. (Indeed, our estimate of the gap may be too low for two reasons: (a) it implicitly overlooks the fact that in the base year of our calculation, 1975, there probably already was a substantial excess demand for meat in the official sector, and (b) it does not take into account the rise in the public's holdings of savings deposits, which has been much faster than the rise in personal money incomes.) Understandably, therefore, in the past five years, and especially in the past year or two, official stores have been increasingly devoid of meat and meat products, the quality of meat in such has declined, prices in unofficial markets rose sharply, and public dissatisfaction with the meat situation, always smoldering, seems to have grown markedly, by all reports.

Enter the embargo. How much would it have directly affected Soviet meat supply if it had been fully effective? Assuming that all the embargoed grain was intended as livestock feed, and assuming a conversion ratio 10:1, the embargoed 17 million metric tons would have reduced meat supply 1.7 million tons. This is approximately 11 percent of the amount of meat that would have been consumed without the embargo (estimated at 15 million tons equals 57 kg./head times 265.5 millions persons). In other words, a fully effective embargo would have doubled (or more) the above-computed gap, thereby seriously aggravating an already grave supply-demand balance. If the embargo is only one-third effective, as some news reports have suggested, the reduction in meat supply might be of the order of 3–4 percent, still a serious matter under present conditions. Contrary to what some commentators have assumed, the grain embargo does not have to be fully, or even mostly, effective to have an important impact on the Soviet economy in the short run.

The gravity of the situation from the Soviet standpoint must be seen, of course, not only in economic terms. In the USSR—as throughout Eastern Europe—no problem has concerned the mass of consumers more than the price and availability of meat in official stores, and the price of meat in unofficial outlets. And probably no problem has been seen by the public and the rulers alike more than this one to be a leading test of the efficacy—and even political legitimacy—of the regime.

So much for short-term effects. The long-term effects, to which I now turn, may also be important.

III

The long-term effects relate to the possible rearrangement of development priorities and reallocation of resources in the USSR. It should be noted that in a country where resources have almost always been greatly strained, the last few years have seen an even greater pressure placed on them, and the near future bodes more of this yet. The main factors in the recent tendency are surely known: demographic trends unfavorable to the growth, composition, and spatial distribution of the labor force; a mounting energy shortage; depletion of a number of other natural resources; expensive but necessary shift of investment to Siberia; continued heavy investment in agriculture; diversion of resources to environmental protection; not the least, significant slowdown in the rate of growth of capital stock, in large part for the reasons just enumerated; and, hence, marked overall retardation in economic growth. These trends have to be seen against the background of enduring heavy commitment of resources to military ends, and within the setting of a general economic inefficiency that bodes little promise of alleviation in the foreseeable future.

Another factor may be added to this familiar list: the now apparent crisis of railroad transportation. Despite the great extension of the pipeline network and growth of trucking in recent years, Soviet railroads still account for over 60 percent of the domestic interurban ton-kilometers in the country. Their performance deteriorated markedly in the last few years: growing delays in freight shipment, frequent failures to deliver empty cars for loading, increasing loss of goods in transit (including growing pilferage to feed the black market), and so forth. Many Soviet plants have been forced to curtail production for want of transport. There have been frequent complaints in the general press and the specialized literature on this score, and some leading Soviet specialists see transport as a major limiting factor to further Soviet economic growth in the near future (cf., Academician A. Aganbegian in Economics and Organization of Industrial Production (Novosibirsk), 1979:10, p. 7). The chief reasons for the railroads' plight seem to be (a) their having reached the limits of the throughout capacities of many key nodal points in the rail net, and (b) the considerable physical deterioration of the rolling stock, notably of locomotives, with insufficient replacement of equipment and chronic shortage of spare parts. To break this bottleneck the Soviets will require much capital investment, thus adding to the pressure on resources in the foreseeable future.

Again returning to the embargo, the big

question over a longer term is whether it has tended to intensify the debate regarding the very heavy commitment of investment resources to agriculture, and, if so, whether it has shifted the balance on this score. In relative as well as absolute terms, this commitment has been rising since Mr. Khrushchev's day. By the early 1970's agriculture (broadly defined) came to claim as much as 27 percent of the total gross fixed investment in the economy, or 6–7 percent of the Soviet GNP (Western concept), this high level remaining steady to the end of the decade. (The figure does not include investment in rural housing and rural roads, which would raise the percentage appreciably.) The goal is clearly eventual self-sufficiency in foodstuffs, but with the large and growing claims of other sectors the policy has not been without strong domestic critics. So far, the pay-off from the enormous capital investment of the past decade does not seem to have been strikingly large, and with the increasing capital needs of other major sectors and industries—transport, iron and steel, and, of course, energy, to name a few—it is not unlikely that the commitment to very heavy investment in agriculture would continue to be viewed with doubts in some powerful quarters.

The American grain embargo has, naturally, thrown a new light on the whole question of Soviet self-sufficiency in food, and the presumed arguments of the critics—that it is better to count on imports of American grain and to invest elsewhere, where the pay-offs may be more promising—may have suffered a setback. The Soviet Union's luck this time around in finding non-U.S. sources for a large part of the embargoed grain may be less convincing to Moscow than it is annoying to Washington. It may be reasoned in Moscow either that on another occasion the Soviet need to import will be much greater than in even this bad-harvest year, and therefore U.S. as well as other overseas grain will be required; or that the non-U.S. sources may have less to sell in another year; or that some of them may side with a possible U.S. embargo on political grounds where this time they did not.

These arguments may well be reinforced by the darkening prospects of earning hard currency owing to the likely decline or stabilization of Soviet crude oil output in the near future and the consequent decline in Soviet exports of the commodity to the West.

It must be emphasized that should the embargo enhance the Soviet search for long-term grain independence, the near-term pressure on Soviet resources might be appreciably increased, the energy, transport, and other major bottlenecks may be aggravated, and the course of the Soviet economy significantly affected for some time to come. Exactly what solutions the present Soviet leadership—or the next one—will opt for under the circumstances of tightened resource stringency brought about by a greater allocation of resources to investment in agriculture, as posited, is more than we, or perhaps the Soviets themselves, can now foretell. But it is not unlikely that a removal of the embargo at this point by, say, a vote of Congress, which would probably lay low the likelihood of its repetition for some years to come, would signal to the Soviets that no additional major efforts to hasten the arrival of grain self-sufficiency, and therefore no additional major pressure on their resources, need be expected for this reason.

It may be added that the American farmer need not be apprehensive if the Soviets invest more in the quest of grain self-sufficiency as a result of the embargo. I believe I am correct in my understanding that most Western experts on the Soviet economy would not expect the additional investments in Soviet agriculture to be much more productive than those heretofore, and would not foresee a serious diminution in Soviet dependence on Western grain for some time to come. What is more, the very fact of intensified pressure on Soviet resources is likely to lead, on one hand, to enhanced inflationary pressure, and so to an augmentation of consumer demand for meat, and, on the other hand, to unfavorable effects on the general efficiency of the Soviet economy and so a dilution of the pay-off from the additional investment effort.

IV

As these lines are written, Poland is in the midst of a serious crisis brought about by a chain of major strikes that were triggered by the raising of official meat prices (and related measures) by the government at the beginning of July. The Polish events have certain implications for our embargo policy.

First, the latest Polish workers' revolt, the third such response by the working class to attempt to raise meat prices in ten years, once again did place the Soviet authorities on notice regarding the difficulties of solving their own meat problem. Like the Polish government, the Soviet government has been paying enormous subsidies to keep meat prices low for essentially political reasons, and, as in Poland, with a series of unfavorable economic and fiscal consequences. The Soviet government would most probably prefer to raise meat prices sharply, but so far has not dared to do so for fear of the public reaction. This fear has hardly been allayed by the strikes in Poland. The fear may reinforce the Soviet reluctance to increase meat prices, thereby keeping the demand for meat artificially high, and enhancing the long-term need for very large investment in agriculture. This would tend to make the long-term resource burden imposed by the U.S. embargo, as described above, even more significant, even if the embargo remains only partial.

Second, the Polish crisis may call forth a rescue operation for Poland on the part of the USSR, as on similar previous occasions. Indeed, more Soviet resources may have to be channeled into other Eastern European countries as well to forestall the spread of the Polish malaise. Altogether, we may expect a heightened pressure on Soviet resources—possibly including food resources as such—for this reason, too, which would tend to make the U.S. grain embargo to be felt more by the Soviets.

Third, a termination of the embargo by Congressional vote at this time would be likely to be interpreted by the people of Poland and the rest of Eastern Europe as essentially a discouraging signal, and to this extent would tend to relieve the economic as well as political pressure on the Kremlin from that side.

V

To recapitulate:

The U.S. grain embargo does not have to be fully effective to have a significant short-run impact on the Soviet economy. Under present circumstances, an embargo that is only fractionally effective may seriously reduce the supply of meat in the face of excess demand for meat by consumers, aggravating political problems for the government.

The more important effect of the grain embargo is likely to be the longer-term one, should the Soviets allocate even larger resources towards achieving eventual grain self-sufficiency, as they may well try to do. While their success in this regard is doubtful, in the process they would considerably aggravate the pressure on Soviet economic resources. For this reason, a Congressional repeal of the grain embargo would be of help to the Soviets in grappling with their economic problems.

The recent events in Poland also militate against a Congressional repeal of the embargo.

SOVIET GRAIN PROSPECTS WORSENING; EMBARGO BY U.S. MAY CUT DEEPER

(By Anthony Austin)

MOSCOW, September 7.—The weather has been bad for farmers over most of the Soviet Union during the last month, and prospects for the 1980 grain harvest have worsened.

This means that the already tight supply situation in feed grains, the controlling factor in the Government's hopes of increasing meat production, will be that much tighter, and the impact of the American embargo on grain sales to the Soviet Union will be that much sharper.

Western agricultural experts here still expect the country's state and collective farms to bring in an average harvest. But their July forecast of a grain yield of 210 million to 215 million metric tons has been trimmed to an estimate of between 200 million and 210 million tons.

Soviet authorities had hoped for a near-record grain harvest of 235 million tons, hoping to bounce back from the crop failure of 1979, when only 179 million tons were brought in. Indifferent winter and spring weather had dashed these hopes, but barring an exceptionally bad summer, the country seemed assured of a good enough harvest to get over the worst of the effects of the 1979 disaster.

The summer has not been a disaster, but it has not been good. There has been a lot of rain recently in European Russia and northern Kazakhstan, and it has been dry in the southern agricultural belt. The Soviet press has exhorted farmers to battle the elements and reduce losses in yield. There have been none of the preliminary harvest figures that usually come out this time of the year.

Western experts have been following the harvest prospects with special attention this year because of the important economic and political implications for meat production and grain imports.

BEEF SHORTAGE IS ACUTE

Despite the Soviet leadership's repeated promises to raise meat production, the increase has barely kept pace with population growth, and according to official statistics, the average Soviet citizen is getting no more meat now than he did in 1976. The shortage is particularly acute in beef; in many parts of the country, beef is not to be had in the state stores and is available only at much higher prices in the farmers' markets.

More than an improvement in diet is involved in the Government's promises to increase meat supply. The promises go to the heart of the entire economic plan.

The Soviet Union's economic growth rate is lagging, and there are no extra resources in manpower or energy to throw in as a way of increasing production. The only way is to increase productivity with more output per man-hour.

But productivity rates have also been slipping. There is little incentive for the Soviet citizen to work harder if, after he gets paid, there is so little available for him to buy. Improving meat supplies has been a key feature of the Government's program for increasing consumer goods and incentive in the work place.

Because of lower productivity in the livestock industry, meat production has been going down. Last July, the expectation was that in 1980 it may be 5 percent below last year's total. Now with harvest prospects just a bit worse, the meat situation will be that much tighter.

Last January and February, as a result of some distress slaughtering of livestock, meat production went up about 14 percent. Then it started slipping, and it has declined steeply in the last three months. Production tor to further Soviet economic growth in June and 15 percent in July, compared with figures for the same months of 1979. It seems inevitable that instead of going up this year, as planned, per-capita consumption of meat will go down.

A group of American farmers visting Soviet agricultural areas recently asked a Western farm expert whether the American grain embargo was working.

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"Well," he replied, "the Soviet troops are still in Afghanistan, aren't they?"

If President Carter's grain embargo was designed to force a Soviet withdrawal from Afghanistan, it has not worked. But it is questionable whether Washington really thought that denying the Russians 17 million tons of American grain—while still letting them have the 8 million tons the United States is obliged to sell them annually under a five-year agreement ending in 1981—would produce that effect. It is more reasonable to regard the embargo as designed to give the Soviet Union added problems in an already difficult supply situation.

To make up for the loss of American grain, the Soviet Union has had to pay higher prices for often lower quality from other suppliers, principally Argentina. The Russians have had problems with feed-grain formulas for their livestock as a result of the change in grains, and they may have trouble buying as much this year as last.

In the 12 months that ended June 30, Moscow appears to have made up 11 million or 12 million tons of the lost American grain, bringing their total imports to an estimated 31.2 million tons. But this total included a substantial amount of American grain—in addition to the 8 million tons provided annually—in the form of carryovers from previous years' sales.

Now there is no carryover left. If the United States again sells only the 8 million ton minimum in the 12 months starting July 1, the Soviet Union may find it difficult to obtain more than a total of 25 million tons from other markets, according to Western experts here.

MSGR. GEORGE G. HIGGINS

Mr. MOYNIHAN. Mr. President, last Wednesday evening I spent several hours in the distinguished company of Msgr. George Higgins and his many friends from the labor and civil rights movements. We had come together to celebrate our good fortune, for all of us must count our friendship with Msgr. Higgins among our most prized blessings.

At sometime in his life, most certainly as a youth, Monsignor Higgins must have taken to heart the New Testament admonition against parading one's good works in hope of mere human praise. He has never sought after personal glory or recognition. His apostolate as secretary for special concerns at the U.S. Catholic Conference, which has spanned 36 years, is marked by quiet persistence and patience, not by drama or slick publicity. He knows well what the Sermon on the Mount is all about; he has lived it.

Since Monsignor Higgins is such a quiet and gentle man, not given much to self-advertisement, his friends—and there are many of them—must sometimes take it upon themselves to tell the world about him. Last Wednesday night, some of the Monsignor's fondest admirers put their sentiments in eloquent words. Their comments are worth reading, and I ask unanimous consent that the remarks be printed in the RECORD.

There being no objection, the comments were ordered to be printed in the RECORD, as follows:

REMARKS BY PRESIDENT CARTER

Rarely in history does a single individual embody in his spirit and his person the highest ideas of an entire movement. Monsignor George Higgins is such an individual. For more than four decades the labor movement has been guided by his wise counsel; emboldened by his courageous example and heartened by his unrelenting commitment to the highest ideals of social justice and human rights. As we conclude a celebration of an historic Labor Day for workers throughout the world, I join all in honoring a man who has honored our nation and the entire labor movement throughout his proud life's work. America is a more just, more decent, more humane society because of Monsignor Higgins and the labor movement that he loves. May God bless him and keep him for many years to come.

REMARKS BY AFL-CIO PRESIDENT LANE KIRKLAND

It's good to see that the program for tonight's events reads "Labor's Salute to Monsignor George Higgins." It is hard to conceive of a man of Father Higgins' energy and spirit being described as "in retirement." And, judging by the list of his future activities, Father Higgins doesn't see himself as the retiring type either.

For George Higgins, leaving his post of 36 years with the U.S. Catholic Conference is a simple change of address, not a change of heart.

And it happens to provide the American trade union movement with an excuse for a richly deserved salute to Father Higgins' commitment and leadership.

So, we are saluting George Higgins tonight, not giving him a gold watch send-off. We are pausing for a moment along the way to thank him for walking so many miles with us.

We are taking this opportunity to honor a man who has never sought personal recognition, glory or praise. It may be, because he is a genuinely modest man, that he is even a little embarrassed by the festivities in his honor.

Knowing Father Higgins cares so little for personal rewards, we have to ask him to be patient with us tonight as we admit to our somewhat selfish motives for this occasion.

Tonight's salute is dedicated to George Higgins out of a need that many of us in the American labor movement feel to express our gratitude, our respect and our friendship.

Each of us feels a compelling need to let Father Higgins know that his devotion has never gone unnoticed or unappreciated.

In looking back through the events in the history of the labor movement for the last 40 years, it is difficult to find a time when Father Higgins was not there to stand up for the rights of working people.

I see behind me a line of expert witnesses who are prepared to testify to those occasions with great authority, and I will not steal their thunder.

Only one such witness is not here tonight and that is George Meany, who looked on Father Higgins as pastor, as friend, and as a fellow soldier in the battle for human justice. Like George Meany, George Higgins is a man whose principles and life are in harmony.

Father Higgins understands that the American trade union movement speaks and fights for human rights and human dignity. It not only celebrates the strength of collective action to achieve democratic goals, but also never loses sight of the worth of the individual.

Father Higgins has found the strength to be a defender of the labor movement and the these same principles are in total consonance with the teachings of his church and the promptings of his heart.

For a man of George Higgins' enormous talents, it would have been a simple matter to rise to prominence, even to great reputation as a reformer without ruffling the feathers of the powerful and without getting the dust of the struggle on his hands.

But it is not in the nature of the God he loves, the church he serves or the conscience he bears to ignore the calls of his fellow men and women for social and economic justice, for equality, for dignity and for the simple exercise of their most basic human rights.

And it is not in the nature of George Higgins as a man of great energy to sit, observe and comment while others act.

Early in his life, Father Higgins saw the genuine fairness and democracy inherent in the collective bargaining system. He saw beyond the basic bargaining for wages and conditions to the usefulness of this system as a means of social and individual good.

Through organization, bargaining and collective action, working men and women can have a voice in events which affect them; they can defend their interests and they can actively contribute to the good of others.

We do not suppose that the rich and the powerful ought to make the decisions and set the policies by which the rest of us are to live. The trade union movement believes that each of us has the right to participate in that process.

George Higgins has shared that opinion, marched with it and spoken for it in a voice rich with conviction and logic.

Whenever working people have needed a strong right arm, George Higgins has counseled them and championed them, struggled beside them.

He is a man who will never keep accounts of the debts of gratitude which we owe him. But the labor movement knows the extent of its debt, and tonight we hope to repay a small part of it.

REMARKS BY AFL-CIO SECRETARY-TREASURER THOMAS R. DONAHUE

I am delighted to have the opportunity to say a few words for Monsignor Higgins and to have the opportunity to express the thanks of a grateful labor movement for his dedicated service.

George Higgins stands in a singularly important line of Catholic priests who have been the principal spokesmen within the Church and outside it, for the rights of labor. That line goes back—surely to Cardinal Gibbons, but in more recent years has been distinguished by the tradition of George Higgins and his predecessors as the voice of workers within the USCC or the National Catholic Welfare Conference. George Higgins was the logical successor to Father Ray McGowan, to Bishop Hass, to Msgr. John A. Ryan.

They, each in their turn, have been the clear, identifiable voice of the Catholic hierarchy on matters of Catholic Social Action and its application within the labor movement and related movements.

George Higgins, as much as any of his predecessors, and for an even longer period, is respected for sustaining the dozens and dozens of other priests throughout the United States who have been the defenders, supporters, advancers of this workers' movement.

There's a long honor roll of these stalwarts, running from Monsignors Rice and Monahan and Cantwell and Kern, and Monsignors Lalley and Corcoran, and Jack Egan, who are here tonight; through the hierarchy of Archbishop Lucey, and Bishops Flores, Donnelly, and Metzger, to Archbishop Hickey (who comes to us now in Washington, well recommended by our unions in Cleveland) and to our own Bishop John McCarthy now claimed by Texas.

And that line continues through the long, long line of labor priests who have served workers and built labor schools and nurtured support groups around the country—Father Mortimer Gavin in Boston, Father Vincent Fox in New York—Fathers Carey and Cronin and Toner, and so many more.

All of them—predecessors, contemporaries, or students and followers of George Higgins—all owe him the debts which flow from his inspiration and guidance and the continuing demonstrations of courage in the face of critics.

Similarly, whole generations of Catholic trade unionists and social activists owe him a great debt for the inspiration he gave to us. There are dozens in this room, and hundreds across the nation, now holding some leadership role in America's unions because George Higgins taught us, guided us, and even more importantly, provided the institutional framework within which our Church's social teachings and social policy was to be understood and implemented.

We were the young, who were trained in the Catholic labor schools and in the Association of Catholic Trade Unionists in Detroit and Boston, in New York, Los Angeles, Philadelphia, Pittsburgh and a dozen other cities, and we were the ones who were then further nurtured and confirmed through the active years of the National Catholic Social Action Conference which George Higgins guided.

And sometimes, when we were saddened or disturbed (as we were from time to time) by some action of a priest or nun or bishop, as the manager of a Catholic institution, hospital or school, acting in clear conflict with our beliefs, it was always certain that George Higgins would speak out just as clearly and forthrightly against that denial of social justice, that contradiction of Catholic social philosophy, as he would against the actions of a Farah, of a Stevens, or a DiGiorgio.

And so Monsignor, we honor you as the premier translator of the American labor movement to the Church, and of that Church to this movement. All of us who have taken inspiration from you in the past fully expect to continue to be able to do so for lots of years to come.

We thank you.

We wish you well.

We are proud to salute you tonight.

REMARKS BY CESAR CHAVEZ

Monsignor Higgins, we are proud and honored to be here tonight among your many friends to honor you.

Monsignor Higgins is one of those remarkably unique, irreplaceable people. No single person in the church has done so much for working men and women and children. No other person in the church is so widely respected in the American labor movement. And his influence within the church on issues affecting labor have not come by accident.

His stature comes from decades of unswerving commitment to working people and the cause of labor. It also comes from hard work, discipline and from an uncompromising devotion to truth and to justice.

In the farmworker struggle, history will show that Monsignor Higgins was crucial to the survival of our union. He helped create the Bishop's Committee on Farm Labor which played a dominant role in the first collective bargaining agreements in agriculture in the history of our country.

He made scores of trips out to California to insure success of the grape negotiations. No sooner the grape strike was settled than the lettuce strike started, where again Monsignor Higgins repeated his performance on behalf of the farmworkers. In early 1973 the Teamster-Farmworker jurisdictional wars began. We could hope for no better friend than Monsignor Higgins. He knew the exact nature of the dispute. He walked the picket lines. He told what he knew to the public. Again, the Bishop's Committee came to our aid. Almost single-handedly he led an unprecedented outpouring of church support for our strike and boycott.

Our union survived and out of the struggle the farmworkers were blessed with the right to collective bargaining legislation in California and Monsignor Higgins is a vital part of all this progress.

Monsignor Higgins has given so much to so many working people. I tonight want to express personally ours and the farmworkers' gratitude for your commitment and dedication to the fieldworkers' struggle. To us Monsignor Higgins is the supreme example of a man who gives his life in service to others.

DEDICATION OF THE ROBERT C. BYRD ROOM AT COLSON HALL, WEST VIRGINIA UNIVERSITY

Mr. CRANSTON. Mr. President, West Virginia University paid a high tribute to our distinguished majority leader on September 6. The university dedicated the ROBERT C. BYRD room at Colson Hall. The room houses the West Virginia collection of books about West Virginians and their history.

The university is fortunate to receive the records and personal papers of such a distinguished public servant. ROBERT C. BYRD has been a vital part of his State's history and of the Nation's history. It is appropriate that the collection of his senatorial papers will eventually be at Morgantown, at West Virginia University. The record of Senator BYRD's career will certainly be an inspiration to future West Virginia students considering public careers. It will also be a national treasure of the history of an outstanding Senator and majority leader.

On September 6, Senator BYRD offered remarks at the dedication ceremonies for the ROBERT C. BYRD room. I ask unanimous consent that his remarks be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR ROBERT C. BYRD UPON DEDICATION OF WEST VIRGINIA COLLECTION

For the naming of this room in my honor, and for allowing my papers to become a part of this outstanding West Virginia Collection of history and culture, I am deeply grateful.

If my papers can help bring a measure of understanding about our problems and their solutions, if they can inspire young men and women of talent and promise to put on the mantle of leadership, then one of the purposes of education will have been fulfilled.

"Young people at universities," said Winston Churchill, "come to study and to achieve knowledge, not to learn a trade. We must learn to support ourselves, but we must also learn to live . . ." Education is the greatest gift we can give to ourselves. But, the greatest gift we can give to our children and their children is to share what we have learned. For it is only by "learning to live" that our society will continue to mature, will continue to progress, and will continue to create more opportunity to learn.

In his work, "Death in the Afternoon," Ernest Hemingway says, "There are some things which cannot be learned quickly, and time which is all we have, must be paid heavily for their acquiring. They are the simplest things, and because it takes a man's life to know them, the little new that each man gets from life . . . is the only heritage he has to give."

The individual pieces of knowledge, or history, or culture, come together to make up the rich heritage of our country. These are vitally important, because we are a young nation. We are still deciding what we want to do with our lives. We are still trying to get a sense of ourselves. This collection will awaken our memories and bring us closer to a part of our history.

Even though we are a young nation, America's history is unique. If we are to continue to mature as a nation, we must have a strong sense of history and appreciate our heritage. West Virginia's history—the people's art, their music, their literature, and their architecture—all are an important part of our national treasure. This university deserves high commendation for its efforts to make a collection of West Virginia's unique history and culture a priority.

The West Virginia Collection and the papers that I will add to it, will not create a new history. But, those who will come and study here, will have the advantage of understanding and appreciating their past. With that understanding, it will be possible to better understand the present and to prepare for the future.

G. K. Chesterson, the English novelist and poet, once said this about history: "History is a hill or vantage point from which alone men can see the town in which they live or the age in which they are living."

In the same way, I hope that my papers will create the opportunity for young minds to be further enriched, whether it is for scholarship, or as a guide to solve future problems.

This is one of the fundamental principles of education: that learning from history should be never-ending. In Plato's famous Allegory of the Cave, the man who has been set free from his chains of ignorance and led into the light of truth, has a responsibility to return to the darkness of the cave and serve others who are still trapped there.

Education at its best, is education that prepares young men and women to serve, whether that service is given by adding beauty to the world, as in art; by alleviating the suffering of mankind, as in medicine; or by increasing the availability of goods necessary to sustain human life, as in agriculture or business. In this respect education will prepare the student to prepare as an elite of service, rather than an elite of privilege.

Perhaps the vision of man's potential, as embodied in the collected works of West Virginia's history and its culture, is best expressed in the words of the poet Edwin Markham, and I close with his verse:

THE PILGRIM

Man comes a pilgrim of the universe,
Out of the mystery that was before the world,
Out of the wonder of the stars.
Far roads have felt his feet, forgotten wells
have glassed his beauty bending down
to drink.
At altar-fires anterior to earth his soul was
lighted, and it will burn on after the
suns have wasted on the void.
His feet have felt the pressure of old worlds,
And are to tread on others yet unnamed—
Worlds sleeping yet in some new dream of
God.

LACK OF STRONG ADMINISTRATION POLICY IN NUCLEAR WEAPONS PROGRAM

Mr. THURMOND. Mr. President, on August 26, 1980, the Senate Armed Services Committee approved a program to begin modernization of our nuclear weapons production complex in the Department of Energy nuclear weapons authorization bill for fiscal year 1981.

On taking this initiative the committee called attention to the potential shortage of critical nuclear materials and provided funding to meet these issues which go to the heart of our national security preparedness.

The administration's lack of leadership in this area was the subject of an August 27, 1980, article in the Washington Post newspaper by columnists Rowland Evans and Robert Novak entitled "The Other Face of Carter's Defense Policy."

I ask unanimous consent that this

article be printed in the RECORD at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE OTHER FACE OF CARTER'S DEFENSE POLICY

(By Rowland Evans and Robert Novak)

While publicly taking a tough election-campaign stance on defense, President Carter has privately ordered a delay in one of the most sensitive areas of national policy: an overdue increase in the production of nuclear explosives for warheads to power America's expanding arsenal.

In response to Ronald Reagan's tough rhetoric, the president has given maximum publicity to the new "Stealth" aircraft and the new nuclear targeting policy to show progress against Soviet power. The delay over expanding nuclear fuel production suggests procrastination in hopes that the Soviet threat will somehow ease. That raises questions about how much the Carter team's view of the Kremlin really has changed.

This other face of the administration's defense policy also points to an election-year political dilemma. The delay in nuclear explosives production betrays a fear that expanded production would antagonize the anti-nuclear and environmental lobbies. But the delay itself generates fear about the reaction of defense-oriented congressmen.

That second fear was reflected in a "top secret" directive on Aug. 7 signed by Zbigniew Brzezinski, Carter's national security adviser. The tip-off was this instruction: "All responses to press inquiries about special nuclear materials should be low-key and . . . limited."

Brzezinski's memorandum went to the Secretaries of State and Defense, the CIA director and the Joint Chiefs of Staff. It informed them that "a formal . . . decision" to expand nuclear fuel production will be "deferred" until an international conference on nuclear proliferation in Geneva has ended. That will not be for weeks.

The decision to delay means the detentists have won the backstage debate between them and the defense community, a debate waged in Congress and within the administration. Their victory means in essence that there is a high probability of running out of nuclear explosives for the new weapons systems. The administration is authorizing rifles but not the bullets they can fire.

The "bullets" necessary were spelled out last spring in a classified document written by the Joint Chiefs of Staff for Secretary of Defense Harold Brown, setting production targets for new weapons-grade materials. These targets were required by Carter's recent decisions to build the MX mobile missile and the Trident II submarine-launched missile and—most important—to put warheads on new nuclear weapons for Europe to compete with existing Soviet systems.

"Carter has approved these new systems with much fanfare," one defense expert told us, "but the delay in new production of weapons-grade fuel does not give the Joint Chiefs a Chinaman's chance in hell to put warheads on them."

In its report on the authorization bill for the production of warhead fuels last May the House Armed Services Committee said that Carter was planning major new nuclear weapons for which there would be no explosives. "Is there a commitment to a nuclear weapons program?" the committee asked.

Pentagon officials have tried to argue this case in congressional testimony short of publicly breaking with the White House. On June 18, James P. Wade, Brown's assistant for atomic energy, testified cautiously that "additional resources" are needed.

Congress has been unsuccessfully pressing Carter for several years to gear nuclear plants in Hanford and Richland, Wash., for production of modern, weapons-grade nuclear fuel. But when, after months of procrastination, Carter finally took the lead in modernizing NATO nuclear weapons and ordered full-speed on the MX and Trident missiles, defense-oriented congressmen believed the impasse was broken.

Brzezinski's directive makes clear they were wrong. It revealed that a July 24 session of the Presidential Review Committee formally decided to defer new production facilities.

The directive went on to warn that "responses to press inquiries . . . should be low-key and limited to the following points": present production is "adequate for the near term"; "long-term requirements are under review but are difficult to predict"; if higher production is needed, "appropriate programs will be requested."

In yet another gesture to politics, the directive orders that all responses to congressional inquiries "should be cleared" by the Defense and Energy departments, the NSC and the Office of Management and Budget. Having put the development of "Stealth" on the network news, Jimmy Carter wants to keep his other defense face shrouded from the public view.

INTERVIEW WITH CHINESE LEADER DENG XIAOPING

Mr. THURMOND. Mr. President, one of the most important interviews with a Communist leader took place recently when Italian journalist Oriana Fallaci met with Chinese Vice Premier Deng Xiaoping.

The Chinese Communists understand the Soviets better than any government in the Western World and our leaders would be well served to heed the remarks of Premier Deng.

He predicted that a third world war was likely because of Soviet designs on Europe if the West, and particularly the United States, did not recognize the threat. He stated.

Now America is on the defensive and, let's fact it: America fears the Soviet Union.

This impression Deng has received is the result of our weakening defense posture and the vacillating leadership of the Carter administration.

Premier Deng also stated that the Soviets are determined to take over the oilfields of the Middle East and thereby bring Europe into their orbit. He said that tying the Soviets down in Afghanistan and Cambodia was the best hope of the West to deter these aspirations.

Mr. President, I believe this Nation must assist the people of Afghanistan in their resistance to the military invasion by the Soviets. The Afghan leaders do not want American soldiers, they merely want arms with which to defend themselves. We should aid them, and in doing so I believe we would prevent the need to use American servicemen to halt Soviet expansionism in some future land.

The Soviets have become encouraged because our leaders negotiated an unequal strategic arms limitation treaty. This treaty is not only unequal, it does not even reduce arms but rather allows numbers to rise to higher levels.

Mr. President, I ask unanimous consent that an excellent summary article of the Deng interview entitled "Soviet Designs Will Trigger World War III, Deng Says," which appeared in the September 2, 1980, issue of the Washington Star newspaper, Washington, D.C., be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SOVIET DESIGNS WILL TRIGGER WORLD WAR III, DENG SAYS

Chinese Vice Premier Deng Xiaoping says a third world war, possibly waged with conventional weapons and not nuclear arms, is inevitable and is likely to be touched off over Soviet desires to conquer Europe.

"The war is inevitable because the superpowers exist and because their imperialism exists," Deng in an interview with Italian journalist Oriana Fallaci.

"The inevitability of war isn't just a view of the Chinese: Many people in the world are convinced that the war will break out in the '80s," Doug said. "The next 10 years are very, very dangerous. They are frightful."

Deng said there are many hot spots in the world, including the Middle East and Indochina. "They are almost everywhere, and it isn't easy to predict where the war will break out," he said. "It is very, easy instead to say who will light up the fire."

The Chinese leader made clear in the interview, which was published in The Washington Post, that he believes the Soviets are the ones who will light a global fire.

"Only two countries in the world are capable of launching a war, the United States and the Soviet Union," he said, adding that since the Korean and Vietnam wars U.S. forces have been declining and the United States has been "retreating."

"Now America is on the defensive and, let's face it: America fears the Soviet Union," he said.

Later he added, "Precisely because both sides have so many nuclear weapons, the possibility exists that the third world war will be a conventional war, not a nuclear war."

Deng said such a war would not necessarily break out in Europe.

"I say that war will break out for Europe," he said, "because the strong political influence stays in Europe, because the military force stays in Europe, and all this is necessary to dominate the world."

The vice premier said that when he referred to Europe as the focal point of Soviet strategy, he also included the Middle East and the northern coast of Africa—"in sum, the Mediterranean."

Deng views the Soviet invasion of Afghanistan as part of a Soviet drive to the Indian Ocean to "outflank Europe."

"And when this plan is completed, Europe will face its critical moment. Because, once the Soviets control the oil sources, what will Europe do?" Deng said.

Deng suggested that if Europe doesn't join an effort to contain the Soviet Union, war is inevitable. He compared the attitude of European countries to the pre-World War II efforts to "appease" Hitler's Germany.

"This new appeasement only serves to weaken more and more the West, Europe," he said. "The Soviets know it, and because of this they encourage it. Because of this they become more and more arrogant."

He said he was sure that the Soviets would not stop in Afghanistan.

"The next target can only be Iran or Pakistan. We cannot predict what country will be chosen first, but I think that we should pay more attention to Iran."

Deng said he thought America was "totally incapable of doing anything in Iran."

The outbreak of war could be postponed if the United States, China and their allies move to contain Soviet expansion, Deng said, but not by "chatters about peace and detente."

"These are the two places where we must try very hard to tie down the Soviet Union for several years: Afghanistan and Cambodia," Deng said. "If we do so, the war is postponed. . . . The important thing is postpone, to gain time."

Deng acknowledged that many people have predicted that China would be the first target of the Soviet Union in a major war.

"Even if the Soviets occupy Peking and the areas north of the Yellow River, for us it would only mean the beginning of the war," the vice premier said.

"When it comes to China, one should not turn the superiority of the Soviet military forces into a myth. The Afghan guerrillas are still very active, you know? And in China we have enough people, enough places, to cope with a Soviet invasion."

MAYOR RICHARD E. CARVER

Mr. PERCY. Mr. President, as many of my colleagues know, Mayor Richard E. Carver of Peoria, Ill., has recently completed his term of office as 37th president of the U.S. Conference of Mayors. I would like to take this opportunity on the floor of the Senate to commend him publicly for his outstanding leadership during a period of economic uncertainty that has not been easy for mayors and other local officials around the country.

Those of us who are fortunate enough to be from Illinois have been aware for many years of the special talents Dick Carver brings to his work. He has distinguished himself by his outstanding record of public service as mayor of Peoria, by his keen grasp of the issues and by his dedication in fighting on behalf of the people of his city.

These talents were recognized on the national level when Dick was elected president of the U.S. Conference of Mayors in 1979.

At its 48th annual conference in Seattle, Wash., earlier this year, the conference adopted a resolution commending Dick Carver and his outstanding wife Judy for their meritorious service. In appreciation for his fine work, I ask unanimous consent that the text of the resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, for the first time at an annual conference, the delegates at this annual conference toured Seattle witnessing firsthand Seattle's historic preservation, downtown and neighborhood revitalization, health facilities, and transportation efforts; and

Whereas, the delegates attended cultural events in municipal facilities, all a part of the outstanding arts and cultural efforts of Seattle,

Now, therefore, be it resolved that we, the nation's Mayors, representing our cities, express our sincere appreciation to all the citizens of the City of Seattle for their warm hospitality during our stay in Seattle; and

Be it further resolved that we commend Mayor Royer and his wife, Rosanne, the staff of the City of Seattle, Seattle business and civic leaders and citizen volunteers from all walks of life who personally contributed to making our 48th Annual Conference of Mayors pleasurable for our delegates and participants and meaningful for our cities; and

Be it further resolved that the delegates at this 48th Annual Conference of Mayors commend Mayor Royer for opening the city and providing the nation's Mayors the opportunity to witness, experience together and learn from Seattle exciting urban innovations that are moving forward here in the Queen City of the Northwest.

MAYOR RICHARD E. CARVER

Whereas, Peoria Mayor Richard E. Carver has served as the 37th President of the U.S. Conference of Mayors from June, 1979 to June, 1980; and

Whereas, at the Executive Committee meeting in Peoria Mayor Carver provided Mayors leadership in planning and activities of the Conference for the year; and

Whereas, Mayor Richard Carver has been a strong advocate in assisting thousands of refugees that have come to America for a home; and

Whereas, our President, Dick Carver, has been a leader in this nation in calling for the reenactment of General Revenue Sharing and fiscal assistance for all cities, large and small, in this nation; and

Whereas, Mayor Dick Carver led the delegation of Mayors to Israel spreading good will to our allies there; and

Whereas, Mayor Carver has helped this conference in its efforts to protect vital urban programs as the Congress moved toward a balanced budget; and

Whereas, Mayor Dick Carver has expressed on behalf of this Conference our deepest concern and offered and supported programs to cope with the inflation that seriously affects local budgets throughout the nation; and

Whereas, President Richard E. Carver along with his wife Judy has served in his position with dignity,

Now, therefore, be it resolved that the delegates of the 48th Annual Conference of Mayors officially commend Mayor Richard E. Carver for his efforts during the past year and wish him and his wife and family well; and

Be it further resolved that we commend Mayor Carver for his leadership and urge him to be active in contributing his efforts within the U.S. Conference of Mayors in the future.

DEPARTMENT OF ENERGY CONTRACTING PRACTICES

Mr. PRYOR. Mr. President, I commend the distinguished Senator from Louisiana for his recognition of the concerns I and others have expressed about the Federal Government's use of consultant services.

Several weeks ago, in his capacity as floor manager of the DOE authorization bill, the Senator from Louisiana accepted an amendment I proposed to deal with some of the Department's problems in the use of consultants. Indeed, because those amendments regarding contract information and attribution of contractor assistance in the preparation of reports were made a part of that bill on July 30, I have decided not to propose a consultant amendment to this appropriation bill. Rather I want to simply restate my concern about this problem and provide some further comments about DOE problems.

My Subcommittee on Civil Service and General Services and the General Accounting Office have found enormous waste and abuse in DOE's consulting practices. For example, the GAO found in a March 1980 report that "serious and pervasive" problems existed in DOE's use of consultants. For example, the GAO found that the majority of DOE's consulting contracts were awarded without any competition whatsoever. Furthermore, DOE frequently made little or no use of the consultant studies when they were completed. The following are just a few examples of consultant waste and abuse contained in the GAO report on DOE consultant practices:

DOE awarded a contract for $1,480,000 to continue planning and evaluation assistance to the agency. The DOE justified awarding this contract without competition because no other contractor "is familiar with and experienced in the basic planning studies and assessments needed" as a result of two previous contracts awarded to this same consultant firm. In other words, the GAO said that the contractor "has bought into a long and friendly relationship with the agency."

DOE awarded another contract for $453,581 for an assessment of industry research and development activities. The contract was awarded without competition because, according to DOE, that consultant firm was the only firm that could do the work. Subsequently, the GAO ascertains that this same consultant subcontracted out 60 percent of the work to other consultants.

Another DOE contract for $1,425,238 was modified by $48,130 in order to thwart the competitive bidding process. This modification had nothing to do with the original purpose of the contract but DOE nonetheless decided to modify it to avoid competition. The GAO stated that this practice results in the Government paying more than it should.

Another DOE contract for $343,834 was awarded for a comprehensive analysis of issues regarding resource development on Indian reservations. In the contract justification statement, DOE stated that reports generated by this study would help the agency in policy development. According to the GAO, however, DOE officials could not specifically explain or document any use made of the contract results.

Another GAO report on DOE contracting practices dated November 1979 found that DOE's reliance on consultants was so extreme that the consultants were practically running the Department. GAO's review of five DOE organizations disclosed, first, contracting practices which avoid or limit competition; and second, contractor involvement in the performance of basic management functions. The GAO stated that, "Each of the five organizations within the Department of Energy appear to be contracting with private firms to carry out some of its basic management function. Some of these contracts also appear to provide contractors wide latitude for participating in the development of energy policy and offer the potential for allowing the contractor to determine energy policy."

Not only are DOE consultants being used to influence the Department's energy policies, but also, my Subcommittee on Civil Service and General Services has found that these same DOE consultants forming energy policy also work for not only various OPEC countries but also for every oil company in the United States.

As the Civil Service Subcommittee's hearings and investigations have discovered, the Department of Energy's reliance on consultants and contractors is so extreme that it is hard to understand what, if anything, is left for "officials" to do.

Most unfortunately, we found that the

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extreme and invisible reliance on contractors is further characterized by profoundly disturbing evidence of poor, even unlawful, management, and waste. For example:

We found that the Department is paying out millions of dollars under contracts for which there are no, or inadequate, records in the "official" contract files.

We found that the Department was unable to produce hundreds of items of work ostensibly prepared and paid for under recent and ongoing multimillion dollar contracts.

We found that the Department pays consultants a needless brokerage fee for work it could do itself. For example, we found that contractors have been hired to write the job descriptions for hundreds of DOE "official" positions. When the contractor told DOE that it did not have the expertise needed, DOE found experts for the contractor to hire. Typically, the experts were former Government personnel experts. Thus, DOE paid a private contractor a fee to employ former Government officials—located by DOE—to define the work of present government officials.

Mr. President, the need for my amendment was made crystal clear in a GAO report issued just last month. GAO's review of seven agencies found that consultants were used to meet over 40 percent of their congressionally mandated reporting requirements during fiscal years 1977 to 1979. Consulting services accounted for almost two-thirds of the total costs incurred. Approximately 60 percent of the reports either did not disclose or inadequately disclosed consultants involvement in their preparation.

Mr. President, Congress needs to know who prepared the hundreds of reports sent to us by DOE each year so that we know how much reliance to place in the conclusions and recommendations contained in these reports upon which the Congress must act.

REDUCTION OF COSTS FOR CONSULTANTS

Mr. PRYOR. Mr. President, I commend the distinguished Senator from Washington (Mr. MAGNUSON), the chairman of the Committee on Appropriations, for his continuing leadership in the Senate to cut the fat from the Federal consultant budget. At the Appropriations Committee markup of the bill we are considering today, Senator MAGNUSON introduced an amendment to reduce these agencies' budgets for consultants by $17 million. He has been a pioneer in the area of consultant reform. As chairman of the Appropriations Committee, he has continually brought to light the enormous consultant waste and abuses at the Department of Health, Education, and Welfare.

I am particularly pleased to have had the opportunity to assist the Senator in his recent efforts to cut the fiscal year 1981 budget for consultants at all Federal agencies. The staff of my Subcommittee on Civil Service and General Services has worked with his staff to develop accurate figures on Federal consultant expenditures upon which a much needed reduction can be made.

I completely support the consultant reduction contained in this bill. The need for cutting the Department of Energy's consultant budget was made crystal clear in a March 20, 1980 report by the General Accounting Office. In this report the GAO found "serious and pervasive" problems in six agencies' use of consultants. For example, GAO found 67 percent of all contracts reviewed were awarded without competition and that 54 percent of the consultant contracts were awarded in the last quarter of the fiscal year. Furthermore, in GAO's opinion, many of the contracts should have never been awarded because the work could have been performed by agency employees.

The consultant cut contained in this bill is not the only reduction taken at the initiative of Senator MAGNUSON. He plans to make similar reductions for consultants on all major appropriation bills for fiscal year 1981. If all of these reductions are sustained in conference, and I am confident they will be, the fiscal year 1981 budget for consultants will be reduced by over $350 million. This is the equivalent of a 15-percent reduction in the consultant budget for 1981 of nearly $2.5 billion. I think this reduction is modest in light of the enormous waste and abuse that Senator MAGNUSON and I have found in our investigations. Again, I commend the Senator for his leadership in this area and I offer him my complete cooperation and assistance in this effort to eliminate consultant waste and abuse in our Federal system.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:56 a.m. a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House insists upon its amendments to the bill (S. 988) entitled "Health Sciences Promotion Act of 1980," disagreed to by the Senate; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. WAXMAN, Mr. SATTERFIELD, Mr. PREYER, Mr. MAGUIRE, Mr. LUKEN, Mr. WALGREN, Ms. MIKULSKI, Mr. BROYHILL, Mr. CARTER, Mr. DEVINE, and Mr. STOCKMAN were appointed as managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6372. An act to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants;

H.R. 7466. An act to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status; and

H.R. 7779. An act to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the enrolled bill (S. 1625) to amend the act of December 20, 1944, as amended.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. MITCHELL).

At 2:21 p.m., a message from the House of Representatives, by Mr. Gregory, one of its reading clerks, announced that the House has disagreed to the amendments of the Senate to the bill (H.R. 2977) to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; that Mr. PERKINS, Mr. BRADEMAS, Mr. HAWKINS, Mr. BIAGGI, Mr. SIMON, Mr. BEARD of Rhode Island, Mr. MILLER of California, Mr. STACK, Mr. ASHBROOK, Mr. COLEMAN, Mr. KRAMER, and Mr. ERDAHL were appointed as managers at the conference on the part of the House for the consideration of titles I, II, III, and IV of the Senate amendment, and modifications thereof committed to conference; that Mr. BROOKS, Mr. EDWARDS of California, Mr. CONYERS, Mr. HYDE, and Mr. SENSENBRENNER were appointed as managers at the conference on the part of the House for the consideration of sections 501, 502, 503, and 505 of title V of the Senate amendment and modifications thereof committed to conference; and that Mr. ULLMAN, Mr. CORMAN, and Mr. CONABLE were appointed as managers at the conference on the part of the House for the consideration of section 504 of title V of the Senate amendment and modifications thereof committed to conference.

The message also announced that the Senate further disagrees to the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes; agrees to the further conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. THOMPSON, Mr. BRADEMAS, Mr. FORD of Michigan, Mr. GAYDOS, Mr. BIAGGI, Mr. SIMON, Mr. MURPHY of Pennsylvania, Mr. WEISS, Mr. PEYSER, Mr. RATCHFORD, Mr. MILLER of California, Mr. ASHBROOK, Mr. BUCHANAN, Mr. JEFFORDS, Mr. EDWARDS of Oklahoma, Mr. TAUKE, and Mr. PETRI were appointed as managers at the conference on the part of the House.

The message further announced that

the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 7306. An act to provide for the orderly disposal of certain Federal lands in Nevada and for the acquisition of certain other lands in the Lake Tahoe Basin, and for other purposes; and

H.R. 7666. An act to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes.

At 3:49 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the Speaker has signed the following enrolled bill:

S. 299. An act to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 4:53 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the bill (S. 2728) to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6790. An act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes;

H.R. 7218. An act to establish the Martin Luther King, Junior Historic Site in the State of Georgia, and for other purposes; and

H.R. 7956. An act to make various changes in the tax laws.

HOUSE BILLS REFERRED

The following bills were read twice by their title and referred as indicated:

H.R. 7306. An act to provide for the orderly disposal of certain Federal lands in Nevada and for the acquisition of certain other lands in the Lake Tahoe Basin, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 7779. An act to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court; to the Committee on Finance.

H.R. 7956. An act to make various changes in the tax laws; to the Committee on Finance.

HOUSE BILLS HELD AT DESK

The following bills received from the House were held at the desk, pursuant to previous order:

H.R. 6372. An act to amend title 5, United States Code to provide for voluntary withholding of State income tax for civil service annuitants.

H.R. 7218. An act to establish the Martin Luther King, Junior Historic Site in the State of Georgia, and for other purposes.

H.R. 7466. An act to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

H.R. 7666. An act to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes.

HOUSE BILL PLACED ON CALENDAR

The following bill was read twice by its title and placed on the calendar:

H.R. 6790. An act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary reported that on today he had presented to the President of the United States the following enrolled bill:

S. 299. A bill to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4588. A communication from the Assistant Secretary of the Army, Secretary of the Army, reporting, pursuant to law, that a cost study has been conducted with respect to converting the installation support functions at Selfridge ANGB, Selfridge, Michigan, and a decision has been made that performance under contract is the most cost-effective method of accomplishing it; to the Committee on Armed Services.

EC-4589. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Korea for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4590. A communication from the President of the United States, reporting the issuance of a determination that the extension for one year of certain authorities currently exercised under Section 5(b) of the Trading With the Enemy Act, 50 U.S.C. App. 5(b), with respect to the countries of North Korea, Vietnam, Kampuchea or nationals of those countries, is in the national interest; to the Committee on Banking, Housing, and Urban Affairs.

EC-4591. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report of the activities of the Department of Commerce during calendar year 1979; to the Committee on Commerce, Science, and Transportation.

EC-4592. A communication from the General Counsel, Department of Energy, transmitting, pursuant to law, notices of meetings related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-4593. A communication from the Secretary of the Interior, reporting, pursuant to law, that Darrell E. Fleming has retired as the U.S. Government Comptroller of the Virgin Islands; to the Committee on Energy and Natural Resources.

EC-4594. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report of a new system of records; to the Committee on Energy and Natural Resources.

EC-4595. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days of the execution thereof; to the Committee on Foreign Relations.

EC-4596. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Progress in Improving Program and Budget Information for Congressional Use," August 29, 1980; to the Committee on Governmental Affairs.

EC-4597. A communication from the Director, National Institute of Corrections, transmitting, pursuant to law, the fourth annual report of the National Institute of Corrections; to the Committee on the Judiciary.

EC-4598. A communication from the Director of Central Intelligence, transmitting a draft of proposed legislation to amend title 18, United States Code to provide criminal penalties for certain acts against intelligence personnel which interfere with the performance of their duties, and for other purposes; to the Committee on the Judiciary.

EC-4599. A communication from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, 556 reports concerning visa petitions which the service has approved according the beneficiaries of such petitions third and sixth preference classification under the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

EC-4600. A communication from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered in 2,241 cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of such aliens; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation and the Committee on Energy and Natural Resources, jointly, with an amendment (in the nature of substitute) from each committee:

S. 2119. A bill to protect the fisheries resources on the Georges Bank, and for other purposes (Rept. No. 96-934).

By Mr. JAVITS, from the Committee on Governmental Affairs, with an amendment:

S. 503. A bill to amend the Privacy Act of 1974 to provide for the confidentiality of medical records, and for other purposes (together with additional views) (Rept. No. 96-935).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary:

Reuben B. Robertson, of the District of Columbia, to be Chairman of the Administrative Conference of the United States.

(The above nomination from the Committee on the Judiciary was reported with the recommendation that it be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. JACKSON. Mr. President, as in

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executive session, from the Committee on Armed Services, I report favorably the following nominations: Maj. Gen. Robert Haldane, U.S. Army, to be lieutenant general, Maj. Gen. Robert Joseph Lunn, U.S. Army, to be lieutenant general, Maj. Gen. Harry Augustus Griffith, U.S. Army, to be lieutenant general; Lt. Gen. Edward J. Miller, U.S. Marine Corps (age 57), for appointment to the grade of lieutenant general on the retired list, and, Maj. Gen. Richard E. Carey, U.S. Marine Corps, to be lieutenant general. I ask that these nominations be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JACKSON. In addition, Mr. President, in the Regular Army, there are 2,111 promotions to the grade of colonel and below (list beginning with Larry D. Aaron), and 369 appointments to the grade of major and below (list beginning with Gary D. Burrows); in the Army of the United States, there are 1,535 promotions to the grade of lieutenant colonel (list beginning with Michael H. Abbott); in the U.S. Navy and Reserve of the Navy, there are 48 temporary/permanent appointments to the grade of captain and below (list beginning with Raymond J. Adams); in the U.S. Marine Corps, there are 284 permanent appointments to the grade of second lieutenant (list beginning with Timothy C. Abe); and, in the Regular Air Force and Reserve of the Air Force, there are 54 appointments/reappointments/promotions to the grade of colonel and below (list beginning with Albert R. Amalfitano). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of August 1, August 18, and August 25, 1980, at the end of the Senate proceedings.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LAXALT:

S. 3104. A bill for the relief of Mercedes Navarro; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 3105. A bill for the relief of Lucia Josepha Asgill; to the Committee on the Judiciary.

By Mr. NELSON:

S. 3106. A bill to amend the Internal Revenue Code of 1954 to provide for the indexation of individual income tax brackets, and for other purposes; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION 122—SUBMISSION OF A CONCURRENT RESOLUTION WITH RESPECT TO THE EXPORT OF WHEAT

Mr. ZORINSKY (for himself, Mr. MELCHER, Mr. MCCLURE, Mr. BELLMON, and Mr. PRESSLER) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations.

S. CON. RES. 122

Whereas current world market prices for wheat are below the cost of production;

Whereas more than one-half of all wheat produced in the United States is exported;

Whereas Canada and the United States together supply approximately two-thirds of the world wheat trade;

Whereas the four principal wheat exporters supply more than 80 percent of the world's wheat exports;

Whereas world wheat exporting countries have traditionally carried a disproportionate share of the world's wheat reserves, resulting in higher costs for United States wheat producers;

Whereas improved storage, processing, and distribution facilities in wheat importing countries would increase wheat utilization capacity and increase the total world wheat market: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that there should be established a Joint Canada-United States Wheat Export Coordinating Commission, (hereinafter referred to as the "Commission") the purpose of which shall be to develop mutual policies whereby each participating country shall—

(1) end the export of wheat at prices below the cost of production;

(2) promote long-range market development;

(3) increase commitments to food assistance programs for importing nations; and

(4) encourage wheat importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves.

Other major wheat exporting nations should be invited to participate in the activities of the Commission.

CANADA-UNITED STATES INTERPARLIAMENTARY GROUP MEETING ON INTERNATIONAL WHEAT MARKETING

● Mr. ZORINSKY. Mr. President, on July 26 I, together with Congressman GLEN ENGLISH of Oklahoma, had the privilege of leading a delegation of five Senators and eight Congressmen to a meeting of the U.S. Interparliamentary Group in Ottawa. Our discussions with 10 members of the Canadian Parliament centered on how to improve cooperation between Canada and the United States in the area of wheat exports.

The discussions were, in my opinion, successful. Both the Canadian and the U.S. delegations expressed their concern with the high cost of production, and the inability of wheat producers on both sides of the border to earn an adequate return for their products. At the suggestion of Senator BELLMON, the Canadian and U.S. legislators agreed to promote the establishment of a "Joint Canada-U.S. Wheat Export Coordinating Commission."

The mission of the Joint Commission would be to develop mutual policies aimed at four broad goals. First, the Commission would attempt to develop coordinated policies which would end the export of wheat at prices below the cost of production. Although several schemes for encouraging higher market prices were discussed, no specific proposal was endorsed. Rather it was envisioned that the Joint Commission would undertake an examination of various policy choices which might be possible within the framework of our current market systems.

The second and third aims of the Commission would be the development of mutual policies to promote long-range wheat market development and increased food assistance programs. Largely through the efforts of the U.S. Department of Agriculture's Foreign Agricultural Service and U.S. Wheat Associates, the United States has greatly increased both its share of the world wheat market, and the overall size of that market. Greater cooperation with our rival wheat exporters offers us the opportunity to continue to expand the overall market size, without endangering the U.S. share.

For example, many importing nations, particularly the developing countries, do not have adequate storage, processing and distributing facilities for grain. The demand for a better diet and increasing populations will encourage greater imports of wheat, but the lack of port facilities, internal storage and transportation capacity will limit severely the amount of grain which can be handled.

Historically, the United States has used its foreign assistance programs and the Public Law 480 food for peace program, to help developing countries establish the necessary facilities. One of the aims of the Joint Commission would be to better coordinate such long-term development efforts, and to encourage our fellow exporters to participate more fully in similar programs. Our own country has been remarkably successful in its educational and promotional sales efforts. The aim of the Joint Commission would be to supplement those programs with other long-term efforts designed to increase the importing capacity of new market countries.

The fourth goal of the Joint Canada-U.S. Wheat Export Coordinating Commission would be to encourage importing nations to bear a larger share of the world's food reserves. Traditionally, the United States and other wheat exporting countries accumulate stocks during years of surplus supplies and low demand. The cost of carrying these stocks is borne by the farmer both directly, in the form of storage and interest costs, and indirectly in the form of lower market prices for the grain.

Importing countries reap the benefits of sufficient supplies, even in years of short crops, without paying any of the costs involved in carrying these reserves from year to year. Canada, the United States, and other wheat exporters would mutually benefit from an increased effort on the part of importing countries to build storage facilities and to carry a larger proportion of world food reserves.

Both the Canadian and the U.S. delegations to the Ottawa meeting pledged to pursue the idea of the Joint Commission with their respective administrations and to extend an invitation to Argentina and Australia to participate in the Commission. I intend to do everything in my power to convince this administration, or a future one, that such an International Commission would be a valuable tool in achieving a better world market for American wheat.

On behalf of the five Senators who participated in this last Conference of the Interparliamentary Group, Senators MCCLURE, BELLMON, MELCHER, PRESSLER, and myself, I am submitting today a concurrent resolution expressing the sense of the Senate that such a Joint Wheat Commission should be established. Congressman English, on behalf of the eight Congressmen who met in Ottawa, is introducing a duplicate resolution in the House of Representatives.

I am pleased to say, Mr. President, that the four points enumerated in the joint resolution evolved not only from our discussions in Ottawa with the "Canadian Members of Parliament," but were also the product of discussions with representatives of major trade and commodity groups here in the United States. Before departing for the Canadian meeting, the 13 members of the U.S. delegation met with U.S. Wheat Associates, the National Association of Wheat Growers, the North American Export Grain Association, and the National Council of Farmer Cooperatives. Many of the ideas and concerns expressed by the American congressional Members at the Canadian meeting were prompted by those expressed to us during our briefings with the U.S. organizations.

A further meeting with the Canadians is contemplated for early next year. At that time we hope to carry the formation of the "Joint Canada-U.S. Wheat Export Coordination Commission" another step forward. The suggestions and comments of these and all other affected groups are not only welcome, but are vital to the success of any further meetings with our northern neighbors.

As a final point, Mr. President, I would add only that the sort of discussions we held in July with our Canadian counterparts are extremely helpful. Not only did each side come away with a far better understanding of the other's wheat production and marketing system, we also discovered the great similarities in our concerns. Sometimes, we tend to think of our Canadian neighbors as rivals in the world wheat market. Meetings like the one we had Saturday emphasize to us again, that as legislators—as representatives of the people—we have a lot more in common than not. We both work for wheat producers, and as such our goals really are the same—to get a more reasonable price and an improved market for their products.●

AMENDMENTS SUBMITTED FOR PRINTING

FOREIGN SERVICE ACT AMENDMENTS OF 1980—S. 3058

AMENDMENTS NOS. 2303 THROUGH 2311

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted nine amendments intended to be proposed by him to the bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

AMENDMENT NO. 2312

(Ordered to be printed and to lie on the table.)

Mr. PELL submitted an amendment intended to be proposed by him to the bill S. 3058, supra.

Mr. PELL. Mr. President, this is an item that the Foreign Relations Committee was unable to consider during its markup. It is identical to a provision in the House bill, and I believe it is of sufficient importance so that it should be included in the Senate bill as well.

The purpose of this amendment is to insure that the administration's authority to grant and withhold extensions of career appointments for members of the Senior Foreign Service cannot be utilized to politicize the Senior Foreign Service by purging officers whose views are considered to be at variance with those of the administration and to reward those whose views conform to those of the administration of the day.

The amendment accomplishes this by stipulating that actions on career extension must be "in accordance with" and not merely "in light of" the recommendations of selection boards. The amendment also deletes the criterion of "the needs of the Service" for career extension, as this criterion is so vague as to be open to abuse by a Secretary of State who wants to get rid of a senior FSO for purely political reasons.

Additionally in those cases where a full career extension is not going to be granted, the amendment would permit a temporary extension not to exceed one year to meet exceptional needs. This will be necessary, for example, when a senior officer who is to be terminated is in the middle of an important project or assignment that would be jeopardized by an immediate termination of the officer's contract.

There are significant differences between the Senior Foreign Service, as legislated in the present act, and the Senior Executive Service of the civil service.

One of these differences lies in the significant curtailment in the leeway given the top political appointees of the executive branch in so far as promotion and retention of members of the Senior Foreign Service is concerned. These are to take place in strict accordance with the findings of the selection boards, that is, on the basis of merit only and not on the basis of political criteria.

A Secretary of State must be able to surround himself with top career officers whom he finds congenial and who share his philosophy, his general approach, his enthusiasms and beliefs. There is nothing in the act as it is now formulated that deprives him of that right and that possibility.

However, the Secretary of State or, for that matter, the President or other senior officers of the Executive cannot and must not be able to force people out of the Senior Foreign Service because they are uncongenial to him. He can, if he wishes, banish them to the wilderness—although he would be wise to keep them around, inconvenient as they may be—but at least there they can be a voice in the wilderness. It is useful for the United States, for example, to have chiefs of missions in an area who might harbor some doubts about our policy in that area even while loyally implementing it.

The Congress cannot legislate that there must be uniformity of opinion at the top, or that there must not be such a uniformity of opinion, but at least the administration should not be able to retire wholesale officers of the Senior Foreign Service for political reasons. The Congress can legislate that any uniformity must not be achieved by getting rid of meritorious senior diplomats because a particular administration does not like their viewpoints.

As amended, the legislation would protect the senior ranks against the forcible creation of uniformity throughout those ranks. The senior ranks of our Foreign Service are a treasure house of experience, and no Secretary of State should have the power to deplete that treasure house, certified as such by the rankings given by the selection boards, on the ground that a particular administration finds it worthless.

AMENDMENT NO. 2313

(Ordered to be printed and to lie on the table.)

Mr. PELL submitted an amendment intended to be proposed by him to the bill S. 3058, supra.

Mr. PELL. Mr. President, I send an amendment to the desk for printing.

Mr. President, this amendment consists of a number of technical changes in S. 3058. None of these changes have a significant substantive impact. I ask unanimous consent that a short explanation of each change be printed in the RECORD at this point and ask my colleagues to vote for the passage of these changes.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF TECHNICAL AMENDMENTS

Section 402 (Bill p. 42, line 4):

This amendment permits a career member of the Senior Executive Service (SES) who is given a limited appointment in the Senior Foreign Service (SFS) to save his or her former rate of pay if the Foreign Service salary class to which he is appointed is lower than his or her former rate of pay in the SES. Because the SFS will have only three salary rates and the SES has six rates, some lateral transfers to SFS, in the absence of this amendment, would necessarily involve either an unearned increase in pay or a salary reduction. The amendment avoids this impediment to interchange between the SES and the SFS.

Section 408 (Bill p. 47, line 18):

This amendment clarifies that the authority of an agency head to establish local compensation plans for foreign national employees includes position classification.

Section 411 (Bill p. 52, line 4):

This amendment provides that payment of chargé pay to an officer who is temporarily in charge of a Foreign Service post will not be precluded by 5 U.S.C. 5535 or 5536. This will assure that section 411 of the bill will not be construed as being in conflict with these general statutory prohibitions against extra pay. The amendment is consistent with existing law and practice.

Section 705(b) (Bill p. 78, lines 10 and 12):

This amendment makes clear that the bill will not be construed as imposing a new limitation upon the efforts of the Family Liaison Office in the Department of State to facilitate the employment of Foreign Service spouses. In the absence of this amendment the current efforts of that office to identify employment opportunities in the United States for members of families returning from overseas assignments might have to be curtailed.

Section 901(14) (Bill p. 141, line 25):

This amendment permits the payment of travel and relocation costs for members of

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the Foreign Service who are assigned to tours of duty in U.S. territories or Puerto Rico (e.g., under the Pearson amendment program; see section 503(a)(4)). Such officers are not eligible for a foreign transfer allowance.

Section 1009 (Bill p. 158, line 25):

This amendment deletes an inappropriate standard for judicial review of decisions by the Foreign Service Labor Relations Board, which was inadvertently included in the bill. The deleted words conflicted with the correct standard as set out in section 1009(c) which is the same as in the Civil Service Reform Act of 1978.

Section 1015(b)(7)(A) (Bill p. 173, line 16):

This amendment clarifies the intent of this section not to authorize picketing at Foreign Service posts abroad.

Sections 1105(a) and 1106(3) (Bill p. 192, line 1, and p. 194, lines 1 and 2):

This amendment makes clear that travel and other administrative expenses associated with the processing of grievances may be paid by the head of any agency to which chapter 11 applies (State, USICA, IDCA, Agriculture, Commerce; see section 1101(c)), and not just by the Secretary of State.

Section 2201(a) (Bill p. 219, line 21):

This amendment deletes an extraneous word, correcting a typographical error.

Section 2202(b)(1) (Bill p. 225, line 14):

This amendment permits the Peace Corps to establish compensation rates below the lowest level in the Foreign Service Schedule, but not below the minimum wage, for personnel performing the most routine duties. All foreign affairs agencies have this authority with respect to positions abroad under section 407 of the bill. The amendment will permit the Peace Corps, which uses only the Foreign Service pay system, also to use this authority within the United States for work compensated by the other agencies under the Civil Service pay system (e.g., GS-1, 2 and 3 positions).

Section 2203(d) (Bill p. 228, line 7):

This amendment clarifies the status for purposes of the civil service laws of the Chairman of the Development Assistance Committee at the OECD headquarters. This official is a U.S. citizen and is paid by the United States as authorized by the Foreign Assistance Act. The Office of Personnel Management has questioned whether the DAC chairman is a federal employee for certain purposes, including retirement coverage. The amendment puts that question to rest and will assure that the present incumbent will not be deprived of retirement credit for the two years he has served or for his future service.

Section 2305 (Bill p. 242, after line 25):

This amendment assures that an individual who is selected out of the Foreign Service and who receives benefits in the nature of severance pay under section 609(b)(1) of the bill will not also be eligible to receive duplicate benefits under title 5 of the U.S. Code. The amendment also makes necessary conforming changes in the numbering of the sections of the bill and in references to those section numbers.

Section 2308 (Formerly 2307) (Bill p. 244, lines 3 and 4):

This amendment eliminates a disparity in the permissible frequency of educational travel for high school and college students who are dependents of Government employees serving overseas. The amendment permits one round trip each year for all such students, eliminating the unused authority of some agencies to pay for two trips each year for college students only.

Section 2311 (Formerly 2310) (Bill p. 245, line 24):

This amendment makes explicit the intent that the total of danger pay allowance and supplemental (incentive) post differential not exceed 25% of basic pay.

Section 2312 (Formerly 2311) (Bill p. 246, lines 11 and 12):

This amendment corrects a technical oversight in title 5 of the U.S. Code as it relates to leave. The section in question incorrectly assumes that all members of the Foreign Service who are serving in senior positions are employed in the Department of State.

Section 2312 (Formerly 2311) (Bill p. 247, lines 3 and 4):

This amendment permits home leave to be granted to an individual whose continuous service abroad is prematurely terminated for the convenience of the Government (e.g., by evacuation from a dangerous post).

Section 2403 (Bill p. 253, line 22):

This amendment modifies the bill's effective date, originally specified as October 1, 1980, and makes various technical, conforming and clarifying amendments. In order to permit adequate time for the issuance of implementing regulations the amendment establishes a general effective date 90 days after the bill's enactment. It also makes clear that thereafter personnel actions may be taken on the basis of the then current Foreign Service evaluation cycle. In addition it permits the Commerce Department, for a limited period, to employ up to ten noncareer Senior Foreign Service members without regard to the 5% limit contained in section 305(b) of the bill.

Section 2403 (Bill p. 254, line 7):

This amendment makes necessary technical amendments in the effective date of the bill's provisions regarding annuities for former spouses.

AMENDMENT NO. 2314

(Ordered to be printed and to lie on the table.)

Mr. PELL submitted an amendment intended to be proposed by him to the bill S. 3058, supra.

Mr. PELL. Mr. President, I send an amendment to the desk for printing.

PAY AND BENEFITS PENDING CONVERSION

A principal objective of this bill is to eliminate, in an orderly and fair manner, the use of the Foreign Service personnel system for the employment of individuals who are not available for overseas service. Chapter 1 of title II of the bill achieves this objective by providing for the conversion of "domestic" personnel who are now in the Foreign Service system to civil service status without loss of pay benefits.

This conversion process is a complicated one. It involves identification of those who are truly Foreign Service and those who should be civil service, notice of rights and decisions by the agencies and by the individuals concerned. The bill allows 3 years for the completion of this entire process of transition.

In the meantime, provision must be made for an appropriate rate of pay for those who ultimately will be converted to the civil service. As presently drafted the bill would initially pay these individuals at the new higher rates for the Foreign Service, and then would convert their pay status to the civil service grades corresponding to their increased salaries. As a result, the affected individuals would receive unearned pay increases without changing their duties in any way—at a cost to the Government of $5.1 million.

The proposed amendment provides a more equitable approach, and states more clearly and completely how individuals should be paid during the transition period.

The administration, in a letter to Chairman HANLEY of the Post Office and Civil Service Committee of April 16, has suggested that those who are not worldwide obligated should be paid only at their current level pending final decision to convert them either to the new Foreign Service schedule or to the Civil Service. This is unfair, since there are only two possible choices—Foreign Service and Civil Service—and each would be at least equal to or higher than current salary. In cases where some time is required to determine an individual's final status, this approach would deprive him or her of pay which they clearly should receive.

On the other hand, to convert these individuals to a pay level equivalent to the new Foreign Service schedule, as the current language mandates, would be both expensive and unwarranted, in that most individuals in the domestic service only Foreign Service group have previously receive, substantial incentives to convert to Foreign Service. To provide an additional windfall is unfair both to those who remained in the Civil Service, and to those who are truly Foreign Service. In any event, the bill provides ample protection and preservation of rights—grade, pay level, retirement system choice, protection against downgrading.

This amendment represents a desirable combination of financial responsibility and equity to all involved, and warrants support.

ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

AMENDMENTS NO. 2315 THROUGH 2320

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted six amendments intended to be proposed by him to S. 1480, a bill to provide for liability compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Mr. HELMS. Mr. President, I have carefully examined the so-called superfund legislation, S. 1480. As I have stated on the floor of the Senate previously what I have discovered disturbs me. I share the sentiments of the distinguished Senator from Wyoming (Mr. SIMPSON) as expressed in the Senate committee report's minority views:

It does alarm me to see the tendency, with but a sweep of the drafter's pen, to simply brush off on the floor many of the rules of evidence which have been so closely crafted and observed in our procedural life as lawyers.

But sweeping change in our rules of evidence is just the "tip of the iceberg." With the creation of a "Federal toxic tort," we are preempting the common law tort system of each of our 50 States—something we should not do without long, serious consideration. With the number of alternatives for dealing with our problems of hazardous wastes, it is unwise indeed to enact such sweeping and monumental legislation.

Mr. President, I have specific concerns with this legislation. It is for that reason that I am today submitting several

amendments in the hope that they will serve to begin a serious dialog on these issues.

Mr. President, I ask unanimous consent that the text of each of my amendments be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2315

Mr. HELMS. Mr. President, the purpose of my first amendment is to delete the designation as "ultrahazardous activities," the manufacture, use, transportation, treatment, storage, disposal, and release of hazardous substances. This term is not defined in the act, in fact, it is never explained or mentioned further therein. However, the term "ultrahazardous activity" is a legal term, that is, one with legal implications which have the effect of expanding the already extraordinary standard of care required for dealing in such activities relating to hazardous substances.

For example, the restatement of torts has defined an "ultrahazardous activity" as one which "necessarily involves a risk of serious harm to the person, lands, or chattels of theirs which cannot be eliminated by the exercise of utmost care" and is not a matter of common usage. To say that the use of a hazardous substance—as overbroadly defined in this bill—is ultrahazardous, certainly would constitute a dangerous extension of the law—especially when common table salt could qualify as a hazardous substance under the terms of the bill. Mr. President, my amendment would remove the designation from the act, thereby closing the "can of worms" opened by its inclusion.

The text of amendment No. 2315 follows:

On page 13, strike out lines 22 through 25.

On page 14, line 1, strike out "(2)" and insert in lieu thereof "Sec. 3. (a)(1)".

On page 14, line 21, strike out "(3)" and insert in lieu thereof "(2)".

On page 16, line 16, strike out "(4)" and insert in lieu thereof "(3)".

AMENDMENT NO. 2316

Mr. HELMS. Mr. President, this amendment would strike the words "reason to believe" from the site notification section in the bill. This section of the bill mandates that—

Any person who owns or operates, or has reason to believe that he or she may be subject to liability for, a facility or site at which hazardous substances . . . are stored or disposal of which is not in compliance with a permit . . . shall notify the Administrator of EPA of the existence of such facility or site.

As presently written, the duty which arises applies to all persons with any connection to the disposal site—even a person who may have a future connection. A person who may "have reason to believe" he is subject to this requirement would be responsible for guessing as to potential liability prior to the filing of any claim—even in some cases prior to any event which would lead to a claim—all in order to determine whether he must comply with this notice section. And the penalties for failure to give notice under this vague and indefinite section are harsh—a fine, prison sentence, and a waiver of any other limitations of liability, not only found in this act, but in any other laws. Mr. President, to impose such a penalty for failure to act, the required action should be clearly spelled out. The inclusion of the phrase "reason to believe" in this section leads to such ambiguity that some experts have even indicated it would violate the due process requirement that a criminal statute not be so indefinite as to fail to give fair notice that a contemplated act is forbidden by statute. Under such circumstances, it appears wise to remove this offending language.

The text of amendment No. 2316 follows:

On page 16, lines 17 and 18, strike out ", or has reason to believe that he or she may be subject to liability for,".

AMENDMENT NO. 2317

Mr. HELMS. Mr. President, my amendment would add—as defenses to the liability for damages as a result of a discharge, release, or disposal—the defenses of negligence on the part of the U.S. Government, and an act or omission of a third party, or a combination of the listed defenses. Along with the already present defenses of an act of God or act of war, these additions would bring the act into conformity with section 311 of the Clean Water Act and would bring an element of fundamental fairness to it.

My able colleagues, Senators DOMENICI, BENTSEN, and BAKER, in the Senate report to S. 1480, have very clearly outlined the results of the bill's omission of these defenses:

The only available defenses under the bill are an Act of God or an Act of War. As a consequence, what S. 1480 does is to simply throw out negligence and nuisance as legal concepts relating to the ongoing activities of America's entire industrial base.

The effects of such a doctrine are clear. For example, in the case of a mining operation where certain chemicals are used in the extraction process, the owner or operator of that mine would have no defenses available to him if an unidentified third party unconnected to his operation, came onto the mine site and mishandled those chemicals. He would find himself facing a barrage of suits in which he was being held strictly liable for all of the damages regardless of whether or not he had any control over the situation.

Mr. President, adequate precedent is present both in tort and Federal statutory law for the addition of these defenses. Under the circumstances, common fairness dictates their inclusion.

The text of amendment No. 2317 follows:

On page 24, lines 19 and 20, strike out "(i) an act of God or (ii) an act of war" and insert in lieu thereof "(I) an act of God, (II) an act of war, (III) negligence on the part of the United States Government, or (IV) an act or omission of a third party without regard to whether any such Act or omission was or was not negligent, or any combination of clauses (I) through (IV)".

AMENDMENT NO. 2318

Mr. HELMS. Mr. President, this amendment would substitute apportioned liability for the joint and several liability requirement presently in the bill. This strict, joint and several liability would extend to the largest number of possible defendants for a broad category of damages. Under this plan, a person with only a peripheral connection to an incident could be held liable for this entire damage because the bill extends liability to four categories of persons: First, present owners or operators of the vessel or facility from which the release occurred; second, owners or operators at the time of the release; third, generators who arrange for offsite disposal; and fourth, transporters. It is patently unfair to require strict as well as joint and several liability on all these classes of persons. My amendment would merely allow for apportionment of the damages so as to equitably assess the party at fault for the damage and injury he has caused.

Now, I understand there is an apportionment provision in the committee-drafted bill. However, it is clearly inadequate. It would allow defendants who are not "significant" contributors to the discharge to prove apportionment. But this proof could only be made after the establishment of the liability and all payments are made. This proof likely will be impossible because of the act's failure to define the key term—"significant." At any rate, any "significant" contributor is not assisted in the bill by apportionment, but is bound by the strict, joint and several liability scheme. My amendment would clearly establish the right of all defendants to apportionment of damages—regardless of the significance of their contribution to the injury.

The text of amendment No. 2318 follows:

On page 25, lines 22 and 23, strike out "shall be jointly, severally, and strictly liable for" and insert in lieu thereof "shall be strictly liable for such person's apportioned share (as determined by the trier of fact) of".

On page 29, line 3, strike out "liable for" and insert in lieu thereof liable for such person's apportioned share (as determined by the trier of fact) of".

Beginning on page 31, line 14, strike out all through page 33, line 6.

On page 33, line 7, strike out "(g)" and insert in lieu thereof "(f)".

On page 33, line 21, strike out "(h)" and insert in lieu thereof "(g)".

On page 34, line 9, strike out "(i)" and insert in lieu thereof "(h)".

On page 34, line 24, strike out "(j)" and insert in lieu thereof "(i)".

On page 37, line 1, strike out "(k)" and insert in lieu thereof "(j)".

On page 37, line 12, strike out "(l)" and insert in lieu thereof "(k)".

On page 38, line 1, strike out "(m)" and insert in lieu thereof "(l)".

On page 38, line 13, strike out "(n)" and insert in lieu thereof "(m)".

AMENDMENT NO. 2319

Mr. HELMS. Mr. President, this amendment would establish peer review for scientific studies released or relied upon by EPA.

There is growing concern about the impact which unreviewed and unverified studies can have. A recent example of this problem is the Love Canal chromosome-damage study which produced national headlines in mid-May. Two weeks after the study was released, an EPA panel concluded that the study had virtually no value.

In situations such as the Love Canal study, it would be far better to provide for peer review before release of a study than to convene a panel after the study has been released. A prerelease review could have recognized the inadequacy of

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the Love Canal study. Assuring that health studies are only released or used when they conform to accepted scientific criteria is an essential component of any program dealing with the problems posed by hazardous substances.

This amendment calls upon EPA to prepare and publish draft criteria and procedures for review of studies within 6 months.

The criteria would relate to the collection of scientific data and the evaluation and use of health and safety studies. Such studies would address subjects such as accepted standards for data gathering and sampling, testing methodology, statistical analysis, appropriate controls, and the completeness of data.

The procedures would be designed to assure that studies have been reviewed and have satisfied the criteria before they are relied upon by EPA as the basis for any action or released to the public. They would include independent peer review of any study which the Administrator proposes to rely upon or release. The review may include internal EPA review or review by other Federal agencies or by persons or organizations outside the Federal Government.

The Science Advisory Board could be called upon by EPA to participate in the review process. In addition, the Board would submit annual reports to Congress assessing the operation of the criteria and procedures.

Mr. President, this amendment would establish a procedure long needed to assure the quality of the information on which EPA relies.

The text of amendment No. 2319 follows:

At the end of the bill add the following new section:

PEER REVIEW OF SCIENTIFIC STUDIES

SEC. 13. The Administrator of the Environmental Protection Agency, within 6 months after the date of the enactment of this Act, shall propose, and within 3 months after proposing shall establish—

(1) criteria for the collection of scientific data and the evaluation and use of health and safety studies generated or used by the Environmental Protection Agency, and

(2) procedures, including peer review, to assure that such studies satisfy the criteria established under paragraph (1) before they are released or relied upon by the Environmental Protection Agency.

The Science Advisory Board of the Environmental Protection Agency shall monitor the criteria and procedures established under paragraphs (1) and (2) and shall report on an annual basis to the Congress with respect to the operation of such criteria and procedures.

AMENDMENT NO. 2320

Mr. HELMS. Mr. President, the amendment I am proposing is not a new idea. In fact, it is an idea that has become so popular over the past years that in 1979 alone, almost 100 bills and amendments were introduced which incorporated similar provisions. Out of those bills, 14 acts have been signed into law.

This amendment will allow Congress to play a much-needed and far more active role than it now plays in overseeing the activities of the Environmental Protection Agency. It gives Congress the authority to disapprove, through concurrent resolution, any regulations promulgated by EPA within 45 days of their appearance in the Federal Register.

It is my hope that if this amendment is enacted, Congress will make full use of it to disapprove unnecessary and harmful regulations which our farmers and businesses are confronted with daily. And of course there are many variations on the theme of legislative veto. I believe this is a particularly moderate one, involving both Houses of Congress.

The language used in this amendment is quite similar to that included in the authorizing legislation for the Department of Education. Already, Congress has disapproved four education regulations on the basis of that legislation. I hope we can employ this amendment in the same productive fashion.

The text of amendment No. 2320 follows:

At the end of the bill add the following new section:

CONGRESSIONAL REVIEW OF PROPOSED REGULATIONS

SEC. 13. (a) (1) Concurrently with the publication in the Federal Register of any final regulation of general applicability under this Act, such regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such regulation shall become effective not less than 45 days after such transmission unless the Congress shall, by concurrent resolution, find that the regulation is inconsistent with this Act, and disapprove the regulation.

(2) The failure of the Congress to adopt a concurrent resolution under paragraph (1) with respect to any final regulation under this Act shall not represent, with respect to such regulation, an approval or finding of consistency with this Act for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

(3) For purposes of this section, the term "regulation" means any rule, regulation, guidelines, interpretation, or requirement of general applicability.

(b) The 45-day period specified in subsection (a) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than 4 consecutive days. In any such period of adjournment, the 45 days shall continue to run, but if such period of adjournment is 30 calendar days or less, the 45-day period shall not be deemed to have elapsed earlier than 10 days after the end of such adjournment. In any period of adjournment which lasts more than 30 days, the 45-day period shall be deemed to have elapsed after 30 calendar days have elapsed unless, during those 30 calendar days, either the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Environment and Public Works of the Senate (or both) shall have directed its chairman, in accordance with the rules of the committee and the rules of that House, to transmit to the Administrator of the Environmental Protection Agency a formal statement of objection to the final regulation. Such letter shall suspend the effective date of the final regulation until not less than 20 days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this section. In no event shall the final regulation go into effect until the 45-day period shall have elapsed, as provided for in this section, for both Houses of the Congress.

(c) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the Administrator of the Environmental Protection Agency may issue a modified regulation to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modification differs from the final regulation earlier disapproved, and how he believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

(d) This section shall be effective with respect to any regulation (or amendment thereto) promulgated on or after the date of the enactment of this Act.

ADDITIONAL COSPONSORS

S. 915

At the request of Mr. INOUYE, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 915, a bill to direct the Secretary of the Army to determine the validity of the claims of certain Filipinos who assert that they performed military service on behalf of the United States during World War II, and for other purposes.

S. 2967

At the request of Mr. NELSON, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 2967, a bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes.

S. 3012

At the request of Mr. WILLIAMS, the Senator from Indiana (Mr. BAYH), the Senator from Minnesota (Mr. DURENBERGER), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 3012, a bill to amend the Internal Revenue Code of 1954 to eliminate the requirement that the States reduce the amount of unemployment compensation payable for any week by the amount of certain retirement benefits, and for other purposes.

S. 3092

At the request of Mr. TSONGAS, the Senator from Tennessee (Mr. SASSER), the Senator from West Virginia (Mr. RANDOLPH, and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of S. 3092, a bill entitled: "National Hostel System Act of 1980".

SENATE JOINT RESOLUTION 176

At the request of Mr. INOUYE, the Senator from Florida (Mr. STONE), the Senator from Delaware (Mr. BIDEN), and the Senator from Kansas (Mrs. KASSEBAUM) were added as cosponsors of Senate Joint Resolution 176, a joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week", and for other purposes.

SENATE CONCURRENT RESOLUTION 117

At the request of Mr. MOYNIHAN, the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of Senate Concurrent Resolution 117, a concurrent resolution expressing the sense of the Congress that the President should convey to the Soviet Government the deep concern of the Congress and the American people for the fate of Raoul Wallenberg and that the U.S. delegation to the Madrid Conference on Security and Cooperation in Europe should urge consideration of the case of Raoul Wallenberg at that meeting by the signatories to the Helsinki Final Act.

SENATE RESOLUTION 401

At the request of Mr. TOWER, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of Senate Resolution 401, a resolution expressing disapproval of the Senate of certain aspects of the proposed model adoption legislation and procedures.

SENATE RESOLUTION 448

At the request of Mr. MELCHER, the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of Senate Resolution 448, a resolution to make the Select Committee on Indian Affairs a permanent committee of the Senate.

AMENDMENT NO. 1690

At the request of Mr. MATHIAS, the Senator from Utah (Mr. GARN) was added as a cosponsor of amendment No. 1690 intended to be proposed to S. 1722, a bill to codify, revise, and reform title 18 of the United States Code; and for other purposes.

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE

Mr. TALMADGE. Mr. President, I wish to announce that the Agriculture Committee will hold a hearing on the disastrous effects which this summer's drought has had on the farm sector. I have invited a group of farmers from Bulloch County, Ga., to testify on the countywide loss of their peanut crop. I believe their plight is typical of what the weather has done to farmers throughout the country.

The hearing will be held on Tuesday, September 17, beginning at 10 a.m., in room 324 Russell Building. Anyone wishing further information should contact the Agriculture Committee staff at 224-2035.

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr President, the Select Committee on Small Business and the Committee on the Environment and Public Works will hold a joint hearing on the Possible Economic Costs of Acid Rain: Economic Losses to Tourism, Sport and Commercial Fishing, Agriculture and Forestry, Damage to Public Buildings and Monuments, and Threats to Public Health.

The hearing will begin at 9 a.m., Tuesday, September 23, 1980, in room 424, Russell Senate Office Building.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Committee on Energy and Natural Resources on the nomination of Wallace O. Green to be an Assistant Secretary of the Interior for Territorial and International Affairs.

The hearing is scheduled for Tuesday, September 23, beginning at 9:30 a.m. in room 3110 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Committee on Energy and Natural Resources, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510. For further information regarding the hearing, you may wish to contact Jessie Mackenzie of the committee staff on extension 47147.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I wish to announce that the Committee on Energy and Natural Resources had scheduled oversight hearings on "the growing importance of coal in international trade". The initial hearings will be held on September 16, 18, and 19, 1980, at 10 a.m. in room 3110, Dirksen Senate Office Building.

The purpose of these hearings is to review; first, the potential demand of overseas markets for coal in the near-term—next 10 years—and in the longer term; second, international factors affecting the materialization of such demand; third, domestic economic and other factors which might, or will, constrain the capability of the United States' coal industry to meet this potential demand; fourth, other domestic economic and other factors, such as the capability of domestic railroad, river, or other transportation facilities, which might, or will, constrain the U.S. capability to export coal in the quantities envisioned; fifth, possible governmental—Federal, State or local—actions that will be, or may be, necessary to mitigate such constraints; and sixth, international cooperative arrangements that might be, or are being, undertaken regarding international trade in coal.

The following witnesses, or their representatives, are expected to testify:

On Tuesday, September 15, the Honorable John Sawhill, Deputy Secretary, Department of Energy and Chairman of the Interagency Coal Export Task Force, accompanied by representatives of the Department of Commerce—Maritime Administration—the Department of Transportation, and the Department of Army—Corps of Engineers; and John D. Bierman, Senior Vice President-Export Credits Guarantees and Insurance, Export-Import Bank of the United States.

On Thursday, September 18, 1980, a coal export panel composed of: William W. Mason, president, Coal Exporters Association and president, Island Creek Coal Sales, Lexington, Ky. 40511; Pieter L. M. Vismans, president, SSM Coal Co., Inc., New York, N.Y. 10017; and Wilson Browning, president, W. J. Browning Co., Inc., coal exporter-broker, Norfolk, Va. 23510. There also will be a panel composed of representatives of east coast and gulf coast port authorities and operators from: New Orleans, La.: Edward S. Reed, port director, Port of New Orleans and Louis H. Meece, president, International Marine Terminal, New Orleans; from Virginia: Glenn Sedam, chairman, Virginia Port Authority, Norfolk, Va. 23510; and from Baltimore, Md.: Louis W. Willett, director of planning and research, Maryland Port Administration, Baltimore, Md. 21202; accompanied by Capt. Thomas W. Powers, occupational safety and health administrator.

On Friday, September 19, 1980, Carroll L. Wilson, director, World Coal Study, Cambridge, Mass. 02139; and a panel composed of transportation representatives: John T. Collinson, president, Chessie System, Cleveland, Ohio 44101; and John P. Fishwick, president, Norfolk and Western Railway, Roanoke, Va. 24042.

Individuals wishing to submit written statements for the record should transmit 10 copies to the Committee on Energy and Natural Resources, U.S. Senate, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.

Inquiries regarding these and any future hearings should be directed to Richard Grundy, professional staff member, at (202) 224-9894.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, the Committee on Labor and Human Resources will hold a hearing on S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases. This hearing will be held on Tuesday, September 23, 1980, in the Labor and Human Resources Committee hearing room, 4232 Dirksen Senate Office Building. The hearings will commence at 9:30 a.m. and will be chaired by Senator METZENBAUM.

Anyone desiring further information about these hearings or wishing to testify should contact Luther Washington at (202) 224-2315.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE TO INVESTIGATE INDIVIDUALS REPRESENTING INTERESTS OF FOREIGN GOVERNMENTS

Mr. MELCHER. Mr. President, I ask unanimous consent that the Subcommittee To Investigate Individuals Representing Interests of Foreign Governments of the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold a public hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, September 11, 1980, to hold a hearing on S. 1480, the Environmental Emergency Response Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

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SUBCOMMITTEE ON RURAL DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Rural Development Subcommittee of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Thursday, September 18, 1980, to hold a hearing on deficiencies in census counts in rural areas.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

RENTAL HOUSING INCENTIVES

● Mr. STEWART. Mr. President, two recent articles in the Washington Post and the Washington Star point out some vitally important incentives for rental housing construction that were included in the tax-cut legislation reported by the Senate Finance Committee. These provisions were drawn from the Real Estate Construction and Rehabilitation Incentives Act of 1980, a measure introduced by Senator WILLIAMS that represents the most thoughtful and comprehensive revision of rental property tax codes in recent memory.

Mr. President, there is no disputing the fact that a very serious crisis in our rental market has developed in recent years. A significant portion of the existing rental stock has been lost to abandonment and conversions, and the amount of private, unsubsidized new rental construction has dropped way down. All estimates indicate that the volume of new construction will not come close to meeting the Nation's needs in the upcoming decade. National vacancy rates are at historic lows, currently around 5 percent.

A variety of factors is responsible for the decline in new rental construction, but the bottom line is that it is no longer viewed as a profitable investment by developers. Operating costs, especially due to rising energy prices, have skyrocketed. New investment costs have sharply risen due to high land, construction, and financing charges. Right now, developers simply cannot charge rents which will cover the costs they incur in building new rental units.

Ten months ago, the General Accounting Office concluded that the rental housing problem was "so severe that it required the immediate attention and action by Congress and the administration." Since that time, the situation has only become more urgent. In my view, working through the tax code to stimulate the rehabilitation and construction of rental units is the most efficient and least costly way of addressing the problems in our rental housing sector.

In its final version of the tax-cut legislation, the Finance Committee approved a major reform aimed at spurring rental construction. Specifically, the bill establishes a 20-year straight line depreciation schedule for all residential property. This is a significant improvement over the present situation for two reasons. First, it shortens the current depreciation period for rental units, which now ranges from 30 to 40 years. Second, by providing for an audit-proof schedule, the bill will mean an end to the frequent disputes which now occur between builders and the Internal Revenue Service over what constitutes the useful life of a building.

The Finance Committee's bill will also make low-income apartments eligible for depreciation over a 15-year period. This shorter life should provide an important incentive to offset other restrictions which exist on investments in low-income housing.

Mr. President, there are other important changes in real estate taxation provided for by the Real Estate Construction and Rehabilitation Incentives Act, and I hope that many of these can be incorporated in the final tax-cut legislation which is approved by this Congress. I do want to emphasize, however, my belief that the Finance Committee's action represents an important first step in relieving the crisis in our rental housing markets.

I ask that the articles from The Washington Post and the Washington Star be included in the RECORD.

The articles follow:

PROPOSED CHANGES IN TAX LAW COULD AID REAL ESTATE MARKET

(By Kenneth R. Harney)

Real estate has plenty at stake—more than is widely recognized—in the current hot debate here over whether there's to be a tax cut in 1980.

The major tax cut proposals now being bandied about on Capitol Hill contain some important reforms that could assist housing and real estate significantly.

Take the bill that the Senate Finance Committee passed with strong bipartisan support, for example. It would liberalize the capital gains tax and make ownership of real estate an even more attractive hedge against inflation than it is now.

The bill would increase the tax-free "exclusion" permitted under the capital gain levy to 70 percent of the total gain, up from 60 percent at present.

That means that an owner of a piece of real estate held for a year or more could keep $700 of every $1,000 in profits at resale absolutely tax-free. The remaining $300 of every $1,000 would be included in the taxpayer's regular income and taxed at ordinary rates.

(By the way, this wouldn't change the already favorable rules on capital gains deferral on sales of principal residences. That provision allows you to "roll over" or postpone tax recognition of the gain on the sale of your house, as long as you purchase a more expensive dwelling within 18 months or construct a more expensive new one within 24 months.)

The Senate Finance Committee's bill—which is opposed by the Carter administration and hasn't yet come to the Senate floor for a final vote—would help in two other important ways. It would:

1. Increase savings deposit inflows to thrift institutions by expanding the availability of Individual Retirement Accounts (IRAs) to more U.S. workers, and by enlarging the annual amount of contributions permitted to such pension plans. Deposit flows to thrift institutions like savings and loans and mutual savings banks are crucial to housing. The thrifts provide more dollars for mortgage loans than any other source. The more IRA dollars they've got on deposit, the better off housing will be.

2. Simplify and speed up the depreciation thereby encouraging rental housing construction and investment in new commercial buildings. Most income-producing real estate could be depreciated over 20-year periods under the bill, rather than the cumbersome and audit-prone 30- to 40-year schedules required by the present tax code. Low-income rental real estate could be depreciated in just 15 years, as could owner-occupied business real estate.

Besides the Finance Committee bill, there is another major tax proposal that could help shape the Senate's final measure, via floor amendments. It is a bill, sponsored by Sen. Harrison Williams (D-N.J.), that contains several reforms of special note.

Williams' bill would encourage the owners of apartment buildings that are ripe for conversion to condominiums or cooperatives to sell units directly to tenant organization members at large price discounts. This would be achieved by allowing building owners to qualify for capital gains treatment on their profits from individual unit sales instead of facing ordinary income taxation as at present.

Rather than being forced by the tax code to sell a building to a middleman "converter" or developer—thereby inflating the eventual retail price to consumers—Williams' bill would permit rental building owners to function as retailers themselves. With mandatory heavy involvement by tenants in the timing and planning of the redevelopment project, building owners could convert an apartment complex into ownership units at deep discount prices.

Sen. Williams, a Democratic liberal with strong ties to the labor movement, is not pushing this concept because he loves fat-cat real estate investors and landlords. Williams has concluded that in a highly inflationary economy, condominium and co-op conversions are inevitable. They're a natural, understandable response to an economic system that penalizes renters as well as the people who own large-scale rental property.

Far better to create incentives for current building owners to sell apartment units at moderate prices, affordable by a large segment of tenants and prospective home buyers, than to try to ban conversions and turn back the clock.

What's the outlook for enactment of sensible tax assistance like this for housing and other real estate? For 1980, the ball is in the court of the Democratic leadership in the House and Senate. Members of their party—such as Louisiana's Sen. Russell Long, New Jersey's Williams and Texas' Sen. Bentsen—have seized back much of the initiative from the Republicans on the whole tax cut issue.

But they've still got to convince their colleague down on Pennsylvania Avenue, plus the Ways and Means Committee in the House to go along and cut some taxes before time runs out.

[From the Washington Star, Sept. 7, 1980]

TAX-CUT BILL LIKELY TO CARRY RENTAL HOUSING INCENTIVES

(By Barry G. Jacobs)

It's still too early to tell whether Congress will pass a tax-cut bill this year, but there's a good chance that any such legislation that is passed in 1980 or 1981 will include some incentives for rental housing.

The real estate industry has been lobbying for a bill introduced by Chairman Harrison A. Williams Jr. of the Senate housing subcommittee. A portion of that bill which deals with depreciation has been incorporated in proposals already approved by the Senate Finance Committee. That legislation is expected to reach the Senate floor in mid-September.

Depreciation is a deduction which allows a property owner to recover the tax on the cost of that property over a period of years. In real estate, the cost of a building is depreciable, but not the cost of land.

Depreciation can be straight-line, with equal deductions taken each year over the theoretical useful life of the property, or accelerated, with larger deductions in the earlier years and smaller deductions later on. The total allowable depreciation for a given property is the same under all methods.

Under the Williams bill, all real estate except low-income housing would be depreciated on a straight-line basis over 20 years. Low-income housing would get 15-year straight-line depreciation. The shorter useful life, for tax purposes, means larger annual deductions and is an additional incentive for investment in low-income housing.

The Finance Committee added a provision allowing 15-year accelerated depreciation for owner-occupied business real estate. This isn't expected to affect residential property.

There are a number of other provisions in the Williams bill which so far haven't been incorporated in the Senate's tax package.

One key provision would repeal Section 189 of the Internal Revenue Code. That section, added to the code in 1976, requires construction-period taxes and interest to be amortized over a 10-year period, instead of being deducted in the year in which they are paid. These front-end deductions have always been an important attraction for investors.

Section 189 is being phased in for most classes of real estate, and it will begin to apply to low-income housing in 1982.

ELIMINATING MIDDLE MAN

Another important section of the Williams bill deals with the tax treatment of condominium and cooperative conversions.

Under present law, if the owner of an apartment building converts the property and then sells the individual units, he is considered a real estate dealer, and any gain on the sales will be taxed as ordinary income. In order to qualify for the much lower capital-gains tax rate, the owner must sell the entire building at one time.

Usually the building is sold to a company specializing in conversions, which then turns around and sells the individual units for a higher per-unit price. In effect, the converter buys the property wholesale and sells it retail.

The Williams bill would eliminate this middle man by allowing the original owner to treat as capital gains his profits on the direct sale of units. This should result in a higher net profit to the owner and a lower price to the unit buyers.

The bill also would eliminate some restrictions on the use of tax-exempt bonds to finance housing.

In housing rehabilitation programs, the bill would authorize the use of tax-exempt bond proceeds to remove prior liens on property being rehabilitated. Generally, bondholders will insist on the security of first mortgages on bond-financed properties, so that in the event of default and foreclosure, they will get first crack at any available funds.

The Internal Revenue Service has ruled, however, that bond proceeds can't be used to clear prior liens on property being rehabilitated without a change in ownership. Such a use, the IRS says, would violate regulations prohibiting prior users of the property (in this case, the owner) from receiving a substantial benefit from the bond proceeds.

This ruling, which blocked a proposed Maryland Community Development Administration rehab program, would be overturned by the Williams bill.

The bill also would authorize advance refunding of housing bonds, a procedure in which a new issue is sold to retire outstanding bonds before maturity. This would allow housing finance agencies to take advantage of declines in interest rates.

The IRS has prohibited advance refundings because they result in having two bond issues outstanding at the same time, increasing the revenue loss to the Treasury.●

CHILE: REPRESSION, FRAUD, AND FARCE

● Mr. KENNEDY. Mr. President, in Chile, September 11 marks the seventh full year that country has endured a military dictatorship—and it has been a year in which repression increased. The Chilean regime now intends to commemorate the coup that halted Chilean democracy with a fraud and a farce—a constitutional plebiscite designed to extend General Pinochet's hold on power perhaps until 1997.

In recent months, the Pinochet regime has renewed the state of emergency, suspended again individual liberties, extended the arbitrary powers of the Chilean secret police apparatus, and engaged in mass arrests, torture, and a sweeping campaign of intimidation.

The Chilean Commission of Human Rights reports more than a thousand persons detained during the first 6 months of 1980, another 500 during the month of July alone. And amnesty international reports that "political arrests and systematic torture of suspects have increased sharply" since last May, and especially since the assassination of the director of the army intelligence school on July 15. Labor leaders, students, and human rights advocates have been sentenced without trial to "internal exile" in remote areas of the country; several hundred professors once more were sacked from the university for political views; and reports of torture, death, and disappearances have occurred with increasing frequency.

With this backdrop of rising repression, the Pinochet regime now proposes to carry out a constitutional plebiscite this Thursday which combines farce, fraud, and tragedy. It demands that voters engage in a ritual designed to create an illusion of legitimacy to obscure the reality of Chilean authoritarian rule.

The farce is the plebiscite itself. Voters will be faced with the threat of jail for failing to vote. Yet, there is no voting list, no alternative to the draft constitution put forward by the junta, no independent check on who votes or who counts the votes. Everything will be run by individuals appointed by General Pinochet. Those who count the votes will be Pinochet appointees; those who review the tallies will be Pinochet appointees; and those who protect the polling places will be Pinochet security forces. Those who can speak on television or have their statements printed without censorship are those who speak for the junta.

It is no wonder that all of the traditional opposition political leaders have spoken out against the plebiscite. Although political parties are not allowed to meet or act, courageous political leaders and legal scholars have challenged the planned plebiscite as being a perversion of democracy.

The Conference of Bishops of Chile only 2 weeks ago stated that conditions for a valid plebiscite do not exist. Among those conditions which they noted were absent are "liberty, a secret ballot, and security in casting one's vote."

The farce not only involves the procedure for the plebiscite but the procedure that produced the proposed constitution as well. In defiance of over one and a half centuries of democratic tradition prior to the 1973 military coup, General Pinochet and the junta handpicked the delegates, reviewed that draft and submitted it for ratification under their own rules.

And the document submitted to the people of Chile by the junta is a fraud—pure and simple. The proposed constitution places few restraints upon the power of the government nor does it establish a framework of law. Instead, it authorizes the abuse of power and assures the personal dictatorship of General Pinochet for at least another decade.

In 1989, it is the junta which will name the President for still another 8-year term—and only at its conclusion—in 1997—is there even a promise of a Presidential election.

All legislative power is to reside—as it has for the past 7 years—in the military junta. There will be no congressional elections through 1990 and perhaps not even then. The ban on political parties and the denial of elected representation would be ratified for another full decade.

It is no wonder that the group of 24, a distinguished committee of legal and constitutional scholars who had offered to prepare an alternative document and requested the chance to comment on the junta's draft, condemned the plebiscite as a means simply of "consolidating the regime" and termed the proposed constitution "a coarse deception." It is, as they noted, "a plebiscite that has as its object the perpetuation of the autocracy that he heads, to complete nearly a quarter century of dictatorial government."

Mr. President, the junta in Chile has been condemned for its human rights abuses by the administration, by the Inter-American Commission on Human Rights, and by the United Nations Human Rights Commission. Its violations of the rights of labor have drawn the criticism of labor unions and the ILO; its abuses have yielded a series of resolutions by international bodies documenting and condemning those actions which have violated its own international and regional human rights obligations. Nor can we forget that the Pinochet regime directed a terrorist assassination in Washington of Orlando Letelier and Ronni Moffit.

In this context, Mr. President, it continues to be essential for the United States to disassociate itself—both publicly and privately—from the Pinochet regime. I hope that the Department of State will reject the upcoming plebiscite as a farce and the draft constitution as a fraud and state our view that we will accept nothing less than an end to human rights abuses and the restoration of democracy. I commend the Department for refusing to allow Chile to participate in the annual hemisphere naval exercises, Unitas XXI, and for continuing to bar aid to the Pinochet government.

I also hope that the United States will support actions in both the Organization of American States and the United Nations to condemn the proposed constitution and the plebiscite as counter to the international obligations of the Ameri-

can Convention on Human Rights and the International Covenant on Civil and Political Rights. There should be no question that continuing repression and denial of democratic process will have grave repercussions on Chile's standing in the international community.●

EXPORT TRADING COMPANIES

● Mr. STEVENSON. Mr. President, American export trading companies could prove especially valuable in arranging U.S. exports to developing countries. Forty percent of U.S. trade is with developing countries and potential growth in their markets is considerably greater than that of the developed nations.

I asked the Department of Commerce and the Department of Agriculture to survey our commercial attachés and agricultural attachés overseas to determine which markets offered the best chances for U.S. export trading companies to expand U.S. exports. The responses suggest widespread opportunities, especially in the rapidly growing economies of Asia, Africa, the Middle East, and Latin America. Among the countries identified where U.S. export trading companies could be particularly effective were: Colombia, Egypt, Hong Kong, the Ivory Coast, Malaysia, Nigeria, India, the Philippines, Pakistan, Yugoslavia, Spain, Peru, Uruguay, and Belgium.

Mr. President, I ask for the responses I received from the Department of Agriculture and the Department of Commerce to be printed in the RECORD at this point.

The responses follow:

U.S. DEPARTMENT OF AGRICULTURE,
FOREIGN AGRICULTURAL SERVICE,
Washington, D.C., August 1, 1980.

Hon. ADLAI E. STEVENSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR STEVENSON: This is in further response to your request of June 3, 1980, for examples of foreign markets in which U.S. export trading companies might prove useful in expanding markets for U.S. agricultural commodities.

The agricultural counselors, attachés, and officers covering 46 countries have given us their views on the impact that the Export Trading Company Act of 1980 (S. 2718) could have on U.S. agricultural exports. They have also supplied us with information about the presence of foreign trading companies as well as U.S. trading companies and export managers in their countries of assignment.

In seven locations (Belgium, Colombia, Egypt, Hong Kong, Ivory Coast, Malaysia, and Nigeria) our representatives reported categorically that the proposed legislation would be beneficial for U.S. agricultural exports. Reports from 29 countries indicated that a limited or minor positive impact on U.S. agricultural exports could result from passage of the Act. Reports from seven countries indicated the proposed legislation would not have a positive impact on trade. Reports from three countries were indecisive.

Concerning existing exports trading services, U.S. trading companies or export managers were reported in 6 countries, while foreign export trading companies—primarily Japanese—were reported in 20 of the countries surveyed.

We hope the above information will be useful.

Sincerely,

THOMAS R. HUGHES,
Administrator.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., July 30, 1980.

ROBERT RUSSELL, Esq.,
Counsel to the Subcommittee on International Finance, U.S. Senate, Washington, D.C.

DEAR MR. RUSSELL: As you requested, I am enclosing a summary we have received from our Foreign Commercial Service posts on export trading companies, as well as a post-by-post resume of replies to our circular telegram asking for post views on export trading companies.

I hope this information will be helpful to you.

Sincerely,

DAVID A. ROSS,
Special Assistant to the Director General, Foreign Commercial Service.

Enclosure.

SUMMARY

Subject: Export Trading Companies.

Reference: USDOC 09106, requesting FCS posts to comment on how ETC's could help promote U.S. exports.

Summary of the main points contained in post replies to reference telegram:

Export trading companies (ETC's) could markedly strengthen the position of U.S. exporters in certain overseas markets.

The most effective ETC would be one offering the most comprehensive service: marketing, shipping, insurance, and financing. The latter—financing—is the key element. If the ETC cannot offer clearly competitive financing terms, its other advantages will have only limited chance to come into play.

Where imports are controlled by state trading entities, the importing entities are often required to deal directly with the foreign manufacturers, to the exclusion of ETC's or other intermediaries.

In LDC's pursuing policies of "indigenization", the ETC's would have to operate through indigenous trading firms, the same as any foreign supplier seeking to enter the import market.

Often the role of the ETC will depend upon how far it is able to go in meeting importers' individual needs, such as (a) handling small orders, (b) over-or underinvoicing to minimize import surcharges, (c) offering credit on easy terms, and (d) shipping precisely on schedule. These require knowledge of local import, customs, credit and banking regulations, and readiness to conform closely to individual customers' wishes. ETC's so inclined are able to provide this kind of service, but they are not innately endowed with an exclusive capacity to do so.

In sophisticated industrialized markets, ETC's would not contribute greatly to increased U.S. exports. Local importers and distributors rely on contacts of long-standing directly with foreign suppliers or highly specialized and experienced marketing groups. In general the field is highly developed, complex, and often deals in large volume and long term.

END OF SUMMARY

Attached is a post-by-post resume of the replies received.

POST-BY-POST RESUME OF REPLIES

[Telegram number in parentheses]

BUENOS AIRES (4998)

No experience—no information to report.

PANAMA (0529)

ETC's could be effective if they could provide adequate financing. Field is now limited to a few large U.S. agricultural marketing groups and some small U.S. consulting firms with limited financial capabilities. Japanese are the most active, with ETC's that have their own bank, factory, ship, insurance company, and marketing firm.

QUITO (3984)

Most local agents deal directly with manufacturers to avoid intermediary price markups. As financing is a key consideration, ETC's with banking services would find favor.

MEXICO (10214)

New ETC incentives would not have significant effect, owing to proximity, long-standing preference for U.S. goods and already well-developed channels of supply.

LA PAZ (5139)

ETC's could play a much larger role than at present (a) by providing expertise to meet complicated public sector import procurement requirements, and (b) by finding effective local agents/distributors. Key element is export financing, which ETC's would have to be in a position to provide if they are to succeed.

MONTEVIDEO (2369)

ETC's could offer very real advantages if they could compete more effectively than U.S. exporters do now with European and Asian exporters who accept small orders, invoice at over or under list price to minimize duty, provide easy financing, ship precisely on schedule, and keep informed on intricacies of local import regulations.

LIMA (6219)

Major projects are largely public sector, with few bidders, of which the one with best financing enjoys advantage. With anticipated early expansion of private sector as new government takes over (July 1980), situation is ideal for a large ETC that could provide all engineering studies and equipment, ship, and especially finance (including equity participation of possible).

SANTO DOMINGO (4807)

No visible role for ETC's.

BERN (3649)

ETC's would not contribute greatly to expansion of imports from U.S., owing to sophisticated character of market with long-established trading patterns.

FRANKFURT (07875)

Only Japan has active ETC's in Germany. Germany has several varieties of ETC's active abroad.

DUSSELDORF (1336)

As German market has highly specialized import needs, and financing is readily available, there is only limited potential impact for ETC's.

BRUSSELS (10727)

The ETC approach is worth a try in Belgium, although there are already many small ETC's in existence, and Belgium exporters are themselves sufficiently accustomed to foreign trade as not to be as much in need of ETC's as are U.S. exporters.

BARCELONA (00692)

Legislation to promote creation of ETC's is welcome, as their advantages would have ample scope in Barcelona area, particularly if they are able to offer credit.

OSLO (4438)

ETC's play a very limited role in Norway.

BELGRADE (5613)

U.S. exports are dominated by a few large U.S. firms with the resources and experience needed to succeed in the complex Yugoslav market. ETC's as envisaged in the Stevenson Bill could take the risk and long term approach that now deters many potential U.S. exporters. As the largest U.S. banks are well tied into the Yugoslav market, a provision that would allow them to invest capital and expertise directly in ETC's would add much to ETC's prospects.

VIENNA (09818)

Establishment of ETC's with requisite know-how, international marketing contacts, and financial capacity would be instrumental in expanding U.S. sales in Austria. Services of ETC's would also be welcomed by Austrian exporters who now rely heavily on trading firms in third countries for a large part of their exports outside of Europe.

LAGOS (06792)

ETC's would significantly benefit U.S. firms in Nigerian market, to the extent that ETC's could (a) mount greater marketing efforts by creating larger groupings of firms, and (b) provide increased access to export financing. However, ETC's would have to operate locally through a Nigerian firm, owing to policy of indigenization.

ACCRA (05758)

Role of ETC's in Ghana has not been significant. However, favorable financing is often the most important factor in securing sales. If American ETC's could improve credit terms U.S. suppliers could offer, increased sales would result.

ABIDJAN (6500)

ETC's would provide significant benefit by (1) consolidating the efforts of smaller U.S. firms unable to devote required resources individually, and (2) providing the financial support needed to offer competitive export credit terms.

NAIROBI (13008)

ETC's are not very evident in Kenya; but certainly American ETC's would have useful impact if they could offer financing competitive with the very attractive terms offered by Japanese and European suppliers.

KINSHASA (8890)

Japanese trading companies are very effective in Zaire, and have been instrumental in loss of market share in recent years by U.S. suppliers. Critical factors have been availability of financing and after-sales service which ETC's are able to offer.

ALGIERS (1969)

All foreign trade is the monopoly of state trading corporations, which prefer to deal directly with manufacturer, and regard intermediaries such as ETC's as unneeded middlemen.

KUWAIT (3171)

Despite general Kuwaiti aversion to middlemen, Japanese ETC's are active locally because of their reputation, known reliability, demonstrated performance and competitive terms. No ready vacuum awaits advent of American ETC's, but they could succeed if able to perform at a level competitive with Japanese.

ABU DHABI (1488)

Japanese ETC's are very active locally, performing many services normally provided by foreign commercial attaches (in our case FCS). American ETC's could benefit U.S. exporters by providing rapid communication with U.S. suppliers, knowledge of local market, and willingness to meet buyers' specifications.

JIDDA (04221)

Role of American ETC's would be very limited, owing to legal restrictions against foreign participation in import activities, and well-entrenched Saudi preference in favor of purchasing direct from manufacturers.

KARACHI (3133)

Japanese ETC's are active and effective, and are able to offer lowest bid on most public sector imports (70 percent of total imports) because of (1) favorable financing they can provide and (2) broad range of suppliers from which they can produce a packaged bid combining a variety of equipment to suit buyer. American ETC's would enhance capability of U.S. suppliers to meet this kind of competition.

NEW DELHI (11786)

About 30 Japanese ETC's are active in India, and U.S. firms could also benefit by advantages offered by ETC's, particularly if they enabled U.S. suppliers to offer more liberal financing.

SINGAPORE (06317)

Many local importers now deal through American trading companies with beneficial results. The single most important benefit that American ETC's could offer is more liberal financing for Indian importers.

MANILA (13646)

Japanese share of Philippine market expanded in recent years, while U.S. share shrank, owing largely to marketing and financing capabilities of Japanese ETC's. Establishment of strong American ETC's would markedly improve U.S. competitive position.

WELLINGTON (03015)

ETC's play a minor role, as importers generally deal direct with overseas manufacturers.

MELBOURNE (0994)

Japanese ETC's are active and highly effective. U.S. ETC's could greatly improve the caliber of service provided by U.S. exporters to Australian importers, especially if bank participation led to more attractive credit terms.●

CLARKSVILLE LITTLE LEAGUE CHAMPS

● Mr. SASSER. Mr. President, the State of Tennessee and the citizens of Montgomery County and Clarksville are honored and proud to have been represented in the National Little League Southeastern Region Tournament at St. Petersburg, Fla., this month.

The Clarksville National Little League All-Stars—a talented group of 14 excellent athletes—almost captured the tournament. Although they were defeated in the final game by the champion Tampa, Fla. team, they gave it their best shot and we are very proud of them. These 14 young athletes represented their community well, finishing second in a tournament in which a total of 7,600 Little League players participated.

Under the able direction of team manager Carrol Poole and coach Dan Ender, these youngsters came within two runs of winning the tournament and moving on to the National Tournament at Williamsport, Pa. The team returned to Clarksville on August 24 after a grueling 15-hour bus ride, but they were in high spirits as they were greeted by a crowd of proud parents, friends and loyal fans. They represented their hometown and State with excellence and in the best tradition of sportsmanship. These accomplished players played with tenacity, coming from behind several times to win the State tournament and earn the trip to the Southeastern touranment. They represented several Little League teams in the Clarksville area, and I know all Tennesseans are proud of them. The team members are Jimmy Galbreath, Eric Mazzei, Steve Miller, Craig Cross, Bryan Alsobrooks, John Davidson, Jim Brewer, Brad Cooper, Sean Thomas, Scott McLean, Chris Ender, Timmy Rye, Frank Goodlett and Chad McKinney.

I am sure this competition has been a tremendous learning experience for the players. They have gained self-confidence and wisdom in the past several weeks. I wish them continued success in the future.●

UNITED STATES-SOVIET RELATIONS

● Mr. KENNEDY. Mr. President, it is clear that the Soviet occupation of Afghanistan has created strains in United States-Soviet relations and prompted a reappraisal of the bilateral relationship. In a thoughtful article in the August 3 edition of the St. Louis Post-Dispatch, David Linebaugh, former deputy assistant director of the U.S. Arms Control and Disarmament Agency, addresses the fundamental issues underlying our relationship with the Soviet Union and methods for resolving them.

Mr. Linebaugh states:

> The obligation of American leadership is both to protect the nation with a strong defense and to explore the possibilities for easing tension and finding common ground with the Soviet Union.

He claims that if we are to accept the fact that our relationship with the Soviet Union will be "differentiated"—that is, containing "some good elements and some bad elements"—then we must not foreclose opportunities for cooperation. In particular, we must engage in negotiations on "the issues currently most critical to United States-Soviet relations—Afghanistan, the nuclear arms race in Europe, and SALT."

Mr. Linebaugh states that the goals of negotiation cannot be readily achieved. But he claims that:

> The United States has powerful bargaining cards: normalization of relations in trade, grain sales, and exchanges; participation in guarantees against interference in Afghanistan's internal affairs; a return to evenhandedness in our relations with Russia and China and others.

Most important, negotiation remains the only means for achieving such important objectives as a near-term Soviet withdrawal from Afghanistan and a halt to the race in theater and strategic nuclear arms.

Mr. President, United States-Soviet relations are in a state of flux. But certain principles for guiding our relationship with the Soviet Union remain unchanged: We must both oppose Soviet aggression and search for ways to reduce tensions. I submit Mr. Linebaugh's article for printing in the RECORD.

The article is as follows:

RESUME THE DIALOGUE—PARALLEL TALKS WOULD ENHANCE U.S. BARGAINING POWER

(By David Linebaugh)

Dean Acheson, Edmund Muskie's model Secretary of State, advised that "the important thing in thinking about international affairs is not to make moral judgments or apportion blame but to understand the nature of the forces which are at work as the foundation for thinking about what if anything can be done." Mr. Acheson was a pragmatist.

It is not possible for an outsider to understand the forces at work within the Kremlin although it is evident that the Soviet decision to occupy Afghanistan was not an iso-

lated event but was made within the context of a gradual deterioration in relations with the United States extending over several years. But it is possible, as Mr. Acheson suggested, to think about what can be done.

The obligation of the American leadership is both to protect the nation with a strong defense and to explore the possibilities for easing tension and finding common ground with the Soviet Union. For what if anything can be done to mitigate the deepening crisis with the Soviet Union can only be answered through the pragmatic test of negotiation.

If the United States is prepared to accept a differentiated relationship with the Soviets—some good elements and some bad elements—then negotiation might bear fruit, as it has before. There are still favorable forces at work on the world scene, as well as unfavorable ones. Europe is stable and there is little chance of a fundamental change in alignments in Europe which would upset the global balance. China inhibits Russia, providing Russia does not feel pushed to the wall by an intemperate and provacative U.S.-China military relationship.

Mutual nuclear deterrence remains effective; both sides have secure retaliatory forces. The eruptive force of nationalism in the Third World bars excessive Soviet influence even though some Third World countries—Vietnam, for example—will exploit the ambitions of the superpowers to gain support in their regional quarrels. All of these factors constrain the Soviet Union.

The crisis over Afghanistan has made the revival of intensive communication with the Soviets urgent and important. Indeed, the invasion of Afghanistan may itself have been the result of Soviet miscalculation due in part to poor communication.

The crisis over Afghanistan has also made negotiation to limit Soviet military power urgent and important. Somewhat paradoxically, it is now more rather than less important to ratify SALT II, and to make a start on SALT III and on limitations on Russian power in Europe.

An active dialogue between Moscow and Washington would help re-establish the cohesion of the Western alliance, and complement and support the initiatives of Lord Carrington of Britain, Giscard d'Estaing of France, and Helmut Schmidt of Germany. The West would again present a united front to Moscow.

Parallel negotiaitons on the issues currently most critical to U.S.-Soviet relations—Afghanistan, the nuclear arms race in Europe, and SALT—would enhance American bargaining power and offer a better chance of success than negotiations focused just on Afghanistan.

The goals of negotiation are ambitious: Soviet withdrawal from Afghanistan; a reduction in Soviet missile deployments against Western Europe; and substantial cuts in Soviet strategic forces that threaten America's land-based force.

But the United States has powerful bargaining cards: normalization of relations in trade, grain sales, and exchanges, including non-discriminatory trade and credit; participation in guarantees against interference in Afghanistan's internal affairs; a return to even-handedness in our relations with China and Russia; a deferral of American missile deployments in Western Europe, acceptance of changes in SALT II to take account of the delay in ratification; and a deferral of American deployments of strategic weapons, including M-X, which would pose a first-strike threat to the Soviet Union.

The United States has made a moral judgment about the Soviet invasion of Afghanistan. It is time we turned to the pragmatic task of seeing what can be done to relax tension and build a more constructive relationship with the Soviet Union.●

THE INFANT FORMULA ACT OF 1980

● Mr. WILLIAMS. Mr. President, yesterday the Senate passed S. 2490, the Infant Formula Act of 1980. This act was designed to assure the parents of this country that the infant formula they purchase will be safe for their children to consume. I wish to commend Senator METZENBAUM for his efforts to move this legislation in the 96th Congress. I would also like to commend all the members of the Committee on Labor and Human Resources for their work on this bill.

Little more than a year ago, it was first discovered that there were infant formulas on the market deficient in chloride, a vital nutrient. However, before that discovery and the subsequent removal of these formulas from the shelves, some 139 infants who had consumed the formulas as their sole source of nourishment became dangerously ill. They became lethargic, lost weight and developed severe blood disorders. Some doctors thought these infants might have a rare kidney disease; others diagnosed some of the cases as a "failure to thrive."

Mr. President, the omission of chloride with its grim consequences pointed out the need for standards of quality and safety for infant formulas.

The Infant Formula Act establishes these standards. The timely passage of this act was brought about through the dedication of parents of infants afflicted by the defective formula and of legislators in the House and Senate who moved rapidly to correct the problem. This legislation will safeguard infants from nutrient deficiencies through the authority given to the Secretary of the Department of Health and Human Services and through the establishment of regulations by the Food and Drug Administration.

Mr. President, it was heart warming to see industry, Government, and parents working so closely together to resolve this issue. Our mutual concern for the health of our children provided us with a catalyst for action. That same concern will make us more alert to dangers of this kind in the future.●

STATEMENT OF SENATOR PRYOR ON CONSULTANT REFORM ACT OF 1980

● Mr. SASSER. Mr. President, I wish to place in the RECORD the opening statement of the distinguished Senator from Arkansas (Mr. PRYOR) at a Governmental Affairs Committee hearing August 19 on S. 2880, the Consultant Reform Act of 1980. I am a cosponsor of that legislation introduced by Senator PRYOR and which is cosponsored by 16 other Senators, and I believe the bill and the statement of Senator PRYOR should have the attention of every Member of the Senate.

The statement follows:

STATEMENT OF SENATOR DAVID PRYOR

I would like to welcome you all to our first hearing on the Consultant Reform Act of 1980. This bill will, for the first time, bring the consulting bureaucracy into the sunshine—as a first step toward its control in the public interest.

I began my investigation of the federal government's use of consulting contractors over a year ago, when I became aware of works that was duplicative, senseless, and overpriced. It is now apparent that what I saw was not random waste, but the by-product of a basic change in the way our government does its work. Today, the passage of each new law, the emergence of each new "crisis," the creation of each new program, is the cause for further wholesaling of the basic work of government to an evergrowing contractor workforce that, by default, is fast becoming the intelligence of government.

As the General Accounting Office has recently summarized, the consulting "problem" has been with us for at least two decades, and federal managers have done little to bring it under control. It is now apparent that the issues posed by the use of consultants are not simply management issues, but basic questions of government that command the attention of us all. At the outset, these issues include the sheer invisibility of a large and growing portion of the federal workforce, the related lack of accountability of that workforce and the failure to apply to that workforce even the minimal codes of ethics and disclosure that apply to "officials" at virtually every level of American government.

The issues we face are very important, and they have too long been neglected by Congress. It is important to state clearly what we propose to do—and what we propose not to do.

When we began to draft legislation, we thought that we could deal with "abuses" by simple and direct prohibitions—for example, by outlawing all contracts where conflicts of interest are presented, or prohibiting the use of consultants to "make policy." As our work proceeded, it became apparent that another layer of regulatory prohibitions is not, at least at this time, the answer.

First, we found that, at least in some important cases, the problem is not the absence of rules, but the failure to honor them—or, by the same token,—the creativity employed in finding new ways to evade them. Indeed, it became apparent that the "official" response to each wave of consulting scandals is the restatement of existing "rules" and "new" rules, and a promise of better management. It is now evident that the issuance of "new" rules—as opposed to the enforcement of "old" rules—has become a powerful way of avoiding confrontation with, and control of, the real problems.

Second, it became distressingly apparent that, despite decades of management concern, we know very little about federal use of consultants. It is difficult to contrive new regulatory schemes in the dark.

The bill we have proposed therefore, is a sunshine bill. It does not try to tell agencies that they must—or must not—use consultants. It says to agencies, "If you do use consultants, we in Congress and the public want to know about it. We want to know who you use, what you have them do, and how you use the work they do for you." The record we have developed shows that the need for sunshine could not be more pressing.

Quite simply, we have found that the federal government has not only contracted out virtually every type of basic government activity, but has done so on terms designed to insure the invisibility of this reliance.

Today, for example, we will talk with the GAO about their review of the use of consultants in the preparation of "official" reports to Congress. The GAO not only found the frequent use of consultants for this work, but found that agencies may often present the final product as their own—that is, without hint of "unofficial" help. Typically, as in

this example, the public has no way of suspecting the presence of consultants behind such basic documents. Nor, by the same token, would it have reason to know that the hidden hands behind the report also work, as it often is the case, for industries that are regulated or subsidized by the agency.

We found that high officials were themselves unaware of, or unable to produce, basic information about the use of consultants by their agencies.

For example:

We heard high officials tell us that they could not tell us how many consulting contracts their agency has, much less how many individual employees are paid for under contract.

We have watched the Department of Energy discover, in response to our request for information, that it literally does not possess complete copies of contracts under which it is apparently paying taxpayer money.

We heard high agency officials tell us that they were unaware, until we told them, that consultants are being used to perform the basic work of their agency. Only four weeks ago, a top DOE lawyer expressed shock when told that DOE uses consultants to draft legislation—"I had rather thought," he observed, "that we lawyers in the General Counsel's office were the ones that drafted legislation."

We found that responsible agency officials do not know who their consultants are. Thus, DOE claimed until we brought it to their attention last month, DOE was unaware that consultants it has long relied on for some of its most important work also claim to do basic work for OPEC oil companies and major private oil companies.

We found that officials actively seek to withhold basic information about the use of consultants, not only from the public, but often from their peers. For example:

We found that within the bureaucracy, officials adopt as their own—without attribution—memoranda, handbooks, forms, briefing packages, and drafts of plans and proposals that were prepared, and often even typed, by contractors.

We found that agencies responded to Freedom of Information Act requests by denying the public even the most basic information about consulting contracts—including, incredibly, copies of "public" contracts themselves.

Ironically, we also found that while agencies denied such information to the public, it appeared to be available to the contractors themselves. For example, we found that contractors were placed in charge of official contract files. Moreover, we found that agencies rewarded contractors for the possession of information about their competitors. For example, we found that DOE recently awarded a ten million dollar contract to a bidder who assured DOE that it would employ "targeted" members of the incumbent contractor's workforce. While the winning bidder was rewarded for knowing the names of its competitors' employees, DOE refuses to disclose such information to the public.

Most incredibly, it appears that the people kept most in the dark on the operations of the consulting bureaucracy are those who pay for it—the public.

In proposing sunshine legislation we hope to serve three basic ends—the protection of the integrity of government; the enforcement of existing rules; the production of information on which to base future reform.

First, we will affirm the public's right to know who governs it, and how its money is spent.

Today, "official" employees are governed by strict ethics and disclosure rules. Incredibly, such rules have not been applied to the consulting workforce—even though consultants may not only perform the same work performed by high government officials, but receive higher pay than that allowed "officials."

Second, we will employ sunshine as the cheapest, and best, deterrence to the continuation of the abuses that characterize the use of consultants today. The potential embarrassment of public explanation should, in itself, deter abuse. For example:

The Department of Transportation awarded a sole source contract for "a comparison of U.S. policies concerning the maritime liner industry and international airline industry." It explained that the Department—which has about 70,000 "official" employees—"is not now currently staffed with officials who have sufficient knowledge of both industries or who have sufficient experience in the field of analysis and development of policies concerning both industries." Would the press and the public leave unexamined the incredible claim that a private contractor is uniquely qualified—to the exclusion of the U.S. Department of Transportation—to explain U.S. transportation policy?

Top HEW officials recently tried to push through a sole source award to design a logo and letterhead for the new Department of Health and Human Services. They sought to justify the award, in part, by stating that capability of the Department to do the work is "nil." What would the public say about this commentary on the capability of the Department's 160,000 employees?

The evidence available to us suggests that, upon the provision of the information required by the bill, contractors themselves will be strong forces in deterring abuses. For example, as we have examined agency contact files we have often found contractors inquiring about a piece of work only to be told that it has already been awarded on a sole source basis. The best check on the wide use of "phony" sole sources is the assurance that alternative sources have timely knowledge of work.

Third, the disclosure required by this bill should permit us to begin to develop basic information now lacking about the consulting bureaucracy—information on which further reforms can be built.

Those who could claim that the coverage of the bill is overbroad and that the topic is best dealt with by Executive branch management would both misread the bill and ignore the sad story of decades of management failure. The record before us, including GAO reports, Congressional inquiry and investigation, and press reports, makes amply clear that a management scheme which singles out a category called "consultants" for special treatment will be evaded with the greatest of ease by the shifting of those contracts into other categories. Moreover, the same record makes clear that the "regulations" of the past, and those of today, are toothless. They are not perceived by top officials as "regulations," but as "guidelines." That is, they are to be honored only in the breach, and can be, and are, ignored with impunity.

The data collected by the Federal Procurement Data System (which, it should be noted, GAO recently found to be "'inaccurate and incomplete") shows the folly of an attempt to control "consulting" by limiting controls to contracts which are deemed to fall within some definition of that term. According to FPDS, the federal government spent only 381 million dollars for consulting services in FY 1979—but over one half billion dollars for "training," over three billion for "studies," and further billions for research and development. As is obvious, many contracts that might be called "consulting" contracts may just as readily fall into the other categories. The public interest in controlling the work does not diminish if it is called "training" or "study" instead of "consulting." Yet controls can be readily evaded by the painless bureaucratic act of pigeon-holing contracts in a category other than "consulting." This, as the GAO has found, is what has been happening—as evidenced by the figures just cited. As one responsible agency official explained to my staff, given the reviews and paperwork that result from defining a contract as a "consulting" contract, the temptation to bury the contract in another category is overwhelming.

In sum an approach to consultants that, like past and present management efforts, focuses solely on that category and, moreover, does not penalize violations will merely add another layer of paperwork veneer to business as usual.

The bill that we propose covers the contracting universe only in order to provide the necessary information to ensure that the "consultant" problem is not "solved" by the illusion of defining contracts out of the "consulting" category into other categories. It does this not by broad regulation of the universe, but by the requirement of the minimal disclosure that, it would seem, the public has a right to already—and moreover, that a prudent management should already have at its fingertips. In sum, we are willing to limit and have limited the scope of key provisions of the bill. To limit the entire bill to a narrow category of contracts, however, would not prevent, and might encourage, the disappearance of the work we seek to control into a vast and in many respects unknown universe.

In conclusion, I must emphasize that the bill we have proposed is, in view of the magnitude of its subject, a very modest one. It does not impose new layers of regulation, but rather, the disclosure of ongoing activities. As the Congressional Budget Office has found, "With the exception of Section 207 relating to contract evaluation [which CBO says may have a small cost, depending upon its implementation], this bill is not expected to result in any significant cost to the government." It must be emphasized that even in emphasizing disclosure, the bill provides requirements that are quite modest. For example, the conflict of interest disclosure required of contractors is essentially identical to that already required of contractors by the Department of Energy, and perhaps other agencies.

To state that the bill is modest, of course, is not to suggest that it will not be effective. Rather, it is to state that those who would propose to limit the sunshine in the bill bear a very strong burden. They must explain to the American public why it is that the public cannot know the most basic information about a hidden workforce to whom it not only pays billions of dollars, but to whom we are increasingly entrusting by default the basic work of government.●

HUMAN RIGHTS ON TAIWAN

● Mr. KENNEDY. Mr. President, Dr. Trong R. Chai, professor of political science at Medgar Evers College of the City University of New York and representative of the Formosan Association for Human Rights, addressed a congressional luncheon seminar on August 7 on the continued lack of human rights and the widespread urge for political liberalization on Taiwan. In order to prevent disruption and instability in Taiwan and to help strengthen the ties between the United States and Taiwan, Professor Chai urged the Senate and the House of Representatives to take actions leading to governmental reforms and a more open society.

I ask that Professor Chai's speech be reprinted in the RECORD.

The remarks follow:

HUMAN RIGHTS IN TAIWAN: CONGRESSIONAL ACTIONS URGED

(By Dr. Trong R. Chai)

Mr. Chairman, Hon. Clark, ladies and gentlemen, I am delighted to be here today to discuss human rights violations and political unrest in Taiwan resulting from the failure of the Kuomintang (KMT) to heed the people's demands for a change in outmoded structures and policies.

Since the Chiangs fled to Taiwan in 1949, the KMT has claimed itself the sole legitimate government of China, with the recovery of the Chinese mainland its fundamental policy. Consequently, political institutions established in China in 1947 are still kept in Taiwan, and the full participation of Taiwanese in these institutions is virtually denied.

This deprivation is evidenced by the fact that native Taiwanese, who constitute 85 percent of Taiwan's total population, occupy only 7 percent of representation in national legislative bodies. Even the Governor of Taiwan is appointed by Chiang, never elected by the people of Taiwan. Moreover, because of the KMT's insistence that it represents all China, Taiwan has been almost completely isolated from the international community. It was expelled from the United Nations in 1971, from the Olympics in 1979, and from many other international organizations at various times. Today, there are fewer than 20 nations which maintain diplomatic relations with Taiwan's Nationalist regime, and none of these countries is a big power.

The KMT has imposed martial law on the Taiwanese people for more than three decades—the longest period of martial law in history. As a result, the people of Taiwan have been deprived of such basic rights as freedom of speech and assembly. In addition, strikes are outlawed and civilians can be court-martialed.

To effectively counter Chinese Nationalist rule, opposition politicians formed a corporation last summer to publish a magazine called Formosa. Soon, this journal, the voice and hope of Taiwan's democratic movement, became the bane of Chiang's existence, and the KMT's hostilities toward Formosa culminated in its handling of the commemoration of Human Rights Day by the people of Kaohsiung, the second largest city in Taiwan, on December 10, 1979.

On that day, riot police first blocked streets in an attempt to prevent the populace from attending the rally and, after failing to do so, spread tear gas into the crowd of tens of thousands. The riot police then refused to give the demonstrators a way out of their rally site—a violation of the first rule of peaceable crowd control—and touched off club fights with the people. "No more than five or six people on both sides were hurt," according to the New York Times of March 23, 1980.

The KMT immediately used this incident as a pretext to launch a crackdown on its political opponents. Nearly one hundred prominent political and church leaders, human rights workers, and intellectuals were subsequently arrested, whether or not they had attended the meeting. Almost all those arrested asserted in court during subsequent trials that they had been subjected to various forms of mental and physical torture. Some of them were convicted by a military court for sedition, with their sentences ranging from 12 years to life imprisonment. The penalty was severe enough to draw outcries not only from church and human rights organizations but also from the State Department.

A terrible incident occurred to one of the prisoners, Lin Yi-hsiung. On February 28, 1980, three hours after his mother had spoken over the phone with a human rights worker in Japan about the torture he had undergone in prison, Mr. Lin's mother and twin 7-year old daughters were stabbed to death in his home and another daughter was severely wounded.

These harsh measures will no doubt make the Taiwanese people feel that Chiang's regime is no less oppressive than the Communist Party of China and that it makes little difference if the KMT or the CPC governs them. The spirit and determination of Taiwanese to resist Chinese aggression will, therefore, be greatly weakened. If their will to freedom is lost, the lesson learned from the war in South Vietnam shows, Taiwan will perish, even though the United States provides the KMT with a large quantity of sophisticated weapons.

Current educational and economic development in Taiwan simply do not allow dictatorship. Only when differences between the KMT and the Taiwanese people are resolved in a peaceful, democratic manner, will political stability in Taiwan be realized. High-handed suppression by the KMT will only escalate popular resistance, and an unstable Taiwan will give China an excuse to "liberate" Taiwanese from the KMT's oppression.

Events in Iran and Afghanistan demonstrate that the best way to deal with a crisis is to prevent it from occurring, not wait until it occurs. The United States can prevent a crisis in Taiwan—even strengthen Taiwan's defense—if Congress decides to take the following actions:

1. intensify its investigation of violations of human rights by the Taipei authorities by sending delegations to Taiwan and holding Congressional hearings at home;

2. pass a resolution to express its concern over the current human rights situation in Taiwan, as the Canadian Parliament has done recently, and to urge the KMT to lift its martial law;

3. ban the sale to Taiwan of any kind of military goods and services until martial law has been lifted and violations of human rights have been corrected—in particular, until all people recently arrested for the Kaohsiung incident have been freed.

In fact, such actions by Congress are required by the Taiwan Relations Act of April 10, 1979, which clearly states: "Nothing contained in this act shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States."●

REPORT ON EXPENDITURES BY DOD FOR I.R. & D. AND B. & P.

● Mr. CULVER. Mr. President, section 203 of Public Law 91-441 requires the submission to the Congress each year of a report on funds spent by the Department of Defense for independent research and development and for bids and proposals, commonly referred to as I.R. & D. and B. & P.

This aspect of the Department of Defense research and development program receives little attention and is not well understood. These costs are surcharges added to the cost of DOD procurements and are designed to cover the cost of preparing bids and proposals as well as to perform independent research and development of projects chosen by the companies. In simple terms, these are the funds that allow companies to remain competitive in fields of their choosing. These are the funds that insure the availability of qualified competitive bidders when DOD needs new weapons and equipment.

As the report shows, the I.R. & D. costs for 1979 were $643 million for DOD and $65 million for items procured by DOD for foreign military sales. The bid and proposal costs for 1979 were $479 million for DOD and $38 million for foreign military sales. The total I.R. & D. and B. & P. costs were $1.2 billion, an increase of 10 percent over 1978.

Mr. President, I ask to place in the RECORD a summary report of independent research and development and bid and proposal costs for the years 1978 and 1979. I would also advise my colleagues that a more detailed report is on file with the Armed Services Committee. The detailed report shows the I.R. & D. and B. & P. costs by company. Because of the sensitivity of private company data it will not be made public.

The material follows:

THE UNDERSECRETARY OF DEFENSE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., March 14, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Secretary of Defense has required that I prepare and submit to you the report of Independent Research and Development and Bid and Proposal costs required under Section 203, paragraph (c) of the 1971 Department of Defense Appropriation Authorization Act (PL 91-441). This section requires the submittal of an annual report to the Congress on or before March 15th each year setting forth—

"(1) those companies with which negotiations were held pursuant to subsection (a)(1) of this Section prior to or during the preceding fiscal year of the Federal Government, together with the result of those negotiations;

(2) the latest available Defense Contract Audit Agency statistics, estimated to the extent necesary, on the independent research and development or bid and proposal payments made to major defense contractors, whether or not covered by subsection (a)(1) of this section during the preceding calendar year; and

(3) the manner of his compliance with the provisions of this Section, and any major policy changes proposed to be made by the Department of Defense in the administration of its contractors' independent research and development and bid and proposal programs."

The report is in three parts corresponding to the three items quoted above. Parts I and II were compiled from detailed data pertaining to individual companies. This detailed company information is very sensitive and is not included in the report, however, it will be made available for review.

Sincerely,

WILLIAM J. REY.

INDEPENDENT RESEARCH AND DEVELOPMENT COSTS AND BID AND PROPOSAL COSTS

PART I

Those companies with which negotiations were held pursuant to subsection (a)(1) of this section [203] prior to or during the preceding fiscal year of the Federal Government, together with the results of those negotiations.

In accordance with the above requirement, the attached Schedule A provides data pertaining to the negotiations conducted in the Government's fiscal year 1979.

SCHEDULE A

I.R. & D./B. & P. REPORT—PART 1: NEGOTIATIONS COMPLETED IN FISCAL YEAR 1979 AND RESULTS OF THOSE NEGOTIATIONS

[Dollar amounts in thousands]

Contractors' fiscal year	Number of companies	Total program dollars proposed by contractors			Total advance agreement ceiling dollars negotiated by DOD			Estimated DOD share of ceiling dollars negotiated		
		I.R. & D.	B. & P.	Total	I.R. & D.	B. & P.	Total	I.R. & D.	B. & P.	Total
1978	1		$1,325	$1,325		$1,325	$1,325		$847	$847
1979	77	$2,107,930	849,635	2,957,565	$1,508,174	724,247	2,232,421	$667,001	489,619	1,156,620
1980	19	897,642	151,534	1,049,176	534,561	131,659	666,220	134,869	86,068	220,937
1981	2	21,150	10,550	31,650	19,050	9,700	28,750	7,521	3,617	11,138

PART II

Latest available Defense Contract Audit Agency statistics, estimated to the extent necessary, on the Independent Research and Development (IR&D) or Bid and Proposal (B&P) payments made to major defense contractors whether or not covered by Subsection (i)(1) of this Section [203, PL 91-441] during the preceding calendar years.

The statistics required are provided in the attached DCAA report. The report shows total IR&D and total B&P costs incurred by the contractors reviewed, the amount accepted or recognized by the Department of Defense and the DoD share. In addition, total sales of the contractors are shown along with the portion representing DoD sales.

The amount listed on Page 1 under the column heading "Accepted by Government" represents the sum of the ceilings negotiated with individual contractors as well as the sum of amounts recognized for certain other contractors who had no advance agreements. These accepted amounts are not the costs reimbursed by the DoD but are the amounts that the DoD recognizes for allocation to all the contractors' business. The DoD portion is shown under the column headed "DoD share." Please note that the Foreign Military Sales (FMS) portion has been broken out separately, because these costs are not costs to the DoD. Thus, the IR&D costs to the DoD for 1978 and 1979 are as follows:

[In millions]

	1978	1979
I. R. & D.	$578	$643
B. & P.	430	479
Total	1,008	1,122

On pages 2 and 3 of the report the totals shown on page 1 are broken down to show, respectively, the portions applicable to contractors for which advance agreements were required and the portion applicable to contractors for which advance agreements were not required. The foreword appearing in the DCAA report explains the basis for the cost data reported.

It will be noted that data for both 1978 and 1979 are furnished. It has been the practice to update data previously furnished because latest year figures include significant amounts of estimated information. The 1978 figures presented here have had most of the estimated data replaced with actual data. The report furnished next year will similarly update the 1979 figures.

PART III

The manner of his compliance with the provisions of this section, and any major policy changes proposed to be made by the Department of Defense in the administration of its contractors' Independent Research and Development and Bid and Proposal Programs.

During the past year, we believe our implementation of Section 203, PL 91-441, has been in full compliance with that section. We have not revised any of our major policies for administration of contractors' Independent Research and Development and Bid and Proposal programs.

SUMMARY OF INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS INCURRED BY MAJOR DEFENSE CONTRACTORS IN THE YEARS 1978 AND 1979

FOREWORD

This summary report presents the latest available Defense Contract Audit Agency (DCAA) statistics on the independent research and development (IR&D) and bid and proposal (B&P) payments to defense contractors. The statistical data are to be included in the Secretary of Defense's annual report to the Congress on or before 15 March 1980, in accordance with paragraph (c), Section 203, Public Law 91-441. The constraints of the IR&D and B&P ceilings mandated by Public Law 91-441 are not applicable to DoD contracts for Foreign Military Sales (FMS). The data in this summary report are similar to that previously furnished to the Office of the Under Secretary of Defense, Research and Engineering (Contracts and System Acquisition), for contractor fiscal years 1977 and 1978.

Page 1 shows the overall IR&D and B&P costs incurred by 93 defense contractors during their fiscal years 1978 and 1979, amounts accepted by the Government, and the Department of Defense (DoD) share of amounts accepted. The amounts accepted by the Government are allowable and allocable to all contractor work performed—Government and commercial. The DoD share of the costs accepted each year is the contractors' allocation of such costs to DoD work. In addition, this summary shows related sales achieved by the 93 contractors, comprising 339 reporting divisions and/or operating groups.

The major defense contractors in this summary are those which had an annual volume of costs incurred of $30 million or required 5,000 or more man-hours of DCAA's direct audit work a year. This summary also includes other contractors which, although not meeting the above criteria, negotiated IR&D/B&P advance agreements so that the summary on page 2 will be compatible with the advance agreement reports prepared by Army, Navy, Air Force, and the Defense Logistics Agency. Contractors specifically excluded from this summary are construction companies, educational institutions, foreign contractors and overseas operations of U.S. contractors, insurance companies, marine transport contractors, and military medicare contractors. These contracting activities incurred nominal or no IR&D/B&P costs.

DCAA obtained the IR&D B&P cost and sales data from contractors' records, but such data do not necessarily represent audited amounts. Included in the costs shown are amounts accepted by the Government in overhead negotiations and through advance agreements. Where actual cost and sales data were not available, as in the case of contractors which had not closed their books for 1979, DCAA auditors obtained reasonable estimates. Where costs not charged to IR&D were determined to be more properly classified as IR&D, these costs were reclassified by the auditors and included in IR&D costs incurred. The amounts of such reclassifications are $.7 million per year for 1978 and 1979. Reclassified costs are accepted to the extent that the adjusted IR&D costs accepted do not exceed negotiated advance agreement ceilings.

Page 2 shows the extent of advance agreements in effect during 1978 and 1979. Page 3 shows costs not subject to advance agreements.

SUMMARY OF INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS INCURRED AND SALES ACHIEVED BY MAJOR DEFENSE CONTRACTOR

[For contractor fiscal years 1978 and 1979]

	1978 (In millions)			1979 (In millions)		
	Costs incurred	Accepted by government	DOD share	Costs incurred	Accepted by government	DOD share
Independent research and development (I.R. & D.)	$1,788	$1,365		$2,104	$1,517	
DOD excluding foreign military sales (FMS)			$578			$643
DOD FMS			65			65
Bid and proposal (B. & P.)	780	662		839	723	
DOD excluding FMS			430			479
DOD FMS			40			38
Total, I.R. & D. and B. & P. costs	2,568	2,207	1,113	2,943	2,240	1,225
Sales—Total, government and commercial		$62,079			$72,669	
Sales—DOD excluding FMS		28,299			32,584	
Sales—DOD FMS		3,594			2,799	
Sales—Total DOD		31,893			35,383	

SUMMARY OF INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS INCURRED AND SALES ACHIEVED BY MAJOR DEFENSE CONTRACTORS—Continued

[For contractor fiscal years 1978 and 1979]

	1978 (in millions)				1979 (in millions)			
	Incurred	Amount by government	Share	Number of divisions	Incurred	Amount by government	Share	Number of divisions
With advance agreements								
Independent research and development (I.R. & D.)	$1,777	$1,356	$637	206	$2,095	$1,510	$705	216
Bid and proposal (B. & P.)	767	650	462	206	822	707	506	216
Total, I.R. & D. and B. & P.	2,544	2,006	1,099		2,917	2,217	1,211	
Without advance agreements								
Independent research and development (I.R. & D.)	$11	$9	$6	33	$9	$6	$4	23
Bid and proposal (B. & P.)	13	12	7	32	17	16	10	23
Total, I.R. & D. and B. & P.	24	21	13		26	22	14	

INVESTIGATION OF THE COMPROMISE OF TRIGON

● Mr. McCLURE. Mr. President, I fully support the request by Senators DANIEL PATRICK MOYNIHAN and MALCOLM WALLOP for the Senate Select Committee on Intelligence to investigate the circumstances surrounding the loss of the best intelligence source we had in the Soviet Union in the 1970's, an agent code named Trigon, who was arrested, tried for treason, and executed by the Soviets in 1977. The compromise of Trigon, who had been maintained for many years as an important agent within the Soviet Government, in the very early days of the Carter administration has never been thoroughly investigated. There have been reports, such as that by Robert Moss in June of 1979, that a "senior official of the National Security Council" was responsible for the compromise of Trigon when he leaked the existence of a "Blue-Line" document to an agent of the Soviet bloc.

Now it is difficult to imagine that even a senior official of the Carter administration would be incompetent enough to do such a thing, but in the aftermath of the revelation of the leak of the "stealth" information by the White House and Defense Department and the recent damaging leak attributed to a staff member of the NSC revealing cooperation on intelligence matters between the United States and Red China, charges of this type must be given more credence.

Senator HUMPHREY has written to the Director of Central Intelligence, Adm. Stansfield Turner, concerning the accuracy of the Moss story. I would hope that this would be one of the issues that the Senate Intelligence Committee would look into.●

MEXICAN INDEPENDENCE DAY

● Mr. RIEGLE. Mr. President, September 16, 1980, marks the anniversary of Mexico's Independence Day. The people of Mexico have endured the tribulations that face every nation with courage and strength and through the years have established a strong and honorable self-government which I believe is worthy of the highest international respect. The people of Mexico have consistently worked for the betterment of their nation and through this experience Mexico has become a society enriched by its most essential asset—a strong and proud people.

All people in the United States can appreciate the struggle for freedom and democracy in Mexico, since the independence of this Nation was also achieved through great commitment and sacrifice.

Independence day for any nation is a time of celebration, but also a time to look both to the past and to the future. The people of Mexico should take great pride in their heritage and the contributions they have made to not only their own nation but also to the world. The United States has especially benefited from its friendship with its neighbors in Mexico.

The millions of Mexican Americans now living in the United States have made great contributions to every facet of American society: the arts, music, literature, religion, philosophy, economics, public service and in many other fields. For the many outstanding contributions made by Mexican Americans, the United States should be deeply grateful and hopeful that the role of Hispanic Americans will continue to expand in all aspects of American endeavor.●

WILL THE UTILITY SERVICE OBLIGATION BECOME THE VICTIM OF ECONOMIC THEORY?

● Mr. TALMADGE. Mr. President, I would like to call the attention of my Senate colleagues to an interesting article entitled "Will the Utility Service Obligation Become the Victim of Economic Theory," which appeared in the March 27 edition of Public Utilities Fortnightly and is based on a presentation by Mr. Louis Flax before the 1980 Rate Symposium on Problems of Regulated Industries at Kansas City, Missouri on February 11. Public Utilities Fortnightly has been well known in public utility circles over the years as the source of a great many authoritative articles on a variety of problems facing that industry.

The Kansas City rate symposium is jointly sponsored by the American University; the Missouri Public Service Commission; the University of Missouri-Columbia; and Foster Associates, Inc.; under the auspices of the Institute for Study of Regulation. It has rapidly reached the status of one of the most prestigious of forums on utility rate matters. Mr. Flax has had long experience in public utility regulations as both an engineer and an attorney, extending back to 1948. That experience includes employment by the Federal Power Commission and the Atomic Energy Commission as well as some 24 years in the private practice of law. He is presently a partner in the firm of Sutherland, Asbill, and Brennan.

In this article, Mr. Flax responds to the increasing pressure to minimize the service obligation of regulated industries in favor of what is termed conservation or economic efficiency. Those favoring this approach claim that conservation and economic efficiency will be achieved by predicating rates on marginal costs which will simulate competitive pricing. Mr. Flax points out that regulated industries deal in products or services that are vital to the well-being of the Nation, and they are an amalgam of public service and private enterprises. As a part of their public service function, they are, unlike nonregulated businesses, obligated by statute to disseminate their products or services broadly and to do so in a manner which neither discriminates against nor prefers customers. In return for undertaking this service obligation they are provided a monopoly or sheltered position in the market and the opportunity to recover the cost of the service they render.

Mr. Flax expresses further his grave concerns as follows. He notes that in the electric industry, marginal cost pricing, such as urged by the Department of Energy under the Public Utility Regulatory Policy Act (PURPA), ignores the basic utility service obligations. Instead, under the guise of achieving the PURPA objectives of economic efficiency, conservation and equity, present customers will be priced out of the market and utilities will be inhibited in serving the expanding needs of areas where they are located. The problem is not confined to the electric industry, however, but extends across the whole spectrum of

regulated industries where the statutory obligation to serve the public is being traded off for what purports to be economic efficiency. It has not been demonstrated, however, that the results will ultimately benefit the public, since claims to this effect are based only on economic theory rather than credible evidence of the impact.

Mr. President, I ask that this article be printed in the RECORD.

The article follows:

WILL THE UTILITY SERVICE OBLIGATION BECOME A VICTIM OF ECONOMIC THEORY?

(By Louis Flax)

In his two-volume treatise on the economics of regulation, Dr. Alfred Kahn says that the job of public utility regulation formerly was done almost exclusively by lawyers and politicians, with accountants and engineers as assistants. However, because of great and increasing dissatisfaction in their performance, he continues, economists have been drawn more and more into the process so that lawyers who fail to seek the economist's direct cooperation find they cannot understand what their opponents' witnesses are saying.[1] As a member of two of the downgraded professions, my first reaction was to recall the rapidly aging story of the economist who upon finding himself on a desert island with a case of canned food and no way to open it decided to solve his dilemma by assuming a can opener.

Much more to the point, however, and somewhat less of an ad hominem nature, is a 1939 holding of the Wisconsin supreme court[2] in which the court concluded that the Wisconsin commission had upon general principles proposed to deprive the Wisconsin Telephone Company of necessary revenues in order to aid its patrons and to level off the inequality resulting from the economic depression. As to this approach the court held:

If the commission were empowered to review the whole internal economy of the state, its postulates and arguments might sustain the conclusion that it reached. Within the limits of its statutory authority, however, it had no right to give dominant weight to economic theory in the face of statutory command. Recent years seem to have pretty thoroughly demonstrated that economic theory is vague, uncertain, and undependable and the predictions based upon it are not reliable. It seems to be in constant need of repair and readjustment.

The point of this quotation, which I believe is highly pertinent to circumstances today, is that public utilities are creatures of statute and notwithstanding broad discretion that has been vested in regulatory commissions, the commissions are nevertheless limited by the terms and intent of their statutory commands. With that the case it is well to reflect on the fundamentals of public utilities and their regulation in order to understand why economic theory cannot and must not control despite its promises of multiple benefits such as conservation, equity, economic efficiency, and optimal resource allocation.

THE STATUS OF A UTILITY

Basically, regulated public utilities are an amalgam of a public service entity and a private enterprise. They deal in products and services that are extremely important if not vital to the economic and social welfare of the public, and the broad dissemination of those products and services is highly desirable. Consider, for example, the nature of the products and services in which utilities deal—energy, water, transportation, and communications. Consider, also, the historical background of utilities whereby they were given important privileges such as (1) the right to open and use public streets or to cross public lands and (2) a monopoly or sheltered position in the market. In return, the utility agreed to serve the public broadly and without undue discrimination or preference. In other words, it would offer service to all those in a particular class or area rather than to pick and choose customers it found most advantageous to serve. Additionally, the utility agreed to accept the constraint of rates that would recover not more than the cost of the service it rendered, made up as a minimum of its operating expenses and capital charges.[3] This assumes, however, that the utility is able to sell its wares at rates which can recover its cost of service.

These various privileges and obligations upon which utilities were founded were subsequently incorporated into state statutes and are found today in a number of provisions of those statutes. For example, they are embodied in the direct obligation to provide adequate service and in provisions for determining service areas or granting certificates of public convenience and necessity for areas where the utility has the obligation and often the exclusive right to serve. They are also in restrictions against abandonment of service and in the requirement that service be nondiscriminatory and nonpreferential. Ratewise, they are statutory provisions that rates shall be just and reasonable, meaning that the utility should be given the opportunity to recover its cost of service. Also rates must not be unduly discriminatory or preferential, which has been largely interpreted as meaning that they shall reflect the cost of serving individual customer classes.

THE NEW FEDERAL "STANDARDS"

Notwithstanding the impression that is sometimes sought to be given that there has been a federal takeover of electric rate regulation and the so-called standards of the Public Utility Regulatory Policies Act are to control, the state statutes and the provisions are still viable. In fact they are dominant. Thus § 111(a) of PURPA provides that nothing prohibits any state regulatory authority from determining that it is not appropriate to implement PURPA standards pursuant to its authority under otherwise applicable state law.

Also the statement of the managers of PURPA makes it clear that the three purposes of § 101—that is, conservation of energy supplied by electric utilities, the optimization of the efficiency of use of facilities and resources by electric utilities, and equitable rates to electric consumers—do not override state law. With this being the case, the emphasis given to economic theory as the predicate for various of rate design proposals under PURPA sorely neglects important statutory provisions as well as a number of fundamentals of regulation. Although I have already touched on some of these, I believe that some degree of repetition is needed in order to provide a complete list.

SOME FUNDAMENTAL CONSIDERATIONS

First, utility service is "vital to the economic well-being and the domestic life of the people of a large territory." These are the words of a 1972 decision of the supreme court of North Carolina.[4] Our extreme reliance on adequate utility service is often taken for granted, however, and is lost in generalized and self-deprecating comments on our wasteful and inefficient use of resources. Nevertheless, is air conditioning wasteful when it has made many of our cities livable in the summer? Furthermore, can new rate designs that inhibit use be adopted with impunity when we have for reasons of more efficient land use and more economic construction built buildings over the past thirty years without air shafts and set backs, with eight-foot ceilings, and entirely reliant on forced ventilation?

Additionally, plants have been built and processes developed with the expectation of adequate electric service at reasonable rates. Moreover, power-assisted devices have permitted the employment of women and the handicapped. Can we now say this was all a mistake because those rates do not comport with our present concepts of economic theory and hence those users did not deserve service in the first place?

Consider also, an article in the December 3, 1978, edition of *The Washington Post* on the Latins in Miami, which mentions in passing that Miami's suburb of Coral Gables has been chosen as the home for the Latin offices of 76 multinational firms—a principal reason, communications. The article quotes an official of one large company as stating, it is simply faster to telephone, fly, and mail to South America from Miami than from any South American country. Thus it is evident that basic utility services are as important to our future development as they are to our continued well-being.

Second, utilities combine public service and private enterprise features and are charged with a broad obligation to serve the public. Indeed the U. S. Supreme Court has held: "The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders . . ."[5]

Third, the utility is simply not an economic entity in the sense contemplated by free market economic theory. The comprehensive duty to serve, restraints on its leaving the market, revenue constraints, the need for authorization to enter a market, and the various positive requirements that rates and services be just and reasonable, nondiscriminatory, and nonpreferential all depart from usual free market concepts. Briefly stated, you do not order a private entity to extend service to all who want service in a broad area and then expect its economic performance to compare with that of a free market enterprise without such obligation.

Fourth, notwithstanding the fundamental differences between utilities and free market enterprises, we have for a number of years heard as "conventional wisdom" that utility rates should simulate what would result from competition. Furthermore, it is now claimed that since the product of perfect competition is a price that is equivalent to marginal costs, utility prices should be fixed on that basis in the first instance. This has prompted me to seek out whether there is a source in statute or case law for the proposition that utility rates should stimulate competition. Thus far the closest I have come to a competitive standard as a legal principle has been the holdings of the Bluefield and Hope cases that return on equity should reflect the competition for equity funding by other enterprises of corresponding risk.[6] This, however, is certainly not the same as fixing rates in their entirety as if they were determined by competition.

Fifth, no matter what rationale is attributed to marginal cost pricing as a measure to achieve economic efficiency and conservation, it essentially operates by discouraging use. Although increasing costs, even as mitigated by use of embedded costs, are likely to discourage use in the normal course, deliberate changes in rate design which further discourage use should be carefully examined to ascertain if they are consistent with the utility obligation to serve the public adequately. On the other hand it must be recognized that embedded costs that average old and new costs mitigate the inflationary impact of new construction on the prices for some of our most basic commodities and services.

Sixth, and among the most important of the considerations which I am raising, is the need for evidence of the impact of the pro-

Footnotes at end of article.

posals in considering whether rate designs that reduce use are consistent with the utility obligation to serve the public. This would include a showing that the measures will in fact achieve the objectives of the proposals. Instead, economic theory alone seems to be relied upon as support for the claim that economic efficiency, optimal resource allocation, conservation, and equity will result from marginal cost pricing. This ignores, however, that there are substantial departures from marginal cost theory in determining the marginal costs to be used in fixing rates. Principal of these are the revenue constraint and the fact that all other goods and services are not priced at the margin.

Reliance solely on economic theory also avoids a showing by credible evidence of the extent to which reduced use or inhibited growth will result, the consequent impact on rates and service, and the further impact on consumers and the economy as a whole. As to rates, there is the possibility that reduced use will mean less coverage of fixed charges and the need for still higher rates. Thus the consumer gets increased rates and less service plus the prospect of still higher rates and still poorer service. This is sometimes described as the domino effect.

As to service, there is the impact on consumers who have arranged their lives and economic activities on the expectation of adequate service when they need it. Parenthetically, it should be noted that peaks are created because that is when customers want service and forcing customers to adjust to the utility's benefit is something akin to cutting the customer to fit the suit rather than the suit to fit the customer. Nevertheless, customers would be forced by the changed rate designs to reduce or terminate usage, to change their pattern of usage to a less satisfactory one, or to pay a premium to maintain their past service. The added costs to these consumers are certainly trade-offs for the benefits which economic theory tells us will result from the rate design changes. Yet, I know of no instance where these trade-offs have been evaluated. This of course is understandable since those who claim the benefits are seldom if ever precise in quantifying those benefits, much less the trade-offs.

The need for a showing of impact is clearly set forth in the 1978 holding of the U.S. court of appeals for the D.C. circuit in North Carolina v. Federal Energy Regulatory Commission[7] where the court remanded the Federal Energy Regulatory Commission's approval of a gas curtailment plan for Transcontinental Gas Pipe Line Corporation because the FERC had failed adequately to consider the impact on the end user. In so doing, the D.C. circuit cited the U.S. Supreme Court's holding in the renowned Hope case[8] that it is not the theory of a rate order but its impact that determines its legality.

In addition to the significance of these holdings in themselves, there is an interesting parallel in that the theory in dispute in the Hope case was whether the rate base should be predicated on original costs which analogize to embedded costs or on fair value which includes reproduction costs that analogize the marginal costs. Evidently, the court had tired of this argument, which had been before it many times, and decided to cut through economic theory by looking to the impact.

Seventh, efficiency, conservation, and equity are not the exclusive province of marginal cost pricing. There are a number of measures that are basic to regulation which are directed to these objectives. For example, regulatory commissions often have the power to preclude the construction of unneeded facilities through their certificate jurisdiction or jurisdiction over financing. Incidentally, I should mention that the usual method for analyzing certificate applications for new or expanded service, when such applications were being filed regularly at the Federal Power Commission, was to determine the revenue requirements of the project itself on an incremental basis. If the revenue requirements exceeded revenues available from customers to be served at current rates, the benefits from the new project were then balanced against the impact on all customers, including existing customers who might have their rates increased to suport the new project. This is a reasonable approach to an incremental cost analysis in which incremental costs are considered in the context of how much should the general overall public participate in meeting the utility's service obligation before a specific project is constructed. This contrasts with fixing rates at the marginal cost level without any analysis of the impact on service provided or to be provided either new or existing customers.

In addition to denying authorizations for new projects that do not meet its economic tests, a regulatory commission may exclude from the rate base facilities that are not used or useful, and from the cost of service imprudent expenditures. Commissions may also lower the rate of return for a particularly inefficient operation. Other measures available to regulatory commissions are restrictions on attachments for uses that are considered wasteful or not in the public interest or curtailment of those uses if there is a shortage of capacity. Moreover, there are various programs such as those pursuant to the National Energy Conservation Policy Act, most of which directly encourage conservation efforts by the user. Some of these programs are administered by utilities and involve supervision by regulatory commissions.

The advantage of proceeding by such measures is that this impact can be estimated directly by the utility, the regulatory commission, or the consumer, and the trade-offs can be evaluated. This contrasts with the pricing approach where vague and unquantified benefits from economic theory are predicted, but the trade-offs of reduced service are sublimated or subordinated. In fact, they are likely to be unknown until they are experienced.

Eighth, I have been advised from some quarters that my concern for the impact of rates and their effect on meeting the utility's service obligation could be viewed as a departure from objective rate making and an argument for lifeline rates. This certainly is not my intent. Rates should be designed to recover operating expenses and capital charges expended in providing service. Rates should also attribute to each distinct class of service the costs that have been incurred in serving that class. Just as rates should not be advisedly designed to discourage services, so also they should not be designed to encourage service. This includes lifeline rates which encourage service by creating a separate customer class predicated not on its incurrence of costs, but rather on an alleged inability to pay. At the same time the costs required to serve the "lifeline class" are assigned to other customer classes based on an unsupported perception of their ability to pay.

While it would be insensitive to oppose lifeline rates without the caveat that those who are indeed unable to pay should be aided through welfare channels, it is also callous to adopt rates which impose the deficiency in revenues resulting from lifeline rates on other customers without considering the impact on those other customers. Thus they may be induced to reduce their purchases, leaving fixed charges to be concentrated progressively on the remaining sales until at least some of the customers that were originally intended to bear the lifeline burden find themselves to be economically marginal and must also go the welfare route.

Ninth, the utilities themselves are not immune to domino effect and what the U.S. Supreme Court in Market Street R. Co. v California R. Commissioner[9] described as the law of diminishing returns. In that case the court held that it was not confiscation to refuse a trolley fare increase from five cents to seven cents because rates cannot be increased continuously to recover costs when each increase inhibits ridership and net revenues. Today, what street railways there still are, like almost all other intracity transit operations, are no longer private enterprises. This is to say nothing of the railroads, the telegraph companies, and the railway express agency, all of which saw better days before being forced to think the unthinkable. Although no doubt in each of these instances there are distinguishing factors, I perceive a distinct absence of realism in the attitude of some electric utilities today which act as if they are disinterested stakeholders while the marginal cost battle is fought out between the Department of Energy and their industrial customers. The issue for the utilities is not such abstract considerations as economic efficiency, fairness, or optimal resource allocation. Rather it is a matter of the continued viability of present markets and the impact that the sought after changes in those markets will actually have on the utilities themselves and on the economy as a whole.

SUMMING UP

As a final matter, the concern I have expressed for service from utilities faced with proposals to simulate the competitive market in pricing does not end with electric and gas industries. There is a movement extending across the entire spectrum of industries subject to utility-type economic regulation which proposes that rates should either be fixed to simulate competitive market economics or deregulated entirely. Such proposals, however, give little or no concern for the impact on the service those industries have been rendering. Thus deregulated airlines tumble over each other in a rush for the high-density routes while smaller, less populated communities are left to complain of reduced service and their reduced attraction for commerce and industry. Also with the deregulation of brokerage fees, many small investors, whose fees escalated, have curtailed their investing or left the market entirely. Still deregulation proposals are introduced as to the communications, trucking, and rail industries, supported only by platitudes that it is not the intent of these measures to diminish service by the affected industries.

It may well be that our economic problems from inflation, plus the pressures from escalating petroleum prices and efforts to develop alternative energy supplies, will make it extremely difficult, if not impossible, to maintain the level of utility service to which we have become accustomed. If that is the case, however, we should recognize the problem and face it directly rather than to delude ourselves that the solution will come from an application of economic theory which promises great benefits, but shows minimal concern for the service obligation traditional to utilities and clearly stated in utility statutes.

FOOTNOTES

[1] *"The Economics of Regulation, Principles and Institutions,"* by Alfred E. Kahn, John Wiley & Sons, Vols. I and II, 1970, 1971.

[2] Wisconsin Teleph. Co. v Wisconsin Pub. Service Commission (Wis Sup Ct 1939) 31 PUR NS 351, 287 NW 122, 147.

[3] Federal Power Commission v Natural Gas Pipeline Co. of America (1942) 315 US 575, 607, 42 PUR NS 129; Federal Power Commission v Hope Nat. Gas Co. (1944) 320 US 591, 603, 51 PUR NS 193; Colorado Interstate Gas Co. v Federal Power Commission (1945) 324 US 581, 605, 58 PUR NS 65.

[4] State of North Carolina ex rel. Utilities Commission v. General Teleph. Co. of the Southeast (1972) 189 SE2d 705, 717.

[5] United Fuel Gas Co. v. Kentucky R. Commission, 278 US 300, 309, PUR1929A 433.

[6] Bluefield Waterworks & Improv. Co. v. West Virginia Pub. Service Commission (1923) 262 US 679, 692, 693, PUR1923D 11; Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 603, 51 PUR NS 193.

[7] North Carolina v. Federal Energy Regulatory Commission (1978) 26 PUR4th 312, 584 F2d 1003, 1014.

[8] See footnote 6.

[9] (1945) 324 US 548, 565, 52 PUR NS 18.

ORDER FOR CONSIDERATION OF CERTAIN TREATIES ON WEDNESDAY, SEPTEMBER 17, 1980

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with Mr. CHURCH on this side of the aisle, and has now been cleared with the Republican leadership and with Senators on that side of the aisle, and also with other Senators on this side of the aisle.

Mr. President, I ask unanimous consent, as in executive session, that the following conventions and treaties be considered as having passed through the various parliamentary stages up to and including the presentation of the resolution of ratification:

Executive G, 96–2, The Food Aid Convention of 1980; Executive FF, 96–1, Protocols for the Fifth Extension of the International Wheat Agreement, 1971; Executive B, 96–2, 1978 Partial Revision of the Radio Regulations; Executive C, 96–2, Amendment to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora; Executive I, 96–1, Proposed amendments to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter; Executive HH, 96–1, Convention on the Inter-American Institute for Cooperation on Agriculture; Executive F, 96–1, Treaty on Maritime Boundaries with the United Mexican States; Executive G, 96–1, Maritime Boundary Treaty with the Republic of Venezuela; and Executive H, 96–1, Maritime Boundary Agreement with the Republic of Cuba.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FOOD AID CONVENTION, 1980

The PRESIDING OFFICER. Without objection, the first treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Food Aid Convention, 1980, signed on behalf of the Government of the United States of America at Washington on April 29, 1980 (Executive G, Ninety-sixth Congress, second session).

PROTOCOLS FOR THE FIFTH EXTENSION OF THE INTERNATIONAL WHEAT AGREEMENT, 1971

The PRESIDING OFFICER. Without objection, the next treaty for the Fifth Extension of the International Wheat Agreement, 1971, will be considered as having passed through the various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the ratification of the 1979 Protocol for the Fifth Extension of the Wheat Trade Convention, 1971, and the 1979 Protocol for the Fifth Extension of the Food Aid Convention, 1971, both signed on behalf of the Government of the United States of America at Washington on May 16, 1979 (Executive FF, Ninety-sixth Congress, first session).

THE 1978 PARTIAL REVISION OF THE RADIO REGULATIONS

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the Resolution of Ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Partial Revision of the Radio Regulations (Geneva 1959) signed on behalf of the United States at Geneva, March 5, 1978 (Executive B, Ninety-sixth Congress, second session).

AMENDMENT TO THE CONVENTION ON THE INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, adopted at Bonn on June 22, 1979 (Executive C, Ninety-sixth Congress, second session).

PROPOSED AMENDMENTS TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the Resolution of Ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendment to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, adopted at London on October 12, 1978 (Executive I, Ninety-sixth Congress, first session).

CONVENTION ON THE INTERAMERICAN INSTITUTE FOR COOPERATION ON AGRICULTURE

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on the Inter-American Institute for Cooperation on Agriculture, signed at Washington on March 6, 1979 (Executive HH, Ninety-sixth Congress, first session).

TREATY ON MARITIME BOUNDARIES WITH THE UNITED MEXICAN STATES

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty on Maritime Boundaries between the United States of America and the United Mexican States, signed at Mexico City, May 4, 1978 (Executive F, Ninety-sixth Congress, first session).

MARITIME BOUNDARY TREATY WITH THE REPUBLIC OF VENEZUELA

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Maritime Boundary Treaty between the United States of America and the Republic of Venezuela, signed at Caracas on March 28, 1978 (Executive G, Ninety-sixth Congress, first session).

MARITIME BOUNDARY AGREEMENT WITH THE REPUBLIC OF CUBA

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and includ-

ing the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Maritime Boundary Agreement between the United States of America and the Republic of Cuba, signed at Washington, December 16, 1977 (Executive H, Ninety-sixth Congress, first session).

ORDER FOR VOTES ON TREATIES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 12:40 p.m. on next Wednesday, September 17, 1980, the Senate go into executive session; that the Senate immediately proceed under a time limitation of 20 minutes to be equally divided between Mr. CHURCH, and Mr. JAVITS, the debate to be on the aforementioned treaties and conventions, that immediately upon the expiration of the time, or at 1 p.m., to be precise, there be one vote to count for eight votes, the eight Executive treaties being those that I have mentioned, Calendar Orders Nos. 14, 15, 16, 17, 18, 19, 20, and 21; that immediately upon the consummation of that vote, and back to back thereto, a vote occur on Executive H, the Maritime Boundary Agreement with the Republic of Cuba; that immediately upon the disposition of those treaties and notification to the President, if such is ordered by the Senate, and the motion to reconsider and the motion to table, it being understood that there will be no time for debate on such motion to reconsider—and I ask unanimous consent that the motions may be made en bloc—the Senate will then return to legislative session.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. This means, Mr. President, that beginning at 1 o'clock on next Wednesday afternoon, September 17, 1980, there will be two votes, and they will be back to back, the first of which will account for eight, the second of which will account for one, making a total of nine.

Mr. President, I ask unanimous consent that it may be in order at any time to order the yeas and nays on the aforementioned treaties with one show of seconds.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the aforementioned treaties.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. I thank the distinguished acting Republican leader.

TIME LIMITATION AGREEMENT—S. 3059

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the military construction authorization bill, S. 3059, Calendar Order No. 998, is before the Senate, the following time agreement obtain: 1 hour equally divided on the bill, to be controlled by Mr. HART and Mr. TOWER; one-half hour equally divided on any amendment; 2 hours equally divided on a committee amendment offered by Mr. JACKSON on the subject of binaries for chemical bombs; one-half hour equally divided on an amendment by Mr. PRYOR on general alarm system; 2 hours equally divided on an amendment by Mr. HART on binaries; 20 minutes on any debatable motion, appeal, or point of order if such a point of order is submitted by the Senate, and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, again, I thank Mr. STEVENS and all other Senators.

PRINTING ADDITIONAL COPIES OF CERTAIN BOOKLETS

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a Senate concurrent resolution and ask that it be stated by the clerk.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

A Senate concurrent resolution (S. Con. Res. 123) authorizing the printing of additional copies of the booklets entitled "The Senate Chamber, 1810–1859" and "The Supreme Court Chamber, 1810–1860".

Resolved by the Senate (the House of Representatives concurring), That there be printed for use of the Commission on Art and Antiquities of the United States Senate fifty thousand additional copies of the booklet entitled "The Senate Chamber, 1810–1859", and thirty thousand additional copies of the booklet entitled "The Supreme Court Chamber, 1810–1860".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution.

Mr. STEVENS. There is no objection.

There being no objection, the Senate proceeded to consider the resolution.

The concurrent resolution was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT FOR FISCAL YEAR 1981

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator KENNEDY I ask that the Chair lay before the Senate a message from the House of Representatives on S. 568.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 568) entitled "An Act to promote the full use of human resources in science and technology through a comprehensive program to maximize the potential contribution and advancement of women in scientific, professional, and technical careers and to authorize appropriations for activities for the National Science Foundation for fiscal years 1981 and 1982, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "National Science Foundation Authorization Act for Fiscal Year 1981".

SEC. 2. (a) There are authorized to be appropriated to the National Science Foundation, for the fiscal year 1981, the sums indicated for the following categories:

(1) Mathematical and Physical Sciences, $259,800,000.

(2) Astronomical, Atmospheric, Earth, and Ocean Sciences, $237,100,000.

(3) United States Antarctic Program, $64,200,000.

(4) Ocean Drilling Programs, $17,500,000.

(5) Biological, Behavioral, and Social Sciences, $183,410,000.

(6) Science Education Programs, $92,200,000.

(7) Engineering and Applied Science, $142,560,000.

(8) Scientific, Technological, and International Affairs, $30,450,000.

(9) Cross-Directorate Programs, $33,200,000.

(10) Program Development and Management, $59,800,000.

(b) Of the total amount authorized under subsection (a)(7)—

(1) not less than $19,400,000 shall be available for Earthquake Hazards Mitigation;

(2) not less than $1,000,000 shall be available for the Small Business Innovation Program, for projects to aid the handicapped;

(3) not less than $3,000,000 shall be available for Research and Development in Appropriate Technology;

(4) not less than $5,000,000 shall be available for a Center for Innovation Development to be located in an area which experienced an unemployment rate in excess of 10 per centum in 1979, and which is centrally located to serve several major metropolitan centers; and

(5) not less than $1,800,000 shall be available for the establishment and operation of three university-based Innovation Centers.

(c) Of the total amount authorized under subsection (a)(6)—

(1) not less than $2,400,000 shall be available for Science Faculty Improvement Programs, for year-long awards to experienced, full-time, two- and four-year college and university science teachers who are involved primarily in undergraduate science instruction to increase their competence in science; and

(2) not less than $1,500,000 shall be available for Science Education Programs relating to Appropriate Technology.

(d) Of the total amount authorized under subsections (a)(1), (a)(2), (a)(5), and (a)(7), not less than $2,000,000 shall be available for the salaries of faculty members of two-year and four-year colleges that have only small or no doctoral programs in science and engineering or of universities that have very limited science and engineering programs, for the purpose of enabling them

to participate in research projects at institutions other than the faculty members' home institutions.

(e) Of the total amount authorized under subsection (a)(4), not more than $500,000 is authorized for the Ocean Margin Drilling Project, including such sums as may be necessary for the National Academy of Sciences study specified in section 3(c).

(f) Of the total amount authorized under subsection (a)(9), not more than $1,600,000 is authorized for United States/Union of Soviet Socialist Republics cooperative research, no portion of which shall be expended until the President has certified in writing to the Congress that such expenditures shall be of direct and very substantial benefit to the United States.

(g) Of the total amount authorized under subsection (a)(8), $14,500,000 is authorized for International Cooperative Science Activities.

SEC. 3. (a) The Foundation shall prepare a report on the Ocean Margin Drilling Project and shall transmit the report to Congress not later than December 31, 1980. The report shall include—

(1) plans for conversion of the Glomar Explorer or other drilling platform;

(2) plans for drilling;

(3) detailed cost estimates;

(4) a discussion of the feasibility and cost of alternative drilling platforms;

(5) plans for funding; and

(6) other plans.

(b) No funds shall be obligated for the Ocean Margin Drilling Project after December 31, 1980, until the report specified in subsection (a) is transmitted to Congress.

(c) The National Academy of Sciences shall study marine earth sciences research and report to the Congress.

(d) To the extent permitted by law, all Federal funding of the Ocean Margin Drilling Project shall be provided from the Windfall Profit Tax Account.

SEC. 4. Appropriations made under the authority provided in sections 2 and 6 shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making the appropriations.

SEC. 5. From appropriations made under the authority provided in this Act, not more than $5,000 may be used for official consultation, representation, or other extraordinary expenses at the discretion of the Director of the National Science Foundation. His determination will be final and conclusive upon the accounting officers of the Government.

SEC. 6. Besides the sums authorized by section 2, not more than $5,500,000 is authorized to be appropriated for the fiscal year 1981 for expenses of the National Science Foundation incurred outside the United States, to be drawn from foreign currencies that the Treasury Department determines to be excess to the normal requirements of the United States.

SEC. 7. Funds may be transferred among the categories listed in section 2(a), but neither the total funds transferred from any category nor the total funds transferred to any category may exceed 10 per centum of the amount authorized for that category in section 2(a) or available for that category after the application of section 10, unless—

(1) thirty calendar days on each of which at least one House of Congress is in session have passed after the Director of the National Science Foundation or his designee has transmitted to the Speaker of the House of Representatives, to the President of the Senate, to the Committee on Science and Technology of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate a written report containing a full and complete explanation of the transfer involved and the reason for it, or

(2) before the expiration of the thirty days both the Committee on Science and Technology of the House and the Committee on Labor and Human Resources of the Senate have written to the Director to the effect that they have no objection to the proposed transfer.

SEC. 8. The National Science Foundation is directed to consolidate all Directorates, including the Science Education Directorate, under one roof, in the present location of the central administrative offices, on or before August 1, 1982.

SEC. 9. The Director of the National Science Foundation, jointly with the Secretary of Education, shall develop and transmit to Congress a proposed joint Science Education Program plan.

SEC. 10. If the total amount of appropriations made by any Act for program activities included in section 2 for the fiscal year 1981 is less than the total amount authorized to be appropriated for those activities by section 2, the amount available from such appropriations for any particular program activity shall bear the same ratio to the amount authorized to be appropriated for that activity by section 2 as the total amount of the appropriations made by such appropriation Act for all included program activities bears to the total amount authorized to be appropriated for those activities by section 2 (with each ceiling and floor set forth in section 2 being reduced in the same ratio for purposes of determining the amounts so available), except to the extent specifically otherwise provided in the text of the Act making the appropriations for the program activities involved.

SEC. 11. (a) Section 15 of the National Science Foundation Act of 1950 is amended by striking out subsection (c), and by redesignating subsection (d) as subsection (c).

(b) The text of section 16 of such Act is amended to read as follows:

"SEC. 16. To enable the Foundation to carry out its powers and duties, only such sums may be appropriated as the Congress may authorize by law.".

SEC. 12. (a) Section 2(a) of the Act entitled "An Act to establish a National Medal of Science to provide recognition for individuals who make outstanding contributions in the physical, biological, mathematical, and engineering sciences", approved August 25, 1959 (42 U.S.C. 1881(a)), is amended by striking out "or engineering" and inserting in lieu thereof "engineering, behavioral, or social".

(b) The title of such Act is amended by striking out "and" engineering" and inserting in lieu thereof "engineering, behavioral, and social".

SEC. 13. The President, with the assistance of the Director of the Office of Science and Technology Policy and members of the Cabinet, shall develop a comprehensive national policy with regard to women, minorities, science and technology. Further, the President is directed to report to the Congress a comprehensive legislative and administrative program to implement this policy before January 1, 1981.

SEC. 14. The Director of the National Science Foundation shall henceforth require the titles of all its grants to contain a brief statement of the purpose of the research being undertaken. Insofar as possible such statements shall be in layman's language.

Amend the title so as to read: "An Act to authorize appropriations for activities of the National Science Foundation for fiscal year 1981 and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, and Mr. HUMPHREY conferees on the part of the Senate.

BILL HELD AT DESK—H.R. 7218

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 7218 be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROTC SCHOLARSHIPS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator STENNIS, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5766.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 5766) entitled "An Act to amend title 10, United States Code, to authorize additional Reserve Officers' Training Corps scholarships for the Army, to provide a certain number of such scholarships for cadets at military junior colleges, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, and for other purposes", with the following amendments:

Page 2, line 3 of the Senate engrossed amendments, strike out "of an armed force", and insert "concerned".

Page 10, line 6, strike out "an armed force", and insert "the Secretary concerned".

Page 10, line 7, strike out "an armed force", and insert "the Secretary concerned".

Page 10, line 10, strike out "an armed force", and insert "the Secretary concerned".

Page 10, line 12, strike out "entity", and insert "entity, but such term does not include the payment for any course of advanced education which is paid for under chapter 106 or 107 of this title.".

Page 12, line 4, strike out "(13)", and insert "(14)".

In lieu of the matter proposed by the amendment of the Senate to the title of the said bill, insert: "An Act to authorize additional Reserve Officers' Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished postsecondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. STENNIS, I ask unanimous consent that the Senate concur in

these amendments of the House to the amendments of the Senate, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the action by which the Senate concurred in the House amendments to H.R. 5766.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDIAN HEALTH CARE IMPROVEMENT ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator MELCHER I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2728.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2728) entitled "An Act to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That (a) section 102 of the Indian Health Care Improvement Act (90 Stat. 1400), hereinafter referred to as the "Act", is amended by striking the last sentence in subsection (c) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,300,000, $2,600,000, $3,000,000, and $3,500,000, respectively.".

(b) Section 103 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,600,000, $1,800,000, $2,100,000, and $2,400,000, respectively.".

(c) The first sentence of section 757(a) of the Public Health Service Act is amended by striking the phrase "and for each of the succeeding fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting, in lieu thereof, the following: "$9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 for the fiscal year ending September 30, 1984.".

(d) Section 105 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $990,000, $1,140,000, $1,310,000, and $1,510,000, respectively.".

SEC. 2. (a) Section 201(c) of the Act is amended by adding the following sentence to paragraph (1) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $20,250,000, $23,000,000, $26,500,000, and $30,500,000, respectively, and such further additional positions are authorized as may be necessary.".

(b) Section 201(c) of the Act is amended by adding the following sentence to paragraph (2) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $6,400,000, $7,350,000, $8,450,000, and $9,700,000, respectively, and such further additional positions are authorized as may be necessary.".

(c) Section 201(c) of the Act is amended by adding the following sentence to paragraph (3) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,875,000, $2,150,000, $2,500,000, and $2,875,000, respectively, and such further additional positions are authorized as may be necessary.".

(d) Section 201(c)(4) of the Act is amended by—

(A) adding the following sentence to subparagraph (A) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,500,000, $2,875,000, $3,300,000, and $3,800,000, respectively, and such further additional positions are authorized as may be necessary.";

(B) adding the following sentence to subparagraph (B) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $750,000, $870,000, $1,000,000, and $1,150,000, respectively, and such further additional positions are authorized as may be necessary.";

(C) by adding the following sentence to subparagraph (C) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,350,000, $2,700,000, $3,100,000, and $3,600,000, respectively, and such further additional positions are authorized as may be necessary.";

(D) by adding the following sentence to subparagraph (D) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $460,000, $525,000, $600,000, and $690,000, respectively, and such further additional positions are authorized as may be necessary."; and

(E) by adding the following sentence to subparagraph (E) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $250,000, $285,000, $325,000, and $375,000, respectively.".

(e) Section 201(c) of the Act is amended by adding the following sentence to paragraph (5) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $15,000,000, $17,250,000, $19,840,000, and $22,800,000, respectively.".

(f) Section 201(c) of the Act is amended by adding the following sentence to paragraph (6) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $5,000,000, $5,750,000, $6,600,000, and $7,600,000, respectively, and such further additional positions are authorized as may be necessary.".

(g) 201(c) is amended by striking all of paragraph (7) thereof.

SEC. 3. Title III of the Act is amended by inserting a new section 305 as follows:

"SEC. 305. For fiscal years 1981, 1982, 1983, and 1984, funds necessary to carry out the purposes of section 301 and 302 of this Act may be appropriated pursuant to authority contained in the Act of November 2, 1921 (42 Stat. 208), as amended by the Act of October 12, 1976 (90 Stat. 2233); and the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267).".

SEC. 4. Section 506 of the Act is amended by adding the following sentence at the end thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $18,750,000, $21,500,000, $24,725,000, and $28,500,000, respectively.".

SEC. 5. Section 4(c) of the Act is amended by adding at the end the following: "For purposes of titles II and III of this Act, such terms include Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State of California.".

Amend the title so as to read: "An Act to amend the Indian Health Care Improvement Act (90 Stat. 1400) to reauthorize appropriations for the various programs therein.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I move that the Senate disagree to the amendment of the House and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. MELCHER, Mr. INOUYE, Mr. DECONCINI, Mr. COHEN, and Mr. HATFIELD conferees on the part of the Senate.

ORDER FOR RECOGNITION OF CERTAIN SENATORS AND FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order, Mr. WILLIAMS be recognized for not to exceed 15 minutes, Mr. STEVENS be recognized for not to exceed 15 minutes, and Mr. ROBERT C. BYRD be recognized for not to exceed 15 minutes, after which there be a period for the transaction of routine morning business for not to exceed 15 minutes, and that Senators may speak during that period of the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR SENATE TO CONVENE ON MONDAY, SEPTEMBER 15, 1980, AT 1 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate convenes on Monday next, it convene at the hour of 1 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I believe the order has been entered for the Senate to recess over today until tomorrow at 9 a.m., and from tomorrow, Thursday, over until Monday at 1 p.m.; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 o'clock tomorrow morning

The motion was agreed to; and at 5:59 p.m., the Senate recessed until tomorrow, Thursday, September 11, 1980, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 10, 1980:

DEPARTMENT OF STATE

Arthur H. Woodruff, of Florida, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

David E. Simcox, of Kentucky, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Republic of Mozambique.

Francis J. Meehan, of the District of Columbia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Poland.

THE JUDICIARY

Nicholas J. Bua, of Illinois, to be U.S. circuit judge for the seventh circuit, vice Philip W. Tone, resigned.

Raymond L. Finch, of the Virgin Islands, to be a judge of the district court of the Virgin Islands for a term of 8 years, vice Warren H. Young, deceased.

DEPARTMENT OF JUSTICE

Atlee W. Wampler, III, of Florida, to be U.S. attorney for the southern district of Florida for the term of 4 years, vice Jacob V. Eskenazi, deceased.

Mack A. Backhaus, of Nebraska, to be U.S. marshal for the district of Nebraska for the term of 4 years, vice Ronald C. Romans, term expired.

IN THE ARMY

The following-named Army Medical Department officers for temporary appointment in the Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3442 and 3447.

MEDICAL CORPS

To be major general

Brig. Gen. Edward James Huycke, 512-24-0763, Medical Corps, Army of the United States (colonel, U.S. Army).

To be brigadier general

Col. William Presley Winkler, Jr., 322-24-8918, Medical Corps, U.S. Army.

Col. Frank Finley Ledford, Jr., 279-30-2388, Medical Corps, U.S. Army.

Col. Frank Allen Ramsey, 465-26-3131, Medical Corps, U.S. Army.

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EXTENSIONS OF REMARKS

NERVE GAS STORED IN DENVER

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mrs. SCHROEDER. Mr. Speaker, the following articles shed a lot of light on the nerve gas being stored in Denver that was discussed in the military construction bill debate today. I hope Members will read them.

WETEYE DETOXIFICATION BILL IS OK'D

(By Al Gordon)

The Senate Armed Services unanimously approved legislation Wednesday that would force the Defense Department to remove or detoxify, within a year, the 900 Weteye nerve gas bombs stored at Denver's Rocky Mountain Arsenal.

The measure, sponsored by Sen. Gary Hart, D-Colo., would require the department to report to Congress its plans for detoxification or transfer within 90 days after the bill is passed. Congress would have the power to veto the proposed plans.

The committee will ask the Defense Department to study the feasibility of converting the arsenal to other uses, notably as a site for expansion of Stapleton International Airport. The study is to review the scope and price of decontamination efforts which must be made at the arsenal before it could be turned over to civilian use.

The Weteye provisions are part of the $5.4 billion 1980-81 Defense Department construction bill. Hart, who chairs the subcommittee that oversees the legislation, attached his amendment last week.

The bill includes $10.4 million toward efforts to clean up ground and water chemical contamination at the arsenal, $1.6 million for construction work at Fitzsimons Army Medical Center, Lowry Air Force Base and Buckley Air National Guard Base and $54 million for other facilities in Colorado.

Committee staff members said one more meeting will be needed to finish work on the construction bill, but no date has been set.

The House Armed Services Committee has cleared its version for floor action, but the House hasn't voted on it.

The House bill doesn't include a Weteye provision. It does include $3.15 million to begin production of a new generation of nerve gas weapons which might eventually replace the Weteyes.

That provision isn't in the Senate bill. Hart opposes it, citing the lack of equipment and training for U.S. forces to enable them to defend themselves against chemical weapons. Without such a defensive capability, the U.S. can't credibly deter the Soviets from using nerve gas, Hart argues.

Other members of the Senate panel are concerned that the U.S. chemical warfare arsenal has fallen far behind the Soviet's and they want to close the gap by producing the new "binary" weapons. These contain two components that aren't lethal until mixed in combat and thus are safer to store than the Weteyes.

Defense Secretary Harold Brown is expected to be asked for his views on producing the binaries when he testifies before the Senate committee Thursday. It's possible the armed services may decide to add the binary production money to the construction bill before it finished action on the measure.

Hart warned that his Weteye proposal, which so far he has managed to steer clear of the binary-bomb controversy, still must be approved on the Senate floor and be reconciled with the House version.

But Hart termed Wednesday's committee's action an important step toward getting the bombs out of the Denver area.

The arsenal is next to a main runway at Stapleton. Hart and other Colorado leaders repeatedly have warned that a plane crash could unleash a cloud of deadly GB nerve gas on 1.5 million people.

The Defense Department had planned to move the bombs to Tooele Army Depot in Utah. Those plans were canceled earlier this year in the face of opposition from Utah Gov. Scott Matteson and from Hart and other Colorado lawmakers who urged that the bombs be detoxified instead.

Hart said he continues to prefer detoxification. But he will no longer oppose the transfer of the weapons to another site if that's the only way to get them out of Denver.

INVITING THE UNTHINKABLE

The U.S. Army's decision to continue storing 888 deadly "weteye" nerve gas bombs at the Rocky Mountain Arsenal near Denver unnecessarily exposes 1.5 million people to the danger of accident or sabotage.

To say the bombs should not be stored near a major metropolitan area is not necessarily to join the ranks of those who insist the United States shouldn't stock such weapons at all. Given the present state of world affairs, the Army's recent reversal of its 1978 decision to destroy the bombs may well make sense. Until the day when an effective and enforceable international treaty outlaws such barbaric weapons, the United States may need them as a deterrent.

History certainly provides recent evidence that mutual deterrence sometimes works. In World War II, Nazi Germany manufactured huge stocks of deadly nerve gases—and certainly Adolph Hitler never shrank from mass destruction for humanitarian considerations. But, by a quirk, Germany was far more vulnerable to such weapons than the allies.

Short of petroleum, the Germans used horse-drawn transport to move many of their military supplies throughout the war. As it happens, you can put a gas mask on a man but you can't keep one on a horse. In a battlefield exchange of chemical weapons, therefore, German horses would die while allied trucks rolled on—and so, the bombs were never unleashed. Thus, the "balance of terror" did place some limits on slaughter even amidst all-out war.

So, until they can be mutually forsworn, keep the bombs if need be. But get them the heck out of Denver and put them far away from a major population center. Anyone breathing our "brown cloud" can guess what would happen if these bombs leaked during an atmospheric inversion in Denver. The Arsenal is right next to Stapleton International Airport. What happens if a plane crashes where they're stored? Or a fire breaks out? Or any of a number of unlikely but potentially catastrophic accidents occurred, not to mention deliberate sabotage?

The Army isn't insensitive to this problem. It's seeking a $3 million program to improve security at the Arsenal, including an underground storage facility for the bombs "complete with automatic environmental and decontamination-control devices." Certainly, that would be safer than the present storage of the bombs in metal sheds above ground. But to begin with, it would take two years to complete such a program. Even then, the Arsenal's record doesn't exactly inspire confidence. Soil at the facility is so contaminated from storage of hazardous materials that the Army is expected to continue working for at least another decade to restore the land.

In fact, the Arsenal's history even includes what may well be the unique distinction of triggering earthquakes in a metropolitan region. A series of tremors in the '60s was ultimately found to have been caused by deep well disposal at the Arsenal that lubricated stress lines within the earth and triggered the quakes. A record like that can hardly reassure the public that the Arsenal can foresee absolutely all possible dangers.

There was logic in keeping the bombs at the Arsenal as long as a 1978 decision to destroy the weapons was in effect. The Arsenal has the know-how to detoxify them and it may have been safer to leave them there in the interim than to move them. But even the most gracious host sometimes has to tell a weekend guest that he's not welcome as a permanent boarder.

If they must stay in the national inventory, the Army should take extraordinary safety precautions in moving them, but it should move them—soon and far away. Such weapons exist only because in an uncertain world it is necessary to "think about the unthinkable" and create them in hopes of deterring their use by a hostile nation. But storing them where they needlessly endanger 1.5 million people isn't thinking the unthinkable—it's inviting the unthinkable.

INTOLERABLE ABUSE OF AMERICAN TRUST

(By Leonard Larsen)

It is time to consider serious abuses by the U.S. government against its own people, abuses extending back at least a decade and involving several presidential administrations.

Specifically, the Department of Defense and the various top-level bureaucrats who have occupied chairs there should be called on to answer the charge of blackmail and White House occupants—from Jimmy Carter to Gerald Ford and back to Richard Nixon—should explain the shoddy business of knuckling under to the defense establishment and lying about it.

This is about the Rocky Mountain Arsenal, the Army installation on Denver's shoulder which has long since outlived its usefulness, which has proved repeatedly to be a threatening and dangerous neighbor and which beyond any reasonable doubt should be shut down, cleaned up and vacated by its Army tenant.

The latest outrage, a decision apparently endorsed by a pliant President Carter with the customary lack of insight and understanding which typifies his work, will keep nearly 900 Weteye nerve gas bombs stored indefinitely at the arsenal.

The bombs, designed as weapons for Navy aircraft and manufactured in the 1950s, are in fragile condition—some of them are already leaking—and the Carter decision to keep them at the arsenal instead of transferring them as planned to a more remote arsenal at Tooele, Utah, was justified in part by the obvious risks inherent in an airlift from Denver to Utah.

The Weteye nerve gas bombs could—and should—be destroyed at the arsenal. The equipment and the personnel are there.

But in the explanation of why not, the Carter administration, as the previous administrations, serves as the mouthpiece for the lies and blackmail of the Defense Department.

We are told these bombs, these bombs in such unsafe condition, they cannot even be flown to Utah, must remain in storage at the arsenal as a "deterrent" against potential nerve gas use by the Soviet Union.

Since the bombs can't be flown away from Denver in their present condition, that line of reasoning seems to argue that the Russians would have to be airlifted to Denver and herded onto the arsenal grounds, there to be dosed with our nerve gas.

An accompanying piece of blackmail asserts that since Congress and succeeding administrations have not approved a new "binary" system of nerve gas weapons—less risky in handling—then the defense establishment cannot unilaterally dispose of even these rickety Weteyes.

Successfully, at least since 1970, various Defense Department officials and the old boys of the defense establishment have employed the blackmail which demands that approval of the "binary" nerve gas weapons is their price for destruction of the old ones.

Presidents, the latest one Carter, have endorsed the blackmail and the lies and in the process abused the concerns and the safety, not just of the people of Denver but of all Americans.

SOME HISTORY

In 1970 the then Rep. Don Brotzman, R-Colo., whose district included the arsenal, was assured in writing by the Defense Department that all nerve gas weapons and stocks at the arsenal—including the Weteyes—would either be destroyed at the arsenal or moved away.

The defense establishment lied to Brotzman and to Colorado. The full actions he was promised didn't occur.

In 1973, testifying before a House inquiry into chemical weapons stockpiles, the then secretary of the Army, Howard (Bo) Callaway, said all "deterrent" stockpiles of nerve gas weapons at the arsenal—again, including the Weteyes—would be destroyed there.

Callaway, now a Colorado resident who is seeking nomination as the Republican candidate for the U.S. Senate, said the nerve gas weapons at the arsenal were not necessary to the nation's defense, that they were only a "small portion" of the nation's total storage.

He said the decision for "detoxification" had been made by James Schlesinger, then the secretary of defense, "with the concurrence of the National Security Council," the panel which included President Nixon.

What Callaway said would happen didn't happen, not during the nearly three more years he served as secretary of the Army, not during the Ford administration which followed Nixon's and not during this administration of Jimmy Carter.

Instead, the defense establishment veered back to its "deterrent" argument, threatening the Soviet Union with weapons that can't even be reliably delivered against them and blackmailing the highest levels of our government.

This is shabby and intolerable abuse of the trust most Americans hold in their national government and its leaders.●

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

PERSONAL EXPLANATION

HON. LARRY J. HOPKINS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HOPKINS. Mr. Speaker, yesterday I had the opportunity to be the keynote speaker at a preliminary conference to the 1981 White House Conference on Aging, which was held in my home State of Kentucky. As you know, I am a member of the Select Committee on Aging as well as the House Agriculture Committee, and I have been active in both of these areas. My speech dealt with the challenges in the next decade for the rural elderly.

Because I was obliged to make travel arrangements while the House was still in session, I did not have the opportunity to vote on several key issues discussed during debate on the Rail Act of 1980, H.R. 7235. If I had been present, I would have voted "no" on the amendment offered by the gentleman from Texas (Mr. ECKHARDT), "yes" on the amendment offered by the gentleman from West Virginia (Mr. STAGGERS), "no" on the amendment offered by the gentleman from Michigan (Mr. ALBOSTA), and "yes" on final passage of H.R. 7235.●

NATIONAL DEVELOPMENT BANK

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PAUL. Mr. Speaker, this morning the Subcommittee on General Oversight of the House Banking Committee held a hearing on H.R. 7902, a bill to create a national development bank. Two witnesses appeared at the hearing, one of whom was Mr. Sheldon Richman of the Council for a Competitive Economy. I would like to call my colleagues' attention to Mr. Richman's testimony, for it is an excellent analysis of why this bill, and development banks in general, are a bad idea. They create no new jobs, no new wealth, and no new capital. They merely redistribute jobs, wealth, and capital, and destroy all three in so doing.

The statement follows:

STATEMENT OF SHELDON RICHMAN, DIRECTOR OF RESEARCH, COUNCIL FOR A COMPETITIVE ECONOMY

Mr. Chairman, members of the subcommittee: Thank you for this opportunity to testify on this important matter. I am Sheldon Richman, director of research for the Washington-based Council for a Competitive Economy. The Council is an organization of over 1,100 companies and individuals dedicated to a free, competitive economy, unhampered by regulation, subsidy and any form of special privilege. I want to stress that we are not a pro-business organization, but rather an organization of business people who are pro-free-market. To provide a context for my remarks on H.R. 7902, I should note that we are dedicated to the free market, first, because it is the only arrangement that respects individual rights, and, second, it is the only one that enables individuals to maximize their well-being as they see it.

The purpose of the proposed National Development Bank is to lend or pledge the taxpayers money for the achievement of certain political objectives. These include creating public-works projects and establishing or expanding commercial enterprises to create jobs for the unemployed and so-called underemployed.

I submit to you that the creation of a healthy economy in which everyone who wants a job can find one will not be achieved by this method. Historical precedent and economic theory demonstrate that it is doomed to failure.

Let's look at history briefly first. The National Development Bank is similar to the famous Reconstruction Finance Corporation of the 1930's, a Depression-era agency that lent money to banks, railroads, state and local governments and agriculture. In 1932, the RFC provided nearly $4 billion in cash and credits. Note that I said 1932—the last year of Herbert Hoover's administration. We've heard a lot about the need for an FDR-type economic revival in the United States. But few people seem to recall that government activism in the economy during the Depression began with Herbert Hoover, not Franklin Delano Roosevelt. In fact, every major program installed by Roosevelt had a precursor in the Hoover years, including wage supports, public works and business loans.

I leave it to you to decide if the attribution of these ideas to Herbert Hoover takes some of the gloss off H.R. 7902. The fact is that the RFC, despite its $10 billion in credits from 1931 to 1938, did not revitalize the economy and end the Depression. In 1938, unemployment was nearly as bad as it was when FDR took office. Only the transformation to a war economy did what Hoover's and Roosevelt's New Deals could not.

We have to turn to economic theory for an explanation of why the RFC could not and the proposed National Development Bank will not revitalize the economy.

The purpose of an economic system is to satisfy consumers. It exists to serve them. When it is unobstructed by government intervention, entrepreneurs, guided by the signals of the price system, channel land, labor and raw materials to the most highly valued purposes of consumers. One thing that is inconceivable in the unregulated market economy is mass, permanent unemployment. Human wants are insatiable; so the demand for labor services is unlimited. As long as wage rates are allowed to seek the market-clearing level, jobs will exist for all who want them. To be more precise, jobs will go begging for workers, and the consequent bidding up of wage rates will assure that workers earn the market value of their contribution.

Given what I've just said, there's obviously no need for a National Development Bank whose purpose is to create jobs. Rather, what we need to do is remove the impediments to a free labor market: the minimum-wage law, which prices unskilled labor out of the market; labor legislation, which drives wages above market level and causes unemployment, and all other obstacles to the free movement of labor.

But Congress and the Administration are unwilling to take these necessary steps. So

they choose rather to pile new regulations on old to treat the problems the old regulations created in the first place. The National Development Bank is such a measure. And like all such measures, it won't work. Not only that: It will make matters worse and undermine our liberty in the process.

The National Development Bank will have 5 billion dollars to lend or to guarantee loans with. It is charged with the task of finding public-works and commerical projects to assist through this awesome power. How will it decide what to fund? We can be certain it will not use the same methods that private investors use. They look for actual or potential profitability, which is always a sign that the enterprise in question is responding to a consumer need. The Bank by law will be required to assist only enterprises that DO NOT serve consumers well. The bill says that borrowers must present evidence "they are unable to obtain funds on reasonable terms from any other source . . ." If no voluntary investor is willing to lend a borrower money, there are only two explanations: Under current conditions, the borrower is not credit-worthy or he is not planning to use the loan to satisfy consumers' most urgent wants.

This federal agency will "revitalize" the economy by forcibly diverting scarce capital to wasteful uses. There is no other conclusion to be drawn. Present laws and inflationary monetary policies make capital precious enough. We hardly need a new agency dedicated to wasting valuable assets.

Moreover, the National Development Bank would be built on a foundation of injustice. Where will it get its money? From unwilling taxpayers, who, I suspect, would have other plans for their money. How will the Bank guarantee loans made by private sources? By pledging the money of those same hapless taxpayers. Who will be assisted by the Bank? Well-connected people who have been rejected in the marketplace by consumers. Ponder this for a moment: Just as in the Chrysler bailout, consumers who turn down a firm in the marketplace will be forced to support it through taxation. Does that strike you as just?

I cannot stress enough how fundamentally this bill would change our economic system from a demand economy to a command economy.

In the free market, voluntary exchange between consumers and producers determines the structure of the economy, the composition and quantities of products and services. This Bank, blind to consumers preferences, will substitute what it believes is in the "national interest." This may sound noble, even idealistic. But it is not. The nation's interest lies in the liberty and prosperity of the individuals who comprise it. This process cannot work backwards. The Bank cannot try to achieve the national interest, hoping to achieve individual well-being as a result. So instead, the Bank will become an engine of special privilege, accessible only to those with political clout. Notice that only Chrysler got bailed out despite the fact that as many people as Chrysler employs lose jobs because of small-business failures each year. Could it be that the UAW has influence the others don't have?

This bank will not only infringe on the freedom of American citizens, it will help impoverish them through its immense costs. These costs go far beyond the $5 billion the bill would appropriate. Every time the Bank guarantees a loan to someone who couldn't get it on its own in the market, it will be depriving consumers of whatever goods would have been produced by the entrepreneur who would have borrowed that capital. In other words, the Bank, in fulfulling its mandate, will be snatching capital from potential winners and giving it to known losers. Is that a prescription for prosperity?

This not only deprives consumers of untold products and services, it deprives workers of new and lucrative job opportunities, and it deprives entrepreneurs who don't have connections or opportunities to borrow capital to start or expand profitable projects.

On all counts, this National Development Bank is a bad idea. It diminishes liberty—which is enough to shelve it—and it promises to make us all poorer as a result. It has no place in a country that prides itself on freedom of enterprise. It will steal from us all for the benefit of privileged interests. It will centralize and politicize economic affairs in a manner reminiscent of Mussolini's fascist programs in the 1920's and 1930's.

I implore you to reject this bill and begin deregulating and decontrolling the economy so that we have both freedom and prosperity. Thank you.●

PERSONAL EXPLANATION

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, earlier today I was detained and unable to reach the House floor in time to vote on the motion to table House Resolution 745, the resolution of inquiry in the matter of Billy Carter. As a cosponsor of this resolution, I would have voted "no" on the motion to table if I had been present.●

HAZARDOUS WASTE SITE INVENTORY AMENDMENT TO H.R. 7020

HON. BOB ECKHARDT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ECKHARDT. Mr. Speaker, when the House of Representatives considers H.R. 7020, the Hazardous Waste Containment Act of 1980, I intend to offer two amendments. The first, which I discussed in yesterday's Extensions of Remarks at page E4295, would provide funds for health studies at hazardous waste sites. The second, which is the subject of this statement, would provide for a comprehensive inventory of all hazardous waste sites in the country.

In September 1979, the Commerce Committee's Oversight and Investigations Subcommittee, which I chair, issued a report, entitled "Hazardous Waste Disposal," which concluded that, "Hazardous waste disposal is one of the most serious environmental problems faced by this country today." Obviously, this is a problem of enormous dimensions. For example, in its first year of operation, EPA's Hazardous Waste Enforcement Task Force has helped the Justice Department file suits seeking about $230 million just for the cost of remedial work on Hooker Chemical Corp.'s four sites in Niagara Falls, N.Y. Overall, in just this first year, the Justice Department has filed a total of 40 suits for remedial work with an estimated cost of between $330 million and $590 million. While these statistics hint at the size of the problem, they are merely the tip of the iceberg. We really have no idea what the full dimensions could be. Therefore, one of the main recommendations of our report was for, "An inventory of all hazardous waste disposal sites, so that proper regulatory and enforcement priorities can be established."

I provided for the creation of such an inventory in my hazardous waste bill, H.R. 6931, and a similar provision was incorporated in the introduced version of H.R. 7020, the bill we are considering today. Unfortunately, in our haste to move H.R. 7020 through the full Interstate and Foreign Commerce Committee, the provision was narrowed so that now it would provide for an inventory of inactive hazardous waste sites only. My amendment would restore the original concept of H.R. 7020 so that we would have an inventory of all hazardous waste sites, inactive and active.

The effect of my amendment would be to apply the provisions of H.R. 7020 to the owners and operators of both active and inactive hazardous waste sites. As amended, H.R. 7020 then would require all owners or operators of such sites to provide the following information to State and local officials within 3 months after EPA issues the necessary forms:

(A) A description of the location of the hazardous waste site;

(B) The name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

(C) The current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carrried out at such site;

(D) Such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

(E) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Mr. Speaker, we must have this information if we are to set rational priorities for cleaning up dangerous sites. Absent adoption of this amendment, we will not have the necessary information about active sites under EPA's proposed regulations until all such sites have received permits from EPA, a process EPA admits will take some 7 to 10 years. Moreover, I believe that the basic mechanism contained in H.R. 7020 for collecting this information—from site owners in the first instance and then from generators or transporters where the owner fails to comply or where the information is inadequate—is the most efficient, least expensive and least burdensome way of securing this vital information.

I hope all my colleagues will support this amendment that I believe is essential to the workability of H.R. 7020.●

HAPPY 80TH BIRTHDAY, CONGRESSMAN CLAUDE PEPPER

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. STOKES. Mr. Speaker, I would like to thank the gentleman from Florida, Congressman FASCELL for taking out this special order so that we can salute one of our most outstanding Members on his 80th birthday—the Honorable CLAUDE PEPPER.

Mr. Speaker, instead of saying CLAUDE PEPPER is 80 years old, I think it is more appropriate to say 80 years young. The word "old" brings to mind someone slowing down and retiring. We all know that Congressman PEPPER is not about to slow down.

In fact, it seems that as he has progressed chronologically, he has increased his commitment to the causes for the poor, the disadvantaged and the elderly. By recounting his public career, it is evident that he has displayed the resilience, foresight and flexibility we often associate with youth.

Mr. Speaker, Congressman PEPPER is not a man who has taken the easy role in terms of positions or causes he has championed. For example, he became involved in the struggle for racial justice long before the civil rights movement gained momentum in this country. He has taken similar stances in terms of the problems of the elderly and American immigrants and refugees.

He is probably most noted and revered around the country for his role as chairman of the House Select Committee on Aging. Under his leadership, the committee has addressed the problems of the aged in our country. He has even gone so far as to act as our conscience for older citizens in each and every piece of legislation that comes before the House of Representatives. His legislative achievements in this area include the extending of the popular meals on wheels program; establishing a program to combat crime in public housing; and obtaining Amtrak discounts for older citizens.

He is probably most noted for his work with the Age Discrimination Act Amendments of 1978 which eradicated the age-based retirement of Federal employees and increased the retirement age in private sector employment from 65 to 70. Without his unfaltering work on this legislation, many productive elderly persons would be forced to retire prematurely.

Mr. Speaker, time and time again, Congressman PEPPER has become the spokesperson for seemingly hopeless causes and brought hope and success to many people. His energies and vigor in the pursuit of these causes have been untiring. I salute him on his 80th birthday and I wish him well in the future.●

A TRIBUTE TO HON. BILL NATCHER ON HIS BIRTHDAY

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BROOMFIELD. Mr. Speaker, tomorrow is a very special day in the life of our distinguished colleague BILL NATCHER, and I want to join in congratulating him on his birthday.

No Member of this body is better liked than BILL NATCHER and none has a finer reputation for decency, honesty, and integrity.

During the 26 years he has conscientiously represented the people of Kentucky, he has never missed a quorum or a rollcall—and there have been 11,954 of them.

That is a record that is unmatched in the history of the House of Representatives.

As the Washington Post noted in an article earlier this year, BILL runs the smallest, most frugal office in Congress demonstrating his belief that service in the House is a privilege and the highest honor of citizenship.

The respect he commands is never more evident than when he assumes the Speaker's chair. Under his firm but gentlemanly stewardship, the House functions efficiently and fairly and with a welcome air of dignity and decorum.

Mr. Speaker, BILL NATCHER embodies all of the good qualities that bring great credit to this body.

He is a special person and we all look better in his reflection.

I want to join with BILL's family and his many friends in the House in wishing him many, many more years of health and happiness.●

HON. JOHN H. BUCHANAN, JR., MERITS EDITORIAL TRIBUTE

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. COUGHLIN. Mr. Speaker, I am honored to insert in the CONGRESSIONAL RECORD an editorial tribute to Hon. JOHN HALL BUCHANAN, JR., who represents Alabama's Sixth Congressional District.

In the editorial published Sunday, September 7, 1980, by the Washington Post, the newspaper takes note of JOHN BUCHANAN's courageous actions in battling for voting rights in the District of Columbia. His honesty and concern were an open affirmation of his Christian beliefs.

I am disappointed and saddened that JOHN will not be returning to these Chambers next year. But to those of us who know and respect him, JOHN always will symbolize the practicing Christian who is unafraid to lay his beliefs on the line.

The House and, yes, Alabama's Sixth District are the losers. I know, however, that JOHN will take this election defeat in stride and, in fact, will turn it into strength and faith. He will be successful in whatever venture he chooses.

The editorial follows:

[From the Washington Post, Sept. 7, 1980]

MR. BUCHANAN'S "DOGGONE TRUTH"

"When voting rights came to Alabama, it was the best thing that happened to my state * * * I will not any longer compromise on civil rights * * * I'm at the point in my political career where I'd rather lose it than fail to do what's right."

The "Point" mentioned above was four years ago, when Rep. John Hall Buchanan Jr. was explaining why an Alabama Republican-Baptist preacher-congressman-moderate/conservative would battle in Congress for the cause of voting rights for the District of Columbia. And this week Mr. Buchanan did "lose it"—falling victim in the GOP primary to supporters of the Rev. Jerry Falwell's Moral Majority. Though the defeat may not mark the end of Mr. Buchanan's political career, he will be leaving Congress, where his stands on civil rights, foreign affairs, separation of church and state and other matters had won wide respect.

Mr. Buchanan's positions, though they did not fit any predictable political mold, have never seemed part of any calculated "maverick" role. Long before his efforts for the D.C. voting rights amendment, he was taking on the Ku Klux Klan, calling it "a tiny unrepresentative group of misguided people who have brought so much shame upon themselves and those associated with them."

During the House debate on the D.C. amendment, Mr. Buchanan socked it to certain colleagues in an emotional speech pointing to a "scandalous hostility between many members of the House and the District." He noted later that "nobody will say it, but it's the doggone truth." He attributed his "emancipation," on civil rights in general and on D.C. voting in particular, to his experience with a biracial Baptist church in Southwest Washington, where he and his wife have served in various capacities. "When you're deeply involved in a biracial entity, you think of people as brothers and sisters. Then the denial of rights of my brothers and sisters becomes an infringement of my rights as well."

That is why, with good reason, so many "brothers and sisters" and others well beyond the borders of his home state appreciate the many efforts John Buchanan extended on their behalf, in Congress as well as throughout the city.●

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SMALL BUSINESS REGULATORY FLEXIBILITY ACT—S. 299

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HARRIS. Mr. Speaker, it is with great satisfaction that I had the opportunity to manage the Regulatory Flexibility Act on behalf of the Judiciary Committee during floor consideration on Monday, September 8. The Regulatory Flexibility Act represents the culmination of a great deal of work and persistence by both the Senate and House. The House Judiciary Committee has been working on a comprehensive regulatory reform bill which includes provisions for small business regulatory flexibility similar to the legislation we have just passed. In addition, the House Small Business Committee has conducted extensive hearings and investigations on this issue and reported similar legislation to S. 299 last October.

As a member of the House Task Force on Small Business, I am pleased that the Congress has taken another step toward reducing the burden of excessive and cumbersome regulations on the small business community through its overwhelming support and approval of this measure. The passage of this landmark small business legislation is consistent with our efforts over the last 3 years to eliminate unnecessary regulations to enhance and encourage competition in our economy. We have passed deregulation bills for the airline and trucking industries and on Tuesday, September 9, moved to deregulate the ailing railroad industry as well.

Redtape, excessive paperwork, and burdensome regulations which drain resources and add to business costs must be eliminated. The application of regulations across the board regardless of the size of business involved has given an unfair competitive advantage to larger businesses at the expense of many small businesses throughout the country. It is difficult enough under the best of circumstances for a small business to be successful. But when small businesses are already feeling the effects of double digit inflation and interest rates it is difficult to keep up with larger companies that maintain full-time staffs of lawyers and accountants to interpret the maze of Federal regulations promulgated each year.

The Small Business Regulatory Flexibility Act will go far toward setting up a more equitable and reasonable approach to the development and implementation of regulations by Federal agencies. Under this bill, Federal agencies are required to assess the impact of existing and future regulations on small businesses and make appropriate adjustments to reduce the burden and impact on the small business community. The legislation would provide notice of proposed rulemaking to assure that small businesses have adequate notice and opportunity to participate in the rulemaking proceeding. The Small Business Administration's Chief Counsel for Advocacy is responsible for monitoring agency compliance with the legislation's requirements.

Overregulation of small businesses is one of the most longstanding and strongest complaints by the small business community. Regulatory flexibility was included by the delegates to the White House Conference on Small Business as a top priority in its recommendations for actions to assist small business.

The small business sector of the economy accounts for fully two-thirds of all new jobs created in the economy and currently employs 58 percent of America's total business employment. The small business sector is critical to current efforts to increase productivity and innovation, which has been lagging in our economy in recent years. Every positive step must be taken to provide small businesses the means and opportunity to create new jobs and generate the technological innovation necessary to insure a productive and efficient economy in the future.

Clearly, small business makes a tremendous contribution to our Nation's economy. We have an obligation to preserve and encourage a competitive marketplace in which small businesses can thrive. The Regulatory Flexibility Act will allow small business men and women to do what they do best—compete and serve the needs of consumers in an unfettered environment. I am extremely pleased to have played a part in the enactment of this important legislation.●

THE BOREN AMENDMENT

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FORD of Michigan. Mr. Speaker, on Tuesday, September 16, the House-Senate conference on the Child Nutrition Amendments of 1980 will consider a nongermane rider to the nutrition bill dealing with the Farm Labor Contractor Registration Act (FLCRA). The rider, known as the Boren amendment, was adopted by the Senate without hearings or testimony in either body of Congress.

I strongly oppose the Boren amendment because I object to the Senate's increasing abuse of the nongermane rider, a technique that subverts the orderly, thoughtful consideration of legislation. But more importantly, I object to the Boren amendment because it would effectively repeal the FLCRA, the only Federal legislation that protects migrant farmworkers against the most common abuses they endure in their hiring, transportation, housing, and employment in agricultural labor.

The administration, through Secretary of Labor Ray Marshall, has announced that it shares my concern about and opposition to the Boren amendment. I would like at this point in the RECORD to insert a letter to me from Secretary Marshall in which he details his objections to the Boren amendment, as well as his support for compromise legislation which I have introduced, H.R. 7868.

The letter follows:

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C.

Hon. WILLIAM D. FORD,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is to express my deep concern and strong opposition to the amendment introduced by Senator Boren to the Farm Labor Contractor Registration Act (FLCRA). This amendment was passed by the Senate and attached as title III of H.R. 7664, the Child Nutrition Amendments of 1980.

The Senate amendment to FLCRA would effectively repeal the Act's protections for most agricultural workers brought within the Act by the 1974 amendments and for most farmworkers who were protected by the original passage of the 1964 Act.

These amendments could be read as providing that a traditional farm labor contractor—the person who recruits, solicits, hires, furnishes or transports workers for agricultural employment—would be exempted by the simple expedient of being hired as an "employee" by every user of his services. Even if the farm labor contractor should serve several users simultaneously, he could be exempt under the amendment's definition of a "regular employee" which includes all part-time employees. Since the amendment exempts any "employee" of a farmer, canner, processor, ginner, packing shed operator, or nurseryman, the traditional farm labor contractor could escape coverage.

Under present law, the only responsibility of the user of farm labor contractor services is to assure that the contractor has complied with the registration provisions of the Act.

The amendment does not transfer any obligations for the protection of agricultural workers to the user from the traditional farm labor contractor. Since the amendment virtually eliminates the prior obligations of the farm labor contractor, the amendment results in the agricultural workers being left with no protections under the law.

The amendment would further exclude from coverage agricultural cooperatives and associations and their employees, even when performing traditional farm labor contractor activities, such as supplying migrant workers not only for their member growers but also for other growers as well.

The Act presently exempts any processor, ginner, canner, packing shed operator, or nurseryman who supplies migrant workers solely for his own operation. The amendments would define the term "for his own operation" so broadly however, that it is strongly arguable that virtually every entity, regardless of whether it acts as a traditional farm labor contractor or not, would qualify for the exemption.

Although the amendment would relieve fixed situs operations from the burden of registration—an aim which this Department supports—it does so by unnecessarily eliminating essential protections for their farmworkers. Furthermore, the amendment would reduce the general class of protected farmworkers. This Department cannot support legislation which would lessen farmworker protections. Because farmworkers are least able to protect themselves, their current labor standards protections under the Act must continue.

This Department is not unmindful of the legitimate concerns of many members of Congress concerning the interpretations placed on the Act's provisions by the Department and the Federal courts. On July 30, 1980, you introduced H.R. 7868, the Farm Labor Contractor Act of 1980, which the Department of Labor supports.

H.R. 7868 would maintain the protections provided for agricultural workers under FLCRA while eliminating unnecessary paperwork—registration and documentation—requirements for fixed situs agricultural employers who hire agricultural workers only for their own operations.

This, we believe, is a sensible approach. FLCRA registration and documentation provisions were initially established to deal with crew leaders who provide workers to others and who regularly move from one place to another in carrying out those activities. Some means of registration and documentation of traditional farm labor contractors must be maintained in order to protect both workers and employers. It has become clear, however, that the need for registration and documentation of fixed situs employers who obtained agricultural workers only for their own operations is less important than assuring substantive labor protections for those agricultural workers.

While we agree that fixed situs employers should be relieved of the registration and documentation requirements, it remains abundantly clear that agricultural workers employed by fixed situs employers still need substantive FLCRA protections. We believe that H.R. 7868 appropriately addresses these issues.

That bill would further remove the possibility which presently exists that corporate employers may be eligible for certain exemptions from coverage while their managerial employees would not be exempted. Such a situation could result in employees being held responsible for corporate policy over which they have no control.

H.R. 7868 addresses other issues, and we are enclosing for your use a more detailed comparison of title III and H.R. 7868.

In summary, we believe that the provisions of H.R. 7868 should be substituted for the provisions of title III of the Child Nutrition Amendments of 1980. The provisions of H.R. 7868 would both maintain the substantive protections currently available to agricultural workers and eliminate unnecessary employer burdens.

These changes would also assist the Department of Labor in targeting its compliance activities in the most effective manner possible. By contrast Senator Boren's amendment to FLCRA would needlessly reduce protections farmworkers currently have and at the very least should be removed from the Child Nutrition Amendments of 1980.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAY MARSHALL,
Secretary of Labor.●

RESOLUTION ON BILLY CARTER

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, regarding the debate on the House floor on the resolution of inquiry in the matter of Billy Carter, it is apparent that many questions still remain to be answered. Unfortunately, I was unavoidably absent and unable to vote on the motion to table the resolution. However, as stated in the RECORD earlier today I would have voted in opposition to the motion since I am a cosponsor and supporter of the resolution.

In connection with the entire matter, I would like to bring to the attention of my colleagues the presentation made at the council of the John Birch Society on September 6, 1980, by the noted author and investigative reporter, John Rees.

BILLY CARTER

(By John Rees)

In discussing the activities of Billy Carter one fact should be paramount in our minds—If Mr. Welch or any of us in this room had acted in a similar manner, the doors of a federal prison already would have slammed shut behind us.

But we are talking about a privileged person, the "First Brother," and an Administration that has gained notable expertise—on the job training, as it were—in covering up criminal and ethically dubious, but financially rewarding problems concerning the President's immediate family and entourage.

During Jimmy Carter's brief reign in the White House we have read about repeated less-than-vigorous prosecutions of investigations concerning the Carter family peanut warehouse and the financing of the 1976 Carter presidential campaign; about Bert Lance and his curious loans to the Carter family businesses; Robert Vesco; about Speaker of the House Tip O'Neill and the fraud-riddled General Services Administration; about Dr. Peter Bourne and Hamilton Jordan and other reports of abuse of illegal drugs in White House circles.

The real accounts of the wheeling and dealing that snatched both Jack and Chip Carter from investigations by the Drug Enforcement Administration into the major marijuana smuggling cesspools of south Georgia and northern Florida have yet to surface.

So with expertise gathered in at least a dozen cases potentially disasterous to the Carter White House, it is not surprising that the murky affairs of Billy Carter and the government of Libya is being moved to a decidedly inconclusive conclusion.

Many of the facts about Billy Carter's courtship by Libyan diplomats and their agents were presented in The Review of the News on August 20th.

We detailed Billy Carter's finances and showed that the year before he first traveled to Tripoli he had borrowed at least $336,000. We can't prove what he did with that money, but our sources claim Billy used it to pay back Jimmy Carter's campaign debts. That raises more questions. Why couldn't President Carter or the Democratic National Committee hold some public fundraising luncheon at $100-a-plate and pay off legitimate debts? Was Jimmy Carter's initial primary campaigns late in 1975 and early 1976 financed by those funny loans from Bert Lance's banks to the Carter warehouse and farm? That would have been a grave violation of the Federal Election Financing laws. Did brother Billy then have to borrow all that money in 1977 to pay back Bert Lance's bank and head off the investigations?

When Bert Lance was forced to resign from the White House, he sold out his bank-holdings to a group of Arab businessmen at a very high price. Did Bert Lance steer Billy Carter toward how to make deals with the Libyans?

Billy has admitted receiving $220,000 from the Libyan government. Even so, in his testimony he indicated he expected to get a total of $500,000 from Colonel Qaddafi's officials. Now that would have been enough to pay off all of Billy's strange loans, his own personal debts on real estate and his back taxes. Does this mean that it would have ended up with Colonel Qaddafi picking up the tab for President Carter's initial presidential campaign expenses?

The documents Billy Carter had to submit to the Senate included Xerox copies of the two bank drafts made out to Billy Carter on the account in a Washington, D.C. bank maintained by the People's Bureau, as the Libyans now term their Embassy, of the Socialist People's Libyan Arab Jamahiriya. The first for $20,000 was dated December 27, 1979. The second for $200,000 was dated April 7, 1980 and was deposited by Billy a week later in a brand new account.

It is interesting to note that Billy Carter listed 12 bank accounts over which he positively had signature authority and another 9 bank accounts, including the various Carter family businesses, he thinks he "may have had" signature authority. You know, people can get a little tired of the "I'm just a dumb country boy and every time I need to write a check I just go open another checking account" line.

In any case, once Billy deposited the $200,000 Libyan check, he listed disbursements through at least four separate accounts for $50,000 in bank loans; $20,000 to IRS for unpaid back taxes; $17,000 for vehicle purchases; over $7,000 on his American Express card; over $10,000 in mortgage payments; over $8,000 in lawyers and accountants' fees; he gave $8,000 to his buddy Randy Coleman who has also registered as a Libyan agent; there was a couple of thousand dollars more to pay off some bills. Then you get this item: "Miscellaneous checks drawn on various accounts" from April to the date of his Senate testimony in mid August a total of $32,800.

For a gas station owner in a small town, Billy Carter seems to have remarkable expenses. He had gone through all but $11,000 of the Libyan money in four months. Even though some of Billy's disbursements were for old debts, it would seem he requires close to $200,000 a year just to maintain his style of living—even with inflation pretty good for a small town in south Georgia!!!

The important question to ask is why did the Libyan government think Billy Carter was worth such a big investment? They gave him $220,000 in unsecured "loans" which by registering as a Libyan agent Billy in effect admitted were really not loans but payments. From Billy's testimony, it seems he expected to receive as much as half-a-million dollars more.

There can be little doubt that Billy Carter indeed performed some services for the Libyan Government. He helped them to get a fleet of 400 giant trucks. These were sold to the Libyan Ministry of Agriculture, but in fact they are sitting right now on a mili-

tary base outside Tripoli being serviced and made ready for desert warfare as tank transporters by Soviet technicians.

Billy Carter also helped the Libyan Government get export permits for some aircraft, the sort of jumbo jets that are easily converted to troop transports. Billy has also served as a major distraction—a decoy, if you will—in a federal investigation of a Libyan effort to bribe John White, the National Chairman of the Democratic Party.

Right now there is a federal grand jury sitting in New York City on that bribery matter. I understand that despite evidence gathered by an FBI agent who was undercover in the staff of the Democratic Party National Committee, there is every indication that the Carter-appointed U.S. Attorney and the Justice Department will decide to not prosecute and claim "lack of evidence."

In passing let me share with you the methods by which the guilty may be protected.

From 1977, Chairman John White was in contact with officials of the Libyan Government over getting export permits for the C-130 transports Libya had bought from Lockheed and which were sitting on a storage runway in Marietta, Georgia. It is known that certain promises were made both by and to White. Did the FBI wait to see if a "constructive act" took place as would any prudent investigative organization? Not at all. We have been told by reliable sources that FBI investigators were instructed to visit John White and ask him, "Do you expect to receive a bribe next time you meet the Libyans?" Naturally he said "No" and naturally, now being warned that his meetings with the Libyans were under surveillance, he broke off the meetings. That's rather different in method from the "ABSCAM" operation. No one sent other FBI agents to the offices of the Congressmen who have been indicted to ask them whether they were negotiating to get a bribe from an Arab sheik!

But getting back to Billy Carter. I have here a rather bulky document from the House Judiciary Committee. Chairman Peter Rodino, prodded by Congressmen such as John Ashbrook, Henry Hyde, Robert McClory and Jim Sensenbrenner, produced some questions for the President that would have provided us with considerably more information on his brother's activities—had they been fully answered.

It is very interesting to examine how these questions were handled. For example, the question asking for "the exact date on which the President learned of the Justice Department's investigation and proposed prosecution of Billy Carter, and the exact date on which the President learned of the $220,000 payment to Billy Carter by the Government of Libya," received this response:

"No documents are responsive to this paragraph."

The House Judiciary Committee was not asking for documents. They wanted a plain answer from the President of the United States, James Earl Carter, Jr. And since we know that the President keeps a detailed personal diary and since his meetings and telephone calls are chronicled, I find it impossible to believe the White House response.

Obviously there are more areas that should concern us. For example, why did Billy Carter consistently use payphones to make his calls? Did he think his calls were being monitored? If so, why? What was he hiding?

Why was Billy Carter being investigated by FBI agents assigned to the Foreign Counter-Intelligence squad? Why was this highly specialized division of the FBI involved and with what breaches of U.S. security was Billy involved?

Why was the President so poorly informed about his brother's activities? Or was he informed?

The Carter White House and reelection strategists are making every attempt to play down the story of the "buying of Billy." Half-truths have been heaped upon evasions and misstatements and the White House public-relations flacks are looking for scapegoats to divert attention. Assorted Administration officials are being readied for sacrifice, with Attorney General Benjamin Civiletti at the head of the list. Congress has the opportunity to force the truth into the light and make it known to the American people.

But with the future of the President's own party at stake in November, and with that party's control of the House and Senate in question, the likelihood that we will get answers to hard questions before November 4 diminishes daily. The only way we may get the truth is if the Republicans start behaving like a real opposition party and get to the bottom of this affair.●

PROTECTION FOR OUR COASTLINES

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. STUDDS. Mr. Speaker, once again the Federal Government has been caught seriously lagging behind the efforts of our States to protect our valuable coastal resources. In this instance, I am proud to say that in our own State of Massachusetts a gubernatorial executive order, designed to discourage further housing and commercial development on barrier beaches, has put the State well ahead of efforts by the Federal Government to halt subsidizing unwise development in areas far too fragile to accept such development. This measure is critically important in Massachusetts because over half of all new development is occuring on our coast.

Specifically, the executive order forbids the use of State money and State-administered Federal grants for construction projects in hazard-prone barrier beach areas; allows State antierosion projects only to keep open navigation channels, but not to save beach property; commits the State to disapproving development projects in flood-prone areas; and makes barrier beaches the State's top priority when buying land for public use. Already $1 million has been appropriated by the State to assist in this land acquisition. State officials have wisely decided that it is wrong to encourage or subsidize the building of structures where nature has clearly shown us they do not belong—and continues to remind us by periodically washing them away.

Unfortunately, what the State cannot do is direct the Federal Government's role in the Federal flood insurance program, U.S. Army Corps of Engineer projects, and the many other Federal programs and activities which often attract or encourage coastal and barrier island development. Clearly, we need a coherent and consistent Federal coastal policy which coordinates Federal programs with State initiatives and assures us that our many Federal and State programs are not working at cross-purposes.

Mr. Speaker, very shortly we will be considering H.R. 6979, the Coastal Zone Management Improvement Act of 1980. One of the key provisions of this bill is a call for a comprehensive review of all Federal programs which affect our coastal resources. This review is intended to help Congress, as well as the executive branch, take action to eliminate any conflicts between existing programs and to develop a consistent and rational policy toward the development of our coastline. I would urge my colleagues to join with me in support of this vital piece of legislation so that the Federal Government may make a significant effort toward assisting our coastal and Great Lakes States in the wise management of our coastal resources.●

ACHIEVEMENT SCHOLARSHIP PROGRAM

HON. RAY KOGOVSEK

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. KOGOVSEK. Mr. Speaker, for many years, there have been considerable efforts to fight crime and to prevent offenders from committing second offenses and returning to jail. One successful effort was launched in 1973 by one of my constituents, Helene C. Monberg. The achievement scholarship program has helped ex-offenders move back into the community as skilled, taxpaying citizens. In fact, the program is now directed by Ronald Malcolm, one of the program's recipients. ASP, a nonprofit organization, is moving into a new phase. It has been merged with Inner Voices, another Washington, D.C. based nonprofit organization for ex-offenders. IV operates as a restitution program which provides alternatives to prison for those having committed less serious crimes and are able to pay back their victims. ASP will serve as the educational arm of Inner Voices. Together, I believe the two programs will work as one in a continuing effort to help ex-offenders become productive citizens and not recidivists. Mr. Speaker, I enter an explanation of the Inner Voices-ASP merger into the CONGRESSIONAL RECORD so that the programs can receive much deserved recognition.

The material follows:

ASP REACHES FIRST GOALS, MOVES ON TO NEW PHASE

(By IV-ASP Coordinator Ronald D. Malcolm)

WASHINGTON, September 1980.—Today I am a pioneer, one of a handful of black men managing a non-profit, privately funded, tax-exempt organization in this area.

A year ago I was a resident of a halfway house.

What accounted for this miracle? The Achievement Scholarship Program (ASP). ASP is living proof that miracles still happen.

Some 7½ years ago, in February 1973, Helene C. Monberg, a veteran Washington news correspondent with long experience in working with youth as a volunteer, started ASP as an experimental "seed-money" scholarship program for ex-offenders to help move them back into the community as skilled tax-paying citizens. Now, as one of ASP's own awardees, I am running ASP. This fulfills a goal set for ASP by Chairman Bill Butler of the Achievement Scholarship Committee back in 1974 to have our ASP awardees run the program. I took over as full-time manager of ASP on Aug. 1.

ASP is being merged into Inner Voices (IV), another Washington, D.C.-based nonprofit organization serving ex-offenders, headed by IV's Rhozier T. (Roach) Brown, Jr. Brown founded IV while he was at the Lorton complex in 1969. IV now operates a restitution program which provides an alternative to prison for those having committed less serious crimes who are able to pay back their victims, work and become productive citizens. The merger agreement was signed on July 24, and it will go into effect on Jan. 1, 1981, if both parties agree. At that time ASP will become the educational arm of IV. The merger agreement was approved unanimously by the 10-member Achievement Scholarship Committee on July 14 and by the three-member executive committee of IV on July 17. It was drafted by ASP Legal Counsel Edward Weinberg, a Washington attorney.

Under the merger agreement, ASP is a self-contained unit within IV. I am full-time manager of IV-ASP, a member of the staff of IV and of its executive committee, and IV agrees to train me in all phases of management. I started to work for ASP in March 1979 while I was a resident of Lorton complex and a student at the University of the District of Columbia under the Lorton Program. My responsibilities have gradually increased in the past year and a half as I have been groomed as Miss Monberg's successor in running ASP. As a full-time ASP manager, I am able to support my family on my ASP salary. Miss Monberg has always served ASP as a volunteer.

WHAT ASP IS

ASP is a Washington, D.C.-based nonprofit tax-exempt privately funded organization with two tax exemptions, one from the U.S. Internal Revenue Service and the other from the District of Columbia. It provides "second-chance" scholarships to ex-offenders from the Washington area to help them move back into the mainstream of their community as productive and responsible citizens. The scholarships are "seed-money" aid toward college, trade school and special education. ASP also tries to provide other back-up support for its awardees, including on-the-job training, a how-to-study course, and counselling. All ASP paid work goes to its awardees, and four awardees have served on the ASP staff since 1975. ASP has also obtained a few jobs elsewhere for its awardees.

ASP's rehabilitation work is done in the Washington area with ex-offenders on parole and probation from area correctional institutions. Parole and probation officers nominate to ASP candidates, who, in their considered judgment, can be successfully rehabilitated thru education. Applicants are screened twice, first by the correctional agencies and then by the Achievement Scholarship Committee and staff.

GOALS ACCOMPLISHED

ASP was able to accomplish two of its goals in the 1973-1980 time frame: to have one of its own student awardees run its program and to help assure its future by merging with another non-profit organization working with ex-offenders.

In the same time frame, ASP awarded 113 scholarships toward college, trade school or special school to 112 awardees, of whom 23 to date have graduated or have completed special school. Seven more are on the way, making ASP's ultimate completion rate about 25 percent, equal to that of the general population, even tho all ASP awardees are ex-offenders.

ASP increased its "seed-money" scholarship awards from two in 1973 at $520 each to 30 in 1978 at $800 each and to 28 in 1979 at $900 each. ASP's scholarship award now is worth $900.

ASP has never employed outside help. All of its paid help has come from its awardees. ASP concentrated on using young black male inner-city ex-offenders as paid staffers because 90% of our awardees are black males and the unemployment rate among this group in the inner city is exceedingly high. Three ASP staffers have done well. One went on to a government job on which he performed satisfactorily. One is a counsellor on the staff of the University of the District of Columbia and a stringer for the Washington Post. And I am now running IV-ASP. ASP failed with one staffer.

Very few ASP awardees have been recidivists, although we do not know the exact count. This is due to ASP's insisting on two screenings of applicants, one by their parole/probation officers and one by the Achievement Scholarship Committee and staff. All ASP awardees were interviewed personally by ASP before receiving their scholarship awards.

For its work, ASP has received two citations in recent years. It received a citation in 1978 from the Committee for Economic Development, a blue-ribbon business research organization based in New York, for being one of 60 programs nation-wide effectively working on training and employing the hard-to-employ, the ex-offender. It was cited by the Probation Office of the U.S. District Court for the District of Columbia on April 17, 1980, for its seven-year program of providing "seed-money" scholarships to ex-offenders to give them a second chance to become productive citizens.

MOVING TO NEW PHASE

We feel that IV is a perfect partner for ASP. We see the merger as growth for both programs. Before the merger, ASP never had had a full-time manager. And IV did not have an educational department. The merger strengthens both. We hope to continue to prove in IV-ASP that ex-offenders, if given the opportunity, can become better citizens through education.

As a volunteer I coordinate a prison service program through my religion. I feel that my affiliation with ASP and the religious prison service program has been a total growth process for me. It gives me direction and allows me to serve the community in several beneficial ways. Being one of the very few blacks managing a privately funded non-profit organization in the area adds a tremendous incentive to my efforts. Being an ASP student awardee gives me a first-hand knowledge of ASP from the perspective of a student. I feel this background will enable me to make clearer and more precise decisions on the direction of IV-ASP in the future. Our target is a $30,000 program for the next year to allow IV-ASP to take on more awardees and to offer them more services.

ASP has been a highly successful experiment in training and employing the ex-offender and using the program to train young black leaders. Now ASP is moving into a new phase, with its awardees running the program. We hope to make the second phase as successful as the first.

The ultimate goal of ASP is to explode the myth that those who go through the criminal court system are losers. In ASP we hope to prove that many, even most, ex-offenders can become productive, useful citizens. ASP is designed to keep the ex-offender from going through the revolving door by providing him with an alternative through education.

ASP has reached the foothills; yonder are the mountains. I say, let us climb the mountains!●

CLAUDE PEPPER—80 YEARS YOUNG

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. CHAPPELL. Mr. Speaker, our esteemed and distinguished colleague, CLAUDE PEPPER, celebrated his 80th birthday on Monday, September 8. He has served in the Congress for nearly a half century, left his mark on many pieces of legislation, and earned warm friendships on both sides of the aisle.

It has been my privilege to serve with CLAUDE and to have his sage counsel and good friendship over these many years. He is a man who is a good listener, an effective speaker, and a hard-working legislator which has earned him nine terms in the House and 14 years in the U.S. Senate.

Adding to CLAUDE's personal appeal is his sympathy for the underprivileged whom he has gone out of his way to assist both personally and professionally. He has steadfastly and tirelessly advanced the cause of improving conditions for our senior citizens. He has been instrumental in authoring legislation for the aged such as his bill which raised the mandatory retirement age for most jobs in the United States from 65 to 70.

CLAUDE PEPPER is in every sense an outstanding Congressman, with a great understanding of the legislative process and a love for his district that he so ably serves. Senator, my most helpful and loyal friend, you are 80 years young and I am delighted to have this opportunity to wish you a very happy birthday; and may God bless you with many, many more exceptionally successful and productive years.●

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LAME DUCKS AND LAWS

HON. GARY A. LEE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. LEE. Mr. Speaker, I will be the first to admit that a lot of things just do not make sense to me, but then the application of logic is often our first error in Government. The thought that the 96th Congress will be called back into a lame duck session late this year takes the prize for nonsense.

Speaker of the House THOMAS P. ("TIP") O'NEILL has made the announcement that Members of this Congress will most likely be called back into session after the elections because of the "press of important legislation."

Historically, employers have been in one of two schools of thought about workers they find still at their desk at quitting time, or the ones who take work home from the office on a regular basis. The first is that these are very dedicated employees who deserve to be credited for their diligence.

The second, however, is that the employee working late must not be doing his or her job well enough to keep up with the others. If the overtime employee needs 10 hours to do the work which has been allocated to an 8-hour day, it may be time for the boss to take a closer look.

The Speaker would have the American taxpayer, in this case the employer, believe the former description: that Congress wants to work overtime because of its dedication. I tend to believe the opposite.

I have joined with a handful of my colleagues in the House to formally oppose the convening of a lameduck session this year not only because it should be unnecessary, but because it can be downright dangerous to the taxpayers' health.

In the first place, this Congress was convened on January 4, 1979. The work that needed to be done should have been done by this time, plain and simple.

Out of fairness, one term of Congress will never solve all of the problems of America. This Nation is a growing, living, dynamic unit that needs constant attention. That is why there will be a 97th Congress, 98th, 99th, and Congresses beyond.

Yet even in view of that, the record of this Congress has been poor. The accomplishments list could be inscribed on the inside of your grandmother's favorite locket, and no amount of late-year legislating will change that.

Productivity during a lameduck session is another matter, and I do not give much hope for anything getting done this year. Maybe more importantly, however, is the danger it presents to the Nation from many directions. To list a few of those:

Legislation which is now before the Congress may well be deferred until later following the old adage that "work expands to fill the time allotted to it." Much of it should not be delayed.

Members of Congress who no longer rely on the approval of their constituents—nearly 40 have already announced their retirements and an undetermined number will be defeated in elections—can afford to be a great deal more callous about what they are doing here. In some matters, an "I don't care" attitude makes no difference, but now we are talking about making laws for the Nation.

The perceived "crush of business" often makes for very hasty decisions, particularly with a couple hundred people who do not want to be where they are and have other plans waiting, anyway.

Should the winds of politics shift in the November elections, many of those who are now "in" will be "out" by January. Yet a lameduck session of this Congress allows the "outs" to make law in December that will bind the next Congress.

If nothing else, politicians can be schemers. It is entirely possible for laws to be made in December that have no other purpose than to make the next Congress look bad, to encourage changes 2 years down the road. All America loves a practical joke, but not with their tax money.

Of vital concern must be the question of denying the will of the voter. If the voter in November decides that it is time to "throw the rascals out," then he does not want the rascals to go back for one last stab.

This final point, sending the "outs" back for a final shot at lawmaking, places this Congress under a highly suspect view by its voters. Government, specifically Congress, is already mistrusted enough; to compound that would be a travesty of the American system.

Lame ducks belong in a veterinary hospital, not in the U.S. Congress.●

THE SPIRIT OF HELSINKI, VIGIL 1980

HON. BALTASAR CORRADA

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. CORRADA. Mr. Speaker, it is an honor for me to again participate in "The Spirit of Helsinki, Vigil 1980" with many of my colleagues here in the House. The commitment we all share to honor the provisions of the Helsinki accords is shown by our continuing to speak out for those who cannot speak for themselves. Today I would like to bring to your attention the plight of Evgenia Lutskaya: Mrs. Lutskaya is a 53-year-old engineer from Leningrad who wants to emigrate to Israel to be reunited with her daughter. So far, her appeals to Soviet President Leonid Brezhnev have been unsuccessful. I would like to share with you her poignant and moving message:

On the 4th of January, 1974, I was informed that my departure from the U.S.S.R. to my daughter is not permitted. This refusal received from OVIR has been explained that it was due to my previous work in NPO "Mars." The answer to my question about how long this refusal would be effective was as follows: "It may be one week, may be in one month, may be five years—10 years—15 years, and may be forever—when our laser beam will fall upon you.

From the conversation in OVIR it became quite clear to me that the idea of my work has been absolutely wrong and has nothing to do with my actual work.

I was sent from one organization to another where instead of giving a definite answer I was told: "We are not obligated to inform you."

I left my work three years ago, and during the period of the last two years prior to my leaving, all the drawings issued by myself had no stamp of confidential because of continuous progress in science and technology and due to the fact that already a considerable time has lapsed since I worked in that organization, everything I have designed lost its actuality.

I kindly ask you to reconsider my natural and rightful desire of a mother, suffering from a serious illness, to live with my daughter. I express my hope that your interference will restore legality and justice, and I will be given permission to be reunited with my daughter and this will be in full compliance with the recent decision adopted by the Congress on Security and Mutual Cooperation in Europe.

I urge the authorities in the Soviet Union to grant Mrs. Lutskaya's request. Our prayers are with her and we fervently hope that she will be reunited soon in Israel with her daughter.●

HIGHER EDUCATION CONFERENCE: METZENBAUM AMENDMENT SLEEPER

HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ASHBROOK. Mr. Speaker, last Thursday the conference report on H.R. 5192, amending and extending the Higher Education Act of 1965, was rejected in the other body by a margin of one vote. This really was a defeat—which we must not allow to stand—for our Nation's hard-pressed middle-income parents who are trying to help their children obtain a college education.

The issue in the vote by the other body was the rejection by the conference committee of an amendment sponsored by the junior Senator from my State, and accordingly known as the Metzenbaum amendment. The amendment allegedly would save money in the guaranteed student loan program by requiring student borrowers—with three exceptions—upon

graduation to repay the interest subsidy granted while they were still in school. This proved to be very enticing to the Senate Budget Committee, but it was strongly opposed by every single House conferee because of its disastrous effect on the guaranteed student loan program.

In Thursday's debate in the other body the junior Senator from Ohio appeared to single me out among the House conferees for criticism. He described me as being one who takes pride in being "one of the great conservatives of America" and in being concerned "about balancing the budget and cutting out excessive spending." In that the gentleman is absolutely correct. But he went on to suggest that my criticism of his amendment "was maybe stronger than some of the others on that committee," and in that he was quite wrong.

My colleague JOHN BRADEMAS, the distinguished majority whip of the House and one of the leading authorities in this body on student financial assistance, described the claims for the amendment as a "proposition based upon plain inaccuracies" and questioned why the House "should be hostage" to it. Chairman PERKINS described it as one which would have the effect of destroying the foundation of the student loan program. A Senate conferee was not as charitable. He flat out said they were misled in the oratory when the Metzenbaum amendment was offered.

I could not and did not state the case against the Metzenbaum amendment more strongly, or more accurately for that matter. The Congressional Budget Office estimates that 75 percent of the amendment's supposed savings could result from a reduction in loan volume due to decreased student borrowing, which is not what we were seeking to achieve in this program. The Student Loan Marketing Association, the corporation set up by Congress to act as a secondary market for the guaranteed loans, stated that the amendment will necessarily cause severe administrative difficulties and will not result in the tremendous cost savings predicted, and concluded that this additional administrative burden will predictably result in lender withdrawal from the program.

The Carter administration opposed the House-passed bill, but supported the conference report which did not include the Metzenbaum amendment. The administration contends that the exemptions in the amendment would be far too complex for the Department (of Education) and lenders to administer effectively. It states that two of the exemptions would impose hopelessly complex accounting requirements on private lender institutions and the third exemption would result in a haphazard distribution of subsidy benefits among students, with no regard to their real needs. The Metzenbaum amendment is, in short, a bureaucratic monstrosity.

In addition to this kind of expert analysis, we have virtually unanimous opposition to the amendment of those State agencies which must administer the guaranteed loan program. Many of them contend that administrative costs under the amendment would run as high as the cost of subsidies at present, thus leaving reduced utilization and reduced loan availability as the only savings from it. Obviously, we could get that kind of savings by repealing the program altogether which we might as well do if the Metzenbaum proposal should ever be foolishly adopted.

Mr. Speaker, I do indeed take pride in being a conservative and in seeking to reduce Federal expenditures and to balance the budget. But I would take no pride in reneging on the commitment made by Congress in 1978 in adopting the Middle Income Student Assistance Act. That was a commitment to help our fellow citizens who bear the heaviest burden of high taxation and high inflation to provide for their children's education—and to do so without submitting to an income test or a poverty oath. We must not restrict opportunity for a college education to either the poor or the middle or upper income student. I think that is a responsible position and in my experience the conservative position has always been the responsible one.

It ill behooves those whose actions over the years have contributed to the heavy burdens of taxation and inflation which are wiping out middle income families in America—and who have not struggled with the complex details of student assistance programs for their children—to pose as the saviors of the budget with ill-considered schemes which would injure programs to help those families.

I certainly sympathize with our colleagues in the other body who want to seize upon every genuine opportunity for saving money, but I urge them to look very closely at the objective analysis of the responsible legislators opposing the Metzenbaum amendment. This is not one of those genuine opportunities. I think such an examination will convince them of the wisdom of the compromises struck by the conferees on H.R. 5192. The conference report was very carefully worked out after prolonged consideration, and I urge my colleagues in the House to stand firm for a good and much-needed piece of legislation.●

CANADIAN WHEAT COOPERATION

HON. RON MARLENEE

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. MARLENEE. Mr. Speaker, today several of my colleagues and I are introducing a joint resolution, the objective of which is to establish a Joint Canadian-United States Wheat Cooperating Commission. In a recent visit to Ottawa, Ontario, Members of the U.S. House and Senate sat down with Members of the Canadian Parliament to discuss common economic problems that face agricultural producers, and wheat growers in particular. Evolving from our meeting of July 26 was the idea to establish a cooperating commission that would examine ways in which the two countries could cooperate for the betterment of wheat growers in both nations.

The Commission would serve four basic functions. First, curtail the export of wheat at prices below the cost of production; second, promote long-range market development; third, increase commitments to food assistance programs for importing nations; and fourth, encourage importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves.

I envision a commission composed of farmers who can work in conjunction with their Canadian counterparts to coordinate international marketings.

Let us discontinue Government policies which promote the continued exportation of agricultural products at less than the cost of production. Let us abandon the policy of having farmers and ranchers mortgage their productive assets and our Nation's land to feed countries which have the ability to pay for food at prices that will keep our farmers in business. Recent actions due to the grain embargo have shown that other countries are willing to pay increased prices for the agricultural goods; especially when those increased prices are the result of increased costs of producing those products.

What I am arguing for is not a reversal of our role as the bread basket for the world. We must help and assist those nations who have domestic crop shortfalls or are not presently capable of supporting their population with their current agricultural production. But does it make sense to export wheat at a price of $3.50/bu. while Japan sells the same wheat to their millers at about $9/bu.? Does it make sense to stop the flow of goods to Russia when we could have extracted a higher price for the products we could supply? A boon, rather than a drain, could have been presented to the American taxpayer and farmer if such a policy was followed.

The coordination of wheat growers in the United States and Canada is crucial for the future survival of the farmer in both countries. When two countries supply approximately two-thirds of the world wheat trade, they should set the market price. Instead of working at cross purposes which harm growers on both sides of the border, it is imperative that cooperation takes place for the benefit of all wheat growers and the two nations.●

CHRISTIAN VOTE IN 1980

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. DRINAN. Mr. Speaker, America magazine, the national Catholic weekly edited by American Jesuits, analyzed very perceptively in its issue of September 13, 1980, the phenomenon of conservative evangelical Christians taking positions on political issues and claiming that their positions are dictated by the Gospel.

America magazine is very categorical in stating that "citizens who come to different conclusions than the evangelicals are not necessarily immoral or un-Christian." The Jesuit weekly goes on to state that "on most issues before the electorate, it is possible for informed Christians, equally sensitive to the moral imperatives, to come to different conclusions about the practical merits of a particular program, the relative merits of different constellations of programs, and the overall records of individual candidates."

The text of this thoughtful editorial follows:

THE CHRISTIAN VOTE IN 1980

Some evidence of religious piety, however bland and generalized, has always been considered a political asset by candidates for office. In this Presidential campaign year, however, the accent on personal religion has become much more sharp and specific. All three of the Presidential candidates lay claim to the experience of being "born again in Jesus Christ." The political significance of this new fashion does not lie primarily in the success of Jimmy Carter's 1976 campaign when his proclivity for religious confession seemed so unusual. Four years later, all candidates recognize that there is a special constituency, with growing numbers of registered voters, for whom such identification is of crucial importance. These are the evangelical Christians, recently organized into political coalitions that intend to check what they see as the serious moral decline of American society. They aim to do this by making what evangelist James Robison calls "the Christian vote" a decisive force in the nation's political life.

This campaign of conservative evangelical Christians to affect election results marks a reversal of their conventional attitude toward politics. In the past, Southern Baptists and other evangelical groups remained aloof from politics, at least on the national scale, partly because of an emphasis on individual morality and partly because of a perception that organized political lobbying threatened the separation of church and state. At least two factors have been responsible for the present shift: First, many evangelicals are deeply disturbed by changes in American mores that appear to threaten traditional values and institutions, the family in particular. Conflicts over abortion, homosexuality and the Equal Rights Amendment demonstrate how this concern for family values has political implications. Second, the extraordinary popular success certain evangelical preachers have achieved through their television broadcasts has resulted in national networks that can promote voter registration and fund raising. The Rev. Jerry Falwell, for example, founder of a political lobby called the Moral Majority, reports that his group has registered 3 million new voters in just 14 months. His weekly television hour with its regular appeals for contributions brought in $56 million last year.

The sudden emergence of this new political force is disturbing to some observers, but for a variety of reasons. Among secularized elites in the United States, if religious faith itself is not considered a lapse in taste, public profession of faith is. This can lead to dark mutterings about the separation of church and state. But there is nothing unconstitutional about religious convictions influencing political decisions. Nor is there anything sinister about citizens with similar convictions organizing into groups in order to exercise a collective influence on political life. There are more serious issues, however, connected with the recent political activism of the evangelicals.

The very first misgiving arises over the expression, "the Christian vote." This seems to suggest that on political issues there is only one way a believing Christian should vote. But on most issues before the electorate it is possible for informed Christians, equally sensitive to the moral imperatives of the Gospel, to come to different conclusions about the practical merits of a particular program, the relative merits of different constellations of programs and the overall records of individual candidates. The tendency of the new evangelical activists to lump a series of distinct political issues together indiscriminately is a major failing that encourages thinking in stereotypes and caricatures that corrupt both politics and religion. Permissive abortion, recognition of Taiwan, prayer in public schools, homosexual rights, the Equal Rights Amendment and a balanced budget are issues that should be argued on their own merits. Yet one organization of evangelical Christians has issued a "moral rating" of Congressmen according to their conformity to an officially approved "Christian" way to vote on all of these issues.

Furthermore, in a pluralistic society a fundamental assumption of public policy is the recognition that everything immoral need not be declared illegal. This important distinction between law and morality is largely ignored by the evangelicals. The public morality that is expressed in law reflects a consensus derived from the public debate. Like all other citizens, the evangelical activists have the right to participate in that debate and urge their point of view. But social realities as well as religious principles must be taken into account in judging the wisdom of any legislation. Citizens who come to different conclusions than the evangelicals are not necessarily immoral or un-Christian. The tendency to so brand one's political opponents suggests a kind of moral fascism.

The moral crisis in American society is real, and it challenges citizens of all religious faiths. But the mass market techniques of the television evangelists and their identification with one political ideology do not make for either good politics or good religion.●

PERSONAL EXPLANATION

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. GILMAN. Mr. Speaker, on Tuesday, September 9, it was necessary for me to miss a number of rollcalls in the House in order to fulfill obligations in my congressional district.

The votes I missed concerned H.R. 7235, the Rail Act of 1980, and I take this opportunity to announce how I would have voted had I been able to be present:

On roll No. 530, the Eckhardt substitute to the Staggers-Lee-Rahall compromise amendment which would have defeated the main purpose of rail deregulation, I would have voted "no."

On roll No. 531, the Staggers-Lee-Rahall amendment, I would have voted "yes." This amendment deregulates the rail industry over a period of 4 years and was accepted by the railroads and by most shippers.

On roll No. 533, the Albosta amendment to create a Federal rail land bank, I would have voted "no."

On roll No. 534, final passage of the Rail Act, I would have voted "yes."●

SUPPORT FOR SEAWAY DEBT LEGISLATION

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. OBERSTAR. Mr. Speaker, I have spoken before in this House on the need for Congress to restructure the St. Lawrence Seaway Development Corporation. I have introduced H.R. 3258, which would convert the outstanding seaway debt to a capital equity ownership by the Federal Government. More recently, I introduced H.R. 8027, which would extend the debt repayment period by 30 years.

Both bills have the strong support of Great Lakes and farm State interests. Roy Hoffmann, chairman of the Western Great Lakes Ports Association, has written Members of this House from the Great Lakes region urging them to support H.R. 3258 and H.R. 8027.

Admiral Hoffmann's letter states clearly the need for the enactment of legislation to relieve the discriminatory burden imposed on seaway users.

I share with my colleagues a copy of Admiral Hoffmann's letter. I urge my colleagues to join me in sponsoring either or both bills.

WESTERN GREAT LAKES
PORT ASSOCIATION.

GENTLEMEN: Your attention respectfully is invited to H.R. 8027, introduced on August 26, 1980 by the Honorable James L. Oberstar of Minnesota. This bill would extend the repayment of the St. Lawrence Seaway outstanding capital construction debt from 50 to 80 years. It would preclude a government programmed escalation of the debt service from a current $2.5 million to $5 million annually in 1982, which the Western Great Lakes Ports Association believes would result most assuredly in the total demise of Great Lakes international shipping.

Seaway uses, through tolls charged on the Seaway, pay for all operation and maintenance costs plus the annual $2.5 million on the construction cost debt service. Quoting Mr. Oberstar from the August 26, 1980 Congressional Record: "* * * users of the St. Lawrence Seaway bear a burden borne by the users of no other federally constructed waterway." For example, a typical overseas general cargo ship (13,800 GRT) currently will pay about $47,000 total Great Lakes/Seaway tolls on ship and cargo round trip to Milwaukee. Similarly, a grain dry bulker (21,400 GRT) will pay about $32,000 total tolls. If the grain dry bulker came into the Lakes in ballast and carried an 18,000 ton grain cargo outbound the round trip toll would be about $19,000.

The appended Great Lakes ship and cargo statistics emphatically demonstrate the marginal ability of an international cargo liner service to remain competitive on the Lakes with current Seaway tolls, much less absorb the scheduled doubling of debt payments in 1982.

Actually, Congressman Oberstar's H.R. 8027 to extend the Seaway debt obligation is a compromise to H.R. 3258, also legislation he introduced that would restructure the St. Lawrence Seaway Development Corporation to convert the outstanding debt into equity ownership by the U.S. Government. H.R. 3258 would require that tolls be sufficient to meet all operating and maintenance costs and assurance of an annual return on the equity, but differs from H.R. 8027 in that it substantially modifies the debt retirement vice a mere straight line extension. The former would allow a moratorium on Seaway toll increases and more management flexibility in negotiating toll charges with the Government of Canada, resulting in ultimate recapture of favorable Seaway shipping rates and maximization of inherent marine transportation efficiencies. Simple extension of the debt as proposed in H.R. 8027 would eliminate the necessity for doubling tolls in 1982 but more or less maintain a status quo with respect to our current marginal competitive edge with tidewater ports.

The unanimous position of the Western Great Lakes Ports Association continues to strongly favor the original bill (H.R. 3258), but we agree with Congressman Oberstar's assessment that it may not be possible to enact H.R. 3258 at this late date in the 96th Congress and therefore support H.R. 8027 as an interim solution. In any event we need legislative relief now.

One final point: numerous delegates from the northeast seaboard states will probably oppose these bills for obvious reasons—others for perceived reduction in federal revenue. However, a fact probably unknown by many, or at least avoided because of international political sensitivity, is that the majority of our Middlewest cargo to the United Kingdom and Europe is being diverted through intermodal Canadian routes. The Maritime Administration is unofficially projecting a diversion of over $900 million of high value container cargo through the Detroit Customs District alone this calendar year—a direct transportation loss to all U.S. ports, Merchant Marine, railroad and associated transportation industries.

Very respectfully,

ROY F. HOFFMANN,
Rear Admiral, USN (Ret.),
Chairman.●

THE FOURTH SEACOAST

HON. THOMAS L. ASHLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ASHLEY. Mr. Speaker, I introduce today a bill which will go a long way to providing an essential fourth seacoast on the Great Lakes to serve the rich industrial heartland of this country with economic, efficient, and energy-conserving water transportation. This bill, when enacted, will allow shippers in the Great Lakes region to distribute their export throughout the full year rather than over the limited 8-month period now dictated by winter's abbreviation of the navigation season on that essential waterway.

The "fourth seacoast" contains a commercial water surface area of over 95,000 square miles, of which 61,000 are within U.S. boundaries. The full U.S. basin area comprises over 300,000 square miles and provides for the movement of over 100 billion ton-miles of waterborne freight each year. About two dozen commercial harbors serve the region, including some of the largest ports in the Nation. Two of the five largest cities in the United States, Chicago and Detroit, are in the heart of this region. Although the Great Lakes region comprises only about 4 percent of the Nation's total population, it produces over one-sixth of the Nation's gross product.

Due to the severity of the cold winters, navigation on the Great Lakes is limited to an 8-month season. The closing of these waterways is a crippling and unnecessary curtailment of one of the Nation's most energy efficient and low-cost water transportation systems. The most persistent need cited at last year's House Merchant Marine and Fisheries Committee oversight hearing on the Great Lakes was to extend navigation on the upper lakes to encompass the winter season.

On December 31, 1979, the U.S. Corps of Engineers released a report detailing its findings on winter navigation for the upper lakes. This bill incorporates those findings which were based on demonstration programs conducted during the winters of 1971-79. This 7-year program, funded by Congress and conducted by a multiagency winter navigation board concluded that an extended season on the Great Lakes is engineeringly feasible, economically beneficial, and environmentally safe. The Department of Commerce reported that a year-round navigation season on the Great Lakes would add more than one billion 1967 dollars to labor earnings in 11 States in the Midwest.

The bill I offer today takes cognizance of the legitimate concerns we have for the ecology of the region. Shoreline erosion and other environmental effects could be exacerbated by unregulated and inconsiderate use of the Great Lakes during the period of the year when the environmental balance is most delicate. In addition to the assurances provided in the study which gave rise to this legislation, the bill calls for a further monitoring of the environment and an assessment of the need for an indemnification scheme to protect the shoreline.

In order to stimulate commerce on a competitive basis with other seacoasts, a provision has been included in the bill providing for alternate routing through the United States while the St. Lawrence Seaway is closed in winter. This provision will eliminate the costly procedure of stockpiling goods and commodities at Great Lakes ports and enable lake carriers and ports with the necessary traffic to operate on a year-round competitive basis with ocean carriers and ports.

Of 1,400 U.S.-flag sailings per year only 10 or 12, less than 1 percent, originate or terminate at Great Lakes ports. The Midwest area ships and receives over 25 percent of the country's imports and exports, yet only a fraction moves through Great Lakes ports. One of the reasons for the steep decline in shipping has been the series of increases in the tolls for the St. Lawrence Seaway. Since 1978, tolls have effectively doubled the cost of shipping commodities through the seaway. The St. Lawrence Seaway Development Corporation, a unit of the Department of Transportation, derives its revenue entirely from seaway tolls. In 1979, it had revenues of $11 million, but $2 million of that was given to the Treasury Department in partial compensation by the Federal Government for the building of the seaway, along with the Canadian Government, back in the 1950's. This year the Seaway Corporation will have to pay $3 million to the Treasury, and in 1982, the repayment schedules increases to $5 million per year. In addition to paying off this debt service, the tolls are used to pay for all operating and maintenance costs. So in order for the Corporation to pay off this outstanding debt, it is estimated that tolls will have to be increased by another 50 percent within the next 18 months.

In order to maintain tolls at current levels this bill provides for an extended repayment period of 30 years for the outstanding debt. This will have the effect of guaranteeing present toll levels to users, while other modes of transportation are likely to rise. The net result will make the seaway more attractive to users, thereby increasing present traffic levels over today's present low volumes.

Another provision that I am introducing in this bill will cure what the courts have described as a loophole in the filing requirements for tariffs under the Shipping Act of 1916. In 1977, the Federal Maritime Commis-

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sion held that sections 1 and 18(b) of the 1916 Shipping Act, extended jurisdiction to include nonvessel operating common carriers. As such, this decision granted the Commission the power to mandate that those parties arranging the movement of export cargo from the United States through the Canadian ports file tariffs with the Commission. This decision, however, was reversed on appeal in 1978. *Anastasia Container Express* v. *F.M.C.*, 580 F.2d 642, 188 U.S. App. D.C. 379 (1978). In its decision, the court of appeals specifically addressed the definition of "common carrier by water in foreign commerce" as contained in section 1 of the Shipping Act of 1916, saying that the court, the explicit language of section 1 combined with its legislative history shows that transportation services touching only foreign ports do not fall within the purview of the Shipping Act. The court went on to say that foreign carriers which operate within the United States should be required to file tariffs for transportation rates they charge. Thus, the only authority to extend the Commission's jurisdiction is by legislative remedy. This bill will provide a remedy by extending the authority of the Commission over companies which arrange to transport cargo from the United States through the ports in a contiguous nation, without actually using American ports. This will reduce the practice of rate cutting by foreign companies which are presently not required to file with the Commission.

In conclusion, Mr. Speaker, this bill is a comprehensive measure intended to address the problems of waterborne commerce and development that have hindered this region since the opening of the seaway over 20 years ago. These problems have resulted in the high levels of unemployment that bedeviled us for so many years. This bill addresses problems in the Great Lakes region, and will serve the national interest as well.●

THANK YOU, BILL SLONECKER

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. DORNAN. Mr. Speaker, on Friday, September 12, 1980, I will be among the many grateful friends of Chief Bill Slonecker, who will attend a dinner honoring him as he retires from the Torrance Fire Department after over 30 years of faithful service. When we gather at the beautiful Los Verdes Country Club on the breathtaking Palos Verdes Peninsula, we will be paying tribute to a man who has worked his way up in the department from a member of the crew to the respected position from which he now steps down.

Bill Slonecker's record of achievement is an admirable one of service to his community and Nation. Bill served his country admirably in World War II, in the then Army Air Corps, where he was awarded the Air Medal with five oak leaf clusters. He also received the Purple Heart.

After completing his studies at Compton College, he began a 30½ year career in the Torrance Fire Department in 1950. On June 14, 1973, his long years of service were capped as he was promoted to fire chief for the city of Torrance. Since that time, Bill has been the primary figure responsible for protecting the lives and property of the people of the city of Torrance from the uncontrolled destruction which can occur as a result of a major blaze.

While he was performing these duties with distinction, Bill was also lending a helping hand in the community, having been an active member of the South Torrance Lions Club, and serving for 11 years as a supporter of the Torrance Little League effort.

In his spare time, Bill is a dedicated fisherman, accomplished both in freshwater and ocean fishing. An avid outdoorsman, Bill is a proficient camper along with his family, and he enjoys collecting Indian arrowheads. Bill is also known to be one of the most dedicated fans of the Torrance High School football and baseball teams.

As you can see, Bill had led a life that is full and well rounded. I am glad that I will be afforded the opportunity this Friday night to tell him "thanks" for his outstanding service with the fire department, and to wish him well as he opens yet another chapter of a rich and varied life.●

POLICY COMMITTEE SUPPORTS HOUSE RESOLUTION 777

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. SHUSTER. Mr. Speaker, yesterday afternoon, the House Republican Policy Committee unanimously adopted a policy statement in support of House Resolution 777, a resolution of inquiry directing President Carter to provide Congress with all pertinent information concerning the disclosure of classified information relating to the Stealth technology for military aircraft.

It is shocking that the House Armed Services Committee voted along party lines to close debate and adversely report this resolution. At a time when the evidence suggests that our Commander in Chief is using secret military information to advance his own political cause, it is imperative that Congress act in a responsible and bipartisan spirit to uncover the details surrounding the leak of this critical information.

Following is a copy of the Republican Policy Committee statement expressing the concerns of the committee and suggesting immediate action on House Resolution 777.

JIMMY CARTER: BUILDER OF POTEMKIN VILLAGES

In 1787, Grigory Potemkin hurled up an array of impressive false front villages along the route traveled by Catherine the Great in her famous expedition to the Russian south over which Potemkin, as Governor General, claimed to have firm and prospering control of all matters, both civil and military. Fooled by his cynical concealment of all of the many weak points in his poor administration, the Empress rewarded Potemkin with continued power.

In 1980, Jimmy Carter has deployed, as no President before him, the weight, power and influence of the Executive Branch of our government to hurl up Potemkin villages in an effort to hide from the voters the incomparable blunderings, shortcomings and abuses of his administration.

President Carter's latest act of political legerdemain is the most harmful—a "leak" to the public relating to the Stealth technology for military aircraft, in an attempt to conceal his administration's record in the defense area. By pointing to a futuristic bomber, he hopes to obscure the fact that he has delivered the world's once-strongest, proudest, defense establishment into a frightening condition of unilateral disarmament, general disarray, unmatched demoralization and unprecedented politicization. By erecting a facade of an invincible aircraft, President Carter hoped to obscure the fact that, during his 3½ year tenure as Commander in Chief, he has:

Ended the B-1 bomber program.

Vetoed construction of a nuclear aircraft carrier.

Curtailed Navy shipbuilding and Air Force fighter production.

Closed down Minuteman III production lines.

In order to expose the blatant ruse surrounding the Stealth "leak," the House Republican Policy Committee strongly endorses H. Res. 777, introduced by Congressman James Courter (R-N.J.), a resolution of inquiry directing President Carter to provide the Congress with all pertinent information concerning the disclosure of classified information relating to the Stealth technology for military aircraft. The House Republican Policy Committee is shocked that the Democrat majority on the Armed Services Committee politicized the issue by prohibiting Members of the Committee sincerely concerned about this release of sensitive information from even discussing the issue. The Democrat majority then voted to effectively block the inquiry of this urgent issue by reporting out the resolution with an unfavorable recommendation.

President Carter has apparently turned a jaundiced eye on the dangers inherent in the use of classified information for political purposes. But then, this is the same President whose entire record of campaign performance, from first race for Governor of Georgia to first race for President, is replete with a firm and well-recorded technique of personal attack, innuendo and outright smear. It is, therefore, of utmost importance that the American people be made fully aware of this record, in order that they may be in the best possible condition to consider—long and well—what they see and hear between now and election day in November. For example:

He boasts of a domestic policy which has doubled from 12 to 24 the "misery index"—a combination of inflation and unemployment.

He boasts of a lowering of an inflation rate from the record high of near 20 percent to which his own fiscal and economic policies drove it to the point of quadruple the rate he inherited.

He promises a tax cut in 1981 after having become the President who, in concert with his Democrat Congressional majority, saddled the people with the greatest tax burden in American peacetime history—increasing taxes by 69 percent over 4 years to a total of $604 billion.

He boasts of a sound and prospering economy and of lesser governmental burden after having increased federal spending by more than $230 billion, and the national debt by $300.9 billion.

This is the same President whose most notable success has been his unique ability to plan a recession and force it to come to pass. His policies of tax, spend, regulate, and control have brought the American automotive, steel, and other major industries to the brink of disaster, resulting in massive unemployment. Yet Carter seeks to convince the unemployed workers that—if they can only survive today—he may do better tomorrow, hoping they will forget what he did yesterday—and is not doing today.

The House Republican Policy Committee is confident, that unlike Catherine the Great, the American people will not be fooled by the Carter Administration's attempt to hide its record.

This is the 253rd day of the 26th consecutive year of Democrat control of the House of Representatives.●

IN PRAISE OF A FRIEND OF THE CITY: MARVIN HIMELFARB

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FAUNTROY. Mr. Speaker, I wish to take this moment to praise a deep and loyal personal friend who has done much to improve the fortune of this city and the fate of every person whom he has had occasion to touch directly and many whom he has touched only through his work, which all of us have seen and heard.

This person is Marvin Himelfarb, who is one of the founders of Abramson/Himelfarb, Inc., an advertising firm which has had an association with this city that is deeper than any of us here can measure. Marvin is now leaving this city to express his creativity in an excitingly new and different way. As he leaves us, I wanted to share with you something of that person and what he is to this city.

It is important to understand that Marvin Himelfarb did more than create advertising. In the 15 years he has been with the firm, he created a human spirit and an energy that transcended the mere selling of a product or a service. That unique ability not only sold products but it also brought out the best of those who sought his services because he created a sense of value that one felt an obligation to reach. I know this in my own personal experience from work he did in my very first political campaign and I know it from those others whose campaigns he also helped to create. As Marvin now goes on to Hollywood to write and perform there, I can only hope that his efforts there will have upon others the same profound effect it has had upon so many of us here.

Marvin has written and produced thousands of commercials for the largest and smallest business of this community. Just as often, he has produced them free especially for those events which mean so much to a city and its people. Always, each commercial was filled with a passion and creative talent that electrified those who came into contact with the message and with him.

Marvin never says it cannot be done. He is a positive and idea person who always tried and, I must say, always succeeded. He has given of himself to organizations like the Washington Theatre Club, The Washington Cultural Alliance, and the United Negro College Fund. I salute him for having done so well, and for taking his talents to the whole of our country in a way which will make each Washingtonian proud to have been associated with him.●

THE HANDICAPPED FINANCIAL SECURITY TAX ACT OF 1980

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HARRIS. Mr. Speaker, I am pleased to be introducing legislation which will allow tax exempt trusts to be established for the handicapped. The purpose of this legislation is to help alleviate unnecessary anxiety for parents and supporters of dependent handicapped persons. I became acutely aware of this need when on May 19, 1980, I held a forum for the handicapped in my district. As we talked about the present legislative efforts to aid the handicapped, many felt that although Congress and the country have just begun to be sensitized to some of the issues facing the handicapped, more needs to be done. One of the concerns expressed, particularly for parents of severely handicapped, was the fear of providing for their children's future. In addition to the ever-present medical expenses, these parents and supporters of handicapped persons experience both the fear of rising costs and anxiety associated with the unknown aspects of the future; they ask, for example: Who will support their handicapped child if they die early or when they retire? Mr. Speaker, this legislation will relieve that unnecessary anxiety.

Furthermore, Mr. Speaker, Congress, in its wisdom, has recognized the importance of allowing people to provide for their own need, by allowing Keoghs and IRA's to be established. These programs allow the self-employed and those not covered by sufficient retirement programs to provide for that need, thereby keeping their names off the welfare rolls. We must do the same for the handicapped by allowing tax-exempt trusts to be established for their future care.

This particular legislation allows a contribution of $3,000 per year, adjusted to reflect changes in the cost-of-living index, to be placed in trust. Generally, the funds contributed to the trust and the interest accrued would be tax exempt. For purposes of estate taxation, the accounts are considered to be a part of the estate of the designated beneficiary, not of the person contributing to the account. As funds are expended from the trust, they are considered taxable income of the beneficiary, not of the person contributing to the account. Payments from the trust to the beneficiary can begin at the time of the retirement of the supporting individual or could be deferred until a later date, at the discretion of the supporting individual.

Handicapped persons and their families face many incredible physical and emotional trials. One of those difficulties must not be the fear of the future. Congress must do everything it can do to relieve suffering and needless worry. Passing legislation to enable the establishment of trusts for the future care of the handicapped would be a big step in that direction.●

TRIBUTE TO NATE HORWITT

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. CONTE. Mr. Speaker, on this first day of Rosh Hashanah, I wish to pay special tribute to a special person and long-time friend, whom I have admired for years, Nate Horwitt. Nate is a man who has never been accused of not speaking out on an issue which may interest him.

Nate Horwitt is the youngest, most vibrant octogenarian with whom I have ever had the pleasure of associating. His interests run the gamut from hunting the elusive morel mushroom to designing the functional, yet beautiful work of art, the Movado watch.

He is no average person of 82 years. He continues to nurture carefully two gardens and many apple trees on his 371-acre farm in Stockbridge, Mass. He knows the importance of our precious resources and has always been a staunch supporter and protector of our environment. This gentleman's frequent astute letters to the editors of the local newspapers on subjects such as "white elephants and jackasses" at the Republican and Democratic Conventions have gained him a reputation of never being wishy-washy on any issue. His straightforward style is one of his finest traits.

In addition to his numerous design accomplishments for such items as

furniture, clocks, watches, and his "frameless picture frame," this man is as interested in improving the state of people as he is with inanimate objects.

As a Russian Jew whose parents left Russia when he was 3½ years old to travel to the United States, Nate is an outspoken proponent of a Jewish state. On this subject, he is quoted as saying:

> A place not only for political statement, but at the least, a hold out, where if the people die, at least they not die like sheep.

During the cold war between the East and West, this great humanitarian came to the aid of starving India which chose to remain neutral during the turmoil. However, Nate Horwitt could not remain neutral and he donated 1,200 pounds of wheat to India, which spurred a nationwide program at a time when 29,000 people were dying each day of starvation.

Nate Horwitt has accomplished more in his 82 years than most people ever dreamed of doing. He is a man whom the youth of today would do well by emulating and I commend your attention to the following profile which recently appeared in the Berkshire Eagle:

A LIFETIME OF LITTLE ACCIDENTS

(By Jennifer T. Davies)

Nathan George Horwitt is an admitted procrastinator. Like Scarlett O'Hara in "Gone with the Wind," to him, tomorrow is another day.

"I've done that with my age too," he states. "And I'm glad I've put it off."

After some coaxing, Horwitt finally met with a reporter at his home on Bean Hill Road. He was caught mowing some hay aboard a John Deere tractor, an activity one does not normally expect from an 82-year-old.

But Nate Horwitt is no average octogenarian. He tends two gardens and many apple trees on his 371-acre property. Inside his neat and tidy wood-paneled house, with its cherry floors and functional furniture, he also tends to his guests quite nicely. Though no cook by his own declaration, he manages to serve a good cup of coffee and some fine Stella d'Oro cookies. Interspersed between mouthfuls of the two is a whirlwind recollection of his 82 years.

Horwitt has a lifetime of accomplishments to his credit, and a mountain of newspaper clippings to prove it. Because of his notoriety in Berkshire County, supplemented by his provocative Letters to the Editor, Nate Horwitt has been called "no shrinking violet."

"I wasn't afraid of publicity," he says matter-of-factly. "With other journals, I have had little difficulty getting letters in," he explains, including in his statement The Bershire Eagle.

Horwitt's outspoken public opinions on everything from rock concerts at Music Inn to "white elephants and jackasses" at the Republican and Democratic national conventions, have gained him mostly friends, but some foes in Berkshire County. People either love Nate Horwitt or hate him. There's not much in between.

Yet something is quite admirable about his straightforward style. Whatever he might be called, it's not wishy-washy.

In 1930, as advertising director at E.R. Squibb in New York City, Horwitt decided to get out of a business that to him, openly used deception.

"I decided I hadn't disliked advertising all along for nothing," he recalls. "I didn't believe in advertising . . . it sells the consumer with creative phrases and creates virtues that products sometimes don't always have."

Horwitt decided instead to try to create better products for the consumer, which could make the job of advertising far easier. "Then you wouldn't have to invent virtues," he explains.

The company he founded after leaving Squibb was Design Engineers. There he and his staff, among them Frederick Kiesler, Alexi Brodovitch and Kem Weber, created products from a sense of need, rather than a desire to further ornament or style.

Horwitt devised functional designs, among them chairs using the then new chrome and foam rubber. But they didn't catch on. "We had no sales agents, and what we were doing was new," he explains.

He turned his attention to a different way of telling time. Horwitt had in mind a clock or watch that could be read instantly. He came up with two designs; one was the "jump clock," forerunner of our modern day digital clock—a mechanism where numbers revolve on a rotating drum as the minutes progress. The other, the cyclometer, featured a large circular window on the front of the globe-like clock through which the hour could be seen, and a smaller such window, rotating on a drum like a moon in orbit, through which the minutes could be read.

It was the concept of the latter invention which proved most practical to Horwitt. But the $3,000 working model and its blueprints were stolen from his car in 1954. Nevertheless, he used the circular idea in his design for a new type of watch. Employing the principle that the average person has an indelible memory of a watch face, Horwitt designed his new timepiece with no numbers at all—just a gold dot at the 12 mark and gold hands for the hour and minute. Set against a black background, the watch is not only a functional instrument, but a beautiful work of art. Along with another of his inventions, the Braquette called the frameless picture frame, it was selected to be in the permanent collection of New York City's Museum of Modern Art.

Though commonly referred to as the Movado watch, because of the company it was leased to, it is still a Horwitt design. He has the patents to prove it, but even they could not prevent other watchmaking firms from assimilating his designs.

Improving the state of people as well as things is of interest to Horwitt, especially the fate of Israel as a nation.

Born in the Russian state of Minsk to Jewish parents, Horwitt was 3½ when he came to the United States with his family and settled in a Jewish ghetto in the Bronx. When his father died, the Horwitts moved to Lawrence, L.I., and young Nate graduated from Morris High School and attended the City College of New York, New York University, and the Art Students League. He also joined the Army during World War I. Though an expatriate, Horwitt recalls his heritage as a Russian Jew.

He does not like to discuss Soviet Jewry. But he says, "It is one of the little pimples in the great ailment," referring to the plight of Jews as a whole.

"It is a right of a people to have a home of its own," he says. What Horwitt can't explain is what he calls the "peculiar antipathy" which in the 11th century accounted for the 1½ million Jews killed by Crusaders on their way to the Holy Land, and later was carried through to the Spanish Inquisition, the pogroms of Poland and Russia, and the Holocaust of Germany.

Horwitt is an outspoken proponent of a Jewish state—"A place not only for political statement, but at the least, a hold out, where if the people die, at least they not die like sheep."

In the late 1940s, Horwitt put his words into motion when he invited members of a world movement of young people like the Boy Scouts to train on his property in the Berkshires in preparation for the Palestinian conflict in 1948. Horwitt was vice chairman of an organization in the United States which supported the Irgun, a revolutionary group headed by Menachem Begin. On his Berkshire farmland, once populated by dairy cows, Horwitt even stashed arms to aid the cause.

Years later, he became involved in another world crisis, this time turning his focus on India. It was a nation of starving people, but because of India's decision to remain neutral in the Cold War between East and West, Horwitt explains, the United States would not aid the country.

Prompted by an article by author Norman Cousins, Horwitt donated 1,200 pounds of wheat to India, which spurred a nationwide program. "I believe it saved a quarter of a million lives," he says. "People were dying at the rate of 29,000 a day."

Of all his endeavors, Horwitt says this gave him the greatest satisfaction. "I feel very pleased with that. It was not for gain, not for motive, it was an accident—an unimportant, isolated individual moving in a responsible sense," he says, seconds later adding, "That sounds pompous as hell."

But Nate Horwitt is not too worried about his public image. At 82, he's happy dining out with a few friends or puttering around his farm, which he bought in 1945. He used to live with his former wife and two sons in a larger house on the property, but now lives in a small cottage nearby. He has given up his photography and even his hunts for the elusive morel mushroom. "It means walking, and the ardor has given out," he explains. "I don't actually eat as many as people think. Word went out that I was an expert in mushrooms. 'See here, I'm no expert,' I said, so word went out I was not only an expert, but modest as well."

Horwitt used to swim varsity in college and he played baseball years ago, but it is tennis which he is most reluctant to abandon. An accident three years ago has made it difficult for him to play, but every three weeks, after one of his shots of cortisone for arthritis, the urge is greatest.

A lifetime of little accidents is how Horwitt summarizes his varied career. When asked if there was any interest or activity among the collage which he pursued all along, he could only think of one: "breathing."

At 82, Nate Horwitt is still going strong. He's not about to shut down the machinery and float peacefully away. National politics and local issues keep his pencil sharp, and he hopes to get his new watch, based on his cyclometer, into production.

"I have dreams and they evaporate before morning, but I have thought of a thousand things," says Horwitt who explains characteristically, "They're in the wings."●

BILLY CARTER MOTION

HON. JEROME A. AMBRO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. AMBRO. Mr. Speaker, this morning the House debated House Resolution 745, the "Resolution of Inquiry Concerning Billy Carter."

Subsequent to the debate, a motion was offered to table the resolution on the grounds that the President and the administration have already substantially complied with its directions. The motion lost by a vote of 124 in favor to 260 against tabling. I was unavoidably delayed on Long Island this morning and was thus unable to vote on this motion. Had I been present and voting, I would have voted "no," that is, against tabling House Resolution 745. I would then have voted in favor of the resolution, as I believe that the House inquiry on Billy Carter must proceed.

House rules, of course, do not allow for pairs on procedural matters, but I did want to go on record as opposing the motion to table House Resolution 745.●

H.R. 8092, REPEAL OF THE FAMILY RENTAL TAX

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FISHER. Mr. Speaker, I would like to take this opportunity to discuss H.R. 8092, which I introduced yesterday and which is designed to repeal what is becoming known as the family rental tax.

Under current law, if an individual rents a house he owns to a nonrelative and charges a fair market rent, then that individual is entitled to take deductions normally associated with homeownership, such as mortgage interest and property taxes, as well as business expense deductions such as depreciation and the cost of insurance. If, however, this same house is rented to a relative of the owner and a fair market rent is charged, then the business expenses are not deductible. Clearly, this creates a disincentive to rent a house or apartment to a relative. It is the family rental tax.

This tax provision was part of the Tax Reform Act of 1976. The 1976 Act was a wide-ranging law that on the whole represented an improvement in the fairness of the Tax Code, which is why I supported it. However, as in any massive bill, there were sections which should have been thought through more carefully, perhaps pointing out the danger of trying to pass comprehensive tax legislation under the gun.

The section which has given rise to the family rental tax was designed to defeat sham transactions which might take place between family members who are seeking to use a house for personal purposes, while at the same time receiving business deductions. However, on reflection, I believe that in an effort to prevent this potential abuse, we are running a much greater risk of increasing the tax burden on family members involved in legitimate rental transactions. It seems that this section of the Tax Code takes too much of a scattershot approach to attacking tax fraud. I am concerned that in attempting to make it more difficult for some individuals to subvert the Tax Code, the current law will increase taxes on many more honest individuals who rent homes to relatives at a fair market rate. Underlying this section of the Code, there seems to be an unjustified presumption of guilt imposed upon rental transactions among relatives which is inconsistent with our Nation's notion of fairplay.

Furthermore, as a matter of social policy the current law could have a negative impact on the family structure. Although there are certainly other factors which enter into an individual's decision on whether to rent a house to an elderly relative, for example, the economic and tax considerations are relevant, and I believe that they should foster family cohesion instead of discourage it.

H.R. 8092 would change the current law so that the Tax Code will treat equally transactions in which a fair market rent is charged, regardless if the parties concerned are relatives. The Internal Revenue Service has recently issued proposed regulations to provide the public with needed guidance in complying with this section of the 1976 act. In addition to questioning the unique concept of retroactive guidance, I believe that this portends a greater activism on the part of the IRS in enforcing this part of the Tax Code. It, therefore, is important that we act on this legislation soon. I urge my colleagues to give it their full support.●

GRIGORY GOLDSHTEIN

HON. JOSEPH P. ADDABBO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ADDABBO. Mr. Speaker, I would like to take this opportunity to call to the attention of my colleagues the plight of Grigory Goldshtein, a former Soviet prisoner of conscience who is still being denied the right to emigrate to Israel by the Soviet Union. This week, as Jewish people all over the world commemorate Rosh Hashanah, the Jewish New Year, we must remember there are Jewish men and women in the Soviet Union who are unable to freely express their feelings as Jews. Grigory Goldshtein is one such person, though his story is not a unique one.

Grigory was sentenced in the spring of 1978 by Soviet authorities to 1 year of hard labor in Siberia. He had been tried and convicted on the charge of parasitism which stemmed from his application for an exit visa in December of 1971. After his brutal sentence was served, the Soviet Union denied him the right to emigrate to Israel, along with his brother Isai and sister-in-law. This was in complete reversal of the Soviet Union's policy of granting an exit visa to a prisoner of conscience upon completion of the prison term. What this means is that Grigory is still unable to find a job because of his application for a visa, and could conceivably be found a parasite again, still a prisoner in a nation which does not want him, yet refuses to let him free.

Of course, there is no greater tragedy than to be denied freedom of choice, whether it be to practice one's religion, to read a choice of books and literature, or to live in a nation that treats you with dignity. One of the reasons I bring this case to the attention of the House is because it is one of countless hundreds in Russia. At this very moment there are men and women in Soviet jails who are there because they had the audacity in the eyes of the Soviets to express their desire for freedom. We, as the greatest free nation on the face of the Earth, must continue to pressure the Soviet Union to live up to the Helsinki Accords. We must continue to do all we can to prevent any more tragedies, such as the one I have briefly related today, to continue. We must not rest until Jewish people in the Soviet Union are once and for all treated with the dignity and respect that all human beings are entitled to.●

RENAMING THE NATIONAL COLLECTION OF FINE ARTS AND THE NATIONAL MUSEUM OF HISTORY AND TECHNOLOGY

HON. FRANK THOMPSON, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. THOMPSON. Mr. Speaker, today I have introduced legislation to change the names of two of the Smithsonian Institution's museums. I would like to bring to my colleagues' attention the following explanatory statement on those proposed changes:

It is proposed that the name of the National Collection of Fine Arts be changed to the National Museum of American Art and that the name of the National Museum of History and Technology be changed to the National Museum of American History. The proposed changes do not in either case involve any major redirection of museum activities, but, rather, are designated to reflect more accurately the character and purpose of each museum.

For more than ten years the National Collection of Fine Arts has concentrated exclusively on American art, an area heretofore neglected, especially in its nineteenth—and early twentieth—century aspects. Building on its important basic collections, especially those contributed early in the century by William Evans and John Gellatly, it has amassed a large and notable collection of American painting, sculpture, and graphic arts from the eighteenth century to the present. Its extensive publications and active programs in education and scholarship, together with its assembly of material

for the ready use of scholars, have been instrumental in reshaping the study of art in American culture. Its exhibitions, many of which circulate through the country and abroad, have introduced a wide public to the rewarding, yet often ignored, range of character of American creativity. Hilton Kramer, in the New York Times in 1976, wrote, "In the National Collection of Fine Arts, especially, we now have an institution—again, for the first time in our history—that takes all of American art as its scholarly province, and that acts in the most responsible and clear-minded way to enhance our understanding and appreciation of its many-sided accomplishments."

This fruitful concentration on American art has been obscured by a title bestowed on the museum in 1937 when the name, National Gallery of Art, was transferred from this collection to the present National Gallery. In choosing the title, little thought was given to the possible future direction of the collection which is, in fact, the oldest national collection of art. Although specialists are well aware of the nature of the present National Collection and its activity, members of the public find the name confusing and little descriptive of what they find there of special appeal. Foreign visitors and embassy guests, who find the museum a particular pleasure because it effectively exhibits so much material with which they are not familiar, have repeatedly complained that the museum's name fails to indicate what to them is its major attraction and thus escapes the attention of many who come here. the name suggests simply one more general museum of art—if, indeed, the word "collection" suggests even a museum.

To make clear, then, what the National Collection of Fine Arts has indeed become—a center for the collecting, study, and presentation of American art—and to make the title of the museum accord with those of other Smithsonian museums, it has been recommended that its name be changed to the National Museum of American Art.

With respect to the National Museum of History and Technology, it has suffered from its beginning from an identity problem that has affected in varying degrees all of its constituences. Most importantly, the current name either confuses or misleads the visiting public. Informal questioning and eavesdropping reveal that a substantial number of visitors to the Mall (and to the museum itself) do not know or cannot remember the name of the museum: commonly it is thought of as the Museum of Science and Technology, the Museum of Industry and Technology, and the like. This leads a number of visitors whose interests are neither scientific nor technological to avoid the museum altogether, while others who do visit are disappointed when they do not find there the kind of demonstrations of physical sciences or presentations of the latest gadgets that are characteristic of science museums.

The same sort of confusion has existed in the minds of potential donors and even of the museum's own staff. In both cases the results are unfortunate. The museum's collections in American cultural, social and political history have been impoverished because many owners of important objects, thinking of it as primarily concerned with technology, have chosen to give their collections to institutions that are more clearly concerned with these areas. Even the museum's staff has been affected by the ambiguity of the museum's mission and as a result has attempted to achieve incompatible, or at least unrelated, objectives.

The only legislation specifying the name of the museum is the authorization for appropriations to construct the building. The history of this legislation makes abundantly clear—as the present name does not—the intention of the Congress that the museum should concentrate upon the history and technology of America. In the judgment of the museum's staff (including those specializing in the history of science and technology), of its director, of the distinguished scholars who comprise the Smithsonian Council, and of the Smithsonian administration, a new name is needed to clarify rather than to change what has always been the basic mission of the museum: to illuminate through collections, exhibitions, research, publications and educational programs the entire history of the United States. Since technology is inextricably involved in our history, it will continue to receive due attention, but the name of the museum would no longer suggest an emphasis upon the history of technology at the expense of social, cultural, and political history.

After careful consideration, the name National Museum of American History has been chosen as best reflecting the true purpose and content of the museum.●

POLISH AUGUST

HON. EDWARD P. BOLAND

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BOLAND. Mr. Speaker, for the last few weeks the attention of the world has been focused on Poland. A strike by shipyard workers in the Baltic port city of Gdansk spread to over 600 factories and mines throughout Poland, and more than 500,000 workers left their jobs.

Few events in recent years have furnished more convincing evidence of the shortcomings of the Communist system. While the actions of the workers in Gdansk were triggered by economic concerns, their demands escalated to a call for a number of major political reforms. Among the reforms sought were freely elected labor unions, the guarantee of a right to strike, freedom for political prisoners, and the abolition of press censorship. Over the Labor Day weekend, an historic agreement was reached providing for nonparty, self-governing trade unions. In addition, the incarceration of a number of political prisoners was ended, and a relaxation of censorship was promised. While it is not as yet clear how the gains of the workers will operate in practice, it is clear that 30 years of Communist rule has not dampened the desire of the Polish people for freedom.

Mr. Speaker, I believe that is useful for those people living in democratic nations to pause and reflect on the demands of the Polish workers. All too often we take for granted those characteristics which distinguish a free society from one which is not free. The right to organize and bargain with our employers, the right to express our opposition to the policies of our Government, and the right to read, see, and hear news accounts unrestricted by anything except the truth, are liberties with which we have become all to comfortable. We sometimes forget how dearly they are prized and how desperately they are sought by those to whom they are denied. The actions of the Polish people provide fresh proof of the value which should be placed on the ability to exercise these freedoms.

No one should underestimate the risks taken by the workers of Gdansk. On two occasions in the past decade, protests prompted by economic conditions in Poland were suppressed by the government. Given the nature of the current demands, their implicit criticism of the Communist system, and the proximity of Poland to the Soviet Union, the temptation for outside intervention in the dispute was, and in fact remains, great. Much is at stake for people throughout Eastern Europe in the choices to be made by the Soviets. It is my hope that they will see the wisdom in allowing the internal affairs of Poland to be managed by the Polish people.

Mr. Speaker, I applaud the indomitable courage and determination of the Polish people. Theirs is a history rich with examples of individual and collective actions taken in pursuit of liberty. The events of the "Polish August" will command a prominent place in that history. The actions of the workers of Gdansk have served to remind us once again that the desire for the basic decencies of life cannot be satiated by ideology.●

FATHER FRANCIS J. KIMBLE, ON HIS RETIREMENT

HON. CHARLES F. DOUGHERTY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. DOUGHERTY. Mr. Speaker, on October 19, 1980, St. William's Parish in my district will honor Father Francis J. Kimble, who retired earlier this year after 12 years of faithful service as pastor of St. William. Father Kimble has made an invaluable contribution to the religious and educational life of Philadelphia and has endeared himself to all who have known him throughout his long and fruitful ministry.

Born in Oxford, Pa., October 31, 1905, Father Kimble studied for the priesthood at Mt. St. Mary's College, Emmitsburg, Md. He was ordained by Dennis Cardinal Dougherty at the Cathedral of St. Peter and St. Paul on May 21, 1932, and celebrated his first Mass in the Church of the Sacred Heart, Oxford, Pa., on May 22, 1932. He served as assistant pastor of St. Canicius Church, Mahanoy City; Our Lady of Consolation, Tacony; and St. Joseph's, Collingdale, Pa.

For more than 20 years Father Kimble taught at Roman Catholic High School in Philadelphia. During this period he resided for a year at Holy Child Church and for many years at St. Edward's Church where he directed an outstanding choir. Father Kimble also found time during this time to obtain his master's degree in education from the University of Pennsylvania.

In 1956, Father Kimble was named the first priest principal of St. Pius X High School in Pottstown, Pa. During his term at St. Pius X, he resided at and served the people of St. Gabriel Church, Stowe, Pa.; Holy Trinity Church, Pottstown; St. Ann's Church, Phoenixville; and St. Aloysius Church, Pottstown. Father Kimble marked his silver jubilee as a priest at St. Gabriel Church, Stowe, in May 1957.

Appointed pastor of St. William's Church, Philadelphia, in January 1968, Father Kimble retired on June 16, 1980. Although officially retired, he intends to continue residing at St. William where he will be free to serve the people he has served so well over the years without the administrative responsibilities of a pastor.

Mr. Speaker, we offer our congratulations and our deep gratitude to Father Francis J. Kimble for his long life of distinguished and unselfish service to God and to his fellow man.●

MOBILIZING MATURE MANPOWER TO SOLVE PROBLEMS

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PEPPER. Mr. Speaker, Members of this body are aware of my views and those of the Select Committee on Aging, which I have the privilege to chair, regarding mandatory retirement. They know of our concern over policies which force older workers from productive jobs into idleness with the result, often, of diminished physical or mental health. We believe that mandatory retirement is a scourge that must be eradicated.

Policies which allow us to put people out to pasture after they reach an arbitrary age reinforce discrimination and rob the Nation of the skills, talents, and experience of those who have demonstrated abilities in various professions. I believe it was John Stuart Mill who said, "Give a man nothing to do for his country, and he will have no love for it."

We will continue to press for legislation which will wipe out mandatory retirement because of age in this country. But there are hundreds of thousands of retired persons in the United States today who are willing to contribute their efforts, on a voluntary basis, to the progress of our society. A number of programs to tap this national resource have been put forward. Recently, the work of Morton D. Weiss has been brought to my attention. Mr. Weiss, a retired management analyst, has developed a program he calls mobilizing mature manpower.

Mr. Weiss envisions groups of retired persons with skills in various areas coming together to solve community problems. Under his plan, these groups would be provided office space, a place to meet regularly and put their minds to solving local problems. He believes such groups could replace many consulting groups and save the public a great deal of money.

A number of newspaper articles about Mr. Weiss and his plan have been published, the most recent in the Washington Post of August 4, 1980. I believe my colleagues would benefit by these articles, and I insert them in the RECORD at this point.

[From the Washington Post, Aug. 4, 1980]

GRAY POWER: NETWORKING

(By James T. Yenckel)

Morton D. Weiss has an idea for a "brain trust" of retired workers to help communities across the nation at a cost "of peanuts."

It's his way of easing two of America's big problems: the spiraling cost of government and the sense among many retirees that "like Old Dobbin, they've been put out to pasture."

Weiss, who is 75, retired 15 years ago as a management analyst in the federal government. A few years ago—after watching what was happening to other retirees—he established a "human resources" organization he calls Mobilizing Mature Manpower, aimed, in part, at keeping retired workers "in the mainstream."

Many retirees, he says, "who have been active all their lives," after leaving their jobs "withdraw from life." All too soon "they end up in Gawler's" (a funeral home).

"Too many of my contemporaries just fall apart. They say, 'My memory is going.' We've got to work at life."

Weiss operates out of a cluttered office he shares in the National Press Building. On the wall is a pay telephone. It makes it easier, he explains, to let others use his office when he's away.

So far, his organization is only in the talking stages. He has briefed a number of officials and gotten some press publicity in his vacation travels around the country. In 1977, Sen. Charles Percy (R-Ill.) inserted a favorable mention in the Congressional Record.

What he envisions is "informal" groupings of perhaps 12 retired men and women—lawyers, accountants, economists, doctors, managers, business executives, bureaucrats, scientists—who would donate their talents to help solve municipal problems.

It would be, he says, "a research arm for any administration wanting to take advantage of its talents. There are enough problems in this city every day that could keep dozens of groups in the metropolitan area busy."

It's the kind of consulting help, he says, that otherwise might cost a city "a couple of hundred thousand."

Such problems could include "street conditions, the need for better fire protection, the need for security on streets and buildings."

These groups, provided with inexpensive office space, could meet regularly to discuss projects they might want to tackle. "The interchange of ideas," he says, could lead to solutions.

Weiss spends about 30 hours a week promoting his idea. "It's kept me agile, alive and interested.

"I'm pushing just as hard as I can. My contemporaries and I must leave a better legacy than we appear to be leaving—a hell-ova mess."

[From the Daytona Beach (Fla.) Morning Journal, Mar. 13, 1980]

HE HAS IDEAS FOR USING RETIREES' TALENTS

(By John Wisniewski)

Morton D. Weiss may be described in many ways—as a planner, as economist, statistician, analyst or management engineer, for instance—but at 75 he definitely is not a senior citizen, especially in light of his interpretation of "senior."

"I don't like the word 'senior' at all," he said with a smile in an interview, "because 'senior' and 'senile' have the same Latin root."

He doesn't look 75, for one thing, and the manner in which he strides across a room, effortlessly picks up a padded chair and carriers it back for a visitor is evidence enough of his physical condition.

Weiss and his wife, Dena, left their Washington, D.C., home several weeks ago to enjoy the warm weather of the Sunshine State and after stops elsewhere, are spending 10 days in Daytona Beach.

As he does in almost every new city he visits, Weiss already has made an appearance at City Hall, during which he spoke to Gordon Tiffany, assistant city manager, about a program he initiated some years ago called "Mobilizing Mature Manpower."

The program is Weiss' solution to a problem a lot of people talk about, but few do anything about—utilizing the knowledge and talents of retired persons.

"There is so much talent going to waste, it's criminal," Weiss says. "My theory is you can't get along without another job after you retire, not a job you work at for money, but one through which society benefits because of your expertise." The idea for "Mobilizing Mature Manpower" first came to him when he retired 15 years ago, but became reality only in the past three years. "To conserve and utilize human resources" is the organization's motto.

From its office in Washington, D.C. (Room 1228, National Press Building, 20045) the organization offers counseling to institutions, public bodies, and industrial, civil and commercial agencies.

"The average person withdraws instead of retires," according to Weiss, "and boredom sets in. Getting involved in community affairs helps to prevent mental and physical deterioration."

Every community, he believes, "needs the assistance of my contemporaries," and the best way to begin is for a group of about a dozen persons to get together to exchange ideas.

Local governments would be wise to make meeting and, if possible, office space available to such a group at a nominal cost, Weiss contends.

Once organized, ideas to benefit the community could be developed by the group. Depending on the expertise available, communities could save money in such areas as consultants' fees if needed information can be provided by mature manpower members.

"I'm pushing 'Mobilizing Mature Manpower' just as hard as I can," Weiss said in describing his efforts, "because my contemporaries and I must leave a better legacy than we appear to be leaving."

[From the Washington Star, Dec. 26, 1979]

MOBILIZING MATURE MANPOWER

(By Donald Saltz)

One occasion about 15 years ago, it occurred to Morton D. Weiss that people who retired seemed to quickly slow up and lose their acumen. It just didn't seem proper to him.

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Even then, an idea which was to materialize years later was jelling in Weiss's mind.

Weiss, a long-time government financial researcher and planner and management analyst, considers himself an extrovert which has proven fortunate for fruition of his idea.

It got a big boost 2½ years ago when former House Speaker John McCormack heartily endorsed it.

"I've seen too many people a year or two after retirement who begin slowing up and acting foolish," Weiss said. "At the prime of their life, they decide to just mow the lawn and walk the dog.

"The same man used to have one meal at home then stops working and his wife starts," Weiss said.

He says it isn't age but the change in a man's status that causes him to slow down and lose his memory.

The idea simmered in Weiss's mind for years but in the mid-1970s he went public with it. It was a plan to "stop letting talent go down the drain," as he puts it.

He realizes that people who retire want time to think, to reorganize their lives and do things they haven't had enough time for before, but then they want to get back on the productive track.

"They need time to reflect and retirement gives them that time, but then they also need to come together and when that happens the results could be plans, projects and ideas in the national interest," he said.

He believes that when a dozen or so people get together, they get ideas useful to society. He also thinks they should be provided inexpensive office space where they can develop their ideas for the benefit of their community.

"A sharp mayor or county government would make space cheaply available—not free because it's better that the people involved each pay maybe $25 a month—to conserve and utilize human resources," Weiss said.

He notes that a dozen people occupying a downtown office space would incur personal total costs of $3,000 a year, an acceptable sum to them. And from these people who spent working lifetimes as scientists, accountants, lawyers and in other professions might come numerous ideas to improve business and society.

They would be free to develop and work on their own projects without stress of corporate pressures.

Weiss says the people who would participate in his plan—which he calls Mobilizing Mature Manpower—are individuals who don't like to be tied down, which for many of them was the principal reason they didn't continue working.

Weiss said he had been given less than enthusiastic reception by senior citizens organizations such as American Association of Retired Persons. "They're interested in selling tours and insurance," he said. "Too many young people are concerned with telling oldsters what to do."

Weiss says governments—city, county, state or national—will spend money on outside consultants when the work could be done capably by members of the mature manpower group.

"I'm too familiar with large amounts of money spent on outside consultants when the work could be done as well in-house.

"This is an opportunity for public officials and private officials and private administrators to draw on a pool of talent and experience without spending money," he said.

As Weiss' slogan explains, "Mobilizing mature manpower conserves and utilizes human resources."

[From the Enquirer, July 10, 1976]

THE CREATIVE USE OF RETIREMENT

Just because a man hits 65 and leaves a payroll is no sign his brain or imagination ceases to function. Yet society's principal message to him, all to often, is simply, "go fishin'."

For some men (and their wives), enforced idleness is too much. Psychologists compare what sometimes to a business executive in retirement, for example, with the deep-sea diver for whom the pressure lifts too suddenly and the "bends" result.

Such groups as the American Association of Retired Persons have given the problem a lot of attention in recent years, of course. But a lot more, we believe, needs to be given.

So we were pleased to learn of an idea put forward in Washington by Morton D. Weiss, 71, retired government research and finance expert, for the creative use of retirees with lively minds and proven ability. Mr. Weiss' plan is simply this: Permit retirees from the scientific community and such agencies as the Commerce Department to rent office space, at a nominal fee, in a private building downtown, then let them use it as they see fit.

Mr. Weiss' thesis is that able, creative minds, spent in many years on the job, need time to reflect, and retirement gives them that time. But then they also need to come together, and when that happens, the results could be plans, projects and ideas in the national interest.

Maybe such an approach would prove impractical, though on its face it seems to have a lot of logic. In any case, Mr. Weiss, married to the former Dena G. Morgenstern of Cincinnati, is actively pursuing it with private interests in the nation's capital. The federal establishment has surely spawned many a "pilot project" with what seemed a lot less potential than this idea. Moreover, Mr. Weiss' experiment would cast a pittance of even the most humble federal undertaking.

We wish him well, then, in his proposed venture. Certainly not all good ideas from Washington have to flow from the public sector (and treasury).●

ELIMINATE TAX BRACKET CREEP AND END MARRIAGE TAX INEQUITY

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PICKLE. Mr. Speaker, in all this talk about increasing productivity through Tax Code changes, there are two areas of individual taxation that we must not overlook—these two areas cry out for correction by the U.S. Congress.

They are the so-called tax bracket creep, and the marriage tax penalty.

From calender year 1980 to 1981, Americans will be paying $15.1 billion more in taxes because inflation has pushed them into the higher and higher tax brackets. This is not fair—the taxpayer is getting a double whammy—his standard of living is going down because inflation makes his take home pay less, and his taxes are higher.

No matter when Congress passes a tax bill effective for 1981, I will support strongly indexing our code so that the brackets are adjusted for inflation. If the benefit is too heavy on the upper ends, I am not adverse to weighting the adjustments to the middle brackets in the $25,000 to $40,000 range, which is no longer the level of the super rich, but of the two wage earner middle class family.

And since the two wage earner family is becoming the rule instead of the exception, we must end the quirk in our present tax laws that taxes two workers more if married than if they lived together unmarried. The amount can be as high as $1,000 for a family earning $30,000 per year with no dependents taking the no itemized deductions.

Various credits and solutions have been proposed, and this is a vexing problem as we do not want to punish the one wage earner married family. But the law must be changed.

The change should be major and meaningful, and be a major part of the 1981 tax restructuring bill.

With these two steps, along with major provisions on restructing taxes holding back our productivity, I think that a substantial amount of faith can be restored in our tax system.●

IRAN'S ATTEMPTS AT TERROR AND INTERFERENCE IN AMERICAN AFFAIRS

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, on July 23, 1980, a number of us sent a letter to the Attorney General, Mr. Civiletti, raising certain questions in the wake of the assassination that occurred in the Washington, D.C., area of a former Iranian Government official who supported the Shah and opposed the present Khomeini regime. These were legitimate questions. The letter, together with the names of signers is shown below:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 23, 1980.

Hon. BENJAMIN CIVILETTI,
Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: With the murder of former Iranian diplomat Ali Akbar Tabatabai on July 22, by a group evidencing terrorist training and support by their modus operandi we must urge the Department of Justice and the Federal Bureau of Investigation to provide us with reports on the activities of pro-Khomeini terrorist and terrorist-support groups presently active in the United States.

The activities and potential of these groups to use terrorist tactics in the U.S. obviously poses a threat to the maintenance of law. It also creates a threat to the national security of the United States. Responsibility for preventing terrorist attacks rests with

you, as Attorney General, and with your department.

Specifically we wish to be informed on:

(1) The activities on behalf of the Government of Iran and/or Ayatollah Ruhaolah Khomeini or any other Iranian principals of Bahram Nahidian of 3046 Kirby Road, McClean, and whether any action has been taken against him under the Foreign Agents Registration Act or any other federal law.

(2) The activities of Bahram Nahidian in relation to the Islamic Center in Washington, D.C.; his attempts to coerce the leadership of that Center by force and his use of that religious institution to cloak political activities of a nature inimical to the interests of the United States.

(3) The activities of Bahram Nahidian and his associates to recruit support from among Muslim and other prisoners in Lorton Reformatory, and in other local, state and federal prisons in various parts of America.

(4) Information related to contacts and meetings between Bahram Nahidian and members and former members of revolutionary groups, active in the District of Columbia; together with known reports of weapons owned or stored by Bahram Nahidian.

(5) The activities of the Iranian Student Association (ISA) and its fronts and splinter groups, including the organization known as the Islamic Guerrilla Association, possibly based in Moscow, Idaho.

(6) The activities of revolutionary groups in the U.S. supporting the activities of the ISA, including but not confined to the support provided by the Workers World Party (WWP), the Socialist Workers Party (SWP), the Communist Party, U.S.A. (CPUSA), the Communist Party, Marxist-Leninist (CPML), and the Revolutionary Communist Party.

(7) The activities of persons serving as diplomats in Washington, D.C. for the governments of Libya and Afghanistan in support of groups listed in paragraphs 4 and 5 above.

(8) The activities of diplomats, accredited to the United Nations in New York City, representing the government of Libya, Iraq and Afghanistan, and representatives of the Organization of Arab States and the Palestinian Liberation Organization (PLO) in supporting financially and logistically and activities of groups listed in paragraphs 4 and 5 above.

It would be appreciated if you would provide us with an initial response to this letter on or before July 31, 1980.

Sincerely,

Larry P. McDonald, J. Kenneth Robinson, John Rousselot, Tom Kindness, Benjamin Gilman, John Ashbrook, Mendel Davis, Eldon Rudd, G. V. Montgomery, Tennyson Guyer, Daniel B. Crane, James M. Collins, Carroll Hubbard, Don Young, Ron Paul, William Dannemeyer, Lester Wolff, Richard Shelby, Philip M. Crane, and Sam Devine.

Mr. Speaker, in response to our concern, the Assistant Attorney General sent an almost insulting reply, which is reproduced below:

DEPARTMENT OF JUSTICE
Washington, D.C.

Hon. LARRY P. MCDONALD,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MCDONALD: The Attorney General has asked me to respond to your letter of July 23, 1980 requesting information on the several organizations and persons mentioned. Your request is on your behalf and that of 19 of your colleagues in the Congress. It is not one submitted by a committee having jurisdiction over terrorist or related matters.

I am sure you can appreciate that it would be a considerable undertaking to develop this information, which to the extent that it exists, would be contained in the investigative files of this Department. It is not our policy to comment on matters of current investigative interest, since the comments could lessen our chances of success or prejudice the rights of innocent persons. Moreover, without additional specific details regarding each of your requests I am unable to determine what, if any, substantive response can be provided.

Pursuant to longstanding Justice Department policy, I must ask that your request be signed by the chairman of the appropriate committee and addressed to me or the Deputy Attorney General. The request should state both the information desired and the legislative purpose for which it is sought.

Very truly yours,

PHILIP B. HEYMANN,
Assistant Attorney General,
Criminal Division.

Mr. Speaker, in order to underline just how serious a matter of internal security we are dealing with, those of us who sent the first letter have now sent Mr. Civiletti the further response that follows. We call upon him to meet his responsibilities for the internal security of this Nation.

SEPTEMBER 10, 1980.

Hon. BENJAMIN CIVILETTI,
Department of Justice,
Washington, D.C.

(Attention: Philip B. Heymann, Assistant Attorney General, Criminal Division).

DEAR MR. ATTORNEY GENERAL: Reference is made to my letter of July 23, which nineteen of my colleagues joined me in signing, and your non-responsive reply of August 6.

Prompted by your non-response to the matters of grave concern outlined in my letter, additional research has obtained further information on the activities of Bahram Nahidian, and the organization known as the Islamic Guerilla in America (IGA).

We are now aware of specific illegal activities of Nahidian and the IGA, which are also known to the FBI. We have also become aware of the visit to Washington, Los Angeles and Boston of an Iranian General Fardoust. General Fardoust was identified in the New York Times of August 15 as a former head of the Ayatollah Khomeini's intelligence organization with a possible role in the killing of Ali Akbar Tabatabai.

Our investigations have developed information on the movement of large sums of money by Iranians in the United States for purposes probably inimical to the interests of the United States, and in this matter the activities of a Cyrus Hashemi and the Souri International Forwarding Company of New York City have been brought to our attention.

We have also developed information pertaining to the IGA using firearms in an attempt to kill federal officials resident in the Washington area.

As Members of Congress, having responsibility for the allocation of funds to the Executive Branch, we are concerned that these actions are taking place, with the knowledge of the FBI and the law enforcement community without prosecution of those responsible.

I have, personally, shared my concerns in these matters with responsible officials of the FBI, and must now insist on a response to my letter before putting the full details of the information that I have gathered, together with the appropriate documentation, publicly before my colleagues.

Sincerely,

Larry P. McDonald, John H. Rousselot, G. V. Montgomery, Samuel L. Devine, Eldon Rudd, Tennyson Guyer, Ron Paul, Richard C. Shelby, Thomas N. Kindness, J. K. Robinson, Benjamin A. Gilman, William E. Dannemeyer, Philip M. Crane, Carroll Hubbard, Jr., Mendel J. Davis, Lester L. Wolff, John M. Ashbrook, James M. Collins, Daniel B. Crane, and Don Young.●

THE BURDEN OF FEDERAL PAPERWORK

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for Wednesday, September 10, 1980, into the CONGRESSIONAL RECORD:

THE BURDEN OF FEDERAL PAPERWORK

Although weighty issues of economics, national defense, and foreign affairs are dominating discussions of politics and government in this election season, there is a simpler issue that will not go away. Whether or not it receives the attention of the media, the burden of federal paperwork continues to concern Hoosiers in all walks of life. Complex tax returns overwhelm the ordinary citizen; forms of all sizes and descriptions frustrate the educator; reams of paper threaten to smother the small businessman. Some Hoosiers, harassed to no end by duplicative, frivolous paperwork, have concluded that shuffling paper is the main activity of the federal government. Why else, they ask, would Washington want so many forms?

Paperwork has been a product of the federal government ever since the founding of the nation so the burden it imposes on Americans is not new. Relatively new, however, is the rapid growth of paperwork during the past three decades. Neither the Federal Reports Act of 1942 (the basic law which coordinates the way Washington gathers data) nor any ad hoc effort undertaken since then has been sufficient to control the paperwork generated by an expanding government. In 1979 alone, 5,000 federal reports required by law demanded an estimated 786 million hours of the public's time, enough to keep 390,000 full-time workers busy. The forms completed in one year may fill almost seven million cubic feet of space, and the cost of preparing and processing them may be more than $40 billion. Small businesses are especially hard-pressed. They file more than 305 million federal forms a year, about 850 million pages containing 7.3 billion questions. The average annual cost to each small business in the country is thought to be more than $1,000. Experts claim that three-quarters of this burden is due to the assessment and collection of taxes.

Of course, not all paperwork is bad. Forms that convey information are necessary for the management of all federal initiatives. Without paperwork, we could not raise revenue for the defense of the nation or combat drug abuse in our communities. Forms are needed to show who is eligible for federal benefits and who is cheating the government. But far too much paperwork is not useful. Useless paperwork arises when federal programs are poorly managed or staffed,

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when agencies are out of touch with one another, when regulations are complex, or when Congress acts too quickly or inexpertly in trying to solve a problem. The effects of useless paperwork are serious; they can be devastating in some instances. Time can be wasted, resources drained away, and creativity stifled. This kind of paperwork can dull the government's sensitivity to the needs of the people and prevent the government from meeting those needs.

The most recent drive against paperwork began in 1974 with the work of the Commission on Federal Paperwork. During the three years of its existence, the 14-member panel made 520 recommendations aimed at eliminating or cutting down red tape in the executive branch. Some 269 of these recommendations have been accepted at last count, and many of the commission's functions are now being carried out by the Office of Management and Budget. President Carter continued the drive against paperwork with two major executive orders. The first, issued in March of 1978, required federal agencies both to write regulations in plain English and to analyze the impact of the paperwork their regulations might cause. The second, issued in November of 1979, went even further. It set up "paperwork budgets" which agencies could not exceed, created a "locator system" to eliminate duplication of data, ordered agencies to consider the effects of paperwork on small businesses, and established a "sunset" mechanism to terminate paperwork automatically.

Congress has not lagged behind in the drive against paperwork. In February of 1977, the Senate adopted a "housekeeping" rule which requires that each bill reported by a committee be accompanied by an estimate of the amount of paperwork the bill would cause if it passed. Many Congressmen, myself included, have worked for a similar rule in the House of Representatives. Rules like these serve to cut off paperwork at one of its sources. Another congressional milestone in the drive against paperwork was House passage of the Paperwork Reduction Act in March of this year. If approved by the Senate, the bill would reduce paperwork by giving overall direction to the government's information policies. Any proposal by an agency to collect data from the public would have to be sanctioned by a special office and would not be renewed after three years unless still shown to be necessary. The office would not sanction proposals if the data to be collected were already in government files. Other measures have received congressional attention as well. On several occasions, Congress has moved to trim paperwork in specific programs. It is also considering new ways to attack paperwork government-wide.

Although federal officials claim that we are making gains against paperwork, I have asked Hoosiers themselves whether they see any improvement. Some notice slight progress; others say the burden is as heavy as ever; still others complain that things are getting worse. Such responses indicate to me that the drive against paperwork is an ongoing one. We can expect paperwork to abate when we simplify tax returns, ease up on surveys, and revise the way states and localities apply for federal grants. We can expect paperwork to increase if we are not alert to the potential consequences of new legislation in the areas of energy, environmental protection, and health. Given the complexity of government today, it is not realistic to believe that final victory over paperwork can be quickly achieved. What we in government must do is recognize the extent to which paperwork is a burden to citizens, committing ourselves to every reasonable step that might reduce the burden and keep it manageable.●

LEAKS OF THE "STEALTH" AIRCRAFT TECHNOLOGY

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ROUSSELOT. Mr. Speaker, the House Armed Services Committee is now attempting to discern which, if any, guidelines and procedures for the prevention of unauthorized disclosures of information have been broken, with respect to the "Stealth" aircraft technology. The full House of Representatives must also consider the propriety of any further voluntary disclosures made by the administration even if those disclosures do not break security regulations. The responsibility for breeches of confidentiality in our national security program rests upon those who are charged with keeping the integrity of such programs.

The ramifications of such poor judgment and handling of high technology are plain to see. We do not require the services of our most sophisticated defense planners to tell us that the earlier a potential enemy learns of a new weapon technology, the sooner they will begin to develop countermeasures. Expenditures for defense programs have been gutted, in real terms, to dangerous levels in the 1970's. To compound the problems of a strained defense program, we now have disclosures of a developmental project before the weapon is operational.

Obviously, some very serious questions need to be addressed:

First. Are our current guidelines concerning classified material sufficient to protect our national defense?

Second. If these guidelines are judged inadequate—which appears plausible since at least one journalist has known about the existence of "Stealth" for as long as 2 years—what have the Pentagon and the administration done to prevent similar leaks of future projects?

Third. If our guidelines are judged reasonable to insure our national security, the possibility is than raised that they were circumvented intentionally. If so, we must ask: By whom? For what purpose? To harm our Armed Forces capabilities? For political gain? To defuse criticism of the lack of military initiative?

The Investigations Subcommittee of the House Armed Services Committee has been conducting hearings on this matter. The committee members must have all the support and assistance the full House can give them. I have cosponsored Representative JIM COURTER's House Resolution 777, calling on the President to provide all information pertaining to authorization by him, or any official of the executive branch, relating to the disclosure of "Stealth" technology. This resolution also requests information concerning any ongoing investigation by the executive branch into this issue, and also on the current guidelines for classified data.

As the legislative days in the 96th Congress dwindle, it is imperative that this resolution reach the floor of the House. The Armed Services Committee must not be hindered in any way in their investigation. I believe this resolution will help them in their task, and I heartily encourage all of my colleagues to join in cosponsoring this measure.●

SMALL GROWER DOES BIG THINGS FOR COTTON

HON. L. H. FOUNTAIN

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FOUNTAIN. Mr. Speaker, I would like to call the attention of my colleagues to the outstanding leadership and accomplishments of one of my constituents—Mr. C. Hoke Leggett of Hobgood, N.C.

Not only is Hoke Leggett, who farms 350 acres of cotton, one of the leaders in the U.S. cotton industry but he is also active in numerous State, regional, and national organizations.

He is currently in the forefront of the cotton industry's effort to obtain funding for a crash cotton dust research program. In the past, Hoke has served as president of the National Cotton Council and was instrumental in developing a united cotton industry position on the Agricultural Act of 1977.

In an interview in the August 1980 Progressive Farmer, Hoke Leggett discusses his role within the cotton industry and gives some pointers for other farmers interested in becoming involved in the leadership of their industry.

The article is as follows:

SMALL GROWER DOES BIG THINGS FOR COTTON

Edith Longest Leggett was telling a group of ladies at the National Cotton Council (NCC) annual meeting how tricky it was to get in the 1979 peanut crop. "Where was Hoke?" one of them asked.

"Oh, doing what he's doing now," Mrs. Leggett replied. "Only I think it was in Washington at that time."

What C. Hoke Leggett was doing was convincing a group of skeptical cotton farmers of the dangers they faced from cotton dust. The Hobgood, N.C., producer of cotton, tobacco, peanuts, corn, soybeans, and hogs, who is outgoing NCC president and the man who could convince the Du Ponts that they ought to wear cotton underwear, was succeeding better than he knew.

At the January 1980 council meeting, delegates finally resolved that a $9 million crash program to keep cotton dust out of the textile mill was the only way to keep the cotton industry out of disaster.

"If cotton producers assume that dust and brown lung disease are a problem for the textile mills to solve, then we're going to be in big trouble" is the way Leggett's arguments run. "The problem belongs to the whole industry, to producers as well as to spinners and weavers. If we don't solve it, we won't have a cotton industry left to worry about."

The odds against scratching up $9 million in new research money for cotton dust in 1980 were pretty long in January. An Assistant Secretary of Agriculture was on hand to say that the President has passed the word to pare USDA research budgets to the core.

Cotton Incorporated spokesmen protested that they were already spending a big hunk of money on cotton dust research.

Millmen simply pointed to the billions already spent in their efforts to meet worksite standards laid down by the Occupational Safety and Health Administration (OSHA).

Still, NCC had its resolution; and to the surprise of no one who knew how he could work on a problem, it appointed Leggett chairman of the newly established Industrywide Cotton Dust Committee.

If Edith Leggett thought she was going to see more of Hoke around the farm because he was no longer NCC president, she was due for a disappointment.

Backed by the technical staff and like-minded officers of the council, Hoke began a campaign of begging, threatening, lobbying, arguing, speaking, arm twisting, and convincing. By lay-by, most of the funds for a $9 million, two-year, crash research program were promised or in sight.

"The price tag is high, but we've got to pay it," Leggett says. "If we don't, the mills will simply shift to synthetics." Leggett concedes that the price of problem solving is always high; if not in money, always in time and effort. His neighbors sometimes ask him how he can spend so much time serving in state, regional, and national organizations.

"How can I not take the time to look after our business?" he'll reply, holding you with his expressive eyes while snapping out his words in a way that sometimes belies his North Carolina rural background. To Leggett, good marketing and consumer acceptance are as much the business of farming as is careful crop production.

His national activities haven't made him forget his community responsibilities. He has served two terms as mayor of Hobgood, been instrumental in starting a local peanut marketing association, and helped bring a branch of the Peoples Bank and Trust Co. to his town.

With 350 acres, Leggett is a small cotton grower as cotton growers go these days. "But everybody has got to help, large or small," he says.

"Maybe I could grow more and better cotton if I stayed home all the time and paid closer attention to my production practices. But somebody has got to sell it if we're going to raise it. If we all stay home griping about our poor market conditions, nobody is going to make any profit."

Leggett thinks that cotton's future looks good. "Cotton can stay competitive with synthetics if we can solve the dust problem," he says.

Cotton marketing has made a lot of progress, and Leggett credits Cotton Incorporated with making a big share of that progress possible. Personalities need not get in the way of an effective marketing program, he believes, adding, "We all must continue to support CI's program."

Leggett started growing cotton in 1954 and has seen many problems come and go. His farm is located in the area covered by the experimental boll weevil eradication program.

"We've shown here that a communitywide effort can deal with the pesky weevil," he says.

"Just a few years ago, I sprayed my cotton 19 times in a single season, mostly to control boll weevils. Last year, we sprayed only once, and that was to take care of a worm infestation. We didn't spray at all for boll weevils."

The boll weevil eradication effort has been so successful that cotton acreage has increased dramatically this year.

Leggett makes no bones about the fact that too few farmers are willing to pitch in and help solve farm problems.

"No one else will do it for us," he says.

For cotton farmers willing to take his advice and get involved in the leadership of their industry, Leggett gives the following pointers:

Start attending as many meetings as possible of organizations that are working to solve your problems. Get active in committee work. Speak up at meetings. Hold an office when it's offered.

Ask for opportunities to serve as a contact with Congressmen and other people in positions of leadership.

Go visit Cotton Incorporated in Raleigh and see what the staff is doing to solve marketing problems.

Get to know people in the textile industry. Find out what they want.

Get involved in the democratic process. Speak up on political issues that concern you.

Learn everything you can about producing quality cotton. Then produce it.

Encourage people of the news media to cover the positive efforts of the cotton industry. Help them see that the industry is working to solve the brown lung disease problem.

Basically, Leggett's attitude toward the cotton business is "get off your seat and onto your feet." He has always believed that the way to deal with your problems is to roll up your "britches legs" and wade right in.

Maybe that's why Mrs. Leggett is willing to get in the peanuts. And maybe she's pretty proud of the respect and admiration that Hoke has won wherever he has waded into farmers' problems.●

REPUBLICANS TAKE A RISK

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. GINGRICH. Mr. Speaker, David Broder has put the Republican gathering on the Capitol steps September 15 in its historical context in a Washington Post article this morning.

He has described what a change this event represents—that a political party for the first time is gathering its Federal candidates to make a pledge to the American people on what they would accomplish as a unified Government.

Such an event, and a pledge, is a risk. Most politicians have avoided their party label for the last two decades. Most have avoided taking any responsibility for the actions of their parties as a whole.

And, sadly, many politicians have even separated themselves from the Government they are an integral part of. They seem to claim that what Government does just happens—that the politicians' actions have no effect on people's lives or on what Government does.

So Republicans are taking a risk by trying to change "the current wisdom."

Republicans are taking a risk because now if they do win a majority in both Houses, people will be able to measure them against a joint statement of intentions.

And Republicans are taking a risk by trying to explain that Government should consist of teamwork—that one individual has to work with others to accomplish change.

But we think that risk is well worth taking.

Here's David Broder's description of that risk—and the change this event brings to the 1980 campaign:

CAPITOL STEPS THEATRICAL

(By David S. Broder)

The process of presidential campaigning has been so corrupted by "media events"—posing the candidates in settings that convey a message on a TV tube without verbal content—that there is a tendency to view all visual spectacles as essentially phony.

At a Common Cause forum the other day, Linda Wertheimer of National Public Radio was ridiculing the "Italian market syndrome" that seems to send every candidate who comes to Philadelphia out shopping for sausage and eggplant as a shortcut to the ethnic vote.

Next Monday, Ronald Reagan and George Bush will take part in what looks like an equally phony "media event." They are scheduled to meet on the steps of the Capitol with the Republican congressional leaders, members of Congress and a sizable number of GOP candidates from the House and Senate.

There, according to plans, they will announce a list of specific actions that they jointly pledge to take in 1981, if Reagan is elected with a Republican Congress.

Since the odds are against the Republicans' overturning the 26-year-old Democratic majorities in both the House and Senate this November, the "contract" Reagan and the Republicans are offering can be seen as a cheap promise to make—just another "media event" on the candidate's schedule.

But the ceremony has substantive significance, at least in the minds of the junior House Republicans who concocted the notion and sold it to a somewhat reluctant Reagan campaign. It represents a serious and healthy departure from the norms of contemporary presidential campaigning.

For the last quarter-century, most of the presidential nominees of both parties have run for office as if the presidency were the only job on the ballot and they were the only candidates.

Losers like Barry Goldwater and Hubert Humphrey might proclaim their party labels. But for the most part, the successful candidates of both parties from Eisenhower through Carter have told the American people that a change of governmental direction could be achieved by changing the occupant of the White House.

That proposition has been proved false. The inertial forces in the government of the United States—the network of relationships linking the bureaucracy, the interest groups and the congressional subcommittees and their staffs—are demonstrably too powerful to be turned around by any one man.

What the Republicans are attempting to say with their Capitol steps theatrical is that Americans who want to change directions have to change control of the whole government. They have to reverse the ma-

jorities in Congress as well as turn out the incumbent from the White House.

It is a proposition that offers great potential dividends for the congressional Republicans. Too often their candidates have found themselves competing with Democratic incumbents who are as vociferous as the challengers in denouncing the "mess in Washington."

The Republicans hope, by the Monday spectacular, to drive home the point that the Democratic Congress is as much responsible for the record of the last four years as is the Democratic president—and that individual Democratic senators and representatives must be held to account for their party's record.

But it is a strategy with obvious risks for Reagan. It will be fascinating to see how far he really goes in expounding the message the sponsors hope to communicate.

From Eisenhower on, Republican presidential candidates have known that they have to run well ahead of their party to have a chance of winning. Most often, that has meant running far away from their party. Ever since the Democrats took over Congress in Eisenhower's second year, Republican presidents and presidential candidates have been content to seek accommodation, not revolution, on Capital Hill.

In Reagan's case, there is a special risk in the Monday event. His own strategists say that most voters believe that Reagan is a stronger executive than Carter, a man more likely to get things done. But, these strategists concede, there are still grave reservations about the direction in which Reagan would move the country.

Many voters—women in particular—are nervous about Reagan's talk about a bigger, more bristling defense, a tougher line toward foreign governments and a greater reliance on private industry to furnish the jobs and energy the country needs.

Many of those voters who are fed up with Carter but nervous about Reagan would like to hedge their bets by keeping the Democrats in control of Congress—a sort of check-and-balance strategy—as they did when they elected Eisenhower and Nixon three times with Democratic Congresses.

The implicit message of Monday's ceremony is that there can be only one government in Washington at a time and that if voters want Reagan to lead it effectively, they have to go all the way with the GOP.

That is an honest statement, and it is as commendable for the Republicans to dramatize it as it is risky.●

TRINITY LUTHERAN CHURCH, LONG ISLAND CITY, N.Y.—90 YEARS OF CONTINUOUS BLESSINGS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BIAGGI. Mr. Speaker, there will be great joy in the hearts of the parishioners and friends of Trinity Lutheran Church in the Astoria and Long Island City area of the Borough of Queens, New York, this coming Sunday, September 14, as they lift up their hearts in thanksgiving and praise to celebrate the parish completion of 90 years of service to God and community.

A special liturgy and dinner will highlight this occasion as the wonderful and extraordinary event that it is. It is a celebration of God's inspiration and His work. It is a celebration of people who have taken that inspiration and who have united with each other in bonds of love and commitment to live and work for their common spiritual and temporal welfare, and, in doing so, perform God's work.

The history of the efforts and achievements of the extraordinary people who have created the legacy and established the traditions of Trinity Lutheran Church merit our special attention on this truly wonderful and significant occasion, so that we can also derive from their example, take from their inspiration, and live and work to achieve in God's service.

The first services were held at Trinity Lutheran Church on February 23, 1890. The church was originally founded by German immigrants, and German-speaking farmers and craftsmen. The German language was used in the services until English began to be introduced in some services during the early 1900's.

The present church building was dedicated on November 13, 1927. Outstanding pastorships have marked the church's history. The congregation presently consists of about 600 members, and the church is presently connected to a school as well.

Among its many contributions to the ongoing welfare of the community, Trinity Lutheran Church holds senior citizen meetings, scouting group meetings, and Alcoholics Anonymous groups.

The present pastor is the Reverend Leonard R. Klein. The church is located at 31-18 37th Street. I offer the following listing of the milestones in the history of Trinity Lutheran Church in special salute to all the parishioners, under the guidance and leadership of Reverend Klein, who continue to sow and reap the harvests of their ancestors.

The Ladies' Aid Society was founded in July 1890, which was several months after the initial church services were held. The following month, on August 24, 1890, Pastor William Schoenfeld was installed as the first pastor of Trinity, and on September 7, 1890, the first church building was dedicated.

January 11, 1891, saw Mr. John Wambsgans installed as the first teacher of the parochial school, which had been opened on October 27, 1890, with the pastor teaching.

The succeeding pastorships of Adolph T. Sieker and Christian Markel occurred in 1896 and 1897, respectively. The parsonage was constructed in 1900. And it was in September 1906 that Trinity began to conduct services in the English language.

September 12, 1915, marked the 25th anniversary celebration of Trinity Lutheran Church, and, in observance of that milestone, the mortgage on the church was burned.

The next decade witnessed expansion, and there were a number of changes in the physical structure of the parish. The corner lot on which the present church stands was purchased during the same year as the installation of Pastor Fred Lindemann, 1922. The following year, a daughter congregation, Grace Lutheran Church, was started. It was on February 2, 1925, that the congregation voted to build the present church building, and the cornerstone was laid October 17, 1926. After morning services in the old church building on November 13, 1927, dedication services for the new church building were held. The total cost of the structure was $231,000.

The altar and appointments from the old church were installed in the baptistry in 1932. And it was in September 1937 that Trinity began the celebration of the Lord's Supper in at least one service every week. Trinity's fifth pastor, H. J. Rippe, was installed in September 1939.

Trinity's 50th year anniversary celebration was begun at special services on January 7, 1940. In March 1948, the men and women of Trinity dedicated the fine stained-glass windows in the nave and narthex of the church to the memory of their fellow parishioners who lost their lives in World War II.

The special events of the next decade highlight the growth of Trinity's school. The first Christian Day School had ceased operation in the first years of the century, and so it was on September 14, 1953, that Trinity reopened its Christian Day School with Miss Matilda Siegal as teacher for the 2 grades with 26 pupils. The ground was broken for the present school building on December 8, 1957. The cornerstone was laid on May 18, 1958, and the dedication followed on November 16.

Another monumental anniversary celebration banquet to record Trinity's 75th birthday was held on November 11, 1965, with Dr. Oswald Hoffmann as the speaker. During the latter portion of that decade in 1967, Pastor George H. Sommermeyer was installed as the sixth pastor, while Victor R. Kaesmeyer was installed as principal, during the same services. Very significantly, in 1968, Trinity School entered into cooperation with other Lutheran parishes in the area. Queens Lutheran School is the result of this move.

The 1970's brought new office space and a renewed parsonage, both changes and the dedication occurring in 1972.

The Reverend Leonard R. Klein was installed as the seventh pastor of Trinity on December 19, 1976.

Pastor Kazimierz A. Kowalski, the present assistant pastor of Trinity, was ordained there on November 26, 1978.

And this month, September 1980, we herald the 90th anniversary of Trinity Lutheran Church.

I know that you, Mr. Speaker, and my colleagues in this great national body will join with me in extending our sincerest best wishes for continued good blessings and even more bountiful successes now and in the years ahead to Pastor Klein, Pastor Kowalski, and all the wonderful parishioners and friends of Trinity Lutheran Church. May God bless and continue to keep you all.●

CAMBODIA IN THE U.N.

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PORTER. Mr. Speaker, a year ago September our U.S. Representative to the United Nations Credentials Committee voted for the Committee's recommendation to seat Pol Pot's "Democratic Kampuchea."

In just a matter of days, another General Assembly Credentials Committee vote will be taken. We will then have the opportunity to reevaluate our position of last year in which we left behind our values and interests as an influential world power and any apparent regard for the welfare of the Cambodian people who over the past decade have experienced more devastation, brutality, and chaos than any society in modern times.

Although the United States never directly recognized Pol Pot's regime, inherent to our U.N. vote was a strong protest against the Vietnamese occupation of Kampuchea. But our vote, far from pressuring the Vietnamese to rethink their presence in Cambodia, seems to have made them even more unwilling to compromise and make concessions. Moreover, generous international relief efforts have proved to be of little effect in providing the ravaged population with food due to Heng Samrin's regime's suspicions that the international community was attempting to rekindle Pol Pot's efforts by channeling food and supplies to his forces.

In my mind, both governments have been a disaster for the Cambodian People. Pol Pot waged a 4-year reign of terror against his own people and now the Heng Samrin regime continues along the same line of atrocity. Our vote of last year has not in any way contributed to the resolution of the conflict in Cambodia, and if anything, seems to have added to the difficulties.

If our country has any pretentions to the observance of human rights in our international affairs, we cannot in good conscience lend further support to Pol Pot or to any government that barbarizes innocent Cambodian citizens in its struggle for power. We cannot do so even in continued protest against the Hen Samrin puppet Vietnamese regime.

We would be far better advised to observe the values we espouse and use our influence to see that the Cambodian seat in the United Nations General Assembly is left vacant until the time that the Cambodian people can decide free from outside pressure what government should rightfully represent their nation. The vacancy of the seat would be a reminder to us that Cambodia continues to be brutalized beyond all immagination and that the continuation of this genocide is a burden of this entire civilization.●

FURTHER CLARIFICATION OF REMARKS IN SUPPORT OF THE RULE FOR THE CONSIDERATION OF H.R. 3904—THE MULTIEMPLOYER PENSION PLAN AMENDMENTS OF 1980

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. GAYDOS. Mr. Speaker, following my remarks on August 25, 1980, in support of the rule to strike from H.R. 3904—the Multiemployer Pension Plan Amendments Act of 1980—the nongermane Senate amendments and return the bill to the Senate, Mr. Kenneth E. Tobin, president of the National Sand and Gravel Association, has written to me and stated that I "seriously misled the Members of the House with respect to the sand and gravel industry and the situation surrounding our effort to be transferred from MSHA to OSHA jurisdiction."

This is a very serious charge and I want to point out to the Members that this is a scurrilous attack on both myself as well as this body and it is without any basis whatever.

Accordingly, I would like to respond to the various issues raised by Mr. Tobin.

First, he disagrees with my statement that "MESA was transferred to the Department of Labor lock, stock, and barrel * * *," and goes on to state: "As chairman of the subcommittee that wrote the legislation, you know very well that there is no factual resemblance between the old MESA and the much more severe and restrictive Mine Safety and Health Act * * *."

I am at a loss to understand why Mr. Tobin compares MESA and the Federal Mine Safety and Health Act of 1977, since MESA is not a law, but rather an acronym for Mining Enforcement and Safety Administration, an organization which until 1978 existed in the Department of the Interior. It was responsible for implementing both the Federal Metal and Nonmetallic Mine Safety Act as well as the Federal Coal Mine Health and Safety Act of 1969.

Pursuant to title III, section 301, of the Federal Mine Safety and Health Amendments Act of 1977—Public Law 95-164—MESA was transferred to the Department of Labor.

Mr. Tobin should be aware that this transfer occurred with a minimum of fanfare, for it merely meant that the sign referring to MESA and the Department of the Interior at 4015 Wilson Boulevard, Arlington, Va., was replaced by one reading the "Mine Safety and Health Administration, Department of Labor." The facilities today are the same as those occupied by MESA, the records kept by MESA are now under the control of MSHA. MESA employees were transferred to the Department of Labor. The standards issued by MESA pursuant to the 1966 Federal Metal and Nonmetallic Act are now implemented by MSHA. Furthermore, the same situation applies with respect to the MESA field offices.

Second, Mr. Tobin objects to my assertion that, "Today, however, they would have us believe that such operations are not mining operations," and states, "We have never made such contention."

Well, Mr. William E. Hole, president, American Aggregates Corp., and chairman, Safety Committee, National Sand & Gravel Association, in his appearance before the Subcommittee on Health and Safety on July 9, 1979, stated:

> The extraction of our product is similar to excavation work performed by industries now covered by OSHA. Equipment used includes scrapers, front-end loaders, pumps, compressors, conveyor systems, dump trucks, and dredges.
>
> These are vastly different from highly specialized equipment used by deep underground mines such as man hoists, low profile mobile equipment, and continuous mining machines.

From this it would appear that Mr. Tobin believes that, first, sand and gravel operations do not belong under a mine safety and health law; second, his members do not use equipment used in deep underground mines; and third, the extraction of sand and gravel is similar to excavation work performed by industries now covered by OSHA.

If all this is so, then is not the extraction of sand and gravel akin to excavation work and accordingly not a mining operation?

Third, I stated that, "yet, it appears that the sand and gravel industry now wishes to switch its affiliation to OSHA." To which Mr. Tobin replies this is "totally inaccurate." He goes on to state that his organization in September 1973 expressed an interest in having sand and gravel operations under OSHA jurisdiction, and such position was reaffirmed in September 1975 and submitted to the Subcommittee on Manpower, Compensation, and Health and Safety in October 1975.

Well, let us look at the record on this.

On September 3, 1975, in the 94th Congress, Congressman Dominick V. Daniels introduced H.R. 9318, a bill which would have amended the Federal Metal and Nonmetallic Mine Safety Act, in certain respects. But most significantly, this bill would have excluded sand and gravel from the provi-

sions of the act, and accordingly they would then be subject to OSHA.

A statement filed with the subcommittee by the National Sand and Gravel Association contains the following:

H.R. 9318 transfers the responsibility for enforcement of safety regulations affecting the processing of sand and gravel from the Mining Enforcement and Safety Administration in the Department of the Interior to the Occupational Safety and Health Administration in the Department of Labor. This transfer is unnecessary and not called for at this time.

Legislation such as H.R. 9318 is not necessary at this time. If, however, the committee decides to recommend legislation which would transfer our industry to the Department of Labor, we support the recommendation in the bill that our industry be placed under the jurisdiction of OSHA.

I guess what this all meant was that the sand and gravel industry was happy with the provisions of the Federal Metal and Nonmetallic Mine Safety Act, but if it was to be amended, the sand and gravel industry wanted to be under OSHA. Hardly a clear and unambiguous statement that they preferred OSHA jurisdiction; instead, a very waffling position.

But let us look at the position of the National Sand & Gravel Association in the 95th Congress when the current mine safety and health law was under consideration. H.R. 4287 was the bill before the Subcommittee on Compensation, Health, and Safety. It provided for:

First, upgrading the provisions of the Federal Coal Mine Safety and Health Act of 1969.

Second, transfer of administration from MESA in the Department of Interior to the Mine Safety and Health Administration in the Department of Labor.

Third, repeal of the Federal Metal and Nonmetallic Mine Safety Act.

Fourth, all mines to be subject to one act, with separate standards for coal mines and for metal and nonmetallic mines.

And what was the response of the National Sand & Gravel Association to the subcommittee hearings on the bill? Not an appearance before the subcommittee, but instead the submission of a statement for the record. What was the association's position with respect to OSHA? The only reference was to a memorandum of understanding between MESA and OSHA with respect to certain possible duplication of the respective agencies.

But where was the interest in OSHA jurisdiction previously expressed in the 94th Congress? Interestingly enough, the association in setting forth its opposition to H.R. 4287, objected to the general duty provision, a provision which is included in OSHA but was not enacted into law in the Federal Mine Safety and Health Amendments Act of 1977.

The record is clear. The legislative history of the Federal Mine Safety and Health Amendments Act of 1977 contains absolutely no evidence that the National Sand & Gravel Association indicated a wish to have its members subject to the jurisdiction of OSHA.

I do not question the right of Mr. Tobin to change his preference from MESA to OSHA, to MSHA and now to OSHA, but to state that his organization has, "on record before both the House and Senate," a consistent policy favoring OSHA jurisdiction for the sand and gravel industry since 1975 is totally at variance with the evidence contained in the subcommittee hearings.

Fourth, Mr. Tobin states that he assumes that I know from, "personal knowledge of the Pittsburgh area, that a substantial portion of the sand and gravel industry consists of marine operations, operations which are on the face of it therefore incompatible with regulations for underground mining." He makes the proper assumption, but I have yet to hear of MSHA issuing citations against such marine operations for those standards applicable to underground mining. If Mr. Tobin has such examples, why has he kept it from the subcommittee?

Additionally, he contends that, "to apply an underground mine act to marine dredging operations on waterways is simply not feasible or workable." In so doing, he has conveniently substituted "act" for "regulations." But the 1977 Act is a mining act, covering both surface and underground mines. It is the standards that are specifically applicable to surface or underground mining operations, with a further distinction between coal and metal and nonmetal mines.

Fifth, in my remarks before the House on August 25, 1980, I cited statistics which showed that a disproportionate number of the fatalities in metal and nonmetal mining occurred in surface stone and sand and gravel mines. Mr. Tobin contends I left an improper implication for the Members of the House. But what is Mr. Tobin's complaint? He states that while 64 percent of total man-hours worked in surface metal and nonmetal mining were worked in surface stone and sand and gravel, 68 percent of the fatalities in the surface metal and nonmetal mines occurred in surface stone and sand and gravel operations.

Further, he contends that in considering all metal and nonmetal mining—which I assume to mean both surface as well as underground—that the stone and sand and gravel industry, which accounted for 48 percent of the man-hours worked, accounts for 53 percent of the total fatalities.

I am really at a loss to determine what Mr. Tobin is complaining about. His statistics just confirm and buttress my position that stone and sand and gravel operations are not safe operations in that they account for a disproportionately higher number of fatalities compared to other types of metal and nonmetal mining.

Sixth, I informed the Members of the House on August 25, 1980, of those 17 organizations which had written to me supporting deletion of the nongermane MSHA amendment.

Mr. Tobin contends that four of the organizations, "actually endorse the merits of our amendment." What would Mr. Tobin have Members of Congress do when we receive correspondence clearly urging our support for a particular position?

Obviously, we have to take such organizations at their word. Furthermore, whether or not four of the organizations did endorse the merits of the amendment, at the time I was urging the deletion of the MSHA nongermane amendment from H.R. 3908 and that is exactly what those four organizations recommended, no more or no less.

Mr. Tobin states I am totally in error in listing the Flintkote Co. as being opposed to the MSHA amendment. Well, I did not list the Flintkote Co. I did list the Flintkote Cement Co., based on their telegram to me. Was this an oversight on Mr. Tobin's part?

Mr. Tobin also questions my listing Atlantic Cement Co. as opposing the MSHA amendment and states that the president of this company has assured him that he does not oppose the MSHA amendment. He further states that he is attempting to check with the other three cement companies which I listed to "ascertain their exact position." My files contain either a letter or telegram from every organization that I listed, supporting the statement I made.

Further, Mr. Tobin objects to my naming several unions who opposed the MSHA amendment. He contends that the three unions; namely, the Teamsters, the Operating Engineers, and Laborers, which are the principal unions representing employees of sand and gravel operators, have not appeared in either House or Senate in opposition to the MSHA amendment. Well, the Laborers and the Operating Engineers are AFL-CIO affiliates and are members of the Industrial Union Department, AFL-CIO, and the Building and Construction Trades Department, AFL-CIO. Both of these organizations testified before the Subcommittee on Health and Safety during the MSHA oversight hearings, and in no way supported Mr. Tobin's position.

As far as the Teamsters are concerned, the subcommittee received no request from them to either appear or even to submit a statement for the record. If they were so eager to support the exclusion of surface stone and sand and gravel mines from the jurisdiction of MSHA, I am sure they would have acceded to a request from Mr. Tobin to appear before the subcommittee and so testify.

CONCLUSION

I have taken this time to respond seriatim to the reprehensible and totally unfounded accusation by Mr. Tobin that I have seriously misled the Members of the House.

I do not desire to engage in a poison pen campaign with Mr. Tobin of the National Sand & Gravel Association. I do, however, wish to place in the RECORD evidence of the way a particular organization endeavors to deal with the U.S. Congress. I leave it to the Members of this House to draw their own conclusions; unreliable, shoddy quibbling, waffling, misrepresentative, or some other more apt term.

Organizations such as the National Sand & Gravel Association can perform a vital service to the U.S. Congress, to the appropriate administrative agency, as well as to their own membership. But this assumes a position of trust and fair dealing on the part of all participants. If an industry association loses its reputation for honesty and truthfulness, unfortunately everyone loses. But most significantly, the members of the organization who have chosen that organization to act on their behalf, bear the heaviest burden since they lose the services of what otherwise could be an effective spokesman for their interests.

In my remarks to the House, both today as well as on August 25, 1980, I made a factual recitation based on the evidence before the subcommittee. Mr. Tobin may not like the evidence, but it ill behooves him to initiate a personal and totally unwarranted attack on me and the subcommittee.

Mr. Tobin's letter follows.

NATIONAL SAND & GRAVEL ASSOCIATION,
Silver Spring, Md., September 3, 1980.

Hon. JOSEPH GAYDOS,
Chairman, Subcommittee on Health and Safety, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: It is exceedingly unfortunate that in the heat of the debate on the House floor on August 26, you seriously misled the Members of the House with respect to the sand and gravel industry and the situation surrounding our effort to be transferred from MSHA to OSHA jurisdiction.

You told the House "MESA was transferred to the Department of Labor lock stock and barrel * * *". As Chairman of the Subcommittee that wrote the legislation, you know very well that there is no factual resemblance between the old MESA and the much more severe and restrictive Mine Safety and Health Act which is simply an extension of the Coal Mine Safety Act. Referring to our position, you said: "Today, however, they would have us believe that such operations are not mining operations." We have never made any such contention. We do firmly believe that there is a very great difference between the surface mining of sand and gravel and traditional coal mining operations. You then implied that we have only recently decided that we wanted to be under OSHA jurisdiction when you said: "Yet, it appears that the sand and gravel industry now wishes to switch its affiliation to OSHA." The implication of this remark is totally inaccurate as your own Subcommittee's records show.

When the Congress first began serious consideration of what were then predecessor bills that would ultimately become the Mine Safety and Health Act, the Board of Directors of the National Sand and Gravel Association unanimously adopted in September 1973, and then subsequently unanimously reaffirmed in September 1975, that: "First and fundamentally, the Association opposes any change in the present Federal safety enforcement system which places the sand and gravel industry under the Federal Metal and Non-metallic Safety Act of 1966 with responsibility and enforcement under the jurisdiction of MESA within the Department of the Interior; second, if the Congress, despite all efforts to the contrary might insist on transferring Federal safety enforcement to the Department of Labor, the sand and gravel industry should be transferred to OSHA jurisdiction." That position was first urged upon the Subcommittee on Manpower, Compensation and Health and Safety of the Committee on Education and Labor in a statement submitted by Marion W. Bevard, Chairman of the Safety Committee of the National Sand and Gravel Association on October 9, 1975. To further emphasize our desire to be transferred to OSHA if safety jurisdiction over our industry was transferred to the Department of Labor, I filed, as President of the Association, a supplementary statement with that same Subcommittee on October 14, 1975. This position of the Association was reaffirmed in a statement submitted to the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare in May 1976 by John L. Curtis, then Chairman of the Safety Committee of the National Sand and Gravel Association.

This Association has clearly, therefore, been on record before both the House and Senate in favor of OSHA jurisdiction for the sand and gravel industry since 1975-76. The policy of the Board adopted in 1973 has not changed and we have never taken any other position in any statement before the Congress. I told your Committee in my 1975 statement that "a high percentage of the sand and gravel operations in the United States have related manufacturing operations on their premises which are already subject to OSHA's jurisdiction, including ready mixed concrete plants, asphalt plants, concrete block plants, prestressed and precast concrete plants and concrete pipe plants, all of which are presently subject to OSHA jurisdiction." That statement remains true today.

I should also point out, although I assume you know from your personal knowledge of the Pittsburgh area, that a substantial portion of the sand and gravel industry consists of marine operations, operations which are on the face of it therefore incompatible with regulations for underground mining. The U.S. Bureau of Mines, in its latest Minerals Yearbook, indicates that 17 percent of all sand and gravel operations in the United States are marine dredging operations. However, this 17 percent produces almost 30 percent of the total sand and gravel production in the United States. To apply an underground mine act to marine dredging operations on the waterways is simply not feasible or workable.

You also gave the House on August 26 certain statistics concerning the safety record of the sand and gravel industry. The implication left by your recitation of those statistics was that the sand and gravel and surface stone industries are exceptionally hazardous. The difficulty in discussing safety statistics is that even one accident is too many. Nevertheless, based on data published by the Bureau of Labor Statistics from information supplied by MSHA and OSHA, the safety record of the surface stone and sand and gravel industries compares favorably with that of American industry as a whole.

Based on MSHA statistics, the sand and gravel and surface stone industries were responsible for 68 percent of the fatalities in the surface metal and nonmetal mining industries. What you neglected to say was that 64 percent of the total man-hours in the surface metal and nonmetal mining category were worked in the surface stone and sand and gravel industries. In the broader category of all metal and nonmetal mining, the stone and sand and gravel industries were responsible for 53 percent of the total fatalities in the total metal and nonmetal mining industries, but accounted for 48 percent of the man-hours worked. These MSHA statistics make it clear that our accident record is very close to the average for the metal and nonmetal mining category.

If our accident record is representative of the metal and nonmetal mining category as a whole, then the next question is—how do these industries compare with industry accident rates in general? The Bureau of Labor Statistics, using data furnished by MSHA and OSHA, has published statistics on lost work days due to injuries and illness per 100 full-time workers. In 1978, that rate for nonmetallic minerals, which included stone, sand and gravel, was 6.8 work days per 100 full-time workers. This compares favorably to the rate for the entire private sector of 9.2 lost work days per 100 full-time workers. It compares even more favorably with the 11.3 lost work day rate for mining in general, the 19.3 lost work day rate for anthracite mining and even the 7.4 percent rate for the retail trade industry. In short, contrary to the impression you left with the House on August 26, the sand and gravel industry's accident record compares very favorably with general industry experience.

You told the House that 17 organizations oppose the amendment transferring our industry from MSHA to OSHA. You named those 17 organizations, but you failed to give the House any further explanation. This was manifestly unfair since four of those organizations, the National Association of Home Builders, the Sheet Metal and Air Conditioning Contractors, the National Construction Employers Council and the Flintkote Cement Company all actually endorse the merits of our amendment and were only opposed to its being included as a part of the ERISA legislation. As a matter of fact, you were totally in error in connection with the Flintkote Company which supported the amendment even as a part of the ERISA legislation. Executives of that company have written numerous Members of the Congress urging their support for the amendment. The correct Flintkote position on this amendment can be readily documented by Members of the Congress who have received such correspondence, or by checking with the management of the Flintkote Company.

Of the remaining 13 organizations on your list, four are manufacturers of portland cement. I am assured by the President of Atlantic Cement Company that his company does not oppose the amendment. We are attempting to check with the remaining three cement companies to ascertain their exact position.

Seven of the remaining nine organizations you named are union organizations. It is curious that none of these seven union organizations represent a significant percentage of the union employees in the sand and gravel industry. Among employees of the sand and gravel industry, the union with far and away the largest representation is the Teamsters Union, followed by the Operating Engineers, and then by the Laborers. These latter three international unions rep-

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resent an overwhelming majority of our union employees. The combined membership of the seven unions you named does not amount to even three percent of the employees in the sand and gravel industry.

I am sure you are aware that the three principal unions representing our employees have not appeared in opposition to our amendment in any of the oversight hearings in either the House or Senate. The principal union opposition has come from the Steelworkers and the Mine Workers. The only logical explanation for the motives of these two unions in offering opposition, since they do not represent any significant percentage of our employees, has to be either that they mistakenly fear that somehow the amendment will destroy MSHA, or they have ambition to extend their representation at the expense of unions which have historically represented our employees.

I note that the Maritime Department of the AFL-CIO is one of the unions you named. Lest there be confusion concerning the maritime sand and gravel operations to which I referred earlier, please be advised that the overwhelming majority of our union employees on our dredges are represented by the Operating Engineers. The employees on our towboats are not presently covered by MSHA. The Coast Guard has jurisdiction over our towboats.

Of the remaining two organizations on your list, I am at a loss to understand the supposed opposition of the National Coal Association unless that organization, like certain of the unions, mistakenly fears that the simple transfer of our industry to OSHA somehow poses a dire threat to the continuation of MSHA. In any event, the National Coal Association has absolutely no relationship of any kind with the sand and gravel industry and their opposition is therefore totally irrelevant to the merits of the proposal.

The final organization on your list was the National Limestone Institute. I do not question the fact that that organization opposes the amendment, but in their case you also said: "The National Limestone Association (Institute), which has more members than all other national aggregate associations put together . . .". I am familiar with the membership roster claimed by the National Limestone Institute. I assume you relied in good faith on claims made by the National Limestone Institute. Nevertheless, this claim is not only an outright falsehood, but is at variance with the true facts by such a wide margin that one can only feel shocked disbelief that anyone would have the outrageous gall to make such a claim to the Congress of the United States. It is so far from the truth that we cannot accept any explanation of honest mistake or inadvertent error.

Much more relevant, however, than simple size of organizations in matters of safety legislation is the question of which organization represents the largest number of workers who will be affected by such legislation. The membership of the National Sand and Gravel Association alone employs a substantially larger number of workers than the members of the National Limestone Institute. It is, therefore, most misleading to attribute to the National Limestone Institute a significance it simply does not have in the aggregates industries.

In conclusion, I recognize that from the outset you have been honestly opposed to the transfer of the sand and gravel industry from MSHA to OSHA jurisdiction. Through your position in the House, you have succeeded for almost two years in preventing consideration of our exemption legislation despite the fact that the proposal has 218 cosponsors, an absolute majority of the House of Representatives. It was particularly unfortunate and unfair, however, that your remarks will tend to mislead the House on the matters discussed above.

Sincerely yours,

KENNETH E. TOBIN,
President.●

ENGLISH INTRODUCES LEGISLATION TO ENCOURAGE INCREASED UNITED STATES-CANADIAN COOPERATION ON GRAIN EXPORT POLICIES

HON. GLENN ENGLISH

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ENGLISH. Mr. Speaker, on July 26, 1980, a meeting was held in Ottawa, Canada, between Members of the U.S. Congress and the Canadian Parliament. The meeting was held under the auspices of the Canada-United States Interparliamentary Group to discuss cooperation in developing policies to end the export of wheat at prices below farmers' costs of production.

Members from the House of Representatives besides myself who attended the meeting were Representatives STANGELAND, HIGHTOWER, STENHOLM, DASCHLE, HANCE, MARLENEE, and JEFFRIES. Members of the Senate attending were Senators ZORINSKY, BELLMON, MELCHER, MCCLURE, and PRESSLER.

The focus of the discussions was not to propose drastic alterations in the wheat marketing system of the United States or Canada. Quite differently, the discussion focused on gaining a better understanding of each country's marketing system in order to provide better cooperation through existing market structures.

The United States and Canada continue to account for about two-thirds of all wheat traded in international commerce. Wheat exports from the United States alone have doubled in the past decade, in large part due to efforts by farmers themselves through organizations such as U.S. Wheat Associates. It is clear that these exports have contributed significantly to the United States balance of payments, and have been a major means of offsetting large U.S. trade deficits.

However, as wheat exports have continued to increase, so has farm debt, and more and more farmers have been forced out of business by producing large amounts of grain at a loss.

The efficiency and productivity of American grain farmers are being exploited to enhance our balance of payments while at the same time providing wealthy industrial nations such as Japan and the Soviet Union with a cheap source of food. An increase in the world price for wheat would not significantly decrease our exports to developed countries since Japan and the European Economic Community impose substantial import levies.

These are some of the considerations that have prompted the continuation of discussions between Canada and the United States concerning wheat export policy.

As a result of our discussions in Ottawa, the legislators from both countries agreed that there is a definite need to improve cooperation between the major wheat exporters, and to end the export of wheat at prices below the cost of production.

To reach this specific goal, both groups agreed to recommend to their respective legislative bodies that a joint Canada-United States commission be established. For that purpose I am today, along with my colleagues who attended the meeting in Ottawa, introducing a resolution for the establishment of such a commission.

Mr. Speaker, I ask unanimous consent that the text of this resolution be printed in the RECORD at the conclusion of my remarks.

H. CON. RES. —

A bill expressing the sense of the Congress with respect to the export of wheat, and for other purposes

Whereas current world market prices for wheat are below the cost of production;

Whereas more than one-half of all wheat produced in the United States is exported;

Whereas Canada and the United States together supply approximately two-thirds of the world wheat trade;

Whereas the four principal wheat exporters supply more than 80 percent of the world's wheat exports;

Whereas wheat exporting countries have traditionally carried a disproportionate share of the world's wheat reserves, resulting in higher costs for United States wheat producers;

Whereas expanded and improved storage, processing, and distribution facilities in wheat importing countries would increase wheat utilization capacity, and thereby increase the total world wheat market: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that there should be established a Joint Canada-United States Wheat Export Coordinating Commission (hereinafter referred to as the "Commission"), the purpose of which shall be to develop mutual policies whereby each participating country shall—

(1) end the export of wheat at prices below the cost of production;

(2) promote long-range market development;

(3) increase commitments to food assistance programs; and

(4) encourage wheat importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves.

Other major wheat exporting nations should be invited to participate in the activities of the Commission.●

AMERICA'S ABUSED COASTLINE

HON. BOB EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. EDGAR. Mr. Speaker, Time magazine recently carried an article on

the problem of coastline erosion and overdevelopment. The article speaks for itself on this important land management and water policy issue.

The article follows:

AMERICA'S ABUSED COASTLINE

Sweeping south from the chilly waters off Maine and Washington to the warm undergirth along the Gulf of Mexico, the shoreline of the U.S. runs for 53,677 miles—and that figure does not include the lengthy coasts of Alaska and Hawaii. But not all is sandy beaches, sun-tanned bodies, squawking gulls and imposing cliffs. Increasingly, the American coast is becoming a victim of its own magnetism: it attracts heedless development that is fouling its beauty, undermining its ecological importance, and crippling its ability to stand up to nature's winds and waves.

That is the message of the Coast Alliance, an amalgam of environmental organizations and fishing interests that aims to spare the shores from further abuse by man. The Alliance helped persuade President Carter to endorse 1980 as the Year of the Coast, as part of a program to increase awareness of the problems of the nation's abused shoreline.

During a so-called Coast Week last month, would-be saviors of the shores staged several events, among them a "surf festival" in Orange County, Calif., 4-H in Michigan and Wisconsin, and a sand castle-building contest between Alliance activists and the U.S. Army Corps of Engineers at Bethany Beach, Del. The engineers' castle lasted longest, but all the entries, naturally, crumbled eventually—symbolic evidence of the folly of building on dunes and beaches. It was good fun, but it also helped draw attention to the overdevelopment, worsening pollution and mismanagement of resources, which are combining to foul the coasts.

All these perils are apparent to any shore-bound summer tourist. On Massachusetts' Cape Cod, four-wheel-drive vehicles have deeply rutted broad stretches of beach. On New York's Long Island and the New Jersey shore, vacation cottages overcrowd once pristine dunescapes. From those states southward, the Atlantic shore, with scattered exceptions, seems destined to become a stretch of boardwalk and pizza-parlor tackiness.

Near Fort Myers, Fla., a relatively new barrier island heaped up by the sea has attracted developers who want to link it to the mainland with a causeway; that, says Florida Environmental Consultant Dinesh Sharma, "would ruin the entire key." To the west in Louisiana, near Baton Rouge, landowners eyeing big profits from rich agricultural holdings support a plan that would fill in backwater swamps. Conservationists are fighting the idea, saying it would dry up an ecologically valuable resource.

Along the 7,863-mile Pacific littoral, where "coast line consciousness" is probably higher than anywhere else in the U.S., the Interior Department is planning to open 1.3 million acres on the Outer Continental Shelf to oil exploration. This is sure to set the stage for another classic confrontation between the conflicting needs of safeguarding the environment and extracting vital natural resources. As with most environmental issues, the battle over the coast pits those who would exploit it further against those who would stop fiddling altogether with the littoral and its complex system of wetlands and estuaries. The need for growth, which brings jobs, profits and tax revenues, often argues powerfully for development.

For many of the save-the-coast people, a slender volume titled The Thin Edge, published in 1978 by Environmentalist Anne W. Simon, 66, is something of a bible. The book is an expansion of Simon's earlier No Island Is an Island, which dealt with the environmental ordeal of Martha's Vineyard, the island off Massachusetts on which she summers. In Edge, she writes: "In the last ten years, the coast's magnetic pull has become stronger than ever—more industry, more oil, more people, hotels, motels, boatels, more sewage, more waste. The coast is informing us that there is a saturation point beyond which its natural functions no longer flourish, often diminish, or simply cease."

The book adds little to what a well-informed conservationist may already know. But for the layman, it paints a disturbing picture. The issues, as Simon and the Coast alliance see them:

WETLANDS

Those low, swampy areas along the East and Gulf coasts are better preserved than drained and built on. They absorb floodwaters and provide food for millions of minnows and shrimp, which in turn feed larger creatures. An acre of salt marsh in Georgia produces ten tons of dry organic matter every year, *vs.* just four tons for the most fertile hayfield. Nonetheless, 40 percent of the nation's wetlands have been destroyed by public and private development. Yet this attrition is slowing: as the natural benefits of wetlands become better understood, laws are being passed to protect them. Even the dam-building Corps of Engineers, which environmentalists blame for much reckless destruction of wetlands, now concedes that in some instances swamps control floods better than it can.

POLLUTION

Oil is the biggest offender, and not just in obvious ways like fouling beaches. Lobsters, for example, have a sweet tooth for the rich hydrocarbons they find in globs of oil off the New England coast. As oil spills and exploratory oil digs increase, some environmentalists fear that lobsters' migratory and mating patterns may be affected. Says Coast Alliance Executive Director Bill Painter: "There are thousands of little spills every year that experts think are a great danger to the environment. Those spills add up."

ACCESS

More than 90 percent of the U.S. coast (excluding Alaska) is privately owned, and some of the remainder is controlled by the military and is strictly off limits. Only about 5 percent is open to public recreational use, meaning that Americans have available to them just one acre of beach for every 1,450 citizens—roughly the population density of parts of Long Island's jam-packed Jones Beach on a hot summer Sunday. In some parts of the country, the squeeze is even tighter: in the South, there is only one acre of swimming beach for every 3,080 people. The need for open beaches is sure to rise: more than 50 percent of the population now lives in the counties clustered along the coasts, and some demographers expect that figure to reach 75 percent by the end of the decade.

SHIFTING SANDS

The environmentalists' ultimate antidevelopment argument, which even Corps of Engineers officials privately salute, is that nothing built by man can stand up permanently against the natural forces at work on the coasts. Beaches are always on the move, which is how they parry the mighty pounding of the ocean. Some barrier islands shift position entirely over the course of a century, while still protecting the mainland beyond by absorbing the force of the waves. Builders ignore this when they erect towns on the edge of the sea. So do those who construct groins intended to stop the movement of the shores. After Hurricane Allen ravaged barrier islands off Texas in August, developers pushed ahead with plans to construct 15 new condominiums and hotels on the southern end of Padre Island.

Making matters worse is the fact that when disaster strikes in the form of storms or floods, Government agencies and the National Flood Insurance Program help rebuild what will almost surely be destroyed again some day. There is some movement, though, to end such nonsense. Well along in Congress is a bill that would cut off Government subsidies for developing barrier islands off the coast. In addition, the 1972 Coastal Zone Management Act supplies money to states to help them set up programs for their shorelines. So far, though, only 19 of the 35 coastal states and territories have drawn up federally approved plans, which specify what land and water uses will be permitted. Some states are taking stiffer action.

None of these belated governmental efforts really satisfies Environmentalist Simon. Says she: "The original initiative to rescue the shorelines has gotten all wound up in bureaucracy. Unless we quickly find a way to remove the coast as a source of profit, we're not going to have a functioning coast." Simon would like to see the U.S. emulate Sweden, which has protected thousands of miles of shoreline for free public use. With so many vested interests, that may not be possible in the U.S. now. It may take the relentless pounding of the sea itself, which knows no constituency, to bring about reform.—By John S. DeMott. Reported by Peter Stoler and Philip Faflick/New York.●

ECONOMY ON TURBULENT FLIGHT

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, one of the reasons that many so-called experts in recent years have wanted to further regulate the American economy is to prevent us from having booms and busts in the economy. This regulation, we are told, is necessary to protect the "little man." It is true, under the free enterprise system, that ups and downs in the economy can and do occur. However, as Prof. Hans Sennholz, of Grove City College, Pa., so aptly wrote in Private Practice magazine for August 1980, Government meddling and over-regulation of the economy creates an even bigger rollercoaster effect with dire consequences for everyone. The symptoms of the disease become even more exaggerated when government is the cause. Therefore, I commend this article to the attention of my colleagues who really wonder how inflation might best be solved:

ECONOMY ON TURBULENT FLIGHT

(By Hans Sennholz, Ph. D.)

The American economy is like a plane piloted by a student pilot on his first instruction flight. When he discovers that the

plane is climbing gently he pushes the stick forward, which causes the plane to enter a dive. With his heart in his mouth he quickly pulls the stick back, which causes the plane to climb sharply. Once again, he pushes the stick forward and causes a dive. The movements become more violent, the dives steeper and the climbs sharper, until the instructor can suffer no longer and orders him to release the controls. The plane then straightens out by itself and assumes a level flight.

With the Carter administration at the controls of the American economy it would appear we are on just such a novice flight. Until February of this year we were climbing briskly with feverish economic activity and rapidly rising prices. In March, we went into a steep dive with violent crashes in bonds and stocks, commodities and even precious metals. In April, we turned upward again and have been climbing ever since toward a new inflationary peak. In September or October, at the latest, we must brace ourselves for a fall that may take us to new lows in economic activity.

The erratic behavior of the American economy verifies the old maxim about the private property economy—free and unhampered, it is calm and stable, but when mangaged by central planners and politicians, spasmodic and erratic. Planners like to spend and stimulate in order to generate an economic book, for which they are eager to take full credit. Massive deficit spending financed by easy money and credit generates a boom euphoria. Plans are made and costly projects are undertaken because of easy money and low interest costs. But the stimulation does not come from genuine savings and investments: it is induced artificially, benefitting some people at the expense of others. It causes illusions and hallucinations, called economic maladjustments. In turn, these cause painful withdrawal symptoms when the stimulant is withdrawn or when it loses its effectiveness. In economic life, the withdrawal pains come in the form of recession pains signaling a readjustment and return to normalcy.

A recession is painful but inevitable once inflation has caused a disorder. It led to the credit crunch in March, which prompted the leading economic indicators to suffer their biggest drops since the 1974-75 recession. Unemployment rose faster than at any time since World War II. But lo and behold, with the downturn barely a month old, the federal authorities pulled up again in utter panic about the coming depression. The Federal Reserve System supplied new credits, interest rates tumbled and the dollar turned weaker again in international money markets. After a brief respite, primarily as a result of the commodity market crash in March, the inflation is soaring again.

The erratic behavior of the American economy is further aggravated by the crushing load of new taxes imposed on the people by the Carter administration. Through further capital consumption and lower production the taxes are destined to lift all prices. Total budget receipts are expected to rise from $502 billion in 1980 to $628 billion in 1981 by far the biggest tax boost ever in any one fiscal year. The increased revenues are flowing from the soaring inflation, which pushes everyone into higher income tax brackets, and from the windfall profit tax on oil production—the crowning folly of the Carter administration.

When taxes are rising and goods prices are soaring, purchasing power income is falling. In 1979, the average American suffered a loss of some 7 percent in his level of living. In 1980, he must expect to suffer a similar decline. Investors clinging to their monetary savings lost even more to double-digit inflation.

Some knowledgeable investors seek to escape the ravages of taxation and inflation through personal adjustments. Shunning all forms of money, and claims to money, they seek refuge in real assets, such as real estate, gold and silver, art objects and antiques, diamonds, jewelry, etc. They seek to escape through tax "loop-holes" by converting income to tax deductions. No matter how successful they are, they, too, may get hurt in the end. The economic ride will become ever more violent and the taxes more confiscatory, making escape ever more difficult. Moreover, economic upheavals breed social unrest and political radicalism, which ultimately may block all routes of escape even to the most clever investor.

Most Americans are suffering in silence. They feel helpless and defenseless from the inflation and bewildered and dazed from the stall-and-dive flight of the economy. While it's easy to be sympathetic with the millions of innocent victims, the fact cannot be dismissed that the majority of the American electorate chose this economic pilot. Our duly elected representatives make the laws, raise the taxes, conduct inflation and generate the booms and busts. In a democratic society, like ours, there is no one to blame but the people themselves.

Economic policies conducted according to majority vote reflect the hopes and aspirations of the majority. They are the transcript of economic and social ideas in the hearts and minds of most people. Ideas control the world. Therefore, we must finally place the blame for inflation and taxation, booms and busts, on certain thought leaders, on professors and preachers, authors and editors, speakers and commentators, who are disparaging economic freedom and extolling control and regulation by political force. They blithely ignore discussion of inexorable economic principles and what has been said by economists in the last 200 years. They exhort businessmen and professionals to limit their profits and reduce their fees, to lower prices and raise wages, as if such behavior would resolve our problems. In the end, they always urge politicians to take command and use the police to enforce their orders.

Under the influence of these leaders our government has become a universal transfer agency that utilizes the political process for distributing vast measures of economic income and wealth. Through inflation and taxation government preys on millions of people in order to allocate valuable goods and services to its favorite voters and beneficiaries. With the latter, transfer programs are so popular few public officials and politicians dare oppose them.

A free society that is not utterly corrupted by the promises of transfer may yet avert the ultimate disaster—economic chaos and civil strife. It may break its fetters of welfare by political force and cure itself of the political evils now endangering economic prosperity and social peace. It may leave the road to political omnipotence and return to individual freedom.●

Rx

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BROWN of Ohio. Mr. Speaker, my very good friend, Dr. Ray W. Gifford of the Cleveland Clinic in Cleveland, Ohio, has sent me a poem which perfectly expresses a sentiment I have felt often as I have participated in many of the great debates we have had in this Chamber. It was written by Dr. Russell Roth, former president of the American Medical Association, and I commend it to the attention of my colleagues.

Rx

Our congressmen need a strong blast
To remind them that in the years past
Their ancestors fled
From their homelands in dread
Of the same kind of laws they've just passed.●

THE CIA AGAINST THE CONSTITUTION

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. EDWARDS of California. Mr. Speaker, last week the House Judiciary Committee reported favorably, over my opposition and that of a number of the committee's senior Democrats, including chairman PETER RODINO, H.R. 5615, the Intelligence Identities Protection Act. The Intelligence Committee reported the identical bill in July.

Since the Judiciary Committee's action, there has been an outpouring of opposition among the Nation's newspapers, editors' and publishers' associations, and other groups who will be affected by this legislation. The heart of their opposition—and mine—is 501(c) of the bill which makes it a crime for anyone to disclose any information which identifies a covert employee, informant or source, even if that information is based on unclassified sources. I believe this section presents a serious threat to our constitutional guarantees of free speech and free press. But, rather than speak for those most affected, I will let them speak for themselves in the following articles, editorials, and letters.

[From the Washington Post, Sept. 7, 1980]

CIA SECURITY PROBLEM IS FOCUS OF BAD U.S. BILL

(By Richard Cohen)

A colleague of mine once wrote a story about a planned meeting of the Ku Klux Klan. Being a good reporter, he drove past the meeting place himself, noted the address and then wrote a story, giving the location and the proposed time of the meeting. Someone then blasted the place with a shotgun.

That is not much different from what has happened on a couple of occasions to the CIA. A fellow named Louis Wolf, editor of the Covert Action Information Bulletin, has printed the names and addresses of CIA agents in Jamaica and almost before the ink was dry, the home of one agent was shot up there.

The parallel between what my colleague and what Wolf did has nothing to do with any comparison of the CIA to the Klan or even, God forbid, vice versa. It has to do, instead, with how neither one of them intended violence to be the result of what they were doing. Instead, both of them wanted, for reasons of their own, to compile and print information—one for a story, the other for political purposes.

Journalists run into these situations from time to time. It's tragic when this happens, but it's also unpredictable and sometimes unavoidable, and Congress has not yet seen fit to frame a law that would forbid journalists from writing a story that might endanger someone's life. Such a law would be, among other things, unconstitutional.

But Congress has no such compunction when it comes to the CIA. It is now, for instance, considering a law that would make it illegal for anyone to disclose the names of CIA operatives even if the information comes from public documents. The same restrictions would apply to FBI counter-intelligence and counter-terrorist informers.

The bill has two purposes. It is designed to stop former intelligence agents like Philip Agee from leaving the service and then ratting on their erstwhile colleagues. Nothing wrong with that.

But it is also designed to stop people like Wolf, or any journalist for that matter, from disclosing the name of a secret operative "with the intent to impair or impede the foreign intelligence activities of the United States."

It's hard for me, for one, to defend what Wolf is doing. He says his problem with the CIA is not its intelligence-gathering, operation, but its covert operations. He did what he did in Jamaica, he said, when it became apparent to him that the CIA was trying to destabilize the government of Prime Minister Michael Manley and he named names because the only way you can stop the CIA is by stopping its agents—holding them personally accountable for what they do.

So his objection is essentially political. It is therefore a form of dissent and while to many people it might be objectionable or silly, he has a right to say what he wants to say as long as he breaks no law in the process.

On that score, he seems to be clean. No one, not even his most vehement critics, has accused Wolf of getting his information illegally or even unethically. He gets no CIA agent drunk, sleeps with no secretaries, and breaks into no safes. All he does is read the public record. It could be done by others, too—foreign governments, for instance.

The thing for the CIA to do is clamp down, make sure that the information that now finds its way into the public record and, from there, to Wolf, stays within the agency. Instead, it has run to Congress and it, in turn, has given the agency the sort of bill that gives you, if you have even a passing admiration for the First Amendment, the willies. Think for a moment of the kind of mind reading it takes to figure out if a journalist intended to "impair or impede" the CIA.

Still, you might think that when it comes to the CIA and the wonderful work it does, that a little loss of freedom would be worth it. The problem is that this is the same CIA that went off half-cocked a little while back, got itself confused with the FBI, had an identity crisis in which it saw its aims as synonymous with God and Country, bugged Americans, spied on them, opened their mail, trafficked in character assassination and was used by Richard Nixon as a substitute for truth when he got into trouble on Watergate. To "impair or impede" *that* CIA is a patriotic obligation.

Now, if I may, I would like to return to my colleague and the story he wrote about the Klan. It turned out that the shots were fired at the meeting place some 15 minutes before the paper hit the streets. The story could not possibly have caused what happened.

Wolf makes somewhat the same claim for himself. He doesn't think he is responsible for the Jamaica shooting.

Maybe, maybe not. It's hard to tell. But what's not hard to tell is that if this law is passed, it will stay on the books long after Louis Wolf is gone and the reason for its enactment is a bad law and yet another example of the CIA botching matters. It shot at Louis Wolf and hit the First Amendment instead.

[From the Los Angeles Times, Sept. 5, 1980]

UNWISE, UNCONSTITUTIONAL—AND UNFAIR

Despite the opposition of its chairman, Peter W. Rodino Jr. (D-N.J.), and other ranking members, the House Judiciary Committee approved a bill Wednesday that would make it a crime to disclose any information, even if obtained from unclassified sources, serving to identify Central Intelligence Agency officials working abroad.

We believe that the bill, as applied to private persons with no access to classified information, is, first, unwise and, second, unconstitutional. If the legislation, approved in slightly different versions by the House and Senate Intelligence committees, is enacted, we have no doubt that it will be challenged in court as a violation of the First Amendment.

The bill has two provisions. One would make it a crime for a government offical or a former government official who had access to classified material to disclose the identities of CIA agents. Stiff penalties would be provided—10 years in prison and a $50,000 fine.

But the statute also would permit the prosecution of any journalist or other "outsider" who disclosed the name of a secret operative "with the intent to impair or impede the foreign intelligence activities of the United States." The bill provides maximum penalties for this offense of three years in prison and a $15,000 fine.

The language of this section lends itself to broad interpretation. Rodino and his supporters argued that, had the proposed law been in effect at the time of the Watergate break-in, it would have prevented the investigation and disclosure of the CIA connections of some of the Watergate burglars. A zealous prosecutor could apply the provision to a journalist who disclosed an agent's identity in revealing intelligence agency abuses.

The Justice Department, testifying on the legislation earlier this year, raised doubts about the constitutionality of punishing private citizens for obtaining and publishing information in the public domain. This provision, the Justice Department suggested, could "chill speech" by those critical of CIA operations.

The impetus behind the measure stemmed from the angry reaction against a Washington newsletter than has disclosed the names of officials identified by it as CIA agents. The newsletter's staff asserts that all its information comes from unclassified public information, and that, furthermore, not one CIA agent has been harmed as a result of such disclosures. But exposure of the agents for the sake of exposure is not a tactic that earns our admiration, and such disclosure could, of course, put the lives of intelligence agents in danger.

Yet the law could be used, as the Justice Department noted, to impair free speech and intimidate CIA critics. We believe that no law that punishes the communication of publicly available information will stand up in the courts.

NATIONAL NEWSPAPER ASSOCIATION,
September 5, 1980.

Hon. PETER RODINO,
Chairman, Judiciary Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We are writing to you as representatives of several media organizations which are seriously concerned with section 501(c) of H.R. 5615, the Intelligence Identities Protection Act. In our opinion, section 501(c) is fatally flawed from a constitutional standpoint, impinging upon First Amendment rights in a manner which may be unprecedented. Although a majority of your Committee agreed on September 3 to report out H.R. 5615, including this section, we must respectfully urge that the potentially grave implications for the First Amendment call for much additional deliberation.

We have today written to the Speaker of the House, with copies to all Members, outlining our major difficulties with this section. Enclosed, for your convenience, is your copy. But we wish to take this opportunity to elaborate somewhat on those views for you. Our organizations are committed to the proposition that the media have an obligation, flowing from their privileged position under the First Amendment, to provide complete and accurate reports on the performance of all branches of government—reports upon which citizens may base reasoned and informed decisions on public affairs. We believe history makes clear that reporting on activities of intelligence agencies has in many cases been essential to important public policy decisions.

As we emphasize to the Speaker, the members of the media have no quarrel with the aims of securing American intelligence gathering and protecting the lives of American intelligence agents and their families, but we believe that the constitutional principles upon which our commitment is founded cannot be sacrificed to their achievement.

The overriding deficiencies of substantial concern to our organizations are that section 501(c) may well reach the dissemination of news and other constitutionally protected forms of speech, and that it fails to distinguish between classified and unclassified information as a source for exposing agents' identities.

Potential foreseeable consequences stemming from the wording of this section include the prosecution and punishment of members of the media and others who identify an intelligence agent—including Federal Bureau of Investigation agents involved in foreign counterintelligence and counterterrorism—who, in the course of official duties, has committed an unconstitutional or unlawful act, or has clandestinely violated a presidential foreign policy. Moreover, it may be that an intelligence agent could not even identify him—or herself when discussing any matter, classified or not, with members of the media, historians or anyone else without authorization.

One specific troubling aspect of section 501(c)'s wording is the adoption of an intent standard. Intent, as you well know, is a most subjective standard. Although sometimes difficult to prove, by the same token, it also on occasion can be inferred rather easily from circumstantial evidence of questionable sufficiency. Such inferences could be drawn against journalists and others who have rendered what they believe to be objectively warranted stern criticism of intelligence agencies and projects. To conjunctively or subsequently identify an agent could more than reasonably foreseeably create intense pressures on a jury with respect to intent.

Further, there is no standard included in section 501(c) requiring a showing of "direct, immediate and irreparable harm" to

national security or a "clear and present danger" thereto, or a similar test. Absent some such standard, it is difficult to see any consistency with prior limitations on First Amendment rights found to be constitutional.

With these thoughts in mind, we must ask what would have been the impact on the public's right to know had this section been enacted at the time of the release of the Pentagon Papers, or inquiries into the Watergate burglary? Certainly, it would have raised a formidable barrier to the type of effective reporting which was the hallmark of both cases and the conduit of necessary information to the public.

We strongly believe that rushing to judgment on this bill in the emotional aftermath of the recent Jamaica incident will only obscure the implications for the equally compelling constitutional interest. Therefore, we respectfully urge you to lend your wise counsel to the floor debate on this bill on behalf of preserving full First Amendment rights.

Thank you.

Sincerely,

William C. Rogers, Sr., President, National Newspaper Association; Richard P. Kleeman, Vice President—Washington, Association of American Publishers; Jerry W. Friedheim, Executive Vice President, American Newspaper Publishers Association; Charles W. Bailey, Chairman, Freedom of Information Committee, American Society of Newspaper Editors; Curtis J. Beckmann, President, Radio Television News Directors Association; Jack C. Landau, Director, The Reporters Committee for Freedom of the Press; Robert D. G. Lewis, Chairman, Freedom of Information Committee, Society of Professional Journalists—Sigma Delta Chi.

NATIONAL NEWSPAPER ASSOCIATION,
September 5, 1980.

Hon. THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives, 2231 Rayburn House Office Building, Washington, D.C.

DEAR MR. SPEAKER: The members of our respective organizations are fundamentally concerned with section 501(c) of H.R. 5615, the Intelligence Identities Protection Act, as reported out by the House Judiciary Committee on September 3. In our view, this provision raises serious constitutional questions, representing an unprecedentedly sharp limit upon First Amendment rights. We believe this provision calls for a great deal of additional careful deliberation by the House, and should be opposed as it stands.

Mr. Speaker, the members of the media neither support nor condone the practice of methodically exposing the names of American intelligence agents. But we believe that constitutional principles cannot be sacrificed along the way toward legislatively dealing with the situation. Americans believe in a higher standard, however much they may recoil at a seeming abuse of a right.

Our specific problem remains the one that has plagued this particular legislative effort since its outset: section 501(c)'s current wording does not solve First Amendment difficulties. Regardless of intent, this language could well reach distribution of news and other constitutionally protected forms of speech, including books. And, ominously, it does not distinguish between classified and unclassified information as a source for exposing identities. This would establish an extremely grave precedent by criminalizing the dissemination of information which is already in the public domain. In our view, the proper approach is to improve the security of information bearing on agents' identities from within the government, by better regulating classification and access.

We recognize that there has been a continuing effort by many Members and staff to safeguard American intelligence and intelligence agents while not intruding, in any way, upon First Amendment rights. While section 501(c) represents an improvement over earlier versions, it still appears to be fatally flawed from a First Amendment standpoint. Perhaps reconciling these two imperatives legislatively cannot be done, but certainly it is worthy of further consideration.

Therefore, we respectfully, but strongly, urge that there be no rush to judgment on this section of H.R. 5615. Preserving the First Amendment in the face of the need to protect our intelligence agents is a truly difficult task, but one which can only be done by trying further.

Sincerely,

William C. Rogers, Sr., Richard P. Kleeman, Jerry W. Friedheim, Charles W. Bailey, Curtis J. Beckmann, Jack C. Landau, and Robert D. G. Lewis.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 11, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 12

9:30 a.m.
Commerce, Science, and Transportation
To continue hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate Calendar).
235 Russell Building

SEPTEMBER 15

9:30 a.m.
Judiciary
To hold hearings on pending nominations.
2228 Dirksen Building

10:30 a.m.
Judiciary
Antitrust, Monopoly, and Business Rights Subcommittee
Business meeting, to mark up S. 2798, to provide financial assistance for small business concerns for the acquisition of motor fuel service stations, and to regulate motor fuels sales.
457 Russell Building

2:30 p.m.
Appropriations
Business meeting, to mark up H.R. 7584, appropriating funds for fiscal year 1981 for the Departments of State, Justice, Commerce, and the Judiciary; and H.R. 7583, appropriating funds for fiscal year 1981 for the Department of the Treasury, the Postal Service, and general government programs.
S-128, Capitol

SEPTEMBER 16

9:30 a.m.
Agriculture, Nutrition, and Forestry
Environment, Soil Conservation, and Forestry Subcommittee
To resume hearings to review the progress and assessment of the Resources Planning Act (Public Law 93-378), providing for the orderly development of the renewable resources of forest, range, and associated lands.
1202 Dirksen Building

Labor and Human Resources
To hold oversight hearings on the implementation of longshoremen's compensation programs administered by the Department of Labor.
4232 Dirksen Building

10:00 a.m.
Conferees
On H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.
S-145, Capitol

Energy and Natural Resources
To hold oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

Select on Small Business
Business meeting, to mark up H.R. 5612, to extend through September 30, 1982, certain programs administered by the Small Business Administration to develop small business concerns owned by socially and economically disadvantaged persons, and to clarify and expand the scope of agency reporting requirements, and other pending legislation.
424 Russell Building

•Special on Aging
To hold hearing to examine proposals for possible changes to the social security system.
5110 Dirksen Building

1:30 p.m.
Labor and Human Resources
To continue oversight hearings on the implementation of longshoremen's compensation programs administered by the Department of Labor.
4232 Dirksen Building

5:00 p.m.
Conferees
To resume on H.R. 3904, providing changes in the Employee Retirement Income Security Act (ERISA) regarding insurance provided by the Pension Benefit Guaranty Corporation for pension benefits of employees covered by miltiemployer plans which terminate.
S-206, Capitol

SEPTEMBER 17

9:30 a.m.
Labor and Human Resources
Business meeting, to consider S. 2887, to provide statutory assurance of confidentiality to repondents participating in statistical programs of the Bureau of Labor Statistics; and pending nominations.
4232 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

•Labor and Human Resources
To hold hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.
4232 Dirksen Building

Rules and Administration
Business meeting, to resume consideration of Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.
301 Russell Building

3:00 p.m.
Conferees
On H.R. 2977, authorizing funds through fiscal year 1983 to establish a program to increase participation by States and local governments to prevent domestic violence, to provide assistance to victims of crime, and to establish Commissions on National Youth Service.
H-137, Capitol

SEPTEMBER 18

9:30 a.m.
Agriculture, Nutrition, and Forestry
Foreign Agricultural Policy Subcommittee
To hold hearings to examine ways of encouraging further increases in U.S. agricultural exports in the coming decade.
324 Russell Building

Labor and Human Resources
Business meeting, to consider pending nominations.
4232 Dirksen Building

10:00 a.m.
Energy and Natural Resources
To resume oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

• Labor and Human Resources
To continue hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.
4232 Dirksen Building

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
Business meeting, to mark up title II, providing financial assistance to meet basic, and employment skills needs of secondary school youth of S. 2385, proposed Youth Act, and H.R. 7859, to provide assistance to State and local agencies for the education of Cuban and Haitian refugees.
1318 Dirksen Building

4:30 p.m.
Conferees
To resume on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.
S-145, Capitol

SEPTEMBER 19

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold oversight hearings on the scope of science and technology policy.
235 Russell Building

Judiciary
To hold hearings to review in detail the President's proposal to admit refugees to the United States in 1981, and to receive the President's annual report to Congress on U.S. refugee programs.
2228 Dirksen Building

2:00 p.m.
Conferees
To continue on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.
S-145, Capitol

SEPTEMBER 23

10:00 a.m.
Labor and Human Resources
To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.
4232 Dirksen Building

11:00 a.m.
Veterans' Affairs
To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion.
318 Russell Building

2:00 p.m.
Office of Technology Assessment
The Board to meet and discuss pending business items.
EF-100, Capitol

SEPTEMBER 24

10:00 a.m.
•Labor and Human Resources
To hold oversight hearings on the implementation of the home energy assistance program.
4232 Dirksen Building

10:30 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

SEPTEMBER 25

10:00 a.m.
Commerce, Science, and Transportation
To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

HOUSE OF REPRESENTATIVES—*Thursday, September 11, 1980*

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. NATCHER).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 10, 1980.

I hereby designate the Honorable WILLIAM H. NATCHER to act as Speaker pro tempore on Thursday, September 11, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Lord, bless we pray all who turn to You for hope and deliverance. Specially do we remember those people who know bondage and do not experience the freedom that we celebrate each day. Guard and keep our hostages and support and strengthen their families until they again share in the liberty that is their birthright. Keep us all in Your love this day and every day. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4310) entitled "An act to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes."

The message also announced that the Senate agree to the amendments of the House to the amendments of the Senate to the bill (H.R. 5766) entitled "An act to amend title 10, United States Code, to authorize additional Reserve Officers' Training Corps scholarships for the Army, to provide a certain number of such scholarships for cadets at military junior colleges, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, and for other purposes."

The message also announced the Vice President, pursuant to the provisions of Public Law 96-296, appointed Mr. CANNON, Mr. KENNEDY, and Mr. PACKWOOD, on the part of the Senate, to the Motor Carrier Ratemaking Study Commission.

The message also announced that the Senate disagree to the amendments of the House of Representatives to the bill (S. 2728) entitled "An act to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes," and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon.

Ordered, that Mr. MELCHER, Mr. INOUYE, Mr. DECONCINI, Mr. COHEN, and Mr. HATFIELD be the conferees on the part of the Senate.

The message also announced that the Senate disagree to the amendments of the House to the bill (S. 568) entitled "An act to promote the full use of human resources in science and technology through a comprehensive program to maximize the potential contribution and advancement of women in scientific, professional, and technical careers and to authorize appropriations for activities for the National Science Foundation for fiscal years 1981 and 1982, and for other purposes," and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon.

Ordered, that Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, and Mr. HUMPHREY be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1188. An act to amend title 38, United States Code, to improve and modernize the rehabilitation programs for service-connected disabled veterans under chapter 31 of title 38, United States Code, to increase the rates of rehabilitation, educational assistance, and special training allowances paid to eligible veterans and persons, to enhance employment opportunities for eligible veterans, to establish a veterans' employment and training outreach program, to modify the Post-Vietnam Era Veterans' Educational Assistance Program, to modify the termination date of the current GI bill, to facilitate Veterans' Administration debt-collection efforts, and to clarify the Veterans' Administration's authority to recover certain health-care costs; to authorize expansion of the scope of an epidemiological study regarding veterans exposed to Agent Orange to include additional health factors and require the issuance of guidelines for resolving claims based on exposure to agent orange; and for other purposes.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. COELHO) to revise and extend their remarks and to include extraneous matter:)

Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. PEPPER, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LOEFFLER) and to include extraneous matter:)

Mr. BROYHILL.
Mr. FINDLEY.

(The following Members (at the request of Mr. COELHO) and to include extraneous matter:)

Mr. VAN DEERLIN.
Mr. LUNDINE.

ADJOURNMENT

Mr. COELHO. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 4 minutes a.m.), under its previous order, the House adjourned until Monday, September 15, 1980, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ADDABBO: Committee on Appropriations. H.R. 8105. A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes. (Rept. No. 96-317). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII,

Mr. ADDABBO introduced a bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

SENATE—*Thursday, September 11, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. DENNIS DECONCINI, a Senator from the State of Arizona.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, in whom our fathers trusted, we beseech Thee to bestow upon us a measure of the vision, the strength, and the courage which was theirs. Give us grace and wisdom for the turbulent and stressful days in which we live and work. In the contests of public life and in the transactions of this Chamber help us to learn from both opponents and proponents of the issues. Lead the Nation through tension and out of contention, into the clear light of Thy will, to the dawning of a new age of peace and justice.

May the New Year celebration of some become the harbinger of new life for the many.

We pray in the name of the Master whose ceaseless toil and sacrificial service brought a new radiance to the life of man. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 11, 1980.
To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DENNIS DECONCINI, a Senator from the State of Arizona, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. DECONCINI thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, will the Senator from New Jersey need more time than the 15 minutes accorded under the order?

Mr. WILLIAMS. No.

Mr. ROBERT C. BYRD. Does the distinguished minority whip need any more time?

Mr. STEVENS. Mr. President, if the majority leader will consent and the Senator from New Jersey will not object, I ask that we defer the leadership time until after the Senator from New Jersey has taken his time.

Mr. ROBERT C. BYRD. Very well. I make that request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR WILLIAMS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New Jersey (Mr. WILLIAMS) is recognized for not to exceed 15 minutes.

TRIBUTE TO LEON SCHACHTER, LABOR LEADER

Mr. WILLIAMS. Mr. President, Leon Schachter will be honored at a gala dinner in Cherry Hill, N.J., on September 28, 1980. Hundreds of the greats and near greats in the labor movement, the business community, civic organizations, and politics will sing his praises.

That is not unusual. That has happened to Leon Schachter before.

What is unusual, Mr. President, is that the Cherry Hill dinner will mark the retirement of Mr. Schachter as an international vice president of the 1.3-million-member United Food & Commercial Workers International Union, as the president of the nearly 10,000-member local 56 in New Jersey and Delaware, as the director of the UFCW region 4 and as one of the distinguished leaders of the labor movement in the East.

Leon Schachter has been my friend for several decades. He is an unusually dedicated, wise, imaginative, and hard-working person. His devotion to the labor movement, his pioneering spirit, his organizing abilities, his negotiating skills, his dedication to the underdog have made him into a model for young labor leaders.

Leon Schachter rose from being a worker in a poultry store in Philadelphia to becoming one of the most influential labor leaders in the Eastern United States. He began organizing workers in the midthirties in New Jersey and in the Philadelphia area. He was one of the founders of local 56 and served as its President from its inception until now.

Under his leadership, local 56 not only grew but it became a model for other local unions. It is forward looking and progressive in its policies and its services for its members.

Always the organizer, Mr. Schachter led the unionization of cannery and food processing workers in New Jersey and nearby States. Until then, these workers had been bypassed in the organizing drives of the 1930's.

In 1940, he organized and negotiated a contract with the owners of Seabrook Farm, one of the early corporate farms. He had succeeded where no one else had previously. In fact, his organizing victory was not duplicated until Cesar Chavez' drives in the 1960's. Mr. Schachter built a lasting union among hundreds of farmworkers and won decent wages and working conditions in a series of union contracts.

Always the pioneer, Mr. Schachter helped to solve the manpower shortage which existed in New Jersey fields and canneries during World War II by organizing the recruitment of thousands of unemployed black and white workers in the South and brought them in unsegregated railroad cars to the Garden State.

In 1952, the U.S. Government sent Mr. Schachter to Turkey as the U.S. Labor and Economic Attaché to help organize labor unions. He demonstrated the same skill and imagination he had in the United States. He built unions. He helped to negotiate contracts. He brought peace and conciliation out of hatred in Turkey.

In 1948, Mr. Schachter was elected to the international executive board of the Amalgamated Meat Cutters and Butcher Workmen. His keen intelligence and his strength as a leader soon made him an influential member of the board.

He founded the Amalgamated's Washington office in 1955. Under his leadership, the Amalgamated strongly lobbied for farm labor reform, consumer protection, minimum wage improvement, civil rights legislation, food stamps, and many other pieces of progressive legislation. The union became a leading liberal force in Washington.

He added still another important union responsibility to his already many jobs in 1956. He was appointed the district director of the Amalgamated local unions in the Middle Atlantic area. He soon made this district into the largest in the union.

He headed and supervised numerous organizing campaigns of workers in previously nonunion shops and plants. He

led the contract negotiations for thousands of workers at a time. He solved problems between unions and management and between unions and unions. And he sometimes led very difficult strikes.

Most recently, he was one of the leaders who brought about the largest merger of unions in the Nation. He was a member of the Amalgamated Meat Cutters and Butcher Workmen Negotiating Committee, which together with its counterpart committee in the Retail Clerks International Union, created the 1.3 million member United Food and Commercial Workers International Union. Today, the UFCW is the largest union in the AFL–CIO.

Leon Schachter is now retired, but he is hardly resting. His advice is still eagerly sought by his and other unions. He is currently serving on the Presidential Commission for a National Agenda for the eighties. And he is hard at work at a new interest—seeking with labor and management to improve the quality of life for workers in the workplace.

Mr. President, I must say to you that my friend, Leon Schachter, is a restless man. His mind is always working. He always has to do something. His need for accomplishment is endless. He is always on the go.

This great energy, imagination, ability, dedication, and work is aimed at helping other human beings. He has a particularly well-developed devotion to the underdog. He stands at the side of the needy.

Leon Schachter has done many great things for workers and for so many other Americans. Even though he is now officially retired. I know he will create many more new achievements. I do not believe that the Leon Schachter I have known so long can really retire.

I wish him and his wife, Bernice, all the best in the coming years. I join the hundreds who will gather in Cherry Hill on September 28 in saluting him and her.

Mr. President, I am very proud to claim Leon Schachter, this able, dedicated, and imaginative labor leader, as my good friend.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator needs more time than his order allows, I ask unanimous consent that such time as I have under the standing order be transferred to his control.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WILLIAMS. I am grateful to the distinguished majority leader.

APPROPRIATION BILLS

Mr. WILLIAMS. Mr. President, it is the time of the year again when Congress turns its attention to appropriation bills. Unfortunately, it is already clear that in our consideration of these appropriation bills, we will once again be compelled to deal with amendments which purport to restrict the ways in which the agencies can spend their funds. In fact these amendments, if enacted, will constitute significant alterations in statutory programs.

I am talking about the so-called appropriation riders, an annual rite of autumn around here.

The Senator from Washington (Mr. MAGNUSON) will have his extraordinary patience pushed to the absolute limit. He will have to sit here, day after day, as the special interest groups line up and try to accomplish, through the medium of the appropriation rider, what they could not accomplish through the traditional legislative process.

Mr. President, I have stood here in this Chamber before, and I have said that this is not the way a great, deliberative legislative body should function. This is no way to make effective law.

There are a number of reasons why the Senate should reject, out of hand, these appropriation riders when they are offered.

First. They are an insult to the legislative process. We have a system here, we have procedures, and we have rules. And if these rules and procedures have any purpose at all, if they have any purpose other than to amuse and bemuse the public, then that purpose is to encourage the orderly, reasoned consideration of legislative proposals, when we routinely consider and adopt appropriations riders, then we are admitting that we have no confidence in the Senate and in ourselves, no confidence in our ability to develop rational legislative programs.

Second. These things proliferate. They grow like a cancer. Their very number, the readiness with which some Members have resorted to this tool to attack substantive provisions of law, cheapens it and renders the funding limitation impotent as a means by which the Congress can express its displeasure with agency operation.

The appropriation bill for the Departments of Labor, Health and Human Services, and Education for fiscal year 1981, as it passed the House of Representatives on August 27, 1980, had dozens and dozens of such limitations on the use of the appropriation. Limitations in such numbers become little more than a challenge to the agencies in evasion. When we complain about our inability to make the agencies responsive to our wishes and directions, we need only look at ourselves, and our abuse of the legislative and the appropriations processes for the explanation.

Third. We are rapidly losing sight of the forest for the trees. Last year, in the end, we did not even enact an appropriation bill for the Departments of Labor and Health, Education, and Welfare. It was not because the Senator from Washington, the most distinguished chairman of the Committee on Appropriations, did not present the Senate with a bill for its consideration. Certainly nothing could be farther from the truth. The Senator from Washington held hearings well in advance. He carefully studied the testimony of the witnesses. With his usual care, he brought to the Senate a bill which provided sufficient funds for those Departments.

But it was not the amount of funding which prevented enactment of that appropriation bill. There was no Labor-HEW appropriation bill last year because, after months of consideration, there could be no agreement on the rider dealing with abortions. So we lost the appropriation bill not because we could not come to an agreement on the amount of funds to be appropriated, but because we got locked into a battle of wills over the rider dealing with abortion policy.

Fourth. And in my mind, Mr. President, probably the most important—appropriation riders are often offered with no advance warning and with little explanation. They are taken up in circumstances where they cannot be carefully considered and are unlikely to be fully understood. For these reasons, appropriation riders make bad law. We adopt appropriation riders without understanding their full impact and effect, and we make bad law.

Mr. President, when we sidestep the rules that we ourselves have established to insure careful consideration of legislation, to prevent mistakes, we inevitably make mistakes.

Mr. President, just 2 weeks ago the House of Representatives, in considering the bill appropriating funds to the Labor Department, adopted yet another appropriation rider. And it made another such mistake.

The route toward that error is well traveled. We have traveled it ourselves. The amendment was offered in the closing minutes of debate. It was unprinted. It had not been circulated in advance. There was insufficient time to study it, and to understand its effect. It was passed without the benefit of a rollcall vote.

Following this route, the House of Representatives adopted an amendment to the appropriation for the Labor Department's Mine Safety and Health Administration (MSHA). The amendment, quite simply, says that none of the funds appropriated to MSHA shall be used to "prescribe, issue, administer, or enforce any standard, rule, regulation or order with respect to any person engaged in the surface mining of stone, clay, colloidal phosphate, sand, and gravel."

Who, one might ask, will protect the miners in those very hazardous mines? The sponsors of this amendment in the House of Representatives state their views that those miners would be protected by the Occupational Safety and Health Administration (OSHA).

I am certain that that was their intention, and I am sure that the sponsors were sincere in expressing their belief that that was the effect of the provision.

But, Mr. President, that underscores the error of trying to make such major policy decisions in such an offhand fashion. There is no time to study the proposal—no time to understand it—no time to closely examine the claims of the sponsors as to its effect. The House of Representatives, in the limited time available to it, accepted the assertion of the sponsors—that the amendment would do what they intended it to do, and that these miners would come under the protection of OSHA by operation

of section 4(b)(1) of the Occupational Safety and Health Act.

But I am not so confident, Mr. President. Section 4(b)(1) states that nothing in the OSHA Act shall apply to a workplace over which other Federal agencies exercise statutory authority to prescribe or enforce standards. MSHA now has the statutory authority to prescribe and enforce standards at those mines. The appropriation rider does not take away MSHA's statutory authority; it merely denies MSHA the funds to do these things. And it only denies MSHA these funds for a limited period of time. Section 4(b)(1) would give OSHA this authority only if a funding restriction of a single year's duration is equivalent to an absolute inability to exercise statutory authority. No court has made that finding. No court has determined that such a limitation on funding would provide OSHA with jurisdiction pursuant to section 4(b)(1).

Certainly, then, unlike the House of Representatives, we do not have to accept the assertions of the House sponsors of this amendment. Indeed, in view of the total lack of judicial authority, it would be irresponsible for us to accept these bald and unsupported assertions.

Should this amendment be enacted, Mr. President, these questions will certainly be litigated. Only the most naive among us will believe that no one, not a single stone mine operator, not a single sand and gravel mine operator, not a single clay mine operator, will challenge OSHA's authority to engage in this altogether new regulatory field, or try to obtain an injunction, and eliminate any safety and health protection for these miners for the balance of fiscal year 1981.

And while those questions are pending, which agency will protect these miners? Anyone who has even a glimmer of an understanding of how our agencies function, how our courts work, can answer that question. While those questions are pending, I fear, neither agency will be able to protect the safety and health of these miners.

Only someone with the most naive view of our Government would believe that, despite this uncertainty, despite the vagueness, despite the confusing statutory cross references, on October 1, 1980, MSHA will cease protecting these miners and that OSHA, which has never exercised any statutory authority over those mines, which has no mine safety standards in place and no inspectorate experienced in mining hazards, will magically be able to inspect 12,000 mines and will effectively protect almost 165,000 miners.

There was not time enough in the House of Representatives to consider these questions, Mr. President. But there is time enough for the Senate to understand what could very well be the real, not just the theoretical, impact of this amendment.

So, as a result, the question for the Senate this time will not be the same question that was before us only a few weeks ago. Then, the question was, "should stone, sand and gravel, clay and colloidal phosphate miners be protected by MSHA or by OSHA?"

Now, because we have had time to understand the issue, we now know that the question is no longer whether these 165,000 miners should be protected by MSHA or OSHA. The question before us, in practical terms, will be whether they should be protected by MSHA, or by no agency at all.

The answer, I believe, is obvious. These mines are hazardous places to work. So far this year, 36 of 64 fatalities which occurred in noncoal mines occurred at stone, sand and gravel, and clay mines. This is an astounding record for mines which we have been told, repeatedly, are benign, harmless little places that are just not deserving of the kind of highly specialized regulation that they are subjected to under the Mine Safety and Health Act.

Mr. President, the safety record at these mines, never a good one, has, in the present years, deteriorated:

In 1978, these mines were responsible for 54.4 percent of all noncoal mining fatalities;

In 1979, it was 53.7 percent;

And so far this year, Mr. President, these mines, which the House of Representatives would have us excuse from all mine safety regulation and enforcement, have been responsible for 56.25 percent of all noncoal mining fatalities.

Mr. President, I just cannot understand how we can even consider taking the risk that these very hazardous mines will be exempt from all safety regulations whatsoever. And remember, Mr. President, in practical terms, that will be the question before us when we consider this issue: Should the stone, clay, phosphate, sand and gravel mines be subject to no safety regulation and enforcement whatsoever?

Mr. President, last year the Senate added a rider to the MSHA appropriation which freed these mines from the mandatory safety training requirement of the Mine Safety and Health Act. We were told these were safe mines and that the training requirement was egregiously burdensome and unnecessary Federal regulatory overreach. So we freed them from the training requirements, and they rewarded our confidence in them by substantially increasing their share of the noncoal mining fatalities. Last year, these industries were responsible for 53.7 percent of all noncoal mining fatalities. This year, freed from the safety training requirement, these industries are now responsible for more than 56 percent of all noncoal mining fatalities.

Now we are being asked to consider an amendment which has the risk of freeing these mines not just from the training requirement, but from all Federal safety regulations and enforcement. I shudder to think what the measure of that confidence will be a year from now.

Mr. President, I certainly hope that the Committee on Appropriations will strip this dangerous provision from the House-passed bill. But I cannot ignore the possibility that, one way or another, the issue will be before the Senate on this appropriation bill.

And so, we shall have to confront the issue, Mr. President. And, for all the high-sounding language about the sincere intentions of the proponents of this amendment, we must remember that the question before us will not be whether these highly hazardous mining operations should be regulated by MSHA or OSHA. Our votes, Mr. President, as a practical matter, will determine whether these hazardous mining operations will be regulated by MSHA, or not at all.

The answer, for me, is simple. These hazardous mines cannot be freed from all Federal safety regulations. There is no case made, and none can be made, for freeing these dangerous mines from all worksite safety supervision whatsoever.

Mr. President, I care deeply about the safety and health of our miners. And I care deeply about the integrity of our workplace safety and health laws.

But, Mr. President, those are not the only issues that will be before us when we consider the Labor, Health and Human Services, Education Departments' Appropriations bills. We will also have before us the matter of the integrity of the legislative process. We will have before us the question of our responsibilities as lawmakers and I feel deeply about that certainly as well as my concern for these miners.

Mr. President, I thank the majority leader for the extension of time for this message on something that obviously is of great importance to me, and I hope its importance will be shared by Members of the Senate and we will do the proper thing, what I consider the proper thing, in connection with that House rider.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I share the viewpoint that has been expressed by the distinguished Senator from New Jersey (Mr. WILLIAMS) with respect to appropriations riders. There are times when such riders fullfill a purpose, a necessary purpose, so I would not say that all riders under all circumstances are inappropriate or are bad. But, as a general rule, the appropriate way to go about getting a rider on an appropriation bill is, if it is not germane or if it constitutes legislation, to waive paragraph 4 of rule XVI, as we did yesterday, and as we did the day before yesterday, when that rule was waived in order to call up the amendment on Tug Fork.

On yesterday it was waived to allow the legislative and nongermane amendment on the pay cap to come in.

This requires either a unanimous consent, as in the case of the day before, or a two-thirds vote if there is a rollcall vote or a vote by division on the motion to suspend the rules.

If the Senate by a two-thirds vote wants to add a legislative rider or a nongermane rider, then let it say so by a two-thirds vote or by unanimous consent. That is the front-door approach right through the rules, and that is the way we ought to approach this business of adding riders to appropriations bills.

Normally, Senators call up amendments that are legislative in nature and

not germane simply because the amendments themselves in substance have considerable appeal, and raising the question of germaneness requires an immediate vote when Senators come into the Chamber, and they vote based on the substantive content of the amendment not on the procedural issue on which the vote is being held.

When the question of germaneness is raised, if I am not already in the Chamber and not fully aware of what the debate is about, I say to the Parliamentarian, I ask him, "Is this amendment germane?" And if the Parliamentarian says, "No," I do not vote to make it germane because I think that is a prostitution of the legislative process.

Often the Parliamentarian will tell me that an amendment is not germane, it cannot be germane, there is nothing in the bill for it to be germane to. The House has not put any language into the bill to which the amendment can possibly be germane, so obviously the amendment is not germane. It is not 1 percent germane, 2 percent, 10 percent. It is zero percent germane. Why should the Senate then walk up there and say that black is white, that which is not germane is germane? It is a prostitution of the legislative process.

The Senate does it time after time. Senators are either not paying attention to what they are voting on or they are not weighing the equities involved, the equities being—perhaps "equities" is the wrong word—they are simply not facing up to the issue before the Senate.

The real issue at the moment may not be busing or OSHA or gun control. The real issue is whether that amendment to that bill is germane, and that is the issue, and if the Parliamentarian tells me it is not germane I am going to believe him because he has no reason to take any sides in the matter.

If that amendment is not germane, he says clearly it is not germane because there is no House language, no language in the bill for it to be germane to, I am not going to vote it to be germane. I am not going to prostitute my own sense of what constitutes good legislative procedure for the temporary gain of the moment, to wit, to get an "aye" vote on an amendment which I may otherwise favor.

The right way to go about it is to waive paragraph 4 of rule XVI by giving 1 day's notice in writing to suspend the rules, and then let the Senate decide whether or not it wants to suspend that rule.

So I congratulate the Senator on expressing opposition in general to appropriations riders. I will not express opposition in general to appropriations riders because some of them are of necessity, but there is a right way and a wrong way to go about getting those riders attached.

INTELLIGENCE IDENTITIES PROTECTION ACT

Mr. BAKER. Mr. President, in recent months there has been a growing interest in legislation which would prevent the unauthorized disclosure of the names of U.S. intelligence officers serving abroad. This legislation, introduced by the Senator from Rhode Island (Mr. CHAFEE) and entitled Intelligence Identities Protection Act, is now under consideration in both the Senate and the House. I am pleased to be a cosponsor, along with a number of my colleagues from both sides of the aisle.

The need for this legislation grows out of the fact that a small group of Americans have made a profession of ferreting out the identities and publishing the names of these officers, with the result that their lives, and the lives of their families, have been, and are, in jeopardy. Richard S. Welch was murdered as a result of this "naming names." The lives of others have been threatened.

The most recent demonstration of the danger occurred on July 4, when Louis Wolf publicized the names of 15 alleged CIA officers in Kingston, Jamaica. Within 48 hours of the announcement, the home of one of the men, Richard Kinsman of the U.S. Embassy, was fired on with submachine guns and an explosive device. Four days later, another assassination attempt was made—this time on Jesse Jones of the U.S. Agency for International Development, who was also named by Wolf. Incredible as it may seem, Mr. President, there is no law on the books today under which this activity of "naming names" can be prevented.

The principal difficulty in drafting legislation to deal with this situation is that the first amendment declares:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . .

The opponents of identities legislation have taken this to mean that no legislation may be enacted which might, in any way, restrict freedom of speech or of the press. Clearly this absolute interpretation of the first amendment cannot be upheld, especially when the speech involved jeopardizes the lives and the duly authorized missions of U.S. officials serving this country overseas.

The issue is nonetheless difficult because the conflicting values at stake are important ones. I have seen no better summary of the relevant arguments than in an editorial titled "The Boundaries of Free Speech" printed in the Washington Star last Friday. This editorial explores the issue in a balanced, impartial and accurate fashion, and I ask unanimous consent that it be printed in its entirety at this point in the RECORD. I commend it most heartily to my colleagues.

I also ask that the remarks of my good friend and colleague, Senator JOHN CHAFEE of Rhode Island, delivered last Friday before the Senate Judiciary Committee on this subject, be printed in the RECORD. Senator CHAFEE has played an important role in drafting legislation which would prevent these outrageous disclosures while, at the same time, protecting legitimate first amendment rights of the journalist or critic. His careful examination of the constitutional issues relating to this legislation is worth our attention.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE BOUNDARIES OF FREE SPEECH

Those who are resisting the current effort in Congress to protect U.S. intelligence agents against the marauding of Philip Agee and Louis Wolf offer two disclaimers. They are, they claim, as outraged as the rest of us by the disclosures of Mr. Agee and his freelance protege, Mr. Wolf, who make it their business to identify covert agents and expose them to injury or death. They also protest that they do consider First Amendment rights absolute, and ask only that the legislation no "chill" legitimate reportorial inquiry.

These disclaimers must be taken at face value; and Congress would indeed waste its time if it passed a bill that would be easy prey for the first court to take formal notice of it.

Nonetheless, we may be sure that if the cavils of the ultra-libertarians are heeded, Congress will leave itself small leeway for effective legislation. If the handiwork of the Wolfs of this world is to be curbed, we must face the risk that legislation strong enough to curb it could tempt adventurous prosecutors to interfere with legitimate reporting.

But while the danger to be dealt with is real and present, the worries about a "chilling effect" on the press are, as we shall suggest below, dim and hypothetical. Moreover, the libertarians may have met their forensic match this time. There is no more zealous advocate of strong protective legislation for U.S. covert intelligence agents than Sen. John Chafee of Rhode Island, whose uncle, the late Zechariah Chafee of Harvard Law School, was in his day a pre-eminent authority on free speech. With those credentials, Senator Chafee is not easily depicted as an enemy of the First Amendment. In defense of the Senate bill he is co-sponsoring, he cites his uncle's dictum that "the boundary line of free speech . . . is fixed close to the point where words will give rise to unlawful acts."

If that is the proper boundary line, as we in fact believe, there is no doubt that the Agee and Wolf disclosures have crossed it. The 1975 assassination of Richard Welch, then the CIA's station chief in Athens, followed within a month the disclosure of his covert function in the Greek press; and that information came directly from Agee's *Counterspy* magazine. "Public identification of Richard Welch," as was said at the time, "was tantamount to an open invitation to kill him."

More recently, Wolf's bizarre public identification of 15 CIA agents serving in Jamaica (complete with details) was immediately followed by a nocturnal attack on the residence of one with submachine guns and explosives. No life was lost, but several U.S. agents and their families had to be evacuated.

Those who make it their ghoulish business to furnish the enemies of the U.S. with information that invites and facilitates violence against its public servants obviously do not approve of what those servants are doing. It is their right to disapprove; it is their right to agitate against the authority and policy that authorizes their activities.

But the issue before Congress is more basic; it has nothing at all to do with the free play of opinion or dissent and everything to do, rather, with outrageous disclosures that place the authorized intelligence operatives of the U.S. in physical peril and thereby tend to confound and thwart a function that Congress has set fit to sanction. In the present state of the law, the Agees and Wolfs are apparently free to make these disclosures under cover of the First Amendment.

The absolutism of the First Amendment, so interpreted, lies in the impractical refusal of its interpreters to recognize the boundary line that commended itself years ago to

Zechariah Chafee ("where words . . . give rise to unlawful acts") and still commends itself to most of us. Or indeed any other boundary line, for that matter.

The debating trick by which this absolutism is argued by critics of remedial legislation is familiar. It consists in raising endless hypothetical possibilities, all objectionable, which *might* eventuate *if* the law were misused. That way lies not free speech and press but constitutional paralysis.

The ultra-libertarians, dwelling upon their unsavory side-effects, in effect mount the disabling argument that we are powerless to defend the cover of U.S. intelligence agents abroad for fear of "chilling" legitimate inquiry and publication. Yet, interestingly, their objections, hypothetical as they are, have been heeded and reasonably answered, by Senator Chafee and others.

Consider one example. In a memorandum of August 4, the American Civil Liberties Union cites, among the conceivable "situations" that might arise from passage of the pending bills, the following: "An investigative reporter seeks to determine if the Watergate burglars have CIA connections. She discovers that several of them do and that one is a CIA agent. She prints that fact, naming the person."

Obviously, no such reporting should be thwarted. Would the bills now before Congress do so? The Senate bill supported by Senator Chafee and others—and more carefully drawn, as we see it, than the bill approved this week by the House Judiciary Committee—lays down a number of conditions designed to distinguish between malicious disclosure and mere reporting.

If the name of an agent, not previously acknowledged, were disclosed the disclosure would be unlawful *only* if it were within "a pattern of activities intended to identify and expose covert agents . . . with reason to believe that such activities would impair or impede the foreign intelligence activities of the U.S." In view of these provisos, the Senate intelligence committee's report of August 13 specifically rejects the ACLU's contention. "A journalist," it declares, "writing stories about the CIA would not be engaged in the requisite 'pattern of activities' even if the stories . . . included the names of one or more agents, unless the government proved that there was intent to identify and expose agents . . . with reason to believe it would impair or impede foreign intelligence activities." To meet the bill's standard of prosecution, the Senate report says, "a discloser must be engaged in . . . the business of 'naming names.'"

Probably no legislation can be both effective and foolproof; and there are fools about. But effective government is often a matter of choices, sometimes distressing and imperfect choices. The present no-holds-barred license for disclosure that covers everyone, while permitting the Agees and Wolfs to pursue their seditious business, is of debatable usefulness to free speech and press legitimately understood. But its perils and costs are not debatable. It tends to disarm and cripple U.S. intelligence capacity and to jeopardize the lives and limbs of U.S. agents serving in dangerous and sensitive missions.

No other free government on earth—to say nothing of others unfree—remotely begins to tolerate and casual (and sometimes malicious) interference with its intelligence services that Americans have come to countenance in the name of protective "exposure," by those who may or may not have the nation's interest at heart. We think Congress should do whatever is necessary, taking due but not paralyzing heed of constitutional scruples, to protect our covert intelligence and counterintelligence agents. Otherwise, it would be well to admit that we are too paralyzed by constitutional scruples to conduct an effective foreign intelligence system in this dangerous world, and stop asking our people to risk their lives in its service.

We can't have it both ways.

STATEMENT BY JOHN H. CHAFEE

Mr. Chairman, I am pleased to appear here today to comment on the Intelligence Identities Protection Act (S. 2216) which was recently reported from the Senate Intelligence Committee by a vote of 13/1, and which has now been referred to your Committee for consideration.

From the time George Washington dispatched Benjamin Franklin to France in 1776, the government of the United States has sent American citizens abroad on difficult and dangerous missions in pursuit of the goals of our nation. In 1947, this activity was institutionalized by President Truman with the formation of the Central Intelligence Agency, and a permanent cadre of covert agents was created. Covert action and the assignment of Americans—our fellow citizens—to carry out such action has had and now has the support of all administrations since President Truman and every Congress, including this one to which each of us belongs.

In the last five years, certain other Americans have made a profession of ferreting out the identities and publishing the names of these agents, with the result that their lives, and the lives of their families and friends, are placed in jeopardy. Richard S. Welch of Rhode Island was murdered as a result of this "naming names". The lives of others have been threatened. Yet, there is no law on the books today under which this activity of "naming names" can be prevented.

This is an intolerable situation. As legislators, I believe that we have a responsibility to draft a bill which places criminal penalties on those who are in the business of exposing our agents, and, which, at the same time, does not threaten the critic of intelligence policy or the journalist who might reveal the name of an agent in the course of a news report.

In my judgment, and in the judgment of the majority of my colleagues on the Senate Intelligence Committee, the Intelligence Identities Protection Act of 1980 meets this dual standard. However, because the question has been raised as to whether this bill chills First Amendment rights, I would like to focus specifically on this issue as I address your Committee here today.

The section of the First Amendment to the Constitution that pertains to our discussion states that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . "The first point that I wish to make with regard to this amendment is that the provisions of the Bill of Rights cannot be applied with absolute literalness, but are subject to exceptions. It has long been recognized that the free speech clause of the Constitution cannot wipe out common law regarding obscenity, profanity and the defamation of individuals, for example. This point was reiterated by Justice Oliver Wendell Holmes in the classic Espionage Act decisions in 1919 when he stated that:

"The First Amendment . . . obviously was not intended to give immunity for every possible use of language . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

A second, and equally important point, is that if unlimited speech interferes with the legitimate purpose of government, there must be some point at which the government can step in. My uncle, Zechariah Chafee, who was the leading defender of free speech during his thirty-seven years at the Harvard Law School, wrote in his book titled Free Speech in the United States that:

"The true boundary line of the First Amendment can be fixed only when Congress and the courts realize that the principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very important social interests, in public safety and in the search for truth. Every reasonable attempt should be made to maintain both interests unimpaired, and the great interest in free speech should be sacrificed only when the interest in public safety is really imperiled, and not, as most men believe, when it is barely conceivable that it may be slightly affected. In war time, therefore, speech should be unrestricted by the censorship or by punishment, unless it is clearly liable to cause direct and dangerous interference with the conduct of the war. Thus, our problem of locating the boundary line of free speech is solved. It is fixed close to the point where words will give rise to unlawful acts." (Chafee, Free Speech in the United States p.35).

It is clear, that the activity of "naming names" has given rise to unlawful acts, and that it has endangered the safety of American citizens serving abroad. I have already mentioned the murder of Richard S. Welch in Greece. I am sure all of you also remember the recent series of assassinations attempts in Kingston, Jamaica, following Louis Wolf's publication of the names of 15 alleged CIA officers there last month. The Director and Deputy Director of the CIA have testified publicly and in closed session before the Senate Intelligence Committee on a number of occasions regarding this activity. It is clear that the safety and the missions of those named have been placed in jeopardy "naming names".

What is not so clear, is where "naming names" contributes to why my uncle has characterized as the important social interest of "the search for truth". For example, it is difficult to see how the knowledge that a particular individual serving in an Embassy Abroad is paid by CIA rather than the State Department materially contributes to our search for the truth.

In this regard, I think that it is essential to point out that this bill would not prevent Mr. Agee from publishing the articles contained in his publications, obnoxious though they be. This bill would only restrain his publication of the names of persons he claims are covert agents. By the same token, there is nothing in this bill which would prevent Louis Wolf from continuing to publish the Covert Action Information Bulletin which does contain articles purported to be based on "research" into U.S. intelligence operations at home and abroad. The only impact of this legislation would be on the section of the Bulletin titled "Naming Names". In fact, there is nothing in this law that would prevent Wolf from giving anti-CIA or anti-American speeches in Jamaica as long as the speeches do not contain the names of alleged CIA agents.

I hope that this brief review of Constitutional history will show that the First Amendment does not provide absolute protection for all speech, and that the government can, in certain circumstances, intervene in the exercise of free speech in the interest of public safety, without jeopardizing the search for truth. As Attorney General Civiletti stated earlier this year on this subject, "our proper concern for individual liberties must be balanced with a concern for the safety of those who serve the nation in difficult times and under dangerous conditions". It goes without saying that these important constitutional considerations were very much in our mind when my colleagues and I worked up the final draft of the Intelligence Identities Protection Act. We are not challenging the Constitution. We are working with it. In my judgment, we have

worked well within its limits. We have successfully followed what my uncle called the "boundary line of free speech".

In turning now to the specific provisions of our bill, I would like to make several observations which I hope will show that, from a practical as well as a Constitution standpoint, this bill is the best solution to the legislative problem which we face.

The Senate Intelligence Committee has held a number of hearings on intelligence identities protection legislation. In particular, we have focused on the provisions of S. 2216 which was originally introduced last January. While most witnesses expressed support for what are now Sections 501(a) and 501(b) of our current bill, many witnesses, including the Justice Department, raised questions on the section of the bill which made criminal the disclosure of intelligence identities by anyone who acted "with the intent to impair or impede the foreign intelligence or counter-intelligence activities of the United States . . ."

The Justice Department and others felt that this "intent standard" was objectionable because it might lead to a prosecution which would turn on the political motivations of the accused. For example, the writer might defend his disclosures on the grounds that his intent was to improve, not impede, the foreign intelligence activities of the United States. In order to avoid this problem, I offered an amendment to the original version of S. 2216 which, in Paragraph 501(c), adopts a standard of prosecution based on the "pattern of activities" rather than the "intent" of the discloser. This amendment, which was supported by the Justice Department and adopted by the Senate Intelligence Committee, provides that:

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking, affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both."

This section is very carefully drawn because a person must disclose information identifying a covert agent in the course of a pattern of activities which are intended to identify and expose covert agents. We have carefully differentiated between the journalist who may reveal the name of an agent in a news article and the person who has made it his purpose and business to reveal the names of agents, and has engaged in a pattern of activities intended to do so. Clearly, the legitimate journalist would not be engaged in such a pattern of activities. I should note that the "intent" in this case is what is known as an "objective" intent—that is, intent in which the person intends the logical consequences of his act. It is not dependent on his political beliefs, motivations or opinion. Thus, the vehemence of his criticism of the CIA or the United States is not an issue.

There are other standards and protections here as well. First, in order to be liable for prosecution, a person must act with reason to believe that his disclosure would impair or impede the foreign intelligence activities of the United States. Someone who revealed the names of all CIA agents operating in the Soviet Union would certainly have reason to believe that such disclosure would impair or impede U.S. intelligence activities. On the other hand, a journalist who revealed in a news story about the U-2 incident that Francis Gary Powers was an American agent would have little reason to believe his disclosure would or could further impair or impede U.S. intelligence operations. Nor, for that matter, would he be engaged in the requisite "pattern of activities."

Second, in order to be liable, a person must know that the information disclosed so identifies the covert agent. A journalist who reported, for example, a general statement that CIA officers serve undercover in U.S. embassies would not be liable because that information would not by itself identify a covert agent. However, a person who identified a particular officer by position, personal description and gave his home address would clearly know that he was identifying such an agent.

Finally, to be convicted of this crime, a person must know that the United States is taking affirmative measures to conceal an individual agent's classified intelligence relationship to the United States.

In summary, we have drafted a bill designed to stop those engaged in the business of "naming names" and we have carefully drafted it to protect the legitimate rights of free speech of the journalist, however critical he may be of the CIA, its activities or its policies. The Justice Department has not only withdrawn its objection, but has actively supported this legislation because, in the words of Deputy Attorney General Renfrew, "the formulation substantially alleviates the Constitutional and practical concerns expressed by the Justice Department with regard to earlier versions of this bill. . . ."

There is one additional issue which I believe must be addressed before I conclude my remarks because there has been so much confusion surrounding it. During the long public debate on this issue, and in the hearings before the Senate Intelligence Committee, I have heard it suggested or implied that it should be acceptable for people to disclose the names of covert agents if this information derives from unclassified sources. The implication of this view is that there exists somewhere in this government an official but unclassified list of covert agents, and that those who have found this list should be free to publish the names thereon.

I have studied the matter of cover for covert agents within the Senate Intelligence Committee, and have even held a series of detailed hearings on this subject. Without going into specifics in open session, I can assure you that there is no such list. What we have found are unclassified official or semi-official documents which contain the names of covert agents in among the names of other officials of the U.S. government. The covert agents are not identified. The very purpose of these documents is to cover or to hide the true identity of the covert agents named thereon, and in no case is an identification explicitly made.

However, to say that the government has never published an unclassified list of covert agents as such does not mean that certain persons, employing basic principles of counter-espionage, and after considerable effort, cannot determine identities of covert agents with some degree of accuracy.

It is the purpose of S. 2216 to punish the publication of names acquired through these techniques regardless of whether the identification was made with reference to classified or unclassified information. After all, it is not the mechanism of identification which places people's lives in jeopardy and threatens our intelligence capabilities. It is the actual publication of people's names as covert agents that does so. It is the pattern of "naming names" that we want primarily to prevent.

In closing, I would like to clarify several misunderstandings or misstatements that have crept into the debate with regard to this legislation.

The purpose of this legislation is not to "get any group of individuals, but to criminalize a particular activity which jeopardizes the lives and missions of American intelligence officers serving abroad;

The current version of the Intelligence Identities Protection Act of 1980 does not criminalize the "intent" of those who are "naming names", but the pattern of activities in which they are engaged;

This bill is not a hasty response to recent events in Jamaica, but the product of legislative efforts dating back to the 94th Congress;

This Act has not been drafted over the objections of the Justice Department and the press, but actually reflects the concerns and incorporates the recommendations of these entities in its current form.

Over the past five years more than 2,000 names of alleged CIA officers have been identified and published by a small group of individuals whose stated intention is to "expose" U.S. intelligence operations. I think it is time we legislated an end to this pernicious vendetta against the American intelligence community, and I urge you and your colleagues on the Judiciary Committee to move expeditiously in reporting this bill out of Committee before more lives are jeopardized and more damage is done.

The easiest role we might assume is to do nothing; to brush aside the problem because the solution is too difficult. We send fellow Americans abroad on dangerous missions which are supported by us as Senators. We owe it to them to do our utmost to protect their lives as they go about our business.

Thank you.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there may be a period for the transaction of routine morning business and that the period may extend not beyond 1 hour and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 9:39 a.m., recessed until 10:09 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HUDDLESTON).

LEAVE OF ABSENCE

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Senate grant me a leave of absence from attending meetings of the Senate during the week of September 15 to 20, inclusive, of this year for the reason that I will be attending the full meeting of the International Parliamentary Union, as a

member of the United States delegation, representing the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I compliment the Senator on asking for a leave of absence. This is the way it should be done. He could take leave without getting the leave of the Senate. This is done all too much. The Senator has asked the leave of the Senate under the rule, and I compliment him.

Mr. STAFFORD. I thank the majority leader for his kind remarks.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DEVELOPMENT OF MULTIPLE TALENT TEACHING

Mr. HATCH. Mr. President, one of the most dramatic discoveries which is revolutionizing educational curriculum development is the talents unlimited program developed by Dr. Cal Taylor, professor of psychology at the University of Utah. He is one of several intellectual pioneers who suggested years before it became fashionable to believe that the acquisition of knowledge is less important to the educational development of a young mind, than the cultivation of talent; that "how" we learn, is more important in the long run than "what" we learn. While school grades are an important measure of scholastic achievement, they ought not to be the only way we evaluate a student's rate of or capacity for learning.

For a long time, the academy and industry have been preoccupied with grades. However, partly a result of studies conducted by Dr. Taylor, it has more recently been concluded that high grades only occasionally produce complementary high values in such areas as creativity and leadership potential. And business recruiters no longer consider grades alone, realizing that there are other and often more effective measures gaging the worth and potential of a future employee.

In fact, the Salt Lake City based, Institute for Behavioral Research in Creativity with which Dr. Taylor is affiliated, contends that most successful persons do not necessarily have good grades in high school or college. What they often have is a high creativity potential, artistic potential, leadership or career interest—none of which are acknowledged in the traditional grading system. Were students eternally measured by their school marks alone, according to Dr. Taylor's findings, they probably would have never succeeded.

Much of Dr. Taylor's principle work consisted of the preparation and distribution of biographical inventory questionnaires which were funded and supported by various educational agencies and private foundations within my home State. Some Salt Lake City high schools such as South East, Highland, Layton, Viewmont, and Bingham high schools played the major role in the successful completion of this important work.

As we consider proposals for educational curriculum development, the work of Dr. Taylor should be prominently weighed and his recommendations included in the Department of Education's developmental guidelines. For the benefit of my colleagues, I ask unanimous consent that his "Multiple Talent Teaching Results" essay be printed in the RECORD. We will be hearing much more about Dr. Taylor's work in the months and years to come.

There being no objection, the essay was ordered to be printed in the RECORD, as follows:

MULTIPLE TALENT TEACHING RESULTS

(By Calvin W. Taylor)

The multiple potentialities in people and in their remarkably complex total brainpower provide great opportunities for all types of educators—and certainly for those working in Gifted and Talented Programs. As Sam Proctor(16) recently stated, the mind is a terrible thing to waste. Nonetheless, of all our national resources the greatest waste may well be the numerous brainpower processes, namely, the many hidden inner talent processes in our students that are not yet being recognized and developed in our schools.

One reason for this dilemma is that we have too frequently conceived of students as merely knowledge learners, not as thinkers and producers and doers. For those who see a goal of expanding the minds of students, the Multiple Talent Approach to Teaching is a most relevant way to stretch their minds.[1] The youth are our ultimate strength and hope for the future, so they should be developed toward becoming effectively functioning, multi-talented, productive persons, not just knowledge learners-and-returners (i.e., knowledge reproducers).

The Multiple Talent Approach and Totem Poles:

A broad Multiple Talent Approach to Teaching was conceived in our Theory of Education report to Roy Hall, the Assistant Commissioner for Research in the U.S. Office of Education.(19) In setting this approach for implementation into classrooms, five new talents studied in basic research were added to the Academic Talent to create a first set of six talents for initial training of teachers to use with their students. These first six were: (1) academic; (2) creativity; (3) planning; (4) communication; (5) forecasting; and (6) decision making.

Darrel Allington first sketched the Multiple Talent Approach in the form of theoretical multiple talent totem poles (also dubbed as Taylor's Talent Totem Trees), later illustrated in big smiling and frowning faces by Vern Bullough. Beverly Lloyd in Project Implode of the Jordan School District in Utah was the first to put all of her 28 students (7 at a time) on six totem poles, after getting all six talents to function at one time or another in each of her students. Almost daily she was seeing her students function in six different talent ways—which is better than seeing only one talent function six times in each student each day.

In the totem poles(22) each student has a unique pattern of strengths and weaknesses across the talents. Ann does not stay at the top across all talents, but Randy and Kathy each rise to the top as the most talented on two of the new talents. Diane and Steve drop sharply downward on creativity. Also the bottom three on the first talent (Kathy, Todd, and Linda) tend to rise as a subgroup, and are never again so low, generally being around the average, as a subgroup, on the other five talents. The other five talents call for them to produce something of their own rather than working almost entirely under close supervision with full directions by "doing exactly what the teacher tells them in exactly the way the teacher tells them how to do it."

The Talents Unlimited Project developed and functioning in the Mobile, Alabama, school district uses the broader talent of productive thinking (in place of creativity) as the second totem pole. "Talents Unlimited" has been evaluated and approved for backup funding to be adopted throughout the nation on the USOE National Diffusion Network. While it is applicable to all students, it is also the only project on that network that is approved for G/T programs and is the exemplary project on the National Diffusion Network for G/T programs.

Probably the greatest single gain for students is to unearth these new talents from "six feet underground" and get each talent actively functioning at some initial level on each totem pole. The second gain is to have students grow in their ability and effectiveness in using each talent.

An analogy concerns mining for multiple metals. The largest mine in our region pours a mountain-side of boulders through the mills to produce a precious silt stream. Initially only low grade copper ore was extracted and the rest was then dumped on the valley floor as waste products. Later someone discovered how gold could be readily, though crudely, recovered from the silt stream. Next the mining company worked hard to learn how to process the heretofore waste products for every other element yet known to man. They now process for at least seven metals, not just for the copper initially sought. And it doesn't cost much more with the silt stream already flowing.

Similarly, we can process not only for the copper-like academic talent, but also for the uranimum-like creative talent, the gold-like decision-making talent, and so forth in our schools. Like the mining specialists, we may realize that the waste products we have been dumping out in the streets for so long contain many precious talents—perhaps even of a much larger total value than the one (or ones) we initially had solely extracted.

Talent-Focused Teaching Yields an Almost Unbroken String of Positive Results.

In comparison studies in two dissertations (8, 11) all students in a first type of classroom were considered and treated by the teacher as learners, i.e., as learner-returners using a learner type of learning of a particular unit or segment of subject matter. All students in the second type of classroom were considered and treated by the teacher as thinkers, i.e., as thinkers and producers, using a thinker type of learning in the same unit of subject matter. In each case the thinker students surpassed the learner students in practically all the measures used. These pioneering ventures were certainly boundary stretchers or even boundary breakers, because to us there are many more "thinker" types of learning than there are "learner" types of learning. On all talent measures used at that time the thinking classes won over the learning classes, as was also true on the knowledge testing of both classes. While there were some "ties", the thinking classes performed either better or equal to the learner classes on all the knowledge testing.

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[1] Some are currently excited about one hemisphere of the brain being used less than the other hemisphere. The more important evidence, however, is that only a small percent of either side of the brain is typically being used in school—i.e., the large majority of each side of the brain is not being used and developed in school.

A next study in the same Granite District with Title I funds(12) again demonstrated greater gains for the experimental over the control group for post-tests over pre-tests on multiple test measures. There were 14 test measures used and all but one of the results favored the productive thinking groups over the learning groups, with most of the results (for 8 tests out of the 14) being statistically significant. That is, 13 out of 14 results leaned in favor of the productive thinkers with most of these positive results being statistically significant at the .05 level. (In this project the teacher's manual entitled "Opportunities for Creativity and Communications" was developed and has proved to be a most effective initial manual for in-service training of teachers.)

The next and possibly the most potent results occurred in Project Implode at Jordan District's Bella Vista School, under the project leadership of Gilbert Stevenson.(18) These involved the full multiple talent approach in that school versus the academic (or learning) way of acquiring knowledge in two comparison schools.

The Bella Vista students from an average socio-economic level were up at the top in their school district on the traditional standardized achievement tests. In addition, new talent tests and classroom opportunity measures were tailor-made and used to display the classroom phenomena. For example the Student Activities Questionnaire (SAQ)[3] was built at that time to yield the following eight measures, as viewed by the students: Individualized Instruction; Enjoyment of School; Classroom Participation; Career Development; Self Concept; Independent Development (Self Management); Democratic Classroom Control; and Multiple Talent Experiences.

All 4th and 6th grade students in the Bella Vista School, when evaluated on all these measures in 1972 by an independent research agency (IBRIC), surpassed the combined data from two control schools from another district in all 58 comparisons, 42 of which were major (statistically significant) differences. This is again in sharp contrast to the usual results of little or no educational differences. The biggest differences, as expected, were found on Multiple Talent Experiences, and large differences were also found for Career Development.

On Multiple Talent Experiences involving opportunities to develop numerous talents, an average Bella Vista student (at the 50th percentile rank) would be comparable to the 93rd percentile rank student from the control schools. Stated alternately, over 55 percent of the Bella Vista students would be in the top 10 percent of the control students. Conversely, an average student in the control schools was only at the 12th percentile rank in comparisons with Bella Vista students. These potent results are for teachers in the "first wave of the multiple talent teaching change" at Bella Vista.

According to follow-up unpublished results from BYU Professor Wesley Craig's research group, Bella Vista-trained students performed better in junior high than a comparable group of junior high students from a different, but neighboring, elementary school, winning in about 95 percent and tieing in about 3 percent of the comparisons. Again a sizeable number of the positive differences were statistically significant. Yet former Bella Vista students, remembering the earlier and better elementary school climate from which they came, liked the junior high school less than did control group students who like junior high better than their elementary school.

[3] Available from the Institute for Behavioral Research in Creativity (IBRIC), 1570 South 1100 East, Salt Lake City, Utah 84105.

In Beverly Lloyd's masters project(13) she evaluated all 26 of her elementary school students on all six talents as they were being displayed in her own classroom. She used four levels of evaluation, namely: double plus (++), single plus (+), zero (0), and minus (−). These four "learner" levels of functioning on the academic talent divided her students into four groups. On the other five "thinker" talents, the top academic group had the least number of double pluses and single pluses of all groups. The three lower academic level groups, however, had quite a splattering of pluses and double pluses across the five other talents involving thinking and producing something of their own on their own.

This suggests that whenever we select students for graduate or professional schools largely on IQ-like tests and on standard achievement tests and grades, we may be selecting those who have most successfully fit the pattern of being grade-getters and teacher-pleasers. Perhaps after such reinforcement, these students have become less practiced and may therefore be even more handicapped in producing something of their own, with minimal or almost no directions from teachers or supervisors, than are the remaining students.[5]

She also found that all but one of the 26 students received a double plus on at least one of the six talents. Perhaps she deliberately worked hard in trying to find promise in every student in later talents who had not shown promise in earlier talents. In any event, she had run her talent classes some how to bring out such high promise in almost everyone.

The beginnings of a talent project in Iowa occurred when the Superintendent of Polk County Schools, Dr. Ralph Norris, heard speeches on creativity by Elizabeth Drews and the present writer at the 2nd National Education Association-National Magazine Editor's annual meeting in New York City. He then laid the groundwork carefully and solidly for about three years before he and Joe Shea, then of Iowa State University, initiated a proposal a decade ago for Title III support for Project Impact. The U.S. Office of Education rated it as one of the best Title III projects supported to that date. The project directed in succession by Elwin Nielson, Bill Clark, and Helen Coe, focused primarily on training teachers to teach for multiple kinds of thinking, called productive thinking, in their students. After such teacher training, they found that divergent and convergent production and evaluation types of thinking increased in students. They also found that self-concept scores increased in both teachers and students and later found that the more divergent and evaluative thinking that occurred in classrooms, the higher the self-concept a teacher had. They also obtained many testimonials from teachers as to the impact this had on their abilities to teach more effectively than anything else had taught them in their whole teaching careers.

An outgrowth of this Iowa project was another Project Advance in West Des Moines, a part of the large Polk County School District. On that project, the positive results were that teachers gained significantly more knowledge in how to teach for individual differences, how to develop multiple talents, and how to teach for thinking. Reproductive thinking was significantly reduced in students in classrooms and productive thinking was increased. Student abilities in each of the totem pole areas were increased significantly.

[5] This is one reason why I am much more in favor of "lifelong thinking" types of "learning" programs. Also I favor "Thinking Centers" or "Talent Centers" or "Function Junctions" over "Learning Centers."

Project Implode in Utah and the Talents Unlimited project in Mobile, Alabama, have had the greatest nation-wide impacts. The present writer and key people from Project Implode and Project Impact helped to spark the Mobile project which then obtained Title III funding. Under Carol Schlichter's direction, the project team developed all their own materials for training teachers and for teachers to use in training students, plus a large volume of test materials to evaluate the classroom outcomes.

The major findings were from grades one through six regarding student development in the five talents. Twenty-five significant values were found and seventeen other results leaned in the direction of the experimental schools over the control schools. In each of the five new talents the experimental students performed at a significantly high level, compared with the control group in the development of their talents. This reflects a highly significant performance by talent students and is evidence of the overwhelming success of this project in its efforts to construct an appropriate criterion set of talent tests.

Having found very positive results, the project then chose to ask the National Diffusion Network of the U.S. Office of Education to give them the severe evaluation required to become approved for being on the National Network and for the backing of the fundings for that network. They succeeded in being approved and were later rated as being one of the six best projects on the Network. In fact, the U.S. Office of Education recently assigned one of their public affairs staff to write an article on the project entitled "The Care and Feeding of Talents."(7) In it the U.S. Office of Education proudly announces the effectiveness of that project in enlivening students and accomplishing multiple results better than the traditional system accomplishes with its students. That project has been spreading, under Sara Waldrop's leadership, with adopters in the large majority of the states and hopes soon to have at least one adopter in all states.

Several adopters across the nation have also checked on how the Talents Unlimited Project has worked in their setting. Their replication results have nearly always been very similar to those found in the initial Mobile project (see the attached appendix).

With help from Beverly Lloyd and JoAnn Seghini of Project Implode, Project Reach came into existence in the New Brighton School District in Minnesota, with Harry Branes and Joyce Juntune as the initial directors. In contrast to usual experimental designs in education which are largely focused on in-service training of teachers with an evaluation of the impact on the teachers, Project Reach trained teachers, but their evaluations were second-link evaluations on the impact that these trained teachers then have on their students. Their results are some of the most impressive with very positive accountable results across practically all measures used. They provide another strong example of multiple talent teaching paying off. A total of 161 of 186 comparisons were significantly in favor (mostly at the .001 level) of the experimental talent school (with practically all of the remaining comparisons leaning in favor of the talent school).

A combination of growth both from the project's effects and from maturation effects occurred in these talent-trained students in 12 of the 15 comparisons. Summarizing Project Reach's findings, talent-focused teaching yields new phenomena consisting of expanded growth experiences and other improvements over the phenomena in typical classrooms. It therein provides a superior education for students.

All the above results on ten projects plus several replications have almost uniformly been in favor of Multiple Talent Teaching over traditional academic-only-type of teaching (i.e., knowledge-focused teaching). Practically all results were leaning positively with the large majority being statistically significant differences.

In a set of significance tests of no difference (null hypothesis), it would be expected that about one-half would be positive and the other one-half negative, with the signs being randomly distributed across the two types of teaching. The probability would be essentially infinitesimal (about .0000 . . .) that these strings of differences, practically all in one direction and across ten or more projects, could ever occur by chance. It is suspected that no new educational approach has ever attained such powerfully significant results on measured student performances across such a wide range of relevant classroom activities.

In practicing what the basic research preaches about talent complexity, I have asked each of my college students to nominate the two students (per talent) who were tops in the class in each one of the six or seven talents that functioned in class throughout the quarter. Across 10 such classes of about 25 students per class, nearly 99 percent of the students have been nominated as tops in at least one of the talents. This suggests that nearly all students are highly talented in at least one type of talent when given enough opportunities in enough different types of talents. It also demonstrates the viewpoint of having crude measures of how all these new talents are functioning rather than solely having more precise measures of only one (academic) talent in action.

Multiple Talent Teaching has been used on a group of mentally retarded and on another group of emotionally disturbed students by Clayton Nielson. (14) Both of these groups flourished more than before because of the multiple talent teaching situations. This result emerged even against the old yardsticks of standardized achievement tests.[4]

The talent approach has caught and held the interest of representatives of the U.S. General Accounting Office, who report to Congress how Federal money has been spent and who seek diligently for real educational change. They are not satisfied with projects which spent money that merely yielded new alternatives that are no better in education and thus do not improve education. But in contrast they were well pleased when they took a thorough, first-hand look at Project Implode during its initial development period at the Bella Vista School.

[4] The reader is referred to a realistic, heart-warming article on the distinctive contributions of a retarded child to a family by Dr. S. I. Hayakawa, U.S. Senator from California, entitled "Our Son Mark—General Semantics in Rearing a Retarded Child," *ETC—A Review of General Semantics*, Vol. XXCII, No. 1, March 1970, 45–54. Also see "My Most Influential Teacher" in the Church News section of the Deseret News, Salt Lake City, Utah, December 23, 1978, p. 2; by Christine Durham. She describes her four young children as her most influential teachers, including her last, but certainly not least, child who is mentally retarded. A similar emphasis occurs in religious scriptures (see 1st Corinthians 12:4–21). Also, "For all have not every gift given unto them; for there are many gifts, and to every man is given a gift . . . To some is given one, and to some is given another, that all may be profited thereby . . ." (Doctrine & Covenants, Sec. 46–11–12 multiple talent teaching on teachers as well as on students, one can read the dissertation by Reynolds (10, 8) and the volume entitled *Teaching for Talents and gifts: 1978 Status—Developing and Implementing Multiple Talent Teaching*. (23)

Accountability-wise, these remarkable results across all the projects are even more startling upon considering the financial input costs. A multiple talent school is an economical one to operate because it does not require lots of expensive equipment and extra materials—and it functions with a typical teacher/student ratio. Yet it is full of valuable resources, especially the well-functioning, resourceful students.

The Bella Vista School, its Jordan District, and its state of Utah are clearly below the national average in expenditures per student, which is also true for Mobile, Alabama. This approach, therefore, yields excellent results per dollar spent, so that the parents and other taxpayer constituents are certainly getting their money's worth from this multiple talent approach.

In correspondence, Carol Schlichter, the initial director of Talents Unlimited, commented recently that "the fit of Multiple Talents in almost any area of educational programming is phenomenal!" Rachel Morton has similarly written us that "the deeper I get into the multiple talent approach, the more it seems that it fits just about anywhere when people are looking for meaningful innovation in education."

In science the soundness of an approach or theory depends upon the total amount of data that support that approach or theory and how well the data fit. The most convincing support is to have different investigators, in different geographical locations and in different laboratory situations to use their own somewhat individual approaches and methodology and still to come out with essentially the same results. This has certainly proved to be true in the Multiple Talent Teaching Approach. All the accumulated evidence collectively suggests that the Multiple Talent Teaching Approach can be applied with success to yield improved results in almost any area of education.

This long string of positive results argues that the talent-focused approach could retain a portion of the traditional academic approach and add the additional talent processes to classroom and homework activities for widespread use in Gifted/Talented as well as many other programs. This would be analogous to the way in which jet airplanes have retained some of the features of earlier propellor airplanes but have added enough additional features to make the newer plane definitely superior, to practically replace and obsolete most propellor airplanes.

With most successful efforts to date being in elementary schools, a need is to spread more to so-called higher levels of education including high schools, colleges, and graduate and professional schools.

Students have expressed some exciting quotable insights when they have had experiences in using their multiple talents. For example, Sara Waldrop reports that when a child was asked what it meant to him to be in the talent program in Mobile, he responded, without hesitation, "Talents burn a candle in my mind." Likewise, after Dr. Shirley Warner taught a talent class in Putnam, Oklahoma, one child wrote, "I liked your class a lot because it gave me fluency and it made my brain feel refreshing."(12)

APPENDIX

Evidence of the success of the talents unlimited program: Technical report summarizing research findings[5]

(By Brad S. Chissom and James E. McLean, University of Alabama)

Introduction and Background

Talents Unlimited (TU) is an innovative educational program developed under an Elementary and Secondary Education Act (ESEA) of 1965, Title III Grant, and is located in Mobile, Alabama. The program was developed and experimentally tested over a three year funding period from June, 1971 through June, 1974.

As a result of the success of the program the project was "validated" nationally and is now a part of the National Diffusion Network. This and other innovative programs are described in *Education in Action, 50 Ideas that Work*, (15) and *Educational Programs that Work*, both published by the United States Office of Education.

Funds for the dissemination of the TU message continued for two years, and were not renewed for the 1976–77 school year. However, funding was secured in 1977–78 and is continuing at the present time.

The theoretical and research background for TU grew out of the work of Dr. Calvin W. Taylor of the University of Utah who has explored the development of creativity and researched the creative process for over 20 years. His Multiple Talent Approach (MTA) to education has been described extensively in his writings, and is summarized, prior to the beginning of the TU project, in an article (21) for a special "creativity" issue of the *Journal of Research and Development in Education* published in 1971. A companion article in the same issue described Project IMPLODE, (18) a program using the Multiple Talent Approach to education which was a forerunner of Talents Unlimited.

The final theoretical model developed by the TU staff is a combination of Taylor's "Totem Pole Model"(20) picturing the Multiple Talent Approach and Guilford's Structure of the Intellect (SOI) Model, (10) a comprehensive description of intellectual abilities which has enabled researchers to gain insight into the nature of creativity and the creative process. The TU staff was directed by Dr. Carol L. Schlichter for the first three years and is currently headed by Ms. Sara Waldrop.

The TU Model identifies six talent areas, in much the way Taylor did with the Multiple Talent Approach to education and they are: (1) Productive Thinking, (2) Forecasting, (3) Decision Making, (4) Planning, (5) Communication, and (6) Academic. The traditional academic talent is incorporated in the model as a means for helping students gain knowledge in a variety of disciplines, while the other five talents are used as vehicles for assisting students in processing or using the knowledge to create new solutions to problems, Taylor (20) has said that 90 percent of the children in school will be above average in at least one of the six talent areas, provided those talents have an opportunity to develop. Talents Unlimited developed a process by which each of these talents can be taught by a classroom teacher in order to provide an area of success for all students. The program is not a specialty program to be used once a year, but is a program that permeates all phases of instruction.

As a part of the development for TU, procedures for assessing the changes that children exhibit in each of the six talent areas were developed. These measures, entitled collectively *The Criterion Referenced Tests* (CRT), were used to establish the success or failure of the TU Project after its third year. The tests were reviewed and revised during the second year of the project (1972–73), and in their present form have been used by many adopters of the TU Program to evaluate their projects. At the present time there are ten (10) tests, one (1) each for the decision-making forecasting, and planning talents; three (3) for the communication talent; and four (4) for the talent of productive thinking.

These tests form the primary basis for comparing students who participated in the TU Program (experimentals) with students who did not participate (controls). In many

[5] Reproduction of March 1979 Technical Report with approval of the Talents Unlimited Project, Mobile County Public Schools, Mobile, Alabama.

of the adoptions of TU other tests have been used on a limited basis, but the *Criterion Referenced Tests* serve as the common thread running throughout the research. The rest of this paper will describe the results obtained from evaluations of the TU Program.

Evidence of Success

I. *End of Second Year Report, 1973:(2)*

The first source of information documenting the success of the project is from the project report after the second year. The experimental design used enabled the project to be validated after the third year and was sound. Four experimental and four control schools, matched for socioeconomic level and racial composition, were used. Thirty-seven teachers in grades 1–6 participated as "Talents" teachers for the entire three-year period, definitely a positive aspect of the evaluation. Students in the experimental and control schools were pre- and post-tested on the *Torrance Tests of Creative Thinking*; achievement tests (*Clymer Barrett* for the first half of grade one and the *Stanford Achievement Test* for the rest); and the previously described *Criterion Reference Tests*. At this stage of the project there were only eight CRTs that had been developed of the final ten.

Analyses comparing the experimental and control groups over the four *Torrance* subtests show significant differences favoring the experimental group for all subtests. These results are contained in Table 1.

TABLE 1.—MEANS, STANDARD DEVIATIONS, AND T-VALUES ON THE TORRANCE TESTS OF CREATIVITY COMPARING EXPERIMENTAL AND CONTROL GROUPS OVER GRADES 1 TO 6.

	Mean	Standard deviation	t-value
Experimental control:			
Fluency	32.53	7.50	
	27.64	7.15	[1] 6.19
Flex	24.40	4.00	
	19.37	5.20	[1] 10.27
Orig	53.57	15.88	
	34.15	12.98	[1] 12.21
Elab	48.55	23.83	
	37.55	22.62	[1] 4.34

[1] $p<0.05$.

Results of the comparison between experimental and control groups on the *Criterion Referenced Tests* for all five talents are contained in Table 2 and summarized in Table 3. A further summary of these data follow: Grade 1: Significant differences favoring the experimental group on Productive Thinking I & II, Forecasting, and Communication III.

TABLE 2.—EXPERIMENTAL VERSUS CONTROL T-VALUES [1] FOR CHANGE SCORES BY GRADE LEVELS FOR ALL TALENTS

	Planning	Decision-making	Productive thinking I	Productive thinking II
Grade:				
1	1.11	0.95	[2] 2.79	[2] 2.57
2	1.86	1.87	[2] 4.14	[2] 3.86
3	[2] 3.43	1.47	1.29	1.58
4	[2] 5.13	[2] 1.90	[2] 4.00	[2] 5.96
5	[2] 2.59	.70	[2] 3.56	[2] 3.54
6	3.07	1.39	1.48	[2] 3.42
	Forecasting	**Communication I**	**Communication II**	**Communication III**
Grade:				
1	[2] 2.73	0.58	[2] 2.15	−0.17
2	[2] 3.42	[2] 3.67	1.70	[2] 2.24
3	[2] 2.82	1.85	.27	[2] −1.97
4	[2] 2.00	[2] 4.18	[2] 3.76	[2] 1.98
5	1.40	.73	−.28	.61
6	1.14	[2] −2.19	[2] 3.71	−1.51

[1] A negative t-value indicates control group outperformed experimental group.
[2] $p<0.05$.

Grade 2: Significant differences favoring the experimental group on Productive Thinking I & II, Forecasting and Communication I & II. Grade 3: Significant differences favoring the experimental on Planning and Forecasting. The control group was as significantly better on Communication III.

Grade 4: Experimentals were significantly better than the controls on eight talent tests. Grade 5: Planning and Productive Thinking I & II were the significant talent areas for the experimental group. Grade 6: Significant experimental results were obtained on the Planning and Productive Thinking subtests, while the control group was significantly better on Communication I.

TABLE 3.—SUMMARY OF T-VALUES ON THE CRITERION REFERENCED TESTS COMPARING THE EXPERIMENTAL AND CONTROL GROUPS

	Experimental			Control	
	N	Number sig.[1]	Number nonsig.	N	Number sig.[1]
Grade:					
1	30	4	4	26	0
2	33	5	3	35	0
3	34	2	5	31	1
4	62	8	0	63	0
5	31	3	5	28	0
6	29	3	4	34	1
Total	249	25	21	217	2

[1] $p<0.05$.

One of Taylor's hypotheses that 90 percent of the students in a school are above average in at least one talent was tested and the results are presented in Table 4. The findings who that, although Taylor's hypothesized criterion of 90 percent was not achieved, a percentage of approximately 85 percent at each grade level is remarkably close. Results of the achievement test comparisons are summarized and compared to the third year achievement test outcomes in Table 7.

TABLE 4.—PERCENTAGE OF STUDENTS RANKING ABOVE AVERAGE IN AT LEAST 1 OF THE 5 TALENTS BY GRADE LEVEL ACROSS 4 PROJECT SCHOOLS

	Classes	Percent
Grade:		
1	8	84.7
2	7	86.6
3	7	86.8
4	7	86.1
5	7	83.6
6	1	85.2

II. *End of Third Year Report, 1974:(4)*

Only a single source of comparative information on the talents between experimental and control groups was gathered at the end of year three since the Torrance Tests were not given. The Criterion Referenced Tests were revised and now constituted ten subtests with the productive thinking tests undergoing most of the revision. The productive thinking tasks were enlarged from two subtests to four which were entitled flexibility/imagination, flexibility/problem solving, originality/imagination, and originality/problem solving. Results of the comparisons between experimental and controls in grades 2–5 at the end of year three are summarized in Table 5. A summary of these data indicates that talent students continued to improve their performance over the control group, and the major differences are: Grades two and three showed a significant difference on all ten talent tests; Grade four showed a significant difference on seven of the ten talent tests; Grade five showed a significant difference on five of the ten talent tests with the other five being non-significant.

TABLE 5.—SUMMARY OF T-VALUES ON THE CRITERION REFERENCED TESTS COMPARING THE EXPERIMENTAL AND CONTROL GROUPS

	Experimental number sig.[1]	Number nonsig.	Control number sig.[1]
Grade:			
2	10	0	0
3	10	0	0
4	7	3	0
5	5	5	0
Total	32	8	0

[1] $p<0.05$.

No differences favored the control group at any grade level. Compared to 1973, the results are:

TABLE 6.—COMPARISON OF CRT RESULTS FOR ALL TALENTS AT ALL GRADE LEVELS, END OF 2D AND 3D YEARS

	1973	1974
Significant experimental [1]	25	32
Nonsignificant	21	8
Significant control [1]	2	0

[1] $p<0.05$.

Table 7 reveals that the experimental group (talent-trained students) performed significantly better than the control group on 14 subtests of the Stanford Achievement Test; 18 were not significant, and the control group performed significantly better on 3 tests. This reveals a highly significant achievement trend in the direction of the talent group. A comparison with the achievement results at the end of the second year, in 1973 are as follows:

TABLE 7.—COMPARISON OF ACHIEVEMENT TEST RESULTS FOR ALL TESTS AT ALL GRADE LEVELS, END OF 2 AND 3 YEARS

	1973	1974
Significant experimental [1]	6	14
Nonsignificant	11	18
Significant control [1]	18	3

[1] $p<0.05$.

III. *Replication Study, 1977–78:*

Only one talent, productive thinking, was used as a criterion measure with its two subtests of flexibility and originality. A comparison was made, by grade, between subjects in the 1977–78 Talent Students with roughly comparable schools from the 1972–73 testing on flexibility and originality scores. Table 8 is a summary of the results.

Some trends may be noted in the data shown in Table 8. In general, there is fairly clear evidence of consistent superior performance of the 1977–78 experimental group over the 1972–73 control group on the flexibility score. The comparison is not so clearcut for the originality scores. In part, there is a noticeable tendency for the control group to outperform the experimental group even though in most cases the differences were not statistically significant. During the 1977–78 year there was less emphasis placed on originality in the talent program which may have accounted for these results.

TABLE 8.—REPLICATION STUDY: SUMMARY OF EXPERIMENTAL AND CONTROL DATA FOR PRODUCTIVE THINKING TALENT, GRADES 1 TO 6

	Flexibility			Originality		
	Experimental	Control	t-value	Experimental	Control	t-value
Grade 1:						
Mean	16.8	7.8		30.4	26.9	
SD	5.2	4.1	[1] +7.59	14.0	14.7	+1.15
N	46	26		46	26	
Grade 2:						
Mean	19.3	10.4		34.1	37.3	
SD	5.9	6.7	[1] +4.34	12.1	24.9	−.46
N	14	35		14	35	
Grade 3:						
Mean	14.7	12.6		26.0	44.9	
SD	3.3	4.7	+1.31	8.7	16.7	−1.61
N	10	31		10	31	
Grade 4:						
Mean	16.5	10.9		29.7	36.5	
SD	3.9	8.6	[1] +2.01	9.9	18.7	−1.11
N	10	50		10	50	
Grade 5:						
Mean	[1] 5.9	10.6		34.3	38.6	
SD	5.8	5.3	+2.65	9.6	19.6	−.66
N	10	28		10	28	
Grade 6:						
Mean	12.8	12.2		24.8	36.9	
SD	4.4	11.5	+.29	11.7	19.2	[1] −3.21
N	37	32		37	32	

[1] Experimental and control groups significantly different at or below the 0.05 level. A negative t-value indicates control group outperformed the experimental group.

IV. *Arkadelphia, Arkansas Study, 1977–78:(1)*

An ESEA Title IV–C Project was implemented by the Arkadelphia School District No. 1 which adopted the Talents Unlimited procedures for a group of gifted and talented secondary students. There were 56 students in grades 8–12, and they were pre- and post-tested using the *Criterion Referenced Tests* developed by Talents Unlimited.

Their objective of achieving significant changes (at the .01 level) from pre- to post-test on the five talents was achieved. The results were summarized as follows, according to the final report: "The objective was achieved, as statistically significant gains were found on all six tests."

V. *Milaca, Minnesota, 1976:(17)*

A Talents Unlimited Program was introduced in the school system in the 1974–75 school year. After two years, results showed that "over 90 percent of the students in grades K–8 that participated in the project found that they were above average in at least one multiple talent" as measured by the *Criterion Referenced Tests* created by Talents Unlimited.

VI. *Livonia, Michigan, 1976:(17)*

Two talent areas, productive thinking and decision making, were selected for fourth- and fifth-grade students to participate in the Talents Unlimited Program. Experimental and control groups were selected for each grade level with 40 students in each group, making a total of 160 subjects. Pre- to post-test differences on the *Criterion Referenced Test* subtests of productive thinking and decision making were tested. Gains for the experimental students were significantly greater than those for the controls at the .01 level on both talents.

VII. *Mason, Michigan, 1976:(17)*

One class at each of the second, third, and fourth-grade levels was targeted for TU teaching, with a control class selected for each grade. Pre- and post-tests with the *Criterion Referenced Tests* were given in September, 1975, and May, 1976, respectively. "The experimental classes outperformed the control classes and the experimental groups in Alaledon Elementary School outperformed experimental groups in Mobile."

Summary of Results and Projections for the Future

The overall results of the studies reported in this paper favor the Talents Unlimited Program. All of the studies cited show significant differences between the experimental groups that used the TU Program and control groups who did not.

At the present time several sites that have adopted the TU Program are gathering data and more results will be forthcoming. The *Criterion Referenced Tests* developed by TU make an excellent measure for comparison and add continuity to research efforts directed at evaluating the TU Program. Some uniformity of the experimental designs and tests used in the research studies should soon result in a body of information that will provide definite answers to the questions: Does the Talents Unlimited Program work? and for what groups does it work?

Currently (March 1979) there are approximately 70 adopters of the TU Program, throughout the United States. Requests for information, on-site visits, and consultant services continue to pour in to the Mobile office. Subjects include ages from pre-school through adulthood providing an ever expanding audience for the program. Projections of the possibilities for Talents Unlimited seem to be, indeed, "unlimited."

REFERENCES

1. Arkadelphia School District No. 1, Experienced Based Individualized Investigation Program for Gifted and Talented Secondary Students, ESEA, Title IV–C, Part C Evaluation Report, Arkadelphia, Arkansas, 1977–78.

2. Board of Commissioners, Mobile County Public Schools, Talents Unlimited, End of Second Year Report, ESEA, Title III, Mobile, Alabama, July 15, 1973.

3. Board of Commissioners, Mobile County Public Schools, Talents Unlimited, Interim Evaluation Report Year Three, ESEA, Title III, Mobile, Alabama, January 18, 1974.

4. Board of Commissioners, Mobile County Public Schools, Talents Unlimited, End of Third Year Report, ESEA, Title III, Mobile, Alabama, June 4, 1974.

5. Board of Commissioners, Mobile County Public Schools, Talents Unlimited, Final Report, ESEA, Title II-Section 306, Mobile, Alabama, June 30, 1976

6. Board of Commissioners, Mobile County Public Schools, Talents Unlimited, End of Third Year Report, GEPA, Section 422 (a), Mobile, Alabama, May, 1978.

7. Bobowski, Rita Cipalla. The Care and Feeding of Talent. *American Education*, October 1978, 43–8.

8. Clark, Alan C. A creative versus a traditional approach to teaching story problems. Doctoral dissertation. Salt Lake City, Utah: University of Utah, 1967.

9. *Educational Programs that Work*, 5th Edition, Washington, D.C.: United States Office of Education, 1978–10–7.

10. Guilford, J. F. Intelligence: 1965 Model, *American Psychologist*, 1966, *21*, 20–26.

11. Hutchinson, William R. Creative and productive thinking in the classroom. Doctoral dissertation. Salt Lake City, Utah: University of Utah, 1969.

12. James, Lawrence R. Development of communication training exercises. Master's thesis. Salt Lake City, Utah: University of Utah, 1967.

13. Lloyd, Beverly. Unpublished project required for the Master's degree in the College of Education. Salt Lake City, Utah: University of Utah, 1972.

14. Nielson, Clayton. Unpublished project required for the Master's degree in the College of Education. Salt Lake City, Utah: University of Utah, 1972

15. Park, Jeanne S. (Editor) Talents Unlimited, *Education in Action*, 50 Ideas that Work, Washington, D.C.: U.S. Dept. of Health, Education and Welfare, 1978, 107–108.

16. Proctor, Samuel D. A mind is a terrible thing to waste. *Phi Delta Kappan*, November 1978, 201S–03S.

17. Reynolds, Loran R. A History of the Multiple Talent Approach to Education. Unpublished doctoral dissertation, Brigham Young University, April, 1978.

18. Stevenson, Gilbert M. IMPLODE, *Journal of Research and Development in Education*, 1971, *4*, 51–56.

19. Taylor, Calvin W.; Ghiselin, Brewster; Wolfer, John A.; Loy, Lorraine; & Bourne, Lyle E. Jr. Development of a theory of education from psychological and other basic research findings. USOE Cooperative Research Project No. 621. Salt Lake City, Utah: University of Utah (mimeographed), 1964.

20. Taylor, Calvin W., "Be Talent Developers as Well as Knowledge Dispensers," *Today's Education*, December, 1968, 67–69.

21. Taylor, Calvin W.; Lloyd, Beverly; and Rollins, Judy. Developing Multiple Talents in Classrooms Through the Implementation of Research. *Journal of Research and Development in Education*, 1971, *4*, 42–50.

22. Taylor, Calvin W. Multiple Talent Teaching. *Today's Education*, March-April 1974, 71–4.

23. Taylor, Calvin W. *Teaching for Talents and Gifts: 1978 Status—Developing and Implementing Multiple Talent Teaching*. Salt Lake City, Utah: Utah State Board of Education, 1978.

ANTITRUST DIVESTITURE AND ANCILLARY RESTRAINTS IN THE PETROLEUM INDUSTRY

Mr. HATCH. Mr. President, big oil is under ever-increasing attack and scrutiny from all corners, especially in light of the escalating prices at the gas pumps. Many believe that the only remedy capable of containing the so-called monolith, hereby insuring market competition in the oil industry, is antitrust divestiture of the major oil companies.

Recently, Robert S. Campbell, Jr., one of this Nation's outstanding lawyers—from Salt Lake City—received a diploma in law from the University of Oxford for his thesis concerning antitrust divestiture of the oil industries in the United States and Great Britain. The thesis not only represents a tremendous scholarly effort on the part of Mr. Campbell, but

also is a comprehensive examination of the proposition that the major oil companies are monopolistic and engaged in an anticompetitive conspiracy.

Mr. Campbell's thesis also addresses the assault on the marketing and refining tiers of the oil industry. I could not agree more fully with Mr. Campbell's statement that:

The goal of antitrust . . . is that competition is to be conducted for its own sake and on its own merits at all marketing tiers. While harsh and seemingly inequitable at times, it is plainly the best stimulant to economic activity for it guarantees the widest possible freedom of action for traders.

Mr. Campbell thus is not advocating the demise of divestiture as a remedial tool but he does conclude that:

There is no evidential showing of monopoly or shared monopoly at either the refining or retail markets under the Sherman Act and a fortiori, monopolization under section 2 is not even reached.

Mr. Campbell then observes:

The massive profits realized from the escalating price of crude and OPEC cartelizing, are relevant topics for taxing authorities and new exploration initiatives; but they have been demonstrated in this thesis to be unassociated with monopolization.

It is because of these vital insights and my belief that this study might be one of the most definitive in this area, that I ask unanimous consent that Mr. Campbell's thesis be printed in the RECORD.

There being no objection, the thesis was ordered to be printed in the RECORD, as follows:

ANTITRUST DIVESTITURE AND ANCILLARY RESTRAINTS IN THE PETROLEUM INDUSTRY—A COMPARATIVE ANALYSIS OF UNITED STATES AND UNITED KINGDOM ANTITRUST LAW

(By Robert S. Campbell, Jr.)

CHAPTER I: INTRODUCTION, OBJECTIVE AND SUMMARY CONCLUSIONS OF THESIS

This Thesis will subject to legal analysis the contemporary economic structure and market behavior of the major petroleum companies at the refining and marketing tiers in the United States and United Kingdom, viewed in the critical context of relevant and applicable antitrust laws and policy.

The analysis is timely. For several years past, the call has gone out in America from principal origins in the academia and government, for competitive and structural reformation through antitrust divestiture of large oil companies in the petroleum industry to achieve a lesser degree of market concentration and dominance, and correspondingly to provide a more atomized complexion of competition.[1] The focus of most of the attention has been, particularly, at the refining and marketing levels of the vertically integrated major companies. Also under assault have been various refining and retail marketing practices alleged to be in restraint of trade. On the east side of the Atlantic, the competitive behavior of large oil companies has been the subject of a monopoly reference to and report by the Monopolies and Mergers Commission in the United Kingdom twice in 14 years.[2]

The drumbeat for antitrust reform of Big Oil has paralleled if not been occasioned by a petroleum and energy shortfall of crisis dimension. As society's most fundamental producer of energy, the petroleum industry has become the *sine qua non* of the national economies of both the United States and the United Kingdom. Faced with dwindling domestic production and increasing dependence upon imported crude from foreign and politically sensitive nationals, the United States has been required to assess its present and future energy needs and its propensity for high levels of oil consumption, such that can only be characterized as gluttonous. On the other hand, the U.K. has in recent years become a significant producing country of domestic crude with the development of the North Sea and it is presently undergoing self-analysis to determine its petroleum requirements. While antitrust considerations affecting the oil industry are unquestionably severable from the exigencies of the world petroleum shortages, the visceral pains brought on by the latter have plainly highlighted the given new emphasis to structural and trade restraints of the petroleum companies.

The gravamen of the case against the major oil companies may be summarily stated[3]—massive size and wealth, control of output, monopoly profits, price uniformity, joint collaboration at critical stages of exploration, development, transportation, and refining, intense vertical integration, market dominance, and exclusionary practices designed to maintain high entry barriers and reduce competition. In short, the complaint is that Big Oil is so ubiquitous and omnipotent that meaningful competition as the refining and retail markets is significantly foreclosed. Divestiture of those down-stream assets is claimed as the remedial device.

The Thesis will address the factual predicates for the charges against Big Oil and the remedies proposed within the juridical texture of the national antitrust laws of the United States and the United Kingdom. To the antitrust purist, the work may be somewhat of a disappointment, for one postulate of this Thesis is that competition policy does not exist in an antiseptic, water-tight compartment unaffected by other national ambitions and goals. Conservation of finite energy resources, stimulation of new exploration, and the establishment of a comprehensive energy plan for each Country are ambitious that may opt for differing goals than those of antitrust. To the extent that the objectives are at variance, they must be rationalized and a balanced concensus struck that preserves the policies of both antitrust and energy without rendering either impotent.

The relevant parts of the Sherman Act, Clayton Act and the Federal Trade Commission Act of the U.S. will be studied as to their impact upon structural and behavioral aspects of the large oil companies. Competition law of the U.K. consists of two parts, *viz.*, the internal national law of Britain and secondly, the antitrust law of the European Economic Community (Common Market) under Articles 85 and 86 of the Treaty of Rome. Both will be examined and comparisons made with United States antitrust law and enforcement.

Within the larger dynamics of fundamental antitrust policy as adumbrated in Chapter VI, it is the premise *quinta essentia* of the Thesis that vertical divestiture at either the refinery or retail marketing tiers of the major oil companies is unsupported under the respective antitrust laws of either the United States or the United Kingdom. The failures of the arguments for divestiture of Big Oil, along with the bases and rationale for the conclusions, are set forth in Chapters VI, VII, VIII and IX.

The penultimate axiom of the Thesis is that the practices of tying arrangements, information exchanges, exclusivity contracts and exclusionary and discriminatory pricing of major companies with company-leased or independent-owned retail operators are extant in differing but measurable degrees in the two Countries. That conduct may or does transgress the antitrust laws of both the U.S. and the U.K. Vigorous enforcement and heavy penalties, criminal and civil, are compelled to insure effective competition in the vertically-oriented petrol products at the retail market.

CHAPTER II: THE UNITED STATES PETROLEUM MARKET—STRUCTURAL ECONOMICS AND BEHAVIOR

1. The International OPEC Market:

In the norm of things, any complete dissertation on the vertical integration and concentration of power at the refinery level of the oil industry would encompass the sources of production and supply. Access to a reasonably ensured source of crude oil is pivotal to the viability of refinery operations and the absence of that dependable source constitutes a plainly identifiable barrier to new market entry.[4] Because of the pronounced reliance of the U.S. domestic petroleum market upon production and supply from the Persian Gulf, Africa, and from the Organization of Petroleum Exporting Countries (OPEC) specifically, it deserves some attention in this work.

That is not to say that production and supply from the mid-East or Africa is entitled to separate billing, or extended examination. The reasons are several. To begin with, the larger topic of arrangements between OPEC or particular oil producing countries and major oil companies is a vast and complex subject which inherently reaches quite beyond the reasonable perimeters and endurance of this Thesis. Second, much has been already written and more said regarding OPEC structure, its objectives and its relationship with the multi-national oil companies.[5]

Having said that, however OPEC still offers a contribution to this analysis not only for the initially stated reason, but because its behavior provides a vivid bench-mark from which relevant antitrust analysis may proceed. Organized in 1959 by the five charter members,[6] OPEC from the beginning was intent upon controlling output and establishing fixed pricing policies for Persian Gulf and Venezuela crude. By the early 1970's and with eight new middle-East and African members added, it accomplished its ordained objectives. The emphatic oil embargo of 1973 followed.

It does not require a divining rod to reach the conclusion that OPEC is a textbook cartel, engaged in open horizontal price-fixing and restriction of production. The cartel practices are intended to impact and have impacted upon the petroleum market in the United States and Great Britain. All of the pernicious effects of anticompetitive and collusive behavior, *viz.*, shortage of supply, spiraling price increases and prodigious profit-taking, were the outgrowth of the post–1972 cartel behavior.

Moreover, most empirical evidence demonstrates that while there was episodic and mixed competition between the major oil companies,[7] *inter se*, as well as with other independent, producer companies[8] for the rights and concessions to lift and distribute crude petroleum in the various Countries within OPEC, the producing companies also combined and arranged to stabilize crude production, maintain crude oil prices, and divide territorial markets.[9]

We need not pause very long in this Chapter to consider whether the OPEC cartel or, for that matter, the oil producer arrangements within OPEC violate the antitrust laws of the U.S. and the U.K.[10] The paragmatic fact of life is that the prolonged contrivances and manipulations of the OPEC cartel and the accompanying oil production and play in which both major and independent petroleum companies in the U.S. and the U.K. are inextricably involved, are so fraught with and wedded to interal politics of foreign governments and international diplomacy on

Footnotes at end of article.

the largest scale that the antitrust laws of the United States or the United Kingdom have muted relevance.[11]

For purposes of this Thesis, it is sufficient to say that under historical practices of the industry, OPEC crude has been supplied by the major and independent oil companies having operations in OPEC to major and independent refineries in the U.S. Such production has coincided with contemporaneous supplies of domestic crude to major and independent refiners.[12] The proportional level of supply should not be altered, except by contractually established terms. It is within that framework that plenary consideration is given to the structure and character of the refinery tier of the oil industry.

2. Characteristics of the U.S. Petroleum Market:

The United States oil industry, in providing refined petroleum products for all use by all sectors of the economy, is functionally divided along four basic levels—exploration and production, refining, transportation and marketing. The vertically integrated companies conduct significant operations in all tiers, while smaller oil companies or organizations are in only one or more phases.

The development of the national economy in nearly all facets, has been geared to petroleum products, particularly refined petrol. The automotive industry, for example, claims that it serves as the base for employment, directly or indirectly, for one of every 5.5 civilian workers. U.S. dependence on oil in almost every social and economic division has created the greatest demand for one specific energy source in the history of the world. It has also spelled immense wealth and power for the petroleum industry, the major integrated companies in particular.

(a) Production—At the exploration and production level, there were in 1978 better than 12,000 oil operators in the U.S. Many of them were thinly capitalized, were engaged in wildcat speculation and consisted of individual entrepreneurs, closely-held limited partnerships and corporations, publicly-traded diversified conglomerates, moderately sized but established oil producers and, of course, the giant vertically integrated companies. While only a small fraction of the total number of operators in the field brought in commercial production in 1978, the sheer magnitude produced significant competition in leasehold bidding, in the acquisition of well rig equipment, and in capital funding. 1978 was representative of the domestic oil market throughout the 1970's with federal legislation of 1975, deregulating the controlled price of U.S. crude on a graduated bases, having provided further incentive for new exploration.[13] During 1978, 132 companies produced 70 percent of the domestic crude.[14]

TABLE I.—MAJOR OIL CORPORATION LIQUID HYDROCARBON PRODUCTION AND ESTIMATED OIL RESERVES, 1978

Company	U.S. production, B/D [1]	Percent of total U.S. production	Total world production by U.S. companies, B/D [1]	Percent of world production by U.S. companies	World oil reserves (million barrels)
Exxon	715,000	8.2	4,242,000	20.5	15,359
Atlantic Richfield	526,900	6.1	642,600	3.1	3,145
Sohio	528,402	6.1	524,882	2.6	4,106
Texaco	511,000	5.9	3,410,000	16.4	15,941
Amoco	444,000	5.1	941,000	4.5	3,539
Shell—U.S.	409,000	4.7	427,000	2.1	1,796
Socal	373,200	4.3	3,226,900	15.6	15,840
Gulf	331,100	3.8	1,512,300	7.3	2,020
Mobil	260,000	3.0	1,918,000	9.3	7,682
Getty Oil	249,400	2.9	419,200	2.0	2,283
Continental	151,000	1.7	436,000	2.1	1,979

[1] B/D = Average barrels per day (42 U.S. gallons = 1 bbl).

Source: U.S. National Energy Management Report (1979), pp. 10, 11.

As in the past but in differing degrees, the primary production came from eleven major companies. Table I on the facing page reflects the production and relative market shares of the eleven highest corporations. Exxon led in domestic production with 715,000 barrels average daily operations and 8.2 percent of total U.S. petroleum market. It was followed by Atlantic Richfield, Standard of Ohio (Sohio)[15], Texaco, Standard of Indiana (Amoco), Shell-U.S., Standard of California (Socal), Mobil, Gulf and others.[16] The top four and top eight companies accounted respectively for 26.3 percent and 44.2 percent of average daily production. Table I also indicates the total crude produced by the ten major companies (non-U.S. operations included), the representative percentage of each corporation to total crude operations by U.S. nationals, and world oil reserves (estimated) of each entity.

Table II on the facing page demonstrates the historical market share of the ten largest companies in U.S. production at three time frames between 1960 and 1978. It is clear the market share has not been a static condition. Where a move of one percent market share would, on the scale of the top 10 companies, exceed $265 million in revenues, Exxon has steadily increased its market position against the other majors. Amoco and Shell-U.S. have done likewise. Texaco has lost market share and Gulf's share has been erratic. It is quite apparent that the aggregated market share for the top ten has decreased significantly *vis-a-vis* other U.S. petroleum producers over the eighteen-year period.

It may be generally concluded that even though the number of competitors is sizable at the production level, the accumulated market shares of the major companies has the configuration of an industrial oligopoly. When foreign production of the U.S. majors imported into the U.S. is tabulated along with the domestic crude market, a structural oligopoly within the industry at the production tier is even more pronounced.

Footnotes at end of article.

b. Refining.—The petroleum refinery is the central port in the petroleum industry. It is, for practical purposes, the sole buyer of crude oil and through its processes, the raw product is transformed into petrol, aviation fuel, industrial and residential fuel oil, lubricants and other lighter hydrocarbon liquids.

TABLE II.—18 YR OF DOMESTIC CRUDE PRODUCTION IN UNITED STATES

Company	1978 ranking	Company Market Share of U.S. Production 1978	1969	1960
Exxon	1	8.2	9.8	6.5
Sohio	12	6.1	.....	.....
Atlantic Richfield	3	6.1	5.1	5.9
Texaco	4	5.9	8.5	8.9
Amoco	5	5.1	5.1	4.3
Shell—U.S.	6	4.7	6.1	4.8
Socal	7	4.3	5.3	4.7
Gulf	8	3.8	6.8	5.1
Mobil	9	3.0	3.9	3.4
Getty Oil	10	2.9	3.4	2.9
Continental	11	1.7	2.2	2.5

[1] Standard of Ohio was the 2d largest producer in 1978 because of a 1970 BP takeover and merger with Signal Oil Co.

Source: U.S. National Energy Management Report (1979), p. 10. U.S. Senate Report on Investigation of Petroleum Industry, (1973), p. 13.

Entry into the refining market faces several barriers. One is capital requirements. Another is environmental regulations. But the most important element of market entry is access to crude oil supply. The refining operation is not under patent and is well understood in the petroleum field, thus posing no technological barrier to entry.

In 1978, U.S. domestic refining exceeded 16 million barrels per day by major and dependent oil companies.[17] Of that, Exxon, Sohio, Social (Chevron), Texaco and Shell-U.S. accounted for approximately 40 percent and the top eight major companies totalled 57 percent of refinery runs.[18] The industry, consisting of almost 60 major and independent refiners, operated at slightly less than 88 percent capacity. Table III on the opposite page sets forth the relative share of refining capacity (as contrasted to product) for the eight major companies extant in 1978 as well as their respective capacity shares in 1970. While no single company had as much as 10 percent available capacity, Exxon and Social increased their individual positions in the industry by approximately 1 percent in eight years, while Shell-U.S. Amoco, Texaco, Mobil and Atlantic Richfield have each experienced distinguished reductions in relative capacity shares. Since the early 1950's at least eighteen non-integrated refiners have built new facilities each having a capacity of over 50,000 barrels a day with eleven of such plants having better than 100,000 barrels a day capacity.[19] Between 1951 and 1974, the proportionate domestic refining capacity of the twenty largest firms (most of which are significantly integrated at all levels) decreased from 80.68 percent of total U.S. refining capacity to 73.9 percent.[20]

TABLE III.—REFINING CAPACITY SHARE FOR MAJOR OIL COMPANIES IN UNITED STATES, 1979–78

Company	Refining capacity (percent) 1978	1970
Exxon	9.5	8.6
Socal	8.8	7.7
Amoco	7.4	8.2
Shell—U.S.	6.8	8.0
Texaco	6.6	8.1
Gulf	5.5	5.8
Mobil	5.4	6.3
Atlantic Richfield	4.8	5.4
Top 4	32.5	32.6
Top 8	54.8	58.1

Source: U.S. National Energy Management Report, (1979) p. 12. U.S. Senate Report of Investigation of Petroleum Industry, (1973), table II-3.

The integrated nexus between crude oil production and refining capacity of the major oil companies for two separate years, 1978 and 1970, are set forth on Table IV on the facing page. Exxon is No. 1 in the parade in all departments. Beyond that, while correlation is not precise, it is apparent that

several companies, namely Sohio, Atlantic Richfield and Getty, hold measurably higher market shares as producers than they do as refiners. The resulting inference is that each has excess crude beyond their respective refinery needs which would be sold to independent refiners who have no integrated production. Of course, the parallel argument cuts in the opposite direction in the case of Socal.

The fact is that each of the major petroleum companies, Exxon and Socal included, have sold and do sell crude oil to independent refineries on a regular basis.[21] Location or origin of production *vis-a-vis* the location, size and type of integrated refinery will invariably dictate contractually established sales from the majors to the independent refiners. Indeed, non-integrated refining companies locate with pinpoint accuracy their plants so as to have proximity and access to an oil field that is in play, to a pipeline, or to a receiving port.

That is not to say that independent refining companies have a good-housekeeping guarantee that uninterrupted access to crude oil is assured for domestic refining in the United States. There have been shortages of crude experienced by independent refiners, and the claim has been made that the integrated majors have given preference to their own refinery operations at times of tight supply.[22] But in the ordinary course, the independent refiners buy crude from the major companies, from independent field and foreign producers, and on the spot market from both. Nothing in the published literature, including the litany of hearings and reports before the U.S. Congress, indicates that any of the some forty identified independent refiners have been forced or "squeezed" out of business by the twenty plus integrated companies prior to or since the 1973 OPEC embargo.

TABLE IV.—COMPANY RANKING IN CRUDE PRODUCTION AND REFINING CAPACITY IN UNITED STATES

Company	1978		1970	
	Rank in crude production	Rank in capacity refining	Rank in crude production	Rank in capacity refining
Exxon	1	1	1	1
Sohio	2	14	.....	.....
Atlantic Richfield	3	8	6	8
Texaco	4	5	2	3
Amoco	5	3	7	2
Shell—U.S.	6	4	4	4
Socal	7	2	5	5
Gulf	8	6	3	7
Mobil	9	7	8	6
Getty Oil	10	20	9	16

Source: U.S. National Energy Management Report, (1979), pp. 10-12. U.S. Senate Report on Investigation of Petroleum Industry, (1973), table 4.

TABLE V.—MAJOR COMPANY GASOLINE MARKET SHARES FOR 1978-1970

Company	Percent 1978 market share	Percent 1970 market share
Exxon	7.3	7.4
Texaco	6.7	8.1
Socal	4.8	5.0
Amoco	7.7	7.3
Shell—U.S.	7.7	7.9
Mobil	5.5	6.6
Gulf	5.8	7.1
Atlantic/Richfield	3.8	5.6
Top 4	29.4	30.7
Top 8	49.3	55.0

Source: National Petroleum News (June 1979), p. 118. U.S. Senate Report on Investigation of Petroleum Industry, (1973), p. 22, table II-7.

Footnotes at end of article.

While much of the critique on the purported lack of competition and dominance of the major companies at the refinery level has stemmed from government agencies and hearings, the irony is that the Federal Government, through its own policies, has created the most difficult barriers to new entry. First, the Government placed quota restrictions on the importation of foreign crude; such cut supply and availability of crude to independent refiners. Second, Government tax policy has created tax incentives for the vertically integrated majors to take a substantial part of their profits at the production stage, leaving a smaller competitive margin at the refining tier. Third, regulations of the Department of Energy require Government approval prior to developing further retail marketing outlets, thus restricting new markets for independent refiners. Fourth, tedious Governmental regulations on environmental considerations of new refining location have resulted in critical lag-time and increased capital costs. Elimination of these invented, non-economic barriers would enhance the possibility of market entry by new refiners.

The refined product within the industry, whether petrol, aviation fuel, industrial feed or residential heating oil, is generally homogeneous and interchangeable. Such is notwithstanding what is read in newsprint or seen on the television screen through oil company advertisements.

c. Retail Petrol Market—The most visibly competitive marketing tier in the industry is the retail level. Entry into and exit from the petrol or filling station is more frequent and with less capital requirement than at any other phase. For decades, there was a clear line between independent and company retail outlets. The former sold petrol on a no-frills basis, offering little adjunct service. The latter provided service and repair along with petrol and did business under the banner of a major and recognized company. Independents generally sold underneath the major retailers, and the ultimate purchaser was, therefore given a choice between a low-budget operation or the more elaborate marketer with full service and credit cards.

The demarcation between the two types of retailers is now much more subtle. For one thing, most major outlets (company operated or leased) have turned to the self-service pump. For another, many majors have seemingly backed out of the retail market only to return under a new brand name. Price distinction has also been blurred.

In 1978, there were over 172,300 petrol stations in the United States. Texaco owned 27,324 of them outright, Exxon owned 23,807, and the top four and top eight majors owned 92,174 and 151,826 stations respectively.[23] Table V on the facing page reflects the market share of the major oil companies in the U.S. retail petrol market for 1978 as well as for the comparative period of 1970. Shell-U.S. maintained its lofty position of 7.7% share of the market equalled by Amoco. Exxon followed in third position with 7.3% of petrol sales. While none of the market shares of the majors, standing alone, is particularly prominent, the accumulative market share of the top four and eight bear some resemblance to the aggregate market share of the corresponding four and eight largest corporations in refining. See Table III. Such comparison underscores the empirical finding that majors sell principally to their own retail stations with noted exceptions and independent retailers buy primarily from independent refiners.[24] Dependent upon the refined product, market share in refinery operations may exceed significantly the correlative position in petrol retailing, as in the case of Socal. The fact remains constant that unless the distribution system from refinery to retailer undergoes a radical alteration, the integrity of the independent retailer is fastened to the identity of the independent refiner. The collective market shares of the eight major companies in retail operations has declined between 1970-1978, and several economists maintain that the drop-off has been consistent.[25]

The petrol product which the retail market offers for sale in the U.S. is both reasonably homogeneous and interchangeable. While there are real and qualitative differences between "leaded" and "non-leaded" petrol,[26] the octane rating and performance ratios of refined petrol are substantially uniform.[27] Conditioned upon the location of refineries and the length of haul to retail sites, it is not uncommon for a Socal station to be selling Amoco refined product or Shell to retail Exxon refined petrol. Such intercompany exchanges are accomplished with reverse spin in another geographic area or sub-market. Exchanges of refined petrol (or crude for that matter) take place primarily between major oil companies with little switch-overs occurring between majors and independents or independents, *inter se*. The practice is claimed to be justified on cost savings.

The retail petrol market in the U.S. is the most atomized and unconcentrated economic tier of the petroleum industry. Independent outlets have the capacity to and do compete with the majors on a reasonable parity, particularly, to a large degree since than before 1972. Price cutting by independents is still found in selected areas periodically, especially if an excess wagon-load is purchased on the spotmarket, but to a far lesser degree than the pre-OPEC embargo. The reason is apparent— scarcity of supply has placed pressure on the retail market which permits the independent to sell his inventory at the maximum ceiling price without profound fear of market penetration from competitors.

d. Restrictive Practices at the Retail Market.—Major oil companies conduct retailing operations under two general headings, owner-operated outlets and leased stations. The former category is reserved for those situations in which the operator is the employee-servant of the corporation. In the latter, the operator is an independent agent who accounts for his own operating profit, but flies under the flag and brand of the major. It is the second type which is of significance to antitrust considerations herein.[28] It is not atypical for the major to place the operator on a short-term lease subject to a thirty-day cancellation notice. If the capital improvements have been built in whole or part by the operator, the company may bankroll the improvements subject to low interest pay-back provisions. The major may also provide racks, hoses, and other ancillary equipment. Many of such arrangements have ostensible and pro-competitive bias. It is ensuing dealings between company and operator that are of antitrust concern.

Requirement contracts between the refiner and retailer are common in the industry, particularly with the major companies,[29] such "exclusive dealing" arrangements force the retailer-operator to buy all petrol from the major. The operator is unable to buy from an independent jobber or refiner at a lower price and conversely, that segment of the retail market is foreclosed to the independent jobber or refiner.

In addition, the practice has been widespread throughout the industry in the U.S. during the past twenty years wherein the retailer was obligated or "encouraged" by the major company to purchase tires, batteries and other automotive accessories (T B A) either from the petrol supplier or from an identified third-party supplier (i.e., Firestone, Goodyear, etc.). In many instances, the oil company receives a commission from the third-party supplier in return for requiring or "suggesting" that the retailer purchase that supplier's T B A. Such arrangements, known as "tying contracts" or "full-line forcing" are not presently as commonplace as they were ten to fifteen years ago, but they still exist in the industry.

e. Vertical Integration of Oil Majors—The extent of business activity conducted by one entity at the various marketing tiers of an industry has been a consistent barometer in measuring market power and concentration under the U.S. antitrust laws. In the oil industry, the relative levels of economic synthesis by the major oil corporations are remarkable.

TABLE VI.—COMPARISON OF U.S. COMPANY RANKINGS IN PRODUCTION, REFINING, AND RETAIL SALES, 1978—1970

Company	Rank in crude production		Rank in refining capacity		Rank in retail sales	
	1978	1970	1978	1970	1978	1970
Exxon	1	1	1	1	3	3
Texaco	4	2	5	3	4	1
Gulf	8	3	6	7	5	5
Shell—U.S.	6	4	4	4	1	2
Socal	7	5	2	5	7	8
Atlantic/Richfield	3	6	8	8	8	7
Amoco	5	7	3	2	2	4
Mobil	9	8	7	6	6	6
Sohio	2	.....	14	.....	16	.....
Getty Oil	10	9	19	16	18	(1)

[1] Not in top 20.

Source: U.S. National Energy Management Report, (1979), pp. 10, 11, 12. U.S. Senate Report on Investigation of Petroleum Industry, (1973), p. 22.

At all strata of competition, the same companies finish win, place or show, and in all events are in the first eight. Table VI on the facing page demonstrates the highest and comparative rankings of the major companies in the primary brackets of production, refining and marketing for the years 1970 and 1978.[30] While the Table speaks fairly for itself, it is noteworthy that there has been considerable movement between the ten companies during the eight-year period. Besides vertical dispersion of economic strength, the Table provides a source for two important propositions; (a) no two companies conduct their activities in the same manner and (b) market shares have not been pegged or slotted vertically or at any horizontal level.

f. Financial Size and Income of Major Companies—U.S. antitrust law has given size and earnings prominence in vertically integrated monopoly cases.[31] Exxon is the world's largest corporation with assets exceeding $35 billion as of 1978. Its revenues in 1978 were slightly under $65 billion representing 20.5% of total U.S. petroleum industry revenues. Exxon achieved a return on both equity and debt capital of 11.5% for 1978. Assets, revenues, relative financial position in the industry, return on capital and earnings available to stockholders for Exxon and other major U.S. oil companies for 1978 are set out in Tables VII and VIII. Texaco is the third largest corporation in the U.S., Gulf is the sixth largest, Mobil is seventh, Socal is ninth, Amoco is twelfth, Shell is fourteenth and Atlantic Richfield is the nation's sixteenth largest corporation.[32] In all, five of the companies are among the ten largest corporations in the United States. It is claimed that if Exxon were stripped of all refining, marketing and transportation properties and left only with production and reserves, it would still be the world's largest corporation.[33]

TABLE VIII.—GROSS REVENUES AND NET INCOME AVAILABLE TO COMMON STOCK, 1978

[Dollar amounts in millions]

Company	Revenues	Percent of total industry revenues	Earnings available to common stock
Exxon	$64,886	20.4	$2,763
Mobil	37,331	11.7	1,125
Texaco	29,124	9.2	852
Socal	24,597	7.7	1,105
Gulf	20,097	6.3	791
Amoco	16,349	5.1	1,076
Atlantic Richfield	12,984	4.1	804
Shell—U.S.	11,123	3.5	813

Source: U.S. National Energy Management Report, (1979), pp. 4-6.

CHAPTER III: THE UNITED KINGDOM PETROLEUM MARKET—STRUCTURAL ECONOMICS AND BEHAVIOR

Much of what has been stated in Chapter II with regard to the OPEC cartel and its proximate impact upon the U.S. petroleum market has general relevance in the U.K. and thus, need not be recounted. There are cogent distinctions to be drawn, however, that make the neuroses of OPEC cartelizing of lesser consequence to the United Kingdom petroleum market. For one, the addiction to petroleum use is significantly smaller per capita, in the U.K. than in the U.S. For another, the discovery and development of crude oil in the North Sea during the decade last past has cast the U.K. in the posture of probable self-sufficiency. While Mid-East oil supplies are still of national and international concern to the British Government, OPEC crude production has come and will continue to play a diminished role as the essential source of oil supply for the U.K.

1. Characteristics of U.K. Production: Oil production in the United Kingdom has a vastly different genealogy than that of the U.S. Where oil was an American invention in the late 19th Century with prodigious oil discoveries in Pennsylvania and Texas, the U.K. was without any quantifiable, domestic oil fields. Thus it was that prior to the North Sea strike in the 1960's the U.K. was dependent upon imported petroleum, some from the U.S., but most prominently from the Persian Gulf. That in turn inexorably linked U.K. production to the world's largest petroleum companies, Royal Dutch/Shell, British Petroleum, Exxon, and Texaco. Prior to 1976, Shell and B.P. did business at several vertical tiers of the industry under a joint venture, Shell-Mex B.P. Ltd.[34]

Through the early 1960's crude oil production imports to the U.K. were highly concentrated with Shell-Mex and B. P. (50 percent of the market), Exxon doing business as Esso (29 percent of the market), and Texaco doing business as Regent (13 percent of the market) having an aggregated 87 percent slice of the market.[35] Other producers in the form of Mobil, Petrofina, Jet (later acquired by Continental Oil Co.) and VIP made market penetrations and by 1970, the initial and pervasive market shares of Shell-Mex B.P. and Texaco had declined. Such new entries were the result of wildcat discoveries and fresh production by smaller companies from emerging OPEC countries, who had not established refinery or retail outlets. While precise market shares of imported production are not available for the year 1970, it is estimated that the primary participants in the market were:

[In percent]

Company:	Production market share
Shell-Mex & B. P	40
Regent	22
Esso	9
Mobil	7
Jet, Petrofina, VIP, CFP (collective)	20

2. North Sea Production And BNOC;

Beginning with methane hydrocarbon discovery in the southern fields and then eclipsed by major oil strikes in the Montrose and Forties Fields, the complexion of U.K. oil production took a dramatic turn. Not only did the United Kingdom find itself as a domestic source of crude oil, but the Government was faced with the question of what proprietary and regulatory role it should pursue.

With respect to production, some persuasion was required to induce the major companies to commit extensive capital to the North Sea at a time when almost all U. K. producers were already heavily committed in the Middle-East.[37] The startling 1973 OPEC embargo and contemporaneous nationalization of producer assets in several OPEC countries solved that problem. Major corporations turned to the North Sea as a more dependable and politically less volatile area for exploration and production.

As to the Government position, it had long been an equity owner in B. P. Although it had not attempted to exercise any control over the conduct of B. P. foreign or domestic operations at the production or any other level, the relationship between the Company and the Government Foreign Office was inordinately close.[38] Such ownership and association could have had antitrust implications in the development of the North Sea, but it was determined early-on, incident to the first round of leases (licenses), B. P. was to have no special standing.[39] It stands with the other companies, and as in the past, the Government has not pressured or blocked privately motivated management decisions of the Corporation.

(a). North Sea Licensing and Antitrust—The United Nations Convention on the Continental Shelf of 1964 settled the boundaries and resource rights of coastal states in the North Sea. Such was followed by the 1964 Continental Shelf Act of the U. K. Parliament which amplified and supplanted the Petroleum and Production Act of 1934 (the latter having no application to off-shore exploration and development). The 1964 Legislation defined the regulatory powers of the Government to grant off-shore leases to oil companies and statutorily delineated the character and extent of lease-hold interests.

There are essentially two types of lease (or license) arrangements that have been traditionally utilized in oil exploration by national sovereigns that have antitrust relevance: (1) competitive bidding and (2) discretionary allocation. The former, as the phrase implies, calls for bid on public lands to be put out to the public at large and the exploratory acreage is awarded under lease to the highest qualifying bidder. It has been historically utilized with success by the United States for wildcat acreage, both on- and off-shore. The latter methodology permits a government to predicate allocation of exploratory acreage under a licensing agreement to selected oil companies in its discretionary judgement. The Netherlands and all countries in the Middle East (OPEC) have adopted such approach.

The Continental Shelf Act authorized the Government, for the first time, to employ the discretionary method of allocated licensing on North Sea acreage as well as the U.S. procedure of competitive bidding for acreage sections. The U.K. Government has opted to follow the discretionary scheme in all but

TABLE VII.—ASSETS AND RELATIVE SIZE OF 8 LARGEST U.S. OIL CORPORATIONS, 1978

[Dollar amounts in millions]

Company	Gross assets	Net assets	Return on total capital (percent)	Rank in oil industry
Exxon	$35,554	$22,805	11.5	1
Texaco	17,872	10,706	6.6	2
Mobil	16,972	10,161	9.4	3
Gulf	15,781	9,063	8.6	4
Amoco	15,001	8,848	11.0	5
Socal	12,985	7,153	11.6	6
Atlantic/Richfield	12,565	8,592	9.9	7
Shell—U.S.[1]	12,373	7,450	9.0	8

[1] Only Shell—U.S. Royal Dutch/Shell not included.

Source: U.S. National Energy Management Report, (1979), p. 5. F.T.C. v. Exxon Corp. et al., F.T.C. docket.

Footnotes at end of article.

one round of acreage allocations.[40] The theory behind the discretionary ploy was that Whitehall could maintain much closer supervision of exploration and rate of production under the license together with a greater security of royalty payments. In effect, the companies were the agents *vis-a-vis* independent contractors of and worked for the Government. While the license did not require an elaborate capital cost at the outset, close cooperation was expected of the oil company in wildcat drilling and aggressive production in the event of an oil find. Elsewise, the producer might not be considered as a viable candidate for the next round of licenses.

Whether the method selected for development of the North sea acreage was provident and in the public interest is a policy question left for others. But for fundamental precepts of free enterprise and antitrust, it was fortunate. In the initial rounds of licensing large tracts on the Continental Shelf, licenses were handed out to specific major oil companies without threat of competition from others in Big Oil or lesser known independents. Such license *eo instanti* conferred upon the licensee the right to drill and in the event of production, immediate market position at the production level was insured in the U.K. The big could become bigger under the system; the smaller operator was not given a chance, unless it were able to find its way into a suitable consortium.[41] Upon discovery, the licensee, assuming it had United Kingdom refining capacity, could increase its market share in vertical tiers as against others who had not been preferentially chosen in the licensing rounds. If the licensee did not have refining capabilities of excess capacity, it could sell the crude to a company in exchange for other possible advantages in the North Sea operations, but the latter would have increased market position at the refining level. And all of this transpired without the benefit of competition.

It is not as though the discriminatory license theory transformed the entire petroleum industry in the U. K. into a polite game of "monopoly" between the Government and a few well-celebrated companies. It did not. Licenses were parcelled out to a reasonable spectrum of companies and consortiums who had some legitamacy of interest in Britain. But the flaw lay in the fact that at the vortex of development and production of the enormous resources of the North Sea, market power and share in production were dictated by Government favor rather than the competition of the market place. One could hardly stand charged by the Monopoly and Mergers Commission of the U. K. or the European Economic Commission of occupying a monopoly or dominant position at the production level of the industry contrary to the antitrust laws, when the Government, itself, was *particeps civicus* in established market dominance.

2(b). British National Oil Corporation (BNOC)—In the mid-1970's, Whitehall became concerned that North Sea licenses and statutory licensing provisions did not enable H M Government to exercise sufficient control over rate and distination of production and moreover, to recoup the larger and "full" financial benefits of crude production.[42] In addition, there was a view in Parliament that a nationally owned oil company should become directly involved in the petroleum industry. While the National Coal Board (NCB) had some stake in the North Sea and maintained a small but intuitive staff, the powers and authority of the NCB were not sufficient to deal with the expanding importance and hand of the Government in the North Sea. To resolve these claimed inadequacies, the Petroleum and Submarine Pipelines Act of 1975 was enacted by Parliament. The Act not only increased the Government's position in existing North Sea licenses and gave H M G the jurisdiction over submarine pipeline development, it created BNOC as the public entity who was to have direct ownership, technological and operational interest in North Sea development.

The Legislation endowed the Corporation with measurable powers, subject to Ministerial acquiescence, to engage in exploration and development (as well as down-stream activities of refining and marketing) in the North Sea alone or in combination with others. BNOC has the authority under the Act of 1975 to raise debt capital for oil operations, to receive a larger representative interest in existing leases, to take the Government royalty oil "in kind" rather than the traditional payment and to assume the previous interest of the NCB in North Sea development. Finally, the Act authorized the Department of Energy to issue production leases to BNOC at any time, and not just at regular licensing rounds in which private oil companies are selected.

The consolidation and restatement of Government objectives under the P & SPA may have been well and good for more efficient administrative policy as well as reflecting new fiscal concepts as the development of the North Sea unfolded. But the establishment of BNOC as a national corporation to engage in petroleum development, refining and marketing cuts against traditional competition policy recognized by the U.K. for more than sixty years in the petroleum industry. The intrusion of the Government into the petroleum industry as a competitor against private oil companies cannot be justified by the lack of regulatory authority, or the inability to supervise development of the North Sea reserves or the inefficiency of petroleum companies. North Sea licenses should provide the Government with plenary authority to review all phases of exploration and production and to regulate the latter. Significant monetary compensation is also payable to HMG under the licensing arrangements for extraction of crude oil and other hydrocarbons without the necessity of Government interdiction as a producer. As to inefficiency, whatever indictments that have been laid up against oil companies in the past, the lack of proficiency or success in exploration and development have not been among them.

A competitive environment consistent with antitrust principles cannot long endure when one of the chief competitors is subsidized and bankrolled by the Exchequer and purported to act for the general welfare. Indeed, if the concept of Government operation and conduct of oil operations carry the day, then the ultimate rationale requires that it nationalize and take-over the entire industry. It is to say that if a little activity in the oil industry provides a little good, expropriation of the entire field should be all that much better.

The establishment of the BNOC, with its generous powers to invade the sphere of private business, is one of the jaded passions of British competition policy. Such is mirrored, as will be later seen, in a myopic ambivalence toward antitrust enforcement in the U.K. in the larger sense. It is difficult to read the intentions of the Government and BNOC toward active intervention in North Sea development in the future. Because of the acquisition of the license interests of Burmah Oil Company in the Thistle Field, BNOC is presently acting as field operator. Whatever be the present state of the art, the oil industry in the North Sea should do what it knows best, *viz.*, that of using private capital for the extraction of crude petroleum under difficult and speculative circumstances, and HM Government, with the assistance of BNOC, should be left to doing what it knows best, that of supervision and regulation, accompanied by consistent antitrust enforcement.

As to extant licenses in effect at the time of the P&SP Act, negotiations with oil companies resulted in a variety of arrangements,[43] the basic provisions of which either give BNOC a fixed equity position in certain fields, an unrestricted option to purchase 51 percent of oil developed in certain major fields (Piper, Thistle, Statfjord (U.K.) *et al.*) or a more confined option to purchase 51 percent of crude production from the major producers in the U.K. at market price subject to a buy-back provision at the same price.[44]

2(c). Current North Sea Production—Because of the relative new production on the Continental Shelf, market position and shares are neither precise nor conclusive. The major companies engaged in production are Shell, B.P., Texaco, Esso, Amoco, Mobil, Phillips Petroleum Company, Conoco, Gulf, Tenneco and Getty, along with independent operators *inter alia* Tricentrol, Murphy, Ocean Exploration, Santa Fe and Thompson. It has been estimated[45] that in 1980, 2.439 million average barrels per day will be lifted from the North Sea, the leading market shares of which will be:

Company	Production [1]	Market share (percent)
BP	400,000	16.4
Shell Esso	350,000	14.3
Burmah Oil (or its predecessor BNOC)	530,000	21.7
Total-Elf	100,000	4.1
Occidental	220,000	9.0

[1] Barrels per day.

Entry barriers to the production market are high. Off-shore platform drilling in the rough waters of the North Sea requires high risk capital and advanced, technical assistance. The cost of drilling a single well may exceed $7 million, only to find a dry hole, or pipe breakage or a blow-out. If capital requirements do not narrow the market, the Government's selective allocation process of awarding drilling licenses removes production from all but the major companies or consortiums of majors and smaller independents. Because of licensing arrangements and Government imposition in exploration and development, conclusions on oligopoly structure at the production level are not subject to ready definition.

3. U.K. Refining Market:

The vertically integrated major oil companies, traditional suppliers of crude petroleum to the United Kingdom, have captured the leading market shares in refined petrol. For 1977, 4.83 billion gallons of petrol were refined in the U.K., an increase of 355 million gallons (+7 percent) and 1.11 billion gallons (+29.8 percent) over 1975 and 1970 refinery output, respectively. In 1964, the total industry refined 2.644 billion gallons of petrol, less by 2.192 billion gallons or 54 percent of 1977 production. In 1977, the three largest refiners, Shell, Esso and B.P., had a combined market share of 53.4 percent. With Texaco and Mobil market positions added, the top five achieved an aggregated market share of 69.7 percent in 1977.

In 1975, the last year before the Shell Mex-B.P. split of their marketing divisions, the joint venture market share was 35 percent of refined petrol as against the 1977 individualized, aggregated shares of 34.1 percent. The joint venture market position had been in a constant decline since 1964 when it had a 45 percent market share, which, alone, constituted a statutory monopoly as defined by the Monopolies and Mergers Act of 1965.[46] Esso has also slipped in refined market position from a high of 27.6 percent in 1964 to 19.3 percent in 1977. Texaco and Mobil have maintained relatively static market shares during the thirteen years.

The top five integrated majors have lost

Footnotes at end of article.

significant market share since 1964 of more than 20 percent in the aggregate (8.4 percent aggregated loss since 1970) in refined petrol. The entry of smaller majors and low cost independent refiners into the market in the early to mid-60's was, perhaps, the signal reason for the retrenchment of the top five. Such refiners as Conoco, Total, Elf, Murco Petroleum, Amoco, and Gulf all made significant strides in the post-1964 and 1970 refining market. Total and Elf increased their respective positions by 420 percent and 360 percent between 1964 and 1977.

Market penetration in recent years at the petrol refinery level may be traced to several factors. In 1974, the star grading, with clearly defined categories, made an almost instant homogeneous product. The retail market reacted by generally disregarding brand distinctions which had been previously a significant element in refining and retail markets. In addition, the rapid rise of petrol costs in the 1970's caused the retail market to move more readily to the smaller refiners and independent jobbers. Moreover, several of the new majors gained market entry through price rebates while other jobbers (such as the conglomerate ICI with no refinery capacity) simply reduced wholesale prices to independent retailers.[47]

While some price cutting by independent refiners and selective retaliation by the large majors took place in 1975–1977, the refinery price during 1977 through April of 1978 was astonishingly similar. For example, the refinery price of B.P., Texaco, Total, Conoco, Burmah, and Fina were an identical 74.9 pence per gallon for four consecutive months. In May of 1977, nine of eleven refineries had precisely the equivalent price of 80.4 pence per gallon.[48] Such horizontal cohesion coming on the heels of a fierce price war is cause for antitrust concern of price-fixing.[49]

In all, there were twelve separate refiners in the U.K. in 1977, eight of whom were conducting refinery operations in 1964. Entry barriers to refinery operations in the U.K. are not unlike that of the United States. Capital requirements are high and environmental standards are rigid. In addition, there has been excess capacity availability in the market. In 1977, capacity utilization was 73.1 percent of total industry availability in the U.K. as contrasted to capacity utilization of 90.1 percent for the same year in the U.S.[50] Under-utilization of plant could impede new entry.

Lastly, as North Sea production increases in the early 1980's, crude supplies will present an almost ominous barrier to further entry for those refineries that do not have a secured off-shore source. The reasons are two. First, the North Sea crude is a sweet, low gravity oil that reduces refining costs *vis-a-vis* the heavier and sour crude from the Persian Gulf. Second, transportation costs and maintenance of capital in crude tankers will make imported crude economically prohibitive, except for specialized industry.

4. United Kingdom Retail Market:

This down-stream but vitally important market has been the subject of increased concentration, discriminatory pricing and spasmodic competition during the past fifteen years. The independent retailer has experienced difficulty of operation against the major oil company stations (managed and leased). In 1964, there were almost 39,000 petrol sites in the U.K. Although the horizontal retail market has increased by 82.9 percent over 1964 levels, the number of stations in 1977 had shrunk by one-fourth to little over 29,000.[51] Whereas in 1964, 14.2 percent of all retail outlets were owned by large oil companies and accounted for 25 percent of total retail sales, in 1977, 30.2 percent of total outlets were company-owned and they captured 50.1 percent of the market. Thus, in little more than a decade, while petrol sites have decreased 25 percent in number, the majors have increased their vertically-integrated holdings downstream by some 215 percent and proportionate vertical sales by over 100 percent.

The independent outlets rely upon major and independent refiners and wholesalers for supply. Their share of the market has constantly dwindled. Thus, in 1970, when 84.4 percent of all petrol outlets (the large part being independents) pumped less than 200,000 gallons a year and had 52.7 percent of the market, in 1977, 200,000 or less gallonage stations comprised only 72 percent of total outlets and had an aggregated market share of 32.7 percent, or a proportional loss of one-fifth of a rapidly expanding horizontal market. The large chain-independents, with their super/hypermarkets fared better. In 1977, four of the largest independents with only 1.2 percent of total petrol stations sold over 200 million gallons for an accumulative 4.2 percent market share.[52]

The major companies, Shell, Esso, B.P., Mobil and Texaco, supply two basic retail outlets—company-owned and company-leased stations. The former is operated by an employee-servant and the latter is under lease to an independent retailer. Major oil companies in the U.K. increased their ownership of retail outlets from 5,435 to 8,881 between 1964–1977 (at a time when the same companies, through other subsidiaries were disposed of sites in the United States.[53]) In 1977, major oil companies owned 60 percent of the U.K. petrol stations with a 200,000+ gallon through-put and 81.1 percent of stations with annual gallonage exceeding 500,000. While said stations constitute only 28 percent of total outlets in the U.K., they pumped 66.62 percent of all petrol in 1977.[54] The gallonage pumped by petrol stations of 200,000 gallons and above, increased their collective through-put by 82 percent since 1970.

Thus, the major companies were more concentrated and vertically integrated in the U.K. than at anytime since early 1960. Independent retailers have lost both absolute numbers and market share. Two reasons may explain this evolving fashion. The first is profit. The other may rest in the fact that in 1965 the Monopolies and Mergers Commission (MMC) issued a Report[55] in which it condemned, as anti-competitive, solus agreements wherein an oil company required a retailer to buy all petrol (and in many cases petroleum and service products) from the company. Those retailers who failed to abide by the restrictive terms were refused further petrol by the solus suppliers. The M M C recommended that the term of the solus be limited to five years, and that any refiner or jobber whose sales exceeded 10 million gallons annually[56] was not to build or acquire other retail sites in any year in which the company-owned stations received more than 15 percent of total annual sales. The ban on new petrol sites was lifted in the late 1960's by the Secretary of State. Upon that event, major oil acquisitions and development of new sites commenced, rose in 1976 to over 9,000 stations and declined in 1977 to 8,600.

4(a). Solus Agreements and Price Discrimination.—In the 1977 Report, the MMC recognized that exclusive dealing arrangements were still wide-spread. It also found that during indicated periods, (particularly 1975) when price competition was sharp, subsidy support was given by the majors (Esso, Shell, Mobil, and B.P.) to large as against small retailers and company-owned as against independent outlets. The first was acknowledged by the oil Companies, but the second denied.

The basis for price reduction was said to be that smaller stations were less likely to maintain economically viable operations in the long-haul and that selective price support was given to those that would show a "better long-term return."[57] No claim for selective discrimination was apparently based upon specific local conditions to meet the price of a competitor or upon lower costs. Surely it can be said if a major company had predetermined that a particular retail site or even a more general level of retail operation was destined for economic failure regardless of enterprise and efficiency, selective price supports was a way to hurry the smaller operator to the grave.

4(b). Pricing Behavior.—During the last several years, retail pricing by most major companies tended to follow similar contours and trends in the U.K. The pump price often is the same from one retailer to another and seldom does it vary over 2 percent. The price leaders in the market are Shell, Esso and/or B.P. Not infrequently, price rises between the leaders or other majors will be simultaneous. If one company leads out and the other price leaders do not follow, the first may be forced to reconsider the price or risk losing market share. Such pricing policies clearly suggest oligopolistic conduct.

As in the U.S., major companies will, to achieve cost savings, interchange refined petrol. Thus, Shell owned stations may retail petrol refined by Esso and B.P. will sell Shell products. Independent retailers regularly deal in a mix of differing product and may take delivery from a third-party jobber without knowing the identity of the refiner.

CHAPTER IV: ENERGY POLICIES OF THE UNITED STATES AND THE UNITED KINGDOM

The oil paralysis of 1973 in the Persian Gulf laid out for all to see an axiom that some in the petroleum industry had known and given warning for years—that the Western world, particularly the U. S., was consuming petroleum at a breathtaking if not rapacious speed, that most of the "cheap" oil had been exhausted, that crude oil was a finite source and that the national economies faced an unprecedented shortage of supply. The day of prolific economic growth, bottomed on low-cost oil and gas, was over. All the Queen's horses and the Washington bureaucracy could not restore Humpty-Dumpty again.

1. United States Energy Policy:

America was required to inventory all of its energy resources. Some of it had been mismanaged by unconscionable government regulation,[58] other forms of energy such as coal lay dormant due to environmental standards, and much had been simply squandered. It became increasingly clear by 1975 that the country could not afford the luxury of undefined hydrocarbon and fossil fuel use. A new phrase, "energy conservation", was invented in the dialect. National priorities had to be reordered and the proliferation of petroleum consumption checked.

Under the Emergency Petroleum Allocation Act of 1973,[59] maximum ceiling prices on domestic crude and refined product were established. The price of natural gas and oil escalated swiftly. The individual states imposed maximum speed laws of 55 miles per hour to reduce petrol consumption. By 1977, the writing was on the wall—all forms of energy use including oil, natural gas, coal, nuclear, along with the more exotic or experimental kind, must be rationalized into a cohesive national policy. The penultimate targets were spelled out as higher cost energy and conservation, producer price incentives to stimulate new hydrocarbon discovery and gradual deregulation of the well head price of domestic crude and natural gas. The conclusive ambitions were realistic autonomy over an otherwise slavish dependence upon international crude imports together with a more tempered domestic consumption.

In 1978, a comprehensive energy portfolio was enacted into law.[60] A leading edge of the legislation was to bring about pragmatic price uniformity in order to provoke interfuel competition in selected energy markets. Thus, under the Natural Gas Policy Act of 1978,[61] the price of natural gas to full-line

Footnotes at end of article.

and interruptible industrial users is to rise incrementally until it matches the price of No. 2 fuel oil at the New York Harbor. For years natural gas has been federally regulated in interstate commerce at a price below the equivalent BTU therms for heavier industrial oil. Additionally, the congressional intent calls for deregulation over the next several years of both oil and gas so that the price will float to market demand as against other fuels rather than be artificially manipulated through government regulation. The energy Acts also recognize the need for and incentives to further the development of the nation's vast coal deposits as part of the larger policy synthesis.

The entire 1978 energy package is detailed, complex and conceptually original. It is unnecessary to unfurl its entire scenario here. What is important to this Thesis is that since 1973, the petroleum industry has undergone metamorphosis. Prior to that period, oil and its pricing machinations had never been subject to government price controls. The industry is no longer to be gauged in a sterilized vacuum, for it is part and parcel of the national energy fabric. Even so is it in the context of antitrust. If a break-up of the major oil companies into separate operating tiers or functions were to transpire, the proximate impact upon the national conscience of implementing the energy blueprint would have to be given just weight in the judicial equation. More will be said on the subject under Chapter IX.

2. United Kingdom Energy Policy:

The need in Britain to develop an omnibus energy policy begins and leaves at much different points along the path than in the United States. The Parliament has had authority, since at least the 1920 Emergency Powers Act, to deal with interruptions in the nation's fuel supply. The Energy Act of 1976 embellished the powers of H M Government to allocate and ration petroleum and other energy sources as well as to better define the control of building heat, prices of paraffin and speed limits. Conservation measures are presently aimed at cutting oil consumption by some 5 percent through voluntary measures.[62] Britain also has specified EEC obligations in the event of inordinate Community shortages to allocate petroleum supply between Member States and engage in switchoff to other fuels.[63] Lowered speed limits on U.K. highways proved thoroughly distasteful to the public as a conservation move: the motorist claimed that he had paid for his petrol and was entitled to use it. He would conserve in other ways, but not in his auto. The Government relaxed speed limits in 1974.

Whereas the U.S. was running out of domestic crude production in the early 1970's, the U.K. was just gearing up for the dramatic discoveries of the North Sea. North Sea oil has much to do with the short and long-term energy schemes and indeed, the prospects of self-sufficiency in petroleum during the 1980's has given a rather flaccid bent to a well-defined larger energy plan. BNOC weighs-in prominently relative to the Government position in North Sea development and a comprehensive energy plan.

In the event of an energy emergency, Whitehall believes that in order for rationing and allocation of crude and refined petroleum to be affected, collaboration of the major oil companies will be mandated. Section 5 of the 1976 Energy Act provides an exemption for the registration of any oil company co-operative agreements that would otherwise be caught by Section 6(1) of the 1976 Restrictive Practices Act. Allocation and redistribution in crises times would be subject to the jurisdiction of the National Emergency Sharing Organization (NESO), an overview Government agency.

While the United Kingdom has not yet determined the outer limits of its energy program and has not undertaken to define any position on inter-fuel competition comparable to America, it is enough to say that in the antitrust analysis of oil company divestiture, the impact on energy policy under the 1976 Act and EEC commitments is relevant.

CHAPTER V: THE AFFIRMATIVE CASE FOR VERTICAL DIVESTITURE OF MAJOR OIL COMPANIES

Idaho's Senator Frank Church mirrored the view of many in antitrust by his 1973 statement:

"It is time we began the process of demystifying the inner sanctum of this most secret of industries."

As mentioned earlier, dismemberment of the oil industry has found a soft spot in almost every recognizable element of the competition community in the United States and to a lesser degree, in the United Kingdom. While the arguments vary as to the bases for the break-up of Big Oil, there is virtual unanimity in the claim that the major companies are so monolithic in proportion and omnipotent in deciding the fate of economic systems, the politics of nations and the whole mode of social behavior in the 20th Century, their continuance as integrated organisms is contrary to antitrust policy and the larger public interest.

The question of size has always dominated dialogue in Sherman Act enforcement, but its nesting place in the major oil companies has become almost ritualistic. They are, it is said, the largest companies in the world; the sun never sets on their feifdoms. Exxon, Shell, Texaco, Gulf, Mobil, B.P., Socal, Atlantic Richfield and Amoco are the principal targets of the indictment.[64] Of the world's twelve largest corporations, Exxon, Shell, Texaco, Gulf, Mobil, B.P., and Socal rank 1, 2, 4, 7, 8, 11, and 12, respectively. The combined assets of General Motors and ITT do not equal either Shell or Exxon.

It is argued that any resemblance of competition between these barons of capitalism is accidental and episodic. From the outset of the petroleum process, there is prolonged scheming and interstitial collaboration in joint bidding for on- and off-shore leases and licenses.[65] Exploration is conducted jointly and production follows suit. Ownership in major pipelines is in common between the majors to the exclusion and discrimination of independents and smaller operators.[66] Even in the production field, it is contended that one company, say Shell, will "post" a buying price for crude; the price is artificial and a fix, for Shell is not only the posted buyer, it is the seller in the field.[67]

At the refining level, the charge is that the majors exchange crude with each other, to the exclusion of smaller competitors, which gives an unfair but measurable competitive advantage. Moreover, it is claimed that the large companies, due to tax dodges and credits which the companies have lobbied from Congress and Parliament, shift their profit up-stream to the production tier and reflect only a break-even position at the refining level and, because of the consequent high cost of crude, such is * * * to put a down stream "squeeze" on competing refiners who * * * turn a reasonable profit on the sale of refined product.[68]

Continued * * * is practiced at the refinery and retail tiers, so the argument goes. While the homogeneity of the petrol product has, by definition, reduced quality and price competition in varying degrees, information sharing is claimed to be even more destructive of competitive market forces. Each oil company is said to know the other's pricing policies and * * * data because of up-stream collusion; price uniformity is the result, it is claimed. Even if there is not horizontal price-fixing, it is argued that "conscious parallelism" is tantamount to oligopolistic price-fixing.[69]

The only * * * competition is said to be in the form of advertising. The public is either treated to a Shell advertisement on its "platformate" petrol (when the Shell dealer is actually selling product from a Gulf refinery), or Exxon's "tiger in the tank" promises you improved engine performance, or the comedian, Bob Hope, is pictured driving a golf ball off an ocean oil rig yelling "you can trust your car to the man who wears the star . . . Texaco." Because of the homogeneity of petrol, it is argued that the only beneficiaries of that commercial * * * are the advertising agencies on Madison Avenue and Fleet Street.

At the retail level, the majors are alleged to require anti-competitive * * * dealing agreements with dealers and operators, full-line forcing, and illegal tying arrangements. Such are both written and tacit, but backed by the vertical power and leverage to boycott a reluctant dealer. Due to the extent of vertical involvement, it is argued that the major corporations engage in vertical price-fixing with lessee-dealers and independents by a system of "suggested retail prices". Such results in virtual price uniformity in the retail market to the detriment of the buying public.

In consequence of the foregoing, the contention is that the entry barriers are massive and unforgiving. Development of market share at either the refining or marketing tiers is not dependent upon aggressive competition, but rather upon the beneficence of the cozy 7, 8, or 10 in the club. The companies are said to have interlocking banking connections, directors and financial advisers which cross-fertilize the industry with common knowledge.[70] So extensive is vertical integration and interdependent behavior among the majors, it is claimed, that there is extant a shared monopoly—a *de facto* and indivisible union of interests and behavior, with layer upon layer of subsidiary corporations and divisions, that makes identification and public responsiveness impossible.

It is claimed that this sweetheart marriage of Big Oil has yielded monopoly profits. In 1979, B. P. reported after tax profits of £1.62 billion or some $3.64 billion, up almost 400 percent from 1978. Shell exceeded that return in 1979 by earning £3.05 billion or an after tax profit of $6.86 billion, up practically 300 percent from the previous year.[71] Texaco reported earnings of $1.75 billion for 1979, up $907 million from 1978. Last but not least, Exxon reported after tax profits in 1979 of $4.36 billion, an increase of almost 60 percent over 1978 net earnings of $2.8 billion.

The argument continues that the omnipresence of the majors is contrary to the whole thread of antitrust enforcement in the U.S. and U.K and must be terminated by a vertical divestiture at the refining and marketing levels. The divestiture proposal in the pending *F.T.C.* v. *Exxon et al.* litigation is that as many as a dozen smaller companies be created or reorganized to purchase most of the refinery assets of the majors and a separate number of organizations acquire substantially the retail outlets. Thus, the majors would be left essentially as production companies and would be forced to compete at the best price for crude buyers. The refiners in turn would have stepped-up rivalry for the sale of product to competing retailers. Vertical divestiture would also have the adjunct benefits of doing away with illegal exclusive dealing arrangements, tying and full-line forcing.

In advancing these arguments, it is acknowledged that the oil industry is relatively unconcentrated in the United States. The largest four or eight companies have individual market shares at both the refining and retail marketing levels that are less than other industrial segments of the economy, namely, automotive, steel, electric appliances and aerospace.

Footnotes at end of article.

TABLE IX.—COMPARISON OF PETROLEUM AND OTHER MAJOR U.S. INDUSTRIES: RATE OF RETURN ON CAPITAL

Industry groups	10-yr average, 1963–72
Office equipment and computers	15.8
Autos and trucks	15.6
Aerospace	11.0
Rubber and allied products	10.9
Total mining	11.7
Iron and steel	7.3
Household appliances	13.8
Electronic equipment	12.7
Chemical products	12.0
Lumber and wood products	11.9
Crude production and refining	11.8

Source: New York City Bank Statistical Report on U.S. Industries (1975), U.S. National Energy Management Report, (1979), p. 5.

In addition, the rate of return realized on capital investment for the oil industry was, as demonstrated by Table IX on the facing page, mid-stream among other industrial groupings for a ten year period through 1972. Oil companies compete with those other industries for the same equity and debt capital in the financial markets. Moreover, it is reasonably clear that the very high profits racked up by the oil industry and the multi-nationals, in particular, during specific years since 1972, have been as a consequence of the cartel decisions of OPEC and not the individual or collective determinations of major oil companies.

It must be also acknowledged in the U.K. that the refinery market is comprised of more than a dozen corporations, the market share of each being significantly lower than in other sectors of British industry. Until the last several years with the soaring prices for crude on the world market, return on investment has been ordinary in the U.K. Nonetheless, the record of oil is said to be preoccupied with self-indulgency. As the Monopolies and Mergers Commission put it in the 1965 Report on Petrol:

"The history of the petrol industry from the beginning in the United Kingdom has been to minimize competition so that output could be controlled."[72]

Vertical divestiture of all or most of the refining and retail assets of the integrated majors should be mandated, it is contended.

CHAPTER VI: GENERAL PRECEPTS OF COMPETITION

1. The Goal Of Competition: The starting point in any thoughtful analysis of antitrust enforcement in the petroleum industry is the indentification and statement of the focal objective. To some, this observation may sound robustly and overly fundamental, even satirical, for in the words of Al Capp's Little Abner, "as any fool can plainly see", the goal is obvious. The trouble is that the goal of antitrust is not obvious either in the case law or the literature. It has waffled and lurched in different azimuths, at times instantaneously. Although the ambivalence has been all in the namesake of antitrust, the vascillating policy objectives have yielded enormous disparities in competition jurisprudence and result. The propositus of this Chapter is, therefore, to examine briefly the fashionable theories of antitrust and to lay down what I believe to be the controlling and mature goal. If not in a larger legal sense, such is foundational to the questions of antitrust in this Thesis.

The conceptual dogmas of antitrust enforcement are several. First, competition is seen as the tool to meet the demand for products and services by their supply at reasonable prices, to promote technical and managerial efficiency, progress and invention, to allocate resources functionally and economically, and to yield a reasonable return on capital to the investor. Such factors are generally the matriarch of antitrust under the neoclassic definition of Adam Smith and each is to have measured weight in the balancing test of conduct which may or may not be condemned as anticompetitive.

Secondly, it is said that real competition is only found in a large number of structurally small atomized units working within a relative prototype of "perfect competition." Sometimes carrying the label of the "populist" theory, it holds that while all the characteristics of the first concept have relevancy, the most significant goal of antitrust is as a social weapon against corporate bigness and size. Autonomous size and strength of corporate enterprise are diseased without further evidence and are the antithesis of pristine competition. The Sherman Act, it is claimed, was trained on this theorem, the statutory objective being to break-up the mammoth oil, tobacco, railroad, and manufacturing trusts. While, in fact, the Sherman Act was guided by other disciplines,[73] the argument against size has attracted such celebrated jurists as Louis Brandeis, Learned Hand and Charles Wysanski,[74] as well as *obiter dicta* of the U.S. Supreme Court.[75] Brandeis in his book *The Curse of Bigness* wrote:

"It will be found that wherever competition has been suppressed, it has been due either to ruthless processes or by improper use of inordinate wealth and power."[76]

In its proper role and implementation, antitrust will have an unquestioned check on corporate size and success. Monolithic organizations which engage in cut-throat pricing with the specific predatory intent of eliminating smaller businesses or which try to herd with others in the comfort of fixed prices and/or divided markets, will have no peace with antitrust laws. But any curb on size, *per se*, from competition enforcement is a side product and not the end objective. A system which condemns bigness out of hand penalizes the person who competed according to the rules and was successful. Notwithstanding, the argument on size has played a senior part in the development of modern antitrust dogma. In its most vivid colours, the populist theory views antitrust as a governmentally sanctioned method for redistribution of wealth and promotion of the egalitarian state.

Yet a third theorem is that the quintessential role of antitrust is the protection and benefit of the consumer.[77] Competition exists as the method by which consumer demands are met. If a line of conduct is aimed at or will result in more plentiful goods and lesser prices at the tail-end of the distribution process, ancillary anticompetitive behavior to fulfill the original intent and result may be condoned. The proposition, with noted exceptions, reposes an almost infinite confidence in the free market. *Laissez faire* will work through productive and allocative efficiency, it is said, if antitrust and welfare reformists will but give it a chance. The argument admits to unlimited vertical integration, vertical price maintenance, exclusive dealing and other intermediate restrictions in distribution.

Within these three doctrines one can fit almost every concept, whim and anomoly of antitrust. By-passing the first for the moment, the second theory as the *raison d'etre* of antitrust is palpably unacceptable. Antitrust does not preclude business associations from becoming large. If that were the case, the solution of competition policy would be simply to set a ceiling of assets or revenues beyond which no organization could legally exist. When the roof is reached, there would be axiomatic divestiture, vertical and horizontal. The whole trouble with the argument against size is that it is fundamentally at war with the essence of competition—to be successful, more so than all other competitors. The cloth of the populist tends to reward inefficiency and indolence and penalize progress and invention. If through a rational antitrust policy, structural balance and size is contained, then that will be a concomitant consequences along with other societal benefits. But as a self-contained or even part of a collective goal, it is fatally flawed and should be rejected.

The third theory, while polarized from the supposition of bigness and size, is overly restrictive and sees antitrust with tunnel vision. Manifestly more defensible than the idiosyncratics of populism, it suffers to a degree from the same affliction, viz., the notion that the end justifies the means. Under that notion, ancillary but nonetheless measured restraints or trade or other anti-competitive behavior at one or more economic tiers are justified if the ultimate goal of low consumer prices is achieved. Were low consumer prices the finish line, other methods besides market competition could be arranged that would be more effective. In the process, however, the free choice in business enterprise, free movement of goods and society itself would suffer

The initial theorem comes the closest of the three to a workable definition of antitrust. It adopts the pragmatic principles of economics inherent in the market and it inculcates the original message of competition which brought about the passage of the Sherman Act of 1890. It pulls up short in its arrangement of consumer prices or bigness as a casual element of competition. They are not causes, they are effects. If all the facets of the competitive market function as anticipated, the result at day's end will be reasonable consumer prices, quality goods, and structural moderation of industry.

Thus drawing on the theorems analyzed, the goal of antitrust which underpins this Thesis is that competition is to be conducted for its own sake and on its own merits at all marketing tiers. While harsh and seemingly inequitable at times, it is plainly the best stimulant to economic activity for it guarantees the widest possible freedom of action for traders. Competition provides an incentive to improve efficiency and encourage progressiveness, it will allocate resources effectively and it will yield a return or reward on risk capital to the investor. Through the inter-action of the competitive process in its entirety, the ultimate customer will, by definition, pay no more than a fair price for the retail product of his choice. Competition and, to that extent, antitrust enforcement provide the balancing rod between the individual enterprise and the general needs of society.[78]

2. Competition And Market Power:

Before turning to substantive antitrust law and the oil industry, the generic grades of competition and market power should be briefly examined, since they are rooted in any treatment of competition jurisprudence.

(a) Perfect Competition.—Most economists would urge this as the model to which all markets should aspire. Implicit in its definition are (i) that sellers and buyers in a market are so numerous that individual restriction on production has no impact upon market behavior, (ii) that each seller will make a decision to raise or reduce production or prices independently, (iii) that raw materials are freely available and mobile among markets, (iv) that all sellers are knowledgeable as to manufacturing or trading techniques, cost functions and market prices, (v) that there are no individual or collective entry barriers such as patents, or capital requirements and (vi) decisions are made to maximize return on capital (that point where price on the last unit produced is covered by marginal costs). This

Footnotes at end of article.

state of millennial competition is rarely, if ever, witnessed. The doctrine is nonetheless germane to antitrust, for any market should have the ambition of approximating the concept as closely as possible.

(b) Monopoly Power.—Monopoly has general reference to that market in which the position of one enterprise is so pervasive that market price and demand can be controlled by restricting output without regard to competition. Market entry is typically difficult if not impossible because of barriers such as control of raw materials, patents, high capital costs, or customer acceptance. None of the factors attendant "perfect competition" are present except the inducement to maximize profits. However, in the latter, monopoly profits are accomplished by production at lower than competitive output where marginal revenues equate but price exceeds marginal costs.[79] The classic monopoly has little incentive to be efficient or progressive, for he controls his economic destiny. Thus, there may be misallocation of resources, higher costs, and little invention associated with monopoly activity.

While the absence of efficiency and progress is the more prosaic sketch of the monopolist, it could well be that unless the pervasiveness was of natural or statutory origin efficiency and progress, coupled with reasonable prices, were required to achieve a monopoly position in the first instance. One of the better examplars of such was the monopoly of the aluminum ingot market by Aluminum Company of America (Alcoa) during the first part of this Century. Alcoa kept its costs low through efficiency, improved product quality by patents and intuition and attracted high demand with low prices.

(c) Oligopoly Market.—An oligopoly is existent when there are few sellers of a homogeneous or interchangeable product and the contraction of output or price by one will impact significantly upon the market and also upon the individual oligopolist's market share. A competitor in such a market will tend to maintain his prices at a level that does not produce wide swings or radical changes in market share. If manufacturer A makes a price move and manufacturer B, C and D do not follow, A is faced with two choices . . . either maintain his price level and lose market share in which case he will have to also cut output, or return to the former price. However, B, C, and D each have choices to make. They can join A at the higher price (in which case the profits of each oligopolist increase) or each can stay where they are and increase output (assuming *ex hypothesi*) that available capacity is extant. Whether B, C and D follow will depend upon the relationship of marginal revenues to marginal costs.

On the other hand, A may decide to reduce his price to increase market share. He should be aware that if he does and B, C and D follow, that his market share will remain constant and profits, along with those of B, C and D, will diminish. While the operation of oligopolistic markets is likely to be blemished and depends upon the number of competitors, complexity of product, and the ease of identifying any price leader, it is generally characterized by price rigidity.

Oligopoly markets rarely behave as a monopoly market, short of express collusion. Where the monopolist may restrict production and increase prices without an appreciable effect upon market position, a member of an oligopoly can do neither without adversely impacting market performance. An oligopolist may intentionally transmit a signal to the market by price announcements, annual shareholder reports or other devices. On the other hand, an oligopoly may increase prices higher than competitively justified, creating excess capacity and simultaneously insulating inefficient firms in the oligopoly. A monopoly would not ordinarily do either of the latter. Coordination in an oligopoly is very likely to be imperfect in contraction of output or pricing movements and accordingly, it will approximate monopoly power only fortuitously and then episodically.

Further, there is a dramatic distinction between an oligopoly and a cartel. The latter is characterized by explicit collusion restricting individual and collective production and conspiratorial price-fixing. A cartel should move parallel with a monopoly. An oligopoly will not behave as a thoroughbred cartel either externally or internally.

(d) *Shared Monopoly.*—In skeletal theory, shared monopoly is made out when two or more entities, although structurally and equitably independent *de jure*, behave and react to market conditions as a *de facto* unit, the collective conduct being sufficiently influential to restrict production and raise prices. In many respects, shared monopoly resembles an oligopoly in pricing policies and output. Static market shares on a relative scale, even during horizontal expansion, would symbolize shared monopoly structure. In practice, the differentiation between a classic oligopoly and share monopoly is razor thin. Although often difficult to detect, the variation between the two would hinge upon two criteria. One, the conduct of those in the monopoly must be largely indistinguishable and behaviorally tantamount to synonymous conduct. Two, there must be a lack of realistic competition between the participants.[80] The conceptual mold of shared monopoly is of recent improvisation in antitrust.[81]

CHAPTER VII: THE APPLICATION OF UNITED STATES ANTITRUST LAW TO DIVESTITURE AND TRADE RESTRAINTS IN THE OIL INDUSTRY

We turn to the national antitrust law of the U.S. with specific relation to the questions of monopoly and market concentration in the petroleum industry under the studied factual setting of Chapter II. The issues of law of relevant product and geographic markets that are oft-times critical to monopoly litigation,[82] will be given only tertiary consideration. The reason is that neither factor ought to be the subject of reasonable debate. The relevant product market is crude oil at the refinery level and refined petrol at the retail tier. The geographic market is the territorial United States. Any attempt to draw a tighter noose around a more particularized gravity of crude oil or to confine the inquiry to a smaller territory, such as the State of Wisconsin,[83] (so as to increase the proportionate market shares of individual companies) would be a march into sheer fantasy. Product and geography are plainly national in scope. It is as simple as that.

The fundamental issue of law may be quickly stated. Do the antitrust laws require that the major oil companies vertically divest themselves of part or all of their respective refinery and/or retail assets? The answer rests in the vortex of 90 years of statute and case law, chiefly the latter. This Chapter will also address the behavior within the industry at the refinery and retail levels regarding exclusive dealing arrangements, tying contracts and information exchange agreements within the fundamental precepts of U.S antitrust. Such are ancillary but nonetheless important facets of the Thesis.

1. American Antitrust Law:

The Book of Genesis in competition law is housed in three Statutes, the Sherman Act of 1890,[84] the Clayton Act of 1914,[85] and the Federal Trade Commission Act (FTC Act) of 1914.[86] The Sherman Act strikes at restraints of trade and monopolies, the Clayton Act is directed principally at mergers of monopoly concentration (although it also treats price discrimination, exclusive dealing and tying of substantial or monopoly proportions), and the FTC Act speaks against "unfair" methods of competition and deceptive business practices. Together, they form the American economic Magna Carta.[87]

The substantive sections of Sherman deserve attention at the outset. They are fashioned in broad and sweeping terms. Thus, Section 1 stamps "every contract, combination * * * trust or conspiracy in restraint of trade * * * to be illegal." The Statute was interpreted in its early growth to outlaw only "unreasonable restraints."[88]

Not only is the restraint unenforceable at law or equity, it is a felony punishable by a fine of not more than $1 million and imprisonment. Section 1 foresees at least two-party involvement in the trade restraint.

Section 2 of Sherman provides that any person who unilaterally or in combination or conspiracy with another "shall monopolize or attempt to monopolize" trade or commerce shall be guilty of a felony. The Sherman Act was enacted in response to public reaction against the predatory and exclusionary practices of the great tobacco, sugar, oil, and railroad trusts of the late 19th Century as well as their massive accumulation of monopoly power. The oil and tobacco trusts were broken-up in landmark decisions in 1914.[89]

When the prohibitions of Section 7 of the Clayton Act (no corporation shall acquire the capital stock or assets of another corporation where such substantially lessens competition or tends to create a monopoly) and Section 5 of the FTC Act[90] are added to Sherman 1 and 2, the full complement of legislation on the issue of divestiture is at hand. In light of the litany of statutory minutiae that grace the United States Code in less provocative areas, it is remarkable that a field of law as dramatic as antitrust is bound-up in four Congressional sentences. "Unfortunate" might be the way some would describe the matter, for the whole of U.S. antitrust policy has essentially been quitclaimed to the judiciary. The basic responsibility of the latter is to decide specific *ad hoc* cases and controversies. *Judicis est jus dicere, non dare.*

The Courts are neither adapted nor equipped to decree broad public policy questions. Too many cases turn on the precise facts before the court at the time, but the language that is utilized to arrive at judgment is lifted out of text and given instantaneous recognition as national antitrust scripture. Notwithstanding, a common-law of sorts in antitrust has developed over the years that is central to the U.S. competition policy. It is that body of case law which must be examined on the questions of divestiture.

2. The Applicability of the Per Se Doctrine:

While Section 1 of Sherman prohibits arrangements in restraint of trade, it does not speak directly to or condemn monopoly or monopoly abuse. That is left to the auspices of Sherman 2. Authorities make it plain that divestiture may be a proper antitrust remedy where the latter Section is violated.[91] It is that Statute, therefore, that is germane.

From almost the outset of federal antitrust, the Supreme Court has engaged in certain evidential presumptions to deal with anti-competitive behavior and to guide case precedent and enforcement. In the early case of *U.S.* v. *American Tobacco Co.*,[92] Chief Justice White declared that certain agreements "because of their inherent nature" restrained trade and no inquiry was needed to determine the intent of the parties or the degree of harm upon competition. The arrangement was presumed to be against the mandate of competition under the Sherman Act and no explanatory defense would justify or save it. In other words, the judicial assumption was irrebuttable.

American Tobacco and other contemporaneous rulings by the Supreme Court[93] were the embryo of what has since been developed as the *per se* rule in American antitrust. It has been applied over the years to a number of categories of offensive conduct, namely pure cartel arrangements, horizontal and vertical price-fixing,[94] territorial market divisions,[95] group boycotts and concerted refusals to deal.[96]

The policy underpinning the evidentiary presumption of illegality is that certain behavior or arrangements are so diseased in their inception and utterly void of redeeming virtue that an elaborate study of the market is unnecessary to forbid the same. The central rationale of *per se* is expanded by the precept that axiomatic certainty as to particular forbidden conduct promotes the efficiency of judicial administration, offers understanding and predictability of conduct specifically foreclosed, and aids in antitrust enforcement.

The evolution of the *per se* rule in U.S. jurisprudence has not been without misgivings. It has been characterized as an arbitrary tool that is blindly invoked against large segments of activity without analysis, and that it has the chilling effect of denying a party the constitutional due process right to a judicial hearing. Further, it is claimed that *per se*, even if properly used in particular classes of antitrust restraints, has been applied with a back-handed sweep that has vitiated whole areas of conduct that are procompetitive in tone and promote rather than impair antitrust goals.[97] Lastly, it has been said that antitrust courts should not have as their principal engagement the procreation of black-lettered rules that cut wide swaths through entire categories of economic activity. That responsibility, it is argued, is essentially legislative, not judicial.

The extent of the chastisement is not without footing. The complexities of modern business intercourse and practices are not given, in many instances, to dogmatic and peremptory results. To take an exemplar, vertical price maintenance agreements dependent upon the extant exigencies, may have pronounced competitive implications for the market at both upstream and downstream tiers. The arrangement may stimulate competition at the distributor level, for instance, and it could enlarge market position of the dealer at the retail level. While vertical price-fixing arrangements are in the main unprincipled and have an anti-competitive bias that cuts against the demands of the Sherman Act, it is submitted that the entire inventory of such arrangements are not so malignant as to scale the heights of *per se* invalidity. Yet Chief Justice Hughes in *Dr. Miles*[98] determined that a vertical arrangement for resale price maintenance was in no better straits than if horizontal competitors had agreed to uniform prices. Since the latter was a condemned *per se* offense under the Sherman Act, equally so was the former. The judicial blunder in *Dr. Miles* was in looking past the pivotal fact that vertical arrangements on prices do not ordinarily involve opposing market contestants whereas horizontal price fixing agreements always do.

The decision of the Supreme Court in *G. T. E. Sylvania Inc.* v. *Continental T.V. Inc.*[99] overturned a ten year old *per se* rule in *Schwinn Bicycle*[100] with regard to vertical territorial and customer restrictions. *Schwinn*, in an opinion authored by Mr. Justice Fortas, had declared that restrictions on the territory in which and customers to whom bicycles could be sold by an independent retailer was *per se* forbidden under the ancient rule against restraints on alienation. *G. T. E. Sylvania* held that a territorial location restraint imposed by the manufacturer-distributor in a retail contract was not banned on its face and that a rule of reason trial was required to determine whether, on balance, the arrangement was a restraint of trade under Sherman. The *Schwinn* doctrine had provoked enormous reaction at the Bar and probably was the most severely chastized *per se* determination in the history of U.S. antitrust.[101]

In view of the result in *G. T. E. Sylvania*, there is some hope that *per se* adjudications are still open to review and that the Court is aware of the potential irritations which the doctrine portends. That is not at all to say that the *per se* analysis of antitrust enforcement is to be shredded in the discard pile and that all causes, regardless of their character, shall be adjudicated only after a plenary economic analysis of behavior and market impact. Such a result would be not only to forsake a primary function of the judiciary intended by the Congress, viz., to administer the substantive competition laws of the United States,[102] but it would quickly embroil antitrust courts in malingering, unnecessary and time-consuming litigation. Rather, it is to say that broad general axioms of antitrust illegality having instantaneous results on entire fields of conduct, should be reserved to those infected arrangements and exclusionary acts that by their congenital nature are bold and naked restraints of trade in the merits.

Contractual restrictions and unilateral behavior which do not fall within proscribed *per se* conduct are subject to examination under the principle of reasonable analysis. That is to say, taking all relevant factors into account and weighing them in the purview of the competition mandate under Sherman, can it be said by reasonable men that the challenged conduct is against the Act? This *rule of reason* approach to antitrust, although probably implicit in the ordinary judicial function, was given formal introduction in *Chicago Board of Trade v. U.S.*[103] where it was held:

"The true test of legality (under the Sherman Act) is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable."

The rule of reason principle is utilized as an antitrust gauge of general relevancy to assess the evidentiary factors surrounding the implicated conduct and to evaluate its meaning in the specific factual context as well as in the larger forum of economic behavior. The explicable elements that would be germane if not indigenous to the competition analysis by the antitrust court would be the specified conduct or behavior, the *malus animus* or absence thereof, the competitive economic advantage sought, the effect on sources of supply, the establishment of barriers to further competition, the objective impact that such arrangement or conduct (if approved in general model) would have upon the structural market and/or behavioral competition, the ability of the participants and others in the market to expand market share and to reach other markets (horizontal and vertical) and the likely result in market concentration, control or dominance that may foreseeably flow from the questioned activity.

In its best understood role, *per se* analysis in antitrust has been applied to incorrigible conduct under Sherman 1 which restrains trade and commerce. Although language in some Sherman 2 and Clayton 7 controversies would indicate that the court has viewed a corporation as having offended the Acts by mere market share and size,[104] that is neither the authoritative nor better position. The basis of the latter statement is Section 2 of Sherman, itself. The Statute does not forbid, outright, a monopoly. Rather, it enjoins conduct which "monopolizes" or "attempts to monopolize" a market. It is submitted that such entails overt or passive (but nonetheless) conduct, exclusionary activity or predation by the charged party. So even if one were assumed by reason of an invented market share formula, for example, to be a *per se* monopoly, the monopolist would still have to "monopolize" or "attempt to monopolize to contravene Sherman 2.[105] In order to determine whether the party has engaged in monopolizing conduct, a significant examination in a rule of reason trial is ordinarily required. There simply is not the confined quarters in which the *per se* rule may operate in the setting of Sherman 2. The same rationale is applicable to a market analysis of Clayton 7.

Accordingly, this Thesis proceeds to the question of Sherman 2 application against the major oil companies in the United States on the premise that the *per se* doctrine is not an acceptable device to measure the monopoly provisions of antitrust enforcement. It does and will, however, have general relevancy to ancillary considerations in this work regarding exclusivity contract and tying provisions.

3. The Relationship Of Market Shares To Oil Company Monopoly:

American antitrust enforcement in monopoly litigation has been absorbed in market share examination, devoting an abundance of attention to structural analysis of corporations charged with Sherman 2 or Clayton 7 violations. In *U.S.* v. *Aluminum Co. of America* (Alcoa),[106] the distinguished jurist, Learned Hand, analyzed the market dominance and control that was said to flow from Alcoa's market share of 90 percent of U.S. aluminum ingot. Other market share horizons were reviewed as well in the abstract under *Alcoa* apart from specific behavioral character of the subjective market. In *American Tobacco Co.* v. *U.S.*,[107] the market share of the Defendant (between 68 percent and 91 percent of cigarette sales) was given particular prominence in determining that a Sherman 2 count of monopolization was made out. *Brown Shoe Co.* v. *U.S.*,[108] a landmark decision in vertical mergers under Clayton 7, was witness to miroscopic examination of structural market shares of the merging companies, although minor in relative proportion. Moreover, the Justice Department in 1968 fashioned Merger Guidelines that were wedded, vertically and horizontally, to finite market position.[109]

This seeming fascination of American antitrust with market share and structural organization is viewed by lawyers and economists in the United Kingdom as a study in absolutes that is both overly mechanical and in some ways irrelevant. The British consensus seems to be that more attention should be devoted to actual study of market behavior and competition and less time spent on exercises in higher mathematics. While we shall take a look at the general approach to and theory of monopoly cases in the United Kingdom in Chapter VIII, there is some merit to the suggestion. Market share analyses and no more makes for superficiality and arbitrary adjudications that may lose sight of the principal question . . . Is there a monopoly extant, have monopolistic practices been present or does the monopoly and behavior tend to substantially lessen competition.

Yet, there is much to commend market share evaluation as a viable tool in antitrust. First, it is a convenient method to obtain a reasonable grasp on an otherwise complex matter, rather than grousing for months on end in a subjective pilgrimage of massive fact and detail. Second, market share assessment tends to give uniformity and predictability to monopoly questions that would otherwise flounder in a sea of subjective doubt. Thirdly, empirical studies have consistently indicated that there is a high correlation between market share and market control, between proportionality and the

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ability to control price by restricting output.[109] Such disciplines have further demonstrated that there is significant affinity between market position and profits and that as a general synthesis, high market share will yield higher than average profits.

Moreover, it is a reasonably accepted postulate that as market share rises, so do the entry barriers of risk capital, economies of scale, absence of patent and a greater degree of customer awareness and acceptance of the principle market position. The trick is to utilize market share analysis in combination with subjective assessment of the particular factual scenario. Each is the better with the other.

It is accepted in this Thesis for the foregoing reasons that market share is a reasonably reliable yardstick with which to measure monopoly considerations in the oil industry. The debate does not come at the upper echelons of market position, for few would contest that a corporation with absolute dominion or with 90% of the market would have little effective competition and that the structure of monopoly as discussed in Chapter VI would be present. The only question with a market share of that dimension is whether it was acquired through or is held by exclusionary, predatory or other than meritorious means. If the latter behavior were not present, divestiture would not be in order. If, however, exclusionary or restrictive practices were undertaken to procure the monopoly, divestiture could be remedially sound.

The issue, to put it bluntly, is where to draw the line on market share. Any percentile within a given framework may come under attack as unjustly categorical, but those that insist on perpetuating that attack have nothing in the end. For the purpose of this Thesis, the starting point of monopoly power is a market share in the range of 65 percent. Until that level is approached, competition may take place in a meaningful fashion and new market penetration against the leader is entirely feasible. Studies at the national level in the United States [111] and prior case precedent [112] suggest that the range of market share adopted is defensible. As earlier noted in another context, a business entity with a market share of less propotionality may be deemed, after a full "rule of reason" exposition, to fall within the monopoly definition of Sherman 2. But in the confines of market share structure, it is only when market position approaches the level of 65 percent should serious consideration be given to the implication that market share is demonstrative of monopoly market power.

It is crystal clear that under the factual presentation set out in Chapter II, no major oil company comes within striking distance of the proposed minimum or threshold level. Exxon had the largest market share at the refining tier in 1978 and that was less than 10 percent of available capacity. For that matter the aggregated market share of the top four major companies was 32.5 percent of total available refining capacity, or slightly less than 50 percent of that considered marginal for any single company.

The market shares of the retail sector of the industry for 1978 are of less significance than at the refining tier. Shell-U.S. and Amoco each achieved 7.7 percent of the market in front of Exxon at 7.3 percent. The top four majors had an aggregated 29.4 percent of the retail market and the entire top eight had an accumulated market share of less than 50 percent.

Thus, no major company has sufficient market share in any market tier to support, without more, that a monopoly is present and should be arrested by divestiture. But the analysis does not end there. The rule of reason silhouette still requires that other factors incident to the subjective composition and individual or collective behavior of the corporations be weighed.

4. The Elements of Size, Efficiency & Exclusionary Behavior:

Almost every argument brought forward, vertical divesture of the major oil companies, whether it is the revenues earned, asset holdings or their ranking as the biggest corporations in the world, all have a common origin . . . the vast accumulation of wealth at every marketing tier. The contention is that the antitrust laws were designed to put an end to the massive assemblage of economic opulence, for such wealth breeds market power, inefficiency and absence of genuine competition without regard to market share and exclusionary or predatory conduct.

In the 1955 Report of the U.S. Attorney General Committee on Antitrust, the following statement is made:

"Effective competition may be affected not only by the total number of sellers; their relative size and strength must also be considered. This does not mean that close equality of size among the various firms is essential for workable competition to exist, but only that the rivalry should not depend entirely upon sellers who are so weak or inefficient as to exist by sufferance. For such firms are not independent, and are not properly counted among the number of effectively competitive sellers. And as the number of independent sellers reaches unity, the market obviously reaches monopoly."[113]

As applied to the oil industry, the statement argues that the oil majors have a greater power to control the refinery and retail markets than market shares indicate. The argument continues that where there is great disparity in economic size and wealth, smaller companies exist virtually by the grace or "sufferance" of the majors and thus should not be counted among the "effective" competitors in the market. Under that line of reasoning, the fifty to sixty smaller integrated and independent refineries should be disregarded in the determination of "effective market share" at the industry refinery level. Such methodology would increase the market share of Exxon to an "effective" level exceeding 17 percent of the refinery market, Socal to 16 percent and the top four majors including Amoco and Shell-U.S. to 58.9 percent of refinery capacity. At the retail market level, if all other marketers were excised from the calculations apart from the top eight oil companies as being "ineffective", the respective market shares in 1978 of Shell-U.S. would rise from 7.7 percent to 15.6 percent, Exxon from 7.3 percent to 14.8 percent and the aggregated "effective" market share of the top four would increase from 29.4 to 59.6 percent.[114]

An ancillary and not unimportant element of the argument of size in American antitrust is that the Sherman Act bans massive accumulations of aggrandized wealth as monopolistic without the requirement of a showing that exclusionary or predatory conduct contributed to the monopoly. The thread of the argument has been that since the Sherman Act forbids monopoly, the issue of how a company arrived in that position is irrelevant. Graphic demonstrations of that juridical philosophy are found in two cases out of the Federal bench in Massachusetts, both of which received Supreme Court review.

In *U.S.* v. *Griffith*,[115] the Defendant utilized a monopoly position in the theatre business in one town to obtain concessions from a distributor for movies to be shown in another town in which defendant faced exhibitor competition. The United States Supreme Court affirmed the holding of the trial court, Wyzanski, J., that such conduct was an attempt to utilize market power of a monopoly in one market to increase market strength in a different market. In finding a violation of Sherman 2 the Court wrote:

"Section 2 is not restricted to conspiracies. . . . but also makes it a crime for any person to monopolize or to attempt to monopolize. . . . So it is that monopoly power, *whether lawfully or unlawfully* acquired, *may* itself constitute an evil and stand condemned under Section 2 *even though it remains unexercised*." (Emphasis added).

In *United Shoe*,[116] the chargeable Sherman 2 offense consisted of United's practice of leasing shoe machines which it manufactured and refused to sell the same to competitors. The leases had partnership features which the trial Court found went beyond the mere assurance of prompt rental payments. Judge Wyzanski determined that the Sherman monopolization provisions had been transgressed by United. In so doing, he declared that illegal market power is unlawful when accompanied by actual or planned use of any "exclusionary practice" including activity which, though "honestly industrial", was "not economically inevitable."[117] The Supreme Court affirmed the Wyzanski opinion in *United Shoe* summarily without written opinion. The height of the Wyzanski Sherman 2 rationale was reached ten years after in *U.S.* v. *Grinnell Corp.*,[118] where, in a moment of judicial *dictum*, the trial court wrote that regardless of the specific facts and behavior of the defendant, a finding of monopoly power carried with it the signal "but rebuttable presumption *that such power had been criminally acquired*." A defendant shown to have monopoly control would have the *burden of proof* of showing that the company was the "highly exceptional case" where "monopoly power was *thrust* upon an enterprise by the economic character of the industry." On appeal, the Supreme Court, as we shall see, did not adopt this astonishing exercise of judicial wizardry.

The *ratio decidendi* in *Griffith*, *United Shoe* and *Grinnell* stemmed from one of the truly seminal cases in U.S. antitrust law, the *Alcoa* opinion [119] by Learned Hand. It is considered so because at the time of decision, the Second Circuit Court of Appeals was regarded as perhaps the premier judicial body in the United States (if not the Western world), and because the case has be en cited with distinction and authority by the Supreme Court itself. But *Alcoa* is also landmark because it has led American antitrust into deep waters from which it has yet to fully emerge. The facts bear repeating as they lay open the base for the entire judicial debate on size and absence of any monopoly misconduct under Sherman 2.

Alcoa began manufacturing aluminum in 1885 and obtained through acquisition of successive patents a monopoly of the manufacture or manufacturing process of aluminum by 1910. Aluminum was a new lightweight alloy that could be utilized in a number of industries that made it compete directly with steel. Alcoa aggressively promoted aluminum in the U. S. and Canada, developed new uses for the alloy, continued to compete against other types of metal products and kept its prices down. Competition from imported ingot was proportionately minor. By the 1940's, through strong competition, continuous expansion of capacity and maintenance of low prices, Alcoa had at least 90 percent of domestic aluminum ingot sales. Alcoa's profits for over a 50 year period averaged less than 10 percent per annum on invested capital.

In 1940, the Justice Department charged Alcoa with monopolization under the Sherman Act. On appeal, Judge Hand first determined that the 90 percent market share of Alcoa constituted a monopoly "lawful or unlawful". Next, he laid aside as irrelevant

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the fact that Alcoa had not abused its monopoly power by charging high prices and earning excessive profits, stating:

"It is no excuse for 'monopolizing' a market that the monopoly has not been used to extract from the consumer more than a 'fair' profit. The Act has wider purposes."

Hand then turned to the issue of size and economic concentration, declaring that—

"Many people believe that possession of unchallenged economic power deadens initiative, discourages thrift and depresses energy; that immunity from competition is a narcotic, and rivalry is a stimulant to industrial progress. . . . True it might have been thought adequate to condemn only those monopolies which could not show that they had exercised the highest possible ingenuity. . . . No doubt, that would be one way of dealing with the matter. . . . Be that as it may, that was not the way Congress chose; it did not condone 'good trusts' and condemn 'bad' ones; it forbad all."

Judge Hand then demonstrated his comprehension of the Sherman Act by comparing conspiratorial price-fixing, a *per se* violation of Section 1, with a Section 2 finding of unilateral monopoly:

"Starting, however, with the authoritative premise that all contracts fixing prices are unconditionally prohibited, the only possible difference between them and a monopoly is that while a monopoly necessarily involves an equal, or even greater power to fix prices, its mere existence might be thought not to constitute an exercise of that power. That distinction is purely formal; it would be valid only so long as the monopoly remained inert; it would disappear as soon as the monopoly began to operate. . . . There can be no doubt that the vice of restrictive contracts and of monopoly is really one, it is the denial to commerce of the supposed protection of competition."

Before turning to the question of intuition, invention, efficiency, progressiveness, and low prices which had characterized Aloca's operation, Hand turned back to the question of size alone being sufficient to indict under Sherman 2:

"We have been speaking only of the economic reasons which forbid monopoly; but, as we have already implied, there are others, based upon the belief that great industrial consolidations are *inherently undesirable* regardless of their economic results. . . . Throughout the history of these statutes it has been constantly assumed that one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other. We hold that Alcoa's monopoly of ingot was of the kind covered by Section 2." (Emphasis added)

Learned Hand recognized the pivotal contrast between a "monopoly" and "monopolizing", but to the *Alcoa* Court it may have been a distinction without a difference:

"It does not follow because Alcoa had such a monopoly, that it *monopolized* the ingot market; it may not have achieved a monopoly; monopoly may have been *thrust* upon it." (Emphasis added)

We now see where Judge Wyzanski borrowed the word "thrust" in *Grinnell*. Hand then proceeded to address the issue of whether one can be convicted of a felony for violation of Sherman 2 when there was no wrongful intent and Alcoa did not engage in any exclusionary conduct of "monopolization":

". . . persons may unwittingly find themselves in possession of a monopoly, automatically so to say: that is, without having intended either to put an end to existing competition, or to prevent competition from arising when none had existed; they may become monopolists by force of accident. Since the Act makes "monopolizing" a crime, as well as a civil wrong, it would be not only unfair, but presumably contrary to the intent of Congress, to include such instances . . . A single producer may be the survivor out of a group of active competitors, *merely by virtue of his superior skill, foresight and industry*. In such cases a strong argument can be made out that . . . the Act does not mean to condemn the resultant of those very forces which it is its prime object to foster: *finis opus coronat*."

Then Judge Hand made a statement which resulted in a full reversal of his field:

"The successful competitor, having been urged to compete, must not be turned upon when he wins."

The opinion closed on the illusory and astonishing note that an "exclusionary" act contrary to Sherman 2 consisted of Alcoa increasing its production capacity as demand for its product grew:

It (Alcoa) insists that it never excluded competitors; but *we can think of no more effective exclusion* than *progressively* to embrace each new opportunity as it opened, and to *face every newcomer with new capacity* already geared into a great organization, having the advantage of experience . . ." (Emphasis added)

The time has been taken to set out several sections of the opinion in *Alcoa*, for one needs to see for himself the enormous difficulty in which the Hand Court placed itself and, for that matter, the whole field of monopoly law under the Sherman Act. If the decisions in *Griffith*, *United Shoe*, *Grinnell* and *Alcoa* are synthesized, it can be said in a Sherman 2 case (i) that corporate size is significant legal relevancy, (ii) that monopoly power is actionable even though lawfully acquired unless it were thrown or "thrust" on an unwilling and unknowing competitor, (iii) that normal competitive activity by a monopoly will be exclusionary unless it was "economically inevitable", (iv) that Sherman 2 did not just forbid "bad monopolies", it forbade all monopolies, (v) that monopoly power was criminally acquired and that the burden of proof is on the monopoly to show that it fits within a "highly exceptional case", but (vi) that a competitor who acquired a monopoly through superior skill, foresight and industry must not be turned on when he wins.

If the law were actually as suggested by this compendium of cases, a substantial segment of American corporations would be under perpetual indictment for monopoly violation of the Sherman Act. It should be noted that the market in which Alcoa was said to have "monopolized" was aluminum. Apparently to the Second Circuit, aluminum has no competitive interchangeable substitute such as steel or other synthetics. By drawing the product market with an arrow, a corporation can turn from competitor to monopolist very swiftly.[120]

The rationale of *Alcoa* and the trial court opinion in *Grinnell* are categorically inconsistent with the bold letter precedent of the Supreme Court and with the better rationale that size is no offense under Sherman 2. First, in *U.S.* v. *U.S. Steel Corp.*,[121] better than 180 firms were brought under unified control of defendant. The Steel Company then attempted to induce others to fix prices; the Supreme Court found that such conduct was itself evidence that the defendant lacked market power. The Court found that although U.S. Steel had attempted to become a monopoly, it had not succeeded and that its size as the largest steel company in the U.S. did not make it so.[122]

Secondly, the statements in the opinion of Judge Hand cannot stand analysis. In one breath, it is said that only a monopoly that is thrown in one's lap or was otherwise economically inevitable, can be sustained under the Act. In the next breath, Hand writes that one who has gained a monopoly by competitive skill, foresight and industry, cannot be condemned. The two statements cannot stand together; they result in an immaculate *non-sequitur*.

In point of law, the larger approach to the Sherman Act in *Alcoa* is flawed. To compare a horizontal price-fixing conspiracy with a unilaterally and properly acquired monopoly is convoluted logic of the worst type. *Alcoa* abuses the central theme and is the antithesis of competition, for in claiming that it was violative of the Sherman Act to expand capacity in order to match new demands which Alcoa's production had created, the opinion does just what Learned Hand feared most . . . it penalizes a competitor for being efficient and legitimately expanding capacity, for keeping his costs down, for developing new techniques and for selling at a low price for the benefit of the consumer. If the opinions of Judges Hand and Wyzanski are, indeed the law, the following antitrust aberrations result:

(a) Keep your prices sufficiently high above marginal costs so that entry barriers will not be intolerable and the market can be shared;

(b) Inefficiency should be encouraged for that will reduce barriers to market entry;

(c) Do not be so progressive with new product development and capacity expansion because others may not be able to compete; and

(d) By all means, don't be such a strong competitor that you win.

Third, the most recent pronouncement of the U.S. Supreme Court on the issue of Sherman 2 monopolization was the 1966 appeal in *Grinnell*.[122a] In a repudiation of the language of the trial judge, Wyzanski, J., the Supreme Court expressly declared that a Sherman 2 violation is made out only by the existence of monopoly power and the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

Thus, *Grinnell* recognizes and permits a monopoly that was obtained through diligence, efficiency and progressiveness. The very stuff of the antitrust laws is to put out a better product than competitors, to sell at a lower price, to expand capacity, and to be more efficient and progressive. What antitrust condemns is competition that is not on the merits. The latter is the "exclusionary conduct" which constitutes monopolization under Sherman 2. *Grinnell* has left American antitrust law with a workable definition. Competition on the merits in a highly concentrated market is not an offense under the Act and a monopoly acquired by such conduct is not subject to attack. A monopoly need not be "thrust" upon a company to sustain it *vis-a-vis* the Sherman Act, if the company acquired it through good faith competition and superior skill.

Fourth, the great bulk of Section 2 litigation wherein a violation has been found, involved express, exclusionary conduct. In the watershed case of *Standard Oil Co.* v. *U.S.*,[123] the Supreme Court found that preferences and discriminatory pricing, contracts with competitors to restrain trade, price cutting to ruin competition and creation of bogus companies were violations of Sherman 1 which in turn resulted in monopolization under Sherman 2. The Court also stated that if traditional methods of competition were not utilized and behavior was accompanied by intent to exclude, the conduct was condemned under Section 2. In the companion case of *U.S.* v. *American Tobacco Co.*[124] predatory ruthless practices were made out as the bases for finding a Sherman Act violation. Speaking through White, C. J., the Court observed that a legitimately acquired monopoly was not forbidden by the Statute.

Thus it is that U.S. antitrust does not condemn size, *ipso facto*, or monopoly power.

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The Sherman Act does not forbid all monopolies as claimed in *Alcoa*. It bans only monopolization. Monopoly power does not carry with it any presumption of criminal acquisition. The trial court statement in *Grinnell* to that effect is lonely for any support.

The anomalies of *Alcoa* are prodigious and undercut any weight that might otherwise be accorded to the decision. *Alcoa* is a celebrated case only because of the general reputation of its author and not because of the respectability of its rationale in the field of antitrust. While *Alcoa* and *Grinnell* have long provided intellectual sport in academic circles, they do not represent the controlling monopoly law of the U.S.

The oil majors are not subject to the wrath of Section 2 of Sherman by virtue of dominance or size. None of the companies approach a level of market share in either refining or retailing which under American jurisprudence constitutes a monopoly.

5. Considerations of Vertical Integration:

The assimilation of separate operating levels, each of which competes in a distinct market, has long been of concern in antitrust. In the more general reference, the argument is generally made that vertical combination of separate markets in the distribution system allows market power at one level to be unfairly employed in increasing market power at a second level to the detriment of competition at the latter. In most instances, the integration that is claimed as anti-competitive is the use of up-stream strength to unnaturally inseminate a down-stream operation. Since the upper level of a company is likely to deal with its forward level to the exclusion of other possible purchasers and because the forward level is just as likely to acquire its up-stream product from the upper level rather than from outside sellers, it is argued that competition is strangled in both directions.

The argument against vertical assimilation of different operating tiers within one enterprise, both in its general context and that of the major oil companies, is bankrupt and misconceives the purpose of antitrust. To begin with, there is no jurisprudential or economic theory that forecloses an entity from engaging in business at more than one level of the manufacturing process. Indeed, if the matter is to turn on fundamental competition philosophy, the presumption must be that an individual has the range of freedom to engage in different levels of economic activity at the same time. If efficiency of operation is enhanced at either level or at both upper and lower tiers by the reduction of marginal costs, vertical integration of the two levels is not only an acceptable method of competition, it is a clear social gain and is a desired objective of antitrust. Moreover, if the combination of different operating levels contributes to a progressively better product or promotes new research and technology at either or both functioning tiers, such are also social competition gains and are to be encouraged.

As for the argument in the oil industry that vertical integration permits a downstream "squeeze" on independent refiners, the claim is flawed. Even if the argument were accurate, the refining level of the major oil company is foregoing a profit on its operations which it otherwise would be entitled to recover. The result is neither unfair nor contrary to competition policy. The true cost of the product to the integrated company is the price on the open market at any given stage or at the tail end. Competition at the production level in the United States will place emphatic pressure on the major company to sell crude to others or transmit the crude to its own refinery at a price which meets that of the independent producer. Those that augur for an infinite number of atomized economic units could hardly ask for more.

In addition, there is a strong practical argument that supports vertical combination of the production and refining levels and for that matter, the refining and retail tiers. A operator who has heavy capital investment in production plant and crude is desirous of securing an outlet for his petroleum. Otherwise, he will be dependent upon the vagaries and accidents of a down-stream refiner wherein a sale could be interrupted because of the latter's internal financial conditions, industrial action, and the like. The reliability of petroleum refinining capacity is of particular import at the production stage, for quantity and storage requirements (even apart from financial risk) are vast. A producer can neither logistically nor economically store crude oil for extended time periods. This principle is indigenous to the independent producer as well as to the major oil company.

If it were shown that the specific *animus* on the part of the integrated major was to intentionally drive another refiner out of business by a "squeeze," such would in all probability constitute exclusionary conduct under Sherman 2.[125] On the other hand, if the conduct were prompted either by tax or business incentives (as acknowledged by commentators) or by the incentive to compete and hold down price, that is nothing more than is expected of a strong competitive market. The trouble with much of the argument against vertical integration, not unlike that of other populist proposals, is that it does not fit comfortably in juxtaposition with competition. At times a harsh reality, competition neither makes allowances for nor guarantees equal economic shares of the market. Businesses fail because of inefficiency, ineptness, lack of acumen, absence of aggressiveness, or simply overpopulation in the market. Nothing in the law of antitrust, except perhaps for the machinations of *Grinnell* and *Alcoa*, requires a business operator to treat a competitor not only with good faith competition, but with tender-loving care as well.

Because of the nexus of vertical integration under Sherman 2 to vertical mergers of corporate entities generally, the case law under Section 7 of the Clayton Act should be considered. The leading case in point is *U.S. v. Columbia Steel Co.*[126] wherein the Government challenged a vertical acquisition by a steel manufacturer (a subsidiary of U.S. Steel) of a steel fabricator (Consolidated). Undisputed testimony established that the purpose of the merger was to assure an outlet for the manufacturer's production. The Justice Department claimed that such would exclude competitors from supplying Consolidated and therefore would substantially lessen competition or "tend to create a monopoly". The purchases of Consolidated comprised about 3 percent of the rolled steel market, and there was no predatory intent to monopolize the downstream market. The Supreme Court approved of the merger, as accomplishing "a normal business purpose", and further declared that a vertical merger is not *per se* illegal, but must be examined under the rule of reason.

There are, however, numerous examples of mergers ruled anticompetitive. In *Reading*[127] and *Lehigh Valley*,[128] both railroads acquired coal bearing properties so that coal production from the fields would pass over their lines and not the roads of competitors. The Supreme Court found the vertical acquisitions to be tained with an intent to eliminate competition and rejected both mergers. The railroads had statutory monopoly power as common carriers. In the more recent case of *U.S. v. Yellow Cab Co.*[129] decided under Sherman 2, the Court disapproved of vertical acqusitions of taxi companies where there appeared to be a "calculated purchase for control" of taxi cabs by an auto wholesaler. That type of acquisition was not in furtherance of a normal business practice, but rather was viewed as an attempt to gain a monopoly control in relevant product and territorial markets in order to block any access by competitive wholesalers. And in *U.S. v. Paramount Pictures Inc.*,[130] a Sherman 2 complaint was sustained where major film distributors, having 75 percent of the market, were found to have monopolized first run exhibitions by preferentially cross-licensing each other's theatres. The Court, stating that vertical integration under the Act turns on the purpose or intent (a calculated scheme to gain control over an appreciable segment of the market and to restrain competition) and the power to effectuate it, ordered divestiture of the down-stream assets.

The law under both Clayton 7 and Sherman 2 with respect to vertical integration thus hinges on monopoly power. *Unless there is power of monopoly proportions at either the upper or lower operational tiers, vertical integration lacks antitrust significance.* If there be monopoly power at the upper tier, vertical integration will have antitrust consequences where there is manifested express exclusionary conduct at the lower level to significantly restrain trade, to attempt monopolization at the lower tier, or to increase the monopoly power at the upper level.

The individual market shares of the major oil companies at production and refining levels will not allow an argument of monopoly power, for reasons already advanced in this Chapter. The respective market positions resemble more that of Consolidated in *Columbia Steel* than that of *Paramount Pictures*. The basis for the vertical integration of crude production and refining tiers is consistent with "a normal business purpose" *viz.*, securing a dependable outlet in the manufacturing process. Further, there is no express showing of exclusionary conduct or a scheme calculated to create a monopoly at either the production or refinery tiers.

The vertical integration of retail stations by the major oil companies presents a closer question than the refinery level. To begin with, the business justification argument of having a secured outlet for the refined product is of less weight—independent retailers provide a significant and dependable base for the sale of petrol. Moreover, some of the restraints which major oil companies place on lessee-dealers as well as independent retailers may constitute exclusionary practices at the retail level.

6. Joint Bidding And Exchange Agreements:

The claim that joint bidding procedures of the major oil corporations violate the antitrust laws is without merit. In fact, the argument demonstrated a considerable lack of understanding regarding necessary and typical business activity in the petroleum industry, including independent operators. The search for and development of oil is much different than manufacturing automobiles, or making bubble gum. In the latter, the raw materials are identified and quantifiable. The fundamental risk is thus one of efficiency of production, quality of product and the ability to sell at a profitable and competitive price.

On the other hand oil involves high risk to locate the raw material. The risk is not only how much oil will be hit, but whether any at all will be discovered. Moreover, the capital required to engage in a comprehensive oil exploration program is massive, even by major oil company standards. In 1979, for example, Amoco budgeted $1.2 billion, Social budgeted $2.3 billion and the independent, Louisiana Land & Exploration, set aside $220 million for exploration and development.[131]

The areas in which wildcat drilling is required are deep and difficult horizons, both on and off-shore. The only way that private capital can be raised to undertake these high-risk operations is through joint venture bidding and exploration between majors and independents where the risk in any one field or hole is shared. Joint venture operations at the exploration and development tier are common throughout the industry in every country. If such arrangements are considered illegal combinations or conspiratorial practices under the Sherman Act, then the charge must be levied against the entire industry and not just the major chieftains. Of course, the ultimate consequence of that antitrust eccentricity would be that exploratory drilling would be seriously prejudiced with the most difficult areas abandoned. Joint ventures, however, between the top eight or any large oil corporations at points forward of production other than pipeline transportation, should be closely examined and challenged where any costing methodology or pricing techniques are even tacitly involved.[132]

Arrangements for exchange of crude or refined product between major companies, to the exclusion of independent refineries, have superficial overtones of discrimination and predation. Yet under the *Colgate* doctrine,[133] a party may unilaterally choose with whom he will deal and, in the absence of any purpose or intent to create or maintain a monopoly, the conduct is not contrary to the Sherman Act. As we have noted, refined gasoline is a constant product and, dependent upon gravity base, so is crude. There is cross-elasticity of demand. If a company is able to obtain increased efficiency and thus lower costs by exchange of the homogeneous product, the conduct is pro-competitive and does not violate the antitrust laws.

However, it would not take much for this practice to constitute a trade restraint under Sherman 1. If there were any significant showing that an interchange arrangement was made to intentionally discriminate against an independent or another major comoany, or to drive them from the market, a Sherman 1 complaint would be made out. In addition, such combined practices would provide a leg up toward the theory of shared monopoly under Sherman 2.

7. Information Sharing Agreements:

Agreements of competitors to exchange information as to technology, marketing practices, employment procedures, inventory, customer lists, and costing and pricing mechanisms should be viewed with skepticism and suspicion under the antitrust laws. There are few inventions, techniques and production processes in refining or in the operation of retail outlets that are not of common understanding. There are those exceptional circumstances in which the contractual exchange of technical or operative data is justified on the basis that productive and allocative efficiency of the general industry is bettered. For example, agreement for information sharing within the Common Market has been sanctioned by the Commission of European Communities as a method to dissolve national markets and promote trade within the Community. Moreover, general financial and technical data furnished to trade associations or journals is not injurious to antitrust principles, for such is no more than what may be found in annual reports to shareholders. In fact, non-contractual dissemination of technical and functional material by individuals and companies is encouraged if not required in order that there be free exchange of ideas and dialogue on contemporary problems facing the industry.

But that is as far as the argument on contractual informational agreements can be taken. Inter-company arrangements to share price data, customer lists, costing analyses, and projected future plans are pernicious in spirit and cancerous in effect, for they lead inevitably to specific knowledge of a competitor's operations, inter-dependency and ultimately to price-fixing. In *Container Corp.*,[134] the United States Supreme Court found that the contractual exchange of price lists, inventory counts and customer invoice summaries is the *de jure* equivalent of price-fixing and that this type of cross-fertilization of financial data and materials was categorically forbidden as a *per se* violation of Sherman 1. Antitrust was born to sweep away the barriers of economic interdependency and reciprocity and to sustain efficiency and progressiveness upon individualistic conduct in the market. Competition does not begin or hang on just the price of the end product.

Nor is there any inconsistency between the position now advocated and joint venture arrangements for exploration and development in oil. The latter have long been essential if the high-risk hunt for new discoveries is to continue. The only information that is shared in those ventures relates to the specific field. But that is where it stops. Information sharing or "pooling" beyond that is insidious.

8. The Theorems Of Shared Monopoly & Conscious Parallelism:

Although no antitrust court in the United States has yet held that a shared monopoly is reached by Section 2 of Sherman, the Act and its purpose do not rule out this view as a matter of law. Section 2 condemns "every person who shall monopolize or attempt to monopolize." Nothing in that language suggests that several, although acting individually, might not "combine" to monopolize albeit there is no overt conspiratorial conduct.

From all that has been said, it is a postulate of this Thesis that the eight major oil companies (and perhaps the top ten) fit the profile of an oligopoly in the U.S. Even though individual corporate market shares are of low proportionality, if Exxon or Texaco were to restrict output or increase prices, the effect on the other majors and possibly the entire U.S. industry would likely be substantial. But oligopoly status does not violate Sherman 2 *per se;* it is not even a finding of a *per se* monopoly. The concern of the Act is the promotion of competition through efficiency and progressiveness and the condemnation of a structural market that ignores those characteristics. The market positions of major companies, while relatively stationary, yet have been fluid, both *inter se* and within the industry. The erosion of their historic position has been marked in the past decade with non-integrated independents and other large majors increasing their market shares.

There are four fundamental factors which cut against the finding of shared monopoly by U.S. companies under Sherman 2. First, the individual shares of the top eight majors, aggregated, do not reach the marginal level of what this writer has determined to be monopoly power in either the refinery or retail markets. In 1978, the top eight companies had 54.8 percent of U.S. refining capacity and 49.3 percent of retail petrol sales. In order for an aggregated market share to reach even the doormat of what Learned Hand would catalogue as a monopoly, there would need to be added to the list of inductees three to five additional oil refineries and as many as six to eight corporations with integrated retail divisions. Is it then to be said that these newest reinforcements are part of this shared monopoly when the basis of the monopoly, i.e., uniformity, joint agreements and conscious parallelism, are lacking as to them? That sort of arbitrary pigeon-holing would be fraught with due process questions of constitutional dimensions.

While it is urged that the barriers to new entry at both the refinery and retail markets are intolerable, the uncontested fact is that the only barriers are capital costs and governmental restrictions. Antitrust can hardly do anything about the latter. As to capital requirement, it always has been an inexorable concomitant to the oil industry.

The second reason is that the Supreme Court has refused to find that conscious parallelism, standing by itself, is a violation of Sherman 2.[135] In *Paramount Films*, the aggregated distributors (eight in number) possessed 63 percent of the first-run film market to supply retail exhibitors. The Warren Court[136] explicitly found that the accumulated market share was inapposite and of no consequence under Sherman 2 standards, since the individual conduct of each distributor, although in general parallel to others, was consistent with sound business practices and judgment and that the most profitable mode of distribution was followed. The Court has refused to be drawn away from a showing of some collusion that was persistent and substantial.[137]

The third reason is that even assuming for the sheer sake of argument that a shared monopoly is proven, it must still be evidenced that the monopoly "monopolized" by exclusionary behavior so as to invoke the sanctions of the Sherman Act. There has been no expression that a common unit of a dozen or more companies discriminated against or excluded competition at the refinery or retail markets. To say that the companies engaged in exclusionary behavior individually takes the reader back to conscious parallelism. Unde *Paramount Films*, it may not be used, by itself, as the basis for a Sherman 2 violation. Nor will it do to say that the same conduct that brought about the "monopoly" may be served up again to prove "monopolization." That would be an impermissible "double-dip".

The fourth reason is that there has been, after all has been said, meaningful competition among the magnates of the industry at the refinery and retail levels. Gross revenues have varied; Exxon lost its position in 1978 as having the highest retail market share; some have lost and others have gained market position, and even those in the top eight have changed. The oil oligopoly could hardly be charged with market share rigidity, which typically accompanies the classic arrangement. To the contrary it is elastic.

Lastly, the profits which the industry has typically earned are not what one expects of a monopolist. They could only be recorded as moderate in light of the high-risk industry as well as in relation to other major industry categories. The exorbitant profits captured by the majors in the immediate years past must be fundamentally laid at the feet of OPEC and not to the structural dominance or behavior of the companies. The social problem raised by that phenomenon may be treated in a number of legislative ways, but antitrust should not become the whipping boy of the Internal Revenue Service.

The jurisprudential philosophy of "shared monopoly" is novel and constructive. However, it must be approached and used with caution. Otherwise, most major industry groups, such as automobile, steel, and appliances, with higher individual market shares and structural concentration than oil, will be caught in the whirlwind. Shared monopoly in U.S. oil is inevitable in this Thesis under the rule of reason.

9. Vertical Restraints Of Trade At The Retail Level:

There are two particular areas of antitrust enforcement that merit special attention in the oil industry, to-wit, vertical tying agree-

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ments and exclusive dealing arrangements. Their use has been frequent by major oil companies in the U.S. as a means to control the business functions of independent marketers at the retail level. Company-owned and operated outlets are unaffected by the competitive significance of tying, full-line forcing and exclusive dealing clauses. But they are of cosmic importance to the lessee of a company-owned station and the simon-pure independent retailer, both of whom operate their own business.

a. Tying Contracts:

American antitrust law has consistently eyed with suspicion tying agreements as anticompetitive and unreasonable vertical constraints upon commerce. Even apart from the interdiction of Section 1 of the Sherman Act barring contracts in restraint of trade, Section 3 of Clayton renders illegitimate in law sale agreements between seller and buyer in which the buyer is precluded from purchasing similar goods from the seller's competitor (where such agreement "substantially lessens competition or tends to create a monopoly").[135] In addition to exclusive and full-line forcing contracts, Clayton 3 has been specifically applied to tying arrangements.[136] Moreover, Section 5 of the FTC Act, debarring unfair methods of competition, has been utilized to strike down, under a broader standard, tying arrangements.[136]

One of the principal objections to a tie-in is the utilization of market power in the tying product to force a sale and extirpate competition in a separate product market. The classic illustration is *United States* v. *Loew's Inc.*,[141] wherein the defendant, having a dominant position in the film distribution market, conditioned the licensing to exhibitors of first-run or high quality films upon the licensee taking inferior films as well. The Supreme Court found that the agreement constituted a *per se* violation of Sherman 1. However, a tie-in is not only condemned when the buyer is forced to take a tied product that he does not want. A tying arrangement is subject to attack even where the buyer may desire to purchase the secondary product,[142] for the depreciating effect upon structural competition is the same.

Most tying complaints are brought under the Sherman Act as a restraint of trade. A *per se* violation will be made out if (1) the seller has a dominant position in the tying product [143] or it is otherwise uniquely desirable and (2) a substantial volume of commerce is restrained in the tied product.[144] In determining the latter, the test of "quantitative substantiality" is utilized to measure the dollar volume of tied product that is foreclosed to the market.[145] If a case does not come within the *per se* doctrine, a Sherman 1 offense may still be shown under the rule of reason.[146]

While the tied item may be a service under the Sherman Act, both the tying and tied articles must be commodities under the Clayton Act. If there is a reasonable probability that the tie-in has lessened competition under the "quantitative substantiality" test, a Clayton 3 action will be made out even though the seller lacks market power in the typing product. A Sherman 1 count, on the other hand, requires both dominance (or uniqueness) and competitive restraint.[147]

The leverage which the seller uses to require that the buyer take the tied commodity may rest inherently in the relationship between seller and buyer without a specific explication in writing. In *F.T.C. v. Texaco, Inc.*[148] The Supreme Court introduced the doctrine of "inherent coercion" in a case under Section 5 of the FTC Act wherein Texaco had only "suggested" to its retail dealers that the TBA of Goodrich be purchased.

There are defenses to a non-*per se* Sherman or Clayton tie-in, such as the single product, legitimate business purpose, and protection of goodwill. The latter defense is bottomed on the premise that without the tied product being sold, the customer is less likely to have confidence in the tying product.

Tie in case precedent in U.S. antitrust law has been chastized because its policy appears to rest upon the inequality in bargaining power between the largest seller and the smaller purchaser rather than upon a fundamental goal of competition. While there is language in the case law that would lend credence to a protectionistic complex in the judicial assessment,[149] the contention misses the mark. The pivotal factor is that through the market power or product uniqueness of the seller in the tying commodity, competition in the tied product at the retail level is emasculated not because the party imposing the tying requirement has a better product or a lower price, but because of economic leverage in another market. Thus, in the oil industry, the retail dealer is foreclosed by his tie-in with the major from seeking out TBA and purchasing it at a more competitive price from another supplier. The other side of the coin is that the market, represented by the retailer, has been artificially shut off to any other TBA competitor by the tying arrangement. Therein lies the dual injury to competition and antitrust policy.

In determining whether a major oil company has the requisite economic power or authenticity to satisfy Sherman 1 standards, the relevant geographic market should be defined by the retail market of the buyer not by the refining market of the seller. It is the retail market that has been obstructed. It could be as small as a borough or city and as large as a county or state, dependent upon the specific trading area.

Although there may be exceptional cases, the rule of law, upon which this Thesis rests, is that tying agreements or tacit "understandings" between major oil companies and lessee or independent retailers for TBA are invidious constraints on trade an dependent upon the substantiality of commerce foreclosed, offend the antitrust laws of the United States. Tying cannot be excused on the notion that the oil company is desirous of maintaining quality products at retail outlets where its petrol is sold. That is just another way of saying that the company wants to oversee and control the independent business operations of the retailer. The preservation of a competitive market for the retailer to buy TBA at the best quality and price will not condone such behavior.[150]

b. Exclusive Dealing Contracts.—An exclusive dealing (or requirements) contract in the oil industry is as the phrase implies. . . . as a condition of selling petrol to the retail outlet, the integrated oil company obligates the retailer (1) to purchase all petrol needs from the company and (2) to refrain from dealing in the petrol of any competitor of the company. In consequence, the retail dealer is blocked from access to a better petrol price from the competitive market and in reverse, the retail market represented by the dealer is closed to the competitors of the supplying company. To that end, it might be urged that an exclusive dealing agreement is only a truncated version of a tying arrangement.

But there are conspicuous differences between tie-ins and exclusivity. For one thing, under an exclusive dealing contract the retailer purchases and obtains precisely the commodity he desires. For another, the oil company does not employ in exclusive dealings the degree of abrasive economic power in one market (petrol) to penetrate a separate market (TBA) under a tie-in. In addition, there may be sound business reasons for both the major and the retailer to respectively secure a known outlet and source of supply, whereas a tying agreement can be seldom justined. The utilization of exclusive requirement contracts has been, at times, diffuse in the retail market by the major oil companies.

There is little doubt that exclusivity at the retail level constitutes a restraint of trade. To that end, requirement agreements could ostensibly invoke the Clayton Act, Section 1 of Sherman and the incipiency objectives of the FTC Act.[151] Indeed, the language of Clayton 3 seems plain enough in its declaration that "it shall be unlawful for any person . . . to make a sale . . .[152] on the condition . . . that the . . . purchaser shall not use or deal in the goods . . . of a competitor of the seller . . . where the effect of such condition may substantially lessen competition or tend to create a monopoly." But construction of Section 3 is not axiomatic. The issue of illegality turns on the interpretation of that radiant level of conduct that constitutes a "substantial" lessening of competition. Does 1 exclusive agreement meet the test, or 5 or 50 or 500? Or is proportionality of the entire retail market the litmus test? Still further, is the "quantitative substantiality" doctrine of tie-ins under International Salt the applicable measure? The answers to these questions are not found in the Clayton Act.

Several conclusions of law can be drawn at the outset. Requirement contracts have definite, pro-competitive elements that may stimulate competition. Such redeeming value precludes the application of a *per se* analysis under Sherman 1 or Clayton 3. Secondly, 1, 5, or even 25 exclusive agreements out of 500 retailers purchasing from one major company in the relevant product and geographic market would be, as a matter of law, insubstantial. The antitrust laws protect competition, not individual competitors.[153] Thirdly, a barrage of exclusivity contracts by one major company followed by overt refusals to deal with recalcitrant retailers could be well construed as an attempt to monopolize or monopolization contrary to Section 2 of the Sherman Act as well as being a violation of Sherman 1 and Clayton 3.[154] Beyond that, the guideposts are less than translucent.

The hallmark case on exclusive dealing in U.S. antitrust [155] could hardly provide a better setting for the subject of this Thesis. In *Standard Oil*, Socal had achieved a market share of 23 percent of retail petrol sales in a seven-state area of the Western U.S. Socal supplied some 6,000 independent stations, which accounted for 16 percent of all outlets in the geographic market; the 6,000 independents were responsible for selling about 11.5 percent of Socal's 23 percent of the market. While the agreements between Socal and the independents differed in terms, there was a common theme—an exclusive dealing clause as to petrol requirements. The six leading competitors of Socal, with an aggregated share of 42 percent of the retail market, also maintained exclusivity arrangements with independent retailers. The Justice Department brought action for injunctive relief under Sherman 1 and Clayton 3 for restraint of trade.

Justice Frankfurter, writing for the Court, began by distinguishing exclusive dealing from tie-in arrangements, finding that the latter "serve hardly any purpose beyond the suppression of competition." Because that Court had spoken plainly on the mischief of tie-ins just two years before in *International Salt*, Frankfurter declared that the "quantitative substantiality" formula adopted therein was inapplicable in exclusive dealing agreements. However, the Court recognized the need for a standard under which "effect" on "substantial competition" could be gauged; otherwise, Frankfurter noted, the juridical process would become as *ad hoc* and

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unrefined as the recently enacted Monopolies Act of Great Britain.[156] After considerable vacillation if not gnawing frustration, the *Standard Oil* Court declared that the doctrine of "comparative substantiality" should be applied to determine the proportionality of trade restrained. Since some of 23 percent of the retail market (65 percent of the market including Socal's competitors) was subject to exclusivity, tht effect of the competition inhibited was adjudicated substantial and in violation of Clayton 3. The Court did not reach the issue of whether Socal had transgressed the Sherman Act.

In dissent, Justice Douglas argued for a populist result, claiming that an atomized retail market was the object of anti-trust and that the judgment reached by the *Standard Oil* majority would indefeasibly bring about the destruction of the independent retailer and the creation of major company empires at the retail market. Aside from an otherwise vacuous opinion on competition law, Douglas had a practical point.

A decade later in *Tampa Electric*,[157] the Court found that an exclusive contract to purchase coal requirements (the agreement was for $128 million) was comparatively insubstantial, it covering only .77 percent of the relevant market.

Thus, after decades of antitrust precedent in the U.S., the law relative to exclusive requirement contracts is not altogether settled. Particularly is that so with respect to the petroleum industry, for the sheer, absolute number of outlets and the homogeneity of petrol supply make definition difficult. If the exclusive agreement were between a woolen mill and retailers, forbidding the retailer to buy sweaters from a competing mill, or between a manufacturer of shoes and the retail shop, the comparative substantiality test under the "effects" clause of Clayton 3 would be much the easier to satisfy.

It is submitted that American antitrust courts should apply, as the judicial index in exclusivity contracts, whether competition would have been stimulated and strengthened with lower costs, higher retail profits and added consumer benefits if the requirement agreements were not in effect. This "but for" test is more than a rule of reason analysis, for its focus is on competition *vis-a-vis* individual competitors in the market.

It is not known what proportion of the lessee and independent retailers served by the major oil companies in the U.S. is under exclusive agreements and accordingly, no position can be taken in this Thesis as to probable antitrust violations of any one or more of them. Moreover, the vulnerability of each company must be weighed by the specific geographic market in which it sells refined petrol. Conceptually, however, unless the exclusive agreements of a given company were in the range of 10 percent of the relevant retail market, it is the position of this Thesis that exclusivity should be adjudged insubstantial in its effect upon competition. Long-term exclusivity is much the more offensive due to its time length in which supply competition is shut down. In all events, exclusive arrangements, where permitted, should not exceed a year in duration with the retail operator having the right to select another supplier upon expiration of the term without trepidation of the oil company refusing to supply.

10. Considerations of Divestiture of the Major Companies:

To those within the industry who contend that the consequences of divestiture should be considered in arriving at the conclusion of whether the antitrust laws have been violated,[158] they are wrong. Remedial cures in antitrust are irrelevant to the cornerstone issues on the application of substantive competition law.

Section 4 of the Sherman Act authorizes the several district courts of the United States "to prevent and restrain violations" of the antitrust laws. Criminal fines and incarceration, prohibitory injunction, actual damage recovery by the Government and treble damage liability are explicitly set forth in either the Sherman or Clayton Acts as remedial devices of the judiciary. The word "divestiture" does not appear in print throughout the antitrust laws. Yet it took little time before divestiture was employed in the courtroom. Under the 1915 decision of *Standard Oil*,[159] the Supreme Court entered a decree aimed at both conduct and vertical structure—an injunction against further predatory pricing practices and an order of divestiture as to assets which had been utilized or acquired by the predatory behavior. Without exceptional comment, divestiture was regarded as an inherent attribute of the Court's equity power (judex equitatem semper spectare debet) and seen as the only pragmatic means in which the egregious monopolization by the Oil Trust could be arrested.

American antitrust courts have continued to depend upon divestiture procedure as the ultimate instrument with which to restore competitive balance in the market pursuant to the Sherman 4 statutory mandate. That mandate is the basis of the economic order of the United States. Those that play fast and loose with the competitive system in the U.S. damage the core of free enterprise and individual initiative. Anemic and insipid enforcement consequences are the soft underbelly of the antitrust laws, jeopardizing if not blunting their effectiveness.

In some instances, a criminal fine and the possibility of a treble damage action may be only a wristslap to a monopolist. In other instances, there may be no juridical option other than divestiture, for an injuncture against an entrenched monopolist is barren if he is unable to avoid further antitrust violations by continued operations. Moreover, if the monopoly was achieved through illegal merger or predatory and exclusionary behavior, there is something to be said for the equitable principle that the monopolist should not be entitled to retain the "fruit" of its unlawful conduct.[160] Divestiture has been ordered solely in cases under Section 2 of Sherman and then principally implemented only when anticompetitive acquisitions were the staple of the violations.

Nonetheless, divestiture is radical surgery, easily the most dramatic reparation in antitrust. Dismemberment of a company can have a devastating impact upon corporate personnel, stockholder, and operations in the largest sense and not just to the assets that are subject to divestiture. Time to accomplish the disunion may result in inordinate delay resulting in the loss of capital and inordinate inefficiency. On top of that, the judicial machinery is not very well equipped or designed to fashion or preside over complex economic decrees breaking up a company, as acknowledged by the trust-busting jurist, Charles Wyzanski, in *United Shoe*.[161]

In considering divestiture of the major oil firms, the first issue that must be squarely faced is the profile of the decree. If dismemberment is to fall at the refining and retail levels as to Exxon, for example, is the decree to declare that Exxon is enjoined from thereafter acquiring other assets at those marketing levels in the future? An even larger question is whether the court is prepared to forbid Exxon from developing assets in those markets through the normal process of internal vertical integration? If so, the antitrust court has relegated Exxon to operate perpetually or even for a finite period on one or, perhaps, two levels of economic activity in the industry, i.e., exploration-production and transmission. The company would be required thereafter to compete against other oil companies, including foreign corporations such as B. P., who remained vertically integrated. No one could duck the fact that the restriction of economic freedom and ability of Exxon to acquire properties could raise the most serious substantive due process and equal protection issues of constitutional dimensions.

If that dismemberment process were, as proposed by the advocates of major oil divestiture, repeated seven times against Texaco, Mobil, Shell, Socal, Amoco and the others, the proximate economic upheaval and chaos would be in all likelihood, massive and unprecedented in the U.S. economy. Antitrust enforcement would have to reflect long on the commonsense destiny of such a bold and hazardous divestiture decree.

The second question to be faced in a breakup of Big Oil is what assets are going to be carved up and who is going to buy at liquidation? As to the former, if a clean sweep is to be made of all refinery and retail assets of each major company under divestiture, the problem will be complex, at best, but not nearly to the degree that a less-than-all approach would have. A partial dismemberment at the refining and/or retail level would surround the antitrust court in having to decide which properties go and which stay. Unless some mystical economic formula were devised, the judiciary could become engaged in a game of tweedle-dum and tweedle-dee or some other equally sophisticated adjudication.

The question of what entities would purchase and assume the divested assets, while of lesser dynamics, would be yet of significance. The requirements of capitalization, debt capacity, and the omnibus financial viability of prospective companies would, of necessity, have to weigh-in with the Court. The current proposal of the F.T.C. for divestiture of Big Oil is that a number of companies, perhaps a dozen or more, would be involved at each marketing level. The court would be obligated to see that structural balance was accomplished in the take-over entities, a task that would entail continuing judicial supervision.

A further consideration of divestiture of the major companies is the impact upon equity stock and debenture holder, each class of whom may well have purchased or lent their credit in reliance on an undivested corporation. Enormous losses in the paper value of the stock of retirement trusts and other investors would be a likely concommitant of dismemberment, particularly in the vortex of uncertainity created by protracted and costly litigation and by their future equity in the break-up.

The fate of long-term debt holders is a different story. Their monies and credit were pegged to the capital structure of the company before divestiture. Dismemberment surgery would not only increase their risk through forces other than the market place, but it would also possibly impair their obligation of contract. Assuming, *arguendo*, that debt reapportionment could be legally achieved, the entire debt structure of each company would be the subject of metamorphic change and the debenture holders would be justified in exacting a premium payable for the alteration of their risk.

But after all of that, after being under the seige of the penumbra shadings of the most difficult structural and financial foot-shuffling after years of painstaking effort and monumental litigation costs, the threshold question would still be present—would divestiture only result in the creation of a new set of oligopolies and oligopolists, of oligopsonies and oligopsonists at the refining and retail marketing tiers of the petroleum industry? The prospects of such irony and despicable consequence would have to be given mandatory consideration by the anti-

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trust court to determine whether divestiture should be ordered in the first instance.

This is not to suggest in this Thesis that divestiture should be ruled out (assuming that Sheman 2 has been violated) because the remedial cure is simply too difficult and foreboding for the industry, and therefore that the bigness of Big Oil has, by its own monolithic proportions and strength, been immunized from U.S. antitrust enforcement.[163] The oil majors are not in any animated sanctuary and if an intolerable case under Sherman 2 were laid up against the oil majors, divestiture would be required as the only meaningful way to restore competition at the refinery and retail market levels. But it is to argue that the near draconian off-shoots of divestiture of the petroleum majors must be heavily assessed before the antitrust court embarks upon such a remedial cure. The cure, in this case, could turn out to be far worse than the disease.

The ultimate position in this Thesis of divestiture in the United States is reserved for the concluding Chapter IX.

CHAPTER VIII: UNITED KINGDOM ANTITRUST LAW—DIVESTITURE AND TRADE RESTRAINTS IN THE OIL INDUSTRY

The analysis of U.K. competition law presents a vastly different and relatively new jurisprudence in substance, methodology and effect from that of the United States. Substantively, the rules of antitrust are inculcated within statutory and treaty pronouncement that, unlike the broad and sweeping dialect of the Sherman and Clayton Acts of the U.S., are minute in detail not only as to the specific conduct proscribed, but as well to affirmative defenses that forgive or at the least tolerate otherwise unlawful behavior. Particularly does this strain appear in the Acts of Parliament. Such microscopic delineation of antitrust law is, however, a reflection of the procedural methodology utilized to resolve competition questions.

Whereas United States antitrust interpretation and enforcement has been in paramount parts left to the judiciary (with exception of the FTC Act), the U.K. judiciary has a very confined role to play in the competition process,[163] save the appellate review by the European Court of Justice. From beginning to end, the essential method of evolvement, hearing and fact determination is administrative in character.[164] Indeed, in the more precise area of monopoly (and mergers), under U.K. national law, the procedural filament is somewhere between the ordinary conceptual mold of administrative decision-making and a general board of civic inquiry. Effectually, antitrust theory in the U.K. is largely intent upon terminating if possible, anticompetitive behavior in the future rather than upon punishment for past conduct (subject again to European Community law). Criminal penalties or sanctions are non-existent, civil fines are unheard of in U.K. national competition law, and punitive damage (especially treble damage) recovery for antitrust violations is not only roundly rejected, but is viewed conceptually as an esoteric enigma.

Thus, in style and content, the difference in U.K. and U.S. antitrust law is large. But the fact does not modify the supposition of this Thesis as enunciated in Chapter VI. The genuine goals of antitrust are not chameleon, they do not hinge upon which side of the Atlantic they are articulated, and they can not be shoved aside as applicable to some and inapplicable to others. The precepts of competition are or should be as fundamental to the mold of economic efficiency, individual freedom of choice and social progress in Britain as in America. Thus, much of what has been written regarding the jurisprudence of antitrust, its temperament and eccentricities as identified with U.S. law in the previous Chapter will not be examined again here. To do so would be both tedious and repetitive. Rather, Chapters VII and VIII are in juxtaposition in substance as well as sequence and should be so read.

1. The Duality of United Kingdom Antitrust Law:

There are two prime bodies of competition law extant in the U.K. that have nexus to structural and behavioral analysis of the petroleum industry. The First is the internal antitrust laws of the U.K. as enacted by Parliament, which are in turn constituted of two parts, viz., monopolies and mergers on the one hand and restrictive practices on the other. Internal monopoly and merger questions fall within the jurisdiction of the Monopolies and Mergers Commission (MMC) of HM Government under the Fair Trade Act (FTA) of 1973. Restraints of trade are carved out for specific internal consideration by the Restrictive Practices Court under the Restrictive Practices Act of 1976.

The second corpus of antitrust law in the U.K. of relevance is found in the competition Articles 85 and 86 of the Treaty of Rome (and incident regulations) which became the substantive law of Britain upon its joining the common-market of European Economic Communities (EEC) in 1973. The Treaty provisos charge the Commission of European Communities (CEC) with the enforcement of common-market antitrust policy with right of appellate review before the European Court of Justice (ECJ). The Commission sits in Brussels, Belgium and the Court is housed at Luxembourg. Although this Thesis is trained on the competitive markets of the U.K., the structural dominance and conduct of major oil companies in the Country would unquestionably affect trade between member states of the Community and thus invoke application of the Rome Treaty.[165]

The Treaty is not regarded as a separate code of international jurisprudence, but rather as an integral part of U.K. domestic law.[166] While the accession of Community law as the substantive law of Great Britain reflects a departure from the traditional dualist doctrine of international law,[167] the legal amalgamation is complete.[168] The objectives of the Treaty are announced in Articles 2 and 3 to establish a free and open market for trade between member States. In order to preclude private parties from erecting barriers to trade by way of agreement or exclusionary behavior, and isolating national markets or restricting competition through market dominance, Articles 85 and 86 were included within the original Treaty of 1957. They are self-executing without regulatory authority of the EEC Council of Ministers.[169]

The U.K. Restrictive Practices Court (RPC) may undertake to enforce Community antitrust laws, provided that the CEC has not taken similar action. Any judgment rendered by the national court shall coincide with the rationale of Community objectives.[170] If there be a conflict between the antitrust goals of the RPC and the Community and the matter is one which impacts trade in the broad sense within the common market, the law of the Community prevails.[171] Collisions of that character have been rare. In the ordinary case where a national court is squarely faced with a question that places at issue the application or interpretation of EEC antitrust law, the specific question of law will be referred by the national tribunal to the ECJ at Luxembourg pursuant to Article 177 of the Treaty for adjudication.

2. National Law Of U.K. On Monopolies And Trade Restraints In The Oil Industry:

At the outset, it should be said that British antitrust faces a congenital difficulty that spills-over into all facets of enforcement. The function of competition jurisdiction is essentially bifurcated between two agencies, the MMC and the RPC. The former has the responsibility for monopoly and merger matters and the RPC presides over restrictive practices litigation. Enforcement is mutually exclusive. If the Commission, in the course of an investigation, determines at it often does that contractual trade restraints have taken place by a monopolist, it is precluded by Section 54(5) of the 1973 Act from undertaking any remedial action as to the offensive conduct. The reverse is also true of the RPC regarding serious monopoly dominance or unilateral behavior stemming from market power or concentration. While the Director General of Fair Trading is to correlate the workings of the bifurcated tribunals, the empirical fact is that antitrust mischief uncovered or developed by one will not necessarily be pursued by the other. Principal exemplars of that fact are the 1965 and 1979 Petrol Reports of the Commission which disclosed a variety of significant restrictive practices within the oil industry. Both the U.S. and the EEC pursue antitrust investigations and enforcement under one governmental agency. Much of the shortfall in British antitrust, including more efficient use of staff personnel would be corrected by consolidating the functions of monopolies, mergers and trade restraints. The goal of antitrust is not segregated and neither should it be with enforcement.

2(a). Doctrine Of Statutory Monopoly As Applied To Major Oil Companies:

It is said a touchstone of monopoly proceedings of the MMC is that, unlike American antitrust law, the Commission is not addicted to or obsessed with structural analysis and market share concentration of large corporations within an industry. An examination of various monopoly reports manifests that Commission investigations of market power and level of competition are, indeed, left to each individual setting for *ad hoc* analysis. While it is clear enough that blind adherence to categorical standards of market share leans toward rigidity and arbitrary classification of true market position, market share, for reasons earlier enunciated, occupies a material place in monopoly litigation.

Yet for a system that prides itself on subjective assessment of each case on its merits, the MMC is presented from the outset with an unequivocal classification of monopoly power as a matter of statutory edict. Under Sections 6 and 7 of the 1973 Act, a monopoly in goods or services is said to exist as to any party who supplies 25% or more of the product or service market.[172] If two or more corporations, albeit independently owned and operated, behave in a parallel or common manner so as to be part of one group to "prevent, restrict or distort" competition and said companies have an aggregated market share of 25% or more of the product or service market, a "complex monopoly" is said to exist as to each company.[173]

Of course the query is upon what basis does Parliament declare that in every instance, without deviation, where a company has one-fourth of a market in goods or services, it is a monopoly? Economic studies and empirical evidence will not demonstrate such a fact. Indeed, the probabilities are the other way. It would be such an extraordinary event for a 25 percent market share to yield monopoly power in a product or service market that an evidentiary presumption should exist against such a finding. Notwithstanding, the FTA of 1973 creates an irrebuttable presumption that a company holding a 25 percent market share is a monopoly. Arbitrary in its minimum threshold classification,[174] but drafted at such level so that the Director General of Fair Trading or the Minister would have a wide field from which to make a monopoly reference, the Statute places an inordinate burden upon a business which, although far from exercising monopoly dominance, finds itself suddenly caught in an expensive and manifold Commission investigation. On the other hand, the arbitrary threshold standard may explain, in part, the

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hesitance of the M M C to give much emphasis to market share in past reports.

Petrol Refining Market.—As of 1977, no major company conducting refining operations in the U.K. had a market share of 25 percent in wholesale petrol. Shell was nearest the threshold with 19.5 percent, Esso was next with 19.3 percent and B.P. was third with 14.6 percent of petrol refining. However, only two years prior to the 1977 MMC investigation of the petroleum industry, Shell and B.P. had a long-standing joint venture for refining and marketing; in 1975, the joint venture share of the refining market was 35 percent. That market share would have qualified Shell and B.P. as a "complex monopoly" assuming that the combination prevented, restricted or distorted competition. Surely, the termination of the joint venture between these perennial oil magnates did not erase or emasculate all of the information acquired regarding the operations of the other. They knew and still know each other's marketing patterns, customers and market behavior.

The top five refiners of petrol, namely, Shell, Esso, B.P., Texaco and Mobil had an aggregated market share in 1977 of 69.7 percent. The prices charged by each of them were remarkably similar. They buy, sell and exchange refined petrol between them. In all probability, each engaged in discriminatory price subsidization with selected large retailers to the detriment of small independents. They have maintained their separate buying arrangements and solus agreements over the years.

On the face of it, there is sufficient justification to determine that the top five corporations, viz., Shell, Esso, B.P., Texaco and Mobil constitute a complex monopoly within the framework of Section 11 and 6(2) of the 1973 F T Act in the petrol refining market.[175]

Retail Petrol Market.—As to the retail petrol market in the United Kingdom, there is no market share information available for the years 1975–1978. Requests for gallonage sales by company and for relative retail market shares were made; the requests were refused. It is know that the major oil companies increased their share of the retail market from earlier years because the independents lost significant gallonage at all levels of petrol outlets. Beyond that, thousands of independent retailers went out of business, either voluntarily or involuntarily in the last decade. At the same time, the majors increased their retail holdings in 1977 by over 215% of that in 1964. It is also known that the large companies own a sizable share of high volume supermarket outlets. Those outlets, while only 28% of the total number of stations in the U.K. in 1977, sold 66.6% of all gallonage that year.

Moreover, price movements at the retail market had an outstanding degree of uniformity and moved in tandem. Shell, Esso, and B.P. were clear price leaders, each at a different time. Several price rises at the retail tier were undertaken by the majors simultaneously the same day. The largest corporations which lead at the refinery level also are price leaders at the retail market. By vertical integration, each company unquestionably sells through company-owned and operated as well as leased petrol stations. While a retail market share in the magnitude range of that held in petrol refining might be reasonably assumed or constructed, such a judgment cannot be made for the purpose of this Thesis without market data. Ergo, no hypothesis is advanced as to the shared monopoly by major oil at the retail market.

2(b) Public Interest Criteria In Monopoly Proceedings:

As with U.S. antitrust, the determination that a corporation is a monopoly is the beginning, not the end, of the U.K. administrative review. Monopoly, per se, does not violate the act. It is reprehensible only if found to counteract the public interest. While the relevant factors on the question of "monopolization" are left to the judiciary in U.S. antitrust, they are statutorily defined in the U.K. under Section 84 of the FT Act. The criteria are unremarkable in competition law—efficiency, cost reduction, technical development, market entry, maintaining effective competition and quality, reasonably priced goods at the retail market. However, there should be added to the roll call of factors the failure of a market to achieve effective competition and the existence of anticompetitive or unfair trade practices.

2(c) MMC Reports—Precedent Value and Effect:

To say little about the value of precedent from the MMC reports is to say a lot. With exceptions, the reports of the Commission tend to resemble a social documentary on a particular industry rather than a critical antitrust analysis. The factual section is prepared by staff, ordinarily with the help of the company or industry under investigation; the latter generally assures a model of temperance and objectivity. No omnibus rules of law or economic fact are ordinarily set out to establish monopoly policy or to guide the hand of future Commissions.

In fact, not one report was found involving different industries where a legal or economic rule or policy in a previous case was even cited much the less relied upon. No conclusions of law are announced and little time is spent in market share analysis or its effect. It is apparent that such is all quite intentional and consistent with the theory of judging every case on its merits, one by one. Unfortunately, that one-by-one process requires the Commission to wade into every statutory monopoly, whereas objective precedent would conserve time and, because of the possibility of preventive action taken by potential target companies, may eliminate the necessity for a reference at all.

Nonetheless, having said that, some generalization of antitrust principles may be made from an examination of the reports. As in U.S. law, merger cases have relevance in evaluating the elements of market power and vertical integration.

Size and Market Share.—The Commission to its credit, has not been nearly as concerned about utilizing antitrust as a prophylactic against bigness and corporate size, as have some U.S. Courts. The MMC has been ordinarily concerned with bigness only in horizontal mergers where structural market concentration was evident.

On the other hand, an unseemly tolerance has been shown to high market share so long as prices were held down (at the time of the investigation). In *Colour Film*,[176] Kodak, the giant of amateur film industry with a 70% slice of the U.K. retail market, used its power to leverage the sale of color film under a "tie" wherein the buyer was required to purchase prepaid processing to get the film. Although the MMC was clearly distressed about the illegal tie-in and set forth its view on the matter in the Report, it was incapable of ordering termination. The reason—Commission reports are only recommendatory.[177] As to the tying arrangement, while it was essentially a restrictive practice subject to the jurisdiction of the RPC, the Commission was entitled to consider it in the context of monopoly abuse. Albeit, the principal effort in *Kodak* was to obtain a reduction of monopoly profits and film prices. No action was ever taken under the Restrictive Practices Act for the unlawful tie.

Under *Detergents*,[178] the MMC was confronted with a virtual duopoly in washing power. It found that not only was there no price competition between the two massive entities, Unilever and Procter & Gamble, but the two were exchanging price information. The only competition was said to be in advertising costs. The question on exchange of price information was without MMC jurisdiction; it never reached the RPC. As to advertising, the Commission recommended that the Companies reduce the expense by 40% which would lower barriers to possible new entry. The Companies refused to comply. The Minister declined to enter an order under statutory instrument (possibly because expense reduction was a primary management decision outside of statutory reach). No attack was made against the duopoly power.

The failure of the Commission to focus on the consequences of market share in the 1967 horizontal merger of *Guest, K. & Nettlefolds Ltd. and Birfield Ltd.*[179] resulted in the creation of an almost absolute monopoly in a major auto part industry. Approval was given on the questionable basis that the pressure from the motor car manufacturers would assure low prices from the merging monopolist. Little attention was given in the Report to the creation of the monopoly or the significant entry barriers resulting.

British Match[180] and *British Oxygen*[181] further demonstrate the attention bias of the MMC for product price rather than the inherent question of monopoly. Match had close to a complete monopoly and Oxygen had a 90 percent market share. Both companies engaged in the similar conduct of price-cutting in localized markets against new competitive entry. The MMC recommended that each Company publish and maintain uniform price lists, so that any price reduction would have to be made nationally. The wisdom of the Reports is debatable. First, it could be strongly argued that Match and Oxygen were engaged in procompetitive conduct in meeting competition, unless it were expressly shown that intentional *animus* existed to prevent new entry to the market. Second, even if localized price-reduction were diseased, the recommendation that a firm hold to a national price regardless of local conditions is combating anticompetitive conduct with further anticompetitive conduct.

Other cases, however, suggest that in the fundamental area of mergers, horizontal dominance has played a role in MMC deliberations. Thus in *Barclays, Lloyds and Martin Bank Merger*,[182] the Commission rejected the merger because of the resulting market dominance. The same result was reached in *United Drapery*[183] and *Ross Group & Associated Fisheries*.[184] All three cases resulted in a merged market share obviously lower than in *Nettlefolds and Birfield*, and measureably lower than the monopoly cases of *Colour Film, Detergents, British Match* and *British Oxygen*. The major oil companies with market shares at the refining level at less than 20 percent would likely not be subjected to direct attack unless the complex monopoly and monopolization were unequivocally made out.

Fair Price Determination.—In several cases, the MMC has become enmeshed in determining what a fair price should be for a monopolist to charge. Thus in *Tranquillizers*,[184a] the Commission determined that the prices of Roche Products in the sale of valium and librium were 40 percent and 25 percent too high; it recommended reduction. U.S. antitrust courts have long learned the lesson from the early case of *Trans-Missouri*[185] that it should not enter the arena of price regulation. Nor should the MMC. The vagaries of determining a "proper" or "fair" price are only a step away from public utility control. The antitrust laws were not meant for the government to interfere with management prerogatives in private industry. If the monopoly is permitted to stand, monopoly profits are entitled to be earned. At least it is not a concern of antitrust.

Presumption in Merger Cases.—While the Commission has not readily accepted efficiency or economies of scale as a basis for

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forward integration by merger,[186] vertical mergers have been approved even where a monopoly market was created at the next marketing tier.[187] In *British Motor Corp. and Pressed Steel*, the MMC approved a downstream acquisition by BMC that resulted in virtually a total monopoly for vehicle bodies. The Commission was assured that the merged firm would maintain the same supply relationship with other competitors of the acquiring company (at least until the investigation had become history). *Pressed Steel* and *Pyrotenex* mirror a larger bias in British antitrust favoring mergers that, while having its initial footings in the Statute, is more fundamentally a product of Commission procedure Section 69 of the FT Act requires the MMC to investigate and report on mergers which may or do operate "against the public interest." Such has been construed as a polite but statutory presumption that mergers are in the public interest unless expressly declared. Conglomerate mergers representative of large industrial concentrations have been apparently approved on such premise.[188]

The more basic reason for the pro-merger bias in U.K. competition law, however, is the nature of the Commission proceeding, itself. Informal and non-adversarial, the typical hearing is witness to only factual evidence fully supportive of the merger. At the close of the proceeding, the MMC is likely to be left with a record requiring merger approval, regardless of any statutory presumption. When other competitors or management of the acquired company have presented evidence opposing a merger, the application has been rejected.[189]

During the past fifteen years, there has been major industrial and commercial concentration in the U.K. Only 3 percent of the more than 1500 corporate marriages that were subject to reference under Section 64 of the Act were, in fact, referred and of those, approximately 30 percent were denied. A Green Paper issued by HMG in 1978 recognized the pro-merger presumption extant and has recommended that it be altered so that the policy of the MMC neither favor nor disfavor mergers.[190] However, unless and until there are the most significant changes made in the procedural methodology and burden of proof before the Commission, a new presumptive declaration, even reduced to statute, is unlikely to affect the practical result. The Commission must become more of a deliberative body in both merger and monopoly proceedings. The staff of MMC should be charged with developing its own position in favor of or in opposition to a merger or monopoly reference, and to prosecute and argue the same before the Commission. The legal and factual questions should be framed and narrowed by expert testimony and cross-examination. The Commission should formulate its own report without the back stage penmanship of the parties. Until these primary modifications are made in MMC procedure and attitude, it is submitted that any change in the merger presumption will be one of form and not substance.

2(d) Shared Monopoly and Conscious Parallelism:

The doctrinal rudiment of shared monopoly has been already explored under Chapter VII incident to U.S. antitrust. The essential denominators of commonality, i.e., organization, vertical integration and function, are found in the conceptual operative of a "complex monopoly" under Sections 6(2) and 11 of the FT Act. Although the MMC determined in the 1979 Report on Petrol that the entire wholesale petroleum industry was a complex monopoly, the shallow findings and almost complete absence of antitrust rationale to hit upon the conclusion abused rather than advanced the practical realization of shared monopoly. It could well be the case that all oil companies and wholesale distributors, regardless of structural position or individual behavior, were thrown in a catch-all basin by the MMC without structural or behavioral analysis, in order that a Report could issue at the conclusion of the investigation. If that be so, such is hardly the use intended under the Act.

There is a stronger case for complex monopoly at the petrol refining market in the U.K. than in the United States. Industry concentration of fundamental monopoly proportions are more evident, for one thing. In 1977, the five leading oil majors in the U.K. had an accumulated share of 68.7 percent of the market, whereas in 1978, the top five corporations in the U.S. had only 38.8 percent of refinery capacity market. In fact, the top eight U.S. companies had an aggregated market share of 54.8 percent at the refinery level versus an aggregated share of 81.8 percent in the United Kingdom.

The MMC Reports On The Major Oil Companies.—The exclusionary conduct of the major companies in the U.K. has been as frequent but in a wider spectrum than in the U.S. Under the 1965 *Petrol Retail*[191] reference to the Commission, it was determined that solus agreements were spread throughout the major companies, that full-line forcing required retail operators to purchase inventory that was unwanted and resulted in excess capacity, and that exclusivity arrangements were used for extensive tie-ins. The MMC found refusals to deal by the majors with those retailers that did not fully comply with solus contracts, particularly where the major company unilaterally concluded that the marketing area was adequately served by another dealer. The latter finding should have been alarming for it was tantamount to a territorial location clause that eliminated intra-brand competition.

The MMC went on to make the interesting observation in the 1965 Report that although solus agreements were restraints of trade in the retail market, they should nonetheless "be honored" by local retailers. But the Commission recommended (a) that solus be for no more than five years in length and (b) that no oil company of more than 10 million gallons should acquire any petrol sites in any year in which more than 15 percent of total retail through-put was supplied to company-owned outlets. The intent of such recommendation was to protect the independent retail market from up-stream dominance and extended vertical integration of the majors. The immediate result in the industry was that which was feared in the *Standard Oil*[192] dissent—to skirt the antitrust concern over solus agreements, the major companies in Britain proceeded to acquire old and built new petrol sites.[193]

The 1979 investigation of the industry converged on the refinery or wholesale market, but tangentially reviewed the omnibus aspects of the retail level. Apart from its questionable classification of complex monopoly, the MMC found that solus agreements were still existent and that proprietary acquisition of petrol sites by majors continued to mount with solus a facet of the lessee-operator's contract. The price discrimination which was uncovered in the form of selective subsidies granted to certain favored dealers by Shell, Esso, Mobil, Texaco and B. P., was premised on the long-term potential of the specific retail outlet in the market. Some retail price maintenance was also noted in the Report.

Yet in spite of the finding of complex monopoly and in the face of the restrictive practices at the refinery and retail levels, the MMC made the bewildering finding that neither the industry structure nor exclusionary behavior "operates or may be expected to operate against the public interest." The 1979 Petrol Report of the Commission is an astonishing document, replete with a conglomeration of statistics and statements regarding the industry that have virtually no antitrust relevancy. It must be regarded as a setback to complex monopoly enforcement in Britain and as an injustice to other positive holdings of the Commission.

The inter-company exchange of operating and technical information in the industry is largely undefined in the U. K. The Restrictive Practices Act exempts certain information contracts and "know-how" arrangements between two persons from registration. The position of this Thesis on information-sharing agreements has been set forth earlier and need not be repeated. It is sufficient to say that the concept is basically anticompetitive and if it takes place beyond the exploration and development tier of the industry, it ought to be condemned. Arrangements on information exchanges of actual operating costs, efficiency studies, marginal costs and price methodology are trademarks of co-operative conduct that proximately points to a narcosis in competition and then to the mutually-held objectives of a shared monopoly. A modicum of competition does exist in the U.K. at the refinery and retail markets. The market shares of the largest companies have been in general decline for more than a decade and the smaller majors and non-integrated refiners have accomplished new penetration. The horizontal expansion of the petrol market has seen a slight loss of proportional market share between the top five companies, *inter se*, Esso moving from 29.9 percent to 27.6 percent between 1970–1977. However, Mobil achieved a slight increase between the first five from 9.1 percent to 10.1 percent during the same period. Whether competition among the five largest corporations is merely a curious and unintentional function of business rather than a genuine intention to offer better service and product at a lower price could not be ascertained without a full economic study.

Yet, there still remains the noble fact in the U.K. that the market shares of the five major companies are significant and that there is far more common behavior between them than in the United States. Whereas the top eight companies in the U.S. have a market share of 54.8 percent of refining capacity and 49.3 percent of the retail petrol market, the first five majors in the U.K. have almost 70 percent of refining output. The Shell-Mex B.P. Joint Venture of many years is evidence of inordinate communal interest and common goals. The level of exclusive agreements, tying, and full-line forcing, not to mention information-sharing activities are more pronounced than in the U.S. While the monopoly provisions of Section 6 of the Act will not apply to any single oil company, the "complex monopoly" provisions of Sections 11 and 6(2) will catch the first five companies at the refinery level, i.e., Shell U.K., B.P., Texaco, Esso, and Mobil. The doctrine of conscious parallelism, while not found in the anti-trust decisions of the MMC, should be applicable in support of the finding of complex monopoly. Commonality of behavior, coupled with conduct at the retail market which "in any way" prevents, restricts or distorts trade is sufficient.

The effect of a complex monopoly classification under the FT Act may not be, in reality, profound, as witnessed by the 1979 Petrol Report. It means that the five companies are the subject of an MMC investigation. Findings and enforcement are quite another matter. Because of the limited impact and remedy under U.K. national antitrust law, a more extended treatment of the complex monopoly finding is set out under Section 3(c) of this Chapter relating to shared market dominance under Article 86 of the Rome Treaty.

2(e) Impediments In Commission Procedure & Authority.

If Commission decisions on structural monopoly and vertical mergers are subject to

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challenge both in philosophy and effect, a lion's share of the inadequacy can be traced to the inherent nature of commission procedure and jurisdiction. Several of those issues are treated at this juncture corollary to the considerations of divestiture and restraint in the oil industry, *res accessoria sequitur rem principalem*.

(1) The Commission is not its own personage. It cannot initiate an investigation *sua sponte*, but must await the signal and reference of a Minister or the DGFT. The former is likely to have little contact with current problems of antitrust.

(2) Once a monopoly or merger reference is made, the MMC is bound within the tight constraints of the questions presented in the reference.[194] If it is concluded during the ensuing proceedings that other issues should be joined or that the entire reference should be amplified or changed, the Statute requires the original reference be reported out or the DGFT or Minister will need to be convinced that an amended reference be issued. The time delay could be critical to antitrust analysis.

(3) While there is merit to an open exchange of relevant information, the Commission hearings should not be simply a general colloquy and dialogue between several Commission members and company representatives. A defined procedural path should be established to frame antitrust issues, to present and receive evidence of expert witnesses, to subject the same to cross-examination and to development by staff of a position. The proceeding need not be adversarial; but it would be better to employ the formal socratic method.

(4) The MMC should sit in panels of not more than three members, so that the case load may be better administered. Factual findings and conclusions could be referred to the entire Commission for review *en banc*.

(5) The Commission cannot order any corporation to do or cease doing anything. Its report, however meritorious, is recommendatory only and may be discarded or altered by the Minister. One commentator has suggested that the MMC include several alternative proposals and remedies for review of the Minister.[195] That is not the answer. The alteration required is statutory wherein an order of the MMC has the equivalent force of law.

(6) The matter of presumption and burden of proof has already been examined.

(7) The Commission should be empowered to levy fines in aid of enforcement.

In short, the activities of the Commission, both procedurally and substantively, must take on a more significant and affirmative stature. Competent legal and economic advisers should staff the Commission functions or such should be provided on a permanent basis from the Director General. Staff should be capable of undertaking an adversarial role or definitive position in monopoly and merger investigations as well as it does presently, to provide the MMC with professional assistance. *Strong antitrust enforcement rests on the unquestioned ability of the Commission to act decisively, to implement its findings, and to enforce remedial orders.* While the Competition Bill of 1979 presently before Parliament authorizes the MMC to conduct investigations with respect to anticompetitive practices under a "competition reference" from the DGFT, it does not satisfy the exigent problems noted in this Chapter.

2(f) Restrictive Practice In The U.K.:

There are three principal classes of vertical and horizontal arrangements which have been followed by major oil companies for use at the refinery and retail levels in the U.K. Each of them draw into question the application of the U.K. Restrictive Practices Act of 1976 and the decisional precedent under it and preceding legislation.[196] They are tying agreements, solus contracts and information exchanges. The competitive arguments in favor of or against each type of conduct have been delineated in the previous Chapter.

Under Section 6 and 11 of the RPA, contracts between two or more persons under which specific restrictions are accepted with respect to goods or services are void and unlawful unless registered with the Director General of Fair Trading.[197] Rather than rely on the more generic dialect of the Sherman Act which simply bars agreements in "restraint of trade", the British Act spells out the prohibitions specifically, to-wit, horizontal or vertical price fixing (whether charged, quoted or paid), resale price maintenance, restrictive terms or conditions of purchase, horizontal quantity and product manufacturing restrictions, territorial market divisions and individual or group boycotts.

In order for the restriction to be subject to Section 35 sanctions, it must be one that transcends general contract law and imposes a restraint upon ordinary freedom of trade to which a party was not previously obligated.[198] Under the landmark case of *British Slag*,[199] a restriction encompasses any negative obligation, express or implied. But the Statute, itself, is the sounding board for trade restraints that are foreclosed, and pursuant to the familiar maxim *expressio unius est exclusio alterius*, conduct that is not described is outside the Act. Nothing is left to judicial invention or uncertainty in that regard. Failure to register the agreement is not a criminal offense or the subject of government penalty, but it does give rise to civil liability for breach of a statutory duty.[200] The DGFT is statutorily obligated to refer all registerable contracts to the Restrictive Practices Court.

Thus, at least at the start, the RPA hits at the basic bilateral arrangements, agreements and conspiracies that offend classic antitrust policy And it does so in rational terms. But the Act is soon plagued with mechanistic requirements and exceptions that make its enforcement, in many instances, dependent upon pedantic style of the agreement rather than upon substance of the restraint. At the head of the line is the rule that unless the restraint is accepted by both parties, it is not caught by Section 6 of the Act. As an exemplar, corporation A extracts, as part of a contract of sale with B for specifically identified goods, a covenant that B will not resell the goods to anyone residing in Coventry and A undertakes no other covenant than one of supply.

Although B's covenant not to sell the goods to buyers from Coventry is a territorial customer restraint that effectively results in a market division at the retail level contrary to the express mandate of Section 6(1)(f) of the RP Act, there is no antitrust violation because the restraint falls under 9(3) of the Act. The latter provides that a trade restraint which relates "exclusively to the goods supplied" in a contract is to be disregarded. The restraint on B not to sell to Coventry residents is related "exclusively to the goods supplied" by A.[201] A series of such vertical distribution agreements between A and other retailers barring sales in specific geographic areas will consequentially divide the entire horizontal market with the blessings of the antitrust laws.

Another rule of technique is lodged in Schedule 3 Para. 2 under Sections 28 and 9(7) of the Act which absolutely exempts, *ipso facto*, certain restrictive agreements from registration. If an agreement between only two parties for the supply of goods contains a trade restraint assumed by either buyer or seller that relates to the "supply of other goods of the same description" and no other restraint otherwise prohibited by Section 6 is set forth, the agreement is entirely exempt from the Act. For instance, if an exclusive dealing contract between major oil company A and retailer B provides that B will purchase his petrol requirements only from A during a particular period of time, the agreement would be said to relate to other "goods of the same description" and would be exempted. But if the agreement were so worded as to require B to purchase from A all 2, 3, and 4 star petrol "along with other petroleum supplies", then the contract would not relate to other "goods of the same description" and the blanket exemptions of 28 and 9(7) would not apply. That is so because the quoted phrase does not identify goods of the same description. Of if the exclusive dealing contract involves more than two persons, the agreement is presumptively violative of Section 6 and must be registered, even though the arrangement calls for the supply of identifiable products within Sections 28 and 9(7).

This intense information of the RPA for technical formalism leads not only to arbitrary and illogical antitrust aberrations, but it is also the undoing, in good measure, of what started out as a meaningful and comprehensive competition statute. If a restrictive practice constitutes an unreasonable and illegal restraint on commerce, it should be condemned because of the merits and spirit of the restraint. Escape hatches should not depend upon clever penmanship of the agreement or because the arrangement involves only two persons. The addition of one party to the contract should not transpose statutorily exempt conduct into statutorily banned conduct.

Yet succeeding provisions of the Act continue to permit the illegality of what would be otherwise naked restraints of trade to pivot upon *ad hoc* factual justification or form of the agreement. If an agreement, such as horizontal price fixing is caught by Section 6 of the Act, the contract is not void or illegal *per se* as it would be under Sherman 1; it is only *presumptively* so. Upon being registered, the agreement is referred to the Court by the DGFT who thereupon determines, after trial, whether the presumption of illegality can be overcome by a vindication that is specifically adumbrated under Section 10 of the Act.

There are eight separate bases in which a trade restraint, regardless of its severity, may be excused. Commonly labeled "gateways", they recognize that a restraint may be salvaged from illegality by, *inter alia*, a showing that the proviso will result in "specific and substantial" benefits to the consuming public, that the restraint counteracts anticompetitive conduct of a third party, and that removal of the restraint is "likely to have a serious and persistent adverse effect" on the general level of local employment.

If the trade restraint passes any one of the eight gateways, it must still satisfy the balancing test of Section 10 known as the "tailpiece". The latter requires that the trade restraint be not "unreasonable" having regard to the interest of the public *vis-a-vis* that of the contracting parties. While in general, the R P C has narrowly construed the gateways and tailpiece against restrictive clauses, Section 10 has encouraged attempts to justify raw and blatant restraints of trade. Several such restrictive combinations, including horizontal price fixing schemes, have been permitted to stand.[202]

Thus, in the case of *Cement Makers*,[203] the Court had before it an industry-wide price fixing agreement of more than 30 cement manufacturers, founded upon a basing-point system. The excuse for the master price fix was claimed under 10(1)(b) that uniform prices would make the industry and each company safer and more dependable and, ergo, would reduce capital borrowing costs. In an Opinion authorized by Diplock, J., the Court decided although the prices of individual procedures would be

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lower without price fixing, that industry-wide return on investment had only been around 10 percent under the conspiracy and that since fixed prices should result in lower cost of capital, the master price fixing agreement passed 10(1)(b) as well as the tailpiece.

The decision in *Cement Makers* must go down as a leading candidate for the worst decision in all of antitrust. It manifests an inherent and lasting distrust for the competitive market. Under the *ratio decidendi* of *Cement*, efficiency and progressiveness are penalized and higher prices at the wholesale and retail marketing tiers will ultimately result. Every price fixing agreement could be excused on the basis that it will result in less risk, thus lowering capital borrowing and equity costs. *Cement Makers* allows the inefficient operator to stay in the pack comforted by a price fixing conspiracy that enables him to cover his marginal costs.[201]

Tying Agreements. No case has been before the RPC expressly involving the legality of tie-ins, although in law, it has statutory jurisdiction to adjudicate the same by declaratory judgment.[202] Tying has nexus to "the terms and conditions or subject to which goods are to be supplied" (petrol), and therefore falls within the provisions of Section 6(1)(c) unless it is exculpated by Schedule 3 and Sections 28 and 9(7). The argument could well be advanced that 9(3) condones tying contracts because the restraint to take the tied product is not accepted by both parties, only the retailer. But the fact that opposes such argument is that the goods which are "exclusively supplied" and which supposedly trigger 9(3) under the tying contract is the primary product, petrol. TBA is not the central target of the tie; it is only ancillary to the main sale of petrol. The secondary product should not become the tail that wags the dog under Section 6. Tying contracts have but few business justifications to keep out of the *per se* category. There is no legitimate reason which would exonerate the typing of TBA to petrol in a major oil company supply contract. Rather, tie-ins result from the market power in the tying market to leverage in another independent market. The British Court should concentrate on the substantive policy to be reached in antitrust under Section 6, rather than engaging in a myopic, legalistic exercise where result hinges on format and hyper-technical language construction.

Sections 28 and 9(7) are not of relevant consideration in a tying agreement, for they have nexus to exclusive dealing arrangements. Although a tie-in might be manipulated in a contract so as to turn into an exclusive requirements clause, for antitrust purposes the two are separate species.

Exclusive Dealing Agreements Of Major Oil Companies.—The Statutory scheme of 28 and 9(7), and Schedule 3, Para. 2 would seem to be tailor-made to exempt exclusive dealing. In a larger sense, said Paragraph appears to be aimed at a block exemption of all vertical restraints with the exception of vertical price fixing and price maintenance.[203] Exclusive agreements are utilized extensively in the U.K. by all major oil corporations to the irremediable concern of the MMC.

There is one material hitch to the block exemption of Schedule 3. Exclusive dealing with respect to the supply of goods of the same description is applicable in contracts between two persons only. If the exclusivity involves three or more, the contract is caught by Section 6. While the oil companies might produce separate solus contracts for each lessee or retail dealer, the fact is that each contract is part of a larger orchestration involving several hundred, if not thousands of retail dealers all of whom are under the same contract. Antitrust enforcement does not rest on social etiquette, but upon the genuine merits of the restraint.

It is submitted in this Thesis that exclusive dealing agreements of the integrated majors are part of a grand scheme that permeates the retail market and may substantially impair or constrict competition. Schedule 3 was plainly intended to reach the isolated transaction in the market. Otherwise, Parliament would not have limited the block exemption to contracts involving only two persons. The R P C should find that, pursuant to jurisdiction vested under 26(2) of the Act, Schedule 3 is not applicable and solus agreements are caught by Section 6. While the oil majors may have business justification for exclusivity arrangements such as a secured outlet for petrol, such argument can be placed before the Court under one or more of the gateways and tailpiece of Section 10.

It is said that even if an exclusive dealing agreement is exempted from the Act the contract is unenforceable as a common law restraint of trade under the decision of the Lords in *Harpers Garage*.[207] The Case does not stand for the proposition that an exclusive requirement contract is *per se* unentitled to judicial cognizance. *Harpers Garage* viewed the exclusivity contract as a restraint of trade but balanced the constraints against the possible advantages under a rule of reason analysis. It was determined that under the facts of the case, an exclusive arrangement of 4½ years was not unreasonable while one of 21 years was unreasonable. The decision does not stand as precedent for the RPC in weighing exclusive agreements under the gateways of Section 10. That requires statutory interpretation of antitrust law which was not before the Lords in *Harpers Garage*.

Selective Price Subsidization By The Oil Majors.—During the years following the OPEC embargo, the major companies subsidized selected dealers during periods of retail price cutting so that refinery output could be maintained. The subsidy effectively provided the chosen, retailer with a below wholesale price. At the same time, other dealers were sold the same quality petrol by the company for the regular wholesale price. Such conduct is open and rapacious price discrimination. The reprehensible conduct was not in carrying out a subsidy program, but rather in selectively discriminating against the dealer who effectively paid more for petrol than the favored retailer.

Whereas in the United States price discrimination between different purchasers of a commodity of like grade and quality is specifically barred by law,[208] no parallel legislation exists in the U.K. However, price discrimination (subsidy) is the legal equivalent of an unauthorized quantity discount and as such, it should be caught by Section 6(1)(c) of the Act.

Information Sharing Agreements.—The position of this Thesis on competitors exchanging technological or financial data has been treated briefly heretofore in this Chapter and *in extenso* in Chapter VII. The practice has, however, proven popular in the U.K. and it has been raised as a gateway justification under 10(1)(b) to a horizontal price fixing contract.[209] Indeed, it is not an anachronism that information sharing within industry should lead to the ultimate corrosion of a fix on prices. The only irony is that competitors should appear before the RPC arm-in-arm to argue that price fixing is exonerated because it has led to inter-mural cooperation between companies.

That the whole question of information sharing is of antitrust consequence in the U.K. is signalled by the 1968 Restrictive Practices Act where for the first time, Parliament authorized the Secretary of State, under Section 7 to prohibit by an order under statutory instrument classes of information agreements regarding commodities. Like some other competition questions, the draft of a proposed order must be preliminarily laid before and approved by both Houses of Parliament. While such procedure is a rather clumsy and ineffective method of antitrust enforcement, it is submitted that the Minister of State should issue an order forbidding information agreements in the oil industry, particularly between the vertically integrated majors, forward of exploration and production.

3. EEC Law Of U.K. On Monopoly And Trade Restraints In The Oil Industry:

As was set forth earlier in this Chapter, antitrust law of the Common Market is governed by two fundamental sections of the Rome Treaty, Articles 85 and 86. 85 deals with and prohibits agreements or arrangements[210] which affect trade between member States and which have as their object or effect the prevention, distortion or restriction of commerce. Among the restrictive combinations which 85 is intended to catch are price-fixing, production quotas, agreements limiting technology or investment, market allocation, price discrimination as to goods of equivalent character and tie-ins.

Article 86 is directed at structural market power and unilateral behavior that stem from or have nexus to market dominancy.[211] In general, 86 forbids the abuse by a party (undertaking) holding a dominant position in a substantial part of the Common Market that affects trade between the States. Conduct that is foreclosed as "abusive" is, *inter alia*, unfair prices and trading conditions, controlled production or commodity development that prejudices consumers, discriminatory marketing conditions and tying arrangements.[212]

Unlike the bifurcated system in the U.K., responsibility for all antitrust enforcement under 85 and 86 rests with the Commission (CEC). The Commission has jurisdictional authority to issue regulations on both procedural and substantive facets of antitrust enforcement, to grant discretionary exemptions and negative clearances under 85,[213] and to impose fines for Article violations from one thousand to one million units of account or not more than 10 percent of the undertaking's turnover for the preceding year.[214]

Antitrust enforcement in the Common Market is of relatively recent vintage, the Treaty of Rome having been signed in 1957. While case law is still developmental in the EEC, the Commission has already established a solid base of competition policy for the Common Market that entities it to prominent recognition.

Many of the substantive elements of Articles 85 and 86 were fashioned around the conceptual text of U.S. antitrust jurisprudence. They are, on the whole, more deliberate and definitive than the Sherman or Clayton Acts, thus accomplishing the more desired result of broad competition policy being a product of legislative enactment rather than a case-by-case invention of the judiciary.

EEC antitrust law, in the sensitive area of monopoly enforcement, is given to reliance upon case precedent and the doctrine of *stare decisis*. In that regard, it follows the lead of the U.S. and pulls away from the subjective ways of United Kingdom monopoly analysis. As to trade restraints, the holdings of the Commission and the ECJ, unlike some decisions of the British Court, appear to depend on the substantive merits of the antitrust policy sought to be achieved and not on subtle and mechanical nuances. In addition, the seriousness of antitrust policy of the EEC is reflected in its capacity and willingness to impose heavy fines for violative conduct as well as provide a civil remedy for breach of statutory duty. Although the EEC method of fines may be, in a pragmatic context, the equivalent of the treble damage remedy under the Sherman and Clayton Acts, it does not have the flavor of triple recovery of actual injury that

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is so distasteful to many of the U.K. bench and bar. In all, EEC antitrust law has the basic stuff of a strong and temperate approach to competition policy.

3(a) Relevance of Article 86 To The Petroleum Market Of U.K.:

There can be little debate that even though structural composition and behavior of the oil majors under this Thesis occur solely within the U.K. or its jurisdictional waters under the Convention on the Continental Shelf, the Treaty reaches such conduct. Particularly is that so under 86. The test is whether the questioned conduct is such as "may affect" trade within a substantial part of the Common Market. In *Benzine en Petroleum BV et al* v. *CEC*,[215] the ECJ found that refined motor spirit sales from B.P. to ABG Association solely in the Netherlands was subject to Article 86 review. The earlier case of *Sugar Cartel*[216] determined that Holland, itself, and Belgium and Luxembourg combined, constituted substantial parts of the Common Market for antitrust purposes. And the Court in the watershed case of *Continental Can*,[217] found that a portion of Germany was considered a relevant geographic market for tin cans under 86. Lastly, the Commission, in its 1975 competition "Report On The Behavior Of Oil Companies In The Community,"[218] wrote that the control of oil in the several Member States by a small number of vertically integrated major companies was of consequence to the entire Community. It is, therefore, a premise of this Thesis that trade by oil majors at the refining and marketing levels of the U.K. is justiciable under the antitrust provisions of the Treaty.

3(b) Market Dominance Under Article 86

The maintenance of a dominant position within the Common Market under 86 is not necessarily that of a monopoly under Sherman 2. The scope of the Sherman Act is wider than 86 in one respect, for it condemns "*attempts* or conspiracies to monopolize" whereas 86 is conditioned on the finding of an *already extant* dominant position and abuse.[219] Yet, as will be seen, the general vortex of Sherman 2 is narrower than Article 86.

Dominancy was first defined by the C E C in *Continental Can*[220] as "the power to behave independently * * * without taking into account competitors, purchases or suppliers". That terminology was substantially repeated five years later in the 1976 Commission holding in *United Brands*.[221] The European Court, however, opted for a more simplistic and pliable definition in *Commercial Solvents*[222] where a monopoly supplier of raw materials was able to determine whether competition at a downstream level would continue and at what degree. The Court stated that dominance under 86 was made out as Commercial Solvents had "the ability to impede effective competition." And in the appeal of the CEC determination in *Continental Can*, the ECJ declared that dominancy is present when it "substantially fetters competition", meaning that only undertakings remain in the market "whose behavior depends upon the dominant one." *Continental Can*, it should be noted, was a merger litigation, the first to reach the Court. Whether its more narrowed definition would control non-merger structural or behavioral dominance is not clear. The last definitional word of the Court of Justice was in *United Brands*[223] wherein it was stated that 86 dominance has reference "to a position of economic strength" which enables an undertaking to "prevent effective competition" in the relevant market, having the power to behave "independently without regard to competitors or customers."

The factors which the Court has utilized to determine dominancy have been generally the same as that in U.S. interpretations under Sherman 2. Market share has played a significant role under the case precedent. In *United Brands*, the Company defended against the application of Article 86 with respect to its distribution of bananas claiming that it had only 45 percent of the banana market, that the relevant market was the larger market of fresh fruit and that there was a meaningful level of competition that opposed any finding of dominancy. The Court disagreed, strictly construing the relevant product market as bananas, and found dominance based on 45 percent share and the premium position of its "Chiquita" name. Other elements to be considered on the issue of dominance are industrial property rights, technology, financial resources, and possibly monopoly prices. But market share would appear to be the leading barometer. In *Hoffman-La Roche* v. *CEC*[224] the vitamin manufacturer had a market position in different vitamins ranging from 95 percent to 47 percent. Contrary to the Roche position, the ECJ determined that each vitamin constituted a "separate" product market in the Community and found dominance and abuse in all.

While the test of monopoly in U.S. antitrust enforcement would not under this Thesis be met with less than the 60 percent-65 percent market share as indicated in Chapter VII, a share in the magnitude of 45 percent and possibly lower, when accompanied by other factors of strength, would fall within the shadow zones of dominancy in the EEC. Do the major oil companies in the U.K. constitute dominant undertakings under 86? Shell has the highest position at the refinery level with a market share of less than 20 percent. Esso, B.P., Texaco and Mobil are below that. It is plain that the Commission believes that each of the oil majors are not only dominant within the scope of 86, but that each is a monopoly. In its informal Oil Company Report of 1975,[225] the CEC bluntly but unequivocably stated that a shared dominancy and *individual monopoly* existed as to the major companies:

"The market in oil products is controlled by a small number of large international companies distributing a limited number of homogeneous products. * * * (After the oil embargo) refiners in general, including large and small integrated companies, saw their position strengthened * * * that collectively they acquired a dominant position * * *. In view of the scarcity of oil * * * each refiner *in a given country* became the sole and imposed supplier of all dealers * * *. In the context of their collective dominant position, *each* of the refining companies was therefore in a *monopolistic position* towards its customers." (Emphasis added).

In other words, the Commission position is that in times of tight supply, a concentrated oligopoly distributing an interchangeable commodity (oil) is a monopoly as to each dependent customer. The remarkable theory was pursued by the CEC in its decision of *ABC* v. *Esso Nederland BV*[226] wherein B.P. was found to have abused its dominant (monopoly) position by refusing to supply ABG during the 1973 OPEC embargo. While reference was made to the major companies in the Netherlands (the same as in the U.K., Esso, Shell, B.P., Mobil, Chevron, Texaco and Gulf), it did not set forth the respective market shares or the aggregated total. In light of the 1975 Report, it might be argued that such was unnecessary.

On appeal, the ECJ reversed the Commission decision in *Benzine en Petroleum (B.P.)*,[227] determining as a matter of fact that ABG had not been a "regular purchaser" of B.P. prior to the shortage and ergo, B.P. did not owe a duty of proportionality during the embargo. The question of monopoly or even dominancy was not raised at any point in the opinion, although it might be argued that the Court of Justice assumed both. If the European Court has adopted the Commission position regarding the creation of an absolute monopoly from a shared dominancy, and there is reason to believe that it may have,[228] it has reached the wrong answer for the wrong reason. Antitrust is continually plagued by artificial markets being invented, both geographic and product, to reach a result.[229] If the product being sold is truly homogeneous, the seller position, even in times of scarcity, must by definition relate to the larger homogeneous market and not to his slice of the total sales. *Otherwise, every company in the homogeneous market, even though his market share is 1 percent, would be an absolute monopolist as to his customers.* Such ignores and mocks reality. The target of antitrust is competition in the product market of petrol, not competition in the Esso *product market* or the B.P. *product market*. The theory of the CEC would have to face the harsh fact that each absolute monopolist would yet continue as it has in the past to compete with every other absolute monopolist in the sale of petrol at both the refining and retail markets. It is an illogical contradiction.

American antitrust courts have expressly rejected the proposition of "*ad hoc* absolute monopoly" under the Sherman Act. In a case squarely in point, the Seventh Circuit, in *Mullis* v. *ARCO Petroleum Corp.*,[230] declared that where ARCO had only 3 percent of the relevant petrol market in Ohio, it was not a monopoly as to its own market share. Mullis, a former distributor who was dependent upon ARCO for refined petrol because of Government allocation regulations, charged that ARCO's termination of the Mullis distributorship was an act of monopolization under Sherman 2. The Court declared that a monopoly must be gauged in full view of all brands of the entire product market under the cross-elasticity or "interchangeable doctrine" of *E. I. du Pont de Nemours*.[231] Citing other U.S. antitrust precedent, the ARCO Court found there to be no monopoly and no violation of Sherman 2.[232] Because the argument of the Commission in *Benzine en Petroleum B.P.* and its 1975 report is flawed and because the ECJ has not definitely bought the CEC position, the proposal of each major oil company having an absolute monopoly share in its own product is renounced in this Thesis.

The Sherman Act is a fair point of reference, however, in the analysis. There is, it is submitted, a pronounced difference between a monopoly market under the Sherman Act and market dominance under Article 86. Certainly there is coincidence of the two in the aim against exclusionary or predatory conduct by a competitor with extraordinary market power. As well, each anticipates good faith competition on the merits and does not condemn, *ipso facto*, a high market share which is legitimately achieved. Where the two concepts part company is the degree of market power exacted to condemn unilateral behavior. Dominance must necessarily stop short of monopoly, if not by literal linguistics then by intent. If the signatories to the Rome Treaty had intended that 86 only reach monopoly power, the word "monopoly" would have been, in all probability, used since it was part of the antitrust dialect in 1957. The fact that neither the word nor a conceptual "monopoly" makes its way into any point of 86, when taken with "unfair" trading conditions being denominated as one of the first abuses of dominancy, leads to the conclusion that the Article, in part, is fashioned more nearly after Section 5 of the Federal Trade Commission Act than it is Sherman 2.[233]

In sum, whether the dominance of 86 was intended to and does reach a market share of 19.5 percent (for Shell) or as small as 7

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percent (in the case of Mobil) is a difficult query. While the answer lies in a determinative opinion of the ECJ, for this Thesis, all structural and behavioral factors being considered, none of the oil majors, standing alone, meet the dominancy test of 86 at the refining level in the U.K. There is insufficient data on the retail market to form any judgment on dominancy.

3(c) Shared Dominance Under Article 86:

The Judicial philosophy of shared monopoly in antitrust has already been examined relative to U.S. and U.K. national law. In the context of Article 86, the theory was clearly foreseen, for the opening stanza provides that an abuse "by one or more undertakings of a dominant position" within the common market is proscribed. The lead question is, of course, whether the oil majors in all or a portion of the aggregate, from a dominant position at the refinery or retail market of the U.K.? There are no reported decisions from the European Court. The question is of the largest scale for if a shared dominancy is made out in the oil oligopoly of the U.K., the flood gates may be open for major sectors of the economy, with higher structural concentration than oil, to be caught by 86. A respected Community text on antitrust law notes that the area of shared monopoly is quite "unclear" and that great caution should be taken before whole oligopolies are swept into the arms of the Article.[224] On the other hand, the position of the CEC is quite "clear" that at the inside minimum, there is shared dominance of the major oil companies under 86.[225]

If the CEC is correct in its assertion, how many vertically integrated oil corporations in the U.K. share the dominant position? In 1977, the top three corporations (Shell, Esso and B.P.) had an accumulated share of 53.4 percent of the refining market, and the first five companies (Texaco and Mobil added) had an aggregated 69.7 percent. Conoco had a market share of 4.6 percent, Gulf was at 2.6 percent and Socal (although one of the largest integrated oil companies in the world), had only 1.1 percent of the 1977 U.K. refining market. Is Socal and Gulf to be thrown in with all others?

Part of the answer lies not in just arithmetic numbers, but upon the character and degree of common conduct, together with conscious parallelism of the Companies. In the U.K. market, there has been an inordinate amount of friendly co-operation and co-ordination. Shell and B.P. were *de jure* and *de facto* joint venturers at the refining and marketing levels for many years through 1975. The divorce has not changed their refining and marketing habits. Esso, Shell and B.P. exchange petrol product and deal on a common and continued basis at the refinery level. While they keep refinery share capacity to themselves, each knows the capability of the other and area of operation. Pricing policies at the refinery level are remarkably similar between the top five. In April of 1978, Amoco, B.P. and Texaco had identical prices for wholesale petrol while Mobil and Shell were only 4 percent below; the latter is quite remarkable considering the individuality of refining, transportation, storage and sources of production. In May of 1977, all of the first five sold refined petrol at exactly the same price, namely, 16.08 pence per litre. Pricing techniques and vertical arrangements with independent retailers and lessee operators are generally of uniform nature with Esso, Shell, B.P., Texaco and Mobil. Moreover, market shares between the top five, while experiencing a reduction as against other competitors, have remained proportionally relative.

There is an element of the doctrine of "conscious parallelism" that is of relevancy to the question of shared dominancy under 86. In theory, it holds that similar conduct of competitors, although independent from any express or tacit understanding, is corroborative of collusion to fix prices, divide markets, etc. It ordinarily has application to two-party trade restraints under Article 85. While conscious parallelism, standing alone, is not a violation of 85(1)(a),[226] it may well be evidence of dominancy under 86, particularly where the nature of the market renders it unlikely that such parallelism would result solely from market structure or ordinary behavior. The uniformity of prices over extended periods of time at the refinery level gives the doctrine efficacy in this instance.

It seems clear enough from all that has been said that if the supposition of shared dominance is to be anything more than a vacuous notion, its application is warranted in the case of the top five vertically integrated companies in the U.K., i.e., Shell, Esso, B.P., Texaco and Mobil. Together, they comprise a rather tight club which dominates almost 70 percent of the petrol refining market. While there is competition between each of them, there is, on balance, a larger and more imminent degree of common interests and co-operation. They are for this Thesis considered a shared dominancy under Article 86 in the petrol refining market.

There is reason to draw a distinction between the first five refining companies and the rest of the field. Conoco and Total have less than 5% of the market or approximately 20 percent of the positions of Shell and Esso. Elf and Petrofina, with less than 3 percent of the market, have much less commonality as independent operators than the vertically integrated majors in the U.K. B.P. has 450 percent larger market position than each of them. Gulf, Amoco and Chevron have no place in a shared dominance. Amoco and Chevron have barely 1 percent of the market and Gulf maintains a little over 2 percent. The aggregated shares of the trio are approximately 50 percent of Texaco. While the three companies may hold significant proportions of market power in other geographic areas, they do not in the United Kingdom. It would be without purpose or reason to catalogue such companies as Conoco, Total, Elf and Petrofina with the five leaders. The line must be drawn not just somewhere, but with as much balanced precision as possible. The latter companies are not inculcated within the shared dominancy.

A subsidiary question to shared dominancy is whether all undertakings within the dominant group must engage equally or proportionately in "abusive" conduct in order that it be caught by Article 86. The short answer is no . . . 86 declares that *any* abuse by *one or more* of a dominant position is banned. The doctrine of shared dominancy is employed solely to determine the applicability of 86 to an undertaking, not to measure the intensity of antitrust behavior.

3(d) Abusive Conduct Under Article 86.

(1) General.—Significantly, Article 86 does not condemn dominancy out of hand. Like the Sherman Act, it strikes at conduct that has nexus to or arises out of suffusive economic power. Both the ECJ and the Commission have thus far avoided the pitfall of censuring size and efficiency as was done by U.S. antitrust courts in *Alcoa*[227] and *United Shoe*.[228] There are several endemic characteristics underpinning the general deployment of 86 that distinguish abusive conduct in the Common Market from exclusionary and/or predatory behavior under Section 2 of the Sherman Act. First, the goal of the Treaty in eliminating commercial barriers and achieving a single market within the Community has been a consistent theme in antitrust enforcement under 86. Both the CEC and the Court of Justice have been quick to flag conduct as abusive which tended to discriminate between nationals or to establish separate markets within the Common Market.[229] While the Sherman Act has its footings in the Commerce Clause of the U.S. Constitution,[230] it does not have the Common Market hurdles of nationalism to overcome.

Second, Article 86 was initially thought to be directed only at unilateral behavior by an undertaking having market dominancy while 85 focused upon two-party trade restraints. Antitrust questions bearing upon structural position in the market were viewed as residing outside of the influence of 86. The specific enumeration of forbidden unilateral conduct under 86(a) through (d) reinforced the belief that behavior and not market structure was targeted under the Article. But that theory all changed with the issuance by the Court of Justice in 1972 of its seminal decision in *Continental Can*[231] and the subsequent 1974 opinion in *Commercial Solvents*.[232] In Continental Can, the Court, in rejecting a horizontal merger that would have eliminated any competition in part of the Common Market, spelled out its position that a firm could be caught by 86 as a result of its structural market position if Community trade were deleteriously affected. While the ECJ placed unnecessary reliance upon Articles 2 and 3 of the Treaty, it declared that the general "spirit and scheme" of Article 86 precluded a corporate combination if competition were thereby distorted or eliminated, even though no specific subsection of 86 was in issue. The Court, finding that the later were only illustrative in any event, concluded that Articles 85 and 86 read together, were aimed at conduct, collective or individual, that restrained competition within the Community.

In *Commercial Solvents*, a vertically integrated firm, having a virtual monopoly over raw materials, refused to supply such to a manufacturer with whom it competed. The Court found that because of the structural position of Commercial Solvents in raw materials, a refusal to supply under that circumstance constituted an abuse of a dominant position under Article 86. The pivotal factor under the Court's opinion was structural dominance, but for which the exclusionary conduct would not have been deemed abusive or even relevant to antitrust enforcement.

Thus, it is increasingly apparent that if structural dominance impacts upon Common Market competition, it may well be subject to the requisites of 86.

Third, Article 86 contains several values, the subversion of which by a dominant firm will constitute abusive conduct, that are not in the Sherman Act. 86(1) converges upon prices or trading conditions that are "unfair", and 86(2) relates to restrictions in production or progress "to the prejudice of consumers". Neither unfair conditions or consumer prejudice necessarily have any bearing upon actual or even potential competition, whereas the Sherman Act is inextricably bonded to competition policy. The question of what standard is applicable in measuring prejudice to consumers is, itself, subject to kaleidoscopic variation. For example, a dominant firm may flood the market with a product or lower its prices to either meet new competition or to intentionally force a competitor out of the market. In the short-term view, product availability and prices will be both fair and to the benefit of the consumer. But the long-term position is another matter, for after the competitor has left the market, the structural dominancy of the firm will enable it to moderate production and raise prices to the prejudice of the consumer. Even then, the prices may not be "unfair". The Commission is thus faced with the changing equation of whether the short-term or long-term policy, brought about by structural dominancy, is unfair and prejudices the consumer. The resulting ambivalence augurs for *ad hoc* consequences and indecision.

Fairness, itself, has such ominous overtones of subjectivity that unless the concept is applied sparingly and with almost surgical care, the bottom-line result may be to impose Community supervision and control over market operatives contrary to antitrust principles, rather than permitting the competitive market to work. In *United Brands*,[233] the Court of Justice, in a case of first impression, found that "excessive and unfair prices" charged distributors in several states within the Common Market was an abuse of 86. The Company, the largest producer of bananas in the Community with 45 percent of the market, sold bananas to wholesale distributors in Rotterdam at a higher price than that charged in Ireland. Upon investigation by the CEC, United defended its pricing policies upon differential costs in the Netherlands *vis-a-vis* Ireland, upon the Company's "yellow color" marketing approach and upon the competitive structure of the Rotterdam market. The Commission found that unfair prices were charged on the artless bases of utilizing Ireland as the market price from which to judge sales in other Common Market States and because the Netherlands price was excessive in relation to the "economic value" of the product. While the Commission suggested that it was a primary-line injury case, the facts seem clear that any genuine mischief was secondary-line injury.

On appeal, the Court of Justice affirmed the CEC determination of unfairness and abuse but disagreed with the factual methodology. The ECJ declared that while a banana price may be excessive if it has no ostensible bearing to "economic value", it must be considered whether the imposed price is "either unfair in itself or when compared to competing products". The latter phrase was a curious anomaly, for the Court had preliminarily found that in determining dominancy under 86, the relevant product market was not fresh fruit generally, but only bananas. Notwithstanding, the Court found itself in considerable difficulty in arriving at a formula for "fairness". It finally concluded that the "fair" way to ascertain fairness was to enter upon a full economic cost analysis of United's pricing practices.

To send the case back to the CEC for a debate among economists as to proper structural costing is not only factually unproductive, it ignores the great danger of the entire scheme to sound antitrust policy. To begin with, "economic value" and "fairness" must be measured in the market place, not in a Brussels hearing room. If United prices are excessive, the market will turn to other interchangeable fruit which, in turn, would cause United's prices to drop. Secondly, were the CEC to subsequently determine that the prices of United were excessive and thus unfair, the result would be a draconian conflict with and obstruction of a cardinal principle of competition law, viz., that a monopoly is entitled to charge monopoly prices for its product,[234] so long as it does not engage in exclusionary or predatory practices. *United Brands* was not, in point of fact, a case of exclusionary or predatory pricing.

Thirdly, if the CEC and the Court are going to conduct full cost analyses of a company's spring policies, that is the judicial equivalent of public utility regulation and is the antithesis of antitrust enforcement. Lastly, the whole concept of looking over the shoulder and second-guessing the prices to be charged by a market competitor reflects a manifest skepticism for the entire competitive system. That system must be permitted to operate to achieve the central antitrust goal without the patronizing approval of price regulation disguised as competition enforcement. Significantly, neither the ECJ or the Commission found primary line injury to the competitors of United as the predicate for discriminatory pricing under 86(c).

United Brands takes Community antitrust law and the Court into quicksand from which there is little hope of return other than supervisory overview of entire areas of market pricing. Such a result would be a disaster of the first order in light of the solid foundation of Common Market antitrust law.

A third general concept of Article 86 is its interrelationship with 85 under the Treaty. The omnibus principle suggests that collaborative conduct caught by 85(1), unless exempted by 85(3), would also constitute a violation of 86 if one of the undertakings held a dominant position in the relevant market.[235] If the spirit of 86 and 85 drive at the same objective, the legal conclusion should follow. That philosophy would track the position of U.S. antitrust that concerted action violative of Sherman 1 may constitute monopolization under Sherman 2.[236] The difference between Common Market and U.S. enforcement in that regard would turn upon the broader standard of market dominance under 86 as against the Sherman 2 requisite of monopoly position.

(2) Selective Pricing By The Dominant Oil Majors in the U.K.:

No one need grope or search for the answer to the question of whether selective price supports to favorite retailers violates 86. It does. 86(c) forbids applying "dissimilar conditions to equivalent transactions" at forward marketing tiers which cause competitive disadvantage. The retailer who was given a subsidy by the major company could slash his price to meet other competition, knowing that the price reduction was being bank-rolled by the refiner. On the other hand, the smaller retail independent or lessee (who, parenthetically, likely needed the support subsidy more than his larger intra-brand competitor) was forced either to maintain his price and lose market share or lower the retail price to his direct loss. The competitive disadvantage of the disfavored retailers was enormous. The larger rationale of *Benzine en Petroleum B. P.*[237] supported the finding of treating all like purchasers in a substantially equal manner. Although a rule of reason test might not be available under 86,[238] the attempt to justify a business distinction between retailers of long- and short-term potential is insipid. The discriminatory practice would, in fact, bring on the very result which the oil company, not the market, forecasted.

As to oil companies that are not within the shared dominancy who were nonetheless engaged in subsidy support with selective retail operators, their conduct is caught by 85(1) for the principal reasons as the dominant companies are reached under 86 (c). In this instance, there should not be any business justification that would recognize an *ad hoc* exemption under 85(3).

The OEC should enter upon an investigation of this pervasive discriminatory practice in the United Kingdom.

(3) Tying Agreements In The U. K. Under Article 86:

Tie-ins of collateral products are specifically designated as an abuse of 86(d) of the Treaty. There are no known cases of the European Court addressing the question. The case of *Sugar Cartel*[239] involved an arrangement whereby sugar producers offered a rebate to loyal purchasers. While the fidelity rebate system had the anticompetitive consequence of linking the purchaser to the product and producer to the exclusion of other supplier-competitors, there was no "tying arrangement" within the legal definition of 86(d) *for there was only one product*, viz., sugar. The same maybe said of the companion decision of the ECJ in *Hoffman-La Roche*.[240] Both cases are exclusive dealing or discrimination litigation and will be considered in that conjunction.

A TBA typing agreement between a dominant major oil company and a retailer is, in all probability, a violation of 86(d). While Article 85(3) provides an escape mechanism wherein the CEC may discretionarily exempt certain restraints of trade, there is no such safety valve under 86. If the TBA were an isolated transaction and a negligible amount of competition were affected, the contract would possibly come within the rule of *de minimis non curat lex*. But the thrust of 86 presumes that the conduct will prejudicially impact upon the Common Market. Ergo, unless the isolated TBA transaction is of minimal quantifiable significance in the market, it should be condemned under 86. The CEC should follow the U.S. antitrust doctrine of quantitative substantiality as earlier discussed.

4. Exclusivity Agreements Under Article 86:

In point of law, exclusive agreements may be caught under either 85 or 86. The latter is applicable to exclusive dealing either as an element of "unfair trading conditions" under 86(a) or as discriminatory or unequivalent trading conditions under 86(c).

The doctrine is well established in the Community that a firm having 86 dominancy may not utilize a fidelity rebate arrangement with a retailer to insure market retention. Such was viewed by the Court of Justice as a *de facto* exclusive agreement in *Hoffman-La Roche*[241] and was condemned under 86(c). Hoffman, the world's largest vitamin producer, had entered into contracts with bulk wholesalers agreeing to return part of the purchase price of bulk orders if the wholesaler dealt only with the manufacturer. The Court found that such agreements, exclusive or preferential, interfered with the normal competitive choice of the wholesaler and gave him an unfair competitive advantage *vis-a-vis* a wholesaler who did not receive the rebate. The latter finding unnecessarily stretches the doctrine of equivalent transactions, for in case of *Hoffman*, the exclusivity practice could have been branded an unfair trading practice under 86(a). The opinion in *Sugar Cartel* involved a fidelity rebate of parallel consequence and was also caught under 86(c).

There is good cause for the Commission and the ECJ to proceed with delicacy before applying the axiomatic Article 86 treatment to exclusivity agreements. Solus agreements, even with dominant firms, are often subject to genuine business justification. The need for a dependable marketing outlet, the isolation of the transaction, the duration of exclusivity, and the product sub-market that may be involved, all argue for ad hoc analysis under the aegis of Article 85. Few exclusive agreements involving major oil companies and retailers should be subjected to *per se* treatment of 86. They will not be in this Thesis.

3(e) Article 85 In The Context Of The Oil Industry.

Article 85 of the Treaty is germane to this work in two specific regards—the enforceability of exclusive dealing agreements and the validity of horizontal information exchange arrangements.

(1) General Provisions of the Article.—85 is shaped in substance to roughly correspond to Section 1 of the Sherman Act. Agreements and concerted practices which may affect trade within the Common Market and have as their object the prevention, restriction or distortion of competition, are precluded. Particular types of contracts are outlined in the Article as tainted, namely, price fixing, arrangements curbing production, development or investment, understandings allocating product or territorial markets, boycotts, tying agreements and discriminatory trade combinations. As with 86, the delineation of categories of arrangements that are caught under 85(1) is illustrative and not exhaustive.[242]

It is urged by some that the principal word

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in the prohibitory language of 85(1) is "distort" and that the language "restrict and prevent" is corollary.[253] The fact is that neither the Commission nor the Court of Justice has been married to any singular word or collection of phrases to describe antitrust behavior. All three words, in combination, are adapted to foreclose conduct that restrains or may restrain trade within the Community or that creates isolated markets (particularly national).

Contracts which are caught by 85(1) are "absolutely void" pursuant to 85(2) unless they have been exempted in accordance with 85(3) procedure. If the banned restriction is capable of being severed from the contract and the balance is otherwise an enforceable agreement, the contract may not be void *in toto*. The latter will depend upon an adjudication by a national court applying the relevant conflicts of law rule.[254]

Article 85(3) provides that as to an agreement or arrangement otherwise within 85(1), it may be nonetheless saved if the Commission, in its discretion and upon request, determines that the contract (i) contributes to production or distribution of goods or promotion of technical or economic progress, (ii) allows consumers a fair share of resulting benefits, (iii) while not imposing restrictions on the undertakings which are not indispensable to the contractual objectives and (iv) not allowing the undertakings to emasculate competition in any substantial part of the relevant market. The four conditions are not alternate "gateways" having any kinship with Section 10 of the U. K. Restrictive Practices Act. All conditions must be satisfied to invoke 85(3). It is, in U. S. dialect, a Treaty defined "rule of reason" to judge bilateral trade restraints.

In addition to the exclusive jurisdiction of the CEC to grant discretionary exemptions under the singular facts of each case, the CEC has authority to issue block exemptions to classific categories of agreements in order to facilitate the goal of Common Market trade and development, as well as to cut through the tedium of *ad hoc* review and approval or denial of a plethora of individual contracts. Pursuant to Regulation 19/65 of the Community Council of Ministers of 1965, the CEC, in 1967, promulgated and adopted Regulation 67/67. The latter declares that Article 85(1) of the Treaty shall not have application to a contract involving only two undertakings from different States within the Common Market where one party agrees to purchase exclusively from the other for resale.

(2) The Per Se Rule of Illegality.—One further point is deserving of mention in the general vernacular of antitrust enforcement under 85. There is no Treaty provision declarative of an axiomatic ban or bar upon certain restraints of trade such as horizontal price fixing agreements or vertical group boycotts. 85(1) merely states that arrangements which have as their "object or effect" the restriction of competition within the Community are prohibited. In one of the most important decisions in Common Market antitrust, the Court of Justice, in *Counsten and Grundig*,[255] held that if the "object" of the contract was to restrict trade in the Community, the actual "effect" upon the market was of no relevancy. The judicial inquiry as to the violation was at an end.

The Case has been interpreted as establishing a *per se* rule of illegality with a market analysis being required under rule of reason only when the "effect" of the conduct was at issue. The distinction, in practice, between "object" and "effect" is nebulous and not easily made. If what was meant in *Counsten and Grundig* is that a specified category of contract has no redeeming virtue and is squarely aimed at the restraint of trade, the "object" test would parallel the "naked restraint" *per se* rule in American antitrust under *Addyston Pipe*.[256] In that case, a secondary or ancillary restraint which only implements an otherwise worthy object of the contract would be examined for its "effect" on the market. The fact is that the *Counsten and Grundig* Court was looking for a shorter path under 85 to catch bald behavioral restraints besides a full scale inquiry into market impact and business justification.

The *per se* rule of *Counsten and Grundig* has been tempered by the subsequent decision of the ECJ in *Volk*[257] holding that notwithstanding the plain "object" of a contract is to restrain or distort trade in the Common Market, the amount of trade effected must be *appreciable* to activate Article 85. *Volk* is nothing more than a *de minimis* exception tacked-on to the *per se* concept. *Volk* was reduced to codification by the CEC in 1970 under a quantifiable *Notice of Agreements of Minor Importance*.[258] In other respects, the *per se* rule of presumption in *Counsten and Grundig* is substantively analogous to the U.S. principle.

(3) Solus Agreements Under Article 86.—Common Market antitrust does not have the sequel to *Standard Oil (Socal)*[259] in American case law. As noted earlier, exclusively contracts of supply may have pro-competitive objects and effects on the development of trade within the Community. It should, therefore, not be subject of a *per se* embargo, but adjudged under the rule of reason. To those contending that *Counsten and Grundig* has brightened the path to determine the legality of pure solus contracts in Community antitrust,[260] they are wrong. *Counsten and Grundig* involved an exclusive territorial distributorship in France and non-exclusive but territorial agreements in Germany. While the case is a milestone in the troublesome area of territorial and customer restraints that block distribution across national boundaries, it was not an exclusive dealing case either in the classic sense or in the context of the oil industry.

The question under this Thesis narrows itself to this—does the block exemption of regulation 67/67, Article 1, extend to a requirements contract between a major oil company and a retail marketer in the U.K.? The answer is in the negative. First, solus arrangements between the oil majors and independent or lessee retailers are so prolific throughout the vertical systems of each company that to argue that the exclusivity contracts are only between two individuals is to blindly prefer the letter over the spirit of the exemption. It is unmistakably clear that like Sections 28 and 9(7) of the R.T.P.A. 67/67 was intended to reach the insular transaction or, perhaps, several individual agreements. But it was not intended as an exculpatory balloon where single contracts were merely part of a subliminal arrangement of exclusivity to blanket a significant part of the Common Market.

Second, it might be argued that Article 1 (2) of 67/67 renders inapplicable the *en bloc* exemption because the solus agreement is between nationals of the same State. While the plain language of Article 1(2) would dictate that result, the ECJ held in *Fonderies Roubaix*[261] that Article 1(2) was not intended to eliminate from the block exemption those intra-State exclusivity agreements which otherwise affected trade and competition within the Common Market. Article 1(b) of Regulation 67/67 would be relevant to exclusive dealing agreements between the oil majors and retailers, were it not for the grand design in which exclusivity is carried out by each company. Accordingly, solus agreements do not fit within the *en bloc* exemption category of 67/67 and should be subject to rule of reason analysis under Article 85(3) of the Treaty.

In addition to review under 85(3), exclusive dealing contracts may be notified and negative clearance sought under the procedure of Article 2 of Regulation 17/62 and Article 85 (2) of the Treaty. The factors to be considered in the rule of reason evaluation have been earlier set out under Chapter VII and the national U.K. antitrust law of this Chapter. In all events, the duration of petrol exclusivity should not exceed one year with the retailer having the option to seek other competitive sources without penalty or a subsequent refusal to deal by the oil major.

(4) Informational Exchange Agreements Under Article 85.—The Common Market faces an antitrust dilemma if not paradox in horizontal co-operation and information arrangements. On the one hand, trade between nations of different States is to be encouraged in order to dissolve territorial markets. Co-operative and informational exchanges aid that cause. On the other hand, exchange of information that leads to price fixing or other non-competitive practices distort and restrain trade and are subject to 85(1) sanctions.

The Community competition policy to resolve the quandary has been principally kept at the CEC level. While the European Court did speak out strongly in *Sugar Cartel*[262] against the exchange of cost information in a highly concentrated industry, the primary target of the Case was cartel price manipulations and rebates. In *Glass Manufacturers*,[263] the CEC specifically condemned, under 85, four agreements relating to exchange of prices and invoices (including customer identity) between undertakings in different States. Among the factors considered by the Commission were industry concentration, homogeneity of the product and lack of competition other than price.

The general policy of the C E C on information sharing is set out in its 1978 Competition Report.[264] The key to Commission approval under 85(3) of an information agreement should be and probably is that the undertaking maintain its competitive individuality. But although a company should keep informed on market conditions, industry technology, and product development, contractual informational exchanges on pricing or costing policies, customer identification and inventory in an oligopoly market should be forbidden as a *per se* violation. Such is the U.S. antitrust experience in *Container Corp.*[265] and the earlier case of *American Column & Lumber*.[266]

The need for informational agreements in the oil industry, beyond the exploration and development market, is undemonstrable in the U.S. Such should be closely examined by antitrust enforcement of the CEC.

3(f) Merger Enforcement In The EEC.

The relationship of market criteria in the review of horizontal and vertical mergers to the larger aspects of dominancy under Article 86 is pronounced. To that end, the decision of the Court of Justice in *Continental Can*[267] must rank as a turning point in Common Market antitrust enforcement. First of all, it established by judicial decree that in order to maintain a balanced and competitive Common Market, mergers could be prohibited. Unlike the Clayton Act, the Treaty does not make formal reference to accumulations by merger. Secondly, the Court laid down fundamental tests by which dominance through merger should be adjudged, viz., combined market share of the marriage, relative proportionality to the market size of competitors, economic power of the merged undertakings *vis-a-vis* downstream purchasers, and potential competition in other product and territorial markets. The first three tests are soundly reasoned; the last is open to some question because of the American experience in the manipulation of geographic markets.

Yet even with *Continental Can*, there are still glaring defects in Common Market merger enforcement:

Footnotes at end of article.

(a) A merger can not be prohibited under 86 unless one undertaking is already dominant;

(b) There are no pre-notification provisions extant which enable the CEC to review or prevent a merger before it takes place.

The EEC Ministers should consider the promulgation of a Council Regulation that would provide the CEC with advance warning of a merger of specific proportions, such as was set forth in U.S. competition law under the *Scott-Hart-Rodino Antitrust Improvements Act of 1976*.[268] While a proposal has been before the European Council of Ministers since 1973,[269] no action has been taken.

4. Considerations Of Divestiture Of Major Oil Companies In The United Kingdom:

The policies favoring and opposing vertical divestiture in the oil industry have already been examined under Paragraph 10 of Chapter VII. The question at this point is whether U.K. antitrust law recognizes divestiture and realistically authorizes its use.

1. U.K. National Law.—Vertical divestiture is a legislatively authorized remedy under the 1973 F T Act.[270] Indeed, of the three antitrust systems of jurisprudence under study in this Thesis, U.K. national law is the only one in which divestiture is expressly sanctioned. By order under statutory instrument (first approved by both Houses of Parliament), the Secretary of State may provide for the division of a business, for the reorganization and transfer of assets as well as equity and debt positions, and the continuation of legal proceedings. The Act does not spell out the body that would preside over the divestiture. Neither the MMC, from whom the divestiture recommendation would stem, nor the High Court is invested with jurisdiction.

In practical fact, however, the procedural mechanics of vertical divestiture are irrelevant, for in the larger view of U.K. antitrust law, the divestiture remedy may be no more than an academic curiosity. British national antitrust instructs that the ramifications of divestiture may be too dramatic to implement within the economic system of the U.K. The remedy lies dormant in the Statute, its use never once having been attempted in 32 years of competition law. Accordingly, as long as the law deals in even the shadow zones of possibility, much less probability, divestiture is not a feasible remedy, under U.K. national policy, even if the monopoly position of the major oil companies warranted it.

2. Common Market Law.—There is no Treaty provision that authorizes vertical divestiture. Article 3 of Regulation 17 authorizes the Commission to terminate infringements of Articles 85 or 86, and "to require undertakings to bring * * * infringement to an end." The Commission in *Continental Can* ordered the American-based company to divest itself of the Holland firm.[271] On appeal, because of Court of Justice ruled directly on the antitrust validity of the merger, itself, the question of divestiture was never reached.

The CEC has been granted broad authority to deal with competition issues. While still a system that is undergoing experimentation, Common Market antitrust has reflected a responsible and balanced attitude toward competitive structure and behavior. If a specific case presented facts of such market dominance and egregious behavior that reasonable competition could not be restored unless dismemberment of the undertaking were required, it is a premise of this Thesis that the Commission has the inherent authority under the Treaty and Regulation 17 to order divestiture. What is more, the CEC, on the record of *Continental Can* and otherwise, is likely to request it with respect to a U. K. firm. The ultimate decision on the subject of course, rests with the European Court of Justice.

CHAPTER IX: SECTION 2 OF THE SHERMAN ACT AS APPLIED TO MAJOR U. S. OIL COMPANIES AND FINAL CONCLUSIONS REGARDING VERTICAL DIVESTITURE IN THE U.S. AND U.K. PETROLEUM INDUSTRIES

Vertical divestiture of the major oil companies of most or all assets forward of production and transportation is, without serious rivalry, one of the epic questions in antitrust enforcement today. It is not just of consequence to the industry participants or substantive competition law. The outfall consequences reach the largest markets, indeed, the entire economies of both the United States and the United Kingdom.

Those that advocate vertical divestiture of Big Oil in either Country are unquestionably correct in one aspect. If divestiture occurred, there would be a new suffusion and round of competitors in the refining and retail markets of petroleum. But that argument is capable of being made about divestiture in any industry regardless of the degree of structural concentration. Of course there would be new companies created and others reorganized to purchase the dismembered assets. But whether those new entities would provide a new and improved thermostat of competition is an entirely different matter. Heavy capital investment is a hypostasis and an entry barrier to refining and, in lesser degree, retailing. It can not be avoided. That being the case, it is within the realm of probability that a proximate result of vertical divestiture would be the establishment of another dozen or so major companies at each marketing tier operating within a new oligopoly pricing system that would require a full return on capital for each new company at each level. More than that, the newly invented tiers of companies at the refining and retail markets would only take effect after years of litigation, after the most complex economic evaluations to achieve parity of corporate structures and asset divestiture, and after the constancy of judicial or administrative supervision of the dismemberment process.

This is not to urge that divestiture is an ill-conceived tool of antitrust that should be pitched aside because of the intransigent difficulties of implementation. On the contrary, divestiture is a remedial mechanism which should be an appurtenance of any comprehensive method of competition enforcement. *But never in the history of antistantial parts of an entire industry* either at one sitting or over a period of time. Divestiture should be, therefore, approached with the most deliberate care not only for its merits, but with regard to an industry that is vital to society as is petroleum.

1. Monopolization By American Companies Under The Sherman Act:

The dialogue regarding vertical divestiture of the refinery and retail levels of the major oil companies rests on the assumption that divestiture is justified and required by the antitrust laws of the United States. It is not. This Thesis has demonstrated that under every recognizable gauge of competition policy, a case of monopoly, shared monopoly, or monopolization is not made out under Section 2 of the Sherman Act against the oil majors. Exchange of crude or refined petroleum between major companies is not an offense under the Sherman Act, unless there is specific premeditation to force an independent or other major from the market. The homogeneity of the product allows for inter-company exchanges as an element of increasing efficiency and to that extent is pro-competitive. No antitrust court has yet found that inter-corporate exchange of raw product is an act of monopolization or a restraint of trade, with the exception of predatory *animus*. If there be a primary-line or down-stream "squeeze" on other oil refiners, that squeeze is an operative of competition and not of an antitrust violation.

Common ownership of interstate pipelines, considering the capital investment, efficiency and environmental problems associated with individual lines should not be of significant concern. Such lines are common carriers and their non-preferential use subject to the jurisdiction and review of the Interstate Commerce Commission.

As to the contention that the only competition among the oil barons is commercial advertising, it is incorrect. Considering the similarity of product and the national energy laws requiring governmentally induced conservation, there exists distinctive evidence of competition in the industry including that of a reasonable scale between the majors, themselves. As importantly, new market entry has been accomplished in recent years at both the refinery and retail tiers. The major corporations have lost aggregated and individual market shares as a result of new penetration. The petroleum industry is less concentrated presently than it was 10 to 20 years ago, and admittedly less concentrated than most other manufacturing. Even the forensic antitrust warriors of Thurman Arnold's Jay would concede that the minimum market shares and level of competition between Big Oil and within the industry, generally, are not reached by the monopoly provisions of the Sherman Act.

Tying arrangements, information agreements forward of production, and exclusivity contracts do exist, but they can and should be treated and subjected to stringent enforcement under Section 1 of Sherman. Such behavior and conduct, individual or cumulative, does not suggest that Sherman 2 be brought into play as exclusionary acts of substantiality and monopolization. The commonality of directors on the Boards of major companies in the form of bankers and investment houses, is troublesome, but it should be resolved under the federal securities laws or Section 5 of the FTC Act. It hardly signals or is deserving of the disciplines of Sherman 2, viewed either in its own cubicle or in tandem with other trade restraints.

The argument that the major oil compaines are so intensely interested and on common course that they constitute a *de facto* indivisible business unit is largely rhetorical diatribe. This Thesis has manifested that there is competition between the eight, ten or twenty majors in the United States. Even in appeasement of the rhetoric, were the sixty or so smaller or independent refiners *completely excised* from the market equation, there is still competition between the largest twenty companies that forecloses the claim of an "indivisible business unit" and insufficient market share to be subject to Sherman 2 sanctions.

The stubborn fact remains that there is simply not the type of abusive, cut-throat, exclusionary and predatory behavior of major oil companies afoot that caused the antitrust courts to find massive Sherman 2 violations and to order divestiture in *Standard Oil* and *American Tobacco*. There is no evidential showing of monopoly or shared monopoly at either the refinery or retail markets under the Sherman Act and *a fortiori*, monopolization under Section 2 is not even reached.[272]

2. Divestiture of United Kingdom Corporations Under Applicable Antitrust Laws:

In the United Kingdom, it is concluded that the market dominance of the top five oil majors is of such magnitude that they comprise a complex monopoly at the refinery level under U.K. internal antitrust laws and a shared dominancy under EEC competition law. The latter is of particular significance.

Footnotes at end of article.

But that conclusion does not close the door on inter-company competition of the five other integrated refining and retailing corporations. On a different scale and degree than in the U.S., competition nonetheless is plainly extant in the U.K. Market shares of the leading majors (Shell, Esso and B.P.) have fallen against new entry at the refining level at the same time that the horizontal market was expanding. Entry barriers of integration, capital requirements and market identity have not precluded increased penetration against the five majors by independents and smaller integrated companies. Thus, competition has not been stultified under either the complex monopoly or shared dominancy.

On the other hand, exclusionary activities in the U.K. are more pronounced than in the U.S. Information exchange arrangements are or have been significant, tying and exclusive dealing are widespread and selective discriminatory pricing at the down-stream retail level has taken place in recent years in Britain. The latter has placed an unreasonable anticompetitive "squeeze" on small lessee and independent retailers. All of such behavior should be the targets of investigation or hearing by the DGFT, by the Monopolies and Mergers Commission, by the Restrictive Practices Court and, not the least, by the CEC. Discriminatory pricing by the majors against the smaller retailers is both a primary-line and secondary-line injury that should be caught under Article 86 of the Treaty of Rome and the faulting companies should be subjected to the type of fines that will leave no doubt about the gravity of the offense.

On the central question of vertical divestiture, this Thesis stands on the proposition that the indicated conduct by one or all of the top five vertically integrated companies does not rise to the level where the remedy should be seriously entertained at the refinery market. The anticompetitive conduct can be corrected by measures that do not require the radical surgery of dismemberment.

3. Energy Policies vis-a-vis Antitrust Policy:

The design of the United States to homogenize petrol and require conservation of petroleum products is one of the principal ambitions of the national conscience. Without measured cadence in consumptive use of oil at all sectors of the economy, competition policy in oil will no longer be of social relevance. It is a superficial paradox, at times urged by industry personnel, that major oil corporations are expected to engage in fierce competition with respect to a resource whose demand is governmentally regulated. The argument is infirm. The complexion of antitrust and the commitment to competition are unchanged by the energy schemes of either the U.S. or the U.K. But antitrust may be required to recognize the exigencies and demands of conservation and regulatory policy in rule of reason cases and at the enforcement stage. National energy goals should have no bearing on *per se* violations of the antitrust laws.

4. Conclusions:

So the matter comes down to this—the essential case against Big Oil is, as the name implies, bigness, existence at all marketing levels and large profits. It is, in most respects, a repeat performance of the anti-bigness prejudice that was the undoing of the Learned Hand Court in *Alcoa* and the Supreme Court in *United Shoe*. That bias continues to be the unfortunate incantation of legitimate competition enforcement. This thesis has studied the theory of size and has found it wanting as a goal of antitrust policy. Conceptually, bigness has nexus to antitrust as a possibly desired side-effect, but it is not the casual predicate or goal. Competition policy of the United States or the United Kingdom is not a pawn of the reformists to accomplish social welfare ideology. The massive profits realized from the escalating price of crude and OPEC cartelizing, are relevant topics for taxing authorities and new exploration initiatives, but they have been demonstrated in this Thesis to be unassociated with monopolization in the U.S. or abusive dominance in the U.K.

If the day dawns when the oil majors have been found to have monopolized under the Sherman Act in the U.S. and there is no other way to restore competitive balance to the market other than by vertical divestiture of the refinery and/or retail tiers, American antitrust is fully capable to and should be used to order dismemberment.

The same cannot be said about U.K. internal competition law. Whether the statutory authorization for divestiture in Britain has more than ceremonial value remains to be seen. The United Kingdom is yet to decide whether it genuinely wants decisive antitrust enforcement. Monopoly law will begin to reach its potential and maturity if and when amendments to procedural methodology and enforcement authority of the MMC are made.

Antitrust law of the European Community, however, has a pragmatic conceptual balance that, in some parts, is missing in U.S. law. Enforcement has been strong and effective. This Thesis argues that should it be necessary in the future to remedy a grievous imbalance of the competitive structure in the oil industry of the United Kingdom, vertical divestiture is a remedial antitrust device in the Common Market.

Lastly, the Thesis holds that antitrust policy has as its function the creation of the widest number of economic opportunities and freedoms at all levels of the market place. Its operation gives some assurance that competition will take place on its merits, that goods of quality and reasonable price will be made available to the intermediate and ultimate purchasers and that a stable economic balance between the individual and society will be rationally achieved. No economic system is perfect, but it is the best that the human condition has yet devised.

FOOTNOTES

[1] Besides writings in the published literature, *several* Bills were introduced in the U. S. Senate in 1976 on the subject. Under the generic heading of the Petroleum Industry Competition Bill, the proposed legislation, if enacted, would have worked an axiomatic and statutory divestiture of some 20 oil companies. Support for the measure came from Senators Church, Hart, Kennedy, Muskie and Bayh, *inter alia*. Wall Street Journal Publication, February 9, 11, 12, 1976.

On July 18, 1973, the Federal Trade Commission of the U. S. filed an administrative complaint against the eight largest petroleum companies seeking vertical divestiture under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. *FTC* v. *Exxon Corporation, et al.*, FTC Docket No. 8934. The case is yet pending.

[2] *A Report on the Supply of Petrol to Retailers in the United Kingdom*, HC264 (1965); *A Report on the Supply of Petrol in the United Kingdom by Wholesale*, Cmnd. 7433 (1979).

[3] A more detailed inventory and study of the allegations are set out in Chapters II, III, and V.

[4] B. Jones, W. Mead, P. Sorenson, *Free Entry Into Crude Oil & Gas . . . Productions And Competition In The U.S. Oil Industry*, Natural Resources Journal, Vol. 18 No. 4 p. 861 (1978); *Investigation Of The Petroleum Industry*, Report of Permanent Subcommittee on Investigations of the U. S. Senate (July 1973) p. 25.

[5] M. Ajomo, *An Appraisal Of The Organization Of The Petroleum Exporting Countries (OPEC)*, Texas International Law Journal, Vol. 13 p. 11 (1977); E. Penrose *OPEC's Importance In The World Oil Industry*, International Affairs, Vol. 55 No. 1 (Jan. 1979). And see A. Sampson, *The Seven Sisters*, Hodder & Stoughton, London (1975). While the weight of Sampson's *The Seven Sisters* must be discounted because of the melodramatic sensationalism which accompanies investigative-style writing, the Book nonetheless lays out the geneological beginnings and reasons for the emergence of OPEC as a dominant influence in world politics and macro-economics.

[6] Saudi Arabia, Kuwait, Iraq, Venezuela and Iran formed the initial combination and were thereafter joined, under formal statutory convention by the African states of Libya, Nigeria, and others. Together, OPEC countries had under thumb over 65% of world oil production and in excess of 85% of global crude exports. *Report of OPEC Statistics Unit* (Jan. 1976).

[7] Big Oil participants in OPEC production over the years were Exxon Corp., Texaco Inc., Gulf Oil Corp., Mobil Oil Company, Standard of California (Socal), Royal Dutch/Shell, and British Petroleum.

[8] From 1954 through 1970, a number of smaller companies played an active role in OPEC oil, including Getty Oil, Signal, Amerada-Hess, Continental Oil, Marathon, and Occidental.

[9] *The International Petroleum Cartel*, Report of Subcommittee on Multinational Corporations of the U.S. Senate (February 21, 1974) pp. 142–147, 153–156; *Oil Corporations and U.S. Foreign Policy*, Report of Subcommittee on Multinational Corporations of the U.S. Senate (1975) pp. 47–48, Part 7, p. 257, 285. On the other hand, it must be said that while the producing companies behaved in many regards as a cartel for over 20 years through 1973, crude oil was in plentiful supply and at low cost to the retail market. Moreover, much of the cartel activity of the major companies had the express blessing of the U.S. Government.

[10] Section 1 of the Sherman Antitrust Act provides that agreements or combinations in restraint of trade or commerce "among the several States or *with foreign nations*" are proscribed. 15 U.S.C. § 1. In the early case of *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347 (1909) authored by Holmes, J., it was declared that conduct occurring without the U.S. was governed by the *lex loci contractus* and not by domestic antitrust law. More recent authority holds that activity in restraint of trade, although extraterritorial in performance, falls within the Sherman Act if it impacted or was intended to and did impact domestic commerce. *Continental Ore Co.* v. *Union Carbide and Carbon Co.*, 370 U.S. 690, 705 (1962). The current interpretation is, in many instances, pretentiously broad and portends global significance to U.S. antitrust enforcement.

[11] Antitrust courts have been very hestitant to apply the Sherman Act to conduct involving, directly or indirectly, foreign governments. *Hunt* v. *Mobil Oil Corp.*, 410 F. Supp. 10 (S.D.N.Y. 1975). The defenses of sovereign immunity and "ace of state" are well recognized. *American Banana Co.* v. *United Fruit Co.*, supra. Even were the cartel activity of a foreign national found in violation of the Sherman Act, enforcement of a judgment or decree would present enormous difficulties and invite retaliatory action by the sovereign defendant.

[12] Idem. f.n. 4 *ante*.

[13] Under congressional enactment, Pub. L. 93–159, 87 Stat. 627, the wellhead price of domestic crude was regulated under a maximum ceiling, significantly below that of the world market. While such a program was intended to maintain low consumer petrol prices, the disadvantages were plain. Conservation was discouraged rather than the reverse; there was a disincentive to search for new domestic crude. Accordingly, the President was given authority to deregulate domestic crude in order that the price may float toward the World market. Full deregulation is expected in 1981.

[14] *U.S. National Energy Management Report*, Harcourt Brace Jovanovich Inc., Dallas (1979) p. 6.8. Each of the 132 companies reflected in excess of $1,000,000 in revenues, were publicly owned, with at least 51 percent of operations in oil and/or associated natural gas.

[15] Sohio has been since 1970 controlled through stock ownership by B. P. Corp., a wholly owned subsidiary of B. P. Ltd. of the United Kingdom.

[16] With Shell-U.S. being one of the subsidiary entities of the Shell Group and ultimate parent Royal Dutch/Shell, all of the Seven Sisters are represented in the top eight producers of U.S. domestic crude.

[17] *U.S. National Energy Management Report* Harcourt Brace Jovanovich Inc., Dallas (1959), p. 11.

[18] Ibid, p. 12 *ante*.

[19] *National Refiners Association Statistical Report*, Washington, D.C. (1974).

[20] Ibid. Such new refiners as Amerada-Hess, Union Pacific R.R., Coastal States Oil and Gas Co., and Kerr McGee are not know to have any retail marketing outlets in the United States.

[21] B. Jones, W. Mead, P. Sorensen, *Free Entry Into Crude Oil & Gas Production and Competition In The U.S. Oil Industry*, Natural Resources Journal, Vol. 18 No. 4, p. 864 (1978).

[22] *Investigation Of The Petroleum Industry*, Report of Permanent Subcommittee on Investigations of the U.S. Senate, (July 1973), pp. 25, 29. Hearings and testimony on *Competition and Public Policy In The Petroleum Refining Industry*, Subcommittee on Antitrust and Monopoly of the U.S. Senate (1978), pp. 22–35.

[23] National Petroleum News Annual Report (June 1979); Some indication of the size of the U.S. market and the position of Exxon and Texaco can be gained from the fact that the retail outlets of the two companies, above, are 150% more than all petrol sites in the U.K. s of 1978.

[24] *Investigation of the Petroleum Industry*, see f.n. 22, p. 23. *ante*.

[25] Ibid. f.n. 21, p. 863.

[26] Unleaded gasoline is utilized in the U.S. for automotive engines which, by reason of the questioned wisdom of the Federal Government (E.P.A.), requires leaded components to be stripped in the refining process. Unleaded refining is not only more costly, it results in lower gas mileage thus increasing U.S. consumptive requirements.

[27] Major oil company advertisements continue to indicate, however, that particular ingredients or chemical agents in particular petrol will give improved gas mileage, engine performance and lower cost repairs.

[28] Owner-operated stations are an exception to the rule, except for some small, independent refiners.

[29] Report on *Marketing Practices In The Gasoline Industry*, Subcommittee on Antitrust and Monopoly of U.S. Senate, Part 1 (July 1970) pp. 6–13.

[30] In the critical area of petroleum reserves, the same companies on Table VI are the strongest both in U.S. and the world (by U.S. corporations) holdings. *U.S. National Energy Management Report*, p. 10, *ante*.

[31] *U.S.* v. *Paramount Pictures Inc.*, 334 U.S. 131 (1948); *U.S.* v. *Griffith*, 334 U.S. 100 (1948).

[32] Complaint of *FTC v. Exxon Corporation et al.*, Fed. Trade Comm. Docket 8934.

[33] P. Barnes, *How To Play Monopoly—Oil Everywhere*, New Republic, Vol. 165, p. 21.

[34] The representative interests in the joint venture assets were 60% Shell Group to 40% B.P. The economic rationale for this curious admixture is not clear, even after an interview by the author with senior legal personnel of one company. It is presumed that the joint venture grew out of mutual positions of B.P. and Shell in crude production in the Persian Gulf, most specifically from Kuwait, Iraq, and Iran, and had its beginnings prior to the passage of the Monopolies and Restrictive Practices Act of 1948. After the 1976 divorce, the two Companies no longer have any conjugal properties or interest.

[35] R. W. Shaw, *Price Leadership And The Effect Of New Entry On The U.K. Petrol Supply Market*, Journal of Industrial Economics, Vol. 23 (Sept. 1974), p. 65.

[36] Ibid, p. 65.

[37] *First Report from the Committee of Public Accounts: North Sea Oil and Gas* (Session 1972–73). Department of Trade and Industry, p. 24.

[38] P. Frankel, *Mattei: Oil and Power Politics*, London (Faber & Faber 1966), p. 34.

[39] E. N. Krapels, *Controlling Oil: British Oil Policy And The British National Oil Corporation*, U.S. Government Printing Office, Washington, D.C. (1977), p. 4.

[40] The method has been reviewed and employed by both the Tories and Labor. Ibid. f.n. 37 *ante* p. 32.

[41] Several combinations and arrangements of smaller independents along with major producers were licensed. The major discoveries at Thistle and Montrose were by mixed consortiums. *Development Of The Oil And Gas Resources Of The United Kingdom*, Department of Energy, London (1977).

[42] *Report on United Kingdom Offshore Oil and Gas Policy*, Cmnd. 5696, London.

[43] The negotiations were conducted in what must be said were less than arms-length conditions. The Minister for Energy plainly stated in connection with the Fifth Licensing Round of 1977, that the acceptability of a potential licensee would substantially hinge upon the "reasonableness" of the company to amend *ex post faco* existent leases to provide the Government with a majority revenue position. *U.K. Offshore Petroleum Production Licensing:* Fifth Round, Department of Energy Report, London (May 1976).

[44] Personal interview with oil company officials, February, 1980.

[45] *Make or Break? A Survey Of North Sea Oil*, Economist, Vol. 256, supplement London (July 1975).

[46] The United Kingdom Monopolies and Mergers Act was amended by the Fair Trading Act of 1973 to lower the threshold test for a statutory monopoly from one-third to one-quarter of the market for like kind goods. On February 1, 1976, the Monopolies Commission received a reference from the Director General of Fair Trading with respect to the petrol industry. It is possibly more than economic coincidence that the Shell-B.P. joint venture was terminated the same year. Neither Company, standing alone, had sufficient market share to qualify at the refining level or the retail market as a statutory monopoly. Together, they both were caught by the Act.

[47] *A Report On The Supply Of Petrol In The U.K. By Wholesale*, Monopolies and Mergers Commission, Cmnd. 7433 (Jan. 1979) p. 21.

[48] Ibid, pp. 23, 24, 27.

[49] The question of horizontal price-fixing by refining companies was not within the monopoly reference to the Commission in 1976 and in all events, such restrictive practice would have been without the Commission's jurisdiction. Fair Trading Act of 1973, 54(5).

[50] Ibid f.n. 47 *ante* p. 9–10; Ibid f.n. 18 *ante* p. 12.

[51] Ibid f.n. 47 *ante*, p. 11.

[52] Ibid f.n. 47, p. 18, Table I, p. 5.

[53] Esso, Amoco, B.P., Gulf, Phillips and other major companies have voluntarily sold off significant segments of their U.S. retail stations in the 1970's.

[54] Ibid. f.n. 51, Table 8, p. 17, Table 1, p. 5.

[55] Ibid f.n. 21.

[56] The Secretary of State unilaterally raised the threshold barrier to 50 million gallons as part of his post-Report negotiations with the oil companies. Unfortunately the Monopolies Act confers such authority. FTA of 1973 56 (2), (3).

[57] Ibid f.n. 47 *ante*, p. 32.

[58] From 1951 through 1970, the Federal Power Commission regulated the price of natural gas at the wellhead so low that exploration and production incentives were all but strangled. When discovered, gas was normally "flared" to get at the associated oil, and vast quantities were wasted. In BTU output, the regulators saw to it that natural gas had no competition for any use. Coal production consequently suffered.

[59] Pub. L. 93–159, 87 Stat. 627.

[60] Ibid.; Energy Policy and Conservation Act, Pub. L. 94–173, 89 Stat. 871; Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432, 42 U.S.C. § 7255 (Supp. 1979); Public Utility Regulatory Policy Act of 1978, Pub. L. 95–617, 92 Stat. 3117; Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174; National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206.

[61] Sec. 203(a)(7)(A) of the Act.

[62] *Emergency Allocations of Crude and Products—National Arrangements In the United Kingdom*, P. G. Ashcroft, D.E.R. Scarr, A Government Position Paper, London (1979).

[63] It could be that the French might even slightly repent of their unlawful if not irresponsible position on British lamb imports in the Common Market in exchange for crude oil from the North Sea.

[64] *Fortune Magazine*, May and September (1973).

[65] C. A. Fraas, *Structural Shared Monopoly Under FTC 5. The Implications Of The Exxon Complaint*, Western Reserve L. Rev. Vol. 26 (1976) p. 615 at 644.

[66] Ibid 627, 639; Ibid f.n. 25 *ante* pp. 24–28.

[67] *FTC Report On Investigation Of The Petroleum Industry*, Antitrust Trade & Regulation Report No. 622 (1973) pp. E–9–11.

[68] Ibid. f.n. * * *, 16–20.

[69] R. A. * * * *The Antitrust Laws*, 21 Stanford L. Rec. 1562 (—).

[70] *The Structure Of The U.S. Petroleum Industry*, Committee on Interior and Insular Affairs, U.S. Senate, Washington (1976), pp. 7–12.

[71] Daily Telegraph, London March 4, 17, 1980.

[72] Ibid. f.n. 2 *ante*.

[73] The incipient thrust of American antitrust legislation was to stop vicious and predatory pricing activities driving others out of business, acquiring competitive businesses only to close them down, cartel price-fixing and other parallel behavior. It was also aimed at trust which held absoluate monopoly market power.

[74] The views of Judges Hand and Wyzanski on the role of size in antitrust are incongruous. The cases bearing their signature will be examined in this Chapter VII.

[75] *U.S.* v. *Paramount Pictures Inc.*, 334 U.S. 131 (1948).

[76] L.D. Brandeis, *The Curse of Bigness*, Kennikat Press Inc., Post Washington, N.Y. (1934) p. 115.

[77] Robert H. Bork, *The Antitrust Paradox*. Basic Books, Inc. New York, N.Y. (1978) p. 405. The Alexander M. Bickel Professor of Law at Yale University, Bork was former Solicitor General of the United States and acting Attorney General.

[78] For a parallel view, see the First Competition Report of the CEC, April 1972, p. 11.

[79] In this context, marginal costs inculcate a factor for return of capital C.F.R. Posner, The Social Cost of Monopoly And Regulation, 83 Jour. Political Economics 807 (1975).

[80] Competition within the proclaimed *de facto* monopoly suggests that a monopoly can compete against itself, an irreconcilable *non-sequitur*.

[81] The U.S. antitrust statutes do not address

the theory. The author is aware of no cases from the U.S. Supreme Court in which the concept has been treated or even discussed.

[92] See *Brown Shoe Co. v. U.S.* 370 U.S. 294 (1962) on product definition and *U.S. v. Philadelphia National Bank*, 374 U.S. 321 (1963) on geographic issue.

[93] *U.S. v. Pabst Brewing Co.*, 384 U.S. 546 (1966).

[94] 26 Stat. 209, 15 U.S.C. § 1–7.

[95] 38 Stat. 730, 15 U.S.C. § 12–27.

[96] 38 Stat. 717, 15 U.S.C. §41–51.

[97] *Appalachian Coal Co. v. U.S.*, 288 U.S. 344; 359 (1953).

[98] *Standard Oil Co. of New Jersey v. U.S.*, 221 U.S. 1 (1911).

[99] Ibid. f.a. 88 *ante; U.S. v. American Tobacco Co.*, 221 U.S. 106 (1911).

[100] While Section 5 (authorizing the FTC to arrest unfair trade practices) forms the basis for the presently pending suit against Exxon and others in FTC Docket No. 8934, it is believed that the standards of the Sherman and Clayton Acts must be observed under the factual setting of this Thesis.

[101] *American Tobacco Co v. U.S.* 328 U.S. 781 (1946).

[102] Ibid. f.n. 90 *ante*.

[103] *U.S. v. Trans. Missouri Freight Assn.*, 166 U.S. 290, 327 (1897).

[104] *U.S. v. Socony-Vacuum (Mobil) Oil Co.*, 310 U.S. 150 (1940); *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. (1911).

[105] *U.S. v. Topco Associated, Inc.* 405 U.S. 596 (1972).

[106] *Klor's Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959).

[107] *U.S. v. Arnold, Schwin & Co.*, 388 U.S. 365 (1967).

[108] Ibid. f.n., 94 *ante*.

[109] 433 U.S. 36 (1977).

[110] Ibid. f.n. 97 *ante*.

[111] See Bork, f.n. 77 *ante* p. 284. Professor Milton Handler of the Columbia School of Law labeled *Schwinn* as "the most egregious error in all of antitrust." M. Handler, *Twenty-Five Years of Antitrust*, 73 Col. L. Rev. 415, 458 (1973).

[112] Senator Sherman left no doubt in his words that the Sherman Act was broad and judicial interpretation and innovation was expected.

[113] 246 U.S. 231 (1918).

[114] *U.S.* v. *Aluminum Co. of America*, 148 F. 2d 416 (2d Cir. 1945); *U.S.* v. *Philadelphia National Bank*, f.n. 82 *ante*.

[115] This point is one of heated contest in American antitrust dialogue. It will be treated in this Chapter under size and efficiency.

[116] Ibid. f.n. 104 *ante*.

[117] 328 U.S. 781 (1946).

[118] Ibid. f.n. 82 *ante*.

[119] Merger Guidelines of the U.S. Department of Justice (May 30, 1968).

[120] J. Bain, *Industrial Organization* (2d Ed 1968); F. M. Scherer and L. Weiss, *The Concentration-Profits Relationship and Antitrust in Industrial Concentration: The New Learning* (Goldschmid, Mann and Weston Eds. 1974).

[121] 1968 White House Task Force On Antitrust Policy.

[122] Ibid. f.n. 104 *ante*.

[123] Report of The Attorney General's National Committee On The Antitrust Laws (1955) p. 326.

[124] See also discussion of monopoly power and consequent illegality based on size and concentration in J. Flynn, *Antitrust and Regulated Industries*, 5th Ed. The Foundation Press, Inc. Mineola, New York (1977), pp. 71–86.

[125] 334 U.S. 100, 106 (1948).

[126] *United States* v. *United Shoe Mach. Corp.*, 110 F. Supp. 295 (D. Mass. 1953), aff'd per curiam, 347 U.S. 521 (1954).

[127] Ibid at p. 341.

[128] 236 F. Supp. 244 (D.R.I. 1964).

[129] Ibid. f.n. 104 *ante*.

[130] In *U.S.* v. *Du Pont*, 351 U.S. 377 (1956) the product market was defined as "flexible packing material" rather than cellophane which Du Pont manufactured. Du Pont was found to have insufficient market share to fall within Sherman 2.

[131] 251 U.S. 417 (1920).

[132] *U.S.* v. *International Harvester Corp.*, 274 U.S. 693 (1927) and *U.S.* v. *Swift & Co.*, 286 U.S. 106 (1932) are to the same effect.

[133] *U.S. Grinnell Corp.*, 384 U.S., 570 (1966).

[134] Ibid. f.n. 88 *ante*.

[135] Ibid. f.n. 91 *ante*.

[136] *Otter Tail Power Co.* v. *U.S.*, 410 U.S. 366 (1973); see also *U.S.* v. *Corn Products Ref. Co.*, 234 Fed. 964 (S.D.N.Y. 1916).

[137] 334 U.S. 495 (1948).

[138] *U.S. v. Reading R.R. Co.*, 253 U.S. 26 (1920).

[139] *U.S. v. Lehigh Valley R.R. Co.*, 254 U.S. 255 (1920).

[140] 332 U.S. 218 (1947).

[141] 334 U.S. 131 (1948).

[142] Ibid., f.n. 17 *ante*.

[143] *American Column & Lumber Co. v. U.S.*, 257 U.S. 377 (1921); Cf., *Maple Flooring Mfrs. Ass'n v. U.S.*, 268 U.S. 563 (1925).

[144] *U.S. v. Colgate & Co.*, 250 U.S. 300 (1919).

[145] *U.S. v. Container Corp.*, 393 U.S. 333 (1969).

[146] *Theatre Enterprises, Inc. v. Paramount Film Distribution Corp.*, 346 U.S. 537 (1954).

[147] In the "Warren era," the Supreme Court gave an expansive and broad interpretation to all aspects of antitrust enforcement reflecting many vertical mergers of marginal market strength.

[148] L. A. Sullivan, *Antitrust*, West Publishing Co., St. Paul, Minn. (1977), p. 107.

[149] 15 U.S.C. § 15.

[150] *Northern Pacific Ry.* v. *U.S.*, 356 U.S. 1 (1958).

[151] *Atlantic Refining Co.* v. *F. T. C.*, 381 U.S. 357, 369 (1965).

[152] 371 U.S. 38 (1962).

[153] *International Salt Co.* v. *U.S.*, 322 U.S. 392 (1974).

[154] *Times-Picayune Publishing Co.* v. *U.S.*, 345 U.S. 394 (1953).

[155] *U.S. Steel Corp.* v. *Fortner Enterprises, Inc.* (*Fortner II*), 51 L. Ed. 2d 80 (1977); ibid., f.n. 141 *ante*, p. 45.

[156] Ibid. f.n. 142 *ante*.

[157] *Fortner Enterprises Inc.* v. *U.S. Steel Corp.*, (Fortner I), 394 U.S. 495, 500 (1969).

[158] Ibid. f.n. 143 *ante*.

[159] 393 U.S. 223 (1968).

[160] *Goodyear Tire & Rubber Co. v. F.T.C.*, 331 F.2d 394 (7 Cir. 1964).

[161] Quite obviously, if the retailer opts to buy TBA from the major, he is free to do so. It is the tie-in to petrol sales, direct or indirect, that is barred.

[162] In *F.T.C. v. Brown Shoe Co.*, 384 U.S. 316 (1966), it was held that where Brown had offered incentive discounts to retailers that sold only the supplier's shoes, the F.T.C. could check in its incipiency, an exclusive dealing even though no violation of Clayton 3 had been shown.

[163] The Clayton Act makes unlawful a lease of commodity.

[164] *U.S. v. Columbia Steel Co.*, 334 U.S. 495 (1948).

[165] *Lorain Journal Co. v. U.S.*, 342 U.S. 143 (1956).

[166] *Standard Oil Co. v. Cal. v. U.S.* 337 U.S. 293 (1949).

[167] Frankfurter footnoted the U.K. The Monopolies and Restrictive Practices Act of 1948.

[168] *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961).

[169] S. Richie, *Petroleum Dismemberment*, 29 Vanderbilt L. Rev. 1131 (1976).

[170] Ibid. f.n. 88 *ante*.

[171] *Schine Chain Theaters* v. *U.S.*, 334 U.S. 110 (1948).

[172] In the legendary case of *California* v. *F.P.C.*, 369 U.S. 482 (1962), the Supreme Court ordered divestiture by the world's largest natural gas company, El Paso Natural Gas, of certain properties acquired through horizontal merger. The Clayton 7 litigation before the U.S. District Court went to the Supreme Court at least 8 separate occasions and stretched over 17 years. However, it should be noted that during the 17 year period, El Paso *was entitled to retain the revenues and profits of some $12 million a year from the illegally acquired assets during the prolonged litigation.*

[173] In *California*, supra, the divestiture was accomplished, competitive balance was restored to the Western United States in the gas industry, and the structural integrity of El Paso (as well as the emerging Northwest Pipeline Corp.) was maintained. *California* is graphic evidence that devestiture is a viable antitrust remedy.

[174] J. Lever and C. Bellamy, British Municipal Competition Law, *Chitty on Contracts* (24th Ed.) Vol. 2 p. 739.

[175] While judges of the High Court sit on the Restrictive Practices Court they are joined by lay members appointed by the Queen. On pure questions of law, the High Court judge will decide the matter and such ruling may be reviewed by the Court of Appeals. Issues of fact decided by the Court are final and no appellate review is available even as to the arbitrary or capricious nature of the findings. *Restrictive Practices Court Act of 1976*, Sec. 10.

[176] *Benzine en Petroleum Handelsmaatsch BV (B P) v. C. E. C.*, Case 77/77 (1978) E. C. J. 151P.

[177] European Communities Act of the U. K. 1972 § 2(1), effective January 1, 1973. Similarly all decisions and rules after that date are axiomatically a part of U. K. law.

[178] D. Lasok and J. Bridge, *Law and Institutions Of The European Communities*, Butterworths, London (1976).

[179] Statement of Lord Diplock, *Competition Law Of Britain And The Common Market*, Matthew Bender, New York (1975) p. xv.

[180] *De Geus v. Bosch*, (1962) C.M.L.R. 1. Before promulgation of Regulation 17/62 of the E E C, only national courts could enforce the Treaty sanctions of 85 and 86. See also Article 1. Regulation 17 of the Treaty.

[181] C. Bellamy and G. Child (edited by J. Lever, Fellow at All Souls College, Oxford) *Common Market Law of Competition*, Sweet & Maxwell, London (1978) p. 18.

[182] *Whihelm v. Bundeskartellant*, Case 14/68 (1969) CMM. L. R. 100, 119.

[183] The original Monopolies and Restrictive Practices Act of 1948 set the monopoly entry-way at one-third of the market. Even though conspicuous horizontal concentration took place in all sectors of British industry between 1948 and 1970, the monopoly threshold was flattened to a quarter of the relevant geographic and product market in the 1973 Act.

[184] This is the U. K. equivalent to the conceptual theory of shared monopoly in U.S. antitrust. Section 11 F. T. Act of 1973.

[185] The 25 percent monopoly category is disingenuous. It should be excised from the Act and in its place, the Director General should have the discretion to initiate a reference as the public interest requires. Better yet, the MMC should have the capacity to initiate a proceeding, *sua sponte*.

[186] In the 1979 Petrol Report, ibid. f.n. 47 *ante*, p. 27, the Commission found a complex monopoly to exist as to some 15 oil companies "and all other wholesalers" in the U. K. The Report simply throws a tent over all companies regardless of market share or the extent of parallelism.

[187] (1966) H.C.P.

[188] Section 56 of the FT Act 1973.

[189] (1966) H.C.P.

[190] (1967) Cmnd. 3186.

[191] (1953) H.C.P.

[192] (1956) H.C.P.

[193] (1968) London H.M.S.

[194] *United Drapery Stores & Montague Burton*, 1967 Cmnd. 3397.

[195] (1966) Cmnd. 42.

[196] *Report on the Supply of Valium and Librium (Tranquillizers)*, (1973) H.C.P. 197.

[197] *U.S.* v. *Trans-Missouri Freight Ass'n.*, 166 U.S. 290 (1897).

[198] Ibid. f.n. 182, 183 *ante; Beecham and Galaxo Ltd., The Boots Co. and Galaxo Ltd.* (1972) H.C.P. 341.

[199] *British Motor Corporation and Pressed Steel* (1965) Cmnd. 46; *B.I.C.C. Corp. and Pyrotenex*, (1967) H.C.P. 490.

[200] *British Match Corp. and Wilkinson Sword Ltd.*, (1973) Cmnd. 5442; *Unilever Ltd. and Allied Breweries* (1974) H.C.P. 297.

[201] *The Rank Organisation Ltd. and The De La Rue Co.*, 1969, H.C.P. 298.

[202] *A Review of Monopolies and Mergers Policy, A Consultative Document* (1978) Cmnd. 7198.

[203] *Report On Supply Of Petrol To Dealers in United Kingdom* (1965) H.C.P. 264.

[204] Ibid. f.n. 155 *ante*.

[205] *Report On Supply Of Petrol In U. K. By Wholesale*, (1979) Cmnd. 7433.

[206] Section 54(2) of F T Act of 1973.

[207] A. Sutherland, *The Monopolies & Mergers Commission In Action*, Cambridge University Press (1969).

[208] The primary legislation was the Restrictive Trade Practices Act of 1956 which established R P C. The Statute was subsequently amended in 1968 to include additional sanctions for restraint of trade. The Director General's Office took the place of the Registrar under the F T A of 1973 and the 1976 Restrictive Practices Act made further refinements in substance.

[209] Section 11 et seq. dealing with services tracks Section 6 et seq. on goods. Since this Thesis involves only the latter, all references will be those sections on goods.

[210] Re: *British Waste Paper Assoc.'s Agreements* (1963) 1 W.L.R. 540.

[211] Re: *British Basic Slag's Application* (1962) 1 W.L.R. 986.

[212] Section 35(2) R T P Act of 1976.

[213] See excellent discussion by J. Lever, *Restrictive Trading Agreements*, Chitty on Contracts, 24th Edit., Sweet & Maxwell, London (1977) Chapter 10.

[214] Re: *Black Bold and Nut Assoc's. Agreement* (1960) 1 W.L.R. 884 (R. P. C.) Re: *Glazed Tile Home Trade Assoc's. Agreement* (1964) 4 R.P. 239.

[215] Re: *Cement Makers' Federation Agreement* (1961) 2 R.P. 241.

[216] Price fixing arrangements, predicated upon the reduction of industry or business risk, have been uniformly rejected by the C E C. *Nederlandse Cement Handelmaatschacappid (NCH)*, (1973) C.M.L.R. D. 257.

[217] R. T. P. Act of 1976, Sec. 26(2).

[218] Lecture of P. Craig (Oxon) of Oxford Univ. Faculty of Law, Mich. Term (1979).

[219] *Esso Petroleum Co. Ltd.* v. *Harpers Garage Ltd.*, (1967) 1 All E.R. 699. v. Korah argues erroneously that under *Harpers*, requirement contracts in the petroleum industry may be fair game for oil majors, since the retailer made "a bargain at arm's length" and "deserves little sympathy". As with much of Korah's book, the argument misses the basic antitrust significance at large. V. Korah, *Competition Law of Britain & The Common Market*, Matthew Bender, New York (1975) p. 105.

[220] Robinson-Patman Act incorporated as Section 2 of Clayton Act, amended (1963).

[221] *Black Bolts*, ibid. f.n. 206 *ante*; Re: *Permanent Magnet Assoc. Agreement*, (1962) 3 R.P. 119.

[222] 85 will catch informal understandings on price levels that would only be loosely characterized as combinations. *ICI and Dyestuffs* v. *C.E.C.* (1972) E.C.R. 619.

[223] F. Honig, *Cartel Law of the European Economic Community*, Butterworths, London (1963).

[224] While specifically enumerated in 86, the abusive practices are illustrative and not inclusive. *Europemballage Corp. and Continental Can Company, Inc.* v. *C.E.C.* (1973) E.C.R. 215.

[225] Article 85(3) of the Treaty; Regulation 17/62, Article 2 and 4.

[226] Regulation 17/62, Article 15.

[227] Ibid f.n. 165 *ante*.

[228] (1975) E.C.R. 1663.

[229] Ibid. f.n. 212 *ante*.

[230] COM (75) 675, December 10, 1975.

[231] One author suggests that the mere "possibility" of an abuse of dominance is sufficient under 86. Smit & Herzig, *The Law Of The EEC.*, Vol II, Columbia Law Sch. Project on European Legal Institutions, Matthew Bender (1976).

[232] Re: *Continental Can Co. Inc.* (1972) C.M.L.R. D11.

[233] (1976) 1 C.M.L.R. D28.

[234] *Commercial Solvents Corp. v. C E C* (1974) E.C.R. 223.

[235] *United Brands Co. (Chiquita) v. C E C* (1978) E.C.J. 207.

[236] (1976) 18 C.M.L.R. D25.

[237] Ibid. f.n. 218 *ante*.

[238] (1977) 2 C.M.L.R. D1.

[239] Ibid. f.n. 165 *ante*.

[240] See *Hugin Kassaregister v. E. C. Commission* (1979) E.C.J. 1869.

[241] The manipulations of sub-markets, both geographic and product, by the U.S. Supreme Court, has produced bizarre if not disasterous results, particularly in Clayton 7 merger litigation. *U.S. v. Von's Grocery Co.*, 384 U.S. 270 (1966); *U. S. v. Pabst Brewing Co.*, Ibid. f.n. 87 *ante*; and see *Alcoa*, ibid, f.n. 108 *ante*.

[242] 502 F. 2d 290 (7 Cir. 1974).

[243] *U.S.* v. *E I du Pont de Nemours & Co.*, 351 U. S. 377 (1956).

[244] *Bernard Foods Indus. Inc.* v. *Dietene*, 415 F. 2d 1279 (7 Cir. 1969).

[245] The F.T.C. Act makes unlawful "unfair methods of competition" and "unfair or deceptive practices". A coterie of behavior which does not rise to the level of the Sherman Act will be subject to administrative sanctions of the F.T.C.

[246] Ibid. f.n. 170 *ante*, p. 181.

[247] Ibid, f.n. 218 *ante*.

[248] *I.C.I. et al* v. *C E C*, (1972) C.M.L.R. 557.

[249] Ibid, f.n. 104 *ante*.

[250] Ibid, f.n. 116 *ante*.

[251] *In re GEMA*, (1971) 10 C.M.L.R. D35; *Counsten S.A. and Grundig GmbH* v. *CEC* (1966) C.M.L.R. 418.

[252] Article 1, Section 8, U.S. Constitution.

[253] Ibid f.n. 212 *ante*.

[254] Ibid. f.n. 222 *ante*.

[255] Ibid. f.n. 226 *ante*.

[256] *U.S.* v. *International Harvester Co.*, ibid, f.n. 126 *ante; U.S.* v. *American Can Co.*, 230 Fed. 859 (D. Md. 1916).

[257] Ibid. f.n. 212 *ante*; Cf. the possible basis of Article 85 violation of *Hoffman-La Roche, supra* f.n. 224 *ante*.

[258] Most Sherman 2 litigation has depended upon Sherman 1 conduct for "monopolization." Ibid. f.n. 88, 90, 91, *ante*.

[259] Ibid. f.n. 165 *ante*.

[260] Unlike Article 85, there is no exit for restraint of trade misconduct of a dominant undertaking within 86. K. Lipstein, *The Law Of The European Community*, Butterworths, London (1974); ibid. f.n. 212 *ante*.

[261] *Cooperative Vereniging UA et al. v. CEC* (1975) E.C.R. 1663.

[262] (1976) 18 C.M.L.R. d25.

[263] Ibid f.n. 224 *ante*.

[264] *Continental Can*, ibid. f.n. 212 *ante*.

[265] D. Lasok, *Law And Institutions Of The European Communities*, Butterworths, London (1976).

[266] *Societe Technique Miniere v. Maschinenbau Ulm* (1966) E.C.R. 235.

[267] *Counsten and Grundig-Verkaufs GmbH* v. *CEC*, (1966) C.M.R.L. 418.

[268] *Addyston Pipe & Steel Co.* v. *U.S.*, 85 Fed. 271 (8th Cir. 1898).

[269] *Volk* v. *Vervaecke*, (1969) E.C.R. 295.

[270] J. O. Comm. Eur. Co. C64 (1970).

[271] Ibid. f.n. 155 *ante*.

[272] See Korah, ibid, f.n. 220, p. 233.

[273] *S.A. Fonderies Roubaix-Wattrelos* v. *Societe Nouvelle Roux et al.*, (1976) 17 C.M.L.R. 538.

[274] Ibid. f.n. 250 *ante*.

[275] Re *European Glass Manufacturers Agreement* (1974) 14 C.M.L.R. D50.

[276] CEC Seventh Annual Competition Report (1978), p. 19.

[277] Ibid. f.n. 134 *ante*.

[278] *American Column & Lumber Co.* v. *U.S.*, 257 U.S. 377 (1921).

[279] Ibid. f.n. 212 *ante*.

[280] 15 U.S.C.A § 18A, PL. 95–435.

[281] (1973) C.M.L.R. D205.

[282] Schedule 8, Part II, Para. 14 F T Act of 1973.

[283] (1972) C.M.L.R. D11.

[284] By virtue of the antitrust mischief at the retail level, a potentially stronger case exists for Sherman 2 prosecution than it does at the refinery level.

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Federal Trade Commission Act, 15 U.S.C. X41–51.

Energy Policy and Conservation Act, Pub. L. 94–173, 89 Stat.

Natural Gas Policy Act 1978, 15 U.S.C. X3301, 3432, 42 U.S.C. X7255 (Supp. 1979).

Public Utility Regulatory Policy Act 1978, Pub. L. 95–617, 92 Stat. 3117.

Energy Tax Act 1978, Pub. L. 95–618, 92 Stat. 3174.

National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206.

Emergency Petroleum Allocation Act of 1973, 87 Stat. 627.

Robinson-Patman Act, 15 U.S.C. Sec. 13.

Cases

Addyston Pipe & Steel Co. v. *U.S.*, 85 Fed. 271 (6th Cir.).

American Banana Co. v. *United Fruit Co.*, 213 U.S. 347 (1909).

American Column & Lumber Co. v. *U.S.* 257 U.S. 377 (1921).

American Tobacco Co. v. *U.S.*, 328 U.S. 781 (1946).

Appalachian Coal Co. v. *U.S.*, 288 U.S. 344, 359 (1953).

Atlantic Refining Co. v. *F.T.C.*, 381 U.S. 357 (1965).

Bernard Foods Industry Inc. v. *Dietene*, 415 F. 2d 1279 (7 Cir. 1969).

Brown Shoe Co. v. *U.S.*, 370 U.S. 294 (1962).

California v. *F.P.C.*, 369 U.S. 482 (1962).

Chicago Board of Trade v. *U.S.*, 246 U.S. 231 (1918).

Continental Ore Co. v. *Union Carbide and Carbon Co.*, 370 U.S. 690 (1962).

Dr. Miles Medical Co. v. *John D. Parks & Sons Co.*, 220 U.S. 373 (1911).

F.T.C. v. *Brown Shoe Co.*, 384 U.S. 316 (1966).

F.T.C. v. *Exxon Corporation et al.*, F.T.C. Docket No. 8934.

F.T.C. v. *Texaco, Inc.*, 393 U.S. 223 (1968).
Fortner Enterprizes Inc. v. *U.S. Steel Corp.* (*Fortner I*), 394 U.S. 495 (1969).
G.T.E. Sylvania Inc. v. *Continental T.V. Inc.*, 433 U.S. 36 (1977).
Goodyear Tire & Rubber Co. v. *F.T.C.*, 331 F. 2d 394 (7 Cir. 1964).
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International Salt Company v. *U.S.*, 322 U.S. 392 (1947).
Klors Inc. v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959).
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Maple Flooring Mfrs. Ass'n. v. *U.S.*, 268 U.S. 563 (1925).
Mullis v. *ARCO Petroleum Corp.*, 502 F. 2d 290 (7 Cir. 1974).
Northern Pacific Ry. v. *U.S.*, 356 U.S. 1 (1958).
Otter Tail Power Co. v. *U.S.*, 410 U.S. 366 (1973).
Schine Chain Theatres v. *U.S.*, 334 U.S. 110 (1948).
Standard Oil Co., of Cal. v. *U.S.*, 337 U.S. 293 (1949).
Standard Oil Co. of New Jersey v. *U.S.*, 221 U.S. 1 (1911).
Tampa Electric Co. v. *Nashville Coal Co.*, 365 U.S. 320 (1961).
Theatre Enterprises, Inc. v. *Paramount Film Distributing Corp.* 346 U.S. 537 (1954).
Times-Picayune Publishing Co. v. *U.S.* 345 U.S. 394 (1953).
U.S. Steel Corp. v. *Fortner Enterprises, Inc.* (*Fortner II*), 51 L. Ed. 2d 80 (1977).
U.S. v. *Aluminum Co. of America*, 148 F. 2d 416 (2d Cir. 1945).
U.S. v. *American Can Co.*, 230 Fed. 869 (D. Md. 1916).
U.S. v. *American Tobacco Co.*, 221 U.S. 106 (1911).
U.S. v. *Arnold, Schwinn & Co.*, 388 U.S. 365 (1967)
U.S. v. *Colgate & Company*, 250 U.S. 300 (1919).
U.S. v. *Columbia Steel Co.*, 334 U.S. 495 (1948).
U.S. v. *Container Corp.*, 393 U.S. 333 (1969).
U.S. v. *Corn Products Ref. Co.*, 234 Fed. 964 (S.D.N.Y. 1916).
U.S. v. *DuPont*, 351 U.S. 377 (1956).
U.S. v. *E.I. duPont de Nemour & Co.*, 351 U.S. 377 (1956).
U.S. v. *Griffith*, 334 U.S. 100 (1948).
U.S. v. *Grinnell Corp.*, 236 F. Supp. 244 (D.R.I. 1964).
U.S. v. *International Harvester Corp.*, 274 U.S. 693 (1927).
U.S. v. *Lehigh Valley R.R. Co.*, 254 U.S. 255 (1920).
U.S. v. *Loew's Inc.*, 371 U.S. 38 (1962).
U.S. v. *Pabst Brewing Co.*, 384 U.S. 546 (1966).
U.S. v. *Paramount Pictures Inc.*, 334 U.S. 131 (1948).
U.S. v. *Philadelphia National Bank*, 374 U.S. 321 (1963).
U.S. v. *Reading R.R. Co.*, 253 U.S. 26 (1920).
U.S. v. *Socony-Vacuum* (*Mobil*) *Oil Co.*, 310 U.S. 150 (1940).
U.S. v. *Swift & Co.*, 286 U.S. 106 (1932).
U.S. v. *Topco Associates, Inc.*, 359 U.S. 207 (1959).
U.S. v. *Trans-Missouri Freight Ass'n.*, 166 U.S. 290 (1897).
U.S. v. *U.S. Steel Corp.*, 251 U.S. 417 (1920).
U.S. v. *United Shoe Mach. Corp.*, 110 F. Supp. 295 (D. Mass., 1953) aff'd per curiam, 347 U.S. 521 (1954).
U.S. v. *Von's Grocery Co.*, 384 U.S. 270 (1966).
U.S. v. *Yellow Cab Co.*, 322 U.S. 218 (1947).
U.S. v. *Grinnell Corp.*, 384 U.S. 563, 570 (1966).

II. UNITED KINGDOM

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1964 Continental Shelf Act of the United Kingdom.
Petroleum and Submarine Pipelines Act of 1975.

Cases

B.I.C.C. Corp. and Pyrotenex (1967) H.C.P.
Barclays, Lloyds and Martin Bank Merger (1968) London H.M.S.
Beecham and Glaxo Ltd., The Boots Co. and Glaxo Ltd., (1972) H.C.P.
Re: *Black Bolt and Nut Assoc'n's Agreement* (1960) 1 W.L.R. 884 (R.P.C.).
Re: *British Basic Slag's Application* (1962) 1 W.L.R. 986.
British Match Corp. and Wilkinson Sword Ltd. (1973) Cmnd. 5442.
British Motor Corporation and Pressed Steel (1965) Cmnd. 46.
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Re: *Cement Maker's Federation Agreement* (1961) 2 R.P. 241.
Esso Petroleum Co. Ltd. v. *Harpers Garage* (1967) 1 All E.R. 699.
Re: *Glazed Tile Home Trade Assoc's Agreement* (1964) 4 R.P. 239.
Guest, K. & Nettlefolds Ltd. and Birfield Ltd. (1967) Cmnd. 3186.
Re: *Permanent Magnet Assoc. Agreement* (1962) 3 R.P. 119.
Rank Organisation Ltd., The and The De La Rue Co. (1969) H.C.P.
Report on Detergents, (1966) H.C.P.
Report on Supply and Export of Matches and Match Making Machinery, (1953) H.C.P.
Report on Supply of Certain Industrial and Medical Gases (1956) H.C.P.
Report on the Supply and Processing of Colour Film (1966) H.C.P.
Report on the Supply of Petrol in the United Kingdom by Wholesale, Cmnd. 7433 (1979).
Report on the Supply of Petrol to Retailers in the United Kingdom, HC264 (1965).
Report on the Supply of Valium and Librium (*Tranquilizers*) (1973) H.C.P.
Ross Group Ltd. and Assoc. Fisheries Ltd. (1956) H.C.P.
Unilever Ltd. and Allied Breweries, (1974) H.C.P. 297.
United Drapery Stores & Montague Burton (1967) Cmnd. 3397.

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ABG v. *Esso Nederland BV* (1977) 2 C.M.L.R. D1.
Benzine en Petroleum Handelsmaatsch BV (*BP*) v. *CEC*, Case 77/77 (1978) E.C.J. 1513.
Commercial Solvents Corp. v. *CEC*, (1974) E.C.R. 223.
Re: *Continental Can Company, Inc.* (1972) C.M.L.R. D11.
Cooperative Vereniging UA et al. v. *CEC*, (1975) E.C.R. 1663.
Counsten S.A. and Grundig BmbH v. *CEC* (1966) C.M.L.R. 418.
De Geus v. *Bosch* (1962) C.M.L.R. 1.
Re: *European Glass Manufacturers Agreement* (1974) 14 C.M.L.R. D50.
Europemballage Corp. and Continental Can Company v. *CEC*, (1973) E.C.R. 215.
In re GEMA (1971) 10 C.M.L.R. D35.
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I.C.I. and Dyestuffs v. *CEC*, (1972) E.C.R. 619.
Nederlandse Cement Handelmaatshcappij (*NCH*), (1973) C.M.L.R. D257.
S.A. Fonderies Roubaix-Wattrelos v. *Societie Nouvelle Roux et. al.*, (1976) 17 C.M.L.R. 538.
Societe Technique Miniere v. *Maschinenbau Ulm* (1966) E.C.R. 235.
Re: *United Brands Company* (*Chiquita*) (1976) 1 C.M.L.R. D28.
Volk v. *Vervaecke* (1969) E.C.R. 295.
Walhelm v. *Bundeskartellant*, Case 14/68 (1969) C.M.L.R.

Regulations

Regulation 17/62 of the Council of EEC.
Regulation 67/67 of the CEC.

BIBLIOGRAPHY OF LEGAL AND ECONOMIC BOOKS, PERIODICALS AND REVIEWS

Ajomo, M. A., "An Appraisal of the Organization of the Petroleum Exporting Countries (OPEC)", *Texas International Law Journal*, Vol. 13 (1977), pp. 11–34.

Ashcroft, P. G., "Emergency Allocations of Crude and Products—National Arrangements in the United Kingdom", *A Government Position Paper*, London (1979).

Brain, J., *Industrial Organization* (2nd Edit. 1968).

Baker, D., "Vertical Restraints in Time of Change", *44 Antitrust Law Journal* (1975), p. 537.

Ball, R., "North Sea Oil and Britain", *Fortune*, Vol. 95 (April 1977).

Barnes, P., "Oil Everywhere: How to Play Monopoly", *New Republic*, Vol. 165 (Nov. 1971), p. 21.

Beck, P. S., "Product Shortages and Attempts to Monopolize", *Boston U. Law Review*, Vol. 55 (Mar. 1975), pp. 243–262.

Bellamy, C., *Common Market Law of Competition* (2nd Edit.), Sweet & Maxwell, London (1978).

Bork, R. H., *The Antitrust Paradox*, Basic Books, Inc., New York, N.Y. (1978).

Brandeis, L. D., *The Curse of Bigness*, Kenniket Press, Inc., Port Washington, N.Y. (1934).

Bringhurst, B., *Antitrust and the Oil Monopoly: The Standard Oil Cases, 1890–1911*, Greenwood Press, London (1979).

Burma-Signal Merger: A Special Report, The, U.S. Government Printing Office, U.S. Senate Committee on Interior—Special Subcommittee on Integrated Oil Operations, Washington, D.C. (1974).

"CEC Seventh Annual Competition Report" (1978), p. 19.

Cannon, J. S., "How Gulf Dealt Its Dealers Out", *Nation*, Vol. 228 (Feb. 1979), pp. 203–206.

Carberry, J., "Big Oil Besieged" *The Wall Street Journal*, New York (Feb. 9, 11, 12, 1976).

Carpel, C. S., "Ten Ways to Break OPEC", *Harpers Magazine*, Vol. 258 (Jan. 1979), pp. 65–74.

Child, G., "Dominant Positions and Prices", *E. E. C. Competition Law*, E. E. C. Publishing Ltd., (1978).

"Competition and Public Policy in the Petroleum Refining Industry", U.S. Senate Committee on Foreign Relations, Multinational Subcommittee (April 1978), pp. 22–35.

Craig, P., Law Fellow, Lecture at Oxford University, Faculty of Law, Michaelmas Term (1979).

Crommelin, M., "Offshore Oil & Gas Rights", *Natural Resources Journal*, Vol. 14 (Oct. 1974), pp. 457–500.

Daily Telegraph, The, London (March 4, 17, 19, 1980).

"Development of the Oil and Gas Resources of the United Kingdom", Department of Energy, London (1977).

"Distribution in Light of Schwinn", *75 Columbia Law Review* (1975), pp. 243, 270.

Elles, N., *Community Law Through the Cases*, Stevens & Sons, London (1973).

"P. T. C. Report on Investigation of the Petroleum Industry", Antitrust Trade & Regulation Report, No. 622 (1973), pp. E–9–11.

"Federal Antitrust Policy—Organization of our American Tradition, The", Johns Hopkins Press, Baltimore, Md. (1955).

"First Competition Report of the C. E. C.", (April 1972).

"First Report From the Committee of Public Accounts: North Sea Oil and Gas", Department of Trade and Industry (Session 1972–1973), p. 24.

Flynn, J., *Antitrust and Regulated Industries* (5th Edit.), The Foundation Press, Inc., Mineola, New York (1977).

Fortune (May & Sept. 1973).

Fraas, G. A., "Structural Shared Monopoly Under F. T. C. 5: The Implications of the Exxon Complaint", *Western Reserve Law Review*, Vol. 26 (1976), pp. 615, 627, 639, 644.

Frankel, P., *Mattei: Oil and Power Politics*, Faber & Faber, London (1966).

Gaskin, M., "Economic Impact of North Sea Oil on Scotland", *Three Bank Review*, No. 96 (March 1973), pp. 30–50.

Handler, M., "25 Years of Antitrust", *73 Columbia Law Review* (1973), pp. 415, 458–59.

Honig, F., *Cartel Law of the Economic Community*, Butterworths, London (1963).

Ikard, F. N., "Competition in the Petroleum Industry", *Oregon Law Review*, Vol. 54, No. 4 (1975), pp. 583–605.

"International Petroleum Cartel, The", Report of Subcommittee on Multinational Corporations of the U.S. Senate (Feb. 21, 1974), pp. 142–147, 153–156.

"Investigation of the Petroleum Industry", Report of Permanent Subcommittee on Investigations of the U.S. Senate (July 1973), pp. 10, 16–20, 24–29.

Joffe, P. L., "Beyond Antitrust", *Catholic University Law Review*, Vol. 28 (Fall 1978), pp. 1–85.

Jones, B., "Free Entry Into Crude Oil & Gas. . . . Productions and Competition in the U.S. Oil Industry", *Natural Resources Journal*, Vol. 18, No. 4 (1978), pp. 861–64.

Jones, R. O., "Monopoly in the U.S. Oil Industry—Does It Exist", Natural Resources Journal, Vol. 18, No. 4 (Oct. 1978), p. 859.

Kent, D. C., "Horizontal Integration in the Energy Industry", *29 Baylor Law Review* (Fall 1977), p. 941.

King, G. M., "Cartel Pricing in the International Energy Market", *Oregon Law Review*, Vol. 54, No. 4 (1975), p. 643.

Korah, V., *Competition Law of Britain & the Common Market*, Matthew Bender, New York, (1975).

Krapels, E. N., "Controlling Oil: British Oil Policy and the British National Oil Corporation", U.S. Government Printing Office, Washington, D.C., (1977), p. 4.

Kronstein, H., *Major American Antitrust Laws*, Oceana Publications Inc., Dobbs Ferry, N.Y., (1965).

Lasok & Bridge, *Law & Institutions of the European Community*, (2nd Edit.), Butterworths, London, (1976), Chapter 11, "Supremacy of Common Law".

Lasok, D., *An Introduction to the Law and Institutions of the European Communities*, Butterworths, London, (1976).

Lever, J., *The Law of Restrictive Practices and Resale Price Maintenance*, Sweet & Maxwell, London, (1964).

Lever, J., "Restrictive Trading Agreements", *Chitty on Contracts*, (24th Edit.), Sweet & Maxwell, London, (1977), Chapter 10.

Levy, W. J., "The Years That the Locust Hath Eaten: Oil Policy and OPEC", *Foreign Affairs*, Vol. 57, (Winter 1978–79), p. 287.

Lipstein, K., *The Law of the European Economic Community*, Butterworths, London, (1974).

McCarthy, R. C., "Restraint of Trade and the Gasoline Retailer", *Villanova Law Review*, Vol. 18, (March 1973), pp. 648–677.

"Make or Break? A Survey of North Sea Oil", *Economist*, Vol. 256, Supplement, London, (July 1975).

Marfels, C., "Birdseye View in Industry Concentration", *Antitrust Bulletin*, Vol. 20, (Fall 1975), p. 485.

"Marketing Practices in the Gasoline Industry", Subcommittee on Antitrust and Monopoly of U.S. Senate, (July 1970), Part I, pp. 6–13.

Merger Guidelines of the U.S. Department of Justice, (May 1968).

"Nation Refiners Association Statistical Report", Washington, D.C., (1974).

"Oil Corporations and U.S. Foreign Policy". Report of Subcommittee on Multinational Corporations of the U.S. Senate, (1975), pp. 47–48, Part 7, pp. 257, 285.

"Oligopoly in the Petroleum Industry, *FTC* v. *Exxon*", *Antitrust Law & Economics Review*, Vol. 6, No. 3, (1973), pp. 67–76.

Operdorpher, C. W., *Common Market Cartel Law*, C.C.H., (2nd Edit.) Chicago, (1971).

Patterson, J. M., "Shortages and Gasoline Marketing", *Business Horizons*, Vol. 17, (April 1974), pp. 5–17.

Penrose, E., "OPEC's Importance in the World Oil Industry", *International Affairs*, Vol. 55, No. 1, (Jan. 1979).

Posner, R. A., *Antitrust Law*, University of Chicago Press, London, (1976).

Posner, R. A., "The Social Cost of Monopoly and Regulation", *83 Journal of Political Economics*, (1975), p. 807.

Posner, R. A., *21 Stanford Law Review*, (1969), p. 1562.

"Proposals to Break Up Major U.S. Oil Companies", *Congressional Digest*, Vol. 55, (May 1976).

Rahl, J. A., *Common Market & American Antitrust*, McGraw-Hill Book Company, London, (1970).

Reid, M., "Bootleg Gasoline, Etc.", *National Petroleum News*, Vol. 70, (July 1978), pp. 46–50.

Report of OPEC Statistics Unit, (Jan. 1976).

Report of The Attorney General's National Committee On The Antitrust Laws, (1955), p. 326.

Report on Crude Oil Reseller Price Controls, U.S. General Accounting Office, (May 1979).

"Report on United Kingdom Offshore Oil and Gas Policy", C.M.N.D. 5696, London, (1974).

"Review of Monopolies and Mergers Policy, A Consultative Document", C.M.N.D. 7198, (1978), (HM Government, London).

Ritchie, S., "Petroleum Dismemberment", *29 Vanderbilt Law Review*, 1976), p. 1131.

Rycroft, R. W., "U.S. Oil Industry", *Current History*, Vol. 74, (May 1978), pp. 193–97, 225–26.

Sampson, A. *The Seven Sisters*, Hodder & Stoughton, London, (1975).

Sandeman, H., "North Sea Oil Finance", *Banker*, Vol. 127, (May 1977), pp. 73–97.

Scherer, F. M., *The Concentration-Profits Relationship and Antitrust in Industrial Concentration: The New Learning*, Goldschmid, Mann and Weston, (1974).

Shaw, R. W., "Price Leadership and the Effect of New Entry on the U.K. Petrol Supply Market", *Journal of Industrial Economics*, Vol. 23, (Sept. 1974), p. 65.

Smit & Herzig, *The Law of the EEEC, Vol. II*, Columbia Law School Project on European Legal Institutions, Matthew Bender, N.Y., (1976).

Smith, A., *The Wealth of Nations*, Modern Library Edition, (1937).

Smouse, V. A., "Gasoline Marketing Practices Under the Robinson-Patman Act", *Maryland Law Review*, Vol. 37, No. 2, (1977), pp. 323–349.

"Structure of the U.S. Petroleum Industry, The", Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C., (1976), pp. 7–12.

Suagusa, M., "The Application of Article 86 to the Pricing Policy of Dominant Companies: Discriminatory and Unfair Prices", *16 C M L Review* 179, (1979).

Sullivan, L. A., *Antitrust*, West Publishing Co., St. Paul, Minn., (1977), p. 107.

Sutherland, A., *The Monopolies Commission in Action*, Cambridge Press at the University, (1969).

Treasury Staff Analysis of F T C Staff Report on Oil Industry, U.S. Treasury Department, (July 1973).

Tucker, R. W., "Oil and American Power", *Commentary*, Vol. 63, (Jan. 1977), pp. 29–36.

"U.K. Offshore Petroleum Production Licensing: Fifth Round", *Department of Energy Report*, London, (May 1976).

U.S. Congressional Record—H1034, (Feb. 1977).

"U.S. National Energy Management Report", Harcourt, Brace, Javanovich, Inc., Dallas, (1979), pp. 6–12.

Van Gervan, W., "Twelve Years E E C Competition Law (1962–1973), Revisited", *Chicago Law Review* 38.

Wall, E. H., *The Court of Justice of the European Communities*, Butterworths, London, (1966).

Watt, D. C., "Britain & North Sea Oil", *Political Quarterly*, Vol. 47, (Oct. 1976), pp. 377–397.

White House Task Force on Antitrust Policy, (1968).

Wilkerforce, Lord, *Restrictive Trade Practices and Monopolies*, Sweet & Maxwell, London, (1966).

Willrich, M., "Energy Independence for America", *International Affairs* (*London*), Vol. 52, (Jan. 1976), pp. 53–66.

Wilson, J. W., "Market Structure & Integration in Petroleum Industry", *Journal of Economic Issues*, Vol. 9, (June 1975), pp. 319–335.

Witt, M., "How Big Oil Controls the Coal Industry", *United Mine Workers Journal*, No. 12, (July 1973), pp. 4–7.

Wortley, B. A., *The Law of the Common Market*, Manchester University Press, (1974).

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed, for not to exceed 2 minutes, to consider the following nominations:

Lindsay D. Norman, Jr., Director of the Bureau of Mines, Calendar Order No. 265; Francis R. Dugan, and Dennis R. Smith under the U.S. Metric Board; Howard A. White, Corporation for Public Broadcasting; Stephen R. Reinhardt, of the Judiciary; nominations listed under U.S. Army and U.S. Marine Corps

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on page 8; and nominations placed on the Secretary's desk on page 9.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the reservation is for the purpose of advising the majority leader that the executive calendar items just identified by him are cleared on our calendar, and I might say after rather extensive negotiations, and that we have no objection to their consideration and confirmation.

Mr. ROBERT C. BYRD. Mr. President, I thank the minority leader.

I do thank him for getting clearance on those nominations.

Mr. President, I ask unanimous consent that these nominees be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF THE INTERIOR

Lindsay D. Norman, Jr., of Maryland, to be Director of the Bureau of Mines.

U.S. METRIC BOARD

Francis R. Dugan, of Ohio, and Dennis R. Smith, of Massachusetts, to be members of the U.S. Metric Board.

CORPORATION FOR PUBLIC BROADCASTING

Howard A. White, of New York, to be a member of the Board of Directors of the Corporation for Public Broadcasting.

THE JUDICIARY

Stephen R. Reinhardt, of California, to be U.S. circuit judge for the 9th circuit.

IN THE ARMY

Maj. Gen. Robert Haldane, 131-14-7236, U.S. Army, to be lieutenant general.

Maj. Gen. Robert Joseph Lunn, 361-14-7936, U.S. Army, to be lieutenant general.

Maj. Gen. Harry Augustus Griffith, 113-18-4835, U.S. Army, to be lieutenant general.

IN THE MARINE CORPS

Lt. Gen. Edward J. Miller, U.S. Marine Corps, age 57, for appointment to the grade indicated on the retired list pursuant to the provisions of title 10, United States Code, section 5233, to be lieutenant general.

Maj. Gen. Richard E. Carey, 279-20-96-19, U.S. Marine Corps, to be lieutenant general.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, NAVY, AND MARINE CORPS

Air Force nominations beginning Albert H. Amalfitano, to be lieutenant colonel, and ending William E. Dussetschleger, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 25, 1980.

Army nominations beginning Larry D. Aaron, to be major, and ending Joseph Saint Clair, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

Army nominations beginning Michael H. Abbott, to be lieutenant colonel, and ending John J. Zegarski, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Army nominations beginning Gary D. Burrows, to be major, and ending Larry Smith, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Navy nominations beginning Raymond J. Adams, to be ensign, and ending Sheldon Brotman, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

Marine Corps nominations beginning Timothy C. Abe, to be second lieutenant, and ending Larry R. Shannon, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominations were confirmed en bloc.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN SERVICE ACT OF 1980

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The Senate resumed consideration of the bill.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will State it.

Mr. HELMS. What is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

S. 3058, a bill to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

Mr. HELMS. I thank the Chair and I thank the clerk.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, the pending legislation, which has been agreed to by the majority of the Committee on Foreign Relations, fails to resolve the more serious weaknesses of the present Foreign Service. Indeed, several provisions will make the Foreign Service even less efficient in some respects and will deepen the crisis of morale which is presently endemic in the Service.

The Foreign Service of the United States and the diplomatic establishment which it is intended to serve have been in a state of crisis and decline for at least a decade, perhaps a generation. Their decline has accompanied, and contributed to, the decline of the United States as a world power. Thus the solution of the fundamental diplomatic functions of the Foreign Service should be seen in terms of the fundamental foreign policy goals of the United States.

Neither the committee bill, nor the administration bill, H.R. 6790, addresses the problems of the Foreign Service in terms of these larger issues.

Neither the committee bill nor the administration bill recognizes that the crisis in the Foreign Service does not arise mainly from such administrative issues as the number of classes of Foreign Service officers, the categories of its personnel, or even the promotion and selection out procedures it employs. It arises instead from confusions as to the proper role of the traditional Foreign Service in foreign policy; its status among the Federal departments and agencies, including the Central Intelligence Agency; its specific functional role within the Department of State with its separate civil career and excepted service personnel; and its ability to recruit quotas of women and minority personnel without a reduction in the professional quality of its members.

These fundamental problems, Mr. President, are not solved but, indeed, they are exacerbated by the committee bill, which is at best an effort to reconcile special interests rather than the creation of the best professional diplomatic and consular service which the United States could provide. At a time when there is an increasing use of private citizens and personnel from the White House and other departments to perform diplomatic missions of the most delicate nature, the Congress should not permit public attention to be deflected from the serious problems which the Foreign Service faces.

Foreign Service reform should recognize that the Corps is essentially the elite service, that differs fundamentally from the civil service. Although many of the cosmic problems relating to foreign policy must await a major reorganization of the foreign affairs agencies, including even certain functions of the Departments of Agriculture, Commerce, Treasury, and the military departments, Congress should focus on the immediate issues that trouble the Foreign Service today.

These issues are: selection and recruitment standards; classification and recruitment standards; classification of positions; pay and retirement benefits; labor-management relations; and supplemental compensation for the burdens and dangers with which foreign service personnel must contend.

The basic philosophy behind legislation specifically distinguishing the foreign service from the civil service should relate to the additional rigorous duties, greater sacrifices, more dedication to hazardous and onerous service. Consequently, Congress should begin with the policy that foreign service personnel must have all the rights and prerequisites of civil service personnel, plus such additional safeguards and rewards and protections which take cognizance of the greater demands on professional qualification and personal character and dedication.

The committee bill addresses the problems of the Foreign Service from the standpoint of improving administration of the Department, without regard to the function of the Foreign Service. Proper reform should, and must, heighten the character of the Foreign Service as an elite institution, while at the same time demanding a higher calibre of performance. It should recognize the increased hazard of service abroad, as well as the increased inconveniences and liabilities which accrue to family and professional life in times of uncertainty and rapid shifts in the international economic order. Finally, Mr. President, it should provide for a humane and sensible system for the elimination of redundant personnel, so that the taxpayers' money will not be continued to be wasted as is now the case.

In my opinion, the committee bill has failed to do this. It has not even taken note of such risks as the risk of being taken hostage—a situation which is certainly familiar to all Senators, indeed, to all Americans today.

Last month, on July 29, to be exact, I introduced S. 2986, which consists of only 11 pages of text, in contrast to the committee bill which is now pending. The committee bill, I would mention, has 250 pages. It covers the essential points in simple and understandable form—and I am referring to S. 2986 when I say this. These 11 pages of S. 2986 achieve more directly and more simply the essential urgent reforms which are now long overdue.

My bill, S. 2986, is like S. 3058, in that it provides a unified salary schedule for all Foreign Service personnel linked directly to Civil Service general schedule 4 through 18, and enacts into statute present worldwide agency bargaining units now established by Executive order.

The principal difference, Mr. President, the difference between my bill, S. 2986, and the pending bill, S. 3058, the committee bill, is that my bill does not create a Senior Foreign Service. The top three salary classes, corresponding to GS 16, 17, and 18, are continuations of the same promotion process used throughout the Foreign Service ranks. The Senior Foreign Service, as constituted in S. 3058, the committee bill, is the seedbed of future frustration and discontent among our Foreign Service officers.

And I would say parenthetically, Mr. President, that if the Senate fails to take note of this and fails to adopt the amendment in the nature of a substitute, which I shall shortly call up, then future Senates will have to deal with many problems, not to mention the State Department and our entire Government, as well, in its international relations.

The Senior Foreign Service will be open to charges of arbitrary personnel management, political favoritism, cronyism, and manipulation of the system for reasons of bureaucratic power. And now, Mr. President, is the time to prevent that.

I hope Senators who may be reading the RECORD of what is being said here this morning by the Senator from North Carolina will bear in mind that the pending legislation is not pro forma. It is decidedly and vitally important if we are to make meaningful reforms in our Foreign Service.

I think that we should take a look at exactly what has been happening in the promotion system at the present time. Secretary after Secretary has refused to use the tools which have been provided to him to manage the personnel system effectively. The old theory of promotion is "up of out," that is, if an officer does not get promoted within a reasonable time-in-class, based on the needs of the Service, then that officer is selected out by a selection panel of his peers.

But the plain truth, Mr. President, is that system has not been working. I suggest that every member of the Foreign Relations Committee knows this or should know it. According to the House hearings on this legislation, there have been 3,345 Foreign Service officers selected out between 1969 to 1978. During that period, 71 percent of the selection outs were under the time-in-class provision, while 29 percent were selected out for substandard performance.

But the real problem, Mr. President, is that in the upper two classes, FS-1 and FS-2, there have been no officers selected out since 1974. There have been retirements for age and voluntary resignations, but none have been selected out. In other words, the system has stopped working at the top, and it is not working very well any where along the line.

I say again, now is the time to correct that. I say again that neither the pending bill nor the administration bill does the job.

What is the result?

The result is that there has been an impactment of officers at the top. Some estimates place the number of redundant officers at the top between 100 and 150, making it more and more difficult to justify promotions all along the line. It should be noted that this problem is particularly acute at State, but is not a problem at all at ICA. Yet the officers at ICA will be subjected to the same drastic remedy under S. 2058.

What happens under this bill is that present FS-1's and FS-2's will be offered the choice of converting to the Senior Foreign Service within 120 days after this bill is enacted, or remaining where they are. Those are the two choices. If they remain where they are, they face mandatory retirement in 3 years. If they choose to go in the Senior Foreign Service, they have a 3 year tenure—or possibly as long as 5. Then they can be promoted, or they can be reappointed for a limited tenure of 5 years, after which they are out.

Thus, in order to cure an administrative problem, S. 3058 proposes a system which—and I want to be as charitable as I can be in assessing S. 3058—is arbitrary, capricious, and subject to subjective administration. Objectivity is out the window. Moreover, it proposes a drastic change for many officers all at once. What it does is to push the bulge at the top into an arbitrary system.

Mr. President, I will say to Senators, that is inviting deep trouble.

It is my understanding that upward of 1,500 new salary slots will be created under this legislation by the Secretary. The legislation itself does not address how this will be done, nor how will Congress have any control over the rate at which this is done. There is the danger that the rapid conversions envisioned in the transition sections of S. 3058 will result in the senior slots being filled very rapidly, thus freezing promotions at the top level for a considerable length of time.

In my view, the Senior Foreign Service is unnecessary and will create many, many problems up and down the line. The present selection board system should be retained, but it should be put under pressure to work more effectively, and to make sure that the needs of the service are taken into consideration constantly all down the line. We should not continue to promot too many people all along, and then cut them off in the end. There should be a natural, constant attrition.

There should be more emphasis, therefore, on the idea of the Foreign Service as an elite service, with rigorous standards, and more efficient practices.

Mr. President, I have tried to do my homework on this matter, and I believe I am correct in what I am about to say.

My bill would emphasize both the elite caliber of the Service, and the efficiency of its operation. My bill would require that all jobs filled by Foreign Service personnel be classified by the Office of Personnel Management according to civil service standards. This would give an objective benchmark for efficiency. The Secretary would have to place personnel in jobs corresponding to their salary level, and report to Congress on how well this is being done. Thus Congress

would have some criteria to form the basis of appropriations of the taxpayers' money for the operation of the Service.

My bill would provide greater rewards for Foreign Service personnel, including a tax-free bonus at all levels and increased pensions in recognition of the disruptions caused by the worldwide availability and by increased hazards.

But it would also encourage more selection out of redundant personnel, and Congress would be aware if this were not happening. It would provide increased prestige for the service, but it would also require written examinations for promotions for the first five grades, thus insuring objective not subjective standards for appointment and promotion.

It would also, in recognition of the special debt owed to Foreign Service personnel who do become hostages, grant increases in pensions depending upon the number of days held, with options for immediate retirement.

And, I might add, in spite of the increased rewards for employees, my bill will not cost the taxpayers anything more because of the savings resulting from increased efficiency, better utilization of personnel, and a smaller staff.

My bill, I believe, is far more equitable both to employees and to the taxpayer. I might add, Mr. President, that it has received high praise from labor leaders who are involved in this area. The Foreign Affairs Employees Council, AFL–CIO, has expressed its enthusiastic endorsement of my bill, in a letter which will be on every Senator's desk prior to the vote on my proposal on Monday. I hope that Senators will read it.

Mr. Abe Harris, who is president of the American Federation of Government Employees Local 1812, which represents some 2,000 Foreign Service employees at the U.S. International Communication Agency as their exclusive bargaining agent has also written a similar letter of endorsement. The AFGE, of course, represents some 700,000 Federal employees in 50 States. Mr. Harris states that my legislation is "a clear and straightforward bill which focuses on issues basic to the Foreign Service."

Mr. President, I ask unanimous consent that both these letters may be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AFGE,
Washington, D.C., September 9, 1980.

Hon. JESSE A. HELMS,
Senate of the United States,
Washington, D.C.

DEAR SENATOR HELMS: The American Federation of Government Employees Local 1812 represents some 2,000 Foreign Service employees at the United States International Communication Agency. Our International organization represents some 700,000 Federal employees in 50 states. We have represented USICA Foreign Service Officers since 1976, when they determined that the American Foreign Service Association, was not properly protecting their interests, and elected AFGE 1812 to be their exclusive representative in all employee-management matters.

Since the introduction by request of the proposed Foreign Service Act, we have noted and suggested improvements in the bill. Always our concern was that the bill did not address the recruitment and retention issues of the Service in the 70's and 80's and their effect on our foreign relations, but would in fact aggravate the problems that already exist.

AFGE was thus gratified when you offered as a substitute for the proposed two hundred and seventy (270) page Act, a clear and straightforward bill which focused on the issues basic to the Foreign Service.

I have consulted with career members of the Foreign Service, Staff Counsel, and reviewed your alternative remarks in Senate Report No. 96–913 on the proposed Act. (S. 3058). These remarks suggest that (1) you do not intend to replace the Reserve Corps; (2) you are willing to accept a five percent limit on any officers appointed to Classes 1, 2, and 3 without having gone through the examination process. Your remarks also indicate that you are willing to preserve the current bargaining unit, which in recognition of the rank-in person system and the frequent rotation of people in and out of supervisory positions, includes these personnel in the unit. We understand a new draft of your bill includes these provisions.

We also urge that you include within your bill a grievance procedure which would reject the composition of the Board as proposed in the Pell bill. This provision, as explained in the attached Thomas Legal Defense Fund Report, would destroy the integrity of a third party process by allowing management officials of the agencies to appoint unilaterally all Grievance Board members.

Since the Helms bill does not presently address the process for resolving grievances, we would like to suggest that you adopt a grievance section which tracks the lines of S. 2712. The Senate has passed this bill previously on two separate occasions. We are attaching a proposal for a statutory grievance chapter to that purpose.

Again, let me say that we appreciate your efforts on behalf of the Foreign Service and with the inclusion of the above stated provisions in your bill, we can enthusiastically endorse S. 2986.

Sincerely,

ABE HARRIS,
President,
AFGE, Local 1812.

FOREIGN AFFAIRS EMPLOYEES COUNCIL,
Washington, D.C., September 10, 1980.

Hon. JESSE A. HELMS,
Senate of the United States,
Washington, D.C.

DEAR SENATOR HELMS: Thank you for letting me see the final text of the Bill you have prepared to amend the Foreign Service Act of 1946.

We find your Bill would tremendously strengthen the Foreign Service. Your constructive proposals are far preferable to the voluminous text submitted by Senator Pell for the Committee on Foreign Relations.

I wholeheartedly endorse your Bill.

On behalf of the several thousand career employees of the foreign affairs agencies represented by the Foreign Affairs Employees Council of the American Federation of Government Employees, AFL–CIO, I urge its adoption by your colleagues in the Senate.

Sincerely,

BERNARD WIESMAN,
President.

Mr. HELMS. Mr. President, my amendment in the nature of a substitute is identical to S. 2986, except for a few changes which have been suggested in discussions with many individuals concerned with the matter.

I have added, for example, sections 2314 and 2207 of S. 3058, dealing with retirement credits for "Radio" service, and "Retirement for Binational Center Employees," both of which were offered in committee by the distinguished floor manager of this bill. I am also in accord with the grievance procedure which would allow employees to have a representative of their own choosing at grievance hearings. That would have been overturned by S. 3058 if the distinguished Senator from Rhode Island (Mr. PELL) had not offered an appropriate amendment. Such an amendment is not necessary to my proposal, since my proposal retains the present system.

I have also accepted the State Department's criticism that the appointment of Foreign Service officers in the upper ranks without examination should be limited to 5 percent, as well as the Department's observation that an ambassador in a post abroad should be able to delegate labor-management issues to the DCM, or to an administrative or personnel officer. I have also accepted the Department's suggestion that "supervisors" should be included as employees rather than as management.

With these changes, I believe that my proposal, to be offered in the form of an amendment in the nature of a substitute, is a superior substitute for the pending bill, S. 3058.

Mr. President, I urge Senators to study this matter carefully and to bear in mind that what we do on this piece of legislation, which I am sure very few Senators have considered to any great extent, will very well have a bearing on the implementation of our foreign policy and the success of it in the future.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. PRYOR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, there is a fundamental question which must be addressed in consideration of S. 3058 and the proposed substitute: What differences should there be between the way the Foreign Service is operated and the laws governing the civil service? The proposed substitute if adopted would represent far-reaching departures from well-established and successful practices used by the Foreign Service since 1946 and refined and improved under S. 3058. Although the sponsor of the substitute agrees with me that the Foreign Service is an elite service which is fundamentally different from the civil service, the thrust of many of the new departures in his substitute are in the direction of making the Foreign Service much more like the civil service.

I have always believed that the Foreign Service is more similar to the military services than to the civil service, and that similarity would be greatly undermined by the proposed substitute.

During the 15 months the new Foreign Service Act has been before the Congress, this issue of how separate should the Foreign Service be has been prominent. In their deliberations, the concerned

committees and subcommittees of the Senate and House reached quite different conclusions from those reflected in the substitute. For example:

All, including the House Post Office and Civil Service Committee, accepted the proposition that the Secretary of State should continue to have classification authority separate from Office of Personnel Management (OPM) because of the continuing different circumstances which have caused the Foreign Service to be outside the civil service laws since the very first Civil Service Act in 1883. Chairman CAMPBELL of OPM supports S. 3058 which continues this provision. The heads of the Foreign Affairs agencies are explicitly directed by S. 3058 to give "appropriate weight to job factors relating to service abroad." This would not be possible under the civil service classification system that would be required by the substitute bill.

All agreed that the Foreign Service should continue to be operated, as it has by Executive order since 1971, under a somewhat different system of labor management relations than applies to the civil service. Chapter 10 of the proposed new act represents a careful incorporation of many of the pertinent features on this subject of title VII of the Civil Service Reform Act of 1978. Again, the Post Office and Civil Service Committee, whose orientation is toward maximum use of the civil service system, was in full agreement with the carefully negotiated approach finally adopted which takes into account the special conditions of Foreign Service employment.

All agreed that the 10 step pay schedule applicable to the civil service, and mandated by the substitute bill, did not suit the needs of the Foreign Service.

In spite of strong sympathy for the difficulties of Foreign Service life, all the committees concluded that it would be inappropriate at this time to change the Foreign Service retirement system, in view of the current examination of all Federal retirement systems which is now underway.

The several committees also addressed a number of current problems with the Foreign Service which are not taken up in the substitute bill. The latter—

Does not provide for clear separation of the Foreign Service and civil service, according to the type of career an individual will have;

Leaves some 1,500 "domestic Foreign Service" employees eligible for all Foreign Service benefits and subject to conditions of employment designed for those who serve rotational careers;

Fails to consolidate and codify all legislation pertaining to the Foreign Service in one place, as has not been done in 34 years;

Does not create a Senior Foreign Service comparable to flag ranks in the military and to the Senior Executive Service, with retention based strongly on performance; and

Does not simplify and consolidate the Foreign Service personnel system in the same degree as does S. 3058.

As a final point, the special plight of the hostages is being dealt with by other legislation which is already moving through the Senate and the House: I am cosponsor, along with the chairman of the Foreign Relations Committee of two measures in the Senate, S. 2581, which is pending before the Finance Committee, and S. 2582, which has been reported by the Judiciary Committee and is on the Senate Calendar. Companion legislation has been reported by the House Foreign Affairs and Post Office and Civil Service Committees. These bills are more comprehensive in meeting the needs of the hostages than are the provisions in the substitute, and are preferable to them.

I ask unanimous consent that a section-by-section rebuttal of the Helms substitute be printed in the RECORD at this point.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

ANALYSIS OF AMENDMENT NO. 2290 TO S. 3058, THE HELMS SUBSTITUTE FOR THE FOREIGN SERVICE ACT OF 1980

Section 1—Short Title:

Section 1 identifies this Act as consisting of amendments to the Foreign Service Act of 1946 rather than providing a new charter for the Foreign Service as proposed in S. 3058. This illustrates the substitute's retention of a number of out-of-date features of the 1946 Act, its omission of a number of necessary provisions contained in S. 3058 and its abandonment of the objective of consolidating in an orderly coherent way the various laws relating to the several agencies which use the Foreign Service personnel system, but which are not contained in the basic legislation applicable to the Foreign Service.

Section 2.—Objectives:

This section would add two new objectives to Section 111 of the 1946 Act. The first would ensure Foreign Service personnel all rights accorded to personnel in the Civil Service. This is apparently in lieu of the detailed provisions of S. 3058 which specify the rights to be accorded to members of the Foreign Service. (See, *e.g.*, section 105 on Merit Principles, Protections for members of the Service and Minority Recruitment; sections 607 and 608 regarding Selection Out Procedures; section 610 regarding Separation for Cause Procedures; Chapter 11 regarding Grievance Procedures.) The vague statement in the substitute is likely to lead to misunderstandings and confusion. For example, is it intended to guarantee to members of the Foreign Service who are separated for cause a right to a hearing before the Merit Systems Protection Board? This right is accorded to employees in the competitive service. Section 610 of S. 3058 provides instead for a hearing before the Foreign Service Grievance Board. The substitute would leave on the books section 637 of the 1946 Act which provides for a hearing before the Board of the Foreign Service in such cases. The bill before the Senate has been carefully drafted and scrutinized by three committees of the Congress who have assured themselves that it contains equitable treatment of Foreign Service personnel, but not an identity of procedures with the Civil Service.

This section would also add to the 1946 Act's statement of objectives the provision of further protections, procedures and emoluments to Foreign Service personnel, above and beyond those accorded to Civil Service personnel. However, the particular proposals of the substitute, as described below, are an inadequate substitute for the detailed protections, procedures and emoluments specified in S. 3058 which have been fashioned in the course of extensive Congressional deliberations and consultations with the members of the Foreign Service and organizations which represent them.

Section 3—Foreign Service Schedule:

This section would establish a single Foreign Service schedule in lieu of the separate schedules for Foreign Service Officers and Reserve Officers on the one hand and for Foreign Service Staff Officers and employees on the other, now contained in the 1946 Act. This schedule, unlike S. 3058, would include the three senior ranks of the Foreign Service which S. 3058 deals with separately as a Senior Foreign Service into which officers could advance only on the basis of stringent requirements through a competitive process administered by Selection Boards operating under precepts negotiated between Department management and the exclusive representative of Foreign Service personnel. The substitute would link the 13 classes in this proposed Foreign Service schedule to specific grades in the general schedule established for Civil Service personnel. The specific linkages appear to bear little relaitonship to the intensive studies of Foreign Service compensation that have been conducted in recent years. Moreover, by establishing these linkages in legislation the substitute would depart from the procedures established for setting pay in the Executive branch under existing legislation. This combination of factors would be likely to cause this measure to be vetoed even if it were passed by the Congress.

This section would provide a salary supplement to each member of the Foreign Service equal to 15 percent of basic salary, but not less than $2,500 or more than $7,500 each year. This supplement would be exempt from federal income tax. Apart from the enormous cost of this proposal, it should be noted that since the substitute does not provide legislative authority for elimination of the anomalous domestic categories of Foreign Service personnel who have not and will not serve abroad, these tax-free windfalls would be paid to employees who are nominally members of the Foreign Service but who occupy positions in which many of these same individuals previously served as Civil Service employees. While the Foreign Service certainly deserves adequate compensation and benefits, this provision is not the answer. The answer is to be found in the comprehensive provisions of S. 3058 which cover not only pay but also travel, medical expenses, leave, allowances and other benefits. These provisions have been formulated, again, in close consultation with the members of the Foreign Service and their organizations and after careful study by three committees of the Congress. Finally, this proposal for tax exempt salary supplements would fall within the jurisdiction of the Committee on Finance. If it were necessary to refer this bill to yet another committee it is clear that the 96th Congress will adjourn without enacting meaningful and desirable Foreign Service legislative reforms.

This section would require the Secretary of State to classify the Foreign Service positions not only in the Department of State, but also in two other agencies—The Agency for International Development and the International Communication Agency. Yet, he is to do so in accordance with the provisions of chapter 51 of title 5, United States Code, which would not allow him to classify positions in other agencies. It is unclear how this conflict in the direction given by this section would be resolved. The mandatory application of the Classification Act to the Foreign Service would represent abrupt departure from existing law. The Classification Act is geared to a Civil Service based on the concept of rank in position with a fairly static work force. Jobs are classified by rank and people who move into those jobs acquire the rank to which the positions have been assigned.

Because the Foreign Service operates on

a rank in person basis comparable to the military services and because its members are frequently rotated from post to post and from position to position, the Congress has wisely exempted Foreign Service positions from the inappropriate Classification Act. The existing authority of the Secretary of State to classify positions in the Foreign Service, which would be preserved by S. 3058, provides the Secretary with the ability to maintain an appropriate, flexible system for identifying the levels of responsibility of the various jobs within the Foreign Service to facilitate the assignment of appropriate personnel at the appropriate rank. The abrupt departure proposed in the substitute would be cumbersome and chaotic.

Section 4—Admission to Foreign Service salary classes:

This section would require written and oral examinations for entry into the lower ranks of the Foreign Service, including tests on geography, history, U.S. political structure, and major international events. This would create an unreasonable and unnecessary burden and would impede the recruitment of qualified technical, clerical and other support personnel and would impair affirmative action programs.

This section would also provide for admission to the senior ranks of the Foreign Service on the basis of oral examination alone, with no limit on outside hiring. In addition, this section would permit the appointment of senior officers with no examination at all upon notice to the Senate, so long as the number did not exceed 5 percent of the total number of employees (Foreign Service and Civil Service) in the Department of State. By contrast, S. 3058 provides for entry into the Senior Foreign Service by promotion of career Foreign Service personnel, and permits not more than 5 percent of the members of the Senior Foreign Service to be appointed from the outside. The substitute bill thus appears to provide a legislative basis for serious erosion of the professional character of the career Foreign Service. This provision would also appear to conflict with the objective stated at the outset of the substitute that Foreign Service and Civil Service personnel should have the same protections. Senior Executive Service personnel in the Civil Service are protected against noncareer appointments at the Senior levels by the Civil Service Reform Act.

This section would direct the Secretary of State to conform assignments of Foreign Service personnel with position classifications and to report to Congress on assignments which vary by more than one grade from the classification of the positions to which those assignments are made. It is unclear how this provision would relate to the existing authorities for assignment contained in a later chapter of the 1946 Act. The amendment appears to assume that the common sense approach of matching rank of the individual with the level of the position to which he is assigned is widely disregarded in the Foreign Service and that assignments are seriously out of kilter. This is simply not the case, and yet another reporting requirement is not needed. Moreover, the classification of a Foreign Service position is only one of a number of factors which must be considered, along with language ability, functional skills, familiarity with a particular country or experience in dealing with its leaders, the urgency of filling a vacancy, and the availability of qualified personnel. An effective Foreign Service should be responsive and its members should be available to fill any assignment where they are needed. The 1946 Act recognizes this in sections which are considered in section 501 of S. 3058.

Finally, this section would require that all persons in the Foreign Service be named in OPM registers, presumably with a view to helping them find Civil Service employment if they leave the Foreign Service. The section also directs the OPM Director to assist any separated Foreign Service employee to find employment in the Civil Service. There are several things wrong with this provision. First, there is a greater rate of retention in the Foreign Service than in the Civil Service. The administrative burden imposed by this section is totally unwarranted with respect to the vast bulk of Foreign Service officers who enter in their youth and serve until retirement, and who have no interest in a Civil Service job. Second, the provision assumes that anyone who leaves the Foreign Service, for whatever reason, is suitable for Civil Service employment. This would appear to require that the Executive Branch find a Civil Service job for the Foreign Service information officer who was convicted of espionage in 1978 or any such case which may arise in the future. This assumes extraordinary law standards for employment in the Civil Service.

Section 5—Labor-management relations:

This section would scrap the labor relations system which has functioned smoothly and efficiently for the Foreign Service since 1971 and would substitute in its entirety the Civil Service system in which the Foreign Service has no experience or history of bargaining and which the three committees of Congress that have studied the matter has found inappropriate. The amendment does not address several anomalies that would be created because of basic differences between the Foreign Service and Civil Service systems. In addition it contains a number of novel and unworkable proposals, such as combining Civil Service and Foreign Service personnel in a single bargaining unit despite the absence of a community of interests that would promote efficient and effective dealings.

In addition the measure would permit only one senior official each from ICA or from AID to be treated as a management official at any Foreign Service post, thus creating the peculiar situation that an AID mission director would have to bargain with his own deputy, who would be represented by the union. Clearly, this section is no substitute at all for the carefully developed chapter 10 of S. 3058 which has been scrutinized in the House by the committee which had primary jurisdiction over the Civil Service Reform Act, and which is supported not only by the Administration but also by the American Foreign Service Association which is the exclusive representative of the vast majority of members of the Foreign Service.

Section 6—Computation and payment of annuities:

This section would alter the formula for computing Foreign Service annuities in a way that would increase the unfunded liability of the Foreign Service Retirement and Disability fund by $400,000,000 according to the Treasury Department actuary.

This section would also provide increased annuity for hostages by giving them one year of retirement credit for each month of captivity, or two years of credit for each month of captivity exceeding six months. This is both too much and too little: it is too much because it would give a recent appointee held hostage for one year 24 years of retirement credit; it is too little because it would not permit that individual to retire, utilizing that 24 years of credit until he or she had reached a normal retirement age, at which time any years of credit in excess of 35 years would be disregarded in computing the annuity. The question of relief for hostages is being given separate and more appropriate consideration in other legislation before the Senate.

Sections 7 and 8.—Retirement credit:

These sections would provide retirement credit for employees of certain broadcasting facilities and for employees of binational centers.

Mr. PELL. I also ask unanimous consent to have printed in the RECORD a letter to the Members of the Senate from Dr. Henry Kissinger and Mr. Cyrus Vance, and a letter from Secretary of State Muskie urging the adoption of the Foreign Service bill.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SEPTEMBER 10, 1980.

To the Members of the Senate:

We join in urging your support for the Foreign Service bill (S. 3058) now up for final action by the Senate.

Both of us have testified in favor of this measure and believe its passage at this session is of vital importance to maintain and strengthen the Foreign Service of the United States.

In response to a 1976 Congressional mandate for a "comprehensive plan" for reform of the personnel system of the Foreign Service, work on this measure began in the last year of the Ford Administration and continued during the Carter Administration. As reported to the Congress before the change of Administration in January 1977, a key element in any proposed reform is the clear division between the Foreign Service and the Civil Service in the Department of State. The pending bill accomplishes this long overdue objective in a fair and equitable manner. In addition it codifies diverse laws affecting the Service in an effective new charter and accomplishes many other needed reforms.

This country has a diplomatic service second to none. The dedicated and able men and women of the Foreign Service serve this Nation in increasingly difficult and dangerous conditions abroad.

The proposed Foreign Service Act of 1980 is well designed to meet the needs of the Service and the needs of our Presidents and Secretaries and State in the years ahead.

HENRY A. KISSINGER.
CYRUS R. VANCE.

THE SECRETARY OF STATE,
Washington, D.C.

I am writing to urge your support of the Foreign Service bill (S. 3058) which will be up for Senate action shortly.

Since assuming the duties of Secretary of State four months ago, I have become keenly aware of the desirability of enactment at this session of this comprehensive and important bill to strengthen and to improve the Foreign Service. My predecessors strongly share this view as does a preponderant majority of the members of the Service. A brief description of the proposal is attached.

I want to give you my personal assurance that the Foreign Service bill is a completely non-partisan measure which has gained the overwhelming support of the Senators and Representatives who conducted extensive hearings and markups in 1979 and 1980. On September 8 the House passed the bill by a substantial bipartisan majority.

It is the direct result of five years of efforts begun during the last part of the Ford Administration in response to a Congressional demand in 1976 for a "comprehensive plan" for the improvement and simplification of the personnel system of the Foreign Service.

Your support will be greatly appreciated.

Sincerely,

EDMUND S. MUSKIE.

FOREIGN SERVICE BILL: MAIN FEATURES

(A Bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.)

The bill provides a closer linkage between performance and all aspects of Foreign Service personnel management: recruitment, tenure, advancement, incentive pay, and retention, as judged by impartial selection boards of career and public members.

It simplifies the present overly complex personnel structure of the Foreign Service and converts to Civil Service status those who have not and will not serve abroad with full protection of pay and rights.

It establishes a Senior Foreign Service compatible with the special needs and role of the Foreign Service and yet responsive to the purposes and goals which were sought through the creation of the Senior Executive Service under the Civil Service Reform Act of 1978.

Employee-management relations are placed on a sound statutory basis.

The bill replaces the Foreign Service Act of 1946 and codifies an accumulation of 34 years of legislation on the subject in one comprehensive new charter.

It effects numerous other reforms relating to the rights and benefits of the dedicated members of the Foreign Service and their families who are called upon daily to serve this country in increasingly dangerous and difficult circumstances abroad.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FORD). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. INOUYE. Mr. President, my colleague from Rhode Island has brought before us an important and comprehensive bill which will strengthen the Foreign Service.

With respect to the impact of this legislation on AID, I take it that my colleagues' understanding is the same as mine—that the Administrator of AID will continue independently to exercise all authorities available under this legislation with respect to AID personnel.

When the International Development Cooperation Agency was established last year, we were told that it would have policy and budget responsibilities, but that it would not interfere in the day-to-day operation of AID. My subcommittee has been troubled by reports that IDCA has from time to time sought to intervene in the personnel management of AID, which is clearly beyond its intended scope.

I am taking this opportunity to clarify for all concerned any ambiguity as to whether AID continues to exercise its authorities as a separate Agency and to emphasize our view that all authorities, personnel and otherwise, necessary for the effective operation of the U.S. bilateral assistance program by AID are to be unambiguously vested in AID.

Mr. President, my subcommittee has worked for years to make AID as efficient an operation as we can. I think we have made substantial progress, and do not wish any ambiguities about the responsibilities of the Administrator of AID to interrupt this progress.

As far as I am concerned, a key test of IRCA's effectiveness and utility will be its ability to provide useful policy and budget guidance without in any way hampering—indeed by positively reinforcing—the independent operation of its component agencies.●

(The following proceedings occurred during the statement of the program by Mr. ROBERT C. BYRD later in the day and are printed at this point in the RECORD by unanimous consent:)

AMENDMENT NO. 2290

(Purpose: To amend the Foreign Service Act of 1946 to strengthen and improve the Foreign Service, and for other purposes)

Mr. BAKER. Mr. President, the distinguished Senator from North Carolina, who will offer the substitute amendment on Monday, or who would offer it today and make it the pending business, is necessarily absent from the floor temporarily.

In order to make sure that the Helms amendment is the pending business when we return, and after the recognition of the two leaders, as the majority leader has provided for, I now ask the Chair to lay before the Senate on behalf of Senator HELMS the amendment I just referred to.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), on behalf of Mr. HELMS, proposes an amendment numbered 2290.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Service Act Amendments of 1980".

OBJECTIVES

SEC. 2. Section 111 of the Foreign Service Act of 1946 is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(10) to ensure that personnel in the Foreign Service are accorded all the rights accorded to personnel in the civil service; and

"(11) to provide further protections, procedures, and emoluments to such personnel, in addition to the protections, procedures, and emoluments provided to personnel in the civil service, in order to compensate such Foreign Service personnel for the hazards, inconveniences, and disruptions which encumber such personnel and which require sacrifice and discipline not expected of civil service personnel.".

FOREIGN SERVICE SCHEDULE

SEC. 3 (a) Sections 412 through 415 of the Foreign Service Act of 1946 are amended to read as follows:

"FOREIGN SERVICE SCHEDULE

"SEC. 412. (a) There is established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this title.

"(b) The Foreign Service Schedule shall have 13 salary classes, designated FS-1 through FS-13, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

"Salary class:	Shall correspond to grade:
FS-1	GS-18
FS-2	GS-17
FS-3	GS-16
FS-4	GS-15
FS-5	GS-14
FS-6	GS-13
FS-7	GS-12
FS-8	GS-11
FS-9	GS-9
FS-10	GS-7
FS-11	GS-6
FS-12	GS-5
FS-13	GS-4

"(c) Each class in the Foreign Service Schedule shall have 10 salary steps, equal to the steps for the corresponding grade in the General Schedule, except that the salary classes designated FS-1, FS-2, and FS-3 shall have 1, 5, and 9 steps, respectively.

"ADDITIONAL COMPENSATION

"SEC. 413. (a) The Congress finds that the availability of members of the Foreign Service to serve worldwide at any post assigned without regard to hazards, inconveniences, or disruption of family relations and educational and other personal plans entitles such members to the additional compensation provided under subsection (b).

"(b) In addition to the basic salary prescribed under section 412 and any other allowance authorized by law, there shall be paid in a lump sum to each member of the Foreign Service an amount equal to 15 percent of the basic salary for such member at the grade and step prescribed under section 412, except that in no event shall a member of the Foreign Service be paid under this section less than $2,500 or more than $7,500. Such amount shall be exempt from taxation under chapter 1 of the Internal Revenue Code of 1954.

"CLASSIFICATION OF POSITIONS

"SEC. 414. The Secretary of State shall designate and classify positions in the Department of State, the Agency for International Development, and the International Communication Agency and positions at Foreign Service posts, subject to the applicable provisions of chapter 51 of title 5, United States Code, in relation to the salaries established under section 412. Positions so classified shall be considered to be part of the civil service for purposes of title 5, United States Code. Career members of the Foreign Service shall be eligible to compete for positions classified under chapter 51 of title 5, United States Code, which are not classified by the Secretary pursuant to this section.

"ASSIGNMENT TO POSITIONS

"SEC. 415. The Secretary shall, to the maximum extent practicable without prejudicing the foreign policy or national security interests of the United States, assign individuals holding a personal rank in the diplomatic service of the United States only to such classified positions as may be appropriate to the rank and salary of such individuals. The Secretary shall from time to time prepare and transmit a report to the Congress listing the names of each individual assigned to a classified position for which the salary was more than one grade higher or lower than the grade corresponding to the personal rank of such individual.".

(b) Section 416 of such Act is repealed.

ADMISSION TO FOREIGN SERVICE SALARY CLASSES

SEC. 4. Sections 516 through 518 of the Foreign Service Act of 1946 are amended to read as follows:

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 7 THROUGH 13

"SEC. 516. No person may be eligible for initial appointment as a member of the Foreign

Service of classes 7 through 13 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determine fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major internal events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"ADMISSION TO FOREIGN SALARY CLASSES 1 THROUGH 6

"SEC. 517. No person may be eligible for initial appointment as a member of the Foreign Service of classes 1 through 6 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant. Notwithstanding the preceding sentence, the Secretary of State may appoint an individual as a member of the Foreign Service of class 1, 2, or 3, without examination by the Board of Examiners for the Foreign Service if—

"(1) not later than 30 days after such appointment, the President notifies the Senate of such appointment; and

"(2) not more than 5 percent of the employees of the Department of State at one time are appointed pursuant to this sentence.

"OFFICE OF PERSONNEL MANAGEMENT

"SEC. 518. (a) The Director of the Office of Personnel Management shall cause the names of all individuals appointed to the Foreign Service to be placed on the registers or lists of eligibles, maintained by the Office of Personnel Management under subchapter I of chapter 33 of title 5, United States Code, together with the grade in the civil service corresponding to the salary class in the Foreign Service for each such individual. The Director of the Office of Personnel Management shall keep current the information provided under the preceding sentence.

"(b) If the employment of an individual in the Foreign Service is terminated, the Director of the Office of Personnel Management shall assist such individual in finding a position of corresponding grade in the civil service.".

LABOR-MANAGEMENT RELATIONS

SEC. 5. (a) Section 7103(a)(2) of title 5, United States Code, is amended—

(1) by inserting "or" at the end of clause (iii); and

(2) by striking out clause (iv).

(b) Title VI of the Foreign Service Act of 1946 is amended by inserting after part E the following:

"PART F—LABOR-MANAGEMENT RELATIONS

"SEC. 651. (a) The provisions of subchapter 71 of title 5, United States Code, shall apply with respect to labor-management relations in the Foreign Service except to the extent such provisions are inconsistent with this section.

"(b) The Federal Labor Relations Authority shall resolve any dispute as to whether this Act or chapter 71 of title 5, United States Code, applies with respect to labor-management relations in the Foreign Service.

"(c) Each member of the Foreign Service who is a citizen of the United States, wherever serving, other than a management official, has the right to form, join, or assist any labor organization or to refrain from such activity, freely and without fear of penalty or reprisal. Each such member shall be protected in the exercise of such right.

"(d)(1) For purposes of this section, except as provided in paragraph (2), the term 'management official' means an official who—

"(A) is a chief of mission or principal officer;

"(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

"(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in clause (A) or (B);

"(D) is serving as a deputy to any individual described by clause (A), (B), or (C);

"(E) is assigned to carry out functions of the Inspector General of the Foreign Service; or

"(F) is engaged in the administration or formulation of the personnel policies and programs of the Department.

"(2) For purposes of labor-management relations with respect to a particular Foreign Service post, of the individuals assigned to such post from the Department, the International Communication Agency, and the United States International Development Cooperation Agency, not more than six senior officials shall be considered to be management officials for purposes of this section, including—

"(A) not more than one senior official each from the International Communication Agency and the United States International Development Cooperation Agency; and

"(B) not more than the following four senior officials from the Department: the chief of mission or principal officer, the deputy chief of mission, the principal administrative officer, and the principal personnel officer.".

"(e)(1) For purposes of involvement in any labor organization, the employees, other than management officials, of the Department, the United States International Development Cooperation Agency, and the International Development Cooperation Agency and the International Communication Agency shall constitute, with respect to each such Department or Agency, as the case may be, a single and separate worldwide bargaining unit.

"(2) For purposes of involvement in any labor organization, all members of the Foreign Service, other than management officials, who are employees (including supervisors) of the Department of Agriculture and the Department of Commerce may constitute, with respect to each such Department, as the case may be, a single and separate worldwide bargaining unit or, if recognized as a bargaining unit on the date of enactment of this Act, may merge with any bargaining unit under paragraph (1) which accepts such merger.

"(f) Upon the approval of the Federal Labor Relations Authority and under such terms and conditions as the Authority may require, any bargaining unit representing civil service employees of a department or agency of the United States for which members of the Foreign Service are employed may merge with a worldwide bargaining unit representing only Foreign Service employees if such unit accepts such merger.".

COMPUTATION AND PAYMENT OF ANNUITIES

SEC. 6. Section 821 of the Foreign Service Act of 1946 is amended—

(1) by striking out "2 per centum" in the first sentence and inserting in lieu thereof "2.5 per centum"; and

(2) by adding at the end thereof the following:

"(j)(1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

"(A) one-tenth per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than thirty days; or

"(B) two-tenths per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained in excess of thirty days.

"(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under sections 851 and 853 shall be increased by one year for each month or fraction thereof a participant is so held hostage or detained less than six months and shall be increased by two years for each month or fraction thereof a participant is so held hostage or detained in excess of six months.

"(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.".

RETIREMENT CREDIT FOR "RADIO" SERVICE

SEC. 7. (a) Subsection 8332(b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting after paragraph (9) the following:

"(10) Subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the (A) National Committee for a Free Europe; (B) Free Europe Committee, Inc.; (C) Free Europe, Inc.; (D) Radio Liberation Committee; (E) Radio Liberty Committee; (F) subdivisions of the entities referred to in clauses (A) through (E); (G) Radio Free Europe/Radio Liberty, Inc.; (H) Radio Free Asia; (I) the Asia Foundation; or (J) the American Forces Network, Europe (AFN-E).".

(b) Section 8332(b) of such title is amended by adding at the end thereof the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee referred to in paragraph (10).".

RETIREMENT FOR BINATIONAL CENTER EMPLOYEES

SEC. 8. Section 803(a) of the Foreign Service Act of 1946 is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(2) by adding at the end thereof the following:

"(5) Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under this Act and who makes an appropriate contribution to the Fund in accordance with the provisions of this Act.".

EFFECTIVE DATE

SEC. 9. The amendments made by this Act shall take effect on October 1, 1980.

AGRICULTURAL SUBTERMINAL FACILITIES ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. TALMADGE, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 261.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 261) entitled "An Act to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities, to provide for the development of State plans to improve such facilities within the States or within a group of States acting together on a regional basis, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Agricultural Subterminal Facilities Act of 1980".

FINDINGS

SEC. 2. Congress finds and declares that—

(1) an adequate system for the efficient transient storage and movement of bulk agricultural commodities is essential to the overall success of the agricultural industry of the Nation, the development of rural areas of the Nation, and the economic stability of the Nation;

(2) the movement and storage of bulk agricultural commodities has been seriously and repeatedly impeded by shortages of transient storage facilities, adequate rail rolling stock, and the deterioration of many railroad track beds and rural highways throughout the United States;

(3) the efficient movement and storage of bulk agricultural commodities may be achieved and facilitated by the joint location at strategic points throughout the United States of transient storage facilities and multimodal terminal facilities constructed especially for the efficient shipment and receipt of agricultural commodities; and

(4) the location of such facilities must be carefully planned to assure maximum benefits to producers of agricultural commodities and unprocessed agricultural products and utilization of the most efficient means of transporting bulk agricultural commodities for domestic and export markets.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "bulk agricultural commodity" means any agricultural commodity that can be transported in bulk and can be temporarily stored in bulk quantities without undergoing processing or packaging. Such term also includes any commodity or product that is used by producers in the production of agricultural commodities and that can be stored or shipped in bulk, such as fertilizer and fuel;

(2) "unprocessed agricultural products" means food, fiber, and other agricultural products that have not been packaged or otherwise prepared for retail sale, including animal products and unfinished cotton, wool, leather, or any other unfinished natural material;

(3) "Secretary" means Secretary of Agriculture;

(4) "subterminal facility" means any facility that is located in the area of production or consumption of agricultural commodities or any major storage or major export point for such commodities and is located at a place that conveniently serves the needs of producers, purchasers, and consumers of bulk agricultural commodities, and is—

(A) used for the transient storage of bulk agricultural commodities and may include equipment or structures necessary for the transportation, upgrading, receiving, drying, or loading out of such commodities; or

(B) any rail siding, loading, or unloading facility that can accommodate unit railroad trains or multiple car trains and other appropriate transportation modes designed for the transport of bulk agricultural commodities and production materials; and

(5) "region" means two or more States acting together to develop a coordinated regional subterminal facilities plan.

STATE AND REGIONAL PLANS; PLANNING GRANTS

SEC. 4. (a)(1) The Secretary shall, beginning not more than one hundred and eighty days after the effective date of this Act, make financial assistance available to any State that makes application therefor, and that otherwise meets the requirements of this section, for the purpose of assisting such State in the development of a subterminal facilities plan (hereinafter in this Act referred to as the "State plan") for such State. Assistance under this section shall be made available in the form of a grant. No grant may be made to any State unless the Governor of such State or the appropriate agency of such State makes an application therefor as provided in this section. To the maximum extent practicable, the personnel and resources of the colleges or universities in the State which are eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (7 U.S.C. 321-326 and 328), including Tuskegee Institute, shall be utilized in developing the subterminal facilities plan for that State pursuant to this section.

(2) The Secretary may also make grants under this section available to two or more States acting together to develop a coordinated regional subterminal facilities plan (hereinafter in this Act referred to as the "regional plan") for such region.

(3) Grants made under this section to any State or region may not exceed 80 per centum of the cost of preparing the State or regional plan.

(4) The State or regional plan shall prescribe in detail the actions such State or region proposes to take in order to (A) facilitate the efficient and competitive movement of bulk agricultural commodities from the points of production within such State or region to major market or export points, (B) provide adequate storage facilities for such commodities between points of production and market, (C) provide adequate receiving, storage, and loading facilities for any bulk agricultural commodity, and (D) assure that such facilities will be located at sites that will result in maximum benefits to local producers.

(5) Each State or regional plan shall include the following:

(A) an analysis of the marketing, shipping, storage, and production of bulk agricultural commodities produced in that State or region and the short- and long-range projections with respect to the marketing, shipping, storage, and production of such commodities in that State or region;

(B) a determination, on the basis of the analysis and projections required under clause (A) of this paragraph, of the needs of the State or region for subterminal facilities;

(C) an assessment of the use of existing on-farm storage facilities located within the State or region and an assessment of the ways in which subterminal facilities can benefit the continued use of on-farm storage facilities;

(D) an evaluation of the effect of the development of new subterminal facilities on small capacity rural shipping and storage facilities within the State or region;

(E) an evaluation of ways to ensure adequate rail service for subterminal facilities described in clause (D) of this paragraph, including an evaluation of the use and feasibility of contract rates;

(F) an assessment of the ways that subterminal facilities can enhance the operation of small capacity shipping and storage facilities within the State or region;

(G) an assessment of other actions being taken or considered in such State or region for the improvement of agricultural transportation, including an evaluation of the use being made of shuttle or collector trains and comoinations of rail and barge service;

(H) an evaluation of the potential benefits of subterminal ownership and leasing arrangements for rail rolling stock (including locomotive power), motor trucks, barge equipment, and other bulk agricultural commodity transport equipment that may help achieve maximum benefits from the operation of subterminal facilities within the State or region;

(I) an assessment of the overall transportation system in the State or region and future plans for that overall system, including the adequacy of highways and bridges; and

(J) consideration of the feasibility and advisability of the ownership and operation of rail branch lines by farmer-owned cooperatives, and the role that such cooperatives might play in any overall planning for the restructuring and rehabilitation of rail service and marketing facilities within the State or region.

(b) Funds made available to a State or region under this Act for the purposes of assisting such State or region to develop a plan shall be subject to the condition that the State or region establish a plan review commission composed of local producers, local elevator operators, representatives of affected motor and rail carriers, other interested individuals, and, when appropriate in the judgment of the Secretary, consumers of bulk agricultural commodities used in the production of unprocessed agricultural products. A majority of the members of any plan review commission must be local producers or, when appropriate in the judgment of the Secretary, consumers of bulk agricultural commodities used in the production of unprocessed agricultural products. The plan review commission shall consider the information and analyses developed by the State or region in the development of a State or regional plan and make appropriate recommendations regarding the State or regional plan. The plan review commission shall also make recommendations, based on information developed in the plan, for the most beneficial location of subterminal facilities.

(c) No application for planning assistance authorized pursuant to this section may be submitted by a State or region until the appropriate plan review commission established in accordance with this Act has had the opportunity to make recommendations to the Governor or Governors that a need exists for the development of a State or regional plan, and a majority of the members of such plan review commission concur that such application should be submitted.

(d) No State or region may receive a grant under this section unless—

(1) an application therefor has been submitted that complies with the provisions of this Act;

(2) the average annual production of bulk agricultural commodities produced within such State or region, or shipments of such commodities transported into such State or region, meets minimum levels established by the Secretary for a period the Secretary considers appropriate preceding the year in which application for such grant is made;

(3) the Governor of such State or the Governors of the States in such region certify to the Secretary that producers of agricultural commodities have experienced serious storage and transportation problems within such State or region during the three years preceding the year in which application for such grant is made; and

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(4) such State or each State within such region has established an adequate plan, as described in section 5(j) of the Department of Transportation Act (49 U.S.C. 1654(j)), for rail service in such State or States, or such State or each State in such region is actively developing such a plan.

(e) Whenever any State or region has submitted a State or regional plan under this section, the Secretary shall approve such plan only if it has been approved by a majority of the members of the appropriate plan review commission established pursuant to this Act, and it meets the other conditions specified in this Act and those prescribed in regulations issued by the Secretary to carry out this Act. When a plan is approved by the Secretary, such plan shall be known as an "approved State plan" or an "approved regional plan," as appropriate.

(f) To carry out the purposes of this section, there are authorized to be appropriated not to exceed $3,300,000 for each of the fiscal years ending September 30, 1981, September 30, 1982, and September 30, 1983.

LOANS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

SEC. 5. Section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) is amended by adding at the end thereof a new subsection (e) as follows:

"(e)(1) The Secretary may also insure and guarantee loans under this section to public, private, or cooperative organizations organized for profit or nonprofit, or to individuals for the purpose of constructing or improving subterminal facilities if—

"(A) the construction or improvement of such facilities is consistent with the appropriate approved State or regional plans and the recommendations of the local plan review commission established pursuant to the Agricultural Subterminal Facilities Act of 1980;

"(B) the Secretary determines that the ownership and operation of such subterminal facilities will result in the efficient and competitive movement of bulk agricultural commodities and will return increased benefits to the local producers served by such facilities; and

"(C) the Secretary determines that the rail carrier designated to provide service to any such facility will be able to provide adequate service.

Such loans may be made available for purchase of rail rolling stock (including locomotives, motor trucks, barges, and other bulk agricultural commodities transport equipment to be used in conjunction with the operation of subterminal facilities.

"(2) The Secretary may only insure or guarantee loans under this subsection if the Secretary finds that applicants are unable to obtain credit from commercial lending institutions (including specialized lending institutions established to provide credit to agricultural producers) on reasonable terms and conditions.

"(3) In order to preserve local ownership and control of agricultural transportation facilities, the Secretary shall give preference under this subsection to existing agricultural elevator operators and local producers in areas in which subterminal facilities are proposed to be located.

"(4)(A) The total amount of loan authority made available for use for the purpose of this subsection for any fiscal year shall be allocated by the Secretary on the basis of need among those States that have approved State or regional plans as defined in the Agricultural Subterminal Facilities Act of 1980. Such allocation shall be based on such formula as the Secretary shall prescribe by regulation.

"(B) Any loan authority available for use in any State in any fiscal year that is not used by such State shall be reallocated, to the extent practicable, among other States eligible for the assistance provided under this section, in accordance with the same formula developed by the Secretary for the initial allocation of loan authority under this subsection.

"(5) As used in this subsection, the term 'subterminal facility' has the same meaning as provided in the Agricultural Subterminal Facilities Act of 1980.

"(6) Within one hundred and eighty days after the effective date of the Agricultural Subterminal Facilities Act of 1980, the Secretary shall establish such rules and regulations as may be necessary to implement the provisions of this subsection.".

EFFECTIVE DATE

SEC. 6. The provisions of this Act shall become effective October 1, 1980.

Amend the title so as to read: "An Act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes.".

Mr. TALMADGE. Mr. President, S. 261—the Agricultural Subterminal Facilities Act—would promote the construction and improvement of subterminal storage and shipping facilities for, first, any agricultural commodity that can be transported in bulk from the farm and temporarily stored in bulk quantities without undergoing processing or packaging, and, second, any commodity or product that can be stored or shipped in bulk and used by producers in the production of agricultural commodities.

The House amendments, some of which are technical in nature, improve the bill. Under the amendments, States or groups of States receiving cost-sharing grants for the development of State or regional subterminal facilities plans are to use, to the maximum extent possible, the resources and facilities of the land grant colleges and universities, including Tuskegee Institute.

Also, under the House amendments, no application for planning assistance may be submitted by a State or region until the appropriate Plan Review Commission established under the bill has the opportunity to make recommendations to the Governor or Governors that a need exists for the development of a State or regional plan, and a majority of the members of the Plan Review Commission concur that the application should be submitted.

Whereas the bill passed by the Senate authorized annual appropriations of $3.3 million for planning grants for fiscal years 1980 through 1982, the House amendments authorize annual appropriations of $3.3 million for fiscal years 1981, 1982, and 1983.

I ask unanimous consent that a statement of the differences between S. 261, as passed by the Senate, and the House amendments thereto be printed in the RECORD.

There being no objection, the statement of differences was ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Major Differences Between S. 261 As Passed By The Senate and The House Amendments Thereto:

(1) State and regional planning grants:

A. The House amendments provide that, to the maximum extent practicable, the personnel and resources of the land grant colleges and universities, including Tuskegee Institute, are to be used in developing subterminal facilities plans.

The Senate bill contains no comparable provision.

B. Both the Senate bill and the House amendments require that the State or regional plan include a variety of items.

In addition to the items specified in the Senate bill, the House amendments require (1) an assessment of the overall transportation system in the State or region, including the adequacy of highways and bridges, and (2) consideration of the feasibility and advisability of the ownership of rail branch lines by farmer-owned cooperatives, and the role the cooperatives might play in restructuring rail service and marketing facilities.

C. Both the Senate bill and the House amendments provide for the establishment of plan review commissions.

Under the Senate bill, each State or regional plan review commission is to be composed of local producers, local elevator operators, representatives of affected motor and rail carriers, and other interested individuals.

The House amendments require that the plan review commission be composed of the same persons as specified in the Senate bill and, when considered appropriate by the Secretary of Agriculture, consumers of bulk agricultural commodities used in the production of unprocessed agricultural products.

D. The House amendments provide that no application for planning assistance may be submitted by a State or region until the appropriate plan review commission established under the bill has the opportunity to make recommendations to the Governor or Governors that a need exists for the development of a plan, and a majority of the plan review commission concurs that such application should be submitted.

The Senate bill contains no comparable provision.

E. The House amendments provide that the Secretary of Agriculture may approve a State or regional plan only if it has been approved by a majority of the members of the appropriate plan review commission.

The Senate bill contains no comparable provision.

(2) Appropriations:

The Senate bill authorizes annual appropriations of $3⅓ million for fiscal years 1980, 1981, and 1982 to fund Federal planning grants for the development of State and regional subterminal facilities plans.

The House amendments authorize annual appropriations for the same purpose in the amount of $3.3 million for fiscal years 1981, 1982, and 1983.

(3) Loans for subterminal facilities:

Both the Senate bill and the House amendments authorize the Secretary of Agriculture to insure and guarantee loans for the construction of subterminal facilities to applicants in States or regions that have approved subterminal facilities plans.

The Senate bill provides that in no event may the amount of loan authority allocated to any State or States in any fiscal year be less than an amount equal to one percent of the total loan available for such loan authority in each fiscal year.

The House amendments delete the Senate provision.

● Mr. ZORINSKY. Mr. President, S. 261, the Agricultural Subterminal Facilities Act, was passed by the Senate on May 23, 1979. More recently, on June 3, 1980, the House approved S. 261, with amendments.

The need for the Subterminal Facilities Act is as obvious today as when the legislation was first introduced last year.

It has become apparent that the rail industry cannot efficiently move farm products when rail equipment must be simultaneously distributed across a vast trackage system to thousands of small collection points. Of course, this dilemma worsens as the health of the rail industry declines and the track system continues to deteriorate.

S. 261 is one attempt to help alleviate the adverse economic impact on rural America of the trend in the railroad industry to consolidate and abandon trackage. The trend in rail service, especially as it affects agriculture shippers, is to move away from service on light density branch lines and the small country elevator. Of course, this loss of service is, and will continue to be, devastating to agricultural producers and others who make their living in rural America.

S. 261, as passed by both the House and the Senate, establishes a mechanism whereby local producers and existing elevator operators may enhance and improve their commodity storage and marketing delivery system. This legislation can go a long way toward assuring us that our rural transportation system, now in a state of transition, has at least one additional tool to enable our producers and shippers to adapt to inevitable changes in our traditional transportation system.

The House of Representatives made several changes in the bill. However, the changes, some of which are technical in nature, do not alter the basic structure of the bill and are, in fact, constructive. I, therefore, urge my colleagues to concur in the House amendments.●

● Mr. McGOVERN. Mr. President, I am pleased that Congress is taking final action on S. 261, the Agricultural Subterminal Facilities Act, a bill I introduced.

S. 261 would—

First, promote the construction and improvement of subterminal storage and shipping facilities for agricultural commodities that can be transported in bulk from the farm and temporarily stored in bulk quantities without undergoing processing or packaging, and commodities or products that can be stored or shipped in bulk and used by producers in the production of agricultural commodities;

Second, authorize appropriations of $3.3 million for each of fiscal years 1981, 1982, and 1983 to provide cost-sharing planning grants to States and groups of States for the development of State and regional subterminal facilities plans;

Third, provide that no State or region can apply for a planning grant unless a plan review commission consisting of local producers, local elevator operators, representatives of the affected motor and rail carriers, and other interested parties concurs in the need for such plan, and

Fourth, authorize the Secretary of Agriculture to insure and guarantee loans for the construction and improvement of subterminal facilities to applicants within States or regions that have developed subterminal facilities plans which have been approved by the local plan review commission and which otherwise comply with the provisions of the act. Loan preference would be given to existing agricultural elevator operators and local producers in the area to be served by the subterminal facility.

The Subterminal Facilities Act of 1980 is patterned after the successful, but limited experience of grain producers in Iowa and other States. Subterminal facilities are located on carefully chosen main lines and viable branch line points and have the capacity to receive grain by truck and to load multiple-car and unit trains for nonstop delivery to domestic processors or to export terminals. On-farm storage and unimproved country elevator facilities serve as satellite feeders to the subterminal. With these facilities, producers and shippers are able to deal directly with processors and export purchasers. The result is adequate, reliable rail service, greater competitive ability, reduction of transportation costs through economies of scale and improved car utilization, and increased income for both grain producers and railroads.

The affected State or region must develop a comprehensive plan which assures that the development of such facilities are coordinated with State rail plans that identify lines essential to the State economy. The plan should also provide for the full utilization of not only rail but also barge and truck transportation options and the capacity to receive and temporarily store bulk commodities used in agriculture production, such as fertilizer and fuel. The State or regional subterminal planning effort must also include a participatory role for local producers, shippers, representatives of transportation modes serving the area, and local residents who have a direct interest in the program. Finally, there must be authority to provide Federal loan assistance to local producers and shippers who wish to construct subterminals on sites identified in the State or regional plan but who are unable to obtain adequate funds on reasonable terms and conditions.

The Agricultural Subterminal Facilities Act of 1980 responds to these requirements by providing Federal matching grants for State or regional planning programs that involve the participation of local plan review commissions, and by providing insured and guaranteed loans under the Farmers Home Administration business and industrial loan program. S. 261 provides that planning grants can only be provided if the State or regional planning review commission affirms the need for developing a plan and the plan can only be considered an "approved plan", and thus capable of serving as the basis for loan assistance, if the plan is approved by the review commission.

S. 261 will provide greatly needed assistance to States anxious to resolve their serious agricultural transportation problems. The planning and funding initiatives originate and are completely controlled at the State and local levels. Local producers and shippers are given priority status under the legislation for loan assistance thereby assuring that those directly impacted by the lack of subterminal facilities will have ample opportunity to own and operate such facilities. Throughout the entire process these efforts will be carried out at the State and local level thereby insuring that the producers most affected by this problem will be instrumental in developing and implementing the solution.

The amendments made by the House of Representatives, some of which are technical in nature, improve the bill, and I urge my colleagues to concur in the House amendments.●

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. TALMADGE, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL AQUACULTURE ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. TALMADGE, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1650.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1650) entitled "An Act to provide for the development of aquaculture in the United States, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential

for aquaculture and may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementating a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association, or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers or employees of the Federal Government), while away from their homes or regular places of business in the performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential;

(3) address, after taking into acount the status of aquaculture regarding the aquatic species concerned—

(A) aquaculture facility design and operation,

(B) water quality management,

(C) use of waste products (including thermal effluents),

(D) nutrition and the development of economical feeds, including natural food sources,

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans),

(F) processing and market development,

(G) production management and quality control, and

(H) the development of adequate supplies of seed stock;

(4) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(5) include, where appropriate, programs to analyze, and formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture; and

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency any State agency, or any person, and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquaculture assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the coordinating group, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprise), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the

biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system, and, if necessary to demonstrate its feasibility, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical legal, and economic information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region on such fisheries, and

(ii) recommended measures to ameliorate any such effect; and

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, through the coordinating group, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, an explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretaries deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 6. (a) ESTABLISHMENT.—There is established within the Office of Science and Technology Policy an interagency aquaculture coordinating group that shall, subject to subsection (f), operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978. The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture.

(2) The Secretary of Commerce.

(3) The Secretary of the Interior.

(4) The Secretary of Energy.

(5) The Secretary of Health and Human Services.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Administrator of the Small Business Administration.

(9) The Administrator of the Agency for International Development.

(10) The Chairman of the Tennessee Valley Authority.

(11) The Director of the National Science Foundation.

(12) The Governor of the Farm Credit Administration.

(13) The heads of such other Federal agencies as are deemed appropriate by the Director of the Office of Science and Technology Policy (hereinafter in this section referred to as the "Director"), after consultation with the coordinating group.

(b) PURPOSE AND FUNCTIONS.—The purpose of the coordinating group is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the coordinating group shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) CHAIRMAN.—Each of the Secretaries or their designees, on such rotating basis as shall be determined by the Director, shall serve as the chairman of the coordinating group. The term of office of the chairman is two years.

(d) REPORTS.—The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) FEDERAL CONSISTENCY.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

(f) FUNCTIONS IF FEDERAL COUNCIL TERMINATED.—If at any time after the date of the enactment of this Act, the functions of the Federal Council are by executive action terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) and the reports required under subsection (d) shall be made to the Director.

CONTRACTS AND GRANTS

SEC. 7. (a) IN GENERAL.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) LIMITATION.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

SEC. 8. (a) CAPITAL REQUIREMENTS STUDY.—The Secretaries, through the coordinating group, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) CAPITAL REQUIREMENTS PLAN.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

SEC. 9. (a) REGULATORY CONSTRAINTS STUDY.—The Secretaries, through the coordinating group, shall conduct, within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983;
(2) to the Department of Commerce—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983; and
(3) to the Department of the Interior—
(A) $3,000,000 for fiscal year 1981,
(B) $4,000,000 for fiscal year 1982, and
(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or activity authorized under any other provision of law.

Mr. TALMADGE. Mr. President, S. 1650 would promote the development of aquaculture in the United States. The bill requires the Secretaries of Agriculture, Commerce, and the Interior to establish a national aquaculture development plan. In addition, the bill provides for studies to investigate the need for further financial programs and examine methods to reduce undue regulatory restraints that may face the aquaculture industry.

Aquaculture, the cultivation of aquatic plants and animals in marine, brackish and fresh water, has been an important means of food production in Asia for several thousand years. It is a relatively recent practice in the United States. Today, aquaculture in the United States produces salmon, catfish, trout, oysters, mussels, shrimp, clams, and other species. Despite the great potential of aquaculture as an energy-efficient means of food production, its growth has been much slower, and levels of production are much lower, than elsewhere in the world.

The National Oceanic and Atmospheric Administration has estimated that the domestic demand for seafood products will increase by 80 percent by the year 2000. However, most traditional fisheries in the United States are already being harvested at or near optimum sustainable levels. In addition, NOAA has estimated a worldwide shortage of fisheries products within 3 to 10 years on the basis of projected rates of harvesting and consumption. Aquaculture can respond to this projected shortfall of supply.

The United States currently imports over 50 percent of its fisheries products, creating a balance-of-payments deficit of approximately $2 billion per year. Aquaculture can make a substantial contribution to reducing this deficit by reducing the import need and by producing products for export.

I am pleased to note that the House amendment retains the text of the Senate-passed bill and incorporates technical changes that serve to strengthen the bill. The time has come for the enactment of a national aquaculture act. The great potential of aquaculture should be fully explored and developed. S. 1650 will serve to facilitate that exploration and development. I ask unanimous consent that a statement of the differences between S. 1650, as passed by the Senate, and the House amendment thereto, be printed in the RECORD.

There being no objection, the statement of differences was ordered to be printed in the RECORD, as follows:

STATEMENT OF MAJOR DIFFERENCES BETWEEN S. 1650, AS PASSED BY THE SENATE, AND THE HOUSE AMENDMENT THERETO

(1) Definiton of "State".

The House amendment includes the Trust Territory of the Pacific Islands in the definition of State for purposes of the bill.

The Senate bill contains no comparable provision.

(2) Discretionary functions:

The Senate bill authorizes the Secretaries of Agriculture, Commerce, and the Interior to conduct tests of any aquacultural system and, if necessary, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results.

The House amendment authorizes the Secretaries to conduct tests of any aquacultural system and, if necessary to determine the feasibility, of any such system, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results.

(3) Coordination:

The Senate bill establishes a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs.

The House amendment establishes an interagency aquaculture coordinating group within the Office of Science and Technology Policy that will operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology. If the functions of the Federal Coordinating Council are, by executive action, terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group will carry out its functions under the direction of the Director of the Office of Science and Technology Policy.

Mr. TALMADGE. Mr. President, I would like to note the splendid cooperation between the Committee on Commerce, Science, and Transportation and the Committee on Agriculture, Nutrition, and Forestry in handling S. 1650 in the Senate. Senator INOUYE of the Committee on Commerce, Science, and Transportation, and Senator STONE of our committee are to be especially commended for their leadership and work in developing the legislation.

● Mr. INOUYE. Mr. President, I strongly support passage of S. 1650, the National Aquaculture Act of 1980, as passed by the House. This bill is the culmination of 4 years of effort to develop legislation to provide for the development of aquaculture in the United States. At last, we have a bill before us which is strongly supported by the House, which the White House has indicated it supports, and which the Senate can also strongly endorse.

Aquaculture is the rearing of aquatic species in controlled or selected environments, which is also commonly known as fish farming. Aquaculture is a highly energy efficient and environmentally sound means of food production which has made significant contributions to the world's food supplies for centuries—roughly 10 percent of the world's fisheries supplies come from aquaculture.

Unfortunately, aquaculture has never been as significant in the United States, where only 3 percent of our fisheries supplies come from aquaculture. This lack of emphasis in the United States is attributable at least in part to the Federal Government's failure to have a strong policy in support of aquacultural development. The result has been that those programs designed to assist new businesses have never been available to aquaculture, and regulatory programs which were never intended to apply to aquaculture inadvertently place severe restrictions on it.

S. 1650 would encourage the development of aquaculture by establishing a strong national policy in favor of such development, by requiring the development of a plan to coordinate all Federal activities relating to aquaculture, by formally establishing an interagency coordinating group to implement this plan on an on-going basis, and by requiring the agencies involved to provide various forms of assistance to the aquaculture industry. Some of us would like to have seen provisions for financial assistance as well as technical assistance, but financial assistance has been deferred in an effort to exercise budgetary restraint and to satisfy the objections of the President.

Nonetheless, this bill takes a large first step toward establishing aquaculture in the United States as a major food producing industry. S. 1650, as passed by the House, is almost identical to the bill that I introduced on August 2, 1979, that the Commerce and Agriculture Committees reported unanimously, and that the Senate passed unanimously. The few changes made by the House are minor or technical, and raise no new substantive issues. I therefore strongly urge my colleagues' support of this important piece of legislation.●

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. TALMADGE, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair on behalf of the Vice President in accordance with Public Law 90-206, appoints the following individuals to the Commission on Executive Legislative and Judicial Salaries: Edward P. Morgan and Robert P. Griffin.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President and upon the recommendation of the majority and minority leader, pursuant to the provisions of 22 U.S.C. 276, as amended by Public Law 95-45, appoints the Senator from Vermont (Mr. STAFFORD) as chairman to the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16-24, 1980, in lieu of the Senator from New Jersey (Mr. WILLIAMS), resigned.

CABINET POLITICKING AT TAXPAYERS' EXPENSE

Mr. SCHMITT. Mr. President, since the 1976 election campaign, there supposedly have been restraints on the amount of politicking that may be done by Cabinet officials. As the Presiding Officer will recall, the Ford administration was required to reimburse the Government based on a "reasonable" estimate of what portion of each trip was devoted to politics and did so. The beneficiary of that policy in 1976 was none other than Jimmy Carter, who is now President of the United States. The Federal Election Commission (FEC) now has levied the same basic requirement on the Carter campaign and its use of Cabinet members as candidate-surrogates at taxpayers' expense.

Lately, the Carter campaign has been violating this stricture. For instance, last month, Secretary of State Edmund Muskie addressed the Steelworkers Convention, at which time he attacked the Republican platform. Secretary Harris, at the Department of Health and Human Services, has traveled to Dallas and Los Angeles to make speeches attacking the Reagan candidacy. Campaign Chairman Robert Strauss is on record as favoring this blatant, unfair waste of the taxpayers' money which did not occur when Jimmy Carter was a candidate, as President Ford abided by these restraints imposed by the Federal Election Commission.

The Carter administration has used the incumbency in a more political manner than has any other candidate in recent memory. Secretary Goldschmidt even stated that he awarded "discretionary" grants only to political friends; the Carter-Mondale campaign had the FEC sue various independent committees, attempting to abridge their first amendment rights of association and free speech; and when losing in that case, they filed a petition with the Federal Communications Commission, attempting to do what the court said they could not do.

As my distinguished colleague Senator DURENBERGER said the other day, having failed to kill the messenger, they are trying to kill the message.

Furthermore, the White House has been conducting a sophisticated targeted mailing program—with the mailing expenses paid by the Government—extolling the benefits of the Carter Presidency, while Cabinet officers have been traveling at taxpayers' expense to give political speeches; and perhaps worst of all, military secrets appear to have been selectively leaked to help the administration politically.

Last week, I inserted in the CONGRESSIONAL RECORD a series of articles by Lewis Helms, written for the Federal Times, detailing abuses at the Department of Health and Human Services, with respect to political activities, including an informative piece on the Secretary's campaign appearance in Dallas and Los Angeles paid for by the taxpayer.

On Tuesday the New York Times printed a story by Steven Weisman entitled "Guidelines Restrict Cabinet Politicking." According to this article, the reinstitution of this rule against such politicking is required by the FEC and was also drafted due to public criticism of this misuse of taxpayers' money.

I hope the public will continue to watch the Carter-Mondale campaign very carefully and, along with this Senator and others, call on Chairman Robert Strauss to now reimburse the taxpayers of this country for the political trips that have occurred up until this time.

I will presume that such reimbursement will now occur for any subsequent trip based on the Federal Election Commission's ruling.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the article to which I referred earlier from the New York Times.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GUIDELINES RESTRICT CABINET POLITICKING—WHITE HOUSE ISSUES NEW POLICY ON GOVERNMENT-PAID ACTIVITIES

(By Steven R. Weisman)

WASHINGTON, September 8.—The White House, responding to a new rule from the Federal Election Commission, circulated a new set of guidelines today restricting partisan political activities that may be engaged in by Cabinet members and other officials at Government expense.

As originally drafted, the guidelines would have placed even greater restrictions on activities by Cabinet members. But they were softened after protests by Robert S. Strauss, chairman of the Carter-Mondale Re-election Committee, and several Cabinet members.

The original draft of the guidelines suggested, for example, that any defense of President Carter's record by a Cabinet member making a Government-paid trip would mean that that trip would have to be paid for by the Carter-Mondale committee. The new guidelines issued today give the Cabinet members more latitude to defend the Carter record, but the officials still may not overtly advocate Mr. Carter's re-election in a speech, if the speech is during a trip paid for by the Government.

Administration officials said that the new guidelines would have the effect of seriously hampering the sorts of speeches that Cabinet secretaries and others will be able to make this fall on behalf of Mr. Carter.

"We will now have to pick up the tab for a lot more political trips by Cabinet members than we did during the primary campaign," said a spokesman for the Carter-Mondale committee. "Because our budget is tight, that means we won't have as many campaign trips by Cabinet members as we would like."

The use of Cabinet members in the primary campaign was strongly criticized by Mr. Carter's opponent, Senator Edward M. Kennedy. In response, the Federal Election Commission ruled this summer that if any portion of a Carter aide's trip were political, the entire trip had to be paid by the campaign committee. The rule officially took effect last Friday.

CRITICISMS FROM REPUBLICANS

There also had been rising accusations recently from Republicans that Mr. Carter had been abusing the role of his Cabinet members and other "surrogate" campaigners, in sharp attacks on Ronald Reagan, the Republican nominee, and on the Republican platform.

Last month, for example, Secretary of State Edmund S. Muskie addressed a steelworkers convention and attacked the Republican platform. And Patricia R. Harris, Secretary of Health and Human Services, gave speeches in Dallas and Los Angeles saying that the Republican platform had been endorsed by the Ku Klux Klan.

White House officials said today that the new guidelines would restrict some Government-paid activities, but would not prohibit Cabinet members from speaking out on issues in their areas of expertise, as Defense Secretary Harold Brown has done in recent weeks on weapons and armaments.

"We are not going to break the law, but we cannot hide our light under a bushel basket," said Eugene Eidenberg, assistant to the President and secretary to the Cabinet. "If the Government's senior people are constrained from laying the record out, the country is not going to benefit from this campaign."

Before 1976, there were no Federal restrictions on what Cabinet members could say on Government-paid trips. In the 1976 campaign, the Administration of former President Gerald R. Ford was required to reimburse the Government based on a "reasonable" estimate of what portion of each trip was devoted to politics.

In the primary campaign this year, the Federal Election Commission required the Carter campaign to pay for those portions of Government trips by Cabinet members that were devoted to politics. If 25 percent of an official Government trip was taken up by a political speech, the Carter campaign then had to pay for 25 percent of the cost of the trip, including accommodations and transportation.

After Mr. Kennedy's criticisms and the ruling by the Federal Election Commission, the White House counsel's office drew up a memorandum in August warning Cabinet members and others to be careful, lest any partisan comments force the entire trip to be paid by the campaign.

THE IMMIGRANTS

Mr. SCHMITT. Mr. President, today's Wall Street Journal contains a useful article by Robert E. Taylor entitled "The Immigrants," and deals with the general issue of undocumented workers, illegal aliens, Mexican migrants, whichever term you wish to use.

It is unfortunate that Mr. Taylor's article neglects to discuss the various legislative proposals before both House and Senate to deal with this problem and that, for the most part, the major proposals show that the trends in Congress are quite different in major respects from those that are being apparently favored by the Select Commission on

Immigration and Naturalization headed by Father Hesburgh of Notre Dame.

In the Senate, a bill introduced by this Senator and cosponsored by eight other Senators, favors, and with good justification, the establishment of a legal worker program involving the Mexican migrants. A companion bill, H.R. 5128, introduced in the House, advocates a similar approach.

Mr. President, the summary of the comments by the staff director of the select commission, Mr. Lawrence Fuchs, seems to indicate that the commission, in searching for a compromise between various competing proposals to deal with this very serious problem of illegal aliens, is potentially going to settle on exactly the wrong set of solutions.

It is indicated that Mr. Fuchs has said that the commission leans toward a firm ceiling of about 750,000 migrants a year, which will not do anything to solve the basic problem. It appears that we are dealing with from 2 to 4 million undocumented workers entering this country each year, most of them temporary, most of them returning to their homeland, insofar as Mexico is concerned, at least.

To set an arbitrary ceiling that is lower than the number of jobs that are available to the migrant worker, jobs that are not competitive with American workers, means that you are still going to have an illegal alien problem. They will still cross the 2,000-mile border between the United States and Mexico in order to escape the economic deprivation that they face in Mexico at the present time to temporarily work in jobs that are available to them in this country.

So whatever we do, the ceiling, if there is to be a ceiling, must reflect the realities, not only of the job market, but of the impossibility of enforcing a law against migration along a 2,000-mile border.

Mr. Fuchs also suggests that there should be a law against hiring illegal aliens and sanctions against employers who do. Most Hispanic organizations, most people who realize the implications of such a law, will not favor that approach because it clearly would result in increased discrimination against U.S. citizens of Hispanic descent or of descent the same as those nationals who enter this country illegally seeking work.

Mr. Fuchs suggests that a counterfeit-proof identity card identifying all citizens and legal alien residents should be considered. Again, there are major implications of such a proposal. This country has done very well without identity cards. There is some real question of whether it should now take a step contrary to our traditions in establishing such identity cards.

Mr. Fuchs also suggests that the Commission is leaning toward some form of amnesty for illegal aliens who live and work here permanently. If it is the amnesty proposed by the President some years ago, clearly that does not solve the problem, it merely postpones it. For those persons who are in this country with well-defined roots, based on dependents, length of stay and other factors that are clearly definable, we should make the decision more than likely that they are permanent residents, but make no discrimination other than that that already exists in favor of their becoming citizens.

The problem, Mr. President, that we have in dealing with the problem of economic migrants crossing our borders is that nobody or few people in high levels of policy, including the White House, understands the realities of the real world, a reality of a job market that requires semiskilled and unskilled labor that U.S. workers are no longer required to perform because of the economic net that we have placed under our population. It ignores the reality of a 2,000-mile border which cannot be enclosed except by the use of extraordinary force and extraordinary costs. It ignores the reality of the temporary nature of most of the migration that we are dealing with.

I strongly recommend that my colleagues consider the approach or modifications of the approach recommended in S. 1427 by myself and my colleagues as the only realistic way in which we begin to gain control of the immediate problem of illegal aliens, undocumented workers from Mexico.

It is important also that we remember that a long-term solution involves close economic cooperation between the United States and Mexico, and other countries that are sources of undocumented workers, to assist them to move into the economic 20th century and provide meaningful employment for their citizens, assist them in realistic ways, not in most of the ways that we have attempted to assist them in the past.

Mr. President, I ask unanimous consent that the article by Mr. Taylor published in this morning's Wall Street Journal be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

U.S. POLICY ON WHOM TO ADMIT DRAWS FIRE AS OUTDATED AND FUTILE

(By Robert E. Taylor)

CHULA VISTA, CALIF.—By late afternoon, hundreds of them sit silently on an open slope at the Mexican border watching. On the American side, U.S. Border Patrol agents watch back from a hill a quarter mile off. "They'll come after dark," one says.

And they do. Two hours after sunset on this strip of border called the War Zone, the dark hills are alive with fleeting shapes as the unequal combat waged here nightly is replayed again.

The agents have vehicles and horses, infrared telescopes that see in the dark, helicopters, searchlights and electronic sensor alarms battle proved in Vietnam. The Mexicana have persistence, numbers and the night. It is enough.

Agent Robert Hines, tipped off by a sensor alarm, collars 19 people sprinting through the zone for the U.S. border town of San Ysidro. But there are too many running shapes, too many alarms; as he hustles to respond to another alarm, three figures flit past behind him.

He never knows how many escape him, but he does know that many of those caught and dumped back across the border will try again and again until they succeed. "It's frustrating as hell," Mr. Hines says. A colleague adds: "It's like standing with your finger in a dike that has a million holes in it."

What happens nightly here is also a live demonstration of what now is widely viewed as the futility and failure of U.S. immigration policy. A Greek chorus of critics, including many in the immigration bureaucracy itself, denounces the laws governing it as cumbersome, arbitrary and hopelessly outdated; refugee policy in particular is viewed as a mess, with the administration wildly tacking this way and that.

TROUBLED AGENCY

The agency charged with enforcing the laws clearly is failing. The Immigration and Naturalization Service (which includes the Border Patrol) is undermanned, mismanaged and plagued by low morale and charges of brutality. While hundreds of thousands of aliens seeking legal entry here are stuck for years in its bureaucratic machinery, it can't stop hundreds of thousands more who just sneak in or overstay visas and melt into the resident population.

The agency, called INS, "is absolutely overwhelmed by the sheer number of people it has to deal with," says Peter Schey, executive director of the National Center for Immigrants' Rights. And a Congress practically paralyzed by conflicting pressures from special-interest groups has been unable to do much about either reforming the laws or their enforcement. Instead, it appointed a select commission to recommend an overhaul of the system, but a protracted struggle is likely over the measures that it is expected to suggest.

Meanwhile, even those with sharply divergent views on the benefits of immigration are alarmed at the failure to control it. Roger Connor, head of the Federation for American Immigration Reform, a group that wants to curb the flow sharply, says, "If you don't have control of your immigration, you don't have control of your future." Federal Refugee Coordinator Victor Palmieri, who worries that a backlash against immigrants may lead to harsh and repressive legislation, says of the pell-mell Cuban influx: "The U.S. was denied the fundamental basis for refugee and immigration policy—the ability to screen and process people to see if they met your criteria."

THE MAIN PROBLEM

Though highly publicized, the Cuban inflow is insignificant compared with the huge steady northward flood of illegal Mexican nationals. To stop them, an undernourished Border Patrol fields only 350 agents at a time along a 1,945-mile span from the Gulf to the Pacific—an impossible job made even more so by spot shortages of vehicles and gasoline.

So the immigrants pour through to the farms of the Southwest, to the garment-industry sweatshops and small plants of Los Angeles, to barrios in a dozen cities where they simply disappear from official view. If the INS raids an employer's plant and scoops them up for deportation, they come back—and often bring friends.

No one knows how many are here. Estimates of foreigners living illegally in the U.S.—mostly Mexicans—range up to 12 million or more; Census Bureau officials say about 3.5 million, but this may be too low. Thin as it is, the Border Patrol catches hundreds of thousands a year and estimates that two slip in for each one apprehended. Some agents think that the ratio is closer to five to one.

The effect of this secret population is a puzzle: Studies disagree on whether the migrants are a drain on the domestic economy or whether they contribute more to it than they take away.

The social effect is equally hard to gauge, but there is mounting concern that the migrants are creating what ambassador-at-

large Robert Krueger calls "a permanent underclass." Labor Secretary Ray Marshall adds: "I am convinced that we are sowing the seed of future civil-rights struggles, and we would be better off if we were to confront the issue now."

While the army of illegals slips through the back door to the U.S., many others trying to enter lawfully are stalled outside the front door. This year, more than 700,000 aliens will take up legal residence here, compared with an annual average of about 400,000 during the mid-1970s—while the waiting list has grown to nearly one million from 600,000 or so. Some people have been waiting 10 years. They are victims of a patchwork of laws that immigration attorney Dan Danilov calls "an abysmal mess."

The history of these laws reflects a national schizophrenia about immigration in a country forged by immigrants. For years, the U.S. didn't put any numerical limit at all on inflow; in 1819, it even passed a "steerage law" that improved shipboard conditions for newcomers headed here.

But in 1882, alarmed by an influx of Chinese laborers, it banned Chinese and didn't let them in again for more than 60 years. It opened the golden door to nearly nine million immigrants from 1900 to 1910—and then in the 1920s slammed it on a lot of fingers by imposing national-origin quotas that, in effect, greatly favored Western Europe at the expense of other areas, including nations with predominantly black or Asian populations. By 1965, national-origin quotas were viewed as racist and scrapped.

LEGAL TANGLE

Though current law is a tangle of exemptions, exceptions and special cases, it basically encourages family reunification; spouses, young children and parents of any U.S. citizen, for example, can enter in unlimited numbers.

Other close relatives of citizens, and all close relatives of aliens legally living here, must wait in line under a "preference category" system that provides a fixed number of available slots for each category. The system also provides some protection for the American labor force. There are slots for professionals, people of exceptional ability in the arts and sciences, and workers with skills in short supply here—but foreigners with no close relatives in the U.S. and no needed skill or background generally can't get in unless they qualify as refugees.

In all, 280,000 slots are currently available each year, and Uncle Sam treats each nation the same in doling them out—no more than 20,000 preference visas a year for any one country. The law thus treats Iceland as if it were as populous as India. It also is blind to the vast differences in desire to emigrate among people of different nations.

The result has been an enormous disparity in the time people must wait to join relatives here. The Mexican wife of an alien legally living in the U.S., for example, now must wait about five years to join him. In most other places, the wait isn't more than six months. In teeming Hong Kong, allowed only a few hundred slots as a dependency of the British Crown, some have waited 10 years.

REFUGEE PROBLEMS

U.S. handling of refugees, a separate and growing class of immigrants, also has been "haphazard, incoherent and often inadequate," according to the House Judiciary Committee. The law governing refugees hasn't been any better, according to other critics.

Until recently, it restricted refugee admission almost exclusively to people fleeing from Communist governments or from the Middle East. Legal roadblocks barred all but a trickle of those trying to escape from oppressive rightist regimes, some with U.S. ties, such as Haiti's, and the small number of refugee preference slots available were totally inadequate to handle waves of escapees from Hungary in the '50s, Cuba in the '60s and Vietnam in the '70s. Congress and various Attorneys General had to whip up solutions on the spot.

The 1979 Refugee Act, which took effect in March, stripped away the anti-Communist bias and increased refugee preference slots to some 50,000. Then 120,000 Cubans and 15,000 Haitians descended on Florida. Publicly torn between welcoming them and trying to stop them, the administration finally decided it couldn't send them back to sea—but it also declined to admit them under the Refugee Act, on the ground that that law was intended only to aid immigrants who had been screened and granted visas abroad.

Instead, it waffled; it called the newcomers "entrants," a label that entitled them to fewer federal dollars for resettlement than refugees. This maneuver, private resettlement experts say, has unfairly complicated the Cubans' and Haitians' adjustment here. Government officials explain that the administration was torn between compassion—along with a desire to embarrass the Castro regime—and fear that granting formal refugee status might lure new flotillas of refugees fleeing from Caribbean poverty.

The select commission appointed by Congress now is the principal forum for debate over what should be done about refugees, illegal aliens and other immigrants. Staff director Lawrence Fuchs says the group seems headed toward agreement on some measures, including:

A firm ceiling of about 750,000 people a year or a flexible goal for all immigration.

A revamped, more flexible preference system.

Amnesty for most illegal aliens who already live and work here, allowing them to stay and become citizens.

A law against hiring other illegal aliens and sanctions against employers who do. Neither exists now.

A counterfeit-proof identity card or databank system identifying all citizens and legal alien residents permitted to work here.

A beefed-up INS.

Even if commission members agree on these steps, and there isn't any certainty they will, some of the proposals may never make it through Congress. The administration and labor unions, for example, strongly back sanctions against employers of illegals, and most immigration experts agree that without such penalties the flow northward from the Mexican border can't be checked effectively. But potent Sun Belt agricultural and business interests have defeated in the Senate two sanctions bills that passed the House.

FARMERS' POSITION

Southwestern farmers say they need aliens. "California agriculture can't survive without Mexican laborers," says a grower who has 100 acres of olives at Corning Calif. He says he and his neighbors lost $1 million or more last year when the Border Patrol scooped up his work force at the height of picking season, and he insists he can't get enough American workers at prevailing piecework rates.

The select commission is considering a temporary program that would phase out Mexican labor over five years—giving farmers time to adjust. But Mr. Fuchs concedes that even that idea faces heavy fire from organized-labor, which prefers an immediate ban.

Almost everybody loathes the identity-card proposal. Hispanic groups fear that it would increase police and other official harassment of Hispanics. Civil-liberties groups oppose it as Big Brotherism and unwarranted invasion of privacy. Secretary of Health and Human Services Patricia Harris says the Social Security system would blow a gasket if charged with producing and keeping track of it.

But commission staffers don't see any alternative. "People look at it and say, 'I hate it, I hate it, we need it,'" says one. The Rev. Theodore Herburgh, president of the University of Notre Dame and commission chairman, pleads: "Give me a better solution, and I'll be for it."

Observers agree, however, that any overhaul of immigration policy requires an overhaul of the INS. Its manual record-keeping system is so overtaxed that it recently lost 50,000 files in New York alone. It has drifted without a permanent head for almost a year, and the Justice Department has left unfilled INS jobs authorized by Congress.

When it tries to act, it is often immobilized by red tape and long legal battles; a deportation can take five years, and one celebrated case has lasted almost 20. Some of its Border Patrol agents have been charged in brutal beatings of immigrants, and morale among others who feel they are carrying water in a sieve is low. "It's a disaster," a congressional staffer says.

If it is and if political leaders are paralyzed and confused, that may be because bureaucrats and lawmakers alike are so divided in their own minds. In them, the historical American schizophrenia about the immigration issue lives on.

Refugee Coordinator Palmieri, for one, expects economic and political turmoil to push ever more people out of Southeast Asia, Latin America and the Caribbean toward the U.S., but he admits he doesn't know what to do about it. He says the U.S. can't accept many more immigrants than it is currently taking in but also can't afford to be seen as "a nation that builds walls around its own affluence." He adds:

"I'm trying to manage what is, in many ways, an unmanageable problem."

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting the nomination of John C. Sawhill, of the District of Columbia, to be Chairman of the Board of Directors of the U.S. Synthetic Fuels Corporation, which was referred to the Committee on Energy and Natural Resources.

PRESIDENTIAL APPROVALS

A message from the President of the United States, reported that he had approved and signed the following acts and joint resolution:

On August 28, 1980:

S. 1863. An act to authorize the Secretary of Commerce to charter the nuclear ship Savannah to Patriots Point Development Authority, an agency of the State of South Carolina.

On August 29, 1980:

S. 659. An act for the relief of the Black Hills Area Council of the Boy Scouts of America.

S. 1140. An act to amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, to authorize appropriations for such title for fiscal years 1980 and 1981, and for other purposes.

S. 1626. An act for the relief of H. F. Mulholland and the estate of John Oakason.

S. 1730. An act to declare that title to certain lands in the State of New Mexico are held in trust by the United States for the Ramah Band of the Navajo Tribe.

On September 4, 1980:

S. 496. An act to increase the appropriations ceiling for title I of the Colorado River Basin Salinity Control Act (the Act of June 24, 1974); 88 Stat. 266), to increase the appropriations authorization for the Small Reclamation Projects Act of 1956 (70 Stat. 1044), and for other purposes.

S. 1998. An act to provide for the United States to hold in trust for the Tule River Indian Tribe certain public domain lands formerly removed from the Tule River Indian Reservation.

S. 2549. An act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes.

S.J. Res. 83. Joint resolution to authorize the Camp Fire Girls of Cundys Harbor, Maine, to erect a memorial in the District of Columbia.

S. 2055. An act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon.

On September 8, 1980:

S. 2680. An act to improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666).

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-854. A petition from James J. Milligan, a citizen of St. Louis, Missouri, calling for certain actions to be taken to strengthen America's security; to the Committee on Armed Services.

POM-855. A resolution adopted by the Municipal Council of Jersey City, New Jersey, favoring the adoption of legislation to relieve municipalities from the financial burden of new sewerage treatment and water plants; to the Committee on Environment and Public Works.

POM-856. A resolution adopted by the State Council of North Carolina Junior Order United American Mechanics of the United States of America (Resolution No. 3) favoring legislation regulating the admission of aliens to the United States in such a manner as will protect and promote the interests of Americans and shield them from the depressing effects of unrestricted immigration and thereby promote the general welfare and happiness of our Nation's people; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JACKSON (for himself, Mr. MORGAN, and Mr. GOLDWATER) (by request):

S. 3107. A bill to provide for the designation of the Smithsonian Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History respectively; to the Committee on Rules and Administration.

By Mr. DOLE (for himself and Mr. PACKWOOD):

S. 3108. A bill to amend section 72 of the Internal Revenue Code of 1954 relating to the taxation of annuity contracts; to the Committee on Finance.

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 3109. A bill for the relief of Dante Soriano Loo and Rhodora Guerrero Loo, his wife; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JACKSON (for himself, Mr. MORGAN, and Mr. GOLDWATER) (by request):

S. 3107. A bill to provide for the designation of the Smithsonian Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History, respectively; to the Committee on Rules and Administration.

NATIONAL MUSEUM OF AMERICAN ART AND NATIONAL MUSEUM OF AMERICAN HISTORY

● Mr. JACKSON. Mr. President, at the request of the Board of Regents of the Smithsonian Institution, Senator MORGAN, Senator GOLDWATER, and I have introduced legislation to rename the Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History, respectively. I ask unanimous consent that a statement prepared by the Smithsonian staff explaining the reasons for the proposed changes be made part of the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

RENAMING THE NATIONAL COLLECTION OF FINE ARTS AND THE NATIONAL MUSEUM OF HISTORY AND TECHNOLOGY

It is proposed that the name of the National Collection of Fine Arts be changed to the National Museum of American Art and that the name of the National Museum of History and Technology be changed to the National Museum of American History. The proposed changes do not in either case involve any major redirection of museum activities, but, rather, are designed to reflect more accurately the character and purpose of each museum.

For more than ten years the National Collection of Fine Arts has concentrated exclusively on American art, an area heretofore neglected, especially in its nineteenth—and early twentieth—century aspects. Building on its important basic collections, especially those contributed early in the century by William Evans and John Gellatly, it has amassed a large and notable collection of American painting, sculpture, and graphic arts from the eighteenth century to the present. Its extensive publications and active programs in education and scholarship, together with its assembly of material for the ready use of scholars, have been instrumental in reshaping the study of art in American culture. Its exhibitions, many of which circulate through the country and abroad, have introduced a wide public to the rewarding, yet often ignored, range of character of American creativity. Hilton Kramer, in the New York Times in 1976, wrote, "In the National Collection of Fine Arts, especially, we now have an institution—again, for the first time in our history—that takes all of American art as its scholarly province, and that acts in the most responsible and clear-minded way to enhance our understanding and appreciation of its many-sided accomplishments."

This fruitful concentration on American art has been obscured by a title bestowed on the museum in 1937 when the name, National Gallery of Art, was transferred from this collection to the present National Gallery. In choosing the title, little thought was given to the possible future direction of the collection which is, in fact, the oldest national collection of art. Although specialists are well aware of the nature of the present National Collection and its activity, members of the public find the name confusing and little descriptive of what they find there of special appeal. Foreign visitors and embasy quests, who find the museum a particular pleasure because it effectively exhibits so much material with which they are not familiar, have repeatedly complained that the museum's name fails to indcate what to them is its major attraction and thus escapes the attention of many who come here. The name suggests simply one more general museum of art—if, indeed, the word "collection" suggests even a museum.

To make clear, then, what the National Collection of Fine Arts has indeed become—a center for the collecting, study, and presentation of American art—and to make the title of the museum accord with those of other Smithsonian museums, it has been recommended that its name be changed to the National Museum of American Art.

With respect to the National Museum of History and Technology, it has suffered from its beginning from an indenity problem that has affected in varying degrees all of its constituencies. Most importantly, the current name either confuses or misleads the visiting public. Informal questioning and eavesdropping reveal that a substantial number of visitors to the Mall (and to the museum itself) do not know or cannot remember the name of the museum: commonly it is thought of as the Museum of Science and Technology, the Museum of Industry and Technology, and the like. This leads a number of visitors whose interests are neither scientific nor technological to avoid the museum altogether, while other who do visit are disappointed when they do not find there the kind of demonstrations of physical sciences or presentations of the latest gadgets that are characteristic of science museums.

The same sort of confusion has existed in the minds of potential donors and even of the museum's own staff. In both cases the results are unfortunate. The museum's collections in American cultural, social and political history have been improverished because many owners of important objects, thinking of it as primarily concerned with technology, have chosen to give their collections to institutions that are more clearly concerned with these areas. Even the museum's staff has been affected by the ambiguity of the museum's mission and as a result has attempted to achieve incompatible, or at least unrelated, objectives.

The only legislation specifying the name of the museum is the authorization for appropriations to construct the building. The history of this legislation makes abundantly clear—as the present name does not—the intention of the Congress that the museum should concentrate upon the history and technology of America. In the judgment of the museum's staff (including those specializing in the history of science and technology), of its director, of the distinguished scholars who comprise the Smithsonian Council, and of the Smithsonian administration, a new name is needed to clarify rather than to change what has always been the basic mission of the museum; to illuminate through collections, exhibitions, research, publications and educational programs the entire history of the United States. Since technology is inextricably involved in our history, it will continue to receive due attention, but the name of the museum would no longer suggest an emphasis upon the history of technology at the expense of social, cultural, and political history.

After careful consideration, the name National Museum of American History has been chosen as best reflecting the true purpose and content of the museum.●

By Mr. DOLE (for himself and Mr. PACKWOOD):

S. 3108. A bill to amend section 72 of the Internal Revenue Code of 1954 relating to the taxation of annuity contracts; to the Committee on Finance.

TAXATION OF ANNUITY CONTRACTS

● Mr. DOLE. Mr. President, for some time now, many of us have argued that inflation, and the current administration's misguided efforts to control it, are having a devastating effect on our economy. Today, Senator PACKWOOD and I are introducing legislation to correct an unintended loophole created by the instability of the present economic situation.

The investment gain on amounts used to purchase nonqualified deferred annuities is not taxed until payments are made. This is a good and reasonable result since it encourages people to make long-term savings for their retirement years or other worthwhile objectives. These long-term savings benefit the economy by providing the funds for capital improvement and economic growth.

In recent years nonqualified deferred annuities, both fixed and variable, have provided rates of investment buildup that are competitive with yields under many forms of investments that are subject to current taxation. Because it is possible to "cash out" of many nonqualified annuities in a single year, by surrender or otherwise, or to transfer the value of one such contract to another without triggering tax, such contracts have been used by many purchasers for short-term investment purposes. This use of annuity contracts by individual investors for other than annuity purposes threatens the Treasury with substantial revenue losses. The disintermediation caused when investors "cash out" of these contracts threatens the stability of the insurance company reserves that support fixed annuities and jeopardizes the contract values of holders of both fixed and variable annuities. Stable insurance company reserves constitute vast capital sources for American industry.

We, therefore, are introducing legislation to limit the traditional deferral of taxation on investment build-up under both fixed and variable nonqualified annuities to those that permit a distribution of value, other than in the event of death, only under annuity payment options containing life contingencies or in substantially equal installments over 60 months or longer. By eliminating all possibility of "cashing out," this change will remove from the nonqualified annuity market taxpayers who are interested only in such contracts as an alternative means of short-term investment. This change will not affect the legitimate use of nonqualified annuities to provide supplemental retirement income or to fund certain periodic payments, such as alimony, child support, and college tuition.

This change will have no effect upon the use of annuity contracts in connection with any employee benefit plans. Thus, this change will not affect annuity contracts purchased, distributed, or exchanged in connection with any qualified pension, profit-sharing, stock bonus, or annuity purchase plan, any individual retirement annuity (IRA), or any annuity purchase arrangement meeting the requirements of section 403 (b). In addition, this change will have no effect upon the use of annuity contracts under any nonqualified employee benefit plan, except to the extent that annuity contracts are distributed to participants. Such plans include unfunded deferred compensation plans (regardless of the tax status of the employer and including plans that cover independent contractors), retired lives reserves plans, and other recognized employee benefit plans.

The proposed change would apply only on a prospective basis to new money and new contracts.

We recognize that this legislation would constitute a substantial change in the tax treatment of annuities. This change in the tax laws is warranted, we believe, by the impact the unstable economy has had on the marketing and use of nonqualified annuities. We are also confident that the public will have sufficient input to assure that only the present abuse will be affected.●

ADDITIONAL COSPONSORS

S. 2375

At the request of Mr. KENNEDY, the Senator from Hawaii (Mr. INOUYE), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of S. 2375, a bill to amend the Public Health Service Act to revise and extend the programs of assistance under title VII and VIII for training health professionals and to extend the National Health Service Corps program.

S. 2890

At the request of Mr. LEVIN, the Senator from Massachusetts (Mr. TSONGAS), the Senator from Texas (Mr. TOWER), and the Senator from New York (Mr. JAVITS) were added as cosponsors of S. 2890, a bill for the relief of Maria and Timofei Chmykhalov, and for Lilia, Peter, Liubov, Lidia, and Augustina Vashchenko.

AMENDMENTS SUBMITTED FOR PRINTING

MILITARY CONSTRUCTION AUTHORIZATION—S. 3059

AMENDMENT NO. 2321

(Ordered to be printed and to lie on the table.)

Mr. JACKSON (on behalf of the Committee on Armed Services) submitted an amendment intended to be proposed by him to S. 3059, a bill to authorize certain construction and military installations, and for other purposes.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS—H.R. 7631

AMENDMENT NO. 2322

(Ordered to be printed and to lie on the table.)

Mr. MOYNIHAN submitted an amendment intended to be proposed by him to H.R. 7631, an act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Committee on Energy and Natural Resources on the nomination of Mr. John C. Sawhill to be chairman of the Board of Directors of the U.S. Synthetic Fuels Corp.

A hearing is scheduled for Thursday, September 18, beginning at 8:30 a.m. in room 1202 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Committee on Energy and Natural Resources, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510. For further information regarding the hearing, you may wish to contact Jessie Mackenzie of the committee staff on extension 7147.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Tuesday, September 16, 1980 to hold a hearing on the disaster harvest in Bulloch County, Ga.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PARKS AND RECREATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Parks and Recreation Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold a hearing on S. 2630, legislation to establish the Martin Luther King National Historic site in the State of Georgia and S. 3091, legislation which authorizes revisions to the boundary of the Chaco Canyon National Monument.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

CURRENT EXPORT POLICY HAS FAILED

● Mr. CHAFEE. Mr. President, yesterday, President Carter released the adminis-

tration's long awaited study on export disincentives. In view of this document, I direct the attention of my colleagues to a column which appeared in this past Sunday's New York Times written by Mr. Stanley Marcuss, former Deputy Assistant Secretary at the Commerce Department. The piece, entitled "Exports: From 'Born Again' to 'Still Born' " is particularly appropriate today given what the President's report says and what it does not say.

Mr. Marcuss begins by reminding us that 2 years ago this week, the White House announced a "new" export policy. It was called "a beginning, a first step."

Mr. Marcuss writes:

Two years later our export policy has proven stillborn.

Export-Import Bank funds have dried up. More and more Americans are coming home daily because of unfair tax policies. And Government agencies continue to pile on the obstacles. Marcuss writes:

We seem willing to spend billions on aircraft carriers and planes to fight for oil, yet hardly one red cent to generate the economic strength to buy that oil—and produce useful goods and services for the rest of the world in the bargain.

And the trade deficits continue to grow.

Like the "no action" policy we have experienced for 2 years, the President's report on export disincentives released yesterday ducks the fundamental issues.

No one wants to tackle the sensitive political problems like the Foreign Corrupt Practices Act, the U.S. antiboycott law, or adequate funding for Export-Import Bank.

Lack of courage to put an end to export disincentives and to create adequate incentives for exporters means that we will no doubt reach the record deficit of $30 billion that has been projected for this year.

In the President's report to Congress there are no recommendations made concerning problems with the antiboycott law regulations.

There are no recommendations made concerning environmental and safety regulations.

There are no recommendations made concerning a whole series of other potential export disincentives.

What does the President recommend?

The only major proposals are in the areas of taxation of Americans overseas, and the creation of export trading companies—both of which originated in Congress and were literally forced upon the administration. Had it not been for action taken by the Senate Finance Committee on the tax issue or for the efforts of Senators STEVENSON, DANFORTH, HEINZ, and others on the trading companies bill, I question whether these topics would have ever been included in the President's report.

Even with such pressure, the White House has managed to misrepresent the problems created by our tax policies on overseas workers. The President proposes targeting a tax exemption on earned income for U.S. citizens working in developing countries or hardship areas.

The President has obviously not read the report issued by his own "blue ribbon" Export Council. The goal of granting an exemption on earned income is to encourage U.S. exports, not to encourage more Americans to work in specified hardship areas.

What the President's export disincentives report really says is that the status quo should continue while these disincentives are studed for another year or two. Such an endorsement for "no action" is an insult to the business community who gave of its time and offered recommendations. It is an insult to all U.S. exporters who are spending millions of dollars trying to comply with regulations which keep them one step behind their foreign competitors.

I recommend that my colleagues study the President's report carefully after reading Mr. Marcuss' article.

As an example, I direct attention to what each one says about a most significant export impediment: The Foreign Corrupt Practices Act of 1977.

Mr. Marcuss writes:

United States anti-bribery law embodies the unassailable proposition that business obtained by bribery corrodes our fundamental precepts of free competition.

But does it make any sense to have a law that intimidates even the most honest and scrupulous because government agencies refuse to clarify it?

The President's report states:

Some in the business community have expressed their uncertainty about what conduct is prohibited and what conduct is not prohibited by the FCPA.

The President goes on to point to the Justice Department's review procedure through which business people can present an actual business situation and ask the Justice Department to furnish an option as to the legality of such an action.

Unfortunately, the Justice Department is not required to provide an opinion to every case.

It is not required to provide an opinion within a specific time period.

And, it has stated that no general policies may be extrapolated from any opinion. Everytime an American business person operating overseas has a question about the FCPA, he must go back to Justice.

Worst of all, no other agency is bound by the Justice Department's opinion. This means that the Securities and Exchange Commission, which also has enforcement jurisdiction over the bribery provisions of the FCPA, is not required to abide by Justice's rulings.

Can such a procedure really be called "protection" or "guidance." Business people inform me that they do not think of it as such.

The President's report says that the FCPA needs at least another year of study before we can even begin to consider ways of clarifying the ambiguities.

As the sponsor of S. 2763, a bill to clarify the FCPA cosponsored by 13 Senators, I am appalled at the fact that the President has refused to address this problem. Even the relatively simple problem of dual enforcement jurisdiction between the Justice Department and the SEC is ignored.

U.S. Trade Representative Reubin Askew and Commerce Secretary Phillip Klutznich both recommended to the President in July that the Justice Department be given sole enforcement jurisdiction over the bribery provisions of the FCPA.

The Justice Department had no objection to this.

The SEC, apparently, had no objection.

Yet, again the President did not act.

Until the administration assumes responsibility for a unified, consistent export policy—until export expansion is recognized as a necessary goal—then our failure to achieve that goal will impair our ability to achieve others.

As Mr. Marcuss states:

It is not a question of abandoning the quest for human rights, tax equity, a balanced budget, free competition, or trade that is free from bribery and the distorting effects of boycotts. . . . It is a question of realizing that the pursuit of these goals without regard for the consequences is the pursuit of abstractions at the expense of reality.

Mr. President, I ask that the article entitled "Exports: From 'Born Again' to 'Stillborn' ", by Mr. Stanley Marcuss which appeared in the New York Times on Sunday, September 7, 1980, be printed in the RECORD.

The article follows:

[From the New York Times, Sept. 7, 1980]

EXPORTS: FROM "BORN AGAIN" TO "STILLBORN"

(By Stanley J. Marcuss)

Two years ago, the White House announced a new national export policy. This was to be the dawn of a new awareness and a new attitude toward trade, born again in the cauldron of a declining dollar and deepening trade deficits. "A beginning, a first step," it was called.

Two years later, our export policy has proven stillborn. Export-Import Bank funds have dried up. Trade with the Soviet Union has been virtually shut down.

Daily more and more United States executives abroad pick up stakes and come home because the effort is no longer worthwhile. Stung by embargoes and flip-flops in policy, customers abroad no longer believe they can rely on the United States to fulfill its commitments and thus look elsewhere for trading partners. And government agencies pile on the obstacles, almost gleefully it seems, dangling the sword of fine or imprisonment over those whose most grevious sin may be little more than an inability to understand the bewildering array of conflicting government regulations churned out daily.

Meanwhile, the trade deficit continues to grow—a record $30 billion in red ink is forecast for this year—and once-mighty industries like steel, autos and shipbuilding continue their decline.

Why hasn't the promise of our national export policy been fulfilled? Because it is a policy in little more than name.

To be sure, when announced it contained a recommendation that Congress provide a little more money for export finance. It also contained the familiar mandate to Cabinet Secretaries to take export consequences into account in making their day-to-day decisions—a little like telling someone to look right and left when going through an intersection. And it contained the all to familiar announcement of yet another blue ribbon committee, the President's Export Council, to restudy a problem that has been studied to death by countless committees, commissions, and government agencies over the last 10 years.

But beyond that there was little to offer. The fundamental issues were ducked. Indeed, they were never even presented to the President for his consideration. No one wanted to tackle the sensitive political issues involved, and many believed that eventually the problem would disappear anyway.

Perhaps those who argue that there is no need to do anything special to increase United States exports are right. Maybe—just maybe—the trade deficit will be so bad and the dollar will fall so low that American goods will eventually become an irresistible bargain, and the situation will correct itself.

But before that happens, the United States will have paid dearly in inflation, loss of jobs, industrial decay, political and social unrest, and in the process will have mortgaged its increasingly hollow claim to world leadership to those who turn on the oil tap each morning. It is ironic in the extreme that we seem willing to spend billions on aircraft carriers and planes to fight for oil yet hardly one red cent to generate the economic strength to buy that oil—and produce useful goods and services for the rest of the world in the bargain.

We find ourselves in this predicament because export policy is not an issue whose time has come. Despite the rhetoric, despite the searing experience of the 1970's when America found itself unable to pay for the goods it has come to depend upon for its prosperity, most Americans still regard exports as a distinctly secondary aspect of our economic life.

Changes in this basic attitude are likely to be slow in coming. The major obstacles to exporting erected over the years continue to enjoy a constituency and a priority that make any effort to remove them politically hazardous.

It is difficult to be in favor of trade with the Soviet Union when it persists in heavy-handed behavior even though, to paraphrase Adlai Stevenson, one might just as well attempt to square the circle as to expect the Soviets to abandon their misguided cause in Afghanistan under threat of losing American help to build a blue-jean factory.

No one wants to appear against human rights even though trade sanctions taken in the name of human rights have probably done as much to retard as to advance the cause of individual liberty around the world. No one wants to appear tolerant of foreign bribery even though the United States is virtually powerless to stamp out corruption in parts of the world that do not share our values.

And many are hesitant about supporting financial incentives for big corporations to increase their exports even though such corporations may be the pillar upon which most of the United States export effort rests.

As a result, the obstacles persist, and we refuse to face up to their haphazard and contradictory application.

United States antiboycott law, for example, embodies a noble ideal: no United States company should buckle under to a foreign country's demands that it systematically exclude other United States companies from participating in international trade.

But does it make any sense to have three separate and conflicting statutes on the subject and three separate government agencies with different regulations and perspectives to enforce them?

United States antibribery law embodies the unassailable proposition that business obtained by bribery corrodes our fundamental precepts of free competition. But does it make any sense to have a law that intimidates even the most honest and scrupulous because it cannot be understood and because government agencies refuse to clarify it?

Most Americans do not understand the intimate link between United States export performance and such vital issues as the fight against inflation and the effort to preserve American influence throughout the globe.

When the dollar goes down, the cost of what we import goes up. When we consistently buy more from abroad than we sell, American jobs are jeopardized. Still, organized labor remains one of the most implacable foes of the Export-Import Bank, an agency designed to help increase United States exports.

Those who do understand the stakes show a frightful tendency to be coopted when it comes to pushing for the right decisions where hard choices are involved.

The President's Export Council is an example, despite its vigorous efforts over the last year. At the time the Council was created, no one in government believed that yet another committee would add a jot or a title to our understanding of the issues. Months of work exploring all conceivable options for dealing with our dismal export performance had preceded the export policy pronouncement. A new committee would add nothing—except a cover for the fact that the months of work had produced very little. For those who were unwilling to come to grips with the real issues—tax, antitrust, financial, regulatory, and foreign economic policy—a high level committee would help buy time.

The pattern persists. Speeches about the importance of exports ring with patriotic fervor. Government reports on export disincentives tumble out almost daily. Congressmen introduce bills and hold hearings on trade policy.

Meanwhile, the door to the Export-Import Bank remains barely open for lack of funds, and United States companies spend millions trying to comply with regulations which keep them one step behind their competitors abroad.

This is the way it will continue to be until policy-makers come out of the closet and face up to the fact that export growth is also a worthy goal and that the failure to achieve that goal will impair our ability to achieve others.

It is not a question of abandoning the quest for human rights, tax equity, a balanced budget, free competition, or trade that is free from bribery and the distorting effects of boycotts. Far from it. It is a question of realizing that the pursuit of these goals without regard for the consequences is the pursuit of abstractions at the expense of reality.

It may be that refusing to sell frying pans to those who don't behave in accordance with our wishes provides a degree of emotional gratification. But we are probably cooking our own goose by doing so.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on September 8, 1980.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 8, 1980.

Dr. HANS BINNENDIJK,
Deputy Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director, Defense Security Assistance Agency.●

NOTICE OF DETERMINATION BY SELECT COMMITTEE ON ETHICS

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD this notice of Senators, or Senate officers and employees who propose to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization. The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Senator ORRIN HATCH, two Senate employees under his supervision (Mr. John Haddow of his personal staff and Mr. Michael Pillsbury of the Senate Republican Steering Committee) and two Senate employees under the supervision of Senator TOWER (Mr. Robert Wolthuis, Deputy Staff Director of the Republican Policy Committee and Mr. Sven Kraemer of the Republican Policy Committee staff) to visit Japan from August 29–31, 1980, the expenses of this trip to be paid for by the several domestic American organizations and the Japan Center for the Study of Security Issues, which are sponsors of the conference. It has been determined that the principal purpose of the trip is educational and that the trip is in the interests of the Senate and the United States.●

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BETTER HEALTH

● Mr. KENNEDY. Mr. President, America is undergoing a revolution that I know all of my colleagues support and one in which many are active participants—a fitness revolution. Today more than 100 million Americans are exercising. Millions are dieting and taking care to improve their own health.

Mr. President, last week a well-researched and thorough series by Victor Cohn appeared in the Washington Post dealing with the value of exercise, a balanced diet and appropriate self care. I congratulate the Post and Mr. Cohn for their important contribution, and ask that these articles be printed in the RECORD.

The articles follow:

[From the Washington Post, Aug. 31, 1980]

A PASSION TO KEEP FIT—PART I

(By Victor Cohn)

Every noon, they pour out of the federal office buildings, the men and women in shorts, the joggers.

Why do they do it? A 32-year-old secretary says, "I know this sounds funny, but my boyfriend wants me to. And I like it." A paunchy man, 36, a health policy analyst, says, "To get rid of this paunch." A paunchy woman, 45: "I started it to lose weight, and I'm losing some. But I also feel more alive, more awake."

One hundred million sweating Americans are currently exercising in some way.

Like no people before us, we are running, swimming, doing sit-ups and push-ups and hitting or tossing a ball as part of a new lifelong passion to keep fit.

This exercise surge is only part of a new fitness revolution, one that has millions of us concerned not just with exercise but with everything else that affects our health.

Most of us are smoking less, fretting about weight and eating strikingly less sugar and fat in an attempt to slim down and protect our hearts. Our patronage has built an estimated $15 billion a year exercise and weight-loss industry, with thousands of fitness, "figure control" and diet centers, and new chains of sports stores selling mountains of exercise shoes, exercise suits, backpacks and headbands.

All the people who are exercising, looking for healthy foods and eating fiber instead of sugar would have been derided as "health nuts" only a decade ago. In the last 10 years, however, our doctors and our government have been telling us: "Your health is up to you. You can do far more for yourself than any doctors or expensive medical technology."

We, the people, have been getting the message. What we are seeing, say professors, is one of the late 20th century's major sociological events.

It is an event born of many elements. A concern with "self" and "controlling our own lives." A concern with body image and "keeping young"—and sexually active—into our late years. A concern over persisting environmental pollution that tells us we have to try harder to stay individually healthy. And the hard-headed, practical realization that health is indeed largely up to us.

"Exercise has certainly helped me," said one unusual Washington exerciser one recent day.

Milton Kronheim had just finished punching a bag at the George Washington University gym. At 6 p.m. every day, five or six days a week, this wiry man spends 45 minutes bending, stretching, riding an exercise cycle and punching the bag.

Not so unusual? No, except for the fact that Kronheim—the District's leading liquor distributor though he doesn't touch the stuff—is 91. He started punching the bag when he was 10. Until he was 86 and hurt his shoulder, he regularly pitched nine innings of Sunday baseball. A few years ago, he gave up handball. But he keeps punching the bag.

"It's hard work," he tells you. "It gets monotonous. But all this keeps me going. I feel good."

Dr. Ronald Crystal, 38, heads the pulmonary (lung) disease branch at the National Heart, Lung and Blood Institute. He is also a muscular runner, part of the half-naked army in Nikes and shorts who morning, noon and night plot along the nation's sidewalks and paths.

"Four years ago, I could only run around the block," he says. "Now I go out and run 15 miles, and it's absolutely nothing."

But is he healthier? Are the exercising millions truly any healthier, living longer, having fewer heart attacks for all the sweat?

Many medical enthusiasts say yes. "But as a doctor and scientist," says Crystal, "I have to say we honestly aren't sure yet."

The evidence, in strict scientific terms, is "highly suggestive" that exercisers feel better, sleep better, have more energy and tend to lead lifestyles that help prevent disease and lengthen life. And the evidence is impressive. Exercise has profound physical effects on the heart and blood vessels. It strengthens muscles. The heart, a muscle, pumps more blood. The ability of all tissues to use the increased blood flow and oxygen is increased.

Hard exercisers, even those who work strenuously just three times a week for 20 to 40 minutes, have higher levels of HDL—high density lipoprotein, or "good cholesterol"—in their blood. (High total cholesterol means more chance of heart disease; a high ratio of high to low-density cholesterol seems to mean less.)

Diligent exercisers tend to lose weight. Even more important for long life, they lower their blood pressure. Conditioning also seems to help the blood dissolve clots; clots in the blood cause strokes and heart attacks.

Despite today's stress and a thousand new pollutions, health officials report marked declines in heart and stroke deaths in the last decade. It has been a decade, they point out, of more attention to controlling blood pressure, less smoking, a lower-fat diet and also more exercise.

Students of disease have looked at sedentary vs. active D.C. postal workers, San Francisco dockers, London busmen and British business and professional men. In every case, sedentary workers were the most likely to die of heart disease. In Framingham, Mass., where a federal team watched 1,909 men for five years, those with the most active jobs and lives cut their heart attack risk by 30 percent after age 45.

And they did so because they also followed other good habits. They lowered their blood pressure and blood cholesterol and cut out cigarettes as well as staying active.

Dr. Ralph Paffenbarger questioned 16,936 Harvard male graduates aged 35 to 74 over six to 19 years. He too found that "vigorous" exercisers—those who ran for an hour three or four times a week or bicycled, played handball or walked with equal intensity—had fewer heart attacks then their fellows. Those with less strenuous activity got moderate benefit if they did enough, but those with only "light" play (golf, bowling, baseball, dancing, yard work) showed little or no benefit unless they added more strenuous work.

Does this mean exercise has to be hard to do much good? Paffenbarger indeed says "an ideal prescription" for lower heart risk must include "robust exertion" that makes the lungs fill and expand and the heart beat faster. Dr. Kenneth Cooper named this activity "aerobic."

But Dr. Lester Breslow, dean of public health at the University of California at Los Angeles, found exercising even moderately improves life expectancy. He found that those who live longest are those who follow seven health rules: daily breakfast; three meals a day at regular times with no between-meal indulging; seven or eight hours of sleep; no smoking; moderate weight; no or moderate alcohol use, and even moderate regular exercise.

Kronheim, the 91-year-old George Washington University bag puncher, pretty much follows such rules. In his gym shorts and shirt, he looks plainly old. He wouldn't deny it. His legs are spare, his skin dry and wrinkled. But his eyes sparkle, and if he told you he was only 71, you'd believe it.

When Kronheim arrives at the gym daily, and when other men, young and old, arrive for their late afternoon stints, they are at the end of their workdays. Most look tired. When they leave, you notice, almost all look fresh and sparkling. You might say they'd had some kind of fix.

Is it possible that exercise indeed may provide a natural fix, an extra dose of brain chemicals that makes exercisers feel so good they themselves often speak of their "addiction"?

The chemical evidence for this is still new and sometimes puzzling. The brain during a moderate run seems to pour out extra endorphins, "the brain's own opiates," or painrelievers. This doesn't seem to happen to marathoners.

"Perhaps these chemicals come into play under stress, but at a certain point in training, the body no longer needs them," Dr. David Picker of the National Institute of Mental Health conjectures. "We do know that if you bicycle very hard on a machine, pedaling as hard as you can for 15 or 20 minutes, you double this opiate activity. It's certainly attractive to think this accounts for the 'high,' the euphoria so many runners report."

The same mental chemistry may explain the fact that exercise seems to help depressed mental patients, and in some cases does more good than drugs. At the University of Wisconsin, starting with long walks linked by short runs, therapists gradually encouraged 28 depressed patients to run several times weekly. This helped many of them as much as conventional psychotherapy, at less cost.

This wouldn't have surprised Dr. Paul Dudley White, the late, famous heart doctor to President Eisenhower. He bicycled, preached fitness aad helped start the exercise boom. He was certain intellectual health depends on healthy, fit circulation of blood to the brain.

"I think my running is quite addicting," Dr. Crystal of the heart and lung institute. "I think it's a positive addiction, one that gives you psychological and emotional benefit. I don't know whether or not this is a chemical effect, but I do know I feel much better."

San Francisco's Dr. Joan Lamb Ullyot, author of "Women's Running," was "the least athletic person" in her Harvard medical class by her admission. But "at age 30," she says I had a growing problem with middle-age spread . . . Now at 38, I'm a marathoner. I'm also slimner and fitter than at any other time in my life."

What does exercise do for women? The Framingham study detected no protection from heart attacks among more active women. A Dutch study of merely mild exercisers and gardners did. But most studies have not included women at all.

The "problem," researchers explain, is that women get few early heart attacks, so it's harder to establish an exercise effect. The scientists also say, "Men get more heart attacks, so it's more important to study them." The scientists, of course, are almost all men.

Women as well as men do have elevated "good cholesterol" if they are active. More men than women exercise, but in the last few years more women than men have been taking up exercise.

"I started running in 1971 for the same reasons that motivate most beginning joggers—health and appearance," Ullyot says. But now, "I have a positive addiction. If I don't run, I miss the health and good feelings."

In October 1978, Maryland representative and marathoner Goodloe Byron, a mere 49, died of a heart attack after running 12 miles. "He had a strong family history of coronary disease," Medical World News reported. "Two exercise tolerance tests, the latest in January, indicated coronary atherosclerosis. But Byron ran on, spurning warnings."

Exercise may be great medicine, but it is no cure-all. The fittest persons can and do have heart attacks and die, even at early ages.

Some doctors think heedless running can spur a heart attack. Others think running has nothing to do with the occasional disaster. No one knows for sure. But a Stanford study found that of 18 persons who died during or just after running, six had ignored warning signs like pain and difficult breathing.

All authorities agree that sporadic bursts of exercise may do more harm than good. Even regular exercise, overdone, may be harmful.

If running has become a positive addiction for some, it has become a dangerous "negative addiction" for others, the University of Wisconsin's William Morgan warns. These are persons who run almost endlessly while their other relationships deteriorate, who become anxious and irritable when they can't run, and, the most telling symptom, ignore pain and injuries that can do lasting harm.

Many doctors, many of them runners, think running has been oversold as the ultimate activity. They think many unknowledgeable runners will end up with bad, arthritic knees and, almost as bad, disillusionment that ends all activity.

It is probably true that only 20 to 60 minutes of continuous hard activity like jogging or swimming can give the heart, lungs and body the most thorough workout. But "for the general public," Dr. Arthur Leon of the University of Minnesota says, "brisk walking five days a week for at least an hour will give you the same metabolic benefits, without as much risk."

Bicycling or rope-jumping or almost anything done without slowing or stopping can achieve about the same goal, and are probable better conditioners than games like handball or doubles tennis that demand only brief bursts.

Dr. Irving Wright, New York cardiologist, quarrels with the claim that golfers can't get real exercise. "A lot of old people won't go for a walk. But a golf game can get them to walk five miles."

"Vigorous dancing is an activity we often overlook," Dr. Samuel Fox at Georgetown University contributes. Dr. Joseph Fetto, New York orthopedist, says, "A lot of good exercises, like running in place and situps, don't require any special equipment."

The bottom line, it seems, is that there is no "right" exercise for everyone. The "best" exercise is the one that you'll do.

Not everyone exercises. Whites exercise more than minorities, the well-off more than the poor, the educated more than the less educated, the young more than the old. Fifty percent of those who buy jogging suits or sign up at the "Y" soon drop out.

Unlike our forebearers, most of us don't walk, pull, lift and labor as a necessary part of life. We ride and we sit, and the number of basically sedentary persons is still "growing with each passing decade" because of the "sloth" created by technology, Dr. William Kannel, co-chief of the government's Framingham study, reports.

"I think becoming sedentary is the most profound change, metabolically, that has happened to man in civilized history," says Dr. Henry Blackburn of the noted Laboratory of Physiological Hygiene at the University of Minnesota. "I think this is responsible for many of our metabolic maladaptations"—the mechanisms by which we develop many diseases.

Where do we go next, then, in the exercise movement?

Dr. Kannel urges us to consider how to start a second stage: "one to engineer physical activity" into our daily living once more.

*How to spend 2,000 calories a week exercising**

For your weekly total, add up the calories you burn in each type of exercise:

Walking: Walk 3 miles (36 city blocks) everyday (give yourself 8 calories credit for each city block walked.)

Stair climbing: Climb 710 steps every day (4 calories credit for each flight of 10 steps walked.)

Light sports: Spend 6½ hours a week (5 calories a minute credit.) Light sports include Bowling, Baseball, Biking, Dancing, Golf, Yard Work etc.

Strenuous sports: Spend 3½ hours a week (10 calories a minute credit.) Strenuous sports include Running, Basketball, Swimming, Skiing, Tennis etc.

Combined light and strenuous sports: Spend 4½ hours a week (7½ calories a minute credit.)

[From the Washington Post, Sept. 1, 1980]

OUR OBESITY NEUROSIS—PART II

(By Victor Cohn)

"I'd been overweight all my life," said Phil Burke age 45, client of a Georgetown University diet control program. "In the past 25 years," he said, "I lost 1,000 pounds. Then I gained back 1,000."

Americans—a generation of Phil Burkes—are too fat and getting fatter. Despite a new nationwide passion for exercise, which should eventually take off some pounds, only one group, white middle- and upper-class women past their 20s, have so far been getting thinner.

And the surgeon general is warning us: excess pounds are dangerous to our health.

Obesity "has reached epidemic proportions," say the medical experts, and too much weight remains "one of the most important medical and public health problems of our time."

The nation, it is obvious, is caught between its new passion for health, exercise and thinness and its still affluent, indulgent ways.

Who's fat in America?

One person in five is 20 percent above "desirable weight."

Women are fatter than men. Twenty-four percent of women and only 14 percent of men are obese.

Black women are heavier than white women. Poor women are heavier than affluent women, but affluent men are a bit heavier than poor.

Probably thanks to "better lives" and "better eating"—actually meaning less physical labor and richer food—men in their 20s are heavier, on the average, by 2 to 17 pounds (depending on specific age) than their 1959 counterparts. Men in their 30s and women in their 20s are 1 to 8 pounds heavier.

But women in their 30s have dropped a few pounds; women in their 40s and over, up to 9 pounds.

"This trend has been going on for 40 years," Edward Lew, former vice president of Metropolitan Life Insurance Co., reports. "Men have put on weight at all heights and ages. Women over 30 are taking weight off because of fashion."

Charlotte Williams, 34, M.A. in public administration, American University, is black, overweight and ambitious. In all these ways, she says, she is pressured by the new national passion for thinness.

"There is the pressure on every woman now to be a super-person," she said. "The whole American mentality is that you must be thin. You must be on a diet or you're not American.

"And there is special pressure now on a black woman to do well and look good."

Weight, plus or minus, is in part a class phenomenon, at the Fort Lincoln Family Medical Center in far Northeast Washington, nurse-practitioners and diet counselors Holly Markham and Joyce Smith see a legion of obese black women.

These largely middle-aged and elderly mothers and grandmothers grew up admiring the "fat, prosperous look" and the "fat, healthy baby." Only today are they suddenly being told, "Take it off."

"I think 90 percent of our patients are obese," nurse Markham said. "It's sweets—I love food!" explained one of her patients, a retired federal payroll clerk, recently. This Mrs. A—none of three women interviewed wanted their names printed—had just lost 20 pounds in a six-week diet course.

Mrs. B, who lives on her Army widow's pension, had lost four pounds. Mrs. C had lost none. All three said their "problem" is just "eating wrong," eating starches, ice cream, cakes, pie.

True enough, but far from the whole story. Part of the problem is cultural. In several cultures, eating well means eating to be large. And the habits of the country persist in the city. "One woman told us of raising her family in North Carolina," nurse Markham said. "They were all up at 5:30 a.m. to work in the fields. Now they're here, but they eat the same way."

These patients also live on low incomes—Social Security, pensions, welfare or wages. "We have them keep food diaries," nurse Smith said. "These high-price days, sometimes it's all bread.

"But when there's a holiday or family dinner, they eat. Not just a few things on the table, but turkey, chicken, pork, ham, potatoes, macaroni and cheese and three vegetables and desserts. That's what they're used to."

Dieter Charlotte Williams, a policy analyst for federal agencies, remembers that for a black girl there were few athletic outlets. "We didn't play tennis, we didn't swim. The boys could play basketball, but that wasn't encouraged for us. What was encouraged was cooking."

The result? Twenty-four to 40 percent of black women above the poverty line and 28 to 49 percent below it are overweight compared with 19 to 28 percent of whites above poverty and 21 to 26 percent below. In each group, women above age 45 are the heaviest.

"The black woman fighting to feed a family," says actuary Edward Lew, "is too busy surviving to worry about weight. She has more important things to worry about."

Yet poor black men tend to be thin. This too may be a class matter. Black men typically work at demanding, even damaging jobs, and their sickness and death rates are high. Perhaps only the lean and healthy survive.

Still, not all poor men are slim. In New York City, in a survey by economic class, a third of low-income men were overweight

*Dr. Ralph Paffenbarger of Stanford has found a sharp reduction in heart attack rates among those whose weekly energy output equals 2000 to 3000 calories.

compared with 16 percent of upper-income males. But the heaviest New Yorkers of all were the middle-class.

In New York, this included many Jews, who are the most overweight Americans of all by religious group.

Sociologists say the reason is fairly obvious: "Here is a people who ate too little in Europe, and for them, just as for blacks, prosperity meant eating all you wanted." And the typical Jewish diet has run heavily to fat: meat, butter, cream cheese and chicken soup with lots of chicken fat "to make it taste good."

"The Georgetown University diet program makes you ask yourself, 'Why am I eating so much?' " said Charlotte Williams. "I had to face the fact that I sometimes used eating to compensate for other things. Sometimes it was easier to eat than vent one's frustrations."

Why do we get fat in the first place?

The surgeon general has a ponderous answer. "Large gaps remain in our understanding . . . (But) it is clear that obesity results either from ingestion of more food energy than the body needs or utilizes, or the expenditure of less energy than normal."

Translation: We eat too much. We move too little.

For thousands of years men and women had to scratch for their food. The norm was too little to eat, not too much. "Only in the first few decades of this century did obesity become common," says Dr. Jerome Stamler of Northwestern University. "Until then the rich were the fat."

Today, most authorities agree, overeating and underactivity cause 95 percent of obesity, and only 5 percent is caused by some hereditary, hormonal or other disorder.

Probably by training, not heredity, obese parents tend to have obese children. By most studies, obese children are three times likelier than slim children to become obese adults.

Though overeating is obesity's main cause, it is also becoming scientifically clear that losing weight is not equally easy for everyone. Women, for example, are fatter than men not just by habit or gluttony but because they have fatty breasts, thighs and buttocks for child-bearing.

Some scientists think overstuffed infants or adolescents develop too many "fat cells"—adipocytes—and the number of these cells stays constant for life, making it harder for those "hypercellular" persons to lose.

Also, it seems, humans and other mammals ages ago developed small stores of brownish fat cells to be burned off for warmth in hard weather. Some people may be more adept physiologically at burning this energy. Everyone knows the slim types who eat and never gain.

Many people plainly overeat because of emotional problems. Or frustration. Or boredom.

"For many, fat is a protective mechanism." Georgetown diet counselor Mary Ellen Fediuk says. "It can be a mechanism for dealing, or not dealing, with disturbing people or social or sexual situations."

Then there is food as a symbol. Today almost every human activity offers food as the centerpiece. The wonder, say some scientists, is that only a fifth of the populace is obese.

What is "desirable" weight? There are complex formulas based on height, build and amount of body fat vs. lean. But if you look in the mirror and seem neither fat nor skinny, that's about it. If you tighten a belt around your lower rib cage, then can't lower it around your belly, you're fat.

Is being just 10 or 20 pounds above average weight unhealthy? Probably not, though experts disagree.

There is little doubt that overweight is associated with diabetes, gallstones, degenerative joint disease—ankles and knees worn out by sheer weight—and high blood cholesterol and high blood pressure, which heighten the risk of heart disease and stroke. For women there is added risk of endometrial (womb) cancer.

Figures from the government's continuing survey of Framingham, Mass., indicate that "if everyone were at optimal weight," there would be 25 percent less coronary heart disease and 35 percent fewer blockages of brain vessels, causing strokes.

Georgetown University dieter Grazia Cramer, 43-year-old mother and part-time government researcher, said, "Have you ever been in a fat ladies' group? It's embarrassing. The majority are just mortified to be seen in a bathing suit. Some will go out only when it's dark."

"I needed to lose and I'm doing it," Charlotte Williams said. "But I'm big-boned, I'll never be thin. And all you see in ads and on TV are these super-thin folks."

Despite its dangers, do we over-emphasize obesity?

Do we make it too much a stigma for the millions whose only crime is eating the dishes life puts out before them? Or too much a burden for those who try to diet and fail: the 75 to 95 percent of those in weight control programs who gain some or all of it back?

Some nutritionists, and some newly militant heavyweights, are asking these questions.

Obesity, it seems clear, has become not just a health problem but a national neurosis. This is especially true for women, said Mary Ellen Fediuk, who administers the Georgetown diet center.

"Men come in for health," she said. "Women come in for appearance. And today a lot of them fear that if they're fat, they won't get ahead on the job."

Indeed, say many persons, fat women are discriminated against; fat men less often.

Many young women are even becoming mentally ill anorexics, who waste away because they won't eat enough. Some alternate between binges of gorging and starving; when they do eat, they often lose food in helpless spasms.

Their revulsion, it seems clear, is born of perplexity over our worship of thinness, on the one hand, and our piles of hamburgers, pizzas and sugar-loaded drinks, on the other. "It shouldn't be a crime to be fat," counselor Fediuk said.

What can we do to improve this nation's health by improving its waistlines, without adding to the guilt the fat already feel?

INCREASED MORTALITY WITH RISE IN WEIGHT

[By cause of death for insured men and women]

	If you are above average weight—							
	20 percent		30 percent		40 percent		50 percent	
	Your chance of death compared to normal is—							
	Men	Women	Men	Women	Men	Women	Men	Women
Cerebral hemorrhage	8 percent higher	13 percent higher	37 percent higher	(1)	56 percent higher	(1)	(1)	(1)
Coronary disease	19 percent higher	28 percent higher	44 percent higher	34 percent higher	58 percent higher	63 percent higher	75 percent higher	(1)
Diabetes	130 percent higher	75 percent higher	400 percent higher	(1)	(1)	(1)	(1)	(1)
Digestive diseases	23 percent higher	30 percent higher	50 percent higher	(1)	120 percent higher	(1)	(1)	(1)

[1] Too few cases for analysis.

Source: Ad Hoc Committee of the New Build Blood Pressure Study, Association of Life Insurance Medical Directo rs of America and Society of Actuaries

Nutrition authorities have no easy answers. They say they can only tell us the facts, and hope for more tolerance. At the same time, they add, dieters and, counselor Fediuk believes, "more people are beginning to make it."

The so-called 75 to 95 percent "failure rate" ignores the pounds that remain off, even though they may not be "enough." And many dieters, like many chronic patients, may have to work at the problem all their lives.

"In some ways we're overconcerned, yes," Dr. William Ayers, the Georgetown program's medical director, said. "But I think the medical profession is underconcerned."

Many doctors, he said, are understandably discouraged because they "tell their patients to lose and they're ignored." Yet "you can't just hand out a diet sheet and drop the subject. It takes more sophisticated counseling over time, perhaps a long time. It often takes psychological help. If doctors abandon that role, others will fill it. That's why there's such a proliferation of fad diets and weight loss clinics. There's a big buck to be made."

Diet pills? Most doctors are unimpressed with them. The "best" diets—those most effective in the long run, authorities say—include almost all foods and nutrients, though special diets may be needed for a time for some persons, who should then be under close medical watch.

In short, the best and most scientific diet advice for most people turns out to be the old, sensible advice: "Moderation."

"Three years ago, after years and years of high blood pressure and emotional suffering, I entered the Georgetown program," dieter Phil Burke said. "I started exercising. I'm deputy executive secretary of the Bicycle Manufacturers Association, so I cycled. In six months I got down from 264 to 184, then 173.

"I couldn't maintain that low a weight. But now I cycle, I run. Now and then, when I'm tense, I go the dessert route. But I have abolished butter, salt and soft drinks. Now I fluctuate around 200 or 205. I'm not skinny, but I feel wonderful."

[From the Washington Post, Sept. 2, 1980]

WELLNESS: A CHALLENGE TO MEDICINE—PART III

(By Victor Cohn)

Fourteen patients and a doctor sat in the circle.

They sat easily and talked and laughed and exchanged ideas about how to keep well.

Keeping well. They repeated this almost magic word several times. They talked of attitudes, exercise, relaxation and the right food. Of taking control of your life, taking responsibility for your own health, feeling less tense. Feeling well.

This was the Wellness Group, which meets one night a week at the Kaiser-Georgetown Health Plan's Reston Center, 30 miles from the heart of Washington.

A new and growing wellness movement is challenging medicine.

The movement goes by several names—"wellness," "holistic medicine," "wholistic medicine"—but all speak of considering and caring for the whole person, not just treating Disease A with Pill X.

All embrace or overlap several other growing movements in and outside traditional medicine: self-care (learning to be your own doctor sometimes), patient education, prevention, fitness and exercise.

All are part of what could be called a new life-style medicine, which teaches us that what we do and don't eat, smoke, drink and do has more to do with our health than all the things doctors can do. All these forces seek to go beyond today's jogging and exercise to offer a whole way of life, one that includes exercise but also declares a large degree of independence from doctors, disease and helpless depression.

The movement, like hot tubs and group sex, has found its fastest—and some of its strangest—growth in California.

But today, Dr. James Gordon, a Washington psychiatrist who headed a study of "alternate" services for President Carter's Commission on Mental Health, reports: "Holistic medicine and wellness centers are happening all over the country. About 100 places" from Maine to Texas and in almost every state and the District of Columbia "are practicing all or part of these new ideas."

Holistic medicine and wellness, proponents say in lofty words, treat patients "humanistically" as "mental and emotional beings," and seek "optimal attunement of body, mind, emotions and spirit" in "a health-oriented ecology and life style." One observer sensibly sums this up at "concern for the whole person, not just the part that hurts."

The new movements often use alternative treatments ranging from meditation to acupuncture to ayurvedism (India's herbal medicine). The doctors and others who do and teach these things range from the skilled and responsible to kooks, quacks and money-chasers.

But all these trends represent a revolt against the prevalent medical model, the usual "disease model" of treatment: I get sick, I go to the doctor, he gives me a cure.

Wellness, all its advocates say, is far more than an absence of illness. It is a sense of health and control even in the face of illness and adversity.

Dr. Elliot Dacher (pronounced "Dosher") is medical director of the Kaiser-Georgetown Reston center. He is 36, well-trained and well-certified, and he fully uses orthodox medicine.

"But as a doctor," he said, "I was doing a lot of things to a lot of patients, but they kept coming back. I slowly became convinced I wasn't doing them any favor. I was just making them dependent on drugs and on me, rather than helping them really get better.

"So I began to explore their lives with them. And my own life. And my family's. What were we doing to keep well? To relax? To eat right?"

He began telling his patients: "I can't get you well. Everything it takes to get well is already inside each person. It's all there for free, and it can't be purchased. It can only be found in ourselves."

He also began to explain: "You can be well if you're ill. All of us have known people who had serious illnesses, but maximized their potential. Within whatever limits they had, they went on.

"There are also people who are not ill at all who are not very well. You can see it on people's faces at a bus stop."

"The most important factor pushing us in new directions," said Dr. James Gordon, "may be the incredible cost of health care today. And the consumer movement, the civil rights movement, the women's movement, the old people—Gray Power.

"And the fact that so many people are dissatisfied with the present approach."

The new movement was probably born out of the alternative health services of the 1960s, the free clinics, drop-in centers and crisis centers that gave care, shelter and counseling to the disaffected young of that decade.

These young found conventional services "threatening, damaging or unresponsive," Gordon said, and they found common ground with many activist health workers who also "believed that, given time, space and encouragement, ordinary people could help themselves."

Too, many health professionals and their patients "were becoming dissatisfied with 'best care,' " especially that given people who complain of feeling poorly, yet have no physical pathology. A social innovator named Sidney Garfield sympathetically named them "the worried well." Many doctors use the term derisively.

By the early 1970s, however, many health workers were moving beyond the often inadequate free clinics to create the physically and emotionally oriented services that would become Wholistic-centers.

"There was, and is, no single model," Gordon reports. A Lutheran minister, Granger Westberg, started a Wholistic Health Center in a Springfield, Ohio, church basement. It has led to a network of clinics in the East and Midwest, combining traditional medicine with mental and spiritual counseling.

The Wholistic Health and Nutrition Institute in Mill Valley, Calif., tries to substitute stress reduction, often via biofeedback, relaxation and exercise, for reliance on drugs.

At the Pain and Health Rehabilitation Center in LaCrosse, Wis., Dr. Norman Shealy, a neurosurgeon who largely abandoned drugs and surgery, tries to substitute diet, fitness, biofeedback, electrical pain relief and other techniques.

The Helping Hand Clinic of St. Paul, Minn., teaches its patients selfcare. The Swedish Wellness Center of Englewood, Colo., was founded by two hospitals whose boards were considering expansion. Instead, they founded this joint clinic to try to keep patients out of the hospital.

Most of these centers meld orthodox medicine with biofeedback, family therapy, stress control, meditation, nutritional therapy and, in Gordon's phrase, "other healing traditions."

"I'd say holistic medicine at its best includes everything useful conventional medicine offers, plus other things," Gordon sums up. "If somebody gets hit by a truck, you're not going to tell him to sit there and meditate."

"I still work with many patients one to one," said Dacher in Reston. "Two years ago we also started our wellness group.

"We started with learning sessions in three areas: Stress and how to relieve it. Nutrition. And body fitness. Later, the group sort of took itself over."

It is 7:30 p.m. on a Tuesday. Dacher wears his usual garb, unpressed pants and an open sport shirt.

The wellness group trickles in. Eight women, six men, suburbanites, fresh or unfresh from their jobs and their car pools. Worn jeans, open shirts, only a few smart outfits or crisp button-downs. These are the citizens of Tense City, trying to make sense of their health and their lives, rather than succumbing to neuroses and coronaries.

A slim, wiry woman, 35ish, in jeans and a checked shirt, opens the weekly forum. Her youngest child "has been waking me up again. He woke up 10 times the other night. I was a zombie.

"I really needed to relax, so I tried the self-hypnosis. I counted backwards to 10, and I was just saying, 'This isn't working.' That's the last I remember. For 20 minutes 'cause I'd set the alarm. Then I got up and went to work.

"It was really very relaxing. I've also used the meditation." In addition to teaching self-hypnosis—in reality, deep relaxation—Dacher urges his patients, to meditate in a simple way, no semi-religious hocus-pocus, for 20 minutes twice daily. "I've been meditating at least once a day," this woman said.

A government official with thick glasses tells of doing his meditation "to calm down—just closing my eyes seems to help."

The four, far from mysterious, components in such meditation, said Dr. Herbert Benson of Harvard, are sitting quietly, closing one's eyes, repeating a simple word or phrase and closing out other thoughts.

A cheerful, mildly stout woman in a flowery shirt tells how "our diet has completely changed." Dacher and the group put great store in abandoning junk and factory food and too many sweets, in favor of fresh, unprocessed fruits, vegetables, nuts, seeds, yogurt, whole-grain bread and chemical-free poultry and meats.

The woman also speaks of the group's "caring and sharing." This night's 14 men and women—some nights there are 20—are obviously a kind of surrogate family for these American wanderers.

The best physicians have always been holistic practitioners, considering and treating the whole of their patients' lives.

A Mayo Clinic doctor wrote 40 years ago: "Four out of five times I'd find out what was wrong sooner if I started by examining the patient's home life, his job and his bank account instead of his heart, his digestive system and his kidneys."

Today many physicians—as many testify—no longer take the time to pay attention to their patients' whole lives. Their complex scientific training, Gordon says, has "de-emphasized the importance of things we knew 100 years ago, like the physician sometimes touching the patient."

Dr. William R. Barclay, editor of the Journal of the American Medical Association, has written that "medical care is first of all caring, and this component of medicine seems to be missing from much of what we do today."

Many doctors are consciously adding some of the "new" yet old methods in simple but practical ways.

Dr. Michael Newman, a young specialist in internal medicine on Washington's 19th Street NW "medical row," says many "caring doctors" are doing a far better job than innovators who ignore tradition to try unproved fads.

In a pamphlet of their own writing, he and his associate, Dr. Devra Marcus, tell their patients, "Your health is our concern but your responsibility . . . Our job is to help you be aware of how your life style affects your health." And: "Not every symptom requires medication."

"We find patients are just as happy if you really give them information," Newman said. "They don't really say, 'Dr. Soandso would give me a pill.' "

Dr. Samuel Bessman of the University of Southern California is a more severe critic of the new movements. He attacks the moneymaking "high priests" of new, unscientific "cults" who discourage patients from seeing doctors when sick.

All the new movements, all experts agree,

badly need study to separate the useful among them from the merely silly or commercial. Prevention, now an official new policy of federal health agencies, needs to be developed and tested not out of sentiment but as rigorously as vaccination.

No one, say the doctors who still must care for the sick, should begin to act as though the sick are sinners who are to blame for their illnesses.

Still, Gordon says: "We're overdue for some change."

As the months go by, some drop out of the Reston Medical Center's Wellness Group and some enter.

A man of 60 is about to have surgery. Dacher suggests that he begin trying another new technique: "visualization" or "suggestive imagery," that is, intensely imagining desired bodily responses or mental attitudes or even inter-personal situations.

"You can do a lot about your own recovery," Dacher said. "By resting beforehand. By eating right. And by visualizing the kind of recovery you want."

Another man said, "I'm taking fewer pills for my blood pressure, and I'm still on my low-fat diet. I'm under 200 pounds—I haven't been there in years. But the really great thing, what I've gotten out of this is awareness—of food, of my feelings, of myself. I feel more in control."

When other patients too, tell of being "better able to cope," Dacher tells the group:

"Clearly, all of you are feeling better in one way or another. Some of you have forgotten your abdominal complaints. Some have fewer pains. And you've taken responsibility for who and what you are.

"It's a long process. It'll go on for a lifetime. But these are incredible changes in two or three or six months. Doctors don't usually see that in their practices."

The wellness movement may have been born in part out of the self-fascination of the "me" generation. But, given true expertise and a reasonable use of traditional medicine, it can become a more mature road to health.

LifeScore for your health

Find Your LifeScore

Your lifestyle today has more to do with your tomorrows than anything else does.

LifeScore is a self-checkup.*

Score yourself on each item. The larger the positive score, the more that factor contributes to a healthy life. The larger the negative score, the more the factor is damaging your good health. The LifeScore computed at the end measures the total effect.

Warning: LifeScore is designed for adults who do not presently have chronic diseases such as emphysema, cancer, diabetes, heart disease, uncontrolled high blood pressure, or major disability; and have never had a heart attack or stroke.

Exercise

Count the minutes per week you engage in conditioning exercise in which the heart rate (pulse) is raised to 120 beats per minute or more. Exercise sessions should last at least 15 minutes at the 120-beat level. Exercise that usually does not produce conditioning includes baseball, bowling, golf, volleyball and slow tennis. Conditioning exercise usually does come from brisk walking, basketball, fast tennis, squash, jogging, racquetball, aerobic dancing, and other continuous, vigorous activities.

If your minutes of conditioning per week total:

Less than 15	Score	0	—
15–29		+2	—
30–44		+6	—
45–74		+12	—
75–119		+16	—
120–179		+20	—
180 or more		+24	—

*Courtesy of Dr. Donald M. Vickery and the Center for Consumer Health Education.

Weight

Check your weight against the weight table. Pick your body frame size—small, medium or large—by comparing yourself to other people of your height with differing builds.

If you are overweight by:

0–5 pounds	Score	0	—
6–15		−2	—
16–25		−6	—
26–35		−10	—
36–45		−12	—
46 or more		−15	—

Diet

If you eat a balanced diet—one which includes vegetables, fruits, breads and cereals, protein foods, and dairy products:

Score +4 —

If you stay away from saturated fats and cholesterol, which are mostly found in animal fats:

Score +2 —

Smoking

If you smoke only a pipe:

Score −4 —

One cigar is equivalent to one cigarette. If the number of cigarettes you smoke each day is:

1–9	Score	−13	—
10–19		−15	—
20–29		−17	—
30–39		−20	—
40–49		−24	—
50 or more		−28	—

Extra points for women: If you smoke at all and take birth control pills:

Score −7 —

Alcohol

Figure the amount of alcoholic beverages you drink each day. One drink equals 1½ ounces of liquor or 8 ounces of beer or 6 ounces of wine. If your drinks are larger, multiply accordingly.

If your average daily number of drinks totals:

0	Score	0	—
1–2		+1	—
3–4		−4	—
5–6		−12	—
7–9		−20	—
10 or more		−30	—

Car Accidents

If the time you wear a seat belt is:

Less that 25%	Score	0	—
About 25%		+2	—
About 50%		+4	—
About 75%		+6	—
About 100%		+8	—

Stress

One way of measuring the stress in your life is to look at the changes in your life. The Holmes Scale is designed to do this. Add up the points for all the events on the scale that have happened to you in the past year, plus the points for all events you expect in the next year.

If your Holmes score is:

Less than 150	Score	0	—
150–250		−4	—
250–300		−7	—
More than 300		−10	—

Personal History

If you have been in close contact for a year or more with someone with tuberculosis:

Score −4 —

If you have had radiation (x-ray) treatment of tonsils, adenoids, acne or ringworm of the scalp:

Score −6 —

If you work with asbestos regularly and do not smoke:

Score −2

If you work with asbestos regularly and do smoke:

Score −10

If you work regularly with vinyl chloride:

Score −10

If you live or work in a city:

Score −6

If sexual activity has been frequent and with many different partners (for potential of venereal disease):

Score −1 —

For Women Only (Risk of uterine cancer):

If you began regular sexual activity before age 18:

Score −1 —

Family History

For each parent, brother, or sister who had a heart attack before age 40:

Score −4 —

For each grandparent, uncle, or aunt who had a heart attack before age 40:

Score −1 —

For each parent, brother, or sister with high blood pressure requiring treatment:

Score −2 —

For each grandparent, uncle, or aunt with high blood pressure requiring treatment:

Score −1 —

For each parent, brother, or sister who got diabetes before age 25:

Score −6 —

For each grandparent, uncle, or aunt who got diabetes before age 25.

Score −2 —

For each parent, brother, or sister who got diabetes after age 25:

Score −2 —

For each grandparent, uncle, or aunt who got diabetes after age 25:

Score −1 —

If you have a parent, grandparent, brother, sister, uncle, or aunt with glaucoma:

Score −2 —

If you have a parent, grandparent, brother, sister, uncle, or aunt with gout:

Score −1 —

For women, if your mother or a sister has had cancer of the breast:

Score −4 —

Medical Care

If you have had the following procedures regularly, score the points indicated:

Blood pressure check every year:

Score +4 —

Self-examination of breasts monthly plus examination by physician every year or two:

Score +2 —

Pap smear every year or two:

Score +2 —

Tuberculosis skin test every 5 to 10 years:

Score +1 —

Glaucoma test every 4 years after age 40:

Score +1 —

Test for hidden blood in stool every two years after age 40, every year after 50:

Score +1 —

Proctosigmoidoscopy once after age 50:

Score +1 —

Your LifeScore

Add or subtract all the points you scored.

Total points	____
Now Add	+200
Your LifeScore	____

A LifeScore of 200 is about "average." If your score was above 215 you have an excellent chance of enjoying better than average health. A score of 230 or more means the odds of a healthy, long life are overwhelmingly in your favor. A score below 185 means your probability of a healthy life is decreased. Below 170 consider that you are heading for serious illness.

HOLMES SCALE

(Check all times that happened to you in the last year or you expect in the next year.)

1. Death of spouse	100
2. Divorce	73
3. Marital separation	65
4. Jail term	63
5. Death of close family member	63
6. Personal injury or illness	53
7. Marriage	50
8. Fired at work	47
9. Marital reconciliation	45
10. Retirement	45
11. Change in health of family member	44
12. Pregnancy	40
13. Sex difficulties	39
14. Gain of new family member	39
15. Business readjustment	39
16. Change in financial state	38
17. Death of close friend	37
18. Change to different line of work	36
19. Change in number of arguments with spouse	35
20. Large mortgage	31
21. Foreclosure of mortgage or loan	30
22. Change in responsibilities at work	29
23. Son or daughter leaving home	29
24. Trouble with in-laws	29
25. Outstanding personal achievement	28
26. Spouse begin or stop work	26
27. Begin or end school	25
28. Change in living conditions	25
29. Change in personal habits	24
30. Trouble with boss	23
31. Change in work hours or conditions	20
32. Change in residence	20
33. Change in schools	20
34. Change in recreation	19
35. Change in church activities	19
36. Change in social activities	18
37. Small mortgage or loan	17
38. Change in sleeping habits	16
39. Change in number of family get-togethers	15
40. Change in eating habits	13
41. Vacation*	13
42. Christmas**	12
43. Minor violations of the law	11

* If any.

** Everyone should count this.

Source: Thomas H. Holmes, M.D. Social Readjustment.

Rating Scale reprinted with permission.

Another way of showing how decisions affect your health is to make a rough estimate of your life expectancy. The table below translates Life Score to estimated life expectancy.

Your health	Life score	Estimated life expectancy: Men	Estimated life expectancy: Women
Excellent	230+	81+	86+.
Good	211–229	74–80	79–85.
Average	191–210	67–73	72–78.
Below average	171–190	60–66	65–71.
Poor	170 or less	Less than 60	Less than 65.

DESIRABLE WEIGHTS

WOMEN OF AGES 25 AND OVER

Height: Feet	Height: Inches	Small frame	Medium frame	Large frame
4	8	92–98	96–107	104–119
4	9	94–101	98–101	106–122
4	10	96–104	101–113	109–125
4	11	99–107	104–116	112–128
5	0	102–110	107–119	115–131
5	1	105–113	110–122	118–134
5	2	108–116	113–126	121–138
5	3	111–119	116–130	125–142
5	4	114–123	120–135	129–146
5	5	118–127	124–139	133–150
5	6	122–131	128–143	137–154
5	7	126–135	132–147	141–158
5	8	130–140	136–151	145–163
5	9	134–144	140–155	149–168
5	10	138–148	144–159	153–173

MEN OF AGES 25 AND OVER

Height: Feet	Height: Inches	Small frame	Medium frame	Large frame
5	1	112–120	118–129	126–141
5	2	115–123	121–133	129–144
5	3	118–126	124–136	132–148
5	4	121–129	127–139	135–152
5	5	124–133	130–143	138–156
5	6	128–137	134–147	142–161
5	7	132–141	138–152	147–166
5	8	136, 145	142–156	151–170
5	9	140–150	146–160	155–174
5	10	144–154	150–165	153–179
5	11	148–158	154–170	164–184
6	0	152–162	158–175	168–189
6	1	156–167	162–180	173–194
6	2	160–171	167–185	178–199
6	3	164–175	172–190	182–204

Note: For women between 18 and 25, subtract 1 lb for each year under 25.

Source: Prepared by the Metropolitan Life Insurance Co. ●

TEACHER CENTERS BECOME A NEW FORCE DESERVING OF FULL FUNDING

● Mr. CHAFEE. Mr. President, declining enrollments at every level of education are causing more emphasis to be placed on retraining veteran teachers, instead of training new ones. This change in emphasis is affecting not only teachers, but the institutions preparing them, the children in their classrooms, and the way we think about teacher education.

With the number of bachelor's degrees from teachers' colleges shrinking from 194,210 to 129,130 in the past 7 years, it is reasonable to assume that the teachers in today's classrooms will be the same teachers we rely on to educate our young people in 10, 20, or even 30 years from now.

From this emerging demographic model of our school for the future, arise questions of how to update teacher skills, how to infuse new ideas into the classroom, how to keep teachers from "burning out" as a result of the mounting social pressures with which they must deal daily.

In addition, our institutions designed for teacher training also face important questions about change. Dwindling enrollments in elementary and secondary schools have resulted in declining registrations in bachelor's degree programs for potential teachers and, in turn, fewer jobs for professors in colleges of education.

In what form will teachers' colleges survive in the future, and what will be their relationship to veteran teachers?

Some of the answers to these questions are being found in teacher centers.

Teacher centers have their roots in Great Britain. Teachers realized a need to share and exchange ideas and discuss problems relevant to their situations. As a result, teacher centers were born. American educators were quick to recognize the possibilities of such an idea working here and soon teacher centers were a reality in the United States.

In 1978, Federal moneys were made available for the first time for teacher centers implementation and today there are centers in 44 States and territories. As a result of the Higher Education Act Amendments of 1980, soon there will be at least one teacher center in every State in the Nation.

A teacher center is as unique as the population that it serves. Centers feature a varied program and are often changing their offerings as the needs of students and teachers change. Most centers offer formal and informal course work, either through a university or a State department. Workshops, demonstrations, curriculum development, collections of teacher resources, libraries of professional materials, recycle areas, and production space are frequent components of a teacher center.

In fact, some centers are strictly outreach, moving into classrooms in an advisory capacity. This allows training to be tailored to the needs of one school or even one classroom.

Mr. President, I direct the attention of my colleagues to an article in Sunday's New York Times special section on Continuing Education entitled "Teacher Centers Are Becoming A New Force."

The article by Ms. Sally Reed explains the success that teacher centers are experiencing throughout the Nation.

One teacher is reported to comment:

I found myself trying things in the class I had never attempted before and when my students said "I never knew learning could be so much fun," you can imagine how high that made me feel. So the real beneficiaries are the children.

Another public school teacher, who after 20 years was reassigned from her kindergarten position to teach third grade as a result of declining enrollment, explains that she was "panicky" because she had never taught third grade reading or math. To update her skills, she turned to a federally financed teacher center where she received not only the training she needed, but also moral support.

These examples of how the centers can improve teaching skills, help make school more interesting to students, and provide psychological support to teachers are typical of important roles this program serves.

Yet, another interesting benefit to teacher centers is that they are changing teacher education. Teacher centers, the New York Times article explains, are providing schools of education new models for teacher education. Teachers, who have been on the firing line in the classroom, are calling for practical day-to-day advice, and coping skills that can complement their theoretical knowledge.

Mr. President, during Senate consideration of the Higher Education Amendments Act this past June, I made a statement supporting the teacher center program. At that time, I called for full funding of this unique educational tool.

Today, I reiterate that statement and urge my colleagues to join me in calling for full financing of teacher centers.

At a time when there persists a grow-

ing belief that our Nation's schools are in trouble, the teacher center program offers some common sense answers to some very difficult problems.

Teachers are the single most important factor in the quality of education. And, teachers need and deserve assistance.

The cost of the teacher center programs is moderately small, especially when one considers the importance of these centers. It is this program, which helps teachers to become better teachers in order to meet the needs of their students, that holds some of the greatest promise for improving the quality of American education.

Mr. President, I ask that the article by Ms. Sally Reed entitled "Teacher Centers Are Becoming A New Force" from the New York Times Continuing Education Supplement of Sunday, September 7, 1980, be printed in the RECORD.

The article follows:

TEACHER CENTERS ARE BECOMING A NEW FORCE

(By Sally Reed)

"Like most teachers, I was very skeptical about the teacher centers," said Marion Donovan, a sixth-grade teacher at Public School 261 in the Bronx. "But I found out that the teacher center was the greatest thing that happened to me. It was the first time in my teaching experience that I had a person I could go talk to, who could give me feedback on my ideas, to whom I could explain my problems."

Another public school teacher who after 20 years was reassigned from her kindergarten position to teach third grade in Brooklyn became panicky because she had never taught third-grade reading or math. To update her skills she turned not to her local college of education but to one of two federally financed sites in her area where she received not only the training she needed but also moral support.

Like these New York City teachers, thousands around the country are turning to teacher centers and other nontraditional forms of training that are helping to transform teacher education in the United States. In so doing they are forcing schools of education to change their programs and shifting money, power and resources away from the traditional institutions of higher education to the teachers themselves.

The Federal Government began financing teacher centers two years ago. There are now 89, serving 1,327 school districts, and 17 more are to be created next year. New York City has one federally financed center, with eight sites, and New York state has six other centers. Some states, such as Florida, and some local school districts, like Bay Shore, L.I., have organized their own teacher centers. And there are about 200 independent and private teacher centers around the country.

And corporations and even education magazines such as The Learning Institute, a division of Learning Magazine, provide courses throughout the country. But the teacher center is making the greatest impact.

Miss Donovan said: "I found myself trying things in the class I had never attempted before and when my students said, 'I never knew learning could be so much fun,' you can imagine how high that made me feel. So the real beneficiaries are the children."

Kathleen Devaney, director of the Teachers' Centers Exchange at the Far West Laboratory in San Francisco, said: "A teacher center is a place or program where teachers come to work on curriculum for their classes, to participate in inservice education which is designed to meet the needs they themselves have defined, which provides a context for sharing their successes and their problems and which stimulates and encourages professional growth over a long period of time."

What makes the Federal programs different from those offered at schools of education is that generally they are for experienced classroom teachers and, by Federal mandate governed by teachers and the affiliates of the National Education Association and American Federation of Teachers. They are in or near schools and open at times convenient for teachers.

Many courses are without credits, lasting one day or four months, depending on the need. The courses de-emphasize theory and methodology and concentrate on more practical concerns. The centers are frequently places where teachers can relax, find resources for their classes, construct materials, share ideas and discuss common problems.

In a typical federally financed center, the Government grants money to a local education agency, such as the local school district, or an intermediate agency, such as the Board of Cooperative Education Services. More than half the policy board governing a center must be made up of teachers. The remainder includes administrators, community representatives and institutions of higher education.

The New York City Teacher Center Consortium is made up of the teachers' union local, the United Federation of Teachers, the New York City Board of Education and cooperating colleges of education. A teacher specialist at each site directs activities, acts as an adviser to teachers in the classroom and conducts workshops on such topics as "Chisanbop" or finger calculations, and "How to Use the Newspaper."

Other courses might cover the New York City Writing Project, which trains teachers to improve their own writing to better understand the process students go through; teacher effectiveness and classroom handling, and Project Teacher, a course on classroom management and communications skills.

The courses are conducted by teachers, university professors and experts in the field who plan the courses with teachers to insure that they are practical and applicable to a classroom.

"The teacher centers are giving schools of education new models for teacher education," said Myrna Cooper, director of the consortium.

"Teacher centers represent a shift of authority and place or locus and manner of delivery away from the schools of education down to the local schools," said Bruce Gaarder, special assistant in the Teacher Center Program at the Federal Department of Education.

At the Pittsford, N.Y., Teacher Center, which is supported by the local school district, the director, Wanda Ward, said, "Schools of education have not provided enough hands-on practical experience in preparing teachers to keep up. Many offer the same courses they did 40 years ago."

"If one of the 400 teachers served at the Pittsford Center has a need we find 10 others who share that same need and offer a course. Teacher centers are pertinent to what teachers are doing now."

Michael Franzblau, managing director and president of Pinebrook Educational Inc., who has conducted seminars for teachers for five years, believes that teachers are learning to take their future in their own hands and said: "The teacher-center movement is potentially dynamite. It would not be surprising to see entire master's degree programs spring up at a teacher center in the future."

But others believe that these new programs put too much stress on the practical and sometimes lack quality and substance and emphasis on skills that will improve teaching. And there are others who do not believe the 30,000 schools of education are affected at all by the new teacher centers.

Colleges have responded to pressure from centers in a number of ways. Some universities had their own centers, such as the Teacher Center for the Gifted and Talented at Hunter College and the Learning Resource Center at Fordham University, long before the Federal teacher centers. Others have ignored the new programs.

Some places, such as Nazareth College in Rochester, plan to supplement teacher preservice training by making attendance at teacher-center programs part of degree requirements. Fairfield University in Connecticut initiated its own teacher center to offer alternative courses but kept it under the university's control. Indiana University sponsors "Weekenders," courses on a host of practical subjects such as how to use your local zoo as a resource. But the courses are conducted in various sections of the state, which takes the classes to where teachers are.

"Much of what is in a school of education has no practical application to teachers," said Madeline Hunter, nationally recognized teacher educator at the University of California at Los Angeles. "The schools of education say, 'That's OK. Our role is to provide a higher plane, ideas, theory and research.' On the other hand, teachers need a wedding of theory and practice. I wish the teacher centers and schools of education will be joined together so that teacher centers have their heads in the clouds more and schools of education their feet on the ground." ●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD the two notifications which have been received. The classified annex referred to in one of the covering letters is available to Senators in the office of the Foreign Relations Committee, room S-116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 8, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-96, concerning the Department of the Air Force's proposed Letter of Offer to Korea for defense articles and services estimated to cost $88.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-96]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser, Korea.

(ii) Total estimated value.

[In millions]

Major defense equipment*	$81.6
Other	6.4
Total	88.0

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Cooperative Logistics Supply Support Arrangement, requisition case (FMSO II) for follow-on spares and supplies for support of ROKAF aircraft of U.S. origin and other items of U.S. manufacture (e.g., F-4, F-5, A-37, T-33, T-37, and C-123 aircraft).

(iv) Military Department, Air Force (KBJ).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid, none.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold, none.

(vii) Section 28 report, case not included in section 28 report.

(viii) Date report delivered to Congress, September 8, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 8, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-97, and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter to Canada for defense articles and services estimated to cost $15.3 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-97]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Canada.

(ii) Total Estimated Value:

[In millions]

Major defense equipment*	$14.0
Other	1.3
Total	15.3

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered, eighty-six AIM-7 series missiles with spares and support.

(iv) Military Department, Navy (AGY).

(v) Sales commission, fee, etc. Paid, offered or agreed to be paid, none.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold, see annex under separate cover.

(vii) Section 28 report, included in report for quarter ending 30 June 1980.

(viii) Date report delivered to Congress: September 8, 1980.●

PROMULGATION OF DRAFT REGULATIONS GOVERNING LEGAL EXPENSE FUNDS

● Mr. HEFLIN. Mr. President, on August 25, 1980, as chairman of the Select Committee on Ethics, I introduced, for myself, Vice Chairman WALLOP, the members of the committee, and the majority and minority leaders, Senate Resolution 508. That resolution, agreed to by the Senate on September 5, created a new standing rule of the Senate authorizing Members, officers, and employees of the Senate to receive contributions to defray legal expenses incurred in relation to their service in or to the Senate, subject to regulations to be promulgated by the select committee.

Pursuant thereto, the committee publishes the following draft regulations, on which we invite public comment. Comments will be received for a period of 10 days. All comments must be received by 5 p.m., on September 22, 1980. We ask that comments be in writing, and that they be directed to the staff director, Select Committee on Ethics, U.S. Senate, 113 Carroll Arms, Washington, D.C. 20510.

A brief explanation by the committee of the need for the rule change accompanies these regulations.

The material follows:

COMMITTEE EXPLANATION TO ACCOMPANY REGULATIONS PROMULGATED PURSUANT TO SENATE RESOLUTION 508

In response to several inquiries, and in general recognition of the need to clarify an area of uncertainty in the provisions of the Senate Code of Omcial Conduct, the Select Committee on Ethics proposed a change in the Standing Rules of the Senate to expressly permit the establishment by Members, officers, or employees of the United States Senate of funds to defray legal expenses which arise in relation to their service in or to the Senate.

We did so in recognition that Members, officers, and employees of the Senate may find it necessary to defend themselves against charges (or, in a rare case, to initiate a civil lawsuit) in proceedings which would not have arisen but for their positions, or by virtue of their service in or to the United States Senate. The expenses of such investigative civil, criminal, or other legal proceedings could be substantial, thereby necessitating that Members, officers, and employees avail themselves of contributions from friends, supporters, constituents, and others in order to defray their legal expenses. In analyzing pertinent provisions of the Standing Rules of the Senate, the Committee reached the conclusion that certain provisions of the Rules may place Members, officers, and employees at a disadvantage in this regard relative to their fellow citizens, should the latter choose to raise funds to defray legal expenses which they incur. Rule 35, for example, places dollar limitations on gifts which may be received by Members, officers, and employees, and on the circumstances under which such gifts may be received. In addition, Rule 38 prohibits, under certain circumstances, the establishment by Members of "unofficial office accounts" for the purpose of defraying allowable but otherwise unreimbursed expenses incurred in connection with official duties.

The Committee wanted Members, officers, and employees of the Senate to be on equal footing with the public generally regarding the raising of funds to defray legal expenses. To eliminate any doubt as to the permissibility under Senate Rules of Members, officers, and employees of the Senate (or their spouses or dependents) accepting funds to defray investigative, civil, criminal, or other legal expenses, the Senate, on September 4, 1980, agreed to S. Res. 508 as Rule 43 of the Standing Rules of the Senate. Rule 43 provides:

"Nothing in the provisions of the Standing Rules of the Senate shall be construed to limit contributions to defray investigative, civil, criminal, or other legal expenses of Members, officers, or employees of the Senate relating to their service in the United States Senate, subject to limitations, regulations, procedures and reporting requirements as shall be promulgated by the Select Committee on Ethics. Nothing in the provisions of the Standing Rules of the Senate shall be construed to limit contributions to defray the legal expenses of the spouses or dependents of Members, officers, or employees of the Senate."

The following draft regulations are promulgated by the Select Committee on Ethics pursuant to S. Res. 508. Upon their adoption, they would be applicable to Members, officers, and employees of the United States Senate during the time of their service in or to the Senate. These regulations governing legal expense funds would not apply to the spouse or dependents of any Member, officer, or employee of the Senate; i.e., there are no limitations on, or regulations prohibiting, the solicitation, receipt, or disbursement of contributions by spouses or dependents from funds established to defray legal expenses incurred on their own behalf and for their own benefit.

REGULATIONS GOVERNING FUNDS TO DEFRAY LEGAL EXPENSES INCURRED BY MEMBERS, OFFICERS, AND EMPLOYEES OF THE U.S. SENATE

CHAPTER ONE—PURPOSES, USES, AND ESTABLISHMENT OF LEGAL EXPENSE FUNDS

A Member, officer, or employee of the Senate may establish a fund which shall be used to defray legal expenses incurred by the Member, officer, or employee in investigative, civil, criminal, or other legal proceedings relating to or by virtue of his or her service in or to the United States Senate.

A. Who may establish a legal expense fund?

Any Member, officer, or employee of the Senate may establish such a fund.

B. Circumstances under which a legal expense fund may be established

A legal expense fund may be established in circumstances in which a Member, officer, or employee incurs or reasonably expects to incur legal expenses in the course of any investigative, civil, criminal, or other legal proceedings relating to or by virtue of his or her service in or to the Senate.

Funds may be raised to defray the costs of legal proceedings of any nature—including, but not limited to, a Congressional inquiry or investigation; a criminal investigation or proceeding; a civil lawsuit; civil or criminal appeals; and post-appeal proceedings—provided that such proceedings relate to or arise by virtue of the service of a Member, officer, or employee in or to the Senate.

Funds to defray legal expenses may not be established in cases in which the legal expenses are for purely personal matters, to include—but not be limited to—such matters as tax planning, personal injury litigation, protection of property rights, divorces, or the probate of an estate. A fund may be established, however, for a Member, officer, or employee to defray legal expenses incurred, either as plaintiff or defendant, in a defamation suit, if it meets the criteria set forth above.

It should be noted that there may be institutional issues of interest to the Senate involved in certain of these proceedings. Nothing in these regulations, however, is intended to alter existing provisions of statutes, case law, or the Standing Rules and Orders of the Senate, which govern the standing of Members or the Senate itself to become involved in legal proceedings, included but not limited to, their standing to file suit, assert defenses, or raise issues involving institutional interests of the Senate which may require a Senate Resolution, or in which the office of Senate Legal Counsel may have an interest.

C. Expenses which may be defrayed by a legal expense fund

The proceeds of a legal expense fund may be used to defray all expenses reasonably related to the purposes for which the fund was established, including but not limited to, all expenses reasonably related to legal proceedings as contemplated in subparagraph (B) above; all reasonably incurred costs of administering the fund, including but not limited to, costs incident to the solicitation of funds; and for the discharge of federal and state tax liabilities, should any be deemed to exist, which are incurred as a result of the creation, operation, or administration of the fund.

D. How a legal expense fund is established

A legal expense fund is established, and contributions may be solicited and received and disbursements made, upon the filing with the Committee by the Member, officer, or employee desiring to establish such a fund, of a written statement and two sworn affidavits. The written statement shall contain the following:

(1) a factual statement of the nature of the legal proceeding (or proceedings) which necessitate the establishment of such a fund; and

(2) a designation by the Member, officer, or employee, as required by Chapter Two hereof, of an administrator of the fund as his or her agent.

Sworn affidavits must be filed by the Member, officer, or employee seeking to establish the fund, and by the administrator thereof.

The first affidavit must contain a sworn statement that the Member, officer, or employee understands he or she will be bound by the provisions of these regulations and the Rule pursuant to which they are promulgated, and that although an administrator of the fund has been designated, the Member, officer, or employee seeking to establish the fund bears ultimate responsibility, as principal, for the proper administration of the fund. . .

The affidavit of the administrator must contain a sworn statement that he or she has read and understands the provisions of the regulations governing establishment, administration, and termination of legal expense funds, and that he or she consents hereunder to administer such a fund in conformity with the Standing Rules of the Senate.

In the event a legal instrument has been executed incident to the creation of such a fund (for example, an instrument setting up a fund in the form of a trust), a copy of the instrument must accompany the affidavit. If a legal instrument is executed subsequent to the filing establishing a fund, a copy thereof shall be forwarded to the Committee.

Upon the filing of a statement and sworn affidavits by the party seeking to establish a legal expense fund, the Committee shall review the statement, affidavits, and any supporting documents or instruments filed therewith to determine whether the proposal conforms with the requirements established by these regulations. If defects are ascertained, the Committee will bring them to the attention of the Member, officer, or employee who has established the fund and his or her administrator, which parties will then have thirty days within which to take necessary corrective action.

The Committee shall review the quarterly reports required under Chapter Four hereof, and shall monitor the activities of the fund to insure continued compliance with the provisions contained herein. The Committee may, for cause, direct that the fund be terminated involuntarily, subject to the provisions of Chapters Five and Six hereof.

CHAPTER TWO—ADMINISTRATION OF A LEGAL EXPENSE FUND

Each Member, officer, or employee seeking to establish a legal expense fund shall designate by name an administrator of the fund.

A. Who may serve as administrator

It is preferable, though not a condition precedent to the establishment of a legal expense fund, that the administrator be an attorney, an accountant, or a financial institution. The administrator may not be a Member, officer, or employee of the Senate; a member of the immediate family of the individual on whose behalf the fund is established; counsel for the beneficiary in the legal proceeding or proceedings necessitating creation of the fund; or a member, partner, associate, or employee of the firm employing counsel for the beneficiary in the proceeding or proceedings necessitating creation of the fund.

In addition, no officer or employee of the Senate may solicit, receive, or handle any contributions to a legal expense fund established pursuant to these regulations. This prohibition does not apply, however, to two assistants to a Senator who have been designated as "Political Fund Designees" pursuant to the provisions of Rule 41 of the Standing Rules of the Senate.

B. Duties of the administrator

The administrator of the fund shall serve as agent for the beneficiary Member, officer, or employee of the Senate, although the beneficiary, being subject to the Rules and regulations of the Senate, bears ultimate responsibility for administration of the fund.

The administrator shall be responsible for the receipt of contributions to the fund; authorization of expenditures and disbursements from the fund; filing reports as required by Chapter Four hereof; and the performance of other tasks incident to the administration of the fund.

As required by paragraph D(4) of Chapter One hereof, each administrator shall consent in writing to administer the fund in conformity with the Standing Rules of the Senate.

CHAPTER THREE—CONTRIBUTIONS

A. Who may contribute

Any individual, corporation, association, partnership, or other legal entity may contribute to a legal expense fund established pursuant to these regulations, except for the following:

1. any officer or employee of the United States Senate, or the spouse or dependent thereof, other than the officer or employee establishing the fund (or his or her spouse or dependent);

2. any Member's principal campaign committee;

3. any foreign national (as defined in the Federal Election Campaign Act, 2 U.S.C. Section 441(e)).

B. How much may be contributed

Contributions from any one source to a legal expense fund, when aggregated, shall not exceed $2,500 per fiscal year of the fund.

C. Definition of first fiscal year of the fund

For the purposes of these regulations, the first fiscal year of the fund shall be deemed to have started on the first day of the calendar quarter following the establishment of the fund. Any contributions received prior to that date shall be deemed to have been received in the first fiscal year of the fund.

D. Segregation of funds

All contributions to a legal expense fund must be kept in a separate bank account established therefor. They shall be segregated from, and may not be commingled with, the personal, political, or official funds of the Member, officers, or employee establishing the fund, or the funds of any other individual or legal entity.

CHAPTER FOUR—DISCLOSURE AND REPORTING REQUIREMENTS

A. When reports must be filed

A report of contributions received and expenditures made during each quarter, as described in paragraph (B) below, must be submitted to the Office of Public Records of the Secretary of the Senate and the Senate Select Committee on Ethics no later than 15 days following the last day of every calendar year (March 31, June 30, September 30, December 31) for the duration of the legal expense fund.

A final report upon termination of the fund shall be submitted as provided by Chapter Six hereof.

B. What must be reported

All reports filed pursuant to this Chapter shall include the name and address of each contributor whose contributions aggregate $100 or more, and the amount of each contribution made by such contributor during the relevant fiscal year.

All reports shall also include the name and address of each individual or other entity to which an expenditure from the fund has been made, along with a brief description of the nature and the amount of each expenditure.

C. Public availability of reports

All reports filed pursuant to this Chapter shall be available for public inspection upon filing with the Office of Public Records of the Secretary of the Senate.

CHAPTER FIVE—TERMINATION

A. When shall a legal expense fund be terminated

A legal expense fund established pursuant to these regulations may be terminated by any one of three means:

1. Voluntary termination.—the Member, officer, or employee who established the fund may direct, for whatever reason, that the fund be terminated;

2. Automatic termination.—by its terms, no later than six months following the completion of the legal proceedings for which the fund was created, unless, upon application and for good cause shown, the Committee extends the life of the fund, in which event the fund would terminate upon the expiration of all extensions; or

3. Involuntary termination.—the Committee may direct the involuntary termination of the fund pursuant to the provisions of Chapter Six hereof.

For purposes of granting extensions, the Committee would consider as "good cause" the existence of deficits in the fund, i.e., outstanding legal expenses which exceed the balance remaining in the fund. In such a case, the Committee may grant an extension (or extensions) for a reasonable time thereafter, during which time funds to make up the deficit may be solicited and received.

Upon termination of the fund, no further contributions may be accepted, nor may additional expenditures be made.

B. Disposition of unexpended funds upon termination

Funds remaining upon the termination of the fund, within thirty days thereafter, shall be either donated and distributed to one or more organizations described in Section 501 (c)(3) of the Internal Revenue Code of 1954 and made exempt from taxation under section 501(a) thereof, or returned to contributors to the fund on a pro-rata basis.

C. Final report

Within sixty days of the termination of the fund, a final report, disclosing the totals of all contributions and expenditures as described in Chapter Four hereof, and of all distributions as described in paragraph (B) of this Chapter, must be rendered and filed with the Committee and the Office of Public Records of the Secretary of the Senate. Upon filing, the report shall be available for public inspection at the Office of Public Records.

CHAPTER SIX—ENFORCEMENT

A. Audits

The Committee shall monitor the activities of any legal expense fund established pursuant to these regulations, and may direct that an audit be made of such fund when, in the judgment of the Committee, there is reason to believe that the fund is being improperly administered, or for other good cause.

B. Who performs the audit

Upon a determination by the Committee that an audit of a fund should be made, the Committee shall select a qualified auditor to examine the records of such fund. The expense of an audit performed at the direction of the Committee shall be borne by the Committee.

C. Involuntary termination

Upon a finding by the Committee that the fund is being improperly administered, or for other good cause, the Committee may direct that the fund be terminated and that the funds be distributed in accordance with provisions of Chapter Five hereof.

CHAPTER SEVEN—RETROACTIVITY

Nothing in these regulations shall preclude a Member, officer, or employee of the Senate who remains liable for expenses incurred *prior* to the enactment of Senate Resolution 508 (96th Congress, 2nd Session) from establishing a legal expense fund if otherwise consistent with these regulations.

CHAPTER EIGHT—INTERPRETIVE RULINGS

Senate Resolution 338, as amended, authorizes the Committee, in its discretion, to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Committee may issue such rulings in the interpretation and clarification of Senate Resolution 508, and these regulations pursuant thereto, in accordance with the procedures set forth in Rule 12 of the Rules of Procedure of the Committee.●

REBUILDING A SOCIETY THAT WORKS: AN AGENDA FOR AMERICA

● Mr. STEVENSON. Mr. President, on September 8, Senator PERCY inserted into the RECORD the Anderson platform: "The Program of the Anderson/Lucey National Unity Campaign." A second document released by the Anderson campaign—Rebuilding A Society That Works: An Agenda for America—highlights many of the campaign's major themes and proposals.

Mr. President, party platforms are little noted, nor long remembered. The Anderson agenda reflects his beliefs. The ideas have been carefully developed, and reflect a conscientious effort to elevate the political debate and focus our attention on the complex choices facing the Nation. It deserves the most respectful attention and so, Mr. President, I ask that the statement entiled "Rebuilding A Society That Works: An Agenda for America" be printed in the RECORD.

The statement follows:

REBUILDING A SOCIETY THAT WORKS: AN AGENDA FOR AMERICA

WASHINGTON, D.C.,
August 30, 1980.

To the American people:

In the past few weeks, the traditional political parties have released their traditional platforms. Now we are releasing ours—an untraditional program for America that responds to new challenges in new ways.

Our program is presented in two related documents. The first, "Rebuilding a Society that Works; An Agenda for America" highlights many of the major themes and proposals that our National Unity Campaign will offer to the nation. It is relatively short and deliberately selective. It states our goals and sketches in general terms how we intend to promote them. It is intended as a synthesis and an introduction to our program.

The second document, "The Program of the Anderson/Lucey National Unity Campaign," presents the details of our legislative and executive program in every major area of concern to this nation. It is divided into three sections. First, the Introduction sets forth the public philosophy that guides and unifies our program. The second, the body of the document, details our program in the general areas of economic policy, foreign and defense policy, social policy, and civil and human rights. The final section deals with the practical problems of governance. It substantiates our conviction that an Independent administration can effectively govern this nation.

It should be clear that we do not desire to implement every proposal in this program in the first year of an Anderson Administration. The full fiscal impacts of these initiatives are to be spread over the next four years. It would be fiscally irresponsible to do otherwise.

The program does not contain any massive new expenditures on the scale of a $50 billion land-based missile or a $25 billion-a-year comprehensive national health insurance scheme. Nor does the program call for large personal income tax cuts in advance of a balanced budget.

Moreover, we anticipate that the initiatives outlined in this program are small enough in their revenue impacts to be accommodated by the normal real dollar growth in revenues associated with an expanding economy. We will, within the next three weeks, issue a budgetary impact statement for our program.

How does our program differ from traditional party platforms?

First, it is specific. We have not been satisfied to express a vague commitment to abstract goals. We have spelled out our intentions; in many instances we have proposed specific legislation.

Second, it is directed toward problem-solving. We believe that government must be bold and active, but that it should not act for the sake of acting. We firmly believe in the old maxim, "If it isn't broken, don't fix it." In each section of our program, therefore, we begin by stating the real, pressing, unavoidable problems we face. And everything we propose is intended to advance this nation towards solving these problems.

Third, our program is coherent. We believe that government fails when it loses its sense of overall purpose and direction. We believe that the public interest is neglected when government disintegrates into a grab-bag of uncoordinated, contradictory efforts to serve special interests.

Our proposals are consistent with the public philosophy which guides our unity campaign. Its principles are both simple and profound. We believe America is in peril because our tradition of self-government has been eroded. We believe we must prepare for the future; that we must be cognizant of its limits, and aggressively pursue its opportunities. We believe we must rebuild America, and that the government must act as a catalyst to encourage every American to participate in the task of rebuilding. We believe that the rebuilding of America will not have succeeded unless we have persevered in our efforts to establish justice for all Americans.

Fourth, our program is realistic. We know that our resources are limited and that they must be applied to our most basic and pressing needs. We have not promised more than our federal budget and our national economy can bear. And we have not avoided the hard choices. As we constructed this program, we thought in terms of what our responsibilities would be if we were governing this nation. It is a strategy of governance, not a game plan for winning the election.

Fifth, our program is a personal commitment. Harry Truman was right when he said that a platform ought to be a contract with the American people. But too often party platforms are ignored by the candidates, after the election and even during the campaign. This year, for example, the Democratic National Convention repudiated much of the economic program of its own party's nominee, and he, in turn, rejected their decisions. Alternatively, the Republican Vice Presidential candidate ran virtually his whole primary campaign against proposals appearing in the platform upon which he is now running. There is no ambiguity about our commitment to our platform. It's ours, we mean every word of it, and we'll stand by it, during and after the national campaign.

Although our program is a personal commitment, it is not the work of our hands alone. We have consulted with business executives and assembly-line workers and farmers and with citizens concerned about our nation's future. We have analyzed and debated every proposal, and we have drafted and redrafted them until we were fully satisfied. We are proud of this program and we will fight hard for it.

We urge you to read and consider the program, and to compare it with those of the traditional parties. At this time of national testing, we must move beyond the politics of empty tactics and superficial images. We must face and debate the real issues. You may disagree with what we say, but we want you to know what we believe and what we will do if elected. You have a right to know what we stand for and what we will try to get enacted into legislation. The program will also help you identify the main issues we must debate and the problems we must solve. Our country needs the energy, the involvement, the concern of each one of you.

As the nineteen eighties begin, where does America stand?

The United States finds itself knee-deep in paradox. Its economy is the most powerful productive system on earth. Its natural resources are still relatively abundant. Its citizens are the most educated and capable work force in history. Its open and mobile society is a magnet for oppressed people throughout the world. Its constitution is a proven design for the governance of a pluralistic community. Yet we are stumbling—uncertain of our purpose, unsure of our strengths, preoccupied with our differences.

Our weaknesses, some real, some imagined, have begun to sap our confidence in ourselves and our capacities. A lack of foresight

and an excess of evasion have compounded problems we should long since have addressed. Things have gotten out of control.

Over a period of years our economy has not kept pace with the rising demands upon it or with mounting competition from abroad.

Our dependence on foreign oil has become a crippling vulnerability, shifting hundreds of billions of dollars abroad, stimulating inflation at home, and hamstringing our foreign policy.

Our national security has eroded in the face of a relentless military buildup by the Soviet Union and the emergence of threats to American interests less susceptible to traditional military responses.

Our standing in the world has declined, among allies whose cooperation we need for an effective international policy, as well as among other nations whose good will and trade we value and whose development we wish to assist.

Our society has suffered shocks to its public and private institutions, to its quality of life, and to that sense of community which can flow only from the pursuit of common purposes.

Our federal system is buffeted by conflicting claims and swelling responsibilities of national, state and local authorities, and relations between the legislative and executive branches careen periodically toward calamity.

If America is to cope with these challenges, we must marshal our human and material resources far better than we have in recent years. In 1980 the over-riding issues are how we can do so and who is best prepared to lead the effort. No President can solve all the nation's problems, but the nation cannot manage them successfully without effective presidential leadership. Throughout the land there are grave doubts that either President Carter or Governor Reagan can devise a suitable program and provide the leadership to implement it.

Our National Unity Campaign speaks both to Mr. Carter and to Mr. Reagan.

To Mr. Carter, it says that a President must not only declare worthy goals; he must recognize the conflicts among competing goals and set a consistent course to prevent contradictions from rendering us impotent. The sad verdict is that Mr. Carter has:

Failed to rally the nation, the Congress, and our allies to a common standard;

Failed to fulfill his campaign commitments of 1976;

Failed to provide coherent and credible leadership.

His own book of promises now stands as an indictment of his tenure. On the record no fair observer can conclude that Mr. Carter deserves another term—or that the nation should have to endure one.

To Mr. Reagan, our campaign says that America will not trade inept management of complexity for doctrinaire assertions of simplicity. However, frustrated Americans may be, they are too sensible to believe that relief from present difficulties can come without sacrifice. They recognize the implausibility of Mr. Reagan's claim that we can

Cut taxes massively,

And increase defense spending enormously,

And balance the budget quickly,

And cure inflation permanently.

They question whether the necessity to strengthen our defenses justifies abandoning diplomatic efforts to reduce the threats to our security. On the record, no one can be confident that Mr. Reagan offers the balanced judgment and vision which America has a right to expect of its president.

Our National Unity Campaign responds to these concerns. We espouse a patriotism that is larger than partisanship. We seek to energize the political process by rejecting the Hobson's choice presented by the two major parties in 1980. We plan to tap the best ideas and talents of both parties, and to advance initiatives of our own to deal with the novel problems America faces in the late twentieth century.

Above all, we hope to define the national interest in ways that enlist broad support among Americans. As a nation, we need to rise above the chronic political combat among special interests whose claims, though often worthy, must be subordinated to the common good. To strike such balances is the prime responsibility of the Presidency. To suggest the priorities that should govern is the central objective of our campaign.

The Anderson-Lucey campaign is based on a public philosophy that neither repeats nor repeals the past, but builds upon it. Its principles are clear and simple. America is in peril because her foundations have been neglected in the past generation. We must plan for the future, we must save for the future, and we must invest in it. We must rebuild America. For the most part, government cannot do this directly. Rather, it must act boldly to create a climate and a framework of incentives that encourage individuals and businesses to get to work at the task of rebuilding.

Each of us must share these burdens, lest they become unbearable for all. And we must apportion the sacrifices necesary for national recovery with fair regard for the ability of individuals and groups to bear them. The rebuilding of America cannot succeed unless we are united; but we cannot remain united unless we persevere in establishing justice for all Americans.

More than ever before in peacetime, America must identify the esential tasks before it and focus its energies on them. What are these tasks? We perceive three of them, around which many important objectives revolve:

(1) To restore economic vitality

(2) To meet human needs and secure social justice

(3) To maintain national security and international cooperation.

I. Economic vitality:

To restore the vitality of the American economy will be neither simple nor easy; we deceive ourselves to think otherwise.

In launching the effort, the last thing America needs is a political campaign which exaggerates the differences among us. Republican and Democratic rhetoric leads in that direction. We should reject it and build upon the common ground that unites our citizens.

We perceive a latent consensus among the American people.

Americans agree that inflation must be curbed or the United States will be permanently weakened. In recent years, even when the overall inflation rate (as measured by the Consumer Price Index) has declined, the underlying inflation built into the costs of goods and services has remained high. For example, when the CPI rate fell below 6 percent in 1975–76, the underlying rate remained at nearly 8 percent. This almost guarantees that each recovery will spawn a new surge in prices, as producers try to meet demand while recovering their increased costs of labor and capital. All Americans are fatigued by a tail-chasing game that has gone on too long.

Americans agree that, to overcome this chronic threat to economic stability, we must improve productivity through investment in new plant, equipment and infrastructure. The massive investment required dictates a high priority to increasing the rate of capital formation through reversing the drastic drop in savings, increasing the capacity and incentives for business to invest, and restraining the claims of the public sector.

Americans agree that the principal avenue to solving the grim problem of unemployment is investment to create and sustain jobs, either by launching new industries or by revitalizing old ones. Rising competition from other countries makes this objective at once more difficult and more urgent. The only real protection against such foreign competition lies in strengthening our own ability to compete effectively. Yet there is a proper demand that government use its influence to promote fair international competition and that, when necessary, transitional arrangements permit American firms and workers to adjust to changing markets.

Americans agree that expanding jobs in the private sector is preferable to a bloated government payroll. The virtues of free enterprise still prevail and most Americans do not wish government to collect and allocate an ever-growing share of the nation's wealth. Yet, while restraining the growth of government spending, there is a clear public obligation to cushion the burdens a turbulent economy imposes on those least able to bear them—the jobless, the elderly, the poor. In steering the nation onto a path of noninflationary growth, government must improve its performance in helping to train and place the unemployed.

Americans agree that the global energy crisis threatens to undermine our best efforts to restore a sound economy. Our country's dependence on foreign oil, though less than that of our allies, compounds inflationary pressures and poses an obvious peril to our security. Yet other nations have shown the way to prosperous and less inflationary economies with much lower levels of per capita energy consumption. To achieve such growth will require us to wring energy waste out of the economy and to bring new energy sources into service.

In order to meet these objectives, we need three kinds of measures.

A. First, the Anderson-Lucey Administration will take immediate action on inflation and unemployment to counteract the economic dislocation and human distress produced by the Carter economic policies of the past four years.

INFLATION

Although inflation, as measured by the consumer price index, has receded from the 18 percent rate recorded in the first quarter of 1980, the underlying inflation rate remains at historically high levels. A central focus of national economic policy must be a progressive, year-by-year reduction in the inflation rate until reasonable price stability is achieved.

While fiscal and monetary restraint is essential to the achievement of price stability, we must also endeavor to reach a broader national accord on appropriate wage and price increases. We will construct a Wage-Price Incentives Program. Our administration will invite labor and management leaders to agree upon fair and realistic guidelines and to determine appropriate tax-based incentives to encourage compliance with those standards. By discouraging inflationary expectations, this wage-price incentives policy will be a key weapon in the campaign for stable economic growth.

In the absence of sharp and prolonged increases in the rate of inflation, we will oppose mandatory wage and price standards. Experience has demonstrated that such controls are difficult to administer and result in misallocation of economic resources.

FULL EMPLOYMENT

A sound economic policy must incorporate a commitment to full employment. We reaffirm the goals of the Humphrey-Hawkins Act, and regret the President's failure to consult with Congress before altering the timetables set forth in that Act. The establishment and attainment of national economic ob'ectives are the joint responsibility of the President and Congress.

While America's full employment policy must focus on the creation and preservation of productive, private-sector jobs, there will be a continuing role for complementary federal programs to deal with chronic employment problems.

(1) We propose pilot projects to integrate state unemployment benefits with retraining benefits for those with long records of unemployment.

(2) To increase the effectiveness of the employment tax credit for small businesses, we will study the advisability of making the tax credit refundable.

(3) To deal with the critical problem of youth unemployment, particularly among minorities, we propose:

Enactment of the proposed Youth Act of 1980 to provide over $2 billion a year for job-training and state and local educational programs designed to improve the employability of disadvantaged and out-of-school youth;

Increased funding for youth career intern programs;

A youth opportunity wage incentive that would exempt eligible youths and employers from social security taxes during the first months of employment; and

A Youth Energy Projects Act that would provide up to $1 billion a year for multi-year energy and conservation projects, including mass transit, offering career opportunities for economically disadvantaged youth.

We will work with educators and employers to smooth the transition from school to job.

B. Second, the Anderson-Lucey Administration will undertake basic structural initiatives to create conditions for long-term economic growth with lower inflation and higher purchasing power.

(1) We will set a new balance between fiscal and monetary policy to dampen inflation, lower interest rates, and foster a predictable environment for long-range planning by investors and government alike.

While declining tax revenues and increasing transfer payments can be expected to unbalance the budget during times of economic difficulty, the budget should move toward balance or surplus during expansionary periods.

Once balance in the federal budget has been achieved, the Anderson-Lucey Administration will propose to index personal income tax brackets to prevent inflation from pushing taxpayers into higher tax brackets. As further economies are made in federal spending, we will propose tax cuts that go beyond the tax relief afforded by indexing.

We will oppose any new Constitutional limitation on the spending and taxing powers of Congress. Reforms limiting government spending to an appropriate percentage of GNP should be enacted as amendments to the Congressional Budget Act.

In the interest of more effective fiscal management, we will propose administrative procedures, subject to legislative veto, to meet changing economic conditions by (a) adjusting tax rates upward or downward by 10 percent or less and (b) accelerating or slowing certain federal expenditures. Timely and orderly action on these fronts can diminish the wasteful scramble of federal agencies to spend remaining funds in the closing days of each fiscal year. Such flexibility can also relieve the strain on monetary policy by permitting prompt fiscal intervention to counter adverse trends.

(2) We will use the tax code to encourage greater personal savings and capital formation.

We must make it both possible and desirable for the average American to save again. Lowering the inflation rate will be a powerful stimulus to savings. Phasing out interest rate restrictions on savings accounts, recently approved by Congress, will also be an important stimulant. We should remove other disincentives to savings and investment from the tax code. We propose:

Expanding gradually the interest and dividend income exclusion to $750 for individuals, $1,500 for married couples filing jointly;

Liberalizing eligibility requirements and income limitations for Individual Retirement Accounts, particularly for homemakers; and

Instituting a further review of capital gains taxes.

The current state of the economy and of our most basic industries, including automobiles and steel, requires adoption of added capital cost recovery measures to ensure that troubled companies and industries will not suffer a competitive tax disadvantage in undertaking capital expansion and improvements.

To enable less profitable companies to modernize their plants and equipment, we will propose to make the investment tax credit refundable. To ensure adequate congressional review of this measure, we propose a three-year limit on the refundability provisions, subject to extension.

(3) We will use tax incentives and direct federal assistance to stimulate research and development and to spur productivity.

To revive our flagging R & D effort, we propose a number of initiatives and improvements. An Anderson-Lucey Administration will seek to:

Reverse the decline in the real level of federal funding for research and development;

Provide a 10 percent investment tax credit for qualifying research and development expenditures;

Establish a federal program to re-equip the laboratories of universities, non-profit research centers, and government facilities;

Redefine the working relationship between government and universities so as to avoid substituting paperwork for creativity;

Provide fixed objectives and more predictable project funding for scientists and engineers on the cutting edge of technology;

Establish regional technology centers under the aegis of the National Science Foundation and NASA to lower the costs of selling and licensing new technologies to private business;

Establish a more uniform patent policy for all federal agencies;

Require federal agencies to determine expeditiously whether they will retain patents on inventions developed by private contractors with federal monies;

Reorganize and increase the funding of the Patent and Trademark Office to improve its operations;

Explore the possibility of a separate patent court to reduce the time needed to establish a valid patent.

(4) We will prune regulations that waste capital and do not serve valid regulatory objectives.

We will seek legislation that would:

Set an eight-year timetable for thorough congressional review of regulatory agencies;

Require the President to submit in the first session of each new Congress a regulatory reform plan for each of the regulatory agencies scheduled for review;

Require Congress to act on the regulatory reform plan by August 1st of the second session;

Assure congressional action by denying the affected agency power to promulgate new rules and regulations until Congress has acted.

An Anderson-Lucey Administration will be firmly committed to the growth and maintenance of competition in our modern economy. We support recent efforts toward deregulation of the transportation industry, and we will support thorough review of antitrust and other federal laws affecting competition.

(5) We will use a tough, conservation-oriented energy program to curtail the rapid outflow of American capital to pay for imported oil.

We will expand production of energy and induce conservation of energy through policies that are equitable, economical, environmentally and technologically sound. We would couple decontrol of oil and gas prices with an excise tax of 50 cents per gallon on gasoline, the full revenues of that tax being returned to individuals through reductions in payroll taxes and increased Social Security benefits. Gasoline prices will still remain well below those of other industrial nations. We will employ tax credits and other incentives to promote substitution of non-petroleum energy for oil, adoption of energy-efficient systems in industry and elsewhere, improvements in transportation and energy production technologies, and development of less wasteful structures for home and commerce.

We will explore a wide range of energy supply options—from mini-hydropower to renewable resources to fusion—to determine which are appropriate medium-term investments and which should be deferred or abandoned. We will emphasize environmental and safety controls as we explore wider use of coal through such techniques as liquefaction, gasification and fluidized bed combustion. We will propose financial concessions to construct rail, port and slurry pipeline facilities for expanded domestic and foreign trade in coal.

In considering policy for nuclear power, we will act on the recommendations of the Rogovin and Kemeny Commissions to make certain that installation of any future plants is preceded by demonstration of satisfactory standards and action on the nuclear waste question. We will assess nuclear power in light of its dependence on public subsidy and of the possibility that slower growth in demand may enable us to phase in other energy supplies in preference to nuclear systems.

We will accelerate the use of solar energy, particularly by using federal procurement to encourage uniform performance standards and economies of scale. We will devise suitable loan and credit mechanisms to stimulate residential and other applications. We will actively investigate the potential for renewable energy sources.

C. Third, the Anderson-Lucey Administration will adopt a new industrial policy, specifically targeted to encourage the reindustrialization of the U.S. economy.

(1) We propose an industrial policy sensitive to the special needs of our basic industries:

An Industrial Development Administration authorized to speed development of new technologies and cost-saving techniques by providing loan guarantees to industry;

An Industrial Development Council, chaired by the President, will engage government, labor and management in a continuing review of government policies affecting industrial matters, in fostering closer relations between management and labor, and in encouraging American industry to adapt to the rapid changes in international economics, technology, and consumer preferences;

Liberalized depreciation allowances, refundable investment tax credit, and 10 percent R & D tax credits for the auto and steel industries.

(2) We propose policies designed to restore small business to its traditional role as a generator of new ideas and new jobs:

Allow small businesses to elect to write-off the first $50,000 in investments in equipment and machinery each year;

Provide simplified and liberalized depreciation allowances for capital equipment and structures;

Provide an investment tax credit for quali-

fying research and development expenditures;

Defer capital gains tax on the sale of a small business if the proceeds are reinvested in another qualified small business within six months; and

Reduce corporate tax rates by two percentage points across-the-board by 1986.

Small businesses are often less suited or equipped to deal with federal regulatory requirements. Legislation should require federal agencies to consider the feasibility of less burdensome regulations for small businesses, providing they satisfy important safety and health standards.

(3) We propose policies designed to ensure that our transportation system can meet the demands of a changing economy. We must repair our nation's railroads, maintain our highways, upgrade our port facilities, and update our air traffic control systems.

(4) We propose to revitalize our space program, an important source of technological innovation and economic progress.

(5) We propose measures to remove barriers to exports and to work aggressively to increase them:

Expanded, competitive U.S. Export-Import Bank financing of a broader range of exports;

Reduced taxation of American nationals living abroad and engaging in export activities;

Duty-free entry of machinery and materials for use in export manufacture in foreign trade zones;

Anti-trust immunity for certified export activities by business associations;

Measures to encourage formation of export trading companies to assist small and medium-sized firms;

An Agricultural Export Credit Revolving Fund;

Renewed efforts to obtain international agreement on foreign business practices.

(6) We will strengthen our trade and our currency through increased international economic cooperation. To this end, we pledge:

Continued cooperation with our allies to achieve energy conservation and production targets set forth in the recent Venice Summit Agreement;

Closer cooperation among our trading partners to reduce frictions which, left unattended, could lead to arbitrary trade restrictions;

More effective coordination of economic and financial policy among the leading industrialized nations through the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD);

Continued efforts to enhance the effectiveness of IMF exchange rate surveillance;

Expanded financial and technical assistance to non-OPEC developing countries in their efforts to explore and market new energy sources; and

Support for a stable monetary order through refinement and extension of the Special Drawing Rights.

We will not pursue the fantasy of a return to the gold standard, as contemplated by the Reagan platform.

(7) Finally, we must preserve and extend the gains working men and women have achieved in nearly a century of organization and struggle.

We support a fair and equitable minimum wage that bears a consistent relation to the average manufacturing wage.

We support the full and effective enforcement of the Occupational Safety and Health Act of 1970, and we oppose legislation now before the Congress that would drastically weaken OSHA.

We support worker participation in determining the structure of the workplace.

We support extension of job-retraining and relocation assistance for displaced workers, Economic Development Administration assistance to distressed communities, and adoption of work-sharing programs on a pilot-project basis.

We oppose repeal of the Davis-Bacon Act of 1931.

We support selective improvements in the National Labor Relations Act to guard further against unfair labor practices.

II. Human needs and social justice:

A dynamic and growing economy is the necessary condition of social progress, of domestic harmony, and of national security. And only such an economy can allow all its citizens the basic freedom to choose and to pursue their own occupations. But economic health is not an end in itself. The worth of every society is determined by what its members do—as individuals and as citizens—with the wealth they create.

We believe that a modern society must accept its responsibility to provide for basic human needs by furnishing those public goods citizens cannot attain through individual effort.

To care for its cities, its transportation, and its environment;

To assist those who cannot support themselves;

To create a climate within which human beings can strive to fulfill their own needs.

To fulfill this responsibility, we will shape an adaptable government, responsive to its citizens and effective in its functions. The potential for institutional deadlock has grown acute and with it a dispiriting sense that little can be done to achive our public goals. This we must overcome.

A. We will launch an evolutionary effort to energize our political institutions and to adapt them to contemporary responsibilities. We will seek to establish a new and healthier equilibrium in the federal system. To examine the current condition of federal-state relations, we will assemble the constitutional partners in a Convocation on Federalism. This will not be a convention to act on constitutional amendments, as proposed by some state governments, but the Convocation will present recommendations to the President and Congress for statutory or constitutional change through normal legislative procedures.

Among issues to be addressed will be ways to reverse the incessant trend toward centralization of government, to establish balance between public sector and private sector claims on national wealth, and to improve the conduct of programs which must be handled on an intergovernmental basis. In short, without running the risks associated with a plenary convention, the Convocation will permit a thorough assessment of the federal system and of the Constitution, as it completes its second century. Our goal will be an allocation of responsibility among federal, state and local government that is clear and efficient.

Respecting the dual needs of executive initiative and legislative prerogative, the National Unity Administration will work closely with legislative leaders. To avoid the recurrent paralysis of legislative-executive relations, we will be prepared to consider far-reaching innovations, compatible with the separation of powers, to coordinate decision-making between the branches more effectively. We will discuss with the majority and minority leaders of both Houses whether they wish to take part in specified deliberations of the Cabinet and National Security Council, particularly those relating to international crises. Without abridging the President's right to privileged counsel, we will facilitate access of designated legislators to studies and analyses prepared for executive policy-making.

B. Together with state and local authorities, we will mount a systematic campaign to rebuild America's cities.

(1) Urban foundations.

The deterioration of our massive investment in urban capital stock—housing, roads, bridges, public transportation, sewers, water systems—is the most serious problem now confronting the cities. Squeezed between declining tax bases and escalating costs, many cities have been forced to defer essential maintenance to meet immediate operating needs.

To address this problem, an Anderson-Lucey Administration will propose an Urban Reinvestment Trust Fund (URTF). Funded through dedicated revenues from the federal alcohol and tobacco excise taxes and phased in over three years, it will disburse approximately $3.9 billion annually. It will be used for upgrading, repair and replacement of capital plant and equipment.

Because the revenues from the federal excise taxes on alcohol and tobacco have been rising more slowly than the rate of inflation, at the end of the phase-in period we will consider raising current excise tax rates to meet the urgent national needs to which our Trust Fund is addressed.

(2) Housing.

We face a looming crisis in housing. Construction has dropped below the level at which new families are being formed and economic and regulatory constraints have virtually shut down the multifamily housing industry. We propose:

To reduce interest rates by stabilizing the economy

To dampen the erratic housing cycle through a countercyclical mortgage subsidy program

To work for simplification and standardization of federal, state, and local building regulations

To stimulate private construction of multifamily housing, through increased interest rate subsidies and tax incentives, including accelerated depreciation

To accelerate renovation of existing housing stock

To encourage conversion of abandoned buildings from other uses to housing

To encourage low-income families to buy their own dwellings through federal mortgage guarantees

To increase the supply of mortgage funds by policies to expand personal savings.

(3) Neighborhoods.

A healthy city requires vigorous and thriving neighborhoods, secure in their differences, linked by common interests and purposes. For too long, federal policy has damaged neighborhood interests while neglecting programs that directly benefit neighborhoods.

We will review and, where appropriate, implement the recommendations of the largely ignored report of the National Commission on Neighborhoods. We will support neighborhood associations through tax credits, federal matching money, and increased funding for federal programs that work directly with local groups. We will use the Small Business Administration and the Urban Development Action Grants to promote economic development in neighborhoods. We will make federal policy more responsive to the plight of displaced urban dwellers.

(4) Enterprise zones.

Within our distressed older cities, there are zones of devastation, blighted by crime, arson, and population flight. The traditional tools of federal policy do not work, and cannot be expected to work, in these areas.

We favor legislation that would create "enterprise zones" in these areas, by lowering corporate, capital gains, payroll, and property taxes and by furnishing new tax incentives to small businesses.

C. We will work to transform America's surface transportation network.

Through years of neglect, profligate energy consumption, and lack of federal leadership, the United States has slid into a de-

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pendence on imported oil that threatens our economic viability and our national security. Transportation consumes half the petroleum used in this country. It is in this sector that we must effect the greatest economies.

To promote a balanced, cost-effective, energy-efficient transportation system:

We should establish a new Community Transportation Trust Fund to finance capital and maintenance costs of metropolitan and local transit systems, while general revenues would finance operating costs. Funded with dedicated revenues from the federal alcohol and tobacco excise taxes, it would disburse $15 billion over the next five years, $2.5 billion in the first year.

After suitable consultation with states and communities, the federal government should establish a twenty-year community transportation plan that lays out goals and funding priorities.

We should use tax incentives and selective subsidies to encourage the participation of the private sector in public transportation and to encourage the development of transportation alternatives for rural Americans.

We will implement a national railroad policy to catalyse the development of versatile, competitive and attractive freight and passenger services. This policy will give due weight to related policies on energy, agriculture and industry. While affording reasonable protection to shippers captive to rail transportation, we will move to end anachronistic regulations and place increased reliance on market forces to determine railroad pricing and operating practices. Our administration will participate actively in efforts to upgrade the nation's dilapidated roadbeds and antiquated transfer facilities. We will consider equitable user charges for transportation modes benefiting from public subsidies in order to assure a less distorted and more competitive market for freight services.

D. We will construct an environmental policy that seasons idealism with realism and mobilizes Americans to combine restrained development with constant vigilance for the preservation of our natural assets—land, air and water. The fragility of our environment must evoke frugality in our stewardship of America.

We embrace the spirit of idealism and farsightedness that has enabled the environmental movement to flourish over several decades. We will guard and consolidate the achievements in every field of environmental protection and preservation. While mindful of the need to assess the economic impact of proposed environmental safeguards, we reaffirm our long-standing commitment to protecting our resources against pollution and depletion.

In addition to aggressive implementation of existing programs to protect air and water resources, we will launch new efforts to deal with safe disposal of toxic substances, with problems of acid rain and air-borne carbon dioxide, and with the detection and control of likely cancer-causing substances. We will undertake a broad range of policies to protect our wildlife, our public lands, our coastal zones and international environments like the ocean. We will ensure that federal water projects respect environmental concerns.

The complex and delicate relationship between energy and environmental policy necessitates constant surveillance. Conservation is the essential link between them. While all energy options require environmental safeguards, the distinctive aspects of nuclear power give urgency to the establishment of a Nuclear Regulatory Authority under a single administrator to assure the operational and environmental safety of reactors, fuel handling and waste disposal.

E. We will strive to improve the health of Americans by closing the gaps in our health care system and by promoting more effective delivery of services without inducing exorbitant inflation in their cost. These are familiar goals and the nation's failures to achieve them are equally well-known. We must prevent public policy from impeding a more competitive and cost-conscious market for health services. We would phase out retroactive cost-plus reimbursement under federal programs and replace it with prospective rate or fixed-premium financing, in order to give incentives to contain costs. Such a change should reduce the expensive cost-accounting and reporting practices now borne by hospitals, nursing homes and other agencies. We will take steps to allow Health Maintenance Organizations and other prepaid insurance options to compete for the federal health care dollar. We will analyze cost-sharing procedures to deter over-utilization and wasteful treatment under Medicare and Medicaid. To spur competition in the private sector we will recommend making health insurance payments by employers tax deductible only if they offer multiple options (including catastrophic coverage) which permit employees to choose the most cost-efficient plan for their individual circumstances.

We will ground health policy in the existing private structure, gradually augmenting present coverage to reach the twenty-two million Americans who are now unprotected. An important mechanism to bring professional care to areas which are inadequately served is the National Health Service Corps, which we will enlarge.

We will act to correct the under-emphasis on preventive medicine and health research—which now accounts for only 2 percent of total health care expenditures. We will give close attention to disseminating the results of research on the health implications of lifestyle, diet and environmental factors. Programs to prevent and treat problems of drug abuse, alcoholism and mental health are increasingly important in contemporary society; we will sustain them.

F. We propose to rationalize the welfare system and to meet the changing requirements of families and individuals in need. We will improve administration of the principal welfare programs—Aid for Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid and Food Stamps—and will consider the possibility of uniform application for them. We support a national minimum benefit standard and uniform eligibility requirements for AFDC. To avoid further weakening of families in dire need, we advocate mandatory AFDC coverage of two-parent families in the 24 states now lacking it. There should be standard procedures for periodic determination of income and eligibility, as well as expansion of the National Recipient System (NRS) to eliminate erroneous payments.

Even with administrative improvements, the income transfers made by these programs are near their practical limits. We must place greater stress on earned income for the disadvantaged by reducing the marginal tax on entry of poor workers into the labor force. We propose a standardized benefit reduction formula to assure higher real income for welfare recipients who obtain work.

We would expand the Earned Income Tax Credit to increase incentives for the working poor and to increase their ability to accumulate savings. We favor expansion of day care facilities for the children of these families.

The welfare of our people depends on far more than the welfare system. It also requires sturdy families able to cope with the stress of modern life. We would bolster the family's economic base by ending the so-called "marriage tax" on two-earner families and inheritance or gift taxes on transfers between spouses. We support authority for homemakers to establish Individual Retirement Accounts and programs to assist displaced homemakers. We favor added tax relief for families providing home care for relatives who would otherwise be institutionalized.

With a growing population of older Americans—of whom nine million live in poverty—we must also focus policy on their needs. While working to reduce inflation as the key to durable economic relief for all citizens, we will retain adequate indexation for Social Security benefits and resist their taxation. We will also encourage the ablebodied elderly to enjoy the financial and emotional benefits of work by phasing out limits on earnings for Social Security recipients and strengthening the Age Discrimination in Employment Act.

A major objective will be to curtail unnecessary institutionalization by supporting arrangements which enable the elderly to remain in the community. Among other measures, we recommend—

Broader health care coverage to aid persons or families who incur huge medical expenses while caring for the elderly at home or outside hospitals

Adult day care centers to aid those for whom overnight and weekend care is available at home

"Respite services" to assure families that elderly members will be cared for competently during vacations and other absences.

Making it possible for the elderly to remain in the home and neighborhood can produce substantial savings to provide increased funding for those truly in need of long-term institutional care.

Another group of Americans, young and old, deserves more help from government. They are the 30 million veterans of our armed forces. The shortcomings of the Veterans Administration demand correction. The physical and psychological traumas inflicted by the war in Southeast Asia require the succor of a caring nation. Our programs will focus on the disproportionate unemployment and readjustment problems suffered by Vietnam veterans. We would extend educational benefits for these veterans, and permit such entitlements to be used as reimoursements to employers for wages and other training expenses related to jobs for eligible veterans. We will step up personal counseling services for Vietnam veterans and will conduct a major outreach program to contact and assist victims of Agent Orange or other contaminants used in the war.

G. We will dedicate ample resources to the manifold missions of education.

To break down communications barriers among federal, state and local educational officials, and to provide supplemental aid to hard pressed local school districts, we will provide subtsantial funding to the Department of Education—a worthwhile innovation which will require active and sensitive direction. The virtues of diversity in education warrant federal deference for wide latitude in local school policies, and we will press the Department to cut back the thicket of regulations, subject only to monitoring federally mandated programs and accountability for federal funding. We will frame executive orders to govern future regulations.

We will defer to self-regulation by states or school districts except when it proves demonstrably unsuccessful or incompatible with overriding federal interests. At the same time we will uphold by all means at the government's disposal the right of every child to an equal educational opportunity.

A continuing goal will be to advance the education of handicapped children, including opportunities to learn vocations conducive to productive and self-directed lives. We will place emphasis on linking special education programs for the handicapped to affirmative action efforts by private employers.

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The Department of Education will intensify its activities in behalf of disabled children in poorer districts, and work to overcome the present shortage of special education teachers generally.

Taking account of the changing demography of education at all levels, we will encourage diversification of schools and colleges into adult and continuing education programs for people of all ages who are eager to enlarge their knowledge and skills. We will strive to bring coherence and adequate resources to the varied programs of federal financial aid to students in higher education.

"Learn awhile to serve" reads an English school motto. That is but one worthy goal of learning. Knowledge and skill are economic tools but they are also instruments for personal fulfillment. We will strive to make them accessible to all with the capacity and determination to learn.

H. We will marshal increased support for the arts and humanities.

A difficult mission for government lies in the support of the arts and humanities—creative endeavors whose justification rests on artistic and scholarly grounds rather than on the pragmatic reasons associated with science and technology. Fostering an environment in which are and the humanities can flourish with significant public funding but without unwarranted public control is a challenge we have begun to meet. We will support the principal federal institutions for these purposes, the National Endowments for the Arts and the Humanities, and will try to protect these valuable programs against the ravages of inflation and budget cuts. We favor the creation of a National Arts Bank to purchase and lease for exhibition works of American art. We will encourage wider use of tax credits available to individuals and corporations contributing to the arts. We will investigate additional improvements in copyright and patent laws to guarantee fair compensation to artists. We will also lend our endorsement to the proposed Artists Tax Equity Act to facilitate donations of works of art to public institutions and to eliminate unfair taxation of artists and their heirs. These material measures can help the artistic spirit thrive in communities throughout America.

I. We will erect a government devoted to ending discrimination and advancing justice for every person in our society.

An important goal on the social agenda will be to bring women into full partnership in all our institutions. We are committed to ratification of the Equal Rights Amendment. We oppose government intrusion in the most intimate of family decisions—the right to bear or not to bear children—and will fight against any constitutional amendment prohibiting abortion. We support public funding of family planning services and other efforts to enable women to find acceptable alternatives to abortion. Women will hold responsible position in every department of our administration.

We will be diligent in enforcement of affirmative action programs and other measures to assure equal protection of the laws for minorities and other victims of discrimination. Vigorous administration and stronger enforcement provisions for federal Fair Housing legislation will be crucial as the nation strives to surmount its serious housing shortage. The ability to read is indispensable to meaningful opportunity in America; we will direct the Department of Education to attack the massive problem of functional illiteracy, from which an estimated 20 million adults suffer. We will strengthen our commitment to bilingual education and provide appropriate assistance to local authorities for development of responsive and effective bilingual education programs. We advocate reaffirmation of the nation's democratic principles by fair and equal representation in Congress for the citizens of the District of Columbia.

Fundamental questions of justice hinge on the reform of the U.S. Criminal Code. Our first objective will be to prevent crime and to protect its victims. We also favor a cautious and deliberate approach to the sensitive issue of civil liberty involved in such reform. Intricate issues arise, for example, in attempting to frame systematic principles for sentencing convicted offenders and for plea bargaining. Out of respect both for the constitutional ban on double jeopardy and for the need to avoid coercion in plea bargaining, we oppose giving prosecutors the right to appeal a sentence. Reform should correct disparities in sentencing and promote guidelines for the use of fines, community service orders and restitution in preference to incarceration in appropriate cases.

Law enforcement is principally a state and local function, but we will act firmly to fulfill federal responsibilities, including protection of individuals against policy brutality. We will reinforce the capacity of the Community Relations Service to deal with local tensions. Prison reform looms large among the challenges of the coming decade and we will take steps to relieve overcrowding and abuses in the prisons, as well as to increase the range of opportunities for inmate work release programs, and other rehabilitative efforts.

Concern over the treatment and status of immigrants joins our domestic and international policy. We will seek humane solutions to the dilemmas arising in this field, by extending civil rights protection to aliens and by negotiating actively with Mexico and other nations to devise satisfactory international arrangements regarding illegal aliens.

In appointments to executive and judicial offices, we will steadfastly oppose the application of ideological "litmus tests" and adhere strictly to standards of qualification, competence, and equal opportunity for women and minorities. To diminish the recurrent conflicts of loyalty to which recent Attorneys General have been subject, we will underscore the Attorney General's obligations to the courts by consulting with the Judicial Conference of the United States prior to submitting any nomination for that office.

III. National security and international cooperation:

On issues of foreign policy and national security, as on the economy, we must find areas of consensus on which the United States can build sound policy.

The first priority for American foreign policy must be to rebuild our domestic strength—the bedrock of our international posture.

The next priority for American foreign policy is to restore and nurture our historic alliances.

Most Americans agree that the continuing growth of both Soviet strategic and conventional forces requires the United States to strengthen its defenses.

We agree that it is essential to recruit and retain capable men and women to serve in our armed forces—and that to do so without resorting to conscription will demand substantially greater pay and benefits for volunteers.

We agree that beyond the Soviet-American rivalry lie new threats to our vital interests—threats arising from technological change and the possible spread of nuclear weapons, from the potentially explosive competition for resources in an age of global interdependence, from unchecked racism and overzealous nationalism, from famine and widespread disease.

And we agree that mutual, verifiable and realistic arms limitations can contribute to our security.

Meeting these challenges successfully will tax America's wisdom even more than its material wealth. What do we propose?

Defense and National Security:

A. In strategic forces, we will maintain a stable balance by preserving essential equivalence with the Soviet Union. To meet an evolving threat to our deterrent we will modernize and diversify our strategic arsenal.

Specifically, we will take the following steps:

Our military command, control and communication systems should be made as survivable as our strategic weapons systems.

Our warning systems must be improved, as well as our ability to analyze data and make decisions under war-time conditions.

We will improve the basing systems for our aircraft and fleet ballistic missiles.

We will move ahead with the current Trident submarine program.

We should continue research into other missile-carrying submarines, as additional means for enhancing our deterrent capabilities in the face of changing Soviet anti-submarine warfare capabilities.

We will continue modernization of the B-52 with air-launched cruise missiles, short range attack missiles, and with improved navigational and other electronic systems.

We will continue research on new bomber forces, including those capable of launching cruise missiles.

The growing concern over the threat to fixed, land-based missiles poses an urgent problem to both the United States and the Soviet Union. Economically, environmentally, and strategically, the specific cure proposed by the Carter administration—the MX system—is unsound.

The fundamental question posed by the growing vulnerability of our land-based missiles is what comprises the most desirable mix of forces as the American arsenal is modernized in the 1980's. Should we preserve the three main components of our strategic forces, land-based missiles, bombers, and submarines? Or, as we move into the future, should we place greater reliance on bomber and submarine forces?

A possible solution would be negotiations with the Soviet Union that verifiably reduced the capacity of each party to threaten the other's land-based missiles. Unfortunately, the Soviets have so far rejected such negotiations. We must make clear to them that their intransigence is forcing us to consider options which may severely impair strategic stability.

The Anderson-Lucey Administration will give this matter the fresh and sober consideration it deserves through a comprehensive assessment of strategic doctrines, capabilities, and choices, free from either ideology or illusion.

American ingenuity can devise a more flexible and more cost-effective solution to the threat posed to our land-based missiles.

For the past five administrations, Democrat and Republican, our nuclear strategy has been based on the principle of deterrence. Our principal objective is not to wage nuclear war, but to prevent it.

The Anderson-Lucey Administration will unambiguously reaffirm this traditional strategy. We hold fast to the conviction that control of nuclear war is improbable, and that victory in nuclear war is meaningless. For, as Douglas MacArthur said, "If you lose, you are annihilated. If you win, you stand only to lose."

B. The National Unity Administration will emphasize versatile and usable forces to counter any conventional attack on our vital interests. Our first priority here will be to redress the grave personnel problems of the armed forces. We oppose peacetime conscription, but to make the volunteer army work will require additional funds for military pay and benefits. We will support both performance and reenlistment bonuses, as well as other measures to ensure retention of those with critical skills. We will take steps to rectify the serious shortcomings in military housing and social services. We will offer new educational incentives to aid recruitment.

To attract more qualified personnel, we will encourage lateral entry in selected categories for both enlisted and officer ranks; to retain them we will eliminate the "up or out" policy on promotions and permit skilled individuals to remain on active duty outside the normal promotion path. Improved retention should make possible substantial savings in training budgets to help offset the costs of these personnel policies.

Beyond strengthening our military manpower base, we will stress improved force readiness through increased operations and maintenance funding. We will press for further improvements in the "tooth-to-tail" ratio. To facilitate more rapid action in Europe and other critical areas we will expand programs to pre-position equipment overseas and to increase U.S. air and sealift capabilities.

In guiding weapons design and procurement, our policy will be to demand a better balance between advancing technology and producing in quantity; we need more weapons with adequate capability and high reliability, rather than fewer weapons with excess capability and low reliability. To guarantee our ability to operate on a global scale, we will allocate more resources to naval forces, including those needed for operations in the Persian Gulf and Indian Ocean.

C. We will invigorate the international quest for arms control. Our policy will be based on the fundamental principles:

Arms control agreements must enhance our basic security and must not compromise our ability to protect our national interests.

Agreements must preserve and reinforce the stability of the strategic balance.

Arms control agreements, particularly with the Soviet Union, are not agreements between friends. We cannot rely on the good intentions or paper promises of our adversaries. Arms control must be based on adequate, effective verification.

The Anderson-Lucey Administration will take steps to complete the SALT II process, and thereby lay the groundwork for SALT III.

The Western Alliance should proceed with its plans to modernize its theater nuclear arsenal; at the same time, we should keep open the possibility of negotiations with the Soviet Union to limit theater nuclear forces.

Our administration will support efforts to negotiate a ban on the development, testing, and deployment of anti-satellite warfare systems. Until, however, the Soviet Union shows a willingness to enter serious negotiations in this area, we should continue research on an anti-satellite capability.

We favor conclusion of a short-term comprehensive Nuclear Test Ban Treaty between the United States, the Soviet Union, and the United Kingdom, with frequent review pending inclusion of all nuclear weapons states. This will be a valuable element in the firm policy we will conduct to discourage proliferation of nuclear weapons.

Our anti-proliferation policy will devote particular attention to limiting the number of facilities which use or produce plutonium or weapons-grade uranium.

The United States must maintain a basic program of nuclear energy research and development if we are to retain our command of the broad range of nuclear activities relevant to the problems of nuclear weapons proliferation.

We will use every technological and managerial tool at our disposal to increase still further the distance between the military and peaceful uses of nuclear energy. In addition, we believe that exports of nuclear technology should only be approved by the United States in instances where the proposed transfer comports with non-proliferation goals.

D. For a more effective defense, we will rely heavily on collective security arrangements with our principal allies in NATO and Japan. Unlike the Soviet Union, the United States enjoys the support of willing allies, not reluctant satellites. To strengthen deterrence of war in Europe, we will consider ways to reinforce NATO against potential Warsaw Pact attacks, including the organization of reserve forces for combat use in the early stages of conflict. We will work to upgrade the quality, standardization and interoperability of alliance weapons and equipment, and to provide ample war reserve stocks in Europe. We will refine joint arrangements to expand airlift capacity by suitable alterations and command arrangements for wide-bodied aircraft in allied civil fleets.

We will also look to our allies to share the burden of defending Western interests in such regions as the Persian Gulf, either directly or through flexible arrangements for employment of American forces assigned to NATO and the Far East. We believe Japan should assume a security role appropriate to its situation and commensurate with its capacity. Given Japan's substantial shipbuilding assets, this role could well include contributions to sealift and anti-submarine warfare capabilities. An alliance of equal partners, proceeding with mutual concern and genuine consultation, can make "division of labor" more than just a slogan.

Foreign Policy and International Cooperation:

We are dedicated to a reinvigorated partnership with our democratic allies. With it, Western civilization can confront the dangers and the challenges of the world from a position of calm but unquestioned strength and courage. Our diplomacy is a key to our security. We must be prepared to confront challenges to our basic interests around the globe with an active and forward diplomatic effort.

A. We will work to reinforce and enhance our historic partnership with our Western European allies. To many, the ills of the Alliance are beyond cure. But we have a unique opportunity to extend the fundamental partnership which has been such a source of strength for the free world for the past thirty years. If the Alliance was important to our world position in 1949, when America's power was at its zenith, it is even more so today as we face even greater challenges around the world.

To bolster our Atlantic partnership in the next decade, we need a clear sense of the basic principles which should guide our efforts.

First among these broad principles is the recognition that apart from deterring a physical attack upon the United States itself, there is no more important national interest than the maintenance of our Alliance with Western Europe.

Second, we must recognize that the Alliance must be a union of equal partners.

Third, we must be prepared to acknowledge that there will be times when European interests are not those embraced by the United States. A mature and balanced partnership can accommodate differences of opinion or approach.

Fourth, the United States must cease talking about consultation and actually consult with its allies before embarking on ventures in which it expects them to participate. Reciprocally, our allies must acknowledge a similar responsibility.

B. The National Unity Administration will give priority to stabilizing the critical relationship with the Soviet Union. We will maintain and reinforce the military balance. We will support international efforts to end Soviet aggression in Afghanistan. We will adopt measures to deter or counter Soviet intervention, whether direct or through proxies, in areas vital to our interests, including specifically the Persian Gulf.

The superpower relationship is central to world peace and neither side can allow it to degenerate further. Recent developments—the SALT deadlock, Afghanistan, rising military competition—have rendered the limited working relationship between Washington and Moscow more limited than working. Particularly when tensions are high, it is incumbent on the United States and the Soviet Union to maintain active communications. That will be our policy.

A realistic relationship will demand that both sides act on their vested interest in mutual restraint. The Strategic Arms Limitations process is a valuable means of testing and defining mutual acceptance of that fact and we will take steps to revive that process. Specifically, we will propose to Moscow supplementary measures that could make possible the ratification of the SALT II Treaty and the start of SALT III negotiations. These proposals will respond to concerns expressed in the U.S. Senate regarding such issues as verification and future force reduction. They could take the form of joint declarations and treaty interpretations not requiring renegotiation of the existing treaty language.

We strongly support the Helsinki process. The broadening of trade, as well as the expansion of scientific, technological, and cultural exchanges, is dependent upon practices by the Soviet and East European governments which are consistent with basic human rights standards.

C. The establishment and maintenance of peace in the Middle East will be an urgent objective.

A lasting settlement must encompass the principles affirmed in the Camp David accords.

Our administration will support the recognition of Palestinian rights as embodied in the Camp David accords, but will oppose the creation of a Palestinian state between Israel and Jordan.

The United States will not recognize or negotiate with the Palestine Liberation Organization unless that organization repudiates terrorism, explicitly recognizes Israel's right to exist in peace, and accepts UN Security Council Resolutions 242 and 338 unchanged.

The questions of Israeli settlements on the West Bank and the final status of East Jerusalem must be decided by negotiations. The United States will support free and unimpeded access to Jerusalem's holy places by people of all faiths. Jerusalem should remain an open and undivided city. At the conclusion of the peace-making process and as a final act of settlement, we will recognize Jerusalem as the capital of Israel and to move the U.S. Embassy there.

D. In strengthening our diplomatic alliances, we will continue to build on our strong ties to Japan to enhance our security in the Pacific region. We will carefully nurture our new relationship with China.

We believe that two basic principles should guide our policy toward Japan: a genuine American-Japanese partnership is fundamental to all else in the Pacific, and economic and security elements in the partnership cannot be separated.

Japan is at once our military ally and our economic competitor. American-Japanese trade relations have been troubled by the large current trade imbalance, the impact of Japanese exports on the American automobile industry, and American difficulty in gaining access to Japan's domestic market.

In resolving these issues, the Anderson-

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Lucey Administration would be guided by three propositions. First, decisions reached without full consultation and indifferent to Japanese concerns will be worse than no decision at all. Second, our bilateral economic relations are related to basic and far-reaching movements in the global economy. Third, both the United States and Japan must ensure that trade problems do not impair our security relations.

Concerning China, we believe that those who blithely talk of playing the fabled "China card" do not understand the nature of the relationship. It is not in our interest to give China an "American card" for use in her relations with other East Asian countries or with the Soviet Union.

From a renewed position of domestic and international strength, the Anderson-Lucey Administration would work to discourage antagonism between Russia and China. We should not become an arms supplier to China. We should work for better understanding by China's leaders of the consequences of nuclear war, of measures that should be taken to guard against accidental war, and of ways to make the nuclear balance more stable.

Finally, our administration would abide by both the letter and spirit of the Taiwan Relations Act. We would maintain our contacts with Taiwan but would not establish official relations with its government.

Elsewhere in the region, we would continue to support the security of Thailand. We would not normalize relations with Vietnam without real progress on outstanding issues. We reaffirm our commitment to defend South Korea against attack.

E. In Latin America our diplomacy would promote U.S. ideals and interests, while respecting the sovereignty and independence of every nation in the hemisphere.

There is no more important partner than Mexico.

One of the most complex and difficult issues is the immigration of undocumented Mexican workers to the United States. We recognize that there is no easy solution to this problem. We would work with Mexico to improve the economic conditions of that country in order to diminish the basic causes of the migration. We will also propose a joint American-Mexican Commission to promote cooperative social development in the border region. An on-going dialogue on issues such as trade, agriculture, energy, migration, finance, and industry is essential to forging the kind of partnership that should characterize our relations with Mexico in the 1980's and beyond.

We will make clear that the United States will not tolerate direct military intervention by Cuba in Central America. There must be no Angolas in the Western Hemisphere. We will also oppose any attempt by the Cubans to lead the nonaligned movement into the Soviet camp.

However, we must not allow our concerns about Cuba to distort our policy toward other parts of the hemisphere. No amount of military aid can make a repressive government popular, and an unpopular government is never secure for long. The best antidote to Cuba's promotion of revolution is a region of sound, popular, democratic governments—not an armed camp of military dictators.

Providing economic aid to Nicaragua serves that goal. It will ease the suffering of Nicaragua's poor and should promote an atmosphere of moderation within that country.

F. In South Asia, the Anderson-Lucey Administration will make a major effort to open a wider window to India. We will support India's independent role in world affairs. We will maintain our commitments to other countries in the area. We will encourage both India and China to continue efforts to settle their boundary controversies. We will press for Soviet withdrawal from Afghanistan, where the gravest threat to regional stability now lies.

G. We will promote stability in Africa by helping the nations of that continent achieve their social, political, and economic goals.

We will:

Work toward majority rule in South Africa through negotiations in bilateral and multilateral forums.

Continue restrictions on Export-Import Bank restrictions on credit for investments in South Africa.

Encourage compliance with the United Nations embargo on the export of military equipment to South Africa.

As circumstances warrant, and in cooperation with our allies, discourage investments in South Africa.

Our administration will aggressively pursue a final agreement in Namibia based on UN Security Resolution 435 which has been accepted by both SWAPO and the South African government.

H. We will cooperate with the developing nations in ways which respect their individuality and independence and which serve our mutual interests in trade and development. We will follow a carefully differentiated policy toward these countries working through both multilateral and bilateral arrangements. The fact that the North-South dialogue has deteriorated into a harangue by the so-called Group of 77 should not blind us to the necessity to work toward a more equitable international economic order.

Our objective will be not one global bargain, but a workable global structure in which individuals, firms and nations can strike the countless bargains necessary to a productive international economy. And we will urge oil-exporting nations to take the lead in relieving the hardship drastic oil price increases inflict on less-developed countries.

CONCLUSION: HOW AN INDEPENDENT CAN GOVERN

We have set forth a program for America. But that is not enough. Those who would form an Independent Administration should also explain how they could accomplish these tasks.

We believe that, at this critical juncture, an Independent Administration with ties to both parties can work successfully with a two-party Congress to govern the United States.

The two parties have not yet formulated a realistic post-New Deal public philosophy. They have found it exceedingly difficult to make the hard choices needed when government is obliged not to distribute the dividends of economic growth, but to allocate burdens and orchestrate sacrifices.

And many of the key issues confronting this country now cross traditional party divisions.

We believe that an Independent President can be effective. We acknowledge that the context within which Presidents must act has become more complicated and restrictive during the past two decades. Sober observers have pointed to the decentralization of Congress, the fragmentation of political parties, the rise of single-issue constituencies, and the atomization of the electorate as major elements of this new situation. But we contend that in 1980 an Anderson-Lucey Administration can deal with it more effective than a party administration can.

Victory by our ticket—in the teeth of enormous institutional biases against independents—would be a dramatic signal that the nation wants and expects action based on the consensus the campaign has articulated. Our campaign represents a coalition of the center—the traditional basis for governing the country.

We are confident that Congress—which includes men and women of high civic dedication—will work productively with any President who enjoys the trust of the American people. We hope to earn and hold that trust.

The essence of presidential responsibility is to assert the general interest over narrow interests, to make difficult choices among worthy, but conflicting, objectives, to strike policy balances that are wise and fair enough to gain the support of Congress and the nation.

No President can forecast in all respects the precise course he will follow on all issues. But it is incumbent on candidates who seek your vote to state their view of the country's needs and to identify those intiatives they expect to undertake—to point a direction even when they cannot provide a full map.

That we have attempted to do. Many distinguished Americans have contributed to the studies and position papers on which this program is based, but it is our own sketch of the priorities we believe should guide our country—not a mosaic of bargains among special interests or trade-offs among experts.

We seek a workable synthesis of policy and program, for the next administration must blend new ideas with old, innovative concepts with traditional values, proven approaches with tentative ones. In responding to the challenges we face, government must be frankly experimental in some fields, conventional in others. It must also be utterly ruthless in judging its performance and pruning its failures. These convictions will animate our administration.

We speak for a patriotism greater than party. And we invite patriots of all persuasions to join with us in shaping a government that can shape the future.

It won't be easy—but it will be worth it.

Sincerely,

JOHN B. ANDERSON.
PATRICK J. LUCEY.

INTERPRETATIVE RULINGS OF THE SELECT COMMITTEE ON ETHICS

● Mr. HEFLIN. Mr. President, on behalf of the Select Committee on Ethics, I submit a number of the committee's interpretative rulings on the Senate Code of Official Conduct made pursuant to section 206 of Senate Resolution 110, 95th Congress. These 62 rulings answer questions raised by Members, officers and employees of the Senate and the public regarding Senate rules 34–42 the franked mail statute and regulations, and other matters. They are presented chonologically by ruling number (beginning with No. 273) with reference to subject and reflect committee action between July 9, 1979, and September 3, 1980. The first 103 rulings were published in the CONGRESSIONAL RECORD on October 7, 1978. Rulings 104–150 were published November 9, 1978. Rulings 151–242 were published September 5, 1979. Rulings 243–272 were published February 27, 1980.

The committee also responded by letter to 239 inquiries not submitted here for publication. These inquiries were either too specilized to be of general assistance or responses to inquiries duplicated interpretations presented here or previously published.

Interpretative rulings by the committee may be relied upon by an individual involved in a specific transaction or activity which is indistinguishable in all its material aspects from the facts on which a ruling has been made. The committee encourages written requests for

rulings on specific situations not clearly covered by the Code of Conduct.

The committee will continue to respond to written requests for interpretations, treat such requests confidentially, and publish its rulings with appropriate deletions to protect the privacy of individuals who seek committee guidance.

The rulings of the select committee are as follows:

INTERPRETATIVE RULING NO. 273

Date issued: July 9, 1979.
Applicable Rules: 37, 41.[1]

Question considered

May a Senator hire an employee who also serves as a member of a state legislature of the State which the Senator represents? The employee would carry out normal staff functions but would not be one of the two staff members authorized by Rule 49 to engage in campaign fund-raising activities. The state legislature meets for several months per year and its members are compensated at a rate of $200 a biennium, plus mileage.

Ruling

Rule 37, paragraph 2, prohibits Senate employees from engaging in outside activity for compensation which is inconsistent or in conflict with official duties. Paragraph 3 of Rule 37 places the responsibility upon the employees' supervisor, which in this instance would be the Senator, to take such action considered necessary to avoid a conflict of interest or interference with Senate duties.

While the Committee cannot predict whether in fact this outside activity will conflict with Senate duties, or will result in conflict of interest in connection with a particular issue, the Committee suggests that, if hired, the employee be advised that the Senator will monitor the situation and consider whether a salary adjustment or restriction in Senate duties would be appropriate during those periods when the state legislature is in session. The Committee believes this approach to the matter would be in conformity with paragraph 3 of Rule 37.

INTERPRETATIVE RULING NO. 274

Date issued: July 16, 1979.
Applicable Rules: 34, 35.[2]

Question considered

What are the gift and reporting consequences where a Member accepts the offer of a personal friend to fly on an airplane owned by the friend's corporation from Washington to his home State and back? The corporation employs no lobbyist, nor does it maintain a political action committee. The commercial rate for the round-trip air travel is $198.00.

Discussion

Rule 35 of the Senate Code of Official Conduct prohibits accepting gifts that have an aggregate value of $100 or more from, among others, persons or organizations which have a "direct interest in legislation before the Congress," which is defined in subparagraph 1(b) as persons, organizations or corporations which are registered under the Federal Regulation of Lobbying Act of 1946 or which maintain a separate segregated fund for political purposes as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 441 (b)).

Accepting the airplane flight is not prohibited by Senate Rules because the corporation is not registered as a lobbyist and does not maintain a political action committee.

Paragraph 2(b) of Rule 42[3] and Section 102(a)(2)(A) of the Ethics in Government Act of 1978 requires an annual public disclosure of any gifts of transportation, food, lodging, or entertainment aggregating $250 or more from any source (except relatives) during a calendar year. The Committee has determined that for purposes of determining the value of a gift of air transportation, a reporting individual may use the amount charged for coach class service by a scheduled commercial airline over the same route.

The Member states that the round-trip air fare for the trip is $198. In that case, the $250 reporting threshold has not yet been met. However, if the total value of all gifts of transportation, food, lodging, or entertainment from the same source should equal or exceed $250 during the year, then a report of the gifts must be made on or before the following May 15 as part of the Member's annual public financial disclosure report.

INTERPRETATIVE RULING NO. 275

Date issued: July 17, 1979.
Applicable Rules: 34, 37, 41.[4]

Question Considered

What is the applicability of the Senate Code of Official Conduct to a proposed employment arrangement whereby a Senator would hire a partner from a law firm located in his home state for a nine-month period, during which time the lawyer would be on leave from the firm but would receive a lump sum sabbatical payment? The law firm represents many leading corporations in the state and has clients which employ registered lobbyists or are themselves registered lobbyists. The staff member would be compensated by the Senate at a rate less than $25,000 per year.

Ruling

The ruling request poses four questions for consideration. First, does the proposed arrangement create a conflict of interest problem as contemplated by Rule 37(2)? Second, would the prohibition against affiliation with a firm in Rule 37(5) be applicable in this situation? Third, would the individual be required to file a financial disclosure statement under Rule 34? Lastly, would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

1. Does the proposed arrangement create a conflict of interest problem as contemplated by Rule 37(2)?

Rule 37(2) of the Senate Code of Official Conduct provides that:

"No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties."

The Nelson Committee Report, which accompanied Senate Resolution 110 (Senate Code of Official Conduct), noted that this provision "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 41 (1977). As the law firm represents many leading corporations in the Senator's state and in addition has clients who maintain registered lobbyists or are registered lobbyists themselves, the Committee is of the opinion that the proposed employment of a partner in the firm could result in an actual or apparent conflict of interest between the client's interests and the responsibility of the partner as a Senate employee.

The Committee notes that under paragraph 3 of Rule 37, it is the supervisor of a Senate employee who has the initial and continuing responsibility of determining whether a proposed situation creates a possible conflict. The supervisor is further responsible for monitoring the situation in order to determine what action, if any, may be "necessary for the avoidance of conflict of interest or interference with duties to the Senate."

2. Would the prohibition against affiliation with a firm provided in Rule 37(5) be applicable to this situation?

Rule 37(5) states in pertinent part that:

"No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm . . . for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm . . . or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed."

The question is whether the sabbatical pay should be deemed to be compensation for the performance of Senate services requiring, via Rule 41(4)(c), that the payment be considered "compensation disbursed by the Secretary of the Senate", and therefore be aggregated with regular Senate salary for the purposes of the $25,000 threshold amount. The Committee is of the opinion that if the law firm grants a paid leave of absence for work in a Senator's office, the pay would be deemed to be for services rendered to the Senate, and therefore, the sabbatical pay should be aggregated with regular Senate salary for purposes of determining whether the $25,000 threshold amount is met. If the amount is met, as it is apparent it would, then the partner would be required to terminate his association with the firm. If, however, the payment is earned or accrued pay, incident to an established sabbatical leave plan available to other members of the firm, the sabbatical payment without more, should not be regarded as compensation for Senate services and therefore would not be aggregated with regular Senate pay for purposes of meeting the $25,000 threshold amount and triggering the provisions of the Rule.

3. Would the individual be required to file a financial disclosure statement per the provisions of Rule 34?

Under Rule 34 (Title I of the Ethics in Government Act), Senate employees who are compensated at a rate equal to or in excess of basic pay in effect for GS–16 (currently $47,889) are required to file a financial disclosure report. The issue to be resolved here is identical to the one addressed under question 2. Consistent with the preceding discussion, the Committee is of the opinion that if the sabbatical pay accrues incident to an established leave plan participated in by other members of the firm, sabbatical pay need not be aggregated with regular Senate salary to determine if the total compensation for Senate services meets or exceeds the threshold amount, thereby triggering Rule 37(5) and possibly, the reporting requirement.

4. Would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

Rule 37(9) provides in pertinent part that:

"If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position."

The Committee is of the opinion that while the above provision would prevent the partner on sabbatical leave from lobbying for a period of one year after termination of Senate services, this provision would not restrict the lobbying activities[5] of any other members, associates, or employees of the law firm.

INTERPRETATIVE RULING NO. 276

Date issued: July 23, 1979.
Applicable Area: Senate Code of Official Conduct.[6]

Question considered

May a Senator accept a honorarium from an organization with a direct interest in the action of a Senate committee on which the Senator sits?

Footnotes at end of article.

Ruling

While the receipt by a Senator of a speaking fee from an organization with a direct interest in the actions of a Senate committee the Senator sits on is not in violation of any specific provision of the Code of Official Conduct, it is possible that the receipt of many such fees may create the appearance of a conflict of interest. The Committee believes the Senator must use his or her best judgment as to whether he or she should accept the honorarium under these circumstances.

INTERPRETATIVE RULING NO. 277

Date issued: July 23, 1979.
Applicable Rule: 40.

Question considered

Do trade journals and other periodicals published by the private business sector fall within the purview of the term "communications media" referred to in paragraph 4(c) of Rule 40?

Ruling

Rule 40 of the Standing Rules of the Senate places certain restrictions on mass mailings sent out under the frank. As to such mailings:

1. they are not frankable within 60 days of an election in which the Member is a candidate.

2. funds, other than official Senate funds, cannot be used to prepare such a mailing.

3. they must be registered annually with the Secretary of the Senate. The term "mass mailing" is defined in 39 U.S.C. 3210(a)(5)(D) as:

"Newsletters and similar mailings of more than 500 pieces in which the content of the matter mailed is substantially identical but shall not apply to mailings—

"(i) which are in direct response to inquiries or requests from the persons to whom the matter is mailed;

"(ii) to colleagues in Congress or to Government officials (whether Federal, State, or local); or

"(iii) of news releases to the communications media."

In conformity with 39 U.S.C. 3210(a)(5)(D), paragraph 4(c) of Rule 40 excludes from the strictures of Rule 40 mass mailings which consist entirely of news releases to the communications media.

The Committee believes that the term "communications media" does include publishers of periodicals such as trade journals and other periodicals published by the private business sector, and therefor the Rule 40 restrictions on mass mailings do not apply to news releases, to trade journals and other periodicals which are published by the private business sector.

INTERPRETATIVE RULING NO. 278

Date issued: July 23, 1979.
Applicable Area: Franking.

Question considered

Is it permissible under the franking statute, 39 U.S.C. 3210 *et seq.*, for a Senator to use, in a fanked mailing, the designations "D" or "R" representing Democrat or Republican, after the name of a United States Senator? In addition, is it permissible in a franked mailing to state that a legislative proposal was defeated "in a straight party-line vote"

Ruling

While the Committee believes that the designations "R" and "D", when used for purposes of party identification, and the phrase "in a straight party-line vote" may be used in a franked mailing, Section 3210(a)(5)(C) of Title 39 of the United States Code, prohibits the use of the frank for mail matter which specifically solicits political support for the sender or for any political party. An updated edition of the *Regulations Governing the Use of the Mailing Frank*, dated June 26, 1979, interprets this provision to preclude the inclusion of "material of a partisan nature" in newsletters or news releases mailed under the frank (Chapter Two, paragraph 4 of the revised Regulations). In this regard, the Committee believes that while the contemplated use of the phrase "in a straight party-line vote" is permissible, it might be prohibited as "material of a partisan nature" in different circumstances.

INTERPRETATIVE RULING NO. 279

Date issued: August 8, 1979.
Applicable Rule: 35.[7]

Question considered

May a Senator accept an offer of a year's paid membership in an association which is a tax-exempt, non-profit institution which does not patricipte in lobbying or have other direct legislative interests under the meaning of Rule 35? The dues of $13.00 would be paid by a constituent.

Ruling

Senate Rule 35 contains no prohibition on the acceptance of gifts from any source, if they are of an aggregate value of $100 or less in any calendar year. Moreover, gifts of a value less than $35 need not be aggregated. It is not necessary in these circumstances to consider the nature of the source, inasmuch as the gift ($13.00) is of an insufficient value to invoke the prohibitions.

INTERPRETATIVE RULING NO. 280

Date issued: September 10, 1979.
Applicable Rule and Area: 40, Franking.

Question considered

May a Senator purchase a mailing list with funds from his or her official "ten percent" allowance? The purchase would be for full market value from a private group. After using the mailing list for official mass mailings, the Senator intends to inform the private group of any address changes or deletions from the list which became apparent as a result of returned mail. The Committee also understands that the private group might then offer the mailing list to the Senator's Campaign Committee as an "in-kind" contribution which would be reported as such.

Ruling

The Senate Rules Committee, by letter of December 31, 1977, adopted an opinion by the Comptroller General of the U.S. that the role of the Rules Committee in approving vouchers for expenditures from the ten percent category is to insure only that the vouchers are regular in form, have been certified by the Senator as being for official expenses not otherwise provided for in 2 U.S.C. 58(a), and are not for meals or entertainment. However, by letter of June 22, 1978, in resolving the question of whether non-Senate employee transportation expenses could be reimbursed from the ten percent allowance, the Rules Committee distinguished specific restrictive statutory provisions from the general application of the Comptroller General's advisory opinion. The Rules Committee is the proper authority to be consulted concerning the propriety of use of the ten percent allowance in the absence of a Code of Conduct question.

The Ethics Committee has undertaken to rule on the permissibility of expenditures from the ten percent category when expressly requested to do so with regard to the Senate's Code of Conduct. As a consequence, in Interpretative Ruling No. 134, May 18, 1978, the Ethics Committee held that the ten percent discretionary fund could be used to purchase a mailing list of registered voters from a state election board when the list is uncoded as to political affiliation. The Ruling also noted that Senate Rule 40(5) imposed no restriction on the source of a mailing list which is to be processed by the Senate computer facilities.

The Committee's Interpretative Ruling No. 135 of May 22, 1978, held that "a Senator may not use the mailing list of a private organization in a franked mailing and subsequently communicate information to that organization to enable it to update its mailing list." Reference was made to the franking statute, 39 U.S.C. 3215, wherein it is said a person entitled to use of the frank may not permit its use "for the benefit or use of any committee, organization or association."

Although in this specific situation the full market value would be paid initially for the list, the value of the list as corrected would be enhanced as a result of the use of federal funds (the cost of the frank) and this value would be donated to a private entity, whether the private group or the Senator's campaign committee. This proposed arrangement would be improper as a misuse of the frank and a misuse of federal funds for political purposes. The authorization of the purchase of the list from the ten percent fund, absent the arrangement intended thereafter with the private group and the Senator's campaign committee, would be a matter for decision by the Rules Committee.

INTERPRETATIVE RULING NO. 281

Date issued: September 19, 1979.
Applicable: 34, 35.[8]

Question considered

May a group which has an interest in legislation pending before the Congress sponsor and defray the total cost of a dinner or other function at which a Senator is the guest of honor and will address those present? Furthermore, is the Senator required to report the cost of the function in his Senate Financial Disclosure Report?

Ruling

Senate Rule 35 on Gifts prohibits Members, staff, and their spouses from accepting gifts having an aggregate value exceeding $100 in a calendar year from individuals or entities having a direct interest in legislation before the Congress, as defined in Paragraph 1(b) of the Rule. However, Rule 35 expressly exempts from the definition of gifts subject to the prohibitions "a reception at which the Member, officer, or employee [of the Senate] is to be honored, provided such individual receives no other gifts that exceed the restrictions in the rule, other than a suitable memento," and "meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging". As a result of these exceptions, a Member is not prohibited from accepting the food, beverages, or entertainment incident to a dinner or other function at which he or she is the guest of honor, regardless of whether the event is sponsored or paid for by a prohibited source of gifts under Rule 35.

As to disclosure, title I of the Ethics in Government Act of 1978 specifically exempts from the definition of reportable gifts any "food and beverages consumed at banquets, receptions, or similar events." As a consequence, neither the food or beverages provided to all those who attend the dinner or similar event constitute a reportable gift. However, if there is payment of or provision for travel-related expenses of the Member by the sponsor of the event at which the Member is to appear, the cost of the travel-related expenses may be disclosed as a "reimbursement" on the Member's public financial disclosure report.

INTERPRETATIVE RULING NO. 282

Date issued: September 19, 1979.
Applicable Area: Franking.

Question considered

May a Senator frank a card to top officials of federal agencies providing services within the geographic area the Senator represents, in order to obtain information needed to enable his or her office to respond to emergency or constituent requests for assistance on the weekend? In addition, may the frank be used for the return of this information to the Senator's office?

Ruling

Paragraph 4 of Chapter 1 of the Regulations Governing the Use of the Mailing Frank provides that;

"The sending back to a Senator, or officer of the Senate, of a return-addressed and franked piece of mail by an addressee does not constitute a loan of the frank if the mail matter was frankable and if the return use of the frank remains under the Senator's or officer's control."

The use of the frank for this purpose, in the conduct of official Senate business, thus would be permissible under the above provision so long as the mail matter to be returned to the Senate office is preaddressed.

INTERPRETATIVE RULING NO. 283

Date issued: September 25, 1979.
Applicable Rule: 37.[10]

Question considered

May a Senator hire two lawyers to work part-time on matters arising out of the Senator's work on two committees? Both lawyers are in general practice and one of them is both a partner in a law firm and a member of a State legislature. Neither represents trade associations or clients in such a way as to be involved in lobbying efforts before the State legislature or the Congress of the United States.

Ruling

Paragraph 5 of Rule 37[11] provides that no employee of the Senate compensated at a rate in excess of $25,000 may "affiliate with a firm . . . for the purpose of providing professional services for compensation." Since the lawyer, who is a partner in a law firm is to be paid less than the threshold rate, the prohibition does not apply.

Senate Rule 37 on conflicts of interest, in paragraph 2, prohibits a Member, officer, or employee of the Senate from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. In the report to accompany S. Res. 110 (which established the new Senate Code of Conduct), it was noted that this provision "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." (S. Rept. 49, 95th Cong., 1st Sess. p. 41 (1977)). The Committee has interpreted this paragraph to prohibit the type of situation where, for example, an individual's Senate duties involve work with a Committee that has jurisdiction over authorization, oversight, or legislation in connection with the proposed non-Senate activities.

In addition, paragraph 3 of Rule 37 states that no Senate employee may engage in any outside professional activity or employment for compensation unless he or she has reported in writing the nature of such activity to his or her Senate supervisor when such activity commences, and on each May 15th thereafter, so long as the activity continues. The supervisor is then required to make the initial determination as to whether a proposed situation creates a possible conflict of interest. The supervisor is further required to monitor the situation in order to determine whether action is "necessary for avoidance of conflict of interest or interference with duties to the Senate."

The Committee is of the opinion that no real or potential conflict of interest problems are apparent from the facts of this situation but the Committee cannot predict what will occur in the future. It will be the continuing responsibility of both of these individuals and the Senate supervisor, to take whatever steps may be necessary to avoid a conflict between their Senate duties and their non-Senate work.

INTERPRETATIVE RULING NO. 282

Date issued: October 2, 1979.
Applicable Rule and Area: 34,[12] Foreign Gifts and Decorations Act.

Question considered

What are the reporting requirements for a Senate staff member who intends to accept an invitation from an international studies center of an American university to participate in an educational study mission abroad?

Ruling

A Senate staff member must file the annual public financial disclosure report required by Senate Rule 34 if he or she is a Senate employee for more than 60 days in a calendar year, is compensated for at least 60 days at an annual rate of pay equal to or in excess of the basic rate of pay in effect for grade GS-16 of the General Schedule, and is a Senate employee on May 15 of the succeeding calendar year. In addition, a staff person must file the financial disclosure report if he or she is designated by a Senator as a "principal assistant" for purposes of filing a report, or if he or she is designated to handle political funds pursuant to Senate Rule 41.

An individual who must file a public financial disclosure statement must disclose the source, a brief description, and the value of (1) any gifts of transportation, lodging, food and entertainment received from one source aggregating $250 or more in value, except that food, lodging or entertainment received as personal hospitality need not be reported, and any gift with a fair market value of $35 or less need not be aggregated; and, (2) any other gifts received from one source aggregating $100 or more in value, except that any gift with a fair market value of $35 or less need not be aggregated.

In addition to the disclosure of gifts, a reporting individual must disclose the source and value of all "reimbursements" made to him or her by the center at the university, if they aggregate $250 or more in value during the course of the calendar year. "'Reimbursement' means any payment *or other thing of value* received by the reporting individual, other than gifts, to cover travel-related expenses of such individual . . ." (2 U.S.C. 707(8)—emphasis added). In order to distinguish a travel-related gift from a reimbursement, the following example is provided: If the center at the American university is sponsoring a trip to Taiwan and the transportation is provided by the center, the transportation is considered to be a "reimbursement." However, if the center is sponsoring a trip to Taiwan and the transportation is provided by "X" organization, an entity separate from the center, then the transportation is considered to be a "gift", unless either the employee or the American university reimburses "X" for the travel.

Furthermore, the Foreign Gifts and Decorations Act (5 U.S.C. 7342) limits the acceptance by any Member, officer, employee of the Senate, and the spouse or dependent thereof, of certain tangible gifts and gifts of travel, or expenses for travel, from a foreign government. In addition, certain reporting requirements are imposed upon Members, officers and employees who accept gifts from a foreign government pursuant to the provisions of the Act.

INTERPRETATIVE RULING NO. 285

Date issued: October 2, 1979.
Applicable Area: Franking.

Question considered

A Senator proposes to include in his annual questionnaire mailed under the frank, a statement soliciting additions to the Senator's mailing list, as well as address corrections. What is the applicability of the franking statute to this proposal?

Ruling

The regulations published by the Select Committee on Ethics (approved June 26, 1979) governing the use of the mailing frank state that mailing lists may be corrected under Postal Service Regulation 122.5 by Postmasters on request from a Member of Congress. Postal Regulation 122.5 includes a provision that "the frank shall not be used for any other means of correcting the mailing list of a Senator."

The Committee has previously ruled, in Interpretative Ruling No. 26, June 3, 1977, that it is not improper to use the phase "address correction requested" on a franked envelope provided that this correction request is incidental to the mailing of other frankable matter. The Committee believes that the inclusion of the proposed statement in the Senator's questionnaire would be consistent with both the *Regulations Governing the Use of the Mailing Frank* and Interpretative Ruling No. 26.

Additionally, the inclusion of a request that recipients of the questionnaire notify the Senator's office of individuals who do not receive mailings from the Senator and who would like to be included on his mailing list is not prohibited by the statute authorizing the use of the mailing frank, 39 U.S.C. 3210 *et seq.*

INTERPRETATIVE RULING NO. 286

Date issued: October 2, 1979.
Applicable Rule: 37.[13]

Question considered

May a committee legislative counsel accept a position on the editorial board of a state university publication which receives funds from an agency over which that committee has jurisdiction? The Senate employee would receive no compensation, except for reimbursement of travel and related expenses in connection with attendance at board meetings.

Ruling

Rule 37(3) of the Senate Code of Official Conduct, Conflict of Interest notes that it is the supervisor of a Senate employee who has the initial and continuing responsibility of determining whether a proposed situation creates a conflict of interest. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 41 (1977).

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." Rule 37, paragraph 3. While the requirement for written notice to the employee's supervisor strictly speaking applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside business activities and positions contemplated by their staff.

The Committee, while recognizing the difficulty of substituting its judgment for that of the supervising Senator, believes that if the position were accepted on the editorial board an appearance of a conflict of interest might result due to the jurisdiction of the particular committee over legislation and appropriations affecting the publisher.

INTERPRETATIVE RULING NO. 287

Date issued: October 2, 1979.
Applicable Area: Franking.

Question considered

May a Senator send, as franked mail, a reprint of a part of the *Congressional Record*

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containing an article complimentary to the Senator excerpted from a magazine?

Ruling

Section 3212 of Title 39, United States Code, states that "Members of Congress may send, as franked mail, any part of, or a reprint of any part of, the *Congressional Record*, including speeches or reports contained therein, if such matter is mailable as franked mail under Section 3210 . . ."

Section 3210(a)(4) of that statute prohibits the use of the frank for "the transmission through the mails . . . of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials [who are authorized to use the frank]." In addition, Section 3210(a)(5(A) prohibits the use of the frank for "mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a member-elect."

Although the *Regulations Governing the Use of the Mailing Frank* state on page 10 that "the use, in a newsletter or other mass mailing, of matter which is laudatory or complimentary to the Senator, no matter how deserving the basis or how accurate a factual account, may give the impression that the Senator is advertising himself for political purposes contrary to section 3210(a)(5)(C) . . ." they further state that "matter complimenting a Senator is frankable only if it relates to achievements related to the performance of Senate duties."

In this factual situation the excerpt appears to be complimentary on the basis of the performance of official duties as a Member of the Senate, and the Committee believes the *Congressional Record* excerpt could be mailed under the frank.

INTERPRETATIVE RULING NO. 288

Date issued: October 16, 1979.
Applicable Rules: 37, 41[14].

Question considered

May a member of a Senator's staff take two days of "personal leave" from the Senate in order that he might consult with a state political party in the development of on-going programs for the state political party? The consulting work will not pertain to any official business or any past, present or future work assignment in the office, nor will the work be carried out on the Senator's behalf, on behalf of any other elected official, or any candidate for public office. The consulting will not exceed two days in duration and payment will not exceed $200 plus expenses.

Ruling

Paragraph 3 of Rule 37 on Conflict of Interest provides, with respect to outside employment for compensation, that the supervisor, upon learning of the proposed outside activities, is to take such action as may be necessary to avoid any apparent or actual conflict of interest with Senate duties. In addition, Senate Report 95-241 of the Committee on Rules and Administration states that it is not a violation of law or any Senate rule for a member of a Senator's staff to work full-time in a political campaign while on annual leave.

Senate Rule 41 prohibits Senate employees generally from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for nomination or election to the Senate or for any other federal office, unless such an individual has been designated by the Senator, pursuant to that Rule, to engage in political activity on behalf of the Senator. The Select Committee has previously ruled that the Rule 41 prohibition of political fund activity by other than designated staff applies to duty hours, off-duty hours and vacation leave.

The Committee believes that on the basis of the facts given this employment is not prohibited by the Code of Official Conduct.

INTERPRETATIVE RULING NO. 289

Date issued: October 16, 1979.
Applicable Rule and Area: 38,[15] and Federal Election Campaign Act.

Question considered

May excess campaign funds from a principal campaign committee be used to defray the cost of entertaining individuals or small groups of constituents at lunch or dinner, or to purchase furniture or other fixtures (such such as desks, chairs, and curtains) for office use?

Ruling

The use of excess campaign funds is governed by both the Federal Election Campaign Act and Senate Rule. 2 U.S.C. 439a permits such funds to be used for any lawful purpose, including the ordinary and necessary expenses incurred in connection with one's duties as a holder of federal office. In addition, Senate Rule 38 allows Senators to defray office expenses from "funds derived from a political committee"; however, no campaign contributions may be converted to the personal use of any Member. "Personal use", as that term is used in Rule 38, does not include reimbursement of "expenses incurred by a Member in connection with his official duties."

The Committee considers that for the purposes of Rule 38, both the cost of entertaining constituents at lunch or dinner, and the cost of furniture or other fixtures for use in a Senate office, are the kind of expenses which are incurred by a Member in connection with officials duties. Consequently, excess campaign funds from a Senator's principal campaign committee may be used to pay these expenses, either directly or as reimbursements should the Senator pay the expenses from personal funds. However, in view of the Rule 38 prohibition on converting contributions to the personal use of any Member or former Member, furniture or other office fixtures should be returned to the Member's principal campaign committee after its use in the Member's office.

The Committee notes that this interpretation of paragraph 2 of Rule 38 has no bearing on the question of what kinds of expenses are "official expenses" as that term may be defined by the Senate Rules Committee or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds.

INTERPRETATIVE RULING NO. 290

Date issued: October 26, 1979.
Applicable Rule and Area: 40[16] and Franking.

Question considered

May a Senator on a regular basis send to constituents questionnaires, news briefs, notices on upcoming legislation, and other items of a nonpartisan civic-oriented nature? The recipients are to be referred to as "precinct advisory liaisons" in the mailings in order to utilize the abbreviation "PAL." The purpose of the mailings is to establish a vehicle to obtain constituent response and recommendations from neighborhoods of the home State.

Ruling

Section 3210(a)(1) of Title 39, U.S. Code, states: "'t is the policy of the Congress that the privilege of sending mail as franked mail shall be established . . . in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States."

Section 3210(a)(3) of Title 2 states: "It is the intent of the Congress that such official business, activities, and duties . . . shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public . . ."

Newsletters and questionnaires are specifically authorized for franking (Section 3210 (a)(3) (B) and (C)) but both must be restricted to official business, duties, and activities. Material which is of a personal or partisan nature may not be mailed under the frank.

The Committee sees nothing inherently wrong with the proposal; however, it may be very difficult for many to see the separation drawn between those who will receive the franked mailings and political workers. It is the responsibility of the Member to see that the distinction is clearly maintained.

As to using the words "precinct advisory liaisons" to describe the recipients of matter mailed under the frank, the Committee believes that the term "precinct" is so closely associated with the electoral process that its use in a franked mailing could be construed as constituting prohibited political or partisan matter and recommends caution in using the word "precinct" in matter mailed under the frank.

Finally, if the names and addresses are used in the Senate computer facilities, there is the question of whether such use is permissible under Senate Rules. Rule 40.5 prohibits using Senate computer facilities "to store, maintain, or otherwise process any lists or categories of lists of names and addresses identifying the individuals included in such lists as campaign workers or contributors, as members of a political party, or by any other partisan political designation." If the mailing list is not used for partisan political purposes to any extent whatsoever, and the list or lists is not derived or acquired from lists selected on the basis of a high incidence of partisan behavior,[17] then the use of the list would not violate Rule 40.

INTERPRETATIVE RULING NO. 291

Date issued: November 26, 1979.
Applicable Rule: 41.[18]

Question considered

May a person on a Senator's staff, consistent with the Senate Code of Official Conduct, act as the chief executive officer of a State political committee of a national political party? The individual would not receive compensation and would perform his or her responsibilities during off-duty hours.

While the State political committee's principal purpose is not the raising of campaign funds, the committee is ultimately responsible under its by-laws for all the affairs of the party in the State, including the support of Federal candidates, and does raise funds to support its own activities.

Ruling

No provision in the Senate Code of Official Conduct completely bars Senate employees from engaging in general campaign activities, but Rule 41 strictly limits political fund activity. The Rule prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for the nomination or election of any individual for any Federal office. The Rule further provides that the prohibition does not apply to either one or two individuals specifically designated by a supervising Senator to perform any of these functions on behalf of the supervising Senator alone and not on behalf of any other Federal candidate or officeholder.[19]

The Committee has previously determined[20] that Rule 41's restrictions on staff political fund activities apply to participation in Federal elections and not to State and local elections, but that the State and local political fund activity must be clearly separate and distinct from any activities in connection with a Federal election in order to be permitted under the Rule.[21]

While the principal purpose of the State party committee is not raising campaign funds for Federal candidates, the Committee believes that an individual who acts as chief executive officer of a State party committee would necessarily be responsible, as part of the party committee's normal course of business, for the acceptance, solicitation, retention, or expenditure of funds in connection with campaigns for Federal office by individuals other than the supervising Senator, and that this would not be permitted by Rule 41.

INTERPRETATIVE RULING NO. 292

Date issued: November 27, 1979.
Applicable Rules: 34, 41.[22]

Question considered

May the requirement to file a Public Financial Disclosure statement be waived for a political fund designee whose appointment period will cover a period of only six weeks?

Ruling

Rule 41, paragraph one, states, in relevant part, that an assistant may be designated to handle political funds only "if such assistant files a financial disclosure statement in the form provided under Rule 34 for each year during which he is designated under this rule." There is no period of time which one must be so designated before the obligation to file a disclosure statement, pursuant to Rule 41, arises. Further, the Committee has no authority to waive the disclosure requirement.

INTERPRETATIVE RULING NO. 293

Date issued: November 28, 1979.
Applicable Rules: 34, 35.[23]

Question considered

May a staff member accept room and board from a foreign foundation while attending a conference in the United States sponsored by that same foundation?

Ruling

Paragraph 1(a) of Rule 35, Gifts, prohibits employees of the Senate from accepting gifts with a value in excess of $100 in any calendar year from foreign nationals. However, the necessary expenses of travel, including transportation, food, lodging, and entertainment are specifically excepted from the definition of "gift" in paragraph 2(a) of the Rule when such "necessary expenses" are provided by a sponsor on whose behalf the employee is making an appearance. The description of the event indicates that the benefits to be furnished to the staff member will be necessary expenses of travel. Inasmuch as such expenses are exempted from the scope of Rule 35 (1), it is not necessary to determine whether the source of the expenses is a prohibited one, and acceptance of the invitation is therefore permissible.

Senate Rule 34 on Financial Disclosure requires a reporting individual to report the identity of the source and a brief description of any reimbursements aggregating $250 or more in value in a calendar year received from any source.

INTERPRETATIVE RULING NO. 294

Date issued: December 10, 1979.
Applicable Area: Foreign Gifts and Decoration Act.

Question considered

May a staff member accept an invitation to travel within a foreign country under the auspices of that foreign government, to represent a Senator at a dedication ceremony? The staff member will provide travel expenses to and from the country and the foreign government will provide transportation and related expenses within the foreign country.

Ruling

The U.S. Constitution prohibits employees and officers of the United States from accepting gifts from foreign governments unless Congressional consent has been given. Such consent has been given in the Foreign Gifts and Decorations Act (5 U.S.C. 7342) for gifts of travel or expenses of travel taking place entirely outside the United States if such acceptance is appropriate, consistent with the interests of the United States and permitted by the employing agency. The Committee finds that acceptance of travel benefits from the government under the circumstances described is appropriate and consistent with the interests of the United States, and is therefore permissible.

Within thirty days after any Member, officer or employee of the Senate has accepted travel or expenses for travel taking place entirely outside the United States, where costs have been borne by a foreign government, such Member, officer or employee must file a statement of information with the Select Committee. The Committee's "Dear Colleague" letter of December 12, 1978 sets forth the items to be included in filing that statement.

Tangible gifts from a foreign government of more than minimal value (more than $100) are deemed to have been accepted on behalf of the United States and become the property of the United States. Within 60 days after acceptance of any such gift, it must be deposited with the Secretary of the Senate with a statement of details.

INTERPRETATIVE RULING NO. 295

Date issued: December 11, 1979.
Applicable Rule: 34.[24]

Question considered

Are certain expenses incurred in connection with the GAO audit[25] of a Senator's Public Financial Disclosure Statement "official" expenses and reimbursable from the 10 percent official office account?

Ruling

On a previous occasion, the Committee ruled that "[c]ompliance with the rules regarding financial disclosure . . . is a Senate duty . . ."[26] Insofar as Public Financial Disclosure is a rule of the Senate, expenses incurred in carrying out this duty are "official" expenses.

Whether official expenses of this nature are properly payable from the 10 percent account is a question which falls within the jurisdiction of the Committee on Rules and Administration. The Committe, therefore, recommends that the Rules Committee be advised of this determination and asked to decide whether reimbursement can be made from the 10 percent account.[27] The Committee also notes that under Senate Rule 38 it would be permissible for a Senator's political committee to provide such reimbursement.

INTERPRETATIVE RULING NO. 296

Date issued: December 18, 1979.
Applicable Area: Franking.

Question considered

May the frank be used by a Senator to send letters of congratulations to soldiers from his or her home State who enlist or re-enlist in the U.S. Army? The Army would provide the names and addresses of soldiers and the Senator's staff would prepare the letters and would use official stationery and franked envelopes for the mailings.

Ruling

Section 3210(a)(3)(F) of Title 2 of the United States Code authorizes franking of "mail matter expressing . . . congratulations to a person who has achieved some . . . public distinction."

The Committee has concluded that enlisting or re-enlisting in the Armed Forces of the United States is an act which constitutes a "public distinction" contemplated by the authorization for franked mail matter in section 3210(a)(3)(F) of Title 2. The Committee, therefore concludes that letters expressing congratulations to individuals who enlist or re-enlist in the Armed Forces are frankable.

INTERPRETATIVE RULING NO. 297

Date issued: December 18, 1979.
Applicable Rule: 37.[28]

Question considered

May a member of a Senator's personal staff be permitted to serve as an officer or board member of a 501(c)(4) educational foundation, and in addition, be paid a fee by the foundation for consultant services? No work for the foundation would be performed by the employee during working hours of the Senate. Expertise involved in consulting would be unrelated to the employee's professional responsibilities to the Senate, and any consulting time devoted to the foundation would not conflict with the performance of Senate duties.

Ruling

Rule 37(6) prohibits service by a Senator or employee as an officer or member on the board of a publicly held or regulated organization, excluding, however, organizations exempt from taxation under section 501(c) of the Internal Revenue Code of 1954 if the service is performed without compensation. A prior ruling of the Committee[29] held that service of this nature for a 501(c) organization is permissible unless it conflicts or interferes with the conscientious performance of Senate duties.

The 501(c) exclusion in Rule 37(6) extends to employees on the personal staff of a Senator as well as those on a Committee staff. Inasmuch as the exclusion applies only if one receives no compensation for service as an officer or director of a 501(c) organization, a determination of whether it would be permissible for an uncompensated officer or director to serve at the same time as a paid consultant for the same 501(c) organization would turn on whether the consulting duties are related to the responsibilities of the position of officer or director. Since neither the rule nor its legislative history give any indication that service as a paid consultant for a 501(c) organization is impermissible, the Committee is of the opinion that if the duties as a consultant are unrelated to the responsibilities of officer or director, and if the consulting duties are not violative of paragraphs 1, 2, 3, and 6 of Rule 37, service as a paid consultant while also serving as an officer or director is not prohibited. If the consulting duties are not clearly distinguishable from the responsibilities of the position of officer or director, approval of dual service in two such capacities could encourage by indirection the accomplishment of that which is directly prohibited.

The Committee recognizes that where consulting duties have an uncertain relationship to responsibilities as an officer or director, it would be more difficult to determine whether the arrangement violates the spirit of the Rule 37 paragraph 6(a) exclusion in the case of an officer charged with day to day responsibility for conducting the business of the organization than in the case of a director whose responsibilities are necessarily confined to policy matters.

The Committee cannot monitor the manifold aspects of the relationships which might arise in the future in a consulting role, and can only offer guidance. Under paragraph 3 of Rule 37, it is the continuing responsibility of an employee's supervisor to monitor

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situations such as this to avoid any conflict of interest or interference with Senate duties.

INTERPRETATIVE RULING NO. 298

Date issued: December 18, 1979.
Applicable Area: Franking.

Question considered

May a Senator send a newspaper column under his frank in response to letters he has received from constituents concerning the Department of Education?

Ruling

It is the Committee's opinion that the proposed mailing constitutes frankable mail matter within the meaning of Section 3210 of Title 39 of the United States Code, and the regulations promulgated thereunder, for the reason that the column concerned the approval by the Congress of legislation creating the Department of Education and the Committee noted that section 3210(a)(3)(A) of the franked mail statute specifically authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress".

INTERPRETATIVE RULING NO. 299

Date issued: December 20, 1979.
Applicable Rules: 34, 35.[30]

Question considered

May a Senator accept travel expenses to a foreign country from private educational and cultural organizations which use grant funds derived from a "Friendship Commission" o pay for the travel expenses? The "Friendship Commission" was established by a United States Public Law, which provides that the Commission shall use funds derived from payments by the foreign country to the United States Government to support educational and cultural activities that will enhance friendship, understanding and mutuality of interests between the two nations. The Commission provides grant funds to private, non-profit organizations in both countries which conduct exchanges between the two countries for educational purposes. The Commission itself does not directly operate any programs.

Ruling

The Committee has previously ruled [31] that a Member, officer, or employee of the Senate may accept the necessary expenses of foreign travel in connection with an appearance incidental to official duties where the travel expenses are furnished or paid for by the domestic sponsor of the program. From the facts outlined a Member may accept the necessary expenses of a trip to the foreign nation from a private domestic organization which derives its funds from the Commission. A Member who accepts these necessary expenses of travel will be obligated by Title I of the Ethics in Government Act of 1978, which has been adopted by the Senate as Standing Rule 34, to disclose the receipt and source of these travel-related expenses on his or her annual public financial disclosure report, where total expenses equal or exceed $250. Since the Commission itself does not directly operate any programs, the sources of the expenses should be identified as the domestic organization which received Commission funds and which in turn provided the Member's expenses.

Where the organization which proposes to provide travel expenses is a foreign organization, Rule 35 of the Standing Rules of the Senate prohibits a Member of the Senate from accepting payment for travel expenses from a foreign national unless the provisions of paragraph 4 of the Rule are met. Paragraph 4 provides that travel expenses may be accepted from a foreign organization where the purpose of the trip is educational, participation is not in violation of any law, the Select Committee on Ethics determines that participation in the program is in the interests of the Senate and the United States and proper notice is published in the CONGRESSIONAL RECORD. Where these travel expenses are received they must also be disclosed on a Member's annual public financial disclosure report when the expenses equal or exceed $250.

INTERPRETATIVE RULING NO. 300

Date issued: February 6, 1980.
Applicable Rules and Areas: 35, 38,[32] Federal Regulation Lobbying Act of 1946, and Federal Election Campaign Act of 1971.

Question considered

A Senator who was then in his home state was asked to testify in Washington before a Commission in support of a request for relief by thirteen domestic companies. Round-trip commercial air transportation between the home state and Washington was not obtainable at that particular time. Is it permissible to accept round-trip transportation on a plane owned by one of the companies involved in the matter before the Commission? The company maintains a political committee and a registered lobbyist.

Ruling

Rule 35 of the Senate Code of Official Conduct imposes a $100 limitation on gifts to Senators from entities with a "direct interest in legislation before the Congress", defined as organizations which have a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or a separate segregated fund for political purposes under the Federal Election Campaign Act of 1971, as amended.

Based on the information provided, the Committee believes that the providing of transportation by the company, in the circumstanecs described, would constitute a "gift" worth more than $100, from a company with a "direct interest in legislation before the Congress," and would thus be prohibited under Rule 35; it would not fall within the exception to the definition of "gift" for the necessary expenses of travel because the Senator is not making an appearance before the company providing the transportation, and would not fall within the "consideration" exception because testifying before the Commission does not constitute performing services for the company. Accordingly, reimbursement, based on commercial airfare rates, should be made to the company for the value of the transportation exceeding $100.

The Committee notes that if the appearance before the Commission was in connection with official duties, it would seem that a request for reimbursement from official funds would not be improper. Alternatively, under Senate Rule 38, it would be permissible for a Senator's political committee to provide reimbursement for expenses in connection with the appearance.

INTERPRETATIVE RULING NO. 301

Date issued: February 21, 1980.
Applicable Rule and Area: 41,[33] Federal Election Campaign Act Amendments of 1979.

Question considered

May a Senate employee who is not designated under Senate Rule 41, contribute money to incumbent and non-incumbent presidential and congressional candidates, to national, state and local political party committees, or to state and local candidates or their campaign committees? In addition, which of the above actions would not be permissible for the political fund designee under Rule 41?

Ruling

These questions involve application of a Federal statute, recently amended by the Federal Election Campaign Act Amendments of 1979, which prohibits the making of certain political contributions by Federal employees. The amended provision, now found in Section 603 of Title 18 of the United States Code, reads as follows:

"Section 603. Making Political Contributions.

"(a) It shall be unlawful for an officer or employee of the United States or any department of agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

"(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee."

The interpretation of the new provision, and the enforcement of its prohibition, are within the jurisdiction of the United States Department of Justice. The Committee notes, however, that during Senate consideration of H.R. 5010, a bill to amend the Federal Election Campaign Act of 1971 (which became Pub. L. 96-187), Senator Hatfield, ranking minority member of the Senate Rules Committee, referred to the proposed changes in the criminal code, stating: "Current provisions of the Criminal Code reflect a longstanding concern that no Federal employee be subject to any form of 'political assessment.' Consistent with this underlying concern, the revised language permits a Federal employee to make a voluntary contribution to another Federal employee who is not his or her employer or employing authority." 125 Cong. Rec. S19099 (December 18, 1979).[34]

The Senate has previously recognized that questions might be raised under existing statutory prohibitions in the Federal criminal code on the solicitation, receipt, and making of political contributions (formerly found in 18 U.S.C. sections 602, 603, and 607). When the Senate adopted its new Code of Official Conduct for Members and employees of the Senate on April 1, 1977, it instructed the Senate Rules and Administration Committee to "study laws relating to contributions solicited from or made by officers or employees of the Senate and report the results of their review, together with their recommendations, to the Senate within one hundred and eighty days . . ." Section 307, S. Res. 110, 95th Cong., 1st Ses. (1977). Pursuant to this mandate, the Rules Committee issued a report on October 17, 1977 (S. Rept. No. 95-500, 95th Cong., 1st Sess.), which contained the first phase of their study, a compilation of existing laws relating to this issue.

In addition to the statutory provision discussed above, Rule 41 of the Senate Code of Official Conduct contains restrictions on one aspect of campaign activity—the handling of campaign funds by Senate staff. The Rule states that no employee of the Senate may solicit, be the custodian of, or distribute" funds in connection with any campaign for Federal office, unless the employee is one of two individuals specifically designated by his or her Senator to engage in limited political fund activity on the Senator's behalf.[35]

Footnotes at end of article.

INTERPRETATIVE RULING NO. 302

Date issued: February 21, 1980.
Applicable Rule: 41.[36]

Question considered

May an employee on the personal staff of a Senator, with the approval and monitoring of the Senator, engage in substantial political activity for a limited period of time on behalf of a presidential candidate? The staff member will devote at least 15 percent of his time to his Senate duties; however, he will receive a proportional salary reduction and will not engage in political activity from either the Senator's Washington or state office.

Ruling

It is a Member's prerogative in staffing his or her office to prescribe an employee's duties and hours, and to consent to certain outside activities. Pending completion of the study by the Committee on Rules and Administration of permissible political activity for Senate employees while on the Senate payroll (Section 308 of S. Res. 110) the Committee offers the following guidance to Members.

Other than the restrictions on political fund activity in Senate Rule 41, no rule expressly prohibits political activity by staff during off-duty hours or during established and reasonable annual leave time. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately.[37]

With respect to the proportional salary reduction, the Committee concluded that the proposal is reasonable. In addition, the Committee noted that the employing Member will monitor operation of the plan to ensure that it is carried out as represented. Finally, the Committee noted that the staff member will continue to be subject to the Senate Code of Official Conduct during this period of outside employment for compensation.

INTERPRETATIVE RULING NO. 303

Date issued: February 21, 1980.
Applicable Area: Franking.

Question considered

Is it permissible under the franking statute for a Senator to distribute return-addressed, franked envelopes to selected individuals in his State, who would use the envelopes to mail copies of local newspapers to his Washington Office in an effort to keep the Senator informed of the local news as it relates to the Federal Government?

Ruling

The Committee does not believe that this proposed use of franked envelopes is proper under the franked mail statute, 39 U.S.C. 3210 *et seq.* The statute, at section 3215, prohibits a person who is entitled to use the frank from lending it or permitting its use by any individual or group who is not authorized to use the frank. In addition, *The Regulations Governing the Use of the Mailing Frank* state: "Under this section, a Member or official authorized to frank mail matter may not allow his or her frank to be used in any way that would inure to the benefit of persons, firms, or organizations themselves not authorized to send mail matter under the frank."

The Committee has consistently taken the position (see *e.g.*, Interpretative Ruling No. 127, dated May 12, 1978) that because of the opportunity for alteration of the matter mailed or misuse of the frank, franked envelopes may not be processed, mailed, or distributed by any outside individual or organization. The Committee has recognized a narrow exception, in the instance where, on an interim basis, franked envelopes are labeled or stuffed by outside groups under the personal supervision of an employee from the Senator's office. This exception is based on the Committee's recognition that, pursuant to the statute, the use of the mailing frank is the personal responsibility of the Senator entitled to its use and that prior to delivery to the Postal Service, franked envelopes must not leave his custody or control.

INTERPRETATIVE RULING NO. 304

Date issued: February 21, 1980.
Applicable Rule: 37.[38]

Question considered

May an attorney employed by a Senate Committee at a salary rate in excess of $25,000 argue a case before the appellate court while on leave from the Committee? The attorney tried the case, which is a suit for money damages, before the United States District Court prior to his employment with the Senate. Any subsequent work has been performed in his spare time.

Ruling

Rule 37 of the Senate Code of Official Conduct places the initial responsibility upon a Senate employee and his or her supervising Senator to determine whether any proposed outside activity would create a conflict of interest, or the appearance thereof. See Rule 37, paragraph 2. Under paragraph 3 of Rule 37, an employee must, before commencing any outside business or professional activity for compensation, report in writing the nature of such activity to his supervisor who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." The employee must continue to file such reports on May 15th of each year thereafter so long as the outside employment continues.

In addition, paragraph 5 of Rule 37 prohibits a Senate employee who is compensated at a rate in excess of $25,000 per year and employed for more than 90 days in a calendar year from (a) affiliating with a firm or partnership, (b) permitting his name to be used by such firm or partnership, or (c) practicing a profession "to any extent during regular office hours of the Senate office in which employed." This Committee has previously ruled that this last provision restricts, but also contemplates, some limited practice outside office hours or on annual leave time, as a sole practitioner.[39]

Thus, it would appear that the proposed handling of the matter, if approved by the supervisor, would be permissible.

INTERPRETATIVE RULING NO. 305

Date issued: February 21, 1980.
Applicable Rules: 34, 35, 37.[40]

Question considered

A commerce and industry association has invited a Senate staff member to participate in a six-day program in order to acquaint him with the business operations of the association's members. The program would take place during a Senate recess period. May a staff member accept necessary travel, food, and lodging expenses in connection with participation in the program?

Ruling

Rule 35 of the Senate Code of Official Conduct prohibits the acceptance of gifts, including gifts of travel, from certain sources. However, the definition of "gift" under Rule 35 does not include the payment by a sponsoring organization of travel, food, and lodging expenses incurred by a Senator or a member of his staff in connection with the performance of a service by the Senator or his aide on behalf of the sponsoring organization.

The Committee has previously ruled that "fact finding" in connection with matters of direct interest to a Senator, his constituents, and the sponsoring organization is a service of public office, and that the payment by the sponsoring organization of the necessary expenses of a Senator or his aide incident to such a trip is permitted by Rule 35.[41]

Therefore, payment by the association of the necessary travel, food and lodging expenses incurred in connection with participation in such a program is permissible under Rule 35.

Under Senate Rule 34, the acceptance of necessary travel and related expenses would be reportable as "reimbursements" if the staff member is required to file a disclosure statement under the rule.

While the form of the proposed arrangement does not violate any specific prohibition of Rule 37, on conflict of interest, paragraph three of that rule directs that a supervisor, when an employee's outside business or professional activity or employment is brought to his attention, shall take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

INTERPRETATIVE RULING NO. 306

Date issued: March 3, 1980.
Applicable Area: Franking.

Question considered

May a Senator's office use the frank to respond to a constituent's request for information concerning campaigns for the presidential nominations? The proposed response would inform the constituent that the request has been forwarded to the appropriate campaign committee for a reply.

Ruling

While it is the prerogative of a Senator to respond or not to respond to the inquiries of his or her constituents, the franked mail statute, 39 U.S.C. 3210(a)(5)(c), prohibits the use of the frank for "mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office". We do not believe that the proposed response would be prohibited by this section of the statute because there is no solicitation of political support and because the proposed letter merely informs the constituent that the request has been forwarded for a reply from a particular campaign committee.

INTERPRETATIVE RULING NO. 307

Date issued: March 3, 1980.
Applicable Rule and Area: 38,[42] Franking, Federal Election Campaign Act of 1971.

Question considered

In view of the fact that the inclusion of greetings from a spouse in letters written by a Senator in response to constituents' letters is expressly forbidden by the franking statute,[43] and reimbursement for postage costs for these letters from the "ten percent portion" of the Official Office Expense Account is not allowed by the Committee on Rules and Administration because the mail matter is not frankable, what are the alternatives for reimbursement?

Ruling

In recognition of an issue such as this, Senate Rule 38 provides certain limited alternative sources from which a Member may defray otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. The Rule provides, in part:

"[E]xpenses incurred by a Member in connection with his official duties shall be defrayed only from:

"(a) personal funds of the Member;

"(b) official funds specifically appropriated for the purpose;

"(c) funds derived from a political com-

Footnotes at end of article.

mittee (as defined in section 301(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)); and

"(d) funds received as reasonable reimbursement for expenses incurred by a Member in connection with personal services provided by the Member to the organization making the reimbursement."

In light of these provisions, the Committee believes that postage for a letter to a constituent which would be frankable but for the inclusion of greetings from a spouse is an expense incurred in connection with a Member's official duties, and that the expense may be defrayed from personal funds of a Member or funds derived from a Member's principal campaign committee.

INTERPRETATIVE RULING NO. 308

Date issued: March 3, 1980.
Applicable Rule: 37.[44]

Question considered

May a Senator's Field Representative serve on the Boards of two non-profit organizations? The Senator is a member of two Committees which have oversight of Federal agencies providing funds to these organizations. The staffer will not participate in deliberations during Board meetings regarding these funds and has no financial interest in their disposition, but the organizations' applications for such funds are handled through the Sentor's office which he supervises.

Ruling

Rule 37 of the Senate Code of Official Conduct, Conflict of Interest, places upon Senate employees and their supervising Senators the initial, and continuing, responsibility for avoiding situations which create conflicts of interest, or the appearance of such conflicts. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest."[45]

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." Rule 37, paragraph 3. While the requirement for written notice to the employee's supervisor literally applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside activities and positions contemplated by their staff.

In this specific case, since the organizations' applications for federal funds from agencies subject to oversight jurisdiction by two Senate Committees on which the Senator serves are handled through the office which the Field Representative supervises, there may be an appearance of a conflict of interest between the Field Representative's official responsibilities and his fiduciary duties to the Boards of the two organizations. Further, if the Field Representative were involved directly or indirectly in assisting or handling any application for funds, an actual conflict of interest might be presented.

The Committee has recognized, in prior rulings involving a conflict of interest question, the difficulty of substituting its judgement for that of the supervising Senator. The Committee can call attention to relevant considerations, but absent facts which would indicate an actual conflict, the Committee believes that the supervising Senator must be the primary monitor of the propriety of outside activities of his staff.

INTERPRETATIVE RULING NO. 309

Date issued: March 5, 1980.
Applicable Area: Franking.

Question considered

The Congressional delegations of a State often work together on various State problems. These joint efforts are handled by a special State team which plans to mail correspondence using a common letterhead approved by the Committee on Rules and Administration. Does the franking statute permit the use of the frank to mail correspondence to constituents and government agencies on the common letterhead from each of the originating State Congressional offices?

Ruling

Assuming that the content of the correspondence is frankable, as is set forth in the franked mail statute, 39 U.S.C. 3210 *et seq.*, and assuming that each of the delegation's offices maintains custody and control over the envelopes which bear its Senator's frank, per section 3215 of the statute, and provided that each office assumes the responsibility for the proper use of its own franked envelopes, we believe that the use of the mailing frank to mail correspondence on the "Team" letterhead would be proper.

INTERPRETATIVE RULING NO. 310

Date issued: March 5, 1980.
Applicable Rule: 40.[46]

Question considered

For purposes of Rule 40(1) and (6)(a), is a Member considered a candidate when he is the only individual in his party to file for election, his home State Board of Elections has declared him to be his party's candidate for U.S. Senator, and his name will not appear on the primary ballot?

Ruling

Rule 40 declares that the frank may not be used for any mass mailings, and the Senate and House radio and television studios may not be used, within the 60-day period immediately preceding the date of any primary or general election in which the Senator is a candidate for public office.

The Committee has interpreted Rule 40 (1) and (b)(2) to be inapplicable to a Senator for the 60 days preceding a State primary in which the Senator's name does not appear on the primary ballot because of his nomination as the party's candidate at a party convention prior to the date of the primary, and has also held that Rule 40 is inapplicable to a Senator for the 60 days preceding a primary in which the Senator's name appears unopposed on the ballot and write-in votes are impermissible under State law.[47] Since the intention of the Rule is to reduce an incumbent's advantage over challengers, the Committee has found no basis for the constraint where the incumbent cannot be opposed by virtue of State law.

For these reasons, the Committee ruled that the 60 day limitations in Rule 40(1) and (6)(a) do not apply to the circumstances presented.

INTERPRETATIVE RULING NO. 311

Date issued: March 17, 1980.
Applicable Rule and Area: 34 and Ethics in Government Act of 1978.

Question considered

What are the public disclosure obligations of a reporting individual concerning an estate of which his spouse is a beneficiary? The executor has informed the spouse that a substantial and unspecified amount of the estate's non-cash assets will have to be sold prior to distribution of the estate in order to pay specific bequests, taxes, and other expenses, and that the executor expects that the estate will remain under administration for some months before distribution.

Ruling

The Committee does not believe that a reporting individual is obligated under Title I of the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.) to itemize and value property held by an estate or its liabilities, or transactions by the administration and prior to a distribution of estate assets. The Committee believes, however, that where a reporting individual is aware that he or she, or a spouse or dependent child, is the beneficiary of an estate, from which reportable property may be received in the future, that a very brief and general statement of interest should be provided. From the facts provided, a notation such as the following would be sufficient on the disclosure report: "Residuary legatee of the estate of (name) ----------; deceased (month and year) ----------; in period of administration; details of assets to be disclosed upon distribution (or when available, if there is a residuary trust)."

The Committee notes, however, that if reportable property is distributed or if a residuary trust is created, that the holding of such property would have to be disclosed in the public financial disclosure report for the year in which the trust is created.

INTERPRETATIVE RULING NO. 312

Date issued: March 20, 1980.
Applicable Rule: 37.[48]

Question considered

May a staff member accept an uncompensated position on a State Commission? His supervising Senator is a member of a Subcommittee whose jurisdiction includes providing funding for an Agency related to the work of the particular Commission. The staff member, however, has no duties or responsibilities with respect to the Subcommittee and he will not discuss or vote on any Commission proposal which might involve action by the Subcommittee.

Ruling

The Committee is not unmindful that questions may arise whenever an employee of the Senate is invited to accept an appointment to a State Commission or is approached to serve on the board of a private group and the commission or the private group receives some or all of its funding from the federal government. While there is no specific prohibition in Senate rules which would preclude the acceptance of such an appointment, paragraph 3 of Rule 37, Conflict of Interest, does direct that a Senate employee notify his or her supervisor at such time as he or she engages in an outside professional activity, on each May 15 thereafter and that upon notification it becomes the responsibility of the supervisor to make the initial judgment that an outside activity presents no actual or apparent conflict of interest either with respect to the time required to engage in the activity or due to the nature of the activity itself. In addition, the supervisor has an ongoing responsibility to monitor the outside activity and to take such action as he may consider necessary to avoid an actual or apparent conflict in the future. Based upon the facts presented, the Committee does not believe the proposed activity represents a conflict of interest.

INTERPRETATIVE RULING NO. 313

Date issued: March 20, 1980.
Applicable Rule: 40.[50]

Question considered

Is Rule 40, paragraph 1, which provides a 60 day moratorium upon the use of the frank for any mass mailings prior to any primary or general election (whether regular, special or runoff), triggered by a Senator's participation in presidential primaries in States other than the Senator's home State?

Ruling

The Committee believes it is clear that Rule 40 was intended to be applicable to primary and general elections for the Senate in a Member's home State, as well as to a presidential primary or general election, in a Senator's home State where the Senator is a candidate in such a presidential primary or general election, but does not believe the moratorium upon mass mailings to home State constituents was intended to be triggered by participation in a presidential primary or the equivalent in another State. However, the Committee believes that the 60 day moratorium would also apply to any "mass mailing" mailed under a Senator's franking privilege to a State in which the Senator participated in a presidential primary or general election.

INTERPRETATIVE RULING NO. 314

Date issued: March 25, 1980.
Applicable Rules: 35, 37, 41.

Question considered

May a Senator hire an individual to work part-time on his personal staff while the individual remains a full-time employee of a registered lobbying group? The individual, who does not himself lobby Members of Congress, would work 15 hours per week at a salary rate exceeding $25,000 per year, on legislative matters. The purpose of the part-time arrangement is to afford the Senator an opportunity to decide whether to hire the individual on a permanent full-time basis.

Ruling

Senate Rule 41, paragraph 2, states that "[f]or purposes of the Senate Code of Official Conduct . . . an employee of the Senate includes any employee whose salary is disbursed by the Secretary of the Senate." As a result, individuals who are compensated for part-time work are treated as Senate employees for purposes of the Code.

Senate Rule 37, on Conflict of Interest, places upon Senate employees and their supervising Senators the initial and continuing responsibility for avoiding situations which create conflicts of interest, or the appearance of such conflicts. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which would represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 41 (1977).

In addition, paragraph 3 of Rule 37 requires a Senate employee to report in writing to his Senate supervisor the nature of any outside business or professional activity or employment for compensation. The supervising Senator is then required "to take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate."

No Senate Rule explicitly prohibits hiring, for part-time work, an individual who is a full-time employee of a registered lobbying group but who himself does not lobby Members of Congress. The Senate Code of Official Conduct contains some specific provisions which deal with lobbyists and lobbying activities. Rule 35 prohibits the acceptance by Senators and Senate employees of gifts worth over $100 per year from lobbyists. Paragraphs 8 and 9 of Rule 37 prohibit post-term and post-employment lobbying by former Senators and former Senate employees for a one-year period after they leave the Senate. The gift and lobbying restrictions reflect a policy of separating certain specific activities from current Members and employees of the Senate, but these restrictions are not clearly and specifically applicable to the facts in this specific situation.

The Committee has recognized, in many prior rulings concerning conflict of interest questions, that it is difficult to substitute its judgment for that of the supervising Senator. The Committee can call attention to relevant considerations, but absent facts which would indicate an actual conflict, the Committee believes that the supervising Senator must be the primary monitor of outside activities of his staff.

Finally, paragraph 5 of Rule 37 prohibits Senate employees who are compensated at a rate in excess of $25,000 per year and who are employed in excess of 90 days in a calendar year from affiliating with a firm, partnership, association, or corporation for the purposes of providing professional services for compensation. As the Committee is not certain that the individual will be a Senate employee in excess of 90 days while maintaining his present, outside employment, it is not possible to determine whether this outside employment constitutes an affiliation for the purposes of providing professional services.

INTERPRETATIVE RULING NO. 315

Date issued: April 3, 1980.
Applicable Rule and Area: 34, Ethics in Government Act of 1978.

Question considered

A Member has been asked to participate in a golf tournament to benefit a memorial medical research fund. Corporations are contributing cash and aircraft in order to provide transportation and lodging expenses for the participants. May a Member accept these travel and lodging expenses? In addition, would the donations by corporations of cash and aircraft to the fund constitute campaign contributions by such corporations?

Ruling

The Select Committee has previously ruled that participation by a Member of the Senate is a contribution by the Senator to the sponsor of the event. Transportation and lodging furnished by the sponsor is provided in consideration for the Member's participation and is not a gift for purposes of the Senate Code of Official Conduct.[51] In addition, Senate Rule 34 requires a Member of the Senate to make an annual public disclosure of the receipt of reimbursements received to cover travel-related expenses aggregating $250 or more from any one source during a calendar year.

Whether the donation by corporations of cash and aircraft to a memorial medical fund, to be used to provide transportation and lodging to celebrity participants in a golf tournament, would constitute campaign contributions by such corporations, is a matter within the jurisdiction of the Federal Election Commission.

INTERPRETATIVE RULING NO. 316

Date issued: April 3, 1980.
Applicable Rule and Area: 35, Federal Regulation of Lobbying Act of 1946; Federal Election Campaign Act of 1971.

Question considered

May a Senate staff member accept reimbursement for travel expenses in connection with an appearance before the regional office of a federal agency in an effort to help resolve official difficulties attending the implementation of a particular statute in that State? A member of a local association with interest in the statute has offered to provide the Senate staff members' travel expenses.

Ruling

Rule 35 of the Senate Code of Official Conduct imposes a $100 limitation on gifts to Members, officers, and employees from entities with a "direct interest in legislation before the Congress", defined as organizations which have a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or a separate segregated fund for political purposes under the Federal Election Campaign Act of 1971, as amended. Rule 35, paragraph 1(b). It would appear, based on the information provided, that the providing of transportation by the local member of the association, in the circumstances described, would constitute a "gift". The Committee does not believe that the "necessary expense" exception to the definition of "gift" in Rule 35 is applicable in this instance since the Committee has previously ruled that the receipt of such "necessary expenses" must be in connection with either an appearance made before a group or organization which is to provide the expenses or an appearance made at an event sponsored by such group or organization.

It is the Committee's understanding that the prospective donor maintains a political committee and also a registered lobbyist. Accordingly, the company would be an entity with a "direct interest in legislation" under Rule 35 from which a Senate employee may receive gifts totalling not more than $100 in value in a calendar year. Thus the reimbursement of travel expenses in this instance is subject to such limitation.

We note that if the staff member's appearance before the agency was in connection with official duties, it would seem that a request for reimbursement from official funds would not be improper.

INTERPRETATIVE RULING NO. 317

Date issued: May 1, 1980.
Applicable Area: Franking.

Question considered

May a Senator use the frank to express congratulations to individuals for attaining a 90th birthday or condolences upon a death?

Ruling

Section 3210(a)(3)(F) of Title 39 authorizes franking of "mail matter expressing condolences to a person who has suffered a loss or congratulations to a person who has achieved some personal or public distinction." The *Regulations Governing the Use of the Mailing Frank* state, "birthday greetings which are not incidental to an otherwise frankable mailing are not considered frankable mail."

The Committee believes that congratulations for attaining a 90th birthday constitute birthday greetings and are not frankable unless they are incidental to an otherwise frankable mailing. The Committee also believes that a death constitutes suffering a loss within the meaning of section 3210(a)(3)(F), and that frankable mail matter includes an expression of condolences upon a death.

INTERPRETATIVE RULING NO. 318

Date issued: May 9, 1980.
Applicable Rule: 40.

Question considered

May a Senator provide a national political committee with a copy of his mailing list of senior citizens in order for the Committee to add the names and addresses to a list of individuals to whom the Committee already sends a newsletter?

Ruling

Senate Rule 40 states, at paragraph 5(c) that "the Senate computer facilities shall not be used . . . to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate . . ." The Report of the Special Committee on Official Conduct, Senate Report 95-49, in explaining Rule 40.5(c) states that "under this paragraph, mailing labels and computer tapes cannot be produced by the Senate facilities for use in any other facility, such as for campaign mailings." The author of this provision stated on March 23, 1977, at p. 8843 of

Footnotes at end of article.

the Congressional Record, it was his intention that the provision ". . . just restates that in no case are Members of the Senate or Senate committees authorized to use Senate computer facilities for political or personal purposes.

We believe that the furnishing by a Member of a list of names and addresses, currently stored in the Senate Computer Facility, to a political committee for use by them in a mailing would be prohibited by paragraph 5(c) of Senate Rule 40, since the labels or tapes to be furnished would be used by the political Committee at a facility which is not maintained or operated by the Senate.

INTERPRETATIVE RULING NO. 319

Date issued: May 9, 1980.
Applicable Rules: 34, 37.

Question considered

May a staff member of a Senate committee provide economic analysis for a consulting firm? The outside employment would involve approximately 10 hours of work per week for about 8 weeks, and the work would be done exclusively at night or on weekends. As proposed, the Senate employee would provide analysis for a private consulting firm and the firm would advise its clients about prospects for federal grants. The employee has indicated that the analysis would not concern or be connected with any legislative matter pending before the Senate Committee which employed him. He also states that should his analysis lead to an application for a federal grant, the grant application would not be considered by any agency of the federal government over which the employee's Senate Committee has jurisdiction.

Ruling

Senate Rule 37.2, Conflict of Interest, prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. From the information available, the Committee does not believe that proposed outside activity is prohibited by Rule 37.

However, paragraph 3 of Rule 37 requires the supervisor of a Senate employee to make the initial judgment as to whether a proposed activity would present a conflict of interest, because of either the time required by the activity or the nature of the activity itself. This paragraph imposes upon the supervisor the responsibility for continuing to monitor the activity and for taking such steps as necessary for the avoidance of a conflict or interference with Senate duties.

If the staff member is a reporting individual under Senate Rule 34, he will be obligated publicly to disclose outside employment and earnings.

INTERPRETATIVE RULING NO. 320

Date issued: May 13, 1980.
Applicable Area: Franking.

Question considered

May the frank be used to mail the *Consumer Information Catalog* in direct response to a request for it from a person to whom it is mailed, after the availability of the catalog has been mentioned in a regular franked newsletter? The *Consumer Information Cataloo* is printed by the Government Printing Office and offered to Members of Congress in quantity by the General Services Administration.

Ruling

The Ethics Committee's Interpretative Ruling No. 52 of August 23, 1977 concluded the frank could not be used to mass mail the catalog. However, inasmuch as the newsletter notice of availability of the catalog would come within the scope of a Senator's representative functions, and because the Senate's franking regulations[52] except from the definition of a mass mailing that which is sent in direct response to requests from the persons to whom the matter is mailed, the catalog may be franked to constituents who have specifically requested it.

INTERPRETATIVE RULING NO. 321

Date issued: May 13, 1980.
Applicable Rule: 37.

Question considered

May a subcommittee special counsel, who intends to be a full-time Senate employee for six months but who may then rejoin the law firm where he has been a partner, retain during his Senate employment a limited relationship with the law firm?

For the period of his Senate employment, the counsel plans not to be affiliated with the law firm for the purpose of providing professional services for compensation, and the firm shall not use his name. The counsel will withdraw from litigation in which he was involved at the firm, will have no interest in fees for services rendered by the firm during the period in which he is not affiliated with it, and the firm will remove his name from its letterhead. The counsel has the option to resume affiliation with the firm after termination of his employment with the Senate, but during his Senate employment will retain at his expense pre-existing group insurance and his interest in the firm's pension plan.

Ruling

Paragraph 5 of Senate Rule 37 provides that:

"No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph, "professional services" shall include but not be limited to those which involve a fiduciary relationship."

Based upon the facts presented, it appears that special counsel and the law firm took all reasonable steps to comply with paragraph 5 of Rule 37. Accordingly, the Committee holds that retention of the firm's group insurance benefits and pension benefits, at his expense, do not constitute a prohibited affiliation within the meaning of paragraph 5(a) of Rule 37.

The Committee reminded the supervising Senator that paragraph 3 of Rule 37 prohibits a Senate Employee from engaging in any outside business or professional activity or employment for compensation unless he had described such activity in writing to his supervisor and the Rule places a continuing responsibility on the supervisor to take such action as is necessary for the avoidance of conflict of interest. Thus, the Senator should review any change in the counsel's relationship with the firm during the time that he is employed by the subcommittee.

The Committee noted also that Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires that any individual who becomes an officer or employee of the Senate on or after January 1 of the calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year and who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS–16 of the General Schedule must file a Public Financial Disclosure Report within thirty days of becoming such an employee. The Select Committee has previously interpreted this provision to apply to employees who have committed themselves to work or who reasonably believe that they will be working for more than sixty days in the calendar year.

INTERPRETATIVE RULING NO. 322

Date issued: May 13, 1980.
Applicable Area: Franking.

Question considered

May a Member use the frank to mail certain official government publications (the publications of the Department of Health and Human Services, *Infant Care* and *One to Six*) to constituents to assist them in the care of babies and children?

Ruling

The Committee has previously ruled[52] that it is not a proper use of a Member's franking privilege to mass mail to his constituents a selected list of pamphlets, which were prepared by executive agencies and which are available upon order from the Consumer Information Center in Colorado, for the reason that the publications were not printed by order of Congress nor do they bear more than an indirect relationship to the legislative process.

The Committee has also ruled, however, that a Member may use the frank to express congratulations (for having achieved a "personal distinction") to parents on the birth of a child and to include along with the congratulations a notification that the pamphlet *Infant Care* is available from the Member's Washington and home State offices.

The Committee believes that a Member may, consistent with these rulings, use the frank to express congratulations to parents upon the birth of a child. These frankable expressions of congratulations may include at notice that the pamphlets *Infant Care* and *One to Six* are available upon request from the Member's Washington or home State offices. Upon request for these pamphlets, we believe that a Member may use the frank to send the pamphlets to those who request them.

INTERPRETATIVE RULING NO. 323

Date issued: June 6, 1980.
Applicable Area: Franking.

Question considered

A Senator has authored a scholorly article for the journal of his State University's Graduate School of Business Administration. The article, which has been published, deals with the Senator's own views concerning the impact of certain regional economic theories affecting his State, especially as these theories are used in the formation of national economic policy. The Senator asks whether reprints of the article may be mailed under the frank to interested persons in his State?

Ruling

In its response, the Select Committee noted that the franked mail statute, 39 U.S.C. 3210 *et seq.*, states the policy of Congress that the franking privilege was enacted in order to assist and expedite the official business, activities, and duties of the Congress and these include all matters which directly or indirectly pertain to the legislative process or to any congressional representative function generally. In addition, Section 3210(a)(3)(A) of the statute authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress."

The Select Committee observed that the article dealt not only with regional economic theories but also with the impact of several specific pieces of tax, environmental and employment legislation recently passed by the Congress. Thus, the Committee ruled that reprints of the article would be frankable pursuant to Section 3210(a)(3)(A) of the franked mail statute, because the article concerned itself with the impact of legislative actions of the Congress, and informed his constituents as to his views thereof and why he voted for or against the legislation in question.

While it appeared that the article has been copyrighted by the state university, the Select Committee expressed no opinion as to the effect of copyright law on a reprint of the article.

INTERPRETATIVE RULING NO. 324

Date issued: June 25, 1980.
Applicable Rule: 40.

Question considered

What is the applicability of the 60-day moratorium on the use of the Senate Recording Studio in Senate Rule 40, paragraph 6 to a Member recording an opening statement for a business conference to be held in a foreign country? The Member was asked to address the conference in his capacity as chairman of a Senate subcommittee; he proposed to do so by means of a video recording; and stated to this Committee that the proposed recording of the four-minute opening statement would not ever be shown in the United States. In addition, the proposed use of the Senate Recording Studio would take place within the 60 days prior to the day the Member was a candidate in his home State primary.

Ruling

Paragraph 6 of Senate Rule 40 provides as follows:

"(a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator.

"(b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954."

The Committee has previously ruled,[54] in connection with the 60-day moratorium on the use of the frank provided in the same Rule at paragraph 1, that Rule 40 does not apply to the mass mailings of a Senate committee which are mailed under the frank of a committee's chairman, but that such mailings must relate only to the committee's business and may not focus on a Member in a manner that could reasonably be deemed to be personal or political.

This ruling was based on a conclusion that there was no evidence in the Rule's legislative history that the Senate intended to include committees and subcommittees within the moratorium on franked mass mailings where the frank being used was that of a chairman who was covered by the Rule's 60-day moratorium.

INTERPRETATIVE RULING NO. 325

Date issued: June 27, 1980.
Applicable Area: Franking.

Question considered

May a member of the Senate frank a letter of congratulations to recently naturalized citizens in his home state, and enclose with that letter an enclosure which provides information as to the Member's state offices and who to contact if a problem arises in a particular area of citizen concern?

Ruling

The franking statute at 39 U.S.C. 3210(a)(1) states:

"It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of official business, activities, and duties of the Congress of the United States."

The intent of the Congress in furnishing the franking privilege to Members is provided at 39 U.S.C. 3210(a)(2) which states:

"It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions."

Of particular note is 39 U.S.C. 3210(a)(3)(F) which specifically sets forth statutory authorization for the franking of "mail matter expressing . . . congratulations to a person who has achieved some personal or public distinction."

It was the considered opinion of the Committee that becoming a citizen of the United States is a "public distinction" within the meaning of the statute, and that letters expressing congratulations for achieving citizenship are frankable as such. Further, the Committee believed that the enclosure of information regarding services available at the Member's state offices was frankable as it conveyed information to the public as a means of assistance in the performance of the legislative and representative functions consistent with the Congressional intent provision of the franking statute.

INTERPRETATIVE RULING NO. 326

Date issued: July 1, 1980.
Applicable Rule: 41.[56]

Question considered

May an employee on the personal staff of a Senator, in his home state office, also serve during off-duty hours and without compensation as the National Committee Chairwoman of a political party from that state?

Ruling

There is no provision of the Code of Official Conduct which prohibits such service by a member of the personal staff of a Senator. As S. Rep. 95–241 (95th Cong.) indicated, except for prohibitions of Rule 41 with respect to the handling of campaign funds, "it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties. . . ."[56]

The prohibitions on political activity within the Code of Official Conduct are found in Rule 41. The legislative history of Rule 41 makes it clear that the Code was not intended to proscribe or restrict legitimate, voluntary political activity such as that in question.

In furtherance of legislative intent, this Committee has approved a Senate employee holding a position as a political party's precinct chairman as long as the state and local campaign activities were clearly separate and distinct from any fund-raising activities performed in connection with a Federal election, and the activities did not interfere with the employee's Senate duties. Interpretative Ruling No. 204 (Dec. 5, 1978).

Hence an employee on the personal staff of a Senator could, during off-hours and without compensation, serve as a political party's National Committee Chairwoman from her state. Such an employee, however, unless one of the Senator's two political fund designees, could not "receive, solicit, be the custodian of, or distribute any campaign funds," Interpretative Ruling No. 5 (May 11, 1977), nor could said employee solicit others to solicit funds or "otherwise becom[e] involved to any substantial degree in political fund activity." Interpretative Ruling No. 25 (June 2, 1977).

If the employee were a political fund designee, then she could handle political funds as set forth in Rule 41. The prohibitions on political fund activity found in Rule 41 *do not*, however, apply to state or local campaigns. Interpretative Ruling No. 153 (June 22, 1978); Interpretative Ruling No. 182 (September 29, 1978). If involvement in *any* campaign activity becomes extensive, however, the supervising Member may find it wise to remove the employee from the payroll for the period of extensive campaign involvement. *See*, for example, Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 309 (February 21, 1980). This is important for the supervising Senator to recognize, because the position of National Committeeman or Committeewoman for a political party is an important position which could conceivably require a great deal of time on the part of the Senate employee.

It should be clear from the foregoing that even if not a political fund designee, an employee would not be prohibited from handling funds for a *state* party organization for the purpose of paying off campaign debts incurred by a party's candidates for state and local office. But those activities must be clearly divisible from any of the organization's activities performed in connection with any *federal* election. That is to say if the proposed activities would involve the raising of a common fund to, for example, discharge the party's political debts on behalf of *all* of its candidates, whether federal, state or local, the employee's participation in the common fund activities would be prohibited under Rule 41, even if the proceeds of the activities could be clearly apportioned between federal candidates and state or local candidates. Interpretative Ruling No. 182 (September 29, 1978).

Because the language of Rule 41 prohibits an employee from receiving, soliciting, being the custodian of, or distributing funds in connection with any federal election campaign, it would be necessary for the employee, as National Committee Chairwoman, to abstain from voting on any issue before the party's National Committee which would involve fund-raising activities for federal elections, or for any common-fund activities which funds would be used for, among others, federal elections, unless, of course, the employee is a political fund designee. The same interpretation would apply to the employee's appointment to a Committee, Subcommittee, Task Force, or other unit of the party's National Committee which would be involved in fund-raising activities for federal election campaigns, or the disbursement or distribution of political campaign funds in federal elections.

We distinguish the case of a party National Committee Chairman or Chairwoman, in this case, from that of the chief executive officer of a state political committee, in Interpretative Ruling No. 296. There we ruled that the party's duties necessarily entailed, in the formal course of business, the acceptance, solicitation, retention or expenditures of funds in connection with federal election campaigns, the effective discharge of which duties would run afoul of the prohibitions of paragraph 1 of Rule 41. Such would not appear to be the case regarding the duties of a party National Committee Chairman or Chairwoman.

Finally, the Committee notes that in addition to restrictions on campaign activity imposed by Senate rules, there are also statutory prohibitions against certain types of political activity by Senate employees. *See* 18 U.S.C. sections 602, 603 (solicitation of political contributions), 606 (intimidation to secure political contributions), and 607 (making political contributions).

Footnotes at end of article.

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In sum, an employee on the personal staff of a Senator, in his home state office, may serve as a political party's National Committee Chairwoman from that state, if done voluntarily during off-hours, and without compensation; if it does not interfere with the performance of her Senate staff duties; and if it does not entail the handling of political campaign funds in *federal* elections, unless said employee is one of the Senator's political fund designees, in which case the employee may handle federal election campaign funds within the limits of Rule 41.

INTERPRETATIVE RULING NO. 327

Date issued: July 1, 1980.
Applicable Rule: 34.

Question considered

For reporting purposes, how is a gift of a season pass to a theatre or sporting events or a membership in a club to be valued?

Ruling

Section 107(3) of the Ethics in Government Act of 1978 (2 U.S.C. 707(3)), which has been adopted as Rule 34 of the Standing Rules of the Senate (Public Financial Disclosure) defines gift as "a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include—

"(A) bequest and other forms of inheritance;

"(B) suitable mementos of a function honoring the reporting individual;

"(C) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States Government;

"(D) food and beverages consumed at banquets, receptions, or similar events;

"(E) consumable products provided by home State businesses to a Member's office for distribution; or

"(F) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;".

As to the value assigned for reporting purposes to the gift of a season's pass to the theatre or sporting events, or a gift of membership in a club, the Committee believes that the value for reporting purposes is the cost paid by the donor, regardless of the extent, if any, of the use of the pass or membership by the donee.

The Committee has also concluded that the value of a gift of a season pass is the value at the time of acceptance.

INTERPRETATIVE RULING NO. 328

Dated issued: July 11, 1980.
Applicable Area: Franking.

Question considered

May a Member of the Senate frank a letter to constituents encouraging them to recommend that their children attending colleges enroll in ROTC programs?

Ruling

Title 39 USC 3210(a)(2) indicates that the use of the frank by Members of Congress is intended to assist them in the performance of their official duties. This is meant to encompass all matters which relate directly or indirectly to the legislative and/or representative function of the Member. 39 USC (a)(3)(A) specifically authorizes the use of the Member's frank with regard to "programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress."

It was the considered opinion of the Committee that in a time when the all-volunteer enlistment program for the United States Armed Services is not filling the manpower requirements necessary to maintain full military preparedness, a letter written by a Member encouraging participation in available college military programs specifically authorized by Congress was related to a matter of public concern or public service as contemplated by 39 USC 3210(a)(3)(A). It was therefore the conclusion of the Committee that the letter encouraging enrollment in ROTC programs was frankable under the frank mail statute.

INTERPRETATIVE RULING NO. 329

Date issued: August 26, 1980.
Applicable Area: Franking.

Question considered

May a Senator use his franked mail privilege to enclose, in an otherwise frankable mailing, a "wallet card" which lists information for senior citizens, including phone numbers of local governmental agencies which serve senior citizens?

Ruling

The Senator proposes to mail a letter of response to each letter he receives from a senior citizen. In that response, he proposes to include a "wallet card" which lists the phone numbers of selected state and local agencies which offer assistance to senior citizens. While some of the listed agencies are public and some are private, all appear to have only a state or local focus and none of the listed organizations is an agency of the Federal government, nor are any of the organizations listed related to the Congress.

The franked mail statute, at 39 U.S.C. 3210(a)(3), states the intent of Congress that the franking privilege of a Member of Congress shall include "the conveying of information to the public . . ." While Section 3210(a)(3)(A) specifically authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service . . .", the Select Committee has previously taken the position that "these matters must relate principally to the Federal Government. "Matters of purely State or local concern are not frankable". (See Chapter 2, paragraph 3 of the *Regulations Governing the Use Of the Mailing Frank*).

The "wallet card" which was proposed to be enclosed in franked mailings to senior citizens appears to deal exclusively with phone numbers of various state, county, and private agencies and organizations which assist senior citizens. For this reason, the Committee ruled that the "wallet card" would not be frankable for the reason that it does not relate to matters of public concern involving the Federal Government, nor does it relate to "the functioning, working, or operating of the Congress . . ." per section 3210(a)(3) of the franked mail statute.

INTERPRETATIVE RULING NO. 330

Date issued: August 26, 1980.
Applicable Rule and Area: 38 and the Federal Election Campaign Act.

Question considered

May a Member use excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff?

Ruling

The use of excess campaign funds is governed by the Federal Election Campaign Act and Senate Rules. The Act, as amended by Pub. L. No. 96-187, provides at section 439a of Title 2, United States Code, that excess campaign funds may be used by a holder of Federal office "to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office." Senate Rule 38 allows a Member to defray "expenses incurred by a Member in connection with his official duties" from, either personal funds or, "funds derived from a political committee."

The Committee does not believe that a Member's use of excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff violates the requirement of Rule 38 that "expenses incurred by a Member in connection with his official duties shall be defrayed only from . . . (c) funds derived from a political committee . . ." In addition, the Committee does not believe that such a use of funds from a Member's principal campaign committee violates the prohibition in paragraph 2 of Rule 38 on the conversion of contributions to the personal use of a Member.

The Committee notes that this interpretation of Rule 38 has no bearing on the question of what kinds of expenses are "official expenses" as that term may be interpreted by the Committee on Rules and Administration or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds. In addition, the Committee expresses no view on the tax consequences to a Member or to his principal campaign committee of the use of campaign funds to defray the cost of entertainment of staff. Further information on these issues can be found in a report of the Committee on Finance, "Tax Status of Funds Expended by a Political Committee", S. Rept. 95-779 (1978), and in Revenue Ruling 78-373 on Deductibility of Expenses paid by Members of Congress.

INTERPRETATIVE RULING NO. 331

Date issued: September 3, 1980.
Applicable Area: Franking.

Question considered

A Senator has introduced legislation concerning an environmental issue. A national environmental group is interested in the bill and has asked the Senator to supply it with a quantity of reprints of the legislation and the Senator's remarks in the *Congressional Record* upon introducing the bill. The Senator, who is a candidate for reelection to the Senate and is within the 60-day moratorium established by Senate Rule 40, asks whether it would be proper for him to request that the Senate Service Department reprint a large quantity of his introductory remarks from the *Congressional Record* and whether he can use his franked mail privilege to mail reprints of the bill and the *Congressional Record* remarks to the environmental group, who will then enclose the reprints in a newsletter mailing which they regularly send to their membership?

Ruling

Concerning the use of the Service Department to reprint copies of a Senator's remarks from the *Congressional Record*, the Select Committee stated that it knew of no provision of the Code of Official Conduct which would preclude such a request. As the Select Committee has previously stated, the fact that the material would ultimately be disseminated by a private group rather than directly by the Senator would not preclude such reprinting by the Service Department, cf. IR No. 127, dated May 12, 1978. In this as in all other instances in which a Senator requests that the Service Department prepare printed material, the Senator must make the judgment that such a request is made in connection with his official duties.

Concerning the use of the mailing frank to forward such reprints to the environmental group, the Select Committee stated that section 3212 of Title 2, U.S. Code, the franked mail statute, provides that Senators may send the *Congressional Record* "any part of, or a reprint of any part of, the Congressional Record, including speeches or reports contained therein, if such matter is mailable as franked mail under section 3210." Section 3210(a)(3)(A) of the statute authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress." The Select Committee ruled that taken together, sections 3210(a)(3)(A) and 3212 provide authority for the Senator to mail as prescribed mail reprints of his remarks from the *Congressional Record* concerning the introduction of the environmental legislation.

In response to the Senator's question as to whether the fact that he is a candidate for reelection to the Senate would impact upon his use of the frank to forward the reprints, the Select Committee stated, that based upon the assumption that the reprinted matter being forwarded in response to the environmental group's request was to be mailed in one mailing, the restrictions imposed upon Senators who are candidates for reelection and who seek to use their mailing frank for "mass mailings" (cf. Senate Rule 40) would not preclude this specific use of the frank. In this factual setting, although the Senator was within a 60-day moratorium established by Rule 40, the mailing to the environmental group would not be a "mass mailing" for the reason that the term "mass mailing" is defined as "any mailing within a 30-day period of more than 500 pieces of substantially identical content." Here there was to be a one-time mailing, in bulk, under a single use of the frank and thus the 500 piece threshold of Rule 40 would not be met.

INTERPRETATIVE RULING NO. 332

Date issued: September 3, 1980.
Applicable Rule: 38.

Question considered

A Senator holds periodic town meetings throughout his state and in the past has notified residents of future town meetings in their area by franked post cards. In the alternative, the Senator proposes to prepare meeting notices and distribute the notices to grocery stores in his state for dissemination to the public. Would such a proposal be consistent with the Code of Official Conduct?

Ruling

While Senate Rule 38 prohibits the defrayal of expenses incurred in connection with a Senator's official duties from other than one of the four sources specifically identified in the Rule, the Senator states that the costs of preparing the town meeting notice will be defrayed from one of the sources of funding listed in Rule 38. In addition, while the Select Committee has previously ruled that in-kind donations of goods and services for official purposes fall under the prohibitions of Rule 38 (see IR 16, dated May 23, 1977, IR 43, dated July 13, 1977, and IR 72, dated September 29, 1977), it is the Committee's view that such "in-kind contribution" rulings do not preclude a Senator's distribution of town meeting notices to grocery stores where such notices will be made available to the general public, for the reason that the services are of a de minimus nature, and are available to other responsible organizations.

INTERPRETATIVE RULING NO. 333

Date issued: September 3, 1980.
Applicable Area: Franking.

Question considered

May letters of congratulations be sent under the frank to senior citizens who have attained their high school diploma through an adult education program?

Ruling

Section 3210(a)(3)(F) of Title 39 of the United States Code authorizes the franking of "mail matter expressing . . . congratulations to a person who has achieved some personal or public distinction."

A franking regulation promulgated by the Committee declares that "[c]ongratulations to graduating students or to newly-weds, or birthday greetings which are not incidental to an otherwise frankable mailing are not considered frankable mail."

The Committee concluded that the attainment of a high school diploma by a senior citizen is sufficiently distinguishable from the usual circumstances surrounding a high school graduation as to constitute a "public distinction" within the meaning of the Act. Therefore a letter congratulating the senior citizen for that accomplishment may be franked.

INTERPRETATIVE RULING NO. 334

Date issued: September 3, 1980.
Applicable Rule: 35.

Question considered

Is it permissible under the Code of Conduct for a Senate employee to accept from a public research foundation travel, food, and lodging expenses for a three-week visit to the foundation to edit certain papers which the employee's supervising Senator asked the Foundation to publish?

Ruling

The Senate employee edited certain papers that were prepared for and presented to Members of Congress and congressional staff members during a Congressional Roundtable co-sponsored by the employee's supervising Senator. During the trip the foundation paid the employee's travel, food, and lodging expenses, and he remained on the Senate payroll, engaging in the activity as a work assignment for the Senator and not on leave time. The Senator indicated that he "regard[ed] this activity on the employee's part as being consistent with his official duties."

Paragraph 1(a) of Rule 35 on Gifts prohibits Senators, officers, and employees of the Senate from accepting gifts with a value in excess of $100 in any calendar year from a prohibited source, as that term is defined by the Rule. Paragraph 2(a) of the Rule, however, excepts from the definition of "gift" any payment where "consideration of equal or greater value is received" by the party making the payment.

The Committee determined that the employee's editing work was a substantial service to the foundation in connection with its publication of the papers, and therefore "consideration of equal or greater value [was] received" by the foundation such that its payment of travel, food, and lodging expenses was not a gift within the meaning of Rule 35. Accordingly, since the expenses furnished to the employee were therefore exempted from the Rule 35(1) prohibition, it was not necessary to determine whether the source furnishing the expenses was a prohibited one, and the trip and the employee's acceptance of expenses was therefore permissible.

The Committee noted that if the employee was required to file a financial disclosure statement under the Ethics in Government Act of 1978, i.e., if he was an employee of the legislative branch for more than sixty days and was compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS-16 during the calendar year, he would be required to report the identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

INTERPRETATIVE RULING NO. 335

Date issued: September 3, 1980.
Applicable Area: Franking.

Question considered

A Committee Chairman proposes to use his frank to mail a survey to 3,000 research and development firms asking for their comments on the Federal government's research and development efforts. The results of the survey will be used by the Committee to support a bill which the Committee has reported to the Senate. In addition, the Chairman proposes to enclose, with the survey, a pre-addressed, franked, return envelope which would enable the recipient to return the survey results to the Committee. The Chairman asks whether these specific uses of the frank are authorized by the franked mail statute?

Ruling

Section 3210(a)(3)(c) of Title 39, U.S. Code, the franked mail statute, authorizes the franking of questionnaires "seeking public opinion on any law, pending or proposed legislation, public issue, or subject." The Select Committee ruled that a survey seeking comments about the research and development programs of the federal government from business engaged in research and development work would be within the definition of a "questionnaire" as that term is used in section 3210(a)(3)(c) of the statute, with the result that the frank of a Senator could be used to mail the proposed survey.

Chapter Two, paragraph 5 of the *Regulations Governing the Use of the Mailing Frank* states that "a Senator may provide a franked, pre-addressed mailer or envelope for the return of responses to a franked questionnaire as intended by section 3210(a)(2) of Title 39, U.S. Code, which specifically authorizes the use of the frank in 'requesting the views of the public'." The Select Committee held, given the facts presented, that a Committee Chairman would be authorized to enclose, with the survey, a self-addressed, franked envelope for use by the recipient of the survey in responding to the Committee's request for information and views on the federal research and development process.

FOOTNOTES

[1] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is not Rules 34 through 42.

[2] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[3] Subsequent to this ruling the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of the Ethics in Government Act of 1978. Rule 42, as noted above is now Rule 34.

[4] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[5] Prior interpretations of the lobbying prohibition in the Code can be found in Interpretative Ruling Nos. 92 and 218.

[6] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[7] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[8] After this ruling was issued, the Senate agreed on March 25, 1980 to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[9] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[10] After this Ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[11] Subsequent to this ruling, the Senate

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agreed (on November 14, 1979) to S. Res. 274 which removed paragraph 5 of Rule 37, necessitating a renumbering of Rule 37, paragraphs 6–12.

[12] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[13] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[14] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[15] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[16] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[17] See Interpretative Ruling No. 44.

[18] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[19] See Interpretative Ruling No. 223, dated January 30, 1979.

[20] See Interpretative Ruling No. 182, dated September 5, 1978.

[21] See Interpretative Ruling No. 204, dated December 5, 1978.

[22] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[23] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Re. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[24] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[25] On August 3, 1979 the Senate agreed to S. Res. 220 striking Rule 42 and replacing it with Title I of the Ethics in Government Act of 1978. Prior to its amendment, Rules 42(5)(e)(2) provided for the Comptroller General to audit at least one report filed by each Member of the Senate during each six-year period beginning December 31, 1977. Rule 42, as amended, now Rule 34, has no such provision.

[26] See Interpretative Ruling No. 60, dated September 13, 1977.

[27] After this ruling was issued, the Rules Committee decided that such reimbursement can be made from the 10 percent account.

[28] After this ruling was issued, the Senate, on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[29] See Interpretative Ruling No. 103.

[30] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[31] See Interpretative Ruling No. 105, dated March 9, 1978.

[32] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[33] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[34] The Committee also notes that the prohibition in the criminal code on receipt of contributions in a Federal building (formerly 18 U.S.C. section 603) was also amended by the Federal Election Campaign Act Amendments of 1979 to allow unsolicited contributions to be received in a Federal building, provided they are not directed to be sent there, and further provided that they are transferred to a political Committee within 7 days of receipt. 18 U.S.C. section 607, as amended.

[35] See Interpretative Rulings No. 3, No. 5, No. 22, No. 49, No. 153, No. 182.

[36] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[37] See Interpretative Rulings No. 6 and No. 59.

[38] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[39] See Interpretative Rulings No. 70 and No. 233.

[40] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[41] See Interpretative Rulings No. 69 and No. 133.

[42] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[43] Section 3210(a)(5) of Title 39 states that mail is not frankable if it "includes greetings from the spouse or other members of the family" of a Senator.

[44] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[45] S. Rept. 49, 95th Cong., 1st Sess. 41 (1977).

[46] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[47] See Interpretative Rulings Nos. 137 and 152.

[48] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[49] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[50] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[51] See Interpretative Ruling No. 29.

[52] *Regulations Governing the Use of the Mail Mailing Frank by Members and Officers of the United States Senate*, June 26, 1979, Chapter Three, paragraph 2(b).

[53] See I.R. 52, dated August 23, 1977. See also Rule 40.2 of the Standing Rules of the Senate, effective January 1, 1978, which requires the use of official Senate funds for the printing or preparation of any mass mailing material to be sent out under the frank.

[54] See I.R. 141, dated June 7, 1978.

[55] Rule 41, Standing Rules of the Senate, was previously Rule 49. It was renumbered by S. Res. 389 (consolidation of the Senate Rules), which passed the Senate on March 25, 1980.

[56] S. Rep. 95–241 (95th Cong.), *quoted in* Interpretative Ruling No. 154, June 22, 1978, p. 2. S. Rept. 95–241 accompanied S. Res. 188, which amended then Rule 44 (now Rule 41) relative to political fund activity by Senate officers or employees.●

PERMISSION FOR COMMITTEES TO FILE BILLS, REPORTS, AND CONFERENCE REPORTS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committees may have permission to file bills and reports from 9 o'clock tomorrow morning until 3 o'clock tomorrow afternoon, and that conference reports may be filed during that period.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECORD OPEN UNTIL 5 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may have until 5 p.m. today to introduce statements, bills, resolutions, petitions, and memorials.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORITY FOR CERTAIN ACTION DURING RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess until 1 p.m. on Monday next, the Secretary of the Senate may be authorized to receive messages from the President of the United States and/or the House of Representatives, and that they may be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over until 1 p.m. on Monday next, the Vice President of the United States, the President of the Senate pro tempore, and the Acting President pro tempore of the Senate may be authorized to sign all duly enrolled bills and joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, on Monday next, the Senate will convene at 1 p.m. There being no orders for the recognition of Senators, the two leaders or their designees will be recognized under the standing order for up to 10 minutes each, after which the Senate will resume its consideration of the Foreign Service bill, at which time the 1 hour for debate on the substitute amendment by Mr. HELMS will begin running.

One hour of debate on the substitute amendment by Mr. HELMS will begin running at that time, after which the vote will occur on the substitute amendment by Mr. HELMS. That will be a rollcall vote, undoubtedly.

Upon the disposition of that amendment, if it carries, the Senate will immediately proceed to the consideration of the bill, as amended, and without further amendment. However, if the amendment by Mr. HELMS does not carry, then he or any other Senator may call up additional amendments.

Upon the disposition of the Foreign Service bill, the Senate will proceed to the consideration of the HUD appropriations bill. This should come at a fairly early time on Monday afternoon. There will be rollcall votes in connection with amendments to the HUD appropriations bill.

Upon the disposition of the HUD appropriations bill, or not later than 12 noon on Tuesday, the Senate will proceed to the consideration of the military construction authorization bill.

In the event the HUD appropriations bill has to be laid aside temporarily on Tuesday at noon for that purpose, upon the disposition of the military construction authorization bill the Senate will return to the consideration of the HUD appropriations bill.

Following the disposition of both of these measures—the HUD appropriations bill and the military construction authorization bill—the Senate will proceed to the consideration of the military construction appropriations bill.

Upon the disposition of the military construction appropriations bill, the Senate will proceed to the consideration of the transportation appropriations bill.

Mr. President, at some point next week, I anticipate calling up the disapproval resolution on Tarapur, regardless of what my position may be on the resolution. I want to ascertain a time that will be mutually agreeable to the chairman of the committee and those who support the disapproval resolution, and, if possible, alert all Senators to that time so that Senators will be prepared. But at some point next week, I anticipate calling that up.

As I said, that will be after consultation with the chairman, the ranking member, the minority leader, and Senators who support the disapproval resolution.

I merely make that statement now so that Senators will be alert to the action on that bill. That measure will be under a built-in time agreement and, of course, will result in a rollcall vote.

Mr. President, I anticipate the likelihood of long sessions next week—early and late sessions—as we near the end of the session prior to the election. The anticipated adjournment date is still October 4. It may be possible to beat that by a day or two. It is my understanding that the other body may go out on October 2, but I anticipate the Senate being in until October 4 at the latest and until October 3 or the second at the very earliest, before it recesses over until after the election.

The Senate will return following the election. It will return on November 12, the day after Armistice Day. The business that will make it a necessity to return will be the continuing resolution, for one thing. There will be a continuing resolution over from the other body within the next few days, but the date in that continuing resolution probably will be December 15 or thereabouts, which will necessitate another continuing resolution following the election.

Additionally, there is the second concurrent budget resolution which, if not disposed of before the election, will remain to be disposed of following the election.

Any other business which has not been disposed of before the election and which is considered to be "must" legislation will be taken up following the election.

So the post-election session is assured, and the October 4 adjournment is assured with the possible adjournment over until November 12 occurring maybe on the third or the second, depending on how well the work goes in the Senate, in the meantime.

I would not rule out a Saturday session or so between now and October 4.

RECESS TO 1 P.M. ON MONDAY, SEPTEMBER 15, 1980

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 1 p.m. on Monday next.

The motion was agreed to; and at 12:20 p.m. the Senate recessed until Monday, September 15, 1980, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate September 11, 1980:

U.S. SYNTHETIC FUELS CORP.

John C. Sawhill, of the District of Columbia, to be Chairman of the Board of Directors of the U.S. Synthetic Fuels Corp. for a term of 7 years (new position).

CONFIRMATIONS

Executive nominations confirmed by the Senate September 11, 1980:

DEPARTMENT OF THE INTERIOR

Lindsay D. Norman, Jr., of Maryland, to be Director of the Bureau of Mines.

U.S. METRIC BOARD

Francis R. Dugan, of Ohio, to be a Member of the U.S. Metric Board for a term expiring March 23, 1986.

Dennis R. Smith, of Massachusetts, to be a Member of the U.S. Metric Board for a term expiring June 14, 1986.

CORPORATION FOR PUBLIC BROADCASTING

Howard A. White, of New York, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 26, 1986.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

THE JUDICIARY

Stephen R. Reinhardt, of California, to be U.S. circuit judge for the ninth circuit.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert Haldane, 131–14–7236, U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert Joseph Lunn, 361–14–7936, U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Major General Harry Augustus Griffith, 113–18–4835, U.S. Army.

IN THE MARINE CORPS

Lt. Gen. Edward J. Miller, U.S. Marine Corps, age 57, for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

The following-named officer under the provisions of title 10, United States Code, section 5232, to be assigned to a position of importance and responsibility designated by the President, in grade as follows:

To be lieutenant general

Maj. Gen. Richard E. Carey, 279–20–9619, U.S. Marine Corps.

IN THE AIR FORCE

Air Force nominations beginning Albert R. Amalfitano, to be lieutenant colonel, and ending William E. Dussetschleger, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 25, 1980.

IN THE ARMY

Army nominations beginning Larry D. Aaron, to be major, and ending Joseph Saint Clair, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

Army nominations beginning Michael H. Abbott, to be lieutenant colonel, and ending John J. Zegarski, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Army nominations beginning Gary D. Burrows, to be major, and ending Larry Smith, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

IN THE NAVY

Navy nominations beginning Raymond J. Adams, to be ensign, and ending Sheldon Brotman, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

IN THE MARINE CORPS

Marine Corps nominations beginning Timothy C. Abe, to be second lieutenant, and ending Larry R. Shannon, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

EXTENSIONS OF REMARKS

FOR GRAIN ELEVATOR IN ISRAEL

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 11, 1980

● Mr. FINDLEY. Mr. Speaker, I am urging swift action on a proposed foreign market development facilities program to clear the way for a much needed grain elevator in Israel.

I made the recommendation in a mailgram to Kelly Harrison, the U.S. Department of Agriculture's General Sales Manager.

I strongly urge immediate approval of the proposed Commodity Credit Corporation intermediate credit export sales program for foreign market development facilities.

Because of the pending project for a large, modern grain elevator at the port of Ashdod, Israel, time is of the essence for putting this program in place using funds available in the current fiscal year which, of course, ends September 30.

As a principal sponsor of the Agricultural Trade Act of 1978, under which this foreign market development facilities program should be carried out, I believe it is most important to implement fully this act. The proposed program is an important part of the objectives sought by this act, one which would help develop and expand the importing capabilities of foreign customers for U.S. farm commodities.

Regarding the proposed Ashdod facility, it should be noted that Israel's grain requirements are increasing about 10 percent annually. These needs are being served by a single elevator at the shallow water port of Haifa, now operating at full capacity. Ashdod can handle ocean vessels twice the size of those unloading at Haifa because it is a deeper draft port. An adequate facility at Ashdod would result in significant ocean freight and demurrage savings to Israel.

Ashdod also is more strategically located. The grain and oilseed consuming industry is centered around Ashdod and grain imported there could be more efficiently stored for shipment to the ultimate customer.

Of particular significance to Middle East relations is the fact that a modern grain unloading facility at Ashdod could become a regional depot serving Egypt.

The Agriculture Department has indicated that the advantages of Ashdod as a supply point for Egypt, Gaza, and Sinai are quite significant, since it is only 40 kilometers by direct coastal road to the 400,000 people in Gaza, compared with the present closest Egyptian elevator at Alexandria, 1,000 kilometers away.

Therefore, the implementation of the intermediate credit export sales program for foreign market development facilities is important to improving the Israeli economy, furthering peaceful cooperation among Middle East nations, and expanding the potential markets for American farm products not only in the Middle East but in other customer countries which may find this program vital to expanding import opportunities. The program should be implemented without delay.

The proposed Ashdod elevator facility will have a storage capacity of 90,000 metric tons, can unload 1,000 metric tons of bulk grain an hour, and handle ocean vessels up to 60,000 metric tons capacity. The elevator will be a joint venture of the Minneapolis exporting firm of I. S. Joseph Co., and the Haifa, Israel, firm of "Dagon" Batey-Mamguroth Le-Israel, Ltd., which will operate the elevator under the corporate name of Ashdod Silos, Ltd.

According to the proposal, the Israeli Supply Mission, the importing arm of the Government of Israel, will guarantee 60,000 metric tons or two-thirds of the capacity of the new elevator. The other 30,000 metric tons of storage capacity will be used for Israel's surplus storage plus possible grain handling and storage for shipments to Egypt.

The project agreement is to authorize the purchase by Ashdod Silos, Ltd., of 20 million dollars' worth of American corn and grain sorghum, 85 percent of the cost of which will be borne by the Commodity Credit Corporation through intermediate credit. Upon sale of the commodities by Ashdod Silos, the funds will be put in a financial facility approved by the CCC to be used for the construction of the port elevator. The proposed intermediate credit agreement calls for repayment in dollars to CCC over a 10-year period.●

HAPPY BIRTHDAY, CLAUDE PEPPER

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BINGHAM. Mr. Speaker, today, September 8, 1980, our distinguished and beloved colleague, CLAUDE PEPPER, of Florida, celebrates his 80th birthday. I am grateful to our colleague, Mr. FASCELL, for arranging for this special order so that we properly celebrate such a happy event.

What great service Senator PEPPER has rendered to his State, his country, and the world over the four and one-half decades of his public service. And what great service he is rendering today and will render in the years to come.

As a senior citizen, he stands as a shining example of the principle he has so often and so effectively espoused: That our senior citizens have much to contribute. Indeed, his imagination, drive, energy, and stamina are enough to put to shame our colleagues in their twenties and thirties, let alone those of us young fry who are in our sixties.

It has been a privilege and a delight for me to serve with CLAUDE PEPPER in the House since January 1965.

My wife and I join most enthusiastically in wishing him a happy birthday and many happy returns of the day.●

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

SENATE—*Monday, September 15, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 1 p.m., on the expiration of the recess, and was called to order by Hon. WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

"God of our life, through all the circling years,
We trust in Thee,
In all the past, through all our hopes and fears
Thy hand we see."

—H. T. KERR.

Breathe upon us now a sense of Thy continued presence. Fill us with life anew, that we may love what Thou dost love, and do what Thou wouldst do.

Help us, Lord, in our daily work to stay close to Thee that we may serve the Nation as we would serve Thy kingdom. May the call to public service and the duties already imposed upon us here keep us steadfast, alert, and strong amid all change.

Under the shelter of Thy wing,
Still may we dwell secure.
Sufficient is Thine arm alone,
And our defense is sure.
Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 15, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. FORD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CREDIT GUARANTEES FOR POLAND

Mr. ROBERT C. BYRD. Mr. President, on Friday afternoon, President Carter announced his decision to extend $670 million in agricultural credit guarantees to Poland for fiscal year 1981. This action will allow Poland to buy an estimated 4 million tons of grain and other agricultural commodities from American farmers.

I applaud this effort to support the Polish economy in the wake of the historic agreements settling the recent strikes in Poland. The Polish Government has stated that the agreements will be implemented fully. Mr. Stanislaw Kania, the new Communist Party chief, has pledged to see that the reforms are carried out. Initial steps taken in accordance with the agreements seem to validate Mr. Kania's pledge. New independent unions are springing up all over Poland, and workers are lining up to join.

The strikes were debilitating to the already weak Polish economy. But I hope that the agreements made between the workers and their Government, without outside interference, will allow work to recommence and will provide a foundation for future prosperity. It is appropriate for the people of the United States to affirm their friendship with the Polish people by extending to them the largest amount of U.S. credit guarantees ever offered to a single country. The President stated that this aid was in response to an urgent request from Poland.

No one believes that this financial assistance will relieve Poland of all future hardships. But it is important that the Polish people know that they have the support of the people of the world's greatest democracy, the United States of America. It is important that the Polish people share in the bounty of the world's most efficient agricultural producer, the American farmer.

These credit guarantees are an indication that the American people care about Poland and follow its development and its news with special interest. We are witnesses to the events and promises of the last month, and we will watch carefully as the promises of September come to life in the months and years ahead.

RECOGNITION OF THE ASSISTANT MINORITY LEADER

Mr. ROBERT C. BYRD. Mr. President, if the distinguished minority whip would like any of my time, I will be glad to yield it.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Mr. STEVENS. I thank the distinguished majority leader.

THE POSTELECTION SESSION

Mr. STEVENS. Mr. President, I was just reading the CONGRESSIONAL RECORD for Thursday, September 11, and I noticed that my good friend the majority leader had indicated once again that it is the intention to return to session on November 12.

It had been my hope that perhaps the leadership might work toward a continuing authorizing resolution which would negate the necessity to return.

I realize that there is "must" legislation to be completed, but it was my hope that we might avoid the potential discord that is involved in a postelection session in a Presidential election year.

I do not have any speech to make about this. I should just like the RECORD to show that I again seriously question the concept of being in session after an election in a Presidential election year. My memory of the times I have been here in 1972 and 1976 have convinced me that they are not productive sessions.

I say again to the majority leader that if there is anything we can do or that I can do personally to assist in working out the calendar so that we might avoid a postelection session, it is my hope that he will try to see if it is possible. I note that the majority leader has stated categorically—and I know that when my good friend says something categorically, he believes it and means it—that a postelection session is assured.

It seems to me that with the potential for the change of leadership in the executive branch, and even without it, in a Presidential election year, there is too much for the country to risk to have Congress in session after an election. I cannot believe that there is not some way we can avoid that.

It is my hope that we might discuss this matter with the leadership of the majority party in both Houses, to see if it would be possible to work out an arrangement whereby we would have a continuing resolution which, in fact, would continue the "must" legislation through in the next year, on an authorizing continuing resolution basis, and see if it would be possible to arrive at that type of solution to the problem that confronts us.

Mr. ROBERT C. BYRD. Mr. President, I appreciate the opportunity to respond to the distinguished Senator. I also am

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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grateful for his offer to assist in expediting the work of the Senate.

I doubt that a postelection session can be avoided unless the second concurrent budget resolution and appropriation bills and the continuing resolution can be acted upon in such a way as to avoid the necessity of such a postelection meeting.

The House will send over a continuing resolution soon. It is my understanding that it will provide a date of something like December 15. This, in itself, would necessitate our return following the election.

We still have several appropriation bills. The second concurrent budget resolution has not been marked up in the other body as yet.

My only suggestion would be that we get as much business done as possible, so that when we do return after the election, our workload will be narrowed to that extent.

Further, if we could get agreements on appropriations bills which would preclude legislative amendments which are not in order under the rules anyhow and which would preclude the calling up of nongermane amendments which are not in order under the rules anyhow, this would help us to expedite action on appropriations bills. If we could get other time agreements and agreements on the nominations that remain to be confirmed, these things would greatly expedite the work of the Senate.

I know that the distinguished minority whip will be interested in expediting these matters and he will be effective in aiding in the expedition of them. I know, also, that he will try to do whatever he can do from his side of the aisle to meet the suggestions I have made, particularly with respect to the amendments on appropriations bills.

Calling up an appropriations bill here, of course, sets the stage for a lot of amendments that are not germane and a lot of amendments that are legislative in nature. If we could reach agreements on these, that would avoid having to take time to deal with such amendments that are not in order under the rules anyhow. This would greatly aid us in the utilization of the remaining time.

I thank the distinguished Senator.

Mr. STEVENS. Mr. President, I do thank the majority leader for his comments.

I think it would be possible to work out an understanding between the majority and minority that is based upon firm assurance that if the understandings were agreed to there would be no postelection session.

Whether it is with regard to nominations or the must legislation, or the appropriations bills, with the knowledge that there is going to be a postelection session, I think it is very difficult to get agreement on almost anything right now, although, as my good friend knows, I will continue to work to try and help him with those agreements in order to accelerate the work of the Senate.

It just seems to me that we should have, by virtue of our experience in the past, learned that postelection sessions in Presidential election years are really detrimental, I think, to the legislative process and to the best interests of the country.

So again I renew my offer on the record to assist in any way I can.

We have no request for time on this side, I might say to my good friend.

On that basis I shall be happy to yield back my time or let it run, whichever the majority leader wishes to do.

Mr. ROBERT C. BYRD. Mr. President, I yield back my time.

Mr. STEVENS. Mr. President, I yield back my time.

The ACTING PRESIDENT pro tempore. The time has all been yielded back.

FOREIGN SERVICE ACT OF 1980

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, S. 3058, which the clerk will state.

The legislative clerk read as follows:

A bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, will the Chair state the agreement?

AMENDMENT NO. 2290

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the pending amendment in the nature of a substitute, amendment No. 2290, by the Senator from North Carolina (Mr. HELMS) on which there shall be 1 hour.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side on the amendment awaiting the managers of the amendment and the opponents of the amendment to reach the Chamber.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, the Foreign Service Act of 1980 (S. 3058) represents a 5-year nonpartisan effort to strengthen and improve the Foreign Service of the United States.

In 1978, the Congress took a major step to upgrade the management and efficiency of the Federal service by enacting the Civil Service Reform Act. This bill, S. 3058, is a companion measure designed to increase the effectiveness of the foreign policy arm of Government. It also responds to a congressional directive—section 117 of Public Law 94-350—to prepare a comprehensive plan for the improvement and simplification of the personnel systems of our various foreign affairs departments and agencies.

The last comprehensive attempt to revise the Foreign Service was the Foreign Service Act of 1946. There is a clear need, after more than three decades, for substantial legislative changes to strengthen and improve the Foreign Service to enable it to fulfill its essential role and mission now and in the years ahead.

This new Foreign Service Act is needed:

To provide a clear distinction between Foreign Service and civil service employment, and to convert to civil service status without loss those Foreign Service personnel who are obligated and needed only for domestic service;

To improve efficiency and economy by simplifying and rationalizing the various categories of Foreign Service personnel and by establishing a single Foreign Service salary schedule;

To establish a Senior Foreign Service (SFS) with rigorous entry, promotion, and retention standards based on performance, with performance pay for outstanding service;

To make more uniform the statutory terms and conditions of Foreign Service employment based on merit principles;

To provide a statutory basis for labor-management relations in the Foreign Service;

To consolidate and codify the various laws relating to Foreign Service personnel which have been enacted both within and outside the framework of the existing Foreign Service Act;

To improve interagency coordination by promoting compatibility among the personnel systems of the agencies employing Foreign Service personnel and with those of other departments and agencies.

There is no doubt that it is in the national interest to maintain and strengthen a professional Foreign Service, representative of the American people, to assist the President and the Secretary of State in managing the country's foreign relations.

This bill strengthens the professional character of the Foreign Service of the United States by:

First, limiting Foreign Service status to those who accept its discipline including the obligation to serve anywhere in the world often under dangerous or unhealthy circumstances;

Second, requiring that all persons seeking career status pass successfully through a strict but fair tenuring process; and

Third, establishing closer links between performance and promotion, compensation and incentive payments, and retention in service.

This bill will also improve the management of the Foreign Service and promote economy and efficiency by reducing the number of personnel categories under a single pay schedule, establishing a Senior Foreign Service comparable to the Senior Executive Service of the civil service, and by encouraging interchange and maximum compatibility of personnel systems among the foreign affairs agencies.

The bill has been the subject of extensive consultations. Its provisions reflect comments and suggestions which have been received from the members of the Foreign Service and the employee organizations which represent them, and from interested agencies within the executive branch.

Its support is broad based, extensive, and nonpartisan. It is appropriate that in this year, while U.S. diplomats are still being held hostage in Iran, we move to pass this legislation in support of our representatives abroad.

I urge my colleagues to support S. 3058.

Mr. President, I think special credit is due to the distinguished Senator from Rhode Island (Mr. PELL) for the interest he has shown in the legislation through the years, and for the leadership he has given in helping to draft the legislation and bring it to the floor.

I am certain that he himself will look upon the passage of this bill as one of the signal accomplishments of his career in the Senate, and I extend to him my congratulations.

Mr. PELL. I thank the Senator.

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. On whose time?

Mr. CHURCH. On the time of neither side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that the time be charged as previously provided under the order entered pursuant to the majority leader's request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UP AMENDMENT NO. 1573 IN THE NATURE OF A SUBSTITUTE FOR AMENDMENT NO. 2290

(Purpose: To amend the Foreign Service Act of 1946 to strengthen and improve the Foreign Service, and for other purposes)

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to send to the desk a substitute for my amendment No. 2290 which makes a number of corrections of a technical nature. I have cleared this with the distinguished manager of the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1573 in the nature of a substitute for amendment numbered 2290.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Service Act Amendments of 1980".

OBJECTIVES

SEC. 2. Section 111 of the Foreign Service Act of 1946 is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(10) to ensure that personnel in the Foreign Service are accorded all the rights accorded to personnel in the civil service; and

"(11) to provide further protections, procedures, and emoluments to such personnel, in addition to the protections, procedures, and emoluments provided to personnel in the civil service, in order to compensate such Foreign Service personnel for the hazards, inconveniences, and disruptions which encumber such personnel and which require sacrifice and discipline not expected of civil service personnel.".

FOREIGN SERVICE SCHEDULE

SEC. 3. (a) Sections 412 through 415 of the Foreign Service Act of 1946 are amended to read as follows:

"FOREIGN SERVICE SCHEDULE

"SEC. 412. (a) There is established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this title.

"(b) The Foreign Service Schedule shall have 13 salary classes, designated FS-1 through FS-13, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

"Salary class:	*Shall correspond to grade:*
FS-1	GS-18
FS-2	GS-17
FS-3	GS-16
FS-4	GS-15
FS-5	GS-14
FS-6	GS-13
FS-7	GS-12
FS-8	GS-11
FC-9	GS-9
FS-10	GS-7
FS-11	GS-6
FS-12	GS-5
FS-13	GS-4

"(c) Each class in the Foreign Service Schedule shall have 10 salary steps, equal to the steps for the corresponding grade in the General Schedule, except that the salary classes designated FS-1, FS-2, and FS-3 shall have one, five, and nine steps, respectively.

"ADDITIONAL COMPENSATION

"SEC. 413. (a) The Congress finds that the availability of members of the Foreign Service to serve world-wide at any post assigned without regard to hazards, inconveniences, or disruption of family relations and educational and other personal plans entitles such members to the additional compensation provided under subsection (b).

"(b) In addition to the basic salary prescribed under section 412 and any other allowance authorized by law and only to such extent or in such amounts as are provided in advance by appropriation Acts, there shall be paid in a lump sum to each member of the Foreign Service an amount equal to 15 percent of the basic salary for such member at the grade and step prescribed under section 412, except that in no event shall a member of the Foreign Service be paid under this section less than $2,500 or more than $7,500.

"CLASSIFICATION OF POSITIONS

"SEC. 414. The Secretary of State shall designate and classify positions in the Department of State, the Agency for International Development, and the International Communication Agency and positions at Foreign Service posts, subject to the applicable provisions of chapter 51 of title 5, United States Code, in relation to the salaries established under section 412. Positions so classified shall be considered to be part of the civil service for purposes of title 5, United States Code. Career members of the Foreign Service shall be eligible to compete for positions classified under chapter 51 of title 5, United States Code, which are not classified by the Secretary pursuant to this section.

"ASSIGNMENT TO POSITIONS

"SEC. 415. The Secretary shall, to the maximum extent practicable without prejudicing the foreign policy or national security interests of the United States, assign individuals holding a personal rank in the diplomatic service of the United States only to such classified positions as may be appropriate to the rank and salary of such individuals. The Secretary shall from time to time prepare and transmit a report to the Congress listing the names of each individual assigned to a classified position for which the salary was more than one grade higher or lower than the grade corresponding to the personal rank of such individual.".

(b) Section 416 of such Act is repealed.

ADMISSION TO FOREIGN SERVICE SALARY CLASSES

SEC. 4. Sections 516 through 518 of the Foreign Service Act of 1946 are amended to read as follows:

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 7 THROUGH 13

"SEC. 516. No person may be eligible for initial appointment as a member of the Foreign Service of classes 7 through 13 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determine fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major international events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 1 THROUGH 6

"SEC. 517. No person may be eligible for initial appointment as a member of the Foreign Service of classes 1 through 6 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant. Notwithstanding the preceding sentence, the Secretary of State may appoint an individual as a member of the Foreign Service Reserve of class 1, 2, or 3, without examination by the Board of Examiners for the Foreign Service if—

"(1) not later than 30 days after such appointment, the President notifies the Senate of such appointment; and

"(2) the appointment of such individual would not cause the number of individuals appointed as members of the Foreign Service Reserve of classes 1, 2, and 3 without examination by the Board of Examiners to exceed 5 percent of the number of individuals appointed as members of the Foreign Service of classes 1, 2, and 3.

"OFFICE OF PERSONNEL MANAGEMENT

"SEC. 518. (a) The Director of the Office of Personnel Management shall cause the names of all individuals appointed to the Foreign Service to be placed on the registers or lists of eligibles, maintained by the Office of Personnel Management under subchapter I of chapter 33 of title 5, United States Code, together with the grade in the civil service corresponding to the salary class in the Foreign Service for each such individual. The Director of the Office of Personnel Management shall keep current the information provided under the preceding sentence.

"(b) If the employment of an individual in the Foreign Service is terminated, the Director of the Office of Personnel Management shall assist such individual in finding a position of corresponding grade in the civil service.".

LABOR-MANAGEMENT RELATIONS

SEC. 5. (a) Section 7103(a)(2) of title 5, United States Code, is amended—

(1) by inserting "or" at the end of clause (iii); and

(2) by striking out clause (iv).

(b) Title VI of the Foreign Service Act of 1946 is amended by inserting after part E the following:

"Part F—LABOR-MANAGEMENT RELATIONS

"SEC. 651. (a) The provisions of subchapter 71 of title 5, United States Code, shall apply with respect to labor-management relations in the Foreign Service except to the extent such provisions are inconsistent with this section.

"(b) The Federal Labor Relations Authority shall resolve any dispute as to whether this Act or chapter 71 of title 5, United States Code, applies with respect to labor-management relations in the Foreign Service.

"(c) Each member of the Foreign Service who is a citizen of the United States, wherever serving, other than a management official, has the right to form, join, or assist any labor organization or to refrain from such activity, freely and without fear of penalty or reprisal. Each such member shall be protected in the exercise of such right.

"(d)(1) For purposes of this section, except as provided in paragraph (2), the term 'management official' means an official who—

"(A) is a chief of mission or principal officer;

"(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

"(C) occupies of position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in clause (A) or (B);

"(D) is serving as a deputy to any individual described by clause (A), (B), or (C);

"(E) is assigned to carry out functions of the Inspector General of the Foreign Service; or

"(F) is engaged in the administration or formulation of the personnel policies and programs of the Department.

"(2) For purposes of labor-management relations with respect to a particular Foreign Service post, of the individuals assigned to such post from the Department, the International Communication Agency, and the United States International Development Cooperation Agency, not more than six senior officials shall be considered to be management officials for purposes of this section, including—

"(A) not more than one senior official each from the International Communication Agency and the United States International Development Cooperation Agency; and

"(B) not more than the following four senior officials from the Department: the chief of mission or principal officer, the deputy chief of mission, the principal administrative officer, and the principal personnel officer.".

"(e)(1) For purposes of involvement in any labor organization, the employees, including supervisors and all persons other than management officials, of the Department, the United States International Development Cooperation Agency, and the International Communication Agency shall constitute, with respect to each such Department or Agency, as the case may be, a single and separate worldwide bargaining unit.

"(2) For purposes of involvement in any labor organization, the employees, including supervisors and all persons other than management officials, of the Department of Agriculture and the Department of Commerce may constitute, with respect to each such department, as the case may be, a single and separate worldwide bargaining unit or, if recognized as a bargaining unit on the date of enactment of this Act, may merge with any bargaining unit under paragraph (1) which accepts such merger.

"(f) Upon the approval of the Federal Labor Relations Authority and under such terms and conditions as the Authority may require, any bargaining unit representing civil service employees of a department or agency of the United States for which members of the Foreign Service are employed may merge with a worldwide bargaining unit representing only Foreign Service employees if such unit accepts such merger.

"(g) For purposes of this section, the term 'conditions of employment' means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 414.

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multiagency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system.

"(h) The provisions of sections 7114(c), 7117(a), 7117(b), 7121, and 7122, of title 5, United States Code, shall not apply to labor-management relations in the Foreign Service.".

COMPUTATION AND PAYMENT OF ANNUITIES

SEC. 6. Section 821 of the Foreign Service Act of 1946 is amended—

(1) by striking out "2 per centum" in the first sentence and inserting in lieu thereof "2.5 per centum"; and

(2) by adding at the end thereof the following:

"(j)(1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

"(A) one-tenth per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than 30 days; or

"(B) two-tenths per centum of the average basic salary of the annuitant, as computed under section (a), for each day such annuitant was so held hostage or detained in excess of 30 days.

"(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under section 851 and 853 shall be increased by one year for each month or fraction thereof a participant is so held hostage or detained less than six months and shall be increased by two years for each month or fraction thereof a participant is so held hostage or detained in excess of six months.

"(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.".

RETIREMENT CREDIT FOR "RADIO" SERVICE

SEC. 7. (a) Subsection 8332(b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting after paragraph (9) the following:

"(10) Subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the (A) National Committee for a Free Europe; (B) Free Europe Committee, Inc.; (C) Free Europe Inc.; (D) Radio Liberation Committee; (E) Radio Liberty Committee; (F) subdivisions of the entities referred to in clauses (A) through (E); (G) Radio Free Europe/Radio Liberty Inc.; (H) Radio Free Asia; (I) the Asia Foundation; or (J) the American Forces Network, Europe (AFN-E).".

(b) Section 8332(b) of such title is amended by adding at the end thereof the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee referred to in paragraph (10).".

RETIREMENT FOR BINATIONAL CENTER EMPLOYEES

SEC. 8. Section 803(a) of the Foreign Service Act of 1946 is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(2) by adding at the end thereof the following:

(5) Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under this Act and who makes an appropriate contribution to the Fund in accordance with the provisions of this Act.".

EFFECTIVE DATE

SEC. 9. The amendments made by this Act shall take effect on October 1, 1980.

Mr. HELMS. Mr. President, at the outset, let me pay my genuine respects to the distinguished manager of the bill (Mr. PELL) and to others who have worked so diligently on it. Basically, there is no disagreement as to the need for some legislation. There is some disagreement on how far we should go in determining some aspects of it.

As to the substitute which is now pending, let me reassure my colleagues that there are no major changes from what was previously proposed. I will enumerate the corrections at this time.

First. On page 4 of amendment 2290, lines 1 and 2, strike everything after "$7,500". This deletes the tax exemption of the additional compensation. While the Senator from North Carolina would prefer that this special recognition be tax exempt, it has been suggested that there would be complications with the Tax Code which the Finance Committee might need to examine. So, rather than place another obstacle on the legislation at this late date, I am simply deleting that provision.

Second. Page 6, lines 10 to 17 have been redrafted to make it clear that appointments under this section would be restricted to 5 percent of Foreign Service classes I, II, and III, and not to 5 percent of the entire personnel of the State Department.

Mr. President, this restriction was originally put in at the suggestion of the State Department, and it was always the intent to restrict such appointments to 5 percent of classes I, II, and III, as my statement of last Thursday shows.

However, the gremlins got into it in the drafting stage. It should be pointed out that the reference is to salary classes, not to commissioned ranks, said it is obvious that the Secretary, under law, can appoint only reserve officers and not career officers.

To clarify that point, the word "reserve" is inserted at the appropriate places.

Third. In labor-management relations page 10, after line 11, insert a new subsection (g). Mr. President, this is identical to section 1002(5) of S. 3058. Although this subsection protects the Secretary from being forced to bargain over certain regulations, this insures that the scope of bargaining is not extended beyond what is in S. 3058. At the same time, it does not decrease the scope of bargaining. It merely preserves the status quo.

Fourth. A new subsection (h) is further added to exclude those provisions of the CSRA labor-management program that are inconsistent with the provisions of this section. With one worldwide unit per agency, there is no need to have a two-step process of agency head approval for agreements. In the civil service, agreements are often at local activity level, so a period for review and approval by the Department head in Washington makes sense. With one world-wide unit, however, such a requirement would merely encourage delay in bargaining. The agency head should make sure he is represented competently at the table in negotiating for his worldwide unit.

Sections 7117 (a) and (b), are omitted from the committee bill because their discussion of how bargaining relates to regulations is subsumed in the definition of "conditions of employment" contained in subsection (b). The committee bill omits sections 7117 (a) and (b) because its provisions are inconsistent with current practice under the Executive order and with its definition of "conditions of employment." With continuation of the legislated grievance procedure, sections 7121 and 7122 are unnecessary.

As I said at the outset, Mr. President, these are all technical and conforming amendments to improve the bill.

Mr. President, as a preface to my comments on my bill, S. 2986, and the committee bill, S. 3058, I want, for a few moments, to discuss the constitutional context to which both relate. These bills, Mr. President, touch directly on the rights and privileges and duties of the Senate itself. Consequently, unlike many other reorganization and reform bills, they are of unusual importance to the Senate. Unlike the House of Representatives, which has rights and duties relating largely only to legislative matters under the separation of powers, the Senate shares in some of the powers and functions of the President of the United States. This is particularly true in the Senate's constitutional rights to participate in the making of treaties and in the appointment of ambassadors and Foreign Service officers.

Mr. President, I want to read, with the indulgence of Senators, the pertinent text of paragraph II of section II or article II of the Constitution. It reads:

He—

Meaning the President—

shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors,

And so on.

Thus, unlike the House of Representatives, the Senate has a collegial role in the powers of the Presidency, particularly in foreign affairs.

These bills, S. 2986 and S. 3508, deal with the conditions under which personnel for the Foreign Service will be selected, personnel who will participate in the drafting of treaties, their implementation and their nonimplementation. Consequently, the character of these personnel and their qualifications, their esprit de corps, their protection against arbitrary action by foreign powers and by their own superiors, all are matters of great concern to the Senate. We have all heard repeatedly in the last several years that the Foreign Service and the diplomatic establishment which it is intended to serve have been in a state of crisis and decline. That decline has accompanied and contributed to the decline of the United States as a world power.

So, now, we get to the meat of the coconut, Mr. President. My bill, which is in the parliamentary sequence of a substitute to my substitute, is intended to provide the administrative and the fiscal means to reverse this decline and to eliminate the endemic crises which afflict the Foreign Service today.

As the distinguished occupant of the Chair may know, the American Federation of Government Employees, AFL-CIO, has endorsed my bill. As the distinguished Senators may also know, there are many differences between the Senator from North Carolina and the AFL-CIO on various matters of domestic legislation. However, on foreign policy matters, I believe I can say without challenge that George Meany and I were in complete agreement on many issues more than almost any other Senator. I could relate many conversations that I had with George Meany over the years. He and I did agree on domestic matters, frequently, but we agreed on foreign policy, national defense, and that sort of thing. His interest and mine in bringing Alexander Solzhenitsyn to this country were parallel, and we worked together on that issue.

I mention all of this, Mr. President, to state my appreciation to the AFL-CIO's American Federation of Government Employees for studying my proposal and having endorsed it. I believe that general agreement on foreign policy probably exists with the present President of the AFL-CIO, Lane Kirkland. However, I must confess that I have not talked with him about this measure.

The reasons for our agreement on foreign policy are clear: Our agreement about the extreme dangers which we confront abroad and the need to provide maximum resources to meet those challenges.

Mr. President, even the American Foreign Service Association, which is not supporting the pending substitute, has had to concede that the problems which I have just described do, in fact, exist. For example, just last Monday, the senior officers of that association confirmed to my staff that over 120 to 150 Foreign Service officers classes 1 and 2 are performing work lower than their grades. They alleged that at least that number of FSO-1 and FSO-2 officers are doing the work of FSO-3 officers, though assigned to nominal positions of FSO-1 and FSO-2. They asserted, and the Department of State has confirmed, that since 1974, not a single FSO-1 and FSO-2 officer has been selected out. For this reason, FSO-3 and FSO-4 officers are actually doing the work of FSO-1 and FSO-2 officers, according to the state-

ments of the current leaders of the American Foreign Service Association.

The pending substitute would put a speedy end to that unhappy and undesirable situation.

By requiring all positions to be classified according to the universal standards of levels of difficulty of work, developed over 50 years by Federal classification experts, and by requiring periodic desk audits of these positions by the Office of Personnel Management, these abuses would end. Further, by requiring the Secretary of State to report to the Congress periodically the numbers of officers assigned more than one position higher or lower than their own grades, the Congress could exercise its proper oversight over the personnel selected primarily to implement our foreign policies.

A great deal has been made about the additional costs of my bill. In fact, my bill would provide savings by raising the quality and reducing the quantity of Foreign Service personnel. Under the conditions set by my bill, at least 15 percent and perhaps 20-percent Foreign Service would prove to be redundant within years.

I should like to remind the Senators of the judgment of that eminent career Foreign Service officer and seven times Ambassador, the Honorable Ellis Briggs. In his book, "Farewell to Foggy Bottom", Ambassador Briggs assails the overloading of posts with nonessential personnel.

As one of many examples of superfluous personnel who in fact are obstacles to efficient performance, Ambassador Ellis Briggs narrated his experiences at the American Embassy in Prague, Czechoslovakia.

When he arrived there, he found a staff of 80. The Department asked his advice as to how much he should cut the staff, in light of the Communist seizure of power in Prague. He recommended the staff be cut by 50 percent, for a total of 40 persons.

Let me use Ambassador Briggs' words:

> I recommended to Washington that my inherited complement of eighty Americans (although microscopic by today's embassy standards) be reduced as a start, by one half. That is to say, that the roster be cut from eighty to forty . . .
>
> After six months, and an expenditure of effort on my part sufficient to have built, singlehanded, a bridge across the Vitava River, I had managed to reduce my overblown staff by two persons—from eighty to seventy-eight.
>
> At which point, the Communists, ignorant of my hassle with Washington over personnel, and believing that they were doing the American government in general and the American ambassador in particular the greatest possible disservice, suddenly declared five-sixths of the embassy personnel persona non grata.

What do you think was the result, after the departure of 66 of the 80 embassy personnel at Prague?

Ambassador Briggs wrote as follows:

> It was an efficient embassy. It was probably the most efficient embassy I ever headed. Our operation was compact. Our personnel was alert. We kept Washington accurately informed of what was going on. Our work was accomplished with a minimum of friction and delay.

Mr. President, that is the testimony of Ambassador Briggs. He recommended a cut of 1 in 2. He suffered a cut of 5 out of 6. Yet, he welcomed the latter cut as better for U.S. policy.

The point is that my bill would result in a reduction of 15 percent to 20 percent in quantity, but would result in higher pay for better qualified, better educated, more dedicated personnel, working at jobs for which they are qualified.

Its results would be eminently beneficial to the foreign policy position and the international standing of the United States.

Ambassador Briggs later went into more detail on this topic in his book "Anatomy of Diplomacy." There the Ambassador says:

> The Foreign Service entered the decade of the 1960s with far too many people. The notion that it takes scores of officials to man a single Embassy, and thousands and thousands to operate a successful Washington foreign affairs establishment, has proved in post after post and country after country to be nonsense—as the practitioners of diplomacy (in contrast to the planners and administrators) have repeatedly testified. Nor is this view of the efficacy of small staffs an American heresy. A British diplomatist recently declared that "forty years' foreign service has taught me that in diplomacy there is an inverse relationship between numbers and performance. . . . The envoy's a one-man task; double the team and the results are halved."
>
> What the optimum number of Foreign Service Officers would be, given United States responsibilities in a fast-changing world, is, of course, not easy to say with precision. At the moment, the figure probably falls around twenty-five hundred, as against three thousand seven hundred officers now on the roster.
>
> Certainly with one thousand fewer officers there still should be plenty of administrative elbowroom to take care of vacations and home leave, and to assign occasional officers with special aptitudes or interests to the study of esoteric languages, or to a university for an advanced degree in a science relevant to "emerging nations." The State Department should still be able to fill its quota at the postgraduate Government institutions, which are more numerous than the public is aware.
>
> With one thousand fewer officers, the requirements for substantive work could still be met (two or three officers each, in the political and economic sections will usually suffice), and there would be ample talent remaining for Deputy Chief of Mission, for assistants to the Ambassador, for juniors being rotated through Embassy sections for experience, and for officers on loan to the propagandists, the intelligence community, the military establishment, the aid operations, and even the Peace Corps.
>
> With one thousand fewer officers there would still be an ample quota of Foreign Service Officers to fill the "opposite number" positions in the State Department (minus those three hundred jobs "de-designated" as *not* suitable for the Foreign Service).
>
> With one thousand fewer officers, a brisker and more alert corps could be maintained, without the sloppiness that inevitably penetrates an organization that has to invent make-work projects—like the Comprehensive Country Programming System of 1964—in order to convince the Congress, or the public, or itself, how quickly the ship of state would founder without extra hands to polish the brasswork.
>
> In a world where international developments seem to multiply themselves at an ever-increasing pace, it is fashionable to declare that the personnel who suffice today may be inadequate for tomorrow. That is debatable, or at the least a matter for continuing study, which should start from the premise that the roster of the Foreign Service should be kept at the lowest possible figure consistent with getting the job done. That should be coupled with a recruitment policy that will provide a more even flow than heretofore of candidates entering the Foreign Service and a tough but humane "selection out" program that will permit the promotion system to operate.

Mr. President, I reserve the remainder of my time and I yield the floor.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from Rhode Island.

Mr. PELL. Mr. President, I have listened with interest to the proposals and suggestions of my colleagues from North Carolina. I know his interest in the bill, and I have had an opportunity over the weekend to go over his substitute.

But, after a careful examination of both his substitute amendment and our own proposal, I continue to urge my colleagues to support the proposed Foreign Service Act of 1980, S. 3058.

This bill is an absolutely nonpartisan measure. Remember, we started working on it with Assistant Secretary Eagleburger under the Ford administration. It has gained overwhelming support of Senators and Representatives who conducted extensive hearings and markup sessions during 1979 and 1980.

Mr. President, I urge my colleagues to support the proposed Foreign Service Act of 1980, S. 3058. This bill is a completely nonpartisan measure which has gained the overwhelming support of the Senators and Representatives who conducted extensive hearings and markup sessions during 1979 and 1980. S. 3058 is, with some minor differences, identical to the legislation which recently passed the House of Representatives by a vote of 239 to 78. It should be noted that a substantial majority of each party voted in favor of that legislation.

S. 3058 is the direct result of 5 years of efforts initiated under the Ford administration. It is a response to a 1975 congressional mandate calling for a comprehensive plan for the improvement and simplification of the Foreign Service.

I believe this Senator played a role in the development of that comprehensive plan and that congressional mandate. My colleagues should take note of the fact that three Secretaries of State—Henry Kissinger, Cyrus Vance, and Edmund Muskie—have all written in support of this legislation.

In contrast, the Helms substitute has never been vetted at any of the previous stages of consideration including the Senate Foreign Relations Committee hearings—a committee upon which the senior Senator from North Carolina so ably serves.

This substitute confuses the essential differences between the Foreign Service and the Civil Service to the detriment of both systems. For example, the substitute, also, inappropriately applies a civil service approach to the Foreign Service promotion, assignment and classification systems.

The proposed application of civil service classification standards to the Foreign Service in the substitute would drastically limit the flexibility needed by the Secretary of State to meet worldwide staffing needs.

Mr. President, the Helms substitute, also, lacks a number of provisions contained in S. 3058 which are necessary to keep our Foreign Service strong and vital. It fails to deal with important issues concerning family members. It contains no affirmative action or equal employment opportunity provisions. It has none of the advanced provisions of S. 3058 which deal with employee protections, labor management relations and allowances—all of which have been so laboriously developed, and were not in the 1946 act.

Finally, Mr. President, the substitute's 15-percent tax-exempt salary supplement and the increase in the retirement multiplier from 2 percent to 2.5 percent for each year of service would be enormously costly. The other way to keep these costs down would be to dramatically reduce the size of the Foreign Service. On that point, it should be noted that the size of the Foreign Service has remained constant since the early 1960's despite an incredible increase in its responsibilities. To reduce the Service would seriously damage U.S. interests abroad.

In conclusion, Mr. President, I would like to indicate that S. 3058 has the strong support of the American Foreign Service Association, which is the exclusive elected employee representative for all 11,000 members of the Foreign Service in the Department of State and the Agency for International Development. If we are to continue to have the kind of Foreign Service this Nation must have to protect its interests abroad, the operating charter, personnel system, employee protections and rewards which S. 3058 provides are essential. The Helms substitute contains a number of harmful features, fails to emphasize the special nature of the Foreign Service, and has not had the benefit of either the full consideration or the broad consensus which S. 3058 enjoys.

Therefore, I urge my colleagues to reject the proposed substitute.

Mr. President, I should like to read into the RECORD a letter from Katherine Keough, acting for the Family Liaison Action Group (FLAG):

> DEAR SENATOR PELL: With the regard to the hostage benefit amendment that Senator Helms is proposing to attach to the Foreign Service Act:
>
> "While FLAG is deeply grateful to Senator Helms for addressing himself to a specific benefit for the American hostages in Iran, we feel that his proposal might better be included as part of a separate compensatory bill.
>
> "We anticipate that such legislation would address annuities, retirement and other financial considerations. We, FLAG, would be more than happy at an appropriate time in the future to assist Senator Helms in the drafting of such a bill which will be meaningful to these hostages and their families.
>
> "For the present FLAG would strongly prefer to have Senator Helms' support for a swift enactment of the Hostage Relief Act (S. 2852 and S. 2581) now rather than an attachment to the Foreign Service Act. In the future we will seek his creative personal support and ideas as we begin to turn our attention towards comprehensive, compensatory legislation."
>
> We thank you for making our remarks known to Senator Helms and others on the Committee.

Mr. President, I yield the floor at this point.

Mr. HELMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Ten minutes and fifty-eight seconds.

Mr. HELMS. I thank the Chair.

First of all, Mr. President, I want to share with Senators a telegram I have received from Mr. John Hemenway, former president of the American Foreign Service Association, who says:

> As past president of American Foreign Service Association I urge support of Helms' substitute (S-3058) and Bayh amendment correcting injustices of grievance system legislated in 1975.
>
> Present AFSA leadership has acted ultra vires—violating AFSA bylaws—pretending consultation with membership when in fact it merely has rubber-stamped provisions promoted by cliques trying to manipulate foreign policy through personnel practices.

It is signed "John Hemenway, 4816 Rodman Street, N.W., Washington, D.C. 20016."

Mr. PELL. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. PELL. Is the Senator aware of the fact that Mr. Hemenway was fired as president, by the process of recall, and does not stand in well with that organization? Because of that, I do not believe he speaks for the Foreign Service now.

Mr. HELMS. I understand what the Senator is saying, but I point out that there were an extraordinary number of irregularities in that recall and that matter is now in the courts. The ultimate judgment will be made there.

In any case, Mr. President, I accept fully the concept that the Foreign Service has many similarities to the military service.

It is precisely for that reason that I oppose the creation of a Senior Foreign Service not based at all on the military services but on the purely civilian model introduced into the Civil Service Reform Act of 1978. Thus, the claim that these new Senior Foreign Service positions are modeled on the flag positions of the military is literally untrue. The present system, which I should like to retain, was in fact modeled on the pattern of the Navy, as the legislative history of the 1946 act clearly and repeatedly shows. The proposed Senior Foreign Service is a direct assault on the military flag officer model.

As to the confirmation system, the Secretary of State has repeatedly asserted that positions abroad in fact are now classified according to the objective standards of the Office of Personnel Management. If that is the case, why should this not be mandated by statute? Certainly, those standards already provide for higher classifications for such factors as service abroad. The main difference between my bill and present alleged policy is that congressional oversight would be improved because the Office of Personnel Management would have a role in confirming the accuracy of the classification, and the Secretary of State would have a further assurance that congressional intent is being honored.

But classification is an abstract function unless related to the actual assignment of qualified personnel in the proper grade and proper pay category. Foreign Service personnel, as well as the taxpayer, need to know that proper service is given for salaries paid. My proposal, incorporated in the pending substitute, assures that, by providing the congressional oversight which is now lacking.

Correct classification is important for Foreign Service officers, who hold rank-in-person commissions and compete for promotion against each other. They need to be assured that their performances are rated objectively against the same standard. For example, a class 3 officer serving in a position normally classified as class 2 but actually requiring services at a class 4 level would have unfair advantage over all other colleagues of class 3. My proposal would eliminate the possibility of this danger by having the outside classification experts of the Office of Personnel Management review the classifications of all positions. Thus, the promotion selection panels would be able to judge personnel records with greater uniformity.

The charge that my proposal, by including these provisions, does not provide for a clear separation of the Foreign Service and Civil Service is groundless. These provisions are the universal provisions of due process and equity. My proposal does not in any way diminish any of the real distinctions between Foreign Service and Civil Service by providing those elements which every fair career system must have—in fact, it clarifies and reinforces these real distinctions by many other specific provisions which are not in the other bill.

Frankly, I am astounded that the State Department now claims that my proposal erodes the difference between the Foreign and Civil Services by linking Foreign Service grades to Civil Service grades. But these linkages already exist by agreement of the Secretary of State and OPM. In fact, the pay increases of Foreign Service personnel, as well as military personnel, are even now directly linked by the Federal Pay Comparability Act of 1970 and the specific points of linkage agreed to by the Secretary of State and OPM. The difference is that, taking account of the pay study ordered by the State Department and the complaints by the American Foreign Service Association and the American Federation of Government Employees, I have incorporated into my bill a linkage system which better correlates the actual pay of Foreign Service personnel to Civil Service grades.

In fact, my proposal does the same in principle for Foreign Service personnel which Congress has just enacted for military personnel, who this year will

receive a higher pay adjustment than civil service personnel. The only difference is that I am doing this systematically by permanent legislation rather than ad hoc.

Here, too, I believe my proposal further shows an acute awareness of the similarities between the Foreign Service and the military service, important similarities to which the administration and the committee bills are in fact inattentive.

As to costs, my rebuttals to the State Department computations already exist in the Report No. 96-913, pages 247-269. These pages show that my bill would not cost more than the committee or administration bills. In fact, it would cost less. The State Department has sought further to confuse and obfuscate the purposes of my proposal by pretending that conflicts could arise because I have sought to assure that Foreign Service personnel have all the procedural protections and employee rights which civil service personnel have.

I ask, Mr. President, how can this lead to confusion? These Foreign Service personnel are Federal employees. Certainly they should not have lesser rights, especially since they have assumed more onerous and dangerous duties and obligations, duties even analogous to military personnel.

As to the alleged protections afforded Foreign Service employees in the committee bill, which is supported by the administration, I feel obliged to emphasize that these protections in fact are less than currently provided in the Foreign Service Act of 1946 as amended. The repeated detailed analysis of the harmful report on members of the Foreign Service Staff Officer Corps is but one example of a major deprivation of existing protection and rights, in this case of clerical, administrative and technical personnel.

The claim that my proposal gives the Secretary of State the right to classify positions in AID and ICA is a total misreading. The present Foreign Service Act of 1946 as amended, makes it clear that the term Secretary of State means Administrator of AID and Director of ICA whenever any actions are to be carried out in those agencies. Since my proposal amends the Foreign Service Act of 1946 as amended, that distinction applies. Only the Administrator of AID would classify positions in AID; only the Director of ICA would classify positions in ICA.

In fact, as the testimony before the Foreign Relations Committee shows, the great concern is that the committee bill erodes the integrity and independence of AID and ICA and vests too much power over them in the Secretary of State. My proposal does not do that, but maintains the existing status quo.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, I oppose the substitute offered by our distinguished colleague from North Carolina. I do so for a number of reasons.

But, first, I point out that the Senate once again is indebted to our distinguished colleague, and the members of his staff, who I think is one of the most dedicated, hardworking, and devoted Members of the Senate and who many times provokes us into forcing us to think about what we are doing even though we end up concluding that we oppose it. They have rendered a very valuable service because otherwise we would not have had this debate; otherwise, we would not have been forced to go back and take a good hard look at this act that has been hammered out and either reaffirmed our support for it or cause us to open our minds and see whether or not there are fallacies in it that should be corrected.

But to offer now at this stage a full substitute as a bill I think, after the 15 months that we have spent exhaustively studying this legislation, would be wrong.

I think that the distinguished Senator from North Carolina, who believes deeply in the presence of the Senate and the process of the Senate and knows it about as well as any of whom I know, would fully take into account the fact that his own colleagues who could not have spent and have not spent as much time as he has on this particular measure could now be expected to really fully comprehend the nature of this sweeping substitute and then override and overlook the work that has been done by committees in the House of Representatives and in the Senate over a period of many months.

If I had known that he intended to make such an offer of a substitute, it would have been my wish that it would have been offered at the time that the Committee on Foreign Relations, of which he serves as a distinguished member, was marking up the bill so we could have given it the kind of considered judgment that we in the Senate have come to expect committees to do, not that we turn to the committees and have them do all our work for us, but on the other hand it does give us the benefit of having some Members concentrate on this particular activity.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. PERCY. I am happy to yield for a comment.

Mr. HELMS. I thank my friend.

Mr. President, what he says is true. I did not offer it formally, as the Senator from Illinois has said, but I did make it available to every member of the committee and staff at that time. It so happened I was in a markup of a bill in the Agriculture Committee, of which I am ranking minority member, so I could not be there to do it formally, but I did in good faith make it available to every member of the committee and all staff members. I thank the Senator.

Mr. PERCY. I appreciate the explanation.

Mr. President, I wish to speak in support of the Foreign Service legislation as reported by the Foreign Relations Committee and against the substitute proposed by my colleague from North Carolina.

On the one hand, the Senator says that the Foreign Service "is essentially an elite service that differs fundamentally from the civil service," while actually his substitute would adopt many significant features of the civil service system. He prefers aspects of the civil service relating to promotions and assignments, which are generally believed to be unsuited to the Foreign Service, while rejecting features of the civil service—such as a senior service and performance pay—which make good sense for the Foreign Service as well.

The substitute addresses some longstanding problems of the Foreign Service, such as pay comparability, but says nothing about a range of other issues which ought to be addressed, and which are addressed in the bill reported by the committee. The effect of his legislation would seem to be to consolidate the Foreign Service as a branch of the civil service without regard to the unique requirements, as well as the special identity and spirit, of the Foreign Service. As one who has respect for the civil service and who spent many, many hours on the civil service reform bill which is now law, I simply do not see the rationale for such an approach to the Foreign Service.

Furthermore, Mr. President, it seems to me that a bill which would affect the Foreign Service in such a profound way should be the subject of extensive review. Members of the administration, the Congress and the Foreign Service itself should have a chance to debate such a course of action thoroughly and to assess the impact of its provisions on the basis of careful study. It is not clear, therefore, why the substitute is proposed at this late hour. The bill reported by the Foreign Relations Committee has been before us for over a year and was the subject of a number of hearings and markup sessions in committee. It was discussed extensively within the administration and within the Foreign Service itself and has the strong support of both. A similar bill was carefully formulated by two committees of the House and passed that body a week ago by a vote of 239 to 78.

Mr. President, all of the issues raised by Senator HELMS were before the committee, of which he is an able and active member, yet he did not propose his substitute during the markup. The effect of accepting it now would be to end all prospect of Foreign Service legislation this year, since it would certainly have to be referred to other committees. We would therefore have to begin all over again in the next Congress and delay still further many changes in the Foreign Service system which are already long overdue.

Mr. President, some of my colleagues of the minority may feel that they would like to defer the resolution of some issues to the next administration and the next Congress, but Foreign Service reform is not a partisan issue. We all—regardless

of party—want to see an effective, superior-quality Foreign Service capable of executing a coherent, consistent foreign policy, and the differences between the substitute and the committee bill are not political.

I see nothing to be gained from postponing action on a carefully developed bill such as the one reported out by the Foreign Relations Committee. Almost all of its provisions have been exhaustively reviewed—and in some cases painfully negotiated—over a period of years, with results which are likely to be very similar under any administration. It will always be open to us to make further adjustments in the Foreign Service system as time goes on. But the overwhelming consensus seems to favor building upon the separate, specially designed Foreign Service which has been developed over so many years.

Whatever problems of recruitment, administration and morale the Service may now have, they are not likely to be improved by a proposal to make the Foreign Service so similar to the civil service. And in failing to address a number of other features of the committee bill, this substitute is simply not adequate to its own professed objective of streamlining and reforming the Foreign Service.

I urge my colleagues to vote against the substitute and to retain S. 3058 as reported by the Foreign Relations Committee.

The American Foreign Service Association which is the elected exclusive representative of all 11,000 AID and State foreign service persons that has endorsed the Foreign Service Act of 1980 indicated that about 15 months scrutiny by concerned congressional committees has been given to the pending bill, including many people who have cared to testify worked to fine tune the legislation, to preclude political abuse, to protect the rights of individual employees, and to strengthen the professional service.

They furthermore pointed out that 60 hours of hearings by the House Foreign Affairs and Post Office and Civil Service Committee which considered every one of 400 suggested changes cannot be disregarded.

The House of Representatives approved the bill by an overwhelming vote of 239 to 78, including the majorities of both parties.

To at this stage then feel that it would be profitable to make a sweeping substitute and have any chance of this legislation being enacted in this Congress I think would be to ignore the fact that the clock is running, time is running out, and really in a sense the adoption of this substitute would kill the bipartisan support that has been working mightily toward civil service and Foreign Service reform and improvement which would provide, and the present bill before us does provide, a comprehensive review of the Foreign Service and assures excellence in our first lines of defense.

In addition to this, members of the administration, State Department, Members of Congress, and the Foreign Service itself, have given a tremendous amount of thought and time to the pending legislation and have contributed immeasurably to the bill before us.

It is, therefore, I think, extraordinarily difficult to give the full kind and careful consideration that should be given to the proposal by the distinguished Senator from North Carolna, and I for one could not support in any way a substitute for the present bill.

All of the issues raised by Senator HELMS were actually issues that were before the committees of both the House of Representatives and the Senate.

Though he did have a conflict in scheduling at that time and there was important legislation affecting all of us before the Agriculture Committee, this is a matter that I think would have required a good deal of careful thought before we could certainly adopt the substitute.

Mr. President, I wish to take just one aspect of the substitute bill before us which would, I think, vitally affect the performance and service and indicate that I could, as the distinguished Senator from Rhode Island knows, certainly not support the substitution of a pay increase automatically across the board for performance bonuses.

I do feel that the performance bonus system that has been worked out in civil service and in civil service reform is an extraordinarily good feature of this legislation.

At this time, however, I wish to refer to a letter that I have received from Mr. Alan K. Campbell, Director of the Office of Personnel Management with whom we worked over a period of many months, in fact over a year, on civil service reform itself. The letter reads as follows:

As the Senate nears floor action on S. 3058, "The Foreign Service Act of 1978," I would like to note my continued strong support for this legislation which I believe will be highly beneficial to the Foreign Service.

Since early in 1979 when OPM became heavily involved with the Department of State in advising it during the formulation of the Administration's proposal, we have been enthusiastic about many of the features of this legislation which opens new opportunities for flexibilities in the management of the Foreign Service personnel system. Key to this forward looking legislation is the Senior Foreign Service with its opportunities for rewarding outstanding performance. We are also very happy with the bill's clear delineation of those positions which are appropriately under the Foreign Service personnel system.

The Senate report on S. 3058 carries the additional views of Senator Helms along with the substitute measure which he is sponsoring. Although Senator Helms has the good of the Foreign Service in mind, I must take issue with his proposal because of several features which I believe to be unsound from the standpoint of Federal personnel policy.

Section 3 of Senator Helms' bill, S. 2986, provides, in a revised section 413 of the Foreign Service Act of 1946, an additional lump sum payment to each member of the Foreign Service equal to 15 percent of the basic salary for such member within the limits of $2,500 and $7,500. The bill would further exempt this lump sum payment from taxation.

I strongly disagree with this concept. First, Senator Helms would offset the expense of this provision by deleting the Senior Foreign Service performance pay provisions. It is obvious to those of us who have studied and worked with compensation systems that rewards should go with performance. Senator Helms, in deleting the performance award system proposes a step backward in the progress toward pay-for-performance which is to be found under the Civil Service Reform Act, passed overwhelmingly by the Senate, and section 405 of S. 3058.

Further, there is no reason to believe that the added bonus would accomplish anything constructive in struggling with the problem of members of the Service who are reluctant to go overseas. Senator Helms explains in the committee report that "by providing the 15 percent tax-exempt incentive, it would reduce the resistance of married personnel to accept foreign assignments . . .". There can be no such direct effect from a bonus which goes to all members, without regard to their willingness to move to "undesirable" posts. The proposal would simply raise the level of compensation without a return benefit to the Government. Members of the Foreign Service receive post differentials provided under title 5, U.S.C., which are meant to compensate for the difficulties in recruiting at hardship posts. These differentials would be increased under S. 3058 and the House passed bill.

Section 6 of Senator Helms' bill would revise the retirement formula to increase the annuity of members of the Service from the current 2 percent for each year of service to 2½ percent. The bill would apparently provide this increased computation benefit to all service so that those retiring immediately after the Act's passage would receive a windfall from the bill despite the knowledge that Senator Helms apparently does not intend that the increased benefit apply to service prior to the enactment date.

I do not find Senator Helms' analogy between the Foreign Service and the FBI and Air Traffic Controllers valid. The present computation of retirement for members of the Foreign Service already exceeds the normal Civil Service computation. The special computation provided for Air Traffic Controllers and other special occupations in which early retirement has been mandated, is meant to adjust the annuity to a normal level in the face of a career which is curtailed at a point of service which would otherwise provide an inadequate annuity. The increased computation in Senator Helms' bill for members of the Foreign Service is unnecessary. They do not normally have early retirement. Also, the House passed version of the Foreign Service bill raises the mandatory retirement age to 65, which indicates a trend toward longer service, rather than early retirement.

I have not touched on all of my concerns with Senator Helms' bill, but have indicated some of my primary concerns. I urge the Senate to move ahead on its consideration of S. 3058. Thank you for the consideration of my comments.

I have provided a similar letter to Senator Pell.

Sincerely yours,

ALAN K. CAMPBELL,
Director.

That ends the quotation I would like to read at this time. I certainly concur with Mr. Campbell.

At this time I would like to mention to my distinguished colleague from North Carolina that the Governmental Affairs Committee worked for well over a year on civil service reform. We held hearings in Washington for many, many days.

The Senator from Illinois, knowing the deep effect this had upon millions of the Federal employees, recognized that one of the most important things we could do in the Senate to restore the faith of the American people in their Government was to find a way to organize the personnel system so that there

was a responsiveness somewhat closer to the private sector, because the performance and productivity in Government have been dismal in many, many respects.

The Senator from Illinois held three separate hearings in different parts of Illinois. Director Campbell came to Illinois, other members of the Civil Service Commission came and testified.

We had as witnesses many past regional directors of many different services who testified as to their utter frustration, their disappointment, their disillusionment, their inability to get anything done. They could not fire people; many times they could not hire people. They could not reward.

There was a uniformity of pay regardless of performance that just, in a sense, as one of them said, "drove me right up the wall. I finally just had to get out. I could not perform the function that was expected of me under the personnel practices of the Federal Government."

So the months and months we put into the Civil Service Reform Act were the culmination of those frustrations.

There was bitter opposition many times, and there were several services that wished exemption from them. The Foreign Service said, "We are different. We should not really come, of course, under the same type of regulations and modifications and changes."

The Intelligence services said they wanted to be exempt. The Export-Import Bank was exempt.

Yet now it is a strange thing but all of them are coming back petitioning Congress to include many of those reforms in the personnel practices that govern them.

For instance, the subject of bonuses is one we all well understand. We would all like to believe that every person will always give as much to his job as he is capable of giving, that he has always had the support of his family for an outstanding job, and that money was not what motivated them. That is what we used to talk about respecting teachers years ago, until I finally went to President Eisenhower in exasperation and said, "There is no way, in my judgment, to get enough teachers in this country unless we compensate them as much as we do bricklayers—maybe not as much, but get up there somewhere."

We began a program in the fifties of elevating teachers' salaries and giving them a sense of dignity and giving them a job that people would really seek, that parents would recommend their children take.

The same thing is true in Government service, and this is where the bonus system, which has worked so well in the private sector, comes into play. It works well in Ford Motor Co., it has worked well over the past in duPont; it has worked well in General Electric; and it has worked well in the company I knew something about, Bell & Howell Co., for years, 18 years, when I had the duty to administer our executive compensation program.

I had an opportunity to see the effect on families and individuals of being able to say at the end of the year, "We will now evaluate all of our key personnel and executives based on performance to see whether or not their salary fully compensated them or whether they went beyond the call of duty and should be fully rewarded."

It was that selection process. It was sitting down with that individual, it was having that individual have to go home and say, "I didn't make it this year, I am outside the bonus system," and then explain it to his family because last year he might have been given $3,000, $4,000, $5,000, $6,000, at the end of the year or a person going home and saying, "I know, dear, I have been gone many nights, I have traveled weekends, I worked hard, but here is the $6,000," or $8,000 or whatever it may be, "to help our children get an education, and that extra work has been worthwhile."

The difference in approach that a family takes when they see that the company cares about them is what I am speaking about. The same thing is now true in the Federal Government. For the first time in the history of our Federal service we are able to evaluate and have given the power to supervisors to render judgment as to whether compensation has been adequate for the performance of an individual.

When two individuals sit side by side and one exerts 150 percent of his energy and one exerts 35 percent of his energy, at the end of the year they both may be getting the same compensation, at the end of the year to be able to take that 150-percent performer and really reward him, that makes a difference.

That is why this last month not only has the Foreign Service said they would like to come under this reward system, but also the intelligence services have petitioned, and the Export-Import Bank has come in and said, "We cannot hold our people. They are now going to the senior service that rewards them adequately."

The word is getting around that an outstanding performer really even in the Federal Government can now be rewarded and compensated, and it is not just the money. It is the fact that it has become a symbol in our society of outstanding performance.

So again I say in that one area, and this is why I think Dr. Campbell feels so strongly, we ought to be able to offer to the Foreign Service now that extra incentive for outstanding work because we all know people do not perform uniformly. They are all a composite of inner drives, and one of those drives that is ours is the fact that we may be rewarded, we may be recognized for what we have done, in addition to our good will in wanting to do the best job possible.

For that and a number of other reasons, I will regretfully oppose the substitute and ask our colleagues to support the committee bill.

Again I wish to also commend our distinguished colleague for the thoughtful way he has approached this problem. It is one of the big problems we have faced, he has provoked us into thinking there may be better ways of doing it. Certainly if there are better ways, the Senator from Illinois will always, just as we have this year now begun the reform of the civil service reforms passed a year ago, be looking at it not as set in concrete but as a moving, going thing, an entity that is so important that we must constantly find ways to improve it.

I do not overlook the fact that there is a body of support now among some personnel who would support the substitute, but I think overwhelmingly, as has been pointed out in the American Foreign Service Association release to us, is the fact that they do represent exclusively 11,000 AID and State Department Foreign Service personnel, and they have endorsed the Foreign Service Act of 1980.

They do point out that a worldwide survey of 283 posts in 114 countries shows that the people of the Foreign Service in that survey overwhelmingly supported the bill, and if we have any chance of passage of this reform, we would have to enact the committee bill and not the substitute.

The PRESIDING OFFICER. The Senator from Rhode Island has 2 minutes remaining.

Mr. PELL. I know the Senator from North Carolina would like an opportunity to rebut, so I will yield my 2 minutes to him.

Mr. HELMS. I thank the distinguished Senator for his courtesy, and I will not require the entire 2 minutes.

Mr. President, the distinguished Senator from Rhode Island mentioned as a disadvantage to my substitute the fact that it does not address the grievance procedure.

I am perfectly willing to modify my amendment along the lines of the Bayh bill (S. 2712) on grievance procedures which has already passed the Senate twice.

I ask, with the Senator's indulgence, that the Bayh bill be added at the conclusion of my pending substitute, and I have been informed by Senator BAYH's staff that the Senator from Indiana is agreeable to this procedure.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Will he please send the modification to the desk?

Mr. HELMS. I so do.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

At the end of the HELMS amendment, UP 1573, add the following modification:

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the modification be dispensed with, and I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification is as follows:

At the end of the pending amendment, add the following:

SEC. 10. Delete sections 691 through 695 of the Foreign Service Act of 1946 and insert in lieu thereof the following:

Chapter 11.—GRIEVANCES

SEC. 691. DEFINITIONS; APPLICABILITY.—(a)(1) Except as provided in paragraph (2), for purposes of this chapter, the term

"grievance" means any act, omission, document, or condition which is a source of concern or dissatisfaction to a member of the Service who is a citizen of the United States or to an exclusive representative and which is subject to the control of the Secretary or the Secretary of State (or both) and relates to terms and conditions of employment, including, but not limited to—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member;

(B) other alleged violation, misinterpretation, or misapplication of any applicable law, regulation, or published policy adversely affecting the career, reputation, financial condition, or terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action taken or likely to be taken against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member which is or could be prejudicial to the member;

(F) any action which is alleged to be in the nature of reprisal, or interference with freedom of action in connection with participation by the member in procedures under this chapter or in connection with the making of any disclosure or submission described in section 105 (b)(2), (b)(3), or (c);

(G) any alleged denial of basic due process;

(H) any claim involving the effect, interpretation, or breach, of any collective bargaining agreements; and

(I) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2)(A) Subject to subparagraph (B) of this paragraph, the term "grievance" does not include, for purposes of this chapter, the judgment of a selection board established pursuant to section 602, a tenure board established pursuant to section 306(D), or any other equivalent body established pursuant to law or regulation which similarly evaluates the performance of members of the Service on a comparative basis.

(B) Notwithstanding subparagraph (A), the term "grievance" shall include a claim that a judgment described in subparagraph (A)—

(i) was based on any prohibited personnel practice described in section 2302(b) of title 5, United States Code;

(ii) was based on or constitutes falsely prejudicial information; or

(iii) was not made in accordance with law, rule, or regulation.

(b) For purposes of this chapter, the term "exclusive representative" means a labor organization which is accorded exclusive recognition under chapter 10.

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce. When used in this chapter, the term "Secretary" shall refer to the head of a department or agency listed in this subsection.

SEC. 692. GRIEVANCES CONCERNING FORMER MEMBER.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse, former spouse, or another member of the family of a deceased member or former member of the Service may file a grievance under this chapter.

SEC. 693. FREEDOM OF ACTION.—(a) Any person filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(B)(1) Any grievant has the right at every stage of the proceedings to a reasonable number of representatives of his or her own choosing. An exclusive representative shall have the right to appear and present its views during any grievance proceeding.

(2) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards which are necessary to ensure confidentiality, in accordance with section 1108(d).

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department shall expedite security clearance procedures whenever necessary to assure a fair and prompt investigation and resolution of a grievance.

SEC. 694. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that in the case of any grievance arising before the date of the enactment of this Act, the grievance shall be so barred, and not so considered and resolved, unless it is filed within 2 years after such date of enactment. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any, within sixty days after it is filed with the Department), a grievant shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 695. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 12 members, who shall be appointed under subsection (b).

(b)(1) The Members of the Board shall be appointed by the Secretary of State from individuals nominated under paragraph (2) and approved in writing by the exclusive representative for each agency to which this chapter applies and each such agency which has such an exclusive representative. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section.

(2) Each appointment made by the Secretary of State under paragraph (1) shall be made from a written list of candidates submitted to the Secretary of State by any organization which is composed primarily of individuals who are experienced in the adjudication or arbitration of personnel matters.

(3) An individual shall be eligible for appointment as a member of the Board only if such individual—

(A) is not a current or former employee of the Department or a current or former member of the Service, or is not performing and has not previously performed services for the Department or Service (other than as a member of the Board);

(B) has the demonstrated ability, background, training, and experience necessary to be especially qualified to serve as a member of the Board; and

(C) demonstrates a capacity and willingness to devote sufficient time to service as a member of the Board in order to enable the Board to dispose of cases under this chapter in a timely manner.

(c)(1) A member of the Board may be removed from the Board—

(A) by majority vote of the members of the Board (other than the member who is the subject of the proposed action of removal); and

(B) only for inefficiency, neglect of duty, or malfeasance in office.

(2) Any member of the Board who is the subject of any proposed action of removal under this subsection shall be given notice and opportunity for a hearing before the Board prior to any vote of the members of the Board under paragraph (1)(A). Each agency and each exclusive representative shall be given the right to appear at the hearing and present its views. The Board may dispense with the opportunity for a hearing only upon the submission of a written waiver of the hearing to the Chair by the member subject to the proposed action.

(d) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate payable for GS-18 under the General Schedule under section 5332 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United State Code.

(e) The members of the Board shall select from among the members of the Board a Chair who shall be the chief executive and administrative officer of the Board.

(f) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible

solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards necessary to ensure confidentiality, in accordance with section 1108(d).

SEC. 696. BOARD PROCEDURES.—(a) Procedures for the resolution of grievances in accordance with the purposes of this chapter shall be established by an agreement between the exclusive representative for each agency to which this chapter applies and each such agency which has an exclusive representative.

(b) Subject to any terms of an agreement under subsection (a), the Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. Unless the grievant requests otherwise, such hearings shall be open to public observation, except that the Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be closed to public observation because the public interest so requires. Testimony at a hearing shall be given under oath or affirmation, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing any witness under its control, supervision, or responsibility, except that if the Board determines that the absence of such witness from the hearing would not impair the presentation of the grievance or lessen the Board's assessment of credibility, the witness may be made available by deposition. If the witness is not made available in person or by deposition within a reasonable time as determined by the Board, the facts at issue shall be construed in favor of the grievant. Necessary costs and travel expenses shall be paid by the agency.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board may exclude any irrelevant, immaterial, or unduly repetitious evidence.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) The Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chair, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise.

The Board shall act through panels of at least 3 members in any grievance regarding any agency which has an exclusive representative. Members of any such panel shall be designated by the Chair for a fixed period of time and shall be approved in writing by the agency and the exclusive representative. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate.

(8) If the Board determines that the Department is considering any action which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions if such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence or if the Board otherwise considers it warranted.

(c) The provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is, in the interest of national defense or the conduct of foreign affairs, specifically prohibited from disclosure by any other provision of law or specifically required by Executive order to be kept secret.

SEC. 697. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board may order the Department—

(1) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(2) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(3) to take any other remedial action that the Board deems appropriate.

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d)(1) If the Board finds that—

(A) the grievance is meritorious and orders that remedial action be taken that relates directly to promotion or assignment of the grievant, or

(B) the evidence before it warrants disciplinary action against any employee of the Department or member of the Service,

it shall make an appropriate recommendation to the Secretary of State.

(2) The Secretary of State shall make a written decision on the recommendation of the Board within thirty days after receiving the recommendation. The Secretary of State shall implement the recommendation of the Board except to the extent that, in a decision made within the 30-day period, the Secretary of State rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would adversely affect the foreign policy or national security of the United States. If the Secretary of State rejects the recommendation in whole or in part, the rejection shall fully state the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative.

(3) Pending the decision of the Secretary of State under paragraph (2), there shall be no ex parte communication concerning the grievance between the Secretary of State and any person involved in the proceedings of the Board. The Secretary of State shall, however, have access to the entire record of the proceedings of the Board.

SEC. 698. ACCESS TO RECORDS.—(a) If a grievant is denied access to any written information in the custody or available to the agency (hereinafter in this section referred to as "agency record") prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the Secretary of State personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States. Any such certification shall be fully documented with the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

Any material furnished to the Board shall be furnished to the grievant or the grievant's representative at the same time. Whenever the furnishing of a personnel record or any other material may conflict with a regulatory or statutory provision protecting privacy or confidentiality the record shall be furnished promptly to the grievant or the grievant's representative only upon a certification, signed personally upon oath or affirmation, that the information contained therein will not be disclosed outside of the grievance proceedings. No employee of the Department participating in a proceeding on behalf of the Department shall disclose any information concerning a grievance to anyone not involved in the grievance proceedings. Violations of this section may be brought to the attention of the Board for appropriate action.

(e) If the Department fails to furnish to the Board any agency record promptly upon request, the Board shall construe the facts at issue in favor of the grievant if the Board determines the agency record may be relevant or material to the grievance. Consistent with the objective of expediting the resolution of grievances, the Board may make such a construction even if the agency record is submitted, if it was not submitted promptly after it was originally requested.

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(f) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board. The Board shall furnish the grievant or the grievant's representative with a copy of the record of the proceedings and the decision in any case considered by it.

SEC. 699. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. Except as provided in subsection (c), such an election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

(c) An election to raise a matter under grievance procedures in no way prejudices the right of an aggrieved party to request the Merit Systems Protection Board to review the final decision of the Grievance Board or to request the Equal Employment Opportunity Commission to review a final decision in any matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(d) Nothing in this act shall extinguish or lessen any right or remedy, including the right to trial de novo, of an employee or applicant for employment under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standard Act o 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

SEC. 700. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

CONFORMING AMENDMENTS

Page 5, in the item relating to section 1101, strike out "Definition of grievance" and insert in lieu thereof "Definitions; applicability".

Page 17, line 3, strike out "section" and insert "Act".

Page 17, line 6, strike out "in the civil service".

Page 167, beginning on line 9, strike out "in any separation" and all that follows down through line 10 and insert in lieu thereof "in any grievance proceeding under chapter 11; or".

Page 69, line 22, insert a period after the word "grievances" and strike all that follows down through line 24.

Mr. HELMS. Mr. President, in addition, I am pleased to tell this body that my substitute amendment for S. 3058, would not affect the contractual agreement of the U.S. Government to the 900 or so workers at USICA and the Voice of America. Last week, my esteemed colleague from Maryland (Mr. MATHIAS), offered an amendment to the Foreign Relations Committee bill, which I, along with my other colleagues, adopted.

Certainly in the context of S. 3058, Mr. MATHIAS' amendment was necessary and appropriate.

My substitute, would not violate the agreement between AFGE Local 1812 and the U.S. International Communication Agency. Foreign Service domestics would continue to be in the same bargaining unit to which they now belong under Executive order 11636, a Republican Executive order. Their relations with their agency would be covered under section 5, the labor-management relations of my substitute. These "domestic" employees would have continued access to the grievance provisions for the Foreign Service.

My substitute amendment would maintain the status quo of the collective bargaining agreement. Those USICA employees who have or do decide to remain within the Foreign Service system could do so. Others could, under the terms of their representative's contract with USICA, voluntarily convert to civil service status.

Mr. President, I thank the distinguished Senator from Rhode Island for yielding.

The PRESIDING OFFICER. The Senator from Rhode Island now has 15 seconds remaining.

Mr. PELL. I yield back the 15 seconds and suggest we come to a vote.

Mr. HELMS. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute as modified by the Senator from North Carolina for his substitute for the bill.

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Louisiana Mr. LONG), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay".

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS) and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BOREN). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 18, nays 66, as follows:

[Rollcall Vote No. 400 Leg.]

YEAS—18

Armstrong	Garn	Schweiker
Bayh	Hatch	Simpson
Bellmon	Helms	Stevens
Boschwitz	Humphrey	Thurmond
Byrd, Harry F., Jr.	Jepsen	Wallop
Domenici	Laxalt	
	McClure	

NAYS—66

Baucus	Hayakawa	Nelson
Bentsen	Heflin	Nunn
Biden	Heinz	Packwood
Boren	Hollings	Pell
Bradley	Huddleston	Percy
Bumpers	Inouye	Proxmire
Burdick	Jackson	Pryor
Byrd, Robert C.	Johnston	Ribicoff
Cannon	Kassebaum	Riegle
Chafee	Kennedy	Roth
Chiles	Leahy	Sarbanes
Church	Levin	Sasser
Cochran	Lugar	Schmitt
Cohen	Magnuson	Stennis
Danforth	Mathias	Stevenson
DeConcini	Matsunaga	Tower
Dole	McGovern	Tsongas
Durenberger	Meicher	Warner
Exon	Metzenbaum	Weicker
Ford	Mitchell	Williams
Gravel	Morgan	Young
Hatfield	Moynihan	Zorinsky

NOT VOTING—16

Baker	Goldwater	Stafford
Cranston	Hart	Stewart
Culver	Javits	Stone
Durkin	Long	Talmadge
Eagleton	Pressler	
Glenn	Randolph	

So Mr. HELMS' amendment (UP No. 1573), as modified, was rejected.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, obviously, a great many Senators did not understand the excellence of the substitute offered by the Senator from North Carolina. In view of the vote, I ask unanimous consent that the now-pending substitute be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 2290) was withdrawn.

The PRESIDING OFFICER. Is there further amendment? If there be no further amendment, the question is on the engrossment and third reading of the bill.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask for order, because this is extremely important legislation.

The PRESIDING OFFICER. The Senate will be in order.

AMENDMENT NO. 2312

(Purpose: To restrict the use of the authority for career extensions)

Mr. PELL. Mr. President, I call up amendment No. 2312, now at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes an amendment numbered 2312.

Mr. PELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 67, line 2, immediately before the period insert ", subject to any career extension under subsection (d) of this section", and immediately after line 2, insert the following new subsection:

"(d) Notwithstanding any other provision of this section—

"(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

"(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.".

On page 66, line 14 and 15, strike "in light of the recommendations of selection boards established under section 602 and the needs of the service." and insert in lieu thereof "in accordance with the recommendations of selection boards established under section 602.".

Mr. PELL. Mr. President, what this amendment does is prevent the removal of senior officers for political reasons—a change in administration or something of that sort. It came up as a result of the testimony of a number of the witnesses who came before the Foreign Relations Committee. It is generally acceptable and I hope it can be accepted by my colleagues.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2312) was agreed to.

AMENDMENT NO. 2314

(Purpose: To prevent windfall pay increases through the Civil Service to Foreign Service conversion process)

Mr. PELL. Mr. President, I call up now amendment No. 2314.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes an amendment numbered 2314.

Mr. PELL. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 200, strike out lines 20 through line 3 on page 201 and insert in lieu thereof the following:

SEC. 2101. PAY AND BENEFITS PENDING CONVERSION.—(a) Until converted under the provisions of this chapter, individuals who were Foreign Service officers immediately before the effective date of this Act shall be treated for purposes of salary as follows:

(1) Individuals who were serving under appointments at class 2 or a higher class of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2103 of this Act on the first day of such pay period to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402 of this Act.

(2) Individuals who were serving under appointments at or below class 3 of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2102 of this Act on the date specified in subsection (e) to the appropriate class and step (as determined under section 2106(a) of this Act) in the Foreign Service Schedule established under section 403 of this Act.

(b)(1) Except as provided in section 2104 (b), until converted under the provisions of this chapter, individuals who were Foreign Service Reserve officers or Foreign Service staff officers or employees immediately before the effective date of this Act shall be treated for purposes of salary in accordance with paragraphs (3) and (4) of this subsection.

(2) Not later than 30 days after the effective date of this Act, the Secretary—

(A) shall make an initial determination of the availability for worldwide assignment of each individual who was a Foreign Service Reserve officer or a Foreign Service staff officer or employee immediately before the effective date of this Act, and

(B) shall notify any such individual who is not initially determined to be available for worldwide assignment of that initial determination.

(3) Individuals who are initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as follows:

(A) Individuals who could be converted under section 2103 shall be paid as if they had been converted under section 2103, on the date specified in subsection (e) which begins on or after the effective date of this Act, to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402.

(B) Individuals who could be converted under section 2102 shall be paid as if they had been converted under section 2102, on such date, to the appropriate class and step (as determined under section 2106(a)) of the Foreign Service Schedule established under section 403.

(4)(A) Individuals who are not initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as if they had been converted under section 2104(a), on the date specified in subsection (e), to the grade and step in the General Schedule which most closely corresponds to the class and step at which the individual was serving immediately before the effective date of this Act, subject to the prohibition on reductions in basic rate of salary which is contained in the second sentence of section 2106(a)(1).

(B) If an individual who is not initially determined under paragraph (2) of this subsection to be available for worldwide assignment is subsequently converted under section 2102(a), 2103(b), or 2103(c) on the basis of a decision that the initial determination with respect to the availability of that individual for worldwide assignment was erroneous, the salary of that individual shall be adjusted, retroactively to the date specified in subsection (e), to the rate at which that individual would have been paid under paragraph (3) of this subsection if he or she had been initially determined to be available for worldwide assignment under paragraph (2) of this subsection.

(c) For the period beginning on the effective date of this Act and ending on the day before the date specified in subsection (e) (if such date occurs after the effective date of this Act), the individuals to whom this section applies shall continue to receive a salary at the rate at which they were being paid immediately before the effective date of this Act.

(d) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who, immediately before the effective date of this Act, were Foreign Service officers, Foreign Service Reserve officers, or Foreign Service staff officers or employees, shall be treated for purposes of allowances and all other matters (except salary) as if they had been converted on the effective date of this Act under section 2102 or section 2103 (as appropriate for the class in which they were serving immediately before the effective date of this Act).

(e) Except as otherwise provided, any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act) as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

Mr. PELL. Mr. President, in simplest terms, this amendment prevents a windfall salary increase for those individuals who convert from the Foreign Service to the civil service. Without this amendment, there would be a number of windfall increases, which would be both expensive and inadvisable. I hope my colleagues can accept this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 2314) was agreed to.

AMENDMENT NO. 2313

(Purpose: To make technical changes)

Mr. PELL. Mr. President, I call up amendment No. 2313.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes an amendment numbered 2313:

On page 42, line 4, immediately before "The" insert "(a)"; and between lines 12 and 13, insert the following new subsection:

"(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate

is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

"(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.".

On page 47, line 18, immediately after "compensation" insert "(including position classification)".

On page 52, line 4, immediately after "member" insert "and notwithstanding sections 5535 and 5536 of title 5, United States Code".

On page 78, line 10, strike out "abroad"; and in line 12, strike out "abroad".

On page 141, line 25, immediately after "United States" insert "(or any territory or possession of the United States or the Commonwealth of Puerto Rico)".

On page 158, beginning in line 25, strike out the comma and all that follows through and including line 2 on page 159 and insert in lieu thereof a period.

On page 173, beginning in line 16, strike out "the operations of" and all that follows through and including line 19 and insert in lieu thereof "the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice);".

On page 192, line 1, strike out "of State"; and on page 194 lines 1 and 2, strike out "of State".

On page 219, line 21, strike out "the".

On page 225, line 14, strike out "and" and insert in lieu thereof a period; and in line 18, immediately after "prescribe" insert the following: "and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6 (a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).".

On page 228, line 7, immediately after the first period insert the following: "Such person is to be considered an employee of the United States Government for the purposes of any benefit under any law administered by the Office of Personnel Management.".

On page 242, immediately after line 25, insert the following new section:

"SEC. 2305. SEVERANCE PAY.—Section 5595 (a)(2)(vi) of title 5, United States Code, is amended by inserting after 'to receive' the following: 'benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any'.".

Redesignate former sections 2305 through 2314 as sections 2306 through 2315 respectively; and on page 245, line 16, strike out "2309(a)" and insert in lieu thereof "2310 (a)"; and on page 246, line 2, strike out "2309(b)" and insert in lieu thereof "2310 (b)".

On page 244, strike out lines 3 and 4 and insert in lieu thereof the following: "striking out '(1)' and all that follows through and including 'each type of education' and inserting in lieu thereof 'one annual trip each way for each dependent'.".

On page 245, line 24, immediately before the first period insert a comma and the following: "except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee".

On page 246, lines 11 and 12, strike out "in the Department of State".

On page 247, between lines 3 and 4, insert the following new subsection:

"(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after 'States' in the first sentence '(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)'.".

Beginning on page 243, strike out line 22 and all that follows through and including line 6 on page 254 and insert in lieu thereof the following:

"SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

"(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

"(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).".

On page 254, line 7, strike out "(2) The provisions of such chapter" and insert in lieu thereof "(d)(1) The provisions of chapter 8 of title I"; and beginning in line 9, strike out "such effective date" and insert in lieu thereof "the effective date of this Act"; and in line 12 strike out "(3)" and insert in lieu thereof "(2)".

Mr. PELL. Mr. President, this amendment consists of a number of technical changes in S. 3058. None of these changes has any significant or substantive impact. They have been gone over on all sides and I hope they can be approved.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 2313) was agreed to.

AMENDMENT NO. 2308

(Purpose: To make the effective date April 1, 1981)

Mr. HELMS. Mr. President, I call up amendment No. 2308 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2308:

On page 253, line 23, delete "October 1, 1980" and insert in lieu thereof, "April 1, 1981".

Mr. HELMS. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HELMS. Mr. President, I was thinking just now of our former distinguished colleague from Wyoming, the delightful, inimitable Cliff Hansen. I came in this Chamber one time and, voting on one of his amendments, I said, "Is this your amendment, Cliff?" He said, "It is. It is an excellent amendment. It is good. It is beneficial to the country. It is fair and equitable and, naturally, it is being defeated."

That is how I felt when I saw the substitute go down because, in fact, Senators have not had time to study this issue, and I can understand that.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, this bill is 250 pages long. It makes sweeping changes in the personnel practices affecting thousands of Government employees. It requires perhaps hundreds of pages of new regulations to be written by the Secretary of State, all of them regulations which very well could have a dramatic effect on the way this bill is administered.

As Senators will note, the effective date of this bill was October 1, which is less than 3 weeks away. I simply do not think it is sound practice to write regulations and get the sweeping personnel changes underway with only 20 days.

It has been 34 years since the fundamental law was changed. Therefore, I think it is important the effective date of the bill be pushed forward by 6 months to give employees a better understanding of their new situations.

This amendment, therefore, would make the effective date of this bill April 1, 1981, and I move its adoption.

Mr. PELL. Mr. President, I think the motion of the Senator from North Carolina has merit. I have discussed it with the minority side. I advise my colleagues to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 2308) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HAYAKAWA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2309

(Purpose: To increase the rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories)

Mr. HELMS. Mr. President, I call up amendment No. 2309 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

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The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2309.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 97, after line 2, insert a new subsection as follows:

(m)(1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

(A) one-tenth of 1 percent of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than 30 days; or

(B) two-tenths of 1 percent of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained in excess of 30 days.

(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under sections 816 and 817 shall be increased by 1 year for each month or fraction thereof a participant is so held hostage or detained less than 6 months and shall be increased by 2 years for each month or fraction thereof a participant is so held hostage or detained in excess of 6 months.

(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.

Mr. HELMS. Mr. President, it is an unfortunate fact of life that respect for international law is standing more and more in the abeyance. We have seen more than one U.S. diplomat kidnapped, murdered, or held hostage. This problem is particularly egregious where a foreign state itself is the culprit in violating the concepts of diplomatic immunity.

I do not have to mention the hostages in Iran, nor the fact that they have been held captive for nearly 1 year. What counts is that the danger is always there, in these perilous days, and that any diplomat who serves abroad is subject to official terrorism even by foreign governments themselves.

I think that we should recognize this danger by providing increased retirement benefits, benefits which might be chosen immediattly if need be. There are not only physical hazards, but mental and psychological hazards to which a hostage is uniquely subject. Sometimes, these effects create a permanent disability, as we saw in the recent case of Richard I. Queen.

My amendment would provide that the rate of annuity of any participant in the Foreign Service would be increased by one-tenth of 1 percent of the average basic salary, for each day detained for the first 30 days, and two-tenths of 1 percent for every day detained in excess of 30 days. This annuity would be available to him immediately as soon as he leaves Government service.

Mr. President, I urge the adoption of the amendment.

Mr. PELL. Mr. President, I realize the emotion, the compelling need, and the situation that gives rise to this amendment. But my own view, and I think the view, more importantly, of the families of the hostages, is that they would prefer this be done in separate legislation.

I have earlier referred to a letter from Katherine Keough for the Family Lessor Action Group (FLAG) which says—it has already been printed in the RECORD—that while they are deeply grateful that Senator HELMS has addressed himself to this issue, that for the present, FLAG strongly prefers his support for swift enactment of the Hostage Relief Act rather than this amendment to the Foreign Service Act.

In this regard, the chairman of our committee (Mr. CHURCH) and I, and others, have cosponsored comprehensive legislation that we believe addresses the problem in a more thorough manner.

I hope in the light of this more comprehensive legislation which is pending before the Finance Committee, and in view of the wishes of the Family Liaison Action Group, that the Senator from North Carolina might be inclined not to press this issue to a vote.

Mr. HELMS. Mr. President, ordinarily, I would want to accommodate my friend in any way possible because he is a gentleman and he is, in fact, a dear friend of mine, and I respect what he has said.

However, I think it is time for the Senate to speak in terms of encouragement to those hostages and to others in the Foreign Service.

Whether this amendment is retained in conference would be up to the conferees. But I think the Senate ought to speak to this question.

Therefore, I ask for the yeas and nays on the amendment, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wisconsin (Mr. NELSON), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE), are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators present who desire to vote?

The result was announced—yeas 41, nays 43, as follows:

[Rollcall Vote No. 401 Leg.]

YEAS—41

Armstrong	Durenberger	McClure
Bayh	Garn	Packwood
Bellmon	Hatch	Roth
Biden	Hatfield	Sasser
Boren	Hayakawa	Schmitt
Boschwitz	Heinz	Schweiker
Bradley	Helms	Simpson
Byrd, Harry F., Jr.	Humphrey	Stevens
	Jepsen	Thurmond
Cochran	Kassebaum	Tower
Cohen	Laxalt	Wallop
Danforth	Long	Warner
Dole	Lugar	Weicker
Domenici	Mathias	Young

NAYS—43

Baucus	Huddleston	Pell
Bentsen	Inouye	Percy
Bumpers	Jackson	Proxmire
Burdick	Johnston	Pryor
Byrd, Robert C.	Leahy	Randolph
Cannon	Levin	Ribicoff
Chafee	Magnuson	Riegle
Chiles	Matsunaga	Sarbanes
Church	McGovern	Stennis
DeConcini	Melcher	Stevenson
Exon	Metzenbaum	Tsongas
Ford	Mitchell	Williams
Gravel	Morgan	Zorinsky
Heflin	Moynihan	
Hollings	Nunn	

NOT VOTING—16

Baker	Goldwater	Stafford
Cranston	Hart	Stewart
Culver	Javits	Stone
Durkin	Kennedy	Talmadge
Eagleton	Nelson	
Glenn	Pressler	

So Mr. HELMS' amendment (No. 2309) was rejected.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 2310

(Purpose: To provide for appropriate examinations for certain salary classes of the Foreign Service and the Senior Foreign Service)

Mr. HELMS. I call up amendment 2310 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2310.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

The amendment is as follows:

On page 31, line 23, change the period to a dash, and insert between lines 23 and 24 the following paragraphs:

"(1) Notwithstanding any other provision of law, no person shall be eligible for initial appointment as a member of the Foreign Service of classes 5 through 9 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determines fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major international events of the twentieth century. The Board of Examiners for the Foreign Service shall interpert the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"(2) Notwithstanding any other provision of law, no person shall be eligible for initial appointment as a member of the Foreign Service of classes 1 through 4 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant.".

Mr. HELMS. Mr. President, one of the most important elements in the morale of the Foreign Service is that of insuring that candidates for a service represent the highest quality personnel. Senators know the work of the Foreign Service is demanding, that it requires extensive knowledge of world affairs, geography, language, and sensitivity to other cultures, and it is important that not only the senior personnel have the assurance that the same high standards to which they were subjected for entry are maintained, but that new personnel have the self-confidence that they are ready to handle any assignment on worldwide availability.

Mr. President, the only way to do this, the only way to achieve this, is by written examination in the great tradition of the Foreign Service.

Unfortunately, this tradition has been watered down. There have been results of test scores set aside or reinterpreted. Worst still is the problem of lateral entry at higher levels by people who have never, never been examined, not even on languages.

I submit, Mr. President, that this is an abuse of the Service and it is an abuse that should be stopped.

Therefore, this amendment proposes that all candidates for appointment in classes 5 through 9 be given written examinations, but that the upper four classes should be examined also as to their professional competence. I doubt that a written examination is necessary in the latter case, but there should be at least the formality of an oral examination.

No examinations are proposed for the senior Foreign Service. Those in the senior Foreign Service will no doubt be under rigorous standards of selection promotion.

I think the amendment speaks for itself and, at a very minimum, Senators ought to agree to this. Therefore, I urge its adoption. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PELL. Mr. President, I have examined this amendment of the Senator from North Carolina. Referring to paragraph (2) where he speaks about oral examinations for senior officers 1 through 4, that is the present practice, so I do not think it is really necessary. There is no change between what is presently in the law and that of the amendment of the Senator from North Carolina. I believe the Senator will agree with me that paragraph (2) is a repetition of present procedure, present law.

Mr. HELMS. That is correct as to practice, but there is no requirement for a formal oral examination in law.

Mr. PELL. When it comes to paragraph (1) there is a change here where it requires that the examinations, written examinations, for junior officers cannot be waived by the Secretary of State as he is permitted to do in order to effectuate the affirmative action program.

This is a somewhat contentious provision, but it is one that is necessary at this time in order to provide for proper diversification and representation of all Americans in the Foreign Service, and I would recommend that this amendment not be agreed to.

Mr. PERCY. Mr. President, I would just ask the distinguished Sentor from North Carolina if we required this kind of procedure with respect to hiring Senate employees, and we have to have a lot of Senate employees who have some knowledge of the world we live in, geography and history and so forth, that, if we required every single one of them to submit to oral and written examinations, would this not unnecessarily burden the U.S. Senate?

Would it not place a tremendous amount of restrictions on the way we select people and in our discretion? Do we not feel that we as supervisors and our own department heads have enough discretion to select and pick people without overburdening formalities of written and oral examinations, to require them to go through tests on geography, history, U.S. political structure, major international events, and so forth?

It seems to the Senator from Illinois that we are trying to get away from as much regulation, as much rigidity in our system as possible and provide a little bit more flexibility. If we impose those same requirements on ourselves here in the Senate that we are now talking about in this amendment, imposing upon the entire Foreign Service these restrictions for lower ranks, is not this unnecessarily costly, and will it not remove the kind of flexibility we need to select people who can do these jobs, and really give discretion to a person who is a skilled interviewer?

I have known many people who can sit down and cram for an examination and get by with that and do reasonably well, but you would not think of hiring him. On paper he would look awfully good.

I wonder if the distinguished Senator could respond to that inquiry of the Senator from Illinois?

Mr. HELMS. I am delighted to respond to my friend from Illinois, and I will respond to his question with a question. Would the Senator advocate elimination of examinations for candidates for West Point and the other service academies?

What we are talking about is competence. I do not know about the Senator from Illinois, the Senator from Idaho, or the Senator from Rhode Island, but I have talked to Ambassadors and other representatives in the Foreign Service, and they are appalled by some of the personnel they are required to take.

Is it not reasonable to expect a candidate for such a sensitive, perilously responsible, position that is tied so closely to our foreign policy and the implementation thereof to pass a written examination? If we say here that, "Oh, no, we are not going to allow them to take a test; we are going to waive that. We will just bring them in so that we can fill this and fill that," and the rest of it as is now being done—according to Ambassadors I have been talking with, then what are we saying? I say, yes, we ought to have some way of knowing that there is competence and some way of measuring that competence. I think the American people, the taxpayers, are entitled to that. Certainly our foreign policy needs it. That is my response to the Senator.

Mr. PERCY. As I see the substitute requiring an examination for admission of lower staff officers in the specialist categories of the Foreign Service in all cases, I look upon the intent as that of maintaining high quality in the Service, and I think that is a laudable intent. But I do think we have to take into account that there would be two rather unfortunate results of the program. It will eliminate the minority and women's recruitment program for the Foreign Service, which has helped materially to enhance representativeness without reducing quality.

I submit for the RECORD several summaries of the progress which has been made in the Department of State, which will be endangered by the amendment. It would require specialists entering in the grades named, secretary, security officers, communicators, nurses, to take the general background examination now required of Foreign Service officer candidates.

Since recruitment is already difficult for some categories of specialists, this would place the service at a real disadvantage. Just as with the civil service, recruitment of Foreign Service specialists seems best handled by examination of professional credentials through a competitive process, as would be done under S. 3058. The Senator from Illinois feels that the provisions of S. 3058 are satisfactory. They have been looked at very carefully, indeed.

For that reason, I would oppose the pending amendment.

The summaries previously referred to follow:

DEPARTMENT OF STATE,
Washington, D.C., April 4, 1980.

MEMORANDUM

To The Secretary.
Through M. Ben H. Read.
From M/DGP.—Harry G. Barnes, Jr.
Subject Trends in FSO minority representation.

You asked me to send you the figures I had used in our Affirmative Action meeting April 2, with regards to trends in minority representation in the Foreign Service Officer Corps.

I mentioned that at the beginning of 1977 5.9% of our FSOs and FSO candidates were minorities. At the beginning of 1980 that figure stands at 8.3%. By way of illustrating the results of the emphasis we have put on affirmative action, I also gave the following figures for the Junior Officer ranks (as of the end of 1979):

	Percent
*0–6	13.6
*0–7	20.7
*0–8	36.0

With regard to the proportion of women, the corresponding figures are:

	Percent
0–6	20.0
0–7	23.0
0–8	30.0

*FSO and FSR Career Candidates.

DEPARTMENT OF STATE—MINORITY FOREIGN SERVICE OFFICERS AND CAREER CANDIDATES, DEC. 31, 1976, TO DEC. 31, 1979

	Dec. 31, 1976			Dec. 31, 1979		
	Total population	Total minorities	Percent	Total population	Total minorities	Percent
CA	1					
CM	40	1	2.5	31	1	3.2
FSO-1	311	6	1.9	320	12	3.8
FSO-2	305	10	3.3	302	7	2.3
Subtotal, senior level	657	17	2.6	653	20	3.1
FSO-3	615	17	2.8	704	21	3.0
FSO-4	854	27	3.2	774	49	6.3
FSO-5	627	68	10.8	579	60	10.4
Subtotal, middle level	2,096	112	5.3	2,057	130	6.3
FSO-6	340	20	5.9	474	14	3.0
FSO-7	283	1	.4	11		
FSO-8	85					
Subtotal, junior level	708	21	3.0	485	14	2.9
Total, FSO	3,461	150	4.3	3,195	164	5.1
FSO/FSR-6, FSSO-4				575	78	13.6
FSO/FSR-7				246	51	20.7
FSO/FSR-8				50	18	36.0
Total, junior officers (including career candidates)[1]				871	147	16.9
Total, FSO and career candidates				3,581	287	8.3

[1] Starting January 1978, junior officers are appointed as career candidates—FSR.

Note: With an intake of 59 minority officers during fiscal year 1980 we expect that minority FSO's and career candidates will comprise approximately 10 percent of the FSO Corps.

DEPARTMENT OF STATE—WOMEN FOREIGN SERVICE OFFICERS AND CAREER CANDIDATES, DEC. 31, 1976 TO DEC. 31, 1979

	Dec. 31, 1976			Dec. 31, 1979		
	Total population	Total women	Percent	Total population	Total women	Percent
CA	1					
CM	40	1	2.5	31		
FSO-1	311	10	3.2	320	7	2.2
FSO-2	305	8	2.6	302	10	3.3
Subtotal, senior level	657	19	2.9	653	17	2.6
FSO-3	615	34	5.5	704	36	5.1
FSO-4	854	56	6.6	774	66	8.5
FSO-5	627	85	13.6	579	107	18.5
Subtotal, middle level	2,096	175	8.3	2,057	209	10.2
FSO-6	340	56	16.5	474	86	18.1
FSO-7	283	54	19.1	11	3	27.3
FSO-8	85	18	21.2			
Subtotal, junior level	708	128	18.1	485	89	18.4
Total, FSO	3,461	322	9.3	3,195	315	9.9
Junior officers, including career candidates:						
FSO/FSR-6, FSSO-4				575	115	20.0
FSO/FSR-7				246	57	23.2
FSO/FSR-8				50	15	30.0
Total, junior officers (including career candidates)[1]				871	187	21.5
Total, FSO and career candidates				3,581	[2] 413	11.5

[1] Starting January 1978, junior officers are appointed as career candidates—FSR.

[2] An additional 73 women mid- and junior-level FSO career candidates have been taken in since Jan. 1, 1980, for a total FSO and career candidate population of 486 women (less attrition) by Oct. 1, 1980. This represents 2.7 percent of a total 3,830.

DEPARTMENT OF STATE—WORK FORCE CHANGE, BY SEX, 1969–79

	Total		Men		Women	
	Number	Percent	Number	Percent	Number	Percent
Total work force (CS and FS):						
Dec. 31, 1969	12,899		8,279	64.2	4,620	35.8
Dec. 31, 1979	12,830		8,046	62.7	4,784	37.3
Change	−69	−0.5	−233	−2.8	+164	+3.5
All civil service (GS and GG):						
Dec. 31, 1969	3,329		1,238	37.2	2,091	62.8
Dec. 31, 1979	3,710		1,178	31.8	2,532	68.2
Change	+381	+11.4	−60	−4.8	+441	+21.1
All Foreign Service:						
Dec. 31, 1969	9,570		7,041	73.6	2,529	26.4
Dec. 31, 1979	9,120		6,868	75.3	2,252	24.7
Change	−450	−4.7	−173	−2.5	−277	−11.0
Foreign Service officer and career candidate:						
Dec. 31, 1969	3,304		3,130	94.7	174	5.3
Foreign Service officer and career candidate—Continued						
Dec. 31, 1979	3,581		3,168	88.5	413	11.5
Change	+277	+8.4	+38	+1.2	+239	+137.4
Foreign Service Reserve and Foreign Service Reserve Unlimited:						
Dec. 31, 1969	1,404		1,289	91.8	115	8.2
Dec. 31, 1979	3,020		2,588	85.7	432	14.3
Change	+1,616	+115.1	+1,299	+100.8	+317	+275.7
Foreign Service staff and Foreign Service staff officers:						
Dec. 31, 1969	4,862		2,622	53.9	2,240	46.1
Dec. 31, 1979	2,519		1,112	44.1	1,407	55.9
Change	−2,343	−48.2	−1,510	−57.6	−833	−37.2

Source: PER/MGT/OS quarterly summary of employment (excluding noncareer chiefs of mission, FS/GS unclassified, consular agents, resident staff, wage board, WAE, and contract).

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I must confess, with all due respect to my friend from Illinois, that I do not quite understand what he is saying. He mentioned that this would eliminate recruitment programs for minorities and women, if I understood him.

Is he saying that minorities and women are not qualified to pass the test? I do not understand the argument that he is making.

My argument is that everybody, regardless of race, creed, or sex, who is going to be employed by the Foreign Service, ought to be qualified and ought to be demonstrably so. I think that is a reasonable request. It seems to me to be demeaning to suggest that minorities and women are not qualified to pass a written exam.

I realize that certain people in the State Department, in their zeal to get a bill passed, have been calling around to all the Senators, saying: "Don't take any of HELMS' amendments. You will mess up the whole deal. We have got this deal cut over in the House, so don't take any Helms amendment."

I received a call Thursday from my good friend, the former Secretary of State, Cy Vance. He said, "Jesse, I hope that after your substitute is defeated"—and he certainly made a brilliant forecast on that—"that you won't offer any amendments."

I said, "Well, Mr. Secretary, let me go down the list on these amendments and see which one of them you find disfavor with." I went down the list, Mr. President, one by one. He said, "Well, I agree with that." "I agree with that." "I don't know about that one, but it sounds all right to me." At the conclusion of the conversation, he said that they are good amendments, but he still did not want any vote on them. This is my friend Cy Vance. And, of course, Ed Muskie has been making the same calls to Senators. They do not want any amendment, no matter how much it improves this bill.

I say to you, Mr. President, that that is a very poor way to legislate. I have not advanced an amendment to any bill since I have been in the Senate that, as a Senator, I did not consider would be helpful to the intent of that amendment.

There is nothing frivolous about this. This is simply saying that you are going to take an examination and demonstrate that you are competent. And, under the American system that I love, what is wrong with that?

The State Department complains about the range of grades requiring written examinations. Well, let me point out,

Mr. President, that these candidates are being appointed to positions which are ranking a person as high as a GS-12. What is a GS-12? By military standards, I say to my friend from Illinois, that is a position as high as captain in the Army.

Does my friend, or do any of my friends, suggest that there should be no examination, no demonstration of competence? It would be absurd for them to say that with respect to the Army. I say it is absurd to make that suggestion as to this bill.

I simply cannot comprehend why the State Department would not be eager to require a written examination for persons of the relatively senior position of captains and so forth.

I note with special interest the complaints about the difficulty in obtaining clerical personnel, notably secretaries, yet I am informed that the Office of Personnel Management regularly, itself, tests typists and secretaries for employment as civil service employees in Washington, D.C., for the State Department. So why the double standard? That office could easily provide the same testing service for Foreign Service personnel. So the question is: Why not?

Earlier this afternoon, Mr. President, I noted that recruiting better qualified personnel was one of the justifications for the 15-percent tax-exempt additional compensation. I am pleased to note that the Department concedes that it now has severe difficulty in recruiting secretaries. Certainly the 15-percent differential might be an inducement; it might save recruitment and personnel turnover costs.

The Senate can vote its will on this amendment, but I just do not understand how any Senator can step up here and say "nay" to an amendment that is simply calling for demonstrably ascertained competence.

I yield the floor.

Mr. PERCY. Mr. President, I will ask my distinguished colleague, because he made comments about this bill going without any amendment, can he ever recall, in his experience, when the Senator from Illinois was helping to floor manage a bill when the Senator from Illinois was not willing to consider amendments? I have no pledge of any kind to carry a bill clean into conference.

Mr. HELMS. Mr. President, if the Senator will yield, I did not imply, nor should he infer, that I was talking about him. He knows that he is my friend. I am simply saying that the lobbying from the Department was not to take an amendment from HELMS or anybody else. "Let's let this thing, greased as it is, go through." I am not talking about the Senator from Illinois.

Mr. PERCY. I can assure my colleague that the Senator from Illinois has not talked to a single person in the State Department.

I just happened to be in my office with Ambassador Helman having a meeting. He is here from Geneva. I had an appointment with him here at 3 o'clock. I asked him about the last amendment, how he would view it as a Foreign Service officer and I got his judgment.

But I have not talked to the State Department officially about any aspects of this bill. I am simply going on my own experience as an employer. And I asked the question: Would we want to submit, for many of these ranks, a requirement that everyone hired by the U.S. Senate be submitted to that kind of oral and written examination, which would add a tremendous amount of cost and duplicity and effort for the kind of jobs that I feel we have adequate experience among ourselves to determine whether or not a person is qualified?

When we are trying to deregulate this Government and when we just stood out on the steps out here and heard the pledges that we made as Republicans for getting the heavy hand of Government out of a lot of things and directing and telling us what commonsense ought to tell us and forcing us to do things which we, in our judgment, do not feel at all cost effective, why would we turn around and come right back on a floor and then force the State Department to force persons in the lower categories to submit to oral and written examinations that we just do not feel require that kind of questioning?

That is why I raised the question and why I do not feel, in good judgment, that this is essential and certainly is not in accord with the desire to have our operations as flexible and as cost effective as possible.

If the Senator from North Carolina could convince me that this was absolutely essential, that we were hiring totally unqualified people and that would be corrected by this, but I have not really heard that argument or seen that measure of proof. For that reason, I cannot really see the need for it.

It is not the intention of the Senator from Illinois to just take a bill without amendments. The Senator from Illinois always has accepted amendments as a floor manager when he feels that they have improved the bill.

In fact, we welcome such amendments.

In this particular case, I just happen to disagree with my colleague.

Mr. HELMS. I know my good friend disagrees. We have always agreed to disagree agreeably. I love him for all that. But I would say to him that in hiring personnel for his office, he is not under any affirmative action gun. He is not under any political pressure to hire this person or that person. And he does not hire all that many people.

But I go back to my original statement, what we are talking about in terms of taking this examination are people who have as high as the equivalent military rank of captain in the Army. I do not think the Senator would suggest that there be no testing of someone being considered for a captaincy in the Army.

I do not know how much duplication, redtape, and so forth, is involved in a simple test. To tell you the truth, Mr. President, before I got into my study of this bill, I just assumed that that sort of thing was policy. Here I find that, "No, we have written examinations, but we waive them whenever we want" which means that political appointments can be made of people who do not understand the languages or the cultures, or anything else. They even can make lateral entry at higher grades, without examination. Just plug them in because somebody wants to be in the Foreign Service.

I do not know, I cannot testify of my own knowledge, of course, as to how often that happens, but I think we ought to be in the position of having said on the floor of the U.S. Senate that it is not going to happen at all. All this amendment says is, "You will have a demonstrably competent candidate." That is all the amendment says; nothing more, nothing less.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I think the record should show that we have already accepted one amendment to this bill. This changed the effective date of the bill at the suggestion of the Senator from North Carolina, an excellent suggestion. So this bill is not without amendment already.

Another point to bear in mind is that if the pending amendment of the Senator from North Carolina is accepted, it would then mean that a new procedure would have to be brought into effect for secretaries and specialists whereby they would have to take examinations of the type that are given now only to Foreign Service officers. I think that we would find that would not be necessary. In any case, I am ready to vote on this matter.

Mr. HELMS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. NUNN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BAU-

cus). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 19, nays 62, as follows:

[Rollcall Vote No. 402 Leg.]

YEAS—19

Armstrong	Humphrey	Thurmond
Boren	Jepsen	Tower
Boschwitz	Laxalt	Wallop
Exon	Lugar	Warner
Garn	McClure	Zorinsky
Hatch	Morgan	
Helms	Simpson	

NAYS—62

Baucus	Ford	Mitchell
Bayh	Gravel	Moynihan
Bellmon	Hatfield	Packwood
Bentsen	Hayakawa	Pell
Biden	Heflin	Percy
Bradley	Heinz	Proxmire
Bumpers	Hollings	Pryor
Burdick	Huddleston	Randolph
Byrd, Harry F., Jr.	Inouye	Ribicoff
Byrd, Robert C.	Jackson	Riegle
Cannon	Johnston	Roth
Chafee	Kassebaum	Sarbanes
Chiles	Kasten	Sasser
Church	Leahy	Schmitt
Cochran	Levin	Schweiker
Cohen	Long	Stevens
Danforth	Magnuson	Stevenson
DeConcini	Mathias	Tsongas
Dole	Matsunaga	Weicker
Durenberger	McGovern	Williams
	Metzenbaum	Young

NOT VOTING—19

Baker	Goldwater	Stafford
Cranston	Hart	Stennis
Culver	Javits	Stewart
Domenici	Kennedy	Stone
Durkin	Nelson	Talmadge
Eagleton	Nunn	
Glenn	Pressler	

So Mr. HELMS' amendment (No. 2310) was rejected.

UP AMENDMENT NO. 1574

Mr. HELMS. Mr. President, I send an unprinted amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1574.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 185, strike out chapter 11 (beginning on line 4 and ending on line 16 of page 200) and insert in lieu thereof the following:

Chapter 11—GRIEVANCES

SEC. 1101. DEFINITIONS; APPLICABILITY.—(a)(1) Except as provided in paragraph (2), for purposes of this chapter, the term "grievance" means any act, omission, document, or condition which is a source of concern or dissatisfaction to a member of the service who is a citizen of the United States or to an exclusive representative and which is subject to the control of the Secretary or the Secretary of State (or both) and relates to terms and conditions of employment, including, but not limited to—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member;

(B) other alleged violation, misinterpretation, or misapplication of any applicable law, regulation, or published policy adversely affecting the career, reputation, financial condition, or terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action taken or likely to be taken against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member which is or could be prejudicial to the member;

(F) any action which is alleged to be in the nature of reprisal, or interference with freedom of action in connection with participation by the member in procedures under this chapter or in connection with the making of any disclosure or submission described in section 105(b)(2), (b)(3), or (c);

(G) any alleged denial of basic due process;

(H) any claim involving the effect, interpretation, or breach, of any collective bargaining agreement; and

(I) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2)(A) Subject to subparagraph (B) of this paragraph, the term "grievance" does not include, for purposes of this chapter, the judgment of a selection board established pursuant to section 602, a tenure board established pursuant to section 306(b), or any other equivalent body established pursuant to law or regulation which similarly evaluates the performance of members of the Service on a comparative basis.

(b) Notwithstanding subparagraph (A), the term "grievance" shall include a claim that a judgment described in subparagraph (A)—

(i) was based on any prohibited personnel practice described in section 2302(b) of title 5, United States Code;

(ii) was based on or constitutes falsely prejudicial information; or

(iii) was not made in accordance with law, rule, or regulation.

(b) For purposes of this chapter, the term "exclusive representative" means a labor organization which is accorded exclusive recognition under chapter 10.

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce. When used in this chapter, the term "Secretary" shall refer to the head of a department or agency listed in this subsection.

SEC. 1102. GRIEVANCE CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse, former spouse, or another member of the family of a deceased member or former member of the Service may file a grievance under this chapter.

SEC. 1103. FREEDOM OF ACTION.—(a) Any person filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b)(1) Any grievant has the right at every stage of proceedings to a reasonable number of representatives of his or her own choosing. An exclusive representative shall have the right to appear and present its views during any grievance proceeding.

(2) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards which are necessary to ensure confidentiality, in accordance with section 1108(d).

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department shall expedite security clearance procedures whenever necessary to assure a fair and prompt investigation and resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that in the case of any grievance arising before the date of the enactment of this Act, the grievance shall be so barred, and not so considered and resolved, unless it is filed within 2 years after such date of enactment. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within sixty days after it is filed with the Department, a grievant shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 12 members, who shall be appointed under subsection (b).

(b)(1) The Members of the Board shall be appointed by the Secretary of State from individuals nominated under paragraph (2) and approved in writing by the exclusive representative for each agency to which this chapter applies and each such agency which has such an exclusive representative. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section.

(2) Each appointment made by the Secretary of State under paragraph (1) shall be made from a written list of candidates submitted to the Secretary of State by any organization which is composed primarily of individuals who are experienced in the adjudication or arbitration of personnel matters.

(3) An individual shall be eligible for appointment as a member of the Board only if such individual—

(A) is not a current or former employee of the Department or a current or former member of the Service, or is not performing and has not previously performed services for the Department or Service (other than as a member of the Board);

(B) has the demonstrated ability, background, training, and experience necessary to be especially qualified to serve as a member of the Board; and

(C) demonstrates a capacity and willingness to devote sufficient time to service as a member of the Board in order to enable the Board to dispose of cases under this chapter in a timely manner.

(c)(1) A member of the Board may be removed from the Board—

(A) by majority vote of the members of the Board (other than the member who is the subject of the proposed action of removal); and

(B) only for inefficiency, neglect of duty, or malfeasance in office.

(2) Any member of the Board who is the subject of any proposed action of removal under this subsection shall be given notice and opportunity for a hearing before the Board prior to any vote of the members of the Board under paragraph (1)(A). Each agency and each exclusive representative shall be given the right to appear at the hearing and present its views. The Board may dispense with the opportunity for a hearing only upon the submission of a written waiver of the hearing to the Chair by the member subject to the proposed action.

(d) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate payable for GS-18 under the General Schedule under section 5332 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United States Code.

(e) The members of the Board shall select from among the members of the Board a Chair who shall be the chief executive and administrative officer of the Board.

(f) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards necessary to ensure confidentiality, in accordance with section 1108(d).

SEC. 1106. BOARD PROCEDURES.—(a) Procedures for the resolution of grievances in accordance with the purposes of this chapter shall be established by an agreement between the exclusive representative for each agency to which this chapter applies and each such agency which has an exclusive representative.

(b) Subject to any terms of an agreement under subsection (a), the Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. Unless the grievant requests otherwise, such hearings shall be open to public observation, except that the Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be closed to public observation because the public interest so requires. Testimony at a hearing shall be given under oath or affirmation, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing any witness under its control, supervision, or responsibility, except that if the Board determines that the absence of such witness from the hearing would not impair the presentation of the grievance or lessen the Board's assessment of credibility, the witness may be made available by deposition. If the witness is not made available in person or by deposition within a reasonable time as determined by the Board, the facts at issue shall be construed in favor of the grievant. Necessary costs and travel expenses shall be paid by the agency.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board may exclude any irrelevant, immaterial, or unduly repetitious evidence.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) The Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designed by the Chair, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise.

The Board shall act through panels of at least 3 members in any grievance regarding any agency which has an exclusive representative. Members of any such panel shall be designated by the Chair for a fixed period of time and shall be approved in writing by the agency and the exclusive representative. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate.

(8) If the Board determines that the Department is considering any action which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Nothwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions if such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence or if the Board otherwise considers it warranted.

(c) The provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is, in the interest of national defense or the conduct of foreign affairs, specifically prohibited from disclosure by any other provision of law or specifically required by Executive order to be kept secret.

SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board may order the Department—

(1) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(2) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(3) to take any other remedial action that the Board deems appropriate.

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d)(1) If the Board finds that—

(A) the grievance is meritorious and orders that remedial action be taken that relates directly to promotion or assignment of the grievant, or

(B) the evidence before it warrants disciplinary action against any employee of the Department or member of the Service,

it shall make an appropriate recommendation to the Secretary of State.

(2) The Secretary of State shall make a written decision on the recommendation of the Board within thirty days after receiving the recommendation. The Secretary of State shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary of State rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would adversely affect the foreign policy or national security of the United States. If the Secretary of State rejects the recommendation in whole or in part, the rejection shall fully state the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative.

(3) Pending the decision of the Secretary of State under paragraph (2), there shall be no ex parte communication concerning the grievance between the Secretary of State and any person involved in the proceedings of the Board. The Secretary of State shall, however, have access to the entire record of the proceedings of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any written information in the custody of or available

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to the agency (hereinafter in this section referred to as "agency record") prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the Secretary of State personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States. Any such certification shall be fully documented with the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) Any material furnished to the Board shall be furnished to the grievant or the grievant's representative at the same time. Whenever the furnishing of a personnel record or any other material may conflict with a regulatory or statutory provision protecting privacy or confidentiality the record shall be furnished promptly to the grievant or the grievant's representative only upon a certification, signed personally upon oath or affirmation, that the information contained therein will not be disclosed outside of the grievance proceedings. No employee of the Department participating in a proceeding on behalf of the Department shall disclose any information concerning a grievance to anyone not involved in the grievance proceedings. Violations of this section may be brought to the attention of the Board for appropriate action.

(e) If the Department fails to furnish to the Board any agency record promptly upon request, the Board shall construe the facts at issue in favor of the grievant if the Board determines the agency record may be relevant or material to the grievance. Consistent with the objective of expediting the resolution of grievances, the Board may take such a construction even if the agency record is submitted, if it was not submitted promptly after it was originally requested.

(f) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board. The Board shall furnish the grievant or the grievant's representative with a copy of the record of the proceedings and the decision in any case considered by it.

SEC. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. Except as provided in subsection (c), such an election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

(c) An election to raise a matter under grievance procedures in no way prejudices the right of an aggrieved party to request the Merit Systems Protection Board to review the final decision of the Grievance Board or to request the Equal Employment Opportunity Commission to review a final decision in any matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(d) Nothing in this act shall extinguish or lessen any right or remedy, including the right to trial de novo, of an employee or applicant for employment under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

SEC. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

CONFORMING AMENDMENTS

Page 5, in the item relating to section 1101, strike out "Definition of grievance" and insert in lieu thereof "Definitions; applicability".

Page 17, line 3, strike out "section" and insert "Act".

Page 17, line 6, strike out "in the civil service".

Page 167, beginning on line 8, strike out "in any separation" and all that follows down through line 10 and insert in lieu thereof "in any grievance proceeding under chapter 11; or".

Page 69, line 22, insert a period after the word "grievances" and strike all that follows down through line 24.

Mr. ROBERT C. BYRD. Would the distinguished Senator yield?

Mr. HELMS. Certainly, I will yield to my good friend.

Mr. ROBERT C. BYRD. It is for an announcement.

Mr. President, it is the plan to finish this bill this evening, I am told by the distinguished Senator from North Carolina that he may have one more amendment, or he may not.

Mr. HELMS. Yes.

Mr. ROBERT C. BYRD. Then the Senate should be finished its work on this bill by 5 o'clock, or 15 minutes after, something like that.

After that, there would be no more rollcall votes. After acting on this bill, there will be no more rollcall votes today. The Senate would go to the HUD appropriation bill for opening statements only, and then the Senate would go over until tomorrow.

ORDER FOR RECESS TO 10:30 A.M. TOMORROW

If the Senator will allow me to ask unanimous consent, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, under the order previously entered, the HUD bill would be laid down today, opening statements would be made, and that would be the business before the Senate tomorrow, after the recognition of Senators for whom any orders have been entered.

ORDER FOR RECOGNITION OF MR. M'GOVERN ON TOMORROW

Mr. ROBERT C. BYRD. I now ask unanimous consent to enter an order for Mr. MCGOVERN, for not to exceed 15 minutes, after the two leaders, under the standing order on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Are there any other orders for the recognition of Senators tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. Then, Mr. President, following the laying down of the HUD appropriation bill tomorrow, at no later than 12 noon, under the order previously entered, the Senate would lay aside temporarily the HUD appropriation bill and proceed to the military construction authorization bill; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. All right. I thank the distinguished Senator from North Carolina for his courtesy.

Mr. HELMS. Mr. President, this amendment would delete the grievance section of S. 3058 and replace it with what the Senator from North Carolina considers an improved version of the bill introduced by the distinguished Senator from Indiana (Mr. BAYH), which is S. 2712.

Now, the Chair will recall that this is the same amendment which I added by unanimous consent to my comprehensive substitute earlier this afternoon, which was defeated.

I might add that it has the strong support of the national office of the AFGE, AFL-CIO, and Local 1812.

For the benefit of Senators, perhaps I should summarize the effects of the pending amendment, which is a substitute for the grievance section of S. 3058.

Unlike the bill as originally drafted, this amendment guarantees an individual grievant the right to representation of his or her own choice.

The committee has adopted a similar amendment and, in view of the statutory

base for the grievance procedure, the pending amendment simply continues this right.

Mr. President, the reported bill raises serious doubt about whether a grievant in a separation case is entitled to have this decision reviewed by the Equal Employment Opportunity Commission, and, where necessary, to obtain a trial de novo for the discrimination claim in the U.S. District Court.

I am confident it was not the intention of my distinguished colleagues on the Foreign Relations Committee to immunize the Department of State from enforcing the same obligation to provide equal opportunity currently applicable to both it and the other Federal agencies.

So, Mr. President, the pending amendment removes this ambiguity and, similar to an employee's status under the Civil Service Reform Act of 1978, preserves the rights of the Foreign Service officer's under the Nation's civil rights laws.

In what may have been a drafting oversight, the reported bill allows the agencies to appoint all the members of the Grievance Board. A marked departure from current practice where each agency and each employee representative has an absolute veto over each nomination to the board. Under the reported bill, whenever a disagreement arose, five agencies and two representatives would each nominate two candidates. Thus, there would be 10 agency nominees and 4 representative nominees. On the first round of the striking procedure, the five agencies would be able to eliminate the four candidates nominated by the employee representatives. The unfairness of this procedure is obvious and has been highlighted by a report from the officers of the Thomas Fund.

The Thomas Legal Defense Fund was established in 1971 to secure the constitutional protection for the rights of Foreign Service officers. The officers of the fund have distributed a report sharply critical of the changes made by the reported bill. In addition, the fund shares the alarm of the Thursday luncheon group, composed of minority members of the service, at the prospect that the grievance chapter will be crippled.

Mr. President, in earlier Congresses, the Senate has thoroughly considered the issue of an appropriate mechanism for resolving grievances in the Foreign Service. On several occasions, the Committee on Foreign Relations has recommended and the Senate has adopted the grievance legislation offered by my distinguished colleague from Indiana (Mr. BAYH). Unfortunately, we were never able to convince the House to go along wholeheartedly. In H.R. 6790 the House once again falls short of the Senate's consistent position on grievance legislation.

I believe that no thorough review of the legislation charter for the Foreign Service can be complete without an effort to achieve some of the gains found in the earlier legislation so favorably approved by the Senate. I must confess, however, that my substitute does not reach the full measure of protection afforded by S. 2712, the Bayh bill passed by this body in earlier years. I would like to explain some of the departures from the Bayh bill.

First, I have added a limiting phrase to the general definition of grievance so that the dispute must "relate to terms and conditions of employment." I do not intend by the addition of this phrase to preclude any matter currently grievable from being resolved through the procedure in my substitute. In fact, my substitute enlarges the definition of grievances beyond that found in current law. I wish to inform my colleagues, however, that by use of this limiting phrase, I specifically intend to make it clear that the policy content of foreign affairs decisions is not subject to the grievance procedure. I believe that the claim that the content of policy decisions would be grievable was an inaccurate criticism of the Bayh bill. This limiting phrase eliminates any basis for such a charge against my substitute.

In a second departure from the bill, approved earlier by the Senate, I specifically exclude the subjective judgments of selection boards from the definition of grievance. Where, however, a selection board has engaged in a prohibited personnel practice or otherwise violated law, rule, or regulation, its decision would be grievable.

Perhaps the most criticized facet of the Bayh legislation is its requirement that the members of the Grievance Board be selected on a tripartite basis, with one selected by agency management, one by the employee representative, and one by the other two members. My substitute eliminates this tripartite composition of the Grievance Board, while building on the Board's current practice of acting through panels.

My substitute allows the Secretary of State to refuse to provide information, and even to implement certain decisions of the Grievance Board, if he finds that it would adversely affect the foreign policy or national security of the United States. These provisions are a profound departure from the normal procedure for resolving disputes where the third-party decision is final and binding on all parties. Although I am hesitant about allowing one side to a dispute to have the power to ignore the decisions of the Grievance Board, I believe that my substitute contains adequate safeguards as that the Secretary's power will not be used arbitrarily or otherwise abused.

My amendment also contains guarantees for the protection of confidential information and allows the grievant the right to close a grievance hearing. Where, however, the grievant desires an open hearing, the Board would be required to honor the request unless it found good cause to do otherwise.

In conclusion, I urge my colleagues to vote for this substitute. It avoids the unfortunate provisions of the reported bill which have come under increasing criticism. The substitute also avoids those features of the grievance legislation approved by the Senate but which have raised the greatest objection. Most importantly, the substitute places the Senate on record—once again—in favor of expanding the guarantees of basic fairness in the Foreign Service.

Mr. PELL. Mr. President, I appreciate the motives and the reasons for the submission of this amendment. I ask one question of the Senator from North Carolina: Is this basically the Bayh bill that the Senator from North Carolina has submitted?

Mr. HELMS. It is, I say to my friend.

Mr. PELL. This is a bill we have considered before, and I wanted to identify it, to know exactly what we are talking about.

We thought there were many parts of the Bayh proposals that were excellent. In fact, the grievance provisions in the bill before the Senate, S. 3058, move in the direction of Senator BAYH's proposal in several key respects. For example, the grounds on which management can overturn Grievance Board decisions have been sharply narrowed, so that only true national security grounds provide justification for doing so.

Then, as the Senator from North Carolina has mentioned, our Foreign Relations Committee added a provision which confirms that "the grievant has a right to a representative of his or her own choosing at every step of the proceeding."

Richard I. Bloch, the Chairman of the Foreign Service Grievance Board and an arbitrator for a number of Federal agencies—IRS, Labor, Treasury, Justice, and others—says that the present Foreign Service grievance system "is the single best Federal sector system we know * * * well structured and for the most part adequately responsive to the needs of the parties."

The Grievance Board is working well and meets in a fair and constructive fashion the needs of management and the employees.

In this regard, the composition of the Board is exactly as the Senator from North Carolina has said. But we also should bear in mind that the list from which the members are drawn is a negotiated list, agreed upon by the organizations representing the employees.

When it comes to support, while the AFGE supports this measure, it is representative of only 2,000 employees; but the American Foreign Service Association, which supports the bill before the Senate, represents some 11,000 people, or almost six times as many in the Foreign Service.

Also, we have to keep in mind the rights of the individual, fairness to the individual, as well as flexibility of assignment and the national interests of the United States. Those really are paramount.

One of the problems with the Bayh approach is that a man or woman assigned to an unattractive post could bring a grievance.

The whole idea of the Foreign Service is that you go where you are assigned. It is a disciplined service. There may be an occasional unpleasantness in it, as there may be in the military service; but, in general, I believe the system works well and fairly. Here, I speak with some experience, because I served in it for a half-dozen years.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have been ordered.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent to have printed in the RECORD a statement from the Thomas Legal Defense Fund.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

CRIPPLING THE FOREIGN SERVICE GRIEVANCE PROCEDURE: THE PROPOSED FOREIGN SERVICE ACT OF 1980 (H.R. 6790/S. 3058)

INTRODUCTION

The United States Senate and the House of Representatives are currently considering a bill which, in part, would amend the existing grievance legislation for the Foreign Service passed by the Congress in 1975. Written by the Department of State as a new "Foreign Service Act," H.R. 6790/S. 3058 has already received committee action in each House.

The "Foreign Service Grievance Act" (H.R. 7446/S. 2712), has also been introduced in both Houses and contains grievance provisions taken from the bill which was reported favorably by the Committee on Foreign Relations and passed by the Senate during the Ninety-Second and Ninety-Fourth Congresses. The Department has opposed changing its bill to incorporate the grievance provisions of H.R. 7546/S. 2712.

The Thomas Legal Defense Fund was established in 1970 when it became obvious that judicial protection would be necessary to secure the constitutional rights of officers employed in the foreign affairs community.

Through *Lindsay* v. *Kissinger*, 367 F. Supp. 949 (D.D.C. 1973), the Fund won the landmark affirmation that fair hearing and due process must be provided within the Foreign Service. This decision eventually led to the Department of State's acceptance of grievance legislation in 1975.

The Thomas Fund has consulted with attorneys familiar with current operations under the Foreign Service grievance system and has concluded that the provisions of the proposed Foreign Service Act would substantially reduce the protections already granted Foreign Service members under current law. The Department's communications to Congress and the foreign affairs community avoid discussing these "take-away" provisions. Since it has been the experience of the Fund that Department officials are inclined to take advantage of any opportunity presented by an ambiguous regulation or statute, the officers of the Fund determined that it is crucial to alert the foreign affairs community to the changes made in existing law by the proposed Foreign Service Act. Because the Bayh-Derrick bill has been adopted in earlier Congresses by the Senate and is being offered as an alternative to Chapter 10 of the proposed Foreign Service Act, it is also discussed.

The Thomas Legal Defense Fund has had this report prepared as part of its continuing efforts to ensure that the Foreign Service is treated in accordance with principles of fairness and due process.

(Note: Other interpretations exist to this report's "worst case" analysis. If the grievance changes survive Congressional scrutiny and achieve passage, the Thomas Fund will continue to press for the most favorable construction of the new law.)

ANALYSIS

1. Confidence in the integrity of the grievance board.

The heart of any effective mechanism for resolving disputes is confidence in the integrity of the entity deciding those disputes. Under current law, all members of the Foreign Service Grievance Board are appointed with the approval of all of the foreign affairs agencies and employee bargaining representatives. Each employee representative now has an absolute veto over the appointment of each member to the Grievance Board.

H.R. 6790/S. 3058 would eliminate this veto by the employee representative. The bill provides instead a striking procedure whenever an agency fails to agree with a representative on Board members. The striking procedure would in effect, allow the agencies to appoint the members of the Board, thereby undermining confidence in the integrity of the Board and in the impartiality of its decisions.

Unlike most of the act, the grievance procedure would apply to the Departments of Agriculture and Commerce.

Under the proposed striking procedure, each agency(State, IDCA, USICA, Agriculture, Commerce) and each employee bargaining representative (AFSA, AFGE) would nominate two people. The five agencies and the two representatives would then alternate in striking names from the list of nominations. It thus appears that agencies would first be allowed to "stack the deck" by nominating ten of the fourteen candidates and then would get a second advantage by being able to strike more names from the stacked list than the representatives could. In fact, the five agencies would be able to eliminate all four candidates proposed by the representatives on the first round of the striking procedure. No justification for this departure from a neutral Grievance Board appears to have been presented by the bill's proponents.

The bill would also allow the Secretary to remove unilaterally any member of the Grievance Board for certain specified cause. Under current law, neither the agencies nor the representatives may remove a Board member unilaterally.

H.R. 7546/S. 2712 would establish a "tripartite panel" with one member of the Grievance Board appointed by agency management, one by the bargaining representative, and one by each of the other two members from a roster agreed upon by the Secretary and the bargaining representative. Tri-partite panels are a common feature of dispute resolution mechanisms for professional public servants.

2. Definition of grievance.

The proposed Foreign Service Act (H.R. 6790/S. 3058) appears to exclude from the grievance procedure low-ranking decisions by the selection boards. With the limitation on time-in-class found in the Foreign Service personnel system, improper low-ranking can quickly result in an officer's being selected out improperly. Thus, the legality and validity of an initial low-ranking decision is crucial to an officer's career.

Under current law, a low-ranking decision must be accompanied by a statement of reasons documented by the performance file. Failure to comply with this and other requirements can now be successfully challenged before the Grievance Board. The process by which low-ranking decisions are made is sufficiently imperfect that some officers have even persuaded management officials at the Department level to overturn low-ranking decisions. The bill's proponents do not appear to have offered any justification for narrowing the scope of grievances from current law and have neither identified nor explained their proposed immunity for improper and invalid low-ranking decisions.

The proposed act would also expressly allow the Department and a bargaining representative to further restrict by agreement an officer's statutory right to resolve a grievance.

As passed by the Senate in two earlier Congresses, the proposed grievance bill (H.R. 7546/S. 2712) would expand the definition of grievance to include promotion decisions. This bill also contains express coverage for all violations of due process. All actions grievable under current law would continue to be grievable under the expanded scope of grievances in this bill. Although the Senate Committee on Foreign Relations added general language to the prefatory section of S. 3058 urging that the Foreign Service be governed by due process principles, the Committee did not expand the bill's definition of grievance to include due process violations specifically.

3. Freedom of action.

Under current law, a grievant is entitled to have the grievance processed by a reasonable number of representatives chosen by the grievant. Some grievants have preferred to avoid using lawyers and instead rely on a couple of colleagues to be their representatives. This practice has facilitated the thorough and expeditious processing of grievances. The Fund knows of no general assertion by the Department that excessive representation has been sought under current law.

The House bill (H.R. 6790) would require that a grievant be represented by the exclusive bargaining agent for the bargaining unit to which the employee belongs (AFSA for State and IDCA, AFGE or USICA). No longer would the Foreign Service member be able to choose his or her own representatives and use the grievance procedure without the bargaining agent. The Department's explanation for this change included an erroneous conclusion that such practice is common elsewhere and omits the obvious reference to 5 U.S.C. 7114(a)(5) which grants to civil servants using a statutory procedure the right to select their own representative.

The Senate bill (S. 3058) would allow an employee to choose a representative other than the exclusive bargaining agent, but its language omits any reference to the "reasonable number of representatives" found in several sections of the current law. This omission could allow the Department to claim that the existing right to a reasonable number of representatives has been repealed.

4. Decisions of the board.

Under current law, certain decisions of the Board are not binding on the Department. These decisions include those on reinstatement, promotion, assignment, or disciplinary action, and those providing remedial action which is not stated specifically in the statute. The Department may ignore the Board decision on these subjects if it claims that the "needs of the Service" or that the "efficiency of the Service" justifies such action. Experience indicates that the Department is quite willing to exercise this discretionary right to reject third-party decisions.

The proposed act (H.R. 6790/S. 3058) would eliminate both efficiency and the needs of the service as grounds for rejecting a Board decision. The bill would still allow the Department to ignore a Board decision if, in the opinion of the Department, the decision was contrary to law or would adversely affect foreign policy or national security. As with access to written records (below), the bill appears to leave the determination that a decision is contrary to law solely with that side in the dispute which had already been found by the Grievance Board to have engaged in illegal or improper conduct.

The grievance bill (H.R. 7546/S. 2712) specifies that only the Secretary himself may reject a recommendation of the Grievance Board, and then only for national security or foreign policy reasons with full documentation required.

5. Access to written records.

Current law requires that the Department supply a grievant with records which the grievant requests and the Board believes are relevant and material. If the head of the Department or his deputy determines that disclosure would adversely affect foreign policy or national security, access to the record is barred. The agency determination is final, subject to judicial review.

The proposed act (H.R. 6790/S. 3058) seems to provide the Department with additional rationales, and thus opportunities, for refusing to disclose information even when that information is relevant to the grievance. In allowing the Department to refuse to decide whether disclosing particular information is prohibited by law, the bill could be interpreted to give the Department unilateral and final authority to determine whether a grievant is entitled to access to agency documents.

The grievance bill (H.R. 7546/S. 2712) would require the Department to furnish the grievant with any document he requests that the Board determines is relevant and material. Where bona fide security concerns exist, the bill directs the Department to expedite necessary security clearances.

Currently, the Department too often refuses to provide information in a timely fashion even when such information could forestall a grievance. No bill addresses this practice of delay and waste and expense it causes.

CONCLUSION

The proposed Foreign Service Act would radically alter the existing structure for resolving grievance in the Foreign Service. The legislation would deprive Service members of the right to challenge instances of agency misconduct that are currently grievable. It would allow the agencies to appoint the Grievance Board unilaterally. It would then allow this agency-appointed entity to further restrict the grievance procedure over the objections of employee representatives. All these changes depart from the well-established principles governing the resolution of disputes.

State Department Officials drafted many of these changes in oblique language. Since the changes almost uniformly favor the Department at the expense of the members of the Foreign Service, and the Department has not publicized their impact within the foreign affairs community, the proposed legislation must be seen as a covert attempt to disrupt and dismantle the Foreign Service grievance procedure.

Mr. HELMS. Mr. President, I am ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. NUNN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 36, nays 45, as follows:

[Rollcall Vote No. 403 Leg.]

YEAS—36

Armstrong	Garn	Mathias
Baucus	Hatch	McClure
Bayh	Hatfield	Metcher
Belmon	Heinz	Roth
Boschwitz	Helms	Sarbanes
Chafee	Humphrey	Sasser
Cochran	Jepsen	Schweiker
Cohen	Johnston	Simpson
DeConcini	Kassebaum	Stevens
Dole	Laxalt	Thurmond
Domenici	Levin	Wallop
Ford	Lugar	Zorinsky

NAYS—45

Bentsen	Hart	Pell
Biden	Hayakawa	Percy
Boren	Heflin	Proxmire
Bradley	Hollings	Pryor
Bumpers	Huddleston	Randolph
Burdick	Inouye	Ribicoff
Byrd,	Jackson	Riegle
Harry F., Jr.	Leahy	Schmitt
Byrd, Robert C.	Long	Stevenson
Cannon	Magnuson	Tsongas
Chiles	Matsunaga	Warner
Church	Metzenbaum	Weicker
Danforth	Mitchell	Williams
Durenberger	Morgan	Young
Eton	Moynihan	
Gravel	Packwood	

NOT VOTING—19

Baker	Javits	Stennis
Cranston	Kennedy	Stewart
Culver	McGovern	Stone
Durkin	Nelson	Talmadge
Eagleton	Nunn	Tower
Glenn	Pressler	
Goldwater	Stafford	

So Mr. HELMS' amendment (UP No. 1574) was rejected.

AMENDMENT NO. 2304

(Purpose: To require the Secretary to notify Congress of the number of Foreign Service personnel assigned to positions higher or lower than their personal rank)

Mr. HELMS. Mr. President, I call up amendment No. 2304 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2304.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 54, at the end of line 24, add the following sentence: "The Secretary shall notify Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.".

Mr. HELMS. Mr. President, official State Department figures furnished to me by the Congressional Budget Office show that at the present time the Foreign Service has a total of 1,550 officers in classes 1 and 2, but according to State's own classification system, there is a need for only 1,236. That means that there is an overcomplement of 314.

This information is more than double the totals which I had been told before. That is a 25 percent overstaffing in the upper ranks—counting by the Department's own measurement. This clearly shows that the selection-out process is not working.

Moreover, this is based on a job-classification system of State's own devising. I would suggest that an objective job-classification system, such as has been used throughout the government for 50 years, might come up with a different measure.

Mr. President, this legislation (S. 3058) requires that all jobs in the Foreign Service be classified as to skill and other job factors required. My amendment would require the Secretary to inform Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names of such personnel would be transmitted on a confidential basis to assure privacy and national security.

This is just an amendment which would enable Congress to keep better check on the efficiency of the administration of the Foreign Service. At the moment we do not know whether a large number or a small number of officers are assigned to positions which are above or below their grades and salary levels. I think this information should be available to Congress on a regular basis, and that is the purpose of this amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TSONGAS). Without objection, it is so ordered.

Mr. PELL. Mr. President, as I understand this amendment, all it does, and I am reading the text, it requires:

The Secretary shall notify Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.

What this amendment does is require an annual report. I have discussed this with my colleagues and the administration and believe it is an acceptable amendment. I ask that it be supported.

Mr. PERCY addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, it is true that most Foreign Service personnel are assigned to positions identical to their own personal rank, but somewhat more members are serving above their personal grade than below. I think that the amendment, therefore, would be perfectly in order. There is no opposition at all to submitting such a report. From this side of the aisle, I know of no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina (Mr. HELMS).

The amendment (No. 2304) was agreed to.

● Mr. BAUCUS. Mr. President, I rise in support of S. 3058, the Foreign Service Act of 1980, which is the bipartisan product of several years of study and experience, and which is well-designed to strengthen the Foreign Service of the United States and the conduct of foreign policy.

Events of recent years have vividly demonstrated the need for a strong, professional Foreign Service. The men and women of our Foreign Service are called upon to serve all over the world, often under difficult or hostile conditions. Their task is of vital importance to the security of the United States and to the cause of peace. The legislative basis for the present-day Foreign Service goes back to 1946; the world has changed enormously since then, and so have the demands on our Foreign Service people operating on the front lines in carrying out America's relations with other nations—both friends and adversaries, rich and poor.

I have examined the major provisions of the bill under consideration, and I am satisfied that it brings the mandate and structure of the Foreign Service abreast of the times we now live in; it is an excellent basis for the future development of our professional Foreign Service. This act delineates clearly the criteria characterizing the Foreign Service and setting it apart from the Civil Service, emphasizing the principle of availability for assignment worldwide.

It provides for the highest standards for initial hiring and for promotions and assignments throughout the career, establishing a framework for thorough training in foreign languages and the many other skills of particular importance in the conduct of international relations. At the same time, the present legislation establishes a structure parallel to that of the Civil Service in areas where the two personnel systems are compatible, such as in the establishment of a Senior Foreign Service essentially similar to the Senior Executive Service, and in the commitment to Equal Employment Opportunity.

The Foreign Service Act of 1980 will set our Foreign Service on a sound footing for many years to come, while resolving areas of confusion and inequities that have crept in over the years since passage of the 1946 act. It is appropriate that in this year when members of the Foreign Service have been subjected to extreme risks, even of life and liberty, that this body should manifest by passage of this act its concern and high regard for the men and women of the Foreign Service and for the key role they play in the conduct of foreign relations.

I congratulate the managers of the legislation, of both parties and in both houses of Congress, for the excellent work they have done in preparing this act for our favorable consideration, and I urge my colleagues to join me in voting for its passage.●

● Mr. DOLE. Mr. President, the Senator from Kansas rises to speak today in favor of S. 3058, the Foreign Service Act of 1980. This is a piece of legislation long overdue, and many years in the making. Before addressing the merits of the bill, however, I would like to add to the comments of my colleagues in expressing appreciation to the Senator from North Carolina (Mr. HELMS) for his efforts on this subject. The provisions of this bill, which reform and consolidate the Foreign Service legislation enacted since the last comprehensive Foreign Service Act of 1946, have been worked out carefully over a period of years. Many compromises were required before the legislation could reach this point of final passage. The bill is complex, arcane in many areas, and the result of numerous hearings and studies, both by the Congress and the State Department.

In my opinion of the Senator from Kansas, Senator HELMS has done the Senate a signal service by subjecting the committee bill to a final scrutiny. It is necessary in a bill such as this to make sure that the bill as a whole carries out the spirit and intent of its many parts. By offering the substitute for the committee bill and several amendments, the Senator from North Carolina has caused many of his colleagues to review the pending legislation with a sharper focus than otherwise might be the case, and I thank the distinguished Senator from North Carolina.

EQUITY IN PAY

One of the major revisions in this bill is an attempt to make Foreign Service officer (FSO) salary levels relate more closely to other Government pay structures, while reflecting the extra hazards, dangers, and material inconveniences that being in the Foreign Service or our Nation entails. As I have expressed before, the Foreign Service Reform Act is the product of years of discussion and a great deal of lobbying and compromise this year. The House version passed 239 to 78. It has a very good and equitable pay structure which addresses the inadequacies of the present situation, which have occurred over the past several years. The Senate version is very similar; the major difference appears to be the administration attempt to lower the proposed adjustments in pay by using nonspecific language in the Senate bill, in the hope that a lower figure can be reached as a compromise with the House level in a conference.

The Foreign Service, like the military, has been losing people particularly at the midlevels, and suffers from low morale. The FSO organization essentially claims that the administration's pay structure would equate Foreign Service salaries with comparable Civil Service positions, but not adequately take into account the hazards of FSO careers and the expenses and inconveniences of constant moving overseas. It is estimated, for instance, that for every year served in subequatorial Africa a Foreign Service officer can expect a statistical decrease of several years in life span due to chronic disease or debilitating illness. It is the opinion of the Senator from Kansas that a revision in pay scale, particularly at the midlevels, is long overdue.

SPOUSE RIGHTS

A major amendment, incorporated in the Senate bill, is a provision to allow former wives of FSO's who were unable to pursue careers while accompanying their spouses around the world, to collect part of the pensions after a divorce. The amount would be determined in court during the divorce proceeding. There are some who would delete this provision, prefering to leave to the courts any decision involving alimony and claiming that the courts already have the power to adjudicate the issue. This is not the case in some States and leaves in many cases the divorcee unprotected in the event the FSO dies.

The Senator from Kansas feels the wife of any American diplomat often plays a vital role in representing the United States in international relationships. Frequently in the past she has been expected to be knowledgeable of the affairs of state, culture, language, and social customs acceptable in the country in which her spouse serves. Countless hours have been devoted to the community, all without payment of any kind.

The time and talent diplomatic wives have contributed to our Nation should not be pushed aside, deminished, nor forgotten due to the termination of marriage. As our present laws now stand she has little security against financial disaster. Nor does she have protection under present social security laws since most often the Foreign Service wife is not permitted to pursue her own career while overseas. The passage of this bill will update and strengthen our laws as well as assure and provide the former wives with adequate financial protection upon dissolution of the marriage.

In summary, Mr. President, I believe this bill represents progress in modernizing the Foreign Service while building on the foundations of our postwar tradition of bipartisan foreign policy, administered by a nonpartisan Foreign Service officer corps. The widespread consensus among U.S. diplomats—and I might add that the last three Secretaries of State, at least, support this bill, covering both Republican and Democratic administrations—seems to favor the preservation of the Foreign Service as a separate, special designed corps. This legislation recognizes this long-term development and through its changes on pay and other matters, will hopefully add to its future stability and excellence.●

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Third reading.

Mr. PELL. Mr. President, I suggest third reading.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. PELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6790.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill.

The Senate proceeded to consider the bill.

Mr. PELL. Mr. President, I move to strike out all after the enacting clause of H.R. 6790 and substitute therefor the text of S. 3058, as amended.

The PRESIDING OFFICER. Is there objection to the motion? If not, the motion is agreed to.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

The bill (H.R. 6790) was passed, as follows:

H.R. 6790

Resolved, That the bill from the House of Representatives (H.R. 6790) entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.—This Act may be cited as the "Foreign Service Act of 1980".

SEC. 2. TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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Sec. 1. Short title.
Sec. 2. Table of contents

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Sec. 201. The Secretary of State.
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TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. FINDINGS AND OBJECTIVES.—(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this Act is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances that will insure the fullest measure of due process for the members of the Foreign Service;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service personnel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. DEFINITIONS.—(a) As used in this Act, the term—

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency as defined in section 552(e) of title 5, United States Code;

(3) "chief of mission" means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502 (c) to be temporarily in charge of such a mission or once;

(4) "Department" means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) "employee" (except as provided in section 1002(8)) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(6) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) "Government" means the Government of the United States;

(8) "merit principles" means the principles set out in section 2301(b) of title 5, United States Code;

(9) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) "Secretary" means the Secretary of State, except that (subject to section 201(b)) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency;

(11) "Service" or "Foreign Service" means the Foreign Service of the United States; and

(12) "United States", when used in a geographic sense, means the several States and the District of Columbia.

(b) References in this Act or any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers.

SEC. 103. MEMBERS OF THE SERVICE.—The following are the members of the Service:

(1) Chiefs of mission, appointed under section 302(a)(1) or assigned under section 502(c).

(2) Ambassadors at large, appointed under section 302(a)(1).

(3) Members of the Senior Foreign Service, appointed under section 302(a)(1) or 303, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 302(a)(1), who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 303, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 303, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 303 by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. FUNCTIONS OF THE SERVICE.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

SEC. 105. MERIT PRINCIPLES; PROTECTIONS FOR MEMBERS OF THE SERVICE; AND MINORITY RECRUITMENT.—(a)(1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit principles.

(2) For purposes of paragraph (1), the term "personnel action" means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation, and

(B) any decision, recommendation, examination, or ranking provided for under this Act which relates to any action referred to in subparagraph (A).

(b) The Secretary shall administer the provisions of this Act and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited under section 2302(b)(1) of title 5, United States Code;

(2) are free from reprisal for—

(A) a disclosure of information by a member or applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Department of State and the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5, United States Code.

(c) This section shall not be construed as authorizing the withholding of information from the Congress or the taking of any action against a member of the Service who discloses information to the Congress.

(d)(1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5, United States Code.

(2) Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report, signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.

(e) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), prohibiting discrimination on the basis of handicapping condition; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. THE SECRETARY OF STATE.—(a) Under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this Act.

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a)(1) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Number 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

(b) Subject to section 201(b)—

(1) the agency heads referred to in subsection (a), and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other act),

shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act.

SEC. 203. COMPATIBILITY AMONG AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this chapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

SEC. 204. CONSOLIDATED AND UNIFORM ADMINISTRATION OF THE SERVICE.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695)) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

SEC. 205. COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel system with other Government personnel systems to the extent practicable.

SEC. 206. REGULATIONS; DELEGATION OF FUNCTIONS.—(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.

(b) The Secretary may delegate functions under this Act which are vested in the Secretary to any employee of the Department or any member of the Service.

SEC. 207. CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(3) shall submit a report describing the foreign language competence of the chief of mission and the mission staff in the principal language or other dialect of the country to the chairmen of the Senate Foreign Relations and House Foreign Affairs Committees within six months of assuming the post.

(b) Any agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and

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operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.

SEC. 209. INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any general program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(b) Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transitions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operation meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c)(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those communities, the Secretary of State shall make copies of them available to the public request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as the responsibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General or his or her designee shall prepare the performance evaluation reports for such individuals.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

SEC. 210. BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State and shall include one or more representatives of the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

SEC. 211. BOARD OF EXAMINERS FOR THE FOREIGN SERVICE.—(a) The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 301(b) to be given to candidates for appointment in the Service. The Board shall consist of 15 members appointed by the President (no fewer than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity). The Board shall include representatives of agencies utilizing the Foreign Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) The Board of Examiners shall periodically review the examinations prescribed under section 301(b) in order to determine—

(1) whether any such examination has an adverse impact on the hiring, promotion, or other employment opportunity of members of any race, sex, or ethnic group;

(2) methods of minimizing any such adverse impact;

(3) alternatives to any examinations which have such an adverse impact; and

(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 301(b).

(c) Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

CHAPTER 3—APPOINTMENTS

SEC. 301. GENERAL PROVISIONS RELATING TO APPOINTMENTS.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) The Secretary shall prescribe, as appropriate, written, oral, physical, foreign language, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term "veteran or disabled veteran" means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(d)(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment.

SEC. 302. APPOINTMENTS BY THE PRESIDENT.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B) No person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister with the advice and consent of the Senate or in accordance with clause 3, section 2, of article II of the Constitution relating to recess appointments, except in accordance with this subparagraph. The personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding 6 months: *Provided*, That the President, 30 days prior to conferring such rank, reports in writing to the Committee on Foreign Relations of the Senate his intent to confer such rank, the necessity for conferring it, the dates during which the rank shall be held, and the justification for not submitting the nomination for Senate advice and consent prior to such appointment, and transmits therewith all materials relating to any potential conflict of interest relevant to such person.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

SEC. 303. APPOINTMENTS BY THE SECRETARY.—The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 302(a)) in accordance with this Act and such regulations as the Secretary may prescribe.

SEC. 304. APPOINTMENT OF CHIEFS OF MISSION.—(a)(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(4) The President shall provide the Committee on Foreign Relations of the Senate, with each nomination for a chief of mission position, a report on that nominee's demonstrated competence to perform the duties of chief of mission in the country in which he or she is to serve.

(b)(1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such individual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), and the term "immediate family" means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

SEC. 305. APPOINTMENT TO THE SENIOR FOREIGN SERVICE.—(a) Appointment to the Senior Foreign Service shall be to a salary class established under section 402, and not to a position.

(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

SEC. 306. CAREER APPOINTMENTS.—(a) Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 303, or

(2) to recommend to the President that the candidate be given a career appointment under section 302.

(b) Decisions by the Secretary under subsection (a) shall be based upon the recommendations of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

SEC. 307. ENTRY LEVELS FOR FOREIGN SERVICE OFFICER CANDIDATES.—A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 404 to a salary class higher than class 4 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications and experience of the candidate, foreign language competence and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class 4 in the Foreign Service Schedule.

SEC. 308. RECALL AND REEMPLOYMENT OF CAREER MEMBERS.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serv-

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ing at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

SEC. 309. LIMITED APPOINTMENTS.—A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in section 311(a), may not be extended or removed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

SEC. 310. REEMPLOYMENT RIGHTS FOLLOWING LIMITED APPOINTMENT.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5, United States Code.

SEC. 311. EMPLOYMENT OF FAMILY MEMBERS OF GOVERNMENT EMPLOYEES.—(a) The Secretary, when employing individuals abroad in positions to which career members of the Service are not customarily assigned (including, when continuity over a long term is not a significant consideration, vacant positions normally filled by foreign national employees), shall give equal consideration to employing available qualified family members of members of the Service or of other Government employees assigned abroad. Family members so employed shall serve under renewable limited appointments in the Service and may be paid either in accordance with the Foreign Service Schedule or a local compensation plan established under section 408.

(b) Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.

(c) The Secretary of State shall prescribe regulations governing the employment at Foreign Service posts abroad of family members of Government employees by all agencies and other Government establishments (including establishments in the legislative or judicial branch).

SEC. 312. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary of State shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. SALARIES OF CHIEFS OF MISSION.—(a) Except as provided in section 302(b), each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, United States Code.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

SEC. 402. SALARIES OF THE SENIOR FOREIGN SERVICE.—(a) The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.

SEC. 403. FOREIGN SERVICE SCHEDULE.—The President shall establish a Foreign Service Schedule which shall consist of 9 salary classes and which shall apply to members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this chapter. The maximum salary rate for the highest class established under this section, which shall be designated class 1, may not exceed the maximum rate of basic pay payable for GS-15 of the General Schedule under section 5332 of title 5, United States Code. Salary rates established under this section shall be adjusted in accordance with subchapter I of chapter 53 of title 5, United States Code.

SEC. 404. ASSIGNMENT TO A SALARY CLASS.—(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 407 or who are family members of Government employees paid in accordance with a local compensation plan established under section 408) to appropriate salary classes in the Foreign Service Schedule.

(b)(1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under chapter 5.

(2) Except as authorized by subchapter I of chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with chapter 6. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5, United States Code, and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

SEC. 405. PERFORMANCE PAY.—(a) Members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 402 and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other member of the Service shall not preclude the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 50 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary for that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed $10,000 in any fiscal year, except that payments of up to $20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.

(4) The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, as in effect at the end of that fiscal year.

(c) The Secretary shall determine the amount of performance pay available under subsection (b)(2) each year for distribution among the members of the Senior Foreign Service and shall distribute performance pay to particular individuals on the basis of recommendations by boards established under section 602.

(d) The President may grant awards of performance pay under subsection (b)(3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

SEC. 406 WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the Foreign Service Schedule shall receive an increase in salary at periodic intervals to the next higher rate

for the salary class in which such member is serving unless the performance of the member during any such interval is found in a review by a selection board established under section 602 to fall below the standards of performance for his or her salary class.

(b) The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

SEC. 407. SALARIES FOR FOREIGN SERVICE PERSONNEL ABROAD WHO PERFORM ROUTINE DUTIES.—(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule by section 403 for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to the lowest class in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

SEC. 408. LOCAL COMPENSATION PLANS.—(a)(1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government employees. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to those family members of Government employees who are paid in accordance with such plans at a rate which is no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)). Any compensation plan established under this section may include provision for leaves of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, United States Code.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this Act.

(c) The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

SEC. 409. SALARIES OF CONSULAR AGENTS.—The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

SEC. 410. COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

SEC. 411. TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member and notwithstanding sections 5535 and 5536 of title 5, United States Code, an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

SEC. 412. SPECIAL DIFFERENTIALS AND PREMIUM PAY.—(a) The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

SEC. 413. DEATH GRATUITY.—(a) The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) A death gratuity payment under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) As used in this section—

(1) the term "Foreign Service employee" means any member of the Service or United States representative to an international organization or commission; and

(2) each of the terms "widow", "widower", "child", and "parent" shall have the same meaning given each such term by section 8101 of title 5, United States Code.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. CLASSIFICATION OF POSITIONS.—The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salaries established under chapter 4. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

SEC. 502. ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a)(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 501 in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require. The Secretary shall notify Congress annually of the num-

bers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 102(a)(3) by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

SEC. 503. ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—(a) The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b)(1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expenses of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

SEC. 504. SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon asignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 505. TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this chapter.

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in the Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 303 to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are asigned to a class in the Foreign Service Schedule, are promoted by appointment under section 302(a) as career members of the Senior Foreign Service or by assignment under section 404 to a higher salary class in the Foreign Service Schedule.

(b) Except as provided in section 608(a), promotions of—

(1) members of the Senior Foreign Service, and

(2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 602, except that the Secretary may by regulation specify categories of career members, and categories of career candidates, assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c)(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class FS-1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 607(a)) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion into the Senior Foreign Service.

(2) Decisions by the Secretary on the numbers of individuals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

(A) a regular, predictable flow of recruitment in the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

SEC. 602. SELECTION BOARDS.—(a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 601;

(2) awards of performance pay under section 405(c);

(3) denials of within class step increases under section 405(a);

(4) offer or renewal of limited career extensions under section 607(b); and

(5) such other actions as the Secretary may prescribe by regulation.

(b) All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

SEC. 603. BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of current language test scores from the Foreign Service Institute, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service.

SEC. 604. CONFIDENTIALITY OF RECORDS.—The records described in section 603(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work

on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

SEC. 605. IMPLEMENTATION OF SELECTION BOARD RECOMMENDATIONS.—(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 606. OTHER BASES FOR INCREASING PAY.—(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 302(a);

(2) promote a member of the Service under section 303;

(3) grant performance pay to a member of the Senior Foreign Service under section 405(c); or

(4) grant a within-class salary increase under section 406 to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 605(b), the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

SEC. 607.—RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a)(1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, which they are in salary classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary in accordance with the recommendations of selection boards established under section 602. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Any member of the Service—

(1) whose maximum time in class under subsection (a) expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 609, subject to any career extension under subsection (d) of this section.

(d) Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

SEC. 608. RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 609. RETIREMENT BENEFITS.—(a) A member of the Service—

(1) who is retired under section 607(c)(2); or

(2) who is retired under section 607(c)(1) or 608(b)—

(A) after becoming eligible for voluntary retirement under section 811, or

(B) from the Senior Foreign Service or while assigned to class FS-1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 806.

(b) Any member of the Service (other than a member to whom subsection (a) applies) who is retired under section 607(c)(1) or 608(b) shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2) a refund is provided in section 815 of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 806, commencing at age 60.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60, his or her death shall be considered a death in service within the meaning of section 809.

SEC. 610. SEPARATION FOR CAUSE.—(a)(1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service.

(2) A member of the Service who is a member of the Senior Foreign Service or is assigned to a salary class in the Foreign Service Schedule and who either (A) is serving under a career appointment, or (B) if separation is to be by reason of misconduct, is serving under a limited appointment, shall not be separated from the Service under this section until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing. The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 1106 and shall be in lieu of any other administrative procedure authorized or required by this or any other law.

(b) Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 815 of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 806, commencing at age 60.

SEC. 611. TERMINATION OF LIMITED APPOINTMENTS.—Except as provided in section 610(a)(2), the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule, or who is a family member of a Government employee serving under a local compensation plan established under section 408.

SEC. 612. TERMINATION OF APPOINTMENTS OF CONSULAR AGENTS AND FOREIGN NATIONAL EMPLOYEES.—(a) The Secretary of State may

terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

SEC. 613. FOREIGN SERVICE AWARDS.—The President shall establish a system of awards to confer appropriate recognition of outstanding contributions to the Nation by members of the Service. The awards system established under this section shall provide for presentation by the President and by the Secretary of medals or other suitable commendations for performance in the course of or beyond the call of duty which involve distinguished, meritorious service to the Nation, including extraordinary valor in the face of danger to life or health.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. FOREIGN SERVICE INSTITUTE.—(a) The Secretary of State shall maintain and operate the Foreign Service Institue (hereinafter in this chapter referred to as the "Institute"), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The Institute shall be headed by a Director, who shall be appointed by the Secretary of State.

(b) To the extent practicable, the Secretary of State shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the Institute and otherwise.

SEC. 702. FOREIGN LANGUAGE REQUIREMENTS.—(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the Institute or otherwise in order to assist in meeting the requirements established under subsection (a).

SEC. 703. TRAINING AUTHORITIES.—(a) In the exercise of functions under this chapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the Institute, including functional and geographic area specializations;

(2) correlate training and instruction furnished by the Institute with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the Institute, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4)(A) employ in accordance with the civil service laws such personnel as may be necessary to carry out the provisions of this chapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations), the services of individuals to serve as language instructors, linguists, and other academic and training specialists (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipemnt as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

(b)(1) The Secretary shall establish a professional development program to assure that members of the Foreign Service obtain the skills and knowledge required at the various stages of their careers. With regard to Foreign Service Officers (including Foreign Service Information Officers) primary attention shall be given to training for career candidate officers and for midcareer officers, both after achieving tenure and as they approach eligibility for entry to the Senior Foreign Service, to enhance and broaden their qualifications for more senior levels of responsibility in the Foreign Service. Training for other members of the Service shall emphasize programs designed to enhance their particular skills and expert knowledge.

(2) Junior Foreign Service Officer training shall be directed primarily toward providing expert knowledge in the basic functions of analysis and reporting as well as in consular, administrative and linguistic skills relevant to the full range of future job assignments. Midcareer training shall be directed toward develpoment and perfection of management, functional, negotiating and policy development skills to prepare the officers progressively for more senior levels of responsibility.

(3) Training for other members of the Service shall be directed toward maintaining and improving their professional expert knowledge, including development of the management skills appropriate to their occupational categories.

(4) In each case the program of professional development should be designed to provide members of the Service with the opportunity to acquire skills and knowledge relevant to clearly established professional standards of expected performance. Career candidates should satisfactorily complete such training prior to attainment of career status. All members of the Service should satisfactorily complete mid-career training before appointment to the Senior Foreign Service.

(5) In formulating programs under this subsection, the Secretary should establish a system to provide, insofar as possible, credit toward university degrees for successful completion of courses comparable to graduate-level, university courses.

(6) Training provided under this subsection shall be conducted by the Department and by other governmental and nongovernmental institutions as may be considered appropriate by the Secretary.

(7) The Secretary shall report annually to the Congress and the President on the status of the professional development program and the resources needed and made available to achieve it. The first such report, to be submitted 90 days after the effective date of this Act, shall set out the resources required to initiate the program established by this subsection successfully.

(c) In furtherance of the objectives of this Act, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 411) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(d) The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 311.

SEC. 704. TRAINING GRANTS.—(a) To facilitate training provided to members of families of Government employees under this chapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) If a member of the Service who is assigned abroad, or a member or his or her family, is unable to participate in language training furnished by the Government through the Institute or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 705. CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause.

(b)(1) The Secretary may facilitate the employment of spouses of members of the Service by—

(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and non-governmental employment opportunities available to them; and

(C) otherwise assisting them in obtaining employment.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. ADMINISTRATION OF THE SYSTEM.—In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this chapter referred to as the "System"), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 802 MAINTENANCE OF THE FUND.—The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this chapter referred to as the "Fund"), originally created by section 18 of the Act of May 24, 1924, (43 Stat. 144).

SEC. 803. PARTICIPANTS.—(a) The following members of the Service (hereinafter in this chapter referred to as "participants") shall be entitled to the benefits of the System:

(1) Every member serving under a career appointment or as a career candidate under section 306—

(A) in the Senior Foreign Service, or

(B) who is assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 805.

(b) Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

SEC. 804. DEFINITIONS.—As used in this chapter, unless otherwise specified, the term—

(1) "annuitant" means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim for such annuity;

(2) "child" means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an individual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) "court" means any court of any State or of the District of Columbia;

(4) "court order" means any court decree of divorce or annulment, or any court order or court-approved property settlement agreement incident to any court decree of divorce or annulment;

(5) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) "former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 816;

(7) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) "lump-sum credit" means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration, or a predecessor organization, after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service of that participant is of (B) the total number of years of such creditable service;

(11) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bonda fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(12) "surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding his or her death or is a parent of a child born of the marriage; and

(13) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined.

SEC. 805. CONTRIBUTIONS TO THE FUND.—(a) 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c)(1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d)(1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited,

may make a special contribution to the Fund equal to the following percentages of basic salary received for such service:

Time of service:	*Percent of basic salary*
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 816.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(e) Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 816 for periods of internment during World War II.

(f) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

SEC. 806. COMPUTATION OF ANNUITIES.—(a) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years.

not exceeding 35, of service credit obtained in accordance with sections 816 and 817, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment under section 302(b) in a position to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 805(d) which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(b)(1)(A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participant shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 814(b), or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 814(b) if the spouse later qualifies as a former spouse under section 804(6)), or to reduce such survivor annuity by designating a portion of the annuity of the participant as the base for the survivor benefit.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect in writing to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the 12-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 814(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600. The reduction under this paragraph shall be calculated before any reduction under section 814(a)(5).

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(b)(4)(B).

(C) An annuity payable from the Fund to a surviving spouse under this paragraph shall commence on the day after the participant dies and shall terminate on the last day of the month before (a) the surviving spouse's death or (b) if the surviving spouse remarries before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c)(1) If an annuitant who was a participant dies and is survived by a spouse and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

(A) $900, or

(B) $2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

(A) $1,080, or

(B) $3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 826(c)(3), and

(B) the minimum specified in subsection (1)(2) of this section.

(d) If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an annuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 804(12)). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b)(2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than that participant.

(i)(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 823 shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least one year at the time of death or who is a parent of a child born of the marriage.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 of this Act in any case in which an annuitant has a former spouse who was married to the participant during a period of recall service and who qualifies for an annuity under section 814(b).

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 814(b)(5)), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) The Secretary of State shall, on an annual basis—

(1) inform each participant of his or her right of election under subsection (g) and (j); and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 814.

(l)(1) The monthly rate of an annuity payable under this chapter to an annuitant, other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) The monthly rate of an annuity payable under this chapter to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.), or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) This subsection does not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

SEC. 807. PAYMENT OF ANNUITY.—(a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this Act shall become effective on the day he or she attains age 60.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this chapter may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

SEC. 808. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 810 as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 815, except that he or she may elect voluntary retirement if eligible under section 811.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this subsection nor any provision of such subchapter shall be construed to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other individual.

(e) Notwithstanding any other law, the right of any individual entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this Act, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, which is earlier.

SEC. 809. DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this Act, the lump-sum credit shall be paid in accordance with section 815.

(b) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 814(b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 806(a) and any surviving former spouse shall be entitled to an annuity under section 814(b) as if the participant died after being entitled to an annuity under this chapter. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant who elected a reduced annuity dies in service after being recalled under section 308 and is survived by a spouse or former spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 823. If such death occurs after the annuitant had completed sufficient

recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 806 (i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this chapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

(g) Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 814(b), the annuity of the spouse under this section shall be subject to the limitation of section 806(b)(3)(B).

(h) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 806, as appropriate.

SEC. 810. DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 815, or to leave his or her contributions in the Fund and receive an annuity, computed under section 806, commencing at age 60.

SEC. 811. VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 812. MANDATORY RETIREMENT.—(a) Except as provided in susbection (b), any participant shall be retired from the Service at the end of the month in which the participant reaches age 60 if the participant has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and shall receive retirement benefits in accordance with section 806.

(b) Any participant who reaches age 60 while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated. In addition, whenever the Secretary determines it to be in the public interest, any participant who has reached age 60 may be retained on active service for a period not to exceed 5 years. Any participant who completes a period of service after reaching age 60 as authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 813. RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—If a participant completes an assignment under section 302(b) in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 814. FORMER SPOUSES.—(a)(1) Unless otherwise expressly provided by any court order under section 820(b)(1), a former spouse of a participant or former participant is entitled to an annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant through such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this title or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No court order under section 820(b)(1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such order relating to an annuity under this subsection be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant or former participant shall be reduced by the amount of an annuity under this subsection of any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this chapter, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 806 (b)(3).

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 308, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 824, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the later of the date the participant would qualify on the basis of his or her creditable service for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 806(h) or any comparable provision of law.

(b)(1) Subject to any election under section 806(b)(1)(C) and unless otherwise expressly provided by any court order under section 820(b)(1), if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entiled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 806(a); or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years af age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 806(b)(3) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806(a).

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 806(b)(3)) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 820(b)(1) may not adjust the amount of the annuity of any former spouse under this section.

(5) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless the participant is then married and elects in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b)(3) for any spouse of the participant.

(c)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a court order under section 820(b)(1) may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected or ordered under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(d) Section 806(l) shall not apply—

(1) to any annuity payable under subsection (a) or (b) to any former spouse if the amount of that annuity varies by reason of a court order under section 820(b)(1) from the amount which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such court order; and

(2) to any annuity payable under subsection (c).

SEC. 815. LUMP-SUM PAYMENTS.—(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this chapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i)).

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 823 the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i)).

(c) If all annuity rights under this chapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (f).

(d) If a participant or former participant dies and is not survived by an individual eligible for an annuity under this chapter or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Payments under subsection (c) through (e) shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the patricipant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 804(2)) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointment executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section 805 from the beginning of the first pay period after the participant has completed 35 years of service computed under section 816 (excluding service credit for unused sick leave under section 816(b)), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 805 (d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in order of precedence specified in subsection (f).

(i) Unless otherwise expressly provided by any court order under section 820(b)(1), the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse.

SEC. 816. CREDITABLE SERVICE.—(a) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5, United States Code), shall be creditable for purposes of this chapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(b) In computing any annuity under this chapter, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 806 (a)) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this chapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c)(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods or leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 805. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 805. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 805 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this chapter, as not separated from the Service unless the

participant applies for and receives a lump-sum payment under section 815. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g)(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(i) of title 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credit or annuity recomputed under this subsection of their entitlement to such credit of recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332 (i) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this chapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i)(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this chapter relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this chapter a portion of the lump sum (or a court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant—

(A) for periods assumed to be creditable service under section 808(a) or section 809 (e), or

(B) for any extra period of creditable service provided under section 817 for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.

SEC. 817. EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service.

SEC. 818. ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding $5,000 per year for the incidental expenses necessary in administering the provisions of this chapter, including actuarial advice.

SEC. 819. INVESTMENT OF THE FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 820. ASSIGNMENT AND ATTACHMENT OF MONEYS.—(a)(1) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3477 of the Revised Statutes of the United States (31 U.S.C. 203) or any other law, a member of the Service who is entitled to receive benefits under section 609(b)(1) may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be deposited with the Secretary of the Treasury by the member executing the assignment.

(b)(1)(A) In the case of any participant or annuitant who has a former spouse with respect to whom there is a court order—

(i) any right of any former spouse to any annuity under section 814(a) in connection with any retirement or disability annuity of the participant, and the amount of any annuity under such section 814(a);

(ii) any right of a former spouse to a survivor annuity under section 814 (b) or (c), and the amount of any such annuity under section 814 (b) or (c) for any surviving former spouse of the participant or annuitant; and

(iii) any right of any former spouse to any payment of a lump-sum credit under section 815 (a) or (b); shall be determined in accordance with a court order, if and to the extent expressly provided for in the terms of that court order.

(B) This subsection shall not apply in the case of any court order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

(2) Except with respect to obligations between participants and former spouses, payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this chapter for periods beginning after the date of receipt by the Secretary of State of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(f) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 804(b)(6), or any other provision of this chapter, shall not be construed to affect the rights of any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this chapter.

(c) None of the moneys mentioned in this chapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 821. PAYMENTS FOR FUTURE BENEFITS.—(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 825;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 805(a).

SEC. 822. UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service.

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 821(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 823. ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 308(a) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 805. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 825 that became effective during the recall period.

(b) If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 815. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect

a supplemental annuity computed under section 806 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least 5 years, the annuitant may elect to have his or her annuity determined anew under section 806 in lieu of any other benefits under this section. Any annuitant who is recalled under section 308 may upon written application count as recall service any prior service that is creditable under section 816 that was performed after the separation upon which his or her annuity is based.

SEC. 824. REEMPLOYMENT.—(a) Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this chapter, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary the member would be entitled to receive under this Act if currently employed in the Foreign Service class which the Secretary determines most comparable to the class the member held on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits under this chapter.

(b) When any such retired member of the Service is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such member the salary of the position in which he or she is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this chapter.

SEC. 825. VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to the effective date of this Act by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

(1) returned in a lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a) (2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 815(f).

SEC. 826. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340 (b) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 609(b)(2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or deceased participant on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

(2) Effective from its commencing date, an annuity payable from the Fund to the survivor of an annuitant, except a child entitled to an annuity under section 806(c) or 809 (c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 806 (c) or (d) or 809 (c) or (d), the items $900, $1,080, $2,700, and $3,240 appearing in section 806(c) shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the annuity of the child becomes effective.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least $1.

(f) Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

SEC. 827. COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) to the Foreign Service Retirement and Disability System so that it applies in like manner with respect to participants, former participants, annuitants, or survivors under that System.

(b) The President shall be Executive order prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;

(2) authorized or required home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service for purposes of family visitation in situations where the family of the member is prevented by official order from accompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed 2 round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship;

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to successive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States (or any territory or possession of the United States or the Commonwealth of Puerto Rico), including assignments under subchapter VI of chapter 33 of title 5, United States Code (notwithstanding section 3375(a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5, United States Code; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the port of entry in the contiguous 48 States which is nearest to that post.

SEC. 902. LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

SEC. 903. REQUIRED LEAVE IN THE UNITED STATES.—(a) The Secretary may order a member of the Service who is a citizen of the United States to take a leave of absence under section 6305 of title 5, United States Code (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Leave ordered under this section may be taken in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

(c) While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

SEC. 904. HEALTH CARE.—(a) The Secretary of State may establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or to provide survivor benefits under chapter 8.

(c) The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.

(e) Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

SEC. 905. REPRESENTATION EXPENSES.—Notwithstanding section 5536 of title 5, United States Code, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests. In carrying out the provisions of the preceding sentence, the Secretary shall, to the maximum extent practicable, provide for the use of American products, including American wines.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

SEC. 1001. LABOR-MANAGEMENT POLICY.—The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilities and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Serv-

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ice employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. DEFINITIONS.—As used in this chapter, the term—

(1) "Authority" means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) "Board" means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) "conditions of employment" means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 501;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multiagency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) "confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) "dues" means dues, fees, and assessments;

(8) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) "General Counsel" means the General Counsel of the Authority;

(11) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an oranization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) "management official" means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 209; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) "person" means an individual, a labor organization, or an agency to which this chapter applies.

SEC. 1003. APPLICATION.—(a) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b);

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(6) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstration incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

SEC. 1007. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligation to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

(c) In order to carry out its functions under this chapter—

(1) the Board shall by regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5, United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapetr 71 of such title.

SEC. 1008. FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary retraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

SEC. 1010. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);

(2) one individual employed by the Department of Labor;

(3) one member of the Federal Service Impasses Panel, and

(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

(c)(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

SEC. 1011. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

SEC. 1012. EMPLOYEES REPRESENTED.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1013. REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any separation described in section 1101(a)(1)(A) or any proceeding relating to such a separation; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to Government-wide or multi-agency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

SEC. 1014. RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1015. UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice); and

(B) to condone any unfair labor practice

described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 1109(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

SEC. 1016. PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Any complaint under subsection (a) shall contain a notice—

(1) of the charge;

(2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and

(3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d)(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

SEC. 1017. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

(f) If the Board finds that any labor organization has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

SEC. 1018. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Department as a member of the Service; or

(3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 11—GRIEVANCES

SEC. 1101. DEFINITION OF GRIEVANCE.—(a)(1) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this chapter; and

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under chapter 10 (hereinafter in this chapter referred to as the "exclusive representative").

(b) For purposes of this chapter, the term "grievance" does not include—

(1) an individual assignment of a member under chapter 5, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 602, a tenure board established under section 306(b), or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 611, or the denial of a limited career extension or of a renewal of a limited career extension under section 607 (b); or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1109(b).

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

SEC. 1102. GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in section 1101 (a)(1)(G).

SEC. 1103. FREEDOM OF ACTION.—(a) Any individual filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b) Any grievant filing a grievance, and any witness or other person involved in a proceeding before the board, shall be free from any restraint, interference, coercion, discrimination, or reprisal. The grievant has the right to a representative of his or her own choosing at every stage of the proceeding. The grievant and his or her representatives who are under the control, supervision, or responsibility of the Department shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance of such grievant. Any witness under the control, supervision, or responsibility of the Department shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) or a grievant who is not a member of such bargaining unit or whose grievance is described in section 1101(a)(1)(A) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order de-

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termined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

SEC. 1106. BOARD PROCEDURES.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Department.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5, United States Code.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceedings of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

SEC. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that

the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

SEC. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

SEC. 2101. PAY AND BENEFITS PENDING CONVERSION.—(a) Until converted under the provisions of this chapter, individuals who were Foreign Service officers immediately before the effective date of this Act shall be treated for purposes of salary as follows:

(1) Individuals who were serving under appointments at class 2 or a higher class of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2103 of this Act on the first day in such pay period to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402 of this Act.

(2) Individuals who were serving under appointments at or below class 3 of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2102 of this Act on the date specified in subsection (e) to the appropriate class and step (as determined under section 2106(a) of this Act) in the Foreign Service Schedule established under section 403 of this Act.

(b)(1) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who were Foreign Service Reserve officers or Foreign Service staff officers or employees immediately before the effective date of this Act shall be treated for purposes of salary in accordance with paragraphs (3) and (4) of this subsection.

(2) Not later than 30 days after the effective date of this Act, the Secretary—

(A) shall make an initial determination of the availability for worldwide assignment of each individual who was a Foreign Service Reserve officer or a Foreign Service staff officer or employee immediately before the effective date of this Act, and

(B) shall notify any such individual who is not initially determined to be available for worldwide assignment of that initial determination.

(3) Individuals who are initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as follows:

(A) Individuals who could be converted under section 2103 shall be paid as if they had been converted under section 2103, on the date specified in subsection (e) which begins on or after the effective date of this Act, to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402.

(B) Individuals who could be converted under section 2102 shall be paid as if they had been converted under section 2102, on such date, to the appropriate class and step (as determined under section 2106(a)) of the Foreign Service Schedule established under section 403.

(4)(A) Individuals who are not initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as if they had been converted under section 2104(a), on the date specified in subsection (e), to the grade and step in the General Schedule which most closely corresponds to the class and step at which the individual was serving immediately before the effective date of this Act, subject to the prohibition on reductions in basic rate of salary which is contained in the second sentence of section 2106(a)(1).

(B) If an individual who is not initially determined under paragraph (2) of this subsection to be available for worldwide assignment is subsequently converted under section 2102(a), 2103(b), or 2103(c) on the basis of a decision that the initial determination with respect to the availability of that individual for worldwide assignment was erroneous, the salary of that individual shall be adjusted, retroactively to the date specified in subsection (e), to the rate at which that individual could have been paid under paragraph (3) of this subsection if he or she had been initially determined to be available for worldwide assignment under paragraph (2) of this subsection.

(c) For the period beginning on the effective date of this Act and ending on the day before the date specified in subsection (e) (if such date occurs after the effective date of this Act), the individuals to whom this section applies shall continue to receive a salary at the rate at which they were being paid immediately before the effective date of this Act.

(d) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who, immediately before the effective date of this Act, were foreign Service officers, Foreign Service Reserve officers, or Foreign Service staff officers or employees, shall be treated for purposes of allowances and all other matters (except salary) as if they had been converted on the effective date of this Act under section 2102 or section 2103 (as appropriate for the class in which they were serving immediately before the effective date of this Act).

(e) Except as otherwise provided, any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act) as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

SEC. 2102. CONVERSION TO THE FOREIGN SERVICE SCHEDULE.—(a) Not later than 120 days after the effective date of this Act, the Secretary shall, in accordance with section 2106, convert to the appropriate class in the Foreign Service Schedule established under section 403 of this Act those individuals in the Foreign Service who are serving immediately before the effective date of this Act under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

(1) Foreign Service officers, or

(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after the effective date of this Act, Foreign Service Reserve officers and staff officers and employees who the Secretary determines under subsection (a)(2) are not available for worldwide assignment shall also be converted, in accordance with section 2106, to the appropriate class in the Foreign Service Schedule established under section 403 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

SEC. 2103. CONVERSION TO THE SENIOR FOREIGN SERVICE.—(a) Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before the effective date of this Act, are serving under appointments at class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appoint to the Senior Foreign Service.

(b) Except as provided in subsection (d), if a request is submitted under subsection (a) by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(c) If a request is submitted under subsection (a) by a Foreign Service officer or, except as provided in subsection (d), a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(d) If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after the effective date of this Act and before the end of the 3-year period beginning on such effective date, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 402 of this Act, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe consistent with the provisions of chapter 6 of title I of this Act relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit a request under subsection (a), or

(2) who submits such a request more than 120 days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),

may not remain in the Foreign Service for more than 3 years after the effective date of this Act. During such period, the officer shall be subject to the provisions of title I of this Act applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 405, and shall not be eligible for a limited career extension as described in section 607(b). Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits determined in accordance with chapter 8 of title I of this Act.

SEC. 2104. CONVERSION FROM THE FOREIGN SERVICE.—(a) Except as provided in subsection (b), in the case of any individual in the Foreign Service who, immediately before the effective date of this Act, is serving under an appointment described in section 2102(a) or 2103(a) and who is not converted under section 2102 or section 2103 because such individual does not meet the conditions specified in section 2102(b) or 2103(d), the Secretary shall, not later than 3 years after the effective date of this Act, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b)(1) Notwithstanding any other provision of law, the status, promotion, class, and tenure of individuals who, immediately before the date of enactment of this Act are in the Foreign Service in the International Communication Agency and are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals shall, continue to be governed by the Foreign Service Act of 1946 and Public Law 90-494 (as those Acts were in effect immediately before the effective date of this Act). This Act (except sections 402, 403, 404, 405, 504) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 610, 803, 1002, 1101 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are covered by this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall not be less than those rates in effect on the effective date of this Act and shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

SEC. 2105. CONVERSION OF CERTAIN POSITIONS IN THE DEPARTMENT OF AGRICULTURE.—(a) Not later than 15 days after the effective date of this Act, the Secretary of Agriculture shall—

(1) designate and classify under section 501 of this Act those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5, United States Code, which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 103 which will apply to such individual.

(b) Each employee serving in a position at the time it is designated under subsection (a) shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c); or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) apply.

(c)(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent of the Senate, those employees who elect conversion under subsection (a)(1).

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1).

(d) Any employee who declines conversion under subsection (b)(2) shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

SEC. 2106. PRESERVATION OF STATUS AND BENEFITS.—(a)(1) Every individual who is converted under this chapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this chapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2) An individual converted under section 2104 to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b)(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion under section 2104 may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Individuals who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this chapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Any individual who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service, or

(2) in any other office or position continued by this Act,

may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Any individual in the Foreign Service—

(1) who is serving under a career appointment on the date of enactment of this Act, and

(2) who was not subject to section 633(a)(2) of the Foreign Service Act of 1946 immediately before effective date of this Act,

may not be retired under section 608 of this Act until 10 years after the effective date of this Act or when such individual first becomes eligible for an immediate annuity under chapter 8 of title I of this Act, whichever occurs first.

SEC. 2107. REGULATIONS.—Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this chapter.

SEC. 2108. AUTHORITY OF OTHER AGENCIES.—The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this chapter in accordance with regulations prescribed by the Secretary of State under section 2107. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

CHAPTER 2—AMENDMENTS RELATING TO FOREIGNS AFFAIRS AGENCIES

SEC. 2201. BASIC AUTHORITIES OF THE DEPARTMENT OF STATE.—(a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, is amended by adding at the end thereof the following new sections:

"SEC. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service) or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.

"(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d)(2)),

the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.

"(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.

"(d)(1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).

"(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.

"(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

"(f) The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 26. (a) The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry out the member's work efficiently.

"(b) The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 27. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.

"(b) Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—

"(1) would violate any law of such country or of the United States; or

"(2) could, as certified in writing by the United States chief of mission to such country, damage the interests of the United States.

"SEC. 28. The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.

"SEC. 29. Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.

"SEC. 30. (a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or

"(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

"(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

"(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, United States Code, and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

"(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsections (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

"(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

"SEC. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the For-

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eign Service Buildings Act, 1926 (22 U.S.C. 292–300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

"(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

"(d) Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

"SEC. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.

"SEC. 33. This Act may be cited as the 'State Department Basic Authorities Act of 1956'.".

(b) Section 13(a) of such Act (22 U.S.C. 2684(a)) is amended by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2202. PEACE CORPS ACT.—(a) Section 5 of the Peace Corps Act (22 U.S.C. 2504) is amended—

(1) in subsection (f)(1)—

(A) in subparagraph (A) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1))," and inserting in lieu thereof "section 816(a) of the Foreign Service Act of 1980", and

(B) in subparagraph (B) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980"; and (2) in subsection (a)—

(A) by striking out "section 1091 of the Foreign Service Act of 1946" and inserting in lieu thereof "section 30 of the State Department Basic Authorities Act of 1956", and

(B) by striking out "Director of ACTION" and inserting in lieu thereof "President".

(b)(1) Section 7(a) of the Peace Corps Act (22 U.S.C. 2506(a)) is amended—

(A) in paragraph (1)—

(i) by striking out ", who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established under section 402 or 403 of the Foreign Service Act of 1980";

(ii) by striking out "section 528" and inserting in lieu thereof "section 310"; and

(iii) by striking out "Reserve" the last place it appears and all that follows and inserting in lieu thereof a period; and

(B) by amending paragraph (2) to read as follows:

"(2) In order to employ such individuals as may be necessary to perform duties that reasonably require availability for worldwide assignment, the President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—

"(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and

"(B) no individual whose Foreign Service appointment or assignment under his paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.

Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (i) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe, and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(2) Section 7(a)(4) of the Peace Corps Act (22 U.S.C. 2506(a)(4)) is amended—

(A) by striking out "Until" and all that follows through "paragraph or" and inserting in lieu thereof "An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years";

(B) by striking out "such person" and inserting in lieu thereof "such individual"; and

(C) by striking out "substantially continuous basis" and inserting in lieu thereof "continuous basis without a break in service of more than three days".

(c) Section 13(b) of the Peace Corps Act (22 U.S.C. 2512(b)) is amended by striking out "section 872 of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 824 of the Foreign Service Act of 1980,".

(d) Section 14(b) of the Peace Corps Act (22 U.S.C. 2513(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(e) Section 15(a) of the Peace Corps Act (22 U.S.C. 2514) is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

SEC. 2203. FOREIGN ASSISTANCE ACT.—(a) Section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)) is amended to read as follows:

"(d) For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignments exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service.".

(b) Section 629(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2389(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(c) Section 631(b) of such Act (22 U.S.C. 2391(b)) is amended by amending the second sentence to read as follows: "Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

(d) Section 631(c) of such Act (22 U.S.C. 2391(c)) is amended by amending the second sentence to read as follows: "Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate. Such person is to be considered an employee of the United States Government for the purpose of any benefit under any law administered by the Office of Personnel Management.".

SEC. 2204. ARMS CONTROL AND DISARMAMENT ACT.—(a) Section 42 of the Arms Control and Disarmament Act (22 U.S.C. 2582) is amended to read as follows:

"FOREIGN SERVICE PERSONNEL

"SEC. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—

"(1) the authority available to the Secretary under the Foreign Service Act of 1980, and

"(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.

"(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.".

(b) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2205. REPEALED PROVISIONS.—The following are repealed:

(1) The Act entitled "An Act to improve, strengthen and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration", approved August 13, 1946, titles I through X of such Act being the Foreign Service Act of 1946 (22 U.S.C. 801–810, 816, 817, 821, 826, 827, 841–843, 846, 861, 866–873, 876, 877, 881, 882, 886, 889, 890, 896, 900, 901, 902, 906–915, 921–924, 926–928, 936–939, 946, 947, 951, 961–966, 968, 981, 986, 987, 991–996, 1001–1009, 1016, 1017, 1021, 1022, 1026–1028, 1031, 1036, 1037–1037c, 1041–1048, 1061–1065, 1071, 1076, 1076a, 1081, 1082, 1084, 1086, 1091, 1093, 1095, 1101, 1103–1106, 1111, 1112, 1116, 1121, 1131, 1136–1136a, 1139, 1148–1151, and 1156–1160).

(2) Sections 401 and 413 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat 981, 986).

(3) Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 857).

(4) Sections 117, 120, and 522 of the Foreign Relations Authorization Act, Fiscal Year 1977 (90 Stat. 827, 829, 846).

(5) Section 6 of the Department of State Appropriations Authorization Act of 1973 (87 Stat. 452).

(6) The Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968 (22 U.S.C. 929–932, 1221–1234).

(7) Section 104(c) of the Mutual Education and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)).

(8) Subsections (e), (g), (j), and (k) of section 625 of the Foreign Assistance Act of 1961 (22 U.S.C. 2385 (e), (g), (j), and (k)), except that the repeal of subsection (k) shall not become effective until January 1, 1982.

(9) Section 7(b) of the Peace Corps Act (22 U.S.C. 2506(b)).

(10) Sections 14 and 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2679a, 2680a).

(11) Section 124(a)(2) of the International Development and Food Assistance Act of 1977 (91 Stat. 542).

(12) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 21, 1952 (22 U.S.C. 1077, 1078).

(13) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 1, 1956 (22 U.S.C. 1079–1079f).

(14) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved September 2, 1958 (22 U.S.C. 1079g–1079j).

(15) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved July 12, 1960 (22 U.S.C. 1079l).

(16) The Foreign Service Annuity Adjustment Act of 1965 (22 U.S.C. 1079m–1079s).

SEC. 2206. OTHER CONFORMING AMENDMENTS.—(a)(1) Section 3(b) of the Asian Development Bank Act (22 U.S.C. 285a(b)) is amended by striking out the "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(2) The United Nations Participation Act of 1945 is amended—

(A) in section 2(g) (22 U.S.C. 287(g)) by striking out "sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) for chiefs of mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 8 (22 U.S.C. 287e) by striking out section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(3) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor", approved July 30, 1946 (22 U.S.C. 287n), is amended by striking out "Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or provided for Foreign Service officers under section 403 of that Act,".

(4) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor", approved June 14, 1948 (22 U.S.C. 290a), is amended by striking out "provided by section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "established under section 402 or 403 of the Foreign Service Act of 1980".

(5) Section 203(b) of the African Development Fund Act (22 U.S.C. 290g-1(b)) is amended by striking out "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(6) Section 408 of the Mutual Security Act of 1954 (22 U.S.C. 1928) is amended—

(A) in subsection (a) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801)," and inserting in lieu thereof "Foreign Service Act of 1980";

(B) in subsection (b) by striking out "chief of mission, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)" and inserting in lieu thereof "chief of mission under the Foreign Service Act of 1980"; and

(C) in subsection (c) by striking out "section 529 of this Act who are appointed as Foreign Service Reserve officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)" and inserting in lieu thereof "section 628 of the Foreign Assistance Act of 1951 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980".

(7) The International Atomic Energy Agency Participation Act of 1957 is amended—

(A) in section 2(d) (22 U.S.C. 2021(d))—

(i) in the first sentence by striking out "sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 856, 857), for Chiefs of Mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,", and

(ii) in the second sentence by striking out "by Chiefs of Mission" and inserting in lieu thereof "under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 5 (22 U.S.C. 2024)—

(i) by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980", and

(ii) by striking "Foreign Service Act of 1946, as amended;" and inserting in lieu thereof "Foreign Service Act of 1980;".

(8) Section 704(b) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056(b)) is amended by striking out "title X, part C of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 25 of the State Department Basic Authorities Act of 1956".

(9) Section 104(d) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(d)) is amended by striking out "section 528" and all that follows through "such persons" and inserting in lieu thereof "section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service".

(10) Section 5(a) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2605(a)) is amended—

(A) in paragraph (1) by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service";

(B) in paragraph (2) by striking out "Foreign Service Reserve officers" and inserting in lieu thereof "members of the Foreign Service serving under limited appointments"; and

(C) in paragraph (4) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "Foreign Service Act of 1980".

(11) Section 403(c) of the International Development Cooperation Act of 1979 (22 U.S.C. 3503(c)) is amended by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

(b)(1) Section 605A(h) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes", approved August 28, 1954 (7 U.S.C. 1765a(h)), is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

(2) Section 606D of such Act (7 U.S.C. 1766c) is amended by striking out "title IX of the Foreign Service Act of 1946" and inserting in lieu thereof "chapter 9 of title I of the Foreign Service Act of 1980".

(c)(1) Section 2002(a) of title 10, United States Code, is amended—

(A) in the text preceding paragraph (1) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(b) of the Foreign Service Act of 1980"; and

(B) in paragraph (2) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(a) of the Foreign Service Act of 1980".

(d) Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 906(a)(1)) is amended by striking out "section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2))" and inserting in lieu thereof "section 5924 of title 5, United States Code".

(e)(1) Section 104(a)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) is amended by striking out "section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)" and inserting in lieu thereof "section 808 of the Foreign Service Act of 1980".

(2) Section 170(1) of the Internal Revenue Code of 1954 (26 U.S.C. 170(1)) is amended by amending paragraph (6) to read as follows:

"(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.".

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(3) Section 912(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 912(1)(A)) is amended to read as follows:

"(A) chapter 9 of title I of the Foreign Service Act of 1980,".

(4) Section 2055(f)(5) of the Internal Revenue Code of 1954 (26 U.S.C. 2055(f)(5)) is amended to read as follows:

"(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.".

(f) Section 235 of title 38, United States Code, is amended—

(1) in paragraph (1) by striking out "Section 1131 of title 22" and inserting in lieu thereof "Section 905 of the Foreign Service Act of 1980";

(2) in paragraph (2) by striking out "Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22" and inserting in lieu thereof "Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980";

(3) in paragraph (3) by striking out "Section 1138 of title 22" and inserting in lieu thereof "Section 901(13) of the Foreign Service Act of 1980";

(4) in paragraph (4) by striking out "Section 1148 of title 22" and inserting in lieu thereof "Section 903 of the Foreign Service Act of 1980"; and

(5) in paragraph (5) by striking out "Section 1156 of title 22" and inserting in lieu thereof "Section 904(d) of the Foreign Service Act of 1980".

(g) Section 415(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5055 (c)) is amended—

(1) in paragraph (1) by striking out "Section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other" and inserting in lieu thereof "any"; and

(2) in paragraph (2) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2207. RETIREMENT FOR BINATIONAL CENTER EMPLOYEES.—Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under the Foreign Service Act of 1946 may become a participant in the Foreign Service retirement and disability system and may make an appropriate contribution to the Foreign Service retirement and disability fund in accordance with the provisions of this Act.

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 2301. REEMPLOYMENT RIGHTS.—(a) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"§ 3597. Reemployment following limited appointment in the Foreign Service

"An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.".

(b) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"3597. Reemployment following limited appointment in the Foreign Service.".

SEC. 2302. SALARY FOR AMBASSADORS AT LARGE.—Section 5313 of title 5, United States Code, is amended by adding the following at the end thereof:

"Ambassadors at Large.".

SEC. 2303. ADVANCES OF PAY INCIDENT TO DEPARTURES FROM POSTS ABROAD.—(a) Section 5522(a) of title 5, United States Code, is amended—

(1) by striking out "evacuation" and inserting in lieu thereof "departure"; and

(2) by striking out "is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family" and inserting in lieu thereof "is officially authorized or ordered—

"(1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or

"(2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee.".

(b) Section 5522(b) of title 5, United States Code, is amended by striking out "evacuation" and inserting in lieu thereof "departure".

(c) Section 5523(a)(1) of title 5, United States Code, is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) whose departure is authorized or ordered under section 5522(a) of this title; and"; and

(2) in subparagraph (B) by striking out "evacuation" and inserting in lieu thereof "departure".

(d) Section 5523(b) of title 5, United States Code, is amended by striking out "evacuation" both places it appears and inserting in lieu thereof "departure".

(e) Section 405a(a) of title 37, United States Code, is amended by striking out "evacuated" and "evacuation" wherever they appear and inserting in lieu thereof "to depart" and "departure", respectively.

SEC. 2304. PREMIUM PAY.—(a) Paragraph (2) of section 5541 of title 5, United States Code, is amended—

After clause (xv), add "(xvi) a member of the Senior Foreign Service; or"

(b) Nothing in this Act shall be construed as precluding compensatory time for Foreign Service officers.

SEC. 2305. SEVERANCE PAY.—Section 5595(a)(2)(vi) of title 5, United States Code, is amended by inserting after "to receive" the following: "benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any".

SEC. 2306. ATTORNEYS FEES IN BACKPAY CASES.—Section 5596(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A)(ii) by inserting "or under chapter 11 of title 7 of the Foreign Service Act of 1980," immediately after "chapter 71 of this title,"; and

(2) in paragraph (3)—

(A) by inserting "and (with respect to members of the Foreign Service) in sections 1001 and 1002 of the Foreign Service Act of 1980" immediately after "section 7103 of this title"; and

(B) by inserting "and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980" immediately after "section 7116 of this title".

SEC. 2307. SEPARATE MAINTENANCE ALLOWANCE.—Section 5924(3) of title 5, United States Code, is amended—

(1) by inserting "or authorized" immediately after "compelled"; and

(2) by inserting "or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents," immediately after "for the convenience of the Government,".

SEC. 2308. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(1)" and all that follows through and including "each type of education" and inserting in lieu thereof "one annual trip each way for each dependent".

SEC. 2309. POSTS REQUIRING SPECIAL INCENTIVES.—Section 5925 of title 5, United States Code, is amended—

(1) by striking out "A post" in the first sentence and inserting in lieu thereof "(a) A post";

(2) by inserting "under this subsection" immediately after "differential" in the last sentence; and

(3) by adding at the end thereof the following new subsection:

"(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

"(1) may be paid for each assignment to a post determined to have such conditions;

"(2) may be paid periodically or in a lump sum; and

"(3) may not exceed 15 percent of the rate of basic pay for that employee for the period served under that assignment.".

SEC. 2310. ADVANCES OF PAY.—(a) Subchapter III of chapter 59 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5927. Advances of pay

"Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.".

(b) The analysis of chapter 59 of title 5, United States Code, is amended by inserting after the item relating to section 5926 the following:

"5927. Advances of pay.".

SEC. 2311. DANGER PAY ALLOWANCE.—(a) Subchapter III of chapter 59 of title 5, United States Code, as amended by section 2310(a), is further amended by adding at the end thereof the following new section:

"§ 5928. Danger pay allowance

"An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee, except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee.".

(b) The analysis for chapter 59 of title 5, United States Code, as amended by section 23(b), is further amended by inserting after the item relating to section 5927 the following:

"5928. Danger pay allowance.".

SEC. 2312. LEAVE.—(a) Section 6301 of title 5, United States Code, is amended by adding at the end thereof the following new sentence:

"Notwithstanding clauses (x)–(xii) of paragraph (2), the term 'employee' includes any member of the Senior Foreign Service or any Foreign Service Officer (other than a member or officer serving as chief of mission or in a position which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.".

(b) Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

(2) by adding at the end thereof the following new subsection:

"(g) Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

"(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after "States" in the first sentence "(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government".

SEC. 2313. RETIREMENT CREDIT FOR IMPRISONED FOREIGN NATIONALS.—Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual.".

SEC. 2314. CONFORMING AMENDMENTS TO TITLE 5.—(a) Section 3323(c) of title 5, United States Code, is amended by striking out "Foreign Service officer retired under section 1001 or 1002 of title 22 of a Foreign Service staff officer or employee retired under section 1063 of title 22" and inserting in lieu thereof "member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980".

(b) Section 5102(c)(2) of title 5, United States Code, is amended by striking out "employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22" and insert in lieu thereof "members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980".

(c)(1) Section 5301(c) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(2) Section 5303(a) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by redesignating paragraph (3) as paragraph (2);

(C) by striking out "; or" at the end of such redesignated paragraph and inserting in lieu thereof a period; and

(D) by striking out paragraph (4).

(23) Section 5304 of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(d) Section 5724(g) of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(e) Section 5727(e)(2) of title 5, United States Code, is amended to read as follows:

"(2) This section, except subsection (a), does not affect section 403e(4) of title 50.".

(f)(1) Section 6301(2)(xii) of title 5, United States Code, is amended by striking out an officer who receives pay under section 866 of title 22" and inserting in lieu thereof "a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980)".

(2) Section 6305(b) of title 5, United States Code, is amended by striking out "an officer" and inserting in lieu thereof "a chief of mission".

(g) Section 7103(a)(2)(iv) of title 5, United States Code, is amended by striking out "the Agency for International Development, or" and inserting before the semicolon ", the United States International Development Cooperative Agency, the Department of Agriculture, or the Department of Commerce".

(h) Section 8501(1)(C) of title 5, United States Code, is amended by striking out "Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22" and inserting in lieu thereof "members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980".

SEC. 231. RETIREMENT CREDIT FOR "RADIO" SERVICE.—(a) Subsection 8332(b) of title 5, United States Code, is amended by adding the following new paragraph (10) immediately following paragraph (9) thereof to read as follows:

"(10) Subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the National Committee for a Free Europe; Free Europe Committee, Inc.; Free Europe, Inc.; Radio Liberation Committee; Radio Liberty Committee; or their subdivisions; Radio Free Europe/Radio Liberty, Inc.; Radio Free Asia; the Asia Foundation; or the American Forces Network, Europe (AFN-E).".

(b) Such subsection 8332(b) is further amended by adding at the very end the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee named by paragraph (10) of this subsection.".

CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

SEC. 2401. SAVING PROVISIONS.—(a) All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

(b) This Act shall not affect any increase in annuity or other rights to benefits, which was provided by any provision amended or repealed by this Act, with respect to any individual who became entitled to such benefit prior to the effective date of this Act.

(c) References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

SEC. 2402. CONGRESSIONAL OVERSIGHT OF IMPLEMENTATION.—(a) Within fifteen months after the effective date of this Act, the Secretary of State shall submit to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a report describing the implementation of this Act during the fiscal year 1981 by the agencies utilizing the Foreign Service personnel system. Such report shall—

(1) describe the steps taken and planned in furtherance of (A) maximum compatibility among such agencies, as provided for in section 203, and (B) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 204;

(2) indicate the progress made by each such agency in the conversion of personnel and position classifications in accordance with chapter 1 of this title; and

(3) specify the upper and lower limits planned by each such agency for recruitment, advancement, and retention of members of the Service, as provided for in section 601(c)(2), including with respect to each of the relevant promotion competition groups the projected ranges of rates of appointment, promotion, and attrition over each of the five fiscal years 1981 through 1985.

(b) Beginning in 1982, the Secretary of State shall submit each year to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a supplemental report describing any relevant developments with respect to the matters reported on under paragraphs (1) and (2) of subsection (a) and, with respect to paragraph (3) of such subsection, a revised projection of the ranges of rates of appointment, promotion, and attrition over each of the next five years, as well as a comparison of such projections with the projections for the preceding year and with actual rates of appointment, promotion, attrition. The report shall explain fully any deviations from projections reported in the preceding year.

(c) The Secretary shall consult, in accordance with the procedures set out in section 1013(g), with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 1003(a) with respect to steps to be taken in implementing this Act and reported under this section. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).

(d) The provisions of chapter 8 of title I regarding the rights of former spouses to any annuity under section 814(a) shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of an individual who separates from the Service after such date.

(2) The provisions of such chapter regarding the rights of former spouses to re-

ceive survivor annuities under section 814 (b) shall apply in the case of participants or former participants in the Foreign Service Retirement and Disability System who die after such effective date.

Mr. PELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I ask that S. 3058 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I would like the record to reflect that if the yeas and nays had been ordered on the previous vote, I would have been recorded in the affirmative as voting on that.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT — INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 7631, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today. Rollcall votes are expected tomorrow on the military construction authorization bill and on the HUD appropriations bill. There will be no session this coming Saturday. I expect rollcall votes daily, however, through Friday of this week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business and that Senators may speak therein for a period not to extend beyond 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENFORCEMENT OF SUBPENA OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 981.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 502) directing the Senate Legal Counsel to bring civil action to enforce subpena of the Permanent Subcommittee on Investigations.

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 502) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 502

Whereas the Senate Permanent Subcommittee on Investigations subpenaed William Cammisano to testify at a subcommittee hearing on May 1, 1980, and was immunized under court order against self-incrimination by his testimony but refused to answer the subcommittee's questions, and

Whereas under section 703(b) of the Ethics in Government Act of 1978 (2 U.S.C. 288(b)), the Senate Legal Counsel shall bring a civil action to enforce a subpena of a Senate subcommittee only when directed to do so by the adoption of a resolution by the Senate: Therefore be it

Resolved, That the Senate Legal Counsel shall bring a civil action in the name of the Senate Permanent Subcommittee on Investigations to enforce the subcommittee's subpena to William Cammisano, and that the Senate Legal Counsel shall conduct all appeals, contempt proceedings, and other ancillary legal proceedings, relating to testimony of William Cammisano before the subcommittee; and be it further

Resolved, That the Senate Permanent Subcommittee on Investigations has certified a continuing interest in and need for the proposed testimony of William Cammisano concerning organized crime in Kansas City and related matters for the remainder of the Ninety-sixth Congress and throughout the Ninety-seventh Congress.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WITHDRAWAL AND RELEASE OF CERTAIN RECORDS AND DOCUMENTS

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a Senate resolution on behalf of Mr. CHILES and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 519) to authorize the withdrawal and release of certain records and documents created or obtained by and in the possession of the Special Committee on Aging to the Office of Disciplinary Counsel, Supreme Court State of Hawaii.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 519) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 519

Whereas the Office of Disciplinary Counsel, Supreme Court, State of Hawaii, has requested certain materials and information created or obtained by and in the possession of the Special Committee on Aging as a result of its official activities; and

Whereas, by the privileges of the Senate of the United States and by Rule XI of the Standing Rules of the Senate, no Member, officer, or employee of the Senate is authorized to produce documents, papers, or records of the Senate but by order of the Senate and information secured by Members, officers, and employees of the Senate pursuant to their official duties may not be revealed without the consent of the Senate: Now, therefore, be it

Resolved, that the Chairman of the Special Committee on Aging is authorized, at his discretition and subject to such conditions as he may deem appropriate, to provide the Office of Disciplinary Counsel, Supreme Court, State of Hawaii, with certain records, documents, papers, and other information, or copies thereof, created or obtained by and in the possession of the Committee as requested by the Office of Disciplinary Counsel, Supreme Court, State of Hawaii.

ORDER TO HOLD MESSAGE ON HOUSE JOINT RESOLUTION 607 AT THE DESK UNTIL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message from the House on House Joint Resolution 607 be held at the desk until tomorrow.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO HOLD H.R. 2170 AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 2170 arrives in the Senate from the other body, that the measure be held at the desk pending further disposition.

Mr. STEVENS. Mr. President, we do concur in the procedure.

The PRESIDING OFFICER. Without objection, it is so ordered.

RIDICULOUS SUBSIDY POLICIES BY THE EXPORT-IMPORT BANK

Mr. PROXMIRE. Mr. President, the Export-Import Bank has done, or is doing, it again.

At a time of rampant inflation they are lending out more money.

At a time when the Federal Reserve Board, in the interest of fighting inflation, has put the credit screws on farmers, small businesses, big businesses, consumers, and almost everybody in the economy, another arm of the Government, the Export-Import Bank is not only shoveling out new loans and guarantees of loans, but they are doing so at absurdly low interest rates. Further, in order to get the funds they are going into the private market to borrow them. They will pay more for the funds than they loan them out at.

While on the one hand the Government is cutting back on spending and tightening the money supply to fight inflation—policies which are both tough and correct—another agency of the Government is shoveling the money out the back door at cut-rate interest rates while at the same time having to go into the private market to borrow the money which further bids up the interest rates on the limited supply of money available to them and everybody else.

RIDICULOUS POLICY

Now, Mr. President, how ridiculous can we get? This policy is being promoted by the administration, the Treasury Department, and the Export-Import Bank and is being gleefully supported by many of the same business interests of the country who at the same time are denouncing wild spending, high inflation, and big Government.

They are doing this in the name of promoting exports. But exports have never done better.

So far in 1980 they are running at an annual rate of about $216 billion. Last year they were $182 billion. In 1973 merchandise exports were $142 billion. That is a 50-percent increase in 2 years.

A LITANY OF WRONGS

Listen to this sad litany of wrongs.

The Export-Import Bank is grossly subsidizing American exports at a time when exports are doing very well.

They are subsidizing them at interest rates of 9 percent at a time the Government is paying over 11 percent for its long term money and the prime rate is at 12¼ percent.

They are shoveling out the money while other arms of the Government are trying to limit the increase in the supply of money.

They are thus helping to bid up the price of money and raise interest rates when other equally or more needy borrowers are having a very difficult time in getting money because of the high interest rates.

Finally, they are doing this through devices which put the transactions off the budget in contradiction of every budget principle both the President and Congress have advocated under the Budget Act.

WASHINGTON POST ARTICLE

John F. Berry, writing in the Washington Post on Sunday September 14, has given the details of this ironic and wasteful Government policy.

The Ex-Im Bank is now eating into its capital to subsidize export loans.

There is a mysticism about the value of exports which goes back at least as far as the French Mercantilists. There is abroad in the land among politicians and businessmen alike the myth that all exports are good and promoting them should rank above all other priorities.

The President, the business world, and the Commerce Department are now promoting that myth as never before. They are doing it in spite of the costs and subsidies and in spite of both sound economic principles and correct financial fiscal policies which they otherwise say they support.

John Berry has detailed this latest example of wrong-headed, self defeating, upside-down policies in a clear and readable article.

I ask unanimous consent that his article appear at this point in the RECORD and I urge both my colleagues and opinionmakers in the country to take note of it.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EX-IM FINANCING BECOMING CLASSIC OFF-BUDGET CASE

(By John F. Berry)

The Carter administration has devised an end-run around the current budget crunch to finance some $1.1 billion in lending commitments made by the Export-Import Bank.

The makeshift policy, worked out this summer by high administration officials at the Treasury Department, Office of Management and Budget and the Ex-Im Bank, will force the bank to go to the costly private money market to fulfill the $1.1 billion in commitments instead of relying on less expensive direct federal lending.

This move by the bank, a federally funded institution that lends money to foreign borrowers to buy American goods, could cost U.S. taxpayers $200 million.

The idea is to permit the bank, which already has gone through its fiscal 1980 budgetary allotment, to finance some of the billions of dollars in loan commitments it has outstanding before the fiscal year runs out at the end of this month—without reflecting the outlay on the current budget.

It's a classic case of off-budget financing by the administration, a practice that President Carter has deplored and his administration publicly has sought to stop. The administration's push for off-budget lending authority from Congress came last summer after major U.S. exporters, which directly benefit from the bank's loose-lending policies launched a high pressure lobbying campaign to get Ex-Im Bank additional funds.

The off-budget scheme has caused consternation among career staffers at the bank. Privately, they worry that this is just another example of the Carter administration's policy of using the bank's valuable capital to subsidize unrealistically low interest rates. They say that as a result, the bank has about $12 billion in direct loan commitments, but an annual budget of only about $4 billion in lendable funds.

As internal dissent has heightened at the bank, the politically appointed top management met with the career professionals. The careerists have been challenged on their figures, and have been advised that stories about the threat to the bank's capital are much exaggerated.

Under John L. Moore Jr., the Carter-appointed chairman, the Ex-Im Bank has aggressively financed billions of dollars in U.S. exports by lending to foreign buyers. Even as the prime rate has soared to as high as 20 percent this past spring, Moore and his fellow Ex-Im Bank board members have sought to spur exports by lending money at rates ranging between 7¾ and 8¾ percent.

The U.S. industry benefiting most from this liberal lending policy is aircraft manufacturing. During the Carter administration, foreign buyers of U.S. planes have found financing easy to come by, especially with the threat of sales competition from the wide-bodied A300 planes manufactured by Airbus Industrie, a European combine.

But according to many Ex-Im Bank staffers—a group that historically has been expansionist on bank-lending policy—the board finally has gone too far.

"The board doesn't know how to say 'no,'" observes one official. "They've forgotten they're public servants. They're too concerned with making corporations happy."

Moore gets most of the criticism for what some see as the bank's current rocky condition. An Atlanta lawyer and long-time Carter supporter who had little experience in the complexities of international finance before joining the bank, Moore has spent much of his time since his appointment in 1977 on the road visiting potential customers.

Last spring, Moore was under attack on Capitol Hill when he pushed through a $201 million loan at 8 percent of an airline half-owned by Australian financier Rupert Murdoch. What caused the controversy then was not the low interest rate but rather the scent of politics that surrounded the deal.

On Feb. 19, the day Murdoch was negotiating the loan, he dropped by the White House for lunch with President Carter. And two days later, Murdoch's New York Post endorsed Carter in the upcoming New York primary.

At subsequent hearings on the Murdoch affair before the Senate Banking Committee, the senators were unable to show any direct political influence involved in the loan. But the lasting impression from the hearings was that Murdoch had stampeded the bank board into granting him the low-interest loan.

Critics say that these same easy-lending ways have forced the administration to devise the $1.1 billion off-budget item. These critics say that the administration, facing unprecedented billions of dollars in commitments by Ex-Im Bank in fiscal 1981 and beyond, got Congress to agree to an additional appropriation amounting to about one-quarter of the bank's normal appropriations in the last few weeks of the 1980 fiscal year. Congress agreed after it was clear the $1.1 billion would not show up in the budget.

Among the administration officials who came up with the plan and sold it to Congress were Ex-Im Bank's Moore and Fred C. Bergsten, assistant Treasury secretary for international affairs, with officials of the budget office in agreement.

Most of the Ex-Im Bank's financial support to foreign borrowers is in the form of direct credits. These loans are financed by the Treasury, which sells federal securities to raise funds. The Treasury securities currently

have a rate of about 11½ percent, while the Ex-Im Bank is lending at under 9 percent.

What allows Ex-Im Bank to continue to lend at apparently money-losing interest rates is the bank's capital.

Back in 1945, when Ex-Im Bank was founded, the Treasury put in seed funds of $1 billion. Over the years, those funds have been carefully nurtured so that the bank's capital, or equity, has grown to over $3 billion. In addition, the bank also has about $9 billion in funds that were borrowed from the Treasury at interest rates significantly below today's level.

By blending the low-interest capital with freshly borrowed funds, the bank year after year has been able to lend funds at higher rates than its current borrowing. It also allows the bank to state that it is "self-sustaining."

Along with direct credits, the Ex-Im Bank also puts the name of the U.S. government behind guarantees to enable foreigners to borrow from private financial institutions. Ex-Im Bank usually collects about half of one percent for this service, and the foreign borrower uses the funds to buy U.S. exports.

But guarantees, unlike credits, are not reflected on the federal budget. So this summer, the administration went to Congress to get $1.1 billion in guarantees to finance some of its commitments, off-budget.

Once Congress voted through the additional funding in the form of guarantees in late August, Ex-Im Bank by law then had to send Congress descriptions of any commitment of $100 million or more it planned to fund with the guarantees.

On Aug. 27 and 29, the bank sent up five separate commitments, and Congress has 25 days from then to raise questions about them.

What upsets Ex-Im Bank staffers is that the five commitments to foreign borrowers were almost all for direct credits, at a weighted average interest rate of 9 percent. The direct credits could have been funded through the Treasury, but now that they have been converted to guarantees to avoid the budget, the bank must go into the private market to raise money.

Not only does this mean higher interest rates, it also means that the bank must absorb the difference between the weighted average rate of just under 9 percent and whatever the private-market rate is at the time the $1.1 billion is raised.

According to several sources, this $1.1 billion in guarantees will cost the bank at least $200 million in interest payments over the 10-year life of the loans. And to finance the $200 million, the bank must dip into its valuable capital.

This is what most troubles critics of this off-budget, eleventh-hour effort by the administration to fund $1.1 billion of Ex-Im Bank's multibillions in commitments, along with the bank's unrealistically low lending rates.

Says one bank official: "What has happened over the past 35 years could be undone in one whack if this goddamned foolishness doesn't stop."

THE DANGER OF FALSE HOPE

Mr. PROXMIRE. Mr. President, the world knows the tragic fate of 6 million Jews at Nazi hands. This staggering number often prompts doubt about Jewish resistance to the Nazis. It may seem that so many could have been killed only if they surrendered themselves freely. Actually, the facts are to the contrary, and I have spoken many times of those individuals and groups who resisted bravely. Certainly no one aware of these efforts could discount their importance. Yet at times resignation could replace resistance, as revealed in some accounts of holocaust survivors.

Mel Mermelstein in "By Bread Alone" recounts how hope led him to acquiescence. He tells how a Nazi guard separated the members of his family. Yet no one cried out in fear or dismay. Everyone held to the belief that this separation could be only temporary. Everyone tried to forget those terrible rumors about the fate of transported Jews. Even when Mel, his father, and his brother arrived at the Polish death camp of Birkenau, they told themselves that they had merely been relocated to another worksite.

A vicious Nazi guard quickly dispelled their illusions. He explained the perplexing smoke which poured forth from the tall chimneys around the camp. His angry and senseless words prompted many of the Jews to question his sanity. Mel would recall that they did not question their own sanity in permitting themselves to be transported there.

Mel screamed at the thought that the smelly, furling smoke might be testimony to the fate of his mother and sisters. He later would write these words:

> I still did not believe . . . nor did I understand, but I could see the chimneys, and they were smoking fiercely. A month before we might have exploded, run, fought, killed, and died in the process. But now we had suffered the brickyard and the sealed train; we had no strength left, no will to fight. . . . Hope was on the side of submission.

This account reveals how human it is to cling to hope when danger is near. Only when Mel was inside the gate of Birkenau, looking at the peculiar smoke and listening to the Nazi guard, could he comprehend the danger he faced. Over and over the survivors of the Holocaust tell us that many Jews clung to the hope that mass extermination was a false rumor. Over and over we hear that when hope had dissipated, many were too weak to resist.

Mr. President, it is once again tempting to believe that genocide could never recur, that the danger somehow has passed. But I remind this body how easily hope can become self-deception, and how suddenly self-deception can become surrender. Do we, like Mel, need to find ourselves face to face with genocidal policies before we can acknowledge any danger? If so, Mr. President, this body has only a weak claim to foresight. I urge my colleagues not to give up the hope that men can become more humane. I urge them merely to found that hope on the Genocide Convention, a treaty which deserves our immediate ratification.

IOWA SOIL CONSERVATION WEEK

Mr. JEPSEN. Mr. President, on October 4, 1979, in a cornfield near Des Moines, Iowa, Pope John Paul II urged Iowans to "conserve the land well, so that your children's children and generations after them will inherit an even richer land than was entrusted to you."

Pope John Paul knew Iowa is the most appropriate place in all of the United States to utter those words. The "black gold" soil from Iowa's rich farmlands generates the basic health and welfare of the State and is extremely important to the entire Nation. Yet, Iowa soils are eroding on an average of 10 tons per acre per year, twice the acceptable rate.

Iowans realize this and have undertaken a number of soil conservation initiatives to help insure that their "children's children" will inherit the land's rich "black gold" because of the preventive actions this generation takes. To encourage support for conservation measures, planning and awareness, the Iowa State Legislature declared the first week of harvest season, September 14–20, as "Iowa Soil Conservation Week."

When Iowans were polled a few years ago to determine what they thought was Iowa's greatest resource, their resounding response was "the land." And when they were asked what resource problem required priority attention, they answered "soil erosion." Recently I held a series of soil conservation hearings in Iowa for the Senate Agriculture Soil Conservation Subcommittee. Iowa's dedication to the soil was summed up by Iowa Secretary of Agriculture Bob Lounsberry when he said:

> Our soil must come first; all else builds from it.

Iowans believe in this and they are doing something about.

Since fiscal year 1979 Iowa has contributed more funds and services to soil and water conservation districts than any other State. Also, Iowa is the only State in the Nation to announce a commitment to reduce soil losses to nondepleting levels by the year 2000. This goal, along with the methods of reducing soil losses is delineated in the Iowa soil 2000 laws passed by the Iowa State Legislature this year. Mr. President, I ask unanimous consent that excerpts from a summary of the Iowa soil conservation laws be printed in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXCERPTS

GENERAL STATEMENT OF POLICY

Agriculture is the foundation of Iowa's economy. That foundation is currently being undermined by critical excessive erosion of the topsoil in the state. Thus it is in the best interest of both the present and future generations to promptly control soil erosion in Iowa. Moreover, control of nonpoint source pollution (i.e., pollution attributable to runoff from large areas rather than to specific points, such as sewage treatment plants) of the state's rivers and lakes can be largely achieved by proper soil conservation techniques. It should therefore be the policy of the state of Iowa to:

A. Provide education at all levels. Education is a vital tool in building awareness of the importance and understanding of the methods of conserving soil.

B. Provide incentives for good soil management. These incentives may include, but are not limited to, public cost-sharing, low-interest loan funds, and tax credits or tax exemptions to encourage the installation of effective soil conservation practices.

C. Provide technical assistance. Technical assistance should be provided, within budgetary limits, to develop conservation folders (i.e. compilations of information needed to draw up conservation plans) and to prepare plans for the installation of conservation measures for each farm unit in Iowa.

D. Control soil erosion by the year 2000. Erosion of topsoil from all land within the borders of the state of Iowa should be controlled by the year 2000 to the extent necessary to meet applicable soil loss limits which have been established by the respective soil conservation districts under existing law.

GOALS BASED ON THE STATEMENT OF POLICY

A. Five-year objectives:

1. To accelerate the availability of soil survey mapping data.

2. To provide each farm unit with a conservation folder by 1985.

3. To control erosion of the most fragile soils, which under present agricultural use and management will be depleted in 20 years.

4. To reduce excessive soil erosion on all agricultural lands by 40%.

5. To control nonpoint source pollution in at least twelve high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

B. Ten-year objectives:

1. To require each landowner or operator to keep his or her conservation folder current with computed soil loss rates provided by the local soil conservation district.

2. To control erosion on soil which under present agricultural use and management will be depleted in 40 years.

3. To reduce excessive soil erosion on all agricultural lands by an additional 40%.

4. To control nonpoint source pollution in at least an additional twenty-four high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

C. Fifteen-year objectives:

1. To control erosion on all agricultural land at a nondepleting level.

2. To control nonpoint source pollution in at least an additional fifty high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

D. Twenty-year objectives:

1. To maintain a nondepleting level of soil loss on agricultural land and control sediment production on all Iowa land.

2. To continue to develop and install cost effective soil conservation practices so that soil erosion is held at a nondepleting level.

3. To control nonpoint source pollution in all watersheds, based on the agricultural nonpoint pollution plan.

LEGISLATIVE RECOMMENDATIONS

1. An interagency committee should be established by the Department of Soil Conservation to prepare plans for coordinated approaches to water management problems that are within the common jurisdiction of two or more state or local agencies, particularly the control of water flowing into, across and from roadside ditches. The committee should consist of one representative each from the Department of Soil Conservation, the Department of Environmental Quality, the Department of Transportation, the state Department of Agriculture, the Iowa Natural Resources Council, county supervisors, county engineers and soil conservation district commissioners.

2. At present, a landowner who receives public cost-sharing money for establishment of permanent soil conservation practices must agree to return that money if the practices are removed or downgraded within ten years from their establishment, without the consent of the State Soil Conservation Committee. The Subcommittee recommends that:

a. The ten-year limit on the obligation to maintain permanent soil conservation practices that are partially publicly funded be removed, and the obligation made one of indefinite duration.

b. The authority to consent to removal or alteration of a publicly-funded permanent practice be vested in the local soil conservation district commissioners, following State Soil Conservation Committee guidelines.

c. Recording of the agreement to maintain publicly-funded permanent practices be required, so that the obligation to maintain the practices—and the monetary penalty for failure to do so—will transfer to a new owner when title to the land involved changes.

3. The Department of Soil Conservation, acting through local soil conservation district commissioners, should be authorized to enter into long-term agreements with landowners, for periods of up to five years, in order to encourage and facilitate completion of permanent soil conservation practices on entire farms or on adjoining groups of farms.

4. It should be a duty of soil conservation districts to encourage and assist local school districts to provide instruction in the importance of and some of the basic methods of soil conservation, pursuant to the requirements of Code section 257.25(3) and (4) that elementary and secondary schools in Iowa teach science courses "including conservation of natural resources and environmental awareness".

5. The soil conservation legislation enacted in 1971 should be amended to remove any possible doubt that state agencies, political subdivisions of the state, and agencies of such political subdivisions which have control of publicly-owned lands have the same responsibility as private landowners to control soil erosion so as to comply with the applicable local soil loss limits.

6. Soil conservation district commissioners should be authorized to initiate an inspection of land when they have reasonable grounds to believe that excessive soil erosion is occurring on that land, without the necessity of receiving a complaint from a person whose property is being damaged by sediment due to the erosion. Also, such a person should be permitted the option of making a complaint verbally rather than in writing, provided the commissioners know and make a record of the complainants identity.

7. Chapter 467A of the Code should be amended to provide that:

a. Each farm in the state shall be furnished a "conservation folder" (a compilation of topographic, agronomic, soil loss rate and other information pertinent to soil conservation efforts) by the Department of Soil Conservation not later than January 1, 1985, or as soon thereafter as adequate funds are available.

b. It is the obligation of the owner or operator of each farm in this state to work out with the local soil conservation district commissioners a farm unit soil conservation plan for that farm, not later than January 1, 1990 or five years after the conservation folder for that farm is completed, whichever date is later.

c. It is the obligation of the owner or operator of each farm in this state to enter into a conservation agreement with the soil conservation district commissioners, binding the owner or operator to comply with the applicable soil loss limits on condition of receiving from the soil conservation district appropriate technical and financial assistance, within a reasonable time after completion of the farm unit conservation plan for that farm.

8. Chapter 467A of the Code should be amended to provide that beginning January 1, 1990 (or five years after the conservation folder contemplated by paragraph a of recommendation 7 is completed for the farm in question, whichever date is later) an owner or operator of agricultural land who has received notice from local soil conservation district commissioners for three or more consecutive years that soil is eroding from that land at a rate at least twice the nondepleting level, shall be subject to an order to follow a conservation plan developed for that land. If the owner or operator has previously reached agreement with the local soil conservation district commissioners on a farm unit conservation plan, as contemplated by paragraph b of recommendation 7, the order would direct that that plan be followed; otherwise the plan would be developed by the soil conservation district commissioners on the basis of Department of Soil Conservation guidelines. This recommended provision differs from the administrative order procedure prescribed in law at present, in that it will not be necessary under the recommended provision for the soil conservation district commissioners to show that the excessive erosion from the owner or operator's land is resulting in damage to another person's property, in order to obtain an order requiring that the erosion be controlled.

9. Chapter 467A of the Code should be amended to require that a seller of agricultural land furnish to a prospective buyer:

a. A copy of the conservation folder for that land, if one has been completed as contemplated by paragraph a of recommendation 7.

b. Documents fully and accurately describing both:

(1) All existing permanent soil conservation practices which the owner of that land is obligated to maintain, as contemplated by recommendation 2; and

(2) Any additional practices likely to be required in order to comply with applicable soil loss limits, and any changes in current or recent cropping methods used on that land which will be necessary in order to establish the additional soil conservation practices.

10. Legislation should be enacted under which each of the 100 soil conservation districts in Iowa (each county constitutes a district except Pottawattamie County, which is divided into two districts) is designated a state agency, for the limited purpose of possible tort claim actions against the district, its officers or any employees. The Attorney General has advised the Department of Soil Conservation that local soil conservation districts are legally "municipalities" (i.e., political subdivisions of the state, broadly comparable to counties, cities or school districts), and that therefore officers and employees of such a district are subject to tort claim actions but are theoretically entitled to be indemnified by the district if held liable. However there are in fact no funds available to a soil conservation district to indemnify a commissioner or employee in such a case, and soil conservation district commissioners—who are unpaid officers—are therefore at some risk of having a judgment placed against their personal assets should they be held liable in a tort claim action.

The Subcommittee concluded, after hearing a presentation by members of the Attorney General's staff, that the best way of resolving this situation is to make the soil conservation districts state agencies for this one limited purpose. This step appears quite appropriate since these districts are already unique among municipalities in Iowa in that they are entitled by section 467A.6 of the Code to call upon the Attorney General for legal services.

12. A special 60 percent cost-sharing rate should be authorized for establishment of permanent soil conservation practices on agricultural land located in watersheds assigned high priority, on the basis of soil fragility, by conservancy district boards. However, this special participation rate should be available only in a priority watershed where owners of at least 65 percent of the land in that watershed have signed agreements to establish and maintain such practices. The special participation rate should be available in the context of long-term agreements, as contemplated by recommendation 3.

13. The Department of Soil Conservation

should be authorized if adequate funding is provided, to increase the number of qualified technical personnel available to help implement the "Iowa Soil 2000" goal, described in this report, by not more than 15 full-time equivalent positions per year for each of the next five fiscal years.

14. The Department of Soil Conservation should be authorized to initiate a program under which limited set-aside payments can be made to farmers on a per-acre basis, for the purposes of holding land out of production for one season or delaying planting so as to allow construction of terraces and establishment of other permanent soil conservation practices during the spring and summer months.

15. Iowa State University's Cooperative Extension Service should begin immediately to collect, assemble, publish and disseminate data available from Iowa farm operators who are currently using conservation tillage methods.

Mr. JEPSEN. Iowa was the first State to appropriate funds for a statewide soil conservation cost-sharing program. Presently it contributes $5 to 6 million. Iowa initiated a wind erosion control incentive program in seven counties and a conservation tillage demonstration project in eight. These programs began in 1971 with an appropriation of a half-million dollars each. In addition, a number of Iowa counties provide cost-share funds to help finance the construction of conservation practices or make funds available for additional technical assistance.

While every State needs to assess its own soil conservation needs, Iowa's example shows how we can set goals to limit soil losses and establish procedures to meet that goal. Most importantly, it must be the State and local governments which set those goals for farmers and residents. Above all, the Iowa 2000 soil laws stress the absolute need for local grassroots control in soil conservation decisions—decisions that affect the fertile source of our food and fiber as well as the role of stewards of the land.

The idea of conserving our soil is not new. Teddy Roosevelt summed it up in 1908. "When the soil is gone," he reminded us, "man must go." Iowa is setting a soil-saving example in both its commitment and its programs. Let us commend the State for its efforts as they celebrate this year's harvest in Iowa Soil Conservation Week.

THE DOMESTIC VIOLENCE ACT

Mr. JEPSEN. Mr. President, on Thursday, September 4, 1980, the Senate passed H.R. 2977, the Domestic Violence Act. I voted against its passage and today want to express the reasons why.

Like many others in this Nation, I am concerned about this tragic problem. The fact that Congress has to address the issue is sad testimony to the appalling existence of violence in American family life and an unfortunate comment on our culture and society.

On the surface, the arguments supporting this bill seem rational, reasonable, and ultimately convincing. But they are not. In most issues, but particularly in the domestic violence bill before the Senate, I believe we fail to recognize a fundamental principle: Government governs best when it governs close to home.

In considering the problem, the question arises concerning how we should approach the issue. Proponents of H.R. 2977 argue that the problem of domestic violence in America, despite its existence as a private family matter, is so pervasive and deeply rooted that it "touches community and human life to such an extent that it cannot conscionably be ignored by any level of government."

Instead of designing a program for State and local agencies to administer, proponents want to establish a new Federal program and bureaucracy to centralize decisionmaking in Washington. Instead of utilizing the expertise and coordinated talents of public officials, private organizations, community groups and churches at the local level, proponents want to stifle local decisionmaking and community participation by implementing Federal guidelines, redtape, and Washington efficiency to solve family disputes.

Mr. President, we are told that H.R. 2977 does not provide a "Federal solution," but merely a "supportive and stimulating" role for the Federal Government to play. I disagree.

Certainly Government has the responsibility and duty to protect public safety and welfare. When carefully designed and constructed, Government participation indeed can serve the public interest as an effective stimulus in solving national problems. But this is not the case. Instead, we have an ill-designed, poorly constructed approach to Federal involvement.

It is ill-designed because it places Federal Government in the position of solving primary decisions and problems at the expense of local agencies and individuals. It is poorly constructed because the bill ignores the fact that Federal programs and local initiatives already exist to address the problem of domestic violence. To place yet another Federal layer of bureaucracy on top of existing Federal programs and local initiatives duplicates efforts and, in fact, complicates solutions.

My main objection to H.R. 2977 is that the Federal Government would engage itself in domestic disputes which are purely private and centered at the local level of government. Federal efforts to protect public safety and welfare in regard to this problem may be premature.

No one denies the existence of domestic violence. The real issue in this bill is not whether we fail to recognize the problem, but create greater problems by drafting an ill-constructed approach.

I believe that Government should only do for people what they cannot do for themselves. Since taking my seat in the Senate, there is a new awareness in Congress opposing the extension of additional power in Washington under the guise of solving people's problems and protecting the public interest. Unfortunately, the adoption of H.R. 2977 as reported by the Human Resources Committee would diminish this new sense of awareness.

MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of September 11, 1980, the Secretary of the Senate, on September 12, 1980, received a message from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received during the recess are printed at the end of the Senate proceedings.)

REPORT ON THE STATUS OF HEALTH INFORMATION AND HEALTH PROMOTION—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 242

Under authority of the order of September 11, 1980, the Secretary of the Senate, on September 12, 1980, received the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I transmit herewith the Third Annual Report to the Congress on the Status of Health Information and Health Promotion, as required by P.L. 94-317, the "National Consumer Health Information and Health Promotion Act of 1976."

JIMMY CARTER.

THE WHITE HOUSE, *September 12, 1980.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings).

PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on September 12, 1980 he had approved and signed the following act:

S. 390. An act to expedite and reduce the cost of antitrust litigation, and for other purposes.

MESSAGES FROM THE HOUSE

At 3:42 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 1250. An act to promote United States technological innovation for the achievement of national economic, environmental, and social goals, and for other purposes.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 7301. An act to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

At 4:26 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

HOUSE BILL PLACED ON THE CALENDAR

The following bill was read by title and placed on the calendar:

H.R. 7301. An act to authorize certain construction at military installations for fiscal year 1981, and for ther purposes.

HOUSE JOINT RESOLUTION HELD AT THE DESK

The following joint resolution was ordered held at the desk until September 16, 1980, by unanimous consent:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4601. A communication from the Principal Deputy Assistant Secretary of Defense (Comptroller), reporting, pursuant to law, on the intent to obligate $1.1 million in the Army Stock Fund for war reserve stocks; to the Committee on Appropriations)

EC-4602. A communication from the President of the United States, transmitting proposed fiscal year 1981 appropriation language changes that would increase budget authority in the amount of $2,600,000 for the Department of Justice; to the Committee on Appropriations.

EC-4603. A Communication from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), reporting, pursuant to law, that a study has been conducted with respect to converting to contract the total installation functions at Hawthorne Army Ammunition Plant, Hawthorne, Nevada, and a decision has been made that performance under contract is the most cost effective method of accomplishing it; to the Committee on Armed Services.

EC-4604. A communication from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the T-4/T-26A instrument flight trainer operator function at Sheppard Air Force Base, Texas, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4605. A communciation from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting pursuant to law, that a study has been conducted with respect to coverting the commissary shelf-stocking and custodial services function at Lowry Air Force Base, Colorado, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4606. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to the Federal Republic of Germany for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

ES-4607. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Australia for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4608. A confidential communication from the Director, Defense Security Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to a NATO country for defense articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4609. A communication from the President, Export-Import Bank of the United States, reporting, pursuant to law, on loan, guarantee and insurance transactions supported by Eximbank during June 1980 to communist countries (as defined in section 620(f) of the Foreign Assistance Act of 1951, as amended); to the Committee on Banking, Housing, and Urban Affairs.

EC-4610. A communication from the Vice President for Government Affairs, National Railroad Passenger Corporation, transmitting, pursuant to law, a report for the month 1980 concerning (1) the average number of passengers per day on board each train operated, and (2) the on-time performance at the final destination of each train operated, by route and by railroad; to the Committee on Commerce, Science, and Transportation.

EC-4611. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Oil and Natural Gas From Alaska, Canada, and Mexico—Only Limited Help For U.S.," September 11, 1980; to the Committee on Energy and Natural Resources.

EC-4612. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes construction of a Federal Building in Redding, California; to the Committee on Environment and Public Works.

EC-4613. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease for space located at 1310 L Street, N.W., Washington, D.C.; to the Committee on Environment and Public Works.

EC-4614. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes the acquisition of space by lease in Denver, Colorado; to the Committee on Environment and Public Works.

EC-4615. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease for space located in the Park Place Building, 1200 Sixth Avenue, Seattle, Washington; to the Committee on Environment and Public Works.

EC-4616. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes a lease for the Railroad Retirement Board in Chicago, Illinois; to the Committee on Environment and Public Works.

EC-4617. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Three Mile Island: The Most Studied Nuclear Accident in History," September 9, 1980; to the Committee on Environment and Public Works.

EC-4618. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Ground Water Overdrafting Must Be Controlled," September 12, 1980; to the Committee on Environment and Public Works.

EC-4619. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Foreign Tax Credit And U.S. Energy Policy," September 10, 1980; to the Committee on Finance.

EC-4620. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days after the execution thereof; to the Committee on Foreign Relations.

EC-4621. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report and recommendation concerning the claim of the Brooklyn Times against the United States; to the Committee on Governmental Affairs.

EC-4622. A communication from the Director of the Federal Emergency Management Agency, transmitting a draft of proposed legislation authorizing the Agency to provide transportation for certain persons engaged in activities at the Agencies' special facility; to the Committee on Governmental Affairs.

EC-4623. A communication from the Acting Commissioner of the U.S. Immigration and Naturalization Service, transmitting, pursuant to law, orders in the cases of certain aliens found admissible to the United States under section 212(a)(28)(I)(ii) of the Immigration and Nationality Act; to the Committee on the Judiciary.

EC-4624. A communication from the Chief Justice of the United States Supreme Court, informing the Senate of the opening of the October 1980 Term of the Court on October 6, 1980; to the Committee on the Judiciary.

EC-4625. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report relative to Department of Justice aid to help improve conditions at State and local correctional facilities; to the Committee on the Judiciary.

EC-4626. A communication from the Chairman of the United States Commission on Civil Rights, transmitting, pursuant to law, a report relative to civil rights issues in immigration; to the Committee on the Judiciary.

EC-4627. A communication from the Chairman of the National Arthritis Advisory Board, transmitting, pursuant to law, a monograph entitled "Thru the Arthritis Maze"; to the Committee on Labor and Human Resources.

EC-4628. A communication from the Chairman of the U.S. Railroad Retirement Board, transmitting, pursuant to law, the Board's annual report for fiscal year 1979; to the Committee on Labor and Human Resources.

EC-4629. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the third annual report under the National Diabetes Mellitus Research and Education Act of 1974; to the Committee on Labor and Human Resources.

EC-4630. A communication from the Administrator of the Veterans Administration, transmitting, pursuant to law, the Admin-

istration's annual report for fiscal year 1979; to the Committee on Veterans Affairs.

EC-4631. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report of rescissions and deferrals, September 1, 1980; to the Select Committee on Small Business, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Appropriations, the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Finance, the Committee on Foreign Relations, the Committee on Governmental Affairs, the Committee on Labor and Human Resources, the Select Committee on Indian Affairs, the Committee on Veterans' Affairs, the Committee on the Judiciary, and the Committee on Rules and Administration, jointly, pursuant to order of January 30, 1975.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and referred as indicated:

POM-857. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services:

"ASSEMBLING JOINT RESOLUTION No. 89

"Whereas, Congress has under consideration legislation to correct a longstanding inequity in our treatment of the survivors of the Phillippine Scouts who fought alongside American soldiers during World War II and who, although they were a part of the United States Army and fought and died along with their American counterparts, never received same pay or benefits, and

"Whereas, This kind of flagrant discrimination was sad reward indeed for their heroic sacrifices, and the enactment of this legislation would be a clear message to Filipino-Americans and people throughout the world that our commitment to justice and equality is not parochial and is basic to our conception of universal human rights; and

"Whereas, In the late 1930's, the Philippine Scouts were made a part of the United States Army to help defend the South Pacific against totalitarian domination and General Douglas MacArthur described the Scouts as "excellent troops, completely professional, loyal and devoted," since they were an elite organization with a high esprit de corps in which membership was considered an honor by Filipinos and the strictest standards were followed in selection; and

"Whereas, General Wainwright, who took command of forces on Bataan and Corregidor after General MarArthur moved Army headquarters to Australia, reported that by the beginning of December 1941, the 'Philippine Scouts were fit, trained in combat principles, and ready to take the field in any emergency"; and

"Whereas, At the onslaught of the war in the Pacific when the enemy attacked Pearl Harbor and invaded the Philippine Islands, these soldiers became a key to the success of our entire South Pacific strategy, for it was the continued resistance on Bataan that denied the Japanese an essential base for the projected thrust to the South Pacific, and they were forced to retain large Army and Navy Forces in the Philippines, which otherwise could have been employed against allied shipping of men and materials to Australia and New Caledonia from the United States and the Middle East, so that the protracted defense of these islands by the Philippine Scouts against incredible odds allowed the United States time to recover from the first blows of the war and begin to send in supplies and reinforcements; and

"Whereas, The defenders of Bataan were hopelessly outnumbered and undersupplied, endured severe hardships during their entrenchment, and were already in need of new issues of clothing and shoes when they entered Bataan in January, and, as General Wainwright reported, most of the soldiers "walked into Bataan barefooted," with disease and starvation problems dealt with daily, since at least 30 percent of the troops had dysentery, and the rest some variety of worm infestation of the bowel, so that by mid-March at least 75 percent of the command was incapacitated to some extent, but for four months they held out, fighting the enemy guerrilla fashion, buying time for an allied force build-up in Australia; and

"Whereas, With all the hardships endured by these soldiers, they never received the comparable benefits they were due, and as Brigadier General W. E. Brougher, Commander of the 11th Division on Bataan, pointed out in his prison diary, the moral factor that most disturbed him was 'discrimination against Philippine Scouts officers by the United States Army Forces in the Far East in matters of promotion, pay and allowances,' since despite their gallant service and tremendous suffering, the Philippine Scouts received only a fraction of the pay and benefits received by their American counterparts, and that discrimination continues today; and

"Whereas, It is time to rectify this longstanding wrong by the enactment of pending legislation which would authorize pay and benefits for members of the Philippine Scouts or their survivors at the same rates of basic pay as other members of the United States Army of corresponding grades and lengths of service received at that time; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and Congress to support and enact legislation which would authorize pay and benefits for members and survivors of members of the Philippine Scouts on the same basis as such pay and benefits are authorized for other members of the United States Army and their survivors; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States,"

POM-858. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"ASSEMBLY JOINT RESOLUTION No. 93

"Whereas, Federal guidelines under the Comprehensive Employment and Training Act have been construed to require, in the determination of which areas of the City of Los Angeles will receive federal funds for summer jobs, that the city use last year's unemployment rate and apply it to 1970 census data; and

"Whereas, Population information gathered in 1977 for the city's Public Employment and Housing Survey, which has been used in the past for other federal programs, provides a better basis for allocating programs and services to the needy; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California requests the federal government to permit the City of Los Angeles to use population information gathered in 1977 for the Public Employment and Housing Survey, or its equivalent, to determine summer job programs; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the United States Department of Labor and to the California Economic Development Administration."

POM-859. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, opposing the Department of Transportation rules governing the Highway routing of radioactive and hazardous materials as presently drafted and proposed; to the Committee on Commerce, Science, and Transportation.

POM-860. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, supporting certain amendments to the Fair Housing Act of 1968 (H.R. 5200 and S. 506); to the Committee on the Judiciary.

POM-861. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, supporting Law Enforcement Assistance Administration appropriations; to the Committee on the Judiciary.

POM-862. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, supporting the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974; to the Committee on the Judiciary.

POM-863. A resolution adopted by Miss Wheelchair America, Inc., Birmingham, Alabama, to afford Miss Wheelchair America the privilege of addressing the United States Senate; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES SUBMITTED DURING RECESS

Under the authority of the order of Thursday, September 11, 1980, the following reports of committees were submitted on Friday, September 12, 1980:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment and an amendment to the title:

S. 2375. A bill to amend the Public Health Service Act to revise and extend the programs of assistance under titles VII and VIII for training health professionals and to extend the National Health Service Corps programs (Rept. No. 96-936).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment:

H.R. 2743. An act to provide for a national policy for materials research and development and to strengthen the materials research and development capability and performance of the United States (Rept. No. 96-937).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, without amendment:

H.R. 3210. An act to terminate the authority to make grants to the Las Vegas Valley Water District under the Act of August 27, 1954;

H.R. 6137. An act to convey certain interests in public lands to the city of Angels, California; and

H.R. 7434. An act to provide for the establishment of the Boston African American National Historic Site in the Commonwealth of Massachusetts, and for other purposes.

By Mr. JACKSON, from the Committee on Energy and Natural Resources, without amendment:

S. 3017. A bill to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments (Rept. No. 96-938).

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

S. Res. 518. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 333. Referred to the Committee on the Budget.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

S. Con. Res. 109. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569 (together with minority views) Rept. No. 96-939).

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 5829. An act for the relief of the the Foundry Methodist Church (Rept. No. 96-940).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute):

S. 2884. A bill to provide for an accelerated program of light water nuclear reactor safety research and development, to be carried out by the Department of Energy (Rept. No. 96-941).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with amendments:

S. 2926. A bill to provide for an accelerated research, development, and demonstration program to achieve confirmation of the engineering feasibility of magnetic confinement fusion, and for other purposes (Rept. No. 96-942).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOMENICI:

S. 3110. A bill to extend the boundaries of White Sands Missile Range, White Sands, New Mexico, and provide an exchange of Federal lands for State lands; to the Committee on Energy and Natural Resources.

By Mr. McGOVERN (for himself and Mr. NELSON):

S. 3111. A bill to amend certain provisions of the Federal Power Act, 16 U.S.C. 791a et seq., relating to preferences in issuance of preliminary permits or licenses; to the Committee on Energy and Natural Resources.

By Mr. McGOVERN:

S. 3112. A bill to provide a two-year suspension of payment of principal and interest on certain loans made to farmers and ranchers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOLE:

S. 3113. A bill to amend the Tariff Schedules of the United States to increase the quantity of cigarettes that may be accorded duty-free treatment if acquired in the insular possessions and entered by returning United States residents; to the Committee on Finance.

By Mr. HATCH:

S. 3114. A bill to amend section 1979 of the Revised Statutes (42 U.S.C. 1983), relating to civil actions for the deprivation of rights, to limit the applicability of that statute to laws relating to equal rights; to the Committee on the Judiciary.

S. 3115. A bill to provide a special defense to the liability of political subdivisions of States under section 1979 of the Revised Statutes (42 U.S.C. 1983) relating to civil actions for the deprivation of rights; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI:

S. 3110. A bill to extend the boundaries of White Sands Missile Range, White Sands, N. Mex., and provide an exchange of Federal lands for State lands; to the Committee on Energy and Natural Resources.

WHITE SANDS MISSILE RANGE

● Mr. DOMENICI. Mr. President, as our Federal land ownership of lands expands to meet increased demands, pressure correspondingly increases in those States with a large ratio of Federal/State lands.

The purpose of this legislation is to establish principle that while a State may not be opposed to increasing Federal boundaries, be they for parks or military use, that States should still have the option of compensation in Federal lands of equal value rather than simple economic remuneration.

This legislation would have two effects. First there would be State participation in the decision as to whether the ratio of State to Federal land ownership should change. Second, the Federal agencies would have to consider whether an increase of a certain land holding was significant enough to justify a decrease or relinquishment of some other parcel.

In New Mexico, there is a need to expand Federal ownership within the boundaries of the White Sands Missile Range. The State would rather make a like for like exchange.

Federal ownership in the West is an onerous burden already. Unless some type of mechanism such as that suggested by this legislation is soon adopted, cooperation between the State and Federal government will end.

We in New Mexico would like the opportunity to show the Nation how such a give and take could work and how it would result in additional booty—namely goodwill.●

By Mr. McGOVERN:

S. 3112. A bill to provide a 2-year suspension of payment of principal and interest on certain loans made to farmers and ranchers; to the Committee on Agriculture, Nutrition, and Forestry.

FARMERS IN DISTRESS NEED MORE HELP FROM ALREADY OVERBURDENED FMHA

● Mr. McGOVERN. Mr. President, I rise to introduce S. 3112, a bill to provide a 2-year suspension of payment of principal and interest on certain loans made to farmers and ranchers by the Farmers Home Administration.

In 1976, my State of South Dakota was hit with the worst drought in many years. Farmers and ranchers were forced to borrow heavily to keep from going broke.

Ordinarly, after such a disaster it is a rule of thumb that it takes a producer 5 years to get back on his feet. But it has only been 4 years since that terrible year that brought farmers to their knees, and once again the weather has crippled South Dakota's farmers and ranchers, who contribute so much to the productivity of the United States. Again this year, because of the lack of rain, 52 out of 67 counties in South Dakota have been declared disaster areas. And it is probable that more counties will fall into this category.

Remember, Mr. President, I said that ordinarily farmers can come back from a disater in about 5 years. But this has been an extradordinary year.

I do not think there is any doubt that the embargo of grain to the Soviet Union depressed the prices that farmers receive for their grain. Meanwhile the inputs needed to farm have been inflating at a rate of between 20 and 30 percent. I know of no other segment of our economy that has been so severely hit by high oil prices and inflation as agriculture has been.

This crisis situation is reflected in the amount of farm debt. Total farm debt on January 1 of this year stood at $157.8 billion nationwide, an increase of $20.3 billion over the same time in 1979.

On the one hand, our farmers are up to their ears in debt, and on the other, the weather has conspired to keep them from being able to pay off their loans. Net farm income this year is expected to drop by as much as 30 percent—and that is not even taking the drought into consideration.

Further, farmers and ranchers in the Midwest and Great Plains, whose operations are a long distance from terminal markets, are having to pay for increasingly high-priced transportation of their goods—transportation that is not always there when it is needed.

It seems to me that the stage is set for an economic depression in agriculture that will mean ruin to farmers and ranchers, and sharply higher food prices to consumers.

The bill I am introducing today will not solve all of the problems that I have cited here. It is merely designed to give some producers a breather, so that they can get their act back together and recover some of their losses.

The bill provides that the Secretary of Agriculture shall suspend the payment of principal and interest for 2 years on any Farmers Home Administration operating or emergency loan at the request of the borrower.

I think the bill will provide vital relief to farmers who were forced by the 1976 drought to go deeply into debt, and others who were forced to borrow under the economic emergency loan program.

I think this bill will provide a badly needed respite for the Farmers Home

Administration, an agency that is in the middle of a severe management crisis.

The Farmers Home Administration has been in business for about 50 years, providing essential credit of last resort to farmers and others in rural America.

Yet in recent years we have been piling program after new program upon the agency, without appreciably increasing its staff. As a result, half of the money the agency has ever loaned out in the past 50 years has been loaned in the past 3 years.

The Farmers Home Administration was built upon the principle of supervised credit. Since the agency largely deals with borrowers who would be considered marginal by commercial lenders, Farmers Home employees are expected to sit down with borrowers to develop farm operating plans so that there can be reasonable assurance that farmers can pay back their loans.

As a result of the growth of FmHA lending, loan supervision has all but gone out the window.

This has resulted in two problems, it seems to me:

First of all, marginal borrowers have not had the benefit of professional advice that they need so badly; and

Second, I believe loans have been made to large operations that should not be a part of Farmers Home's ordinary clientele.

I am convinced that the Farmers Home Administration needs a major overhaul. The regular loan programs and the disaster loans are in too many cases going to less deserving and less needy farmers.

I think we need to begin planning now for a joint review and reconstruction of the programs of FmHA by both the Congress and the administration.

Just 12 years ago, the Farmers Home Administration was carrying $6 billion in outstanding debt of all kinds. Now the agency is holding more than $50 billion in debt, and in the past 3 years, most of its money has gone to farmers in trouble.

Because of limitations in personnel and other problems imposed on the agency by various administrations, it seems to me that Farmers Home is going to be in trouble, just as our producers are, if we don't sit down and map out a new course for it.

Mr. President, I ask unanimous consent that S. 3112 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3112

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a), during the two-year period beginning on the date of the enactment of this Act, the Secretary of Agriculture shall suspend, at the request of the borrower, the payment of principal and interest on the balance of any operating or emergency loan made to a farmer or rancher under the Consolidated Farm and Rural Development Act and held by the Secretary, or on the balance of any emergency loan made to a farmer or rancher under the Emergency Agricultural Credit Adjustment Act of 1978 and held by the Secretary, and shall forego pursuit to final collection of any such loan for nonpayment of principal or interest during such period.

(b) No interest shall accrue on any loan described in subsection (a) during any period that the payment of principal and interest has been suspended under such subsection.

(c) Payment of principal and interest on the balance of any loan described in subsection (a) shall recommence after the suspension period has expired, and the repayment period on such loan shall be extended to provide for payments that would have been due and payable during the suspension period.●

By Mr. HATCH:

S. 3114. A bill to amend section 1979 of the Revised Statutes (42 U.S.C. 1983), relating to civil actions for the deprivation of rights, to limit the applicability of that statute to laws relating to equal rights; to the Committee on the Judiciary.

S. 3115. A bill to provide a special defense to the liability of political subdivisions of States under section 1979 of the Revised Statutes (42 U.S.C. 1983) relating to civil actions for the deprivation of rights; to the Committee on the Judiciary.

MUNICIPAL CIVIL LIABILITY

● Mr. HATCH. Mr. President, I note that yet another drain on public funds and a stumbling block to efficient performance of public services has been created by the Supreme Court. As a result of two recent rulings, State and local officials will find themselves forced to perform their duties with the constant fear of costly damage suits which will cut into their ability to spend their time and efforts in the performance of important services to the public at large.

Municipalities will not be able to function without the threat of an action against them for the bad-faith conduct of some misguided public servant. Cities and towns are now saddled with the almost impossible task of second-guessing the Supreme Court's future interpretations of constitutional law. If they should happen to guess incorrectly in enacting ordinances, local governments may be held strictly liable to anyone who cares to bring suit against them. Civil actions may now be brought against State and local officials under 42 U.S.C. 1983 based on violations of laws which have no relevance whatsoever to deprivations of constitutional or statutory equal rights. Any statute may now be the basis for such an action. Our crowded courts will no doubt be burdened even further. Our tax dollars will be spent in costly defenses against damage suits involving local governments and officials.

Mr. President, because the court's recent rulings in the cases Maine against Thiboutot and Owen against the City of Independence involve areas of the law which are better left to Congress than to judicial activism, I wish to introduce some relatively simple, yet very important amendments to 42 U.S.C. 1983.

Section 1983 provides that persons responsible for the deprivation of another's constitutional rights shall be liable to that person for redress in a civil action. The exact language of the section as it currently reads, protects those rights "secured by the Constituion and laws" of the United States. In the case of *Maine* v. *Thiboutot*, — U.S. —, 100 S.Ct. 727 (1980), the Court expressly ruled, for the first time ever, that the phrase "and laws" was intended by Congress to provide a section 1983 remedy for deprivations of rights secured by any law of the United States. This is a broad interpretation of an act enacted for the express purpose of providing a Federal remedy for impingements, made under color of State law, upon 14th amendment rights. The Court's broad reading of the law now greatly expands the liability of State and local officials charged with the task of administering the laws of the land.

Providing for a "cause of action for the infringement, under color of State law, of any Federal right" means that "virtually every * * * program, together with the State officials who administer [them] becomes subject to judicial oversight at the behest of a single citizen, even if such a dramatic expansion of Federal court jurisdiction never would have been countenanced when these programs were adopted." See *Chapman* v. *Houston Welfare Rights Org.*, 441 U.S. 600 (1978), (concurring opinion, Powell J.). Such a judicially created statutory liability is "at war with the intent of Congress" in its enacting of section 1983 and with the historical purpose and application of the section. Together with the holding of the Court in *Owen* v. *City of Independence*, — U.S. — , 100 S.Ct. 1398 (1980), the Thiboutot holding imposes a formidable burden upon State and local governments and officials.

In Owen, the Court held that local governmental entities may not assert the good faith of their agents as a defense to liability under section 1983 suits. The Court has stepped into an area best reserved to Congress in creating this new realm of liability which can have only adverse consequences for States and localities.

MAINE AGAINST THIBOUTOT

The Thiboutots were recipients of AFDC benefits administered by the Maine Department of Human Services. The amount paid to the family was calculated on the number of dependents of Mr. Thiboutot—three children from a previous marriage—rather than on the number of dependents he and his present wife claimed. Their petition for a reassessment of the benefits was based on amounts due them as parents of eight children. The Superior Court of Maine, in an order affirmed by the Supreme Judicial Court of Maine, required the agency to make the requested changes and adopt new policies for similar cases. The Supreme Judicial Court also awarded attorney's fees, 405 A.2d 230 (Me. 1979) on appeal the Supreme Court of the United States affirmed.

Justice Brennan, writing for the majority of the Court, interpreted the "plain language" of section 1983 as providing a broad base for claims arising not only out of violations of Constitutional rights, but also out of statutory rights unrelated to equal rights. Such claims are not limited to constitutional rights or equal rights created by statute, reasons Justice Brennan, because the section merely

states "and laws" and "Congress attached no modifiers" to explain what type of laws were intended to be covered by the section.

The result is that a cause of action under section 1983 may now rest on the violation or deprivation of any rights secured by any statute. In other words, a disgruntled citizen, feeling that an official deprived him or her of some benefit under a program provided for by Federal law, may sue that official for damages under section 1983. Prior to this decision, section 1983 cases only involved rights secured by the Constitution and statutes which provided for equal rights. Now the Court has transformed this remedy into a catchall cause of action for the redress of any infringement of statutory rights.

OWEN AGAINST CITY OF INDEPENDENCE

In this case, a dismissed city police chief sued the city, city manager, and city council for violating his due process rights. The Supreme Court, reversing the Court of Appeals, held that the city was liable to the police chief because its ordinance allowing his summary dismissal was unconstitutional and went against the Court's holdings in *Roth* v. *Board of Regents*, 408 U.S. 564 (1972) and *Perry* v. *Sindermann*, 408 U.S. 593 (1972). These decisions had been handed down after the actions taken by the city. The district court had therefore, allowed a good faith defense because the city and its officials could not have anticipated the Supreme Court's future interpretations of constitutional law. The Supreme Court, however, disallowed the good faith defense and held the city liable even though it had no way of predicting the Court's actions.

Until the Owen case, the Court had avoided defining the exact limit of municipal liability in section 1983 actions. It had established some limitations, though. In 1921, for example, in the case of *Harris* v. *District of Columbia*, 256 U.S. 650 (1921), the Court noted that a municipal corporation, when acting in good faith, is not liable for the manner in which it exercises discretionary powers of a public or legisltaive character.

Later, in a section 1983 case, the Court held that cities were not persons within the ambit of section 1983 and were therefor immune from liability in such actions. See *Monroe* v. *Pape*, 356 U.S. 167 (1961). This immunity was affirmed in later cases, such as city of *Kenosha* v. *Bruno*, 412 U.S. 507 (1973) and *Moore* v. *County of Alameda*, 411 U.S. 693 (1973). The Court reversed the absolute immunity rule of its Monroe holding in 1978 and began the erosion of municipal immunity with its holding in *Monell* v. *City of New York Department of Social Services*, 436 U.S. 658 (1978).

In this Monell case, the Court expressly reserved the question of a qualified immunity for municipalities. It did note that municipalities cannot be held liable on a respondent superior theory and further that it must "reverse the judgment below."

> In so doing, we have no occasion to address, and do not address, what the full contours of municipal liability under section 1983 may be. We have attempted only to sketch so much of the section 1983 cause of action against a local government as is apparent from the history of the 1871 act and our prior cases.—Monell, at 695.

With the Owen decision, however, the Court milks the legislative history of section 1983 again and this time comes up with the decision that municipalities shall be strictly liable in 1983 actions.

Add to this holding the broad doctrine of Thiboutot, another stretching of section 1983's history, and the result is that the Court now allows a local government to be held strictly liable under a section 1983 action based on a violation of any statute.

Justice Powell authored dissenting opinions for the justices in the minority in both the Owen and Thiboutot decisions. The major flaws in each of those holdings are, as Justice Powell sees them, the Court's inconsistent and incorrect interpretation of the history of section 1983 as well as the Court's inconsistent treatment of section 1983 claims. Most important, he feels, these decisions depart from the established law in this area. He notes in his Owen dissent:

> This strict liability approach inexplicably departs from this court's prior decisions under section 1983 and runs counter to the concerns of the 42d Congress when it enacted the statute. The court's ruling also ignores the vast weight of commonlaw precedent as well as the current state of municipal immunity.

Again, in Thiboutot, Justice Powell voices concern:

> Until today this court never had held that section 1983 encompasses all purely statutory claims. Past treatment of the subject has been incidental and far from consistent. . . .

In Owen and Thiboutot the Court felt, and the law now reads, that a broader interpretation of the "and laws" language of section 1983 is mandated by the section's legislative history and the Court's prior treatment of section 1983 claims. Cities should not enjoy any form of immunity from liability, in its opinion, because Congress had not expressly provided for any. The dissenting justices, including the Chief Justice and Justices Powell and Rehnquist—Justice Stewart joined in Justice Powell's dissent in the Owen case—noted that the legislative history does not mandate the Court's rulings in these two cases and that the holdings in Owen and Thiboutot actually fly in the face of the established law and the public policy associated with section 1983.

Though much has been said about these decisions and their departure from prior decisions, I must mention one other important aspect. Justice Powell points out, in his dissent in Owen, that the court's decision in that case is completely out of step with the prevailing situation of the law of municipal immunity in the States. Most States have some form of immunity, the most common being a qualified immunity. Only five States practice the form of blanket immunity introduced by the court in Owen.

In addition, the States and the Supreme Court have allowed most State executive officials some kind of good faith defense in 1983 actions. Now, however, when an official is sued under section 1983, Owen and Thiboutot seem to say that the government of the locality is strictly liable even though the official may have acted in good faith. It does not matter under such as doctrine, whether the official has acted in good faith or bad faith. Either way, the municipality inevitably bears the burden of judgment. Also, though the States have granted municipalities immunity, the Federal Government does not. With such a rule, a Federal forum becomes even more desirable. That age-old spectre that such a decision will cause a race to the courthouse and open floodgates of litigation to overload an already burdened Federal judiciary raises its ugly head again. It cannot be ignored.

CONSEQUENCES

Any time the scope of liability is extended—here it is extended to include State officials and local governments—it is likely to cause an increase in litigation. Justice Powell notes in his Thiboutot dissent that—

> No one can predict the extent to which litigation from today's decision will harass state and local officials; nor can one foresee the number of new filings in our already over-burdened courts. But no one can doubt that these consequences will be substantial.

In addition, Justice Powell illustrates the new areas likely to be affected by the Court's extension of liability. I include the appendix to his opinion at this point because of the importance of understanding the extent to which this holding will intrude into the performance of State and local government officials.

The statutes Justice Powell lists fall into three general categories which he entitles (a) joint regulatory endeavors; (b) resource management; (c) grant programs. The Court's holding will allow cases under section 1983 based on any deprivation by a State official administering such programs.

Note the wide range of programs included in the list:

(A) Joint regulatory endeavors:

1. Federal Insecticide, Fungicide, and Rodenticide Act, 86 Stat. 973 (1972), as amended, 7 U.S.C. 136 et seq.; see, E.G., 7 U.S.C. 136u, 136v.

2. Federal Noxious Weed Act of 1974, 88 Stat. 2148 (1975), 7 U.S.C. 2801–2813; see 7 U.S.C. 2808.

3. Historic Sites, Buildings, and Antiquities Act, 49 U.S.C. 666 (1935), as amended, 16 U.S.C. 461–467; see 16 U.S.C. 462(E).

4. Fish and Wildlife Coordination Act, 48 Stat. 401 (1934), as amended, 16 U.S.C. 661–666c; see 16 U.S.C. 661.

5. Anadromous Fish Conservation Act, 79 Stat. 1125 (1965), as amended, 16 U.S.C. 757a–757d; see 16 U.S.C. 757a(a).

6. Wild Free-Roaming Horses and Burros Act, 85 Stat. 649 (1971), as amended, 16 U.S.C. 1331–1340; see 16 U.S.C. 1336.

7. Marine Mammal Protection Act of 1972, 86 Stat. 1027, as amended, 16 U.S.C. 1361–1407; see 16 U.S.C. 1379.

8. Wagner-Peyser National Employment System Act, 48 Stat. 113 (1935), 29 U.S.C. 49 et seq.; see 29 U.S.C. 49g (Employment of Farm Laborers).

9. Surface Mining Control and Reclamation Act of 1977, 91 Stat. 447, 30 U.S.C. 1201–1328; see 30 U.S.C. 1253.

10. Interstate Commerce Act Amendments of 1935, 49 Stat. 548, as amended, 49 U.S.C. 11502(a)(2) (Enforcement of Highway Transportation Law).

(B) Resource management;

1. Laws involving the administration and management of national parks and scenic areas: E.G., act of May 15, 1965, section 6, 79 Stat. 111, 16 U.S.C. 281e (Nez Perce National Historical Park); act of Sept. 21, 1959, section 3, 73 stat. 591, 16 U.S.C. 410u (Minute Man National Historical Park); act of Oct. 20, 1972, section 4, 86 Stat. 1302; 16 U.S.C. 460bb-3(b) (Muir Woods National Monument).

2. Laws involving the administration of forest lands: e.g., Act of March 1, 1911, section 2, 36 stat. 961, 16 U.S.C. 563; act of Aug. 29, 1935, ch. 808, 49 stat. 938, 16 U.S.C. 567a-567b.

3. Laws involving the Construction and Management of Water Projects: e.g., Water Supply Act of 1958, 301, 72 stat. 319, 43 U.S.C. 390b; Boulder Canyon Project Act, sections 4, 8, 45 stat. 1058, 1062 (1928), as amended, 43 U.S.C. 617c, 617g; Rivers and Harbors Act of 1899, section 9, 30 stat. 1151, 33 U.S.C. 401.

4. National Trails System Act, 82 stat. 919 (1968), as amended, 16 U.S.C. 1241–1249; see 16 U.S.C. 1246(h).

5. Outer Continental Shelf Lands Act Amendment of 1978, section 208, 92 stat. 652, 43 U.S.C. 1345 (oil leasing).

(C) Grant programs:

In addition to the familiar welfare, unemployment, and medical assistance programs established by the Social Security Act, these may include:

1. Food Stamp Act of 1964, 78 Stat. 703, as amended, 7 U.S.C. 2011–1025; see e.g., 7 U.S.C. 2020e–2020(g).

2. Small Business Investment Act of 1958, section 602(d)(1), 72 Stat. 698, as amended, 15 U.S.C. 636(d).

3. Education Amendments of 1978, 92 U.S.C. 2153, as amended, 20 U.S.C. 2701 et seq.; see, e.g., 20 U.S.C. 2734, 2902.

4. Federal-Aid Highway Legislation, e.g., 21 U.S.C. 128, 131.

5. Comprehensive Employment and Training Act Amendments of 1978, 92 Stat. 1909, 29 U.S.C. 801 et seq.; see, e.g., 29 U.S.C. 823, 824.

6. United States Housing Act of 1937, as added, 88 Stat. 653 (1974), as amended, 42 U.S.C. 1437 et seq.; see, e.g., 42 U.S.C. 1437d (c), 1437j.

7. National School Lunch Act, 60 Stat. 230 (1946), as amended, 42 U.S.C. 1751 et seq.; see, e.g., 42 U.S.C. 1758.

8. Public Works and Economic Development Act of 1965, 79 Stat. 552, as amended, 42 U.S.C. 3121 et seq.; see, e.g., 42 U.S.C. 3132, 3151a, 3243.

9. Justice System Improvement Act of 1979, 93 Stat. 1167, 42 U.S.C. 3701–3797; see, e.g., 42 U.S.C. 3742, 3744(c).

10. Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 1109, as amended, 42 U.S.C. 5601 et. seq.; see, e.g., 42 U.S.C. 5633.

11. Energy Conservation and Production Act of 1976, 90 Stat. 1125, as amended, 42 U.S.C. 6801 et seq.; see, e.g., 42 U.S.C. 6805, 6836.

12. Developmentally Disabled Assistance and Bill of Rights Act, 89 Stat. 486 (1975), as amended, 42 U.S.C. 6001 et seq.; see, e.g., sections 6011, 6063.

13. Urban Mass Transportation Act of 1964, 78 Stat. 302, as amended, 49 U.S.C. 1601 et seq.; see, e.g., sections 1602, 1604(g)–(m).

Also of concern is the added burden in time and public funds which inevitably accompanies such litigation. Many cities already face heavy fiscal problems, high taxes and rising inflation in providing necessary community services. Now the Court will add to these problems the costs of defending against section 1983 actions based purely upon some statutory claim and paying judgments as a result of the Owen strict liability doctrine. These judgments become even more onerous when the Court decides that attorney's fees may also be awarded under section 1988, the Civil Rights Attorney's Fees Awards Act of 1976, as it did in Thiboutot.

Such an unjust rule does not allow municipalities to act with the degree of latitude needed to meet their obligations to the public. Writing of immunity for government officials, Justice Harlan listed some important reasons for granting immunity which I feel apply just as strongly to municipalities as well.

> It has been thought important, he wrote: that officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties—suits which would consume time and energies which would otherwise be devoted to government service . . . . *Barr* v. *Matteo*, 360 U.S. 564.

The municipality's actions are essentially those of its chief officials. Its immunity should be at least as extensive as that of those who act in its behalf and who enforce and make its laws. The same concerns mentioned above by Justice Harlan apply to both the municipalities and the officials. The importance of freedom to pursue official duties without threat of suit, the savings in time, energies, and dollars which would allow better service to the public at large. Judge Learned Hand once wrote:

> To submit all officials, the innocent as well as the guilty to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again, the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be a means of punishing public officers who have been truant to their duties: but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. *Gregoire* v. *Biddle*, 177 F. 2d 579, 581. Quoted in *Barr* v. *Matteo*.

In the case of municipalities, charged by law with protecting the welfare of the public and providing necessary services, it is certainly unfair to expose to suit such as have been honestly mistaken. This is precisely what the Court has done in the Owen case, by holding the city of Independence strictly liable for an honest mistake, a good faith reliance on the validity of a law which was not made unconstitutional until after the incident giving rise to Mr. Owen's suit had taken place.

PROPOSED AMENDMENTS

The erosion of municipal immunity begun with the Court's Monell decision and taken to its maximum extent in Owen is an indication of the need for action on the part of Congress. The court had declared in Monell that it had come as far as possible from the "apparent" history of the act in declaring that cities were not entitled to an absolute immunity from liability under section 1983. The Court left undecided the question of qualified immunity. The Court has blamed the difficulty of construing section 1983, in part, on the "scanty" legislative history of the act of 1871, section 1983's predecessor.

The Court has also been careful to point out in many of its section 1983 cases, including Owen and Thiboutot, that Congress could, if it chose to do so, modify the statute or limit its application to certain types of statutes. The Court has evidently grown tired of waiting for Congress to act on the matter, and has gone ahead and forged its own limits—or, rather, abolished any limits—of liability under section 1983.

The intrusion of the judiciary into an area best reserved for the legislative branch of Government is unfortunate. Nor is it wise for Congress to leave the language of section 1983 in such a state of ambiguity as to result in further confusion like that involved in the Owen and Thiboutot cases. The pitfalls associated with finding "legislative intent" in the history of an act, or in the "plain language" of an act, are widely recognized. That the Court had nothing better to work with in the case of section 1983 is not entirely its fault. But one cannot saddle Congress with the responsibility for the Court's "evolving" interpretation of section 1983's "scanty" history. It is the Court that has taken silence on a phrase to mean one thing at one point in time and another thing years later—as it did in Monroe (1961) and Monell (1978).

The fact that Congress had not expressly mentioned municipal liability under section 1983, or that Congress never defined them as "persons" under that section, gave the Court reason enough to hold in Monroe that cities are not persons for purposes of the act. That interpretation lasted until the Court read congressional silence again in Monell and held that Congress had not set out the exact limitations of liability or immunity for municipalities under section 1983 and, therefor, Congress did not intend for municipalities to be absolutely immune from liability.

The Supreme Court has been far from unimaginative in its interpretation of legislative history touching section 1983. It has managed to pin a couple of very different rules of law on the same legislative history of section 1983 in a period of less than 20 years.

It is time that Congress step in and correct the Court's statutory interpretation. The Thiboutot decision does not involve a departure from the treatment of constitutional claims. My amendments would not affect constitutional claims. Instead, the first of the proposed amendments is limited to the decision of the Court in Thiboutot. It makes literal the intended meaning of the language of section 1983 by adding the missing modifiers which permitted Justice Brennan and the Court to make the holding they did. The section would then provide that section 1983 actions be based on deprivations of those rights secured by the Constitution and by those laws which provide for equal rights. The text of the section would be changed by adding the words "and by any law providing for equal rights" in the place of the ambiguous and broad "and laws" language to read:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and by any law providing for equal rights of citizens or of all persons within the jurisdiction of the United States, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Civil Rights Act of 1871 had been enacted by the 42d Congress to provide a Federal remedy for persons seeking redress for violations of 14th amendment rights and related rights secured by statute. The Court has now stretched the statute beyond those bounds to cover any statutory claim, not just those claims relating to equal rights or 14th amendment rights, because Congress has included no modifiers in the phrase "and laws." That problem is solved with the adoption of this amendment.

My amendment will give effect to Justice Powell's suggested solution to the problem. Anticipating the statutory-based claim of the type contested in Thiboutot, Justice Powell suggested the problem would be "avoided if section 1983 is read, as it should be, as encompassing only rights secured by the Constitution and laws providing for equal rights." Chapman, supra at 645, 646. This language included in the act by the proposed amendment will give a more clear and definitive indication of the scope of section 1983 claims.

In its Owen decision, the Court provides for municipal liability because Congress had not provided for municipal immunity. This decision comes now even though the Court had decided almost 20 years ago that Congress had intended, by its silence on the question of immunities under section 1983, not to provide liability to municipalities. The second amendment which I propose today will remedy this confusion by providing that municipalities and other political subdivisions of the States shall have a good faith defense in 1983 actions. This new section on liability of political subdivisions will read:

> No civil action may be brought against a political subdivision of a state under this section if the political subdivision acted in good faith with a reasonable belief that the actions of the political subdivision were not in violation of any rights, privileges, or immunities secured by the Constitution or by laws providing for equal rights of citizens or persons.

Thus section 1983 will continue to allow recovery when there has been an intentional or bad faith violation by the municipality, but will provide protection for the municipality that has acted in good faith.

CONCLUSION

As the city of Independence learned, attempting to second-guess the future interpretation of constitutional law by the Supreme Court is difficult if not impossible. The law has always provided that where the acts of an individual cause injury, such individual should be responsible. It is difficult, however, to find a logical reason to hold a city responsible for violating a right which first came into existence after the city had acted.

It is in the best interests of the States and the public as a whole to provide meaningful guidelines in the area of municipal and official liability. Cities and other political subdivisions must be able to enact ordinances and laws without the constant threat of a subsequent change in the law which could subject them to costly damage suits and judicial intrusion into their decisionmaking. State and local officials should be able to carry out programs and policies, even in a Federal-State cooperative situation, without the fear that a section 1983 action based on something other than a deprivation of equal rights may be brought against them.

This threat of judicial intrusion into the policymaking, practices, and decisionmaking of governments defeats the purpose and thwarts the theory of the doctrine of separation of powers.

It is important, in order to maintain balance in our Government and stability in the law, that some officials and local governments be allowed to exercise their discretionary duties with a degree of protection from unwarranted judicial review and costly and time-consuming litigation. Causes of action are provided for by many statutes, when necessary. Such remedies for deprivations of specific statutory rights should be created by Congress, not the Court. As Justice Powell noted in Owen:

> The allocation of public resources and the operational policies of the government itself are activities that lie peculiarly within the competence of the executive and legislative bodies. When charting those policies, a local official should not have to gauge his employer's possible liability under section 1983 if he incorrectly—though reasonably and in good faith—forecasts the course of constitutional law. Excessive judicial intrusion into such decisions can only distort municipal decision-making and discredit the courts. Qualified immunity would provide presumptive protection for discretionary acts, while still leaving the municipality liable for bad faith or unreasonable constitutional deprivations.

I therefore urge immediate action to avoid the onerous consequences of the Court's decisions in Maine against Thiboutot and Owen against city of Independence by the adoption of these two amendments. It is the responsibility of this body to prevent the unnecessary and costly litigation involving local governmental officials and entities that will follow in the wake of these decisions and reach every member of the public. Adoption of the proposed amendments is the proper way to solve such controversy. Justice Rehnquist foresaw such a need in his dissenting opinion in Monell against city of New York Department of Social Services:

> Only Congress, which has the benefit of the advice of every segment of this diverse nation, is equipped to consider the results of such a drastic change in the law. It seems all but inevitable that it will find it necessary to do so after today's decision.

To keep this problem on the back burner may result in another 17-year wait for the Court to decide to correct its own mistakes of statutory construction. It is our prerogative to make such corrections in statutory law whenever we see fit. Now is the time, if the consequences are to be effectively avoided.●

ADDITIONAL COSPONSORS

S. 1411

At the request of Mr. CHILES, the Senator from Tennessee (Mr. SASSER) was added as a cosponsor of S. 1411, a bill to improve the economy and efficiency of the Government and the private sector by improving Federal information management, and for other purposes.

S. 1530

At the request of Mr. RIBICOFF, the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor of S. 1530, a bill to change the method of medicare reimbursement for health maintenance organizations.

S. 1942

At the request of Mr. MCGOVERN, the Senator from North Carolina (Mr. MORGAN), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 1942, a bill to provide for a resource conservation and development program in the Department of Agriculture, and for other purposes.

S. 2639

At the request of Mr. MCGOVERN, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 2639, a bill to mitigate the adverse effects of the suspension of trade with the Union of Soviet Socialist Republics on U.S. agricultural producers, and for other purposes.

S. 2906

At the request of Mr. DANFORTH, the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Pennsylvania (Mr. HEINZ) were added as cosponsors of S. 2906, a bill to amend the Internal Revenue Code of 1954 to provide a credit against tax for certain research and experimental expenditures, and for other purposes.

S. 2979

At the request of Mr. METZENBAUM, the Senator from New Hampshire (Mr. DURKIN), and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

SENATE JOINT RESOLUTION 202

At the request of Mr. DOMENICI, the Senator from Arizona (Mr. DECONCINI), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of Senate Joint Resolution 202, a joint resolution to authorize and request the President to issue a proclamation desig-

nating October 12 through October 19, 1980, as "Italian-American Heritage Week."

SENATE RESOLUTION 482

At the request of Mr. EXON, the Senator from Kansas (Mr. DOLE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Alaska (Mr. STEVENS), the Senator from Montana (Mr. MELCHER), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. PRESSLER), the Senator from Alabama (Mr. HEFLIN), the Senator from Nevada (Mr. CANNON), the Senator from Montana (Mr. BAUCUS), the Senator from New Mexico (Mr. SCHMITT), the Senator from Texas (Mr. TOWER), the Senator from North Dakota (Mr. YOUNG), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Oregon (Mr. HATFIELD), the Senator from Arkansas (Mr. PRYOR), the Senator from Arkansas (Mr. BUMPERS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Carolina (Mr. THURMOND), the Senator from New Jersey (Mr. BRADLEY), the Senator from California (Mr. CRANSTON), the Senator from Utah (Mr. GARN), the Senator from Wyoming (Mr. WALLOP), the Senator from North Carolina (Mr. HELMS), the Senator from Maine (Mr. COHEN), and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of Senate Resolution 482, a resolution to designate the third week of September of each year as "American Buffalo Week."

SENATE CONCURRENT RESOLUTION 124—SUBMISSION OF A CONCURRENT RESOLUTION DISAPPROVING THE SALE OF URANIUM TO INDIA

Mr. HARRY F. BYRD, JR. (for himself, Mr. GLENN, Mr. RIBICOFF, Mr. CRANSTON, Mr. BOSCHWITZ, Mr. COHEN, Mr. CANNON, Mr. DOLE, Mr. GOLDWATER, Mr. HEFLIN, Mr. LEAHY, Mr. PROXMIRE, Mr. THURMOND, Mr. LAXALT, and Mr. HATFIELD) submitted the following concurrent resolution, which was placed on the calendar, pursuant to Public Law 95-[illegible]12:

S. CON. RES. 124

Resolved by the Senate (the House of Representatives concurring), That the Congress does not favor the proposed export of low-enriched uranium to India pursuant to export license applications XSNM-1379 and XSNM-1569 which would be authorized by the Executive Order transmitted to the Congress by the President on June 19, 1980.

Mr. HARRY F. BYRD, JR. Mr. President, I am today submitting a concurrent resolution, relating to the proposed sale of nuclear fuel to India.

I take this action on behalf of myself, Mr. GLENN, Mr. RIBICOFF, Mr. CRANSTON, Mr. BOSCHWITZ, Mr. COHEN, Mr. CANNON, Mr. DOLE, Mr. GOLDWATER, Mr. HEFLIN, Mr. LEAHY, Mr. PROXMIRE, Mr. THURMOND, Mr. LAXALT, and Mr. HATFIELD.

This resolution is being submitted for technical parliamentary reasons.

SENATE RESOLUTION 518—ORIGINAL RESOLUTION REPORTED DURING THE RECESS TO WAIVE THE CONGRESSIONAL BUDGET ACT

Under authority of the order of September 11, 1980, Mr. CHURCH, from the Committee on Foreign Relations, on September 12, 1980, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 518

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 333, a bill to strengthen federal capabilities to combat acts of international terrorism and to enlist the cooperation of all other nations in countering acts of international terrorism. Such a waiver is necessary to allow the authorization of $200,000 in additional budget authority for fiscal year 1981 for aviation security assistance, assessments of security measures maintained in foreign airports, and Department of State reporting requirements.

Compliance with section 402(a) of the Congressional Budget Act of 1974 was not possible by the May 15, 1980 deadline because the additional cost of such legislation did not come to the attention of the Committee with primary jurisdiction until after the May 15, 1980 deadline.

The effect of defeating consideration of this authorization will be a disruption in the aviation security assistance and assessment programs as called for by S. 333. These programs are considered vital in upgrading foreign airport security to help prevent acts of hijacking and other forms of airport terrorism.

AMENDMENTS SUBMITTED FOR PRINTING

BANK HOLDING COMPANY ACT AMENDMENTS OF 1980—H.R. 2255

AMENDMENT NO. 2323

(Ordered to be printed and to lie on the table.)

Mrs. KASSEBAUM submitted an amendment intended to be proposed by her to H.R. 2255, an act to amend the Bank Holding Company Act of 1956 to limit the property and casualty and life insurance activities of bank holding companies and their subsidiaries.

● Mrs. KASSEBAUM. Mr. President, I am today submitting an amendment to H.R. 2255, the 1980 amendments to the Bank Holding Company Act of 1956. My amendment would strike section 402 from the bill as reported by the Senate Banking Committee. That section would amend current law to provide 100 percent insurance of public funds in federally insured lending institutions.

Public deposits are now secured by Federal and State insurance and, in 34 States, by the pledging of State and local financing bonds. Full Federal insurance would put an end to pledging practices which provided a reliable market for municipal bonds. The result of such action is a predictable increase in the cost of public borrowing for small towns and cities.

The text of section 402 was derived by incorporating S. 2800 into H.R. 2255. S. 2800 was introduced on June 9, 1980. No public hearings were held on the proposal, and there was no public announcement of the committee's intention to consider S. 2800 for inclusion during markup of H.R. 2255. The result was that there was little or no deliberation or opportunity for consideration of the merits of such action. In 1974 an identical proposal was rejected by the committee on the basis of adverse views expressed by affected Federal agencies, depository institutions, securities and municipal finance industries, and State and local governments. In August and July of this year, the FDIC, the Federal Reserve Board and the Comptroller of the Currency expressed opposition to provision of 100 percent Federal insurance of public deposits.

Mr. President, I ask unanimous consent that comments from these agencies and from the National Association of Credit Unions appear at this point in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, D.C., July 22, 1980.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Dirksen Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This will respond to your request for our comments on S. 2800 which would provide for full insurance for deposits of public funds in insured banks, thrift institutions and credit unions. For the reasons that follow we do not favor enactment of S. 2800.

A major shortcoming of S. 2800 is that there is no apparent or demonstrated need to provide full insurance for deposits of public funds. The current amount of deposit insurance coverage plus pledging requirements under various State laws provide a satisfactory level of protection for the public depositor. Furthermore, our experience with bank failures fortifies our conclusion that there is little evidence of any compelling need in support of 100 percent insurance coverage for public deposits. For example, in two of the largest bank failures, the evidence is that, largely because of pledging requirements, there was no public deposit runoff even after it was general public knowledge that the banks were experiencing severe difficulties.

The increase in deposit insurance coverage contemplated by S. 2800 would also increase the exposure risk of the insurance fund and probably would increase the insurance assessment costs of banks. We estimate that, if S. 2800 were enacted into law, the exposure risk to the deposit insurance fund for public funds would increase from approximately $19 billion to in excess of $65 billion. Our estimates also indicate the assessment costs to banks would increase in order to maintain the 1.10 percent ratio of deposit insurance fund to insured deposits mandated by the Depository Institutions Deregulation and Monetary Control Act of 1980. These consequences argue against full insurance coverage for public funds, especially in the absence of an apparent or demonstrated need for such additional coverage.

Particularly in States with high pledging requirements, full deposit insurance coverage for public funds will to some extent impact on the municipal bond market. Arguably, the impact could adversely affect the stability of that market, particularly in small cities and towns which generally do not have ready access to wide markets. Furthermore, as the Advisory Commission on Intergovernmental Affairs concluded in its Study, public borrowing costs for States and municipalities could increase, especially those with high pledging requirements.

Some argue that full insurance coverage for public fund deposits would benefit housing by attracting additional public funds for thrift institutions, thereby increasing the size of their mortgage lending base. Public deposits are relatively volatile because they tend to fluctuate according to tax receipt and disbursement schedules. From the standpoint of prudence, they are, therefore, generally regarded as ill-suited for long-term lending. Admittedly to the extent that full insurance coverage for public fund deposits causes shifts of public funds from commercial banks to thrift institutions, there may be some increase in the flow of funds devoted to housing finance. On balance, however, any benefit to the housing market resulting from the flow of such funds probably would be marginal at best.

We are especially concerned that passage of S. 2800 will open the door to the increased likelihood of 100 percent deposit insurance coverage for all deposits. As the insurer of over 14,000 banks, a major supervisory concern of the FDIC is that full insurance coverage for deposits would remove any incentive to the imposition of market discipline and may prompt banks, especially smaller banks to compete aggressively and beyond the bounds of prudence for deposits. Presumably with the advent of full coverage proposed in S. 2800, pledging requirements for public deposits will be removed. Among the virtues of pledging requirements are that they tend to impose a market-determined limit on the amount of public funds a bank is willing to acquire and to diminish the potential adverse effects of sizable public deposit withdrawals. Full insurance coverage for deposits of public funds coupled with the removal of these market constraining factors could lead individual institutions to acquire an inordinate amount of public funds at excessive rates. The Corporation currently has authority to limit the aggregate amount of funds deposited in a bank by individual public units. Nevertheless, we believe that the combination of pledging requirements and profitability considerations implicit in the current structure is a superior and less costly regulatory device than the imposition of artificial limits by the FDIC.

In the event S. 2800 is enacted into law, we strongly recommend that banks be included in the legislation. We also strongly recommend if S. 2800 is passed that full coverage of public deposits should be accompanied by a provision which would require the FDIC, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration to prescribe uniform restrictions with respect to the aggregate amount of public funds that could be deposited in a bank, savings and loan association or credit union. We appreciate the opportunity given us to comment in this legislation.

Sincerely,

QUINTON THOMPSON,
Director.

FEDERAL RESERVE SYSTEM,
Washington, D.C., August 20, 1980.

Hon. JOHN TOWER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TOWER: Thank you for your letter of August 12 requesting the views of the Board of Governors on S. 2800, a bill to provide for full insurance for deposits of public funds in insured banks, thrift institutions, and credit unions, which was reported as part of H.R. 2255 on July 31, 1980, by the Senate Committee on Banking, Housing and Urban Affairs.

Federal deposit insurance was established nearly 50 years ago for the purpose of protecting the small saver and to maintain the confidence of individuals in financial institutions. A guiding principle in establishing this protection was that the Federal government should do no more than is necessary so as to avoid undue Federal intervention in our financial markets. The Board has opposed in the past and continues to oppose full Federal deposit insurance of public funds primarily because, in the view of a majority of the Board, there is a potential of increased involvement of government in banking that could result from full insurance and because of the potential adverse effect of the proposal on the market for government obligations.

A majority of the Board believes that fully insuring public deposits has potential danger for weakening the banking system. Granting such coverage could lead at a later time to extension of full insurance coverage to other groups of depositors on grounds of equity. If there are compelling reasons for providing full Federal deposit insurance to governmental entities, then weaker or more vulnerable depositors would argue with equal or greater force that their deposits should be similarly covered. The pressure to widen this coverage could be irresistible. That course of action could weaken incentives for good management in our financial institutions. As these institutions are weakened, the case for more government surveillance and direction becomes stronger. The Board believes that any such extension of deposit insurance consequently could lead to an increase in government involvement in banking and substantially reduce the efficiency of banking markets in allocating credit. In this regard, the discipline imposed on financial institutions by their large customers, including governmental depositors, is an important factor in maintaining the soundness of the financial system.

We note that governmental bodies typically protect their deposits by requiring pledges of governmental securities, and all have the option to do so. As of year-end 1979, domestic offices of insured commercial banks held total governmental (Federal, State, and local) deposits of $86 billion. A substantial portion of these funds are secured by pledges of U.S. government and agency securities. Full insurance of deposits of public entities would free a correspondingly large amount of pledged government securities. As a result, demand for government securities would weaken and borrowing costs of governmental units, both State and Federal, would rise.

We are not aware of any commensurate benefits to be derived vis-a-vis these costs of fully insuring these deposits. Consequently, the Board is of the opinion that, on balance, the public interest would not be well served by affording full Federal deposit insurance to governmental funds.

Sincerely,

PAUL A. VOLCKER,
Chairman.

ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., August 21, 1980.

Hon. JOHN TOWER,
U.S. Senate,
Washington, D.C.

DEAR JOHN: Your letter of August 12, 1980, requests our comments on proposed S. 2800 which would provide full federal insurance for deposits of public funds in time and savings accounts at insured institutions. We have recently responded to a request from Chairman Proxmire for our comments on that proposal. As stated in our letter to Chairman Proxmire, we are opposed to the enactment of such legislation. However, in light of the range of opinion which exists, we respectfully recommend that Congressional hearings be held regarding the merits of this legislation before proceeding any further. A copy of our letter to Senator Proxmire is enclosed for your reference.

Sincerely,

JOHN C. HEIMANN,
Comptroller of the Currency.

ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., August 20, 1980.

Chairman WILLIAM PROXMIRE,
Committee on Banking, Housing and Urban Affairs, U.S. Senate, Dirksen Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for this Office's comments on S. 2800. This proposed legislation has been recently incorporated by the Senate Committee on Banking, Housing and Urban Affairs as a provision of H.R. 2255 which was ordered reported out favorably on July 31, 1980. The proposal would provide full federal insurance for deposits of public funds in time and savings accounts at insured institutions. In the absence of demonstrated significant benefits to be derived from the extended insurance for public funds, we oppose the enactment of this legislation.

We are concerned that adoption of this measure may have adverse consequences which would outweigh any benefits it may have. One adverse consequence concerns increasing the instability of the asset/liability mix of depository institutions. Public deposits, which comprise operating funds and temporary cash surpluses, are generally subject to fluctuations in tax receipts and disbursements. Moreover, state and local government treasurers are increasingly following the practice of competitive bidding in the placement of funds under this control, which has the effect of increasing the volatility of these funds at the depository institutions involved. This suggests that volatile public funds are a relatively poor source of deposits to support such long-term assets as mortgages especially at smaller banks and thrift institutions. It suggests also that, to the extent deposit insurance replaces the pledge of securities to secure public deposits, certain banks and thrift institutions may replace marketable government and municipal securities with relatively illiquid loans supported by highly volatile public funds.

Full deposit insurance protection of public funds also might have significant adverse consequences on the market for U.S. Treasury securities. The market for these securities has historically been supported by the pledging requirements of public funds, and full deposit insurance protection might well substitute for such pledging requirements, depending upon provisions of state and local law. In addition, municipal finance officers have expressed concern about the possible adverse consequences of full deposit insurance on the market for narrowly traded local

government obligations and longer maturity municipal securities which have also received support historically from pledging requirements.

We are also concerned that the proposed bill would treat public and private deposits differently. If public funds were fully insured, an argument might then be made that private funds receive the same treatment. However, full insurance would result in the loss of market discipline on depository institutions' risk taking. By eliminating any risk exposure to large depositors, full insurance would eliminate the need for larger depositors to evaluate the condition of the institution into which their funds were deposited. In addition, full insurance of deposits could increase the exposure of the Federal deposit insurance funds for banks and thrifts and could result in an increased insurance assessment cost to the institutions.

In light of the range of opinion which exists, we respectfully recommend that you consider holding hearings about the merits of this proposal before proceeding any further.

Sincerely,

JOHN G. HEIMANN,
Comptroller of the Currency.

NATIONAL CREDIT UNION ADMINISTRATION,
Washington, D.C., August 19, 1980.

Hon. JOHN TOWER,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR TOWER: This is in response to your letter of August 12, 1980 requesting my views on S. 2800, a bill to provide for full insurance for deposits of public funds in insured banks, thrift institutions, and credit unions.

At the present time, I have reservations about the increase in insurance of public unit accounts beyond the present $100,000. This agency would require time to examine the potential effects of S. 2800; first, as it might impact the National Credit Union Share Insurance Fund and second, as it might affect the traditional operations of Federally insured credit unions.

I hope these comments are of assistance.

Sincerely,

LAWRENCE CONNELL,
Chairman.●

MILITARY CONSTRUCTION AUTHORIZATIONS—S. 3059

AMENDMENT NO. 2324

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN submitted an amendment intended to be proposed by him to S. 3059, a bill to authorize certain construction at military installations, and for other purposes.

MILITARY CONSTRUCTION AUTHORIZATIONS—H.R. 7592

AMENDMENT NO. 2325

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN submitted an amendment intended to be proposed by him to H.R. 7592, an act making appropriations for military construction for the Department of Defense, and for other purposes.

FAIR HOUSING AMENDMENTS OF 1980—S. 506

AMENDMENTS NOS. 2326 THROUGH 2329

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted four amendments intended to be proposed by him to S. 506, a bill to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes.

FAIR HOUSING AMENDMENTS OF 1980—H.R. 5200

AMENDMENTS NOS. 2330 THROUGH 2334

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted five amendments intended to be proposed by him to H.R. 5200, an act to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes.

HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS, 1981—H.R. 7631

AMENDMENT NO. 2335

(Ordered to be printed and to lie on the table.)

Mr. TSONGAS (for himself, Mr. WILLIAMS, Mr. SASSER, Mr. JAVITS, Mr. RIEGLE, Mr. LEVIN, Mr. SARBANES, Mr. CRANSTON, Mr. STEWART, and Mr. MOYNIHAN) submitted an amendment intended to be proposed by them, jointly, to H.R. 7631, an act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

(The remarks of Mr. TSONGAS when he submitted the amendment appear elsewhere in today's proceedings.)

NOTICES OF HEARINGS

SUBCOMMITTEE ON RURAL DEVELOPMENT

Mr. LEAHY. Mr. President, on September 18, at 1 p.m., in room 357 of the Russell Senate Office Building, the Rural Development Subcommittee of the Committee on Agriculture, Nutrition, and Forestry will hold an oversight hearing on undercounting of nonmetropolitan populations in the 1980 census. The subcommittee will hear testimony from Vincent P. Barabba, Director of the Bureau of the Census.

Mr. President, the allocation of over $50 billion in annual Federal aid is contingent upon the decennial census of the Nation's population. The final population count affects where Federal funds go for a wide variety of Federal programs including those to improve housing, health, transportation, and employment opportunities. In recent weeks public attention has focused on efforts by several major urban areas to have their estimated census undercounts included in their area's total population figures for use in the funding distribution formulas of Federal programs. Several large cities have brought their arguments to the courts, and a policy decision on this issue is expected from the Bureau of the Census within the next 2 months.

The Rural Development Subcommittee is not holding a hearing on undercounting in nonmetropolitan areas in the 1980 census to force a decision on whether undercount estimates should be included in Federal funding formulas. Our concern is more parochial.

Mr. President, the hearing is being called to find out what steps are being taken by the Bureau of the Census to insure that an accurate assessment of rural populations is in the 1980 census, and to guarantee that any policy decisions regarding the inclusion of undercount estimates in the final census tally apply equitably to all cities and towns, regardless of their size or location.

Mr. President, our major urban areas have the necessary resources to bring their arguments on the undercount issue to the attention of the Federal Government. The 38,000 cities in this country under 50,000 population are less likely to have this capacity, especially those 27,130 towns under 2,500 population. The Rural Development Subcommittee will bring the issue of rural equity to the attention of the Bureau of the Census through the hearing on September 18. We will also review steps the Bureau of the Census has been directed to take to improve data collection and information accessibility in rural areas and small communities.

Mr. President, persons interested in the hearing should contact Ken Pierce of my staff at 224-4242.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 16, 1980 to hold an executive session in order to hear Secretary of State Edmund Muskie and Secretary of Defense Harold Brown on PD-59, the recently signed directive on nuclear war strategy.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENVIRONMENT, SOIL CONSERVATION, AND FORESTRY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the environment, Soil Conservation, and Forestry Subcommittee of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Tuesday, September 16, 1980, to hold an overnight hearing on the Resources Planning Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT INVESTIGATIONS SUBCOMMITTEE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Permnent Investigations Subcommittee of the Committee on Governmental Affairs be authorized to meet during the sessions of the Senate today, Tuesday, September 16, and Wednesday, September 17, 1980, to hold executive sessions for the purpose of hearing testimony in connection with the oversight inquiry into the Labor Department's investigation of the Teamsters Union central States pension fund.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

CONSERVING OIL

● Mr. McGOVERN. Mr. President, a consensus has been mounting among energy experts that the most important new source of energy for the 1980's will be conservation. Synthetic fuels and, even more promising, solar energy, will be available to the Nation in the 1990s; conservation is available now. With the Nation heading for an oil import bill of perhaps $80 billion this year, it has become essential to stem the flow of funds going out of the country to pay for imported oil, funds that, if kept at home, could be used to create jobs, fund energy research for the future, and otherwise help revitalize our economy.

In basic economic terms it is the supply side of the oil equation that is largely beyond our control. We can, however, control demand through our own decisions and policies, with results that cannot fail to be beneficial to the Nation.

There appeared in the Washington Post on August 4 a thoughtful letter from Mr. Maurice Apstein outlining briefly the varied benefits—political and military as well as economic—to be derived from an energy conservation effort designed to reduce our dependency on the oil resources of the Persian Gulf. Mr. President, I ask that Mr. Apstein's letter be printed in the RECORD.

The letter follows:

CUTTING BACK ON MIDEAST OIL

A recent government report indicates that conservation can save as much as 30 percent of our imported oil. To put this into proper perspective, we should remember that 30 percent is almost exactly equal to the amount of oil that we import from the Persian Gulf. Then we have to consider the magnitude of effort we have expended and are still expending to protect our "interests" in that area. To put it bluntly, wouldn't it make more sense to institute conservation measures at home that would eliminate entirely the need for Persian Gulf oil and at the same time reduce our military budget and the need for some of our military commitments thousands of miles from home? This would keep billion of oil dollars at home, help the balance of payments deficit, create millions of domestic jobs and help revitalize our own economy. To put it even more bluntly, doesn't it make more sense to redirect our technology toward conservation and a little temporary inconvenience if by that course of action we can avoid having to send our youth to the Middle East to protect a source of fuel that we can learn to do without in the first place?

Answers to these questions seem so obvious that one wonders why it is even necessary to ask them. Perhaps the reason is that the issues have not been clearly enough enunciated so that the public realizes it has a choice. Now that an official government report indicates that a choice is there and that it is within our own control to decide in which way our resources are to be expended, let us hope that public opinion will make itself known in favor of conservation, self-restraint and a peaceful solution to the Middle East oil problem.●

DEATH OF WILLIAM LLOYD VINSON

● Mr. HATFIELD. Mr. President, the State of Oregon and the organized labor movement lost a true friend on August 24 of this year, when William Lloyd Vinson passed away in Salem, Oreg. Throughout the course of his career, W. Lloyd Vinson provided tremendous support and leadership for organized labor, particularly on the west coast.

Born in Grand View, Idaho, Lloyd Vinson grew up in the State of Washington. When I first had the honor of meeting Lloyd Vinson in 1959, he was the business manager for the Portland, Oreg., local of the International Brotherhood of Electrical Workers (IBEW). In my capacity as Governor of Oregon, I was in a unique position to observe his work and the influence of his personality on the people and situations with which he had contact.

He was a reconciler and an individual who enhanced the quality of life for those around him. From the Portland local, Lloyd Vinson was promoted to west coast vice president of the IBEW in 1965, operating out of California. He retained this post until his retirement in 1979.

During the course of his career, Mr. Vinson built up a distinguished record of leadership in the labor union movement. Under his guidance, the IBEW became a leader in the organized labor movement on the west coast.

In addition to this commendable record on behalf of working men and women, W. Lloyd Vinson was an uncompromising Christian. Along with my colleagues, I wish to extend my greatest sympathy to Verna Vinson, his wife, as well as the surviving Vinson children and grandchildren.●

DROUGHT CAUSES DISASTER SITUATION IN ALABAMA

● Mr. HEFLIN. Mr. President, a few days ago my distinguished colleague from Arkansas, Senator BUMPERS, informed the Senate of the severe economic crisis facing his State as a result of the drought. Senator BUMPERS stated that his State of Arkansas is experiencing the most dramatic crisis the State has ever faced.

Today I wish to advise the Senate that my State of Alabama is faced with a similar crisis. Mr. President, I want to put this body on notice with regard to assistance that will be needed to help my State's farmers through this time of crisis.

Dr. Louie Chapman, chief crop specialist for the Alabama Extension Service in Auburn, said 1980 could be the worst drought year on record for soybean, cotton, corn, and peanut farmers.

Last year those crops sold for a combined total of nearly $500 million. But Dr. Chapman said field inspections show corn, peanuts, and cotton, could be off as much as 50 percent in some areas, and soybeans, which accounted for $340 million in sales last year, are a question mark at this time.

Dr. Chapman said this probably will go down as one of the worst drought disasters we have had in Alabama.

Projections based on crop conditions as of September 1, compiled by the Alabama Office of the U.S. Agriculture Department Crop Reporting Board, indicate soybean production was down 25 percent from last year, cotton and peanuts 26 percent, and corn 55 percent.

This loss from the drought comes on the heels of the hurricane damage to pecan orchards last September in Baldwin County, Ala. The State's pecan farmers suffered about $8 million in losses and knocked the State out of its ranking as the Nation's second largest pecan producer. It is estimated that it will be 15 years or more before the trees return to full production.

About 50 percent of Baldwin County's pecan trees were destroyed. The amount of pecans produced in my State dropped from 32 million pounds in 1977 to 4 million pounds in 1979. State income from pecan sales dropped from $16 million in 1977 to $2 million last year.

The State's corn crop which brought in $37 million last year was hardest hit by the drought. Total crop production is expected to decrease by 55 percent.

Projections for cotton crops are not much better.

Total projected losses are: Soybeans $85 million; cotton $28.6 million; peanuts $31.4 million; and corn $20.5 million.

Just as Senator BUMPERS stated before me, I call these severe crop losses to the attention of my Senate colleagues to put them on notice that this is a natural disaster just as certain as were the eruptions of Mount St. Helens for which we have already appropriated almost $1 billion.

Without question, Congress must deal with this problem because it is a problem that affects not only my State but many others throughout the Southeastern part of the Nation. It must be dealt with in a timely fashion, so that disaster funds can be made available before planting time next year.●

HELMS ASSURES FARMERS FUEL PRIORITY

● Mr. LUGAR. Mr. President, much of the important work done in the Senate seldom makes headlines. Yet, it is this regular day-by-day work—work that is hard but not glamorous—that makes possible the implementation of sound ideas and concepts into law.

As an example of this, I bring to the attention of my colleagues the efforts of the distinguished senior Senator from North Carolina, and ranking Republican on the Senate Committee on Agriculture, Nutrition, and Forestry, (Mr. HELMS) who devoted countless hours to a very important part of the standby gasoline ration plan concerning agriculture. The plan now sits on the shelf, ready to be used in the event of a severe gasoline shortage. And thanks to the ef-

forts of Senator HELMS, if this plan is ever used, the farmers and ranchers of this Nation will be assured adequate supplies of gasoline to produce the food and life everyone enjoys today.

Neither the Senator from North Carolina nor the Senator from Indiana supported the adoption of a standby rationing plan. But even though Senator HELMS was in the minority on that issue, the Senator from North Carolina worked to make sure that our Nation's gasoline rationing plan, if and when implemented, would treat the agriculture sector with priority as it should be. For his leadership in the development of that plan, especially as it concerns adequate supplies of gasoline for agriculture production and distribution, the Senator from North Carolina deserves our gratitude and praise.

In March 1979, acting under a mandate of the Energy Policy and Conservation Act, President Carter submitted to Congress a proposed gasoline rationing plan. As the ranking Republican on the Senate Committee on Agriculture, Nutrition, and Forestry, Senator HELMS studied the plan with a careful eye concerning its treatment of our vital agriculture sector. Because of apparent shortcomings in the plan, Senator HELMS—along with others, such as myself—requested hearings by the Agriculture Committee to examine the plan's provisions for adequate supplies of gasoline for agricultural production and use by rural residents.

At the hearing, it was evident that the needs of our sensitive and complex food chain had not been considered. While the plan provided for some special fuel rights for off-highway vehicles used in farming, it fell woefully short of assuring that enough gasoline would be allocated throughout the food chain—from the farm gate to the retail grocery store. The Senator from North Carolina succinctly described its fatal flaws:

Clearly, there is no agriculture priority in this plan, despite Administration claims to the contrary. There is only a limited special allotment for farm tractors. Apparently, the bureaucrats at the Department of Energy think food magically appears on the supermarket shelves as the exclusive result of farmers driving around their fields on tractors. That is the only agricultural function provided for in this plan. This plan ignores the need of farmers heavy reliance upon customs service operators, who harvest 35 percent of the wheat in the Great Plains and apply over a quarter of all agricultural pesticides; and, it ignores the fact that food must be transported to retail outlets. Mr. President, with one exception, this plan ignores every link of the long and complex food chain.

In light of these serious shortcomings, Senator HELMS, along with every other member of the Senate Committee on Agriculture, Nutrition, and Forestry, joined in a letter to President Carter expressing grave concerns about the proposed plan. During consideration of the plan on the Senate floor, the Senator from Washington (Mr. JACKSON) brought from the White House a response from the President seeking to allay the concerns raised by the committee.

Following that letter's receipt on the Senate floor, the Senate narrowly passed a resolution approving the rationing plan. Its passage came, however, over the strong objections of the Senator from North Carolina who warned that the plans' provisions for agriculture were inadequate. If ever implemented, that plan would have left the U.S. food production and distribution system—and thus our economy—crippled.

The House had more time to analyze President Carter's response and wisely rejected the proposed gasoline rationing plan—largely because of its treatment of agriculture as had been earlier raised during the Committee hearings.

Then, in October of 1979, Congress passed the Emergency Conservation Act. Once again the Senator from North Carolina was on guard. When the conference report on that bill was considered on the Senate floor, Senator HELMS engaged the floor managers of that conference report in a colloquy to establish the legislative intent and history of that act. His colloquy left no doubt that the gasoline rationing plan the President was to submit under the act should include a fuel priority for the entire food chain, including the distribution and processing of agricultural products.

Nevertheless, when the Department of Energy published its draft of the new gasoline rationing plan for comment, the provisions for the fuel needs of agricultural production and distribution were essentially unchanged from the plan proposed by the President almost a year before. In a joint letter to the Secretary of Energy, along with the distinguished chairman of the Agriculture Committee (Mr. TALMADGE), Senator HELMS outlined that Congress intended that a meaningful gasoline priority for the production and distribution of agricultural products be included in any plan sent to Congress for its approval. Only after extensive follow-up did the Senator from North Carolina put the issue to rest before the President submitted the proposed gasoline rationing plan to Congress in June of this year. Recently the Senate approved the plan.

The agricultural priority ultimately included in the plan did not come easily; but, in the event gasoline rationing should ever be implemented, we all will be glad that it was achieved, thanks in large measure to Senator HELMS.

The production and distribution of perishable agricultural products simply cannot be left to chance. The food supply of America is too important for such treatment.

Mr. President, the Senator from North Carolina dedicated considerable time and resources to assure that, in the event of gasoline rationing, our Nation's food supply would not be interrupted due to a shortage of fuel.

The rationing priority given to agriculture was not simply a farmer's issue. Instead, it was an issue of importance to everyone—including the 230 million Americans who sit down at their dinner table every night. It was not an issue, however, that received much publicity or was appreciated by all of those who may benefit from his actions—it was merely the right thing to do, and Senator HELMS did it.

The Senator from North Carolina has served the Nation well and deserves the gratitude of the Senate and the entire Nation.●

RATTLESNAKE NATIONAL RECREATION AREA AND WILDERNESS

● Mr. BAUCUS. Mr. President, on Tuesday, September 9, I submitted testimony before the Subcommittee on Parks, Recreation and Renewable Resources of the Senate Committee on Energy and Natural Resources. The hearing concerned the Rattlesnake National Recreation Area and Wilderness near Missoula, Mont.

Passage of this legislation is important to me, to the people of the Missoula area, and to the State of Montana. Because of the importance of the bill and its imminent consideration by the Senate, I ask that my statement appear in the RECORD.

The statement follows:

STATEMENT BY SENATOR MAX BAUCUS

Mr. Chairman, from my home in Missoula, Montana, the boundary of the land included in S. 3072 is within a reasonable walking distance. By bicycle or automobile, the gateway to this area is only minutes away. For that reason, critics might complain that I have a vested interest in this legislation.

In a sense, perhaps I do. However, my vested interest in the area, which we simply refer to as "The Rattlesnake," is shared by thousands of Missoulians and other Montanans.

On a sunny September day, looking from the heart of downtown Missoula, one can easily see the peaks that form the heartland of the Rattlesnake: Mt. Stuart, Murphy Peak, Mosquito Peak, and others. Indeed, this proximity to one of Montana's larger urban areas is one reason why there is such widespread local popularity for protection of these unique wildlands.

Over the decades, the Rattlesnake has offered local residents and visitors alike an opportunity for reflection, revitalization, and recreation—important functions for Americans in the 1980s. Thus, I am particularly pleased to offer my suppport to the passage of S. 3072 with one suggested change which I will outline later.

Special management of this 60,000 acre area is a goal of most people who are familiar with it. Yet, the path toward reaching that objective has not been entirely smooth. One of the most thorny issues has been the presence of private inholdings, principally those of Montana Power Company and Burlington Northern.

Beginning in 1929, Montana Power Company acquired private lands within the Rattlesnake to ensure protection of the area as a municipal watershed for the City of Missoula. Today, Montana Power Company owns more than 21,000 acres within the area encompassed by this bill. Similarly, Burlington Northern holds title to some 4600 acres of land in the Rattlesnake.

Obviously, private inholdings are inconsistent with designation of this area as a national wilderness and recreation area. However, funds for the purchases of such land are carefully husbanded by Congress in these days of restricted budgets. Indeed, many question the wisdom of adding any additional acres to federal ownership. Thus, a land exchange or some similar arrangement holds the most promise for successfully completing the Rattlesnake proposal.

Anyone who has been involved in a land exchange knows that this is a tall order. Competing interests and values often doom such projects. The bill we are considering today, however, is testimony to the dedicated efforts of my distinguished colleague, Senator Melcher, to see the Rattlesnake land exchange brought to a successful conclusion.

By serving as the intermediary between inholders and government agencies, Senator Melcher was able to bring accord to the parties. The unique "land for coal leases" proposal described in Section 4 of the bill serves the Rattlesnake well and is a tribute to Senator Melcher innovative approach.

With the decks cleared for designation of the Rattlesnake for specialized management, the next issue of concern for us must be the determination of proper boundaries. I am pleased to note that the boundaries of the area covered by S. 3072 are generally consistent with those of H.R. 5898, the companion measure introduced in the House by Congressman Pat Williams.

In fact, only one boundary remains the subject of much disagreement. This is the demarcation between the wilderness area of the upper Rattlesnake and the national recreation area in the lower part of the drainage. S. 3072, as I understand it, places the end point for the national recreation area at the confluence of Wrangle Creek and Rattlesnake Creek. H.R. 5878, by contrast, would extend the national recreation area only to Franklin Bridge, more than five miles downstream from Wrangle Creek.

This decision has not been an easy one for me. Citizens from the Missoula area who favor broad access into this mountainous region have presented their case well. On the other hand, many Missoula area residents favor the closure of the entire Rattlesnake to motorized vehicles. After careful consideration of these arguments and after hiking through the Rattlesnake myself, I have concluded that a boundary at Franklin Bridge presents the best alternative. Accordingly, I urge that the national recreation boundary designated by S. 3072 be set at Franklin Bridge. I base my recommendation on three factors. They are:

1. A desire for balanced use of our national forest resources;
2. An interest in maintaining the quality of visitor experiences in wilderness areas;
3. A need for protection of wildlife values.

My first concern is the need for the balanced use of our national forests, the Lolo Forest in this case. Fortunately, timber and mineral wealth are not major concerns in the Rattlesnake and that makes our job easier. Because the Rattlesnake is a designated watershed, the cutting of timber has historically been considered inappropriate. Mineral values as well are believed to be relatively insignificant. Thus, recreation uses are our primary concern.

Throughout the Lolo National Forest, over 90 percent of the trails and roads are available for use by motorized vehicle. In short, a few areas are restricted to foot traffic only. As a result, I believe that limitations on the use of motor vehicles in the lower Rattlesnake does provide a necessary balance.

I wish to stress that I have no quarrels with the use of motorized vehicles on Forest Service lands. Properly operated, motor bikes and snow machines can provide an enjoyable recreational opportunity. However, I also believe that hikers, skiers, and snowshoers deserve an area which is available for their use.

By placing the boundary at Franklin Bridge, the Rattlesnake will roughly be divided evenly between wilderness and national recreation areas. Motorized vehicle users will be allowed to ride over eight miles past the main entrance to the area. Only the upper, more Alpine reaches of the Rattlesnake will be excluded.

My second reason for urging that the wilderness boundary be shifted to Franklin Bridge is my interest in maintaining the quality of visitor experiences. By this, I refer to the search for solitude which takes many users of the Rattlesnake high into its upper lakes and mountains. I am struck by the words of Bob Marshall, one of the pioneers of American forestry, for whom Montana's premier wilderness area is named. He remarked that "Enjoyment of solitude, complete independence, and the beauty of undefiled panoramas is absolutely essential to happiness."

Whether reasonable or not, the fact of the matter is that people travelling into the high country to seek this kind of wilderness experience do not react well to the presence of motorized vehicles. The noise and the appearance of such vehicles is simply not well received by those who walk forest trails in search of a temporal retreat from the hubbub of day-to-day life.

Finally, I am concerned for the impact on the wildlife of the upper Rattlesnake if motorized traffic is allowed to continue. In a series of correspondence which I have recently received from wildlife biologists in Montana, the need for relative isolation for a number of species was addressed. Bears, wolves and wolverines are among those animals who make their home in the Rattlesnake. These species apparently require relatively undisturbed habitat for successful propogation. In addition, plans are afoot to reintroduce mountain goats to the area. Adverse effects of motorized vehicles on this reintroduction are feared.

The designation of wilderness and national recreation areas within our national forest system has, over the years, been a highly controversial matter. This is, in fact, proper since such designations in essence restrict the use to which these lands may be put by laying a mantle of protection over their natural and recreational values. While the Rattlesnake has been controversial, the controversy has been generally of a pleasant nature. By and large, the question has not been whether to protect the 60,000 acres of the Rattlesnake, but rather how best to protect it. Missoula's City Council, County Commissioners, the Governor, the State Department of Fish, Wildlife and Parks, a variety of private organizations spearheaded by Friends of the Rattlesnake and hundreds of citizens have all added their voices to the chorus urging special management of the Rattlesnake. The legislation which is today being considered by the Committee will, with the modification which I have suggested, provide a reasonable and a responsible answer to this demand. Wilderness, recreation, wildlife, and watershed values will be preserved and hopefully enhanced. In short, this legislation will create a legacy in which Montana and the nation in general can take great pride.

Thank you.●

IN MEMORY OF BEN STONG

● Mr. McGOVERN. Mr. President, in the early morning hours of September 6, Ben Stong, an institution in the Senate and a dear personal friend of mine, died in Sibley Hospital.

A congressional staff member for over 25 years, Ben Stong was the kind of man Senators and Congressmen spend their careers in the Congress looking for but seldom find. The breadth of his knowledge and vision made him the recognized congressional expert on such issues as agricultural policy, soil conservation, wilderness legislation, forest and national park issues, and rural electrification.

In a manner of speaking, the recognition of his abilities can be measured by the stature of those who sought his advice. On this side of the Capitol that range was from every chairman of the Interior and Agriculture Committees in the modern Congress through the members of those committees to those Senators who were not committee members but who had concerns in these broad areas. Outside the Congress, he was known, respected, and sought out by agricultural and natural resource organizations throughout the land.

From 1964 to 1969 I was privileged to have the "pleasure of his company" when he served as my legislative assistant. I never knew Ben Stong to be a "young man"—he was always an "older man" to me but "older" only in the sense of being older than I. His mind was young, his ideas new and refreshing, his legislative sense was incisive and shrewd—and Ben never lost an important legislative battle though he spent 12 years on the Wilderness Act and endless hours on the voluntary wheat certificate plan of 1964 which I sponsored successfully.

Ben Stong did all the legislative backgrounding for the creation of the Senate Select Committee on Nutrition and Human Needs which I chaired. The depth of his knowledge with respect to the traditions of the Senate earned him my everlasting gratitude during that period of time.

Beyond his ability as a legislative craftsman was that all-too-uncommon quality these days of genuine friendship. He was the quintessence of a very gentle man—kind, compassionate, witty, erudite, proper without being stuffy. He was economical with words but still generous with details. His vocation was hard work and his avocation was harder work. His language both spoken and written was structured and stylish, yet clear and accurate. A journalist by training and profession, he carried to the legislative process all the qualities of an experienced reporter and the quickness of a legislative tactician.

Perhaps the great joy of knowing Ben Stong were those days after the close of business when he would recall the early period of the Populist Farm Movement and the Non-Partisan League in the upper Great Plains, or those little known anecdotes about people and places and things, his charter membership in the Wayne Darrow Society on Mathematical Probabilities, or the early days of the Henry Wallace and the Gorsts in exploring hybrid seeds and fertilizers, the developing eras of the National Farmers Union and the NFO, his gardening secrets for growing the largest flowering dahlias in the area.

His widow, Laverne, and his family have my condolences. I will remember him with tenderness and affection, for he possessed all those human qualities that are worth remembering in great abundance.●

LIMITING THE JURISDICTION OF THE COURTS

● Mr. HATCH. Mr. President, in April of this year, the Senate approved S. 450, a measure eliminating much of the obligatory jurisdiction of the Supreme Court. An amendment was adopted to that bill that would have, further, removed the jurisdiction of the Supreme Court and lower Federal courts with respect to State laws dealing with voluntary prayer in public schools.

A great deal of controversy has surrounded the legislative notion of limiting the appellate jurisdiction of the Supreme Court. Much of this controversy stems from the recent dormancy of that provision of the Constitution on which proponents of such limitations rely. Article III, section 2, clause 2 of the Constitution states:

> In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

I would like to call to the attention of my colleagues two recent commentaries on this provision. The first is an article by Mr. Anthony Tortora from the September 19, 1980 issue of National Review. The second is an excerpt from a June 25, 1980 report prepared for the Heritage Foundation by Mr. Thomas Ascik. I would also refer back to a legal analysis by Prof. Basile J. Uddo of the Loyola University School of Law which I inserted in the CONGRESSIONAL RECORD of December 15, 1979 (36330) on the occasion of the introduction of my Human Life Anti-Injunction Act (S. 2138).

The material follows:

GOVERNMENT BY JUDICIARY: EX PARTE MCCARDLE

(By Anthony Tortora)

As the election draws near, it is useful to be reminded not only of what is desirable in politics, but also of what is possible. Too much of what is desirable has not even been seriously attempted, because of the belief that it is impossible of achievement. The recent adoption by the Republican Platform Committee of a resolution to prohibit busing for purposes of school integration is a good example: it is a pure velleity if, simultaneously, one does not address how this policy is to be implemented against the Supreme Court's (sometimes) adamantine insistence that such busing is constitutionally obligatory.

Similarly, the gathering support for tuition tax credits may, in due course, founder on the shoals of a Court decision that they violate the "separation of church and state." That such a ruling would be a preposterous misreading of the First Amendment's reference to "establishment of religion" doesn't give us any less reason to predict it. It would just represent (to paraphrase Raoul Berger's indictment in Government by Judiciary) "another of the usurpations that bestrew the path of the Court."

These matters have been almost entirely undiscussed during the campaign, along with, as the *Fullilove* decision perhaps reminded us, "affirmative action" in all its varied manifestations. But they must be mentioned, soon or late, for they will not go away, and it is intolerable that present policies should continue unremedied, because they make manifest what is now unequivocally true: namely, that the United States Government—notwithstanding its sanctimony toward South Africa and pre-Mugabe Rhodesia—is the largest purveyor of racial discrimination in the world today. And this obsession with race, and sex, is so pervasive that we've become accustomed to hearing matters on which race and sex only incidentally impinge aggregated with those to which these matters are central. Thus, for example, the tendentious treatment of the tuition tax credit issue as if it were a question which naturally divides black from white.

In any event these issues certainly are categorically distinct for the purpose of this article. The *Weber* and *Fullilove* cases, and affirmative action generally, are (legally) comparatively simple matters. The Court has never held that it is constitutionally required to discriminate against white people on the basis of race. The very statement of the proposition makes this evident, even though we continue to be afflicted by a Court some of whose members' grasp of the Constitution is so fragile one wonders if someday they might not reach that conclusion.

IF CONGRESS WANTS

Weber was specifically decided on the basis of the 1964 Civil Rights Act, and the Court held, in effect, that Congress could permissibly legislate racial preferences. That this decision perversely stood on its head the manifest intent of the 1964 Act has elsewhere been well documented, and I doubt one could improve on Justice Rehnquist's devastating dissent to this effect. The point, however—of which even the *Washington Post* took note in its morning-after editorial—is that if Congress did not like the holding in the case it could reverse it.* That Congress has not done so, or otherwise seen fit to reverse the volumes of regulations and edicts imposing racial and/or sexual quotas, by which the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) have reordered our lives, reflects congressional pusillanimity, and certainly not any insuperable legal obstacles. *Fullilove*, in this context, merely provides a gloss on *Weber* by iterating Congress's authority to legislate racial preferences.

With respect to busing, the situation is rather different, both legally and socially. The social question is, in my view, immeasurably more serious. What other society has ever offered up its children as point-men in a radical, and radically dangerous, social experiment? Has any sociologist or historian had the courage to break the mold of fashion and attempt to count the casualties—physical, emotional, educational—which have resulted from this experimentation?

But on the legal point, which is the purpost of this article, there has been general despair. It has generally been believed that because *Brown* v. *Board of Education* was decided on constitutional rather than statutory grounds, and because decisions requiring busing were largely derivative (from *Brown*), therefore no remedial approach save that of a constitutional amendment is possible. The defeat of Representative Ronald Mottl's effort to get the busing amendment through Congress has seemed to sound the death knell for these attempts at revision. Since most people believe that there is no redress short of an (apparently unpassable) constitutional amendment, the feeling is quite general that there is nothing legally to be done.

It is important to disabuse ourselves of this notion which paralyzes our will to act. Amendments are unnecessary and are, moreover, subject to objections which are not raised with regard to statutory legislation. Further, they are unwieldy tools which are too slow and cumbrous to deal with a situation which is in urgent need of reform. Much simpler would be federal legislation prohibiting busing in order to achieve "racial balance," *combined with* legislation which would remove the issue from the jurisdiction of the courts.

The constitutional authority for this procedure is manifest, and I am undecided whether its disuse stems from congressional timidity or from ignorance. Forced to guess, I personally would be inclined to believe the latter. Let's start with the basics: the Constitution itself, which is, strictly speaking, both the beginning and the end of the argument.

AT CONGRESS'S SUFFERANCE

Article III deals with the judicial power of the United States and divides the jurisdiction of the Supreme Court (the only court specifically mentioned, the establishment of the inferior federal courts being left to the discretion of Congress) into "original jurisdiction" and "appellate Jurisdiction." The Court has original jurisdiction "in all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party." Article III, Section 2 goes on to say that "In all other cases . . . the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

To put it another way, the Supreme Court addresses issues at the sufferance of Congress, except in those cases in which it has constitutionally conferred "original Jurisdiction." It is too clear to require elaboration that the quota and busing questions, and also the proposed tax credit legislation, fall outside the class of cases enumerated under the Court's original jurisdiction.

This provision of the Constitution has not been invoked for some time, and its disuse has a way of making it appear novel. But it is not, and among the *cognoscenti* its existence is acknowledged as a commonplace. Richard Morris, for example, in the 1961 edition of his *Encyclopedia of American History*, remarks matter-of-factly that "In February 1868 the Court agreed to consider *ex parte McCardle*. Fearing that a review of this case might invalidate Reconstruction measures, Congress deprived the Court of jurisdiction." Morris evidently felt no need to elaborate on that which he took as a given, but the very general unawareness of the provision nowadays virtually compels a fuller restatement of its implications. This undesirable necessity calls to mind Orwell's observation that we have sunk so low that "the first duty of intelligent men is to state the obvious."

William Archibald Dunning, writing to the same effect as Morris, comments, in his text *Reconstruction: Political and Economic*: "From this trying predicament [i.e., the anticipated Supreme Court reversal of a Reconstruction statute] the radicals in Congress extricated the Court by a hasty repeal of the legislation which gave jurisdiction over the case; and the Chief Justice, whose dislike of military judicature was well-known, relinquished with some regret so perfect an opportunity to damn it, but saved as he could the dignity of the Court by the resounding platitude: 'Judicial duty is not less fully performed by declining ungranted jurisdiction than by exercising firmly that which the Constitution and the laws confer.'"

Also, Professors Alpheus Mason and William Beaney state, in their monographic

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*The ability of Congress to overturn a Court decision made on statutory grounds is a legal commonplace which no competent lawyer would attempt to deny. It occurs in other, less politically volatile contexts without comment; consider, for example, Senator Kennedy's pending legislation (S-300) to overturn the Court's holding in the *Illinois Brick* antitrust case.

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American Constitutional Law: "The Supreme Court has appellate jurisdiction in respect to both law and fact in all other cases, but subject to such exceptions and regulations as Congress shall make (Article III, Sec. 2, Cl. 2). By virtue of this clause and of its power over the jurisdiction of inferior federal courts. Congress has plenary power over the appellate jurisdiction of the Supreme Court. It could thus deprive that Court of all such jurisdiction and make final the decisions of the inferior courts. An extreme example occurred in 1868 when Congress, fearing that the Court would invalidate the Reconstruction Acts, hastily withdrew the Court's jurisdiction under the Habeas Corpus Act of 1867. The Court thus became powerless to pass on a case in which argument had been heard."

Numerous citations to the same effect could easily be made. But for those who have become accustomed to an acquiescent legislature, the detail of this case is especially instructive in displaying the ease and assurance with which Congress formerly asserted its supremacy over the Court. There are of course other instances where Congress limited the scope of the Court's authority, but none I think with such didactic effect as in *McCardle*, where Congress reached out to interpose its will not only on a case which was *sub judice*, but on a matter (writs of habeas corpus, the so-called "Great Writ") which has constitutional protection (*vide* Article I, Section 9). Surely it is clear beyond cavil that a Congress which can be the final arbiter on a matter which is an integral and explicit part of the Constitution has more than sufficient authority to mandate the handling of issues which have been given constitutional import by a kind of judicial forced march of the Fourteenth Amendment.

The *McCardle* story properly begins with an act to amend the Judiciary Act of 1789, by which amendment, on February 5, 1867, Congress expanded the authority of the courts by providing that the courts of the United States "shall have the power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violence of the Constitution, or of any treaty or law of the United States" (14 Statutes at Large 385). The same Act further provided that it should "not apply to any person who is or may be held in the custody of the military authorities of the United States, charged with any military offense."

WHAT HAMILTON THOUGHT

The problem which eventually gave us the *McCardle* case arose as a result of action by the governor of the military region in which McCardle resided. The governor imprisoned McCardle, a Confederate journalist given to invective against the military administration of the South under the Reconstruction statutes. Suit was brought on McCardle's behalf that a writ of habeas corpus be issued. Under the 1867 amendment to the Judiciary Act, the case was enabled to work its way to the Supreme Court, where argument was heard. This was entirely proper, absent a congressional prohibition of judicial review; and it was clear that the Act's exemption of persons incarcerated by the military would be the focus of the legal assault on the Act. First, however, the Court heard arguments as to its jurisdiction, and it ruled that indeed it might hear and rule on McCardle's appeal.

Congress, understandably, anticipated that the Court would rule in McCardle's favor; as has been noted, the Court's lack of sympathy for the military administration of the South was widely known. Accordingly, Congress passed the repealing act which removed the case from the Court's jurisdiction. Chief Justice Chase's opinion in the case displayed a laudable deference to both the spirit and the letter of the Constitution; he showed reluctance even to speak to an issue on which jurisdiction had been removed, saying, "The first question necessarily is that of jurisdiction; for, if the Act of March 1868 takes away the jurisdiction defined by the Act of February 1867, it is useless, *if not improper*, to enter into any discussion of other questions." And further, "Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause."

So admirable a fidelity to the Constitution has not been consistently shown by recent courts, and it would be idle not to come to grips with the question which logically springs to mind: What if the Court decided otherwise and asserted its right to rule even where jurisdiction had not been granted? The question is not entirely speculative. In his *History of the Supreme Court of the United States*, Charles Fairman reminds us that when Justice Harlan in 1962 mentioned the *McCardle* case, "there was a nervous reaction within the Court. Justice Douglas saw 'great mischief'—'There is a serious question whether the *McCardle* case would command a majority view today.'"

Precisely. It is this very lack of obedience to the Constitution which has given rise to this article. But, again, how would it be resolved? A constitutional crisis would have been precipitated, and, ultimately, it would be a political question which would be settled by the relative strengths of the contending forces. This and this alone will determine who prevails, and not any arcane argument about legalities. But for those who seek guidance as to how it should be dealt with if the Court ever so defied Congress, there is no better guidance than that provided by Alexander Hamilton in the 81st Federalist:

"It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority which was been upon many occasions reiterated is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty from the general nature of the judicial power, from the objects to which it relates, from the manner in which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There never can be any danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would haazrd the united resentment of the body entrusted with it, while this body was possessed of the means of punishing their presumption by degrading them from their stations. While this ought to remove all apprehensions on the subject it affords, at the same time, a cogent argument for considering the Senate a court for the trial of impeachments."

THE JURISDICTION OF THE SUPREME COURT

The jurisdiction of a court refers to its authority to hear and decide a case. In *Ex parte McCardle* (1868), Chief Justice Salmon P. Chase said, "Without jurisdiction the Court cannot proceed at all in any case. Jurisdiction is power to declare the law. . . ." Article III of the Constitution grants Congress complete discretionary authority over not only the jurisdiction, but also the very existence of the federal district courts and circuit courts of appeals. The same article provides that the Supreme Court shall have two jurisdictions: an "original" jurisdiction over cases "affecting ambassadors, other public ministers and consuls, and those in which a state shall be party." Thus the original jurisdiction of the Supreme Court comes directly from the Constitution and cannot be expanded or contracted by any acts of Congress. In cases under its original jurisdiction, the Court has the right (but it is not required) to hear all the initial arguments directly. Today, the Court decides very few cases brought under its original jurisdiction. Additionally, from the date of the Judiciary Act of 1789, Congress has given itself the authority—and the Supreme Court has acquiesced—to decide whether the Court's original jurisdiction in certain kinds of cases is exclusive (belonging to the highest court alone) or concurrent (shared with other state or federal courts).

Article III also grants the Supreme Court an "appellate" jurisdiction, that is, the authority to review—and affirm or overturn—the decisions of state or lower federal courts that had heard the initial arguments. This appellate jurisdiction extends "both as to law and fact . . . to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made . . . to all cases of admiralty and maritime jurisdictions; to controversies to which the United States shall be a party . . . to controversies . . . between citizens of different states, between citizens of the same state claiming lands." But the entire group of cases is subject to "such exceptions, and under such regulations as the Congress shall make." Thus, the appellate jurisdiction of the Supreme Court comes from the Constitution by way of congressional legislation.

CONGRESS' AUTHORITY OVER THE SUPREME COURT

Section Two, Paragraph Two, of Article III of the Constitution reads:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all other cases before mentioned (i.e., cases in law and equity under the Constitution, the laws, and treaties of the U.S. along with cases of admiralty and maritime jurisdiction), the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

Little evidence is available concerning the ideas and debates surrounding the origin of the "exceptions and regulations" clause of Article III. The Constitutional Convention of 1787 opened on May 17. Two plans for a new constitution were proposed, the New Jersey plan (drafted by William Patterson) and the Virginia plan (masterminded by James Madison). Concerning the role of the judiciary, both plans were inchoate. After the opening debates on the two plans, a Committee of Detail was formed to draft a proposed constitution incorporating parts of both plans and other ideas that had already been debated.

When the Committee on Detail reported back to the full convention on August 6, it had given shape to a complete document that eventually served as the substantial basis for the final Constitution. And this was true for its provisions on the judiciary also which, for the first time at the Convention, brought up the issue of the proposed Supreme Court. Concerning both the original and appellate jurisdiction of the Supreme Court, the Committee came up with almost the precise language that was to become part of Article III of the Constitution. The Court was to have original jurisdiction in "cases affecting ambassadors, other public ministers and consuls and those in which a state shall be a party" and appellate jurisdiction "in all other cases beforementioned (refer to first paragraph of this section) with

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such exceptions and under such regulations as the Legislature shall make."

Thus, this was the first appearance of this language for consideration by the Convention delegates. Another clause (later deleted and, therefore, not included in the Constitution) emphasized again the legislative control over the judiciary's jurisdiction by declaring that "The Legislature may assign any part of the jurisdiction abovementioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such Inferior Courts. . . ."

Debate on the "exceptions and regulations" clause was limited and non-controversial, and so it might be presumed that it was an issue about which no one disagreed. The authority of the legislature to "assign" the jurisdiction of the Court was eliminated by a unanimous vote. Although no debate on this vote has survived, it might be safe to assume that it was considered a redundancy with the "exceptions and regulations" clause.

However, two short exchanges about the jurisdiction of the judiciary were revealing. Madison wanted the Constitution to state that the jurisdiction of the Supreme Court was limited to "cases of a Judiciary nature" rather than to "all cases arising under this constitution." He thought that the highest court should not have a general "right of expounding the Constitution."

All agreed with Madison's idea but thought that the wording "all cases arising under the constitution" already clearly limited the authority of the Court to cases "of a judiciary nature." Another motion was offered that would have made the resolution of all cases under the appellate jurisdiction to be resolved "in such manner as the Legislature shall direct." This was likewise defeated unanimously.

Thus, overall, the writers of Article III of the Constitution accepted without controversy that the Congress should have the authority to except and regulate the appellate jurisdiction of the Supreme Court, concluded that the Supreme Court had no general right to expand the Constitution, but was limited to cases "of a Judiciary nature," and decided that the Congress could not direct the "manner" of the exercise of the appellate jurisdiction of the Court.*

And these conclusion seem re-enforced by Alexander Hamilton in Federalist 80:

"From this review of the particular powers of the federal judiciary, as marked out in the Constitution, it appears that they are all comformable to the principals which ought to have governed the structure of that department, and which were necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such *exceptions*, and to prescribe such regulations as will be calculated to obviate or remove these inconveniences." (Emphasis in original.)

And by Hamilton in Federalist 81:

"The amount of the observations hitherto made on the authority of the judicial department is this: that it has been carefully restricted to those causes which are manifestly proper for the cognizance of the national judicature; that in the partition of this authority a very small portion of original jurisdiction has been preserved to the Supreme Court, and the rest consigned to the subordinate tribunals; that the Supreme Court will possess an appellate jurisdiction, both as to law and fact, in all cases referred to them, both subject to any *exceptions* and *regulations* which may be thought advisable; that this appellate jurisdiction does, in no case, *abolish* the trial by jury; and that an ordinary degree of prudence and integrity in the national councils will insure us solid advantages from the establishment of the proposed judiciary, without exposing us to any of the inconveniences which have been predicted from that source." (Emphasis in original.)

From the beginning of the new government, the Congress has exercised its authority over the jurisdiction of the Supreme Court and the lower federal courts. Probably the most important statute passed by the First Congress was the landmark Judiciary Act of 1789 which actually created the federal judicial system, left largely inchoate by the Constitution. As anticipated by Article III, which left the establishment of any lower federal courts to Congress, the Act provided for a system of district courts and circuit courts (consisting of two Supreme Court justices and one district court judge). Both of these kinds of courts were given limited and carefully circumscribed jurisdictions, and the Supreme Court's appellate jurisdiction was created and also equally limited. Acting under the "exceptions and regulations" clause, the Congress provided that the Supreme Court could accept appeals in civil cases from the circuit courts only if more than $2,000 was involved and also decreed that the highest court could not hear appeals in criminal cases—which Congress did not change until 1889. Additionally, the Congress decided to qualify even the constitutionally-mandated original jurisdiction of the Supreme Court by providing that, in certain cases, the Court would share its original jurisdiction with the newly-established lower federal courts. The overall intention of the Judiciary Act of 1789 was that most cases and controversies would be decided in the state courts.

Early decisions of the Supreme Court show a complete understanding of the constitutionally-granted authority of Congress over the appellate jurisdiction of the federal judiciary. In the 1796 case of *Wiscart* v. *D'Auchy*, Chief Justice Oliver Ellsworth, who had been a member of the Committee on Detail at the Constitutional Convention and later one of the authors of the Judiciary Act of 1789, wrote:

"The constitution, distributing the judicial power of the U.S., vests in the Supreme Court, an original as well as appellate jurisdiction. . . . Here, then, is the ground, and the only ground, on which we can sustain an appeal. If Congress has provided no rule to regulate our proceedings, we cannot exercise our appellate jurisdiction; and if the rule is provided, we cannot depart from it. The question, therefore, on the constitutional point of appellate jurisdiction, is simply, whether Congress has established any rules for regulating its exercise." (3 Dall. 321 at 326)

In the 1799 decision of *Turner* v. *Bank of North America*, Ellsworth said that a "circuit court . . . is of limited jurisdiction and has cognizance, not of cases generally, but only of a few specifically circumscribed . . ." (4 Dall. 8 at 10). In a footnote to the same decision, Justice Ellsworth added:

"The notion has frequently been entertained that the federal courts derive their judicial power immediately from the constitution; but the political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise; and if Congress has not given the power to us or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound . . . to enlarge the jurisdiction of the federal courts, to every subject, to every form, which the constitution might warrant." (at 11)

In the 1810 case of *Durousseau* v. *U.S.*, Chief Justice Marshall emphasized the same point:

"The appellate powers of this Court are not given by the judicial act. They are given by the constitution. But they are limited and regulated by the judicial act, and by such acts as have been passed on the subject. When the first legislature of the Union proceeded to carry the third article of the constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions to the appellate jurisdiction of the Supreme Court." (6 Cranch 307 at 313)

In 1845, in the case of *Cary* v. *Curtis*, the Supreme Court declared that the "judicial power of the United States [is] dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress . . ." (3 How. 236 at 245). In the 1868 case of *Nashville* v. *Cooper*, the Court emphasized the point again by saying that "two things are necessary to create jurisdiction. . . . The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it" (6 Wall. 247 at 252).

By way of comparison, the Court has ruled, in what was probably its most famous case, *Marbury* v. *Madison*, that its original jurisdiction has been given directly from the Constitution and is not dependent on any acts of Congress In *Marbury* the Court ruled that a clause of the Judiciary Act of 1789 was unconstitutional because it acted to expand the original jurisdiction of the Supreme Court—something that could be accomplished only by constitutional amendment.

In the 1820s and 1830s, there was a major constitutional confrontation between the Supreme Court and the highest courts of the states. Under Section 25 of the Judiciary Act of 1789, Congress had authorized the Supreme Court to review decisions of the states' courts under the federal constitution. States began to appeal to Congress to remove this jurisdiction from the Supreme Court. A bill was introduced in the House to that effect but even though a significant percentage of the House supported it, the bill never made it to a floor vote, and eventually the confrontation passed.

In 1867, Congress for the first and only time in the nation's history, acted to prevent a decision of the Supreme Court by repealing its jurisdiction over the subject matter of the case. William McCardle, a Mississippi editor who was violently opposed to the post-Civil War Reconstruction Acts, was arrested and held for military trial by Major General Edward Ord, the commander of the Northern Occupation forces in Mississippi and Arkansas. McCardle, having been denied a writ of habeas corpus in the federal circuit court, appealed to the Supreme Court which had only six months before been granted jurisdiction by Congress to review denials of writs of habeas corpus.

The Supreme Court accepted the petition and the Congress, dominated by the radical Republicans of the Reconstruction era who were unsympathetic to challenges to the military rule of the South, moved immediately to repeal the jurisdictional statute that it had only recently passed.

The Court had no choice but to dismiss the case for lack of jurisdiction. Writing for the Court, Chief Justice Salmon P. Chase said:

"We are not at liberty to inquire into the motive of the legislature. We can only examine into its power under the Constitution, and the power to make exceptions to the appellate jurisdiction of this Court is given by express words. What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause. . . ." (*Ex parte McCardle* 7 Wall. 506 at 1514-515)

Nevertheless, four years later in *U.S. v. Klein*, the Court declared unconstitutional another statute that Congress had passed under its power to make exceptions and regulations to the appellate jurisdiction of the Court. President Lincoln had offered full presidential pardons to all Confederates who swore allegience to the Constitution and the Union. Persons pardoned were then able to recover any of their property confiscated by the Union During the war. Klein, a pardonee, sued in the federal Court of Claims because his property had not only been confiscated, but sold to another. The Court of Claims ruled in his favor, but the case was appealed to the Supreme Court. Before the Court could act, the Reconstruction Congress passed a statute removing the Court's jurisdiction over appeals from the Court of Claims based on presidential pardons without some additional proof of loyalty.

In a 7-2 decision, with Chief Justice Chase again writing the opinion, the Court ruled that Congress, in this instance, had acted unconstitutionally under the exceptions and regulations clause. Nevertheless, the Court emphasized that Congress does have the power to remove jurisdiction "in a particular class of cases":

"Undoubtedly the legislature has complete control over the organization and existence of that court and may confer or withhold the right of appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient. . . . But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the Preisdent the effect which this court has adjudged them to have. The proviso declares that pardons shall not be considered by this court on appeal.

"We have already decided that it was our duty to consider them and give them effect, in cases like the present, as equivalent to proof of loyalty. . . . It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power. . . . To the Executive alone is intrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons that no doubt might exist as to their character, restoration of property was expressly pledged; and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath. . . . Now, it is clear that the Legislature cannot change the effect of such a pardon any more than the Executive can change a law." (13 Wall. 128 at 142, 145, 146, 147, 148)

It can be seen that the *Klein* Court based its decision not only on the exceptions and regulations clause of Article III, but also on the pardoning power granted exclusively to the President by Article II, Section 2, Clause 1. Also, and in contrast to *McCardle*, the *Klein* Court found that it was unconstitutional for Congress to prescribe the decision in a case by eliminating some of the *evidence*, that is, a pardon—matters of evidence in a particular pending case being pre-eminently a judicial concern. In *McCardle*, the Congress had restricted the Court's authority over a judicial procedure, that is, a writ of habeas corpus, and, further, a certain statutory *class* (i.e., under the Reconstruction Acts only) of the writs—the Court's jurisdiction over other habeas corpus writs being left untouched. Since the *Klein* case of 1872, there have been no significant controversies in the Supreme Court about the exceptions and regulations clause. And no judge, save for Justice Douglas, has ever seriously questioned the authority of the Congress over the Supreme Court's appellate jurisdiction. In a footnote to his opinion in the 1962 case of *Glidden* v. *Zdanok* (370 U.S. 530), Douglas wondered (at 605) "whether the *McCardle* case could command a majority view today." But, six years later in *Fleet* v. *Cohen* (392 U.S. 83), Douglas, in a concurring opinion, cited *McCardle* when he said, "As respects our appellate jurisdiction, Congress may largely fashion it as Congress desires by reason of the express provisions of Section 2, Article III" (at 109).

In 1932, Congress culminated more than two decades of disputes between legislatures and the federal courts over labor issues by passing the Norris-LaGuardia Act, removing the authority of the lower federal courts to issue injunction in such cases. In the 1938 case of *Lauf* v. *E. G. Skinner & Co.*, the Supreme Court upheld the constitutionality of the Norris-LaGuardia Act. Associate Justice Roberts, writing for the Court, said that there "can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States." (303 U.S. 323 at 330)

Over the past 30 years, as the Supreme Court accrued more powers to itself, Congress has periodically considered legislation to repeal specific areas of jurisdiction of the highest court. At the beginning of this modern era, the American Bar Association joined by Justice Roberts sought to head off the whole controversy by recommending the adoption of a constitutional amendment giving the Court, instead of Congress, authority to determine its appellate jurisdiction. But the idea received little congressional support. Throughout the post-World War II era and up to the present time, Congress has considered legislation to limit the jurisdiction of the Supreme Court and the lower federal courts in a wide variety of areas: desegregation, certain criminal procedures, internal security, school prayer, apportionment, and abortion. In 1964, the House passed a bill eliminating the jurisdiction of the Supreme Court to hear cases dealing with the apportionment of any state legislature, but the bill failed in the Senate.

CONCLUSION

Over the past twenty-five years, the Supreme Court has been racing ahead of other governmental institutions in effecting changes in national social policy and in society itself. Indeed, the Court has been fashioning a national social policy for the first time, for through the succession of controversial Supreme Court decisions on desegregation, reapportionment, school prayer, capital punishment, criminal procedure, school busing, pornography, abortion and reverse discrimination a common theme has been apparent: all these areas had been longstanding matters of individual state policy before the Court acted. By its decisions in the cases, the Court not only suddenly made them all matters of national policy, but it also defined what the new national policy would be in each case.

Such a role for "the judicial power" is not provided for in the Constitution nor was it ever contemplated by the Constitutional Convention of 1787. As mentioned above, the judiciary power was not intended to extend to all cases arising under the Constitution but to cases of a "judiciary nature" only. Nevertheless, the opportunity for the Court to assume policy-making powers might be provided by the Constitution itself.

The delegates to the Constitutional Convention were much more concerned with the executive and legislative powers than with the judicial power. The amount of time and debate spent on Article III was minor by comparison. Consequently, it took a subsequent act by the First Congress, the Judiciary Act of 1789, to give a complete expression to the role, authority, and jurisdiction of the judicial power. The last substantial change in the federal judicial system was the creation of the circuit courts of appeals in 1891. Since, then, the judiciary has largely functioned according to its own discretion.

In Madison's view, the so-called "system of checks and balances" was the fundamental pillar holding up the entire constitutional structure. In Federalist No. 51, he explained this principle:

"In the compound republic of America, the power surrendered by the people is first divided between the two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself."

It can be asked whether the system of checks and balances can function with respect to a Supreme Court that has assumed unplanned powers of fashioning and promulgating policy.

Compared to the executive and the legislative branches, the Supreme Court is able to act in a relatively easy manner. The justices are appointed for life and are answerable to no one after their initial confirmations by the Senate. Five justices in agreement constitute a summary authority to eliminate longstanding social customs (prayers in public schools, local prohibitions on the sale of pornography), establish new constitutional rights (the right of privacy, the rights to welfare and education), re-order the structure of government (re-apportionment), or assume executive and/or legislative powers (overseeing prisons, hospitals and schools).

The other departments of the "compound republic" are shackled by checks and restraints. The executive and the members of Congress must stand for re-election, thus making their actions reviewable periodically. The legislative is divided into two: the House holds an effective vote over the actions of the Senate and vice versa. With each house, it takes the agreement of a multitudinous majority in order to pass legislation. The presidential veto, seemingly a powerful weapon, must be separately sustained by one-third of each house.

Amending the Constitution, deliberately planned as a rare and arduous undertaking, must be accomplished by the agreement of two-thirds of each house and three-fourths of the states. The states, who substantially weakened themselves by ratifying the Sixteenth (national income tax) and Seventeenth (direct election of senators) Amendments can effect a major change in the structure of government only if two-thirds of them agree to call a constitutional convention, something that has never happened.

Against the judiciary, the executive has no power. The Constitution gives the "check" on the judiciary to the Congress. "In republican government, the legislative authority necessarily predominates." (Madison in Federalist No. 51) In recent years, the relative powers of the Congress and the Supreme Court have been skewed in favor of the latter: passage of a constitutional amendment being an enormously difficult task compared to the agreement of a majority of the Court. Removing the jurisdiction of the Court over a class of cases requires only a simple majority of each house. The Senate has decided to use this means regarding school prayer and awaits the decision of the House.●

* *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, Norton Library, 1969, pages 393, 510, 536-541.

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PRINCE SIHANOUK URGES VOTE AGAINST SEATING POL POT REGIME IN UNITED NATIONS

● Mr. McGOVERN. Mr. President, when the United Nations General Assembly convenes in New York this week, one of the first items on its agenda will be the decision whether to seat the Pol Pot regime as the representative of Cambodia in the United Nations. It would be a humanitarian and a diplomatic tragedy for the United States to repeat its mistake of last year and vote in favor of Pol Pot.

It would be a humanitarian tragedy because the Pol Pot regime stands condemned as one of the most cruel governments in all of human history. Over the years we have come to learn of the unbearable cruelties imposed by this band of murderers on the gentle people of Cambodia—starvation, executions, torture, mass forced exodus. The United States simply should not be associated in any way with this group of despots and killers. Doesn't it weaken our support for human rights to vote in favor of the regime which President Carter once labeled—accurately, in my view—as the world's worst violator of human rights?

A vote to seat Pol Pot would be a diplomatic tragedy as well because it would deny the United States the diplomatic independence and leverage it needs to help bring a political solution to the Cambodian problem. I am opposed to the presence of Vietnamese troops in Cambodia. American policy should be designed to encourage a diplomatic solution which will lead to a quick withdrawal of Vietnamese troops and the installation of a Cambodian Government chosen freely by Cambodians. Continued support for Pol Pot works directly against these goals for two reasons. First numerous observers have concluded that although Cambodians resent the Vietnamese military presence, they regard it as the lesser of two evils if the alternative is a return of the Pol Pot regime. Therefore, any continued support for Pol Pot has the effect of lengthening the stay of Vietnam in Cambodia.

Second, American ties to Pol Pot are widely regarded as American deference to China's regional power politics in Asia. By deferring to China's interests, the United States has cut itself off from an independent relationship with one of the principal protagonists, Vietnam. The United States possesses great potential leverage against Vietnam to reduce Soviet influence in Asia and to bring about a Vietnamese withdrawal from Cambodia, but this leverage cannot be brought into play as long as we support China's endorsement of Pol Pot.

For these reasons, the United States should not vote to seat Pol Pot's regime in the United Nations. The United States should abstain during the credentials vote or else support the "empty seat" option. In this way, the United States could announce its abhorrence of the Pol Pot group while at the same time making clear that we do not endorse the Vietnamese-installed government of Heng Samrin in Phnom Penh. There is a direct link between the humanitarian relief efforts of the United States and the upcoming vote at the U.N. The connection is that we cannot realistically expect to solve the humanitarian needs of the Cambodian people until we alter the mistaken diplomatic position of supporting a bloody regime which the people of Cambodia have rejected.

The United States should not condone either the Pol Pot executioners or the Vietnamese invaders, but we should, as the American Friends Service Committee has urged, "champion a suffering and disenfranchised people by seeking the swiftest route to peace and stability."

Mr. President, one of the most authoritative voices representing the disenfranchised Cambodian people is Prince Sihanouk, the former head of free and independent Cambodia. The State Department should take his views into account as a leading Cambodian nationalist who will play a central role in a future diplomatic solution. In an article last week in the English daily newspaper, The Guardian, Prince Sihanouk pleads that Cambodia's seat at the U.N. be left vacant "until an authentic Cambodian Government drawn from the Cambodian people, and elected by the people by secret vote and universal suffrage, can come to occupy it in complete legitimacy and legality."

Prince Sihanouk's proposal deserves support. The United States should vote against Pol Pot at the United Nations as its contribution to a sound diplomatic solution to one of the world's most tragic situations.

Mr. President, I ask to insert into the RECORD the text of Prince Sihanouk's article and the text of a short legal memorandum prepared by the Lawyers Committee for International Human Rights on "Legal Aspects of Rival Claims to Representation at the United Nations."

The texts of these documents follow:

LOADING THE DICE TO FAVOUR THE KHMER ROUGE

The Cambodian problem has two principal aspects: first, the invasion (in 1979) and military occupation of Cambodia by the Socialist Republic of Vietnam; second, the survival of the Khmer Rouge, called "Democratic Kampuchea," which continues to be considered—by the United Nations and by a great number of governments in the Free World and in the Third World—the legitimate and legal government of Cambodia.

At the moment, many non-communist countries and governments (the United States, Canada, Australia, New Zealand, the countries of Western Europe—except for Britain and France—the countries of ASEAN—Thailand, Singapore, Malaysia, Indonesia and the Philippines—and Japan) accord the highest importance to the first aspect and deliberately neglect the second. Yet in the eyes of the Cambodian people still living in Cambodia, the second aspect has supreme importance. It concerns a question of life and death, particularly death, for the future of these unfortunate people, victims since 1975 of the savage and bloody regime of "Democratic Kampuchea."

In the course of the past year, a large number of Western journalists (non-communist) and Western personalities (including Jacques Couture, a minister of the Quebec Government) have gone to Cambodia. They have visited Phnom Penh and many provinces of my country. They have been able to question Cambodians of various trades and social backgrounds, as much in the towns as in the country, as they chanced to meet them. All the Khmer (young and old, men and women, bourgeois and peasant, intellectual and illiterate) have in substance told them this:

"We do not like the Vietnamese and we feel humiliated by the fact that our country, Cambodia, has lost its independence, and become a protectorate of Vietnam. But what we fear, and what we dread more, is the eventual return to power of the Khmer Rouge—with Pol Pot and Ieng Sary at its head. Certainly we hope that one day the Vietnamese will leave our home and give us back our sovereignty. But if the Vietnamese should leave now, who is going to come to Cambodia to look after our safety and prevent the hellish Khmer Rouge from starting again against us their ignoble and horrible practices of genocide. . . .?"

Of course, if Western "investigators" ask the opinions of those Khmer politicians and intellectuals who have taken refuge in foreign countries, the great majority will say that the first problem is "to chase the Vietnamese out of Cambodia and free the country completely from the Vietnam-Soviet grip"—a problem which must have absolute priority in working out a solution. They will also say that the problem presented by the bloody Khmer Rouge is altogether secondary and can be resolved "amicably" between the Cambodians once the Vietamese have left.

But when the West wants to know the deep feelings of the Cambodian people, should it not give greater importance and weight to the opinions of Cambodian men and women still living in Cambodia (who, in consequence, are in everyday touch with the realities of the country), rather than to the "more sophisticated" views of the politicians and intellectuals who are refugees abroad, remote from the realities of the country and dreading that much less the horror and terror of the Khmer Rouge which, after the departure of Vietnamese troops from Cambodia, would have no chance of affecting them personally? When one knows oneself to be out of danger, one can easily play the super-patriot and place greater value on indulging in anti-Vietnamese demagogy.

The situation of the Cambodian peasants, threatened in their villages in the heart of Cambodia with the prospect of being slaughtered at any moment by the satanic Khmer Rouge, is altogether different. . . .

I am infinitely sad to have to state that countries calling themselves "democratic", "liberal" and "defenders of the rights of man," should show themselves so insensible to the misfortune of Khmer people in Cambodia that they can vote imperturbably at every session of the United Nations General Assembly to retain a seat for the Khmer Rouge—under the pretext that it is necessary to penalize the Heng Samrin regime which Vietnam has imposed on Cambodia.

If this must be so, why do the countries who vote at the UN for the Pol Pot regime refuse to continue to recognize Idi Amin and Jean-Bedel Bokassa as the heads of state in Uganda and Central Africa?

The team of Pol Pot, Khieu Samphan and Ieng Sary is a hundred times more sanguinary and tyrannical than theirs. As to the present governments of Uganda and Central Africa, they have been, as Heng Samrin was in Phnom Penh, installed at Kampala and at Bangui by foreign armies—the Tanzanian Army and the French Army.

In writing this I do not wish to say that one should recognize de jure the government of Heng Samrin which represents Vietnamese colonisation and in no way symbolises the sovereignty of Cambodia.

I have always pleaded to the United Nations, and to all the other international organizations, that Cambodia's UN seat should be left vacant until an authentic Cambodian government drawn from the Cambodian people, and elected by the people by secret vote and universal suffrage, can come to occupy it in complete legitimacy and legality.

But the United States and others have found my demand unrealistic. They consider that what I want for my country and my people (that is to say, an international conference on the lines of the 1954 conference on Cambodia, putting Cambodia under the trusteeship of the United Nations for a certain number of years, neutralizing Cambodia on the Austrian pattern: with a solid international guarantee, sending in UN troops to relieve the Vietnamese troops, having the UN troops disarm the elements of the Cambodian armies whoever they may be, organising general elections under international control with authorisation given to both communist parties to complete, normalization of the real government of Cambodia by the new Cambodian parliament brought into being by the general election) is unrealistic.

The United States and others consider that, in spite of their "repugnance" for the Khmer Rouge, there is only one way for them to "defend the higher interests of Cambodia"—by voting at the United Nations and in other international instances for . . . the Khmer Rouge. They do this, they say, in order not to recognize the colonisation of my country by Vietnam and, happily for the Cambodian people, they imply, there is very little chance in practice that the Khmer Rouge regime could be reinstalled in power in Cambodia.

However, if by some veritable "miracle" the Vietnamese army were to be vanquished in Cambodia and obliged to flee from my country, the Khmer Rouge government, members in full standing of the United Nations, would be reinstated ipso facto in complete legality, and this as easily as its army could make a mouthful of the lamentable armies of the former prime minister Son Sann and the other Khmer Serei (Free Cambodians).

The United States and the other democracies who will have voted to the bitter end for the regime of "Democratic Kampuchea" will have assumed in history the heaviest and the least honourable of responsibilities: that of changing Cambodia back into an immense Auschwitz.

More to appease their own consciences than to reassure the unfortunate Cambodian people in Cambodia, certain governments of the Free World have allowed themselves to believe that, with a new direction (a direction assured by that so-called liberal Khieu Samphan), the Khmer Rouge regime is in the process of humanising itself. According to certain Westerners, the Khmer Rouge wolves are perfectly capable of transforming themselves into lambs.

Such wishful thinking is dangerous, above all for the Cambodian people still in Cambodia. These people are hoping that the Free World can find some means of saving them other than by supporting the so-called legitimacy and locality of the infernal regime of Pol Pot, Ieng Sary and Khieu Samphan.

LEGAL ASPECTS OF RIVAL CLAIMS TO REPRESENTATION AT THE UNITED NATIONS

INTRODUCTION

The Lawyers Committee for International Human Rights has prepared this memorandum to analyze the legal questions raised by rival claims to representation at the United Nations. We have done so at the request of the American Friends Service Committee, in light of the current controversy around Kampuchea's United Nations seat. We have also endeavored to evaluate the extent to which human rights criteria may influence the decision to seat representatives in the General Assembly.

While the General Assembly is clearly not a judicial organ, decisions to accept or deny a representative's credentials must be made in compliance with the provisions of the United Nations Charter and the General Assembly's own Rules of Procedure.

The first requirement is that no state may be represented in the General Assembly until it has first been accepted as a Member State in compliance with Article 4 of the United Nations Charter. The second requirement is that the General Assembly and its Credentials Committee shall determine, in compliance with the Assembly's Rules of Procedure, who may represent that Member State.

The primary difficulty in the development of a consistent legal policy toward Member State representation at the United Nations is that neither the Charter nor the Rules of Procedure provide sufficient guidance for deciding cases of contested representation.

In addition, the Credentials Committee and the General Assembly both tend to function in response to the circumstances of the case before them rather than in response to precedent. The absence, since 1950, of any substantial clarification of the problem has, therefore, created a legal tapestry with few consistent patterns.

In view of the inconsistent precedents, the General Assembly and its Credentials Committee need not be bound by prior decisions. Instead, in resolving new disputes, the Assembly should attempt to establish a framework for decisionmaking in this area that is consistent, rational and equitable.

This paper is intended to analyze the following points:

I. Legal Aspects of Representation:
A. Available Procedural Forums.
B. Resolution 396(v).
C. "Effective Authority" Concept.
D. Substantive Distinctions.
E. Other Criteria.
1. Internality factor.
2. Unresolved military situations.
F. Permissibility of a vacant seat.
G. Human Rights Considerations.
II. Historical Foundations: Case Histories.
A. China.
B. Hungary.
C. Congo.
D. Yemen
E. South Africa.
F. Cambodia.
G. Kampuchea.
III. Conclusions.

I. Legal Aspects of Representation:

A. Available Procedural Forums:

The current controversy surrounding the disposition of Kampuchea's United Nations seat is one of several cases since 1950 to require a determination as to which of two rival claimants is the legitimate representative of a Member State. From a procedural point of view there are two possible means the Assembly can utilize in arriving at this choice. Disputes over representation may properly be addressed in either the General Assembly as a separate agenda item, as in the case of the People's Republic of China, or in the Credentials Committee of the General Assembly, as in the Congo and Yemen controversies.

While the designation of a representation question as a separate agenda item generally leads to a much more direct examination of which government is entitled to represent a Member State, it generally also leads to a more volatile session. Additionally, as a separate agenda item, a representation question may be subject to extensive and complicated political maneuvering which will delay its resolution.

Use of the Credentials Committee enables the General Assembly to avoid the appearance of discussing either claimants' "legitimacy" as a government while focusing on the technical question of which government is the effective representative of the State. The Credentials Committee's initial formulation of all questions of contested representation normally rests on the basis of the propriety of a representative's credentials, for example, the timeliness of submission with proper signature, in accordance with Rule 27 of the General Assembly's Rules of Procedure.[1]

As the Legal Counsel of the United Nations informed the General Assembly on November 11, 1970:

"(N)ormally the examination of credentials, both in the Credential Committee and in the General Assembly, is a procedural matter limited to ascertaining that the requirements of Rule 27 have been satisfied, there have, nevertheless been a few instances involving rival claimants, where the question of which claimant represents the true government of a Member State has arisen as a substantive issue."[2]

The Yemen and Congo controversies are examples of cases in which the Credentials Committee's examination of a representative's credentials has been of a substantive nature. The Cambodian and Kampuchean cases demonstrate how the Credentials Committee is procedurally able to effectuate a substantive conclusion, with respect to the validity of a claimant's credentials, without necessarily examine all of the controversial merits of the situation.

The Credentials Committee has evolved from a body concerned purely with documentary formalities to one able to consider the broader question raised in a representation dispute. Perhaps the real significance of the Credentials Committee lies in the fact that it bestows official recognition and approval upon those who claim to represent a Member State.

While from time to time some Member States, to avoid a substantive examination of credentials, will deny the power of the General Assembly and its Credentials Committee to inquire into the matter of representation, virtually all Member States have in one case or another, approved such a practice.

Indeed, there have been several occasions when, in the course of one meeting of the Credentials Committee or the General Assembly, Representatives have advocated the power to inquire into the matter of representation in one case and denied it in another. One example of this occurred in the Credentials Committee at the 15th Session of the General Assembly, when one representative, while explicitly denying such a power in the Hungarian case, ardently invoked its existence in the Chinese and Congo cases.[3]

B. Resolution 396(v):

Since neither the Charter nor the Rules of Procedure provided determinative guidance for examining or deciding cases of contested representation, the General Assembly expressly declared itself competent to decide such issues. This declaration was formulated in resolution 396(v), which was passed in December 1950, at the 5th Session of the General Assembly.[4]

However, Resolution 396(v), which provides that representation controversies "should be considered in light of the purposes and principles of the Charter and the circumstances of each case," has proved to be a hopelessly vague standard for resolving such disputes.

C. Effective Authority:

To supplement the language of this governing resolution, the General Assembly has, on occasion, applied a test of effective authority to determine which of two rival claimants is entitled to recognition as a Member State Representative.

This informal test attempts to gauge governmental power by focusing on a claimant's control over the population and territory of

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the State. It is intended to be an objective test.

This effective authority test originates from a legal memorandum submitted to the General Assemoly by Secretary General Trygve Lie in 1950, several months before the Assembly first considered the question of representation.[3]

The memorandum asserted that the proper principle for choosing between rivals should be derived by analogy from Article 4 of the U.N. Charter. This article requires that an applicant for membership must be able and willing to carry out the obligations of membership. The memorandum continued, "the obligations of membership can be carried out only by governments which, in fact, possess the power to do so."[4]

The memorandum then stated that where a revolutionary government presented itself as representing a state, in opposition to an existing government, "the question at issue should be which of these two governments, in fact, is in a position to employ the resources and direct the people of the state in the fulfillment of the obligations of membership."[5] In essence, this would necessitate an inquiry into whether the new government exercised "effective authority" within the territory of the state and was "habitually obeyed by the bulk of the population." "If so," the memorandum concluded, "it would seem to be appropriate for the United Nations organs, through their collective action, to accord the new government the right to represent the state in the Organization, even though individual members of the Organization refuse, and may continue to refuse, to accord it recognition as the lawful government for reasons which are valid under their national policies."[6]

D. Substantive Distinctions:

This 1950 legal memorandum also made important distinctions between representation of a state at the United Nations and recognition of that state by other states. This distinction is essential to a consistent application of the effective authority concept.

Simply stated, recognition by a state and representation of a state in an international organization were described as legally separable issues.

On the basis of an individual government's act, "the recognition of either a new state, or of a new government of an existing state, is a unilateral act which the recognizing government can grant or withhold. . . . While states may regard it as desirable to follow certain legal principles in according or withholding recognition, the practice of most states shows that the act of recognition is regarded as essentially a political decision, which each state decides in accordance with its own free appreciation of the situation."[9]

From the standpoint of the 1950 memorandum, the problem with contested representation was that Member States tended to confuse it with issues relating to the recognition of either a new state or a new government of an existing state.

Before 1950, universal membership in the United Nations was seen not only as legally correct, but, also, as conforming to the basic character of the organization. Under such a view, membership of a state in the United Nations and representation of a state in the various organs was to be determined by a legally and not politically motivated collective act. In the case of representation, the act was the vote of the Credentials Committee on the credentials of the purported representatives.[10] This perception of the relationship between representation and recognition, is, however, no longer reflective of the prevailing conduct at the United Nations.

The United Nations does not possess the power, either to recognize a new government or to bind individual Member States to such an act of recognition. Therefore, Member States tend to vote on matters of credentials and representatives not based on the concept of universality but according to their individual national policies of recognition. Member States may also choose, for political reasons, to accept the credentials of delegations from Member States which they do not recognize.

The question of a Representatives credentials is, therefore, frequently a political one. Consequently, the effective authority test has not been consistently applied in the General Assembly or in its Credentials Committee.

E. Other Criteria:

1. The internality factor:

One element which will occasionally influence the General Assembly in its application of the effective authority test is the internality factor. The internality factor is expressed by United Nations Charter Article 2(7) which states in part:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . ."[11]

Of central concern to the internality factor is whether the Assembly's exercise of its competence to resolve issues of representation, pursuant to Resolution 396(v), would constitute a transgression of this article.

Article 2(7) and its provisions may be read as protecting the sovereign discretion and national identity of Member States from intrusion by the international community. It is intended to prevent the General Assembly from becoming involved in political matters of esssentially domestic concern that have somehow been forced into the international arena.

2. Unresolved military situations:

A second element to be considered is whether the Assembly should act before the military struggle between the two factions has been concluded.

The hasty endorsement of a rebel government over its domestic rival might violate the principle of internality. Waiting for the resolution of the conflict would, however, tend to lead to the continued representation of the incumbent delegation. (See discussion of Rule 29, below.)

Therefore, either expressly or by default, it appears difficult to avoid making some kind of substantive choice between the claimants in a representation dispute.

F. The Permissibility of a Vacant Seat:

One approach which has been suggested to diffuse the volatility of contested representation cases when the military situation remains unresolved is to leave the seat of the Member State vacant.

The closest that the General Assembly's Rules of Procedure come to authorizing such an approach is Rule 29.[12] This rule enables the General Assembly and its Credentials Committee to refrain from taking any action on the credentials presented by objectionable representatives. Instead of leaving the seat vacant, however, the challenged representative is ". . . seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision."

While Rule 29 has not been used in cases of contested representation, it has been utilized in disputes of uncontested representation (Hungary).

The General Assembly has also on one occasion (South Africa), rejected uncontested credentials even though it resulted in leaving a Member State's seat vacant.

Although there is no precedent for leaving a contested seat vacant, the General Assembly reserves the right, pursuant to Resolution 396(v), to rule on each case with respect to its individual merits. Thus, it has the option, should it choose, to reject one set of credentials in a contested case, without approving the rival claimant. (*See* generally Appendix G, regarding the decision on the representation of the Republic of the Congo in 1960.)[13]

G. Human Rights Considerations:

Human rights considerations at the United Nations are covered by the Preamble, Article 2 and Article 55 of the United Nations Charter.[14]

The South African case is a distinct example of three essential points: First, that the Credentials Committee can apply substantive principles such as human rights in determining the validity of a representatives credentials; second, that both the Credentials Committee and the General Assembly can reject even uncontested credentials on the basis of human rights violations; third, that such action can result in leaving a Member State's seat vacant in a manner unforeseen by the U.N. Charter.

There are no other precedents which utilize human rights criteria as a basis for deciding whether to seat representatives in the General Assemoly. One explanation for this is that inquiries into a Member State's alleged domestic violations of human rights were often considered to be contrary to Article 2(7) of the Charter.

In recent years, however, nations have come to recognize that human rights violations are a matter of international concern. In this context, Article 2(7) of the Charter may not be the only operative or relevant provision. Article 6 of the Charter, which has never been fully implemented, provides for the expulsion of a Memoer of the U.N. which has "persistently violated" the principles contained in the Charter.[15]

The inter-relationship between these two provisions, which is yet to be clearly developed or defined, may be a significant factor in future decision-making in this area.

II. Historical Foundations: Case Histories:

A. China:

The question of Chinese representation occupied the United Nations off and on from 1949, when the People's Republic of China was estaolished on the mainland until October 1971. The Chinese case is unique in the history of the United Nations in that it was the first instance in which two rival governments vied to represent a Member State.

This may be considered remarkable in view of the fairly large number of revolutionary changes of government and the even larger number of instances of breach of diplomatic relations among members which occurred before 1950. Nevertheless, as previously indicated, until this question arose the issue of Member State representation in the United Nations was considered distinctly separate from that of recognition of a new government.

In each year from 1950 to 1960, an attempt was made to include in the General Assembly agenda an item calling for the seating of representatives of the People's Republic of China in place of those from the Republic of China. Each year the General Assembly instead adopted a resolution postponing consideration of the matter.

In 1961 the issue of representation for the People's Republic was classified as an "important question" in accordance with Article 18 of the United Nations Charter. Article 18 (2) provides that: "Decision of the General Assembly in important questions shall be made by a two-thirds majority of the members present and voting."[16]

Underlying this characterization was a combination of complex political and legal considerations stemming from both the twenty-year old stalemate in the Chinese Civil War and the discrete nature of the territories occupied by the rival claimants.

From the minority view, the conflict bore far greater resemblance to a dispute over membership for a new state than to one of contested representation. However, in the

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view of the growing majority, the claimants were seen, not as representatives of two distinct countries, but as rival delegations from one country. Since only one China was recognized as a Member State, it was argued that only one claimant could be seated in the General Assembly. These considerations constituted such unique problems that the General Assembly deemed them most appropriately handled in plenary session.

Continued attempts to change the representation of China in the General Assembly were unsuccessful until 1971. Finally in October 1971, the General Assembly, by a narrow margin, refused to characterize the matter as an important question. Nevertheless, even when the issue was eventually reclassified as a non-important question requiring only a majority vote, the dispute was retained in plenary session as a separate agenda item.

On October 25, 1971, the General Assemoly accepted the People's Republic of China as the legitimate representative of China. The Nationalist Government of the Republic of China was not permitted to remain in the General Assembly as a new Member State. The People's Republic thus took over "China's" seat, as a permanent member of the Security Council, in the General Assemoly and in the organization's various other organs.

The General Assembly's action was categorized by the majority of the delegations of the Member States, not as a matter of expelling a Member State or of admitting a new Member State to the United Nations, but rather as a matter of "restoring to the People's Republic of China its lawful rights." It was argued, therefore, that recognition of the Nationalist Government in the United Nations under any pretext "would create a dangerous precedent for the legalization of interference in the internal affairs of other States, in violation of Article 2(7) of the Charter."

The minority of the delegations, however maintained that the expulsion of the Nationalist Government from the United Nations was itself a violation of Article 6 of the Charter.

There were two reasons for this position: first, that the General Assembly had "expelled" the Nationalist government without obtaining "the recommendation of the Security Council" as required by Article 6; and second, that the only ground for recourse to an Article 6 expulsion procedure was for persistent violations of the principles contained in the Charter. In this context it is important to note that from the point of view of the majority, the question of the expulsion of a Member State did not even arise.

B. Hungary:

Following the Soviet response to the Hungarian revolt of 1956, the General Assembly, relying on the ambiguity of Rule 29 of the Assembly's Rules of Procedure, decided to take no action on the credentials submitted on behalf of the new Hungarian delegation. These representatives had been sent by the Kadar Government which, with the support of Soviet tanks and troops, had toppled the coalition government of Imre Nagy.

Although only one delegation was claiming to represent Hungary, both the Credentials Committee and the General Assembly refrained from taking any action on the credentials it presented until 1963. During that period, however, Hungary functioned for all intents and purposes as if it were a full member.

C. Congo:

Following the General Assembly's September, 1960 decision to admit the Republic of the Congo (Leopoldville) to membership in the United Nations, pursuant to Article 4 of the U.N. Charter,[17] the question of representation was referred to the Credentials Committee. The issue to be resolved was whether to approve the credentials of the delegation led by Prime Minister Patrice Lumumba or the one led by Chief of State Joseph Kasa-Vubu. From September to November when the Credentials Committee finally reported, the Congo was not represented in the General Assembly.

Several weeks before the General Assembly's action, a grave constitutional crisis had occurred in the Congo. Chief of State Kasa-Vubu had issued an ordinance dissolving the government headed by Prime Minister Lumumba and had called upon the President of the Senate, Joseph Ilea to form a new government. Mr. Lumumba had, in turn, announced that President Kasa-Vubu was no longer Chief of State and had called upon the people, the workers and the army to rise.

After a joint session of the Congolese Parliament had conferred full powers on Prime Minister Lumumba, Chief of State Kasa-Vubu issued an ordinance suspending Parliament. At this point, the Chief of Staff of the Army seized power.

The prevailing arguments in the Credentials Committee's decision to accept the credentials of the delegation appointed by the Chief of State of the Congo stressed the procedural side of the question rather than its substantive merits. It was argued that the duty of the Credentials Committee was to pass only on the legal questions concerning the validity of credentials before it, and that political or other considerations should be left to the General Assembly. It was noted that Rule 27 of the Rules of Procedure provided that credentials "shall be issued either by the Head of State of government or by the Minister for Foreign Affairs." It was also the consideration of the majority, that to question the validity of a document issued by the Chief of State would be an intervention in the domestic affairs of the Republic of the Congo in violation of Article 2(7) of the United Nations Charter.

Although the decision to accept the credentials presented by the Chief of State was challenged by Prime Minister Lumumba on the basis of Kasa-Vubu's alleged noncompliance with the Congolese Constitution, the Committee refused to look beyond the fulfillment of the technical requirements of Rule 27.[18]

D. Yemen:

In the 1961 Yemen case the revolutionary government of Brigadier El Sallal had, with the direct assistance of as many as 50,000 Egyptian troops on Yemeni soil, displaced the previously established government of the Iman. In so doing, the rebels succeeded in seizing and controlling the capital, most of the nation's territory and the support of the majority of the population.

The Iman, however, was able to resist with military aid provided by Saudi Arabia in small areas of the country which his troops continued to occupy. When the question of Yemeni representation was finally decided by the General Assembly, the military contest was a mere eleven weeks old and not totally concluded. These facts are fairly parallel to those in the current Kampuchea representation dispute and in the Cambodian dispute of 1974.

The Yemen representation dispute was initially dealt with in the Credentials Committee. The credentials of the rebel El Sallal government were accepted there without discussion. The report of the Credentials Committee was accepted by the General Assembly the next day. A suggestion by the representatives of Saudi Arabia and the Kingdom of Yemen that the General Assembly should delay a decision on the credentials question pending an inquiry in the United Nations was not adopted.

It is a supportable proposition that the General Assembly rendered its decision on the basis of effective authority criteria, since at the time of the Assembly's debate and vote, the El Sallal government exercised effective control over most of Yemen.

Two further elements are discernable from the Yemen case, however, which could also have had a bearing upon the General Assembly's use of the effective authority test. The first element is the Assembly's acceptance of the internality criterion despite evidence that foreign troops had assisted the revolutionary government on the soil of the Member State. The second element to be considered is that the Assemoly had acted against the previously established government, as noted above, before the military struggle had been concluded.

The fact that neither of these two elements played a significant role in the choice between the rival Yemeni claimants probably should not be considered determinative as to future cases of contested representation. By adopting Resolution 396(v), the General Assembly has indicated that it will consider representation controversies according to the circumstances of each case. Such a policy tends to subject legal standards to the fluctuations of the prevailing political winds.

E. South Africa:

On September 27, 1974, the Credentials Committee of the Twenty-ninth Session of the General Assembly voted to accept the credentials of all delegations "with the exception of the representatives of the Republic of South Africa." The General Assembly adopted the Credentials Committee's report without change.

At the same meeting, the Assembly adopted Resolution 3207 (XXIX) calling upon the Security Council to review the relationship between the United Nations and South Africa in light of the constant violations by South Africa of the principle of the Charter (Articles 22 and 55) and the Universal Declaration of Human Rights."

These violations were alleged to stem from the South African Government's apartheid policy which institutionally denied basic rights and freedoms to the non-white majority.

When the Security Council failed to take action recommending the expulsion of South Africa, several Members of the Assembly sought a ruling from the Chair on the status of the South African Delegation in the General Assembly. The President of the Assembly gave a ruling which had the effect of suspending South Africa from its participation in the work of the Assembly, thus circumventing the expulsion requirements of Article 6 of the United Nations Charter.

Although human rights violations were used in this case as a basis for unseating the South African delegation it was a suspension of a Member State ". . . from the exercise of rights and privileges of membership in a manner not foreseen by the Charter." (Scope of "credentials" in Rule 27 of the Rules of Procedure of the General Assembly on November 11, 1970.)[19]

According to Article 6 of the Charter, such an expulsion action would have required the recommendation of the Security Council and a two-thirds majority vote in the General Assembly. The above-cited 1970 report by the Legal Counsel concluded that "the participation in meetings of the General Assembly is quite clearly one of the important rights and privileges of membership . . . Suspension of this right through the rejection of credentials would not satisfy the foregoing requirements (Article 6) and would therefore be contrary to the Charter."[20] Nevertheless, statements by the Legal Counsel, rather than having a binding effect on the General Assembly, have only a hortatory effect. This demonstrates the essentially political nature of that august body.

In terms of precedent, therefore, the exclusion of the South African delegation from

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participation in the business of the General Assembly points to two additional conclusions: first, that the General Assembly does not consider itself bound by the legal recommendations of its Legal Counsel and second, that when a sufficient number of delegations wish to punish a Member State for violations of human rights, they can suspend that State from the General Assembly even though such an action is not specifically authorized by the Charter.

Although the suspension of the South African delegation applied only to representation at the Twenty-ninth Session of the General Assembly, the Republic of South Africa no longer sends a delegation to represent it in the General Assembly.

F. Cambodia:

On March 18, 1970, General Lon Nol unseated Prince Norodom Sihanouk as the Cambodian Head of State. The new government adopted the name "The Khmer Republic." The Khmer leadership encountered little difficulty in receiving diplomatic recognition. The representatives that were sent to the United Nations were seated without objection.

On May 5, 1970, Sihanouk announced the formation of a rival government, the Royal Government of National Union of Cambodia, and claimed the support of the forces battling Lon Nol. At the time, both sides controlled significant areas of the country, but neither could claim to control the whole population or the territory. In addition, the military struggle had yet to be definitely resolved.

In September 1973, at the Twenty-eighth Session of the General Assembly, 32 Member States requested the inclusion in the Assembly's agenda of an item entitled the "Restoration of the Lawful Rights of the Royal Government of National Union of Cambodia in the United Nations." On October 17, the Assembly decided to include the item in its plenary meetings.

The question was considered by the General Assembly at four plenary meetings held on December 4 and 5, and was then deferred on a procedural motion until the 1974 session of the Assembly. Following this deferment, the question of Cambodia's representation was discussed in the Credentials Committee. On December 11, 1973 the Credentials Committee voted to accept the credentials of the representatives of the Khmer Republic. This decision was approved by the General Assembly.

At its Twenty-ninth Session, in 1974, the General Assembly adopted resolution 3238 (XXIX),[21] by a preamble to this resolution, the Assembly noted that, while the RGNUC, presided over by Prince Norodom Sihanouk, exercised authority over part of Cambodia, the Government of the Khmer Republic still controlled a majority of the Cambodian people. In the operative paragraphs of this resolution, the Assembly requested the Secretary-General, ". . . after due consultation, to lend appropriate assistance to the two contending parties claiming lawful rights in Cambodia and to report on the results to the General Assembly at its Thirtieth Session."[22]

Following the adoption of resolution 3238 (XXIX), the Credentials Committee, on December 12, voted to approve the credentials of representatives of the Khmer Republic. This recommendation was adopted by the General Assembly on December 16, 1974. Resolution 3238 (XXIX) was subsequently dropped from the agenda in 1975.

G. Kampuchea Case:

On September 19, 1979, in its report to the Thirty-fourth Session of the General Assembly, and again on July 28, 1980 in its report to the Seventh Emergency Special Session, the Credentials Committee voted to accept the credentials of the Government of Democratic Kampuchea and not those of the People's Republic of Kampuchea. In both of these sessions, the General Assembly voted to accept the report of the Credentials Committee. In the debate on Kampuchea that preceded these votes, it was apparent that the effective authority test was not being applied by the majority of Representatives on the Credentials Committee.

There are several explanations for this development. The first reason offered was that since the People's Republic of Kampuchea assumed power as a direct result of Viet Nam's military invasion and occupation, it lacked the necessary independence to advance its claim to representation. While under international law, the government which exercises effective authority over a territory is generally the one which is recognized, it was argued that an exception to this should be made: A foreign power which conquers a territory by force should not be recognized even when it is able to demonstrate effective authority. In terms of the history of contested representation cases, this was a rather novel argument. No similar argument was raised in either the Yemen controversy or in any of the uncontested situations involving the use of foreign forces to place a new government in power.

The second reason for the result which occurred was the previously described view that under Rule 27 of the Rules of Procedure the Credentials Committee was limited to the "technical task" of examining the credentials of the government of Democratic Kampuchea. The proposal that the Kampuchea seat be kept vacant was rejected as "inconsistent with the Rules of Procedure and contrary to previous practice."[23]

Regarding the first claim, the minority emphasized that since the People's Republic of Kampuchea was in "full and firm control of the whole territory," the acceptance of the credentials of the Government of Democratic Kampuchea amounted to gross interference in the country's internal affairs. Regarding the majority's procedural claim, the Credentials Committee was also reminded of the 1974 precedent in which the credentials of the South African delegation underwent a substantive rather than a procedural examination. Nevertheless, these arguments did not prevail.

When the Thirty-fifth Session of the General Assembly opens on September 16, 1980, this dispute will undoubtedly require a new determination as to which claimant is the legitimate representative of Kampuchea.

III. Conclusions:

An examination of Member State representation conflicts at the United Nations demonstrates that such conflicts are commonly dealt with politically rather than legally.

While there are standards, such as the effective authority concept, which could be used to resolve incidents of contested representation, they have not been consistently applied.

Human rights criteria have been used as the basis for unseating a Member State delegation (South Africa), but this precedent was established contrary to the legal position submitted to the General Assembly by the Legal Counsel.

While there is no precedent for leaving a seat vacant in the General Assembly in cases of contested representation, this does not foreclose the possibility of such an occurrence. In a case of uncontested representation, South Africa's seat was left vacant through a procedural ruling from the Chair which effectively suspended the South African delegation from its participation in the work of the General Assembly.

The determination regarding which of two rival delegations to seat as representatives of a Member State has developed into a situation where nearly any decision may be permissable. This is a consequence of the General Assembly's failure to apply firm or consistent legal standards in resolving cases of contested representation.

The history of contested representation cases at the United Nations is, at best, ambiguous. The General Assembly now has the opportunity to develop an objective framework for decision making that considers peace, stability and human rights in addition to the other relevant issues. Under this kind of approach, representation disputes would be resolved in a consistent, rational and equitable manner.

FOOTNOTES

[1] See Appendix A: Rules of Procedure of the General Assembly up to 31 December 1978.

[2] See Appendix B: United Nations General Assembly A/8160 11 November 1970.

[3] See Appendix C: United Nations General Assembly A/4743 20 April 1961.

[4] See Appendix D: Resolution 396(v). 325th plenary meeting 14 December 1950.

[5] See Appendix E: United Nations Security Council S/1466 9 March 1950.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] See Appendix F: Charter of the United Nations.

[12] See Appendix A: Rules of Procedure of the General Assembly up to 31 December 1978.

[13] See Appendix G: United Nations General Assembly A/4578 17 November 1960.

[14] See Appendix F: Charter of the United Nations.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] See Appendix G: United Nations General Assembly A/4578 17 November 1960.

[19] See Appendix B: United Nations General Assembly A/8160 11 November 1970.

[20] Ibid.

[21] See Appendix H: Resolution 3238 (XXIX).

[22] Ibid.

[23] See Appendix I: United Nations General Assembly A/34/500 20 September 1979.

THE INSULATION OF THE DEPARTMENT OF JUSTICE FROM POLITICAL INTERFERENCE OR IMPROPER INTRUSIONS

● Mr. MATHIAS. Mr. President, notorious cases, such as the current investigations of Billy Carter's relationship with the Government of Libya, should do more than merely titillate public curiosity. They should be utilized as opportunities to view the operations of political institutions that are usually veiled from view and to assess their efficiency and effectiveness.

An important aspect of the unfolding Billy Carter affair is the practice instituted at the Department of Justice in 1977 to insulate the Department from political interference or improper intrusions. That procedure, which is certainly well motivated, may be inhibiting necessary communication between the President and the Attorney General.

An interesting discussion of the subject recently appeared on the OpEd page of the Washington Post. The author, James Rowe, is a distinguished and experienced Washington attorney who has served in both the White House and the

Department of Justice. He speaks with the authority of one who has been there.

I ask that the article be printed in the RECORD.

The article follows:

POLITICAL JUSTICE

Louis Brownlow was a famous public administrator who in the 1930s reorganized the federal government and, in effect, created the Modern Presidency of Franklin Roosevelt.

One of his favorite sayings was that the president's Cabinet consisted of "10 SOBs trying to cut the president's throat."

He believed democratic government would not work unless there was "political control" from the top. Presidents controlled Cabinet members and they, in turn, controlled their departments.

Today the Department of Justice does not seem to follow this ancient rule of public administration. Not only does the president not appear to be in control of his attorney general—or even want to be—but his attorney general too often does not appear to be in control of the Department of Justice.

The Department of Justice is the "Power of Darkness," as all lawyers know. Further, as all prosecutors learn, there is a tremendous amount of discretion lodged in the Justice lawyers as to whom they will or will not prosecute. There has to be; otherwise the judicial system would be swamped and sink under the waves.

The department was badly scarred during the Nixon-Watergate days, with one attorney general going to prison and another just barely missing going there.

Since then, the result has been an "unpolitical" Department of Justice. Not only, it seems, is the president afraid to speak to the attorney general but the latter can hardly speak to his subordinates without the media trying to make a "federal case" out of it. This is absurd.

Break-ins and "enemy lists" are not really very good things, and no one actually wishes a return. But the pendulum has swung so far the other way that this business of being "unpolitical" is, practically speaking, cockeyed.

Item. Is it really conceivable that the attorney general should not tell his boss, the president of the United States, that a member of the president's family might be indicted if he does not register under the Foreign Agents Act?

Item. During the 1976 presidential campaign, President Ford had a completely "unpolitical" attorney general in Edward Levi, who, as a former Justice Department lawyer, dean of the Chicago Law School and president of the University of Chicago, was more than competent to hold the highest law office in the land. Still, during the 1976 campaign he authorized, and allowed to go on, an elaborate, long-drawn-out investigation of his own president, involving some political contributions from labor unions in Michigan in earlier years. The matter had already been investigated in past years and Ford had been cleared. During the hard-fought presidential campaign, the result of the second investigation was eventually the same, but clearance of the president did not come until late October. There are today Republican politicians who believe that investigation cost Ford another term. They thought that at most it should have been disposed of quickly and gotten out of the way early. But the "unpolitical" attorney general did not help.

Item. In what was perhaps the flimsiest federal investigation in recent years, the attorney general appointed a "special prosecutor" to look into the cocaine habits of Hamilton Jordan, the White House chief of staff. Even an outside newspaper reader could tell from the beginning that this one was "a dog" and should never have been started. The eventual result was that Jordan was completely cleared, after having run up a $100,000 legal fee defending himself against a miasma. To date, no principal congressman has introduced a private bill in Congress to reimburse Jordan for his legal fees.

Item—or perhaps several items, ABSCAM. Whatever the legal niceties, this is perhaps the most virulent entrapment in legal history. Here were a number of elected congressional public servants who were going along minding their own and the public's business. Most of them had good reputations, and one or two excellent reputations. The motivation for ABSCAM, with its incredible leaks to the national press, has never been made clear. Certainly it was not a reasoned, responsible decision by the leaders of the Department of Justice to bring a series of cases. Rather, they, like the rest of us, were faced with a number of front-page newspaper stories by a not altogether responsible press. Who the leakers were—or are—and what their motivations were and are is not clear. Are they Savonarolas or witch-hunters of the present era? Are they self-appointed "moralists," ungirdled by any respect for their superior officers? Or do they envision future political careers for themselves?

No one seems to know. Once again, it is inconceivable that the leaders of the Department of Justice do not know who they are. They may not be able to prove who they are, but they have more than a good idea; and one wonders what action, if any, they plan to take against them.

In all such items as these, and there are many, the decisions should, in a democracy, be made by our responsible political leaders. In the American democracy, these leaders are the president and the attorney general.

In a simpler day, in the early 1940s, for an example, the Department of Justice was seriously considering bringing an antitrust suit against the Associated Press. In those days, before television, this meant taking on the pressiords of the United States, who owned and controlled the AP. Some of those pressiords and their lawyers went to the White House. FDR sent one of his top political emissaries to the attorney general and to Thurman Arnold, the antitrust attorney general, to ask what was going on. FDR did not relish taking on the country's newspaper publishers any more than he had to and unless he had to. The case was carefully reviewed by the Justice lawyers with the political emissary, who in turn reported back to the president. The Department of Justice soon thereafter brought the suit and eventually won it.

Given the present atmosphere, perhaps that president and that attorney general would be on their way to jail. At least they could console themselves that the responsible political leaders in this democracy had made the decision, and not some faceless FBI or Justice minion in the outer reaches of New York or New Jersey.●

SENATOR McGOVERN ON U.S. FOREIGN POLICY

● Mr. KENNEDY. Mr. President, the Soviet occupation of Afghanistan and the articulation of the Carter doctrine have prompted many long and detailed analyses of current American foreign policy. It is rare, though, to find as thoughtful an article as the one that our respected colleague, Senator GEORGE McGOVERN of South Dakota, wrote for the June edition of the Atlantic. Entitled "How To Avert a New Cold War," his piece discusses the Carter doctrine and its implications for our foreign and national security policies.

In his article Senator McGOVERN reminds us of the fact—too often overlooked in the heated rhetoric of recent months—that avoiding nuclear war "is, in the most literal sense, a vital national interest." Hence, cooperation with the Soviet Union must "rank with the defense of the Persian Gulf as an essential national interest. The task of policy is to reconcile the two and, if possible, make them mutually reinforcing."

Mr. President, Senator McGOVERN's perceptive analysis points to the clear need for a reexamination of U.S. national security policy. We need to take effective action both to insure the protection of our interests in the Middle East and Persian Gulf and to oppose the Soviet occupation of Afghanistan. But deterring aggression, protecting the Persian Gulf, and pursuing cooperation between the two nations with the power to destroy the world itself are not, and cannot become, mutually exclusive goals. We must continue to seek a world safe for freedom—and for human survival. With Senator McGOVERN, I believe that we must devise a sound national security policy based "on the defense of the oil lifeline and at the same time cooperation in all possible areas with the other nuclear superpower."

I request that Senator McGOVERN's article be inserted in the RECORD.

The article follows:

HOW TO AVERT A NEW "COLD WAR"

(By GEORGE McGOVERN)

In the years since World War II, Presidents have often been accused of "lacking a policy," but we have seen a proliferation of presidential doctrines. The Truman Doctrine of 1947, which grew out of the necessity to resist Stalinist incursions upon Greece and Turkey, was elevated to a declaration of global ideological warfare against communism. The Eisenhower Doctrine of 1957 declared the United States prepared to use armed force to assist Middle Eastern nations threatened by "international communism." The Nixon Doctrine of 1969 called for the use of regional surrogates to bar the gates to communism and protect American interests. Now in 1980, we have the Carter Doctrine, stating that "an attempt by an outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States," to repel which the United States would employ "any means necessary, including military force."

There is an important difference between a policy and a doctrine. A policy is good for as long as it works or is needed, whereupon, without undue difficulty, it can be altered or discarded. When a policy is finished it is not the end of an "era"; it is merely the end of an approach that has outlived its usefulness. A doctrine, by contrast, is for the ages, and is neither easily nor safely trifled with even when it has outlived its usefulness or acquired unintended meanings. With their bias toward the ideological and the broadly geopolitical, doctrines tend to generalize beyond the warrant of ascertainable facts, tempting us to discount local conditions and special circumstances. The trouble is, as Vietnam and Iran have shown, that purely local circumstances often determine the success or failure of grand geopolitical or ideological doctrines.

The hazard of the Carter Doctrine, as spelled out in the State of the Union ad-

dress of January 23, 1980, is not in the President's pledge to protect our vital interests in the Persian Gulf, but in the assumption, without clear or convincing evidence, that our interests are now threatened by a Soviet grand strategy "to consolidate a strategic position . . . that poses a grave threat to the free movement of Middle East oil." Four highly plausible possibilities are thus ignored: that the Soviets may have no such grand strategy; that threats to our interests may arise from other, local sources; that détente with the Soviets and securing our interests in the Gulf can be mutually reinforcing; and that the countries of the Persian Gulf region, as well as our historic allies, must be consulted before the United States develops a doctrine or embarks on military intervention related to their interests.

The Carter Administration cannot be held primarily responsible for the explosion of anti-Americanism that accompanied the Islamic revolution in Iran. That was the result of a policy, going back to World War II, of treating Iran as an object in the geopolitics of the Middle East, without regard to its own preferences. The shah and his lieutenants played a crucial role in the high-stakes game of strategy and oil, but the Iranian people were shut out of the game. Cut loose from their traditional religious and social moorings, their expectations aroused by the sudden, glittering affluence of a privileged segment of their society, and alienated by the pretensions and oppressiveness of the imperial regime, the Iranian people became a receptive audience not only to the agitations of thousands of young people the shah had sent abroad for their education, primarily in America, but also to the smuggled-in teachings of a charismatic, exiled cleric.

Although the Carter Administration cannot be blamed for the consequences of past misjudgments, it can quite properly be asked to account for its general unprofessionalism surrounding the admission of the shah to the United States and the consequent seizure of the American hostages in Tehran. The shah was admitted to the United States despite warnings from various sources, including the American chargé in Tehran, Bruce Laingen, that it would be dangerous to do so without special measures to protect the embassy or remove American personnel. No convincing case has ever been made that the shah could have been treated only in New York, or that American doctors and equipment could not have been flown to Mexico City. Professor James Bill, an expert on Iran at the University of Texas, commented in November 1979, after the hostages had been seized, that although the Iranians had warned us repeatedly about the shah, "we did nothing to assuage their desperate fear of a linkage between the shah and the Administration to plot his return. They cannot forget the CIA plot that ousted Mohammed Mossadegh in 1953 and returned the shah to his throne." The Administration's patience after the embassy was seized won support from the public and Congress, but there remains the question of whether the hostage crisis need have occurred.

By invading Afghanistan in the last week of December 1979, the Russians rescued the Administration, at least temporarily, from pressure to account for its handling of Iran. The two events merged into a full-fledged Cold War crisis, in which the Russians at least temporarily displaced the Ayatollah Khomeini as the principal author of mischief in southwest Asia. The President called the Soviet action "the most serious threat to the peace since the second World War," and the Administration for the time being lost interest in retaliatory acts against Iran, urged the Iranians to recognize that the real danger to them came from the Soviet Union and said that the Iranians might receive American military and economic support against the Soviet threat if they released the hostages. All but forgotten was the President's statement to congressional leaders on November 27, 1979, that even the freeing of the hostages "will not wipe the slate clean" with Iran. "We have no basic quarrel with the nation, the revolution, or the people of Iran," the President said on January 21, 1980. "The threat to them comes not from American policy but from Soviet actions in the region. We are prepared to work with the government of Iran to develop a new and mutually beneficial relationship." The hostage crisis was thus reduced, in the Administration's rhetoric, from a supreme challenge to American honor and interests to distraction from the real issue of Soviet aggression and expansion. Only when the Ayatollah Khomeini, in the wake of repeated efforts at propitiation by the President, came down strongly on the side of the militants and against President Bani-Sadr's efforts to arrange a transfer of the American hostages to government control did President Carter announce a formal breach of diplomatic relations and order a ban on exports to Iran, pressure our allies to employ sanctions, and finally launch the abortive rescue attempt.

Until that time the Administration seemed ready to associate itself with Khomeini's regime, as it had with the shah's, solely on the basis of its presumed anti-Sovietism, without bothering to look closely at the new Iranian government's ambitions and viability. Nor did the Administration consider it worthwhile to examine a variety of plausible reasons behind the Soviet move into Afghanistan, or even to acknowledge that we could never really be sure what the motives of the men in the Kremlin were. Instead, the Carter Administration perceived, and forthwith proclaimed, a Soviet grand design to envelop the Persian Gulf region and threaten the free world's oil lifeline.

There is one possible virtue but several probable dangers in the drastic warning to the Russians in the Carter Doctrine. The possible virtue is that it could destroy any illusions the Russians may have about the importance the United States attaches to the Persian Gulf region and the seriousness with which we regard military intervention in violation of international law. The dangers are in making threats we may not be prepared to back up, in the possibility that the Administration will believe the untested assumptions contained in its overheated rhetoric, and in the extreme difficulty of reversing course once the tough talk has served its immediate purpose. Under the best of conditions, détente has been a fragile edifice, painstakingly constructed. Protracted educational efforts have been required to develop public attitudes congenial to arms control, trade, and cultural exchange. In a crisis these are all too easily dispelled and replaced by attitudes of mistrust and belligerency. Then, when the national interest requires a renewal of cooperation with the Soviet Union, the entire process has to begin anew, painfully, from scratch.

Therein lies the mischief of the Carter Doctrine. It implies a comparison between the Soviet behavior in Afghanistan and the Hitler model of aggression in the 1930s. The lesson of such a comparison is obviously that it is better to stop an insatiable, reckless aggressor sooner rather than later. The trouble with this or any other "lesson of history" is that it is instructive only when you are dealing with a closely similar situation. In the case of the Russians in Afghanistan, the differences far outweigh any similarities to, say, the German seizure of Czechoslovakia in 1938. We are dealing with an aggressor whose record is more calculating than reckless and whose insatiability is more a tenet of ideology than a guideline of practical policy. Not the least important difference between Nazi Germany in the thirties and the Soviet Union in the eighties is that until the late thirties it was feasible to stop Germany relatively easily; after that it was feasible to eliminate the Hitler regime at a high price, but one well short of the destruction of much of the world's civilization. The Soviet Union, by contrast, deploys conventional forces in Afghanistan that no responsible military analyst believes we can challenge, and is also a nuclear superpower that cannot be eliminated, as Hitler's Reich was, and with whom we therefore have no choice but to coexist as best we can.

This end is best served by trying to analyze Soviet behavior as objectively as possible, on the basis of ascertainable facts rather than ideological tenets. The facts of Afghanistan are that the Soviets intervened in a country that had come under their domination, without notable protest from the United States, in a Communist coup in April 1978, and that by late 1979, following a second coup in September in which one Marxist leader overthrew another, the country seemed to be slipping out of Marxist and Soviet control and into the hands of Moslem insurgents. The regime the Russians toppled, was hardly one to be mourned: President Ammin's brief reign in Kabul was characterized by a brutality equaled only by its incompetence.

Moreover, there are indications that the Russians, fearing the spread of Islamic militancy across the southern tier next to their borders, have been no more happy than we with the militancy and anarchy in Iran, especially when the Ayatollah Khomeini culminated against both superpowers as "Satan's" agents.

The Russians undoubtedly underestimated the difficulties in Afghanistan and the world reaction. The new president they installed, Babrak Karmal, has been ineffective; reorganizing the Afghan army has proven difficult if not impossible; resistance by Islamic guerrillas has been stiff, forcing the Russians to scrap any plans they may have had for an early withdrawal. Nor had they expected so vehement a reaction from the United States and the Islamic countries. The United Nations General Assembly's denunciation of the Soviet move into Afghanistan by a vote of 104 to 18 with 18 abstentions must have come as a shock and as a major setback to Soviet aspirations for expanding their influence in the Third World.

Another significant factor was the bitter and emotional attitude toward the United States prevailing in Moscow in the fall of 1979. President Brezhnev, who had invested heavily in détente and whose health and faculties were impaired, had to confront his harder-line colleagues with a catalogue of failure and frustration: the SALT II treaty seemed lost beyond retrieval in the Senate; the United States was preparing to increase its military spending; NATO had agreed to deploy a new generation of American nuclear armed missiles in Western Europe; the United States was moving closer to a working relationship with the Chinese. In addition, an irritating and wholly unnecessary fuss had been stirred up by the American President, for patently political reasons, over a Soviet brigade known to have been in Cuba for many years. Under these circumstances the Soviets may have felt they had little to lose by using military force to retrieve a disintegrating situation in a bordering satellite state.

To all these possible factors—local, regional, and internal to the Soviet Union—the Carter Administration was indifferent, caught up as it was in the excitement of unveiling its new doctrine. It was almost as if, when the Soviets moved into Afghanistan, we were relieved to find ourselves freed from the complexities of Third World nationalism and the Islamic revival and back on the comfortably familiar turf of a bipolar Cold War world. Once they heard the call of

the Carter Doctrine, the Iranians would naturally forget about the shah, the Arabs would forget their differences with Israel, our allies in Western Europe and Japan would gratefully follow our lead, and all would join with us in a grand alliance against Soviet aggression. Now the unwelcome "lesson of Vietnam"—as Daniel Yergin put it, "that 'fundamental designs' may be illusory and that global implications may be secondary to local issues"—could also be cast aside. Americans could be patriots again, without bothering to make the troublesome distinction between patriotism and jingoism.

In this altered environment our "hawks" joyfully trumpet the coming of the "second Cold War." They are also proclaiming their own vindication: have they not warned us all along that détente would fail? They have indeed, but the question remains whether they merely foresaw the breakdown, or helped to contrive it.

When the President warned of "the most serious threat to world peace since the second World War," he inevitably created a war atmosphere in which public discussion, to a greater degree than in many years, has been dominated by war talk. To express dismay at this development is not to preach pacifism: we must be prepared to fight either a nuclear or a conventional war, and we cannot rule out the possibility of either occurring. The issue is not whether we will fight if our vital interests are attacked, but how most effectively to use our policy and diplomacy without resort to war. Preventing nuclear war has become a national interest second to no other, as well as an interest we share with the Soviet Union and with all other nations. It cannot be too often emphasized that a third world war would in no sense be comparable with the first and second world wars, which, destructive though they were, left the world physically intact. Although projections differ as to which side might emerge from a nuclear war with the larger fraction of its industry intact and of its people still alive, no one contests that the losses would be in the hundreds of millions and that our society and economy, even were we to emerge as the "winner" of the conflict, would be grievously crippled.

Avoiding so great a calamity is, in the most literal sense, a vital national interest. That is what détente is about. It is not a policy "opinon" in the conventional sense, since the only other "option" available is unending cold war, recurrent crisis, an arms race forever escalating in cost and risk, and "at the end, looming ever clearer," as Albert Einstein warned, "general annihilation." With implications of such great consequence, détente with the Soviet Union must surely rank with the defense of the Persian Gulf as an essential national interest. The task of policy is to reconcile the two and, if possible, make them mutually reinforcing.

It comes, therefore, as a shock to have détente declared at an end in our sudden alarm for the security of the Persian Gulf. That, however, is the thrust of the Carter Doctrine: in the name of one vital interest, another is to be cast over the side. It would have made a great deal more sense, in the wake of Iran and Afghanistan, if the President, instead of hastily compiling a shopping list of sanctions against the Soviet Union, had put to his advisers the question "By what means are we to protect the two vital interests we have at stake? By what means can we defend the oil lifeline and at the same time maintain necessary measures of cooperation with the other superpower?"

One probable reason for the Administration's preference for the tough line—in addition to the still tenacious hold of the postwar "doctrines" on many minds—is the tendency to treat international relations as a kind of morality play. The Russians, in this perception, are either good people like ourselves, as we briefly deemed them to be when they were our allies in World War II, or they are bad people through and through—voracious and deceitful, determined to do us in. The basic Cold War assumption, that you cannot do business with the Russians, was codified in 1950 in a joint State and Defense Department document, known as "NCC-68," which was to become highly influential. "The Soviet Union, unlike previous aspirants to hegemony," NSC-68 said, "is animated by a new fanatic faith, antithetical to our own, and seeks to impose its absolute authority over the rest of the world." This basic view of Soviet intentions has strongly influenced American policy for three decades: it had much to do with our involvement in the Vietnam War and it largely underlies the current opposition to SALT.

Since coming to office in 1977, the Carter Administration has blown an inconstant trumpet. Its human rights policy and direct contacts with Soviet dissidents affronted and alarmed the leaders in the Kremlin. At the same time, without explanation or advance notice, President Carter momentarily abandoned the Vladivostok formula and told the Russians he wanted much deeper cuts in strategic arms levels—a highly commendable idea, but one which the Russians took as a breach of the Valdivostok agreement and angrily rejected. For three years the Carter Administration seemed to address the Soviets with two voices—the conciliatory voice associated with Secretary of State Cyrus Vance, who at one point spoke of the "similar dreams and aspirations" held by Brezhnev and Carter, and the more provocative voice of National Security Adviser Zbigniew Brzezinski, who has devoted considerable energy to forging a Sino-American anti-Soviet alliance.

The Soviets, for their part, appear to have been genuinely confused by the Carter Administration's approach. A Pravda article in June 1978, for example, complained of the "constant zigzags and inconsistency" in American policy. The Soviets welcomed the President's diligent efforts to conclude the SALT II treaty but resented the lectures on human rights and the refusal to accord the Soviets equal trade treatment despite greatly increased Jewish emigration, exceeding 50,000 a year by 1979. The Russians were also alarmed by the Carter Administration's readiness to introduce a new generation of strategic weapons, such as the MX missile, as the price of winning support for SALT in the Senate, and by the plan to increase NATO's nuclear forces by stationing Pershing and cruise missiles in Europe. They took further offense when Brezhnev's offer of October 6, 1979, to negotiate mutual force reductions in Europe in return for withholding the new NATO missiles, was dismissed by President Carter as a trick. When the President, in the wake of Afghanistan, asked the Senate to defer its consideration of the SALT II treaty, Brezhnev issued a statement denouncing the United States as "an absolutely unreliable partner in interstate ties." Instead of viewing us as weak, as we often fear, the Soviets may well view us as powerful, unpredictable, and dangerous.

Détente has also become, during the Carter Administration, a partisan issue. Republicans have accused the President of being naive about the Russians and of having cut arms spending to dangerously low levels. President Carter, for his part, set out to prove, through his new doctrine, that he was the equal of any Republican in his mistrust of the Soviet Union, while promising too that he would step up defense spending by at least 5 percent above the inflation rate as demanded by former Secretary of State Kissinger and critics of the SALT treaty in both parties.

But is this promised arms buildup really necessary? The proponents of increased strategic defense spending argue that some time in the 1980s the Soviets will acquire the capacity to launch a nuclear first strike capable of taking out our land-based missiles. This prospect, they say, represents an intolerable threat to our security, even though the other components of the strategic "triad"—manned bombers and especially submarine-launched missiles—would be largely unaffected by such a strike. It is difficult to believe that the Soviets would be so insane as to launch the first strike, knowing the other components of our retaliatory capacity would survive.

Another question in need of dispassionate examination is that of Soviet political strategy, or more exactly, whether there is any strategy beyond the imprecise guidelines of Marxist ideology. Is there a pattern in recent Soviet activities in Angola, Ethiopia, South Yemen, and Afghanistan? Do these add up to "an unprecedented Soviet assault on the international equilibrium," as Henry Kissinger said in his testimony on SALT II, or were they a series of accidents and opportunities brought about by internal disruptions in these countries with which, at the outset, the Soviets had little if anything to do? The evidence points to the latter, but even if these involvements do add up to an overall strategy, it would seem an ill-conceived one, not very clearly directed toward gaining control of the power centers of the world. Nor has this Soviet "strategy" been notably effective: for the dubious privilege of financing the Ethiopian military government's armed conflicts with Somalia and the Eritrean rebels, to take one example, the Soviets paid the price of expulsion from Somalia, where the naval base they built at Berbera may soon be used by the United States.

By now we should know enough about the Russians to be able to break the cycle of excessive trust followed by bitter disillusionment. The experience of three decades has shown us that the Soviets do indeed believe in their ideology of conflict between social systems; that they take whatever opportunities come their way to implant their ideology and influence in other countries; that they are preoccupied with having friendly, which is to say compliant, governments in the countries around their borders; that they are tough and, when necessary, brutal in suppressing rebellion within these satellite states. We also know from experience that the Soviet leaders seldom let ideology obscure their view of reality; that they have a healthy respect for the power of the United States and NATO; that for good reasons of their own they strongly desire cooperation with the United States in arms control, trade, and other areas; that they are disinclined to take high risks; and that they share with the Soviet people a horror of major war, rooted in the experience of World War II in which the Soviet Union lost over 20 million people. It would seem time for an end to the demonology that has distorted our perceptions of the Soviet Union and made for such wild gyrations in our policies.

There is a limit to our ability to discern Soviet objectives in trying to do so we tread, as George Kennan wrote in his diary in 1950, "in the unfirm substance of the imponderables. A sound policy must be rooted in the firmer terrain of our own clearly defined national interests—the defense of the oil lifeline and, at the same time, cooperation in all possible areas with the other nuclear superpower. In formulating a policy for the Persian Gulf we do not need to know for certain what Soviet objectives are. The region is vital to us whatever the Soviet aims may be; with 25 percent of the world's known oil reserves (and almost 30 percent of the known oil reserves in the noncommunist world), Saudi Arabia would be crucial to the United States even if the Soviet Union did not exist. We can get by without Iranian oil, as we have since President Carter ended imports from Iran last winter, but we could

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not for the foreseeable future get by without the oil of the Arabian peninsula, from which we now obtain 20 percent of our imports, or 9 percent of our total consumption. Perhaps we should not have allowed ourselves to fall into so dangerous a dependency; we should reduce that dependency as quickly as possible through conservation and the development of new energy sources. But that will take time, even if, as is far from certain, we adopt an effective national energy policy. In the meantime, we and our allies retain a vital interest in the Persian Gulf, and more particularly in the Arabian peninsula.

A direct Soviet threat to the Arabian peninsula and the flow of oil to the outside world, as envisioned in the President's State of the Union address, is possible but unlikely. The Soviet leadership appears to have been well aware, even before President Carter's stern warning, that a threat to our oil supply would carry the risk of war. The director of the Soviet Institute for American and Canadian Studies, George A. Arbatov, was quoted in the Washington Star in July 1979: "The Soviet Government would certainly not interfere with Western oil supplies from the Middle East, whether this were done by intimidating the oil producing countries not to export oil to the West or by strangling the sea routes. These would be very hostile acts, close to a declaration of hostilities." Arbatov said too: "I could not conceive of a scheme the Soviet Union might apply to deprive the West of oil from the Middle East without realizing what this would mean to the whole world situation." There is surely no harm in reminding the Soviets—and other, possibly greater sources of potential disruption in the region—of our vital interest in the Persian Gulf, but as George Kennan wrote in the New York Times, "Is it really wise—is it not in fact a practice pregnant with possibilities for resentment and for misreading of signals—to go warning people publicly not to do things they have never evinced any intention of doing?"

The more likely threat to the Arab Gulf states is internal, although it is unclear how great this threat is. The seizure of the Grand Mosque in Mecca by religious extremists in November 1979 was a more serious occurrence than the Saudi authorities would have us believe, but it does not necessarily indicate that the House of Saud is about to be overturned. There are destabilizing possibilities, however, in the social disruptions caused by rapid, uneven, and, in many instances, prodigally wasteful economic modernization in the traditional Islamic societies of the Arabian peninsula. We must counsel the oil-producing states against these programs, even at the cost of some profit to American, European, and Asian businessmen and corporations. The profits from huge development projects reduce our heavy payments deficits with the oil producers, but, as with arms sales to the shah, the benefits will be short-lived if the projects contribute to destabilization and take-overs by left-wing or, more probably, Islamic extremists.

In the last resort we must be prepared to use military force to assist friendly governments in the region against external or internal threats. Strengthening American sea and air power in the Indian Ocean and the Arabian Sea would in itself have a useful deterrent and stabilizing effect in the region. Nor is there good reason to excuse our allies, most of whom are more dependent on Persian Gulf oil than we are, from sharing the responsibility of securing the oil lifeline. They have tended in the past to disclaim security responsibilities outside Europe, leaving these to the United States. In fact, both France and Great Britain have sizable navies able to help protect the sea-lanes; the French have a highly trained anti-terrorist commando force, from which a team was reportedly flown into Saudi Arabia during the siege of the Great Mosque in Mecca to help the Saudi national guard flush out the rebels. In his State of the Union address President Carter spoke of the need for "collective efforts" to maintain the security of the Persian Gulf, but efforts to secure allied participation in implementing the Carter Doctrine appear to have focused on boycotting the Moscow Olympics rather than on sharing the military burden. Our allies, for their part, speak of a "division of labor," the specifics of which would add up to their providing bases and access routes while the fighting was left to the United States. A readjustment of this "division of labor" would seem a more important objective of our diplomacy than our allies' participation in symbolic sanctions against the Soviet Union. For example, the persistent reluctance of the French to cooperate in joint military undertakings could perhaps be overcome by the designation of a French admiral to command an allied Indian Ocean fleet.

We, as well as our allies, would do well to distinguish between symbol and substance in dealing with the Russians in the wake of Afghanistan. Strengthening our capacity to defend the Arabian peninsula, coupled with effective and convincing energy program at home, is the real "message" we need to send to the Soviets, and for that matter to OPEC and the rest of the world. In addition, the United Nations General Assembly resolution of January 14 and the planned American boycott of the Moscow Olympics will serve to remind the Soviet Union that the United States takes seriously by the commitment of off members of the United Nations under the charter to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. . . . Beyond that tough talk and marginal, symbolic, and even petty sanctions can do little but further damage our relations with the other superpower while raising doubts in the minds of both friends and adversaries about the dependability and sound judgment of the American leadership.

Among the more ill-considered of the sanctions against the Soviet Union adopted in the wake of Afghanistan is the grain embargo, which will almost certainly damage us more than the Russians. Although other grain-exporting nations have promised not to replace the American grain that is withheld, the Soviets have long been adept at obtaining embargoed goods through second-and third-party purchasers. Thus, the Soviets have an excellent chance of replacing the embargoed grain, but the United States will have little chance of replacing the hard currency that would have been earned by the sales. The purchase of the grain by the Commodity Credit Corporation, as promised by the Administration, will partially compensate American farmers for the loss of income, but at the risk of permanent loss of a lucrative market and at a cost to American taxpayers of at least $2.25 billion. Industries such as railroads and barges that derive earnings from the transport of grain will go uncompensated. The embargo will inconvenience the Soviets and injure American farmers and others, but it is hardly likely to persuade the Soviet Union to withdraw its forces from Afghanistan.

Even if economic boycotts were as injurious as their advocates hope, there would remain the question of whether it is in our national interest to injure the Russians in this particular way. It undoubtedly would be if the enmity between the superpowers were total. In the two world wars, which were total wars based on total mobilization of the populations and resources of the belligerents, anything effectively injured the enemy—the defeat of his armies on the field, the destruction of his industry and the shattering of his population's morale by large-scale bombing raids—was an appropriate war measure, toward the objective of "unconditional surrender." But before the two world wars, relationships of partial enmity were common and considered normal. During the Crimean War, for example, Russia successfully floated a loan on the London private money market, even though it was at war with England. We would perhaps not wish to carry tolerance that far, but the attitudes of that period seem both more appropriate and less dangerous in our current dealings with the Soviet Union than the attitudes engendered by the era of total war.

In the field of cultural relations the sanctions taken against the Soviet Union since Afghanistan seem spiteful and capricious. The cancellation of a long-planned tour in America of art from Leningrad's Hermitage Museum will insult but not otherwise injure the Soviet Union; the injury and cost are to ourselves. Equally petty was the suspension of preparations for the planned opening of a Soviet consulate in New York and an American consulate in Kiev, the principal effect of which will be to inconvenience a sizable number of American tourists.

In the big leagues of political conflict the potentially most dangerous "sanctions" against the Soviet Union are suspending SALT II and playing the "China card." Although President Carter asked the Senate in early January to defer further consideration of the SALT treaty "because of the Soviet aggression," the more compelling consideration was the lack of a two-thirds majority for ratification in the wake of Afghanistan. Whether this in turn reflected a conviction on the part of senators that withholding SALT was a suitable punishment for the invasion of Afghanistan seems doubtful; more likely Afghanistan provided an added political argument for those who mistrusted or disliked the SALT II treaty to begin with. Whatever the motives of all concerned, the treaty is now on the shelf. President Carter, in his State of the Union address, said that efforts to control nuclear weapons "will not be abandoned," but little has been said about SALT since that time and its revival in this election year seems unlikely.

Therefore, the way is now open for a full-scale revival of the nuclear arms race. A new national intelligence estimate, reported in the press in late January, projected that, in the absence of a strategic arms agreement, the Soviets by 1989 will have almost two and a half times the number of warheads—about 14,000—mounted on highly accurate land-based missiles directed against the United States than they would have if SALT II were implemented and followed by successor agreements. Should this occur, the elaborate system of 200 mobile MX missiles to be concealed at random in 4600 concrete silos, now being planned at a cost of from $30 to $100 billion, would be effectively neutralized, unless we were prepared to double or triple our MX force at double or triple the cost. The result would be astronomical increases in the defense budget with commensurate effects on the rate of inflation. For the present, both sides are complying with the limits of the expired SALT I treaty and the unratified SALT II treaty, but the time is approaching when both sides will have to retire designated older missile systems—systems that, though "obsolete," are still lethal—or allow the laboriously constructed agreements to start unraveling. It will be no easy task to reconstruct an agreement once the weapons retirement timetable, reflecting a fragile balance of interests, is disrupted.

Moreover, the protocol to the SALT II treaty, of major importance to the Soviet Union because it places limits on the range of American cruise missiles, is scheduled to expire at the end of 1981. Neither side is likely to find it easy to renegotiate the protocol, the Russians because they had not anticipated when they signed it in June 1979 that NATO would subsequently agree to the deployment of cruise missiles in Europe, the United States because many members of Congress never wanted to accept limits on the cruise missile.

Because of the crisis atmosphere in Soviet-American relations, the Carter Administration has judged it prudent to await a more favorable time to press for ratification of the SALT II treaty. But a case can be made for the Administration to call on the Senate to take up the treaty, debate it, and vote it up or down without undue delay. What could not be accomplished through cloakroom maneuvering and dubious tradeoffs on future arms spending can perhaps be accomplished by a strong, commonsense appeal on behalf of the treaty's merits and the essentiality of nuclear arms control. The President could explain, simply but accurately, that abandoning SALT will free the Russians from critically important restraints, that compliance can be monitored by proven procedures, and that without SALT we will face a protracted, budget-busting, inflationary, and exceedingly dangerous arms race.

The conventional political wisdom is to avoid highly controversial national decisions in an election year. So great are the stakes in strategic arms control, however, and in the policy of détente of which SALT is the key symbol, that we should bring the issue to the center of our national political debate and, if necessary, make the election at least partially a referendum on the basic choice between détente and renewed cold war. Such a debate might even establish the case for arms control measures more far-reaching than those of the meticulously circumscribed SALT II treaty.

Second only to an uncontrolled arms race in dangers posed for the future is the possible overplaying of the "China card." For a year following the normalization of relations with the People's Republic of China, the Carter Administration maintained a kind of evenhandedness toward China and the Soviet Union. That ended abruptly with the Soviet invasion of Afghanistan. Shortly thereafter, Secretary of Defense Harold Brown, on a visit to China that had been previously scheduled, discussed plans for military support and cooperation. On January 24, after Brown's return, it was announced that the United States was prepared to sell military support equipment but not weapons to China. On the same day Congress approved nondiscriminatory trade treatment for China—a favor still withheld from the Soviet Union. There has also been speculation on Sino-American cooperation in support of insurgent forces in Afghanistan.

The steps known to have been taken thus far are disturbing less in themselves than for the policy direction they suggest—toward a Chinese-American, anti-Soviet military alliance. Because nothing alarms the Soviets more than the prospect of a China armed with modern weapons and allied to the United States, the advantages of such an alliance are, from the latter-day Cold War perspective, geopolitically self-evident. From the perspective of those who still see merit in detente, there would seem need to inquire whether it really is to our advantage to threaten the Soviets in this way and whether Chinese objectives, other than the containment of Soviet power, are consonant with our own.

There is substantial evidence that they are not. For more than two decades the rulers in Peking regarded American "imperialism" as their foremost enemy; only as our involvement in Indochina neared its end in the early seventies did the Chinese judge that the greater threat came from the "social imperialism" of the Soviet Union, whereupon the United States was demoted to enemy number two. Under Mao Tse-tung's "three worlds doctrine," sanctified in the preamble to China's 1978 constitution, China is bound in solidarity to the oppressed peoples of the Third World against the "first world" of the two superpowers and the "second world" of Europe and Japan. Under the Maoist doctrine, China's aim is the overthrow of the superpowers' "hegemony" as the essential precursor to world revolution. It is mistaken to assume that the Chinese, any more than the Soviets, are guided solely by ideology in their foreign policy, but it is no less a mistake to dismiss ideology as an important factor. Indeed, Maoist doctrine explicity endorses tactical alliances toward the destruction of enemies one by one. It is hardly likely that the Chinese will be in a position, or will have the desire, to destroy us in the foreseeable future, but neither is it certain that a China supplied with American arms will confine their use to threatening the Soviet Union. The Chinese, who used armed force to "teach Vietnam a lesson" in early 1979, might someday perceive advantage in using American arms to pressure India or Thailand or South Korea or even Japan. In playing our "China card" in the geopolitical arena against the Soviet Union, we would do well to remember that the Chinese leaders, who share no common vision of the future with us, are playing their "American card," toward objectives inimical to our own.

From the standpoint of vital American interests, China is necessarily secondary to the Soviet Union, for the simple, compelling reason that the Soviet Union is a nuclear superpower and China is not. As long as our primary objective is the achievement of a measure of cooperation with the other nuclear superpower, and as long as the Russians know this to be the case, useful leverage can be derived from giving the Russians some concern over our relations with China. Normal political and economic relations between the United States and China can give the Soviets incentive to compete for similar favors and to strengthen détente, while also encouraging moderate and pragmatic tendencies within China. Arming China, on the other hand, although it may be presented as simply an additional measure of cooperation, is in fact a policy radically different from the normalization begun by President Nixon and gradually expanded through 1979. Instead of encouraging Soviet-American détente, American military assistance to China bids fair to convince the Soviet leaders that the United States has no further interest in détente. The highly probable result will be a continuing Soviet arms buildup and further aggressive efforts, such as those now being carried out in Afghanistan, to strengthen the Soviet strategic position. In the long term, a Sino-American military alliance could be expected to endure until the Soviets should become sufficiently alarmed to mount a pre-emptive strike, nuclear or otherwise, against China, or until the Chinese should judge their "American card" to be of no further use.

China is by no means the only country to seek advantage in the rivalry of the superpowers. The Carter Administration's palpable interest, after Afghanistan, in drawing revolutionary Iran into an anti-Soviet alliance, as well as domestic American political pressure to secure the release of the hostages, may have convinced the Iranian authorities that they could without risk further delay or raise the price for release of the hostages. In agreeing to the formation of a UN commission on Iran without an explicit understanding on release of the hostages, the Administration may have assumed prematurely not only that the government of President Bani-Sadar had the power and desire to liquidate the hostage problem so as to get on with the task of governing but also that the Iranians, although they did not say so, now shared American preoccupation with the Soviet threat. The State Department's spokesman, in a press briefing on January 18, urged the Iranians to release the hostages so that the United States and Iran "would be better able to coordinate our concerns about Soviet aggression." Not for the first time, American policy-makers projected their own concerns onto others.

The Iranian authorities denounced the Soviet invasion of Afghanistan and expressed common cause with the Islamic insurgents in that country, and this encouraged our policy-makers to believe that an arrangement could then quickly be made. Less attention was paid to the fact that, in denouncing the Soviet Union, the Iranians did not cease to denounce the United States; Iranian officials have even gone so far as to express public confidence that they need not fear either superpower because each could be counted on to defend Iran against the other.

Caught up as we have been in the belief that anybody who is against the Russians has got to be for us, we did not find it easy, until Khomeini forced it upon us, to accept the evidence that the Iranian revolutionaries are hostile to both superpowers. Like China and other countries of the Third World, they lump the superpowers together, "imperialists" and "social imperialists," while seeking profit from playing them against each other.

Instead of fighting the perception widely held in the Third World, the superpowers might find it rewarding to consider whether they do not indeed have common attributes and common responsibilities, as well as a common interest in avoiding nuclear war. As the only powers with global military and political reach, they are the only nations with the capacity to maintain a semblance of order in a turbulent world. To do this they would have to set aside the doctrines that pitted them against one another—the Truman, Nixon, Brezhnev, and Carter doctrines—in favor of a common endeavor for world order. The advantages would be considerable: neither has profited greatly or for very long from various client relationships in the Third World. These have been expensive, troublesome, and often dangerous. Superpower collaboration in areas of the Third World would deprive a number of countries of leverage for their particular national purposes, but it could also serve to protect national independence, reduce regional conflict, strengthen détente, and save a great deal of money which now goes to arm unpredictable surrogates.

Whether President Brezhnev was serious or engaging in propaganda when he suggested in late February a form of neutralization for Afghanistan was not clear. The idea, however, which is strongly advocated by our European allies, is worth exploring and perhaps expanding to include the neutralization and protection of the entire Persian Gulf oil-producing region.

In matters affecting small countries caught between the interests of larger powers, the most reliable, historically tested means of protecting the small countries and avoiding conflict between the big ones is neutralization. It has worked well for European countries such as Belgium, Switzerland, and Austria. If, as seems likely, the Soviets invaded Afghanistan primarily out of concern for the stability of their border region, it might be feasible to work out an agreement under which the Soviet forces would be withdrawn from Afghanistan, a government "friendly" to the Soviet Union but otherwise unaligned would be installed in Kabul, and the Western countries would undertake, so far as possible, to prevent the use of arms provided by them to surrounding countries such as Pakistan in support of the Afghan rebels. A more ambitious approach would be an effort to negotiate a multilateral treaty for the neutralization of the entire Persian Gulf region as well as Afghanistan. Under such a general agreement the regional and nonregional

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powers, including the superpowers and the principal consumers of Persian Gulf oil, might pledge to respect the sovereignty and neutrality of the countries of the region and the inviolability of the sea-lanes through which the oil flows, with the single reservation, cautiously stated but clearly understood, that a "clear and present danger" to the oil supply would necessitate measures for its protection if requested by a producing country. Itself a prospective consumer of Persian Gulf oil, the Soviet Union could be expected to appreciate this necessity on the part of the United States and its allies.

The alternative to this approach, or something like it, is renewed and intensified cold war, with all that it implies in the way of mounting military expenditures, galloping inflation, and other strains on our domestic life. It would be a misfortune of no small dimensions if the pressures of the election year were to continue to push us in that direction.●

THE NATIONAL EMERGENCIES ACT

● Mr. MATHIAS. Mr. President, September 14 marked the fourth anniversary of the enactment of the National Emergencies Act. On this occasion, I would like to review briefly the history of this act and discuss its most recent application.

In 1974, when I first introduced legislation to regulate the conduct of the Government in future national emergencies, we were actually living under four concurrent states of national emergency—the earliest going back to 1933. On March 6, 1933, Franklin D. Roosevelt declared a state of national emergency to cope with the economic crisis of the Depression. The second declaration, made by Harry S Truman on December 16, 1950, facilitated our response to the invasion of South Korea by the North Korean Army. The last two declarations were made in the last decade by Richard M. Nixon—the first on March 23, 1970, to deal with the Postal Service employees' strike; the second on August 15, 1971, in response to the serious international monetary crisis.

As a result of these declarations, 470 statutes already on the books were triggered. These gave the President a broad range of discretionary powers, including the power to: Declare martial law; call up the reserves; take over property, communications, and transportation; and regulate industry and otherwise control the life of every citizen without regard to ordinary constitutional constraints.

The National Emergencies Act evolved out of the investigation of these past national emergencies by the Senate Select Commission on National Emergencies and Delegated Emergency Powers, cochaired by Senator FRANK CHURCH and myself.

This legislation, which was signed into law in 1976 by President Gerald Ford, repealed many of the powers and authorities accumulated by the President during states of national emergency. It also established procedural guidelines to regulate Presidential actions in future emergencies and provided for periodic congressional review at 6- and 12-month intervals.

The National Emergencies Act has been invoked twice since its enactment, both times to enable the President to respond to the situation in Iran created by the illegal seizure of the U.S. Embassy in Tehran and the taking of U.S. diplomatic personnel as hostages. The President's November 14, 1979 and April 17, 1980 declarations had a twofold purpose. They were intended to signal to the Iranian authorities in a meaningful yet nonbelligerent way the seriousness with which we regarded their lawless behavior. They were also intended to block the withdrawal of official Iranian funds from U.S. banks and their foreign branches in order to protect claims on Iran by the United States and its citizens.

On May 14, 1980 I made a statement in which I noted that although the President's initiatives enjoyed widespread backing in the Congress and the Nation, the Congress had carried out its responsibilities under the act to undertake the 6-month review. The Senate Foreign Relations Committee and the House Foreign Affairs Committee fully examined the question and concluded that no cause existed for consideration of a resolution terminating the current state of emergency. The decision was formally relayed to the President and the Congress.

As we observe the fourth anniversary of the enactment of this legislation, I would like to restate my commitment to insuring that the law be strictly observed. I believe that it is very important for the Congress to exercise its supervisory role and continue to provide its opinion on the question of continuing or terminating the state of emergency.●

SOLAR CELL RESEARCH AT THE UNIVERSITY OF DELAWARE'S INSTITUTE OF ENERGY CONVERSION

● Mr. ROTH. Mr. President, I was pleased to learn recently, of a significant advancement made in solar cell technology at the University of Delaware's Institute of Energy Conversion. This achievement is especially significant because it comes at a time when we are striving to produce independent energy resources to extinguish our dependency on foreign imports. A research team from the university has produced for the first time a thin-filmed solar cell increasing the possibilities for widespread harnessing of the Sun's light to produce low-cost electricity.

This thin-film cadmium-zinc sulfide/copper sulfide solar cell has the conversion efficiency of 10.2 percent in actual sunlight testing. The sunlight testing at the institute utilizes radiation monitors traceable to the international pyrheliometric scale.

According to Dr. T. W. Fraser Russell, director of the institute, the recently achieved efficiency level meets a key goal of the national Federal photovoltaic program of the Department of Energy—the goal to achieve a 10-percent efficiency level for thin-film cells by 1980. The institute's cells are being prepared for independent testing at other facilities such as the NASA/Lewis Research Center.

Solar cells are solid state devices that convert sunlight directly into electricity. The efficiency rating refers to a solar cell's capability to make this conversion. A 10-percent efficient cell converts 10 percent of the sunlight striking its surface into electricity.

A pioneer in the basic solar research needed to help solve our Nation's energy problems, the University of Delaware began its program to develop efficient and inexpensive thin-film solar cells in 1972.

Adapting for use on Earth the technology developed by NASA, the institute first fabricated its cells with cadmium sulfide and copper sulfide. These early cells, which were difficult to make consistently, had conversion efficiencies ranging from 3 to 5 percent.

Just 2 years ago, institute researchers produced a cadmium sulfide/copper sulfide cell with an efficiency of 9.2 percent, exceeding the previous high efficiency of 7.8 percent, first announced by the institute in 1978. Laboratory procedures for consistently producing cells of over 9-percent efficiency were firmly enough established by 1979 at the institute to begin engineering research efforts on commercial-scale production techniques.

In 1975, the institute also began developing a cell utilizing cadmium-zinc sulfide instead of cadmium sulfide, because of its higher potential efficiency. Future work will concentrate on the cadmium-zinc sulfide/copper sulfide solar cell, according to Dr. John D. Meakin, director of the institute's solar cell development division, "as we anticipate significantly higher efficiencies in the future."

The practical limit of efficiency for the cadmium-zinc sulfide/copper sulfide cell is believed to be between 14 to 16 percent, he said, while the limit for a cadmium sulfide solar cell is about 12 percent.

Earlier this year, the university dedicated a unique photovoltaic unit operations laboratory that permits for the first time study of concerns related to commercial-scale solar technology. The results of ongoing research there will be vital to industries interested in producing photovoltaic cells.

Therefore, the institute has formed an industrial associates program for select organizations, which as members, would receive consulting services from specialists at the institute and which would be permitted access to research results, in return for organizational and financial support of institute research and development programs.

Under the leadership of Dr. Russell, university researchers already are developing and testing process designs for industrial facilities that will manufacture thin-film solar cells on a large scale at a very low cost.

Current research in the photovoltaic unit operations lab involves a reel-to-reel vacuum coater, which was specially designed by a team headed by Dr. Russell. This equipment which deposits active semiconductor layers, such as cadmium sulfide, cadmium-zinc sulfide and copper sulfide, on a continuously moving metal substrate, makes possible the first of several experimental programs in unit operations crucial to the development of commercial-scale manufacturing processes for thin-film solar cells.

Previously solar cells could be produced in a laboratory at the rate of a few square centimeters per day, but the vacuum coater can continuously deposit semiconductors layers on a moving metal substrate at a rate of about 100 square centimeters per minutes, he said.

In the future, Dr. Russell added, procedures for depositing a transparent electrical grid, an antireflective coating and a protective encapsulant or cover on the cell need to be developed at the unit operations or pilot-plant scale.

When all the commercial-scale design procedures are perfected, photovoltaic technology will be ready for transfer from the university to industrial concerns, Dr. Russell noted.

The university's solar cell research that resulted in the 10-percent efficiency involved a team of more than 30 engineers, scientists, and technicians, with support from the Department of Energy administered by the Solar Energy Research Institute (SERI) in Golden, Colo.

Programs also are being conducted at the Institute of Energy Conversion on amorphous silicon and zinc phosphide in attempts to achieve potentially higher efficiency, lower cost solar cells.

Achievement of the 10-percent efficiency was discussed September 4 at an indepth review meeting on the cadmium sulfide solar cell, organized by SERI and held in Alexandria, Va.

Mr. President, I am pleased to announce this advancement and I am proud of the University of Delaware for their nationally significant accomplishments.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, it is my understanding that, under the unanimous-consent agreement the majority leader achieved last Wednesday, the Senate proceeds to the consideration of H.R. 7631. Is that correct?

The PRESIDING OFFICER. The Senator is correct. The Senate is currently considering H.R. 7631.

Mr. PROXMIRE. Mr. President, the HUD-independent agencies appropriation bill for fiscal year 1981, as reported by the Senate Appropriations Committee on September 4, 1980, provides total new budget authority of $69,155,568,000, which is $4,335,237,000 below the budget estimate and $29,868,104,000 more than the level of funding contained in the House-passed bill. It should be noted at the outset that the House deferred consideration of $33,196,631,000 requested for HUD's assisted housing programs as well as a $4,364,500,000 budget estimate for NASA's research and development activities, whereas we considered both items during our deliberations. On the other hand, the House considered and approved the full $4,569,949,000 requested for general revenue sharing, while the committee deferred consideration of revenue sharing funding for 1981, pending passage of authorizing legislation. Both the House and Senate committee deferred consideration of the $500,000,000 budget estimate for the proposed, new local government transitional assistance program due to the lack of an authorization.

The bill as reported provides funding for the Department of Housing and Urban Development, the Veterans' Administration, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, the Federal Emergency Management Agency, and a number of smaller agencies, offices, commissions, and councils.

Before I turn to a discussion of the bill as reported, I want to say that I believe that the HUD-Independent Agencies Subcommittee and the Full Senate Appropriations Committee have worked hard and made some painful, difficult choices in their efforts to hold the line on the 1981 budgets of the various agencies and programs funded in this bill. Appropriations for many popular programs were reduced or held at current year levels and I hope that my colleagues will resist efforts to substantially increase the funding levels recommended by the committee.

It is also important to note that the budget authority recommended in H.R. 7631 as reported is $6,444,000,000 under the amount allocated to the HUD-Independent Agencies Subcommittee following passage of the first concurrent resolution on the budget. However, according to the assumptions of the Senate Budget Committee regarding future requirements for pay raises, public housing fuel cost increases, veterans' benefits, disaster assistance, the revenue sharing program and other anticipated supplemental budget items, the level of funding recommended by the committee is right at the budget ceiling. Therefore, any efforts to go above the committee's recommendations, without offsets in other areas in the bill, could create future problems if the HUD-Independent Agencies Subcommittee does not receive an additional allocation under a second budget resolution. It is important to keep this in mind as we act on the legislation before us today.

REVENUE SHARING

Mr. President, I would normally begin my discussion of the bill with an explanation of the committee's actions with regard to the Department of Housing and Urban Development, but before I go into the details of the bill, I would like to point out that the committee has deferred consideration of one of the largest budget items in this bill—that is, the $4,569,949,000 requested by the administration for the general revenue sharing program. The House has provided the full amount requested for general revenue sharing with the understanding that only local governments would receive payments in 1981. However, legislation reauthorizing general revenue sharing beyond the current fiscal year has not been taken up on the floor of either House. The committee felt that a decision to fund general revenue sharing beyond fiscal year 1980 should be postponed until an authorization has been approved and the issue of whether or not the State share of revenue sharing shall be authorized in whole or in part next year has been decided. As my colleagues know, the first resolution assumes that only the local government portion of revenue sharing will be funded in fiscal year 1981. Consequently, I hope that the Senate will go along with the committee's decision to defer consideration of appropriations for general revenue sharing at this time.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The committee has recommended a total appropriation of $36,760,330,000 for the programs of the Department of Housing and Urban Development—$30,877,500,000 of which represents budget authority to enter into long-term contracts for assisted housing for periods of up to 40 years. The House deferred consideration of the administration's budget request for assisted housing programs, pending passage of housing authorization legislation that is currently awaiting conference action. The level of funding approved by the committee for the assisted housing program is $2,319,131,000 less than the budget request and roughly the same as the amount contained in the Senate-passed authorization.

Within the total amount appropriated by the committee for assisted housing, the committee has directed that the Department provide no fewer than 6,000 units of Indian housing, as opposed to the 4,000 recommended by the administration. The committee has also included language in the bill directing that $75,000,000 of the total be provided for public housing modernization, and that $1,327,600,000 in budget authority that the administration proposed to commit to finance the sale of public housing bonds to the Federal Financing Bank be used instead for the subsidization of new and existing assisted housing units. The level of funding proposed by the committee for annual contributions for assisted housing would support an estimated 280,018 section 8 and public housing units if the program is tailored in accordance with the authorization bill passed by the Senate earlier in the summer.

The most significant change we have recommended in HUD's budget is a decrease of $200,000,000 below the budget estimate and $60,000,000 below the House-approved amount for community development block grants. A General Accounting Office report, published just last month, indicated that many communities are unable to spend funding which has already been allocated and that the Department is putting a special

emphasis on spending block grant funds, thus creating the potential for the ineffective and inappropriate use of such funds. The committee also noted in its report that a reduction of approximately $200,000,000 in the amount requested for function 450, which includes the bloc grant and urban development action grant programs, was contemplated in the first budget resolution for 1981 as passed by the Senate.

Other significant changes in the House-passed bill include: An increase of $50,000,000 in the section 202 housing for the elderly or handicapped program, providing a total of $880,000,000 in 1981 as opposed to the $830,000,000 requested and recommended by the House; a reduction of $6,100,000 in the troubled projects operating subsidy program, for a total of $15,000,000; a reduction of $38,640,000 in the Federal Housing Administration fund, providing a total of $230,000,000; an increase of $35,000,000 in transfer funds for the Solar Energy and Energy Conservation Bank, for a total of $125,000,000; an increase of $17,500,000 in the section 701 comprehensive planning grant program, providing the budget request of $40,000,000; a decrease of $20,000,000 below the House in the rehabilitation loan program for a total of $124,000,000 as requested by the administration; a decrease of $5,350,000 in research and technology providing a total of $44,650,000; and an increase of $2,000,000 in fair housing assistance to the budget estimate of $5,700,000.

INDEPENDENT AGENCIES

Turning now to the other agencies supported through this legislation, the most significant changes the committee has recommended are in appropriations for the National Aeronautics and Space Administration (NASA); the Environment Protection Agency and the Veterans' Administration. The committee has recommended an increase above the House-approved totals for both EPA and NASA, while recommending a reduction in funding for the Veterans' Administration below the House-passed bill.

EPA

The total EPA budget recommended in the bill as reported is $4,743,376,000, which is $12,811,000 more than the House approved amount and $340,491,000 below the budget estimate.

Within this total, the committee has recommended $543,388,000 for EPA abatement, control, and compliance activities, an increase of $12,000,000 above the House-approved amount. Among the specific actions taken by the committee were a $5,000,000 reduction below the budget in the pesticide program, which was suggested by the House; a $5,000,000 appropriation for the resource recovery grant program providing $5,000,000 more than the House-approved amount and $5,000,000 less than the budget request; concurrence with a House-passed $2,000,000 reduction below the budget estimate for underground injection control grants; $5,000,000 increase over the House providing the full budget request of $13,500,000 for the clean lakes program; the elimination of $5,000,000 added by the House to the budget request for State water control agency grants; concurrence in the House add-on of $1,500,000 for a project to begin a cleanup of PCB's in Waukegan Harbor on Lake Michigan; and a total of $709,000 for continuation of an environmental impact study of natural resource development in the Flathead River basin of Montana.

Although the committee recommended a reduction of $1,004,000 in the House-approved amount for EPA's research and development activities, the committee did propose increased funding for several important programs within the total EPA R. & D. appropriation. These include: $900,000 for cold climate research; $2,500,000 for continuation of the renewable resources program; and restoration of the $2,500,000 cut by the House in the innovative research portion of the anticipatory research budget.

Within the EPA salaries and expenses account, the committee restored $4,500,000 of the $10,345,000 cut by the House for automated data processing technical support; reduced funding for consultants by $4,500,000 below the House and the budget estimate; reduced EPA travel by $850,000 below the budget and $600,000 below the House; and cut $750,000 in the amount originally set aside for Senior Executive Service bonuses, an action not taken by the House. The committee recommended a total salaries and expenses budget of $541,647,000, an increase of $700,000 above the House approved amount.

The committee has concurred with the House in providing $3,400,000,000 for the waste treatment construction grant program, $300,000,000 below the budget estimate, in concurrence with the assumptions implicit in the first concurrent resolution on the budget.

The committee also provided $1,115,000 above the House for buildings and facilities and $1,000,000 more than the House for the activities of the U.S. Regulatory Council.

NASA

The committee has recommended $4,430,000,000 for NASA's research and development program, or $65,500,000 more than the budget estimate. The House deferred consideration of this account pending passage of the 1981 NASA authorization bill, which was passed and signed into law following House appropriations action. Within this total appropriation for NASA research and development, the committee has recommended funding for a number of projects and activities that were not provided for by the President's amended budget request. They include: Initiation of development work on a solar electric propulsion system; definition studies of an operational land observing system and advanced technology development of the multilinear array; and additional support for various aeronautics and space technology projects, including the exploration of future fuels, variable cycle engine work, and high-speed aircraft structures technology. The committee also provided $120,000,000, $10,000,000 more than the House, for construction of facilities and $1,032,404,000, $9,250,000 more than the House, for NASA's salaries and expenses.

VA

The committee recommended a number of changes in the Veterans' Administration's budget as approved by the House. The total of $20,549,437,000 recommended by the committee is $199,133,000 below the House level due to the following committee actions:

A cut of $123,241,000 below the House in readjustment benefits, largely because of a reduction of $155,000,000 to be recouped by the VA through more aggressive and efficient debt collection activities. This reduction was offset in part by the committee's decision to restore correspondence training funds cut by the House and provide sufficient flight training money to allow veterans currently in training to complete their work in 1981.

A reduction of $90,745,000 in medical care, due in large part to the committee's decision not to endorse a House-approved increase in the administration's budget request as well as a shift of $5,314,000 from medical care to medical and prosthetic research that was requested by the VA.

A reduction of $4,894,000 in medical administration and miscellaneous operating expenses, due to the deletion of funding targeted for the agency's health care information systems in fiscal year 1981. The committee felt that further funding for this controversial computer system should be postponed until the VA can effectively demonstrate to the committee that its planning for data processing resources is cohesive and focused.

Offsetting these reductions on the House-approved totals were the following increases:

An increase of $15,961,000 for general operating expenses, including an increase of $10,880,000 and 396 positions for enhanced debt collection activities at the VA in fiscal year 1981, but also providing an $8,800,000 increase for State approving agencies that are a part of the education benefits program.

An add-on of $16,492,000 in construction, major projects, largely due to the committee's decision to change the dollar limitation for major construction from the current $1,000,000 cutoff point, to a new figure of $2,000,000. The House and the administration had recommended a $3,000,000 demarcation point for major projects.

RELATED AGENCIES

The committee has provided $1,078,600,000 for the National Science Foundation, which is $4,600,000 more than both the budget estimate and the House-passed bill. Within this total appropriation, the committee has recommended an add-on of $5,100,000 for the escalating costs of fuel used in conjunction with the Antarctic and ocean drilling programs. The committee has also recommended a total of $80,700,000 within the total NSF appropriation for NSF's Science Education activities, which is $5,000,000 above the budget estimate but $5,000,000 below the House.

The bill provides $1,218,937,000 for the

Federal Emergency Management Agency (FEMA), including the full $119,100,000 requested by the administration for civil defense activities and $43,000,000 for the Consumer Product Safety Commission, or $489,000 below both the House and the budget request.

Finally, the bill, as reported, contains a number of general provisions affecting the agencies covered by this legislation. For example, the committee has amended section 410 of the House-passed bill, which prohibits the use of Federal funds for public intervention in regulatory or adjudicatory proceedings, to permit such funding for travel, per diem, and the preparation of materials for the public record. The committee has concurred with the House in approving section 412 of the bill which mandates an across-the-board cut of 2 percent in obligations made under each appropriation account with the exception of funds provided the VA and payments required by law, resulting in a total reduction of $992,200,000.

Finally, the committee has recommended the addition of four new sections which essentially require the agencies under this bill to take various steps to curb fraud, abuse, waste, and error in their respective programs, including limits on end-of-year spending; resolution of unresolved audits; improvements in collection of debts owed the Government; and a reduction of $28,297,000 in funding for consulting services supported by HUD, EPA, and NASA.

Mr. President, that summarizes the major actions the committee has recommended. Obviously, there are numerous other accounts, programs, and minor changes in funding that could be mentioned.

Before I relinquish the floor, I want to thank my distinguished colleague (Mr. MATHIAS), who is not only a most capable ranking minority member, but is always a pleasure and a joy to deal with. He and I disagree pretty sharply on some issues, but he is most accommodating, cooperative, and helpful whenever he can be. He has, once again, done a superb job in helping us to bring this complex bill through 20 days of hearings, subcommittee and full committee markup, and onto the floor. Without his cooperation and assistance on this legislation, we might still be back at square 1 with time running out on our effort to enact this bill before the start of fiscal year 1981. I would also like to thank the minority counsel of the subcommittee, Dr. Wallace Berger, who has been most helpful in working with the majority staff of the subcommittee this year.

And of course, Mr. President, the majority staff head on the subcommittee, Tom van der Voort, has done his usual outstanding job. There is no better staff man, in my judgment, in the Senate, on this committee or any other committee, and Bob Mills has very ably assisted Tom van der Voort.

Mr. President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc, and that the bill, as thus amended, be regarded, for purposes of amendment, as an original text; provided, that no point of order shall be considered to have been waived by reason of agreement to this order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The committee amendments agreed to en bloc are as follows:

On page 2, beginning with line 8, insert the following:

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in annual appropriations acts, is increased by $1,417,400,000 of which not less than nor more than $75,000,000 shall be for the modernization of existing low-income housing projects: *Provided*, That budget authority obligated under such contracts shall be increased above amounts heretofore provided in annual appropriations acts by $30,877,500,000: *Provided further*, That any balances of authorities remaining at the end of fiscal year 1980 shall be added to and merged with the authority provided herein and made subject only to terms and conditions of law applicable to authorizations becoming available in fiscal year 1981.

On page 3, line 22, strike "$830,000,000" and insert "$880,000,000";

On page 5, line 7, strike "$21,100,000" and insert "$15,000,000";

On page 5, line 21, strike "$268,640,000" and insert "$230,000,000";

On page 5, line 21, after "expended" insert a colon and the following:

Provided, That none of the funds shall be available to cover losses incurred as the result of any employment program not specifically justified at the time the budget was submitted without the prior approval of the Committee on Appropriations

On page 8, line 17, strike "$90,000,000" and insert "$125,000,000";

On page 9, line 1, strike "$3,810,000,000" and insert "$3,750,000,000";

On page 10, line 3, strike "$22,500,000" and insert "$40,000,000";

On page 10, line 8, strike "$144,000,000" and insert "$124,000,000";

On page 10, line 15, strike "$196,000,000" and insert "$176,000,000";

On page 12, line 22, strike "$50,000,000" and insert "$44,650,000";

On page 13, line 13, strike "$3,700,000" and insert "$5,700,000";

On page 13, line 14, strike "$575,946,000" and insert "$571,956,000";

On page 13, line 17, strike "Provisions" and insert "Provision";

On page 13, beginning with line 21, strike through and including line 23;

On page 14, line 14, strike "$8,967,000" and insert "$8,897,000";

On page 15, line 12, strike "$43,489,000" and insert "$43,000,000";

On page 16, line 15, strike "$540,947,000" and insert "$541,647,000";

On page 16, line 21, strike "$252,280,000" and insert "$251,276,000";

On page 16, line 25, strike "$531,338,000" and insert "$543,338,000";

On page 17, line 4, after "(42 U.S.C. 6913)" insert a colon and the following:

Provided, That the funds herein appropriated may not be expended for testing or certifying any automobile made in whole or in part in the Soviet Union, nor shall any funds be expended to provide technical assistance in connection with the importation of such vehicles into the United States.

On page 17, line 13, strike "$3,000,000" and insert "$4,115,000";

On page 17, beginning with line 22, strike through and including page 18, line 7;

On page 18, line 11, strike "$2,000,000" and insert "$3,000,000";

On page 18, line 12, strike "Provision" and insert "Provisions";

On page 18, beginning with line 17, insert the following:

Not to exceed 2 per centum of any appropriation made available to the Environmental Protection Agency by this Act (except may be transferred to any other such appropriations for "Construction grants") may be transferred to any other such appropriation prior to March 31, 1981.

On page 19, line 11, strike "$3,200,000" and insert "$3,300,000";

On page 20, line 3, beginning with the colon, strike through and including the word "projects" in line 10;

On page 21, line 18, strike "a note dated" and insert "notes dated April 17, 1979, and";

On page 22, line 17, strike "$2,308,000" and insert "$2,100,000";

On page 22, beginning with line 19, insert the following:

RESEARCH AND DEVELOPMENT

For necessary expenses, not otherwise provided for, including research, development, operations, services, minor construction, maintenance, repair, rehabilitation and modification of real and personal property; tracking and data relay satellite services as authorized by law; and purchase, hire, maintenance, and operation of other than administrative aircraft, necessary for the conduct and support of aeronautical and space research and development activities of the National Aeronautics and Space Administration, $4,430,000,000 to remain available until September 30, 1982.

On page 23, line 11, strike "$110,000,000" and insert "$120,000,000";

On page 24, line 14, strike "$1,023,154,000" and insert "$1,032,404,000";

On page 25, line 10, strike "$8,700,000" and insert "$9,800,000";

On page 25, line 12, beginning with the colon, strike through and including the word "nature" in line 16;

On page 25, line 21, strike "$29,000,000" and insert "$27,000,000";

On page 25, line 25, strike "$37,108,000" and insert "$41,108,000";

On page 26, strike line 2, through and including line 4, and insert in lieu thereof the following:

"During 1981, within the resources available, the principal amount of direct loans outstanding shall not exceed $169,050,000";

On page 27, line 24, strike "$982,800,000" and insert in lieu thereof "$992,900,000";

On page 28, line 1, strike "$114,600,000", and insert in lieu thereof "$119,600,000";

On page 29, line 9, strike "$85,700,000", and insert in lieu thereof "$80,700,000";

On page 29, line 21, strike "$5,500,000", and insert in lieu thereof "$5,000,000";

On page 30, line 6, strike "$12,000,000", and insert in lieu thereof "$13,426,000";

On page 30, line 14, after "$27,137,000, strike the following ", which shall be reduced by $16,155,000 if registration of males is not conducted in fiscal year 1980";

On page 31, strike line 2 through and including line 7";

On page 31, line 15, after "$922,000", insert the following ", *Provided*, That none of these funds may be used to administer programs to issue loan guarantees to New York City for the purpose of permitting the Municipal Assistance Corporation to use the proceeds of its borrowings in fiscal years 1981 and 1982 to meet the City's financing needs after fiscal year 1982."

On page 32, line 23, strike "$1,822,308,000", and insert in lieu thereof "$1,642,806,000";

On page 32, line 25, strike "$56,261,000", and insert in lieu thereof "$24,502,000";

On page 33, line 1, strike "and correspondence";

On page 33, line 1, after "benefits", insert the following:

"for veterans who were not enrolled in an approved course as of October 1, 1980";

On page 34, line 5, strike "$6,044,013,000", and insert in lieu thereof "$5,953,268,000";

On page 34, line 11, strike "$129,496,000", and insert in lieu thereof "$134,810,000";

On page 34, line 19, strike "$55,312,000", and insert in lieu thereof "$50,418,000";

On page 35, line 6, strike "$611,631,000" and insert "$527,592,000";

On page 35, line 14, strike "$3,000,000" and insert "$2,000,000";

On page 35, line 17, strike "$390,583,000" and insert "$407,075,000";

On page 35, line 17, strike "$376,343,000" and insert "$392,835,000";

On page 36, line 8, strike "$3,000,000" and insert "$2,000,000";

On page 36, line 9, strike "$126,928,000" and insert "$108,908,000";

On page 38, line 6, after "and" insert the following: "obligations for such loans";

On page 45, line 10, strike all after "travel" through and including the semicolon on line 12, and insert in lieu thereof the following: "for which reimbursement is made pursuant to section 111 of title 38, United States Code; to travel performed in connection with major disasters or emergencies declared or determined by the President under the provisions of the Disaster Relief Act of 1974;"

On page 48, line 14, after "proceedings", insert the following: "other than travel, per diem and the costs of preparing materials for the public record";

On page 49, line 13, after the comma, insert the following: "except as otherwise provided by law";

On page 49, beginning with line 15, insert the following:

SEC. 414. (a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment, as defined in section 2 of the Budget and Accounting Act 1921, or any major administrative subdivision thereof, during the fiscal year ending September 30, 1981, to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than forty-five days after the end of each quarter of the fiscal year, the head of each department and establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(c) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department and establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

SEC. 415. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving questioned expenditures, arising after the enactment of this Act shall be resolved within six months of completing the initial audit report.

SEC. 416. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

SEC. 417. (a) Notwithstanding any other provision of this Act, the amounts otherwise available to agencies under this Act for the procurement of consultant services shall be reduced by the following amounts: HUD, $2,387,000; EPA, $11,868,000; and NASA, $14,042,000.

(b) For fiscal year 1982 and thereafter, a department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which such funds are located; and a brief description of the need for consulting services, including a list of major programs that require consulting services.

(c) For fiscal year 1982 and thereafter, the Inspector General of such department or establishment, or comparable official, or if there is no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

Mr. MATHIAS. Mr. President, before going into the specifics of this bill, I would like to do what I have done on many previous occasions, compliment our subcommittee chairman, the distinguished Senator from Wisconsin. His dedication, diligence and, I might add, his dexterity in handling the hundreds of issues touched on by this complicated bill are well recognized. As usual, from my personal point of view, it has been a pleasure to work with him.

Mr. President, as an illustration of what I have called the complex nature of this bill, let me point out that it contains 90 accounts. I think it is a tribute to the members of the subcommittee that 42 of these 90 accounts are below the budget, while only 7 are above it.

Some of the major reductions below the budget are HUD in assisted housing; HUD in low-income housing payments; HUD in community development grants; EPA construction grants; the Veterans' Administration readjustment benefits; Veterans' Administration major construction; and section 412, the 2 percent cut. So this is a bill which comes to the Senate in the posture of having been brought here after a process of very careful scrutiny, with the concept of the maximum economy being achieved.

Mr. President, the bill recommends $69,155,568,000 in new budget authority; this is $4,335,237,000 below the request for fiscal year 1981. We must also consider the fact that the committee did not include the administration's request of $500,000,000 for local government transitional assistance and the $4,569,949,000 for general revenue sharing. With these items considered, the bill is $9,405,186,000 below the President's budget request. Our subcommittee's allocation under the first budget resolution is $75.6 billion in budget authority and $50.2 billion in outlays. The bill as it now stands, is $6.5 billion below in budget authority and $5.1 billion below in outlays.

Mr. President, I may wish to address these overall totals and the assumption made by the Budget Committee at a later time but for now, I would like to highlight some of the major changes made by the committee in this bill.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The House declined to include contract authority and budget authority for annual contributions for assisted housing programs in the 1981 appropriation bill. The House committee recommended deferral of action on the Department's request, pending enactment of new authorizing legislation. The Senate committee has recommended $30,877,500,000 which is consistent with the amount provided in the first concurrent budget resolution and the Senate authorization bill. The committee decided to include funding for the assisted housing program since any delay in providing funding would have serious implication on program planning and management at all jurisdictional levels—Federal, State, and local. This would add to the problems of workload leveling and increasing the pressure on September commitments—a practice that this committee has opposed. A lack of prompt approval of the request would also delay the Department's ability to provide amendment authority to projects otherwise ready to start and thus cause a decline in starts in 1981. A serious delay in funding would also delay the entire production pipeline and cause a decline in 1982 starts as well. It goes without saying that in construction, delays also increase costs. In the housing industry, time is money and every delay, in an era of rising costs, adds to the cost of housing. Severe delay, therefore, will increase the cost of every project and reduce the number of units which can be subsidized with available funds. A 3-month delay in acting on this request could result in the loss of 26,000 section 8 units through inflation.

Included in the administration's request for assisted housing was $1,327,600,000 for the conversion of tax-exempt bonds to a taxable status. The committee denied the use of these funds for bond conversion for several reasons. The $30,877,500,000 appropriation is already $2,319,131,000 below the request and will no longer support the 300,000 unit reservations that the administration feels

is essential. If, on the other hand, we make the $1,327,600,000 available for unit reservations, it would create about 16,000 additional housing reservations. Thus putting these funds to work. The committee did not take exception to the concept of having taxable bonds, but based on the current tight situation in the housing market, the cut we are recommending in this account and the fact that we do not know the market for these taxable bonds concluded that the timing was bad.

For the payments for operation of low-income housing projects, the committee approved $862,000,000 which is $113,000,000 less than the revised request. The additional $113,800,000 was formally transmitted only 2 weeks ago and was, therefore, not considered by the House. This budget amendment is to provide funds for the increased cost of utilities for low-income housing programs during 1980. This request would enable retroactive payments to be made to the 1,400 affected public housing authorities (PHA). During recent months, it became apparent that utility costs were increasing at a rate well in excess of the 12-percent rate for which provisions were made in the 1980 budget. Fuel oil costs, for example, were 67 percent higher during the past winter than they were at the time the 1980 budget was submitted. The inadequacy of the budgetary allowance for utilities has now been confirmed by the fact that payments attributable to utility costs to PHA's with fiscal years that began January 1, 1980, and April 1, 1980, will be about 25 percent in excess of last year. If these funds are not provided, PHA's will experience a 16-percent shortfall in their fiscal year 1980 allocation. This could jeopardize the already precarious situation of some of these projects. This would impact 600,000 housing units throughout the country; 1,400 PHA's in 50 States. I intend to introduce an amendment on this matter at a later time and, therefore, will have more to say on this topic then.

The committee has recommended $15,000,000 for the troubled projects operating subsidy. This is $16,100,000 below the estimate and $6,100,000 less than provided by the House. This program is designed to provide funding for financially troubled multifamily subsidized projects to insure the financial stability of existing rental housing projects and thus protect tenants from higher rents caused by escalating operating costs; preserve and improve existing projects while recognizing the impact on the neighborhoods where such projects are located; insure that HUD-owned projects when sold will continue to serve the income groups that they originally were intended to house; and prevent potential losses to the insurance funds resulting from project insolvency. I understand that there may be an amendment to restore the $16,100,000 cut by the committee and I will have more to say about flexible subsidies at that time.

Within the Federal Housing Administration funds, the committee approved the concept of assisting homeowners faced with temporary financial problems under HUD's new temporary mortgage payments assistance (TMPA). It is the Department's intention to assist all homeowners who, through no fault of their own, were subjected to financial burdens which precluded their ability to meet contractual mortgage obligations. The House report indicates, however, that the costs of such a program should be limited to $6,000,000 for the first year. When initially proposed, the Department estimated that there would be 2,500 families which would require such payments during 1981, at a cost to the fund of $6,000,000 in payments. The current estimate is that the number of mortgagors which could be recipients of TMPA payments is as many as 3,700. This limitation would have the effect of not only returning homeowners to their troubled financial status, but also would increase the Department's inventory of single family homes and mortgages—resulting in higher outlays to the fund. Therefore, the Senate committee has recommended a program level of $9,000,000 which would cover the expected demand for this program.

The committee has provided $125,000,000 for the solar energy and energy conservation bank. This amount is $22,500,000 less than the request and $35,000,000 more than the House. These funds, to be transferred from DOE, are to provide lump sum subsidy payments to financial institutions which will pass on these subsidies to borrowers for energy conservation modifications and solar energy technology. The President's initial budget proposal was for $450 million, and the recent conference agreement on the Energy Security Act authorized $300 million for fiscal year 1981. Subsidies for solar—mostly passive—systems will be provided through regular mortgage procedures while conservation subsidies will be granted by banks to individuals who are at or below 80 percent of the medium income and own a home. The committee has also included report language earmarking $2,153,000 for salaries and expenses so that the Department can staff the program with a personnel ceiling of 25. Funding for staff was not included in the House report.

The committee has included $3,750,000,000 for the community development bloc grant program. This is $200,000,000 below the request and $60,000,000 below the House. HUD maintains that the funds proposed in the administration budget are needed by formula entitlement grantees in order to help offset the very substantial reduction they will otherwise have to make in their community development programs due to inflation. The implicit price deflator for State and local government purchases of goods and services is estimated at 10 percent for 1981. The amount requested by the administration would yield about a 4-percent increase, and thus would still result in some decrease in purchasing power at the local level. Furthermore, the problem for formula grantees is made worse by a number of cities and counties expected to qualify for entitlement in 1981 for the first time. It is already known that eight cities will qualify for the first time resulting in a total of approximately $5 million. In addition, from three to four urban counties are expected to qualify, but this will not be known for certain until late in October. The total funding expected to be required for new formula cities and counties is estimated to be about $15 million. The addition of these new formula grantees will serve to reduce the share of existing grantees if the overall appropriation is not increased. I know that our subcommittee chairman (Mr. PROXMIRE) has raised some serious objections to the way this program is being administered and I am also aware that an amendment to restore the $200,000,000 will be offered. I am prepared to discuss the bloc grant program further when that amendment is offered.

The committee has earmarked $104,000,000 for the Secretary's discretionary fund. The House reduced the amount available for the discretionary fund from the $109,950,000 request to $90,000,000, in keeping with their authorization bill. The Senate authorization bill provides "such sums as specified in appropriations acts." In keeping with prior appropriations acts, the Senate committee has recommended that the discretionary fund be set at 3 percent of the bloc grant funds. The House action reducing the discretionary fund would reduce the amount of moneys available for disaster assistance by about 20 percent. The Secretary's discretionary fund moneys for the Indian bloc grant program would be reduced by 19 percent—and have a significant effect on that program.

In fiscal year 1981, HUD expects to receive even larger requests for Indian funds, but if the level of funds available are reduced, fewer tribes will be funded. In addition, the annual appropriation proposed by the House introduces an uncertainty into funding so that essential planning of community development activities becomes difficult. This is particularly harmful to those population groups that have minimal tax base, that are largely dependent on their governments for employment, and that have nearly half of their population under 17 years of age.

The committee provided the full $40,000,000 requested for HUD's comprehensive planning grants. The House had proposed a reduction of $17,500,000. The House reduction would have eliminated the amount available to States ($10,000,000) and thus precluded approximately 20 States from receiving funds. The elimination of funding for State agencies would also cut funding for nonmetropolitan areawide planning organizations because State agencies would no longer be able to administer the areawide grants. The House proposal also eliminates funding localities ($5,750,000). This cut would adversely impact on the vast majority of the thousands of small local governments. These governments depend upon these funds—either in the form of direct grants or technical assistance provided by the State.

For HUD's fair housing and equal opportunity program, the committee has recommended $5,700,000. This is $2,000,000 more than the House and the same

as the budget request. The House deferred consideration of the $2,000,000 requested for community housing resource boards pending enactment of the Fair Housing Amendments Act of 1980. The local Boards help HUD monitor and evaluate its agreements with realtors and identify builders who are committed to voluntary efforts to further fair housing. Membership consists of representation from community organizations having a broad interest in fair housing. These organizations include Urban League, NAACP, League of Women Voters, private fair housing groups, chamber of commerce, universities, office of the mayor, et cetera. The $2,000,000 would fund approximately 133 boards. It is the opinion of HUD's general counsel that this activity is authorized under existing legislation (section 808(e)(3) of title VIII of the Civil Rights Act of 1968.

ENVIRONMENTAL PROTECTION AGENCY

Appropriation language for fiscal year 1973 through fiscal year 1979 provided EPA with a 7-percent appropriation transfer authority from one account such as salaries and expenses to abatement, control, and compliance. In fiscal year 1980, the Congress directed a new appropriation structure and because of this new structure, reduced the transfer authority to 2 percent. This year the House has proposed entirely eliminating the transfer authority. The Senate committee has reinstated the 2 percent transfer provision. The authority was initially given to EPA in recognition of the sudden changing priorities as well as the need to shift funds where the "most for the dollar" could be achieved in carrying out EPA's goals. The Congress recognized that the many statutes and volatile programs essentially dictated this flexibility. The Senate provision recognizes the immediate need for a continuation of the 2-percent transfer authority and at the same time also recognizes that this authority should be phased out so that EPA is treated as all other agencies in this bill—which would requires a reshuffling of EPA's accounts and more precise estimates of expected costs. The provision grants a 6-month extension of the transfer authority so that EPA could make the necessary adjustments in its account structure.

On another item, the committee took exception to the direction contained in the House report concerning EPA's review of advanced wastewater treatment projects. The committee concurs with the House that the Administrator should be responsible for approving these treatment projects but believes that he should be given the leeway necessary to determine how these reviews can best be conducted.

The committee has made some rather significant cuts in EPA's salaries and expenses; abatement, control, and compliance; research and development; and construction grants accounts. In most of these cases, I believe that these cuts were ill advised. However, the mood of the committee was such that some extremely valuable programs have been eliminated or sharply curtailed. I understand that there may be an amendment to provide additional funding for the implementation of the super fund. In the event that such an amendment is offered, I will address the need for these funds at that time.

Within EPA's salaries and expenses account, the committee recommended a cut of $4,500,000 for consulting services. However, I think it is important not to cut too deeply or in the wrong areas. For instance, I do not believe the subcommittee intended to cut economic, statistical, or energy analysis in the planning and evaluation program area.

The committee has provided $3,000,000 for the U.S. Regulatory Council. This is $1,000,000 more than the House and $338,000 less than the request. The $1,000,000 over the House will permit the Council to restore full distribution of the calendar, continue efforts on innovative regulatory techniques, continue efforts to improve regulatory analysis techniques, conduct special projects in specific industries—for example, coal, non-ferrous metals, hospital—expand indixes and appendixes of the calendar to make it easier to use and to start an adjudications calendar of important regulatory cases. The committee recognizes the unique contribution this agency can make to the streamlining of the Federal regulatory process and has directed the Council to focus its efforts on the more central regulatory issues.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The committee has provided $4,430,000,000 for NASA's research and development account. This funds all of the programs authorized in the NASA fiscal year 1981 Authorization Act. The recommended funding levels total $6,750,000 million below the authorized level and $65,500,000 above the revised budget request. The House deferred action on this entire account and thus included no funds.

The committee has recommended this level of funding for NASA in recognition of its unique contribution to this country. NASA has been and continues to lead the world in the exploration of space and the development of space technology. Money in this bill, we are now considering, will help us maintain this position of leadership in space exploration and science—by providing funds for ongoing projects such as the space telescope and for new projects; like the gamma ray observatory. These missions will fly later in the decade and contribute significantly to the Nation's prestige and scientific knowledge.

NASA contributes directly to national security; by pushing technology in areas like rocket propulsion, electronics, and composite materials. In the future, national security requirements will dictate that we operate routinely in space. NASA's space shuttle will enable us to do so. The Air Force is planning to use the shuttle extensively. About one-fourth of the shuttle missions planned through 1985 will be for the Department of Defense. Funds provided in this bill will allow NASA to continue the essential work in aeronautic such as alternative fuels technology, the variable cycle engine, and rotocraft technology.

NASA's aeronautics R. & D. has helped make the United States the acknowledged world leader in the production and export of civil and military aircraft. This means jobs at home and sales abroad; aeronautics is one field where American products dominate. An investment in NASA also pays off as a direct stimulus to increased national productivity. The spinoff of NASA's technology is well known. New products are created and new markets established. The space agency is a national resource of scientific and engineering talent that is unmatched elsewhere in the world. We need to maintain it, and keep it directed to the future.

Within this account, the committee has approved $19,100,000 for a new start—the gamma ray observatory (GRO). The observational objectives of GRO include a search for direct evidence of the synthesis of the chemical elements and measurement of direct high energy astrophysical processes. Gamma rays provide unique information on the most astronomically intriguing objects yet discovered, including quasars, neutron stars, and black holes. Astronomy is now to the point where our understanding of these objects is being seriously impaired by lack of data in the gamma ray region of the spectrum.

Another new start funded in this account is the National Oceanic Satellite System (NOSS). The committee has included $5,800,000 for NOSS in fiscal year 1981. The objective of NOSS is the development and limited operational demonstration of a remote sensing system which will supply specific global oceanographic data under all weather conditions on a routine and repetitive basis in support of NOAA, DOD and scientific needs. Although operationally oriented, NOSS provides an observational capability which has significant potential for research, specifically, understanding the interaction between the oceans, atmosphere, and ice-covered regions. Without NOSS, U.S. Navy operations will continue to be severely hampered by insufficient and inadequate weather and sea-state information. Civilian operations involving fishing, ship routing, ocean mining, oil and gas exploration, et cetera, would continue to be severely hampered by inadequate weather/sea state predictive information.

A final new NASA start, funded at $12,000,000 in fiscal year 1981, is the solar electric propulsion system (SEPS). SEPS is primarily designed to increase our capability to explore the solar system, and either dramatically improves performance or provide a capability that otherwise does not exist including the ability to maneuver and rendezvous after reaching a celestial body—that is comets, asteroids, outer planets, et cetera. SEPS will alleviate launch window constraints by markedly lengthening the windows—that is, months versus weeks—and increasing their frequency of occurrence.

NATIONAL CONSUMER COOPERATIVE BANK

The Senate has provided $9,800,000 for salaries and expenses of the National Consumer Cooperative Bank. This is $1,100,00 above the House level and $441,000 less than the budget request.

The committee increased the House allowance in recognition of the fact that this is perhaps the most critical year in the bank's development since it is the first year of full staffing, including a regional office staff. Thus, an increase in the bank's salary and expense account from the fiscal year 1980 level should be expected since fiscal year 1980 was the bank's initial year of operation and a full staff was not in place. It is expected that the bank's fiscal year 1982 request will show a significant reduction in salaries and expenses and there will be no request for funds in this area in fiscal year 1983 and beyond.

NATIONAL SCIENCE FOUNDATION

For the National Science Foundation, the committee has recommended $1,078,600,000 or $4,600,000 above the House and the budget request.

The National Science Foundation (NSF) is the primary agency in the Federal Government with responsibility for promoting the health of this Nation's science and its scientific resources. NSF's role with regard to basic research support accounts for almost 20 percent of the total Federal effort (over $900,000,000 out of slightly over $5,000,000,000 from the U.S. Government). Research, particularly basic research, was singled out by the fiscal year 1981 budget submission as an area that would contribute to our Nation's productivity and economic growth. The January budget proposed for NSF was up nearly 15 percent above the fiscal year 1980 appropriation.

However, the budget revisions in March fell heavily on NSF. Almost one-half of the increase was lost in the revision. The percentage increase for NSF was down to less than 8 percent; with the impact of double-digit inflation and skyrocketing fuel cost—for the ocean and Antarctic program—the NSF revised budget request is austere. This Nation must retain its strong position in scientific research internationally, and basic scientific research undergirds future technological development and scientific advancements. The NSF's fiscal year 1981 budget retained some increases in important areas like: The mathematical and computing sciences; quality science education for our citizens and for our children; and the highly acclaimed programs to bring university and industrial scientists together. The Foundation is the major agency of the Federal Government supporting research on economic and industrial productivity.

Our committee recommended $1,073,400,000 out of the $1,074,000,000 requested by the President in his revised budget request. The President has requested $1,074,000,000 in his budget revision. The subcommittee also added $5,100,000 to the Foundation's request in an effort to partially offset a $10,200,000 fuel increase for the Antarctic research program and the oceanographic research fleet. The fuel cost increases had more than doubled since the fiscal year 1981 budget was sent to the Congress.

The committee increased the amount available for NSF's small business innovation and industrial technology program by $5,000,000. The National Science Foundation initiated the small business innovation research program in 1977 as a new approach to Federal funding of research conducted by small science or technology-based firms. The goal of the program is to draw upon the research base of the Nation's small businesses and direct that research toward technological innovation and commercial applications. To date, some 182 awards have been made or are in the process of being made. The additional funds provided through this amendment will result in 100 to 200 new starts.

The committee also shifted $5,000,000 from NSF's lower priority applied research program to science education. The additional $5,000,000 over the request for science education will be used for NSF programs aimed at improving the Nation's pool of scientific personnel, developing improved materials and techniques for science education. The funds for scientific personnel will allow a small new program aimed at women and minorities, and will restore the NSF graduate fellowships to the fiscal year 1980 number. In addition, the funds will be applied to the continuation of NSF's local course improvement program (LOCI).

DEPARTMENT OF TREASURY—REVENUE SHARING

The Senate bill does not contain any funding for general revenue sharing. The House included $4,569,949,000 for local governments. We deferred consideration of this item since the Senate Finance Committee has not yet marked up the authorization bill. It is my understanding that they intend to do so within the week and an amendment will be offered to include these funds, contingent on the enactment of the authorizing legislation.

VETERANS' ADMINISTRATION

The House has recommended an increase of $85,431,000 for the VA's medical care program. The Senate version contains the revised amount recommended by the administration of $5,953,268,000. I understand that there may be an amendment to include some of the House increases in the Senate bill. When that amendment is called up, I shall have more to say on the very real need for increased funding.

The House bill eliminates flight and correspondence school benefits for veterans. The Senate version reinstated correspondence benefits. The committee felt that correspondence schools represented a cost-effective method of providing knowledge and skills to our ex-servicemen. For several years now, correspondence schools, under VA regulations, must be able to demonstrate that a minimum of 50 percent of graduates are employed in the field, or a closely-related field, for which trained. Some correspondence schools can demonstrate up to 85.3 percent employability of VA-funded graduates. This is an enviable record for any type of educational institution. I also understand that an amendment will be offered to restore flight training.

GENERAL PROVISIONS

Finally, we have recommended some changes in the General Provisions of the bill. Section 410 of the House bill eliminates the payment of any expenses or compensation for non-Federal parties for participation in regulatory or adjudicatory proceedings. While we sympathize with the concerns of the House, we felt that the elimination of the entire public participation program was too severe. The three affected agencies (EPA, Consumer Product Safety Commission, and the Office of Consumer Affairs) have the need to obtain the views and assistance of outside experts in writing standards, invite individuals who might make a unique contribution to take part in a proceeding, and to support the travel and per diem of consumers, local officials, small businessmen, who can make a contribution to the agencies' deliberations, and who other wise could not afford to participate. The committee has, therefore, modified the House provision and included report language on pages 118 and 119 to reduce the possibility of abuse in this program.

Section 412 of the bill provides that 2 percent of the total budget authority in the bill shall be withheld from obligation and that up to 5 percent may be withheld from any account, activity or project. The provision excludes the funds provided for the programs administered by the Veterans' Administration. The savings from this provision is estimated to be $992,200,000. This provision, as now drafted, contains some serious problems for the agencies and the Congress. In addition, the provision is technically ambiguous. For these reasons, I intend to offer a substitute amendment.

Section 417 of the Senate version requires a reduction in consultant contracts for HUD, EPA, and NASA. Although I shall not question the wisdom of a general reduction in such contracts, I shall be proposing an amendment that will better define the amount of money being spent on consultants and the size of the reductions that will be made.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TSONGAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PROXMIRE). Without objection, it is so ordered.

AMENDMENT NO. 2335

Mr. TSONGAS. Mr. President, I appreciate the Senator from Wisconsin taking the chair so I may introduce an amendment which he will be opposing tomorrow. I appreciate his indulgence in this regard.

Mr. President, I would like to place in the record today, and will discuss it tomorrow, an amendment relative to CDBG funding, the community development block grant funds.

It is an amendment sponsored by myself and Senators WILLIAMS, SASSER, JAVITS, RIEGLE, LEVIN, SARBANES, CRANSTON, STEWART, and MOYNIHAN, which adds $200 million to the CDBG appropriations.

I thank the Senator from Wisconsin for his assistance.

(Mr. TSONGAS assumed the chair.)

Mr. PROXMIRE. Mr. President, earlier when I concluded my remarks, I asked

unanimous consent that the committee amendments be adoped en bloc and that they be treated as original text for purposes of amendment. Included in that was one amendment that affects the New York City loan guarantee program. I understand the distinguished senior Senator from New York is going to offer an amendment to knock that committee amendment out.

Of course, he is free to do that, as I understand it, under the rules, because I got unanimous consent for that to be treated as original text subject to amendment.

On the other hand, the Senator from New York may prefer to have that treated separately and the committee amendment not adopted, and have the Senate have before it the committee amendment for an up or down vote.

Whichever way the Senator from New York prefers it, I will be very happy to have him do it that way.

So I ask unanimous consent that in the event the distinguished Senator from New York desires to have that part of the committee amendment, that particular committee amendment, taken out of the bill, that he will be free to do so.

Mr. MATHIAS. Mr. President, reserving the right to object, I said a few minutes ago that it was a pleasure to work with the distinguished Senator from Wisconsin. I cannot help but observe that his thoughtful action in this regard is an example of why it is a pleasure to work with him.

I certainly have no objection to the unanimous-consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will come in at 10:30 tomorrow morning. After the two leaders or their designees have been recognized under the standing order, Mr. MCGOVERN will be recognized for not to exceed 15 minutes, after which the Senate will resume consideration of the HUD appropriation bill.

At no later than 12 o'clock noon, the HUD appropriation bill will be temporarily set aside until such time as action on the military construction authorization bill has been completed.

Am I correct, Mr. President?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. And a call for the regular order will not dislodge the military construction authorization bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Upon the disposition of the military construction authorization bill, the Senate will resume consideration of the HUD appropriations bill. Rollcall votes will occur on tomorrow, contrary to some rumors that have sprouted up like the prophet's gourd overnight. There will be rollcall votes on amendments and motions in relation to the military construction authorization bill or passage thereof, in all likelihood, and with respect to amendments and motions in connection with the HUD appropriation bill.

So there will be rollcall votes tomorrow. There will be rollcall votes daily through Friday. There will be no session of the Senate on this coming Saturday.

Mr. STEVENS. Will the majority leader repeat that last statement?

Mr. ROBERT C. BYRD. In response to the distinguished Senator's question, there will be no session of the Senate on this coming Saturday.

Mr. STEVENS. I thank the majority leader.

RECESS TO 10:30 A.M. TOMORROW

Mr. PROXMIRE. Mr. President, if there by no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 10:30 a.m. tomorrow.

The motion was agreed to; and at 5:35 p.m., the Senate recessed until tomorrow, Tuesday, September 16, 1980, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 12, 1980:

DEPARTMENT OF STATE

Harry W. Shlaudeman, of California, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Argentina.

Thomas D. Boyatt, of Ohio, a Foreign Service officer of class one, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Columbia.

Edwin Gharst Corr, of Oklahoma, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Peru.

THE JUDICIARY

Nickolas P. Geeker, of Florida, to be U.S. attorney for the northern district of Florida for the term of 4 years (reappointment).

James Leslie Blackburn, of North Carolina, to be U.S. attorney for the eastern district of North Carolina for the term of 4 years, vice George M. Anderson, resigned.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Dennis D. Clark, of Maryland, to be a Member of the Federal Mine Safety and Health Review Commission for the term of 6 years expiring August 30, 1986, vice Jerome R. Waldie.

DEPARTMENT OF STATE

The following-named Foreign Service Officers for promotion in the Foreign Service to the classes indicated:

Foreign Service officers of class 1:
Melville E. Blake, Jr., of California.
John P. Blane, of Alabama.
J. Donald Blevins, of Florida.
Michael P. Boerner, of New Jersey.
John Condayan, of Virginia.
Goodwin Cooke, of New York.
Allen C. Davis, of Tennessee.
Robert W. Drexler, of Wisconsin.
Raymond C. Ewing, of California.
James P. Farber, of Florida.
James Ferrer, Jr., of California.
Robert K. German, of Texas.
Kenneth O. Harris, of West Virginia.
Roy T. Haverkamp, of Missouri.
Lucian Heichler, of Virginia.
George Borman High, of Illinois.
John W. Holmes, of Massachusetts.
Betty-Jane Jones, of Wisconsin.
Lewis D. Junior, of Maryland.
Herbert Kaiser, of Maryland.
George R. Kenney, of Illinois.
Lowell C. Kilday, of Virginia.
P. Wesley Kriebel, of Maryland.
Sheldon Jack Krys, of Maryland.
George M. Lane, of Massachusetts.
Burton Levin, of New York.
Stephen R. Lyne, of the District of Columbia.
Harry R. Melone, of New York.
James C. Nelson, of Illinois.
Robert P. Paganelli, of New York.
Edward L. Peck, of California.
Raymond L. Perkins, Jr., of Colorado.
J. William Piez, of Colorado.
Larry G. Piper, of Texas.
James A. Placke, of Nebraska.
Nicholas Platt, of the District of Columbia.
Henry Precht, of Georgia.
Gerald A. Rosen, of New York.
James D. Rosenthal, of California.
Paul Sadler, of Tennessee.
Howard B. Schaffer, of New York.
Kenneth N. Skoug, Jr., of Virginia.
Richard J. Smith, of Connecticut.
Walter Burges Smith II, of Rhode Island.
Frank M. Tucker, Jr., of Pennsylvania.
James L. Tull, of Iowa.
Marten H. A. van Heuven, of Connecticut.
E. Allan Wendt, of California.

Foreign Service officers of class 2:
Donald M. Anderson, of the District of Columbia.
Merle E. Arp, of Iowa.
Richard C. Barkley, of Michigan.
Norman E. Barth, of Florida.
Adrian Anthony Basora, of Puerto Rico.
Jack R. Binns, of Washington.
Robert D. Blackwill, of Nevada.
Felix S. Bloch, of North Carolina.
William Bodde, Jr., of Maryland.
Donald J. Bouchard, of Maine.
Charles R. Bowers, of California.
A. Donald Bramante, of New York.
Thomas Stanley Brooks, of Wyoming.
Pierce K. Bullen, of Florida.
James R. Bullington, of Tennessee.
Paul F. Canney, of Massachusetts.
Thomas J. Carolan, Jr., of Maryland.
Paul M. Cleveland, of Massachusetts.
Harry L. Coburn, of New York.
Robert D. Collins, of Virginia.
Elinor G. Constable, of New York.
Carl C. Cundiff, of Nevada.
Jerrold Mark Dion, of Washington.
David J. Dunford, of Virginia.
Robert E. Ezelle, of California.
Donald C. Ferguson, of California.
Robert A. Flaten, of Minnesota.
Bruce A. Flatin, of Minnesota.
Ludlow Flower III, of the District of Columbia.
Francis Anthony Forgione, of Massachusetts.
Jay P. Freres, of Florida.
Herbert Donald Gelber, of New Jersey.
Stephen R. Gibson, of California.
Myles L. Greene, of Florida.
Herbert G. Hagerty, of New Jersey.
Paul J. Hare, of the District of Columbia.
Donald F. Hart, of Maryland.
John H. Hawes, of New Jersey.
John J. Helble, of Illinois.
Peter T. Higgins, of California.
Francis S. M. Hodsoll, of New York.
Harriet W. Isom, of Virginia.
George W. Jaeger, of Vermont.
Harmon E. Kirby, of Ohio.
Edward Kreuser, of Pennsylvania.
Paul L. Laase, of Virginia.
David F. Lambertson, of Kansas.
William H. Mansfield III, of Connecticut.
Edward Marks, of California.
Richard R. Martin, of the District of Columbia.
Gary L. Matthews, of Missouri.
John T. McCarthy, of New York.
Richard L. McCormack, of Florida.
James M. Montgomery, of New Jersey.

Richard H. Morefield, of California.
John A. Murtha, of Washington.
Jerrold M. North, of Illinois.
Richard M. Ogden, of Connecticut.
George W. Ogg, of Florida.
Edmund M. Parsons, of Texas.
Edward Joseph Perkins, of California.
James D. Phillips, of Kansas.
William E. Rau, of Virginia.
Leo J. Reddy, of South Carolina.
J. Brayton Redecker, of Connecticut.
Alan D. Romberg, of Maryland.
William Frederick Rope, of New York.
Irving L. Sanders, of Washington.
Teresita C. Schaffer, of New York.
Arthur P. Shankle, Jr., of Texas.
Pierre Shostal, of the District of Columbia.
John P. Shumate, Jr., of California.
Franklyn E. Stevens, of California.
Ulrich A. Straus, of Maryland.
Gordon L. Streeb, of Minnesota.
John J. Taylor, of Tennessee.
Paul Daniel Taylor, of New York.
Thomas T. Turqman, of the District of Columbia.
Alexander F. Watson, of Massachusetts.
Martin A. Wenick, of Florida.
William B. Whitman, of Florida.
Richard H. Williams, of Utah.
Richard L. Williams, of Pennsylvania.
Larry C. Williamson, of California.
John J. Youle, of Virginia.
David E. Zweifel, of Colorado.

Foreign Service officers of class 3:
Charles S. Ahlgren, of West Virginia.
Charles A. Anderson, of Virginia.
Anthony J. Babin, Jr., of Texas.
Charles G. Billo, of Maryland.
Dorothy Jean Black, of California.
H. Clay Black, of Illinois.
Kenneth W. Bleakley, of New York.
Robert O. Blucker, of Arkansas.
Jere Broh-Kahn, of Ohio.
David G. Brown, of Florida.
Timothy C. Brown, of Nevada.
Stephen W. Buck, of New York.
James N. Bumpus, of California.
W. Scott Butcher, of Ohio.
James L. Clunan, of Maine.
Herbert A. Cochran, of North Carolina.
Donald I. Colin, of Nevada.
James K. Connell, of Connecticut.
James F. Creagan, of Ohio.
Jeffrey Davidow, of Minnesota.
John S. Davison, of Maine.
Wilfred F. Declercq, of Virginia.
James F. Dobbins, Jr., of New York.
Felix Dorough, of Texas.
Stephen M. Ecton, of Connecticut.
Richard C. Faulk, of New Jersey.
Patrick J. Flood, of Ohio.
John David Forbes, of Pennsylvania.
Sidney Friedland, of Wisconsin.
Brian R. Furness, of Connecticut.
Thomas Howard Gewecke, of Massachusetts.
Jon D. Glassman, of California.
Edward W. Gnehm, Jr., of Georgia.
James J. Gormley, of New York.
John A. Graham, of Washington.
Terrence G. Grant, of Illinois.
Theodore S. Green, of Pennsylvania.
John M. Gregory, Jr., of Virginia.
Michael J. Habib, of Virginia.
Hugh G. Hamilton, Jr., of Missouri.
Alan M. Hardy, of Ohio.
Douglas G. Hartley, of Tennessee.
Genta A. Hawkins, of California.
Francis P. G. Hearne, of New Jersey.
George W. Heatley, of California.
Richard J. Higgins, of Maryland.
David L. Hobbs, of California.
Michael M. Hornblow, of New York
James S. Huffman, of California.
Martin Jacobs, of Florida.
Darryl N. Johnson, of Washington.
Ralph R. Johnson, of Washington.
John M. Joyce, of Colorado.
David T. Kenney, of the District of Columbia.
James E. Kerr, of the District of Columbia.
T. Patrick Killough, of Texas.
Marguerite Cooper King, of California.
Philip A. King, of Florida.
Robert H. Knickmeyer, of Missouri.
Gilbert D. Kulick, of California.
David C. Lacey, Jr., of Ohio.
Charles E. Lahiguera, of Puerto Rico.
Edward Gibson Lanpher, of Virginia.
Richard R. La Roche, of Rhode Island.
Joseph E. Lee, of Nevada.
Ira H. Levy, of Missouri.
Bonnie M. Lincoln, of Minnesota.
Philip Thomas Lincoln, Jr., of Michigan.
Warren E. Littrel, Jr., of Illinois.
Walter B. Lockwood, Jr., of Connecticut.
Peter J. Lydon, of Massachusetts.
Robert A. MacCallum, of Oregon.
James H. Madden, of California.
John F. Maisto, of Pennsylvania.
Jim D. Mark, of Georgia.
Thomas G. Martin, of Alabama.
Stephanie Mayfield, of California.
Alfred J. McGinness, of Florida.
Brunson McKinley, of New Jersey.
Marilyn Ann Meyers, of Minnesota.
Ned E. Morris, of Tennessee.
Sarah Louise Nathness, of Ohio.
Francis J. Nelson, of New York.
Warren P. Nixon, of Iowa.
Joseph P. O'Neill, of New York.
Shirley E. Panizza, of Connecticut.
Alan Parker, of California.
Thomas Parker, Jr., of Maryland.
F. Coleman Parrott, of Alabama.
Robert Stephen Pastorino, of California.
Edward T. Paukert, of Nevada.
Robert M. Perito, of Massachusetts.
John G. Peters, of California.
Paul P. Pilkauskas, of New York.
Edward B. Pohl, of Louisiana.
Kenneth M. Quinn, of Iowa.
Robert Rackmales, of Maryland.
David M. Ransom, of the District of Columbia.
John E. Reinertson, of Wisconsin.
L. Benjamin Sargent, Jr., of Washington.
Arnold P. Schifferdecker, of Missouri.
Norman T. Shaft, of Minnesota.
Gilbert H. Sheinbaum, of California.
Harrison B. Sherwood, of Minnesota.
Daniel H. Simpson, of Ohio.
Robert S. Simpson, of California.
Norman A. Singer, of Illinois.
Richard J. Slott, of Indiana.
Donnell D. Smith, of Illinois.
Keith C. Smith, of Virginia.
Seton Stapleton, of New Jersey.
John P. Steinmetz, of California.
John D. Stempel, of Indiana.
Linda C. Stillman, of Arizona.
Elizabeth A. Swift, of the District of Columbia.
William S. Tilney, of California.
Edmund van Gilder, of Pennsylvania.
Thomas J. Wajda, of Ohio.
Edward S. Walker, Jr., of Pennsylvania.
Anthony H. Wallace, of New York.
Donald B. Westmore, of Washington.
Tnomas Gary Weston, of Michigan.
James C. Whitlock, Jr., of Connecticut.
Peter D. Whitney, of New York.
Edward H. Wilkinson, of Indiana.
Howard F. Williams, of Georgia.
James Alan Williams, of Virginia.
David S. Wilson, of California.
Ralph Winstanley II, of Indiana.
Bernard J. Woerz, of New Jersey.
John M. Yates, of Washington.
Murray David Zinoman, of New York.

Foreign Service officers of class 4:
Edward Gordon Abington, Jr., of Florida.
David Michael Adamson, of New York.
Leslie M. Alexander, of New York.
Douglas B. Archard, of the District of Columbia.
Michael R. Arietti, of Connecticut.
Joseph F. Aronhime, of Florida.
Anthony Arredondo, of Colorado.
Robert D. Austin, Jr., of Washington.
Alfred R. Barr, of California.
Michael T. Barry, of Texas.
Jane Ellen Becker, of Wisconsin.
Ann R. Berry, of Kentucky.
Peggy Blackford, of New Jersey.
John S. Boardman, of Ohio.
Elizabeth B. Bollmann, of Missouri.
Michael A. Boorstein, of Colorado.
Robert A. Bradtke, of Pennsylvania.
Edward Brynn, of California.
Roger E. Burgess, Jr., Nevada.
Bruce G. Burton, of New York.
Suzanne S. Butcher, of Pennsylvania.
Robert J. Carroll, of Connecticut.
Virginia S. Carson, of Oregon.
Mary Ann Casey, of Colorado.
Mary Reed Cencetti, of the District of Columbia.
George A. Chester, Jr., of California.
Geraldeen G. Chester, of California.
Gene Burl Christy, of Texas.
Patricia R. Clark, of California.
Donald R. Cleveland, of Oregon.
Lee O. Coldren, of California.
Michael Congdon, of California.
Frederick R. Cook, of Illinois.
Kathleen J. Croom, of Missouri.
Brian Dean Curran, of Maine.
Roger L. Dankert, of California.
Jan de Wilde, of New Jersey.
Thomas P. Doubleday, Jr., of New York.
Richard C. Dunbar, of Washington.
Craig G. Dunkerley, of Massachusetts.
John M. Evans, of Virginia.
Gary Lee Everett, of Texas.
Patrick M. Folan, of California.
Mary Lee K. Garrison, of New Jersey.
Thomas Humphrey Gerth, of New York.
David N. Greenlee, of California.
Andrew Grossman, of New York.
James Henry Hall, of Virginia.
Thomas R. Hanson, of Virginia.
David C. Harr, of Illinois.
Patrick R. Hayes, of Virginia.
Donald S. Hays, of Virginia.
Judith M. Heimann, of Connecticut.
Dale Roy Herspring, of California.
Donald Vance Hester, of Illinois.
Rex L. Himes, of Washington.
Richard A. Holmes, of Michigan.
James R. Hooper, of Michigan.
John E. Hope, of California.
William J. Hudson, of Virginia.
James G. Huff, of the District of Columbia.
Marie T. Huhtala, of California.
Edmund James Hull, of Illinois.
Sandra Nelson Humphrey, of New Jersey.
Douglas Randall Hunter, of Illinois.
Robert Leonard Jacobs, of Illinois.
Dennis Coleman Jett, of New Mexico.
Donald C. Johnson, of Oregon.
Robert D. Johnson, of Missouri.
David H. Kaeuper, of Michigan.
Theodore H. Kattouf, of Florida.
Herbert Klee, Jr., of Illinois.
Jacques Paul Klein, of Illinois.
Therese Ann Kleinkauf, of New York.
Robert J. Kott, of New York.
Sheldon I. Krebs, of New York.
William J. Kushla, of California.
James A. Larocco, of Illinois.
James V. Ledesma, of California.
Gary E. Lee, of Ohio.
Harlan Y. M. Lee, of Hawaii.
Anthony Leggio, of New York.
Alexander T. Liebowitz, of New York.
John W. Limbert, of Vermont.
Thomas E. Macklin, Jr., of California.
Frederic William Maerkle III, of California.
Peter S. Maher, of Illinois.
Ronald L. Main, of Oklahoma.
Luciano Mangiafico, of Connecticut.
Dana M. Marshall, of New York.
G. Eugene Martin, of Maryland.
Pedro Martinez, of Texas.
W. Lee Mattingly, of Massachusetts.
Drew Stephen May, of New Jersey.
Joseph Neal McBride, of Wyoming.
Donald James McNally, of New Jersey.
Harold Edward Meinheit, of Illinois.

Michael J. Metrinko, of Pennsylvania.
William A. Moffitt, of Texas.
Mark E. Mohr, of New Jersey.
Peter B. Morrissey, of Hawaii.
Russell E. Morrow, of Texas.
Joseph W. Moyle, of Maryland.
John G. H. Muehlke, Jr., of New Hampshire.
Paul T. Murphy, of Connecticut.
Thomas F. Murphy, of Illinois.
Ronald J. Neitzke, of Minnesota.
Ronald E. Neumann, of California.
Terrell R. Otis, of Maryland.
Robert S. Pace, of Pennsylvania.
Alec M. Peltier, of Virginia.
Peter S. Perényi, of Connecticut.
Robert C. Perry, of Virginia.
Robert D. Persiko, of Virginia.
John A. Polansky, Jr., of Texas.
Bruce F. Porter, of Colorado.
John A. Purnell, of Arkansas.
John R. Ratigan, of Virginia.
David P. Rawson, of Ohio.
Peter Robert Reams, of Nevada.
Arlene Render, of Ohio.
David E. Reuther, of Washington.
Max Newton Robinson, of Washington.
Wayne Alan Roy, of Illinois.
Richard W. Ruble, Jr., of California.
Judith Ann Schmidt, of Texas.
Joseph B. Schreiber, of Michigan.
Louis D. Sell, of Kentucky.
Amelia Ellen Shippy, of New Mexico.
LeRoy C. Simpkins, of California.
Charles H. Sisk, of Florida.
James R. Smith, of West Virginia.
Joan Veronica Smith, of the District of Columbia.
Richard A. Smith, Jr., of Connecticut.
Karl H. Sprick, of California.
Daniel Anton Strasser, of California.
Bruce D. Strathearn, of Wisconsin.
Russell J. Surber, of California.
Eric E. Svendsen, of Connecticut.
Mary Elizabeth Swope, of Virginia.
John F. Teft, of Wisconsin.
Albert A. Thibault, Jr., of Pennsylvania.
J. Richard Thurman, of Kentucky.
Donald R. Tremblay, of California.
Robert A. Tsukayama, of Hawaii.
Benjamin Tua, of Virginia.
Domonic Vallese, of Pennsylvania.
Ralph Claiborne Walsh, of Texas.
Thomas M. Widenhouse, of Illinois.
Sharon P. Wilkinson, of New York.
Ruth L. Willow, of the District of Columbia.
Dan A. Wilson, of Texas.
James Howard Yellin, of Pennsylvania.
Eugene C. Zajac, of Illinois.
John Joseph Ziolkowski, of the District of Columbia.
Richard H. Zorn II, of Illinois.

Foreign Service officers of class 5:
Harold C. M. Baum, of New York.
William M. Bellamy, of California.
Robert A. Benzinger, of Arizona.
David L. Bleyle, of New York.
Robert J. Blohm, of California.
John W. Bowen IV, of Florida.
Ralph L. Boyce, Jr., of Florida.
Jo Ann Hardee Collinge, of Florida.
Gary Couey, of California.
Joni L. Davidson, of California.
Margaret M. Dean, of Illinois.
James A. Derrick, of Iowa.
Robert Sidney Deutsch, of Virginia.
Joseph R. Donovan, Jr., of New York.
Timothy John Dunn, of California.
Linda Mathews Eckhardt, of California.
Robert Bruce Ehrmman, of New Jersey.
Allan Vincent Elisbury, of Wyoming.
Daniel Ted Fantozzi, of Virginia.
John P. Felt, of Virginia.
Reed J. Fendrick, of New York.
Thomas C. Ferguson, of Michigan.
Robert W. Pitts, of New Hampshire.
Sally M. Gober, of Ohio.
James K. Gordon, of California.
C. Lawrence Greenwood, Jr., of Florida.
Reno Leon Harnish III, of the District of Columbia.
John J. Hartley II, of South Carolina.
Joseph A. Hilts, of Wisconsin.
Joel Gerard Imp, of Pennsylvania.
Michael Allen Jacobs, of California.
Hartford T. Jennings, of Ohio.
David E. T. Jensen, of Virginia.
Margaret Carnwath Jones, of Pennsylvania.
Laura-Elizabeth Kennedy, of Virginia.
Esther Klein, of Connecticut.
Louis J. Kochanek, of New Hampshire.
Mary J. Kosheleff, of Ohio.
Daniel Charles Kurtzer, of New Jersey.
James B. Lane, Jr., of Ohio.
Randall R. LeCocq, of New Mexico.
Steven R. Mann, of Pennsylvania.
Dianne E. Markowitz, of Pennsylvania.
Alphonso George Marquis, of Maryland.
Joseph R. McGhee, of Pennsylvania.
Thomas J. McMahon, of New York.
Thomas W. Mears, Jr., of Maryland.
Clifford W. Mecklenburg, of Ohio.
Barbara R. Miller, of New York.
William Howard Moore, of Virginia.
Bruce P. Morrison, of New York.
Leigh A. Morse, of Minnesota.
John Jacob Norris, Jr., of Virginia.
Joseph Bernard Nowell, of Michigan.
Jon Lane Noyes, of Wyoming.
W. Andrew Osterman, of Pennsylvania.
James E. Overly, of Colorado.
Donald Edward Parker, of Wisconsin.
Mary C. Pendleton, of Kentucky.
Robert Chamberlain Porter, Jr., of Maine.
Gary V. Price, of Hawaii.
Michael E. Ranneberger, of Maryland.
Robin Lynn Raphel, of New Jersey.
Sheldon J. Rapoport, of Connecticut.
R. Ross Rodgers, of Washington.
Carol Lynn Rose, of Tennessee.
Clayton F. Ruebensaal, Jr., of Maryland.
Christopher W. Runckel, of Washington.
Kenneth F. Sackett, of Florida.
Robert A. Sarofeen, of Florida.
Katherine H. Smith, of California.
Robert J. Smolik, of California.
Don Kenneth Sowers, of Virginia.
Melvin T. Spence, of the District of Columbia.
Patsy G. Stephens, of California.
Curtis M. Stewart, of Colorado.
George Louis Summers, of California.
Steven Wagenseil, of Rhode Island.
Leon Weintraub, of Maryland.
Joseph Charles Wilson IV, of Washington.
Henry C. Zimerowski, of Massachusetts.

DEPARTMENT OF STATE

The following-named person for appointment as a Foreign Service Information officer of class 4, a consular officer, and a Secretary in the Diplomatic Service of the United States of America:

Anthony William Sariti, of Florida.

For appointment as Foreign Service officers of class 6, consular officers, and Secretaries in the Diplomatic Service of the United States of America:

Hector Pablo Barreyro, of Texas.
Earl Don Mannola, of Virginia.
Mary Cynthia Smoot, of the District of Columbia.

Foreign Service reserve officers to be consular officers and Secretaries in the Diplomatic Service of the United States of America:

James M. Achterhof, of Virginia.
Luis Enrique Acosta, of Virginia.
Manuel F. Acosta, of Arizona.
James Beach Allen, of Massachusetts.
Earl R. Allison, of Virginia.
Assad Amine, of Michigan.
Gerald Christopher Anderson, of Illinois.
Walter E. Andrusyszyn, of New York.
Blaine David Benedict, of New York.
Jon D. Berlin, of Virginia.
John C. Bishop, of Florida.
Steven Lee Blake, of Texas.
Avis T. Bohlen, of the District of Columbia.
Barbara A. Bonamy, of Washington.
Sherman Gayloid Boone, of the District of Columbia.
Jacquelyn J. Borgel, of Virginia.
Randolph E. Boswell, of Virginia.
Mark M. Boulware, of Texas.
Barbara Jean Bowie, of New York.
Richard E. Bradshaw, of North Carolina.
Roberto Gonzales Brady, of California.
Jacquelyn Owens Briggs, of Michigan.
William E. Brooks, of Virginia.
Karen S. Brown, of Indiana.
Edward S. Browne, of California.
Judith F. Buncher, of New Jersey.
John Angelo Butler, of California.
Michael A. Butler, of Virginia.
Keith Christian Buxton, of Pennsylvania.
Thomas W. Callow, of Michigan.
James E. Campbell, of California.
Joseph D. Cardosi, of Virginia.
Laraine Newhouse Carter, of Florida.
Dana T. Cartozian, of California.
Samuel J. Cerrato, of the District of Columbia.
Deborah A. Coates, of California.
Carol A. Colloton, of the District of Columbia.
Stephen L. Conn, of Massachusetts.
Bruce Edward Connuck, of New York.
John Owen Cook, of California.
José E. V. Cunningham, of California.
Andrew Czirjak, of Virginia.
Glyn T. Davies, of Maryland.
Kathleen Rebecca Davis, of Maryland.
James J. Dolge, of Virginia.
Frederick H. Donner, of Texas.
Raymond W. Eiselt, of Virginia.
Lawrence McNicoll Glisuke Enomoto, of Hawaii.
Charles William Evans, of Virginia.
Brian P. Fairchild, of Virginia.
Jonathan D. Farrar, of California.
Mitchell H. Feigenberg, of California.
Alan C. Ferguson, Jr., of Virginia.
John E. Ferguson, of Virginia.
John Daniel Fernandez, of California.
Kenwood S. Foster, of Virginia.
Stephen R. Fox, of Washington.
Henry Danton Gaddis, of Texas.
Priscilla Harter Galassi, of Massachusetts.
Jenaro A. Garcia, of New Hampshire.
John L. Gartin, of Virginia.
Norman D. Glick, of Maryland.
Raymond J. Gonzales, of California.
Douglas C. Greene, of the District of Columbia.
Robert B. Greene, of Virginia.
Walter Greenfield, of the District of Columbia.
Gabriel Guerra-Mondragón, of the District of Columbia.
John R. Haberstroh, of Virginia.
Mary Allyn Haines, of Missouri.
Bobby Harris, of the District of Columbia.
William James Haugh, of Virginia.
John Arthur Hedges, of Virginia.
John W. Hendrix, of the District of Columbia.
John W. Hennessy, of Virginia.
Kenneth MacLean Hillas, Jr., of New Jersey.
John Hitchcock, of Washington.
James Robert Holbein, of Texas.
Mark W. Huffman, of Virginia.
Barbara Fitzsimmons Hughes, of Nebraska.
Miriam Irene Hughes, of Florida.
Stephanie F. Johnson, of the District of Columbia.
John B. Jones, of Virginia.
Peter Graham Kaestner, of Maryland.
Timothy B. Kane, of Virginia.
Jerrold I. Kellson, of Massachusetts.
Angela Maria Kelsey, of Pennsylvania.
George W. Kenning, Jr., of Virginia.
Leonard J. Lange, of Maryland.
Brent E. Lawson, of Virginia.
Linda K. Lawson, of Virginia.

Richard L. Layne, of the District of Columbia.
George Lee, of California.
Anna Maria Anderson Lehel, of the District of Columbia.
Margery Lemb, of Pennsylvania.
Susan Pierce Lively, of Kentucky.
Kenneth Lizzio, of Virginia.
Josephine Ann Stelzig Lockley, of Maryland.
John D. Long, of the District of Columbia.
Nicholas C. H. MacNeil, of Virginia.
Janet Robins Malkemes, of Pennsylvania.
Charles M. Martin, of Virginia.
David C. Martin, of Virginia.
Mary Jeanne Reid Martz, of Florida.
John P. Marx, of Virginia.
Herbert H. Matsubayashi, of California.
Sue Ellen McCoy, of Virginia.
William McPherson, of California.
Helen Meagher, of Virginia.
Kevin C. Milas, of California.
Jeffrey S. Miller, of Virginia.
James A. Minyard, of Virginia.
Francis X. Monachino, of Virginia.
Roberta Newell Mounaimné, of Washington.
Susan Margaret Mowie, of the District of Columbia.
Jesse Leroy Myers, of California.
David Napierkowski, of Virginia.
Kevin Glenn Nealer, of Ohio.
Edwin Richard Nolan, Jr., of Massachusetts.
Robert Lloyd Norman, of Ohio.
David Alan Ochmanek, of New Jersey.
Maria Luisa Otero, of Puerto Rico.
E. Alan Platt, of Florida.
Richard E. Plues, of California.
Frank J. Rafalko, Jr., of Virginia.
Edith A. Reidy, of Virginia.
Phillip H. Ringdahl, of Virginia.
Hazel L. Robinson, of Pennsylvania.
Stanley Herman Robinson, of New Jersey.
Harold R. Rooks, Jr., of Virginia.
David Henry Rundell, of Delaware.
Frederick W. Rustmann, Jr., of Florida.
Royal Lawrence Rutter, Jr., of Virginia.
Elida F. Sánchez, of Virginia.
Robin Renee Sanders, of New York.
Brenda Brown Schoonover, of California.
Thomas E. Shealy, of Virginia.
Dona Phelps Sherman, of Maryland.
Rosemary J. Silvia, of Virginia.
Douglas R. Smith, of Texas.
Edward Thomas Smith, of the District of Columbia.
Gabrielle Margaret Solleder, of New York.
G. Jean Soso, of California.
Madelyn Elizabeth Spirnak, of the District of Columbia.
William N. Stevens, of Maryland.
Gordon John Stirling, of Utah.
David S. Stott, Jr., of Virginia.
Raymond W. Suarez, of Massachusetts.
Shaun D. Sullivan, of Florida.
Maria Alexandra G. Sundquist, of New York.
Lisa M. Tender, of Massachusetts.
Scott Norris Thayer, of California.
Linda Carol Turner, of Virginia.
Margaret E. Vaeth, of the District of Columbia.
Juan F. Valadez, of Maryland.
Richard C. Vandiver, of Virginia.
Kurt A. Wagner, of Illinois.
Ruth A. Whiteside, of Texas.
Charlotte M. Williams, of California.
Robert M. Witajewski, of California.
Karl Edwin Wycoff, of Georgia.
Stephen Markley Young, of New Hampshire.
Peter Jay Zabriskie, of the District of Columbia.

Foreign Service reserve officers to be consular officers of the United States of America:

Gary Lee Caldwell, of Virginia.
Clifton W. Flowers, of Virginia.
Ronald J. Kelly, of New York.
John E. Kwiatkowski, of Ohio.
Charles V. North, of New Mexico.
Paul L. Smith, of California.

Foreign Service Reserve Officers to be Secretaries in the Diplomatic Service of the United States of America:

Stephen R. Bond, of the District of Columbia.
Robert G. Pelikan, of Maryland.
Theodore Riccardi, Jr., of New Jersey.

Foreign Service Staff Officer to be a Consular Officer of the United States of America:

Stephen R. Cromwell, of Wisconsin.

For promotion from a Foreign Service Officer of class 6 to class 5, effective May 23, 1980:

Louis A. McCall, of Ohio.

U.S. NAVY

The following-named Navy Enlisted Scientific Education Program candidates to be appointed permanent ensign in the line or staff corps of the U.S. Navy, subject to qualification therefor as provided by law:

Brunner, Glenn M. Duff, John M.
Falkner, David E Piper, Glenn A., III
Swerczek, Anthony G.

Theodore M. Hohl, Jr., civilian college graduate, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

Randall A. Langston, ex-U.S. Navy officer, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

James L. Laubach, ex-U.S. Naval Reserve officer, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

The following-named U.S. Navy officers to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Mandel, Lloyd B. Petit, William F.

The following-named civilian college graduates to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Espinosa, Alvaro J. Miller, Edwin B.

The following-named U.S. Navy officers to be appointed temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Freeland, George R. McKay, Hunter A.

Gregory J. Firman, ex-Naval Reserve officer, to be appointed a temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

Executive nominations received by the Senate September 15, 1980:

UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION

The following-named persons to be Representatives of the United States of America to the 21st session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Robin Duke, of New York.
Barbara W. Newell, of Massachusetts.
Elie Abel, of California.
John E. Fobes, of North Carolina.
John Hope Franklin, of Illinois.

The following-named persons to be Alternate Representatives of the United States of America to the 21st session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Sandra Lopez Bird, of New York.
Joseph D. Duffey, of the District of Columbia.
Kathleen Nolan, of California.
Beatrice Ranis, of Hawaii.
Roger Revelle, of California.

IN THE AIR FORCE

The following-named officers for promotion in the U.S. Air Force, under the appropriate provisions of chapter 839, title 10, United States Code, as amended.

LINE OF THE AIR FORCE

Major to lieutenant colonel

Aarni, John C., Jr., 526-66-5983.
Abbott, Frank D., Jr., 023-32-7867.
Abela, Alexander A., 051-36-6232.
Abrams, Fredric L., 497-44-1853.
Abrams, Kenneth H., Jr., 145-30-3873.
Adams, Robert G. S., 558-58-2751.
Adams, Thomas R., 243-66-7869.
Addison, John M., 251-62-7388.
Adkins, John B., 283-40-4984.
Adler, John W., 310-44-9700.
Ahearn, Francis W., 125-33-5458.
Ahern, Donald E., 571-54-4362.
Aitken, Douglas B., 172-36-3737.
Aldrian, Frederic L., 569-56-0139.
Alexander, Jon R., 508-40-8823.
Alexander, Roger S., 145-34-7036.
Alexander, Thomas W., 421-52-1705.
Alison, Thomas M., 517-44-0063.
Allen, Lewis H., III, 107-34-3737.
Allen, Mervin B., 528-54-9284.
Almquist, Tommy B., 410-68-3587.
Alverson, Don L., 422-52-6425.
Ambrosia, Andy L., 573-58-0595.
Amdor, Stephen L., 332-36-8575.
Amodeo, James M., 485-46-3131.
Andersen, Richard D., 524-52-1605.
Anderson, David S. J., 149-32-1664.
Anderson, Frederic M., 143-34-1483.
Anderson, Glen M., 483-58-3497.
Anderson, James A., 374-42-4406.
Anderson, James C., 260-64-4607.
Anderson, Reed M., 559-60-9673.
Anderson, Richard D., 025-28-9275.
Anderson, Robert M., 522-52-6110.
Anderson, Ruth M., 542-50-7651.
Andre, Jerome P., 541-42-8655.
Andrlik, Jerry E., 342-34-7122.
Angell, John E., Jr., 036-28-8199.
Angstadt, Howard J., Jr., 565-62-0783.
Ankeney, Lawrence A., 165-34-4248.
Archibald, Harold A., 423-52-4588.
Arnold, John E., 561-64-5969.
Arrison, John R., 158-32-9363.
Aschenbrenner, Gerald A., 562-56-0217.
Ash, Robert K., Jr., 040-32-8016.
Ashbaugh, Dennis M., 495-46-4317.
Astor, Wally G., 474-36-3995.
Atkins, William D., Jr., 464-56-6890.
Atkinson, Lynn A., 307-44-0231.
Atwood, Argyle P., Jr., 256-66-6548.
Averill, Thomas D., 001-34-0289.
Ayoub, Fred M., 465-62-0857.
Bailey, Edward L., Jr., 113-38-2132.
Baker, Vincent T., 481-56-0760.
Baldwin, David L., 307-44-5738.
Baldwin, Ronald L., 511-42-1829.
Ball, David C., 567-58-7378.
Ball, James A., 162-34-4094.
Bandy, John W., 332-34-9067.
Banks, William M., Jr., 415-68-5005.
Barbeau, Jack W., 514-34-1776.
Bardal, Eugene A., 477-48-8685.
Barger, Edward L., 388-42-7330.
Barker, John K., 262-66-2663.
Barnes, Albert M., 425-86-8889.
Barnes, Peter A., 103-32-3409.
Barnes, William J., Jr., 266-56-0649.
Barnett, Francis V., Jr., 434-58-8596.
Bartanowicz, Robert S., 268-62-3278.
Bartels, Richard L., 080-32-1648.
Bartholomew, Raymond J., 196-34-0339.
Barton, Charles D., 248-68-7628.
Barton, James B., 474-46-2250.
Bash, Donald C., 506-56-5017.
Bash, James C., 223-60-8350.
Bashant, Ronald W., 565-60-8978.
Bass, David, 440-42-5554.
Bateman, John P., 454-50-9890.
Batt, William P., 261-64-3508.
Battle, Thomas S., 189-34-4867.

Bean, John E., 402-52-3476.
Beard, Donaldson E., 431-68-7811.
Beard, Preston S., 459-58-7845.
Beasley, John T., 063-34-4255.
Beavers, James L., III, 525-96-7546.
Beavers, William W., 560-62-6324.
Beckom, Edwin A., III, 455-58-4530.
Becker, Leo E., 200-32-0256.
Bednarz, Michael H., 271-46-2924.
Beggs, Paul L., 420-52-4440.
Bell, Harvey B., 266-62-0902.
Bell, Jack D., 525-98-2100.
Bell, Larry A., 267-62-4127.
Bender, William C., 577-56-9819.
Benham, Clarence, Jr., 255-64-8810.
Benson, David E., 517-44-0639.
Benson, John D., 361-34-7389.
Berberek, Edward, Jr., 329-34-3897.
Bergeman, Gerald M., 524-44-3054.
Berger, Charlie T., 461-60-6041.
Bergeson, Michael B., 528-58-0249.
Bernardi, Richard A., 356-34-3125.
Berning, William V., 308-44-6891.
Best, Donald L., 219-40-1363.
Bettis, Jerry R., 440-42-2038.
Beu, Norman J., 325-34-6425.
Bexfield, James N., 521-60-8625.
Billones, Louis R., 565-56-8197.
Binford, Eugene E., 399-38-8157.
Bishop, Donald W., 416-48-3275.
Bivens, George W., 526-62-5673.
Black, William S., Jr., 069-34-6999.
Blackman, Barry A., 507-52-3762.
Blankenship, James E., 409-74-2345.
Bliemel, Jeffrey J., 093-34-0837.
Block, William H., 339-36-8208.
Bloom, Leonard O., 235-66-6930.
Bluford, Guion S., Jr., 182-34-9877.
Boles, James D., 458-70-6260.
Bolz, Larry P., 539-36-8722.
Bondaruk, Henry A., Jr., 378-38-3863.
Bonham, Frank A., 417-56-8796.
Boniface, George B., Jr., 578-50-4699.
Bonner, Barry D., 409-05-6488.
Boots, Robert J., 003-34-9226.
Borah, Steve B., 271-42-9040.
Bormann, Charles F., 093-32-4176.
Boston, William E., III, 343-34-5689.
Bottomley, James A., 484-50-7816.
Bouma, Eugene F., 167-34-5642.
Bounds, Michael S., 576-42-4339.
Bousek, Ronald R., 274-34-9135.
Bowen, James A., Jr., 439-62-3585.
Bowen, Ronald S., 234-66-3558.
Bower, Robert C., 525-98-7315.
Bowers, John V., Jr., 1744-34-0064.
Bowse, John R., 026-30-7684.
Boyce, Joseph B., Jr., 239-70-4812.
Boyd, Sterling W., 436-66-5477.
Boyer, Winfred R., 186-32-8152.
Bracci, Peter G., 018-32-9763.
Bradford, Gregory H., 218-38-5543.
Bradley, Roger C., 486-46-0868.
Bragg, James J., 220-38-2563.
Branch, Robert C., III, 241-64-6883.
Brantner, John A., 261-72-3348.
Braswell, Nancy S., 090-40-1172.
Brauer, Richard F., Jr., 020-32-3800.
Bream, Joseph R., 139-34-0783.
Breedlove, Phillip G., 253-66-4405.
Brekke, Ronald H., 517-48-2244.
Bremer, John R., 390-42-0490.
Brenneman, Richard C., 304-44-1125.
Bristow, Vincent L., 503-50-9311.
Britan, Joseph K., 305-44-1698.
Brittingham, James H., 229-52-4576.
Brook, Gary W., 543-40-7366.
Brooks, David H., 320-36-8008.
Brothers, Alfred S., Jr., 015-32-3166.
Browder, Thomas M., Jr., 227-58-4250.
Brower, Stephen A., 574-18-3198.
Brown, Durward D., 493-50-0275.
Brown, Edward F., 218-38-3157.
Brown, James S., 062-34-9253.
Brown, John O., 307-40-7265.
Brown, Nelson C., 226-56-2787.
Brown, Raymond G., 449-64-0825.
Brown, Richard C., 084-34-2569.
Brown, Robert H., 239-68-1920.
Brown, Wayne D., 277-38-1860.
Brown, William J., 258-68-9284.
Brunson, Roy E., 180-34-9404.
Buck, Donald L., 456-66-1148.
Bukauskas, Louis J., Jr., 338-32-4261.
Bump, David G., 007-38-3754.
Bunce, Charles N., 449-64-5913.
Burchfield, Edward L., 302-36-0680.
Burger, Norman A., 159-32-3094.
Burns, Nicholas J., 535-40-3123.
Burrow, Jerry G., 247-52-8932.
Burrows, William E., 453-64-7551.
Busek, Joseph R., Jr., 502-44-2128.
Buttross, David A., 425-80-6375.
Buzzell, Robert L., 264-56-6986.
Byers, Norman P., 515-42-0049.
Caffo, John A., 578-56-6356.
Cagle, Donald R., 239-64-5424.
Cahill, Lawrence J., Jr., 226-56-8837.
Calabrese, Louis, 208-32-0169.
Callanan, Anthony P., 482-48-1933.
Callens, Pierre A., 438-58-9771.
Calligan, Patrick J., 479-48-0010.
Camburn, Gilbert L., 426-86-9280.
Cantrell, Ronald L., 328-36-7591.
Cantrell, Zell O., 547-52-8335.
Cantwell, John L., 312-42-1161.
Capps, Thomas E., 241-64-6761.
Cardea, George C., 146-34-5655.
Carl, Joseph W., 142-32-5661.
Carney, James F., Jr., 268-40-3042.
Carpenter, Newton I., Jr., 579-56-8390.
Carpenter, Thomas E., 571-54-5146.
Carr, Michael L., 480-50-9662.
Carr, Virgil J., Jr., 410-78-0361.
Carriger, Henry N., 354-32-5942.
Carson, Phillip L., 452-56-8622.
Casciano, John P., 136-38-2866.
Case, Robert E., 292-36-9053.
Case, Roger S., Jr., 065-34-9464.
Casey, Francis J., 556-54-9596.
Casey, Jerome C., 393-36-0106.
Cashel, William F., 060-32-2486.
Caskey, Billie R., 403-52-0593.
Casper, John H., 253-64-6464.
Castell, Harold L., 441-42-1883.
Castro, Benjamin H., 559-56-8522.
Cates, Robert L., 455-58-9288
Catherwood, Michael I., 143-34-7168.
Cathey, William H., 467-68-4981.
Cauley, Robert F., 035-28-3887.
Caviness, Jesse C., Jr., 411-66-2331.
Cecchini, Maurice J., 579-54-2179.
Cermele, Michael J., 154-32-1025.
Cesarotti, William L., 339-36-9314.
Chambers, John F., Jr., 463-68-8169.
Charlton, Hugh. J., 521-56-8049.
Chepolis, William M., 145-30-9688.
Cherney, Thomas J., 470-46-5377.
Cherry, Charles E., 223-56-1592.
Chojnacki, Raymond, 046-32-6836.
Christman, Noel J., 551-58-9499.
Christopher, Robert L., 080-34-4161.
Chumbley, George W., 555-50-0218.
Cirino, Alan B., 557-62-5251.
Clamon, James A., 449-62-7849.
Clark, Howard A., 539-34-0495.
Clark, James C., 419-54-9973.
Clark John D., 535-40-0498.
Clark, Kenneth H., II, 436-64-9273.
Clark, Richard D., 312-42-2418.
Clark, Walter F., 274-34-0589.
Clark, William E., Jr., 228-56-4629.
Clarke, Sidney H., 533-40-7742.
Claxon, Lynn R., 407-56-4184.
Cleland, Thomas E., Jr., 029-32-3967.
Clippinger, William C., Jr., 494-46-2686.
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Sauter, Albert H., II, 130-34-0089.
Savage, William C. G., Jr., 200-34-9865.
Saxer, Charles P., 526-52-5290.
Saxon, Vernon P., Jr., 075-38-0308.
Schaab, Richard W., 142-30-4696.
Scharf, Richard L., 501-46-3128.
Schaumburg, Glenn R., 507-50-9339.
Schauss, Roger H., 285-38-2420.
Schelbel, Robert L., 520-46-8595.
Schell, Chris A., 504-44-5225.
Schelliammer, Richard J., 077-32-3674.
Schill, Peter L., 155-34-2524.
Schilling, David C., Jr., 441-42-9857.
Schimmel, Robert E., 278-40-1956.
Schlachter, David C., 270-38-9312.
Schmid, Michael E., 207-32-0552.
Schmidt, Bruce W., 328-34-8880.
Schnee, Walter L., 278-38-3041.
Schoegler, Thomas D., 230-54-2943.
Schor, Frederick D., 261-60-5194.
Schroeder, Leroy B., 564-58-3520.
Schroeder, Ted, 294-36-4027.
Schwarz, Frederick W., 526-64-6221.
Schweizer, Alvin C., II, 104-34-4270.
Schwenke, Richard T., 279-36-7230.
Scott, Byron W., 521-54-0964.
Scott, James D., 519-44-7665.
Scott, Rolland A., 053-34-1552.
Seares, David F., 571-60-3156.
Segars, Robert J., 316-42-3801.
Seifert, Charles W., 097-38-6800.
Selvidge, Philip L., 447-40-6930.
Seniawski, Charle D., 067-34-4036.
Setlow, Robert E., 534-40-6603.
Sewell, Gary W., 426-78-9729.
Sharer, Bruce W., 523-56-8605.
Shaughnessy, Dale J., 507-56-5511.
Shaughnessy, John E., Jr., 433-62-0812.
Shealy, Phillip T., 247-64-4463.
Sheehan, Stephan D., 402-58-8289.
Setlow, Robert E., 534-40-6603.
Shehi, Phillip C., 510-42-0314.
Shelton, Harvey W. C., III, 430-78-1807.
Sherman, Frank V., 317-42-7477.
Sherman, Todd H., 014-32-9053.
Short, Claude R., 490-44-4112.
Showell, Charles H., Jr., 212-40-9656.
Shuck, Gary W., 400-58-6324.
Sidor, John, Jr., 297-36-1841.
Siefert, Mark C., 193-34-0442.
Sieg, William D., 194-32-4297.
Silence, Gary H., 490-46-6989.
Silha, Carlan W., 518-44-3785.
Silva, Albert M., 043-34-0914.
Simmons, Ross L., Jr., 519-40-8612.
Simpson, Richard T., 250-66-2660.
Singleton, Barry A., 490-44-1503.
Singleton, Stephen N., 036-26-1692.
Sloan, James R., 575-44-5377.
Smith, Dennis A., 557-58-5782.
Smith, Dwight D., 441-42-5227.
Smith, E. C., 462-70-3433.
Smith, Leslie L., 567-48-1930.
Smith, Michael W., 479-44-8588.
Smith, Robert D., 421-38-7078.
Smith, Robert D., III, 453-60-0225.
Smith, Ross L., 458-66-2892.
Smith, Stanley J., 447-40-6811.
Smith, Stephen A., 562-58-7944.
Smith, William D., 283-38-8804.
Smith, William E., 314-36-3504.
Snedker, Harold C., 513-40-8904.
Snodgrass, Charles G., 235-66-4096.
Snyder, John D., 139-34-2895.
Soares, Jerome E., 547-52-7152.
Soden, James P., 429-76-3753.
Somers, Christopher A., 084-32-8852.
Sonnenfeld, Robert E., 142-32-2295.
Sonoda, Howard K., 575-42-1389.
Souza, Manuel A., Jr., 526-50-6358.
Sowada, Daniel E., 449-70-0823.
Specht, Charles W., 270-38-2254.
Spehar, Michael A., 295-36-8689.
Spencer, John B., 004-40-7064.
Spinks, Robert I., 235-64-8121.
Spitler, Jack B., 279-38-1686.
Spitzmesser, Richard L., 303-44-0477.
Spory, Robert E., 204-34-5455.
Stafford, Harry A., III, 486-48-5406.
Stanfield, Harry T., 252-62-9099.
Stanfill, William E., 406-56-1816.
Starke, Bruce F., 489-46-9003.
Starr, Richard F., Jr., 103-30-1366.
Stauder, Peter G., 080-32-6855.
Stead, Richard P., 188-32-0966.
Stecklein, Bernard, 509-50-8743.
Steele, Stephen B., 118-34-0294.
Steen, Waldo S., 492-36-8696.
Steere, George C., 453-56-8593.
Stegeman, William M., 535-38-7208.
Stegenga, Stuart, 024-32-2526.
Steger, Clifford, 499-58-9537.
Stephenson, Bobby C., 412-48-3001.
Stephenson, John R., 198-32-2315.
Stephenson, Thomas W., III, 529-50-1081.
Stetz, George A., 558-62-9191.
Stevens, Richard L., 533-40-9986.
Stevenson, Harry C., 455-70-0960.
Stewart, Charles F., Jr., 064-32-1206.
Stewart, Dorothy L., 523-52-7917.
St John, James B., 479-44-9933.
Stokes, David R., 363-42-2656.
Stone, Neil H., 273-38-9457.
Stoops, Carl E., 548-62-0642.
Stout, Charles R., 367-44-0059.
Stovall, George W., Jr., 427-84-2300.
Strasser, Robert H., 118-34-6959.
Strickland, Daniel Z., Jr., 237-60-7325.
Strider, Samuel F., 236-68-3311.
Strock, Vibert L., Jr., 256-66-5742.
Strunk, Richard R., 530-26-3396.
Suban, David N., 077-34-9262.
Sublett, Kenny W., 401-60-3089.
Suchy, Russell J., 284-38-0305.
Sugg, Joseph P., 432-46-9479.
Sullivan, John J., 057-34-6129.
Sullivan, John L., Jr., 426-78-0308.
Summerville, Rett S., 350-34-9169.
Suo, James S., 562-56-2685.
Supp, Peter L., 173-34-0920.
Sutter, David L., 332-34-8179.
Swanson, Leslie R., 376-42-8653.
Sweeny, Llewellyn R., 338-30-1536.
Swenka, Ronald A., 480-52-1804.
Swich, William A. III, 574-14-9189.
Swisher, William S., 276-14-9189.
Sykes, Ronald D., 191-34-3605.
Szwarc, Joseph R., 181-34-9347.
Tabler, Michael W., 301-42-7009.
Tafares, Robert E., 053-34-3181.
Taffet, Morris R., 137-34-1910.
Takahara, Edmund W., 575-40-0694.
Talley, John S., 223-56-8068.
Tanaka, Milton K., 575-46-1119.
Tate, Jillian D., 052-32-4262.
Tatum, Charles T., 450-66-7386.
Taylor, Robert D., 335-36-1407.
Taylor, Roger C., 453-66-2818.
Taylor, Wendell H., 263-70-3749.
Tedesco, Frederick P., 042-32-3191.
Tedesco, Michael F., 119-30-2409.
Teigiser, John A., 302-36-9332.
Tesar, George K., 444-44-7029.
Thacker, James D., 525-90-0096.
Thomas, Charles A., 213-42-6273.
Thompson, Robert W., 241-64-3684.
Thompson, Terry L., 430-84-0815.
Thompson, William S., 408-72-8863.
Thomsen, Gary B., 563-58-7990.
Thornburg, John W., 281-36-1407.
Ticktin, Thomas L., 247-74-5321.
Tietge, Michael R., 388-38-2241.
Tiley, Paul L., 430-76-5324.
Titmas, Gary W., 271-34-8168.
Titus, Timothy L., 447-40-6030.
Tolin, Anthony J., 437-64-7431.
Tongue, Wayne A., 387-34-9310.
Tonjes, Earl A., 275-38-3904.

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Tribble, Alford P., 410-68-2934.
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Trodden, Michael J., 035-26-1661.
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Tucker, Ronald R., 488-46-3999.
Tucker, Victor L., Jr., 247-70-3788.
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Turk, Randall L., 315-44-7366.
Turner, Melvin L., 537-40-2580.
Twomey, Thomas A., 228-58-6465.
Valente, George A., Jr., 138-34-2698.
Valentine, Jeffrey H., 155-34-8181.
Vandevender, Leonard G., 428-74-6817.
Vanhook, Jeffrey, 003-32-5576.
Vaniare, James, 055-36-3516.
Vanvalkenburgh, Nicholas, 546-58-7156.
Varn, Benjamin F., Jr., 247-64-0001.
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Veranes, Ernest R., 048-32-2166.
Vernlund, Robert N., 504-48-5052.
Villarreal, Lorenzo, II, 556-60-6464.
Vining, Gordon G., 518-50-9529.
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Vise, Carrell D., 448-42-8099.
Vogel, Glenn H., 498-46-4044.
Vosika, Richard J., 470-44-6967.
Voss, Charles B., 393-38-4197.
Vrettos, John D., 320-36-7015.
Vriezelaar, Donald W., 262-70-1857.
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Walker, Duncan E., 585-01-3777.
Walker, Robert A., 282-38-5906.
Wall, Steven E., 447-36-9812.
Wallace, Bruce A., 150-34-8758.
Wallace, Ronald G., 420-56-2625.
Wallace, Thomas G., 569-52-5604.
Wallrapp, Michael F., 113-34-5906.
Walls, Charles O., III, 208-32-0351.
Walsh, Richard N., 390-42-2958.
Walton, Robert L., 462-70-9092.
Walter, Don B., 476-38-5868.
Walter, Warren E., 218-38-3249.
Walters, Brian L., 379-38-9880.
Walton, Robert L., 462-70-9092.
Walton, William H., 426-80-6046.
Wammer, David H., 475-46-5618.
Ward, Floyd E., Jr., 412-68-4672.
Ward, George H., 381-40-8811.
Ward, John P., 239-66-0157.
Wardlaw, John W., Jr., 238-62-8082.
Ware, Gary R., 261-56-5612.
Warner, George R., 445-42-9010.
Warren, Joe B., Jr., 242-62-5898.
Waterstraat, Craig K., 101-34-2946.
Watson, Brian D., 385-40-5262.
Watson, Ronald R., 166-36-3302.
Watson, Wilbur W., 539-30-4636.
Watt, George W., 528-62-2370.
Watts, Barry D., 562-62-0515.
Weathers, Morris E., 540-38-6007.
Weaver, Robert D., 464-62-1704.
Webb, Francis R., 428-66-1705.
Webb, Michael S., 230-48-7722.
Webster, Kenneth I., 242-62-7265.
Weddle, Dennis R., 483-48-1905.
Weissence, Alfred A., 098-36-5687.
Weitzel, Eilert R., II, 463-68-8021.
Welsh, Jay B., 201-32-4833.
Wenger, Robert K., 048-34-2538.
Wenninger, Michael E., 265-66-0466.
Western, Robert W., 420-54-6032.
Weyrauch, Arthur H., 474-46-5972.
Whavlen, Donald G., 444-42-2328.
White, Anthony N., 446-42-4559.
White, David A., 018-32-2641.
White, James R., 544-48-9333.
White, John F., 010-34-8519.
White, Michael B., 218-40-6126.
White, Robert C., 226-50-9437.
White, Walter E., Jr., 248-68-7780.
Whitehead, Charles W., 350-32-3066.
Whitman, Philip E., 418-54-7187.
Wick, James R., 537-38-8048.
Wiggins, Ellsworth E., 577-50-6928.
Wigness, Douglas A., 502-42-9932.
Wilde, Robert R., 360-30-9647.
Wilder, Ward R., 509-40-4785.
Wiles, John C., Jr., 233-68-5914.
Wiley, Harold G., 578-56-4062.
Wiley, John, III, 226-60-7244.
Wiley, Robert E., 248-72-1861.
Wilkins, Stephen W., 549-54-4353.
Wilkowski, Jerome S., 095-34-8512.
Williams, Andrew, 252-64-6221.
Williams, Brooks M., 238-64-9294.
Williams, Charles E., 314-40-8745.
Williams, Charles H., 520-44-5054.
Williams, Frederick M., 344-34-0469.
Williams, John H., 395-40-9165.
Williams, Paul L., 479-40-9994.
Williams, Richard M., 524-58-4159.
Williams, Ronald W., 223-54-9744.
Williams, Tereld T., 167-30-1647.
Willis, Albert H., 523-52-4446.
Willoughby, David J., 484-52-2604.
Willoughby, James S., 517-50-7297.
Wilson, Bennie J., III, 565-60-5541.
Wilson, Calvin J., 471-46-7931.
Wilson, Joseph C., Jr., 281-38-8576.
Wilson, Robert S., 444-40-2994.
Wilson, Walter P., Jr., 409-60-3059.
Winchester, Robert O., 498-40-3747.
Winegar, Rodger A., 484-46-6018.
Winkler, Frank P., 547-54-0654.
Winter, James W., 425-74-8838.
Witty, Bruce A., 460-70-6561.
Woelz, Karl J., 223-56-3090.
Wohinick, Charles T., 156-32-1354.
Wood, Dennis D., 446-38-7436.
Wood, Wendell B., 443-38-7491.
Woodworth, Donald A., Jr., 047-34-2020.
Woody, John W., 245-58-8374.
Worden, Douglas L., 051-34-1824.
Wortham, George E., 446-42-7015.
Wright, Garth A., 545-50-0470.
Wright, James R., 519-44-9994.
Wright, Karen S., 445-42-6161.
Wright, Michael J., 473-46-6829.
Wyman, William A., 303-44-0302.
Wyraz, Edward M., Jr., 560-62-1601.
Yabui, Alan E., 576-36-8004.
Yaunches, George J., 180-32-9266.
Yeager, Rodney A., 488-48-4808.
Yonker, Dale B., 524-56-2529.
Young, George O., III, 511-42-5218.
Zadareky, Joseph T., II, 155-30-5636.
Zaleski, Andrew A., II, 236-64-2433.
Zalocusky, Michael N., 426-86-2431.
Zartman, James L., 545-50-7902.
Zielinski, Stanley J., Jr., 030-34-0943.
Zisch, Waldemar C., 013-32-8102.
Zody, James G., 517-48-7619.
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Zucker, Richard A., 079-34-0041.

CHAPLAIN CORPS

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Bagge, Carl J., 032-16-7317.
Bauer, Jack A., 506-42-1500.
Beckstrom, Edward A., 561-44-7699.
Beeson, Gilbert W., Jr., 242-54-6745.
Bilderback, Carl E., 465-48-9004.
Carter, Wilton C., 426-68-7625.
Chumley, Theodore R., Jr., 465-52-2409.
Colohan, Edward A., 049-24-1913.
Costagliola, Salvatore M., 093-22-3586.
Gallagher, Ronald E., 033-26-9407.
Hockaday, Albert A. L., 243-50-4630.
Horton, Carl E., 573-42-8489.
Jensen, Harold M., 023-30-3207.
Koch, Glenn A., 519-32-0481.
Lenihan, John P., 338-22-5786.
Nielsen, Ralph R., 529-52-9498.
O'Rourke, Thomas J., 548-88-6244.
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Ramsey, Kenneth C., 262-48-4300.
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Wawrzynski, Edward A., 204-26-2684.
Weiss, Everett L., 353-24-5449.

JUDGE ADVOCATE

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Carrahan, Burrus M., 325-38-8743.
Christie, William J., II, 249-70-2182.
Concannon, Milburn K., Jr., 487-44-1961.
Corbin, Norman L., 479-40-0698.
Davidson, John P., 424-52-8488.
Deoey, A. B., 513-40-8311.
Donat, James L., 505-54-7175.
Dumerer, James E., 334-36-6530.
Durham, Bryant L., 258-70-6637.
Edwards, Carl E., Jr., 238-64-4256.
Egeland, Andrew M., Jr., 231-56-1475.
Elliott, William R., Jr., 565-64-7064.
Emerson, Michael R., 226-58-5395.
Finley, Gordon B., Jr., 407-60-1450.
Fowler, Henry P., Jr., 218-38-7129.
Hoppe, Allen B., 478-50-5571.
Hornbrook, Edwin F., 264-60-6132.
Humphreys, Warren P., 022-32-9208.
Johnson, Phillip A., 478-50-6777.
Laedlein, Charles E., III, 230-56-3208.
Lahendro, Albert L., 224-54-4774.
Leonard, Robert H., 384-42-5365.
Miller, James E., 541-50-3585.
Moran, Francis S., Jr., 017-32-2399.
Novak, Richard A., 070-34-2581.
Puett, Jimmy D., 456-64-9120.
Purdon, Richard L., 488-46-3856.
Ranciglio, Alessandro J., 490-48-6909.
Rasher, Donald C., 101-38-7798.
Rothenburg, Richard F., 226-46-9644.
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Schilling, Edwin C., III, 437-64-9458.
Schlechter, Alvin E., 263-80-8325.
Shockley, Larry G., 490-48-5970.
Silliman, Scott L., 015-36-4741.
Smalbridge, Gary C., 265-84-1689.
Smith, Wendell K., 529-52-7909.
Sweeney, Howard P., 556-60-7633.
Sweeney, Patrick C., 517-46-8124.
Warren, Stephen A., 314-42-9604.
Wheeler, Jon S., 261-68-3669.
Wickham, Richard J., 033-32-1278.
Willis, William T., 411-70-7306.
Wolfe, Norman K., 281-38-6328.
Worley, William H., Jr., 343-34-3096.

NURSE CORPS

Allen, Ann M., 299-28-4749.
Anderson, Dorothy A., 153-30-1212.
Anderson, Robert J., 132-26-5065.
Barrow, Joyce M., 183-32-0341.
Bowar, David R., 503-34-0567.
Burke, Margaret M. C., 023-32-9399.
Christiansen, Shirley A., 483-38-6710.
Davis, Barbara M., 528-48-8238.
Davis Bettye H., 205-28-5236.
Davis, Dian J., 562-46-2228.
Geiselman, Vivian J., 397-28-0626.
Gruber, Edward P., 502-44-1237.
Hoskin, Diane J., 289-38-9850.
Hotop, Marcella C., 497-38-6749.
Hull, Kathleen V., 067-34-1969.
Hyre, Elva M., 209-38-6441.
Jason, Marie E., 012-32-8275.
Jones, Charles E., 419-50-8707.
Kucinkas, Chris M., 045-32-4856.
Leffel, Mary S., 230-50-3036.
Lyons, Geraldine E., 378-40-4908.
Maroon, Hana J., 486-46-5095.
Matas, Irene M., 204-28-5615.
Payne, Margaret L., 248-66-1234.
Piccolella, Joseph A., 138-26-7735.
Porter, Patricia A., 090-36-0714.
Powers, Helen A., 285-34-0650.
Reichenbach, Georgianna, 166-32-1941.
Reilly, Joanna D., 161-34-3622.
Rogers, Bonnie P., 252-62-8709.
Schafer, Leah L., 229-54-0253.
Smith, Elaine R., 384-34-5465.
Taylor, Carol A., 538-34-0370.
Wilder, Barbara E., 399-42-0957.

MEDICAL SERVICE CORPS

Armstrong, George M., III, 433-60-2733.
Avants, Mervin T., Jr., 023-32-7584.
Bateman, Val Jr., 528-56-0950.
Bates, Thomas G., 527-60-6694.
Beaty, John R., 256-54-1664.
Blansett, Randy S., 449-68-0720.
Bristow, Charles L., 442-40-2535.

Burke, Roger L., 480-50-9563.
Ciminelli, Lawrence W., 072-30-5924.
Degroot, Edward B., III, 575-40-0472.
Dick, William W., 537-40-5773.
Drummond, Robert D., 491-40-5944.
Emigh, John L., 512-42-8838.
Fincher, James C., Jr., 067-34-3891.
Forister, Thomas C., 520-46-2860.
Heuckendorf, Richard P., 478-44-1638.
Jacobson, Philip E., Jr., 470-44-9186.
Lake, Jerome P., 473-46-0012.
Langenberg, Stephen L., 540-44-8723.
Meyer, Alvin F., III, 505-54-6825.
Moran, Frank E., 163-34-8111.
Nelson, Steven P., 106-32-9402.
Nordquist, Frederick J., 536-40-0638.
Oatley, Theodore W., 385-32-7607.
Ortmann, Fred W., III, 249-70-5947.
Poston, Thomas D., 305-34-9702.
Powers, William J., 154-34-6800.
Renn, Benjamin C., 548-54-7959.
Renn, Michael G., 230-54-4055.
Schumann, Thomas R., 271-36-4641.
Solesbee, Billy R., 247-72-3725.
Squires, Darrell R., 113-24-5578.
Vorpahl, Thomas E., 475-44-7028.

BIOMEDICAL SCIENCES CORPS

Anderson, Gary D., 218-38-5316.
Banner, Edwin C., III, 225-54-7648.
Brown, Mary L., 166-26-8944.
Carter, Malcolm J., 422-38-1261.
Chambers, Mildred J., 539-36-4514.
Hammond, John M., 267-60-1669.
Harropschumacher, Patricia, 535-34-5312.
Kaylin, Bernice M., 149-32-2112.
Krieg, Richard E., Jr., 138-34-2819.
Leftwich, Marion W., Jr., 466-70-2805.
Mammell, Bruce H., 440-42-1099.
McLean, Jerry A., 524-46-7183.
Murray, Joseph D., 321-30-1837.
Myers, Milo G., 432-80-8785.
Nuss, David A., 171-32-9777.
Patterson, William E., 251-62-6436.
Pettit, Robert A., 150-32-2397.
Rock, James C., 057-36-9799.
Schwarz, James G., 551-50-1410.
Shafer, Richard L., 448-44-2440.
Smith, William B., 255-62-7927.
Thelen, Terry J., 479-46-5190.
Turner, Ronald W., 214-38-5145.
Valder, Stephen M., 505-50-4339.
Wansky, Michael A., 293-36-0123.

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

To be major

Adams, Robert G. S., 558-58-2751.
Ambrosia, Andy L., 573-58-0595.
Anderson, James A., 374-42-4405.
Anderson, Ruth M., 542-50-7651.
Averill, Thomas D., 001-34-0289.
Battle, Thomas S., 189-34-4867.
Benham, Clarence, Jr., 255-64-8810.
Bormann, Charles P., 093-32-4176.
Bowen, James A., Jr., 439-62-8585.
Boyer, Winfred R., 186-32-8142.
Bradford, Gregory H., 218-38-5543.
Brown, Richard C., 084-34-2569.
Calligan, Patrick J., 479-48-0010.
Carr, Virgil J., Jr., 410-78-0361.
Cords, Robert D., 167-34-9349.
Crisler, Robert C., 226-54-4998.
Davis, Rodney G., 505-44-5148.
Ellis, Charles W., 089-32-9281.
Evans, Ellis R., 320-34-9705.
Ford, John T., 387-40-7601.
Frantz, James R., 209-34-7249.
Fry, Kent G., 338-32-3004.
Puller, Robert A., 222-26-2259.
Gillaspy, Edward D., 552-48-5629.
Grover, Melvin G., Jr., 043-34-5268.
Harrington, Gary L., 307-38-0434.
Hohn, Theodore A., 153-34-9453.
Holley, Thurston C., 462-60-6883.
Huber, Terrence J., 480-50-0583.
Janson, Gotthard, III, 547-48-4013.
Johnson, Robert W., 517-48-4013.
Kelly, John H., 148-28-8764.
Knox, Michael R., 005-40-7953.
Ledbetter, David P., 460-62-2200.
Lee, Jack W., 525-98-3932.
Leo, Alfred F., 113-34-5038.
Lewis, Roger W., 512-40-3584.
Lewis, Rocsevelt J., Jr., 418-56-3430.
Lloyd, Theodore A., Jr., 109-28-9757.
Lubin, Herbert, 080-32-3156.
MacGregory, James R., 026-34-6167.
Malvaso, Patrick J., 126-32-0636.
McAtee, Philip M., 020-32-8629.
McGowan, Robert W., 330-32-1305.
McLeod, Raymond W., 249-70-8679.
Mohre, John L., II, 488-40-5337.
Mokuau, Norma L. K., 575-42-0067.
Nagy, Stephen J., 062-34-1954.
Pearson, Donald J., 029-30-2920.
Pothier, John L., 272-38-5941.
Reid, John J., 078-34-5172.
Ritenour, John J., Jr., 277-38-9534.
Sabraw, John C., 397-36-7598.
Shaughnessy, Dale J., 507-56-5511.
Shealy, Phillip T., 247-64-4463.
Showell, Charles H., Jr., 212-40-9656.
St. John, James B., 479-44-9933.
Strasser, Robert H., 118-34-6959.
Strickland, Daniel Z., Jr., 237-60-7325.
Strider, Samuel F., 236-68-3311.
Sullivan, John J., 057-34-6129.
Suo, James S., 562-56-2685.
Thompson, William S., 408-72-8863.
Tucker, Victor L., Jr., 247-70-3788.
Veranes, Ernest R., 048-32-2166.
Wilkin, Stephen W., 549-54-4353.
Wilson, Robert S., 444-40-2994.
Wright, Garth A., 545-50-0470.
Wyman, William A., 303-44-0302.

To be captain

Brantner, John A., 261-72-3348.
Gordon, Harold, 156-32-1646.

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

CHAPLAIN

To be major

Neilsen, Ralph R., 529-52-9498.

JUDGE ADVOCATE CORPS

To be major

Smith, Wendell K., 529-52-7909.

NURSE CORPS

To be captain

Hyre, Elva M., 209-38-6441.
Payne, Margaret L., 248-66-1234.
Reilly, Joanna D., 161-34-3622.

MEDICAL SERVICES CORPS

To be major

Lake, Jerome P., 473-46-0012.
Moran, Frank E., 163-34-8111.
Nordquist, Frederick J., 536-40-0638.
Renn, Michael G., 230-54-4055.
Vorpahl, Thomas E., 475-44-7028.

BIOMEDICAL SCIENCE CORPS

To be major

Nuss, David A., 171-32-9777.
Schwarz, James G., 551-50-1410.

IN THE NAVY

The following-named commander of the U.S. Navy for temporary promotion to the grade of captain in the Chaplain Corps, pursuant to title 10, United States Code, sections 5773 and 5791, subject to qualifications therefor as provided by law:

Holwager, Philip J.

The following-named lieutenant of the U.S. Navy for temporary promotion to the grade of lieutenant commander in the Medical Corps, pursuant to title 10, United States Code, sections 5773 and 5791, subject to qualifications therefor as provided by law:

Long, Kenneth W.

The following-named lieutenants (junior grade) of the U.S. Navy for temporary promotion to the grade of lieutenant in the line and staff corps, as indicated, pursuant to title 10, United States Code, sections 5769 (line officers), 5773 (staff corps officers), and 5791, subject to qualifications therefor as provided by law:

LINE

Allison, David S.
Bauer, David A.
Coe, Dennis L.
Crandall, Robert A.
Gorrell, Walter H., Jr.
Hess, Bernard R.
Labella, John P.
Lapating, Edward C.
Oberst, David R.
Prior, George M.
Shinn, David M.
Wilstrup, Steven L.
Baisley, Jon B.
Cathey, Ronald D.
Collins, Patrick S.
Dantonio, Robert
Gunderson, Scott A.
Kanewske, Robert H.
Lage, Thomas D.
Luginbuhl, Michael W.
Paskulovich, Robert S.
Reeves, Jeffrey L.
Taylor, Edward J.

SUPPLY CORPS

Alderman, Robert B.
Hagarty, James N.
Perry, Will H., III.
Rieck, Dale C., Jr.
Pasqualucci, Joseph A.
Boyter, Henry G., III.
Porter, David L.
Robie, Craig M.

NURSE CORPS

Powers, Betty A.

The following-named commanders of the U.S. Navy for permanent promotion to the grade of commander in the line, pursuant to title 10, United States Code, sections 5780 and 5791, subject to qualification therefor as provided by law:

Nesbitt, Donald L.
Shaffer, Leslie V., II.

The following-named lieutenant commanders of the U.S. Navy for permanent promotion to the grade of lieutenant commander in the line and staff corps, as indicated, pursuant to title 10, United States Code, sections 5780 (line officer), 5782 (staff corps officer), and 5791, subject to qualifications therefor as provided by law:

LINE

Pohle, James H.

CHAPLAIN CORPS

Cardon, Earl L.

The following-named woman lieutenant of the Chaplain Corps of the U.S. Navy for permanent promotion to the grade of lieutenant commander in the Chaplain Corps of the U.S. Navy, pursuant to title 10, United States Code, sections 5771 and 5791, subject to qualification therefor as provided by law:

McFadden, Vivian P.

The following-named woman lieutenant (junior grade) of the Supply Corps of the U.S. Navy for permanent promotion to the grade of lieutenant in the Supply Corps of the U.S. Navy, pursuant to title 10, United States Code, sections 5771 and 5791, subject to qualification therefor as provided by law:

Hoch, Rita A.

HOUSE OF REPRESENTATIVES—*Monday, September 15, 1980*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. NATCHER).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 10, 1980.

I hereby designate the Honorable WILLIAM H. NATCHER to act as Speaker pro tempore on Monday, September 15, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Reverend Edward G. Latch, D.D., former Chaplain of the House of Representatives, offered the following prayer:

Depart from evil and do good: seek peace and pursue it.—Psalms 34:14.

O God, our Father, our help in ages past, our hope for years to come, and our strength for this present hour, enlighten our minds and lift our spirits that we may serve Thee and our Nation well this day. Bless our President, our Speaker, and these Representatives of our people that with wisdom and understanding they may continue to labor for peace in our world, unity in our Nation, and good will in the hearts of all. May those held captive in other lands be set free to return home to their loved ones, thus may ill will and injustice increasingly come to an end and good will and justice rise to new life in our world: to the glory of Thy holy name and the good of all mankind. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agree to the amendments of the House to bills of the Senate of the following titles:

S. 261. An act to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities, to provide for the development of State plans to improve such facilities within the States or within a group of States acting together on a regional basis, and for other purposes; and

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 3292. An act to assist the States in developing fish and wildlife conservation plans, and for other purposes; and

H.R. 7590. An act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The message also announced that the Senate insist upon its amendments to the bill (H.R. 7590) entitled "An act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. JOHNSTON, Mr. STENNIS, Mr. MAGNUSON, Mr. ROBERT C. BYRD, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. BURDICK, Mr. SASSER, Mr. DECONCINI, Mr. HATFIELD, Mr. YOUNG, Mr. SCHWEIKER, Mr. BELLMON, Mr. MCCLURE, Mr. GARN, and Mr. SCHMITT to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 123. Concurrent resolution authorizing the printing of additional copies of the booklets entitled "The Senate Chamber, 1810-1859" and "The Supreme Court Chamber, 1810-1860."

The message also announced that the Vice President, pursuant to Public Law 90-206, appointed from private life Edward P. Morgan and Robert P. Griffin to be members of the Commission on Executive, Legislative, and Judicial Salaries.

The message also announced that the Vice President and upon the recommendation of the majority and minority leaders, pursuant to the provisions of section 276 of title 22, United States Code, as amended by Public Law 95-45, appointed Mr. STAFFORD as chairman to the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16-24, 1980, vice Mr. WILLIAMS, resigned.

THIRD ANNUAL REPORT TO CONGRESS ON STATUS OF HEALTH INFORMATION AND HEALTH PROMOTION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Interstate and Foreign Commerce:

To the Congress of the United States:

I transmit herewith the Third Annual Report to the Congress on the Status of Health Information and Health Promotion, as required by P.L. 94-317, the "National Consumer Health Information and Health Promotion Act of 1976."

JIMMY CARTER.

THE WHITE HOUSE, *September 12, 1980.*

CONSENT CALENDAR

The SPEAKER pro tempore. This is the day for the call of the Consent Calendar.

The Clerk will call the first bill on the Consent Calendar.

FEDERAL RECOGNITION OF MEMBERS OF NATIONAL GUARD OF THE VIRGIN ISLANDS IN GRADES ABOVE COLONEL

The Clerk called the bill (H.R. 5856) to amend title 32, United States Code, to allow Federal recognition as officers of the National Guard of members of the National Guard of the Virgin Islands in grades above the grade of colonel.

There being no objection, the Clerk read the bill, as follows:

H.R. 5856

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (g) of section 307 of title 32, United States Code, is repealed.

● Mr. EVANS of the Virgin Islands. Mr. Speaker, I rise in support of H.R. 5856, legislation which I have introduced to allow Federal recognition of officers in the National Guard of the Virgin Islands, in grades above the rank of colonel.

This bill has been given the full support of the House Armed Services Committee, the Department of Defense, and the National Guard Association of the United States. Additionally, this bill would cause no increase in National Guard strength authorizations or budgetary requirements of the Department of Defense.

Mr. Speaker, of the 53 American jurisdictions to which a National Guard has been authorized, only the U.S. Virgin Islands is subject to a statutory restriction on the maximum grade in which its officers may be federally recognized. This restriction, as so stated in title 32, United States Code, section 307(g), prevents the adjutant general of the National Guard in the U.S. Virgin Islands from being federally recognized in general officer grade.

The U.S. Congress imposed this grade limitation initially because of the small size of the National Guard of the Virgin Islands, initially approximately 200 persons. Since that time, however, the Virgin Islands National Guard has grown to be a force of almost 1,000 persons, which is not that much smaller than the States of Nevada (1,121) and Wyoming (1,391).

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Moreover, the Virgin Islands is one of fewer than 10 jurisdictions which enlist 100 percent of their manpower allotment. At one time, we were one of only three jurisdictions to be fully subscribed.

Since the adjutant generals of the several States and territories collectively form the top leadership of the National Guard, I feel strongly that they should stand among themselves as equals.

As I mentioned earlier, this change does not involve any increased cost, and the original reason for this restriction no longer exists. It should, therefore, be removed, and I urge my colleagues to support this important piece of legislation.

Thank you.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CITY OF FAIRFAX

The Clerk called the bill (H.R. 2170) to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government.

There being no objection, the Clerk read the bill, as follows:

H.R. 2170

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective October 1, 1980, there are authorized to be appropriated $41,958.78 to the Secretary of the Treasury who shall pay sums so appropriated to the city of Fairfax, Virginia, as reimbursement to the city for the legal expenses it incurred with respect to legal actions arising out of a 1971 entry into and search of a private building in the city by employees of the Federal Government.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EL DORADO NATIONAL FOREST

The Clerk called the bill (H.R. 6175) to provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map.

There being no objection, the Clerk read the bill, as follows:

H.R. 6175

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to section 2 of this Act, the Secretary of Agriculture shall convey, without consideration, to any person, all right, title, and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, California, if—

(1) such portion was depicted in the 1957 recorded surveyor's map of the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, as being included in a lot with respect to which title to the remaining portion of such lot is held by such person, and

(2) such portion was determined, following surveys conducted under the auspices of the Forest Service in 1974 and 1976, and contrary to the map referred to in paragraph (1), to be part of the El Dorado National Forest.

Such Forest Service surveys revealed that the boundaries of certain lots in the Kyburz Mountain Resort Unit Numbered 1 Subdivision, as depicted in the 1957 recorded surveyor's map of such subdivision, had been erroneously represented as extending approximately fifty-three to sixty-one feet inside property which was actually part of the El Dorado National Forest. Further, the area of land involved in this everlap consists of 1.684 acres, more or less.

SEC. 2. A conveyance may be made under this Act to a person only if such person submits a written application to the Secretary of Agriculture within five years after the date of the enactment of this Act, together with such proof of title as the Secretary may consider appropriate.

SEC. 3. For purposes of this Act, the term "1957 recorded surveyor's map", as used with respect to the Kyburz Mountain Resort Unit Numbered 1 Subdivision, refers to the map of such subdivision which was filed in the Office of the County Recorder, El Dorado County, California, on October 3, 1957.

SEC. 4. The Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, consists of a portion of the northwest quarter of section 27, and the northeast quarter of section 28, township 11 north, range 15 east, Mount Diablo Meridian, more particularly described in book 4, page 57, and book 5, page 41, of the El Dorado County Records of Survey.

With the following committee amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. (a) Subject to section 2 of this Act, the Secretary of Agriculture shall convey to any person, all right, title and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, California, if—

(1) such portion was depicted in the 1957 recorded surveyor's map of the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, as being included in a lot with respect to which title to the remaining portion of such lot is held by such person, and

(2) such portion was determined, following surveys conducted under the auspices of the Forest Service in 1974 and 1976, and contrary to the map referred to in paragraph (1), to be a part of the El Dorado National Forest.

(b) Each person to whom property is conveyed pursuant to this Act shall reimburse the Secretary of Agriculture for all administrative expenses incident to such conveyance, and in addition shall pay to the United States the following:

(1) an amount equal to the acreage or fraction thereof of the property conveyed to such person, multiplied by the per-acre price for the remainder of the lot (exclusive of any improvements) referred to in paragraph (1) of subsection (a) of this section paid by such person or his predecessor in interest at the time of the original purchase of such lot after formation of the subdivision; and

(2) if such person elects to receive title to the mineral interests in the property conveyed, the fair market value thereof; but if such person does not so elect, all such mineral interests shall be reserved to the United States.

SEC. 2. (a) A conveyance may be made under this Act to a person only if such person submits a written application to the Secretary of Agriculture within five years after the date of the enactment of this Act, together with such proof of title as the Secretary may consider appropriate.

SEC. 3. (a) For purposes of this Act, the term "1957 recorded surveyor's map," used with respect to the Kyburz Mountain Resort Unit Numbered 1 Subdivision, refers to the map of such subdivision which was filed in the Office of the County Recorder, El Dorado County, California, on October 3, 1957.

(b) For purposes of this Act, the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, consists of a portion of the northwest quarter of section 27, and the northeast quarter of section 28, township 11 north, range 15 east, Mount Diablo Meridian, more particularly described in book 4, page 57, and book 5, page 41, of the El Dorado County Records of Survey.

SEC. 4. Subject to valid existing rights, all mineral interests retained by the United States pursuant to section 1(b)(2) of this Act are hereby withdrawn from all forms of entry or appropriation under the mining laws and from the operation of the mineral leasing laws of the United States.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMENDING INDIAN CLAIMS COMMISSION ACT

The Clerk called the bill (H.R. 7519) to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended.

There being no objection, the Clerk read the bill, as follows:

H.R. 7519

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049, 1050; 25 U.S.C. 70a), as amended, is further amended by striking the period at the end thereof, and inserting, in lieu thereof, a colon and the following: *"Provided,* That no money or property given to or funds expended gratuitously for the benefit of the claimant after June 30, 1951, shall be set off against any award to the claimant.".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DETERMINING INDIAN WILL TRANSFERS AND HEIRS

The Clerk called the Senate bill (S. 2223) to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons.

There being no objection, the Clerk read the Senate bill as follows:

S. 2223

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares that—

(1) as a result of the enactment by certain States of amendments to their intestate succession laws, members of Indian tribes within such States are restricted in their right to devise restricted Indian lands to their own children who are not classified as heirs at law under such amended intestate succession laws; and

(2) it is the policy of Congress to allow any Indian to devise restricted Indian lands and shares in the assets of any Indian tribe or corporation to his or her heirs or lineal descendants and other Indian persons eligible to hold land in trust.

SEC. 2. Section 4 of the Act of June 18, 1934, as amended (25 U.S.C. 464), is amended (1) by inserting in the first proviso clause immediately after the words "corporation or any heirs" the following: "or any lineal descendants", (2) after the words "of such member" insert "or to any Indian person who is recognized by the Secretary of the Interior as eligible to hold land in trust.".

With the following committee amendment:

Strike all after the enacting clause and insert the following:

That the first proviso of section 4 of the Act of June 18, 1934 (48 Stat. 984, 985; 25 U.S.C. 464), is amended by striking the phrase "or any heirs of such members" and inserting, in lieu thereof, the phrase "or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust".

SEC. 2. (a) The second and third provisos contained in the paragraph entitled "Determining Heirs" in the Act of January 24, 1923 (42 Stat. 1185; 25 U.S.C. 377), as amended, and section 2 of the Act of December 24, 1942 (56 Stat. 1080, 1081; 25 U.S.C. 375b), are hereby repealed.

(b) The Secretary of the Interior may cancel any unpaid fees assessed under the provisions repealed by this section.

The committee amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

The SPEAKER pro tempore. This concludes the call of the eligible bills on the Consent Calendar.

GENERAL LEAVE

Mr. WHITE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill H.R. 5856.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANOTHER LOSS OF CREDIBILITY

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, President Carter's decision certifying, as he was required to do under the Young amendment, that the Sandinista regime in Nicaragua is not supporting terrorism in Central America provides one more example where and why this administration is losing credibility with the American people.

For months there have been reports of military arms and other supplies going to terrorists in El Salvador and Guatemala by way of Nicaragua. Recent newspaper reports have described arguments within the administration over the assessment of Nicaragua's support for Central American terrorist groups.

I would have expected that on the basis of those conflicting reports the administration would have withheld a decision until there was proof positive that there was no Sandinista interference in neighboring countries. As it is now, the American people are left to believe that, congressional mandates aside, the Carter administration can manipulate intelligence analyses to suit its own political purposes.

And President Carter charges his opponent is inept in handling foreign policy issues.

□ 1210

REAGAN AND CARTER TAX PROPOSALS ARE VERY DIFFERENT

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, as one reads the newspapers these days for commentary on the economic policies of the two major Presidential candidates, one is struck by an interpretation that seems rather strange; that is, the assertion that both proposals are virtually the same.

It seems that sometimes our memories are very short. But just a few months ago, President Carter was telling us that tax cuts could not possibly be achieved, that tax cuts were inflationary, and suggesting perhaps they might even be immoral. Suddenly, he has discovered the morality of it. But now we have the press telling us that Ronald Reagan is similar to Jimmy Carter in this respect.

I would invite the attention of my colleagues and the members in the media to a detailed review of these proposals to see that they are very different. I might also comment that one newspaper in my area, the LA Times, stated in an editorial yesterday that Governor Reagan's proposals are close to what Congress had in mind all along.

Mr. Speaker, as a Member of this body for 2 years, it comes as news to me that Congress had anything in mind in terms of tax cuts, because we have had scores of tax cut proposals before the Ways and Means Committee, which is controlled by the leadership of this House, and we have not even moved on them in 2 years. Now, as we approach the election, we in Congress somehow see the right in this.

GOVERNOR REAGAN IN EXCELLENT PHYSICAL CONDITION

(Mr. SOLOMON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SOLOMON. Mr. Speaker, I read over the weekend some unkind remarks—flippant remarks—by the Democratic Senate majority leader concerning the physical fitness of the Republican nominee for President, Gov. Ronald Reagan. I would just like to tell everybody here that I just saw the Governor run up 67 stair steps to address all of the Republican Members of this House on a unity meeting that we just held on the west front steps, which I think ought to dispel any of those irresponsible remarks.

Second, Mr. Speaker, I would like to challenge the Democratic majority to meet on the west steps with the President to defend his record over the last 3½ years. I doubt if anyone would show up.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, and clause 5(b) of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules and each question of passing bills or joint resolutions on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, September 16, 1980.

MARKETING ORDERS FOR WALNUTS AND OLIVES

Mr. COELHO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3765) to provide that orders issued by the Secretary of Agriculture under the Agricultural Adjustment Act respecting development projects designed to assist, improve, or promote the marketing, distribution, and consumption or production of walnuts may provide for any form of marketing promotion, including paid advertising, and for crediting certain direct expenditures of handlers for such promotion, as amended.

The Clerk read as follows:

H.R. 3765

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8c(6)(I) of the Agricultural Adjustment Act (7 U.S.C. 608c(6)(I), as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) by inserting "walnuts," before "or tomatoes"; and

(2) by inserting "walnuts, olives," before "and Florida Indian River grapefruit".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. COELHO) will be recognized for 20 minutes, and the gentleman from Virginia (Mr. WAMPLER) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from California (Mr. COELHO).

GENERAL LEAVE

Mr. COELHO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous matter on the bill, H.R. 3765.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

● Mr. FOLEY. Mr. Speaker, I rise in support of H.R. 3765, a bill to provide that walnut marketing orders issued by the Secretary of Agriculture may provide for any form of marketing promotion, including paid advertising. In addition, the bill will permit walnut and olive marketing orders to provide for crediting the assessment obligation of each handler with all or any portion of such handlers direct expenditures for marketing promotion.

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The United States is the world's leading walnut producer, and California is the Nation's leading producing State, accounting for over 97 percent of domestic commercial production. Thirty-five years ago the United States supplied 50 percent of the world walnut supply. Today the U.S. market share has reached 72 percent and projections for the 1980's indicate that domestic production will exceed 80 percent of the world supply. The California walnut industry, consisting of approximately 6,000 growers and 32 handlers, accounts for 97 percent of the U.S. production with a farm value of the crop approximating $170 million.

Orderly marketing has made it possible for growers to increase the supply available to the domestic market faster than the increase in U.S. population and also produce an exportable quantity that is currently providing over $60 million in annual export revenue. The California walnut industry currently exports over 83 million pounds of in-shell walnuts and 7 or 8 million pounds of shelled walnuts. Domestic consumption of shelled walnuts is over 80 million pounds annually.

The California walnut industry soon may be faced with record high crops far in excess of current domestic and export needs. Based on the current bearing acreage figures, and barring bad weather, California's 1979 crop could be a record in excess of 200,000 tons. Furthermore, in the years ahead, crops over 260,000 tons are possible due to the fact that 20 percent of the walnut acreage in California is currently nonbearing.

Enactment of H.R. 3765 would alleviate the projected supply-demand imbalance by encouraging increased promotional activities. The bill would authorize the marketing order to provide for the expenditure of assessment funds obtained from handlers for promotional activity such as generic advertising, public relations and the preparation and distribution of educational and recipe materials. The bill would also permit the marketing order to allow handlers to offset all or part of their direct marketing promotion expenditures against their asessments thereby encouraging handlers to maintain or develop their own marketing promotion activities.

A similar oversupply situation exists in the olive industry. Virtually all olive production in the United States is located in California. Although crop sizes have ranged widely, there has been an overall upward trend—1978 production at 126,000 tons, exceeded the previous record of 1976 by 46,000 tons or 58 percent.

This increased production has created serious problems for producers due to the relatively unique characteristics of olive production. Olive trees require between 8 and 10 years to reach bearing stage and some 20 years to reach maximum yield. Thereafter, if properly cared for, the trees have a production life of 100 years or more. Attempts to pick only a percentage of the crop are impractical because fruit which is left on the trees will adversely affect the following year's crop. These factors make it very difficult for producers to make short-term production adjustments. Therefore the olive industry must increase its promotional activities.

H.R. 3765 will greatly assist the olive industry by: First, providing incentives for handlers to advertise their product; second, encouraging coordination between generic and private label advertising; and third, creating a more stable marketing situation that is geared toward expansion. In addition, the bill will benefit consumers by assuring stable supplies and orderly marketing.

I ask all Members to join with me in supporting enactment of H.R. 3765.●

Mr. COELHO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, thank you for placing on the Suspension Calendar for consideration by the House today, H.R. 3765, the bill which I introduced to amend the Agricultural Adjustment Act to provide for inclusion of olives and walnuts in the Agricultural Marketing Agreement Act. Your bringing this to the House floor is appreciated by agricultural and consumer interests throughout the United States. A special word of thanks is in order for the House leadership on both sides of the aisle, and to my chairman, Mr. FOLEY, as well as our colleague Mr. RICHMOND who chairs the Subcommittee on Domestic Marketing, where the bill first received attention; and the gentleman from Virginia (Mr. WAMPLER), the ranking minority member.

This legislation has received the formal endorsement of the U.S. Department of Agriculture, inasmuch as it extends to handlers of these two commodities the same treatment for marketing promotion, including paid advertising, that is extended under present law to other crops such as almonds. By providing for crediting of certain direct expenditures, markets for olives and walnuts can be expanded. With the record high production of these crops, the surplus inventories of growers and processors will be reduced adding some semblance of order to the market for these goods.

Already Federal marketing programs are in effect for 21 fruit, vegetable, and tree nut commodities. Promotional activities such as generic advertising, public relations, or the preparation and distribution of educational and recipe materials to home economists, schools, food editors, or the general public are not only a part of Federal agricultural policy, but practiced in many States with identical programs. In some States research and promotion acts are passed for a single commodity and special commissions are established to administer marketing orders and promotional activities.

The United States is the world's largest walnut producer and California is the Nation's leading producing State, accounting for over 97 percent of the domestic commercial production. California also produces 100,000 tons of olives annually for a domestic consumption of 60,000 tons. With increasing competition from several of the Mediterranean countries and escalating costs in wages and technology, the U.S. industry is struggling to survive against the subsidized production of Spain and Greece. I am proceeding on our trade fronts to protect the U.S. industry with administrative action from the ITC and USTR. Taking into account competition from other domestic specialty crops—not to mention complicated trade barriers with foreign producers—H.R. 3765 is a most appropriate public policy.

Mr. WAMPLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3765 which was reported without a dissenting vote by the Committee on Agriculture. This bill is of substantial interest to my colleague, the gentleman from California (Mr. THOMAS), and but for a prior commitment he would be on the floor managing this matter for this side of the aisle.

This bill would amend the Agricultural Marketing Agreement Act of 1937 to authorize the addition of marketing promotion, including paid advertising, to the Federal marketing order for California walnuts. In addition, it would permit the marketing orders for both olives and walnuts to provide for crediting the assessment obligation of each handler with all or a portion of that handler's direct expenditures for marketing promotion, including paid advertising. Paid advertising authority for the marketing order covering olives was added in 1965.

Virtually all olive production in the United States is located in California. Over the last few years there has been an upward trend in the size of the olive crops. The larger crops are the result of both good yields and increased bearing acreage from heavy plantings that began in the early 1970's. The increased production, due to the unique characteristics of olive production which make it difficult for producers to make short-term production adjustments, has created serious problems for producers.

It is necessary for the olive industry to tap potential markets and thus eliminate oversupply and depressed market conditions. This can be done through education of consumers. This bill will benefit consumers by assuring stable supplies and orderly marketing. It will also greatly assist the olive industry by: First, providing incentives for handlers to advertise their product; second, encouraging coordination between generic and private label advertising; and third, creating a more stable marketing situation that is geared toward expansion.

California is also the Nation's leading producer of walnuts, accounting for over 97 percent of domestic commercial production. The United States is the world's leading walnut producer, with 72 percent of the world supply.

The California walnut industry may soon be faced with record high crops, far in excess of current domestic and export needs. Enactment of H.R. 3765 could alleviate the projected supply-demand imbalance by encouraging increased promotional activities.

I urge my colleagues to support this measure.

□ 1220

Mr. Speaker, I reserve the balance of my time.

Mr. COELHO. Mr. Speaker, I yield back the balance of my time.

Mr. WAMPLER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. COELHO) that the House suspend the rules and pass the bill, H.R. 3765, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide that marketing orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting walnuts may provide for any form of marketing promotion, including paid advertising, and that marketing orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities.".

A motion to reconsider was laid on the table.

RURAL DEVELOPMENT POLICY ACT OF 1980

Mr. DASCHLE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3580) to provide for establishment and coordination of rural development policy and to extend for 2 years the authorization of appropriations for carrying out title V of the Rural Development Act of 1972, as amended.

The Clerk read as follows:

H.R. 3580

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Rural Development Policy Act of 1980".

RURAL DEVELOPMENT POLICY

SEC. 2. The Rural Development Act of 1972 (Public Law 92-419; 86 Stat. 657) is amended by adding at the end thereof a new section as follows:

"SEC. 607. RURAL DEVELOPMENT POLICY.—(a) The Secretary of Agriculture shall provide leadership within the executive branch for, and shall assume responsibility for coordinating, a nationwide rural development program using the services of executive branch departments and agencies, including, but not limited to, the agencies, bureaus, offices, and services of the Department of Agriculture, in coordination with rural development programs of State and local governments.

"(b) POLICY DEVELOPMENT.—(1) The Secretary shall conduct a systematic review of Federal programs affecting rural areas to (A) determine whether such areas are benefiting from such programs in an equitable proportion to the benefits received by urban areas and (B) identify any factors that may restrict accessibility to such programs in rural areas or limit participation in such programs.

"(2) Subject to the Privacy Act of 1974, the Secretary may secure directly from any Federal department or agency information necessary to carry out the Secretary's duties under this section. Upon request of the Secretary under this paragraph, the head of any such Federal department or agency shall furnish such information to the Secretary.

"(3) The Secretary shall develop a process through which multistate, State, substate, and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis. Such process may include the use of those rural development experts, advisors, and consultants that the Secretary deems appropriate, as well as the establishment of temporary advisory committees under the terms of the Federal Advisory Committee Act.

"(4) The Secretary may undertake cooperative efforts with other Federal departments and agencies to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas. The Secretary may request the heads of other Federal departments and agencies to participate in any working groups that the Secretary deems necessary to carry out the purposes of this section.

"(5) The Secretary may hold public hearings and receive comments on any matter that the Secretary determines may have a significant impact on rural development or the economic development of rural communities.

"(c) RURAL DEVELOPMENT STRATEGY.—(1) The Secretary shall prepare a comprehensive rural development strategy based on the needs, goals, objectives, plans, and recommendations of local communities, substate areas, States, and multistate regions, which is designed to—

"(A) maximize the effectiveness, increase the responsiveness, and improve the delivery of Federal programs to rural areas;

"(B) increase the coordination of Federal programs with the development needs, objectives, and resources of local communities, substate areas, States, and multistate regions; and

"(C) achieve the most effective combinations of Federal, State, and local resources to meet the needs of rural areas for orderly growth and development.

"(2) The rural development strategy shall take into account the need to—

"(A) improve the economic well-being of all rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

"(B) improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

"(C) improve State and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for State and local officials, particularly in small rural communities;

"(D) strengthen the family farm system; and

"(E) maintain and protect the environment and natural resources of rural areas.

"(3) The rural development strategy developed under this subsection shall be for the fiscal year ending September 30, 1982, and updated for each fiscal year thereafter.

"(4) The Secretary shall hold public hearings and receive such suggestions and recommendations as the Secretary deems appropriate during the preparation of the rural development strategy and the annual updates to the strategy.

"(5) The rural development strategy and the annual updates to the strategy shall be transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry by January 31 of the calendar year immediately preceding the beginning of the appropriate fiscal year.

"(6) The rural development strategy and each annual update of the strategy shall contain an analysis of the budget recommendations of the President for the fiscal year following the transmittal of the strategy or update of the strategy and of all the available budget projections of the President for subsequent fiscal years, and projections regarding the budget that are relevant or essential to the rural development policy and the rural development strategy developed under this subsection. Each annual update shall also contain a detailed statement of the findings and conclusions of the Secretary regarding the implementation during the preceding fiscal year of the rural development strategy, including any revisions of the strategy, any recommended legislation to improve the rural development effort of the Federal government, and an evaluation of and recommendations regarding the rural development information system required under section 306(a)(12) of the Consolidated Farm and Rural Development Act.

"(d) Strategy implementation.—The Secretary shall ensure the effective implementation of the rural development strategy and maximize coordination of Federal programs affecting rural areas through a systematic effort to—

"(1) improve communication and encourage cooperation among Federal departments and agencies in the administration of rural development programs;

"(2) eliminate conflicts, duplication, and gaps in program coverage, and resolve contradictions and inconsistencies in the objectives, administration, and effects of rural development programs;

"(3) facilitate the sharing or common location of field offices of Federal agencies administering similar or complementary programs and unification of delivery systems, where feasible, to maximize convenience and accessibility of such agencies and programs to rural residents;

"(4) facilitate and expedite joint funding of rural projects through Federal programs;

"(5) correct administrative problems in Federal programs that delay or hinder the effective delivery of services, assistance, or benefits to rural areas; and

"(6) simplify, standardize, and reduce the complexity of applications, reports, and other forms required under Federal rural development programs.

UNDER SECRETARY OF AGRICULTURE FOR SMALL COMMUNITY AND RURAL DEVELOPMENT

SEC. 3. (a) There is hereby established in the Department of Agriculture the position of Under Secretary of Agriculture for Small Community and Rural Development to be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary of Agriculture for Small Community and Rural Development may exercise such functions and perform such duties related to small community and rural development, and shall perform such other duties, as may be required by law or prescribed by the Secretary of Agriculture.

(b) Section 5314 of title 5, United States Code, is amended by adding at the end thereof a new paragraph as follows:

"Under Secretary of Agriculture for Small Community and Rural Development.".

RURAL DEVELOPMENT ACT REAUTHORIZATION AND AMENDMENTS

SEC. 4. The Rural Development Act of 1972 is amended by—

(1) in section 503(a), (7 U.S.C. 3663(a)), striking out "three" and "1979" and inserting in lieu thereof "five" and "1981", respectively;

(2) in section 503(c) (7 U.S.C. 2663(c)), striking out "and September 30, 1979" and inserting in lieu thereof "September 30, 1979, September 30, 1980, and September 30, 1981";

(3) in section 503(f) (7 U.S.C. 2063(f)), inserting immediately after the first sentence a new sentence as follows: "In those States that contain more than one institution or university accepting the benefits of the Morrill Act of 1862 or 1890 (or both), including Tuskegee Institute, such annual plan and budget shall be jointly developed by mutual agreement of the chief administrative officers of all such institutions or universities.";

(4) in section 507(b) (7 U.S.C. 2667(b)), inserting ", Guam, the Commonwealth of

the Northern Mariana Islands, American Samoa, the Virgin Islands of the United States," after "several States"; and

(5) in section 603(c), repealing paragraph (2); in paragraph (1), striking out "(1)" after the subsection designation; and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

REVISED STATUTES AMENDMENTS

SEC. 5. Section 526(b) of the Revised Statutes (7 U.S.C. 2204(b)) is amended by—

(1) striking out the first and second sentences thereof;

(2) in the third sentence striking out "and" before "rural industrialization" and inserting before the period at the end thereof the following: ", and technology appropriate to small and moderate-sized family farming operations, and any other problem that the Secretary may determine has an effect upon the economic development or the quality of life in rural areas".

ELIMINATION OF REPORTS

SEC. 6. Section 901 of the Agricultural Act of 1970 (Public Law 91-524, 84 Stat. 1303; 42 U.S.C. 3122) is amended by striking out the last sentence of subsection (b) and repealing subsections (c) through (f).

TECHNICAL ASSISTANCE AND INFORMATION SYSTEM

SEC. 7. Section 306(a) of the Consolidated Farm and Rural Development Act (Public Law 87-128, 75 Stat. 307; 7 U.S.C. 1926(a)) is amended by—

(1) amending paragraph (11) to read as follows:

"(11) The Secretary may make grants, not to exceed $15,000,000 annually, to public bodies or such other agencies as the Secretary may select to provide rural development technical assistance, rural community leadership development, and community and areawide rural development planning.";

(2) redesignating paragraphs (12), 13), and (14) as paragraphs (13), (14), and (15), respectively; and

(3) inserting immediately after paragraph (11) a new paragraph (12) as follows:

"(12)(A) The Secretary shall, in cooperation with institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, establish a system for the dissemination of information and technical assistance on Federally sponsored or funded programs. The system shall be for the use of institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, and other persons concerned with rural development.

"(B) The informational system developed under this paragraph shall contain all pertinent information, including, but not limited to, information contained in the Federal Procurement Data System, Federal Assistance Program Retrieval System, Catalogue of Federal Domestic Assistance, Geographic Distribution of Federal funds, United States Census, and Code of Federal Regulations.

"(C) The Secretary shall obtain from all other Federal departments and agencies comprehensive, relevant, and applicable information on programs under their jurisdiction that are operated in rural areas.

"(D) Of the sums authorized to be appropriated to carry out the provisions of this Act, not more than $1,000,000 per year may be expended to carry out the provisions of this paragraph.".

LIMITATIONS

SEC. 8. No funds are authorized to be appropriated pursuant to sections 4 and 7 of this Act and the amendments made by those sections for the fiscal year ending September 30, 1980, in excess of such amounts as have been appropriated on or before the date of enactment of this Act for such fiscal year.

WEB RURAL WATER DEVELOPMENT PROJECT

SEC. 9. (a) There are authorized to be appropriated to the Secretary of the Interior for the fiscal year ending September 30, 1981, $1,900,000, which shall be used for initial planning and construction of a rural water treatment and distribution system in portions of, but not limited to, Walworth, Edmunds, Brown, Campbell, Potter, McPherson, Faulk, Hand, Spink, and Day Counties in South Dakota that will furnish water for domestic and other purposes, hereafter referred to in this section as "the WEB Rural Water Development Project", as generally proposed by the WEB Water Development Association, Incorporated, and as described in the special report by the Association of January 1980.

(b) Effective October 1, 1981, there are authorized to be appropriated to the Secretary of the Interior for the further planning and construction of the WEB Rural Water Development project $68,100,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 1980, as indicated by the engineering cost indices applicable to the types of construction involved herein: *Provided*, That such authorization for appropriations shall not become effective until such time as legislation has been enacted deauthorizing the Oahe Unit, initially authorized by the Act of August 3, 1968 (Public Law 90-453; 82 Stat. 624): *Provided further*, That if such legislation has not been enacted by September 30, 1981, the authorization for appropriations provided for in this subsection shall terminate.

(c) Any funds appropriated under this section shall remain available until expended.

(d) Any funds appropriated under this section shall be transferred by the Secretary of the Interior to the Secretary of Agriculture when such funds are appropriated. The Secretary of the Interior may enter into cooperative memoranda of understanding with the Secretary of Agriculture as may be required to provide services to carry out the purposes of this section.

(e) The Secretary of Agriculture shall use any funds transferred under subsection (d) for necessary administrative expenses, and to provide financial assistance to plan and develop the WEB Rural Water Development Project under the terms and conditions of the Consolidated Farm and Rural Development Act and the rules and regulations promulgated by the Department of Agriculture under that Act, except to the extent such Act or rules or regulations promulgated thereunder are inconsistent with the provisions of this section. Such funds shall be made available in a combination of grants and loans that will provide grants for not less than 75 per centum of eligible development costs and such loans as may be necessary to plan and construct the WEB Rural Water Development Project.

EFFECTIVE DATE

SEC. 10. The provisions of this Act shall become effective October 1, 1980.

The SPEAKER pro tempore. Is a second demanded?

Mr. GRASSLEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from South Dakota (Mr. DASCHLE) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. GRASSLEY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from South Dakota (Mr. DASCHLE).

Mr. DASCHLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3580, as amended by the substitute offered today which was printed in the RECORD on September 10, by Chairman FOLEY. This is an important piece of legislation for rural America and deserves the support of all Members.

H.R. 3580, as amended by the substitute directs the Secretary of Agriculture to assume a leadership role in coordinating a nationwide rural development program through: First, the development of a rural development policy; second, the preparation of a rural development strategy and annual updates including an analysis of how the budget requests will effectuate the strategy; and third, by requiring the Secretary to implement the rural development strategy and maximize the coordination of Federal programs affecting rural areas. By assigning the Secretary of Agriculture the leadership role in coordinating Federal programs affecting rural areas these programs can be targeted more effectively to meet the needs of rural residents and communities.

The substitute establishes a new position of Under Secretary of Agriculture for Small Community and Rural Development to be appointed by the President with the advice and consent of the Senate. The administration strongly recommended inclusion of this provision in the substitute believing that establishment of this position is essential to the President's rural policy initiatives.

H.R. 3580, as amended by the substitute, extends until October 1, 1981, the authorization for the rural development and small farm research and extension programs of title V of the Rural Development Act of 1972. The bill also requires the Secretary to expand research and development efforts related to technologies which are appropriate for small and moderate size family farm applications. These programs were created by title V of the Rural Development Act of 1972. The title V research and extension programs are administered through the land grant college system but also provide for involvement by other institutions of higher education. As of November 1977, 1,300 projects had been initiated under this program, which have involved participation by schools in the land grant system and over 100 nonland grant public and private colleges and universities.

The substitute eliminates a total of five annual reports to Congress which the Secretary of Agriculture currently has to file relating to various aspects of rural development. These reports are no longer deemed necessary since the substitute provides for the submission of a comprehensive rural development strategy and annual updates to that strategy.

H.R. 3580, as amended, increases from $10 to $15 million the annual authorization for section 111 rural development planning grants and expands the purposes for which the grants may be used to include rural development technical assistance, rural community leadership training, and community and areawide comprehensive planning. This provision will allow grant funds to be used to pay specialists who would assist rural communities to apply for needed Federal funds. In addition the bill would authorize the use of up to $1 million per year of funds appropriated to the Farmers Home Administration to establish a system for the dissemination of information and technical assistance on federally sponsored or funded programs.

I want also to address myself briefly to the WEB rural water development project portion of this bill. The WEB project is of critical importance to my State. It would provide badly needed domestic and municipal water to a 10 county region now served by unreliable, notoriously low quality water sources.

The WEB section of this legislation is the result of a year long effort between the South Dakota delegation, the administration, the appropriate committees of Congress and numerous parties in South Dakota to arrive at an acceptable compromise on WEB and the thorny matter of South Dakota's Oahe Irrigation System. The compromise embodied in this legislation is fully supported by every member of our South Dakota delegation, by the administration, and by our committee. It would authorize a minimum amount of start up funding for WEB in 1981 to be worked out over the next year to deauthorize the Oahe Irrigation System on terms acceptable to South Dakota, to the administration, and, of course, to the Congress.

This agreement on the WEB project is the first consensus action on a major water development project in the Oahe area of our State since disagreement over the Oahe system fractured water planning in South Dakota amost a decade ago. It is of fundamental, long-term importance to us not just because it authorizes an extremely important rural water system, but because it commences the process of compromise we must have to get water planning in our State back on track for the 1980's.

I am proud to have played a role in the creation of this compromise and want to add words of special thanks to Chairman FOLEY, Congressman RICK NOLAN, to Assistant Secretary Guy Martin, to Deputy Assistant Secretary Dan Beard, and to the other members of our South Dakota delegation for their efforts and their great patience in sticking with this effort through the many delays and roadblocks that were bound to occur as we sought together to bring an end to a decade of hostility over water development in the Oahe region.

As one who was raised in the region to be served by the WEB project, and who vividly remembers stocking up on Aberdeen city water before going to spend a weekend with relatives whose water came from the abysmal wells WEB will replace, I can assure this Chamber the WEB project is badly needed. And as one who has been through the decade of division over the Oahe project, I can assure this Chamber that the agreement which led to this WEB legislation is just as badly needed as the WEB project itself.

I am pleased to come before the House with this substitute amendment to H.R. 3580. The substitute is the result of over a year of negotiations between the committee and the administration and enjoys the administration's support as well as bipartisan support among members of the Agriculture Committee. The committee has also worked closely with the Senate Committee on Agriculture, Nutrition, and Forestry in developing the substitute and we believe that H.R. 3580, as amended, will be accepted by the Senate, thereby avoiding the need for a conference.

I urge all Members to support enactment of H.R. 3580, as amended by the substitute.

Mr. Speaker, I reserve the balance of my time.

Mr. GRASSLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it has been more than 15 months since this bill was reported by the House Agriculture Committee, and almost a year since it was granted a rule. It has been languishing all this time because the administration opposed it. It comes to the floor now in a modified form which has received the administration's blessing. It is not as good as the original bill, but even in this "compromise" form it has merit. There is much of the Nolan-Grassley bill left in it, with some additions and some deletions. I support it and recommend that my colleagues in the House give it their support.

The origins of this bill go back to 1977 when the distinguished chairman of the Family Farms Subcommittee, the gentleman from Minnesota (Mr. NOLAN) and I began discussing the need for strengthening the Rural Development Act of 1972. Those discussions resulted in a bill that was introduced on February 9, 1978—H.R. 10885 in the last Congress. That legislation was developed through a process that involved much input from the rural community, including many rural and agricultural interest groups, members of the Rural Caucus and others concerned about the need for better coordination of rural programs at the Federal level, for improvement of Federal programs and services for rural areas, and for increased responsiveness of the Federal bureaucracy to the needs of and objectives of rural communities.

The bill was modified and improved through hearings and committee action, and was reintroduced in this Congress as H.R. 3580. It was approved by the Agriculture Committee by a vote of 33 to 3 in May of last year.

From the beginning this legislation was opposed by the administration despite its broad support by others. The principal basis for this opposition was that the bill would have required the administration by statute to carry out some new, specific responsibilities with respect to the administration and management of programs affecting rural areas. Their complaint was that it would reduce their "flexibility." And, besides, they said, they were already doing the things the bill required.

In December 1979, the Carter administration—3 years after taking office—finally announced a small community and rural development policy. It was extremely interesting to Chairman NOLAN and myself, and to those who had helped develop H.R. 3580, to see that many of the specifics in our bill had been adopted as Carter administration policy. This was both good news and bad news for us. It is good that they picked up so much of what was recommended, but without the requirement of law there is no guarantee that this administration or any following it will do anything about implementing those needed improvements.

Now, after months of negotiation, the administration has agreed to a modified Rural Development Policy Act. To their credit, they have given ground on some points such as the strategy development and the budget process, but the price has been high. This watered-down bill now includes creation of a new position in the U.S. Department of Agriculture—that of Under Secretary of Agriculture for Small Community and Rural Development. I have real concern about creating another new high-level Federal position. At the same time, the fact that the administration is pushing for this post is an indication of the complete about-face they have done on the issue of rural development programs in the Department of Agriculture. Only a short while ago we were fighting the Carter administration's attempt to chop up the Department of Agriculture by moving the rural programs out. Now they are proposing a new position that will strengthen the focus on rural programs within the Department.

I am concerned also about the authorization of up to $1 million annually for establishment of a system for the dissemination of information and technical assistance on federally sponsored or funded programs. I am not aware of any clearly demonstrated need for a program of this type.

Even with these and other weaknesses, however, the bill is still worthy of support. It spells out new rural policy responsibilities for the Secretary of Agriculture. It extends the authorization for the rural development and small farm research and extension programs of title V of the Rural Development Act of 1972. It expands small farm research and development authority. It eliminates five unnecessary reports to the Congress, and it increases the authorization and broadens the scope of the rural development planning grant program.

There is one other provision in the amendment offered by the gentleman from Washington, Chairman FOLEY. This has to do with the WEB water project in South Dakota. It is an unusual procedure to bring such an authorization to the floor in this way. The project does, however, have administration support conditioned on deauthorization of the Oahe project, and the language in the bill stipulates that condition.

On balance, Mr. Speaker, I believe this bill has merit, and I would urge my colleagues to support it.

□ 1230

Mr. Speaker, I reserve the balance of my time.

Mr. DASCHLE. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Speaker, I rise in support of this legislation.

I am pleased that after many months of hard work by the members of the Committee on Agriculture and officials from the administration, we finally are taking the first steps toward development of a coordinated and comprehensive rural development policy. I believe that the several provisions of this act will assure that our Federal Government will give the formulation and implementation of our rural development policy the kind of high level visibility and focus which it deserves.

In addition, I am particularly pleased by language in the act which would inject a higher degree of common sense and fiscal responsibility into the method for determining Federal water policy in the State of South Dakota. Specifically, I welcome the language which initiates development of the so-called WEB water system. This section is important not only because it will bring the WEB water system to the planning stage, but also because it conditions completion of the WEB water system on the deauthorization of the Oahe unit.

As my good friends from the State of South Dakota are well aware, Mr. Speaker, my strong interest in assuring that Federal funds are spent only on those water projects that make sense economically—no matter where they are located—has led me to be a determined opponent of the Oahe unit.

Briefly, my long standing opposition to completion of the Oahe unit is based on the following facts: under the Oahe unit proposal, the Government intended to acquire 110,000 acres of land on which to build the maze of canals and storage pools designed to irrigate some 190,000 acres. The land to be irrigated was estimated a few years ago to be worth about $300 an acre and after irrigation that land would have been worth about $1,100 an acre. The $800 an acre increase in the value of the land would have cost the Government $2,323 an acre. Approximately 600 farms would have benefited at an estimated cost of $735,655 per farm.

Recognition of the advisibility of deauthorizing the Oahe unit, as contained in the Rural Development Policy Act, assures that taxpayers in South Dakota and throughout the United States will not be called upon to foot the bill for yet another economically unsound water project. However, the initial authorization in the act for the WEB water system should be an indication to the people of South Dakota that the Federal Government stands ready to support those sensible water development projects that the State needs and deserves.

Mr. Speaker, I strongly support this responsible measure, and urge its prompt adoption.

Mr. GRASSLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. WAMPLER).

Mr. WAMPLER. I rise in support of this legislation. It is a compromise, as are most products of the legislative process. As such it is not entirely satisfactory to anyone, but is somewhat satisfactory to most.

Without question there is need for improvement in rural policies and programs at the Federal level.

I thought when the committee reported H.R. 3580, we put in place a responsible piece of legislation. I was hopeful at that time that the administration could see its way to support H.R. 3580. Certainly, the ranking minority member of the Subcommittee on Family Farms, Rural Development, and Special Studies, Mr. GRASSLEY, supported that measure.

However, in the intervening months, it became apparent that the administration was going to insist on some changes or there would be no bill. I supported Mr. GRASSLEY in insisting that whatever changes were made would have to be acceptable to those groups that were concerned about rural development policy.

The committee staff, working together with USDA and other interest groups, have worked out this compromise. It is my understanding that this compromise is acceptable to Mr. GRASSLEY and, therefore, I have lent my support to this measure.

The fact that this bill adds an assistant secretaryship to the Department's organization does give me some pause about its merits. However, it is part of the compromise that I have indicated I will support.

There is one additional matter which has been considered for inclusion in H.R. 3580. On January 29, 1980, Mr. ABDNOR and Mr. DASCHLE introduced H.R. 6320 which would authorize appropriations for the WEB water project. The bill was referred to the Agriculture Committee; however, no committee action was taken. The administration agreed to support the bill if the authorization for WEB would be conditioned on subsequent congressional action deauthorizing another unrelated water project, the Oahe unit.

The effect of the bill with the administration amendment would be to authorize $1.8 million for WEB for fiscal year 1981 (to be used primarily for planning) and provide that if the Oahe unit is deauthorized prior to September 30, 1981, an additional $73.2 million would be authorized for WEB.

I understand that all members of the South Dakota delegation support enactment of H.R. 6320 with the administration-suggested amendments, and have expressed their desire that H.R. 6320, as amended, be included as part of H.R. 3580. In view of the broad bipartisan support for H.R. 6320, it is included in H.R. 3580.

Mr. GRASSLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from South Dakota (Mr. ABDNOR).

Mr. ABDNOR. Mr. Speaker, I rise in strong support of the committee substitute for H.R. 3580, the Rural Development Policy Act. The substitute has been presented on behalf of the committee by my colleague from South Dakota (Mr. DASCHLE).

This compromise measure, which was formulated by Chairman FOLEY and is supported by the minority members of the committee, will go a long way toward establishment and coordination of Federal policies needed to place proper emphasis and priority upon the developmental needs of rural America.

In addition, at the urging of the South Dakota congressional delegation, the committee has included language to authorize development of the WEB rural water system. I am the sponsor of a bill, H.R. 6320, which was referred to the Agriculture Committee in this regard; and I am pleased the committee has seen fit to support enactment of its intent through language in the measure before the House today.

Mr. Speaker, the substitute offered by the committee has the support of the administration, and that is true particularly with respect to the language authorizing the WEB project.

The June 18, 1980, letter I received from Interior Secretary Andrus documents the support of the administration for WEB, as well as for the identification and acceleration of other South Dakota water projects to be developed in lieu of the Oahe irrigation project.

The Oahe unit was originally authorized in the Flood Control Act of 1944, and the 190,000 acre initial stage was reauthorized in 1968. The initial stage of the Oahe unit was intended as partial compensation to the people of South Dakota for the loss of over 500,000 acres inundated in our State through construction of four huge dams on the Missouri River. These dams were constructed to provide flood control and navigation benefits to downstream States, and over three-quarters of the hydropower is marketed outside of South Dakota as well.

Mr. Speaker, I am providing this background for the record to make absolutely clear that in supporting authorization of the WEB project it is not the intent of the South Dakota congressional delegation that it is to serve as the sum total "economic mitigation" our State is to receive under the Pick-Sloan Missouri Basin program. Secretary Andrus himself has acknowledged our right to seek additional considerations, and the South Dakota Legislature has set forth in Senate Concurrent Resolution No. 8 the terms of deauthorization of the Oahe unit, initial stage, which would be acceptable to the State.

Mr. Speaker, for further clarification of this exceedingly complex issue, I would like to have included in the RECORD the text of the Secretary's June 18 letter, along with the text of my June 30 letter to Governor Janklow, who had voiced concern that the best interests of the State were not being served.

Finally, I would also like to include in the RECORD the text of legislation which I have had drafted to carry out the policy of the State. It is my intent to introduce this legislation in the near future, and I am pursuing an early hearing before the House Interior Committee's Subcommittee on Water and Power Resources.

Authorization and funding of WEB will be hopeful steps toward the realization of the full value of "economic mitigation" which is due the people of South Dakota, but it is not in any sense intended to offset or deny the need for development of other water projects in our State.

The letters and the draft bill follow:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., June 18, 1980.

Hon. JAMES ABDNOR,
House of Representatives,
Washington, D.C.

DEAR MR. ABDNOR: I am writing in response to your letter of May 12, 1980, and pursuant to the consultations which have occurred between us since that time.

I want to begin by thanking you for the constructive nature of your letter, and the extraordinary effort and care you have given to resolving the difficult questions regarding the future water resource needs of South Dakota. In spite of differences which may exist regarding some specific issues, I am convinced we share a commitment to meeting South Dakota's needs through sound water management and development, and seeing that the Federal role is a major and cooperative one.

The Administration has made clear its view that it cannot support the permanent authorization of the WEB project in the absence of a deauthorization of the Oahe Unit, and I believe the reasons for this are well understood. You have made clear, in return, two central points. First, that if Oahe is to be deauthorized, you must consider and address other water development needs in the state in addition to the WEB project. Second, that additional time is needed to identify and analyze other proposals and to permit adequate public consideration of them.

Our reaction to these points is favorable, and with some variation, we are able to accept the basic premise of your May 12 letter. What we propose is a process which would create the time and opportunity for development of other responses to state needs, yet leave you in a position in mid-1981 similar to that which exists today—a choice between the continued authorization of Oahe (but without an authorization for WEB) or a deauthorization of Oahe, predicated an authorization and funding for WEB plus other proposals which might be agreed upon in the interim.

Specifically, we would not object to the authorization of the WEB project immediately, as well as first-year funding of approximately $1.9 million if provided within the Administration's overall budget request for the Department. By mutual agreement with you, a provision would be included in the WEB authorization which would establish a "trigger date" of September 30, 1981 (the end of FY 1981), at which time the future of the WEB and Oahe projects would be firmly decided. Should Oahe be deauthorized by this date, WEB automatically would be authorized for completion, including adequate authority for all necessary funds. (A copy of the proposed language to achieve these purposes is enclosed as amendments to H.R. 6320.)

As you suggest, a "clean" deauthorization bill for the Oahe project will be introduced immediately with the joint sponsorship of the delegation (a draft of such legislation is enclosed). We would have no objection to the introduction of such a bill on request. While the Administration favors passage of such a bill, it would be understood that actual passage is not anticipated until mid-1981, after consideration of other South Dakota water needs. Accordingly, the "clean" bill for Oahe deauthorization would be agreed to be introduced again at the beginning of the next Congress.

During the period between now and mid-1981, when a definitive choice on Oahe deauthorization will be required, a concerted and cooperative effort will be made to better assess South Dakota water resource needs, and to develop agreement on other possibilities for development in addition to the WEB pipeline. We realize that, within the state and even within the delegation, views may differ on various alternatives and priorities, and the Administration has strong views as well. We should use the next 12 to 14 months as a period of working together toward agreement on issues important to the water resource needs of South Dakota and the appropriate contribution of the Federal Government to those needs.

We would approach this effort with great but realistic expectations, and expect all others to do the same. A common initial understanding of the conditions which will determine ultimate agreement will vastly improve our capability to work together. Obviously, there must be a mutual understanding that the package put together in the coming months will require Administration agreement. From the Administration's viewpoint, you should understand that support for any additional future projects or programs will be based on established planning and evaluation procedures, consistency with existing Federal programs, standards set forth in the President's water policy message of June 6, 1978, and consistency with existing budgetary constraints. Such standards are indeed more demanding, in some cases, than those being applied to the WEB proposal itself.

It should also be understood that, the prior decision to authorize and fund the Oahe unit, or any speculative evaluation of that authorization, cannot serve as a measure of what might be agreed upon in coming months. While no reasonable alternative can be ruled out at the beginning of this process, it is equally important to understand that agreement is unlikely if it is predicated on unresolvable budgetary, legal or political bases.

We have previously indicated our feeling that the formulation advanced by the South Dakota legislature cannot be the basis of agreement, and although you may initially wish to use it for discussion, we believe it is important for our views to be known at the outset.

The greatest opportunity for success rests in an effort to focus on water resource needs and sound planning to address them, rather than on settlement of legal or political differences. We are willing to take a number of steps to facilitate this effort, and ensure that it is as constructive as possible. For instance, we will support a decade-long reservation of Missouri River water for the state, as proposed by Senator McGovern, in an amount of water equal to that anticipated for the Oahe unit. In addition, we will take several specific steps related to the role of the Water and Power Resources Service in South Dakota. We will retain adequate staff in the Huron office to assist in this effort, and will review all presently authorized planning in South Dakota, and where possible, accelerate work on individual projects.

Most importantly, we want to contribute to the establishment of a new atmosphere of cooperation among state, Federal and local interests to address common problems. We will gladly enter into such an effort at the field and policy levels with the possibility of identifying new appraisal and feasibility level studies which can be supported for authorization by all the parties concerned.

Overall, we believe this approach meets the basic objectives set out in your May 12 letter, and does so in the manner most likely to yield subsequent agreement based on cooperative efforts over the coming months. We would appreciate an early response from the delegation, as time is drawing short to address the various legislative matters which are essential.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CECIL D. ANDRUS,
Secretary.

HOUSE OF REPRESENTATIVES,
Washington, D.C., June 30, 1980.

Hon. WILLIAM JANKLOW,
State Capitol,
Pierre, S. Dak.

DEAR BILL: Thanks for your excellent letter, dated June 13th, concerning WEB and the Oahe authorization. Although the public chronology of events may appear otherwise, your letter did not arrive until after the Congressional delegation had signed our letter of June 18th to Secretary Andrus, confirming our agreement with the Administration. We were, of course, aware of your concern, however; and we share it. That is why we insisted that there could be no agreement to advance WEB which would tie our hands with respect to the Oahe authorization. We have striven to achieve Administration support for WEB without "boxing ourselves in" on deauthorization, and it appears we have succeeded in doing so.

A copy of the June 18th reply we received from Secretary Andrus has been forwarded previously for your information, but another is attached for your convenience. Please note in particular the underlined portions of his letter. It is evident that the Secretary understands quite clearly that from our perspective WEB alone does not constitute adequate compensation for deauthorization of Oahe. He not only acknowledges our right to seek additional considerations, he offers assistance in identifying them. I, for one, intend to place great emphasis upon the Secretary's offer to "accelerate work on individual projects" and am already endeavoring to apply his offer to the benefit of the Grass Rope and Belle Fourche projects, the Hanson, B.D.M., and B-Y rural water systems, as well as the Lower James-Ft. Randall and Oahe Riverside irrigation studies. I believe there are other projects which deserve accelerated consideration, too; and the degree to which the Secretary makes good on his offer will help me, the entire Congressional delegation, and the people of South Dakota determine whether following through with deauthorization is to our advantage.

Let me make absolutely clear that I am not bound to support deauthorization of the Oahe Unit next year or anytime. Whether, in fact, I do support deauthorization will be determined by whether doing so will, in my judgment, contribute to the maximum degree possible to the good of the people of South Dakota—not just those in the WEB service area. If, for example, it appears that additional considerations can be garnered by holding onto the authorization beyond the "trigger date" of September 31, 1981, I shall not hesitate to oppose deauthorization until such time as those additional considerations can be realized. Of course, that may mean a delay in WEB (assuming WEB advances on the most optimistic schedule otherwise), but it is my view that the longterm good of all South Dakotans must prevail over the shortterm wishes of WEB's constituency.

If additional time is needed to study other projects, I shall fight to see that ample time is given; and that would not necessarily mean that WEB would have to be delayed. The express language supported by this Administration to authorize WEB as an amendment to the Rural Development Policy Act (H.R. 3580) would automatically deauthorize WEB if Oahe is not deauthorized by the end of Fiscal Year 1981, but you and I both hope and expect a new Administration will assume office in January. With the support of the new Administration, it may be an easy matter to amend the law to provide either an extension of the "trigger date" or even a straightforward authorization of WEB which is not contingent upon deauthorization of Oahe. Even if WEB is deauthorized after the expenditure of $1.9 million in FY81, though, the fact of that investment will enhance chances of resurrecting the project based upon its own

merits. Thus, as I see it, we are truly in a no loss position.

Let me address specifically a number of the points of your letter: First, the Administration and the South Dakota Congressional delegation do *not* have to agree on the terms of deauthorization. We have simply agreed to terms of the WEB authorization this year, which would require deauthorization of the Oahe Unit next year, if the WEB authorization is to remain in effect. We are not bound to any terms of deauthorization of Oahe. We have acknowledged our understanding that the Administration's position on any projects in addition to WEB will be based upon the President's water policies, but we are not constrained by those policies in our efforts to convince the Congress that South Dakotans deserve additional considerations. As I've already indicated, it is my intent to be ruthless, relentless, and untiring in the pursuit of such additional considerations; and, depending upon the outlook of such efforts, I do not view the "trigger date" of September 31, 1981, as an apocalyptic deadline.

Second, it is possible that nearly half of the construction funding for WEB will be virtually guaranteed before the "trigger date." That is because Congress should complete action on the FY82 appropriations prior to the end of FY81. This is a critical issue, the importance of which has escaped many of WEB's supporters and virtually all of those who are in a rush to deauthorize Oahe. If Oahe were prematurely deauthorized, it is very likely, as you suggest, that WEB would never be constructed. The delegation's agreement with the Administration addresses this issue in spades, however.

Not only must the Administration support authorization and first year funding of WEB in the amount of $1.9 million, but the President must include in his January Budget request to Congress at least $33 million in FY82 construction funding for WEB. (That is the FY82 construction cost estimate calculated by WEB's engineer.) Otherwise any shortfall of construction funding in the President's Budget will be a showing of bad faith upon the part of the Administration, and I mean to tell you here and now there is absolutely no agreement on my part to pursue deauthorization of the Oahe Unit if the Administration fudges on its agreement—quite the contrary, any showing of bad faith on the part of the Administration will stiffen still more my resolve to fight to uphold the interests of the people of our state. Even setting other considerations aside, it would be completely foolhardy and totally unforgiveable if the delegation stood by and watched Oahe deauthorization without guaranteeing construction funding for WEB.

Third, I share your dismay and am disgusted as well that Secretary Andrus continues to refuse to acknowledge the commitment of the Federal Government to our state. In pledging the Administration's support for WEB, though, the Secretary has unwittingly acknowledged by his action what he refuses to acknowledge by his word. That is, Department officials frankly state that WEB could not meet the Administration's water policy criteria based on its own merits; and yet the Administration, by the Secretary's letter of June 18th, does in fact support WEB in trade for the Oahe authorization. If that authorization has no value as argued by Departmental officials and if there is no special obligation to South Dakota, how is it that we are blessed with the Administration's endorsement of a $70 million project it would not "normally" support? As I see it, the Administration has by its actions conceded the point; and the issue is no longer whether there is a commitment but, rather, to what degree will the Federal Government live up to its commitment.

It may be possible to achieve a near consensus among South Dakotans as to the extent of the Federal commitment, along the lines of Senate Concurrent Resolution No. 8. Enactment of legislation, such as that I've drafted, to implement action to carry out the Federal Government's obligation will not be easy. Obviously, though, the greater the consensus within South Dakota, the better our chances of achieving action which as closely as possible reflects our wishes. Insofar as I am aware, Senate Concurrent Resolution No. 8 and my draft bill are the only efforts to achieve such a consensus; and both are broad enough (and subject to alteration) to accommodate the needs of the local sponsors of virtually any specific project. To be sure, we will not achieve development of every project sought by a local group, nor will it be easy to achieve development of any single project.

In my view, however, those who downplay the chances of success and discourage the effort are doing a disservice to the people of the state. As much as anyone, WEB's supporters have heard naysayers, and yet they have forged ahead. I believe their determination is a lesson for other local project sponsors, as well as for the Congressional delegation in attempting to serve the overall interest of the state.

That brings me to the final point I'd like to make—yes, it is true as you say, ". . . WEB is . . . being used as a political pawn in an effort to deny the rest of South Dakota its expected and deserved compensation under the Pick-Sloan Plan." There is no question of that fact, and it is fair neither to WEB's supporters nor to the other citizens of our state. As the President has pointed out, however, "Life is not fair;" and, under the circumstances, I believe the position taken by the Congressional delegation is the correct one at this time.

At this point we have everything to gain and nothing to lose in accepting the Administration's support for WEB and the Secretary's offer to accelerate other projects. Obviously, next year there will be something considerable to lose; i.e., the Oahe authorization. As I pointed out earlier, though, my actions at that point will be governed by the same test which I applied to the present agreement; namely, will it serve the overall best interests of the people of South Dakota?

It should be abundantly clear that I have reserved the right to apply that test, and it should be well understood as well that I share your belief our water development interests will fare better under a new Administration. There will be those who will say we are being "political" in expressing that belief, but in my view we would be shirking our duty if we failed to do so. Regardless of who sits in the White House next year, the election campaign affords an important opportunity to make him more aware of the commitment to our state. It's an opportunity not to be missed, and I commend the contribution your letter makes toward clarifying this vital issue for the Congressional delegation and for the people of our state.

With best personal wishes,

Sincerely,

JAMES ABDNOR,
Member of Congress.

H.R. —

A bill to authorize the Secretary of the Interior to provide to the State of South Dakota funds for the development and implementation of plans for the mitigation of economic losses to the State which have occurred as a result of the taking of land within South Dakota for the Missouri River Basin project, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PLANNING GRANTS

SECTION 1. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to make grants to the State of South Dakota (hereinafter referred to as the "State") to develop plans for the mitigation of economic losses incurred within the State as a result of the taking of land by the United States for the Missouri River Basin project initially authorized by section 9 of the Act of December 22, 1944 (58 Stat. 891).

(b) The grants shall cover the cost to the State of the development of economic development plans for the State or any sector thereof.

(c) The plans should, among other things, provide for the establishment or improvement of commercial, industrial, or agricultural facilities that increase, expand, or protect the economic base of the State and job opportunities in the State, including energy utilization and availability, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, and irrigation.

PROJECT GRANTS

SEC. 2. The Secretary is authorized to make grants to the State to carry out the economic development plans referred to in section 1. A grant may be approved by the Secretary to carry out the plan only after the Secretary reviews the plan and determines that it is economically feasible under the terms of this Act.

APPLICATIONS

SEC. 3. A grant authorized by section 1 or 2 may be made only upon application by the State to the Secretary at such time or times and containing such information as the Secretary may prescribe. No such application shall be approved unless it—

(1) in the case of a grant to carry out a plan, sets forth, in detail, the economic development plan;

(2) provides such fiscal control and accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State pursuant to the grant; and

(3) provides for making such reports, in such form and containing such information, as the Secretary may require, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

MAXIMUM DEVELOPMENT GRANTS

SEC. 4. (a) Federal grants under section 2 shall not exceed 95 per centum of the cost to carry out an economic development plan developed by the State under section 1 and shall not exceed 90 per centum of the cost of any economic development plan for which the State requires repayment under subsection (b), except that the Secretary may make available to the State and local sponsoring agencies 100 per centum of the cost to carry out any economic development plan for which the State or local sponsoring agencies agree to repay 10 per centum of the cost.

(b) The Secretary may, if requested to do so by the State, enter into contracts, with the State and local sponsoring agencies designated by the State, for repayment of that portion, as determined by the State, of the total cost of carrying out the plan which is not covered by the grant made by the Secretary. The terms of repayment shall be determined by the State and approved by the Secretary, except that the State may require repayment by local sponsoring agents of an amount in addition to that required to recover 10 per centum of the cost and such additional amount shall accrue to the State.

AVAILABILITY OF HYDROPOWER

SEC. 5. Notwithstanding any other provision of law, as soon as practicable and during each calendar year thereafter, the Western Area Power Administration shall make available according to the direction of the State not less than 170,200 kilowatts of electric power and shall sell according to the direction of the State not less than

310,800,000 kilowatt hours of electric energy at a price not to exceed the cost of production and transmission of such energy, except that the State may establish a higher price, and any revenues collected in excess of the cost to the Western Area Power Administration shall accrue to the State. To qualify for the receipt of electric power or revenues under this section, the State shall submit to the Secretary a plan for the sharing of any such power or revenues with Indian tribes within the State and, after consulting with such Indian tribes, the Secretary shall determine that such plan provides for the equitable sharing of such power or revenues.

DEAUTHORIZATION OF CONSTRUCTION OF THE INITIAL STAGE OAHE UNIT, JAMES DIVISION, MISSOURI RIVER BASIN PROJECT

SEC. 6. (a) The construction, operation, and maintenance by the Secretary of the initial stage Oahe Unit, James Division, Missouri River Basin project, South Dakota, authorized by the Acts of August 3, 1968 (82 Stat. 624), and October 27, 1972 (86 Stat. 1265), for the purpose of furnishing a surface irrigation water supply and for other purposes, is hereby deauthorized and is no longer an integral physical or financial part of the comprehensive Pick-Sloan Missouri Basin program that was approved by section 9 of the Act of December 22, 1944 (58 Stat. 891), as amended and supplemented.

(b) Those Oahe Unit works, facilities, and related properties that have been acquired or constructed shall be disposed of by the Secretary according to a plan developed by the State and approved by the Secretary under the authority of this Act.

(c) Those funds previously expended pursuant to authorities contained in the Acts of August 3, 1968 (Public Law 90-453; 82 Stat. 624), and October 27, 1972 (Public Law 92-577, 86 Stat. 1265), shall be charged against the general fund of the Treasury of the United States and shall not be charged against the Pick-Sloan Missouri Basin program, except that all costs assigned to the initial stage Oahe unit which are deferred without interest shall be retained as interest free costs of the Pick-Sloan Missouri River Basin program.

AUTHORIZATION

SEC. 7. There are authorized to be appropriated to the Secretary to carry out sections 1 and 2 of this Act for fiscal years beginning after September 30, 1981, an amount equal to the cost, in current dollars and as calculated by the Secretary, of completing the initial stage Oahe Unit, indexed by the Secretary for inflation.

GRANTS FOR INDIAN TRIBES

SEC. 8. (a) The Secretary may make grants to any Indian tribe within the State for the same purposes and on the same terms as grants may be made to the State under this Act, except that the chairman of any such tribe shall submit to the Secretary an application for such grant. Any grant made to an Indian tribe under this section shall be in accordance with the Leavitt Act (25 U.S.C. 386a).

(b) There are authorized to be appropriated to the Secretary to carry out subsection (a) of this section for fiscal years beginning after September 30, 1981, an amount which does not exceed 60 per centum of the amount appropriated to the Secretary pursuant to section 7.

Mr. Speaker, I strongly urge enactment of the compromise version of the Rural Development Policy Act, which has been offered today as a substitute for H.R. 3580.

● Mr. ALBOSTA. Mr. Speaker, I strongly support H.R. 3850, the Rural Development Policy Act as proposed by the House Agriculture Committee today. This legislation which directs the Secretary of Agriculture to assume the leadership on rural development policy within the executive branch and to coordinate a nationwide rural development program, is needed now.

For too long rural areas, often lacking the resources to compete with large cities for grants and economic development assistance, have not received their fair share from the Federal Government. This country must have a strong rural and urban economy. H.R. 3850 provides the tools for reaching this goal in rural areas. Better coordination of Federal programs in rural areas, protecting our natural resources and, most of all, strengthening the family farm will help us reach this goal. The Department of Agriculture is the right agency to take the lead in working for better conditions in rural areas, and I believe this policy emphasis at USDA is long overdue.

Having lived in a rural area all of my life, I know that our needs are different from Detroit, Chicago, and New York. The Rural Development Policy Act is one important step the Federal Government can take in helping to meet these needs of rural areas so our country will be stronger and our Government operate more efficiently for everyone.●

● Mr. BROYHILL. Mr. Speaker, I rise in support of H.R. 3580, the Rural Development Policy Act of 1980.

As vice chairman of the Congressional Rural Caucus, I have studied this legislation with some interest. The caucus has worked diligently with the administration to craft a bill which responsibly addresses what we have determined to be a problem of great magnitude. I am referring to the growing tendency of Government policies and regulations to neglect the needs of small cities, towns, and rural areas. This is evident, not only on a programmtic level, but also on a structural level as well.

It is evident that we need to insure a more comprehensive, coordinated and responsible effort to aid rural America.

The Rural Development Policy Act aims to do just that. The bill calls for a nationwide rural policy, to be developed and administered at all levels—local, State, and Federal. The Secretary of Agriculture is charged with development and implementation of a rural development strategy. In addition, a position of Under Secretary of Agriculture for Small Community and Rural Development would be established, so that we can make sure certain rural interests are being served.

The bill provides funding to the Farmers Home Administration for the dissemination of technical and information assistance on Government programs. It is also important to note that H.R. 3580 calls for a review of Federal programs to insure the needs of rural areas are being met. It contains a provision calling for administrative reforms and an elimination of excessive reporting requirements.

The review provision and the simplification of the administrative process provision are two important concepts within H.R. 3580 which I feel could be extended to the Government as a whole. That is why I have been advocating passage of comprehensive regulatory reform legislation for the entire Government. I would urge my colleagues to take this opportunity to reflect upon the need for such reform as soon as possible.

In closing, I reiterate my support for the Rural Development Policy Act, and indeed, for Government recognition of rural America and its needs.●

Mr. DASCHLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GRASSLEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time, as well.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from South Dakota (Mr. DASCHLE) that the House suspended the rules and pass the bill, H.R. 3580, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes."

A motion to reconsider was laid on the table.

Mr. DASCHLE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 670) to require the Secretary of Agriculture to establish and maintain a rural development policy management process, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Dakota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 670

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rural Development Policy and Coordination Act of 1979".

SEC. 2. Congress finds that the efforts conducted under title IX of the Agriculture Act of 1970 and the Rural Development Act of 1972 have been insufficient to achieve the planning and coordination needed for the development of a national rural development policy that will ensure a sound balance between rural and urban America. Persons living in rural areas of the United States do not have convenient, useful, and unbureaucratic access to programs sponsored or funded by the Federal Government and the Federal Government has failed to adequately address the problem through an active coordination. The diverse Federal, State, and local programs that affect rural America must be coordinated and systematically reviewed and analyzed. Without this coordination and review, Federal rural development efforts result in wasteful duplication of effort and excessive confusion that burdens the effective delivery of services and assistance to rural areas. It is hereby declared to be the policy of Congress to provide for the effective implementation of the congressional mandate for coordination and planning of rural development efforts contained in the Rural Development Act of 1972 and title IX of the Agricultural Act of 1970.

SEC. 3. Section 526 of the Revised Statutes as amended (7 U.S.C. 2204), is amended by

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striking out the last two sentences of subsection (b) and inserting in lieu thereof the following: "In carrying out this responsibility the Secretary of Agriculture shall establish and maintain a rural development policy management process in partnership with local and State governments and involving all executive branch departments and agencies and major private institutions having policies and programs affecting the quality of life in rural areas. This policy management process shall include, but not be limited to—

"(1) the development, collection, dissemination, and assessment of data and information necessary to determine and compare rural and metropolitan conditions, problems, needs, and opportunities for development at the national, multi-State, State, and sub-State levels, and the effect of governmental policies and program thereupon;

"(2) the formulation of broad, long-range rural development goals, policies, and strategies, at the national, multi-State, State, and sub-State levels that are consistent with the balanced growth and development of the Nation;

"(3) the establishment of short-range rural development strategies, plans, and program objectives by Federal, State, and local agencies that are consistent with the long-range strategies and support long-range goals; and

"(4) the periodic reporting of progress made toward meeting the board, long-range national goals and specific short-range program objectives and the identification of needed changes in the rural development program.

SEC. 4. (a) Section 901 of the Agricultural Act of 1970, is amended by—

(1) striking out the last sentence of subsection (b); and

(2) repealing subsections (c), (d), (e), and (f).

(b) Section 603(c) of the Rural Development Act of 1972, is amended by—

(1) amending paragraph (2) to read as follows:

"(2) The Secretary shall make an appraisal every five years of rural conditions, needs, problems, and the opportunities for development in rural areas of the United States. The Secretary's report of this appraisal shall be delivered to the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Committee on Agriculture, and the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry on the first day after Congress convenes in 1983 and on that day every five years thereafter. Each appraisal shall include, but not be limited to—

"(A) the establishment of broad, long-range national rural development goals that reflect national policy with respect to the quality of life in rural areas and are consistent with the balanced growth and development of the Nation;

"(B) an inventory and description of specific problems, needs, and opportunities for development as they relate to national rural development goals;

"(C) recommended long- and short-range strategies needed to address the problems, needs, and opportunities for development identified in the inventory; and

"(D) recommended policy, program, and budget changes needed in the national rural development policy to implement the proposed development strategies."; and

(2) adding new paragraphs (3) and (4) as follows:

"(3) The Secretary shall make a biennial report on the progress made toward attaining the national rural development goals. This report shall be submitted to the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Committee on Agriculture, and the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry on the first day after Congress convenes in 1981 and on that day every two years thereafter, except that no report is required in those years in which the five-year rural development progress appraisal is submitted. Each biennial report shall include but not be limited to—

"(A) a comparison of rural and metropolitan employment, income, and population conditions and trends;

"(B) an identification and discussion of the problems, needs, and opportunities of those rural areas that differ significantly in terms of employment, income, and population experience from metropolitan standards;

"(C) an appraisal of housing in rural areas that (i) analyzes conditions affecting rural housing and Federal rural housing programs, (ii) provides information on the Federal program strategies to be employed over the next succeeding two years to deal with rural housing problems, (iii) identifies specific rural areas and population groups having the greatest housing needs, and (iv) provides information on the short-range strategies to be employed by the Federal Government to meet those needs;

"(D) data on the needs of rural Americans for selected community facilities and services and a statement of the Federal strategy to be employed to meet those needs. The specific community facilities and services to be assessed in each biennial report shall be selected after consultation with the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry;

"(E) an analysis of the needs of disadvantaged rural people (including, but not limited to, migrant farmworkers) that reviews the needs and problems of selected population groups and describes the Federal strategy for meeting their problems; and

"(F) an analysis of Federal outlays in rural areas as contrasted with those in metropolitan areas.

"(4) The Secretary may initiate new and expand on-going research and development efforts related to the solution of rural development, economic, technological, and social problems.".

SEC. 5. There are hereby authorized to be appropriated annually not to exceed $1,500,000 for the development of a rural development policy management process that shall include both an appraisal every five years of rural conditions, needs, problems, and opportunities for development, and a biennial report on progress toward attaining national rural development goals.

SEC. 6. Section 306(a)(11) of the Consolidated Farm and Rural Development Act is amended to read as follows:

"(11) The Secretary may make grants, not to exceed $15,000,000 annually, to public bodies or such other agencies as the Secretary may select to assist in establishing and maintaining the rural development policy management process provided for under section 526(b) of the Revised Statutes, as amended (7 U.S.C. 2204), at the State and sub-State levels. Such grants are to be used to establish and maintain a process to—

"(A) collect data and information needed to assess area and State rural conditions, needs, problems, and opportunities;

"(B) establish local and State government rural development policies, strategies and program objectives to address these conditions, needs, problems, and opportunities;

"(C) enable participation by the grantees in the Federal, State, and local rural development policy management process;

"(D) design, in conjunction with other levels of government, programs needed to implement rural development goals, objectives, and strategies; and

"(E) provide for a flow of rural development information among the citizens, local governments, designated sub-State planning bodies, State governments, and the Federal Government.".

SEC. 7. Section 306(a) of the Consolidated Farm and Rural Development Act is amended by—

(1) redesignating paragraphs (12), (13), and (14) as paragraphs (13), (14), and (15), respectively; and

(2) inserting immediately following paragraph (11) a new paragraph (12) to read as follows:

"(12) The Secretary shall provide for the establishment and operation in no less than five rural states rural information and assistance centers (hereinafter referred to as 'centers'.) The centers shall be established and operated as demonstration projects—

"(A) The centers shall be established in geographically dispersed areas of the United States, taking into consideration the geography of the areas in which the centers are to be located, the rural population of the areas in which they are to be located, and accessibility and convenience to the rural population.

"(B) The Secretary, through grants, contracts, or cooperative agreements with any public or private nonprofit organization, college or university, State or local agency, governmental planning body shall assure the operation of such centers. Contracts, grants, or cooperative agreements entered into for the operation of the centers shall be for a period of at least two but not more than three years. The Secretary shall provide such technical assistance and training as may be necessary to provide the most accurate, timely, systematic, and comprehensive exchange of information on federally sponsored or funded programs. The Secretary may contract with commercial time-sharing firms in order to carry out these purposes.

"(C)(1) It shall be the function of each center to provide to persons living in rural areas, to officers and employees of government at all levels, elected officials, and to regional, district, and local planning bodies current, accurate, and comprehensive information with respect to all federally sponsored or funded programs. It shall also be the function of each center to provide its users with such technical assistance and training as may be necessary. It shall also be the function of each center to provide for the widest possible dissemination of all information available to the center.

"(2) The Secretary shall provide the centers with as much information as possible regarding new Federal programs at the earliest practicable time after the establishment of such programs, particularly those programs not yet listed in the Catalogue of Federal Domestic Assistance or on the Federal Assistance Program Retrieval System, and the centers shall make through the best available state-of-the-art information to the persons it serves at the earliest practicable time after receiving it from the Secretary.

"(D) The Secretary shall give the centers the widest possible discretion in their operations and shall encourage the centers to conduct for the users of such centers, under contractual arrangements with such users, analytical type studies using the information available to the centers.

"(E)(1) In order to carry out the demonstration projects the Secretary shall obtain from all departments and agencies of the Federal Government the most comprehensive, current, and applicable information that can be made available with respect to programs operated or funded by such departments and agencies and provide such information to the centers. This is to include but not be limited to elements of the following data bases: Federal Procurement Data System, Federal Assistance Program Retrieval System, Catalogue of Federal Domestic Assistance, Geographic Distribution of Federal Funds, United States Census Information, Code of Federal Regulations, Federal Assistance Award Information, and other such data bases.

"(2) Coordinating Federal interagency bodies and the heads of all departments and agencies of the Federal Government shall cooperate and assist the Secretary in providing such information as may be needed for the purposes of this Act.

"(F) The Secretary shall submit a written report to Congress one year after the date of enactment of this Act, and annually thereafter, reviewing the actions taken under this Act and the operations of the centers during the past year. The Secretary shall include in each such report his evaluation of the program being carried out under this Act together with such recommendations for new legislation as he deems necessary or appropriate to improve such program.

"(G) Funds authorized to be appropriated in section 306(a)(11) shall be used to carry out the demonstrations.".

SEC. 8. The provisions of this Act shall become effective October 1, 1979.

MOTION OFFERED BY MR. DASCHLE

Mr. DASCHLE. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. DASCHLE moves to strike out all after the enacting clause of the Senate bill, S. 670, and to insert in lieu thereof the provisions of the bill, H.R. 3580, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3580) was laid on the table.

House Resolution 438 was laid on the table.

GENERAL LEAVE

Mr. DASCHLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Dakota?

There was no objection.

WEST VALLEY DEMONSTRATION ACT

Mr. McCORMACK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6865) to authorize the Department of Energy to carry out a high level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y., as amended.

The Clerk read as follows:

H.R. 6865

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "West Valley Demonstration Project Act".

SEC. 2. (a) The Secretary shall carry out, in accordance with this Act, a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities.

(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solification.

(2) The Secretary shall develop containers suitable for the permanent disposal of the high level radioactive waste solidified at the Center.

(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal respository for permanent disposal.

(4) The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project.

(5) The Secretary shall decontaminate and decommission—

(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

(B) the facilities used in the solidification of the waste, and

(C) any material and hardware used in connection with the project,

in accordance with such requirements as the Commission may prescribe.

(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

(2) The Secretary shall consider the various technologies available for the solidification and handling of high level radioactive waste taking into account the unique characteristics of such waste at the Center.

(3) The Secretary shall—

(A) undertake detailed engineering and cost estimates for the project,

(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques.

(C) conduct appropriate safety analyses of the project, and

(D) prepare required environmental impact analyses of the project.

(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 under which the State will carry out the following:

(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

(B) The Secretary shall provide technical assistance in securing required license amendments.

(C) The State shall pay 10 per centum of the costs of the project, as determined by the Secretary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

(c) Within one year from the date of the enactment of this Act, the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project. The agreement shall provide for the following:

(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan, the Secretary shall publish a notice in the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secretary does not revise the plan to meet objections specified in the comments of the Commission, the Secretary shall publish in the Federal Register a detailed statement for not so revising the plan.

(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

(3) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger to the public health and safety which may be presented by the project.

(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, and the commercial operator of the Center.

SEC. 3. (a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

SEC. 4. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

SEC. 5. (a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shal be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of

1954 or the Energy Reorganization Act of 1974. This Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

SEC. 6. For purposes of this Act:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "State" means the State of New York.

(4) The term "high level radioactive waste" means the high level radioactive waste which was produced by the reprocessing at the Center of scent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high level radioactive waste for purposes of protecting the public health and safety.

(5) The term "transuranic waste" means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

(6) The term "low level radioactive waste" means radioactive waste not classified as high level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(7) The term "project" means the project prescribed by section 2(a).

(8) The term "Center" means the Western New York Service Center in West Valley, New York.

The SPEAKER pro tempore. Is a second demanded?

Mr. CORCORAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

Mr. BAUMAN. Mr. Speaker, reserving a right to object to the ordering of a second, would the Chair entertain a call of the House at this point?

The SPEAKER pro tempore. The Chair would like to say to the gentleman from Maryland that the Chair would like to finish, unless the gentleman insists.

Mr. BAUMAN. Mr. Speaker, I move a call of the House.

The SPEAKER pro tempore. At this time the Chair declines to recognize the gentleman for that purpose.

Mr. BAUMAN. Mr. Speaker, I object to the ordering of the second, and on that I demand tellers.

Tellers were ordered, and the Speaker pro tempore appointed as tellers Mr. MCCORMACK and Mr. BAUMAN.

PARLIAMENTARY INQUIRY

Mr. McCORMACK. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. McCORMACK. Mr. Speaker, will the Chair please explain for all Members present exactly what the present parliamentary situation is and on what the Members will be voting by tellers?

The SPEAKER pro tempore. The question is on the ordering of the second and a motion to suspend the rules.

The House divided, and the tellers reported that there were—yeas 14, nays 1.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 244, nays 0, answered "present" 1, not voting 187, as follows:

[Roll No. 540]

YEAS—244

Abdnor
Addabbo
Akaka
Alexander
Annunzio
Archer
Ashley
Badham
Bafalis
Bailey
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bevill
Bingham
Blanchard
Boggs
Boiling
Bonior
Brinkley
Brodhead
Brooks
Broomfield
Broyhill
Buchanan
Burgener
Burlison
Burton, Phillip
Carter
Cavanaugh
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Danielson
Dannemeyer
Daschle
Davis, Mich.
Deckard
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Downey
Duncan, Tenn.
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Erdahl
Ertel
Evans, Del.
Fascell
Fazio
Fenwick
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Frenzel
Frost
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hamilton
Hammer-schmidt
Hance
Hansen
Harris
Hawkins
Hillis
Hinson
Hopkins
Howard
Hubbard
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lewis
Livingston
Lloyd
Loeffler
Lott
Lowry
Luken
Lundine
Lungren
McCormack
McDonald
McHugh
Madigan
Markey
Marriott
Martin
Matsui
Mazzoli
Mica
Michel
Miller, Calif.
Miller, Ohio
Mineta
Mitchell, Md.
Mitchell, N.Y.
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Murphy, Pa.
Murtha
Natcher
Nichols
Nolan
Oakar
Ottinger
Pashayan
Pepper
Perkins
Petri
Pickle
Porter
Preyer
Price
Quillen
Rahall
Railsback
Ratchford
Regula
Reuss
Rhodes
Ritter
Robinson
Rose
Roth
Rousselot
Royer
Rudd
Sabo
Satterfield
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shumway
Skelton
Smith, Nebr.
Snowe
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Taylor
Thompson
Trible
Udall
Ullman
Van Deerlin
Vento
Volkmer
Walker
Wampler
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Wilson, Tex.
Winn
Wylie
Yates
Young, Alaska
Young, Fla.
Zablocki

ANSWERED "PRESENT"—1

Horton

NOT VOTING—187

Albosta
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Anthony
Applegate
Ashbrook
Aspin
Atkinson
AuCoin
Baldus
Barnes
Bereuter
Bethune
Biaggi
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brown, Calif.
Brown, Ohio
Burton, John
Butler
Byron
Campbell
Carney
Carr
Chappell
Cheney
Chisholm
Cleveland
Collins, Ill.
Corman
Cotter
Daniel, R. W.
Davis, S.C.
de la Garza
Dellums
Dixon
Dodd
Donnelly
Dornan
Dougherty
Drinan
Duncan, Oreg.
Early
Eckhardt
Emery
English
Erlenborn
Evans, Ga.
Evans, Ind.
Fary
Ferraro
Findley
Fish
Ford, Mich.
Fountain
Fowler
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Goldwater
Gray
Green
Hall, Ohio
Hall, Tex.
Hanley
Harkin
Harsha
Heckler
Hefner
Heftel
Hightower
Holland
Hollenbeck
Holt
Holtzman
Huckaby
Hughes
Ireland
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kostmayer
LaFalce
Leach, La.
Lederer
Lent
Levitas
Long, La.
Long, Md.
Lujan
McClory
McCloskey
McDade
McEwen
McKay
McKinney
Maguire
Marks
Marlenee
Mathis
Mattox
Mavroules
Mikulski
Minish
Moakley
Mottl
Murphy, Ill.
Murphy, N.Y.
Musto
Myers, Ind.
Myers, Pa.
Neal
Nedzi
Nelson
Nowak
O'Brien
Oberstar
Obey
Panetta
Patten
Patterson
Paul
Pease
Peyser
Pritchard
Pursell
Quayle
Rangel
Richmond
Rinaldo
Roberts
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Russo
Santini
Sawyer
Scheuer
Shannon
Shelby
Shuster
Simon
Smith, Iowa
Snyder
Solarz
Staggers
Stark
Tauke
Tauzin
Thomas
Traxler
Vander Jagt
Vanik
Walgren
Watkins
Waxman
Weiss
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Yatron
Young, Mo.
Zeferetti

□ 1250

So a second was ordered.

The result of the vote was announced as above recorded.

□ 1300

The SPEAKER pro tempore. The gentleman from Washington (Mr. MCCORMACK) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. CORCORAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Washington (Mr. MCCORMACK).

Mr. McCORMACK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 6865 authorizes the Department of Energy to conduct a research, development, and demonstration program on the process for glassification, vitrification, or solidification of high level radioactive wastes, a step that is necessary prior to the ultimate disposal of these materials.

Under the program, the Department will take the liquid waste presently stored in tanks at the Western New York

Nuclear Service Center in West Valley, N.Y., and convert it into a solid, insoluble substance to make it totally safe for transportation and final disposal. In conducting this program, the DOE will develop essential data, experience, and materials for the later demonstration of techniques for permanently disposing of nuclear wastes. In this regard, it is my hope that further legislation dealing with all of the steps in the high level waste disposal process will be brought before this body before the end of this session.

Before describing this bill further, I congratulate and commend the gentleman from New York (Mr. LUNDINE), a member of the Committee on Science and Technology, for his tireless efforts in drafting this legislation, in working with the committees and subcommittees of jurisdiction and providing a vital link between his constituents and the State of New York and the Congress. He has done an outstanding job in addressing this complex issue surrounding this subject.

I also congratulate the chairman of the Committee on Science and Technology (Mr. FUQUA), the other members of the Committee on Science and Technology, and especially the Subcommittee on Energy Research and Production, the ranking minority member, the gentleman from New York (Mr. WYDLER), who worked hard to bring this legislation before the House, and of course, the chairman of the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce which had joint jurisdiction on this bill, the gentleman from Michigan (Mr. DINGELL), who also worked diligently in adding his perspective and that of his subcommittee to this bill.

Although the major benefit from the project authorized in this bill will accrue to the Federal Government and the people of this country through the advancement of the understanding of the technology for disposing of high level wastes, the bill recognizes that the State of New York also benefits from the conduct of this project and that the State of New York will assume total liability for the plant and for the entire facility as of January 1981. For this reason, the bill also requires that the cost of the project shall be shared by the Federal Government and the State of New York. I believe this is an equitable arrangement.

Among other things, the bill directs the Secretary of Energy to file reports with the Nuclear Regulatory Commission and keep it informed regarding the project. Since the demonstration facilities will be constructed on the site currently licensed by the Nuclear Regulatory Commission, the bill also provides that the NRC may prescribe requirements for decontamination and decommissioning of the demonstration facilities and may require certain safety reports from the Department of Energy. These requirements were specified so the project does not compromise further licensing related decisions by the Nuclear Regulatory Commission.

H.R. 6865, however, does not change the fundamental nonregulatory relationship that would otherwise obtain between these two Government agencies and the conduct of research, development, and demonstration in nuclear energy. The bill directs the DOE to proceed with this project and DOE is not subject to NRC control or licensing, except for the two very limited instances noted above, that is, that the NRC may prescribe requirements for decontamination and decommissioning and may require certain safety reports. Other than these two instances, the NRC is in purely an advisory situation. It is anticipated that NRC might need to amend its license on West Valley to take cognizance of the DOE involvement at the site, but that this would be purely an administrative technicality that would not affect the project. These very limited regulatory provisions should not be interpreted as a precedent for direct NRC responsibility of research, development, and demonstration activities by the Secretary. I understand the gentleman from Michigan, whose subcommittee suggested this careful cooperative approach, concurs with this interpretation.

The bill also provides for public hearings or meetings to advise the communities surrounding the project of the Department's plans for carrying out the project. I believe the local communities should be kept well informed of the Government's activities in West Valley.

The total project cost is estimated to be about $300 million, of which the Federal Government would be paying 90 percent. The total cost may be much less, however, depending upon the choice of technologies. This will be decided in the future.

This bill authorizes an appropriation of $5 million for the fiscal year 1981, and this is the amount requested by the administration and approved by the Committee on Science and Technology in its fiscal year 1981 Department of Energy authorization bill. The appropriation of this amount has already passed the House.

I believe this legislation is a necessary step in the Government's program of research, development, and demonstration of the technology for disposing of high-level radioactive wastes, and I urge all of the Members to support it.

Before I yield time I want to show the Members a sample of what radioactive wastes will look like when they are converted to glass. I have in my hand here a small cube. It is four cubic inches and it is a cube of obsidian rock. This obsidian rock was naturally formed by volcanic action in the State of Oregon. As it happens, the nuclear wastes, when they are glassified, will have virtually the identical chemical composition. We have already glassified wastes, of course, in this and many other countries, and this particular piece of obsidian is between 15 and 20 million years old. This is what the liquid wastes will look like when they solidify in the canister a few hours after they are poured, and that is what they will look like 15 million years later in deep geological storage. Of course, the radioactivity will long since have died out. The glassified wastes will decay to a level of toxicity equal to the uranium ore from which it came, in about 500 years.

This is the program we are undertaking, then, to convert the liquid wastes to solids for permanent geologic disposal.

Mr. Speaker, I now yield such time as he may consume to the gentleman from New York (Mr. LUNDINE) who is the key person in writing this bill and bringing it to us at this time.

Mr. LUNDINE. Mr. Speaker, first I would like to thank the chairman of the Committee on Science and Technology, the gentleman from Florida (Mr. FUQUA), for his outstanding cooperation. Likewise, I would like to thank the subcommittee chairman, the gentleman from Washington (Mr. MCCORMACK) as well as the gentleman from Michigan (Mr. DINGELL), in addition to the chairman of the Interstate and Foreign Commerce Committee, the gentleman from West Virginia (Mr. STAGGERS), and the chairman of the Interior and Insular Affairs Committee also having jurisdiction over this matter, the gentleman from Arizona (Mr. UDALL). I would like to express my thanks for their outstanding cooperation and I especially want to thank my colleague from New York (Mr. WYDLER) who could not be here today, and the gentleman from Ohio (Mr. BROWN), ranking member on the Energy and Power Subcommittee, for their worthwhile work on this project.

Other colleagues of mine from New York, including Mr. OTTINGER, who serves on both committees, have been very important in moving this legislation to where the House can now consider it.

Mr. Speaker, I rise in support of H.R. 6865, legislation authorizing the Department of Energy to undertake a high level nuclear waste solidification demonstration project at the Western New York Nuclear Service Center in West Valley, N.Y. This legislation is important, not only for the tiny West Valley community which I represent in Congress, but also for this country as a whole as we try to move forward to coordinate and implement an effective national program to safely manage and dispose of our nuclear wastes.

This technological demonstration project has received careful and extensive consideration over the past 2 years and today benefits from broad-based support. This project has already been approved by the House once as part of the fiscal year 1980 Department of Energy authorization bill. Unfortunately, the Senate chose not to act on this bill, making necessary the further legislative action we are taking today by considering H.R. 6865. A similar bill, S. 2443, was approved by the Senate in June. The House has also approved a $5 million appropriation to accompany this authorization as part of the energy and water appropriations bill.

I appreciate the cooperation and support of members of the Science and Technology, Interior, and Commerce Committees, particularly their ranking majority and minority members, in steering this bill to the floor for your consideration today. The bill has benefited from the dialog and contributions from all of these committees with shared jurisdiction over this matter. In addition, I am pleased we have arrived at mutually acceptable provisions to the

administration and nuclear and environmental communities.

West Valley is the site of the only commercial nuclear reprocessing operation ever in the history of the United States. The reprocessing center was encouraged by the Atomic Energy Commission as an important step to help close the back end of the nuclear fuel cycle. The center began operations in 1966 and was closed in 1972 when upgraded seismic requirements from the Nuclear Regulatory Commission made it uneconomic to continue operations. The operation would not have been possible had not the Federal Government concluded a "baseload agreement" to provide the major portion, nearly 70 percent, of the fuel for reprocessing.

The West Valley site is licensed by the Nuclear Regulatory Commission with New York State and Nuclear Fuel Services, Inc. acting as colicensees of the site. The site is owned by New York State but Nuclear Fuel Services operates the site under a contractual arrangement which permits them to transfer ultimate responsibility for the disposition of the nuclear waste on the site to the State of New York. Nuclear Fuel Services, Inc. has indicated they intend to take action to do so on December 31, 1980.

Located on the site from reprocessing operations are about 580,000 gallons of high-level liquid nuclear waste stored in two carbon tanks, a nuclear fuel reprocessing plant being maintained in a shutdown condition, a spent fuel pool with a capacity of 250 metric tons which is approximately two-thirds full at the present time, and two shut-down solid nuclear waste burial grounds; one licensed by the NRC and the other by the State of New York.

The project authorized by the bill would solidify the 580,000 gallons of high-level liquid waste at the site. This undertaking has important value as a cost-effective demonstration of our ability to safely and successfully implement a program to manage high-level liquid nuclear wastes. Solidification of high-level liquid nuclear waste of the type at West Valley has never been demonstrated anywhere in the United States on a significant scale. The project authorized by this bill would require the first integrated production scale operation for high-level liquid nuclear waste solidification. The facilities and hardware already at the center, which will be contributed as part of the New York State share of this project and utilized by the Federal Government, will make this a cost-effective undertaking that otherwise would require a large infusion of taxpayer dollars to provide similar facilities and hardware at any other site elsewhere around the country.

As I previously described, there are also two solid waste burial grounds and a partially filled spent fuel pool at the West Valley site. The provisions of H.R. 6865 do not extend to these aspects of the West Valley site, but rather permit the future disposition of these facilities to be determined separately. In other words, H.R. 6865 does not authorize or otherwise provide for the establishment of an "away from reactor" interim storage facility for spent nuclear fuel or reopening of the low-level waste nuclear burial ground at the site.

H.R. 6865 limits the Federal liability in regard to the entire site to the conduct of the project specifically defined in the bill. The bill prohibits the transfer of ownership of the site to the Federal Government, thereby leaving long-term responsibility for the entire site with the State of New York. H.R. 6865 furthermore does not authorize the transfer of title to the high-level liquid nuclear waste to be used in the project, but would not prohibit taking of title to these wastes under some other or future provision of law.

Furthermore, the bill provides for a cost-sharing arrangement between the Federal Government and State of New York whereby the Federal Government would contribute 90 percent of the costs of the solidification project and the State of New York 10 percent. This provision was included in recognition of the fact that as owner of the West Valley site and wastes, the State of New York will benefit from the elimination of a potential public health and safety hazard that may develop if these wastes are not solidified and disposed of in a proper and timely fashion.

H.R. 6865 also protects the rights and authority of the State of New York and Nuclear Fuel Services for pursuing any action to recover any costs from each other or any other appropriate person for past actions at the site. In summary, the cost-sharing arrangement, benefits, responsibilities, and liabilities are fairly proportioned under the provisions of H.R. 6865.

As the representative in this legislative body of the people of West Valley, I am naturally concerned that this project go forward with the utmost regard for the health and safety of those living in the vicinity of the project and those who will be employed during the course of the project. I am convinced, and there is consensus surrounding this matter, that the provisions of H.R. 6865 will provide the necessary safeguards to protect public health and safety.

Although H.R. 6865 clearly does not intend this project to be licensed by the Nuclear Regulatory Commission, it addresses in detail a meaningful consultive role for the NRC which will insure public involvement in decisions surrounding implementation of the project. The Department of Energy is required to hold public hearings to inform the public of activities to be undertaken under the project and to solicit their comments. The plan for solidification of the high level wastes at the West Valley site must be submitted to the NRC for review and comment. If there are any objections to the DOE plan, the NRC must publish them in the Federal Register for public comment. The DOE is then required to address the Commission's concerns and explain in the Federal Register the actions they intend to take as a result. The Department of Energy is further required to make available to the NRC all safety analyses and other information relating to matters of public health and safety. Finally, the bill provides that once the project is complete, the facilities and hardware used in connection with the project will be decontaminated to a level prescribed by the NRC.

In summary, H.R. 6865 is a carefully drawn bill which has the support of the administration, three congressional committees who have carefully considered its benefits to this country, the colicensees of the West Valley site—New York State and Nuclear Fuel Services, and the West Valley community. This demonstration project will move this country an important step forward toward the evolution of an acceptable way to handle and dispose of our high-level nuclear wastes. The problem of what to do with our nuclear wastes has been ignored by the Congress too long. We cannot afford to procrastinate any longer. I urge your support for this bill before you today as a meaningful step in the right direction.

□ 1310

Mr. Speaker, at this point I would like to yield to my colleague from New York (Mr. KEMP). West Valley is just about in between the district of Mr. KEMP and myself.

Mr. KEMP. Mr. Speaker, I would like to thank my colleague from Washington (Mr. MCCORMACK) and my colleague from western New York (Mr. LUNDINE) for their work in helping bring the West Valley Demonstration Act before the Congress today. The West Valley nuclear fuel reprocessing site, which is in Mr. LUNDINE's district contiguous to my own, poses serious health and safety problems to the residents of western New York and Erie County. I have been working for many years to help achieve a cleanup of this inactive waste depository, and the bill before us today is the result of this long-term effort.

The history of the problems at West Valley is a classic example of shortsighted planning by the Federal Government. In 1957 the Federal Government encouraged New York State to establish a commercial nuclear waste reprocessing site within its borders, which New York eventually did. In 1961, New York State purchased the land where the West Valley site stands; and in 1963 a lease and waste storage agreement was negotiated between Nuclear Fuel Services and the State of New York. Base-load supplies were worked out, so that the plant would be economically viable, and the State and Federal regulations and environmental requirements were spelled out.

In 1970, after the plant had been constructed and had already processed 600 tons of fuel, 75 percent of which was from a Federal Government source, the Federal Atomic Energy Commission changed the rules of the game. New rules required wastes to be solidified and shipped to a Federal waste disposal area, rather than retaining the wastes in a liquid form, as had been contemplated in the construction of the NFS Center. That change in policy—which would have cost Nuclear Fuel Services over $600 million—made further commercial reprocessing uneconomical, and the plant closed.

But the people of western New York were left with a plant site holding 600,000 gallons of liquid waste—with no way of removing it, since the parent company

had folded. This was a frightening situation.

The bill now before us establishes a Federal demonstration project to solidify the high-level nuclear wastes at the West Valley center and move the wastes to a Federal repository for long-term burial. The site is then to be decommissioned and decontaminated, and a plan for the safe removal of the wastes must be prepared. The bill authorizes $5 million for fiscal year 1980 for the project. I have long opposed letting this site be a permanent one and I'm glad to see this reflected in the bill.

Mr. MCCORMACK. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. DINGELL), chairman of the Subcommittee on Energy and Power.

Mr. DINGELL. Mr. Speaker, I rise in support of H.R. 6865, as amended. I particularly commend the author of the bill, Mr. LUNDINE; the chairman of the Science Committee, Mr. FUQUA; my distinguished friend and colleague from Washington (Mr. MCCORMACK); my colleagues on both sides of the aisle and on both committees which have considered this matter—the Committee on Interstate and Foreign Commerce, and also the Committee on Science and Technology. I do also commend my good friend, Mr. UDALL, chairman of the Committee on Interior and Insular Affairs, for the very helpful fashion in which he has cooperated on this matter; and also my good friend from New York, (Mr. OTTINGER), who has worked very hard to bring this matter about.

Mr. Speaker, I rise in support of the amendment to H.R. 6865.

This amendment represents the results of the effort by all parties involved to resolve differences in the bill as reported by the Committee on Science and Technology and the Committee on Interior and Insular Affairs. As the amendment is merely a modification of the bill as reported by the Commerce Committee, and as it respects the interest of all the parties involved, I urge my colleagues to support.

H.R. 6865 was jointly referred to the Committees on Science and Technology, Interior and Insular Affairs, and Interstate and Foreign Commerce. What is before the House today is not simply the results of a combined effort of these committees, but also another demonstration of the fact that these committees can work together on matters which affect the interests of each committee. It should be noted that this legislation was introduced last March, and despite the heavy schedule of each committee, we have been able to consider it and reach a compromise in a relatively short period of time, demonstrating that the committees can not only work together, but can do so expeditiously.

The amendment before the House today is the result of combined efforts of many, and some are deserving of particular note. Much of the credit belongs to the distinguished gentleman from Florida (Mr. FUQUA), who, as chairman of the Committee on Science and Technology, was most instrumental in negotiating this compromise as was his colleague on that committee, the gentleman from Washington (Mr. MCCORMACK), who chairs the Subcommittee on Energy Research and Production, which first reported this bill. Additionally, the distinguished chairman of the Committee on Interstate and Foreign Commerce (Mr. STAGGERS) deserves recognition for his leadership in shepherding this bill through that committee, as does the gentleman from Arizona (Mr. UDALL), for his efforts in regard to this legislation in the Committee on Interior and Insular Affairs.

There are three others who deserve special recognition. First, the sponsor of this legislation, the gentleman from New York (Mr. LUNDINE), was untiring in his efforts on behalf of this bill. Additionally, another gentleman from New York (Mr. OTTINGER), with whom I have the privilege of serving on the Committee on Interstate and Foreign Commerce, worked diligently on behalf of the bill in that committee and was most instrumental in negotiating the compromise which is before the House today. Finally, my colleague from Ohio (Mr. BROWN), who serves as the ranking minority member on the Subcommittee on Energy and Power, was an active and helpful participant in developing the Commerce bill and without whose help we would not be at the point we are today.

Mr. Speaker, the amendment before the House today is essentially the version of the bill which was reported by the Committee on Interstate and Foreign Commerce, with just some slight modifications, and therefore reflects the actions taken by the committee and the assumption upon which such actions were based. Although the sponsor of this legislation was initially concerned about the virtual total revision of the bill which occurred during the course of our committee's considerations, I believe he will agree that the result represents a substantial improvement from the bill as introduced, and that, as a consequence, the program is more defined and that the interest of not only the Federal Government but also the State of New York are better served by the Commerce bill. A full explanation of the revised bill can be found in the Commerce Committee's report on H.R. 6865. Moreover, I pledge to work actively in resolving any differences which may exist with the Senate regarding this bill so that it may soon be signed into law.

There are certain points which should be emphasized in regard to the amendment which is presently under consideration. The legislation directs the Secretary of Energy to establish a program to solidify the high-level liquid radioactive waste which exists at the Western New York Nuclear Fuels Service Center near West Valley, N.Y. Only the wastes presently at the site are to be solidified, and nothing in this bill authorizes the Secretary to accept title to either the high-level radioactive waste in a solid or liquid form or to the center or any portion thereof.

Under the bill, the Secretary is directed to enter into a cooperative agreement with the State of New York regarding certain aspects of the program. However, this is essentially a Federal program, and nothing in this cooperative agreement is to in any way limit the Secretary's authority to make the final decision regarding the establishment or implementation of the program, and the fact that the State is contributing a small portion of the cost is not to be interpreted as giving the State any role in the management of the program.

The Western New York Nuclear Service Center is a licensed facility which is under the jurisdiction of the Nuclear Regulatory Commission, and the existing license presently does not authorize the establishment of a high-level liquid waste solidification project. Consequently, before the project can begin, it will be necessary to obtain a license amendment from the Commission. The Commission will then have to determine the appropriate procedures for considering this application, and nothing in this act affects the statutory authority to regulate the activities on a license site or to consider the issuance of such an amendment subject to such terms or conditions which the Commission deems consistent with its existing statutory authorities.

The bill also directs the Secretary to negotiate an agreement with the Nuclear Regulatory Commission to establish a mechanism, independent of any existing statutory authority, for cooperation between the Department of Energy and the Nuclear Regulatory Commission in regard to all aspects of the project. Such an amendment should be designed to facilitate the relationship between these two Government units and diminish the potential for any subsequent disputes.

The project authorized by this legislation will afford the Department of Energy the opportunity to undertake a full-scale waste solidification program. As a result, the project has substantial demonstration value, which is the basis for joint referral of this bill to the Committee on Science and Technology. However, there is a substantial remedial action aspect to the program in that the continued storage of high-level radioactive waste in a liquid form is an unacceptable situation which poses a long-term danger to the public health and safety. The remedial action aspects of this program constitute the basis for the referral of this legislation to the Committees on Interior and Insular Affairs and Interstate and Foreign Commerce. The Committee on Interstate and Foreign Commerce's action was the result of its concern about the public health and safety issues, and it is for that reason it believes action is required now.

Although viewed as a remedial action program, the situation at West Valley is unique because of the demonstration aspects of the program. Furthermore, the past extensive Federal involvement in the development and operation of the reprocessing activities at the site distinguish this program from a typical remedial action program. Over 70 percent of the spent fuel reprocessed on the site was under contract with the Atomic Energy Commission, and most of these were for the military as opposed to the commercial programs. The remainder of the spent fuel was supplied by the utilities, but the Atomic Energy Commission was committed to reprocessing it and utilize the West Valley facility for discharging its commitment to these utilities. Be-

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cause of the past Federal involvement and because of the demonstration aspects of this project, the Federal contribution is greater than it would normally be under a typical remedial action program, and thus, West Valley should not be a precedent for determining Federal contribution to future remedial action programs regarding the disposal of radioactive waste or any other toxic or hazardous waste.

Finally, nothing in this legislation requires any reciprocal action on the part of the State of New York regarding the use of any other portion of the site. This program represents the totality of the Federal commitment to the site, and it is expected that in the future the State of New York will look to its own resources regarding any action required at the site needed to protect the public health and safety. However, it must be noted that the West Valley site has the potential for use as a low-level waste burial ground and as a spent-fuel storage facility. There is presently a critical shortage of low-level waste disposal sites, and the lack of such a facility in the Northeast, which is the largest generator of such waste, cannot be ignored. The enactment of this legislation should, therefore, provide a substantial incentive to the State of New York to consider the potential use of this site for meeting regional needs. We can furthermore expect that all the low-level and transuranic contaminated waste generated in the course of this project will be disposed of at the site.

I note that in his floor statement on this bill, the floor manager from the Committee on Science and Technology noted that my understanding was that this would not be licensed activity. While I agree that this program would not set a precedent for future programs, it must be recognized that this is a licensed facility and an amendment to license is necessary, and nothing in this bill affects the regulatory authority of the NRC.

Mr. Speaker, in conclusion, I believe this is a good bill and one which should pass. At this time, Mr. Speaker, I yield to my good friend and colleague, the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I would like to ask the chairman of the Subcommittee on Energy and Power a question concerning the fact that the compromise does not contain the provision which was included in the bill reported by the Interstate and Foreign Commerce Committee relating to the authority of the Nuclear Regulatory Commission to terminate any action of the Secretary in regard to this program. It is my understanding that because the Western New York Nuclear Service Center is a licensed facility and because the activities would require an amendment to the existing license the amendment was unnecessary. Is that the gentleman's understanding?

Mr. DINGELL. That is my understanding and a license amendment would be required and that this makes the West Valley situation unique from any generic legislation dealing with nuclear waste issues.

Mr. OTTINGER. I further understand that an amendment was adopted by the Interstate and Foreign Commerce Committee that would authorize the Nuclear Regulatory Commission to terminate any action of the Secretary regarding the management of nuclear waste which poses a danger to the public health and safety. I assume this provision is appropriate and consistent with the action we are taking.

Mr. DINGELL. Such an amendment would be appropriate in the context of subsequent legislation and is not included in the pending legislation only because the West Valley facility is already licensed by the NRC.

Mr. OTTINGER. Mr. Speaker, if the gentleman will yield further, I want to thank the gentleman very warmly for that clarification. My main concern in this legislation is to assure that the NRC retain its prime responsibility for protecting the public health and safety in nuclear matters. I think that this has been resolved satisfactorily in this situation for the reasons that the chairman has stated. I thank him.

Mr. DINGELL. I thank the gentleman, and I thank the distinguished gentleman from Washington State (Mr. McCORMACK) for his kindness.

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, at this point I would like to yield to my friend and colleague, the gentleman from California (Mr. CLAUSEN), the ranking minority member of the Interior Committee.

Mr. CLAUSEN. Mr. Speaker, I rise in support of H.R. 6865. Our committee held hearings on West Valley last year.

I congratulate the chairmen of the Science and Technology, Interior and Commerce Committees for having arrived at such a constructive and beneficial bill.

There is little question that a solution to the problem of high-level nuclear wastes must be found before we can move to greater utilization of the nuclear option. It was determined almost 10 years ago by the Atomic Energy Commission that commercial high-level radioactive wastes should be solidified as the first step in controlling the potential hazardous effects of high-level wastes.

Nevertheless, commercial high-level wastes have not yet been solidified in the United States on other than a laboratory scale. Solidification of the high-level wastes at West Valley can provide valuable technical information on large-scale solidification, as well as provide the public with the assurance that this country can effectively solve problems that were created before the decision to solidify all high-level wastes.

In addition, the Federal Government has the responsibility to resolve the high-level liquid waste problems at West Valley. It endorsed and encouraged commercial reprocessing of nuclear fuel and then decided that reprocessing was not in the national interest. I believe reprocessing of nuclear fuel is in the national interest and the enactment of this bill can serve notice that this Nation can solve any problem relating to the generation of high-level wastes during reprocessing.

□ 1320

Mr. CORCORAN. Mr. Speaker, the legislation before us, I think, has been adequately and accurately discussed by the Members who have preceded me this afternoon. I am not going to take the time of the House in order to run over the same ground that we have already discussed, but I would like to touch on two aspects of the problem that gave rise to our legislation that is pending in the House this afternoon.

First of all, I think there is a growing concern on the part of not only the people who live in the West Valley area but around the country, about the public health and safety aspects of the high level liquid waste which is in the tanks at the West Valley Center today. I believe that the committees that have been involved in this legislation have determined, correctly, that we have a Federal responsibility to be of some assistance in providing for a solution to that present exposure that exists at the site.

Second, I think there is also a Federal responsibility here with respect to the value the Federal Government and the country as a whole can derive from having a demonstration project like this, because what we intend to do, as my colleagues have already described in detail, is to provide for a demonstration program to solidify the high-level radioactive waste which obtains at the moment at the West Valley site.

One of the other aspects of the legislation in which I was particularly interested in the committee consideration of the measure was the degree to which there would be consultations between the Department of Energy and the Nuclear Regulatory Commission.

It seems to me one of the benefits we can derive from this is knowledge as to whether or not this solidification process, whether it is a vitrification process, whether it is a vitrification form or whatever form it might take, is of some use in our long-term disposal and management of the high level of radioactive waste which has been developed throughout comercial nuclear powerplants. I think that particular concern has been met because time and time again in the legislation before us, there is requirement for consultation and review between the Nuclear Regulatory Commission and the Department of Energy, so on that basis I am happy to support this legislation.

I want to congratulate, as others have done, the original sponsor, our friend from New York (Mr. LUNDINE) and I would urge my colleagues to support this measure.

Mr. Speaker, at this time I would like to yield 3 minutes to the gentleman from California (Mr. ROYER).

Mr. ROYER. Mr. Speaker, I should point out from our Science and Technology Committee view the role of the NRC in this project does not prejudice this role in nuclear waste R. & D. recovery in this matter. There are two aspects of this important nuclear legislation which I would like to stress.

First, this bill authorizes a technology demonstration project for the solidification of high-level nuclear waste. Such a project is necessary to instill public confidence in the fact that the technology

for nuclear waste disposal is indeed at hand simply waiting for demonstration. The waste at West Valley is a result of both military activities and civilian reprocessing.

The sad thing is that the present administration has indefinitely deferred such reprocessing on the basis of its fear about weapons proliferation. Our committee has taken a strong position that spent nuclear fuel cannot be considered as "waste" because of the precious uranium and plutonium contained in it.

I hope that within a decade this country will be reprocessing such spent fuel and using the recycled plutonium and uranium in burner and breeder reactors.

The second important point I want to make about this bill is the fact that it delineates State responsibility for the nuclear fuel cycle. The State of New York is not sharing as much of the cost of this project as some of us might wish, but at the same time it must make a significant contribution to carrying out the demonstration project.

This is consistent with the fact that there is State responsibility for handling nuclear waste just as there are State benefits in electrical generation from the use of nuclear fuel. The State sought this facility and has operated and will build more nuclear powerplants and as a result no matter what the Governor's protestations may be, it will continue to receive the benefits of nuclear power. I urge my colleagues to support the legislation, which although not an ideal solution, represents a consensus among three major standing committees of the Congress.

Mr. CORCORAN. Mr. Speaker, I would like to add just one comment to what the gentleman from California mentioned with respect to the unique character of the involvement of the Nuclear Regulatory Commission with respect to decommissioning and decontamination.

We do have a unique circumstance here and that is that this is a licensed facility. With respect to other research and development projects, I do not think we have established any precedent whatsoever.

Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I rise in support of H.R. 6865. I am pleased to see this action toward the goal that the high-level liquid waste problems at West Valley be resolved.

In the last Congress the Government Operations Committee's Subcommittee on Enviromental Energy and Natural Resources held hearings in 1977 concerning the status of the West Valley site. It was apparent to me at that time that the Federal Government had the major share of responsibility for dealing with the high-level wastes at that site. The Federal Government encouraged the commencement of reprocessing at West Valley in order to commercialize the nuclear industry and then chose to abandon reprocessing as part of the nuclear fuel cycle.

It is now 3 years later, and I am happy to see that this bill not only solves an important local problem by recognizing the Federal Government's responsibility but, more importantly, provides for constructive action which will benefit this Nation's nuclear program. Nuclear wastes are a national problem and this bill will launch an important element of DOE's overall program to solidify high-level wastes.

I think it is desirable and appropriate that we enact this bill now and urge a "yes" vote.

Mr. CORCORAN. Mr. Speaker, I yield 4 minutes to the gentleman from Utah (Mr. MARRIOTT).

Mr. MARRIOTT. Mr. Speaker, I rise in support of H.R. 6865. Our committee held hearings on West Valley last year.

I congratulate the chairmen of the Science and Technology, Interior and Commerce Committees for having arrived at such a constructive and beneficial bill.

There is little question that a solution to the problem of high-level nuclear wastes must be found before we can move to greater utilization of the nuclear option. It was determined almost 10 years ago by the Atomic Energy Commission that commercial high-level radioactive wastes should be solidified as the first step in controlling the potential hazardous effects of high-level wastes. Nevertheless, commercial high-level wastes have not yet been solidified in the United States on other than a laboratory scale. Solidification of the high-level wastes at West Valley can provide valuable technical information on large scale solidification, as well as provide the public with the assurance that this country can effectively solve problems that were created before the decision to solidify all high-level wastes. In addition, the Federal Government has the responsibility to resolve the high-level liquid waste problems at West Valley. It endorsed and encouraged commercial reprocessing of nuclear fuel and then decided that reprocessing was not in the national interest. I believe reprocessing of nuclear fuel is in the national interest and the enactment of this bill can serve notice that this Nation can solve any problem relating to the generation of high-level wastes during reprocessing.

□ 1330

Mr. CORCORAN. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. RITTER).

Mr. RITTER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of H.R. 6865, to authorize the demonstration of the solidification of high level nuclear waste at West Valley.

I think this is a landmark demonstration program because it will show to the people of this country that we can effectively deal with the problem of nuclear waste. As the gentleman from Utah (Mr. MARRIOTT) said, it also indirectly endorses the fact that reprocessing can and perhaps should be part and parcel of the nuclear fuel-to-waste cycle. The American people have waited a long time for the political leadership to begin to deal effectively with the nuclear waste problem, and this is a very good step in that direction.

Mr. Speaker, I yield back the balance of my time.

Mr. CORCORAN. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I want to express my thanks to the gentleman from Illinois (Mr. CORCORAN) for yielding to me; time on my side has virtually run out.

Mr. Speaker, I want to make it clear that I have consistently supported this legislation and support it strongly, reports in some of the Buffalo papers notwithstanding. I supported the bill in the Energy Research and Production Subcommittee chaired by the gentleman from Washington (Mr. McCORMACK). I supported it in the Science and Technology Committee. I helped to get it out of our Subcommittee on Energy and Power and the full Committee on Interstate and Foreign Commerce. I was pleased to have that acknowledgment from the principal author of the legislation, the gentleman from New York (Mr. LUNDINE), who has done yeoman-like work in getting this legislation through. I wish to commend the chairman of the Subcommittee on Energy and Power, the gentleman from Michigan (Mr. DINGELL), who made substantial improvements to the bill.

I think this legislation represents a good compromise. I would like to emphasize that I think it is essential that this problem be disposed of because the waste at West Valley at the present time does present a substantial danger to the public. It is high-level toxic waste, most of it defense waste from our nuclear weapons program. The waste presently exists in tanks, and the security of those tanks is in doubt since some evidence of leakage has already occurred.

It is important that we have this dispostal project, and I think it is important to demonstrate to the country that the solidification process we are authorizing can present an answer to the nuclear waste problem for the Nation.

I would like to congratulate also the chairman of the Energy Research and Production Subcommittee, the gentleman from Washington (Mr. McCORMACK), for his work in providing for this demonstration through this legislation.

My principal concern with the legislation has been that the Nuclear Regulatory Commission maintain the jurisdiction we have given it over public health and safety. It is for that reason that I offered an amendment making the NRC's health and safety responsibilities clear in the legislation as it passed the Committee on Interstate and Foreign Commerce. I was persuaded to withdraw that amendment in the compromise that we have reached here because this is a licensed facility and under the license the NRC has the power to assert its authority over health and safety issues.

But the question will rise again with respect to the generic nuclear waste disposal legislation. We fought a tremendous battle here to dismantle the old Atomic Energy Commission which had responsibility for both nuclear promotion and safety and finally resolved it. Congress overwhelmingly, and with the support of most of those who advocate nuclear energy expansion, acted out of a sense that it was important that we separate the functions of promoters of nuclear energy, now residing in the Department of Energy, and protectors of the

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public health and safety, now residing in the Nuclear Regulatory Commission. To eliminate NRC's responsibility for health and safety as affects demonstrations of waste disposal would be a great mistake, and I am glad to see it satisfactorily resolved in this legislation.

Mr. Speaker, I think the protections we need are adequately preserved in this legislation, and I want to thank all those concerned, including the gentleman from Illinois (Mr. CORCORAN), for their cooperation in promoting this legislation.

Mr. CORCORAN. Mr. Speaker, I reserve the balance of my time.

Mr. McCORMACK. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I am not a scientist, I am not a member of the committee, and I guess I can only be described as a lay person.

The subcommittee chairman, the gentleman from Washington (Mr. McCORMACK), has shown me and shown all of us a cube of material which I believe is about an inch and a quarter on edge, and it feels like and has the heft of a piece of glass of about the same size.

I would ask the chairman of the subcommittee, what is this?

Mr. McCORMACK. Mr. Speaker, this is a piece of obsidian rock. It can be found in the ground, and it is volcanic in origin. It is identical chemically to the chemical makeup of solidified waste as it will be made.

The liquid waste from the tank will be mixed with glasseous ingredients, sand and limestone, in a melting furance and poured as a liquid glass into steel canisters, thick-walled steel canisters about the size of a domestic water heater, and will solidify and be chemically identical to this sample. Then it will be welded shut for a 500-year period.

Mr. DANIELSON. Mr. Speaker, what I would like to know is this: Is there or will there be any liquid development after the solidification has taken place?

Mr. McCORMACK. No. This is a piece of glass. It is identical to rock. It is a piece of solid glass. It will be solidified. It will be solid after it is poured and will remain solid for all time.

Mr. DANIELSON. Is there any danger of its desolving and decomposing and regaining its liquid form?

Mr. McCORMACK. No, there is not. Of course, it is possible to leach glass with some chemicals, but we do not put the glass in the ground where chemicals could reach it. This is engineered by placing a barrier around it, like a thin sheet of titanium around it, so it will remain for at least a thousand years. So it could not be leached even if chemicals did reach it.

Mr. DANIELSON. What is the danger of its leaking and percolating through the ground?

Mr. McCORMACK. It is nonexistent.

Mr. Speaker, this is being done every day in France and in other countries. The French in particular are making waste every day from their nuclear fuel program.

The SPEAKER pro tempore. The time of the gentleman from California (Mr. DANIELSON) has expired.

Mr. McCORMACK. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I will conclude my remarks by simply saying that this is an important vehicle to carry out our high-level liquid nuclear waste management program. The technology does exist. It is developed, and is utilized in other parts of the world. There is no question that we can do it.

When we get to the point of converting our nuclear waste to glass, as we certainly will do, we will be totally removing those materials from the biosphere forever, and this bill is taking us down the first step in that direction.

● Mr. WYDLER. Mr. Speaker, I support this bill, the West Valley demonstration project, H.R. 6865. However, I wish to make clear its implications for the energy future for the State of New York and for the Nuclear Regulatory Commission's relation to research, development, and demonstration activity.

Nuclear energy has been important to the economy and well-being of the State of New York. Nuclear energy supplies 18 percent of the electricity for the State, and this will increase in the future. Nuclear is as necessary an energy source as coal, the only other realistic alternative for this century. In brief, New York has a significant stake in nuclear energy, with nuclear-electric use that is significantly greater than the national average. With any reasonable energy policy this use will increase, notwithstanding some current aberrations in energy planning by the State of New York.

The benefits of nuclear energy go hand in hand with responsibilities. Handling nuclear wastes is one of these responsibilities. New York has assumed this responsibility in the past when it sponsored the Western Nuclear Service Center to reprocess nuclear fuel. Although the plan no longer is in operation, the wastes remain. New York not only has a contractural responsibility for handling these wastes, but also a symbolic responsibility to do its part in continuing to fulfill the State's responsibilities flowing from the benefits of nuclear power. On the other hand, it is appropriate that the Federal Government shoulder most of the cost, since it will be the principal beneficiary from the demonstration.

As I have mentioned, the Department of Energy is turning the problem of existing wastes at West Valley into the advantage of generally demonstrating the removal and solidification of liquid high-level wastes on a meaningful scale. This is an appropriate intermediate state in the program evolution toward building expensive, full-scale facilities. Thus, this project at West Valley is truly research, development, and demonstration. It will provide the information needed as a licensing basis for full-size facilities. As such, under existing law, these demonstration facilities are not to be licensed. It is important to make this clear for this West Valley situation, because this location happens to include previously licensed facilities storage and operations. Therefore, this bill is intended to authorize an unlicensed demonstration project, even though the site has been licensed.

The gentleman from New York (Mr. OTTINGER) has claimed that this bill does not prejudice any future legislation about the role of the Nuclear Regulatory Commission in nuclear waste undertakings. It is equally important to note that neither does this bill expand any potential Nuclear Regulatory Commission role in any type of nuclear research, development, and demonstration activities. We have a well established and reliably operating DOE tradition of development work such that is done in a way that provides full information to the Nuclear Regulatory Commission and fully considers Commission advice. I see no reason that these advantages of collaboration, short of licensing and approval, will not be followed for this project at West Valley. I emphasize that this bill does not diminish nor does it expand the carefully limited role of the Nuclear Regulatory Commission in the research, development, and demonstration carried out by the Department of Energy.

It is also important in this discussion of H.R. 6865 that we accurately identify who is responsible for health and safety in research, development, and demonstration. There is no question about who is responsible: It is the Department of Energy. The Nuclear Regulatory Commission clearly does not have that responsibility, despite the statements of the gentleman from New York (Mr. OTTINGER). The gentleman apparently engaged in a colloquy of wishful thinking, but the facts are otherwise. Moreover, the bill H.R. 6865 does not give the Nuclear Regulatory Commission that responsibility for the specific case of West Valley nor does the DOE contemplate any such role in generic waste management legislation. The original Atomic Energy Act assigned health and safety responsibilities to the Atomic Energy Commission, and the Energy Reorganization Act carried over this health and safety responsibility for research, development, and demonstration to the successor agency, the Department of Energy, although some other health and safety responsibilities were indeed assigned to the NRC. There is no need to change these responsibilities, and this bill causes no change.

Mr. Speaker, I support H.R. 6865, on the basis that the State of New York has a continuing responsibility for nuclear matters and the Nuclear Regulatory Commission has no final say in research, development and technology demonstration activity.●

● Mr. WEISS. Mr. Speaker, I am in strong support of H.R. 6865, the West Valley Demonstration Project Act, which authorizes the Department of Energy to solidify and dispose of highly radioactive wastes buried, and submerged in a cooling pool, at West Valley, N.Y. The project is an important step in improving disposal of nuclear wastes, and would provide valuable new research in the area. If successful, it would also remove what has become a concentration of lethal materials only 35 miles south of the Buffalo metropolis and Lake Erie, drinking supply for 11 million people.

Part of a problem that is national in scope and import, the West Valley site requires that a Federal responsibility for its disposal be established. The only commercial plant for reprocessing nuclear fuel ever opened in the United States, West Valley received just 5 percent of the radioactive fuel it reprocessed from within New York State. Sixty percent came from the nuclear production reactor in Hanford, Wash., which produced material for American nuclear weapons. The remainder came from elsewhere in the Nation.

Begun with strong Federal encouragement in 1966, the West Valley plant operated for just 6 years before its owner, Nuclear Fuel Services, Inc., closed it in 1972. Equipment failures, frequent fires, and radiation leakage contributed to the decision.

The site's burial ground has begun eroding, and has leaked radiation in water that periodically accumulates in its trenches and has overflowed. Repeated draining of the trenches is necessary.

Other radioactive waste is buried in steel drums that are expected to remain intact for only 26 years. Yet the cesium-137 isotope within the drums will remain radioactive for thousands of years.

Cooling pools inside the reprocessing building contain 160 tons of spent fuel, and the building itself is dangerously contaminated. During its years of operation, the plant released radiation in quantities 1,000 times greater than originally projected, exposing workers to the highest average doses of any nuclear installation in the world.

The original contract with Nuclear Fuel Services allowed the company's owner, Getty Oil Co., to return the facility and land to New York State at the end of 1980. Under H.R. 6865, the State will pay for 10 percent of the demonstration project, and the Federal Government will pay 90 percent. The commercial operator has escaped financial liability, as the contract insured.

The Federal Government should be entrusted with ultimate disposal of nuclear wastes. But the nuclear industry must bear a meaningful share of these costs in future cases. This industry has failed to plan for disposal of wastes it generates, and has a clear obligation to help pay for a long-term solution. For example, the industry could pay a fee for storage of spent fuel at any Federal facility which may be established. I hope that many of my colleagues will agree.

H.R. 6865 is only part of many-faceted Federal nuclear waste disposal package that will be considered in this House in coming days. It is past time when we should have been facing this issue, and I am pleased to see it being addressed.

But these efforts must incorporate several important principles. First, provisions for significant State and local participation in decisions about location and operation of Federal storage sites must be included. Second, Nuclear Regulatory Commission licensing requirements and the National Environmental Protection Act must apply to any such facilities.

Finally, West Valley and other obsolete storage sites that have been closed must not be reopened to more wastes. New, truly safe storage sites must be found. Outmoded, leaking facilities that may be fractured by a major earthquake, such as West Valley, are no place for renewed deposits of these very dangerous substances.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. McCORMACK) that the House suspend the rules and pass the bill, H.R. 6865, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter, on the legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2443) to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y., and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "West Valley Demonstration Project Act".

SEC. 2. (a) The Secretary of Energy (hereinafter in this Act referred to as the "Secretary") shall carry out, in accordance with the provisions of this Act, a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York (hereinafter referred to as "the project"). The Secretary shall carry out the project by vitrifying the high-level liquid nuclear wastes located at such Center or by employing the most effective technology for solidification available. The Secretary shall, as part of the project, also (1) as soon as feasible transport such solidified wastes, in accordance with applicable provisions of law, to an appropriate Federal repository for long term burial, and (2) decontaminate and decommission facilities, materials, and hardware used in connection with the project.

(b) During the fiscal year ending September 30, 1980, the Secretary shall—

(1) prepare a plan for safe removal of such wastes from tank numbered 8D-2 and any other storage tank at the Center containing such wastes including safely breaching the tanks, operating waste removal equipment, and sluicing techniques,

(2) determine the feasibility of immobilization and waste handling techniques required by the unique situation of such wastes at the Center, including initiation of detailed engineering and cost estimates as well as safety analyses and environmental impact analyses, and

(3) enter into a cooperative agreement with the State of New York pursuant to the "Federal Grant and Cooperative Agreement Act of 1977", Public Law 95-224, to provide for the conduct of the demonstration project, without transfer to the United States of title to the high level liquid wastes or to the project site, and for the following activities:

(A) demonstration of vitrification technology or technologies which can be replicated for other applications in the United States;

(B) submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration;

(C) application of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, to all aspects of the demonstration project; and

(D) conduct of other activities at the project, as determined to be appropriate by the Secretary, to protect public health and safety and to be in the national interest regarding the safe management of nuclear wastes in the United States.

SEC. 3. There is authorized to be appropriated to the Secretary not more than $5,000,000 for the fiscal year ending September 30, 1981, for the project. Funds authorized and appropriated in subsequent fiscal years for the project shall not be used by the Secretary for such purpose until the Secretary, the State of New York, and other appropriate persons enter into such contracts and agreements as may be required—

(a) to enable the Secretary to utilize property and facilities at the Center for the project,

(b) to share the costs of the project, except that the non-Federal share of such costs shall be limited to no more than 10 per centum thereof and in determining such share the Secretary shall consider the utilization of such Center by the Secretary for the project, the amount of money in the existing perpetual care fund originally designated to provide, for ultimate disposition of the high-level liquid nuclear waste at the Center, and such other factors as the Secretary deems appropriate,

(c) to otherwise provide for the conduct of the project in a timely manner, and

(d) authority to enter into contracts shall be only to such extent or in such amounts as may be provided in advance in appropriations Acts.

SEC. 4. In carrying out the project, the Secretary shall consult with the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, the State of New York, and the commercial operator of the Center.

SEC. 5. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Committee on Science and Technology, the Committee on Interior and Insular Affairs, and the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including the costs incurred, and the activities to be taken in the next fiscal year and the costs thereof. Any contract or agreement executed under sections 2 and 3 of this Act, together with summaries thereof, shall be promptly transmitted to such committees for their information and review.

SEC. 6. Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Cen-

ter, the State of New York, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facilities or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirements of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. The provisions of this Act shall not apply or be extended to any facilities or property at the Center which is not used in conducting the project.

MOTION OFFERED BY MR. M'CORMACK

Mr. McCORMACK. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. McCORMACK moves to strike out all after the enacting clause of the Senate bill, S. 2443, and to insert in lieu thereof the provisions of H.R. 6865, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 6865) was laid on the table.

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MILITARY PAY AND ALLOWANCES BENEFITS ACT OF 1980

Mr. NICHOLS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7626) to amend title 37, United States Code, to improve certain special pay and allowance benefits for members of the uniformed services, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7626

Be it enacted by the Senate and House of Representatives of the United States of America assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Military Pay and Allowances Benefits Act of 1980".

SPECIAL PAY FOR SUBMARINE OR NUCLEAR DUTY

SEC. 2. (a)(1) Subsection (a) of section 312 of title 37, United States Code, is amended by striking out "$5,000' and "$4,000' and inserting in lieu thereof "$6,250' and "$5,000", respectively.

(2) Subsection (e) of such section is amended by striking out "September 30, 1981' and inserting in lieu thereof "September 30, 1983".

(b)(1) Subsection (a) of section 312b of such title is amended by striking out "$3,000" and inserting in lieu thereof "$5,000".

(2) Subsection (c) of such section is amended by striking out "September 30, 1981" and inserting in lieu thereof "September 30, 1983".

(c)(1) Subsection (a) of section 312c of such title is amended by striking out "$4,000 for each nuclear service year beginning after September 30, 1975, and ending before October 1, 1981" and inserting in lieu thereof "$5,000 for each nuclear service year ending before October 1, 1983"

(2) Subsection (b) of such section is amended by striking out "$2,400 for each nuclear service year beginning after September 30, 1978, and ending before October 1, 1981" and inserting in lieu thereof "$3,000 for each nuclear service year ending before October 1, 1983".

(3) Subsection (e) of such section is amended to read as follows:

"(e) For the purpose of this section, a 'nuclear service year' is any fiscal year beginning before October 1, 1983.".

(d)(1) Paragraph (1) of section 302(b) of such title is amended—

(A) by inserting "or (2)" after "clause (1)";

(B) by striking out "a member" and inserting in lieu thereof "an enlisted member"; and

(C) by striking out the center heading "ENLISTED MEMBERS" before the table in such paragraph.

(2) Paragraph (2) of such section is amended—

(A) by inserting "as an officer" after "For the performance";

(B) by striking out "or (3)"; and

(C) by striking out "section," and inserting in lieu thereof "section or for the performance of the hazardous duty described in clause (3) of such subsection,".

(e)(1) The amendments made by subsection (a)(1) shall apply only with respect to active-duty agreements under section 312 of title 37, United States Code, executed after September 30, 1980.

(2) The amendment made by subsection (b)(1) shall apply only with respect to training completed after September 30, 1980.

(3) The amendments made by subsections (a)(2), (b)(2), and (c) shall take effect on October 1, 1980.

(4) The amendments made by subsection (d) shall apply only to payment of monthly incentive pay for months after September 1980.

INCENTIVES FOR ENLISTED MEMBERS TO EXTEND TOURS OF DUTY OVERSEAS

SEC. 3. (a)(1) Chapter 5 of title 37, United States Code, is amended by adding at the end thereof the following new section:

"§ 314. Special pay: qualified enlisted members extending duty at designated locations overseas

"(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

"(1) is entitled to basic pay;

"(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

"(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

"(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

is entitled, upon acceptance of the agreement providing for such extension by the Secretary concerned, to special pay for duty performed during the period of the extension at a rate of not more than $50 per month, as prescribed by the Secretary concerned.

"(b) A member who elects to receive rest and recuperative absence or transportation at Government expense, or any combination thereof, under section 705 of title 10 is not entitled to the special pay authorized by this section for the period of extension of duty for which the rest and recuperative absence or transportation is authorized.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"314. Special pay: qualified enlisted members extending duty at designated locations overseas.".

(b)(1) Chapter 40 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas

"(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

"(1) is entitled to basic pay;

"(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

"(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

"(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

"(b) The benefits authorized by subsection (a) are—

"(1) a period of rest and recuperative absence for not more than 30 days;

"(2) a period of rest and recuperative absence for not more than 15 days and round-trip transportation at Government expense from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return; or

"(3) round-trip transportation at Government expense of the member and the member's dependents from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return.".

(2) The tables of section at the beginning of such chapter is amended by adding at the end thereof the following new item:

"705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas.".

(c) Section 314 of title 37, United States Code, as added by subsection (a), shall take effect on October 1, 1980, and shall apply to periods of extended duty overseas beginning before, on, or after such date, but no payment may be made under such section for any month before October 1980. Section 705 of title 10, United States Code, as added by subsection (b), shall take effect on October 1, 1980, and shall apply only with respect to periods of extended duty overseas beginning after September 30, 1980.

BASIC ALLOWANCE FOR QUARTERS IN LIEU OF ASSIGNED QUARTERS FOR CERTAIN MEMBERS WITHOUT DEPENDENTS

SEC. 4. (a) The second sentence of subsection (b) of section 403 of title 37, United States Code, is amended by striking out "commissioned officer" and "O-3" and inserting in lieu thereof "member" and "E-6", respectively.

(b) Subsection (c) of such section is amended to read as follows:

"(c)(1) A member of a uniformed service without dependents is not entitled to a basic allowance for quarters while he is on field duty unless his commanding officer certifies that the member was necessarily required to procure quarters at his expense.

"(2) A member of a uniformed service without dependents who is in a pay grade below pay grade E-7 is not entitled to a basic allowance for quarters while he is on sea duty. A member of a uniformed service without dependents who is in a pay grade above E-6 and who is on sea duty is not entitled to a basic allowance for quarters while the unit to which he is assigned is deployed for a period in excess of 90 days.

"(3) For the purposes of this subsection, duty for a period of less than three months is not considered to be field duty or sea duty.".

(c) The amendments made by this section shall only apply to payment of basic allowance for quarters for months after September 1980.

CHARGES FOR PARKING FACILITIES FOR HOUSE TRAILERS AND MOBILE HOMES

SEC. 5. Section 403 of title 37, United States Code, is amended by adding at the end the following new subsection:

"(k) Parking facilities (including utility connections) provided members of the uniformed services for house trailers and mobile homes not owned by the Government shall not be considered to be quarters for the purposes of this section or any other provision of law. Any fee established by the Government for the use of such a facility shall be established in an amount sufficient to cover the cost of maintenance, services, and utilities and to amortize the cost of construction of the facility over the 15-year period beginning with the completion of such construction.".

PERMANENT AUTHORITY FOR SUBSISTENCE ALLOWANCES FOR MEMBERS OF MARINE CORPS OFFICER CANDIDATE PROGRAMS

SEC. 6. Section 209(d) of title 37, United States Code, relating to members of precommissioning programs, is amended—

(1) by striking out "(1)" before "Except when"; and

(2) by striking out paragraph (2).

The SPEAKER pro tempore. Is a second demanded?

Mr. MITCHELL of New York. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Alabama (Mr. NICHOLS) will be recognized for 20 minutes, and the gentleman from New York (Mr. MITCHELL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Alabama (Mr. NICHOLS).

Mr. NICHOLS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a great deal has been accomplished by this Congress in an attempt to resolve the military manpower problems that we face today. Because this activity has been distributed among a variety of legislative vehicles, I would like to summarize exactly what has been done—and what remains to be done—in order to put what we are doing today in contest.

The overall active duty All-Volunteer Force, today, is within 2 percent of meeting authorized strength levels. Viewing the situation from this broad perspective has led to the suggestion that modifications to the overall pay scales are needed to achieve full manning. This aggregate viewpoint, though insightful, is, however, extremely misleading in that it obscures very significant year-of-service maldistributions, skill shortages, and recruiting shortfalls—in terms of quantity and, possibly, quality—in the active force and fails to recognize the significant and pervasive shortfalls in the reserves.

Within this more detailed framework, I would have to argue that the most efficient means of solving existing problems lies not in across-the-board pay raises which marginally affect the 98 percent of the force on active duty today. But rather, in more focused attempts: First, to modify compensation for those specific categories of personnel in which identifiable problems exist; and second, to remove financial irritants associated with military service that adversely affect the individual member's decision to continue on active duty.

The so-called Nunn-Warner amendment to H.R 5169—a bill extending certain expiring personnel management authorities—for example, followed this latter approach.

As the Members know, significant problems exist in retention of pilots; the Nunn-Warner amendment increased flight pay by 25 percent. The Navy exhibits critical shortfalls in its mid-career petty officer force—probably the most significant problem in manpower today—many of these shortages occur in the seagoing ratings. The amendment addressed these problems by providing significant, immediate increases in sea pay and by extending eligibility for selective reenlistment bonuses to those enlisted members in critical skills who possess 10 to 14 years of service. On the other hand, not all services are experiencing the same problems or the same degree of problems nor are these problems extant in every career field.

The Nunn-Warner amendment also addressed irritants suffered by career military personnel. For example, the current ceiling on reimbursement for mileage in conjunction with a permanent change of station move is removed. In addition, a variable housing allowance is authorized which will permit an additional payment to military personnel stationed in high-cost areas. These two provisions will assist the service member in meeting personal expenses incurred as a result of the military's way of doing business.

The House agreed to H.R. 5168—including the Nunn-Warner amendment—on August 26, 1980. The President signed that bill on September 8, 1980, and it has become Public Law 96-343.

H.R. 7626, as reported by the committee, addresses a number of modifications similar and complementary to those in the Nunn-Warner amendment focusing on identified problem areas and financial irritants.

H.R. 7626 contains the following components recommended by the President:

Authorization of a family separation allowance for junior enlisted personnel;

Increases in the reimbursement for moving a mobile home;

Authorization of basic allowance for quarters for naval personnel deprived of shipboard quarters while in port;

Increases in the maximum enlistment and reenlistment bonuses;

Authorization of optional basic allowance for quarters for single members in pay grade E-7 and above;

Authorization of a continuation bonus for aviators; and

Increases in per diem allowances while on temporary duty.

In addition, the committee proposed two additional initiatives:

Authorization of a special pay for enlisted personnel who extend overseas; and

Increases in pay for enlisted submariners and nuclear qualified personnel.

Not included in H.R. 7626, as reported by the committee, are two other proposals recommended by the President: Authorization of a dental CHAMPUS program for dependents of active duty personnel and authorization of a bonus for participation in the Individual Ready Reserve. Dental CHAMPUS continues to be studied by the committee, while the IRR bonus—together with a bonus for affiliation with the Selected Reserve—was agreed to by the conferees on H.R. 6974, the Defense authorization bill for fiscal year 1981. H.R. 6974 also included a number of provisions similar to those in H.R. 7626 which were agreed to by the conferees.

H.R. 6974 was signed by the President on September 8, 1980, and has become Public Law 96-342.

Fire provisions remain in H.R. 7626, as amended:

Increases in enlisted submariner pay and bonuses for nuclear qualified officers;

A new special pay for enlisted members in certain skills who agree to extend beyond their normal overseas tour;

Optional basic allowance for quarters for pay grades E-7 and above who elect to live on the economy;

Specification that trailer pads for mobile homes are not to be considered quarters for the purpose of establishing a rental fee; and

Permanent extension of authority to pay a subsistence allowance to members of the platoon leaders class officer candidate program.

Of particular significance is the increase in the special pay and bonuses for submariners.

During its deliberations on this bill, the committee found preliminary indications of some significant and worsening problems within the submarine and nuclear qualified community.

For example, career retention rates among enlisted submariners are declining (70 percent in 1976 to 53 percent in 1979 for members in the 11 to 14 years of service group). Shortages of up to 50 percent exist in some enlisted ratings for members with 10 to 20 years of service.

For officers, substantial shortages exist in key sea-going positions. This results in officers spending 15 of their first 19 years in shipboard billets.

H.R. 7626 would make several modifications to existing special pays for nuclear qualified officers and enlisted personnel assigned to submarine duty.

For the enlisted community, the committee recommended a 25-percent increase in submarine pay. This is the same increase provided enlisted flight crew members under the Nunn-Warner amendment. This would also be in addition to other initiatives recommended by the committee that would affect this community. The Nunn-Warner amendment, for example, would extend eligibility for the selective reenlistment bonus from 10 to 14 years of service and would increase the rates of sea pay. Another provision of H.R. 7626, as reported, would increase the maximum selective reenlistment bonus from $15,000 to $20,000. This modification would affect nuclear qualified petty officers in particular.

For nuclear qualified officers, the nuclear accession bonus would be increased from $3,000 to $5,000; the nuclear continuation bonus payable for a 4-year extension following initial obligation would be increased from $20,000 to $25,000 (a 25-percent increase); and the

annual nuclear career incentive pay provided after 10 years of service would be increased from $4,000 to $5,000 per year (a 25-percent increase). In addition, the authority for these bonuses which expires on September 30, 1981, would be extended to September 30, 1983.

The Committee on Armed Services has also taken the initiative in the development of a major restructuring of the special pays for military physicians. This legislation, recently signed into law, was designed to apply financial incentives at the critical retention points and should significantly increase the number of physicians on active duty.

Recruiting shortfalls, one of the more invidious problems not addressed at all by the Nunn-Warner amendment or the other actions outlined above, has, however, been addressed by the Congress. An educational assistance plan designed to attract more college-bound youth into the combat arms was included in H.R. 6974 as passed by the House and was adopted by the conferees together with additional education incentives included in the Senate version of H.R. 6974.

H.R. 6974 also contains a provision for an 11.7 percent pay increase this October. In addition, the President is directed, in the bill, to provide recommendations by April 1981, on the appropriate mechanism to be used to adjust military pay in the future.

These are significant initiatives and will have a substantial, positive impact on the manning of the force. All of these increases, with the exception of the October pay increase, result in an expenditure from which we will receive a direct return on the investment in terms of ameliorating an identified problem or removing an irritant. The pay increase, of course, is needed to maintain levels of military pay at a generally comparable position with the private sector.

This package of initiatives will cost over $2 billion in fiscal year 1981—above the Administration's request—and well over $10 billion in the next 5 years.

The Congressional Budget Office estimates that by the end of fiscal year 1981 these changes will lead to a significant reversal of current trends, stabilizing the career force and leading to increases—above the level that existed in fiscal year 1979—by fiscal year 1982. The services should be able to maintain the desired percentage of those holding high school diplomas while also attracting enough enlisted recruits in fiscal year 1981. In fact, the services should begin to recover from the fiscal year 1980 shortfall in high school graduates; the entire shortfall should be eliminated by fiscal year 1982. The projections of the Congressional Budget Office are based on conservative estimates of the economic situation and also assumed immediate implementaion of a high-three average for military retired pay. The economic situation will undoubtedly fall short of the CBO projections, and although H.R. 6974 provides for a high-three average, it restricted its application only to individuals who enter active duty in the future. Consequently, these Congressional Budget Office estimates are on the pessimistic side, and the manpower situation should stabilize and improve even more rapidly than the Congressional Budget Office initially projected.

Although some additional action remains to be completed, I think, it is time to stand back and observe the effects of these changes. More may be needed, but we do not know that yet. Some problem areas remain to be addressed; for example, I believe more needs to be accomplished in the submarine community, and there may be a problem developing with regard to scientific and engineering officers. Additional information is needed with regard to these areas, however, before meaningful changes can be recommended.

As the Members know, much remains to be accomplished before the end of the 96th Congress. The Committee on Armed Services has reported changes to the survivor benefit plan for military retirees, expects to complete action on dental CHAMPUS, and will attempt to resolve the substantial differences in the House and Senate versions of the Defense Officer Personnel Management Act (DOPMA) yet this session. All of these will have substantial effects on retention of career personnel.

Mr. Speaker, H.R. 7626 further enhances the overall compensation initiatives taken by this Congress. I urge the Members to strongly support this bill, as amended.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Speaker, I certainly rise in support of this legislation. The gentleman has pointed out some of the problems we are having in regard to service personnel, especially enlisted, and particularly officer personnel who have between 10 and 14 years in the service. We are having problems keeping them in the service. They are getting out of the service. Certainly this will correct this situation.

Speaking of these programs and bonuses, does that go toward the National Guard and Reserve? Does this cover the Reserve?

Mr. NICHOLS. I must tell the gentleman that this does not apply to the Reserve Forces. We are speaking of active duty services.

Mr. MONTGOMERY. It is strictly active duty?

Mr. NICHOLS. Yes.

Mr. MONTGOMERY. I certainly still support the legislation.

Mr. NICHOLS. I thank the gentleman from Mississippi for his remarks.

Mr. MITCHELL of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the bill, H.R. 7626, as amended. As the chairman of the Military Compensation Subcommittee has pointed out, we have acted on a considerable range of initiatives in the field of military compensation during this Congress. The provisions of H.R 7626 not yet enacted will fill in some of the remaining gaps in the overall compensation initiatives taken by this Congress.

One of the major provisions of the bill authorizes for the first time a special pay for enlisted members in certain specialties who extend their overseas tour for at least a year.

The purpose of the proposed special pay is to assist in alleviating a problem of manning skills in which the majority of the skill requirements are in overseas areas. In many instances, this imbalance results in members being required to be reassigned overseas after less than 24 months in the United States. The situation is cited by many NCO's as their reason for leaving the service.

The bill would provide a payment of up to $50 per month for each month of an extension.

As an alternative to the $50 monthly special pay, a service member who agreed to extend overseas for 12 months could elect to receive one of the following:

First. A 30-day rest and recuperation absence from duties not chargeable to leave;

Second. A 15-day rest and recuperation absence from duties not chargeable to leave and transportation at Government expense to and from the United States for the member; or

Third. Round trip transportation at Government expense for the member and his family to the United States.

Surveys indicate that this proposal would assist in alleviating the overseas skill imbalance problem.

Another major provision would extend flexibility to senior enlisted personnel and junior officers without dependents by permitting them to elect to live off base and draw their basic allowance quarters.

At the present time an officer in the grade of major or lieutenant commander—or above—without dependents for whom Government quarters are available may elect not to occupy those quarters and instead elect to receive the basic allowance for quarters appropriate to his grade.

H.R. 7626 would extend this privilege to all personnel without dependents—both officers and enlisted personnel who are in pay grade E–7 or above. This privilege would be extended to naval personnel on sea duty if in port for extended periods. For those naval personnel, eligibility for optional basic allowance for quarters would end if the unit to which they are assigned is deployed for a period of more than 90 days.

This provision would remove an irritant for our more senior enlisted members without dependents who would prefer to reside in quarters of their own choosing.

Many military personnel, faced with the high cost of housing, have chosen to purchase a mobile home. Trailer pads have been established on many Government installations to accommodate these personnel.

At present, military personnel with mobile homes who occupy trailer pads on Government installations pay a rental fee that covers utilities, maintenance, and an amortized share of the cost of construction.

The Department of Justice has ruled that those trailer pads are technically within a statutory definition of Government "quarters" and as such must be rented to the occupants at the "reasonable value." The effect of this interpretation would be to require an increase in the current fees paid by military personnel and would result in the Government earning a profit on those pads. About 96 percent of those trailer pads are occupied by enlisted personnel.

The bill would authorize continuation of the present practice that, in effect, covers the cost to the Government of building and maintaining those facilities.

Finally, one of the principal sources of new officers for the Marine Corps is the platoon leaders class officer candidate program. This program is the counterpart of the ROTC programs of the other services. Those Marine Corps officer candidates have, by a series of temporary laws, been authorized the same $100-per-month subsistence allowance that is provided for ROTC participants. The current authority will expire on September 30, 1982.

The bill would provide permanent authority for that subsistence allowance and eliminate the need for periodically renewing that authority.

These provisions in H.R. 7626 focus in on specific elements of compensation, addressing identified problem areas or enhancing the quality of life for service members. Both are worthy objectives, and the Military Compensation Subcommittee has consistently attempted to support legislation that assists in attaining those objectives.

Mr. Speaker, this year has become a banner year for military compensation. If all the measures presently under active consideration—including H.R. 7626—are added to those already enacted, the dollar impact will be greater than in any year since the early 1970's. It is time we provide in a more realistic manner for the economic desires and needs of those who elect to devote themselves to a career in the Armed Forces.

Mr. Speaker, I urge strong support for this legislation.

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Mr. EDWARDS of Alabama. Mr. Speaker, will the gentleman yield?

Mr. MITCHELL of New York. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. I want to commend the gentleman from Alabama (Mr. NICHOLS), and the gentleman from New York (Mr. MITCHELL) and the subcommittee for bringing this bill to the floor. If we are going to have a good defense, they key problem that has got to be resolved is the problem of retention.

I am convinced that the type of legislation that the subcommittee has brought here today, along with the other bills that the gentleman has been working on, will go a long way toward resolving the problem of retention.

We cannot make planes fly. We cannot make ships go, and we cannot make trucks go up hills, and we cannot do a lot of things if we do not have the skilled people in the service dedicated to the task to make all this happen.

If it happens, then I think this committee can claim a larger share of the credit for it, because it is the essential ingredient in my opinion in bringing to this Nation a good strong defense system.

Mr. MITCHELL of New York. I thank the gentleman for his comments. It is certainly a very sound observation about what we need to do to attract and retain our military people.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. NICHOLS. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. BENNETT), the chairman of the subcommittee on Seapower and Strategic and Critical Materials.

Mr. BENNETT. Mr. Speaker, I want to congratulate the chairman, the gentleman from Alabama, and others who so actively and thoughtfully pursued this legislation to see to it that it fitted the precise needs, and did what was needed to be done. They did not waste any money but wisely spent it.

I think the thoughtful approach they gave this legislation is manifested particularly in the provisions they brought forth, in the field of submarine pay. I think that is something that has not been looked at as carefully as it should have been in the past. This and the other provisions in the bill, I think, will go a long way toward giving us the stability in our Armed Forces we should have.

I just came back from a little trip largely among military personnel. I want to say their morale is really very high. They appreciate very much this fine work the gentleman from Alabama has done and the committee. They are really looking forward to future tours of duty. This committee's work has a lot to do with this new optimism and improved morale.

Mr. NICHOLS. I thank the gentleman from Florida. We know of his longtime interest in military personnel, particularly those of the U.S. Navy, where we have been having so many problems. I do appreciate the comments.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Alabama (Mr. NICHOLS) that the House suspend the rules and pass the bill (H.R. 7626), as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent that all Members may have five legislative days in which to revise and extend their remarks on the bill, H.R. 7626, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3806) to establish a U.S. Court of Appeals for the Federal Circuit, to establish a U.S. Claims Court, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3806

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Court of Appeals for the Federal Circuit Act of 1980".

TITLE I—UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT AND UNITED STATES CLAIMS COURT

NUMBER AND COMPOSITION OF CIRCUITS

SEC. 101. Section 41 of title 28, United States Code, is amended by striking out "eleven" and inserting in lieu thereof "twelve" and by adding at the end thereof the following:

"Federal ---- All Federal judical districts.".

NUMBER OF CIRCUIT JUDGES

SEC. 102. Section 44(a) of title 28, United States Code, is amended by adding at the end thereof the following:

"Federal ---------- 12".

PANELS OF JUDGES

SEC. 103. (a) Section 46(a) of title 28, United States Code, is amended by striking out "divisions" and inserting in lieu thereof "panels".

(b) Section 46(b) of title 28, United States Code, is amended—

(1) by striking out "divisions" each place it appears and inserting in lieu thereof "panels"; and

(2) by inserting immediately before the period at the end of the first sentence thereof the following: ", except that the United States Court of Appeals for the Federal Circuit may determine by rule the number of judges, not less than three, who constitute a panel".

NUMBER OF JUDGES FOR HEARINGS

SEC. 104. (a) The first sentence of section 46(c) of title 28, United States Code, is amended by inserting immediately after "three judges" the following: "(except that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide)".

(b) Section 46(d) of title 28, United States Code, is amended by striking out "division" and inserting in lieu thereof "panel".

PLACES FOR HOLDING COURT

SEC. 105. Section 48 of title 28, United States Code, is amended by adding at the end of the list of circuits and places the following:

"Federal ----------District of Columbia, and in any other place listed above as the court by rule directs.".

ORGANIZATION OF UNITED STATES CLAIMS COURT

SEC. 106. (a) Chapter 7 of title 28, United States Code, is amended to read as follows:

"Chapter 7—UNITED STATES CLAIMS COURT

"Sec.
"171. Appointment and number of judges; character of court; designation of chief judge.
"172. Tenure and salaries of judges.
"173. Times and places of holding court.
"174. Assignment of judges; decisions.
"175. Expenses for travel and subsistence.
"176. Removal from office.
"177. Disbarment of removed judges.

"§ 171. Appointment and number of judges; character of court; designation of chief judge

"(a) The President shall appoint, by and with the advice and consent of the Senate, sixteen judges who shall constitute a court of record known as the United States Claims Court. The court is declared to be a court

established under article I of the Constitution of the United States.

"(b) The Claims Court shall at least biennially designate a judge to act as chief judge.

"§ 172. Tenure and salaries of judges

"(a) Each judge of the United States Claims Court shall be appointed for a term of fifteen years.

"(b) Each judge shall receive a salary at an annual rate of $50,000, subject to adjustment under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), and section 461 of this title.

"§ 173. Times and places of holding court

"The principal office of the United States Claims Court shall be in the District of Columbia, but the Claims Court may hold court at such times and in such places as it may fix by rule of court. The times and places of the sessions of the Claims Court shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Claims Court with as little inconvenience and expense to citizens as is practicable.

"§ 174. Assignment of judges; decisions

"(a) The judicial power of the United States Claims Court with respect to any action, suit, or proceeding, except congressional reference cases, shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

"(b) All decisions of the Claims Court shall be preserved and open to inspection.

"§ 175. Expenses for travel and subsistence

"Judges of the United States Claims Court shall receive necessary traveling expenses, and a per diem allowance as provided in the Travel Expense Act of 1949, while traveling on duty and away from the District of Columbia, subject to the same limitations in amount as may from time to time be in effect with respect to the United States Customs Court.

"§ 176. Removal from office

"Judges of the United States Claims Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

"§ 177. Disbarment of removed judges

"A judge of the United States Claims Court removed from office in accordance with section 176 of this title shall not be permitted at any time to practice before the Claims Court.".

(b) The item relating to chapter 7 in the chapter analysis of part I of title 28, United States Code, is amended to read as follows:

"7. United States Claims Court..... 171".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 107. Chapter 9 of title 28, United States Code, and the item relating to chapter 9 in the chapter analysis of part 1 of such title, are repealed.

INTERLOCUTORY APPEALS FROM CERTAIN ORDERS

SEC. 108. Section 256(b) of title 28, United States Code, is amended by striking out "section 1541(b)" and all that follows through "in that section." and inserting in lieu thereof the following: "section 1292(c)(3) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.".

REPEAL; ASSIGNMENT OF CIRCUIT JUDGES

SEC. 109. Subsection (b) of section 291 of title 28, United States Code, is repealed.

ASSIGNMENT OF DISTRICT JUDGES

SEC. 110. Section 292(e) of title 28, United States Code, is amended by striking out "the Court of Claims, the Court of Customs and Patent Appeals or" and by striking out "in which the need arises".

REPEAL; ASSIGNMENT OF OTHER JUDGES

SEC. 111. Subsections (a), (c), and (d) of section 293 of title 28, United States Code, are repealed.

JUDICIAL CONFERENCE

SEC. 112. Section 331 of title 28, United State Code, is amended—

(1) in the first paragraph, by striking out ", the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals,"; and

(2) in the third paragraph, by striking out the second sentence.

RETIREMENT

SEC. 113. (a) Section 372(a) of title 28, United States Code, is amended—

(1) in the third paragraph, by striking out "Court of Claims, Court of Customs and Patent Appeals, or"; and

(2) in the fifth paragraph, by striking out "Court of Claims, Court of Customs and Patent Appeals, or".

(b) Section 372(b) of title 28, United States Code, is amended by striking out "Court of Claims, Court of Customs and Patent Appeals, or" each place it appears.

REPEAL; DISTRIBUTION OF COURT OF CLAIMS DECISIONS

SEC. 114. Section 415 of title 28, United States Code, and the item relating to section 415 in the section analysis of chapter 19 of such title, are repealed.

DEFINITIONS

SEC. 115. Section 451 of title 28, United States Code, is amended—

(1) in the first paragraph, by striking out "the Court of Claims, the Court of Customs and Patent Appeals,"; and

(2) in the third paragraph, by striking out "Court of Claims, Court of Customs and Patent Appeals,".

TRAVELING EXPENSES

SEC. 116. The second paragraph of section 456 of title 28, United States Code, is amended by striking out "the Court of Claims, the Court of Customs and Patent Appeals" and inserting in lieu thereof "the United States Court of Appeals for the Federal Circuit".

APPLICATION OF CERTAIN PROVISIONS TO THE UNITED STATES CLAIMS COURT

SEC. 117. (a) Chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 462. Application to the United States Claims Court

"Section 452 through 455 and sections 457 through 459 of this title apply to the United States Claims Court.".

(b) The section analysis of chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"462. Application to the United States Claims Court.".

INTERESTS OF THE UNITED STATES IN CERTAIN ACTIONS

SEC. 118. Section 518(a) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court or in the United States Court of Appeals for the Federal Circuit".

TRANSMISSION OF PETITIONS IN SUITS AGAINST THE UNITED STATES

SEC. 119. (a) Section 520 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court or in the United States Court of Appeals for the Federal Circuit"; and

(2) by striking out "Court of Claims" in the section heading and inserting in lieu thereof "United States Claims Court or in United States Court of Appeals for the Federal Circuit".

(b) The item relating to section 520 in the section analysis of chapter 31 of title 28, United States Code, is amended to read as follows:

"520. Transmission of petitions in United States Claims Court or in United States Court of Appeals for the Federal Circuit; statement furnished by departments.".

BUDGET ESTIMATES

SEC. 120. Section 605 of title 28, United States Code, is amended by inserting immediately before the period at the end of the second undesignated paragraph the following: "and the estimate with respect to the United States Court of Appeals for the Federal Circuit shall be approved by such court".

DEFINITION OF COURTS

SEC. 121. Section 610 of title 28, United States Code, is amended by striking out "the Court of Claims, the Court of Customs and Patent Appeals" and inserting in lieu thereof "the United States Claims Court".

STAFF ATTORNEYS AND TECHNICAL ASSISTANTS

SEC. 122. Section 713 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Each court of appeals may appoint such central staff attorneys and technical assistants as may be necessary, each of whom shall be subject to removal by the court.".

OFFICERS AND EMPLOYEES OF THE UNITED STATES CLAIMS COURT

SEC. 123. (a) Section 791(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Claims Court may appoint a clerk, a chief deputy clerk, and such other employees as may be necessary, each of whom shall be subject to removal by the court.".

(b) Section 792 of title 28, United States Code, and the item relating to section 792 in the section analysis of chapter 51 of such title, are repealed.

(c)(1) Section 794 of title 28, United States Code, is amended to read as follows:

"§ 794. Law clerks and secretaries

"The judges of the United States Claims Court may appoint necessary law clerks and secretaries, subject to any limitation of the aggregate salaries of such employees which may be imposed by law.".

(2) The item relating to section 794 in the section analysis of chapter 51 of title 28, United States Code, is amended to read as follows:

"794. Law clerks and secretaries.".

(d)(1) Section 795 of title 28, United States Code, is amended to read as follows:

"794. Law clerks and secretaries.".

"The United States Claims Court may appoint necessary bailiffs and messengers, each of whom shall be subject to removal by the court.".

(2) The item relating to section 795 in the section analysis of chapter 51 of title 28, United States Code, is amended to read as follows:

"795. Bailiffs and messengers.".

(e) Section 796 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

(f) Section 797 of title 28, United States Code, and the item relating to section 797 in the section analysis of chapter 51 of such title, are repealed.

(g)(1) The item relating to chapter 51 in the chapter analysis of part III of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(2) The chapter heading of chapter 51 of title 28, United States Code, is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 124. Chapter 53 of title 28, United States Code, and the item relating to chapter 53 in the chapter analysis of part III of such title, are repealed.

REPEAL; CLERKS OF COURT OF CUSTOMS AND PATENT APPEALS

SEC. 125. Subsection (b) of section 957 of title 28, United States Code, is repealed, and subsection (a) of such section is amended by striking out "(a)".

REPEAL; SUPREME COURT REVIEW OF CERTAIN CASES

SEC. 126. Sections 1255 and 1256 of title 28, United States Code, and the items relating to sections 1255 and 1256 in the section analysis of chapter 81 of such title, are repealed.

COURTS OF APPEALS JURISDICTION

SEC. 127. Section 1291 of title 28, United States Code, is amended—

(1) by inserting "(other than the United States Court of Appeals for the Federal Circuit)" after "courts of appeals"; and

(2) by adding at the end thereof the following new sentence: "The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and 1295 of this title.".

INTERLOCUTORY DECISIONS

SEC. 128. (a) Section 1292(a) of title 28, United States Code, is amended—

(1) by striking out "The courts" and inserting in lieu thereof "Except as provided in subsection (c) of this section, the courts";

(2) by striking out the semicolon at the end of paragraph (3) and inserting in lieu thereof a period; and

(3) by striking out paragraph (4).

(b) Section 1292 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

"(1) of an appeal from an interlocutory order or decree described in subsection (a) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title;

"(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting; and

"(3) when the chief judge of the Customs Court issues an order under the provisions of section 256(b) of this title; or when any judge of the Customs Court, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from its order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order. Neither the application for nor the granting of an appeal under this paragraph shall stay proceedings in the Customs Court unless a stay is ordered by a judge of the Customs Court or by the United States Court of Appeals for the Federal Circuit or a judge of that court.".

CIRCUITS IN WHICH DECISIONS ARE REVIEWABLE

SEC. 129. Section 1294 of title 28, United States Code, is amended by striking out "Appeals" and inserting in lieu thereof "Except as provided in section 1295 of this title, appeals".

JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SEC. 130. (a) Chapter 83 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

"(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

"(1) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1338 of this title, except that a case involving a copyright and no other claim under section 1338(a) shall be governed by sections 1291, 1292, and 1294 of this title;

"(2) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 39 of the Trademark Act of 1946 (15 U.S.C. 1121);

"(3) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a district court under section 1346(a)(1), 1346(b), or 1346(e) of this title shall be governed by sections 1291, 1292, and 1294 of this title;

"(4) of an appeal from a final decision of the United States Claims Court;

"(5) of an appeal from a decision of—

"(A) the Board of Appeals or the Board of Patent Interferences of the Patent and Trademark Office with respect to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and any such appeal shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35;

"(B) the Commissioner of Patents and Trademarks or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.C. 1071); or

"(C) a district court to which a case was directed pursuant to section 145 to 146 of title 35;

"(6) of an appeal from a final decision or order of the United States Customs Court;

"(7) to review, by appeal on questions of law only, the findings of the United States International Trade Commission as to unfair practices in import trade, made under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337);

"(8) to review, by appeal on questions of law only, findings of the Secretary of Commerce under headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (relating to importation of instruments or apparatus);

"(9) of an appeal under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461);

"(10) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5; and

"(11) of an appeal from a final decision of an agency board of contract appeals pursuant to section 8(g)(1) of the Contract Disputes Act of 1978.

"(b) The head of any executive department or agency may, with the approval of the Attorney General, refer to the Court of Appeals for the Federal Circuit for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which the head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b)). The head of each executive department or agency shall make any referral under this section within one hundred and twenty days of the receipt of a copy of the final appeal decision.

"(c) The Court of Appeals for the Federal Circuit shall review the matter referred in accordance with the standards specified in section 10(b) of the Contract Disputes Act of 1978. The court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, if appropriate, render judgment thereon, or remand the matter to any administrative or executive body or official with such direction as it may deem proper and just.".

(b) The section analysis of chapter 83 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit.".

INTERSTATE COMMERCE COMMISSION ORDERS; JURISDICTION

SEC. 131. Section 1336(b) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

UNITED STATES AS DEFENDANT; JURISDICTION

SEC. 132. Section 1346(a) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

INTERSTATE COMMERCE COMMISSION ORDERS; VENUE

SEC. 133. Section 1398(b) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

UNITED STATES AS DEFENDANT; VENUE

SEC. 134. Section 1402(a) of title 28, United States Code, is amended by inserting "in a district court" after "civil action".

CURE OR WAIVER OF DEFECTS

SEC. 135. Section 1406(c) of title 28, United States Code, is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court".

UNITED STATES CLAIMS COURT JURISDICTION AND VENUE

SEC. 136. (a) Section 1491 of title 28, United States Code, is amended by striking out "Court of Claims" the first place it appears and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims" each other place it appears and inserting in lieu thereof "Claims Court".

(b) Section 1492 of title 28, United States Code, is amended by striking out "chief commissioner of the Court of Claims" and inserting in lieu thereof "chief judge of the United States Claims Court".

(c)(1) Sections 1494, 1495, 1496, and 1497 of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(2) The section heading of section 1497 of title 28, United States Code, is amended by striking out "growers," and inserting in lieu thereof "growers' ".

(d) Section 1498 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court";

(2) in subsections (b) and (d), by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

(e) Sections 1499, 1500, 1501, 1502, and 1503 of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(f) Section 1504 of title 28, United States Code, and the item relating to section 1504 in the section analysis of chapter 91 of such title, are repealed.

(g) Section 1505 of title 28, United States Code, is amended by striking out "Court of Claims" the first place it appears and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims" the second place it appears and inserting in lieu thereof "Claims Court".

(h) Section 1506 of title 28, United States Code, is amended by striking out "Court of Claims" the first place it appears and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims" the second place it appears and inserting in lieu thereof "Claims Court".

(i) Section 1507 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(j)(1) The item relating to chapter 91 in the chapter analysis of part IV of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(2) The chapter heading of chapter 91 of title 28, United States Code, is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

(3) The item relating to section 1499 in the section analysis of chapter 91, United States Code, is amended to read as follows:

"1449. Liquidated damages withheld from contractors under Contract Work Hours Standards Act.".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 137. Chapter 93 of title 28, United States Code, and the item relating to chapter 93 in the chapter analysis of part IV of such title, are repealed.

REPEAL; FEES AND COSTS

SEC. 138. Section 1926 of title 28, United States Code, and the item relating to section 1926 in the section analysis of chapter 123 of such title, are repealed.

REPEAL; TIME FOR APPEAL

SEC. 139. Section 2110 of title 28, United States Code, and the item relating to section 2110 in the section analysis of chapter 133 of such title, are repealed.

COURT OF APPEALS JURISDICTION

SEC. 140. Section 2342 of title 28, United States Code, is amended—

(1) by inserting "(other than the United States Court of Appeals for the Federal Circuit)" after "court of appeals";

(2) in paragraph (4), by inserting "and" after the semicolon;

(3) in paragraph (5), by striking out "; and" and inserting in lieu thereof a period; and

(4) by striking out paragraph (6).

PLANT VARIETY PROTECTION OFFICE DECISIONS

SEC. 141. Section 2353 of title 28, United States Code, and the item relating to section 2353 in the section analysis of chapter 158 of such title, are repealed.

UNITED STATES CLAIMS COURT PROCEDURE

SEC. 142. (a) Sections 2501 and 2502(a) of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(b)(1) Section 2503 of title 28, United States Code, is amended to read as follows:

"§ 2503. Proceedings generally

"Parties to any suit in the United States Claims Court may appear before a judge of that court in person or by attorney, produce evidence, and examine witnesses. The proceedings of the Claims Court shall be in accordance with such rules of practice and procedure (other than the rules of evidence) as the Claims Court may prescribe and in accordance with the rules of evidence applicable to trials without a jury in a district court of the United States. The judges shall fix times for trials, administer oaths or affirmations, examine witnesses, receive evidence, and enter dispositive judgments. Hearings shall, if convenient, be held in the counties where the witnesses reside.".

(2) The item relating to section 2503 in the section analysis of chapter 165 of title 28, United States Code, is amended by striking out "before commissioners".

(c) Section 2504 of title 28, United States Code, and the item relating to section 2504 in the section analysis of chapter 165 of such title, are repealed.

(d) Section 2505 of title 28, United States Code, is amended—

(1) by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) by striking out "report findings" and inserting in lieu thereof "enter judgment".

(e) Section 2506 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(f) Section 2507 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) in subsection (c), by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

(g) Section 2508 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(h)(1) Section 2509(a) of title 28, United States Code, is amended to read as follows:

"(a) Whenever a bill, except a bill for a pension, is referred by either House of Congress to the chief judge of the United States Claims Court pursuant to section 1492 of this title, the chief judge shall designate a judge as hearing officer for the case and a panel of three judges of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding officer of the panel.".

(2) Section 2509 of title 28, United States Code, is amended—

(A) in subsection (b), (c), (d), and (f), by striking out "trial commissioner" and inserting in lieu thereof "hearing officer";

(B) in subsections (b), (c), and (e), by striking out "chief commissioner" and inserting in lieu thereof "chief judge";

(C) in subsections (b), (f), and (g), by striking out "Court of Claims" and inserting in lieu thereof "Claims Court";

(D) in subsection (d), by striking out "of commissioners";

(E) in subsection (g), by striking out "commissioners" the first place it appears and inserting in lieu thereof "judges"; and

(F) in subsection (g), by striking out "trial commissioners" and inserting in lieu thereof "hearing officers".

(i)(1) Section 2510 of title 28, United States Code, is amended to read as follows:

"§ 2510. Referral of cases by Comptroller General

"(a) The Comptroller General may transmit to the United States Claims Court for trial and adjudication any claim or matter of which the Claims Court might take jurisdiction on the voluntary action of the claimant, together with all vouchers, papers, documents, and proofs pertaining thereto.

"(b) The Claims Court shall proceed with the claims or matters so referred as in other cases pending in such Court and shall render judgment thereon.".

(2) The item relating to section 2510 in the section analysis of chapter 165 of title 28, United States Code, is amended to read as follows:

"2510. Referral of cases by Comptroller General.".

(j) Sections 2511, 2512, 2513(c), 2514, and 2515(a) are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court.".

(k) Section 2516 of title 28, United States Code, is amended to read as follows:

"§ 2516. Interest on claims and judgments

"(a) Interest on a claim against the United States shall be allowed in a judgment of the United States Claims Court or of the United States Court of Appeals for the Federal Circuit only under a contract or Act of Congress expressly providing for payment thereof.

"(b) Interest on judgments against the United States affirmed by the Supreme Court after review on petition of the United States shall be paid at the rate established in section 1961 of this title from the date of the filing in the General Accounting Office of the transcript of the judgment of the United States Claims Court to the date of the mandate of affirmance. Such interest shall not be allowed for any period after the term of the Supreme Court at which the judgment was affirmed.".

(l) Section 2517 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) in subsection (b), by striking out the comma at the end thereof and inserting in lieu thereof a period.

(m) Section 2518 of title 28, United States Code, is amended—

(1) by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) by inserting immediately before the period at the end thereof the following: "or of the United States Court of Appeals for the Federal Circuit".

(n) Sections 2519 and 2520(a) of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(o)(1) The item relating to chapter 165 in the chapter analysis of part VI of title 28, United States Code, is amended to read as follows:

"165. United States Claims Court procedure ..... 2501."

(2) The chapter heading of chapter 165 of title 28, United States Code, is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 143. Chapter 167 of title 28, United States Code, and the item relating to chapter 167 in the chapter analysis of part VI of such title, are repealed.

FINALITY OF DECISIONS

SEC. 144. Section 2638(b) of title 28, United States Code, is amended to read as follows:

"(b) The decision of the judge is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2639 of this title or an appeal is made to the United States Court of Appeals for the Federal Circuit within sixty days after entry of the judgment or order.".

FEDERAL RULES OF EVIDENCE

SEC. 145. Rule 1101(a) of the Federal Rules of Evidence is amended by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

TITLE II—CONFORMING AMENDMENTS OUTSIDE TITLE 28

SEC. 201. Section 225(f)(C) of the Federal Salary Act of 1967 (2 U.S.C. 356(C)), is amended by inserting "and the judges of the United States Claims Court" immediately before the semicolon at the end thereof.

SEC. 202. Section 7703 of title 5, United States Code, is amended—

(1) in subsection (b)(1), by striking out "Court of Claims or a United States court of appeals as provided in Chapter 91 and 158, respectively, of title 28" and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit";

(2) in subsection (c), by striking out "Court of Claims or a United States court of appeals" and inserting in lieu thereof "Court of Appeals for the Federal Circuit"; and

(3) in subsection (d), by striking out "District of Columbia" and inserting in lieu thereof "Federal Circuit".

SEC. 203. The second sentence of section 71 of the Plant Variety Protection Act (7 U.S.C. 2461) is amended to read as follows: "The United States Court of Appeals for the Federal Circuit shall have jurisdiction.".

SEC. 204. Section 39 of the Trademark Act of 1946 (15 U.S.C. 1121) is amended by striking out "circuit courts of appeal of the United States" and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit".

SEC. 205. Section 11(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2210(d)) is amended by striking out "Court of Claims of the United States" and inserting in lieu thereof "United States Claims Court".

SEC. 206. Section 204 of title 18, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court or the United States Court of Appeals for the Federal Circuit".

SEC. 207. (a) Section 29 of the Act entitled "An Act to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes", approved August 13, 1946 (25 U.S.C. 70v-3), is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court".

(b) Subsection (c) of section 29 of such Act is repealed.

SEC. 208. Section 2 of the Act of May 18, 1928 (25 U.S.C. 652) is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims of the United States" and inserting in lieu thereof "United States Claims Court".

SEC. 209. Section 7422(e) of the Internal Revenue Code of 1954 is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "United States Claims Court".

SEC. 210. Section 7428 of the Internal Revenue Code of 1954 is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court".

SEC. 211. Section 7447 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following subsection:

"(j) APPLICATION TO CLAIMS COURT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of this section also apply to the United States Claims Court, and for such purposes, any reference in this section to the 'Tax Court' shall be deemed to be a reference to the 'Claims Court'.

"(2) EXCEPTIONS.—In the case of a judge of the United States Claims Court who elects to receive retired pay under subsection (d)—

"(A) notwithstanding subsection (g)(2)(C), such judge shall not be paid the lump-sum credit computed under section 8331(8) of title 5, United States Code;

"(B) if such judge was serving on October 1, 1981, the time period required by paragraph (3)(A) of subsection (b) shall be 3 years instead of 15 years;

"(C) if such judge was serving on October 1, 1981, the provisions of subsections (c) and (f) shall not apply where such judge of the United States Claims Court serves by virtue of section 304 of the Court of Appeals for the Federal Circuit Act of 1980 unless such judge indicates, upon retirement, a willingness to be subject to recall.

"(3) TRIAL COMMISSIONER SERVICE.—A judge of the United States Claims Court who has service as a trial commissioner of the United States Court of Claims and who elects to receive retired pay under subsection (d) may also elect to treat such services as a trial commissioner as service as a judge of the United States Claims Court. If such judge makes such election with respect to service as a trial commissioner—

"(A) in the determination of the length of service as a judge under paragraph (1) of subsection (d), one year of service as a trial commissioner of the Court of Claims shall be treated as one-fourth of a year of service as a judge of the Claims Court, and service as a trial commissioner for any portion of a year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more; and

"(B) the rate of retired pay received by such judge during any period under paragraph (1) of subsection (d) shall not exceed 80 percent of the rate of the salary payable to such judge for such period.".

SEC. 212. Section 7448 of the Internal Revenue Code of 1954 is amended by adding the following new subsection at the end thereof:

"(t) APPLICATION TO CLAIMS COURT.—The provisions of this section also apply to the United States Claims Court, and for such purposes any reference in this section to the 'Tax Court' shall be deemed to be a reference to the 'Claims Court'.".

SEC. 213. The second sentence of section 7456(c) of the Internal Revenue Code of 1954 is amended to read as follows: "Each commissioner shall receive pay at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of title 28, United States Code, and also necessary traveling expenses and per diem allowance, as provided in the Travel Expense Act of 1949, while traveling on official business and away from Washington, District of Columbia.".

SEC. 214. Section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1)) is amended—

(1) in subparagraph (A), by striking out "Court of Claims" and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit"; and

(2) in subparagraph (B), by striking out "United States Court of Claims for judicial review, under section 2510 of title 28, United States Code, as amended herein," and inserting in lieu thereof "Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, United States Code."

SEC. 215. Section 10(c) of the Contract Disputes Act of 1978 (41 U.S.C. 609(c)) is amended by striking out ", or, in its discretion" and all that follows through "of the case".

SEC. 216. Section 713 of title 44, United States Code, is amended—

(1) by striking out "eight hundred and twenty-two" and inserting in lieu thereof "eight hundred and twenty"; and

(2) by inserting "and" after "Superintendent of Documents;"; and

(3) by striking out "to the Court of Claims, two copies; and".

SEC. 217. Section 1103 of title 44, United States Code, is amended by striking out ", the Court of Claims, and by striking out ", chief judge of the Court of Claims.".

SEC. 218. (a) The following provisions of law are amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "United States Claims Court":

(1) Sections 1 and 2 of the Act of October 19, 1973 (87 Stat. 465).

(2) Section 8715 of title 5, United States Code.

(3) Section 8912 of title 5, United States Code.

(4) Section 2273(b) of title 10, United States Code.

(5) Section 337(i) of the Tariff Act of 1930 (19 U.S.C. 1337(i)).

(6) Section 606(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2356(a)).

(7) Section 1 of the Act entitled "An Act providing for the allotment and distribution of Indian tribal funds", approved March 2, 1907 (25 U.S.C. 119).

(8) Section 2 of the Act of August 12, 1935 (25 U.S.C. 475a).

(9) Section 6110(i)(1) of the Internal Revenue Code of 1954.

(10) Section 2 of the Act of May 28, 1908 (30 U.S.C. 193a).

(11) Section 7 of the Act of July 31, 1894 (31 U.S.C. 72).

(12) Section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a).

(13) Section 183 of title 35, United States Code.

(14) Section 104(c) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 330(c)).

(15) Sections 13(b)(2) and 14 of the Contract Settlement Act of 1944 (41 U.S.C. 113(b) and 114).

(16) Sections 8(d), 10(a)(1), and 10(d) of the Contract Disputes Act of 1978.

(17) Sections 171 and 173 of the Atomic Energy Act of 1954 (42 U.S.C. 2221 and 2223).

(18) Section 10(i) of the Trading with the Enemy Act (50 U.S.C. App. 10(i)).

(19) Sections 103(f), 103(i), 105, 106(a)(6), 108, 108A, and 114(5) of the Renegotiation Act of 1951 (50 U.S.C. App. 1213(f), 1213(i), 1215, 1216(a)(6), 1218, 1218a, and 1224(5)).

(20) Section 4 of the Act of July 2, 1948 (50 U.S.C. App. 1984).

(b) The section heading of section 108A of the Renegotiation Act of 1951 (50 U.S.C. App. 1218a) is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

SEC. 219. The following provisions of law are amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court":

(1) Section 4(c) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(c)).

(2) Section 20 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831s).

(3) Section 403 of the International Claims Settlement Act of 1949 (22 U.S.C. 1642b).

(4) Section 2(a) of the Act of May 15, 1978 (92 Stat. 244).

(5) Section 311(i) of the Federal Water Pollution Control Act (33 U.S.C. 1321(i)).

(6) Section 10(b) of the Intervention on the High Seas Act (33 U.S.C. 1479(b)).

(7) Section 282 of title 35, United States Code.

(8) Section 5261 of the Revised Statutes (45 U.S.C. 87).

(9) Section 41(a) of the Trading with the Enemy Act (50 U.S.C. App. 42(a)).

SEC. 220. The following provisions of law are amended by striking out "United States Court of Customs and Patent Appeals" any place they appear and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit":

(1) Section 21 of the Trademark Act of 1946 (15 U.S.C. 1071).

(2) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

(3) Section 305(d) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(d)).

SEC. 221. (a) The following provisions of law are amended by striking out "Court of Customs and Patent Appeals" each place it appears and inserting in lieu thereof "Court of Appeals for the Federal Circuit":

(1) Subsections (e) and (g) of section 516 of the Tariff Act of 1930 (19 U.S.C. 1516 (e) and (g)).

(2) Section 528 of the Triff Act of 1930 (19 U.S.C. 1528).

(3) Section 337(c) of the Tariff Act of 1930 (19 U.C.S. 1337(c)).

(4) Sections 141 through 146 of title 35, United States Code.

(b)(1) The item relating to section 141 in the section analysis of chapter 13 of title 35, United States Code, is amended by striking out "Court of Customs and Patent Appeals" and inserting in lieu thereof "Court of Appeals for the Federal Circuit".

(2) The section heading for section 141 of title 35, United States Code, is amended by striking out "Court of Customs and Patent Appeals" and inserting in lieu thereof "Court of Appeals for the Federal Circuit".

SEC. 222. The following provisions of law are amended by striking out "the United States Court of Claims, the United States Court of Customs and Patent Appeals" each place it appears and inserting in lieu thereof "the United States Claims Court":

(1) Section 6001(4) of title 18, United States Code.

(2) Section 906 of title 44, United States Code.

TITLE III—MISCELLANEOUS PROVISIONS

EFFECTIVE DATE

SEC. 301. The provisions of this Act shall take effect on October 1, 1981.

CONTINUED SERVICE OF CURRENT JUDGES

SEC. 302. The judges of the United States Court of Claims and of the United States Court of Customs and Patent Appeals in regular active service on the effective date of this Act shall continue in office as judges of the United States Court of Appeals for the Federal Circuit. Senior judges of the United States Court of Claims and of the United States Court of Customs and Patent Appeals on the effective date of this Act shall continue in office as senior judges of the United States Court of Appeals for the Federal Circuit.

APPOINTMENT OF CHIEF JUDGE OF COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SEC. 303. Notwithstanding the provisions of section 45(a) of title 28, United States Code, the first chief judge of the United States Court of Appeals for the Federal Circuit shall be the Chief Judge of the United States Court of Claims or the Chief Judge of the United States Court of Customs and Patent Appeals, whoever has served longer as chief judge of his court. When the person who first serves as chief judge of the United States Court of Appeals for the Federal Circuit vacates that position, the position shall be filled in accordance with the provisions of such section 45(a).

COURT OF CLAIMS COMMISSIONERS

SEC. 304. (a) Notwithstanding the provisions of section 171(a) of title 28, United States Code, as amended by section 106 of this Act, a commissioner of the United States Court of Claims serving immediately prior to the effective date of this Act shall become a judge of the United States Claims Court on the effective date of this Act.

(b) Notwithstanding the provisions of section 172(a) of title 28, United States Code, as amended by section 106 of this Act, the initial term of office of a person who becomes a judge of the United States Claims Court under subsection (a) of this section shall expire on September 30, 1984, except that no such individual shall serve as a judge after reaching the age of seventy years.

(c) At the time a commissioner becomes a judge of the United States Claims Court, he may elect between the retirement program described in section 7447 of the Internal Revenue Code of 1954, as made applicable to judges of the United States Claims Court by subsection (j) of such section 7447, and the pension plan in which he was previously enrolled.

(d) If any position of commissioner on the United States Court of Claims becomes vacant during the period beginning on the date of enactment of this Act and ending October 1, 1981, such position shall remain vacant during the remainder of such period and shall be filled, after October 1, 1981, by aopointment in accordance with section 171 of title 28, United States Code, as amended by this Act.

EFFECT ON PENDING CASES

SEC. 305. Any matter pending before a commissioner of the United States Court of Claims on the effective date of this Act shall be transferred to the United States Claims Court. Any appeal which has been taken from a district court of the United States prior to the effective date shall be decided by the court of appeals in which it has been filed. Any matter pending before the United States Court of Customs and Patent Appeals or awaiting disposition by the United States Court of Claims on the effective date shall be transferred to the United States Court of Appeals for the Federal Circuit.

TVA LEGAL REPRESENTATION

SEC. 306. Nothing in this Act affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 to represent itself by attorneys of its choosing.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. RAILSBACK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is a pleasure to bring H.R. 3806 before the full House. The proposed legislation establishes a new intermediate appellate court to be called the U.S. Court of Appeals for the Federal Circuit. Creation of this court is accomplished through a merger of the existing Court of Claims and the existing Court of Customs and Patent Appeals into a single appellate court with expanded jurisdiction. The creation of this new court substantially improves the administration of the law in the areas of patents, Government contracts, trademarks and international trade; provides a tribunal capable of exercising appellate jurisdiction nationwide; and results in improved functioning of the Federal appellate system.

There are those who would argue that we have created a specialized court. To the contrary, what we have done is take two specialized courts and combine them into a larger, more generalized court. In addition, the court has enlarged jurisdiction over all Federal contract appeals in which the United States is a defendant, over patent and trademark appeals from all Federal district courts, and over appeals from the Merit Systems Protection Board. All of this firmly respects present-day conceptions of judicial administration: That we ought not create overly specialized courts.

H.R. 3806 also creates a new article I trial forum known as the U.S. Claims Court, which would inherit the trial jurisdiction of the Court of Claims. The creation of this court provides an upgraded and better organized trial forum for Government claims cases.

There are several very important reasons for this legislation. First, the caseload of the Federal appellate system has reached crisis proportions. Between 1962 and 1977, appellate court judges more than quadrupled—from approximately 5,000 to 20,000. During this same period, Federal circuit judges only increased from 78 to 97. In spite of the fact that the omnibus judgeship bill created an additional 35 circuit judgships, it created many more at the base of the judicial pyramid: The district court level. These new lower court judges have kept their new circuit court brethren more than occupied with constantly increasing numbers of appeals. In addition, legislation passed by the 95th and 96th Congresses has drastically increased the burdens on the appellate courts. For example, both the bankruptcy and magistrate reform bills gave relief to the district courts while funneling larger numbers of appeals directly to the circuit courts of appeals.

This bill is not a panacea for these festering problems. It does, however, provide partial relief.

A second specific goal of the legislation is to provide increased uniformity in the patent law.

The establishment of a single court to hear patent appeals was repeatedly singled out by the witnesses who appeared before my subcommittee as one of the most far-reaching reforms that could be made to strengthen the U.S. patent system in such a way as to foster technological growth and industrial innovation. The new Court of Appeals for the Federal circuit will provide nationwide uniformity in patent law, will make litigation results more predictable and will eliminate the expensive and time-consuming forum-shopping that characterizes litigation in the field.

Patent litigation long has been identified as a problem area, characterized by undue forum-shopping and unsettling inconsistency in adjudications. Based on the evidence it compiled during the course of thorough hearings on the subject, the Commission on Revision of the Federal Court Appellate System—created, I might add, by act of Congress—concluded that patent law is an area in which the application of the law to the facts of a case often produces different outcomes in different courtrooms in substantially similar cases.

Secretary of Commerce Philip M. Klutznick testified in support of the proposal:

> Decisions to file patent applications and to invest in commercializing inventions would be improved meaningfully as a result of the greater uniformity and reliability made possible . . .

For these reasons the establishment of a single court to hear patent appeals

was a major recommendation of the domestic policy review initiated by President Carter and is an indispensable part of the President's industrial innovation program. The proposal was expressly endorsed by President Carter in a message to the Congress on February 17, 1979.

The uniformity in the law that would result from the centralization of patent appeals in a single court will be a significant improvement from the standpoint of the industrial and businesses that rely on the patent system. Business planning becomes easier as more stable and predictable patent law is introduced. Patents thus serve as a stimulus to the innovative process. This can have important positive ramifications for the Nation's economy.

The proposal contains additional positive features. From a practical standpoint, a merger of the Court of Claims and the CCPA could be accomplished with minimal disruption. Since the courts presently occupy but do not quite fill the courts building on Lafayette Square in Washington, D.C., and already share the library and dining facilities, a new building does not have to be built. From a budgetary perspective, the merger would be extremely cost effective—and over the long run, would result in cost savings. The CBO cost estimate states that the proposed legislation will only require new expenditures of $60,000 in 1982, $70,000 in 1973, $70,000 in 1984 and $80,000 in 1985.

CONCLUSION

In summary, consolidation of the Court of Claims and the Court of Customs and Patent Appeals is constitutionally permissible and logistically and technically uncomplicated. Furthermore, it will make maximum use of available facilities and personnel and make only a modest change in Federal appellate court structure. It will reduce the incentive to forum-shop and bring desirable uniformity to an important area of the law. The number of appeals resulting from attempts to obtain different rulings on disputed legal points can be expected to decrease. Business planning will be made easier as the law becomes more stable.

At the same time, the merger of the courts will relieve docket pressures both on the regional appellate courts and on the Supreme Court. Although the number of appeals to be redirected is not great in proportion to the total caseload of these courts, the cases that would be rerouted contain some of the most complex and time-consuming issues the courts consider. The impact of the new court on the dockets of these courts therefore will be far greater than the raw numbers might indicate. Thus, the proposed court will increase the capacity of the Federal judicial system for definitive adjudication of patent and other issues falling within its jurisdiction.

Mr. Speaker, in closing, I remind my colleagues that similar legislation has passed the U.S. Senate. With an "aye" vote, we hopefully can achieve enactment of a public law during this Congress. I urge your support for this legislation.

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Mr. RAILSBACK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3806, a bill to help improve our patent system by creating a single court to hear appeals from the Court of Claims and from the Court of Customs and Patent Appeals. However, one of the major purposes of the new court will be its expanded and exclusive jurisdiction of patent appeals from district courts throughout the Nation.

Our subcommittee held several days of hearings where we heard a great deal of testimony concerning the problem of forum-shopping which presently exists. For example, if you wanted to bring a lawsuit which would have the effect of attacking the validity of an existing patent, you would most likely file such a lawsuit in the eighth circuit. On the other hand, if you were trying to have a patent held valid, you would try and have the suit filed in the fifth circuit.

Only a small percentage of the patents granted are challenged in court. However, of those patents challenged, over 50 percent are held to be invalid. Some of this instability is attributable to forum shopping. Although we are not talking about a lot of cases, the chilling effect is substantial on everyone who holds a patent. It is especially discouraging for the single inventor and the small businessman who do not have the resources for prolonged litigation.

H.R. 3806 has the support of the Departments of Justice and Commerce, the American Patent Law Association, the Judicial Conference and the judges and commissioners of the two courts involved. It is also supported by numerous corporate lawyers and the Industrial Research Institute, which is a private, nonprofit corporation with a membership of approximately 250 industrial companies that account for a major portion of the industrial research and development conducted in the United States. The Senate has also passed a bill very similar to H.R. 3806; S. 1477.

As a practical matter, the merger of the Court of Claims and the Court of Customs and Patent Appeals can be accomplished with virtually no disruption to the people involved. This legislation would not involve the building of any new courtroom facilities. The existing courts already jointly occupy almost all of the courts building at Lafayette Square in Washington, D.C. They presently share the same library, and court personnel share the same dining facilities.

I urge my colleagues to vote favorably for the passage of this legislation.

Some of the persons and organizations who support the legislation are the following:

ORGANIZATIONS SUPPORTING H.R. 3806

1. American Patent Law Association.
2. National Bar Association.
3. National Patent Law Association.
4. Committee for Economic Development.
5. Industrial Research Institute.
6. Wisconsin Alumni Research Foundation.
7. National Small Business Association.
8. Small Business Legislative Council.
9. American Society of Inventors.
10. National Patent Council.
11. American Chemical Society.
12. Saginaw Valley Patent Law Association.
13. Chemical Manufacturers Association.
14. Menominee Indian Tribe of Wisconsin.
15. Klamath Indians of Oregon.

GOVERNMENT AGENCIES SUPPORTING H.R. 3806

1. United States Department of Justice.
2. United States Department of Commerce.
3. Judicial Conference of the United States.

BUSINESSES SUPPORTING H.R. 3806

1. Itek Corporation.
2. Sperry Univac.
3. Reynolds Metals Company.
4. The Continental Group Inc.
5. Combustion Engineering Inc.
6. Colt Industries.
7. St. Regis Paper Co.
8. Allied Chemical Corporation.
9. FMC Corporation.
10. Bethlehem Steel Corporation.
11. Borg-Warner Corporation.
12. E.I. dupont de Nemours & Company.
13. American Can Company.
14. Monsanto Company.
15. Perkin-Elmer Corporation.
16. Deere & Company.
17. Foster Wheeler Energy Corporation.
18. Phillips Petroleum Company.
19. Allis-Chalmers Corporation.
20. Dow Chemical Company.
21. Bell Telephone Laboratories.
22. General Electric Company.
23. Rex Nord.
24. The Procter & Gamble Company.
25. Continental Oil Company.
26. International Business Machines Corporation.
27. Lilly Corporation.
28. Airco Inc.
29. Burroughs Corp.
30. Merck Sharp & Dohme Research Laboratories.
31. Xerox Corporation.
32. United Technologies Corporation.
33. Stauffer Chemical Company.
34. 3M Corporation.
35. J.I. Case Corporation.
36. Allen-Bradley Company.

SELECTED INDIVIDUALS WHO SUPPORTED H.R. 3806

1. Prof. Daniel J. Meador, School of Law, University of Virginia.
2. Dean Paul Carrington, School of Law, Duke University.
3. Larry Cassett, Esq., Director of Patent, Trademark & Licensing Activities.
4. Nicholas deB. Katzenbach, Esq., IBM Corporation.
5. Dale L. Carlson, Esq., Patent Counsel, Union Carbide.
6. Paul S. Quinn, Esq., Wilkinson, Cragun & Barker, Washington, D.C.
7. Chief Judge Daniel M. Friedman, U.S. Court of Claims.
8. Chief Judge Howard T. Markey, U.S. Court of Patent and Customs Appeals.
9. Hon. Henry J. Friendly, U.S. Court of Appeals for the 2d Circuit.
10. Erwin N. Griswold, Esq., Former Solicitor General of the United States.
11. Harry F. Manbeck, Jr., Esq., General Patent Counsel, General Electric Co.
12. Homer O. Blair, Esq., Past President, Licensing Executives Society (U.S.A.).
13. Donald R. Dunner, Esq., Member—Patent Subcommittee, Advisory Committee on the Domestic Policy Review for Industrial Innovation.

Mr. KASTENMEIER. Mr. Speaker, I will only conclude by saying that I agree with what the gentleman from Illinois (Mr. RAILSBACK) has just stated. This is an essential cornerstone in the attempt to revise our patent policy and patent procedures to make this Nation competitive in terms of its innovation and technology.

I appreciate also the fact that the gentleman from Illinois read, in part, the

long list of supporting organizations for this legislation.

Mr. RAILSBACK. Mr. Speaker, I yield such time as he may consume to my distinguished friend and colleague, the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in support of H.R. 3806. Because of the nature of infringements, patent attorneys have an almost open shot at any forum in the United States that they wish to pick. Consequently, most of the patent law firms, as we know, have virtually a national practice, because of the forum-shopping aspects. For example, lawyers wishing to protect a patent will virtually boycott the eighth circuit because they have a very poor record of sustaining patents. The philosophy of the eighth circuit seems to be more antipatent than most of the other circuits, while the second and seventh circuits are more neutral and the fifth is considered propatent.

I would like to point out to the Members that this new court is not a specialized court. Its jurisdiction is not limited to one type of case, but rather it will have a varied docket spanning a broad range of legal issues. By combining the jurisdiction of the two existing courts—Court of Claims and the Court of Customs and Patent Appeals—along with certain limited grants of new jurisdiction, the bill creates a new intermediate appellate court markedly less specialized than either of its predecessors.

We have heard from many patent lawyers from around the country, and they strongly feel that there should be a uniformity of appellate jurisdiction and are very strongly in favor of this legislation.

I urge the Members to vote favorably for the enactment of H.R. 3806.

● Mr. McCLORY. Mr. Speaker, I rise in support of H.R. 3806, which establishes a new intermediate appellate court by merging two existing article III courts, the Court of Claims and the Court of Customs and Patent Appeals.

I would like to emphasize for the membership two important aspects of this legislation. First, H.R. 3806 is an important court reform measure in that it will expedite and unify the present jurisdiction of the two merged courts and further expand its jurisdiction to include all patent appeals from the district courts around the country.

The second aspect is the effect this legislation is going to have on industrial innovation, which I believe is a key to increase productivity in our country. As has been pointed out by other Members, the validity of a patent is dependent, to a certain degree, upon geography. It is particularly difficult for small businesses to make useful and knowledgeable investment decisions where patents are involved when they fear a patent may be attacked and tied up for years in expensive litigation. The standard of patentability should not vary from circuit to circuit.

A good friend of mine, Secretary of Commerce, Phil Klutznick, testified in support of this legislation, and his testimony before the subcommittee he said the following:

Decisions to file patent applications and to invest in commercializing inventions would be improved meaningfully as a result of the greater uniformity and reliability made possible by a National Appeals Court.

Mr. Speaker, this legislation was favorably reported, on voice vote, both in the subcommittee and the full Judiciary Committee, and I urge the Members to vote favorably for its passage.●

● Mr. GUDGER. Mr. Speaker, I commend the chairman of the subcommittee for his explanation of H.R. 3806 and associate myself with his remarks.

During the 96th Congress one of the major goals of the Subcommittee on Courts, Civil Liberties and the Administration of Justice has been the improvement of the patent system created by Congress pursuant to our powers enumerated in article I, section 8. Toward that end we offer this bill which will establish a single court of appeals inferior to the U.S. Supreme Court which will provide the sole forum for patent appeals from U.S. District Courts.

Currently, patent cases are appealed from district court to the Circuit Courts of Appeal. This has resulted in inconsistant case law in the patent area and quite a bit of forum shopping. We believe that this bill will facilitate uniformity in the area of patent law and since judges from the existing Court of Patent Appeals and the Court of Claims will sit on the new court, they should bring considerable expertise to this court.

We urge adoption of this bill.●

● Mr. RODINO. Mr. Speaker, on April 30, 1979, I introduced H.R. 3806, the Court of Appeals for the Federal Circuit Act, one of several comprehensive court reforms proposed by President Carter in his message to Congress on February 27, 1979. It is my pleasure to speak today in support of the bill as it has been reported by the Committee on the Judiciary.

Under the able leadership of Mr. KASTENMEIER, the Subcommittee on Courts, Civil Liberties and the Administration of Justice conducted extensive hearings on the proposal. The bill in its present form has been refined through the committee process and enjoys not only the support of the administration and of the Department of Justice but also bipartisan support within the House and the approval of the patent bar, the judges of the affected courts and the representatives of the businesses, large and small, interested in the proposal.

The essence of the proposal is the creation of a new intermediate appellate court, to be called the "U.S. Court of Appeals for the Federal Circuit," by merging the Court of Claims and the Court of Customs and Patent Appeals. The new court would consist of 12 article III judgeships to be appointed by the President with the advice and consent of the Senate. Initially the 12 judges of the two existing courts would staff the new court.

This new court would be, in effect, a 12th circuit court. It would not be interposed between the existing circuits and the Supreme Court, but rather would occupy a place in our appellate structure similar to that of the existing circuits. Review of its decisions would be in the Supreme Court upon a writ of certiorari.

Like the existing circuit courts, the new court would hear appeals from certain final decisions of the district courts. Unlike the existing circuits, however, the jurisdiction of the new court would be nationwide and would be limited and exclusive.

A major object of the proposal is to reduce the widespread lack of uniformity and uncertainty of legal doctrine that now exists in the administration of the patent law and that has resulted in costly and unseemly forum-shopping in that area. This objective would be realized by giving the new court exclusive jurisdiction over all appeals from cases in the district courts in which a patent issue was raised in the complaint, as well as overall appeals in patent cases currently reviewed by the Court of Customs and Patent Appeals.

In the past decade various groups such as the study group on the caseload of the Supreme Court and the Commission on Revision of the Federal Court Appellate System have sought to resolve the problems presented by the multiplicity of Federal appellate courts. In the course of their analysis, both groups observed that there was considerable diversity among the appellate courts in patent law. Patent issues may appear in any of the 11 regional circuits or in the Court of Customs and Patent Appeals. Patent law is an area in which the application of the law to the facts of an individual case often produces different outcomes in different courtrooms. Since Supreme Court review of patent cases is rare, the courts have conflicts on important legal questions which go unresolved. The existence of such disparity in the law promotes litigation and forum shopping in patent law which both unnecessarily taxes judicial resources and destroys respect for the law.

This proposal seeks to resolve that problem by combining the Court of Claims with the Court of Customs and Patent Appeals. It transfers all appeals in patent, trademark, plant variety protection, and pendent matters to the new court which would be known as the U.S. Court of Appeals for the Federal Circuit.

This court would have all the features of the regional courts of appeals. It would not be above those courts since it would hear no appeals from them, nor would it be below them since its cases would be reviewed only by the Supreme Court. It could sit in panels of three, five, seven or more according to rules it would establish. The size of the panel would reflect the importance of the case to be decided.

In addition, the new court would inherit all other jurisdiction of the Court of Claims and of the Court of Customs and Patent Appeals except for, first, cases brought under the Federal Torts Claims Act—all of which historically have been heard by the district courts and the regional circuits—and second, the trial function now being performed by the Commissioners of the Court of Claims.

A new article I Court, patterned after the U.S. Tax Court, and to be called the "U.S. Claims Court," would be created consisting of 16 judgeships—initially staffed by the current Court of Claims Commissioner. The claims court would

inherit the existing jurisdiction and function of the Court of Claims Commissioners, again, with the exception of Tort Claims Act cases.

H.R. 3806 recognizes the fact that the Court of Claims, with its trial functions delegated to a group of court-appointed commissioners, has really become an appellate court. With the transfer of the Court of Claims into the new appellate court, the role of the commissioners requires formal recognition. The bill establishes the U.S. Claims Court as an article I court which would assume the trial jurisdiction of the present U.S. Court of Claims. Such a change should promote efficiency since the current commissioners are not able to make dispositive decisions, and thus practically every case before them is appealed to the Court of Claims. Under the new structure they would issue dispositive orders which should have the effect of reducing the time and energy needed to get a final decision in a claim against the United States.

H.R. 3806 is a much-needed structural reform in our Federal civil justice system. It will markedly reduce the specialization of two existing courts, reduce the total number of Federal courts, and add to the capacity of our system by making optimum use of existing resources. No new courts or judgeships are created; no additional personnel are required.

Moreover, by stabilizing the patent law so vital to industrial innovation in this country, H.R. 3806 will achieve major economies for prospective litigants and foster investment in research and development. New investment means new technology. New technology means new jobs and increased productivity essential to the revitalization of our Nation's economy. It is no wonder then that H.R. 3806 has the support of American business, large and small.

H.R. 3806 also has the support of President Carter, of the Department of Justice and the Department of Commerce. It has the support of the lawyers who will practice before the new courts and of the judge who will serve on them.

Mr. Speaker, I urge all my colleagues to vote with me in adopting H.R. 3806.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, H.R. 3806, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 3806, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

JUDICIAL COUNCILS REFORM AND JUDICIAL CONDUCT AND DISABILITY ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7974) to revise the composition of the judicial councils of the Federal judicial circuits, to establish a procedure for the processing of complaints against Federal judges, and for other purposes.

The Clerk read as follows:

H.R. 7974

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Judicial Councils Reform and Judicial Conduct and Disability Act of 1980".

JUDICIAL COUNCILS OF THE CIRCUITS

SEC. 2. (a) Section 332(a) of title 28, United States Code, is amended to read as follows:

"(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he may designate, a meeting of the judicial council of the circuit, consisting of—

"(A) the chief judge of the circuit, who shall preside;

"(B) that number of circuit judges fixed by majority vote of all such judges in regular active service; and

"(C) that number of district judges of the circuit fixed by majority vote of all circuit judges in regular active service, except that—

"(i) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is less than six, the number of district judges fixed in accordance with this subparagraph shall be no less than two; and

"(ii) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is six or more, the number of district judges fixed in accordance with this subparagraph shall be no less than three.

"(2) Members of the council shall serve for terms established by a majority vote of all judges of the circuit in regular active service.

"(3) The number of circuit and district judges fixed in accordance with paragraphs (1)(B) and (1)(C) of this subsection shall be set by order of the court of appeals for the circuit no less than six months prior to a scheduled meeting of the council so constituted.

"(4) Only circuit and district judges in regular active service shall serve as members of the council.

"(5) No more than one district judge from any one district shall serve simultaneously on the council, unless at least one district judge from each district within the circuit is already serving as a member of the council.

"(6) In the event of the death, resignation, retirement, or disability of a member of the council, a replacement member shall be designated to serve the remainder of the unexpired term by the chief judge of the circuit.

"(7) Each member of the council shall attend each council meeting unless excused by the chief judge of the circuit.".

(b) Section 332(c) of title 28, United States Code, is amended by striking out "quarterly" and inserting in lieu thereof "semiannually".

(c) Section 332(d) of title 28, United States Code, is amended to read as follows:

"(d)(1) Each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. Each council is authorized to hold hearings, to take sworn testimony, and to issue subpoenas and subpoenas duces tecum. Subpoenas shall be issued by the clerk of the court of appeals, at the direction of the chief judge of the circuit or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas issued on behalf of the United States or an officer or agency thereof.

"(2) All judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council.

"(3) Unless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council.".

(d)(1) The section heading for section 332 of title 28, United States Code, is amended to read as follows:

"§ 332. Judicial councils of circuits".

(2) The item relating to section 332 in the section analysis for chapter 15 of title 28, United States Code, is amended to read as follows:

"332. Judicial councils of circuits.".

PROCEDURES WITHIN JUDICIAL COUNCILS

SEC. 3. (a) Section 372 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

"(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term 'chief judge'). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

"(3) After reviewing a complaint, the chief judge, by written order stating his reasons, may—

"(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) related to the merits of a decision or procedural ruling, or (iii) frivolous; or

"(B) conclude the proceeding if he finds that appropriate corrective action has been taken.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

"(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

"(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

"(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

"(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

"(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recom-

mendations for necessary and appropriate action by the judicial council of the circuit.

"(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council——

"(A) may conduct any additional investigation which it considers to be necessary;

"(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

"(i) directing the chief judge of the district of the magistrate whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate;

"(ii) certifying disability of a judge appointed to hold office during good behavior whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this subsection;

"(iii) requesting that any such judge appointed to hold office during good behavior voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply;

"(iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate whose conduct is the subject of a complaint;

"(v) censuring or reprimanding such judge or magistrate by means of private communication;

"(vi) censuring or reprimanding such judge or magistrate by means of public announcement; or

"(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 153 of this title; and

"(C) shall immediately provide written notice to the complainant and to such judge or magistrate of the action taken under this paragraph.

"(7)(A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

"(B) In any case in which the judicial council determines, on the basis of a complaint and an investigation under this subsection, or on the basis of information otherwise available to the council, that a judge appointed to hold office during good behavior has engaged in conduct—

"(i) which might constitute one or more grounds for impeachment under article I of the Constitution; or

"(ii) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

"(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate whose conduct is the subject of the action taken under this paragraph.

"(8) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary.

"(9)(A) In conducting any investigation under this subsection, the judicial council, or a special committee appointed under paragraph (4) of this subsection, shall have full subpoena powers as provided in section 332(d) of this title.

"(B) In conducting any investigation under this subsection, the Judicial Conference, or a special committee appointed by the Presiding Officer of the Judicial Conference, shall have full subpoena powers as provided in section 331 of this title.

"(10) A complainant aggrieved by a final order of the chief judge under paragraph (3) of this subsection may petition the judicial council for review thereof. A judge or magistrate aggrieved by an action of the judicial council under paragraph (6) of this subsection may petition the Judicial Conference of the United States for review thereof. Except as expressly provided in this paragraph, all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be reviewable on appeal or otherwise.

"(11) Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this subsection, including the processing of petitions for review, as each considers to be appropriate. Such rules shall contain provisions requiring that—

"(A) adequate prior notice of any investigation be given in writing to the judge or magistrate whose conduct is the subject of the complaint; and

"(B) the judge or magistrate whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing.

Any rule promulgated under this subsection shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference.

"(12) No judge or magistrate whose conduct is the subject of an investigation under this subsection shall serve upon a special committee appointed under paragraph (4) of this subsection, upon a judicial council, or upon the Judicial Conference until all related proceedings under this subsection have been finally terminated.

"(13) No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this subsection.

"(14) All papers, documents, and records of proceedings related to investigations conducted under this subsection shall be confidential and privileged against disclosure by any person in any proceeding, except that the judicial council of the circuit, the Judicial Conference of the United States, or the Congress may release any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution.

"(15) Except as expressly provided in this subsection nothing in this subsection shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

"(16) The Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court shall each prescribe rules, consistent with the foregoing provisions of this subsection, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this subsection.".

(b) The section heading for section 372 of title 28, United States Code, is amended to read as follows:

"§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline.".

(c) The item relating to section 372 in the section analysis for chapter 17 of title 28, United States Code, is amended to read as follows:

"372. Retirement for disability; substitute judge on failure to retire; judicial discipline.".

AUTHORITY OF THE JUDICIAL CONFERENCE

SEC. 4. The fourth undesignated paragraph of section 331 of title 28, United States Code, is amended to read as follows:

"The Conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. In its discretion, the Conference may make necessary and appropriate orders in the exercise of its authority under section 372 of this title, and in the performance of its authority under such section may, as a Conference or through a special committee appointed by the Presiding Officer, hold hearings, take sworn testimony, and issue subpoenas and subpoenas duces tecum. Subpoenas shall be issued by the clerk of the Supreme Court of the United States or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the Court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedures for subpoenas issued on behalf of the United States or an officer or agency thereof. All judicial officers and employees of the United States shall promptly carry into effect all such orders of the Judicial Conference. The Conference may also prescribe and modify rules for the exercise of authority conferred by section 372 of this title in accordance with subsection (c) of such section.".

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

SEC. 5. Section 604 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(h)(1) The Director shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under section 372 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under section 372 of this title.

"(2) The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under section 372(c) of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 7. This Act shall become effective on October 1, 1981.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. RAILSBACK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is with great pleasure that I bring to the House floor a bill to substantially improve the functioning and accountability of the Federal judiciary. I would like, at the outset, to thank the members of my subcommittee, who participated in the drafting and formulating of this important piece of legislation. They all have cosponsored the bill before us, and without them the legislation would not be on the House floor today.

In brief, the proposed legislation creates procedures and in mechanism within the Federal judicial branch of Government to handle complaints against Federal judges and magistrates. It also revises the composition of the judicial councils of the 11 Federal circuit courts of appeals, and in addition clarifies the authority of both the circuit councils and the Judicial Conference of the United States in the area of judicial discipline and disability.

The bill has received broad-based and virtually unanimous support. It has been endorsed by the Judicial Conference of the United States, the U.S. Department of Justice, the American College of Trial Lawyers, the Conference of Federal Trial Judges, the American Bar Association (in principle), the National Association of Attorneys General (in principle), and the American Judicature Society (in principle). The American Civil Liberties Union, on record as opposing all previously drafted legislative proposals, has withdrawn its opposition and takes no position on H.R. 7974.

The proposed legislation was reported unanimously from the subcommittee that I chair—the Subcommittee on Courts, Civil Liberties and the Administration of Justice. Indeed, as I stated above, all nine subcommittee members have cosponsored the legislation. Further, by voice vote the bill was unanimously reported from the full committee. Not a single amendment was offered in subcommittee or full committee. I believe that this is due to the fact that we have successfully drafted a consensus piece of legislation, agreed to by all three branches of Government.

Let me now turn to some of the issues involved.

Under article III, section 1, of the Constitution of the United States, Federal judges hold office "during good Behaviour, and shall * * * receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." This clause was designed to give judges maximum freedom from possible coercion or influence by the other two branches of Government.

In the Constitution, there is only one provision dealing with sanctions that may be imposed on Federal judges. Alexander Hamilton observed that article III, section 1, "is the only provision on the point which is consistent with the necessary independence of the judicial character." James Madison said:

> The judges are to be removed only on impeachment, and conviction before Congress.

The reason I present this constitutional analysis at the outset is that I would like the ensuing debate to keep it in mind. We, as elected Members of Congress, have an affirmative obligation to maintain and insure respect for the Constitution.

In this regard, it is my opinion that in recent years the U.S. Senate has passed legislation on this topic of very questionable constitutionality. There even appears to be an admission or concession of this point in S. 1873, the companion Senate bill, which contains a separability section stating that if any section of the act is held invalid then the application of the remainder of the act shall not be affected. Further evidence of this can be gleaned from the heated debate in the Senate. In conference—if one is necessary—I pledge to be very firm on compromising away the contents of the Constitution. In short, I will not do so.

A second issue that I would like to raise is that of the need for the legislation. Again, in my opinion, there has been no showing of a compelling necessity to create elaborate judicial discipline machinery, such as a new court of commission. We live in a period of mistrust of new Government programs. We also are experiencing great distrust of generous spending programs to solve societal problems. In short, in drafting the proposal before the full committee today, it was necessary first of all to measure the need for the legislation and then to craft a logical, economical and fair solution to the problem.

With respect to policy, I would argue that the proposed legislation meets the test of good legislation. It solves the problem of there being no mechanism within the Federal judiciary to resolve complaints about the conduct and disability of judges. It does not result in overkill, it is cost effective, and it will not dilute the independence of the Federal judicial branch.

With respect to constitutionality, I believe that the bill reported by the Committee on the Judiciary—and formulated by my subcommittee, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice—passes constitutional muster. It specifically does not allow removal and it does not create a new court of tenure commission.

With respect to costs, it is economical. It utilizes existing judicial machinery. It also dovetails with efforts by the Judicial Conference of the United States to stimulate and create grievance procedures within the Federal judiciary.

Let me now give a brief summary of how the proposed legislation accomplishes its policy and constitutional goals. In brief, it uses the existing circuit councils as the primary mechanism for the resolution of complaints against Federal judicial officers. A complaint can be filed with the circuit's clerk of court; it then is referred to the chief judge of the circuit who is granted broad discretion to solve the perceived problem or to dismiss the complaint if it is frivious. The chief judge's decision is rendered in writing. If the chief judge is unable to solve the complaint or dismiss it, he must create a special committee to investigate the facts and allegations in the complaint. The special committee conducts an investigation as extensive as it considers necessary and then files a comprehensive written report with the full judicial council of the circuit. The latter then may conduct an additional investigation, and shall take such action "as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit" including actions specifically delineated in the legislation. In addition, the circuit council may refer any complaint to the Judicial Conference of the United States. The council is required to do so if a judge has engaged in impeachable activity or activity which, in the interest of Justice, is not amenable to resolution by the judicial council.

Any complainant who is not satisfied with a decision of a chief judge may petition the judicial council for review thereof. Nothing in the legislation precludes a complainant from bringing any matter to the attention of the House of Representatives for an impeachment inquiry or to the U.S. Department of Justice for a criminal investigation.

The proposed legislation also provides for consistency in circuit rules. It additionally improves the functioning of the judicial councils by providing for district judge representation. And, last, it calls for the Director of the Administrative Office of the U.S. Courts to annually report to Congress on the number of complaints filed, the nature thereof, and the disposition.

Unquestionably, the issue of the best means by which to deal with allegations of unfitness against Federal judges is one that concerns all three branches of the Federal Government. The Congress has a role in the appointment process and can, as we know, remove a judge from the bench through the impeachment process. The executive branch, through the Department of Justice, also has a role in the appointment process, investigates allegations of criminal misconduct against judicial officers and prosecutes such judicial misbehavior; the judiciary itself has a responsibility to maintain its own integrity. Because of the separation of powers principle that guides us, these roles—and any legislation affecting them—must remain separate. I believe that the legislation before us today satisfies that mandate. And I am pleased that the highest ranking representatives of the other two branches agree with this. As observed by Attorney General Benjamin Civiletti in his recent speech to the ABA convention:

> I firmly believe that the establishment through legislation of formal procedures by which the judiciary itself can consider and act upon complaints against judges will pro-

vide a shield for the many, many unwarranted complaints that are raised against judges and will increase public confidence in the quality of the judiciary. . . . We essentially support the draft bill in the House." In a letter to me, Judge Elmo J. Hunter (as representative of the Judicial Conference of the United States) stated that "no proposal which I have seen in the past can in any way be deemed to be the equivalent to H.R. 7974.

I particularly appreciate this support from the other two branches because it symbolizes recognition that we are engaged in a cooperative endeavor to achieve an effective and constitutional process within one of the branches, that is, requiring the judiciary to establish judicial discipline procedures. In short, it is a clear message that we have satisfied the difficult legislative mandate given to us.

I ask your support for this legislation, and I urge an "aye" vote.

□ 1410

Mr. Speaker, I reserve the balance of my time.

Mr. RAILSBACK. Mr. Speaker, I yield myself so much time as I may consume.

Mr. Speaker, I rise in support of H.R. 7974, a bill which would establish a procedure for investigating and resolving allegations against members of the Federal judiciary. I would like to commend Mr. KASTENMEIER and the members of the subcommittee for their work on the legislation.

I think we all agree that legislation in this senitive area is long overdue. Until only recently, there was no procedure or mechanism, short of impeachment, available for handling cases of judicial misconduct or disability involving a Federal judge. In the last year and a half, all 11 judicial councils have implemented rules for the processing of complaints against Federal judges in response to a resolution issued by the Judicial Conference on March 9, 1979. However, an examination of the various sets of rules adopted by the respective judicial councils indicates that they lack uniformity and, in many instances, are silent on important issues.

H.R. 7974 would, I believe, go a long way toward remedying the existing deficiencies in the various sets of rules now in use by the 11 judicial councils by strengthening and clarifying their power to handle complaints against members of the Federal judiciary.

I recognize that there are those Members who may favor stronger measures and, I am one of them. However, I respect the argument that stronger measures than those embodied in H.R. 7974, may be more controversial. Therefore, I am willing to support H.R. 7974 as a reasonable first step in this extremely sensitive area.

H.R. 7974 is virtually without opposition and enjoys the active support of the Judicial Conference of the United States, the U.S. Department of Justice, the ABA, the American College of Trial Lawyers, the Association of Federal Trial Judges, the National Association of Attorneys General (in principle), and the American Judicative Society (in principle). Moreover, H.R. 7974 was reported by the Subcommittee on Courts, Civil Liberties, and the Administration of Justice and the full Judiciary Committee without opposition or amendment. Accordingly, I urge my colleagues to support H.R. 7974 as a significant improvement in the functioning and accountability of the Federal judiciary.

□ 1420

Mr. Speaker, I would like to yield such time as he may consume to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in support of H.R. 7974, which would establish a new, workable procedure for the handling of complaints against Federal judges and magistrates.

I think it is important for my colleagues to recognize the fact that the need for H.R. 7974 is not based on any evidence that there is a serious problem with Federal judgs failing to conform to the "good behavior" standard of the U.S. Constitution. Rather, H.R. 7974 is based on the recognition that there are isolated cases that involve judicial misconduct or disability, which do not rise to the level of an impeachable offense, yet need redress. H.R. 7974 would provide an equitable and clear procedure for the handling of such cases.

In the introduction to the "Standards Relating to Judicial Discipline and Disability Retirement," adopted by the American Bar Association's house of delegates in 1978, it is stated that:

> The major purpose of judicial discipline is not to punish judges, but to protect the public, preserve the integrity of the judicial process, maintain public confidence in the judiciary, and create a greater awareness of proper judicial behavior on the part of judges themselves.

I believe that H.R. 7974 will further these stated purposes of judicial discipline while preserving judicial independence. Accordingly, I urge my colleagues to support H.R. 7974, which has been cosponsored by all nine members of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

Mr. KASTENMEIER. Mr. Speaker, I yield such time as he may consumer to the gentleman from North Carolina (Mr. GUDGER), a distinguished member of the subcommittee.

Mr. GUDGER. Mr. Speaker, I thank the gentleman for yielding. I wish to commend the chairman of the subcommittee and the ranking minority member for their clear and forthright explanation of this highly important bill.

Mr. Speaker, I urge passage of H.R. 7974, a bill to revise the composition of the Federal circuit counsels and to establish a procedure for the processing of complaints against Federal judges.

The Courts Subcommittee and the full Judiciary Committee both unanimously reported this bill in response to a perceived need to establish an effective procedure whereby citizens may have their complaints about Federal judges addressed. Personally, I believe that this bill strikes a balance between the twin goals of judicial discipline and the maintenance of an independent Federal judiciary. We accomplish this by giving the Federal judiciary both the authority and responsibility for policing themselves.

We must always preserve the independence of our Federal judiciary. This era of our national history is no different than those that precede it and that may be expected to follow, it is an era that demands hard judicial decisionmaking and inevitably, unpopular decisions. While the impeachment process has proven so cumbersome as to be useless in dealing with judicial impropriety that does not amount to criminal behavior, it has made life tenure and insulation from political pressure a reality. Our bill will not replace impeachment as the sole method for removal, but would give the chief circuit judge several options in dealing with complaints against judges in the circuit including referral to a judicial council composed of district and circuit judges.

Sanctions such as censure, the withholding of cases, requests for retirement or the certification of a judge's disability, which have proven effective in my own fourth circuit, are codified in the bill. There is also an appellate procedure which culminates in the Judicial Conference of the United States. That body has the option of referring a case to the Congress with a recommendation for impeachment. However, the constitutional prerogative of Congress to impeach is in no way jeopardized by the bill.

In sum, the bill preserves judicial independence while establishing a procedure whereby the Federal bench may resolve public grievances against it. I strongly urge its adoption.

Mr. RAILSBACK. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Mississippi (Mr. LOTT).

Mr. LOTT. I thank the gentleman for yielding.

I am very pleased to rise in support of this legislation. I want to commend the Committee on the Judiciary, both the subcommittee leadership and that of the full committee for reporting out H.R. 7974, the Judicial Council Reform and Judicial Concept and Disability Act of 1980.

Mr. Speaker, this is legislation that has been talked about and considered as I understand it since the forties and a number of States have passed legislation to deal with this. Mississippi, I think, was one of the last States that actually set up a judicial discipline agency.

There are certain constitutional considerations that had to be weighed very carefully and I think that this bill has done that. I think it sets up a system where, when there may have been some misconduct there will be a way that it can be looked into and appropriate action can be taken without removing them from office.

I think we have a good bill here. I am pleased to see the Senate has already acted on legislation that is, I understand, very similar. I think it is needed, I think it will help to restore the confidence of the American people to a large extent in our judicial system, if there is some way in which these charges that are sometimes made can be investigated.

I appreciate the job that has been done and I am very pleased to support this legislation.

Mr. KASTENMEIER. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. PEASE).

Mr. PEASE. Mr. Speaker, I rise in

strong support of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (H.R. 7974). Certainly Chairman KASTENMEIER and all the members of the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice are to be commended for bringing this bill before us today.

Soon after the 96th Congress convened in January 1979, I introduced a bill (H.R. 622) which would create a system for filing complaints about Federal judges with a responsible, judicial body that would have both the means and the ability to investigate and take appropriate action. I did this because of my belief there exists a compelling need to reinforce public confidence in the character, professional conduct, and accountability of our Federal judges. I urge support for H.R. 7974 because it helps meet this need. At the same time, it represents a significant step toward giving life and meaning to a system for the Federal judiciary policing itself.

In No. 51 of the Federalist Papers, James Madison underscores the importance of preserving our liberties by obliging our Government to control itself as well as the governed. Specifically, he wrote:

> In framing a government which is to be administered by men over men the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

What this bill is about is providing a needed "auxiliary precaution" to insure that the Federal judiciary effectively controls itself. The value of such a precaution should be self-evident as the Federal judiciary pursues its policymaking functions.

Mr. RAILSBACK. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

● Mr. McCLORY. Mr. Speaker, I rise in support of H.R. 7974, which would revise the composition of the Judicial Councils of the Federal Judicial Circuit and establish a procedure for the processing of complaints against Federal judges.

I think we all recognize that impeachment is a cumbersome and unwieldly process, as evidenced by the fact that in nearly 200 years only 54 judges have been investigated and of these, only 8 judges and 1 justice have been impeached. Furthermore, only four judges have been removed, with the last impeachment of a Federal judge occurring over 40 years ago. However, the structuring of impeachment as a difficult process was, I believe, not unintentional, for by so doing the Founding Fathers provided protection for the independence of Federal judges who in many cases must render unpopular decisions. Something fairly egregious has to occur before impeachment is restorted to, yet there are cases involving Federal judges that need redress, short of impeachment.

H.R. 7974 would expand and clarify the power of the judicial councils to handle complaints against members of the Federal judiciary. I am optimistic that the judicial councils will now be capable of handling cases that involve conduct which does not rise to the level of an impeachable offense. By the same token, I feel quite confident that the circuit councils can effectively handle cases of alcoholism and senility involving a Federal judge. Experience with these problems in the past has established that the best forum for the handling of such cases is provided by ones own colleagues.

Strengthening the disciplinary powers of the circuit councils, as provided for in H.R. 7974 will, I believe, minimize the constitutional problems involved in this sensitive area, while providing the least intrusion into the independence of the Federal judiciary. I urge my colleagues to support H.R. 7974.●

● Mr. RODINO. Mr. Speaker, I want to raise a strong voice in favor of passing H.R. 7974, the Judicial Councils Reform and Judical Conduct and Disability Act of 1980. As reported from the Committee on the Judiciary, this bill offers a wise and prudent solution to one of the most serious problems facing our system of justice in America—that of judicial accountability.

It is my belief that the real security and strength of our Nation lies in the integrity of its institutions and the informed confidence of its people. American citizens are concerned about the quality of justice provided by our judicial system and they are demanding greater accountability by their judges. The very distinguished Federal district court judge, Frank M. Johnson has stated "judicial independence must incorporate some notion of accountability."

The bill before the House today embodies this advice, and I believe it strikes true balance between the twin goals of a judicial branch that is independent from political pressures and one that is accountable to the finest standards of integrity.

Mr. Speaker, this is a subject that goes to the heart of our Constitution and one to which I have given a great deal of thought. As chairman of the House Committee on the Judiciary, I presented my ideas to the Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice at the start of this Congress on how to improve procedures to deal more effectively with complaints of misconduct or misbehavior by Federal judges.

I told the subcommittee that the expertise which Congress showed in the 1974 impeachment inquiry and the scholarship we now have available to us indicate strongly that the authority to remove a Federal judge from office must rest solely with the Congress. The Constitution makes it very clear in articles I, II and III that removal authority rests solely with Congress. This is where it should stay.

I recommended that improved judicial branch procedures be established which would discipline or reprimand judges, short of the removal power. I also believe that the House Judiciary Committee should consider improvements in the way in which we handle complaints against judges. The committee rules can be reviewed and modified if the need is there. Also, I recommend that the three branches of Government improve their lines of communication and cooperation to insure that Congress is aware of any inquiries which either the judiciary or Justice Department are making regarding complaints against Federal judges.

Mr. Speaker, in considering this legislation, much has been said about the impeachment process being very cumbersome. I believe that is as it should be. The Constitution grants the House of Representatives sole impeachment power over judges; it also recognizes that this authority is the ultimate and last resort, and should not be an easy mechanism for removing an official. In fact, the Constitution provides that impeachment itself is not a substitute for the ordinary application of the criminal laws.

I do not doubt that there may have been judges that may have committed impeachable offenses during the last 50 years, judges who were not found guilty by the Congress. However, if we consider the cases, we will find that a good many of them were solved by the other institutions that serve us. Several judges resigned from office when threatened with prosecution. At least one was prosecuted and then resigned after conviction. Other problems—usually relating to alcoholism and senility—were solved by the Federal judiciary. In many of these instances, we find that the system can really work—that certain actions within the system can cure the problem instead of rushing to impeachment.

Mr. Speaker, H.R. 7974 will improve the system's mechanisms for solving its problems of misconduct while maintaining a strong, independent court system. The bill is a product of much study by the Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice. Chairman ROBERT KASTENMEIER obtained the advice of numerous professionals in the Federal judiciary as well as the other branches of Government. His own commitment to crafting the best possible balance between judicial independence and accountability has produced a commendable bill.

H.R. 7974 provides the judicial councils in each Federal circuit with the statutory responsibility for preserving the integrity of the court by creating a disciplinary machinery for circuit, district, and bankruptcy judges, and magistrates.

These councils could take action to discipline a judge, short of removal. They also could refer complaints to the U.S. Judicial Conference which, if it concluded that impeachment was warranted, could inform the House of Representatives. Of course, the House could take whatever action it considered necessary. Nothing in the bill precludes a person from taking a complaint directly to the House of Representatives.

Mr. Speaker, this is a fair bill that will significantly improve the handling of misconduct cases in our Federal courts, and thus strengthen the public's confidence in our judicial branch of Government. The bill is one of the most important court reform measures to come from the House Judiciary Committee and

the Congress in several years. I enthusiastically support it and urge its adoption by the House.●

● Mr. BUTLER. Mr. Speaker, I support this legislation which would establish a procedure, short of removal, for handling complaints against members of the Federal judiciary. Legislation in this area is long overdue. However, while H.R. 7974 represents an important first step, the question that concerns me and that only time will answer is whether or not H.R. 7974 goes far enough in its attempt to establish a procedure short of removal, for disciplining Federal judges.

On March 9, 1979, the Judicial Conference adopted a resolution calling for the promulgation by the 11 judicial councils of procedural rules to process complaints alleging judicial misconduct inconsistent with the effective administration of the business of the courts. To date, all 11 judicial councils have adopted widely varying sets of rules to implement the conference recommendation. H.R. 7974 represents a legislative proposal that would increase and clarify the authority of the judicial councils to handle complaints against Federal judges.

A key provision of H.R. 7974 requires the Director of the Administrative Office of the U.S. Courts to report annually to the Congress on the number of complaints filed with each judicial council their general nature and disposition. This information will make it easier for us, as Members of Congress, to properly assess whether the subject of judicial misconduct is a serious one or not, and accordingly whether stronger measures are necessary.

In supporting H.R. 7974, I would like to impress on my colleagues the importance of conducting congressional oversight in this most sensitive area. At the first sign that the judiciary is incapable of disciplining itself, Congress should reevaluate the provisions of H.R. 7974 with a view toward stronger measures.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, H.R. 7974.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 1873) to establish a procedure for the processing of complaints directed against Federal judges, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1873

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Judicial Conduct and Disability Act of 1979".

PROCEDURES WITHIN JUDICIAL COUNCILS; COURT ON JUDICIAL CONDUCT AND DISABILITY

SEC. 2. (a) Section 372 of title 28, United States Code, is amended by adding at the end of the section:

"(c)(1) Any person may file a written complaint against a judge, as defined in paragraph (2), with the judicial council of the circuit in which the judge serves, alleging that—

"(A) the judge is, or has been, unable to discharge efficiently all the duties of his or her office by reason of mental or physical disability; or

"(B) the judge is engaging, or has engaged, in conduct inconsistent with the effective and expeditious administration of the business of the courts.

"(2) For the purposes of this subsection through subsection (o), other than subsections (g) and (j), 'judge' means a judge of a court of appeals or a district court.

"(3) Complaints which are outside the jurisdiction of the judicial council include, but are not limited to, complaints relating to the merits of any decisional or procedural ruling of a judge, or any matter reviewable under any other provision of law on the record. The judicial council shall dismiss any complaint which is outside its jurisdiction.

"(4) The judicial council shall, with respect to judges within its circuit, process and investigate each complaint not dismissed under paragraph (3), and may investigate on its own motion any other allegation which meets the standards provided in subparagraph (A) or (B) of paragraph (1). After investigation on its own motion, the judicial council may, if appropriate, file a complaint under paragraph (1). The judicial council shall notify the complainant when it receives the complaint, and shall forward a copy to the judge who is the subject of the complaint. The judicial council shall take action on each complaint in an expeditious manner.

"(5) After review of the allegations, the judicial council shall dismiss any complaint, the allegations of which are frivolous or which do not meet the standards provided in subparagraph (A) or (B) of paragraph (1), or proceed in accordance with subsection (d). If the judicial council dismisses a complaint under this paragraph or under paragraph (3), it shall notify in writing the complainant and the judge who is the subject of the complaint of the action taken and the reasons for the order of dismissal.

"(6) The complainant may, within ten days of receipt of the notice under paragraph (5), petition the Court on Judicial Conduct and Disability (hereinafter in this section referred to as the 'Court') for review of any order of dismissal under paragraph (3) or (5).

"(d)(1) If the complaint is not dismissed under subsection (c)(3) or (c)(5), the judicial council shall notify the complainant and shall give the judge who is the subject of the complaint an opportunity to appear before the judicial council, if desired.

"(2) If the judicial council finds that the allegations meet the standards provided in subsection (c)(1)(A) or (B), it shall—

"(A) certify disability pursuant to the procedures and standard provided under subsection (b);

"(B) request that the judge voluntarily retire with the provision that the length of service requirements under section 371 of this title shall not apply;

"(C) order that, on a temporary basis for a time certain, no further cases be assigned to the judge;

"(D) censure or reprimand the judge by means of private communication;

"(E) censure or reprimand the judge by means of public announcement; or

"(F) order such other action as it considers appropriate under the circumstances, but in no circumstances may the council order removal from office.

"(3) The judicial council shall maintain a record of any proceedings conducted under paragraph (2), and each action taken shall be accompanied by written findings, including a statement of the basis upon which such action was taken.

"(4)(A) The judicial council shall notify in writing the complainant and the judge who is the subject of the complaint of the action taken under paragraph (2). A complainant or the judge who is the subject of the complaint may, within ten days of receipt of such notice, petition the Court for review of any such action.

"(B) Upon the timely filing of a petition for review under this paragraph or under subsection (c)(6), the judicial council shall certify and transmit to the Court its action and findings with respect to that action, and a record of the proceedings. For purposes of a petition under subsection (c)(6), the record shall, at a minimum, consist of a copy of the complaint and the written notification to the complainant and the judge who is the subject of the complaint of the action taken and the reasons for the order of dismissal.

"(C) Except as provided in this section, there shall be no judicial review of any action taken by the judicial council under this subsection or subsection (c).

"(e)(1) The Judicial Conference of the United States shall promulgate rules of procedure for the judicial councils for discharging the duties under subsections (c) and (d), or authorize the judicial council of each circuit to promulgate rules of procedure for its respective circuit.

"(2) The Judicial Conference of the United States shall also promulgate rules of procedure for the Judicial Council of the District of Columbia Circuit and the chief judges of the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court, for discharging the duties under subsection (j).

"(3) Any rule promulgated under this subsection may be modified by the Judicial Conference of the United States and shall be a matter of public record.

"(f)(1) Administrative, professional, and financial assistance from the Administrative Office of the United States Courts and from the Federal Judicial Center may be requested by—

"(A) each judicial council for discharging the duties under subsections (c) and (d); and

"(B) the Judicial Council of the District of Columbia Circuit and the chief judges of the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court, for discharging the duties under subsection (j).

"(2) The Administrative Office of the United States Courts and the Federal Judicial Center are authorized to provide assistance requested under paragraph (1) and to expend funds to insure such assistance, within the limits of its available resources.

"(g)(1) There is established a court of record to be known as the Court on Judicial Conduct and Disability. The Court may exercise all appropriate judicial powers incident or necessary to the jurisdiction conferred upon it. The Court may prescribe such rules for the conduct of its proceedings as it considers appropriate. Attendance of witnesses and the production of relevant material may be required from any place in the United States and its territories at any place designated for holding court. Whenever possible, the Court shall sit in the district or circuit in which the judge who is the subject of the complaint serves. If the judge who is the subject of the complaint serves on the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court, the Court shall sit, whenever possible, in the location in which that court is usually held.

"(2) The Court shall consist of five Federal judges, including at least one district court judge, to be appointed by the Chief Justice of the United States. Each member shall be a judge of the United States in regular active service. The Chief Justice shall designate the chief judge of the Court.

"(3) A judge of any court created by an Act of Congress in a territory which is vested with the jurisdiction of a district court of the United States may not be a member of the Court.

"(4) The term of each member shall be three years, except that when the Court is initially appointed, three of the members shall serve three-year terms and two of the members shall serve two-year terms. The term of any member shall automatically be extended until his or her successor has been appointed. A member selected to fill a vacancy shall commence a full three-year term. A judge may serve on the court any number of times, but may not serve consecutive terms.

"(h)(1) The Court shall grant a petition filed by a complainant under subsection (c)(6) or (d)(4), or a petition filed by a judge who is the subject of the complaint under subsection (d)(4), upon the concurrence of two of its members.

"(2) Upon the grant of a petition under paragraph (1), the Court shall—

"(A) dismiss any complaint, the allegations of which do not meet the standards provided in subsection (c)(1)(A) or (B), and any complaint relating to the merits of any decisional or procedural ruling of a judge or any matter reviewable under any other provision of law on the record;

"(B) affirm any action taken by the judicial council if the action is supported by clear and convincing evidence on the record;

"(C) modify any action taken by the judicial council if such modification is supported by clear and convincing evidence on the record, but no such modification may include an order of removal from office;

"(D) reverse and remand to the judicial council for further proceedings any action which is unsupported by clear and convincing evidence on the record; or

"(E) when required in the interests of justice, conduct a hearing under subsection (i)(1) to determine the matter de novo, and any action taken under subsection (i)(2) shall be supported by clear and convincing evidence.

"(i)(1) If the Court decides to hear the matter de novo, the judge who is the subject of the complaint shall be given adequate notice of the hearing, shall be admitted to the hearing, may be represented by counsel, may testify and present testimony at the hearing in his or her own behalf, and may confront and cross-examine any witness.

"(2) After a hearing de novo under paragraph (1), the Court shall—

"(A) upon a determination that the allegations do not meet the standards provided in subsection (c)(1)(A) or (B), order dismissal of the action;

"(B) upon a determination that the judge is unable to discharge efficiently all the duties of his or her office by reason of permanent mental or physical disability and that the appointment of an additional judge, in the manner provided in subsection (b), is necessary for the efficient dispatch of business, certify disability; or

"(C) upon a determination that the allegations meet the standards provided in subsection (c)(1)(A) or (B)—

"(i) order that, on a temporary basis for a time certain, no further cases be assigned to the judge;

"(ii) censure or reprimand the judge by means of public announcement; or

"(iii) order such other action as it considers appropriate under the circumstances, but in no circumstances may the Court order removal from office.

"(3) Each action taken under subsection (h)(2) and under paragraph (2) of this subsection shall be made by a majority of the members of the Court. Each order or action of the Court shall be in writing, and the complainant and the judge who is the subject of the complaint shall receive a copy. There shall be no judicial review of any order or action of the Court taken under this subsection or subsection (h).

"(j)(1) Any person may file a written complaint—

"(A) with the Judicial Council of the District of Columbia Circuit, with respect to the chief judge of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court; or

"(B) with the chief judge of the applicable court, with respect to any judge of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court;

alleging that the conduct of the judge meets the standards in subsection (c)(1)(A) or (B).

"(2) The Judicial Council of the District of Columbia Circuit or the chief judge, as the case may be, shall proceed in accordance with the provisions of paragraphs (3) through (6) of subsection (c) and the provisions of subsection (d). If a complainant or judge who is the subject of the complaint petitions the Court for review, the provisions of subsections (g), (h), and (i) shall apply. For purposes of this paragraph, all references to 'judicial council' in paragraphs (3) through (6) of subsection (c), subsections (d), (h), and (i), shall be treated as referring to 'the Judicial Council of the District of Columbia Circuit or the chief judge, as the case may be,'.

"(k)(1) The Court shall submit to the House of Representatives a record of all proceedings by the council, the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court, revealing conduct which, in its view, would constitute an impeachable offense as defined in Article II, section 4, of the Constitution of the United States. The record shall be accompanied by the complaint made against the judge and any order or findings made by a judicial council, the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court.

"(2) The Committee on the Judiciary of the House of Representatives shall give timely consideration to such record and accompanying materials, and shall make its best efforts to take action within 90 days of receipt of such record.

"(l) A judge shall not sit in any proceeding as a member of a judicial council or of the Court, or under the provisions of subsection (j), when it inquires into his or her own conduct, or when it inquires into a complaint filed by him or her against another judge.

"(m) No person shall be granted the right to intervene or appear as amicus curiae in any proceeding before a judicial council, the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court.

"(n)(1) All matters filed with, all testimony or evidence given before, and all deliberations of, a judicial council under subsections (c) and (d), the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court under subsection (h), shall be confidential—

"(A) unless authorized in writing by the judge who is the subject of a complaint;

"(B) unless the judge is censured or reprimanded by means of public announcement under subsection (d)(2)(E); or

"(C) unless final adverse action is taken against a judge, not including an order of dismissal.

"(2) For the purposes of subparagraph (C) of paragraph (1), an action is final—

"(A) if no petition for review is filed, the date of expiration of the time period during which a petition for review may be filed; or

"(B) if a petition for review is filed, the date on which—

"(i) the Court denies a petition for review; or

"(ii) the Court grants the petition for review and takes action under subsection (h)(2)(B), (C), or (D).

"(3) If the Court determines under subsection (h)(2)(E) to hear the matter de novo, all proceedings conducted by the Court pursuant to subsection (i) shall be open and shall be a matter of public record.

"(o) The Director of the Administrative Office of the United States Courts shall include in its annual report filed with the Congress under section 604 of this title a summary of the number of complaints filed with each judicial council under subsection (c), and with the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), indicating the general nature of such complaints and the disposition of those complaints in which action has been taken, including any action taken by the Court.".

(b)(1) The section heading for section 372 of title 28, United States Code, is amended to read as follows:

"§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline"

(2) The table of sections for chapter 17 of title 28, United States Code, is amended by amending the item relating to section 372 to read as follows:

"372. Retirement for disability; substitute judge on failure to retire; judicial discipline.".

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

SEC. 3. Section 604 of title 28, United States Code, is amended by adding at the end the following:

"(1) The Director shall provide facilities and pay necessary expenses incurred by the Court on Judicial Conduct and Disability under chapter 17 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title.".

SEPARABILITY

SEC. 4. If any provision of this Act or any amendment made by this Act, or the application of such provision or amendment to any person or circumstances, shall be held invalid, the remainder of this Act or such amendment or the application of such provision or amendment to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

AUTHORIZATION

SEC. 5. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

EFFECTIVE DATE

SEC. 6. This Act shall become effective October 1, 1980.

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KASTENMEIER moves to strike out all after the enacting clause of the Senate bill, S. 1873, and to insert in lieu thereof the provisions of H.R. 7974, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to revise the composition of the judicial councils of the Federal judicial circuits, to establish

a procedure for the processing of complaints against Federal judges, and for other purposes.".

A similar House bill (H.R. 7974) was laid on the table.

□ 1430

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed, H.R. 7974.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PRETRIAL SERVICES ACT OF 1980

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7084) to amend chapter 207 of title 18, United States Code, relating to pretrial services, as amended.

The Clerk read the bill, as follows:

H.R. 7084

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pretrial Services Act of 1980".

SEC. 2. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services agencies

"The Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the 'Director') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise, for the establishment of a pretrial services agency in each judicial district (other than the District of Columbia) with respect to which the appropriate United States district court and circuit judicial council have recommended such establishment.".

SEC. 3. Section 3153 of title 18, United States Code, is amended to read as follows:

"§ 3153. Organization and administration of pretrial services agencies

"(a) The pretrial services agencies established under section 3152 of this title shall be under the general authority and direction of the Director.

"(b) Each pretrial services agency shall be headed by a chief pretrial services officer selected by the chief judge of the district court. An individual who is a probation officer appointed under section 3654 of this title may perform functions and duties of an officer or employee of a pretrial services agency including a function or duty of the chief pretrial services officer.

"(c)(1) With the approval of the district court, the chief pretrial services officer shall appoint such other personnel as may be required to staff the agency. The position requirements and rate of compensation of the chief pretrial services officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code.

"(2) The chief pretrial services officer is authorized subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code.

"(d)(1) Except as provided in paragraph (2) of this subsection, information contained in the files of any pretrial services agency, presented in an agency report, or divulged by the agency during the course of any hearing, shall be used only for the purposes of a bail determination and shall otherwise be confidential. The agency report shall be made available to the attorney for the accused and the attorney for the Government.

"(2) The Director shall issue regulations establishing the policy for release of information contained in the files of each pretrial services agency. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

"(A) by qualified persons for purposes of research related to the administration of criminal justice;

"(B) by persons under contract under section 3154(a) of this title;

"(C) by probation officers for the purpose of compiling presentence reports;

"(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

"(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

"(3) Information contained in the files of any pretrial services agency is not admissible on the issue of guilt in any criminal judicial proceeding, except that such information, if otherwise admissible, may be admitted on the issue of guilt for a crime committed in the course of obtaining pretrial release.".

SEC. 4. Section 3154 of title 18, United States Code, is amended—

(1) so that paragraph (1) read as follows:

"(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, and recommend appropriate release conditions for such individual.";

(2) by adding at the end of paragraph (3) the following: "The Director shall, not later than ninety days after the enactment of the Pretrial Services Act of 1980, issue guidelines for such supervision which shall (A) avoid unnecessary supervision; and (B) specify the factors to be considered in determining which persons need not be supervised and the appropriate degree and conditions of supervision.";

(3) in paragraph (4), by striking out "With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of" and inserting "Provide for" in lieu thereof;

(4) in paragraph (5), by inserting "and the United States attorney" after "court";

(5) so that paragraph (9) reads as follows:

"(9) Perform other functions under this chapter."; and

(6) by adding at the end the following:

"(10) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions and prepare periodic reports to assist in the improvement of the bail process.

"(11) To the extent provided for in an agreement between the pretrial services agency and the United States attorney, collect, verify, and prepare reports for the United States attorneys office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(12) Make contracts for the carrying out of any of the functions of such pretrial services agency.".

SEC. 5. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of the agency. The Director shall be required to include the Director's annual report to the Judicial Conference under section 604 of title 28, United States Code, a report on the administration and operation of the pretrial services agencies for the previous year.".

SEC. 6. The table of sections for chapter 207 of title 18, United States Code, is amended—

(1) in the item relating to section 3153, by inserting "and administration" after "Organization"; and

(2) so that the item relating to section 3155 reads as follows:

"3155. Annual reports.".

SEC. 7. For the purposes of carrying out sections 3152 through 3155 of title 18 of the United States Code, there is authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1981, and $8,000,000 for the fiscal year ending September 30, 1982.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Michigan (Mr. CONYERS) will be recognized for 20 minutes, and the gentleman from Wisconsin (Mr. SENSENBRENNER) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of this bill is to provide for the expansion of pretrial service agencies presently operating on a demonstration basis throughout the Federal judicial system. Title 2 of the Speedy Trial Act of 1974, you may recall, authorizes the Director of the Administrative Office of the U.S. Courts to establish demonstration programs of pretrial services agencies in 10 Federal judicial systems. Five of these agencies are administered by the Probation Division of the Administrative Division, and five are administered by boards of trustees appointed by the chief judges of the district courts involved.

The pretrial services agencies perform two basic functions: First, the compilation and verification of background information on persons charged with violation of Federal criminal law for the use of the district court in setting bail; second, for the supervision of persons released from pretrial custody, including the provision of counseling and other pretrial services. These objectives in the title are, first, to reduce the volume and cost of unnecessary pretrial detention; and second, to reduce the commission of new crimes by those released on bail, and finally, to improve the operation of the Bail Reform Act itself.

Included among the services rendered by pretrial services agencies is assistance in securing necessary employment, medical and legal or social services. The record of the programs in meeting the objectives of the statute is set out in our committee report on the bill, and we think that it is an excellent one. It shows that, comparing the operation of the program as it went from the first year through the last, improvements were made in three key objectives.

Improvement rates in most categories are better under the separate board districts. For example, the board districts

completed interviews and submitted recommendations for use at bail hearings in a considerably higher percentage of cases. They also show more improvement in the use of nonfinancial conditions of release.

But, the probation districts showed greater improvement in two areas that are important; the rearrest rate—that is, the commission of new crimes on bail—and the failure to appear for trial.

The program has reduced detention and costs of detention, and that was one of the key objectives of the bill. The most recent figures show that there has been, generally speaking, a 40 percent reduction in the average number of days of detention in the districts where it operates since the program began. The costs of detention in these districts have also gone down, even when one uses 1973 costs for comparisons, which discount inflation at the present time.

Detention costs before the program was over $3 million a year in the 10 districts. The detention costs now are under $2 million. Bear in mind, however, that these savings have not been at the expense of community security. Both crime on bail and failure to appear for trial have also gone down in the demonstration districts, as the chart on page 4 in the report clearly reflects. A comparison of the rates and costs of detention in demonstration districts before and after the act also show a substantial reduction in detention and costs of detention under the act.

The figures for 2 years immediately before the act and for the first 3 years under the act show that the average number of days per defendant of detention has gone down almost 40 percent. We are very proud of this program which started off, of course, on an experimental basis, and now we are, under rather limited conditions, asking that it be expanded.

Further, Mr. Speaker, the study shows a comparable reduction of almost 40 percent in the cost of pretrial detention in the 10 districts under study—$3,285,000 a year to $1,900,000 a year. No attempt has been made to quantify the savings, which are important, that were brought about by the 50-percent reduction in crime on bail, thereby reducing losses to victims, or the similar reduction in failure to appear for trial, which saves the time and expense for court personnel in addition to costs that would have occurred for initiating prosecution for crimes that could have or may have been committed had they not been reduced.

We are proud of this program. The subcommittee which I chair has reported it favorably to the full committee, which now brings it to the floor today under these circumstances that we hope will meet with the approval of the overwhelming majority of my colleagues. We are proud to say that here is a program that was begun carefully and under experimental circumstances, that has proved the test of time. It has succeeded in literally every respect, and we now urge that it be modestly extended very carefully, with a fiscal appropriation of $6 million for 1981 and for $8 million for 1982, which will then allow it to grow considerably. We have followed the recommendations of the full committee and, in effect, put a sunset provision and a cap on the legislation. I urge its favorable consideration to my colleagues in this body.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong opposition to H.R. 7084, the Pretrial Services Act of 1980. Apparently infused with divine inspiration and at long last, the 2d session of the 96th Congress has recently embarked on a course of fiscal responsibility by attempting to balance the budget. Essential to this endeavor are drastically cutting, or completely exorcising, and restricting the urge to initiate unnecessary programs and bureaucracies.

Flying in the face of this long overdue trend, the Committee on the Judiciary has reported H.R. 7084, the Pretrial Services Act of 1980. If enacted, H.R. 7084 would extend an existing demonstration program operating in 10 Federal judicial districts into a nationwide network of pretrial services and a new bureaucracy. The proponents of this bill argue that the alleged success of the demonstration program illustrates a need for these services; that the mechanism for providing them under the bill are appropriate and effective, and the bill encourages cost effectiveness. I strongly disagree on all counts.

□ 1440

Mr. Speaker, the goal of providing our Federal judges and magistrates with information relating to the alleged "bailworthiness" of arrestees is, of course, a commendable one. Situations where unscrupulous persons have been released on their own recognizance because the magistrate has not had access to information about their criminal past are far too numerous. Nevertheless, Mr. Speaker, there is serious question as to whether the Pretrial Services Act, which perpetuates an existing experimental program, effectively accomplishes the goal that we all support.

Mr. Speaker, I have been advised by Federal district court judges that they have not found these services worthwhile. They have found that the probation offices which operate in their districts provide them with the information that they need with respect to bond hearings. These services are provided at no additional expense to the taxpayers of this country. The supporters of H.R. 7084 cannot make the same claim about the arrangement which they propose.

As a member of the Subcommittee on Crime of the Committee on the Judiciary, I believe that the success of the demonstration program has been vastly overrated. Some of the achievements which have been praised, such as declines in pretrial detention, were also experienced in districts where these services were not provided. One judge testified that in his district "there are a number of judges who have serious doubts as to the efficacy of and need for any pretrial services in the Federal System."

Even if we all agreed that this approach to information-gathering were the correct one, the mechanics which H.R. 7084 employs are questionable. If, as Federal district court judges advise, the probation offices can adequately perform these services, why is there not at least a presumption in the bill that they will be used? Merely removing the prohibition against a probation officer's serving as chief pretrial services officer is not enough.

The probation officers, according to reports that have been issued, have performed in a superior manner with respect to reductions in failures by arrestees to appear at trial and reductions in crime committed while on bail. Irrespective of cost considerations, these achievements alone should encourage us to place these services within the probation offices. But once cost is also factored into the equation, there is no question that the probation approach is preferable. While the Administrative Office of the U.S. Courts estimates that these services will cost $12 million per year, frugal probation officers working in the field advise me that the same work can be done by them for only $4 million.

The amendments adopted by the Judiciary Committee improve this bill somewhat, but I am concerned about what lies over the horizon when we come to conference. The Pretrial Services Act report by the Judiciary Committee of the other body does not contain these improvements. If the urge to establish new agencies has proven too irresistible to them in the midst of our effort to balance the budget, what assurances do we have that the same urge will not strike those who will be making the decisions under the so-called flexible approach contained in this bill?

Mr. Speaker, perhaps with more study we can devise an approach which will benefit the hard-working taxpayers as well as the bureaucrats. Until that time, however, I must urge my colleagues to vote against the motion to suspend the rules, to vote against H.R. 7084, and to defeat this bill.

In summary, Mr. Speaker, this bill imposes a new Federal program with a new bureaucracy at increased cost, and it is bills like this that make up the Federal budget deficits which Congress has enacted since 1969 and the inflation that is running so rampant and destroying the fabric of our society.

I say to the Members, please vote "no."

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, may I just point out for the record that notwithstanding my colleague's participation and his concession that the bill has been improved, I would just like to make several points briefly and attempt to spread before the Congress the record of pretrial service agencies.

This is not a new program. It is 4 years old. It started experimentally, and it has moved along the path of a most cautious and considered examination all the way through these 4 years. So, we are not asked to start a new program. We have a successful experimental project, and we have to ask ourselves whether we want to kill it or whether we want to continue it.

In view of the members of the Committee on the Judiciary is that we should

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cautiously extend this program. We extend it in a way that very carefully considers the matters of cost and efficiency.

First of all, we are extending the program for only 2 years, and we are using a very modest amount of money, $6 million and $8 million for fiscal 1981 and for fiscal 1982.

It has been proven that these procedures will save money. So, the point that is very baffling to me is that my colleague, the gentleman from Wisconsin, who has been very, very fiscally prudent from his beginning days of service here in the Congress, is now willing to recommend that we do not bring forth a program that has proven to be cost-effective in every respect in which it was examined, one which has met with the unparalled support of all the members of the judiciary and the magistrates who have testified before our subcommittee.

So, Mr. Speaker, it seemed to me that I was going to have the privilege of bringing forth a piece of legislation that, on the issue of cost factors, would win points and approval on both sides of the aisle.

I am really surprised that my colleague would object to a bill which, by operating in this manner in determining who can be released and by our own examination and by the oversight of the gentleman's own committee, has proven that we will clearly save hundreds of thousands of dollars by being able to give the Federal courts in this land the information that they so desperately deserve and need to determine who should be released pending trial, and the best conditions of that release.

Mr. Speaker, I will suspend at this point, and I yield 5 minutes to my colleague, the gentleman from North Carolina (Mr. GUDGER), a member of the subcommittee.

Mr. GUDGER. Mr. Speaker, I thank the gentleman for yielding me this time, and I congratulate him for his effective explanation of this bill.

Mr. Speaker, I am proud to rise in support of this bill. It will enhance the rights of all Americans to be free of unreasonable bail in Federal criminal proceedings. This civil liberty, guaranteed by the eighth amendment, was championed by one of North Carolina's great patriots, her former Senator Sam Ervin.

This bill merely builds on the foundation of the Speedy Trial Act of 1974, which established pretrial services projects in our 10 largest Federal district courts. Of these 10, 5 projects were operated by the probation offices and 5 were operated by independent boards. Using first year data as a benchmark, there is statistical evidence that both the probation and the independent offices contributed substantially to the reduction of pretrial crime, the rate of failure to appear by persons on release, unnecessary pretrial detention, and undue reliance on money bail. Clearly, this successful program should be continued.

Early on in my consideration of this proposal, I was deeply troubled that a provision which effectively excluded these services from the administrative purview of the chief probation officers would not only result in the creation of independent agencies in every district, but would prevent the district court from choosing the most effective method of providing these services in the district. My particular concern was that in districts having few criminal filings and large geographical areas it would be wasteful to create a totally new agency when our information indicated that probation offices in these areas could more efficiently handle the pretrial services function.

I developed an amendment which allows the district court to decide whether pretrial services should be handled by probation, an independent office, or by some other method. This amendment was adopted by the Judiciary Committee, and should assure the efficiency that these austere times demand. My amendment, together with the amendment of Mr. HYDE as amended by Mr. VOLKMER which authorizes an austere funding for the next 2 years, will insure that our tax dollars are not squandered. I commend these gentlemen for their efforts.

We urge that you support this bill which will allow the good work of pretrial services to be continued and expanded in the most efficient, economic, and effective manner possible.

□ 1450

Mr. SENSENBRENNER. Mr. Speaker, I yield 6 minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I am pleased to support H.R. 7084, the Pretrial Services Act of 1980, as reported by the Committee on the Judiciary.

The pretrial services demonstration program currently in existence was initiated under the Speedy Trial Act of 1974. As a member of the Subcommittee on Crime, I heard testimony from many witnesses, including a Federal magistrate from my own State of Illinois, to the effect that these services have been a valuable addition to our Federal judicial system. As that magistrate pointed out in her statement to the subcommittee, the benefits of these agencies include reducing unnecessary pretrial detention of arrestees, early commencement of rehabilitation, insuring that all personnel needed at the bond hearing (including public defenders and interpreters) are present, and providing information to the magistrate about compliance with bail conditions.

In the absence of adequate information, a judge's decision on bail can be disastrous. For instance, when a computer failure last February deprived a District of Columbia judge of information relating to an arrestee's criminal background, the judge released him on his own recognizance. Following his release the arrestee murdered a District of Columbia policeman. This demonstrates the necessity for judges and magistrates to have as much relevant information about a defendant as possible. Pretrial services agencies provide this crucial information.

Mr. Speaker, I share the concern expressed by some of my colleagues with respect to the cost issue. To that end, I offered two amendments to H.R. 7084, which were adopted by the Committee on the Judiciary. The first included in the bill a specific dollar authorization for appropriations. For fiscal year 1981, $6 million is authorized to be appropriated. For fiscal year 1982, $8 million is authorized to be appropriated. Although the figure for fiscal year 1982 is slightly more than I originally proposed, I believe that it nevertheless places an appropriate cap on expenditures. Irrespective of the precise dollar figures contained in the amendment, the authorization provision which it inserted into the bill acts as a "sunset" provision which will enable us to give this expanded program additional close scrutiny in 2 years to insure that it is performing in a cost-efficient manner and is achieving the goals that we have set for it.

The second amendment which I offered in the Judiciary Committee further reduces expenditures. Under present law, the range of services offered by the agency is left to the decision of the district court. As reported by the Subcommittee on Crime, the agency would have been required to perform a wide variety of social services, in addition to its informational services. The amendment which I offered allows for the type of flexibility which will militate against unnecessary expenses.

Mr. Speaker, let me make just a few comments about the pretrial services bill reported by the Judiciary Committee of the other body. As I understand it, their bill deletes the word "agency" throughout the bill so that there will be not even a hint of a presumption that an agency separate from the probation office must be established. I applaud that change, Mr. Speaker, as a further incentive to savings and I hope that that is the approach that we will adopt when this bill goes to conference.

On the other hand, Mr. Speaker, I am disturbed by the fact that the amendment offered by the gentleman from North Carolina, which was adopted by the Judiciary Committee of this body, is not part of the bill reported by its counterpart in the other body. That amendment removed the provision in the bill which effectively required the establishment of an agency separate from the probation office. I will admit to you frankly, Mr. Speaker, that if this bill comes back to us from conference with the provision that an employee of the probation office cannot serve as the chief pretrial services officer, I will have to reevaluate my support for H.R. 7084. I commend the gentleman from North Carolina for offering his cost-effective amendment.

Finally, I understand that their bill takes our subcommittee's approach of requiring the agency to perform multitudinous social services. Again, I would have difficulty supporting a bill which includes this provision for the cost reasons I have previously stated.

In sum, Mr. Speaker, I believe that the Judiciary Committee has taken great pains to fashion a bill which will will provide Federal judges and magistrates with the informational resources they need, while minimizing cost. I therefore urge my colleagues to vote in favor of the motion to suspend the rules and pass H.R. 7084.

Mr. Speaker, I would like to say that the money can be saved in many ways,

and one of the most vulnerable areas of neglect, one of the most glaring areas of neglect in the entire country is that of the administration of justice, prison reform, and the way our courts operate. It seems to me almost primitive not to have pretrial services available to provide information to a judge concerning a prisoner who may need some help at that point like no other point in his life or her life. And to deny people this sort of service and this information to the court is indeed primitive. As far as I am concerned, this is a modest program in terms of the billions of dollars that are spent on other, I might say, less efficacious programs.

I want to commend the chairman of this subcommittee for his innovation and for his persistence in pursuing this program and for his flexibility in accepting amendments that make it palatable to other members, and the gentleman from North Carolina (Mr. GUDGER); and, of course, while I commend my colleague, the gentleman from Wisconsin (Mr. SENSENBRENNER), who indeed works very hard on issues like this, and his point of view is a respectable one, I just do not happen to agree with it here. I think we are being pennywise and pound foolish not to provide services like this to our court system. We are helping the prisoners, we are helping the community, we are helping the administration for justice for a small amount of money, and that is no small achievement indeed.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. VOLKMER), a member of the subcommittee.

Mr. VOLKMER. Mr. Speaker, I rise in support of H.R. 7084 and lend my support to those who have spoken today also on this much needed legislation for pretrial services.

Mr. Speaker, I feel that these amendments to the act and the extension of the act will provide much needed services for persons who have been charged with crime and will provide services to those people so that, in the end, they may very well never have to spend years in penal institutions unjustifiably, and it is a way in which we can save a lot of taxpayers' money.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in listening to the arguments advanced by the supporters of this bill, one can easily get the impression that this bill represents the epitome of pinch-penny attitudes in the Congress.

I would respectfully disagree with those contentions.

What is being proposed in this piece of legislation is that an existing experimental program in 10 Federal judicial districts be expanded nationwide. Furthermore, what the probation officers around the country estimate can be done for $4 million per year will cost $6 million in fiscal year 1981 and $8 million in fiscal year 1982. As a matter of fact, the cost constraints originally proposed by my colleague, the gentleman from Illinois (Mr. HYDE), in the Committee on the Judiciary for $6 million in fiscal year 1982 were amended upward by $2 million before this bill was reported out.

So it is obvious that the foot in the door that was created when the pretrial services program was established in the 10 judicial districts 4 years ago is now opening the door a little wider with a nationwide program in this authorization, and I am certain that it will be opened still wider in 1982 when this present authorization expires.

If the 2d session of the 96th Congress is to go down in history as the Congress that turned the corner on Federal spending and unnecessary Federal programs, it is legislation like this that must be defeated so that we can demonstrate to the country our sincere desire for fiscal constraint and for balancing the budget. While I laud my colleagues, the gentleman from Michigan (Mr. CONYERS), the gentleman from North Carolina (Mr. GUDGER), and the gentleman from Illinois (Mr. HYDE), I do not think that a doubling of the total expenditures for pretrial services in a 2-year period of time is the kind of cost effectiveness that this Congress should set and which the American public would appreciate.

So for that reason, I hope that this bill is voted down.

● Mr. McCLORY. Mr. Speaker, I speak in support of H.R. 7084, the Pretrial Services Act of 1980, as that bill was reported by the Committee on the Judiciary.

As reported, H.R. 7084 expands an existing demonstration program operating in 10 Federal judicial districts so that all judicial districts will have the benefit of these services. The demonstration program was established under title II of the Speedy Trial Act of 1974 for the purpose of facilitating and implementing the objectives of the Bail Reform Act of 1966. The services provided by these agencies are primarily geared toward providing Federal judges and magistrates the information that they sorely need in determining which persons should be released on bail and what conditions should be imposed on their release.

In addition, these agencies provide invaluable assistance to the bench and the public alike by supervising persons released on bail in order to insure that they comply with the conditions placed on their release. Incidentally, they also provide counseling and employment services where requested by the judge, and, pursuant to arrangements entered into with the U.S. attorney's office, they may provide assistance in connection with pretrial diversion. I believe that the track record of the demonstration program, which has operated in Illinois, is such that it merits expansion of these services across the country.

The Committee on the Judiciary vastly improved this bill by adopting several amendments aimed at insuring that these services will be provided in the most efficient manner possible. Employees of the Federal Probation Office in the district may be used to man the agencies in order to avoid staff duplication. Furthermore, the district court is granted the option of choosing which services the agency in that district will perform so that no unnecessary expenditures are incurred. This permits the needed flexibility from district to district.

The most important improvement in the bill made by the committee is the addition of a specific dollar authorization for appropriations for fiscal years 1981 and 1982. The figures included in the bill are ample to fund the services, but encourage cost effectiveness. Furthermore, the authorization acts as a "sunset" provision which will give us a chance to reexamine this new program in 2 years to insure that it fulfills the goals which we envisioned in enacting it.

In sum, Mr. Speaker, I urge my colleagues to vote in favor of the motion to suspend the rules and pass H.R. 7084, the Pretrial Services Act of 1980.●

□ 1500

Mr. CONYERS. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS), that the House suspend the rules and pass the bill, H.R. 7084, as amended.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7084, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

COAST GUARD AUTHORIZATION, FISCAL YEAR 1981

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 6672, to authorize appropriations for the Coast Guard for fiscal year 1981, and for other purposes, as amended.

The Clerk read as follows:

H.R. 6672

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds are hereby authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1981, as follows:

(1) for the operation and maintenance of the Coast Guard, including expenses related to the Capehart housing debt reduction: $1,248,367,000;

(2) for the acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto: $469,320,000;

(3) for the alteration or removal of bridges over navigable waters of the United States, constituting obstructions to navigation: $16,200,000; and

(4) for research, development, test, and evaluation: $30,000,000.

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SEC. 2. For fiscal year 1981, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,600: *Provided*, That the ceiling shall not include members of the Ready Reserve called to active duty under the authority of section 764 of title 14, United States Code.

SEC. 3. For fiscal year 1981, average military training student loans for the Coast Guard are authorized as follows:

(1) recuit and special training: 4,175 student-years;

(2) flight training: 117 student-years;

(3) professional training in military and civilian institutions: 595 student-years; and

(4) officer acquisition: 925 student-years.

SEC. 4. The second sentence of subsection 475(a) of title 14, United States Code, is amended to read as follows: "When any such lease involves housing facilities in a foreign country, the lease may be made on a multiyear basis for a period not to exceed five years, and, in accordance with local custom and practice, advance payment may be made for the lease.".

SEC. 5. The third sentence of subsection 650(a) of title 14, United States Code, is amended to read as follows: "In these regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts.".

SEC. 6. The last sentence of subsection 214(d) of title 14, United States Code, is amended to read as follows: "A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive the increases in pay and allowances authorized for that grade.".

SEC. 7. (a) Chapter 13 of title 14, United States Code, is amended by adding a new section 512 as follows:

"§ 512. Monetary allowance for transportation of household effects

"The transportation and reimbursement authorized by subsection (b) of section 406 of title 37, United States Code, shall be available hereafter to pay a monetary allowance in place of such transportation to a member who, under regulations prescribed by the Secretary, participates in a program designated by the Secretary in which his baggage and household effects are moved by a privately owned or rental vehicle. This allowance shall not be limited to reimbursement for actual expenses and may be paid in advance of the transportation of the baggage and household effects. The allowance shall, however, be in an amount that will result in savings to the Government when the total cost of the movement of baggage and household effects is compared with the cost that otherwise would have been incurred under subsection (b) of section 406 of title 37, United States Code.".

(b) The analysis of chapter 13 of title 14, United States Code, is amended by adding the following item at the end thereof:

"512. Monetary allowance for transportation of household effects.".

SEC. 8. When an inspection or examination of a vessel documented or to be documented as a vessel of the United States is conducted at a foreign port or place at the request of the owner or operator of the vessel, that owner or operator shall reimburse the Secretary of the department in which the Coast Guard is operating for the travel and subsistence expenses incurred by the personnel assigned to perform the inspection or examination. Amounts received as reimbursement for these expenses shall be credited to the appropriation for operating expenses of the Coast Guard.

SEC. 9. The joint resolution of June 4, 1958 (72 Stat. 179; 36 U.S.C. 161) is amended by striking the words "week which includes July 4" and inserting in lieu thereof the words "week commencing on the first Sunday in June".

SEC. 10. (a) Chapter 17 of title 14, United States Code, is amended by adding a new section 660 as follows:

"§ 660. Transportation to and from certain places of employment

"(a) Whenever the Secretary determines that it is necessary for the effective conduct of the affairs of the Coast Guard, he may, at reasonable rates of fare fixed under regulations to be prescribed by him, provide assured and adequate transportation by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed by, the Coast Guard; and during a war or during a national emergency declared by Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for the Coast Guard.

"(b) Transportation may not be provided under subsection (a) unless the Secretary or an officer designated by the Secretary, determines that—

"(1) other transportation facilities are inadequate and cannot be made adequate;

"(2) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

"(3) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

"(c) To provide transportation under subsection (a), the Secretary may—

"(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

"(2) maintain and operate that equipment by enlisted members or employees of the Coast Guard, or by private persons under contract; and

"(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer designated by the Secretary, and that may provide for the pooling of government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

"(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c)(3), shall be covered into the Treasury as miscellaneous receipts.".

(b) The analysis of chapter 17 of title 14, United States Code, is amended by adding the following item at the end thereof:

"660. Transportation to and from certain places of employment.".

SEC. 11. Paragraph (1) of the first section of Public Law 96-23 (93 Stat. 68) is amended by striking "$1,058,357,000;" and substituting "$1,091,357,000;".

SEC. 12. The President shall submit to the Congress, with the fiscal year 1982 budget request for the Coast Guard and each subsequent budget request, the current copy of the Coast Guard's Capital Investment Plan, Cutter Plan, Aviation Plan, and Shore Facilities Plan.

SEC. 13. Section 3(c) of Public Law 96-324 is amended by striking the words "the Canal Zone.".

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. STUDDS) will be recognized for 20 minutes, and the gentleman from Alaska (Mr. YOUNG) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. STUDDS).

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6672 and urge its passage by the House.

The bill as reported authorizes appropriations totaling $1,743,887,000. This amount is an increase of $196,183,000 or 12.5 percent over the amount requested in the President's budget. A large portion of this increase is to authorize appropriations for a dual-draft icebreaker for the Great Lakes. That item will not, of course, result in any significant outlays during fiscal year 1981. When this is taken into consideration, the effective increase over the President's budget is about 5 percent.

This modest increase is, in my opinion, the minimum amount needed by the Coast Guard to be able to effectively perform its missions. It is clear from the testimony we received at the hearings on this bill, and from the recent Comptroller General's report on the Coast Guard, that the Coast Guard's budget has not grown to meet the increased demands that are being placed on it. We recognize that in this year's budget climate we cannot provide that growth. We must, however, insure that we provide sufficient funds to enable the Coast Guard to safely maintain its facilities and equipment—train and house its personnel—and fulfill its assigned missions to the greatest extent possible.

The Coast Guard's recent experiences in coping with the flood of refugees from Cuba to Florida graphically illustrate the nature of the agency we are providing funds for. The exodus of refugees started only a few days after the Coast Guard had prepared plans to limit routine operations in order to save fuel. The Cuban exodus has, of course, resulted in greatly increased fuel usage as the Coast Guard has had to call in ships and aircraft from all along the east and gulf coasts to cope with the drastic increases in search and rescue and law enforcement duties. Fuel costs will undoubtedly go up dramatically.

I mention this as illustrative of the type of unforeseeable contingency that often happens in the case of the Coast Guard. I also mention it because one of the major items the committee added to the operating expenses authorization was $37,700,000 to cover increased fuel costs. Though this is a significant sum, it will do little other than cover already known and predicted fuel price increases. If we did not authorize this additional amount, we would be failing to recognize reality.

The committee also added a $2,000,000 cost-of-living adjustment, and a $2,300,000 travel and training increase. These increases are not expansions of Coast Guard programs, but are the minimum amounts necessary to compensate for inflationary increases. In fact, almost two-thirds of the increases the committee adopted merely reflect the increased

cost of doing business, attributable to inflation. The remainder are directed at improving the quality of life of Coast Guard personnel in an attempt to counter the continuing servicewide loss of trained personnel—and at undertaking significant improvements in the maintenance of Coast Guard vessels, aircraft, and shore facilities.

In the latter category, the committee added:

$1 million for additional personnel costs needed to operate the first of the new 270-foot cutters;

$500,000 for alleviation of the asbestos problems on Coast Guard ships;

$300,000 for loran-C receivers for small search and rescue vessels;

$200,000 for additional personnel for safety afloat training;

$850,000 for increasing the level of maintenance on four of the older icebreakers; and,

$910,000 for required inspections under the Outer Continental Shelf Lands Act.

Under the acquisition, construction, and improvement appropriation, the committee recommends adding an additional $144,928,000. Of this increase, $107 million is for the Great Lakes icebreaker. The committee continues to believe that construction of this vessel is essential for the economic well-being of the Great Lakes area.

The remaining increases are for:

Necessary improvements to aids to navigation;

Safety improvements on the training vessel *Eagle*;

Improved aircraft surveillance equipment;

Oil spill response equipment;

Major repairs to the icebreaker fleet; and

The establishment of a Marine Inspection Office to deal with the growing offshore supply fleet in the Gulf of Mexico.

The committee recommends an increase of $5,000,000 to the research and development authorization. This increase would allow the Coast Guard to operationally evaluate advanced marine vehicles for possible service use. It would also provide funds for further research into improvements in radionavigation and surveillance and communication technology—and into improvements in response to oil and hazardous substances spills. The committee identified these areas as being the most potentially productive of the projects not included in the President's request.

The committee made no change to the requested authorization of $16,200,000 for removal of obstructive bridges, and recommends that the full amount requested be authorized.

In addition to the appropriation authorizations, the bill contains several minor changes to existing laws concerning the Coast Guard. Four of these changes—sections 4, 6, 7, and 10—provide either protection or benefits to Coast Guard personnel. The committee believes these changes will have a positive effect on the retention problem in the Coast Guard. These are admittedly small steps to aid the service in retaining experienced personnel. But, when combined with the increased authorizations recommended by the committee for safety improvements, training, reduction of transfers, and better maintenance of facilities, the bill should have a significant impact on this serious problem.

Other amendments made by the bill:

Authorize a change in the date of Safe Boating Week to place it closer to the beginning of the summer boating season; and

Authorize the Coast Guard to be reimbursed for travel expenses when a U.S. vessel requests to be inspected at an overseas location where Coast Guard inspectors are not available in the area. This latter provision will facilitate the inspection of U.S. vessels overseas.

After the bill was reported by committee, the Senate passed a companion bill, S. 2489, which differs in several particulars from the bill we reported. The motion I am offering today includes several amendments that would adopt provisions of the Senate bill. These are amendments I would have offered had the bill come up under a rule. These amendments would add $20 million to the amount authorized for operating expenses of the Coast Guard for fiscal year 1981 and $33 million to last year's authorization. These amounts are to cover increased fuel costs that will impact the Coast Guard as a result of fuel oil price increases and expanded operations as a result of the Cuban refugee sealift. These amendments also narrow the increased authority being granted to the Coast Guard in the use of the supply fund—a revolving fund that finances the procurement and maintenance of inventories of uniform clothing, provisions, and fuel to support Coast Guard operating units. The amendment is in accordance with the administration's request and will conform this section of the bill to the Senate-passed version. The motion to suspend also includes one technical amendment to the recently enacted lines of demarcation bill, Public Law 96-324. These amendments have been cleared with majority and minority committee members and are included in the bill under consideration.

I urge enactment of H.R. 6672.

□ 1510

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we consider H.R. 6672, the Coast Guard authorization bill, which I wholeheartedly support.

The primary purpose of this bill is to authorize appropriations for fiscal year 1981 and also authorize supplementary appropriations for fiscal year 1980. The bill before us today would incorporate the provisions of the bill enacted by the Senate. The effect of this is to increase the operating expenses by $20 million and to add an additional $33 million to fiscal year 1980 funds. I am pleased to support these amounts which are necessary due to the effect of inflation on the price of fuel and the recent Cuban operations. For some time, I have been particularly concerned regarding the ability of the Coast Guard to purchase fuel—the lifeblood of its essential lifesaving, safety, and environmental missions.

All of us were very concerned during this past year when the Coast Guard was faced with serious cutbacks in its operational missions including pollution surveillance, port safety and security, enforcement of laws and treaties including fisheries enforcement, aids to navigation, drug enforcement, and personnel training.

Potentially, only search and rescue operations would have been continued on a minimum basis. I am well aware of, and very sympathetic to, the needs of this Congress to exercise budgetary restraints and the Coast Guard's authorization is no exception. However, the detrimental consequences of not adequately funding the Coast Guard cannot be taken lightly. Inflation, administration budget cuts and the artificiality of setting fuel prices for the Coast Guard have taken their toll on the effectiveness of this agency to perform its valuable missions.

I want to emphasize that budgetary restraint was exercised in the consideration of this bill in committee. The hearings we conducted revealed that there is an ever recurring need for increased Coast Guard coverage off the vast coastline of this country. In my own State of Alaska, I was very concerned with search and rescue coverage in the area of Prince William Sound. This area is heavily trafficked by fishing vessels and is in dire need of Coast Guard protection. My hope is that critical needs such as this, and similar requirements for additional Coast Guard support in the Gulf of Maine, the Delaware Coast, the Virgin Islands, and other areas, will be addressed in future Coast Guard authorizations.

In addition to the authorization of appropriations for the Coast Guard, H.R. 6672 contains several other important provisions essential to the operation and administration of the Coast Guard and certain other programs. These provisions address a variety of essential personnel matters, including foreign leases for housing, monetary allowances for Coast Guard personnel to transport household effects, and transportation of Coast Guard personnel. Other provisions concern the Coast Guard supply fund, intermittent overseas vessel inspections, the date for National Safe Boating Week, and a technical change to Public Law 96-324. These items directly affect the multiple missions performed by the Coast Guard and will go a long way towards improving the quality of life and retention of career Coast Guard personnel.

Mr. Speaker, I strongly urge enactment of H.R. 6672 as it is being considered today.

● Mr. MURPHY of New York. Mr. Speaker, H.R. 6672 is a bill to authorize appropriations for the Coast Guard for fiscal year 1981. The circumstances under which this year's Coast Guard authorization has been considered have been most difficult. On one hand, the current economic and budgetary conditions and the consensus within the Congress have indicated a desire and need to balance the Federal budget for fiscal year 1981 in an effort to reduce the overall inflation rate. On the other hand, however, it has become increasingly evident that the Coast Guard has been underfunded over the past decade.

The Coast Guard is faced with yet another austere budget year while it

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struggles to correct existing deficiencies in capital plant, personnel retention, and operational programs—deficiencies that in large part result from budget restraints in previous years. The effect of this consistent underfunding has been the increased difficulty of the Coast Guard to fulfill its missions. The situation is severe, not susceptible to easy remedies.

I would ask the Congress, in considering the Coast Guard authorization bill for fiscal year 1981, also to bear in mind that the Coast Guard is one of the armed forces of the United States at all times and, as such, should have the special treatment accorded the other military services. Further, the Coast Guard is the principal maritime law enforcement agency of our Nation, charged not only with implementing safety and environmental protection requirements on the sea and in our ports but also with effectively fulfilling the mandates of Congress with regard to fisheries conservation and drug interdiction.

With regard to the proposed budget estimates, I am greatly concerned about the number and character of Coast Guard requests for funding that have been eliminated or sharply reduced during the review process in the executive branch. Notwithstanding statutory mandates, many cuts have been made that make it impossible for the Coast Guard satisfactorily to carry out assigned tasks. These cuts go well beyond deferral of improvements. Curtailment of expansion, and avoidance of redundancy. These cuts affect procurement, innovation, augmentation, and support in ways that can only require major catch-up expenditures in the future. The operating forces of the Coast Guard make the service fuel intensive by nature. If ships, boats, and aircraft cannot train, patrol, and respond to incidents because of fuel limitation, the Coast Guard simply cannot do its job. The fleet of vessels and aircraft must keep pace with contemporary demands and developing missions. The review of requests for funding should be made with an eye to the future, not with a blind fixation on the status quo. This is a time for building and augmenting a fleet, not deferring acquisitions and neglecting maintenance.

Presented with a serious servicewide retention problem, a growing shortfall in its ability to meet operational requirements, and the failure of the research and development base to keep pace with inflation and expanding mission requirements, the Coast Guard's capacity to carry out its programs is severely limited.

This year, as in past years, in reviewing the Coast Guard authorization, the Merchant Marine and Fisheries Committee examined closely the capabilities of the Coast Guard to meet its legislative mandates, the policy directions set by the Congress, and the resource demands implicit in congressional actions. In so doing, we have identified ways to help the Coast Guard to meet mission requirements, and at the same time, to establish policies to guide the Coast Guard in setting priorities and defining objectives. While significant increases in the overall budget have not been approved this year, we have recognized the need for higher funding levels beginning in fiscal year 1982.

In the interim, for fiscal year 1981, the committee approved a total Coast Guard budget of approximately $1.7 billion, reflecting an increase of 12 percent above the President's revised fiscal year 1981 budget request. Of this total, more than half of this net increase is reflected in the acquisition, construction, and improvement category through the reauthorization of a dual-draft icebreaker a badly needed replacement to facilitate extended winter navigation on the Great Lakes. Some two-thirds of the remaining increases provided by the committee are earmarked for the operation and maintenance of the Coast Guard, and are directly attributable to inflationary impacts reflected in the increased cost of doing business today. The remaining budget categories of research and development and bridge alteration reflect proportionately similar increases.

Aside from the central issue of sufficient funding to perform assigned missions, I have some specific concerns about policy direction the Coast Guard is taking. These concerns, which deal with various programs and services that the Coast Guard must fulfill, have been addressed in testimony before both the full committee and the Subcommittee on Coast Guard and Navigation and have been covered in oversight hearings. Attention to these concerns will help the Coast Guard to perform effective service in light of such a budget crunch.

While the committee actions have been modest, they will avoid drastic cutbacks in Coast Guard operations and prevent further deterioration of its programs and personnel. It is now up to the Congress to do for the "can-do" service what it cannot do for itself. I urge strong endorsement of the committee's actions by the Members of the House through the unanimous passage of this legislation today. I commend my colleague, the Honorable MARIO BIAGGI, chairman of the subcommittee on Coast Guard and Navigation, and the members of his subcommittee for their significant contributions toward this effort.●

● Mr. ASHLEY. Mr. Speaker, H.R. 6672 authorizes appropriations for the Coast Guard for fiscal year 1981.

The Committee on Merchant Marine and Fisheries labored under most difficult circumstances in its review and consideration of this year's annual Coast Guard authorization. The committee's actions were strongly influenced by prevailing economic and budgetary conditions and by the desire to balance the fiscal year 1981 Federal budget.

However, the committee could not ignore mounting evidence that the Coast Guard has been consistently underfunded over the years. The cumulative impact of a decade of inadequate budgets is now assuming crisis proportions.

This is manifested in a severe servicewide retention problem, caused by chronic understaffing; low pay; long hours; arduous, hazardous and, in some instances, unhealthy working and living conditions for Coast Guard personnel—all compounded by raging inflation. The result is that by this time next year half of the Coast Guard's enlisted personnel will have less than 2 years of service. This can only contribute to a decline in experience, performance, and professionalism in the service.

Even more alarming is a growing shortfall in the Coast Guard's ability to meet its operational requirements. This was dictated a decade ago by the wholesale decommissioning of older vessels without adequate replacements being provided, and by the continued operation of overaged vessels for long periods beyond their design life, with inadequate maintenance and support provided. This shortfall is measured in an annual operating deficit of 2,000 ship days today—expected to increase to 3,000 ship days by 1985. It represents a need for 27 additional medium-endurance cutters in addition to the 13 vessels now presently planned or authorized—as well as 8,200 additional personnel this year above the authorized strength of 45,000—and another 28,000 new personnel over the next decade.

Of longer term significance is the failure of the Coast Guard's research and development base to keep pace with inflation and expanding mission requirements as a result of constant funding levels in real dollars at approximately 1.4 percent of the Coast Guard's total budget, in comparison to a government-wide average of 5 percent for operating technical agencies and 10 percent for the Defense Department. The inevitable consequence is a severe limitation upon the Coast Guard's ability to seek out and implement cost-effective alternative platforms, equipment, and techniques to improve its operational performance.

In response to this growing crisis, the Committee on Merchant Marine and Fisheries—while not approving significant increases to the overall Coast Guard budget this year—did recognize the unavoidable necessity for the Congress to take the initiative in approving consistently higher funding levels for the Coast Guard in future years—beginning in fiscal year 1982.

In the interim, for fiscal year 1981, the committee approved a total of approximately $1.7 billion, reflecting an increase of 12 percent above the President's revised fiscal year 1981 request. More than half of this increase is reflected in the acquisition, construction, and improvement category through the reauthorization of a dual-draft icebreaker, a badly needed replacement to facilitate extended winter navigation on the Great Lakes. Some two-thirds of the remaining increases provided by the committee are earmarked for the operation and maintenance of the Coast Guard, and are directly attributable to inflationary impacts reflected in the increased cost of doing business today. The remaining budget categories of research and development and bridge alteration reflect proportionately similar increases.

Mr. Speaker, viewed in their entirety, the committee's actions were exceedingly modest in scope and nature. They will not significantly enhance the Coast Guard's overall mission performance and effectiveness. They will—by offsetting skyrocketing fuel cost increases and by providing necessary adjustments to base,

including cost-of-living adjustments and additional badly needed maintenance and training support—avoid drastic cutbacks in Coast Guard operations, and prevent further deterioration of the Coast Guard's physical plant, personnel competency, and professionalism. They reflect a consensus in the committee to hold the line against further budgetary erosion that can only impair the service's continuing ability to perform its many missions.●

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time.

Mr. STUDDS. Mr. Speaker, I have no further requests for time. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. STUDDS) that the House suspend the rules and pass the bill, H.R. 6672, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.".

A motion to reconsider was laid on the table.

Mr. STUDDS. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 2489) to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2489

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds are hereby authorized to be appropriated for necessary expenses of the Coast Guard for the fiscal year 1981 as follows:

(1) For the operation and maintenance of the Coast Guard including expenses related to the Capehart housing debt reduction, $1,248,367,000 and such additional sums as may be necessary to meet unforeseen circumstances;

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto, $469,320,000, to remain available until expended.

(3) For the alteration or removal of bridges over navigable waters of the United States, constituting obstructions to navigation, $16,200,000, to remain available until expended;

(4) For research, development, testing, and evaluation, $30,000,000, to remain available until expended.

SEC. 2. For fiscal year 1981, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,600: *Provided*, That the ceiling shall not include members of the Ready Reserve called to active duty under the authority of section 764 of title 14, United States Code.

SEC. 3. For fiscal year 1981, average military training student loans for the Coast Guard are authorized as follows:

(1) Recruit and special training: 4,175 student-years;

(2) Flight training: 117 student-years;

(3) Professional training in military and civilian institutions: 595 student-years; and

(4) Officer acquisition: 925 student-years.

SEC. 4. Subsection 475(a) of title 14, United States Code, is amended so that the second sentence reads as follows: "When any such lease involves housing facilities in a foreign country, the lease may be made on a multi-year basis for a period not to exceed 5 years, and, in accordance with local custom and practice, advance payment may be made for the lease.".

SEC. 5. Subsection 650(a) of title 14, United States Code, is amended so that the third sentence reads as follows: "In such regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts.".

SEC. 6. Subsection 214(d) of title 14, United States Code, is amended by amending the last sentence to read as follows: "A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive the increases in pay and allowances authorized for that grade.".

SEC. 7. (a) Chapter 13 of title 14, United States Code, is amended by adding a new section 512 as follows:

"§ 512. Monetary allowance for transportation of household effects

"The transportation and reimbursement authorized by subsection (b) of section 406 of title 37, United States Code, shall be available hereafter to pay a member who, under regulations perscribed by the Secretary, participates in a program designated by the Secretary in which his baggage and household effects are moved by privately owned or rental vehicle. Such allowance shall not be limited to reimbursement for actual expenses and may be paid in advance of the transportation of said baggage and household effects. However, the monetary allowance shall be in an amount which will provide savings to the Government when the total cost of such movement is compared with the cost which otherwise would have been incurred under subsection (b) of section 406 of title 37, United States Code.".

(b) The analysis of chapter 13 of title 14, United States Code, is amended by adding the following item at the end thereof:

"512. Monetary allowance for transportation of household effects.".

SEC. 8. Public Law 85-445 (72 Stat. 179) is amended by striking "week which includes July 4" and inserting in lieu thereof "seven-day period beginning June 1.".

SEC. 9. The Coast Guard shall submit to the Congress with its fiscal year 1982 budget request and each subsequent budget request the current copy of the Coast Guard's Capital Investment Plan, Cutter Plan, Aviation Plan, and Shore Facilities Plan. Whenever the Coast Guard transmits one of these plans to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No Officer or agency of the United States shall have any authority to require the Coast Guard to submit any of these plans to any officer or agency of the United States for approval, comments, or review, prior to the submission of such plans to the Congress.

SEC. 10. Paragraph (1) of the first section of Public Law 96-23 (93 Stat. 68) is amended by striking "$1,058,357,000;" and substituting "$1,091,357,000;".

MOTION OFFERED BY MR. STUDDS

Mr. STUDDS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. STUDDS moves to strike out all after the enacting clause of the Senate bill, S. 2489, and to insert in lieu thereof the provisions of the bill, H.R. 6672, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 6672) was laid on the table.

House Resolution 657 was laid on the table.

GENERAL LEAVE

Mr. STUDDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PRIVATE SECTOR INITIATIVE PROGRAM FOR CETA

Mr. HAWKINS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6796) to amend and extend title VII of the Comprehensive Employment and Training Act, as amended.

The Clerk read as follows:

H.R. 6796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VII of the Comprehensive Employment and Training Act is amended—

(1) by inserting ", in cooperation with other Federal programs that generate employment," immediately after "under this Act, and" in the first sentence of section 701;

(2) by striking out subsection (b) of section 702 and inserting in lieu thereof the following:

"(b)(1) Eighty-five per centum of the funds made available for carrying out this title shall be allocated by the Secretary on an equitable basis among such prime sponsors, taking into account the factors set forth in section 202(a). Fifteen per centum of the funds so allocated to each prime sponsor may be used by prime sponsors to support programs conducted under part C of title II for individuals eligible to participate in such programs.

"(2) Ten per centum of the funds made available for carrying out this title shall be used by the Secretary to provide incentive bonuses to prime sponsors who engage in efforts to promote coordination with economic development activities supported by Federal, State, or local funds. Funds used for such coordinated activities shall not be taken into account in the computation of cost per participant or cost per placement for purposes of program evaluation.

"(3) The remainder of the funds made available for carrying out this title shall be used by the Secretary to provide financial assistance to prime sponsors who jointly establish a single private industry council and to Native American entities described in section 302(c)(1)(A) and (B) for carrying out the purposes of this title.

"(c) There are authorized to be appropriated to carry out this title such sums as may be necessary for fiscal years 1981, 1982, 1983, and 1984.";

(3) by inserting ", local economic development councils established under the Public Works and Economic Development Act of 1965," immediately after "community-based organizations" in section 703(b)(5);

(4) by inserting "local economic development councils (such as those established under the Public Works and Economic Development Act of 1965)," immediately after "community-based organizations" in section 704(a)(1);

(5) by inserting "(particularly persons with expertise in on-site, industry specific vocational education)" immediately after "educational agencies and institutions" in the second sentence of section 704(a)(1);

(6) by striking "and" at the end of paragraph (14) of section 705(a);

(7) by striking the period at the end of paragraph (15) of section 705(a) and inserting in lieu thereof "; and"; and

(8) by adding after such paragraph the following new paragraph:

"(16) developing on-site, industry specific training program supportive of industrial and economic development in cooperation with State vocational education boards, provided that, where feasible, funds made available under this Act for such programs are supplemented by Federal, State, or local vocational education funds or by non-governmental funds made specifically available for such programs, or both.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. HAWKINS) will be recognized for 20 minutes, and the gentleman from Vermont (Mr. JEFFORDS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. HAWKINS).

Mr. HAWKINS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are considering H.R. 6796 which amends and extends the private sector initiative program under title VII of CETA.

In 1978, Congress established this demonstration program to encourage the direct involvement of the business community in the planning and delivery of employment services to the unemployed.

Although the program has only recently entered into the phase of full operation, it has already made great strides in unifying the business community with public sector employment and training efforts. Recent testimony by the chamber of commerce before the Subcommittee on Employment Opportunities supports this position. The chamber testified that "in spite of uncertain funding * * * those who took up the challenge of making CETA work have had remarkable initial successes. Stories of these successes are the clearest proof that PSIP should be reauthorized."

The establishment of private industry councils at the local levels to advise and operate the program has also met with success. According to recent Department of Labor statistics, 469 of the 470 prime sponsors have established PIC's with the last one in its final planning stage. In addition, program participation levels are also encouraging. To date, 46,000 persons have participated in the program and Department of Labor estimates that more than 70,000 will participate in title VII activities this year and approximately 120,000 individuals will be served in 1981 when the program will be operating at full capacity.

H.R. 6796 extends the private sector initiative program for 4 years through fiscal 1984 to assure stability in the system. The bill also amends title VII to encourage coordinated efforts between private industry and economic development activities. Such coordination should provide more effective utilization of limited public funds and should assure placement of CETA eligible individuals in publicly assisted private sector employment. The legislation further amends title VII to allow funds to be used for retraining and upgrading activities such as those authorized under title II-C of CETA. Finally, the bill provides that on-site industry specific vocational training be available to the PIC and that these programs have representation to the extent possible on the PIC board.

H.R. 6796 authorizes such sums as may be necessary for fiscal years 1981 through 1984. The President's budget requested $150 million for fiscal year 1981. However, CBO estimates that $400 million would be sufficient to fund the program in fiscal year 1981. This estimate includes the President's budget request of $150 million for fiscal year 1981 as well as a carryover of approximately $250 million from fiscal year 1980.

The legislation was reported unanimously by the Committee on Education and Labor. The reauthorization of the title VII program is supported by the administration, the business community, labor organizations, and public interest groups.

Mr. Speaker, I urge my colleagues to support the reauthorization of the private sector initiative program.

Mr. JEFFORDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I want to commend the chairman of the subcommittee, the gentleman from California (Mr. HAWKINS), and the chairman of the full Committee on Labor and Education, the gentleman from Kentucky (Mr. PERKINS), and the ranking member (Mr. ASHBROOK), for the work that went into this fine bill. H.R. 6796 is a bipartisan effort of the Education and Labor Committee to extend a program that has exhibited its potential and holds the promise of bringing together Government and the private sector to help people who need job training and employers who need employees.

H.R. 6796 is much needed legislation. During consolidation of the 1978 CETA amendments, the need to encourage and promote private sector involvement in all CETA programs was recognized. The intent of these 1978 amendments was to increase employment and training opportunities for the Nation's economically disadvantaged through private and public sector cooperation.

In spite of very unstable financial support and a shaky beginning, nearly 500 private industry councils have been established. Approximately 95 percent of the prime sponsors have established PIC's. By the end of the second quarter of 1980, over 14,000 trainees have been enrolled and it is estimated that by the end of fiscal 1980 at least 200,000 jobs and training opportunities will have been created.

Four out of every five jobs in the American economy are in the private sector. Employer involvement can assure that new workers are trained to meet requirements of available entry-level jobs and that current workers can upgrade their skills to fill expanding opportunities for higher skilled and supervisory workers. Private employers can supply managerial and supervisory talent not available in the public sector, assuring that these training programs produce graduates with the type of training and discipline necessary for regular employment. Access to employer facilities and equipment can improve the quality of training programs and provide work experience in a realistic setting. Most importantly, individual employers can play an essential intermediary role between Government and the private sector.

Title VII of CETA, which H.R. 6796 reauthorizes, has become recognized by the private sector and has generated great interest in linkages between the private and public sectors. Without stable funding and a long-term commitment on the part of Congress, the private sector will not view this as a credible program.

This bill reauthorizes title VII for 4 years, which will provide the assurance the private sector needs to permanently establish the links called for with the public sector. Provisions of the bill refine previous authorization to encourage activities and coordination with community economic development policies and manpower training; promote coordination with State and local economic development activities; and foster coordination among the various job creation systems. With the employment situation worsening, title VII funds will now be used for upgrading and retraining activities to allow workers to become more productive and to provide incentive to employers to hire disadvantaged workers into entry-level positions. Language in the bill also encourages the development of "onsite, industry-specific training programs" to support and tie into local industry and economic development.

The private sector has increasingly indicated its willingness to cooperate in the development and implementation of these joint efforts. The administration has encouraged CETA contractors to work more closely with private business. Every person who testified on this bill overwhelmingly supported its continuation without reservation.

The urgency of passage of this bill is clear because we need to assure the private sector that we are sincere about bringing them into this area of public policy. Without a direct line of communication with industry, any Federal jobs training program is likely to be insufficient because we will not know what jobs to train for. This bill will make our programs much more efficient and effective. I urge passage of this bill as reported out of the Education and Labor Committee to meet this critical need.

● Mr. PERKINS. Mr. Speaker, today the House is considering, under suspension of the rules, the bill H.R. 6796, which amends and extends title VII of CETA, the private sector initiative program. I rise in support of the passage of this important bill.

The private sector initiative program was established during the 1978 reauthorization of the Comprehensive Employment and Training Act to demonstrate ways of encouraging businesses to become more involved in the hiring and training of economically disadvantaged workers. The title provides funds to prime sponsors for the establishment of private industry councils to participate with the prime sponsors in developing employment opportunities for the unemployed in the private sector. These private industry councils include members from the local business communities, community based organizations, local education agencies and where possible, 50 percent membership for small businesses.

At this point, virtually all prime sponsors in the CETA system have established private industry councils. Even though its history has been brief, the private sector initiative program has produced many encouraging examples of successful cooperation between CETA and the business community. These joint efforts have provided thousands of disadvantaged and jobless workers with meaningful employment and training opportunities. Also, the program has demonstrated to businesses that they can cooperate efficiently with the CETA system to improve their communities.

Primarily, H.R. 6796 does four things:

First. It extends the private sector initiative program for 4 years through fiscal year 1984 to assure stability in the system;

Second. It allocates 10 percent of title VII funds to the Secretary of Labor for incentive bonuses to encourage coordinated efforts between private industry programs and economic development activities, so that these two complementary programs can be efficiently and successfully linked;

Third. It allows up to 15 percent of title VII funds to be used for training and upgrading activities to improve the long-term employability of program participants; and

Fourth. It provides that on-site, industry specific vocational training programs are to be available to private industry councils and that such programs be represented to the extent possible on council boards.

Mr. Speaker, in addition to enthusiastic bipartisan support, this bill has the strong support of the business community, organized labor, and public interest groups. I join in this unanimous support by urging my colleagues to adopt this important legislation in order to save one of the most innovative programs in CETA from extinction at the end of this month.●

● Mr. BRADEMAS. Mr. Speaker, I take this time to express my own support for the bill under consideration, H.R. 6796, the private sector initiative program for CETA.

In indicating my support for this legislation, Mr. Speaker, I should like to note that I have just had a letter indicating support for H.R. 6796 from several chambers of commerce in the congressional district I represent.

In a letter to me from Mr. Eli D. Miller, general manager of the South Bend-Mishawaka Area Chamber of Commerce, Mr. Miller writes that—

> The Private Sector Initiative Program (PSIP) is receiving the plaudits of the private sector because it has established a new and valuable relationship between business and government.

Mr. Miller goes on to say:

> As you know, PSIP has been initiated to better design, administer and/or implement, actual training programs in the private sector. PSIP has been successful in accomplishing its objectives without spending the entire funds which Congress appropriated . . .

Mr. Miller concludes:

> Because of the effectiveness of PSIP, and the extent of PSIP involvement by the private sector in concert with government, the South Bend-Mishawaka Area Chamber of Commerce urges PSIP re-authorization by the Congress. Also, on August 28, the Third Indiana District Congressional Alliance of Chambers, including seven in the District (South Bend-Mishawaka, Elkhart, Goshen, LaPorte, Michigan City, Nappanee, Walkerton), adopted unanimously a resolution urging Congressional re-authorization and passage of H.R. 6796.

Mr. Speaker, I hope that Members of the House on both sides of the aisle will give this important legislation their support.●

● Mr. WEISS. Mr. Speaker, I strongly support H.R. 6796, an extension of title VII of CETA, the private sector Initiative program.

As a member of the Subcommittee on Employment Opportunities of the Education and Labor Committee, I participated in the reauthorization of CETA in 1978 and the creation of the original private sector initiative program.

And today, passage of this 4-year reauthorization will demonstrate to both the business sector and the local community that the Congress is willing to make a long-term commitment in order to meet the goals of the private sector initiative program. The objection of this legislation, strengthening the linkages between the business community and the local labor market, is just getting underway. According to testimony by Mr. William H. Kolber, the president of the National Alliance of Business, before the subcommittee, there are now 435 private industry councils representing 460 of the 470 prime sponsor areas.

Funds for existing public service employment programs are insufficient to train all the unskilled and provide jobs for all the structurally unemployed and economically disadvantaged. The involvement of the business community, where four out of every five new jobs are found, is critical. Jobs are available in the private sector, and the resources and expertise for training and placement could, if made available and fully utilized, meet the demand.

But the commitment to serve and employ the economically disadvantaged has not yet been made by the business community. This legislation is designed to encourage the business world to make that commitment.

Under the private sector initiative program each prime sponsor may establish a private industry council, or PIC, consisting of representatives of large and small businesses, community based organizations, unions and other members of the community. The council helps to locate jobs for the disadvantaged and insure that the private sector is involved in all employment and training activities at the local level. As the CETA regulations state, PIC's provide "direction to the local employment and training system on ways to increase private sector job placement," and "represent the private sector's view and recommendations for making programs more responsive to local employment needs."

In meeting these objectives, the council performs a wide variety of activities. These may include the development of apprenticeship programs, the distributing of information about the availability of potential employees, coordinating public employment programs with actual local labor market needs, and forecasting future needs of the market.

I am particularly proud of the private industry council in New York City, whose record of success has been unmatched. The council was established as a nonprofit corporation so that it can receive funds not only from CETA, but foundations and businesses as well. One of their most successful programs has been the development of a multimillion dollar training program for airline reservation clerks, with Pan Am doing the training. Because of the business community's recognition of the commitment and expertise of Pan Am, a number of airlines have agreed to hire graduates of these programs.

The private sector initiative program is just getting underway. Business involvement in the area of job creation and development of public service employment is crucial if the number of unemployed and underemployed is ever to decline. We must encourage the business sector to make a commitment. And the only way to insure this is for Congress to demonstrate its own commitment by passing this legislation.

I urge my colleagues to join me in supporting this legislation.●

Mr. HAWKINS. Mr. Speaker, I have no further requests for time. I reserve the balance of my time.

Mr. JEFFORDS. Mr. Speaker, I have no further requests for time. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HAWKINS) that the House suspend the rules and pass the bill, H.R. 6796, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

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GENERAL LEAVE

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ELIMINATION AND MODIFICATION OF CERTAIN REPORTS TO CONGRESS

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6686) to discontinue or amend certain requirements for agency reports to Congress, as amended.

The Clerk read as follows:

H.R. 6686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Congressional Reports Elimination Act of 1980".

TITLE I—ELIMINATIONS

REPORTS BY MORE THAN ONE AGENCY

SEC. 101. (a) Section 404 of Federal Property and Administrative Services Act of 1949 (40 U.S.C. 514(d); 63 Stat. 398), is amended by striking out subsection (d) and redesignating subsection (e) as subsection (d).

(b) Section 304 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4224; 82 Stat. 1102) is repealed.

(c) The second undesignated paragraph under the paragraph designated "STEAM-VESSELS, FOOD-FISHES" under the center heading "MISCELLANEOUS OBJECTS UNDER THE TREASURY DEPARTMENT" in the first section of the Act of March 3, 1887 (16 U.S.C. 744; 24 Stat. 523) is repealed.

REPORTS BY THE DEPARTMENT OF AGRICULTURE

SEC. 102. (a) Section 2(b) of the Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 602(b); 76 Stat. 588), is repealed.

(b) Section 3 of the Act of September 18, 1972, entitled "An Act to provide for the acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes" (16 U.S.C. 576e; 86 Stat. 678), is repealed.

(c) Section 302 of the Rural Development Act of 1972 (7 U.S.C. 1010a; 86 Stat. 670) is amended by striking out the last sentence.

(d) Section 201(b) of the Agricultural Act of 1956 (7 U.S.C. 1851(b); 70 Stat. 198) is repealed.

(e) Section 11 of the Emergency Livestock Credit Act of 1974 (7 U.S.C. prec. 1961 note; 89 Stat. 214) is repealed.

(f) Section 609 of the Agricultural Act of 1970 (7 U.S.C. 1350a; 84 Stat. 1378) is repealed.

(g) Section 602(f) of the Act of August 28, 1954, entitled "An Act for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes" (7 U.S.C. 1762(f); 90 Stat. 1500) is amended by striking out the last sentence.

(h) Section 13 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714k; 62 Stat. 1073) is amended by inserting a period after the word "account" and by striking out the remainder of such section.

REPORTS BY THE DEPARTMENT OF COMMERCE

SEC. 103. (a) Section 213 of the Merchant Marine Act, 1936 (46 U.S.C. 1123; 49 Stat. 1991) is amended by striking subsection (c).

(b) Section 13 of the Merchant Ship Sales Act of 1946 (50 U.S.C. app. 1746; 60 Stat. 50) is repealed.

(c) Section 9(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742h(a); 70 Stat. 1123) is repealed.

(d) Section 5(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742d(a); 70 Stat. 1121) is amended by striking out ", prepare and disseminate information, and make periodical reports to the public, to the President, and to Congress," and inserting in lieu thereof "and prepare and disseminate information".

(e) The first section of the Act of June 16, 1948, entitled "An Act to provide safety in aviation and to direct a study of the causes and characteristics of thunderstorms and other atmospheric disturbances" (15 U.S.C. 313, note; 62 Stat. 470), is amended by striking the last sentence.

REPORTS BY THE DEPARTMENT OF DEFENSE

SEC. 104. (a) Section 2390(b) of title 10, United States Code, is repealed.

(b) Section 2110(b) of title 10, United States Code, is amended by striking out "The Secretary of each military department shall report to Congress in April of each year on the projection of the flight instruction program.".

(c) Section 5(c) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 903(e); 73 Stat. 214) is repealed.

(d) Section 7 of the Act of March 3, 1899, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes" (33 U.S.C. 549; 30 Stat. 1150), is repealed.

REPORTS BY THE DEPARTMENT OF ENERGY

SEC. 105. (a) Section 14 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2513; 90 Stat. 1270) is repealed.

(b) Section 365(c) of the Energy Policy and Conservation Act (42 U.S.C. 6325(c); 89 Stat. 935) is repealed.

(c) Section 7(c)(4) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2506 (c)(4); 90 Stat. 1264) is repealed.

(d) Section 19(l) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5919(l); 92 Stat. 69) is repealed.

(e) Section 20(d) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5920(d); 92 Stat. 85) is amended by striking out paragraphs (2) and (3).

(f) Section 310(a) of the Department of Energy Act of 1978—Civilian Applications (15 U.S.C. 2709(a); 92 Stat. 83) is repealed.

(g) Section 12(d) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(d); 88 Stat. 1076) is repealed.

REPORTS BY THE DEPARTMENTS OF EDUCATION AND HEALTH AND HUMAN SERVICES

SEC. 106. (a) Section 418 of the General Education Provisions Act (20 U.S.C. 1226d; 88 Stat. 564) is repealed.

(b) Section 971 of the Higher Education Act of 1965 (20 U.S.C. 1134r–2; 90 Stat. 2164) is repealed.

(c) Subsection 981(f) of the Higher Education Act of 1965 (20 U.S.C. 1134s(f); 86 Stat. 380) is repealed.

(d) Section 182(a) of the Vocational Education Act of 1963 (20 U.S.C. 2412(a)(3); 90 Stat. 2206) is amended by inserting "and" at the end of paragraph (1), by striking out "; and" at the end of paragraph (2) and inserting in lieu thereof a period, and by striking out paragraph (3).

(e) Section 423 of the General Education Provisions Act (20 U.S.C. 1231b; 84 Stat. 167) is repealed.

(f) Subsection 403(c)(3) General Education Provisions Act (20 U.S.C. 1221c(c)(3); 88 Stat. 560) is repealed.

(g) Section 653 of the Education of the Handicapped Act (20 U.S.C. 1453; 84 Stat. 187) is amended by striking out subsection (c).

(h) Section 134 of the Higher Education Act of 1965 (20 U.S.C. 1015c; 90 Stat. 2089) is repealed.

(i) Section 308 of the Age Discrimination Act of 1975 (42 U.S.C. 6106a; 92 Stat. 1556) is repealed.

(j) Section 330(e)(5) of the Public Health Service Act (42 U.S.C. 254c(e)(5); 92 Stat. 3559) is amended by striking out the last sentence.

(k) Section 231(b)(1)(B) of Community Mental Health Centers Act (42 U.S.C. 2689q (b)(1)(B); 89 Stat. 328) is amended by striking out the second sentence.

(l) Section 511(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 958 (b); 83 Stat. 803) is repealed.

(m) Section 27 of the Toxic Substances Control Act (15 U.S.C. 2626; 90 Stat. 2049) is amended by striking out subsection (c)(1) and redesignating subsection (c)(2) as subsection (c).

(n) Section 1881(c)(6) of the Social Security Act (42 U.S.C. 1395rr(c)(6); 92 Stat. 312) is amended by striking out the last sentence.

(o) Section 1114(f) of the Social Security Act (42 U.S.C. 1314(f); 76 Stat. 190) is amended by striking out the last sentence.

(p) Section 502 of the Marihuana and Health Reporting Act (42 U.S.C. 242, note; 84 Stat. 352) is repealed.

(q) Section 723(a)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3233(a)(2); 92 Stat. 2276) is amended by striking out the last sentence.

REPORTS BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 107. (a) Section 244 of the National Housing Act (12 U.S.C. 1715z–9; 88 Stat. 679) is amended by striking subsection (f) and redesignating subsection (g) as subsection (f).

(b) Section 505 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–4; 84 Stat. 1787) is amended by striking subsection (f).

(c) Section 803(b)(2) of the National Housing Act (12 U.S.C. 1748b(b)(2); 63 Stat. 571) is amended by striking "The Secretary shall report to the Committees on Banking and Currency of the Senate and the House of Representatives each instance in which he has required the Secretary of Defense to guarantee the General Insurance Fund, with reasons therefor.".

(d) Section 704(c) of the Housing and Urban Development Act of 1965 (42 U.S.C. 3104(c); 82 Stat. 533) is amended by striking "unless the Secretary (1) determines that due to unusual circumstances a longer period of time is necessary and in the public interest, and (2) reports such determination promptly to the Committees on Banking and Currency of the Senate and House of Representatives.", and inserting in lieu thereof "unless the Secretary determines that due to unusual circumstances a longer period of time is necessary and in the public interest.".

REPORTS BY THE DEPARTMENT OF THE INTERIOR

SEC. 108. (a) Section 1(d) of the Act of October 15, 1966 (42 U.S.C. 1900(d); 80 Stat. 951) is repealed.

(b) The second paragraph under the heading "SURVEYING THE PUBLIC LANDS" of the first section of the Act of March 2, 1895, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, and for other purposes" (43 U.S.C. 886; 28 Stat. 937) is amended by striking out ", and the Secretary of the Interior shall report to each regular session of Congress what has been done under the foregoing provisions" in the last sentence thereof.

(c) Section 1 of the Colorado River Storage Project Act (43 U.S.C. 620; 82 Stat. 897), is amended by striking out "*Provided*, That construction of the Uintah of the Central Utah project shall not be undertaken by the Secretary until he has completed a feasibility report on such unit and submitted such report to the Congress, along with his certification that, in his judgment, the benefits of such unit or segment will exceed the costs and that such unit is physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof:".

(d) Section 4(c) of the Act of September 7, 1964, entitled "An Act to provide for the construction of the Lower Teton division of the Teton Basin Federal reclamation project, Idaho, and for other purposes" (43 U.S.C. 616qq(c); 78 Stat. 926), is repealed.

REPORT BY THE DEPARTMENT OF JUSTICE

SEC. 109. Section 19(d) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5919; 92 Stat. 64) is repealed.

REPORT BY THE DEPARTMENT OF LABOR

SEC. 110. Section 76 of the Act of April 30, 1900, entitled "An Act to provide a government for the Territory of Hawaii" (31 Stat. 155), is repealed.

REPORTS BY THE DEPARTMENT OF STATE

SEC. 111. (a) Section 302(b) of the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1613a(b); 65 Stat. 647) is amended by striking out "from time to time but not less than once every six months recommending action".

(b) Section 204(b)(8) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824; 90 Stat. 344), is amended by inserting "and" at the end of subparagraph (B), by striking out "; and" at the end of subparagraph (C) and inserting in lieu thereof a period, and by striking out subparagraph (D).

REPORTS BY THE DEPARTMENT OF TRANSPORTATION

SEC. 112. (a) Section 3(b) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1702(b); 84 Stat. 219) is repealed.

(b)(1) Section 112(b) of title 23, United States Code, is amended by striking the second sentence.

(2) Section 307(b) of title 23, United States Code, is amended by striking out "and he shall report from time to time to the Committees on Public Works of the Senate and of the House of Representatives on the progress and findings with respect to such studies".

(c) Section 1124(g) of title 10, United States Code, is amended by striking out the second sentence thereof.

(d) Section 475(e) of title 14, United States Code, is amended by striking out "(c),".

(e) Section 303(e) of the Federal Aviation Act of 1958 (49 U.S.C. 1344(e); 84 Stat. 234) is amended by striking out the last sentence.

(f) Section 1309 of the Federal Aviation Act of 1958 (49 U.S.C. 1539; 72 Stat. 805) is repealed.

(g) Subsections (a) and (b) of section 10 of the Act of September 30, 1965, entitled "An Act to authorize the Secretary of Commerce to undertake research and development in high-speed ground transportation, and for other purposes" (49 U.S.C. 1640(a), (b); 79 Stat. 895), are repealed.

(h) Section 10 of the Emergency Rail Services Act of 1970 (45 U.S.C. 669; 84 Stat. 1978) is amended—

(1) by striking out the first sentence;

(2) by striking out "also" in the second sentence; and

(3) by inserting "except the Central Railroad Company of New Jersey and the Penn Central Transportation Company," immediately after "railroad" in the second sentence.

REPORT BY THE DEPARTMENT OF THE TREASURY

SEC. 113. Section 3(c)(1) of the Black Lung Benefits Revenue Act of 1977 (30 U.S.C. 934a(c)(1); 92 Stat. 13), is amended to read as follows:

"(1) It shall be the duty of the Secretary of the Treasury to hold the fund.".

REPORT BY ACTION

SEC. 114. Section 405 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5045; 87 Stat. 409) is amended by striking out subsection (c).

REPORT BY THE CONSUMER PRODUCT SAFETY COMMISSION

SEC. 115. Section 14(b) of the Flammable Fabrics Act (15 U.S.C. 1201(b); 81 Stat. 573) is amended by striking out the last sentence.

REPORT BY THE EXPORT-IMPORT BANK

SEC. 116. Section 1(c) of the Act of July 7, 1968, entitled "An Act to enable the Export-Import Bank of the United States to approve extension of certain loans, guarantees, and insurance in connection with exports from the United States in order to improve the balance of payments and foster the long-term commercial interests of the United States" (12 U.S.C. 635j(c); 82 Stat. 297), is repealed.

REPORT BY THE FEDERAL COMMUNICATIONS COMMISSION

SEC. 117. Section 5(e) of the Communications Act of 1934 (47 U.S.C. 155(e); 66 Stat. 714), is amended by striking out, "; and the Commission shall promptly report to the Congress each such case which has been pending before it more than such three- or six-month period, respectively, stating the reasons therefor".

REPORT BY THE INTERNATIONAL COMMUNICATIONS AGENCY

SEC. 118. Section 1008 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1439; 62 Stat. 14) is repealed.

REPORTS BY THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 119. (a) Section 6(d) of the National Aeronautics and Space Administration Authorization Act, 1970 (42 U.S.C. 2462(d); 83 Stat. 199), is repealed.

(b) Section 206(b) of the Act of October 4, 1961, entitled "An Act to increase the limitation on the number of positions which may be placed in the top grades of the Classification Act of 1949, as amended, to provide certain additional research and development positions, and for other purposes" (42 U.S.C. 2473a; 75 Stat. 791) is repealed.

REPORT BY THE NATIONAL SCIENCE FOUNDATION

SEC. 120. Section 10 of the National Science Foundation Authorization Act, Fiscal Year 1978 (42 U.S.C. 1873a; 91 Stat. 834), is amended by striking out subsection (c).

REPORT BY THE VETERANS' ADMINISTRATION

SEC. 121. The Act of October 22, 1975, entitled "An Act to amend title 38, United States Code, to provide special pay and incentive pay for certain physicians and dentists employed by the Department of Medicine and Surgery of the Veterans' Administration in order to enhance the recruitment and retention of such personnel, and for other purposes" (38 U.S.C. 4118 note; 89 Stat. 669), is amended by striking out subsection (h) of section 4.

REPORT BY THE OFFICE OF PERSONNEL MANAGEMENT

SEC. 122. Section 1308 of title 5, United States Code, is amended by striking out subsections (a) and (b) and redesignating subsections (c), (d), and (e) as subsections (a), (b), and (c), respectively.

REPORT BY THE NATIONAL MEDIATION BOARD

SEC. 123. Section 4 of the Railway Labor Act (45 U.S.C. 154, 48 Stat. 1193) is amended by striking out the last sentence of the paragraph designated "Second".

TITLE II—MODIFICATIONS

REPORT BY THE EXECUTIVE OFFICE OF THE PRESIDENT

SEC. 201. Section 305 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1165; 90 Stat. 244) is amended by striking out "of each year" and inserting ", 1979 and every other year thereafter" in lieu thereof.

REPORTS BY THE DEPARTMENT OF COMMERCE

SEC. 202. (a) Section 12 of the Shipping Act, 1916 (46 U.S.C. 811; 39 Stat. 732), is amended by striking out "It shall, on or before the first day of December in each year, make a report to the Congress, which shall include" and inserting in lieu thereof "The Secretary of Commerce shall include in the annual report pursuant to section 208 of the Merchant Marine Act, 1936,".

(b) Section 809(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1213(a); 89 Stat. 680), is amended by striking out "Not later than March 1, 1976, and annually thereafter, the Secretary shall submit to Congress" and inserting in lieu thereof "The Secretary shall include in the annual report pursuant to section 208 of this Act".

(c) Section 804(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1222(e); 84 Stat. 1034), is amended by striking out "shall, at the beginning of each regular session, make a report to the Congress" and inserting in lieu thereof "shall include in the annual report pursuant to section 208 of this Act, a report".

(d) Section 904(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3244(b); 88 Stat. 1165) is amended—

(1) by striking out "The Secretary shall provide an annual consolidated report to the Congress," and inserting in lieu thereof "The Secretary shall include in the annual report pursuant to section 707 of this Act a consolidated report"; and

(2) by striking out the second sentence thereof.

(e) Section 204(b)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144(b)(2); 90 Stat. 2333) is amended—

(1) by striking out "The Secretary shall provide an annual consolidated report to the Congress," and inserting in lieu thereof "The Secretary shall include in the annual report pursuant to section 707 of this Act a consolidated report"; and

(2) by striking out the second sentence thereof.

(f) Section 112(d) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1382(d); 86 Stat. 1042), is amended by striking out "forthwith submit to Congress" and inserting in lieu thereof "include in the annual report to the public and the Congress required under section 103(f) of this Act".

(g)(1) Section 201 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441; 86 Stat. 1060) is amended by striking out "report from time to time, not less frequently than annually," and inserting in lieu thereof "include," and by striking out "to the Congress" and inserting in lieu thereof "as a separate section of the annual report to the Congress required by section 202(c)".

(2) Section 202(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1442(c); 86 Stat. 1061) is amended to read as follows:

"(c) On or before February 1 of each year, the Secretary of Commerce shall report to the Congress on the administration of this title and title III of this Act during the preceding fiscal year. The Secretary shall include in each annual report a description of the results of the activities undertaken pursuant to this section during the preceding fiscal year, and the matters required to be included in the report by sections 201 and 302(d) of this Act. The Secretary shall also include as a separate section in each annual report the report to the Congress of activities of the Department of Commerce under section 5 of the Act of March 10, 1934 (16 U.S.C. 665; 48 Stat. 402), which is required by that section.".

(3) Section 302(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(d); 86 Stat. 1062) is amended to read as follows:

"(d) The Secretary shall include, as a separate section, in the annual report to the Congress required by section 202(c) of this Act a comprehensive review of actions taken during the preceding fiscal year in the administration of this title, including recommendations for additional legislation if deemed necessary.".

REPORTS BY THE DEPARTMENT OF DEFENSE

SEC. 203. (a)(1) Section 1812 of the Revised Statutes (40 U.S.C. 50), is amended by striking out "in time to accompany the annual message of the President to Congress, namely:

"First. A report of his operations for the preceding year" and inserting in lieu thereof "within nine months after the end of a fiscal year:

"First. A report of the Chief of Engineers' operations for that year".

(2) Such section is further amended by striking out "his charge" and inserting in lieu thereof "the Chief of Engineers' charge".

(b) Section 306(f) of title 37, United States Code, is amended by striking out the first sentence and inserting in lieu thereof "The Secretary of Defense shall report to Congress by March 1 of each year following a calendar year in which special pay is disbursed under this section. Negative reports need not be submitted.".

(c) Section 43(b) of the Act of August 10, 1956, entitled "An Act to revise, codify, and enact into law, title 10 of the United States Code, entitled 'Armed Forces', and title 32 of the United States Code, entitled 'National Guard'" (50 U.S.C. App. 2285; 70A Stat. 636) is amended by striking out "quarterly" and inserting in lieu thereof "annually".

REPORTS BY THE DEPARTMENT OF ENERGY

SEC. 204. (a) Section 400I(b) of the Energy Policy and Conservation Act (92 Stat. 3253) is amended by striking out "within one year after the date of enactment of this part" and all that follows thereafter to the end of such subsection and inserting in lieu thereof "include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out with funds allocated, and an estimate of the energy savings, if any, achieved.".

(b) Section 399(b) of the Energy Policy and Conservation Act (92 Stat. 3247) is amended by striking out ", within one year after the date of enactment of this part" and all that follows thereafter to the end of such subsection and inserting in lieu thereof "include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.".

(c) Section 254 of the National Energy Conservation Policy Act (42 U.S.C. 8233; 92 Stat. 3237) is amended by striking out "President" wherever it appears and inserting "Secretary" in lieu thereof.

(d) Section 11(c)(3) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796; 89 Stat. 980) is amended by striking out "file quarterly reports with the President and the Congress" and substituting in lieu thereof "include a separate section in reports filed pursuant to section 57(a) of the Federal Energy Administration Act of 1974 containing information", and by striking out the last sentence of the subsection.

(e) Section 13 of the Solar Energy Research Development and Demonstration Act of 1974 (42 U.S.C. 5562; 88 Stat. 1437) is amended to read as follows:

"ANNUAL REPORTS

"SEC. 13. A summary of all actions taken under the provisions of this Act and action planned for the ensuing year shall be included in the annual report required by section 657 of the Department of Energy Organization Act (42 U.S.C. 7267).".

(f) Section 308 of the Act of June 3, 1977, entitled "An Act to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes" (42 U.S.C. 5816a; 91 Stat. 189), is amended by striking out "Energy Research and Development Administration", "Administration", and "Administrator" wherever they appear therein, and inserting respectively, "Department of Energy", "Department", and "Secretary of Energy" in lieu thereof, and by amending subsection (b)(2) to read—

"(2) report annually to the Congress with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year".

(g) Section 306 of the Act of December 31, 1975, entitled "An Act to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nuclear Energy Research and Development Act of 1974, and for other purposes" (42 U.S.C. 5801, note; 89 Stat. 1074), is amended by striking out "by June 30, 1976, and by the end of each fiscal year thereafter, submit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Interior and Insular Affairs of the Senate," and inserting in lieu thereof "include, in the report required by section 204(b) of the Department of Energy Act of 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), information"; and by striking out "Administrator" wherever it appears therein and by inserting in lieu thereof "Secretary of Energy".

(h) Subsection (b) of section 204 of the Department of Energy Act of 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), is amended to read as follows:

"(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).".

(i) Section 421 of the Energy Conservation and Production Act, (42 U.S.C. 6871; 90 Stat. 1158), is amended to read as follows:

"ANNUAL REPORT

"SEC. 421. The Secretary of Energy shall include in his annual report a separate section containing information describing the weatherization assistance program carried out under this part or any other provision of law including the results of the periodic evaluations and monitoring activities required by section 416.".

(j) Section 206 of the Energy Conservation and Production Act, (42 U.S.C. 6806; 92 Stat. 3134) is amended by striking out "Not later than the last day in December in each year, the Secretary shall transmit to the Congress a report" and inserting in lieu thereof "The Secretary shall include in each annual report submitted under section 657 of the Department of Energy Organization Act a statement".

(k) Section 21(c) of the Federal Energy Administration Act of 1974 (15 U.S.C. 780(c); 88 Stat. 112) is amended by striking out "report quarterly to the Congress" and insert in lieu thereof "submit to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act a statement".

(l) Section 18(d) of the Federal Energy Administration Act of 1974 (15 U.S.C. 777; 90 Stat. 1130) is amended by striking out "shall provide the Congress with an annual report" and inserting in lieu thereof "shall submit to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act a statement" and by striking out "Such report" and inserting in lieu thereof "Such statement".

REPORTS BY THE DEPARTMENTS OF EDUCATION AND HEALTH AND HUMAN SERVICES

SEC. 205. (a) Section 112(c) of the Vocational Education Act (20 U.S.C. 2312(c); 90 Stat. 2187) is amended by striking out "The Commissioner shall prepare and submit annually to the Congress, within nine months of the termination of each fiscal year, a report on the status of vocational education in the country during that fiscal year." and inserting in lieu thereof, "The Commissioner shall include in the Commissioner's annual report a report on the status of vocational education in the country."

(b) Section 507 of the Rehabilitation Act of 1973 (29 U.S.C. 794c; 92 Stat. 2983) is amended by striking out "each" and inserting in lieu thereof "every other".

(c) Section 183(g) Elementary and Secondary Education Act of 1965 (20 U.S.C. 2833 (g); 92 Stat. 2189) is amended by striking the words "no later than February 1, 1980, 1982, and 1984".

REPORTS BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 206. (a) Section 1234 of the National Housing Act (12 U.S.C. 1749bbb–10d; 84 Stat. 1790) is amended by inserting immediately after "shall include" the phrase "at least biennially".

(b) Section 1320 of the National Flood Insurance Act of 1968 (42 U.S.C. 4027; 82 Stat. 581) is amended—

(1) by striking out "include" and inserting in lieu thereof "biennially submit";

(2) by striking out "in the annual report"; and

(3) by striking out "required by section 8 of the Housing and Urban Development Act".

REPORTS BY THE DEPARTMENT OF THE INTERIOR

SEC. 207. (a) Section 1(1) of the Act of March 3, 1885, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes" (16 U.S.C. 743a; 88 Stat. 124), is amended by striking the first sentence of subsection (c) thereof, and inserting in lieu thereof the following sentence: "The Director of the United States Fish and Wildlife Service shall make a report to Congress at the end of any fiscal year that the provisions of this section are utilized, which describes the use of the provisions of this section, and the additional cost, if any, to the Federal Government resulting therefrom."; and striking out "annual" in the second sentence.

(b) Section 6 of the Act of June 22, 1936, entitled "An Act to authorize the Secretary of the Interior to investigate and adjust irrigation charges on irrigation lands within projects on Indian Reservations, and for other purposes" (25 U.S.C. 389e; 49 Stat. 1804), is amended by striking the first sentence thereof, and inserting in lieu thereof the following sentence: "The Secretary shall include in the report to Congress required pursuant to section 2 of this Act, a description of actions taken under the provisions of sections 1 to 6 of this Act during the preceding fiscal year.".

(c) The text of section 6 of the Guam Development Fund Act of 1968 (48 U.S.C. 1428d; 82 Stat. 1173) is amended to read as follows: "The Governor of Guam shall include in the annual report to Congress required pursuant to section 6 of the Guam Organic Act (48 U.S.C. 1422; 82 Stat. 844) a report on the administration of this Act.".

(d) Section 9(g) of the Act of July 22, 1954, entitled "An Act to revise the Organic Act of the Virgin Islands of the United States" (48 U.S.C. 1575(g); 68 Stat. 501), is amended to read as follows:

"(g) A listing of all laws enacted by the legislature each year shall be transmitted with the annual report to Congress required pursuant to section 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591; 68 Stat. 503).".

REPORT BY THE DEPARTMENT OF JUSTICE

SEC. 208. Section 204(d) of the Immigration and Nationality Act (8 U.S.C. 1154(d); 79 Stat. 915) is amended by striking out the first sentence and inserting in lieu thereof the following: "The Attorney General shall forward to the Congress a statistical summary of petitions for immigrant status approved by him under sections 203(a)(3) or 203(a)(6).".

REPORTS BY THE DEPARTMENT OF STATE

SEC. 209. (a) Section 204(b)(4)(C) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824(b)(4)(C); 90 Stat. 343) is amended by striking out "a copy of such material" and inserting in lieu thereof "a monthly summary of foreign fishing applications including a report on approved applications as described in paragraphs (6) and (7)".

(b) Section 23(d) of the International Secretary Assistance Act of 1978 (22 U.S.C. 2428b(d); 92 Stat. 744) is amended by striking out ", 120 days prior to each phase of troops withdrawal, a report on the viability of the withdrawal", and inserting in lieu thereof "a review of the viability of each phase of troop withdrawal as part of the annual report on Korea as required by section 668 of the Foreign Assistance Act of 1961 (22 U.S.C. 2428; 90 Stat. 760)".

(c) Section 23(e)(2) of the International Security Assistance Act of 1978 (22 U.S.C. 2428(e)(2); 92 Stat. 745) is amended by striking out "Prior to any further withdrawal," and inserting in lieu thereof "In the annual report on Korea required by section 668 of the Foreign Assistance Act of 1961 (22 U.S.C. 2428; 90 Stat. 760),".

REPORTS BY THE DEPARTMENT OF TRANSPORTATION

SEC. 210. (a) Section 211(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440(a); 84 Stat. 976) is amended by striking "May 1" and inserting "July 1" in lieu thereof.

(b) Section 163(o) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 130, note; 87 Stat. 280) is amended by striking out "annual" and inserting in lieu thereof "biennial".

(c) Section 151(g) of title 23, United States Code, is amended by striking out "not later than September 30 of each year" and inserting in lieu thereof "not later than December 30 of each year" and by striking out "not later than January 1 of each year" and inserting in lieu thereof "not later than April 1 of each year.".

(d) Section 203(e) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 130, note; 87 Stat. 283) is amended by striking out "not later than September 30 of each year" and inserting in lieu thereof "not later than December 30 of each year" and by striking out "not later than January 1, of each year" and inserting in lieu thereof "not later than April 1 of each year.".

(e) Section 311(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1861(a); 90 Stat. 358) is amended by striking out "semiannually," and inserting "annually on June 30," in lieu thereof; and adding at the end of the subsection, before the period, "during the preceding calendar year".

(f) Section 9(d)(2) of the Department of Transportation Act (49 U.S.C. 1657(d)(2); 80 Stat. 944) is amended by striking out "report annually in writing to the appropriate committees of the Congress on" and inserting in lieu thereof "include in the annual report required by section 11 a statement on".

(g) Section 112 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1421; 90 Stat. 725) is amended to read as follows:

"SEC. 112. The Administrator shall on or before February 1 of each year report to the Congress on the administration of this title during the preceding fiscal year, including recommendations for additional legislation if deemed necessary.".

REPORT BY THE EXPORT-IMPORT BANK OF THE UNITED STATES

SEC. 211. The fourth, seventh, and eighth sentences of section 2(b)(1)(A) of the Export-Import Bank Act of 1945 (12 U.S.C. 635 (b)(1)(A); 80 Stat. 2333) are amended by striking out "semiannual" and inserting "annual" in lieu thereof.

REPORT BY THE GENERAL SERVICES ADMINISTRATION

SEC. 212. Section 11(a) of the Public Buildings Act of 1959 (40 U.S.C. 610; 73 Stat. 481) is amended—

(1) by striking out "The Administrator shall submit to Congress each January, promptly after the convening of Congress," and inserting in lieu thereof "Upon the request of either House of Congress, or any committee thereof, and within a reasonable time, the Administrator shall submit"; and

(2) by striking out "last preceding report made under this Act" and inserting in lieu thereof "request, or as of such other date as the request may designate".

REPORTS BY THE INTERNATIONAL COMMUNICATION AGENCY

SEC. 213. (a) Section 108(b) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2458; 75 Stat. 534) is amended to read as follows:

"(b) The President shall submit periodic reports to the Congress of activities carried on and expenditures made in furtherance of the purposes of this Act and of the United States Information and Educational Exchange Act of 1948, as amended.".

(b) Section 704(c) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056 (c); 74 Stat. 142) is amended to read as follows:

"(c) The Director of the International Communication Agency shall make periodic reports, as he deems necessary, to the Congress with respect to his activities under the provisions of this chapter, and such reports shall include any recommendations for needed revisions in this chapter."

REPORT BY THE LABOR MANAGEMENT RELATIONS BOARD

SEC. 214. Section 3(c) of the National Labor Relations Act (29 U.S.C. 153(c); 83 Stat. 1972) is amended by striking out "stating in detail the cases it has heard, the decisions it has rendered, and an account of all moneys it has disbursed" and inserting in lieu thereof "summarizing significant case activities and operations for that fiscal year".

REPORT BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 215. Section 408(b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736b(b); 80 Stat. 1537) is amended by striking out "March 31," in the second sentence thereof.

□ 1520

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas (Mr. BROOKS) will be recognized for 20 minutes, and the gentleman from New York (Mr. HORTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill is the result of a survey of reports to the Congress statutorily required from the executive agencies. The survey was conducted by the General Accounting Office under a mandate contained in the Legislative Reorganization Act of 1970, as amended in 1974. Simultaneously the Office of Management and Budget conducted a similar survey.

The Government Operations Committee reviewed the GAO and OMB recommendations and then contacted all House committees for their opinions as to whether the subject reports should be eliminated or modified. The bill, as reported by the committee on August 28, 1980, incorporates all of the suggestions of the affected committees.

H.R. 6686, as amended, eliminates 79 reports and modifies 52 reports presently required by law to be submitted to the Congress. Mr. Speaker, as you know, statutory requirements for reports have been steadily multiplying. Almost 800 new requirements for reports were added in the 1970's. Therefore, a review of these reports and elimination of those which

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are outdated or obsolete is an absolute necessity.

The adoption of this legislation will increase Government efficiency and the savings to the taxpayers will be in excess of a million dollars.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as one who is always looking for ways to reduce unnecessary Federal paperwork, I am delighted to voice my support for H.R. 6686, the Congressional Reports Elimination Act of 1980. Chairman BROOKS, the General Accounting Office, the Office of Management and Budget, and the staff at the Government Operations Committee are to be commended for pursuing the elimination or modification of those congressionally mandated recurring reports that serve little or no useful purpose.

It should be noted that Congress generates new, recurring reports at the rate of several hundred per Congress. While this bill may not eliminate or modify as many reports as this 96th Congress generates, it at least represents a serious effort to neutralize the trend. I do not mean to suggest that all—or even most—reports generated by Congress are unnecessary. I am suggesting that we should always be monitoring the reporting process so that we can recognize when a report is no longer useful.

It should also be noted that GAO, OMB, and the Government Operations Committee staff went to great lengths to verify that the reports to be eliminated or modified by this bill are, indeed, no longer useful. Contact was made, not once but several times, with every committee of jurisdiction and with every affected agency. As far as we have been able to determine, there is no objection by anyone to any modification or elimination in this bill.

Mr. Speaker, I support H.R. 6686 and I urge its prompt approval here today.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding. I want to thank the distinguished gentleman from Texas (Mr. BROOKS) for his leadership as chairman of the Committee on Government Operations, and the distinguished ranking member from New York (Mr. HORTON) for bringing this measure to the floor to help us cut Government costs by eliminating some reports that are no longer necessary and by eliminating the frequent filing of other reports.

To my knowledge, however, the House Select Committee on Narcotics, of which I am a member, was not contacted regarding its views with reference to two provisions of H.R. 6686 that are of major concern to the chairman of the Narcotics Select Committee (Mr. WOLFE) and to some of us on the committee * * * reports that are important and that should be filed timely.

First, section 106(p) of H.R. 6686 would repeal the requirement for filing a report on the health consequences of marihuana; and, second, section 201 would require that the Federal drug strategy be revised, reviewed, and promulgated biannually rather than annually. The distinguished chairman of the Government Operations Committee and the ranking member may not be aware that these two documents are of major importance to those concerned with narcotics trafficking and drug abuse. Both of these reports are extremely helpful in raising the consciousness of the public regarding the dangers of drug abuse. Both reports are widely circulated within the Federal Government, among State health and law enforcement agencies and interest groups and internationally.

The proposal to repeal the report on the health consequences of marihuana comes at a time when more and more of our citizenry are abusing this substance without fully understanding its dangers and when more and more of our youngsters are smoking marihuana at a tender age.

With reference to the Government Operations Committee's proposal that the Federal Drug Strategy Council prepare its report biannually rather than annually, we should note that our Nation still lacks an effective strategy for preventing and controlling drug abuse. The Drug Strategy Council has not yet prepared its 1980 strategy which should have been published back in June of this present year pursuant to Public Law 94-237—that amends the Drug Abuse Office and Treatment Act of 1972. H.R. 6686's proposal to change the Drug Strategy Council's reporting requirements comes at a time when our Narcotics Select Committee is about to hold oversight hearings on the Federal drug strategy.

What is needed with regard to our administration's drug strategy is not any delay in reporting but a requirement for more timely annual reporting in order to encourage a continual effective national effort in our war on drugs.

Mr. BROOKS. If the gentleman will yield, I am happy to answer the gentleman.

Mr. HORTON. I am happy to yield to the chairman.

Mr. BROOKS. Let me say that I am familiar with both of these proposals. We do know about them and we were informed just about 2 days ago of the interest of the gentleman's committee in these two reports.

The other body has already put one of them in. The other one, if the gentleman can get it put in by the other body, or put in in conference, it suits me fine.

The truth of the matter is that we will get very little out of either of these reports in the way of hard facts since we have gotten so little out of them in the past. Notwithstanding the need for this information, these two reports are very likely to produce that which anybody can use, but if the gentleman wants to keep them we will keep these two, but it is just like the gentleman from New York (Mr. HORTON) says, I would say to my friend, we have been very kind, and if anybody in any committee thought that they might possibly someday read one of these reports we have kept it in.

I hope that next year we can have a little harder standard and these reports that do not, in fact, represent something that is going to produce money or information that is useful, that we can cut them out regardless of one individual or a couple of people saying they kind of would like to have those reports people down there. It is going to take more than that from now on. But for this year I am for the gentleman's program and he can go on and have it. I will work on it in conference for the gentleman.

Mr. GILMAN. Will the gentleman yield further?

Mr. HORTON. I would like to yield but first I would like to say something also.

When I was chairman of the Paperwork Commission we found that a great amount of paperwork was involved in preparing these reports and many of them are mandated by the Congress. We just willy-nilly mandate reports.

I am not too familiar with the reports the gentleman is talking about but, as the chairman (Mr. BROOKS) has said, we have leaned over backward to be lenient and to permit the reports to remain if any committee wanted to keep them.

I certainly would agree with Chairman BROOKS that in the other body perhaps they might want to put those back in. I would also urge the gentleman from New York (Mr. GILMAN) and those serving on those committees to scrutinize these reports so that in the next Congress perhaps where the gentleman is asking for two reports in a year they could put it on a yearly basis, because this in turn will also save paperwork and save people having to prepare all of these reports.

So that is what we are trying to do, eliminate the unnecessary paperwork, the people that are involved and the bureaucracy involved in preparing these reports, many of which are not even looked at. They are just filed someplace and it costs a lot of money to print them.

But I have no objection to the two reports the gentleman is referring to.

Mr. GILMAN. Will the gentleman yield further?

Mr. HORTON. I am happy to yield.

□ 1530

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding and I commend the chairman and the ranking minority member for their salutary objectives in seeking to eliminate unnecessary paperwork and I certainly advocate what they are seeking to do. But both of these narcotic reports which I have referred to are significant to the entire health and law enforcement community that is concerned with drug abuse. One report pertains to the utilization of marihuana—there is a growing need to keep apprised annually of these problems—and the other pertains to the Federal strategy on drug abuse and control. The 1979 Federal drug strategy report became virtually a bible for law enforcement people across our Nation and throughout the world. I am hopeful that we can help to continue to focus on these important problems. I appreciate the distinguished chairman and the ranking member's assurances that they would make certain the present requirement for filing these reports would be continued.

I hope that in any conference committee deliberation on this measure that the chairman and the ranking member would make certain that the present filing requirements for these vital drug reports will be maintained.

I thank both gentlemen for their support.

Mr. HORTON. I would indicate that this report the gentleman has here, the 1979 report entitled "Federal Strategy for Drug Abuse and Drug Traffic Prevention," prepared by the Strategy Council on Drug Abuse, is not a very large report. Certainly if we can continue it, I think it would be a good report to continue.

Mr. Speaker, I urge the adoption of H.R. 6686.

● Mr. ALBOSTA. Mr. Speaker, I rise in support of this bill.

On December 11, 1979, I introduced H.R. 6083, the Congressional Reports Elimination Act. This bill was the draft proposed by the Office of Management and Budget, after they had compiled a list of 278 reports mandated by Congress that can be modified or eliminated.

I introduced this bill because of the testimony received from my constituency at field hearings in my district on the burden of Federal paperwork. The message from my constituents was clear on this subject—they have had enough paperwork requirements from the Federal Government. Congress and the bureaucracy must work to reduce or eliminate that burden.

I am pleased the chairman of the committee took on the leadership role that he did in moving this legislation through his committee. He has shown a clear commitment to not only reduce Government, but also improve the operation of essential Government services. For that I thank him.

Congress through the years has been guilty of placing a paperwork burden on the American public. All too often people feel it is only the bureaucracy that can commit such sins, but when public laws require a Federal agency to continually make a report to Congress, these reports translate into additional information requirements from our already exhausted public. The real problem is that many of these reports are either not needed because of changes in the law, or represent duplication of information already compiled by other sources.

H.R. 6686 represents a strong movement toward a reduction, and in some cases an elimination of reports that have been mandated by the Congress, but are simply no longer needed in their present form. This bill leaves intact those reports that are still of essential value in their present form.

While there are over one hundred fewer reports affected by H.R. 6686, than in the bill I introduced, I feel it is vital that we take this first step that will show the bureaucracy that the Congress is willing to cut down on its reporting requirements on them so that they can spend more time fulfilling the goals of the agency. I am hopeful that this action will be translated by the agencies into a reduction of the reporting requirements on the American public. It is then, and only then, that we will be able to solve the problems expressed in the hearings conducted in my congressional district that unnecessary paperwork requirements are inflationary and counterproductive. Particularly in small businesses, this redtape can serve to discourage hiring people who desperately need jobs. Unfortunately, to the employers, additional employees represent reams and hours of Federal, State, and local paperwork.

We must take this important step toward solving our Nation's paperwork problems by passing H.R. 6686.●

Mr. HORTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion of the gentleman from Texas (Mr. BROOKS) that the House suspend the rules and pass the bill, H.R. 6686, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

TREASURY DEPARTMENT INTERNATIONAL AFFAIRS FUNCTIONS AUTHORIZATION, 1981

Mr. CAVANAUGH. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2514) to authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal year 1981, and for other purposes.

The Clerk read as follows:

S. 2514

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10(d) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(d)) is amended—

(1) by inserting after the world "provided" the words "to employees of the Department of State"; and

(2) by inserting before the period at the end thereof the following: ", and by section 5924(4)(B) of title 5, United States Code".

SEC. 2. (a) Section 5(a) of the Act of November 8, 1978 (92 Stat. 3092) is amended—

(1) by striking out "and" after "1979" and inserting in lieu thereof a comma;

(2) by inserting "and $23,671,000 for fiscal year 1981," after "1980,"; and

(3) by inserting before the comma after "representation expenses" the following: "and for payments under an agreement with the Asian Development Bank for a salary equalization program for United States nationals employed by the Bank who are subject to United States income taxes".

(b) Subsection (b) of such section is amended by inserting "and for fiscal year 1981 not to exceed $1,100,000," after "$800,000".

SEC. 3. (a) The Congress finds that—

(1) there is an accelerating trend among nations to construct new, government-owned or sponsored steelmaking capacity;

(2) such trend leads to economically unjustifiable excess capacity which will inevitably force those governments to dump their surplus production on world markets;

(3) the principal industrialized nations of the world are contributing to this problem through their government-subsidized financing of the construction of this excessive steel producing capacity;

(4) such financing is provided on far more generous terms than are available to domestic industry for its own capital investment needs;

(5) neither the Multilateral Trade Negotiations nor the International Arrangement on Export Credit provide any meaningful restraints on predatory financing practices; and

(6) to continue such financing without adequate restraints is self-defeating to the interests of the United States and other industrialized nations.

(b) Therefore, the United States shall promptly initiate, through its representative to the Organization for Economic Cooperation and Development Steel Committee, discussions leading to a multilateral agreement halting predatory government-subsidized export credits for steel plants and equipment.

(c) The Secretary of the Treasury shall report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs on the progress of this initiative six months after the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. LEACH of Iowa. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The gentleman from Nebraska (Mr. CAVANAUGH) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. LEACH) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. CAVANAUGH).

Mr. CAVANAUGH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill, S. 2514, is a routine authorization of administrative expenses for the carrying out of the international affairs functions of the Department of the Treasury. Those expenses encompass staff salaries, office and equipment supplies, travel, communications, research, and representation in international organizations and foreign countries. With the exception of one amendment added by the Senate, it is identical to H.R. 7051, which has been favorably reported by the House Banking Committee, by voice vote.

The Treasury had originally requested an authorization of $24,271,000, plus $1,100,000 for mandated cost-of-living expenses. The House and Senate Banking Committees reduced the request for administrative expenses to $23,671,000, and left the cost-of-living category unchanged. With this change, this authorization calls for an increase of about 7 percent over the authorization for fiscal

1980. Over half of the funds will be spent on salaries and personnel compensation. The increase in funds for the salaries of Treasury staff working on international affairs is minuscule. The Treasury has kept the size of its international affairs staff virtually constant.

The bill contains two minor provisions for new types of payments. It authorizes the Treasury to provide its overseas employees allowances for educational travel for dependents equal to those provided State Department employees. And it authorizes the Treasury to enter into a "salary equalization program" with the Asian Development Bank so that Americans employed at the ADB will receive roughly the same real salaries as other nationals. ADB salaries are calculated on the assumption that the employees' salaries will not be taxed by their national governments.

But Americans employed at the ADB must pay U.S. income tax on their salaries, so they suffer a real after-tax discrimination in their pay levels. For that reason, many have quit the ADB. A program of compensatory payments is necessary to remove that discrimination, and enable the ADB to attract and retain Americans.

I would like to emphasize that these payments are not additional to the basic authorization, but are included within the $23,671,000 for administrative expenses. The Treasury estimates the payments for dependents' travel allowances will not exceed $10,000. It requests $700,000 for the "salary equalization program" with the ADB.

I would also like to point out that this is only the second annual authorization we have given the Treasury for these expenditures. Prior to fiscal year 1980, all these expenses were paid out of the resources of the Exchange Stabilization Fund (ESF), which is not in the budget. In 1978 we passed legislation prohibiting that off-budget practice, and putting all these expenditures in the budget, subject to our annual scrutiny. These are normal administrative expenditures. They are not in any way what I would call "policy expenditures." That is, these funds are not used for foreign loans, or U.S. contributions to international organizations. They have nothing to do with foreign aid. They basically just pay the salaries of the staff who work on Treasury's international policies, as well as other routine administrative expenses. These expenses would be more or less the same, no matter what kind of international policies the Treasury Department pursued, no matter what kind of administration were in office.

The Senate added one amendment to this bill, sponsored by Senator HEINZ. It directs the U.S. Representative in the OECD Steel Committee to initiate discussions leading to a multilateral agreement to halt predatory Government-subsidized export credits for the construction of steel plants. The problems of our steel industry clearly indicate that there is excessive steel-producing capacity around the world, so I think it is wholly appropriate that we try to get other governments to stop subsidizing the construction of even more steel capacity.

With this welcome amendment, I urge the House to adopt S. 2514.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield for a question?

Mr. CAVANAUGH. I yield to the gentleman from Maryland.

Mr. BAUMAN. If I am not mistaken, Mr. Speaker, this is the same bill, except for the Senate amendment dealing with the steel matter, that was defeated by the House on suspension some months ago. Is that correct?

Mr. CAVANAUGH. That is correct.

Mr. BAUMAN. Has there been any consideration given by your committee to bringing this matter up under a normal rule so that amendments could be considered? It seems to me the House rejecting it once might have dictated we would have used a different procedure this time.

Mr. CAVANAUGH. There has been no consideration to my knowledge to changing the procedure. I believe it was the feeling of the committee that with the Heinz amendment the original legislation was greatly enhanced and, therefore, probably would meet with favor in the House.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for his explanation.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill represents a lean budget for a very busy and effective arm of our Government. Treasury's International Affairs Department plays an important role in assuring that U.S. international economic policies support the needs of our domestic economy. Treasury has major international responsibilities: The Secretary is Governor of the International Monetary Fund, the World Bank, and other multilateral development banks. Cochairman of the Saudi Arabian-United States Joint Commission on Economic Cooperation; Cochairman of the U.S.-U.S.S.R. Commercial Commission; and Cochairman of the United States-China Joint Economic Commission. The Secretary oversees U.S. international monetary policy and operations, represents the United States in discussions and negotiations on financial issues with other countries, and closely assists the President at economic summit meetings.

Our fight against inflation, in particular, includes international as well as domestic initiatives. A stable dollar, and a fair and open system of international trade and investment, are essential aspects of our efforts to avoid additional inflationary pressures here at home. Smoothly functioning international monetary arrangements are equally important. Such activities as these, on the part of the Secretary and other senior Treasury officials, obviously require highly professional staff support.

The authorization for fiscal year 1981 for the international affairs function is $24.8 million—comprised of $23.7 million for the basic expenses and $1.1 million which would be available only for the payment of authorized cost-of-living increases in pay and overseas allowances and benefits. This represents a 7-percent increase over last year for Treasury's 460-person office, and is $600,000 less than originally sought by Treasury.

The Senate version of the bill which we are now considering has a very interesting amendment which speaks to the problem of predatory export financing.

In the last few years a number of our foreign competitors have resorted to giving highly subsidized credit terms to their exporters who are selling steel plants and steelmaking equipment abroad. This is a serious development for two reasons:

First, subsidizing the credit lowers the cost of building new steelmaking capacity to the point where it easily leads to excess steel production. The net results, of course, is unfair pressure on U.S. producers from subsidized or desperate foreign steel producers.

Second, where the new capacity is needed, subsidizing credit takes export sales away from U.S. exporters who do not have access to highly subsidized credit. The net result is that both U.S. steel producers and U.S. equipment producers are injured by the foreign subsidy.

This problem is not limited to the steel community. Foreign predatory export financing has cost U.S. exporters billions in lost exports in recent years, although the problem is particularly acute with regard to steel. The Heinz amendment attempts to solve the problem—not by matching foreign subsidies with expensive U.S. subsidies, but by calling upon Treasury to negotiate an end to such practices within the OECD Steel Committee. This is a sound approach, and similar to that embodied in H.R. 6596—a bill I introduced to end foreign predatory financing practices.

In this regard, I should like to stress that predatory financing is a two-edged sword. When the Carter administration agreed to undercut the financing terms offered by foreign competitors on the sale of aircraft to the Australian publisher Rupert Murdoch, it increased the chances that European governments would subsidize the sale of other products such as steel in this country. Mr. Carter errored in offering taxpayer subsidies to Mr. Murdoch and the subsequent endorsement of Mr. Carter by Murdoch's newspaper, the New York Post, raises ethical questions of the most serious nature.

While I fully support this legislation and feel it should pass, I feel it is important to reiterate a point I have made throughout its consideration.

There is a great myth that this administration "gave-in" to congressional pressure to bring the functions of this office "on-budget." My colleagues will remember that until last year these authorizations were funded out of profits from the "off-budget" Exchange Stabilization Fund. The ESF is Treasury's $4 billion slush-fund with which they defend the value of the dollar in international exchange markets.

Now you do not have to be a speculator like Bunker Hunt to know that when you speculate in the dollar and the dollar's value goes up—you make a profit. But if the dollar declines, you meet the same

fate the Hunt Brothers met in the silver market—big losses. This is exactly what happened with the administration's feeble attempts to support the dollar—big losses.

We could debate the causes of the dollar's decline in recent years. Certainly part of the blame must rest on this administration's shoulders. They tried to arrest the dollar's slide too late in the game after much of the damage was done. In addition, they have failed to inspire confidence in U.S. economic leadership around the world that is central to a stable dollar.

The net result of this has been significant (paper) losses to the Exchange Stabilization Fund over recent years—losses which would have made it impossible to fund Treasury's operations out of the ESF. Treasury had little choice but to seek open authorizations for their operating expenses.

Whatever their motivations, Treasury's international operations are crucial to the smooth functioning of the international monetary system and our continued prosperity. These authorizations have been cut back by the committee to what we feel is a bare-bones budget in line with overall budget stringency. The bill deserves our support.

Thank you.

□ 1540

Mr. RUDD. Mr. Speaker, will the gentleman yield?

Mr. LEACH of Iowa. I will be delighted to yield to the gentleman from Arizona.

Mr. RUDD. This is the Senate version of H.R. 7051, I believe?

Mr. LEACH of Iowa. Yes; that is correct.

Mr. RUDD. Which failed to pass on suspension by a vote of 251 to 143 last June 4?

Mr. LEACH of Iowa. That is correct.

Mr. RUDD. The only difference is the amendment the gentleman is talking about?

Mr. LEACH of Iowa. The only difference is the amendment from the distinguished minority Senator from Pennsylvania, Mr. HEINZ.

Mr. RUDD. Was there a good reason why it was not brought up under regular order rather than under suspension again?

Mr. LEACH of Iowa. I am afraid the gentleman will have to direct that question to the majority.

Mr. RUDD. Since the bill failed to pass under suspension before, is there a good reason why it was brought up again under suspension?

Mr. CAVANAUGH. Mr. Speaker, I think the basic reason was time and the fact that the Senate had acted and that the House was in agreement and willing to accept the Senate action, and in order to expedite the legislation, which is of a purely technical nature and has not in the past encountered partisan or engendered partisan conflict; it was felt that it could again proceed under suspension as enhanced by the minority amendment attached in the Senate and accepted now by the House.

Mr. RUDD. Well, It seems to me, Mr. Speaker, that even though the one slight technical change may be, if it failed to pass under suspension once, it would deserve to at least get a vote on it.

Mr. LEACH of Iowa. The change that has been made is very substantial in terms of policy, although it may be considered technical in terms of no considered technical since there is no alteration of the budget items involved. However, in this regard it should be stressed that what we are talking about is a 7-percent increase in funding over the previous year which is less than the inflation rate and $600,000 below what the administration originally sought.

It should also be stressed that those individuals affected by this legislation have as their responsibility the vital role of this Government in the overall international financial system. This is a very important governmental function and the minimal funds involved are of small consequence compared to a mistake in policy that might occur if we were to constrain this particular division too greatly.

Mr. RUDD. I think the question before that was these funds provide funds for staff for the directors of the various banks?

Mr. LEACH of Iowa. In large measure.

Mr. RUDD. Yes; and nothing to my knowledge was presented on the floor under suspension indicating the justification for the staff involved, other than the fact that people need staff.

Mr. LEACH of Iowa. I would be happy to outline the exact breakdown on how the funds were expended if that would be of consequence.

Mr. RUDD. I think that would be of consequence.

Mr. LEACH of Iowa. Basically speaking, we are talking about an authorization of $23.6 million, of which salaries are $13.7 million; personal benefits, $1.5 million; travel, $1.05 million; transportation of things, $.104 million; standard level user charges, $.256 million; other rents, $1.52 million; printing and reproduction costs, $.387 million; supplies and materials, $.192 million; equipment, $.162 million; other services, which I can also break down for the gentleman, about $5.2 million. So, the sum total is about $23.67 million plus $1.1 million for cost-of-living adjustments for the people involved.

Mr. RUDD. I certainly thank the gentleman for the enumerations. I think I have a printout of that here also. I thank the gentleman.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Nebraska (Mr. CAVANAUGH).

Mr. CAVANAUGH. Mr. Speaker, first I would like to simply acknowledge and commend the gentleman from Iowa (Mr. LEACH), and to assure the gentleman that for his participation in this legislation, in which he has truly been a leader of the subcommittee, and assure him that if there was ever any doubt in the mind of the Secretary of the Treasury and the Department of the Treasury that predatory trade practices were indeed a two-edged sword, that his participation over the last several months has sharpened their awareness of both sides of that sword, as he has wielded it along their backsides on several occasions. I want to commend the gentleman for his participation in this legislation, and further state that the Heinz amendment is more than a technical amendment. It is a substantive amendment, and probably has become the most substantive part of the bill. The rest of the bill is primarily a technical authorization piece of legislation which the appropriation has preceded, but the Heinz amendment is important and substantive and does commend itself to the House.

● Mr. REUSS. Mr. Speaker, we are again considering this legislation under the suspension of the rules procedure. Though the earlier vote on June 4, 1980, was overwhelmingly in favor of the House bill, 251 to 143, it did not obtain the necessary two-thirds. I am confident that we can build on the earlier vote and secure passage of this Senate-passed bill.

I note that the bill we are considering today contains an amendment added by the Senate to require the administration to begin negotiating with other countries to end predatory export financing for steel-producing plants and equipment. This is a modest provision which those who favor free and fair trade can easily support.

The basic legislation, authorizing appropriations for the Treasury Department's international affairs responsibilities, should be noncontroversial. There is no foreign aid involved. The funds will go to pay for normal administrative expenses for U.S. economic representation in foreign countries and international organizations. As long as this country remains committed to strong involvement in the international economy, our Treasury Department will have important responsibilities in making that involvement effective. I urge you to support this vital legislation.●

Mr. LEACH of Iowa. Mr. Speaker, I yield back the balance of my time.

Mr. CAVANAUGH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. CAVANAUGH) that the House suspend the rules and pass the Senate bill, S. 2514.

The question was taken.

Mr. RUDD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. CAVANAUGH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on the Senate bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

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OIL SHALE LEASING AMENDMENTS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7941) to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act.

The Clerk read as follows:

H.R. 7941

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 21 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain," approved February 25, 1920 (41 Stat. 437; 30 U.S.C. 241) (hereinafter referred to in this Act as the Mineral Leasing Act of 1920) is amended as follows:

Add the following new section:

"(d) The Secretary is authorized to issue, to the holder of any oil shale lease issued under subsection (a) of this section prior to 1985 an additional lease or leases for the use of other Federal lands for purposes, other than the removal of any mineral deposits contained therein, connected with the development of an oil shale operation under an oil shale lease, that the oil shale lessee demonstrates are necessary and appropriate for such operations. These uses may include, among other things, the disposal of oil shale waste and other materials removed from the lands covered by an oil shale lease and the building of plants, reduction works, and other facilities needed for operations under an oil shale lease. The Secretary may issue such additional leases after consideration of the environmental and other resource values and other possible uses of the lands to be covered by the leases and upon a determination that the public interest would be served thereby. Any lands under the jurisdiction of a Federal agency other than the Department of the Interior shall be included in such a lease only with the consent of that agency and shall be subject to such terms and conditions it may prescribe.

"A lease issued under this subsection shall be for such periods of time and shall include such lands as the Secretary determines to be necessary to achieve the purposes for which the lease is issued, and shall contain such provisions as he determines are needed for proper protection of environmental and other resource values. The lessee shall pay an annual rental which shall reflect the fair market value for the use of the lands covered by the lease. Such payment shall be subject to adjustment so that it continues to reflect fair market value. Lands subject to a lease under this subsection shall remain subject to leasing under the other provisions of this Act where such leasing would not be incompatible with the purposes for which a lease is issued under this subsection. A lease issued under this subsection shall not be transferable except in conjunction with the transfer of the associated oil shale leases issued pursuant to subsection (a) of this section.".

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes, and the gentleman from Utah (Mr. MARRIOTT) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, I rise in support of H.R. 7941.

Very briefly, this bill would amend the Mineral Leasing Act of 1920 to authorize the Secretary of the Interior to lease the holder of an oil shale lease, issued prior to 1985, certain additional lands outside the existing oil shale lease. The additional land would be used for the disposal of waste, construction of plants, facilities or for any other purpose necessary for the production of shale oil, other than the mining of oil shale itself.

The Department of the Interior has issued four prototype oil shale leases covering approximately 5,000 acres each in Utah and Colorado. This program was designed to obtain on the ground knowledge and experience in the techniques of mining, extracting and retorting oil shale. Various methods are under development from open pit mining to underground room and piller mining to in-situ and modified in-situ extraction of the oil from shale. However, in all of these methods one of the most serious impediments has been the lack of authority by the Secretary to allow the use of the surface of land outside an existing lease for waste disposal, construction of plants and other facilities necessary for the proper development of these oil shale deposits. If the existing oil shale leases are used for these purposes, it would in many cases significantly reduce the amount of oil that could be produced from any given tract of land.

H.R. 7941 is a much simplified version of the administration's proposal, H.R. 7857. That proposal not only included the same provisions for the use of off-site disposal as is in H.R. 7941, but it also contained additional language which was much more encompassing and potentially controversial. Briefly, it would have granted the Secretary authority to issue oil shale leases for more than 5,120 acres when such a larger acreage was necessary for commercial development; it would have clarified the Department's authority to issue multiple mineral leases, that is, leases for dawsonite, nacholite, and halite intermingled with oil shale; and finally, it would have authorized the issuance of two leases per State per person, or four nationwide rather than the present one lease limitation.

Due to the complexity of some of these proposals, and the additional fact that they were not submitted timely by the Department, the committee's decision was to go forward with a simplified version represented by H.R. 7941, and to defer action on the more comprehensive, but complicated and controversial, departmental proposal until another time. The off-site disposal problem is the most immediate and pressing one, and H.R. 7941 takes care of that immediate problem. Major reform of oil shale leasing can be postponed until a more appropriate time.

Let me touch quickly on the potential energy resource tied up in oil shale. In the lands of Colorado, Utah, and Wyoming there are approximately 1.8 trillion barrels of shale oil. Of this, approximately 600 billion barrels is estimated to be recoverable with known technology. The economics of this recovery are not quite so clear. However, that is improving and hopefully in the next few years this resource can be developed.

I said previously there are 600 billion barrels of recoverable oil in these shale deposits. By comparison, the known oil reserves of Saudi Arabia are placed at 165.7 billion barrels, or about one-third the size of the potential of oil shale. Now, I am not advocating any all out or crash development of this resource, notwithstanding its size. I do not want any open pit covering half of Colorado, nor the canyons of Utah filled level with waste. H.R. 7941 does not authorize that. It is a very modest start and any lease for additional land can be issued under H.R. 7941 by the Secretary only after consideration of the environment and other resource values, as well as other possible uses of the land, and after careful consideration of the overall public need and interest.

Mr. Speaker, I support H.R. 7941 and urge its adoption.

□ 1550

Mr. Speaker, I reserve the balance of my time.

Mr. MARRIOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 7941, which is the final result of legislation I introduced in May of this year.

This bill is the first priority of companies interested in oil shale development to expedite oil shale to help meet this Nation's energy problems.

This bill enjoys broad bipartisan support, support of the western Members of Congress, as well as the White House.

The United States contains some of the richest oil shale reserves in the world. According to the Department of the Interior, there are approximately 1.8 trillion barrels of oil shale underlying some 17,000 square miles of Colorado, Utah, and Wyoming. About one-third or 600 billion barrels are now recoverable.

That 600 billion barrels equals 90 percent of the known world reserves of conventional oil, and at current rates of consumption would fulfill U.S. needs for 100 years.

Testimony before the Mines and Mining Subcommittee revealed, however, that a necessary element of oil shale development is the ability of the lessee to utilize offsite lands for the disposal of spent shale or for the location of retorting facilities.

Not to utilize the leased lands for those purposes is to permit unnecessary waste, which is counter to our national policy of energy development. On those tracts where open-pit extraction is the most economical manner of mining, offsite leasing is crucial.

The bill before the House today would permit the Secretary of the Interior to issue such leases to the holder of an oil shale lease issued prior to 1985.

By adoption of this legislation, we will insure that the development program now ongoing will not be frustrated but will in fact be expedited.

There is additional legislative work that remains to be done. As oil shale becomes a major plank in our energy platform, the Mines and Mining Subcommittee of the House will be working on this in the years to come. This legislation today is the first step to successful oil shale development and U.S. energy independence.

Mr. Speaker, I would like to thank the chairman of the full committee for assisting us in expediting this legislation. I hope that we can encourage the Senate to move quickly on this legislation before we adjourn.

Mr. WHITTAKER. Mr. Speaker, will the gentleman yield?

Mr. MARRIOTT. I am happy to yield to the gentleman from Kansas.

Mr. WHITTAKER. Mr. Speaker, I rise today in support of H.R. 7941.

I rise to make two points: First, that this legislation is necessary and timely if America is going to become energy independent.

The second point is to congratulate Congressman MARRIOTT for taking the lead in this legislation, for pursuing it over the past year, and for seeing it brought to fruition.

His efforts and the efforts of many of his colleagues will make it possible for oil shale to play a key role in energy independence.

● Mr. SANTINI. Mr. Speaker, I urge my colleagues to support H.R. 7941. The legislation authorizes the Secretary of Interior to lease to anyone holding an oil shale lease prior to 1985 additional lands outside the existing lease for surface use purposes.

In 1974, the Department of Interior implemented the Federal prototype oil shale leasing program which was designed to test the environmental and socioeconomic feasibility of oil shale development by various methods of mining and processing. However, development under the program has been minimal, providing supervisory experience and limited technical and environmental information. One of the major impediments has been the lack of secretarial authority to allow surface use of additional lands not located within the oil shale lease.

In some of the richest shale areas, the most efficient mining operations cannot be accomplished if the processing plant and spent shale disposal are located on the lease site. The additional area authorized by this proposal would be used for disposal of oil shale waste, disposal of overburden removed from the leased lands, for construction of plants, processing facilities, storage facilities, or other surface uses for development of oil shale. The mining of oil shale would not be authorized on the additional tract.

Although there are many impediments to development of oil shale which will require legislative action, the off-site lease provision appears to be the most imminently needed change. Representatives of the Rio Blanco Oil Shale Co., the leaseholder of the C-a Federal tract in the Piceance Basin, Colo., testified during hearings in the Senate, as well as the House, of the loss of oil recovery by various mining and processing methods. An open pit surface mine operation would yield 5 billion barrels of shale oil; a modified in situ method would yield 2 billion barrels; and an underground room and pillar operation would yield 1 billion barrels of shale oil. Thus, the most efficient type of operation developed to date—open pit surface mine—is dependent on an off-lease siting for processing plants and a disposal of spent shale. Production by the Rio Blanco could begin in 1987 from the open pit method.

If we intend to meet the President's production goal of 400,000 barrels of oil per day by 1990, we must actively encourage development of the oil shale industry today. At the present time, there are only two operations near to a development stage, with an initial combined production of 60,000 barrels of shale oil per day. The resource base is much greater than even the President's goal, but the success of second and third generation shale plants depends on the technologic, economic, and social factors derived from the initial development.

The Congress has implemented many laws over the past few years which all add impediments to energy development. Among those new laws are the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Federal Land Policy Management Act, the Endangered Species Act, the Antiquities Act, the Wilderness Act, the Safe Drinking Water Act, the National Environmental Policy Act, and the Surface Mining Control and Reclamation Act.

The oil shale industry will be one of the first major new industries to be developed under those strict controls. In light of all the constraints, it is imperative that Congress legislatively encourage development of the initial plants to gain the knowledge and experience needed to obtain oil from shale.

One of the primary questions asked concerning oil shale development is the availability of water. Although studies have been made indicating that an industry of 500,000 barrels per day will not require water tradeoffs, the knowledge derived from initial projects will provide actual water requirements as well as technology to reduce the water requirements.

Unless Congress acts to reduce many of the legislative and regulatory constraints, the success of the Department's prototype oil shale program will be drastically thwarted. We need to test the environmental and socioeconomic factors of oil shale development by various mining and processing methods. There is no question of America's oil needs—the only question is the most effective means of obtaining domestic oil from shale.

I urge my colleagues to support passage of H.R. 7941.●

Mr. MARRIOTT. Mr. Speaker, I thank the gentleman from Kansas (Mr. WHITTAKER), and I reserve the balance of my time.

Mr. UDALL. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 7941.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

URGENT SUPPLEMENTAL APPROPRIATION FOR THE VETERANS' ADMINISTRATION, 1980

Mr. WHITTEN. Mr. Speaker, pursuant to the order of the House on Wednesday, September 10, 1980, I call up the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980, and ask for its consideration in the House as in the Committee of the Whole.

The Clerk read the joint resolution, as follows:

H.J. RES. 607

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sum is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1980, namely:

VETERANS ADMINISTRATION

READJUSTMENT BENEFITS

For an additional amount for "Readjustment benefits", $40,000,000, to remain available until expended.

GENERAL LEAVE

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in connection with the consideration of House Joint Resolution 607.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. WHITTEN. Mr. Speaker. I move to strike the last word.

Mr. Speaker, expeditious handling of this joint resolution is essential to insure that veterans receive their educational benefits checks—benefits to which they are entitled by law—as soon as possible.

The Veterans' Administration originally requested and Congress approved $2.3 billion for education payments in the current fiscal year, which ends September 30. The additional $40 million provided in this joint resolution is needed because of higher than anticipated enrollments of Vietnam-era veterans under the GI bill.

On September 4, the administration requested a $40 million supplemental appropriation for readjustment benefits. On Tuesday, September 9, I introduced a resolution (H.J. Res. 607) to provide the additional $40 million for readjustment benefits. The full Committee on Appropriations met on Wednesday, September 10, and approved the supplemental request. Time did not permit the House considering this measure on Wednesday, September 10.

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Without the supplemental appropriation, the Veterans' Administration estimates that 128,000 veterans will face delays up to 4 weeks in receiving their checks.

Mr. Speaker, the Congress has long supported our veterans and I urge quick passage of this joint resolution.

● Mr. BOLAND. Mr. Speaker, the Veterans' Administration estimated that 1,173,100 trainees would apply for readjustment benefits in fiscal year 1980. To cover those costs, Congress appropriated $2,278,535,000 in the 1980 HUD-Independent Agencies Appropriation Act. The VA now estimates an additional 18,300 post-Korean war veterans will apply for readjustment benefits in fiscal year 1980. This increase in the number of trainees is primarily attributed to the economic situation. Cost of the additional trainees, and a net increase of $24 million in overpayments, is estimated to be $115 million.

The VA plans to transfer $75 million to help cover this cost—$55 million from the compensation and pensions appropriation and $20 million from the education loan fund. That leaves a balance of $40 million needed to cover payment of readjustment benefits for the rest of fiscal year 1980.

On September 4, the administration requested a $40 million supplemental appropriation for readjustment benefits. On September 5, the HUD-Independent Agencies Subcommittee approved the request. On September 9, Chairman WHITTEN introduced a resolution (H.J. Res. 607) to provide the additional $40 million for readjustment benefits. The full Committee on Appropriations approved the supplemental request on September 10.

An eligible veteran is entitled to educational benefits. The VA is holding up payment cycles for new applicants and those veterans seeking adjustments to their present payment until this appropriation is received. If Congress does not pass this urgent supplemental appropriation, approximately 128,000 veterans will face delays of up to 4 weeks in receiving their educational benefit checks.

Mr. Speaker, I urge speedy passage of this resolution.●

Mr. CONTE. Mr. Speaker, I move to strike the last word, and I rise in support of the joint resolution.

Mr. Speaker, in yet another example of bureaucratic bungling, the administration has allowed the Veterans' Administration to fall $40 million short in funds needed to meet VA educational benefit payments through the end of fiscal year 1980.

We have been informed that although VA officials knew as early as last July that there would probably be a shortfall, OMB officials ignored VA recommendations for a supplemental appropriation request.

Finally on Thursday, September 4, only after the VA regional offices had already been informed that not all veterans would be receiving their checks, did OMB finally send to the committee a $40 million supplemental request.

Mr. Speaker, I am amazed at the insensitivity of the administration to the needs of our veterans. At a time when the unemployment rate for all veterans is over 7 percent and for those veterans between the ages of 20 and 24 it is an astounding 17.3 percent, the need has never been greater to encourage our veterans to go to school to get the education necessary to get a good job.

Mr. Speaker, I am one of the thousands of World War II veterans who went to school on the GI bill. I know from my personal experience how important these educational assistance checks are. Many of these veterans have families. They cannot wait a month or two for their checks. They have to have this money to continue their education.

Mr. Speaker, the Appropriations Committee has attempted to act on this matter as quickly and responsibly as possible. We received this supplemental request from OMB on September 4. Last Wednesday, less than 1 week later, we met in full committee and reported favorably on it. That very afternoon we asked and received unanimous consent to make it in order to bring this matter to the floor today.

Mr. Speaker, I urge immediate approval of this urgent supplemental request. It is very important to our veterans.

Mr. BAUMAN. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I do so only to ask a few questions of the gentleman from Mississippi (Mr. WHITTEN).

□ 1600

I certainly support the resolution, and I understand full well the necessity for passing it. But I did want to try and clear up an inconsistency that appears to me.

On September 9, in the CONGRESSIONAL RECORD, the Congressional Budget Office indicated that there was only $19 million remaining in outlays for the current fiscal year 1980. The urgent supplemental appropriation we have before us today appropriates $40 million. In reading the resolution, it says "* * * for the fiscal year ending September 30, 1980 * * *." In other words, it would appear that a point of order would lie. I do not intend to make one. But it would appear that a point of order might lie against this bill since the bill is drafted in the form for current year spending and the Budget Office has told us that we no longer have that amount of money available.

Mr. WHITTEN. May I say to my colleague, the gentleman from Maryland, that we checked this matter and I was advised that House Joint Resolution 607, in its present form, would leave an estimated $237 million in budget authority and $19 million in outlays under the current budget ceiling.

This resolution would have no outlay impact in fiscal year 1980 and I pass that information on, for the record.

Mr. BAUMAN. I think the gentleman's reading of the situation is the same as mine, but I just wonder, if we are going to bring up any other supplementals before the new fiscal year date of October 1, what exactly the situation will be with the Budget Act. It seems to me that you might have written this to say that it would take effect on October 1, as we have done with several other appropriations.

Mr. WHITTEN. All I can say to the gentleman is that I am reluctant to act personally on any further requests. I could not say that additional requests will not come up. But if any emergency request should come up and there is convincing evidence that it does exceed the budget, the only thing we could do is ask for a rule waiving the budget ceiling. It would take a very serious matter to bring that about, but I know of no other way to deal with it.

Mr. BAUMAN. I thank the gentleman from Mississippi, the distinguished chairman, for his response, and I would only say, Mr. Speaker, that today is the 15th of September, the day by which Federal law requires the Congress to have passed the 1981 budget. We have not passed the budget. We have not passed in the other body, particularly, appropriations bills, and we are proceeding with this bill today in a time-honored tradition of meeting the Government's needs because of the Appropriations Committee, despite the Budget Committee, despite the budget system, despite the Budget Act, all of which seems to have been thrown out the window.

Mr. WHITTEN. As the gentleman knows, I was senior cochairman of the committee that studied the budget process. I have become convinced since that time that the current budget process is going to have to recognize that on proper occasions and when necessity dictates, that some means is needed to waive that ceiling if the situation is sufficiently serious.

Mr. BAUMAN. Perhaps the answer is to combine the Budget Committee with the gentleman's committee and allow the gentleman to run it. I think it might be a bit more orderly.

Mr. WHITTEN. I am proud of the fact that our Committee on Appropriations for 36 out of the last 37 years has been below the budget recommendations. But as the gentleman knows, we have other means to commit the Government to obligations which the Congress has used from time to time. Our committee can only do that which comes within its jurisdiction, and we try to do a good job along that line.

Mr. BAUMAN. I thank the gentleman.

Mr. CONTE. Mr. Speaker, will the gentleman yield.

Mr. BAUMAN. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, I might point out, also, that the House Committee on Appropriations has done an excellent job. We have reported all of our bills out. We will have defense today, and, as I understand, tomorrow we go before the Rules Committee for the last, final bill, for the foreign operations bill. And, unfortunately, the other body has only reported one bill out of committee which passed the floor of the House, and that is the public works bill. So they are really dragging their feet. The gentleman is absolutely right. All of those appropriations bills, had we gotten cooperation, would have been passed by now except those two.

Mr. BAUMAN. These are matters, I am sure, that will be taken care of when the lame ducks come home to roost.

Mr. CONTE. There will be a lot of ducks around here, and the season opens up around that time, too; it ought to be good shooting.

● Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of the urgent supplemental appropriations for the Veterans' Administration. I would like to commend the members of the Committee on Appropriations for their swift actions to aid our veterans attending educational institutions under the GI bill. As you know, Mr. Speaker, there were concrete indications as early as July that the funds available for veterans education would be short. I am informed that the VA submitted a request to OMB for $75 million more than a month ago. Unfortunately, however, it was not until last week that OMB allowed the Appropriations Committee to act, by submitting this request.

This supplemental, in the amount of $40 million is clearly needed. Without it, approximately 128,000 veterans will face delays of up to 4 weeks in receipt of their educational benefits. Consequently, Mr. Speaker, I wholeheartedly endorse the supplemental, and urge that it be acted upon by both houses immediately.●

Mr. WHITTEN. Mr. Speaker, I move the previous question on the joint resolution to final passage.

The previous question was ordered.

The joint resolution was ordered to be engrossed and read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ADDABBO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 8105, making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, and that I may be permitted to include tables and extraneous material in connection with the bill, H.R. 8105.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, pursuant to the unanimous-consent request granted on September 10, 1980, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 2 hours, the time to be equally divided and controlled by the gentleman from Alabama (Mr. EDWARDS) and myself.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York.

The motion was agreed to.

The SPEAKER pro tempore. The Chair designates the gentleman from Illinois (Mr. ROSTENKOWSKI) as Chairman of the Committee of the Whole and requests the gentleman from Alabama (Mr. BEVILL) to assume the chair temporarily.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 8105, with Mr. BEVILL, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN pro tempore. Under the unanimous consent agreement, the gentleman from New York (Mr. ADDABBO) will be recognized for 1 hour, and the gentleman from Alabama (Mr. EDWARDS) will be recognized for 1 hour.

The Chair recognizes the gentleman from New York (Mr. ADDABBO).

Mr. ADDABBO. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, none of us can really fully comprehend the immensity of the funds in this appropriation bill. The committee has heard testimony for over 6 months. At this time I wish to pay a special word of tribute to my ranking minority member, the gentleman from Alabama (Mr. EDWARDS), and all of the members of the committee, for their diligence and time spent with me in listening to the many witnesses who appeared before our committee.

I wish to commend our staff, headed by Mr. Ralph Preston, for their diligence and their work and their expertise.

Mr. Chairman, to really fully understand and appreciate the work of the committee and the work of the staff, one must sit in our committee room and visualize anywhere from 1 to 30 and sometimes as many as 50 expert witnesses from the Pentagon and from the various services, and that is just what they have up front and does not count the many other experts that they have back at the Pentagon.

Facing this great army from the Pentagon are our individual staff members who have great expertise and great dedication in their various fields.

The bill provides for $156.9 billion in new appropriations and $244 million in transfers from unobligated balances for a total of $157.2 billion for the Department of Defense in 1 fiscal year. The impact on the lives of all Americans by the appropriation of this amount to the Department of Defense in 1 fiscal year is tremendous. The burden on the taxpayers who must eventually take this amount out of their pockets and send it to the U.S. Treasury is tremendous. The impact on those who need housing, those who need better education facilities, those who need medical care, or better transportation, or flood control projects, or any other of the countless needs of the American people is very real. The requirement to take this much money out of the Treasury of the United States in 1 fiscal year for one purpose touches every American. To the extent that we do not raise sufficient revenues to cover the proposed defense spending and to the extent that such expenditures further heat an already overheated economy, the resultant inflation will diminish the buying power of the salaries of American workers and to an even greater extent diminish the buying power of those who are retired or on fixed incomes. It will be especially burdensome to those who have limited means.

It is easy to wave the flag and say, "More for defense, more for defense," but there is a price tag and that price tag is paid by all of the constituents of all of the Members of the House.

Once again, the annual defense appropriation bill is the largest appropriation bill ever enacted in peacetime by any legislative body on the face of the Earth. The trend in defense spending is up, sharply up. In 1977, the defense budget request was for $109.5 billion. Only 4 years later, the request is for $154.5 billion. This is almost a 50-percent increase in the past 4 years, and the committee felt it was not enough and raised it. The trend projected for the future by the Department of Defense is to continue this sharp rise, perhaps even more sharply.

Why is this? Why do we spend so much money that we need for other things on a peacetime military establishment? The first reason is that all of our intelligence reports tell us that the Soviet Union is engaged in a massive defense buildup in all areas: Strategic and tactical, nuclear, and nonnuclear. We do not want the Soviets to overwhelm us in military so we are spending to their increases with increases of our own.

Another reason is that the impact of inflation on the Defense Department is at least equal to and in many cases greater than the impact on inflation on some of the other areas of our economy. The Defense Department consumes huge quantities of scarce strategic materials, huge quantities of ever more costly petroleum products, and pays millions of personnel (military, civilian and contractors) whose salaries have risen sharply in recent years.

Still another reason is the ever-increasing demands of the admirals and generals. It is their nature to feel that they never have sufficient forces to accomplish their given assignments with certainty. Congress and Americans generally tend to follow their guidance in military matters to be on the safe side and the price tag continues to increase.

Another factor is the role which defense spending plays in our overall economy. Millions of people outside of the Department of Defense owe their liveli-

hood to the funds provided in the defense appropriation bill. Some of our country's largest and strongest corporations are included in this list. The aerospace industry, the electronics industry, the construction industry, the transportation industry, the communications industry, agriculture, the clothing industry, and many, many others are suppliers to the Department of Defense.

Mr. Chairman, I will be offering an amendment at the proper time to amend the so-called Maybank language which would then permit some defense contracts especially those pertaining to small contracts and service contracts, to be earmarked for high unemployment areas.

First. No other agency of the Federal Government is subject to restrictive language such as the Maybank amendment;

Second. At the time the Maybank amendment was adopted in 1953, the national unemployment rate was 3 percent. It is almost triple that today.

Thus since unemployment is much more important today, it would seem prudent to take that fact into consideration when the DOD expends its funds.

Third. It should be noted that in addition to the "big ticket" items such as planes and ships, the DOD spends untold billions in "operation and maintenance" for items ranging from uniforms to soap.

Channeling a small percentage of contracts, for this type of procurement, into areas hit particularly hard by unemployment would be in the national interest.

Fouth. Two trends presently underway are: A recession which is becoming quite severe in certain areas of the country; and a fairly rapid increase in expenditure for defense.

Looking at these trends from a national perspective, it would be a prudent policy to have a reasonable amount of defense spending going to areas which are particularly hard hit by the recession. Defense business is an important part of overall business. It is not surprising that demands for more and more defense spending come from all parts of the country, and, as the overall size of the defense establishment grows, are more and more difficult to resist.

I would be remiss if I did not remind my colleagues that some of what we buy in the name of defense does not in any way provide for the defense of the country. It may help the economy in a certain area of the country. It may help a certain company, it may help a certain group of employees, but it does not add to our military strength. The word "defense" as it is used today is a big; broad umbrella under which countless numbers of activities are carried out. Some of them are absolutely essential to national defense. Some are nice to have even though they may not be essential, and some are absolutely worthless insofar as the defense or our country is concerned.

It is with this in mind that the subcommittee has spent months in hearings, has had a large number of studies and investigations made by the staff of the committee and others made by the General Accounting Office, and has studied the audit reports of the military services themselves, in order to ferret out those programs and activities which need not be funded, and we have had a great deal of success.

The bill that is before you calls for an increase above the President's budget of $2½ billion. This is a net amount. We made reductions totaling some $5 billion and increases totaling approximately $7.5 billion and $2.5 billion is a net increase. If the committee had not searched out waste in the way we did, the bill before you, if it included all the items which were added above the budgeted amounts, would total $7.5 billion more than the budget rather than $2.5 billion.

I do not believe that enough attention is given to the unexpended and unobligated balances of the Department of Defense. We have placed tables in the report showing the unobligated and unexpended balances of the Department of Defense from the end of fiscal year 1961 to the sums estimated at the end of fiscal year 1981. One of the very obvious results of our increased spending for defense are increases in both unobligated and unexpended balances. While I feel very strongly that there have been significant improvements in our defense establishment as a result of the appropriations made for defense in recent years, I must point out especially to those who may feel that we are not providing enough money for the Department of Defense, that the unobligated balances and unexpended balances have grown significantly.

The table in the report shows that unobligated balances—that is, those funds which were appropriated but at the end of the fiscal year had not been legally obligated—at the end of fiscal year 1961 totaled $6.4 billion and at the end of fiscal year 1979 (the last fiscal year for which we had actual figures) the unobligated balance for the fiscal year had grown to $16.2 billion. It is estimated that at the end of fiscal year 1981, and this is based on the budget estimate and not the additional funds added by the committee, unobligated balances will have grown to $19 billion, these are the estimates of the Defense Department, these are not my estimates.

In unexpended balances—that is, those funds for which there is some legal obligation but the funds have not actually been withdrawn from the Treasury, together with those funds which are unobligated—the total at the end of fiscal year 1961 was $25.2 billion. In the last fiscal year for which we have actual figures, that is fiscal year 1979, the unexpended balances had grown to $72.6 billion. The Defense Department's estimate for the unexpended balances at the end of fiscal year 1980 is $82.7 billion and at the end of fiscal year 1981—and this does not include the additional funds which the committee has added, the unexpended balances estimated by the Department of Defense are $95.4 billion.

So the unexpended balance will have grown by $23 billion in only 2 fiscal years and yet there are those who say we are not providing enough funds for the Department of Defense. The facts are that we are providing more funds for the Department of Defense than the Department can usefully spend during a given fiscal year.

The Defense Subcommittee started its hearings on January 23 of this year and concluded on July 2. The 10 volumes of testimony before you are a result of those hearings. In addition, there were some 1,500 transcript pages of hearing proceedings which could not be printed because of their security classification. There is no question but that preparation of the Defense appropriation bill is a long, arduous task. The hearings go into a great number of subject areas and into a great number of very complex and difficult programs. A great deal of just plain digging is required to obtain the facts.

I would like to take the time to mention just a few of the many specific reductions and increases which the committee recommends. The report is quite complete and some 400 pages in length. It discusses each and every action. On pages 5 and 6 of the report, there is a summary listing of the principal additions and principal reductions which I recommend that all Members read. It quickly gives an indication of the subcommittee's efforts in preparing this bill and the position which the subcommittee has taken.

Among the reductions, we found in the military personnel accounts certain budgetary irregularities in that funds were being requested which, while they might be eventually required, are not required in this fiscal year or at this time. We deleted almost $200 million from the military personnel appropriations than was budgeted for advance inflation which has not yet occurred. We deleted almost $400 million for funds which are requested and which would be obligated but would not be expended in the forthcoming fiscal year.

We made some reductions in the procurement area, such as a $200 million reduction in funds requested for the TAK-X, a supply ship, to be used by the rapid deployment force. We feel that there are a number of commercial ships which might be adapted to this purpose more rapidly and at less cost. I might mention at this point that we added some $300 million to the bill for procurement of such commercial ships.

In the area of research and development, we deleted $750 million in advance inflation funding deleted $159 million from the estimates for the technology base. While advanced technology is essential to modern weaponry, funds in this area have been rising too fast and we felt that a reduction in the request was in order.

We deleted $120 million from the development of the MX missile. The MX is a new ICBM which would be located in the States of Utah and Nevada and would run from launchpoint to launchpoint on a track in a covert way so as to confuse an enemy as to the precise location of the missile. The program has been changed a number of times this year and we felt that this lack of firmness in program planning should result in the obligation of fewer funds than originally planned in this fiscal year.

We have found a very rapid rise in recent years in personal services contracts let by the military services. We have found that a number of the contracts let have been unnecessary and others have not given the Defense Department its money's worth. We feel that a $125 million reduction will force a better screening of such contracts and feel that if this is not the case, further and more drastic actions by the Congress, both in appropriations and in legislation may well be in order.

The various supply activities of the Department of Defense are always somewhat chaotic. Some improvements have been made and many more must be made. We recommend an $80 million reduction in supply activities.

As to increases, all of us have been concerned about the retention of needed skilled personnel in the military services. It has been frequently testified that a better pay level and more benefits, particularly for middle-grade enlisted personnel, would aid in their retention, Congress has responded with the so-called Nunn-Warner personnel package. We have added $713 million to the bill to implement the Nunn-Warner package.

The Department of Defense is a huge consumer of petroleum products. The flying hours and steaming hours of the services have remained relatively stable and price of fuel has risen for the Department, as it has for everyone. We added $800 million above the estimated budget for fuel increases which have already taken place since the budget was formulated.

One of the areas in which I think all members will join with us is in improving our National Guard and the reserves. We added $110 million for strength improvements and $50 million for readiness.

All of us were shocked to find that the budget for the Department of the Navy did not request enough new aircraft to replace the aircraft which statistics indicate will be lost through accidents or otherwise during the coming year.

We have found that the Navy and the Department of Defense have engaged in a bit of budgetary trickery for a number of years in that the aircraft which everyone agrees are needed are not budgeted. The budget allocation is taken up with other items in the hope and belief that the Congress will provide the funds for the needed aircraft over and above the budgeted amount. We have done this several times and have done so again this year. We have added $119 million for additional F-14 aircraft, $271 million for F-18 aircraft, $68 million for P-3C aircraft, $37 million for C-9 aircraft, $186 million for A-6E aircraft, $71 million for EA-6B aircraft, $90 million for AV-8B aircraft procurement, and $32 million for T-34C aircraft—all for the Navy. In addition, we have added $157 million for additional aircraft spare parts for the Navy so that the readiness rate on these aircraft can be more near to levels which they should be.

In Navy ships, we have added $508 million for an additional SSN-688 class submarine and $477 million for FFG-7 frigates. This is in addition to the prepositioning ships which I mentioned earlier.

One of the most controversial defense programs during the enactment of the annual authorization bill was the question of the development of a new strategic bomber. There are those who believe we do not need a new manned, strategic bomber. They feel that intercontinental ballistic missiles and cruise missiles give us the necessary land-based strategic force. There are others who believe that the B-1 bomber which was canceled should be reinstated and should be placed in the operational inventory. There are others who believe that a less costly, fixed-wing version of the B-1 would be appropriate. Others believe that we could modify our FB-111 aircraft and make an appropriate strategic penetrator using that aircraft. Others look to a new technology bomber perhaps using the recently divulged Stealth technology to penetrate Soviet air defenses. This matter is very much unsettled. The committee does not have a solution but recommends that $175 million be provided to the Air Force to study all the possibilities I have mentioned and any others which they may find feasible and report back to Congress. This seems to be the best solution at the present time to this question. It would be unfortunate for the Congress to make a precipitous move which would lock us into a position which we would find in a year or two we should not be in.

I call on the Members to read my separate views in the report in which I discuss our defense record in recent years. I think that we have done a good job of providing the funds and providing the stimulus otherwise for strong military forces. Those of us, both Democrats and Republicans, who have been in office and have been a part of the decisionmaking process which has established our defense program should know that we have many positive accomplishments. Those who would have our people believe that we have been doing nothing while the Russians have been running very fast are wrong. While we agree the Russians have been running very fast so have we, and we have a very substantial and credible military force today which if called upon, could carry out our national will.

I fully understand that this is a Presidential election year. It is a time when everyone expects charges and countercharges of all kinds. It is unfortunate, however, that some feel a need to overstate our defense problems. To state again and again that the United States is weak militarily when we are not is a great disservice. It encourages our enemies to underestimate our strength and to act in a less restrained way. It discourages our friends and causes them to wonder whether or not they should leave the side which appears to be losing. Constructive criticism and honest debate over specific issues is healthy and helpful. A part of our strength is our system which permits challenges and criticism, but broad and inaccurate statements which make us appear virtually helpless when we are not are destructive, not constructive. We do not need to "cry wolf" to the American people in order to persuade them to support the defense programs we need.

We have worked hard to provide properly for our Nation's defenses. I believe Members need to have the details available to them in order to show their constituents that their work has not been in vain, that we have had notable successes. It is with this in mind that I have included this material in the report and hope that it will be of assistance to all Members.

I hope that the House will agree with our recommendations and that the bill can be passed expeditiously. There is nothing more important at the present time to the Defense Department than to obtain the funds required for the new fiscal year. If we fail to enact appropriations in a timely way, the Department could be under a continuing resolution for a long period of time with the attendant uncertainty as to the funding of various programs. I think that the early passage of the bill is far more important than any of the programs included in the bill.

We have made a great effort to stay with the budget allocation for the bill under section 302 of the Budget Act. The budget resolution target for this bill is $160.2 billion. This includes $3.7 billion which was included by the Budget Committee for the 1981 pay supplemental which will be before the House next spring. The sum required for the pay supplemental will probably exceed the $3.7 billion.

In committee, we used some $600 million of the $3.7 billion in the present bill. Further, substantial increases would use up the money allocated for the 11.7-percent military pay raise which we strongly favor and could, if the total allocation is exceeded, kill the bill in that, under the law, it would not be enrolled. Those who would like to add funds had better be alert to this situation. In trying to do a little good, they could do a great wrong.

I think we have brought you a bill which all Members can support. We have cut waste, we have added money for a great number of programs, we have tried to present a bill which is balanced, and which is in the best interest of the United States today and in the future.

Under leave to extend, I include a summary tabulation from the committee report:

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1980 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1981

Agency and item	New budget (obligational) authority, fiscal year 1980 [1]	Revised budget estimates of new (obligational) authority, fiscal year 1981 [2]	New budget (obligational) authority recommended in bill	Bill compared with— New budget (obligational) authority, fiscal year 1980	Bill compared with— Budget estimates of new (obligational) authority, fiscal year 1981
(1)	(2)	(3)	(4)	(5)	(6)
RECAPITULATION					
Title I—Military personnel	$30,650,522,000	$32,129,120,000	$32,179,220,000	+1,528,698,000	+50,100,000
Transfer from other accounts	(109,141,000)			(−109,141,000)	
Title II—Retired military personnel	11,964,700,000	13,987,800,000	13,887,800,000	+1,923,100,000	−100,000,000
Title III—Operation and maintenance	45,694,895,000	51,188,023,000	51,812,001,000	+6,117,106,000	+623,978,000
Transfer from other accounts	(403,001,000)	(253,400,000)	(186,200,000)	(−216,801,000)	(−67,200,000)
Title IV—Procurement	35,528,139,000	40,639,342,600	44,240,005,000	+8,711,866,000	+3,600,663,000
Proceeds from foreign sales	(106,000,000)			(−106,000,000)	
Transfer from other accounts	(322,620,000)		(56,700,000)	(−265,920,000)	(+56,700,000)
Title V—Research, development, test, and evaluation	13,449,459,000	16,475,555,000	14,843,919,000	+1,394,460,000	−1,631,636,000
Transfer from other accounts	(63,086,000)		(1,966,000)	(−61,120,000)	(+1,966,000)
Title VI—Special foreign currency program	6,667,006	2,760,000	2,760,000	−3,907,000	
Title VII—General provisions (additional transfer authority, sec. 733)	(1,000,000,000)	(750,000,000)	(750,000,000)	(−250,000,000)	
Title VIII—Related agencies	63,523,000	73,824,000	73,124,600	+9,601,000	−700,600
Total, Department of Defense (NOA)	137,357,905,000	154,496,424,000	157,038,829,000	+19,680,924,000	+2,542,405,000
Proceeds from foreign sales	(106,000,000)			(−106,000,000)	
Transfer from other accounts	(897,848,000)	(253,400,000)	(244,866,000)	(−652,982,000)	(−8,534,000)
Total funding available	138,361,753,000	154,749,824,000	157,283,695,000	+18,921,942,000	+2,533,871,000
Transfer authority	(1,000,000,000)	(750,000,000)	(750,000,000)	(−250,000,000)	
Distribution by organizational component:					
Army	33,198,837,000	38,243,341,000	37,978,747,000	+4,779,910,000	−264,594,000
Transfer from other accounts	(198,375,000)	(4,700,000)		(−1 8,375,000)	(−4,700,000)
Navy	46,187,493,000	50,111,077,000	52,660,370,000	+6,472,877,000	+2,549,293,000
Transfer from other accounts	(456,982,000)	(137,200,000)	(195,866,000)	(−261,116,000)	(+58,666,000)
Air Force	40,323,765,000	46,195,379,000	46,749,693,000	+6,425,928,000	+554,314,000
Proceeds from foreign sales	(106,000,000)			(−106,000,000)	
Transfer from other accounts	(224,491,000)	(111,500,000)	(49,000,000)	(−193,4 1,000)	(−62,500,000)
Defense agencies/OSD	5,619,587,000	5,885,003,000	5,689,095,000	+69,508,000	−195,908,000
Retired military personnel	11,964,700,000	13,987,800,000	13,887,800,000	+1,923,100,000	−100,000,000
Related agencies	63,523,000	73,824,000	73,124,000	+9,601,000	−700,000
Total, Department of Defense (NOA)	137,357,905,000	154,496,424,000	157,038,829,000	+19,680,924,000	+2,542,405,000
Proceeds from foreign sales	(106,000,000)			(−106,000,000)	
Transfer from other accounts	(897,848,000)	(253,400,000)	(244,866,000)	(−652,982,000)	(−8,534,000)
Total funding available	138,361,753,000	154,749,824,000	157,283,695,000	+18,921,942,000	+2,533,871,000
Transfer authority	(1,000,000,000)	(750,000,000)	(750,000,000)	(−250,000,000)	

[1] Includes amounts in Supplemental Appropriations and Rescission Act, 1980. [2] Includes changes proposed in H. Docs. 96-294 and 96-316.

□ 1620

Mr. EDWARDS of Alabama. Mr. Chairman, I yield myself 27 minutes.

Mr. Chairman, first, I would like to compliment the chairman of the subcommittee. He is a man I hold in high respect. He has been a good leader in leading us through our work product this year. We obviously differ in our views from time to time, but we are good friends and we differ, I think, in a way that does not bring discredit to our subcommittee.

I should also like to pay my respects to the rest of the committee and especially that little band of minority Members that have to try to hold up our side of the table against this overwhelming majority that we deal with.

I would also pay my respects to the staff for the hard work they have done. Once again, we do not always agree, but I think we have got as fine a staff as any committee in this Congress.

For the first time in 13 years, the committee has gone over a President's budget for defense. For fiscal year 1981, the committee is proposing a net increase of $2.5 billion or 1.6 percent over and above the budget request. Since the mid-1950's this has happened on only three other occasions—once in 1959 when $212.6 million was added, and again in 1961 when $2.9 million was added, and again in 1967 when $952.1 million was added.

The total amount recommended in the bill is $157.3 billion. That is $18.9 billion over the amount appropriated last year. If allowance is made for the effects of inflation, the bill, as reported out by the committee, would provide for 3.1 percent real growth. That estimate excludes the $4.0 billion pay supplemental that the committee will be considering sometime next year.

Most would have to agree that $157 billion is a very substantial sum of money. It should and will buy a lot of defense, but those of you who have studied our military requirements as I have done would also agree that much more will be needed if we are ever to whip the armed forces into shape. I believe that we could have added $10 to $15 billion just to meet some very pressing needs, but the additional budget authority was simply not available to do it. Unfortunately, defense planning is being driven by dollars and not actual needs.

I cannot report to you that the Armed Forces are in good shape. They are not.

I am sure some of you read the recent newspaper report on the "hollow Army" and how 6 of the Army's 10 combat divisions stationed in the United States were rated "not combat ready" last December. You have probably also heard how only about 50 percent of our first-line fighter aircraft are ready to go at any given time.

War reserve stocks (spare parts, munitions, and so forth) are almost nonexistent. Current military plans call for having about 90 to 120 days of supplies to carry our forces through the initial stages of warfare or the point where industry is supposed to pick up the slack and begin deliveries. The truth is that we have stocks for key systems like our tactical fighter forces that would be adequate to suport perhaps 10 to 20 days of intense warfare, and it would take industry at least 2 years to get geared up to meet most wartime demands. More on this later.

This country is simply not prepared to go to war today. Our military forces are not ready to go into action on short notice. Based on my own preliminary studies, I am concerned over our capacity to fight a conventional war.

With tensions on the increase around the world, we must be better prepared militarily. The lack of readiness today concerns me, and it concerns the committee.

Much needs to be done, but it involves nuts and bolts and not the sexy hardware items—the gold plated items—that are so often and so easily added to the budget here in the House. What the military needs most of all are the readiness-related items, like spare parts, equipment maintenance, training, flying hours, steaming hours and all the necessary pay and benefits needed to increase manpower retention. We cannot operate and maintain sophisticated equipment and weapons without skilled technicians.

I think we are beginning to turn the corner on this issue. In the past, we were bent on pouring money into modernization at the expense of readiness. I think the danger associated with this policy is better understood now; and in the future I believe we will certainly do a better job in striking a balance between modernization and readiness. I believe that the action of our committee this year reflects those needs. By their actions, the Armed Services Committee this year have also recognized the need to improve readiness. And I am told that the Department will put greater emphasis on readiness in the fiscal year 1982 budget that we will be looking at next year. More must be done, but we are headed in the right direction. The trend is good.

I can support this bill. It is a good bill, but disagreement will certainly arise as to where and how we have proposed to spend the money provided in the bill.

The net increase proposed in the bill—$2.5 billion—is the product of a number of reductions totaling $5.0 billion and increases adding up to $7.5 billion. To a large extent, we have reallocated funding within the bill, in effect, establishing a new set of priorities. We should not have to be doing this. If there were a clearer defense policy, much of this would be taken care of in the budget, and we would not have to be doing all of this rearranging of dollars. With only so much money available, we put the money where we thought it was needed most and curtailed programs that were questionable in our view.

In proposing the $2.5 billion net increase in the bill, we took $1.6 billion from research and development (R. & D.) funds, while adding $3.5 billion to procurement and $613.1 million to the operation and maintenance account.

The bulk of the addons in the procurement account—$3 billion—are proposed for the purchase of tactical aircraft for the Navy and Air Force—$2 billion—and for ships $1 billion—and about $600 million for spare parts to increase aircraft readiness rates. The largest, single increase in the operation and maintenance account totaled $800 million to cover fuel price increases to support the flying and steaming hour programs, training and readiness. That is based on inflationary needs and does not produce any real growth.

The committee is recommending that the Department curtail long-term modernization, and thus the cut in research and development programs. We are saying that near-term modernization should be accelerated. We strongly believe in R. & D., but we also believe very strongly that there comes a time when we have to finish researching and proceed with procurement. We think that tactical aircraft and shipbuilding programs and related readiness efforts need to proceed at a much faster pace.

President Carter's 1981 budget, as presented to the Congress, does not address the question of retention—supposedly the military's No. 1 concern. I will discuss this later.

The committee's proposal to add $2.5 billion in budget authority signals a very dramatic change in the mood of the House on defense spending. It is the continuation of a trend that began emerging several years ago. In the mid-1970's, this committee was making cuts of 6 to 7 percent in the defense bill, but these cuts have become progressively smaller with last year's cut amounting to no more than 1.6 percent of the request.

In a nutshell, the House is beginning to come to the realization that there are some very interesting deficiencies in our Defense Establishment. Our military preparedness is not what it must be.

The Soviet Union has continued to expand and modernize its conventional and strategic forces across the board. According to some recent DOD estimates in 1979 alone, Soviet military investment exceeded our own by 85 percent. The consequences of this disparity in defense expenditures is becoming readily apparent to the whole world.

The capability of the Soviet Union to challenge the United States militarily around the world continues to improve. In this context we have serious potential problems in the Middle East and Persian Gulf. Because of our dependence and the dependence of our allies on the supply of oil in that region, a threat to that oil supply would place in jeopardy our own economic well-being and the economic well-being of our allies.

Thus, the stakes in the Middle East are high, and the potential danger of conflict there is great.

Herein lies a major policy issue that we must address. It is a key issue, central to all national security policy. Its resolution will determine the future direction and shape of our Armed Forces for many years to come.

These are the questions yet to be answered. What kind of forces do we need to protect our interests in the Middle East and Indian Ocean? How do we meet these new responsibilities? Do we draw forces from existing commitments, or do we create new forces and expand overall capabilities? Exactly how do we cope with the Soviet threat in the region?

In the past, national security policy focused on meeting our longstanding commitments in NATO and the Pacific.

The President and the Defense Department are saying that we can continue to fulfill these and take on a new commitment in the Middle East without much expansion of the force structure beyond existing levels. In my opinion, this is an impossibility and constitutes a fundamental problem in the fiscal year 1981 budget and programs.

If we are to increase our involvement in the Indian Ocean, then we must build up a Navy equal to the task. Of that, I am sure. There is just no other way to operate effectively in the Indian Ocean.

We must start building more ships. We must start buying more naval aircraft. We must put more money into ship maintenance and ship overhaul. We must also do whatever is necessary to retain skilled manpower to operate and maintain the ships we have today. The situation we find ourselves in today where first-line ships cannot put to sea for lack of qualified personnel is unacceptable. I will speak on this in more detail in a moment.

MAJOR ISSUES

(1) MIDDLE EAST CONTINGENCY

As Secretary of Defense Brown pointed out in testimony before our committee this year:

> With the possible exceptions of Western Europe and East Asia, no area of the world retains greater interest and importance for the United States than the Middle East.

He went on to explain that—

> We and our allies will continue to depend on Middle East oil for the foreseeable future.

About half of our oil comes from the Middle East, while our European and Japanese allies import a much greater proportion of their oil. Europe is almost totally dependent on Middle East oil.

Many of the countries in the region are ripe for political upheaval and internal strife. And even before the invasion of Afghanistan, the Soviet Union was busy establishing footholds throughout the region—in Yemen, Iraq, and Syria coupled with a growing naval presence in the Red Sea and Indian Ocean.

This is a potentially explosive situation and may indeed be the most probable area for a United States-Soviet military confrontation. Secretary of Defense Brown alluded to this possibility in a statement before our committee earlier this year. He said that:

> It is conceivable that control of the oil itself might become an issue in the future as the Soviets encounter shortfalls in domestic production and begin to cast about for new and assured supplies.

I believe this country has a responsibility to guarantee access to the oil supplies in the Middle East. We must be prepared to use military force, if necessary, to protect our vital interest in that region. I do not know how this should be done, but it must be done. In my opinion, this may be the single most important national security issue under consideration today.

The Defense Department appears to recognize the need to take on new military commitments in the Middle East and Persian Gulf. These new commitments are just beginning to take shape. We have already deployed naval forces in the area, and a search for land bases is in progress, but this takes time.

In my opinion, the question of how to fulfill the emerging military commitment in the Middle East has been one of the main issues underlying the debate concerning the fiscal year 1981 defense budget in Congress.

As the executive branch has failed to come forward with a concrete plan as to how to build the Middle East contingency force, the Congress has moved into the vacuum and is attempting, in its usual haphazard way, to fashion policy and create a force by adding vast amounts of hardware to the defense budget. The Congress, as an institution, is not equipped to do this. In the absence of direction or a clear sense of purpose from DOD, we are doing the best we can, but it is not good enough.

The only Defense Department idea that even resembles a plan for meeting the Middle East contingency is the Rapid Deployment Force (RDF). Existing

units are now being designated as components of the RDF. If we do not expand our forces for this purpose, then of necessity we will have to begin bleeding off prime assets from our NATO and our Asian commitments to meet Middle East requirements. This process may already be underway, as the Army recently announced plans to withdraw 7,000 troops from Europe and Korea to beefup understrength units in the United States.

While I support the RDF concept, I think we need to be very careful to see that it is developed in a way that is meaningful. We need to build great mobility into our force. That means buying more amphibious ships, including maritime prepositioning ships. It means buying more long-range transport aircraft. It means buying more naval capability for sea control and power projection. Those are the kinds of assets we would need in a Middle East contingency force. And, finally, it means a superior training program for the troops so that we, in fact, have the ability to deal with this contingency.

(2) RETENTION

The retention of technically skilled manpower is one of the most serious problems confronting the military services today. This is the "Hemorrhage of talent" you have all heard about.

According to the best available estimates, the services are short about 100,000 E–4 through E–9 personnel. In many cases, these are highly trained supervisory personnel, and their absence is having a direct, adverse impact on readiness. It is literally impossible to maintain the sophisticated equipment and weapons in the field today without the services of these technicians.

The fiscal year 1981 budget, as presented to Congress, does very little in my opinion to improve retention of key personnel. It contains a request of $295.9 million for selective reenlistment bonuses—the main tool for retaining skilled manpower. When measured against the magnitude of the retention problem—supposedly the No. 1 problem, this is a pittance.

During the hearings this year, for example, we found that there were some critical skills/ratings that were experiencing serious personnel shortages coupled with very low first- and second-term reenlistment rates—like 10 to 30 percent—but where only minimal or no bonus payments were being made. We also found that current DOD regulations may in fact hinder the payment of bonuses.

The committee has seized the initiative in the manpower field. We are fully funding the Nunn-Warner compensation package at a cost of $700 million. We have added about $80 million for additional bonus payments. We have pledged our support for the 11.7 percent pay raise.

All of these manpower-related proposals will cost roughly $2 billion in fiscal year 1981. Hopefully, this action will send the right signal to the men and women in uniform. Hopefully it will improve morale and retention. Though it is by no means a solution, it is a first step in the right direction. But there must be a comprehensive plan for military compensation at the earliest possible time.

(3) FORCE READINESS AND COMBAT SUSTAINABILITY

Since the beginning of the year, I have been evaluating the combat readiness of the Armed Forces. This, in turn, led me into a study of our capability to fight a conventional war with the Soviet Union. I am concerned about our ability to win such a war.

Admittedly, we have some first-rate weapons and equipment, but they are spread too thin, and to a large extent, I find that they are poorly maintained. I believe that there has been excessive emphasis on quality at the expense of quantity—in other words we do not seem to be able to strike the right balance—and that military technicians are not adequately trained to maintain this equipment. Furthermore, the most highly trained technicians are leaving the services at an alarming rate.

I find that the Armed Forces lack depth. They lack the necessary attrition assets needed to fight a conventional war. A wartime logistical base exists for perhaps 10 to 20 days of intense combat for key systems like tactical fighter forces.

In short, we seem to be forced into a short-war scenario. The Soviets, by comparison, appear to be preparing for a conventional war of attrition.

Consider these facts, which seem to point up a real lack of combat sustainability on our part:

First. Stockage of spare parts and other war reserve materials needed to support wartime operations are almost nonexistent in many critical areas.

Second. For fiscal year 1981, the Air Force spare parts program is underfunded by $2.1 billion. The Navy's spare parts program is underfunded by over $1 billion.

Third. Plans call for stockage of war reserve materials spare parts—and so forth—to support Air Force operations during the first 90 to 120 days of warfare. Actual stockage today would be adequate to support only 10 to 20 days of combat operations.

Fourth. Tactical fighter forces of the Air Force could meet wartime sortie rates for a matter of days and in a short time those forces would rapidly decrease in size for lack of spare parts and would probably be completely grounded in a few weeks.

Fifth. C–5 aircraft, which would provide essential logistical support for any overseas combat operations, are supposed to fly a specified number of sorties per day in wartime. Because the spare parts needed to support C–5 wartime sorties rates were never procured, the C–5 aircraft could probably fly less than half their required number of sorties during the first 120 days of warfare. The C–5 spares account is underfunded by more than $500 million in fiscal year 1981. If we cannot afford to support the primary transport we have in the inventory, then should we plan to buy another one?

Sixth. Six of the Army's ten combat divisions stationed in the United States were rated "not combat ready" last December. Low readiness ratings have been applied to two of the three divisions that have been designated as part of the new Rapid Deployment Force.

Seventh. There is a widespread shortage of skilled manpower to operate and maintain all the sophisticated weapons and equipment we have in the field. Our committee believes the shortage involves in excess of 100,000 personnel holding rank of E–4 to E–9. We simply cannot keep advanced weapons operational without the services of these technicians.

Eighth. A first-line naval vessel could not put to sea for lack of qualified personnel. If the Navy had to move suddenly to a wartime footing, there would not be enough qualified personnel to fully man all the ships.

Ninth. Only about 50 percent of our first-line fighters are classified as mission capable at any given time.

Tenth. Inventories of advanced munitions are woefully inadequate. Current inventories of air-to-air missiles, for example, would be consumed in only a few days of intense aerial combat.

Eleventh. Because of a shortage of spare parts and supplies, it would be impossible to maintain more than four or five of our carriers on a wartime footing at any given time.

Twelfth. Recent reports indicate that we could rapidly deploy a small Marine amphibious brigade into the Persian Gulf, but such an operation could be sustained for only a few weeks without causing a severe strain on our military resources.

Thirteenth. We have no attrition assets that would be needed to replace wartime losses of aircraft, tanks, ships, and so forth.

Fourteenth. Industry, in many cases, would take 2 or more years to expand production in order to begin delivering replacements and parts to cover wartime attrition. Current DOD planning assumes that industry could begin deliveries within 90 to 120 days.

The above-mentioned points raise some very serious questions in my mind as to our ability to fight a conventional war.

How could we fight a conventional war of attrition and win without attrition assets and with a wartime logistical base for key items that could support combat operations for no more than 10 to 20 days? The Soviet Union, by comparison, has superior quantities of weapons and equipment; a constant production base; fewer manpower problems, and a greater conventional force in being. This leads me to the tentative conclusion that they could "out-attrit" us in a conventional war. I intend to look into this matter in further detail next year.

It would appear to me that the only way we could defeat the Soviets in a conventional war would be to resort to the use of tactical nuclear weapons—not as an option but as the sole means of waging war successfully. Is this where we are headed? For me, it is a compelling reason why we should build up our conventional force structure and why we should enhance combat sustainability. We must improve our capability to wage a conventional war without delay.

(4) NAVAL FORCE MODERNIZATION

If we are truly planning to take on serious military commitments in the Indian Ocean, then I am convinced that the overall size of the Navy must be increased.

As it stands today, the existing 540-ship Navy is too small to fulfill our long-standing commitments in Europe and Asia as well as a new commitment in the Indian Ocean. The Chief of Naval Operations underscores this point when he says that "we have a one and a half ocean Navy trying to meet a three ocean commitment."

The Indian Ocean is immense, involving vast distances. For example, the distance from Diego Garcia to the mouth of the Persian Gulf is 2,200 nautical miles. Aside from Diego Garcia, we have no major military bases in the region. There is simply no way to establish a significant military presence in the Indian Ocean without the existence of a powerful naval force in place. That is essential.

But we cannot do that with the Navy we have today—unless we draw down on existing commitments in Europe and the Pacific.

If we do indeed establish a large naval force in the Indian Ocean then we must buy more ships and naval aircraft. We must expand the Navy beyond the current 540-ship level. Navy experts say we would need at least 200 more ships to do the job.

At this point, I do not know what kind of force is needed to support an Indian Ocean commitment or how many additional ships would be involved. I do know that we need a sense of direction from the Pentagon.

If we want to maintain the existing naval force structure, we need to buy about 20 ships and 200 fighter/attack aircraft per year. In recent years, we have not done that. We have been buying far fewer than the required number. If current naval procurement policies prevail in the future, we will end up with a 300-ship Navy and not enough aircraft to put on the decks of our 12 carriers or to fully provide for three Marine Corps airwings.

The future does not look good.

The current 5-year shipbuilding program—fiscal year 1981–85—presented to the Congress in January called for the funding of 97 new ships, including 19 in fiscal year 1982. Recent press reports suggest, however, that the new 5-year plan, which is being prepared in connection with the fiscal year 1982 budget, would fund 84 instead of 97 ships in the 1981–85 timeframe and only 12 in fiscal year 1982 as compared to the 19 planned today.

This is merely the continuation of a trend that we have seen for the past several years. Somehow we must reverse that trend.

The Navy is being given the responsibility to protect our vital interests in three oceans. We in the Congress have a responsibility to see to it that the Navy has the assets needed to fulfill those commitments. In recent years, the Congress has the assets needed to fulfill those commitments. In recent years, the Congress has added substantial sums of money to the Navy budget. This year, we are recommending a new $2.5 billion increase for the Navy and Marine Corps. We will keep doing this until the Navy has a true, three-ocean Navy that it needs.

SUMMARY

We could argue forever about how much money is needed for national defense or where that money should be spent. But I do not believe there is anyone in this Chamber who could provide the right answer to those questions.

I feel as though we did the best we could under the circumstances. The product of our work is far from being perfect, because much more remains to be done, but the bill is supportable.

We are definitely on the right track so far as manpower retention and combat readiness are concerned. Congress has taken the lead on these issues, and thus far, I think we have done a good job in addressing them.

It will take time to solve these thorny problems. It will take at least 2 years before the additional spare parts provided in the bill begin to reach the operational units and longer than that before we begin seeing some real improvement in readiness in the broad sense. While the impact of our pay and benefits package will be felt sooner than that, it will be several years before reenlistment rates reach desired levels.

We will certainly have to pursue these issues again next year to be sure that our initiatives remain on track. We will probably follow up next year with some additional proposals, but I feel like the funding allowed in the bill constitutes a good start toward solving the readiness and retention problem. More comprehensive solutions will be needed over the long run.

What lacks most of all is some policy guidance from the Defense Department as to how it plans to protect our vital interests in the Middle East and Indian Ocean. The lack of direction on this issue is, in turn, causing considerable indecision on the overall mission of the Navy and thus the numbers and types of ships and aircraft the Navy needs to carry out its mission. Until the administration resolves this basic national security policy issue, it will be impossible for the Congress to act in an intelligent way on the Department's request for annual appropriations.

I must reiterate that Congress does not set policy very well. I am convinced that the greatest waste in defense comes when the Congress attempts to fill a policy void in the White House or the Pentagon. We tend to appropriate out of frustration and all too often that is wasteful.

I plead with the administration for a sense of direction—It is Congress that seems to decide the types of ships we need—It is Congress that takes the lead in pay and allowances and benefits to try to solve the retention problem—It is Congress that will ultimately decide on a manned penetrating bomber if there is no proposal coming from the executive branch—It is Congress that tries to make something reasonable out of 5-year defense plans that go up and down like a rollercoaster.

Give us a sense of direction—a clear long-range defense policy and I guarantee that we will be better prepared to defend this Nation.

Mr. Chairman, I urge support of this bill.

□ 1650

Mr. ADDABBO. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, the gentleman from Alabama has stated several concerns that I feel also, but I do not feel that we should expect that the Russians will be landing on our shores tomorrow. The committee, working as a bipartisan committee, has in the last 4 years instituted many new weapons systems, and I will include in the RECORD at this point the various new weapons systems for which we have provided production funding in the last 4 years.

They are as follows:

ARMY

UH 60 Blackhawk utility helicopter.
XM–1 main battle tank.
Fighting Vehicle Systems.
Multiple Launch Rocket System.
Patriot air defense missile system.
M–198 155mm towed howitzer.
Roland air defense missile system.
Advanced Attack Helicopter.
VIPER shoulder-fired anti-tank weapon.
Stinger shoulder-fired air defense weapon.
Division Air Defense system.
Copperhead laser guided artillery projectile.
Hellfire laser guided, air launched, anti-armor missile.
Tri Service Tactical Communications Program.
TPQ–36 and TPQ–37 mortar and artillery locating radars.
Lightweight Company Mortar system.

NAVY

LAMPS MK–111 Multipurpose helicopter system.
F–18 fighter/attack aircraft.
MK–46 Neartip torpedo.
Captor mine.
Phalanx shipboard closein weapons system.
High Speed Anti-Radiation Missile (HARM).

AIR FORCE

Air launched cruise missile.
Ground launched cruise missile.
F–16 aircraft.

In addition to that, when we look at our forces vis-a-vis the Russian forces, we have to take a look at the entire picture. We have to compare Warsaw Pact forces with NATO forces. When we take our forces and the NATO forces and compare them with the Russian forces and the Warsaw Pact forces, we find that we have about 5 million men versus their 5.6 million.

We also find that the Russians must take at least one-quarter of their defense efforts and direct them against their Chinese borders. We find, as a whole, the Western Alliance has outspent the Eastern bloc in defense. The Soviets have 12,000 marines; we have 184,000. Their amphibious fleet has one-third the carrying capacity of ours. The Soviet air lift force can lift one-half that of our force, measured in millions of ton-miles per day.

The Soviets have five aircraft carriers, all smaller and less capable than ours.

The gentleman from Alabama has pointed out that 6 of our Army's 10 combat divisions in the United States were rated unfit to fight.

Well, this has always been the case in peacetime military forces. A unit may be temporarily unfit to fight one day because men may be on leave or men may have been discharged, but the next day it may be up to strength. Also, the same article that pointed out the deficiencies within our military indicated that the Russians have only about one-third of their units which are fully manned and combat capable.

So, Mr. Chairman, I would point out that, yes, there are deficiencies, and the committee has addressed many of those deficiencies, especially areas such as spare parts and readiness. Yes, the Administration has sent up several budget requests as far as defense spending is concerned—both budget amendments and supplementals. But these only reflect actions needed in response to the most recent intelligence reports.

I do not think it is peculiar or particular to this administration. I think we have found this in every administration but together, working with the administration, whatever party it may be, the committee will continue, along with the support of the Congress, to provide that which is absolutely necessary and which can be spent without waste for our national defense.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman.

Mr. EDWARDS of Alabama. Mr. Chairman, I am not going to get into any big argument with my friend from New York. My argument is not so much with the dollar figure; my argument is where those dollars are spent. I still believe that it does us no good, for example, to have this great new tank if it goes to the field and does not work. I still believe it does us no good to go out with brandnew airplanes if they get out there and break down.

My concern is that we misdirect too often where our defense dollars are spent. I know there is a botton in the well. The gentleman knows there is a bottom in the well. We agree that we have to defend this Nation, and my concern goes more to the question of how we defend it, where we spend those dollars, how much we waste in the process, because we know there is waste there, and how can we find ways to cut out waste.

Mr. ADDABBO. Back to being nonpartisan I fully agree with the gentleman.

Mr. EDWARDS of Alabama. I thank the gentleman.

Mr. ADDABBO. Mr. Chairman, I yield 8 minutes to the gentleman from Missouri (Mr. BURLISON).

Mr. BURLISON. Mr. Chairman, let me commend my distinguished chairman and his counterpart on the minority side, the gentleman from Alabama, for the extraordinary leadership that they have given our subcommittee throughout the hearings process and through the markup; and, as is already obvious from the first 45 minutes or so of the debate on this bill, an extraordinary knowledge of the problems, the defense problems, that confront this country.

Mr. Chairman, I rise in support of the committee bill on Department of Defense appropriations for fiscal year 1981. I support the intent proposed by the Committee on Appropriations on the F/A-18 aircraft. However, Mr. Chairman, upon reflection of how the committee has expressed its intent in supporting the increases made by the authorization conference, I believe it would be useful to explore further what the real intent of the committee was in taking the actions reflected by its report.

The committee worked diligently in both increasing the funding and the requested quantities for those programs where such increases would add to the national security and lead to more efficient production and lower ultimate costs to the taxpayer. In doing so, the committee endeavored to assure that, in fact, the items involved were ready for production and that the taxpayers funds would not be wasted. In some cases, these actions, taken together for the same program, may appear to be inconsistent to those who were not familiar with the committee's intent. Such a program is the F/A-18 fighter attack aircraft.

After much testimony and deliberation, the committee concurred in the actions of the authorization conference action which authorized 60 aircraft and advance procurement for 108 aircraft in the following year, a substantial increase over the request, but one which will pay enormous dividends both in increasing the cost efficiency of this program and in easing tactical aircraft shortfalls in naval aviation. During our deliberations, there was discussion of potential deficiencies in the aircraft which the Navy attempted to address in full upon questioning by the committee. Also, the committee became aware, very late in its deliberations, of an accident which occurred on the 8th of September 1980. Concern over both potential deficiencies in the aircraft and the cause of the accident led the committee to require certification from the Secretary of Defense that the F/A-18 deficiencies encountered in testing as well as any revealed in the ongoing accident investigation, have been corrected and tested and that the system meets contract specifications for performance and reliability.

In expressing these concerns and requiring the certification, the committee, of course, employed the broad language generally used in discussing these matters in a committee report. However, someone not involved in the discussions and not privy to the committee's intent could be puzzled by the committee language which, on the one hand, increased aircraft quantity while, on the other, created impediments to timely and cost effective program execution. Since timely and cost effective program execution were at the very heart of the committee action in providing amounts greater than requested, any confusion should be dispelled in this floor debate.

I would like to provide my impression of the intent of the committee, if I am right, perhaps the chairman of the committee would agree with my interpretation, thereby providing for all the Members of this body a clear presentation of what our intent was. It is my belief that the committee was not intent upon placing delays in F/A-18 program execution. What we wanted was firm assurance by the Secretary of Defense that, in fact, the program was ready to go before a full production release takes place.

Clearly, for example, delaying obligation of production funds until development testing III has been completed, and all deficiencies encountered are corrected and tested, could easily cause a 2-year delay in this program; that would needlessly drive up costs and further exacerbate the severe shortfall in tactical aircraft that I addressed earlier and that was earlier alluded to by the gentleman from New York and the gentleman from Alabama. Instead, we are interested in the significant deficiencies and potential problem areas discussed with the Navy during our review of their budget request and the problems that the recent accident could portend. The certification that is really required from the Secretary of Defense before he makes all of the funds in this bill available for obligation, is one that be given following initial operational test and evaluation (I.O.T. & E.), and would address these matters, particularly significant deficiencies and those identified in the accident investigation of the loss of aircraft TF-2. We feel that such deficiencies have to be corrected and successfully tested prior to the full DSARC III decision milestone. I believe that the committee understood full well that, in order to maintain program schedule as desired by the committee, obligation of funds will occur prior to both the certification and the full DSARC III decision point. In addition, of course, this certification following I.O.T. & E. would provide a statement that this new weapon system is expected to meet the Navy's requirement for operational performance and reliability.

Mr. Chairman, this is what I believe the committee intended. In inserting the requirement for a certification from the Secretary of Defense, the committee nevertheless, supported fully the authorization conference action in increasing the number of aircraft being procured in order to effect all possible efficiencies and economies. I would ask that the distinguished chairman of the subcommittee correct me if my perception of committee intent is not accurate and if he does not agree with that viewpoint.

□ 1700

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. BURLISON. I am delighted to yield to the subcommittee chairman.

Mr. ADDABBO. Mr. Chairman, in the main I agree with the gentleman from Missouri (Mr. BURLISON). It is not our intent to unnecessarily delay the F-18 program. We do understand that some of the funds would have to be obligated and expended for production, but again the committee wished to be assured, because of the problems we have seen in the F/A-18, that there be a certification by the Secretary. But this would not apply to all the deficiencies because we know there will be some minor deficiencies which cannot be fully corrected prior to proceeding with production.

So, Mr. Chairman, in the main, I agree with the gentleman from Missouri.

Mr. BURLISON. Mr. Chairman, I thank my subcommittee chairman.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 12 minutes to the very able gentleman from Virginia (Mr. ROBINSON).

Mr. ROBINSON. Mr. Chairman, I join with my colleague, the ranking minority Member, in his comments regarding our chairman, the gentleman from New York (Mr. ADDABBO), and our fine staff. It is certainly true that we can disagree, but it is in a friendly climate and one where courtesy always exists and where real acrimony is very infrequent.

But as I look back on the subcommittee's proceedings and the process this year, I wish that we could have set aside more time to mark up the bill in a truly thorough fashion and more time to draft and digest a truly representative committee report.

We would have been better advised, in my view, to put somewhat less time into subcommittee hearings. Many were poorly attended. They filled 9,000 printed pages, many of which did not contribute to the decisionmaking process of markup, a process, as it evolved, which resulted in most points of significance that were considered being staff-selected.

Mr. Chairman, I will vote for this bill, but I am not at all content with it. I agree fully with the concerns expressed by the gentleman from Alabama (Mr. EDWARDS).

Some of the reasons why I am not satisfied with the bill are set forth in the additional views appearing in the report which I signed in company with the distinguished gentleman from Alabama (Mr. EDWARDS) and 10 other members of the committee.

If additional time had been available between the release of the committee print of the report and the printing deadline for the report as finally approved, I am confident that we would have been able to enlist more committee members—from both sides of the aisle—as signatories of the additional views.

What concerns us is that this House may gain the impression that it has done the best that can be done at this time toward providing the Nation with a fully adequate national defense.

As a member of the subcommittee which developed this bill, I sat through months of hearings.

I heard the top officials of the Department of Defense defend the budget for that Department as submitted, and modified, by the President, the Commander in Chief.

In addition, I heard high operational, logistical and research and development officers of the several services acknowledge, in response to questioning by members of the subcommittee, that the real and pressing needs of their commands could not be met in adequate and timely fashion with the levels of funding proposed in the budget.

In a number of instances, the subcommittee responded to the concerns of these officers who would be responsible for fighting a war, should one be thrust upon us.

As the report notes, the bill carries approximately $2.5 billion more than requested by the President.

Pages 5 and 6 of the report set forth, however, the manner in which that net increase was achieved—by the addition of some $7.4 billion in funding for defense programs and activities not requested by the President, and by almost $5 billion in reductions from figures recommended by the President.

I urge my colleagues to study, in particular, the list of reductions.

A question we should ask ourselves is this:

"How many of these cuts will lose us precious time in the effort to shore up our defenses, and deny our forces delivery, until some uncertain and distant date, of weapons they truly need today?"

And here is another question we might ask:

"How many of these reductions have the color of phony cuts, in that they amount to underestimation of accounts we know we will have to pay in full, whatever the amounts, when they come due?"

An example is the reduction of three quarters of a billion dollars in the inflation factor estimate for research, development, tests and evaluation—R.D.T. & E.

I have stated repeatedly, during my service on the subcommittee, that I have no disposition to give the Pentagon a blank check, and that I do not pretent that defense programs are immune to waste and mismanagement.

And I do not pretend, either, that a subcommittee charged with resoonsibility for providing for the operational readiness costs of the Defense Establishment gains, through experience, either infallibility or clairvoyance.

But I do insist that it is not our reputations as members of a subcommittee, or of a full committee or this House, that we risk if we err on the side of not enough in funding the Armed Forces this year, or in any year in the foreseeable future.

It is the very survivability of this country that we risk.

I am not standing here in the well expressing concern as to the adequacy of the bill before us because I have accepted the inevitability of war.

It is precisely because I cannot accept that inevitability that I ask you not to be content with what is proposed to be provided by this huge amount of taxpayer money—more than $157 billion in new obligational authority and transfers.

Comprehension winces at such a figure.

It represents a dreadful taxpayer burden.

Even so, I say that we need to ponder more what has been left out of this bill than what has been put into it.

Yes, there is enough money in the bill to improve the pay and allowances of military personnel and, thereby, it is to be hoped, to attract and retain personnel of the quality essential to operate and maintain the high-technology weapons systems of a modern defense force.

There is enough to buy more of the best weapons now in production and to move forward on the development of still more effective ones.

There is even enough to provide for a modest amount of growth, in real terms, in our overall defense investment—but this only if current projections of the inflation rate in the next fiscal year are reasonably accurate—not among the safest of bets.

As we consider this bill, let us keep in mind the magnitude of the great and growing threat.

Let us keep in mind that the Soviet Union is something more than a large and powerful nation.

It continues to be the principal protagonist of worldwide Marxist revolution. And, even though the assertiveness of the Polish workers and the refusal of many of the Afghan people to resign themselves to subjugation constitute minor Soviet irritatives currently the momentum of this sinister revolutionary force remains essentially unchecked. In our own hemisphere, the Kremlin's methodical minion, Fidel Castro, counsels and assists the Sandinista regime in Nicaragua toward complete conversion to a Marxist state; provides leadership and supplies to like-minded Marxist revolutionaries elsewhere in Central America and on Caribbean Islands, and at home in Cuba conducts, under Soviet guidance, a major, sophisticated training program for revolutionary cadres to be dispatched, at Soviet direction, for violent mischief-making in Central and South America, Africa, and wherever else circumstances seem opportune for a Marxist transformation of rule.

And, while some become preoccupied with the niceties of nuclear balance—undeniably a critically important matter—the Soviet Union builds its conventional forces apace—not only conducting impressive research and development programs, but also actually delivering its forces—land, sea, and air—the products of this research and development at a more intensive rate, in many categories, than we.

We may have the very best tank, but few of them have come off the production line as yet.

The Soviet Union has a great many very good tanks.

We may have the very best fighter aircraft, but relatively few of them are fully ready to fly and fight at any given time. The Soviet Union has a great many flyable planes of respectable capabilities.

We may have the very best submarine in the Trident, now in initial production, but the Soviet Union has a great many very formidable submarines.

And yet, in recent years, the United States has slowed deployment of the Trident II missile and submarine system; canceled procurement of a new-generation manned bomber; vacillated on the MX missile program; stretched out the cruise missile and Navy shipbuilding

programs; budgeted for woefully low levels of munitions, maintenance, and spare parts; and even provided insufficient fuel for adequate training operations of military aircraft and the fleet.

I do not denigrate our capacities in technology and production.

I continue to have full confidence that the United States can provide itself with a defense force second to none.

But, I regret that, in recent years, we have not demonstrated a sufficient commitment in this regard.

The Soviet Union, meanwhile, presses to achieve not deterrent, but intimidating power to back its undiluted dedication to the achievement of a Marxist world order.

This bill suggests some disposition to get about the job of taking up the challenge thrust at us by the Kremlin, but the resolve to make the hard, essential sacrifices has not yet asserted itself, and time has become precariously short. It is on the record—the adversary is not lenient with weakness.

The adversary grows stronger and stronger, and bolder and bolder. He shows a continued willingness to devote an ever-increasing proportion of his GNP to build military might far beyond the necessities of his own defense. A real growth of 3 percent in our own military parity, and the use of that as a goal, only sets forth for the world to see, that we are unable or unwilling to try to achieve military parity, for in the minds of experts around the world we have lost it.

□ 1710

Mr. ADDABBO. Mr. Chairman, I yield 7 minutes to the gentleman from Washington (Mr. DICKS), an able and diligent member of the subcommittee.

Mr. DICKS. Mr. Chairman, I rise in support of this Defense Appropriations Act for fiscal year 1981, but I too am concerned about meeting our real needs. I want to extend my thanks to the chairman, ranking minority member, and my other colleagues who serve on the Defense Appropriations Subcommittee. I also want to thank our hardworking staff. It has been a pleasure and an honor to work with these dedicated individuals to produce recommendations to the House on national security investment for the coming year. While the bill certainly is not perfect, it represents in my judgment a sincere effort to address many of the inadequacies we face in the defense area.

The 1980's are a decade of challenge for the United States, more than any decade since the 1940's and the Second World War. We must meet our pressing energy problems and reduce our costly dependence on foreign petroleum. But even more important we must maintain our ability to preserve the American way of life and exercise our legitimate role as a major world power. This requires a recommitment to funding national security forces. It requires sacrifices. If we shy away from these sacrifices now, the price we will pay in the future will be infinitely greater.

Over the last 15 years, we were restrained in our defense spending levels. We hoped that as we negotiated with our major rival to control arms levels, they would show similar restraint. The evidence clearly shows they have not. Our effort at unilateral restraint has largely been a failure. Over the last decade the Soviets have invested over $150 billion more than the United States, no matter how you calculate the comparison. The steady growth of the Soviet military machine has continued despite domestic economic pressures. It shows no signs of slowing down.

The invasion of Afghanistan last December represents a new chapter in Soviet foreign policy. They are now willing to commit naked aggression on a neutral state in order to preserve their own interests. All reports indicate that they are displaying a callous brutality in that effort unmatched since the heyday of the Nazi regime.

Our task is to demonstrate beyond a shadow of a doubt that this type of aggression entails far greater costs than rewards. The actions to limit technological exports, embargo grain shipments, and gain international condemnation are important steps. But they are empty steps if we do not have ultimate capability to deter aggression through military capabilities. As the Soviet Union faces increasingly difficult situations along their borders, the temptation to act militarily will be strong. If those of us in the Western Alliance are not able to present a strong and united front, they will no doubt yield to that temptation.

This bill represents an important step in meeting that challenge. It provides $157.3 billion in budget authority, the largest defense budget in history. It is nearly $20 billion over the level provided in fiscal year 1980 and represents a continuation of the real growth begun in the last few years. Most importantly, this bill demonstrates the recognition of Congress that our defense investment must have priority. For the first time in memory, the House Appropriations Committee has not recommended an overall reduction in the President's budget. It has instead provided $2.4 billion above the administration request. The Defense Subcommittee strove through hundreds of hours of hearings and markup to allocate those resources in a manner that will produce the most effective results possible.

The bill does not provide all many of us on the subcommittee had hoped. I am convinced that before the fiscal year is ended, additional funds will have to be allocated to defense. The 11.7 percent pay increase for the military and the 9.1 percent provided to defense civilians will require additional funds above those originally budgeted. Fuel costs will add another $2 to $3 billion if we are to maintain programed flying and steaming hours. The committee was constrained in meeting these contingencies by the section 302 allocations called for under the Budget Act. The budget process requires all segments of the Federal program to bear some burden. But the allocation to the Defense Subcommittee does not in my judgment reflect the will of the Congress in adopting the first concurrent budget resolution. There is no doubt a second resolution is required during this fiscal year if we are to meet the objectives we originally set for our increased defense spending.

The bill does take important steps in two areas that have been too long neglected in shaping our defense budget. The first of these is a beginning recognition that military personnel represent our most critical asset. And if we are to attract and retain the quality people needed to run our armed services we must adequately compensate them. Over the last several years that compensation has eroded to intolerable levels. Real income, including benefits for military personnel has declined as much as 20 percent since 1972. Thousands are forced to depend on food stamps or second jobs. A plane handler on the *Nimitz* is asked to be separated from his family for many months, work long hours, and all for less than a cashier at McDonald's.

The results of pay caps and other artificial restraints on military compensation are predictable. Career reenlistments rates have declined 14 percent and we face shortages of 46,000 Army NCO's and 20,000 Naval petty officers. Readiness is adversely affected. Recent reports indicate that 6 of the 10 Army divisions stationed in the United States are unfit for combat primarily due to lack of NCO's. A reduction in manning levels in our forward deployed divisions is required to bring these divisions up to a minimum operational level. The Navy has begun a system for sharing crews to maintain necessary manning levels on ships that can be deployed.

The $713 million provided for implementation of the Nunn-Warner amendment is an important start in correcting some of the most pressing compensation shortfalls that are driving quality veterans out of the service. The additional $83 million for reenlistment bonuses and tuition reimbursement increases for middle enlisted personnel are also welcome actions. But these actions are just a start. More needs to be done in the educational area. We must continue to provide pay increases which keep pace with the private sector. The ultimate cost will be high, and could well require a basic restructuring of the military pay system. But the cost cannot be avoided. If we try to, the ultimate costs will be far greater.

A second important area addressed in this bill is readiness, particularly as it relates to maintenance of our sophisticated equipment. Each year we find the budget request woefully inadequate in its provision of spare parts. While true for all systems, the most graphic illustration of the consequences comes in aircraft. We now find ourselves in a situation where we spend over $20 million per combat aircraft only to have half of them unusable at any point due to lack of maintenance and spares. The bill provides an additional $540 million in aircraft spares above the budget. This will not solve the problem, but it will be an important force multiplier for our tactical aircraft.

Spending increases, for their own sake, do not yield better national security. Where they feed on existing inefficiencies

or outdated concepts our position can even be weakened. While real increases in defense spending are required, we will always have limited resources in comparison to the countless competing demands. Much still needs to be done to reduce duplication of effort. The bill's provisions relating to consulting studies are one attempt to address this particular problem. The question of high cost sophistication at the expense of greater numbers must also be addressed, particularly in the areas of aircraft and naval shipbuilding. The American public will not tolerate waste of their hard earned tax dollars, no matter what the avowed purpose. I take pride in the important role the Defense Appropriations Subcommittee plays in this effort.

We are beginning a journey into a risky, unknown future. Our best companion on that journey will be a strong and adequate national defense. The rebuilding cannot take place overnight any more than a strong new ship can be built up overnight. It must have a firm foundation in manpower and day-to-day operations, and must be planned to meet the needs of the Nation without undue expense. I am dedicated to this effort and support this bill as an important part of it.

□ 1720

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 1 minute to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Chairman, I will vote for this Defense appropriation bill, but not without some serious misgivings.

The funds appropriated by this bill are not sufficient to improve our military forces to the degree required in light of the current Soviet threat to American security.

As noted in additional views in the report accompanying this bill, the Soviet Union has quintupled the number of its strategic nuclear delivery vehicles and expanded the number of weapons those vehicles can carry by a factor of 11 in recent years.

The Soviets have deployed five new intercontinental ballistic missiles and three new submarine-launched ballistic missiles, while improving the accuracy of their ICBM's by a factor of five.

Additionally, the Soviets have provided their substantially expanded army of 170 divisions with new tanks, armored fighting vehicles, and artillery in large numbers.

The United States, on the other hand, has only 16 active and 8 reserve divisions, plus assorted regiments and brigades.

A recent U.S. Army report showed that 6 of the 10 Army divisions in the continental United States are not "combat ready."

Moreover, while the Soviet Union has been outspending the United States by about $75 billion to $80 billion a year on its overall military effort, our President has taken a series of actions designed to slow down or reduce U.S. defense efforts.

The Carter administration has slowed deployment of the Trident-II missile and submarine.

Canceled procurement of a new-generation manned bomber;

Repeatedly shifted direction on the MX missile program;

Reduced combat aircraft procurement to such an extent that the Navy, for example, has been losing more planes each year through operational attrition than requested for it in the Carter budgets;

Dragged out the cruise missile program;

Permitted appallingly low levels in stocks of munitions, with some aircraft deployed overseas supplied for only a day of combat operations.

In addition, the Carter administration reduced the 5-year shipbuilding program of the Ford administration from 157 ships to only 83 ships, so that now the United States only has 462 ships in its active fleet, compared to an active Soviet fleet of 1,764 ships around the world.

Mr. Chairman, there are some who would have us believe that Congress has been providing sufficient funds for our defense forces since 1977, despite the refusal of the Carter administration to provide adequately for the defense budget.

Nothing could be further from the truth.

This bill is far from adequate in light of the substantial shortfalls in the President's budget for defense production, operations, and maintenance programs, research and development, and other needs.

Furthermore, this bill is $3.1 billion below the $160.2 billion budget resolution target, as allocated by the Appropriations Committee earlier this year under section 302 of the Budget Act—meaning that defense appropriations have suffered again this year so that more budget dollars could be shifted into ever-expanding social welfare programs deemed politically important by the Carter administration and its supporters in Congress.

As I say, Mr. Chairman, I will vote for this bill with some misgivings, because it appropriates far less funds than we really need to provide adequately for U.S. defense needs in 1981 and beyond.

Mr. ADDABBO. Mr. Chairman, I yield 5 minutes to the gentleman from Arkansas (Mr. ALEXANDER).

Mr. ALEXANDER. Mr. Chairman, 3 years ago the debate raged in the Congress and in the national media over the advisability of pursuing the development and deployment of a manned bomber.

Today, the popular press is full of expression of concern over the state of our national defense. If the press accounts are true, we have a Navy that will not sail, an Army that is unfit to fight, and a strategic force that is approaching obsolescence.

Although press treatment of defense matters is usually less than comprehensive, there seems little question that our military and strategic strength relative to that of the Soviet Union has declined in recent years.

By the midpoint of this decade, our first-line ICBM's will become vulnerable to a Soviet first strike using their heavy SS-18 missiles.

U.S. defenses have endured more than a decade of neglect from Congress, but fortunately there seems to be a general sense among most Americans that it is time to rebuild American military strength. But defense costs a lot of money. And the question facing the American people is not whether we should have a stronger national defense, but whether we, a nation, have the capacity and willingness to pay the price for a strong national defense.

The first test of our willingness and capacity may be the question of whether we will develop and deploy a new manned bomber.

When we debated the issue 3 years ago, the debate soon became centered on whether we even needed a manned penetrating bomber in the age of the air-launched cruise missile. The distillation of the complex relationship between those two strategic systems down to a question of which system was better, obscured the more relevant question of what our total defense needs really were.

It was true then, and it is true today that the strategic balance demands both types of penetrating systems.

Our military planners have said all along that we need a manned penetrator to complement the ALCM. The Secretary of Defense, the Chairman of the Joint Chiefs and the Commander of the Strategic Air Command have all testified to the necessity for having complementary systems during this period of extreme vulnerability of our land based ICBM force.

If we need both, and I happen to believe we do, then it is not too early to take a hard look at our options. The hardware alternatives that our defense experts have put before us are these:

First. Modifications of the B-52 to become a cruise missile carrier.

Second. Modifications to the FB-111 to improve its range and payload.

Third. Development of a B-1 variant or some other advanced technology penetrating bomber to perform both roles.

Let us look at each option in light of what the two principal missions require.

We have 161 B-52's. Each aircraft can carry 20 ALCM's. The B-52 has the range and payload to be an effective cruise missile launcher. But if you modify it for cruise missile carriage, you degrade its ability as a penetrator. Frankly, if its ability to penetrate is degraded any further—and its present capability is reliably estimated at about 75 percent—you will have a weapon on your hands that is virtually obsolete.

Thus, the situation with the B-52 is that today, it can realistically perform cross section and because it has a relatively slow base escape reaction time, its days as an ALCM carrier are also numbered as Soviet defenses improve.

The FB-111 can be "stretched" by adding the B-1 engine and making some structural changes to increase its carriage volume. As a penetrator, the modified FB-111 would have good performance characteristics, but it would remain range-limited. There would have to be a trade-off between range and warhead delivery capacity. The cost of putting together an adequate force of 155 FB-111's would be about $5 billion, but there would

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be add-on costs including additional tanker aircraft for in-flight refueling.

That brings us to an advanced technology bomber which can perform both strategic missions. We could build a variant of the B–1 to accommodate both vital missions.

As a penetrator it would have the speed, performance, range and payload needed to do the job. As a cruise missile carrier, it would be superior to the B–52 in carrying capacity—it could carry between 16 and 30 ALCM's—it would present a smaller radar cross section to Soviet defenders, and it would have a very rapid base escape reaction time which would allow it to avoid getting caught on the ground. A B–1 variant force of 100 aircraft could be built for about $12.5 billion.

Mr. Chairman, when the B–1 was scrapped 2 years ago there was a lot of talk about cost effectiveness. Since that time our strategic posture has deteriorated and inflation has raged along at double-digit rates. As a result, we are today confronted with defense choices that are harder and economic choices which are more expensive than ever.

I believe we must decide now whether we are willing to foot the bill for the kind of defense we must have to meet the challenge of Soviet weaponry and intentions. There is not much time to engage in a continuation of the national agonizing that has degraded our strategic forces over the past decade. Its time to recognize that the quality of our hardware has a pronounced affect upon political decisions in the Kremlin.

If we persist in jerry-rigging our strategic forces instead of displaying the national resolve to keep our deterrent credible, we are inviting the Soviet Union to engage in increasingly risky political and military adventures.

In my view, we ought to decide now to move forward with an advanced technology bomber that can do all the things our national defense requires.

Mr. ADDABBO. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. WRIGHT), the majority leader.

Mr. WRIGHT. Mr. Chairman, I think this is a red-letter day. I want to congratulate the committee on having recognized the need to begin in earnest to rebuild the military strength of the United States and to recapture the position of unquestioned leadership throughout the world.

Surely in the 30-year interval since World War II, American military primacy more than any other single factor has kept the strategic peace. The knowledge of our strength has kept any would-be-aggressor from making us the victim of its aggression. I recall the words of John F. Kennedy when he said:

> Only when our arms are sufficient beyond doubt can we be certain beyond doubt that they will never be employed.

So I congratulate the committee on having demonstrated here in this bill the largest annual increase in military readiness funding that we have enjoyed in any single year since World War II.

Specifically, I want to commend the committee upon its recognition of the need to build a modern, penetrating bomber as a replacement for our aging fleet of B–52's.

Members of the House will recall the colloquies we engaged in during the time when the authorization bill was before the House. I congratulate the committee for including $175 million for the evaluation of alternatives for a new strategic bomber.

Reading from the committee report on page 321, I discern that the committee feels the Department of Defense and the President, as directed incidentally in the authorization bill, should come forward expeditiously with a report in which they would recommend one of several alternatives, either a B–1, some derivative of a B–1, some derivative of an FB–111, or some new technology aircraft embodying new design.

Now I want to ask one question of the distinguished chairman of the committee. While so heartily approving the boldness of the committee in adding $175 million for research and development into determining which of these alternate methods would be best suited for the needs that lie immediately ahead of us, I note that the authorizing conference report included a total of $300 million for full-scale engineering development of a multirole bomber aircraft and $75 million for long lead items to be associated with the procurement of new multirole strategic aircraft.

□ 1730

Now, I think I understand the rationale in the minds of the committee, including funds fully adequate for research and development, yet not including funds at this juncture for actual procurement.

Do I understand rightly that the committee felt it would be premature and actually impossible properly to commit funds for procurement until such time as the President and the Department of Defense have recommended to us and Congress has made a choice from among those recommendations which route to follow.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. WRIGHT. Of course, I yield.

Mr. ADDABBO. The gentleman from Texas is absolutely correct. At this time it would be untimely to appropriate the funds referred to by the gentleman. All it would do is become a part of a statistic. It would be in unobligated, unexpended funds. If and when a decision is made as to which is the proper strategic bomber for the future, then it would be proper at that time to appropriate money for procurement for long lead items.

Mr. WRIGHT. I thank the gentleman for that response.

Noting that the authorizing legislation in the form of the conference committee report directs the President of the United States to come forward with a specific recommendation next March, let us assume the case in which he might come forward with a recommendation urging us to move rapidly in the actual development and procurement of one or another of these alternatives. If that were to develop next March, there is nothing to prevent our coming forth speedily with a supplemental appropriation to accommodate that request, is there?

The CHAIRMAN pro tempore. The time of the gentleman from Texas has expired.

Mr. ADDABBO. Mr. Chairman, I yield the gentleman 1 additional minute.

If the gentleman will yield further, in view of the fact that the authorizing committees have approved the $300 million in R. & D. and $75,000,000 in procurement, then the Appropriation Committee, if a budget supplemental was sent to the Congress by the administration, could easily and would probably act with regard to this matter.

Mr. WRIGHT. I thank the gentleman. It would certainly be my firm intention as majority leader to schedule any such action expeditiously. Our need for a modern penetrating bomber is, in my opinion, urgent and already too long delayed.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. WRIGHT. Yes, of course, I yield to my friend.

Mr. EDWARDS of Alabama. The gentleman has touched on something that has concerned me greatly. I spoke on it briefly in my earlier comments, and that is what I perceive to be a lack of direction on this particular issue. We have been floundering around now for the last almost 4 years over the manned penetrating bomber, to have or not to have, if so, what to have, with no recommendation whatsoever coming from the Pentagon in this vital area.

So I would hope that in March, I believe March 15 is the day that is set in pending legislation, I would hope that the administration, whichever administration it may be, whoever may be the President or the Secretary of Defense, that we will see a real honest-to-goodness sense of direction as far as manned penetrating bombers are concerned, so that we can as a Congress go forward with something that most of us believe is necessary.

Mr. WRIGHT. I earnestly join the gentleman in that fervent hope.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, much has been said, and I am sure, will be said tomorrow about whether this bill is adequate. As I said in my opening remarks, I could have found somewhere to spend another $10 or $15 billion with great ease. I am sure that others could have found other places to put money; but I think the work product of this committee, the end product of what we have done, has certainly been on the plus side. We probably will come up finally with a real growth figure of somewhere around 3 percent. I do not think we are going to make the 5 percent that the President beguiled us with a few months ago; but I do think that we probably will make about a 3-percent real growth this year.

Now, you say, well, that is not too much, and it is not what I would like to see; but when compared with earlier years, it is real progress.

Now, I went back and had the Defense Department prepare for me figures all the way back to 1970 on real growth in

defense appropriations. It is interesting to note that out of the last 10 years, the only 2 years that we had real growth in the defense budget, and in the final work product of the Congress, were in the 2 Gerald Ford years as President. From 1970 through 1980, the only real growth was in the budgets for fiscal years 1976 and 1977; so I think that the American people are speaking now. I think this Congress is speaking now through its committee.

We are coming to the floor with a budget, with a bill that contains real growth in it. It seems to me that we are on the right track.

I am not satisfied with where we are, but I can bring you this bill with some degree of pride, because I think we have accomplished much in it.

I would hope that we will build on this work over the next few years, the next 10 years, perhaps. If we can continue to do this, then those concerns that some of us have that we spoke about today will start to fall by the wayside, because we will be doing the things that we need to be doing in preparation for what we all hope will never come, and that is a war with the Soviet Union or some other major power.

So let us hope that what we are doing here today is a new beginning, is a start in the right direction on building a defense second to none, going back to the days where we had great strength. I think it is something we can accomplish if we will stay in this vein.

Mr. Chairman, under leave granted to the chairman earlier, I would ask permission to include the chart prepared by the Department of Defense at this point in the RECORD:

DOD APPROPRIATION ACTS

(Millions of constant fiscal year 1981 dollars)

	DOD request	HAC recommendation	House passed bill	Conference committee recommendation	Real growth in percent
Fiscal year:					
1970	78,389	72,972	72,972	72,770	.....
1971	71,583	69,306	69,456	69,248	−11.2
1972	76,183	73,444	73,444	72,384	−3.0
1973	80,839	75,591	75,591	75,457	−3.3
1974	83,451	79,062	79,119	78,461	−3.9
1975	88,814	84,828	84,517	83,633	−1.4
Fiscal year—Con.					
1976	99,186	92,166	92,166	92,400	+2.9
1977	109,503	107,344	106,793	105,724	+6.4
1978	117,225	113,219	113,203	112,830	−1.2
1979	123,661	122,081	121,904	120,890	−.6
1980	132,256	129,450	129,460	130,918	−2.9

Note: Data does not include Military Construction Appropriation Acts and supplemental appropriations for military construction and family housing. Included are amounts for Defense Manpower Commission, CIA retirement and disability fund, intelligence community oversight, and the Office of Federal Procurement Policy.

● Mr. KEMP. Mr. Chairman, in providing appropriations for our national defense, the Congress fulfills its most crucial constitutional mandate; namely to provide for an "Army and Navy." It is a source of considerable disappointment to me that the Committee on Appropriations has not provided this Nation with a bill more adequate to our needs. To be sure, the bill is considerably improved from the wholly inadequate version proposed by the administration which failed to provide for sufficient funds to simply execute the program it had requested. Nevertheless, the fiscal year 1981 Defense appropriation bill once again fails to meet our defense needs, and in doing so places the Nation in much greater danger during the coming decade than would be the case had sufficient funds been provided.

There was no shortage of informative testimony before the Defense Subcommitte this year on the state of our defense posture. Perhaps the most dramatic and telling testimony came from the Commander in Chief of the Strategic Air Command, Gen. Richard Ellis. General Ellis testified in considerable detail to the effect that even when the Carter administration's own definition of "essential equivalence" in strategic nucelar forces between the United States and the Soviet Union, this objective cannot be met with either current forces or any forces scheduled to be deployed during the coming decade. This is a startling and compelling fact that is virtually ignored in the bill presented to the Congress today. The cancellation of the B–1 bomber has served to deprive our strategic forces of the margin of safety which would have assured that our forces would not be inferior to those of the Soviet Union during the 1980's. Despite the manifest evidence that the strategic nuclear balance will shift dangerously in favor of the Soviet Union during the next 2 years, it is useful to review some of the actions the committee took this year that will undermine our security for a generation.

First, despite evidence to the effect that no time should be lost in deploying a survivable intercontinental ballistic missile, the committee cut the MX program by $120 million, assuring a delay in the system's initial operating capability.

Second, despite the urgency of finding a replacement for the B–52—an aircraft designed in 1948—the committee cut the authorization for a new bomber by $125 million (from $300 to $175 million), and eliminated all funding for the long-lead procurement of equipment which would be common to any new bomber choice as a means of reducing the leadtime to when such a system could be deployed.

Third, in the face of requirements that our command-control-communication-intelligence systems had to be improved if we are to be able to strike Soviet targets which affect the credibility of deterrence, serious reductions have been made in this crucial area.

Perhaps the only reassuring dimension of the committee's deliberations arose when the full Appropriation's Committee refused to accept 10 pages of introductory text in the subcommittee's report which displayed a degree of insensitivity to the great danger our Nation faces that is unparalleled since the "America-first" isolationism of the 1930's. I am hopeful that this "revolt" of the full Appropriations Committee against the complacency of the Defense Subcommittee majority will affect subsequent defense appropriations efforts.

The committee report you now have before you is the revised version of an original staff draft. The original version is one of the most remarkable examples of complacency I have encountered in nearly 10 years in the Congress. A few examples are worthy of note as a means of illustrating the case.

First. "There is no cause * * * to be alarmed * * * the United States has not grown weak nor has the Soviet Union grown overwhelmingly strong."

The Defense Subcommittee has taken reams of testimony from expert witnesses from the Carter administration acknowledging the relative decline in American military power. The Commander in Chief of the Strategic Air Command—General Ellis has acknowledged the loss of "essential equivalence with Soviet forces" since 1977.

In his statement before the Naval War College last month, Secretary of Defense Harold Brown acknowledged that the U.S. Minuteman ICBM force would become vulnerable during the early 1980's.

Because the United States has disinvested in Defense when the effect of inflation is removed for more than a decade, the United States has indeed grown weak in relation to the Soviets, and because the Soviets have increased their defense effort by 4–5 percent per year, they have grown stronger. Not to acknowledge this as the chairman's original draft did, is to be oblivious to the most dangerous trends facing our defense posture.

Second. The original draft of the report applauds the "Stealth" aircraft, but fails to note that the subcommittee cut the authorization to develop a new bomber—possibly incorporating "Stealth" technology by $125 million; from $300 million to $175 million.

Third. The original draft notes that "there is no more reason at this time to fear an imminent Soviet military attack than there has been most of the time in the past two decades."

This is an astounding statement. Lest we be under any illusion, it is helpful to examine the Soviet-American military balance two decades ago compared to the balance today. The United States had a

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virtual monopoly on effective strategic nuclear weapons delivery capability with more than 1,000 strategic nuclear aircraft, the Polaris and Minuteman ballistic missiles being deployed, and an overwhelming advantage in naval forces and tactical nuclear forces.

To say that there is no reason to fear an imminent Soviet attack when the balance of forces has tipped so dangerously in the Soviet Union's favor indicates that the author is part of our defense problem rather than part of the solution.

Fourth. The original draft takes note of the unrest in Eastern Europe by stating that Eastern Europe "grows ever more restive under the yoke of foreign domination."

This statement has been true for more than three decades; the operational question is its implications for U.S. policy. As the Soviets have massively increased their military power in Eastern Europe in the past 10 years, and the United States adopted a deliberate of not encouraging a clash between Poland and their Soviet overlords. Hence as the United States has acquiesced in Soviet domination of Eastern Europe, the restiveness of Eastern Europe contributes nothing at all to American security. We are left with a far greater Soviet presence in Eastern Europe which does jeopardize our security.

The committee's disinclination to take the threat to U.S. strategic forces seriously is paralleled by its unwillingness to cope with the central problem of deterring conventional conflict—the lack of preparedness of U.S. general purpose forces. In his 1980 state of the Union message, President Carter declared the Persian Gulf region to be a "vital" interest of the United States. I regret that the President did not see fit to request any additional funds to support his extension of protection to the Persian Gulf. Indeed, the committee was informed that there have been no budgetary consequences in the form of new program initiative of any consequences stemming from the Soviet deployment of four motorized rifle and one airborne division(s) in Afghanistan only 300 miles from the Straits of Hormuz. To deploy two aircraft carrier battle groups to the Persian Gulf, we have been obliged to renege on our commitment to the North Atlantic, the Mediterranean, and the Western Pacific by drawing down ships, fuel, spare parts, and experienced crew members. In the words of the Chief of Naval Operations, we have a "one-and-one-half ocean Navy for a three-ocean commitment."

The ability of the Navy could have been swiftly and cheaply improved had the committee not rejected the recommissioning of the aircraft carrier *Oriskany*, and recommissioning the battleship *New Jersey* in modified form. The latter, when modified with a complement of 320 cruise missiles and two 16-inch gun batteries, could increase the striking power of a carrier battle group 60 times at a price less than one-fifth that of an aircraft carrier. The recommissioning of the *Essex*-class carrier, *Oriskany* could have mitigated the severely stretched assets we have to deploy today.

Had not the Carter administration cut the fiscal year 1978 Ford naval shipbuilding program from 157 to 83 ships over a 5-year period, we would not be so sorely in need of naval vessels. Indeed, of the 52 ships added to the Navy's active net inventory since 1977, virtually all of them resulted from construction authorization initiated prior to President Carter's assumption of office.

The readiness of U.S. Forces has become widely discussed in the press, but it is scarcely evident in either administration budget requests or—despite valiant efforts by the ranking minority member, Mr. EDWARDS—in this bill. On an average day, 50 percent of our tactial aircraft are not fully mission capable because of the administration's unwillingness to fund any significant part of the $6 billion deficiency in spare parts for tactical aircraft which has been allowed to accumulate during the past 4 years.

Similarly, devastating shortages in ammunition have been exposed during the course of the committee's deliberations. These shortages exist in the most crucial arena—the very realm of our technological advantage. Precision guided munitions, advanced air-to-air missiles, and advanced artillery ammunition are among the most conspicuous shortages. The fig leaf that constitutes the administration's commitment to procuring an adequate defense posture has never been better emphasized than its decision to procure only 130,000 rockets for the Army's new multiple-launch rocket system. This is a sufficient quantity to support 4 days of combat operations. Throughout our defense posture, the administration's budget requests are oriented toward obtaining the appearance of doing something about defense by purchasing additional tanks, aircraft, and ships, while denying them the ammunition and spare parts they must have to be effective.

Similarly, to support the special-interest constituencies so crucial to the President's reelection, defense expenditure has been held down to the point where insufficient funds have been made available for fuel to provide a minimum acceptable amount of training, or to pay our military personnel sufficiently well to induce them to stay in the Armed Forces. The most important land-based tactical aircraft in our inventory—the F-15—has been so starved for funds to purchase fuel, that its pilots will not be fully trained in its use until the mid-1980's.

It is hardly surprising that middle-level officers and noncommissioned officers are leaving the armed services when their real level of compensation since 1977 has dropped as much as 30 percent. To make matters worse, the administration uses this as de facto evidence that the All-Volunteer Force has failed as an excuse to initiate a program of draft registration. Suffice to say that the administration's military personnel policies have done more to undermine our military strength than any other single decision. It is my hope that the Congress will go considerably beyond the Nunn-Warner amendment which it funded in this bill to restore military compensation to a level which will attract and hold highly qualified personnel who chose military service as their career. Owing to the administration's persistent underestimate of inflation, the Congress will almost certainly have another opportunity to do so when the administration submits its next supplemental appropriation request.

It is possible to dwell at length on the shortcomings of both the current bill, and the failure of the administration to take an active interest in an adequate defense program. A suggestion of some of the concerns of committee members is contained in a joint statement of additional views in the committee report; a more detailed characterization is provided in the ten volumes of testimony provided—but largely ignored—to the Defense Subcommittee. It is my hope that exposure of the Congress to the manifest failings of this bill to meet our minimum defense needs will lay the basis for a more vigorous expression of congressional support for an adequate defense program in the next fiscal year.●

● Mr. FITHIAN. Mr. Chairman, I wish to express my general satisfaction with H.R. 8105, as reported by the Appropriations and Armed Services Committees. I am pleased that Congress has taken the necessary initiative to meet the challenges and threats the United States has faced with increasing frequency in recent years.

It is an unfortunate fact of international relations that respect is often accorded to a nation in terms of its perceived military strength. And by nearly any measure, our Armed Forces have experienced a decline in the past decade and a half. The aftermath of Vietnam caused many decisionmakers to shy away from the commitment to keeping our military at a high level of training and preparedness.

The United States has been compelled to resort to arms on a number of occasions in the 35 years since the end of World War II. Yet every time we have done so, we have sent in conventional military forces. And despite the continual advances in sophisticated weapons systems technology, we have always relied most heavily on infantry with support from sea and air.

With each year since the advent of the All-Volunteer Forces in 1973, it has become increasingly apparent that the United States has been seriously falling behind the U.S.S.R. in terms of what is still, demonstrably, our most critical military resource: manpower. Not only are fewer men and women volunteering—all four branches of the service failed to meet their fiscal year 1979 recruiting goals—but an increasing number of skilled officers and NCO's are leaving the service for a more financially attractive civilian life.

We must do more to encourage qualified men and women to join our Armed Forces, and we must do more to keep those who now serve. The service man and woman are the backbone of our military strength. They are essential for driving our tanks, flying our planes, piloting our ships, and bearing arms to defend America. Without sufficient qualified servicemen to run them, even the most sophisticated weapons systems are useless.

I freely admit that my strong support for increasing America's conventional forces stems a great deal from my 20 years' service in the Navy. I have been a serviceman, and I have lived and worked with servicemen. And I know exactly the kinds of problems that are caused when they don't have the type of training and equipment they need to do their jobs. Any one of us who has ever served America in the Armed Forces knows that this is true. Our problem is to convince the big bureaucrats in the Pentagon of this.

The appropriations bill now before us is one way we can send this kind of signal. I am especially pleased by the inclusion of the Senate-passed "Nunn-Warner Amendment" which provides for increases in selected areas of military compensation. The urgent need for such action was graphically illustrated not too long ago by former Defense Secretary Melvin Laird who told a congressional committee that a 3d class petty officer handling $25 million warplanes on the deck of an aircraft carrier earns less than a cashier at McDonald's. The Nunn-Warner amendment will rectify this inequity with seven separate compensation adjustments which will add $713 million in annual compensation to members of the Armed Forces.

Among other things, this provision increases housing allowances for personnel living in high cost housing areas, increases change of station mileage payment ceilings to a realistic level, increases sea pay and flight pay by 15 percent and 25 percent, respectively, and increases selected reenlistment bonuses. Altogether, this package should do much to increase enlistment and retention rates. This is a prospect which I, for one, regard with great relief.

Finally, I applaud the fact that the committees realize that this extra attention being paid to manpower this fiscal year is not nearly sufficient to respond to the need. It will take several years of continuous work to build up our standing army and, perhaps more importantly, our Ready Reserve. America must never allow itself to be compromised and humiliated by being unprepared to respond to Soviet aggression, direct or indirect.●

Mr. ADDABBO. Mr. Chairman, I yield back the balance of my time.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. HOWARD). The Clerk will read.

The Clerk read as follows:

TITLE II

RETIRED MILITARY PERSONNEL

RETIRED PAY DEFENSE

For retired pay and retirement pay, as authorized by law, of military personnel on the retired lists of the Army, Navy, Marine Corps, and Air Force, including the reserve components thereof, retainer pay for personnel of the Inactive Fleet Reserve, and payments under section 4 of Public Law 92-425 and chapter 73 of title 10, United States Code; $13,887,800,000.

Mr. ADDABBO. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. NATCHER) having assumed the chair, Mr. HOWARD, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, had come to no resolution thereon.

SEPTEMBER 15—NOT JUST ANOTHER PRETTY DAY

(Mr. REGULA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REGULA. Mr. Speaker, today is September 15, the deadline provided in the Budget Act for completing action on the second concurrent budget resolution. Yet, today will go without any action on that important matter. The other body has a reported budget resolution, but it has not considered it on the Senate floor. The House Budget Committee has not even held one markup session, so the House has nothing to consider. Trying and not succeeding is one thing but not trying at all is unpardonable.

The reason for inaction by September 15 is another day—November 4. Just as the administration would have the American people believe that OPEC is the cause of our inflation and the current recession, so, too, would the majority party have us believe that unforeseen changes in the economy and the economic outlook have so confused the budget picture that more time is needed to "study" the matter. I do not buy the OPEC scapegoat and I do not accept the other argument either.

Last June, we adopted the first budget resolution for 1981. For a fleeting moment, we stood here and told the Nation we would have a balanced budget in 1981. Now, the best estimates call for a minimum deficit of $50 billion. I was 1 of only 10 Republicans to vote for that balanced resolution. At the time, I expressed my doubts as to the validity of the numbers and the assumptions behind them, but I supported the resolution because it contained important policies and principles that I have been advocating for a long time—reconciliation, a much slower rate of growth for nondefense Government programs, a responsible rate of growth for national defense, and a provision for holding up budget-busting bills and not sending them to the President for his signature.

Mr. Speaker, the budget process is at a critical crossroads. Reconciliation is in doubt, even as the conference on that important, precedent-setting legislation is set to begin this week. We have again failed to meet the legal requirement of the Budget Act that the second budget resolution be adopted no later than today. This flagrant disregard of the law is a scar on the Congress. Equally disturbing is the politization of the budget process.

We observed the President withhold his mid-session budget review past the legally mandated date in order to avoid giving out the bad news during the Republican Convention. The Congress has been equally political by failing to move forward with consideration of the second budget resolution. I recall the response of the former chairman of the Senate Budget Committee when asked about not meeting the deadlines required by statute; Chairman Muskie replied:

What are they going to do, come and take us off to jail?

Mr. Speaker, that attitude aptly exemplifies the problem as once again today Congress chooses to ignore the law for political purposes.

SUPPORT FOR HAZARDOUS WASTE CONTAINMENT ACT

(Mr. GORE asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. GORE. Mr. Speaker, this week the House of Representatives will take up H.R. 7020, the Hazardous Waste Containment Act of 1980. I would like to urge my colleagues to support it and I would like to urge them to support the tougher version of it which has been reported out of the Committee on Ways and Means.

Up until recently, the representatives of the chemical industry have been fighting this legislation vigorously but early last Friday, the spokesman for the Chemical Manufacturers Association expressed support for a $1.2 billion fund with 75 percent of that sum coming from the industry and 25 percent from general revenues.

Mr. Speaker, I trust this was not a slip of the tongue and I would like to insert the transcript of this industry spokesman's commitment of support into the RECORD at this point:

Robert Roland (President, Chemical Manufacturers Association): "The chemical industry, specifically manufacturers of chemicals have been trying for over a year to get sensible legislation enacted. And today, in testimony before the Senate Finance Committee on S-1480, we indicated once more that we support 7020—HR 7020, the Florio Bill, on the House side. We believe. . . ."

Ted Koppel (ABC News): "What does that bill do?"

Roland: "That is a superfund-type bill that deals with abandoned waste sites and provides for a fund contributed by industry and government."

Koppel: "Now what would the breakdown be?"

Roland: "The breakdown would be 75% industry and 25% government. It would be $1.2 billion."

Congressman Gore: "Ted, if I may comment. I think we've seen something new here on your program tonight. If Mr. Roland is indeed speaking for the industry and can communicate to the United States Senate that the industry will accept a 75% burden with 25% coming out of general revenues, and a fund of $1.2 billion, then I think the United States Senate would pass that legislation expeditiously if the opponents of the legislation got that message from the chemical industry and the lobbyists that they've hired to work it."

Koppel: "All right. Now Mr. Roland, you're the president of the Chemical Manufacturers Association, so you clearly speak for the industry. Is that what you're saying?"

Roland: "What we're saying is we will con-

tribute to a reasonable fund in a reasonable fashion."

Congressman Gore: "A moment—a moment ago. . . ."

Roland: "Now wait a second, let me finish, please."

Congressman Gore: "A moment ago you said 75/25 and $1.2 billion."

Roland: "You're talking over $4 billion on the Senate side and you're talking more than 80% on the Senate side."

Koppel: "I mean, I think we have the workings of a compromise here, Mr. Roland."

Roland: "That's precisely so."

Koppel: "If in fact you are talking about the chemical industry of coming up with 75% of the $1.2 billion. Is that what you're saying?"

Roland: "That's right. And we think that the $1.2 billion figure is important because the amount that is specified in the Senate bill is excessive for the job that needs to be done. And that's only the beginning, Ted."

□ 1630

TRIBUTE TO HAROLD B. SAY

The SPEAKER pro tempore (Mr. NATCHER). Under a previous order of the House, the gentleman from Arkansas (Mr. HAMMERSCHMIDT) is recognized for 5 minutes.

● Mr. HAMMERSCHMIDT. Mr. Speaker, I stand with a large and distinguished company as I mourn the passing on September 3 of Capt. Harold B. Say, the gentleman whose life was dedicated to America and the veterans of military service who fought to preserve her.

Harold Say served as legislative director of the Veterans of World War I for many years and, as ranking member of the House Committee on Veterans' Affairs, I found his analysis and testimony on veterans' legislation unfailingly reasonable and informed. While his organization emphasized the concerns of that particular group of veterans, Harold Say was unstinting in support of all American veterans.

Harold Say was a member of the American Legion and the Veterans of Foreign Wars. His military combat career was launched during World War I, in the midst of the battle of St. Mihiel. During World War II his assignments included missions of the greatest subtlety and trust. American lives and the fortunes of war frequently hung in the balance of his judgment.

Recognized as one of the Navy's top security experts, he served on the staff of three different NATO fleet commanders after the war. And, although he was identified with his high official positions, Harold Say remained an objective and respected journalist. Editor of the Torch, the official publication of the Veterans of World War I and former editor of Stars and Stripes, his articles on veterans and military affairs appeared in numerous nationally circulated magazines. Regarding military matters as well as veterans' affairs, Harold Say called them as he saw them.

We contemplate the death of this fine man with deep regret, Mr. Speaker. I hope and trust his influence will abide with us and his example inspire us to remain unrelenting in our own dedication to the veterans for whom he consecrated his life.●

EMBARGO ON GRAIN SHIPMENTS TO U.S.S.R. IS WORKING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 5 minutes.

● Mr. ALEXANDER. Mr. Speaker, the decision by President Carter in January of this year to impose a partial embargo on grain shipments to the Soviet Union in response to their invasion of Afghanistan has acted to focus great attention on U.S. agriculture and the critical role played by our farmers in world affairs. It also provided certain critics of the President, particularly from the opposition party, with what they may have believed to be an opportunity to use that decision to attack and weaken the President. I suspect they are beginning to doubt the believability of their own rhetoric.

In fact, Mr. Speaker, those critics are being dumbfounded by the evolution of events this year. The embargo on grain shipments to the U.S.S.R. is working. The Soviets are increasingly feeling the pinch as their unproductive food and agriculture system continues to fail to deliver on promises made to the Soviet population by its leaders.

Here at home, keen observers are taking a closer look at the issue and are seeing something that the President's political critics may have missed. The public, including a majority of American farmers, still supports the President's actions and will continue to do so. American farmers believe in patriotism and are not fainthearted summer soldiers who indulge in cheap, carping criticism of decisions that are difficult and may require sacrifice.

Now, as the Soviet Union is in fact feeling the sanctions that the President has imposed, it may be time for us to acknowledge that his decision was both correctly measured and has been effective in punishing Soviet aggression.

It is also time to ask ourselves whether the burden of a policy of using food as a foreign policy tool should be borne exclusively by the American farmer.

It is not too soon to examine what effect embargoes of U.S. food have had and will have on the agricultural sector. Clearly, one of the foundations of our economy is the productivity of the farmer. We have practiced a national policy of encouragement for U.S. agriculture to grow more and more to insure moderate consumer prices and help feed the world while enhancing our export trade balances. The farmer has met every demand placed upon him. But to do so, he has had to make investments in land and equipment that have created a delicate balance between credit requirements and commodity prices which is tremendously sensitive to dislocations in supply and demand such as those brought about by the embargo of grain to the Soviet Union.

I recently called upon the Department of Agriculture to conduct a comprehensive study of the effects of embargoes and to formulate recommendations for programs designed to ameliorate the damage to American agriculture worked by a policy of using food sales as a foreign policy tool. During the days ahead, I shall be conferring with individual farmers and farm groups to arrive at means of dealing with the effects of embargoes.

For the benefit of my colleagues, I am submitting the following article for publication in the RECORD which has recently appeared in the press on this subject:

[From the Journal of Commerce, Sept. 15, 1980]

SOVIET MEAT PRODUCTION SEEN DECLINING STEADILY SINCE MARCH—CONTRARY TO CLAIMS THAT EMBARGO IS INEFFECTIVE

MOSCOW.—A dramatic decline in Soviet meat production since the spring contradicts Kremlin claims that this country has not been hurt by the United States embargo on grain sales.

What's more, Western experts expect that a no-better-than-average grain harvest this Fall will make the embargo an even bigger burden in 1981, provided it survives the presidential election.

Ronald Reagan has said that if he wins, he will rescind the restrictions on grain sales to the Soviet Union that President Carter imposed at the beginning of 1980 to protest the Soviet military intervention in Afghanistan.

Compared with 1979, Soviet meat production has been declining since March, with output for the first seven months of this year only 97 percent of what it was at the same time last year.

The falloff has been particularly steep since May, Soviet statistics show. In May, meat production declined 5 percent compared with May, 1979. In June the dropoff was 10 percent, and in July in reached 15 percent.

Figures for August have not yet been released, but Western agronomists watching the situation expect the downward trend to continue, perhaps less sharply, for the rest of the year.

The agronomists say the principal problem plaguing meat production is a shortage of high-quality feed. The bulk of the grain the Soviets buy abroad is used to feed animals raised for meat.

The U.S. Department of Agriculture says that, largely as a result of Mr. Carter's embargo, Soviet imports of foreign-grown grain in the 1979–80 fiscal year fell about five million tons short of what was wanted, despite President Leonid Brezhnev's recent claim in Kazakhstan that the Soviet imports of foreign-grown grain the 1979–80 fiscal year fell about five million tons short of what was wanted, the Soviets were able to "find substitutes for all grain lost because of the embargo."

In addition, if the embargo is extended in 1981, the shortage could be twice as big, Western agronomists agree, because this year's figures include U.S. grain that was purchased by the Soviets before the embargo but not delivered until later.

The embargo limits Soviet grain purchases from the United States to a maximum of eight million metric tons. The Agriculture Department says 18 million tons of U.S. grain actually reached the Soviet Union in fiscal 1979–80.

Until Mr. Carter imposed the freeze, the Soviets were expected to buy about 25 million tons of American grain, mostly corn, to offset the effects of last year's grim harvest of 179 million tons, more than 50 million tons below what had been planned.

The Soviets were expected to import a total of about 37 million tons of grain. The Agriculture Department estimates that they actually bought about 31.5 million tons.

NEXT YEAR'S IMPORTS?

"If the United States holds them to an eight million ton total again next year, they'll be able to buy somewhere between 25 and 30 million tons," one source said. "I think the lower estimate is more likely."

Observers say the shortage will be sorely felt, since this year's grain harvest is not expected to be a very good one. The grain crop in Kazakhstan, which set a record last year, is thought to be about average, one source said.

"If the embargo continues, it's going to hurt them more next year than it did this year," the source said. "They won't have enough to replenish reduced stocks. Also, with the lousy weather in the western areas at harvest, you really have to wonder about the quality of the crop."

Experts say the damage done by the embargo cannot be measured simply in terms of import totals.

"True, the Soviets were able to buy a lot of grain elsewhere to make up for most of what the embargo cost them in terms of U.S. grain," one agronomist said, "but what they got was often inferior to what they would have bought, or not the kind of grain that they really wanted."

The Soviets are thought to have bought considerably less corn than they had hoped to. Corn is an important ingredient in feed for hogs and chickens, and the Soviet Union grows very little of it.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky (Mr. MAZZOLI) is recognized for 5 minutes.

● Mr. MAZZOLI. Mr. Speaker, I was unavoidably absent for one recorded vote on Monday, September 8, 1980. Had I been present, I would have voted:

"Aye" on roll call No. 525, passage of H.R. 6790, Foreign Service Act of 1980.●

HAPPY BIRTHDAY, CLAUDE PEPPER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. O'NEILL) is recognized for 5 minutes.

Mr. O'NEILL. Mr. Speaker, I am privileged to take this opportunity to extend belated birthday greetings to the Honorable CLAUDE PEPPER on the occasion of his 80th birthday.

"Senator" PEPPER, who celebrated his 80th birthday on September 8, 1980, has served with distinction as chairman of the House Select Committee on aging since its inception. CLAUDE PEPPER is indeed Mr. "Golden Ager" of the House of Representatives. An active, determined, and dedicated public servant, CLAUDE PEPPER takes pride in his ability to help older Americans cope with the problems of loneliness, isolation, health care, nutrition, and limited financial resources. For these reasons, it is a great honor to pay tribute to such a talented and devoted and hard working Member of the House of Representatives.

Happy 80th birthday, CLAUDE, and best wishes for continued health, happiness, and success in the years ahead.●

AMENDING SUBPART F PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ROSTENKOWSKI) is recognized for 5 minutes.

● Mr. ROSTENKOWSKI. Mr. Speaker, I am today introducing legislation designed to make necessary and useful changes in Internal Revenue Code provisions concerning controlled foreign corporations (subpart F). The introduction of this legislation is a worthwhile first step in a process which I hope will yield constructive and effective modifications to the code. I urge my colleagues to note carefully the content of this bill, and to suggest improvements where necessary.

Section I of the bill would redefine subpart F income so as not to include dividends from controlled foreign corporations that derive substantially all (80 percent) of their income from transactions in commodities which would otherwise generate nonsubpart F income. This provision would have the salutary effect of recognizing that the substance of a transaction, as well as its form, should be taken into account when determining when income is subpart F income.

Section II of the bill would further redefine the definition of subpart F income to include all U.S. source income which is not effectively connected to the operation of a trade or business in the United States. The purpose of this provision is to create a disincentive to firms considering moving current U.S.-based plants overseas. It would do this primarily by taxing the income of "runaway" plants which sell in the United States.

Section III of this legislation would exclude from subpart F income amounts invested in U.S. plants and equipment by a controlled foreign corporation if the U.S. parent does not have significant operations in the United States of the type conducted by the controlled foreign corporation in the United States. The effect of this provision would be to allow some influx of capital for new investment—much needed at this time—which is currently discouraged by subpart F rules. At the same time, the provision does not in any way hinder the original thrust of subpart F.

Finally, section IV of the bill would address a device which has been increasingly employed to avoid the restrictions of subpart F and antiboycott measures. Currently, U.S. corporations may attempt to avoid these rules by simply splitting off their foreign operations and conducting them through separate foreign corporations. By stapling the stock of the original U.S. company to that of the new foreign entity—or pa ring the stocks on printed certificate—the management of the U.S. company will contend that the new foreign corporation is not subject to the subpart F or antiboycott rules. The bill would treat any foreign corporation which is paired with a U.S. corporation as owned directly by the U.S. corporation, thus nullifying the use of this device to escape taxation of subpart F income.

A technical explanation of this legislation and the statutory language follows:

CONTROLLED FOREIGN CORPORATIONS

PRESENT LAW

Deferral.—The foreign source earnings of a foreign corporation owned or controlled by U.S. persons generally are subject to U.S. income taxes only when they are actually remitted to the U.S. shareholders as dividends. The fact that no U.S. tax is imposed until, and unless, the income is distributed to the U.S. shareholders is generally referred to as "deferral".

Subpart F.—An exception to the general rule of tax deferral is provided for "tax heaven" activities of corporations controlled by U.S. shareholders under the subpart F provisions of the Code. Under these provisions, this tax haven income, or subpart F income, is deemed to be distributed to the U.S. shareholders, and it is taxed to them currently whether or not they actually receive the income in the form of a dividend.

There are five categories of tax haven (subpart F) income taxed currently to U.S. shareholders of controlled foreign corporations ("CFCs"): (1) income from the insurance of U.S. risks; (2) passive investment income such as dividends, interest, royalties, and rents (referred to as foreign personal holding company income); (3) sales income earned by the foreign subsidiary on the sale of property purchased from, or sold to, a related company if the property was neither manufactured in nor sold for use in the country in which the subsidiary is incorporated (referred to as foreign base company sales income); (4) income from services performed by the foreign subsidiary outside of the country in which it is incorporated (referred to as foreign base company services income); and (5) shipping income earned by a foreign subsidiary outside of the country in which it is incorporated, if that income is not reinvested in shipping assets (referred to as foreign base company shipping income).

In addition to the tax haven types of income currently taxable to U.S. shareholders under the subpart F provisions, U.S. shareholders are also currently taxable under the subpart F provisions on (1) an amount equal to any illegal bribes or similar payments made by a foreign subsidiary to a foreign governmental official and (2) any income of a foreign subsidiary attributable to the participation in or cooperation with an international boycott.

Exclusion for certain agricultural products.—The Tax Reduction Act of 1975 amended the subpart F provisions to exclude income from the sale between related parties of agricultural commodities which are not grown in the United States in commercially marketable quantities. (Prior to the amendment, such income would have been included in the category of foreign base company sales income.) Consequently, a base company established in a tax haven can trade in such non-U.S. type commodities, buying them from or selling them to related parties, without the trading income being currently subject to U.S. tax under subpart F.

Investments in U.S. property (sec. 956).—Deferral is also ended under present law when (with certain exceptions) the earnings of a controlled foreign corporation are invested in U.S. property (sec. 956). Such indirect repatriations of foreign earnings are treated as constructive dividends. In general terms, U.S. property is defined as all tangible and intangible property located in the United States other than certain specified categories of properties such as portfolio investments in U.S. stocks and securities.

EXPLANATION OF PROPOSAL

Dividends attributable to certain agricultural commodities.—this provision would expand the exclusion from subpart F income presently applicable to income from trading agricultural products which are not grown in marketable quantities in the United States. Under the proposal, where a foreign subsidiary engaged in such commodity trading activities is not owned directly by a U.S. company, but rather indirectly through an intermediate foreign holding company, dividends received by the holding company which are attributable to the commodity trading activities of the foreign trading subsidiary

would not be treated as subpart F income and thus would not be currently taxable to the U.S. company. (Under present law, the dividends would constitute foreign personal holding company income currently taxable to the U.S. parent company under subpart F.)

Stapled stock.—The subpart F and anti-boycott rules only apply to foreign corporations if more than 50 percent of the stock of the foreign corporation is owned (directly or indirectly) by U.S. shareholders owning at least 10 percent of the stock each.

Thus, for example, these rules do not apply to a foreign corporation which is 100-percent owned by U.S. persons if more than 50 percent of the stock is owned by shareholders owning less than 10 percent each. In several recent cases, U.S. corporations have attempted to avoid the subpart F rules and the anti-boycott rules by splitting off their foreign operations and conducting them through separate foreign corporations.

The stock of the foreign corporation is "stapled to" or "paired with" the stock of the original U.S. company so that a shareholder cannot buy or sell the stock of one corporation without buying or selling the stock of the other. The management of the U.S. company and its foreign clone are the same. Assuming the U.S. corporation, and thus the new foreign corporation, are widely enough held, this device arguably reaches the result that the new foreign corporation is not subject to the subpart F and anti-boycott rules because the 10-percent shareholder test is not met.

This proposal would treat any foreign corporation which is paired to a U.S. corporation as owned directly by the U.S. corporation with the result that any subpart F income or boycott income of the foreign corporation would be taxed to the U.S. corporation.

Runaway plants.—This provision would treat as subpart F income currently taxable to U.S. shareholders any income derived by a foreign subsidiary from the manufacture of property abroad for sale or consumption in the United States.

Investments by foreign subsidiaries in new U.S. plants.—As indicated above, with certain limited exceptions, a direct investment in U.S. property by a foreign subsidiary is treated as a constructive dividend, and is thus currently taxable to the U.S. parent of the foreign subsidiary. This proposal would allow a foreign subsidiary to invest deferred income in U.S. property without the U.S. investment being treated as a constructive dividend if the investment is a new manufacturing facility in the United States in a separate line of business from that conducted by the U.S. parent company (or its domestic affiliates).

EFFECTIVE DATE

The provision excluding dividends derived from commodity trading activities would apply to years after 1979. The provisions dealing with stapled stock would apply as of the date of committee action. The provisions dealing with stapled stock would apply as of the date of committee action. The provisions dealing with runaway plants and investments by foreign subsidiaries in new U.S. plants would apply to years after 1980.

REVENUE EFFECT

To be supplied.

H.R. 8110

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN FOREIGN COMMODITY INCOME.

Paragraph (4) of section 954(c) of the Internal Revenue Code of 1954 (defining foreign personal holding company income) is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(D) dividends received from a related person which is a controlled foreign corporation out of the earnings and profits of such person for a taxable year in which at least 80 percent of its gross income (other than gross income taken into account in determining the amounts described in section 952 (a)) was derived from the purchase or sale of agricultural commodities which were not grown in the United States in commercially marketable quantities (within the meaning of subsection (d)(1)).."

SEC. 2. CERTAIN FOREIGN BASE COMPANY SALES INCOME.

Paragraph (1) of section 954(d) of the Internal Revenue Code of 1954 (defining foreign base company sales income) is amended to read as follows:

"(1) IN GENERAL.—For purposes of subsection (a)(2), the term 'foreign base company sales income' means—

"(A) income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

"(i) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

"(ii) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country; or

"(B) income derived from the manufacture and sale of property for use, consumption, or disposition within the United States which is not effectively connected with the conduct of a trade or business in the United States and which does not otherwise constitute 'subpart F income' under this subsection.

For purposes of subparagraph (A), personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities."

SEC. 3. INVESTMENT OF EARNINGS IN CERTAIN UNITED STATES PROPERTY.

Paragraph (2) of section 956(b) of the Internal Revenue Code of 1954 (defining United States property) is amended by striking out "and" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(I) property comprising a new manufacturing facility in the United States, and stock or obligations of a domestic corporation which is a related person to the extent that the proceeds therefrom are employed by such related corporation to acquire a new manufacturing facility, but only if neither a United States shareholder nor a member of the affiliated group which includes such shareholder is engaged in the United States in manufacturing or processing activity which is substantially the same as or integrally related to the activity to be conducted by the new manufacturing facility.

For purposes of subparagraph (I), the term 'new manufacturing facility' means tangible property constituting a manufacturing or processing unit, including land and building, and the machinery and equipment reasonably necessary thereto, provided that at least 80 percent of the aggregate adjusted basis of such building, machinery and equipment, is attributable to property the original use of which commenced with the controlled foreign corporation or related domestic corporation. For purposes of subparagraph (I), the term 'affiliated group' has the meaning given to such term by section 1504(a), except that the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears therein."

SEC. 4. PAIRED STOCK.

Part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to income from sources without the United States) is amended by adding the following new subpart after subpart D:

"SUBPART E—PAIRED STOCK

"SEC. 941. PAIRED STOCK.

"(a) OPERATIONAL RULES.—For purposes of this title—

"(1) If an interest in a foreign corporation, foreign partnership or D.SC (as defined in section 992(a)) is paired with an interest in a domestic corporation or domestic partnership, the interest in the foreign corporation, foreign partnership or DISC shall be treated as owned directly by the domestic corporation or domestic partnership.

"(2) Property distributed with respect to an interest in a foreign corporation, foreign partnership or D.SC that is paired with an interest in a domestic corporation shall be treated as having been first distributed to the domestic corporation and then distributed by it to the holder of such interest.

"(3) A distribution of an interest in a foreign partnership or DISC becomes paired D SC by a domestic corporation or domestic partnership shall be disregarded if immediately after the distribution such interest is paired with an interest in such domestic corporation or domestic partnership.

"(4) If an interest in a foreign corporation, foreign partnership or DISC becomes paired with an interest in a domestic corporation or domestic partnership other than in connection with a distribution to which paragraph (3) applies, the interest in the foreign corporation, foreign partnership or DISC shall be treated as contributed to the domestic corporation or domestic partnership on the date such interests become paired or on September 15, 1980, whichever is later.

"(5) On the date an interest in a foreign corporation, foreign partnership or DISC ceases to be paired with an interest in a domestic corporation or domestic partnership will be deemed to have made a distribution with respect to such interest of the interest in the foreign corporation, foreign partnership or DISC. The amount of the deemed distribution shall be reduced by the amount which was included in the gross income of the distributee (or its predecessor) pursuant to any actual distribution prior to September 15, 1980, of such interest in the foreign corporation, foreign partnership, or DISC.

"(b) DEFINITIONS.—For purposes of this section—

"(1) PAIRED INTERESTS.—An interest in a corporation or partnership is paired with an interest in another corporation or partnership if, by reason of form of ownership, restrictions on transfer, or any other terms or conditions, upon the transfer of one such interest the other such interest is also transferred or required to be transferred to the same person. The requirement of the preceding sentence shall be considered to be satisfied if both interests must be offered for redemption prior to sale of either such interest.

"(2) INTEREST.—The term 'interest' means—

"(A) with respect to a corporation, legal or beneficial ownership of stock in such corporation, or

"(B) with respect to a partnership, legal or beneficial ownership of an interest in the income or capital of such partnership.

"(c) APPLICABILITY OF SECTION.—Subsection (a) shall apply only if—

"(1) the aggregate of interests in the domestic corporation or domestic partnership which are paired with interests in the foreign corporation, foreign partnership or DISC constitutes at least 50 percent of the total combined voting power, or 50 percent of the total value, of all interests in such domestic corporation or domestic partnership, and

"(2) any person, which held an interest in the foreign corporation, foreign partnership or DISC immediately after such interest became paired with an interest in the domestic corporation or domestic partnership, held the interest in the domestic corporation or domestic partnership (or its domestic predecessor) immediately before such interests became paired.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as he may deem appropriate to provide the extent to which—

"(1) subsection (a) shall not apply for purposes of any provision of this title other than subpart F of part III, part IV, and part V of subchapter N,

"(2) basis or earnings and profits shall be adjusted at the time that an interest in a foreign corporation, foreign partnership or DISC ceases to be paired with an interest in a domestic corporation or domestic partnership.

"(3) paragraph (5) of subsection (a) shall apply upon the liquidation or redemption of one or both of the paired interests described in paragraph (1) of subsection (a).".

SEC. 5. EFFECTIVE DATES.

(a) SECTION 1.—The amendments made by section 1 shall apply to taxable years of foreign corporations beginning on or after January 1, 1980, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(b) SECTIONS 2 AND 3.—The amendments made by sections 2 and 3 shall apply to taxable years of foreign corporations beginning on or after January 1, 1981, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(c) SECTION 4.—The amendments made by section 4 shall apply after September 15, 1980, with respect to any interest in a foreign corporation, foreign partnership or DISC which is paired (within the meaning of section 941(b)) with an interest in a domestic corporation or domestic partnership regardless of when such interests became paired, except that section 941(a)(5) shall not apply before 1 year after date of enactment of this Act with respect to any such interest which became paired before September 15, 1980.●

MICHAEL J. KOGUTEK ELECTED NATIONAL COMMANDER OF THE AMERICAN LEGION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ROBERTS) is recognized for 5 minutes.

Mr. ROBERTS. Mr. Speaker, Mr. Michael J. Kogutek, of Lackawanna, N.Y., was elected national commander of the American Legion at the closing session of the 62d Annual National Convention, in Boston, Mass., on August 21, 1980. Commander Kogutek will lead an organization approaching 2.7 million veterans. Commander Kogutek is the fourth New York Legionnaire to attain the post of national commander.

A veteran of the U.S. Navy with service in the South Pacific during World War II, he is a charter member of Lackawanna's Matthew Glab Post No. 1477 and was honored with life member status in 1965.

During his 34 years as a Legionnaire, Kogutek has steadily climbed the ranks of responsibility at all levels of the American Legion. In 1961–62 he was commander of post No. 1477, after having served in a variety of post positions. He was Erie County, N.Y., adjutant prior to becoming county commander in 1964–65 and was elected eighth district commander for 1966–67.

Mr. Kogutek was commander of the department of New York during the American Legion's golden anniversary in 1968–69. At the State level, he has served as chairman of special activities, resolutions, membership, convention arrangements, and as a member of the national executive committee.

He is a past alternate national executive committeeman and currently is a member of the national finance commission and the board of directors of the National American Legion Child Welfare Foundation, Inc. His previous national appointments include the national economic commission, national veterans' preference committee, and the national economic subcommittee for which he served as liaison with the Small Business Administration of the Federal Government.

Mr. Kogutek was born in Lackawanna, N.Y., September 30, 1925, and was educated in Lackawanna's public and parochial schools. He studied industrial and labor relations at Cornell University and holds an associate degree in science from Empire State College. He is plant manager for Buffalo Brake Beam Co. and a former police commissioner and commissioner of public works for the city of Lackawanna.

He is past president of both the Lackawanna Chamber of Commerce and the Central Railway Club of Buffalo, and holds membership in the Professional & Businessmen's Association, the Associated Industry Association of New York, the Knights of Columbus, and the Buffalo Chamber of Commerce.

Commander Kogutek and his wife, the former Dorothy Druzbik, are the parents of two children, Michael and Sharon.

Mr. Speaker, I wanted all Members of the House to know something about the outstanding background of Commander Kogutek.

Commander Kogutek will appear before the Committee on Veterans' Affairs on September 23 to present the legislative recommendations of his great organization. We look forward to his appearance at that time. I have a very high regard, as do all Members of this body, for the American Legion. We work very closely with them.

Although I will not chair the Committee on Veterans' Affairs next Congress, since I plan to retire from the House at the close of this session, I feel certain that the American Legion will prosper under the leadership of National Commander Michael J. Kogutek.●

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. LUNGREN) to revise and extend his remarks and include extraneous material:)

Mr. HAMMERSCHMIDT, for 5 minutes, today.

(The following Members (at the request of Mr. DICKS) to revise and extend their remarks and include extraneous material:)

Mr. ALEXANDER, for 5 minutes, today.
Mr. BINGHAM, for 5 minutes, today.
Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. MAZZOLI, for 5 minutes, today.
Mr. O'NEILL, for 5 minutes, today.
Mr. ROSTENKOWSKI, for 5 minutes, today.
Mr. ROBERTS, for 5 minutes, today.
Mr. GAYDOS, for 60 minutes, September 16.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LUNGREN) and to include extraneous matter:)

Mr. RHODES.
Mr. GREEN.
Mr. MICHEL in two instances.
Mr. HOLLENBECK in three instances.
Mr. SENSENBRENNER.
Mr. BROWN of Ohio.
Mr. LEACH of Iowa.
Mr. CONABLE.
Mr. MOORHEAD of California.
Mr. HYDE.
Mr. WINN.
Mr. WYDLER.
Mr. LAGOMARSINO in two instances.
Mr. BROYHILL in two instances.
Mrs. FENWICK.
Mr. KEMP in three instances.
Mr. WHITEHURST.

(The following Members (at the request of Mr. DICKS) and to include extraneous matter:)

Mr. OTTINGER.
Mr. BINGHAM in 10 instances.
Mr. EDWARDS of California in two instances.
Mr. BEDELL.
Mr. BRODHEAD.
Mr. MAZZOLI in three instances.
Mr. JONES of Oklahoma.
Mr. BRADEMAS.
Mr. STOKES.
Mr. STARK.
Mr. ZABLOCKI.
Mr. STUDDS.
Mr. FAUNTROY.
Mr. PHILLIP BURTON.
Mr. TRAXLER.
Mr. BLANCHARD in two instances.
Mr. HUBBARD.
Mr. MCDONALD in five instances.
Mr. ANDERSON of California in 10 instances.
Mr. GONZALEZ in five instances.
Mr. ANNUNZIO in six instances.
Mr. ROSENTHAL in 10 instances.
Mr. BROWN of California in 10 instances.
Ms. HOLTZMAN in 10 instances.
Mr. JONES of Tennessee in 10 instances.

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Mr. BONER of Tennessee in five instances.

Mr. HOWARD.

SENATE CONCURRENT RESOLUTION REFERRED

A concurrent resolution of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. Con. Res. 123. Concurrent resolution authorizing the printing of additional copies of the booklets entitled "The Senate Chamber, 1810–1859" and "The Supreme Court Chamber, 1810–1860"; to the Committee on House Administration.

ADJOURNMENT

Mr. DICKS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 43 minutes p.m.) the House adjourned until tomorrow, Tuesday, September 16, 1980, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5279. A letter from the Governor, Farm Credit Administration, transmitting the 46th Annual Report of the Farm Credit Administration and the cooperative farm credit system, pursuant to section 5.18(3) of Public Law 92–181, as amended; to the Committee on Agriculture.

5280. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment and services to the Netherlands (Transmittal No. 80–105), pursuant to section 813 of Public Law 94–106; to the Committee on Armed Services.

5281. A letter from the Chairman, U.S. Commission on Proposals for the National Academy of Peace and Conflict Resolution, transmitting the interim report of the Commission; the interim report of the Commission; to the Committee on Education and Labor.

5282. A letter from the Assistant Secretary of State for Congressional Relations, transmitting Presidential Determination No. 80–26, certifying that the Government of Nicaragua has not aided or abetted international terrorism, together with notice of the President's intention to exercise his authority under section 614(a) of the Foreign Assistance Act of 1961 in order to furnish assistance to Nicaragua, pursuant to section 536 (g) and 652 of the act; to the Committee on Foreign Affairs.

5283. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of the United Kingdom for permission to lease certain U.S.-origin defense equipment to the Netherlands, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5284. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

5285. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to India (Transmittal No. 80–88), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5286. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment and services to India (Transmittal No. 80–94), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5287. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment and services to the Netherlands (Transmittal No. 80–105), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5288. A letter from the Assistant Secretary of Transportation for Administration, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5289. A letter from the Director of ACTION, transmitting notice of proposed changes in existing records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5290. A letter from the Secretary of Health and Human Resources, transmitting the third annual report on activities of diabetes research and training centers, pursuant to section 435(b) of the Public Health Service Act, as amended; to the Committee on Interstate and Foreign Commerce.

5291. A letter from the General Counsel, Department of Energy, transmitting notice of a meeting relating to the international energy program to be held on September 18, in Paris; to the Committee on Interstate and Foreign Commerce.

5292. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in the cases of certain aliens found admissible to the United States, pursuant to section 212(a)(28)(I)(ii) of the Immigration and Nationality Act; to the Committee on the Judiciary.

5293. A letter from the Administrator of General Services, transmitting a prospectus proposing the construction of a Federal building in Redding, Calif.; to the Committee on Public Works and Transportation.

5294. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease in Denver, Colo.; to the Committee on Public Works and Transportation.

5295. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease for the Railroad Retirement Board in Chicago, Ill.; to the Committee on Public Works and Transportation.

5296. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease for space located at 1310 L Street NW., Washington, D.C.; to the Committee on Public Works and Transportation.

5297. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease of space located in the Park Place Building, 1200 Sixth Avenue, Seattle, Wash.; to the Committee on Public Works and Transportation.

5298. A letter from the Chairman, U.S. Consumer Product Safety Commission, transmitting the Commission's budget estimates for fiscal year 1982, pursuant to section 27(k) of the Consumer Product Safety Act; jointly, to the Committees on Appropriations and Interstate and Foreign Commerce.

5299. A letter from the Comptroller General of the United States, transmitting a report on the nuclear accident at Three Mile Island, Pa. (EMD–80–109, Sept. 9, 1980); jointly, to the Committees on Government Operations, Interior and Insular Affairs, and Interstate and Foreign Commerce.

5300. A letter from the Comptroller General of the United States, transmitting a report on the estimated potential of oil and natural gas available to the United States from Alaska, Canada, and Mexico through the year 2000 (EMD–80–72, Sept. 11, 1980); jointly, to the Committees on Government Operations, Interior and Insular Affairs, and Interstate and Foreign Commerce.

5301. A letter from the Comptroller General of the United States, transmitting a report on problems State and local prison and jail administrators have in providing safe and humane environments for inmates (GGD–80–77, Sept. 15, 1980); jointly, to the Committees on Government Operations and the Judiciary.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[*Pursuant to the order of the House on September 10, 1980, the following reports were filed:*]

Mr. BINGHAM: Committee on Foreign Affairs. House Concurrent Resolution 367. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1569 (Rept. No. 96–1318). Referred to the Committee of the Whole House on the State of the Union.

Mr. BINGHAM: Committee on Foreign Affairs. House Concurrent Resolution 368. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1379 (Rept. No. 96–1319). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 6865. A bill to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.; with amendment (Rept. No. 96–1100, pt. 2). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ALEXANDER:

H.R. 8106. A bill to amend the Depository Institutions Deregulation and Monetary Control Act of 1980 to provide that any person may charge interest on any loan at a rate which is not more than 5 percent greater than the discount rate on 90-day commercial paper which is in effect at the Federal Reserve bank in the Federal Reserve district in which such person is located; to the Committee on Banking, Finance and Urban Affairs.

By Mr. JOHN L. BURTON:

H.R. 8107. A bill to amend the Federal Aviation Act of 1958 to require the monitoring of the radioactive materials transported by air, and for other purposes; to the Committee on Public Works and Transportation.

H.R. 8108. A bill to require the monitoring of radioactive materials transported by air, and for other purposes; jointly, to the Committees on Interstate and Foreign Commerce and Public Works and Transportation.

By Mr. CONABLE:

H.R. 8109. A bill to amend the Internal Revenue Code of 1954 to increase the amount of the credit for expenses for household and dependent care services necessary for gainful employment; to the Committee on Ways and Means.

By Mr. ROSTENKOWSKI:

H.R. 8110. A bill to provide certain rules relating to the taxation of U.S. business operations abroad; to the Committee on Ways and Means.

By Mr. FRENZEL:

H.R. 8111. A bill to amend the Internal Revenue Code of 1954 to provide tax incentives to encourage the building and rehabilitation of rental housing; to the Committee on Ways and Means.

By Mr. KOGOVSEK (for himself and Mr. JOHNSON of Colorado):

H.R. 8112. A bill to require the Secretary of the Interior to convey a parcel of land located in Colorado and certain mineral interests to the Ute Mountain Ute Tribe and to pay an amount to such tribe for energy development; to the Committee on Interior and Insular Affairs.

By Mr. MATHIS:

H.R. 8113. A bill to amend the Consolidated Farm and Rural Development Act to provide the Secretary of Agriculture with emergency credit readjustment authority, and for other purposes; to the Committee on Agriculture.

By Mr. PICKLE:

H.R. 8114. A bill to amend the Internal Revenue Code of 1954 to exempt incremental tertiary oil from the windfall profit tax; to the Committee on Ways and Means.

By Mr. RODINO (by request):

H.R. 8115. A bill to amend section 274 of the Immigration and Nationality Act relating to the seizure of vessels, vehicles, and aircraft by the Immigration and Naturalization Service; to the Committee on the Judiciary.

By Mr. STUDDS:

H.R. 8116. A bill to require that State elections, within the same region of the United States, for delegates to national Presidential nominating conventions be held on the same date, and for other purposes; to the Committee on House Administration.

By Mr. WAXMAN (for himself, Mr. CARTER, Mr. GRAMM, Mr. STAGGERS, Mr. SATTERFIELD, Mr. PREYER, Mr. LUKEN, Mr. WALGREN, Mr. SHELBY, Mr. MURPHY of New York, Mr. SANTINI, Mr. TRAXLER, Mr. BEDELL, Mr. BROYHILL, Mr. DEVINE, Mr. STOCKMAN, Mr. LEE, Mr. MCCLORY, Mr. PASHAYAN and Mr. DANNEMEYER):

H.R. 8117. A bill to amend the Safe Drinking Water Act, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. WHITTEN:

H.J. Res. 609. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes; to the Committee on Appropriations.

MEMORIALS

Under clause 4 of rule XXII,

527. The SPEAKER presented a memorial of the Legislature of the State of California, relative to library services, which was referred to the Committee on Education and Labor.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 365: Mr. GINN.

H.R. 4223: Mr. LEDERER, Mr. LELAND, and Mr. FORD of Tennessee.

H.R. 5092: Ms. OAKAR, Mr. CAVANAUGH, Mr. YATES, and Mr. LONG of Maryland.

H.R. 5382: Mr. GARCIA and Mr. RAILSBACK.

H.R. 6066: Mr. ROTH.

H.R. 6625: Mr. ROE.

H.R. 6637: Mr. SHUMWAY.

H.R. 7286: Mr. O'BRIEN.

H.R. 7436: Mr. OTTINGER.

H.R. 7526: Mr. MAGUIRE, Mrs. CHISHOLM, Mr. ROSENTHAL, Mr. STARK, Mr. BONIOR of Michigan, Mr. CLAY, Mr. RAHALL, Mr. STUDDS, Mr. WOLPE, Ms. MIKULSKI, Mr. BEDELL, Mr. FAZIO, Mr. OTTINGER, Mr. MITCHELL of Maryland, Mr. GARCIA, Mr. GRAY, Mrs. SPELLMAN, and Mr. WAXMAN.

H.R. 7658: Mr. MCKINNEY.

H.R. 7773: Mr. ALEXANDER, Mr. TAUZIN, and Mr. LEHMAN.

H.R. 7898: Mr. WOLFF.

H.R. 7957: Mr. EVANS of Indiana.

H.R. 8000: Mr. FAZIO, Mr. WOLPE, and Mr. BLANCHARD.

H. Con. Res. 422: Mr. ENGLISH, Mr. ICHORD, Mr. JONES of North Carolina, Mr. SANTINI, Mr. BETHUNE, Mr. FOUNTAIN, Mr. LOWRY, Mr. LUJAN, Mr. FRENZEL, and Mr. SYMMS.

PETITIONS, ETC.

Under clause 1 of rule XXII,

432. The SPEAKER presented a petition of the 29th Annual Conference, United Methodist Youth Fellowship of the North Carolina Conference of the United Methodist Church, Raleigh, relative to the right to die, which was referred to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. LIVINGSTON:

—Page 72, after line 16, insert the following:

SEC. 305. Notwithstanding section 311 (f)(1) of the Federal Water Pollution Control Act, this title and the amendments made by this title shall be applicable to claims for removal costs and economic loss incurred as a result of the discharge of pentachlorophenol into the Mississippi River Gulf outlet on July 22, 1980, in the same manner and to the same extent as this title and the amendments made by this title apply to claims to removal costs and claims for economic loss incurred after the effective date of this title.

By Mr. STUDDS:

—Page 9, line 15, strike out " and".

Page 9, line 21, strike out the period and insert in lieu thereof a semicolon.

Page 9, after line 21, insert the following:

(5) loss of use of real or personal property;

(6) loss of use of natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

Page 10, line 10, strike out "item 2" and insert in lieu thereof "items 2, 5, and 6".

Page 11, line 1, strike out "4" and insert in lieu thereof "7".

Page 12, line 7, strike out "and".

Page 12, line 11, strike out the period and insert in lieu thereof "; and".

Page 12, after line 11, insert the following:

(7) under item 7, by any State or political subdivision thereof.

—Page 48, line 7, strike out "and".

Page 48, line 13, strike out the period and insert in lieu thereof a semicolon.

Page 48, after line 13, insert the following:

"(E) loss of use of real or personal property;

"(F) loss of use of natural resources; and

"(G) loss of tax revenue for a period of one year due to injury to real or personal property.

Page 49, line 3, strike out "item (B)" and insert in lieu thereof "items (B), (E), and (F)".

Page 49, line 21, strike out "(D)" and insert in lieu thereof "(G)".

Page 50, line 18, strike out "and".

Page 50, line 22, strike out the period and insert in lieu thereof "; and"

Page 50, after line 22, insert the following:

"(G) under item (G) of paragraph (1) by any State or political subdivision thereof.

H.R. 5615

By Mr. SOLOMON:

—Page 13, line 7, strike out "an" and insert in lieu thereof "a present or former".

Page 13, line 8, strike out ", or a member of the Armed Forces" and insert in lieu thereof "or a present or former member of the Armed Forces who is or was".

Page 13, line 20, after "United States" insert ", or who resided or acted outside the United States,".

Page 13, beginning on line 23, strike out "who is at the time of the disclosure acting as" and insert in lieu thereof "who is or was".

H.R. 7020

By Mr. STOCKMAN:

—Page 7, line 11, strike out "or local".

—Page 8, line 8, after "(ii) whether there have been any" insert "scientifically documented".

Page 8, line 10, strike out "or the environment".

—Page 9, line 3, after "Administrator," add the following: "The Administrator shall not make such forms available prior to submitting copies of the proposed forms to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The Administrator may not use any form that has been disapproved by a majority vote of either Committee within fifteen days of its submittal or three months after the date of enactment of this Act, whichever is later.".

—Page 9, line 18, after "paragraph (1)" insert the following: "*Provided, however,* That the Administrator may not require a generator or transporter to submit such information unless he determines that the site in connection with which the information is sought poses an imminent threat to public health or safety.".

—Beginning at page 12, line 3, strike out all that appears down through page 13, line 3.

—Page 13, line 10, after "section," add the following: "No State shall receive more than 15 percent of the total amount of such grants allocated in any one fiscal year, nor shall any State receive less than one percent of the total.".

—Page 13, line 18, strike out "$35,000,000" and insert in lieu thereof "$20,000,000".

—Beginning at page 14, line 1, after "environment.", strike all that appears down through page 14, line 24.

—Beginning at page 18, line 23, strike out all that appears down through page 20, line 8.

—Page 20, line 14, strike out "or" and insert in lieu thereof "and".

—Page 20, line 15, strike out "or the environment" and insert in lieu thereof "and safety".

H.R. 8105

By Mr. ADDABBO:

—Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:".

On page 42, line 1, and insert in lieu thereof "*Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:".

EXTENSIONS OF REMARKS

MOSCOW, POLAND, AND FINANCING OF COMMUNIST COUNTRIES BY THE WEST—PART I

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. McDONALD. Mr. Speaker, recent events in Poland laid bare the precarious state of the Polish economy, supported on one hand by loans from the West and on the other hand by loans from the Soviet Union. Many columns were devoted to the state of the Polish economy, but most of them missed one salient point. Most of what the Polish economy builds and makes goes to the Soviet Union, in return for rubles and raw materials. Poland, for instance, pays dearly for Soviet oil to fuel her economy. One of the major reasons the Soviet Union was so intensely interested in a peaceful settlement of the strike was the fact that the striking shipyards are constantly building new merchant ships for her fleet, because her own shipyards are tied up in gigantic naval construction projects. Therefore, loans by Western banks and governments to Communist Poland are in effect loans to the Soviet Union.

The time is long past due for the free world to reexamine its suicidal policy of financing the Communist world. Therefore, at this point I am inserting part I of an article that appeared in the June 1980 Washington Monthly by James M. Whitmire for the edification of my colleagues on this subject:

FINANCING OF SOVIET BLOC BY WESTERN BANKS IS A MISTAKE

(By James M. Whitmire)

In the wake of Afghanistan, the United States and the Soviet Union are back to strutting around each other like gun-fighters at high noon, each ready to reach for the trigger. The Pentagon talks of fearsome new weapons: MX missiles, neutron bombs, particle beams. Everyone assumes the Soviets are plotting ghastly new weapons as well. The truth is, one is already in place.

But you won't find this new secret weapon in the Red Army's arsenal, because it's not a bomb or a chemical. It's worse. It could devastate the West without a shot being fired. Incredibly, it is a weapon we are not only constructing for the Russians—but paying for as well.

The weapon? Debt. Quietly, assiduously, Western banks since the mid-1970s have allowed the Soviet bloc to pile up $60 billion to $80 billion in outstanding debt, according to the Washington Monthly's sources. The magnitude of this debt is such that a Soviet default might spark a financial panic capable of collapsing the capitalist banking system.

Most of the industrial goods "sold" to the Soviet bloc in recent years have not been paid for in hard currency, but financed by loans from the U.S. government or banks. These loans increase inflation in the West, while gifting the Soviet bloc with priceless technology and machinery in return for the unenforceable promise that someday they will pay us back.

There is growing concern within the international community that Soviet bloc countries will never be capable of generating enough hard currency to repay their debts—or, more chilling, have no intention of repaying in the first place.

The Soviets are almost certain, at some point, to use the threat of default as a lever to gain political concessions from the West. Should U.S.-U.S.S.R. relations ever decline into desperate straits, the Soviets could simply defy their benefactors and cancel the debt outright.

What's more, lending to the Soviet bloc continues at a furious pace, despite the loans' questionable merit from either a political or financial point of view. Western bankers, caught in an "undertow syndrome" of sending good money after bad, seem determined to make our position even weaker.

ON OUR ASSETS

In 1977 the Senate Foreign Relations Committee concluded that the entire international financial system could crumble beneath the weight of one or two major defaults, defaults that would send banks tumbling into each other like freeway traffic hitting a patch of ice.

The committee had in mind defaults involving far less money than is now loaned through COMECON to the Soviet bloc. COMECON is a Common-Market-like agency that coordinates economic policy for the Soviet Union and its East European client states. (Though technically loans are made to individual COMECON members like Hungary, Russian planners wield almost total control over the organization and its use of funds.)

The specter of colossal default was raised last November when Iran announced that it would not repay the $10 billion it owes American banks. A World Bank officer told The Washington Post that this action, "the largest default in financial history," put the banking system to "its most severe test in recent times." Fortunately, the shock was absorbed with minimal funk, largely because the Iranians were so careless as to have left $8 billion in assets in American banks.

This episode had the salutary effect of stimulating some thought on the consequences of large defaults. If Iran's net default of $2 billion put a severe strain on the system, what might be the impact of a Soviet-bloc default involving amounts 30 to 40 times greater? (The Soviets are not so careless as to leave much money in our hands.)

So far, the only public debate on East-West trade involves the politics of the exchange. There is contention about whether our bulging grain exports serve to shore up the inefficient Soviet system and strengthen the Kremlin elite's grip on power. There is strategic argument about whether transferring advanced technology contributes to our adversary's military power. But there's never been debate over the simple fact that the Soviet bloc, in effect, does not pay for what it gets. The West sends machines and grain, and receives nothing in return except the illusion of prosperity for the farmers and firms being paid in funny-money originating on the Federal Reserve's press.

Washington officially downplays the prospect of a COMECON default, but anxious whispering can be heard. "We should have been a lot more cautious," says an informed State Department official. "They've got us where they want us now." One source interviewed for this article referred to a conversation he had with National Security Advisor Zbigniew Brzezinski, in which Brzezinski admitted to worrying "quite a bit" about the political leverage the Soviets gain through their debt. "Indebtedness often increases the leverage of the debtor and decreases the leverage of the creditor," Brzezinski is quoted as saying. (He declined to be interviewed for this article.) Noting that the English, West Germans, and Italians have loaned especially large sums to the Soviet bloc, Brzezinski is quoted as concluding, "If a COMECON country defaulted, it could create considerable problems."

LEAVE ME A LOAN

Government officials also worry that exposing such a predicament to abrasive public response would play into Soviet hands, by increasing the West's sense of weakness and vulnerability. When pressed, officials at the departments of Commerce and State admit that the growing COMECON debt is ominous, but they invariably change the subject by pointing to the much larger—and equally uninsured—debt owed by Third World nations.

Credit outstanding to "less-developed countries" has risen from $137 billion in 1974 to more than $300 billion today. The prospect of a Third World default, officials contend, is a greater cause for alarm than possible Soviet misbehavior.

The Third World debt is, of course, troubling. But poor nations are not a rigid ideological bloc acting cohesively. Far more important, they are not our avowed political and economic competitors. They do not have large, potent armies and have not preoccupied themselves with devising new instruments of pressure and coercion, as have the Soviets.

The West's tenuous grasp of the COMECON debt problem is indicated by the fact that no one can agree on how much credit actually has been extended. The most conservative estimate is that the debt has increased from less than $10 billion in the early 1970's, to $18 billion in 1974, to $48 billion in 1977—a pace many times greater than inflation. It hovers between $60 billion and $80 billion today—an amount equal to the total assets of Exxon and General Motors combined.

Back in 1976 Henry Kissinger described the debt as "sudden" and "striking." Yet it continued to climb, unopposed. Allen Lenz of Commerce's Bureau of East-West Trade (which supports the above low-end estimates) predicts that by 1985 Soviet-bloc borrowing could hit $108 billion. Miles Costick, director of the conservative Institute on Strategic Trade, says Commerce deliberately deflates the debt figure because of its desire to "generate trade at any price." The current trends, Costick believes, point to a debt of at least $200 billion by 1990—$45 billion of which, he says, will be held by Russia itself. It seems that if only Lee Iacocca could move Chrysler headquarters to Kiev, his money problems would be solved; he could simply plug into COMECON's free-flowing line of Western credit.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

AUTARKIC CHILD

COMECON debt is a recent development because, until the early 1970s, the Soviets didn't want to borrow money. The Soviet regime traditionally has been highly autarkic, exhibiting an aversion to debt that one economist described as "positively Victorian." Besides their doctrinaire position that the presence of capitalist financiers would corrupt Marxist purity, Kremlin leaders believed that if Eastern economies were based on someone else's money, they could never be self-sufficient or secure.

On the rare occasions Soviet-bloc countries borrowed, they were scrupulous about meeting interest and repayment timetables, and International Monetary Fund official says. Thus, when economic difficulties forced them into the credit market in the early 1970s, Western bankers were impressed by their impeccable borrowing records. The bankers declared COMECON countries to be good risks.

Two types of loans are extended to COMECON nations. The first is government-supplied "credits"—direct loans from the U.S. Treasury, administered by the Export-Import Bank. Ex-Im "credits" can be used only for the purchase of American goods, and are "tied" to a specific commodity or project. An Ex-Im loan to buy American computers, for instance, is essentially a payment from the Treasury to the computer firm, with money never coming to rest in COMECON accounts. Repayments are made from COMECON to the Treasury. If the debtor does not pay, the U.S. taxpayer takes the loss directly.

A State Department source estimates that about one-third of COMECON's loans are credits from the Ex-Im Bank. One drawback of the credits is that Ex-Im contracts include human rights provisions, similar to those in the Helsinki Pact, that debtor countries are supposed to observe. There are no such provisions in regular commercial loans, which make up the remaining two-thirds of the East's borrowing.

Regular commercial loans are the same as those extended to companies. "When the Soviet Union goes to Chase Manhattan," says another State Department officer, "they're treated just like Ford Motor Company, or any private customer." This means, first, that private loans are "not a matter of official government policy," the officer explained. "The banks don't have to make them, and Washington doesn't stop them from making them." It also means these arrangements enjoy the same secrecy that surrounds other private loans.

COMECON's early-1970s arrival on the credit market couldn't have come at a better time from the East's perspective, because our commercial banks were inordinately liquid. Following the 1973 quadrupling of OPEC oil prices, Arab petrodollars swelled Western banks; simultaneously, because of the 1974-1975 recession, private-sector demand for loans was low. The banks were eager to find outlets for idle capital.

Most of the banks granting COMECON loans are the same ones involved in other aspects of the international credit market. According to an informed source, Citicorp is the largest lender, followed (in rough order) by Morgan Guaranty Trust, Chase Manhattan, and Hanover Trust. Many of their loans are not for specific purposes, like the credits Ex-Im extends, but "untied" loans. In this case, the bank sends a lump sum directly to the central bank of the COMECON member nation. The COMECON nation then uses the money as it sees fit while (in theory at least) repaying the lender in regular installments.

Specific loans are often tied to a project—say, the development of a coal field—whose completion will enhance the debtor nation's ability to repay. Untied loans can be used for anything: to cover balance-of-payment deficits, to buy hard currency for new purchases, or in some cases, to meet the payments on previous loans. This makes them the most precarious of all. Because they are entirely uninsured, they are called "sovereign risk" loans against the creditworthiness of the country itself. Banks usually form syndicates (risk-sharing pools) on sovereign risk loans, so that in case of trouble, the lead bank does not suffer all the loss. "For all intents and purposes, these loans are made solely on faith, with no recourse if the Soviets refuse to pay," says a State Department analyst, "I sure hope Citicorp knows what it's doing," he adds.

Most of the initial loans were five- to seven-year agreements on terms highly favorable to COMECON. Sources have told me that the ease with which COMECON obtained its loans was a revelation to Eastern governments. So were the full implications of the arrangement. After finally tasting the forbidden fruit of Western credit, COMECON nations realized they could never be forced to repay. What once semeed like a flirtation with capitalist corruption began to look like a fine means to drain strength from the crumbling bourgeois powers.●

THEY'VE GOT A SECRET

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. STARK. Mr. Speaker, I would like to bring to the attention of my colleagues the following Washington Post editorial on the administration's new system to deal with classification.

The very terminology chosen by the administration makes one wonder what has become of the President's commitment to open Government. Do the President and his top advisers really consider themselves royalty?

The editorial follows:

[From the Washington Post, Sept. 10, 1980]

THEY'VE GOT A SECRET

The administration, it seems, has been working up a new system to deal with classified information in order to see that the right stuff gets to the right people, and only to them. The juciest part of the scheme is that a new classification, above top secret, is being created: royal. It is solemnly avowed by those familiar with the system in the executive branch and on Capitol Hill, that information will not be withheld from people who ought to have access to it. But the number of people cleared for royal will be very small.

The fact that under a new category some information will be restricted to a short list does raise the possibility of abuse. It is now widely accepted, for instance, that the list of those allowed to check plans for the Iranian rescue mission was disastrously short. But it is not on its face wrong to draw up a short list—as long as there are believable assurances that insiders who need to know will know and that the procedures will be kept open to review. The government does have a responsibility to regulate the flow of classified information and plug leaks. From what is known, it seems premature to suggest, as some have, that the new system is meant not so much to protect intelligence sources as to provide President Carter with a hiding place for politically damaging information—about, say, his brother's Libyan ties.

But we would not be taking up your time today simply to tell you that. What really moves us is the new designation: royal. Hold that one up to the light. Recall that the old system was based on a set of words—secret, top secret—referring directly to the information being held. Even some of the old odd super-secret classifications, such as "cosmic" or "Q," refer to the information. You are "cleared for top secret." But, royal: it can only refer to the people cleared. Not since Richard Nixon put the White House police in double-breasted white tunics and vinyl operetta caps has there been a similar reaching out for simulated majesty.

All right—it could have been worse: Holy, Blessed, Galactic, Superhuman, Hotsy-Totsy. But royal is bad enough. Is that really how the Carter White House views the Carter presidency? The Royal We lives.●

REGIONAL PRIMARIES

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. STUDDS. Mr. Speaker, by the time the results of the 37th Presidential primary were tallied on June 3 of this year, Americans were weary of politics and disenchanted with the candidates who had survived—there is no more accurate term—the ordeal of a marathon primary season. Preprimary campaigning now begins years before the polls open in New Hampshire. Thereafter, candidates trudge through State after State, week after week, for dozens of Presidential primaries and caucuses scattered across the country, with campaign organizations and media in tow and with the public straining to keep from yawning.

The State primary was originally designed as a progressive alternative to nominating the personal favorites of political power brokers. The primary season has, however, become so cluttered and unwieldy—there were more than twice as many primaries in 1980 as in 1968—that party nominations are virtually reserved for the least employed and most athletic of candidates.

State primaries are still the best way to gauge the popular preferences for Presidential candidates. But the kaleidoscope of primaries now operates with less attention to coherent, coordinated scheduling than to political expediency, or—in many cases—with virtually no reason at all. Some States jockey to be among the first to hold primaries; others want to have the last say of the primary season. In between, it is not unusual for several States located in disparate parts of the country to hold primaries on the same date. A candidate is obliged to bounce from coast to coast among the primary sites just to keep pace with the other marathoners, despite the fact that the demands of the current primary system

have little relevance to the demands of the Presidency. The primary campaign serves, though, to drain the candidates' physical stamina and consume their financial resources, which in many cases are underwritten by the taxpayers through public campaign financing.

As a result, I have introduced legislation in the House of Representatives to establish a system of four regional Presidential primaries to be held on the first Tuesdays in March, April, May, and June. I believe this system would provide for a reasonable number of primary dates and for a sensible interval of time between them. Under the bill, the United States would be divided into four geographic regions. States in each region would be permitted to hold a primary on one of the four dates. The order of the regional primary dates would be determined by lottery drawing about 60 days before each successive primary.

I believe this system could minimize the freneticism of the primary campaign. Candidates could campaign more calmly for 1 month in each section of our large Nation, addressing themselves more than superficially to both regional and national issues. This might inspire and assist the electorate to base its decisions on more than a television advertisement or an airport news conference. Candidates could concentrate their personal energies and campaign chests while also saving some of the voters' patience for the actual Presidential race which follows.

This could all be done without stretching out the primary season. Determining the primary sequence by lot might also cut down on the drone of preprimary campaigning by mitigating the supposed importance of political momentum based on success in the first primary contest. A candidate who does not know where the campaign will begin may not spend 2 years banging on doors in the first primary site. The demands of the current primary setup limit dangerously the field of prospective Presidential candidates. A system of regional primaries, on the other hand, would again make it possible for a responsible public official to run for the Presidency. Perhaps we might even return to the point, as suggested recently by Washington Post reporter David Broder, when astute politicians believed that the best way to win the Presidency was to gain respect in their present jobs.

In conjunction with other reforms which I am proposing, a system of regional Presidential primaries could go a long way toward restoring respect for our electoral system and the officials we elect by means of that system.●

RETIREMENT OF DANIEL SCHULTZ, SOCIAL SECURITY ADMINISTRATION

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. PICKLE. Mr. Speaker, I rise to honor the retirement of a distinguished Government employee. Early this month, Mr. Daniel Schultz of the Office of Hearings and Appeals, Social Security Administration, retired after 33 years of service, of which the last 15 years were in the Office of Hearings and Appeals. He was as knowledgeable as any individual in the country in the complex social security appeals systems, and happily for the Social Security Administration, he used this expertise in a very practical way as Director, Office of Policy and Procedure. Mr. Schultz had the rather unique quality, while being completely loyal to the prevailing administration position, of being able to supply relevant data and backgound information requested by our subcommittee in a completely honest and forthright manner. He was also responsive to requests in terms of time and substance, a characteristic much appreciated by Members and staff who worked in the appeals area.

The Social Security Administration can ill afford to lose Dan Schultz' integrity and competence, and the institutional knowledge he represented. The Social Security Subcommittee thanks him for the assistance he has so graciously provided in the past, and wishes him well in his retirement.●

STEALTH CASE DISMAYS EXPERTS

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I believe the administration's attempt to downplay the magnitude of the error in confirming the existence of the stealth aircraft is clearly analyzed in a recent news commentary by columnist George Wilson.

I would like to call to the attention of my colleagues the column by Wilson entitled "Stealth Case Dismays Experts" which appeared in the September 11, 1980, edition of the Washington Post.

The column follows:

STEALTH CASE DISMAYS EXPERTS

(By George C. Wilson)

The debate over who leaked what to whom, and when, about radar-invisible Stealth aircraft misses the real sore point for the nonpolitical professionals in the defense community.

They angrily believe the Carter administration handed their counterparts in Russia a gem of information far more valuable than any of the sketchy technical details about Stealth that have been printed in the press.

The gem, in their view, is confirmation by the highest defense executive in the government that Stealth is not just another technological dream but a fully realized weapon that "alters the military balance significantly."

Armed with such a statement from Defense Secretary Harold Brown, who made it at a televised Aug. 22 news conference, the Russian general in charge of air defense has a better-than-even chance of obtaining more money to counter Stealth aircraft, in the view of these specialists.

Neither the United States nor the Soviet Union has enough money to cover every bet in the defense field. The Kremlin's analysts are overwhelmed by thousands of pages of information about American weapons being pursued by military laboratories or ballyhooed by defense contractors. Trade journals, newspapers, scientific papers, speeches by generals, congressional hearings and floor debates add up to a groaning smorgasbord of information—some right, some wrong—about American weaponry.

Because the Soviet government plants stories in Russian publications, Kremlin analysts reading about Stealth in the American press must at least entertain the possibility that those stories are intended to send Russian technology down the wrong path. This further complicates the job of deciding which American military projects are the important ones to worry about.

What Brown and Pentagon research director William J. Perry did, with advance approval of the Carter White House, was assure the Kremlin that Stealth was indeed something to worry about. The Pentagon executives said test Stealth planes had already been built and flown successfully. Brown also said Stealth technology would be incorporated in any future bomber.

Not that those professionals in the defense and intelligence communities liked the articles in The Washington Post, Aviation Week, Aerospace Daily and other publications on Stealth technology dating back to 1976. They did not. But the professionals contend that the Carter administration, through the Pentagon press conference, alerted the Kremlin to where the United States stood on this radar-foiling technology which both sides have been pursuing for decades.

There were articles back in the '30s and '40s about the possibility of building an atomic bomb. But such press disclosures, the professionals argue, did not impel the government to tell the world that it had actually developed and tested an atomic bomb, that it worked and would alter the military balance.

Brown's counter to such criticism is that the Aug. 22 press conference disclosed nothing that would help the Russians develop countermeasures to Stealth aircraft. The really hot technical information has not leaked out anywhere, the defense secretary said. And because the Stealth program was taking on so many more people, requiring so much more money from Congress and entering the debate over what kind of bomber to build, Brown said, it would have leaked out in a matter of months anyway.

The active-duty professionals cannot go public with their indignation over what they consider the politicization of Stealth without risking their careers. But their complaints in one-on-one conversations do fit with what a retired member of their community, Air Force Lt. Gen. Brent Scowcroft, former national security adviser to President Ford and currently an adviser to GOP presidential candidate Ronald Reagan, told a press conference yesterday.

Said Scowcroft:

"The real damage of the revelations . . . is that the administration announced that the program was doable. The other important aspect of the revelations is that it was announced not only that it was new but that it was of the highest importance, indeed, that it changed the strategic balance. . . . This is of enormous significance in [the Soviets'] allocation of resources."●

PLEASE VOTE NO

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HUBBARD. Mr. Speaker, at times I have told some of my colleagues that I have many constituents who urge me to vote no on every bill before us. A few of my colleagues chuckle when I tell them that and assume I am saying such in jest.

Well, I would like to share with my colleagues the sentiments of one of my constituents, Mr. Richard Conrad of Conrad's IGA Foodliner in Marion, Ky. Mr. Conrad's recent one-sentence correspondence is short and simple. His comments to his Congressman are:

"Please vote no on everything."●

DEPENDENT CARE AMENDMENTS OF 1981

HON. BARBER B. CONABLE, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. CONABLE. Mr. Speaker, I am introducing today a bill to expand the existing income tax credit for work-related dependent care expenses and to permit nonprofit organizations providing work-related dependent care to qualify readily for tax-exempt status.

I encourage individuals and organizations having interest and expertise in work-related dependent care to study and analyze the bill and suggest any modifications or additions which might make it more responsive to the goals of assuring an adequate supply of good quality, affordable care for dependents of working individuals and enabling parents to obtain dependent care that is well suited to their and their children's needs. I anticipate that these comments and suggestions will help build a foundation for legislative action in the next Congress.

The need for work-related dependent care has grown steadily in the last few years even though birth rates have generally declined, largely because working mothers have become the rule in the United States, rather than the exception. In March 1978, mothers in the work force included 60 percent of those whose youngest child was school aged, 50 percent of those whose youngest child was aged 3 to 5, and 40 percent of those whose youngest child was under age 3.

Child care is too often wrongly categorized as a "women's issue." It is a parent's issue. In 4.5 million two-worker families with preschoolers and almost 8 million with school age children, the fathers are increasingly sharing the responsibilities for dependent care arrangements.

Nevertheless, there are 1.1 million working mothers of preschoolers who are the sole parents in their families. The responsibilities for this group, which includes 65 percent of divorced mothers of children under age 3 and 70 percent of divorced mothers with 3 to 5 year olds, are heavy. They must have affordable child care if they are to hold jobs that prevent or reduce welfare dependency. With so many working mothers of preschool and school age children in the work force at all income levels, it is time to reexamine policies regarding work requirements for the 3 million mothers receiving welfare. Two million of them have preschool children whose dependent care needs will have to be met before the mothers can take jobs that lead to economic self-sufficiency.

I recite these statistics merely to demonstrate that work-related dependent care is a pervasive issue which at some point in their lives affects the majority of American families. It is no longer a negligible concern of an unconventional minority of unfortunate or offbeat families.

The dependent care credit, created in 1976, is a nonrefundable credit of 20 percent of dependent care expenses up to a maximum credit of $400 a year for the care of one dependent and $800 a year for two or more dependents. The credit is currently being claimed on almost 2 million tax returns and has become the largest single element of Federal assistance to dependent care.

The tax credit is a fitting vehicle for future Federal efforts to aid dependent care. First, it is the parents who decide what kind of care to purchase rather than administrators of Government agencies. Because the credit goes directly to the taxpayer, it does not encourage the development of bureaucracies or monopolistic day care systems in States and localities that might limit parental choice or inflate the cost of services unnecessarily. Similarly, the credit does not skew the dependent care system toward any particular option. It is available equally for child care in the home or out of the home, for babysitters, relatives, neighborhood group homes, summer day camps, day care centers, church-related or secular organizations. It is strictly up to the parents to explore the possibilities and make the choice. Finally, because it is a credit, it is of the same value regardless of the parent's tax bracket.

Despite these strengths, there still remain some areas where the credit could be improved. Most of the provisions of the Dependent Care Amendments of 1981 address these areas. A summary of the bill and its rationale follows:

DEPENDENT CARE AMENDMENTS OF 1981

SEC. 2—35 PERCENT CREDIT

The bill would increase the credit from the present 20 percent to 35 percent of allowable dependent care expenses.

Although better than nothing at all, the 20 percent credit does not appear to make enough of a difference in many families' budget to enable them to explore any alternatives to dependent care but the very cheapest, regardless of quality. Many relatively inexpensive babysitting and daycare arrangements may be adequate or even ideal for meeting the needs of individual children and infants, but many are not. Yet the parents have no economic alternative but to go with what they can afford or give up their jobs. It is my hope that increasing the credit to 35 percent, a little over one-third of the cost, will enable families to have at least some degree of financial choice in selecting dependent care most appropriate to their children's and dependent's needs. I hope also that this increased ability of parents to pay for dependent care will stimulate the growing care market to provide still more alternatives and services than it does today.

From time to time, I have seen it suggested that the amount of expenses on which the credit can be based ought to be increased. Under present law, the credit can be claimed on the first $2,000 of annual dependent care expenditures for one dependent, the first $4,000 for two or more dependents. These maximums were established in 1976, and despite considerable inflation since then, have not been raised. However, any increase in the maximum allowable expenditures would potentially benefit only the relatively few families, who are currently able to spend the present maximums. All families, however, would benefit from an increase in the percentage of the credit from 20% to 35%.

SEC. 3—REFUNDABLE CREDIT

The Dependent Care Amendments would make the credit refundable. This means, simply, that families would be able to receive the dependent care credit even though it exceeded their tax liability, or if they had no tax liability. This is not the case under present law. It is my hope that making the credit refundable will assist families who find themselves caught in the middle with too much income to qualify for Head Start or Title XX programs, too little to afford dependent care on the private market.

Under present law, women who are working their way off welfare are permitted to "disregard" all reasonable dependent care expenses in calculating how much welfare supplement they will receive in addition to their wages. Upon passage of a refundable dependent credit, the program of Aid to Families with Dependent Children must be amended so that the disregard of dependent care expenses for purposes of calculating welfare benefits will apply only to the portion of expenses not picked up by the refundable credit.

The Joint Committee on Taxation estimates that over 400,000 families would benefit from this refundability provision. The refundable portion of the 35 percent credit from some 200,000 families below $5,000 would average somewhat over $100, while almost 160,000 families between $5,000 and $10,000 would benefit an average of $50 from refundability.

SEC. 4—OUT-OF-HOME DAY CARE

The bill permits the dependent care credit to be claimed when dependents over age 14 are cared for outside the home. Under pres-

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ent law, the credit is available for either in-home or out-of-home care of dependents aged 14 and younger. However, if the dependent is an incapacitated spouse or other dependent over age 14, the credit is available only for in-home care.

This change is designed to respond to the growing interest in encouraging families to keep their elderly and handicapped dependents living at home rather than in institutions. In a family where both the husband and wife work or where there is only one adult capable of work, there is no one at home during the day to look after the adult dependent. In some communities, day care programs for older, retarded or handicapped individuals are being organized, as are programs for elderly people. These programs meet the social needs of the older dependents, are less of a financial burden on their families than in-home care which would involve hiring a person during working hours.

It is the intent of this provision to allow the credit for only non-residential out-of-home dependent care. I am not addressing nursing homes, hospitals, or other residential settings. Therefore, the bill provides that the credit would be available only where the dependent ordinarily returns to the taxpayer's household each day.

SEC. 5—COVERAGE OF PARENTS WITH LOW INCOMES

The bill would permit the credit to be claimed even when one working parent realized no or low income during the year. Under present law, the credit may not be claimed on dependent care expenses in excess of the earnings of the sole or lesser-earning parent. This prevents someone from working part-time to earn, say, $500, in order to claim the credit on $4,000 of nursery school costs which would have been incurred whether or not the parent worked.

Occasionally, this provision has an unintended effect. Both parents may be working at full-time jobs all year long. But if one of them ends up with a net loss or realizes very little income despite a year's strenuous effort, the dependent care credit is forfeited. People with small businesses, farms or who are self-employed are particularly vulnerable to this situation. One example brought to my attention concerned a woman who worked all year as a secretary in town, commuting from the family's farm where her husband put in long hours. A combination of bad weather and low crop prices left them with virtually no income from the farm that year. They had placed their daughter in day care throughout the year so that both parents could work, and if the farm had shown some income, they would have been entitled to a dependent care credit of almost two hundred dollars. As it was, they got no credit because their dependent care expenses exceeded the income from the farm.

My bill addresses this situation by imputing for each month when an individual works in a trade or business on a substantially full-time basis earnings of not less than $166 for one dependent and $333 for two or more dependents. A "substantially full-time basis" is defined as at least 35 hours per week. This provision parallels the one already in existing law which imputes income to a full-time student.

SEC. 6—TAX-EXEMPT STATUS FOR DAYCARE CENTERS

The bill makes it easier for non-profit daycare centers to qualify for tax-exempt status provided they are organized to care for children of working parents and there is general public access to their services.

In a number of communities, groups are organizing before- and after-school supervision for children of working parents. Others are organizing centers linked to networks of child care homes so that the supply of affordable, non-institutional infant care can be expanded.

Both these kinds of organizations, as well as others of a more traditional nature such as summer play-schools, have had problems in qualifying for tax-exempt status under Sec. 501(c)(3) of the tax code. Without tax-exempt status, it is difficult for these fledgling efforts to solicit the charitable contributions they often need to meet start-up and operational costs.

To qualify for tax-exempt status these innovative organizations must show they were organized and operated exclusively for educational or charitable purposes. An after-school or infant-care organization has difficulty in demonstrating its "curriculum." Children who have been in the classroom all day do not need more of the same. If an organization admits it is simply providing a safe place where the children can have a snack, do their homework, enjoy "free play" or other unstructured activities until their parents return from work, it will not qualify for tax-exempt status. If an organization caring for very young infants can convince the IRS that its curriculum consists of sensory/cognitive development, gross motor development and fine motor development instead of letting infants play with toys, crawl and learn to feed themselves, it just might qualify for tax-exempt status, as indeed an infant "school" on the West Coast succeeded in doing. But this is far-fetched, and I do not believe organizations providing the very legitimate service of dependent care for the children of working parents should have to go through such contortions to qualify for the tax-exempt status they need to get started and often to survive financially.

My bill provides that the term "educational purposes" in the sections of the code dealing with tax exempt status will be defined as including nonresidential care of individuals if substantially all of the dependent care provided by the organization is for the purpose of enabling individuals to be gainfully employed and if the services provided by the organization are available to the general public.

SEC. 7—EMPLOYER-PROVIDED SERVICES

Next, the bill specifically allows the credit to be claimed on dependent care services provided by the taxpayer's employer.

A number of types of child care assistance are being provided by employers: on-site daycare centers, purchasing places for employee's children at private daycare centers, and assisting them in other ways to locate and secure daycare. Such assistance can be deducted by an employer as an ordinary and necessary business expense.

In many of these situations, the employees pay modest amounts for the daycare services or pay on a sliding fee scale. At present, such employee benefits are not being taxed to the employees unless they are clearly part of the employee's overall compensation, such as when the employee receives a daycare allowance in addition to the regular paycheck. However, it is possible that in the future the IRS might try to levy taxes on employees for the dependent care expenses they received. An employee with a child in the company daycare center who has paid $30 a week for an annual total of $1,500 might find that the IRS thinks the daycare was worth $3,500 and that the employee owes income tax on the remaining $2,000. I do not believe such in-kind dependent care services ought to be considered taxable income when they are generally available across-the-board to all employees of the company. My bill, therefore, provides specifically that any such employer-provided dependent care, including imputed amounts as well as actual payments by the employee, will be eligible for the 35 percent dependent care credit, thereby neutralizing for most taxpayers the impact of being held liable for taxes on employer-provided services.

COST

The dependent care credit under present law will amount to $900 million in Fiscal 1981, according to the Administration's budget. The bill I am introducing will add another $765 million for the first full calendar year. $110 million of this amount is attributable to the provision which makes the credit refundable. The remaining $655 million represents the impact of increasing the existing nonrefundable credit from 20 to 35 percent. The other provisions of the bill are estimated to have a negligible revenue impact.●

GOES-D METEOROLOGICAL SATELLITE

HON. LARRY WINN, JR.

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. WINN. Mr. Speaker, on Wednesday, September 9, 1980, the National Aeronautics and Space Administration successfully launched the GOES-D meteorological satellite for the National Oceanic and Atmospheric Administration. The GOES series of satellites has for some time been providing invaluable meteorological information for weather forecasters. However, the GOES-D will provide a new capability with the installation of the visible atmospheric sounder (VAS).

If the experiment with this new instrument proves successful, the capability will exist to measure the atmospheric temperature and moisture at various levels in the atmosphere. This information will prove to be very useful in increasing the understanding of such short-lived weather features as thunderstorms and tornadoes.

I wish to congratulate NOAA and NASA for the development of such an experiment. This is precisely the type of effort I feel must be expended to improve our ability to understand and forecast severe storms and other weather phenomena.●

MERGERS AND PRODUCTIVITY

HON. BERKLEY BEDELL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BEDELL. Mr. Speaker, I wish to call to the attention of our colleagues an excellent article in the September issue of the Washington Monthly magazine entitled, "Pie Slicers vs. Pie Enlargers." The article was written by Robert B. Reich, the Director of Policy Planning for the Federal Trade Commission.

In recent weeks and months the media have been filled with discussions of the productivity crisis beset-

ting American industry. Most of the discussion, unfortunately, has centered on analyzing the symptoms rather than examining the root causes of the problem. Consequently, this article should be of special interest to those Members who are seeking a deeper understanding of some of the fundamental problems in our economy and our society.

This article is of particular interest to me, because much of it is concerned with the recent wave of conglomerate mergers. Earlier this year, in the Small Business Subcommittee on Antitrust, I chaired a series of hearings on the microeconomic effects of conglomerate mergers.

Mr. Reich focuses on an issue that surfaced at our hearings, a matter which is of great concern to me. Specifically, he notes that most of the current economic activity—mergers, acquisitions, proxy fights, and so forth—seems to be directed at the goal of rearranging existing assets. To a large extent, such efforts detract from meeting our societal goals of increasing productivity and stimulating technological innovation.

In his article, Mr. Reich states:

> In the last three years some $100 billion of corporate cash resources have been used to acquire existing corporate assets through tender offers. This money otherwise could have been spent on new factories and other productive uses . . . Instead of generating future economic expansion, the money circulates among companies like the stakes in a floating dice game.

One of the chief reasons for this new trend in corporate asset management, according to Mr. Reich, is the increasing emphasis on short-term profit realization and immediate return on investment, as opposed to an emphasis on long-term investment in capital goods and research. He suggests this is a logical consequence of the increasing role of asset managers replacing entrepreneurs in the leadership of American industry, and the testimony we heard in our hearings seems to bear out this contention.

Mr. Reich, quite correctly, points out that the larger interests of society as a whole are well served by the company that invests in new technology and greater productive capacity, but that this requires a corporate management commitment to the long term and a willingness to take risks. Both of these qualities, he notes, are in short supply in the executive suites and the ranks of institutional investors in our largest companies today. This makes all the more important his observation that:

> An exception to this general rule are the stockholders of many small or closely-held enterprises. They tend to be concerned about long-term goals simply because they are closer to their company—involved in its management, familiar with its work force, committed to the product or process they are developing. And they are able to pursue those goals, at the expense of immediate gains, because they are not playing with anyone's money but their own. Not surprisingly such small or closely-held firms, particularly in high-technology industries, account for the lion's share of new ventures, inventions and innovations.

Mr. Speaker, the House Small Business Committee's Subcommittee on Antitrust and Restraint of Trade, which I chair, held a total of 7 days of hearings on conglomerate mergers and their effects on small business and local communities. All together, we have compiled over 1,000 pages of testimony and relevant materials. Much of what we found appears to have a very direct bearing on the current debate over productivity and the health of our economy. I expect our final report to be completed and published within the next few weeks.

In the meantime, I urge may colleagues to read the recent article by Robert B. Reich, "Pie Slicers vs. Pie Enlargers," in the current issue of the Washington Monthly.●

PEPPER BIRTHDAY

HON. PHILLIP BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. PHILLIP BURTON. Mr. Speaker, I rise to pay tribute to my dear friend CLAUDE PEPPER on his 80th birthday. CLAUDE has served in Congress for an extraordinarily long time, and while he has the wisdom that comes with such experience, he retains an energy and spirit of that many younger men must admire.

CLAUDE has been a major force in many progressive causes throughout his long tenure in Congress, but he will be best remembered for his many accomplishments enhancing the quality of life for older Americans. As chairman of the Select Committee on Aging, he has pushed Congress and the Nation to realize that older Americans can continue contributing richly to society. He led the fight to increase the minimum retirement age and to protect Federal employees from age discrimination.

Earlier in CLAUDE's political career, he led many fights in the South to achieve racial justice. These courageous efforts came long before civil rights became a major national issue, and demonstrated CLAUDE's conviction and courage in standing for his beliefs despite considerable risk to his political future. His colleagues in Congress can attest to CLAUDE's continued steadfastness in pursuing progressive causes.

I join my colleagues in wishing CLAUDE a happy birthday and look forward to many years of working with this fine gentleman.●

STEALTH BOMBER CONTROVERSY

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MAZZOLI. Mr. Speaker, I commend to the attention of my colleagues the following editorial from the September 7 Washington Post.

The editorial is, in my opinion, a fair and balanced assessment of the controversy over administration disclosures concerning the Stealth bomber.

I cannot but feel that the Secretary of Defense—whether on his own or at White House direction—was most imprudent in his statements. We may, as a Nation, come to regret this whole episode most bitterly.

STEALTH

You have to be a real administration loyalist to take at face value the Pentagon's insistence that its official disclosure of top-secret information on the "Stealth" aircraft project last month was guided entirely by a desire to plug further leaks. The "major" unauthorized leak that prompted the disclosure came, in a story in this newspaper, on Aug. 14—just as Jimmy Carter was being renominated. Officials cited in that story acknowledged readily—some of them bitterly—that it was going to be used to combat Ronald Reagan's charges that Mr. Carter had lowered the nation's guard by, among other things, canceling the proposed B1 bomber. The Stealth technology, you see, is supposed to render aircraft virtually invulnerable to radar detection. It will thereby enable a future bomber to penetrate enemy defenses far better than could the late and widely lamented B1, and it will enable an administration so minded to claim that in canceling the B1 it was merely, wisely, waiting for a penetration bomber that actually could penetrate.

Secretary of Defense Harold Brown and President Carter resist conceding outright that the Stealth announcement was intended at least in part to burnish the administration's controversial defense credentials. Mr. Carter has a particular problem: to be seen as an adequate (but not excessive) hawk, but not to be seen as a born-again hawk. But the administration's collective denials are lame. It evidently wants the credit for demonstrating urgent and effective concern for security, but it does not want the blame for whatever damage may have been done—political damage as well as security damage—by premature release of secret information for campaign purposes.

Ronald Reagan says the Pentagon's confirmation gives the Soviet Union a tip-off of 10 years (lead time for a Stealth-equipped bomber) to prepare countermeasures. What about that? It seems fair to ask why, if the offense was so heinous, it took Mr. Reagan three weeks to say so. Is it just a coincidence that his assault coincided with an evident need to lift his campaign out of something of a self-confected slump?

For all of that, we remain troubled by the possibility that the administration's confirmation that Stealth had been proven, flight-tested and validated at the highest levels did add a good deal to earlier leaks—and to earlier official acknowledgments that the United States was working on the problem. Mr. Carter, ever since he got down to actually running against Ronald Reagan, has been doing some very transparent and

occasionally reckless rearranging of his own defense record and trying to alter the public's perception of it. He has shown himself willing to involve the most intricate and secret security matters in the political campaign. The burden is on the administration to show that the Soviets, in the Stealth affair, were not handed an intelligence coup.●

FRANCIS BENNETT HONORED FOR SERVICE

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOLLENBECK. Mr. Speaker, on September 27, members of American Legion Post 46 in Union City, N.J., are honoring Mr. Francis Bennett for his outstanding record of service to the Legion and to his community. I am honored to participate in this well-deserved tribute.

Frank is a past commander and life member of post 46, who has served with distinction in many capacities since 1945. He was elected junior vice commander in 1946, and he served as senior vice commander from 1947 through 1952 and from 1955 through 1956. Frank was commander of post 46 from 1957 through 1959. He then assumed duties as adjutant until 1962.

Presently, Frank is a service officer and a trustee of the nurses scholarship fund. He has also served as chairman of the bingo committee since its inception in 1967. The committee, under Frank's direction, has grossed more than $1 million and has made possible contributions by the post to worthy charities and to our veterans hospitals.

Frank has also served with distinction at the county and State levels of the American Legion—in leadership positions of the New Jersey Department's Press Club and as chairman of the State Public Relations Committee, 1952-55, among other assignments.

Frank Bennett is one of those very rare individuals whose busy schedule can always be expanded, somehow, to accommodate yet another community service project.

In addition to his long and steady dedication to the goals of the American Legion, he has been active in Scouting, in the Hudson and New Jersey Voiture, and in the Bergen County Music Educators Association.

I am proud to offer my congratulations to this distinguished citizen of the Ninth Congressional District of New Jersey on the appropriate recognition being afforded him by his fellow Legionnaires and to express my sincere appreciation for his continued endeavors to make our communities a better place in which to live.●

TITO IN PERSPECTIVE: PART I

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. McDONALD. Mr. Speaker, the death of Yugoslavia's Communist dictator, Josip Broz Tito, led many Western political spokesmen, including those of our own Government, to compete with Moscow and Peking in praise for the man who governed Yugoslavia from 1945 to 1980, regardless of the wishes of the Yugoslav people.

There has been an unceasing effort to portray Tito as a different sort of Communist, somehow better than the others. Yet Tito was, of course, just as ruthless in his methods as any other Communist dictator. The object of all of them is to obtain and maintain total power.

Titoism has been so persistently presented to the public as some improved brand of communism, independent, at that, that what is needed is a dissenting point of view from the victimized people.

Dr. Slobodan Draskovich is a leading Serbian emigre spokesman, a former professor of economics at the University of Belgrade, and a former member of the Yugoslav Institute of National Defense, who came to the United States in 1947. Dr. Draskovich has, on several occasions, testified before committees of Congress, trying to help us understand that Tito did not represent what American liberals would like to believe he represented.

The views of Dr. Draskovich follow:

THE MEANING OF TITO AND TITOISM

Observers from all parts of the world are in agreement that the funeral of the communist dictator of Yugoslavia, Joseph Broz Tito, attended by most of the world's (free, communist and "non-aligned") heads of state, was a most impressive gathering. What has apparently escaped the attention of those keen observers is that it was also, as far as the United States and the free world are concerned, an occasion of monumental shame, outrage and political weakness. One hypothetical comparison comes to mind: the free world honoring Hitler for his services to democracy and the cause of racial tolerance!

At Tito's funeral, the communist heads of state were at the right place, at the right time, with the proper remarks on Tito, communist Yugoslavia and their role in the communist world movement, for they knew that he had shared their Gulag concept of human dignity, social justice and peace.

But the leaders of the free world were present at the wrong place and said the wrong things, for they came to pay tribute to a communist dictator who had spent his long life destroying everything they stand for. Nevertheless the West made possible Tito's rise to power and then gave him its lavish, unconditional and suicidal assistance to consolidate his regime.

In coming to pay tribute to Tito, the leaders of the free world were honoring their unforgiveable mistake and sin. In extolling Tito's greatness and virtues, they were advertising their own lack of political vision and greatness. Worse, in praising Tito's "achievements" they were desecrating the achievements and foundations of Western civilization and humanity. No man has the right to forgive this.

The shame of the West which on May 8, 1980 went down in history, was not unexpected. It was the natural climax of a long-standing policy of helping Tito, from the days of World War II, through his rise to power and after his ouster from the Cominform, to the present day.

It has been said that the greatest blunders in history are often the least noticeable for their contemporaries, because they cannot fathom their enormity. This certainly applies to the case of Tito.

The statements of President Carter on the one side and of the Soviet leaders and Hua Guofeng on the other, on May 8, 1980, make glaringly clear the incongruity of the international situation and the inadequacy of the policy of the free world.

In March 1978, at the time of Tito's visit to the United States, President Carter had called him a "true friend of America", adding that he symbolized the strivings of the people not only in Yugoslavia and Eastern Europe, but in the whole world, for liberty and self-determination. In his comments on Tito's death, President Carter called him "a towering figure on the world stage", a man who "sought practical and lasting solutions not only to the issues confronting his country, but to those affecting countries and people far from Yugoslavia's shores".

The official Soviet tribute said that Tito was "a prominent leader . . . and . . . a worker for peace and progress throughout the world", a "leading figure in the international communist and workers movement".

And Hua Guofeng, according to Time magazine, "grandly praised Tito for great contributions to the proletarian revolution".

Evidently, both sides cannot be right. One must be catastrophically wrong. Tito could not have worked all his life for the interests of world communism and at the same time for the victory of freedom. He could not have worked for peace, national independence and self-determination, and at the same time for the goals of communist imperialism.

Where is the truth? Whom did Tito serve? Nikita Khrushchev once issued the famous warning, "We shall bury you"! Whose grave was Tito digging all his life?

There is no issue in international politics where so much ignorance, bold defiance of incontrovertible facts, pro-communist bias, neglect of essentials and political innocence have combined to present to the world a picture of a country, a regime and a political figure so contrary to the truth as in the case of Tito. The structure of Western pro-Titoism rests mostly on claims, assertions and attitudes contemptuous of the rule of evidence and the regard for common sense.

In World War II Tito allegedly fought the Nazi invader and by putting the interests of Yugoslavia above those of communism, was able to create "Yugoslav unity". He allegedly defied Moscow's hegemonistic policies and pursued a course of national independence, between East and West. In consonance with that course, he helped organize the movement of "non-aligned" nations. In domestic policies he introduced an allegedly original system of workers self-management of enterprises, which is the economic wonder of the world, envied by most nations. The present regime in Yugoslavia is communist, but allegedly different, evolving toward democracy.

The trouble with all those claims is that they are shockingly devoid of substance. The structure of Western Titoism rests on denials and distortions of incontrovertible facts.

TITO'S TRUE RECORD

The highlights of Tito's true record are:

When Hitler attacked Yugoslavia in April 1941, Tito, whom Stalin had appointed secretary of the CPY in 1937, did not fight the invader, Stalin's ally at that time, but sabotaged the short-lived Yugoslav war effort, as did the Croatian "ustashi", puppets of Mussolini.

Tito did not issue a call to arms until June 22, 1941, when "our country", as he called the Soviet Union, was attacked by Hitler.

Tito and his followers did not fight in the strategically decisive area of Yugoslavia and the Balkans, the Morava-Vardar valley. This was the main area of operations of the Chetniks of General Draza Mihailovich, who gave a significant contribution to the Allied war effort, which was recognized on New Year's eve of 1943 by the leading Allied commanders, General Eisenhower, General Auchinleck, Air Marshal Tedder, General De Gaulle, etc.

In the course of 1943, fearing the landing of contingents of American and British troops on the Dalmation coast, Tito offered his collaboration to Hitler, to prevent the common (Western capitalist) enemy from landing and throw him back into the sea. Hitler refused the offer.

In 1944, when Tito's prospects of winning the battle for power in Yugoslaiva were rapidly dwindling, he flew in a Soviet plane to Moscow and begged Stalin for direct military intervention. Stalin sent Marshal I. Tolbukhim to the rescue; in September 1944 he crossed the Rumanian-Yugoslav border and after several weeks of fighting the Germans, entered Belgrade on October 20, 1944 and installed Tito in power. In doing so, the Soviet Union used the same procedure as it applied to install in power Janos Kadar in Hungary (November 5, 1956), Gustav Husak in Czechoslovakia (August 1968) and Babrak Karmal in Afghanistan (December 28, 1979).

Tito did not leave the Cominform in June 1948 in protest against Soviet hegemonistic policies and pressures. He was expelled from the Cominform by Stalin.

As for Tito's alleged policy of *national independence*, again the facts refuse to comply with the propaganda claims. In June 1945, Edvard Kardelj, Tito's right hand man and presumptive heir, made to the Soviet ambassador Sadchikov, the unprecedented declaration of satellitism and total subservience, saying that Yugoslavia did not wish to pursue an independent policy but expected the Soviet Union to determine it and looked forward to becoming a constituent part of the USSR.

Eleven years later, in June 1956, Tito stated in Stalingrad, in the presence of Marshal Georgi Zhukov, that "Yugoslavia marches in time of peace as in time of war, shoulder to shoulder with the Soviet Union towards the same goal of the victory of socialism". This declaration of fundamental identity of outlook and aim expressed the gist of Tito's policy before the break with Stalin in June 1948 and after it. In all important issues of international politics (Budapest, Korea, Czechoslovakia, Vietnam, Angola, etc.) communist Yugoslavia sided with the Soviet Union.

And it could not be otherwise. The simple truth of the matter is that communism and national independence do not go together. They are mutually exclusive. A communist cannot stand for national independence. A believer in national independence cannot be a communist. Tito always knew this, as all communists do. And he never hesitated to take his stand as a communist.

This fully applies to the question of the role which Tito played in the movement of the non-aligned nations. Far from creating a neutral force in the world, much less leaning away from Moscow, towards Washington, Tito was using his reputation of a "different", "independent" communist, to attract the nations of the Third World into an alliance which would be formally noncommitted to either bloc, Soviet or American, but would actually always serve the goals of communist imperialism.

Tito left no doubt regarding his concept of communist Yugoslavia's role in the movement of the non-aligned. In a major policy speech of December 29, 1962, Tito glorified Soviet "achievements": "We know that they are bearing great sacrifices not only to defend themselves, but to defend socialism in general". He then spoke of Yugoslavia's role: "Yugoslavia enjoys . . . especially great prestige among the peoples of Asia and Africa . . . this is beneficial not only to us and to those countries, but also to the whole progressive movement and all peace-loving peoples. In that manner our policy contributes to the same goal towards which strives the Soviet people . . . our common goal the realization of socialism, and, ultimately, communism" (Belgrade Daily Politika, December 31, 1962).

At the Conference of European communist parties in East Berlin (1976), Tito spoke of the "indispensability of different roads in the struggle for Socialism". As for Yugoslavia, "the policy of non-alignment" was its "lasting orientation". "By taking active part . . . in the movement of the non-aligned . . . Yugoslavia (is) discharging its international debt to the world communist and humanity's progress" (N.Y. Times, July 1, 1976).

The true nature of the role which Tito played in the movement of the non-aligned was also put in sharp focus by the official comments of Moscow and Peking on Tito's death. The Soviet news agency Tass, while hailing Tito as an "active fighter for peace and solidarity of progressive forces in the struggle against imperialism and colonialism", did not forget to state that he was "one of the founders of the movement of nations calling themselves non-aligned".

The head of Red China, Hua Guofeng, expressed in an interview with the Yugoslav magazine NIN (May 11, 1980), his conviction that "hardened Yugoslavs, under the leadership of the . . . CPY, will successfully march forward on the road to socialism, self-management and non-aligned policy".

As for self-management, a policy invented by Kardelj and Djilas, which Tito sold to the West, it is a hoax of unsurpassed boldness. The very idea of giving the "factories to the workers" in an industrially undeveloped country, under a thoroughly anti-democratic regime, where the workers lack the necessary knowledge, experience and managerial ability for assuming such a role, is utterly preposterous, especially if its purpose is to promote a democracy!

The experiment was rather "a way for us Communists . . . to shift the responsibility for failures and difficulties in the economy onto the shoulders of the working class", to use a sentence of Milovan Djilas (The Unperfect Society, 1969, p. 211).

According to The Economist (August 11, 1979), a Yugoslav industrial expert called the Yugoslav self-management system "a mixture of totalitarianism and anarchy".

As for Tito "the unifier", the claim is as spurious as the rest. Tito did not unite anybody, nor did he intend to. His communist message was one of hatred, dissension and terror, directed mainly against the Serbs, the largest group in Yugoslavia and the Balkans, the backbone of that area of the world.

Tito's slogan about "brotherhood and unity" served only to better camouflage his true policy. In any event, all the problems between the nations and nationalities composing Yugoslavia, which existed in 1941, exist today, exacerbated by the communist regime's policy of fomenting rivalry and disunity, to consolidate the only unity that counts, the unity of the communists, oppressing the country and its people.●

TRIBUTE TO JEANNE WARD

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MOORHEAD of California. Mr. Speaker, on October 10, the Hear Center of Pasadena, Calif., will present its highest honor to Mrs. S. Paul Ward.

At a testimonial dinner at the Huntington-Sheraton Hotel, Jeanne Ward will receive the Glen H. Bollinger Humanitarian Award for her years of dedicated involvement with the people of Pasadena and the citizens of the State of California.

Mr. Speaker, Mrs. Ward is president of the S. Paul Ward, Inc., Ceramic Research of South Pasadena. She has been a member of the board of directors of the southern California section of the American Ceramic Society for 3 years.

For 8 years, she has been a board member of the Hear Center and for 11 years, Mrs. Ward has been a treasurer for the Santa Anita Church of Arcadia, where she participated in three successful building projects.

In 1972, Mrs. Ward received the Spirit of Life Award from the City of Hope, where she established and still supports the ceramic industry research fellowship for metabolic diseases.

In 1973, the Woman's Business and Professional Club of South Pasadena named Mrs. Ward its "Woman of the Year." She is also active in the Boy Scouts, the Red Cross, and the Foundation for the Junior Blind.

It is clear from this partial list of Mrs. Ward's endeavors, that she has committed her life voluntarily to the service of others.

There is no higher avocation than the constant giving of self to others less advantaged. Over the years, Mrs. Ward has demonstrated a willingness to share her energys, her resources, her time, and her blessings with anyone needing those special gifts.

Mrs. Ward is a worthy recipient of the Hear Center's annual Glen H. Bollinger Humanitarian Award. I thank her for her generosity to others and congratulate her on receipt of this fine honor.●

UNITED STATES MARCHING DOWN ROAD TO TROUBLE WITH UNDERSUPPLIED MILITARY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LAGOMARSINO. Mr. Speaker, after the Soviet invasion of Afghanistan, it suddenly became fashionable again in the Democrat-controlled Congress and the administration to discuss increases in defense spending. Yet, despite a lot of lip service to rebuilding our defense capability, the congressional leadership and the administration still have failed to make the commitment needed to restore our critically sagging military.

A recent commentary by the editor of the Arizona Republic, Pat Murphy, summarizes concisely the problems facing the United States with our "underfunded" and "undersupplied military."

I call to the attention of my colleagues Mr. Murphy's assessment of our defense posture.

U.S. IS MARCHING DOWN ROAD TO TROUBLE WITH UNDER-SUPPLIED MILITARY

In the months before the United States was caught napping at Pearl Harbor, some American military units had to prepare for war with toys.

Some infantrymen went into the field equipped with dummy wooden rifles, and dummy mortars made of ordinary household plumbing, and mock tanks shaped out of flatboard.

The reason was because that's all the Army had to go around.

For years, the military had been on its knees pleading with Congress for funds. But the nation scoffed at talk of war, even though Adolf Hitler was on the march in Europe and the Japanese were going full tilt on the China mainland.

When Japan finally struck, our troops in the Pacific went into battle with 1903 A-3 bolt-action, single shot rifles, wearing their fathers' World War I helmets.

Now, consider 1980.

We don't seem to have learned much in 40 years.

Items:

A Pentagon study reports that six of the 10 Army divisions stationed in the continental United States are unready for combat because of insufficient personnel, or poor training or inadequate provisions for combat.

A Navy supply ship, the USS Canistero, could not go to sea because it lacked three of the five required senior boiler technicians and two of eight needed machinists mates to operate the vessel.

The Air Force grounds all 1,700 of its F-4 Phantom fighter planes because of a faulty seat ejection system.

A congressman's spot check of 50 new F-15 Eagle jet fighters at Langley Air Force Base revealed that only 20 were "mission capable"—while 20 of the remaining grounded first-line fighters were listed as "hangar queens" because of prolonged troubles.

For the seventh straight year, the Navy this year will get fewer new planes than it loses through crashes and obsolescence.

The new 300,000-man Rapid Deployment Force, intended to be rushed to world hot spots, will lack reliable airlift capability until the mid-1980s, when the new CX transport is delivered.

Flight training time for combat pilots in all services has been sharply curtailed because of budget cuts.

Sen. Sam Nunn, D-Ga., reports the Navy has only enough torpedos for attack submarines to conduct two patrols; the Air Force has only about one-third the Sparrow missiles it needs for the F-15s; the army is short 60,000 wheeled vehicles needed to move supplies; and the Marines have only 63 amphibious landing craft, enough to carry only one of three Marine amphibious assault units.

The Navy's fleet has declined from 900 vessels 10 years ago to about 465, prompting Chief of Naval Operations Adm. Thomas Hayward to lament that the U.S. is "trying to meet a three ocean requirement with a 1½ ocean Navy."

Now, maybe there are some around who believe that (a) the Pentagon budget is nothing but rolls of fat, or that (b) all we need are brave words to protect our interests around the world.

Not me.

We're in a mess, militarily, and believing otherwise only serves as a reminder of the Army's toy wooden rifles 40 years ago.

The Soviets still post the principal peril to peace. Furthermore, they have the will and the way to carry out their policies.

They outrank the United States 5-to-1 in tanks; 8-to-1 in artillery; 2-to-1 in tactical aircraft; 3-to-1 in submarines. I haven't even included the arms lineup in Warsaw Pact countries on which the Kremlin can depend for backup.

If Congress were to write a blank check tomorrow for whatever the Pentagon wants, American assembly lines are incapable of reducing the gap with the Soviets for years to come.

But forget about catching up in numbers.

We have airplanes that can't fly, and ships that can't go to sea because of too few experienced enlisted personnel—in effect, we have a fine inventory of military hardware that is as useless as none at all.

We can blame that, principally, on witless politicians who mindlessly campaigned against the Pentagon budget, as though it were some tainted woman.

They refused to think ahead. They looked back over their shoulders at Vietnam.

Are we, dread the thought, in the same shape as those pre-World War II months, when soldiers had only toy rifles and congressmen still were pooh-poohing the idea that the military should be better prepared?●

GREEN NOTES HISPANIC WEEK

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. GREEN. Mr. Speaker, I would like to bring to your attention the fact that President Carter has proclaimed this week National Hispanic Heritage Week.

This is an important week for all of us to honor. The Hispanic heritage is the heritage of all Americans, as many of the earliest explorers and settlers of the American Continent were Hispanics. They have fought side by side with people of all ethnic origins to establish and preserve this Nation.

The Hispanic peoples have continued to add much to our country in the areas of art, music, athletics, leadership, and a host of other concerns.

Yet honoring the contribution of Hispanics is not enough; this week we must also pledge to work for the betterment of their condition in the United States. Despite all that Hispanics have contributed to American society and culture, they are still not provided with adequate opportunities in employment, housing, and education. The median income for Hispanics is only $7,000, as opposed to $10,000 for the average worker. Only 40 percent of Hispanics have had the opportunity to complete high school, as compared to 64 percent for the population as a whole.

Hispanics are our fastest growing minority, increasing in population by 1 million last year. Yet we have barely begun to address the problems of immigration, language, affirmative action, voting rights, and housing for these people.

In honoring Hispanics and their contributions to our Nation this week, we must think of what contributions we should make to them in return.●

ALDO BECKMAN

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HYDE. Mr. Speaker, the profession of journalism lost one of its most luminous members, when Aldo Beckman died last week. Chief of the Chicago Tribune's Washington office, Aldo was a friend of mine for many years. He was kind, gentle, thoughtful and a superb newspaper man.

His greatness of spirit was never more manifest than during his last illness, where we all learned more than we ever knew about bravery. All who shared the honor of his friendship feel his loss keenly, but we all take a measure of consolation in having had our lives enriched by having known and loved him.

A colleague of Aldo's, Tribune columnist Bob Wiedrich has written a moving column about this great friend, and I wish to share it with my colleagues:

Aldo Beckman was an honorable man. A devious thought never crossed his mind.

He came from the rolling farm country of west central Illinois, where the terrain slopes to the Mississippi River in a tangle of glorious color and an earthy humor born of the land sustains its inhabitants through good times and bad.

Beckman brought that humor to the big city when he joined The Tribune staff as a young reporter in 1959.

He also brought with him a perspective of humanity that served him well during the 21 years that he worked as a reporter and writer for a newspaper that also had sprung from the Illinois prairie and reflected its values.

From Criminal Courts reporter to White House correspondent traveling world capitals, Beckman accepted people he met at every level of society for exactly what they were.

In writing about them, he reported accurately. He didn't produce puff pieces. Nor did he ever demean. He took life as he found it. He faithfully told his readers what he learned. He didn't embellish. The truth was his grail.

And so, in his more than two decades as a working newspaperman, Bechman left an indelible record of highly credible observations of historic events that few are privileged to witness, much less report.

Now Aldo Beckman is dead, taken by cancer this week at the age of 45. And he faced that dread disease as courageously as he confronted the challenges met during his reportorial career.

Perhaps the greatest joy of having known Beckman as a friend and colleague was his love and respect of his fellow man. Beckman found something interesting in everyone he met. And he was capable of conveying that interest to readers with enthusiasm.

When Beckman was assigned to the Criminal Courts Building beat in the early 1960s, he encountered the peaks and valleys of human behavior. For a young man, fresh from the small farming community of Lima, Ill., the jailhouse with all its sordid sorrows and frustrations must have been a cultural shock.

Nevertheless, he treated everyone equally—from the lowliest defendant to the stateliest judge. And all became his admirers and friends. For they knew Beckman's word was good. He only lacked patience with phonies.

It was fun to watch Aldo Beckman grow professionally during those 21 years. He learned something new every day. He never became jaded. He had no time for cynicism.

During his apprenticeship at the Criminal Courts, he covered the big trials that made headlines.

But he also found time to write about the little people, the jail guards and bailiffs, court reporters and clerks, the low profile jobs that make government work.

By giving them recognition, he educated and informed his readers. He also cleverly developed a network of loyal informants who kept him abreast of events on his beat that sometimes even the big shots of the criminal justice system knew nothing about.

Beckman took that same skill to Washington when he was transferred to the Tribune bureau there in 1966.

Within a short time, Tribune readers were relishing informative feature stories about the behind-the-scenes federal employes that make congressmen on Capitol Hill look good.

And when Beckman became White House correspondent four years later, his stories about valets, butlers, chauffeurs, and secret service men, gleaned from the back corridors of the Executive Mansion, made not only for interesting reading but assured him a continuing supply of news tips.

He was a master at making friends because he genuinely cherished them.

People recognized that quality and naturally cottoned to the short statured man with the midwestern twang and unassuming manner whose integrity was as good as gold in a town that has more than its share of four flushers.

They knew that the information they entrusted to him would be reported faithfully and that neither they nor the truth would be compromised because Beckman was a fair and impartial recorder of facts. He never slanted a story. And those who dared suggest otherwise were treated with contempt.

In my years of personal contact with Aldo Beckman, the newspaperman, I always appreciated his sense of history and his ability to place in proper perspective what was happening now with what had happened before.

That knowledge and skill enriched his offerings to readers. It helped them better understand the world in which they lived.

Beckman's good works were not restricted solely to his own pen. He volunteered the unique access he enjoyed to great events to fellow journalists.

During his grueling trip to the Peoples Republic of China with former President Nixon in 1972, Beckman became the only person ever to call me collect from Peking.

The phone would ring. And there would be that friendly voice speaking across thousands of miles, inconveniencing himself to provide my column with perceptive sidelights of an unprecedented moment.

Aldo Beckman considered his role as a scrivener of historic events important.

And that recognition of a personal responsibility to accuracy reflected the reverence with which he held the institutions that govern this country. He viewed the Constitution with awe. And he regarded men in high office who sought to corrupt it with disdain.

Aldo Beckman was what every newspaperman should aspire to be. He represented the finest of his craft. I am proud to have had him as a friend. I am prouder still to have been his colleague.

I am grateful that the Illinois heartland gave him to my profession to share his warmth, intellect, wit, and humaness, if only for a relatively short time.●

SPECIAL ORDER FOR HON. CLAUDE PEPPER, ON THE OCCASION OF HIS 80TH BIRTHDAY, SEPTEMBER 8, 1980

HON. JIM LLOYD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LLOYD. Mr. Speaker, it is a pleasure to join in celebrating the 80th birthday of my friend and colleague, CLAUDE PEPPER.

His active presence during his long career in Congress has touched many people: Members, such as myself, who have benefited from his experience and leadership; the poor, the forgotten, and the elderly, whose cause he has so effectively championed for many years; and his constituents, who could ask for no better voice in this Chamber.

Senator PEPPER has not only authored major legislation to advance the legal right of older Americans, but has also set a personal example of achievement as effective as any legislation in striking down the misconceptions that foster ageism. He is a powerful example that ability is not age related, that one may be wise as well as kind, and that much can be accomplished in spite of adversity.

Senator, as we celebrate your presence and your contributions, you have my warmest wishes for much happiness and achievement to come.●

AUSTIN MAN IS NAMED POLICEMAN OF THE YEAR

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. PICKLE. Mr. Speaker, in case any of you missed reading the special Parade magazine supplement in yesterday's Post, I am pleased to present it here. Each year, Parade awards a "Police Service Award" along with the International Association of Chiefs of Police. This week, an Austin, Tex., undercover officer is receiving the award in St. Louis.

James Wolsch puts his life on the line each day in Austin to make the streets safer for everyone. His job is a dangerous one. He frequently deals with the seamy underworld of high-stakes narcotics peddling—and he does it in a humble spirit of service to the community.

I am pleased to present the article about James Wolsch and join in saluting his accomplishments and public service:

THE LONELY VIGIL OF SUPERNARC JAMES WOLSCH

(By Pam Proctor)

AUSTIN, TEX.—A lot of folks in the seamy Austin underworld of heroin and "speed" admit they're afraid of James Wolsch—an undercover cop who's been described by colleagues as a "supernarc." That's one reason he's been picked to receive the 15th annual Police Service Award given by Parade and the International Association of Chiefs of Police (IACP).

The award, which will be presented to Wolsch this week in St. Louis at the IACP's annual convention, is a symbol of the achievements of the nation's 485,000 police officers who work largely without fanfare. The diversity of their jobs—from the risky bomb squad details to the critical crimeprevention units—is exemplified by the 10 officers who have been cited for honorable mention.

One thing that sets 32-year-old Senior Patrolman Wolsch apart from other officers is that "he's so successful at what he does," says Austin Police Chief Frank Dyson. In a city which Dyson describes as "a major stockpile center" for drugs in the Southwest, Wolsch alone accounts for 50 percent of all the narcotics cases in the department, and 25 percent of the cases handled by the other seven narcotics officers.

He got his nickname, "Stoopdown," as a uniformed officer 10 years ago, when he worked the tough 11th Street section of East Austin. Wolsch would hide his car and crouch behind the window of an abandoned motel to watch the dealings of the dope pushers and prostitutes in the area.

"There wasn't a whole lot going on in his district that he didn't know about," says Lt. Bobby F. Simpson, who a few years later picked Wolsch to do undercover narcotics work as part of a newly formed Organized Crime Control Unit.

Wolsch is effective, says his commanding officer, Capt. Gilbert Miller, "because he can blend into any situation. He can go from the high to the low." One day he can be talking chemistry in a clandestine lab where methamphetamine, or "speed" is being produced; the next he can be slapping backs with junkies in the ghetto. He wears no wigs

or makeup, but can change his appearance simply by changing his hairstyle, which he does three or four times a year. A measure of his talent, says Miller, is that he's been undercover six years—more than any other cop in the department—despite the fact that the drug traffic in Austin "moves in closed circles."

Much of his undercover work involves making "controlled buys" of drugs from dealers, in an effort to become familiar in the underworld and sniff out the big "fish" who run large-scale drug operations. Wolsch prepares for his role like an actor getting ready to step on stage. If it's cocaine he's buying, he'll snort antihistamine and twist the nozzle in his nose to make it red like a "coke freak." If it's heroin, he'll burn his arm with an acid stick to simulate needle tracks.

Wolsch has a reputation for honesty. "It's axiomatic in law enforcement that narcotics officers lie," says Travis County D.A. Ronald Earle. "But I've never known James to lie."

That reputation not only makes Wolsch a valuable witness in court; it also makes him credible to the informants who put their futures on the line with him in return for information. A good narcotics officer "doesn't ever promise an informant anything he can't legally deliver," says Lt. Simpson. "Wolsch has all this—he can communicate."

What's more, says Simpson, the underworld knows "he can't be bought." Typical is Wolsch's reaction to the $1 million bribe he was offered to lay off a clandestine "speed" lab. "It was an insult," says Wolsch.

Wolsch even has earned the respect of some of his criminal adversaries. "He doesn't despise the people he works with the way many cops do," says Capt. Miller. In fact, Wolsch has even helped rehabilitate some of the junkies he's arrested.

Danger is the name of the game in undercover narcotics work, perhaps more than in any other aspect of police work, says Capt. Miller, because of the high financial stakes and the use of weapons. But Wolsch seems blind to its terrors. "There are a lot of people in town who would like to buy James off—or have him killed," says Miller. Once someone almost succeeded. A ring of "pill pushers" hired an assassin to murder Wolsch during a drug buy. He was saved by an informant's call.

Wolsch, whose salary is $20,000 a year, says he was a mediocre high school student who became interested in police work at the age of 20 by riding in a squad car with a neighborhood cop. At the time, he was working as a TV repairman. "If there was a problem I couldn't solve, I'd stay on the job until 10 or 11 until I got it fixed," he recalls.

He approached narcotics work with the same dogged persistence. But on the way to becoming a top undercover cop, he has made a sacrifice. "We don't do much as a family," admits his wife, Peggy, who was his high school sweetheart.

But the bottom line, she says, is that James is happy. That's why she's willing to put up with the calls from informants at 2 a.m. and with a husband who's rarely home for her or their two adopted children, Johnny, 10, and Nicole, 7.

But he insists that the sacrifice is worth it, not because of any overriding sense of public duty, but simply because "somebody has to do it."●

MONEY MARKET MUTUAL FUNDS

HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LEACH of Iowa. Mr. Speaker, from time to time over the last half century substantial asset shifts have occurred between depository institutions and this disintermediation of funds has jeopardized the capacity of one type of institution or another to fully meet its ongoing capital requirements. In the last several years problems of disintermediation have taken on a novel character as new methodologies for attracting savings have been advanced. The most important new methodology, the money market mutual fund, has enormous implications for the institutional arrangements by which savings are harnessed for economic growth. In addition, there are problems of competitive equity when one institutional arrangement operates under a set of guidelines more restrictive than those followed by another methodology. In order to insure the safety and soundness of the banking and savings and loan systems as well as the overall economy, a careful reexamination of existing policy toward money funds is in order.

In this connection, a recent exchange of letters between Federal Reserve Chairman Volcker and myself discusses some aspects of the problem and current Federal Reserve thinking:

JULY 24, 1980.

Hon. PAUL A. VOLCKER,
Chairman, Board of Governors, Federal Reserve, Washington, D.C.

DEAR MR. CHAIRMAN: During the Banking Committee hearing yesterday I briefly raised the problem of insuring equitable competition between financial institutions and money market mutual funds. The current advantages enjoyed by money funds have caused massive deposits to be shifted from banks and savings and loans into near-bank operations. The money fund development would appear to be particularly damaging to small, rural financial institutions, compared to money-center ones, and consequently to the overall rural economy.

I would be appreciative of any thoughts you might have on this problem and if you could indicate whether the Federal Reserve intends to utilize its authority and/or recommend legislation to establish competitive equality between financial institutions and money funds.

Thank you for your consideration.

Sincerely,

JIM LEACH,
Member of Congress.

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., August 22, 1980.

Hon. JIM LEACH,
House of Representatives,
Washington, D.C.

DEAR JIM: I have hesitated for too long in answering your inquiry about money market funds for one reason: I frankly am not comfortable that I have an adequate answer to the concerns you express.

As a starting point, I certainly agree with your observation that the money funds have attracted deposits from both banks and thrifts. In a period of high interest rates, investors obviously have found the yield and liquidity characteristics of the funds to be superior to deposits for many purposes—a disparity that reflects to a substantial extent the more restrictive regulations faced by banks and thrifts.

As you also suggest, the diversion of deposits to money funds probably has had its greatest impact on the availability of credit at smaller institutions, such as those often prominent in rural areas. This distortion of credit flows was especially serious when financial conditions generally where under extraordinary strain, and it led to the March 14 actions imposing a special deposit requirement on growth in money fund assets. The requirement was removed only after the pressures in financial markets had eased substantially and credit increasingly was available to a wide variety of borrowers at lower interest rates.

The relaxation of these immediate difficulties, of course, does not signal any change in the fundamental competitive positions of money funds and depository institutions. A number of factors constrain the ability of banks and thrifts to compete with money funds. Recognizing the particular problem of ceiling rates, the Depository Institutions Deregulation Committee moved to raise permissible rates a bit on certain time deposits relative to market interest rates, as a first step in the Congressionally mandated process of phasing out these ceilings. But there are obvious limitations on the extent to which that can be an answer in the near term, given the existing assets and earnings of the institutions. Even when the "deregulatory" process is completed, depository institutions still will operate under much more pervasive regulations than money funds, including reserve requirements on transactions and nonpersonal time accounts.

There is, of course, another side of the story. Partially offsetting the regulatory disadvantages are insurance on deposits and the ability of depository institutions to offer customers a wide variety of services in one location. I have been surprised recently with the rapid growth in passbook savings accounts at both banks and thrift institutions even though money fund rates are well over yields on these accounts. More broadly, from the savings and consumer standpoint, money market funds are attractive and efficient; they contribute to both consumer satisfaction and the national interest in savings.

Nevertheless, savers have become extremely sensitive to even small changes in the relative advantages of holding different assets. In the still uncertain financial environment we face, a substantial diversion of flows from depository institutions to money funds could recur, and, indeed, except for the past few weeks, the money funds have remained in a relatively strong competitive position.

Given the urgent need to encourage savings that can be channeled into investment, it would obviously be preferable to redress competitive imbalances by removing restrictions on banks and thrifts when possible rather than to impose limits on money funds. But given the restraints on progress in that direction, I am left with the nagging concern that the situation is unbalanced. Imposing an interest rate ceiling, a la Reg. Q, seems neither desirable nor feasible. One approach toward balance might be to, in effect, force a choice between reserve requirements or conducting only a "non-transaction account" business. But that would be a substantial departure from the traditions of mutual fund regulation. Moreover, we need to balance the needs of consumers and savers.

In sum, I have no legislative proposal now—but I do believe the situation bears watching. And I would be delighted to explore your own thinking further.

Sincerely,

PAUL.●

TRIBUTE TO REPRESENTATIVE BILL COLMER

HON. ROBERT McCLORY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McCLORY. Mr. Speaker, it was with a sense of personal loss that I learned of the passing of our long-time former colleague, Representative William M. Colmer of Mississippi.

In a very real sense, Bill Colmer was an institution who flourished during a period of great transition in this greatest of all legislative bodies. While Representative Bill Colmer was a true southerner and a lifetime Democrat, he belonged more truly to the entire Nation and to both political parties.

Representative Bill Colmer was one of the first Members of the House with whom I became acquainted when I came to this great body in 1963. At that time, my principal interest was in the budgetary prerogatives of the Congress. I conferred and cooperated with Bill Colmer in early efforts to establish a Congressional Budget Committee—with a view toward putting our Federal Government's fiscal house in order.

Mr. Speaker, if Bill Colmer's views had been adopted at that time, the U.S. budget would have been in balance and the ensuing huge deficits would never have been countenanced or been possible.

As an archconservative, Representative Bill Colmer's progressive and innovative views may never have been fully appreciated. But, those of us who knew him intimately were aware that his goals for our country were idealistic and his thoughts were truly enlightened. He was a very fair and understanding individual who embraced the highest principles of character and statesmanship.

Mr. Speaker, it is most interesting that when Representative Bill Colmer retired from the Congress in 1972, he was succeeded by his administrative assistant, TRENT LOTT, who ran as a Republican in the Fifth District of Mississippi. Bill Colmer supported TRENT LOTT's candidacy as a Republican and thereafter supported the election of Republican Presidential candidate Gerald R. Ford in 1976.

Mr. Speaker, while Representative William M. Colmer now belongs to the ages, he truly during his lifetime belonged to the Nation.

I am proud of him and grateful to have had the opportunity to know him and to have served with him.

Mr. Speaker, in expressing these few words of respect and remembrance on the occasion of Bill Colmer's passing, I also want to communicate to his widow, Ruth, and to all members of his family, my deepest sympathy.●

FORMER AMBASSADOR RECOUNTS EVENTS LEADING TO FALL OF SHAH OF IRAN

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BROWN of Ohio. Mr. Speaker, over the past several months during which our American hostages have been held captive in Iran, many have wondered how the United States could have let the Iranian situation get so far out of hand.

As the following illuminating recount of the events leading up to the fall of the Shah of Iran demonstrates, the stage was set during the 1978 Iranian crisis. The article, written by William H. Sullivan, the U.S. Ambassador to Iran during the fall of the Shah, clearly illustrates the misguided foreign policy decisions of the Carter administration which resulted in the downfall of the Shah and contributed to the current volatile Iranian situation.

As we pray for our American hostages and grow increasingly concerned over the possibility of war in the Persian Gulf over oil, we should know the truth about how these events developed. I insert the Sullivan article as follows:

ENVOY'S VERSION OF THE COLLAPSE

(By William H. Sullivan)

Iran, at the head of the Persian Gulf and stretching along its northern and eastern shores, has always served as a barrier against Russian ambitions toward the Indian Ocean and the Arabian Peninsula. The integrity and independence of Iran have strengthened the effect of that barrier and, in recent years, tempered whatever plans the Soviets may have had to move into or manipulate the area.

In recent years, the United States has come to depend upon the Persian Gulf for 30 per cent of its oil imports. Western Europe's dependency is over 60 per cent and Japan's is over 70 per cent. Therefore, the integrity and independence of Iran have become of significant importance to the United States and to its allies. Conversely, in strategic terms the disintegration of Iran or its economic dependence upon the Soviet bloc would represent a major gain for the Soviet Union.

Consequently, the policy of the United States in an Iranian crisis should have been guided primarily by concern for the preservation of the territorial integrity of that nation and its independence from Soviet control or manipulation. Other concerns, such as the well-being and the political as well as human rights of the Iranian people, should also have been of importance in view of America's longstanding association with Iran.

The crisis that came in 1978 developed rapidly, but not so suddenly as to have precluded a careful assessment of U.S. options and the formulation of a policy to enhance American interests. But to decide among those options required a mature understanding of the nature of the revolution that was sweeping Iran in 1978 and the factors that contributed to its rapid success. It was far more complex than the simplistic Islamic revolution label accorded it by the press.

Rather, the 1978 crisis was an uprising that was joined by all the enemies of the Pahlavis. These included the old aristocrats from the Qajar regime; the feudal landholders who had lost their villages in the land reform programs; the social democrats who had been suppressed with Prime Minister Mohammad Mossedeq in 1953; the bazaaris—the traditional merchant class—who felt left out of the shah's industrialization program; the young, rootless industrial workers who had never been able to adjust to their vagrant life in the cities; the various radical Islamic groups such as the Mujahadeen and the Fedayeen; the separatists in Kurdistan, Azerbaijan, and elsewhere; the old tribal chieftains who flocked back from exile; the pro-Soviet communists of the Tudeh party; and the other communist groups who eschewed Moscow's direction.

All of these opponents of the Pahlavi dynasty, for their own individual reasons, were willing to band together for the negative purpose of overthrowing the shah. All were under the ostensible leadership of Ayatollah Ruhollah Khomeini, who, fired by his own personal animosity toward the Pahlavis, was able to give the movement the coloration of a religious crusade.

The American embassy in Tehran attempted in its reporting to convey the complex and negative nature of this revolution and to express the view that the direction Iran would take in a post-shah period was far from preordained. I believe the State Department, in general, understood and accepted those reports. There were, however, those at State who were so strongly opposed to the shah because of the human rights abuses of his regime that they wished to see him collapse no matter what the consequences for the United States or its allies.

Therefore, when the State Department advanced the view that the shah's regime would not survive, there were many others in the Washington bureaucracy, particularly on the National Security Council (where the revolt was simplistically believed to be an Islamic revolution), who attributed State's perception, and by indirection that of the embassy, to an expression of wishful thinking on the part of those whose vision was blurred by their zeal for human rights.

This division in perceptions within the Washington bureaucracy also extended to the nature of instructions that were sent to the embassy or, more often, to the absence of any instructions whatsoever because the bureaucracy could not agree upon their terms. Most significant in these divisions was the difference in perception about the shah's willingness to use force to suppress the revolution.

DIVISIONS IN WASHINGTON

Time and again the shah told me that he would not use force because a "king cannot murder his own people." With what I regarded as more convincing logic, he told me that if he used force, he could suppress the spreading revolution only as long as he him-

self lived. Since he reckoned his mortality in a short time frame, he felt the suppressed forces would blow up in the face of his son, and the dynasty would, in any event, be blasted away.

In Washington, these embassy reports were apparently received with divided conclusions. The State Department—and eventually the Central Intelligence Agency—accepted them objectively and believed the shah would follow a policy of concession rather than force. Other elements of the bureaucracy, led by National Security Adviser Zbigniew Brzezinski, apparently thought that I had abandoned 32 years of professional objectivity and was subjectively tailoring my telegrams to fit what they conceived to be the mood of the State Department.

BRZEZINSKI TURNS TO ZAHEDI

In this pernicious atmosphere, U.S. policy formulation broke down. By November 1978 Brzezinski began to make his own policy and established his own "embassy" in Iran. That embassy materialized in the person of Ardeshir Zahedi, the shah's ambassador in Washington, who returned to Tehran at Brzezinski's behest with the explicit mission of pulling the shah's resolve together so that he could suppress the revolution. Zahedi to urge the shah to use force. These confidence. He saw the shah frequently and reported daily (on the open international telephone monitored by the Soviets) to Brzezinski. He also made reports to me.

Zahedi is an engaging fellow. He is a romantic in a very Persian way and has an ebullient belief in his own actions. His father had been chief of the armed forces that restored the shah to power in 1953, and Ardeshir himself played a part in that counter-coup. In his home, I found a rather tatterdemalion remnant of the figures who had participated in that successful 1953 action. But in assaying them, I found them would-be leaders without troops. Those they had led in 1953 were, in 1978, on the other side of the barricades.

The shah seemed to feel the same way, for he continually told me to warn Washington not to pay attention to Zahedi because he did not understand the current situation. Naturally, my reports of this warning served only to deepen the divisions and heighten the suspicions that beset Washington at that time.

URGING THE SHAH TO FIGHT

The confusion also contaminated the Iranians. Brzezinski reportedly encouraged Zahedi to urge the shah to use force. These messages were doubtless embroidered in being relayed to their high destination. When the shah turned to me for confirmation of these appeals, I could point only to platitudinous cables that leaned toward condecension.

Matters came to a head in mid-November. A military government, headed by General Gholam Azhari, has been installed on November 5, 1978 after rioting and arson had left Tehran in a shambles. On November 9 I sent a message to Washington saying that this was the last chance for the shah to control the revolutionary process. If this government failed, I stated that we should anticipate the collapse of the shah and look for alternate means to protect and preserve our interests. I defined those interests in terms of the territorial integrity and independence of Iran and said that, given the nature of the revolution, the only instrument that could advance those objectives was the armed forces.

We should act, therefore, to preclude the armed forces from being chewed up in the revolution. Because of our special relationship, we should determine whether we could broker an arrangement that would permit the armed forces to remain intact. They would have to be under the direction of a government that would enjoy the support of the groups that would prevail after the success of the revolution and that would have the blessing of Khomeini. I anticipated (correctly, as it turned out) that the first government to emerge from the shock of the revolution would be headed by Medhi Barzagan, a benevolent social democrat.

KEY MESSAGE IGNORED

I never received a reply to this fundamental message. Instead, it soon became apparent that my views were no longer welcome at the White House. Emissaries of various types began to arrive from Washington to assess the situation *de novo* and to encourage the shah to use force. One of these not trapped into unreality was Senate Majority Leader Robert Byrd. I believe he left Tehran understanding the true situation.

On December 20 the leader of the military government suffered a heart attack, and the situation that I had anticipated on November 9 came to pass. As if to underline this fact, Azhari summoned me to his sickbed to tell me that the regime was lost "due to the indecision of the king." I duly reported this to Washington and then went on to say that I intended to move along the lines I had recommended in my cable of November 9. There were no instructions to the contrary, and so I began to steer the embassy through a series of actions that sought to establish the ground rules under which the Iranian armed forces, purged of some of their more controversial leaders, would be accepted by a Barzagan government.

At the same time, we sought to determine on what terms the armed forces would accept such an arrangement. Because many of those who engaged for patriotic reasons in those conversations are still in Iran, and because their patriotic motives may be suspect in the highly charged atmosphere there, I shall not go into detail about these various discussions.

MILITARY TRANSITION SET

Suffice it to say that detailed understandings were reached between the armed forces and revolutionary leaders in Tehran: A number of senior officers would have been allowed to leave the country with the shah, and a transfer of allegiance of the remaining armed forces would have been made in a way that would have preserved their integrity.

At about this time, the internecine squabbling in Washington began to impinge upon my communications. I began to discover that any sensitive message I sent, no matter how highly classified, that digressed from the views of the National Security Council staff would appear, almost verbatim, in the New York Times. I therefore had to use the secure telephone exclusively to communicate with the Department of State.

When plans for the peaceful transfer of military authority had sufficiently matured and when the shah had decided to leave the country and hand over a fig-leaf of authority to a government headed by a man he despised—Shahpour Bakhtiar—I felt it was important that the nature of the proposed transition be discussed with and understood by Khomeini, who was in Paris. This was especially important because Bakhtiar jauntily took the position that he, rather than Khomeini and the victorious revolution, would exercise governmental power despite the fact that he had no constituency and no popular support.

Accordingly, I proposed that an authoritative emissary be sent from Washington to consult with Khomeini. We already knew from contacts with his entourage that he was concerned about bloodshed between the revolutionaries and the armed forces when he returned to Tehran after the planned departure of the shah. We also assumed that he had given general sanction to the arrangements we had made with the revolutionary leaders in Tehran, but felt it was important that we have his first-hand acceptance of these understandings.

MISSION TO KHOMEINI

I discussed this suggestion on the secure telephone directly with Secretary of State Cyrus Vance. He approved the general idea and then sent me, by a system called secure telecon, a talking paper for use by our emissary. When I had agreed to its terms, he then instructed me to discuss the entire enterprise with the shah, whose departure was less than two weeks away. After I received the shah's acquiescence, Vance informed me that he had selected as our emissary Ambassador Theodore Eliot, the inspector general of the Foreign Service, former ambassador to Afghanistan, former economic counselor in Tehran, and a fluent Farsi linguist. I applauded the choice. Here was a man who understood Khomeini and the nuances of the Iranian situation. He could convey in a forceful manner the full dignity of American purpose as well as American sincerity.

I then turned my attention toward a refinement of plans for the evacuation of American officials and civilians.

During the first week of January, I received an urgent nighttime message from Washington informing me that the Eliot mission had been canceled and that the president had directed that the shah be so informed. The president, who had stayed in Guadeloupe after the economic summit meeting with Western European leaders to do some deep-sea fishing, was accompanied in his retreat only by Brzezinski. I sent an impassioned reply to the secretary of state imploring reconsideration and stating that cancellation of the Eliot mission would be an "irretrievable" mistake. I received a curt rejection that cited all the cabinet officers who agreed with the president. When I told the shah, he reacted with incredulity and asked how the United States expected to influence "these people," if it would not even deal with them.

As far as I could determine, the United States, on the eve of the shah's departure, was left with no policy. I immediately thought of all the American citizens who would be caught up in the confrontation that would result if no arrangements were worked out for a peaceful transition. We had to move immediately from a situation in which we foresaw a controlled transfer of power to one in which I could perceive nothing but chaos, for the shah had already fixed the date when he would swear in Bakhtiar as prime minister and then leave the country.

THE BRZEZINSKI FACTOR

However, I overlooked the Brezezinski factor. It appears that he had a plan in mind. He had already sent to Tehran General Robert Huyser, deputy commander of U.S. forces in Europe and deputy of Alexander Haig, supreme allied commander in Europe. I had used Huyser frequently in the past to help us guide the Iranians in the restructuring of their armed forces' command-and-control system so that they would be able to utilize some of the sophisticated equipment we had sold them. When it was proposed that Huyser come to Iran at the time of the shah's departure, Haig telephoned me on the secure line to say that he was opposed to the mission and would

resign if it were undertaken. It was undertaken, and he resigned.

Huyser, every inch a straightforward good soldier, arrived in Tehran somewhat flustered by the nature of his mission and by Haig's resignation. He moved in with me, and we shared all our message traffic and our common concerns. We did not always agree. But when we differed, we did so openly and with due respect to our differences.

Huyser's mission, as described in the brief official order he received, was to assist in maintaining the integrity of the armed forces and in transferring their loyalty from the departing shah to the Bakhtiar regime.

Parallel to this order, I received terse instructions telling me that the policy of the U.S. government was to support the Bakhtiar government without reservation and to assist its survival. I replied by pointing out that the Bakhtiar government was a chimera that the shah had created to permit a dignified departure, that Bakhtiar himself was quixotic and would be swept aside by the arrival of Khomeini and his supporters in Tehran. Moreover, I argued that it would be reckless to transfer the loyalty of the armed forces to Bakhtiar because this would cause the destructive confrontation between the armed forces and the revolutionaries that we hoped to avoid. It would result in the disintegration of the armed forces and eventually in the disintegration of Iran. It would be directly contrary to U.S. interests.

ACERBIC EXCHANGES

By this time, my exchanges with Washington had become increasingly acerbic. The reply I received to this message, in my judgment, contained an insulting aspersion upon my loyalty and instructed me, in no uncertain terms, to support Bakhtiar no matter what reservations I had. At this point I decided, like Haig, to resign. However, I still was responsible for protecting about 15,000 remaining Americans in the face of enveloping chaos. I therefore quenched my Irish temper, sent my wife out of the country, prepared for the worst, and delayed my resignation until after the anticipated holocaust.

As the confrontation between Bakhtiar and Khomeini quickened, Huyser received continuing instructions to prepare the armed forces for conflict in defense of the Bakhtiar regime. On the basis of his observations, he offered to Washington his opinion that in such a confrontation the armed forces would prevail. But he always tempered this observation by stating that I disagreed and that I believed the army would disintegrate when ordered to fire on revolutionaries, some of whom were relatives of the soldiers. As a result, their arms would be dispersed throughout the whole tangled and conflicting fabric of the revolutionary forces, making it impossible for the Bazargan government to assume quick and effective control when it inevitably took power.

The armed forces understood this also. When General Abbas Gharabaghi, their commander in chief, decided to resign, Bakhtiar, who had been assured by Washington that I was under instructions to support him, called me into the actual meeting during which Gharabaghi attempted to submit his resignation. Like two characters in a Greek tragedy in which both knew the futility of their actions, I remained true to my ambassadorial oath by urging the general to withdraw his resignation, and he agreed to do so. It was a sickening performance for both of us.

THE ROAD NOT TAKEN

I have no way of stating categorically that the road not taken would have averted what has happened in Iran. But perhaps I can end this article by quoting Bazargan from an interview that he gave to Oriana Fallaci:

"Then think of the deplorable state in which the army, police and security forces find themselves, all of them indispensable bodies for establishing law and order . . . The revolutionary committees and the revolutionary guards cannot perform their duties because they're not trained, they quarrel among themselves and they refuse to take orders from us . . . I say that these are things that would paralyze any government." ●

THE REGULATION REFORM ACT OF 1980

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BROYHILL. Mr. Speaker, as an active participant in the effort to enact a regulatory reform bill this Congress, I am greatly disappointed to see that the Judiciary Committee has once again decided to forestall any further action on H.R. 3263, the Regulation Reform Act of 1980.

A number of Judiciary Committee members, acting in their individual capacities and in conjunction with committee staff members, have been working continuously this past year to reach a final good faith compromise on the various provisions of H.R. 3263. These individuals recognize the overwhelming need for enactment of regulatory reform legislation at this time. I was encouraged to learn that the committee had decided to hold a mark up session on H.R. 3263 on September 9, as full committee action on the bill had ground to a halt several months ago. In fact, it was because the bill has been stalled in Committee for so long that I felt compelled to file discharge petition No. 12 to bring H.R. 3263 to the House floor for consideration.

And now, no sooner had the September 9 markup session been scheduled than the decision was suddenly reversed, and markup on H.R. 3263 indefinitely postponed. Mr. Speaker, such arbitrary actions do nothing to get legislation enacted, and in the case of the Regulation Reform Act, the sudden decision to cancel the committee's consideration of the bill is particularly regrettable. With everyone clamoring for meaningful regulatory reform before the end of this Congress, we are all the losers as a result of this short-sighted maneuver.

While I was pleased to learn that the Judiciary Committee had decided to take up H.R. 3263, the recent reversal of that decision points up the need for taking an alternative tack to get the regulatory bill to the House floor. We can no longer afford to sit by and wait while the Judiciary Committee vacillates, in response to whatever outside forces motivates it, on whether or not we will see the enactment of regulatory reform legislation this Congress. Now, more than ever, I hope my colleagues will see the need for my discharge petition on H.R. 3263, and will add their signatures to the petition.●

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. OTTINGER. Mr. Speaker, Congress will soon determine the fate of efforts to end the proliferation of nuclear arms.

To date, 116 countries have ratified the Treaty on the Non-Proliferation of Nuclear Weapons. Forty-six countries, including India, have not signed the treaty. India stands alone as the nation which has produced a nuclear bomb by flouting U.S. peaceful use guarantees. Since exploding the so-called peaceful nuclear device in 1974, using, in the process, U.S. heavy water, India has rejected all agreements regarding the manufacturing of atomic bombs.

Despite this and countless other disturbing actions, President Carter now urges, in the name of geopolitics, that we approve the sale of 38 tons of nuclear fuel to India. Both the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations have voted to override the President's misguided decision.

I urge my colleagues to support the "Resolutions of Disapproval," written by Mr. BINGHAM and reported favorably by the Foreign Affairs Committee, which would block the fuel shipments, and I urge the leadership to bring this matter to a vote quickly.

Let us scrutinize the geopolitical consideration surrounding this sale. On June 19, Mr. Carter signed an Executive order overruling the unanimous vote by the Nuclear Regulatory Commission to disallow the sale of fuel to India, citing the need for the United States to bolster our relations with nations in South Asia, particularly those that can play a role in checking Soviet expansionism. On July 8, India recognized the pro-Soviet Heng Samrin government in Kampuchea.

After President Carter reportedly promised Prime Minister Indira Gandhi the pending fuel shipments for the Tarapur facility at Bombay, India signed a $1.6 billion arms deal with the Soviets. This nation to which we are now asked to give enriched uranium also recognizes the Palestine Liberation Organization.

India is a nation whose prime minister has vowed to explode more peaceful nuclear devices if she deems it to be necessary.

India is a nation which has hindered our efforts to secure the release of our hostages in Iran by undermining the U.S. embargo. On June 14, India announced its intention to send grain

and a number of industrial products to Iran to enable that country to meet shortages stemming from sanctions imposed by the United States.

India is a nation which did not support the United Nations resolution on the Soviet invasion of Afghanistan.

While the administration claims that this sale will increase stability with a key South Asian democracy, my distinguished colleagues on the foreign affairs panel who voted against the sale will tell you otherwise. In fact, to allow the sale to India could accelerate Pakistan's efforts to acquire a nuclear weapons capability.

Proponents of this sale argue that India will turn to the Soviet Union for nuclear fuel. Russia's willingness to do so is unlikely. In the mid-1960's, when the Soviet leaders were worried about the possibility of West Germany acquiring nuclear arms, Moscow joined the United States as a prime mover in negotiating the nonproliferation treaty. The U.S.S.R. is required by the treaty and the 1977 nuclear suppliers guidelines to demand safeguards on all exported nuclear material, and, under the latter, not to undercut U.S. actions in furtherance of nonproliferation objectives. Russia has repeatedly demonstrated its commitment to the goals of nonproliferation. For example, it requires the return of all Soviet nuclear spent fuel, and, with respect to India, has already extracted tough peaceful use assurances on the imported heavy water.

The administration maintains that failure to deliver the shipments would constitute a breach of the United States-Indian Nuclear Agreement for Cooperation signed in 1963 since we have promised to be a reliable supplier of nuclear fuel. We have promised, however, to be a reliable supplier only to nations which adhere to effective nonproliferation policies, and not to a nation which has consistently refused to subject its facilities to international safeguards. I might add that Canada immediately terminated its nuclear relationship with India following the 1974 explosion. The American Law Division of the Congressional Research Service agrees that the United States would not be in breach of the agreement by withholding the shipments.

Perhaps the most ludicrous argument in favor of this shipment has been made by the President himself. Mr. Carter, who once called nonproliferation one of mankind's most pressing challenges, now claims that, "These exports will help us to maintain a dialog with India in which we try to narrow our differences on these issues."

As I have said before, the President is essentially offering a potential gunman bullets and asking him not to shoot.

India has already stockpiled enough fuel to last through February 1982. It takes but 8 kilograms of plutonium to produce a bomb as powerful as that exploded over Nagasaki. If these shipments continue while India refuses to subject its facilities to international safeguards, let those responsible for the decision know that thousands of kilograms of plutonium will be stockpiled by India during this decade without safeguards. Indira Gandhi's continual transgressions against the United States in foreign policy matters gives little room for optimism that continued uranium shipments will buy anything other than worldwide disregard for U.S. efforts for nonproliferation.

This is the first test case of whether we will continue nuclear trade with nations deliberately maintaining the option of making nuclear weapons by refusing to allow inspections of nuclear activities.

At issue is not only nonproliferation, but the perception of U.S. strength and integrity abroad. In his 1977 message to Congress, Mr. Carter said "if our policy is too weak, we could find ourselves powerless to restrain a deadly worldwide expansion of nuclear explosives capability."

Approval of this sale will teach every member nation to the Nuclear Non-Proliferation Treaty that it has no reason to abide by the agreement any longer. It will signal that the United States is not serious about its nonproliferation stance and its insistence on international safeguards.

To quote from a New York Times editorial of June 22:

> If the Indians retaliate by using the spent American fuel for reprocessing, let them take responsibility for destroying the containment effort. If that effort is to succeed, the line has to be held.●

ANTONIO GAGLIOTI HONORED FOR SERVICE

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOLLENBECK. Mr. Speaker, I am proud to join district 6 of Unico National in honoring Mr. Antonio Gaglioti for his outstanding record of service to the Unico National and to our communities.

Mr. Gaglioti is the outstanding district governor of Unico National for 1979-80. He earned this recognition through his leadership efforts in civic activities including mental health and scholarship programs and for his coordination of the seven chapters of district 6 in a drive which raised $18,000 in a 2-month period for the purchase of a special IBM cell separating machine. The machine, used to combat Cooley's anemia, was donated to the Columbia Presbyterian Hospital.

In his dedication to service, Mr. Gaglioti has touched the lives of thousands of New Jersey residents. He is a proud testimony to the positive results one individual can achieve in steadfast commitment to the ideals upon which our Nation was founded.

I extend to Mr. Gaglioti my commendation and my very best wishes for every happiness and success in his future endeavors.●

THE BOTTLERS BILL: WERE ANTICOMPETITIVE CONCERNS JUSTIFIED?

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MAZZOLI. Mr. Speaker, during deliberations on the so-called bottlers bill, which was signed into law on July 9, 1980, by the President, some concerns were raised about the possible anticompetitive effects of this bill on the soft drink industry.

As the following Wall Street Journal article indicates, competition within the soft drink industry is more vigorous and resolute than ever.

The article reads as follows:

SOFT-DRINK MAKERS' DISCOUNTING HAS SOME WORRIED OVER EFFECTS

(By Bill Abrams and Susan Harrigan)

Discounting has become a way of life for soft-drink marketers. A quick tonic for slow sales, temporary price cuts are especially common during economic slowdowns, and this one is no exception. But this practice, known in the industry as "dealing," also can leave an unpleasant aftertaste—weakened brand loyalty—that worries the soda-pop industry.

Discounts "have gotten out of hand," says Sidney Mudd, chairman of Joyce Beverages, a New York area Seven-Up and Royal Crown bottler. "Price promotions are good, but when they're as constant as they are now, they cheapen the product in the mind of the consumer."

Of course, a major objection is that discounting puts pressure on profit margins. It also erodes images carefully cultivated through expensive advertising. Ultimately, discounting may even make it easier for Philip Morris' Seven-Up and Procter & Gamble's recently acquired Crush unit to increase market shares.

Despite those prospects, Coca-Cola has been waging an aggressive price-off campaign and is regaining market share lost to Pepsi. Coke's reasoning: Consumers respond enthusiasticaly to price-oriented appeals. "It's the current game," says Brina Dyson, president of Coke's domestic operations, "and you'd better learn how to play it."

Coke says 1980 "could be" a record year for discounting. Consumers in most cities can find bargains easily. In Dallas, site of acrimonious Pepsi-Coke battles, shoppers could buy a six-pack of 12-ounce Coke cans last week for $1.19 (regularly $2.05) or two-liter bottles of Pepsi or Dr Pepper for 77 cents (regularly $1.29)

The number of soft-drink deals featured in newspaper ads rose 21 percent in the first five months of this year, compared with the same period in 1979, according to a survey of 20 major markets. Specials on Coke increased even more than that, says an industry source.

Pepsi's response? "We're not about to let someone take our share of market away," says John Sculley, president of Pepsi's U.S. unit. "If someone wants to raise the ante, we don't think it's very smart, but we know how to play hardball, too."

Mr. Sculley once thought discounting was a smart idea. A decade ago, Pepsi began dealing vigorously to sway consumers to its cans and large bottles. The goal, says Mr. Sculley, was "to obsolete the equity Coke had in its hourglass-shaped bottle."

A fast rise in sugar prices in 1974 quickened the pace. Soft drink prices advanced, too. Then when sugar prices dropped, bottlers were awash in profits. Rather than lower prices directly, they poured money into price promotions. (Antitrust laws prohibit franchisers from dictating wholesale prices to independent bottlers.) Industry observers say discount sales contribute 40 percent to 80 percent of unit volume for many bottlers.

After Pepsi passed Coke in food-store market share in 1977, discounting lost some of its allure for the new leader. "What was once a strategy has become a cost of doing business," says Mr. Sculley. "Are we going to continue to use price promotions as a way to build share in the 1980s? Not if we can help it."

Coke may have other ideas, though, because its recent price push appears to be working. A. C. Nielsen market-share calculations for April and May showed Pepsi with a 22.4 percent share, down half a percentage point from a year earlier, while Coke's share rose four-tenths of a point to 21.4 percent. Executives at both concerns anxiously await June and July results, due next Wednesday. Coke is confident of regaining market leadership eventually. When? "That's a closely guarded secret," says Mr. Dyson, "except that it's inevitable."

Pepsi attributes Coke's gains to discounting. "We think it's too high a price to pay," says Mr. Sculley. "Can they hold it over time? Our experience is that it takes more than price."

"Ridiculous," replies Coke's Mr. Dyson, who calls discounting "a valid, healthy, strong practice." To those who claim it harms brand loyalty, he retorts: "That's the kind of elegant theory you can get by with on a blackboard or in some text. But in the marketplace, you try that and you'll get into trouble."

Mr. Dyson's view isn't universally shared by soft-drink marketers. Many see consumers increasingly making decisions on the basis of supermarket ad features and in-store displays, rather than on the basis of product quality or image. One study of soft-drink loyalties found that fewer than 5 percent of soda buyers are "exclusive users" of a single brand. Complains Mr. Sculley: "Pepsi and Coke have become pretty interchangeable to a large number of consumers."

Pepsi says it's trying less-costly promotions to cut down on discounts. Last Christmas, the company tied holiday sales promotions to Mickey Mouse displays, puppet premiums and a sweepstakes. Pepsi will try another game during this year's World Series. But Coke rejects claims that discounts squeeze bottlers' profits. Mr. Dyson says financial surveys show bottling to be "a very healthy, a very good industry to be in." He adds: "You have to conclude, from that, that price promotion isn't killing bottlers."

Seven-Up, although a frequent discounter, wants to depend less on cents-off discounting and more on marketing ingenuity, Seven-Up president Edward Frantel told bottlers this spring: "We propose to sell Seven-Up products as brands, not commodities." Seven-Up's likely introduction next year of new products, including a cola, will give the company a chance to test its philosophy.

The strongest pressure against discounts, however, could come indirectly. Sugar prices have doubled in the past year, and bottlers will have to decide whether to pass all the increase along to consumers or to absorb some of it through less discounting. Either way, the soft-drink bargains shoppers are enjoying mightn't be around next summer.●

THE 170TH ANNIVERSARY OF MEXICAN INDEPENDENCE

HON. DAN LUNGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LUNGREN. Mr. Speaker, in recognition of California's strong ties with Mexico and the rich cultural impact our southern neighbors have had on all levels of our society, I would like to commemorate this day as the anniversary of their independence.

The Mexican move toward independence erupted as a reaction against deeply rooted prejudices as well as social and political inadequacies which existed in the imperial system.

Father Miguel Hidalgo led the independent move to liberate Mexico from Spain. On the morning of September 16, 1810, he summoned his followers to mass and asked, in his famous "Grito de Dolores" speech, that they take up arms against their Spanish oppressors. A formal declaration of independence from Spain and the drafting of a constitution ensued. On September 16, the democratic ideals of liberty and freedom triumphantly emerged.

The traditional Independence Day celebration begins on the eve of September 15 when the President of Mexico once again proclaims Father Hidalgo's "Grito de Dolores."

To close the ceremony, bells ring throughout Mexico in response to the independence bell, originally rung by Father Hidalgo 170 years ago.

In the United States, southwestern States join in celebrating Mexico's independence by observing similar traditions—parades, fireworks and the ceremonial "Grito de Dolores."

Today on the 170th anniversary of Father Hidalgo's cry for freedom, Mexico's remarkable heritage and vision of democracy remain an indelible mark in the history of independence.●

VIRGINIA BEACH CITY PUBLIC SCHOOLS

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. WHITEHURST. Mr. Speaker, the recent regulations proposed by the Department of Education which would mandate bilingual education programs in our public schools are not in the best interest of our young people whose primary language is not English. Indeed, we will do these students a grave disservice if we fail to teach them English expeditiously, because we will deny them access to the mainstream of American life. Without a working knowledge of English, they will find it difficult, if not nearly impossible, to find meaningful employment; and by encouraging languages other than English to be widely used, we will further fragment American society.

At this point in the RECORD, I would like to share with my colleagues the position paper on this issue which was prepared by the Virginia Beach city public schools. It is a scholarly presentation, and I commend it not only to my colleagues but to those in the Department of Education who would impose this requirement on our schools indiscriminately.

The position paper follows:

A POSITION PAPER ON PROPOSED LAU REGULATIONS

The Virginia Beach City Public Schools are opposed to the adoption and enforcement of the "Lau Regulations" proposed by the Secretary of Education which mandate a bilingual education program as the prescribed means of teaching students whose primary language is not English and/or who have limited proficiency in English.

It is the position of the Virginia Beach City Public Schools that the proposed mandated bilingual program is neither reasonable nor educationally defensible; rather, it has the potential to destroy effective programs now in place and to increase the demands on already scarce resources. Our position is not intended as an attack on bilingual education as one approach to the education of non-English proficient students; we simply oppose the apparent selling of the concept as the only answer for all schools. It is perhaps useful, necessary, and a cost-effective program where there are heavy concentrations of persons with primary languages other than English; it is, at best, a highly questionable requirement for districts with relatively few, widely dispersed students with many different primary languages; it is not the only approach that should be encouraged in either situation. It is reasonable to assume that the adoption and enforcement of the proposed rules will cause a bilingual program to become the exclusive means of educating students with primary languages other than English. Exclusive because of the demands the regulations place on time, personnel, and money; exclusive because there will be no resources left for alternatives; exclusive, though evidence and theory do not support it as the only or most effective way to educate students with non-English primary languages.

It is generally agreed by linguistic scholars that one of the greatest obstacles which a learner of a second language must overcome is the already internalized dominant primary language. It is held that the greater the reliance on and use of the dominant primary language, the longer it will take to acquire proficiency in a second language.

The bilingual mandate requiring that instruction be given in the student's native language, when that is assessed to be the stronger, will impede or reduce motivation to achieve proficiency in the second language. Usually, students with limited English proficiency have many more hours of often exclusive exposure to their native language in the home than the few during which they are exposed to English in the public schools; additional exposure by instruction in the native language can be

counter-productive. Under such circumstances English proficiency will always lag, while the native language continues to be or becomes increasingly dominant.

It is our position that in Virginia Beach City Public Schools the best interests of students with limited English proficiency can be and are served by a strong, intensive, and effective ESL (English as a Second Language) immersion program. Such a program, not unlike that of the Foreign Service Institute language training program of the State Department, provides the students with the English language skills necessary to function comfortably and successfully in the educational mainstream. In such a setting, students can acquire English proficiency more rapidly by participating and learning from the actual life, language, and culture in which they are immersed.

At a time when education is required to mainstream persons with physical, mental, and learning handicaps; it seems foolish and contradictory to remove and isolate a group of students who are meeting with success while in the mainstream of our educational program.

The Virginia Beach City Public Schools recognize the need to provide programs for students with limited English proficiency. We readily accept that responsibility. We neither want nor seek relief from the responsibility; we do want, however, to meet the need in a way which best serves our students and this district. The record will show that we have taken the initiative in this matter.

The Virginia Beach City Public Schools have designed, and have had in place since 1975, a program to assist administrative and instructional personnel in providing instruction in English as a Second Language to enable non-English proficient students to participate in the mainstream of the instructional program and to reach educational goals consistent with their individual capabilities and aspirations.

Using identification procedures suggested in the "Lau Remedies," individual school principals identify those students (1) whose first learned language is other than English, (2) who speak a language other than English, or (3) in whose homes a language other than English is spoken.

The degree of students' proficiency in English is assessed by several means. Standardized achievement test scores are examined by classroom and reading resource teachers. Students scoring within a year of grade level are considered to be in need of no further assistance. Students whose grade level deficiency is more than one year of grade level are individually screened by the TESOL specialist. The diagnostic process includes an interview, a test of listening comprehension, an oral syntax measure, graded reading word lists, and, with older students, an assessment of writing skills.

Prescriptive recommendations for the instruction of each student are made to the principal who has the responsibility for designating a teacher, aide, volunteer, or peer teacher to provide instructional assistance in ESL. Additionally, the TESOL specialist provides each student with appropriate ESL instructional and supplementary materials, conducts in-service training for ESL instructors, and confers with classroom teachers, counselors, and administrative personnel to meet the individual needs of the student. A summer session of more intensive English as a Second Language is provided free of charge at a magnet school; summer classes serve multi-language and multi-cultural groups.

It is our position that the total immersion ESL program is the most economically, organizationally, and educationally feasible means of meeting the needs of Virginia Beach's diverse and widely scattered non-English speaking student population. The district has a relatively small and highly transient student population speaking approximately thirty-five different primary languages. Few are long term residents; many are dependents of temporary N.A.T.O. staff and allied military or technological training groups; some await opportunities to relocate in areas of high concentration of their ethnic groups. Enrollment and withdrawal records reveal the fluid and constantly changing nature of our non-English speaking population; the sale of six fighter planes to Iraq, for example, can change that population for a three to eighteen month period. With our population, the proposed bilingual mandate would result in a program with constantly changing form and uncertain needs and commitment of resources; we would have to be prepared and staffed to teach every language, and possibly dialect, spoken.

Because of the fluid nature of our population and the lack of information about available bilingual teachers, materials, and tutors, we have not made a definitive cost study of the impact of the proposed bilingual mandate on our district. It appears that magnet schools would be the only means of providing bilingual instruction for our dispersed non-English speaking students. For example, thirty-four Chinese speaking students are dispersed in grades K-8 in sixteen schools spread over approximately 350 square miles.

Magnet schools, obviously, mean more space for a school district already overcrowded. More space means construction, and construction means money. It is reasonable to assume that the mandated bilingual program will cost the Virginia Beach City Public Schools millions of dollars.

The Virginia Beach City Public Schools share the concerns of the Secretary of Education which are addressed by the proposed rules for bilingual programs; we do not share the belief that bilingual education is the only or the best means of educating students with primary languages other than English. It is our belief that the mandating of specific instructional methodology, technique, and delivery systems is not within the purview of the federal government.

Lau v. Nichols is a clear mandate for equal opportunity; complying with that mandate ought to be left to local districts when they have acted in good faith to accept that responsibility. A mandated bilingual program which is unsupported as exclusively effective and, apparently, organizationally and economically disastrous is not in the best interest of students with a primary language other than English, nor is it in the best interest of the Virginia Beach City Public Schools. The proposed "Lau Regulations" and the concept of a federally mandated bilingual program should be rejected.●

TRIBUTE TO ELWYN G. RAIDEN

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. RHODES. Mr. Speaker, another long-term employee of the House, Elwyn G. Raiden, has retired after serving a quarter of a century in the Sergeant at Arms office. As overseer of the bank, he has probably served individually more Members and staff than anyone else in the ranks of House personnel.

Elwyn Raiden is one of the many dedicated and unsung staff people that make the House go. He was not only an employee, but a good friend to many of us, who appreciate his unfailing cheerful services as keeper of the "money store" and provider of notary services which we all found frequently necessary to have at hand.

I have been in Congress during Mr. Raiden's tenure of service. I join my colleagues whom he has served so well in expressing our thanks for his 25 years among us. We all wish him a most happy, long, well-earned retirement, and we will all miss him at the bank.●

ATTORNEY GENERAL WITH TWO HATS

HON. F. JAMES SENSENBRENNER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. SENSENBRENNER. Mr. Speaker, the very inadequate and unsatisfactory manner in which the White House and Department of Justice have faced up to Billy Carter's financial and pseudodiplomatic relations with Libyan Government officials has placed the Carter administration in a very bad light. To what extent improprieties or possible illegalities extend may yet be disclosed by ongoing investigations.

At any rate, the White House and the Attorney General have been less than forthright in their relations with the Congress and in their disclosures to the American people.

Mr. Speaker, the distinguished columnist Mary McGrory has summarized this pattern of White House and Attorney General conduct in a most illuminating and incisive column which appeared in the Wednesday, September 10, issue of the Chicago Tribune.

Mr. Speaker, I am attaching Mary McGrory's column for the edification of my colleagues:

ATTORNEY GENERAL WITH TWO HATS

Chairman Birch Bayh (D., Ind.) of the Senate Billy Committee poured sympathy over the impassive witness. Poor Benjamin Civiletti, he has to wear two hats, one as attorney general of the United States and the other as the "President's lawyer."

Civiletti, the day before, got low marks from three Justice Department subordinates for his performance in the Billy Carter case. The President, however, gave him a pat on the back.

Civiletti has always understood his place. Right after his appointment, the President towed him over to Baltimore to show him off before the Sons of Italy as an example of the heights upwardly striving Italo-Americans can aspire to in a Carter administration.

Civiletti knew what was expected of him in the Billy matter. He tried to wall himself off from it. He was eventually caught between his tigerish Foreign Agents Registration Unit, which was hot on Billy's trail, and a White House which is not notable for noticing the conflict between protecting the Constitution and protecting the President.

The thing that most becomes Civiletti as attorney general was that he allowed the investigation of the President's younger brother to go forward. You have only to consider the likelihood of such an event in the Nixon years to see that a triumph of justice had occurred.

Having done that, Civiletti tried to forget about it. But his studied indifference was shattered last April when someone, unbidden, handed him two documents relating to Billy which, as luck would have it, would have nailed him cold.

As attorney general, his heart must have leapt up to see in a secret intelligence report the "smoking gun" his underlings had been seeking in their efforts to bridle Billy. But the President's lawyer was affronted by the gift and put it aside.

The reason he gave is one that has been heard before in the Caucus Room: national security. He considered it a higher duty to avoid compromising "high sensible, fragile, and secret" sources.

Civiletti is a bland man with an undershot jaw and nerve ends well below the surface. His greatest aversion, it seems, is to "kicking up dust."

"I thought it would kick up dust," he said in explaining why he thought it would make better men of his investigators if they scrambled on their own for the stuff.

His exquisite concern for the national security was not matched by National Security Adviser Zbigniew Brzezinski, who on getting one of the documents straightaway called up Billy and told him to cool the oil deal with the Libyans outlined therein.

It is hard to know whether it was the attorney general or the President's lawyer who spoke out publicly on the case on May 29.

At a news conference, Civiletti said that it has "taken longer than appropriate." This could have been the attorney general prodding his underlings to find the information he was holding behind his back. Or it could have been the President's friend winding up to wind down a case that was an embarrassment to a presidential candidate.

Finally, on June 6, he coughed up to his investigators. There was nothing political about the timing, he insisted to Sen. Richard Lugar (R., Ind.), who is the most focused questioner on the committee, and who noted that the President had been, until June 3, engaged in "primary after primary."

"There is always some kind of an election or a primary," Civiletti replied loftily, "you have to disregard it."

The President's lawyer and the attorney general went arm-in-arm to the White House on June 17. The attorney general told the President he would not discuss his brother's case with him. The President's lawyer, however, told him that Billy was "a damn fool" not to register.

Purists pounced on the exchange as a howling example of impropriety, which it was not. In the real world, attorneys general tell Presidents that a member of the family might go to jail.

Where Civiletti came to grief was when he lied at his July 24 news conference, when he echoed the White House claim of "no contact."

This was later corrected by the President himself, and Civiletti had to come back the next day and concede that he had made unappreciated "lawyer-like distinctions." It's the one thing he regrets about the whole episode.

The only new thing Civiletti revealed to the committee was that he had received an accolade from the President, one which was delivered by Carter's Georgia guru, Charles Kirbo. The President, Kirbo told him, two days after the second unfortunate news conference, "asked me to tell you to keep your chin up, and he has great confidence in you."

What Lugar at length brought out was that Civiletti was merely following his leader in ambivalence. Jimmy Carter, as leader of the Western world, deplored his brother's tight friendship with a terrorist country. Nonetheless he urged him on, cabling congratulations after Billy's first trip to Libya, and asking him to bring the Libyan representative to the White House to negotiate the hostages' release.

It's no wonder Civiletti switched hats so often in the Billy affair. Everyone was doing it.●

JAMES A. BYRNE, IN MEMORIAM

HON. CLEMENT J. ZABLOCKI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. ZABLOCKI. Mr. Speaker, like many of my colleagues whose service in this body dates back to 1952 and even beyond, I was greatly saddened to learn of the recent death of former Congressman James A. Byrne, who represented the Third District of Pennsylvania with distinction for two decades.

Jim Byrne was not only a staunch and effective spokesman for his constituency, which was the primary focus of his concern throughout his political career, but he was also a valiant fighter in behalf of causes in which he deeply believed, involving both national and international affairs. Some of those causes, I might add, were not always supported with universal acclaim—and I include both civil rights legislation and foreign aid in that category—but he was never a man to run from or avoid a political controversy.

Jim Byrne was, in fact, an old-fashioned political leader, in the best sense of that term. He worked his way up through the ranks of his party, beginning as a Democratic committeeman of the 31st ward of Philadelphia, and ended his career as a respected member of the Armed Services Committee and senior Member of this body. Although he was a politician with a world view, until the end, a loyal, responsive and authentic representative of his people.

To his wife, Virginia, and his surviving brother and sister, I extend my deepest sympathy, as well as my personal regret for the loss of a valued colleague and a long-time friend.●

SHARP DROP IN AMERICAN AUTO SALES

HON. WILLIAM M. BRODHEAD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BRODHEAD. Mr. Speaker, Theodore S. Holtz, mayor of the city of Garfield Heights, Ohio, submitted the following material to the Auto Task Force. Mayor Holtz describes some of the extreme measures his city has been forced to take in response to the recent drop in American auto sales. I would like to share his letter with my colleagues.

The letter follows:

THE CITY OF GARFIELD HEIGHTS,
Garfield Heights, Ohio, August 28, 1980.

THE AUTOMOBILE TASK FORCE,
c/o Hon. WILLIAM BRODHEAD,
Longworth House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE BRODHEAD: Due to extremely limited funds available for the purpose of travel of officials of the City of Garfield Heights, Ohio, I am unable to appear to give testimony before the Automotive Task Force Hearings that are scheduled to begin in Detroit on Tuesday, September 2, 1980, at 10:00 A.M., nor am I able to send a representative.

In lieu of personal appearance by the undersigned, or a representative, I am forwarding this written appearance to you for your information and, hopefully, to be included in the record of the hearing.

The City of Garfield Heights is a community of approximately 40,000 people and is made up, in large part, of middle and upper middle-class persons, many of whom work as skilled and technical employees.

This week, it has been necessary for me to issue a notice of layoff to our Service Department employees, and others, effective September 15, 1980, due to a critical, financial situation. One reason for the crisis in our community stems from the fact that our income tax receipts are down approximately $110,000.00 from the anticipated collection made at the beginning of the year.

We have, already during the course of the year:

Refrained from replacing police cars this year and may suffer serious future consequences as a result.

Refrained from replacing three Service Department employees during the summer months when they were most necessary.

Refrained from replacing two Policemen.

Refrained from replacing a Fireman.

Laid off a Recreation Department employee in the height of the summer season.

My layoff notice, that will be effective September 15th, will provide as follows:

1. Effective September 15th, all overtime sewer calls will be discontinued. We will assist our residents with sewer problems but all calls will be done during the regular daytime hours.

2. We will layoff one Driver and one Laborer in the Sewer Department.

3. We will layoff one Rubbish Crew, one Driver and two Laborers.

4. Effective with the layoffs, the Task System, in the Service Department, will be abolished and all crews will return to a regular 8:00 A.M. to 4:30 P.M. day.

5. Heavy rubbish will only be picked up once a week.

6. If further layoffs are necessary, we will consider rubbish pick up once every two weeks.

7. We will layoff a Police Dispatcher.

8. Further cuts in the Police and Fire Departments are anticipated, probably resulting in layoffs of Dispatchers and perhaps some uniformed men from each Department.

9. We will layoff Sign Crew personnel.

10. As the year progresses, other cuts may be required.

Our Finance Department informs me that, for the first eight months of this year,

we are down $110,000.00 from income tax collections only, as I have indicated previously in this report. We note, in this connection, that we have substantial employment of our residents in the municipalities of Brook Park, Twinsburg and Walton Hills, which, of course, are the municipalities that have large automotive employers. Based on the information of our Finance Department, I am convinced that a great portion of the declining income from income tax is as a direct result of the layoffs in the automotive industry. I am also convinced that much of our fiscal problems can be directly traced to the unsettled condition that we are all aware of in the automotive field.

I trust that the foregoing information will be of some use to you and your Committee.

Respectfully submitted,

THEODORE S. HOLTZ, *Mayor.*●

TRIBUTE TO WILLIAM M. COLMER

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. RHODES. Mr. Speaker, we all are saddened by the passing of a former colleague, William M. Colmer, who served in the House for 40 years.

Bill Colmer was elected 20 times from Mississippi, and served the longest of any Member sent to Congress from that State. He had a distinguished career, capped by his chairmanship of the House Rules Committee.

It was my privilege to have served with Bill Colmer during much of his time in the House. I knew him as an astute Member, and as a good personal friend. He held strong opinions on many issues. On both sides of the aisle he was held in high respect for his integrity, and he had a host of friends in the Congress.

Bill Colmer was the epitome of the term "statesman." He was a firm believer in fiscal responsibility and a supporter of the free enterprise system. He served Mississippi and the Nation well for four decades, and remained active in the political process after he returned to his beloved Pascagoula. Congress was enriched by his long and dedicated service. I offer my condolences to his wife, Ruth, and his two sons.●

THE SMOKING HABIT

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. DRINAN. Mr. Speaker, Dr. William Bennett, associate editor of the Harvard Medical School Health Letter, has written an excellent article describing the last 100 years as "The Cigarette Century." Until the 1870's cigarettes were a luxury item consumed by few; today millions of Americans are addicted to the smoking habit.

This article and a supporting article entitled, "Pay the Piper" chronicle the history of the cigarette industry in the United States and also describe in very lucid terms the various physiological effects of cigarette smoking, explaining why people continue to smoke despite the known health risks.

The mounting evidence of these risks has indeed made clear, as Dr. Bennett states, that "smoking a cigarette will never again be regarded as altogether normal behavior." Let us hope that this same evidence will make this the last "cigarette century."

I commend to my colleagues these outstanding articles, published by the American Association for the Advancement of Science in Science 80:

THE CIGARETTE CENTURY

Eli Whitney, Thomas Alva Edison, Henry Ford, Alexander Graham Bell, James Bonsack, Wilbur and . . . Wait a minute. James Bonsack? Yes, James Albert Bonsack of Roanoke County, Virginia.

Although he has left but a faint trace in the history books, Bonsack belongs to that list of American tinkers and inventors who made an indelible mark on modern civilization. Just a hundred years ago—on September 4, 1880, to be precise—Bonsack filed for a patent on his design of a cigarette-rolling machine. Bonsack's complicated but clever invention made cheap cigarettes a possibility; and before long, a new type of tobacco made them a necessity for millions of people.

Until the 1870s, manufactured cigarettes were a minor item—a kind of dandified luxury—in the American tobacco trade. In 1869, fewer than two million were produced, all of them hand-rolled. But demand soon began to increase, and in 1875 the firm of Allen & Ginter offered a prize of $75,000 for a machine to do the job.

James Bonsack, a gifted teenager well acquainted with the machinery in his family's woolen mill, set out to win the award. He interrupted his efforts only briefly to attend Roanoke College, then dropped out, over his father's protests, to keep working on the invention. A month before his twenty-first birthday, James filed for his first patent. The "Bonsack," as his machine came to be known, poured a uniform flow of tobacco through a device resembling the wool feeder of a carding machine onto a thin strip of paper. The paper was rolled into a single, continuous tube. As it emerged from the machine, the tobacco-filled tube was cut into equal lengths.

The machine worked. It was improved. Father and son reconciled and set up a joint stock company to produce more machines and lease them to tobacco firms.

In retrospect, it seems surprising that there was a market for cigarettes. In the United States, per capita consumption of tobacco products had fallen for nearly a century, and it appears to have reached an all-time low of 1.8 pounds in the early 1870s. And yet, even in the decade before Bonsack filed for his patent, demand for cigarettes grew some thirtyfold. Why did a waning vice, subject to a good deal of mid-Victorian opprobrium, suddenly reestablish itself? And why did the impoverished tobacco country of Piedmont Virginia and North Carolina—now known as the "Old Bright Belt," where most cigarette tobacco is grown—rapidly become one of the most prosperous agricultural regions of the world?

Fairly abruptly, after the Civil War, methods of tobacco processing changed in the Old Bright Belt. As a result, smoke from the tobacco grown there became relatively easy to inhale, and nicotine, when delivered by inhalation, is a highly addicting substance. The cigarette happens to be the ideal means for obtaining manageable doses of inhaled nicotine. Mechanization, clever advertising and marketing techniques made their contribution, but they never would have sold much dried cabbage.

Nicotiana is an American plant that was transported around the world by the European explorers. When the Jamestown colonists arrived in the New World a century after Columbus, they brought the tobacco habit back with them. But where they settled they found an altogether harsh-tasting species of tobacco—just one more hardship in a generally tough existence. Then, about 1612, John Rolfe imported seed of a milder variety from one of Spain's Caribbean colonies. This tobacco did well in the sandy Virginia soil, and within a few years its smoking qualities were improved when a neighbor of Rolfe's began to cure his leaves by hanging them instead of stacking them on the ground. Curing is a process in which harvested tobacco is slowly dried; it removes excess starch and permits other chemical reactions, which lead to a milder smoke. The quality of the smoke is very sensitive to the rate and temperature of curing.

Tobacco grown in the Old Bright Belt became known for its mildness—mainly a result of the nitrogen-poor soil—but not until the 19th century did improvements in curing methods yield a leaf with smoke mild enough to be routinely inhaled. The first steps were made when it was discovered that heating tobacco at just the right time turns the leaf a bright yellow (hence the name "bright" tobacco), a color associated with a mild and pleasant smoke. Open flames of wood or charcoal were used for the purpose at first, but they imparted their own flavor to the curing leaves.

In the early 1800s, a few attempts were made to isolate wood smoke from the tobacco by building fires in furnaces outside the curing barns and leading the heat in through flues. That method was unsuccessful mainly because construction of the ducts was clumsy, and disastrous fires often destroyed barn and crop.

Safely designed flues, developed immediately after the Civil War, made all the difference. With flue curing, mild bright tobacco could be reliably turned out, and by 1880, as demand continually grew for the resulting product, this method became standard in the Old Bright Belt. What the tobacco growers and manufacturers could not have known was that the change in curing method had significantly altered the chemistry of their product. The smoke was not only mild, it was slightly acid instead of alkaline. Thus, the tobacco that was poured into Bonsack's new machines, and has been the chief component of cigarettes ever since, was unlike virtually any that had been available earlier, and the slight shift from alkaline to acid smoke radically changed the nature of the smoking habit.

Nicotine passes easily through living tissue only when it is in an alkaline medium. Under even slightly acid conditions, virtually every molecule of nicotine carries an electric charge that prevents it from crossing membranes. Pipe and cigar tobaccos, cured by age-old methods, yield an alkaline smoke, from which nicotine can be gradually absorbed in modest quantities through the mucous membranes of the mouth. The alkalinity itself makes the smoke irritating and deters inhalation.

By contrast, the slight acidity of cigarette smoke is not readily neutralized by saliva, so relatively little nicotine can be absorbed if the smoke is just held in the mouth. But because cigarette smoke is not highly irritating, it can be drawn into the lungs—indeed, it must be for absorption to occur. On the lungs' vast surface the acidity is neutralized; the nicotine loses its electric charge and passes rapidly into the bloodstream.

From the lungs, nicotine-loaded blood is carried back to the heart, which gives a squeeze and sends about 15 percent of the inhaled dose directly, and undiluted, to the brain. The brain, in turn, takes up on the first pass virtually all of the nicotine carried to it. The whole journey takes seven seconds. In comparison, heroin injected into the forearm takes about 14 seconds to reach the brain, and on its way, the dose becomes diluted by blood from other parts of the body.

Conventional explanations of cigarette smoking have called it a form of psychological dependence, in which the child's pacifier and security blanket are rolled into one little white tube for grown-up use. There is some reason to believe that pipe and cigar smoking reflect more a psychological need than a physiological one. But the cigarette habit is extremely potent and often very difficult either to give up or substitute with other crutches. Adolescents who smoke more than one cigarette, according to a British government study, have only a 15 percent chance of remaining nonsmokers. And when, after years of smoking, people try to kick the habit, they suffer from physical and psychological symptoms that persist for at least a couple of weeks, and some of their afflictions, including drowsiness and craving, usually get worse after ten days or so. For most, craving persists at least a month, and for about a fifth it continues five to nine years after they quit.

Only recently, with the work of British psychiatrist Michael A. H. Russell of the Maudsley Hospital in London, American psychologist Stanley Schachter of Columbia University, and other investigators, has the addictive nature of nicotine been clarified. by now there is little doubt that the drug, absorbed in the right way, creates a state of drug dependency. Confusion on the point arose and has persisted because nicotine is not like many other addicting substances: It does not interfere with "normal" behavior and thinking. Quite the contrary, cigarette smokers report that they need to smoke in order to focus their attention, to avoid drowsiness and a sense of blurred consciousness. The objective changes associated with smoking are also those of increased arousal, even though most smokers report the subjective effect as relaxation. In general, nicotine resembles stimulants, such as caffeine and amphetamine, more than the narcotics.

Russell hypothesizes that nicotine becomes highly addictive only when it is inhaled. What an inhaling cigarette smoker receives from his or her habit is a series of nicotine jolts, and the smoker seeks the jolts for two reasons. First, they give an ill-defined, but generally pleasurable sensation, and the average cigarette smoker can easily obtain 70,000 to 100,000 fixes a year—two to three hundred each day. Such frequent rewards serve as powerful reinforcers of cigarette-smoking behavior. Second, administering nicotine in brief, concentrated jolts is the best way to keep high levels in the brain—more so even than intravenous injection, which inevitably results in dilution of the dose.

Nicotine addiction requires the smoker to accept a certain compromise, however. At the same time that the addict wants to rise brain levels of nicotine, he or she must guard against elevated levels elsewhere the body, lest nauses and wooziness result from peripheral effects of the drug. Even though smokers become metabolically accustomed to nicotine, they have their limits. Indeed, most seem to be more careful to keep themselves below a maximum level of blood nicotine than above a minimum.

But as blood levels fall, so do brain levels; and withdrawal sets in. Beginning as craving and irritability, nicotine withdrawal proceeds to a panoply of physiological as well as psychological symptoms. Brain wave patterns change, levels of certain hormones diminish, heart rate and blood pressure fall. Abstinent smokers often complain of nausea, headache, constipation, or diarrhea. They gain weight. Inability to concentrate is perhaps the most common and persistent subjective complaint, and it is accompanied by objective deficits in performance of tasks that require vigilance or tracking.

Once the smoking habit is well established, preventing withdrawal becomes the major motivation for continuing it, as Schachter showed in a series of studies conducted at Columbia during the 1970s. He found that chronic smokers are not made less irritable than other people by their habit; rather, they are protected from becoming more irritable. In one of his more naturalistic experiments conducted by Deborah Perlick, subjects sat in a laboratory decorated to look like a living room in Queens and listened to recordings of airplanes passing overhead. Allowed to smoke at will, they responded just like nonsmokers to the roaring and screeching. But kept from smoking or allowed to smoke only low-nicotine cigarettes, they became much more annoyed than before, and more so than nonsmokers. Schachter concluded from this experiment, and others using such irritants as electric shocks, that chronic cigarette smokers maintain their habit not for any pleasure it adds to their lives, though they may rationalize that they do, but rather to avoid the unpleasantness that comes from not smoking.

The rate at which a person smokes seems to be largely determined by the rate at which nicotine levels fall, and a major variable affecting the rate of nicotine removal from the body is the acidity of the urine. At any given moment, about a third of the nicotine molecules in the blood do not carry an electric charge; they pass freely through membranes, and that is how they travel into the urine. If the urine is even slightly acid, the nicotine is immediately charged and thus trapped; it cannot freely return to the bloodstream as it would if the urine were alkaline.

The times when smokers are most likely to light up are quite predictably those times when urine is acid. Psychological stress, for example, acidifies the urine. So do cocktail parties. So does eating; urine is distinctly acid for half an hour or so after a meal. The one major exception to the rule appears to be morning. Although urine is acid in the morning, smokers often do not smoke until later in the day. There probably are two reasons for this paradox: Most smokers are more sensitive to side-effects of nicotine in the morning, and those who want to cut down do so by postponing the first cigarette of the day.

As many as 90 percent of cigarette smokers, by some estimates, would like to cut down, or quit, and many have. The reason for quitting is also the reason why it is so difficult to quit. Cigarette smoke is inhaled, and inhaled tobacco smoke can be lethal (see box).

But nobody knew that a hundred years ago, least of all James Buchanan Duke, the real father of the American cigarette industry. Duke began his career in the tobacco trade in 1865, at the age of nine. That year, his father, Washington Duke, a reluctant Confederate soldier who had been opposed to slavery, returned from the war to find his farm despoiled of everything except—miraculously—a barn full of bright yellow tobacco laid down before he left for duty. With his family's help, the elder Duke pulverized the tobacco, packed it in large muslin bags stenciled with his new brand name, "Pro Bono Publico," and loaded the bags on a wagon. Then he harnessed two blind mules that he bought on leaving the army and set out with his son to sell the tobacco. It was good stuff, and they came home with enough money to stay in business.

The Duke concern grew, and at the age of 18, Buck, as the boy was known, became a partner. After ten years of selling its smoking tobacco, the Duke firm was substantial but hardly in a league with its chief competitor, Bull Durham, so Duke began manufacturing cigarettes. He leased several Bonsacks, installed the machines, improved them, and began to undersell other manufacturers. In 1889, W. Duke & Sons sold a billion cigarettes, 40 percent of the country's output. And one year later, Duke, who never smoked his product, took over the United States' entire cigarette industry. His monopoly, The American Tobacco Company, survived until 1911, when the Supreme Court found it to be in violation of the Sherman Antitrust Act. Americans smoked just over ten billion cigarettes that year.

Four companies emerged from the old trust: a smaller American, Liggett & Myers, Lorillard, and R. J. Reynolds. With Philip Morris and Brown & Williamson, these companies continue to dominate an industry that last year poured out 704 billion cigarettes, of which 90 percent were smoked in the United States by some 54 million adults and five million adolescents.

The cigarette century is clearly at an end. Smoking a cigarette will never again be regarded as altogether normal behavior. But it is much too early to announce the demise of an industry that brought in $17 billion last year.

PAYING THE PIPER

When experiments on animals turn up carcinogens in our favorite foods and everyday consumer items, some critics invariably dismiss the data as coming only from animals. The tobacco industry has, of necessity, taken the opposite tack; for years it has argued that the evidence incriminating cigarettes shows merely a "statistical association" because it comes from studies of human deaths, not animal experiments. By now, though, the evidence that cigarettes shorten life is overwhelming; the causal connection is as firmly established as any in medicine. "Indeed," writes John Cairns, a molecular biologist and expert on cancer, "in retrospect, it is almost as if Western societies had set out to conduct a vast and fairly well controlled experiment in carcinogenesis, bringing about several million deaths and using their own people as the experimental animals."

But the cancer connection, which was the most obvious and easiest to establish, is not the major cause of death in smokers. Rather, it is coronary heart disease. Second comes lung cancer. General deterioration of the lung tissue is third. After these three major causes, a variety of other diseases and cancers make a further contribution to the high death rate of smokers. Cancers of the larynx, mouth, esophagus, bladder, kidney, and pancreas are all more common in smokers than nonsmokers. So are ulcers of the stomach and intestine, which are more likely to be fatal in smokers.

Women who smoke during pregnancy run a significant risk that their babies will die before or at birth. The newborns are likely to weigh less, to arrive prematurely, and to be more susceptible to "sudden infant death."

The risk of smoking is, in general, a 70 percent increase in the probability of dying at any age—100 percent for a two-pack smoker. As a rule of thumb, each cigarette knocks about five minutes off the smoker's life. For an average habit, that adds up to six or seven years (more for some, less for others). In the meantime, smokers lose more work days to illness than nonsmokers and spend more time in the hospital.

The ill effects of smoking are mostly, but not entirely, a consequence of the amount of inhaled smoke. Virtually all cigarette smokers inhale, even those who say they do not, and they continue to do so when they switch to pipes or cigars.

Cigarette smoke is loaded with poisons and carcinogens. The "tars," particles of organic matter, are largely responsible for causing cancer, or, perhaps, for promoting the growth of tumors started by other agents. Nicotine and carbon monoxide are thought to be the main cause of heart disease; there is debate about their relative importance.

In response to public worry about the health hazards of smoking, cigarette manufacturers over the last decade have progressively lowered the tar and nicotine content. These "lighter" brands appear to be effective in reducing rates of lung cancer. There may be a similar effect for heart disease, but the evidence is not as good. Smokers of low-tar cigarettes appear to get no protection from other respiratory illnesses.

In order to elicit recommendations for his 1981 report on smoking, Surgeon General Julius B. Richmond recently called a conference to set research priorities for low-tar cigarettes. One area of concern was quickly established: The light cigarettes may pose a risk for pregnant women. Dr. Jesse Steinfeld, dean of the Medical College of Virginia in Richmond, speculates that the villain in low-tars may be carbon monoxide, since it "binds hemoglobin and may restrict the oxygen a baby needs from the mother's blood."

Carbon monoxide may turn out to be harmful to adults as well. In fact, questions abound on the safety of light cigarettes. We still do not know whether smokers who switch to low-tar cigarettes smoke more and inhale more deeply. If they do, those smokers are at least partly offsetting the presumed advantage of switching. Another questions concerns whether the availability of these "safer" cigarettes has encouraged a large number of young people who otherwise would not have smoked to begin the habit. All in all, we are still far from knowing whether the low-tar, low-nicotine cigarettes will ultimately prove to be a Good Thing.●

HEROISM OF ARTHUR S. FANTROY

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. STOKES. Mr. Speaker, I rise on this occasion to bring to the attention of my colleagues a story of courage and selfless determination.

Recently, Mr. Arthur S. Fantroy of Cleveland, Ohio, received the 14th Annual Helicopter Heroism Award from the Avco Corp. and the Aviation/Space Writers Association. This honor followed the Coast Guard's Silver Lifesaving Medal for "Courage and Unwavering Determination" in rescuing a downed airplane pilot in Lake Erie. In January 1979, a pilot crashlanded his aircraft on an ice floe in the lake. A Coast Guard helicopter failed in a rescue attempt because of adverse weather conditions.

Mr. Fantroy, owner of Cleveland Air Transport, determined to pursue his own rescue effort. His first attempt failed because of weather, but the approach of a severe storm convinced him of the desperate need to try again. Flying at minimum altitude, he conducted a thorough search, ignoring fatigue and a steadily diminishing fuel supply. Siting the downed aircraft, he demonstrated extraordinary flying skill in boarding the injured pilot while using the throttle of his helicopter to insure that the full weight of his craft did not settle on the delicate ice. Mr. Fantroy then flew his passenger to a waiting ambulance at Lost Nation Airport. He landed with less than 5 minutes of fuel left in the helicopter's tanks.

Mr. Speaker, this kind of dedication and courage are all too rare in our modern society. I ask my colleagues to join me in extending congratulations and admiration to Mr. Fantroy for his heroism.●

POSSIBLE AMENDMENT TO THE SUPERFUND LEGISLATION

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. WYDLER. Mr. Speaker, I am strongly considering offering the attached legislation as an amendment to the superfund Florio bill, which is scheduled for consideration later this week. It is designed to permit an orderly identification and cleanup of toxic chemical waste dump sites which endanger public health. It is not meant to be a replacement for the legislation on which my colleagues have labored so long and hard. Instead, I hope my attempt to establish a legal basis for EPA action in this area will complement these efforts.

My amendment, entitled the "Toxic Chemical and Hazardous Waste Research and Development Act of 1980," approaches the toxic chemical dump problem by establishing a division in the Environmental Protection Agency whose sole responsibility will be to study waste sites and to make recommendations regarding their cleanup. An advisory board, which will insure that the expertise of industry, the academic community, and the rest of the Government are readily available to the new EPA office, would also be established. Much is being said but little is actually known about these abandoned sites. This amendment would permit us to learn how big a problem we really do have and to make plans for cleanup at the earliest possible date.

Our 1976 act, the Resource Conservation and Recovery Act (RCRA), established stringent requirements for handling and disposing of hazardous wastes produced after the date of passage, but did not address the problem of Love Canal and other toxic chemical dumps which were closed before the date of passage. In spite of the lack of legal authority to act on the problem the Environmental Protection Agency has been making unsubstantiated statements about the number of love canals which are scattered around the country and about the threats they pose to human health and safety.

This amendment would for the first time give the Environmental Protection Agency the tools to learn how serious the problem really is to go with their responsibilities to propose solutions to the problems they find. The new division created under the act, the "Office of Remedial Research" will have an initial assignment to identify the major closed and abandoned chemical and hazardous waste dump sites in the country and to inventory the type and condition of waste in the site. It would also identify what known technologies can be used to clean up specific sites, and make research recommendations regarding sites with special problems. The report containing this information would be submitted to the office's advisory board. Both the EPA report and the board's critique of it would be submitted to the Congress with recommendations for further action.

This type of ordered approach is the best way to protect citizens who unknowingly live near these dumps and the best way to lay to rest the bogus claims that there are literally tens of thousand of love canal dump sites littering the countryside.

I would expect the work under the current version of the superfund legislation and the work under this amendment to go on simultaneously. In no way would I want to slow down the remedial work to be done on known dump sites. Instead, I would hope the information gained through the inventory activity be used to make the cleanup under superfund more effective and more comprehensive.

The text of the bill follows:

H.R. 8104

A bill to amend the research and development provisions of the Resource Conservation and Recovery Act of 1976 to provide for a study of the problem of toxic chemical and hazardous waste and for research in and development of possible solutions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Toxic Chemical and Hazardous Waste Research and Development Act of 1980".

SEC. 2. (a) Section 1002(b) of the Resource Conservation and Recovery Act of 1976 is amended by striking out "and" at the end of paragraph (5), by redesignating paragraph (6) as paragraph (7), and by inserting after paragraph (5) the following new paragraph:

"(6) it is necessary to conduct further research in and development of possible technological solutions to toxic chemical and hazardous waste problems; and".

(b) Section 1003 of such Act is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and", and by adding after paragraph (8) the following new paragraph:

"(9) promoting a national research and development program which will study the extent of toxic chemical and hazardous waste problems, conduct a complete investigation of dumpsites which may contain significant volumes of toxic chemical and hazardous wastes, and recommend appropriate technology to be applied to clean up such dumpsites.".

(c) Section 1004 of such Act is amended by redesignating paragraphs (34) and (35) as paragraphs (35) and (36), respectively, and by inserting after paragraph (33) the following new paragraph:

"(34) The term 'toxic chemical' means a liquid which upon contact causes substantial harm to human beings, including not only substances which cause death but also those which cause disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations.".

SEC. 3. (a) Section 8001(a) of the Resource Conservation and Recovery Act of 1976 is amended by striking out "and" at the end of paragraph (12), by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; and", and by adding after paragraph (13) the following new paragraph:

"(14) specifying the dumpsites in the United States which contain toxic chemical or hazardous wastes in sufficient volume to present a clear danger to public health, and identifying the most appropriate technological solutions to health and environmental problems caused by toxic chemical or hazardous waste.".

(b) Section 8001(b)(1)(A) of such Act is amended to read as follows:

"(A) In carrying out his functions pursuant to this Act, and any other Federal legislation respecting solid waste, discarded material, or toxic chemical and hazardous waste research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.".

(c) Section 8002 of such Act is amended by redesignating subsections (l) and (m) as subsections (m) and (n), respectively, and by inserting after subsection (k) the following new subsection:

"(l) Toxic Chemical and Hazardous Waste.—(1) The Administrator shall establish, within the Environmental Protection Agency, an Office of Remedial Research, to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The Office of Remedial Research shall undertake a comprehensive study and analysis of, and publish a report on, dumpsites in the United States which contain significant volumes of toxic chemical and hazardous wastes.

"(2) The report shall include—

"(A) an enumeration of all dumpsites which (i) contain toxic chemicals or hazardous waste in sufficient amounts to present a clear danger to public health, and (ii) were closed before October 30, 1976, setting forth in such enumeration a description of the location of, type of waste contained in, and specific danger presented by each dumpsite;

"(B) an assessment of the status of technology generally applied to the disposal of toxic chemical and hazardous waste;

"(C) recommendations as to what technology should be used to clean up the dumpsites enumerated under subparagraph (A);

"(D) a description of problems at specific dumpsites requiring research and development for their resolution;

"(E) a plan for research, development, and demonstration respecting the findings of the study, including recommendations regarding the appropriate government and private sector roles under the plan; and

"(F) legislative recommendations resulting from the study to appropriate committees of Congress.

"(3) The Administrator shall provide to the appropriate committees of Congress a complete statement of the known dumpsites enumerated in paragraph (2)(A) not later than April 1, 1982.

"(4) The Administrator shall complete the research, studies, and report required under this subsection not later than October 1, 1982.

"(5)(A) There shall be created an independent Toxic Chemical and Hazardous Waste Advisory Board, comprised of industry, academic, and government toxicologists, which will review the findings and recommendations in the report. The members of the Advisory Board shall be named by the Director of the Office of Science and Technology Policy.

"(B) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Advisory Board in carrying out this subsection and shall provide such information as the Advisory Board deems necessary to carry out this subsection.

"(C) All data and support research which was used in the compilation of the Administrator's report on toxic chemical and hazardous wastes shall be made available to the Advisory Board.

"(D) All members of the Advisory Board shall be entitled to reimbursement for travel and other expenses actually incurred, including a per diem allowance in accordance with section 5703(b) of title 5, United States Code, while engaged in performing service as such members.

"(6) Both the Administrator's report on toxic chemical and hazardous wastes and the Advisory Board's review of such report shall be submitted to Congress not later than February 1, 1983.".

(d) Section 8002(n) of such Act (as redesignated by subsection (c) of this section) is amended—

(1) by striking out "other than subsection (j)" and inserting in lieu thereof "other than subsections (j) and (l)"; and

(2) by adding at the end thereof the following new sentence: "There is authorized to be appropriated not to exceed $15,000,000 for the fiscal year 1982 to carry out subsection (l).".

(e) Section 8003(a) of such Act is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof a period, and by adding after paragraph (9) the following new paragraph:

"(10) research and development activities respecting toxic chemical and hazardous waste.".

(f) Section 803(e)(1) of such Act is amended to read as follows:

"(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, toxic chemical and hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of relevant research, investigations, experiments, surveys, studies or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.".●

EIGHTIETH BIRTHDAY OF HON. CLAUDE PEPPER

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. CONTE. Mr. Speaker, I join my colleagues in extending to CLAUDE PEPPER warmest birthday wishes on the occasion of his 80th birthday.

This Nation, this Congress, and, in particular, the State of Florida are so much richer for having had the privilege of sharing in CLAUDE PEPPER's compassionate service to all mankind.

CLAUDE's more than 50 years of public service have produced countless contributions to the well-being of this Nation's needy—people of every age and every walk of life have been beneficiaries of his generous efforts.

No one of our colleagues would ever argue that CLAUDE is but a skilled and wily legislator. His most recent efforts have been geared toward the welfare of older Americans. Through his chairmanship of the Select Committee on Aging, CLAUDE has shaped and guided through Congress vital and needed reforms. These include improvements in health and social programs, including liberalization of the mandatory retirement law and a program designed to end abuses in the sale of health insurance to the elderly. CLAUDE is a living, vibrant example of the productive capability of all Americans regardless of age. It is from the heart that Chairman PEPPER achieves such great accomplishments.

Throughout CLAUDE's 14 years in the Senate and his 18 years in the House, he has worked as hard as any man could work for his people. He is a celebrated representative of Florida's citizens, particularly the elderly, the poor, and the disenfranchised. Throughout the South, he was known for his unrelenting efforts to achieve racial justice long before the civil rights struggles of the 1960's made it acceptable to do so. Through his efforts, the Meals on Wheels program was extended to homebound elderly. He also played key roles in obtaining

Amtrak discounts for older citizens and in building programs to combat crime in public housing.

CLAUDE believes in the integrity of all people regardless of age and family circumstance. He continues to work hard for the deinstitutionalization of elderly citizens kept in nursing homes who could, in fact, live in their own homes with a modest amount of home care. He continues to wage a fervent campaign to provide alternatives to nursing homes.

From the New Deal to the 1980's, CLAUDE PEPPER has served America with distinction. I am proud to count myself among his colleagues and wish him tremendous happiness on his 80th birthday and many wishes for many more productive years in the service of his country.●

JOSEPH HANDLEMAN HONORED

HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BLANCHARD. Mr. Speaker, recently I had the opportunity to attend a dinner honoring Joseph Handleman, a prominent former Detroit industrialist, community leader, and president of the American Red Magen David for Israel (ARMDI). The dinner was given by the Michigan Chapter of the ARMDI at Adat Shalom Synagogue in Farmington Hills, Mich.

Mr. Handleman has been active in numerous Israel-related and other Jewish causes for many years. I am enclosing an article from the July 25, 1980, edition of the Detroit Jewish News which further describes the dinner for Mr. Handleman, as well as Mr. and Mrs. Handleman's many accomplishments.

The article follows:

NATIONAL HONORS FOR JOSEPH HANDLEMAN AT MAGEN DAVID ADOM DINNER ON SEPT. 7

National honors for Joseph Handleman, prominent former Detroit industrialist, in recognition of six years of services to the Israel cause, will be honored here at the annual dinner of the Michigan Chapter of American Red Magen David for Israel Sept. 7 at Adat Shalom Synagogue.

Announcing the awards dinner, in which Mrs. Handleman will share the honors, Dr. John Mames, Michigan MDA chairman, said that prominent representatives of the Israel and American counterparts of the Israel equivalent of the Red Cross will be here to express their appreciation for the nearly six years of Handleman's chairmanship of the movement.

Handleman, who was presented with the ARMDI International Humanitarian Award "for his dynamic leadership," has been active in other Jewish causes as well.

The Handlemans have established the Joseph and Sally Handleman Communications Center at the Dropsie University in Philadelphia, the Handleman Institute of Recorded Sound at the University of Miami School of Music and the Laboratory of Languages at the Hillel Day School.

Mrs. Handleman, the former Sally Kabaker, has a lifetime of family identification in scores of Zionist, pro-Israel and communal movements. She shared with her husband and her family roles in Hadassah, the Jewish National Fund and the MDA. The Handlemans contributed a fully equipped ambulance now in operation in Israel to the Magen David Adom.

Dr. Mames announced also that a committee of prominent Detroiters is being mobilized to plan the event in honor of the Handlemans.●

THE CIA VERSUS THE CONSTITUTION—PART 2

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. EDWARDS of California. Mr. Speaker, on September 3 the House Judiciary Committee reported H.R. 5615, the Intelligence Identities Protection Act, over the opposition of myself, the chairman of the committee and several other senior Democrats on the committee. We believe the section of the bill which criminalizes disclosure of unclassified information by private citizens is unconstitutional. We are not alone in that belief. Numerous constitutional law experts and members of the press agree with us. I refer my colleagues to the following material:

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, Mass., September 8, 1980.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: Thank you for inviting me to offer my views on § 501(c) of the Intelligence Identities Protection Act of 1980, S. 2216.[1] I believe that this provision, if made law, would violate the First Amendment.

There is no doubt, of course, that "the Executive [may] . . . promulgat[e] and enforc[e] . . . executive regulations[ ] to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense." *New York Times Co. v. United States*, 403 U.S. 713, 729-30 (1971) (Stewart, J., joined by White, J., concurring). Nor is there any doubt that "Congress [may] . . . enact . . . criminal laws to protect government property and preserve government secrets." Id. at 730. But the First Amendment severely circumscribes the Government's power to achieve such ends by punishing journalists and other private citizens for repeating or publishing truthful information either (1) lawfully derived or deduced from information that has already found its way into "the public domain," *Cox Broadcasting Co. v. Cohn*, 420 U.S. 469, 495 (1975), or (2) innocently received as a "leak" from someone with access to classified, or otherwise confidential, government materials. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 837-46 (1978).

The need for secrecy in the foreign intelligence sphere is among the most pressing of governmental interests. Cf. id. at 849 n.[2] (Stewart, J., concurring in judgment). But this cannot obscure either the priority given by the First Amendment to "public scrutiny and discussion of governmental affairs," *id.* at 839 (majority opinion); *New York Times Co. v. Sullivan*, 376 U.S. at 254, 269-70 (1964), or the correlative prinicple that no governmental restriction on "uninhibited, robust, and wide-open" political debate, *id.* at 270, is constitutionally acceptable unless—

(a) the restriction is designed to achieve a compelling governmental objective, and is narrowly drawn to achieve neither more nor less; and

(b) the restriction's enforcement in a given case is shown to be truly essential to achieve that compelling governmental interest.

See *First National Bank v. Bellotti*, 435 U.S. 765, 787 (1978); In re *Primus*, 436 U.S. 412 (1978); *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (per curiam). Section 501(c) quite clearly fails to meet these tests.

The provision's proscriptions—which apply even when the information illegally "disclosed" was lawfully obtained, and even when the only result of its suppression would be to stifle criticism or exposure of alleged governmental ineptitude or wrongdoing—are not limited to cases in which a judge or jury finds that "disclosure" of the information in question has harmed, or is likely to harm, the safety or security of any individual or the success of any specific lawful governmental undertaking. Cf. *Bridges v. California*, 314 U.S. 252, 263 (1941); *Pennekamp v. Florida*, 328 U.S. 331, 347 (1946); *Craig v. Harney*, 331 U.S. 367, 376 (1947); *Wood v. Georgia*, 370 U.S. 375 (1962). The provision at issue would impermissibly penalize unauthorized disclosures without requiring any such showing of actual or probable harm.

It is no answer that the disclosures for which § 501(c) prescribed punishment without requiring such a showing of injury are limited to disclosures made "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States." Indeed, the vague "pattern of activities" requirement demonstrates that the proposed law would be anything but closely fitted with the restriction's ostensible purposes. For disclosures of the identities of our covert agents and operatives abroad, however harmful or threatening, would not be forbidden under § 501(c) unless made "in the course of a [specified] pattern of activities," while revelations that do not imperil any individuals or operations would be punished under § 501(c) whenever made by persons tainted by their association with the forbidden "pattern of activities"—activities that, standing alone, might otherwise be wholly lawful and, in fact, themselves entitled to First Amendment protection. Thus it is also no answer that punishment is limited to disclosures made "in the course of [such] a pattern of activities" with knowledge "that the United States is taking affirmative measures to conceal [an] individual's classified intelligence relationship to the United States." Even under such circumstances—and assuming that any matter so vaguely defined can be "known"—§ 501(c) would not require the Government to prove any causal link between the culpable disclosure and a harm that would justify punishing it.

This mismatch between the Government's chosen means and its professed ends not only dooms § 501(c) on its face but also underscores doubts, independently generated by the provision's history, about its true aims, and, indeed, about those of § 501 as a whole. Cf. *First National Bank v. Bellotti*, 435 U.S. 765, 793 (1978). Needless to say, protecting the image and reputation on governmental officials and agencies, or the smooth operation of governmental programs immunized from public examination and critique, is insufficient justification "for repressing speech that would otherwise be free." *New York Times Co. v. Sullivan*, 376 U.S. 254, 272-73 (1964). Thus, for example, the provision's restrictions on disclousure cannot be justified by the Government's wish to preserve the CIA's "plausible deniability," or to avoid "political outcry" over American covert operations in foreign countries, or otherwise to preserve, among other things, access "to appropriate targets" of recruitment abroad. New York Times, September 6, 1980, at 22 col. 1 (quoting testimony of Frank C. Carlucci, Deputy Director, CIA, before Senate Judiciary Committee on September 5, 1980). Such justifications bespeak purely political purposes beyond the Government's power to accomplish by stifling protected speech. Moreover, such congressional action, frankly targetting for special restrictions on First Amendment activities a readily identifiable group of private citizens—in this case, apparently a group of journalists associated with the Covert Action Information Bulletin—bears a distressing resemblance to past legislation whose purpose to punish dissenters or penalize partisans of defeated enemy causes was evident from the legislation's face or history—and which was hence invalidated by the Supreme Court as a forbidden ex post facto law or bill of attainder.[3]

For the reasons I have sought to articulate above, I believe that § 501(c) would violate the First Amendment if enacted. Accordingly, I recomend that at least this provision of § 501 be deleted from S. 2216.

Sincerely,

LAURENCE H. TRIBE.

[1] The provision reads as follows: "(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information so disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years or both."

[2] Thus, for example, despite the undisputed importance of preserving the confidentiality of a state's judicial disciplinary proceedings, *Landmark Communications, Inc.*, supra, 435 U.S. at 834-36, not even the state's "interest in protecting the reputation of its judges, nor its interest in maintaining the institutional integrity of its courts is sufficient to justify . . . punishment of [unauthorized disclosure]," id. at 841, when such disclosure is made by "third parties" and consists of "truthful information regarding [the] confidential [judicial] proceedings." Id. at 837. The Supreme Court so held "even on the assumption that criminal sanctions do in fact enhance the guarantee of confidentiality," id. at 841, and even when the information at issue has been "withheld by law from the public domain." Id. at 840.

[3] See *United States v. Brown*, 381 U.S. 437, 453, 455-56 (1965) (invalidiating law prohibiting members or supporters of Communist Party from holding union office); *United States v. Lovett*, 328 U.S. 303, 315 (1946) (invalidating law barring those named as subversives in HUAC investigations from federal employment); Ex parte *Garland*, 71 U.S. (4 Wall.) 333 (1867) (invalidating law forbidding supporters of Confederate cause to practice law in federal courts); *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 323 (1867) (invalidating law banning such persons from practice of any profession).

TEXT OF TELEGRAM SENT TO REP. PETER RODINO

TUESDAY, SEPTEMBER 2, 1980.

We believe that section 501(c) of H.R. 5615 (S. 2216), which would punish disclosure of the identity of covert CIA and FBI agents based solely on analysis of unclassified information violates the first amendment and urge that it be deleted as recommended by the House Judiciary Subcommittee on Civil and Constitutional Rights.

Signed,

Elizabeth Bartholet, Harvard University; Vern Countryman, Harvard University; Alan Dershowitz, Harvard University; Steven Duke, Yale University; Thomas I. Emerson, Yale University; Carol E. Goldbery-Ambrose, University of California, Los Angeles; Morton J. Horowitz, Harvard University; Lance Liebman, Harvard University; Frank Michelman, Harvard University; Charles R. Nesson, Harvard University; Richard Parker, Harvard University; Scot Powe, University of Texas; Laurence Tribe, Harvard University; and Bernard Wolfman, Harvard University.

KILLING FREEDOM TO SAVE IT

(By Tom Wicker)

On June 24, a Justice Department spokesman appeared before the Senate Intelligence Committee to oppose a bill making it a crime for anyone to publish information—whether or not classified—leading to the identification of a covert agent of the Central Intelligence Agency.

On Aug. 19, the same spokesman told a House subcommittee that the measure was all right after all. This week the House Judiciary Committee approved it by 21 to 8, with the full House expected to follow suit. The Senate, where a subcommittee will hold hearings today, apparently offers the only chance to stop this dangerous and unnecessary legislation that stabs the First Amendment to its heart.

Why did the Carter Administration change its mind? The Justice Department says its objections were removed when the bill's language was changed to require that disclosures, to be criminal, had to be part of a "pattern of activities intended to expose agents."

More likely, the Administration jumped on the bandwagon after July 4, when the home of a man alleged to be the C.I.A. station chief in Jamaica was attacked with automatic weapons fire, after disclosure of his name and address in the so-called Covert Action Information Bulletin. In an election year, the disclosure legislation immediately became a popular cause in Congress.

Finally, it's an election year for Jimmy Carter, too, and his opponents are charging that he's soft on national security and has let down the nation's guard. One way to riposte is to take the kind of hard-nosed, know-nothing stand exemplified by the bill's principal Republican backer, Representative Henry J. Hyde of Illinois, who told the Judiciary Committee that if people—just anyone—published the names of C.I.A. agents, "They should be treated like the criminal agents they are," not "permitted to hide" behind the First Amendment.

But the legislation now moving rapidly through Congress does not aim itself exclusively at the Covert Action Information Bulletin, or even at ex-C.I.A. agents who disclose agency secrets, or former Government employees who violate secrecy oaths or classification rules. It in no way limits itself to those who disclose classified information. It makes no exception for the publication of information already available in public records.

Instead, this sweeping legislation, sowing widely the seeds of an Official Secrets Act, would make a criminal of anyone who "discloses, with the intent to impair or impede the foreign intelligence activities of the United States, to any individual not authorized to receive classified information, any information that indentifies a covert agent . . ."

That the Senate version would require such disclosure to be part of a "pattern of activities intended to disclose agents" is only a faint improvement, whatever the Carter Administration might claim. A reporter publishing, say, a series of articles could be demonstrating such a pattern, as might one who had published a number of such articles over the years. Yet, those articles might disclose reprehensible C.I.A. attemps to assassinate foreign leaders, or to infiltrate domestic organizations, or overthrow legitimate governments.

Nor is the requirement of "intent to impair or impede . . . foreign intelligence activities" a saving grace. That might be precisely the intent, and legitimately so, of articles that would expose in advance and thus prevent something like the Bay of Pigs fiasco. Such intent might also be "established" if the C.I.A. had asked a reporter in advance not to publish a story, for reasons however self-serving, and he or she published it anyway.

The key phrases are "any information" if disclosed to "any individual not authorized to receive classified information." Taken together, they mean that *any* information—no matter how obtained, even from a public and unclassified record—published by anybody in virtually any form, if it could be read to disclose an agent's identity, would be a crime. Such legislation would impose a prior restraint unprecedented in American history, even on information that may already be in the public domain.

It would give the C.I.A., for example, just the weapon it wants to hide, or prosecute disclosures of, embarrassing or damaging misdeeds, failures and illegalities—spying on Americans in America, or helping a President to cover up criminal activities, or infiltrating the clergy. Reporting such stories, even if clearly in the public interest, would be virtually impossible without risking disclosure of some agent's identity—or at least risking that the C.I.A. would claim that such disclosure had resulted.

How can Stansfield Turner, the C.I.A. Director, argue that this blatant power grab is "vital to the maintenance of an effective intelligence apparatus and the successful conduct of United States foreign policy"? That is to say that only if free American institutions are undermined from within can we be successful in the world. But what is success, if not the protection and maintenance of those same free institutions?

QUESTION OF INTENT

(By Anthony Lewis)

WASHINGTON.—It is 1983, and there are new reports of abuses by United States intelligence agencies. A newspaper series says the C.I.A. is secretly using three notorious gangsters to try to overthrow the government of country X. Another paper names F.B.I. counterintelligence agents who it says have infiltrated domestic civil liberties organizations and are trying to disrupt their work.

Those imagined reports are like the ones that in the 1970's disclosed excesses committed in the name of intelligence and helped bring about reforms. But there would be one difference in 1983. If the C.I.A. has its way, the newspapers that printed the stories would be committing a crime. The reporters and editors involved could go to prison.

A bill that would very likely make it a criminal offense to publish those stories is due for a vote soon in the House. It has

strong support, and for a good reason: It is intended to deal with a real problem, the unjustified naming of U.S. covert agents. But the bill is written so that it could sweep dangerously far in its effects.

The immediate targets of the legislation are people who make a business of disclosing C.I.A. identities. The best known is Philip Agee, the turncoat former agent. And a Washington newsletter, the Covert Action Information Bulletin, carries what it says are the names of C.I.A. employees gleaned from clues in published information.

So far as it deals with the Agees of this world—people who use what they learn in office to betray their colleagues—the bill faces no serious objections. The difficulty arises in the section punishing private individuals who disclose the identity of covert agents.

That section would for the first time in American history make it a crime for journalists or ordinary citizens to publish, or even say aloud, what they know from unclassified sources. And the fact is that C.I.A. affiliations are not always tightly concealed. When I lived in London, the names of successive C.I.A. station chiefs were common knowledge among Britons and Americans. Some critics of the legislation would drop that section entirely, limiting coverage to people like Agee. I do not think that is a defensible position if one really wants to stop the wholesale naming of agents. The Covert Action newsletter is in the same dirty business as Agee, with the same resulting risk to people working for the United States.

The danger is that the bill would reach much farther than the professional publishers of lists of names. The Justice Department itself warned that an earlier draft of the legislation would apply "to disclosures even of publicly-available information by any voter, journalist, historian or dinner-table debater," and "could have the effect of chilling legitimate critique and debate on C.I.A. policy."

The House bill, in an attempt to meet the problem, requires proof that the defendant acted with "intent to impair or impede" the foreign intelligence activities of the United States. But intent is a slippery concept Robert L. Keuch, Associate Deputy Attorney General, testified in criticism of this language:

"A mainstream journalist, who may occasionally write stories based on public information mentioning which foreign individuals are thought to have intelligence relationships with the U.S., might be fearful that any later stories critical of the C.I.A. could be used as evidence of an intent to 'impede' foreign intelligence activities."

("Mainstream?" The greatest freedom-of-the-press decision by the Supreme Court, *Near* v. *Minnesota* in 1931, involved a sleazy anti-Semitic weekly.)

Despite further changes the House bill still troubles the Justice Department. And some outside critics object not only to the vagueness of the intent clause. They note that the bill would punish disclosure not just of regular C.I.A. employees but of foreign leaders who have been paid by the agency, and of F.B.I. counterintelligence informants inside this country.

In the Senate, the Intelligence Committee has approved a version of the bill that tries in other ways to limit its reach. It requires proof that disclosure of a name was part of a "pattern of activities intended to identify and expose covert agents," and was done with "reason to believe" it would impede intelligence activities.

The Senate bill is better, and the committee report says specifically that it would not cover "news media reporting of intelligence failures or abuses." But doubts remain. An editor who published a story about the C.I.A.'s hiring of Chicago gangsters to assassinate Fidel Castro might well have "reason to believe" that it would impede that "intelligence activity." Judges tend to defer to the Government in these matters, accepting its definition of what is a legitimate "intelligence activity."

It may still not be too late for a critical voice to be heard in Congress. Senator Moynihan of New York is a logical possibility. He opposed an earlier version of this legislation because, he said, it "might have a chilling effect." And he himself published a book in 1975 that named a forbidden name. He wrote that the C.I.A. had once interfered in Indian politics by giving money for the Congress Party to Mrs. Indira Gandhi.●

BROYHILL SUPPORTS ACCELERATED DEPRECIATION TO ASSIST BUSINESSES

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BROYHILL. Mr. Speaker, we are all too aware of the declining productivity rate which this country has been experiencing in recent years. As this trend continues, our inflation rate correspondingly soars, and the cycle is perpetuated. In response to pleas for help from specific industries, Congress has reacted in the past by enacting shortsighted, stopgap funding measures, to shore up those businesses who could not otherwise survive. Such a tactic not only fails to address the basic problem of lagging productivity in this country; it also serves to reward those businesses who are failing at the expense of those who are managing to survive despite the condition of our economy.

The textile industry is one which has been surviving despite its capital-intensive nature and its traditionally low profit margins. The tenacity and perseverence of those in the textile industry, who have kept their businesses healthy despite soaring equipment and production costs, are described by writer Rolfe Neill in a recent edition of the Charlotte Observer. As Mr. Neill points out, the textile industry has consistently managed to stay on its feet without any infusions of Government funds into the industry. Rather, the textile industry has relied upon advanced technology and modern equipment in order to increase its productivity levels. However, the costs involved in replacing such advanced machinery, are rapidly becoming prohibitive, as a consequence of our soaring inflation rate. Our present depreciation rates for business equipment and machinery are woefully inadequate, and unless we enact legislation to permit more rapid depreciation of these items, even the textile industry will find it more and more difficult to continue as a healthy, productive contributor to our economy. Mr. Neill's article illustrates why we need tax reform legislation now, to accelerate capital cost recovery.

Mr. Speaker, I commend Mr. Neill's remarks to my colleagues:

U.S. TEXTILES MAKES A BIG POINT

Suddenly, Cinderella has been discovered living in North Carolina. Her name is—surprise!—the oft-maligned industry called textiles.

Here is a story of our nation to ponder as it forms public policy for troubled industries such as autos and steel.

Single solutions rarely work for complex problems. None is suggested here. But there are lessons to be gleaned from the Tar Heel factories that produce one-quarter of all the wealth to be manufactured in our state this year.

In 1961 I left North Carolina to be away until 1975. When I departed, the textile industry was pleading for government help. This was before Lockheed and Chrysler became congressional mendicants. Also it was before so much onerous federal regulation of the marketplace and those who wish to sell there.

HOLLERING FOR UNCLE

Nonetheless, textile operators felt Uncle Sam was the answer to their problem. Keep out lower-priced goods, they begged. Years passed before Washington responded, but finally quotas were imposed. Breathing room was provided.

But that was not the long-term answer. It can never be in a world that is moving, rapidly now, toward a global economy. Each of our 50 states produces what it can most efficiently and peddles it nationwide without tariffs or other trade barriers. Cotton has gone from Carolina to California as a result. So must be it worldwide.

N.C. textiles is proof today that you survive by being efficient, not by subsidy. We actually are exporting textile fabric and yarn to some of the countries that 20 years ago imperiled our own textile economy. (Apparel, however, still is a larger net import in the United States.)

A government wisely concerned for its citizens will not seek to keep alive the inefficient firm, even though owners will be quite willing. Rather, that government will aid in the burial and assist displaced workers in transition.

UNBURIED DEAD

England is the best example of a nation that refuses to bury its industrial dead. When I was a kid, English goods were the pride of any merchant. Today, British factories are the least productive of all major industrial nations. Her goods are losing out.

Know who is next in declining efficiency? Our own nation.

This is the country that boasted "sound as a dollar" and bragged about "Made in USA" and sniggered at the copycat Japanese and their inferior products. We are not terminal but we are quite ill industrially. We will die, and deserve to, unless we take action.

Look at the long-term rates of growth and what has been happening in productivity since the year John F. Kennedy was elected (1960):

PRODUCTIVITY—1960 TO 1979

Nation	1960–67	1967–73	1973–79
Canada	4.1	4.9	2.8
Japan	9.0	10.0	4.2
Italy	7.2	6.6	3.3
West Germany	5.8	5.0	5.0
France	5.6	5.7	5.1
United Kingdom	4.1	3.8	0.6
United States	3.7	2.9	2.1

REALLY QUITE SIMPLE

One needn't possess a Harvard MBA to understand productivity. If you pay a worker $5 an hour and he produces five widgets, then the unit labor is $1 per widget. If he produces 10 widgets and hour, the unit labor cost is now only 50 cents. He is more productive and this makes the factory more competitive in the market.

How does one go from 5 to 10 widgets an hour? Management and worker efficiency help but usually big productivity increases are the result of better machinery.

Our state's textile business illustrates the point. That industry has lowered the number of workers employed, raised the wages of those remaining and increased productivity. How? By installing new equipment (much of it made overseas; suppose Washington imposed such high tariffs that foreign equipment couldn't compete here?).

Consider a typical cotton mill producing a single fabric, from a bale of fiber to cloth ready to ship for dyeing:

In 1968, that firm invested $26,055 in machnery per worker. Today, it invests $122,925 per worker. Land and building are extra.

From where does that money come? Textiles only makes about 3 cents profit on each $1 of sales (compared to nearly 6 cents per $1 in sales for all manufacturing). From the 3 cents, mills must pay shareholders a dividend. The remainder goes back to improve the business.

Textiles has been putting back about 80 percent of what's left after dividends compared to an all-industry average of 55 percent. Still, textile owners must borrow money. Where do they get it? From people who saved it. Where do those people get money to save? By denying themselves pleasures and purchases.

POOR TAX POLICIES

Yet, our tax policies discourage saving. That's why the U.S. savings rate has become the lowest of all major nations, about 4 cents on the dollar. In Japan, a worker can put $50,000 into savings whose earnings are tax free.

A government that encourages savings is encouraging prosperity. A government whose policies make a dollar worth less than it was a year ago steals from all its citizens. Currently, our government policies work against a majority of people as well as against business.

Or consider a single textile machine. A Gaston County mill paid $20,000 for a winder in 1968. Uncle Sam permits a company to depreciate—in effect squirrel away—money to replace the $20,000 machine. It gives the firm 10 years and $2,000 a year off on taxes. When the company replaced the machine this summer the cost was $100,000, not $20,000.

TALK IT UP, MEN

What does a nation do? Change tax policies to encourage faster depreciation so our factories can meet competition. For improvements such as pollution and safety controls, permit even faster recovery, since these costs only increase expense, not efficiency.

These are the issues I want to hear Carter and Reagan and Anderson talk about. Not evolution. Not the KKK.

American textiles set the quality standard on this whole planet. Meanwhile, there is talk about limiting how many of you can purchase a Japanese auto, Why? Because more and more people prefer a Japanese car to those made by their own countrymen.●

INDIA AIDS IRAN AND DOES NOT DESERVE AMERICAN NUCLEAR FUEL

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MARKEY. Mr. Speaker, I urge my colleagues to oppose the shipment of nuclear fuel to India and support the resolution of disapproval reported out of the House Foreign Affairs Committee.

The State Department and the Carter administration have made unproven assertions that shipping nuclear fuel to India will enhance our foreign policy objectives in that country. Let us examine the evidence.

President Carter told Mrs. Ghandi last winter that he would send the uranium fuel to India. I am inserting in the CONGRESSIONAL RECORD a chronology of Indian foreign policy decisions announced subsequently. The chronology shows that:

First, India and the Soviet Union negotiated a $1.6 billion arms sale.

Second, India signed a major trade agreement with Iran which effectively neutralized the U.S. boycott and reduced pressure to free the hostages.

Third, India recognized the pro-Soviet Government in Kampuchea.

Fourth, Mrs. Ghandi announced her government will not hesitate from detonating nuclear explosions in the national interest.

I am also inserting in the RECORD a copy of a front-page article that appeared in the major Indian newspaper, the Statesman of New Delhi. The headline of the story is "India to Help Iran to Beat U.S. Sanctions".

Mr. Speaker, I wonder if our hostages can figure out what broad foreign policy objectives are being met through the sale of uranium to India, a country that not only refuses to accept full-scope safeguards, but explicitly tries to undermine our attempt to put pressure on a country such as Iran which is actively doing us harm?

I urge my colleagues to support the resolutions of disapproval reported out of the House Foreign Affairs Committee when they are voted on this week.

The chronology and article follow:

CHRONOLOGY

1. March 14, 1980.—Mrs. Gandhi, knowing final U.S. decision on continued Tarapur fuel supply is pending and that U.S. has sought assurances India will conduct no further nuclear tests, announces her government "will not hesitate from carrying out nuclear explosions . . . in the national interest."

2. May 8, 1980.—Carter announces decision to send Tarapur fuel.

3. May 29, 1980.—India and Soviets close $1.6 billion arms sale on terms extremely favorable to India (2 percent interest).

4. June 14, 1980.—India and Iran sign major trade agreement undercutting U.S. embargo on exports to Iran.

5. June 14, 1980.—U.S. sells $32 million worth of TOW anti-tank missiles to India (3700 missiles).

6. June 18, 1980.—State Department testifies in favor of exports at Senate Foreign Relations/Governmental Affairs Committee Hearings, stressing, among other points in India's favor that India has refrained from recognizing the pro-Soviet Kampuchean government.

7. June 19, 1980.—President signs Executive Order overruling the 5-0 NRC vote and authorizing the Tarapur exports, stating the need for the U.S. to "bolster our relations" with nations in South Asia, "particularly those that can play a role in checking Soviet expansionism."

8. July 8, 1980.—India recognizes pro-Soviet Heng Samrin government in Kampuchea.

9. July 19, 1980.—India orbits a satellite using a rocket whose guidance system can be adopted to an IRBM or ICBM. A number of Indian parliamentarians call for the development of nuclear warheads.

[From the Statesman (New Delhi), June 14, 1980]

INDIA TO HELP IRAN BEAT U.S. SANCTIONS

(From Our Special Representative)

NEW DELHI.—India is to send grain and a number of other industrial products believed to be worth several hundred million dollars to Iran to enable her to meet shortages arising out of the sanctions imposed by the USA and the EEC.

But a 17-member Iranian delegation led by Mr. Reza Sadr has been told that it would be difficult to supply cement, sugar and steel because of domestic shortages. It is possible, however, that these items will also become part of Indo-Iranian trade in future.

Prospects of substantially increased trade and economic contacts which will extend to management of plants in Iran, completion of contracts terminated by Western companies and establishment of new plants have emerged following the talks between the Iranian delegation and an Indian team led by Mr. Praneb Mukherjoe, Minister of Commerce.

Further delegations are to be exchanged to study the possibilities opened up in the past few days and Indian business men are to be registered in Iran as both prime contractors and subcontractors. If all the deals discussed materialize, Iran will become a major trading partner of this country.

What remains to be finalized is the financing of the deals since India wants assurances on payments. This is presumably in the context of the default to the extent of nearly $400 million by Iran on the Kudremukh iron ore project which was also discussed in the current round. Mr. Sadr promised to convey India's position to his Government.

In effect, the result of the talks is that India has agreed to help Iran to bear the U.S. and EEC sanctions imposed because of the hostages issue. Iran presented a long shopping list to India of items that she needs urgently and much of her needs are to be met.

While he was here, Mr. Sadr promised that Iran would consider supplying India oil on a long-term, rather than annual, basis. This is an important outcome of the talks, as is the possibility of greatly increased exports to pay for the oil.

In the ministerial-level talks that ended today, India and Iran agreed that bilateral cooperation could be further expanded in the sectors of food and agriculture, drugs and pharmaceuticals, supply of engineering goods, provision of consultancy services and training of managerial personnel.

The Iranian side has expressed interest in purchasing from India items like iron and

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steel products including pipes, textiles, sugar, industrial raw materials, paper and agricultural products like wheat, barley, rice, maize, sugar and animal food.

The Indian side noted Iran's interests in these commodities, and provided immediate information to areas of surpluses. The Iranian delegation was assured that subject to its own domestic requirements India would make effort to meet the needs of Iran.

During the talks, both sides were in agreement on the desirability of strengthening bilateral commercial and economic links for their mutual benefit. It was decided in course of the discussions that a committee on trade, in terms of the Trade Agreement of 1974, would be constituted and it would meet at appropriate levels alternatively at Teheran and New Delhi.

It was also agreed to exchange delegations comprising various sectors of industry and commerce of the two countries for further discussions with their counterparts and identification of specific areas of cooperation and trade exchanges. There would also be close collaboration between industrial units and Export Promotion Councils in India and the Nationalized Industries Organization of Iran.

The Indian side referred to the experience acquired by India in the development and application of technology and emphasized the scope for expanding cooperation between the two countries through transfer of appropriate technologies. It was pointed out that India could supply a wide range of engineering equipment and machinery for various industrial products ranging from the small-scale sector to the heavy capital goods sector.

The Indian side offered to transfer technology to Iran accompanied by comprehensive assistance that would include training of Iranian technical personnel in Iran as well as in India, and consultancy and management services. The Iranian side stated that technology was required not only for new projects but also for existing industrial plants in Iran.

Both sides identified several areas of industrial cooperation, such as the automotive and commercial vehicles industry, automotive ancillaries, tyres and tubes, refrigeration systems, oil refineries and petrochemicals, machine tools and electrical equipment, power plants, the construction industry and establishment of industrial estates.

Cooperation was offered by India in the small-scale sector and for the establishment of industrial estates in Iran to cover a wide range of products. The Iranian side expressed great interest in collaborating with India in this field and stated that Iran attached priority to the setting up of industries in the small-scale sector.

The two sides identified broad areas for widening bilateral cooperation in the field of shipping. Iran sought Indian assistance in the manufacture and supply of a variety of dredgers, barges, launches and other port equipment, as well as spare parts for vessels of different makes, repair facilities, port development, training of port personnel and consultancy services. The Indian side agreed to extend necessary assistance, wherever possible.

Both sides agreed to strengthen the Iran-o-Hind Shipping Company. The Iranian side recommended that priority should be given by the company to transportation of cargoes between the two countries. It further stated that Iran-o-Hind were in need of suitable additional ships and suggested that India could assist by providing appropriate vessels on charter basis.

The Iranian side took note of the capability of the Indian Roads Construction Corporation and the Dredging Corporation of India to undertake consultancy in specific fields.

In the railways sector, both sides agreed that cooperation would be developed between the two countries in supplies by India to Iran of railway equipment and spares, services and maintenance, and training of personnel. A specific list of requirements of the Iranian State Railways was made available to the Indian side, including rehabilitation of tracks, repair of damaged locomotives and supplies of locomotive parts. The Indian side assured immediate examination of these proposals.

The Iranian side expressed interest in cooperation with India in the fields of agricultural machinery, such as, power tillers, ploughs, threshers, combines and plant protection machinery, animal husbandry and cattle upgrading, veterinary health services, including measures adopted in India to control animal disease and * * * breeding. Iran also showed interest in cooperation in fisheries, including education and training of personnel, fish processing, fisheries survey and fisheries craft and gear.●

TRIBUTE TO ERNEST W. LASS, JOURNALIST

HON. JAMES J. HOWARD

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOWARD. Mr. Speaker, since the role of the press is frequently a subject of debate in our Chamber and elsewhere, I think it is appropriate that we make special note of those areas where consensus does exist.

A journalist, who everyone agrees conducted himself in the finest tradition of his profession, lived and worked in my district for 52 years. Every public official I know had the highest regard and deepest respect for him. He was concerned that his paper's coverage be fair, and that, first and foremost, it represent the public interest. He tackled tough issues, devoting his resources to those areas where it appeared the public's resources were being squandered or the natural resources of the Jersey Shore were being threatened.

This fine man, Ernest W. Lass, editor-in-chief and chairman of the board of the Asbury Park Press, Asbury Park, N.J., died September 8 at the age of 73. He has left his mark not only on his readers, his employees, and the many young journalists who learned from him, but on the quality of life in central Jersey. As a private citizen, he was active in many civic organizations and was honored time and again for his volunteer work. As a journalist and a businessman, he truly made a difference to the communities in our area.

He will be missed, but his good deeds and the memory of his kindness and decency will live on.●

PALISADES PARK CHAPTER OF UNICO NATIONAL CITED FOR ACHIEVEMENTS

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOLLENBECK. Mr. Speaker, my colleagues who are familiar with the activities of Unico National will appreciate the high honor or recognition as "Outstanding Chapter" in an organization which maintains a truly remarkable record of community service in 144 chapters throughout the country. The award has been bestowed this year on the Palisades Park, N.J., chapter of Unico National. Its president, Patrick Roma, has been named outstanding chapter president.

The distinguished Italian-Americans who work within the Palisades Park chapter are a community of people of ability and dedication joined to act in the public interest. They reflect, completely, the Unico motto of "service above self."

Needy and deserving citizens of all ages and backgrounds have benefited from the endeavors of this chapter—from their scholarship fund and their contributions to children's athletic teams; from their educational and civic programs; and from their contributions to medical research. Under the able leadership of President Roma, Unico National of Palisades Park, in conjunction with district 6, contributed $8,100 this year to purchase an IBM cell washer for Columbia Presbyterian Hospital to help combat Cooley's anemia, a blood disease affecting children. And, among other civic contributions, the chapter awarded $1,500 in scholarships to deserving recipients.

I am proud to offer my congratulations to Patrick Roma and the membership of the Palisades Park chapter of Unico National for their achievements and to express my sincere appreciation for their continued endeavors to make our communities a better place in which to live.●

MX MISSILE SYSTEM

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. EDWARDS of California. Mr. Speaker, I would like to take this opportunity to insert into the RECORD a resolution recently adopted at the general assembly of the Unitarian Universalist Association in New Mexico this year.

As you can see, the resolution expresses their strong disapproval of the MX missile system. This resolution was adopted by more than two-thirds of the delegates representing all 50 States.

I think it is important that we recognize that many Americans in our country do not support the development of the MX missile system.

The resolution follows:

RESOLUTION ADOPTED BY THE 19TH GENERAL ASSEMBLY OF THE UNITARIAN UNIVERSALIST ASSOCIATION, JUNE 13-18, 1980, ALBUQUERQUE, N. MEX.

Whereas the United States Congress is now considering new funding for the multibillion-dollar Missile Experimental (MX) Missile System; and

Whereas the MX Missile System represents a major escalation of the arms race; and

Whereas the General Assembly of the Unitarian Universalists Association in 1979 affirmed that reversal of the arms race must be the overwhelming priority on the human agenda because escalating military power (a) diverts crucial resources from human and environment needs, (b) contributes to runaway inflation and inhibits full employment, (c) leads toward the certainty of planetary holocaust; and

Whereas the MX is a destabilizing, potentially first-strike nuclear weapon system; and

Whereas there is widespread opposition by the citizens of Nevada and Utah where the MX is slated to be deployed: Be it

Resolved, That the 1980 General Assembly of the Unitarian Universalist Association calls upon Unitarian Universalists to urge members of Congress to vote against further funding for the MX Missile System, and to urge direct funding to domestic human services programs; and be it further

Resolved, That this Assembly reaffirms the 1979 Peace and Disarmament resolution and calls upon the U.S. Government to seek prompt negotiations with the nuclear powers for a mutual moratorium on nuclear weapons systems.●

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

HON. MILLICENT FENWICK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Ms. FENWICK. Mr. Speaker, we often hear about the shortcomings of government and it is heartening to learn of a program which has given encouragement and opportunity to those who have, too often, been denied those benefits.

This is a letter from a constituent, a father whose deaf child has benefited from one of the Federal programs. I enter it in the RECORD as an encouragement to other parents and their deaf children:

Recently my daughter earned her Associate Degree in Applied Science at the National Technical Institute for the Deaf which is one of the nine colleges that make up Rochester Institute of Technology at Rochester, N.Y. My purpose in writing to you is to express my appreciation of not only the support that you as a member of Congress have given in the form of funding this unique institution, but to commend your wisdom in making possible an opportunity for members of the deaf population to become taxpayers rather than tax burdens as well.

Without dwelling on too much detail, the National Technical Institute for the Deaf was established in 1965 by Public LAW 89-36 with the funding being administered by the Department of Health, Education, and Welfare. This effort by Congress is unique in that NTID, as a part of RIT, represents the first effort to educate large numbers of deaf students within a college environment designed primarily for hearing students. As such, it is the only one of its kind nationally or internationally.

From a career standpoint, my daughter currently qualifies as a junior computer programmer, but has decided to continue her education with the goal of earning a Bachelor of Science Degree in Business Administration at RIT's College of Business. Since the College of Business is primarily a hearing environment, you should be aware of the fact that the necessary support services, such as note takers and tutors, are also made available by HEW funding. In short, if it were not for the opportunities provided by the National Technical Institute for the Deaf, the expectation of my daughter ever becoming a productive member of society, would be severely limited. Here the U.S. taxpayer is truly receiving a good return on his investment.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 16, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 17

9:30 a.m.

Conferees

To continue on S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.

Room S-146, Capitol

Judiciary

Business meeting, to consider pending nominations and legislation.

Room S-207, Capitol

Labor and Human Resources

Business meeting, to consider S. 2887, to provide statutory assurance of confidentiality to respondents participating in statistical programs of the Bureau of Labor Statistics; and pending nominations.

4232 Dirksen Building

10:00 a.m.

Energy and Natural Resources

Business meeting to consider pending calendar business.

3110 Dirksen Building

Finance

Business meeting on pending calendar business.

2221 Dirksen Building

Governmental Affairs

Civil Service and General Services Subcommittee

To hold hearings on the substance of H.R. 6372, providing for the voluntary withholding of State income tax for civil service annuitants, the substance of H.R. 7466, permitting the employment of personal assistants for handicapped Federal employees both at regular duty and travel status, and the substance of H.R. 7666, increasing the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members (all being held at the Senate desk).

1224 Dirksen Building

Governmental Affairs

Permanent Subcommittee on Investigations

To continue closed oversight hearings on the Department of Labor's investigation of alleged mismanagement and criminal activities of the Teamsters Union's Central States pension fund.

3302 Dirksen Building

*Labor and Human Resources

To hold hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.

4232 Dirksen Building

11:00 a.m.

Judiciary

Subcommittee, to continue hearings on matters relating to its investigation of individuals representing the interest of foreign governments.

2228 Dirksen Building

1:30 p.m.

Foreign Relations

To hold closed hearings on U.S. military access agreements with Oman, Kenya, and Somalia.

4221 Dirksen Building

2:00 p.m.

Conferees

To resume on S. 914, and on the substance of H.R. 2063, bills authorizing funds through fiscal year 1983 for public works and economic development programs of the Economic Development Administration.

Room to be announced

Conferees

To resume on H.R. 3904, providing changes in the Employee Retirement Income Security Act (ERISA) regarding insurance provided by the Pension Benefit Guaranty Corporation for pension benefits of employees covered by multiemployer plans which terminate.

H-328, Capitol

3:00 p.m.

Conferees

On H.R. 2977, authorizing funds through fiscal year 1983 to establish a program to increase participation by States and local governments to pre-

vent domestic violence, to provide assistance to victims of crime, and to establish Commissions on National Youth Service.
H-137, Capitol

Joint Economic
To resume hearings on the various aspects of the current housing industry situation.
1318 Dirksen Building

SEPTEMBER 18

8:30 a.m.
Energy and Natural Resources
To hold hearings on the nomination of John C. Sawhill, of the District of Columbia, to be Chairman of the Board of Directors of the U.S. Synthetic Fuels Corporation.
1202 Dirksen Building

9:30 a.m.
Conferees
To continue on S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.
Room S-146, Capitol

Labor and Human Resources
Business meeting, to consider pending nominations.
4232 Dirksen Building

10:00 a.m.
Conferees
On H.R. 6942, authorizing funds for fiscal year 1981 for foreign development and international security assistance programs, and funds for fiscal year 1981 for the Peace Corps.
S-116, Capitol

Energy and Natural Resources
To resume oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

Finance
Business meeting on pending calendar business.
2221 Dirksen Building

Governmental Affairs
Permanent Subcommittee on Investigations
To resume oversight hearings on the implementation of the Department of Energy's Gasoline allocation program.
3302 Dirksen Building

*Labor and Human Resources
To continue hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.
4232 Dirksen Building

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
Business meeting, to mark up title II, providing financial assistance to meet basic, and employment skills needs of secondary school youth of S. 2385, proposed Youth Act, and H.R. 7859, to provide assistance to State and local agencies for the education of Cuban and Haitian refugees.
1318 Dirksen Building

1:00 p.m.
Agriculture, Nutrition, and Forestry
Rural Development Subcommittee
To hold hearings to review the accuracy of the 1980 census count in rural areas.
357 Russell Building

2:00 p.m.
Conferees
To continue on H.R. 6942, authorizing funds for fiscal year 1981 for foreign development and international security assistance programs, and funds for fiscal year 1981 for the Peace Corps.
S-116, Capitol

4:30 p.m.
Conferees
To resume on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.
S-145, Capitol

SEPTEMBER 19

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold oversight hearings on the scope of science and technology policy.
235 Russell Building

Conferees
To continue on S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.
S-146, Capitol

Judiciary
To hold hearings to review in detail the President's proposal to admit refugees to the United States in 1981, and to receive the President's annual report to Congress on U.S. refugee programs.
2228 Dirksen Building

10:00 a.m.
Energy and Natural Resources
To continue oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

2:00 p.m.
Conferees
To continue on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.
S-145, Capitol

SEPTEMBER 23

9:00 a.m.
Select on Small Business
To hold joint hearings with the Committee on Environment and Public Works on the possible economic costs of acid rain, focusing on economic losses to tourism, sport and commercial fishing, agriculture and forestry, damage to public buildings, and threats to public health.
424 Russell Building

9:30 a.m.
Energy and Natural Resources
To hold hearings on the nomination of Wallace O. Green, of the District of Columbia, to be Assistant Secretary of the Interior for Territorial and International Affairs.
3110 Dirksen Building

*Labor and Human Resources
To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.
4232 Dirksen Building

11:00 a.m.
Veterans' Affairs
To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion.
318 Russell Building

2:00 p.m.
Office of Technology Assessment
The Board to meet and discuss pending business items.
EF-100, Capitol

SEPTEMBER 24

10:00 a.m.
*Labor and Human Resources
To hold oversight hearings on the implementation of the home energy assistance program.
4232 Dirksen Building

10:30 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

SEPTEMBER 25

10:00 a.m.
Commerce, Science, and Transportation
To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

2:00 p.m.
Finance
Health Subcommittee
To resume hearings on the FBI's current and prospective investigation into medicare and medicaid fraud, focusing on the current status of the Department of Health and Human Services' efforts in antifraud and antiabuse activities.
2221 Dirksen Building

SEPTEMBER 29

9:30 a.m.
Finance
Health Subcommittee
To hold hearings on S. 3029, to establish a National Professional Mental Health Services Commission.
2221 Dirksen Building

CANCELLATIONS

SEPTEMBER 17

10:00 a.m.
Rules and Administration
Business meeting, to resume consideration of Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.
301 Russell Building

SEPTEMBER 18

9:30 a.m.
Agriculture, Nutrition, and Forestry
Foreign Agricultural Policy Subcommittee
To hold hearings to examine ways of encouraging further increases in U.S. agricultural exports in the coming decade.
324 Russell Building

SENATE—*Tuesday, September 16, 1980*

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Our Father God, as we turn again to waiting tasks, give us who labor in this Chamber the wisdom, humility, and charity sufficient for the day. Through the toiling hours, in tense and testing times, keep our hearts and minds attuned to Thy spirit. Strengthen our weakness, calm our anxieties, and save us from cynicism. May faith in Thee allay all fear. When we have done faithfully the work Thou givest us to do, may we leave the result to Thy higher judgment, and take supreme satisfaction in having served the Nation to the utmost and moved forward Thy coming kingdom.

We pray in His name, who is Lord and Master. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 16, 1980.
To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HOWELL HEFLIN, a Senator from the State of Alabama, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. HEFLIN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Does the minority leader need any of my time?

Mr. BAKER. Mr. President, I do not. I was inquiring on this side to see if there were any requests for time. I believe there are no requests for time on this side. I have no need of my time under the standing order, and I yield it back.

Mr. ROBERT C. BYRD. I yield back my time.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 15 minutes, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock tomorrow morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is terminated.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may put in a quorum call without it being charged against Mr. MCGOVERN. I believe this is a reasonable request, inasmuch as both leaders have yielded back their time, and Mr. MCGOVERN could not have anticipated this.

Mr. BAKER. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCGOVERN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR MCGOVERN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from South Dakota is recognized for not to exceed 15 minutes.

Mr. MCGOVERN. Mr. President, I yield briefly to the Senator from Maine.

PRIVILEGE OF THE FLOOR—H.R. 7631

Mr. COHEN. Mr. President, I ask unanimous consent that Susan Collins of my staff be accorded the privilege of the floor during debate on the HUD appropriations bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RAILROAD DEREGULATION

Mr. MCGOVERN. Mr. President, on September 9, the House of Representatives took final action on their version of the Rail Act of 1980, H.R. 7235, the so-called deregulation bill. Members of both bodies, as Senators know, are now preparing to go to a joint conference committee to work out the differences between these two bills.

Action by the Senate on this legislation was taken on April 1, 1979 on S. 1946, and it is important to remember there was some concern expressed and more unexpressed of the implications this legislation could have on shippers and in particular, agricultural shippers and the farmers they serve. In the months that have transpired since the passage of the legislation in the Senate and through the deliberations of the House of Representatives, several points of dispute have arisen on which agriculture has focused especially.

During the Senate debate, I expressed my own personal concern over some provisions of that bill and was successful in obtaining some amendments to clarify and protect agriculture's position with regard to the proposed rail deregulation.

Today I have spoken to several of my colleagues who are equally concerned who are joining in discussing some of these issues and concerns and, if possible, to give some direction to our Senate conferees on the positions that they should take in conference to alleviate the concern we feel over some provisions in the bill as passed by the House of Representatives.

In particular, I wish to discuss:

First, the surcharge and the de facto abandonment provisions of both bills; second, the waiving of certain statutory requirements on the pending applications to build a railroad to haul coal from the Powder River Basin; third, the demand sensitive provisions of both bills; fourth, the contractual authorities granted in both bills; and finally, my

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

concern that this legislation may result in more Government regulation of business.

JOINT RATE AND SURCHARGE PROVISIONS

The House bill that we object to contains a wholesale grant to the railroad industry to apply surcharges in such a way as to clearly allow the railroad's ability to discriminate in favor of certain traffic and commodities and against others. This discrimination would apply to commodities, regions, ports, and markets.

One of the big concerns would be the discrimination which would exist against agricultural commodities. Surcharges could be applied against flour moving from Minneapolis to the East and no surcharges would apply against flour moving out of Kansas City or vice versa, thus directly working against the interests of the agricultural community in different regions. A further discrimination would occur with respect to branch lines.

A surcharge could be applied to one branch line but not to another—the movements distinguishable by an arbitrary standard of 3 million tons.

Moreover, if a carrier does not have adequate revenues there is no restriction on the opportunity to surcharge. A carrier could thus selectively choose the branch lines on which it seeks to impose a surcharge.

The surcharge provision would impose a tremendous burden on rural shippers. They do not have the facilities to police, protest, and file complaints on surcharge proposals.

First of all and the bill reduces substantially the time period for making a tariff effective. Shippers in rural areas do not have the ability to police the filing of the multitude of railroad tariffs.

Moreover, they lack the financial resources and expertise to effectively fight unfair tariffs or surcharges. Also, they lack the resources and expertise to determine whether the cost/revenue tests may be applied.

The bill purports to grant great rate freedom to efficient rail carriers. This section of the bill, on the other hand, permits the inefficient carrier to establish the effective rate level.

Finally, the overall intent of the bill is designed to promote competition in the marketplace. I doubt that has been achieved. In particular, this section of the bill is anticompetitive in that surcharges must be applied to all routes in which an inefficient carrier participates.

It will encourage the efficient competing carriers to likewise raise the rates because of the action of the inefficient carrier. If a carrier possesses an unprofitable route, there should be no reason why it should not be permitted to eliminate its participation in such a route. That action, however, should not be permitted to extend over all the carrier's more efficient routes, or encourage other carriers to raise rates on their noncompensatory routes in order to accommodate the inefficient participant. The anticompetitive effect of such action is clear.

Regarding the Senate provision for Joint Surcharges, Mr. President, it is important that the committee, after lengthy consideration of this proposal decided to eliminate that provision from their reported bill.

The day the bill came to the floor, it was presented as a recently arrived at compromise between the Southern Railway and the Consolidated Railway System, and that it had the endorsement of "a number of other" railroads that "carry well over 60 percent of our Nation's freight." Opposition to the amendment was expressed by other committee members and the vote was close, 52 to 44.

The amendment's sponsor readily admitted that some railroads had not had an opportunity to study the amendment, and that he would assure those railroads that there would be ample opportunity to make appropriate changes to satisfy the legitimate concerns of most everybody.

I refresh our memory about this consideration, since we now have the language, or hope to in the next few days, that is equally as damaging to the smaller railroads and to the small shippers and to rural communities.

I am vitally concerned about this particular provision of the bill since it can readily result in the abandonment of most of the "inefficient" branch lines that are the lifeline for small communities in rural America. I urge all my colleagues to contact their shipper groups, both agricultural and others, and their short line railroads, to get their constituent input on this vital matter. I do know that this surcharge provision is opposed by several major class I railroads and over 60 short line railroads.

POWDER RIVER BASIN RAILROAD

Regarding the special provisions for consideration of an application before the Department of Transportation for a competitive railroad to serve the coal-shipping region of the Powder River Basin, I support competition and will encourage it. I openly question the provision of the House-passed bill which directs the Secretary of Transportation, within 45 days after enactment, to take action on applications pending for such a railway to be constructed.

The reason I question it, is that it is a single purpose amendment and waives certain requirements which Congress felt essential when the loan guarantee program of the 4-R Act was passed. Those provisions waived deal with the requirement for an environmental impact study report, and the security requirements which assure repayment.

Mr. President, if we are to waive these requirements for the Powder River Basin Railroad, then I suggest that we waive the requirement for all such application for Government-guaranteed loans, both in the Department of Transportation and in other agencies. I can assure you that it would relieve a lot of Federal regulation and delay in consideration of all types of loans.

If we must persist in this effort, I recommend the conferees strike the waiver provisions, and require the Secretary of Transportation to reach his decision on the guaranteed loan as expeditiously as possible.

DEMAND SENSITIVE

With regard to demand sensitive rates, the Senate committee rightfully exempted grains from these provisions, since the export grain movement of grain makes such provisions impractical. It is my understanding, however, that cotton was to be included in that exemption and was inadvertently omitted. Further consideration since passage causes me to recommend, that for clarification of the exemption, instead of just reading "grains," be changed to read "grains, including soybeans and rice, or cotton."

One further item, however, concerning demand sensitive rates. The House chose to drop their demand sensitive section, and actually repeal existing authority under the 4-R Act. Some question has arisen over this provision and unless a favorable response is assured from the ICC, I would urge that the conferees insist on the Senate language with my recommended compromise language.

CONTRACT PROVISIONS

Both bills contain authority for contract rates. The House version attempted to accommodate some special circumstances of agriculture, however it provides the antitrust exemption for contracts after the ICC approves them. This leaves a gray area which will necessitate a court ruling for clarification. Railroads presently enjoy antitrust immunity from the Justice Department and that responsibility is given to the Interstate Commerce Commission.

So, the question arises, will contracts between shippers and railroads be subject to antitrust laws, or not. Our small agricultural shippers feel they should be, and therefore it should be clarified in this legislation. I doubt that this would be subject to the jurisdiction of the conference, but deserves some attention.

ADDITIONAL REGULATION

Mr. President, in the 5 or 6 months since the Senate passed this bill, and in particular in the past week since House passage, I have come to ask if this bill, like some other deregulation bills we have considered, will result in more regulation instead of less? Certainly the uniform cost accounting provisions of the House bill will result in more Federal Government intervention in the day-to-day activity of railroads by accountants and auditors.

Consideration and approval of individual contract rates between each railroad and each shipper will surely take more bureaucratic time than the uniform freight rates they now supervise—which they will continue to supervise. Scrutiny of surcharges, abandonments, and other provisions of the bill will result in more regulation of railroads, but it will be rewarded by a broad discretion in their upward movement of

rates to their shippers. I guess that is compensation enough for more regulation.

I would close my comments merely by indicating that agriculture and rural America is unique in the railroad freight business. The price a farmer receives for his grain, or cotton, is determined by people other than himself at points far distant from his farm. That market price is determined in terminal markets, largely by export demand. The handling charges and freight charges are then taken off that terminal market price and the farmer receives what is left. Up until this legislation, farmers have enjoyed relatively uniform freight rates, even with unit-train rates, and so forth.

Under this bill, however, the introduction of new variables to his freight costs, such as variable contract rates to all the local elevators that bid for his grain, and selective surcharges on certain branch lines, and, the prospect of de facto abandonments, all cause me to think that he will no longer be able to shop around to the different elevators in this area for the highest price for his grain.

Farm price differentials will vary widely, and therefore the one elevator who has the highest bid in a local area will buy all the grain in that area, and the others will either go out of business or become affiliates of larger grain companies or cooperatives that can provide him with lower competitive freight rates and the resulting ability to bid higher prices for grain. It is obvious that such a process is predatory and will result in the evolution of a few major grain companies and cooperatives controlling the prices farmers receive with little competitive bidding in the local farm markets.

Mr. President, I do not wish to belabor these points here at great length today, but the point of our concern is that the Senate version of the bill, I think, contains a number of safeguards that are designed to give protection against arbitrary decisions that affect rates and abandonment procedures related to branch lines. The Senate version in my judgment contains some essential protection to rural shippers which is of benefit to our agricultural interests. There are a number of other concerns to which I refer.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter written to me under date of September 15 by the President of the Burlington Northern, Mr. Richard M. Bressler, with regard to the Powder River issue and other concerns; two editorials, one from the Alliance, Nebraska, Times Herald, and one from the St. Paul Pioneer Press; and then a third news article from the New York Times.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BURLINGTON NORTHERN,
St. Paul, Minn., September 15, 1980.

Hon. GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C.

DEAR GEORGE: The House has now passed its version of the rail deregulation bill S-1946. The House version is substantially different from the Senate bill. As a result, we expect that conferees will soon meet to reconcile the differences between the Senate and House versions.

While we have had substantial reservations about some of the provisions of this legislation, the House version injects, for the first time, an entirely new special-interest provision singularly punitive and damaging to the Burlington Northern.

It would divert for the benefit of Union Pacific Corporation, Federal financing intended for the rehabilitation of deteriorated rail facilities in virtually every section of the country. The House conducted no Committee hearings with respect to any of the issues involved in this provision.

Specifically, Section 228 of the House version is an effort to legislate a decision on a matter pending before the Interstate Commerce Commission (ICC) and the Federal Railroad Administration (FRA).

In those proceedings, operating authority and Federal loan guarantees are being sought for the benefit of the Union Pacific through the construction of a connector line to transport Chicago and North Western coal movements from the Powder River Basin in Wyoming. Proceedings before the ICC have been completed and the FRA period for public comments expired on August 11, 1980.

All proceedings have been conducted pursuant to existing law, including Section 511(g) of the 4-R Act which establishes sound standards to measure the need for loan guarantees and to protect the security interests of the United States in loans the repayment of which is to be guaranteed by the Federal Government.

Even though the proceedings are completed and ready for decision by both the ICC and the FRA, this new House provision would provide for waiver of all the protective standards in Section 511(g) of the 4-R Act.

Despite the fact that the Union Pacific Corporation is the real beneficiary, the proposal is structured in such a manner that neither Union Pacific nor any of its subsidiaries would have any obligation to repay the Government-guaranteed loan in the event of default.

Further, the Union Pacific Railroad, a subsidiary of the Union Pacific holding company, would enjoy very large revenues from the coal movements which would result from the loan guaranteed by the United States.

In addition, the House version circumvents the objections which have been made by state and local officials by waiving the environmental safeguards of Section 4(f) of the Department of Transportation Act. That section requires the Secretary of Transportation, in consultation with the Secretaries of the Interior and Agriculture, to preserve the environment and the public interest of the United States respecting lands affected by rail construction projects.

Some concerns have been expressed with respect to rail competition in the Powder River Basin. The Burlington Northern has responded to these concerns by offering the Chicago & North Western the right to serve the Powder River Basin without any investment on its part and without the necessity for any public financing.

Unfortunately, the C&NW has rejected this offer due, we suspect, to pressure from the Union Pacific resulting from the substantial economic power that it has over the North Western.

In short, the Union Pacific, without doubt the richest railroad in this Nation, is seeking Federal funding, not for the benefit of the C&NW, but for its own benefit to extend its operations into the Powder River Basin.

Isn't it strange that a holding company that recently announced that it was going to acquire a partnership interest in a large casino complex in Las Vegas, Nevada, should have its railroad subsidiary seek Federal loan guarantees to extend its operations into territory now adequately served by the Burlington Northern?

Perhaps this explains why the House version provides for a waiver of all of the protective standards for such loans contained in Section 511(g) of the 4-R Act.

Clearly, this special interest proposal for the primary benefit of the Nation's most prosperous railroad and its holding company should be rejected. The funding provisions of the 4-R Act were designed for the rehabilitation of deteriorated rail lines, not new construction by railroads fully able to finance such construction in the private sector.

There is no occasion for the waiver of soundly conceived public interest tests. Indeed, if the Union Pacific is entitled to this special treatment, should not all other applicants for loan guarantees be given the same benefits? It is obvious that the Union Pacific is afraid to allow existing law to be applied to this application.

Compare this proposal with the record of the Burlington Northern. Through 1979 BN invested $1 billion in railroad facilities and equipment to transport coal.

The Company projects additional expenditures of $1.6 billion in coal-related facilities and equipment for the five-year period 1980–1984. Despite these recent massive expenditures, BN earned only $41 million before taxes last year from its rail operations, a return of only 1.08 percent on its investment in rail operations.

This compares with the Company's present cost of capital of almost 13 percent.

In addition, the Company has substantial excess coal transportation capacity. Today, we have 31 coal trains in storage, 22 owned by utilities and nine owned by BN.

Further, we have 107 serviceable locomotives in storage. Surely, if public funds are to be provided for redundant transportation facilities, should not such an investment of taxpayers funds be measured by the same public interest standards that apply to all other railroad projects in the United States.

We urgently request that you support our efforts to eliminate this objectionable special interest provision. Thank you for your consideration and your assistance.

Sincerely,

DICK.

[From the Times-Herald, Aug. 13, 1980]

WE AGREE WITH MCGOVERN

Sen. George McGovern (D-SD) has taken a strong stand against the connector-line plan from the Powder River Basin coal fields that would link the Chicago and North Western Railroad and the Union Pacific.

An application has been made by C&NW to the Federal Railroad Administration for federal loan guarantees to fund the project.

McGovern supported action of the Interstate Commerce Commission in 1976 for joint ownership of the new Orin-Gillette railroad line by C&NW and Burlington Northern.

But he opposed the loan application filed by the C&NW on May 12, 1980 with the Federal Railroad Administration, saying that the Union Pacific Railroad would be the primary beneficiary if it were granted.

McGovern also sees "serious policy questions" in the loan application.

Congressional intent in passing the Rail-

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road Revitalization and Regulatory Reform Act of 1976, which authorized the federal loan guarantee program, was to provide federal assistance for the revitalization of marginal lines.

Because the UP would be the primary beneficiary under the loan application, McGovern contends that approval of the loan would violate the intent of Congress. Certainly the UP is not a marginal line.

McGovern takes this stand in a letter written to John Sullivan, administrator of the Federal Railroad Administration, dated Aug. 9, 1980.

He is concerned with the C&NW as it is the primary railroad now serving South Dakota. He boosted the 1976 joint ownership of the new Orin-Gillette line, with Burlington Northern, believing it would provide access to the coal fields for C&NW which would transport it to destinations by ways of the northern Nebraska line.

As McGovern sees it, "a substantial increase in C&NW revenues is essential to the upgrading and modernization of their physical plant which is presently suffering from deferred maintenance and equipment problems."

In the letter to Sullivan, McGovern asks that any decision regarding the Powder River Basin loan application be deferred "pending analyses and investigations of the recent rail merger acquisition (by UP with Missouri Pacific and Western Pacific) that will be conducted in both the Senate Judiciary Committee and the Congressional Joint Economic Committee."

McGovern sees the possibility of the UP providing single line coal service to many utilities in the Southwest at the expense of other carriers.

Many in western Nebraska welcome the stand taken by McGovern. The UP connection to the coal fields of eastern Wyoming makes little sense toward the real needs of the C&NW—upgrading of its present lines.

[From the St. Paul Pioneer Press, Sept. 12, 1980]

MIDWEST COULD BE BIG LOSER IN RAIL WARFARE

(By Lee Egerstrom)

Early in his administration, President Carter informed Congress and the transportation industry that he would support legislation deregulating the carriers from governmental agencies. In short, he favored turning the transportation industry loose to grow and prosper using its own ingenuity.

This week Midwesterners are learning how ingenious some railroads can be.

Lobbyists for the Union Pacific (UP) and a number of other railroads got the U.S. House of Representatives to pass a rail deregulation bill Tuesday that coul[4] provide taxpayers' subsidies to the Union railroad to open a lucrative coal hauling line into the Powder River Basin area of Wyoming at the expense of the Burlington Northern.

But in the process, the move could prevent the Kansas City Southern Railway Co. from improving grain hauling service from the northern prairie states.

The bill also creates a rate-making procedure to regulate the cost of hauling coal. Thus, future railroad operating cost increases might well be disproportionately charged against hauling grain and other commodities in the midwestern and western states.

"This is just the beginning of an effort to limit the number of railroads in this country to a handful of giants," said Phillip Brown, a Kansas City Southern vice president who heads his railroad's law department.

"The intention of this bill is to squeeze everybody else out," he said in a telephone interview from Kansas City. "This will make a lot of lines go broke or consider mergers."

The Kansas City Southern is seeking government approval to acquire from the bankrupt Rock Island Line a long stretch of tracks through Iowa. This move would link St. Paul to the Gulf Coast ports through Kansas City, providing that Kansas City Southern could acquire government loans to rehabilitate the aging Rock Island tracks.

Brown estimates that Kansas City Southern would need between $100 million and $150 million to make the Iowa tracks capable of handling large and efficient grain trains.

"I'm not saying we still won't do it, but the prospects are now very dim," he said.

Those dim prospects stem from an amendment offered to the House deregulation bill Tuesday before the House passed it. It orders the Federal Railroad Administration to act on an application by the Chicago Northwestern (CNW) railroad to open a 60-mile line into the Powder River coal region in Wyoming.

The CNW also wants $300 million from the Department of Transportation's rail rehabilitation program to acquire and build that line. That program offers government-guaranteed loans to all but the wealthiest railroads at interest rates equal to the cost of money to the government.

Since there is only $170 million in that program's pocket right now, and Congress isn't likely to grant more than $600 million more for the coming year, the Kansas City Southern sees little likelihood that it can tap into the program to improve rail service across Iowa.

Furthermore, notes James R. Walker of the Burlington Northern, the rehabilitation program is supposed to help economically hard-pressed railroads and their dependent shippers and consumers.

The main beneficiary of opening a CNW line into the Powder River would be the highly prosperous Union Pacific, he said.

Walker, Burlington's general counsel, notes that the proposed CNW line in Wyoming would merely carry Wyoming and Montana coal to the UP's transcontinental line crossing in northwestern Nebraska. The CNW already has rights to carry Powder River Basin coal to eastern markets on Burlington tracks.

In effect, Walker said, the UP would be given "taxpayer subsidies" to compete with the BN, which now transports most of the Powder River coal.

"There is capacity for one line, scant capacity for two, and capacity for neither if ever Congress passes a coal slurry pipeline bill," he said.

Texas Congressmen, who favor coal slurry pipelines as a means of transporting both North Plains coal and water to Texas users, favored yesterday's amendments giving priority to the CNW new coal hauling line.

But Midwesterners, led by Reps. Bill Frenzel, R-Minn., and Jim Oberstar, D-Minn., fought unsuccessfully to prevent the regulatory amendment from being added to the deregulation bill.

Rep. Mark Andrews, R-N.D., argued that ——— the expenditures of $300 million in taxpayers' guaranteed loan money to duplicate rail service is wasteful when "not 1 cent" is being made available to preserve the bankrupt Milwaukee Road's ——— hauling line from North Dakota to the Big Surry power plant on the Minnesota-South Dakota border.

"All I'm saying is before we put priorities in ——— to, in effect, double the service to one area, we ought to maintain original service to another area that has no other choice," Andrews said.

This prompted Kansas City Southern's Brown's remark Thursday:

"There is a good bit of regional warfare involving the rails right now. I wouldn't say it looks good for (the Northern Plains) region."

[From the New York Times]

UNION PACIFIC GAINS SUPPORT ON CASINO

CARSON CITY, NEV., July 16.—The Union Pacific Corporation won a recommendation today to become an active partner in a major Las Vegas hotel-casino, a step paving the way for even bigger gaming-related ventures.

The Nevada Gaming Control Board recommended that the corporation be found suitable for registration as a publicly traded holding company, which, through intermediaries, would hold a 20 to 25 percent interest in the company operating the Union Plaza hotel-casino in downtown Las Vegas.

Until now, U.P.C., a holding company for the Union Pacific Railroad and other diversified interests, had been in a landlord status, owning the Union Plaza complex but leasing it to Frank Scott. The status change for U.P.C. will make it the biggest publicly traded corporation to venture into Nevada gambling.

Mr. Scott and his Scott Development Corporation, through a complex revision of a 1969 agreement with the Union Pacific Corporation, will get the rignt—and "enhanced ability"—to add a $40 million hotel tower adjacent to the existing casino. Scott Development also gets title to land under the club, and the ability to obtain additional contiguous land for later expansion.

The suitability status for U.P.C. and its intermediaries is a key element in its plans to eventually develop 320 acres of land adjacent to the Union Plaza. Plans call for hotels, casino, entertainment and "leisure time activities."

The control board's recommendation now goes to the Nevada Gaming Commission, which is expected to make a final decision July 24.

Mr. BURDICK. Mr. President, will the Senator yield?

Mr. McGOVERN. I yield to the Senator from North Dakota, Senator BURDICK.

Mr. BURDICK. Mr. President, I associate myself with the remarks of the able Senator from South Dakota.

The House of Representatives adopted in their bill the provision known as section 228. Under section 228 the House of Representatives permitted new construction of railroads. It always was the intent and purpose of this act to rehabilitate existing lines.

One can see at once that this is very much a taxpayer's concern when it goes beyond that point.

Let me refer the Senate to a debate on the 1980 Department of Transportation appropriations bill on November 1, 1979, when Senators MAGNUSON and BAYH stated at page 30615 of the RECORD as follows:

Mr. MAGNUSON. Mr. President, the funds in the bill for redeemable preference share financing and loan guarantee financing under title V of the Railroad Revitalization and Regulatory Act of 1976 will be essential to the rehabilitation and improvement of marginal railroads such as the Milwaukee and the Rock Island.

We want to be sure that Federal assistance under title V is limited to rehabilitation and improvement of existing rail facilities and can only be used for limited new construction as part of a rehabilitation and improvement project, and that it will

not be used for projects not directly related to rehabilitation and improvement of the existing railroad system.

Mr. BAYH. I fully agree with the chairman.

So it seems to this Senator that the House in its bill, by adopting section 228, went way beyond what was intended by this legislation.

This, of course, is not contained in the Senate bill and, as I am advised, there were no hearings on this particular phase of the House bill.

So I would like to call to the attention of the conferees before they go into conference this colloquy held on the floor as reported in the CONGRESSIONAL RECORD as to the meaning and intent of the legislation.

I want to thank the Senator from South Dakota for yielding.

Mr. McGOVERN. Mr. President, I thank the Senator from North Dakota for his remarks.

Mr. YOUNG. Mr. President, when the railroad deregulation bill was debated on the Senate floor in April, a number of us were taken in by a last-minute floor amendment which provided for joint rate surcharges and cancellations. The amendment was promoted by Conrail and Southern railroads as a significant and essential step toward solving Conrail's perpetual financial crisis. While a brief legislative explanation was provided to us on the floor, hindsight has demonstrated that the explanation was at best incomplete and may well have been misleading.

The law presently provides a remedy for carriers which are not receiving a fair or adequate share of the revenues from a joint route. In a "divisions proceeding" before the Interstate Commerce Commission, the disadvantaged railroad may argue that the other railroad(s) involved in the joint route are not equitably sharing the revenues from the joint rate charged the shipper. If successful, the disadvantaged railroad is awarded a larger portion (division) of the income, and the income of the other railroad(s) involved in the joint route are adjusted downward accordingly. ICC's decision on the division of the revenue affects only the railroads involved and cannot result in a higher rate to the shipper.

The joint rate surcharge and cancellation provision which the Senate approved in December makes the division proceeding a less desirable method of resolving inequitable or unjust divisions of revenues on joint routes. The surcharge provision says that when the disadvantaged carrier is receiving less than 110 percent of variable cost on its portion of a joint route, it is entitled to improve that income by applying a surcharge to its portion of the rate. The shipper pays the surcharge, and the disadvantaged carrier has no reason to dispute how much of the revenue from the basic rate might be flowing to the other railroads which are partners in the joint route. Conversely, rail partners in the joint route are not entitled to any of the disadvantaged carrier's revenue from the surcharge.

What was not explained to the Senate is that the criteria of "110 percent of variable costs" acts as a trigger—not a ceiling. If the railroad is receiving less than 110 percent of variable cost, that finding makes the railroad eligible to apply a surcharge. A number of my colleagues acted on the presumption that, if eligible to apply such a surcharge, the railroad could only then surcharge its portion of the joint rate to the extent that the basic rate plus the surcharge did not exceed 110 percent of variable cost.

It was some days after the Senate took final action on the rail deregulation bill that we found out no such ceiling existed; that, in fact, we had passed language which said the sky is the limit on the level to which surcharging may legally increase freight rates. It was computed that even if a ceiling had been placed at 110 percent, that alone would immediately result in surcharges of more than a billion and a half dollars.

It was not adequately explained to the Senate that the authority to cancel joint routes could effectively terminate service to thousands of agricultural shippers and could result in double-to-triple transportation costs for thousands of others.

The same "below 110 percent of variable costs" triggers a railroad's right to simply cancel its participation in a joint route. This means that shippers who use that route have to approach each railroad between them and their market to get individual quotes for that segment of the trip. The rates on these "local movements" tend to be a great deal higher than the combined joint rate for a long-haul across two or more rail systems. In fact, by the time you total up the local rates which will get a shipper to his historic market, you could have a figure which is two to three times higher than the joint rate which can be canceled under the new powers given the rail common carriers in both the Senate and House bills.

Obviously, the higher transportation costs will make it difficult or impossible for shippers to compete effectively in their established markets. Many will find new markets, but the higher transportation costs will still exist in the aggregate and will be passed along to consumers. Many rail shippers will turn to other modes of transportation—trucks, which are far less energy efficient than trains, or barges, a geographically restricted method of transportation with an inflexible capacity for expansion.

In time, demand for rail service along joint routes which have been surcharged or canceled will lag dramatically, signaling to rail management that abandonment of the line might be in the transportation company's best interest. The rail deregulation bill provides in another section for expedited abandonment procedures—another provision tailored to accommodate Conrail's management difficulties. If you combine the effect of joint rate surcharges and cancellations with the new provisions for expedited abandonment, you have the potential for wholesale abandonment of most of the branch lines serving agriculture and nonurban industry in America. The Nation will be left with a transcontinental, gateway-to-gateway rail system of main lines to which most shippers will have difficult or no access.

We were given no time to deliberate and understand this in the Senate last April. The House of Representatives had every opportunity to examine the joint rates provisions and that process led to one of the stormiest debates Congress has seen in some time.

Even knowing as little as we did about the potential harm of surcharges and cancellations, the Senate approved the amendment by a slim margin of eight votes (52 to 44). The legislative process does not now allow us to step back and reverse that position. We are, however, still in a position of some flexibility in tailoring the final version to be approved by the conference committee. The Senate version of the surcharge/cancellation authority is extremely broad in scope—so broad as to be frightening if left totally in the hands of Federal regulators to interpret. The House version, on the other hand, is extremely narrow and precise in its language, and promises to do all the damage I have described with the exception that it does use 110 percent of variable cost as a ceiling on surcharging. In between these vastly different versions is an answer which will do the least amount of damage to the rail transportation system and its shippers. It is my hope to work with others in finding this answer and to vote against the conference report if a serious effort in that direction is not made.

I would offer one specific suggestion at this time. The rail deregulation bill does not repeal the existing law which establishes the forum for divisions proceedings at the ICC. As a matter of fact, the ICC itself under existing authority could do much administratively to expedite those divisions proceedings. Southern Railway and a number of other railroads have effectively utilized that forum to work out their revenue problems among themselves. Conrail has not, yet demands that it be given authority to increase revenues by taking it away from shippers and consumers with a surcharge. While the conferees are working to see that the surcharge allows the least amount of mayhem in the Nation's rail system, I would ask that the ICC internally "deregulate" and expedite the divisions proceeding process into an effective, workable tool.

Mr. McGOVERN. Mr. President, if there are no other Senators wishing to speak on this issue I yield back the remainder of my time.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of

the pending business, H.R. 7631, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent Agencies, Boards, Commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate resumed consideration of the bill.

Mr. COHEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized.

UP AMENDMENT NO. 1575

(Purpose: To place limitations on year-end spending for contracts)

Mr. COHEN. Mr. President, I send to the desk an unprinted amendment.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. COHEN) proposes an unprinted amendment numbered 1575.

Mr. COHEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 49, beginning with line 15, strike out through line 5 on page 51 and insert the following:

SEC. 414. No funds appropriated under this Act may be obligated or expended during the last two months of the fiscal year ending September 30, 1981, by a department or agency for the award of a contract, or for a modification of a contract increasing the obligations or expenditures under the contract in excess of 10 percent, unless the department or agency issues a solicitation for or notification of the proposed award or modification at least 60 days before the date on which the award or modification is made. The preceding sentence does not apply to any obligation or expenditure for an emergency affecting human safety, property, or national security, or to any obligation or expenditure if the head of the department or agency determines, on a case by case basis, that the obligation or expenditure is necessitated by another type of emergency and reports such determination to the Committees on Appropriations of the Senate and the House of Representatives.

Mr. COHEN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS UNTIL 11:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 11:30 a.m. today.

There being no objection, the Senate, at 10:56 a.m. recessed until 11:30 a.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. EXON).

Mr. COHEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COHEN. Mr. President, this amendment, which Senator LEVIN and I have coauthored, would strengthen the yearend spending provisions contained in H.R. 7631. It would impose strict new limits on contracts awarded in the final 2 months of the fiscal year to insure that agencies do not rush to deplete their appropriations, regardless of need or time constraints.

Our amendment would prohibit any department or agency from obligating contract funds in the final 2 months of the fiscal year unless the solicitation or notification for the contract is issued at least 60 days before its award. This provision would insure that agencies do not obligate funds simply to prevent them from lapsing and that adequate time for preparation and evaluation of the contract is available. To prevent agencies from avoiding the prohibition by simply enlarging existing contracts, the amendment would also apply to significant modifications of outstanding contracts.

Of course, there may be cases where contracts must be awarded more quickly for emergencies affecting human safety, property, or national security. Our amendment permits the executive department secretaries and agency heads to authorize exceptions to the 60-day rule on a case-by-case basis to cover such exigencies. These exceptions would have to be reported to the House and Senate appropriations committees.

Mr. President, the problem of rushed and unnecessary yearend spending is serious, widespread, and complex. It results from failures at every level of government, from contracting officers to program people, from the Office of Management and Budget to the Congress.

It involves the failures of audit mechanisms and of procurement regulations that grant so much discretion that millions of dollars can be wasted in the waning weeks of the fiscal year.

It is exacerbated by the late enactment of appropriations, the use of continuing resolutions, and the passage of huge supplementals.

It results from a system that rewards spending and discourages thrift because an agency that manages to save tax dollars is a likely candidate to have its budget cut in the following year.

Mr. President, the Governmental Affairs Oversight Subcommittee, under the capable leadership of Senator LEVIN, recently concluded a yearlong investigation into the causes and consequences of so-called hurry-up spending. The subcommittee concluded that wasteful spending practices at the end of the fiscal year cost the taxpayers at least $2 billion annually.

We discovered that hundreds of thousands of contracts are awarded in the final weeks of the fiscal year simply to prevent the return of unused appropriations to the Treasury or to forestall future budget reductions by Congress.

Operating under the "use it or lose it" philosophy, some Federal agencies purchase unneeded goods or services in order to deplete their appropriations. For example, a Young Adult Conservation Corps camp bought 1,000 pairs of horseback riding chaps for fewer than 300 enrollees in response to a memoranum instructing that "all moneys be obligated at the end of fiscal year 1978."

The more significant and costly waste, however, results from the shortcuts taken in the procurement process at the end of the fiscal year. Time constraints encourage the awarding of contracts with limited or no competition, such as sole-source procurements. Noncompetitive practices increase costs because they decrease the probability that the Federal Government will obtain the lowest possible prices for its purchases.

Another common shortcut taken at the end of the fiscal year, in order to speed up the award of the contract, is to waive the preaward audit. Accurate audit information on a firm bidding for a Government contract permits the Government to dispute overly optimistic cost projections which can lead to cost overruns. The subcommittee found that agencies were much more likely to waive the audit requirement at the end of the year. With virtually every Federal agency awarding a disproportionate share of its contracts in September, the pressure to waive the audit increases.

Still another procurement problem caused by the yearend rush is the compression of bidder response time. Shortening the amount of time allowed for private firms to respond to Government bids is a classic technique for awarding contracts before the close of the year. Consequently, the proposals submitted tend to be of poorer quality.

Surges in procurement spending also cause unnecessary adminstrative expenses. In fiscal year 1979 alone, the Federal Government needlessly spent millions of dollars merely to keep procurement personnel working overtime to process the yearend flood of contract requests.

These year-end spending problems that I have discussed permitted HEW to award $135 million worth of contracts during the last 3 days of fiscal year 1979. And those days were a Friday, Saturday, and Sunday.

But HEW was by no means alone in its year-end spending abuses. In fact, none of the 10 Federal agencies and departments examined by the subcommittee were found free of hurry-up spending problems.

The amendment that I have sponsored directly attacks the yearend spending spree. The requirement that a contract could not be awarded in August and September, unless the solicitation for it has been issued 60 days in advance, will

make it much more difficult for agencies to spend wastefully.

The 60-day rule will insure that adequate time is allowed for obtaining competition for contracts, for performing important preaward audits, and for allowing private companies enough time to prepare their bids.

It will insure that agencies plan their purchases. In those agencies where procurement planning already has been implemented, there has been a marked decline in yearend buying.

In addition to the enacting yearend spending caps, Congress should establish mechanisms to allow it to monitor the competition for Government funds and the quality of Federal program expenditures. It should enact a strong clamp on unnecessary noncompetitive contracting. It should insure that agencies and officials who spend wastefully or manage poorly are punished. This will be a tedious and time-consuming task, but it is the only action that will work to correct the fundamental problems in the procurement process.

Mr. President, I urge the adoption of this amendment.

Mr. President, this amendment, which Senator LEVIN and I have coauthored, together with Senator HART, was designed originally to be a substitute for the committee provision dealing with hurry-up spending. We have discussed this matter with the Senator from Wisconsin, and it is my understanding that it will be acceptable as an addition to the committee's provision in dealing with hurry-up spending.

Mr. PROXMIRE. Mr. President, in response to my good friend from Maine, I did discuss this matter with him. It is my understanding that this amendment would not strike the amendment that is in the bill by the chairman of the committee which was aimed at preventing this unfortunate spending in the last month or 2 months of the fiscal year. In fact, it would add strength to it.

I congratulate the Senator from Maine and Senator LEVIN for their initiative and for proposing a very constructive and helpful amendment, which I am happy to support.

Mr. LEVIN. Mr. President, the amendment offered by my colleague from Maine, Senator COHEN, is just one step in a series of needed incentives for reducing wasteful spending in the Federal bureaucracy. The amendment clearly states Congress intent to improve the Federal procurement system by concentrating on the nature of the illness rather than by attacking its most visible symptoms.

I am referring specifically to the need to reduce noncompetitive contract procedures that underlie the excessive increases in expenditures during the fourth quarter of the fiscal year in virtually every Federal agency.

The Governmental Affairs Subcommittee on Oversight of Government Management, which I chair, estimates that at least $2 billion are wasted by Federal agencies each year because of the rush to obligate funds during the fourth quarter. Much of the waste associated with such "hurry-up spending" is due to agency failure to insure adequate competition for contract awards during the final quarter.

Examples of rushed spending at the end of the fiscal year abound throughout the executive branch. These are just two of the many examples cited by the subcommittee's recently issued report entitled "Hurry-up Spending":

In fiscal years 1969 and 1970, the Community Services Administration, and its predecessor, the Office of Economic Opportunity, awarded 45 and 46 percent of its contracts in the final month of the fiscal years."

In fiscal year 1975, the Commerce Department's Maritime Administration, the Environmental Protection Agency, and selected agencies within the Department of Transportation spent 65 percent of their research and development contract funds in the last month of the fiscal year, implying "that funds are obligated to prevent the authority from lapsing or to avoid reductions in future appropriations."

The question is not whether hurry-up spending is wrong, it is; or whether it is costing a tremendous amount of tax dollars, it does; the question is how Congress should act to solve this complex problem. This amendment requires executive agencies and departments to issue bid solicitations, and public notice 60 days prior to the awarding of contracts that are to be let during the final 2 months of the fiscal year. The measure will assure sufficient time for solicitation and negotiation of bids to insure increased competition for fourth quarter contracts. Those actions are the keys to the solution to the problem of hurry-up spending.

This amendment avoids the artificial fourth quarter spending limitations on total agency contract authority, because they may well backfire.

As Senator COHEN pointed out, statutory spending limitations on agency spending, such as that imposed on the Department of Defense, have failed to reduce rushed contracting or the acquisition of goods and services that are not needed. The Deputy Under Secretary for Defense, Dale W. Church, testified that the "limitation, by itself," does "not improve the quality or timeliness of purchases. Proper planning and management is the key."

The Office of Management and Budget recently informed the subcommittee that an arbitrary fourth quarter spending limitation will not solve the problem, and that:

Because agencies would have to obligate annual funds on an arbitrary schedule that is even shorter than the current schedule, the limitation is more likely to contribute to the mentality of spending funds merely to prevent losing it.

In other words, Mr. President, in the absence of a carefully developed and carefully monitored agency spending plan, which will result from our amendment, the surge in spending could just be advanced to the third quarter.

OMB also noted that the limitation would impose arbitrary limits on some programs which have uncontrollable workloads, such as disaster relief and other emergencies, seasonal programs, and benefit payments (for example, for food stamps) required by other laws.

OMB cited programs in which activity peaks in August and September that would be adversely affected by a spending limitation:

August and September are two months in which high fire severity occurs in portions of the western half of the U.S., where 85 percent of the forest fire protection budget is used;

The main reason for high obligations for the fourth quarter in Agricultural Marketing Service activities is the seasonality of the cotton and tobacco grading programs;

In food programs, such as the Elderly Feeding, Summer Feeding, and Food Donations programs, many commodity purchases are made when price and supply are most favorable. Because the harvest season occurs during the fourth quarter, sizeable obligation of funds usually occurs at this time.

The Environmental Protection Agency (EPA) informed the subcommittee that:

The use of obligation limits will introduce unnecessary and undesirable additional constraints on the federal acquisition processes and create many new problems without positively impacting the present problem.

And the Agency cited particular adverse effects of a spending limitation on the construction grants program because of the time needed to negotiate these large contracts with the States and contractors:

The proposed limitation will apply to all types of procurement actions. We anticipate problems in applying the limit to our construction grants program. EPA wastewater treatment construction grants must be planned well in advance of award. Each state develops a priority list of projects to be funded from each fiscal year's appropriations. The grants themselves must be awarded within two years, or funds will be reallotted to another state. Each state, working with EPA, must plan and manage the progress of each project over the two-year period. One of the cumulative effects of this work is the award of a great number of these projects toward the end of each fiscal year. If the limit were imposed on the last quarter of the year, many large construction projects would have to be held up for several months, with a possibility of needed funds being lost altogether. In such a case, not only will the physical construction not take place, but two years of time and effort spent by state and local governments, and EPA staffs may have been wasted . . . The imposition of a limit on spending during the final quarter of the fiscal year would not help this program.

The purpose of this amendment, again, is to encourage increased competition for agency procurement actions during the fourth quarter of fiscal year 1981 by increasing the time for solicitation and negotiation prior to the award of fourth quarter contracts. Current procurement regulations offer guidelines as to what length of time constitutes a reasonable solicitation period in the awarding of contracts. However, no lower limit is set on the amount of time that agencies may permit contractors to formulate their proposals. My subcommittee found dur-

ing its 11-month inquiry into fourth quarter spending abuses that it was typical for agencies to compress the contractor response time, effectively reducing the desired level of competition for contracts. In addition, the subcommittee found that agencies rushed their contract negotiation procedures during the final quarter, and activity that results in a diminution of the agency's ability to evaluate proposals, engage in oral discussions to resolve disputed prices or estimates, and insure that basic contract questions not be left for later agreement.

The subcommittee found that the rush to obligate funds at year's end prompted agencies to waive preaward audits of cost projections in contract proposals, and to award a greater number of sole-source contracts in lieu of soliciting a wide array of proposals to insure an adequate level of competition for major contracts. All of these activities also tend to increase agency expenditures for overtime payments to personnel involved in the award of such contracts.

The pending amendment will address all of these fundamental weaknesses generated by inadequate procurement regulations by allowing sufficient time to each agency to solicit an adequate number of proposals, perform preaward contract audits, thoroughly negotiate all contract proposals, reduce the number of sole-source contracts offered, and reduce excessive overtime payments to procurement personnel.

The 60-day rule imposed by this amendment aims at the problem avoidance of bad procurement practices in the rush to use appropriations or lose them. The measure does not impose an artificial limitation on total budget authority but seeks to improve agency procurement practices in the area where spending is highly discretionary—in the awarding of contracts. The amendment permits agencies to spend funds for legitimate purposes while imposing meaningful requirements against noncompetitive contracting procedures. OMB supports the finding of my subcommitteee that a statutory arbitrary limitation on the timing of obligations will inhibit Congress efforts by shifting the spotlight away from the essential problems—that of inadequate budget planning and management and noncompetitive fourth quarter procurement practices.

In view of the importance of imposing meaningful contracting requirements on Federal agencies, I urge my colleagues to support this amendment as a substitute to section 414 of H.R. 7631, the appropriations bill for HUD and independent agencies.

Mr. President. I am delighted that the Senator from Wisconsin has accepted this amendment. I believe that is an important step forward.

I hope that both this amendment and the language in the committee bill will be able to operate, so that we will be able to get a comparison with respect to the two techniques. We really are talking about two techniques, both of which will now be in this bill. I believe that both can be implemented, and I hope they can, because they are distinctly different in approach. We should get the benefit of experience with both approaches, to see whether or not the one we are offering in this amendment is far better than the one which is the appropriations bill that came to the Senate floor a few days ago.

I commend the Senator from Maine for his leadership in the hurry-up spending effort. It is bearing some fruit already.

I thank my colleague and friend from Wisconsin for accepting this amendment, and I hope the other side of the aisle will see fit to do so, also.

Mr. HART. Mr. President, as a cosponsor with Senator COHEN and Senator LEVIN of this amendment to stop excessive yearend spending. I seek to strengthen the existing yearend spending provisions contained in H.R. 7631.

Those existing provisions attempt to end the wasteful yearend spending practices that now go on in some agencies of the Federal Government. It is well known that some Government agencies will endeavor to spend money by expanding their existing contracts or by issuing new ones, to reduce chances that Congress will curtail funding in the future year. By spending money at the end of their fiscal year, Federal agencies attempt to show that even more money is needed in the following year.

The existing provisions in H.R. 7631 are aimed in the right direction but, unfortunately, will not accomplish that objective. They would limit total yearend spending by an agency to 30 percent of the year's budget in the last 3 months of the year, or limit spending in any of those 3 months to 15 percent of the year's budget.

The problem with such an overall limit is that contracting itself may comprise only a small portion of the agency's budget. Thus, large increases in contracting could occur in the last few months of the fiscal year without changing significantly the total spending profile of the agency.

The Cohen/Levin/Hart amendment would more precisely target budgetarv controls by focusing on contracts themselves. It is the authorization of new contracts, or the hasty expansion of existing ones, which wastes Federal money.

This amendment would require any Federal agency to give public notification at least 60 days in advance of any new contract during the final 2 months of the fiscal year, or of the expansion of any existing contract by more than 10 percent in the final 2 months of the fiscal year.

The important part of this 60-day prenotification is that it subjects new contracts or expansion of existing contracts to both external and internal review. With 60 days of prenotification, it is unlikely that an agency could proceed with a sole-source contract unless it were truly justified. Other qualified firms could make their views known to the agency and insist on competitive bidding.

Furthermore, within the agency budget examiners would have time to review new contracts and be certain that new contracts meet sound budgetary criteria.

Mr. President, the Governmental Affairs' Subcommittee on Oversight of Government Management, under the leadership of Senators LEVIN and COHEN, have concluded that wasteful spending practices at the end of the fiscal year cost taxpayers at least $2 billion annually. Operating under the "use it or lose it" philosophy, some Federal agencies have purchased unneeded goods or services so as to deplete their appropriations. For example, a Young Adult Conservation Corps camp bought 1,000 pairs of horseback riding chaps for fewer than 300 enrolees, apparently in response to a memorandum instructing that "all moneys be obligated at the end of the fiscal year 1978."

The Oversight Subcommittee found that very significant and costly waste resulted from short cuts taken in the procurement process at the end of the fiscal year. Contracts awarded with limited or no competition increase costs to the Government because they do not strive to obtain the services at the least cost. Some short cuts involved the waiver of the preaward audit wherein the Government examines cost projections to insure they are not overly optimistic and destined to overruns.

In summary, Mr. President, I believe that the existing provisions in this appropriations bill will fall short of achieving their desired objective. By lumping contract authority into total authority for an agency, it is unlikely that wasteful contracting practices will effectively be reduced in all agencies. Furthermore, by choosing an arbitrary maximum level of outlays in one time period, many exceptions may be required, so this provision would lose effect quite quickly.

Mr. COHEN. Mr. President, I ask unanimous consent that the amendment I have submitted be considered as an addition to and a substitute for the committee language and that the RECORD so reflect.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I do not wish to delay a vote on this amendment——

Mr. PROXMIRE. Mr. President, has the amendment been acted upon?

The PRESIDING OFFICER. The amendment has not been acted upon.

Mr. JAVITS. I yield for that purpose.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (UP No. 1575) was agreed to.

Mr. JAVITS. Mr. President, by arrangement with the manager of the bill, Senator MOYNIHAN and I have been given an opportunity—which is very accommodating to me because of difficult time problems—to discuss an amendment to the bill, which was reserved yesterday out of the general agreement to the committee amendments, making this amendment still a subject of debate.

This amendment is of critical importance to the city of New York and to its financial future, which has been much debated and considered and to which Senator PROXMIRE and other Members have made marked contribution. It raises very interesting questions of law and fact. With the permission of the Senate, I should like to address myself to them briefly, and I hope that the matter may be considered very carefully by the author of the amendment, the manager of the bill, and by other Senators, with a view to what should be done about it.

The amendment provides that in respect of further guarantees of New York City loans by the Treasury—that is, the Federal Treasury—none of the money raised on indebtednesses covered by those guarantees may be utilized after 1982, which is the expiration date of the act.

The purpose we must divine, and which is referred to in the committee report, expresses the feeling that this will minimize the utilization of the guarantees and that it represents a source of credit which should not be called upon until other sources of credit have been used up entirely.

The first point from us, which I hope Senator PROXMIRE will consider very carefully, is the fundamental responsibility here which, for reasons of technicality, was vested in the Secretary of the Treasury.

We know that in the affairs of a great city like New York City, which really represents a national city so far as our country is concerned, which was reduced in 1975 practically to the point of bankruptcy, it was a national interest that prompted us to intervene. We know the problems of banking markets and the condition of cities in terms of the business they do, the unemployment they have, the stressful circumstances which could occur, including almost any cataclysm to which a great city can be subject, which makes it necessary to contemplate the possibility of changed circumstances.

We cannot be certain that everything will remain the same with New York City. Indeed, it is our position—Senator MOYNIHAN's and mine—that we left the details of how this matter should be handled to the Secretary of the Treasury, precisely to take care of that contingency, and because we all know that Congress cannot get into the administration of detailed acts. That is the function of the executive department.

That does not mean that we cannot change the law. That does not mean that we cannot take away the discretion we vested in the Secretary of the Treasury.

But that is not what is sought here. What is sought here is an administrative determination within Congress as to whether or not these guarantees should be used for the purpose of raising money now which is likely to be used later, that is, after the expiration date of the law.

And I think that is a critically important point, especially in this matter for this reason: this is not a matter of judgment really of a city, nor is it a matter of the city seeking to take away out of some provision of law which it feels encases it against the best interests of both our country and the city, but this is a situation of banking judgment and a banking judgment which has been, considering the city's sacrifices up to now, I think extraordinarily successful.

The whole MAC enterprise, the Municipal Assistance Corp., has Felix Rohatyn, a gifted banker of New York and directing head of MAC, who is extraordinary productive and very intelligent and seems to have timed markets very astutely. And it is their judgment that you cannot crowd the market now with too much MAC paper. You are limited in the area of $400 million or $600 million. Therefore, knowing that you cannot bridge your gap, and that is what the guarantees were given for, the idea is to use providently the guarantees by raising money now which might not be raisable later in order to meet obligations which will be incurred but fall due later.

It seems to me that that is a characteristic, and I know that my friend and colleague, Senator PROXMIRE, was himself employed by banks. It is not an untraditional drawdown technique, and that is really what we put it on. In short, the debtor is entitled to determine when he draws down. Whether he draws down money or a guarantee is not dissimilar.

On a previous occasion, it drew down money. That is in the 1975 act. Now it draws down a guarantee which is tantamount to money.

So those are the first two points, that is, prudence in finance and in that respect just to have the RECORD complete I ask unanimous consent to have printed in the RECORD the letter of the bankers Salomon Bros., dated June 2, 1980, giving their view as to what the market will take in terms of MAC bonds.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SALOMON BROTHERS,
June 2, 1980.

Mr. ROBERT F. VAGT,
Executive Director, Municipal Assistance Corp. for the City of New York, One World Trade Center, New York, N.Y.

DEAR MR. VAGT: We have reviewed the financing proposal of the Municipal Assistance Corporation for the City of New York ("MAC"). The proposal is designed to assist the City in financing its capital program through December 1984. The proposal would provide for MAC to sell in the public market approximately (i) an aggregate of $800 million of its bonds during the City's 1981 and 1982 Fiscall Years in eight quarterly installments of approximatelly $100 million each, in addition to the $862 million of its bonds now scheduled to be sold privately during this period, and (ii) at least an aggregate of $1 billion of its bonds during FY '83 and '84 in quarterly installments of approximately equal amounts. In addition, the proposal calls for the sale to City and State Pension Funds of up to $900 million of federally guaranteed City bonds during FY '81 and '82.

Assuming normal market conditions, in our opinion MAC's bonds could be sold in the public market as described above at reasonable interest rates and terms if no more than approximately $600 million of MAC bonds were sold to the public during any year. We would like to stress, however, that such market access is dependent upon your proposal, or one similar to it, being adopted as the City's Financing Plan. Such a Financing Plan is necessary in order to assure the public market that the City will have access to adequate financing to meet its capital needs in an orderly manner.

If such a Financing Plan is not in place, MAC's access to the public markets could be substantially impaired. Without such a Financing Plan, there can be no assurance that MAC would be able to continue to sell its bonds in the public market in the amounts needed to assist the City in meeting its capital needs.

Very truly yours,

———

Mr. JAVITS. Mr. President, the second point is that we expressly gave the authority to the Secretary of the Treasury because the Secretary of the Treasury was deemed to be that official who could most keep track of the financial situation of the city and the financial situation of the markets to which the city was expected to go.

Third, the aggregate result will be the same. The aggregate result will be the issuance of MAC bonds and the utilization of the loan guarantee with a view to the city's fiscal independence and ultimate reentry into the public credit market, except that the timing will be as adjudged by their own bankers in the best interest of the city and in the best interest of making successful the guarantees of the Federal Government.

Mr. President, a reason for that in addition to banking judgment, of course, is the tremendous problem of capital improvement projects which are so essential to the city if it is going to maintain its business status and bring more business to New York which it so urgently needs.

I recall to my colleagues and to Senator PROXMIRE, who officiated at these hearings on this measure and was very generous to both Senator MOYNIHAN and myself in the allocations of time and allowing us to participate, how we all seemed to concur that the city was sitting on a time bomb in terms of its capital requirements, its sewer system, its water supply system, its roads and streets, its bridges, and accumulated deficiencies in maintenance, some not being adequately maintained for a century and it could blow up in our faces and in the faces of the almost 8 million people who inhabit the city. So again this discretion is necessary to be exercised in respect of that priority if we are not to further incur even greater dangers respecting the collapse of the municipal infrastructure.

So, Mr. President, as my colleague is known for his deliberation and also for his willingness to be persuaded if he can be, he agrees with so many of us. That is one of the great hallmarks of the Senate, of any deliberative body. I hope very much that he may give consideration and that other Senators will give consideration to these basic facts and reconsider whether we are not our own worst enemies rather than our own best friends in having this amendment from a situation which we wish to be successful where millions of people have undertaken at great sacrifice. I live there and I know how tough this has been on New York City. What is at stake is what is commonly agreed to be the greatest city in the world, perhaps the greatest

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city that our civilization has even seen, and there is the matter of business judgment in which we have established a chain of command which it would be very unwise now to vitiate.

I yield to Senator MOYNIHAN.

Mr. MOYNIHAN. I thank my revered senior colleague for yielding to me.

Mr. President, I require only the briefest time to supplement his masterful summary of the question before us. There are two points only that I wish to make.

The first is that the New York City loan guarantees seem to have assumed a life of their own in this institution; they are apparently an event somehow apart from the normal business of our Government.

I simply wish it to be understood for those who would like to know more about this matter that loan guarantees, far from being an exotic phenomenon, are very commonplace in the public finance and political economy of the United States.

In fiscal year 1979, $100,888,000,000 of loan guarantees were issued by the U.S. Goverment—the accumulative total right now approaches $400 billion.

There is nothing unusual about this.

I might add that the Federal Government does not extend money in this process. It collects it. Last week—I think the leader will not mind if I report a private conversation, and the leader is in the Chamber—I called him to discuss this issue and with the prudence that we associate with him in these matters he asked me, "If you have your way will it cost anything?"

I was able to say "no." If the city of New York is not able to use there additional guarantees, the Treasury will actually lose the money which it would charge for those guarantees.

This is not a small amount of money. The first New York City loan guarantee netted the Treasury of the United States $208 million, a very large sum of money. The loan guarantees under the second loan so far issued have earned a fee already of $3.8 million.

We charge for this as is our right as the Federal Government, but certainly this is not a case of special treatment for the city of New York.

The second point I wish to make, having the leader and the chairman on the floor, and I hope I can have them hear me say this, is that they have felt the city of New York's fiscal problems have occupied this Chamber and the other body sufficiently over the last 5 years, then surely they would not want to see this particular amendment enacted, because this amendment guarantees that there will be a third New York City loan guarantee. There will be no way to avoid it.

The city's fiscal plans, which have been forced upon it in many respects by the policies of the Federal Government in raising rates to, at one point, 20 percent this last year, require a spreading out of the loan, of the uses of the guarantee on the MAC. If we are not allowed this, we will be back—can I ask the leader to listen—we will be back, and we do not want to be back.

In the committee report, in language which is scarcely ambiguous, on page 9 the chairman says:

> Finally, the committee wishes to make the point as forcefully as possible that this is the last time.

That is a very direct statement, and certainly one which I would hope will prove to be true. But, I can say in all candor and with absolute conviction, and I think my revered colleague might agree with me, if this amendment were to be adopted, the city will be back, and that we do not want to happen. Therefore we hope that this amendment will not be adopted.

Mr. JAVITS. Mr. President, will the Senator allow me to join with him in that remark?

Mr. MOYNIHAN. I would be happy to do that.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, at the request of the managers of the bill, that the colloquy on this pending subject continue for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, if I may reply to my good friend from New York, I think it was the Senator from New York who mentioned that I was at one time employed by a bank. It was J. P. Morgan, which is now Morgan Guaranty, and I was proud to be associated with one of the great banking institutions in this country, so I am sympathetic, and have been sympathetic, to these banking problems.

As to the New York City situation, for the life of me it is hard to understand why there is an objection to what we put into the bill. I do not think, frankly, that it has been described and analyzed as carefully and accurately as it might be.

Take a look at the actual language contained in this section of the HUD appropriation bill dealing with the New York City loan guarantee program. I offered this language in the course of the regular Appropriations Committee markup of this appropriation bill. It was considered by the committee—several members spoke on the matter including the distinguishd Senator from New Mexico, who was here a few minutes ago, and it was approved. It was approved because it was totally consistent with the intent of the New York City Loan Guarantee Act and consistent with the directives of the Appropriations Committees when they approved the $1.65 billion in loan guarantee authority in 1978.

This language does not change existing law. It would not in any way prevent New York City from getting Federal guarantees in fiscal years 1981 and 1982 if the conditions of the Loan Guarantee Act are met. If New York City is effectively unable to obtain credit in the public markets or elsewhere in amounts and terms sufficient to meet its financing needs—if the interest rates are too high or the amounts too small—then of course the city would get the guarantees. That is what they are there for. They would get them. The amendment does not prevent that.

What the amendment does do is clarify and reemphasize the intent of the law, which is that the Federal Government is supposed to be the lender of last resort. Guarantees are supposed to be issued only if, and to the extent that, neither New York City itself nor the municipal assistance corporation (MAC) is able to meet the city's financing needs in 1981 and 1982. The municipal assistance corporation is a State agency established in 1975 expressly for the purpose of borrowing on behalf of New York City; it has been a mainstay of the city's 4-year financing plan pursuant to the Loan Guarantee Act; it is the city's chief source of credit.

The problem the amendment addresses is a move by New York City to get the Federal guarantees despite that fact that there is credit available elsewhere from the municipal assistance corporation. The city is asking to get all of the $900 million in guarantees remaining in fiscal years 1981 and 1982, despite the fact that it thinks MAC can sell that amount of its own bonds. They want to put the proceeds of the MAC bonds in the bank for possible use after 1982 and use the Federal money now. That is why the amendment was offered.

Mr. President, the effect of the city's proposal would be to overturn the intent of the law. It would make the Federal Government the lender of first resort rather than last resort. If MAC raises money and puts it in the bank, then that is obviously credit elsewhere, and the city should not get the guarantees.

My amendment simply addresses this very narrow case. It says that none of the funds in this bill may be used to administer programs to issue loan guarantees to New York City for the purpose of permitting the municipal assistance corporation to use the proceeds of its borrowings in fiscal years 1981 and 1982 to meet the city's financing needs after fiscal year 1982. That's all it says, and all it does is underscore the "no credit elsewhere" requirement. Guarantees can be provided in any other circumstances, if there is a case to be made that there is genuinely insufficient credit elsewhere—and that may be the case.

In my view, the law is absolutely clear on this issue. Moreover, the provision in the Loan Guarantee Act is bolstered by the specific directives of the Appropriations Committee in its 1978 report on the New York City loan guarantee appropriation, by the agreement to guarantee drawn up by the Secretary of the Treasury and signed by him and all the New York officials, the Governor, the mayor, Mr. Rohatyn who, at that time, was head of MAC, and who still is, of course, and a very able and important official dealing with this situation. I have the language right here from the agreement to guarantee, exhibit A, that states specifically in footnote (6) that the $300 million in guarantees available in 1981 and the $600 million in guarantees available in 1982 are:

> To be issued to the extent the City is unable to issue a long term City indebtedness in public markets in 1981 or 1982 or MAC is unable to issue MAC Indebtedness in 1981 or 1982 on reasonable terms and conditions, as per the Financing Plan.

Mr. President, I ask unanimous consent that a memorandum prepared by Banking Committee staff which explains these matters in some detail be included in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PROXMIRE. Mr. President, my amendment seemed necessary because it appeared that the administration might be willing to give the guarantees despite the intent of the law. This is obviously a matter of great political concern to them, judging from the response to my amendment.

I believe that my responsibility is to uphold the intent of the law and the directives of the Appropriations Committees, and it is for that reason that I offered this language and that I think it is necessary.

One more point I would like to make, and that is to read from the language of the report accompanying the New York City loan guarantee appropriation bill (H.J. Res. 1088) that was passed in 1978. The report reads as follows:

> The Committee directs that the remaining $900 million in guarantee authority, over and above the $750 million intended to be provided in fiscal years 1979 and 1980, be available on a stand-by basis only. This means that primary reliance should be place on sales of MAC bonds as a back-up to anticipated sales of City bonds in fiscal years 1981 and 1982, and guarantees should be provided only to the extent that the MAC back-up is not sufficient to meet the City's financing needs. In general, the Department of the Treasury should seek to minimize the extent of Federal involvement in New York City's financing arrangements.

If that means anything, it means that in the event the guarantee is needed it should be used. That is what it is there for. But, Mr. President, it is also clear that if credit is available elsewhere, if the city can borrow sufficient amounts on its own or through MAC, it should do that first. That is all we provide in this bill, and that is exactly what the law already provides.

So I am very hopeful that my good friends from New York will understand that what we are doing here is simply to reinforce what we said in the law and what is clear in the law.

I am happy to yield to my good friend from New York.

EXHIBIT 1

COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS,
Washington, D.C.

MEMORANDUM TO THE CHAIRMAN

From: Elinor Bachrach, Professional Staff Member.

Re Status of the remaining $900 million in Federal guarantees authorized under the New York City Loan Guarantee Act of 1978.

You asked for the legislative history and other factors bearing on the use of the remaining $900 million in Federal guarantees authorized but not yet issued under the New York City Loan Guarantee Act of 1978. The Board of Directors of the Municipal Assistance Corporation (MAC) approved on June 3, 1980 a proposal which calls for the issuance of the full $900 million in guarantees, as part of a Financing Program for fiscal years 1981–1985 which assumes that the City will make only modest progress toward regaining market access over most of that period.

The Financial Plan for fiscal years 1979–1982 which was considered by Congress in its deliberations on the New York City Loan Guarantee Act projected the issuance of Federal guarantees in the amount of $750 million in the first two years, 1979 and 1980, with the remaining $900 million to be held on "stand-by". In the latter two years of the plan, 1981 and 1982, the City's long-term financing needs were to be met through a combination of $862 million in private placements of MAC bonds and $950 million in public sales of City bonds. To the extent that City bond sales fell short of needs, those amounts were to be made up through public sales of MAC bonds, in the first instance, and then through use of the stand-by Federal guarantees only if, and to the extent that, MAC bond sales also fell short.

The MAC proposal would turn this plan on its head. It calls for the "up front" use of the $900 million in Federal guarantees in 1981 and 1982, along with the MAC private placements and a minimal amount of City bond sales ($100 million a year), to meet the City's capital needs in those years. At the same time, MAC would also sell bonds to the public, in the amount of $800 million, but the proceeds would be held on stand-by to meet prospective needs that might not be covered by City or MAC bond sales in 1983, 1984, and part of 1985.

Although the interest of New York City and State officials in gaining ready access to the remaining $900 million in Federal guarantees is understandable, there is every indication that the proposed use of the guarantees is not permissible under the law. First, the provisions of the Loan Guarantee Act, along with the legislative history of both the authorization and appropriations bills and the Agreement to Guarantee pursuant to the Act, all show clearly that the stand-by guarantees were intended to be used only if there were no credit available elsewhere from any source, including MAC, sufficient to meet the City's needs. Second, these materials are all tied to the four-year period ending on June 30, 1982, when the loan guarantee program expires. There is no indication that the "no credit elsewhere" test can be met prospectively by reference to potential problems arising after 1982, even though it was explicitly recognized that the City might not succeed in regaining full market access by that date. Third, Administration officials have confirmed this reading of the statute on a number of occasions, most recently in the oversight hearings held by the Senate Committee on Banking, Housing and Urban Affairs in January 1980. Finally, it should be noted that there is no compelling evidence that such use of the remaining Federal guarantees is necessary, even if it were permitted by law. These points are discussed in more detail below.

The first source to consult is the Act itself (P.L. 95–339). The language of the statue provides that guarantees may be made "only if the City is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and terms sufficient to meet the City's financing needs." This language was taken from the House bill, H.R. 12428, and the report of the Committee on Banking, Finance and Urban Affairs states further that "the use of the word 'effectively' is intended to create a test of the practical unavailability of credit, including maturity and rate, through the private market." Presumably the phrase "or elsewhere" would refer to sources other than the market, including the private placements with financial institutions and pension funds which are a major component of the City's 1978–1982 Financial Plan. Since it was made clear to the Committees involved and to the Congress at the time the Act was passed that MAC was and would continue to be a major source of credit for New York City in meeting its financing needs, both through the sales of bonds in the public credit markets and through private placements, it is evident that this "no credit elsewhere" requirement was intended to cover sales of MAC bonds as well as City bonds.

The intended use of the Federal loan guarantees in the context of the City's Financial Plan for fiscal years 1979–1982 was explained in some detail in the course of hearings by the Senate Banking Committee on the proposed New York City loan guarantee legislation in June 1978. Mr. Felix G. Rohatyn, Chairman of the Municipal Assistance Corporation, and author of both the loan guarantee proposal and the proposal recently adopted by the MAC board, testified that only a portion of the guarantees authorized should be made part of the "original committed package," with the remainder "kept on a stand-by basis against possible failure of future market access" by both the City and MAC. The testimony expressly foresaw the possibility that the City might fail to regain market access for its bonds "in part or in toto" in 1981 and 1982. It indicated that if this occurred, then MAC would "take up the slack before any of the guarantees are called upon." The following are excerpts from Mr. Rohatyn's testimony of June 7, 1978 (it assume a $2 billion loan guarantee authorization, which was subsequently reduced to $1.65 billion by the Committee of Conference):

> "... The Federal guarantees would be limited to $1 billion as part of the original committed package, with the second billion kept on a standby basis against possible failure of future market access ... The ($4.5 billion) long-term portion would be made up of a private placement of $1.5 billion MAC bonds with city pension systems and financial institutions, $1.0 billion Federally guaranteed bonds with city and state pension systems, $1.0 billion MAC bonds sold publicly over 4 years, $1.0 billion of city and/or MAC bonds sold publicly in years 3 and 4, backed up by the remaining Federal guarantees ..."
>
> "... The likelihood of the second billion dollars of Federal guarantees being called upon would be remote, in my judgment. If the city failed in part or in toto with its attempts to re-enter the markets in years 3 and 4, MAC would still have almost $1 billion of capacity to take up the slack before any of the guarantees are called upon."

The intended use of the Federal guarantees and the application of the "no credit elsewhere" requirement were described in the course of Congressional action on the appropriation of the New York City loan guarantees. Based on the testimony of the Treasury Department at a Subcommittee hearing on August 18, 1978, the Senate Appropriations Committee included the following language in the report accompanying the New York City loan guarantee appropriations bill, H.J. Res. 1088:

> "The Committee directs that the remaining $900 million in guarantee authority, over and above the $750 million intended to be provided in fiscal years 1979 and 1980, be available on a stand-by basis only. This means that primary reliance should be placed on sales of MAC bonds as a back-up to anticipated sales of City bonds in fiscal years 1981 and 1982, and guarantees should be provided only to the extent that the MAC back-up is not sufficient to meet the City's financing needs. In general, the Department of the Treasury should seek to minimize the

extent of Federal involvement in New York City's financing arrangements."

There was no contradictory language in the House Appropriations committee report, and the appropriation bill passed both houses of Congress without amendment and was signed into law. Accordingly, the Senate report language would govern in this respect.

The intent of the law, and the directives and understandings contained in the legislative history, were incorporated in the Agreement to Guarantee pursuant to the New York City Loan Guarantee Act entered into on November 15, 1978 by the Secretary of the Treasury, acting in the name of the U.S. Government, with the State of New York, the City of New York, the New York State Financial Control Board, and the Municipal Assistance Corporation for the City of New York. Exhibit A of that Agreement to Guarantee sets forth a financing plan showing the levels of MAC indebtedness and long-term City indebtedness for fiscal years 1979–1982. A copy of this Exhibit is attached. It shows $300 million in public sales of MAC bonds in fiscal year 1981 and $650 million in 1982, and reference is made to footnote (5) which indicates that these MAC bonds are "to be issued to the extent that the City is unable to issue Long-Term City Indebtedness in Public Markets in 1981 or 1982, as per the Financing Plan." Furthermore, Exhibit A also lists a total amount of $900 million in guaranteed bonds to be sold to City and State pension funds in fiscal years 1981 and 1982, with an acompanying footnote (6) which states that those guaranteed bonds are "to be issued to the extent the City is unable to issue long-term City indebtedness in public markets in 1981 or 1982 or MAC is unable to issue MAC indebtedness in 1981 or 1982 on reasonable terms and conditions, as per the Financing Plan." Thus, it could not be more clear from the formal legal document executed pursuant to the provisions of the Act that the $900 million in "stand-by" Federal guarantees is to be issued only if, and to the extent that, neither the City nor MAC is able to sell bonds to the public in sufficient amounts to meet the City's financing needs in fiscal years 1981 and 1982.

The preceding discussion of the legislative history and legal documents connected with the New York City loan guarantee authorization and appropriations bills shows conclusively that the intent was to address the City's needs through 1982—the date of expiration of the loan guarantee program. At no point did anyone envision the use of the guarantees in order to permit MAC to sell bonds to the public and reserve the proceeds for use after 1982, nor is there any basis for making the "no credit elsewhere" test apply prospectively to the post-1982 period.

In subsequent hearings before the Committee on Banking, Housing and Urban Affairs, the Treasury Department has repeatedly maintained the position that the $900 million in stand-by guarantees was to be used only in the event that both City bond sales and MAC bond sales were insufficient to meet the City's financing needs in 1981 and 1982. The most recent instance occurred in the course of the Committee's oversight hearings in January and February 1980. The following colloquy between Senator Lugar and Assistant Secretary Altman indicates in detail and unequivocally that the stand-by guarantees cannot be used in the event of failure by the City to sell its bonds in sufficient amounts so long as MAC is able to meet the City's financing needs in those years:

Mr. ALTMAN. We see no reason why the remaining $900 million of guarantee authority will need to be used and it was not foreseen to be used in the original plan. I think the original plan is working and those standby guarantees will remain standby and not be used because any failure by the city to re-enter the markets on schedule, which would be next year for $300 million and the next year for $645 million, will be made up by MAC, not the Federal Government.

Senator LUGAR. What is the triggering mechanism that would bring in that $900 million?

Mr. ALTMAN. A failure by the city and a failure by the Municipal Assistance Corp. to be able to get into the public markets or any other bond markets to raise the amounts that have to be raised in fiscal years 1981–82. In other words, the city schedule calls for the public sale of $300 million in fiscal year 1981 and $645 million the following year. If the city cannot sell these amounts quickly, MAC has sufficient reserve debt capacity to meet the city's needs. Only if both the city and MAC fail would the standby Federal guarantees be used.

Senator LUGAR. It's your judgment, then, even after this $100 million is guaranteed and we reach the $750, that throughout the rest of this calendar year of 1980 there would not be a need for further Federal guarantees?

Mr. ALTMAN. Yes.

Senator LUGAR. And there is some reserve capacity with MAC now that would obviate the need for that in the foreseeable future or, to be very specific, thoroughout the entirely of this 4-year plan?

Mr. ALTMAN. Yes; MAC has $1.1 billion of scheduled, unused, funding authority during the remainder of the plan. If the city can't meet its plan for $945 million of its own bonds, you have that as a backup and MAC continues to have access to the public credit market.

The legislative history should be sufficiently conclusive to determine that the remaining $900 million in Federal loan guarantees cannot be used as contemplated in the current MAC proposal. However, it should also be noted that there is no strong evidence that the proposed use of the guarantees is necessary to enable New York City to meet its financing needs in fiscal year 1983 and subsequently. In testimony given at the Senate Banking Committee's oversight hearings in February 1980, MAC Chairman Rohatyn recommended an increase in the Corporation's statutory borrowing authority from the present $8.8 billion to $10 billion and stated that the latter amount would be "ample to finance the City through 1984," and well within MAC's economic capacity and maximum funding requirements. This recommendation was endorsed by the Governor of New York State at the same hearing. The documents accompanying the recent MAC proposal include draft legislation now pending before the New York State Legislature to accomplish this increase in borrowing authority.

Close examination of a schedule developed by MAC projecting the City's long-term financing requirements confirms that they could virtually be met through 1984 by a combination of City bond sales and MAC borrowing up to an authorized amount of $10 billion (and before that point, there should be sufficient economic capacity to support an additional increase in MAC's borrowing authority, if necessary). The figures shown on the MAC schedule may well turn out to be in excess of actual needs. The City's capital spending has fallen far short of projected levels in the first two years of the Financial Plan, 1979 and 1980, and the figures shown for 1982 and beyond are more than double current capital spending levels.

It has been argued that MAC's public market access is limited to a range of $600 to $750 million per year, irrespective of its borrowing authority or economic capacity, and that this constrains its abiltiy to meet the City's financing needs after 1982. However, calculations using the MAC schedule indicate that annual public sales of MAC bonds even in the $500–$600 million range from 1981 through 1984 should be sufficient to support an adequate capital financing program, along with the projected City bond sales. If the latter run higher than projected, or if the City or MAC were able to obtain modest amounts from other sources, such as additional private placements with financial institutions, then the full program could be carried out, assuming the City has the capability to do this.

This leaves one more question, touched on briefly in the materials accompanying the MAC proposal. That is whether MAC's continued market access is dependent on the assurance of the "up-front" availability of the remaining $900 million in Federal guarantees. Obviously this has not been the case to date. MAC has carried out all of its scheduled public offerings, except for one planned for this spring which was cancelled due to extraordinarily adverse market conditions, and also due to the fact that the City did not need the money. Should such conditions recur, and should the need be there, then some of the stand-by guarantees could be provided under the provisions of existing law. In the absence of such extraordinary conditions, there is no evidence that keeping the $900 million in standby guarantees on stand-by will impair MAC's market access. There is only the caution that such assertions, if made too strongly and too often, could become a self-fulfilling prophecy.

FINANCING PLAN

[In millions of dollars]

	Fiscal year—			
	1979	1980	1981	1982
MAC Indebtedness				
Public markets	500	500	[1] 300	[1] 650
Financial institutions [2]	340.575	314.760	314.760	204.605
City pension funds [2]	60.425	222.240	222.240	120.095
State pension funds				
Long Term City Indebtedness				
Public markets			[3] 300	[3] 650
Financial institutions				
City pension funds [4]	250	125	[5] 150	[5] 300
State pension funds [4]	250	125	[5] 150	[5] 300
Seasonal Loans				
Public markets [3]		900 [6]	900	900
City pension funds [4]	375			
Banks [4]	375			

[1] To be issued to the extent the city is unable to issue long term city indebtedness in public markets in 1981 or 1982, as per the financing plan.
[2] Pursuant to the bond purchase agreement.
[3] Pursuant to sec. 6.16 of this agreement.
[4] Pursuant to the guaranteed bond purchase agreement.
[5] To be issued to the extent the city is unable to issue long term city indebtedness in public markets in 1981 or 1982 or MAC is unable to issue MAC indebtedness in 1981 or 1982 on reasonable terms and conditions, as per the financing plan.
[6] Pursuant to the loan agreement, to be reduced by any notes sold in the public market.

Mr. JAVITS. Mr. President, I do not wish to extend the debate except to call one point to the Senator's attention. It is the law which is paramount, and I think we can all agree on that. But when you cannot find it in the law, you must look to the intent, and to me the persuasive words in section 103, paragraph 2, are:

The Secretary determines that the city is effectively unable to obtain credit in the public markets or elsewhere in amounts and terms sufficient to meet the city's financing needs.

Mr. PROXMIRE. May I say that I agree with the Senator wholeheartedly. He is dead right. That determination is

to be made by the Secretary of the Treasury, and our amendment would in no way inhibit it.

Mr. JAVITS. But we are robbing him of it by your amendment.

Mr. PROXMIRE. No; I say to my good friend from New York, we are not doing it, because it is up to him as to whether the terms and conditions are reasonable. If he says they are not reasonable, that sufficient credit is not available, then there is no question in my mind that he can go ahead and provide the guarantees.

Is that not right?

Mr. JAVITS. The reasonable words are not used. It says that the Secretary determines that the city is effectively—that is the key word—effectively unable. So that is what we are contending for. It is his decision, not ours here. In my opinion, we are making the decision based on the Senator's amendment.

Mr. PROXMIRE. I understand the Senator. He makes a very sensible objection. I understand why he is so sensitive to this. I am perfectly willing to make it clearer—and I think we can handle that in conference—make it clearer that the discretion is with the Secretary of the Treasury. It should be with the Secretary of the Treasury.

All we are saying, however, is that if he finds in his judgment that credit is not available on a reasonable basis——

Mr. JAVITS. Effectively.

Mr. PROXMIRE. On a reasonable basis, that is right. All right, effectively.

Mr. JAVITS. Then the Senator is imporing words.

Mr. PROXMIRE. Well, effectively unable to obtain credit, then he can provide the guarantees; the basic point is that he should follow the law which provides there be no credit elsewhere in amounts and terms sufficient to meet the city's needs.

Mr. MOYNIHAN. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield.

Mr. MOYNIHAN. Mr. President, not 2 weeks ago, I was quoted in the Wall Street Journal as describing my senior colleague as the finest lawyer in the Senate. The journalist commented that this was the common judgment of this institution. So I certainly would not wish to add to my senior colleague's masterful statement, but I would wish to say that there is a memorandum of law prepared by the firm of Paul, Weiss, Rifkind, Wharton, and Garrison advising the MAC Corp. in this matter, which I will not put in the RECORD but it will be available to anybody who might like to see it.

I hope that Senator JAVITS' view will prevail.

I wish to thank the chairman for his courtesy, thoughtfulness, and openness in this matter, as in all things. He did all we could wish, even when he does not share our views.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The additional 10 minutes time has expired.

URGENT SUPPLEMENTAL APPROPRIATION FOR THE VETERANS ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with the minority leadership.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 607, the joint resolution making urgent supplemental appropriations for the Veterans' Administration for the fiscal year ending September 30, 1980; provided further that there be not to exceed 10 minutes, to be equally divided between Mr. MATHIAS and Mr. PROXMIRE; that there be one amendment in order to be offered by Mr. MATHIAS; that there be not to exceed 10 minutes, equally divided, on that amendment; and that the Senate then return to the military construction authorization under the order previously entered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

The Senate proceeded to consider the resolution.

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require.

Mr. President, the Veterans' Administration, on September 4, 1980, requested an additional $40,000,000 for the current fiscal year to cover a shortfall in the readjustment benefit program, due to higher than anticipated enrollments of Vietnam-era veterans under the GI bill. According to the VA, about 260,000 trainees were enrolled in the GI bill program in August, and this number is expected to increase with fall enrollments to about 500,000 in September and about 600,000 in October. The supplemental of $40,000,000, coupled with a $20,000,000 transfer by the VA from its education loan fund and $55,000,000 from compensation and pensions, would cover a total shortfall of $115,000,000 and thus prevent an estimated 128,000 beneficiaries from facing delays of up to 4 weeks in receipt of educational benefit checks.

The Congress has already provided a total of $2,278,535,000 for readjustment benefits in fiscal year 1980. If approved, this supplemental appropriation of $40,000,000 would bring the total 1980 readjustment benefit appropriation to $2,318,535,000 for the current fiscal year.

Mr. President, the House passed this resolution yesterday afternoon with the full $40,000,000 included. In view of the severe time constraints surrounding this legislation, the resolution has been held at the desk rather than referred to the Senate Appropriations Committee for consideration, although the committee, in my presence yesterday, did discuss this issue and was aware that that technique was being used. The only alternative to quickly providing these supplemental funds is to tell 128,000 veterans that their GI bill benefit checks will be delayed for another 3 weeks. Under these circumstances, I urge the Senate to approve the full budget request of $40,000,000, as passed by the House.

I reserve the remainder of my time.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I certainly support enthusiastically the suggestion and proposal that has been made by the Senator from Wisconsin. I feel that we have dealt closely, almost parsimoniously, with the GI benefits and that to cause them to be delayed as a result of some failure—managerial failure or administrative failure—would be to add insult to what I believe already is injury.

So I think it is imperative that we move as the Senator from Wisconsin has suggested and that we make these funds available.

As the Senator said, this matter was discussed yesterday in the Appropriations Committee during the committee's review of appropriations for the State, Justice, and Commerce appropriations bill for the fiscal year 1981. At that time, we agreed to attach an urgent supplemental appropriation for the Bureau of the Census to House Joint Resolution 607.

Due to the counting of more households than anticipated in the 1980 Decennial Census and the litigation protesting undercounts that is forcing the Bureau to keep their field offices open longer than expected, there is a deficiency of $27,000,000. We are advised that the Bureau will literally run out of funds tomorrow and that 6,200 employees will be immediately furloughed, and that 5,000 intermittent employees will also be released.

In order to stay within the 1980 budget ceiling the administration requested that this deficiency be covered by transfers from the following Commerce appropriations: National Oceanic and Atmospheric Administration, "Operations, research, and facilities", $10,000,000; Science and Technical Research, "Scientific and technical research and services", $2,000,000; and the Maritime Administration, "Ship construction", $15,000,000. It was also proposed that $7,800,000 of the Maritime Administration's operating differential subsidies, will be deferred from payment until October 1 in order to stay within the outlay ceiling.

However, we were just advised this morning by the Congressional Budget Office that there is sufficient room in the budget resolution to accommodate a straight supolemental appropriation of $27,000,000 without resorting to the use of transfers. This is indeed good news as we found yesterday that our 1981 ceiling would not allow us to immediately restore the transferred funds as originally planned.

I might note, Mr. President, that this action will have a very important impact on a number of offices in California, Louisiana, and Indiana, but I cannot fail to note that the greatest impact will be in Suitland, Md. So I urge the Senate to adopt this amendment.

Mr. PROXMIRE. Mr. President, there are few things more painful than adding millions of dollars to the Federal budget. All of us dislike doing that; $27 million is a lot of money. It represents a lot of taxes that have to be paid. It hurts. It really hurts.

Mr. MATHIAS. If the Senator will yield, it is painful for us to add this money, but it would be more painful for those 900 employees in Suitland, Md., not to get their paychecks. That would hurt even more.

Mr. PROXMIRE. Mr. President, I was about to make that point. I think the Senator from Maryland is correct. Much as I deplore the fact that we have to add money to the budget, the following consequences will ensue if we fail to do so.

In the first place, the 6,200 employees will be furloughed immediately and an additional 5,000 intermittent employees will be released. A total of 11,000 people would be out of work.

Second, there will be a delay of about 3 weeks in completing the field work of the decennial census in 37 offices.

Much more than that will happen, of course, if we do not eventually provide the funds.

Third, our failure to act will create a conflict with a court order requiring the offices to stay open.

There will also be a delay in processing the census questionnaires.

Also, I understand that there will be disruptions and delays in all programs financed by the Periodic Censuses and Programs Appropriation. This includes the economic censuses, the census of agriculture, the census of governments, intercensal demographic estimates, and geographic support activities.

These are very essential Federal activities. The executive branch must perform them. We have to pay for them. We are not only concerned about the loss in jobs, but about the loss in services which our Government simply has to provide.

Is the amendment pending?

UP AMENDMENT NO. 1576

Mr. MATHIAS. Mr. President, I send an amendment to the desk at this time.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an unprinted amendment numbered 1576.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

DEPARTMENT OF COMMERCE
Bureau of the Census
Periodic censuses and programs

For an additional amount for "Periodic censuses and programs", $27,000,000, to remain available until expended.

Mr. PROXMIRE. Mr. President, Senator MATHIAS and I have discussed this issue in some detail, and as manager of the bill I am glad to accept the amendment. Let me amend that statement. I am not glad to accept it. I am sad to accept the amendment, but it has to be accepted. That is an unfortunate fact of life.

Mr. President, I yield back the remainder of my time on the amendment.

Mr. MATHIAS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1576) was agreed to.

Mr. PROXMIRE. Mr. President, if there be no further discussion on the joint resolution, I yield back my time on the joint resolution.

Mr. MATHIAS. Mr. President, I yield back my time on the joint resolution.

Mr. CRANSTON. Mr. President, I would like to take this opportunity to express my deep appreciation to the distinguished members of the Senate Appropriations Committee—particularly Senators MAGNUSON, PROXMIRE, YOUNG, and MATHIAS—for their efforts to secure prompt Senate approval of House Joint Resolution 607. This measure will make an additional $40 million in fiscal year 1980 funds available to the VA for the purposes of payment of GI bill benefits, and prompt congressional approval of these funds is urgently needed so as to prevent significant delays in the payment of certain GI bill benefits to the thousands of veterans returning to schools this month.

Mr. President, as chairman of the Veterans' Affairs Committee, I am very grateful for the responsiveness and sensitivity shown by my colleagues on the Appropriations Committee in this regard. I hope that the Members of the House will address these same concerns for prompt enactment of this measure by speedily approving the Senate's amendment relating to the Bureau of the Census.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the joint resolution.

The amendment was ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution (H.J. Res. 607) was read the third time.

The PRESIDING OFFICER. The question is, Shall the joint resolution pass?

So the joint resolution (H.J. Res. 607) was passed.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. PROXMIRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 3059, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 3059) to authorize certain construction at military installations, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Time for debate on this bill shall be limited to 1 hour, to be equally divided and controlled by the Senator from Colorado (Mr. HART) and the Senator from Texas (Mr. TOWER), with 30 minutes on any amendment (except a Jackson amendment, offered on behalf of the committee, relative to binaries (chemical bombs), on which there shall be 2 hours; a Pryor amendment, relative to a "general alarm system," on which there shall be 30 minutes; and a Hart amendment, relative to binaries, on which there shall be 2 hours), and with 20 minutes on any debatable motion, appeal, or point of order.

Mr. HART. Mr. President, I ask unanimous consent that the following members of the staff of the Senate Committee on Award Services be accorded the privilege of the floor during the consideration of S. 3059: Mr. Frank Sullivan, Mr. James Smith, Mr. Paul Besozzi, Ms. Marie Dickinson, Mr. Rhett Dawson, Mr. Ed Kenney, and Mr. Carl Smith.

In addition, I make the same request for the following members of my personal staff: Mr. Larry Smith and Mr. Peter Gold.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that Mr. Doug Jackson, of Senator PRYOR'S staff, be granted the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. HART. Mr. President, I ask unanimous consent that the time be equally divided on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceed to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, the pending legislation, S. 3059, is an annual authorization bill which provides for the construction of new facilities for all the military services. In addition, authorization is included for the funds necessary to operate, maintain, and repair the 400,000 units of family housing now in the military inventory.

The Department of Defense amended request for military construction for fiscal year 1981 was $5,515,210,000. This compares with $3,838,846,000 authorized for fiscal year 1980 and reflects substantial real growth in this program. A significant part of that real growth reflects new initiatives to expand our capability

to operate in the Indian Ocean-Persian Gulf region.

The amount recommended to be authorized by the Armed Services Committee for fiscal year 1981 is $5,448,618,000, about $67 million less than the amended budget request.

In reviewing this bill, the committee recommended deletion or deferral of many projects where the justification or urgency was questionable, and based on service-furnished lists of high priority, unfunded requirements, additional projects have been recommended.

Let me highlight several points that are covered in more detail in the committee report.

MID-EAST BASES

The situation with regard to the establishment of contingency bases in the Indian Ocean-Persian Gulf region is one that has evolved rapidly. In a budget amendment the Department requested authorization to begin construction of bases in Oman, Kenya, and Somalia. In addition, added capability was sought for Diego Garcia. While the committee was supportive of the requirement to improve our capability to move military forces to, and operate out of, bases in the region, the specific plans presented were not well defined and were dependent on emerging country-to-country agreements.

The committee, therefore, has recommended the establishment of a construction contingency fund for Mid-East bases and has included provisions for extraordinary oversight to monitor the expenditure of these funds. The committee's desire was to give the Secretary of Defense flexibility to proceed as the situation warrants, subject to consultation with the Congress.

ENERGY

For several years, Mr. President, the committee has sought to use this annual authorization bill as a vehicle to involve the Defense Department in innovative energy initiatives. These initiatives have ranged from the mundane—adding building insulation, for example, to those at the edges of new technology. The Defense Department has made a reputation for itself in the Federal Government as the result of energy conservation that statistics can attest. Cooperative efforts with the Department of Energy are underway all across the United States. I invite my colleagues to visit a military community in their State and see what they are doing to contribute to solutions to the energy crisis; I think each of them will be surprised and pleased at the range of ongoing efforts.

MARIANAS LAND LEASE

On a separate issue, Mr. President, the committee has recommended that the Department's request for $28 million to lease land for defense purposes in the Marianas Islands not be approved. The Defense Department justified this land lease as "insurance," in their term, against future possible defense needs in that region of the world. The committee was not convinced that such "insurance" was necessary. However, new information has been forthcoming recently on this issue and, since the request is now included in the House counterpart bill, I fully expect to carefully reexamine the request in conference, together with my Senate colleagues.

Mr. President, the bill recommended by the committee deserves the support of the Senate and I strongly urge its passage.

I want to compliment the ranking minority member of the Senate Armed Services Subcommittee on Military Construction and Stockpiles (Mr. THURMOND), for his usual fine support in handling this bill; his efforts are greatly appreciated, together with the efforts of our extremely fine staff.

Mr. THURMOND. Mr. President, I rise in support of the fiscal year 1981 Military Construction Authorization bill, S. 3059, which provides for the military, defense agency, family housing, and reserve construction programs.

This bill authorizes $5.4 billion in construction programs, a significant increase over past years but one which still fails to aggressively address the huge backlog of important projects which now total around $40 billion.

MIDDLE EAST FUND

One important element of this bill is the establishment of a Middle East, Indian Ocean area emergency construction fund of $200 million. The committee favored establishment of such a fund rather than act on specific construction estimates which may or may not be accurate. Therefore, while the committee supports military construction in this important area the members resolved to maintain tight control by establishing a general fund and the requirement of future justifications before these moneys can be expended.

Mr. President, the committee also continued its restraint in funding projects in Europe or NATO for which we believe our allies should make significant contributions. The Defense Department has not been effective in gaining agreement for more cost sharing by our allies and more attention should be given to this subject.

DIA BUILDING

One item of special interest in the pending bill is the first increment of funding for a new building for the Defense Intelligence Agency. This project has been delayed for too long and, now that funds are finally being requested, the committee found that the site surveys lacked depth and tight cost estimates. Therefore, the committee allowed only $32 million of the request and directed that additional site studies be made prior to the beginning of construction.

Another issue which received special attention from the committee was the subject of the use of appropriated funds for morale, welfare, and recreational facilities. The committee has sought a defensewide policy on these projects, and while one was issued early this year it lacked real direction in some areas. While the committee strongly endorses many of these projects, it must be realized that with an operational requirement construction backlog of $40 billion we should use all resources available to us to meet our construction needs. Therefore, a firm defensewide policy is required.

IMPORTANT PROJECTS ADDED

In the area of operational construction projects the committee did include a large number of high priority jobs not included in the budget. This move by the committee should enable the military to move faster in addressing some of its more pressing requirements.

Mr. President, I commend the able chairman of the subcommittee, the senior Senator from Colorado (Mr. HART) for his fairness in handling the hearings. Also, the staff assistant, Mr. Jim Smith, and his secretary, Mrs. Marie Fabrizio Dickinson, provided outstanding assistance to the committee members in preparation of this bill. I urge its approval by the Senate.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

AMENDMENT NO. 2324

(Purpose: To increase the funds for Ellsworth Air Force Base, South Dakota)

Mr. McGOVERN. Mr. President, I call up my amendment No. 2324.

The PRESIDING OFFICER. The amendment will be stated.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. I wonder at this point if it would be in order, if the sponsor of the amendment, the Senator from South Dakota, would agree, to make a unanimous-consent request which would prohibit amendment of this amendment.

Mr. McGOVERN. I have no objection to that, Mr. President.

Mr. HART. Mr. President, I ask unanimous consent that this amendment not be amended.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WARNER. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WARNER. The Secretary of State is about to address the Republican caucus with respect to a very vital national issue, namely, the nuclear fuel situation in India. I wonder if we could have unanimous consent that there be no rollcall votes between now and the hour of 2 o'clock to facilitate the presentation of the Secretary of State?

Mr. CANNON. Will the Senator yield?

Mr. WARNER. Yes, Mr. President.

Mr. CANNON. Would that preclude us from going ahead with matters which are not contested? There are a number of amendments which I believe are acceptable.

Mr. WARNER. Certainly not.

Mr. HART. Mr. President, reserving the right to object, I think the majority side would like to clear this request with the leadership on the majority side since, in the normal course of affairs, the majority leader enters into requests of this sort. As floor manager on the majority side, I have no personal objection, but I think the majority leader ought to be apprised of the request and concur in it.

Mr. WARNER. I thank my colleague.

Mr. HART. I suggest the absence of a quorum.

Mr. WARNER. Mr. President, we can go ahead, with the understanding that the majority leader will be consulted on this matter. I withdraw the request for the moment.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from South Dakota (Mr. McGOVERN) proposes an amendment numbered 2324.

Mr. McGOVERN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 20, line 24, strike out "$17,560,000" and insert in lieu thereof "$20,720,000".

On page 43, line 19, strike out "$521,873,000" and insert in lieu thereof "$525,033,000".

On page 43, line 21, strike out "$640,630,000" and insert in lieu thereof "$643,790,000".

Mr. McGOVERN. Mr. President, the amendment I am offering today, which is now pending, authorizes the construction of a new dining facility for Ellsworth Air Force Base in Rapid City, S. Dak. The additional cost of this facility for the fiscal year 1981 military construction authorization bill is $3,160,000.

I think Senators will recognize that, over the past several years, a consensus has taken shape in Congress that military personnel and military readiness are the two highest priority items on the national security agenda of our country. I have strongly supported efforts to raise military pay and to increase the funding of readiness accounts. I think these are worthwhile expenditures which will help us get the maximum security payoff for every defense dollar spent.

But if we take the time to examine personnel and readiness problems, including the related morale problems, from the viewpoint of the men and women serving in the All-Volunteer Force, it becomes clear that better pay is not a sufficient response even if it is the most urgent response. The status of the military installations where our Armed Forces personnel live, eat, sleep, and work must also be improved if we are to attract high-quality people to the military and, equally important, if we are to retain the experienced personnel required for a lean and ready force structure.

In short, we need to stop, as best we can, the neglect of our military personnel at our military bases. No one questions that operational requirements must take precedence, but we will not stem the exodus of experienced personnel from the military unless we provide not only a decent wage but also dignified living conditions at military bases in the United States.

Mr. President, I recently testified on this connection between readiness and the status of our military bases, especially Ellsworth Air Force Base, and I ask unanimous consent that my testimony be printed at this point in my remarks.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF SENATOR GEORGE MCGOVERN

I appreciate the opportunity to appear today before the Defense Appropriations Subcommittee to recommend that at least $1.5 million in Operations and Maintenance funds be added to the FY 1981 military budget to stem the deterioration of facilities at Ellsworth Air Force Base and to help the Base Commander turn the corner on the day-to-day repair needs of this critical defense installation.

In many ways, the status of Ellsworth Air Force Base in Rapid City, South Dakota, reflects the status of our military structure as a whole. Ellsworth possesses modern weapons; its military and civilian personnel are skilled and dedicated beyond question. But Ellsworth is not being maintained in an adequate manner with the unacceptable results that the advanced weapons are not fully utilized and the skilled personnel are leaving military service.

A consensus has developed in Congress that we need to shift more military resources to improve readiness. I support that consensus. But it appears that the whole question of defense installations is being left out of the readiness equation. Unless it is changed, efforts to improve readiness will be undercut.

For example, higher military pay and benefits are essential for retaining experienced personnel in the military. But it does not make sense to raise the military pay of an enlisted soldier to a 1980 level and then ask that soldier to sleep in a dormitory built for the Korean War, to eat in a dining room built before most of us entered the Senate, and to work in a converted World War II-era office building.

Or consider the weapons readiness problem. The failure of the helicopter rescue mission in Iran has focused attention on the problem of spare parts for our advanced weapons. Funding increases are properly being made in this area. But we will be unable to improve alert rates if the weapons to be repaired must be trucked in over roads cratered by potholes—on dilapidated service vehicles—into repair hangars where mechanics are forced to overhaul the systems with numbed hands because the corroded heating system and leaky doors are no match for the winter winds of the Black Hills of South Dakota.

Unfortunately, these situations are common occurrences at Ellsworth Air Force Base.

Based on my inspection trips to Ellsworth during the past few months, I recommend that property maintenance and military construction be given a higher priority in the current effort to improve the readiness of our existing force structure. Additional funds must be added to upgrade the facilities at Ellsworth and other key defense bases.

Mr. Chairman, Ellsworth Air Force Base plays a critical role in the maintenance of America's nuclear deterrent. It is the host to the 44th Strategic Missile Wing, which operates 150 ICBMs, and for the 28th Bombardment Wing (Heavy), which operates two B-52H squadrons, one KC-135 tanker squadron and an EC-135 command and control squadron. If South Dakota were to secede from the Union, Ellsworth would make our state the world's third largest nuclear superpower.

The military importance of Ellsworth will grow in the coming decade due to the conversion of the B-52 into a cruise missile carrier aircraft. In addition, the new strategic bomber to be selected by the Defense Department under the authority of the Glenn-Culver amendment to the FY 1981 Defense Authorization bill will almost certainly be based at Ellsworth, because its physical location halfway between the East and West Coasts offers maximum security to bombers against submarine-launched depressed trajectory missile attacks.

Therefore, Ellsworth is important to our security posture now and in the future, and sound national defense security cannot allow Ellsworth to operate at a lowered readiness level, for if Ellsworth's readiness is below par, the readiness of our deterrent is jeopardized. In 1979, for example, 775 missile off-alert hours at Ellsworth were directly attributed to non-availability of service-related vehicles.

But the fact is that the real property at Ellsworth is deteriorating. Let me cite a few examples of what I saw during my visits to the base:

Housing Accommodations: Dormitories for enlisted men built during the Korean War and lack many amenities of decent housing. Now unaccompanied enlisted housing is needed. In the meantime, extensive alterations are required to keep dormitories liveable.

Dining Facilities: The main dining hall for enlisted men is also of the Korean War era and needs refurbishing.

Aircraft Repair Facilities: A number of repair docks and hangars have 25 year old boilers which are worn out and corroded; furnace stacks are unsafe; sliding doors on the repair docks need to be weatherstripped to keep out the wind.

Vehicle Fleet: The vehicle fleet is a key part of Ellsworth's operation because 8.2 million miles are driven annually to maintain the 150 missile sites. Almost 6 million miles are driven over unimproved roadways under adverse weather conditions. Of the 866 registered vehicles at Ellsworth, 41% (352 vehicles) exceed age or mileage criteria or both, and by the end of Fiscal Year 1980, the level will rise to 45%. Many specialized vehicles are in worse shape: 50% of the snow plow flight line fleet has reached or exceeds ten years of age; 60% of the 45 Pax Buses used to rotate security forces to and from the missile fields exceed ten years.

Vehicle Maintenance: The vehicle fleet is the largest in the entire SAC Command, but repair facilities are spread over 4 different buildings separated by 2 miles. This set-up is inefficient.

Weapons Maintenance: The helicopter landing pads at each of the 15 missile launch control facilities are crumbling; the foundation rock is being blown away by helicopter air pressure. In addition, a number of missile access roads are too narrow for safe turning by the missile transporter erectors.

Road Repair: Road upkeep is being defeated by the South Dakota winters, leaving roads with large potholes and crumbling asphalt.

Energy Efficiency: New siding and insulation are needed in the Korean-era dorms and dining halls, in administrative and finance offices, in the vehicle maintenance areas and in many other locations at the base.

Base Engineering: Engineering facilities are spread out over 8 buildings, including converted old dining halls dating back to the 1950's. The Combat Support Group operates out of 6 buildings. Centralized management, cost-savings and office efficiencies become more difficult.

Living Conditions: Approximately 5,000 military dependents live at Ellsworth; they deserve a modern base exchange facility, adequate recreation opportunities, and decent commissary parking.

This backlog of repair projects and military construction projects at Ellsworth exists because the legitimate funding needs of the base have not been met. The Operations and Maintenance funds for these projects

have been squeezed by budget pressures, inflation and energy costs at both the national and local level.

At the national level, readiness funds for base repair and for weapons overhauls have been shortchanged in favor of new procurement and gold-plated weapon systems. Operations and Maintenance funds are now being increased, but one of the legacies of years of neglect is a backlog of maintenance and repair projects in the Air Force of $500 million by the end of the current fiscal year. At Ellsworth, the backlog is $7.5 million.

Mr. Chairman, I recently wrote an article for the New York Times on the military budget which attempts to put the readiness problem in a larger foreign policy context. I am attaching a copy of the article for insertion at the end of my prepared remarks.

At the base or local level, repair funds get the short end of the stick. As you know, the Air Force divides up the O&M funds appropriated by Congress among the different commands. The Strategic Air Command allots its funds to the 26 bases under its authority, including Ellsworth.

The funds allocated to Ellsworth are used to pay for utilities, civilian pay, basic supplies and the contracts to perform the repair projects under the real property account.

This is where the squeeze on funds occurs. The Wing Commander at Ellsworth may start off the year by budgeting a share of the funds for a new roof on Hangar No. 10. But then utility costs go up and he must transfer money from the repair budget to pay for utilities and so he ends up postponing the roof repair—or the paint job or road repair or any of a dozen worthy projects—for another year.

Or take another example. At Ellsworth I was shown deep cracks in the asphalt aprons which were caused by wheel ruts made in summer and the freezing and thawing cycle in winter. Since hunks of asphalt can be sucked up into the jet engines and destroy them, the commander will use his limited repair funds to fix the runway instead of repairing that hangar roof.

This pattern repeats itself year after year. Soon that hangar roof can no longer just be repaired—it must be replaced at a high cost to the taxpayers. And in the meantime, that hangar has been wasting energy and the mechanics have been working in substandard conditions.

I have been using the hangar roof as an example, but the lesson applies to road repair, paint jobs for the dorms and to projects across the board. Deteriorating facilities which are not repaired in time must be replaced—at greater costs and with greater waste in the interim.

Over the years, Mr. Chairman, the Strategic Air Command has provided Ellsworth with approximately 80% of its validated repair requirements, although in certain years the figure has been even lower. This means that 20% of the facilities at the base have been eroding. This is unacceptable to me, to the managers and officers of Ellsworth, to the enlisted men and women and to their dependents.

Additional funds are needed to maintain the base property at Ellsworth. Budget increases in operations and maintenance will not only improve performance at the base and increase retention—but higher funding now will save tax dollars in the long run because pressure on the military construction budget will be reduced and energy efficiency will be advanced.

I recommend that this Committee add an additional $7.5 million to fund the backlog of maintenance and repair projects at Ellsworth. If this is not feasible, then at a minimum, I urge that this Committee budget an additional $1.5 million for O&M repairs at Ellsworth to bring the total FY 81 funding up to $3 million. This is the level the Ellsworth managers told me is required to enable them to halt the erosion in base facilities and to permit the base authorities to hold the line on every day maintenance projects.

In other words, an additional $1.5 million is required just to keep the backlog of maintenance and repair from growing even longer and to help Ellsworth start to reduce the backlog year by year.

This small extra investment will more than pay for itself over the long term in terms of improved retention, reduced energy costs, better productivity and extended use of existing structures.

These additional funds, in my view, should be used on a priority basis for "people programs" at the base—to improve the dormitories, dining halls and other facilities which are essential to a decent and dignified life for the military and civilian personnel at Ellsworth.

No one quarrels with the fact that weapons operation must get first priority. The Air Force is providing for sufficient funds for weapons operations, including the on-going Air-Launched Cruise Missile conversion program at Ellsworth. But it is time to stop the neglect of our military people at our military bases.

Mr. Chairman, I am attaching the list of BMAR projects which would be undertaken if additional funds are made available:

Mr. McGOVERN. Mr. President, today, I seek to focus the attention of the Senate on the military construction needs of one of the most important defense installations in the United States—Ellsworth Air Force Base, in Rapid City, S. Dak. As one of the major Strategic Air Command bases in the United States, Ellsworth houses 150 Minutemen II ICBM's and two B-52H squadrons. These numbers translate into 14.2 percent of the operational U.S. ICBM force, 9.5 percent of the U.S.-based strategic bombers, 2.1 percent of the strategic fuel/cargo tankers and 44.4 percent of the command and control aircraft.

As we consider the requirements for military construction funds around the country, we have to keep in mind the military role of the bases over the next 10 to 20 years. It is clear to me that Ellsworth Air Force Base will play a critical role in maintaining America's strategic nuclear deterrent for the rest of this century and beyond.

Recently, I asked the Library of Congress to study the role of Ellsworth in the context of future trends in the U.S. strategic force posture. The study makes clear that Ellsworth will make a vital contribution if the SALT II treaty is ratified or if the treaty is not ratified. This outcome is due primarily to the physical location of Ellsworth, which offers maximum protection and warning time for strategic bombers against submarine-launched missile attacks. In a SALT world, the Minuteman II ICBM's at Ellsworth would, in all likelihood, not be replaced and in a no-SALT world, according to this brief study, they might be replaced but with more modern weapons.

The conclusion I draw from this Library of Congress study, Mr. President, is that Ellsworth needs sufficient funds to permit the base personnel to carry out their critical missions in the years ahead which will be vitally important for American security either with or without the SALT II treaty.

Mr. President, I ask unanimous consent to have printed the study by the Library of Congress, entitled "Ellsworth Air Force Base and Future Trends in U.S. Strategic Force Posture," authored by Jonathan Medalia, in the RECORD at this point in my remarks.

There being no objection, the study was ordered to be printed in the RECORD, as follows:

ELLSWORTH AIR FORCE BASE AND FUTURE TRENDS IN U.S. STRATEGIC FORCE POSTURE

Strategic force development over the next 20 years is, of course, difficult to predict. Major decisions on strategic programs—MX, Trident, bombers, cruise missile carriers—are likely in the next few years. The fate of SALT II and the SALT process are uncertain, and existing agreements face a future more doubtful than before. The future of any weapon development program is clouded by technological uncertainty. Finally, future Soviet strategic forces, SALT policies, and responses to U.S. actions cannot be predicted with any certainty. Accordingly, the types and numbers of weapons to be deployed in the year 2000, and the locations of their deployment, cannot be predicted with confidence.

Nevertheless, several trends that may affect Minutemen and strategic aircraft, and thus Ellsworth Air Force Base, can be identified. This discussion examines some consequences for Ellsworth in two different situations: (1) a world in which SALT II and subsequent agreements enter into force, and (2) a world in which SALT breaks down and existing SALT agreements are scrapped.

A world with SALT: SALT II, if it enters into effect, would impose a ceiling of 2250 on numbers of strategic systems as of January 1, 1981, and several subceilings, including one of 1200 on MIRVed (i.e., carrying multiple independently targetable reentry vehicles) air to surface ballistic missiles (ASBMs) and launchers of MIRVed intercontinental ballistic missiles (ICBMs) and MIRVed submarine launched ballistic missiles (SLBMs). To comply with these limits, the United States must dismantle or destroy approximately 30 strategic systems by 1981 to get down to the 2250 level and an additional 150 or so would have to be retired between 1981 and 1984 to make room for planned deployments of more modern systems.

These requirements, however, are unlikely to affect Minuteman II because other strategic systems are almost certain to be dismantled instead. According to a detailed analysis of SALT II provisions submitted by Secretary of State Cyrus Vance in June 1979, "we will only be required to dismantle or destroy approximately thirty strategic systems (probably to be chosen from among mothballed B-52 heavy bombers which have already been heavily cannibalized for parts)."[1] The United States plans to dismantle two Polaris submarines, beginning in 1980, and to convert the remaining eight to attack or cruise missile launching submarines, thus reducing aggregate U.S. strategic systems by another 160. The 54 Titan II ICBMs, which carry one warhead apiece, may also be candidates for phasing out. When the number of launchers of MIRVed ICBMs and SLBMs reaches 1200, as it would do when the seventh Trident submarine begins sea trials, SALT II would require dismantling of exist-

[1] U.S. Department of State. Bureau of Public Affairs. SALT II Agreement. Vienna. June 18, 1979. Annex to letter of June 21, 1979, by Cyrus Vance, Secretary of State, submitting the SALT II Treaty to the President. Department of State Publication 8984. General Foreign Policy Series 316. Selected Documents No. 12A (Washington: U.S. Govt. Print. Off., 1979): 14.

ing MIRVed systems to compensate for the addition of new MIRVed systems; such compensation would not affect the unMIRVed Minuteman II force.

Should the United States deploy the MX in multiple protective structures (MPS) as is currently planned, the relative contribution of Minuteman II to the ICBM force, as measured by such criteria as a number of RVs and throw-weight, would decline. MX/MPS should be more survivable than Minuteman II because of the basing mode, and each surviving MX would have 10 warheads, as opposed to one for Minuteman II. Minuteman based in silos and not defended with antiballistic missiles (ABMs), however, are generally thought to be increasingly vulnerable to a Soviet ICBM attack, so that one might expect their importance in the U.S. strategic posture to decline over time, even if MX is not deployed.

Nevertheless, the technicalities of SALT II could be said to increase Minuteman II's importance in a different way. The United States plans to deploy the MX and Trident systems, which count toward the subceiling of 1200 MIRVed systems. To take full advantage of the aggregate ceiling of 2250, however, the United States must deploy 1050 systems other than MIRVed systems. As of June 18, 1979, the United States deployed 54 Titan IIs, 573 heavy bombers, 160 launchers of (unMIRVed) Polaris SLBMs, and 450 Minuteman IIs. With the removal of 160 Polaris launchers and, probably, about 30 heavy bombers, the United States will have about 1047 unMIRVed systems. If the United States is to deploy strategic systems up to the 2250 aggregate ceiling, then, Minuteman II must be retained.

The conference committee on H.R. 6974, the FY 81 Defense Department authorization bill, has recommended replacing 50 Minuteman IIs with 50 Minuteman IIIs that have been in storage. This action could affect Ellsworth AFB by changing the types of missiles deployed there, but not their numbers. Any Minuteman IIIs deployed at Ellsworth could be affected by the Trident and MX programs, if the U.S. complies with SALT II ceilings on MIRVed ballistic missile launchers. Indeed, the United States might comply by putting the newly-deployed Minuteman IIIs back into storage and replacing them with Minuteman IIs.

The conference committee also called for the development of a multirole bomber to reach initial operational capability not later than 1987. Despite the earlier cancellation of B-1 procurement, it now appears that there may well be a new bomber. Whichever aircraft is chosen, Ellsworth will be one of the better sites for deploying it. Ellsworth's location far from the Atlantic, Pacific, and Gulf of Mexico maximizes warning time of an SLBM attack, and its northern location minimizes flight time to the USSR.

A no-SALT world: In a world with neither SALT I nor SALT II and with little prospect of future SALT agreements, U.S. concern about ICBM vulnerability would increase because no limits would be imposed on numbers of Soviet ICBMs or on numbers of warheads each ICBM could carry. This concern would make bomber and cruise missile carrier aircraft survivability more important. Ellsworth would be an attractive base for these aircraft because, as noted earlier, its location would enhance survivability.

Although some analysts contend that MX would not be viable without SALT II, the Administration insists that it would try to offset ICBM vulnerability with MX/MPS even if the Treaty fails. In that case, the relative contribution of Minuteman II to U.S. strategic forces would decline because Minuteman II warheads would comprise only a small fraction of the ICBM warheads surviving a Soviet attack.

In a no-SALT world, Minuteman II's importance would decline still further because the aforementioned technicalities of SALT II that encourage continued deployment of non-MIRVed systems would no longer hold. The United States would probably replace Minuteman II with Minuteman III, or perhaps with MX. Either change would increase Ellsworth's importance by giving it a larger fraction of U.S. ICBM warheads and throw weight.

If the MPS basing mode did not provide enough confidence in ICBM survivability, the United States might defend MX/MPS with ABMs. MPS is well suited to being defended by an ABM not far beyond the current state of the art, since the basing mode makes the ABM's task easier. (The defense need only intercept those warheads headed for missiles, not those headed for empty shelters.) In this case, a larger fraction of MX warheads would survive than would be the case with an undefended MX. Accordingly, the fraction of surviving ICBM warheads contributed by Minuteman II would be even smaller than it would be with an undefended MX/MPS system.

If ABM becomes capable enough to defend ICBMs based in silos—as it might in 20 years—then the United States would have several choices:

1. The United States could have a mix of MX missiles based in MPS and Minutemen in silos, and defend both with ABM. The Minutemen would be far more survivable than they are expected to be in the mid-1980s without ABM, so would assume greater importance.

2. The United States could decide that its ABM was good enough to permit foregoing MPS, so might deploy MX and Minutemen in silos. Since silo basing is less survivable than MPS basing, a silo-based MX force would contribute fewer surviving warheads to the postattack U.S. force than would an MPS-based MX force of the same size, assuming the defense of each to be equally capable. With silo-based MX, then, the Minuteman force would contribute a larger share of surviving ICBM warheads than it would with MPS-based MX.

3. The United States could have an ABM good enough to defend silo-based ICBMs and might believe that the Soviets had an equally capable ABM. In this case, Soviet ability to intercept MX warheads would greatly reduce U.S. confidence in MX's ability to destroy Soviet silo-based ICBMs. Accordingly, the United States might choose to forego MX, deploy ABMs, and rely on the Minuteman force. Minuteman would then assume more importance to U.S. force planners than it would in the two cases discussed above.

4. The United States could decide to defend silos, forgo MPS, deploy MX in silos, and scrap Minutemen. In that case, the importance of Ellsworth would depend on where MX was deployed. It would seem reasonable to base MX at old Minuteman sites. One reason for basing MX/MPS in the Great Basin is to avoid the severe northern winters that would interfere with the movement of missiles between shelters. In a silo system, however, weather is much less significant, as evidenced by the basing of Minuteman in South Dakota, Montana, and elsewhere. Additionally, Ellsworth's interior and northern location would recommend it as a site for basing MX.

5. Some assert space-based lasers might provide very effective defenses against ballistic missiles. Should the United States and the USSR deploy such systems, bombers and cruise missiles would assume increased importance because they would not be vulnerable to these lasers. Air bases in the northern United States, and particularly in the North Central states, would assume greater relative importance in U.S. strategic forces.

Mr. McGOVERN. Mr. President, in recent months, I have made several inspection trips to Ellsworth to examine the base facilities and to speak with dozens of pilots and engineers, men and women, enlisted personnel and officers. My conclusion is that the real property standards are not being maintained and replaced at a sufficiently high standard in light of the prominent military missions Ellsworth is required to carry out.

I have seen cracked asphalt on the runway aprons, drafty repair docks, poorly lit dormitories, potholed roads, and many other substandard conditions which the base managers are doing their best to overcome with the limited funds at their disposal.

For example, of a total of 1,111 SAC housing units declared inadequate, about one-third, or 388, are located at Ellsworth, even though only 5 percent of the SAC military and only 3 percent of the SAC civilian personnel are located at the base.

Mr. President, I recently asked the Library of Congress to examine the last 10 years of military construction funding and operations and maintenance and funding for Ellsworth. In addition to concluding that one-third of all SAC inadequate housing units are located at Ellsworth, the study also reveals that, over the past 10 years, only 5 percent of SAC military construction spending has gone to Ellsworth, even though 14 percent of this Nation's ICBM's are located there and 9 percent of the strategic bomber force is based there. The figures also show that the 5 percent military construction level is about on par with the 5-percent share of total SAC military and civilian personnel at Ellsworth.

These figures confirm that Ellsworth's funding over the past 10 years has not kept pace with Ellsworth's total share of strategic weapons. These figures bolster the case that a greater share of funds is needed to maintain Ellsworth in a proper manner.

Mr. President, I ask unanimous consent to have printed at this point in my remarks the analysis by the Library of Congress of data provided by the U.S. Air Force on the 10-year funding history of Ellsworth.

There being no objection, the study was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., September 4, 1980.

To Honorable George McGovern, Attention: Alex Knopp, 4239 Dirksen, Washington, D.C. 20510.

From Richard P. Cronin, specialist in national defense.

Subject U.S. Air Force response to questions relating to maintenance work at Ellsworth Air Force Base.

Attached, via a cover letter dated August 20, 1980, is the Air Force response to questions posed at your request concerning military construction and maintenance work at Ellsworth Air Force Base over the past ten years and related matters. The data submitted by the Air Force appears to be responsive to all of the questions posed in your letter to Mr. Gilbert Gude, Director, Congressional Research Service, of July 14, 1980, except numbers 10 and 11. We have responded separately to question 11 as this required an independent Congressional Research Service analysis of the relative importance of Ellsworth Air Force Base in the U.S. strategic forces posture over the next twenty years, based on current and foreseeable strategic weapons programs.

With regard to question 10, we only asked the Air Force to provide certain specific data concerning the base and its role in the U.S. strategic force structure, which they did. We felt that its approximate priority or importance could be inferred from the data thus provided.

The data provided by the Air Force can be summarized as follows: Ellsworth AFB is one of 25 years installations under Strategic Air Command (SAC) jurisdiction. This number has changed little over the ten year period.

The base houses 14.2 percent of the operational U.S. ICBM force, 9.5 percent of the U.S.-based strategic bombers, 2.1 percent of the strategic fuel/cargo tankers and 44.4 percent of the command, control and communications (C^3) aircraft.

The authorized strengths of Ellsworth AFB units, including tenant units, currently total 6,320 military and 820 civilian personnel, or, respectively, 5.1 and 3.3 percent of all SAC personnel. The base also has 5.15 percent of all SAC on-base dependents. Perhaps significantly, of a total of 1,111 SAC housing units declared inadequate, 388, or about one-third are located at Ellsworth.

Over the past ten years Ellsworth has received, in dollar amount, 5.07 percent of SAC military construction spending. Over the past three years the base has received about 2.0 percent each year of the SAC real property maintenance funding.

On the basis of the numbers of ICBM's and aircraft assigned to the facility, Ellsworth would appear to be an important base within a relatively stable total base structure. It would require similar data on every other important base to determine exactly how significant Ellsworth AFB was in comparison with other bases having large shares of the U.S. strategic missile and aircraft forces.

Due to the unknowns about other bases, including the age and condition of their housing and buildings, it is not possible to make conclusive judgments about whether Ellsworth has been receiving military construction and real property maintenance funding commensurate with its importance and need. The total share of construction funding for the ten year period approximates the share of total SAC military and civilian personnel assigned to the base, i.e. about 5 percent in each case, but less than the percentage of ICBM's and strategic bombers and more than the percentage of fuel/cargo aircraft. Due to the small number of aircraft involved, the percentage of (C^3) aircraft is probably not statistically relevant.

The share of real property maintenance funding provided to Ellsworth AFB over the past three years (about 2 percent annually of total SAC RPMA funds) appears less than might be expected, based on Ellsworth's share of total strategic missiles and aircraft and SAC personnel. In this respect, the fact that the base has more than one third of the base housing declared inadequate within SAC as a whole may be indicative of a problem.

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., August 20, 1980.

Dr. RICHARD CRONIN,
Foreign Affairs and National Defense Division, Congressional Research Service, The Library of Congress, Madison Building, Washington, D.C.

DEAR DR. CRONIN: This is in response to your letter of July 24, 1980, concerning data on the recent history of base maintenance work and budgetary allocations for Ellsworth Air Force Base in Rapid City, South Dakota.

The attached fact sheets respond to your questions by number. If we can be of further assistance, please feel free to contact us.

Sincerely,

LARRY W. SHREVE,
Colonel, USAF.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 1. Please identify the military construction projects awarded to Ellsworth during the past 10 years. List the projects by fiscal year, include dollar amounts and a short description of each project.

Answer. The information is attached.

Military construction program (MCP) approved by Congress

FY	Description	Amount
1980	Repair airfield pavements	$2,550
	Add to and Alter Composite medical facility	11,800
	Sanitary sewage treatment and disposal fac	2,650
1979	Library	715
	Alter dormitories	2,739
1978	Weapons system security improvement	4,447
	Addition to comm/electronic shop	251
	Air installation compatible use zone (AICUZ)	125
	Various operational facilities	3,590
1977	Weapons system security improvement	2,273
1976	Industrial waste treatment	903
	Solid state ILS	255
	Energy conservation	57
	Igloos	106
1975	Alter a/c covered corrosion control facility	790
	Alter airmen dorm	1,319
1974	Comm electronic shop	514
	Solid state ILS	55
1973	VASI lighting	103
1972	Radar flight control center	399
	Alter officer's quarters	353
	SRAM facilities	669
1971	Non-destructive inspection facility	196
1970	Officer's open mess	858
	Sewage treatment and disp addn	170
	Total	37,887

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 2. Identify the Maintenance and Repair projects undertaken at Ellsworth (listed as BMAR) during the past 10 fiscal years. List the projects by fiscal year, include dollar amounts and a short description of each project.

Answer. The information is attached for those years for which available.

Maintenance and repair (BMAR)

FY	Description	Amount
1980	E Rpr boiler, fac 109, dorm	$13,100
	E Rpr sewage lagoon at golf 1	9,100
	Rpl UG electronic cables (in-house)	150,000
	Overlay dock roofs	271,300
	Sandblast, prime, paint POL tank	25,000
	Tanker alert visitor center	77,700
	Maintain various base roofs	307,800
	Repair and slurry seal/fog seal taxiway 22	358,200
	Slurry seal taxiway 26/taxiway 22	35,500
	Repair kitchen and baths at 15 LCF's	113,000
	Raise electrical distribution manholes	25,000
	Refinish three courts	18,500
	SCL 0563/0926/0082 paint	4,400
	Paint interior of 6 LCF's	28,500
	Paint interior of remaining 9 LCF's	69,400
	XG replace windows	20,600
	Repair LF MX track	95,200
1979	Paint exterior various base bldgs	99,500
	Overlay base streets	73,000
	Slurry seal taxiway 21	26,500
	Replace heating coil 1707	22,200
	Repair 4 metal dorms	174,500
	Repair 4 metal dorms	174,500
	Replace stairs and storm windows 606	16,900
	Replace ceiling tile	23,600
	Emergency subsurface track repair	99,800
1978	Cathodic protection LF LCF	67,000
	Maintain various base roofs	258,000
	Emergency roof repair hail damage	127,900
	Repair three walk-in refrigerators	7,000
	Replace taxiway 27	329,000
1976	Repair metal personnel doors POL	13,000
	Replace condensate return line 1101	17,000
	Replace condensate return line 1211	33,000
	Replace condensate return line 1107	35,000
1975	Cathodic protection system	13,000
	Replace gym floor	52,000
	Repair engineering/construction branch	64,000
1974	Replace roofs 4 bldg's	75,000
	Restore airman dorm 1109	95,000
	Repair underground heat dist line	34,000
	Paint exterior trim 43 bldg's	42,000
	Repair and paint two water tanks	22,000
	Repair cold storage	5,000
	Replace underground cable duct system	19,000
	Total	3,640,700

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 3. Identify the Military Construction budget for the Air Force for each of the past 10 fiscal years, and determine (by use of the response to question No. 1) the percentage of the Air Force's military construction funds allocated to Ellsworth. Please indicate for each fiscal year and ten year total.

Answer. The information is attached.

AF MILCON BUDGET VERSUS ELLSWORTH PROJECTS

[Dollar amounts in thousands]

Fiscal years	AF Milcon	Ellsworth projects	Percent allocated
1980	$565,456	$17,000	3.01
1979	520,414	3,454	.66
1978	482,786	8,413	1.74
1977	807,952	2,273	.28
1977	14,000	0	0
1976	550,644	1,321	.24
1975	456,439	2,109	.46
1974	269,077	569	.21
1973	283,136	103	.04
1972	289,189	1,421	.49
1971	285,147	196	.07
1970	290,327	1,028	.35
Total	4,814,547	37,887	.79

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 4. Same as above, except use Strategic Air Command military construction budget instead of the Air Force budget.

Answer. The information is attached.

SAC MILCON VERSUS ELLSWORTH PROJECTS

[Dollar amounts in thousands]

Fiscal years	SAC MILCON	Ellsworth projects	Percent allocated
1980	$200,010	$17,000	8.50
1979	183,952	3,454	1.88
1978	62,943	8,413	13.37
1977	86,359	2,273	2.63
1977	0	0	0
1976	41,579	1,321	3.18
1975	38,787	2,109	5.44
1974	28,049	569	2.03
1973	36,712	103	.28
1972	31,557	1,421	4.50
1971	17,521	196	1.12
1970	19,621	1,028	5.24
Total	747,100	37,887	5.07

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 5. Identify the "real property maintenance activities" budget account (a part of the Operation and Maintenance account) for the Air Force for each of the past 10 fiscal years.

Answer. The amounts programmed at Air Force level are as follows ($ million): FY 70—$685; FY 71—$701; FY 72—$718; FY 73—$765; FY 74—$858; FY 75— $992; FY 76—$1276 (reflects 15 month period to include the transition quarter); FY 77—$1149; FY 78—$1201; FY 79—$1294; FY 80 (estimate)—$1386.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 6. Identify the "real property maintenance activities" account allocated by the Air Force to the Strategic Air Command for each of the past 10 fiscal years.

Answer. Records reflecting the allocation of above funds to the Strategic Air Command are only available from FY 75. These amounts are as follows ($ millions): FY 75—$197; FY 76—$252 (reflects 15 month period to include the transition quarter); FY 77—$211; FY 78—$203; FY 79—$220; FY 80—$256.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 7. Identify the "real property maintenance activities" funds allocated by the Strategic Air Command to Ellsworth Air Force Base for each of the past 10 fiscal years.

Answer. Records reflecting the allocations of above funds by SAC to Ellsworth Air Force Base are only available from FY 78. These amounts are as follows ($ millions): FY 78—$3.8; FY 79—$5.0; FY 80—$4.8.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 8. Determine for each fiscal year and for the 10-year period the percentage of Air Force and SAC "real property maintenance funds," respectively, allocated to Ellsworth AFB.

Answer. The percentages of Air Force RPMA funds allocated to Ellsworth AFB for the limited data available are as follows: FY 78—.3%; FY 79—.3%; FY 80—.3%, while the following is a percentage of SAC RPMA funds: FY 78—1.9%; FY 79—2.2%; FY 80—2.0%.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 9. Identify the Maintenance and Repair projects actually funded and undertaken at Ellsworth for each of the past 10 years, listed by dollar amounts, and include a brief description of each project.

Answer. The information is attached for those years for which available.

Maintenance and repair

FY	Description	Amount
1980	E Rpr sewer line	22,500
	E Rpr by rpl boilers in fac 7709	160,000
	Rpr water tank; facility 88361	2,000
	Rpl entry doors, dining hall 4, fac 1211	1,300
	E Rpr fire damaged roof, 1109 dorm	1,800
	E Rpr condensate line, fac 1103, VOQ	1,900
	E Rpr commissary siding	5,000
	Rpl built-up roof, 109, dorm	66,300
	E Rpl rail ties asphalt	13,000
	E Rpr parking stub 6	129,500
	E Rpl sewer pipe J-1	5,800
	E Rpr roof, finance, 88535	1,000
	Rpr by rpl 149 MPPS	236,900
	Rpr by rpl 14 MPPS	23,700
1979	Airfield joints/cracks	27,700
	Coat interior POL tanks	15,000
	Locks interior dorm doors	1,800
	Repair doors base exchange	9,900
	Airfield drainage	25,000
	Replace windows fac 7709	1,900
	Replace glass front door 7712	1,200
	Carpet rms 115, 119, 120 fac 8301	1,000
	Carpet rms 2/25 fac 903	800
	Carpet rm 69 fac 7504	500
	Emergency repair overhead door	11,400
	Carpet 181 SY fac 609	3,200
	Tighten fence WSA area	47,000
	Carpet dorms	28,300
	Emergency repair tennis court fence	2,600
	Emergency repair rollup doors	300
	Emergency repair base roofs	18,000
	Emergency replace west end taxiway 27	23,100
	Replace glass front fac 3401	200
	Emergency replace ductwork E-Lab	16,500
	Reshingle 21 LCF's	12,700
	Repair dock door deicer system	315,800
1978	Remove rubber runway	5,500
	Replace overhead door fac 88030	2,000
	Replace carpet tanker alert	1,000
	Repair wind damage dock door	5,000
	Repair wind damage dock roofs	7,000
	Emergency repair built-up roof 8202	23,000
	Emergency repair gym roof	2,000
	Emergency repair youth center roof	3,000
	Repair personnel doors	21,000
	Install carpet dorms	6,000
	Emergency repair expansion joint	35,000
	Repair expansion joint E-6	18,000
1977	Emergency repair subsurface B-5	46,000
	Repair clothing sales	13,000
	Sandblast corrosion control facility	7,000
	Repair overhead doors fac 102	8,000
	Carpet RAPCON	2,000
	Install GFE carpet	2,000
	Repair commissary roof	74,000
	EM repair expansion joints	37,000
1976	Replace small metal overhead doors 8115	5,000
	Revamp truck well ramp	12,000
	Repair furnace 5 aircraft hangers	81,000
	Repair tail door corrosion control fac	8,000
	Thru 67 modify vehicle gates	49,000
1975	Restore airman dorm 1102	49,000
	Restore airman dorm 8202	24,100
	Paint 12 bldg's rushmore area	32,000
	Repair various base roofs	84,000
	Repair aircraft shelters	34,000
	Repair door track deicing system docks	53,000
	Replace boiler burner and controls	36,000
	Replace furnace bldg 903	12,000
	Repair boiler auto maintenance shop	38,000
1974	Restore airman dorm 8203	11,000
	Paint interior eleven water stor tanks	17,000
	Replace air conditioning education bldg	14,000
	Restore airman dorm 1106	103,000
	Paint exterior 17 bldg's interior of 2	21,000
	Asphalt overlay taxiway 26	63,000
	Asphalt overlay 11th street	11,000
	Repair submersible pump well no. 2	8,000
	Repair roofs fac 901/902	4,000
	Repair digestor no. 2	48,000
	Repair overhead electrical circuit	59,000
	Total	2,428,200

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 10. What percentage of the total ICBM force of the United States is based at Ellsworth AFB?

Answer. 14.2 percent of the Operational U.S. ICBMs.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 11. What percentage of the total SAC fleet of similar aircraft with comparable missions (i.e., U.S.-based strategic bombers; strategic fuel/cargo/tanker; C^3) is based at Ellsworth AFB?

Answer. 9.5 percent of U.S.-based strategic bombers; 2.1 percent of strategic fuel/cargo tankers; 44.4 percent of C^3 aircraft (EC-135).

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 12. Identify the number of military members and civilian employees authorized at Ellsworth AFB, and the percentage of total SAC military and civilian authorized personnel which Ellsworth represents.

Answer. The authorized strengths of SAC at Ellsworth AFB, including tenant units, is as follows:

	Military	Civilian	Total
Ellsworth AFB	6,320	820	7,140
SAC total	123,706	24,820	148,526
Percent Ellsworth to SAC	5.1	3.3	4.8

FACT SHEET

Subject: Congressional Inquiry, Ellsworth AFB.

Question No. 13: What percentage does Ellsworth represent of total SAC on-base dependents?

Answer: Ellsworth represents a 5.15% of total on-base dependents in SAC (4,805 dependents on Ellsworth compared to 93,265 dependents on all SAC bases). All figures are estimates based on the number of family housing units by category (military or enlisted) multiplied by dependent factors:

TOTAL SAC ON-BASE DEPENDENT POPULATION

	Housing units	Dependent factor	Dependents
Officers	9,477	2.81	26,630
Enlisted	26,869	2.48	66,635
Total	[1] 36,346		93,265

ELLSWORTH ON-BASE-DEPENDENT POPULATION

	Housing units	Dependent factor	Dependents
Officers	318	2.81	894
Enlisted	1,577	2.48	3,911
Total	[2] 1,895		4,805

[1] Includes 1,111 units declared inadequate.
[2] Includes 388 units declared inadequate.

FACT SHEET

Subject: Congressional Inquiry, Ellsworth AFB.

Question No. 14: Please determine the growth or decline in the number of SAC bases and facilities in the U.S. over the past 10 fiscal years.

Answer: The following is the number of the SAC bases and facilities in the U.S. from fiscal year 1970 through 3rd quarter 1980. The numbers include missile facilities as well as installations in which SAC is a tenant.

1970	1,350
1971	1,379
1972	1,391
1973	1,388
1974	1,359
1975	1,368
1976	1,365
1977	1,349
1978	1,339
1979	1,332
1980	1,344

Listed below are the number of major installations included in the above figures for which SAC has jurisdiction.

1970	24
1971	27
1972	29
1973	29
1974	27
1975	27
1976	27
1977	25
1978	25
1979	25
1980	25

FACT SHEET

Subject: Congressional Inquiry, Ellsworth AFB.

Question No. 15: Please provide a budget inflator for Military Construction and for Maintenance and Repair accounts for each of the past 10 fiscal years which would permit my staff to recalculate the current dollar figures used in your report into constant dollars.

Answer: The information is attached.

BUDGET INFLATORS FOR MILITARY CONSTRUCTION, MAINTENANCE, AND REPAIR

[In percent]

Fiscal year program	Calendar year— 1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	198
1973	12.6	9.6	9.6	9.0	9.0									
1974		7.0	6.5	6.0	6.0	6.0								
1975			6.5	6.0	5.4	5.5	5.5							
1976				12.7	12.3	11.3	7.0	6.0						
1977					10.5	12.5	8.7	8.3	8.3					
1978						12.5	8.3	8.0	8.0	8.0				
1979							7.0	6.8	6.6	6.5	6.5			
1980								9.3	6.9	6.5	6.0	6.0		
1981									9.1	9.2	8.3	7.6	7.2	
1982										15.3	10.2	9.1	8.7	7.9

Note: The set of 5 calendar year inflators listed for each specific fiscal year program were used to develop each fiscal year program (i.e., the fiscal year 1974 program used an inflator of 7 percent for calendar year 1972, 6.5 percent for calendar year 1973, 6 percent for calendar year 1974, 1975, and 1976).

Mr. McGOVERN. Mr. President, the old dining hall at Ellsworth stands as a symbol of the neglect of so-called people projects at Ellsworth. This old structure was built in 1952 and it remains an eerie reminder of the Korean war era amidst the more modern weapons and equipment at Ellsworth.

The amendment I am proposing today would authorize the replacement of the old dining hall at a cost of $3,160,000. The case for the new hall can be summed up in three words: "morale, cost-effectiveness, and safety."

First, let's examine the morale issue. I was told during my visits that the existing hall has a negative impact on morale at the base because it cannot adequately serve the base population's needs. Its serving capacity is too small. A number of servicemen told me that they made a habit of skipping breakfast during weekdays because it simply took too much time to stand in line waiting to be served. It strikes me as a contradiction to pay an airman a 1980's wage and then ask him to put up with skipping meals because a Korean war era dining hall does not meet the grade. And there is no doubt that the bad morale this causes has an impact on Ellsworth's retention difficulties.

Second is the cost-effectiveness issue. The existing dining hall is classified as a code 3 structure by the base management. This means that the old hall is deteriorating structurally and that it requires excessive amounts of real property repair funds to keep it maintained in an adequate manner. As repair funds are diverted to keep the dining hall open, other facilities and properties at the base are denied maintenance funds, causing further erosion in the roadbeds, the dormitories and other projects. The base management believes that these repair funds could better be used elsewhere on the base if the dining hall were replaced. Therefore, over the long run, replacement of the dining hall could free up repair funds for other projects and preserve other structures long enough to reduce pressure on the military construction budget.

Third, there is the safety issue. The old dining hall is a wooden structure. There is genuine concern at Ellsworth that it poses a fire hazard. I was told that base personnel feel it endangers their lives and that it should be replaced with a more modern and safe structure. These are real concerns we cannot afford to ignore.

These are the three major reasons why the new dining hall should be authorized and built as rapidly as possible. SAC and the Air Force have tentatively authorized the new dining hall for the fiscal year 1983 budget, but the consensus of the men and women I spoke to at Ellsworth is that this project cannot wait. We cannot wait 2 years to correct morale problems or to save funds or to eliminate a safety hazard. These should be done as soon as possible.

Of course, a new effort will have to be made to appropriate funds for the dining hall if it is authorized, but I am convinced that accelerating the authorization into the fiscal year 1981 budget will be a concrete signal to the SAC personnel at Ellsworth that their problems are being addressed.

Mr. President, this amendment proposes a modest first step to improve morale and reduce retention problems at Ellsworth Air Force Base. I urge its adoption.

Mr. President, it bears repeating that the base that this facility is related to, the Ellsworth Base, is one of the most important in the entire Strategic Air Command system. It houses 150 Minuteman-II CBM missiles and two B-52H bomber squadrons. These numbers translate into something in excess of 14 percent of the entire U.S. intercontinental ballistic missile force and just under 10 percent of our entire strategic bomber force, 2 percent of the strategic fuel cargo tankers, and 44 percent of the command and control aircraft.

Mr. President, the problem with the existing dining facility at this very important base is that it stands as a symbol of the neglect of the so-called people or personnel projects at Ellsworth. The old structure, built some 30 years ago, is a firetrap. It is not large enough to house the personnel. Many of the soldiers that I have visited with at that base tell me that they no longer go to breakfast because of the long wait. Base officers that I visited with say that it requires an enormous amount of effort to keep it maintained and functioning. The repair efforts are diverting personnel from other purposes that are essential to the operation of the base.

It is true that the Air Force, Department of Defense, has plans to include a new dining facility in the fiscal 1983 budget, but meanwhile, a serious morale problem exists at the base, not the least of which are the fire hazards. So I am very hopeful that the committee will see fit to adopt this modest amendment. It is a straightforward effort to include some $3 million for these purposes. I hope that the manager of the bill and other Senators will see fit to accept the amendment.

Mr. HART. Mr. President, the Senator from South Dakota, I think, has raised a very significant issue. It is an issue that our committee has looked at. It is an item not in the counterpart House bill.

We feel, all things considered, that it is a good and worthwhile project. We are prepared on the majority side to accept this amendment.

I wish to concur in remarks by the Senator from South Dakota in two regards. He, above all others of our colleagues, understands the nature of Ellsworth Air Force Base and its importance in our entire national security mix. I think he is not only right on that point about the necessity to keep that base as modern and operable as possible, but also on the issue of the manpower question.

We are all becoming increasingly familiar with the difficulties the armed services are having acquiring and retaining high quality, technically skilled people. They are leaving, not only because of adverse pay circumstances, but also because of conditions that are not acceptable.

I think we can do as much through this military construction budget as even in the pay scale to keep those highly qualified individuals in our armed services and maintaining the equipment we so badly need.

So I commend the Senator from South Dakota for being concerned about this important facility and the people at that facility, and will commit to him we will accept the amendment and give it very serious consideration in the conference.

Mr. McGOVERN. Mr. President, I thank the Senator from Colorado for accepting the amendment.

I appreciate his support, not only on this, but on the leadership he provided in this whole area of giving the country an intelligent, commonsense defense.

Mr. THURMOND. Mr. President, this amendment is not a high priority amendment. I believe the Air Force submitted $100 million in unfunded projects they did consider to be high priority. This is not one of them.

It is not an unreasonable amount, however, and the dining hall is needed. I have no special objection to it.

I do think there are other projects that are of much higher priority. But in order for Ellsworth Air Force Base to get this facility, which is needed, we will not object to the amendment.

Mr. McGOVERN. I thank the Senator.

Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from South Dakota.

The amendment (No. 2324) was agreed to.

Mr. McGOVERN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1577

Mr. CANNON. Mr. President, I send an amendment to the desk on behalf of Senators NUNN, LAXALT, GARN, HATCH, and myself, and I ask for its immediate consideration.

The PRESIDING OFFICER. (Mr. PRYOR). The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON), for himself and Messrs. NUNN, LAXALT, GARN, and HATCH, proposes an unprinted amendment numbered 1577.

Mr. CANNON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert:

IMPACT ASSISTANCE FOR FISCAL YEAR 1981 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

SEC. . During fiscal year 1981, the Secretary of Defense may utilize funds appropriated for planning and design purposes to provide community planning assistance as follows:

(1) To assist communities near MX Weapon System sites, $5,000,000.

(2) To assist communities near the East Coast Trident Base, $1,000,000.

IMPACT ASSISTANCE FOR FISCAL YEAR 1982 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

SEC. . (a) During fiscal year 1982, the Secretary of Defense (hereinafter in this section referred to as the "Secretary") is authorized to assist communities located near MX Weapon System sites, communities located near the East Coast Trident Base, and the States in which such communities are located in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, testing, and operation of the MX Weapon System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of the increased need for such services and facilities.

(b)(1) The Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary is authorized, subject to the provisions of subsection (d), to (A) supplement funds made available under such Federal programs through a direct transfer of funds from the Secretary to the department or agency concerned in such amounts as the Secretary considers necessary, (B) provide financial assistance to communities described in subsection (a) to help such communities pay their share of the cost under such programs, and (C) guarantee State or municipal indebtedness for improved facilities related to the MX Weapon System or the East Coast Trident Base.

(2) The head of each department and agency of the Federal Government concerned shall cooperate fully with the Secretary in carrying out the provisions of this section on a priority basis.

(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, is authorized to provide facilities and services in anticipation of the work to be carried out in connection with the MX Weapon System and the East Coast Trident Base. No department or agency may charge a management fee for assisting the Secretary in carrying out the provisions of this section.

(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary shall consult with the head of the department or agency concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration (1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population, (2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community, (3) the initial capitalization required for municipal sewer and water systems, (4) the initial operating cost for upgrading municipal services, and (5) such other pertinent factors as the Secretary considers appropriate.

(d) Funds appropriated to the Department of Defense for carrying out the MX Weapon System and the East Coast Trident Base in fiscal year 1982 may, to the extent specifically authorized in the military construction authorization Act for fiscal year 1982, be utilized by the Secretary in carrying out the provision of this section.

(e) The Secretary shall transmit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, not later than November 1, 1983, a written report indicating the total amount transferred to and the amount obligated and expended by each local community or State which has been provided assistance under the authority of this section during fiscal year 1982, the specific projects for which assistance was provided during such year, and the total amount for each such project during such year.

COMMUNITY IMPACT ASSISTANCE STUDY

SEC. . (a) The Congress finds that—

(1) the Department of Defense is required from time to time, for national security reasons, to provide for the construction in the United States of major, new military facilities which have a serious adverse impact on the communities and the areas in which such facilities are constructed; and

(2) neither the impacted local governments nor the States in which such facilities are constructed should be expected to bear the full cost of such impact.

(b) The President shall conduct a thorough study of the adverse impact on communities in areas in which major, new military facilities are constructed with a view to determining the most effective and practicable means of promptly mitigating such impact. In carrying out such study the President shall, as a minimum—

(1) identify those potential Department of Defense actions that are sufficient in scope to warrant impact assistance by the Federal Government;

(2) examine various options and recommend organizational mechanisms to administer the Federal community impact assistance to be made available;

(3) examine various options and recommend procedures for the budgeting of community impact assistance funds;

(4) recommend such changes in existing programs as may be necessary to provide effective and timely impact assistance to areas adversely affected by the construction of major, new military facilities; and

(5) consult with and seek the advice of appropriate State and local leaders and officials regarding the problems and needs of communities that result from the construction of major, new military facilities in or near such communities.

(c) The President shall submit the results of the study required by subsection (b) to the Congress not later than March 1, 1981, together with such comments and recommendations as the President considers appropriate.

Mr. CANNON. Mr. President, this amendment I have sent to the desk on behalf of Senators NUNN, LAXALT, GARN, HATCH, and myself is to provide impact assistance for fiscal year 1981 for areas affected by the MX weapon system and the east coast Trident base. Since there are no line items for military construction funds in the fiscal year 1981 military construction bill, some provision to assist communities near MX weapon system sites and the east coast Trident base is required. This amendment is designed to do that. It provides $5 million to assist those locations impacted by MX and $1 million for communities near the east coast Trident base. This amendment also provides a policy statement for the future.

For fiscal year 1982 the amendment states the Secretary of Defense shall carry out the program of assistance through existing Federal programs. He is authorized to transfer funds from his office to the agency concerned in the amounts he considers necessary.

Funds appropriated to DOD for MX and Trident in fiscal year 1982 in the Military Construction Authorization Act may be used by the Secretary. He will report to the Committees on Armed Services and Appropriations of the Senate and House by November 1, 1983, on the amount transferred and expended by each community or State. Also the President shall submit the results of an impact study to Congress by March 1, 1981.

Also the House Armed Services and Appropriations Committees have taken steps to address this essential question of MX impact aid. In its consideration of the fiscal year 1981 military construction authorization bill, the House Armed Services Committee amended section 608 of the 1975 Military Construction Authorization Act; this authorizes the Secretary of Defense to request in the DOD budget impact assistance for the MX.

The HASC language constituted primarily a policy statement that impact funding would have to be specifically authorized without stipulating any specific level of funding for fiscal year 1981. The House Appropriations Committee recommended and the full House agreed to appropriate $4 million of the $97 million total MX planning and design funds to be used by the States of Nevada and Utah or any other State in an effort to develop comprehensive plans for a community impact assistance program. Of the $4 million available to the two States, $1 million was designated as a "set aside" for impact planning by any State identified as a possible location for split basing.

In preparing for the Senate's consideration of the military construction appropriations bill, the Senators from Nevada and Utah have reached a consensus among themselves and the State and local officials involved—based on budgeted work plans—that a total of $5 million should be allocated to the States of Nevada and Utah, with $1 million of this total being "set aside" as planning funds for any State identified for split deployment. The division of these funds would be as follows: $2.5 million for Nevada, $1.5 million for Utah, and $1 million for any split deployment area. The subsequent division of these funds among State and local entities within each State would be established on the basis of an agreed work program drawn up by the principals involved and submitted to the Congress and the Defense Department for their review.

I understand and appreciate the legitimate concern expressed by several Members of the Senate regarding potential funding growth that could occur if impact assistance for major defense projects is included in the defense budget. For this reason, I believe that the Senate should adopt the language. In this way, the concerns for the longer term that we all share can be addressed, while necessary planning funds can still be provided to Nevada, Utah, and Georgia for this fiscal year. Consequently, I urge that the amendment be adopted.

Mr. President, I yield back the remainder of my time.

Mr. HART. Mr. President, the amendment offered by the Senator from Nevada and his colleagues authorizes planning funds for these purposes and facilities for fiscal 1981.

It further authorizes use of existing impact language in the law for fiscal 1982 and requires a study for the best way to do impact assistance in these particular circumstances after fiscal 1982.

The particular points of interest about this amendment are, first of all, that for fiscal 1981 no new funds are authorized.

The amendment authorizes the use of planning moneys as included in the budget request for the MX missile facilities, $5 million; for Trident, $1 million.

In the fiscal 1982 year, the amendment includes language similar to that in existing law for impact funding, so-called section 608 language that was used for the west coast Trident base.

The amendment does not authorize any funds. None will have to be included and justified in the fiscal 1982 budget for use in that fiscal year.

In the fiscal 1983 period and beyond, the amendment requires study as to the best way to do impact assistance. In the case of our counterpart House bill, already passed by the House, that bill only restates the so-called old 608 language or the existing law.

As chairman of this committee, it concerns me somewhat to see the direction in which the Government is going in terms of beginning to aid every community, or certainly the communities that have large military impacts from the development of major weapons systems and the potential for outyear funding that those kinds of requests and the trend in that direction may represent—not necessarily in this case but may represent in the future. In spite of those concerns—and just mentioning them by way of calling them to the attention of our colleagues, if, in fact a trend is developing in that direction and the budgetary consequences of that—I believe this amendment is basically sound.

It does not expose the Federal budget to any unnecessary outyear outlays or commitments, and I believe the Senator from Nevada has carefully fashioned a proposal that avoids the worst consequences that I was suggesting.

So, for the majority side, the Senator from Colorado is prepared to accept the amendment.

Mr. THURMOND. Mr. President, I believe this amendment has merit, and it is proper that it should be adopted.

The planning assistance and the design for this project are bound to be expensive. This amendment calls for $5 million for the MX areas and $1 million for the east coast Trident, making a total of $6 million.

I express the hope that funds from current programs will be used as much as possible for the large assistance programs which may be needed and I presume that that will be done.

Mr. CANNON. Yes. No separate construction funds or planning funds are allocated here with respect to the $94 million figure for the 1981 program. Those funds are authorized for planning, and the Secretary will be allowed no transfer of the funds.

Mr. THURMOND. In other words, there will not be additional costs, so to speak, but it will come from funds already allocated.

Mr. CANNON. The overall figures.

Mr. THURMOND. The distinguished Senator from Nevada (Mr. CANNON) has done a great deal of work on this, as has his colleague, Senator LAXALT, as well as the Senators from Utah (Mr. HATCH and Mr. GARN). They are all interested in this project. It is an important matter and should go forward, and we do not oppose the amendment.

The PRESIDING OFFICER. Is all time yielded back?

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Mr. HART. Mr. President, I should like to ask the Senator from Nevada a question about the amendment.

We are all familiar with charges and countercharges about the MX system and the timetable and chronology. Some have accused the present administration or individual Members of Congress of delaying the development of the MX. I wonder whether the Senator from Nevada will respond to a question having to do with whether anything in his amendment—if it is otherwise the policy of Congress and the administration to develop the system—would prevent or delay its development in any way.

Mr. CANNON. No; I say to my colleagues that it would have quite the opposite effect. These planning funds would be made available at the local level for them to go ahead with there planning now. Construction would not be ready until the 1982 program. Of course, the system itself, we hope, has an IOC of 1986.

So we do need to move ahead rapidly. There are many actions to be taken now, from the standpoint of planning, to facilitate the early movement in this area.

The draft environmental impact statement has not been completed as yet—it has been delayed a little—but it will be completed before very long. After the comments have been filed or there has been an opportunity for filing, the final environmental impact statement will be prepared and produced, and that will permit the movement ahead with this important program.

Mr. HART. So, for those who might be concerned about further delays, if a policy decision were to be made to produce and deploy this missile system—which has not been made—in no way would this amendment delay or slow that process?

Mr. CANNON. No. It would have quite the opposite effect, as I said. It would help speed up the program.

Mr. HART. I thank the Senator from Nevada.

Mr. NUNN. Mr. President, I am pleased to join Senator CANNON and my other colleagues in supporting this amendment to provide authority for impact assistance for areas significantly affected by the proposed MX weapon system and the east coast Trident base.

I understand that this amendment is acceptable to the managers of the bill, and I would highlight that its form is similar to legislation enacted for the west coast Trident facility in 1974 as well as the ABM site when first activated.

This legislation permits planning, budgeting, and funding of community impact needs, when demonstrated, in a timely fashion. It also insures that these needs are primarily met through existing Federal programs.

In addition, the amendment requires that a thorough study be conducted by the President to determine the most effective means of mitigating the military impacts in areas where local governments are unable to bear this burden alone.

The study will examine options in terms of administration of such programs and will recommend procedures for budgeting for community impact as well as review existing programs in this area. In this fashion, a determination can be made as to what type of assistance is appropriate and will best serve the needs of the community.

It is expected that this study will be completed and submitted to Congress prior to any final action on the fiscal year 1982 program which is the first year any actual funding could be expended for anything other than planning.

Mr. President, the Navy has just filed the final environmental impact statement concerning the proposed east coast Trident Submarine Base for Kings Bay, Ga. It is estimated that severe community impacts will occur during the construction and operational phase of this facility. Camden County, in which the facility is located, is expecting over a 182-percent increase in population. This is a rural Georgia county which does not even have full-time local officials; needless to say, the road, school, and medical structure is woefully inadequate to handle this significant military-related impact.

It is obvious that the local area will benefit from the military presence but it is just as obvious that the Federal Government shares the obligation of mitigating the various impacts associated with the decision to locate the facility there. I believe this amendment will enable an orderly planning process to occur and will establish the appropriate framework in which the assistance can be provided in a timely and justifiable fashion.

Mr. CANNON. Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 1577) was agreed to.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. HART. I ask unanimous consent that the time be divided equally, on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Mr. CANNON assumed the Chair.)

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1578

(Purpose: To provide for the installation of a general alarm siren system at all Titan II missile sites)

Mr. PRYOR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. PRYOR) proposes an unprinted amendment numbered 1578.

Mr. PRYOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. DECONCINI). Without objection, it is so ordered.

The amendment is as follows:

On page 24, between lines 5 and 6, insert the following new section:

INSTALLATION OF ALARM SYSTEM AT TITAN II MISSILE SITES

SEC. 304. The Secretary of the Air Force shall acquire and install, out of funds appropriated pursuant to section 303, a general alarm siren system at each Titan II missile site which has in its near vicinity a significant size population.

Mr. PRYOR. Mr. President, I offer today an amendment which will provide that a general alarm siren be placed at each Titan II missile site with a significant surrounding population to serve as an immediate alert in case of accident. I am pleased to be joined in sponsoring this amendment by Senators representing the three States in which Titan II missile sites are located: The Senator from Arkansas (Mr. BUMPERS), the Senator from Kansas (Mr. DOLE), and the Senator from Arizona (Mr. DECONCINI), who now occupies the chair as the Presiding Officer.

I have discussed the amendment with the floor managers of the bill, and it is my understanding that it is acceptable to them. It is my hope that the Senate will concur.

There are 54 Titan II missile sites located in the States of Arkansas, Kansas, and Arizona, with an estimated population of over 1 million people living in the surrounding areas. It is my belief that we must establish an early warning system to protect the safety of these civilians who could be exposed to accidentally released toxic and even lethal gaseous fumes. The general alarm siren provided for in my amendment will serve this much-needed purpose. The sirens will serve as part of a total civilian warning system and will supplement the proposed Air Force plan to alert the surrounding population of an accident via telephone calls and/or personal contacts.

Mr. President, we have a responsibility to protect the civilians living in the communities and on the farms surrounding these missile sites. Accidents have occurred in the past, and we must take steps to reduce their recurrence and provide for the best course of action in case an accident should occur. My deep concern has foundation in the events involving an incident in my home State of Arkansas. In January 1978, a fuel transporter at a missile site near Damascus, Ark., overheated and vented toxic nitrogen tetroxide vapor into the atmosphere. A toxic cloud drifted over the nearby countryside, exposing seven people to the hazardous missile propellant vapor. Four of these citizens were hospitalized and one citizen stated that he was still experiencing ill effects over a year and a half later.

One of the most troubling aspects of this incident was that the most severe exposures were due to the simple fact that the individuals were simply not aware that any danger existed. They were working out in the fields and continued to work for several hours until neighbors found them and warned them of the evacuation of the area around the site. The Air Force stated that the leak was not immediately detected, thus causing the delay in the notification rather than the lack of procedures. I, however, believe that this emphasizes once again the need for an immediate response once the accident is detected.

Mr. President, I also point out that the January 1978 accident near Damascus was not the last incident to occur in Arkansas. In June of this year, I wrote to Col. John Moser, Commander of the 308th Strategic Missile Wing at Little Rock Air Force Base, requesting detailed information regarding any incidents which have occurred since January 1978. Since that time, there have been 9 incidents, 6 occurring in 1979, and 3 this year. While there have been no civilian injuries, exposure to toxic vapors has resulted in the hospitalization of six site personnel and on two occasions, toxic vapors were released into the atmosphere.

Also, in 1978, there was a more severe propellant leak near Rock, Kans. This accident resulted in the deaths of 2 airmen working at the site, 20 hospitalizations, and the evacuation of approximately 200 people from the nearby town and surrounding farms. Concern over the two accidents which I have mentioned and other incidents led to the adoption of two amendments last year.

The first provided for an Air Force study to include an investigation of the physical condition of the Titan II missile systems and recommendations for improvements to protect the public safety, including that of the military personnel assigned to the missile sites. The second amendment, which I offered, provided for the establishment of a civilian early warning system as found desirable by the Air Force study.

Mr. President, the Air Force has completed its study, and it is with regret that I report its findings. While the Air Force stated that the total number of toxicological exposures and minor mishaps increased in 1978 and 1979, it made no final recommendations with regard to procedural improvements to protect the public safety, stating that expanded hazard notification procedures were being developed involving a system of telephone and personal contacts.

I believe that because of the often rural nature of the areas surrounding the Titan II missile sites, any alerting system must also recognize that many people may, as those involved in the Damascus, Ark., incident, be working out in fields or otherwise unavailable by telephone. It is impossible to calculate the amount of time these persons could be unknowingly exposed before an official reached them. Thus, it is necessary that a general alarm siren system be established to supplement a possible system of telephone calls or personal visits. This would provide immediate notification that an accident has occurred or that a hazardous condition exists and would serve as a means to alert individuals to return to their homes for further instruction.

My amendment will not require additional funds to be included in the bill. The Secretary of the Air Force will be authorized to use funds provided for minor construction for this purpose. The acquisition and installation of the necessary sirens will require the use of approximately $10,000 per site or $500,000 to equip all affected sites, assuming several sites in Arizona will not require sirens because of their locations in deserted areas.

I believe that we must protect the safety and well-being of the people living in the immediate vicinity of the Titan II missile sites. We must make every effort to provide for the most rapid and efficient notification procedure. This will serve as a means to avoid future injury or loss of life due to an accident at a Titan II missile site.

Mr. President, I think this amendment makes sense. I am proud, if my understanding is correct, that it will be accepted by the distinguished managers of the bill at this time.

I yield back the remainder of my time.

Mr. HART. Mr. President, the Senator from Arkansas has very accurately stated the purpose of his amendment which is to be able to alert the surrounding populations if there is a fuel leak in one of the aging Titan missile systems.

No new money is required by this amendment. It would use minor construction authorization that is presently available for purposes of this sort.

I note from my own committee record that the Air Force belief is that the warning systems contemplated by the amendment are not the best solution to the problem of population warning in adjacent vicinities. They prefer a different system.

But since this proposal is not contained in the House bill, as with the other amendments which we have accepted, on behalf of the majority of the committee I am more than prepared to accept this amendment, take it to conference with the House of Representatives, and seek the disposition of the House conferees on the matter.

So with that I am prepared to accept the amendment of the Senator from Arkansas.

Mr. THURMOND. Mr. President, we think this amendment has merit and are willing to accept it.

I was just wondering how this figure of $500,000 was decided upon, if it will actually take that much. It sounded a little high for just the placement of sirens. I am wondering who prepared that figure. Do we have an estimate by the Defense Department?

Mr. PRYOR. It is my understanding that Air Force officials have estimated that the acquisition and installation of each warning siren would cost approximately $10,000. It is my further understanding that of the 54 Titan II missile sites, a small number may be located in areas with no immediate surrounding population, thus the approximate total figure of $500,000.

Mr. THURMOND. That is the estimate by the Air Force?

Mr. PRYOR. The Senator is correct.

Mr. THURMOND. Is this so worded that it is not mandatory, that the Air Force may do this only if necessary and then not to exceed this amount?

Mr. PRYOR. I state to the Senator from South Carolina that last year I offered an amendment to the Department of Defense appropriations bill on this issue. The amendment was accepted, and it provided for the Air Force to go forward with such an early warning system on the site if they determined pursuant to a study that such a warning system was necessary.

Mr. THURMOND. Is this amendment so worded that if the Air Force determines that it is necessary it may be done; it does not make it mandatory?

Mr. PRYOR. It is mandatory unless the Air Force determines that there is no surrounding population that needs to be warned or needs to be protected in this manner.

Mr. THURMOND. In other words, it is in the discretion of the Air Force?

Mr. PRYOR. To the extent that the Air Force would determine whether the site had a significant surrounding population.

Mr. THURMOND. Mr. President, I do not want to make the Air Force spend money unless it is necessary and unless the Air Force feels it is necessary. I would wish to amend the amendment if it does otherwise.

Mr. PRYOR. I just say to the Senator that the civilian warning siren is intended to supplement the proposed Air Force plan of notification of civilians by telephone calls and or personal visits.

Mr. THURMOND. Mr. President, we will not oppose the amendment. If there are any changes after further study of the amendment, this could be accomplished in conference.

Mr. PRYOR. I deeply appreciate the distinguished Senator's acceptance of the amendment. I think it is an amendment which will speak to a long-overdue need, and I hope our colleagues will accept this amendment.

Mr. BUMPERS. Mr. President, I am proud to cosponsor and I vigorously support the amendment of Senator PRYOR to the Military Construction Act of 1981 to provide that sirens be placed at each Titan II missile site with a significant surrounding population.

With area wide, siren type alerting systems, an incident in Arkansas near a Titan II site may never have occurred. Near a Titan II site at Damascus, Ark., in January 1978, an oxidizer transport trailer vented oxidizer into the atmosphere. Several civilians required treatment for oxidizer exposure. This venting occurred over a period of several hours, before it was discovered by the Air Force.

Because of the delay in the detection of the venting and because of the civilian suffering that was caused by the accident, Senators from the three States

in which Titan II missiles are deployed—Arkansas, Kansas, and Arizona—held a series of meetings with the Air Force. We insisted that steps be taken to prevent a recurrence of such an incident. To the credit of the Air Force, a series of measures were, indeed, taken.

Specifically, first, fuel transport trailers and oxidizer transport trailers are now enclosed in new containment buildings at each missile wing whenever either propellent is in long-term storage; second, whenever missile propellants are stored at missile sites, military personnel are assigned to round-the-clock surveillance of the propellant trailers and venting should be immediately detected and appropriate action taken; third, "appropriate action taken" involves the following very important, and almost sufficient, steps. The new containment buildings have automatic sensing devices which continually monitor the building atmosphere and alert the missile combat crew should minor amounts of propellant begin to escape. Visual and audible warnings are to be flashed automatically to the missile combat crew in the launch control center. The crew's initial response is to turn on the missile site rotating beacon and warning siren—both of which are located above ground level—to warn personnel in the immediate vicinity.

The "immediate vicinity," however, is not enough. The area-wide sirens we need are the kind that can be heard for a minimum of one-half mile to an average audible range of 2 miles. These are the kinds of sirens authorized in the amendment before us today. Had we had the Air Force's new alerting procedures and these long-range sirens, the serious mishap at Damascus, Ark. might never had occurred. The affected civilians would have been able to leave the area of propellant fumes and into an area of safety.

The cost of $10,000 per site is not great, particularly when one considers the unnecessary risk civilians could suffer—particularly those working their fields or otherwise unavailable to the Air Force's alerting system which includes telephone calls and personal contacts.

Mr. President, I urge the adoption of this worthy amendment.

Mr. DOLE. Mr. President, I am pleased to join the distinguished Senator from Arkansas, Senator PRYOR, along with Senators BUMPERS and DECONCINI in offering an amendment which will provide that a general alarm system be installed at each Titan II missile site with a significant population to serve as an immediate alert in case of an accident.

TITAN II

Mr. President, the Titan II is the largest ICBM in the U.S. arsenal and is capable of carrying a 24 megaton atomic warhead 18,000 miles an hour to targets 6,000 miles away. The Titan II missile system is now almost 18 years old. The 54 Titans in Kansas, Arizona, and Arkansas were established in 1963 with a life expectancy of 10 years.

Mr. President, in recent years, the Titan II has become a "problem" missile. In 1978, for example, 2 airmen were killed and 29 were injured in Kansas and Arkansas in two accidents involving "leaks" of highly toxic liquid propellant used in Titan II's.

Most recently, on April 22, 1980, another major "leak" occurred at the Potwin Kansas missile site. A materiel failure in the stage II oxidizer tank quick disconnect valve was allowing oxidizer to escape. Fortunately, no one was injured.

AN EFFECTIVE WARNING SYSTEM

During the last incident at Potwin Kansas, 16 farm families, which surround the missile site, were ultimately evacuated as a "safety precaution."

While I commend the Air Force and other local law enforcement officials for their good work in notifying the surrounding population of the potential danger as a result of the Potwin "leak", I do not believe it is good enough.

I share my colleagues belief that we must establish an early warning system to protect the safety of these civilians who could be exposed to accidentally released toxic and even lethal gaseous fumes. The general alarm siren provided for in this amendment will serve this much-needed purpose. The sirens will serve as part of a total civilian warning system and will supplement the Air Force proposed plan to alert the surrounding population of an accident via telephone and/or actual personal contact.

Mr. President, it is imperative that we protect the safety and well-being of the people living in the immediate vicinity of the Titan II missile sites. We must continue to make every effort to provide for the most rapid and efficient notification procedures and I believe that by adopting this amendment we will be taking a significant step in the right direction.

Mr. HART. Mr. President, I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment (UP No. 1578) was agreed to.

Mr. PRYOR. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1579

(Purpose: To provide for the selection of a permanent berthing site for the U.S.S. *Nautilus*)

Mr. RIBICOFF. Mr. President, I have an amendment which I send to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) proposes an unprinted amendment numbered 1579.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

SELECTION OF A SITE FOR THE PUBLIC DISPLAY OF THE U.S.S. "NAUTILUS"

SEC. 810. (a) The Secretary of the Navy shall select a suitable site, as provided in this section, at which the U.S.S. *Nautilus*, the world's first nuclear-powered submarine, will be permanently berthed and placed on public display after such submarine has been decommissioned. The Secretary shall select a site for such purpose that will be easily accessible and convenient for the people of the United States to visit.

(b) In considering potential sites for the permanent berthing and public display of the U.S.S. *Nautilus*, the Secretary of the Navy shall take into consideration the estimated site preparation and other related costs involved in permanently berthing such submarine for public display at each such site and the extent to which contributions from public and private sources can reasonably be expected to meet such costs in the case of each such potential site. In no event may the Secretary select a site for such purpose unless he finds that there will be a reasonable contribution from public or private sources to help meet such costs at such site.

(C) The Secretary of the Navy shall notify the Congress in writing of the site selected by him for the permanent berthing and public display of the U.S.S. *Nautilus* promptly after he has made such selection and shall include in such notificatioon (1) a list of the sites considered for such purpose, (2) the reasons for deciding on the particular site selected, (3) an estimate of the site preparation and other related costs involved in the case of each of the sites considered, and (4) an estimate of the amount that could reasonably be expected to be contributed by public and private sources to help meet such costs in the case of each of the sites considered.

Mr. RIBICOFF. Mr. President, on behalf of Senator WEICKER and myself, this amendment has been sent to the desk.

This amendment would establish a permanent berth for the U.S.S. *Nautilus*, the world's first nuclear-powered submarine. The *Nautilus* was decommissioned in March of this year, after over 25 years of Navy service. She is a technological wonder of unique importance in maritime affairs and in American Naval history. Her stature is comparable to that of the U.S.S. *Constitution* and the U.S.S. *Arizona*. Her historical significance makes her worthy of a permanent national memorial.

There is a strong consensus that a national memorial is appropriate. There has, however, been some question about its siting and about the reliability of the cost estimates of the particular sites which are available.

Mr. President, any permanent berth for the *Nautilus* should be at a place which should be accessible to the public and have a maximum of tourist exposure. It should also be in a location which has a strong historic connection to the ship and where the ship will be well cared for and promoted properly.

There have been a number of cost estimates done by the Navy for the various sites under consideration. It is my belief that the most appropriate site for the *Nautilus* memorial is Groton, Conn. She was built in Groton and homeported

there for over 25 years. The Navy has a tradition of retiring historic vessels to areas of the country which have strong historical associations with those ships. Groton is the site of a major U.S. submarine base, and is informally known as the submarine capital of the world. It was in Groton that the men who manned her lived and raised their families. The people of southeastern Connecticut have made a vital contribution to the U.S. submarine tradition and have enormous pride in their achievements.

Whatever site is chosen, a mandatory criteria should be a demonstrated and significant effort by the State or locality in preserving this great monument. Thus, the second part of my amendment would require the Secretary of the Navy to choose a site for which there is a proven ability by the locality to defray a reasonable portion of the site preparation costs.

In the case of Connecticut, I am proud that a combination of State, public, and private sources have pledged nearly $800,000, more than 25 percent of the estimated Groton expenses. No other State or jurisdiction has made any similar effort or commitment. Other sites are welcome to compete, and raise money from whatever source, public or private, they can. In Connecticut, not only has the State pledged half a million dollars, but the Southeastern Connecticut Chamber of Commerce has announced it will spearhead a campaign to raise an additional $250,000. A local piping company has pledged $20,000 in materials and labor.

Any decision by the Navy to select a site should involve Congress. The final part of my amendment would require the Secretary of the Navy to notify the Congress in writing of the site selected by him and include in such notification the reasons for his selection as well as the amount which can be expected to be contributed by the locality.

I fully expect that the desirability of placing the *Nautilus* in Groton will be demonstrated from all criteria—accessibility, local effort, and historic justification. No other locality will meet the challenge like southeastern Connecticut. No other locality is as appropriate. Other jurisdictions are welcome to compete.

I thank the Committee for its consideration of my amendment, and hope it is accepted.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the Senator from Connecticut offers a very worthwhile amendment. The net effect of the amendment would be to ratify the approach taken by the committee in essentially attempting through report language to achieve the result which the Senator from Connecticut would establish in law by his amendment.

Therefore, since particularly this provision is not in the House bill, I think it is very well worthwhile for the Senate to go on official record by the amendment in our bill to achieve the results which we agree should be achieved.

On behalf of the majority, I wish to accept the amendment and urge our colleagues to do likewise.

I congratulate the Senator from Connecticut for raising this issue.

Mr. RIBICOFF. I thank the distinguished manager of the bill.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, we do not oppose the amendment. It is a matter that has got to be worked out. I understand this is just a study to determine the permanent berthing of the *Nautilus*.

Mr. RIBICOFF. That is correct, may I say to the senior Senator from South Carolina.

● Mr. WEICKER. Mr. President, I am pleased to rise in support of the amendment offered by my distinguished colleague from Connecticut, Senator RIBICOFF. I believe this amendment makes a valuable contribution to this bill by clarifying the site selection process for the U.S.S. *Nautilus* memorial.

The U.S.S. *Nautilus* is without question a technological achievement of great historical significance. In terms of its impact on the naval capabilities of the United States, the *Nautilus* takes a rightful place alongside the U.S.S. *Constitution* and the U.S.S. *Arizona*. She is a source of great pride to all Americans as a symbol of American technical knowhow and innovation. We would be greatly remiss in failing to provide a proper memorial to this great achievement.

Mr. President, I believe that Groton, Conn., is the appropriate site for such a memorial. The people of eastern Connecticut and Rhode Island are those most responsible for this accomplishment. By their hard work and dedication, they have earned the privilege of sponsoring this memorial. We should also keep in mind that proper recognition of a job well done can be a powerful incentive to successfully meet the new challenges which lie ahead for the nuclear submarine navy.

From a historical standpoint as well, Mr. President, it is fitting that the *Nautilus* be returned to Groton. This community on Connecticut's southeastern shore is the acknowledged "submarine capital of the world". Groton was not only the construction site for the *Nautilus* but her home port throughout her 25 years of service. The other sites under consideration, I might add, share no such personal or historical association since, to my knowledge, the *Nautilus* has never visited either the Washington Navy Yard or Annapolis, Md.

Mr. President, the Ribicoff amendment which I am pleased to cosponsor, directs the Secretary of the Navy to select a site for a *Nautilus* memorial which is "accessible and convenient" for the American people. It also stipulates that an essential criterion in the Secretary's selection shall be the willingness of the local area to make a "reasonable contribution" to the cost of preparing the site. This latter provision provides a concrete test of the interest and importance of this memorial to the competing localities.

The Groton site will be located near Interstate 95, New England's principal artery, and near the Mystic seaport, which draws over one-half million visitors annually. In terms of local contribution, the State of Connecticut has made its intentions very clear. Governor Grasso has guaranteed that all costs of site preparation beyond $2.6 million will be covered by State, local, and/or private funds. This commitment demonstrates the sincerity of Connecticut's desire to bring the *Nautilus* home and to provide a memorial worthy of her heritage.

Mr. President, I applaud my senior colleague for offering this amendment and urge the Senate to accept it.●

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. I yield back my time.

Mr. RIBICOFF. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Connecticut.

Mr. RIBICOFF's amendment (UP No. 1579) was agreed to.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1580

(Purpose: To authorize funds for a launcher laboratory at the Naval Underwater Systems Center, Newport, Rhode Island)

Mr. PELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes on behalf of himself and Mr. CHAFEE an unprinted amendment numbered 1580.

Mr. PELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, between lines 10 and 11, insert the following:

Naval Underwater Systems Center, Newport, Rhode Island, $4,350,000.

On page 43, line 15, strike out "$755,845,000" and insert in lieu thereof "$760,195,000".

On page 43, line 17, strike out "$863,435,000" and insert in lieu thereof "$866,785,000".

Mr. PELL. Mr. President, the amendment I am proposing would add the amount of $4,350,000 for the purpose of constructing a new launcher laboratory at the Naval Underwater Systems Center, in Newport, R.I.

"NUSC" is one of the Navy's top research and development labs, with expanding responsibilities in our submarine programs. The excellence and qualitative superiority of our submarine weapons program is a key part of the strength of tomorrow's Navy. This building, which has been in the planning stage for several years, will provide a badly needed facility for the study of submarine launching systems. This amendment is cosponsored by my colleague, the former Secretary of

the Navy, Mr. CHAFEE, and I hope it will be accepted by the managers of the bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the amendment offered by the Senator from Rhode Island is indeed a good project. Based on our examination of his amendment and the needs which it addresses, we feel it is beneficial and worthwhile.

Our understanding of the Navy's budget preparation and the administration's submission was that this item was dropped from the fiscal 1981 budget at the last minute. It has been under consideration for a large number of years. It is on the Navy's high priority list and on its unfunded requirements list.

Since this project is not in the House bill it is more than agreeable to the manager of the bill on the majority side to accept the amendment and take it to conference and seek the disposition of our House colleagues on this item.

Mr. PELL. I thank my colleague very much indeed.

Mr. HART. It is my understanding that this amendment is equally acceptable to the minority floor manager and, speaking on his behalf, we are prepared to adopt the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. I yield back our time.

Mr. PELL. I yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

Mr. PELL's amendment (UP No. 1580) was agreed to.

Mr. HART. I suggest the absence of a quorum, Mr. President, the time to be equally divided on the time on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CULVER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1581

Mr. CULVER. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an unprinted amendment numbered 1581.

Mr. CULVER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the bill, add the following new section as follows:

STUDY OF CONDITION OF THE STRATEGIC RAIL CORRIDOR

(A) The Secretary of Defense, in consultation with the Secretary of Transportation, shall conduct a study of the condition of railroad lines identified in the Strategic Rail Corridor Network (STRACNET) for National Defense (Military Traffic Management Command Report RND 76-1, An Analysis of a Strategic Rail Corridor Network for National Defense, November, 1976). Such study shall include an identification of those segments of the corridor which, as a result of deferred maintenance or deterioration, may potentially have an adverse impact on the movement of personnel, equipment, and materials among federal military arsenals and installations, and an estimate of the cost of rehabilitating those segments.

(B) The Secretary of Defense shall submit the results of this study, together with recommendations for correcting deficiencies in the railroad network in order to strengthen the military's combat readiness and military mobilization base, to the Armed Services Committees of Congress no later than July 1, 1981.

Mr. President, this amendment authorizes the Secretary of Defense to assess the condition of railroad lines that are vital to the Nation's defense, and to make recommendations to correct deficiencies in order to strengthen the military's combat readiness and mobilization base.

I have taken to the Senate floor on several occasions to argue the need for a major new commitment to revitalize our freight and rail passenger systems—to rebuild track, improve switching yards, and reduce "turn around" time for transporting our agricultural products to ports for export. The current rail crisis is even more ironic—and tragic—because it comes at a time when our Nation is trying to cut down its dangerous dependence on foreign oil. As we all know, railroads are the most fuel-efficient form of transportation, but only if tracks and equipment can be kept in sound condition.

This year, many domestic programs, including railroad revitalization, are being cut back to make way for massive increases in defense spending. Curiously overlooked in this exercise is the prime importance of America's railroads to our national security.

In the event of a national emergency, we need the planes and ships and tanks to meet any threat. We need our forces and equipment to be in a state of combat readiness. We need fighting personnel and technicians who are adequately trained and paid.

But we also need swift, dependable transportation facilities to carry food and supplies to the Armed Forces, and munitions and equipment from arsenals to points where they are needed.

As a member of the Senate Armed Services Committee, I recently visited the Rock Island Arsenal and was told by officials there that the poor condition of track could have a serious impact on the performance of their mission in the event of mobilization. The arsenal's function is to move equipment and material to military posts throughout the Midwest, and they feared that more "deferred maintenance" and service suspensions could severely hinder the successful performance of their job.

So it is clear, Mr. President, that when we call for the rehabilitation of our deteriorating rail system, we are not only talking about bolstering our domestic economy, but we are talking about strengthening a front line of our national defense.

We cannot have a rapid deployment force if we cannot transport heavy equipment and supplies quickly and surely to ports of embarkation.

We might not be able to resupply our forces in combat in time if vital materials are delayed in transit by inadequate railroad networks.

The Department of Defense recognized the contribution of railroads to the national defense by conducting a study to identify strategically important rail lines in 1976. That study, undertaken by the Military Traffic Management Command, resulted in the identification of the strategic rail corridor for national defense (STRACNET), a system which serves "as the Department of Defense's mainline system of rail corridors."

Because of the general economic condition of several western and midwestern railroads, many of the corridors identified in STRACNET contain track which is in deteriorating condition. We must know prior to an emergency or mobilization which corridors and track are in substandard condition and how much upgrading they require in order to perform their intended mission.

Therefore, Mr. President, my amendment requires the Secretary of Defense—in consultation with the Secretary of Transportation—to study the condition of the STRACNET system, to identify those elements of the system which are in poor condition, and to estimate the cost of repairing or replacing substandard track. This study, along with recommendations for correcting deficiencies, would then be forwarded to the Armed Services Committees of both Houses no later than July 1, 1981. With this information, Congress will be better able to assure that the network will be upgraded to the high performance standards that would be required during a national emergency.

It is tragic enough that farmers, shippers, and consumers are paying a heavy cost for our deteriorating rail system. We must not compound that tragedy by permitting the continued deterioration of rail segments which support the defense requirements of the Nation. We must identify those components which are in need of repair, and assure sufficient resources to accomplish the task. My amendment will get that process underway.

I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I commend the Senator from Iowa for bringing to the attention of the Senate a very critical matter. This issue, I must say, is in keeping with the career of the distinguished Senator from Iowa as I have followed it as his colleague on the Armed Services Committee. That is to broadly define the issue of national security and our national defense.

Unfortunately, I think too often we in the Congress lead the American people astray by too narrowly defining what our national security really is. We debate these individual weapons systems and vote them up or down, and that is the single barometer by which, too often, individual elected officials' attitudes toward national defense are judged.

The Senator from Iowa has a long and distinguished career in seeking to educate his colleagues and the American people about what the true definition of national security and our proper defense really are. This is a classic instance of that type of education.

What is this country to do, Mr. President, if we have the most sophisticated weapons systems in the world, we have them stockpiled and deployed throughout the United States, they are needed on one coast or the other, they must be moved by rail, and it turns out that our rail system is decrepit, decayed, and we cannot move that sophisticated equipment?

For my part, Mr. President, I think the Senator from Iowa deserves a great deal of credit for focusing attention on this area. I think he is absolutely right. I think to engage the Department of Defense and the Department of Transportation in a survey of the adequacy of our rail systems to help in the defense of this country under stress or under a hostile environment is absolutely the kind of thing we need to be doing in the 1980's to really test the adequacy of this country's defenses.

So, for my part, I wish not only to accept the amendment and to encourage its adoption, but also to compliment the Senator from Iowa for his continuing concern about the adequacy of this country's defenses, his proper definition of those defenses, and his long-term concern for readiness and the ability of this country to mobilize under the proper conditions.

Mr. CULVER. Mr. President, I thank the Senator from Colorado very much for his very gracious remarks.

Mr. President, I move adoption of the amendment.

Mr. THURMOND. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. CULVER. Mr. President, I yield back the remainder of my time.

Mr. HART. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 1581) was agreed to.

Mr. CULVER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1582

(Purpose: To expand the purposes for which land previously conveyed to the State of Maine by the United States may be used)

Mr. MITCHELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maine (Mr. MITCHELL), for himself and Mr. COHEN, proposes an unprinted amendment numbered 1582.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

LAND CONVEYANCE, SOUTH PORTLAND, MAINE

SEC. 810. (a) The first section and section 2 of the Act entitled "An Act to provide for the conveyance to the State of Maine of certain lands located in such State", approved August 28, 1957 (71 Stat. 467) are amended by striking out "for vocational or other school purposes" and inserting in lieu thereof "for public purposes".

(b) The Secretary of the Navy shall issue such written instructions, deeds, or other instruments as may be necessary to bring the conveyance made to the State of Maine under the authority of the Act referred to in subsection (a) into conformity with the amendment made by such subsection.

Mr. MITCHELL. Mr. President, this amendment, offered on behalf of myself and Senator COHEN, will permit the city of South Portland, Maine, to establish a public park along its shoreline.

Pursuant to Federal law passed in 1957, the Secretary of the Navy issued a deed conveying certain military property within the boundaries of South Portland to the State of Maine. Because that property is located on the campus of the Southern Maine Vocational Technical Institute, the deed contained language restricting its use to vocational or other school purposes.

During the last year, however, officials of the school, the city and the State have decided to create along the shoreline a public park called the Spring Point Shoreway. A passive recreation walkway will be built with the aid of State and Federal funds already set aside. In order to allow that project to proceed, the use restrictions in the deed must be changed to allow a public project.

Mr. President, our amendment will permit the Secretary of the Navy to issue a new deed enabling this public project to go forward. It will not require appropriations and has, I believe, been cleared with the distinguished floor manager (Mr. HART). I hope he will accept the amendment without further discussion.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I rise in support of the amendment. Its purpose is to lift certain restrictions on property located in South Portland, Maine, which was conveyed from the Federal Government to the State of Maine in 1957.

This property, which was formerly Fort Preble Military Reservation, is now part of the campus of the Southern Maine Vocational Technical Institute. Adjacent to the property is a shoreline park and conservation area which is open to the public. However, because of the restrictions contained in the legislation which conveyed the property, the public may not cross it to reach the shore. This amendment will simply permit the public to access the shore area by way of the former Federal land. It has the full support of all affected parties and is noncontroversial.

I urge adoption of the amendment.

Mr. HART. Mr. President, the Senators from Maine have identified a worthwhile purpose in their amendment, which is very much in order. The majority side of the committee supports it and urges its adoption.

Mr. THURMOND. Mr. President, we feel this is a meritorious amendment and support it.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. Mr. President, I yield back the remainder of my time.

Mr. MITCHELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1582) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JACKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2321

(Purpose: To authorize funds for the initiation of construction of a binary weapons production facility at Pine Bluff Arsenal, Arkansas)

Mr. JACKSON. Mr. President, I call up my amendment No. 2321 and ask that it be considered immediately.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Washington (Mr. JACKSON) proposes an amendment numbered 2321.

Mr. JACKSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, between lines 13 and 14, insert the following item:

"Pine Bluff Arsenal, Arkansas, $3,150,000.".

On page 43, line 11, strike out "$608,560,000" and insert in lieu thereof "$609,710,000".

On page 43, line 13, strike out "$918,830,000" and insert in lieu thereof "$921,980,000".

Mr. JACKSON. Mr. President, this amendment was approved in the Committee on Armed Services by all members of the committee except three. Those approving the amendment are: Senator HENRY M. JACKSON, Senator JOHN C. STENNIS, Senator HOWARD W. CANNON, Senator HARRY F. BYRD, JR., Senator SAM NUNN, Senator ROBERT MORGAN, Senator J. JAMES EXON, Senator JOHN TOWER, Senator STROM THURMOND, Senator BARRY GOLDWATER, Sen-

ator JOHN W. WARNER, Senator GORDON J. HUMPHREY, Senator WILLIAM S. COHEN, and Senator ROGER W. JEPSEN.

Mr. President, over the past 12 months, the Senate has debated a series of major policy issues which relate to the defense posture of the United States. I have been greatly heartened by the outcome of this body's votes on such key decisions as: increasing the fiscal year 1980 second concurrent budget resolution to allow for substantially increased defense spending in fiscal years 1981 and 1982; raising even further the fiscal year 1981 defense figures as became necessary in the course of this year's budget process; providing sorely needed authorizations for higher pay and improved benefits for this country's servicemen and servicewomen; and approving reinstatement of selective service registration. Today, the Senate has before it yet another difficult and important national security issue.

In recent action, the House of Representatives has authorized and appropriated $3.15 million to facilitize the Army's preferred chemical weapons production facility at Pine Bluff, Ark. The House action was prompted by profound concern over the imbalance that currently exists between Soviet and U.S. chemical warfare capabilities and the resulting absence of a credible U.S. deterrent to any Soviet use of chemical weapons. There also has been strong dissatisfaction with the lack of progress in the U.S.-U.S.S.R. chemical arms control negotiations that have been dragging on since 1976.

Obviously, all of us in this Chamber support our Nation's historic commitment to no-first-use of lethal chemical munitions. None of us advocates chemical warfare; and we all seek a verifiable and enforceable arms control agreement with the Soviet Union that would effectively eliminate chemical weaponry.

But, Mr. President, let us look at the actual situation. By any meaningful measure of relative strength in the chemical armaments field, the Soviet Union enjoys a preponderant advantage over the United States. As a result, there is little or no inducement for Moscow to reach an arms control agreement limiting and reducing chemical weapons.

Unclassified estimates illustrate the substantial disparities which exist between United States and Soviet chemical capabilities:

The Soviet Union has 35 dedicated chemical units for every such unit in the Armed Forces of the United States.

In terms of personnel specifically assigned to chemical warfare, the U.S.S.R. outnumbers the United States by a ratio of 11 to 1.

In decontamination equipment—in addition to its enormous qualitative advantage—the Soviet Union enjoys a numerical advantage of 10 to 1.

The U.S.S.R. leads the United States 8 to 1 in chemical munitions.

The Soviets have a 5 to 1 advantage in ground-based chemical delivery systems.

And the Soviet Union leads the United States in production facilities by a factor of 14 to 1.

Clearly, the Soviet Union has a systematic, vigorous and comprehensive approach to chemical warfare. A sizeable production base; a stockpile estimated to consist of between 100,000 and 700,000 tons of chemical munitions; weapons which offer a wide choice of delivery means, ranges, physiological effects and persistencies; highly effective chemical detection, protection and decontamination equipment; and rigorous, realistic training—often in an actual toxic chemical environment—all point to a potent, credible Soviet chemical warfighting capability. When these factors are considered together with the reports of operational use of chemical agents by Soviet proxies in Laos and Cambodia and, more recently, by Soviet troops themselves in Afghanistan, the picture is even darker.

By contrast, the U.S. chemical deterrent posture has been steadily eroding.

During the past 10 years, the United States has not produced a single chemical round.

In the course of this decade, notwithstanding presidential directives "to maintain the (chemical) force without improvement," the U.S. inventory has actually decreased substantially as more and more chemical munitions become categorized as "unserviceable" or, as Secretary of Defense Harold Brown characterized them, "obsolete."

By 1990, through deterioration and obsolescence, the United States will no longer have a militarily-useable—and, therefore, credible—stockpile of chemical munitions.

For 11 years, not one weapon in our chemical inventory has been fired to revalidate ballistic performance and weapons effects.

Incredible as it might seem, it is only in the past few years that a serious effort has been made to upgrade the defensive chemical posture of U.S. forces. Even so, critical shortfalls continue to exist in protective clothing and other defensive equipment throughout the armed services.

U.S. chemical warfare training is still largely rudimentary, infrequent and unrealistic. Chemical training is often hindered by inadequate quantities of protective equipment. Training with leather gloves and galoshes degrades both the realism of the exercise and the familiarity of the individual soldier with clothing upon which his life might well depend.

The quantity and type of decontamination equipment being introduced into the U.S. Armed Forces, by and large, is inadequate to meet the projected Soviet threat.

Over the past 15 years, our annual investment in chemical warfare research and development has been cut in half in real terms.

In short, Mr. President, the Soviet Union today enjoys a significant advantage over the United States in chemical weaponry—on the battlefield and, consequently, at the negotiating table. For 4 years, United States and Soviet negotiators have been meeting in Geneva to discuss a treaty aimed at banning chemical weapons. After 4 years, not one line of such a treaty has been written and agreed to by representatives of the Soviet and U.S. Governments.

This disappointing record is not surprising. Given Moscow's predominant advantage in chemical weaponry, and considering that the United States, since 1969, has engaged in a unilateral moratorium on any improvements in its offensive chemical capability, why would the Soviets come to terms?

From 1976 on, the administration has tested the proposition that continued deferral of any improvements to the U.S. chemical weapons posture would gain for us some sort of significant "American psychological advantage" over the U.S.S.R. Senior U.S. officials apparently have convinced themselves that this misconceived "psychological superiority" would somehow compel the Kremlin to cut back on its chemical weapons and come to terms at the negotiating table. In fact, inferior American chemical warfare capabilities and American unilateral constraint in the production of chemical munitions have failed utterly to move the Soviets closer to a genuine, reciprocal chemical weapons agreement.

The truth of the matter is that our chemical warfare posture must again be made credible. This is an essential step as a deterrent to the threatened use of chemical agents by the Soviet Union. Beyond this, it is a necessary condition for successful arms control bargaining with the Soviets.

Mr. President, if we are ever to reach a genuine limitation and reduction of chemical weapons through negotiation, we must provide the Soviet Union with a more compelling inducement to be reasonable than that provided to date.

To this end, I am today offering an amendment—endorsed by 14 members of the Senate Armed Services Committee—which corresponds to the action taken earlier by the House. It will make possible a binary munitions production facility at Pine Bluff in 1984. Binaries are chemical weapons containing two separate, relatively harmless chemical agents which are mixed only after firing to form the weapon's toxic substance. The advantages of binary munitions are evident in their safety of handling, transportation, stockpiling, and eventual detoxification.

Two features of the binary program make this a particularly appropriate course of action for Congress to adopt at this time.

The $3.15 million are part of what Secretary Brown has called "a preproduction program." As such, their expenditure does not represent a commitment to initiate binary production.

Due to the long-lead times involved, no production of binary munitions will be possible before fiscal year 1984, affording an opportunity—as well as considerable incentive—for purposes to be made in chemical arms control negotiations.

The question before the Senate today is whether we will join in the message already being sent to the Soviet Union by the House of Representatives. If we do not, the Soviets will have been rewarded once again for their intransigence at the negotiating table, and

encouraged to continue their steady expansion of an already formidable chemical arsenal.

With a solid Senate vote in favor of this amendment, Congress will be on record asserting its grave concern about the lack of a credible American chemical deterrent, and its conviction that steps essential to the encouragement of effective chemical arms control must be taken.

I urge the adoption of this amendment.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER (Mr. BENTSEN). Who yields time?

Mr. JACKSON. I yield to the Senator from Virginia.

Mr. WARNER. Mr. President, I support the amendment.

One of the unmistakable lessons of history is that the best deterrent to a chemical attack is a credible retaliatory capability. For example, while Germany pioneered the use of lethal chemical weapons during World War I, Hitler refrained from employing the same strategy in World War II simply because he feared massive chemical retaliation. Other nations lacking a credible retaliatory capability have not been so fortunate as the Allies in World War II.

Japan used chemical weapons against China in 1937; Egypt against Yemen 1963–67; Vietnam against Hmong tribesmen in Laos 1976–79; and Russia against Afghanistan 1979–80.

Today, the U.S. stockpile of chemical weapons is old and deteriorating steadily. Many of the weapons in our chemical inventory are obsolete, in storage awaiting destruction. A predominance of our aging stocks, with a shelf-life of 20 years, are now 20 years or older. What deterrent credibility we have is rapidly deteriorating. We have not manufactured chemical munitions since 1969.

In response to our unilateral restraint, the Soviet Union has developed the largest and most modern chemical weapons inventory in the world. Some estimates of the Soviet offensive capability suggest that possibly one-third of their forward-deployed artillery and rockets may contain chemical agents. Virtually all Soviet armored vehicles have modern collective filtration systems. In both their offensive and defensive preparations, the Soviet Union vastly exceeds the United States. Any question about their willingness to use such weapons has been answered in Afghanistan.

Additionally, the U.S. Army's two top research and development officials, Assistant Secretary Edward A. Miller and Lt. Gen. Howard R. Cooksey, have warned Congress that a nonnuclear Soviet attack against Western Europe would include the use of chemical weapons. Gen. Bernard Rogers, Supreme Allied Commander Europe, stated before the House Appropriations Committee during hearings on the fiscal year 1981 DOD appropriations bill—

> Today, Allied Command Europe has no capable retaliatory ability against the Soviet Union in order to deter their use of CW.

We have tried since 1976 to negotiate with the Soviets an arms limitation agreement for chemical weapons. We have not been successful. The Soviets have little to gain from such a treaty while the United States has ceased production of chemical weapons and our inventory continues to deteriorate into obsolescence.

Consideration of binary weapons production has been underway since 1954. Since 1967, no fewer than 10 studies and 9 national level reviews have been conducted.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of those studies.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

STUDIES ON CHEMICAL WEAPONS

NATIONAL LEVEL REVIEWS

December 1971, NSDM–35.
July 1972, NSSM–157.
January 1973, White House memorandum.
January 1973, NSDM–35.
February 1974, NSSM–192.
May 1976, NSDM–35.
May 1977, PRM–27.
June 1978, PRM–37.
November 1978, Review of PRM–37.
November 1979, NSC review of PRM–37.

STUDIES

June 1967, Mandrake Root.
September 1968, OSD draft Presidential memorandum/guidance specifying capability.
August 1974, JCS review of U.S. offensive chemical posture.
January 1975, Army review of U.S. offensive chemical posture.
1975, TRADOC study.
January 1977, U.S. Army War College—Strategic Studies Institute—chemical warfare policy 1980–1990.
May 1977, U.S. Army—Concepts Analysis Agency.
Fall 1977, JCS study.
September 1979, JCS—Chemical Warfare in Central Europe (IDA).
March 1980, U.S. Army TRADOC chemical operations.

Mr. WARNER. Mr. President, further studies will neither deter the Soviets nor induce them to negotiate.

The United States must retain a credible deterrent capability and at the same time vigorously pursue an arms limiting treaty. For these reasons I am strongly in favor of authorizing $3.15 million as the first step toward providing the United States the capability of producing modern binary weapons.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CANNON. Mr. President, will the Senator yield?

Mr. JACKSON. I yield to the Senator from Nevada such time as he requires.

Mr. CANNON. Mr. President, I associate with the views expressed by my colleague from the State of Washington. The Senator has properly called attention to and described a most worrisome deficiency in our defense posture: our ability to deter use of chemical warfare by the Soviet Union.

We can neither expect to deter the threat posed by the Soviets' growing ability to wage chemical war, nor can we hope to make real progress toward a meaningful chemical arms accord unless we restore some measure of credibility to our own chemical capabilities.

I supported the addition of $3.15 million to establish a binary munitions production facility when it was considered by the Senate Armed Services Committee. This is a timely action which will confirm the strong stance taken by the House of Representatives; it will also send an unmistakable signal to the Soviet Union of the Congress' resolve to counter any advantage they may seek through chemical weaponry and to achieve genuine arms control in this area.

I urge my colleagues to approve the amendment offered by the Senator from the State of Washington on behalf of the Armed Services Committee.

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, the Senate has before it what I consider one of the most serious and consequential issues relating to our national security in recent years. It is an issue of a magnitude that will invite the participation of the overwhelming majority of our colleagues. It is a decision whether we go forward or do not go forward with chemical warfare agents that will have vast implications not only for the United States of America but also for all civilized society. This is a decision that should not be made casually and should not be made lightly.

The vote that will be taken on the amendment offered by the Senator from Washington or the substitute to be offered by the Senator from Colorado will be the first vote in recent times by either House of Congress on the issue of going forward on the production of chemical warfare agents—that is to say, a rollcall vote. This measure is in the House military authorization bill. It was adopted by voice vote. There was no record vote taken by the membership of the House of Representatives on this specific issue.

Mr. President, I think it is important to put this proposal in some context.

First, funds for the facility that is being proposed to be activated by the Senator from Washington were not in the President's budget request. The hearings and the record on this issue are confined to one appearance by the Secretary of Defense before the Senate Armed Services Committee in recent days. There was no committee record made on this question in the House of Representatives. The only testimony presented to either House of Congress was that by Secretary Brown before our committee in which he said, in summary, that the position of the administration and the most senior officials responsible for responding to this proposal was that it was premature. The hearings provide little, if any, detail about how the money would be spent, what the outyear costs would be of this facility which are estimated to be considerable, or what the implications for our foreign policy and national security might be, with the exception of statements made by the Secretary of Defense.

Among those statements were some very, very important and serious observations. First of all, this administration and this Government have not consulted at any high level with our

European allies who, of course, in the past have been most reluctant to address whether NATO should introduce new lethal chemical weapons on the soil of the member nations.

The Secretary of Defense testified that a unilateral congressional decision to begin a production facility for a new generation of chemical weapons could jeopardize our present priority in terms of our NATO objective of negotiating a long-range deployment of new theater nuclear weapons in Europe.

Mr. President, both the Secretary of Defense and the Secretary of State, two officials having most responsibility in our Government for issues of this sort, have reemphasized in various ways in recent weeks their judgment that funding a nerve gas or chemical warfare facility at this time would be premature and could adversely affect negotiations with our allies, especially regarding the theater nuclear modernization question which is central to the long-range security of ourselves and our allies.

Mr. President, starting 5 years ago, the Senator from Colorado took the lead, together with the Senator from Georgia (Mr. NUNN), on the question of requiring better defensive capabilities for both our Armed Forces and the equipment which they use.

Five years have gone by, and we have only begun to make preliminary steps in this direction. The Senator from Virginia and the Senator from Washington, and others, who have spoken in support of this amendment, have talked rightly about a credible deterrent, that the development of an offensive chemical warfare capability was a credible deterrent.

Mr. President, in the absence of a defensive capability for our own forces that deterrent is not credible. Even if the United States were to undertake production of chemical warfare agents, if our own forces in Europe and those of our allies were not equipped to withstand a chemical warfare environment, that deterrent is not credible unless the United States of America is prepared to gas its own troops.

I do not think the Soviet Union is going to be deterred 1 minute by a chemical warfare capability of any magnitude if our own forces and our allies' forces and the equipment they use are not prepared to operate in a chemical warfare environment, and they are not. And this amendment will not solve that problem.

We can produce chemical warfare agents for a long time, but that is not a credible deterrent until our own forces are prepared to operate in that environment.

The Soviet forces by and large are, and they are not going to be intimidated 1 minute by a stockpile of chemical agents which we cannot use without doing more damage to our own manpower and our own Armed Forces than we do to theirs.

We do not know what the cost of this facility will be. We do not know what the total budget for an all-out chemical arsenal will be. The best figures I have seen are $2 to $4 billion. That is a foot in the door, Mr. President. It is a camel's nose in the tent. It is just over $3 million which will lead to billions.

To my knowledge, none of that money is directed to the protection of our own men and our own forces.

Mr. WARNER. Mr. President, will the Senator yield for a question to clarify?

Mr. HART. I will in 1 minute.

Mr. President, we do not even know based on the very, very limited records that we have before us whether this is the right facility. We do not know whether it is the right site. We do not know whether it is going to produce the right kind of chemical munitions.

This amendment would begin the process of developing a capability to produce 155-millimeter artillery rounds. This is a very short range round. If the decision were made to proceed with binary munitions, is that 155-millimeter artillery round the top priority, or should it be a bomb, or should it be something else? Would it not make more sense to start with some munition that had more range and therefore more targeting flexibility? We do not know. The Secretary of Defense did not testify. There is no record.

So, Mr. President, what we have before us is one of the most serious defense questions that this Congress or any other Congress will undertake. The record is at best fragmentary and extremely limited. It is composed of 2 hours of testimony by the Secretary of Defense.

The same Secretary has testified and the Secretary of State has also stated that to take this step is in their judgment premature. It could prejudice serious negotiations underway with our allies in Europe. There has been no high level consultation, and in fact, the decision of this sort without that consultation could result in the same kind of debacle we faced as in the cast of the neutron weapon.

We have heard a lot in this Chamber about taking steps in foreign policy and defense areas in the absence of consultation. This is clearly a step being taken in the absence of consultation.

So those who vote for this amendment are voting to take a major defense step in the absence of any appreciable consultation with the allies who will be most affected by this decision.

Mr. President, I feel that based on all these arguments the Secretary of Defense was absolutely correct when he stated this step would be premature. I hope my colleagues will join me in resisting what I think is a very, very ill-advised proposal.

I yield to the Senator from Virginia.

Mr. WARNER. I thank the Senator.

Mr. President, I wish to clarify the fact that all we are doing here today is requesting authorization of a very small sum of money, $3.5 million, for facility construction. My colleague from Colorado has been very forthright on this issue, and I want the listeners to know we are not talking about production of a single binary weapon. It is only construction of facilities.

Am I no correct in that?

Mr. HART. The Senator is correct, but, on the other hand, the Senator is supporting that on the grounds of some kind of deterrent. The Senator's arguments a few minutes ago were to the effect we are going to produce a chemical warfare arsenal that would represent a credible deterrent. Does $3 million of preliminary construction on a facility represent a deterrent that the Senator thinks we need?

Mr. WARNER. It is a beginning, I represent to the Senator, but I want our colleagues to make clear in their minds we are not talking about building a single weapon. As a matter of fact, production is not likely to occur until 1985 or 1984 at the earliest. But we must begin now to erect the facilities necessary, and the distinguished Senator from Colorado questions the specifics that were before the Armed Services Committee.

I ask the Senator's concurrence in having printed in the RECORD at this time the specific sheet which gives the details of the construction sought, namely, two preengineered, noncombustible additions to building 53–220, one building to house canister-filling operations and a sentry station and the other to enlarge the boiler room. This project includes alterations of existing building 53–220.

Am I not correct? Is the Senator agreeable to having this printed in the RECORD.

Mr. HART. I have no objection. I am not familiar with the document. I have not seen it.

Mr. WARNER. It is a document that was presented to the Armed Services Committee.

Mr. President, I ask unanimous consent to have printed in the RECORD the document to which I have made reference.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

FY 1981 MILITARY CONSTRUCTION PROJECT DATA

1. Component: Army.
2. Date: 14 Sep. 1979.
3. Installation and location: Pine Bluff Arsenal, Arkansas.
4. Project title: Binary Munitions Facility.
5. Program element: 78011A.
6. Category code: 226.
7. Project number: B475–46.
8. Project cost ($000): 3,150.
9. Cost estimates:

[Dollar amounts in thousands]

Item	Unit cost	Cost
Primary facility		$1,491
See cost estimates (continued)		(1,491)
Supporting facilities		1,356)
Electric service	LS	(105)
Gas, fuel lines	LS	(29)
Generator	LS	(49)
Paving, walks, curb, and gutter	LS	(50)
Storm drainage	LS	(19)
Corridor access	LS	(925)
Fence, lighting, and signs	LS	(158)
Communications	LS	(15)
Gravel road	LS	(6)
Subtotal		2,847
Contingency (5 percent)		142
Total, contract cost		2,989
Supervision, inspection and overhead (5 percent)		149
Total request		3,138
Total request (rounded)		3,150

10. Description of proposed construction: Construct two pre-engineered non-combustible additions to Bldg. 53–220. One building to house canister filling operations and a sentry station and the other to enlarge the boiler room. This project includes alterations of existing Bldg. 53–220. Not sited in a flood plain.

11. Requirement: $23,218, SF. Adequate: none. Substandard: $11,374, SF.

Project: This project provides initial production facilities to accommodate equipment for the production of the XM 687, 155mm Binary Projectile.

Requirement: Pine Bluff Arsenal was selected for establishing a government production base capability for the XM 687, 155mm Binary Projectile for which production facilities are required.

Current situation: Adequate facilities for establishing this part of the production base do not exist. Loading, assembling and packaging operations and storage of components and complete projectiles will be accomplished in existing buildings requiring no work other than the addition of security systems and the construction of a small sentry station.

Impact if not provided: The Army initial production base capability for the XM 687 Projectile cannot be established.

Mr. HART. Mr. President, if I may respond, since I yielded for a question, I do not think the Senator from Virginia could have it both ways.

He argued in favor of this amendment on the ground it was going to help us produce a credible deterrent. Now, in response to my arguments, he is saying no, it is not going to do that. It is just going to start some preliminary construction at a facility which will be able to produce the deterrent. He either wants it or does not. The deterrent is represented by the munitions.

It is clear if we take this $3 million step we are going to a $20 million, $50 million or $100 million step to complete the production capability, and the billions of dollars of steps of producing the munitions. That is ultimately where it leads, and that is the reason for the Senator's support. So I do not think we should be disingenuous about it.

We are arguing, in the mind of the Senator from Virginia, to produce some chemical warfare agents to deter the Soviets. That is the issue.

Mr. WARNER. But we will have many opportunities following this for the Senate and the House to intervene with their judgment.

What is taking place today is a simple request for the money to build facilities. I agree it is a step toward creating that deterrent.

I wish to remind the distinguished Senator from Colorado we had much the same situation facing this Nation with the ABM, and it was not until Congress decided to fund the ABM that the Soviets came to the negotiating table in good faith and ultimately settled that question.

Mr. HART. Well, as I said before, responding to the Senator from Virginia, I do not think the Soviets can be deterred 1 minute if our own troops are not capable of withstanding this environment. I think they will be laughing up their sleeves.

In any case, we have had plenty of instances around here, in the time that the Senator from Colorado has served, when the camel got its nose under the tent, and there were all sorts of chances to shove it back out again, but that almost never happens.

Mr. THURMOND. Mr. President, will the distinguished Senator from Washington yield me 10 minutes?

Mr. JACKSON. I yield 10 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the able and distinguished Senator from Washington. The House has acted on this matter, and I just want to quote a few words from their report on page 7 of the Military Construction Act of 1981:

The committee has approved $3,150,000 to start construction of a binary munitions production facility at Pine Bluff Arsenal, Ark. The total military construction cost associated with the projects is $30 million.

Based upon the activities of the Soviet Union in the development, production and reported use of chemical weapons, the committee feels it is essential for the United States to proceed with obtaining the capability to produce binary munitions. A lead time of 3 years is involved before production could begin; therefore, it is the committee's judgment that further delay is unacceptable.

Under current law, 50 U.S.C. 1511, funds may not be used for the production of lethal binary chemical munitions unless the President certifies to the Congress that such production is essential to the national interest. Insofar as the committee is concerned, the prohibition does not apply to the development of a production facility.

Mr. President, I want to say if this amendment passes, funds will still not be used for the production of lethal binary chemical munitions unless the President certifies to the Congress that such production is essential to the national security.

If the President certifies that to the Congress how can the Congress turn him down?

Mr. President, it is essential that we protect the people of this country. It is essential that we be prepared. I will just remind the Senate that the United States has not produced chemical munitions since 1969.

I would remind the Senate that our only chemical production facility is inactive and in a state of disrepair.

I would remind the Senate that by 1990, through deterioration and obsolescence, that United States will no longer have a militarily usable stockpile of chemical munitions.

I would remind the Senate that the Soviet Union outnumbers the United States 35 to 1 in chemical units, 14 to 1 in production facilities, and outnumbers us also in chemical personnel, decontamination equipment, chemical munitions, and ground-based delivery systems. What are we going to do about it?

Mr. President, I would remind the Senate that chemical weapons have been historically used against nations having no retaliatory capability. If we had the retaliatory capability, the probability is they will not be used against the United States. If we do not have it they will.

You may say what is the history for that? The history is this: It was used by Germany in World War I, by the Italians in Ethiopia in 1935, by the Japanese in China in 1937, by the United Arab Republic in Yemen in 1967, by the Vietnamese in Laos and Cambodia, and by the Soviets in Afghanistan in 1980. None of these countries had binary weapons and, therefore, they were used against them.

I would remind the Senate that the U.S. policy is one of deterrence—retaliation. However, inaction and the effects of deterioration and obsolescence will equate to unilateral chemical disarmament. If we do not go forward now it is virtually saying we are going to disarm unilaterally in this field. Is that what we want to do? I do not think so. I do not think that is what the people of America want us to do.

I would remind the Senate that bilateral negotiations with the Soviet Union ongoing since 1976 have produced no substantive results. If we go forward I feel we might be able to get some agreement. But if we do nothing I do not think we will.

I would remind the Senate that the Senate Armed Services Committee studied this matter in depth and they favor this amendment 14 to 3. I repeat, 14 to 3. Is not that judgment worth something to this Senate?

Mr. President, I understand the distinguished Senator from Colorado has a study amendment. I want to say that the United States has no current capability to produce binary 155 millimeter artillery rounds in the first place. This facility would give us the capability if the decision to produce is delayed.

Also our current usable stock of chemical weapons is deteriorating. We need a production capability as a minimum for deterrent purposes. The Joint Chiefs of Staff have stated that the current stockpile amounts to only 25 percent of our needed deterrent capability. Mr. President, that is the Joint Chiefs of Staff, the highest military people in this country, and they say our current stockpile is only 25 percent of what we will need as a deterrent capability.

I would remind the Senate that General Rogers, the NATO Commander, supports this step. He has made this statement:

I support an adequate and modern retaliatory capability to deter a chemical attack by the Soviet bloc nations. At present we do not have an adequate or modern capability. This binary round would give us that capability.

Here is our man in Europe, here is our man in charge of NATO, here is our man who is going to have to oppose the Warsaw Pact countries if aggression begins, and he says we need this.

Mr. President. I would remind the Senate this money is not for production, as has been stated. The President would have to certify to Congress that he favored production, and then Congress would have to approve it. This merely initiates the preparation of a production capability.

I want to say, too, that the need for a chemical deterrent has been studied for the past 5 years. We do not need another study. It has been in the Army budget since 1975 but deleted each time by the administration. Anytime they want to kill something or delay it, it is a study, a study, and that is what the effort is here, a study.

Now is the time to act. We are late with everything. The Joint Chiefs of Staff have said in the last few months that the Soviets are now ahead of us in conventional weapons, and they have also said the Soviets are now ahead of

us in strategic weapons, so where do we stand if they are ahead of us in conventional weapons, ahead of us in strategic weapons?

Mr. President, I fear for what could happen to this country unless we go forward and take the steps we need to take to provide an adequate defense for the people of this Nation, and this is one step we need to take. We need to take it as a deterrent. We need to take it so if the Soviet Union starts using binary weapons here, they will get it back.

Mr. President, this is merely a modest step toward adequate preparedness. The United States has renounced first use of chemical weapons, but needs a deterrent to prevent use by the Soviets.

We have said we will not use it first, just as we said that we would not fire off ICBM's first; we would not start a nuclear war first. But we have to be prepared in the event the Soviets start it so we can finish it.

Mr. President, the United States and the Soviets have been attempting to negotiate a treaty on chemical weapons including verification. This step could help bring about a treaty. If you want a treaty so neither country will use it, this is the best step we can take. When the United States moved forward with the ABM system, and only then, did the Soviets agree to a treaty.

The $3.1 million is in the House bill, as I stated, and has been approved by the House in the authorization bill. It has also been approved in the appropriation bill. Thus, the full House has approved this $3.1 million expenditure for this purpose.

I hope the Senate will see fit to go forward and pass this amendment. I think it is highly to the advantage of the people of this country that we do it.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President, I yield such time as he may require to the distinguished Senator from Alabama.

Mr. HEFLIN. Mr. President, about 3 months ago I made a speech on the Senate floor which I believe was the first speech dealing with the issue pertaining to the Russian buildup of chemical warfare. Since that time there has been a lot of information that has appeared in the media.

I congratulate Senator JACKSON on his wisdom in moving forward in regard to providing funds through an amendment for the integrated binary production facilities for chemical warfare at Fort Smith, Ark.

First of all, let me say that I share with the proponents of this amendment a basic abhorrence of the use of chemical warfare. I sincerely wish we lived in a world where our unilateral refusal to participate in this deadly and horrible form of killing would insure that all the nations of the world would likewise refrain from its use. But this simply is not the case.

The Soviet Union has been engaged in a massive buildup of both their defensive and offensive chemical warfare capabilities. The motive for this gearing up for chemical war is not simply a military exercise, as reliable reports from Afghanistan bear out. We have recently learned that not only have the Soviets used deadly chemical agents in Laos, Cambodia, and Somalia, but are presently using chemical warfare in Afghanistan.

The United States simply cannot afford to be unprepared and helpless in the face of a mounting Russian chemical warfare threat. Our military experts say that the Soviet Union has the most fully trained and sophisticated chemical warfare force in the world. There are estimates that they have a force of over 100,000 trained troops in regard to chemical warfare.

The Russians have integrated chemical warfare into all phases of their armed services. Right now, Soviet troops in Eastern Europe are fully trained and equipped to launch a deadly chemical warfare attack on our allies in Western Europe, if the decision was made to so launch such a deadly attack.

This buildup of Soviet chemical warfare capabilities poses a serious threat to peace in the world. The United States must act—and act wisely to counter this threat to the peace.

The strongest deterrent the United States can have against a Soviet chemical warfare attack is a comparable chemical warfare force.

Mr. President, at this time the United States is far, far behind the Soviets in both defensive and offensive chemical warfare capabilities. In short, we are vulnerable to the use of chemical agents against our civilian populations and our military personnel in the field.

The United States and NATO forces have inadequate supplies of chemical agents and are totally unprepared and untrained in their uses. Further, our military personnel have little or no protective clothing or decontamination equipment with them in the field.

To begin an American effort to catch up with the Soviets is imperative. And I believe the integrated binary production facility for chemical warfare munitions at Fort Smith, Ark., is essential to this beginning.

I have received both classified and unclassified briefings at the Army's chemical school at Fort McClellan in Anniston, Ala. I am convinced that, contrary to what we are being told on the Senate floor today, the United States does not have adequate supplies of filled chemical munitions and many, if not most, of the chemical munitions we have stockpiled are 1950's generation weapons that are outdated and ineffective.

The Army has recognized the need for a binary facility at Fort Smith since 1975 in order to maintain a credible chemical warfare deterrent. Modernization in this critical area of our national defense is essential.

I am also convinced that binary weapons are the most effective and the safest way to beef up our chemical warfare munitions. Let me stress that binary weapons contain two separate chemical agents that are not dangerous until they are mixed in air. The two separate chemical agents are absolutely safe so long as they are kept separate. This fact alleviates the serious problems of storing and transporting chemical filled munitions.

Mr. President, nearly half of all the filled munitions for missiles and bombs stockpiled by the Soviets in Eastern Europe are chemical weapons. These deadly weapons could be delivered by aircraft, artillery, multiple-rocket launchers or landmines. With our present dismal chemical warfare capabilities, we could do little more than stand and watch Europe die if the Soviets were to attack.

To avoid this kind of disaster, we must develop a defensive posture in chemical warfare that is superior to the Soviets and an offensive posture strong enough to deter a Soviet attack.

The binary munitions facility at Fort Smith is an important first step in this goal. Mr. President, I believe it would be a very serious mistake to delete the funds for this important munitions facility.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the money proposed by the Senator from Washington in his amendment would be spent at Pine Bluff, Ark. I yield to the Senator from Arkansas (Mr. PRYOR) such time as he may require.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the Senator for yielding.

Mr. President, I rise for the purpose this afternoon of opposing the amendment offered by the Senator from Washington, Senator JACKSON, and in support of the amendment to be offered later by Senator HART, the manager of this bill, requesting that the administration submit with its 1982 budget request a study of the military, foreign policy and arms control implications of moving forward with the production of binary nerve gas.

Mr. President, because the binary nerve production facility would be located in the State of Arkansas, I have taken the time to study this matter in some detail. I am certainly not an expert. I am a layman in this area. Initially, my concern, when I was Governor of our State, was primarily one of safety. To be honest, I have basically satisfied myself that these binary munitions would probably be relatively safe to produce. But, as I have looked into the matter, I have become increasingly convinced, Mr. President, that there is no need to take this step at this time .

I do not oppose the Jackson amendment because I trust the Russians. I do not. I do not oppose the Jackson amendment because I am any less patriotic than any of my colleagues in this Chamber. But I do oppose the Jackson amendment and support very strongly the Hart substitute because I do not feel that it makes military or economic sense for us to proceed to throw away an 11-year-old policy without adequate debate.

I further feel, Mr. President, that the commitment and expenditure of what ultimately will be a $4 billion project will drain needed defense dollars from what I consider to be higher priority expenditures.

We presently have, to the best of my understanding, a more than adequate stockpile of chemical weapons. The current stockpiles are large enough for 50 divisions to wage chemical warfare for over 100 days. These stockpiles are not significantly deteriorating nor becoming obsolete. The vast majority are serviceable or could easily be made serviceable by repainting or by inserting fuses. These weapons can only be effective, however, if they are available for use. Our European allies have time and again indicated their total unwillingness to store additional chemical weapons on their soil. The West German position was very clearly enunciated in its 1970 White Paper as follows:

> In 1954, the Federal Republic of Germany renounced the production of biological and chemical weapons. She does not carry out any research or development conducive to the production of such weapons. The Federal Republic neither possesses nor does she store any biological and chemical weapons; she does not seek possession of, or control over, weapons of that kind, she has made no preparations for using them, does not train military personnel for that purpose, and will abstain from doing so in the future. Any allegations to the contrary, as occasionally made in the public, are false.

Mr. President, there has been much written about the Soviet chemical weapons capability. Most of the figures used to show a comparison between Soviet and U.S. capability reflect Soviet superiority in defensive not offensive chemical warfare capabiliay. I wish to commend the Senator from Colorado, Senator HART, for including in his substitute an expression of concern over this country's chemical warfare defensive capability. What is currently inadequate is not the state of our present chemical stockpile, which is adequate, but the state of our defensive capability against chemical warfare. From any reasonable and logical military perspective, defense against chemicals makes good sense. It makes especially good sense if one concedes the reported chemical warfare offensive capability attributed to the Soviets.

For the past 5 years, Congress has urged a more determined defensive effort by the Department of Defense. Some progress has been made in such areas as protective clothing, better gas masks, detection equipment, and training. But we have a long distance to go before the American military is adequately protected against chemical warfare attack.

As an illustration of the tragically inadequate level of our chemical warfare defensive effort, I would like to cite hearings before the Special NATO Subcommittee of the House Armed Services Committee on December 18 and 19, 1979.

Here is what Gen. John W. Pauly, Commander in Chief of U.S. Air Forces in Europe, said:

> Although we have given emphasis to our chemical warfare protection program, we were forced to reduce the buy of critical chemical warfare protective suits in fiscal year 1979 by one-third.

General Pauly's testimony is bad enough, but I would also like to quote from an exchange between Congressman LARRY MCDONALD of Georgia and Gen. Frederick Kroesen, Commander in Chief of the U.S. Army in Europe, at that same hearing:

> Mr. MCDONALD. Well, how do you stack up in the area of decontamination, radioactive decontamination of your field units; how are we equipped to handle that? The last time we checked it was with a mop and bucket and some cold water.
>
> General KROESEN. Yes, sir.
>
> Mr. MCDONALD. Are you still at that level of activity?
>
> General KROESEN. I am still at that level of activity?
>
> Mr. MCDONALD. That is pretty medieval.

It is indeed medieval, but it does not stop there. Listen to the next exchange between Congressman MCDONALD and General Kroesen.

> Mr. MCDONALD. Do you have any rapid washing process, or do the contamination process out in the field?
>
> General KROESEN. The manner we are pursuing it right now in Europe, sir, is to have identified for unit commanders the locations of all available washing facilities, such as Schnellwasch stations, automobile drive-in washing facilities.
>
> Mr. MCDONALD. Our military is going to be able to requisition the civilian automobile washing stations; is that what we are planning on using?
>
> General KROESEN. In times of crisis, we need to know where those kinds of facilities are. . . .
>
> Mr. MCDONALD. Good God.

If it was not so tragic, it might be funny.

Here we are, considering what is the initial expenditure of a $4 billion project to replace our present adequate offensive stockpile of chemical weapons when our defensive posture against chemical warfare attack is symbolized by a mop and a car wash.

Mr. President, I submit that we do not need to move forward with the authorization of a binary nerve gas production facility at this time. What we need is to redouble our efforts toward improving our defensive capability against chemical attack. That is where our focus shoud be.

Mr. President, here we are considering what the Senator from Virginia, my good friend, has stated to be a $3.2 million expenditure, a small expenditure, I think, in his words. But in the Department of Defense appropriation bill in the House of Representatives at this time is a $19 million request to equip this facility. So we are looking at an initial expenditure of some $21 million or $22 million.

Further, Mr. President, what we are really talking about today is the beginning of a $4 billion commitment to replace our present offensive stockpile of chemical weapons with a new type of a binary nerve gas which has no military superiority to the present conventional type gas that we have stored in vast amounts.

I say, Mr. President, that before we change this policy, let us remember that nerve gas is a totally indiscriminate killer of civilians who normally do not have access to protective clothing or to gas masks supplied to military personnel. I hope that we will remember that we are committing ourselves to a long-range multibillion dollar program which is going to begin draining off precious and needed defense dollars from other needs.

Mr. President, with these dollars we will not be purchasing one iota of military advantage. We will only be destroying our present stockpile of chemical weapons and substituting another type of stockpile which does not have any military advantage. The only advantages are in transportation and in storage.

Mr. President, the making of binary gas in Pine Bluff, Ark., Spokane, Wash., or Arlington, Va.—wherever it might be made—is not the issue. The issue is that the making of this new gas will not increase our deterrent capability one iota.

Second, we have no militarily useful place to store this gas since our allies in Western Europe refuse to have additional nerve gas stored on their soil.

Also, Mr. President, I think it is very, very relevant to this debate this afternoon to recognize the fact that the Secretary of State is opposed to this proposal; that the Secretary of Defense has testified against this proposal, and that the President has not made a statement on the necessity of reversing our 11-year policy. It should also be pointed out Mr. President, that the Army is not currently maintaining our existing stockpile of nerve gas agents adequately. In addition, the Army is presently demilitarizing and destroying large quantities of usable lethal chemical agents. I will return to this point later.

Mr. President, this is a far-reaching step that we are considering taking today. It is a step where we have not adequately been briefed. It is a step off into darkness and uncertainty. We have not seen the burden of proof being met by the proponents of the Jackson amendment.

There has been, Mr. President, a lack of debate, a lack of committee hearings, and, with the exception of one or two briefings, a lack of classified briefings, on this particular issue.

I conclude, Mr. President, by saying that our decision this afternoon is going to be extremely critical in negotiations on disarmament. It is going to be extremely critical as to what message we are about to send not only our enemies but also our allies.

Mr. President, I would like to emphasize that where nerve gas is made is not the issue. The issue is not parochial, it is not provincial. The issue this afternoon is global and it could become a catastrophic decision if we move without the adequate facts and without the proper deliberation.

I yield to my friend from Colorado.

(Mr. BRADLEY assumed the chair.)

Mr. HART. Mr. President, I yield to the Senator from Mississippi.

Mr. COCHRAN. I thank the Senator from Colorado.

Mr. President, because of my sincere fondness and respect for the Senator from the State of Washington and the State of Virginia, and others who have spoken in support of this amendment offered by the Senator from Washington, I very reluctantly rise to oppose the authorization of funds for the construction of this binary weapons production facility.

This issue is much too complex and its ramifications much too important to be decided in a hasty fashion.

The administration has not requested construction of this facility. In fact, an interagency study is underway right now examining the need for new chemical weapons. No congressional hearings have been held on this issue during the year, with the exception of an appearance recently by the Secretary of Defense, Secretary Brown, who voiced his opposition to this proposal.

No certification has been made by the President as to the national security need for a new generation of chemical weapons as the Congress requested him to do back in 1975 before any such facility should be constructed.

It is argued that these new weapons will be environmentally safer, that they can be relocated, transported, with greater ease and less danger to the general public.

But the weapons we now have in stockpile have given no legitimate cause for concern. Since the end of World War II, there has not been either an accident or a death resulting from the transportation or storage of chemical weapons. The idea, however, is that our NATO allies will be more inclined to accept the stationing of these so-called "safe" binary weapons on their soil than they have been to accept our current stockpile of chemical agent munitions. But there is no indication that the views of our allies are any different regarding binary munitions. They have indicated that they will not permit the storage of any more chemical munitions on their soil, and it is even questionable whether they would agree to their use in time of war. These new weapons are not going to be of much value stored in Arkansas. It is a waste of millions of taxpayers' dollars to construct a facility and weapons before we have gained a commitment from our allies to accept them.

It is argued that we must build up our chemical stockpile to match that of the Russians. We do not know the size of the stockpile the Soviets have, but we have no reason to believe that it is any larger than our own. There is no evidence that they have produced any new weapons during the past decade. Yet it appears that they are growing increasingly more open to a verifiable ban on chemical weapons. They recently agreed to the principle of on-site inspection at the ongoing Geneva negotiations. Unfortunately, there is every likelihood that our hasty construction of a new chemical plant will end this possibility of agreement and that a new chemical arms race will begin as a result.

We have, at the present time, a large and sufficient stockpile of chemical munitions. It is said we have enough to allow 50 divisions to shoot nothing but chemicals for 100 days. More munitions, binary or otherwise, are not the best deterrent or response to a Soviet chemical warfare threat. Unlike other weapons, there is an antidote for chemical attack. A military force equipped with masks and protective body clothing will be relatively immune to chemical agents. It may find itself hampered by this gear, its performance degraded by as much as 30 percent, but physical harm will come only to those surprised by the first use of these weapons.

Therefore, he who initiates the attack has the advantage and makes the only gain * * * a shortlived gain because he must then be prepared to fight with the cumbersome defensive equipment.

He who initiates the attack will have anticipated, of course, chemical retaliation and have prepared himself with defensive equipment. Practically speaking, then, we require only that quantity of chemical agent which will force the attacker to use his protective equipment and take other defensive measures. Beyond this amount, our stockpile of chemical agents is of little value and our threats to use these weapons are not likely to be a deterrent. In a war fought entirely in Western Europe, a threat to pour more chemical agents on the attacker would only serve to kill our own civilian allies.

This is because, in a period of intense chemical munitions use, a significant risk could exist as far as 60 miles downwind. The result in densely populated countries like West Germany, Belgium, or the Netherlands is hundreds of thousands of civilian casualties. For this reason the West Germans will not even train their forces in the use of offensive chemical weapons. They prefer to expend their efforts and money on augmenting defensive measures—as we and our allies should do. Effective defensive training would discourage the Soviets from thinking that they might gain substantially from the introduction of chemical warfare. At this time, however, we have not done nearly enough to train our own forces in chemical defensive measures. This is where our money should be spent.

Adding more chemical weapons to our stockpile will not deter the Soviet leadership from their use if we cannot use them to inflict equal or greater damage on them. Instead of building more redundant chemical weapons, it should be made clear to the Soviets that first use of these weapons, a decision to break the 1925 Geneva convention, would be viewed by this country as a major act of escalation tantamount to justifying the use of nuclear weapons. Only with nuclear weapons could we hope to reply on Soviet soil to the civilian casualties a first use of chemical warfare would incur on NATO territory.

The authorization for a new binary weapon production facility is entirely wasteful, severely strains our relations with out allies, who are adamant in their opposition to these weapons, and puts in jeopardy our negotiations with the Soviets for a total ban on chemical weapons. This Senator believes that the issue deserves more careful consideration than it has received thus far, and I request that the Senate reconsider this issue in an appropriate forum before committing this Nation to a grievous error.

Mr. President, I thank the Senator from Colorado for yielding.

Mr. HART. Mr. President, I yield such time as the Senator from Oregon may require.

Mr. HATFIELD. I thank the Senator from Colorado.

Mr. President, in the last 10 years, we have no evidence that either the Soviet Union or the United States has increased its supply of offensive chemical weapons. Though we have no concrete policy on chemical weaponry, we have thus been adhering to the terms of an undeclared moratorium.

Few could deny that this exercise in restraint is a desirable and commendable aspect of United States-Soviet relations. President Nixon, I might add, deserves much of the credit for the initiation of this policy. In 1975, Congress adopted a prohibition on the production of binary chemical munitions until and unless the President certifies that such production would be essential to our national security. No American President has made such a determination.

In 1976, President Ford began negotiations with the Soviet Union in the hope of obtaining a formal agreement limiting the development and use of chemical weapons. These negotiations have made substantial progress and achieved a critical breakthrough 3 months ago, when both parties accepted the principle of onsite inspection. While onsite inspection is agreed to in principle only, any student of Soviet affairs knows the reluctance of that nation to yield on this point. Yet, with virtually no public debate or congressional review, we are being asked to take the first step toward what could prove to be a chemical arms race.

Mr. President, this proposal is one of the most glaring examples I have seen of a knee-jerk reaction to temporary strains in the geopolitical environment. I submit that if the Senate approves this measure today, it will hand the Soviet Union a propaganda advantage on a silver platter. They will point to us and say, "There they are, the so-called guardians of peace and humanitarianism, producing a substance that violates every standard of human decency." If history serves as an indicator, they will then say, "we have no choice but to act in kind."

People, like the baby who must touch the flame to understand that it is painful, are slow to develop an awareness of what they do not desire. This undoubtedly contributes to our continuing illusion that nuclear weapons will make us more secure. But American soldiers have experienced the horror of gas warfare. Over 1,300,000 casualties were caused by chemical agents during World War I, including 100,000 deaths—over half were Russian—and 100,000 incapacitations.

Today, we possess the technology and the ability to fully protect our men in uniform from the ravages of lethal chemicals. Indeed, protective suiting is standard issue for our soldiers in the European theater. Mr. President, it is women, children, and innocent civilians, not Soviet troops, who would be subjected to the vile and ugly reality of chemical warfare.

Has it been so long that we have forgotten what this substance actually does to a human being? Let me remind my colleagues. Nerve gas enters the body by inhalation or by absorption through the skin.

Once absorbed, the normal transfer of nerve impulses is disrupted. It then causes intense sweating, bronchial constriction, dimming of vision, uncontrollable vomiting and defecation, convulsion and finally, paralysis and respiratory failure. In short, nerve gas violates the axim that "all is fair in war." And our ability to protect our soldiers from its effects makes the call to produce more nerve gas even less defensible than it was in days past.

I further submit there would be no proponents of this measure if it were our own people, and our own soil, which would be the battleground for a potential chemical war. But it is not the United States, it is Europe and primarily Germany where such a conflict would take place. I contacted officials at the Department of State to inquire into the German position on this specific proposal. The response I received was shocking. I was told that this is an internal debate, not subject to an open forum. I was told that bringing this up with the Germans is too sensitive, that it could potentially jeopardize negotiations being conducted on the forward deployment of Perishing missiles. How can any Senator be expected to approve this proposal in the absence of consultation with the very country in which these agents would be used? In 1970, the Federal Republic of Germany issued a white paper on its defense policies. It states:

> In 1954, the Federal Republic of Germany renounced the production of biological and chemical weapons. She does not carry out any research or development conducive to the production of such weapons. The Federal Republic neither possesses nor does she store any biological and chemical weapons. She does not seek possession of, or control over, weapons of that kind. She has made no preparations for using them, does not train military personnel for that purpose, and will abstain from doing so in the future. Any allegations to the contrary . . . are false.

Mr. President, I contacted the German Embassy in order to determine if this policy holds firm today. It does.

Mr. President, there is absolutely no military utility in this proposal. It is an ill-considered and illogical response to strains in the geopolitical environment and nothing more. The only ground which the proponents of this measure advance is the alleged need for a credible retaliatory capability in chemical weapons. Yet if these weapons cannot be prepositioned in Europe, they are clearly useless. Furthermore, it is clear that conventional weapons present a far more credible response to a chemical attack than would chemicals themselves. Only bullets and artillery shells can render protective clothing useless; a chemical counterattack cannot.

I am told the step we take today could end up costing this Nation $4 billion. How can we, in this period of tight budgets and strained pocketbooks, embark on a multibillion dollar chemical rearmament program when we do not even know if our defensive capability is sufficient to protect our soldiers from a chemical attack? The Army has informed me that they have never conducted, and are badly in need of, a comprehensive war game exercise. Such an exercise would consist of large numbers of troops over an extended period of time and would determine weaknesses, strengths and areas which need to be targeted in the defensive area.

Thus, we are not backed up against a wall, Mr. President. We are faced with clear alternatives in the way to proceed to enhance our deterrent capability. One choice is to embark on a provocative rearmament program. The other choice is to channel every dollar necessary to insure that our men and women in uniform are protected to the degree that our technology and ingenuity can provide. I challenge the proponents of this program to ask the World War I veterans, who suffer today from the use of lethal gas, which path they would choose. Ask the people of Europe. Ask our men and women in the services. And ask their mothers and fathers, their wives and children and friends. We owe them that much.

I commend the distinguished Senator from Colorado (Mr. HART) and the distinguished Senator from Arkansas (Mr. PRYOR) for their leadership on this matter. I am proud to be a cosponsor of this measure with them. The casual manner in which this proposal was considered and approved in the House of Representatives was deplorable. They, however, have had the courage and the foresight to tackle this issue head on. We can all be thankful for their vision.

Mr. President, there is no issue of greater importance to this Nation, to our European allies, and to the international community than our response to this measure today. We stand to lose, voluntarily and without provocation, our ability to effectively influence the outcome of bilateral and multilateral negotiations aimed at controlling chemical weaponry. Thus we choose between a world in which these weapons are more likely to spread to many nations as a legitimate instrument of war, and a world in which the very possession of these substances constitutes a black mark on a nation's record.

We have no choice but to strive with all the force of morality and logic we can muster to create an environment where a single chemical weapon on a nation's soil brands its possessor as a pariah in the international community. We will have to do some explaining, Mr. President, to our men and women in uniform if we approve this measure. They will want to know why we chose to squander our resources to initiate a chemical arms race when bilateral restraint has been successful, and negotiations have made so much progress. They will want to know why we did not use our ingenuity to develop a formidable deterrent through protective measures which would vitiate the effects of chemical weapons and render them militarily useless. Let us reject this call which will inadventently make their use all the more likely. In the name of human decency and realism, I urge my colleagues to reject this proposal and adopt the compromise amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. I yield 7 minutes to the distinguished Senator from Nebraska (Mr. EXON).

Mr. EXON. Mr. President, I rise in support of the Armed Services Committee amendment introduced by my friend from Washington to add funds to begin construction of a binary ammunitions plant.

As I see it, today's vote is not any kind of referendum on the pros and cons of chemical warfare. Rather, it is a vote on how best to deter its ever being employed. The thought of chemical warfare is abhorrent, I am sure, to every Senator and all Americans. Although never used in World War II, I believe most of us knew of those who served in World War I and who suffered the horrible effects of exposure to what was then known as gas warfare. I believe that the idea of chemical warfare today is no less detestable than it has ever been. For this reason, all peace-loving nations must do whatever possible to prevent this type of warfare from ever happening.

The United States has been negotiating for years with the Soviet Union regarding a ban on the production and stockpiling of chemical weapons, similar to the one we already have on the production of biological weapons. In 1969, the United States unilaterally decided to destroy all of our biological weapons and not to increase the size of our chemical weapons stockpile. Since 1976, the United States and the Soviet Union have been holding bilateral negotiations on a formal agreement to limit the development and use of chemical weapons. Unfortunately, these negotiations have not been successful.

The real quandry before the Senate today is how best to spur these negotiations and how best to convince the Soviets that continued intransigence at the negotiating table will be counter-productive and not in their best interest. A look at our two relative positions with respect to chemical warfare gives us a good clue as to why a ban on such weapons has not been achieved.

The Soviet Union has by far and away the largest and best chemical warfare capability in the world today. Their troops continually train in its offensive use and in defenses against a chemical counterattack. Recent literature indicates that Soviet mechanized battlefield equipment is rigged with filtration systems designed to protect the soldiers within from their own chemical agents—a move which means to me that they fully expect to launch such an attack and then move men and equipment into the same area in order to exploit their gains.

The Soviets have a separate branch of chemical troops, which consists of 80,000

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to 100,000 specialists in this area. In addition, the Soviet Union is continuing to build up its chemical warfare stocks to increase what is already a preponderant lead over the NATO alliance in such weapons. This investment on their part and their continued practice at implementing chemical warfare leads me to believe that the United States needs to address this problem head-on.

No one wants a ban on chemical warfare or even a ban on the horrors of war more than this Senator. I should like to see at least one of those horrors—that of chemical warfare—eliminated. But we must be practical and appreciate that in these times and all but proved Soviet capacity deterrent is our safest course of action. Certainly we owe it to our troops in the field to leave no stone unturned in this effort. So, again, the question becomes how best to achieve this goal.

Obviously, the Soviet Union has not been particularly impressed with our good intentions and desire to negotiate an end to chemical warfare. Certainly no one wants to have a President faced with the choice of a tactical nuclear response to chemical attack or no response. The fact of the matter is that the Soviet Union has forced us into this corner and that the only responsible approach now is to have an appropriate deterrent to their first use. My investigation and the testimony of the Secretary of Defense lead me to believe that our deterrent is not up to the task. Some of our current stocks of chemical weapons are leaking and becoming unusable. An even more significant problem is that the weapons we have on hand today are ill-suited to the delivery systems we now have and will soon be bringing into the field. In short, our deterrent to chemical warfare is becoming "hollow."

Lest anyone doubt the Soviet position on this issue, I refer them to the high probability of use of chemical weapons by Soviet or Soviet surrogate forces in Afghanistan, Laos, and Cambodia.

By providing this necessary $3 million investment in the beginning of enhancing our chemical warfare capability, the Senate will be saying that the United States means business at the negotiating table and, if necessary, on the battlefield. There will be plenty of time to consult with our allies on this matter and for a much-hoped-for negotiating breakthrough. It will take years to actually begin production of U.S. binary weapons. If the negotiations with the Soviets can get back on track and a chemical warfare ban achieved, this will be the best $3 million investment we can make. If not, we owe it to ourselves and our allies to be prepared.

Mr. President, I ask unanimous consent to have the following items printed in the RECORD: A letter dated September 12, 1980, to Meg Greenfield, editor of the op-ed page of the Washington Post, from Representative RICHARD ICHORD of Missouri, and his attachment thereto; a reprint of an article published in the September 1979 issue of Reader's Digest, by Representative ICHORD, entitled "The Deadly Threat of Soviet Chemical Warfare."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C., September 12, 1980.

Ms. MEG GREENFIELD,
Editor Op Ed Page, The Washington Post, Washington, D.C.

DEAR MS. GREENFIELD: Many of my congressional colleagues have urged to me respond to the op ed article by Senator David Pryor you published on September 9th concerning U.S. production of binary weapons. In the last several days, I've thoroughly reviewed the history of our policy on this subject and the most recent data compiled by our military services concerning U.S. and Soviet capabilities in this aspect of warfare.

I've been a student of this subject for many years, most recently as Chairman of the House Armed Services Subcommittee on Research and Development, and have written about it extensively in the past. This lengthy experience, coupled with my review this week of the most current information on the subject, convinces me that Senator Pryor's editorial is seriously inaccurate in many respects.

In the editorial I've enclosed, the requirements of concision prevented me from addressing all of the points in Senator Pryor's article, but I've attempted to deal fairly and accurately with what I consider to be the salient errors in his analysis.

As you may know, the Senate will probably take up this issue the week of September 14th and I'm very concerned that the crux of the problem will be missed, namely preparedness. The argument now is not, or should not be, production of binaries itself, because there's a long lead time involved—about three years before production could resume. The need is to be geared up and ready to go, should the President at some later time decide that our stockpiles have so far deteriorated that we are shorn of our deterrent and of our ability to defend ourselves in the event of an offensive strike.

I sincerely hope you'll find my remarks a helpful clarification as the Post continues its efforts to improve public understanding of this terribly difficult and emotional subject, which has suffered in the past from a lack of dispassionate analysis.

Sincerely yours,

RICHARD H. ICHORD,
Member of Congress.

THE DEADLY THREAT OF SOVIET CHEMICAL WARFARE

(By Representative RICHARD H. ICHORD)

The huge American M-60 battle tank sat at the intersections of two roads near a German village, its 12-cylinder diesel engine rumbling at idle. Inside, where static poured from the radio, the gunner, loader and driver were slumped in their seats, dead. Only the tank commander had sensed something in the final seconds of his life that hot summer morning, and had groped desperately for the respirator mask attached to the tank's protective ventilation system—too late.

All across Western Europe, the eerie scene was repeated: bodies slumped on air strips and in cockpits; at entrances to radar bunkers, gun emplacements and missile sites. There had been no smell, no ominous cloud, not a sign that the shells and bombs detonated in the surprise barrage had contained Soman, a deadly nerve gas.

Masked and goggled troops of the Red army and its satellite forces now moved quickly to take advantage of the deadly, invisible miasma of their own making. And while the United States, fearful of massive Soviet retaliation, held back its nuclear weapons, it became clear that Western Europe—its industrial and military infrastructure left largely intact for the conquerors' uses—was falling.

Such a scenario becomes more than the stuff of "war-gaming" speculation when one considers the tremendous chemical-warfare capability that has been steadily developed over the past 40 years by the Soviet Union and its Warsaw Pact allies—a sophisticated catalogue of destructive chemical compounds that can kill or incapacitate by attacking the respiratory, blood or central nervous systems. It is an offensive capability Western forces cannot match, and against which we have only the most rudimentary defense.

As chairman of the Research and Development Subcommittee of the House Armed Services Committee, I have become gravely concerned over the growing U.S.-Soviet disparity in chemical warfare. Tragically, we have allowed our natural revulsion for this form of weapon to override our common sense and have permitted our deterrent capability to deteriorate dangerously.

More than two years ago, the U.S. Army's two top research-and-development officials, Assistant Secretary Edward A. Miller and Lt. Gen. Howard R. Cooksey, warned Congress that a non-nuclear Soviet attack against Western Europe would include the use of chemical weapons. "The Soviets," we were told, "are so immersed in chemical weapons, tactics, doctrine, equipment and personnel, and so much of their training centers around the use of lethal agents, that it would be odd if they did not employ them. Their offensive chemical capability dwarfs ours to the point that they would be throwing away a possibly decisive advantage by not using chemical weapons."

History has shown that the only real "defense" against chemical warfare is an "offense" of such weapons so formidable that it deters the enemy from using theirs. During World War II, mindful of Germany's use of poison gas during World War I, the Allies sent word to the Nazis that such use would result in overwhelming retaliation. Thus no gas was employed by either side.

After the war, the Allies learned that as early as 1936 the Germans had made a devastating breakthrough in chemical warfare by perfecting "nerve gases," such as Tabun, that attack and break down the body's nervous system. Unlike the readily detectable asphyxiating gases of World War I, nerve gas is colorless, odorless, virtually undetectable. Although the Allies had nothing comparable to Tabun, the Germans did not know this, and the general threat of retaliation deterred them.

The United States, Britain and Russia divided the Nazis' Tabun stockpile into equal shares. The United States and Britain dumped most of theirs at sea, keeping only enough to aid them in development of their own gas. The Russians took theirs home, along with the dismantled Tabun laboratories and the scientists who made it, and went on to produce great quantities of this gas. They have continued to produce it, and numerous other chemical weapons as well.

During the 1950s, the United States became aware of this Soviet production, and set out to build a deterrent. By the mid-60's, our chemical-warfare posture was such that no potential enemy would have contemplated using such weaponry against us.

During the Vietnam war, however, we received intense worldwide criticism for using chemicals to defoliate jungles, and tear gas to flush out enemy forces. In March 1968, American citizens joined in the furor after 6400 sheep died on grazing lands near the Army Chemical Corps' Dugway, Utah, proving ground, following a nerve-gas experiment. Some people were convinced that, had

weather conditions been different, the lethal gas might have traveled 65 miles to Salt Lake City and killed all its inhabitants. (In reality, no conceivable meteorological conditions could have carried the gas to Salt Lake City in harmful concentrations.)

So we frightened and moralized ourselves into throwing away a vital deterrent, spending upward of $100 million stripping large portions of our chemical arsenal and dumping these munitions at sea. Even the movement of the stuff scared us—to the extent that tightly restrictive legislation was passed to govern the transport, testing and deployment of such weapons.

In 1973, following the Middle East war, American defense analysts were startled to find that Soviet-built equipment captured by the Israelis showed a sophisticated preparation for the offensive use of chemical weapons. Filtration systems in Russian tanks and armored personnel carriers were designed to protect against the nerve gas "Soman," a mainstay of Soviet chemical warfare. Clearly, this equipment had been designed for use in a possible nerve-gas offensive of Moscow's own making.

Ignoring such ominous signals, we continued to disband the Army Chemical Corps. Today we have perhaps 3500 officers and enlisted men involved with chemical-warfare tasks, and nothing remotely resembling an adequate retaliatory capability.

By contrast, the Red army includes a chemical-warfare contingent fully ten percent as large as the entire U.S. Army—80,000 to 100,000 officers and enlisted men. At some 40 sites in Eastern Europe, these forces train intensively for chemical warfare—day and night, in all kinds of weather, on all kinds of terrain. Every Soviet tank and personnel carrier is equipped with chemical detection and alarm systems that automatically close all apertures, and with efficient air-filtration systems. Every Soviet foot soldier is issued a gas mask made of lightweight, rubberized material resistant to all known chemical and biological agents. He also carries gloves, leggings, boots and a thin cape quickly convertible into an overall suit, all of the same protective material.

Approximately every third Soviet missile and rocket warhead, and up to ten percent of artillery projectiles, mortar shells, land mines and aerial bombs, are loaded with a chemical agent. These weapons—between 300,000 and 700,000 tons of them—have a higher kill ratio (per shell or missile fired) than any military device short of nuclear bombs.

Would the Soviets really use their chemical weapons? To my mind, it is naive in the extreme to think that they would go to the immense trouble and expense of constructing history's most impressive offensive chemical-warfare capability, and then not use it. Thus I believe that we have no choice but to proceed with the development of this kind of capability ourselves. Unless we do this, the Soviets will be tempted to wage chemical warfare simply because they are well prepared to do so and also fully aware that we do not now have the ability to retaliate in kind. In the interest of self-preservation, we must act.

Defense officials are aware that any effort to increase our chemical warfare capability will run up against justifiable concerns over the storage of deadly chemical agents. But the Army has been at work on this problem, and investigation by my subcommittee confirms that a solution is at hand in the form of something called binary munitions. Essentially, these are bombs or shells which two containers of relatively harmless chemicals remain separated until the weapon is dropped or fired. Only then do the two chemicals mix into a lethal concoction. Although binary weapons have gone through extensive testing and are now ready for production, opponents of chemical warfare have thus far managed to block their introduction into our armory. Clearly, we are taking a great chance in not moving ahead with this technological advance.

If we allow ourselves the luxury of giving in to our civilized revulsion against this form of warfare, we are whistling past what may turn out to be a graveyard for our forces in Europe. I am convinced that binary munitions will decrease the likelihood of chemical warfare. It is time for Congress to rise to the challenge.

Mr. EXON. Mr. President, I yield back the remainder of my time.

Mr. JACKSON. Mr. President, I thank the distinguished Senator from Nebraska for a very able statement.

I now yield to the distinguished chairman of the committee, Mr. STENNIS, such time as he may require.

Mr. STENNIS. I thank the Senator. I will require 3 to 5 minutes.

Mr. President, even though I was not able to attend the hearings, due to a conflict with other matters on the floor of the Senate, and did not hear the testimony in this matter, I am fully convinced, because of my previous experience in connection with this and general ideas on the subject, that this is a step we can well take. The great probability is that we should proceed without any further loss of time.

Several times in the past several years, we have had this entire subject matter before our committee for discussion back and forth, on the floor of the Senate, and in conferences.

We finally settled the matter and enacted the provision which is the law now. This provision provides that the production of binary chemicals shall not be changed unless the President certifies to Congress that production is essential to the national interest.

Mr. President, if we pass this measure as proposed by the committee, we still will have the law. We start there and we stop with it. It is a good, solid provision. The money we propose today will not make any gas, for 2, 2½ or 3 years but w'll be used for facilities. It merely provides the means to proceed in this direction with respect to the supply of this need, should the President say that it is essential. We could not have a more effective safeguard than that.

I do not look upon it as a step backward, one bit. I look upon it as a step forward, in possible prevention, deterrence, or warning, in view of the undoubted change in the atmosphere, the circumstances, and the facts, with reference to arms limitation or arms control. This amendment will provide the facilities that will take care of our situation in any given time or any call that may be made on us. I believe it is very timely.

We do not like the subject matter. However, we should not let that prejudice our judgment and keep us from seeing that this is a mild step, that it is a step toward prevention and availability and does not rock the boat or stir up things. This proposal does not make one iota of change in the present law, which served well at the time it was passed and has done so since. But it needs some modification as to some preparedness in essential machinery and the preparation for this kind of gas, which we hope never will be used. I believe we should provide this and rest on the provision of the law that the President makes this decision.

Mr. HART. Mr. President, I yield to the Senator from Michigan (Mr. LEVIN).

Mr. LEVIN. I thank the Senator from Colorado.

Mr. President, I oppose the committee amendment and support the compromise amendment of Senator HART, Senator PRYOR, and others. I am pleased to cosponsor this amendment with my friend from the Armed Services Committee. It is designed to keep our future chemical weapons modernization options open and avoid the possible, serious military and foreign policy problems which could be caused by adoption of the committee amendment.

The addition of the $3.15 million authorization to the fiscal 1981 Military Construction Authorization Act for the binary chemical munitions production facility, as proposed in the committee amendment, is premature, unwise and could ultimately be self-defeating from defense, diplomatic, and arms control perspectives.

Delaying this decision for a few months, so it can be considered in the context of our committee's deliberations on the fiscal 1982 Department of Defense and military construction budgets makes a lot more military and foreign policy sense for reasons that I will explain.

There is no national security risk to the United States by this delay. Contrary to the overly pessimistic description of our present chemical weapons stockpile presented by some supporters of the committee amendment, Secretary of Defense Brown testified to our committee just 2 weeks ago that these present stocks of chemical munitions still are a "credible" deterrent and they could cause "tremendous" damage if actually used against Soviet troops.

Our current stockpile presently consists of hundreds of thousands of artillery shells, land mines, and air-delivered bombs filled with extremely lethal gases which can last on the battlefield from between hours and weeks.

As I point this out, Mr. President, I wish to emphasize that I do not think the sponsors of the committee amendment are necessarily wrong in their concerns about maintaining a credible chemical warfare deterrent for NATO.

My disagreement with the committee is over the unilateral and probably self-destructive timing of the decision whether to build this binary munitions plant.

Perhaps those of us offering the compromise amendment have differing opinions about whether we should ultimately produce and deploy binary chemical munitions. I know some of the cosponsors oppose production. I, myself, have not yet resolved the many issues which argue

both for and against such production and deployment.

Personally, I think that this country does need some offensive chemical weapons capability to force the Soviets to wear protective garments so that both sides would suffer performance degradation in a chemical attack. I also recognize the possible military utility in the less-complicated logistics procedures required for binary munitions.

But on one issue the answer seems clear. Now is the wrong time for Congress to decide to begin construction of the binary plant itself. Rather than promoting the maintenance and improvement of a strong chemical deterrent, such a premature decision could seriously jeopardize any prospects we might have to strengthen this deterrent by deploying binaries overseas in the future. It also could weaken, rather than strengthen, our bargaining position in future chemical weapons arms control negotiations.

If Congress does decide at the appropriate time that it wants the Army to produce and deploy binary weapons, the ultimate success of that program will rest on whether our NATO allies have been convinced they should alter their policies against increasing the forward deployment in Europe of U.S. chemical weapons.

I have not heard this issue addressed by the supporters of the committee amendment, Mr. President. It is an important issue because the war fighting and deterrent value of such chemical weapons, binary or otherwise, is significantly reduced if they are not forward deployed.

Yet given the extreme sensitivity the Europeans have about chemical warfare, based on their horrible World War I experience with it, a unilateral decision now about the binary plant, without high-level advance consultations, is likely to provoke a negative reaction among our NATO allies.

There have been no high-level consultations between the United States and its allies about binary weapons. Without that, a unilateral decision on a binary plant could provoke an adverse public and governmental reaction which could seriously jeopardize forward storage.

Thus, such a decision, if European storage is jeopardized, undermines the credibility of the very, offensive chemical threat which the proponents of the committee amendment seek to establish.

The credibility of this threat is also necessary for successful chemical weapons arms control negotiations in the future.

Yet the credibility of that threat is undermined by the lack of consultation about binary munitions, on a high level, between us and our allies and their possible lack of acceptance of forward deploying of these weapons for which proponents of the committee amendment now seek to proceed to build a manufacturing facility.

I happen to agree with the main sponsor of the committee amendment, Senator JACKSON, who professes he wants achievement of a verifiable chemical weapons treaty, that we need to negotiate such a treaty from a position of strength rather than a posture of weakness. Yet adoption of the committee amendment increases the risk that the allies will say "No" to forward deployment because it is a precipitate decision without necessary consultation.

So those who support the committee amendment, because they think that the only way to stimulate Soviet agreement on a comprehensive chemical warfare pact is to confront the Soviets with actual chemical hardware as "bargaining chips," will probably undo themselves if their amendment prevails at this time.

If the Europeans refuse to allow the bargaining chips, in other words, the chemical weapons, to be forward deployed because of the unilateral nature and timing of our binary production plant decision, then these chemical munitions will be of diminished value in any arms control talk with the Soviets. Instead of being meaningful bargaining chips, the binary weapons will become meaningless pieces of plastic.

Instead of permitting us to bargain from a position of strength, which might be possible if proper care is taken to consult with the Europeans in connection with any decision whether to build this facility, making that decision now will mean we will bargain from a position of weakness.

This chemical weapons decision for fiscal year 1981 also could interfere with full implementation of NATO's important long-range theater nuclear weapons modernization program. That prospect is something which should concern all of us who see the alliance's difficult and controversial decision in December 1979, to modernize its theater nuclear forces as important to maintaining a credible conventional and nuclear deterrent in Europe against Soviet/Warsaw Pact aggression.

Mr. President, our military leadership as represented by the Secretary of Defense, who generally supports going forward with the production of binary weapons, recognizes the military risk of prematurely deciding whether to begin construction of the binary plant. Secretary of Defense Brown stated his concern about a decision now succinctly in his statement before the Armed Services Committee, and even though some of that testimony is classified and I cannot read it all, I am going to read now, these two unclassified portions, and I hope my colleagues will read the balance that is classified. He first said:

> My personal opinion is that at some time we should move forward to modernize the stockpile; but I think the time is wrong now.

Secretary Brown then said:

> But there is a broader issue beyond even arms control negotiations, and that is relations with our allies, which I have also discussed. It seems to me that is largely a matter of timing and education. I think the ground now is uncertain.

And I hope my colleagues will note that.

Secretary of Defense Brown said:

> I think the ground now is uncertain. I think it is realistic that a precipitate decision on our part, or what they would see as a precipitate decision, even though, as you correctly point out, we have been hashing this out for several years, would have very negative consequences.

I do not know of anything more valuable than to repeat that thought of Defense Secretary Brown, that a precipitate decision now—one that would be perceived by our allies as a precipitate unilateral decision now—could have very negative consequences for the very program that he and the sponsors of the committee amendment both support.

Regardless of whether authorizing such a small amount of money for facilization is or is not really a commitment by the United States to actually produce binaries, the press here and the Europeans will perceive it as such, no matter how we try to explain it. Already reports emphasizing the significance of this decision have appeared here and in Europe.

Mr. President, I wish to read briefly from an article in the London Times to support this feeling.

On August 13, 1980, the London Times said:

> Thus the decision of the United States House of Representatives last month to agree to a request from the American Department of Defence for funds to resume manufacture of chemical weapons is a sombre, and clearly politically profound, development.

The Washington Post, referring to a number of stories from Europe, reported on August 4, 1980:

> The chemical warfare notion was featured in British newspapers today, with varying degrees of concern expressed. The British, who were repelled by their World War I experience with poison gas, are likely to move cautiously in considering chemical weapons.

My own conversations with NATO embassy officers and with other people from abroad, have convinced me that that position is correct, that it is self-defeating to proceed with the binary plant now and that those who are determined that we need a chemical deterrent will, in fact, be promoting the opposite effect by the reaction that they are going to provoke in Europeans—that of a unilateral decision on our part without the consultations that are necessary to be sure that if these weapons are produced, they in fact can be forward deployed where they would have the most deterrent effect both for deterrence itself, and in terms of arms control treaties.

I am afraid, Mr. President, that the decision to proceed today with the binary munitions plant will diminish the "weight" these weapons will have with the Russians for achieving the goals which this country seeks to achieve.

Governmental and public opinion about chemical weapons in West Germany, a key country in any discussions of possible future forward deployment of binaries, is even more sensitive than that reported in Great Britain. The last time such weapons were discussed publicly in West Germany, in 1969 when forward deployment again was an issue, the New York Times reported on November 26, 1969, that:

> For the West Germans, the question of the use and storage of such weapons has been an embarrassing intrusion into politics since it was conceded officially in July that the United States was keeping limited supplies of gas on German soil.
>
> The West Germans are particularly sensitive about their own weapons and about weapons maintained by the United States in Germany because of their Nazi past and Germany's long record of militarism.

We all recognize that in national security matters, perceptions often are as important as realities, and it is the perceptions of our allies to which we must be sensitive regarding a binary facility decision for fiscal year 1981. We will not be able to avoid a controversy in Europe which could prevent forward deployment by trying to explain the intricacies of the American legislative process.

Secretary Brown stated these problems clearly in his testimony by saying:

> An authorization is not an appropriation, but these nuances are often lost on other countries. I think they would see it as a major step forward in U.S. chemical warfare offensive capabilities with all of the positive and negative effects that that might have, which I have described in my statement.

My own contacts with NATO embassies, and my own knowledge of discussions between U.S. and NATO officials confirms this, Mr. President. This is not "worst-case" State Department analysis.

Given European sensitivities to chemical weapons—greater in fact than their problems with neutron warheads—if the Congress next year decides it wants to procure binary munitions, would it want that decision undercut by another neutron warhead-type controversy?

We ought to find out how far our allies will support our chemical munitions modernization and whether some of them will change their policies against forward deployment of chemical weapons because binaries are safer, before we push ahead.

If we do not give our Government time to prepare the Allies, we might defeat the purpose of any positive decision in our haste.

Mr. President, the committee amendment also ought to be replaced by the Hart substitute because there still are too many unanswered questions about what is the best way to upgrade our chemical warfare capabilities—and whether this particular binaries production plan is the best one from military and foreign policy perspectives.

The additional time provided by the Hart substitute will permit these many questions to be answered.

DOD and the Army are in the process of conducting important new studies in these areas. A major National Security Council, interagency chemical warfare study will be finished by November.

The Joint Chiefs of Staff-sponsored study by the Institute for Defense Analysis—the major justification for our military's chemical stockpile requirement—will be finished by late October. The Army is studying how to fight a chemical war and how it will care for chemical casualties, according to the JCS and DOD.

DOD is studying whether it can rephase the contemplated program to build BIGEYE binary bombs first, which holds out the prospect of avoiding some of the European political problems which could interfere with a binaries program.

Also, our greatest military need in chemical munitions, as I have said previously, is not in artillery shells filled with nonpersistent agents, which is the first phase of the program as it now stands. We have hundreds of thousands of these which still can be used. I have been informed that our major deficiency is in persistent agent-filled, air-delivered bombs, which can be used for deep interdiction against fixed targets. That is what the BIGEYE program is for, and we might want to consider accelerating that program instead of prematurely building artillery shells in the first phase.

All of these studies could affect the scope, timing, and composition of a binaries program, and we ought to wait until most of them are complete before we make such a decision about facilitization at Pine Bluff. We can make these decisions next year after these studies have been finished and as we consider the fiscal year 1982 budget requests.

Delay of a binary production facility decision until fiscal year 1982 also will not harm our national security because we will continue to spend almost $200 million in fiscal year 1981 to improve our chemical warfare defensive capabilities and to conduct research and development on better chemical offensive capabilities.

I might interject at this point that, despite continued improvements in our chemical warfare defensive capabilities, much more progress is needed in this area, and we could more usefully spend any additional dollars for that in the fiscal year 1981 Defense Appropriations Act rather than on a binary plant in this military construction bill now before us.

In assessing the effects of deciding whether to build a binary facility until fiscal year 1982, let me also address the nature of the Soviet chemical warfare threat we face and whether reports of alleged use of chemical agents in Afghanistan, Laos, and Kampuchea are conclusive enough evidence on which to base such a decision.

The sad truth is, Mr. President, that we know very little of the size, scope, and composition of the Soviet offensive chemical warfare threat, again despite the overly dramatic statements of supporters of the committee amendment.

We know that the Soviets have an extensive chemical defense posture, but our estimates of their offensive stockpiles are so broad they are virtually meaningless as a foundation for a prudent and reasonable defense policy decision.

Secretary Brown's testimony before our committee again reinforces my point. He stated:

> My recollection is that the estimates of Soviet capability, and Soviet chemical warfare stockpiles, run from 30,000 to several hundred thousand (agent tons).

He continued:

> I am not trying to imply that the Soviets don't have any chemical warfare munitions; I am convinced they do, and I think they are probably substantially bigger than our stockpiles. I am trying to introduce a proper note of caution into numerical estimates.

Later, Secretary Brown concluded "there is no decent estimate" of the Soviet chemical warfare stockpile.

Mr. President, just because the Soviets may have more chemical munitions than the United States does not mean that they are chemical warfare giants and that we are defenseless midgets. As Secretary Brown clearly stated to our committee, despite this possible disparity, which we cannot verify, our present chemical stockpile remains a credible deterrent which could cause tremendous damage if it ever were used.

We should remember also that the Soviets would have to dedicate some portion of their chemical stockpile against the large armies of the People's Republic of China, and that, despite the fact they are officially outside the NATO military command structure, the French reportedly have offensive chemical capabilities which would complicate Soviet chemical warfare targeting plans and stockpile allocations.

I urge my colleagues to avoid both overstating Soviet capabilities and understating our own in chemical warfare. We must not mislead ourselves, the American public, and the leadership and citizenry of Europe and the Soviet Union about this.

By saying this I do not mean to imply that I think that Congress should regard the relative balance of chemical warfare capabilities between ourselves and the Soviets as completely satisfactory now and in the future. That is not so. I believe that we must continue to modernize our defensive capabilities, and indeed Congress might well have to conclude at the appropriate time that this country should modernize its offensive chemical warfare capabilities, particularly if prospects for chemical weapons arms control do not develop further.

But I do mean that the current state of the chemical warfare balance permits us to more carefully analyze the advantages and disadvantages of whether to produce binary munitions within the context of a comprehensive examination of our overall chemical-warfare policy and posture—and those of the NATO Alliance. Our committee has yet to do this, and the hearing with Secretary Brown cannot be considered such a comprehensive examination of such an important topic.

Before our committee took its position on its proposed amendment, it would have been well-advised to listen to the Secretary of State, which it did not, despite my request, as well as the Secretary of Defense. Adoption of the Hart substitute will permit such testimony to be taken and evaluated, and Congress would be well advised to consider such views before it makes any decision whether to proceed with a binary production facility or with these new munitions themselves.

We will only have this opportunity within the context of our hearings on the 1982 defense and military construc-

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tion budgets. We should not jump to conclusions in fiscal year 1981, either about the binary facility or about the state of the chemical warfare balance, because such hasty judgments as expressed by supporters of the committee amendment only encourage dangerous misperceptions among our Allies and our adversaries.

Similar caution must be expressed about how much to rely on reports of alleged chemical warfare in Afghanistan, Laos, and Kampuchea as justification for proceeding forthwith with a binary production plant in fiscal year 1981.

The testimony before our committee was cleary inconclusive, although the evidence is stronger about some reported instances than about others. Indeed Senator HUMPHREY was moved to tell our other witness, Lt. Gen. Eugene Tighe, USAF, head of the Defense Intelligence Agency charged with monitoring the Soviet chemical warfare posture:

General Tighe, I have been struck by your statements and those of Secretary Brown which indicate the difficulty of ascertaining facts about Soviet production. That is the difficulty of ascertaining facts about Soviet production capabilities for chemical weapons and even their use of them.

We evidently can't ascertain whether Soviet chemical weapons were used in Afghanistan. Evidently we are not absolutely sure that Soviets supplied them to Cambodian forces in Cambodia and Laos.

Mr. President, Congress must not be stampeded into deciding whether to build a binary production facility in fiscal year 1981 on the basis of exaggerated statements about the Soviet chemical warfare threat and of inconclusive reports about use of chemical agents in southwest and southeast Asia.

In this latter regard, I found it interesting to learn that at least some knowledgeable observers from Europe do not feel that the alleged chemical warfare incidents in Afghanistan have contributed significantly to their concerns about the Soviet chemical warfare threat. I therefore must seriously question the utility of reaching conclusions about what to do about our chemical posture in Europe based on these inconclusive reports of Soviet chemical warfare activity in Southwest Asia.

There are also other experts both in and out of Government who should be heard before Congress makes any important change in policy about chemical warfare, which production of binary weapons certainly would be.

For example, the distinguished Harvard scientist, Dr. Matthew Meselson, is an expert on chemical weapons and has taken strong exception to the Army's contention that we must produce more offensive chemical munitions. He contends that far fewer chemical munitions are needed to wage an effective chemical war than what the JCS says is required, and he has submitted a detailed study of his estimates based on Army information. I think we would benefit from receiving the Army's official point-by-point rebuttal to this study, so both viewpoints are available to us before we decide whether to authorize a binary munitions production facility.

Our committee and the Congress need to do much more research about what kind of chemical weapons stockpile, posture and policy makes good sense for the United States and NATO before we make such a decision, Mr. President, and the Hart substitute gives us the opportunity to do this responsible investigation.

Mr. HART. Mr. President, I thank my colleague from Michigan and all of the colleagues for their statements on behalf of the position which we have espoused.

If the Senator from Washington is prepared to do so, I am prepared to yield back the time on his amendment and offer a perfecting amendment.

Mr. JACKSON. Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

UP AMENDMENT NO. 1583

(Purpose: To provide for a chemical warfare review)

Mr. HART. Mr. President, I have an amendment at the desk in the nature of a perfecting amendment and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an unprinted amendment numbered 1583 as an amendment to the Jackson amendment numbered 2321.

Mr. HART. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 3, insert the following:

CHEMICAL WARFARE REVIEW

(a) The Congress finds that—

(1) the capability of the Armed Forces of the United States to deter chemical warfare and to protect combat personnel of the United States may be seriously deficient;

(2) the policy of the United States regarding how best to deter chemical warfare and what defensive and offensive chemical warfare equipment is necessary for the security of the Nation is not sufficiently clear; and

(3) before making firm policy decisions and commitments regarding chemical warfare, the United States should consult with its allies.

(b) The President shall conduct a thorough policy review of the issues pertaining to chemical warfare and report the results of such review to the Committees on Armed Services of the Senate and the House of Representatives not later than March 1, 1981. Such report shall include as a minimum—

(1) a statement of national policy on how best to deter chemical warfare and protect combat personnel of the United States in the event that deterrence fails;

(2) a comparative analysis of the defensive and offensive chemical warfare capabilities of the United States and its allies versus those of the Soviet Union and its allies.

(3) an analysis of the alleged recent use of chemical warfare agents by the Soviet Union or its allies in Cambodia, Laos, and Afghanistan, the alleged manufacture in the Soviet Union of biological warfare agents (as evidenced by the so-called Sverdlovsk incident), and the implications that those alleged events may have on the chemical warfare policy of the United States;

(4) a proposed program to redress any deficiencies in the ability of the United States to deter chemical warfare and to protect combat personnel of the United States;

(5) a priority listing of the actions proposed to be taken with respect to the offensive and defensive chemical warfare capabilities of the United States, an estimate of the funding requirements to carry out such actions, and a proposed schedule for accomplishing each such action;

(6) a detailed statement and discussion of those items included in the fiscal year 1982 budget request that are designed to implement the program referred to in clause (4);

(7) a detailed statement and discussion of the consultations of the United States with its allies regarding chemical warfare policy; and

(8) discussion of the foreign policy and arms control issues involved in each such proposed action.

On page 1, line 4, strike all through line 7.

Mr. HART. Mr. President, this issue has been thoroughly debated in the last hour or so. I do not think we need to repeat arguments.

I want to stress, however, just a few points that I think are applicable to the issue before us. First, this will not be by virtue of the pending amendment a situation where our colleagues necessarily will be required to vote for or against the start-up of a new chemical warfare production capability.

This amendment offers an alternative. It is a compromise and what it says is that we will approach this issue in an orderly way. By that I mean this amendment requires the administration to come forward with a policy, a total chemical warfare policy, that will be the result of a number of inquiries and studies underway at the present time by various agencies in the administration, particularly Defense and State; that will coordinate our efforts in a meaningful way; that will make a judgment about production of 155 millimeter binary rounds, part of an entire policy that will fit that production if it goes forward with the production of other chemical munitions; that will have addressed the question of deployment and storage; that will have addressed the very critical question of defensive capability, which has not been addressed; and that, most importantly, will incorporate the judgment of our European allies who will bear the brunt of this weaponry if, in fact, it is ever used.

If we had a fiasco with regard to the neutron bomb, Mr. President, I can absolutely promise the U.S. Senate will have an even greater fiasco where the issue of chemical warfare agents is concerned. Every emotion, every legitimate concern will be aroused, and the civilian population of Europe, every government in Europe, will be required overnight to take a position on whether or not they support deployment of chemical warfare agents on their soil, and I can guess, and I can bet exactly, what that response is going to be, "No."

How much have we advanced towards a credible deterrent against the Soviets if within 72 hours all the major governments of Europe have said they do not want this stuff on their soil? That is

going to make the Soviets very much afraid, that is really going to shake them in their boosts.

Mr. President, I think we ought to be adult enough after 200 years as a nation to be able to formulate coherent, thoughtful policies. We ought to be beyond the stage where we ad hoc major national security, international security, and foreign policy issues, and that is exactly what we are being called upon to do here, ad hoc policymaking. It is the very thing that so many Senators on both sides of the aisle are critical of this administration for, ad hoc policymaking. Well, we are about to participate in it.

The majority of the Senators today, if they vote for the amendment offered by the Senator from Washington, would be displaying a classic ad hoc policy decision effort.

We have heard statements about the massive Soviet buildup of chemical warfare agents. There is not one concrete bit of evidence on the record that that in fact exists. The Soviets have prepared their troops defensively and their equipment defensively. They are much better equipped to operate in a chemical warfare environment than the United States and its allies.

As I said before, what threat would it be to the Soviets to have an enormous chemical warfare arsenal that would kill more of our troops than it would kill of the Soviets? Not one thing in the Jackson amendment addresses the issue of defensive capability. That is no threat, that is no deterrent.

As I said before, the Soviets are going to be laughing up their sleeves if we spend $2 billion to $4 billion to develop a chemical warfare arsenal that our own troops cannot even resist. That is a threat to us, not to them.

We are inviting a furor in NATO. We are inviting chaos in the question of negotiating theater nuclear force modernization; we are inviting all sorts of criticism from all nations in the world about a unilateral ill-advised decision to make a major defense or weaponry step that has no context in which it is being made whatsoever.

Speculation about Soviet use of gas in Afghanistan, unconfirmed. It ought to be confirmed. Speculation about nerve gas or other biological warfare agents being produced in the Soviet Union, not confirmed. It may be, and it ought to be, confirmed if it happened.

But the way to respond to these kinds of questions is to have a coherent policy, and that is what this amendment calls for.

It may be that the United States of America ought to spend $156 million to create the Pine Bluff capability. I do not know, and I will not know until I see what the administration recommends and the basis for that recommendation. Right now the only recommendation we have is from the Secretary of Defense, and he says this step would be premature. Let us give him a chance to find out whether it is premature or not before we make that decision. That is all this amendment does.

We are not losing time. We are not setting our defense capabilities back. We are not sitting idly by while the Soviets pass us by. It gives us time to equip our forces in Europe and other places around the world to defend against this capability, which is the best deterrent. If it is not going to hurt the troops, then why use it? And it gives this body a chance to make a mature judgment, which we are not going to make unless we have that time.

So, Mr. President, I urge on behalf of myself and my colleagues, Senators PRYOR, LEVIN, COCHRAN, KASSEBAUM, WEICKER, and BRADLEY that we approach this very troublesome and very complicated and very serious issue in a thoughtful way. If we do not we will be making a serious mistake and we will set back the very deterrent, that the sponsors of the Jackson amendment claim to desire, by a long, long way.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, might I put a question to my colleague?

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. I yield to the Senator from Virginia such time as he may require.

Mr. WARNER. Would the Senator be aware of how many studies to date have been conducted in this area?

Mr. HART. I am sure there are dozens if not hundreds.

Mr. WARNER. I have a list of some 21 studies here beginning in December 1971 and ending in September of 1979, a JCS chemical warfare study in Central Europe. General Rogers has indicated that he has absolutely no capability to defend U.S. forces today.

Mr. HART. Precisely.

Mr. WARNER. We talk about the responsibility of this Chamber—every day young men and women are being sent to that theater, our own people, without the capability to defend themselves. I share your concerns on defense, but I am concerned about our capacity to deter.

Mr. HART. I started 5 years ago to try to solve this problem. This amendment will not solve that problem.

Mr. WARNER. This amendment, however, will indicate a determination by the Congress to go forward.

The thing I find so puzzling about this issue is really who is trying to stop the decision and why.

I refer to internal documents within the Department of Defense, one of which is classified and, therefore, I refrain from giving it in its entirety, but it is directed to the Assistant to the President for National Security Affairs from Mr. Walter Slocombe, Assistant Secretary of Defense for International Affairs, in which he clearly says:

I directed in the amended program decision dated 29 August 1979, last year, that the binary chemical munitions facility be included in the amount of $19 million in the Department of the Army basic submission. I also believe this action will provide the Soviets a clear indication of our dissatisfaction with the progress of negotiations, and it will signal the increasing difficulty of our continuing restraint in our chemical warfare capability while negotiations toward a comprehensive ban continue.

And I also look at another memorandum, dated October 12, 1979, to the Secretary of Defense from his Chief of Research and Development, William J. Perry, in which he says the following:

Your memorandum to the National Security Council of 4 October indicated we were reviewing this facility input as part of the FY 1981 budget process in the context of the ongoing bilateral negotiations with the USSR.

It further states:

We believe this action—

Namely what we are trying to do here today—

will provide the Soviets a clear indication of our dissatisfaction with the progress of these negotiations and signal our increasing difficulty of exercising restraint in our own chemical warfare capability.

Mr. HART. Will the Senator yield for an answer?

Mr. WARNER. Yes.

Mr. HART. Mr. President, I do not think the Senator from Virginia has to go very far in his search, in what sounds like a preliminary witch hunt, when he says "Who made the decision?" The Secretary of Defense made the decision. He testified before our committee, the only record on this issue that exists before either House of Congress—the Secretary of Defense, the highest constitutional officer, short of the Commander in Chief, for making these decisions. I do not think you need to scurry around in the Defense Department to find out who made the decision.

The Secretary of Defense sent a letter to the chairman of the Senate Armed Services Committee in which he addresses this issue. He said:

I feel the inclusion of military funds for production facilities in the same budget—

Namely fiscal 1981—

would be premature. We planned to consider that question in preparing the fiscal '82 budget.

I do not think you need to scurry around looking for gremlins in the Defense Department. The Secretary of Defense made the decision.

Mr. WARNER. Yes, but I draw to the Senator's attention—and we know Secretary Brown very well. It was in a colloquy with our distinguished colleague who proposed this amendment, in which he skirted back and forth. This is the man who can be most precise when he wishes to be. But as you read through the testimony, he sidesteps the issue and he goes on both sides. In fact, he says——

Mr. HART. Mr. President, will the Senator yield? Is that a classified record?

Mr. WARNER. Portions of it are and portions are not.

In the unclassified portion, Senator JACKSON asked:

What is your personal—I will ask you, as distinguished from the administration's position—what is your personal recommendation?

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Secretary Brown:

I don't make a distinction, but if you want to know my personal opinion, my personal opinion is that at some time we should move forward to modernize the stockpile.

We are not asking to modernize the stockpile today. We are only asking to take the first step—build the facility.

Mr. HART. The key phrase is "at some time." It is "at some time." It is not "modernize the stockpile."

Mr. WARNER. Does not this body have the duty to make important decisions on behalf of the Government?

Mr. HART. Of course we do. The Secretary of Defense said, "Don't make it this year."

Mr. WARNER. I hope the Congress will say, "Let's make it this year."

Mr. HART. Of course the Senator does.

Mr. JACKSON. Will the Senator yield?

Mr. WARNER. Yes.

Mr. JACKSON. There is an interesting article in Science Magazine, September 12 edition. The Secretary of Defense convened a Science Advisory Board on this issue headed by Dr. John Deutch. The initial findings of the DSB have just become available and they support going forward with construction of this binary facility. Let me remind Senators, this is the Secretary of Defense's own Science Advisory Board.

Let me read now from an article in the September 12th edition of Science Magazine. In it Mr. Deutch is quoted as saying:

The (Defense Science Board) believes there is substantial evidence of Soviet activity with chemical weapons now and, if anything, a decision to go binary is likely to make them more eager to arrive at an anti-chemical warfare accord for which negotiations are now underway in Geneva.

And, I might add, these negotiations have been underway since 1976.

Mr. HART. Will the Senator yield for a question?

Mr. JACKSON. Yes.

Mr. HART. Was the Science Advisory Board, including Dr. Deutch, charged with the responsibility of judging the foreign policy implications of this judgment?

Mr. JACKSON. I would assume that their responsibility—I do not have their charter in front of me—but I assume their responsibility was to make a review of the chemical warfare situation and provide their findings and recommendations. Dr. Deutch is one of the world's top chemists, now at the Massachusetts Institute of Technology and formerly a senior official of the Department of Energy. The DSB is a most distinguished panel, which has just completed its action on this issue, having considered it in detail from August 3 to August 15 in San Diego.

Mr. President, I only make this point: This thing has been studied to death. Chemical warfare is a nasty business, Mr. President. The real issue we must address is whether or not we can eliminate the threat of chemical warfare. We all want to do that. But any reading of history and of negotiations with the Soviet Union tells us that they will never, never agree to an accord in an area where they have an advantage and we have no offsetting capability.

This is the issue before the Senate. All of us want to get rid of this nasty business, as I call it. But you are not going to do it, Mr. President, by continuing to pursue the naive approach the administration has followed in trying to reach—in the absence of a credible U.S. chemical capability—an effective chemical arms control treaty with the Soviet Union.

Let us be under no illusions, Mr. President. We must have a sound, genuine, verifiable agreement. We entered into an accord with the Soviets to outlaw biological weapons in 1975. We now have had the Sverdlovsk incident which points to the existence of an active production facility manufacturing weapons for biological warfare. There is a big argument within the intelligence community on this. But there is strong evidence that the explanation given by the Soviet Union for this incident is not supported by the facts. We have every reason to believe that the U.S.S.R may be in violation of an arms control agreement we reached with them back in 1975.

Mr. President, the debate today is not over brick and mortar. It is over the question of how we should negotiate with the Soviet Union. That is the issue before the U.S. Senate. The truth is that you simply cannot negotiate with the Soviets from a position of inferiority or of weakness.

Mr. NUNN. Mr. President, will the Senator yield?

Mr. JACKSON. Yes, I will yield in a moment.

One other thing I want to mention, Mr. President. Senators have been talking about this great chemical arsenal that we have. Actually, we have a leaking, deteriorating arsenal. I say to my friends here on the floor of the Senate, the chemical munitions we have are leaking. They are dangerous. That is the crucial advantage of going with binary weapons, which we must do.

I would hope that the Senate will appreciate the gravity of the chemical weapons imbalance and the need to take the step recommended by the Armed Services Committee in the interest of achieving progress toward meaningful chemical arms control negotiations.

I yield to the Senator from Georgia.

Mr. NUNN. I thank my friend from Washington.

Mr. President, I had to leave the floor a few minutes ago. The Senator from Colorado was making a statement. One of the things that I believe he stated, and I would like to ask him about this to make sure I understood him correctly, is that we should not take this action today because there have been no high-level consultations on this matter in NATO. Is that a correct impression that I received?

Mr. HART. That was not a statement the Senator from Colorado made. That was a statement the Secretary of Defense made in our hearings.

Mr. NUNN. Was he speaking of no high-level consultation on this particular facility or the overall question?

Mr. HART. No, on the overall question of chemical warfare capabilities.

Mr. NUNN. Mr. President, I had not recalled that. I was there that day and I had not recalled that statement in those words.

If that is the case, I would say that is the most damning indictment of the high levels of NATO civilian leadership that I have heard in a long time, because this has been one of the most flagrant deficiencies in NATO capabilities for at least 5 or 6 years, and perhaps even longer.

I recall back in 1976 the late Senator Bartlett, our dear friend and colleague from Oklahoma, and I came back from NATO after making an intensive study of the problems and deficiencies in NATO. One of the conclusions we rapidly came to was that the chemical warfare advantages of the Soviet Union were overwhelming and perhaps were the cause for one of the most significant deficiencies in all of the NATO military arena.

This is not something that has slipped up on us. It has been going on for a long, long time. We have had testimony by the Commander of NATO, General Rogers, on this subject for several years. We have had testimony by General Jones in his posture statement for 1981, and in other hearings in previous years.

If there has been no high level consultation in NATO on the problems and deficiencies of NATO chemical warfare capabilities, then that is a real indictment of the NATO civilian leadership because I know that the NATO military leadership has been screaming and hollering about this privately for a long time.

I would hope that the Secretary of Defense has some clarification in this area. I would certainly hope that our Secretary of Defense and his counterparts in the other countries of our NATO alliance have indeed had some discussions and conversations on this very serious problem.

General Jones, Chairman of the Joint Chiefs of Staff, in his posture statement for fiscal year 1981 stated very clearly that anyone's theory that unilateral restraint on our part would cause a similar restraint on the Soviet's part has been thoroughly discredited.

General Rogers stated on February 19, 1980, in testimony before our committee to the effect that the U.S. and NATO forces are vulnerable to a Soviet chemical attack. He also stated to the effect that NATO was not configured for any meaningful response.

That is the testimony before our committee and it is not new. I recall questioning witnesses on this subject for over 3 years. I recall many dialogs in the Armed Services Committee. Perhaps most of them were in closed session, but there is certainly nothing new about the deficiencies in the chemical area.

Hopefully the new element is a willingness by the Congress of the United States to take a leadership position on this issue; to recognize, as the Senator from Washington has pointed out so ably, that unilateral restraint simply has not worked. It has not worked with the Soviet Union in the past and it is not working now.

This is perhaps the best example I know of, of a case where this country and our allies have tried unilateral restraint in the hope that it would produce some form of reciprocity. It has not produced reciprocity, and there are no indications that it is going to produce reciprocity.

If we are serious about wanting to limit chemical weapons in the future, if we are serious about wanting real restraint on both sides in this crucial area, then we had better take some steps to improve our negotiating position and to demonstrate clearly to the Soviet Union that we are not going to have a perpetual, indefinite policy of unilateral restraint while they build up an awesome chemical capability. That has been occurring and it continues today.

Mr. President, I join Senator JACKSON and my other colleagues in supporting the Senate Armed Services Committee recommendation that $3.15 million be added to the fiscal year 1981 military construction authorization bill for a production facility for binary chemical munitions.

This initial step toward providing a facility for production of binary munitions is long overdue. There are not many areas in the military equation where the United States shows such a deficit as that relating to deterring or defending a chemical warfare situation.

What we are discussing here today is whether or not we have a clear national policy in this area:

We have followed a policy of unilateral restraint that has failed to restrain anyone but ourselves. This is clear to me and I believe it is clear to the Soviet Union. That the Soviets have a significant capability to wage chemical warfare is undisputed; that the United States and our allies are unprepared to respond in this area is undisputed.

There is no need to repeat the litany of the problems and deficiencies in U.S. capabilities compared to those of the Soviet Union. It is sufficient to say that the inability of the United States and NATO to deter and, failing that, to fight in a chemically contaminated environment is one of our most serious vulnerabilities.

I believe the national focus and attention suggested by the Senator from Colorado and others is warranted, but I believe this review can occur while efforts on this facility are ongoing.

Due to the construction process, this facility will not have a production capability for a number of years; any additional study can be conducted in this time frame.

I share my colleagues' concerns in the arms control area but believe a greater incentive for serious Soviet negotiations will exist in this specific area if the U.S. position represents something more than a unilateral restraint, an obsolescing stockpile and a poor defensive posture.

I urge my colleagues to support the committee recommendation.

Mr. President, I would be glad to yield at this point in time.

I yield to the Senator from Washington.

Mr. JACKSON. Mr. President, we have no need for more time on our side at this time.

Mr. HART. Mr. President, I yield to the Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the Senator from Colorado for yielding. I have two brief points, and then I will yield to my good friend and colleague from Arkansas, Senator BUMPERS.

First, there has been great discussion this afternoon with regard to our stockpile of chemical weapons. There have been allegations made about leaking chemical weapons and about the instability or the unsuitable nature of our stockpile.

Mr. President, I would like to read from the 1977 Comptroller General's report to the Congress about our chemical weapons stockpile. I believe the findings will be as relevant today as they were in September of 1977. I am quoting from this GAO report:

The true condition of the stockpile is unknown. Its serviceability may have been greatly understated. For example, many of the unserviceable classifications are a result of minor nonfunctional defects, such as container rust, which do not affect usability. Also, inspection samples are neither random nor representative, block storage hampers access during inspection, entire production lots are classified unserviceable for a few defects, and chemical agent testing recently has been limited.

Further in this report, Mr. President, I would like to read one final paragraph of the GAO report as it relates to our stockpile.

Little has been done to maintain the stockpile in a serviceable condition or to restore the unserviceable portions. Using anticipated approval of the binary program as a reason for not maintaining the stockpile is inconsistent with sound management. Lack of maintenance could seriously compromise U.S. retaliatory capabilities.

My final point this afternoon, Mr. President, relates to some of the statements made by the distinguished Senator from Washington, Senator JACKSON, and the distinguished chairman of the Armed Services Committee, my friend and neighbor, Senator STENNIS, of Mississippi. That relates to our retaliatory capability with regard to the amount of nerve gas that we have in storage.

Mr. President, if we do what the Army wants, we are not going to increase our military capability one iota. We will be destroying the present stockpile of conventional chemical warfare agents, and replacing it with a binary nerve gas weapon. This particular binary nerve gas has no military advantage whatsoever, except safety, over our conventional chemical warfare which is stockpiled in adequate amounts.

I think, as the Senator from Colorado has so eloquently stated earlier in this debate, that the Russians would actually laugh at us if we went into this type of program at this time. I yield back the remainder of my time to the Senator from Colorado.

Mr. HART. Mr. President, I yield to the senior Senator from Arkansas such time as he may require.

Mr. BUMPERS. Mr. President, let me say that, first, I ought to distinguish my position somewhat from that of some of my colleagues who favor the Hart substitute, which I also favor. My position on the Hart substitute is not precisely ideological, even though my feelings about the whole issue of nerve gas, nerve warfare, chemical munitions are such that I am just as repulsed by the issue as I think everybody is. I do not suggest that those who favor the position of the distinguished Senator from Washington feel differently about it.

Just so that we get a little feel for what we are talking about here, I refer to a Scientific American article of April 1980 by Professor Meselson, in which he writes about the symptoms that afflict people who are hit by some of these nerve gases. They vary widely, depending on the chemical, of course, but most include the following:

Intense sweating, filling of the bronchial passages with mucus, bronchial constriction, dimming of vision, uncontrollable vomiting and defacation, convulsions and, finally paralysis and respiratory failure. Death from acute nerve gas poisoning is caused by asphyxia, which generally will occur within a few minutes. If the dose is only marginally lethal or is received through the skin, however, it may take up to several hours for the victim to die.

Mr. President, I recite that just so everybody understands what the United States and the Soviet Union are confronted with when we talk about nerve gases.

We are talking about whether or not to go into production on binary chemical munitions. I have not heard anybody here describe that perhaps as well as it ought to be described. In the same article, Professor Meselson points out that instead of containing actual nerve gas, it contains two nerve gas precursors held in separate canisters. When the projectile is fired, the canisters burst and their contents react to form the nerve gas while the munition is in flight. One of the canisters can be stored and shipped separately to be loaded into the projectile at the gun site. This built-in safety feature of binary nerve gas munition is intended to provide a greater operational flexibility in the storage, shipment, and deployment of chemical weapons, in part by alleviating public concern about the possible unintended release of poison gas.

Mr. President, I have heard various figures given this afternoon about the ratio between our stockpile of nerve gases and the stockpile of the Soviet Union. I have heard it referred to as the Soviets having a 10-to-1 advantage, all the way up to a 35-to-1 advantage. Professor Meselson says nobody really knows how much they have and how much we have. But it is admitted by all that the Soviets have a considerably larger stockpile of nerve gas than we have.

(Mr. MITCHELL assumed the chair.)

Mr. BUMPERS. Mr. President, as repugnant as the whole concept of nerve gas is to me, the binary munitions would be built in Pine Bluff, Ark. These munitions would be much easier to store and I would feel much more comfortable with a stock of that kind of munitions

than I would the existing supply which can leak and cause all kinds of problems. One of the problems with our present supply of chemical warfare munitions is the difficulty in storing it, at least storing it with any degree of safety.

My position on this issue is very simple. I support the Hart substitute, which says let us wait until March 1, 1981. That is about 6 months off. Let the Pentagon and the White House supply the Committees on Armed Services of both the House and the Senate with a final evaluation as to whether or not we should get involved in this business.

I shall vote aye if that report is positive and says, No. 1, that the Soviets are in the process again of manufacturing chemical agents; No. 2, that their lead over us is increasing to the point that our present supplies no longer constitute a reasonable deterrent; No. 3, that our Government has discussed this with our allies, principally Germany, and Germany has agreed to the key aspects of our detailed, well-developed strategy.

I am not saying that the report which we expect from the executive branch under the Hart substitute on March 1 must firmly answer all of those things. But in its general tenor, it should give this body a good, reasonable, sensible reason for voting to embark on what will ultimately and certainly be a $4 billion expenditure.

Mr. President, I was tempted sorely to vote against my own colleague from Colorado because I think we have to have a chemical weapons deterrent. I do not believe in that theory about how you can protect your troops by giving them only the right kind of passive chemical weapons, equipment like gas masks and special clothing to wear and so on. No. 1, these gases often do not have an odor, and you do not know they are in the area until it is too late. It takes quite a while to get the mask on your face and the rest of the equipment on your body. If you have only a gas mask, these gases oftentimes penetrate the skin.

No. 2, the argument that it only kills civilians is hard for me to accept. What it means is that they kill our civilians and we do not have anything with which to retaliate against their civilians. Thus, we would have no deterrent. As I say, the temptation to come down on the side of the Senator from Washington was almost irresistible.

Mr. President, we are talking about $4 billion. We are talking about a project that will cost about $1.6 billion to $2 billion to build and produce the stockpile, and we are talking about $2.4 billion to dissemble and destroy the existing supplies. The destruction of the current stockpile is the biggest expenditure. I might add, it is the most reasonable expenditure, because it will rid ourselves of these terribly toxic chemicals, some of which, as I said, are leaking and will continue to leak.

It does not look to me as if the Hart substitute is a very Draconian solution, even for the most hawklike of the hawks of the Senate. The Hart substitute says, before we embark on something like this, let us not fly right in the face of the President, who says, "Not right now," or fly right in the face of the Secretary of Defense, upon whom we must depend for our best information, who says, "Not yet."

If Harold Brown or the President, whoever he may be on March 1, or the Secretary of Defense, whoever he may be, comes back here and presents us with what looks like an option that we cannot turn down; namely, to start production of binary munitions, I intend to vote "aye."

Mr. President, all of this, in my opinion, is not an issue of who can be the strongest on defense. It is not an issue of who is a hawk and who is a dove. It is an issue of allowing the people on whom we rely to tell us what we need most to do just that. Nobody in this body can tell us with a reasonable degree of certainty and a straight face that the Soviet Union is involved right now in the production of chemical warfare munitions.

If we want to guess, we can say "Yes." But the CIA will tell us it is the toughest kind of intelligence estimate to make. It requries not satellite photography, but human intelligence and documentary sources, about which we may not be overly blessed as far as the Soviet Union's chemical munitions industry is concerned.

We do not really know whether the Soviets are in production of such weapons. We do not even know they are actually using chemical agents in Afghanistan, though there have been reports, but that is not necessarily nerve gas. It could have been tear gas. Nobody here really knows those things for sure.

But, be that as it may, we have a sufficient deterrent right now that will sustain us for the immediate future.

We are talking about a $4 billion expenditure, which it is my guess we will ultimately expend. But I think it would be shortsighted of this body to approve the beginning of that expenditure with no more information than we have right now.

I know it has been studied. I know it has been talked about. I know there are those who profess themselves to be experts on the subject in both this body and in the House. But I have been to some of these top level, sensitive briefings, and I have not heard anything to indicate that anybody knows enough about the subject yet.

The Pentagon and the Administration are in the process of doing this study. I think we ought to let them finish it before we embark on a $4 billion program.

That, simply and finally, is my position on this, Mr. President.

I yield the floor.

Mr. HART. Mr. President, first of all, I ask unanimous consent that a letter from the Secretary of Defense to the chairman of the Committee on Armed Services of the Senate, dated June 9, 1980, be printed in the RECORD, in which the Secretary of Defense, as I have already stated, recommends against inclusion of the money contained in the Jackson amendment.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, D.C., June 9, 1980.

HON. JOHN C. STENNIS,
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to provide the Department of Defense's position on two significant budget items that were mentioned during the Committee's hearings last week, but for which time did not permit adequate discussion.

The first involves the construction of a facility at Bolling Air Force Base to house DIA analytical and support operations. The current buildings, where most of the analyses are accomplished and where much of our computer and telecommunications equipment is presently located, are in such poor condition as to threatened both life and property.

Numerous alternatives have been studied and new construction is the most economical choice. The Congress provided us with $5.9M for the now completed design of a facility to be located at Bolling. The timing is critical since the lease on the building now housing the photo lab at Arlington Hall Station expires in 1982. Our authorization request is for $106.2M, but the FY 81 appropriations request is only $32.7M, with outlays for the project in FY 81 amounting to slightly less than $1M.

The second item involves the production of chemical munitions. The HASC recently proposed an amendment to the FY 81 Military Construction Authorization Act to include funds for a binary production facility. (The binary concept involves storage of two nonlethal ingredients which are combined after launch to produce the lethal agent.)

At this point we are continuing research on production techniques for binary weapons, and have included funds for that purpose in our FY 81 request. I feel the inclusion of MILCON funds for a production facility—in the same budget—would be premature; we plan to consider that question in preparing the FY 82 budget.

My staff is prepared to provide further information to assist in the Committee's review of these two important issues.

Sincerely,

HAROLD BROWN.

Mr. HART. Mr. President, I also ask unanimous consent that a letter from the Secretary of State, our former colleague, Secretary Muskie, to the distinguished majority leader of the Senate (Mr. ROBERT C. BYRD), dated September 15, 1980, be printed in the RECORD, in which the Secretary of State says:

As Harold Brown emphasized in his testimoney before the Senate Armed Services Committee on September 4, a copy of which is enclosed, the Administration is not seeking such funds in Fiscal Year 1981. A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.

All of these considerations are now part of a careful interagency examination which has already begun. This examination will be completed and a decision will be made on this issue in time for the Fiscal Year 1982 budget process. In the meantime, any such funding at this juncture would be premature.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington, D.C., September 15, 1980.

HON. ROBERT C. BYRD,
U.S. Senate.

DEAR BOB: In view of the present Congressional consideration, I am writing to apprise you of the Administration's position on whether Congress should authorize funds in the FY 81 budget to begin construction of a binary chemical munitions production facility at Pine Bluff Arsenal.

As Harold Brown emphasized in his testimony before the Senate Armed Services Committee on September 4, a copy of which is enclosed, the Administration is not seeking such funds in Fiscal Year 1981. A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.

All of these considerations are now part of a careful interagency examination which has already begun. This examination will be completed and a decision will be made on this issue in time for the Fiscal Year 1982 Budget process. In the meantime, any such funding at this juncture would be premature.

I hope this information will be helpful to you in your evaluation of the issue.

With best wishes, I am

Sincerely,

EDMUND S. MUSKIE.

Mr. HART. Mr. President, what is the record on this issue?

The Senator from Colorado has outlined, as carefully as he can on the basis of the two letters I have just had printed in the RECORD, that there are important and serious foreign policy considerations, not the least of which has to do with the negotiations on theater nuclear forces which all of us feel, one way or the other, are extremely important to the long range mutual security.

There has been no answer to that argument. There is no record whatsoever before the U.S. Senate or the Congress that the Europeans will endorse this proposal. In fact, our experience in recent years is that we are inviting European dissent, and very vigorous dissent.

There is no factual record, classified or otherwise, that I am aware of, of any kind of massive or even significant Soviet buildup of production in chemical warfare agents, and none has been cited.

There is no record before the Senate or before the Armed Services Committee that the Pine Bluff Arsenal is even the appropriate site for this facility. None. No record. We might as well pick a place out of thin air.

There is no record as to cost. The best estimates are over $150 million for this facility, and somewhere between $2 billion and $4 billion for the complete chemical arsenal, and that is pure speculation.

There is no certification on the part of the President of the United States, as required by law, that we should enter into production of this arsenal which the supporters of the Jackson amendment feel is so important.

The law requires that certification. There is none. There is totally inadequate defensive capability on the part of our own forces, our land forces, and manpower, and our equipment.

The record, as I have stated, Mr. President, is completely deficient in all these areas. What we do have on record is a statement by the highest constitutional officers of our Government that we should not do this, and that is the record.

If the Senate wishes to act in haste, it will have plenty of time to repent.

● Mr. BIDEN. Mr. President, I do not wish to address the issue of whether it is wise to overturn the Nixon administration decision of 1969 to maintain existing stockpiles of lethal chemical weapons at present levels. Nor do I wish to address the wisdom of engaging in the development of a new generation of lethal chemical munitions when a formal agreement with the Soviet Union is still being negotiated to limit its development and use. Nor do I wish to question the sagacity of three different Congresses who have refused all pressure to build the binary chemical plant at Pine Bluffs.

I do, however, wish to state that, should the United States enter into the development of a new generation of chemical warfare at this point, it would seriously and adversely affect our relations with our NATO allies. In order to have any potential effectiveness in Europe, this new generation of chemical weapons would have to be pre-positioned and stockpiled on European soil. Our allies have remained firmly opposed to this. West Germany has reiterated her opposition to the possession and storage of such weapons—a decision stated in a white paper more than 25 years ago. Most recently, Prime Minister Thatcher and her Defense Secretary, Francis Pym, emphatically ruled out any plans to develop chemical weapons.

It is my strong conviction that for the United States to make such a major military decision without the approval or even minimum consultation with our allies will produce a high and necessary level of tension between us.

Let me point out that I am not ruling out a U.S. decision at some point in the future to produce a new generation of chemical weapons. And I certainly do not want, Mr. President, to discourage a U.S. policy decision to develop much needed antichemical warfare defense. But I do wish to emphasize that a major military decision with complex and manifold implication should not be made before the appropriate consultative process is set in motion between ourselves and our West European allies.

It is my understanding, Mr. President, that the administration position is simply that the decision to go ahead with the development of binary chemical munitions is premature; ultimate production has not been ruled out. It is because of my particular concern for the future of the NATO alliance that I ask my colleagues to withhold their decision until after NATO consultations have taken place.●

● Mr. KENNEDY. Mr. President, I support the amendment offered by Senator HART to require the President to review the situation surrounding whether to build a new chemical weapons plant and to report back to Congress by March 1.

I believe it would be unwise and premature at this time to begin construction of a binary chemical munitions plant at Pine Bluff. Secretary of Defense Brown has stated that he opposes construction of the plant until an ongoing interagency study on U.S. chemical weapons policy has been completed.

Militarily, we will lose nothing by deferring our decision on the construction of the Pine Bluff facility. The current U.S. stockpile of lethal chemical munitions is sufficient for more than 100 days of warfare, and the weapons will remain lethal for at least another 20 years. Programs to improve our capabilities to protect and defend against chemical warfare will continue.

Furthermore, the United States and the Soviet Union are currently holding negotiations to prohibit the development, production, and stockpiling of any lethal chemical weapons. Progress has been made in these negotiations, and we should not rush ahead in a way that could undermine the talks.

Mr. President, I share the deep concerns of my colleagues over reports that Soviet chemical weapons have been used in Afghanistan, Laos, and Kampuchea. If these reports are confirmed, they would certainly bear directly on our final decision regarding binary chemical weapons. But until we have more evidence, and until the executive branch review is complete and sent to Congress early next year, I believe it is in our interest to delay funding for the Construction of the Pine Bluff facility.●

● Mr. PELL. Mr. President, today the Senate faces a decision on the extremely important issue of whether to proceed with the development of a binary chemical munitions production facility at the Pine Bluff Arsenal in Arkansas. The issue extends far beyond the $3.15 million to begin construction on the binary production facility, because such approval now would reverse longstanding U.S. policy on chemical weapons, without the benefit of administration views, without congressional consideration of all the interrelated issues, and without public debate.

At the present time, the administration is conducting a thorough interagency review of U.S. chemical warfare policy, including the major military, foreign policy, and arms control issues. Secretary of State Muskie has said that this review will be completed and an administration decision on the Pine Bluff facility will be made in time for congressional review of the fiscal year 1982 budget. This ill-advised and hasty attempt to preempt the administration's decision will have implications far beyond the construction of a factory to manufacture binary chemical weapons.

Mr. President, as chairman of the Foreign Relations Committee's Subcommittee on Arms Control, Oceans, International Operations, and Environment, I am very well aware of the detrimental impact that proceeding with this facility now would have on our chance to achieve beneficial arms control of chemical weapons. For the benefit of those Senators who may not be familiar with the ongoing chemical warfare negotiations with the Soviet Union, let me briefly review these issues. The United States, Soviet Union, and over 100 other nations have committed themselves in the 1925 Geneva Protocol not to be the first to use chemical weapons in war. Since 1976 the United States and the Soviet

Union have been engaged in bilateral negotiations to extend this commitment and prohibit the development, production, or stockpiling of any lethal chemical weapon.

The two sides have agreed on many issues such as what types of weapons should be banned. From the outset, however, one of our major concerns has been the development of verification procedures which would give us confidence that the Soviet Union is living up to its commitments. While there are remaining differences on specific verification measures, the Soviets have agreed to the principle of onsite inspections. This is an important breakthrough in the negotiations, which should be pursued vigorously, not abandoned in a headlong plunge toward deploying a new generation of chemical weapons.

If the Congress decides now to begin construction on the binary munitions facility at Pine Bluff, we will be signaling our intent to break the 10-year informal, unofficial ban on chemical weapons production. At the very least, the Soviet Union may decide to take the same step and protect its option for producing modern chemical weapons. Both sides will then be well on their way to a renewed chemical weapons arms race, putting effective arms control that much further from our grasp.

Mr. President, the chemical weapons negotiations have been almost stalled since the Soviet invasion of Afghanistan. As one Senator, I look forward to the day when we recognize that arms control can contribute effectively to our national security, that arms control is not an exercise in unilateral disarmament. We need to take a comprehensive, intelligent approach to our national security planning. With respect to chemical weapons, that means the Senate should not rush to a quick judgment on the Pine Bluff binary facility, before all the implications can be assessed and debated. In my view, the Senate would be well advised to await the administration's position in connection with the budget submission early next year. We will then have the opportunity to consider all the issues raised by chemical weapons and reach a much more well-informed decision.●

Mr. HART. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HART. I yield to the majority leader.

RURAL DEVELOPMENT POLICY ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House on S. 670, for not to exceed 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I would reserve only for the benefit of advising the majority leader that that item is cleared on our side and we have no objection to its consideration on the basis described by the majority leader.

Mr. STENNIS. Mr. President, reserving the right to object, I have been waiting here on what I consider an important vote, one that I should be here for. I understood the time was up, or we had agreed to a set vote. Did the Senator from West Virginia note that this would require a delay of 2 minutes?

Mr. ROBERT C. BYRD. Yes. No more than that.

Mr. STENNIS. All right. I have no objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 670) to require the Secretary of Agriculture to establish and maintain a rural development policy management process, and for other purposes.

(The amendment of the House is printed in the RECORD of September 15, 1980, beginning at page H8755.)

Mr. McGOVERN. Mr. President, I thank the distinguished majority leader, also the distinguished minority leader, for clearing this matter. It is a measure that the House acted on yesterday that is of great importance to rural America.

Mr. President, S. 670 would provide the basis for a new unified natural rural development effort. Section 603 of the Rural Development Act of 1972 directed the Secretary of Agriculture to provide leadership and coordination to our Nation's rural development efforts.

The Rural Development Policy Act of 1980 improves the 1972 act by adding a new section which further defines the Secretary of Agriculture's leadership role in coordinating our national rural development efforts.

S. 670, as amended by the House, also requires the Secretary to prepare a comprehensive rural development strategy, and to submit this strategy and annual updates to the House and Senate Agriculture Committees on January 31 of each year. Both the strategy and the updates are to include an analysis of the rural impact of the President's proposed budget recommendations, as well as any legislative proposals necessary to achieve our stated rural development goals.

In his rural development policy statement, President Carter called for the establishment of the position of Under Secretary of Agriculture for rural development. S. 670 provides for an Under Secretary of Agriculture for small community and rural development.

Title IX of the Agricultural Act of 1970 stated a national commitment to the development of a comprehensive rural policy as a means of achieving a sound balance between the interest of rural and urban America. The creation of this Undersecretary's position gives rural America a much needed voice in helping to achieve this balance.

The Rural Development Policy Act of 1980 will also increase from $10 million to $15 million the annual authorization for Farmers Home Administration rural development planning grants, and would expand the use of these grant funds to include funding of circuit riders who would assist rural areas in applying for needed Federal assistance.

S. 670 will also amend section 306(A) of the Consolidated Farm and Rural Development Act to authorize an appropriation of up to $1 million annually to the Farmers Home Administration for the purpose of establishing a system for the dissemination of information and technical assistance on federally sponsored or funded programs available for rural areas.

The House amendments to S. 670 also extend the authorization for our rural development and small farm research and extension programs through fiscal year 1981. The Senate had earlier approved the extension of these programs when it passed S. 892.

The House amendments to S. 670 do not alter the purpose or intent of the bill as passed by the Senate. The amendment clarifies and makes technical changes that improve the bill. The House is to be commended for its realization of the need for this bill.

Mr. President, I offer these remarks by way of explanation to my colleagues concerning the authorization of the WEB Water Development Association domestic water pipeline contained in the House amendment to S. 670, the Rural Development Policy Act. Admittedly, this provision affords South Dakota special consideration. Yet, I contend, special circumstances warrant this consideration.

Many of my colleagues, especially those serving on the Energy and Natural Resources Committee, are aware of the problems South Dakota has encountered within the last 4 years concerning the course of water development.

In 1944, the U.S. Government and the States of the Missouri River Basin entered into a covenant concerning the development of the region's surface water resources. The development plan known as the Pick-Sloan Missouri Riven Basin program provided for the construction of dams along the mainstream of the Missouri for the multiple purposes of flood control, hydroelectric power generation, navigation, and agricultural water supplies. Among those States, North and South Dakota made a singular sacrifice in agreeing to give up nearly 1 million acres of our richest farmland along the river bottom to permanent inundation so that the other benefits would be enjoyed by the rest of the region and the Nation as well.

Although North and South Dakota together consume less than a third of the electricity generated by the dams in our States, and although we do not benefit from the navigation system in a direct sense, and although the question of flood control has now become moot due to the permanent flooding of our best land, we agreed to this basin development plan. The reason for our agreement was the premise—indeed the commitment—by the U.S. Government to assist us in the development of that water resource for agricultural use or irrigation.

A large portion of the U.S. commitment to North Dakota will have been fulfilled once the Garrison diversion unit becomes operational. The "sister" project in South Dakota to have fulfilled a large part of the bargain was the initial stage of the Oahe unit. The consideration of the WEB pipeline at this time is bound up in that commitment to assist us in development of the Oahe unit.

As my colleagues know, the Oahe unit was one of the very few projects that this Congress decided could remain upon the President's "hit list" of those projects that he had decided should not proceed further. That project being stalled not only places the United States in the position of reneging upon the covenant South Dakotans take very seriously because of the need for irrigation development in our semiarid State; it also dashes the hopes of 100,000 South Dakotans—one-sixth of the population of my State—for water development for domestic consumption.

While South Dakota can accept the deferral of irrigation development for the time being—indeed part of the problem concerning how to proceed with that course rests with us—we cannot accept and I cannot accept leaving the people of my State with no realistic prospect of improving their water supply and water quality problems. It is to this issue which the authorization of the WEB pipeline is directed.

The proposed WEB pipeline would serve many of the people who had hoped to enjoy the benefits of the Oahe unit's water supply. It has the potential of serving 30,000 rural residents on farms and in small rural communities in the northeast central portion of my State. In fact, even a North Dakota rural water system will eventually enjoy the benefits of its development.

Mr. President, I ask my colleagues to study the language authorizing this project very carefully. They will note that it does not permanently authorize the WEB project, unless it becomes at least a partial trade for the authorization of the Oahe unit. What we are in fact doing by approval of this language is providing the people of South Dakota living within the WEB pipeline service area $1.9 million to prepare the final detailed plans for the project prior to its construction. Actual construction could not begin for at least another year.

Construction cannot begin before Congress has acted to actually deauthorize that project. Construction cannot begin before my colleagues will have another opportunity to review the details of what is proposed. I believe the national interest in this project is sufficiently protected. We are not commiting the United States to a project that flies in the face of the national water policies that this administration has attempted to enact. In fact, we have the support of the administration in acting on this matter.

By agreement between myself, the other members of the South Dakota congressional delegation (Mr. PRESSLER, Mr. DASCHLE, and Mr. ABDNOR), and the Secretary of the Interior (Mr. Andrus), it was made clear that the administration cannot support the permanent authorization of the WEB project in the absence of the deauthorization of the Oahe unit. But by that agreement, we have been provided until September 30, 1981, the time and opportunity for the development of a comprehensive water development plan that will serve the needs of South Dakota "in trade" for the Oahe unit. My colleagues will have the opportunity to review that plan and decide whether or not we can proceed with it. The administration, the South Dakota delegation and the State of South Dakota intend to work with the appropriate committees of Congress in that regard.

I ask unanimous consent that there be printed in the RECORD an analysis of the major differences between S. 670 as passed by the Senate and the House amendment thereto.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY ANALYSIS OF MAJOR DIFFERENCES BETWEEN S. 670, AS PASSED BY THE SENATE, AND THE HOUSE AMENDMENT THERETO

1. Secretary of Agriculture's role in leadership and coordination or rural development policy.

(a) The Senate bill requires the Secretary of Agriculture to establish a "rural development policy management process" to formulate both broad, long-range development plans and short-range strategies concerning national rural development policy. The Secretary is to develop these goals and strategies in conjunction with other Federal agencies, multi-State, State, and sub-State entities involved in rural development policy.

The House amendment substitutes "rural development strategy" for "rural development policy management process" and makes technical changes in the matters to be covered in that effort, providing more specificity.

(b) The House amendment requires the Secretary to hold public hearings to aid in the development of any rural development strategy.

The Senate bill contains no comparable provision.

(c) The Senate bill authorizes an appropriation of $1.5 million for development of the "rural development policy management process" and accompanying reports.

The House amendment contains no comparable provisions.

2. Rural Development Reports.

Both the Senate bill and the House amendment repeal existing legislation requiring five separate annual reports relating to rural development.

(a) The Senate bill institutes a major five-year reporting requirement with biennial progress reports.

The House amendment requires publication of a "rural development strategy" beginning for the fiscal year ending September 30, 1982 and updated for each fiscal year thereafter.

(b) The House amendment requires that the "rural development strategy" and each annual update of the strategy contain an analysis of the President's budget recommendations for the fiscal year following the transmittal of the strategy or update and of all the available budget projections of the President for subsequent fiscal years, and projections regarding the budget that are relevant or essential to the rural development policy and strategy developed under the bill.

The Senate bill contains no comparable provision.

(c) The House amendment requires the Secretary to ensure effective implementation of the "rural development strategy" through a systematic effort to (1) facilitate sharing of common location of field offices administering similar or complementary programs; (2) where possible, delivery systems for rural programs; and (3) facilitate and expedite joint funding of rural projects through Federal programs.

The Senate bill contains no comparable provision.

3. Undersecretary of Agriculture for Small Community and Rural Development.

The House amendment authorizes the position of Undersecretary of Agriculture for Small Community and Rural Development, to be appointed by the President, and approved by the Senate.

The Senate bill contains no comparable provision.

4. Title V of the Rural Development Act of 1972.

(a) The House amendment provides for extension of provisions in title V of the Rural Development Act of 1972 which authorize appropriations annually of $20 million each for rural development research and extension through September 30, 1981.

The Senate bill contains no comparable provision. (Note: The Senate earlier passed S. 892 which also authorizes extension of the authorization for rural development research and extension through September 30, 1981.)

(b) The House amendment requires that in States which contain both 1862 and 1890 land grant universities (including Tuskegee Institute), the annual plan and budget must be jointly developed by mutual agreement of the chief administrative officers of all such institutions and universities.

The Senate bill contains no comparable provision.

(c) The House amendment adds Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the American Virgin Islands to the definition of the term "State", entitling them to a share of the of the formula funds distributed under title V.

5. Rural Development Grants and Technical Assistance and Information Centers.

Both the Senate bill and the House amendment increase from $10 to $15 million the annual authorization for Farmers Home Administration rural development grants. Both the Senate bill and the House amendment expand the purposes for which the grants can be used.

(a) The Senate bill requires the Secretary of Agriculture to establish no less than five rural technical information and assistance centers. Funding for the centers would be provided from the $15 million authorized for rural development grants.

The House amendment requires the Secretary to establish such centers (no number specified), and authorizes a separate annual authorization of $1 million for this purpose.

6. WEB Rural Water Development Project.

The House amendment provides an authorization of appropriations to the Secretary of the Interior for the construction of the WEB Rural Water Development Project in South Dakota, subject to desuthorization of the Oahe Project in South Dakota.

The Senate bill contains no comparable provision.

Mr. McGOVERN. Mr. President, the Rural Development Policy Act of 1980 is designed to improve the planning and coordination of our rural development initiatives, and will inject a new vitality into our rural development programs.

●Mr. LEAHY. Mr. President, as chairman of the Subcommittee on Rural Development of the Agriculture, Nutrition, and Forestry Committee, I am particularly pleased to see the Senate taking

final action on S. 670, the Rural Development Policy Act of 1980.

Early in the 96th Congress I introduced S. 670, the Rural Policy and Coordination Act, a measure to improve the delivery of a broad range of Federal programs to rural America. This bill was subsequently passed by the Senate on June 14, 1979. Though not identical to that earlier legislation, I support S. 670 as amended and passed by the House on September 15, 1980. S. 670, as amended by the House, also includes the major provisions of S. 892, which was passed by the Senate on June 14, 1979.

S. 670 is designed to build upon and refine existing Federal efforts in rural development. It will also further integrate rural development planning with multistate, State, substate, and local rural development strategies.

In title IX of the Agricultural Act of 1970, and again in the Rural Development Act of 1972, Congress recognized the need for a fully coordinated rural development policy. Unfortunately, this coordination of rural development programs has not been achieved. I believe this lack of coordination has resulted in wasteful duplication of efforts, conflicts among Federal programs, and a less than effective delivery of assistance and services to rural areas.

As a Senator from the most rural State in the Union, I was pleased to author and introduce S. 670 in the Senate. Too often, the needs of rural residents are unseen and unappreciated in our urban based society.

S. 670, and the House amendments thereto, seek to remedy some of these problems. In effect, Congress is reaffirming its commitment to rural America by giving the Secretary of Agriculture expanded authority to develop a rural development strategy involving the Federal Government, States, and local governments in formulating a flexible rural policy encompassing differing local needs and conditions, while also addressing problems common to all areas and reflecting national objectives.

For the first time we are establishing an Under Secretary of Agriculture for Small Community and Rural Development. This position was an essential element in the administration's small community and rural development policy announced last December, and I am pleased to note we are able to provide for the Under Secretary in this bill.

In addition to providing for a new Under Secretary, S. 670 would:

First, charge the Secretary of Agriculture with coordinating a national rural development strategy, using the resources of the Federal, State, and local governments.

Second, require the Secretary to establish a process that identifies the needs of rural areas on a continuing basis and to review all Federal programs to determine whether rural areas are receiving a fair and equitable share of the benefits of such programs in comparison to urban areas. This includes the use of rural development experts, temporary advisory committees, working groups, public hearings, and other Federal agency resources. The Secretary is to prepare a comprehensive rural development strategy to maximize the effectiveness of rural programs and increase the coordination of such programs to achieve their effective combination with Federal, State, and local resources.

Third, provide for the extension of the authorization of appropriations for rural development research and extension through September 30, 1981, at the existing annual authorization level of $20 million, and small farm research and extension through September 30, 1981, at the existing annual authorization level of $20 million.

Fourth, require that in States which contain both 1862 and 1890 land grant institutions or universities (including Tuskegee Institute), the annual plan and budget must be jointly developed by mutual agreement of the chief administrative officers of all such institutions or universities.

Fifth, add Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands of the United States to the definition of the term "State", entitling them to a share of the formula funds distributed pursuant to title V of the Act.

Sixth, eliminate the current requirement of five annual reports related to rural development and replace them with an annual strategy for rural development which spells out how that strategy will be backed in the President's budget requests.

Seventh, increase from $10 million to $15 million the annual authorization for Farmers Home Administration rural development planning grants. Grant funds could be used to pay "circuit riders" to assist rural areas in applying for needed Federal funds. Eligible institutions for these grants include Tuskegee Institute, State, substate, and regional planning bodies, and other persons concerned with rural development. It would also authorize a separate expenditure of not more than $1 million annually to the Farmers Home Administration to establish a system for the dissemination of information and technical assistance on federally sponsored or funded programs to rural areas.

Eighth, authorize certain expenditures by the Secretary of the Interior, subject to certain conditions and restrictions. For the WEB rural water development project in South Dakota, I would simply add that this particular proposal has the wholehearted support of both the administration and the South Dakota congressional delegation.

The rural development strategy mandated by S. 670 will be for the fiscal year beginning October 1, 1981, and ending September 30, 1982, with annual updates for each fiscal year thereafter. Public hearings are to be used for local input in the preparation of the strategy. The annual updates will be transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry not later than January 31 of each year for the following years.

The rural development strategy and such annual updates are to contain an analysis of the President's budget recommendations for the fiscal year following each transmittal and all available Presidential budget projections for subsequent fiscal years, as well as any other relevant budget projections. By making the rural development effort a more integral part of the budget process and providing the information at a time when it can assist Congress in its budget process, we will have a better idea of the direction that the effort is going and can make any needed modifications in a timely manner.

Each annual update will include a detailed statement of findings and conclusions by the Secretary regarding the implementation of the strategy during the preceding fiscal year, including any revisions to the strategy, recommended legislation, and evaluation of the information system required under the Rural Development Act.

A bipartisan effort was undertaken to design S. 670, as amended by the House. As a result of this process, S. 670 enjoys the support of the administration, the National Rural Electric Cooperative Association, National Grange, National Farmers Union, Congressional Rural Caucus, National Association of Development Organizations, Rural Coalition, National Rural Water Association, Rural Government Coalition, National Governors Association, National Congress for Community and Economic Development, Northeast-Midwest Congressional Coalition, National Association of Towns and Townships, National Association of Regional Councils, National Conference of State Legislatures, New England Regional Commission, Rural America, Inc., National Rural Center, National Association of Counties, Rural American Women, Inc., National League of Cities, and a host of other organizations concerned about improving the quality of life for over 60 million rural Americans. And while nobody got everything they wanted in the bill, including myself, we all realized that in the interest of the rural people we serve it would be necessary to compromise if this bill were to be enacted in this Congress. To wit, Mr. President, we are here today to get final Senate approval on these measures, a legislative compromise I fully endorse.

Mr. President, this is a carefully crafted legislative package uniquely honed to the basic needs of America's small towns and communities. It will assure that realistic goals will be set for rural America, rather than the glorious and hollow promises of the past. Redtape will be cut, Government efficiency will be increased, and all at a bare minimum of cost.

With Senate approval of S. 670, we will have a law on the books that will eliminate many of the impediments that have stifled small community participation in Federal programs in the past.

Mr. President, S. 670, as amended by the House, is good legislation, and I urge that the Senate concur in the House amendments.●

Mr. McGOVERN. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1981

The Senate continued with the consideration of S. 3059.

The PRESIDING OFFICER. The question occurs on the amendment of the Senator from Colorado.

Who yields time?

Mr. JACKSON. Mr. President, is the Senator from Colorado prepared to yield back the remainder of his time?

Mr. HART. Unless there are other sponsors of the amendment offered by the Senator from Colorado who wish to speak, I am prepared to yield back the remainder of my time.

Mr. JACKSON. I yield back the remainder of my time.

Mr. HART. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN), would vote "nay."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD), is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 46, nays 47, as follows:

[Rollcall Vote No. 404 Leg.]

YEAS—46

Baucus	Eagleton	Nelson
Bayh	Ford	Packwood
Biden	Gravel	Pell
Boren	Hart	Percy
Bradley	Hatfield	Proxmire
Bumpers	Heinz	Pryor
Burdick	Huddleston	Randolph
Byrd, Robert C.	Kassebaum	Riegle
Chafee	Kennedy	Sarbanes
Church	Leahy	Sasser
Cochran	Levin	Stevenson
Cranston	Mathias	Tsongas
Culver	Matsunaga	Weicker
Danforth	McGovern	Williams
DeConcini	Mitchell	
Durenberger	Moynihan	

NAYS—47

Armstrong	Hatch	Nunn
Baker	Hayakawa	Pressler
Bellmon	Heflin	Ribicoff
Bentsen	Helms	Roth
Boschwitz	Humphrey	Schmitt
Byrd, Harry F., Jr.	Inouye	Schweiker
Cannon	Jackson	Simpson
Chiles	Javits	Stennis
Cohen	Jepsen	Stevens
Dole	Johnston	Stone
Domenici	Laxalt	Talmadge
Durkin	Long	Thurmond
Exon	Lugar	Wallop
Garn	Magnuson	Warner
Glenn	McClure	Young
	Melcher	Zorinsky

NOT VOTING—7

Goldwater	Morgan	Tower
Hollings	Stafford	
Metzenbaum	Stewart	

So Mr. HART's amendment (UP No. 1583) was rejected.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. WARNER. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

Mr. HART. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the amendment was rejected.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any Senators in the Chamber wishing to vote?

The result was announced—yeas 47, nays 43, as follows:

[Rollcall Vote No. 405 Leg.]

YEAS—47

Armstrong	Hatch	Melcher
Baker	Hayakawa	Moynihan
Bellmon	Heflin	Nunn
Bentsen	Heinz	Pressler
Boschwitz	Helms	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Roth
Cannon	Inouye	Schmitt
Chiles	Jackson	Schweiker
Cohen	Javits	Simpson
Dole	Jepsen	Stevens
Domenici	Johnston	Stone
Durkin	Laxalt	Talmadge
Exon	Long	Thurmond
Garn	Lugar	Wallop
Glenn	Magnuson	Warner
	McClure	Zorinsky

NAYS—43

Baucus	Durenberger	Packwood
Bayh	Eagleton	Pell
Biden	Ford	Percy
Boren	Gravel	Proxmire
Bradley	Hart	Pryor
Bumpers	Hatfield	Randolph
Burdick	Huddleston	Riegle
Byrd, Robert C.	Kassebaum	Sarbanes
Chafee	Kennedy	Sasser
Church	Leahy	Stevenson
Cochran	Levin	Tsongas
Cranston	Mathias	Weicker
Culver	Matsunaga	Williams
Danforth	Mitchell	
DeConcini	Nelson	

NOT VOTING—10

Goldwater	Morgan	Tower
Hollings	Stafford	Young
McGovern	Stennis	
Metzenbaum	Stewart	

So the motion to lay on the table the motion to reconsider was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Washington (Mr. JACKSON).

Mr. HART. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. TSONGAS). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 52, nays 38, as follows:

[Rollcall Vote No. 406 Leg.]

YEAS—52

Armstrong	Glenn	Moynihan
Baker	Hatch	Nunn
Bellmon	Hayakawa	Pressler
Bentsen	Heflin	Randolph
Boschwitz	Heinz	Ribicoff
Byrd, Harry F., Jr.	Helms	Roth
Byrd, Robert C.	Humphrey	Schmitt
Cannon	Inouye	Schweiker
Chiles	Jackson	Simpson
Cohen	Javits	Stevens
DeConcini	Jepsen	Stone
Dole	Johnston	Talmadge
Domenici	Laxalt	Thurmond
Durkin	Long	Wallop
Exon	Lugar	Warner
Ford	Magnuson	Young
Garn	McClure	Zorinsky
	Melcher	

NAYS—38

Baucus	Eagleton	Packwood
Bayh	Gravel	Pell
Boren	Hart	Percy
Bradley	Hatfield	Proxmire
Bumpers	Huddleston	Pryor
Burdick	Kassebaum	Riegle
Chafee	Kennedy	Sarbanes
Church	Leahy	Sasser
Cochran	Levin	Stevenson
Cranston	Mathias	Tsongas
Culver	Matsunaga	Weicker
Danforth	Mitchell	Williams
Durenberger	Nelson	

NOT VOTING—10

Biden	Metzenbaum	Stewart
Goldwater	Morgan	Tower
Hollings	Stafford	
McGovern	Stennis	

So Mr. JACKSON's amendment (No. 2321) was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JACKSON. Mr. President, I ask unanimous consent that the distinguished Senator from Virginia (Mr. WARNER) be added as a cosponsor with me on the amendment just adopted.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 1584

(Purpose: Construct small arms firing range at Malmstrom Air Force Base)

Mr. MELCHER. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 1584.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, between lines 5 and 6, insert: "Malmstrom Air Force Base, Montana, $750,000.".

On page 43, line 19, strike: "$525,033,000" and insert in lieu thereof: "$525,783,000".

On page 43, line 21, strike: "$643,790,000" and insert in lieu thereof: "$644,540,000".

The PRESIDING OFFICER. The Chair will state that the amendment would amend the bill in an area already amended and would require unanimous consent it be taken up.

Mr. MELCHER. Then I ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MELCHER. Mr. President, this is a very easily understood amendment.

Mr. President, the amendment I am offering to S. 3059 adds $750,000 to the fiscal year 1981 military construction authorization for construction of a small arms firing range at Malmstrom Air Force Base, Mont. This firing range is urgently needed to maintain proficiency of base personnel responsible for missile silo security in the use of the M-16 rifle, the .38 caliber pistol, the shotgun, the M-60 machinegun and the 40 mm grenade launchers.

This is not a new project. It is already in the Strategic Air Command approved military construction program for fiscal year 1983. The purpose of this amendment is to accelerate the actual construction date to meet the urgent security needs at Malmstrom and save tax dollars.

The project is for $750,000 to construct a 2,000-square-foot building, four classrooms, office space for nine instructors, paving, utilities, construction of M-60 machinegun and shotgun ranges, and modification of existing M-16 and .38 caliber pistol ranges. Separate arrangements would be made for grenade launchers.

More than 6,000 people a year need to qualify on some or all of the weapons I have previously mentioned.

The following list shows the number of people who must receive training in arms use:

1. Annual 341st Strategic Missile Wing & 24th NORAD training requirements

M-16:	
Security police group (SPC)	2,085
Maintenance (MB)	144
Warskill—Wartime Augmentee	50
Prime BEEF (mobility force)	210
Prime RIBS (mobility force)	30
Communications squadron	54
Permanent change of station	300
Addition for failure rate of 1.5 percent	43
Total	2,916
.38 Pistol:	
SPG	630
MB	239
Operations (Do)	303
Warskill (wartime augmentee)	50
Prime Beef (mobility force)	25
Helicopter crews	15
Addition for failure rate of 1.5 percent	13
Total	1,272
Shotgun:	
SPG	12
MB	436
Addition for 1.5 percent failure rate	4
Total	452
M-60 Machine Gun:	
SPC (450 twice/year)	900
40 mm grenade launcher (450 twice/year)	900
Total annual 341st SMW & NORAD range training requirement	6,640

2. Annual Montana Air National Guard training requirements (MANG provides its own instructors)

M-16:	
Security police (SP)	132
SP augmentees & mobility force	85
Total	217
.38 Caliber Pistol:	
SP	88
SP augmentees and aircrews	55
Total	143
Total annual MANG range training requirements	360

This is not just a routine activity. Most of the personnel receiving training on these weapons are responsible for the security of missile silos and command centers or other high security areas. They must protect these important military installations during inspection, maintenance, and at times of emergency. Under current conditions the wing commander must waive small arms proficiency requirements for an average of 600 security personnel each year. These waivers are required for up to 3-5 months in some cases because of the lack of a year round small arms training facility. I have no doubt that these security personnel are well trained and competent; however, it makes no sense to me that they should be deprived of training in this critical skill. This flies directly in the face of Congress' mandate that we upgrade the quality of training of our military personnel.

Of equal importance is the waste of tax dollars that will result from delaying this project.

Currently, training is conducted at a range in Helena, Mont., almost 100 miles from Malmstrom. The expense involved in holding these training sessions in Helena rather than at Malmstrom, amounts to $10,000 per session for transportation and approximately $4,000 per session for per diem costs. These unnecessary costs amount to $28,000 per year. Further, it takes three times as long for personnel to qualify at Helena than it would if there was an all-weather range at Malmstrom, resulting in the waste of 800 man-days each year. Finally, the $750,000 cost estimate for the firing range is in 1981 dollars; if it is delayed another 2 or 3 years, we know well from past experience that the cost will escalate and the taxpayer will be the loser.

These weapons training requirements are vital to Malmstrom Air Force Base. Security is a major aspect of the maintenance of a missile complex. The task of maintaining proficiency in weapons use becomes increasingly difficult with inadequate facilities. We have the opportunity to take a definite step toward upgrading the ability of the 341st Strategic Missile Wing to fulfill its mission.

I hope that the managers of the bill will see fit to accept my amendment.

Mr. HAYAKAWA. Mr. President, I am greatly impressed with the proposal made by the distinguished Senator from Montana and I offer support. I believe it is, as he argues, a saving of money in the long run, although it costs some to start with.

I believe the Senator makes a very cogent argument on that subject. I congratulate the Senator from Montana.

Mr. MELCHER. I thank my friend from California.

Mr. WARNER. Mr. President, I ask my distinguished colleague (Mr. MELCHER) with respect to how he reached an evaluation of $750,000, and whether or not there is any latitude within which the conference committee may address this item?

Mr. MELCHER. This is the Air Force estimate. It is for $750,000 to construct a 2,000-square-foot building, four classrooms, office space for nine instructors, paving, utilities, construction of M-60 machinegun and shotgun ranges, and modification of existing M-16 and .38 caliber pistol ranges, which are already there.

This has already been approved for fiscal year 1983. I bring it up now because I have been informed by the Air Force they would like to have it because it would save some money, not only in what I have listed as transportation costs, per diem costs, and what they say is 800 man-days waste per year.

But they are satisfied they have to have it. Construction costs will not be cheaper 2 years down the road. They think it will be cheaper in this fiscal year's budget.

Mr. WARNER. Mr. President, we are prepared to accept it. I inform my colleague that during the course of the conference I, personally, will examine the costing of this and reserve the right, within a margin of latitude, to adjust the figure.

Mr. MELCHER. I appreciate that very much.

Mr. HART. Mr. President, we appreciate the Senator from Montana bringing this issue to our attention. As I am sure he and our other colleagues know, each of us in our States has very worthy projects, all of which, or many of which, should be built, many of which will be built, almost all of which could be built more inexpensively in the short term than in the long term.

That is an important argument, but, certainly, not a persuasive one. Everything we build in the future will cost more than if we build it this year.

The Senator from Colorado has some difficulty with the amount of this item. We try to accommodate our colleagues if we can and hold the cost of this bill down.

We brought it in some $65 million or $70 million below the administration request. We have had to be somewhat stern with the services and our colleagues in the sense of resisting very worthwhile proposals and projects, including those that the services wanted.

We added just over $3 million to the cost of the bill by virtue of the Jackson amendment and that, of course, makes it more difficult.

I think in keeping with the spirit of what we tried to do on some of the other amendments that do not appear in the House bill, the majority can accept this with the understanding that we will want to do a very thorough examination of the cost of this facility and see whether that might be reduced.

Mr. MELCHER. I thank my friend from Colorado.

Mr. BAUCUS. Mr. President, I rise in support of the amendment offered by my distinguished senior colleague from Montana, authorizing the necessary funds for a small arms firing range at Malmstrom Air Force Base.

In my view, the need for a small arms range modification project at Malmstrom is clear and unquestionable.

Malmstrom Air Force Base is the home of the 341st Strategic Missile Wing, one of six operational Minuteman wings within the Strategic Air Command. In peacetime, Malmstrom maintains a highly reliable force of Minuteman missiles as a powerful deterrent to nuclear attack.

Clearly, Malmstrom Air Force Base constitutes an absolutely essential aspect of our overall national defense posture.

Yet, at present, security police and other personnel at Malmstrom Air Force Base must travel to other firing ranges in the State in order to obtain the necessary practice. This travel is clearly not a practical or efficient use of man-hours, gasoline or effort.

By authorizing this small amount of money for the small arms firing range, we can correct the situation, and help to streamline all the operations at Malmstrom Air Force Base, so that it can continue to play a critical role in defending our national security in the most efficient and effective manner possible.

Mr. MELCHER. Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Montana.

The amendment (UP No. 1584) was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1585

Mrs. KASSEBAUM. Mr. President, I send two amendments to the desk for myself and Senator DOLE, and ask unanimous consent they be considered en bloc.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mrs. KASSEBAUM), on behalf of herself and Mr. DOLE, proposes unprinted amendment numbered 1585:

On page 3, line 12, strike out $9,900,000 and insert in lieu thereof $11,150,000.

On page 43, line 11, strike out $606,560,000 and insert in lieu thereof $607,810,000.

On page 43, line 13, strike out $918,830,000 and insert in lieu thereof $920,080,000.

On page 3, line 12, strike out $9,900,000 and insert in lieu thereof $16,400,000.

On page 43, line 11, strike out $606,560,000 and insert in lieu thereof $613,060,000.

On page 43, line 13, strike out $918,830,000 and insert in lieu thereof $925,330,000.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. The Chair will state that the amendments would appear to be contradictory in terms of the figures and perhaps the Chair could be advised as to which of the two could be taken.

Mrs. KASSEBAUM. I am addressing them en bloc, Mr. President, and will embrace both of them in my comments on the amendments.

The PRESIDING OFFICER. Apparently, the amendments at the desk do not refer to the same figure in each amendment. So if they were to be passed en bloc, the question would arise as to which figure would predominate.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that my amendments be in order as presented.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Mr. President, the amendments I have sent to the desk are examples of worthy projects for our State.

The first amendment would authorize $1,250,000 for alteration and modernization of the dental clinic at Fort Leavenworth. Currently, Fort Leavenworth has 24 permanent dental treatment rooms. Twelve of these are inadequate according to the Department of the Army. The Department of Defense has requested $1,250,000 to replace these 12 inadequate treatment rooms with 8 new facilities. Last year the Department requested funding for 12 new treatment rooms, 4 of which were justified on the basis of dependent care. The Senate Armed Services Committee rejected the Department's request because it felt the dependent care facilities were not justified. This year the Department did not request 12 treatment rooms. They only requested 8 additional rooms deleting from their request the 4 dependent care treatment rooms objected to by the Senate. I feel the Department of the Army has been responsive to the concerns of the Senate and that we should follow the lead of the House Armed Services Committee and the House Appropriations Committee by including funding for these 8 new treatment rooms.

The second amendment would authorize $6,500,000 for an administration building renovation at Fort Leavenworth. The building scheduled for renovation was built in 1905 and was used as a hospital until 1961. After the hospital facilities were moved, the building was used for administrative offices. However, much of the building is unusable as office space without this renovation. Plans are far enough along that the Department of Defense requested funding for this project in its original budget request. Also, the House has authorized funding for this project in its military construction authorization bill. The plans for the building are to create 300 administrative offices and some small conference rooms. Some argue that it would be less expensive to build a new building. However, this is a building located in the historical district of Fort Leavenworth and the renovation plans carry out the mandate of Executive Order 11593, Protection and Enhancement of the Cultural Environment, which requires Federal agencies to initiate measures and procedures to provide for the maintenance through preservation, rehabilitation, or restoration, of federally owned and registered sites.

Mr. President, I hope these two amendments will be accepted.

● Mr. DOLE. Mr. President, I am pleased to join my distinguished colleague from Kansas, Senator KASSEBAUM, in offering the following two amendments.

DENTAL CLINIC

Very simply, Mr. President, the first amendment will authorize $1,250,000 for much needed improvements of the dental clinic at Fort Leavenworth, Kans. This request, which is identical to that submitted by the Department of Defense, will be used to replace 12 inadequate dental treatment rooms with only 8 new rooms.

Last year, the Department of Defense requested funding for 12 new treatment rooms, 4 of which would accommodate dependent dental care. The committee rejected this request because it felt these dependent facilities were not justified. This year the request reflects the wishes of the committee.

I join Senator KASSEBAUM in urging the Senate to follow the House in includ-

ing funding for this much needed improvement in Fort Leavenworth's dental care facilities.

ADMINISTRATION BUILDING UPGRADE

Mr. President, the second amendment will authorize $6,500,000 for an administration building renovation at Fort Leavenworth, Kans.

Very simply, Mr. President, this amendment will help to renovate and create approximately 300 administrative offices and some conference rooms.

Some concern has been expressed that the cost of renovation may exceed the cost of constructing a new building. While this may be true, I would note that this building is located in the historical district of Fort Leavenworth and the renovation plans carry out the mandate of Executive Order 11593, protection and enhancement of the cultural environment, which requires Federal agencies to initiate measures and procedures to provide for the maintenance through preservation, rehabilitation, or restoration, of federally owned and registered sites.

Mr. President, although these two amendments will be withdrawn, it is my understanding that the chairman will support the House language when this measure goes to conference. Although I would have preferred acceptance of these amendments by the committee or a rollcall vote, I am pleased that the chairman will support the House position in conference.●

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, I compliment the Senator from Kansas for raising these issues.

These are important considerations with respect to the facility at Fort Leavenworth and to the State of Kansas, and I know how strongly she feels and her constituents feel about both items.

These items have been brought to the attention of the committee in the past. We have undertaken to consider them over a period of time, and it is entirely appropriate that they be brought before the attention of the Senate and our committee at this time.

The Senator from Kansas is aware that, unlike other amendments we have accepted today, these items are in the House bill and therefore will be in conference. I can assure the distinguished Senator from Kansas that we will give them every consideration in the conference, and they will receive thorough, thoughtful, and serious attention.

However, given budgetary considerations and other actions taken by the Senate today, it is the strong desire and preference of the floor manager on the minority side that we do not pursue this to a vote, or I am afraid the majority would have to oppose it. I assure the distinguished Senator that we will give both matters every consideration in conference.

Mr. WARNER. Mr. President, I join the Senator from Colorado in stating to the Senator from Kansas that these amendments will receive very careful consideration during the course of the conference.

Mrs. KASSEBAUM. Mr. President, I am very appreciative of the support of the Senator from Colorado and the Senator from Virginia. Under their capable support and guidance in the conference, I feel that the matter will rest in good hands, and I withdraw the amendments I have submitted.

Mr. WARNER. We thank the Senator from Kansas for her willingness to withdraw the amendments at this time.

The PRESIDING OFFICER. Without objection, the amendments are withdrawn.

THE NEED TO MAINTAIN OUR MILITARY SUPPORT SYSTEM

Mr. CRANSTON. Mr. President, I rise in support of S. 3059, the military construction authorization bill for fiscal year 1981. To have an effective defense, it is essential that the facilities which support our defense establishment be properly maintained and modernized. Thus, I would like to take the opportunity to underscore my interest in several projects contained in the military construction legislation which are important to our national security and which also affect the State of California.

First, I would like to commend Senator HART, the distinguished chairman of the Senate Armed Services Subcommittee on Military Construction and Stockpiles, for the comprehensive and careful work that he and his subcommittee have done on this bill. I would also like to thank the chairman of the Armed Services Committee, Senator STENNIS, for his assistance. I appreciate having the benefit of his invaluable expertise in this area.

Mr. President, the increased demands recently made on our naval fleet and aircraft because of the tensions in the Persion Gulf underline the need to keep this equipment in a high state of readiness. We must also keep our shipyards in good condition. A major portion of the naval shipbuilding, refit, overhaul, and repair work of the U.S. naval fleet and repair of Navy aircraft is done by naval shipyards owned by the U.S. Government. In the past, I have spoken at length about the importance of our naval shipyards. Today, I would like to restate my concern that we stick to a prudent schedule for maintaining and upgrading our shipyards so that they can service adequately the Navy ships and aircraft.

Funds are contained in the military construction bill for needed improvements in our shipyards, including those in California. There is some disagreement, however, between the House and Senate versions of the military construction legislation for funding for the Mare Island Naval Shipyard in Vallejo, Calif. In addition to the lead casting facility, for which the Senate Armed Services Committee approved funds, the House has funded three other necessary projects that the Navy has included as part of its maintenance plan for the Mare Island Shipyard.

Of particular concern is the project to dredge the entrance channel at Mare Island so that it will be possible for the new SSN 688 Class submarines to navigate safely. The first boat of this class is tentatively scheduled for work at Mare Island in mid-1981. But first, the Mare Island channel must be dredged from 32 to 36 feet and Pinole Shoal from 35 to 36 feet. Any delay in this dredging will cause serious problems in completing the scheduled work on the SSN-688 submarines.

Other essential projects at Mare Island, which the House funded, are replacement of the drydock's No. 2 caisson and alterations to a complex of service group buildings. The present caisson has reached the point where it no longer makes sense to continue to repair it. As its structural strength can no longer be guaranteed, it is time to replace this caisson. The alterations to the service group buildings are part of the continuous maintenance at Mare Island.

Mr. President, all of these items are essential to keeping the Mare Island Shipyard in proper condition. It is imprudent to postpone these projects because delay will only serve to create a greater backlog of projects, force crash programs later on that are inefficient and more expensive, and hinder planned improvements to our naval fleet. Thus, I hope that the Senate will carefully consider the position of the House on this matter.

With respect to a related program, the Senate Armed Services Committee has included funds at the Alameda Naval Air Station (NAS) for upgrading the pier, for aircraft support facilities, and for improvements to heating, ventilation and air-conditioning. Like our shipyards, it is critical that we keep our air stations in good shape so they can provide the services that our fleets require. The House deferred funding for these facilities at Alameda NAS on the grounds that the Port of Oakland has not determined whether to build a World Trade Center in the area. Regardless of the pending decision on the Trade Center, there is no question about the continuing need for the Naval Air Station at Alameda and, thus, to maintain it properly. I urge that the Senate insist on its position of including funds for the Alameda Naval Air Station.

Turning to a different issue, I am concerned about the problems that residents who live near Norton Air Force Base are experiencing because of Air Force plans to acquire land for an expanded clear zone at Norton AFB. In 1976, the Air Force determined that it should increase the Air Installation Compatibility Zone (AICUZ) at Norton. (The ACIUZ provides a safety area at the ends of runways where accidents are most likely to occur.) At that time, the Air Force made public its study on the AICUZ and its interest in purchasing land for the expanded clear zone.

Since then the owners of the property—approximately six families—have been left in a state of uncertainty anticipating that the Air Force would buy the land. The Air Force did intend to request funding for the purchase this year: however, the administration decided not to include this project in its fiscal year 1981 military construction funding request to Congress.

Mr. President, I believe that final disposition of the AICUZ program at Norton Air Force Base has been delayed for entirely too long. The indecision on this project has disrupted the lives of the families who own the property in question and it has hindered the City of San Bernardino in making long-term plans for the area. Action on the program is needed to insure the safety of the military personnel and the residents in the area. Therefore, I support the House action which included $9.2 million for the purchase of this land this year, and I hope the Senate will recede to House position in conference.

Mr. President, I would also like to address the problem of family housing for the Air Force personnel in the Los Angeles area. We are all well aware of the problems facing the All-Volunteer Force. This is an issue we have discussed at great length in this session of the 96th Congress. To make the All-Volunteer Force work, we must provide our military personnel with an adequate standard of living. This includes decent housing. In the Los Angeles area, the Air Force is having an extremely difficult time meeting this requirement.

There are approximately 1,800 Air Force personnel stationed at the Air Force Space Division. There is little military housing available. The cost of buying a house is so high—the cost of housing in the Los Angeles area is reputed to be the second highest in the country—that only about 10 percent of the Air Force personnel who have been stationed there recently have been able to afford to buy houses. The remainder must rent.

But renting is extremely difficult because of the high costs and because rental housing is in very short supply. The current vacancy rate is estimated at less than 1 percent. This situation has forced military personnel to live in marginal neighborhoods or to commute as much as 90 miles one way. Some have chosen to pay the difference between what the Air Force can provide in quarter allowances and the actual costs, which most personnel can ill-afford.

As you know, Mr. President, the Congress has already acted to help relieve the problem of high housing costs for military personnel in the United States by providing a variable housing allowance. The housing allowance will alleviate the plight of the Air Force personnel in this area to some extent, as will plans to build family housing at Fort MacArthur. I am concerned that despite these efforts the problem will persist in the Los Angeles area because of the unique situation of the costs being so high compared to the national average and the scarcity of rental units.

There is one other avenue which the Air Force has pursued to relieve the problem—the Government-leased housing program. The Air Force Space Division in Los Angeles has made use of this program and the Air Force has authorized 100 units of family housing. However, the rents in the Los Angeles area far exceed the maximum and average amounts the Air Force is permitted to pay under this leasing program. As a result, the Air Force has found that, in general, it cannot compete in the Los Angeles rental market.

The Department of Defense requested this year that the statutory limitations on the maximum cost per unit for rental housing be increased commensurate with the rent portion of the Consumer Price Index for the domestic Government-leased housing program. DOD also proposed that within this program, 500 domestic lease units be exempted from the maximum cost level by raising the cost limitation to $600 a month for these 500 leases. This action would be a significant help to the Air Force in assisting its personnel in finding adequate housing in the Los Angeles area.

The House Armed Services Committee has approved this request. The Senate Armed Services Committee proposed instead of the plan submitted by DOD to allow a domestic average lease cost of $340 per month, and the authority to exempt from statutory limitations 1 percent of the leases currently in effect.

Mr. President, when the House and Senate conferees consider the differences in the two bills on this matter, I ask that the Senate conferees take into consideration the severe housing problems for Air Force personnel in the Los Angeles area and the importance of the Government leasing program in helping to alleviate this problem in the immediate future. I am afraid that the lower figures proposed by the Senate will not give the Air Force the necessary flexibility to resolve the housing problem for its personnel in the Los Angeles area. I hope that the Senate will agree to the House position.

I would also like to discuss the concerns of the residents of the city of Lompoc and the surrounding area regarding the effect of military construction projects at Vandenburg Air Force Base on the local communities. Lompoc is in close proximity to Vandenburg. It is a city that has already experienced a boom/bust cycle. In the late 1960's, there was a boom due to an increase in personnel working on the Air Force Manned Orbiting Laboratory. The bust came when that project was abruptly canceled.

Consequently, the residents of the city of Lompoc are sensitive to both the benefits and the drawbacks of increased defense-related activities at Vandenburg AFB. Vandenburg will again experience a boom as workers prepare this base to be the second launch site for the Space Shuttle and the test site for the MX missile. Between 1983 and 1991, the city of Lompoc anticipates that approximately 5,100 direct permanent and 5,700 indirect permanent jobs will be created as the result of military construction related to the MX missile test program and the Space Shuttle launch site. Fifty percent of the direct MX and Space Shuttle program workers and their families and 30 percent of the indirect MX Space Shuttle workers are expected to live in Lompoc. It is possible that the city's population will increase by 43 percent. Obviously, such a rapid increase will put severe strains on the local community for adequate housing, schooling, and a vast array of social services.

Mr. President, the Senate Armed Services Committee has offered an amendment to this bill which addresses the potential problems that Lompoc residents face. This amendment authorizes the Secretary of Defense when he deems it necessary to assist communities located near the MX Weapon System sites and the East Coast Trident Base in helping to plan for the anticipated growth.

The Committee has also authorized the Secretary of Defense in fiscal year 1982 to assist communities which are located near these programs in meeting the costs of providing increased municipal services and facilities if he determines that it is appropriate given the criteria set out in this amendment.

The committee amendment also provides for an in-depth study regarding the potentially adverse effects large, new defense programs may have on local communities and what steps should be taken to lessen this impact.

I believe that the committee's proposal is an excellent one. It is a sensible approach to a difficult problem. It allows the Secretary of Defense enough flexibility to work with local communities and other Federal agencies to alleviate the negative effect of large defense projects. I strongly support this amendment to S. 3059.

Finally, Mr. President, I would also like to commend Senator HART and his subcommittee for the action that they have taken with respect to the new naval medical facility in San Diego. The issue of where to place the hospital has been a very controversial one for the residents of San Diego because the Navy has proposed to build the new medical complex in one of California's and the Nation's largest and loveliest urban parks—Balboa. A number of other locations have been proposed as alternatives. Two sites for the hospital are presently under active consideration: Balboa Park and Helix Heights. While in the past, the Navy indicated that it preferred the Balboa Park site, many San Diego residents have indicated that they would prefer the Helix Heights site.

Mr. President, the decision on where to build the hospital will have a long-term effect on the city of San Diego. Before such a decision is made, I believe that all reasonable options should be fully explored. Thus, I strongly support the committee's provision requiring the Navy to study both the Balboa Park site and the Helix Heights location and provide the committee with an in-depth comparison of the two locations. This is a sensible approach and I urge that the Senate insist on its language when the House and Senate meet in conference.

Mr. President, I fully realize that the Congress is considering legislation such as the military construction budget under very tight fiscal restraints. However, the projects that I have outlined are all essential. Prudent management requires that we keep up with needed improvements to our support facilities. In the long run, we are not saving any money

by putting off work on these facilities. We must also remember that these facilities do have a significant impact on neighboring communities and we must take this into account. Thus, I hope that these projects will be approved.

I thank the Senator from Colorado for his consideration and his time. In closing, Mr. President, I urge my colleagues to join me in supporting S. 3059, the fiscal year 1981 military construction authorization bill.

LORING AIR FORCE BASE FUNDS

Mr. MITCHELL. Mr. President, I rise in strong support of the provision in the bill before us, the military construction authorization, which will begin the first step in upgrading the facilities and operations at Loring Air Force Base in Maine.

The $11.8 million provided in this bill for much-needed housing construction, weapons storage, security, and energy conservation work marks the beginning of a commitment to the people of Aroostook County, to the State of Maine, and most importantly, to the security of our Nation.

The Loring SAC base is a crucial component of our Nation's strategic mission. Its location directly across the North Atlantic from the site of our most important military and security commitment—the nations of northern Europe—makes it essential that this base be maintained and operated in first class condition.

And its location gives Loring the advantage of replicating more completely than any other base in the Nation, the specific climatic and terrain conditions found over large parts of the Eurasian land mass.

International developments in the past year have, unfortunately, forced our Nation to concentrate its attention and more of its resources on the national defense. While we all hope that more stable conditions will develop soon there is no doubt that the maintenance of a strong, credible, and operationally ready defense represents the best way to deter aggression and encourage a peaceful resolution of national differences.

In this effort, the role of Loring Air Force Base is critical. It represents the continued strength of our commitment to the NATO alliance as surely as the NATO installations in Europe itself.

Part of the congressional effort to upgrade our defenses has involved serious attention to the escalating problem of morale in the armed services. We cannot expect enlisted men and women to continue to serve the Nation when they are forced to live in substandard housing, accept less than first-class medical care, and receive less compensation than their counterparts in the civilian world.

The provisions in this bill to improve enlisted housing facilities at Loring are long overdue. They represent the first installment on a much-needed rehabilitation and construction of decent housing on the base, and I will continue to do what I can to make certain that commitment is fulfilled in the future.

As the effort to upgrade the base continues over the coming 5 years, Loring will be able to take its place as an integral and essential component of our Strategic Air Command system. I am glad the committee has recognized its importance in this bill, and I am certain the effort to upgrade the base will pay dividends in national security terms for many years in the future.

I am also pleased to note that the bill contains needed funding for the Brunswick Naval Air Station, which will permit construction improvements at the ordnance pad, and the significant additional funding for improvements in the machine shop and tool shops at Portsmouth-Kittery Naval Shipyard. The ongoing effort to improve the operations and maintenance of our armed services is essential if the costly military hardware we procure is to be adequately maintained in operational readiness.

The funds authorized in this bill are essential to the continued operation of the military bases and installations on which our defense depends, and I believe it represents a responsible and sound allocation of priorities for our national security.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HART. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 1032, H.R. 7301.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. HART. Mr. President, I move to strike all after the enacting clause of H.R. 7301 and to substitute therefor the text of S. 3059, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Colorado.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. HART. Mr. President, I wish to offer the customary thanks to our excellent staff, particularly Mr. James Smith, who efficiently guides this bill through the Senate every year and who is an extraordinary assistant to those of us who have the responsibility for managing the bill on the floor. I also thank Ed Kennedy, of the minority staff, and the other staff members who work day in and day out on these very complicated matters. I appreciate their help greatly.

I also appreciate the help of the distinguished minority member of our subcommittee, Senator THURMOND, and the Senator from Virginia (Mr. WARNER), who is present at this time in place of Senator THURMOND and who also gives very thoughtful attention to these particularly complicated questions.

I call the attention of my colleagues to a significant provision in this bill which is of particular importance to my home State, having to do with the issue we debated most of the afternoon, and that is the disposition of weapons known as "wet eye" bombs at the Rocky Mount Arsenal, located on the outskirts of Denver.

Our committee took this matter under consideration by unanimous agreement and determined that the continued existence of those weapons in the proximity of an urban area of a million and a half people constituted an unnecesary risk. By this bill, the committee has mandated the Secretary of Defense to remove those weapons from that place and to relocate them or detoxify them within the next year and report to Congress within the next 90 days as to what steps have been taken.

I have appreciated the cooperation of my colleagues in resolving what is a very difficult problem for our area, and I think this is a major step in the direction of getting that matter disposed of.

Mr. CHURCH. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, I wish to join my colleague from Colorado in extending my thanks. While it may be customary, it is not for me because I am relatively new in the Senate. To Mr. Smith of the majority side and a new staff member, Mr. Carl Smith on our side and of course to Mr. Kinney, I express appreciation for their valuable assistance in the preparation of this bill and the management today in the Chamber, and to my colleague, Senator JACKSON, whom I have joined in working on the amendment today, I express appreciation for his guidance and assistance in getting this very important piece of legislation attached to this bill.

I again thank my distinguished colleague from Colorado for his ever-present fairness and candor in dealing with matters which are highly controversial.

Mr. ROBERT C. BYRD. Mr. President, this will be the last rollcall vote today. There will be rollcall votes tomorrow.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. JOHNSTON). Is there any other Senator in the Chamber who would like to vote who has not voted?

The result was announced—yeas 89, nays 3, as follows:

[Rollcall Vote No. 407 Leg.]

YEAS—89

Armstrong	Ford	Mitchell
Baker	Garn	Moynihan
Baucus	Glenn	Nelson
Bayh	Gravel	Nunn
Bellmon	Hart	Packwood
Bentsen	Hatch	Pell
Boren	Hayakawa	Percy
Boschwitz	Heflin	Pressler
Bradley	Heinz	Pryor
Bumpers	Helms	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Huddleston	Riegle
Byrd, Robert C.	Humphrey	Roth
Cannon	Inouye	Sarbanes
Chafee	Jackson	Sasser
Chiles	Javits	Schmitt
Church	Jepsen	Schweiker
Cochran	Johnston	Simpson
Cohen	Kassebaum	Stennis
Cranston	Kennedy	Stevens
Culver	Laxalt	Stevenson
Danforth	Leahy	Stone
DeConcini	Levin	Talmadge
Dole	Long	Thurmond
Domenici	Lugar	Wallop
Durenberger	Magnuson	Warner
Durkin	Mathias	Weicker
Eagleton	Matsunaga	Williams
Exon	McClure	Young
	Melcher	Zorinsky

NAYS—3

Hatfield	Proxmire	Tsongas

NOT VOTING—8

Biden	Metzenbaum	Stewart
Goldwater	Morgan	Tower
McGovern	Stafford	

So the bill (H.R. 7301), as amended, was passed, as follows:

H.R. 7301

Resolved, That the bill from the House of Representatives (H.R. 7301) entitled "An Act to authorize certain construction at military installations for fiscal year 1981, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Military Construction Authorization Act, 1981".

TITLE I—ARMY

AUTHORIZED ARMY CONSTRUCTION PROJECTS

SEC. 101. The Secretary of the Army may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

UNITED STATES ARMY FORCES COMMAND

Fort Bragg, North Carolina, $16,350,000.
Fort Campbell, Kentucky, $15,070,000.
Fort Carson, Colorado, $129,960,000.
Fort Devens, Massachusetts, $1,000,000.
Fort Drum, New York, $1,650,000.
Fort Gillem, Georgia, $2,600,000.
Fort Hood, Texas, $22,420,000.
Fort Hunter-Liggett, California, $5,100,000.
Fort Lewis, Washington, $16,000,000.
Fort Polk, Louisiana, $20,500,000.
Fort Riley, Kansas, $890,000.
Fort Sam Houston, Texas, $3,750,000.
Fort Stewart/Hunter Army Air Field, Georgia, $31,700,000.
Presidio of San Francisco, California, $750,000.

UNITED STATES ARMY WESTERN COMMAND

Schofield Barracks, Hawaii, $14,420,000.
Tripler Army Medical Center, Hawaii, $84,500,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND

Fort A. P. Hill, Virginia, $930,000.
Fort Belvoir, Virginia, $2,310,000.
Fort Benning, Georgia, $18,590,000.
Fort Bliss, Texas, $2,400,000.
Fort Dix, New Jersey, $1,910,000.
Fort Eustis, Virginia, $5,600,000.
Fort Gordon, Georgia, $2,500,000.
Fort Jackson, South Carolina, $20,140,000.
Fort Knox, Kentucky, $5,400,000.
Fort Leavenworth, Kansas, $9,900,000.
Fort Leonard Wood, Missouri, $13,100,000.
Fort Rucker, Alabama, $30,560,000
Fort Sill, Oklahoma, $4,100,000.

UNITED STATES ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND

Anniston Army Depot, Alabama, $3,500,000.
Badger Army Ammunition Plant, Wisconsin, $2,100,000.
Corpus Christi Army Depot, Texas, $1,600,000.
Fort Monmouth, New Jersey, $2,000,000.
Holston Army Ammunition Plant, Tennessee, $4,690,000.
Indiana Army Ammunition Plant, Indiana, $2,800,000.
Iowa Army Ammunition Plant, Iowa, $3,750,000.
Jefferson Proving Ground, Indiana, $960,000.
Kansas Army Ammunition Plant, Kansas, $2,250,000.
Letterkenny Army Depot, Pennsylvania, $9,250,000.
Lone Star Army Ammunition Plant, Texas, $5,090,000.
Louisiana Army Ammunition Plant, Louisiana, $1,050,000.
McAlester Army Ammunition Plant, Oklahoma, $2,770,000.
Milan Army Ammunition Plant, Tennessee, $2,100,000.
Picatinny Arsenal, New Jersey, $1,400,000.
Pine Bluff Arsenal, Arkansas, $3,150,000.
Red River Army Depot, Texas, $3,800,000.
Redstone Arsenal, Alabama, $12,190,000.
Rock Island Arsenal, Illinois, $6,870,000.
Rocky Mountain Arsenal, Colorado, $10,400,000.
Sacramento Army Depot, California, $1,930,000.
Sierra Army Depot, California, $550,000.
Sunflower Army Ammunition Plant, Kansas, $3,950,000.
Tobyhanna Army Depot, Pennsylvania, $680,000.
Tooele Army Depot, Utah, $2,050,000.
Twin City Army Ammunition Plant, Minnesota, $820,000.
Umatilla Depot, Oregon, $620,000.
Volunteer Army Ammunition Plant, Tennessee, $2,150,000.
White Sands Missile Range, New Mexico, $1,000,000.
Yuma Proving Ground, Arizona, $2,650,000.

AMMUNITION FACILITIES

Holston Army Ammunition Plant, Tennessee, $300,000.
Indiana Army Ammunition Plant, Indiana, $3,570,000.
Iowa Army Ammunition Plant, Iowa, $2,300,000.
Lake City Army Ammunition Plant, Missouri, $220,000.
Lone Star Army Ammunition Plant, Texas, $540,000.
Longhorn Army Ammunition Plant, Texas, $260,000.
Louisiana Army Ammunition Plant, Louisiana, $380,000.
Milan Army Ammunition Plant, Tennessee, $210,000.
Radford Army Ammunition Plant, Virginia, $5,890,000.

MILITARY DISTRICT OF WASHINGTON

Cameron Station, Virginia, $930,000.
Fort McNair, Washington, District of Columbia, $690,000.
Fort Myer, Virginia, $1,150,000.

UNITED STATES ARMY COMMUNICATIONS COMMAND

Fort Huachuca, Arizona, $4,650,000.
Fort Ritchie, Maryland, $1,750,000.

UNITED STATES ARMY HEALTH SERVICES COMMAND

Fort Detrick, Maryland, $1,350,000.
Fitzsimons Army Medical Center, Colorado, $790,000.

MILITARY TRAFFIC MANAGEMENT COMMAND

Bayonne Terminal, New Jersey, $660,000.
Sunny Point Terminal, North Carolina, $1,800,000.

OUTSIDE THE UNITED STATES

EIGHTH UNITED STATES ARMY, KOREA

Various Locations, $62,074,000.

KWAJALEIN MISSILE RANGE

National Missile Range, $5,440,000.

UNITED STATES ARMY FORCES COMMAND

Panama Area, Canal Zone, $1,250,000.

UNITED STATES ARMY, JAPAN

Kawakami, Japan, $3,000,000.

UNITED STATES ARMY, EUROPE

Various Locations, $192,280,000.

UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND

Korea, $1,186,000.

EMERGENCY CONSTRUCTION

SEC. 102. The Secretary of the Army may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Army, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 103. The Secretary of the Army is authorized to accomplish minor construction

projects under section 2674 of title 10, United States Code, in the amount of $47,040,000.

TITLE II—NAVY

AUTHORIZED NAVY CONSTRUCTION PROJECTS

SEC. 201. The Secretary of the Navy may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

MARINE CORPS

Marine Corps Air Station, Beaufort, South Carolina, $930,000.

Marine Corps Base, Camp Lejeune, North Carolina, $24,700,000.

Marine Corps Base, Camp Pendleton, California, $8,050,000.

Marine Corps Air Station, Cherry Point, North Carolina, $16,700,000.

Marine Corps Air Station, El Toro, California, $11,500,000.

Marine Corps Air Station, Kaneohe Bay, Hawaii, $620,000.

Marine Corps Recruit Depot, Parris Island, South Carolina, $6,800,000.

Marine Corps Development and Education Command, Quantico, Virginia, $5,800,000.

Marine Corps Air Ground Combat Center, Twentynine Palms, California, $9,400,000.

Marine Corps Air Station, Yuma, Arizona, $2,200,000.

OFFICE OF NAVAL RESEARCH

Naval Research Laboratory, Washington, District of Columbia, $7,300,000.

CHIEF OF NAVAL OPERATIONS

Naval Submarine Base, Bangor, Bremerton, Washington, $8,562,000.

Naval Submarine Support Base, Kings Bay, Kingsland, Georgia, $18,000,000.

Commandant Naval District, Washington, District of Columbia, $790,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Air Station, Brunswick, Maine, $4,100,000.

Naval Station, Charleston, South Carolina, $13,200,000.

Naval Air Station, Jacksonville, Florida, $3,830,000.

Naval Amphibious Base, Little Creek, Virginia, $8,100,000.

Naval Station, Mayport, Florida, $620,000.

Naval Submarine Base, New London, Groton, Connecticut, $6,100,000.

Headquarters Support Activity, Atlantic Fleet, Norfolk, Virginia, $3,400,000.

Naval Air Station, Norfolk, Virginia, $2,450,000.

Naval Station, Norfolk, Virginia, $15,500,000.

Naval Air Station, Oceana, Virginia, $19,350,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Station, Alameda, California, $15,650,000.

Naval Air Station, Barbers Point, Hawaii, $2,500,000.

Naval Air Station, Fallon, Nevada, $330,000.

Naval Air Station, Lemoore, California, $5,810,000.

Naval Magazine, Lualualei, Hawaii, $6,600,000.

Naval Air Station, Miramar, California, $1,200,000.

Naval Air Station, North Island, California, $850,000.

Naval Submarine Base, Pearl Harbor, Hawaii, $1,900,000.

Naval Station, San Diego, California, $4,950,000.

Navy Submarine Support Facility, San Diego, California, $4,150,000.

Naval Air Station, Whidbey Island, Washington, $2,390,000.

CHIEF OF NAVAL EDUCATION AND TRAINING

Fleet Ballistic Missile Submarine Training Center, Charleston, South Carolina, $1,100,000.

Fleet Combat Training Center, Atlantic, Dam Neck, Virginia, $4,700,000.

Naval Submarine School, Groton, Connecticut, $1,150,000.

Naval Education and Training Center, Newport, Rhode Island, $620,000.

Naval Training Center, Orlando, Florida, $7,050,000.

Fleet Combat Training Center, Pacific, San Diego, California, $540,000.

Naval Submarine Training Center, San Diego, California, $4,450,000.

Naval Air Station, Whiting Field, Florida, $3,680,000.

BUREAU OF MEDICINE AND SURGERY

National Naval Medical Center, Bethesda, Maryland, $23,000,000.

Naval Regional Medical Center, San Diego, California, $293,000,000, including land acquisition.

NAVAL MATERIAL COMMAND

Naval Air Rework Facility, Alameda, California, $2,350,000.

Puget Sound Naval Shipyard, Bremerton, Washington, $35,000,000.

Naval Supply Center, Puget Sound, Bremerton, Washington, $2,200,000.

Naval Fuel Annex, Casco Bay, Maine, $3,900,000.

Charleston Naval Shipyard, Charleston, South Carolina, $12,450,000.

Naval Underwater Systems Center, Newport, Rhode Island, $4,350,000.

Naval Weapons Station Charleston South Carolina, $2,910,000.

Polaris Missile Facility, Atlantic, Charleston, South Carolina, $8,400,000.

Naval Weapons Center, China Lake, California, $9,050,000.

Naval Construction Batallion Center, Davisville, Rhode Island, $550,000.

Navy Public Works Center, Great Lakes, Illinois, $8,400,000.

Naval Undersea Warfare Engineering Station, Keyport, Washington, $860,000.

Portsmouth Naval Shipyard, Kittery, Maine, $13,880,000.

Long Beach Naval Shipyard, Long Beach, California, $4,400,000.

Naval Ordnance Station, Louisville, Kentucky, $2,050,000.

Naval Supply Center, Norfolk, Virginia, $13,150,000.

Navy Public Works Center, Norfolk, Virginia, $1,560,000.

Naval Supply Center, Oakland, California, $4,600,000.

Navy Public Works Center, Pearl Harbor, Hawaii, $5,783,000.

Naval Air Rework Facility, Pensacola, Florida, $1,550,000.

Philadelphia Naval Shipyard, Philadelphia, Pennsylvania, $10,710,000.

Pacific Missile Test Center, Point Mugu, California, $670,000.

Norfolk Naval Shipyard, Portsmouth, Virginia, $11,550,000.

Naval Supply Center, San Diego, California, $2,900,000.

Navy Public Works Center, San Diego, California, $8,750,000.

Mare Island Naval Shipyard, Vallejo, California, $800,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communications Area Master Station Eastern Pacific, Honolulu, Hawaii, $2,000,000.

Naval Communications Area Master Station Atlantic, Norfolk, Virginia, $700,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Winter Harbor, Maine, $1,150,000.

OUTSIDE THE UNITED STATES

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Facility, Brawdy, Wales, United Kingdom, $3,600,000.

Naval Station, Keflavik, Iceland, $49,200,000.

Naval Station, Roosevelt Roads, Puerto Rico, $10,500,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Facility, Atsugi, Japan, $1,000,000.

Naval Station, Subic Bay, Republic of the Philippines, $780,000.

NAVAL TELECOMMUNICATIONS COMPANY

Naval Communications Area Master Station Western Pacific, Guam, Mariana Islands, $1,300,000.

Naval Communications Area Master Station Atlantic, Guantanam Bay, Cuba, $900,000.

Naval Communication Station, Keflavik, Iceland, $3,600,000.

Classified Location, $2,100,000.

EMERGENCY CONSTRUCTION

SEC. 202. The Secretary of the Navy may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interest of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Navy, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 203. The Secretary of the Navy is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $33,010,000.

DUAL PURPOSE AIR TERMINAL, ICELAND

SEC. 204. (a) Subject to the provisions of subsection (b), the Secretary of the Navy may contract for the construction of an Air Passenger Terminal in Keflavik, Iceland, and may use not more than $20,000,000 of the funds authorized under section 201 for the Naval Station, Keflavik, Iceland, to pay the United States share of the construction of such terminal.

(b) The Secretary of the Navy may not contract for the construction of such terminal, or otherwise obligate any funds of the United States in connection with the construction of such terminal, until (1) Iceland and the United States have agreed upon the specifications, design, and location of such terminal, (2) Iceland has agreed to pay as its share of the cost of the construction

of such terminal an amount equal to the difference between $20,000,000 and the total cost of the construction of such terminal, and (3) Iceland has agreed to make periodic payments to the United States in such amounts and at such times as the Secretary of the Navy may request in order to meet construction payment schedules.

NAVAL REGIONAL MEDICAL CENTER

SAN DIEGO, CALIFORNIA

SEC. 205. None of the funds authorized to be appropriated for the construction of the Naval Regional Medical Center, San Diego, California, may be obligated or expended until—

(1) the Secretary of the Navy has submitted a report to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives which includes (A) an evaluation of the Balboa Park and Helix Heights areas as proposed sites for the construction of such medical center, (B) a statement of the Secretary's preference between the two sites, and (C) a statement justifying the Secretary's preference; and

(2) each of the committees referred to in clause (1) has approved in writing the site preferred by the Secretary.

NAVAL WEAPONS CENTER

CHINA LAKE, CALIFORNIA

SEC. 206. The Secretary of the Navy is authorized to acquire such lands or interests in lands as may be needed for two established low-level, high-speed aircraft corridors to serve the Naval Weapons Center at China Lake, California. The acquisition of such lands or interests may be made only by exchange, on an equal value basis, of excess land of the Naval Weapons Center, China Lake, California.

TITLE III—AIR FORCE

AUTHORIZED AIR FORCE CONSTRUCTION PROJECTS

SEC. 301. The Secretary of the Air Force may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $9,650,000.

Kelly Air Force Base, Texas, $650,000.

McClellan Air Force Base, California, $3,250,000.

Robins Air Force Base, Georgia, $4,850,000.

Tinker Air Force Base, Oklahoma, $17,570,000.

Wright-Patterson Air Force Base, Ohio, $3,700,000.

AIR FORCE SYSTEMS COMMAND

Arnold Engineering Development Center Tennessee, $11,500,000.

Brooks Air Force Base, Texas, $4,200,000.

Buckley Air National Guard Base, Colorado, $900,000.

Cape Canaveral Air Force Station, Florida, $22,300,000.

Edwards Air Force Base, California, $10,500,000.

Hanscom Air Force Base, Massachusetts, $7,200,000.

Port Hueneme Naval Installation, California, $16,700,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $9,260,000.

Keesler Air Force Base, Mississippi, $2,810,000.

Lackland Air Force Base, Texas, $3,840,000.

Laughlin Air Force Base, Texas, $1,100,000.

Lowry Air Force Base, Colorado, $840,000.

Mather Air Force Base, California, $860,000.

Maxwell Air Force Base, Alabama, $630,000.

Randolph Air Force Base, Texas, $7,850,000.

Reese Air Force Base, Texas, $1,730,000.

Sheppard Air Force Base, Texas, $1,300,000.

ALASKAN AIR COMMAND

Eielson Air Force Base, Alaska, $5,190,000.

Elmendorf Air Force Base, Alaska, $14,820,000.

Galena Air Force Base, Alaska, $930,000.

King Salmon Airport, Alaska, $1,000,000.

Shemya Air Force Base, Alaska, $2,900,000.

MILITARY AIRLIFT COMMAND

Andrews Air Force Base, Maryland, $3,140,000.

Charleston Air Force Base, South Carolina, $1,740,000.

Dover Air Force Base, Delaware, $4,500,000.

Kirtland Air Force Base, New Mexico, $1,200,000.

McChord Air Force Base, Washington, $5,500,000.

Norton Air Force Base, California, $2,000,000.

Pope Air Force Base, North Carolina, $9,250,000.

Scott Air Force Base, Illinois, $4,000,000.

Travis Air Force Base, California, $1,080,000.

PACIFIC AIR FORCES

Hickman Air Force Base, Hawaii, $580,000.

STRATEGIC AIR COMMAND

Barksdale Air Force Base, Louisiana, $3,200,000.

Beale Air Force Base, California, $2,670,000.

Blytheville Air Force Base, Arkansas, $6,141,000.

Carswell Air Force Base, Texas, $8,420,000.

Castle Air Force Base, California, $19,850,000.

Dyess Air Force Base, Texas, $10,300,000.

Ellsworth Air Force Base, South Dakota, $20,720,000.

Fairchild Air Force Base, Washington, $22,860,000.

Grand Forks Air Force Base, North Dakota, $22,650,000.

Griffiss Air Force Base, New York, $14,850,000.

K. I. Sawyer Air Force Base, Michigan, $3,700,000.

Loring Air Force Base, Maine, $11,800,000.

Malmstrom Air Force Base, Montana, $750,000.

McConnell Air Force Base, Kansas, $4,040,000.

Minot Air Force Base, North Dakota, $2,570,000.

Offutt Air Force Base, Nebraska, $5,360,000.

Pease Air Force Base, New Hampshire, $10,500,000.

Peterson Air Force Base, Colorado, $600,000.

Rickenbacker Air Force Base, Indiana, $6,300,000.

Vandenberg Air Force Base, California, $75,300,000.

Whiteman Air Force Base, Missouri, $990,000.

Wurtsmith Air Force Base, Michigan, $34,970,000.

TACTICAL AIR COMMAND

Bergstrom Air Force Base, Texas, $1,910,000.

Davis-Monthan Air Force Base, Arizona, $3,200,000.

George Air Force Base, California, $540,000.

Holloman Air Force Base, New Mexico, $5,800,000.

Homestead Air Force Base, Florida, $670,000.

Langley Air Force Base, Virginia, $3,892,000.

Luke Air Force Base, Arizona, $2,650,000.

MacDill Air Force Base, Florida, $2,860,000.

Moody Air Force Base, Georgia, $1,470,000.

Myrtle Beach Air Force Base, South Carolina, $780,000.

Nellis Air Force Base, Nevada, $6,250,000.

Shaw Air Force Base, South Carolina, $3,800,000.

Tyndall Air Force Base, Florida, $2,300,000.

OUTSIDE THE UNITED STATES

MILITARY AIRLIFT COMMAND

Lajes Field, Portugal, $2,300,000.

PACIFIC AIR FORCES

Camp Zama, Japan, $1,100,000.

Clark Air Base, Republic of the Philippines, $5,250,000.

Kadena Air Base, Japan, $10,280,000.

Kunsan Air Base, Korea, $4,400,000.

Kwang-Ju Air Base, Korea, $5,900,000.

Misawa Air Base, Japan, $1,930,000.

Osan Air Base, Korea, $16,800,000.

Taegu Air Base, Korea, $8,350,000.

UNITED STATES AIR FORCES IN EUROPE

Various Locations, United Kingdom, $2,200,000.

Various Locations, $35,377,000.

EMERGENCY CONSTRUCTION

SEC. 302. The Secretary of the Air Force may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Air Force, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 303. The Secretary of the Air Force is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $24,870,000.

INSTALLATION OF ALARM SYSTEM AT TITAN II MISSILE SITES

SEC. 304. The Secretary of the Air Force shall acquire and install, out of funds appropriated pursuant to section 303, a general alarm siren system at each Titan II missile site which has in its near vicinity a significant size population.

TITLE IV—DEFENSE AGENCIES

AUTHORIZED CONSTRUCTION PROJECTS FOR THE DEFENSE AGENCIES

SEC. 401. The Secretary of Defense may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for defense agencies for the following acquisition or construction:

INSIDE THE UNITED STATES

DEFENSE INTELLIGENCE AGENCY

Bolling Air Force Base, District of Columbia, $32,700,000.

DEFENSE LOGISTICS AGENCY

Defense Electronics Supply Center, Dayton, Ohio, $730,000.

Defense Fuel Support Point, Norwalk, California, $2,000,000.

Defense Fuel Support Point, Searsport, Maine, $3,000,000.

Defense Personnel Support Center, Philadelphia, Pennsylvania, $750,000.

Defense Storage Facility, Bayonne, New Jersey, $1,450,000.

DEFENSE MAPPING AGENCY

Hydrographic/Topographic Center, Brookmont, Maryland, $1,500,000.

NATIONAL SECURITY AGENCY

Fort George G. Meade, Maryland, $5,065,000.

Kunia, Oahu, Hawaii, $2,700,000.

OFFICE OF THE SECRETARY OF DEFENSE

Classified Activity, Fort Belvoir, Virginia, $16,500,000.

OUTSIDE THE UNITED STATES

DEFENSE LOGISTICS AGENCY

Defense Property Disposal Office, Bitburg, Germany, $1,350,000.

NATIONAL SECURITY AGENCY

Classified Location, $574,000.

OFFICE OF THE SECRETARY OF DEFENSE

CLASSIFIED LOCATION

Classified Activity, $3,500,000.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Aschaffenburg, Germany, $1,110,000.

Baumholder, Wetzel Housing Area, Germany, $4,065,000.

Bermuda, Naval Air Station, $2,580,000.

Clark Air Base, Republic of the Philippines, $1,650,000.

Iwakuni, Marine Corps Air Station, Japan, $6,060,000.

Osan Air Base, Korea, $1,900,000.

Pruem Air Station, Germany, $1,150,000.

Sagamihara, Japan, $3,220,000.

Seoul Yongsan Garrison, Korea, $4,500,000.

Taegu, Korea, $4,100,000.

Wiesbaden, Germany, $10,176,000.

Yokota Air Base West, Japan, $7,500,000.

EMERGENCY CONSTRUCTION

SEC. 402. The Secretary of Defense may establish or develop installations and facilities which he determines to be vital to the security of the United States and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $15,000,000. The Secretary of Defense, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public works undertaken under this section including real estate actions pertaining thereto.

MINOR CONSTRUCTION

SEC. 403. The Secretary of Defense is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $3,680,000.

NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

SEC. 404. (a)(1) The Secretary of Defense, acting on behalf of the United States, may participate in the five-year slice group plan for 1980 through 1984 to implement the North Atlantic Treaty Organization Infrastructure program. The Secretary may participate in such five-year slice group plan, heretofore agreed to by member nations of the North Atlantic Treaty Organization, only to the extent that the United States share under such plan does not exceed 27.3 percent of the total amount of the commitments made by all member nations under such plan.

(2) No funds may be obligated or expended in connection with the North Atlantic Treaty Organization Infrastructure program in any year unless such funds have been authorized by law for such program for such year.

(b) The Secretary of Defense is authorized to incur obligations in amounts not to exceed $500,000,000 for the United States share of the cost of multilateral programs for the acquisition or construction of military facilities and installations (including military headquarters) for the collective defense of the North Atlantic Treaty Area.

(c) Within thirty days after the end of each calendar year quarter, the Secretary of Defense shall furnish to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a description of all obligations incurred by the United States during the preceding quarter to meet the United States share of the cost of the multilateral programs for which the Secretary of Defense is authorized to incur obligations.

MID-EAST AND INDIAN OCEAN AREAS CONTINGENCY FACILITIES CONSTRUCTION FUNDS

SEC. 405. (a) There is authorized to be appropriated to the Secretary of Defense the sum of $200,000,000 for the construction of contingency facilities to support the national security interests of the United States in the Middle East and Indian Ocean areas.

(b) None of the funds appropriated pursuant to subsection (a) may be obligated or expended for the construction of any facility until (1) the United States and the country which exercises sovereignty over the land on which the facility is to be constructed have entered into a formal agreement which guarantees the United States access to and use of such facility during the term of the agreement, and (2) a copy of such agreement has been transmitted to the Congress.

(c) None of the funds appropriated pursuant to subsection (a) may be obligated or expended for such construction if such construction is authorized under the terms of a renegotiated, amended, or extended agreement, previously entered into by the United States with any other country, until after a copy of the renegotiated, amended, or extended agreement has been transmitted to the Congress.

(d) On each separate occasion that the Secretary of Defense plans to obligate any part of the funds appropriated pursuant to subsection (a), he shall—

(1) transmit to the appropriate committees of the Congress a written report stating the purpose for which the funds are to be obligated and the amount proposed to be obligated for such purpose; and

(2) withhold such amount from obligation for such purpose for a period of thirty days following the day on which such report is received by such committees.

Each report transmitted under this subsection shall include (A) a detailed accounting of funds appropriated pursuant to subsection (a) that have been previously obligated, (B) a detailed accounting of funds planned for obligation, and (C) a statement of the purposes and the estimated amounts for which any unobligated balance of such funds are to be used (excluding the amount for which an explanation under clause (B) is included).

(e) None of the funds appropriated pursuant to subsection (a) may be obligated or expended to carry out any contract for the construction of any contingency facility referred to in such subsection unless such contract requires that (1) all construction materials (except cement, cement products, and aggregates) used in the construction of such facility under such contract will be materials produced, manufactured, or refined in the United States, and (2) materials will be transported on United States flagships from the United States to the country in which the contingency facility is to be located.

DEFENSE INTELLIGENCE AGENCY BUILDING STUDY

SEC. 406. (a) None of the funds authorized to be appropriated in this title for the construction of a new facility at Bolling Air Force Base, Washington, District of Columbia, for the Defense Intelligence Agency may be obligated or expended until—

(1) the Secretary of Defense has conducted a study to examine alternatives to the facility currently planned for construction at Bolling Air Force Base;

(2) the Secretary of Defense has submitted the results of such study to the appropriate committees of the Congress together with his decision regarding the location and scope of the facility to be constructed for the Defense Intelligence Agency; and

(3) a period of thirty calendar days has expired after the date on which such study is received by such committees.

(b) The study conducted pursuant to subsection (a)(1) shall, as a minimum—

(1) examine alternatives in project scope for the proposed facility referred to in subsection (a) which could result in reduced requirements for new construction;

(2) examine alternative sites for the construction of such facility taking into account available lands and facilities as well as lands and facilities that could be made available by consolidations; and

(3) provide detailed costs and operational efficiency comparisons of the alternatives considered.

(c) The study conducted pursuant to subsection (a)(1) shall be submitted to the appropriate committees of the Congress not later than ninety days after the date of the enactment of this Act.

TITLE V—MILITARY FAMILY HOUSING

AUTHORIZATION TO CONSTRUCT OR ACQUIRE HOUSING

SEC. 501. (a) The Secretary of Defense, or the Secretary's designee is authorized to construct or acquire sole interest in existing family housing units in the numbers and at the locations hereinafter named, but no family housing construction shall be commenced at any such location in the United States until the Secretary shall have consulted with the Secretary of Housing and Urban Development as to the availability of suitable private housing at such location. If agreement cannot be reached with respect to the availability of suitable private housing at any location, the Secretary of Defense shall notify the Committees on Armed Services of the Senate and House of Representatives, in writing, of such difference of opinion, and no contract for construction at such location shall be entered into for a period of thirty days after such notification has been given. This authority shall include the authority to acquire land, and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise.

(b) With respect to the family housing units authorized to be constructed by this section, the Secretary of Defense is authorized to acquire sole interest in privately owned or Department of Housing and Urban Development held family housing units in lieu of constructing all or a portion of the family housing authorized by this section, if the Secretary, or the Secretary's designee, determines such action to be in the best interests of the United States, but any family housing units acquired under authority of this subsection shall not exceed the cost limitations specified in this section for the project nor the limitations on size specified in section 2684 of title 10, United States Code. In no case may family housing units be acquired under this subsection through the exercise of eminent domain authority, and in no case may family housing units other than those authorized by this section be acquired in lieu of construction unless the acquisition of such units is hereafter specifically authorized by law.

(c) Family housing units:

Marine Corps Air Station, Yuma, Arizona, one hundred and thirty-two units, $8,050,000.

Defense Housing Complex, South Bay, San Francisco, California, two hundred and seventy units, $19,045,000.

Marine Corps Air Station, El Toro, California, three hundred units, $17,483,000.

Fort Ord, California, five hundred units, $30,808,000.

Naval Complex, New London, Connecticut, four hundred units, $24,608,000.

Fort Stewart, Georgia, two hundred units, $9,716,000.

Fort Polk, Louisiana, two hundred units, $11,173,000.

Naval Air Station, Brunswick, Maine, sixty-two units, $3,956,000.

Naval Complex, Norfolk, Virginia, two hundred and thirty-two units, $12,093,000.

Lajes Field, Azores, one hundred and fifty units, $9,768,000.

Incirlik Air Base, Turkey, two hundred units, $11,723,000.

Classified location overseas, five units $468,000.

(d) The amounts specified in this section may, at the discretion of the Secretary of Defense, or the Secretary's designee, be increased by 10 per centum, if he determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress. The amounts authorized include the costs of shades, screen, ranges, refrigerators, and all other installed equipment and fixtures, the cost of the family housing unit, design, supervision, inspection, overhead, land acquisition, site preparation, installation of utilities, and solar energy systems.

IMPROVEMENT OF EXISTING QUARTERS

SEC. 502. (a) The Secretary of Defense, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law, to existing public quarters at a cost not to exceed—

(1) For the Department of the Army, $42,436,000, of which $27,150,000 shall be available only for energy conservation projects;

(2) For the Department of the Navy, $13,562,000, of which $2,819,000 shall be available only for energy conservation projects;

(3) For the Department of the Air Force, $52,819,000, of which $17,000,000 shall be available only for energy conservation projects; and

(4) For Defense Agencies, $23,000.

(b) The first sentence of section 610(a) of the Military Construction Authorization Act, 1968 (Public Law 90-110, 81 Stat. 305) is amended to read as follows: "None of the funds authorized by this or any other Act may be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units when such units are to be converted into or used as a single family housing unit, if the total cost of such improvements exceeds $20,000, adjusted by the area construction cost index (as developed by the Department of Defense) for the location at the time of contract award. The total cost of any such improvement shall include all repair costs undertaken as part of the improvement project and all costs in connection with (1) the furnishing of electricity, gas, water, and sewage disposal, (2) the construction or repair of roads and walks, and (3) any grading and drainage work.".

(c) The Secretary of Defense, or the Secretary's designee, within the amounts specified in subsection (a) of this section, is authorized to accomplish repairs and improvements to existing family housing in amounts in excess of the dollar limitation prescribed in section 610(a) of the Military Construction Authorization Act, 1968 (Public Law 90-110, 81 Stat. 305), as follows:

Redstone Arsenal, Alabama, forty units, $891,000.

Navy Public Works Center, Pearl Harbor, Hawaii, one hundred and forty-six units, $5,468,000.

Fort Knox, Kentucky, one hundred units, $2,592,000.

Loring Air Force Base, Maine, five hundred and sixty-five units, $12,723,600.

Kirtland Air Force Base, New Mexico, one hundred and twenty-five units, $2,458,100.

Marine Corps Development and Education Command, Quantico, Virginia, fifty-two units, $1,910,000.

Warren Air Force Base, Wyoming, one hundred and sixty-two units, $3,150,000.

Hahn Air Base, Federal Republic of Germany, twenty-eight units, $980,000.

Ramstein Air Force (Vogelweh and Landstuhl), Federal Republic of Germany, twenty units, $993,000.

Yokota Air Base, Japan, two hundred and sixty-eight units, $9,054,800.

ADVANCE PLANNING AND DESIGN

SEC. 503. The Secretary of Defense is authorized to carry out advance planning and may obtain architectural and engineering services in connection with any family housing construction, including improvements, authorized or not authorized by law, at a total cost not to exceed $1,500,000.

LEASING OF FAMILY HOUSING

SEC. 504. (a) Section 2686 of title 10, United States Code, relating to leases for military family housing, is amended—

(1) by striking out "$310" in subsection (c)(1)(A) and inserting in lieu thereof "$340"; and

(2) by adding at the end thereof the following new subsection:

"(d) The Secretary of Defense is authorized to exempt not to exceed 1 percent of the leases in effect under this section from the cost limitations specified in subsection (c) of this section.".

(b) Section 2675(d) of title 10, United States Code, relating to leases in foreign countries, is amended—

(1) by striking out "$550" and "$970" in the first sentence of paragraph (1) and inserting in lieu thereof "$605" and "$1,070" respectively; and

(2) by adding at the end thereof of the following new paragraph:

"(3) The Secretary of Defense is authorized to exempt not to exceed 1 percent of the leases in effect under this section from the cost limitations specified in subsection (d)(1).".

SETTLEMENT OF CONTRACTOR CLAIMS ON MILITARY FAMILY HOUSING

SEC. 505. Notwithstanding any other provisions of law, if the proposed settlement of any contractor claim or claims arising out of the construction of new or improvement of existing family housing would cause authorized cost limitations on the construction or improvement of family housing to be exceeded, the Secretary of Defense may proceed with the settlement of such claim or claims after (1) he has submitted a report regarding such claim or claims including the amount of the proposed settlement, to the Committees on Armed Services of the Senate and House of Representatives, and (2) a period of thirty days has elapsed after the date of submission of such report to such committees.

OCCUPANT LIABILITY FOR DAMAGES TO FAMILY HOUSING

SEC. 506. (a) Chapter 165 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2775. Liability of member for damages to family housing, equipment, and furnishings

"(a) A member of the armed forces shall be liable to the United States for damage to any family housing unit, or damage to or loss of any equipment of furnishing of any family housing unit assigned to or provided such member if it is determined under regulations issued by the Secretary of Defense, that such damage or loss was caused by the abuse or negligence of such member or a dependent of such member.

"(b)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of the repairs or replacements made necessary as the result of any abuse or negligence referred to in subsection (a) on the part of such member or any dependent of such member.

"(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations issued under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

"(c) Amounts deducted from members' pay under this section shall be credited to the Department of Defense family housing management account established under section 501 of Public Law 87-554 (76 Stat. 236; 42 U.S.C. 1594a-1) and shall be available for use for the same purposes and under the same circumstances as other funds in such account.

"(d) The Secretary of Defense shall issue regulations to carry out the provisions of this section, including regulations for determining the cost of repairs or replacements made necessary as the result of abuse or negligence on the part of a member or dependent of a member.".

(b) The table of sections at the beginning of chapter 165 of such title is amended by adding at the end thereof the following new item:

"2775. Liability of member for damages to family housing, equipment, and furnishings.".

(b) The table of sections at the beginning of chapter 165 of such title is amended by adding at the end thereof the following new item:

"2775. Liability of member for damages to family housing, equipment, and furnishings.".

INCREASED AUTHORIZATION FOR CONSTRUCTION, OAHU, HAWAII

SEC. 507. Notwithstanding the limitations on costs contained in sections 501(a) and 502 of the Military Construction Authorization Act, 1974 (Public Law 93-166; 87 Stat. 673, 674) and sections 501(a) and 502 of the Military Construction Authorization Act, 1975 (Public Law 93-552; 88 Stat. 1757, 1758), the Secretary of Defense is authorized to complete construction of two thousand six hundred family housing units in support of Department of Defense requirements in Oahu, Hawaii, at a total cost not to exceed $117,150,000.

DEFICIENCY AUTHORIZATION FOR NEW CONSTRUCTION

SEC. 508. Section 501(c) of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 577) is amended by striking out "$1,509,000" in the line item relating to the Naval Facility, Centerville Beach, California, and inserting in lieu thereof "$2,030,000".

REPEAL OF PROVISIONS RELATING TO ENERGY CONSUMPTION METERING DEVICES AND EXCESS ENERGY CONSUMPTION CHARGES

SEC. 509. Sections 506 and 507 of the Military Construction Authorization Act, 1978 (Public Law 95-82; 91 Stat. 372), are repealed.

AUTHORIZATION OF APPROPRIATIONS

SEC. 510. (a) There is authorized to be appropriated for fiscal year 1981 for use by the Secretary of Defense, or the Secretary's designee, for military family housing as authorized by law for the following purpose:

(1) For construction of, or acquisition of sole interest in, family housing, including minor construction, improvements to public quarters, relocation of family housing, and planning, an amount not to exceed $269,231,000.

(2) For support of military family housing, including operating expenses, leasing, maintenance of real property, payments of principal and interest on mortgage debts incurred, payment to the Commodity Credit Corporation, and mortgage insurance premiums authorized under section 222 of the National Housing Act (12 U.S.C. 1715), an amount not to exceed $1,919,882,000.

(b) The amounts authorized to be appropriated in subsection (a)(2) may be increased to the extent additional funds are necessary for increased pay costs associated with actions taken pursuant to law.

TITLE VI—AUTHORIZATION OF APPROPRIATIONS AND ADMINISTRATIVE PROVISIONS

WAIVER OF RESTRICTIONS

SEC. 601. The Secretary of each military department may proceed to establish or develop installations and facilities under this Act without regard to section 3648 of the Revised Statutes (31 U.S.C. 529) and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on land includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes (40 U.S.C. 255) and even though the land is held temporarily. The authority to acquire real estate or lands includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

AUTHORIZATION OF APPROPRIATIONS

SEC. 602. There are authorized to be appropriated for fiscal year 1981 such sums as may be necessary for the purposes of this Act, but appropriations for public works projects authorized by titles I, II, III, IV, and V, shall not exceed—

(1) for title I: inside the United States $609,710,000; outside the United States $265,230,000; minor construction $47,040,000; for a total of $921,980,000.

(2) for title II: inside the United States $760,195,000; outside the United States $73,580,000; minor construction $33,010,000; for a total of $866,785,000.

(3) for title III: inside the United States $525,783,000; outside the United States $93,887,000; minor construction $24,870,000; for a total of $644,540,000.

(4) for title IV: a total of $637,610,000, including $3,680,000 for minor construction.

(5) for title V: a total of $2,189,113,000, including $5,471,000 for minor construction.

COST VARIATIONS

SEC. 603. (a) OVERALL TITLE TOTAL LIMITATION.—Notwithstanding the provisions of subsections (b), (c), (d), and (g), the total cost of all construction and acquisition in each of titles I, II, III, and IV may not exceed the total amount authorized to be appropriated in that title.

(b) VARIATIONS IN INSTALLATION TOTALS—UNUSUAL VARIATIONS IN COST. Except as provided in subsections (c) and (d), any of the amounts specified in titles I, II, III, and IV of this Act (other than in sections 103, 203, 303, and 403) may, at the discretion of the Secretary of the military department or Director of the defense agency concerned, be increased by 5 per centum when inside the United States (other than Alaska or Hawaii), and by 10 per centum when outside the United States or in Alaska or Hawaii, if the Secretary of the military department or Director of the defense agency concerned determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress.

(c) VARIATIONS IN INSTALLATION TOTALS—ONLY ONE PROJECT AT AN INSTALLATION.—When the amount named for any construction or acquisition in title I, II, III, or IV of this Act involves only one project at any military installation and the Secretary of the military department or Director of the defense agency concerned determines that the amount authorized must be increased by more than the applicable percentage prescribed in subsection (b), the Secretary of the military department or Director of the defense agency concerned may proceed with such construction or acquisition if the amount of the increase does not exceed by more than 25 per centum the amount named for such project by the Congress.

(d) VARIATIONS IN INSTALLATION TOTALS—REPORTS BY THE SECRETARY OF DEFENSE.—When the Secretary of Defense determines that any amount named in title I, II, III, or IV of this Act must be exceeded by more than the percentages permitted in subsections (b) and (c) to accomplish authorized construction or acquisition, the Secretary of the military department, or Director of the defense agency concerned may proceed with such construction or acquisition after a written report of the facts relating to the increase of such amount, including a statement of the reasons for such increase, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either (1) thirty days have elapsed from the date of submission of such report, or (2) both committees have indicated approval of such construction or acquisition. Notwithstanding the provisions in prior Military Construction Authorization Acts, the provisions of this subsection shall apply to such prior Acts.

(e) COST AND SCOPE VARIATIONS OF INDIVIDUAL PROJECTS; REPORTS TO CONGRESS.—No individual project authorized under title I, II, III, or IV of this Act for any specifically listed military installation for which the current working estimate is greater than the statutory upper limit for minor construction projects, may be placed under contract if—

(1) the approved scope of the project is reduced in excess of 25 per centum; or

(2) the current working estimate, based upon bids received, for the construction of such project exceeds by more than 25 per centum the amount authorized for such project by the Congress;

until a written report of the facts relating to the reduced scope or increased cost of such project, including a statement of the reasons for reduction in scope or increase in cost, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either thirty days have elapsed from the date of submission of such report, or both committees have indicated approval of such reduction in scope or increase in cost, as the case may be.

(f) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, or the Secretary's designee shall submit an annual report to the Congress identifying each individual project (other than a project authorized under section 103, 203, 303, or 403) which has been placed under contract in the preceding twelve-month period and with respect to which the then current working estimate of the Department of Defense, based upon bids received, for such project exceeded the amount authorized by the Congress for that project by more than 25 per centum. The Secretary shall also include in such report each individual project with respect to which the scope was reduced by more than 25 per centum in order to permit contract award within the available authorization for such project. Such report shall include all pertinent cost information for each individual project, including the amount in dollars and percentage by which the current working estimate based on the contract price for the project exceeded the amount authorized for such project by the Congress.

(g) COST AND FLOOR AREA VARIATIONS—SOLAR ENERGY.—The Secretary of Defense shall encourage the utilization of solar energy as a source of energy for projects authorized by this Act where utilization of solar energy would be practical and economically feasible. In order to equip any project authorized by this Act with solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, the Secretary of Defense may authorize increases in the cost limitations or floor area limitations for such project by such amounts as may be necessary for such purpose. Any increase under this section in the cost or floor area of a project authorized by this Act shall be in addition to any other increase in such cost or variation in floor area limitations authorized by this or any other Act.

CONSTRUCTION SUPERVISION

SEC. 604. Contracts for construction made by the United States for performance within the United States and its possessions under this Act shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army; the Naval Facilities Engineering Command, Department of the Navy; or such other department or Government agency as the Secretaries of the military departments recommend and the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective accomplishment of the construction herein authorized. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives a breakdown of the dollar value of construction contracts completed by each of the several construction agencies selected together with the design, construction supervision, and overhead fees charged by each of the several agents in the execution of the assigned construction. Further, such contracts (except architect and engineering contracts which, unless specifically authorized by the Congress shall continue to be awarded in accordance with presently established procedures, customs, and practice) shall be awarded, insofar as practicable, on a competitive basis to the lowest responsible bidder, if the national security will not be impaired and the award is consistent with chapter 137 of title 10, United States Code. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives with respect to all contracts awarded on other than a competitive basis to the lowest responsible bidder. Such reports shall also show, in the case of the ten architect-engineering firms which, in terms of total dollars, were awarded the most business; the names of such firms; the total number of separate contracts awarded each firm; and the total amount paid or to be paid in the case of each such action under all such contracts awarded such firm.

REPEAL OF PRIOR YEAR AUTHORIZATIONS: EXCEPTIONS

SEC. 605. (a) As of October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, all authorizations for military public works, including family housing, to be accomplished by the Secretary of a military department in connection with the establishment or development of installations and facilities, and all authorizations for appropriations therefor, that are contained in titles I, II, III, IV, and

V of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 928), and all such authorizations contained in Acts approved before November 26, 1979, and not superseded or otherwise modified by a later authorization are repealed except—

(1) authorizations for public works and for appropriations therefor that are set forth in those Acts in the titles that contain the general provisions; and

(2) authorizations for public works projects as to which appropriated funds have been obligated for construction contracts, land acquisition, or payments to the North Atlantic Treaty Organization, in whole or in part, before October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982 whichever is later, and authorizations for appropriations therefor.

(b) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 944), authorizations for the following items shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Energy Control System construction in the amount of $3,300,000 at Fort Jackson, South Carolina, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 565).

(2) Regional Sewage Treatment Plant Upgrade construction in the amount of $1,209,000 at Fort Bliss, Texas, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 565).

(3) Regional Sewage Treatment Plant Upgrade construction in the amount of $550,000 at Fort Monroe, Virginia, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 566).

(4) Improvements to Heating System in the amount of $394,000 at Kansas Army Ammunition Plant, Kansas, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 566).

(5) Energy Control System in the amount of $1,372,000 at Fitzsimmons Army Medical Center, Colorado, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 566).

(6) Barracks with Dining construction in the amount of $4,603,000 at Fulda, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 567).

(7) Hospital addition, alteration, and upgrade in the amount of $30,283,000 at 2d General Hospital, Landstuhl, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 567).

(8) Facilities Modernization in the amount of $1,782,000 at Christensen Barracks, Bindlach, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 567).

(9) Facilities Modernization in the amount of $7,731,000 at Ferris Barracks, Erlangen, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 567).

(10) Barracks without dining facilities in the amount of $2,299,000 at Conn Barracks, Schweinfurt, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 567).

(11) Effluent Land Irrigation System construction in the amount of $6,933,000 at Fort Ord, California, authorized in section 101 of the Military Construction Authorization Act, 1977 (Public Law 94-431; 90 Stat. 1349).

(12) Energy Monitoring and Control System in the amount of $765,000 at the Naval Air Station, Jacksonville, Florida, authorized in section 201 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 568).

(13) Municipal Sewer Connection construction in the amount of $2,500,000 at the Naval Education and Training Center, Newport, Rhode Island, authorized in section 201 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 569).

(14) Space Transportation System airfield facilities in the amount of $32,100,000 at Vandenberg Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(15) Energy—Alter Lighting System in the amount of $850,000 at Hill Air Force Base, Utah, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(16) Energy Monitoring and Control System in the amount of $3,300,000 at Kelly Air Force Base, Texas, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(17) Fire Station in the amount of $1,031,000 at Tinker Air Force Base, Oklahoma, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(18) Energy—Alter Mechanical, Electrical and Structural Systems in the amount of $1,120,000 at Wright-Patterson Air Force Base, Ohio, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(19) Energy Monitoring and Control System in the amount of $3,350,000 at Wright-Patterson Air Force Base, Ohio, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(20) Propulsion Wind Tunnel—16T High Angle Automatic Sting in the amount of $2,710,000 at Arnold Engineering Development Center, Tennessee, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(21) Energy Monitoring and Control System in the amount of $2,750,000 at Edwards Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(22) Insulate Heating and Cooling Controls and Insulate Buildings in the amount of $650,000 at Edwards Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(23) Chapel Center in the amount of $1,190,000 at Elgin Air Force Base, Florida, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(24) Energy Monitoring and Control System in the amount of $2,000,000 at Hanscom Air Force Base, Massachusetts, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572).

(25) Aircraft Corrison Control Facility in the amount of $7,310,000 at Dover Air Force Base, Delaware, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(26) Chapel Center in the amount of $1,240,000 at Castle Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(27) Energy Monitoring and Control System in the amount of $610,000 at Grand Forks Air Force Base, North Dakota, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(28) Air Installation Compatible Use Zone in the amount of $314,000 at Grissom Air Force Base, Indiana, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(29) Air Installation Compatible Use Zone in the amount of $357,000 at March Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(30) Sewage Main Regional Connection in the amount of $946,000 at Rickenbacker Air Force Base, Ohio, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(31) Energy Monitoring and Control System in the amount of $540,000 at Holloman Air Force Base, New Mexico, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(32) Energy Monitoring and Control System in the amount of $900,000 at Nellis Air Force Base, Nevada, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 573).

(33) Add to and Alter Cadet Library in the amount of $4,000,000 at the United States Air Force Academy, Colorado, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 574).

(34) Special Operations Facilities in the amount of $2,800,000 at Various Locations, Pacific Air Forces, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 574).

(35) Telecommunications Facility in the amount of $6,515,000 at Various Locations (Ramstein Air Base), Germany, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 574).

(36) ADP and Communications Facility—Alteration of existing space in the amount of $1,573,000 at Defense Depot Ogden, Utah, authorized in section 401 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 575).

(37) Storage Facilities—Construction in the amount of $1,353,000 at Defense Property Disposal Office, Indianapolis, Indiana, authorized in section 401 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 575).

(38) Covered Storage Facilities—Construction in the amount of $584,000 at Defense Property Disposal Office, Subic Bay, Republic of the Philippines, authorized in section 401 of the Military Construction Authorization Act, 1979 (Public Law 95-356); 92 Stat. 576).

UNIT COST LIMITATIONS

SEC. 606. None of the authority contained in titles I, II, III, and IV of this Act shall be deemed to authorize any building construction projects inside the United States in excess of a unit cost to be determined in proportion to the appropriate area construction cost index, based on the following unit cost limitations where the area construction index is 1.0:

(1) $52 per square foot for permanent barracks; or

(2) $56 per square foot for unaccompanied officer quarters;

unless the Secretary of Defense, or the Secretary's designee, determines that, because of special circumstances, application to such project of the limitations on unit cost contained in this section is impracticable. Notwithstanding the limitations contained in prior Military Construction Authorization Acts on units costs, the limitations on such costs contained in this section shall apply to all prior authorizations for such construction not heretofore repealed and for which construction contracts have not been awarded by the date of enactment of this Act.

AMENDMENT TO PRIOR AUTHORIZATION

SEC. 607. (a) Section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572), is amended under the heading "Inside the United States" by striking out "$141,782,000" in the item relating to Vandenberg Air Force Base, California, under the subheading "STRATEGIC AIR COMMAND" and inserting in lieu thereof "$223,161,000".

(b) Section 602 (3) of such Act is amended by striking out "$423,059,000" and "$522,743,000" and inserting in lieu thereof "$504,438,000" and "$604,122,000", respectively.

TITLE VII—GUARD AND RESERVE FORCES FACILITIES

AUTHORIZATION FOR FACILITIES

SEC. 701. Subject to chapter 133 of title 10, United States Code, the Secretary of Defense may establish or develop additional facilities for the Guard and Reserve Forces, including the acquisition of land therefor, but the cost of such facilities shall not exceed the following amounts:

(1) For the Department of the Army:

(A) for the Army National Guard of the United States, $40,000,000; and

(B) for the Army Reserve, $46,525,000.

(2) For the Department of the Navy: Naval and Marine Corps Reserves, $22,250,000.

(3) For the Department of the Air Force:

(A) for the Air National Guard of the United States, $73,500,000; and

(B) for the Air Force Reserve, $17,725,000.

WAIVER OF CERTAIN RESTRICTIONS

SEC. 702. The Secretary of Defense may establish or develop installations and facilities under this title without regard to section 3648 of the Revised Statutes, (31 U.S.C. 529) and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on lands includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes (40 U.S.C. 255) and even though the land is held temporarily. The authority to acquire real estate or land includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

TITLE VIII—GENERAL PROVISIONS

USE OF SOLAR ENERGY SYSTEMS IN NEW CONSTRUCTION

SEC. 801. Section 2688(b) of title 10, United States Code, is amended to read as follows:

"(b) For the purposes of this section, a solar energy system shall be considered to be cost effective if the original investment cost differential can be recovered over the expected life of the facility using accepted life cycle costing procedures.".

LAND CONVEYANCE, SOUTH CHARLESTON, WEST VIRGINIA

SEC. 802. Section 609 of the Military Construction Authorization Act, 1977 (Public Law 94-431; 90 Stat. 1365), is amended—

(1) by striking out in the first sentence "a section of land" and inserting in lieu thereof "three parcels of land";

(2) by striking out in the first sentence "4.5 acres" and inserting in lieu thereof "eight acres more or less";

(3) by striking out in the second sentence "eight acres" and inserting in lieu thereof "ten acres more or less"; and

(4) by striking out the period at the end of the last sentence and inserting in lieu thereof "or the Department of Navy.".

REPORTS ON REAL PROPERTY TRANSACTIONS

SEC. 803. Section 2662 of title 10, United States Code, is amended by striking out "$50,000" each place it appears in subsections (a), (b), and (e) and inserting in lieu thereof "$100,000".

INCREASE IN MAXIMUM AMOUNT THE SECRETARY OF A MILITARY DEPARTMENT IS AUTHORIZED TO EXPEND FOR ACQUISITION OF INTERESTS IN LAND

SEC. 804. (a) Section 2672 of title 10, United States Code, is amended—

(1) by striking out "$50,000" in the catchline and inserting in lieu thereof "$100,000"; and

(2) by striking out "$50,000" each place it appears in the text of such section and inserting in lieu thereof "$100,000".

(b) The table of sections at the beginning of chapter 159 of such title is amended by striking out "$50,000" in the item relating to section 2662 and inserting in lieu thereof "$100,000".

REAL ESTATE TRANSACTION, SAN DIEGO, CALIFORNIA

SEC. 805. (a) The Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized and directed to amend the declaration of taking which (1) was signed by him on December 26, 1979, (2) was filed in Civil Action Numbered 80-0021-E in the United States District Court for the Southern District of California pursuant to the authority conferred upon the Secretary by section 809 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 950), and (3) was condemned for the use of the United States all right, title, and interest of the city of San Diego, California, in and to a certain tract of land consisting of forty acres, more or less, in Balboa Park, San Diego, California. The Secretary may amend such declaration of taking by substituting for the estate described in such declaration a leasehold estate in such tract of land for a term of seventy-five years for the uses and purposes set forth in section 809 of such Act. The amendment of the declaration of taking shall be made by the Secretary subject to such terms and conditions as he deems necessary to protect the interest of the United States and subject to the approval of the city of San Diego.

(b) The Secretary shall convey to the city of San Diego, in consideration in whole or in part for the acquisition under subsection (a), all right, title, and interest of the United States in and to all or any part of the real property (including improvements thereon) of the Naval Regional Medical Center, San Diego, California, that has been conveyed, leased, or otherwise made available to the United States by the city of San Diego (other than the property acquired pursuant to the declaration of taking referred to in subsection (a)).

(c) The Secretary is authorized to construct a Navy hospital or medical center on the lands referred to in subsection (a) and to use such lands for related purposes, notwithstanding the acquisition of a leasehold estate for a term of seventy-five years in such lands rather than the acquisition of all right, title, and interest as provided in section 809(a) of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 950).

(d) The provisions of subsections (c) and (d) of section 809 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 950) shall apply to the amended acquisition authorized in subsection (a) of this section.

ALTERNATE FUELS USE STUDY

SEC. 806. (a) Within one hundred and eighty days after the date of enactment of this Act, the Secretary of Defense shall furnish a report to the appropriate committees of the Congress outlining a plan (1) to convert to the use of a fuel other than oil or gas all oil and gas fired plants of the Department of Defense which have heat input rates of fifty million British thermal units per hour or more, and (2) to replace, in each case in which such action would be cost effective, existing oil or gas fired plants with new central plants that use a fuel other than oil or gas.

(b) Such report shall include with respect to each plant the following:

(1) The estimated cost of conversion or replacement, including a breakdown of costs by major work items (that is, powerplant, utilities, fuel handling facilities, pollution abatement facilities, and related or similar items).

(2) The estimated oil and gas savings that would result from such conversion or replacement.

(3) The estimated annual net fuel cost savings that would result from such conversion or replacement.

(4) The computed benefit-cost ratio and the estimated payback period using accepted life cycle costing procedures.

Such report shall also include funding schedules based on the assumption that such conversions and replacements are to be completed within (A) a five-year period, and (B) a ten-year period.

NEW BOILER PLANT CONSTRUCTION

SEC. 807. (a) Except as provided in subsection (b) of this section, no new facility or plant which requires heat input rates of fifty million British thermal units per hour or more and which uses oil or gas, or a derivative of either, as fuel may be constructed on lands under the jurisdiction of the Department of Defense.

(b) The Secretary of Defense may waive the provisions of subsection (a) in rare, unusual situations; but any such waiver shall be explicitly included in budget justification documents submitted to the Congress in connection with the facility or plant concerned, and such waiver shall be called to the attention of the appropriate committees of the Congress by the Secretary of Defense during review of any proposed legislation to authorize or appropriate funds for the construction of such facility or plant.

(c) The Secretary of Defense may not provide heating service for any new facility or plant in increments in order to avoid the prohibition contained in subsection (a).

REMOVAL OF CHEMICAL MUNITIONS, ROCKY MOUNTAIN ARSENAL

SEC. 808. (a) Notwithstanding any other provision of law, the Secretary of Defense shall remove all chemical munitions from the Rocky Mountain Arsenal, Colorado, within one year after the date of enactment of this Act.

(b) Within ninety days after the date of enactment of this Act, the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives in writing of the methods proposed to be used in carrying out the provisions of subsection (a).

(c) The Secretary of Defense shall not implement the methods outlined in the notification required by subsection (b) until a period of thirty days has expired following the receipt by the Committees on Armed Services of such notification.

DECONTAMINATION STUDY, KAHOOLAWE ISLAND

SEC. 809. (a) In order to determine the feasibility and cost of clearing the island of Kahoolawe, Hawaii, and the adjacent waters of ordnance and other debris resulting from the use of such island as a target range by the United States Navy, the Secretary of the Navy is authorized and directed to (1) develop appropriate technology for clearing unexploded ordnance from test land which has the same or similar soil composition as the island of Kahoolawe and from submerged land which has the ecology characteristics of subtropical waters, and (2) demonstrate the developed technology at selected sites on the island of Kahoolawe.

(b) The Secretary of the Navy shall begin work on the development of the technology described in the first section within six months after the date of enactment of this Act and shall complete the development and demonstration of such technology at the earliest practicable date. The Secretary of the Navy shall submit progress reports to the Committees on Armed Services of the Senate and the House of Representatives each year until the project provided for in subsection (a) is completed.

(c) Any land or water area which may be cleared of unexploded ordnance incident to the demonstration of the technology shall be fenced or buoyed and be used for such purpose or purposes as the Secretary of the Navy may approve.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section during fiscal year 1981.

IMPACT ASSISTANCE FOR FISCAL YEAR 1981 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

SEC. 810. During fiscal year 1981, the Secretary of Defense may utilize funds appropriated for planning and design purposes to provide community planning assistance as follows:

(1) To assist communities near MX Weapon System sites, $5,000,000.

(2) To assist communities near the East Coast Trident Base, $1,300,000.

IMPACT ASSISTANCE FOR FISCAL YEAR 1982 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

SEC. 811. (a) During fiscal year 1982, the Secretary of Defense (hereinafter in this section referred to as the "Secretary") is authorized to assist communities located near MX Weapon System sites, communities located near the East Coast Trident Base, and the States in which such communities are located in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, testing, and operation of the MX Weapon System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of the increased need for such services and facilities.

(b)(1) The Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary is authorized, subject to the provisions of subsection (d), to (A) supplement funds made available under such Federal programs through a direct transfer of funds from the Secretary to the department or agency concerned in such amounts as the Secretary considers necessary, (B) provide financial assistance to communities described in subsection (a) to help such communities pay their share of the costs under such programs, and (C) guarantee State or municipal indebtedness for improved public facilities related to the MX Weapon System or the East Coast Trident Base.

(2) The head of each department and agency of the Federal Government concerned shall cooperate fully with the Secretary in carrying out the provisions of this section on a priority basis.

(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, is authorized to provide facilities and services in anticipation of the work to be carried out in connection with the MX Weapon System and the East Coast Trident Base. No department or agency may charge a management fee for assisting the Secretary in carrying out the provisions of this section.

(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary shall consult with the head of the department or agency concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration (1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population, (2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community, (3) the initial capitalization required for municipal sewer and water systems, (4) the initial operating cost for upgrading municipal services, and (5) such other pertinent factors as the Secretary considers appropriate.

(d) Funds appropriated to the Department of Defense for carrying out the MX Weapon System and the East Coast Trident Base in fiscal year 1982 may, to the extent specifically authorized in the military construction authorization Act for fiscal year 1982, be utilized by the Secretary in carrying out the provision of this section.

(e) The Secretary shall transmit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, not later than November 1, 1983, a written report indicating the total amount transferred to and the amount obligated and expended by each local community or State which has been provided assistance under the authority of this section during fiscal year 1982, the specific projects for which assistance was provided during such year, and the total amount for each such project during such year.

COMMUNITY IMPACT ASSISTANCE STUDY

SEC. 812. (a) The Congress finds that—

(1) the Department of Defense is required from time to time, for national security reasons, to provide for the construction in the United States of major, new military facilities which have a serious adverse impact on the communities and the areas in which such facilities are constructed; and

(2) neither the impacted local governments nor the States in which such facilities are constructed should be expected to bear the full cost of such impact.

(b) The President shall conduct a thorough study of the adverse impact on communities in areas in which major, new military facilities are constructed with a view to determining the most effective and practicable means of promptly mitigating such impact. In carrying out such study the President shall, as a minimum—

(1) identify those potential Department of Defense actions that are sufficient in scope to warrant impact assistance by the Federal Government;

(2) examine various options and recommend organizational mechanisms to administer the Federal community impact assistance to be made available;

(3) examine various options and recommend procedures for the budgeting of community impact assistance funds;

(4) recommend such changes in existing programs as may be necessary to provide effective and timely impact assistance to areas adversely affected by the construction of major, new military facilities; and

(5) consult with and seek the advice of appropriate State and local leaders and officials regarding the problems and needs of communities that result from the construction of major, new military facilities in or near such communities.

(c) The President shall submit the results of the study required by subsection (b) to the Congress not later than March 1, 1981, together with such comments and recommendations as the President considers appropriate.

SELECTION OF A SITE FOR THE PUBLIC DISPLAY OF THE U.S.S. NAUTILUS

SEC. 813. (a) The Secretary of the Navy shall select a suitable site, as provided in this section, at which the U.S.S. Nautilus, the world's first nuclear-powered submarine, will be permanently berthed and placed on public display after such submarine has been decommissioned. The Secretary shall select a site for such purpose that will be easily accessible and convenient for the people of the United States to visit.

(b) In considering potential sites for the permanent berthing and public display of the U.S.S. Nautilus, the Secretary of the Navy shall take into consideration the estimated site preparation and other related costs involved in permanently berthing such submarine for public display at each site and the extent to which contributions from public and private sources can reasonably be expected to meet such costs in the case of each such potential site. In no event may the Secretary select a site for such purpose unless he finds that there will be a reasonable contribution from public or private sources to help meet such costs at such site.

(c) The Secretary of the Navy shall notify the Congress in writing of the site selected by him for the permanent berthing and public display of the U.S.S. Nautilus promptly after he has made such selection and shall include in such notification (1) a list of the sites considered for such purpose, (2) the reasons for deciding on the particular site selected, (3) an estimate of the site preparation and other related costs involved in the case of each of the sites considered, and (4) an estimate of the amount that could reasonably be expected to be contributed by public and private sources to help meet such costs in the case of each of the sites considered.

STUDY OF CONDITION OF THE STRATEGIC RAIL CORRIDOR

SEC. 814. (a) The Secretary of Defense, in consultation with the Secretary of Transportation, shall conduct a study of the condition of railroad lines identified in the Strategic Rail Corridor Network (STRACNET) for National Defense (Military Traffic Management Command Report RND 76-1, An Analysis of a Strategic Rail Corridor Network for National Defense, November 1976). Such study shall include an identification of those segments of the corridor which, as a result of deferred maintenance or deterioration, may potentially have an adverse impact on the movement of personnel, equipment, and materials among federal military arsenals and installations, and an estimate of the cost of rehabilitating those segments.

(b) The Secretary of Defense shall submit the results of this study, together with recommendations for correcting deficiencies in the railroad network in order to strengthen the military's combat readiness and military mobilization base, to the Armed Services Committees of Congress no later than July 1, 1981.

LAND CONVEYANCE, SOUTH PORTLAND, MAINE

SEC. 815. (a) The first section and section 2 of the Act entitled "An Act to provide for the conveyance to the State of Maine of certain lands located in such State", approved August 28, 1957 (71 Stat. 467) are amended by striking out "for vocational or other

school purposes" and inserting in lieu thereof "for public purposes".

(b) The Secretary of the Navy shall issue such written instructions, deeds, or other instruments as may be necessary to bring the conveyance made to the State of Maine under the authority of the Act referred to in subsection (a) into conformity with the amendment made by such subsection.

Mr. HART. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I wish to compliment the distinguished Senator from Colorado (Mr. HART) on his extremely able and skillful handling of this military construction authorization bill. Some difficult problems were associated with the bill, but he has demonstrated, once again, his ability to manage legislation that is complex and difficult and to manage it in a way that cites the esteem and admiration of his colleagues. I wish to express my appreciation to him on behalf of the Senate.

I also wish to thank him and to thank his colleague on the other side of the aisle, Mr. WARNER, for his cooperation with the leadership in managing this bill. Mr. WARNER, likewise, has done a splendid job and, as always, is very skillful in carrying his share of the burden when it comes to managing a bill on the floor and working with the leadership on this side of the aisle.

Mr. President, I yield the floor.

Mr. STENNIS. Mr. President, will the Senator yield for a 1-second statement?

Mr. ROBERT C. BYRD. I yield.

Mr. STENNIS. Mr. President, may I also commend and thank the fine member of the subcommittee, the Senator from Colorado, who held the hearings and guided this bill, coming up with fine ideas as he has. It is another demonstration, Mr. President, of the great value to the Senate which he gives in whatever test he undertakes. We do not always vote together, but I certainly trust him on very important matters and am never disappointed.

Mr. HART. Mr. President, I thank the distinguished majority leader for his customary generosity, and I appreciate the comments of my esteemed committee chairman very much.

Mr. CHILES. Mr. President, I wish to join in the remarks of the majority leader and the chairman of the committee in congratulating Senator HART for his handling of the military construction authorization bill.

I wish to raise an issue, a construction project in Mayport, Fla., for a berthing wharf at the naval station which has been designated by the Navy as the No. 1 service project priority.

The urgency here is that 18 frigates have just been assigned to Mayport, and if the berthing wharf is not constructed properly, it will be difficult, if not impossible to work out.

Senator STONE and I wish to raise this matter because this project was authorized by the House at the level of $37 million for a 2-year construction project. The House Appropriations Committee subsequently approved $18 million for fiscal year 1981 funding of the wharf. The Senate military construction authorizing bill did not contain an authorization for this project, although the Senate military construction appropriations bill has approved a funding level of $37 million for fiscal year 1981.

The purpose of my remarks today, with Senator STONE, is to formally go on record in the Senate as supporting the Senate acceptance of the House authorization level when the military construction authorization is brought to conference by the Senate and the House. I just waned to relay that to my colleague and urge his consideration.

Mr. HART. Mr. President, I wish to thank the Senator from Florida for bringing this matter to the attention of the committee. Although it is not in the budget request, it is, as the Senator has mentioned, in the House authorization bill. It will be a conference item. Given his guidance and recommendations, we will give it very serious consideration, which it deserves. We appreciate his comments.

Mr. BAUCUS. Mr. President, I, too, join in commending, with the Senator from Mississippi, the Senator from Colorado for his management of this bill.

Mr. HART. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make necessary technical and clerical corrections in the engrossment of the Senate amendments to H.R. 7301.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that the bill, as passed, be printed in full, with amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that S. 3059 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I move that the Senate insist upon its amendments, request a conference with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. HART, Mr. STENNIS, Mr. JACKSON, Mr. CANNON, Mr. HARRY F. BYRD, JR., Mr. NUNN, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, and Mr. COHEN conferees on the part of the Senate.

A. PHILIP RANDOLPH INSTITUTE GOLD MEDAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1014, H.R. 5625.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the purpose of the reservation is to advise the majority leader that that item is cleared on our calendar. I see the distinguished Senator from Utah (Mr. GARN) is on the floor at this time. We have no objection to the request of the majority leader.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5625) authorizing the President of the United States to present a gold medal to the A. Philip Randolph Institute.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the committee proceeded to consider the bill which had been reported from the Committee on Banking, Housing, and Urban Affairs with an amendment on page 2, line 4, strike "1980", and insert in lieu thereof "1981".

Mr. PROXMIRE. Mr. President, this bill, as was indicated, directs the Secretary of the Treasury to design and produce a gold medal suitable for presentation to the A. Philip Randolph Institute in recognition of Mr. Randolph's lifelong advocacy of peaceful change on behalf of workers and minorities.

This should not be considered as a routine action by the Senate. Philip Randolph was truly a great American. As I have stated, he believed very deeply in change, but peaceful change. I know of few people who were more honored by our distinguished leaders including people like the distinguished Senator from New York, Senator JAVITS; Senator Lyndon Johnson and President Lyndon Johnson, Senator Humphrey, Senator Douglas, and John Kennedy, who served, of course, as a Senator and as President of the United States.

I am very proud, as chairman of the committee to have the honor to report this bill.

I wanted to say that because I am going to suggest an amendment to the bill which does not relate to Philip Randolph but which I hope the Senate will consider.

I offer this amendment, Mr. President, on behalf of the distinguished ranking minority member, Senator GARN, and myself. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator wish to have the committee amendment agreed to first? There is a committee amendment pending. Does the Senator wish first to have that committee amendment agreed to?

Mr. PROXMIRE. Yes. I would prefer to have the committee amendment acted upon.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. PROXMIRE. Mr. President, I am happy to yield to my good friend, the junior Senator from New York.

Mr. MOYNIHAN. Mr. President, I simply want to express my appreciation to Senator PROXMIRE and Senator GARN for this significant honor which they bestow upon one of the great men of this Republic and the institute named for him, the A. Philip Randolph Institute, in New York City.

I had an honor which would be as much as any man could hope for when I ran for the U.S. Senate. Mr. A. Philip Randolph was chairman of the labor committee supporting my candidacy. I have been associated with the director of the institute for many years.

We do an honor to this body as well as to the memory of this man.

I would like to thank Senator GARN and Senator PROXMIRE for their leadership and assistance in this matter.

Mr. PROXMIRE. Mr. President, I thank the Senator.

Mr. JAVITS. Will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. JAVITS. Mr. President, I would like to join in the comments of my distinguished colleague. A. Philip Randolph was a very, very venerated labor leader, and notwithstanding his labor union in a sense contracted because of changes in transportation modes, he remained one of the most influential labor leaders in the country, and one of the most influential Americans.

Mr. President, I believe it is just great that the Senators from Wisconsin and Utah are presenting this honor, and I thank them.

Mr. PROXMIRE. Mr. President, I thank the distinguished senior Senator from New York.

UP AMENDMENT NO. 1586

(Purpose: To prohibit a bank or bank holding company from acquiring a thrift institution except to avoid insolvency)

Mr. PROXMIRE. Now, Mr. President, I send an amendment to the desk on behalf of myself and Mr. GARN, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), for himself and Mr. GARN, proposes an unprinted amendment numbered 1586.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is ordered.

The amendment is as follows:

At the end of the bill add the following:

SEC. 2. Section 4 of the Bank Holding Company Act of 156 (12 U.S.C. 1843) is amended by adding at the end thereof the following subsection:

"(f)(1) Notwithstanding any other provision of law, no bank or bank holding company, directly or indirectly, or through one or more subsidiaries or affiliates, or through one or more transactions, may acquire, merge with, control or engage in the activity of owning, controlling, managing or operating a nonbank depository institution, except where the Board determines that such an activity is necessary in order to prevent the insolvency of, or to restore the solvency of, a nonbank depository institution.

"(2) For purposes of this subsection, the term nonbank depository institution means—

"(A) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act;

"(B) any savings bank as defined in such section;

"(C) any insured institution as defined in section 401 of the National Housing Act; and

"(D) any savings and loan holding company or any building and loan association or savings and loan association organized and operated according to the laws of the State in which it is chartered or organized that is not an insured institution as defined in section 401 of the National Housing Act; and, for purposes of this paragraph, the term 'State' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

"(3) The prohibition contained in this subparagraph shall remain in effect until the Congress, by concurrent resolution, provides for its termination. No later than September 30, 1981, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation each shall submit to Congress a study analyzing the potential competitive, supervisory, legal and other effects, including the impact on the availability of residential mortgage lending, of permitting acquisitions by banks and bank holding companies of nonbank depository institutions.

"(4) The Board shall make no determination under paragraph (1) of this subsection with respect to a nonbank depository institution described in paragraph (2) of this subsection without the concurrence of the appropriate federal supervisory agency of both the acquiring and the acquired institution.

Sec. 3. (a) Section 11(e)(2)(B) of the Federal Home Loan Bank Act (15 U.S.C. 1431(e)(2)(B)) is amended by striking out "paragraph" and inserting "subsection" in lieu thereof.

(b) Section 11(e)(2)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)(2)(B)) is amended by striking out the word "or" the first place it appears, and inserting in lieu thereof the following: "as interpreted by the Federal Home Loan Bank Board in consultation with the Board of Governors of the Federal Reserve System, and may".

(c) Section 307(b)(2) of the Federal Credit Union Act (12 U.S.C. 1795f(b)(2) is amended by striking out the word "or" the second place it appears, and inserting in lieu thereof the following: "as interpreted by the National Credit Union Administration Board in consultation with the Board of Governors of the Federal Reserve System, and may".

Mr. PROXMIRE. Mr. President, the amendment I am offering now is unrelated to Mr. Randolph or his institute, but it is a vital amendment.

Mr. President, this amendment would prohibit acquisitions of mutual savings banks, savings and loan associations, or savings and loan holding companies by banks or bank holding companies. Acquisitions of savings banks by savings and loan associations would not be prohibited nor would acquisitions of savings and loan associations by savings banks be prohibited. An exception to the prohibition applying to a bank holding company acquiring a savings and loan association would be made for cases where the Federal Reserve, for example, and the FHLBB both determined that an acquisition by a bank holding company was necessary in order to avoid the default of the insured thrift or the payment of its insured accounts, by the FSLIC, or to restore the defaulted thrift to normal operation. The prohibition could be terminated by House and Senate adoption of an appropriate concurrent resolution. The amendment further would require the Federal Home Loan Bank Board to provide Congress, no later than September 30, 1981, with a study analyzing the potential effects of permitting bank takeovers of thrifts particularly with regard to the impact on home mortgage financing.

The basic purpose of the amendment is to make sure that the period of transition and adjustment that the S. & L. and mutual savings bank industry is entering in the wake of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, does not lead to a wave of takeovers of S. & L.'s and mutual savings banks by banks.

By giving the S. & L. industry and mutual savings banks broad new asset and liability powers, and by providing for the gradual ending of rate control, Congress has, in a very real way, changed the rules of the games for thrift institutions, presenting them with a considerable challenge that they must meet in order to continue in business and continue to satisfy our Nation's housing credit needs. At the same time, the new powers given thrifts have made those institutions more attractive acquisition targets for banks and their holding companies and have made S. & L. and mutual savings bank acquisitions a more potent method of circumventing restrictions on interstate branching by commercial banks.

A number of bank holding companies already are planning to seek Federal Reserve approval for thrift takeovers. Without an amendment such as the one now proposed, the only barrier to consummation of those acquisitions appears to be the Federal Reserve Board's own 1977 determination, that operation of a S. & L. is not a proper incident to banking. There is no such decision which applies to savings banks and mutual savings banks.

As I noted, the amendment would allow an exception to the prohibition in order to prevent or cure default. It is intended that this exception would be used only where absolutely necessary. For instance, if thrifts were in danger of collapse and no thrift merger partners were available of a size sufficient to acquire the institution, the Board would have the option, only with the concurrence of the appropriate Federal regulator of both the acquiring and acquired institution of turning to a bank or bank holding company as an alternative to the expensive and disruptive process of liquidation. It is not intended, however, that the exception would be used where suitable thrift—savings and loan or mutual savings bank—partners were available to acquire the defaulting savings and loan association or mutual savings bank.

Mr. President, I might point out that the policy of the Federal Reserve, for years, has been not to approve the takeover of savings and loans or their associations by commercial banks. There is some indication that that policy might be changed. If so, I think the policy change would be so significant that it should be a matter of mature consideration by the Congress. We should have an opportunity to know about it, to hear about it, to take action in support or in opposition to it. That is the purpose of this amendment.

Mr. President, earlier this year the Congress enacted the Depository Institu-

tions Deregulation and Monetary Control Act. Part of that act provides that the Federal Home Loan Bank Board may authorize the Federal Home Banks to offer payments services connected with clearing, settlement, and processing of drafts. These services are to be priced according to a set of full-cost pricing principles.

It appears that a clarifying change is needed. This amendment provides the needed clarification. There is some question as to whether the current language applies to new payments services, as well as existing payment services. This amendment would make it clear that both new and existing payments services offered by Federal Home Loan Banks to savings and loan associations are to be priced at full cost on a for-profit basis. This is the same type of requirement that applies to Federal Reserve Banks.

The Federal Home Loan Bank Board has been informed of this amendment, and I am told that they have no problem with its since they intend to require pricing of new and existing payment services.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I support this amendment to prohibit banks or bank holding companies from acquiring savings and loan associations or other types of savings institutions. Although the Fed has generally not permitted such acquisitions, they are not specifically prohibited under current statutes. Thus, the amendment insures that the distinctive character of savings institutions, which are designed to serve as sources of mortgage financing, is not altered without further study and congressional consideration.

The amendment would also clarify the intent of the Depository Institutions Deregulation Act with regard to pricing of payments services offered by Federal home loan banks. Pricing of these services and those offered by the Federal Reserve banks is important for efficiency reasons, and will lead to a more competitive market for payments services. Therefore, I offer my support for the amendment and I am willing to have it accepted as part of the legislation if there is no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1586) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981.

The PRESIDING OFFICER. The Senate will resume consideration of H.R. 7631, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate continued with consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the amendment by Mr. JEPSEN, the HUD appropriation bill be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine business not to extend beyond 15 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRESSIONAL AWARD PROGRAM

Mr. BAKER. Mr. President, I am delighted to report to the Senate that the national board of directors of the congressional awards program held its first meeting this past week here in Washington and has now officially begun its most promising work in behalf of America's youth.

At that meeting, Mr. W. Clement Stone, an inspirational Chicago businessman and philanthropist known to so many of us in Government, was elected chairman of the Congressional Awards board.

Joining Mr. Stone as officers of the board are: The Honorable John D. Rockefeller, IV, the distinguished Governor of the great State of West Virginia, who was elected vice-chairman; Patrick L. O'Malley, the chairman of the board of the Canteen Corp., of Illinois, who was elected secretary; Frank H. Arlinghaus, Jr., a physician from New Jersey, who was elected treasurer; and David A. Koch, the president of Graco, Inc., of Minnesota, who was elected to the executive committee of the award program.

Mr. President, this program has as its sole and noble goal the encouragement and recognition of the 37 million Americans between the ages of 14 and 23.

These fine gentlemen have most generously donated their time and talents to insure the success of the congressional award program and all Americans owe them a great debt.

All Americans also owe a great debt to my good friend, the distinguished Senator from Wyoming (Mr. WALLOP), who was the driving force behind this program in the Congress. Senator WALLOP's untiring devotion to America's youth, his dedication to their promise and their achievements is a model for us all.

I would encourage all of my colleagues to study the goals of the congressional award program and to support them.

To that end, I now ask unanimous consent that a fact sheet on the Congressional Award and a biographical sketch of its illustrious chairman of the board, Mr. Stone, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE CONGRESSIONAL AWARD FOR YOUTH

What is the congressional award?

The Congressional Award is a program which seeks to give national recognition to the initiative, achievement and excellence of the youth of America.

The Congressional Award was established by an Act of Congress Public Law 96-114 on November 16, 1979. The Law states that the program will receive no Federal funds and will be entirely supported by the private sector.

It's a program of activities open to all young people in the United States between the ages of 14 and 23. It offers a challenge to young people, an opportunity to develop skills, explore new interests, experience adventure, make friends and help the community.

The Congressional Award is a voluntary program. It is not competitive since each participant is evaluated on his or her individual goal achievement. Those accepting the challenge offered by the Congressional Award will require perseverance, enterprise and effort to complete the program and qualify for the awards. Gold, silver and bronze medals will be awarded to those who have satisfied the pre-established standards of achievement in all four program components—public/community service, personal interests, physical fitness and expeditions. Within that broad framework each participant can choose activities which match his/her individual tastes and talents and which are relevant to local community needs.

In order to participate in the program, young people purchase a record book, at nominal cost, from a local Congressional Award Operating Agency (Award Agency). The Award Agencies, which are authorized by the Regional or State Congressional Award Boards, may be schools, community and church organizations, youth agencies and clubs, commercial and industrial organizations, and other responsible bodies which encourage participation by the young people under their charge.

Working with Award Co-ordinators appointed by the Award Agencies are Advisers, who are usually school teachers, youth agency directors, community leaders, business men and local volunteers who have a genuine interest in the upbringing of young people and in the aims of the Award Program. Participants follow their chosen activities, largely in their own time, with guidance from Instructors who are knowledgeable in the participant's chosen subject. When predetermined standards of achievement are met, as indicated in the program standards, the participant qualifies for an award.

W. CLEMENT STONE

From their home office near Chicago, Combined International Corporation and Combined Insurance Company of America operate throughout the United States and in Canada, Great Britain, Australia, New Zealand, the Republic of Ireland, West Germany, France, Japan and the parts of the Caribbean. The founder and chairman of the board of that vast accident, health and life insurance group of companies, W. Clement Stone is also chairman or president of its four subsidiaries in Texas, Wisconsin, New York and Sydney, Australia officer of several other types of business enterprises.

Stone's success philosophy is carried to millions of people through self-help books and articles that he has written; through his magazine, Success Unlimited, the PMA Success Rallies and the W. Clement and Jessie V. Stone Foundation's (AMP) Achievement Motivation Program. He reassuringly tells others how he built a multi-million dollar insurance empire and accumulated a personal fortune of some $400 million by combining merchandising expertise with his concept of a Positive Mental Attitude. At the same time, he instructs them on how they too can become successful in their lives by using similar methods. Much of Stone's time, energy and money in recent years has been devoted to philanthropy, civic activities and to political causes.

As W. Clement Stone has himself observed, he speaks from experience when he insists that any man can become wealthy, "no matter how poor his start in life." He was born in Chicago, Illinois on May 4, 1902 to Louis and Anna M. (Gunn) Stone. Before the boy was three years old, his father died. At the age of six he began selling the Examiner newspaper on Chicago's streets, while his mother worked as a dressmaker, and at thirteen he ran a newsstand of his own. He devoured all the Horatio Alger stories available and was particularly inspired by Robert Cloverdale's Struggle.

When Stone was sixteen his mother moved to Detroit to open an insurance agency, representing the United States Casualty Company. Joining her in the summer, he began his career as an insurance salesman by calling office to office at the Dime Bank Building in Detroit and before long he was earning $100 a week. More important, although timid at first in his approach, by reflection and experience he soon began to develop the sales technique and the rationale of optimism to which he attributes his great fortune.

To devote more time to his insurance business, Stone dropped out of high school. Although self-taught to a great extent, he obtained a diploma by attending the YMCA Central High School in Chicago at night and also took some courses at the Detroit College of Law in 1920 and at Northwestern University from 1930 to 1932.

When he was twenty he used his savings of $100 to set up his own insurance agency in Chicago. He advertised for salesmen in newspapers, first in Illinois and then in other states, and by 1930 about a thousand agents throughout much of the country were selling insurance for him as the representatives for large casualty companies.

A Stone dictum holds that every adversity contains the seed of an equivalent benefit if one but searches for it. For him, therefore, the Depression was the "best thing that happened." Robert J. Cole of the New York Times (May 2, 1971) quoted him as saying, "It forced me to develop good work habits and be more scientific in training men so I could pay off my debts."

While Stone's national insurance sales organization flourished as the Depression waned, he began to carry out ambitious plans for expansion. In 1939 he acquired the management contract of the American Casualty Company (now Combined American Insurance Company) of Dallas, Texas, of which he became president. Also in 1939 he organized the Combined Mutual Casualty Company in Chicago and the following year became president and general manager of the Combined Casualty Company of Des Moines, Iowa. Particularly interested in buying a stock company licensed to sell accident and health insurance in many states throughout the country, he found what he was looking for in 1946 in the Pennsylvania Casualty Company of Philadelphia, which was up for sale because it was losing money.

"What's very important in making a fortune is how to use OPM—other people's money." Stone wrote in an article for Nation's Business (July, 1968). He then went on to explain how he purchased the Pennsylvania Casualty Company with the seller's money, by borrowing from the Commercial Credit Company of Baltimore, which owned the Philadelphia insurance firm.

On December 23, 1946, three days after he had acquired Pennsylvania Casualty, he was elected its president. The following year he changed its name to the Combined Insurance Company of America, into which he merged his Combined Mutual Casualty Company of Chicago in late 1947. Two years later he moved the headquarters of the Combined Insurance Company of America from Pennsylvania to Illinois. Also in 1949 he acquired the first of its subsidiaries, becoming president of the Hearthstone Insurance Company of Massachusetts (now merged into the parent company). Another purchase, in 1954, made him president of the First National Casualty Company of Fond du Lac, Wisconsin (now the Combined Insurance Company of Wisconsin). He is also president of another insurance subsidiary, Combined Life Insurance Company of New York, Albany, and a member of the board of Combined Life Insurance Company of Australia Ltd., and chairman of a minority enterprise small business investment corporation (MESBIC), Combined Opportunities, Inc. of Chicago.

Shareholders of Combined Insurance Company of America approved the formation of a holding company, Combined International Corporation, effective May 30, 1980 in order to undertake a broader range of activities than are open to an insurance company. Stock in Combined was exchanged one for one with stock in International.

Stone once estimated that every $10,000 invested in Combined Insurance Company of America in 1951, had earned several million dollars by 1968, when the company's assets exceeded $150,000,000. In early 1969, according to Time (February 7, 1969), the Combined Insurance Company had 23,000 stockholders, 3,500 salesmen and 1,200 employees. Ten years later Combined's assets exceeded $1.15 billion, its stock was held by almost 30,000 share-holders and policyholders were serviced by a field force of more than 7,000 sales representatives and managers and 3,200 administrative employees.

In the National Underwriter (June, 1980) Price Gaines reported that Combined had premiums earned less dividends of $291,008,675—outproducing its five nearest rivals. Combined has been in first place since 1967. By 1978 the company had in excess of 10,750,000 policies in force in the U.S.A. Included in the world wide total of 14,400,000 health and life insurance policies in force were: Canada, 1,550,000; Australia 425,000; New Zealand 200,000; United Kingdom 1,200,000 and Republic of Ireland 120,000.

Forbes 32nd Annual Report on American Industry in 1979 showed Combined a leader in the stock life insurance industry in regard to return on shareholders equity (ROE) placing the company in the top 15 percent of the Forbes 1,035 company coverage.

The salesmen of Combined Insurance Company of America are trained in methods of merchandising based on inspiration to action, know-how and activity knowledge, and primarily, on what Stone calls PMA—or Positive Mental Attitude. Their training exposes them to such self-motivation spurs to action as "What the mind can conceive and believe, the mind can achieve" and "Do it now." They are said to be instructed to renew or declare their PMA by chanting every morning, "I feel healthy, I feel happy, I feel terrific." William Davis, author of Its No Sin to Be Rich (Sphere Books 1978) explains that the self-motivators ""float about on the surface of your mind for a while. Then, after sufficient repetition, they begin to sink in and become integral components of your psyche. From then on you barely need to think about them. In the midst of any business situation, the correct self-motivator will assert itself and will automatically guide you in the direction of success." The sales training course also includes learning how "to keep a smile in the voice" and when to make "eye contact" with a prospective customer.

"Combined Insurance isn't the least bit worried about sounding corny," David Garino wrote in the Wall Street Journal (February 27, 1969), "When recruiting new salesmen, the company puts enthusiasm and energy ahead of academic attainment." Answering questions by members of the Investment Analysis Society of Chicago in March, 1974 Stone said: "In 1974 we are hiring more people, training more people and keeping more people. When times are difficult it's easier to sell insurance. I can speak with authority because I learned the art during the Depression years."

In achieving PMA, Stone was influenced by the writings of Emile Coue and the Reverend Norman Vincent Peale, well-known advocates of positive thinking, and by Napoleon Hill, whose book Think and Grow Rich for making money, helped Stone to persevere in overcoming the setbacks of the Depression. Many years later he collaborated with Hill in writing Success Through a Positive Mental Attitude (1960). Stone is also the author of The Success System That Never Fails (1962), and the co-author with Norma Lee Browning, of The Other Side of the Mind (1964). All three of Stone's books were published by Prentice-Hall, Inc., from which in late 1964 he bought a majority interest in Hawthorn Books, Inc. When he became chairman of the board of that company in March, 1965, he indicated that he intended to publish books of the type that he had written, which he once described as "inspirational self-help action books."

Stone also lights the way to material well-being through his magazine Success Unlimited, of which he is chairman of the board. That monthly magazine was founded in Chicago in 1954 but did not seek mass circulation until 1967. "SU cheerily offers its 500,000 readers a potpourri of personal success stories and self-improvement sermons," Newsweek (January 11, 1971) reported. ". . . Editorially, SU manages to combine the pragmatism of Poor Richard's Almanac with the moral certitude of the Bible."

Among his other business affiliations he holds a directorship in the cosmetic firm Alberto-Culver Company in Chicago. "While he has a Midas flair for making money," a writer for Time (February 7, 1969) commented, "Stone is equally skilled at giving it away." He was an ardent and generous backer of former President Nixon, who became a personal friend after his defeat in the 1960 Presidential election and the 1962 California gubernatorial election.

Giving much time as well as money to political causes, Stone is a member of the executive committee of the Republican National Finance Committee, and trustee of the United Republican Fund of Illinois and he has served as a member of the National Advisory Committee to the President.

Among civic and government groups with which he has been associated are the National Advisory Committee on Minority Business Enterprise, and the Chicago Council on Urban Opportunity. He is a trustee of the Lincoln Academy of Illinois and a former member of the Committee for the Preservation of the White House. In December, 1979 Stone was appointed a member of the Congressional Award Board established by Public Law 96-114 to administer the Congressional Award Program designed to encourage initiative and achievement among young people.

Groups concerned with voluntarism, mental health, youth welfare, religion and education have been the chief recipients of the charitable contributions channeled through the W. Clement and Jessie V. Stone Foundation, of which Stone is chairman. Stone's

personal gifts and the family foundation grants totaled $57,000,000 at the end of 1972 and exceeded $70,000,000 by December 31, 1978. These figures do not include outstanding commitments. A firm believer that people must be motivated to help themselves, Stone often requires recipients of his grants to raise specified sums of money through their own efforts. To honor those who have overcome adversity and contributed to the betterment of humanity, the Foundation has established the annual "Endow a Dream" award.

Among the countless organizations devoted to human betterment that Stone has endorsed are the Lewis University Special Services Center, which provides training programs in motivation on an international basis for people in criminal justice; Chicago's John Howard Association, an agency to help prisoners; and Teen Challenge, an association for the guidance of troubled adolescents. He is chairman of the board of the Chicago Boys' Clubs, a member of the national executive committee of the Boys' Clubs of America, and of the executive committee of the International Federation of Keystone Youth Organizations, chairman of Helping Hearts and Hands in Chicago and Foundation for the Study of Cycles in Pittsburgh, and member of the Menninger Foundation, the World Federation for Mental Health in Geneva, Switzerland and the Burden Neurological Institute in Bristol, England. In the educational field he is chairman of the board of trustees of Interlochen Arts Academy (Michigan) and the International Council on Education for Teaching (ICET).

In the latter capacity he led educational conferences in Kenya in 1973, Singapore in 1974 (where he personally conducted a seminar on P.M.A. in educational training at the invitation of the Singapore Teachers Union). In the field of National Center for Citizen involvement, he has also helped to support many cultural undertakings such as those of the Art Institute of Chicago, the Chicago Chamber Orchestra, and the Lyric Opera of Chicago.

"Study, Think, Plan, Act" is one of Stone's favorite mottoes. He also asks for divine guidance before setting out on any new venture and regards the Bible as "the world's greatest self-help book." He attends a Presbyterian church and was formerly a director of the McCormick Theological Seminary in Chicago. He is president of Religious Heritage of America, Inc., in Washington, D.C., which named him Layman of the Year in 1962. The Church Federation of Greater Chicago named him Church Layman of the Year in 1968. He is chairman of the Institutes of Religion and Health in New York and in 1969 was chairman of National Bible Week.

Stone belongs to scores of business and fraternal organizations and clubs, including the Hortio Alger Award Committee of the American Schools and Colleges Association, Inc. He himself, received the Horatio Alger Award in 1963. Among his other honors are the B'nai B'rith National Humanitarian Award for 1968, the Patron of the Year Award from the Chicago Medical School's department of microbiology for 1969, the Humanities Award of the College of Insurance for 1971, the Freedoms Foundation Free Enterprise Exemplar Medal in 1972 and the Royal Arch Gold Medal Award of the General Grand Chapter-Royal Arch Masons International in 1972. DePaul University presented him with the St. Vincent DePaul Award and the Doctor of Humane Letters degree in 1970. He holds eight other honorary doctorates, including the Doctor of Jurisprudence degree, conferred by Monmouth College (Illinois) in 1963, and the Doctor of Laws degree conferred by Whittier College (California) in 1973.

On June 16, 1923, W. Clement Stone married his high school sweetheart, Jesse Verna Tarson. They have three children: the eldest, Clement is president and chief executive officer of Combined International Corporation and Combined Insurance Company; younger son, Norman is in business in California and daughter, Donna is president of the W. Clement and Jessie V. Stone foundation and a founding member of the National Committee for Prevention of Child Abuse.

RAIL DEREGULATION

Mr. ZORINSKY. Mr. President, as Senators are aware, the Senate is preparing to go to conference with the House to iron out the vast differences between their respective versions of the rail deregulation bill. We finished our work on that issue last April and have not had to greatly concern ourselves with provisions of that legislation during the months it has taken the House to debate and conclude its deliberations. What is disturbing is that the House debate has brought to light many problems which could well have changed positions taken by a number of my Senate colleagues—particularly with regard to joint rate surcharge and cancellation provisions.

I doubt that many of us had any profound understanding of the consequences of this provision when it was brought in as a last-minute floor amendment. In fact, the legislative explanation provided along with the amendment that day proved to be in many ways inaccurate and misleading. It was misleading in what it did explain and eloquent in what it failed to mention at all.

The surcharge and cancellation provisions we accepted and the modified version passed by the House will create chaos in American rail transportation. Incredible increases in shipping costs are inevitable. At best, parts of America can expect half the service at twice the cost. In all too many communities, shippers can look forward to no rail service at all.

The existing network of joint routes and rates was designed to allow freight traffic to move from origin to destination across the lines of several connecting carriers under a single rate—a long haul rate cheaper than the sum of local rates to be transversed. In some cases, this simply eliminates the problem of "you can't get there from here" without separate quotes from two or more railroads. In others, it provides competition to the big railroads whose single line route to the same destination might otherwise dominate the market and force a chain of small railroads out of business.

In reaching ports, it has meant that through the historical practice of equalization, export goods have access to port facilities and overseas markets at approximately equal and competitive rates. The division of traffic revenues which result from the joint rate is agreed upon by the railroads participating in the route.

It is, however, subject to readjustment at the Interstate Commerce Commission if one of the rail partners can make a case that it is not getting a fair or adequate share. Although this arrangement has worked effectively for over a century, it will be radically disrupted by the surcharge and cancellation authority.

Most of my colleagues are now fairly familiar with this section of the bill, and I need not describe its technicalities at length. The formula was developed by two of the Nation's largest rail transportation companies, Conrail and Southern. It favors inefficient railroads with high operating costs, and as such, the surcharge becomes a reward for inefficiency, providing railroads like Conrail with a means of enhancing their revenues at the expense of prosperous carriers and all shippers.

Conrail has lobbied for its passage with the threat that without surcharge authority, the pricetag on its annual congressional bailout will be increasingly high. Conrail apparently thinks that it is about time American farmers and utility customers begin paying for that railroad's abortive conception and subsequent mismanagement.

Without focusing on the surcharge authority authorized by the legislation, let us look a little bit at what results from cancellation of joint rates, which the legislation also authorizes.

When a carrier is receiving less than 110 percent of its variable costs on its portion of a joint route, it may simply cancel out the joint rate which has been published by the rate bureau—leaving the shippers to fend for themselves in obtaining quotes from the various railroads whose lines will get the shipper's goods to market.

With the artful use of selective cancellation, the large railroads will be in a position to divert traffic to routes from which they derive the greatest economic return. Step two naturally follows—wholesale abandonment of those less desirable joint routes under the streamlined abandonment procedures provided in other titles of the deregulation bill. Once competition from the small railroads which connect with surcharged or cancelled routes has been eliminated and a monopoly position established, the majority of the Nation's shippers—those that have any service left at all—will awaken to find themselves captive to a single carrier.

The small railroads which presently provide a competitive option against this kind of traffic manipulation are not equipped to defend against the new opportunities for predatory practices which are provided by the surcharge and cancellation authority. In an effort to provide Conrail with some temporary financial relief through rapid redetermination of its joint rate revenues, the Congress is risking the bankruptcy of additional carriers and a massive obstruction of market access by manufacturers in thousands of communities across the country. In essence, the legislation will establish a surcharge mechanism which rewards inefficiency and which sidesteps the real issues of good management and proper pricing.

These opportunities for anticompetitive practices have always been curtailed by the Interstate Commerce Act, which protects shippers and small railroads against unjust discrimination and predatory pricing tactics. But deregulation exempts both surcharges and selective cancellation of joint rates from the antidiscrimination law.

That is just a small dose of what we are in for once the joint rates section is

enacted. The Senate was inadequately advised of its intent; the House was subjected to severe pressures from the White House to move ahead with the third and final step in President Carter's transportation deregulation program. The conference is not permitted under its rules to simply drop the issue.

I urge all of my colleagues to take an active part in communicating your concerns to the conferees. Our own version of the provision is broad—too broad to safely deliver into the hands of the ICC for interpretation. But it does provide the framework within which we can work out some of the more onerous features of the surcharge and cancellation mechanism. I trust that the conferees will recognize and acknowledge the serious implications of this situation and be receptive to the suggestions of their Senate colleagues.

Mr. President, I request unanimous consent that a copy of a letter from my colleagues Senators MCGOVERN and DOLE to Representative ECKHARDT be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, D.C., September 5, 1980.

Hon. BOB ECKHARDT,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: As you well know, the House is expected to vote on the Rail Act of 1980, next Tuesday.

The new compromise proposal is a subject of great concern to many of us representing agricultural states. During the development of the Senate rail deregulation legislation earlier this year we worked hard with the Senate Commerce Committee to include provisions in the bill to protect captive shippers from excessive rates and accelerated abandonments.

The Senate bill as passed contains many of these provisions while allowing railroads increased regulatory freedom. We are deeply concerned, however, that the House version of this bill will create serious hardships for shippers and agricultural producers through dramatically increased rates.

We recognize that House compromise proposal contains acceptable general rate provisions which are in some ways similar to those contained in the Senate passed version. However, the House section pertaining to joint rates and surcharges could be devastating to thousands of shippers across the country, particularly those located on branchlines, as well as adversely impacting a number of bridge carriers that transport agricultural commodities.

Surcharges imposed by one carrier and affecting the traffic of another, can have serious financial consequences for the second carrier. Given the marginal nature of several "bridge" carriers, the surcharge and joint rate provisions could result in additional rail bankruptcies or financial crises requiring increased federal assistance. Yet this deregulation proposal was initially predicated upon the need to allow railroads to regain their financial health in the marketplace, thereby reducing their dependence on the Federal treasury.

Moreover, the doubling of a rail rate through surcharges on a given commodity and line can result in de facto branchline abandonments. Such surcharges, as authorized in the House bill, would result in substantial diversion of traffic to less energy efficient transportation modes, thus creating an atmosphere that would facilitate abandonment proceedings.

We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agricultural products through increased food prices.

Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provisions of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Sincerely,

GEORGE MCGOVERN.
ROBERT DOLE.

Mr. ZORINSKY. Mr. President, I ask unanimous consent that letters from the Consumer Federation of America and the Consumer Energy Council of America be printed in the RECORD.

There being no objection the letters were order to be printed in the RECORD, as follows:

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., September 4, 1980.

DEAR REPRESENTATIVE: H.R. 7235, the "Rail Act of 1980," is once again scheduled for consideration by the House on September 5. Support for the Eckhardt-Rahall amendment is strong and has been growing to include many consumer groups since its July 24th passage.

Consumers need your support of this amendment, which will serve as protection against imminent railroad monopolies that will drive smaller lines out of business, allow for discrimination against certain ports, force captive shippers to pay exorbitant rates and cost consumers millions of dollars. If Title 3 remains intact, railroads will acquire the power to surcharge at their discretion. Conrail alone has stated its intention to increase in excess of 285,000 rates.

The Rahall-Staggers-Lee compromise recently offered fails to protect consumers, captive shippers, and small railroads. A report submitted by the Public Interest Economics Center to the Federal Railroad Administration clearly substantiates these concerns as well as numerous other undesirable consequences that will materialize without inclusion of the Eckhardt-Rahall amendment as accepted on July 24.

The amendment has been incorporated into the Rail Bill, illustrating Congress' concern for consumer protection. The Consumer Federation of America urges you to continue supporting the Eckhardt amendment, and oppose the Rahall-Staggers-Lee "compromise" which will negate all virtues of the original Eckhardt-Rahall amendment.

STEPHEN BROBECK,
Executive Director,
Consumer Federation of America.

CONSUMER ENERGY COUNCIL OF AMERICA,
Washington, D.C., September 4, 1980.

Re H.R. 7235 The Rail Act of 1980.

DEAR REPRESENTATIVE: The House is once again considering H.R. 7235, The Rail Act of 1980. The Consumer Energy Council of America, a broad based coalition of major national consumer, labor, farm, public power, rural electric cooperative, urban, senior citizen and low income organizations urges you to support all aspects of the Eckhardt amendment—including those already adopted, and to reject the Staggers-Rahall amendment, which is a major step backward.

The bill, as amended on July 24, 1980, provided the minimum protection that consumers of heavy bulk commodities such as coal and grain deserve. Coupled with the other provisions of the Eckhardt amendment, which would protect small railroads and ports, the bill would strike a balance between shippers, consumers, and railroads. The Staggers-Rahall amendment is not a compromise in any sense of the word and it would remove the protection for the consumer, which the House has already voted.

We urge you to reject the Staggers-Rahall amendment and vote for the Eckhardt amendments which would prevent dramatic, inflationary increases in coal and grain prices. Should the Eckhardt amendment fail, we urge you to vote against the bill.

Sincerely,

ELLEN BERMAN,
Executive Director.

Mr. ZORINSKY. Mr. President, I also have a copy of a recent article printed by the Bureau of National Affairs which outlines the most recent business forecast prepared by Conrail, and which predicts that Conrail will need up to $3.5 billion—Federal—over the next 5 year period. I request unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

RAILROADS: CONRAIL FORESEES NEED FOR ADDITIONAL FEDERAL FUNDING FOR NEXT FIVE YEARS

Massive amounts of additional federal funds will be needed by Conrail in the next five-year period, with the rail carrier's most optimistic estimate calling for $900 million more and the worst scenario saying the need will be about $3.5 billion.

These figures are included in the most recent business forecast prepared by Conrail and filed July 1 with the United States Railway Association but not released until last week. USRA oversees the Conrail operation, decides how much of the available federal government funds will be allocated to the rail carrier, and reports to Congress on the railroad's progress toward economic viability. To date, Congress has authorized $3.3 billion for the Consolidated Rail Corporation (Conrail) and $3.115 billion of that has been approved by USRA for the 17,000-mile rail system that services 16 northeast and midwestern states.

Release of the business and economic forecast for the carrier shortly precedes the return of Congress, July 21, from its current recess. Conrail supporters have been working during the interim on the possibility of getting legislation approved to increase authorized federal support for the railroad.

Several sources report that it has not been easy. The railroad would like another $400 million in authorized funding approved by this 96th Congress. In the face of a very tight budget, an economy wave pervading both the House and Senate, plus perhaps most significant event of all—the November election—the congressional response, thus far, has not been significant.

It is likely that some form of "rescue legislation" will be introduced during the two weeks that Congress will be in session before its next break from Aug. 2 until Aug. 18. But, at this point, there is no strong support lined up to push any Conrail legislation through the Congress, and the Carter Administration has made no commitment on supporting any plan.

The distressing financial projection for the calendar years 1981 through 1985 comes in the wake of, and Conrail says primarily as a

result of, the national economic downturn. Carloadings on Conrail for the months of May and June this year ran 20 percent below the same two months of 1979, and the early July figures indicate at least a comparable, if not worse, falloff in business.

This is a reversal of the economic extrapolations compiled as recently as December 1979 when the forecast was that the original $3.3 billion in authorized federal funds would be sufficient. But very soon thereafter the picture worsened and has grown progressively darker since.

The first two months of 1980 were "just about even" with the same period of 1979, a company spokesman explained. This was particularly encouraging in view of the year-ago results which saw Conrail turn a net profit in the second quarter of 1979, the only quarter since it started operating in April 1976 that the railroad has made money.

But that early 1980 optimism started reversing itself as the March figures deteriorated. Then the May and June reductions in carloadings hit the disastrous 20 percent level. As the nation's new economic forecast continues to be gloomy, Conrail sinks into a worsening fiscal status.

Many employees have been laid off, and further cuts seem inevitable. In mid-May of 1979, there were 89,500 people on the company payroll. This past May 82,300. Not all of the reduction resulted from layoffs that began near the end of September 1979 when 1,000 furloughs were made across the system. Another 1,550 persons were furloughed in November of 1979 and still another 1,750 in May of this year. Hiring for spring maintenance work was held far below original planning levels and the steady drop in size of the overall work force has continued.

A recent General Accounting Office report on the Conrail operation said a reduction in the labor force and improved productivity will be essential if the carrier is to succeed. It said a work force of 97,053 in 1976 has come down to 87,509 in 1979 reports filed with USRA and the Interstate Commerce Commission, with further labor cuts planned. The report stated: "If Conrail is to become profitable within the current limits of federal investment, it has to reduce its ratio of labor expenses to revenues to a level more in line with other railroads. Conrail recognizes this and has formulated programs which it believes will enable it to reduce its labor expenses to 51.4 percent of revenues in 1983."

Those expenses were 63 percent for 1978 and 58 percent in 1979.

To reach its goal, Conrail officials told GAO that four programs will be followed: negotiated improvements in collective bargaining agreements; improvement programs for management control of operations; continued improvement of the physical condition of the rail system; and mandated force reduction.

Conrail estimates that $500 million might be saved over the next five years if present pending rail deregulation (H.R. 7235) is enacted. Failure of Congress to approve the deregulation plan might lead to a need by Conrail for about an equivalent $500 million in federal funding, the railroad said in its acknowledgement of the dire financial predictions for the years 1981–85.

RAIL DEREGULATION

Mr. DANFORTH. Mr. President, the Senate will soon go to conference with the House to resolve differences in our respective versions of railroad deregulation legislation.

It has been many months since the issue of railroad deregulation was before this body—months in which there occurred numerous announcements of pending mergers between virtually all of the major rail transportation systems in the country. During this same time, the bankruptcies of the Milwaukee and Rock Island systems became an acute problem in the Midwest and in parts of the South and Far Western States. I believe it is fair to say that during its consideration of railroad deregulation legislation the Senate was dealing with a different transportation picture than that which preoccupied the thoughts of our House colleagues in recent weeks.

My concern is that the House of Representatives has responded to this intense pressure and adopted provisions which favor some special and limited interests. I certainly intend to examine the bill sent over by the House more closely, but if my initial impression proves to be correct, I must say there is no justification for this Congress to take steps which may make the rehabilitation of the Rock and Milwaukee systems impossible. We are already skirting dangerously close to the creation of a midwest Conrail.

Three sections of the House bill in particular affect this rehabilitation effort by threatening the integrity of the section 511 loan guarantee program administered by the Federal Railroad Administration:

Section 228, loan guarantees, provides for expedited consideration and waiver of all qualification and repayment criteria on the Union Pacific-Chicago Northwestern application for a $300 million loan guarantee to build a new 56-mile rail connector line into the Powder River Basin;

Section 407, electrification loan guarantees, expands the definition of Conrail's authority to obtain section 511 loan guarantees for electrification to include "capital improvements to achieve the goals of the national energy policy." Conrail's Regional Reorganization Act is further amended to allow all other railroads to compete with Conrail for these guarantees under the new and broader "national energy policy" criteria.

Section 408, Government inclusion, opens the section 511 loan guarantee program to rail applicants seeking working capital. The section also opens the State assistance program to railroads and other private entities by allowing them to apply directly to the Federal Government to receive working capital from the State entitlement funds.

I have not at this time involved myself in the debate over the need for competition in the Powder River Basin. I am concerned, however, to see the boilerplate eligibility rules which govern virtually every Federal loan program waived to specifically favor the joint venture of two railroads—especially considering that approval of the sum of $300 million would exhaust virtually all of the available section 511 loan guarantee authority.

The Government inclusion language appears to do a different kind of violence to the section 511 program. Statutory authority does not preclude the use of section 511 funds for working capital to perform normal maintenance operations. Nevertheless, the Federal Railroad Administration has taken the administrative position that the use of these loan guarantees for working capital could perpetuate bad management or marginal operations and therefore has disallowed such use.

It is the responsibility of this Congress to provide discipline in loan guarantee programs by establishing criteria that demand feasible undertakings and reasonable expectation of repayment. In catering to the pressures of special interests, the House has stripped those underpinnings away from the section 511 guarantee program. I have asked the conferees to take a careful look at the consequences of these sections of the House bill, and I urge my colleagues—particularly those affected by the Milwaukee and Rock Island bankruptcies—to do the same.

TRIBUTE TO BEN STONG

Mr. CHURCH. Mr. President, I note with sorrow the passing on September 6, when I was in Idaho, of Ben Stong, who graced this institution as a devoted staff man for more than a quarter of a century.

I came to know and respect Ben Stong in my first years in the Senate, when he was on the staff of the Interior Committee under Jim Murray. More recently, he has served my colleagues from South Dakota and Montana, and, in a larger sense, this institution and his country.

My closest association was when I was privileged, in 1963, to manage the wilderness legislation to which we had by then given many years, none more than Ben Stong. He was at my right hand then.

Ben Stong's life was devoted to the American farmer, to conservation, and to the wilderness idea. He left lasting marks on these worthy endeavors, not less because others of us had our names on the products of his handiwork.

Colleagues in earlier tributes called Ben Stong an inspiration, a giant among men, the quintessence of a very gentle man.

He was, indeed.

SEPTEMBER GOLDEN FLEECE AWARD TO LABOR DEPARTMENT

Mr. PROXMIRE. Mr. President, I am awarding my Golden Fleece of the Month Award for September to the Department of Labor for funding a summer youth employment program in Tucson, Ariz., in which 14 junior college track athletes were paid for twice-a-day training sessions, weekly trips to compete in races, and a week-long journey to Flagstaff, Ariz., and Reno, Nev., to train, compete, and meet with other runners.

PERSONAL GROWTH PROGRAM

The athletes' job supervisor, who also just happens to be their track coach, described the project as a "personal growth" program designed to prepare participants for college. It can be said, without fear of contradiction, that these CETA funds gave the taxpayers a run for their money and that is about all.

The track coach-job supervisor not only justified paying athletes to be athletes but he explained to the Arizona

Daily Star why he paid the athletes for full-time effort when they practiced only part of the day:

I arbitrarily decided to pay them eight hours a day because of the hard work involved with running work-outs twice a day. I gave them free time whenever I could to explore. You know, it's a real eye opener to go to a city like Reno with all those lights and everything.

The 14 junior college athletes were paid $3.10 per hour for 240 hours or $744 for 8 weeks of track workouts this summer. Thus the cost to the Federal taxpayers was over $10,000. CETA summer job program is supposed to provide work for some of the Nation's poorest and unemployed youths. While it appears that a number of the junior college athletes may not have come from poor families, they became eligible for the CETA program by stating that they were independent of their families and not living at home. Four of the 14 athletes listed the coach's home as their address, while another five listed the home of the coach's part-time assistant in their application.

RUNNING NOT LISTED IN ORIGINAL STATEMENT

The original statement of work provided to CETA officials never listed the running, racing, and Reno trip; but instead, discussed landscaping the school's cross-country course as the major project to be completed by the young athletes. According to the athletes' coach and job supervisor, the athletes did provide maintenance and landscaping for both the college's track and cross-country course; and he says that the young workers may have even put in more than 30 hours a week, which is the maximum for which they could receive pay from the Federal program.

The local CETA sponsor, which was headed by the wife of the school's athletic director, conducted several reviews of the program but somehow failed to question or find out about the activities and possible ineligibility of the student athletes. In fact, the head of the local CETA sponsor defended the program as valuable. She is quoted as saying:

The point is you're just trying to teach them things they can use in their personal lives.

FEDERAL CETA OFFICIALS WORKING TO RECOVER SOME FUNDS

After discovering some of the facts and events surrounding this particular project, Federal CETA officials have moved quickly to find out exactly how Federal funds were spent and have assured me that they will attempt to recover any funds improperly spent.

However, for failing to initially properly review and question this obvious misuse of Federal funds, I am awarding my Golden Fleece Award for September to the Department of Labor.

THE 128TH TACTICAL AIR DEFENSE WING OF MADISON, WIS.

Mr. PROXMIRE. Mr. President, I would like to take this opportunity to congratulate the 128th Tactical Air Support Squadron of the Wisconsin National Guard for continuing to uphold the excellent standards they have previously set.

This year, the 128th not only received an "excellent" rating in its first operational readiness inspection, but also was told by the inspection team that it had performed better than any other active duty, Reserve, or Guard unit.

The No. 1 designation for the 128th is nothing new for this exemplary unit. Previously they won the William Tell competition. They have been named the best air guard and air fighter unit in the country. And they have had a pilot named outstanding airman.

Because it has done such outstanding work in the past, the 128th was chosen to break-in the close air support OA–37, the first jet used by the Air Force to receive observation designation and to be used regularly as forward air control aircraft.

I would like to express my admiration to the 128th Tactical Air Defense Squadron for its superb performance. I have no doubt that in the future they will continue to serve our Nation well.

It is for this reason that I ask unanimous consent that the article "Still Leading the Way" from the magazine Airman, which describes the achievements of the 128th squadron, be reprinted in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DESPITE CHANGING AIRCRAFT, THE WISCONSIN ANG IS STILL LEADING THE WAY

(By Sgt. Craig Pugh)

Capt. Curtis Fetty whipped his OA–37 around in a tight turn, then descended on a 20-degree run toward the target. The range officer's voice came through his radio headset matter-of-factly. "Blue Lead, clear to fire." Fellow pilots had preceded Fetty on their rocket runs, missing the target truck by scant meters.

Capt. Fetty was in complete concentration now as he took a final visual reading of the target. It was a mile ahead and about 500 feet below. He carefully aimed his 2.75mm rocket and then fired.

"Blue Leader—bullseye" shouted the range officer not so matter-of-factly. His tone was congratulatory, but he didn't sound surprised. Being on target is nothing new to members of the Wisconsin Air National Guard's 176th Tactical Air Support Squadron from Madison.

The truth is that the squadron is downright comfortable holding a number one position, no matter the mission. Squadron members are busy breaking in the OA–37 as the first jet in Air Force history to receive the observation designation and be used regularly as a forward air control aircraft.

Leading the total force—active duty, Guard, and Reserve—in this conversion takes a winning attitude, something the Wisconsin guardsmen have spent years cultivating.

When they were flying F–102s in 1972, squadron pilots competed with other Guard, Reserve, and active duty fliers in the prestigious William Tell competition and flew away with five awards, including the "top gun" trophy. They aced their closest competitor by more than 1,400 points.

Also in 1972, a 176th squadron pilot won the Air Guard's outstanding airman award, presented to only one pilot from the nation's 91 Guard flying squadrons.

In 1973, the 176th was recognized by the Air Force Association as the best Air Guard unit in the country. That year the 176th won the Spaatz Trophy, too, awarded by the Air Force to the outstanding Guard flying unit.

In addition, the American Fighter Pilots Association's Winston P. Wilson Trophy, presented annually to the best jet fighter unit, was won by the 176th in 1973.

But that victory was bittersweet. While the unit survived a tentatively planned base closure, 176th pilots sadly traded in their beloved "Deuce"—the 800-mph F–102 *Delta Dagger*—for the 190-mph prop-driven O–2A. Even though their air defense mission went the way of the F–102s, the 176th was happy to be still flying and tackled the fine points of their new forward air control mission with customary zeal.

But that, too, is history. Recent force modernization and realignment resulted in Air Force planners directing that a limited number of the small but versatile OA–37 jets be used as Guard FAC aircraft, and that three of the Madison wing's six squadrons would get them.

Keen, as always, in competition, the 176th won first honors. The unit received its first OA–37s (OA for observation/attack) in September 1979. Tactical Air Command required the unit to be marginally combat ready by April 1, 1980. True to form, the 176th was fully combat ready—on April Fool's Day.

"I talked it over with the squadron pilots and maintenance people when we first received the thirty-seven," said Col. David B. Hoff, commander of the 128th Tactical Air Support Wing, the only Air National Guard FAC wing in the nation and the 176th's parent unit. "Everyone felt we could be fully combat ready by April. And once we made the decision there was never any doubt, really, that we would make it."

There was an added incentive that was explained by Col. Donne C. Harned, 128th TASW vice commander. "It's great to be back in jets again, and the thirty-seven's a burner!"

"It's fast, it's small and it can turn on a dime," added 176th TASS pilot Capt. Fetty.

CMSgt. Leonard J. King provided the maintenance specialist's viewpoint. "Thirty-sevens aren't difficult to maintain. It's a good plane. She's a stout bird and takes punishment well. In those high-G turns over target areas, this aircraft is needed. It's a 'rattler'," he said.

Obviously, members of the 176th and its parent organization are enthusiastic about the OA–37. Fighter people by trade and preference, they spend a lot of time discussing FAC tactics.

The squadron's mission is to fly and fight, and they haven't forgotten it. "Our whole reason for being is to be ready," said CMSgt. King, "and we work hard at it."

And well they should; the art of forward air controlling, as with most aspects of aerial warfare, has become more sophisticated. And the professional FACs must keep up with the changes.

Baptized in battle during Vietnam, many FAC crewmen wrote chapters in aerial history while improving FAC tactics learned while performing their vital combat support mission. Many returned from Vietnam and active duty Air Force tours to join Guard units. In the interim, the development of more accurate enemy surface-to-air missiles triggered newer FAC tactics and the use of faster aircraft.

Capt. Fetty, a 203-mission O–2A FAC in 1972, summarized his active duty flying in Southeast Asia this way: "Sometimes, when the enemy was firing everything he had to bring me down, I'd wish I had a faster airplane so I could get the hell out of the area," he said. Flying the OA–37 gives pilots added confidence they will survive in combat, he noted.

The aircraft's turbojet engines generate 5,700 pounds of thrust that can produce .7

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Mach (507 mph) speed. The wings have been beefed-up to take heavier G loads during tight turns. The OA-37s are light, quick, and highly maneuverable—making them particularly well-suited for the FAC mission.

" 'FACing' involves 'creeping up' at treetop level to the forward edge of the battle area, so to speak, and 'popping up' to quickly ascertain your target," said Capt. Fetty. "At the height of the pop, you fire your rocket and mark the target. Then you radio final strike coordinates to the waiting fighter force of F-4s, A-7s, A-10s or whatever, and they go in and clobber the target."

Flying forward air control missions has always been done that way in principle, but the new bird—the OA-37—endears itself to pilots because at the height of its pop, when it is most vulnerable, the aircraft can be put into a six-G dive to escape the threat.

"It takes a little danger out of an already hazardous mission," said Capt. Fetty. "We carry fourteen marking rockets on the aircraft, so in combat we can be exposed to enemy fire at least fourteen times in the course of marking targets."

The OA-37 also boasts a 7.62 minigun, mounted in the right front fuselage. It has both a functional and psychological role, because any fighter pilot is more comfortable with a gun on his aircraft. The minigun also gives the FAC an ability to delay or halt enemy forces with firepower until strike fighters can be called in.

"The bottom line of our mission," explained Col. Hoff, "is to 'hit' the target the Army commander asks to be hit."

The linchpin to the operation is precise target marking by the airborne FAC, who is plugged into a command, control, and communication network. The airborne FAC does not operate independently. He is a vital link in a battlefield chain of command that results in the destruction of a target.

Two distinct components make the chain effective: the U.S. Army ground commander and his supporting Air Force tactical air control party (TACP), which is composed of personnel on the ground with their communications gear, as well as the airborne FAC flying in, around, and over the target area.

Constant coordination is required to ensure effective target-marking for destroying enemy targets while preventing damage to friendly forces in close proximity to the targets. It's the atmosphere a FAC must operate in.

"That's why you can never get too much experience," said Capt. Fetty. "There's a tremendous amount of judgment and responsibility involved in a FAC decision. Our squadron's Southeast Asia veterans have been sharpening their judgment skills for about ten years, so we've never stopped learning."

Wisconsin's abundance of excellent gunnery ranges makes the area ideal for the type of training the guardsmen need. Working with Army units from Fort McCoy—a huge range complex with mock convoys and other targets of opportunity—the Madison-based air and ground operators combine to provide forward air control for Guard, Reserve, and active duty strike fighters from throughout the Mideast. Rocketing and strafing skills are honed at a nearby range that is considered one of the best in the nation.

On a typical training day, A-7's fly in from Sioux City and Des Moines, Iowa, and Sioux Falls, S.D.; F-4s converge from Springfield, Ill., and occasionally from Fargo, N.D., and Selfridge ANGB, Mich. The 176th TASS forward air controllers support the fighters on their training missions.

"We fly over Fort McCoy, about seventy-five miles northwest of here," said Col. Harned, "and radio target coordinates and approach information to the fighters."

While the FACs and fighters are in the sky, Air Force members work with the Army ground forces. Squadron OA-37 pilots also take turns at performing the ground FAC role. A pilot and an enlisted tactical air command and control specialist form a TACP.

"Ground FACing involves coordinating air strikes for the Army from an MK-108 jeep—a radio on wheels," explained MSgt. Bill Sheppard. "We're the middlemen between the FAC in the air and the Army commander."

"It takes a lot of teamwork when you're all in the target area," said Col. Harned, understating the amount of close coordination that's needed.

Two other squadrons in Madison's 128th Tactical Air Support Wing are training in their O-2As for OA-37s. The Peoria, Ill., squadron has already made the transition, and its sister squadron from Battle Creek, Mich., will convert in October. All three squadrons will be FAC-qualified in the OA-37 and combat ready by spring 1981.

The conversion to OA-37s substantially boosts the Air Force's FAC capability and contributes to the total force policy—the training of Guard and Reserve units that would take their place alongside active duty forces in a national emergency.

The first 23 Madison-based pilots to learn OA-37 flying were taught by Air Force Reserve pilots at Barksdale AFB, La. The Guard fliers then returned to Wisconsin to train their fellow pilots in the 176th. Approximately 50 hours are required to become a qualified OA-37 FAC.

Technicians from five Air Force bases traveled to Madison to train the Guard maintenance specialists, some of whom then went TDY to Indiana, Ohio, and New York to learn more about OA-37 jet engine repair.

Additional flying training was provided by the A-37 Reserve squadron from Barksdale that flew to Madison and helped train the Wisconsin squadron. The Reserve unit was able to keep flying—its runway was closed for repairs—and the Guard unit gained valuable A-37 training.

Total-force planning and training keep all members of Madison's 128th TASW busy. Of 850 people assigned, only 165 are full-time guardsmen, and they operate the squadron year-round. The other wing members are part-time guardsmen, often called "weekend warriors." During their annual 15-day active duty training, they are constantly on the go.

"Right now our civil engineers are in Utah learning rapid runway repair," said Lt. Col. Ralph C. Jensen, 128th TASW safety officer and a rated OA-37 FAC. "And our medics and security policemen were at Homestead [AFB] last year to work alongside their active duty counterparts."

Support from the top plays an important role, too, in keeping the 128th Tactical Air Support Wing and the 176th Tactical Air Support Squadron on a ready basis.

Maj. Gen. Raymond A. Matera, Wisconsin ANG adjutant general, frequently travels to Air Force headquarters where he serves as chairman of the Air Reserve Forces Policy Committee, which advises the secretary of the Air Force on Guard and Reserve policy matters. In 1960, then-Capt. Matera was squadron commander of the 176th.

Wisconsin Gov. Lee S. Dreyfus provides strong backing for his Guard units. "As a former communications arts professor whose doctoral dissertation pertained to propaganda in relation to the military draft, I understand the Guard's role in our nation's history," he said. "I feel our American love of democracy demands that I keep people interested in the Guard. It's vital." His support includes participating in Guard activities to help publicize the Wisconsin ANG role in the total force policy and to spur recruitment efforts in his state.

"The Guard's mission is to serve both the state and the nation," Gov. Dreyfus emphasized. "It's a service that requires patriotism, something we've never been short of here in the Dairy State."

Capt. Curtis Fetty is typical of those who gravitate toward the Guard during peacetime. "I feel a calling to the Air Force," he said. "If I have any military talent, it's the ability to fly missions. And if I don't do it and others like me don't do it, who will? I guess that's why I'm in the Guard.

For SSgt. Rosemary Meier, a secretary before joining the Wisconsin unit five years ago, the Guard has given her "a great deal of personal satisfaction." She decided to become a full-time unit technician three years ago and is now "Guard all the way," as she likes to put it.

It's the Fettys, Meiers, and others like them across the country who keep the total force policy alive. And it's units like the 176th TASS, the first Guard jet FAC force, that leads the way in molding that policy into a reality.

SMALL ACTS OF CHARITY REMIND US OF NEED FOR GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, Rachel Auerbach, a Jewish writer and survivor of the Warsaw ghetto, describes the persecution of the Poles who refused to cooperate with the Nazi policy of genocide. In his words, "They were university professors, railroad workers, bus drivers, priests, wives of high officers in the army, peddlers, merchants, and peasants, particularly peasants who, for a single act of charity, giving of a loaf of bread to a Jew, a pint of milk or a night's accommodations in a barn, were cruelly punished, often killed, and their homes set on fire by the Germans."

Despite these risks, some courageous souls defied the Nazis. In Glowno, Poland, Jews who ventured out in search of food usually returned with a bag of potatoes. Such seemingly small acts of assistance often meant life or death. Small acts translated into heroic deeds.

The Jewish writer, Wolf Glicksman, indicated the importance of such acts. When he arrived in Auschwitz, he met Josef Cyrankiewicz. The first thing Josef did was to discretely give Wolf Glicksman a sizable slice of bread. To Glicksman this represented the highest expression of human charity.

The Senate has the opportunity to ratify the Genocide Convention, an act that would become an important, symbolic deed. This treaty will serve as a fundamental document that sets forth international standards to deal with the crime of genocide. Just as a small act during the Nazi regime held important consequences, so would our refusal to pass the Genocide Convention as soon as possible.

MESSAGES FROM THE HOUSE

At 12:40 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 670. An act to require the Secretary of Agriculture to establish and maintain a rural development policy management process, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment in which it requests the concurrence of the Senate:

S. 1946. An act to reform the economic regulation of railroads, and for other purposes.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5856. An act to amend title 32, United States Code, to allow Federal recognition as officers of the National Guard of members of the National Guard of the Virgin Islands in grades above the grade of colonel.

ENROLLED BILLS SIGNED

At 1:12 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 261. An act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes;

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes;

H.R. 5766. An act to authorize additional Reserve Officers Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes; and

H.R. 6940. An act to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that Act to assure the safety and nutrition of infant formulas, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 2:22 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bills, each with an amendment in which it requests the concurrence of the Senate:

S. 2223. An act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons; and

S. 2443. An act to authorize the Department of Energy to carry out a high-level nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2170. An act to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government;

H.R. 3765. An act to provide that marketing orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting walnuts may provide for any form of marketing promotion, including paid advertising, and that marketing orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities;

H.R. 6175. An act to provide that certain lands constituting part of the El Dorado National Forest be conveyed to cetrain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map;

H.R. 6796. An act to amend and extend title VII of the Comprehensive Employment and Training Act; and

H.R. 7519. An act to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended.

At 6:05 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House agrees to the amendment of the Senate to the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

(The enrolled joint resolution was subsequently signed by the President pro tempore (Mr. MAGNUSON).)

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 5856. An act to amend title 32, United States Code, to allow Federal recognition as officers of the National Guard of members of the National Guard of the Virgin Islands in grades above the grade of colonel; to the Committee on Armed Services.

H.R. 6175. An act to provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map; to the Committee on Energy and Natural Resources.

H.R. 6796. An act to amend and extend title VII of the Comprehensive Employment and Training Act; to the Committee on Labor and Human Resources.

H.R. 7519. An act to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended; to the Select Committee on Indian Affairs.

HOUSE BILLS HELD AT THE DESK

The following bills were ordered to be held at the desk:

H.R. 2170. An act to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government.

H.R. 3765. An act to provide that marketing orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting walnuts may provide for any form of marketing promotion, including paid advertising, and that marketing orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 16, 1980, he had presented to the President of the United States the following enrolled bills:

S. 261. An act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes;

S. 1625. An act to amend the Act of December 20, 1944, as amended; and

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, without amendment:

S. 3116. An original bill to amend the National Historic Preservation Act of 1966, and for other purposes (Rept. No. 96-943).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 494. A resolution authorizing the printing of the report entitled "Progress in the Prevention and Control of Air Pollution in 1978 and 1979" as a Senate document (Rept. No. 96-944).

S. Res. 520. An original resolution relating to the purchase of calendars (Rept. No. 96-945).

By Mr. LONG, from the Committee on Finance, without amendment:

H.R. 7670. An act to amend title II of the Social Security Act to make necessary adjustments in the allocation of social security tax receipts between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (Rept. No. 96-946).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 510. A resolution authorizing supplemental expenditures by the Select Committee on Indian Affairs (Rept. No. 96-947).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment (in the nature of a substitute):

S. Res. 448. A resolution to make the Select Committee on Indian Affairs a permanent committee of the Senate (Rept. No. 96-948).

By Mr. RANDOLPH, from the Committee on Environment and Public Works, without amendment:

S. Res. 521. An original resolution to waive section 402(a) of the Congressional Budget Act with respect to the consideration of S. 1480, creating an Environmental Emergency Response Fund to mitigate damages from spills of hazardous materials. Referred to the Committee on the Budget.

By Mr. HOLLINGS, from the Committee on Appropriations, with amendments:

H.R. 7584. An act making appropriations for the Departments of State, Justice, and

Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1981, and for other purposes (together with additional views) (Rept. No. 96-949).

By Mr. KENNEDY, from the Committee on the Judiciary, with an amendment, an amendment to the title, and with a preamble:

S. Res. 482. A resolution to designate the third week of September of each year as "American Buffalo Week".

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment, but with a preamble:

S.J. Res. 197. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day".

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day".

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BUMPERS (from the Committee on Energy and Natural Resources):

S. 3116. A bill to amend the National Historic Preservation Act of 1966, and for other purposes. Original bill reported and placed on the calendar.

By Mr. HEINZ:

S. 3117. A bill for the relief of Remigio Aquino and his wife Ines Aquino; to the Committee on the Judiciary.

By Mr. STONE:

S. 3118. A bill to require that the Secretary of Agriculture insure farmers of equitable opportunities to market their Flue-cured tobacco, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURENBERGER:

S. 3119. A bill to amend the Internal Revenue Code of 1954 to provide limitations with respect to the issuance of mortgage revenue bonds the interest on which is exempt from the Federal income tax; to the Committee on Finance.

S. 3120. A bill to revise the boundary of Voyageurs National Park in the State of Minnesota, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. STONE:

S.J. Res. 203. Joint resolution to authorize and request the President to proclaim the month of October 1980 as "American White House Replica Month"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STONE:

S. 3118. A bill to require that the Secretary of Agriculture insure farmers of equitable opportunities to market their Flue-cured tobacco, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

MARKETING OF FLUE-CURED TOBACCO

● Mr. STONE. Mr. President, I am today introducing legislation to insure that flue-cured tobacco farmers have equitable opportunities to market their tobacco in an orderly and efficient manner.

The bill would amend the Tobacco Inspection Act to require the Secretary of Agriculture to insure that a sufficient number of inspectors are available to allow all flue-cured tobacco auction warehouses to conduct not less than one sale each week during the flue-cured tobacco marketing season.

This is a matter that I had hoped would be handled administratively under existing law, and I urge the Department of Agriculture to do so.

The present situation is intolerable. Small tobacco markets in Florida and Georgia are being forced to cease to operate because of a lack of adequate selling time to service their local farmers. As a result, farmers are being forced to abandon the small markets that they have used over the years and are having to truck their tobacco longer distances to larger markets. This is necessary so that they can sell tobacco before it starts to deteriorate.

The bill includes other provisions—drawn in part from legislation requested by the Secretary of Agriculture and submitted to Congress last year—to improve the grower designation plan under which farmers designate the tobacco markets at which they intend to market their tobacco. Among other things, the bill would subject violators of marketing schedules to monetary penalties. Presently, the Department's only recourse is to temporarily withdraw inspection service for program violations. The closing of warehouses for lack of inspectors works to the obvious disadvantage of tobacco farmers.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3118

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Tobacco Inspection Act is amended by—

(1) inserting after section 5 new sections 6 and 7 as follows:

"SEC. 6. (a) In order to provide tobacco growers the opportunity to market their tobacco in an efficient and equitable manner, the Secretary may:

"(1) Require each tobacco grower to specify the location, warehouse, other facility or person through which or to whom the grower intends to market the grower's tobacco.

"(2) Issue marketing schedules that allocate available sales opportunity to locations, warehouses, other facilities, or persons through which tobacco is marketed. In developing such schedules the Secretary shall take into consideration the following factors:

"(A) the locations, warehouses, other facilities, or other persons at or through which tobacco growers have signified their intent to sell their tobacco;

"(B) the size of the tobacco crop;

"(C) the capacity of processing facilities;

"(D) weather and crop conditions; and

"(E) any other factors that the Secretary considers will affect the opportunity of tobacco growers to market their tobacco in an efficient and equitable manner.

"(3) Prohibit unfair methods of competition and unfair trade practices involving the sale and purchase of the growers' tobacco.

"(4) Provide a method for fixing the size, capacity, weight, dimensions, pack, or condition of the container or containers used in the marketing of the tobacco.

"(5)(A) Require periodic reports from growers, warehouses, purchasers of tobacco, processors of tobacco, and other persons. These reports shall be furnished in accordance with forms prescribed by the Secretary that may include, but not be limited to, (i) the amount of tobacco by acreage that is planted or expected to be planted or the amount of tobacco expected to be produced, or both; (ii) the amount of tobacco sold at a warehouse or other facility during any period of time determined by the Secretary; (iii) the amount of tobacco purchased during any period of time specified by the Secretary or the amount expected to be purchased; and (iv) the amount of tobacco processed during any period of time specified by the Secretary or the amount of tobacco that a facility is capable of processing, or both.

"(B) Each person who is required to submit a report under this section shall maintain such records as are necessary to enable the Secretary to verify such reports. Such records shall be retained for a period of time specified by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary under this section, or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the Secretary may examine such books, papers, records, copies of income tax reports, accounts, correspondence, contracts, documents, or memoranda, which the Secretary deems relevant and are within the control of (i) the person from whom such report was requested, (ii) any person having, either directly or indirectly, actual or legal control of or over the person from whom such report was requested, or (iii) any subsidiary of any such person.

"(C) All information furnished to or acquired by the Secretary under this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information as the Secretary deems relevant shall be disclosed by them and then only in a suit or administrative proceeding involving the Secretary's administration of this Act brought at the direction, or upon the request, of the Secretary, or to which the Secretary or the United States or any officer thereof is a party. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of parties that do not identify the information furnished by any person or (ii) the publication at the discretion of the Secretary, of the name of any person violating this Act. Any officer or employee of the Department of Agriculture violating the provisions of this section shall upon conviction be subject to a fine of not more than $500 and shall be removed from office.

"(b) In developing marketing schedules under this section or any other provision of law, the Secretary shall insure that a sufficient number of inspectors are available to allow all Flue-cured tobacco auction warehouses to conduct not less than one sale each week during the Flue-cured tobacco marketing season.

"SEC. 7. (a)(1) Any warehouse or other person subject to a marketing schedule issued under section 6 of this Act who exceeds the sales opportunity specified in such marketing schedule shall forfeit to the United States a sum equal to one-third of the value of tobacco sold in excess of that authorized by the marketing schedule, which shall be paid to the Secretary. The value of such excess shall be computed by multiplying the average sales price of the tobacco sold during the relevant period by the amount of the excess tobacco sold.

"(2) Forfeitures under this section, that are not paid within thirty days after notice by the Secretary shall be recoverable in a civil suit brought by the Attorney General in the name of the United States.

"(3) Forfeitures received or recovered under this section shall be deposited in the Treasury of the United States.

"(b)(1) Any person, within twenty days after being notified by the Secretary that a forfeiture is due under this section and after

payment of such forfeiture to the Secretary, may file a written petition with the Secretary stating that the imposition of such forfeiture is not in accordance with law and praying for revocation or modification thereof. Each person who files a written petition with the Secretary shall thereupon be given an opportunity for a hearing upon such petition in accordance with sections 554, 556, and 557 of title 5 of the United States Code. The Secretary shall make a ruling upon the prayer of such petition, which shall be final if in accordance with law.

"(2) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are vested with jurisdiction to review the ruling of the Secretary on a petition filed under this section if a complaint for that purpose is filed with the appropriate district court within twenty days from the date of the entry of the ruling of the Secretary. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions to refund the forfeiture paid. The pendency of proceedings instituted under this subsection shall not impede, hinder, or delay the United States or the Secretary from obtaining relief under subsections (a) or (c) of this section.

"(c) The district courts of the United States for any district in which a person subject to the provisions of this Act is an inhabitant, or has his principal place of business, are vested with jurisdiction specifically to enforce the provisions of this Act and to prevent and restrain any person from violating any provision of the Act or any marketing schedule or regulation heretofore made or issued under this Act.";

(2) redesignating sections 6 through 18 as sections 8 through 20, respectively; and

(3) in section 14, as redesignated by 3 of this section, striking out "10" and inserting in lieu thereof "12".●

By Mr. DURENBERGER:

S. 3119. A bill to amend the Internal Revenue Code of 1954 to provide limitations with respect to the issuance of mortgage revenue bonds the interest on which is exempt from the Federal income tax; to the Committee on Finance.

TAX EXEMPT BONDS FOR HOUSING ACT

● Mr. DURENBERGER. Mr. President, today I am introducing a bill that provides for the limited use of tax-exempt bonds to provide mortgage funds for low- and moderate-income families.

Mr. President, there are five broad elements essential to a housing policy for the 1980's: First, tax incentives and disincentives; second, the flexibility of Government programs; third, the mix of housing—and by that, I mean the price mix, the balance between rental and owned housing and the need to upgrade present stock and complement rehabilitated homes with new construction; fourth, energy; and finally, the cost of housing.

As a member of the Committee on Finance, I consider the Federal tax system as important a factor in housing as are our housing laws. One of our major areas of concern is tax-exempt bonds. I believe strongly that tax-exempt bonds are an important and necessary part of any housing policy.

Mr. President, the House of Representatives has approved a revised mortgage revenue bond bill which is before the Senate Finance Committee. Unfortunately, as presently drafted, the bill would effectively end the tax-exempt status of mortgage revenue bonds for single-family housing. The House bill is the result of growing apprehension that the proliferation of such bond issues would have an increasing and adverse impact on Federal revenues and would result in questionable public policies. One of the most serious complaints made about certain bond issues involved their use by localities to reduce mortgage costs for high-income families, without any restrictions on where such mortgage proceeds could be used.

Under present law, State and local governments may issue tax-exempt bonds for single and multifamily housing. The lower tax-exempt interest rates on the bonds allow the State and local government to relend the proceeds to individuals at approximately 1 to 2 percentage points below conventional home mortgage interest rates. In some instances, the bond proceeds are applied toward the purchase of high-price housing by high-income individuals.

Mr. President, it is possible to eliminate these abuses while maintaining the use of revenue bonds for a much needed housing program that does not require an exercise of judgment or restraint by either the administration or the Congress.

In 1979, the Minnesota Legislature passed the Schreiber-Humphrey bill to control the use of tax-exempt bonds for housing at the State level. This legislation ended the abuses surrounding housing mortgage bonds in Minnesota.

The cities of Minneapolis and Saint Paul have made wise use of this method of financing housing to rebuild their cities, retain residents in their communities and attract people back to the central cities.

Small cities around the State of Minnesota have also made good use of this method to increase available housing and help young families to purchase their first home.

The Minnesota Housing Finance Agency has a very commendable record of providing housing that otherwise would not have been available without the use of tax exempt housing mortgage bonds. Since 1971 when the agency was formed, they have provided the following units:

Apartment units	14,370
Single family home mortgages	8,700
Home improvement loans	22,000

Total dollars in loans provided by the agency using mortgage revenue bonds are:

[In millions]

Apartment development	$414
Developmentally disabled (group homes)	4.1
Single family home mortgages	265
Home improvement loans	105

Besides providing housing that may not otherwise have been built, the economy, State and Federal, is enriched with the jobs provided and the materials and equipment consumed. The bonds have been a major factor in keeping one of our key industries of our Nation functioning.

Mr. President, in order to respond to the legitimate criticism of the use of tax exempt bonds for housing, the bill I am introducing contains the following qualifications for single family housing:

First. Single family housing is defined as owner occupied residence of not more than four dwelling units or any owner occupied unit in a condominium or cooperative.

Second. The income of owners is limited to individuals receiving 120 percent of HUD median for nontarget areas, and 150 percent for target areas.

Third. The purchase price in nontarget areas is limited to three times the income limits and in target areas to four times the income limits.

Fourth. The limitation of the amount of bonds that can be issued in any 1 year offers a two-step option:

State housing finance agencies have a 10-percent limitation based upon the average of the amount of mortgages issued during the preceding 3 years within the jurisdiction of the agency. This formula also provides that if the cities do not use their full percentage, the State may use a certain amount.

Local housing finance agencies also have a 10-percent limitation based upon the average of the amount of mortgages issued during the preceding 3 years within the jurisdiction of such agencies. The local agencies have an optimal limitation at their election as follows: $1,000 per capita based upon the latest State or Federal census for the first 50,000 of population and $500 per capita in excess of 50,000. This would be a permanent lid subject to any census increase in population.

Fifth. Target areas residences must meet one of the three following definitions:

First. A qualified census tract—a tract in which 50 percent or more of the families have income which is 80 percent or less of the median family income for the statistical area in which the residence is located or a census tract which qualifies for benefits under the community development block grant program of the Department of HUD.

Second. An area of chronic economic distress as designated by the State as meeting the standards established by the State. Or which is part of a city eligible for urban development action grant made under the Housing Community Development Act of 1974.

Third. A lighted area which qualifies under applicable State law for inclusion in a targeted area due to such physical conditions as buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities are detrimental to the safety, health, morals, or welfare of the community.

Projects for residential rental property will qualify if 20 percent of the units in each project are to be occupied by individuals of low or moderate income and at least 55 percent of the units in each project are to be occupied by individuals earning no more than 150 percent of low- and moderate-income individuals. The income limits will be determined by the

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Secretary of HUD under section 8 of the Housing Act.

Mr. President, the sale and purchase of housing revenue bonds are investments which contribute to the basic housing stock of the Nation. This investment reduces the inflationary demand for housing by increasing the supply. But more importantly, to a large degree, the Congress and the administraton are removed from the housing industry. Key decisions in this area will be properly made by State and local experts with a minimum of costly interference by the Federal Government.

Mr. President, tax exempt bonds are a valuable housing tool if used wisely. The bill I am introducing will eliminate the abuses while preserving reasonable and workable restrictions on the issuance of tax exempt bonds to provide housing to families with below average incomes.

Mr. President, I ask unanimous consent that an editorial from the Minneapolis Tribune, a section-by-section analysis of the bill, and the bill be printed in the RECORD.

There being no objection, the bill and material were ordered to be printed in the RECORD, as follows:

S. 3119

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tax Exempt Bonds for Housing Act".

SEC. 2. MORTGAGE SUBSIDY BONDS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by inserting after section 103 the following new section:

"SEC. 103A. MORTGAGE SUBSIDY BONDS.

"(a) GENERAL RULE.—Except as otherwise provided in this section, any mortgage subsidy bond shall be treated as an obligation not described in subsection (a) (1) or (2) of section 103.

"(b) MORTGAGE SUBSIDY BOND DEFINED.—

"(1) IN GENERAL.—For purposes of this title, the term 'mortgage subsidy bond' means any obligation which is issued as part of an issue any portion of the proceeds of which are to be used directly or indirectly to make or purchase loans (including mortgages and other owner-financing) with respect to single-family residences.

"(2) EXCEPTION.—A qualified mortgage bond shall not be treated as a mortgage subsidy bond.

"(c) QUALIFIED MORTGAGE BOND: QUALIFIED MORTGAGE ISSUE.—

"(1) QUALIFIED MORTGAGE BOND DEFINED.—For purposes of this title, the term 'qualified mortgage bond' means an obligation which is issued as part of a qualified mortgage issue.

"(2) QUALIFIED MORTGAGE ISSUE DEFINED.—For purposes of this title, the term 'qualified mortgage issue' means an issue by a State, a political subdivision of a State, or any other entity authorized by State law to issue mortgage revenue bonds of one or more obligations, but only if—

"(A) all proceeds of such issue (exclusive of issuance costs, administrative expenses, and a reasonably required reserve) are reasonably expected to be used to finance owner-occupied residences, and

"(B) such issue is reasonably expected, at the time it is issued—

"(i) in the case of an obligation issued by a State housing finance agency, to meet the requirements of subsection (g), and

"(ii) in the case of any other obligation, to meet the requirements of subsections (d), (e), (f), (g), and (h).

"(d) RESIDENCE REQUIREMENTS.—

"(1) FOR A RESIDENCE.—A residence meets the requirements of this subsection only if—

"(A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and

"(B) it is located within the jurisdiction of the authority issuing the obligation.

"(2) FOR AN ISSUE.—An issue meets the requirements of this subsection only if all of the residences for which owner-financing is provided under the issue meet the requirements of paragraph (1).

"(e) PURCHASE PRICE REQUIREMENT.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is to be provided under the issue does not exceed 300 percent of the median family income for the statistical area in which the residence is located.

"(2) SPECIAL RULE FOR TARGET AREA RESIDENCES.—In the case of a target area residence, paragraph (1) shall be applied by substituting '400 percent' for '300 percent'.

"(f) INCOME REQUIREMENTS.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if all owner-financing provided under the issue is provided for mortgagors whose family income is 120 percent or less of the median family income for the statistical area in which the residence is located.

"(2) DETERMINATION OF FAMILY INCOME.—For purposes of this subsection, the family income of mortgagors, and median family income, shall be determined in accordance with the regulations prescribed by the Secretary of Housing and Urban Development under section 8 of the United States Housing Act of 1937.

"(3) SPECIAL RULE FOR APPLYING PARAGRAPH (1) IN THE CASE OF TARGET AREA RESIDENCES.—In the case of any financing provided under any issue for target area residences, paragraph (1) shall be applied by substituting '150 percent' for '120 percent'.

"(g) LIMITATION ON AGGREGATE AMOUNT OF QUALIFIED MORTGAGE BONDS ISSUED DURING ANY CALENDAR YEAR.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if the aggregate amount of bonds issued pursuant thereto, when added to the aggregate amount of qualified mortgage bonds previously issued during the calendar year, does not exceed the applicable limit for that calendar year. For purposes of this subsection, any portion of an issue used to finance qualified rehabilitation loans shall be disregarded.

"(2) APPLICABLE LIMIT FOR STATE HOUSING FINANCE AGENCIES.—

"(A) 10-PERCENT LIMIT.—The applicable limit for qualified mortgage bonds issued by a State housing finance agency for any calendar year shall be 10 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences within the jurisdiction of the State housing finance agency.

"(B) ADDITIONAL PERCENT.—The applicable limit under subparagraph (A) for any calendar year following a calendar year for which local housing agencies within a State issued qualified mortgage bonds in an aggregate amount which was less than the applicable limit for such agencies (referred to as the 'unused limit year') shall be increased bp a percent equal to the number of percentage points by which the limit in paragraph (3)(A) for local housing agencies in that State exceeded the aggregate amount of such bonds issued during the unused limit year by such agencies.

"(3) APPLICABLE LIMIT FOR LOCAL HOUSING FINANCE AGENCIES.—

"(A) 10-PERCENT LIMIT.—The applicable limit for qualified mortgage bonds issued by local housing agencies within a State for any calendar year shall be 10 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences with the jurisdiction of such agencies.

"(B) OPTIONAL LIMITATION.—At the election of a local housing finance agency, made at such time, in such manner, and by such official as the Secretary of Housing and Urban Development may require, the applicable limit for qualified mortgage bonds issued by a local housing finance agency shall be the sum of—

"(i) $1,000 multiplied by so much of the population of the area within the jurisdiction of such agency as does not exceed 50,000 persons, and

"(ii) $500 multiplied by so much of the population of such area as exceeds 50,000 persons.

An election under this subparagraph shall be irrevocable and shall apply for the year for which made and all following calendar years. The population of the area within the jurisdiction of the agency shall be determined on the basis of the most recent Federal, State, or local census data available.

"(4) OVERLAPPING JURISDICTIONS.—If 2 or more governmental units have authority (determined without regard to paragraph (1)) to issue qualified mortgage bonds with respect to residences in the same geographical area, for purposes of this subsection only the unit having jurisdiction over the smallest geographical area shall be treated as having issuing authority with respect to such area unless such unit agrees to surrender part or all of such authority for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

"(h) STATE OPINION THAT ISSUE MEETS FEDERAL REQUIREMENTS.—An issue meets the requirements of this subsection only if a preliminary official statement of such issue has been submitted to a State agency designated by the Governor of the State and—

"(1) such agency has, within 30 days after the date of such submission, issued an opinion that such issue meets the requirements of subsection (g) of this section, or

"(2) 30 days have elapsed since such submission and during such 30-day period the State agency has not issued an opinion that the issue does not meet the requirements of subsection (g) of this section.

"(i) TARGET AREA RESIDENCES.—

"(1) IN GENERAL.—For purposes of this section, the term "target area residence' means a residence located in—

"(A) a qualified census tract,

"(B) an area of chronic economic distress, or

"(C) a blighted area.

"(2) QUALIFIED CENSUS TRACT.—

"(A) IN GENERAL.—For purposes of paragraph (1)(A), the term 'qualified census tract' means—

"(i) a census tract in which 50 percent or more of the families have income which is 80 percent or less of the median family income for the statistical area in which the residence is located, or

"(ii) a census tract which qualifies for benefits under the Community Development Block Grant Program of the Department of Housing and Urban Development.

"(B) DATA USED.—Determinations under subparagraph (a) shall be made on the basis of the most recent decennial census for which data are available.

"(3) AREA OF CHRONIC ECONOMIC DISTRESS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'area of chronic economic distress' means an area of chronic economic distress—

"(i) designated by the State as meeting the standards established by the State for purposes of this subsection, and approved by the Secretary of Housing and Urban Development, or

"(ii) which is part of a city eligible for an urban development action grant made under section 119 of the Housing and Community Development Act of 1974.

"(B) CRITERIA TO BE USED IN APPROVING STATE DESIGNATIONS.—The criteria used by the Secretary of Housing and Urban Development in evaluating any proposed designation of an area for purposes of this subsection shall be—

"(i) the condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units,

"(ii) the need of area residents for owner-financing under this section, as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates,

"(iii) the potential for use of owner-financing under this section to improve housing conditions in the area, and

"(iv) the existence of a housing assistance plan which provides a displacement program and a public improvements and services program.

"(4) BLIGHTED AREA.—For purposes of paragraph (1)(C), the term 'blighted area' means an area which qualifies under applicable State law for inclusion in a targeted area due to such physical conditions as buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage or deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

"(j) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) SINGLE-FAMILY RESIDENCE.—The term 'single-family residence' means an owner-occupied residence in a building with not more than 4 dwelling units, or an owner-occupied residential unit in a condominium or cooperative housing project.

"(2) MORTGAGE.—The term 'mortgage' includes any other owner-financing.

"(3) BOND.—The term 'bond' includes any obligation.

"(4) STATE.—The term 'State' includes a possession of the United States and the District of Columbia.

"(5) STATISTICAL AREA.—

"(A) IN GENERAL.—The term 'statistical area' means—

"(i) a standard metropolitan statistical area, and

"(ii) any county (or the portion thereof) which is not within a standard metropolitan statistical area.

"(B) STANDARD METROPOLITAN STATISTICAL AREA.—The term 'standard metropolitan statistical area' means the area in and around a city of 50,000 inhabitants or more (or equivalent area) as defined by the Secretary of Commerce.

"(C) DESIGNATION WHERE ADEQUATE STATISTICAL INFORMATION NOT AVAILABLE.—For purposes of this paragraph, if there is insufficient recent statistical information with respect to a county (or portion thereof) described in subparagraph (A)(ii), the Secretary may substitute for such county (or portion thereof) another area for which there is sufficient recent statistical information.

"(D) DESIGNATION WHERE NO COUNTY.—In the case of any portion of a State which is not within a county, subparagraphs (A)(ii) and (C) shall be applied by substituting for 'county' an area designated by the Secretary of Housing and Urban Development which is the equivalent of a county.

"(6) ACQUISITION COST.—

"(A) IN GENERAL.—The term 'acquisition cost' means the cost of acquiring the residence as a completed residential unit.

"(B) EXCEPTIONS.—The term 'acquisition cost' does not include—

"(i) usual and reasonable settlement or financing costs,

"(ii) the value of services performed by the mortgagor or members of his family in completing the residence, and

"(iii) the cost of land which has been owned by the mortgagor for at least 2 years before the date on which construction of the residence begins.

"(C) SPECIAL RULE FOR QUALIFIED REHABILITATION LOANS.—In the case of a qualified rehabilitation loan, for purposes of subsection (e), the term 'acquisition cost' includes the cost of the rehabilitation.

"(7) QUALIFIED HOME IMPROVEMENT LOAN.—The term 'qualified home improvement loan' means the financing (in an amount which does not exceed $15,000)—

"(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

"(B) only of such items as substantially protect or improve the basic livability of the property.

"(8) QUALIFIED REHABILITATION LOAN.—

"(A) IN GENERAL.—The term 'qualified rehabilitation loan' means—

"(i) any owner-financing provided in connection with—

"(I) a qualified rehabilitation, or

"(II) the acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after the completion of the rehabilitation;

"(ii) a qualified home improvement loan, or

"(iii) a loan made under section 312 of the Housing Act of 1964.

"(B) QUALIFIED REHABILITATION.—For purposes of subparagraph (A), the term 'qualified rehabilitation' means any rehabilitation of a building if—

"(i) there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins, and

"(ii) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

For purposes of clause (iii), the mortgagor's adjusted basis shall be determined as of the completion of the rehabilitation of, if later, the date on which the mortgagor acquires the residence.

"(k) SPECIAL RULE FOR ISSUE USED FOR OWNER-OCCUPIED HOUSING AND RENTAL HOUSING.—In the case of an issue—

"(1) part of the proceeds of which are to be used for mortgages on owner-occupied residences in a manner which meets the requirements of this section, and

"(2) part of the proceeds of which are to be used for rental housing which meets the requirements of section 103(b)(4)(A),

under regulations prescribed by the Secretary of Housing and Urban Development, each such part shall be treated as a separate issue.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 103 the following new item:

"Sec. 103A. Mortgage subsidy bonds.".

SEC. 3. INDUSTRIAL DEVELOPMENT BONDS FOR RENTAL HOUSING PURPOSES NOT TO BE USED FOR LUXURY APARTMENTS.

Paragraph (4) of section 103(b) of the Internal Revenue Code of 1954 (relating to certain exempt activities) is amended by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) projects for residential rental property if—

"(i) at least 20 percent of the units in each project to be provided by such issue are to be occupied by individuals of low or moderate income (within the meaning of section 167(k)(3)(B)), and

"(ii) at least 55 percent of the units in each project to be provided by such issue are to be occupied by individuals earning not more than 150 percent of low and moderate income individuals (within the meaning of such section), and

for purposes of this subparagraph, the term residential rental property includes any cooperative housing project in which all or a portion of the units are to be occupied by residents eligible to receive subsidies under section 8 of the United States Housing Act of 1937,".

SEC. 4. EFFECTIVE DATES FOR BOND PROVISIONS.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by sections 2 and 3 shall apply to obligations issued after the date of enactment of this Act.

(b) EXCEPTION FOR OFFICIAL ACTION TAKEN BEFORE DATE OF ENACTMENT.—

(1) IN GENERAL.—The amendments made by sections 2 and 3 shall not apply to obligations if official action before the date of the enactment of this Act of the governing body of the unit having authority to issue such obligations indicated an intent to issue such obligations.

(2) ACTION BY STAFF OF HOUSING AUTHORITY TREATED AS ACTION OF AUTHORITY IN CERTAIN CASES.—For purposes of paragraph (1), if, before the date of the enactment of this Act—

(A) the permanent professional staff of a a State or local housing authority performed substantial work on a bond issue, and

(B) it was reasonable to expect that the bond issue, as developed by the staff, would be promptly approved by the governing body of the housing authority,

then such action by such staff shall be treated as the official action of such governing body.

SECTION-BY-SECTION ANALYSIS

Section 1. Title. Tax Exempt Bonds for Housing Act.

Section 2(b). Definition of Mortgage Subsidy Bond. Exempt in the case of a qualified mortgage bond, interest on any bond is not tax exempt if any portion of the proceeds are to be used for mortgages of single family residences.

Section 2(c). A Qualified Mortgage Bond is defined as part of a Qualified Mortgage Issue that is issued by a state, a political subdivision of a state, or any other entity authorised by state law to issue such bonds with the following requirements:

Section 2(d). Residence Requirements. All mortgages must be for single family residences which can reasonably be expected to become the principal residences of the mortgagors. The residences must be located within the jurisdiction of the issuing authority.

Section 2(e). Purchase Price Requirements. The acquisition cost of each residence cannot exceed 300 percent of the median family income for the statistical area in which the residence is located. For purposes of target area residences (as defined in section 2(i)), the acquisition cost cannot exceed 400 percent.

Section 2(f). Income Requirements. The income of each mortgagor cannot exceed 120 percent of the median family income for the statistical area in which the residence is located. Family income and median family income shall be determined by the Secretary of Housing and Urban Development under regulations prescribed in section 8 of the

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United States Housing Act. In the case of target area residences (as defined in section 2(i)) substitute 150 percent for 120 percent.

Section 2(g). Market Limitations. State Housing Finance Agencies—the applicable limit for qualified mortgage bonds for any calendar year shall be 10 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding three calendar years for single-family owner-occupied residences.

Section 2(g)(2)(B). The limitations shall be increased by a percent equal to the number of percentage points by which the local housing limitations exceeded the aggregate of bonds issued by such agencies in the preceding year.

Section 2(g)(3)(A). Local Housing Finance Agencies. The applicable limitations shall be the same as that provided in Section 2(g)(2)(B).

Section 2(g)(3)(B). Optional limitations for Local Housing Finance Agencies. At the election of the local housing finance agency made in a time and manner as the Secretary of HUD may require, the limit shall be the sum of $1,000 multiplied by the population of such area within the jurisdiction that does not exceed 50,000 persons, and $500 multiplied by the population of such area as exceeds 50,000 persons.

Section 2(h). Bond Issue Approval.

All bonds must be submitted to a state agency for the agency's opinions as to whether or not the issue meets the market limitations and targeted portion requirement. The state agency must issue an opinion within 30 days after submission.

Section 2(i)). Target Area Residences.

Targeted areas are defined as follows:

(1) A qualified census tract—a tract in which 50 percent or more of the families have income which is 80 percent or less of the median family income for the statistical area in which the residence is located or a census tract which qualifies for benefits under the Community Development Block Grant Program of the Department of HUD.

(2) An area of chronic economic distress as designated by the state as meeting the standards established by the state and approved by the Secretary of HUD or which is part of a city eligible for an urban development action grant made under section 119 of the Housing and Community Development Act of 1974.

(3) Blighted area which qualifies under applicable state law for inclusion in a targeted area due to such physical conditions as buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage or deleterious land use or obsolete layout, or any combination of those or other factors, are detrimental to the safety, health, morals, or welfare of the community.

Section 2(j). Other Definitions:

Section 2(j)(1). Single Family Residence is defined as an owner-occupied residence in a building with no more than 4 dwelling units or an owner-occupied residential unit in a condominium or cooperative housing project.

Sections 2(j)(2)–2(j)(3). Mortgage is defined as including any other owner-financing Bond. The term includes any obligation.

Section 2(j)(4). State is defined as including a possession of the United States and the District of Columbia.

Section 2(j)(5). Statistical area is defined as a standard metropolitan statistical area and any county which is not within a standard metropolitan statistical area.

Standard Metropolitan Statistical Area is defined as the area in and around a city of 50,000 inhabitants or more as defined by the Secretary of Commerce. Designation where adequate statistical information not available. The Secretary may substitute for such county another area for which there is sufficient recent statistical information.

Designation where no county. The Secretary of HUD shall designate an area which is equivalent as a county.

Section 2(j)(6). Acquisition Cost is defined as including the cost of acquiring the residence as a completed residential unit. But, does not include usual and reasonable settlement or financing costs, the value of services performed by the mortgagor or members of his family in completing the residence, and the cost of the land which has been owned by the mortgagor for at least 2 years before the date on which construction of the residence begins.

Section 2(j)(7). Qualified home improvement loan is defined as including the financing in an amount not exceeding $15,000 of alterations, repairs, and improvements in connection with an existing residence by the owner of such items as substantially improve or protect the basic liability of the property.

Section 2(j)(8)(A). Qualified rehabilitation loan is defined as:

(1) Any owner-financing provided in relation to a qualified rehabilitation or the acquisition of a residence with respect to which there has been a qualified rehabilitation. But, only if the mortgagor to whom such financing is provided is the first resident of the residence after completion of the rehabilitation.

(2) A qualified home improvement loan, or

(3) A loan made under section 312 of the Housing Act of 1964.

Section 2(j)(8)(B). Qualified rehabilitation is defined as any rehabilitation of a building if there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins. The expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

Section 2(k). Special rule for issue used for owner-occupied housing and rental housing. In case of an issue to be used in part for owner-occupied housing and in part for rental housing, each part shall be treated as a separate issue.

Section 3. Industrial development bonds for rental housing. The present exception for tax-exemot industrial development bonds would be limited to obligations from which substantially all the proceeds are to be used for multi-family rental housing projects in which at least 20 percent of the units are to be occupied by individuals of low and moderate income as determined by section 167(k)(3)(B) of the Code. And, at least 55 percent of the units in each project to be provided by such issue are to be occupied by individuals earning not more than 150 percent of low and moderate income individuals within the meaning of such section.

Section 4. Effective dates.

Except as otherwise provided, the amendments made by sections 2 and 3 shall apply to obligations issued after date of enactment.

Exception. The amendments made by sections 2 and 3 shall not apply to obligations if official action of a governing body of issuing authority indicated an intent to issue such obligations. For purposes of this paragraph, if before date of enactment, the permanent professional staff of a state or local housing authority performed substantial work on a bond issue and it was reasonable to expect that the bond issue would be promptly approved, then such actions shall be treated as official action of the governing body.

TAX-EXEMPT HOUSING BONDS WORTH SAVING

Tax-exempt state and city bonds to finance construction and rehabilitation of single-family homes are a valuable housing tool in Minnesota and many states. But these bonds are in real danger of being outlawed in Congress. That would be a mistake—at least until Washington finds a better way to subsidize this needed housing.

Two main arguments are used against the tax-exempt bonds. First, investors don't pay federal taxes on their bond earnings. That's true, but the subsidy for housing is nonetheless worthwhile, and serves a better purpose than many other state and local tax-free bonds. Second, a few states and cities have provided housing to families with incomes well above average. That's true, too, but the cure is a simple congressional limit on the income of eligible families.

Instead, the cure that the Carter administration and the House Ways and Means Committee have offered for that illness is to kill the patient. That indicates an overriding interest in the treasury's take at the expense of urban housing needs. The Ways and Means Committee has approved a bill that would eliminate tax-exempt housing bonds while providing an ill-advised tax break on savings accounts (discussed in an editorial on this page yesterday).

Although the bill would eliminate the housing bonds, the Ways and Means Committee also sent an amendment along to the full House for floor debate. The amendment would restrict the use of state and local tax-exempt housing bonds, but not eliminate them outright. The White House and the Treasury Department, ignoring the Housing and Urban Development Department's housing concerns, support the amendment. That is consistent with the Carter administration's basic position since shortly after hearings on the issue began last May.

The catch is that the amendment's restrictions are so severe—by design—that they all but rule out the use of tax-exempt bonds, housing lobbyists maintain. The Minnesota Housing Finance Agency, for example, would find it "virtually impossible" to continue its single-family mortgage or rehabilitation programs, says director James Solem. That mortgage program has provided nearly 9,000 new housing units since 1973, or about a third of the agency's units, which also include townhouses and apartments.

The amendment has only one virtue. It stops short of freezing the House into a position of flat opposition to tax-exempt housing bonds. This makes it more likely that the House might eventually agree to a more flexible Senate bill, which contains income limits and other sensible, workable restrictions. As Rep. Bill Frenzel put it, "We will have to rely on the Senate to repair the flaws."

So the outlook is shaky for housing proponents. But another catch makes their situation even worse. The issue of tax-exempt housing bonds is not even being debated at the moment on its own merits—it has been added to maneuverings of a House-Senate conference committee on the windfall-profits tax. For complicated reasons, that is permissible under congressional rules. But it is also highly unusual, since the full House has not voted on its housing-bonds bill, and the Senate's superior version hasn't even been considered in committee.

A few senators and representatives are protesting, on procedural grounds, that the housing issue should not be discussed in the conference committee on windfall profits. They want the House and Senate to deal independently and fully with their separate tax-exempt-bond bills. We hope they are successful; that would at least give the Senate an opportunity to "repair the flaws" in the House's meat-axe approach.●

By Mr. DURENBERGER:

S. 3120. A bill to revise the boundary of Voyageurs National Park in the State of Minnesota, and for other purposes; to the Committee on Energy and Natural Resources.

VOYAGEURS NATIONAL PARK

● Mr. DURENBERGER. Mr. President, I am introducing a bill to amend the act

of January 8, 1971, authorizing the establishment of the Voyageurs National Park and for other purposes.

Legislation authorizing the establishment of Voyageurs National Park was passed in January 1972. It was not until April 1975 that the park was officially established by the Secretary of Interior. Since that time, much has been accomplished. The Voyageurs Park master plan has been adopted, all but 7,065 acres of the 133,622 land acres in the park have been acquired and alternatives for wilderness designation in the park have been developed and are in the public hearing phase.

Throughout this planning phase there has been extensive public involvement. The Voyageurs National Park Association, established in 1963, provided leadership in the park's formation and has served as a broad-based membership citizens' organization which has been actively and effectively involved in Voyageurs Park issues to the present time. The State of Minnesota officially created the Citizens Committee on Voyageurs National Park in 1975. This group has provided a forum for northern local involvement as well as reflecting State concerns.

In addition, extensive public meetings have been conducted throughout the State on park management issues.

The future development of Voyageurs National Park looks bright and is insured if the public and the established groups with an interest in the park continue to be effectively involved.

The bill I introduce today will carry out the recommendations arrived at in the master plan for the park. But more significantly, it will also resolve the points of controversy between northern Minnesota residents, the State of Minnesota and the Department of the Interior which have arisen during the planning process.

Since the establishment of Voyageurs Park in 1975, the National Park Service has banned hunting in the Black Bay area on the western border of the park in accordance with the Service's standard prohibition on hunting in national parks. This has been the most serious controversy with area residents who have maintained that waterfowl hunting should not have been prohibited in Black Bay.

This bill will provide for the transfer of 1,000 acres, primarily water, of Black Bay to the State of Minnesota and will establish this section as a State wildlife management area which will permit waterfowl hunting under State regulations.

A second major problem has been in private land acquisition with a 1971 authorization too low for 1977–80 market values. This legislation would increase authorization from $26 million to $36.9 million which reflects the current best estimate of the required amount for the 6,572 acres which purchase will be from willing sellers except for selected parcels designated for development of the park in the Voyageurs land acquisition plan which is expected to be released shortly. Of land acquired since 1975 at Voyageurs, 66,442 acres have been purchased at a cost of $30 million, and 60,095 acres have been donated by the State of Minnesota or Federal agencies. Condemnation has been used in only 34 cases.

The bill to revise the boundary of Voyageurs National Park and increase the authorizations for land acquisition culminates over a year of negotiations which began when the National Park Service announced its desire to negotiate with the State of Minnesota regarding Black Bay and State lands outside the park needed for park access and development.

The bill represents the agreement reached by the Department of the Interior and the State of Minnesota and is supported by the Governor of Minnesota, Al Quie, as well as the Department of the Interior. The overwhelming majority of the official State of Minnesota Citizens Advisory Committee of Voyageurs also approved the bill.

The companion bill is being introduced in the House by Congressman OBERSTAR and has the support of Congressman VENTO and others in the Minnesota delegation.

A magnificent national park, the establishment of Voyageurs is to the great credit of the Nation, my State of Minnesota, and the people whose vision helped create the park.

I am pleased to introduce a bill which I believe will help measurably to facilitate the management and development of the park in the best interests of the public it serves.

The proposed legislation also includes the following provisions:

First. The deletion from Voyageurs of 782 acres in the Neil Point, or Gold Shores, area on Rainy Lake. This area is no longer necessary for a park administration building. The use of it would require substantial dredging of Rainy Lake, which the Park Service has determined would be environmentally unacceptable, and considerable residential development in the area makes it incompatible with the purposes of the park. The Park Service master plan for Voyageurs supports deletion of the Neil Point area and as an alternative thereto, recommends

Second. The addition to Voyageurs of 180 acres of land and water at Black Bay narrows for park development needs. The narrows site has been selected by the Park Service to provide the primary access site to the park, boat launching facilities, a ranger station, a visitor center and a central maintenance facility, all of which could and should be constructed as early as fiscal year 1982.

Third. The deletion of Black Bay from the park by the Secretary of the Interior, subsequent to the following actions by the State of Minnesota.

DNR designation of the portion of Black Bay now in the park (1,000 acres) as a wildlife management area, permitting the hunting of ducks, and the development of a wildlife management plan for the entire Black Bay area. The State has agreed to develop a management plan for the entire 5,500-acre area of Black Bay, to insure optimum management of it on a consistent basis. The agreement on Black Bay is with the understanding that the State of Minnesota will maintain the wildlife management area in perpetuity.

The State of Minnesota will grant and the National Park Service will acquire a perpetual easement on approximately 120 acres of State land on the Sullivan Bay access road between the present park boundary and the Ash River Trail (County 765). The easement would include the present dirt road and a corridor of 400 feet wide along the road. Easement would permit the National Park Service to realine and improve the road, which is seen as an access point to Voyageurs. National Park Service financial assistance in upgrading this road has long been sought by local officials. The 400-foot strip will insure the park visitors a scenic view, shielded from potential logging sites in that area.

The State of Minnesota will grant and the National Park Service will acquire a lease of 18.45 acres of land at the Kabetogama Forestry Station on the western boundary of the park. This will permit the National Park Service to develop parking facilities and other services for park visitors. Like the Ash River and Sullivan Bay areas, Kabetogama is seen as an access point for visitors to the park, and a desirable area for National Park Service facilities.

One final major management decision is not covered in this bill—possible wilderness designation in the park. That decision is in the public review process.

However, with exception of possible wilderness designation, I see this bill as the end, not the beginning, of legislative solutions to controversies in Voyageurs National Park.

In the ongoing management of Voyageurs, I strongly urge the National Park Service to closely consult and seek advice from the Voyageurs National Park Association, the Citizens Committee on Voyageurs National Park, and the more recently formed Voyageurs National Park Coalition.

I strongly recommend the passage of this bill to the Senate as a major step toward the development of what we in Minnesota consider the finest national park in the country.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3120

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled, "An Act to authorize the establishment of the Voyageurs National Park in the State of Minnesota, and for other purposes", approved January 8, 1971 (84 Stat. 1971), is amended as follows:

(1) By redesignating "Sec. 102" as "Sec. 102(a)", and inserting the following new subsection after subsection (a) of section 102:

"(b)(1) In addition to such revisions as the Secretary may make in the boundaries of the Park from time to time pursuant to other provisions of law, the Secretary is specifically authorized in the manner provided in subsection (a)—

(A) to delete approximately 782 acres in the Neil Point area of the Park;

(B) to add approximately 180 acres in the Black Bay Narrows area of the Park;

(C) to add approximately 18.45 acres owned by the State of Minnesota at the Kabetogama Forestry Station;

(D) to add approximately 120 acres owned by the State of Minnesota, being a strip of

land through that portion of section 1, township 68 north, range 20 west, fourth principal meridian, which is parallel to and 400 feet on both sides of the unimproved road extending northward from the Ash River Trail as such road crosses said section; and

(E) to delete approximately 1,000 acres at Black Bay.

"(2) The boundary revisions specified in subparagraphs (C), (D), and (E) of paragraph (1) shall, notwithstanding anything to the contrary contained in this Act or any other law, become effective only upon (i) the tender of a conveyance to the United States, by such instrument and in such manner as are satisfactory to the Secretary including but not limited to lease or easement by the State of Minnesota of the lands or interests therein described in subparagraphs (C) and (D) for purposes of the Park; (ii) the establishment by the State of Minnesota of a wildlife management area in the area authorized to be deleted from the Park by subparagraph (E); and (iii) agreement of the State of Minnesota, incorporated in a plan, to manage state lands, riparian to Black Bay, to preserve the natural character of the area so as to complement to the fullest extent possible the management of the Park.

"(3) At such time as the deletion referred to in subparagraph (E) and paragraph (1) becomes effective, the Secretary is further authorized to convey to the State of Minnesota all right, title, and interest of the United States in and to property acquired for the Park from the State within the area deleted pursuant to subparagraph (E)".

(2) By redesignating "Sec. 401" as Sec. 401 (a)", and inserting the following new subsection after subsection (a) of section 401:

"(b) In addition to such sums as may have been appropriated for the acquisition of property prior to the effective date of this subsection, there is authorized to be appropriated for that purpose not to exceed $10,995,000".

(3) The Secretary is directed to study existing road access to the Park and to report to Congress on the impact of Park-related use of those roads and to report specific recommendations on improvements necessary to insure adequate road access to the Park. The Secretary is directed to report within 6 months of the date of enactment of this section to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.●

By Mr. STONE:

S.J. Res. 203. Joint resolution to authorize and request the President to proclaim the month of October 1980 as "American White House Replica Month"; to the Committee on the Judiciary.

AMERICAN WHITE HOUSE REPLICA MONTH

● Mr. STONE. Mr. President, our Nation is blessed with a most unique gift, a replica of the White House. This remarkable piece of art is a gift to the people from the people. Today, Mr. President, on behalf of all Americans, I request that Congress recognize the contributions of John and Jan Zweifel for their dedication in bringing the White House to the people. Therefore, I am introducing a joint resolution to establish the months of October 1980 as "American White House Replica Month".

In 1956 John Zweifel took a tour of our President's home and was dismayed to find that only five rooms were opened to the public. Like many others his curiosity as to the appearance of the remaining rooms which had contributed to this Nation's history was of a patriotic and historical nature. John Zweifel saw the White House as a cherished symbol of his country which in reality belonged to all the people. Mr. Zweifel was determined to bring the peoples' home to the people.

In 1961, Zweifel approached the Kennedy family with his dream and illustrated his sincere interest by carving samples from photographs. The Kennedy's opened the home to him; extensive research began—countless measurements were taken, sketches and floor plans were drafted; exact detail of each room was mandated. Due to the problems of the 1960's and early 1970's Zweifel had to turn to photographs to complete his work. Photographs were enlarged to obtain exact detail; then reduced to size at the exact scale to compare reproductions with the originals. This extensive research made it possible to produce a 1 inch/1 foot scale replica of the house and its decor.

The White House replica stands 60 feet long and 21 feet wide. Its minute detail makes it possible to view the home exactly as it stood on July 6, 1976, the Bicentennial of our Nation. Exactness was quite important: Identical materials were used (at times wood left from the original pieces was made available by the White House staff); chandeliers were handblown; rugs and draperies hand woven; exact oil colors and textures of original paintings were applied with tiny brushes, even gravy stains and cigar burns had to be incorporated in the replica. Not one item of the White House replica was purchased; it is all completely handcrafted representing over 200,000 hours of manual work.

An inherent problem faced by the Zweifels was the changing of decor with each family. For fifteen years as wall coverings and furnishings were changed, the exact changes were made by Zweifel on the replica.

In December of 1975, the American White House replica, nearing completion, was presented to the American people for President and Mrs. Ford at the White House tree lighting ceremony. It then went on display for the first time in the Kennedy Center for the Performing Arts in Washington, D.C. In 1976, Zweifel began an extraordinary 50 State tour with his masterpiece, enabling those who are unable to visit our Capitol to experience the beauty and history of the White House. After viewing the replica one has a lasting impression of the American heritage and a deep sense of pride and patriotism of the United States today. The White House replica is scheduled to be on exhibit during the month of October at the National Visitor Center at Union Station and I urge each of you to go and view this magnificent project.

We should recognize the many years of diligent work and sincere dedication of the Zweifels in presenting the miniature White House to the people. They have been successful in their attempt to bring our country closer together. I request the support of Congress in establishing the month of October, 1980, in recognition of the contributions that the Zweifels have made to this great Nation.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 203

Whereas John and Jan Zweifel of Orlando, Florida, devoted over 200,000 hours in building the American White House Replica, an exact one-inch-to-one foot scale replica of the White House;

Whereas John and Jan Zweifel generously donated the American White House Replica to the people of the United States so that all Americans could enjoy this masterpiece;

Whereas the exhibition of the replica throughout the fifty States has enabled millions of people to enjoy the beauty of the White House; and

Whereas the American White House Replica will be on exhibit during the month of October 1980 at the National Visitor Center in the District of Columbia: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the month of October 1980 as "American White House Replica Month", and calling upon Federal, State, and local government agencies, interested groups and organizations, and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.●

ADDITIONAL COSPONSORS

S. 2082

At the request of Mr. ZORINSKY, the Senator from Nevada (Mr. LAXALT) was added as a cosponsor of S. 2082, a bill to amend title 17 of the United States Code to exempt nonprofit veterans' organizations and nonprofit fraternal organizations from the requirement that certain performance royalties be paid to copyright holders.

S. 2636

At the request of Mr. PRYOR, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 2636, a bill to prohibit the drugging or numbing of race horses and related practices, and to amend title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices.

S. 2695

At the request of Mr. BUMPERS, the Senator from Kansas (Mrs. KASSEBAUM) was added as a cosponsor of S. 2695, a bill to amend the Powerplant and Industrial Fuel Use Act of 1978 to further the objectives of national energy policy of conserving oil and natural gas through removing excessive burdens on production of coal.

S. 3051

At the request of Mr. COHEN, the Senator from Montana (Mr. MELCHER), the Senator from Alabama (Mr. HEFLIN), the Senator from Wyoming (Mr. SIMPSON), and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 3051, a bill to reform Government management and practices relating to Government contracts.

S. 3087

At the request of Mr. SASSER, the Senator from Oregon (Mr. HATFIELD), the Senator from Indiana (Mr. LUGAR), the Senator from Arkansas (Mr. PRYOR), and the Senator from North Carolina (Mr. MORGAN) were added as cosponsors of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

S. 3092

At the request of Mr. TSONGAS, the Senator from Michigan (Mr. LEVIN), the Senator from Michigan (Mr. RIEGLE), and the Senator from Hawaii (Mr. MATSUNAGA) were added as cosponsors of S. 3092, a bill entitled "National Hostel System Act of 1980".

SENATE JOINT RESOLUTION 125

At the request of Mr. SASSER, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of Senate Joint Resolution 125, a joint resolution designating the "square dance" as the national folk dance of the United States of America.

SENATE JOINT RESOLUTION 201

At the request of Mr. CRANSTON, the Senator from New Mexico (Mr. DOMENICI), the Senator from Missouri (Mr. EAGLETON), the Senator from Nebraska (Mr. EXON), the Senator from Kentucky (Mr. FORD), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Indiana (Mr. LUGAR), the Senator from Illinois (Mr. PERCY), the Senator from Tennessee (Mr. SASSER), the Senator from Florida (Mr. STONE), the Senator from Nebraska (Mr. ZORINSKY), the Senator from Texas (Mr. BENTSEN), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of Senate Joint Resolution 201, a joint resolution to provide for the designation of a week as "National Lupus Week."

SENATE RESOLUTION 520—ORIGINAL RESOLUTION REPORTED RELATING TO THE PURCHASE OF CALENDARS

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution, which was placed on the calendar:

S. RES. 520

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, upon vouchers approved by the chairman of that committee, not to exceed $55,120 for the purchase of one hundred and four thousand calendars. The calendars shall be distributed as prescribed by the committee.

SENATE RESOLUTION 521—ORIGINAL RESOLUTION REPORTED TO WAIVE THE CONGRESSIONAL BUDGET ACT

Mr. RANDOLPH, from the Committee on Environment and Public Works, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 521

Resolved, That section 402(a) of the Congressional Budget Act of 1974 is waived with respect to the consideration of S. 1480, creating an Environmental Emergency Response Fund for fiscal year 1981 and thereafter. This legislation was ordered reported by the Committee on Environment and Public Works on June 27, after being marked-up by the Joint Subcommittees on Environmental Pollution and Resource Protection and the full Committee since last September.

The Committee was unable to report the legislation prior to the May 15 deadline because of the complex issues involved in the legislation, the use of joint subcommittees for initial consideration, and the departure of Senator Muskie from the Committee who was chairing one of the subcommittees considering this legislation. The bill, as reported, authorizes appropriations for fiscal year 1981 and imposes a fee upon chemical feedstocks and other similar type materials to provide a fund from which emergency response actions can be taken and longer term damages remedied.

AMENDMENTS SUBMITTED FOR PRINTING

CRIMINAL CODE REFORM ACT—S. 1722

AMENDMENTS NOS. 2336 THROUGH 2338

(Ordered to be printed and to lie on the table.)

Mr. SIMPSON submitted three amendments intended to be proposed by him to S. 1722, a bill to codify, revise, and reform title 18 of the United States Code, and for other purposes.

Mr. SIMPSON. Mr. President, in the near future the Criminal Code Reform Act will be called up for debate. As one of the code's original cosponsors, I have become keenly aware of the urgent necessity that this bill be adopted during this Session of Congress. This is the third time that this bill, in one form or another, has been before the Senate since 1970, and, of course, the work of the Brown Commission and of the American Bar Association pre-dates that by at least 4 years. I am concerned that, unless legislative action is completed this year, the code may never be reintroduced next year. So much time and effort have gone into this undertaking that I doubt any of us would be willing to go through that particular fire a next time. In short, it is now or never, and I urge your support for this historic effort.

Because of the immense complexity of the code, I fear that several unintended loopholes remain to be closed. Three of these involve the organized crime provisions of the bill. I have submitted three amendments to that section of the proposed criminal code that will strengthen the Government's ability to combat two of the most insidious and lucrative activities in which organized crime engages: Narcotics distribution and loansharking.

These two activities provide the vast bulk of money that "the Mob" uses to take over legitimate business, corrupt local law enforcement officials, and to finance its other criminal activities. As the code is now constituted, after committee amendments, there are several weaknesses in it that make it unnecessarily difficult for the Government to effectively combat organized crime. These amendments are designed to remedy those problems.

The first amendment would rephrase the code's definition of an "extortionate credit transaction," in order to make it less difficult to obtain a conviction of a loanshark. In its present form the code states that it is necessary for the Government to prove that both the victim and the loanshark understood that violence would be used to collect the usurious loan if it were not repaid in a timely manner.

This is an absurd burden of proof to place upon a Federal prosecutor. There is no rational reason for requiring proof of that type of understanding. The fact that the loanshark engages in these illegal activities ought to be sufficient. It should not be necessary for the Government to prove beyond a reasonable doubt that the borrower knew that someone might bust him up a bit if the loan weren't repaid.

Moreover, few loansharks are going to be so overenthused as to make an overt threat to their "customers." The threat is always implicit in the nature of the transaction itself. This proof requirement should be eliminated, and that is what the amendment would accomplish.

The second amendment closes up several unintended gaps in the forfeiture provisions of the code. One of the most effective weapons that the Justice Department has in fighting organized crime is its ability to seize the "fruits of those crimes," including enterprises over which the racketeer has obtained control with profits derived from selling narcotics, loansharking, prostitution, and illicit gambling operations.

This amendment would clarify two issues. In its present form the code states that a victim of any racketeering activity may file suit, and recover treble damages for any injuries sustained as a result of being the victim of any racketeering activity. My amendment would allow the victim to automatically recover those proven damages from any proceeds that the Government might obtain by the sale or other disposition of the property in which the racketeer had invested. This could well eliminate a duplicative and unnecessary lawsuit, as the Government will have—as current law already provides—obtained a court order seizing the property in question. This amendment would also tend to eliminate a danger that a victim might be intimidated by the racketeers from asserting his claim for damages—as the claim would only be filed with the Government instead of against "the Mob."

The third amendment clarifies the applicability of the Racketeer Influence and Corrupt Organizations Act (the RICO statute now codified in chapter 18 of this code). This amendment makes it clear that the RICO statute will apply to a labor union only if the criminal activity that otherwise would violate the RICO statute occurs outside the context of legitimate collective bargaining or otherwise lawful union activities.

The second section of this amendment clarifies the applicability of the RICO statute to legitimate business enterprises, by removing from its coverage three offenses which could unintentionally ensnare an otherwise lawful busi-

ness. The amendment provides that a later RICO conviction could not be based upon a conviction for violation of the commercial bribery, customs offense, or securities offense sections of the Code. Without this amendment a legitimate brokerage firm, for example, which filed even a single misleading fact in a prospectus with the Securities and Exchange Commission could also be subjected to all of the forfeiture provisions of the RICO statute. That is not what the drafters of the original RICO statute intended, and that needs to be clarified.

I urge you to support these amendments.

NOTICES OF HEARINGS

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

Mr. CHILES. Mr. President, I would like to announce that the Subcommittee on Federal Spending Practices and Open Government of the Committee on Governmental Affairs will be holding hearings on the continued oversight of the General Services Administration. These hearings will take place on Tuesday, September 30, and Wednesday, October 1, 1980, at 10 a.m. in room 3302 of the Dirksen Senate Office Building.

Any one having questions concerning this hearing may contact the subcommittee staff in room 44, Capitol Hill Apartments, or call 224-0211.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources will hold hearings on Wednesday, September 24, and Thursday, September 25, commencing at 8:30 a.m., room to be determined, or the nominees announced by the President last week for the Board of the Synthetic Fuels Corporation.

The nominees are: Lane Kirkland, the president of the AFL-CIO; Cecil Andrus, Secretary of the Interior; Frank Savage, the vice president and manager of Equitable Life Insurance's Investment Management Department; Frank Cary, the chairman of IBM; Catherine Cleary, former chairman of the First Wisconsin Trust Co. of Milwaukee; and John DeButts, retired chairman and chief executive officer of A.T. & T.

Questions concerning this hearing should be directed to Mr. Owen Malone, the committee counsel, at 202-224-7141.

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT AND SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. FORD. Mr. President, on behalf of the Senator from Washington (Mr. JACKSON) and the Senator from Nevada (Mr. CANNON), I wish to announce that on September 23, at 2 p.m., in room 3110 of the Dirksen Senate Office Building, the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources, and the Subcommittee on Science, Technology, and Space of the Committee on Commerce, Science, and Transportation, will hold joint hearings on the bill H.R. 6889, the Methane Transportation Research, Development and Demonstration Act of 1980.

All inquiries regarding these hearings should be addressed to Mr. Ed Smick of the Commerce Committee staff (224-9351) or Mr. Lee Wallace of the Energy Committee staff (224-4431).

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr. President, the Select Committee on Small Business will continue its hearings on SBA's surety bond guarantee program by examining alleged organized criminal involvement in the program.

The hearing will begin at 9:30 a.m., on Thursday, September 25, 1980, in room 424 of the Russell Senate Office Building.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HART. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate today to hold an oversight hearing on the Longshoreman's and Harbor Workers Compensation Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. HART. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate today to consider S. 2829, legislation authorizing funds for the settlement of Indian claims in the State of Maine.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

COMBAT READINESS OF U.S. FORCES

○ Mr. GARN. Mr. President, the combat readiness of the Armed Forces of the United States is vital to the maintenance of peace. If we allow the combat readiness of our forces to decline to a point where we are incapable of responding effectively to a surprise Soviet attack, we simply invite such an attack. Today, after 3½ years of the Carter administration, the combat readiness of U.S. forces is lower than at any time since the Korean war.

When President Carter took office in 1977 the United States had 10 divisions based in the United States. All were rated C-1, the designation for fully combat ready. Three years later 6 of these 10 divisions were rated at C-4, "not combat ready." The other four were rated as marginally (C-2 or C-3) combat ready. None of these units were rated at C-1, fully combat ready.

The troops of the so-called Rapid Deployment Force (RDF) come from three divisions, two of which are rated C-4, not combat ready. Indeed Army Chief of Staff Gen. Edward Meyer has stated publicly we have "a hollow Army."

Twenty percent of the U.S. Navy ships are not combat ready due to manpower shortages. This includes 20 percent of the 6th Fleet in the Mediterranean, 32 percent of the 7th Fleet in the Western Pacific and even 18 percent of the ships in the Indian Ocean. In at least two instances, Navy captains have refused to sail because their ships were dangerously undermanned by even peacetime standards.

The Air Force and the Navy suffer severe shortages of pilots and their aircraft have an extremely low rate of readiness.

Even the Marine Corps does not rate any of its three divisions as fully combat ready.

Today the United States has only 20 percent of the air cargo capability it needs to support the first 20 days of a NATO conflict.

The bottom line, as the Chairman of the Joint Chiefs of Staff has noted, is that "The size, readiness and sustainability of U.S. conventional forces cannot insure the success of the strategy they are required to support."

In the tactical nuclear area, regarding the Navy's A-6 and A-7 nuclear strike aircraft, General Jones writes that it is "inadequate" against "increasingly sophisticated Soviet air defenses and continuing Soviet emphasis on anticarrier forces." We have no nuclear antiship cruise missile program. Most Army tactical nuclear weapons date from the Eisenhower administration. U.S. strategic forces are clearly inadequate for the missions we have set for them. Gen. Richard Ellis, Commander in Chief of the Strategic Air Command, recently wrote Secretary Brown that—

> It is apparent that the principle of maintaining a countervailing strategy cannot be supported in the 1979-1988 time period short of an LUA (launch under attack) or an initiative attack (first strike).

The administration has attempted to cover all of this up and create the image of U.S. military capabilities "second to none"—while denouncing Ronald Reagan for demeaning "superiority" or "margin of safety—by leaking the existence of a new strategic targeting strategy—unsupported by strategic programs—and the "Stealth" bomber program—which is a technology package, not a strategic bomber.

The Carter administration will not fool the American people with such sleight of hand, nor will it fool the Soviets. As much as President Carter wraps himself in the flag and suggests that it is unpatriotic to charge him with weakening our defenses or inviting Soviet expansion abroad by projecting the image of a jellyfish, the facts will not change. President Carter is weakening our defenses. Just as he suggested that anyone who opposed his inequitable and unverifiable SALT II treaty—which allows a massive buildup of Soviet strategic forces—was a "warmonger" he now, while hiding in the White House from debate, is suggesting that Governor Reagan and anyone else who is demanding that we end the decline of our military potential is somehow "irresponsible" or a warmonger.

There is only one simple question in the national debate on our national security. Do we believe a stronger America is more likely to keep the peace, or a weaker America? I believe it is a stronger America. Mr. Carter, and the men around him, apparently believe it is a weaker America. If they do not say so directly, they certainly act on that basis.●

MADAWASKA: DOWN EAST WITH A FRENCH ACCENT

● Mr. COHEN. Mr. President, "The 60,000 people who live along the hundred miles from Grand Falls, New Brunswick, to Allagash, Maine, think of themselves not so much as Canadians or Americans, but as citizens of a country between." This is one of the opening lines written by Perry Garfinkel in "Madawaska: Down East with a French Accent," an article which appeared in the September edition of National Geographic magazine.

The author of the article has caught the essence of the St. John Valley. The valley is the northernmost portion of Maine. It is a community that stretches across the border between the United States and Canada, united by culture and language. In a State that is rich in history, culture, and a living presence of the past Madawaska holds a special place.

The people of the region are Franco-American. Their heritage has a strong but quiet influence on the life of the valley. A belief in family and hard work—and a feeling for the land—is bred into each new generation.

In his recent book, "Quiet Presence, Histoires de Franco-Americain en New England," Dyke Hendrickson, a Maine writer, notes:

> The Franco-Americans are the invisible minority group of New England. Not to themselves, of course. Over the years they have clung together with remarkable cohesiveness, and are quite aware of their own culture. But for a group that ranks as the largest minority in Northern New England, . . . they have not achieved the visibility . . . of other ethnics.

In the six-State New England region, nearly 2.5 million residents of Franco descent live and work. Their heritage deserves recognition, as well as the respect of all who call themselves New Englanders.

Mr. President, I ask that the text of the National Geographic article be printed in the RECORD.

The article follows:

MADAWASKA DOWN EAST WITH A FRENCH ACCENT

(By Perry Garfinkel)

Gedeon Corriveau lives on the edge—on the edge of two countries, the edge of two cultures, the edge of past and future. From his century-old mill in Upper Frenchville, Maine, where he runs one of the last buckwheat-grinding operations in the valley, he looks down his long treelined driveway at U.S. Route 1 as it nears the end of its 2,360-mile odyssey from Key West, Florida. Just across the road is the Saint John River and just across the river is the town of St. Hilaire in New Brunswick, Canada.

This is the upper Saint John River Valley, also known as Madawaska. This remote region, where the northernmost stretch of Maine meets the westernmost reach of New Brunswick, lies some 200 miles from either Bangor or Quebec City (map, ages 386-7). It is isolated by the green womblike mountains, the whims of international boundaries, and the quirks of cultural history.

The 60,000 people who live along the hundred miles from Grand Falls, New Brunswick, to Allagash, Maine, think of themselves not so much as Canadians or Americans, but as citizens of a country in between. When I asked 19-year-old Patsy Bernier of Fort Kent, Maine, which country she was from, she stated: "The valley is my country."

Life at this border has its idiosyncrasies. A baby born to an American family living in the town of Madawaska, Maine, will most likely enter the world in Edmundston, New Brunswick—since Madawaska has no hospital—and therefore can claim dual citizenship according to both United States and Canadian law. Intermarriage between the valley's Canadians and Americans is so common you need a scorecard to keep track. Money games are even trickier, with exchange rates for Canadian and American dollars fluctuating with the fickleness of the weather. A person who works on one side of the border but lives on the other can make a career of filling out an income tax form. And if he is an American working in Canada, he must get up an hour earlier than his Canadian co-workers, since New Brunswick time is an hour ahead of Maine's.

Despite these complications, the three border crossings along the upper Saint John River—at Van Buren, Madawaska, and Fort Kent—are among the busiest along the entire length of the United States-Canada boundary. This may be due, at least in part, to the fact that the blood of family ties runs thicker here than do the international waters of the Saint John.

And, as much as anyone's, the story of the Corriveau family is the story of the valley.

Gedeon Corriveau, born in Upper Frenchville, is a loader for Fraser Paper, Limited, where he has worked 25 of his 53 years. In the valley, if a man isn't growing potatoes, he's likely working for the paper industry. Between the Canadian pulp mill and the U.S. paper mill, Fraser puts something on the table of almost every family.

Gedeon's wife, Aline, was born in St. Hilaire on the other side of the Saint John—"across." She teaches French to second and third grades. Several generations back, both their families emigrated from France to Quebec and then made their way to the valley. They are devout Catholics and attend church regularly, where the Mass is celebrated in French.

"This's gonna be the last year I grind buckwheat," Gedeon told me in a singsongy patois that managed to combine Maine drawl, Canadian twang, and French twist. He wiped his lean, weatherworn face and dumped a barrelful of grain into the antique grinder. "No matter how I figure it, I will come out in the red." His eight-year-old daughter Nicole, a blue-eyed blonde, and dark-haired Susan Thibault, one of Nicole's 42 cousins from across, played on the steps of the mill where buckwheat sprouts peeked through the cracks.

"Buckwheat used to be a major crop in these parts. We used it for everything. The walls of my house are insulated with it. I still heat with buckwheat hulls. But at this point grinding buckwheat is more like a community service for me. Everyone in the valley who makes ployes buys their buckwheat from me." Ployes are buckwheat pancakes, and everyone in the valley eats them.

In the kitchen Aline poured buckwheat batter on the top of the wood-burning stove. Four handsome blond Corriveau girls bustled and giggled their way around, preparing mashed potatoes, fiddleheads, brisket, and bread, singing a French song.

"We're probably the only family in town who still use a wood stove," Aline said apologetically, and didn't seem to believe me when I said many of my urban friends would envy her that. Stoking the stove, she told me: "I don't make ployes much any more. Too much time. And people are very particular about their ployes. Some say you shouldn't flip them. Cook them one side only. Evervone has their own recipe." Steaming hot and buttered, or layered with baked beans and molasses, then rolled up and eaten with the fingers, Aline's ployes were impossible to resist.

MOTHER TONGUE ONCE FORBIDDEN

Over dinner the conversation was politely in English. If I had not been there, they would be speaking the local French, a combination of Canadian French and an archaic idiom traced to 17th-century France and laced with the nautical terminology of those French ancestors who originally settled and farmed a land that they called l'Acadie—Acadia—along the shores of the Bay of Fundy and its inlets. A majority of the people in the upper Saint John Valley speak this dialect as their mother tongue, but until ten years ago Maine forbade children to speak it in school. Then, in 1970, valley educators designed a bilingual education program with a grant under the Elementary and Secondary Education Act, and it became a model program throughout the U.S.

I got a look at the bilingual program when I accompanied Nicole to her second-grade French class at the Dr. Levesque School in Upper Frenchville. The teacher, Claudette Paradis Violette, told me before the class started, "The parents who were denied the right to speak French are delighted their children can speak bilingually now." She knew because she was one of those parents. "Most of these children's great-great-grandfathers were Acadians. But at this age they don't yet grasp the concept of ancestry—though it's never too soon to try."

She opened the lesson with some Acadian history—in French. Turning to the group of young faces, she asked, "*Qui étaient ces Acadiens?* Who were these Acadians?"

"Indians?" tried one youngster.

Nicole raised her hand, pushing it higher, bubbling with enthusiasm. "They were people who came from France," she answered, ironically in English. She was right, of course. French colonists came in the 17th century to what is now coastal Nova Scotia and the Bay of Fundy. They brought their own dialect from the province of Poitou, south of the Loire River—along with their own customs, food, and dress, plus an independent spirit and the farmer's stubborn streak. Alternately controlled by the French and the English, they were finally ordered to take an oath of allegiance in 1755 to George II of England. When they refused, Governor Charles Lawrence of Nova Scotia called all men and boys to the St. Charles Church in Grand Pré and ordered the eviction of all Acadians—"*le grand dérangement*." At gunpoint they were herded onto ships and scattered from Quebec to Louisiana.

Over the years small groups made their way back to resettle along the Saint John River. In June of 1785, a band of perhaps ten families came ashore at St. David on the southern banks, and soon had settled both sides. The names of those first settlers—Duperre, Daigle, Cyr, Fournier—echo today throughout the Madawaska region.

Local interest in Acadian history is growing as fast as fiddleheads. In 1979 Madawaska, Maine, celebrated its second annual Acadian Festival Week, simultaneously commemorating June 26—declared Acadian Day by the state of Maine in 1978—and the 375th anniversary of the landing of the Acadians in North America.

For many residents getting their first accurate view of their own history, Roger Paradis of the University of Maine's Fort Kent branch is the valley's walking encyclopedia. A slight man with a thin mustache and a tired voice, this historian is the impassioned leader of a move to save bits of valley culture before they are homogenized in the 20th century American mixing bowl. He has put together one of North America's largest collections of Acadian folklore.

One day he took me off to Edmundston to meet Alfred Morneault, who might be called a nouveau folk artist. At 77 Alfred had a robust laugh and high red cheeks. He welcomed

me into his house and with great joie de vivre, though in barely understandable English, he discoursed on his powerful, primitive wood carvings (preceding pages).

"Come," he said. "Look."

In the middle of his living room, next to a life-size wooden blue heron, there reposed a replica of a white porcupine, the largest I had ever seen. On its base, scribbled in Alfred's scratchy hand, was this less than modest description: "I am albino and maybe a unique structure in all the world."

"I whittled maybe 6,000 toothpicks for its spines," Alfred said. "I feel it's my best work. I sold about 50 pieces to the National Museum of Man in Ottawa, though it was hard to separate my collection. If I count my time, materials, and mileage I could get a small fortune for the whole collection."

"What was your inspiration to start all this?" I asked.

"Roger came to me four or five years ago and said, 'If you don't share what you have in your spirit, it will be lost forever.' "

Roger said. "But I didn't think it would come to this."

What it had come to was a basement full of small carved wooden figures—people, buildings, horses, logging haulers—all displayed on large sheets of plywood in exacting detail to a scale of one inch to a foot.

"These are scenes from the valley logging life—scenes from my life. Histoire vécu—my personal history. Each carved figure represents a real person in my life."

"You were a logger?" I asked.

He laughed. "That—and 44 other things." He pointed to a group of figures. "Here's the first lumber camp I worked at, back in 1920. This man turns the grindstone while this man and horse pull the logs."

LOGGING A HARD DAY'S WORK

At today's lumber camps you will see more giant skidders, mammoth harvesters, and merciless mechanical debranchers than horses and grindstones. But you will still meet families operating in the old ways—like the Landrys, whose 1,900 acres of woodlot sit in the saddle of a green valley township on the Canadian side.

As did his father and his father's father, Elude Landry along with his eight sons and one daughter harvest their own wood, putting strong backs to heavy chains, hauling 50-foot logs with a hefty horse—the whole day laughing, cajoling, cavorting, taunting, and having a grand old time (pages 384–5). They are people whose strength—of back and character—bear out the local boast that Paul Bunyan was born in the valley.

"This land is my life," Elude shouted above the noise of the flatbed truck as we bumped along a dirt lane into the woods for a day's work. Three Landry boys—Luc, 17, Georges, 21, and Claude, 25—horsed around in the back of the truck. "Some guy from Toronto offered me $24,000 for a parcel I paid practically nothing for just after World War II. But I'll never sell. My children will always be able to work this land."

It's hard to imagine anyone working the land harder. A well-drilled team, they cut, split, and loaded three cords of hardwood in two hours. They sell 1,000 cords a year.

Most of the wood that comes out of the region's rich spruce and fir concentrations is harvested by companies like Fraser, the valley's biggest, founded by a sagacious Scot named Donald Fraser. The company started a sulfite pulp mill in Edmundston in 1918, and in 1925 opened the paper mill in Madawaska. Today Fraser Inc. is managing and harvesting 1.8 million acres of prime timberland (of which it owns more than 40 percent), and it manufactures more than 400,000 tons of fine paper a year. If you have ever read a Sears Roebuck catalog, you have touched Fraser paper.

Five-mile-long pipes pump 950 tons of pulp every day under the international bridge from Edmundston to Madawaska, a symbolic umbilical cord of international cooperation. Fraser, a Canadian company, exports pulp duty free to its American paper-producing mill, eliminating the high tariffs levied on Canadian paper imported to the United States. That pipe is the lifeline of the 2,200 valley people employed at the Edmundston and Madawaska mills and offices (pages 402–403).

From Fraser's administrative office in Edmundston I drove 40 miles of unpaved roads with 37-year-old Jeff Leach, a Canadian who oversees close to two million acres as woodlands manager. We were heading north to Camp 69, one of Fraser's typical harvesting operations, driving parallel to the Madawaska River.

"It's hard to believe now, but the Madawaska River was completely covered with wood for 14 miles—you couldn't even see the water, eh?—until 1969 when we stopped using the river as a means of transportation and storage. We found out there was more wood underwater than above. When we cleaned the river out, we pulled 100,000 cords of wood from the bottom."

Camp 69 was buzzing with activity when we got there—literally buzzing from the deafening sounds of chain saws, tree harvesters, grapple skidders, and house-size slashers. Like an angry, gnawing, single-clawed big yellow monster, a harvester was dropping trees as though they were annoying weeds. Relentlessly closing in on one particularly formidable tree, the monster grabbed it at its base. Two sheets of heavy metal cut through the trunk. The crunching wood sounded like bones being ground. You could almost hear the tree cry out. The brute yanked the tree from its home of 80 years and turned slowly, the tree dangling from its claw until it was dropped onto a pile.

Gerald Quimper supervises the camp of 85 men who produce 58,000 cords of wood a year. It is a life of cold, cut, and splintered hands, unshaven faces, tired eyes, weary bodies. They live in long bare-metal Quonset huts or in newer, sterile five-room trailers, two men to a room. Privacy is minimal.

"Yes, it can get lonely up here for us," Gerald admitted, relaxing by the wood stove. "But the supervisor's salary compensates for the loneliness."

LIVING BETWEEN TWO WORLDS

"We were the forgotten territory," said Oneil Clavet of Edmundston, who is doing everything he can to help people remember it. "I would say it has to do with the fact that Madawaskans had to live so long without knowing whether they belonged to the United States or Canada. Look here," he said, pushing a map at me. "For 59 years this area was a bone of border contention because of vagueness in the 1783 Treaty of Versailles. Not until the Webster-Ashburton Treaty of 1842 could the people of the valley claim a country. But by declaring seventy miles of the Saint John River the border, that treaty effectively made an international community of the valley, and in many instances divided families into two nationalities.

"I prefer to call myself a citizen of La République du Madawaska." Oneil earnestly declared. He was referring to the original name for the territory, borrowed from the Malecite word meaning "land of the porcupines," an apt image for the sometimes prickly valley characters. Now Oneil unfurled a flag of the republic, then pulled out a draft of the republic's constitution.

Wait a second! Is this a real republic? In North America? Or am I concerned with the leader of an international conspiracy?

But before my mind could run wild, Oneil was quick to remind me the republic is a myth. The Republic of Madawaska has no political clout but is playing The Mouse That Roared to attract attention to itself.

To that end Edmundston played host last summer to the first annual Foire Brayonne. (A bray, a tool regional farmers used for breaking flax, has become a modern-day symbol for Madawaskans.) If there was not a Mardi Gras of the north before, there is now. The downtown streets were blocked off and jammed for a week with 70,000 people. Their high-spirited French blood ran hot as they celebrated their ancestry in cuisine, dance, dress, parades, and competitions.

The highlight of the occasion was the attempt by Jeannine Albert and Alberic Pelletier and their families and friends to make the world's largest ploye, with bulky and uncooperative pans, poles, paddles, forklifts, and tractors. When they finally poured the batter, it oozed to eight feet in diameter and they gleefully joined hands and broke into spontaneous song and dance around the implausible ploye (preceding pages).

But around here even the largest pancake is humbled by the lowly potato, as this local "Potato Song" laments:

I am a farmer on the Saint John River.
I plant potatoes to pay the income tax.
The collectors have arrived and they are encamped at St. Agatha.
They've come to take what little money we've lately saved.

"Baked, mashed, or French fries?" the waitress asked, as all waitresses in the valley automatically inquire.

"No potatoes today, thanks," I deferred, still remembering an overindulgence in oversize ployes. By the look on her face I knew I had committed the ultimate insult here in potato country.

The valley is, and has been for a long time, one of the largest potato-producing regions in the United States. The American side is part of Maine's Aroostook County, which accounts for 90 percent of the state's harvested acreage. In potato production Maine ranks just behind Idaho and Washington.

From the air the valley appears as a patchwork of brown corduroy overalls, held up by long green suspenders leading to the Saint John River—remnants of a centuries-old method of farming which gave every farmer access to the river water. Part of the reason potatoes grow so well here is the valley's natural drainage system plus a good ratio of clay, sand, and organic components.

Potato farming in the valley is a gamble, akin to Russian roulette. Why the average price per barrel for U. S. No. 1 grade potatoes was $16.44 in one year and $2.08 the next keeps brokers at the New York Mercantile Exchange perplexed—and Maine potato farmers poor.

Against such heavy odds, I wondered, why did people choose this way of life.

"We were born in the business," was Adrian Morin's fast reply. Across the kitchen table his wife, Riola, threw up her hands and laughed, "We were born to starve."

Certainly they were not born to get rich. In 1977 the per capita income in Aroostook County was under $4,000. In St. Agatha, not far from the Morins, it was even less.

Adrian said: "My father worked this farm. I was born at my brother Roland's place, up the hill, where grandpa had his farm. For a while I worked construction down in East Hartford—20 years ago there was big money down there in Connecticut. But I didn't like that city life. Then I built the sawmill in 1957. In 1958 it burned—lost all my money. When my father retired, my brothers and I took over the farm.

"Today my sons are planting their own three acres. That's how I started. My father gave me three acres to work. They were shining like gold. I was more proud of those three acres than of what I got today.

"In 1965 there were three and a half million farmers in the nation. Now we're less than two and a half. It gets us to wondering whether our boys should go into another business. But what can we do. Nothin'. It's just somethin' we got in our blood."

The river, like the land, is also in the blood. The valley folk sing of their River Saint John:

Blessed be our heavenly Father
Who placed our cradle upon these shores;
May the pure waters of the river someday caress my grave.

The Indians called it Oo-las-tuk, the Goodly River. From its source deep in the woods of northern Maine, the Saint John River flows more than 400 miles before emptying into the Bay of Fundy. At the eastern end of the river is Saint John, New Brunswick (population 90,000). Far to the west is Allagash, Maine (population 650). If the valley is a place apart, then Allagash—or Moosetown, as people downriver call the isolated town—is a place beyond that.

"DAMN DAM" THREATENS SCOTCH-IRISH

The names on the mailboxes change suddenly as you approach town. Pelletier and Sirois and Daigle turn to McBrearity and Kelly and Gardner. The Scotch-Irish came here in the early 1800s, looking for a place the French hadn't already settled. They are a clannish lot. Marriages between cousins and other relatives are not uncommon.

The woods and the river are what these people know best. Driveways and lawns are strewn with skidders and haulers on one side, canoes and outboard motors on the other. But now this whole way of life is scheduled for demolition.

Allagash, I feel, may become only a footnote in the wake of the proposed two-headed Dickey-Lincoln School hydroelectric project. "That damn dam," as the dual facility is referred to in some valley circles, is the largest public-works project in New England's history and one of the most controversial. Ever since authorized by Congress in 1965, it has pushed emotions to overflowing from Maine to Washington, D.C.

Some chamber of commerce elements, looking toward a boom economy during construction, voted in favor of it. Environmentalists, on the other hand, condemned it for the potential destruction of wilderness, not to mention the rare Furbish lousewort.

Still others pointed to it as a nonpolluting renewable source of an even rarer resource—energy—and as a means of controlling the spring flooding that damages urban properties and potato fields.

With construction slated to begin in 1983, the fate of the project is unresolved. But if built, its impact will be tremendous. The 944-megawatt facility will cost about $825,000,000; the larger Dickey Dam will rise 27 stories and stretch two miles across the valley just above the confluence of the Saint John and Allagash Rivers. It will flood 278 miles of rivers and streams, 76,000 acres of timberland—and part of Allagash.

That last item irked Allagash teacher Bob O'Leary. "What does the dam mean to me? It means 112 families here in Allagash will be dislocated. Mine will be one. I just finished building a $40,000 home along the banks of the Allagash a mile from here. It will be lost if they build the dam. And, you know, those people in Washington can tell us to the penny what the dam will cost, but they still haven't told us what they'll pay us for our homes."

ONE FAMILY'S MOST PRECIOUS CROP

If you surmise that home and family are important in the valley, you miss the point—they are everything.

I was introduced to the Minal Caron family of Fort Kent as one of the most successful potato-farming families in the valley. But according to Mrs. Caron, potatoes were not the family's most important product. She pinched my elbow and asked, "Would you like to see our best crop?"

The living room was like a shrine to her family, its walls lined with photographs, portraits, snapshots, cameos, tintypes, degrees, trophies. One by one, I was introduced, by proxy, to her brood of 12 children, 48 grandchildren, and a couple of great grandchildren. "Some have moved to Connecticut, but we are all very close. Family reunions are very special occasions. The most special is Mother's Day."

Nowadays three to five children in a family are not out of the ordinary. A generation ago it was nine to 13. For sheer numbers the Cyrs of St. François de Madawaska, New Brunswick, must take the cake. Heliodore and Marie Cyr have had 27 children.

Next to family is faith.

"Qui-perd sa langue perd sa foi. Who loses his language loses his faith." The strength of faith in the valley is visible everywhere. In the schools, children are allowed to leave their classes for "release time," during which they receive religious instruction, otherwise not permitted in Maine schools. In the homes, a picture of the family priest shares the wall with the children's portraits. In the fields each fall, priests go through the valley performing Masses in potato houses where potatoes are stored before shipment.

But it's the church itself that impresses most as you drive through any town: It is invariably the largest, most elaborate edifice, and the focal point of every village. The only traffic jams in town are on Sundays.

A TEMPTATION AND A PROPOSAL

Months after leaving the valley—back in my urban environment where I sometimes wonder whether all the amenities are worth the price, where it sometimes seems unnatural to be living 250 miles from my parents, where I sometimes feel anonymous in the city's sea of humanity—I find myself valuing the virtues of these valley people more and more. I am often tempted to trade urban slick for country hick and a warming evening singing old songs with old friends.

But of all my valley memories, it is the face of eight-year-old Nicole Corriveau that keeps coming back to me, circled in gold, angelically pure. Bright eyed, naive, but learning fast, Nicole is the urper Saint John River Valley. Child of a mélange of cultures, a child of our times—the valley's most valuable natural resource.

"If I come back in 15 years, will you marry me?" I asked her one day. She smiled coyly but did not answer, later giggling over my proposal with her cousin. It was I who was being naive. In 15 years Nicole would change—as the valley would change. But one could hope.●

REV. C. K. STEELE: THE MARTIN LUTHER KING OF FLORIDA

● Mr. McGOVERN. Mr. President, during my 1972 Presidential campaign, I came to know Rev. C. K. Steele, pastor of the Bethel Baptist Church in Tallahassee, Fla. It was my privilege to speak in Reverend Steele's church and to have the benefit of his insight and devotion to the cause of social justice. Recently, Reverend Steele died after a remarkable and fruitful life in which his civil rights commitment earned him the discriptive phrase—"The Martin Luther King of Florida."

I ask that some excellent accounts of Reverend Steele's life and death appearing in the Tallahassee Democrat be printed in the RECORD.

The material follows:

CANCER CLAIMS STEELE

(By LaNedra Carroll)

The Rev. Charles Kenzie "C. K." Steele, the man who since the 1950s led Tallahassee's march toward civil rights, is dead.

Cited at a recent testimonial as "a man who fought for the good, for poor, for the powerless and the forgotten," the pastor of Bethel Baptist Church died at his home at 7:15 Tuesday morning after a long illness.

He was 66.

"There is no need to add laurels to make him larger in death than he was in life," said the Rev. Herbert Alexander, a close friend and neighbor. "He was a great man. As long as he lived, he gave himself up to a greater vindication of humanity."

City officials have set Sunday aside as a memorial day for Steele. The flags in front of the Capitol will fly at halfmast Monday in Steele's honor, Gov. Bob Graham said.

Steele's life was a mixture of preaching for justice and fighting for changes.

Born Feb. 17, 1914, in Bluefield, W. Va., Steele was the son of a railroad worker-turned-miner. By the time he was 15 he was preaching.

In 1938 he went to the big city—Atlanta—to attend Morehouse College. It was his first trip far from home.

In the following years he preached in Toccoa and Augusta, Ga., and Montgomery, Ala.

Then, at age 38, he came to Tallahassee.

He began preaching at Bethel Baptist Church, and for several years life in Florida's capital was relatively calm for the minister.

That calm was not to last.

It began with a bus boycott in 1956, at a time when black passengers were supposed to ride in the back of the bus.

Two black students refused to give up their seats to a white woman. They were arrested.

Steele and his followers boycotted the bus system, bringing it to a halt. Former Gov. LeRoy Collins said he had to order the temporary halt, to forestall violence at some bus stops.

"He was strong in his convictions as steel . . . ." Collins said of Steele. "(The boycott) hurt black people more than it did white people, in the sense that they needed that service more than white people did. But it showed the people of this community that they were very determined to right this wrong."

Steele was harassed by the Ku Klux Klan, snubbed by civic leaders and arrested several times. Later, he would refer to the bus boycott as the single most important event in shaping civil-rights activities in Tallahassee.

It was just the beginning. Steele was involved in other non-violent sit-ins, marches and boycotts as he and other civil-rights activists labored to achieve integration in the city's restaurants, theaters, airport and schools.

His focus was not just local. He marched side-by-side with such national luminaries as the late Dr. Martin Luther King Jr. and Ralph Abernathy in Montgomery, Selma and St. Augustine. In 1957 Steele helped King and others found the Southern Christian Leadership Conference, of which he was a vice president.

He carried the fight for equality through the '60s and '70s. The methods were different but the message was the same. In later years, he turned his attention to economic discrimination against blacks and other people.

"They have developed a more subtle way of depriving black people of their rights," he said in an interview with The Democrat two years ago, "but there will be a new group of leaders that will be able to cope with that, a group of leaders as sophisticated and subtle, yet as courageous in conflict, as in times past."

In that earlier interview, he acknowledged the progress that had been made in the struggle for civil rights. He also acknowledged, with a touch of regret, that the "surge for freedom" had its up and downs.

"I know I have done a little something for Tallahassee over the years," Steele said then. "I've really tried to do my best to bring the Kingdom of God to the citizens of this community—both black and white—but it's not been an easy task."

It was three years ago that doctors discovered he had cancer of the bone marrow. They gave him only 22 hours to live.

Steele defied their predictions.

"Death didn't interest him that much,"

said one of his sons, C.K. Steele Jr. "He was not afraid of dying."

Steele remained optimistic. In the earlier interview, he looked ahead.

"Ten, 15 or 20 years from now," he said, "we'll be better able to cope with the situation than ever before. We won't have reached Utopia, but we'll be further along than we were.

"I'd like to see a day when we can bring black people and poor people together in a strong organization determined to obtain for all people an equal share of justice and equality."

Survivors include the Rev. Steele's wife, Lois Brock Steele; five sons, C.K. Steele Jr. of New York City; the Rev. Henry Marion Steele of Orlando; and Clifford, Darryl and Derek Steele of Tallahassee; a daughter, Rochelle Steele Davis of Tallahassee; and his mother, Lydia Steele of Maybeury, W. Va.

A COMMON MAN WITH A KINDLY TOUCH

(By Neil Chethik)

It was April 15, 1980, nearly 30 years after a small, energetic man with a black mustache and goatee first touched Tallahassee, the city he would forever after call home.

It was a symbolic day for the Rev. C. K. Steele—a day that saw most of Boulevard Street renamed for Martin Luther King, whom Steele admired as a colleague and loved as a friend.

Steele's only regret that day was that only portions of Boulevard Street had been renamed. Political compromise had left his job half-finished.

To his close friend, the Rev. Herbert Alexander, he vowed: "Next year, I'll get the rest of it."

"He brought that kind of tenacity to everything he did," Alexander, an administrator at Florida A&M University, said Tuesday. "To me, he was just a common man with a kingly touch."

On Tuesday, Steele died of cancer. He was 66.

But Alexander, who has known Steele since the West Virginia native became pastor of Tallahassee's Bethel Baptist Church in 1952, said he believed Steele's long-fought struggle to dedicate King Boulevard would end in total victory.

"The thing that gives me the greatest inspiration about C. K. Steele is his fierce determination that his ideas never be conquered," Alexander, 52, said Tuesday in an interview.

"I've seen him beaten by the odds," he said. "But inside this little man was a spirit that was indomitable."

That spirit carried Steele through the 1950s and early 1960s, when he mounted successful struggles to integrate Tallahassee's movie theaters, lunch counters, airport and bus station.

It carried him through the late 1960s and 1970s, when he battled to integrate schools, stop police brutality and end job discrimination against blacks and the poor.

And it carried him through the successful 1956 bus boycott in Tallahassee, the incident Steele believed did the most to turn the tide of racism in his adopted city.

"He dared to venture to do things that other men wouldn't think of doing," Alexander said. "His faith helped him . . . and fortified for him a great kind of courage."

Alexander said that faith was never so tested as it was two months ago, when Steele traveled to the NAACP convention in Miami. His body ravaged by cancer, he brought with him nothing but his cane, a small tote bag and $12.

"I told him he could never make it in Miami on that, but he told me, "This will be my last convention. I'm going on faith," Alexander said.

When he arrived in Miami, Alexander said, NAACP officials who didn't even know that Steele was coming took care of him every minute. They fed him, put him up at a hotel and made sure he got back on the plane.

Said Alexander: "He believed in the goodness of people."

Alexander, who was ordained by Steele in 1962, said he saw Steele as more than a teacher, a leader or a pastor. He was a friend.

"And he was the greatest of friends," Alexander said, a smile leaping to his face. "He was a man who took the time to hear what you had to say. He loaned himself to the community, and ofttimes, he received no reward.

"Each time I talked with him, I left with the feeling that I had stolen something from him, without returning anything. He was a giver."

Alexander said Steele often went to his church early to wait for beggars.

"He took great joy in giving to the poor," he said.

Steele's accomplishments, Alexander said, came almost incidentally.

To Alexander, it appeared that Steele was the right man in the right place at the right time.

"I felt that he had an unusual kind of rendezvous with destiny," he said. "He came at a time when men abused other men. He saw that as an evil that had to be attacked."

With the ferocity of a Napoleon, Alexander said, Steele fought battle after battle. He marched, preached, argued and prayed.

"To say that C. K. Steele was a quiet man is not to have seen him in action," Alexander said. "Under the facade of being humble and quiet, he was aggressive and outgoing. He had to be heard."

Alexander said he found it difficult to believe the man he had listened to for almost 30 years would never be heard from again.

It was just Monday night that he sat by Steele's bed. Before leaving, Alexander and two of Steele's sons, Charles and Clifford, knelt by the bed.

The next morning, Steele was dead.

"Even though I had seen a man just a wisp of what he once had been, his hands just skin and bones, it never occurred to me that this man would die," Alexander said. "I knew he was fallible, but in that fallibility, I always found strength."

LEADERS MOURN STEELE'S DEATH

(By Peter Racher)

Veterans of the nation's civil-rights movement Tuesday mourned the death of Tallahassee's Rev. C. K. Steele, "the Martin Luther King of Florida."

The Rev. Ralph D. Abernathy of Atlanta said he and Coretta Scott King, wife of slain Dr. Martin Luther King Jr., would be among mourners at Steele's funeral Monday.

Abernathy said he hadn't discussed travel plans with Mrs. King, who couldn't be reached for comment.

"I just know Mrs. King," said Abernathy, past president of the Southern Christian Leadership Conference, an Atlanta-based civil-rights group. "I don't see how she can be anywhere else."

In an interview Tuesday with The Democrat, Abernathy praised Steele as a friend, scholar and leader of the nation's civil-rights movement.

Steele, who marched in some of the nation's most famous civil-rights protests, died at his home early Tuesday. He was 66.

"When it came to goodness and noble Christian values, he had no peer," Abernathy said.

Abernathy wasn't the only national figure saddened by news of Steele's death.

"He was the conscience of Tallahassee and, in many ways, the conscience of Florida," the Rev. Jesse Jackson said in a telephone interview.

Jackson said Steele had conducted two fights: one against the cancer that had afflicted him, and another against the "social death" that afflicted minorities.

"He sought to redefine dignity for so many people. . . . He never gave up," Jackson said. "He showed us how to live, and he showed us how to die."

Former U.N. Ambassador Andrew Young, who worked with Steele in the civil-rights movement, said in a phone interview, "The movement's base was always the black church, and C.K. Steele was a symbol of that as well as anyone else. He was a preacher with a social conscience, but most of all, he was a preacher."

Young said he couldn't attend Steele's funeral because of other engagements.

Abernathy said he anticipated other black leaders, such as Joseph Lowrey, president of the Southern Christian Leadership Conference, would attend funeral services.

Abernathy said Steele's dream was to bring unity to the civil-rights movement.

"So that which he could not do in life, maybe he will achieve in death," Abernathy said. "I'm sure all of us will be in Tallahassee for the service. We shall all be together."

Abernathy, who gained fame as a close associate of King, praised Steele as "a friend of humanity."

"This man had risen beyond the level of hate," Abernathy said. "He possessed not the capability to hate. He was imbued only with the ability to love. He loved everybody. To the simplest forms of life, his love was evident—with children, with flowers, with birds, with animals, with human beings, black, white, brown, red, yellow. It did not matter one's distinction in life. He loved."

Abernathy said, "It wasn't anything strange for me to pick up the telephone and get his explanation of a particular biblical passage. He was a real Bible scholar."

When other theologians failed him, Abernathy said, he turned to Steele "and got the Steele version of it."

Steele never gained the national prominence of King or Abernathy, although he had helped them establish the Southern Christian Leadership Conference, which took a leading role in the civil-rights movement.

"He served a great deal of his time in the shadow of Dr. Martin Luther King," said a longtime friend and ally, the Rev. R. N. Gooden of Tallahassee.

"Due to the prominence of Dr. King and the focus on Dr. King and the attention the news media gave him, it always put C. K. Steele in the background," Gooden said.

Gooden, in Los Angeles for a church conference, said in a phone interview that Steele was "an even greater speaker than Dr. King."

In Tallahassee Tuesday, Mayor Richard Wilson set aside Sunday as a memorial day to Steele. Wilson said the city and civic groups might schedule other memorial activities but firm plans hadn't been made.

Gov. Bob Graham said flags in front of the Capitol would fly at half-mast Monday in honor of Steele.

"We have today suffered the loss of a great Floridian," Graham said in a press statement.

George Thurston, a free-lance reporter who covered demonstrations led by Steele in the 1950s, recalled the fiery orator who led Tallahassee blacks in 1956 to boycott public buses until the city changed rules requiring blacks to sit at the back.

The boycott enraged many whites, but it ultimately brought public transportation to its knees.

Steele was arrested for his role in the boycott. But when the back-of-the-bus rule finally was outlawed, Steele stood before Talahassee blacks and raised his voice in victory.

Thurston was new director for a local radio station at the time.

"I can hear his voice raised, and he's waving his arm, and he's saying, 'We can ride the bus now! We can ride the bus!'" Thurston said.

Other words of remembrance came from:

FAMU President Walter Smith: "It is a real and terrible loss to Tallahassee, the state and the nation that such a giant should pass at this time . . .

"It is also a severe personal loss because of my own association with Rev. Steele during my days as a student at FAMU, when all of us formed a team that fought for equal rights for all Americans without regard for race, color or creed."

James Eaton, FAMU black archivist: "Dr. Steele's impact was felt around the state. He was symbolic of the movement in Florida. He was the Martin Luther King of Florida. . . . If there's such a thing as a real messiah, a living Jesus, a prince of peace, he was it."

State NAACP President Charles Cherry: "In my mind (Steele) was the leader of civil rights in Florida. He was involved in civil rights long before it became fashionable."

The Rev. Ernest Ferrell, president of the Tallahassee Urban League: "When I look down Old Brainbridge Road, where this office is located, and see people who have turned to alcohol and who are turned off from society, I know the struggle must go on . . . and I hope that one day the dreams Rev. Steele and Dr. King and other black leaders had can become a reality."

STATION TO BROADCAST STEELE DOCUMENTARY

WFSU-TV Channel 11 (cable 3) will rebroadcast its half-hour documentary on the Rev. C. K. Steele tonight at 7:30.

The documentary, "A Warrior Bold and Gentle," was filmed between spring 1979 and spring 1980 by a local free-lance producer, Robert Perkins.

It consists primarily of interviews with Steele, his wife and friends, and includes photographs of the 1956 Tallahassee bus boycott and film footage of a testimonial dinner given for Steele last year.

The documentary was first broadcast by WFSU-TV July 16.

A COMMENTARY ON THE ADMINISTRATION ANALYSIS OF "THE SALT SYNDROME"

● Mr. GARN. Mr. President, the Carter administration has recently released a commentary on "The SALT Syndrome," a documentary film produced by the American Security Council. As a member of the Intelligence Committee I am deeply disturbed by CIA participation in such a gross propaganda effort. The administration response is a combination of distortions, release of classified information when it suits the administrations purpose, withholding information when it suits their purpose, and pro-SALT propaganda. One does not have to endorse every statement in the American Security Council film—and I do not—to recognize that it is basically a very accurate depiction of the strategic balance and the limitations of SALT II intended for a popular audience.

The message of the Carter administration seems to be that quantitative advantages when enjoyed by the Soviet Union are not significant but that they are highly significant when enjoyed by the United States. No one is arguing that the Soviet Union is ahead in everything but they are ahead in perhaps 75 percent or more of the strategic force indicators and are closing the gap in the remaining areas.

The administration seems to use tunnel vision ignoring the trends in the developing balance. It tries to exaggerate the U.S. advantage in the few remaining areas, such as total number of warheads, and ignores the fact that this gap will be closed within 2 years. It talks about qualitative U.S. advantages in missile accuracy that no longer exist. It even tries to ignore the fact that there has been a massive reduction in the size of the U.S. Navy since the late 1960's and the U.S. Navy today is grossly inadequate to carry out its three-ocean requirements.

I have prepared a commentary on the administration analysis of "The Salt Syndrome." I ask that it be printed in its entirety in the RECORD.

The material follows:

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
[Secretary of Defense Robert McNamara] began to disarm.	While McNamara was Secretary of Defense the U.S. engaged in a massive expansion of its strategic nuclear forces. We introduced Minuteman ICBMs, and Polaris submarines and missiles. We also began the developemnt of a light nationwide ABM system and development of multiple independently targeted warheads (MIRVs) for our ballistic missiles. This was hardly an era of unilateral U.S. disarmament.	The Carter Administration characterization of the McNamara defense programs as a "massive expansion" of our strategic forces is ridiculous. Initially there was some expansion of the Eisenhower programs, but defense spending on strategic programs was quickly cut $11.2 billion in 1962 to $6.8 billion in 1966. McNamara froze U.S. strategic forces starting in his 1965 budget and maintained this decision despite the massive buildup of Soviet strategic forces. He reduced U.S. forces by scrapping 180 Atlas and Titan ICBMs, plans for 200 additional Minuteman, and retired all existing U.S. B-47 bombers and planned to retire most of the B-52s. He refused to develop a new bomber. Indeed McNamara did not start a single new strategic system during his 7 years as defense Secretary. More importantly, he formulated the strategy of Mutual Assured Destruction which has had such a negative impact on our defense spending.
1,000 American B-47 strategic bombers were phased out beginning in 1961.	B-47 medium bombers were phased out as obsolete, but were supplanted by vastly more capable long-range B-52s, Minuteman ICBMs, and Polaris SLBMs.	The suggestion that B-47s were "supplanted" by B-52s is a distortion of fact. The B-52s and B-47s were largely contemporary and designed for different missions, the B-47s becoming operational 3 years earlier. The American Security Council point is completely valid—the U.S. phased out its B-47 medium bombers while the Soviets not only retained most of their contemporary Tu-16s but actually improved this force with the introduction of the Blinder and the intercontinental range Backfire. It is true that the U.S. built about 1,700 missiles to replace 1,800 bombers. The Soviets, however, added 2,350 missiles and retained most of their bombers.
Our supersonic B-58 strategic bombers were deactivated in 1970.	The B-58 medium bomber was retired because it was not cost-effective.	The B-58 was retired because of inadequate funding for defense.
In 1977 [President Carter] cancelled the B-1 bomber, which was to replace our obsolete B-52 bombers.	As an alternative to the B-1, President Carter accelerated the development of the air-launched cruise missile (ALCM). B-52s are not obsolete—they will continue to be effective launch platforms for cruise missiles into the 1990s. While the aircraft design is relatively old, the weapons and avionics of the B-52 are quite modern and are being further improved.	The Carter Administration is still trying to maintain the myth that it invented the cruise missile. President Ford's 1976 program called for the deployment of the cruise missile on 250 B-52s plus the deployment of 251 B-1s. Carter cancelled the B-1 and cut the cruise missile force to about 150 B-52s. He also delayed the introduction of the cruise missile.

ABC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
The Soviets are already testing even newer strategic bombers.	In 1979 the Soviets may have had one or more new bombers under development, but none had yet been flight-tested.	It is correct that none of the new Soviet heavy bombers have been flight tested but the Administration itself disclosed in the 1979 SALT debate that the Soviets may have 3 heavy bombers under development.
The U.S. has no plans for a new strategic bomber until at least the 1990s.	The U.S. has continued the B–1 program in research and development, as well as other work which will keep open the option to develop a new manned, penetrating bomber in the future. Additionally, the U.S. is considering the deployment of a cruise missile carrier aircraft by the mid-1980s. Meanwhile, ALCM-carrying B–52s will begin joining the force in 1982, and by the mid-1980s, over a thousand ALCMs will be operationally deployed.	The Carter Administration has no intention of deploying any new strategic bomber or cruise missile carrier. The Administration's statement reminds one of Mr. McNamara's old claim he was developing 3 strategic bombers. None of them even materialized. The Carter Administration has been threatening to veto the defense bill if Congress appropriated money for the B–1.
The Soviet Union's medium and heavy strategic bomber force now numbers 675, while the U.S. bomber force has been reduced to 414.	Misleading comparison. These figures count medium range Soviet Badgers and Blinders equally with long range U.S. B–52s. In heavy bombers alone the U.S. has a substantial lead.	The Administration claim ignores the Soviet Backfire which is an intercontinental strategic bomber with more range than half the B–52s and was counted by the U.S. as an intercontinental bomber before Mr. Carter became President.
The number of United States strategic missiles was frozen at the 1967 level.	The U.S. has not stood still in strategic forces since 1967. Before SALT began, the U.S. decided to shift from quantitative to qualitative improvements in strategic forces. In the missile force these improvements included the deployment of MIRVs—which accounts for the fact that since 1967 the total number of warheads in the U.S. inventory has more than doubled and the number of missile warheads has quadrupled while the total number of launch vehicles has declined slightly; the Minuteman ICBM upgrade program (MK–12A RV,W78 warhead, guidance improvements, silo upgrade and Command Data Buffer System): the replacement of Polaris SLBMs with longer range, more accurate and greater playload Poseidon and Trident missiles. In addition there have been numerous improvements to the B–52 force (new SRAM weapons, new electronic counter-measures, new navigation equipment, improved SRAM guidance, and now the addition of air-launched cruise missiles.)	In relation to the Soviet Union the U.S. has stood still. Since 1967 the Soviets have increased the number of their warheads by about 7 fold. While we have introduced only two new SLBM and one modified ICBM, the Soviets have introduced 4 ICBMs, and 3 SLBMs with several major modifications of each. Soviet strategic programs have been funded at about three times the U.S. level. Over $100 billion more has been spent by the Soviets on strategic programs than the U.S. has spent over the last decade.
But the Soviets continued to build missiles even after they passed U.S. numerical limits about 1969.	The Soviets passed us in number of launch platforms, but we were modernizing our missile force by replacing single-warhead missiles with MIRVed missiles, in reality outstripping the Soviets by multiplying the number of nuclear warheads per missile. The Soviets did not begin to deploy MIRVs until the mid-1970s.	It is true that we were the first to introduce MIRVs but the Soviet Union has clearly outstripped the United States in strategic missile forces, particularly ICBMs. The Soviets already have about twice as many hard ICBM warheads & have achieved about parity in accuracy. They are continuing their MIRVed force expansion while ours is frozen.
President Carter further accelerated our disarmament by cancelling our only ICBM production line.	The MM III line was producing spare & test missiles we had no intention or means of deploying; besides, the U.S. already had a sufficient surplus of MM II's. President Carter has approved development of the MX mobile ICBM.	The Carter Administration certainly had no intention of deploying more Minuteman III or even deploying all of the existing ones we have. One might ask why? Why did the Carter Administration refuse to replace the 450 Minuteman II ICBMs which are now suffering from age? Why did it allow the ICBM force to become vulnerable to Soviet attack and why it so delayed MX that the ICBM force will be vulnerable for the entire decade of the 1980s. The Carter Administration cancelled Ford plans to deploy 50 more Minuteman IIIs in 1977.
At that time [1978] the Soviets were producing or testing eight new ICBMs.	Untrue. The Soviets were producing or testing three fourth generation ICBMs—the SS–17, –18, and –19.	This somewhat depends on your definition of "new," but in 1978 the Soviets were testing about 8 ICBM types—SS–9, SS–11, SS–13, SS–17, SS–18, SS–19, & intercontinental range SS–N–8 & SS–N–18.
The Soviets have at least 1400 ICBM launchers to our 1504.	True, but incomplete. The U.S. places about 25 percent of its 9200 strategic nuclear weapons on ICBMs, whereas the Soviets place approximately 75 percent of their 6000 weapons on fixed-silo ICBMs. The other 75 percent of our weapons are dispersed on less vulnerable mobile platforms-bombers and submarines. Only 25 percent of Soviet weapons are deployed on bombers and submarines.	True but irrelevant. It is what the Soviet SLBM & bomber force that can do against us not the percentage that are on a particular element of the force that is important. Soviet ICBM, by the way, are not vulnerable to a U.S. attack. Indeed they enjoy more survivability today than our bomber & SLBM forces because of their much higher alert rates.
Many of [the Soviet] ICBM silos are designed to be reloaded and refired . . .	Soviet silos do not appear to be designed for this capability. Even if they were, reload & refire in the middle of a nuclear war would be no easy feat. The Soviets, who do very realistic testing & training, have never trained for this complex task. In any case, U.S. retaliatory capabilities could destroy any ICBM reload facilities long before a second Soviet salvo could be fired from reloaded launchers, SALT II bans any testing of a rapid reload operation, and prohibits the location near silos of additional ICBMs and hardened storage facilities vital to a realistic refire system.	Soviet SS–18 & SS–17 silos are cold launched & inherrently have this capability. The U.S. at this time has no significant retaliatory capability against silos. The Administration claim that the Soviets don't practice reloading their silos is ridiculous. SALT II does ban this but does not define what it bans.

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The Soviets have at least 1,000 extra missiles for refire, making their advantage in ICBMs at least 2,400 to our 1,054.	We have over 200 extra missiles ourselves, & believe the Soviets may have several hundred more than that. There are legitimate reasons for keeping retired missiles, such as for obtaining spare sparts & for test purposes. It is unlikely that any excess older missiles the Soviets may have would be used for refire. A complex operation with thousands of people & vehicles—all observable—would be necessary to launch these missiles without their silo launchers. There is no evidence of any such infrastructure.	The United States didn't spot a Soviet combat brigade in Cuba for possibly seventeen years despite the fact it had thousands of people & vehicles. We have no idea how many missiles the Soviets have. We can't even account for third generation missiles we know they produced for initial deployment in these silos.
Because of the larger size of the Soviet missiles, they have a six to one advantage over the U.S. in missile firepower.	The Soviets do have an advantage in missile megatonnage; we have a comparable advantage in heavy bomber megatonnage. There are many other indices of strategic military capability more important than simple megatonnage. For example, the U.S. has nearly twice as many nuclear weapons on its total force of ICBMs, SLBMs & strategic bombers than does the USSR. The reliability & accuracy of U.S. missiles are both better than those of Soviet missiles.	The Soviets have a massive advantage in missile megatonnage. The U.S. does not have twice as many warheads as does the Soviet Union by the Administration's own claims. (9,200 vs. 6,000 for Jan. 1980). The Soviets are adding 1,000–1,500 warheads a year while we are standing still. The accuracy of U.S. ICBMs is only very slightly better than the Soviets & does not begin to compensate for the several fold Soviet yield advantage & the two to one advantage in hard target capable warheads. The Administration itself admitted that Soviet accuracy will be better than our own in the early 1980s.
Soviet mobile ICBMs are not included in the ICBM count because they can be hidden from our satellites in any building. So, we don't know how many they have; but, the U.S. has no mobile ICBMs.	We are confident the Soviets have not deployed any mobile ICBMs. SS–16s, the only mobile ICBM they have even partially tested, cannot be further tested, produced, or deployed under the terms of SALT II. If (after Protocol expiration) the Soviets deployed another type of mobile ICBM, any such missile would be included in the ICBM count—& the Soviets are obligated by SALT II to make them countable. The U.S. is developing MX, a formidable ICBM for deployment in a mobile basing mode.	The Administration's claim about the SS–16 is simply not true. The Soviets have already produced and stockpiled well over 100 mobile SS–16 ICBMs. These could be deployed very rapidly. They may already have produced as many SS–16s as they need.
The number of U.S. sub-launched ballistic missiles was frozen at the 1967 level.	Misleading. As with ICBMs, the U.S. shifted in SLBMs from quantitative to qualitative improvements, replacing Polaris missiles with MIRVed Poseidons, & now replacing Poseidon missiles with new MIRVed Trident SLBMs. The number of U.S. SLBM warheads was increased severalfold since 1967, even though the number of missiles has remained the same.	Not misleading. The Administration objects to every factual statement that the Soviets are ahead in most quantitative indicators & we froze our missile force in 1967 on the grounds that we made qualitative improvements. Granted we did make some but the scale of U.S. programs was a tiny fraction of the Soviets & the net result has been Soviet strategic superiority.
The Soviet advantage in all types of ballistic missile submarines is now 93 to our 41, more than 2 to 1.	Our advantage in number of SLBM warheads—a more meaningful comparison—is more than 3 to 1. Moreover, U.S. submarines are all nuclear-powered, whereas more than a quarter of Soviet ballistic missile submarines are diesel-powered. U.S. submarines are quieter, at sea more often, and are augmented by superior ASW forces.	The Soviets will soon have twice the number of nuclear missile submarines and they are rapidly introducing MIRVed SLBMs. The number of missiles available to each side is important for target coverage and the Soviets have a large advantage. U.S. weapons have a very low yield and have to be used in very large numbers against any area target.
The SS–N–8 [has] a range of 5,500 nautical miles, 3,000 miles longer than any of our sub-launched ballistic missiles.	Not true. The new U.S. Trident C–4 missile now being deployed in Poseidon submarines has a range comparable to that of the Soviet SS–N–8.	The ASC statement was true when the film was made, indeed true for the entire 1973–1979 time frame. Trident missiles were only introduced into the U.S. inventory late in 1979. They are still few in number, compared to hundreds of Soviet SS–N–8 and SS–N–18.
The first Trident, the comparable U.S. submarine, will not be operational until 1981.	The first Poseidon submarine backfitted with Trident I missiles entered operations service in 1979. Twelve Poseidon SSBNs are being backfitted with Trident I SLBMs. The first U.S. Trident submarine will become operational in 1981, & will be far superior to the Soviet Delta submarine.	The Soviet D class submarines have much larger tubes than U.S. Poseidon submarines & the missiles they carry are comparable in size to the missiles that could be carried in the U.S. Trident submarines. Soviet D class have substantial upgrade potential. The counterpart of the Trident is the Soviet Typhoon submarine, not the D class, as the Administration suggests.
The United States Navy in the last ten years has been cut in half . . . In the meantime, the Soviet have vastly built up their Navy.	The U.S. Navy has retired many obsolete WWII ships, & replaced them with fewer but more capable new ships. U.S. ship retirements in the past few years have given us a leaner, more modern, & more capable fleet. In fact, the Soviet Navy, which started far behind us, has also been declining in size recently, not increasing. With regard to large ocean-going surface combatants (over 3,000 tons), the U.S. Navy has deployed more than twice	This is perhaps the most grossly misleading response in the package. Every Administration spokesman from the Chairman to the Joint Chiefs of Staff down has admitted that we do not have anywhere nearly enough ships to meet our requirements & that the Soviets have both more surface ships & submarines. Our newer, more modern vessels do not face World War II Soviet ships. They face modern, missile equipped nuclear capable Soviet surface

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	as many platforms as the Soviet Navy since the early 1960s. The U.S. continues to hold superiority over the Soviet Navy in performance of critical missions such as strike warfare, amphibious warfare, & anti-submarine warfare, as well as in readiness.	& sub-surface vessels. The Soviet Navy is literally threatening our command of the sea. The choice of the 3,000 ton cut off ignores the little fact that the Soviet navy maintains a massive fleet of vessels under 3,000 tons while the U.S. Navy has few.
In attack submarines, The Soviet advantage is 3 to 1.	True in terms of the number of ships, but our attack submarine force is vastly more capable than the Soviet force which relies more heavily on diesel subs. The overall U.S. anti-submarine warfare capability is far ahead of Soviet ASW.	This statement is a gross over-simplification. U.S. nuclear submarines are more quiet than their Soviet counterparts. Soviet submarines are generally faster. The newer submarines are much faster & deeper diving. The Soviets have a massive advantage in cruise missile equipped submarines & will continue to. Soviet diesel submarines are not easy targets & can be in more places than U.S. submarines. Soviet submarines carry more effective weapons than U.S. submarines but our sonars are better.
When all types of combat ships—large & small—are counted, the Soviets numerical advantage is almost 5 to 1.	A misleading comparison. Our ships are much larger. in total tonnage, we are far superior to the Soviets. The absurd practice of counting all ships—large & small—as equal conceals major force differences. For example, the U.S. has 13 heavy aircraft carriers; the Soviets have 2 light aircraft carriers, which are equipped with less capable aircraft. Any such comparison should also take into account NATO & Warsaw Pact navies; in that case, the balance is greatly in NATO's favor. Overall U.S. & other NATO navies have twice the naval tonnage & several times the firepower of the Soviet & other Warsaw Pact navies. We are working to counter Soviet ship-borne cruise missiles by improved fleet air defenses & by development of our own Harpoon & Tomahawk weapons. We are aso upgrading our naval forces with new classes of destroyers, frigates, & attack submarines. The U.S. Navy enjoys other advantages as well, including geography. The Soviet Union must divide its large naval forces between 4 separate & widely dispersed fleets. It would be extremely difficult for the Soviet Union to utilize ships from 1 fleet in another theater in the event of hostilities, since these ships must pass through geographical barriers & bottlenecks which are subject to closure by US/NATO naval operations.	There is no doubt that our aircraft carriers represent a significant advantage. However, the Soviet Union is at the verge of threatening our command of the seas & that is a critical vulnerability for the U.S. U.S. efforts to counter the Soviet cruise missile threat are very inadequate. We are not introducing cruise missiles into our forces at anything like the rate we should because of budget constraints. Current inventories of sophisticated Phoenix air defense are so low that we currently have to exchange them at sea so that replacement carriers going into the Indian Ocean have sufficient numbers. We simply do not have enough to defend our aircraft carriers during a war. U.S. cruise missiles are all subsonic while most modern Soviet cruise missiles fly at high supersonic speeds. The Soviets are much further along in the introduction of modern warships equipped with advanced air defense systems. They are now building large aircraft carriers comparable to our own.
The United States followed Secretary McNamara's theory of no defense, which is called Mutual Assured Destruction.	The bedrock of U.S. nuclear strategy is the ability to inflict an unacceptable blow on an opponent even in retaliation—an assured destruction capability. But U.S. objectives also include crisis stability & essential equivalence-denying the Soviet Union any political or military advantage that might derive from perceptions of relative capabilities. Also, contrary to what many believe, the U.S. has always aimed a majority of its strategic weapons at military—not civilian—targets. In the final analysis, however, neither side has any effective defense of its country against massive destruction in a nuclear war.	It is true we give lip service to other objectives than Assured Destruction but we do nothing to achieve them. We are allowing the Soviet Union to erode even our Assured Destruction capability. The Soviets are now in a position where they can quickly deploy a significant ABM potential while we cannot. They are beginning to badly erode our bomber penetration capability & are making major efforts in civil defense. Their counterforce capability against our land-based missiles & bombers is already quite impressive.
HAIG. This is a policy [assured destruction] which I believe to be immoral, self-defeating & devastating in the context of America's ability to manage inevitable crisis.	The U.S. has always targeted heavily against military targets, while also retaining the ability to destroy cities & industry—precisely so that we will not have to rely entirely on our ability to destroy Soviet cities as our only means of nuclear deterrence. The U.S. has capabilities to respond at varied steps on the escalation ladder & to implement limited nuclear options.	The Administration itself now admits that in the early 1980s we can meet only about half of its own requirement to target military forces in the Soviet Union. The requirement itself is too low. The Assured Destruction mentality is still the primary determinant of U.S. defense procurement. Despite its recent leak to the press that we have increased emphasis on military targeting, this Administration is strongly opposing deployment of more Minuteman III which can target them.
The Soviet civil defense program provides shelters for military & civilian leaders & protection for a larger percentage of industry.	The Soviets provide protection for most of their leadership and a large number of key industrial workers. The bulk of the general population, however, must rely on evacuation from urban areas for its protection.	The Administration response ignores the fact that the ASC statement is true. The Soviet leadership would today survive a nuclear war with the U.S. because of their civil defense effort. The Soviets also have a massive blast shelter construction program underway today that already has produced enough blast shelters for 10 to 20 percent of the Soviet population in urban centers. This is highly significant.

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Soviet losses would be dramatically reduced by their civil defense preparations.	CIA estimates that the Soviets would suffer over 100 million prompt casualties—about half of those fatalities—in an all-out nuclear exchange for which they had little or no time to put civil defense measures into effect. With full implementation of their civil defense program, Soviet casualties would be reduced to around 50 million, with fatalities numbering in the low tens of millions. These figures, however, do not reflect the long-term effects of radiation resulting from a massive nuclear attack. Nor do they take account of casualties from the widespread famine and disease which would likely occur in the aftermath of a nuclear war.	The Administration's response is a reasonably accurate statement of the CIA position and illustrates that the ASC statement is true. However, I would point out that other studies of Soviet civil defense credit it with being far more effective than the CIA study which probably doubled the likely weight of U.S. nuclear retaliation against Soviet urban-industrial centers. Indeed the CIA study assumed well over 35% more warheads are targeted against Soviet cities than actually are. It assumed optimum lay down of weapons which significantly exaggerates their effectiveness.
The Soviet Union also built a massive strategic defensive weapons system backed up by 100 times as many radars as we have. The Soviets built 2,600 fighter interceptors while the U.S. cut back to 309. Their supersonic fighters can overtake our aged B-52s from behind. The Soviets built 12,000 surface-to-air missiles to shoot down bombers while the U.S. cut back to zero.	The Soviets built an extensive air defense because they face a far more significant threat from U.S. (and other) aircraft than we do from theirs. The large Soviet force of fighter interceptors has major deficiencies in performance against low-flying B-52s. With electronic counter-measures and other devices, most B-52s can penetrate Soviet airspace and survive. In the 1980s the air-launched cruise missile will give the B-52 a standoff capability and will significantly complicate the air defense problem for the Soviets. Another reason for the disparity in U.S. and Soviet air defense efforts is our judgment that it is wiser to invest resources in areas other than protection against strategic bombers, particularly since neither side is permitted under the ABM Treaty to deploy a significant defense against the devastating threat posed by ballistic missiles.	More significant threat? Back in the late 1960s the Defense Department estimates that against no U.S. air defense the existing Soviet heavy bomber force could inflict 73 million fatalities on the U.S. Since that time we have phased out almost all of our air defense and the Soviets have built large numbers of Backfire bombers. Soviet air defenses are now being improved to the degree that B-52 penetration may be impossible within a few years. The penetration capability of cruise missiles is in significant doubt.
KEEGAN. During SALT I we caught the Soviets in a massive violation of that accord by testing the SA-5 in an antiballistic missile mode . . . Now, this missile . . . is capable of defending the Soviet Union against ballistic missiles.	During 1973 and 1974 the U.S. observed Soviet missile tests that led us to believe that the SA-5 radar had been used to track strategic ballistic missiles in flight. The Soviets could have been using the radar in a range instrumentation role to obtain precision tracking. On the other hand, this could have been the first step toward testing the system "in an ABM mode." The Soviets maintained that no air defense radar had been so tested and noted that the use of non-ABM radar for range safety or instrumentation was not limited by the ABM Treaty. In any case, they ceased the activity of concern to us. U.S. intelligence believes that the SA-5 system has no ABM capability now and could not be given one without a great deal of testing which would be observable through our national technical means.	There is a significant dispute concerning the ABM capability of the SA-5. Moreover, recently there have been reports that the Soviets have been testing the far more modern SA-10 in the ABM mode. This is of great significance.
KEEGAN. The Soviets are now on the threshold of deploying a particle beam weapon which would throw giant lightning bolts up at income ballistic missiles to simply obliterate them. It is my judgment that the weapon has now been largely perfected and will appear in the field operationally early in the 1980s.	This has been General Keegan's personal crusade for a number of years. This thesis has virtually no support in the U.S. technical and intelligence communities. Particle beam weaponry is considered many years away from becoming a reality, if ever.	Soviet advances in directed energy weapons, both particle beam and laser, are of very substantial significance. If these weapons are developed and deployed first by the Soviet Union, they will be in a position of dictating the future of the world.
KISSINGER. We have placed ourselves at a significant disadvantage voluntarily. This is not the result of SALT. It is the consequence of unilateral decisions extending over a decade and a half of a strategic doctrine adopted in the sixties . . . and of the choices of the present Administration. All these actions were unilateral, hence avoidable.	The United States is not at a strategic disadvantage to the Soviets. Both sides are roughly equivalent, although to maintain the balance we need the increased programs the Administration has proposed. Our strategic posture today is the result of decisions made over the past four Administrations, and Dr. Kissinger is correct in stating that our position today is not the result of SALT. Rejecting SALT II—and the limitations it imposes on Soviet strategic forces—would make it more difficult not easier for us.	I agree with Dr. Kissinger. Even key Administration defense spokesmen admit that we have lost essential equivalence and that the trend over the next five years will be badly adverse.
By 1972 the Soviets had already gained a 3 to 2 numerical advantage over the U.S. in ICBMs. This Soviet advantage was accepted by the U.S. in the first SALT agreement.	This charge ignores the fact that the U.S. had a substantial MIRV & warhead lead at the time, & that SALT I did not count long-range bombers where the U.S. maintained a significant advantage in numbers & capability over the USSR. Moreover, SALT II provides for equal numerical limits, thus eliminating the alleged Soviet advantage in SALT I.	This is another Administration attempt to argue that quantitative advantages are not meaningful when the Soviets enjoy them but are meaningful when we enjoy them. The Administration ignores the massive Soviet advantage in medium bombers. I find it almost incredible that the Administration can still try to argue that the SALT II limits are equal.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Clements. Every one of the U.S. defense programs that was promised in order to get SALT I has now been either cancelled, delayed or stretched out, and it puts us in the position of facing the threat of the 80s with equipment designed for the 60s.	No U.S. weapons program has been slowed by a political or SALT-related decision. MX is on schedule for initial deployment in 1986; Trident SSBNs will be on schedule by the delivery of the 6th boat in 1985, now that management & cost problems have been brought under control; the cruise missile programs are substantially on schedule. Minor delays in the cruise missile programs were due to technical problems. Given the complexity & size of major defense acquisition programs, there are invariably delays in deployment. The B-1 bomber was not put into production because an alternate—the cruise missile—was considered more cost-effective.	It is very clear that the cruise missile was slowed down years because of SALT, particularly the SLCM & GLCM. The MX had an IOC of 1983 under the Ford program. Only recently the Carter Administration further delayed the introduction of the SLCM—just after the Soviets announced that there would have to be an extension of the SALT II Protocol if SALT II were to go into effect. The Carter Administration terminated the B-1 for ideological reasons and delayed the ALCM for at least 18 months.
Jackson. To enter into a Treaty that favors the Soviet Union, as this one does, on the ground that we will be in a worse position without it, is . . . appeasement in its purest form.	It is not appeasement to enter into a treaty that is in our own interest. And the test of our interest is whether we are better off with the treaty or without it. SALT II benefits the U.S. because it limits the strategic arms race, increases our knowledge—and the predictability—of Soviet forces, and puts some limits on the size of the Soviet strategic forces. It provides these benefits while allowing the U.S. to do all it needs & plans to do to maintain its retaliatory capabilities & the strategic balance. The treaty does not favor the Soviet Union; it advances the national security of both countries.	It is appeasement when one does not take the required action for this nation's defense & then argues we should accept an inequitable SALT II agreement on the grounds that we would be better off with it than without it. SALT II places no significant limits on Soviet capabilities. The Administration's definition of "what we need" is the essence of appeasement.
Singlaub. From a historical point of view, it's clear that we cannot trust the Soviets to keep SALT II. Out of 27 summit agreements with the Soviet Union, they have broken or cheated on all but one. And that, of course, includes SALT I. I think it's quite clear that we must have some form of positive verification of this treaty.	General Singlaub's statement is nonsense. He does not specify which 27 agreements he is referring to, much less the 26 the Soviets are supposed to have violated (indeed Soviet compliance performance under 14 arms control agreements signed since 1959 has been good). Singlaub's specific charge that the Soviets cheated in SALT I is inaccurate. We raised a number of issues with the Soviets in SALT I—as they did with us—but in every case the activity in question either ceased or subsequent information clarified the situation and allayed our concern. SALT II will actually help us monitor Soviet strategic forces by establishing rules for verification.	The Soviets have been violating SALT I and virtually every arms control agreement we have signed with them, particularly the way these agreements were explained to the U.S. Congress when we ratified them. There have been clear violations of SALT I such as ICBM dismantling. There have been a number of potential violations which we have simply accepted—the SS-19 and the launch control silo issues. We have also allowed the Soviets to test SAMs in the ABM mode.
Graham. There is no way that intelligence, for instance, can tell you how many of a certain missile are being manufactured in the Soviet Union. We can't verify the range of a cruise missile any more than you can verify how far an automobile will go if you go out and take a picture of it in the parking lot. And furthermore, you can't tell, and this is very important, how many individual warheads are within a Soviet missile nosecone.	Our verification capability can determine Soviet compliance with SALT II—that is, we can detect any Soviet violation before the Soviets could derive any military advantage from such cheating. The U.S. was willing to accept some monitoring uncertainties—over the range of cruise missiles, for example—because it benefitted us to have flexibility in developing such systems. As for the number of warheads on Soviet missiles, the U.S. knows how many warheads have been tested from specific Soviet missiles. We follow these tests using a variety of monitoring sources. By counting the number of warheads tested, we can have reasonable confidence that no more would be deployed. If additional warheads were deployed on Soviet missiles without being flight-tested, the Soviets would almost certainly have lower confidence in their reliability than they would for weapons which had been flight-tested. Thus, the kind of Soviet cheating—even if undetected—would not improve their military power.	If one thing was established in the SALT II debate, it was the inadequacy of our verification capability. This was a primary conclusion of the report of the Senate Armed Services Committee on SALT II. The Senate Select Intelligence Committee in its report on SALT II monitoring capability pointed out "The impact of those changed practices permitted under the Treaty may decrease our confidence in our ability to monitor counting provisions and a combination of such changed practices could greatly complicate our task of monitoring those provisions involving qualitative limitations." During the course of the SALT II debate Soviet violations of the SALT I agreement were exposed. Since then we have reports of further violations and the Soviet Union is now violating the encryption prohibition of the SALT II Treaty by encrypting the telemetry of the Typhoon SLBM. Press reports indicate that the encryption level is 70 percent on this missile.
The trouble with signing these agreements is that as well meaning as we are, we live up to them and the Congress just simply will not vote increased conventional weapons spending following SALT II, as they did after SALT I.	This is the heart of the critics' case against SALT II. The debate over SALT II, if it has done nothing else, has relieved concerns about euphoria setting in. The Soviet invasion of Afghanistan reinforced this. The U.S. has committed itself to a significant real annual increase in defense spending over the lifetime of SALT II. The Treaty limits Soviet forces and does not constrain planned U.S. programs. It is up to us to determine how vigorously we will pursue permitted modernization or support programs not subject to SALT limits.	This is not the heart of the case against SALT II but one of the problems with SALT II. If the SALT II debate have proven anything it is that no Administration that could defend SALT II can be entrusted with our national security.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Haig. That agreement will now, in effect, codify some fundamental deficiencies between the U.S. and the Soviet Union, with grave consequences on America's ability to manage inevitable crisis in the period ahead.	On the contrary, SALT II is an equal agreement that allows us to modernize and correct deficiencies in our forces, while limiting the challenge we face from the USSR. Failure to ratify SALT II would raise doubts among our allies about the U.S. ability to fashion and pursue a coherent foreign policy and provide leadership in world affairs.	SALT allows the Soviets to have 308 heavy missiles with twice the payload allowed for any U.S. missile. It allows the Soviets to build Backfire bombers and not count them as strategic weapons. It effectively limits the U.S. to one new ICBM and the Soviets to 5. It assures that the Soviets will have more ICBMs and in a defacto sense more SLBMs than the U.S.
Graham. SALT II is so lopsided that if we allow the Soviets to get away with this one then we will never be able to get any equitable arms control agreements with the Soviets no matter how hard we try.	An agreement that provides for equal ceilings on numbers of strategic delivery systems, MIRVed launchers, and launchers for fixed-silo MIRVed ICBMs is hardly lopsided. SALT II, when combined with current U.S. modernization programs, will allow the U.S. sufficient retaliatory forces to carry out its strategic missions. Moreover, SALT II is the product of nearly seven years of difficult negotiation. It is a compromise arrived at through tough bargaining on both sides. The way to pursue further arms agreements with the Soviet Union is to ratify SALT II and proceed to SALT III negotiations, not to reject SALT II in the false hope that repeating the negotiation will result in an accord more to our liking.	The Administration avoids the argument of equity and talks about the adequacy of our retaliatory capability. This is nothing more than old Assured Destruction thinking. SALT II resulted from a negotiating strategy of pre-emptive concession by the U.S. in a time frame when President Carter was planning to run on a peace candidacy.
One of the ways in which the numbers were manipulated to make SALT II look equal was that over 200 B-52s, retired to the aircraft boneyard in Arizona, are counted against the U.S. limits as strategic weapons, even though they would take more than a year to get flying again.	The SALT II data base numbers were never manipulated. It was very much in the U.S. interest to count mothballed B-52s in the aggregate total. Doing so cost us very little, and prevented the Soviets from claiming that some of their strategic forces should not be counted because they were "mothballed." The film here makes a U.S. gain appear to be a concession. Under the Treaty terms, by the end of 1981 the Soviets will have to dismantle 10 percent of their strategic launchers—250 operational bombers of missile launchers to get down to 2250. The U.S. will merely have to complete the dismantling of a few nonoperational mothballed B-52s.	This sudden concern about the Soviets mothballing their Bear and Bison heavy bombers is rather touching in view of all the statements we have read concerning how ineffective and small the Soviet heavy bomber force is. The Soviets will dismantle a few old missiles and bombers and be allowed to add about 10,000 modern missile warheads. We, on the other hand, will be forced to dismantle modern MIRVed ballistic missiles, the Minuteman III or Poseidon, unless the Administration further slows down our programs.
The 150 deployed operational Soviet Backfire bombers are not counted as strategic weapons in the Soviet limits.	The Backfire has characteristics that fall between those generally attributed to existing heavy bombers and those of medium bombers. (Tactical aircraft and medium bombers on both sides are not covered by the SALT ceilings.) Close observation by U.S. intelligence over a number of years indicates that this bomber is currently being deployed for use in a theater role or against naval forces, not in a strategic role, and is a replacement for older Soviet medium bombers. It is not included in the Treaty ceilings. However, it could reach the U.S. on one-way high-altitude unrefueled missions, and the Backfire is limited by a binding Soviet commitment made at the Carter-Brezhnev Vienna summit. No more than 30 Backfires can be built per year, and there are limits on upgrading the capabilities of this aircraft. The U.S. has reserved its right to build an aircraft similar to Backfire.	The Backfire has greater range capabilities than half of the U.S. B-52 heavy bombers and can be deployed for use against the U.S. in a matter of hours. It has reportedly been tested with a long range cruise missile that would even further increase its capabilities. It has much potential for further clandestine upgrade. The U.S. has not effectively reserved the right to build a comparable aircraft because there is no agreement on what is comparable. In any event the U.S. has no intention of doing so. The under the 30 per year limit might build a force of 750 Backfire types before the end of this century.
Keegan. We should be concerned because with a range of over 5,100 nautical miles, the Backfire bomber, launching from its bases in Northeastern Siberia, can cover all of the U.S., recovering in Cuba, Mexico, or Latin America.	Backfire does have some inherent intercontinental capability flying certain flight profiles. However, concern about the Backfire threat to the U.S. is a reason to support SALT II, not oppose it. The Soviets have agreed to limit the Backfire production rate & have provided certain commitments against upgrading the aircraft's intercontinental capability. Without SALT II the Soviets could do anything they wanted to do with Backfire to improve its capability.	At the allowed production rate the Soviets could ultimately build a 750 Backfire force, an incredible strategic capability. There are no effective commitments concerning Backfire upgrade except that they won't make it the longest range bomber in the world, which they can't anyway.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Rowny. The Treaty grants the Soviet Union a unilateral right to 308 launchers for heavy ICBMs.	The U.S. did not want heavy ICBMs when we are entirely free to build them, & would not build them today if we had the right to do so. In 1974 in the context of resolving a number of issues, including the heavy ICBM question, President Ford & Secretary Kissinger were able to gain concessions in other areas, notably equal aggregrates (which require the Soviets, but not the U.S. to reduce) & the exclusion of U.S. aircraft in W. Europe & E. Asia which could attack the USSR. We would gain nothing by insisting now on a theoretical right to build a missile we do not need or want. Nor does it make sense to reopen negotiations by insisting on such a theoretical right at the risk of losing real concessions we have already gained. This point was convincingly made by General Jones (Chairman of the Joint Chiefs) and General Ellis (Commander of SAC) in their Congressional testimony on SALT II.	The U.S. does not have heavy ICBMs because of the Assured Destruction mentality. We once did have these missiles but they were retired by McNamara. The original planning for MX would have made it a heavy ICBM & even the existing MX could be deployed as a heavy ICBM if there were no SALT constraints. If the SS-18 was traded for the FBS issue this was an incredibly bad deal. However, this is not the only inequity of SALT II. The Administration claims was traded for FBS. Backfire exclusion was also reportedly traded of FBS.
	With or without heavy missiles, by the early 1980s the Soviets will have a theoretical capability to destroy a substantial part of our Minuteman ICBM force in a preemptive attack—if they ignore our ability to launch under attack, and assume the massive pre-emptive attack would work as planned. However, Minuteman vulnerability does not mean the vulnerability of our overall deterrent U.S. retaliatory capabilities—even after a first strike—will increase by over a thousand additional warheads, between 1980 and 1985 due to ALCM deployments. The U.S. would have thousands of surviving warheads on submarines at sea and bombers on alert, even under the most pessimistic scenario of Soviet pre-emptive attack.	The reason the Minuteman force is vulnerable with or without the SS-18 is the Soviet deployment of the SS-19 ICBM, which violates SALT I as we interpreted it in 1972. This was one of the SALT I violation issues that was "successfully resolved" by allowing the Soviets to do what they wanted to do. The window of vulnerability created by the Carter Administration in the early to mid-1980s is highly significant and will have substantial impact on international relations.
In just 17 years, the SALT Syndrome has reduced the U.S. from a position of clear military superiority to one of clear inferiority.	The United States & the Soviet Union are now essentially equivalent militarily. The Soviets lead in some areas; we lead in others. The choice facing us today is not between the sort of nuclear superiority we enjoyed in 1962 & nuclear inferiority, but between two types of nuclear parity—one at a higher level, which would be more expensive and less stable, or one at the lower level established by the limitations of SALT II.	Even some key Adminstration military leaders admit we have lost essential equivalence & that all the trends are negative. The Soviets are ahead of the U.S. by substantial margins in most key strategic indicators. They have more ICBMs, SLBMs, missile throw weight, equivalent megatons, more bombers of various types & more counter force capability. They will soon close the gap in many of the remaining areas including warheads & will surge ahead of U.S. by the mid-1980s.
The Soviets now have a 2 to 1 advantage over the U.S. in offensive strategic weapons, a 47 to 1 advantage in defensive strategic weapons, a 2 to 1 advantage in major surface combat ships and submarines, and a more than 4 to 1 advantage in tanks and artillery.	These are misleading statistics which use selected data in comparisons designed to show overwhelming Soviet superiority. These "bean counts" say nothing about the quality of weapons, the scenario, the capabilities of allies, the sufficiency to carry out missions, or the like. A comparable exercise could show the same superiority for the U.S. For example, we lead the Soviets by 8 to 1 in heavy bomber weapons. In perhaps the most significant indicator of strategic strength, the U.S. leads the Soviets by 9,200 strategic nuclear warheads to about 5,000, almost a 2 to 1 edge—just the reverse of the assertion in the film. Overall, in a net assessment of strategic forces, both sides are roughly equal.	The quality of weapons systems is important. However, the Administration seems to ignore the fact that Soviet ICBMs, strategic defensive forces & tanks are qualitatively better than our own. No one is claiming that the Soviets are ahead in every measure of strategic capability. However, they are ahead in over 75 percent of these measures & are closing the gaps in most of the rest. The Administration claims that we lead "the Soviets by 9,200 strategic warheads to about 5,000 almost 2 to 1 edge" is simply not true. It reeks of a deliberate misstatement of fact. Indeed, the Administration in its answer to one of ASC assertions stated that "the Soviets place approximately 75 percent of their 6,000 weapons on fixed-silo ICBMs." (Emphasis added) The Soviet ICBM force has been increasing by at least 1,000 warheads a year and the 6,000 figure dates from January 1980. By mid-1981 the Administration admits the ratio will be 9,200 to 8,000 & the Soviets will reach about parity in warheads in 1982. When the Soviets have parity in warheads combined with equal or better accuracy & a several fold advantage in warhead yield, it becomes rather difficult to credibly argue that essential equivalence will exist without resource the old Assured Destruction thinking which holds that it does not matter.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Since SALT I, the Communists have accelerated their takeover of other countries, without opposition from the U.S. Communism has indeed been succeeding in its move toward world domination . . . If SALT II is ratified without really major changes, we can expect greater coercion everywhere in the world.	This statement is rhetorical nonsense. It disregards many Soviet set-backs & many U.S. advances around the world. The Soviets have certainly proven themselves willing to exploit opportunities for mischief, & we must respond and resist appropriately. But their foreign policy has hardly been an unbroken record of success in recent years: expulsion from Egypt, continuing conflict with China and world reaction to their Afghan invasion, to name just a few difficulties. In any event, neither Soviet successes nor failures are the result of SALTS, as the film implies. Among other benefits, the ratification of SALT II will permit the U.S. to destroy more resources and attention to conventional forces which are far more likely to be needed in meeting the threats we will face in the years ahead.	The Administration position is divorced from reality. Since 1975 we have seen a wave of Soviet expansion unparalleled since World War II and its aftermath. Certainly there have been Soviet setbacks but the general trend has been toward success and bolder and bolder Soviet expansion activities that have culminated in the first use of combat troops by the Soviet Union in Afghanistan. The foreign policy of this Administration has been a complete failure. It has contributed to the establishment of hostile communist/marxist regimes in Africa and Latin America and has taken no effective action against the Soviet invasion of Afghanistan. The suggestion that there will be economic savings from SALT II and that will improve our conventional forces is nonsense. Even in the unlikely event that we in the future negotiated a significant SALT agreement that allowed reduced expenditures it would probably mean that that would be an even greater transfer of resources from the Soviet strategic program to their general purposes forces. SALT is no substitute for defense spending.●

THE DROUGHT IN FLORIDA

● Mr. STONE. Mr. President, on Monday, July 21, 1980, I appeared before the Senate to urge the administration and my colleagues to consider the deferral of all disaster-related agricultural principal and interest loans for 2 years.

My appeal in July was the result of a visit I had just completed to Florida where the drought and heat had a devastating effect on food producers in Florida.

After my appeal, I received replies from the Farmers Home Administration (FmHA), the Agricultural Stabilization and Conservation Service (ASCS), and the Small Business Administration (SBA). These agencies basically replied that current administrative authority permits each of these agencies at the local level to review a disaster loan on a case-by-case basis. Each agency felt that current provisions of the law are broad enough to help alleviate a financial crisis in most situations.

I am here again, today, Mr. President, to urge agencies in their case-by-case review to look at the overall state of agriculture in Florida the past few years. In the past 4 years, the State of Florida has had only one generally good growing year for agriculture. In the other years, Florida farmers have faced record-breaking freezes, droughts, or hailstorms that have all extensively damaged crops throughout the State.

One decent year of weather in the past 4 years will not pull farmers completely out of debt. The farmers need a couple of years to financially recoup their losses. Otherwise, we will see more and more farmers forced economically to get out of their livelihood. Florida's agricultural industry ranks 12th in the Nation in cash receipts for agricultural commodities. It is easy for one to see that Florida's farm production is an important part of agricultural production in the United States.

If disaster loan payments are deferred for at least 2 years the farmers, not only in my State of Florida, but all the farmers experiencing similar problems throughout our Nation, would be reassured that we want them to continue and survive. That is the only way I can see this vital segment of our economy surviving. I urge the local offices for ASCS, FmHA, and SBA, in their case-by-case review of farmers requests for deferment of disaster loans repayment to take these problems into consideration.

Mr. President, I ask that copies of the letters I have received from SBA, ASCS, and FmHA be printed in the RECORD.

The letters follow:

U.S. GOVERNMENT,
SMALL BUSINESS ADMINISTRATION,
Washington, D.C., August 26, 1980.

Hon. RICHARD (DICK) STONE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STONE: This is in response to your letter to the Small Business Administration in regard to a moratorium on the repayment of outstanding farm loan debts due to a spring/summer drought in North Florida.

If a farmer who has a disaster loan is in need of assistance or is having difficulty in meeting the loan payments, the farmer should contact the local SBA office to discuss the specific situation with an official in our Portfolio Management Division. Rather than a moratorium on all farm disaster loans, it is preferable that each disaster loan be reviewed on a case-by-case basis at the local SBA office.

SBA has the authority to defer principal payments and, if necessary, interest on disaster farm loans. Since the vast majority of farm loan payments are on an annual basis, such deferments would be on a one year basis, based on the merits of each request. If additional deferments are necessary, the loan case file would be reviewed the following year as requested by the borrower.

In responding to inquiries from constituents, you may wish to mention these "servicing" functions which this Agency can perform and suggest that the borrower contact his local SBA office.

Thank you for your interest in, and support of, SBA's disaster loan programs. If I can be of any further help in this matter, please do not hesitate to contact me.

Sincerely,

RITA M. MCCOY,
Associate Administrator for Financial Assistance.

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURE STABILIZATION AND CONSERVATION SERVICE,
Washington, D.C., August 27, 1980.

Hon. RICHARD STONE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STONE: This is in reply to the recent inquiry by a member of your staff concerning the Farm Facility Loan Program.

The Facility Loan Program provides considerable flexibility in terms of loan repayment. Most loans are scheduled for repayment in 7 installments over an 8-year period. Each installment becomes due on the anniversary date of disbursement and is payable over the next 12 months in cash or by set off from price support or other related programs.

County committees have authority to grant a borrower additional time to pay off a loan if payment cannot be made as scheduled due to situations beyond his control. For example, a deferrment can be used to extend the due and payable period for an individual installment for a period of less than one year. In more extreme cases, an extension of the loan term may be granted. An extension moves ahead by one year the due and payable period of each of the remaining installments.

Current provisions of the program are liberal enough to help alleviate a financial crisis in most situations.

Sincerely,

JEROME F. SITTER,
Director, Price Support and Loan Division.

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, D.C., September 2, 1980.

Hon. RICHARD B. STONE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STONE: As a result of the telephone conversation with Ms. Nancy Foster she asked that I verify in writing what I told her verbally regarding our authorities to defer payments on FmHA farm loans.

The Farmers Home Administration (FmHA) under the authority granted in the Consolidated Farm and Rural Development Act, as amended, can defer principal and interest payments as well as consolidate, reamortize and reschedule FmHA indebtedness where borrowers are experiencing financial difficulty. This is done on an

individual case basis after a thorough review of the borrower's past and future operations. FmHA field personnel have been instructed to make full use of these various loan servicing authorities.

Sincerely,

H. ALLAN BROCK,
Deputy Administrator,
Farm and Family Programs.●

NEWPORT OBSERVES ANNIVERSARY OF LANDING OF FRENCH ARMY UNDER COUNT ROCHAMBEAU

● Mr. PELL. Mr. President, an outstanding highlight in colonial and historic Newport, R.I., this glorious summer was the colorful observance of the 200th anniversary of the landing of the French Army under Count de Rochambeau.

Without Rochambeau and his gallant soldiers we would not have achieved our independence when and as we did.

In Rhode Island, 1980 has been proclaimed the "Year of the French" and we will continue to celebrate it through 1981, observing the departure of Rochambeau and his men as they went off to rendezvous with General Washington and his army to meet and defeat the British at Yorktown, Va., thus bringing victory to the cause of American independence.

Next year we will celebrate the Rochambeau march, which has given us today the famous Rochambeau trail over which the two armies marched from Rhode Island to Virginia through more than half of the original 13 States. And here in Washington, D.C., we have the Rochambeau Bridge spanning the Potomac River at 14th Street.

My home city of Newport has undergone a renaissance with yachting and tennis and other events of an international flavor. This summer the Rochambeau celebration was unique in itself.

There were 4 days of activities in July, including the reenactment of the landing of Rochambeau and his men from the French armada of ships in Newport Harbor in 1780.

The French then found Newport a beleaguered seaport, which the British had quit after years of occupation. Then, as during the recent celebration the French quickly captured the hearts of the Newporters.

The Rochambeau observance has had a special significance for me as I had the honor again to be involved, as I had been 25 years ago, and as was my father, Herbert C. Pell, a half century ago.

Rhode Island is proud of its role in early American history and of its large Franco-American population.

France was an enthusiastic participant in the observance, sending two warships to anchor in Newport Harbor, and its Ambassador, Francois de Laboulaye, an old friend, who conveved a message from the President of France, Giscard d'Estaing.

The speech of the French Ambassador in King's Park, at the site of the actual landing 200 years ago, where a statute of Rochambeau points out into the harbor, was especially moving. His words were of the trust and friendship which have bound our nations and peoples together in the common cause of peace and freedom for two centuries.

Our two nations continued their special relationship in the same sacred cause down through the years from that day in 1780 when the French arrived, including two world wars when Americans fought on French soil.

The 4 days were exciting, especially that of the reenactment at the harbor with flags, anthems, colonial uniforms, fife and drum music, a cannon booming and a large multitude of citizens and visitors alike joining naval personnel of both nations and persons of public office and the clergy to watch a small boat come ashore carrying costumed celebrants representing Rochambeau and staff. And like a curtain at the end, a Newport fog crept slowly in behind.

In Rochambeau's army of 200 years ago there were many Irish soldiers, and this added another dimension to our observance in a State which has many citizens of Irish ancestry.

The celebration officially opened with a gala ball and fashion show on July 10, the day 200 years ago when the French fleet moved into sight of the Newport shore. The actual landing took place the next day.

In the 3 days following of July 11, 12, and 13, the observance was varied and rich, including the dedication of a U.S. post card honoring Rochambeau, the first day issue of a French stamp, the opening of a Rochambeau exhibit at Old Colony House, several concerts, a Governor's people reception, a block party, military parade, fireworks from Fort Adams, a mass for Irish soldiers, a State dinner at Marble House, an outdoor mass celebrated by the Most Rev. Louis E. Gelineau, D.D., Bishop of Providence.

Also, a memorial ceremony for King Louis XVI and Admiral de Ternay, who commanded the French fleet, receptions and ceremonies for visiting French naval officers and men, including a Governor's reception at Colony House, a luncheon hosted by Rear Adm. Edward Welsh as president of the Newport Naval War College, and ceremonies aboard the visiting French vessels, the *Suffren* and the *Aconit*.

Groups participating included the Rochambeau Bicentennial Committee, the Rhode Island Heritage Commission, the Bicentennial Council of the 13 Original States, and the Lafayette-Rochambeau Society of Washington, D.C.

Special acknowledgement goes to Gov. J. Joseph Garrahy for his leadership and enthusiastic participation, as it does also to State Senator Robert J. McKenna and Lionel J. Frappier, committee chairmen: Mayor Humphrey J. Donnelly III and Mrs. William Wood-Prince, Newport chairpersons, Bishop Gelineau, Representative FERNAND J. ST GERMAIN, and Mrs. John Nicholas Brown, for the outstanding Rochambeau military exhibit she organized. Mrs. Garrahy, Mrs. St Germain, and my wife Nuala all served as cochairpersons.

Other committee chairpersons deserving recognition include Bruce G. Sundlun and Paul J. Fournier, business; Mrs. Sundlun, fashion show; Miss Lillian Almeida, arts; Bernard Therous and Representative Roger N. Begin, celebration; Mrs. Helen Priske Gadbois, ball; Robert Lynch and Albert T. Klyberg, coin; Senator Irene P. Smith, education; Don H. Rohrer, government task force; Mrs. Brown, historical; Mrs. Leonard J. Pannaggio and Mrs. Pell, hospitality; John A. Cummings, international; Cols. Gilbert A. Hempel, Patrick Kirby, and Anthony Walker, march; Raymond W. Caine, Jr., media and public relations; Maj. Gen. Leonard Holland, military; Capt. Robert F. Delaney, naval; and Col. Walter E. Stone, security.

Rhode Islanders will have the opportunity for another look at some Rochambeau highlights when WSBE, the Rhode Island educational television station, airs a half-hour program at 8:30 p.m. on September 25 on channel 36.

I ask that the message of the President of France and the speech by the French Ambassador be printed in the RECORD.

The material follows:

MESSAGE OF PRESIDENT OF FRANCE DELIVERED BY AMBASSADOR DE LABOULAYE

Governor, monesigneur Gelineau, senator, Mr. Mayor, dear colleagues, admiral, ladies, gentlemen, dear friends: We are celebrating today an event which is as much significant for France as it is for the United States for it is, above all, the celebration of French-American friendship. This is why President Giscard d'Estaing has asked me to convey to you a few remarks about the meaning of the Rochambeau Day.

I quote: "Exactly two centuries ago, on July 11, 1780, 6,000 French soldiers under the command of General Rochambeau landed at Newport, on American soil. They came to defend the independence of the United States, as France had pledged two years earlier when it signed the Treaty of Alliance."

To all those who are here gathered to celebrate the bicentennial of this historic event, I should like to say how honored France is to have been the first to fight alongside the American people in defense of such big ideals as independence and liberty.

It is these ideals that forged the alliance between France and the United States and that strengthened it in the course of more than two hundred years. On two occasions, those ideals prompted the American Nation, in its turn, to fight alongside our people on our own soil.

I hope that today's anniversary will remind us all of the profound ties of friendship uniting us, of the living force embodied in the heritage for which we have fought side by side, and of the determination our two countries share in pursuing their common efforts to preserve the independence of peoples and the freedom of mankind.

VALERY GISCARD D'ESTAING,
President of France.

SPEECH BY AMBASSADOR DE LABOULAYE

Back in the year 1866, students in a history class at the College De France in Paris heard the professor conclude his lecture about the year 1780 in American history with these words: "America should never forget that France watched over its infancy without ambition, jealousy or self-interest". That historian was my great grandfather who spent his life supporting American and French friendships.

Like children in this country, I was raised on the story of how fifty-five hundred French soldiers, well-trained, disciplined, commanded by a distinguished military leader, landed in Newport and helped the so-called rebels to win the field at Yorktown and, with it, their real independence.

Today, we are honoring the two hundredth anniversary of that event and rightly so, for it is a great chapter in American history, it is a great chapter also in French history.

However, two hundred years ago today, when the 44 ships of Admiral De Ternay's fleet landed Rochambeau's 5,500 men, the situation was far from clear-cut. The venture that was to lead to the birth of a nation was an exemplary gamble taken by three truly outstanding men—Washington, La Fayette and Rochambeau.

It is this aspect—the fact that they took a gamble—that I wish to focus on today.

It was a gamble for the Americans.

It was a gamble when the rebels welcomed Rochambeau's expeditionary force, since they were taking a chance on whether France's intentions were honorable.

In the first place, France might have sought to take advantage of the occasion to reestablish his rule on Canada. France was, after all, a colonial power in the new world, and it was at war with Britain, whose colonies might very nicely have enlarged France's own possessions. Americans might legitimately have been concerned lest they exchange one master for another. This was no doubt in the minds of Washington's emissaries when the previous year they had asked the French King for money rather than troops.

Again, the Americans, and especially the residents of Newport, were taking a chance on the good behavior of the French troops: old rivalries were still fresh enough in people's mind for there to be some doubt as to whether Amercans and French would voluntarily fight under the same flag. Another point to remember is that Newport only had that time about 5,400 inhabitants and with the arrival of the French, its population would be more than doubled. So your forebears were not altogether free from misgivings on the morning of July 11, 1780.

The scene is neatly described by an eyewitness, the Abbe Robin, chaplain of the French Army. He wrote in his dairy: "The arrival of the Comte De Rochambeau spread terror everywhere . . . The French were generally regarded as full of prejudices and superstitions, almost idolatrous in their religion, not very handsome, incapable of delicacy and constancy, occupied solely with curling their hair and putting their rouge on right, showing no faith and no respect for the most sacred duties."

But the Abbe continues: "This unfavorable opinion quickly changed . . . and on the evening of July 12, houses and bell-towers were illuminated and there were fireworks".

This change of heart was reinforced—and this again is a proof of American trust—as time went: the French troops had to protect their fleet from British naval attack and remained as you know billeted in Newport for many months without any policing other than their discipline and their friendship for the American people.

Let me say that the venture was also a gamble on the part of the French.

One cannot emphasize too much the originality of Vergennes' thinking or that of Louis XVI who came to adopt his minister's ideas as his own. It is difficult to realize today just how rare such an expedition was in the 18th century. It took courage on the part of a statesman and also a certain faith in the ideals espoused by the American rebels at that time to dispatch a fleet to this distant land, a fleet that was to take 70 days to cross the Atlantic and carried over 5,000 crack soldiers, young, brilliant officers, and a distinguished general who was to place himself under the orders of a foreign general whom no one in France had ever met.

It took courage also on the part of the sovereign of a colonial power to help colonial insurgents—there was the risk of a dangerous precedent. Lastly, it took courage for France's King to attack the British at sea.

He was also taking a gamble by relying on Washington's integrity and military competence. Washington was described as a "civilian general" at the time the King made him Marshal of France and instructed Rochambeau to place himself under the American's orders.

Nothing more clearly shows the originality of this thinking than the fact that the British, starting with Lord North, the Prime Minister of Great Britain, never for a moment believed in the possibility that the French were coming over to America.

To the gambler the double gamble paid off as we all know.

It paid off for the United States, obviously. We all know the outcome: The British fleet was defeated at Cape Henry by the Comte De Grasse; with the French in control of the sea, Lord Cornwallis found himself trapped at Yorktown where he was beseiged by the American-French Army. He surrendered on October 18, 1781.

The gamble also paid off for the town of Newport. The once prosperous port had suffered considerably at the hands of the British, but henceforth it was to regain its stature as an international meeting place.

Rochambeau's troops were in fact ordered to use for quarters the houses laid waste by the British occupiers and to restore them at their own expense. It is in part thanks to those troops that we can still admire some of the fine houses that grace this city today.

Accounts written at the time all agree on the perfect harmony that existed between the French troops and the American people. There are numerous versions of the story in which our soldiers were encamped near orchards owned by Americans; when they left, it was noted that not a single piece of fruit had been touched. This is the legend at least.

Finally, the gamble paid off for France, for in the United States, France gained a faithful friend and ally. I remember something my friend Senator Pell said at a conference 25 years ago on France's influence on Rhode Island. I quote: "If we Americans realized that the Frenchman thinks of our aid following World Wars I and II as just a repayment of a debt of many years standing, we could better understand the French attitude of today".

I do not think I am going against the spirit of what the Senator said by stating that it was a debt of friendship and we are voting this today.

The fact is, the French people feel that the part we played in the birth of your Nation creates a special kind of bond between our two countries, a bond that is indissoluble. That is our real reward.

This brilliant result is, I think, the product of a conflux of three qualities shown by those who took part in this chapter of history: Talent, confidence and imagination.

First, talent: Washington and Rochambeau displayed this very clearly, not only in the way they handled the friction which could have arisen between their own two nations, but also by their military genius, which was amply demonstrated in Yorktown.

Then there was the confidence which inspired the deep friendship between the two men and whose influence on the final victory we all know about: Washington, recognizing Rochambeau's qualities and experience left the operational decision-making up to him. Rochambeau, however, made it perfectly clear that he had placed himself under Washington's orders.

Lastly, there was the imagination shown on more than one occasion by Washington, Vergennes, Lafayette and Rochambeau. Their capacity for innovation was quite remarkable. Louis the XVI may have made many mistakes during his life, but in America's war of independence, he had the good sense to trust the men in the field and to break with the tradition of the times by allowing Rochambeau to be placed under Washington's order instead of on an equal footing with him.

All this adds up to an example which can still teach us something today.

I would like to quote another great American general, who also became a great statesman: 25 years ago, President Eisenhower wrote the following about the event we are celebrating today: "It is a source of the deepest gratification to me that those links with America's first ally, forged one hundred seventy-five years ago in our war for freedom and tested in two terrible world wars, are today stronger than ever."

Today, the same still holds true to the great fund of friendship between our two nations. We must turn it to the best advantage, of both our nations in fact, solidarity remains the basis of Franco-American relations, for it concerns the most important aspect of all, namely our common conception of freedom. It cannot be stressed too often that differences of opinion affect only passing events, and must be seen as such.

We should look to our forebears and take a leaf out of their book by using our imagination when dealing with a world that is in the midst of change. The balancing factors that prevailed since the war have been seriously undermined. Shifts in the balance of power, the disarray of economic structures, the needs of development all indicate the need to work out today new kinds of relationships. We cannot expect to deal with these problems by simply trotting out tired old solutions or coming up with answers that do not fit.

We should accept our differences: They are our strength and the best guarantee that our action will be effective.

And so today, as 200 years ago, we remain side by side, similar yet different, in the defense of our common ideal. Thank you ●

EPA DROPS PLAN FOR BUFFER ZONES AROUND FARMS

● Mr. CULVER. Mr. President, as chairman of the Senate Resource Protection Subcommittee, I have worked for strong, responsible environmental and conservation measures to protect and enhance the quality of life in Iowa and the Nation. I have also worked equally hard against unnecessary, unworkable proposals which are unrealistically restrictive, as in my successful effort to get the Environmental Protection Agency (EPA) to modify its proposed regulations affecting "rural fugitive dust." Had the Agency not revised that rule at my urging, industrial growth in Iowa would have been severely restricted.

Last week, I had the opportunity to again convince EPA to drop a proposed plan which would not have been in the best interests of Iowa farmers and agriculture.

The Agency has been working on an advisory opinion—soon to be published in the Federal Register—which would have proposed the creation of "buffer zones" around farmland in order to control pesticide wind drift. While I can understand EPA's attempt to develop a solution to the wind drift problem, I strongly believe that to do so through new controls on the use of farmland was counterproductive, unrealistic and completely unworkable.

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I met with EPA officials last week and convinced them that the "buffer zone" concept was an unacceptable way of dealing with the issue of pesticide drift.

Shortly after that meeting, I received a letter from EPA Administrator Douglas Costle stating that the Agency was dropping its advisory opinion and would not publish it in the Register.

EPA's decision was a victory of commonsense, and I am extremely pleased to have had the opportunity to work effectively with them on this issue. The dropping of the "buffer zone" concept will eliminate any remaining understandable fears that farmers may have about new controls on the use of their land.

Mr. President, I ask that a copy of the letter sent to me by the EPA be placed in the RECORD.

The letter follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., September 12, 1980.

Senator JOHN C. CULVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CULVER: Following your discussion with Administrator Costle yesterday concerning the Agency's Draft Cotton Advisory Opinion, we have given careful reconsideration to the advisability of proceeding with this approach in light of the current climate. Owing to the strong interest you have personally taken in this matter, and knowing that it is of similarly great interest to many of your constituents, I would like to inform you where EPA now stands on this entire issue.

As you know, EPA developed this Draft Opinion in response to the apparent and growing conflict between agricultural and urban interests, where the juxtaposition of conflicting land uses has put these interests into intimate contact. I believe that the concept behind this endeavor remains valid. Indeed, the Committees on Agriculture recognized such a need when they gave EPA express authority for such initiatives in amendments to the pesticide law enacted in 1978. With this in mind, our Draft Opinion was designed to help agricultural interests interpret label directions concerning draft of pesticides from agricultural into non-agricultural areas, providing operational guidance which if followed would have defined a reasonable approach to avoiding excessive drift into residential areas. It also would have relieved professional applicators and farmers from the worry—and the reality—of misuse enforcement should pesticide drift occur.

The way in which this Advisory Opinion would have achieved these goals, however, requires the understanding of some very complex relationships between the role that pesticide labeling and enforcement plays currently and as it would play under the Advisory Opinion. Recognizing this complexity, the Agency sought informal dialogue with farm organizations, USDA, the State Departments of agriculture, and others who would be affected. Unfortunately, some of those with whom we attempted to work seized upon this as an opportunity instead to sensationalize and misrepresent our good-faith attempt to find a balance between extreme points of view.

In the present climate, it is clear that the Agency's Draft Advisory Cotton Opinion can no longer provide the assistance it was intended to give. Rather than pursuing an action that would actually further exacerbate an already polarized issue, I have instructed my staff to discontinue working on this Advisory Opinion and not to publish it in the Federal Register for public comment. This means, of course, that those who use pesticides, those who are exposed to drift, and those with responsibility for enforcing existing label instructions and prohibitions relating to drift must continue to use their own best judgment on the meaning of current label statements regarding drift.

I believe that it remains possible to develop a responsible long range solution to this problem. Over the coming months EPA will pursue that goal in close consultation with all of the interested parties.

Sincerely,

STEVEN D. JELLINEK,
Assistant Administrator for Pesticides and Toxic Substances.●

A TRIBUTE TO SENATOR SAM ERVIN

● Mr. STONE. Mr. President, I was pleased to read in this morning's edition of the Washington Post an article by Mr. Dick Dabney reminding us of the special qualities of former North Carolina Senator Sam Ervin. Although I did not have the privilege of serving in the Senate with Senator Ervin, I have long admired his courage and intelligence. He provided the Senate and the Nation with extraordinary leadership at a time of crisis. More than that, he gave the American people an example of personal integrity and honesty at a time when disgrace and suspicion took hold of our national political life. I join Mr. Dabney in saluting Senator Ervin as an authentic American hero and wish him a speedy recovery from his illness and many, many days of happiness in the years to come. I ask that Mr. Dabney's article be reprinted at this point in the RECORD.

The article follows:

SAM ERVIN, HERO

Word comes that Sam Ervin is in the hospital down in North Carolina—a brief paragraph calling to mind a computer-like blip of the Watergate hearings, of which he was chairman; of white hair, black leaping eyebrows, southern drawl: a quick caricature, which is all anybody ever gets known to the public by in this world. And so, if it had been death that had come for him rather than some trifling illness that I'll lay you 10-to-1 he'll overcome, and if his biographer, being interviewed on that occasion, had said that he was a great man, we would have thought, "Ho hum." All any talk of greatness is to us is words, because we nervous citizens of the late 20th century are a suspicious people. What monuments we've built are all to institutions, not individuals. We don't believe in greatness. And we call that "realistic."

The first time I walked into Sam Ervin's office was in the middle of the Watergate hearings, and I had come to look at scrapbooks and old files. This was easy to do, because nothing in that office was ever locked—a circumstance that took some getting used to. And Sam, who didn't know me, remarked that it looked like I needed a place to work, and with that, led me into his own office, established me at his desk and said that he wouldn't need it for several hours, because he would be occupied on the Senate floor.

So I went to work with those clippings and files in a kind of half-moon space that had been cleared on the desk top. Surrounding this on all sides, within easy reach, were some important-looking papers that I later learned had been secret communications from the White House, abstracts of important forthcoming testimony and secret memos on vital investigative leads. But Sam hadn't bothered to squirrel anything away, nor cautioned me not to look at anything, but had just gone on about his business.

This was an intensely moving experience. For all he knew, I could have been working for Nixon, trying to dig up dirt. Or, by reading and spilling what was in those documents, might have jolted the hearings in ways unfavorable to him. But he had trusted me, and I was later to learn that this openness was characteristic of him. All this made an especially poignant contrast when set against the feral suspiciousness of the Nixon White House, which prided itself on its "realism," which was the motto stenciled on the banner of the ship that went down.

Later, over a glass of beer in his living room down in Morganton, N.C., Sam said to me in an offhand way that you had to trust people, that life was not worth living if you could not do that. And while some might attribute this attitude to naiveté, I knew better and regarded it instead as loftiness of spirit. This was one of several outstanding qualities he had, then as now. He was generous to his friends and loving to his family. He had the best sense of humor of any man I ever knew, and was the most intelligent, and lived each day far more fully than most people do. Moreover, he seemed to me to be exceedingly wise, in knowing what had value and what did not. In my opinion, then, he was a great man. This had nothing special to do with Watergate. This had to do with his whole life.

The trouble is that I did not *say* that in the biography I wrote of him. For although I undertook the book in the first place to learn from him, I had at last not learned enough. It was not enough just to trust others; one needed also to be free from others' distrust. But I became ensnared in, and subordinated to, the intense, destructive suspiciousness that is the chief spiritual characteristic of our town—which Sam himself had managed to live above. I couldn't just flat out write that he was a great man, I told myself; people would suspect me of being a chump, or of subscribing to all Sam's political opinions, or of being some bootlicking spaniel of a Capitol Hill aide.

What I did, instead of saying that he was a great man, was to try and show him being that. This I characterized to myself as merely a literary choice. But in fact it was an inward yielding to the paranoid small-mindedness that I so loathed when I saw it exemplified in the Nixon administration. In practical terms, all it meant was leaving out the concluding page of the biography in which I said just about what I've just gotten done telling you. This would have me from looking bad—and who would be the wiser?

Predictably, no one was, the tome got good reviews, and even the bad ones said that it was "objective" and "balanced." But now I wonder how balanced it was—or are we? Are we really so foolish as to think that great men do not exist, or that some of these do not find their ways into public life? Possibly so: the epidemic suspiciousness, which we not only practice, but give in to, makes it easy for that.

We read tales of the 19th century, which Sam was born into, and in some sense represents, and congratulate ourselves for coming so far from a time when people believed in greatness, and when they allowed themselves to feel things deeply. We read, for instance, of Lincoln breaking into tears in public, or laughing so hugely that he fell off the sofa, rolled on the floor kicking his heels and laughing, and finally had to be restrained—a power of mirth that reminds me somewhat of Sam's. And we say to ourselves that those people back then sure were sentimental. But if they knew us, mightn't they say that we are coldblooded?

And so, if the 19th century was one in which no man was a hero to his valet, the 20th century has become one in which no man is a hero to his biographer—except perhaps for Sam Ervin, who, in spite of some epic strife between us, is a hero to *his*, and to many friends who have known him well, and wish him well, and are strengthened and cheered from having him around.●

SENATOR GLENN URGES PASSAGE OF THE FAIR HOUSING AMENDMENTS ACT OF 1980

● Mr. GLENN. Mr. President, on August 26, 1980, the Senate Judiciary Committee favorably reported S. 506, the Fair Housing Amendments Act of 1980. I am a cosponsor of this important piece of legislation. The Fair Housing Amendments Act of 1980 is the product of extensive congressional hearings which began as far back as the 92d Congress. Although there have been many efforts to weaken this legislation, it has nevertheless arrived at the threshold of final passage still intact. The House of Representatives passed their version of the bill, H.R. 5200, on June 16, 1980. For my part, I will expend every effort to support this legislation until it reaches the Senate floor, obtains final passage, and is signed into law.

The Fair Housing Amendments Act of 1980 will amend title VIII of the Civil Rights Act of 1968 by providing a comprehensive administrative enforcement mechanism with which to combat racism and discrimination in housing. Moreover, it will expand the coverage of our fair housing laws to include handicapped citizens. Because the legislation provides for prompt and efficient resolution of complaints, it is a viable alternative to expensive Federal court litigation. This legislation fulfills a promise of fair and decent housing which was made to the American people 12 years ago—a promise which has, until now, proven to be largely an empty gesture.

S. 506 would establish an independent Fair Housing Review Commission. The Commission would appoint approximately nine administrative law judges who would preside over hearings regarding housing discrimination complaints. The Commission would be empowered to review, modify or reverse the decisions of the administrative law judges. Under S. 506, the administrative enforcement of an alleged discriminatory housing practice would be as follows:

1. Whenever an individual, or the Secretary (of HUD) on his own initiative, files a charge, the Secretary must serve notice on the party charged and make an investigation of the charge.

2. If there is a certified state or local agency, the Secretary must refer the charges to such agency for investigation and enforcement.

3. After the filing of a charge, the Secretary or certified agency must attempt to resolve the matter through conciliation (or, if both parties agree, refer the matter to arbitration).

4. If his investigation supports a finding of "reasonable cause", the Secretary must either file an administrative complaint or refer the matter to the Attorney General for civil action.

5. If an administrative complaint is filed, an administrative law judge must conduct a hearing and may award "appropriate relief", including the assessment of a civil penalty of up to $10,000.

6. Any party may seek review of an administrative order by the Fair Housing Review Commission or by the appropriate court of appeals, or both.

Mr. President, I strongly support the Fair Housing Amendments Act of 1980 and I urge my Senate colleagues to join me in seeking final passage of this legislation within the next few weeks.●

REMARKS OF THE HONORABLE MALCOLM FRASER, PRIME MINISTER OF AUSTRALIA

● Mr. HEINZ. Mr. President, I would like to bring to my colleagues' attention a thoughtful speech made by the Australian Prime Minister, Malcolm Fraser, to B'nai B'rith International on September 1, 1980.

In this speech Mr. Fraser declared that "the single most important fact which faces the world in the 1980's is the reality of Soviet military power." Mr. Fraser charged that the Soviet Union has been acting with singleminded persistence in its attempts to broaden its empire, and that the second most important fact facing the world is "the reluctance of many in the West to recognize that reality and respond to it." Mr. Fraser then called on America's allies to give greater support to the United States to assure the survival of the West.

Through his discussion Mr. Fraser reaffirmed Australia's commitment to world peace and humanitarianism. He raised many provocative and salient points regarding the Soviet Union which bear our close consideration. Mr. President, I ask that Mr. Fraser's speech be printed at this point in the RECORD.

The speech follows:

SPEECH TO B'NAI B'RITH INTERNATIONAL

On occasions like this it is customary to begin by saying that one has been greatly moved by the award in question. In my case I can say that with absolute, literal truth, for I have been moved some 10,000 miles to be here tonight to receive this medal.

I assure you that the length of the journey is commensurate with the importance I attach to the occasion—not only because I feel deeply honoured personally that a body of the stature and prestige of B'nai B'rith has chosen to give me this award, but because I regard your decision as a recognition of the tribute to Australia's humanitarian record.

You represent an organization which has demonstrated the seriousness of its concern for human dignity and justice over the years. I represent a country which has done the same thing. I would like to begin by mentioning briefly two manifestations of that concern in areas which I know have been at the heart of B'nai B'rith's activities since its inception one hundred and thirty seven years ago: refugees and opposition to racialism.

Australia began to take refugees in significant numbers in the 1930s, with the exodus of Jewish people from Central Europe. After the Second World War, Australia continued to do so in response to the vast displacement of population in Eastern Europe and the creation of regimes there which many found intolerable. Thousands came from the Soviet Union and the Baltic States. Overall, in the 35 years since that war we have taken an average of around 10,000 refugees a year. Now I appreciate that for Americans, accustomed to think in very large numbers, that figure may not seem unduly impressive. However, if I point out that as a percentage of population it is equivalent to an annual intake of some 150–160,000 by the United States—over three times as many as it has actually taken—I am sure you will appreciate its significance in Australian terms.

In recent years Australia has been taking many more than that average figure. We have responded to the deliberate creation of a terrible refugee problem in our own region, one made even more harrowing by long sea journeys in small and unseaworthy boats which have resulted in tens of thousands of deaths by drowning. In fact, in per capita terms we have accepted more refugees from Indo-China for permanent settlement than has any other country in the world.

We have done this because it is right. But over the years we have also benefitted greatly from it, as the energy and talents of those who have come to Australia have contributed to the rich diversity and prosperity of life there.

As for racialism, let me begin by acknowledging in earlier times Australia life was seriously marred in this respect. Australians did pursue a discriminatory policy as far as immigration was concerned, the so-called "White Australia" policy. Australians did discriminate shamefully against the Aboriginal people in Australia itself. We do neither any longer.

At the beginning of the 1980s Australia's immigration policy is colour blind and over a third of our settler arrivals come from Third World countries. We have moved a long way from being an essentially Anglo-Saxon-Celtic community to being a truly multi-cultural and multi-racial one. Within that community, the Aboriginals are today an important and respected component. It would be idle and wrong to deny that earlier neglect has left a residue of serious problems. There is no complacency about these problems. They are fully recognised and determined efforts are being made to cope with them. A comprehensive set of policies—covering, among other things, land questions, land rights, royalty payment for mining, low interest loans, and special legal, health and education services—is being implemented. These policies are based on a full recognition of the fundamental right of Aboriginal Australians to participate fully in the determination of their own future. They have been devised in consultation with Aboriginal people and, where possible, are carried out by Aboriginal people.

In international affairs Australia is fully committed to opposing racialism. We have opposed it vehemently and to some effect in Southern Africa, where my Government recently played a significant part within the framework of the Commonwealth of Nations in resolving the Zimbabwe crisis. Unlike some others, however, we do not restrict our opposition to racialism to where it is fashionable and safe. We do not believe in being selective on this issue. We oppose it in all its forms and even when it is practised by the very powerful—by the Soviet Union, for example. You may be interested to know that the Australian Parliament recently conducted an enquiry into Human Rights in the Soviet Union and produced a comprehensive report on the subject; to the best of my knowledge, the Australian Parliament is the only legislature to have produced such a report. It has subsequently been incorporated into your Congressional Record.

Before leaving this question, let me add that we are also concerned to oppose the debasement of anti-racialism, which some seek to exploit in a self-serving way by attaching the label of racialism to anything they oppose. To be more specific, my Government has opposed and will continue to oppose attempts to characterise Zionism as racialist, even when this involves us being in a very small minority as far as UN voting is concerned. Racialism is too vile and serious a matter

to be misused and subordinated to other issues in this way.

Ladies and gentlemen, I know that B'nai B'rith's concern is with humanitarian issues. I know also that many people believe that a concern with humanitarian issues should be kept separate from political and strategic matters, that they are somehow incompatible. I sympathise with the impulses behind that view—the religious and humanistic impulses to look for what unites people rather than what divides them. It represents a necessary ideal. Yet at the level of practical policy, I believe that it is profoundly mistaken. All our experience denies it. In particular, the experience of the Jewish people in this century emphatically denies it. Humanitarian problems arise in, and are profoundly affected by, a political context. A realistic humanitarianism, and one meant to solve problems and not merely to assuage consciences, must therefore extend to embrace the great political and strategic issues of our time.

Before I turn to say something about these issues there is something which, from past experience, I feel I should explain. I am sometimes asked, with some surprise implicit in the question, why a geographically remote, middle-sized country like Australia which faces no imminent threat is so concerned with such matters. The best way I could answer this question, if it were possible, would be to take the person asking it to an Australian country town—almost any country town—and ask him to look at this memorial he would find there to the Australians who had died in the wars of this century. The lists are very long. Too many Australians have died in places far remote from their home—in Europe, in the Middle East, in Korea, in South East Asia—for us to be unconcerned about the preservation of world peace. Their sacrifice not only confers a right but imposes a duty on an Australian Prime Minister to speak on these issues.

If I may make a more general point, one cannot on the one hand use the rhetoric of "one world", the "global village" and "interdependence" and on the other proceed to argue that the questions of peace and war should be left to those immediately involved or to the great powers. The middle-ranking countries of the world should recognise that they have a role to play. It would be an excess of modesty on their part, indeed it would be a political and moral failing, to assume that they should be seen but not heard on the great issues.

In the present circumstances, it is not a matter of some exaggerated and unrealistic notion about the extent of the influence an Australian voice can have which moves me to speak. It is rather a belief that in a Western world characterised by a great deal of self doubt, division and illusion, every incremental contribution to the clarifying of issues and the strengthening of resolve is valuable. It is in that spirit that I make my remarks.

We have travelled far this century. Much of the journey has been grim and harrowing. The First World War, whose brutality and suffering almost numb the imagination, left ordinary people shocked, dazed, and longing for an era of peace. They did not get it. 21 years later—in precisely the time required for a new generation of young men to reach their majority—the world was again at war.

Tragically, that second conflict came about because, in the name of peace, the very moderate steps necessary to resist aggression in good time were opposed. Those who sought to maintain the true conditions for peace were denounced as militants. As a result, millions were to perish needlessly—in the gas chambers of concentration camps as well as on the battle fields.

By 1945 the essential lesson had been learned, at least by one generation: it was realised that the end of the War did not signify the end of the struggle to maintain peace—that there was no end to that struggle. So the democracies of the world, led by this great and generous country, girded themselves to face a new threat from a new tyranny. New alignments were forged, new strategies shaped. Leaders of stature and vision emerged. That effort provided the foundation for a generation not only of peace but of unprecedented material advancement for the world.

But 35 years have passed. The generation which emerged from the last war and which understood its lessons is no longer active. Memories have faded; awareness of danger has receded; determination to uphold, and explain and expound the values of free societies has diminished.

What then is the situation facing us at the beginning of the 1980s?

The essence of what I have to say can be summed up in two propositions. First, the single most important fact which faces the world in the 1980s is the reality of Soviet military power and the implications which flow from it. Second, the next most important fact is the reluctance of many in the West to recognize that reality and to respond to it.

As far as the Soviet Union is concerned it is necessary always to bear in mind some basic facts. During the last 50 years, while other empires have been dismembered at an unprecedented rate, the Soviet Union has been the only major power which has acquired substantial territory and surrendered its claim to nothing.

Soviet leaders today, as in the past, describe international politics as basically a struggle between what they call "progressive" forces and the forces of "reaction". They profess support for the "progressive" forces in their struggle to gain power throughout the world and they refuse to accept any definition of detente which in any way circumscribes Soviet participation in that struggle. "Progressive" forces are, of course, defined in terms of their compatibility with the national interest of the Soviet Union.

Internally, there have been some important changes in the Soviet Union over recent decades. In particular the disappearance of mass slave labour and mass terror stand out and are to be profoundly welcomed. But there is still no rule of law, no freedom of opinion or information, no right to strike, no right to emigrate. There is still an oppressive and ubiquitous security service which harrasses cruelly the kind of dissent which is considered normal in open societies. Political and economic power is still monopolised by a self-appointed and self-perpetuating elite. There is still a command economy of the kind which other countries only resort to in war-time. In other words, the basic institutional structure of the country remains unchanged since Stalin's time.

I spell out these features for one reason only: because they are the features of the country which many judge is now the strongest military power in the world and will, given lead-times, remain so for at least most of the 1980s. It has achieved this status by a massive and relentless arms build-up over the last two decades, a build-up which started from what was already a very high base. It was achieved by giving arms an absolute priority, even at the expense of the serious sacrificing of other goals, the achieving of which would have bettered the lot of its long suffering people.

This is the country we are going to live with in the coming years. I believe that doing so is going to be a dangerous business. The main danger as I see it stems not from the likelihood that the Soviet Union will deliberately precipitate a nuclear war or that it will launch a general attack on Western Europe. The Soviet leaders do not want a war with the West. They recognize that if it occurs its effects will be devastating for everyone. I believe, however, that they do want those things the pursuit of which will greatly increase the risk of war.

The danger is greatest in the chronically unstable regions of the Third World. It is particularly great in the Middle East—racked as it is by internal conflict, vital as its oil is for the countries of the world, and adjacent as it is to Soviet military power. The Soviet Union's combination of nuclear parity with the West and conventional military superiority make it tempting for it to use the latter in the Middle East. If it does so the possibility of a spill-back of conflict into Europe will be very great. In other words, the traditional pattern whereby wars have begun in Europe and have then engulfed the rest of the world may well be reversed. For historical reasons it may be difficult for those viewing the world from a European perspective to come to terms with this possibility.

I believe that the danger has been increased by the invasion of Afghanistan which has driven a Soviet salient into the region. I believe it will be further increased to the extent that it is possible for the Soviet Union to misread the situation due to ambiguous or inadequate signals from the West. I emphasise that point: danger will arise not only from Soviet power and intentions but from confusion and division concerning Western policy which could lead to miscalculation on the Soviet side. For the sake of peace it is essential that this be attended to.

It should be emphasized and clearly understood that what I am talking about is not merely hypothetical. To a very significant extent it is already happening: in Angola and Ethiopia on the African continent; in the Yemen and Afghanistan in the Middle East; and, nearer to Australia, in Indo-China where the Soviet Union is subsidising Vietnamese aggression to the tune of $3 million a day, and acquiring military facilities in Vietnam for its troubles.

In the case of Afghanistan and Cambodia, Soviet policy has demonstrated yet again that it has a capacity rivalled only by Nazi Germany in this century for adding to the sum of human misery by creating tragic flows of refugees.

What of the Western response to this challenge? In terms of population, in terms of wealth, in terms of knowledge, in terms of technology, the combined resources of the West far exceed those of the Soviet Union and its associates. If, therefore, the West finds itself vulnerable to Soviet power—as in some respects it does—it is because of a failure of perception and resolve.

These two—perception and resolve—are intimately related. On the one hand, there can be no adequate response to a problem until its existence is properly recognised and its nature understood. On the other hand, a failure of resolve and will is likely to lead to interpretations—either optimistic or fatalistic—which will either explain away the problem or deny the possibility of effective action.

Two years ago at Harvard, Solzhenitsyn spoke of the prevalence in the West of a self-deluding interpretations of the contemporary world situation. "It works", he said, "as a sort of petrified armour around people's minds. . . . it will be broken only by the pitiless crowbar of events". We must hope that Solzhenitsyn is wrong in his conclusion that only after bitter experience will people see things as they are; but he is surely right in identifying the capacity for self-delusion as a critical factor in the West today.

Consider, for example, the typical sequence of arguments advanced against any attempt, to focus attention on Soviet imperialism:

First, a strenuous denial that the Soviet Union is in the process of attempting to achieve military preponderance accompanied by a claim that it is merely reacting to the military programmes of the West.

Second, the assertion that even if the

Soviet Union is in the process of achieving military superiority, this is not politically significant. Beyond the level of "sufficiency" it is claimed, military power is meaningless—and in any case, is becoming increasingly irrelevant to the achieving of foreign policy goals.

Third, the claim that even if military superiority does confer an advantage, there is no need to worry since the Soviet Union is a cautious, conservative, satisfied state, more fearful than ambitious.

Fourth, the reassurance that even if all preceding arguments turn out to be false there is still no cause for alarm, for it is well known that the Soviet Union is so maladroit in its dealings with the Third World that anything it tries there is sure to fail. And so, it is argued the sensible course is to relax and wait for it to do so.

This sequence of arguments—with its series of fall-back positions—constitutes a determined defence in depth against taking anything but an utterly complacent view of Soviet power and intentions. Each step in the sequence is either false, or a dangerous half truth, or involves taking an irresponsible gamble with the peace and security of the world.

The Soviet Union is engaged in a quest for superiority in every important category of weaponry and has already achieved it in many of them. It is not simply reacting to Western efforts, but on the contrary follows an undeviating course regardless of fluctuations in Western performance. The U.S. Secretary of Defense made the point succinctly when he observed that, "As our defense budgets have risen, the Soviets have increased their defence budget. As our defence budgets have gone down, their defence budgets have increased again."

Military superiority is translatable into political advantage, especially when nuclear parity, and consequent nuclear stalement, is combined with conventional superiority.

Soviet caution is not based on conservatism but on a rational calculation of risk and opportunity. When it is at a disadvantage it is cautious, but when it enjoys an advantage it acts boldly to capitalize on it—as it did in Eastern Europe at the end of the Second World War, and as it is increasingly doing now in the Third World. To the extent that the Soviet Union is motivated by fear, it is, as indeed many of those who interpret its foreign policy as defensive concede, a paranoid fear. But the practical manifestations of such a fear are virtually indistinguishable from aggression, in that they cannot be appeased or assuaged short of conceding global dominance.

As to its alleged inability to deal with the Third World, the Soviet Union has had its failures in the Third World, but it has also had its successes; and recently the latter have predominated. In any case, what kind of societies would we be if we were prepared to risk our future on the expected mistakes of an adversary? Surely we value our way of life too much to accept such a risk.

It cannot be denied that some of the effects of the self-delusion and confusion I have sought to identify are apparent in the state of the Western Alliance today. NATO, the centrepiece of that alliance, has been enormously successful, perhaps uniquely successful as a peace-time alliance. But it is operating today in essentially the same form and according to the same strategic doctrine as it did when it was founded 30 years ago, even though there have been profound changes since then.

There have been many such changes: in the economic balance between the United States and Europe; in the extent of trade between the West and the East; in European perspectives following the dismemberment of their empires. All these have important implications and consequences. But in terms of security, one change stands out: in 1949 when NATO was founded, the United States had clear nuclear superiority and virtual immunity from nuclear attack. Now it has neither.

If the Western Alliance is to survive, these changes must be reflected in its form and substance. It must be made consonant with the kinds of threats which its members face today and with the current distribution of power and wealth among its members.

The United States, which has shouldered such a heavy burden for so long, should receive greater support from its now prosperous allies. We in Australia recognize this. In Europe, as America's allies have recovered and become more powerful they have, rightly, reasserted themselves politically. But until this reassertion is accompanied by the willingness to assume a commensurate responsibility for their own security which logically follows from it, it will be a source of strain between the United States and its allies. Some progress has been made in this respect in recent years and this is to be welcomed. But the disparity in burden-sharing is still very pronounced.

The United States, in its turn, should recognize that a changing balance within the Alliance requires different modes of action on its part, including greater attention to continuous policy co-ordination and consultation. There is an urgent need to develop mechanisms which will enable the Western Alliance to respond quickly to events in a dangerous and volatile world.

Again, if we are to avoid nuclear war there is an imperative need for the creation of conventional forces capable in themselves of placing the success of any Soviet conventional attack in serious doubt. It is not enough to depend on a nuclear deterrent in a world in which all are vulnerable to nuclear devastation.

There is an equally urgent need for the allies to agree on the ground rules to be applied for detente: to the relationship between trade policy and the political and military activity of the Soviet Union; and also to the relationship of detente in Europe to events elsewhere in the world. Indeed, high priority should be given to the whole question of the protection of shared Western interests beyond the geographical territory of the NATO members, for as I have said it is there that the danger is greatest.

Beyond all this and perhaps most important of all, there is an over-riding need to articulate the purposes and meaning of the Alliance in language which will revitalize the commitment of ordinary men and women in Western countries to its cause. That cause is not, in the last resort, about military arrangements but about the preservation of a way of life—an open, liberal, democratic way of life governed by respect for law. Whatever the shortcomings of that way of life—and we hear a good deal about them nowadays—it is necessary only to compare it with any of the others which are on offer to realize that it should be supported and defended with zeal and resolution by all who love liberty. It is palpably absurd that its upholders should ever feel morally or ideologically on the defensive in dealing with totalitarians or authoritarians.

Currently, there are disturbing signs of a strengthening of neutralist sentiments in some European countries. This reflects in part the failure of imagination—as someone has said, those who lack to the imagination of disaster are doomed to be surprised by the world. In part it represents a fatalistic assumption that nothing can be done, a feeling of helplessness in the face of events. It is made worse by the current economic problems confronting the developed industrialised countries.

Whatever its causes, it would be a tragic irony if an Alliance which has held firm for three decades should falter now, when the need for it is going to be greatest. It is imperative that the leaders of the Western world—and I do not simply mean its political leaders—find the words and the concepts which will fortify their peoples and that they themselves act in a way which shows that they mean those words.

A people without an objective are a people lost. A people without faith are a people destroyed. A people without conviction will not survive. It is liberty which provides the objective, liberty which allows faith, liberty which sustains conviction.

But liberty is not an inevitable state and there is no law which guarantees that once achieved it will survive. Its preservation requires skill, determination and strength. But first and most important of all, it requires a knowledge and understanding by ordinary people of what is at stake for them not an abstract concept but a whole way of life whose survival depends on their commitment to it.

Once—less than a lifetime ago—it was possible for the voice of a Churchill to bring these truths home to the western democracies. Now, in an age that is suspicious of heroes and sceptical in temper, the task is harder. Leaders of governments cannot master it without the support of ordinary men and women, their readiness to argue the case for liberty with intelligence and passion.

What is needed in this respect is not novelty and gimmickry but the reaffirmation of some old truths in language appropriate to the times. For unfortunaely, the realities of international affairs do not change simply because people find the burden of living with them heavy.

In one of his novels, Saul Bellow has one of his characters comment on the contemporary craving for novelty. I will end by repeating his words:

"It is sometimes necessary to repeat what all know. All map makers should place the Mississippi the same location and avoid originality. It may be boring but one has to know where it is. We cannot have the Mississippi flowing towards the Rockies just for a change."

What is true for map makers is also true for politicians. And what is true for the Mississippi is true for the Elbe and the Mekong and the Jordan.

Ladies and gentleman, I thank you again for the honour you have bestowed on my country and myself.●

MEXICAN INDEPENDENCE DAY

● Mr. BENTSEN. Mr. President, the people of Texas have a special fondness for and affinity with our neighbor to the South. One Texan out of five is of Hispanic origin and an ever greater proportion of our people feel a keen sense of identity with the culture, language, and people of Mexico.

The border between Texas and Mexico, Mr. President, is unique. It is the only place on this globe where a highly advanced, industralized country comes face to face with a dynamic, developing nation. It is to the credit of both Mexico and the United States that this long border has come to unite, rather than divide, almost 300 million people who share a common commitment to freedom, democracy, and opportunity.

Today, "diez y seiz," the 16th of September, marks the anniversary of Mexico's gallant struggle for independence. It was on this date in the year 1810 that Father Miguel Hidalgo y Costilla, a parish priest in the village of

Dolores, assembled his followers under the banner of the Virgin of Guadalupe and initiated the struggle that led eventually to Mexico's independence from Spain.

Mexico's Independence Day is a time for reflection and celebration on both sides of the border. It is an occasion for 70 million Mexicans to take pride in the vast achievements of their nation and the incredible sacrifices made in the cause of freedom. And it is a time for millions of U.S. citizens of Mexican heritage to reflect on their origins, their long legacy of independency, dignity, and accomplishment, and the indelible imprint they have made on every aspect of life in our region.

In a broader sense, September 16 and the brave fight begun with Father Hidalgo's "Grito de Dolores" in an opportunity for all of us to join in saluting our neighbors to the south and paying tribute to Americans of Hispanic origin, who will soon become the largest ethnic minority in this country.

The people of Mexico, Mr. President, have fought with valor and commitment to guarantee a future of freedom; they have been true to the vision of Father Hidalgo.

Today I join with millions of Americans in congratulating our neighbors on their Independence Day and wishing them well in the future. I sincerely hope that the people of our two great nations will continue to reach out across the border and join hands in the cause of a better tomorrow for all our people.●

ERNEST W. LASS

● Mr. WILLIAMS. Mr. President, I am deeply saddened to report the recent death of Mr. Ernest W. Lass, editor in chief and chairman of the board of the Asbury Park, N.J., Press, and I would like to take just a moment to reflect on some of the highlights of Mr. Lass' long and accomplished life.

Mr. Lass joined the staff of the Press as a reporter back in 1928 when he was 21 years old. During his long and fruitful association with that paper, he rose through the ranks, helping to improve the Press every step of the way. Between 1928 and 1980, Mr. Lass served as circulation director, business manager, general manager, and secretary-treasurer of the paper's corporate organization. He was the publisher of the Press from 1955 to 1977. In 1974, Mr. Lass became chairman of the board and chief executive officer of the Press corporations. Through his tenure with the newspaper, the Press increased its daily circulation from 10,000 to more than 100,000.

Mr. Lass' reputation as a journalist and businessman grew with the years, and many of us in New Jersey watched with admiration as he helped build the Asbury Park Press into the respected and widely read paper that it is today.

Over a decade ago, he and I became compatriots of sorts in an enterprise which meant a great deal to both of us, the campaign to open Sandy Hook to the public as a park. Mr. Lass, it seems, became interested in making the area a park when he was still a young man and working for the paper. Some 30 years passed before part of the Hook was finally opened as a State park, leased from the Federal Government. But the campaign to share this unspoiled coast land with people from our State of New Jersey, and from New York was far from over.

Many years after Mr. Lass had begun to work on the park project, I introduced legislation in the Senate which made the Sandy Hook area part of Gateway National Recreation Area, a Federal park. In 1973, when Gateway became a reality, Mr. Lass was among those named to the park advisory commission.

Today, thousands of people are able to enjoy this beautiful, unspoiled part of our State because of the effort Mr. Lass helped bring to fruition over three decades ago.

As an active member of his community, director of a leading paper, and an outspoken, eloquent winner of Four Freedoms Award for editorial writing, Mr. Lass left a very positive mark on our State. I am proud of all that he has contributed to making New Jersey a good place to live, and deeply saddened to have lost so valuable a member of our State.●

RESTORATION OF DEMOCRACY IN PERU

● Mr. KENNEDY. Mr. President, when Peru inaugurated a new civilian President on July 28, its citizens and, indeed, all supporters of democracy throughout our hemisphere had special reason to be heartened. The swearing in of Fernando Belaunde Terry as Peru's 102d President marked the reestablishment of freely elected democratic government in that nation, ending 12 years of authoritarian military rule.

To appreciate the full significance of the inaugural ceremony in Lima on that day, one must understand its place in relation to recent Peruvian history. Following a military coup in 1968—which brought an end to the first presidential term of Belaunde Terry—democracy was severely curtailed. As recently as January 1979, the military suspended constitutional guarantees, declared a state of siege, and detained hundreds of union leaders and opposition political figures, suppressing a general strike called to demand free elections and economic justice.

When elections marking the long-awaited transition to civilian rule were finally held last May—with the welcome support of Peruvian military leaders—Mr. Belaunde won a commanding 45 percent of the popular vote against 14 other candidates. In coalition with the small Popular Christian Party, his centrist Popular Action Party gained a controlling majority in both the Chamber of Deputies and the Senate. In his inaugural address to a joint session of the recently installed Congress, President Belaunde firmly committed himself to implement a return to constitutional rule in his nation, to create an independent judiciary, to spur economic development, and to promote "the full exercise, from this moment, of human rights and freedom of the press."

The job of governing will be a tough task, but initial, concrete actions of the new government have begun to implement these pledges. The new President has promulgated a broad and generous political amnesty, essential to the spirit of national reconciliation, and has ended government control of newspapers and television stations—taken over by the military—to further the checks and balances necessary for truly democratic government.

The restoration of democratic institutions in Peru is not only an essential step in the liberalization of Peruvian political life, but also stands as a signal to the countries of Latin America and the world that the transition from authoritarianism to democracy can occur, in peace, and is worth the effort. Throughout Latin America, military regimes, from Guatemala to Chile, have come under increasing domestic and international pressure to hold free elections and return their countries to civilian rule. Only last year, Peru's Andean neighbor, Ecuador, undertook a similar welcome transfer of power to elected civilian leaders. In Bolivia, however, an encouraging move toward democracy aborted as the military staged a brutal coup against the expected presidential victor of a center-left coalition of parties.

The months ahead of President Belaunde will be difficult economically and politically, and he should know that he will have strong U.S. support in meeting Peruvian needs and aspirations. The return to civilian rule occurs at a time of economic crisis for the people of Peru. While disparities of wealth were reduced under 12 years of military rule, Peru continues to face high unemployment, approaching one-fifth of the population, a 70-percent inflation rate, and continuing widespread poverty.

In the face of these major challenges, President Belaunde has pledged himself to combat widespread poverty by addressing Peru's basic social and political problems, and by actively encouraging renewed large-scale foreign investment and increased international trade to help develop the mining and petroleum sectors central to the nation's economic future. The new democratic leaders of Peru must be sure not only of the unity and support of their own people to push through the bold economic initiatives that will be needed, but also of the committed support of the United States and like-minded democratic nations through increased economic cooperation and aid. We should respond positively and generously to this encouraging call from Peru for renewed cooperation among hemispheric neighbors.

In this way, all Americans and Peruvians can look forward to an enduring system of democracy and social justice in Peru. I, for one, and I know the Congress and the people of the United States join me, congratulate the Peruvian Government and people for their very positive step toward restoring human rights and democracy in their important Andean country.●

THE AMERICAN STEEL INDUSTRY

● Mr. SCHWEIKER. Mr. President, today, the American steel industry is at the crossroads. The same industry which dominated world markets in the years immediately following World War II is now deeply troubled by an outdated physical plant, idle capacity, high unemployment, and heavy competition from subsidized imports. With these disturbing facts in mind, I would like to call attention to the statement on the steel industry issued today, September 16, 1980, by Ronald Reagan.

In his statement, Governor Reagan points out that, whatever the industry's mistakes, the sad truth is that a good deal of its problems can be laid at the door of an indifferent, uncaring and short-sighted Federal Government. Unfortunately, this pattern of indifference has accelerated in the past 3½ years. Typically, while we have heard much in these past few weeks about reindustrialization or the revitalization of basic industries, there has been precious little substantive action by the Carter administration. Instead, there has been rigid refusal to enforce antidumping laws, capped by the outright abolition of the trigger price mechanism necessary to enforce those laws. Rather than innovative thinking and modern tax policies designed to encourage capital formation, there has been stubborn insistence on outdated tax formulas which strangle industrial development. Add to this a heavy dose of incentive-killing regulation, and you have all that is needed to depress a once thriving industry.

The solutions which the administration proposes reflect the same lack of understanding for the steel industry by addressing the symptoms rather than the causes of its problems. Thinly disguised bailouts and spur-of-the-moment relief efforts deal only with the grim results of ineffective policies. They contribute nothing to rebuilding the steel industry. Consequently, while steel imports averaged 13.7 percent from 1974–76, in the past 3½ years they have averaged over 17 percent. In other words, growth in domestic steel consumption has been captured by imports, and domestic capacity continues to decline.

As I said before, the key to many of the steel industry's problems is a lack of understanding of, or worse, indifference to its legitimate needs. As a member of the Senate Steel Caucus, I have joined colleagues on both sides of the aisle in fighting for policies that will make substantive contributions to restoring the health of the steel industry.

We have struggled for the adoption of tax policies which will permit the capital formation the industry so desperately needs. We have sought in vain from President Carter reasonable enforcement of laws designed to insure fair competition for international markets. We have sought the elimination of regulations that impede economic growth without contributing significantly to public health and safety. Too often in recent years we have seen our efforts frustrated by an unwillingness to shed outdated policies or by failure to comprehend basic economic realities.

Given this sad history of broken promises I commend to my colleagues Governor Reagan's statement on the steel industry. It stands in stark contrast to the Carter administrations' indifference which is at the root of the industry's current difficulties.

The statement follows:

STATEMENT BY GOV. RONALD REAGAN

The American people have been told by President Carter that they are suffering from a national "malaise"—a weakness of will, a lack of determination to improve their own lives and the economic condition of their country. The American people have been asked to believe that this "malaise" comes from within themselves. This appraisal is wrong, and indeed is insulting to the intelligence and vigor with which the American people have always attacked their problems. The "malaise" has been imposed upon the people by the Carter Administration, whose policies have undermined the strength of the American economic institutions which are the basis for our prosperity.

Nowhere is the problem more evident than in the states which form the industrial heartland of America. The economic disaster that grips this region didn't just happen. The industries of this heartland have been weakened by short-sighted taxation policies, by inattention to problems created by dumped and subsidized foreign goods and by excessive government regulation.

In this century, America achieved economic strength second to none. But now, in a few short years, the American people have seen this strength undermined. They are worried about the weakness of the nation's industrial base, about the inability of industry to support the nation's military strength, about the decline in productivity, about the erosion in the value of the dollar. In a word, the American people fear that their country is drifting, unguided, away from world leadership, to the point where our jobs, our lives and our institutions are at the mercy of others.

The Administration has failed to realize one fundamental fact: the industries which comprise the industrial base of America, and the people who are employed by those industries, must have the tools with which to produce more and to produce more efficiently. That fact has always been the basis for the economic strength of America; it is a fact now; and it will continue to be so.

The outstanding example of the economic problem—and the outstanding potential for solving the problem—is the steel industry. In the administration of President Eisenhower, the American steel industry was the world leader in production and in technology. Since then, the trend has been one of gradual strangulation of the steel industry by Democratic administrations which have chosen to see American steel mills reduce operations or go out of business entirely, to ignore subsidized imports, to see Japanese, European, or other foreign steel workers take the jobs of American steel workers. The effects of these policies are visible today in scores of cities and towns which depend upon steel mills for their payrolls, for their retail business, for their taxes—for all the economic strengths that invigorate people, families, and communities.

Our people recognize that this country must have a strong world-class industrial base. This industrial base is, in turn, founded upon a strong steel industry. And yet, in a program unveiled before Labor Day, President Carter attacked this massive problem with a series of half-hearted measures which approach the symptoms of economic weakness without really attacking its causes.

If the United States is to return to world leadership in its economic strength, the rebuilding program must be built on a strong industrial base—and steel is part of the foundation of that base.

The steel industry of the United States has been forced into second-class status because short-sighted government policies have prevented it from investing enough money in new production equipment. The steel industry must be revitalized, must be made more competitive with foreign steel, must serve the interests of the American people better with lower-cost, more energy-efficient production. This is a major first step in the industrial revitalization of our country.

The key to this revitalization is investment. Steel mills must be enabled to invest more in modernization and expansion, to protect the jobs of their workers and to retain their own home market. These investment funds can only come from two sources: from profits and from realistic tax policies.

The Carter economic program features subsidies and government handouts. The American steel industry does not ask for subsidies, handouts, loan guarantees or any other form of "bail-out." The industry asks, and should be given, an opportunity to pull itself up by its own bootstraps by earning the money needed for its own revitalization. Enlightened, forward-looking, constructive policies would do the following for the steel industry:

CAPITAL FORMATION

The steel industry, along with others which form the industrial base of the Nation, should be allowed to take its depreciation allowances in a shorter period of time. For the American steel industry the average is now 12 years. This means that, by the time a company takes its tax allowances for new plant investment, the value of the dollars has been eaten away by inflation, and the funds available for new investment buy much less new equipment. American industry in general, and steel mills in particular, are placed at great disadvantage with their major competitors abroad, many of which have the benefit of one- or two-year write-off periods, and none of which have longer depreciation periods. Faster, less complex depreciation schedules should be placed promptly into effect.

Faster depreciation is not a subsidy. All it does is to make available in a shorter period of time the same dollar amount of tax benefits which would otherwise be available to companies over a longer period of time.

IMPORTS

I have already pointed out that the American steel industry has been on a downward path since the Eisenhower years. Nowhere is this more evident than in imports. In the 1950s, imports accounted for an average of 2.5 percent of American steel consumption. In the 1960s, the market share of imported steel rose to an average of 10.2 percent. In the 1970s it rose to 15.5 percent. And, in the first three years of the Carter administration, imports of foreign steel increased to more than 17 percent. In the three years prior to the Carter administration they had been 13.7 percent.

This demonstrates that growth in American steel consumption has gone to imports, while the productive capacity of American mills has gone steadily downward. This does not make economic sense for the steel industry or for the nation, and it adds to the nation's balance of payments deficits.

Democratic administrations, and the Carter administration in particular, have been unwilling to cope with the import problem by enforcing laws which have been on the books for almost 60 years. These laws forbid dumping—that is, the practice of selling goods in the U.S. below cost of production in their home market or below prices which foreign producers sell for in their home market.

The Carter administration has also chosen to ignore laws which require remedies for goods which undersell American producers

by means of foreign government subsidies to their producers. Subsidized imports have reduced American sales volume and profits, thus restricting the funds available to American mills for investment.

To enforce those anti-dumping and anti-subsidy laws is not only the most effective answer to the problem, it is actually demanded of a President who swears to uphold and enforce the laws of the land—not just those laws which he finds convenient to enforce.

Enforcement of the trade laws would not prohibit imports of foreign steel. It would, however, require that steel offered for sale in this country be unsubsidized by foreign governments. American mills are ready and willing to meet foreign competition.

As part of that enforcement process, the Trigger Price Mechanism should be promptly reinstated. Once we restore this protection against subsidized imports, we must then move forward to reduce foreign subsidies wherever possible. My administration will make every effort to negotiate reductions in such trade practices.

REGULATIONS

American industry is stifled by over-regulation. Nowhere is this more apparent than in the steel industry's running battle over excessive environmental regulation. No one quarrels with the general objective of cleaning up the nation's air and waters. But we should not pursue those goals by insisting on timetables which force steel mills to spend money on environmental equipment when they don't have enough capital to invest in job-protecting new production equipment. Worse yet are cases where steel mills are forced to close mills or shut down facilities prematurely because strict enforcement of environmental regulations would make them unprofitable. Loss of jobs and community distress are the result. The steel industry has worked hard to accomplish the vast portion of its clean-up task, and within the next few years will be removing even more of its pollutants from the environment. What is needed is to stretch out the time period for further clean-up.

It is a matter of priorities. Right now, with so much of the pollution clean-up already accomplished, we must balance the need for environmental protection and protection of jobs and rebuilding industry.

For a generation, the steel workers and the steel industry have been whipping boys for those in Washington who wish to show the public how zealously they are holding down prices. Price restraints have not been applied evenhandedly—to the point where the costs of producing steel have risen, prices have risen more slowly, and profits have been squeezed.

The steel industry must be allowed to earn a reasonable profit on investment and on sales, in order to generate the funds for investment in plant modernization and expansion. Government loans or subsidies are no substitute for honest profits earned through aggressive cost-saving and competitive selling in a free and open marketplace.

America needs a modern, world-class steel industry. My administration will support government policies which enable us to achieve it.●

ORDER OF PROCEDURE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders and any orders for the recognition of Senators, the Senate resume consideration of the HUD appropriation bill for such length of time as is necessary to dispose of an amendment that will be called up at its inception, after which the Senate will proceed to lay aside temporarily the HUD appropriations bill and take up the military construction appropriations bill, to be followed by the Department of Transportation appropriations bill, with the understanding that if those two measures are not completed by no later than noon on Thursday, the Senate will resume the consideration of the HUD appropriations bill.

Mr. BAKER. Mr. President, reserving the right to object, I shall not object. I ask the majority leader if the previous order in respect to treaties on Wednesday would be affected by the request he has just made?

Mr. ROBERT C. BYRD. Mr. President, I am glad the distinguished minority leader remained me of the treaty votes on Wednesday.

UNANIMOUS-CONSENT AGREEMENT WITH REGARD TO TREATIES

Mr. ROBERT C. BYRD. Mr. President, under the order previously entered, as in executive session, under the order previously entered, the Senate was to vote tomorrow on the treaties to the Executive Calendar beginning with Calendar No. 14 and going through Calendar No. 22 on page 2. There was one vote, I believe, on the last item, Maritime Boundary Agreement with the Republic of Cuba, which was to be separate. The other rollcall vote was to have accounted for eight votes and would have disposed of the eight preceding treaties to that Maritime Boundary Agreement with the Republic of Cuba. I ask to modify the agreement in the following fashion:

I ask unanimous consent that the Calendar Order No. 20 on the Executive Calendar, executive F, 96th Congress, first session, not be voted on tomorrow, but that the majority leader, after consultation with the minority leader and the chairman and ranking member of the Committee on Foreign Relations, be authorized to call up that treaty early next week at a time that is agreeable to those three Senators.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. JAVITS. Mr. President, the Maritime Boundary Agreement with the United Mexican States is a very important one for that government, which was solemnly negotiated between us and them and agreed upon. There have been some questions desiring information raised by Members respecting that treaty. I think it is critically important to make it clear that, considering the importance of such a treaty, we in the Committee on Foreign Relations and the leaders would not wish to shut off any Member from acquiring necessary information, provided that it may be done with full dignity to the position of the contracting state—to wit, Mexico. Senator CHURCH and I are satisfied by this arrangement, which assures us that the matter will be very promptly considered, and I have no doubt that the treaty will be ratified.

We are very solicitous about the Mexican Government and we propose to act very promptly. It would hardly be in the spirit of relations between our two countries if we denied any Member any information that that Member may wish in order to cast his vote as he may wish to cast it, based upon all the facts, particularly as we are satisfied as to both the bona fides and the equity of this treaty.

I thank the Senator for this arrangement and my own leader on the minority side and believe it is an appropriate one. I trust that it will work out well.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator. I have cleared the request with the chairman of the Committee on Foreign Relations (Mr. CHURCH).

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, continuing further as in executive session, I ask unanimous consent that, at 1 p.m. tomorrow, the Senate go into executive session. I ask unanimous consent that the remaining portion of the order, as entered earlier, be carried out on tomorrow, beginning at the hour of 12:40 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, to make sure that all Senators understand, at 12:40 p.m. tomorrow the Senate will go into executive session. There will be 20 minutes for debate with respect to various conventions and treaties on the Executive Calendar that will be voted on.

At 1 p.m., the Senate will vote by rollcall on the following treaties: Calendar Order No. 14, the Food Aid Convention; Calendar Order No. 15, Protocols for the Fifth Extension of the International Wheat Agreement, 1971; Calendar Order No. 16, 1978 Partial Revision of the Radio Regulations; Calendar Order No. 17, amendment to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora; Calendar Order No. 18, proposed amendments to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter; Calendar Order No. 19, Convention on the Inter-American Institute for Cooperation on Agriculture; and Calendar Order No. 21, Maritime Boundary Treaty with the Republic of Venezuela.

There will be one rollcall vote at that time and it will count for seven.

Immediately following the disposition of that vote, the Senate will proceed to vote separately on Calendar Order No. 22, maritime boundary agreement with the Republic of Cuba.

So, there will be eight treaties voted on, with eight votes in the RECORD, which will be accomplished by two rollcall votes.

Am I correct, may I ask the Chair, in my understanding of the agreement?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR CONSIDERATION ON TUESDAY, SEPTEMBER 23, 1980, OF DISAPPROVAL OF RESOLUTION ON SALE OF NUCLEAR FUELS TO INDIA

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on next Tuesday, after the two leaders have been recognized under the standing order, the Senate proceed to the consideration of the disapproval of the resolution on sale of nuclear fuels to India, Calendar Order No. 1028, Senate Concurrent Resolution 109.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Does he wish to establish a time for that vote so that Senators could be on notice?

Mr. ROBERT C. BYRD. No; I cannot. I believe, under the agreement, the maximum of 10 hours is assured, which time can be reduced by unanimous consent or by nondebatable motions.

Mr. BAKER. Mr. President, as I understand the request made by the majority leader, it is to make the Tarapur Resolution of Disapproval, which I believe is Calendar Order 1028, the pending business when it convenes on Tuesday, is that correct?

Mr. ROBERT C. BYRD. I am sorry.

Mr. BAKER. That under the formulation presented by the majority leader, that the Tarapur Resolution of Disapproval, Calendar No. 1028, would be the pending business when we convene next Tuesday?

Mr. ROBERT C. BYRD. Yes; following the recognition of the two leaders or their designees under the standing order.

Mr. BAKER. I thank the majority leader.

I wonder, really, for the sake of planning, if we could now set a time for the convening of the Senate on Tuesday?

Mr. ROBERT C. BYRD. Yes; I will be glad to.

ORDER FOR SENATE TO CONVENE AT 9 A.M. ON TUESDAY, SEPTEMBER 23, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate convenes on Tuesday, it convene at the hour of 9 a.m.

Mr. BAKER. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR MEASURE TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 6686, the Reporting Elimination Act, is received by the Senate, that that measure be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXCHANGE OF FEDERAL COAL LEASES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 864, S. 1455.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1455) to further amend the Mineral Leasing Act of 1920 (30 United States Code 201(a)), to authorize the Secretary of the Interior to exchange Federal coal leases and to encourage recovery of certain coal deposits, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That (a) notwithstanding any provision of law to the contrary and notwithstanding the provisions of section 2(a)(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1)), the Secretary of the Interior is authorized and directed to issue leases for coal on other Federal lands in the State of New Mexico to the owner or owners of Federal coal leases, serial numbered NM0186612 and NM0186613, upon surrender and relinquishment of such leases or portions thereof. Such exchange shall be completed within 30 months of the date of enactment of this Act: *Provided, however*, That failure of the Secretary to complete such exchange shall not prejudice the rights of the owner or owners of the designated coal leases, and the exchange shall be completed as expeditiously as possible after the expiration of such time period upon request of such owner or owners.

(b) Leases to be issued by the Secretary pursuant to the authority granted by subsection (a) of this Act shall be from within the Federal lands described as follows:

TOWNSHIP 23 NORTH, RANGE 12 WEST

Section 5: South half,
Section 6: South half,
Section 7: All,
Section 8: All,
Section 9: West half,
Section 17: East half, east half west half, northwest quarter northwest quarter,
Section 18: North half north half,
Section 20: Northeast quarter, northeast quarter northwest quarter,
Section 21: West half northwest quarter.

TOWNSHIP 23 NORTH, RANGE 13 WEST

Section 1: Northwest quarter, northwest quarter southwest quarter, north half northeast quarter, southeast quarter northeast quarter, northeast quarter southeast quarter.

The selection of lands pursuant to this subsection shall be consistent with existing land use planning policy and leasing procedures established by the Secretary.

(c) The leases to be issued by the Secretary pursuant to the authority granted by subsections (a) and (b) of this Act and the leases or portions thereof to be exchanged therefor shall be of equal value. If such leases or portions thereof are unavoidably not of equal value, the Secretary is authorized to receive, or pay out of funds available for that purpose, cash in an amount up to 25 per centum of the value of the lease or leases to be issued by the Secretary in order to equalize the value of the lease to be exchanged.

(d) Any exchange lease issued by the Secretary under the authority of this Act shall contain the same terms and conditions as those leases surrendered on the date the exchange takes place.

(e) This subsection does not require or obligate the Secretary to take any action or to make any commitment to a lessee or lease applicant with respect to issuance, administration, or development of any lease.

(f) Except as otherwise herein provided, any lease issued pursuant to this Act shall be consistent with the Mineral Leasing Act of 1920 as amended (30 U.S.C. 184 et seq.)

Mr. ROBERT C. BYRD. Mr. President, is there a further committee amendment?

The PRESIDING OFFICER. There is an amendment to the title.

Does the Senator wish to consider the two en bloc?

Mr. ROBERT C. BYRD. No. I just wish to go to third reading, and I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 987, H.R. 6816.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6816) to provide for the exchange of certain Federal coal leases in the State of New Mexico for other Federal coal leases in that State.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and that the text of S. 1455, as amended, be inserted in lieu thereof; that the bill be advanced to third reading; that it be passed; that a motion to reconsider be laid on the table; and that Calendar No. 864, S. 1455, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISAPPROVAL OF DETERMINATION NOT TO PROVIDE IMPORT RELIEF FOR THE LEATHER WEARING APPAREL INDUSTRY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 992.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 108) to disapprove the determination of the President not to provide import relief for the leather wearing apparel industry.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the name of the Senator from Michigan (Mr. LEVIN) be added as a cosponsor of Senate Concurrent Resolution 108.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I support Senate Concurrent Resolution 108, Calendar Order 992, and urge its adoption by the Senate. This resolution disapproves the President's decision not to provide relief to the leather wearing apparel industry. Its passage by the Congress would result in sorely-needed and long-overdue help to this beleaguered industry and would prove that our trade laws do provide a workable way for our domestic industries to obtain some relief when unduly harmed by imports from other countries.

Mr. President, I commend Senator DANFORTH for his leadership on this matter. He and I and several of our colleagues (Senators HEINZ, EAGLETON, DURKIN, RANDOLPH, MITCHELL, TSONGAS, CHAFEE, COHEN, SARBANES, HOLLINGS, WILLIAMS, NELSON, and LEVIN) introduced this resolution on July 22, 1980. Under section 201 of the Trade Reform Act of 1974, this motion is privileged and must be voted on by the Congress within 90 days. Under the leadership of the wise and distinguished chairman of the Trade Subcommittee, Senator RIBICOFF, the Finance Committee held a hearing on August 19, 1980, and passed the resolution by voice vote on August 21, 1980. The committee recommends to the Senate, for the reasons carefully and clearly outlined in Senate Report 96–910, adoption of this resolution.

Mr. President, the arguments for passing this resolution are compelling. Section 201, popularly known as the "escape clause," of the Trade Act of 1974, is one of the principal ways by which a domestic industry that has been hurt by a sudden and rapid increase in imports can find relief. Through its employer and employee organizations the industry may petition the International Trade Commission claiming "injury," requesting "relief" through the imposition of tariffs or quotas or the securing of orderly market agreements with foreign countries, and may receive that relief for a period up to 5 years. The leather wearing apparel industry, through the National Outerwear and Sportswear Association, Amalgamated Clothing and Textile Workers Union, International Ladies' Garment Workers Union, United Food and Commercial Workers Union, and Tanners' Council of America, Inc., made such a petition on July 24, 1979.

After hearings and an extensive investigation by the ITC, the Commission found that "to prevent or remedy the serious injury to the domestic industry it is necessary to impose rates of duty, in addition to the present rates of duty, with respect to coats and jackets of leather." The ITC recommended a duty increase of 25 percent in the first year, 20 percent in the second, and 15 percent in the third, following which the duty would revert to its original level of 6 percent.

The ITC decision in this case was unanimous. The data upon which it was based leave no doubt that the industry was injured by imports and that relief is justified. From 1975 to 1978, imports increased 143 percent by value and 146 percent by quantity, and thereby captured 82 percent of our domestic market. Moreover, the ITC report concluded that increasing imports of leather garments were the most substantial cause of severe declines in domestic production—approximately a 14-percent decline in the quantity of producers' shipments from 1976 to 1978 and a further 12-percent decline from the first 8 months of 1978 to the corresponding period in 1979.

The President is not compelled to accept such a recommendation of the ITC, only to consider it. Yet, as the Senate report states, with the passage of the 1974 Trade Act by the Congress—

> It was the expectation that the recommendations of the ITC would prevail unless the President, taking into account the broader considerations which the law permits him to take into account, determines that there were compelling national economic interests which must prevail over the recommended relief.

In this case, as in other escape clause cases that have come before him, the President has chosen not to accept the ITC recommendation. Our response to his reasons is outlined in a letter that the sponsors of Senate Concurrent Resolution 108 circulated on September 5, 1980. I ask unanimous consent that the letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMITTEE ON FINANCE,
Washington, D.C., September 5, 1980.

DEAR COLLEAGUE: On July 22 S. Con. Res. 108 was introduced. The resolution disapproves the President's decision not to provide import relief for the leather garment industry as recommended unanimously by the International Trade Commission on January 24, 1980.

On August 21 the Senate Committee on Finance, to which was referred the concurrent resolution, favorably reported the resolution and recommended that it be passed by the full Senate. By statute the resolution must be brought before the Senate for a vote by September 19. The motion to proceed to consider S. Con. Res. 108 is privileged.

We are writing to ask your support for and favorable vote on S. Con. Res. 108.

HISTORY OF THE LEATHER GARMENT INDUSTRY'S SAFEGUARD PETITION

Last year the leather garment industry petitioned the International Trade Commission for import relief under the safeguard provision, Section 201(b) of the 1974 Trade Act. The industry made a compelling case for action:

Imports had captured over 80 percent of the domestic consumption of men and womens' leather coats and jackets;

Imports rose 146 percent between 1974 and 1978; and

Employment in the U.S. leather garment industry dropped by nearly one-third between 1974 and 1977.

The U.S. leather garment industry's petition represented one of the most dramatic import injury cases ever to be brought before the ITC. The ITC made two unanimous findings in the case. First, the ITC found that the industry was being injured. Second, the ITC recommended a plan for prompt and effective import relief; a duty increase of 25 percent in the first year, 20 percent in the second year and 15 percent in the third, following which the duty would revert to its original 6 percent.

Under the law, the President had the right to accept, reject or modify the ITC recommendation.

PRESIDENT'S REASONS FOR REJECTING SAFEGUARD RELIEF

On March 26, the President transmitted to the Congress his decision not to accept the unanimous ITC recommendation for import relief. Instead, the President recommended expedited adjustment assistance for the industry. The President gave two reasons for denying the recommended import relief: its alleged inflationary impact and his belief that import relief is an ineffective means of promoting trade. During hearings held on August 18 before the Subcommittee on International Trade of the Committee on Finance on S. Con. Res. 108, the Administration further contended that if the President had granted relief it would have had an adverse effect on U.S. exports of hides. We disagree on each point.

THE LEATHER GARMENT INDUSTRY CAN BECOME COMPETITIVE

First import relief can be an effective short term tool in promoting trade. Now and in the past, firms in the U.S. leather garment industry have utilized advanced technology to compete both with each other and with foreign suppliers. The U.S. leather garment industry is unsurpassed in technological competence and in the efficiency of its operations vis a vis its foreign counterparts. However, the industry's ability to stay at the technological forefront depends on capital investment. To obtain such capital and have the necessary incentive for investment depends itself on future business expectations.

Those prospects today are not good, due largely to the disparity in labor costs between U.S. and foreign producers. An intense capital investment program, promoted by a temporary import relief program, will reduce overall unit labor costs and allow the U.S. industry to remain competitive, to recapture some of its lost market share, and to save jobs.

As stated by the Committee on Finance in its report on S. Con. Res. 108 (Sen. Report No. 96–910):

> "With respect to the asserted doubts regarding the ability of the domestic leather coats and jackets industry to become competitive, the committee believes that the industry does have a real possibility of becoming competitive again. This belief is based on the unanimous decision of the ITC that the relief would remedy the import-related injury being experienced and upon the testimony received at the committee's hearing on Senate Concurrent Resolution 108. At the hearing, the industry demonstrated a knowledge of its competitive problems. Additionally both management and labor indicated significant progress in planning ways for becoming competitive during the 3 year relief period. . . . Given the circumstances of this case, the industry should be given the opportunity to try to become competitive."

IMPORT RELIEF WOULD NOT BE INFLATIONARY

Second, as to the contention that the import relief package would be inflationary, the three year import relief program recommended by the ITC would not, to any significant degree, inflate prices, decrease supplies to the American consumer, or reduce competition in the U.S. market. Why? While imports of lower unit-value leather garments have flooded the U.S. market, consumers have not received the benefit of these low prices. U.S. retailers have in the past simply applied higher markups to imported apparel than to apparel which is produced domestically.

Further, domestic producers manufacture the full range of leather wearing apparel and are capable of producing any item that a foreign manufacturer produces. The low level of capacity utilization that exists today in the leather garment industry is evidence that the industry has the capability of substantially increasing its production of leather apparel. The consumer choice in style and type will therefore not be diminished.

Also, the structure of the U.S. leather garment industry guarantees that intense competition exists and will continue to exist. There are some 100 firms in this industry almost all of which are small-to-medium sized shops.

The Committee on Finance also determined that the inflation impact argument of the Administration was without merit. As stated in its report:

> "With respect to the asserted inflationary impact of the proposed relief, the committee notes that any inflationary impact would be minuscule, as the leather coats and jackets consumed in the United States accounts for no more than a few one-hundredths percent of personal consumption expenditures. Any increase in the Consumer Price Index as a result of the import relief taking effect would be almost unmeasurable. While the inflation rate is down considerably from the rate present when the President made his determination, the committee is concerned about inflation, and does not take its action lightly. However, given that this is a discrete case and not a precedent for a series of small inflationary actions; that it is a case arising out of the trade laws whereby an industry has demonstrated its eligibility for relief following a 6-month investigation; and that a U.S. industry has a real possibility of becoming competitive again and creating jobs, the minimal price impact possible in this case should not deter granting the recommended relief."

IMPORT RELIEF WOULD NOT ADVERSELY AFFECT EXPORTS OF U.S. HIDES

Third, as to the contention that the granting of relief might reduce the sale of U.S. hides in foreign markets, this is simply not true. First, any slack in foreign supply of leather garments will be made up by U.S. production. Thus, a seller of U.S. hides will merely switch from a foreign buyer to a U.S. buyer. Second, the overwhelming majority of U.S. hides exported are not for the production of leather garments; rather, the hides are used in the production of shoes and sporting equipment. The ITC's decision would not affect the latter markets.

The import relief package recommended by the ITC was not inflationary. It would not have had a negative impact on consumer choice or domestic competition and it would not have adversely affected the exports of U.S. hides. On the other hand, the relief recommended by the President—expedited adjustment assistance—is wholly inadequate.

THE ADMINISTRATION HAS CONSISTENTLY REJECTED ITC RECOMMENDATIONS

We oppose the President's decision not only because it denies justice to an industry that is clearly injured but because it attacks one of the fundamental principles in our trade policy.

The relief unanimously recommended by the ITC is not an unwarranted bail-out of a particular industry. Instead, it is fully consistent with historical precedent, U.S. law, and international trade agreements. The law which permits this relief (Sections 201–203 of the Trade Act of 1974) embodies a basic element of the General Agreement on Tariffs and Trade (GATT)—the idea that an industry seriously hurt by a rapid increase in imports is entitled to import relief for a temporary period to facilitate its adjustment to new competitive conditions.

In the past three and one half years the International Trade Commission has made 16 affirmative recommendations under Section 201. In none of those cases has the President accepted the Commission's recommendation. The leather garment case is a particularly egregious example because the Commission's two decisions—on injury and on a recommendation for relief—were unanimous. To ignore this judgment by a responsible independent agency, particularly in view of the President's previous record of rejecting ITC recommendations, threatens the viability of the Commission, and flies directly in the face of the legislative intent of an important element of our trade policy.

At the present time there are ongoing two safeguard petitions under the provisions of the 1974 Trade Act. In one case, dealing with mushrooms, the ITC unanimously found injury and recommended that import relief in the form of increased traiffs for three years be provided the industry. The ITC decision is awaiting Presidential action. The other case, presently pending before the Commission, concerns the domestic automobile industry. A Commission decision is expected late this fall.

In the mushroom case—injury having been unanimously determined—the fate of the industry once again lies in the hands of an Administration with a dismal track record. The fate of the automobile industry may be next in line.

Your support and favorable vote on S. Con. Res. 108 is needed to demonstrate that Congress intends to stand firmly behind the safeguard provisions provided within U.S. trade laws. If you have any questions please have a member of your staff phone Kermit Almstedt (41408) of Senator Danforth's staff, Charna Sherman (49560) of Senator Moynihan's staff, or Bill Reinsch (47750) of Senator Heinz' staff.

Sincerely,

John C. Danforth, Gaylord Nelson, John A. Durkin, John H. Chafee, Thomas F. Eagleton, Paul E. Tsongas, John Heinz, Daniel Patrick Moynihan, Jennings Randolph, William S. Cohen, George J. Mitchell, Harrison A. Williams, Jr., Paul Sarbanes.

Mr. MOYNIHAN. Mr. President, the trade law recognizes that there is room for disagreement and gives Congress the means to alter a Presidential decision through an override resolution.

Mr. President, the Congress has never before made a serious attempt to override a Presidential decision in an ITC case. The decision to do so in this case was not made lightly, and should be seen as a mark of respect for our trading system, the laws that govern it, and a recognition of the need for a preeminent role for the Chief Executive in conducting trade policy.

There are two, equally important, matters at stake here. One is the merits of the leather wearing apparel petition. These are clear and convincing. The other is more fundamental: It is the viability of our trading system and its ability to meet the problems a liberal trade policy can bring to certain industries, while at the same time giving benefits to others. If this does not work, the system as a whole is in jeopardy. And there have been of late, too many good reasons for concern. There is beginning to be a pattern of denial here. There is a danger that the consensus which existed just a short while ago when the Congress approved the Multilateral Trade Agreements may break down.

The escape clause provision provides a means by which industries seriously hurt by a rapid increase in imports can get relief for a time so as to facilitate their adjustment to new competitive conditions. This measure is a safeguard; it lessens the severe hardships that particular industries may encounter as trade barriers are reduced. It has been a basic element of every major round of international trade negotiations, including the General Agreement on Tariffs and Trade and the most recent Multilateral Trade Negotiations.

The pattern of decision in the past 3½ years has shown mounting disregard for the problems of the petitioners. The message is beginning to be heard as: Do not bother to apply, there is no help for you here.

During this period, the International Trade Commission has made affirmative recommendations under section 201.

Although in some cases an acknowledgement of injury was made, in none of these cases was the full recommendation of the ITC accepted. Of the 16, only 7 cases resulted in the granting of any import relief at all and of these 7, 4 required more than 1 petition before relief was granted.

All the industries that have appealed for relief have experienced drastic reductions in their workforce. Some are faced with extinction. The petitioners have included such industries as nonrubber footwear, color television receivers, CB radio transceivers, industrial fasteners, clothespins, and nonelectric cookingwear. I ask unanimous consent that a report on the recent history of section 201 cases be printed in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

A SUMMARY OF U.S. ITC INVESTIGATIONS CONDUCTED UNDER SECTION 201 OF THE TRADE ACT OF 1974 DURING THE CARTER ADMINISTRATION AND PRESIDENTIAL ACTION TAKEN

There have been 42 escape clause investigations, involving 36 industries, completed to date under Section 201 of the Trade Act of 1974, with 2 additional cases pending. In addition, there have been 6 cases requesting extensions of import relief under Section 203 of the Trade Act. The following summary and analysis are confined to those 26 Section 201 cases and 5 Section 203 cases completed since January 1977, that is, during the Carter Administration.

Of these 26 Sections 201 cases (TA–201–17 through TA–201–42), the U.S. International Trade Commission made these determinations: 15 affirmative findings (6 unanimous votes, 9 divided votes), 10 negative findings (7 unanimous, 3 divided), and 1 split finding (tie vote). In several of the affirmative determinations, the Commission found affirmatively for only part of the industry.

Of these sixteen affirmative and split findings of injury which were submitted by the Commission to President Carter for his decision, only seven have resulted in import relief. The seven industries, and the effective dates of import relief, are: nonrubber foot-

wear (June 28, 1977), color television receivers (July 1, 1977), CB radio transceivers (April 11, 1978), high-carbon ferrochromium (November 17, 1978), industrial fasteners (January 6, 1979), clothespins (February 23, 1979), and nonelectric cooking ware (January 17, 1980). (Only one industry, specialty steel, received import relief prior to 1977.)

It should be noted that four of the seven industries which ultimately received import relief were each the subject of more than one case before import relief under the Trade Act was granted. The nonrubber footwear and high-carbon ferrochromium industries were involved in two cases each. The industrial fasteners' industry was involved in three cases before import relief was granted as a result of the third case. The clothespin industry was unsuccessful in its effort to recure import relief under Section 406 of the Trade Act but did receive import relief under the "escape clause."

In two of the seven cases—color television receivers, and nonrubber footwear—the President negotiated orderly market agreements (OMAs) with certain foreign countries. In the case of nonrubber footwear, orderly marketing agreements were negotiated with Korea and Taiwan. In the case of color TVs, an OMA was initially negotiated with Japan and subsequently OMAs were negotiated with Korea and Taiwan under the President's authority to negotiate further OMAs with other countries. The President imposed quotas on all countries in the case of clothespins, but limited the relief to lower-valued clothespins. Tariffs were increased on imports in the other four cases: CB radios, high carbon ferrochromium, industrial fasteners, and nonelectric cooking ware. The increased duty in all four of these cases applied to imports from all countries under the most-favored-nation treatment principle followed by the U.S.

Although the statute permits import relief for up to five years, none of the seven industries has received import relief for more than four years, with the imposition of four-year relief occurring in only two cases, nonrubber footwear and nonelectric cooking ware. In all other cases, import relief was granted for a period of three years.

The statute permits, under Section 203, an extension of import relief for one three-year period. There have been five cases, involving three industries (certain ceramic articles, specialty steel, and color TVs), under Section 203 since 1977 (TA-203-2 through TA-203-6). Two of these industries—specialty steel and color TVs—received extensions. A petition for an extension of import relief submitted by the specialty steel industry resulted in only an eight month extension with greatly increased quota levels. The color TV industry received a two-year extension of the OMAs with Taiwan and Korea, at increased levels, while the OMA with Japan was allowed to terminate. The other two Section 203 cases since 1977 were on specialty steel. (One of these was to drop bearing steel from import restrictions. The other was to review the original specialty steel case and resulted in a continuation of the import relief. Both were initiated by the Administration.)

Mr. MOYNIHAN. Mr. President, the passage of Senate Concurrent Resolution 108 would not only provide much needed relief to the leader-wearing apparel industry, but it would also signal the intention of the Congress to insure that the problems of injured industries are addressed under the law. The importance of this resolution cannot be overstated. It is imperative that we pass it today.

Mr. President, I thank the majority leader for his courtesy in attending to this matter, which is of no small consequence. If the International Trade Commission's findings in escape clause cases are never to be supported by the President, we might as well not have an International Trade Commission, and we would soon have no international trade policy.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. BAKER. Mr. President, I ask unanimous consent that a statement by the distinguished Senator from Missouri (Mr. DANFORTH) in support of this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR DANFORTH

What is the significance of the vote on Senate Concurrent Resolution 108—a resolution to disapprove the President's decision not to provide import relief for the leather garment industry as recommended unanimously by the International Trade Commission on January 24, 1980? Is the resolution a "bailout" of an industry—specifically the some 100 firms who employ approximately 5,000 persons and comprise the United States leather garment industry? In my opinion, it is not. Is a vote supporting the resolution a vote contrary to the principles of free trade? Again, in my opinion it is not. A vote supporting this resolution is a vote to uphold the principles of free trade as that concept has been molded by the political processes of our nation and today is embodied in the numerous Trade Acts passed by the Congress and enforced by the Executive Branch of our government.

For years Congress has insisted that what is commonly referred to as an "escape clause" provision be included in the trade agreements negotiated by the Executive Branch. For instance, Article XIX.1.(a) of the General Agreement on Tariffs and Trade (GATT) to which the United States is a signatory, contains such a provision. As stated in the Report of the Committee on Finance on the Trade Reform Act of 1974 (Senate Document, Report No. 93-1298 at page 199):

"The rationale for the 'escape clause' has been, and remains, that as barriers to international trade are lowered, some industries and workers inevitably face serious injury, dislocation and perhaps economic extinction. The 'escape clause' is aimed at providing temporary relief for an industry suffering from serious injury, or the threat thereof, so that the industry will have sufficient time to adjust to the freer international competition."

The purpose of an "escape clause" provision is not to provide permanent protection against imports. Quite the contrary—any import restrictions imposed can only be of a limited duration and exist solely to allow the industry time to adjust its operations to meet the demands from foreign competition.

The "escape clause" provision of the Trade Reform Act of 1974 provides that the President may grant import relief to a domestic industry if the International Trade Commission first determines that a product is being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the industry if it produces a similar product. If the injury standard is met, and unless the President determines that to grant relief would not be in the over-all economic interest of the nation, the President may impose any of the following types of relief: increases in or imposition of duties; tariff rate quotas; quantitative restrictions, or orderly marketing agreements. Any relief proclaimed by the President must terminate within five years and if it is proclaimed for longer than three years, it must be phased down beginning in the fourth year. One extension of the relief may be granted for a period of not more than three years.

Since passage of the Trade Reform Act of 1974, there have been 44 "escape clause" investigations under Section 201 of that Act. In addition, there have been six cases requesting extensions of relief under Section 203. Since January, 1977, of the 26 determinations by the International Trade Commission of cases brought under Section 201, 16 were affirmative recommendations for relief. In none of those 16 cases has the President accepted the Commission's recommendations.

Within the past 3½ years it has become obvious that the Executive Branch of government pays only "lip service" to the "escape clause" provision of our nation's Trade Laws. If free trade is to continue as a viable, working concept, then the "escape clause" provision has to be allowed to work and relief proposed under it cannot be summarily rejected as has occurred over the past 3½ years.

The type of foreign competition against which the U.S. leather garment industry has had to compete explains why the Congress has insisted that "escape clause" relief be an integral part of U.S. Trade Laws. The U.S. leather industry has long had the reputation of being the most productive and stylish industry in the world. Likewise, the U.S. tanning industry, which supports the leather industry, has been the most productive, innovative tanning industry in the world. Over the past years, restrictive trade practices of other leather producing countries have become the root of the U.S. leather industry's problems. Some examples will suffice:

ARGENTINA

Argentina subsidizes its tanning industry by the imposition of an export tax on the export sale of hides. The domestic price of Argentine hides over the past few years has averaged considerably less than hide prices on the free world hide market. In addition, Argentina rebates to the exporter a direct cash 'rembolso' on the export of leather garments. The government of Argentina finances the export of leather products through its central bank at very low rates.

URUGUAY

Uruguay subsidies its leather product industry by granting a rebate on the export of leather products. If the leather is converted into products prior to export, the rebate applies to the selling price of the product. Like Argentina, the Central Bank of Uruguay assists in the financing of leather product exports.

Although the U.S. government has attempted to resolve these restrictive practices, the government of Uruguay has consistently reneged on every leather garment trade agreement. In January, 1979, the government of Uruguay agreed to eliminate all its subsidies on leather products to the United States. In April, 1980, the government of Uruguay reinstated its subsidization program.

JAPAN

A simple tariff barrier on leather plus an import quotas protects the local Japanese tanning industry. Operating behind such a barrier the Japanese tanners have a profitable captive customer, the Japanese leather product manufacturer. From this highly profitable, subsidized base, the Japanese tanners export their leather to Korea, Taiwan, Hong Kong and the Philippines at prices lower than their domestic sales price. This practice allows their foreign customers a non-comparable cost advantage.

TAIWAN, KOREA, PHILIPPINES

These countries subsidize the production of leather garments through domestic central bank financing against letters of credit at very favorable rates.

It was in the face of such competition that last year the U.S. leather garment industry petitioned the International Trade Commission for import relief under the "escape clause" provision, Section 201(b) of the Trade Reform Act of 1974. The industry made a compelling case for action. In its case it established that imports had captured over 80% of the domestic consumption of men and womens' leather coats and jackets; that imports rose 146% between 1974 and 1978; and that employment in the U.S. leather garment industry dropped by nearly one third between 1974 and 1977.

The U.S. leather garment industry's petition represented one of the most dramatic import injury cases ever to be brought before the International Trade Commission. The International Trade Commission made two unanimous findings in the case. First, the International Trade Commission found that the industry was being injured. Second, the International Trade Commission recommended a plan for prompt and effective import relief: a duty increase of 25% in the first year, 20% in the second and 15% in the third following which the duty would revert to its original 6%. Under the law, the President had the right to accept, reject or modify the International Trade Commission recommendation.

On March 26 of this year, the President transmitted to the Congress his decision not to accept the unanimous International Trade Commission recommendation for import relief. Instead, the President recommended expedited adjustment assistance for the industry. The President gave two reasons for denying the recommended import relief: its alleged inflationary impact and his belief that import relief is an ineffective means of promoting trade. During hearings held on August 18 before the Subcommittee on International Trade of the Committee on Finance on S. Con. Res. 108, the Administration further contended that if the President had granted relief, it would have had an adverse effect on United States exports of hides.

I disagree with the Administration's reasons for denying relief to the United States leather garment industry. First, import relief can be an effective short term tool in promoting trade. Now and in the past, firms in the U.S. leather garment industry have utilized advanced technology to compete both with each other and with foreign suppliers. The U.S. leather garment industry is unsurpassed in technological competence and in the efficiency of its operations vis a vis its foreign counterparts. However, the industry's ability to stay at the technological forefront depends on capital investment. To obtain such capital and have the necessary incentive for investment depends itself on future business expectations.

Those prospects today are not good, due largely to the disparity in labor costs between U.S. and foreign producers. An intense capital investment program, promoted by a temporary import relief program, will reduce overall unit labor costs and allow the U.S. industry to remain competitive, to recapture some of its lost market share, and to save jobs.

As stated by the Committee on Finance in its report on S. Con. Res. 108 (Sen. Report No. 96-910):

"With respect to the asserted doubts regarding the ability of the domestic leather coats and jackets industry to become competitive, the Committee believes that the industry does have a real possibility of becoming competitive again. This belief is based on the unanimous decision of the ITC that the relief would remedy the import-related injury being experienced and upon the testimony received at the Committee's hearing on Senate Concurrent Resolution 108. At the hearing, the industry demonstrated a knowledge of its competitive problems. Additionally, both management and labor indicated significant progress in planning ways for becoming competitive during the 3 year relief period. . . . Given the circumstances of this case, the industry should be given the opportunity to try to become competitive."

Second, as to the contention that the import relief package would be inflationary, the three-year import relief program recommended by the International Trade Commission would not, to any significant degree, inflate prices, decrease supplies to the American consumer, or reduce competition in the U.S. market. Why? While imports of lower unit-value leather garments have flooded the U.S. market, consumers have not received the benefit of these low prices. U.S. retailers have in the past simply applied higher markups to imported apparel than to apparel which is produced domestically.

Further, domestic producers manufacture the full range of leather wearing apparel and are capable of producing any item that a foreign manufacturer produces. The low level of capacity utilization that exists today in the leather garment industry is evidence that the industry has the capability of substantially increasing its production of leather apparel. The consumer choice in style and type will therefore not be diminished.

Also, the structure of the U.S. leather garment industry guarantees that intense competition exists and will continue to exist. There are some 100 firms in this industry almost all of which are small- to medium-sized shops.

The Committee on Finance also determined that the inflation impact argument of the Administration was without merit. As stated in its report:

"With respect to the asserted inflationary impact of the proposed relief, the Committee notes that any inflationary impact would be minuscule, as the leather coats and jackets consumed in the United States account for no more than a few one-hundredths percent of personal consumption expenditures. Any increase in the Consumer Price Index as a result of the import relief taking effect would be almost unmeasurable. While the inflation rate is down considerably from the rate present when the President made his determination, the Committee is concerned about inflation, and does not take its action lightly. However, given that this is a discrete case and not a precedent for a series of small inflationary actions; that it is a case rising out of the trade laws whereby an industry has demonstrated its eligibility for relief following a 6-month investigation; and that a U.S. industry has a real possibility of becoming competitive again and creating jobs, the minimal price impact possible in this case should not deter granting the recommended relief."

Finally, as to the contention that the granting of relief might reduce the sale of U.S. hides in foreign markets, this is simply not true. First, any slack in foreign supply of leather garments will be made up by U.S. production. Thus, a seller of U.S. hides will merely switch from a foreign buyer to a U.S. buyer. Second, the overwhelming majority of U.S. hides exported are not for the production of leather garments; rather, the hides are used in the production of shoes and sporting equipment. The International Trade Commission's decision would not affect the latter markets.

The import relief package recommended by the International Trade Commission was not inflationary. It would not have had a negative impact on consumer choice or domestic competition and it would not have adversely affected the exports of United States' hides. On the other hand, the relief recommended by the President—expedited adjustment assistance—is wholly inadequate.

The U.S. leather garment industry proved its case for short term import relief before the International Trade Commission. The relief should have been granted and this Resolution should be passed to override the President's rejection of the International Trade Commission's recommendation. Mr. President, by passing Senate Concurrent Resolution 108 the Congress would be sending a clear signal to the Executive Branch that the President's total disregard of the "escape clause" provision of the 1974 Trade Reform Act is no longer acceptable.

● Mr. HEINZ. Mr. President, I wish to express my strong support for this resolution, even though at this point thanks to House action, Senate approval may be more symbolic than substantive. Nevertheless, I am particularly anxious that it be approved because of the implications it has for orderly trade policy process.

Mr. President, last year when Congress wrote the legislation implementing the multilateral trade negotiations' results, we attempted to restructure our trade laws in a way that would insure prompt, fair, and equitable treatment for domestic manufacturers with grievances against foreign producers or governments. We wanted to provide a clear, well-defined procedure and time table for investigating and resolving allegations made. We wanted petitioners to be clearly aware of their rights at every step of the process. We wanted cases resolved strictly on their merits and not on the basis of extraneous political considerations. And we wanted to make sure that if the petitioner was awarded relief, he in fact got it in a timely and effective manner.

At the same time we made these procedural changes, we also clarified the intent of our laws by providing an injury test in certain cases where it was not previously required. As a result we assigned an even more prominent role to the International Trade Commission, the agency given responsibility for determining whether or not injury has occurred. This determination is essential, since no relief will be provided if there is no injury.

One area that remains a problem in terms of the above objectives, and which we did not change last year, is the safeguard section of the law, sections 201-203 of the Trade Act of 1974. This section of law is intended to deal with problems of rising imports. No allocation of subsidy or dumping is made. Petitioner must simply prove he is injured by imports. Relief is limited to no more than 5 years, with a possible further 3-year extension. The intent of this provision is to provide temporary relief to permit adjustment to new competitive conditions. It is not intended to provide permanent tariff or quota protection.

From the Commission's point of view, this section seems to be working. Investigations are timely, and decisions are rendered promptly. In the 3½ years since Jimmy Carter became President, the ITC has sent him 16 affirmative injury determinations with recommenda-

tions for relief. It is at that point, however, that the process is clearly breaking down and our goal of petitioners being provided timely and effective relief not being achieved; for in none of those 16 cases has the President acted in accordance with the ITC's recommendations. If one wanted to be charitable, one could say that in two of the cases the President's decision was close to what the Commission recommended, but in all the rest his decision was effectively a rejection of their advice and a denial of relief petitioners clearly merited by reason of their injury.

One of the most egregious examples of this denial occurred this spring in the leather apparel case. In that case, the Commission agreed unanimously that the industry was being seriously injured by imports, and it agreed unanimously on a remedy—3 years of increased tariffs.

The injury case was clear. Domestic production was down sharply from 1975 to 1978 despite a near doubling in domestic consumption. Further declines in production and capacity utilization occurred in 1979. During the same 1975–78 period the value of imports increased 143 percent, and the quantity of imports rose 146 percent. This meant an increase in import penetration in terms of quantity from 62 percent in 1975 to 79 percent in 1979.

Employment has also been adversely affected. Jobs in the industry declined from 11,100 in 1974 to 5,500 in 1979, a drop of more than 50 percent. More than 3,100 of the laidoff workers have been certified for adjustment assistance.

Equally clear was the need for relief—a tariff increase to equalize the price of imports with the price of domestic products. The Commission voted unanimously for such relief, although the amount of tariff increase recommended was smaller than the industry requested.

Despite this clear-cut case, and despite these unanimous findings, the President declined to approve any action at all, aside from expedited adjustment assistance, which has little or no meaning. Mr. President, there is presently on the Senate calendar legislation (H.R. 1543) to make the adjustment assistance program more viable, and I am working for its enactment. But to suggest at the present time that we have an effective program or that it is an adequate solution to a problem as serious as that of the leather apparel industry is simply ridiculous.

The main reason for the President's action, or rather nonaction, appears to have been the need to fight inflation. While this is an argument that always sounds convincing—no one is in favor of inflation—a closer examination reveals its weakness in this situation. As is the case with other apparel items and footwear, retailers tend to take advantage of the lower wholesale price of imported goods by marking them up more than domestic goods, thus increasing their profit but minimizing any real gain to consumers. Naturally such a practice accounts for the popularity of imports with retailers and hence their increased market share, although it is difficult to show any savings to consumers or any real preference on their part for foreign goods. As a result, simply to mouth the word "inflation" as if it explains everything is to misunderstand the way this industry operates.

Mr. President, I support the resolution to override the President's decision in the leather apparel case and thereby to send the President a message about process and about fairness, a clear message that the Congress believes the 201 escape clause process has gone awry in the hands of an administration which was neither sympathy for nor understanding of industrial trade problems.

Mr. President, this is not simply a question of protectionism versus free trade. It is a question of whether we are going to even try to make GATT-sanctioned escape clause procedures work and give our industries a chance to recover. The relief provided is temporary and consistent with our international obligations. It can be implemented only after a finding of injury by the quasi-judicial independent agency we have created for that purpose, the International Trade Commission.

Unfortunately, this administration has consistently rejected or ignored the work of this Commission and in the process has jeopardized the very existence of a number of American industries. If this attitude is an example of the kind of industrial policy the administration is proposing, I shudder to think what lies in store for other import-impacted industries.

I regret that this resolution, which was reported by voice vote from the Finance Committee, did not receive a similar endorsement in the Trade Subcommittee of the Ways and Means Committee. It was rejected there by a vote of 9 to 10 after intense personal lobbying by the President and other administration officials, who simply did not want the President to be embarrassed.

Well, to that I can only say that he deserves to be embarrassed, because his policy in these cases has consistently ignored policy the Congress has set down. Although it appears unlikely the House will not act on this resolution, I believe it is important to pass it simply to send a clear message to the President that his policy is inadequate and out of touch. If we adopt this resolution now, then perhaps the President will consider more carefully before ignoring the works of the International Trade Commission in the future.●

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution .

The concurrent resolution (S. Con. Res. 108) was agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on March 26, 1980.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LAS VEGAS VALLEY WATER DISTRICT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1023, H.R. 3210.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3210) to terminate the authority to make grants to the Las Vegas Valley Water District under the Act of August 27, 1954.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR MESSAGE ON H.R. 3765 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message from the House on H.R. 3765 (walnut and olive marketing) be held at the desk pending further disposition by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR A MESSAGE ON H.R. 5236 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the Senate receives a message from the House on H.R. 5236 (Louisiana Land Transfer), the measure be held at the desk pending further disposition by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN LANDS TRANSFER

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2223.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2223) entitled "An Act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That the first proviso of section 4 of the Act of June 18, 1934 (48 Stat. 984, 985; 25 U.S.C. 464), is amended by striking the phrase "or any heirs of such members" and inserting in lieu thereof, the phrase "or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust".

SEC. 2. (a) The second and third provisos contained in the paragraph entitled "Determining Heirs" in the Act of January 24, 1923 (42 Stat. 1185; 25 U.S.C. 377), as amended, and section 2 of the Act of December 24, 1942 (56 Stat. 1080, 1081; 25 U.S.C. 375b), are hereby repealed.

(b) The Secretary of the Interior may cancel any unpaid fees assessed under the provisions repealed by this section.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the Senate action was taken.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TONNAGE MEASUREMENT SIMPLIFICATION

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 1197.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 1197) to simplify the tonnage measurement of certain vessels, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate insist on its amendments, agree to the conference requested by the House of Representatives on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. JOHNSTON) appointed Mr. CANNON, Mr. LONG, Mr. EXON, Mr. HEFLIN, Mr. JACKSON, Mr. JOHNSTON, Mr. FORD, Mr. BUMPERS, Mr. MELCHER, Mr. METZENBAUM, Mr. SCHMITT, Mr. WARNER, Mrs. KASSEBAUM, Mr. HATFIELD, Mr. MCCLURE, Mr. DOMENICI, and Mr. STEVENS conferees on the part of the Senate.

ORDER FOR STAR PRINT—SENATE REPORT NO. 96–919

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAYH, I ask unanimous consent that there be a star print of Senate Report No. 96–919.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR THE RECOGNITION OF MR. ROBERT C. BYRD ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order I be recognized for not to exceed 15 minutes to call attention of the Senate to the fact that 193 years ago on tomorrow the Constitutional Convention completed its work. I believe in the year 1787 tomorrow, Wednesday, was a Monday according to the Library on Congress. I wish to make a few remarks in that regard.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, after the two leaders and the order for the recognition of a Senator have been consummated on tomorrow, the Senate will resume consideration of the HUD appropriation bill until such time as an amendment by Mr. JEPSEN has been disposed of. Upon the disposition of the amendment by Mr. JEPSEN, the HUD appropriation bill will be temporarily laid aside and the Senate will proceed to the consideration of the military construction appropriation bill, upon the disposition of which the Senate will proceed to the consideration of the DOT appropriation bill. There will be rollcall votes throughout the day on tomorrow.

Also on tomorrow at 12:40 p.m. the Senate will go into executive session and after 20 minutes of debate there will be two rollcall votes on treaties on the calendar, the two rollcall vote to count for eight rollcall votes.

Upon the disposition of those two rollcall votes, the Senate will return to legislative session.

On Thursday, at no later than 12 o'clock noon, the Senate, if it has not completed action on both the military construction appropriation bill and the Department of Transportation appropriation bill, will resume consideration of the HUD appropriation bill. In any event the Senate will be on the HUD appropriation bill on Thursday and if action is not completed on that bill on Thursday, which would appear that action might not be completed on Thursday, the Senate will continue on that measure on Friday.

If the Senate completes action on the appropriation bill on Thursday, then there will be other business which the minority leader and I will discuss in the meantime. So there will be rollcall votes on Friday.

RECESS TO 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until tomorrow morning at 10 a.m.

The motion was agreed to and at 6:49 p.m., the Senate recessed until tomorrow, September 17, 1980, at 10 a.m.

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HOUSE OF REPRESENTATIVES—*Tuesday, September 16, 1980*

The House met at 12 o'clock noon.

The Reverend Willie J. Ellis, D.D., pastor, New Northside Missionary Baptist Church, St. Louis, Mo., offered the following prayer:

Lord of all, whose balance trieth the nations, to lift up or to cast down; Thou hast planted us, as a people, in quiet resting places, and stretched out our borders from sea to sea, and laid upon us a mighty trust. Never through vain conceit may we be blind to the unchanging conditions of Thy blessings. The world and its fullness are Thine; our portion thereof may we hold, not in wanton self-will, but reverently, as of Thee; making it the stronghold of right, the refuge of the oppressed, and the moderator of lawless ambition.

Grant true wisdom and understanding to the President, the Senate, and to the House of Representatives, and to all others in authority. Make all who speak or act for this Nation true organs of Thine equity, that through their wisdom and faithfulness Thou mayst be our lawgiver and judge. And let it be that, as with the people so with the chiefs, as with the servants so with the masters, as with the buyer so with the seller, all may know Thee as weighing the path of the just; that righteousness may be the girdle of our power. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

THE REVEREND WILLIE J. ELLIS

(Mr. CLAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLAY. Mr. Speaker, next week, a milestone for black Americans will be attained when the Congressional Black Caucus holds its 10th annual legislative weekend.

In reflecting on the significance of this event, I asked the privilege of inviting a black minister to offer today's opening prayer and to give this Congress an opportunity to acknowledge the unique role that black churches have played in the struggle for racial equality.

Rev. Willie Ellis is the pastor of the New Northside Baptist Church in St. Louis, and is among the most independent voices of leadership in our community. As a black minister, Reverend Ellis is capable of articulating the needs of our people without the threat or fear of financial retaliation. As the leader of a black church, Reverend Ellis represents a cornerstone in the efforts of black leaders to reshape America and create a new society where all persons are free and equal. Black ministers have manifest a bond within the black community that has been a source of strength and inspiration to all the minds of black leadership.

Reverend Ellis has dedicated his life to serving his brothers and sisters. On behalf of the U.S. House of Representatives I welcome him and I thank him for his invaluable contributions and commitment to improving the quality of life on this Earth for all of God's children.

PRIVATE CALENDAR

The SPEAKER. This is Private Calendar day. The Clerk will call the first bill on the Private Calendar.

AUTHORIZING AND DIRECTING THE SECRETARY OF THE INTERIOR TO REINSTATE OIL AND GAS LEASE NEW MEXICO 33955

The Clerk called the bill (H.R. 6538) to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955.

There being no objection, the Clerk read the bill, as follows:

H.R. 6538

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188), the Secretary of the Interior is authorized and directed to receive, consider, and act upon any petition of David Fasken, lessee of record of terminated oil and gas lease New Mexico 33955, for reinstatement of said lease filed within ninety days after the effective date of this Act, together with the required rental, if any, including back rental accruing from the date of the termination of the lease.

With the following committee amendment:

Page 2, strike all of line 1 and everything thereafter through the period on page 2, line 7, and insert: the Secretary of the Interior is authorized and directed, upon petition by David Fasken, lessee of record of terminated oil and gas lease New Mexico 33955, to reinstate said lease if the petition is filed within ninety days after the effective date of this Act, together with the required rental, if any, including back rental accruing from the date of the termination of the lease.".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MRS. ALICE W. OLSON

The Clerk called the bill (H.R. 5160) to amend the act entitled "An act for the relief of Alice W. Olson, Lisa Olson Hayward, Eric Olson, and Nils Olson."

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

DR. HALLA BROWN

The Clerk called the Senate bill (S. 1578) for the relief of Dr. Halla Brown.

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice?

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

JEFFERSON COUNTY MENTAL HEALTH CENTER, INC.

The Clerk called the bill (H.R. 4033) for the relief of the Jefferson County Mental Health Center, Inc., and of certain current and former employees thereof.

There being no objection, the Clerk read the bill, as follows:

H.R. 4033

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the waiver certificate filed by the Jefferson County Mental Health Center, Incorporated (hereinafter in this Act referred to as the "health center"), under section 3121(k)(1)(A) of the Internal Revenue Code of 1954 (relating to waiver of exemption by certain organizations) shall (except as provided in section 5 of this Act) be deemed not to be effective in the case of any individual with respect to whom a repayment has been made which is considered, under section 2 of this Act, as an overpayment of tax under section 6413(b) of such Code, for the period for which such individual received the wages (as defined in section 3121(a) of such Code) with respect to which such repayment was made.

SEC. 2. The Secretary of the Treasury or his delegate, upon proof reasonably satisfactory to him that repayment has been made prior to May 14, 1975, to any individual by the health center, of a sum representing the amount of taxes imposed on such individual under section 3101 of such Code (relating to rate of tax) and deducted and paid by the health center under section 3102 of such Code (relating to deduction of tax from wages) for any period beginning after December 31, 1971, and prior to May 14, 1975, shall consider such sum so repaid to such individual as an overpayment of tax under section 6413(b) of such Code (relating to overpayment of certain employment taxes) and shall approve a claim for a refund, credit, or adjustment filed by the health center prior to or within ninety days after the date of enactment of this Act, under section 6402 of such Code (relating to authority to make credits or refunds) or 6611 (a) or (b)(2) of such Code (relating to interest on overpayments).

SEC. 3. Any period of limitations for filing a claim for credit or refund under section 6511 of such Code (relating to limitations on credit or refund) shall be waived with respect to any claim for refund, credit, or adjustment made by the health center under section 2 of this Act. Section 6514 of such Code (relating to credits or refunds after a period of limitation) shall not apply to any such claim.

SEC. 4. (a) A certificate of waiver filed by the health center under section 3121(k)(1)(A) of such Code shall apply to any individual described in the first section of this Act with respect to any period following the period (described in such section) which is applicable to such individual under such section.

(b) Notwithstanding the provisions of section 3121(k)(1)(B)(iii) of such Code, the health center may not elect to have such certificate of waiver apply to any individual described in the first section of this Act with respect to the period (described in such section) which is applicable to such individual under such section.

SEC. 5. (a) In the administration of titles II and XVIII of the Social Security Act, the wages (as referred to in the first section of this Act) received by an individual described in such section for the period (described in such section) which is applicable to such individual shall (except as is otherwise provided in subsections (b) and (c)) be deemed not to constitute wages (as defined in section 209 of such Act) for purposes of determining—

(1) entitlement to or amount of any insurance benefit payable to such individual or any other person on the basis of the wages and self-employment income of such individual, or

(2) entitlement of such individual to benefits under title XVIII of such Act or entitlement of any other person to such benefits on the basis of the wages and self-employment income of such individual.

(b) The provisions of subsection (a) shall not be applicable in the case of any individual (described in the first section of this Act) or any other person claiming any benefit referred to in subsection (a) on the basis of the wages and self-employment income of such individual, if on or before the date of enactment of this Act, such individual has died or attained age sixty-two, or if on such date such individual is under a disability (as defined in section 216(i) of the Social Security Act) which began prior to such date.

(c)(1) The provisions of subsection (a) shall not be applicable to any individual who enters into an arrangement with the Secretary of the Treasury or his delegate for paying into the Treasury an amount equal to the sum repaid to him (as described in section 2 of this Act) by the health center.

(2) The Secretary of the Treasury shall by regulations prescribe the manner in which such an arrangement for payment by an individual shall be made. Any such arrangement shall afford the individual a reasonable time in which such payment shall be made and the amount and time of the installments which will be made toward such repayment, and shall contain appropriate conditions to protect the interests of the United States and to assure equitable treatment to the individual in the event that the individual fails fully to comply with the arrangement.

(3) The Secretary of the Treasury and the Secretary of Health, Education, and Welfare shall cooperate in assuring that, insofar as is practicable, each individual who is eligible to enter into an arrangement under this subsection will be notified of that fact and given an adequate opportunity to enter into such an arrangement.

SEC. 6. Nothing in this Act shall be construed to relieve the center of any liability for the payment of the taxes imposed by section 3111 of the Internal Revenue Code of 1954 with respect to any wages paid by it to any individual for any period.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Secretary of the Treasury or his delegate, upon proof reasonably satisfactory to him that repayment has been made prior to May 14, 1975, to any individual by the Jefferson County Mental Health Center, Incorporated (hereinafter referred to as the "health center"), of a sum representing the amount of taxes imposed on such individual under section 1301 of the Internal Revenue Code of 1954 (relating to rate of tax) and deducted and paid by the health center under section 3102 of such Code (relating to deduction of tax from wages) for any period beginning after December 31, 1971, and prior to May 14, 1975, shall consider such sum so repaid to such individual as an overpayment of tax under section 6413(b) of such Code (relating to overpayment of certain employment taxes) and shall approve a claim for a refund, credit, or adjustment for such overpayment filed by the health center prior to, or within ninety days after, the date of enactment of this Act under section 6402 of such Code (relating to authority to make credits or refunds) or 6611 (a) or (b)(2) of such Code (relating to interest on overpayments).

SEC. 2. Any period of limitations for filing a claim for credit or refund under section 6511 of such Code (relating to limitations on credit or refund) shall be waived with respect to any claim for refund, credit, or adjustment made by the health center in accordance with section 1 of this Act. Section 6514 of such Code (relating to credits or refunds after a period of limitation) shall not apply to any such claim.

SEC. 3. Nothing in this Act shall be construed to relieve the health center of any liability for the payment of taxes imposed by section 3111 of such Code with respect to any wages paid by it to any individual for any period.

SEC. 4. Upon payment of a claim authorized by section 1 of this Act, the United States shall be subrogated to all rights of the health center against the individuals referred to in that section who were repaid amounts representing the amount of taxes imposed on such individuals under section 1301 of the Internal Revenue Code of 1954 and deducted and paid by the health center under section 3102 of such Code for any period beginning after December 31, 1971 and prior to May 14, 1975.

AMENDMENTS OFFERED BY MR. WIRTH TO THE COMMITTEE AMENDMENT

Mr. WIRTH. Mr. Speaker, I offer amendments to the committee amendment, and ask unanimous consent that the amendments be considered en bloc.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. WIRTH to the committee amendment: Page 1, section 1, line 5, strike "1301" and insert "3101".

Page 2, section 4, line 9, strike "1301" and insert "3101".

Page 1, section 1, line 15, after "overpayments." insert "For the purposes of applying section 6611(b)(2) the date of the overpayment shall be considered to be May 14, 1975.".

Mr. WIRTH (during the reading). Mr. Speaker, I ask unanimous consent that the amendments to the committee amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. WIRTH. Mr. Speaker, these are two technical amendments, one relating to printing in the bill and one relating to overpayments.

The SPEAKER. The question is on the amendments offered by the gentleman from Colorado (Mr. WIRTH) to the committee amendment.

The amendments to the committee amendment were agreed to.

The SPEAKER. The question is on the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JAMES R. THORNWELL

The Clerk called the bill (H.R. 5063) for the relief of James R. Thornwell.

There being no objection, the Clerk read the bill, as follows:

H.R. 5063

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated $1,700,000 to James R. Thornwell, originally of South Carolina and now of Oakland, California. Such sum shall be in full satisfaction for the severe physical, psychological, and economic damage, including pain, suffering, emotional distress, trauma, and permanent injuries, inflicted upon James R. Thornwell as a result of the administration by Army personnel of LSD to him in 1961 without his knowledge or consent after subjecting him for six preceding weeks to extreme physical and emotional stress, as part of an Army drug testing program in which he was the only American subject, and as a result of the concealment by the Army of the use of LSD from James R. Thornwell for seventeen years thereafter, during which time he suffered from severe psychological disorientation, and of the Army's failure to provide him any followup care. The payment of such sum shall be in full satisfaction of all claims of James R. Thornwell, his heirs, executors, personal representatives, or assigns, of any nature whatsoever against the United States and its agencies, or against any past or present employee, agent, officer, or person of or associated with the United States, in connection with the circumstances of his injuries compensated hereunder, including injuries incurred subsequent to his discharge from the Armed Forces, and such payment shall be lieu of any further compensation or award for such injuries.

SEC. 2. No part of the amount appropriated by this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, any contract to the contrary notwithstanding. Violation of the provision of this section is a misdemeanor punishable by a fine not to exceed $1,000.

With the following committee amendment:

Page 1, line 5: Strike "$1,700,000 to" and insert "$250,000 to the trustee designated

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pursuant to section 2 of this Act for the benefit of".

Page 1, line 14: After "United States," insert "including those asserted in the United States District Court for the District of Columbia in Civil Action Number 78-1845."

Page 2, line 17: After "forces", strike ", and such payment shall be in lieu of any further compensation or award for such injuries" and insert: "Further James R. Thornwell shall not be eligible for any compensation or benefits from the Veterans' Administration or the Department of Defense."

Page 2, after line 18, insert:

SEC. 2. The sum to be paid pursuant to this bill shall be paid to a California bank as trustee, under a trust agreement to be entered into by said bank and James R. Thornwell (and to be approved as to form by a representative of the Department of Justice of the United States). The trust agreement shall provide that the Trustee shall initially pay James R. Thornwell's outstanding debts and obligations, including legal fees and reimbursable expenses in connection with legal services (as limited by section 3 of this Act), shall invest the remaining amounts and hold them in trust, shall during the lifetime of James R. Thornwell pay to him all of the net income of the trust on a monthly basis, and also pay or apply such amounts of the principal as the Trustee deems necessary for the health, welfare, comfort and maintenance of James R. Thornwell, and upon his death shall pay all assets then held in trust to his estate.

Page 2, line 19: After "SEC." strike "2" and insert "3".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. OBERSTAR. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of the Senate bill (S. 1615) for the relief of James R. Thornwell and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1615

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, $1,000,000 to James R. Thornwell, originally of South Carolina and now of Oakland, California. Such sum shall be in full satisfaction for the severe physical, psychological, and economic damage, including pain, suffering, emotional distress, trauma, and permanent injuries, inflicted upon James R. Thornwell as a result of the administration by Army personnel of LSD to him in 1961 without his knowledge or consent after subjecting him for six preceding weeks to extreme physical and emotional stress, as part of an Army drug testing program in which he was the only American subject, and as a result of the concealment by the Army of the use of LSD from James R. Thornwell for seventeen years thereafter, during which time he suffered from severe psychological disorientation, and of the Army's failure to provide him any followup care. The payment of such sum shall be in full satisfaction of all claims of James R. Thornwell, his heirs, executors, personal representatives, or assigns, of any nature whatsoever against the United States and its agencies, or against any past or present employee, agent, officer, or person of or associated with the United States, in connection with the circumstances of his injuries compensated hereunder, including injuries incurred subsequent to his discharge from the Armed Forces, and such payment shall be in lieu of any further compensation or award for such injuries.

SEC. 2. No part of the amount appropriated by this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, any contract to the contrary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

MOTION OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. OBERSTAR moves to strike out all after the enacting clause of the Senate bill, S. 1615, and insert in lieu thereof the provisions of H.R. 5063 as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 5063) was laid on the table.

JESSE KUO TANG AND SHARON KUO TANG

The Clerk called the bill (H.R. 935) for the relief of Jesse Kuo Tang and Sharon Kuo Tang.

There being no objection, the Clerk read the bill, as follows:

H.R. 935

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of sections 203(a)(1) and 204 of the Immigration and Nationality Act Jesse Kuo Tang and Sharon Kuo Tang shall be held and considered to be the natural born alien son and daughter of Stanley Chih Chin Tang and Nancy Tsou Tang, citizens of the United States: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

With the following committee amendment:

Strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Jesse Kuo Tang and Sharon Kuo Tang may be classified as children within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in their behalf by Mr. and Mrs. Stanley Chih-Chin Tang, citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

KIT TUNG

The Clerk called the bill (H.R. 936) for the relief of Kit Tung.

There being no objection, the Clerk read the bill, as follows:

H.R. 936

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of sections 203(a)(1) and 204 of the Immigration and Nationality Act, Kit Tung shall be held and considered to be the natural-born alien daughter of Mrs. June Armand, a citizen of the United States: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed, and read a third time, and was read the third time, and passed, and a motion to reconsider was laid on the table.

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RAYMOND M. GEE

The Clerk called the bill (H.R. 3096) for the relief of Raymond M. Gee.

There being no objection, the Clerk read the bill, as follows:

H.R. 3096

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Raymond M. Gee may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in his behalf by Mr. and Mrs. Robert L. Gee, citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EILEEN ANGELLA CROSSDALE

The Clerk called the bill (H.R. 3869) for the relief of Eileen Angella Crossdale.

There being no objection, the Clerk read the bill, as follows:

H.R. 3869

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes section 203(a)(2) and 204 of the Immigration and Nationality Act, Eileen Angella Crossdale shall be held and considered to be the natural born alien daughter of William Alexander and Linda Beatrice Crossdale, lawful permanent residents of the United States: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Eileen Angella Crossdale may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by William Alexander and Linda Beatrice Crossdale, a lawfully resident alien and a citizen of the United States, respectively, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Eileen Angella Crossdale."

A motion to reconsider was laid on the table.

ANNETTE JUTTA WOHRLE

The Clerk called the bill (H.R. 4522) for the relief of Annette Jutta Wohrle.

There being no objection, the Clerk read the bill, as follows:

H.R. 4522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Annette Jutta Wohrle shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct one number from the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202 (c) of such Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Annette Jutta Wohrle may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Hans Wohrle, citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

LILIA ESTER CANTU

The Clerk called the bill (H.R. 5157) for the relief of Lilia Ester Cantu.

There being no objection, the Clerk read the bill as follows:

H.R. 5157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Lilia Ester Cantu shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct one number from the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under section 203 (a) of the Immigration and Nationality Act or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Lilia Ester Cantu may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Luis Cantu, a citizen of the United States, and a lawful resident alien, respectively, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JARAMPORN SERMSRI AND AKHARATA SERMSRI

The Clerk called the bill (H.R. 5379) for the relief of Jaramporn Sermsri and Akharata Sermsri.

There being no objection, the Clerk read the bill, as follows:

H.R. 5379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Jaramporn Sermsri and Akharata Sermsri may be classified as children within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in their behalf by Jack Costner, a citizen of the United States, and his spouse, Chantira Costner pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

With the following committee amendment:

On line 7, delete the words "Jack Costner, a citizen of the United States, and his spouse, Chantira Costner" and insert in lieu thereof the words "Mr. and Mrs. Jack Costner, a citizen of the United States, and a lawful resident alien, respectively"

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MICHAEL CHINWEN KE

The Clerk called the bill (H.R. 5745) for the relief of Michael Chinwen Ke.

There being no objection, the Clerk read the bill, as follows:

H.R. 5745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Michael Chinwen Ke may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in his behalf by Charles H. and Jean C. Ke citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ELENA PATRICIA MATTOS

The Clerk called the bill (H.R. 6030) for the relief of Elena Patricia Mattos.

There being no objection, the Clerk read the bill, as follows:

H.R. 6030

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Elena Patricia Mattos may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Napoleon Mattos, a citzen of the United States, and a lawful resident alien, respectively, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RENUKA PAVLA

The Clerk called the Senate bill (S. 215) for the relief of Renuka Pavla.

There being no objection, the Clerk read the Senate bill, as follows:

S. 215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Renuka Pavla may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon the approval of a petition filed on her behalf by Mr. and Mrs. Kenneth L. Lucas, citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The Senate bill was ordered to be read a third time, was read the third time,

and passed, and a motion to reconsider was laid on the table.

KUO-YAO CHENG

The Clerk called the bill (H.R. 1316) for the relief of Kuo-Yao Cheng.

There being no objection, the Clerk read the bill as follows:

H.R. 1316

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provision of section 212(a)(9) of the Immigration and Nationality Act, Kuo-Yao Cheng may be issued a visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act: *Provided,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

FEERONAIH ABBOSH

The Clerk called the bill (H.R. 4139) for the relief of Feeronaih Abbosh.

There being no objection, the Clerk read the bill as follows:

H.R. 4139

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Feeronaih Abbosh shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct one number from the total number of immigrant admissions authorized to the provisions of section 21(c) of the Act of October 3, 1965.

With the following committee amendment:

On page 2, line 5, delete the words "admissions authorized to the provisions of section 21(e) of the Act of October 3, 1965." and insert in lieu thereof the words "visas and conditional entries which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act: *Provided,* That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as described by section 213 of the said Act.".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SEUNG JA KIM AND LADA KIM

The Clerk called the bill (H.R. 4778) for the relief of Seung Ja Kim and Lada Kim.

There being no objection, the Clerk read the bill, as follows:

H.R. 4778

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, for the purposes of the Immigration and Nationality Act, Seung Ja Kim and Lada Kim shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct two numbers from the total number of immigrant visas and conditional entries which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act (8 U.S.C. 1152(e)).

With the following committee amendments:

On page 1, line 4, delete the words "Seung Ja Kim and Lada Kim" and insert in lieu thereof: "Sada Kim".

On page 2, line 5, delete the words "two numbers" and insert in lieu thereof: "one number".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill for the releif of Sada Kim".

A motion to reconsider was laid on the table.

LEOPOLDINE MARIE SCHMID

The Clerk called the bill (H.R. 6739) to confer U.S. citizenship posthumously upon Leopoldine Marie Schmid.

There being no objection, the Clerk read the bill, as follows:

H.R. 6739

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Leopoldine Marie Schmid, late of San Mateo, California, and formerly of Zurich, Switzerland, shall be held and considered to have been a citizen of the United States at the time of her death.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER. That concludes the call of the Private Calendar.

UNITED STATES SHOULD STAND APART FROM POL POT REGIME

(Mr. BONIOR of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BONIOR of Michigan. Mr. Speaker, I am somewhat shocked to have picked up the morning paper this morning and to have read that the United States plans to support the Pol Pot regime for a seat in the United Nations. A year ago today, a year ago at this time, we participated in a similar act to the dismay of literally millions of people in this country, and especially those who have been supporters of the administration's progressive and humane policies with respect to human rights.

I would suggest that the administration look carefully at what it is planning to do next week at the United Nations in New York, and take the advice of Senator TSONGAS and Senator LEVIN, who have written the Government of this country and suggested that we should stand apart from the brutality of both the Communist Pol Pot government and the Communist Vietnamese client-government of Heng Samrin.

I think the best policy is expressed by the Reverend Ellis in the prayer at the beginning of this session, when he asked that we girdle our power in righteousness.

PERSONAL EXPLANATION

Mr. RUSSO. Mr. Speaker, due to illness in my family, I was granted, by unanimous consent, a leave of absence last week. I would have voted in the following manner had I been here:

In favor of H.R. 7235, the Rail Act of 1980, rollcall No. 534.

In favor of the Staggers-Rahall amendment to H.R. 7235, rollcall No. 531.

In favor of H.R. 7301, military construction authorizations, rollcall No. 539.

I ask unanimous consent that these remarks appear in the permanent RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

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PROPOSED AMENDMENT WOULD GUARANTEE NEW FUNDING LEVELS FOR DEFENSE SPENDING

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, it appears increasingly likely that the Congress will not complete action on the fiscal year 1981 Defense Appropriations Act by October 1. Thus, a continuing resolution will be required. But a continuing resolution based on last year's funding levels will have critical detrimental impacts on the operations of the Department of Defense.

The Defense bill before the House today includes nearly $19 billion more than funded in fiscal year 1980. This major increase is the result of a consensus in both bodies of the Congress that our national security requires real growth in defense investment. This real growth commitment is an integral part of our foreign policy.

A continuing resolution based on fiscal year 1980 rates will require the Department to lose approximately $1.5 billion in obligations each month. The result will be that in December when action on the bill is completed, the Department will be forced to try to make up for lost time. The product will be cost inefficiencies and overall program delays that will harm our efforts to provide adequate national defense without waste.

The perception among the American people and our allies, whom we have asked to increase their defense budgets, will be that the Congress has reneged on its commitment. They will see that apparently national defense is not important enough to justify a one-time divergence from usual congressional procedure.

I do not think that is the signal we want to send. I do not think we want to eliminate much of the benefit from the spending increases we have voted. For these reasons I will be offering an amendment to the continuing resolution in the Appropriations Committee to provide funding at the level included in the House-passed bill. This action is essential to the smooth operation of the Defense Department and I am confident it will be supported by my colleagues in this body.

THE PRESIDENT'S UNEMPLOYMENT PROGRAM: PLAYING POLITICS?

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, a hearing and markup on the President's proposal to extend unemployment benefits to a full year is scheduled for tomorrow before the Ways and Means Subcommittee on Unemployment Compensation.

This meeting was postponed last week because the administration's proposal was not ready. The full text still has not been received. Only late yesterday afternoon did we get a page and a half outline of what the President has in mind. Evidently the rest of the proposal is still being hurriedly hashed out and pasted together—by the same President who has refused to cut taxes because it would be political so close to elections.

Evidently he does not think an expensive program to blanket the Nation with a full year of unemployment benefits only a month before the election has anything to do with politics.

How cynical can politics become? These new benefits are to be a 6-month, one-shot deal beginning a month before the election. The $1.3 billion cost will be financed entirely from general revenues.

The areas hardest hit, such as the auto industry, already have a full year's benefits at fairly high levels under trade adjustment assistance. In some States which still have insured unemployment rates of less than 2 percent, a full year's benefits are simply not appropriate.

Why is this legislation being rushed through so quickly and casually that the ink cannot dry and the merits cannot be debated?

The answer just might be that the President is making political use of the fear of unemployment resulting from his policies, in order to prevent his own unemployment.

DISNEYLAND REALITY—WASHINGTON MAKE-BELIEVE

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, some people who have visited Disneyland at Anaheim, Calif., and the House of Representatives in Washington, D.C., have observed that reality is in Anaheim, make-believe is here. Reality at Disneyland came through last week in a very noble, positive way. Date Night at Disneyland is limited to one boy and one girl to form a dance couple. A commercial enterprise has loudly declared that a heterosexual lifestyle is the rule on its premises. This rejection of homosexuality is to be commended for the example which it sets at one of the Nation's most prominent institutions.

Mr. Speaker, it is sad that some politicians do not have similar courage in setting an appropriate moral tone for our Nation.

THE CARTER CAMPAIGN'S SHAMELESS EFFORT TO BUY VOTES

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, the Carter administration is shoveling out election year goodies to key States in an outrageous effort to buy votes with taxpayer dollars in areas considered crucial to President Carter's bid for reelection.

Typical of this politically motivated largesse was Vice President MONDALE's announcement last week of more than $100 million in Federal grants for Chicago area projects.

The Carter forces have selected Philadelphia, another key vote center, for more than a billion dollars in Federal goodies. This includes overhaul work on two aging aircraft carriers and some $100 million in urban grants that were announced, with great preelection fanfare.

Pro-Carter officials are openly urging urban areas to seek Federal aid before the election in order to better their chances.

This is a shameless effort by the Carter campaign to buy votes and misuse Federal office for political gain.

MIDDLE-INCOME AMERICANS DESERVE PREELECTION VOTE ON 1981 BUDGET

(Mr. KRAMER asked and was given permission to address the House for 1 minute.)

Mr. KRAMER. Mr. Speaker, Saturday's Washington Post contained an article that will come as no shock to middle-income taxpayers across the country. However, it does point up what many of us on the minority side of the aisle have been saying for quite some time, and that is that middle-income Americans are paying for the bulk of Government programs conceived in Washington. The article cited an IRS study indicating that although middle-income Americans make up only 38.2 percent of the taxpaying population, they pay 60.1 percent of the taxes which keep the Federal Government going. Thus, you would think that the least this Congress would do is to let these taxpayers have an idea what is in store for them next year before they go to the polls on November 4.

Mr. Speaker, we have just 3 weeks to go before the scheduled start of the October recess. I would once again urge the majority leadership to reconsider its plan to put off a vote on the 1981 budget until after the election. The people have a right to know right now what kind of taxes and spending the present Congress has in mind for the fiscal year starting October 1. The public has a right to know whether the Democratic Party is going to make good on its promise to balance the budget, or whether we are in store for more deficit spending and higher inflation once again.

A CALL FOR MORE TESTIMONY IN HEARINGS ON STEALTH AIRCRAFT LEAK

(Mr. BEARD of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEARD of Tennessee. Mr. Speaker, this morning in the Stealth aircraft hearing before the Subcommittee on Investigations of the Committee on Armed Services, retired Admiral Zumwalt indicated to the committee his sources felt that Deputy Assistant for National Security Affairs David Aaron should be called as a witness to his role or his knowledge of the leaks made to George Wilson of the Washington Post concerning this critically important national defense program.

Apparently the admiral's sources within the White House are saying the same thing my sources are saying. It is for this reason and it is because of the fact the Secretary of Defense refused to name those individuals he communicated with at the White House, in making the decision to declassify the Stealth program, that I have requested the subcommittee chairman, the gentleman from New York, Mr. SAM STRATTON, to ask the President to make available Mr. David Aaron, the Deputy Assistant for National Security Affairs, and also Peter Hamilton, Special Assistant to Secretary of Defense Brown, to testify under oath before our committee.

Mr. Speaker, there is growing evidence that no matter how unfortunate this Stealth episode may seem, it is actually just one gross leak among many others that is beginning to form a very distressing pattern.

IS THIS ANY WAY TO RUN A CONGRESS?

(Mr. ROUSSELOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Speaker, the Budget Act of 1974 requires that the Congress complete consideration of the binding second concurrent budget resolution for the upcoming fiscal year by September 15.

Well, today is the 16th of September—the 15th has come and gone. And, while the House has been preoccupied with such pressing issues as the marketing of

walnuts and olives, there is still no budget for fiscal year 1981 in sight.

The fact is, the House Budget Committee has not budged. The chairman has not even scheduled the first markup session for the second budget resolution, and rumor has it that the new fiscal year will begin before the markup.

Given the fact that the House leadership has scheduled a recess—or, as I prefer to call it, a Democrat walkout—to begin on October 4, it is entirely probable that the Federal Government will be running without any budget at all for at least the first 2 months of the next fiscal year.

Is this any way to run a Congress? Is this any way to run a country? You bet it is not.

TRIBUTE TO MAJ. GEN. GEORGE S. PATTON

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I would like to pay tribute today to one of our most distinguished and dedicated military leaders, Maj. Gen. George S. Patton, who retired from the U.S. Army on August 31, 1980, after 34 years of honorable and faithful service to our Nation's Armed Forces. General Patton leaves a rich legacy of achievement and he has surely pointed the way for Army leaders in the years to come.

General Patton was born December 24, 1923, in Boston, Mass., the youngest of three children of the late Gen. George S. Patton, Sr., the illustrious and distinguished commander of World War II fame. General Patton is married to the former Joanne Holbrook. They have five children, Margaret, George, Jr., Robert, Helen, and Benjamin.

General Patton was graduated from the Hill School in Pottstown, Pa., in 1942 and the U.S. Military Academy at West Point, N.Y., in 1946, at which time he was commissioned as a second lieutenant of infantry. During his career in the Army, General Patton distinguished himself by exceptionally meritorious service in the Korean and Vietnam conflicts and in successive command positions of great responsibility. He served as assistant division commander, 4th Armored Division assistant commandant, U.S. Army Armor School; commanding general, U.S. Army Readiness Region 1; commanding general, 2d Armored Division; deputy commanding general, VII Corps, U.S. Army, Europe; and as director of readiness, Headquarters, U.S. Army Materiel Development and Readiness Command.

General Patton's integrity and courage were an inspiration to all who served with him and his superb leadership earned him the esteem of soldiers at every level. His distinguished service was characterized by innovative and dynamic leadership, efficient management of resources and the deepest concern for the welfare of his troops.

General Patton was awarded many military medals and decorations during his career, including the Distinguished Service Cross, Distinguished Service Medal, Silver Star, Legion of Merit, Distinguished Flying Cross, and the Bronze Star Medal.

I proudly salute General Patton for his splendid record of achievement and his outstanding contribution to the Armed Forces and our Nation. General Patton is a credit to the Army and the Nation he served so well. I wish him well in retirement.

MRS. DOWNAND IS TURNED OFF BY DEMOCRATS

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, the continuing saga of the Democratic campaign film clips will go on this week. Last Wednesday I called these to the attention of the House, after I had seen the Carter clips on TV. It showed a Mrs. Downand, at a Presidential town meeting in Steubenville, Ohio. She had expressed some concern over the President's EPA policies and coal policies. The President, in effect, said, "You come down to Washington and I will talk this over with you." The clip shows her blowing kisses to the President and saying, "I love you, Mr. President." That was the impression that was given in the powerful TV ad.

As I pointed out then, what the film clip did not show was that she came to Washington, and she left the White House in tears because it was pretty obvious to her that the President and his advisers were not going to listen in any way to what she wanted.

As a gesture of honesty, I read that the Carter campaign committee has pulled this television ad.

I noticed this week that Mrs. Downand has now indicated that, after that brief foray at the White House, she is not going to support Mr. Carter, and indeed is going to support Mr. Reagan. I know my colleagues would like to have that information.

FISH AND WILDLIFE CONSERVATION ACT OF 1980

Mr. BREAUX. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 3292) to assist the States in developing fish and wildlife conservation plans, and for other purposes, with the Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Fish and Wildlife Conservation Act of 1980".

SEC. 2. DECLARATION OF FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares the following:

(1) Fish and wildlife are of ecological, educational, esthetic, cultural, recreational, economic, and scientific value to the Nation.

(2) The improved conservation and management of fish and wildlife, particularly nongame fish and wildlife, will assist in restoring and maintaining fish and wildlife and in assuring a productive and more esthetically pleasing environment for all citizens.

(3) Many citizens, particularly those residing in urban areas, have insufficient opportunity to participate in recreational and other programs designed to foster human interaction with fish and wildlife and thereby are unable to have a greater appreciation and awareness of the environment.

(4) Historically, fish and wildlife conservation programs have been focused on the more recreationally and commercially important species within any particular ecosystem. As a consequence such programs have been largely financed by hunting and fishing license revenues or excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the conservation needs of nongame fish and wildlife.

(5) Each State should be encouraged to develop, revise, and implement, in consultation with appropriate Federal, State, and local and regional agencies, a plan for the conservation of fish and wildlife, particularly those species which are indigenous to the State.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife; and

(2) to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) The term "approved conservation plan" means the conservation plan of a State approved by the Secretary pursuant to section 5(a) of this Act.

(2) The term "conservation plan" means a plan developed by a State for the conservation of fish and wildlife which meets the requirements set forth in section 4.

(3) The terms "conserve", "conserving", and "conservation" mean to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the ecological, educational, esthetic, cultural, recreational, and scientific enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(4) The term "designated State agency" means the commission, department, division, or other agency of a State which has primary legal authority for the conservation of fish and wildlife. If any State has placed such authority in more than one agency, such term means each such agency acting with respect to its assigned responsibilities but such agencies, for purposes of this Act, shall submit a single conservation plan.

(5) The term "fish and wildlife" means wild vertebrate animals that are in an unconfined state, including, but not limited to, nongame fish and wildlife.

(6) The term "nongame fish and wildlife" means wild vertebrate animals that are in an unconfined state and that—

(A) are not ordinarily taken for sport, fur, or food, except that if under applicable State law, any of such animals may be taken for sport, fur, or food in some, but not all, areas of the State, any of such animals within any area of the State in which such taking is not permitted may be deemed to be nongame fish and wildlife;

(B) are not listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531–1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)).

Such term does not include any domesticated species that has reverted to a feral existence.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SEC. 4. CONSERVATION PLANS.

The conservation plan for any State must—

(1) provide for the vesting in the designated State agency of the overall responsibility for the development and revision of the conservation plan;

(2) provide for an inventory of the nongame fish and wildlife, and such other fish and wildlife as the designated State agency deems appropriate, that are within the State and are valued for ecological, educational, esthetic, cultural, recreational, economic, or scientific benefits by the public;

(3) with respect to those species identified under paragraph (2) (hereinafter in this section referred to as "plan species"), provide for—

(A) the determination of the size, range, and distribution of their populations, and

(B) the identification of the extent, condition, and location of their significant habitats;

(4) identify the significant problems which may adversely affect the plan species and their significant habitats;

(5) determine those actions which should be taken to conserve the plan species and their significant habitats;

(6) establish priorities for implementing the conservation actions determined under paragraph (5);

(7) provide for the monitoring, on a regular basis, of the plan species and the effectiveness of the conservation actions determined under paragraph (5);

(8) provide for plan review and revision, if appropriate, at intervals of not more than 3 years.

(9) ensure that the public be given opportunity to make its views known and considered during the development, revision, and implementation of the plan; and

(10) provide that the designated State agency consult, as appropriate, with Federal agencies, and other State agencies during the development, revision, and implementation of the plan, in order to minimize duplication of efforts and to ensure that the best information is available to all such agencies.

SEC. 5. APPROVAL OF CONSERVATION PLANS AND CERTAIN NONGAME FISH AND WILDLIFE CONSERVATION ACTIONS.

(a) APPROVAL BY SECRETARY OF PLANS.—(1) Any State may apply to the Secretary for approval of a conservation plan.

(2) Applications for the approval of conservation plans shall be made and reviewed by the Secretary in such mannner as the Secretary shall by regulation prescribe.

(3) As soon as practicable, but not later than 180 days, after the date on which a State submits (or resubmits in the case of prior disapproval) an application for the approval of a conservation plan the Secretary shall—

(A) approve the conservation plan, and designate it as an approved conservation plan, if he determines that the plan—

(i) meets the requirements set forth in section 4, and

(ii) is substantial in character and design; or

(B) disapprove the conservation plan if he determines that—

(i) the plan does not meet the requirements set forth in section 4, or

(ii) to implement any part of the plan on the basis of the specifications, determinations, identifications, or priorities therein would threaten the natural stability and continued viability of any of the plan species concerned.

If the Secretary disapproves a plan, he shall give the State concerned a written statement of the reasons for disapproval and provide the State opportunity for consultation with respect to deficiencies in the plan and the modifications required for approval.

(b) EFFECT OF APPROVAL OF PLANS.—If the Secretary approves the conservation plan of any State under subsection (a)—

(1) that portion of such plan that pertains to wildlife conservation shall be deemed to be an approved plan for purposes of section 6(a)(1) of the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act; and

(2) that portion of such plan that pertains to fish conservation shall be deemed to be an approved plan for the purposes of section 6(a)(1) of the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(c) CONSERVATION ACTION.—If the Secretary approves the conservation plan of any State under subsection (a), those conservation actions set forth in the plan which pertain to nongame fish and wildlife shall be deemed to be eligible as nongame fish and wildlife projects for which reimbursment is available under section 6.

(d) NONGAME CONSERVATION ACTIONS IN THE ABSENCE OF AN APPROVED PLAN.—In the absence of an approved conservation plan, and on a showing of need by the State, the Secretary may deem certain conservation actions to be nongame fish and wildlife projects for which reimbursement is available under section 6(a)(3) if they—

(1) are consistent with such of the requirements set forth in section 4 as may be appropriate, including, but not limited to, the requirements in paragraphs (3), (4), (5), and (7) of such section; and

(2) are substantial in character and design.

SEC. 6. REIMBURSEMENT OF STATE COSTS FOR DEVELOPING, REVISING, AND IMPLEMENTING CONSERVATION PLANS AND IMPLEMENTING CERTAIN NONGAME FISH AND WILDLIFE CONSERVATION ACTIONS.

(a) IN GENERAL.—Any State may apply to the Secretary for reimbursement under this section for costs incurred by the State for the following:

(1) The development of a conservation plan.

(2) The revision of an approved conservation plan.

(3) The implementation of nongame fish and wildlife conservation actions approved under section 5(c) and (d).

(4) The implementation of conservation actions specified in an approved conservation plan.

(5) The coordination, consolidation, or implementation of the conservation plan or conservation actions approved under this Act with other related plans or actions developed pursuant to the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act and the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(b) APPLICATIONS.—Application for reimbursement under this section shall be made in such manner as the Secretary shall by regulation prescribe and shall contain such information as is necessary to enable the Secretary to determine whether the State meets the eligibility requirements set forth in subsection (c).

(c) ELIGIBILITY.—No State is eligible for reimbursement under this section unless the Secretary finds that the costs, for which reimbursement is sought, have been incurred by the State as follows:

(1) If reimbursement is sought under subsection (a)(1), such costs have been incurred in developing a conservation plan that meets the requirements set forth in section 4.

(2) If reimbursement is sought under subsection (a)(2), such costs have been incurred in revising the plan in a manner consistent with such requirements.

(3) If reimbursement is sought under subsection (a)(3), such costs have been incurred in implementing the conservation actions as approved by the Secretary.

(4) If reimbursement is sought under subsection (a)(4), such costs have been incurred in implementing conservation actions specified in, and in a manner consistent with, the approved conservation plan.

(5) If reimbursement is sought under subsection (a)(5), such costs have been incurred in consolidating, coordinating or implementing conservation plans and actions approved under this Act with approved plans and actions under the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to at the Dingell-Johnson Sport Fish Restoration Act and the Act of September 2, 1950 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act in a manner consistent with sections 2 and 4 of this Act.

(d) REIMBURSEMENT.—Subject to the limitations in subsection (c) and the terms and conditions imposed under section 7, and to the availability of funds appropriated under section 11, the Secretary shall reimburse each State which the Secretary finds to be eligible therefor under subsection (c).

(e) LIMITATIONS.—(1) The total amount of the reimbursement paid to any State under this section with respect to any fiscal year may not exceed the allocation available to the State under section 8 for such year.

(2) No reimbursement may be paid under this section to any State for any cost incurred by the State during any fiscal year—

(A) after September 30, 1991, in developing a conservation plan;

(B) after September 30, 1986, for costs incurred in implementing certain nongame fish and wildlife actions approved under section 5(d);

(C) in which less than 80 percent of the costs to be reimbursed are for the principal benefit of nongame fish and wildlife or the users of nongame fish and wildlife;

(D) in implementing an approved conservation plan, unless the cost was incurred in implementing actions approved under section 5 (c) or (d);

(E) in implementing an approved conservation plan covering only nongame fish and wildlife, or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that more than 10 percent of such costs are paid for with moneys collected during such year by the State—

(i) from the sale of hunting, fishing, and trapping licenses, and

(ii) as penalties (including forfeitures) for violations of the hunting, fishing, and trapping laws of the State; or

(F) in implementing an approved conservation plan or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that—

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(I) more than 10 percent of such costs are applied for purposes of conservation law enforcement under any such plan or action, and

(II) more than 10 percent of such costs in any such year are accounted for by personal service or other inkind contributions.

(3) The amount of the reimbursement paid to any State under this section with respect to any fiscal year—

(A) may not exceed 75 percent for the development of a conservation plan except that during fiscal years 1982, 1983, and 1984 such amount shall not exceed 90 percent;

(B) for the implementation of nongame fish and wildlife conservation actions approved under section 5 (c) or (d), may not exceed 75 percent of the cost of implementing the action during such fiscal year, except that if such action is undertaken by two or more States such amount shall not exceed 90 percent;

(C) during and after the fiscal year in which the conservation plan of the State is approved under section 5(a), may not exceed 75 percent of the cost of implementing and revising the conservation plan during such fiscal year, or if two or more States cooperate in implementing or revising such plan, such cost shall not exceed 90 percent, and

(D) after September 30, 1991, may not exceed—

(I) 50 percent of the cost of implementing and revising the plan during the fiscal year, if the approved conservation plan of the State covers only nongame fish and wildlife, or

(II) 75 percent of the cost of implementing and revising the plan during such fiscal year, if the approved conservation plan of the State coordinates and consolidates planning for fish and wildlife.

(4)(A) In computing the costs incurred by any State during any fiscal year in developing or revising conservation plans, in implementing approved conservation plans, or in implementing nongame fish and wildlife conservation actions approved under section 5 (c) or (d), for which reimbursement may be available under this section, the Secretary shall—

(i) take into account, in addition to each outlay, the value of inkind contributions and real and personal property received and applied during such year by the State for such purposes; and

(ii) not include any other Federal moneys received by such State and applied by it, directly or indirectly, for such purposes.

(B) For purposes of subparagraph (A), inkind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies regarding fish and wildlife. The Secretary shall by regulation establish (i) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as inkind contributions; and (ii) the standards under which the Secretary will determine the value of inkind contributions and real and personal property for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be final and conclusive.

SEC. 7. TERMS AND CONDITIONS OF REIMBURSEMENT.

Reimbursements made to the States under section 6 shall be subject to such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. Such terms and conditions shall include, but not be limited to, the following:

(1) Each State and each designated State agency shall keep such records as the Secretary shall require as being necessary or appropriate for fully disclosing the amount and purposes of costs incurred by the State for which reimbursement under section 6 is, or may be, sought. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to such records.

(2) Upon a finding by the Secretary, after notice and opportunity for an agency hearing on the record, that any State has received reimbursement under section 6 for which it is not eligible, or has violated any term or condition imposed under this section, the State shall thereafter be ineligible to receive reimbursement under such section until restitution satisfactory to the Secretary is made, such violation ceases, or adverse effects resulting from such violation are remedied.

SEC. 8. ALLOCATION OF FUNDS FOR ADMINISTRATION AND REIMBURSEMENT OF STATES.

(a) IN GENERAL.—The total amount appropriated pursuant to section 11 for any fiscal year shall be available for administration and for allocation among the States as provided in this section.

(b) ALLOCATION FORMULA.—Of the total amount appropriated for any fiscal year pursuant to section 11—

(1) the Secretary shall deduct so much, but not to exceed 8 percent thereof, as may be necessary for administering during such fiscal year the provisions of this Act relating to the purposes for which so appropriated;

(2) less the deduction under paragraph (1), the Secretary shall allocate—

(A) for the District of Columbia and the Commonwealth of Puerto Rico each a sum equal to not more than one-half of 1 percent of such amount; and

(B) for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands each a sum equal to not more than one-sixth of 1 percent of such amount; and

(3) less the deduction under paragraph (1) and the sums allocated under paragraph (2), the Secretary shall allocate for each of the States (other than those provided for in paragraph (2)) a sum—

(A) one-third of which is based on the ratio to which the area of such State bears to the total area of all such States, and

(B) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States,

except all sums allocated under this paragraph shall be adjusted equitably so that no State shall be allocated a sum which is less than one-half of 1 percent of the amount available for allocation under this paragraph for any fiscal year or more than 5 percent of such amount.

(c) TREATMENT OF AMOUNTS ALLOCATED BUT NOT USED FOR ANY FISCAL YEAR.—(1) That portion of any amount deducted by the Secretary under subsection (b)(1) for administrative purposes for any fiscal year and not expended during such fiscal year shall remain available for administrative purposes until the close of the next succeeding fiscal year and if not obligated or expended by the close of such succeeding fiscal year shall be available for disbursement by the Secretary without regard to subsection (b), to the States to carry out the purposes of this Act.

(2) That portion of any amount allocated to any State under subsection (b) (2) or (3) for any fiscal year and not disbursed to the State for such fiscal years under section 6 shall remain available for disbursement to the State under such section for the next succeeding fiscal year and if not disbursed for such succeeding fiscal year shall be available for disbursement by the Secretary, without regard to subsection (b), to the States to carry out the purposes of this Act.

SEC. 9. OTHER FEDERAL ASSISTANCE AND ACTIONS.

The Secretary and the chief executive officer of any other appropriate Federal department or agency may loan to any State such personnel and equipment of the department or agency, share such scientific or other appropriate information, and provide such other assistance as the Secretary or officer determines appropriate for purposes of assisting any State to develop or revise conservation plans.

SEC. 10. DISCLAIMERS.

Nothing in this Act shall be construed as affecting—

(1) the authority, jurisdiction, or responsibility of the States to manage, control, or regulate fish and resident wildlife under State law;

(2) any requirement under State law that lands, waters, and interests therein may only be acquired for conservation purposes if the owner thereof is a willing seller; and

(3) the authority of the Secretary of Agriculture under the Act of March 2, 1931 (46 Stat. 1468–1469; 7 U.S.C. 426–426b).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for purposes of making reimbursements under section 6 to States for the development and implementation of conservation plans and for administration of this Act under section 8 not to exceed $5,000,000 for each of fiscal years 1982, 1983, 1984, and 1985.

SEC. 12. STUDY.

The Director of the United States Fish and Wildlife Service, in consultation with affected parties, shall conduct, out of funds available for the administration of this Act a comprehensive study to determine the most equitable and effective mechanism for funding State conservation plans and actions under this Act, including, but not limited to, funding by means of an excise tax on appropriate items. On or before the expiration of the 30-month period following the date of enactment of this Act, the Director shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives the results of such study, together with his recommendations with respect thereto.

Amend the title so as to read: "An Act to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes.".

Mr. BREAUX (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

Mr. FORSYTHE. Mr. Speaker, reserving the right to object, I do so in order to conduct a colloquy with the chairman of the subcommittee on this very important bill, very important in that it is one that we have been working on with the Senate and with the administration now for nearly 4 years, and to have it at the stage where, by adopting the Senate amendments, we can now send it to the President I think is a very important occasion.

Mr. Speaker, the enactment of the Fish and Wildlife Conservation Art would represent no less than the dawning of a new era in fish and wildlife management in this country. The primary focus of H.R. 3292, which provides matching funds to the States for the development of comprehensive conservation plans for fish

and wildlife, will be on those species which are not hunted for sport, food, or fur—the so-called nongame species.

Although the Pittman-Robertson and Dingell-Johnson programs have gone a long way toward fulfilling the conservation needs of game species, the sad truth is that no comparable legislation exists for the conservation and enhancement of nongame fish and wildlife, despite the fact that approximately 83 percent of all vertebrates found within the United States are considered nongame species. In fact, of the 3,700 vertebrates found within the continental United States, less than 10 percent receive any scentific management to insure their welfare, and, with few exceptions, these represent the game species.

The lack of attention which has been paid to nongame fish and wildlife over the years is reflected by the fact that 86 percent of the vertebrate species which are currently listed as endangered were considered nongame species at the time of their listing. This fact alone points to the disproportionate impact of man's activities on nongame fish and wildlife. Unfortunately, the problem is likely to grow worse. It is estimated that in the absence of a program such as that provided for in the Fish and Wildlife Conservation Act, 450 nongame species could be added to the endangered list by 1990—120 within the next 5 years.

H.R. 3292 will provide the first step in establishing a comprehensive conservation program for nongame species. It accomplishes this purpose by providing matching funds to the States to enable the States to complete a comprehensive inventory and assessment of the current status of, and the problems facing these species. The legislation also recognizes that game and nongame species live in the same habitat and, therefore, provides money for the development of comprehensive conservation plans which cover game species.

In addition to establishing a conservation plan for the majority of the fish and wildlife species found within the United States, H.R. 3292 will reduce environmental-developer conflict by providing data which can be used in the early assessment of projects. Currently, we are faced with the unpleasant situation of having many projects well underway before the impact of the project on the fish and wildlife in the area is known. This usually leads to extended litigation and unreasonable delay. With the information developed under H.R. 3292 project sponsors will be able to anticipate any adverse impacts on fish and wildlife and can plan projects in such a way as to minimize this impact.

In the same way, the inventories and assessments developed under this bill will permit swifter compliance with the National Environmental Policy Act. No longer will project sponsors be forced to spend large sums of money to develop fish and wildlife data for the preparation of environmental impact statements. No longer will projects be delayed or stopped because of the failure to prepare adequate impact statements with respect to fish and wildlife.

In addition to providing matching funds for the completion of comprehensive plans for the conservation of fish and wildlife, H.R. 3292, as amended by the Senate, provides funds for the implementation of these plans. The House-passed bill only provided for the completion of fish and wildlife conservation plans. The language providing for plan implementation is, in my view, a useful change to the House bill, since it will permit States to undertake specific projects for the benefit of nongame fish and wildlife.

The Senate made two other changes in the House-passed bill. First, the funding was changed. The House bill authorized the appropriation of $19 million over 3 years. The Senate amendments authorize $20 million over 4 years.

The last amendment made by the Senate requires the Secretary of the Interior to conduct a study to determine if it would be appropriate to fund a nongame fish and wildlife conservation program by a means other than general appropriations. Specifically, the Secretary will determine if an excise tax on certain items would be an appropriate funding mechanism.

One of the major changes the final bill makes in the Senate version is the deletion of invertebrates from the bill. The inclusion of invertebrates could quickly exhaust available funds. However, the exclusion of invertebrates from the bill should not be viewed as an indication that invertebrates are not an important part of the ecosystem. States are encouraged to apply their own resources to invertebrates if such species appear in need of conservation and management. In addition, if such species are threatened or endangered or are crucial to the survival of another endangered or threatened species, it is possible that the conservation and management funds made available under section 6 of the Endangered Species Act could be used for the management of these species.

Except for the changes I have described, the Senate has accepted the House bill and for reasons I have already stated, I urge the passage of the Fish and Wildlife Conservation Act, as amended by the Senate. This is landmark wildlife legislation which is supported by all 50 States and by over 260 environmental organizations.

Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. I thank the gentleman for yielding, and I would say that the gentleman is correct in his statement of what the bill does.

Mr. Speaker, H.R. 3292, the Fish and Wildlife Conservation Act of 1980, establishes a matching grant program to assist the States in developing conservation plans for fish and wildlife, with a special emphasis in the State's nongame fish and wildlife populations. The bill passed the House of Representatives on July 9, 1979. The Senate passed their version on May 22, 1980. Since that time, the House and Senate committees have met to resolve their differences on the legislation. The Senate amendment to H.R. 3292, which is before the House today, represents a compromise between the two versions of the legislation.

The Senate amendment makes the following changes to the bill passed by the House last year:

First, the Senate amendment would permit matching grants to enable individual States to implement approved conservation plans for nongame fish and wildlife resources. The House bill had limited the matching grant program to the development of the conservation plans. It now appears that a number of States have made important progress in developing wildlife conservation plans that could be approved under this act. In light of the progress that has been achieved it seems only appropriate to permit the States to seek matching funds for the implementation of the program. To do otherwise would penalize those States that have, on their own initiative, sought to address the conservation needs of nongame species.

Under the Senate amendment, States would be able to receive a 75-percent Federal matching grant once a State has an approved conservation plan. This matching percentage is fully consistent with the existing matching grant program for games species in the Pittman-Robertson program that has been in existence since 1937. As many Members know, the Pittman-Robertson program is one of the most important wildlife conservation programs in this Nation, and, in fact, provides the bulk of the resources to the States for the conservation of game species.

The Senate amendment also provides that the Federal matching share will drop to 50 percent after fiscal year 1991 unless the State's plan consolidates relevant game and nongame plans for fish and wildlife. We believe that this provision is important to encourage the States to integrate their game and nongame planning. Most wildlife biologists now recognize that the long-term conservation of game and nongame species depends on the development of conservation programs which are ecosystem oriented—programs that recognize the interrelationship of these species in the wild.

The second difference between the Senate amendment and the House-passed bill is that the proposed compromise amendment would authorize $20 million over a 4-year period. The House bill had authorized $19 million over a 3-year period.

Third, the amendment directs the U.S. Fish and Wildlife Service to conduct a study to determine the most equitable and effective mechanism for funding nongame conservation projects under this act. Over the last several years, there has been an ongoing discussion about whether nongame programs should be financed out of general appropriations, as is provided in this bill, or whether the funding should come from specially earmarked excise taxes, as is the case with existing game programs.

Unfortunately, no real consensus has developed about the appropriate items that should be subject to any excise tax to fund nongame conservation programs. We do believe, however, that the excise tax option should be further studied and that Congress should reconsider this issue at a later date.

It should be pointed out that the existing game and sport fish programs are financed almost exclusively out of the pockets of the hunters and fishermen of this country. American sportsmen pay an excise tax on items of hunting and fishing equipment, and the proceeds of this tax are distributed to the States for fish and wildlife conservation purposes. Over the last several years, there has been an increasing tendency by the States to divert some of these funds for nongame conservation purposes. Nearly everyone recognizes, however, that these traditional financing mechanisms can never hope to be adequate, nor are they fully appropriate to meet the conservation needs of nongame fish and wildlife. This legislation is intended to address the inadequacies of the existing programs, and hopefully start us down the road to a fully integrated and coordinated fish and wildlife conservation policy.

This bill has been debated, discussed and modified a number of times during the last 4 years. The primary credit for this effort must go to Congressman FORSYTHE, ranking minority member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, who has been the major sponsor, mover, and supporter of this legislation in the House during the last two Congresses. There is absolutely no question that Congressman FORSYTHE's efforts have been essential in developing this legislation, in forming the coalition of State fish and game agencies and environmental groups that support the legislation, and in moving the legislation through the House.

● Mr. ASHLEY. Mr. Speaker, H.R. 3292, the Fish and Wildlife Conservation Act of 1980, establishes a matching grant program to assist the States in developing conservation plans for fish and wildlife, with an emphasis on the States' nongame fish and wildlife species. The House of Representatives passed this bill on July 9, 1979. The Senate passed S. 2181, their version of the legislation on May 22, 1980. Since that time, the House and Senate committees have met to resolve their differences on the legislation. The Senate amendment to H.R. 3292, which is before the House today, represents a compromise between the two versions of the legislation.

The Senate amendment makes the following changes in the bill passed by the House last year:

First, the Senate amendment would permit matching grants to enable individual States to implement approved conservation plans for nongame fish and wildlife resources. The House bill had limited the matching grant program to the development of the conservation plans. Since it now appears that several States have effectively completed their planning process for nongame fish and wildlife conservation, we suggest that those States be permitted to receive implementation money once their conservation plan is approved.

Under the Senate amendment, States would be able to receive a 75-percent Federal matching grant once the State has an approved conservation plan. This percentage is consistent with the existing matching grant program for game species that has been in existence since 1937. The Senate amendment also provides that the Federal matching share will drop to 50 percent after fiscal year 1991 unless the State's plan consolidates the relevant game and nongame plans for fish and wildlife.

Second, the proposed compromise amendment would authorize $20 million over a 4 year period. The House bill had authorized $19 million over a 3-year period.

Third, the amendment directs the U.S. Fish and Wildlife Service to conduct a study to determine the most equitable and effective mechanism for funding nongame conservation projects under this Act. The basic purpose of this study is to determine whether an excise tax is a more appropriate mechanism for funding nongame conservation projects than general appropriations. The existing program for game species derives its revenues from an excise tax on sporting equipment. There has been a continuing discussion about the fairness of extending this principle to the funding of nongame conservation activities. Unfortunately, no consensus has developed about the items that should be subject to this tax. We believe that it will be necessary for the Fish and Wildlife Service to conduct a formal study of this issue so that we have sufficient information to reconsider this issue at a later date.

This legislation has been developed by the Committee on Merchant Marine and Fisheries over a 4-year period. The legislation is strongly supported by the State Fish and Game Agencies and by every major conservation organization. We believe that the legislation represents another important step in promoting the well-being of the Nation's fish and wildlife resources for the enjoyment of all Americans.

I would like to give special congratulations to Congressman FORSYTHE, ranking member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment who has been the primary sponsor and mover of this legislation in the House during the last two Congresses. There is no question that without his continuing interest, support and encouragement we would not be where we are today on this legislation.●

● Mr. MURPHY of New York. Mr. Speaker, H.R. 3292 would assist the States in developing and revising comprehensive plans for the conservation of all vertebrate species of fish and wildlife.

The basic purpose of this bill is to benefit those species of fish and wildlife which are not taken for sport or food. These so-called nongame species have received little direct benefit from State fish and wildlife programs up to now, although they are enjoyed by increasing numbers of urban and rural Americans. The available habitat for these nongame species has decreased at the same time the public is demanding increased opportunities to enjoy nongame wildlife experiences.

Nongame fish and wildlife represent the overwhelming majority of the 3,700 vertebrate species found in the continental United States. Yet, at the present time, only 10 percent of these species are subject to any form of scientific management, and in most instances these are game species. State wildlife conservation programs are primarily supported by funds derived from the sale of State hunting and fishing licenses and from Federal excise taxes on sporting arms and ammunition and fishing equipment. As a result, State management efforts have been focused primarily upon those game species of fish and wildlife which are of interest to the hunters and fishermen paying the excise taxes which fund the program.

This bill recognizes the fact that the vast majority of Americans do not hunt. It also recognizes the fact that more and more urban Americans are seeking improved outdoor recreation opportunities within or adjacent to our cities.

Mr. Speaker, H.R. 3292, as it has passed the House, would authorize any State to apply to the Secretary of the Interior for reimbursement of costs incurred in developing or revising a comprehensive conservation plan for fish and wildlife. Any reimbursement to a State would be limited to 90 percent of the cost of developing or revising a plan.

However, such reimbursement could not be in excess of the allocation available to such State which is based on the size and population of such State as compared to all States. There would be authorized to be appropriated $19 million over a 3-year period to carry out the purposes of the act.

H.R. 3292 passed the House on July 9, 1979. The Senate passed S. 2181, a similar bill to H.R. 3292, on May 22, 1980. Since that time, the members of the Merchant Marine and Fisheries Committee and the Senate Environment and Public Works Committee have agreed on a compromise version and the Senate amendments to H.R. 3292 reflect this compromise version.

The compromise version is very similar to H.R. 3292 as passed by the House, except for three changes:

First, it would allow grants for implementation of approved conservation plans as well as for the development of such plans.

Second, it would increase the funding authorization from $19 million to $20 million and extend the life of the program from 3 to 4 years.

Third, it would add a provision to the bill to require a study on the most appropriate way to finance these conservation projects. The study would focus on whether such funds should come from excise taxes on certain items or from general appropriations.

Mr. Speaker, I highly support the compromise version and urge the House to concur in the Senate amendments to H.R. 3292.●

Mr. FORSYTHE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana (Mr. BREAUX) that the Senate amendments be considered as read and printed in the RECORD?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Louisiana (Mr. BREAUX)?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

PERMISSION TO REDUCE TO 5 MINUTES THE TIME FOR ANY REMAINING VOTES ON MOTIONS TO SUSPEND THE RULES

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that if there is a rollcall vote on the suspension bill about to be called up, the remaining votes to be taken today on suspending the rules and passing bills be reduced to not less than 5 minutes each.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Reserving the right to object, Mr. Speaker, I just want to note that on this side we want to expedite matters, too.

Mr. PHILLIP BURTON. The gentleman is all heart.

Mr. ASHBROOK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

ESTABLISHING ICE AGE NATIONAL SCENIC TRAIL

Mr. PHILLIP BURTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7825) to establish the Ice Age National Scenic Trail, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7825

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Trails System Act (82 Stat. 919; 16 U.S.C. 1241), as amended, is further amended as follows:

(a) Section 5(a) is amended by adding the following new paragraph at the end thereof:

"(10) The Ice Age National Scenic Trail, a trail of approximately one thousand miles, extending from Door County, Wisconsin, to Interstate park in Saint Croix County, Wisconsin, generally following the route described in "On the Trail of the Ice Age—A Hiker's and Biker's Guide to Wisconsin's Ice Age National Scientific Reserve and Trail," by Henry S. Reuss, Member of Congress, dated 1980. The guide and maps shall be on file and available for public inspection in the Office of the Director, National Park Service, Washington, District of Columbia. Overall administration of the trail shall be the responsibility of the Secretary of the Interior pursuant to section 5(d) of this Act. The State of Wisconsin, in consultation with the Secretary of the Interior, may, subject to the approval of the Secretary, prepare a plan for the management of the trail which shall be deemed to meet the requirements of section 5(e) of this Act. Notwithstanding the provisions of section 7(c), snowmobile use may be permitted on segments of the Ice Age National Scenic Trail where deemed appropriate by the Secretary and the managing authority responsible for the segment.".

(b) Section 10(c) is amended by changing "(7), and (8):" to "(7), (8), (9), and (10):", and by inserting "The Ice Age National Scenic Trail," after the phrase "North Country National Scenic Trail,".

SEC. 2. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1981. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

The SPEAKER. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. PHILLIP BURTON) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. SEBELIUS) will be recognized for 20 minutes.

Mr. PHILLIP BURTON. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. REUSS).

□ 1240

Mr. REUSS. Mr. Speaker, I rise in support of H.R. 7825, a bill to make a national scenic trail of Wisconsin's Ice Age Trail.

The bill is cosponsored by my Wisconsin colleagues Congressmen LES ASPIN, ALVIN BALDUS, ROBERT KASTENMEIER, DAVID OBEY, THOMAS PETRI, TOBY ROTH, and CLEMENT ZABLOCKI. An identical bill is sponsored by Senators GAYLORD NELSON and WILLIAM PROXMIRE in the Senate.

This bill has been worked out in close cooperation with the Department of the Interior's Heritage Conservation and Recreation Service. The Interior Department fully supports the bill.

H.R. 7825 has been amended in the House Committee on Interior and Insular Affairs so to conform with existing national scenic trail legislation.

The Ice Age Trail has been developed over the last 20 years by two Wisconsin voluntary citizens groups—the Ice Age Park and Trail Foundation and the Ice Age Trail Council.

The Ice Age Trail provides parallel hiking and biking trails over a 1,000-mile route from Potowatomi State Park in Door County, through Point Beach State Forest in Manitowoc County, through the Northern and Southern Kettle Moraine State Forests, through disused railway rights-of-way, through Devils Lake State Park, over private lands and little-used roads in central Wisconsin, through Chequamegon National Forest, and ending at Interstate Park in Polk County on the Minnesota border.

The trail brings together the nine units of the Ice Age National Scientific Reserve, set up by Congress in a series of laws starting in 1962. Included in the nine units are Two Creeks Buried Forest, Campbellsport Drumlins, Kettle Moraine State Forest, Horicon Marsh, Cross Plains (Dane County), Devils Lake, Mile Bluff, Chippewa Moraine Unit, and Interstate Park.

The Ice Age Trail lies on a variety of lands—national forests, State parks and forests, county parks and forests, and private lands under cooperative agreements.

In August 1979, the Wisconsin Department of Natural Resources assumed joint administrative responsibility for the trail with the private foundation and council. The Wisconsin Department of Natural Resources joins in requesting national scenic trail designation.

The trail offers an outdoor experience close to population centers such as Milwaukee, Chicago, and the Twin Cities, with a population of 12 million.

Jim Staudacher, a 20-year-old Milwaukeean, was the first to hike the full 1,000 miles of the trail, taking 3 months to do so last summer.

This legislation would make the Ice Age National Scientific Reserve a national scenic trail. This status has been accorded to only eight other trails in the Nation, including the 2,000-mile Appalachian National Scenic Trail in the East, and the 2,350-mile Pacific Crest National Scenic Trail extending from the Canadian to the Mexican borders. The designation as a national scenic trail would involve no additional costs, nor disturb the ownership and control of the existing lands in Wisconsin.

Recognition by the Congress of the efforts of private citizens by giving national scenic trail status to the Ice Age Trail will insure the preservation of one of the Nation's finest outdoor resources.

I pay tribute to the House Committee on Interior and Insular Affairs, and particularly its subcommittee headed by that splendid conservationist, the gentleman from California (Mr. PHILLIP BURTON), for its leadership in making the Ice Age a national scenic trail, and to its outstanding minority leader, the gentleman from Kansas (Mr. SEBELIUS), all credit for years of devoted service to the cause of the outdoors.

Mr. SEBELIUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the bill now under consideration, H.R. 7825, which will designate the Ice Age Trail in the State of Wisconsin as a scenic trail unit of our national trails system. This trail route runs for approximately 1,000 miles, and most of its route is already in existence as a completed trail.

A great amount of credit for the development of this bill and for the actual on-site progress in the development of the trail is due our good friend and colleague from Wisconsin, the Honorable HENRY REUSS.

Mr. Speaker, the committee modified this bill very slightly. One change was to authorize the State of Wisconsin to prepare the comprehensive plan pursuant to the provisions of subsection 5(e) of the Trails Act. Normally, by terms of the Trails Act, this responsibility would go to the Secretary of the Interior, through the National Park Service.

Since the State of Wisconsin has been so deeply involved and interested in this project, however, and also since the trail is so integrally involved with the various existing separate units of the Ice Age National Scientific Reserve—which is a cooperative effort of the State and the National Park Service—it seemed only logical to authorize the State to prepare the plan. The intent, however, is that consultation with the National Park Service during plan preparation shall be complete and thorough, and the Secretary of the Interior still retains the authority to finally approve the plan and to submit it to the relevant committees of the Congress, as required by the general provisions of the parent National Trails System Act.

Mr. Speaker, this is a simple bill which will bring very positive environmental and recreational benefits to our country, and I support its adoption by my colleagues.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. ROTH).

Mr. ROTH. Mr. Speaker, I am pleased to be a part of the effort to bring national recognition to the Wisconsin Ice Age Trail by designating it a national scenic trail.

Much of Wisconsin was sculptured from the Wisconsin ice sheet that covered this region 10,000 to 20,000 years ago. Nature's work has blessed our State with spectacular land formations. According to National Geographic magazine, August 1977, "few places on this Earth have a greater variety of geological phenomenon left by glaciation" than Wisconsin's Ice Age Trail.

Today, people seek to explore and enjoy the glories of our Earth. With a greater-than-ever need to encourage energy-saving recreational activities, and the sudden surge in hiking and biking in the State of Wisconsin, and across the United States, we can only anticipate an increasing emphasis on our nature trails.

For 20 years, voluntary citizen groups have been working to develop this trail. These people have succeeded in preserving for posterity natural scenic beauty. Designation of the Ice Age Trail as a national scenic trail is a fitting honor for the two prime carvers of our Nation's landscape, nature, and people. What mother nature perfected, Wisconsinites have preserved.

Wisconsin's Ice Age Trail, the gift of the glacier, is an inspiration to all of us, of the dreams that men have to live in peace and grow with the wonders of nature.

Mr. PHILLIP BURTON. Mr. Speaker, I have no further requests for time.

Mr. SEBELIUS. Mr. Speaker, I have no further requests for time.

The SPEAKER. The question is on the motion offered by the gentleman from California (Mr. PHILLIP BURTON) that the House suspend the rules and pass the bill, H.R. 7825, as amended.

The question was taken.

Mr. SEBELIUS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 397, nays 3, not voting 32, as follows:

[Roll No. 541]

YEAS—397

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Dellums
Derwinski
Devine
Dickinson
Dicks
Dingell
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Heftel
Hightower
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stokes
Stratton
Studds
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wolff
Wolpe
Wright
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—3

McDonald
Paul
Stump

NOT VOTING—32

Anderson, Ill.
Cavanaugh
Clay
de la Garza
Derrick
Dixon
Eckhardt
Erlenborn
Fish
Giaimo
Goldwater
Harsha
Hefner
Holland
Holtzman
Huckaby
Jenrette
Leach, La.
Lundine
McClory
Mattox
Murphy, N.Y.
Myers, Pa.
Nedzi
O'Brien
Shannon
Stockman
Vanik
Wilson, Bob
Wilson, C. H.
Wirth
Wydler

□ 1250

The Clerk announced the following pairs:

Mr. Murphy of New York with Mr. Anderson of Illinois.

Mr. Nedzi with Mr. Dixon.

Mr. Giaimo with Mr. Harsha.

Mr. Vanik with Mr. Wydler.

Mr. Charles H. Wilson of California with Mr. Stockman.

Mr. Wirth with Mr. Erlenborn.

Mr. Jenrette with Mr. Fish.

Mr. Derrick with Mr. Goldwater.

Mr. de la Garza with Mr. McClory.

Mr. Hefner with Mr. Bob Wilson.

Mr. Lundine with Mr. O'Brien.

Mr. Myers of Pennsylvania with Ms. Holtzman.

Mr. Huckaby with Mr. Fowler.

Mr. Clay with Mr. Eckhardt.

Mr. Cavanaugh with Mr. Mattox.

Mr. Shannon with Mr. Leach of Louisiana.

Mr. BARNARD and Mr. DANIELSON changed their votes from "present" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1300

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BARNARD). Pursuant to the provisions of clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed on Monday, September 15, 1980, in the order in which that motion was entertained.

Votes will be taken in the following order: H.R. 7084 by the yeas and nays, and S. 2514.

The Chair will reduce to 5 minutes the time for any electronic vote, pursuant to the unanimous-consent agreement previously granted.

PRETRIAL SERVICES ACT OF 1980

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 7084, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 7084, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device and there were—yeas 243, nays 155, not voting 34, as follows:

[Roll No. 542]

YEAS—243

Addabbo
Akaka
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Beilenson
Benjamin
Bereuter
Bethune
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Brademas
Breaux
Brodhead
Brooks
Broomfield
Brown, Calif.
Buchanan
Burton, John
Burton, Phillip
Carr
Chisholm
Coelho
Collins, Ill.
Conte
Convers
Corman
Cotter
Coughlin
D'Amours
Danielson
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Dellums
Dicks
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Eckhardt
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Evans, Ga.
Evans, Ind.
Fascell
Fazio
Fenwick
Ferraro
Fisher
Fithian
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Gore
Gradison
Gramm
Grassley
Gray
Green
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Harkin
Harris
Hawkins
Heckler
Heftel
Hollenbeck
Horton
Howard
Hughes
Hutchinson
Hyde
Ichord
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Leach, Iowa
Lederer
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, Md.
Lott
Lujan
Luken
Lungren
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Markey
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Murphy, Ill.
Musto
Neal
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Pickle
Preyer
Price
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Ritter
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Sharp
Simon
Smith, Iowa
Snowe
Solarz
Spellman
St Germain
Stack
Staggers
Stark
Steed
Stewart
Stokes
Studds
Swift
Synar
Tauke
Tauzin
Thompson
Traxler
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
White
Whitley
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Wolff
Wolpe
Wright
Wylie
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—155

Abdnor
Albosta
Archer
Ashbrook
Atkinson
Badham
Bafalis
Bauman
Beard, Tenn.
Bennett
Bevill
Bouquard
Bowen
Brinkley
Brown, Ohio
Broyhill
Burgener
Burlison
Butler
Byron
Campbell
Carney
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Derwinski
Devine
Dickinson
Dodd
Dornan
Edwards, Ala.
Edwards, Okla.
Erdahl
Evans, Ind.
Findley
Flippo
Fountain
Frenzel
Fuqua
Gaydos
Gingrich
Goodling
Gradison
Grassley
Grisham
Guyer
Hagedorn
Hance
Hansen
Hightower
Hillis
Hinson
Holt
Hopkins
Hubbard
Hutto
Ireland
Jacobs
Jenkins
Jones, Tenn.
Kemp
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Loeffler
Long, Md.
Lott
Lujan
Lungren
McDonald
McEwen
Madigan
Markey
Marlenee
Marriott
Martin
Mica
Michel
Miller, Ohio
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Nelson
Nichols
Pashayan
Paul
Petri
Porter
Pritchard
Quayle
Quillen
Rahall
Regula
Rhodes
Roberts
Robinson
Roth
Rousselot
Royer
Rudd
Satterfield
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snyder
Solomon
Spence
Stangeland
Stanton
Stenholm
Stratton
Stump
Symms
Taylor
Thomas
Trible
Walker
Wampler
Whitehurst
Whittaker
Whitten
Winn
Wyatt
Young, Alaska
Young, Fla.

NOT VOTING—34

Anderson, Ill.
Applegate
Cavanaugh
Clay
de la Garza
Derrick
Dingell
Dixon
Eckhardt
Erlenborn
Fish
Giaimo
Goldwater
Harsha
Hefner
Holland
Holtzman
Huckaby
Jenrette
Leach, La.
Lundine
McClory
Mattox
Murphy, N.Y.
Myers, Pa.
Nedzi
O'Brien
Shannon
Stockman
Vanik
Wilson, Bob
Wilson, C. H.
Wirth
Wydler

□ 1310

The Clerk announced the following pairs:

On this vote:

Mr. Nedzi and Mr. Murphy of New York for, with Mr. Goldwater against.

Mr. Jenrette and Mr. Dingell for, with Mr. Erlenborn against.

Mr. Myers of Pennsylvania and Mr. Charles H. Wilson of California for, with Mr. O'Brien against.

Mr. Clay and Mr. McClory for, with Mr. Wydler against.

Until further notice:

Mr. Shannon with Mr. Anderson of Illinois.

Mr. Vanik with Mr. Dixon.

Mr. Wirth with Mr. Eckhardt.

Mr. de la Garza with Mr. Fish.

Mr. Cavanaugh with Mr. Harsha.

Mr. Applegate with Mr. Stockman.

Mr. Hefner with Mr. Bob Wilson.

Mr. Huckaby with Mr. Giaimo.

Mr. Lundine with Mr. Holland.

Mr. Derrick with Ms. Holtzman.

Mr. Leach of Louisiana with Mr. Mattox.

Messrs. QUAYLE, MARRIOTT, and LONG of Maryland changed their votes from "yea" to "nay."

So (two-thirds not having voted in favor thereof), the motion was rejected.

The result of the vote was announced as above recorded.

TREASURY DEPARTMENT INTERNATIONAL AFFAIRS FUNCTIONS AUTHORIZATION, 1981

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the Senate bill, S. 2514.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. CAVANAUGH) that the House suspend the rules and pass the Senate bill, S. 2514.

The question was taken.

Mr. RUDD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 238, nays 164, not voting 30, as follows:

[Roll No. 543]

YEAS—338

Addabbo
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnard
Barnes
Bedell
Beilenson
Benjamin
Bereuter
Biaggi
Bingham
Blanchard
Boggs
Boland
Boiling
Bonior
Bonker
Bowen
Brademas
Breaux
Brodhead
Brooks
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Burton, Phillip
Butler
Carr
Carter
Cheney
Chisholm
Clinger
Coelho
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
D'Amours
Danielson
Davis, S.C.
Dellums
Dicks
Dingell
Dodd
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Erdahl
Ertel
Evans, Del.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Frost
Garcia
Gephardt
Gibbons
Gilman
Gingrich
Gonzalez
Gore
Gradison
Gray
Green
Hall, Ohio
Hamilton
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hightower
Hinson
Hollenbeck
Horton
Howard
Hutchinson
Hyde
Jeffords
Johnson, Calif.
Jones, Tenn.
Kastenmeier
Kazen
Kildee
Kostmayer
LaFalce
Leach, Iowa
Lederer
Lehman
Leland
Lewis
Long, La.
Long, Md.
Lowry
Luken
McCloskey
McCormack
McEwen
McHugh
McKay
McKinney
Maguire
Markey
Marks
Marriott
Matsui
Mavroules
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Murtha
Musto
Neal
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Porter
Preyer
Price
Pritchard
Pursell
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Royer
Sabo
Scheuer
Schroeder
Schulze
Seiberling
Sharp
Simon
Skelton
Smith, Iowa
Solarz
Spellman
St Germain
Stack
Staggers
Stanton
Stark
Steed
Stewart
Stokes
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Thompson
Traxler
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Walgren
Walker
Wampler
Waxman
Weiss
White
Williams, Mont.
Wilson, Tex.
Wolff
Wolpe
Wright
Wylie
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—164

Abdnor
Akaka
Albosta
Anthony
Applegate
Archer
Ashbrook
Atkinson
Badham
Bafalis
Bauman
Beard, R.I.
Beard, Tenn.
Bennett
Bethune
Bevill
Boner
Bouquard
Brinkley
Broomfield
Broyhill
Burgener
Burlison
Byron
Campbell
Carney
Chappell
Clausen
Cleveland
Coleman
Collins, Tex.
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daschle
Davis, Mich.
Deckard
Derwinski
Devine
Dickinson
Dornan
Edwards, Okla.
Emery
English
Evans, Ga.
Evans, Ind.
Fippo
Florio
Fountain
Fowler
Frenzel
Fuqua
Gaydos
Ginn
Glickman
Goodling
Gramm
Grassley
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hammer-schmidt
Hansen
Hefner
Heftel
Hillis
Holt
Hopkins
Hubbard
Hughes
Hutto
Ichord
Ireland
Jacobs
Jeffries
Jenkins
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kelly
Kemp
Kindness
Kogovsek
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Livingston
Lloyd
Loeffler
Lott
Lujan
Lungren
McDade
McDonald
Madigan
Marlenee
Martin
Mathis
Mazzoli
Michel
Miller, Ohio
Mitchell, N.Y.
Montgomery
Moore
Moorhead, Calif.
Motti
Murphy, Pa.
Myers, Ind.
Natcher
Nelson
Nichols
Paahayan
Paul
Petri
Pickle
Quayle
Quillen
Roberts
Robinson
Roth
Rousselot
Rudd
Russo
Santini
Satterfield
Sawyer
Sebelius
Sensenbrenner
Shelby
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Solomon
Spence
Stangeland
Stenholm
Stump
Symms
Taylor
Thomas
Trible
Volkmer
Watkins
Weaver
Whitehurst
Whitley
Whittaker
Whitten
Winn
Wyatt
Young, Alaska
Young, Fla.

NOT VOTING—30

Anderson, Ill.
Cavanaugh
Clay
de la Garza
Derrick
Dixon
Erlenborn
Fish
Giaimo
Goldwater
Harsha
Holland
Holtzman
Huckaby
Jenrette
Leach, La.
Lundine
McClory
Mattox
Myers, Pa.
Nedzi
O'Brien
Railsback
Shannon
Stockman
Vanik
Wilson, Bob
Wilson, C. H.
Wirth
Wydler

The Clerk announced the following pairs:

On this vote:

Mr. Fish and Mr. Jenrette for, with Mr. Goldwater, against.

Mr. Myers of Pennsylvania and Mr. Nedzi for, with Mr. McClory against.

Mr. Clay and Mr. Charles H. Wilson of California for, with Mr. Wydler against.

Until further notice:

Mr. de la Garza with Mr. Anderson of Illinois.

Mr. Shannon with Mr. Dixon.

Mr. Vanik with Mr. Erlenborn.

Mr. Wirth with Mr. Harsha.

Mr. Lundine with Mr. Holland.

Mr. Leach of Louisiana with Mr. O'Brien.

Ms. Holtzman with Mr. Railsback.

Mr. Huckaby with Mr. Derrick.

Mr. Giaimo with Mr. Bob Wilson.

Mr. Cavanaugh with Mr. Mattox.

Mr. GUDGER changed his vote from "yea" to "nay."

Messrs. COTTER, HYDE, TAUKE, RITTER, and LEWIS changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof), the motion was rejected.

The result of the vote was announced as above recorded.

CONFERENCE REPORT ON H.R. 4310, RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1980

Mr. BIAGGI submitted the following conference report and statement on the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities, improvement program, and for other purposes:

CONFERENCE REPORT (H. REPORT No. 96-1320)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT

SEC. 101. This title may be cited as the "Recreational Boating Safety and Facilities Improvement Act of 1980."

SEC. 102. The Federal Boat Safety Act of 1971 (Public Law 92-75, 85 Stat. 213), as amended, is amended as follows:

(1) In section 2 by striking the first sentence and inserting in lieu thereof the following: "It is declared to be the policy of Congress and the purpose of this Act to improve recreational boating safety and facilities and to foster greater development, use, and enjoyment of all the waters of the United States by encouraging and assisting participation by the several States, the boating industry, and the boating public in the development, administration, and financing of a national recreational boating safety and facilities improvement program; by authorizing the establishment of national construction and performance standards for boats and associated equipment; and by creating more flexible authority governing the use of boats and equipment.".

(2) In section 3—

(a) by striking clauses (10) and (11) and inserting in lieu thereof the following:

"(10) 'United States' and 'State' include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction.

"(11) 'Eligible State' means a State that has a State recreational boating safety and facilities improvement program that has been accepted by the Secretary."; and (b) by adding the following new clauses:

"(12) 'State recreational boating safety and facilities improvement program' means a State recreational boating safety program, or a State recreational boating facilities improvement program, or both.

"(13) 'State recreational boating safety program' means education, assistance, and enforcement activities conducted for the purpose of boating accident or casualty prevention, reduction, and reporting.

"(14) 'State recreational boating facilities improvement program' means programs to develop or improve public facilities that create, or add to, public access to the waters of the United States to improve their suitability for recreational boating purposes, including such ancillary facilities as are necessary to insure the safe use of those facilities. Such term shall include acquisition of title, or any interest in, riparian or submerged land, and the capital improvement of riparian or submerged land for the purpose of increasing public access to the waters of the United States.

"(15) 'Fund' means the National Recreational Boating Safety and Facilities Improvement Fund established by title II of this Act.".

(3) Section 25 is amended to read as follows:

"NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT PROGRAM

"SEC. 25. (a) In order to encourage greater State participation and uniformity in boating safety and facility improvement efforts, and particularly to permit the States to assume the greater share of boating safety education, assistance, and enforcement activities, the Secretary shall implement and administer a national recreational boating safety and facilities improvement program. Under this program, the Secretary may allocate and distribute funds to eligible States to assist them in the development, administration, and financing of state recreational boating safety and facilities improvement programs. The Secretary shall establish guidelines and standards for this program. In doing so, he shall—

"(1) consider, among other things, factors which affect recreational boating safety by contributing to overcrowding and congestion of waterways, such as the increasing number of recreational boats using those waterways and their geographic distribution, and the availability and geographic distribution of recreational boating facilities within and among applying States, as well as State recreational boating casualty and fatality statistics;

"(2) consult with the Secretary of the Interior so as to minimize duplication with the purposes and expenditures of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4) and with the guidelines developed thereunder; and

"(3) maintain environmental standards consistent with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464) and other Federal laws and policies intended to safeguard the ecological and esthetic quality of our Nation's waters and wetlands.

"(b) A State whose recreational boating safety and facilities improvement program has been accepted by the Secretary shall be eligible for allocation and distribution of funds under this Act to assist that State in the development, administration, and financing of its State program. Matching funds shall be allocated and distributed among eligible States by the Secretary in accordance with section 26 of this Act.".

(4) Section 26 is amended to read as follows:

"PROGRAM ACCEPTANCE

"SEC. 26. (a) The Secretary, in accordance with this section and such regulations as he may promulgate, may allocate and distribute funds from the fund to any State that has an accepted State recreational boating safety and facilities improvement program, if the State demonstrates to his satisfaction that—

"(1) the program submitted by that State is consistent with the purposes of this Act;

"(2) funds distributed will be used to develop and administer a State recreational boating safety and facilities improvement program containing the minimum requirements set forth in subsections (b), (c) or (d) of this section;

"(3) sufficient State matching funds are available from either general revenue, boat registration and license fees, State marine fuels taxes, or from a fund constituted from the proceeds of such a tax and established for the purpose of financing a State recreational boating safety and facilities improvement program. No Federal funds from other sources may be used to provide a State's share of the costs of the program described under this section, nor may any State matching funds committed to a program under this Act be used to constitute the State's share of matching funds required by any other Federal program; and

"(4) the program submitted by that State designates a State lead authority or agency, which would implement or coordinate the implementation of the State recreational boating safety and facilities improvement program supported by Federal financial assistance in that State, including the requirement that the designated State authority or agency submit required reports that are necessary and reasonable for a proper and efficient administration of the program and that are in the form prescribed by the Secretary.

"(b) The Secretary shall accept a State recreational boating safety program, and such program shall be eligible to receive funds appropriated pursuant to section 30(a) of this Act, if such program includes—

"(1) a vessel numbering system, either approved or administered by the Secretary under this Act.

"(2) a cooperative boating safety assistance program with the Coast Guard in that State;

"(3) sufficient patrol and other activity to insure adequate enforcement of applicable State boating safety laws and regulations; and

"(4) an adequate State boating safety education program.

"(c) The Secretary shall accept a State recreational boating facilities improvement program, and such program shall be eligible to receive funds appropriated pursuant to section 30(b) of this Act, if such program includes—

(1) a complete description of recreational boating facility improvement projects to be undertaken by the State; and

(2) consultation with State officials responsible for the statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4) and for any program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451-64).

"(d) Any State may, at its election, submit a combined program to the Secretary for the improvement of recreational boat safety and the improvement of recreational boating facilities in that State. The Secretary shall approve such program if it contains the minimum requirements set forth in subsection (b) and (c) of this section. Those portions of such combined program that are designed to improve recreational boating safety shall be eligible to receive funds appropriated for State recreational boating safety programs pursuant to section 30(a) of this Act. Those portions of such combined program that are designed to improve recreational boating facilities shall be eligible to receive funds appropriated for State recreational boating facilities improvement programs pursuant to section 30(b) of this Act.".

(5) Section 27 is amended to read as follows:

"ALLOCATION OF FEDERAL FUNDS

"SEC. 27. (a) The Secretary shall allocate the Federal funds available for allocation and distribution under this Act for State recreational boating safety programs as follows:

"(1) one-third shall be allocated equally among eligible States;

"(2) one-third shall be allocated among eligible States that maintain State vessel numbering system approved under this Act so that the amount allocated each fiscal year to each such State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States; and

"(3) one-third shall be allocated so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the amount of State funds expended or obligated by such State for the State recreational boating safety program during the previous fiscal year bears to the total State funds expended or obligated during that fiscal year by all eligible States for State recreational boating safety programs.

"(b) The Secretary shall allocate the Federal funds available for allocation and distribution under this Act for State recreational boating facilities improvement programs as follows:

"(1) one-third shall be allocated equally each year among eligible States;

"(2) one-third shall be allocated so that the amount each year to each eligible State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States; and

"(3) one-third shall be allocated so that the amount each year to each eligible State shall be in the same ratio as the State funds expended or obligated by the State for a recreational boating facilities improvement program approved under this Act during the previous fiscal year by a State bears to the total State funds expended or obligated for that fiscal year by all eligible States for recreational boating facilities improvement programs.

"(c) The amount received by any State under this section in any fiscal year may not exceed one-half of the total cost incurred by that State in the development, administration, and financing of that State's recreational boating safety and facilities improvement program in that fiscal year.

"(d) No allocation or distribution of funds under this section may be made to any State for the maintenance of boating facilities under an approved State recreational boating safety and facilities improvement program.

"(e) The Secretary may allocate not more than 5 percent of the funds available for allocation and distribution in any fiscal year for national boating safety activities of one or more national nonprofit public service organizations.

"(f) The Secretary is authorized to expend from the funds available for allocation and distribution in any fiscal year such sums as are necessary for the administration of this Act, but in no event may the funds expended for such administration in any fiscal year exceed the greater of $250,000 or 2 percent of the funds available for allocation and distribution in that fiscal year.".

(6) In section 28 by striking subsections (a) and (d) and redesignating subsections (b) and (c) as (a) and (b), respectively.

(7) In section 29 by (A) striking the words "boating safety program" and substituting "State recreational boating safety and facilities improvement program" and (B) by inserting the word "land," immediately after the words "costs of" the first time they appear therein.

(8) Section 30 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 30. (a) For the purpose of providing financial assistance for State recreational boating safety programs, there is authorized to be appropriated from the National Recreational Boating Safety and Facilities Improvement Fund $10,000,000 for each of the fiscal years 1981, 1982, and 1983, such appropriations to remain available until expended.

"(b) For the purpose of providing financial assistance for State recreational boating facilities improvement programs, there is authorized to be appropriated from the National Recreational Boating Safety and Facilities Improvement Fund $10,000,000 for each of the fiscal years, 1981, 1982, and 1983, such appropriations to remain available until expended.".

(9) Section 31 is amended—

(a) in subsection (a) to read as follows:

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"(a) Amounts allocated and distributed under section 27 of this Act shall be computed and paid to the States as follows: The Secretary shall determine, during the last quarter of a fiscal year, on the basis of computations made pursuant to section 29 of this Act and submitted by the States, the percentage of the funds available for the next fiscal year to which each eligible State shall be entitled. Notice of the percentage and of the dollar amount, if it can be determined, for each State shall be furnished to the States at the earliest practicable time. If the Secretary finds that an amount made available to a State for a prior year is greater or less than the amount which should have been made available to that State for the prior year, because of later or more accurate State expenditure information, the amount for the current fiscal year may be increased or decreased by the appropriate amount."; and

(b) in subsection (c) by striking the words "boating safety program" each time they appear and substituting "State recreational boating safety and facilities improvement program".

(10) Section 32 is amended—

(a) by striking in subsection (a) the words "boating and boating safety" and inserting in lieu thereof the words "boating safety and facilities improvement."; and

(b) by adding in the first sentence of subsection (b) following the word "safety" the words "and facilities improvement".

TITLE II—ESTABLISHMENT OF FUND

SEC. 201. SHORT TITLE.

This title may be cited as the "Recreational Boating Fund Act of 1980".

SEC. 202. ESTABLISHMENT OF NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.

There is established in the Treasury of the United States a separate fund to be known as the "National Recreational Boating Safety and Facilities Improvement Fund", consisting of such amounts as may be paid into it as provided in section 209(f)(5) of the Highway Revenue Act of 1956. Amounts in the Fund shall be available, as provided in appropriation Acts, for making expenditures after September 30, 1980, and before April 1, 1984, as provided in section 26 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1476).

SEC. 203. TRANSFER OF MOTORBOAT FUEL TAXES TO FUND.

(a) GENERAL RULE.—Paragraph (5) of section 209(f) of the Highway Revenue Act of 1956 (23 U.S.C. 120 note) is amended to read as follows:

"(5) TRANSFERS FROM THE TRUST FUND FOR MOTORBOAT FUEL TAXES.—

"(A) TRANSFER TO NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.—

"(i) IN GENERAL.—The Secretary of the Treasury shall pay from time to time from the trust fund into the National Recreational Boating Safety and Facilities Improvement Fund established by section 202 of the Recreational Boating Fund Act amounts (as determined by him) equivalent to the motorboat fuel taxes received on or after October 1, 1980, and before October 1, 1983

"(ii) LIMITATIONS.—

"(I) LIMIT ON TRANSFERS DURING ANY FISCAL YEAR.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $20,000,000.

"(II) LIMIT ON AMOUNT IN FUND.—No amount shall be transferred under this subparagraph if the Secretary determines that such transfer would result in increasing the amount in the National Recreational Boating Safety and Facilities Improvement Fund to a sum in excess of $20,000,000.

"(B) EXCESS FUNDS TRANSFERRED TO LAND AND WATER CONSERVATION FUND.—Any amount received in the trust fund which is attributable to motorboat fuel taxes and which is not transferred from the trust fund under subparagraph (A) shall be transferred by the Secretary from the trust fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

"(C) MOTORBOAT FUEL TAXES.—For purposes of this paragraph, the term 'motorboat fuel taxes' means the taxes under section 4041(b) of the Internal Revenue Code of 1954 with respect to special motor fuels used as fuel in motorboats and under section 4081 of such Code with respect to gasoline used as fuel in motorboats."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxes received on or after October 1, 1980.

SEC. 204. STUDY BY SECRETARY OF THE TREASURY.

The Secretary of the Treasury (after consultation with the Secretary of the department in which the Coast Guard is operating) shall conduct a study to determine the portion of the taxes imposed by sections 4041(b) and 4081 of the Internal Revenue Code of 1954 which is attributable to fuel used in recreational motorboats. Not later than 2 years after the date of the enactment of this Act, the Secretary of the Treasury shall report to the Congress on his findings under such study.

TITLE III—REFORESTATION

SEC. 301. AMORTIZATION OF REFORESTATION EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 194. AMORTIZATION OF REFORESTATION EXPENDITURES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

"(b) LIMITATIONS.—

"(1) MAXIMUM DOLLAR AMOUNT.—The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 143)).

"(2) ALLOCATION OF DOLLAR LIMIT.—

"(A) CONTROLLED GROUP.—For purposes of applying the dollar limitation under paragraph (1)—

"(i) all component members of a controlled group shall be treated as one taxpayer, and

"(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group.

For purposes of the preceding sentence, the term 'controlled group' has the meaning assigned to it by section 1563(a), except that the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1).

"(B) PARTNERSHIPS.—In the case of a partnership, the dollar limitation contained in paragraph (1) shall apply with respect to the partnership and with respect to each partner.

"(3) SECTION NOT TO APPLY TO TRUSTS.—This section shall not apply to trusts.

"(4) ESTATES.—The benefit of the deduction for amortization provided by this section shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under this section to such beneficiary.

"(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

"(1) QUALIFIED TIMBER PROPERTY.—The term 'qualified timber property' means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

"(2) AMORTIZABLE BASIS.—The term 'amortizable basis' means that portion of the basis of the qualified timber property attributable to reforestation expenditures.

"(3) REFORESTATION EXPENDITURES.—

"(A) IN GENERAL.—The term 'reforestation expenditures' means direct costs incurred in connection with forestation or reforestation by planting or artificial or natural seeding, including costs—

"(i) for the preparation of the site;

"(ii) of seeds or seedlings; and

"(iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

"(B) COST-SHARING PROGRAMS.—Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

"(4) BASIS ALLOCATION.—If the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer has made an election under subsection (a) exceeds the amount of the limitation under subsection (b)(1), the taxpayer shall allocate that portion of such amortizable basis with respect to which a deduction is allowable under subsection (a) to each such qualified timber property in such manner as the Secretary may by regulations prescribe.

"(d) LIFE TENANT AND REMAINDERMAN.—In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.".

(b) ADJUSTED GROSS INCOME.—Section 62 of such Code (relating to definition of adjusted gross income) is amended by inserting after paragraph (14) the following:

"(15) REFORESTATION EXPENSES.—The deduction allowed by section 194.".

(c) CONFORMING AMENDMENTS.—

(1)(A) Paragraph (2) of section 1245(a) of such Code (relating to gain from dispositions of certain depreciable property) is amended by striking out "190, 193" each place it appears and inserting in lieu thereof "190, 193, 194".

(B) Paragraphs (2) and (3)(D) of such section 1245(a) are each amended by striking out "or 193" and inserting "193, or 194".

(C) Section 1245(b) of such Code (relating to exceptions and limitations) is amended by adding at the end thereof the following new paragraph:

"(8) TIMBER PROPERTY.—In determining, under subsection (a)(2), the recomputed basis of property with respect to which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized.".

(2) The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by inserting at the end thereof the following new item:

"Sec. 194. Amortization of reforestation expenditures.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to additions to capital account made after December 31, 1979.

SEC. 302. INVESTMENT CREDIT.

(a) GENERAL RULE.—Paragraph (1) of section 48(a) of the Internal Revenue Code of 1954 (relating to definition of section 38 property) is amended—

(1) by striking out the period at the end of subparagraph (E) and inserting ", or";

(2) by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of qualified timber property (within the meaning of section 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as section 38 property) and taken into account under section 194 (after the application of section 194(b)(1)).";; and

(3) by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to property described in subparagraph (F) and, for purposes of this subpart, the useful life of such property shall be treated as its normal growing period.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to additions to capital account made after December 31, 1979.

SEC. 303. REFORESTATION TRUST FUND.

(a) There is established in the Treasury of the United States a trust fund, to be known as the Reforestation Trust Fund (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as are transferred to the Trust Fund under subsection (b)(1) and any interest earned on investment of amounts in the Trust Fund under subsection (c)(2).

(b)(1) Subject to the limitation in paragraph (2), the Secretary of the Treasury shall transfer to the Trust Fund an amount equal to the sum of the tariffs received in the Treasury after September 30, 1979, and before October 1, 1985, under subparts A and B of part 1 of schedule 2 of the Tariff Schedules of the United States (19 U.S.C. 1202) and under part 3 of such schedule.

(2) The Secretary shall not transfer more than $30,000,000 to the Trust Fund for any fiscal year.

(3) The amounts required to be transferred to the Trust Fund under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustment shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c)(1) It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and Senate document of the session of the Congress to which the report is made.

(2)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(B) Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) For each of the first 5 fiscal years beginning after September 30, 1980, there is authorized after that date to be appropriated to the Secretary of Agriculture, out of any amounts in the Trust Fund, an amount equal to the sum of—

(1) the amount by which—

(A) the sum estimated by the Secretary of Agriculture for the fiscal year under section 3(d)(2) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601(d)(2)) to be necessary for reforestation and other treatment of acreage, as set forth in the report transmitted by the Secretary to the Congress under that section for the fiscal year, exceeds

(B) the sum of the amounts appropriated for the fiscal year under the authorization contained in section 3(d)(3) of such Act and under any other provision of law to carry out the same purpose; and

(2) such sums as are determined by the Secretary of Agriculture to be properly allocable to administrative costs of the Federal Government incurred for the fiscal year in connection with the reforestation program carried out under that Act.

(e) The Secretary of the Treasury shall pay into the general fund of the Treasury any amounts, including interest earned on such amounts, remaining in the Trust Fund after September 30, 1985, which were not expended and remain in the Trust Fund.

And the Senate agree to the same.

THOMAS L. ASHLEY,
JOHN M. MURPHY,
MARIO BIAGGI,
JAMES L. OBERSTAR,
WILLIAM J. HUGHES,
AL ULLMAN,
JAMES C. CORMAN,
PAUL N. MCCLOSKEY,
JOEL PRITCHARD,
THOMAS B. EVANS, JR.,
JOHN J. DUNCAN,
Managers on the Part of the House.

WARREN G. MAGNUSON,
WENDELL H. FORD,
HOWARD W. CANNON,
BOB PACKWOOD,
HARRISON SCHMITT,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1980

Present Law

The Federal Boat Safety Act of 1971 provides for the creation of the State Boating Safety Grants Program. Under this grants-to-State program, 51 of 55 eligible jurisdictions have established or enlarged boating safety programs within criteria provided in the act. Through this unique model of Federal standard-setting and State enforcement, a real decline in boating fatalities was observed during the period of 1971 to 1978. Notwithstanding this demonstrated record of achievement and cost effectiveness in the expenditure of general revenue funds, the State Boating Safety Grants Program is scheduled to be phased out at the end of fiscal year 1980.

House Bill

Title I of the House bill amends the Federal Boat Safety Act of 1971. This Amendment would replace the State Boating Safety Grants Program with a new system of providing funds for Federal-State programs for recreational boating safety and facilities improvement.

Section 101(3) of the House bill establishes the mechanism by which States continue to assume a proportionate share of boating safety education, assistance, and enforcement with Federal assistance. The Secretary of Transportation is directed to establish guidelines and standards for a national program, considering factors such as overcrowding and congestion of waterways, trends in registration of numbered vessels, availability and distribution of boating facilities, and boating casualty and fatality statistics.

The Secretary is further directed to consult with the Secretary of the Interior in the development of guidelines and issuance of regulations to avoid duplication or conflicts in administering the provision of this act. State programs approved under the act

must be consistent with approved State Coastal Zone Management Programs.

Section 101(4) of the House bill sets forth conditions of eligibility for Federal matching funds. It recognizes the existence of State marine fuels tax earmarking statutes as well as alternate sources of State matching funds. Also set forth are the minimum requirements for a State recreational boating safety and facilities improvement program for acceptance by the Secretary before allocation and distribution of Federal funds may be made. A State may be eligible for recreational boating and facilities improvement funds, notwithstanding that the Secretary administers the vessel numbering system in that State; however, consistent with existing law, recreational boating safety funds are adjusted to reflect that fact.

Recognizing that in many States boating safety and facilities improvement functions may involve more than one agency, the State must designate a lead agency for program responsibility, implementation, and compliance. Boating facilities improvement programs are defined to include projects involving land acquisition as well as capital improvement, including necessary ancillary safety-related facilities.

Allocation and distribution of funds on a matching basis (as between States and the Federal government, among eligible States, and by category of use) are subject to certain conditions and limitation. These generally effect a balance between large and small States, while providing an incentive for individual States to undertake additional efforts in boating safety and/or facilities development. States are prohibited from utilizing Federal funds derived from other sources as matching funds for a program approved under this act. Also prohibited is double-counting of State matching funds for other Federal programs. The Secretary is further authorized to draw upon appropriated funds for the costs of administering the act, consistent with the self-supporting nature of the program.

Under Title I of the bill, $10 million per year is authorized for grants for recreational boating safety programs, and $20 million per year is authorized for recreational boating facilities improvement programs on a 50 percent matching basis with the States. These amounts are to be available, as provided in appropriation acts, for making expenditures after September 30, 1980, and before April 1, 1984, as provided in Section 26 of the Federal Boat Safety Act of 1971 (as amended by Title I of this bill). Title I of the bill authorizes appropriations of $30 million a year for fiscal years 1981 through 1983 for Federal-State programs relating to recreational boating safety and facilities improvements.

Senate Amendment

The Senate amendment deleted the House provision that provided for development of recreational boating facilities. It provides for authorizations for boating safety programs for fiscal years 1982 and 1983.

Conference Substitute

The Conference substitute would establish separate programs for recreational boating safety and recreational boating facilities improvement. States would have the option of participating in either or both programs. The authorization levels for each of the fiscal years 1981, 1982, and 1983 would be $10 million for safety programs and $10 million for facilities improvement.

TITLE II—NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND

Present Law

Under present law, funds attributable to the 4 cents per gallon excise taxes on motor boat use of gasoline and motor fuels are transferred periodically from the Highway Trust Fund to the Land and Water Conservation Fund. (Sec. 209(f)(5) of the Highway Revenue Act of 1956 as amended.) Of the revenue generated and transferred through this procedure, only a small and unspecified percentage is used to develop recreational facilities which directly benefit boaters.

House Bill

Title II of the House bill establishes a new fund in the Treasury, the "National Recreational Boating Safety and Facilities Improvement Fund." This title also provides that this fund shall receive (from the Highway Trust Fund) up to $30 million per year of the amounts attributable to the existing excise taxes on motorboat use of gasoline and other motor fuels, for fiscal years 1981–83. Thus, those who benefit from the boat safety and facilities improvements rather than other taxpayers will finance the costs of such programs. There is also a maximum balance of $30 million that can be in the new boating fund. Amounts in excess of $30 million per year from these fuels taxes would continue to go into the Land and Water Conservation Fund. Also, the transfer of motorboat fuels tax revenues from the Land and Water Conservation Fund to the new fund (the National Recreational Boating Safety and Facilities Improvement Fund) will not diminish the overall revenues available to the Land and Water Conservation Fund. (Most of the revenues to this fund are derived from receipts under the Outer Continental Shelf Lands Act and are expended primarily for land and water area acquisition costs—including the National parks lands, wilderness area lands, and National recreation areas.

Title II of the House bill also requires the Secretary of the Treasury to conduct a study of estimated annual motorboat fuels tax revenues, with a report to the Congress within 2 years of enactment.

Senate Amendment

The Senate amendment provides that the aggregate amount transferred to the fund for boating safety programs shall not exceed $10 million per year and that the maximum sum in the fund shall not exceed $10 million. House provisions relating to facilities development were deleted.

Conference Substitute

The Conference substitute restores funding for facilities development, however the amount is limited to $10 million per year for facilities and $10 million per year for safety under title I for a total of $20 million per year. The principal reason for the reduction from the House-passed level was the recognition of the need to exercise budgetary restraint at a time when Congress is making every effort to reduce the Federal deficit. An additional basis for the reduction from the House version is revealed from statement and testimony received for the record. The key point was the gauge of the prospective benefits to be anticipated from the annual expenditures of $20 million for new recreational boating facilities versus $10 million.

It was determined that the typical, prefabricated concrete slab launching ramp, with a crushed rock base, costs approximately $15,000 to $20,000 per ramp. Including ancillary development a typical launching facility would cost in the range of $75,000 to $100,000 in 1979 figures. Dry-stack storage can be constructed at a cost of $1,000 per boat. Small marinas may be built at a cost of $1,200 to $1,500 per boat, with minimum support facilities, while more expensive marine facilities may run $2,500 to $3,500 per boat.

These figures thus reveal that an annual expenditure of $20 million in Federal funds, even when matched by the States, is not a significant sum when apportioned among all eligible States for additional recreational boating facilities. What is significant is the fact that for the first time a secure base of Federal funding will exist in order to permit individual States to begin to plan to meet their long-term facility needs and, in the case of States without earmarking statutes, to develop dedicated sources of boating facilities funds should they so desire. Because of the requirement in Title II for a study by the Secretary of the Treasury that will determine the portion of taxes which is attributable to fuel used in recreational motorboats, it is anticipated that the funding level for facilities development may be altered once the results of the study are presented to Congress.

TITLE III: TAX INCENTIVES FOR REFORESTATION AND REFORESTATION TRUST FUND

This title provides several Federal initiatives to promote reforestation on both private and public timberlands. Reforestation of private lands is encouraged through providing 7-year amortization and the 10-percent regular investment credit for a limited amount of qualifying reforestation expenditures each year. In addition, a trust fund is established to fund reforestation activities in order to eliminate a replanting backlog in the National Forest System.

A. Tax incentives for reforestation

Present Law

Under present law, direct costs incurred in connection with reforestation of timberlands are treated as capital expenditures. (Treas. Regs. § 1.611–3(a)). Reforestation costs for this purpose are those for site preparation (including girdling, herbicide applications, baiting of rodents, and bush removal), seed or seedlings, plus labor and tool expenses incident to planting or seeding. Depreciation on tractors, trucks and other equipment used in these activities must also be capitalized as a reforestation cost.

These capitalized reforestation costs may not be depreciated but are recovered through a depletion deduction when the timber is harvested fifteen or more years later.

If a private owner of timberland receives funds from the Federal Government or State government under certain reforestation cost sharing programs, these funds are not included in income. In addition, the private owner of timberlands does not receive any depletion, depreciation or other deduction for his reforestation costs paid with these cost-sharing funds, and the owner's basis in the property does not reflect the amount of these payments. These rules apply for grants made after September 30, 1979.

Where additional costs are incurred for clearing brush and unwanted trees after the planting or seeding of timberlands, these costs are currently deductible because they are in the nature of maintenance charges.

House Bill

The House bill contained no provisions on reforestation.

Senate Amendment

Under the Senate amendment a taxpayer may elect to amortize, over a 7-year period, up to $10,000 of qualifying reforestation expenditures incurred during a taxable year in connection with qualified timber property. Amortization deductions claimed under this provision would be allowed as "above the line" deductions, that is, deductions in computing adjusted gross income, so that this limited amortization provision is equally available to small timberland owners regardless of whether they itemize deductions for income tax purposes.

A taxpayer may elect 7-year (84-month) amortization on up to $10,000 of qualifying reforestation expenditures each year. The election is to be made annually on a property-by-property basis. However, the maximum amount of qualifying forestation or reforestation expenditures paid or incurred during a taxable year which may be amortized is $10,000 for all of the taxpayer's

timber properties, and there is no carryover of excess expenditures to subsequent years. If a taxpayer incurs more than $10,000 in qualifying costs in connection with more than one qualified timber property during a taxable year and elects to amortize the costs attributable to these properties, the Secretary is delegated authority to prescribe regulations concerning the allocation of this amortizable basis among these timber properties.

A mandatory half-year convention is provided, under which it is required that the amortization period begins on the first day of the first month of the last half of the taxable year during which the reforestation costs were incurred. (For example, the amortization period begins on July 1 for a taxpayer who uses a calendar year for tax purposes, regardless of whether the reforestation expenditures were incurred in January or December of that year.) The maximum annual amortization deduction for qualifying expenditures incurred in any taxable year is $1,428.57 ($10,000 divided by 7) and total deductions for any one year under this provision will reach $10,000 only if a taxpayer incurs and elects to amortize the maximum $10,000 of expenditures each year over an 8-year period. (The full $10,000 deduction would be reached in the 8th year.)

In order to be eligible for this elective amortization treatment, qualifying reforestation expenditures must be incurred in connection with a qualifying timber property. A qualifying timber property is defined as property held for purposes of the commercial production of timber in order to exclude, for example, shelter belts (for which current deductions are allowed under Code section 175) and ornamental trees.

Qualifying reforestation expenditures are direct costs incurred to plant or seed for forestation or reforestation purposes, including costs for site preparation, seed or seedlings, and labor and tool costs (including depreciation on equipment used for this purpose). Reforestation expenditures for this purpose exclude costs for which the taxpayer has been reimbursed under a governmental cost-sharing program, unless the amounts reimbursed have been included in the taxpayer's gross income. In addition, the definition of qualifying reforestation expenditures includes only those costs which must be capitalized and become part of the amortizable basis of the property and excludes costs which are currently deductible.

Rules are also provided concerning the general application of this amortization election. For example, it is provided that a life tenant is entitled to the benefit of this amortization provision on qualifying costs incurred by him and any remainder interest in the property is to be ignored for this purpose. Amortization deductions claimed under this provision will be subject to recapture as ordinary income (to the extent of gain) under Code section 1245 where there is a disposition of the timber property to which the amortizable basis (and the amortization deductions) are attributable within ten taxable years from the year in which the amortizable basis was created.

The annual limitation on the dollar amount of expenditures which can be amortized by a taxpayer is intended to insure that these provisions allow only a limited dollar benefit to any enterprise regardless of size. Consequently, where qualifying costs are incurred by a corporation which is a component member of a controlled group of corporations, the $10,000 maximum limitation on costs eligible for amortization applies to the entire controlled group of corporations, and the Secretary is authorized to prescribe regulations concerning allocation of the limitation among members of the controlled group. In determining whether a group of corporations is a controlled group of corporations for purposes of this provision, the standard of control or ownership by the common parent corporation is "at least 50 percent." (This is the same standard as is provided under Code section 179, relating to additional first-year depreciation.)

In applying the $10,000 limitation to partnerships, the dollar limitation is first applied at the partnership level, and then is applied to each partner. Thus, if an individual is a member of a partnership which owns qualified timber property and also owns qualified timber property directly, the maximum amount of amortizable basis acquired during any taxable year on which he can obtain amortization is $10,000.[1]

The Senate amendment would also allow the 10-percent regular investment tax credit on reforestation costs eligible for the amortization election, regardless of whether amortization treatment is elected for these costs. However, the same annual limitation applies so that the amount of qualifying costs eligible for the credit is limited to $10,000 each taxable year, and there is no carryover excess qualifying costs to subsequent years.

The credit also would not be allowed on qualifying reforestation costs attributable to the capitalization of depreciation on property which already qualifies for the regular investment credit.[2] For example, no investment credit would be allowed for reforestation costs attributable to depreciation on equipment which itself qualifies for the investment credit.

In applying these rules, the reduction in basis for depreciation sustained with respect to other property used in the reforestation process shall be applied prior to the application of the $10,000 limitation on eligible costs. Thus, for example, if in a taxable year a taxpayer pays or incurs $12,000 of qualifying reforestation costs with respect to properties for which an election is in effect and $2,000 of such costs are attributable to depreciation of the taxpayer's equipment, such $12,000 would first be reduced by the $2,000 of depreciation, and the $10,000 limitation would be applied following such reduction.

The amortization election and investment credit for certain reforestation expenditures would apply to qualifying reforestation expenditures incurred after December 31, 1979.

Conference Substitute

The conference substitute is the same as the Senate amendment with minor changes.

B. Reforestation trust fund

Present Law

Under present law, revenues from import duties on lumber and plywood are deposited in the general funds of the U.S. Treasury and are not dedicated for any particular purpose.

House Bill

The House bill contained no provisions on reforestation.

Senate Amendment

The Senate amendment would establish a reforestation trust fund, the proceeds of which would be used to supplement congressional appropriations for reforestation and timber stock improvement on publicly owned national forests, in order to eliminate and prevent a backlog in reforestation of the National Forest System. Funding for this trust fund would be derived from import duties on plywood and lumber. The Secretary of the Treasury is required to transfer receipts from these tariffs to the reforestation trust fund in maximum amounts of $30 million for each fiscal year during the six-year period from October 1, 1979, through September 30, 1985. Transfers are required to the trust fund at least quarterly and are based upon estimates made by the Secretary of the Treasury, with adjustments in subsequent transfers to reflect the amount by which earlier estimated transfers were over or under the amounts which were required.

For each of the five fiscal years from October 1, 1980, through September 30, 1985, appropriations are authorized from the trust fund to the Secretary of Agriculture for purposes of paying estimated necessary direct costs and properly allocable administrative costs for reforestation and related programs (under section 3(d)(2)) of the Forest Rangeland Resources Planning Act of 1974 (16 U.S.C. 1601(d)(2)), but only to the extent these estimated costs exceed amounts appropriated out of the general fund for these purposes. After consulting with the Secretary of Agriculture, the Secretary of the Treasury must submit annual reports to the Congress setting forth the financial condition and operating results of the reforestation trust fund for the preceding fiscal year and the expected condition and results of the trust fund for the next year.

The Secretary of the Treasury would be authorized to invest trust fund proceeds, in excess of amounts needed for current withdrawals, in interest-bearing obligations of the United States or guaranteed by the United States. At the termination of the trust fund on September 30, 1985, unexpended amounts, including interest earned on invested proceeds, would be returned to the general fund of the Treasury. The reforestation trust fund provisions require transfers to the trust fund for the period October 1, 1979, through September 30, 1985, and authorize appropriations from the trust fund for the period October 1, 1980 through September 30, 1985.

Conference Substitute

The conference substitute is the same as the Senate amendment, with the addition of clarifying and technical amendments.

The conference committee clarified that the $10,000 limit on the amortizable basis applies to a joint return filed by a husband and wife. In cases where a married couple files a separate return, each would be subject to a $5,000 limit on amortizable expenditures.

The term qualified timber property was modified to indicate clearly that eligible property would be a wood lot or other site which will contain trees in significant commercial quantities. For the purposes of this Act, a wood lot may be a one-acre lot planted with trees in the manner normally used in forestation or reforestation.

For determining eligibility for the investment credit, the useful life of a tree will be its normal growing period. The committee waived the requirement that property eligible for the investment credit must be property for which depreciation (or amortization in lieu of depreciation) is allowable.

The conference committee clarified that the provisions apply to reforestation expenditures incurred in the 50 States and the District of Columbia.

C. Revenue effect

House Bill

The House bill contained no provisions on reforestation.

Senate Amendment

It is estimated that the amortization and investment credit provisions for certain re-

[1] The partnership rule is also the same as the rule applicable under Code section 179. As under section 179, this provision is inapplicable to trusts.

[2] This reflects the existing rule relating to qualified investment in new self-constructed property. Under this rule, the taxpayer is required to reduce the basis of self-constructed property by "any depreciation sustained with respect to any other property used in the construction, reconstruction, or erection" for purposes of the investment credit (Treas. Reg. § 1.46–3(c)(1)).

forestation expenses will reduce budget receipts by $6 million in fiscal year 1981, $5 million in fiscal year 1982, $7 million in fiscal year 1983, $8 million in fiscal year 1984, and $10 million in fiscal year 1985.

Conference Substitute

The revenue effect of the conference substitute would be identical to the revenue effect of the Senate amendment.

THOMAS L. ASHLEY,
JOHN M. MURPHY,
MARIO BIAGGI,
JAMES L. OBERSTAR,
WILLIAM J. HUGHES,
AL ULLMAN,
JAMES C. CORMAN,
PAUL N. MCCLOSKEY,
JOEL PRITCHARD,
THOMAS B. EVANS, JR.,
JOHN J. DUNCAN,
Managers on the Part of the House.

WARREN G. MAGNUSON,
WENDELL H. FORD,
HOWARD W. CANNON,
BOB PACKWOOD,
HARRISON SCHMITT,
Managers on the Part of the Senate.

PERMISSION FOR WAIVER OF 3-DAY RULE FOR HOUSE CONSIDERATION OF CONFERENCE REPORT ON H.R. 4310 — RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1980

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that the provisions of rule XXVIII(2)(a) shall be waived for purposes of House consideration of the report of the committee of conference on H.R. 4310, the Recreational Boating Safety and Facilities Improvement Act of 1980.

Mr. Speaker, the conference report and joint explanatory statement of the committee of conference on H.R. 4310 was filed today and will be printed in today's CONGRESSIONAL RECORD. The Senate had already agreed to the conference report. The matters at issue are noncontroversial. The measure continues to have strong bipartisan support.

Accordingly, it would be advantageous for the conferees to have the flexibility of bringing the conference report to the floor on Thursday of this week—in order to facilitate floor scheduling of other major substantive legislation during the closing weeks of this session.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

HARLEY O. STAGGERS FEDERAL BUILDING

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6511) to designate the building known as the Federal Building in Morgantown, W. Va., as the "Harley O. Staggers Federal Building," with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 2, after line 2, insert:

SEC. 2. The authorization contained in section 1 of this Act shall become effective on January 15, 1981.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

A motion to reconsider was laid on the table.

DISPENSING WITH THE CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule on Wednesday, September 17, 1980, be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. LEVITAS. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I reserve the right to object for the purpose of inquiring about the status of the Regulation Reform Act. The gentleman from Georgia interposed objection last week when this same unanimous-consent request was made and stated at the time that his purpose was to see that the Regulation Reform Act, the centerpiece of the administration's regulatory reform program, finally get out of the Committee on the Judiciary and come to the floor of this House for a vote and let the House do its will.

Mr. Speaker, I would like to inquire of the acting majority leader whether he can inform the Members of this House, will there be completion of action on the Regulation Reform Act and what is the anticipated disposition.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield to me?

Mr. ROSTENKOWSKI. Mr. Speaker, I yield to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I am able to tell the gentleman from Georgia that the Regulatory Reform Act is presently scheduled for markup tomorrow morning in the full Judiciary Committee. I want to add at this time that I am, after this colloquy, going to ask unanimous consent that the Committee on the Judiciary can meet tomorrow. The work we would be doing tomorrow is, hopefully, to complete markup on the regulatory reform bill, the major bill. While I am not able to guarantee that we can complete it tomorrow morning, I can state that when we last adjourned we were, in my opinion, within an hour and a half or 2 hours of completing our work and, hopefully, we can do so tomorrow.

Mr. LEVITAS. Mr. Speaker, further reserving the right to object, I would like to inquire—first of all I would like to congratulate the gentleman from California for this assurance that he is now giving the Members that this important legislation will be completed by the Committee on the Judiciary as best the gentleman can determine. I would, however, like to make one more inquiry: If the Committee on the Judiciary should report this bill out pursuant to whatever compromises might be made within the committee in order to salve the sensibilities of the White House, to get it out of committee, can we have some assurance that the committee will request an open rule or at least a rule which would make in order an amendment which would permit a legislative veto that would not require concurrence of the President?

Mr. DANIELSON. Mr. Speaker, if the gentleman will yield further, I would like to give the gentleman from Georgia assurance, and respond directly and affirmatively to the gentleman's request, but I have found it is better for me to fight only one battle at a time. I have my hands quite full with the one in which I am presently engaged. I know we have an excellent Rules Committee, with fine membership from both sides of the aisle and I should think if we were to sit down together before the Rules Committee we could accommodate the needs of everyone concerned.

I am not on the Rules Committee, I do not even aspire to those heights and, therefore, I would rather not respond further.

Mr. LEVITAS. Mr. Speaker, further reserving the right to object, I would like to inquire whether the gentleman from California, the chairman of the subcommittee—and I notice the presence on the floor of the distinguished gentleman from New Jersey (Mr. RODINO), the chairman of the Judiciary Committee—can we be assured that the rule requested by the chairman of the committee and the chairman of the subcommittee will permit either an open rule or the offering of the amendment which the gentleman from Georgia has upon occasions offered before on this important legislation?

Mr. DANIELSON. I am aware of the gentleman's deep interest in the legislative veto issue, his very sincere interest and the gentleman from Georgia and the gentleman from California both realize that this is an issue that must be resolved. I do not fully agree with the gentleman on everything but I think I have worked out one formula in which the gentleman only disagrees with two words—very important words but only two words.

I would just like to state that I have talked to the White House as late as 8:55 this morning. They do not at all object to having us continue and complete markup. My chairman has agreed to it. Hopefully, the House will agree to let us sit. In that event we should be able to get done tomorrow morning.

Mr. LEVITAS. Further reserving the right to object, I think the gentleman from Georgia has asked a very simple question which is capable of being responded to: Will the gentleman from California, the chairman of the subcommittee and the gentleman from New Jersey, the chairman of the full committee, request an open rule or a rule which would permit the gentleman from Georgia to offer a legislative veto amendment?

□ 1330

Mr. DANIELSON. If it would comfort the gentleman, I will request it, but I will not guarantee that my tone of voice will be persuasive at the time. I will request it; I will utter those words.

Mr. LEVITAS. Further reserving the right to object, if the chairman of the Judiciary Committee would care to respond to that question——

Mr. RODINO. Mr. Speaker, I can only tell the gentleman from Georgia that I defer to the gentleman from California, the chairman of the subcommittee, who has stated that he will make that request.

Mr. LEVITAS. Further reserving the right to object, I thank the gentleman from California and the gentleman from New Jersey; and respecting as I do not only the integrity but the good faith of the gentleman from California, and on that assumption and reliance, I withdraw my reservation of objection.

Mr. DANIELSON. I thank the gentleman.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. BROYHILL. Mr. Speaker, further reserving the right to object—and I shall not object—further committee action on regulatory reform is what we have been working for. A number of people have signed my discharge petition, discharge petition No. 12, which has the purpose of discharging the Judiciary Committee from further consideration of this legislation. The purpose of that discharge petition was to urge the committee to resume its markup.

I do appreciate the gentleman from California saying that the committee will be marking up that bill tomorrow. I hope that work is completed tomorrow, because this House, I think, would overwhelmingly approve that legislation. It has been a disappointment to me that the work of the Judiciary Committee was suspended for these past several months. It is too bad that committee action this late in the legislative year could have the effect of killing this needed reform this year.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT TOMORROW DURING 5-MINUTE RULE

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit while the House is reading for amendment under the 5-minute rule on Wednesday, September 17, 1980. I have cleared this with the minority.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, will my colleague tell us what the legislation is?

Mr. DANIELSON. Yes. There are four bills scheduled. The one that counts is H.R. 3263, the Regulation Reform Act of 1980. There are three very minor bills which may or may not be raised.

Mr. ASHBROOK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. ADDABBO).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 8105, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, September 15, the Clerk had read through line 22 on page 6. Are there any amendments to title II?

If there are no amendments, the Clerk will read.

The Clerk read as follows:

TITLE III

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $3,965,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes; $12,223,579,000, of which not less than $641,500,000 shall be available only for the maintenance of real property facilities.

AMENDMENTS OFFERED BY MR. WHITE

Mr. WHITE. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. WHITE:

TITLE I

On page 2, line 10, in Military Personnel, Army, strike "$10,857,568,000," and insert in lieu thereof "$10,881,768,000."

On page 2, line 18, in Military Personnel, Navy, strike "$7,631,594,000" and insert in lieu thereof "$7,644,094,000."

On page 2, line 18, in Military Personnel, Marine Corps, strike "$2,281,051,000" and insert in lieu thereof "$2,284,951,000."

On page 3, line 10, in Military Personnel, Air Force, strike "$8,692,509,000," and insert in lieu thereof "$8,698,509,000."

TITLE III

On page 7, line 10, in Operations and Maintenance, Army, strike "$12,222,579,000," and insert in lieu thereof "$12,249,579,000."

On page 8, line 25, in Operations and Maintenance, Marine Corps, strike "$990,900,000," and insert in lieu thereof "$994,200,000."

On page 9, line 15, in Operations and Maintenance, Air Force, strike "$13,538,246,000," and insert in lieu thereof "$13,555,046,000."

On page 10, line 5, in Operations and Maintenance, Defense Agencies, strike "$4,008,595,000," and insert in lieu thereof "$4,014,895,000."

Mr. WHITE (during the reading). Mr. Chairman, I ask unanimous consent that the further reading of the amendments be dispensed with, that they be printed in the RECORD, and that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The gentleman from Texas (Mr. WHITE) will be recognized for 5 minutes.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman.

Mr. ADDABBO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would ask unanimous consent that the debate on these amendments and all amendments thereto be limited to 1 hour.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. WHITE. Mr. Chairman, I want to compliment the Appropriations Committee on the hard work and excellent legislation they bring to the floor. This bill contains funding for many important programs and will be of substantial assistance to our military forces.

Mr. Chairman, it does not mean, though, that I agree with everything that was done in this bill.

I am concerned about the Appropriations Committee action preventing the services from commissioning physician assistants and I feel that the Armed Services Committee may have to consider legislation on the subject next year.

More importantly, however, I am very worried about the proposed reduction of $100 million in Department of Defense recruiting funds. I understand that this proposal was agreed to prior to the conference action on the Defense authorization bill which imposed strict quality standards on enlistment in the military. The statutory controls on quality substantially alter the situation from the point at which the subcommittee originally approved reducing these funds.

I do not fault the Appropriations Committee for this proposal because I, too, am uncomfortable with spending such large amounts to recruit personnel. However, attracting quality personnel in an All-Volunteer Force environment is expensive.

The services, and in particular the Army, have been recruiting too many personnel who score poorly on the enlistment tests. The action of the Congress in imposing limitations on the number of nonhigh-school graduates the Army can recruit in 1981, and for all the services, on the number of personnel scoring between the 10th and 30th percentile on enlistment tests is aimed at forcing the services to orient their recruiting toward the higher quality personnel.

The Appropriations Committee report indicates that the reduction is intended to keep the services' recruiting budgets

at the fiscal year 1979 level, plus a factor for inflation.

Unfortunately, Mr. Chairman, in fiscal year 1979, all four services missed their recruiting goals, with the Army taking the largest shortfall experienced in the All-Volunteer Force—over 16,000.

The Appropriations Committee position is that the new pay incentives approved, plus the recession economy, are enough to improve recruiting.

Mr. Chairman, I disagree with this judgment.

All of the estimates presented by the services today in a hearing before the Military Personnel Subcommittee indicate that this reduction in recruiting funds, plus the statutory limitations on quality now in effect, will seriously hurt recruiting in fiscal year 1981, and have an even more serious impact in fiscal year 1982. The Army estimate, alone, is that with the $51 million reduction—which is their allocation of the overall cut—they will have a shortfall of at least 18,000 in fiscal year 1981.

Mr. Chairman, the Congress has taken an important step in establishing—against the wishes of the Department of Defense—strict quality standards on enlistments. That was done 3 weeks ago in the authorization bill. It is simply inconsistent for the Congress now to turn around and not provide the services with the funding required to meet the statutory standards that have been imposed.

Mr. Chairman, I will offer an amendment tomorrow to restore this reduction. I urge the Members to support it.

□ 1340

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has expired.

(On request of Mr. KAZEN, and by unanimous consent, Mr. WHITE was allowed to proceed for 3 additional minutes.)

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, I thank the gentleman for yielding, and I rise to associate myself with his remarks. I agree with the gentleman 100 percent on every single point that he has made.

Since we in this Congress have demanded that the service go out and recruit the best possible people they can, we cannot afford at this time to say, "You cannot do what the Congress has mandated."

I would urge this committee to restore the $100 million. If we are going to have the heart of the security system of this country and the defense of this country, which is its personnel, strengthened, we must adopt this amendment. If we are going to have the heart put back in the body of our defense we must have this $100 million put back in this bill. Our country's security demands it.

Mr. WHITE. Mr. Chairman, I thank the gentleman from Texas. I know he is very intimately acquainted with this issue because he has heard the hearings that were held before our committee.

Mr. JOHNSON of Colorado. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I wonder if the gentleman would address the problem of what will happen in the event we do not vote this $100 million for the volunteer Army vis-a-vis the reinstatement of the draft which may come up next year.

First, I am opposed to the draft, and it seems to me that those who are opposed to the draft should be supportive of the gentleman's amendment.

Mr. WHITE. Absolutely.

Mr. JOHNSON of Colorado. We should be supportive of the amendment so that we can have a volunteer force that will avoid the necessity of the draft. I will ask the gentleman, Is that a reasonable position for us to take?

Mr. WHITE. Mr. Chairman, that is absolutely logical. If we want to have a viable volunteer service, we must restore this money so they can go out and recruit the men and women we need in the service to meet our quotas.

Mrs. HOLT. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentlewoman from Maryland.

Mrs. HOLT. Mr. Chairman, I rise in support of the amendment offered by my chairman, Mr. WHITE, to restore the $100 million needed by the Department of Defense for recruiting, advertising, and examining resources, which was deleted by the Appropriations Committee.

First, I would like to join my colleague in congratulating the Appropriations Committee on a job well done—it is generally an excellent bill.

However, as Mr. WHITE has indicated, we must restore the $100 million if we expect the Department of Defense to be able to respond to the statutory requirements levied by the fiscal year 1981 Authorization Act. Mr. Chairman, during the authorization process, we in the Armed Services Committee, under the superb leadership of our chairman, Mr. PRICE, labored long and hard to develop a defense authorization bill, which was reflective of the needs of our armed services. Particular attention was given to the issues of how to improve the quality of our forces. Accordingly, as a result of our conference with the Senate Armed Services Committee, several restrictive provisions were included in the act, and they were directed to improve the quality of our recruits.

Mr. WHITE has covered the recruiting restrictions in sufficient detail. I would like to add that clearly without the $100 million—which represents about a 14-percent reduction in active forces recruiting funds—it will be difficult, if not impossible, for the department to satisfy the recruiting requirements outlined in the 1981 Authorization Act. This will most likely result in even more serious quality problems. It has been estimated that in the Army alone, the reduction will result in a shortfall in fiscal year 1981 of about 18,000 recruits with 14,000 of these shortages being high school graduates.

Mr. Chairman, I would suggest that we have an obligation to provide the resources necessary for the Department of Defense to carry out the congressionally mandated recruiting requirements.

I strongly urge the Members to support this amendment.

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has again expired.

(On request of Mrs. HOLT, and by unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. WHITE. Mr. Chairman, I thank the gentlewoman from Maryland (Mrs. HOLT) for her contribution.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I have had the privilege of serving on the Subcommittee on Military Personnel, and we have dealt with the issue of personnel in the military services. We certainly have our problems there, and I totally agree with the gentleman's amendment and support the amendment. I am realistic to know at this time Congress is not going to pass a draft, even though we do need the draft.

So to have a chance of making the All-Volunteer Service work, we certainly want to have enough funds for recruiting.

As I understand it, the Chief of Staff of the Army does support this amendment and has written a letter setting forth that support.

Mr. WHITE. Yes, he has, and I will include that letter in the record.

Mr. MONTGOMERY. Mr. Chairman, I want to make the point that this is one of the few times that we ever hear from the Defense Department. The Department of the Army needs this money to upgrade its recruiting program.

Mr. Chairman, again I thank the gentleman for yielding.

Mr. WHITE. Mr. Chairman, I will at this point include the letter to which the gentleman from Mississippi (Mr. MONTGOMERY) referred. The letter from the Chief of Staff of the Army is as follows:

U.S. ARMY,
THE CHIEF OF STAFF,
September 16, 1980.

Hon. RICHARD C. WHITE,
Chairman, Subcommittee on Military Personnel, House of Representatives, Washington, D.C.

DEAR MR. WHITE: Maintenance of the Active Army's personnel strength is currently a critical issue because it impacts directly on readiness of the approved force structure. Even as designed and approved, that structure contains an element of risk. Therefore, any proposal which might further extend the risk is extremely dangerous.

Our experience in attempting to man the volunteer force suggests that success is dictated by three principal measures: standards, recruiting resources, and benefit levels. When we prescribe entry standards we automatically fix the size of the potential market open to us. The guidance we are receiving

from the Congress regarding AFQT scores and high school graduates has the effect of shrinking the market of eligible young men and women. It thus makes recruiting in FY 81 more difficult than it was in FY 80.

Second, we have the consideration due our competitive position in the declining market. While the recent pay raise and passage of Warner-Nunn have improved our retention prospects, the improvement apparent in the entry wage is small vis-a-vis entry level wages among other employers competing for high school graduates. The potential recruit needs to be an astute judge of the total benefits package to see any advantage for entry into service versus the many alternative options open to him. DoD-wide, the challenge to us is to attract one of every six qualified high school graduates throughout the nation in this coming year. Reflect on the high school you are familiar with, and ask if you think we have the requisite attractability to draw in those youngsters with whom you are familiar.

I think we do have the attractability—provided we are able to maintain a recruiting effort adequate to the task of carrying our case to the young men and women of this country. The dimensions of that program, in my view, should be comparable to our successful recruiting years. The reduction which is being considered reduces our effort to one comparable to a year in which we failed to meet our recruiting requirements.

Failure brings with it risk—a risk I do not believe we can accept.

The issue of how we maintain strength is a National, not an Army issue. The Congressional mandate to maintain that strength with volunteers demands the requisite resources to do the job. The proposed reduction will in all likelihood prevent us from carrying out the Congressional mandate.

I hope my views in response to your request on this critical issue will be helpful to you and other members of the Congress in deciding this issue which is elemental to our national defense.

Sincerely,

E. C. MEYER,
General, U.S. Army, Chief of Staff.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I would like to express my support for the amendment and also join with my colleague, the gentleman from Colorado (Mr. JOHNSON), and say that I was also one of those Members who voted against draft registration. But to have any intellectual consistency, I have to support all reasonable efforts to recruit as many people as we possibly can in order to insure the success of the All Voluntary Army.

Along with my colleague, the gentleman from Missouri (Mr. SKELTON), I had an opportunity to visit an aircraft carrier last year, and I saw first hand what the recruitment problems and enlistment problems were in our services.

Mr. Chairman, I think the gentleman from Texas (Mr. WHITE) has offered an excellent amendment to this bill.

The CHAIRMAN pro tempore (Mr. LLOYD). The time of the gentleman from Texas (Mr. WHITE) has expired.

(On request of Mr. HILLIS, and by unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. HILLIS. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Indiana.

Mr. HILLIS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the gentleman's amendment, and I wish to associate myself with his remarks.

The gentleman from Texas (Mr. WHITE) has made all of the points as to why this amendment is needed. I think that if we sat in on the testimony and heard General Meyer, the Chief of Staff, talk about a hallow Army and all of the problems that are associated with trying to equip the Army and maintain adequate personnel in today's Army, we would know that it is exactly the wrong thing to do to cut the recruiting budget.

Higher standards have been placed on the Army, both in the percentage and numbers of high school graduates and ATC scores, and if the Army is to meet these goals, it is going to need every recruiting dollar it can get its hands on. To cut the budget at this point in time and expect the quality and numbers of personnel that we have to have is, I think, a sure ticket to voting not only on draft registration but an active draft within the next year or two in this body.

Mr. Chairman, I think it is absolutely essential that we support this amendment.

Mr. WHITE. Mr. Chairman, I thank the gentleman from Indiana (Mr. HILLIS), who has been a valuable contributor to our committee.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I just want to commend the gentleman from Texas (Mr. WHITE) for his amendment and his statement, and I will seek my own time in support of the amendment.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I thank the gentleman for yielding, and I rise in strong support of the gentleman's amendment.

This Congress, even without as much help from the administration as we should have had, has at least, been able to increase the pay and incentives for the armed services, especially for retention of qualified people. It does not make much sense to try to do that on the one hand if we cannot get the quality people in the first place and make them aware of the changes that have been made and are being made in benefits.

Mr. DICKS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the amendment. Since the Defense Subcommittee marked up this bill, a number of factors have changed that seriously bring into question the wisdom of reducing the recruiting budget by $100 million.

We have become aware of massive reestimates of test scores for Army recruits that show over 50 percent of those recruited last year were in mental category IV, the lowest acceptable level.

As a result of selective service registration, 350,000 young men have checked the box indicating they would like to receive information on opportunities in the armed services. The original budget submission did not include funds to distribute such information to these people. The reduction proposed in this bill will make it even more difficult to take advantage of these prospects.

□ 1350

Most important, the authorization conference had not completed its work when we marked up this bill. Thus, the subcommittee was unable to consider the implications of requirements for the Army to produce 65 percent of accessions as high school graduates.

And I might add that this will add a tremendous burden to the job that must be done by our Army recruiters.

In addition, I believe we failed to take into proper consideration the burden we would be placing on recruiters through this cut. The reduction returns the services to 1979 funding levels, a year where we saw widespread recruiting abuses caused by pressures to produce or else. I do not think any of the Members want to force a return to that situation.

While additional recruiting funds above the committee recommendation are needed this year, in the longer run we should be examining actions that will produce greater results at little or no cost. For example, 41 percent of our high schools do not welcome recruiters to present the case for military service. Some State legislatures, including Washington State, have passed measures assuring access. More needs to be done in this area.

In addition, it is intolerable that the Department of Labor refuses to cooperate in presenting military service as an alternative in employment security programs.

Ultimately, if we are to insure the quality and quantity of recruits we need, we will have to improve the product. The military cannot be a financial sacrifice if we are to gain the services of our most talented young people. Quality of life improvements will yield additional benefits by improving retention and lowering the requirements for new recruits.

Until these actions can bear fruit, however, adequate recruiting resources will be essential, and that is what this amendment provides.

I just think it would be tragic, in the year in which we have passed the Nunn-Warner amendment and have approved an 11.7 percent pay increase for the military, to turn around and to slash the recruiting budget when we need that effort to produce the number of new people that we need into the Armed Forces. So I enthusiastically support this amendment, and I urge my colleagues on both sides of the aisle to support this effort to make sure that we have enough people in the Army, the Navy, the Marine Corps, and the Air Force.

Mr. DOWNEY. Mr. Chairman, will the gentleman yield?

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Mr. DICKS. I yield to the gentleman from New York.

Mr. DOWNEY. I want to associate myself with the remarks of the gentleman from Washington, who has done yeoman work on the committee, and also the author of the amendment (Mr. WHITE).

There is no question that if we need people that we have to recruit them. It is clear that the recruitment effort to date has not met the needs of the Army, the Navy and the Air Force, and I think that as long as we are requiring greater specifications—and that is what the Army is doing—for quality, then we have to provide them with the money to go out and get these people.

Mr. DICKS. Especially when you say that 65 percent of the Army recruits have to be high school graduates. All of a sudden you limit the pool of people from which you can recruit. Unless we give the Army additional resources to reach those people, we are going to wind up having a 15,000, 16,000, 20,000 shortfall again this year.

Mr. DOWNEY. I also think it is important for my friends and colleagues who have not supported the draft registration or the draft to also understand that we cannot keep having it both ways. If we want to see the Volunteer Force work, we are going to, on occasion, have to provide the money to make it work. And this is what this amendment is aimed at.

Mr. DICKS. I thank my colleague and good friend for his remarks.

Mr. WEAVER. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from Oregon.

Mr. WEAVER. Mr. Chairman, I want to associate myself with the remarks of my distinguished friend, the gentleman from Washington, and also the remarks of the gentleman from New York (Mr. DOWNEY), and I wish to commend the sponsor of the amendment, the gentleman from Texas (Mr. WHITE) and assure him that I will be voting for this amendment.

Mr. DICKS. I thank the gentleman for his comments.

Mr. SKELTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I rise in strong support of this amendment offered by the gentleman from Texas (Mr. WHITE). I support the restoration of funds for the Armed Forces recruiting activities. The $100 million cut that is recommended by the Appropriations Committee will have a severe and adverse impact on the ability of our Armed Forces, particularly the Army, to recruit both the quantity and the quality of personnel that they need. It is estimated that these cuts may well cause the Army to miss its fiscal year 1981 recruiting goal by some 18,000 young men and women, of which some 14,000 will be high school graduates. Thus, the cut recommended by the committee is inconsistent with the requirement imposed by this Congress in the recently enacted Department of Defense authorization bill. In that bill we provide for the fiscal year 1981 that those who are enlisted or inducted into the Army who are not high school graduates may not exceed 35 percent of all male individuals with no prior service who are enlisted or inducted during that year. These people train more quickly, perform productively; they are less likely to be lost through attrition and before the end of the terms of enlistment. They are those who are most likely to have a successful military career through the years. They are worth the cost of recruiting them.

Mr. Chairman, I also would like to point out that the increased military compensation, which is essential to retain the trained and experienced soldiers, is important. But that in and of itself, the 11.7-percent pay raise, will not attract those high school graduates that we need. The 11.7-percent pay raise only moves the entry level pay from 84 percent of the minimum wage to 86 percent. Certainly this is not enough to attract those that we need. It is going to take more.

It is going to take personal contact by recruiters. It is going to take advertising. It is going to take a positive and continuing military presence in the communities across our country. This must be maintained and it must be increased to stimulate and to keep the interest in the Army, the Navy, the Marine Corps, and the Air Force among our high school graduates.

Thus, Mr. Chairman, I urge the adoption of this amendment which will restore this $100 million in recruiting funds for our armed services.

Mr. NICHOLS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment of the gentleman from Texas (Mr. WHITE) to add back the funds requested for recruiting in fiscal year 1981 that were cut during the committee consideration of the Defense appropriations bill.

We know that a number of factors impact on the ability to meet recruiting goals: For example, entry level compensation, recruiting resources, and civilian unemployment among the relevant age group. One of the most significant factors is the level of recruiting resources. This is a particularly important factor in terms of recruitment of a specific category; namely, the high school degree graduate and individuals in the upper mental categories.

Although it is true that significant military compensation initiatives have been adopted this year, these initiatives have focused primarily on attempts to improve retention among the members of our career force. For example, in the so-called fair benefits package, only about 10 percent of the increases provided will flow to members in the lowest three pay grades; only 2 percent of the increase will flow to the entry level. On the other hand, 30 percent of the personnel are in the lowest three pay grades; about 10 percent are in the entry level pay grade. The disproportionate distribution of these increases highlights the intent to focus on retention.

Increased retention will result in less demand for recruits, but even under optimistic estimates of retention, substantive recruiting problems will remain in the near future.

The increases that were provided to the entry level pay grades through the fair benefits package and through the 11.7 percent October pay increase will be barely sufficient to keep the compensation at the same relative level it had in fiscal year 1980. This is the compensation that potential enlistees observe when deciding whether or not to enter the military.

It is the new quality constraints that have been imposed on the services through the provisions in the Defense authorization bill are going to make the recruiting task much more difficult in fiscal year 1981. These provisions require at least 65 percent male high school degree graduates in fiscal year 1981 in the Army; in fiscal year 1980, there were only 48 percent. In addition, the services may enlist only 25 percent of new accessions who score between the 10th and 30th percentile on the entrance test; this compared to 30 percent today. I believe that the improved quality that will invariably result from these constraints is very desirable. But we need to provide the resources to achieve these goals. They cannot be achieved at no cost. The result of not providing the recruiting resources requested will be a failure to meet the constraints and a consequent shortfall in end strength in fiscal year 1981.

Another factor affecting the number of individuals who volunteer for military service is the unemployment rate. Although teenage unemployment is likely to increase in fiscal year 1981, I do not believe that this will have as substantial an impact on high mental category, high school degree graduates as it will have on those individuals in the lower mental categories and on non-high-school graduates. To the extent that recruitment of high-school-degree graduates is not facilitated by rising unemployment rates, more recruiting resources must be focused on this category to meet the new higher quality constraints imposed.

In summary, Mr. Chairman, recent compensation increases will not be overly helpful in attaining these quality goals, and it is very questionable that unemployment will aid very much either. The manpower problems we face are extremely difficult to solve. We have taken great steps in addressing some aspects of these problems—particularly those dealing with retention. The Appropriations Committee is to be commended for funding many of the initiatives authorized for next year. But not all the problems have been addressed or addressed fully. And alleviating the retention problems will not resolve the recruiting problems.

The $100 million in recruiting resources that were cut must be restored, and I strongly urge support for the amendment.

□ 1400

Mr. LEATH of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the amendment.

Mr. LEATH of Texas. Mr. Chairman, I rise in strong support of the amendment.

Certainly, every Member of this House must know that our conventional military forces have a recruiting and retention problem that is acute. I have observed these problems at very close range during frequent vists to Fort Hood, the Army's largest military post, which is in my district. My own analysis of the problem has convinced me that we need a draft—now. But since the Congress has seen fit not to address that subject, it is, in my judgment, absolutely foolhardy to cut any funds requested by the Department of Defense that are designed to recruit and retain personnel. On the contrary, we should be doing everything we can to provide the services with the resources they need to attract good people.

I have listened with an open mind to the points raised in support of a cut in recruiting funds, and though they are well intentioned, I must reject their validity to our personnel needs, particularly in the Army.

I would like to believe that our actions to provide better pay and compensation for service members will result in droves of high school graduates beating down the doors of our recruiting stations. Some will be brought in perhaps, but these actions will not solve the problem. Many will still be on food stamps.

I would like to believe that announcement of a new GI bill will inspire parents, as well as potential recruits, to seek the services as an opportunity for education and experience. That will bring in some, but it will not solve the problem.

I would like to believe that the temporary rise in unemployment will drive throngs to the recruiter. This sad condition will bring some, but it will not and should not be a crutch to fill the military ranks.

All of the actions that we have recently taken and will soon take will help the services retain the people they already have. But these actions also provide conditions for a vigorous recruiting program to exploit. But in my judgment, they will not be able to do it with relatively the same funding they had in 1979 when, I would remind my colleagues, every service had a recruiting shortfall. To cut recruiting money now is contrary to everything this Congress has done to help the military services. The funds cut in recruiting must be restored and I urge a "yes" vote for this amendment.

Mr. WON PAT. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the amendment.

Mr. Chairman, I rise in support of the amendment before us proposed by the chairman of the Subcommittee on Military Personnel, Mr. WHITE. There is every indication that the situation with regard to enlistments is growing worse. What we are talking about has nothing to do with a balanced budget or equal rights, or even national military policy. We have the equipment. We have the units. But we simply do not have the soldiers to man the equipment or staff the units.

If we are looking for a paper army, we are headed in the right direction. But, as one who saw World War II in my own backyard, I do not relish the picture of the United States becoming a paper tiger as we were once called.

We cannot condone a massive cut in recruitment funds. This will only make matters worse. All of the services will be hurt by this cut.

My constituents on Guam are proud of their military service. They presently enjoy the highest enlistment rate of any ethnic group. As a matter of fact, there may well be more Guamanians in the military on a per capita basis than there are residents of any other American area.

Only recently, President Carter signed into law my bill to permit individuals from the Northern Marianas to enlist in the U.S. military. I supported this bill because America needed a new source of ready and willing recruits and because the residents of the Northern Marianas know that they can expect a good life in the service.

I urge my colleagues not to do anything that would lessen the ability of our armed services to seek out and actively recruit qualified personnel. Our freedoms mean a lot to each of us. But they do not mean much to the Russians if we cannot defend them.

I wholeheartedly support this amendment and ask that my colleagues do also.

Mr. MOFFETT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I do not relish taking this position from the point of view of opposing the distinguished chairman of the subcommittee, because I think he is one of the great leaders on this subject and in terms of our defense capabilities in the Congress or that has ever been in the Congress.

Also, in a more perfect world, Mr. Chairman, it would be wonderful if we were about to vote for $100 million on a national service program with a civilian option, but it is not a perfect world that we are dealing with here, and to continue to allow our recruitment apparatus to go on as it has is like saying that we would expect the University of Texas or Ohio State or Alabama to recruit for football with the recruitment budget of Slippery Rock. It does not make any sense.

I think as the gentleman from New York (Mr. DOWNEY) said and as our colleague from Washington (Mr. DICKS) certainly articulated, those of us who have been against the draft registration program have a special burden here it seems to me.

I have always taken the position, as have some of my colleagues in this House, that more dollars for defense do not always mean a better defense. But the fact is that there are occasions when we have to spend more money to get more impact. This is one of those.

This is an issue that clearly transcends various ideological disagreements about what kind of defense makes a good defense; and one of the fact that we have to confront is that we have almost a primitive character of our war-fighting capability in many respects aside from our nuclear forces.

The idea that nuclear forces would serve as a strong deterrent to an Afghanistan invasion, for example, I think most of my colleagues would agree, is rather absurd. It is the character of our conventional forces that needs to be looked at as a deterrent as the world sees more and more turmoil and little skirmishes here and there that add up to a most chaotic and turmoil-filled world. We cannot begin to address that, however, if we do not address the issue of recruitment.

What we need to do is focus attention on the condition of our conventional forces. We need to ask the tough question in this age of tremendous pressure for neutron bombs and MX missiles and other such hardware that has dubious value as a deterrent in many situations, the tough question of where is the constituency for the soldier?

We know that the Active Army is 70,000 short of being fully manned. We know that the Army National Guard and Army Reserves are 135,000 short of what they should be. We know that the Individual Ready Reserve is short between 500,000 and 300,000. And this is the Army's only source of large numbers of trained individual replacements.

Even worse, the Pentagon tells us that only one-third of our Armed Forces would be ready to fight at any given moment.

We have heard from senior sergeants and maintenance specialists at Langley Air Force Base who have stated that only 35 percent of the 1st Tactical Fighter Wing's new F-15 Eagles, the leading fighter plane in the Air Force today, are fully capable of flying combat missions on any given day. And only half of the Tactical Air Commands 450 F-15's, each of which cost nearly $18 million, are ready to go at any particular time.

Why is this true? Partly because engines wear out faster than expected, because not enough spare parts are ordered, because, in some cases, of poor design or poor materials.

But this inadequacy also stems from a serious lack of skilled and experienced technicians who bear the brunt of the task of keeping airplanes in the air.

Mr. Chairman, as I indicated earlier, it is especially important for those of us who disagreed with the draft registration decision to support this amendment. It is not often that we have a clear consensus in this House. But I believe there is a consensus that we must beef up the core of our defense. In many cases, it is not as glamorous to tend to the nuts and bolts as to the big items like bombers and aircraft carriers and sophisticated nuclear weapons.

But whether we look to the Indian Ocean, the Persian Gulf, the Middle East or other trouble spots in the world, we

must agree that our conventional forces must be beefed up. That means giving much more attention to recruitment.

I would not be supporting this amendment if I thought that the money would not be productively spent. Many of us have supported efforts to improve recruiting practices. But now is the time to back up these practices with the dollars needed. I urge support of the amendment.

Mr. ADDABBO. Mr. Chairman, with reluctance, I rise in opposition to the amendment.

Mr. Chairman, most of the arguments we have heard here today are arguments in favor of what has already been done by the committee and by the Congress. In order to improve retention and to better the life of the serviceman, we are funding within this bill the Nunn-Warner amendment, which has increased the benefits to the tune of $713 million. In addition to that, there are further pay raises which will come into effect which will in total increase benefits by over $2 billion. That is money that the military said it needs in order to attract and in order to retain men into the service.

□ 1410

We are discussing here today as if we are not spending any money for recruitment. In this bill before us now is $1 billion—$1 billion for recruitment. One billion dollars would buy enough XM-1 tanks to outfit two complete Army mechanized divisions, an entire wing of F-16's, or four FFG-7 frigates every year.

What DOD is seeking to do here is ask for another $100 million to do something they should have been doing over the years; but whenever a problem arises, their answer is more dollars; never, never, never better management.

We have seen within the Army recruiting service the fraud, the misrepresentations, and nothing has been done to tighten it up.

How do we get their attention? How do we make them go and look at better management? The only way to get their attention is by making reductions. Even by this reduction, Mr. Chairman, we increase in real terms the dollars available over the 1979 recruiting dollars. That is what we have done already in this bill.

What do we accomplish by restoring this $100 million? As far as I am concerned, nothing except giving the Army, the Navy, the Marine Corps, and the Air Force more money to waste. We do not require them to do anything. We do not require them to manage their recruiters better. The Marine Corps has said if a recruiter cannot obtain at least a certain number of recruits he should be removed; but they have not removed recruiters who have not met requirements as shown in their own audit reports.

We speak of the high school graduate. Just the other day before the committee of the gentleman from Texas, General Thurman, director of Army recruiting, said that it is not necessarily true that the high school graduate makes the best soldier.

In addition to that, Mr. Chairman, we are being asked today to spend an additional $51 million for 10,000 fewer recruits. The Army has told the committee that the requirement for nonprior service males has been reduced by 10,000, so they are asking for more money to recruit fewer people.

Mr. Chairman, this bill before us is $2.5 billion over the President's budget. We have added money to the President's budget. We have an allowance in the budget ceiling for an 11.7-percent pay increase. If we start increasing that $2.5 billion over the budget, we now will start cutting into that amount which we have available for that pay increase, which then will really affect the retention and possible recruitment.

So I would ask my colleagues to support the committee and not go for this $100 million which is not needed.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, just a brief comment. I certainly commend the chairman for his leadership on our subcommittee and his work to get a significant increase in money for retention and Nunn-Warner and the other things that are essential; but I do think it is important, as the chairman pointed out in his testimony, that it was suggested that a high school graduate may not necessarily make the best soldier; but is it not true that the Congress now has directed the Army to bring 65 percent of the new people that come into the Army must be high school graduates; so it is an amendment that has been adopted by the authorizing committee that narrows the number of people who are available.

The CHAIRMAN pro tempore. The time of the gentleman from New York (Mr. ADDABBO) has expired.

(By unanimous consent, Mr. ADDABBO was allowed to proceed for 2 additional minutes.)

Mr. DICKS. Mr. Chairman, if the gentleman will yield further, it is going to make it more difficult to recruit because Congress has said that it wants more high school graduates in the All-Volunteer Forces.

So I would just like to make that point and ask the chairman if he does not agree that it is going to be more difficult to recruit with a smaller pool of people available.

Mr. ADDABBO. I would say to the gentleman from Washington that at the present time the Navy, the Marine Corps, and the Air Force have been recruiting at their own initiative in excess of 75 percent high school graduates. The Army has been recruiting somewhere around 50 percent; so all we are speaking about is an additional 15 percent for the Army alone, which can easily be accomplished without another $100 million, which could easily be accomplished by better managed recruitment programs, by cutting out the waste and better monitoring of their programs.

Mr. DICKS. If the gentleman will just yield further, the chairman takes a different view of that point; but I also want to make it clear to my colleagues that if once we approve an 11.7 percent pay increase for the military, there is no way that Congress is going to take money away from that pay increase because of this recruiting amendment. I do not think the chairman meant to make that assertion in his statement, because once we make that commitment for 11.7 percent, it becomes like an entitlement program and we are committed in this bill and in the supplemental next year to meet that. Is that not correct?

Mr. ADDABBO. The gentleman is correct, except that if we go over our function of $160 billion, as set by the Budget Committee, this bill would then sit on the Speaker's desk until we have a supplemental or a second or third budget resolution.

Mr. DICKS. The gentleman also recognizes, because the gentleman knows the figures so well, that we are $3.7 billion below that figure at this point.

Mr. ADDABBO. That is correct, but the military pay raise for DOD will cost in excess of $3.2 billion.

Mr. DICKS. So this particular amendment does not put that in danger.

Mr. ADDABBO. Well, it is another $100 million; if we have no further amendments, it may not.

The CHAIRMAN. The time of the gentleman from New York (Mr. ADDABBO) has again expired.

(At the request of Mr. WHITE, and by unanimous consent, Mr. ADDABBO was allowed to proceed for 2 additional minutes.)

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Texas.

Mr. WHITE. Mr. Chairman, I thank the gentleman for yielding and giving me the time.

As a matter of fact, the personnel moneys that are involved here contain some of the bonus moneys that have been one of the most important factors in the recruitment drives of the various services in the past; is this not true, sir?

Mr. ADDABBO. The gentleman is absolutely correct, but it is only the enlistment bonus money. It affects only a small portion of the enlistment bonuses.

Mr. WHITE. Well, that is what we are talking about, enlistment and retention; both of those two things are factors.

Now, as to the question of high school graduates, every witness who appeared before our committee has said that the high school graduate is more likely to complete his term of enlistment than a non-high school graduate, and it follows that he would be more likely to be able to read the instructions on sophisticated weaponry than would a non-high school graduate. At the present time, part of the efforts of the services are directed toward training the young enlistees how to read. By having a high school graduate, you eliminate part of that expense and part of that trouble.

We want an Army and a service that can function on the battlefield and be able to think for themselves and be able to survive the dangers of the battlefield through their ability to think and their ability to follow instructions. That is why I think it is highly important that we go

up to the 65 percent high school graduates, instead of the 48 percent high school graduates as we have at the present time.

Mr. ADDABBO. The committee has added almost $100 million in the reenlistment bonuses.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I sat here for the last 45 minutes feeling that maybe somehow our committee had taken leave of its senses as I listened to all these speeches.

Well, you know, what we found ourselves with in real dollars was the budget figure of about $1.1 billion ($1,052 million) for recruiting or you people in the sales department, if you will, and a budget of about $295 million for what I would call retention bonuses to try to keep good people in the service. Somehow it seemed to me, and I think to the committee as we considered this, that we were building a sales force that was not equal to the ability of the corporation, if you will, to keep people working in it once they got hired; so what we tried to do was to move some of this money around in a way that would lead to greater retention.

We are short in the middle levels some 104,000 petty officers, sergeants, people in the middle level in the service, because they are getting out like flies and the reason is that we are unable to retain them there because of inadequate pay and allowances and benefits. It was this Congress that has led the way now in the Nunn-Warner amendment. Our committee put $713 million into that. We have added some $80 million into the retention program and into bonuses.

We have pledged our support for the 11.7-percent pay raise, and it is my considered judgment that if you want high school people in the service, if you want to attract good, competent, intelligent people into the military service, that you offer them something, not in the sales department, but in that department of the military where they train and learn to be good soldiers and are retained in those positions as they learn their trade and as they become proficient.

□ 1420

We felt on the committee that is where the emphasis should be put, and so it is not like we did away with the recruiting program. We have still left almost $1 billion in recruiting, in the sales department, to bring these people into the service.

I think we all agree. We talked yesterday on the floor when the gentleman from Alabama (Mr. NICHOLS) brought his bill to the floor, that if we are going to have a good military service, if we are going to have good, trained people in it, we have to get at the business of retention programs and providing for their needs in the service, for their pay and allowances and benefits. The gentleman from Alabama (Mr. NICHOLS) has done a good job in that regard. I think then we should not come here embarrassed, feeling like we have done something wrong by cutting $100 million out of a $1,050,000,000 recruiting bill, especially since we have added so much money on the retention side.

So I would urge the committee to go along with what the subcommittee has done. I think we have approached it in the right way, and it is not nearly as dire as has been talked about here on the floor.

Mr. WHITLEY. Mr. Chairman, I move to strike the requisite number of words, and rise in support of the amendment.

Mr. Chairman, I am impressed by what the gentleman from Alabama (Mr. EDWARDS) says about salesmen, but it has been my observation that in the society and in the culture in which we live, even if we have a good product to sell, the successful company, the business that sells its product, is the one that has good salesmen, has a good advertising program. I do not see many successful companies in our country that are cutting their advertising budget. They may be increasing their budget to try to produce a better quality product, and that is what we are doing with Nunn-Warner and the fair benefits package and these other items that are primarily geared to retention and not to initial recruitment.

It does not make any difference how good our program is if the message is not getting to our young people and particularly our quality young people, the high school graduates, the kind we want to enlist and are seeking to enlist. If our recruitment program is not effective in communicating to our prospective enlistees what we have to offer, we are going to fall short again next year just as we have last year.

I strongly support the amendment offered by the gentleman from Texas (Mr. WHITE).

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. WHITLEY. I yield to the gentleman from Missouri.

Mr. SKELTON. I wish to associate myself with the gentleman's remarks and commend him on his clear thinking on this issue. The question was raised a few moments ago about the main problem being retention.

I ask the gentleman: Is there any way to retain good people unless you first enlist them?

Mr. WHITLEY. The gentleman is absolutely right. The basic problem really is initial enlistment. We cannot make a good noncommissioned officer out of a person that we do not recruit in the beginning. We do not need to lose the skilled NCO's that we have to the extent we have been losing them. But our really big, major problem, which is not effectively addressed when we start cutting our recruiting budget, is the initial enlistment of qualified personnel who will stay in the service, who will reenlist, and who will become noncommissioned officers. So I think it is crucial we retain our enlistment capacity and our recruiting capacity.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. WHITLEY. I yield to the gentleman.

Mr. DICKS. I want to commend the gentleman for his statement. I think the gentleman's point is well taken, this $100 million cut, of which, $50 million will be imposed upon the Army and will make their appropriation less than what they had in fiscal year 1979, a year in which they suffered a recruiting shortfall of 16,000. Now we have imposed a higher standard on the Army. We all know the Army is where we have had our most serious problems with 6 out of 10 divisions being unfit for combat. Now we are going to take another step that will cut into their capability to get the kind of people they need.

I think the gentleman's statement is absolutely correct and I commend him.

Mr. WHITLEY. The gentleman is right. Our problem in recruiting has traditionally been with the Army. Last year for the first time all of the services fell short, but historically we have had problems with the Army. We certainly need to do everything we can to see that the Army is not cut, which it will be if this $100 million is not restored.

I want to commend the chairman of the Personnel Subcommittee for offering this amendment.

● Mr. HOPKINS. Mr. Chairman, I would like to ask any Member who may oppose this amendment—how does he or she expect the All-Volunteer Force to succeed? What we will do, if we pass this bill without the $100 million in question, is to build an airplane without wings.

There is no doubt in my mind that at some point down the road, some of the same Members who oppose this additional funding will be asking why the services continue to come up short of the qualified recruits mandated by Congress. The answer will be simple—the House of Representatives failed to put the necessary money where its mouth is.

Many Members would like to think they've done something meaningful to improve the quality of America's military recruits by simply supporting our earlier action this year of limiting the number of non-high-school graduates recruited to no more than 35 percent of all recruits. But I would respectfully say to those of my colleagues thinking along those lines: You have not done enough—we have not finished the job.

The House has gone on record as saying it would like the All-Volunteer Force to work, and we have gone on record saying the quality of the recruits must be raised as well as the quantity. Now in my view, it is time for the House to go on record saying here is the funds necessary to meet the goals we have set. Those of my colleagues who have had some experience in the business world understand that virtually no successful firm—certainly none that must compete for customers—spends millions of dollars to make its goods and services available, and then just throws its product on the shelf as it were and hopes for the best.

Let me say that I had some experience in the business community, and in my mind there is no doubt that to compete you have to market, advertise, sell—and in the military, that is what recruiting is

all about. Let us not get into a position of paying for a plane that will never get off the ground because we were willing to pay for everything but the wings. We have set a standard we expect the services to meet, let us give them the resources necessary to get the job done.

AMENDMENTS OFFERED BY MR. ADDABBO AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. WHITE

Mr. ADDABBO. Mr. Chairman, I offer amendments as a substitute for the amendments.

The Clerk read as follows:

Amendments offered by Mr. ADDABBO as a substitute for the amendments offered by Mr. WHITE: On page 2, line 10, in Military Personnel, Army, strike "$10,857,568,000", and insert in lieu thereof "$10,881,768,000".

On page 7, line 10, in Operations and Maintenance, Army, strike "$12,222,579,000", and insert in lieu thereof "$12,249,579,000".

Mr. ADDABBO. Mr. Chairman, we have heard the debate here today. Most of the debate has been about the Army. My amendment would restore all of the funds cut from Army recruiting.

The Navy and Air Force have met their strength every year as well as their requirements so far as high school graduates are concerned. My amendment would restore $51 million to the Army for recruiting. They are the ones who are now going to be hard pressed, according to the debate here this afternoon. They have been at 50 percent. They are now being asked to go to 65 percent high school graduates.

So I ask the committee to support my amendment.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman.

Mr. DICKS. I want to make sure I understand and make a little legislative history. This $51 million would be restored to the Army account?

Mr. ADDABBO. That is correct.

Mr. DICKS. It will not be apportioned? The $100 million cut was to be apportioned across the various services. This would be earmarked and it would be for the Army?

Mr. ADDABBO. That is correct. My amendment is restoring the full $51 million to the Army.

Mr. DICKS. I appreciate the chairman's clarification and his explanation.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. I do believe the gentleman has perhaps offered an amendment that will solve the main concern we have heard here in the House today. I would urge the Members to support the gentleman's amendment.

Mr. WHITE. Mr. Chairman, I rise in opposition to the substitute.

Mr. Chairman, I appreciate the chairman of the subcommittee of the Appropriations Committee acknowledging the major problem which we have had, and that would be in the Army, of course. But the problem, the intrinsic problem of meeting an obligation that this Congress has imposed upon the services, he now says OK, we are going to restore $51.2 million to the Army so that they can meet their goal of not more than 35 percent of mental category 4 and have at least 65 percent high school graduates. But that same obligation has been imposed on all of the services, all four of the services.

□ 1430

The remaining amount of money, some $49 million or $48 million, is divided among three other services. The $51.2 million that is for the Army is fine. That is a step in the right direction. But what do we do with the other services that have to meet their recruiting goals, too? Are we to say we are going to acknowledge our obligations that we have imposed on you only to the Army, but the rest of you are going to have to shift for yourselves? You will have to forget about dividing up the other part of the pie and still make your quotas? Is this fair to all of the services? We need quality in all of the branches of service. At the present time we have seen what has been happening in the Navy; we have seen what has happened in the Indian Ocean; we saw what happened in the Iranian effort we made. There have been questions about the quality of some of the men who have been in some of these positions of restoring and repairing.

I know that a lot of the problem has been mid-level management. I know a lot of the problem has been the mid-ranks who have been lost for one reason or another. And I certainly applaud the efforts to try to retain these particular people. But someday the people we are taking in now are going to reach those positions. If we are going to have quality down the line, we have got to take in quality now, not just in the Army but in every one of the branches.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Missouri.

Mr. SKELTON. I thank the gentleman for yielding. I commend the gentleman for his statements and comments. I think what he is saying is that we cannot allow by the substitute amendment the Army to have a first-class recruiting service and to allow the Marines, Air Force, and Navy to have a second-class recruiting service. They must be treated equally. I think we should also point out that the Armed Forces, all four of them, the Department of Defense, and the Office of Management and Budget actually are in favor of the gentleman's initial amendment. I think that should be stressed.

Mr. WHITE. I thank the gentleman from Missouri.

Every one of the witnesses who came before us said that they need these moneys in order to meet these goals and they would meet them. The Marine Corps said they would still meet the recruiting goals, but it would be hard on morale. The Marine Corps is the only one who testified before our committee that they could meet their goals. But what about the Navy—the larger branch? What about the Air Force, so technological? I say to you for the little amount now, we are going to be pennywise and pound foolish unless we ascribe to all of the services what we ask for in the initial amendment so we can have an adequate recruiting drive.

Next year we can come back if they have not made it. If there has been some problem, then we can act. But we in Congress imposed these recruiting restrictions.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman.

Mr. ADDABBO. I thank the gentleman for yielding. The gentleman from Texas has held extensive hearings, and they have gone into this question very deeply. Does he not admit that all the services except the Army are presently meeting that goal, that at least 77 percent of their recruiting is presently high school graduates as I recall the testimony?

Mr. WHITE. I do not have the figures before me, but notwithstanding, we have imposed even a greater problem. That is the high school graduate level and the intelligence level. This is even more difficult.

Mr. ADDABBO. Will the gentleman yield further?

Mr. WHITE. I yield to the gentleman.

Mr. ADDABBO. The gentleman imposes a requirement of 65 percent; yet the testimony we have received is that both the Navy, the Marine Corps, and the Air Force have been meeting a higher goal by obtaining at least 77 percent of their enlistments from high school graduates.

Mr. WHITE. I think the Navy for the first time last year failed to meet its goal, as I recall.

Mr. ASPIN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Wisconsin.

Mr. ASPIN. I thank the gentleman for yielding. It seems to me that the gentleman has got a good point here in offering his amendment. I do not know what the exact amounts of money ought to be for this recruiting, but it seems to me to be rather incongruous to be on the one hand increasing the demands on the quality of the All Volunteer Force and at the same time cutting them out of money that is used to recruit it.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendments offered by Mr. ADDABBO as a substitute for the amendments offered by Mr. WHITE.

The question was taken; and the Chairman announced the noes appeared to have it.

RECORDED VOTE

Mr. ADDABBO. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Mr. ADDABBO. Mr. Chairman, I will withdraw my point of no quorum. I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 66, noes 329, not voting 37, as follows:

[Roll No. 544]

AYES—66

Addabbo
Atkinson
Beilenson
Benjamin
Biaggi
Blanchard
Bolling
Bonior
Brcomfield
Brown, Calif.
Conte
Conyers
Dellums
Dingell
Dixon
Drinan
Early
Edwards, Ala.
Erdahl
Evans, Del.
Fascell
Fenwick
Ford, Mich.
Ford, Tenn.
Gibbons
Hollenbeck
Howard
Jeffords
Latta
Lehman
Lundine
McDade
McHugh
Maguire
Michel
Miller, Calif.
Miller, Ohio
Minish
Mitchell, Md.
Murtha
Nowak
Patten
Pursell
Regula
Rhodes
Richmond
Robinson
Rodino
Rosenthal
Rostenkowski
Roth
Roybal
Rudd
Sabo
Sawyer
Scheuer
Schroeder
Sebelius
Stanton
Steed
Studds
Ullman
Walgren
Weiss
Wyatt
Yates

NOES—329

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bereuter
Bethune
Bevill
Bingham
Boggs
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Corcoran
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dodd
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Calif.
Edwards, Okla.
Emery
English
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fazio
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holt
Hopkins
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach, Iowa
Leath, Tex.
Lederer
Lee
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McCloskey
McCormack
McDonald
McEwen
McKay
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Mineta
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Oberstar
Obey
Ottinger
Panetta
Pashayan
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Rinaldo
Ritter
Roberts
Roe
Rose
Rousselot
Royer
Russo
Satterfield
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stark
Stenholm
Stewart
Stokes
Stratton
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Van Deerlin
Vander Jagt
Volkmer
Walker
Wampler
Watkins
Waxman
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wydler
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—37

Anderson, Ill.
Ashley
Carr
Clay
Corman
de la Garza
Derrick
Erlenborn
Fish
Giaimo
Goldwater
Green
Hansen
Harsha
Holland
Holtzman
Horton
Jenrette
Leach, La.
McClory
Markey
Mattox
Myers, Pa.
Nedzi
Nolan
O'Brien
Oakar
Patterson
Reuss
Santini
Shannon
Stockman
Vanik
Vento
Wilson, Bob
Wilson, C. H.
Wylie

□ 1450

Messrs. AUCOIN, DECKARD, MURPHY of New York, KOGOVSEK, PEYSER, EDGAR, PEASE, WOLPE, and BINGHAM changed their votes from "aye" to "no."

So the amendments offered as a substitute for the amendments were rejected.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Texas (Mr. WHITE).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WEISS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 390, noes 13, not voting 29, as follows:

[Roll No. 545]

AYES—390

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hanley
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patterson
Paul
Pease
Pepper
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thompson
Thomas
Traxler
Trible
Udall
Ullman

Van Deerlin	Whitehurst	Wyatt
Vander Jagt	Whitley	Wydler
Vento	Whittaker	Wylie
Volkmer	Whitten	Yates
Walgren	Williams, Mont.	Yatron
Walker	Williams, Ohio	Young, Alaska
Wampler	Wilson, Tex.	Young, Fla.
Watkins	Winn	Young, Mo.
Waxman	Wirth	Zablocki
Weaver	Wolff	Zeferetti
Weiss	Wolpe	
White	Wright	

NOES—13

Addabbo	McCloskey	Peyser
Beilenson	Mikulski	Rangel
D'Amours	Mitchell, Md.	Sabo
Dellums	Nolan	
Leland	Patten	

NOT VOTING—29

Anderson, Ill.	Harsha	Myers, Pa.
Clay	Holland	Nedzi
de la Garza	Holtzman	O'Brien
Derrick	Horton	Oakar
Erlenborn	Jenrette	Shannon
Fish	Leach, La.	Stockman
Ford, Mich.	McClory	Vanik
Giaimo	Markey	Wilson, Bob
Goldwater	Mattox	Wilson, C. H.
Gonzalez	Murphy, N.Y.	

□ 1500

So the amendments were agreed to.

The result of the vote was announced as above recorded.

Mrs. SCHROEDER. Mr. Chairman, for those of us who have been so concerned with readiness and personnel morale, the Defense Appropriations Act of 1981, H.R. 8105, is a real improvement over previous years' bills.

First, it adds almost $625 million to operation and maintenance funds. This is a significant increase because it recognizes that we have to start improving maintenance rather than simply charging ahead buying more and more new weapons systems. Our voice has been heard.

Second, $800 million was also added to cover fuel cost hikes. This is critical because many of our fighter pilots have been unable to train because the fuel fund was depleted.

Finally, funds were added to the personnel account for the pay increase and the full Nunn-Warner package. Morale in the military will certainly be improved by that action.

In the past, the Armed Services Committee has added billions of dollars for new weapons, above the agreed upon budget for new weapons procurement, and then sent it on to the Appropriations Committee. Since the Appropriations Committee had to operate within the budget ceiling, they often had to raid operations and maintenance, fuel, and personnel accounts in order to squeeze the total package under the budget ceiling.

This year the Armed Services Committee did the same thing, putting in $6 billion for weapons systems that were not in the budget. I offered language, which was accepted by the committee, stating that in accommodating the additional $6 billion the Appropriations Committee should not jeopardize readiness. I am delighted that the Appropriations Committee took the language seriously and did not yield to the weapons lobby.

The problem would not be so acute if all the players were equal. Unfortunately, there is a strong weapons lobby, loaded with clout and power, but no operations and maintenance lobby, no readiness lobby, and no personnel lobby powerful enough to match it.

I congratulate the Appropriations Committee for standing firm and putting readiness and morale first, especially during the heat of an election year.

I would like to address a question to the distinguished chairman of the subcommittee (Mr. ADDABBO). On page 50 of the committee report, the committee reiterates its position that individuals hired after completion of the cooperative education program should have to achieve a passing score on "the appropriate civil service examinations." In the past, the appropriate examination was considered to be the professional and administrative career exam (PACE).

Last May, my Subcommittee on Civil Service held hearings on PACE and uncovered evidence showing that PACE discriminates unfairly on the basis of race. While 16 percent of whites score 90 or above on PACE, only two-tenths of 1 percent of blacks score that high. This race differential in PACE test scores is totally out of line with differentials found on other tests. The subcommittee concluded that PACE was flawed and probably invalid.

As a result of these hearings, the Office of Personnel Management has been phasing out the test. The Social Security Administration, which was the Government's largest user of PACE, has stopped using the exam altogether. Other agencies are finding other, better selection devises.

I hope the Appropriations Committee is not now telling the Department of Defense to use a discredited exam for hiring co-op students. Do you intend that PACE be used?

Mr. ADDABBO. If the gentlelady will yield, the intent of the committee is that a valid, job-related exam be given to cooperative education students before they are given full-time civil service jobs. We want to make sure that the individuals hired possess the minimum qualifications necessary to perform effectively the job. I do not care whether PACE is used or whether some other exam is used. If the PACE has the problems you say it has, obviously a more valid and nondiscriminatory exam should be used.

□ 1510

Mrs. SCHROEDER. I thank the gentleman from New York for his remarks, and I am very delighted to hear that that was the intent of the subcommittee.

Mr. ADDABBO. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. ROSTENKOWSKI, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, had come to no resolution thereon.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a joint resolution of the House of the following title:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

URGENT SUPPLEMENTAL APPROPRIATION FOR THE VETERANS' ADMINISTRATION, 1980

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendment, as follows:

Page 2, after line 4, insert:

DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

For an additional amount for "Periodic censuses and programs", $27,000,000, to remain available until expended.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

Mr. CONTE. Mr. Speaker, reserving the right to object, I will ask the chairman of the committee, as I understand it, this is the money, the urgent supplemental that we passed yesterday, for education benefits for the Vietnam veterans, and the bill has gone over to the Senate, the Senate has tacked on $27 million for the Bureau of the Census, and it is because the failure to come up with this kind of money would result in the shutdown of all of the Bureau activities for the Bureau of the Census and would mean furloughing, as I understand it, 6,200 employees and about a release of 5,000 interim employees and a delay of 3 weeks in completing the field work of the dicentennial census and the closing of 37 offices; is that correct?

Mr. WHITTEN. If the gentleman will yield, the gentleman is correct. According to the figures given me, the budget authority and outlay situation under the current budget ceilings will be sufficient to accommodate this additional amount of money.

However, the gentleman might yield to the gentleman from Iowa (Mr. SMITH) at this time for further background on this issue.

Mr. CONTE. Is that the gentleman's understanding?

Mr. SMITH of Iowa. If the gentleman will yield, that is correct. Actually, they came up $57 million short. If the gentleman will recall, they sent up a $50 million supplemental request and then withdrew it. If they had not done that, they would not have been in this situation. But there are a number of lawsuits filed which involve an expected cost increase

of $10 million in order to do the things that may be required under this litigation. There are also local review operations, completion of followup, and tabulations of preliminary population and housing counts for which additional funds are required. If we do not provide this $27 million now, it means the Census Bureau will have to shut down 37 offices, and they would not have the money to open up again until appropriations are provided for fiscal year 1981. Such a shutdown would cost a lot more than $27 million and result in a delay in completing the field work of the decennial census.

Mr. CONTE. It is my understanding that if we do not appropriate these funds, the Bureau of the Census will have to close down around Wednesday or Thursday of this week.

Mr. SMITH of Iowa. That is right.

Mr. CONTE. So it is a very urgent supplemental?

Mr. SMITH of Iowa. It is very urgent.

Mr. CONTE. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

Mr. BAUMAN. Reserving the right to object, yesterday the gentleman from Mississippi (Mr. WHITTEN) was good enough to explain to the gentleman from Maryland the need for the $40 million in additional authority for the Veterans' Administration to pay education benefits. I agreed fully with him then and now of the need for this money for the VA. I also asked the gentleman from Mississippi whether he knew of any other urgent supplemental matters that will be coming down the pike as we close this fiscal year, and the gentleman said that he did not know of any. When did the gentleman discover this new urgency? It has been less than 24 hours since we talked last.

Mr. WHITTEN. I would say 30 minutes ago.

Mr. BAUMAN. Thirty minutes ago?

Mr. WHITTEN. I went to the gentleman from Iowa (Mr. SMITH), who had meetings with the Department of Commerce in connection with the Census request. I might say I may have heard of the census problem on the Senate side. But these funds were added on the Senate side, not on this side. I did not participate in those meetings. I went to the gentleman from Iowa (Mr. SMITH), who was familiar with the census problem. That is the reason I turned to him to give the details. I did ask whether this appropriation would come within the current budget ceilings and I was advised that the budget authority remaining after approval of this measure would be $210 million and the outlays would be $2.5 million. We are getting pretty close to the edge, but those are the figures that were given to me.

Mr. BAUMAN. Further reserving the right to object, yesterday the gentleman from Maryland referred to the statement on September 9 in the CONGRESSIONAL RECORD, which was provided by the Congressional Budget Office, indicating that there were only $19 million remaining in outlays for the current fiscal year 1980. The gentleman is telling us now that their new estimate is that this civil defense add on leaves $2½ million left for all other additional purposes of Government spending for the next 3 weeks?

Mr. WHITTEN. Of course, as the gentleman understands, those were the figures given to me by the staff of the Appropriations Committee, who in turn had gotten them from the proper authorities.

Mr. BAUMAN. Further reserving the right to object, do we have any letter from the Budget Committee which so jealously guards its prerogatives and makes sure that we know exactly what is available in each category of spending? Have they written and approved this request?

Mr. WHITTEN. Personally, I do not have a current letter. We try to keep current. I asked the staff yesterday, when this was up before the House to check and doublecheck with the Budget Committee to be sure that the figures I gave the gentleman were correct. That was the best information that I had.

I am also handed a letter from Director Rivlin, of the Congressional Budget Office dated September 15, 1980, in which she advises:

Enactment of H.J. Res. 607, as reported, would leave an estimated $237 million in budget authority and $19 million in outlays under the ceilings set by the Second Concurrent Resolution for Fiscal Year 1980, as revised by H. Con. Res. 307.

Now, those are the figures remaining prior to this $27 million additional request. The bill yesterday did not affect outlays in fiscal year 1980. So the amount here would still be within the current budget figures on outlays. In each case we are still within the limits.

Mr. BAUMAN. Further reserving the right to object, what information and proof do we have that the $27 million now added for the Census Bureau is in fact not going to wipe out the remaining $19 million in outlays? It appears to me that there are no restrictions in the other body's amendment. They could spend it all tomorrow if they wanted to. It may be a minor matter in the picture of a multibillion-dollar budget, but this type of legislative practice is destroying piece by piece the budget system that supposedly was so important. That is what is happening here today. It seems like a minor matter, since it is just one little bit here and one little bit there, but there is a larger principle involved here. When we go through the whole year and pass the annual budget resolution and the reconciliation bill and force every committee to come back with adjusted figures, it becomes a meaningless process because we then come to the floor with a request like this that completely negates the whole budget process and ignores all the spending ceilings we have set.

□ 1520

There is nobody here from the Budget Committee to explain it, no one to defend the budget process; and of course, I am not addressing my criticism to the gentleman from Mississippi. I know he is caught in the same problem with all of us. It seems to me there is a rather important principle involved in this action and few seem to care.

Mr. WHITTEN. If the gentleman will yield further, as the gentleman says, I have had some years' experience in dealing with the budget, beginning in the Mississippi Legislature, and the budget types can come up with any figures at any time to fit any situation.

We do have the figures from the proper authorities. I think a letter did come up to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. I just now received the letter. I do not know if the gentleman wants me to read all of it, but the last paragraph says:

Appropriations of $67 million as detailed above would leave an estimated $210 million in budget authority and $3 million in outlays under the ceilings set by the second concurrent resolution for fiscal year 1980, as revised by H. Con. Res. 307.

This is from Alice Rivlin, Director, Congressional Budget Office.

Mr. BAUMAN. Further reserving the right to object, Mr. Speaker, I was under the impression members of the Budget Committee usually approve some sort of statement, but this is only from the Director of the Congressional Budget Office?

Mr. SMITH of Iowa. It is from the Director of the Congressional Budget Office. It is a copy of a letter, addressed to the chairman of the Committee on Appropriations in the Senate.

PARLIAMENTARY INQUIRY

Mr. BAUMAN. Mr. Speaker, a parliamentary inquiry.

Section 11(a) of Public Law 93-344, the Congressional Budget and Impoundment Control Act of 1974, says that a point of order will lie against any bill, resolution or amendment providing additional new budget authority for such fiscal year after the enactment of the budget resolution, if the enactment of that measure causes the level of total new budget authority or total budget outlay set forth in the most recently agreed to concurrent resolution on the budget to be exceeded or would cause revenue to be less than the appropriate level.

My inquiry to the Chair is, would a point of order lie against this resolution in its present form under that section of the law?

The SPEAKER. The question before the House is a unanimous-consent request. Under the unanimous-consent request if there was an objection, then it would accomplish the same purpose of preventing consideration of the Senate amendment.

Mr. BAUMAN. A unanimous consent would, in effect, wipe out any point of order?

The SPEAKER. If there were no objection the answer would be in the affirmative.

Mr. BAUMAN. A further parliamentary inquiry.

If this were brought in the form of a motion, would this section of the law then lie as a point of order against a motion?

The SPEAKER. If it were a motion to agree to the Senate amendment, the Chair would have to determine based upon Budget Committee estimates whether the amount exceeded the outlay ceiling for fiscal 1980.

Mr. BAUMAN. I thank the Speaker.

Further reserving the right to object, I would like to say the gentleman from Maryland is not going to object to this. The veterans of America need this funding. Whether the Census Bureau does is another question. But take note that what you are doing today and what you did yesterday and what is being done in other ways amounts to the destruction of the budget process. No one seems to care about that, despite all of the protests we hear so many times from the members of the Budget Committee and their defenders.

If that is the way the budget process is to be conducted in the future, then it is doomed to fail. For instance, the majority leadership has decided we will not be allowed to act on the budget this year before adjourning for the elections and a later lame duck session. It seems to me, someone ought to be honest enough to tell the House and the American public you no longer care about the budget process; you are going to legislate as you please and the budget process be damned.

The gentleman from Maryland thinks we are making a serious mistake.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Mississippi.

Mr. WHITTEN. I thank the gentleman for yielding.

May I say to the gentleman, there are many things he says with which I agree. The budget process has not worked out as I had hoped, almost certainly as I expected, but not as I hoped. I am awfully glad the gentleman is not objecting here, because it would leave the veterans situation unresolved. We would be delaying the amount of money for the veterans education benefits. I am glad the gentleman is not going to object.

May I say I do not feel too good about the $27 million for the Census Bureau. Having read the figures, there is one saving grace, so to speak. They did withdraw a $50 million supplement request voluntarily. This $27 million is far less than what they gave up. I do not know that that answers the question or makes the gentleman feel any better, but, like the gentleman from Maryland knows, when one asks for a set of figures, they seem to be able to come up with whatever the occasion requires.

Mr. BAUMAN. I thank the Chair.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

A motion to reconsider was laid on the table.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from New York?

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 8105, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the Clerk had read through line 12, page 7.

Are there any amendments?

Mr. MYERS of Indiana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, last Wednesday, when the full Committee on Appropriations considered reporting the Defense Department appropriation bill, there was considerable discussion about a portion of the language in the report, and voluntarily the chairman of the subcommittee, the gentleman from New York (Mr. ADDABBO), advised he would strike a particular section of the report that many members found objectionable and report the language clean, and would have separate views.

Now, Mr. Chairman, last Wednesday evening in Indiana on the late news, I heard reports that were exactly identical with the language that was struck, that this was the action of the full Committee on Appropriations that was a report by the Committee on Appropriations.

The Friday Indianapolis Star, September 12, dateline Washington, UPI, reported:

There is no cause to be alarmed about the quality of the Nation's defense.

But the United States has not grown weak nor has the Soviet Union grown overwhelmingly strong.

There is no more reason at this time to fear an imminent Soviet military attack than there has been most of the time in the past two decades.

There is no cause for Americans to be alarmed.

Mr. Chairman, I have gone through the report, with the exception of some language similar to that in the separate views filed by the chairman, I do not find these statements in the report, and it causes me to wonder how did that language get released to UPI on the very day that the full committee acted long before this report, which is dated September 11. Yet on September 10, on the late news, I heard the report from the language that was not to be released.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman from New York.

Mr. ADDABBO. The committee cannot control what the individual members do with the report. The draft report was released only to the members of the Committee on Appropriations. It was not a public report. It was not made a public report until the full Committee on Appropriations voted it out on the 10th. If some member gave it out to the press prior to that time, we have no control over that.

Mr. MYERS of Indiana. Well, it has certainly accomplished everything that the full committee overwhelmingly agreed not to let happen, not to mislead the American people, that there is some concern to be alarmed.

I am quite sure most American people feel that way and that the full committee felt that way, from the appearance of the releases going out under UPI and I suppose other news services.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the ranking member, the gentleman from Alabama (Mr. EDWARDS), who along with the gentleman from Virginia (Mr. ROBINSON), were two who led the fight to strike that language in the report which was misleading.

□ 1530

Mr. EDWARDS of Alabama. Mr. Chairman, I thank the gentleman for yielding. The gentleman has shown to me the article from the Indianapolis paper. I had reports over the weekend back in Mobile that some of the networks, I do not know which ones, had carried this over the air.

I think we should set the record straight, here, without belaboring the point to the extent that we did in the full committee. Obviously, UPI and perhaps others have picked up the report as it came to the full committee. The quotes that the gentleman has referred to in the newspaper story, such quotes as, "there is no cause to be alarmed," or, "but the United States has not grown weak nor has the Soviet Union grown overwhelmingly strong," and other quotes in that article, are not in the report of the Appropriations Committee that came to the floor of the House and which is the basis for support of this bill today.

It would seem to me that those segments of the media that have so reported those views to be the views of the full Appropriations Committee should make a retraction and certainly should clear up that item in their stories in the future.

That language was stricken in the full committee. It was an open session. I do not know whether any of the press was in the full committee during that debate, but certainly it was available as far as the press was concerned to know what was going on in that committee.

The views expressed in those pages that were originally in the committee report that have now been stricken were, in my opinion, not the views of the full committee. Therefore, they were withdrawn. They do appear in the committee report as separate views, which is certainly within a member's prerogative to do. I have no fault with that.

The CHAIRMAN. The time of the gentleman from Indiana (Mr. MYERS) has expired.

(At the request of Mr. EDWARDS of Alabama, and by unanimous consent, Mr. MYERS of Indiana was allowed to proceed for 1 additional minute.)

Mr. MYERS of Indiana. I continue to yield to the gentleman.

Mr. EDWARDS of Alabama. I would hope that because of the strong feelings about the needs of defense in this country, the strong feelings of the members of our subcommittee and of the full committee, that future references to this subject by the media would be reported correctly, that the media would make use of the report that came out of the Appropriations Committee and if it refers to other reports or earlier reports, that they be so designated.

Mr. MYERS of Indiana. Mr. Chairman, I thank the gentleman for his comments. I accept the response the chairman has given us; but I cannot understand any member of the Appropriations Committee who would have had to have been in the meeting to have picked up a copy of that report that was withdrawn, why they would release it to the UPI or any news service when the members of the committee knew the language had been stricken because it was not true.

What really concerns me is the first paragraph. Again under datelines Washington (UPI).

The CHAIRMAN. The time of the gentleman from Indiana has again expired.

(By unanimous consent, Mr. MYERS of Indiana was allowed to proceed for 1 additional minute.)

Mr. MYERS of Indiana. It says:

The House Appropriations Committee, while recommending a record $156.9 billion U.S. military budget, has assured Americans "there is no cause to be alarmed" about the quality of the Nation's defense.

It was made very clear that day that the Appropriations Committee rejected that original language that now appears as a UPI newsstory.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I thank the gentleman for yielding. I think the gentleman has done a service by pointing this out. I would also state that it was rejected unanimously by the Appropriations Committee.

Mr. MYERS of Indiana. Yes; the chairman voluntarily withdrew it.

Mr. DICKS. The chairman withdrew it voluntarily and took those views and put them in as his own separate views in this report.

I think it is another example of someone not doing their homework, in this case it appears to be the media.

Mr. MYERS of Indiana. Including the UPI.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield briefly?

Mr. MYERS of Indiana. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. It is a case of sloppy reporting.

Mr. MYERS of Indiana. Misleading reporting.

Mr. EDWARDS of Alabama. Well, it is sloppy. It is $156.9 billion.

The CHAIRMAN. The time of the gentleman from Indiana has again expired.

(At the request of Mr. EDWARDS of Alabama, and by unanimous consent, Mr. MYERS of Indiana was allowed to proceed for 1 additional minute.)

Mr. EDWARDS of Alabama. Mr. Chairman, if the gentleman will yield further, the story refers to $156.9 billion. It is not that. It was $157.3 billion, as I recall, that we finally came to the floor with.

The story refers to an increase in the bill of $18.8 billion. It was $18.9 billion.

The report refers to the increase over the budget as $2.4 billion. In fact, it was $2.5 billion.

Mr. MYERS of Indiana. The number of pages in the report is wrong.

Mr. EDWARDS of Alabama. That is right. In other words, I think the media ought to take a good look at this one.

Mr. MYERS of Indiana. Well, I hope the American people will not be misled that we do not have to do more for our defenses in this country. We have a good defense, but it needs to be much better.

Mr. RUDD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I was astounded to discover recently that millions of tax dollars appropriated for the Navy—and the improvement of our national defense that such expenditures would imply—are actually being spent on costly environmental modifications to achieve compliance with the Clean Water Act.

This environmental legislation passed in 1977 included within its broad authorization power for the Environmental Protection Agency to require ships, including U.S. naval vessels operating in U.S. waterways—especially those coming into U.S. ports—to be equipped with special "holding tanks" for sewage collected onboard.

The water quality improvement from this expensive requirement is minimal at best—especially when viewed from a cost-benefit analysis. Additionally, the systems reportedly do not work well.

The money diverted for these mandated "improvements" cost over a million dollars for each ship. The overall cost to the Navy will be over $881 million simply for upgrading older ships, in addition to an estimated $80 million for marine sanitation equipment to be installed in new ships, approximately $14 to $16 million of which is scheduled for fiscal year 1981.

The following chart, furnished at my request by the Navy, delineates these costs:

SUMMARY OF ACTUAL AND PROJECTED NAVY EXPENSES DIRECTLY RELATED TO THE COMPLIANCE IN EXISTING SHIPS, CRAFT AND BOATS WITH SEC. 312 REQUIREMENTS OF TITLE 33 U.S.C. 1322

[Expenses for new construction ships are not contained in this summary]

Appropriation	Overall total projected	Total expended or obligated through fiscal year 1980	Total projected for fiscal year 1981–85
1. Pier sewers (Milcon)	$102,589,000	$102,589,000	0
2. OPN (BA–1)	83,000,000	66,265,000	$16,735,000
3. SCN (BA–5) S–SWOBS	10,400,000	10,400,000	0
4. O. & M.N. (BA–1) FMP	17,932,000	7,028,000	10,904,000
5. O. & M.N. (NRF) FMP	10,720,000	5,217,600	5,502,400
6. O. & M.N. (BA–2) FMP	599,070,000	480,749,000	118,321,000
7. O. & M.N. (BA–7) FMP (DSA)	4,900,000	1,400,000	3,500,000
8. R.D.T. & E. (6.2/6.3)	53,358,000	53,358,000	0
Grand total	881,969,000	727,006,600	154,962,400

The resources which our Nation allots for defense purposes are precious, and they should not be squandered on such meaningless modifications which represent no significant improvement in the environment.

When sections of the Clean Air Act are considered for renewal next year, I believe the Congress should be especially cautious to consider the effects of various provisions of the proposed extension.

On too many occasions, consequences, not originally envisioned, are produced in the hurry to adopt legislation.

I believe that the Congress must be more cognizant of the consequences of adopting broad legislation without thorough consideration of its implications.

As a result of this seemingly minor provision of the Clean Water Act, our Navy will have been forced to spend close to $1 billion to comply with these provisions by fiscal year 1985.

Mr. ROBINSON. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I would be glad to yield to the gentleman from Virginia.

Mr. ROBINSON. Mr. Chairman, I thank the gentleman for yielding.

I believe the gentleman has come up with a statistic and a commentary that is certainly of interest to those of us on this subcommittee. I wonder if the gentleman could tell us what the source of his information is.

Mr. RUDD. Well, recently I was privileged to be at the commissioning of a new destroyer in Pascagoula, Miss., the navy yard there. While I was there, I asked for and received a thorough tour through the new Navy destroyer from top to bottom. During the course of that tour I asked what this modification of equipment was all about. They explained it to me in detail. I asked for additional information on it and that is the source of this information.

Mr. ROBINSON. Again, I would like to

congratulate the gentleman for bringing this to our attention. Certainly it is going to be a matter in which this Member, at least, is going to be looking into the process of developing the next defense appropriation bill.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

OPERATION AND MAINTENANCE, ARMY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; $485,993,000, of which not less than $27,400,000 shall be available only for the maintenance of real property facilities.

□ 1540

Mr. MONTGOMERY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to commend Mr. ADDABBO and Mr. EDWARDS and this subcommittee for their dedication and hard work evidenced in this bill for our national defense. I wholeheartedly endorse the bill and the inclusions therein for improvements in all phases of our military systems. I would like to take a minute to single out the provisions that would affect the National Guard and Reserve and speak in support of these portions of the bill.

Badly needed procurement and personnel incentive items have been added, and I am very heartened to see this as an indication of a growing awareness not only of the need for increased Reserve component strength, but also of the very important role these components play in our total defense structure.

Certainly the $2.7 billion contained in H.R. 8105 for personnel costs will be a big help. This includes approximately $100 million in various incentives that will improve recruiting and retention. I strongly support this addition. Likewise, I am pleased to see funds for the procurement of long needed equipment. These acquisitions will not only improve the combat needs of the Reserve and National Guard, but the knowledge that our forces are well equipped will also have a very positive impact on recruitment and retention of well trained and skilled manpower. The equipment along with the other more obvious incentives are absolutely necessary to increase the combat readiness of our Reserve/National Guard.

I will only briefly mention the items that are in the bill that will have a strong impact on the Guard and Reserve and will urge my colleagues to join me in supporting these items: 6 A-7K two-place combat capable fighters, when added to the 24 A-7K's authorized by the Congress during the past 2 years will enable Air Guard Units to better train and save energy; Six C-130H's, these tactical airlifters will replace C-130A's that are more than 20 years old; they are very badly needed for replacement items, as well as the retention of a production line that might be needed in an emergency; 17 AH1S's, these are critically needed to provide some combat deployable helicopters for the Army National Guard; funds are appropriated to accelerate the KC-135 reengining which will increase our operational capability as well as improve safety and noise levels; 30-millimeter gun pod for Guard/Reserve A-7's and F-4's to provide us with a tank killing capability in NATO with those fighters; $12 million for low smoke modification F-4's and RF-4's.

Mr. Chairman, I cannot emphasize too much to my colleagues the essential role the National Guard and Reserves play in the overall combat readiness of our defense systems. These components have suffered along with the active forces from serious shortfalls in the past few years. There have been recent improvements in the numbers of manpower and equipment available. Nonetheless, the Ready Reserves are still 186,000 short of their wartime strength levels, with the Army National Guard over 86,000 short and the Army Reserve over 70,000 short. The Individual Ready Reserve is still over 400,000 short of the level needed to meet emergency mobilization requirements. The support of items in this bill are necessary to improve these shortages.

I am encouraged by this appropriation bill as well as other recent actions taken by this Congress to increase our military preparedness. We must not, however, allow ourselves to lapse into a false sense of security that this 1981 defense spending will be a panacea for all of our past defense weaknesses. We still must remain alert to the needs and open to continued and additional improvements, not the least of which would be a return to the draft, as they become necessary.

There is another issue of great importance to our Reserve components that is not specifically addressed in this bill but which is of great enough significance that I would like to mention it this afternoon. This is the issue of the possible loss of paid military leave for active duty training for members of the Guard/Reserve who are Federal employees. This elimination is a part of the reconciliation bill recently passed by the House. This action removing the paid leave at the Federal level will most assuredly cascade down to the State and local governments and further into private enterprise. This will have a very detrimental effect on recruitment and retention. Fourteen percent of our Selected Reservists are Federal employees and 27 percent are State, county and city employees. Can we ask these people to take 2 weeks each summer of leave without pay or use their vacation time to prepare to defend our Nation? I think not, and I would simply like my colleagues to remain aware of the impact this elimination will have on our Reserve components if it is not restored.

I would again like to commend the members of the Defense Appropriation Subcommittee for an excellent job and to urge the Members of this body to support them unreservedly.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. MONTGOMERY. I yield to the gentleman.

Mr. ADDABBO. I thank the gentleman for yielding and for his kind words about our actions.

I wish to point out that the committee has, as the gentleman knows, added $373.7 million over the budget request for the Reserve and the Guard, as follows:

Plus $85.7 million to increase strength of Reserve Forces by 16,100 personnel.

Plus $50.0 million for combat equipment for early deploying Army Guard and Reserve units.

Plus $44.5 million for 17 Cobra-TOW helicopters for the Army Guard.

Plus $70.8 million to buy 6 C-130's for Air Guard.

Plus $12.0 million for modification of F-4 J-79 engines, including those in Air Guard, to reduce smoke trails.

Plus $2.2 million for Marine Corps Reserve annual active duty training.

Plus $12.2 million to restore 6 Navy Reserve helicopter squadrons not included in budget request.

Plus $37.0 million to buy 2 C-9B aircraft for the Navy Reserve.

Plus $17.0 million to modify Navy Reserve P-3 aircraft.

Plus $10.0 million for Navy Reserve travel costs.

Language to strengthen the role of the Navy Reserve and retain 17 Reserve destroyers.

Mr. MONTGOMERY. I certainly thank the gentleman. I would like to point out it makes sense to turn more of the missions to the Guard and to the Reserve makes a lot of sense, if you give them the equipment and you give them the incentive and then they can do it. But they have to have good equipment and they have to have the same incentives that the Regulars have.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. MONTGOMERY. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. Mr. Chairman, I do not know of anyone in the House that has done more to bring to the attention of the House the needs of the Guard and the Reserve and the value of the Guard and the Reserve for this country than the gentleman from Mississippi. I think the fact the gentleman has congratulated our committee for our work means a lot to me, at any rate. We have worked hard to do better by the Guard and the Reserve. We have highlighted in our report several pages of things that we have done.

We all believe, I think, that in time of trouble we have to have this Guard and Reserve and we have to have it trained and ready to go to the greatest extent possible. I believe the committee has taken a good step in that direction in this bill.

Mr. MONTGOMERY. I certainly agree with the gentleman.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized in military construction authorization Acts or authorized by section 2673, title 10, United States Code, and the land necessary therefor, without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $1,536,200,000, to remain available for obligation until September 30, 1983.

AMENDMENT OFFERED BY MR. MOFFETT

Mr. MOFFETT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MOFFETT: Page 17, line 20, after "1983." insert the following: "None of these funds shall be expended for facilities or equipment relating to binary weapons production.".

Mr. MOFFETT. Mr. Chairman, as my colleagues know, I do not offer amendments to defense appropriations as a practice. I do not think I have ever offered one before. Part of the reason for that is that I do have great respect for the complexity of this area and respect the committee's work. I particularly respect the work of the gentleman from New York (Mr. ADDABBO) and the gentleman from Alabama (Mr. EDWARDS). I cannot think of two people who are brighter and more schooled on this issue.

One of the things I have learned from both of these gentlemen, and I think it is one of the things that led me to support the amendment of the gentleman from Texas (Mr. WHITE) earlier today, is that we ought to get our priorities straight with regard to readiness and with regard to the core of our defense.

It is with a great deal of sadness, I must say, that I offer this amendment, sadness because I believe that the binary weapons program is moving along, bits and pieces, toward the development of a nerve gas program that will roll back the spirit of what the civilized world has been striving for since the Geneva Agreements of 1925 and which will roll back the 10-year commitment and record of our own country through three Presidents not to develop nerve gas production facilities.

I was not going to offer this amendment. As I indicated earlier, I have generally no interest in offering defense appropriation amendments. To be very candid, part of the strategy of those of us who are opposed to nerve gas production was based on our feeling and expectation that in the other body the program would not be included in the military construction legislation, nor in this particular piece of legislation. It has come to my attention, however, that it is likely that the program for the construction of the facility and for the facilities and equipment embodied in this particular bill will, in fact, be included, are likely to be included. Many of us feel as though we should be on record on this issue because, in fact, we are contributing to the creation of a momentum which, as I said, rolls back the spirit of the last 55 years.

Members need not pay a great deal of attention to what an nondefense, nonforeign affairs specialist like myself says on this matter. Members can go back to the debate last week on the military construction bill and listen to the words of the distinguished chairman of the Foreign Affairs Committee, the gentleman from Wisconsin (Mr. ZABLOCKI). I read those words over and over again. I come to the well with great respect for the Appropriations Committee but also great respect for the Foreign Affairs Committee. I am a member of neither and I would much have preferred a member of one of them offer this amendment. But I think this issue is of such importance, and apparently the distinguished gentleman from Wisconsin (Mr. ZABLOCKI) felt the same way, that he rose to speak out loudly and clearly against moving forward with any kind of nerve gas production facility and equipment. In the other body Mr. PRYOR and others have raised their voices on this issue.

It can be said, and the staff, the able staff of the subcommittee that is managing this bill has indicated as such to me, that this is only for certain portions of the equipment and is not for weapons. That is clear and I respect that. I am sure that is the case. But last week it was $3.15 million for a binary weapons production facility This week it is $19 million for facilities and equipment. We are on the road, Mr. Chairman, we are on the road to a $2 billion to $4 billion expenditure. We are on the provocative course of creating a nerve gas production program.

This would not be bad if it did not run counter to what I think this House seems to be doing, which is to begin to focus on the core of our defense. I think all of us know we cannot have everything. We cannot have every weapon and everything that everyone thinks of, and we cannot have everything in this smorgasbord of weaponry possibilities. We have to pick and choose. That is one of the reasons there was overwhelming support for the amendment offered by the gentleman from Texas (Mr. WHITE) earlier today.

□ 1550

We know that that the recruitment amendment was important.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. MOFFETT was allowed to proceed for 3 additional minutes.)

Mr. MOFFETT. Is this nerve gas program so important to absolutely cement and stalemate the negotiations that have been going on with the Soviet Union since 1976, negotiations to prohibit the development, production, or stockpiling of any lethal chemical weapons? There have been stories about gas use in Afghanistan, as the gentleman from Wisconsin (Mr. ZABLOCKI) said last week—not substantiated in any way in terms of lethal gas use. It is a fact that the United States and the Soviet Union have more than 100,000 tons presently of lethal chemical weapons. Our emphasis should be on defense against this kind of weaponry. We have in fact been spending at the rate of $200 million a year for the past 3 years on research and development in this area.

As I understand it, the estimates are 3 million projectiles currently in our stockpile, most of it usable for the rest of this decade. This great body rejected in 1974 and 1975 DOD authorization and military construction bills, or attempts on those bills, to support production of nerve gas. We rejected them, and I plead with those of you in the body, in the Chamber today and those watching the debate in their offices, to step back from the feeling that so many of us have that we need to improve our defense and to try and ask ourselves the question of whether or not this is really any kind of improvement, or are we getting caught up in a kind of momentum that does not really make a great deal of sense, one which will send a horrible signal to the rest of the world.

I also urge that we be sure—and I make this plea regardless of where you stand on this issue—that we have a rollcall vote on the issue because I have a feeling that it is one of those issues that in 5 or 10 or 20 years, if we go ahead with it, that we are going to be asked about and our children are going to be asking us about. I do not mean to get melodramatic, but I have a young child. Many of the Members here have young children. Many of the older Members have grandchildren. If this is the kind of provocative move that many of us think it is, I think we are going to be called to answer for it. This body is full of wonderful committed people, committed to life and humanity. I think this body would make a serious mistake—a serious mistake—by including this money in the bill, and now is the time to stop it.

I yield back the remainder of my time.

Mrs. FENWICK. Mr. Chairman, I rise in support of the amendment.

I spoke against this proposal last week, the proposal to complete these facilities for the production of lethal gas. I, like the chairman of the Committee on Foreign Affairs, the gentleman from Wisconsin (Mr. ZABLOCKI), have never seen a victim of poison gas but I have spoken to those who have, to the Hmong Tribesmen of Laos who have seen what happens when poison gas is dropped on helpless civilians in the mountain areas of Laos. It is a terrible thing.

I think that the proposal is unworthy of this Nation. Somehow it strikes a terrible chord, a note that never should have been heard in this century. We learned in the First World War how evil, how peculiarly evil, such a weapon is. That we should now, so many years later—60 and more years later—be turning to the development of poison gas in this country, the United States, seems to me contrary to everything we intended to be. We have been called the last best hope of Earth. Turning to poison gas as a weapon, is unworthy of this Nation.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike the necessary number of words, and I rise in opposition to the amendment.

Mr. Chairman, I share the gentlewoman's concern and her grief at the thought of this horrible weapon. It is a terrible thing. This whole bill is a terrible thing. I wish I could stand here

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and say to the gentlewoman and to this House and to the people of this country that we do not need a bill like this, that we do not need to spend this kind of money, that we do not need to talk about nuclear weapons and ships and planes that bring destruction on other people's nations. But we have to live in the real world, and we know that the Soviet Union continues to move forward with chemical gases, with the types of systems that we abhor.

But I think I would say to the gentlewoman from New Jersey (Mrs. FENWICK) that as a nation we must be as prepared as we can, and so we have gone a step further than we have in the past. We have been moving in this direction with something called binary chemicals where we literally put the chemicals together in two different containers, each being harmless but being together become lethal. So while even to this day we find ourselves in this country with chemicals that are very dangerous, that are stockpiled and stored, that are getting very old, we are not embarked on that type of undertaking. We do believe that we should move a step at a time in the direction of being as prepared as we can.

This money does not buy chemicals. This money does not commit us in the future to buy chemicals. This money says that we will continue to move forward with equipment while we continue to study the problem, while we continue to look at what the Soviet Union is doing, and that there may be a time when this House will be called upon to vote to go further. You are not being called upon today either in the other military bills that have been passed here recently or in this bill today, to produce binary chemicals or any other chemical. I would like to come here tomorrow or the next day or the next year and say to the gentlewoman that we do not intend to build or to produce binary chemicals. But I will say to the gentlewoman that I will not come here tomorrow or the next day or the next year and say that we should, if we could find some way to get some agreement from the other side to stop this horrible thing.

So I come back to the point of agreement with the gentlewoman. It is a terrible weapon, but this is a terrible bill, and it is one that those of us who serve on this subcommittee stay concerned about. We know that we have got to provide the needs for the defense of this country. We know that we are wasting the taxpayers' money in many places, but we know that it simply has to be done. So I do not like opposing the amendment, but I feel that it must be done.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

On September 10 we had essentially the same discussion here on the floor when the military construction authorization bill was before us. I have just heard the gentleman say that this is not necessarily a commitment to the whole program—that this is merely a first step.

One of the points that I tried to make on September 10 was that in the subcommittee hearing, the gentleman from Michigan (Mr. NEDZI) and the gentleman from Missouri (Mr. ICHORD) entered into a colloquy wherein Mr. NEDZI asked Mr. ICHORD after some discussion about the fact that it would eventually cost a billion dollars whether or not it was a commitment to the whole program. Then the distinguished gentleman from Missouri (Mr. ICHORD) responded that that is true, that it is essentially a commitment to the whole program.

At that time I tried to articulate my concern.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. BETHUNE, and by unanimous consent, Mr. EDWARDS of Alabama was allowed to proceed for 2 additional minutes.)

Mr. BETHUNE. If the gentleman will continue to yield, at that time I tried to articulate the concern that I have that this proposition has not been heard with any degree of precision and fairness out in our committee structure since 1975.

□ 1600

I think, as I said on that day, most Members here in the House really do not know enough about this issue to cast an intelligent vote.

I was persuaded on that day not to offer an amendment because the bill would die in the Senate or it would be killed by the administration. Even as I was making that point, even as that soothing assurance was being made to me, Senator JACKSON was going around on the Senate side hustling votes for the proposition and so I now question whether or not that is the case. If it is going to be stopped on the Senate side and if there is going to be a debate on the whole proposition then I think that would temper some of the adverse comment.

The CHAIRMAN. The Chair would like to caution the Member not to refer to actions of the other body or to refer to Members of the other body.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from New York.

Mr. ADDABBO. Mr. Chairman. I ask unanimous consent that all debate on this amendment and all amendments thereto end in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Members standing at the time the unanimous consent request was agreed to will each be recognized for 1 minute and 45 seconds each.

(By unanimous consent, Mr. DICKS yielded his time to Mr. ICHORD.)

The CHAIRMAN. The Chair recognizes the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Chairman, the question of the gentleman from Arkansas would be extremely difficult to answer because the gentleman sets up a false premise.

Actually, this is the first step of a $175.2 million program for the facilitation of a plant to produce binary munitions. Only $19 million is included in this bill. I do not know how the gentleman from Arkansas arrived at the conclusion he finally reached.

Mr. Chairman, let me say I think the gentleman from Alabama has adequately answered the gentlewoman from New Jersey. I wish too we did not have to spend a dime for defense. This subject is, to me, just as repulsive, I would say to the gentlewoman from New Jersey, as it is to her. The gentlewoman herself has mentioned the use of gas in Afghanistan by the Soviet Union. Unfortunately that is the real world in which we live. Let me say to the gentleman from Arkansas—and I will include additional material in my full answer—yes, if we are able to obtain the valid, enforceable agreement we can stop the production of chemical agents. It will be necessary, however, to have onsite inspection and I am not too optimistic that the Soviets will ever agree to onsite inspection. We are not even close to any such agreement at the present time.

There has been so much misinformation and so much emotion surrounding this issue. Let me appeal to the Members of the House. This is your Armed Service Defense Appropriations Committee. It is the responsibility of the House and the Senate of the Congress to raise, maintain, and support armies. The issue is one of preparedness.

Mr. Chairman, these are the experts carrying out the constitutionally mandated duty of the Congress to provide, raise and maintain and support armies.

The issue is simply one of preparedness and not fighting chemical warfare.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. ICHORD. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I understand the existing stockpiles of chemicals we have today are old and very dangerous.

Mr. ICHORD. They are extremely dangerous and are having to be destroyed as each week passes.

Mr. DICKS. It is further my understanding the binary chemical munitions can be separated and are, therefore, a much safer way to proceed with these kinds of weapons. Is that correct?

Mr. ICHORD. The gentleman is correct. In fact, the supplies we have on hand at the present meet only 25 percent of the stated needs of the Joint Chiefs of Staff to deter, I would state to the gentlewoman from New Jersey, to deter chemical warfare. If we do not do anything, we will be disarming ourselves unilaterally and I know no one in this body wants to do that.

Mr. DICKS. As the gentleman points out, the Soviets have a huge advantage in this area, not only in terms of weapons systems but also in defense gear and filters for the various vehicles that make it less likely that they will be damaged by this.

Mr. ICHORD. The gentleman is eminently correct. All we are trying to do here is to maintain a deterrent. Our only possible response by the year 1990 would be nuclear. I am sure the proponents of

this amendment do not mean to lower the threshold of nuclear war. Let us use commonsense and logic in dealing with this repulsive subject rather than emotion. The Members of the House should follow their experts who have given long and serious thought to the dangers we face.

Let me now take the time to answer a recent article written by a Member of the other body which appeared in the Washington Post.

This recent article entitled "Let's Stay Out of the Nerve Gas Business" contained many assertions which are demonstrably inaccurate and misleading.

For example: The article states that 10 years ago the United States adopted a new policy regarding chemical warfare. It did nothing of the sort. The article further states that the Army is trying to reverse that new policy. It is not.

On November 25, 1969, the President of the United States declared that the United States "reaffirms its oft-repeated renunciation of the first use of lethal chemical weapons" and "extends this renunciation to the first use of incapacitating chemicals." No ban was placed on further production of chemical weapons.

Our position in 1969 was, and today still is and should continue to be, the maintenance of sufficient stock to deter the use of chemical weapons. As the Secretary of Defense stated in 1969, "The objective of the U.S. program will be to deter the use of chemical weapons by other nations and to provide a retaliatory capability if deterrence fails."

The article also stated that the United States has "an enormous supply of nerve gas and chemical munitions" that is not obsolete or deteriorating; that "no proof exists" that the Soviets are manufacturing massive stockpiles of nerve gas weapons; and that binary weapons offer no military advantage. Every one of these statements is incorrect.

The facts are these: Our allegedly "enormous" stockpile comprises 730,000 rounds of unusable chemical munitions that are either obsolete or deteriorating, cannot be repaired, and are in storage awaiting destruction. A predominance of our aging stocks, with a shelf life of 20 years, is now 20 years old or older. Some nerve agents are 25 years old. A variety of artillery shells averages 19 years of age. Our failure to modernize and replenish these stockpiles means that we are losing our retaliatory/deterrent capability. We now have only 25 percent of our needs, according to the Joint Chiefs of Staff. In the absence of a modern usable chemical stockpile, the only way a U.S. President could respond to a chemical attack is with tactical nuclear weapons. No President should be limited to such a stark choice.

The article states no proof exists of a Soviet chemical buildup but according to the most current statistics gathered by U.S. Army intelligence, the Soviet Union now outnumbers the United States in all aspects of chemical warfare. The Soviets have 35 times as many personnel (100,000) trained in the use of chemical weapons, eight times as great a chemical-munitions inventory, five times as many ground chemical delivery systems, and 14 more production facilities. How many production facilities does the United States have? None.

The evidence of the continuing Soviet buildup is overwhelming and indisputable. In the last 10 years the Soviets have deployed two new self-propelled howitzers (1973 and 1974), and a new, heavy, multiple-rocket launcher (1977), all having an offensive chemical munitions capability. U.S. intelligence has confirmed that Soviet production at a chemical warfare agent plant continues as I presently speak.

Despite the article's claim that there is no military advantage to binary weapons beyond their inherent safety, they do offer the obvious military advantage of deployability. Right now, the U.S. Navy will not deploy Weteye bombs (nerve agent) aboard its carriers because they are old, unsafe, and unstable. In a March 2, 1980 interview with the Denver Post, Senator GARY HART of Colorado said, referring to the Weteye's, their poor condition made it "highly questionable" that they could be used in combat. "They would damage our troops as much as they would the enemy." Binary Bigeye bombs forward deployed aboard these carriers would, in contrast, lend credibility to our deterrent and substantially improve our readiness.

However, the issue today is not that of deployment or production of chemical weapons. The issue is preparedness and the article completely missed that point. I share the revulsion against chemical warfare but attention to our lack of preparedness will reduce the confusion and emotionalism that surround this repulsive subject.

So will intellectual integrity. Again, I urge the Members of the House to uphold the committee.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. DOWNEY).

(By unanimous consent, Mr. MOFFETT yielded his time to Mr. DOWNEY).

Mr. DOWNEY. Mr. Chairman, it is pretty clear that the Soviets have gas and have shown little reluctance to use it. They have probably used it in Afghanistan and it is conceivable they have told their allies in Laos how to use it against the Hmong tribesmen.

The question then becomes, since they have it and we have it and they have more of it, how should we respond to such a situation? We have not really engaged in any sort of tactical argument about whether or not nerve gas makes any military sense. I do not believe it does. That is why use has been limited only to those people who do not have any possible defense against it.

We spend $200 million a year equipping our forces to defend against gas. In fact I think we should spend a little more, in learning how to button up our tanks and our soldiers so they could operate in a chemical warfare environment. That is the direction in which we should be going.

If we decide the only way we can counter a Soviet advantage in chemical warfare is by increasing our own capability, we have yielded once again to the military merry-go-round mentality; that one more weapon, a little more capability will lead to military security. It does not.

Mr. Chairman, I think that notion needs to be rejected out of hand. If anything, the opposite is true. With huge stockpiles of nuclear weapons and huge stockpiles of gas, is it not more likely that they will be used? It would seem to me the ongoing negotiations with the Soviets will bear fruit if we give them a chance.

Mr. Chairman, we are not talking about disarmament, we are talking about arms control, adding to our security at reduced cost to the taxpayer.

One point about gas' tactical use: In the event of a war in Europe if the Soviets start shooting gas over, they are as likely to kill millions and millions of German civilians as they are one American soldier. Now, how long do you think the German Army is going to sit still or the U.S. Army while millions of civilians, unprotected civilians, are going to be killed by gas, without using a nuclear weapon? I do not think very long. If we respond by using gas against these forces we will be in the position of killing millions of civilians needlessly.

Mr. Chairman, there are a number of reasons that this amendment should be accepted by the body. One, the fact that we already have discussions ongoing with the Soviets to limit it. Two, tactically large stockpiles of gas are not good to deter Soviet use. What deters use is the ability by both forces to be able to operate in a chemical environment if it is necessary. We have that capability. It should be improved. We should not add this additional weapon to our arsenal because there will never be an end to the weapons we add in the name of trying to deter war. It only brings war that much closer.

The CHAIRMAN. The Chair recognizes the gentleman from Arkansas (Mr. ANTHONY).

Mr. ANTHONY. Mr. Chairman, to prove the point that was made earlier about stocks becoming obsolete and out of date, I happen to represent the congressional district wherein the facility will be located, the Pine Bluff Arsenal at Pine Bluff, Ark. In an effort to try to acquaint myself with that facility and the capabilities there, I have gone out and I have had numerous briefings there.

□ 1610

After one of the briefings that I received, I immediately went and held a press conference and talked about the safety and how everything was well managed, only to have a press release issued the next day, which was the usual practice of the commandant of the arsenal, letting the people know in that area how many leakers were discovered within the premises. The arsenal has a policy of openness within the community so that it will have total acceptance.

Here I was, bragging about the safety and maintenance and then surprised with a press conference the next day totaling the leakers, which points up the fact that the binary system is the best way to go.

We upgrade all other defense systems. We should upgrade chemical warfare for one reason, and one reason only; not for

first strike, but for defense, retaliatory capabilities. We are spending massive amounts of money to upgrade all our forces, our Air Force, Army and Navy, plus all of our weapons, because we know our weapons become obsolete or because our technology changes. We should look at this as a total defensive system.

Mr. ANTHONY. Mr. Chairman, our stocks of chemical weapons are insufficient, outdated and becoming nonfunctional. They present difficulty in storage and transportation.

The binary system is safer and will increase our ability to deploy chemical weapons should the need ever arise.

One final point should be made. We are only authorizing moneys for a facility and equipment. Production of chemical weapons must receive Presidential approval and further congressional authority before actual production can begin. The Congress will have sufficient time to study the issue and vote accordingly.

(By unanimous consent, Mr. PETRI yielded his time to Mr. LEACH of Iowa.)

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. LEACH).

Mr. McCLOSKEY. Mr. Chairman, will the gentleman yield?

Mr. LEACH of Iowa. I yield to the gentleman from California.

Mr. McCLOSKEY. Mr. Chairman, I want to join in the position of the gentleman from Arkansas (Mr. BETHUNE) and those that follow from the gentleman from Iowa.

It seems tragic that after 10 years, a major decision to resume the manufacture of nerve gas should be made without full hearing and comprehensive debate in committee.

It may be that following such hearing and debate we might well vote, on an informed basis, to resume the manufacture of the binary system of nerve gas storage and delivery. But the decision today is not on an informed basis. There has been neither meaningful testimony nor full debate, and as usual the administration has been ambivalent. The Secretary of Defense has testified that the funding is not necessary this year. Why not then wait until we can fully and fairly study and understand the facts.

Mr. LEACH of Iowa. Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from Connecticut and would make several observations that have not been brought up at this point in the debate.

First of all, in an arms control sense, there are three basic weapons of mass destruction: Nuclear, chemical, and biological. We have dealt with biological through a comprehensive arms control agreement, and I am proud to have served on the negotiating team that negotiated that agreement. With respect to nuclear, we are taking steps, although they are not as yet very profound.

But once a country has one weapon of mass destruction, the importance of a second diminishes significantly. What we are talking about here is a new arms race, not only for ourselves, but for others. Chemical weapons, above anything else, are a poor man's weapon of mass destruction. For us to legitimize their use by expanding our arsenal of these weapons is for us to encourage other countries to develop chemical capabilities.

Rather than committing massive dollars to a fearsome new weapons system, let us go forward in a much more significant way with negotiations on a treaty to ban the development, production, and stockpiling of chemical weapons.

Finally, it should be stressed that the fault for delay in negotiating a comprehensive ban on chemical weapons to supplement the existing Geneva Protocol is not all the Soviets—although it is 90 percent so.

Unfortunately our Government, under this and previous administrations, has given far too little attention to chemical weapons negotiations.

Chemical weapons are every bit as repulsive as nuclear. Their recent usage in Afghanistan and Southeast Asia, as well as their stockpiling in Europe on both sides of the Iron Curtain, pose a great if not greater threat to world order than that posed by nuclear warheads.

After all, it is chemical weaponry, not nuclear, that has been employed in the world in recent years, and it is chemical weaponry which has been passed into the arsenals of smaller, militaristic countries such as Vietnam. This trend must be halted, and it is incumbent on responsible leaders of free world governments to lead the way.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. WEISS).

Mr. WEISS. Mr. Chairman, those of us who are old enough to remember back to the beginning of the Second World War will remember the discussions that took place involving gas warfare; remember the training programs, the training films, and instruction in the use of gas masks given not only to military personnel, but also to civil defense volunteers. I recall the horror with which the world viewed the prospect of chemical warfare once again. There were many veterans of World War I who were visible reminders of that horror. It was fervently hoped that after the experience of World War I poison gas would never be used again.

Chemical warfare was not used in World War II. It should not ever be used again. For the Congress of the United States, against the wishes of the administration, to move forward at this point to revive the prospect of the use of chemical warfare is taking this Nation and probably the world back down the wrong road.

I would hope that we would have the good sense to support the concept that chemical warfare is not an acceptable form of warfare. We must not encourage, by the signals that we send, the utilization by us or anyone else of chemical warfare.

I support the amendment of the gentleman from Connecticut and urge its adoption.

The CHAIRMAN. The Chair recognizes the gentleman from Arkansas (Mr. BETHUNE).

Mr. BETHUNE. Mr. Chairman, I think some good questions have been raised here, and I think that is indicative of the fact that the debate has been insufficient.

The gentleman from Wisconsin, the distinguished chairman of the Foreign Affairs Committee, came to this floor the other day and spoke strongly against going forward with this program without further debate. I could not begin to approach the eloquence that he displayed on that occasion. I think what has happened here is that proposal has gathered momentum, not because of the collective judgment of any committee or because of the collective judgment of this body. It has gathered momentum and come to the floor because of the individual expertise of a handful of Members who understand the issue from A to Z.

I find it extremely difficult as a new Member of this House to decide with any degree of precision or intelligence, because it has not been adequately debated, and I do not serve on those committees. I agree with the division of labor, but I do not think we ought to take the word of a few individuals hook, line, and sinker.

It occurs to me that there is plenty of time to debate this as the Congress moves forward. Some people are sure they are for it; some people are sure they are against it, but most Members of this body really cannot make an intelligent decision on it. I think we ought to wait about going forward until we have time to debate it.

Again, I want to point out that I think the brevity of this debate and the questions that have been raised indicate that the simple thing for us to do is to support the gentleman's amendment at this time.

The CHAIRMAN. The Chair recognizes the gentleman from Florida (Mr. CHAPPELL).

Mr. CHAPPELL. Mr. Chairman, the best way, obviously, for us to deter the Soviets from the use of chemical warfare is to be prepared to produce chemical weapons, and that is all we are attempting to do in this bill, to give us this capability. All of us abhor the idea of chemical warfare. Of course we do, but historically chemicals have been employed against nations having no retailatory capability—by the Germans against the Allied forces in World War I, by the Italians in Ethiopia in 1935, by the Japanese in China in 1937, by the Arab Republic in Yeman in 1967, by the Vietnamese against the Meo tribesmen; by the Soviets—note this—by the Soviets against the Afghanistan freedom fighters.

The Soviets train in chemical warfare. They are prepared to use it. They have 35 times the capacity we do, and the only

chance we have, I think, for effective deterrence is to make certain they understand we have the capability to timely manufacture it.

So, I would urge the defeat of this amendment, and give us the capability to deter through possible retaliation.

The CHAIRMAN. The Chair recognizes the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Chairman, I strongly urge a vote against this amendment. I wish we could beat all of our swords into plowshares, but the arguments I have heard from the proponents of this amendment could be used against every weapons system in this bill. I daresay it makes very little matter to a person engaged in war whether they strangle as a result of chemical warfare or are blown to bits by a nucler bomb. Weapons of war are by definition horrible.

That is why we have this bill before us, because we need defensive capacity to avoid war. The fact of the matter is that the money involved in this bill is not, per se, for production of chemical warfare, but rather the production of the howitzer projectiles that might be used for that purpose.

It is admittedly the first step toward chemical warfare capability, but the United States has not produced chemical materials for warefare in this country since 1969. The gentleman from Maryland has availed himself of the Army's classified briefing on this matter a few years ago at Aberdeen Proving Grounds in Maryland, and was astounded at the lengths to which the Soviet Union has gone in their ability to destroy people by chemical warfare. We have heard reference today that the Soviets are already employing such warfare in Cambodia and Afghanistan. Now, we are negotiating with the Soviets for a joint agreement to do away with such warfare.

□ 1620

How can we negotiate when we have no capacity to fight a chemical war? How can we negotiate when they have all the ability?

The Russians will never sign an agreement limiting chemical warfare if we do not produce a weapon that in some way guarantees that indeed if they use chemical warfare, we will respond in kind.

I suspect that those who argue against this weapons system often vote against all defense bills. They are well meaning and I grant them their motives, but they are sadly mistaken.

Mr. Chairman, this is a death struggle, and it is our national death that is a distinct possibility. I urge the amendment be defeated.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. ADDABBO) to close debate.

Mr. ADDABBO. Mr. Chairman, I rise in support of the amendment.

I think we have taken the first step by including the $3 million in the military construction bill. I think we have met the challenge, and this money is not needed at this time. I think we can wait and see if the Russians do make any real movement toward agreement on the prohibition of this type of weapon.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. MOFFETT).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MOFFETT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 125, noes 276, answered "present" 1, not voting 30, as follows:

[Roll No. 546]

AYES—125

Addabbo
Aspin
AuCoin
Baldus
Barnes
Bedell
Bellenson
Bethune
Bingham
Boland
Bonior
Bonker
Brodhead
Brown, Calif.
Burton, John
Burton, Phillip
Carr
Cavanaugh
Clay
Conte
Conyers
Corman
Coughlin
Dellums
Dingell
Dixon
Donnelly
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Calif.
Erdahl
Fascell
Fazio
Fenwick
Ford, Mich.
Ford, Tenn.
Forsythe
Garcia
Glickman
Grassley
Gray
Green
Harkin
Harris
Hawkins
Heckler
Hollenbeck
Howard
Hutchinson
Jeffords
Johnson, Colo.
Kastenmeier
Kildee
Kogovsek
Kostmayer
Leach, Iowa
Lehman
Leland
Lowry
Lundine
McCloskey
McHugh
McKinney
Maguire
Mikulski
Miller, Calif.
Minish
Mitchell, Md.
Moakley
Moffett
Nolan
Nowak
Oberstar
Obey
Ottinger
Panetta
Patterson
Paul
Pease
Petri
Porter
Pritchard
Pursell
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rodino
Rosenthal
Roybal
Sabo
Scheuer
Schroeder
Seiberling
Sensenbrenner
Simon
Smith, Iowa
Solarz
St Germain
Stark
Stewart
Stokes
Studds
Swift
Tauke
Thompson
Udall
Vander Jagt
Vento
Walgren
Waxman
Weaver
Weiss
Williams, Mont.
Wirth
Wolff
Wolpe
Yates
Zablocki

NOES—276

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Atkinson
Badham
Bafalis
Bailey
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Blanchard
Boggs
Bolling
Boner
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Butler
Byron
Carney
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Corcoran
Cotter
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dodd
Dornan
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
Emery
English
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Goodling
Gore
Gradison
Gramm
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Hefner
Heftel
Hightower
Hillis
Hinson
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ichord
Jacobs
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lederer
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lujan
Luken
Lungren
McCormack
McDade
McDonald
McEwen
McKay
Madigan
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Miller, Ohio
Mineta
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Pashayan
Patten
Pepper
Perkins
Peyser
Pickle
Preyer
Price
Quayle
Quillen
Regula
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rostenkowski
Roth
Rousselot
Royer
Rudd
Russo
Santini
Satterfield
Sawyer
Schulze
Sebelius
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Steed
Stenholm
Stockman
Stratton
Stump
Symms
Synar
Tauzin
Taylor
Thomas
Traxler
Trible
Ullman
Van Deerlin
Volkmer
Walker
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Tex.
Winn
Wright
Wyatt
Wydler
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zeferetti

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—30

Anderson, Ill.
Campbell
Chisholm
Collins, Ill.
de la Garza
Derrick
Dougherty
Erlenborn
Fish
Goldwater
Harsha
Holland
Holt
Holtzman
Ireland
Jenrette
Johnson, Calif.
Leach, La.
McClory
Markey
Marks
Mattox
Myers, Pa.
Nedzi
O'Brien
Oakar
Shannon
Vanik
Wilson, Bob
Wilson, C. H.

□ 1630

Messrs. LEWIS, STAGGERS, and DAVIS of Michigan changed their votes from "aye" to "no."

Messrs. LOWRY, FORD of Michigan, SMITH of Iowa, and RAILSBACK changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

□ 1640

Mr. VENTO. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, although the Appropriations Committee and its Subcommittee of Defense have put a conscientious effort into this bill, I must oppose it in its present form.

My reasons for opposition are that the

committee, although exhibiting a realism beyond that of the authorizing committee, has failed to respond properly to the warnings of the leaders of the Air Force that we now face a greater potential for conflict with the Soviet Union than any time since the early 1960's.

In the short term they have failed to place more emphasis on the purchase of weapons that will help us now rather than pie-in-the-sky systems which, at a great expense, may possibly help us some time in the distant future. In the long term they have ignored the fact that a truly effective defense is dependent upon a healthy economy and that to insure such an economy, budgetary limits are required—even for defense.

Unrestrained spending on untested systems does not help us. Look at the example of the C-5A, an airplane for which procurement was finished before test and evaluation uncovered the wing fatique problems. We are paying the price today with the $187 million included in this appropriations bill for a rewing of 12 C-5A's. The whole rewing program will cost $1.4 billion. Because of this mistake the expensive penalty we are paying for the C-5A only underscores the importance of our not making the same mistakes again.

I am, however, pleased that the committee has paid close attention to the F/A-18 aircraft and have made the funding for this program contingent upon certification by the Secretary of Defense that deficiencies identified in both developmental testing III and by all accident investigations have been corrected and successfully tested by the Navy and that the test results demonstrate that the system meets contract specifications for performance and reliability. This is the minimum step that the subcommittee and committee could have taken.

I have been reviewing this aircraft for some months and have discovered that, in addition to the technical problems—which culminated in a near-disastrous crash in England by an exhibition aircraft a week ago, the costs are out of control. It can be expected that the fiscal year 1982 program cost will be some 20 percent higher than the fiscal year 1981 cost. It is reported that the Navy wished to publish this increase in the June SAR but was overruled by the Office of the Secretary of Defense.

Beyond this, many experts question whether the F/A-18 is capable of aiding the Navy in its primary mission of sea control against the Soviet threat. As a result of these technical, cost, and viability problems, the program and our commitment to it is undergoing extensive review by the executive branch OMB Director McIntyre must choose whether to advise the President to accept an OMB report recommending cancellation of the F/A-18. The principal Deputy Undersecretary of Defense for Research and Engineering is heading a task force studying alternatives to the F/A-18. Many in NSC and elsewhere now question the viability of the Navy light-attack concept. Nevertheless, powerful forces protect the project. The glamor and the promotions of a project of this size give it protection in the budgetary politics of the Department of Defense. While more routine established programs get neglected as more and more funds accrue to the larger, newer more spectacular programs.

I urge the subcommittee to continue to monitor the F/A-18 program. We cannot afford to waste Federal funds on a program that does not enhance our defense capabilities. I fully intend to follow closely the progress of this program.

Testimony before the subcommittee last year showed the services often do not put in budget requests for proven systems that they need since they know that these systems will be cut in the budgetary process and their service will lose the money. It appears to be forgotten that it is the routine, established programs which provide us with viable fighting forces. While the new programs get more than sufficient funding, these routine systems not only lose out in budgetary battles but also suffer budget cuts to meet unexpected operational expenses such as those that have been incurred in the Indian Ocean.

This is a practice which must be avoided. Then excessive funds for an untested program such as the F/A-18 would be better spent to provide adequate funding levels for existing essential programs which enhance our current readiness.

Mr. Chairman, I ask that the committee exercise more careful oversight of the process by which the Department of Defense budget is prepared. This I believe, would result in a budget more realistic in terms of the current and projected threat which in turn would result in a better bill and a better defense.

Mr. Chairman, I rise for the purpose of a colloquy with the subcommittee chairman. I want to commend the subcommittee chairman and the committee for their leadership and especially for their report language.

I would like to ask the chairman of the Subcommittee on Defense for a clarification regarding yesterday's debate and the committee report.

In the section of the report regarding the appropriations for the F/A-18, the committee stated:

> These funds shall be made available for obligation only upon certification by the Secretary of Defense that the deficiencies identified in both Developmental Testing III and by all accident investigations have been corrected and successfully tested by the Navy and that the test results demonstrate that the system meets contract specifications for performance and reliability.

During yesterday's debate, the chairman entered into a colloquy on this language and stated that it was not the intent of the committee to unnecessarily delay the program.

In light of the near disastrous F/A-18 accident in England, there appears to be a serious difficulty associated with the aircraft which demands close study.

If I could have the subcommittee chairman respond to a question, would I be correct in my understanding that the committee intended that any deficiency involving safety and/or combat effectiveness would not be considered minor?

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from New York.

Mr. ADDABBO. I thank the gentleman for yielding.

The committee is concerned about the status of the F/A-18 in terms of cost and its reliability and capabilities. The committee report would cover any major or significant deficiency involving safety and/or combat effectiveness.

Mr. VENTO. I thank the chairman for responding.

I would also like to ask whether deficiencies which may be discovered later in the testing process are also within the scope of the committee report?

Mr. ADDABBO. Any significant deficiency found within a reasonable time insofar as they relate to safety and/or combat effectiveness would have to be considered.

Mr. VENTO. I thank the gentleman for his attention and the subcommittee's attention.

Mr. Chairman, I yield back the balance of my time.

Mr. RUDD. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, I rise to propound a question to the gentleman from New York concerning appropriations in this bill to rectify the serious spare parts problems being faced by all the services.

I was told following my visit aboard the U.S.S. *Talbot* earlier this year, when a spare parts problem caused a substantial delay in a scheduled mission, that the Navy had a 35-percent deficiency in spare parts at that time.

Moreover I have just received information from Williams Air Force Base in Arizona, the Nation's largest undergraduate pilot training base, that a deficiency in eight separate aircraft parts is causing a large number of planes to be grounded; 21 planes there have been grounded owing to the lack of only one needed engine part.

I would like to ask the distinguished chairman what the committee has instructed the Defense Department to do to correct this spare parts problem in all the services, and what additional funds are earmarked in this bill to help rectify the current deficiency in spare parts?

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from New York.

Mr. ADDABBO. I thank the gentleman for yielding.

The committee has had the same desire the gentleman has mentioned. In last year's bill, we recommended funds over the budget for spare parts and hopefully we are moving in the direction of correcting this situation. Again, in this year's bill we have increased spare parts for the Navy by $157 million and increased spare parts for the Air Force by $475 million. So hopefully, we are now moving in the right direction.

Mr. RUDD. I thank the distinguished chairman.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. I thank the gentleman for yielding.

I will not take but just a minute.

The committee has moved, I think, smartly in the direction of trying to resolve the spare parts problem. I think the chairman would agree, while we have made a major step this year in that direction, that we still are a long way from solving the spare parts problem. There is still much to be done, and hopefully in the years to come, we will be adding to the spare parts sections of the bill to see that we do not have the kind of problem that the gentleman has discussed here today.

Mr. RUDD. I thank the gentleman from Alabama, and I know that America will be glad of the awareness that has been expressed here of this problem.

I yield back the balance of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

AIRCRAFT PROCUREMENT, AIR FORCE

For construction, procurement, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land without regard to section 9774 of title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to the approval of title as required by section 355, Revised Statutes, as amended; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; $9,639,329,000, of which $382,044,000 shall be available for contribution of the United States' share of the cost of the acquisition by the North Atlantic Treaty Organization of an Airborne Early Warning and Control System (AWACS) and, in addition, the Department of Defense may make a commitment to the North Atlantic Treaty Organization to assume the United States' share of contingent liability in connection with the NATO E-3A Cooperative Programme, to remain available for obligation until September 30, 1983.

Mr. GLICKMAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I commend the Appropriations Committee for its decision to approve procurement funding for the KC-135 reengining program in order to set the stage for an accelerated production schedule. The objective of the program is to replace the aging, inefficient engines in the KC-135 tankers with modern, fuel-efficient engines. Reengining will improve the Nation's defense capabilities, reduce fuel consumption, and cut costs.

With a flexible military strategy an increasing necessity to meet national defense requirements, reengined KC-135's will play a critical role in supplying fuel to long-range penetrating bombers. The KC-135's aerial refueling capability can also be used for a growing number of other Air Force aircraft. The new generation of fighters and transport aircraft are being outfitted to receive fuel midair. Reengining minimizes the number of flight hours required for tanker, bomber, and general purpose fleet refueling sorties and permits greater fuel off-load to extend receiver range and payload. Because reengining enables the KC-135 tankers to take off from shorter runways, our defense readiness can be enhanced through the use of an increased number of bases worldwide by the KC-135 fleet.

The KC-135's are the gas guzzlers of the Air Force fleet, burning over one-eighth of total Air Force fuel. Reengining will dramatically lower fuel usage. With 300 reengined tankers, 3.8 million barrels of fuel can be saved per year and at $30 per barrel, an annual savings of $114 million can be realized.

Besides the reduction in fuel costs, reengining can result in other savings. The KC-135's are currently undergoing wing modifications which will permit their airframes to be used well into the 21st century.

The modern engines to be used in the program are significantly quieter than current KC-135 engines. Members like myself who have an Air Force base or an Air National Guard wing in their districts know that constituents have been continually disturbed by the KC-135 tankers, the noisiest aircraft in the air today. Reengining would bring the tankers into compliance with the FAR, part 36 commercial aircraft noise standards.

The KC-135 reengining program is well underway. Engine selection was completed early this year with the GE/SNECMA CFM56 chosen. The fiscal year 1981 funding will permit the procurement of hardware to reengine one KC-135 aircraft as well as the purchase of hard production tooling and long lead raw materials and equipment. It is essential that we continue to move ahead on the reengining in order to capitalize on the program's benefits. Continued strong congressional support such as what we have seen this year will be needed to insure the programs' progress.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $2,961,054,000, to remain available for obligation until September 30, 1982.

AMENDMENT OFFERED BY MR. COURTER

Mr. COURTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COURTER: Page 25, line 14, strike out "$2,961,054,000" and insert in lieu thereof "$2,965,677,000".

Mr. COURTER. Mr. Chairman, I rise to offer an amendment: On page 25, line 14, to strike out "$2,961,054,000" and insert in lieu thereof, "$2,965,677,000".

Mr. Chairman, the addition of $4.623 million to this legislation is for the necessary and continued research and development on all levels, for various projects under the joint service small arms program headquartered under the Army's Armament Research and Development Command—at the Picatinny Arsenal. These funds have been fully approved by the House-Senate conference report, 96-1222, for the fiscal year 1981 defense authorization bill—page 69, items 106 and 115.

While all of us are rightly concerned with strengthening and modernizing our strategic forces, which I support, we must concomitantly do all we can to strengthen our conventional forces. The basic weapons of our Army, Marine, and special warfare units are small arms. That includes ammunition, pistols, rifles, machineguns, grenade launchers, and other portable, handheld weapons systems up to 40 millimeter. If we are to have an effective rapid deployment force, as called for by the President, they must be equipped with the finest, cost-effective weapons possible. The joint service small arms program, to which these funds are to be directed, is dedicated to developing handheld weapons for all the services, including the Coast Guard, and cut down on waste and duplication. The small arms needs of all our services are being met by this program, with the aim of servicewide standardization and eventual interphase with our NATO Allies.

The need for continued research, development, testing, and evaluation on small arms cannot be overstated. Funding for this program has had the enthusiastic support of professional staff members of both Armed Services Committees. Our major adversary, the Soviet Union, is making major strides in the area of small arms. Forbes magazine, in its September 15, 1980, edition, indicates that the Soviets are far ahead of us in this field. The highly reputable publication, National Defense, in its April 1980 edition, reported that the Soviets are testing a new generation of small arms in Afghanistan, including the new AKS-74 automatic rifle.

As far as our Nation is concerned, the Commandant of the Marine Corps, Gen. Robert H. Barrow, indicated to me in a letter of May 5 of this year, that we should look for a replacement for the M-16 rifle and that:

> Despite fiscal restraints, the requirement to upgrade the equipment of our Armed Forces is ongoing, we are counting on these JSSAP programs to satisfy that requirement for the individual rifleman.

Mr. Chairman, I believe that some of these fiscal constraints should now be removed and that we embark on an ongoing R. & D. program to upgrade our small arms capabilities. The amount of funding is small, in relation to many other programs, yet it is truly needed. An affirmative vote will be in consonance with the authorizing committees and with our national security requirements. Thank you.

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□ 1650

Mr. ADDABBO. Mr. Chairman, it is with reluctance that I rise in opposition to the amendment. It is a small amendment, only $4.6 million, but a million here, a million there, and all of a sudden we have a billion dollars to add to this bill.

The $4.6 million, according to the testimony we received, would be to harmonize the design, development, test evaluation, introduction to the services of small arms.

Mr. Chairman, we have already in this bill $10,344,000 in the Army small arms research program. None of these funds would in any way be for replacing the M-16. Now, over the years our committee has been urging the Department of Defense to standardize on a single handgun. At present there are about 25 different types of handguns and ammunition.

DOD has recently only directed that a single standard off the shelf handgun be procured. This effort was carried out within the levels funded in prior years at the budget levels requested.

Mr. Chairman, there are sufficient funds in this bill for this program.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. COURTER).

The amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law: $4,433,748,000, and in addition, $6,052,000 of which $4,086,000 shall be derived by transfer from "Research, Development, Test, and Evaluation, Navy, 1979/1980", and $1,966,000 shall be derived by transfer from "Research, Development, Test, and Evaluation, Navy, 1980/1981", to remain available for obligation until September 30, 1982.

AMENDMENT OFFERED BY MR. CHAPPELL

Mr. CHAPPELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CHAPPELL: Page 25, line 22, strike out "$4,433,748,000" and insert in lieu thereof "$4,502,211,000".

Mr. CHAPPELL. Mr. Chairman, this addresses a matter which was inadvertently overlooked by the subcommittee by virtue of the fact that the Appropriating Committee had not completed markup.

This line is Vertical Launch Systems and $68.5 million is authorized for appropriation. This amount is essential to complete the ongoing engineering development of vertical launching systems which are planned for CG-47, DDGX and DD-963 class ships.

I urge adoption of the amendment.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. CHAPPELL. Yes, I will yield.

Mr. ADDABBO. I thank the gentleman for yielding.

Mr. Chairman, this matter was not before the committee at the time of markup. We had not received the conference report from the authorizing committee. Since that time the vertical launch systems have been authorized.

We would accept the amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. CHAPPELL. Yes, I will yield to my colleague.

Mr. EDWARDS of Alabama. Mr. Chairman, we accept the amendment on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. CHAPPELL).

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $6,230,579,000, to remain available for obligation until September 30, 1982.

AMENDMENT OFFERED BY MR. MITCHELL OF NEW YORK

Mr. MITCHELL of New York. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MITCHELL of New York: Page 26, line 9, strike out "6,230,579,000" and insert in lieu thereof "6,234,779,000".

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. MITCHELL of New York. I certainly yield to my friend, the gentleman from New York.

Mr. ADDABBO. Mr. Chairman, I have discussed the amendment with the gentleman from New York. At the time that the committee marked up the bill, this matter had not been authorized. Since that time we have again reexamined it. It has been authorized.

We would be willing to accept the amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, if the gentleman will yield, on this side we agree to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. MITCHELL).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SIMON

Mr. SIMON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SIMON: Page 26, line 10 insert after "September 30, 1982,": *Provided*, That none of the funds appropriated by this paragraph may be used for research and development of a basing mode for the MX missile before April 1, 1981".

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from New York.

Mr. ADDABBO. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto end in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SIMON. Mr. Chairman, this amendment does not take one penny from this appropriation. What it does is to say that since we have four studies that will be concluded by February 1 on the basing mode, let us have those studies in before we spend additional tens of millions of dollars on this basing mode.

We are talking about something that will be the second largest expenditure in the history of humanity in toto. I am not going to go into the technical reasons why I think we should reject the basing mode. Members have heard me speak on that before; but let me point out a few things that have happened since we last discussed this.

First, two former Chairmen of the Joint Chiefs of Staff of this Nation have said that we ought to take a second look at this mobile basing mode.

Second, the current issue of the Reader's Digest has an article by a former colleague of ours, the former Secretary of Defense, Mel Laird, and let me quote former Secretary of Defense Mel Laird:

One thing seems obvious. We ought to conduct a thoroughgoing examination of MX basing before any more funds are spent on the hugely expensive deployment of the MX system planned for the Western United States.

James Kilpatrick has called it the Pentagon's Edsel.

I would like to quote also from the Republican Presidential candidate, Mr. Ronald Reagan, who told the Chicago Council on Foreign Relations that he was opposed to the basing mode. In Business Week, March 31, 1980, he said:

It is not the MX I oppose. It is the missile's racetrack deployment system.

□ 1700

What I am saying, my colleagues, and I recognize there is a remote possibility that that gentleman might become President of the United States, let us let some time elapse should he be elected so he can take a look to see whether he wants to go ahead with that.

Senator HOLLINGS, certainly a strong supporter of defense, says:

MX is the right missile but the racetrack basing is nonsensical extravagance.

Senator JACKSON, whose support of defense is clear, says in arguing for proceeding with the MX missile:

I have no intention of supporting the racetrack basing mode that has been discussed. It strikes me as cumbersome, risky, and expensive.

I could go on. Senator TED STEVENS of Alaska, William Buckley, and the list goes on. If my colleagues look at the rollcall we have had in the House, those who have opposed this are not liberals or conservatives, hawks or doves, but it is a good cross section of this House, people who are thinking twice about something that I believe is not only a massive economic mistake, but a massive military mistake.

So I would ask that we do a simple and sensible thing, let us wait until these studies are in and let us provide an additional 60 days and then go ahead if it it is then deemed wise to do so.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to my colleague from Missouri.

Mr. SKELTON. I wish the gentleman would tell me again what his amendment does.

Mr. SIMON. The amendment does one thing, and it is a very simple thing. It says that we do not spend any more money on the development of the basing mode for the MX. The basing mode alone. We go ahead with the research and the development on the missile, but on the basing mode, we halt the development until four studies that are now pending are completed, one of which is the Cannon amendment put in in the other body, and one of which is the Office of Technology Assessment report due February 1, that we wait until we get those reports before we spend tens of millions of dollars, perhaps hundreds of millions of dollars.

Mr. SKELTON. I thank the gentleman.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. EDWARDS of Alabama and by unanimous consent, Mr. SIMON was allowed to proceed for 2 additional minutes.)

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. The gentleman keeps talking about the racetrack basing mode for MX. Is the gentleman not aware that the administration has now gone to the straight-line MX basing mode rather than the racetrack?

Mr. SIMON. It is now the linear roadway. That is the new phrase, the latest thing. Who knows what it is going to be 30 days from now? But if one looks at the maps they produce, they look amazingly like the racetrack again. But the gentleman is correct, it is the linear roadway, but it does not fundamentally change the thing at all.

Mr. EDWARDS of Alabama. So the gentleman is suggesting that the President may yet change his mind and that we will not have the linear roadway?

Mr. SIMON. I am suggesting not only that the President may, but there may be many people who are going to join Mel Laird, the two former Chairmen of the Joint Chiefs of Staff. Perhaps Congress and the President will join in saying this really does not make sense.

Mr. MARRIOTT. Mr. Chairman, I move to strike the necessary number of words.

I rise in support of the amendment offered by the gentleman from Illinois. It's my view that it is a very responsible and moderate approach to a major problem under the existing circumstances.

This amendment does not strike the appropriations for the MX. It simply delays spending, and rightly so.

There are basically 4 reasons why spending should be delayed on the MX missile program.

First, the environmental impact statement, which was to be completed last month, has been delayed to November 15 at the earliest, after the elections.

The split basing study, which was required under the Defense authorization bill, has not been completed.

Second, it is unlikely that any funds could be spent before April 1 of 1981 in any case. The Air Force has already admitted that it cannot staff the MX project office.

Let me quote from the committee report on this bill:

It was noted that the Air Force has failed to fully staff the MX office project, citing as the reason the lack of sufficient numbers of persons with the requisite skills and experience to manage and control so large, complex, and costly an undertaking.

This is a frightening comment. Either the Air Force itself will continue to delay the program because its project office is understaffed, or it will have to staff the office with people short on the necessary skills.

Third, the American people and this body are painfully familiar with the effect of such delays in other defense programs. We can point to the weapons systems on which there have been tremendous cost over-runs and some which were actually scrapped.

For example, the American people spent almost $6 billion over a 10-year period on an ABM system that was shut down within weeks of its completion. The total cost of the B-1 bomber, for example, was over $6 billion when it was decided the cost was excessive and it was abandoned.

We simply cannot afford to repeat this kind of history in developing the MX. Our national survival is at stake.

Fourth, I would point out that politically this is an unprecedented year. There are three major candidates who have a chance of winning the White House. Two of them oppose the "shell game" deployment of the MX. Thus, delaying the spending of funds on a particular deployment mode until next spring will assure that we have neither wasted funds on a program that will soon be abandoned nor have we tied the hands of an incoming administration.

In addition to the practical reasons for delayed spending, there are also political reasons. As a long-standing advocate of a strong national defense, I want what is best for this country. But under the circumstances, jumping into the middle of this project without consideration for the points I have made today would be unwise.

There are still a number of inconsistencies regarding land withdrawal, States' water rights, economic and environmental impacts, and plans to address them have not been resolved.

I urge your consideration of this amendment, not as a destructive force for the MX program—it will not do that—but for the commonsense reasons I have laid out today.

Mr. WEAVER. Mr. Chairman, will the gentleman yield?

Mr. MARRIOTT. I am pleased to yield to the gentleman.

Mr. WEAVER. I want to thank the gentleman. As a fellow westerner, I commend him for his excellent presentation.

I would like to read the concluding paragraph of Jeremy Stone's article in the Washington Post this morning.

With weapon systems taking 10 years to build and designed to function for 20 years beyond that, America can no longer afford to examine its defense posture only in the annual snapshots of congressional review. Now, while we are still at the fork in the road, would it not be wise to stop and think?

Mr. MARRIOTT. I thank the gentleman and would only say in conclusion we have so many immediate problems, one of which I think is to backfill the Minuteman with MX missiles and to rethink where we are going on this basing mode. I think after the election there is plenty of time to fund this program, move on and still meet our objectives, if it is the purpose of this Congress to have this program in effect by 1989.

The CHAIRMAN. The Chairman will state there are 8 minutes left in the debate.

Mr. SANTINI. Mr. Chairman, I move to strike the requisite number of words, and I rise to speak in support of the amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. SANTINI. I am happy to yield.

Mr. EDWARDS of Alabama. Would the Chair advise how much time is left after this amendment?

The CHAIRMAN. After the gentleman concludes his statement, 3 minutes.

Mr. EDWARDS of Alabama. I would urge the gentleman not to use all of his time and save a little for the other side.

Mr. SANTINI. That urging creates a great deal of anguish and anxiety at the beginning of my remarks. I will do my best.

I wish to speak in support of the gentleman's amendment, recognizing that its prime frailty is that it is logical.

I endorse the observations and commentaries of my good friend from Utah and the observations of the sponsor of the amendment, my friend from Illinois (Mr. SIMON).

We have an environmental impact study that is ongoing, No. 1. We have the Office of Technology Assessment study ongoing, No. 2. We have got the Department of Defense study on split basing ongoing, No. 3. We are talking about $500 million and whether or not we spend it now or appropriate its expenditure in April.

□ 1710

My good friend, the chairman of the subcommittee, has observed over the years how many times we go charging on in our understandable enthusiasm to do whatever we can by way of expenditure of taxpayer dollars to reinforce our meager—by some people's assessment, inadequate by most people's assessment—national defense machinery. But it seems to me resoundingly cogent in this case to postpone an expenditure of a half billion dollars when that expenditure could be abrogated immediately by any one of these three studies. It does

not make any sense to anyone under any logical terms of analysis to pour this money into this particular appropriation when the probabilities are that that expenditure is going to have to be modified down the line by any one of the three studies that are now pending.

As I suggested at the outset, the perception is that anything dealing with the MX and reasonable judgment are somehow inconsistent one with the other. I do not think so, and I hope that the Members of this body will concur with me that this half billion dollar expenditure is in jeopardy by any one of these three pending studies, and it makes eminent good sense to forestall that expenditure until the studies are in place and we can at that time deal with the findings of any one of those three entities.

I hope that an increasing degree of economic sensitivity, as well as the substantial concern for national defense will compel my colleagues to support the amendment offered by the gentleman from Illinois (Mr. SIMON).

I yield back the remainder of my time.

Mr. EDWARDS of Alabama. Mr. Chairman, I will try not to use all of my time, or perhaps I can yield some, but I rise in opposition to the amendment. I would just like to point out briefly that in our committee report on page 319 we take note of the fact that there were changes in the MX basing mode announced after the budget was submitted, and for that reason and other reasons cited in our committee report, we reduced the amount made available for the MX by $120 million, taking that into consideration. I would argue that the very reason that we are still spending money on research and development is to learn the best way to do these things, to build the best type of missile. We are not in procurement. We are not in a case where we are buying in this bill land, as we did under military construction, so I think that the gentleman's concern, while valid, has been addressed in our committee report and something that we have taken time to address.

Mr. CHAPPELL. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Florida.

Mr. CHAPPELL. I thank the gentleman for yielding. This amendment says that none of the funds appropriated may be used for research and development of a basing mode for the MX missile before April 1. What concerns me is that we are horribly behind with the program as a very vital and important leg of our Triad. Now we want to delay it some more. It is the basing mode that concerns us the most. Why should we delay the research and development on that, which in my view has nothing more than the effect of delaying the program even further? I do not think it will accomplish a thing. It is the research and development that is important, and we have provided the money to go ahead with it so we will have the information and knowledge about what that basing mode ought to be. I oppose the amendment.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Washington.

Mr. DICKS. I thank the gentleman for yielding. Is it not true, I ask the distinguished ranking minority member, that we have had study after study after study about the basing mode for the MX missile system, and it has been reviewed over and over and over again? I do not see what would be achieved by delaying research and development expenditures during this next 6 months. Research and development has improved the MX program. It should not be stopped for 6 months.

Mr. EDWARDS of Alabama. I agree with the gentleman. We are still in research and development. There no doubt will be other changes made as we proceed down this road. I see no reason to delay this project.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Missouri.

Mr. SKELTON. I thank the gentleman for yielding. What are the other three studies that we are talking about? Who instituted them, and what do they deal with?

Mr. EDWARDS of Alabama. I would suggest that the gentleman address that question to the gentleman from Illinois (Mr. SIMON). I yield to the gentleman from Illinois for that purpose.

Mr. SKELTON. Yes, I would like to have an answer to that.

Mr. SIMON. I thank the gentleman for yielding. Yes, there are four studies really, three fundamental studies. One is an environmental impact statement. The second is an Office of Technology Assessment study requested by Senator STEVENS and the gentleman from Arizona (Mr. UDALL), on this whole thing. The interim report is due on February 1. The third is the whole split basing mode and other alternatives that was mandated by legislation through an amendment by Senator CANNON.

Mr. SKELTON. When is it due?

Mr. SIMON. It simply calls for a study of the alternatives. What I am saying is before we go ahead massively, let us look at what those studies have to say. That does not seem unreasonable.

Mr. EDWARDS of Alabama. If I could reclaim my time, I would argue we are not going ahead massively and that we have in fact taken a cut based on some of the very points that the gentleman from Illinois has made. I would argue that the cuts we have taken are sufficient to keep the program in line as we continue with our research and development.

Mr. SANTINI. Would the gentleman allow me to reclaim 37 seconds that I yielded back to respond to the gentleman from Missouri?

Mr. EDWARDS of Alabama. I yield to the gentleman.

Mr. SANTINI. The Department of Defense study deals specifically with a split basing question and is not even due until February. So any taxpayer dollars expended prior to February would be done at some degree of peril. It seems far more reasonable to wait, as the gentleman from Illinois suggested in his amendment, until that money is back. And given the recent providence of the conversion of the basing mode, we have seen I believe five different basing modes in this much studied missile. Within the last 6 months we have seen a conversion from racetrack to drag strip. Perhaps that gives the gentleman some solace in terms of dependence on those past studies.

● Mr. ECKHARDT. Mr. Chairman, I rise in reluctant opposition to the amendment offered by the gentleman from Illinois, Mr. SIMON. On May 15, 1980, I supported the Simon-Marriott amendment to the Department of Defense authorization bill for fiscal 1981, but the amendment offered today by Mr. SIMON to the fiscal 1981 DOD appropriations bill is at sufficient variance that I cannot consistently support it.

The Simon-Marriott amendment to the authorization bill sought to delete $500 million authorized for research and development and deployment of the MX missile basing system, yet it also specified that $66 million would be authorized to carry out a study of alternative basing modes. The present Simon amendment to the appropriations bill now before the House would simply prohibit any research and development funds for basing of the MX missile before April 1, 1981, when several ongoing and proposed studies are expected to be complete.

The key factor distinguishing the two amendments in my mind is the provision for research and development funds to study alternative basing systems—the Simon-Marriott amendment retained funds for that purpose; the present Simon amendment would delay research and development of basing for 6 months, one-half of the fiscal year. While we must take a hard look at the various basing systems currently under consideration, I can see no effective purpose in delaying research and development funds which can be used to learn even more about the best means of basing the MX.

After careful study, I am convinced that the MX or similar new generation of missiles is worthy of development in order to retain a high level of deterrent force for the missile-launched portion of our defensive Triad. Yet I very much share the outspoken and articulate concern of many of my colleagues, most notably Mr. SIMON, Mr. SANTINI, and Mr. MARRIOTT, that the ever-changing basing modes proposed for the MX thus far have been impractical and not cost efficient.

Nevertheless, in attempting to insure that the Department of Defense will adequately address the wholly legitimate concerns about the MX basing systems which have been raised, we should not

delay ongoing research and development by DOD on the MX basing mode before a final implementation decision is made. For similar reasons, I opposed the Marriott amendment during House consideration of the DOD authorization last May, which would have placed too many restrictions and conditions on MX basing before it could be accomplished. I also oppose the Simon amendment to today's DOD appropriation bill because it would delay research and development by DOD on MX basing.

We must continue to insist that adequate answers to the many serious questions concerning basing of the MX missile be provided before we finally commit ourselves to a course which could prove wasteful and inefficient, but in doing so we cannot afford to unduly delay the necessary development of the missile itself.●

● Mr. FITHIAN. Mr. Chairman, I add my voice in support of the amendment being offered by my distinguished colleague and friend from Illinois, Mr. SIMON. I would like to take just a moment to outline my rationale for this position, in the hopes that it may either sway other Members of this body to join in voting for the Simon amendment, or that my line of reasoning at least give others pause to consider the consequences of lurching ahead with what I call the prairie dog system of missile deployment. I cannot escape the uneasy feeling that future generations will find ludicrous this project which some defense analysts tout as being more ambitious in scope than the Egyptian pyramids or the Great Wall of China.

Please allow me to stress that a vote for the Simon amendment should not in any way be construed as a vote against the MX. The blunt fact of Minuteman vulnerability demands that we seek out an alternate source of strategic strength which will obviate the slightest possibility of a first strike by the Soviets.

I do not lay claim to being an expert on this subject, but even a cursory examination of the basing mode options should convince one that it might benefit us to study for a few months more a project that will demand so much of the American people. A water-based MX has the support of numerous acknowledged defense experts, including former Secretary of Defense Melvin Laird, Rear Adm. George H. Miller—former Director of the Navy Strategic Offensive and Defensive Systems Office—and two former chairmen of the Joint Chiefs of Staff, Gen. Maxwell D. Taylor and Adm. Thomas H. Moorer.

Before a commitment is made to fund a strategic land-based weapons system which is presently estimated to take nearly a decade to become fully operational, and before we are locked into providing over $54 billion for acquisition of this behemoth program, I submit that we continue development of the missile itself, but put off breaking ground on 4,600 silos until certain independent studies referred to by Representative SIMON are completed.

Over two-thirds of the Earth's surface is ocean; that fact alone should argue for further consideration of utilizing the seas. One water-based system which has especially captured my interest is the shallow underwater mobile (SUM) concept. This system, which has been extensively explored by our esteemed colleague in the Senate, MARK HATFIELD, does not reduce the strategic Triad to a Dyad, but, in effect, adds a leg. The end result of this mode would be to retain a certain number of Minuteman and Trident missiles on land, to keep strategic weapons aboard manned penetrating bombers, to similarly arm our deep-water Trident submarines, and, finally, to deploy 100 or so small, MX-bearing submarines along the Continental Shelves of both east and west coasts. An in-depth study of SUM is currently being conducted by the Office of Technology Assessment, yet another reason to hold off giving the green light to land basing.

The adoption of the SUM solution would not only cause untold complications for the Soviets—thus averting a first strike potential—it would also remove the questions of how the proposed land-based mode might have an adverse social, economic, and environmental impact in the States of Utah and Nevada.●

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Illinois (Mr. SIMON).

The question was taken; and on a division (demanded by Mr. SIMON) there were—ayes 13, noes 23.

RECORDED VOTE

Mr. SIMON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 141, noes 256, not voting 35, as follows:

[Roll No. 547]

AYES—141

Abdnor
Addabbo
Aspin
AuCoin
Baldus
Barnes
Bedell
Bellenson
Benjamin
Bingham
Boland
Bonior
Bonker
Brodhead
Brown, Calif.
Burton, John
Burton, Phillip
Carr
Cavanaugh
Chisholm
Clay
Coelho
Collins, Ill.
Conte
Conyers
Corman
Coughlin
Daschle
Dellums
Dixon
Dodd
Donnelly
Downey
Drinan
Duncan, Oreg.
Early
Edgar
Edwards, Calif.
Emery
Erdahl
Ertel
Evans, Del.
Fenwick
Fisher
Fithian
Florio
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Garcia
Glickman
Goodling
Grassley
Gray
Green
Hall, Ohio
Harkin
Hawkins
Hollenbeck
Jacobs
Jeffords
Johnson, Colo.
Kastenmeier
Kildee
Kostmayer
Leach, Iowa
Lehman
Leland
Long, Md.
Lowry
Lujan
Lundine
McCloskey
McHugh
McKinney
Maguire
Marriott
Matsui
Mavroules
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Moorhead, Pa.
Nolan
Nowak
Oberstar
Obey
Ottinger
Panetta
Paul
Pease
Perkins
Peyser
Porter
Pritchard
Pursell
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rodino
Roe
Rosenthal
Roybal
Russo
Sabo
Santini
Scheuer
Schroeder
Seiberling
Sharp
Simon
Smith, Iowa
Spellman
St Germain
Stack
Stark
Stokes
Studds
Swift
Synar
Thompson
Udall
Van Deerlin
Vento
Walgren
Waxman
Weaver
Weiss
Williams, Mont.
Wirth
Wolpe
Yates
Young, Mo.

NOES—256

Akaka
Albosta
Alexander
Ambro
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Atkinson
Badham
Bafalis
Bailey
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Boggs
Bolling
Boner
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Butler
Byron
Carney
Carter
Chappell
Cheney
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Cotter
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dingell
Dornan
Dougherty
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Okla.
English
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Flippo
Foley
Fountain
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Gonzalez
Gore
Gradison
Gramm
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hinson
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kindness
Kogovsek
Kramer
Lagomarsino
Latta
Leath, Tex.
Lederer
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lott
Luken
Lungren
McCormack
McDade
McDonald
McEwen
McKay
Madigan
Marks
Marlenee
Martin
Mazzoli
Mica
Michel
Miller, Ohio
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Pashayan
Patten
Patterson
Pepper
Petri
Pickle
Preyer
Price
Quayle
Quillen
Regula
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rose
Rostenkowski
Roth
Rousselot
Royer
Rudd
Satterfield
Sawyer
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spence
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stratton
Stump
Symms
Tauke
Tauzin
Taylor
Thomas
Traxler
Trible
Vander Jagt
Volkmer
Walker
Wampler
Watkins
White
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Tex.
Winn
Wolff
Wyatt
Wylie
Yatron
Young, Alaska
Young, Fla.
Zablocki
Zeferetti

NOT VOTING—35

Anderson, Calif.
Anderson, Ill.
Campbell
Clausen
de la Garza

Derrick	LaFalce	Sebelius
Erlenborn	Leach, La.	Shannon
Fish	McClory	Staggers
Giaimo	Markey	Ullman
Goldwater	Mathis	Vanik
Hillis	Mattox	Whitehurst
Holland	Myers, Pa.	Wilson, Bob
Holtzman	Nedzi	Wilson, C. H.
Jenrette	O'Brien	Wright
Kemp	Oakar	Wydler

□ 1730

The Clerk announced the following pairs:

On this vote:

Mr. Markey for, with Mr. LaFalce against.

Mr. Goldwater for, with Mr. O'Brien against.

Mr. MILLER of California and Mr. LONG of Maryland changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SEC. 736. No part of the funds appropriated under this Act shall be used to pay salaries of any Federal employee who is convicted in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons, found to be in violation of Federal, State, or local laws designed to protect persons or property in the community concerned.

Mr. ADDABBO (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. WEISS. Mr. Chairman, reserving the right to object, I ask simply to propound a parliamentary inquiry. I will have a point of order to raise against one of the sections in this title. Under the unanimous-consent request that has been asked for, would that point of order be in order at any time during consideration of title VII?

The CHAIRMAN. Immediately after the unanimous-consent request is agreed to.

Mr. WEISS. I thank the Chair, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any points of order against title VII?

Mr. LEVITAS. Mr. Chairman, I reserve a point of order on section 761.

The CHAIRMAN. Is the gentleman making the point of order now?

Mr. ADDABBO. Mr. Chairman, it will be my intention, after unanimous consent has been agreed to, to move to strike section 761.

Mr. LEVITAS. I thank the gentleman.

The CHAIRMAN. Are there any points of order at this time?

POINT OF ORDER

Mr. WEISS. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WEISS. Mr. Chairman, I object to section 736 and rise to make a point of order against section 736.

This provision violates rule XXI, clause 2, of the rules of the House of Representatives, which forbids legislation in an appropriations bill.

By permitting the Department of Defense to impose funding sanctions against its employees who are convicted of "inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons," section 736 is legislation as to the qualifications of the recipients of these appropriations. This cannot be done under the House rules—see Deschler's chapter 26, section 11.36 and 11.26.

In addition, the section requires a State-by-State analysis of differing criminal statutes, and a review of personnel activities at all levels of the military. This creation of a new affirmative duty on the part of a Federal official is legislation and thus impermissible in an appropriations bill—see Deschler's chapter 26, section 10.7, 11.38, and 8.9.

The precedents of the House clearly state that legislative changes may not be made on an appropriations bill. I urge the Chairman to uphold the rules of this body and rule this provision out of order.

□ 1740

The CHAIRMAN. Does the gentleman from New York (Mr. ADDABBO) desire to be heard on the point of order?

Mr. ADDABBO. I do, Mr. Chairman. I rise in opposition to the point of order.

Mr. Chairman, this is strictly a limitation on the funds in this bill. They pertain only to the Federal employees as the language is contained in the bill, and, therefore, it is strictly a limitation and not legislation.

The CHAIRMAN (Mr. ROSTENKOWSKI). The Chair is prepared to rule, based on the precedents suggesting that when a Federal official is called upon to subjectively evaluate the propriety of individual conduct; such language constitutes legislation.

For example:

An amendment providing that no part of the funds carried in a general appropriations bill may be used for financial assistance for students who have engaged in conduct of a serious nature contributing to a substantial campus disruption and who have used force or the threat thereof to prevent the pursuit of academic aims was held to be imposing new duties and exercise of judgment on the part of Federal officials and was ruled out as legislation—Deschlers; chapter 26, section 16, 12.

Based on this precedent and because the section would require the determinations of material damage and the purpose of local governments in enacting laws, the Chair sustains the point of order, and section 736 is stricken from the bill.

The Chair will inquire, are there any further points of order?

The Chair hears none.

Mr. ADDABBO. Mr. Chairman, I ask unanimous consent that all debate on the remainder of the bill and all amendments thereto end at 7 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. CHAPPELL. Mr. Chairman, reserving the right to object, may I inquire as to how many amendments are pending?

Mr. ADDABBO. Mr. Chairman, if the gentleman will yield, there are probably only two that will be debated that we know of at the present time.

Mr. CHAPPELL. Two amendments?

Mr. ADDABBO. That is all.

Mr. CHAPPELL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. ADDABBO

Mr. ADDABBO. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates reads as follows:

SEC. 761. None of the funds appropriated by this Act shall be available for paying to the Administrator of the General Services Administration the standard level user charge established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490), for space and services for any month after January 1, 1980, unless the Administrator has in effect, during that month, regulations, provided for by section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)), that require the recovery of the costs of care and handling of surplus property under the control of the Department of Defense that is disposed of under the provisions of that section.

The Clerk read as follows:

Amendment offered by Mr. ADDABBO: On page 56, beginning on line 9, strike out section 761.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I thank the distinguished chairman of the subcommittee for offering the amendment to strike this section.

As chairman of the subcommittee of the Committee on Government Operations, let me say that it deals with the donated surplus property program. I share the concerns of the gentleman's committee, and we are committed to have oversight hearings on this matter that hopefully will work out an accommodation among the States, the gentleman's subcommittee, his full committee, my subcommittee, my full committee, the honorable Congressman, the gentleman from Chicago, Ill. (Mr. ROSTENKOWSKI), and all other interested parties.

Mr. ADDABBO. Mr. Chairman, I thank the gentleman, and I hope the hearings to be conducted by the committee the gentleman chairs, will look into a more equitable distribution of the property that is at issue, look toward better utilization, reduce and if possible equalize the cost of transportation, and otherwise look at matters raised by the committee in recent years, particularly as they relate to those items addressed in pages 124 through 127 of the report.

Mr. JOHN L. BURTON. Mr. Chairman, if the gentleman will yield further, that is precisely our intention, and we look forward to the gentleman from Illinois (Mr. ROSTENKOWSKI) leading off with us.

Mr. ADDABBO. Mr. Chairman, in view of the fact that the gentleman has given us assurances that hearings will be held, I ask for adoption of my amendment striking section 761. I will place in the RECORD a copy of a letter I received from the gentleman from California concerning this matter which was instrumental in my agreeing to delete section 761.

GOVERNMENT ACTIVITIES AND TRANSPORTATION SUBCOMMITTEE,
Washington, D.C., September 15, 1980.

Hon. JOSEPH ADDABBO,
Chairman, Subcommittee on Defense, Committee on Appropriations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in regard to section 761 of H.R. 8105, the FY 1981 Defense Appropriation bill. Like section 764 of P.L. 96-154, last year's appropriation act, it restricts DOD's expenditures to pay GSA for building space and services unless GSA has in effect a regulation to require recovery of care and handling costs for DOD-generated surplus personal property donated under the Federal Property Act to State and local organizations.

The basic objective of this provision appears to be to cut down on acquisitions of property by donees unless they have a true need for the property and will put it to proper use. Our subcommittee, which is charged with the duty to oversee this program, shares that objective fully. In pursuit of that objective and to examine other major aspects of the program's scope, authority, and operations, I will begin a full-scale review of the program probably in November of this year, with the plan to continue it, if necessary, soon after organization of the 97th Congress. We have noted the sense of the Appropriations Committee in H. Rept. No. 96-1317, about continuing the care and handling surcharge "pending a full review of the program." Our effort will constitute such a review.

Among donation program elements to which our study will give close attention are those which your committee has addressed: Clarification of the care and handling cost provision in the Federal Property Act; procedures to increase assurance of need and proper end use of donated property; further improvement of the system for allocating property to the states; authority and procedure to equalize the high, often prohibitive, transportation expenses that some states sustain by accident of their remoteness from Defense Property Disposal offices; and possibility of streamlining management by combining elimination of use restrictions with an additional charge to the donee for the property item.

The subcommittee's review will involve all parties having a major role in the program: GSA, GAO, the State surplus property agencies, DOD, and individual donees. We have already received assurances of complete cooperation and support from GSA, which has the major administrative responsibility. We would also welcome such information, views, or suggestions as you may wish to present.

Mr. Chairman, the Federal donation program is facing an immediate, grave crisis, largely as a result of implementation of the current surcharge based on section 764 of P.L. 96-154. Numerous reports from State surplus property agencies advise us that donations in the past 2 months have fallen off drastically, in many cases by 50 percent. GSA now estimates that total donations in the next fiscal year will be down well below $300 million (original acquisition cost). Donations for FY 1980 will total about $340 million, down from $443 million for FY 1979.

Right now, some 30 State surplus property agencies are operating at a deficit. On the basis of the current trends, many even most of these agencies will probably have to close within the next two years.

It will be very difficult for our subcommittee's comprehensive review of the program to have a constructive or productive effect if the donation activities have become depressed to a point beyond revival. I believe this point may soon be reached. For this reason, Mr. Chairman, I should like to work with you for the elimination of the burden which section 761 would impose.

I would appreciate it very much if we could get together very soon, today if possible, to discuss this matter.

Sincerely,

JOHN L. BURTON,
Chairman.

● Mr. RINALDO. Mr. Chairman, I support this amendment to delete provisions of the bill that require the payment of a surcharge on property obtained by community health, education, public safety, and recreational organizations under the Federal surplus property donation program.

Under this program, valuable property no longer needed by the Federal Government may be obtained by community service organizations for public purposes. The property is distributed through designated State agencies.

In previous years, sales of surplus property not donated to local organizations financed the donation program. Last year's appropriations bill, however, required that a fee be established on donated property to finance the program and encourage organizations to exercise "self-control" in requesting donation of surplus property. A fee of 2 percent of the value of donated property became effective on July 7, 1980. It must be paid by the State distributing agencies and passed on to local public service organizations that receive the property.

The cost of packing, crating, transporting, and storing already makes it necessary for State distribution agencies to control the amount of property requested from the Defense Department, limiting requests to those items for which there is a bona fide need.

The surcharge imposed under last year's bill, which is continued by section 761 of this bill, has drastically increased the cost of obtaining property through the donation program. Many State distributing agencies have therefore had to cut back drastically on the amount of property being requested from the Defense Department. This cut-back in the State agencies' participation will result in a sharp reduction in useful items available to public service organizations, and will increase the cost of these items for non-profit organizations. In addition, the legality of imposing the surcharge on State agencies, which do not take ownership of the property, is questionable, and many State agencies also do not have clear authority to pay the surcharge. The surcharge provision therefore should be eliminated from the bill.●

● Mr. COUGHLIN. Mr. Chairman, I rise in support of the amendment by my distinguished colleague from New York (Mr. ADDABBO) which would repeal the Maybank amendment and thus permit the Department of Defense to target part of its procurement budget to firms located in labor surplus areas.

Initiated in 1952, Defense manpower policy No. 4—DMP-4—requires that certain procurement contracts be set aside for bidding in areas of substantial unemployment. The program was designed to preserve management and employee skills useful to the Nation's defenses during times of economic downturns. However, every Defense appropriations bill since 1953 has included the language of Senator Burnet R. Maybank, of South Carolina, which prohibits following DMP-4 where the result is a higher price to the Government. Through this language, Senator Maybank was reportedly able to prohibit the Defense Department from paying more for textiles produced in New England mills than would have to be paid at southern mills.

Originally, the General Services Administration imposed the same Maybank amendment restrictions on civilian procurement, for the sake of uniformity in procurement policies. The GSA revised DMP-4 so that civilian agencies are no longer bound by the Maybank amendment as long as the resulting price of contracts targeted to labor surplus—DMP-4—areas is reasonable. Title V of the Small Business Act amendment—Public Law 95-89 of August 4, 1977—specifies that Governmental procurement shall be targeted to high unemployment areas, and specifically refers to DMP-4 as the policy to follow.

Yet, the labor surplus area program was never allowed to get off the ground. For the Defense Department to meet the requirements of DMP-4 and still comply with the provisions of the Maybank amendment, contracts must be split into two production runs. One would go out for nationwide competition to determine the base price and the other would be targeted under DMP-4 to a firm in an area of high unemployment that could meet this base price. This split production process is cumbersome and confusing and as a result, has prevented the effective implementation of the policy. Targeting to areas of high unemployment has been stymied since $60 billion of the $80 billion budgeted by the Government for goods and services is spent by the Defense Department.

Today we have the chance to change this situation while bringing Defense Department procurement practices in line with those of other governmental departments and agencies. The Addabbo amendment allows the Secretary of Defense the discretion to determine that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices in labor surplus areas. Set-asides for labor surplus areas will create private sector jobs which, in turn, will reduce the local demand for welfare, food stamps, Comprehensive Education and

Training Act—CETA—positions, and other similar programs. At the same time, it will be accomplished with little or no additional cost to the U.S. Treasury. There are enough eligible areas to insure that competitive bids would be submitted and under no circumstances is the Defense Department obligated to pay outrageously high prices for goods and services. A broad geographic base and an expanded number of companies participating can only strengthen our national defense.

For these reasons, I urge adoption of the amendment.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. ADDABBO).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. REGULA

Mr. REGULA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REGULA: On page 28, after line 4, add a new section as follows:

SEC. 701. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

And renumber the following sections accordingly.

Mr. REGULA. Mr. Chairman, I would like to commend the committee for its concern and attention to the problem involving the Defense Department's service support contracts with outside consultants. For the past 3 years the committee has attempted to reduce the amount of funding for service support/personal service contracts. Yet, it is estimated that over $1.7 billion has been requested this year for such contracts.

In its report, the committee expressed its frustration over the inability to determine accurately how much is being spent overall for outside studies and reports. I am proposing this amendment today as I have on all appropriations bills that will help uncover these contracts and open up the Defense Department's contracting activities to public scrutiny

A recent report by the committee's surveys and investigations staff reveals several examples of abuse and waste in the use of consultant contracts. I believe the only way to stop such questionable activities is to shed some light on these practices and make the agencies accountable for their spending on consultant contracts.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. REGULA. I yield to the distinguished chairman of the subcommittee.

Mr. ADDABBO. Mr. Chariman, we have studied the amendment, and the majority accepts it.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentlemen yield?

Mr. REGULA. I yield to the ranking minority member of the subcommittee.

Mr. EDWARDS of Alabama. Mr. Chairman, we accept the amendment on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. REGULA).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ADDABBO

Mr. ADDABBO. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates reads as follows:

SEC. 723. No part of any appropriation contained in this Act, except for small purchases in amounts not exceeding $10,000, shall be available for the procurement of any article of food, clothing, cotton, woven silk or woven silk blends, spun silk yarn for cartridge cloth synthetic fabric or coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or specialty metals including stainless steel flatware, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that a satisfactory quality and sufficient quantity of any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possesions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided*, That nothing herein shall preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possesions when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements or where such procurement is necessary in furtherance of the standardization and interoperability of equipment requirements within NATO so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act and with section 814 of the Department of Defense Appropriation Authorization Act, 1976: *Provided further*, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions: *Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further*, That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

Amendment offered by Mr ADDABBO: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "*Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:".

POINT OF ORDER

Mr. EDWARDS of Alabama. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN. The gentleman from Alabama (Mr. EDWARDS) is recognized in support of his point of order.

Mr. EDWARDS of Alabama. Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law.

The amendment prohibits the payment of price differentials on contracts except "as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations."

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under current law.

Although the determination is limited "pursuant to existing laws and regulations", there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law, and require this new determination.

The CHAIRMAN. The Chair will inquire, does the gentleman from New York (Mr. ADDABBO) desire to be heard on the point of order?

Mr. ADDABBO. I do, Mr. Chairman.

Mr. Chairman, this is strictly a further proviso that requires no further duties than presently under the existing law, including this legislation and legislation under the Small Business Act. It asks no additional duties by the Secretary of Defense.

Mr. EDWARDS of Alabama. Mr. Chairman, I would like to be heard further on the point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Alabama (Mr. EDWARDS).

Mr. EDWARDS of Alabama. Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination.

I would urge that the Chair rule that this amendment is out of order.

Mr. CHAPPELL. Mr. Chairman, if I may be heard on the point of order, I join the gentleman from Alabama (Mr. EDWARDS) on the point of order and urge that the point of order be upheld.

The CHAIRMAN (Mr. ROSTENKOWSKI). The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. ADDABBO) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

Mr. ADDABBO. I accept the point of order, Mr. Chairman.

The CHAIRMAN. The Chair has sustained the point of order.

Mr. ADDABBO. The point of order is conceded, Mr. Chairman.

AMENDMENT OFFERED BY MR. ADDABBO

Mr. ADDABBO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ADDABBO: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1:".

□ 1750

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Iowa.

● Mr. BEDELL. Mr. Chairman, I rise in support of this bill and, in particular, its provisions for increasing military compensation and strengthening our conventional forces.

I have long argued that the critical problem in today's Armed Forces is the alarming attrition of both trained mid-level officers, and skilled technicians and mechanics. We cannot maintain our conventional forces at full strength without first restoring the financial incentives needed to attract these quality individuals.

For this reason, I was greatly encouraged last week when President Carter signed into law the authorizing legislation for a broad range of military pay and benefit hikes. These included: An 11.7 percent pay increase for active duty personnel; higher enlistment bonuses; increases in per diem travel allowances; and a more favorable housing formula. Today's legislation appropriates $32 billion for our military personnel with $713 million specifically earmarked for the improved pay and benefits. This funding should be approved.

I must add, however, that I support the bill with reservations over its wasteful expenditures on the MX missile system. As my colleagues are aware, I was one of the first Members of this body to speak out against the so-called multiple aim point or MAP deployment scheme. That was in 1978. Since that time, it has become clear that MX will be the most expensive weapon system in our Nation's history—and it has also become clear that its impact on neighboring communities will be traumatic wherever it is deployed. Moreover, with the SALT II missile limits unratified, the Soviet Union is likely to adopt a similar, but far greater mobile land missile system. This in turn would assure the rapid obsolescence of our own MX system, while further attempts at arms control would be stymied.

Nevertheless, we are being asked today to appropriate $1.6 billion for MX, our most expensive commitment thus far to this exotic weapon system. What disturbs me even more is that this commitment will escalate year after year until it reaches $10 billion per year by the mideighties. Such waste can have only one effect and that is to mortgage our conventional forces, while constraining our ability to recruit talented military personnel.

I therefore oppose the MX funding in this bill, although I support the bill as a whole.●

Mr. ADDABBO. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto end in 30 minutes, the time to be equally divided and controlled by myself and the gentleman from Alabama (Mr. EDWARDS).

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The gentleman from New York (Mr. ADDABBO) will be recognized for 15 minutes, and the gentleman from Alabama (Mr. EDWARDS) will be recognized for 15 minutes.

The Chair recognizes the gentleman from New York (Mr. ADDABBO).

Mr. ADDABBO. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, in a time of continuing inflation and tight budgets, the mood of fiscal conservatism, new and imaginative tools are needed to generate economic growth and create jobs in areas of the Nation suffering the most from excessive unemployment. One such tool is an almost forgotten directive of the Federal Government called Defense Manpower Policy No. 4B. This was first issued in 1952. This policy requires the Federal Government to give preference in the awarding of suitable contracts to firms in high unemployment areas.

The intent of this program was to minimize idle manpower and machinery in connection with the Nation's efforts in Korea. The policy was designed to insure that the Nation could react quickly to any national emergency with a broad base of diversified manufacturing capability. Production lags are avoided by putting people back to work in areas where unemployment rates are highest, the result being a better defense posture and new, permanent, private-sector jobs where they are needed most.

Almost 30 years later, the potential of Defense Manpower Policy No. 4B remains untapped because of the Maybank amendment. Added routinely to every defense appropriation Act since 1953, the Maybank amendment effectively prevents the Defense Department from using its huge budget to enhance our Nation's industrial preparedness. The Maybank amendment prevents the Defense Department from reserving certain of its smaller supply contracts for competition solely among those firms which will perform most of the work in the high unemployment areas.

The Defense Department is the only agency of the Federal Government which is exempt from considering economic distress in purchasing the goods that it needs. There is no justification for this exemption.

My amendment would encourage the Secretary of Defense to locate the procurement of common supply items with private suppliers in high unemployment areas.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. CHAPPELL).

Mr. CHAPPELL. Mr. Chairman, all of us, I think, ought to do those things that are helpful in the labor-impacted areas. But if you want to run the expenditure of the military procurement up, then you would vote for this amendment.

In my view, the military procurement, the military bill, is no place for us to attempt social programs. It is no place for us to attempt to do the sort of things we do with public works projects. We have enough problem getting dollars for defense, and certainly if we start trying to handle our military expenditures on a basis other than pure competition, we are going to spend many, many billions of dollars more.

I know a lot of Members have received a letter saying that this amendment is going to be very helpful to them in their districts. I have such a letter, and my letter points out that over half of my district would be entitled under this provision. But then that is no reason to vote for this amendment which gets us aside from competition in military expenditures.

So, that is no reason for us to throw aside a principle which has worked for 25 years in keeping military expenditures on the basis of competitive bidding.

Some will say, "Will not this help small businesses?"

It will only help small businesses if the small businesses happen to be in one of

those labor-impacted areas. It could very well work to the detriment of your contractors in your districts.

The argument is made, too, that if a Member's district included a labor surplus area designated by the Labor Department, would it not make sense for that Member to vote to drop the Maybank language?

My answer to that, as I stated a moment ago, is: Certainly not.

Let us not throw away a principle that has worked very well in the defense appropriations for 25 years.

The argument is made also that the Maybank language prohibits the Department of Defense from awarding contracts to businesses in labor surplus areas. That simply is not true. Through the normal competitive bidding process and through the small business set-aside program, also subject to competitive bidding, many millions of dollars of defense procurement supporting many thousands of jobs have flowed each year into such areas and will continue to do so.

In addition, however, the Maybank language insures that DOD contracts also are available to the many communities with substantial unemployment but not quite enough joblessness to reach the 7.2 percent which the Department of Labor requires to issue a surplus labor area designation.

So, contrary to what you might hope for, this could be very detrimental to what you think you are doing under this amendment.

Mr. PEYSER. Mr. Chairman, will the gentleman yield?

Mr. CHAPPELL. I yield to the gentleman from New York.

Mr. PEYSER. The question that I have is: My understanding of the amendment is that this will not force the Department of Defense to deal with these areas we are talking about, say, in the Northeast and in other parts of the country, but it merely gives them, under certain circumstances, the option of being able to do it.

It would seem to me that that would be highly fair at this time, without forcing them; is that correct?

Mr. CHAPPELL. If you want to start a real, sure-enough political animal, if you want to turn him loose on military procurement, you will do just what you are talking about, because the Secretary of Defense will have every pressure in the world to designate all kinds of areas to lower the standards of competition and all the rest. So, if you really want to tear up your defense procurement program, if you really want to cost your taxpayers more money for defense, you do away with the Maybank amendment.

Mr. Chairman, I urge the rejection of this amendment.

The CHAIRMAN. The Committee will rise informally.

ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER resumed the chair.

The SPEAKER. The Chair lays before the House the following enrolled joint resolution:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

The SPEAKER. The Committee will resume its sitting.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. ADDABBO).

Mr. ADDABBO. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi (Mr. WHITTEN), the chairman of the full committee.

Mr. WHITTEN. Mr. Chairman, years ago our then President warned us against getting our domestic economy wrapped up in military spending.

I had occasion recently to review some early speeches that I had made for a different reason, one of them made 20 years ago, or longer than that. I could change the date and make the speech here today and it would sound like I was talking about the existing situation.

Right now we do not let soldiers do KP duty. We have a caterer who makes profits out of serving food to the military. The military cannot press their clothes, so the local pressing shop can make money out of it. We have contractors who do much of the work on the base. No wonder we cannot get enough people to join the service, because they do not have anything except time on their hands in between drills.

So I say here that when we meet in committee—and I have the highest regard for the members of this subcommittee and my Committee on Appropriations; they do a good job—we have to ask how much will this contractor get, how much does this area get and that area get.

We already have domestic concerns impacting on defense programs to the extent that we have less defense than we might have for the money we spend.

We have a provision in the law requiring that attention be given to small business, and to give attention to those who meet certain requirements, but if you reject competitive bidding and start dividing your defense dollars even more—and it is bad enough now—then you will have a whole lot of weakening of defense.

I say that it is time we start thinking about defense first. If we want everyone to get cut in on defense business, that is another story.

After I came here, I had a letter from a judge down home, and he said that so-and-so had been to him and said his brother was getting a cut every time he made a Farmer's Home Administration loan. The judge said he told him, "I will write Jamie to stop it." The friend said, "I do not want Jamie to stop it. I want him to make him cut me in on it."

My friends, we had better look at how we do our defense business.

□ 1800

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. PURSELL).

Mr. PURSELL. Mr. Chairman, this Nation, particularly the Northwest, is facing severe economic problems. Unemployment in all areas of the country is on the rise. These economic problems, are not confined to one region but threaten the vitality of the entire national economy.

Before we create additional Government programs, we must learn to use wisely and effectively our current distribution of Federal resources.

The labor surplus area program represents a way in which the Federal Government can effectively utilize the vast potential of its purchasing power by broadening and diversifying its industrial base. It represents the opportunity of meeting our growing economic and military needs, without increasing overall costs to the Government.

Yet, as the program exists today—it cannot begin to realize its potential for addressing the concentrated unemployment problems of this Nation, nor can it assist our very serious problems in industrial preparedness. Over two-thirds of the Federal Government's purchases are made by the Defense Department, yet they are exempt from this program, due to the restrictions of the Maybank amendment. These exemptions include the bulk of the Federal Government's common items. These exemptions include purchases of office supplies, furniture, laundry supplies, and electrical appliances. These items are similar in kind to the purchases made by civilian agencies who participate in the LSA program.

Why does this special exemption exist? Why do we continue to legislate such inconsistencies in our Federal programs?

Jobs are in the best interest of national security.

In 1979, the Department of Defense's procurement budget was over $57.9 billion, yet only $225 million was targeted to areas of high unemployment under the LSA preference program—0.39 percent of the total budget. Billions of dollars a year are spent on these common goods, expenditures which through sound procurement policy can work to counteract the deepening effects of inflation.

Sound procurement policy does not mean increased costs to the Federal Government. On the contrary, a study contracted by the Department of Defense on this issue that the added cost to the Government as a result of contracting to labor surplus area firms was less than three-quarters of 1 percent.

Sound procurement policy does not mean a loss in competition. No contracts would be reserved for bidding to areas of high unemployment if adequate competition to ensure a reasonable price could not be obtained.

The benefits—both direct and indirect—of full implementation of the labor surplus area program are manifold:

Increased employment in communities where the need is greatest, the "ripple effect" on local businesses generated by increased spending from the newly employed, lowered Government costs for income maintenance programs, the retention of skilled labor, and increasing the level of military preparedness.

As the Nation's economic and industrial preparedness problems grow, it can no longer afford to give special exemptions to any Federal agency. I urge my colleagues to join in support for the Addabbo amendment to realize the full potential of Federal purchasing power.

REGIONAL ECONOMIC ALERT, MICHIGAN

(August 1980)

	Employment growth rates (percent change)			Unemployment rates (percent)		
	April	May	June	April	May	June
United States, SA [1]	0.3	0.7	−0.6	7.0	7.8	7.7
United States, not SA	.1	.6	1.7	6.6	7.0	7.8
Northeast-Midwest, not SA	−.3	5.8	1.6	7.3	7.9	8.5
Michigan	−.125	2.1	2.1	12.4	14.0	14.0
Ann Arbor	.28	1.2	(2)	8.2	10.0	10.4
Battle Creek	1.15	1.6	(2)	11.5	12.2	11.8
Bay City	1.94	3.2	(2)	15.2	17.9	(2)
Detroit	−1.66	2.5	(2)	12.9	14.7	14.5
Flint	1.08	2.6	(2)	17.5	22.3	23.0
Grand Rapids	1.67	1.6	(2)	8.1	9.3	10.2
Jackson	−.15	2.0	(2)	10.3	12.3	(2)
Kalamazoo-Portage	.6	.4	(2)	8.1	8.9	9.9
Lansing-East Lansing	.9	1.5	(2)	9.9	13.0	10.0
Muskegon - Norton Shores - Muskegon Heights	1.6	2.0	(2)	12.4	13.8	14.3
Northeast-Midwest—Con.						
Michigan—Continued						
Saginaw	−.4	3.4	(2)	14.5	17.6	(2)

National economic data	April	May	June
Prime lending rate	19½	14	12
Percent change in:			
Index of leading economic indicators	−3.9	−2.3	2.5
Consumer price index	.9	.9	1.0
Retail sales	−1.2	−1.0	1.4
Industrial production	−1.9	−2.4	−2.4
New Housing starts	−2.1	−11.3	30.4
	1979:IV	1980:I	1980:II
Real GNP: Quarterly growth rates	0.5	0.3	−0.2

[1] Seasonally adjusted.
[2] Not available.

Note: Unemployment and employment data for States and the region are not seasonally adjusted. Percent changes are calculated from the preceding period.

Mr. RINALDO. Mr. Chairman, will the gentleman yield?

Mr. PURSELL. I yield to the gentleman from New Jersey.

Mr. RINALDO. Mr. Chairman, I rise in support of the amendment to repeal the Maybank amendment.

Since 1953, the Maybank amendment has frustrated efforts to target defense spending to areas of high unemployment. Every civilian Federal agency must set aside some portion of its procurement contracts for labor surplus areas and give preference to bids from firms in such areas. Repeal of the Maybank amendment would allow the Defense Department, which has one of the largest procurement budgets, to participate in this setaside program in obtaining nonstrategic goods and services.

The present economic downturn points out the need to find ways in which American workers may be protected against loss of employment without a sharp increase in inflationary spending. Repeal of the Maybank amendment would be one of the most effective ways for the Federal Government to increase employment opportunities without setting up an expensive new Federal program. Jobs would remain in the private sector, and the preference given to contract bids from older industrialized areas would help to revitalize industries and stimulate tax revenues. Increased employment opportunities would also help to cut Federal, State, and local costs of income maintenance programs for the unemployed and their families. This revitalization would come as a result of better use of existing Federal spending, rather than through the establishment of new and complex industrial revitalization programs.

For many years there has been an appalling disparity in the amount of defense contract money spent in the Northeast and the Midwest and that spent in the so-called Sunbelt States. Despite a long tradition of significant contributions to defense efforts, New Jersey last year received only 2 percent of the $56 billion spent on defense contracts. This percentage is far below the average 20 percent of defense contracts that the State of California has received over the last 20 years.

The city of Elizabeth, N.J., in my congressional district is one of the cities that could be targeted for defense contracts upon repeal of the Maybank amendment. Elizabeth qualifies as a labor surplus area due to an unemployment rate that is at least 20 percent higher than the national average. Targeting defense contracts to areas such as Elizabeth would be an important step toward economic recovery for these communities.

I strongly support this effort to repeal the Maybank amendment so that businesses and workers in older industrial areas may share more fully in the defense procurement process.

Mr. ADDABBO. Mr. Chairman, I yield 1½ minutes to the gentleman from Maryland (Mr. MITCHELL).

Mr. MITCHELL of Maryland. Mr. Chairman, I rise in support of the Addabbo amendment. If the Members read the morning paper today, the Morning Sun, they will see where 75 jobs; 75 low-paying jobs, were made available at the Social Security Administration in Baltimore City. Seven thousand five hundred people lined up to apply for 75 jobs. It is reported that there were another 2,000 on the way down for 75 jobs. Obviously the Addabbo amendment would help this kind of situation.

I heard in the debate earlier, or last year rather, that somehow or another this was detrimental to minority business and small businesses. It is not.

Everyone knows the military runs a virtual monopoly, giving just crumbs to small businesses and minority businesses, and it is not in any way detrimental to the small business programs or the minority business programs that are on the books.

Let me just make one other statement, if I may: It appears to me that we have an excellent opportunity to begin the process of correcting some of our economic deficiencies. If we are going to spend literally billions of dollars in the military operation, surely a portion of that can be applied to meeting some of these terrible situations that are found in our labor surplus areas without in any way—without in any way—doing damage to the effectiveness of the military operation.

I think the gentleman from New York (Mr. ADDABBO) is sound. I think he is right, if indeed we are serious about addressing the economic problems that are tearing our Nation apart.

Mr. Chairman, I rise in support of the Addabbo initiative to repeal the Maybank amendment. Last year we debated this very same subject. Since that time, this country has continued to experience unprecedented modern day economic problems. Higher unemployment, spiraling underemployment and accelerating cost of borrowing money are just a few of these critical conditions. I need not remind you that the poor and minorities of this country are harmed disproportionately by such drastic downturns in our economy.

Today, we have an excellent opportunity to begin the process of correcting some of our economic deficiencies. I believe firmly that the Addabbo amendment is a positive step in this direction.

It is no secret that the operation of the Defense Department's procurement and contracting policies are virtually monopolistic. In recent years, small and minority businesses have managed to impact on the procurement process by securing a few awards. However, our success has not approached the level

necessary to counter the spiraling rate of unemployment. I think it is very unwise for us not to support the Addabbo amendment. We talk about getting the most for our Federal dollars; the Addabbo amendment will allow this to become a reality. Indeed, if we are going to spend billions of military dollars, then let us do it in a manner which will help the overall economy.

The labor surplus area program provides us with the ability to target Federal spending to our economically distressed areas. The benefits from this program would be enormous. Studies have shown that $1 in defense spending can generate up to $3 in indirect spending. For example, a $150,000 contract to buy office supplies could generate $450,000 worth of private economic development.

In the past, some of my distinguished colleagues have professed, incorrectly, the argument that this program will inure to the detriment of minority owned firms. The labor surplus preference schedule is clearly set out in the Small Business Act. In no way would this program disrupt existing set-asides. Contrary to this assertion, the labor surplus preference program deserves the attention of everyone if we are to diminish the problems of minorities and small businesses in this country.

There is a need for minority owned companies located in areas of high unemployment, to have greater access to DOD procurement programs. Thirty percent of all blacks in this country live in areas of concentrated high unemployment. This figure does not even include the millions of other minorities also located in these areas.

I think Congressman ADDABBO's amendment is sound. If we are indeed serious about addressing the economic problems of our distressed areas, we must move today to repeal the Maybank amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, as a member of the North-East Coalition, I must commit some heresy by saying I oppose the Addabbo amendment. It seems to me to impose a welfare requirement on the defense budget would be a grave mistake. Having the situation where groups seeking these preferences over and above the low bidder would not help our economy and certainly would not help our defense.

If we use any other criterion but the low bidder on defense, we are going to raise an already astronomically high defense budget, and we are not going to add to the quality of the defense procurement. We are going to further politicize something which I suggest has been politicized enough.

Now if we need programs for unemployed people in the cities, and we do, let us target specific programs there. Let us pass a youth deferential in the minimum wage law so that we can put our unemployed youth to work and not price them out of the market, but do not saddle the defense budget with another requirement that it is ill suited to fulfill.

Let us get the most defense for the limited defense dollars at a low-bid basis; and if Baltimore and if Chicago want more defense contracts, let us produce the low bidders then, rather than saddle a procurement responsibility for public works and for jobs on a defense budget that has all it can do to fulfill its goal of defending this country.

Mr. MITCHELL of Maryland. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Maryland.

Mr. MITCHELL of Maryland. I thank the gentleman for yielding.

In his usual skillful manner, the gentleman has achieved obscuring the issue by talking about social welfare programs. I am not talking about that at all. I am talking about the Department of Defense meeting its obligations in terms of unemployment in this country.

Mr. HYDE. I thought that is what the gentleman was talking about.

Mr. MITCHELL of Maryland. That is right. That is not social welfare, brother.

Mr. ADDABBO. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois (Mr. YATES).

Mr. YATES. Mr. Chairman, my friend from Illinois (Mr. HYDE) has made a very eloquent statement that is not appropriate at all, because the Department of Defense does not give its contracts to the lowest bidder.

Let me read from page 220 of the report.

It says:

> For fiscal year 1978 noncompetitive awards by DOD comprised 63.8 percent of the total contract awards, and for the first half of fiscal year 1979 noncompetitive awards were 67.7 percent of the total. Well over 70 percent of all Navy contract awards are noncompetitive, compared with over 60 percent by the Army and Air Force and 50 percent or less for the defense agencies. Those statistics can be very misleading, since many contracts listed as competitive are in fact sole-source awards.
>
> In late 1979, the GAO testified before a congressional committee on trends in DOD procurement. Essentially, the thrust of their testimony was that the DOD was trending towards less competition in its contracts between 1971 and 1978. For example, the value of negotiated price competitive awards, which includes business and labor surplus area set-asides, decreased from 25 to 19 percent during that time frame.

□ 1810

The point that I make to my friend, the gentleman from Illinois, is yes, we do favor competition, but that does not exist in the Department of Defense. The Department of Defense has its sole source award. That is why I am pleased to join with the distinguished chairman of the Defense Subcommittee in his amendment to eliminate the so-called Maybank provision from the Defense appropriations bill to bring a low-bid process to the DOD.

There is something fundamentally wrong with the current situation that permits the Department of Defense to continue as the only Federal agency that does not set aside a portion of its procurement contracts for private industry in areas of high unemployment. In a defense bill, which will support a procurement budget for nonstrategic goods and services of at least $15 billion, failure to remove the Maybank language means that the opportunity to help thousands of smaller supply-type firms in areas of high unemployment will be lost, and it just does not make sense. The strength and diversity of the economy is as an important a defense resource that we have as a nation. The Addabbo amendment is entirely consistent with a strong defense effort and I urge its adoption by the House.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. ROBINSON).

Mr. ROBINSON. Mr. Chairman, I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I thank my friend for yielding.

In response to the statement of my friend, of course, many of those items cannot be let by competitive bid or low bid because nobody else makes a nuclear carrier except Newport News, a $2.5 billion item; so those statistics are misleading and not helpful.

Mr. ROBINSON. Mr. Chairman, the prime objective of this committee is to get the best defense for the least money. The purpose of this amendment is pure and simple. It is going to allow and demand that the Defense Department pay more for certain services and articles than it would have to otherwise pay. It does make a welfare department of the defense organization.

Now, there is no study that has ever been conducted that has not proven that it is going to cost more if the Maybank amendment is pulled out than it will if the Maybank amendment stays in.

I suggest that it would be very poor business to adopt this on a defense bill.

I want to read a paragraph from the Governor of the State of Virginia replying to a letter that was written to him asking him to support the deletion of the Maybank amendment. He says:

> In my judgment it is inappropriate for the U.S. Department of Defense to divert dollars provided by the Congress to provide for a strong national defense to relieve so-called economic distress. The Federal Government should be directing its strongest efforts to reducing federal spending and bringing about economic recovery as soon as possible. It is, therefore, especially inappropriate to suggest that the Department of Defense be allowed to award contracts on any basis other than to the lowest bidder.

Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. FAZIO).

Mr. FAZIO. Mr. Chairman, I thank the gentleman for yielding.

I rise in favor of the amendment, somewhat surprisingly, because I am still smarting from the defeat on low-income energy assistance that was administered several weeks ago here on the floor. Were this to be a Sunbelt-Frostbelt debate, I can assure you I would not be in support of this amendment; but that is not the issue. I do not know if Members are aware that today California is getting back less than a dollar in the taxes it

pays as a State to the Federal Government. Massachusetts, on the other hand, is getting $1.13 for every dollar it pays into the Federal Treasury.

We have seen a reversal in the Sunbelt-Frostbelt debate. Today this amendment will help three-quarters of the congressional districts in California if it is adopted. On that basis, I rise to support it.

I think it is astounding to some that this is the case, but I think we have to realize that only a very few areas of our State have a high concentration of traditional defense industries; but remember, now, we are talking about nonweapons type procurement in the Department of Defense. Throughout the rest of the State we will be able to be eligible for this program and I am in strong support as a result. By all conventional analyses, I should stand here today in opposition to my colleague's attempt to repeal the Maybank amendment. This is because I come from a Sunbelt State, and the normal rule is that this House is supposed to divide on this issue along the lines of the Sunbelt versus the Frostbelt. But even more so because of my frustration at the recent debate and vote on the energy assistance formula, and frankly, language such as that included in this bill report which protects a Scranton facility at the expense of a Los Angeles company.

However, I support my colleague's attempt to repeal Maybank because this need not, should not, and actually is not a Sunbelt versus Frostbelt issue. I would hope to pursuade my colleagues from California, and the West and South as a whole, that they should support our colleague from New York on grounds that this is not another regional square-off, but an effort to let the DOD participate in logical procurement targeting.

This is not a North and East versus South and West issue, first of all, because the national defense purpose for which President Truman originally decided to target Pentagon procurement remains valid: We do need production capability evenly distributed across the Nation. Chronic weaknesses, wherever they may be, represent a security risk for the Nation as a whole.

Second, labor surplus areas do in fact exist across the Nation, not merely in the North and East. There are 1,050 of these areas, in 48 States; 458 of them are in the North and East, but 592 are in the South and West. Over three-fourths of the congressional districts in my State, for instance, contain labor surplus areas, 32 out of 43. So, the statistics alone refute the belief that this proposed program would confer benefits that are regionally definable. The benefits are as universal as unemployment.

I would hope my colleagues would also bear in mind that economic difficulties move around, from State to State, from congressional district to congressional district, as time passes. Where chronic employment is today, it may not exist 10 years from now. History clearly shows that many areas which enjoyed relatively high employment 10 or 20 years ago, do not enjoy it today. Therefore, as we cast our votes—at this point in this particular year—we should remember that the merits of targeted procurement stand to benefit any of our constituencies at some other points in future years.

The most telling point of all, however, is simply this. We all suffer indirectly when one of us suffers disproportionately. Weakness anywhere is a national problem; chronic weakness demands a national solution. The arithmetic is fairly simple in dollar terms. It is estimated that for every unemployed person the Federal Government spends $16,000 a year. These are Federal expenditures alone. They do not include the less visible costs which can be attributed fairly to inadequate incomes. Crime, for example, is very costly. Like many problems, moreover, it has serious social implications. But it is easy enough to make the point by sticking simply to direct Federal dollars, $16,000 a year for each unemployed person.

Where does that $16,000 come from? Those of us who are tempted to vote on this issue by looking strictly at where defense procurement dollars would flow should bear in mind that there is a steady if less visible flow of dollars far in excess of what we are talking about today toward the areas of high and chronic unemployment. When we decide on the wisdom of targeting $15 to $20 billion, which is what the Maybank amendment prevents us from doing, we need to be mindful of the costs we are already sustaining to support the individuals who cannot find jobs. Those costs are being borne by those congressional districts which are not suffering from unemployment.

The argument is common that from the overall perspective, providing a job in a labor surplus area amounts to the same savings to the Federal Government as a job outside a labor surplus area. The truth is, however, that the more chronic unemployment is the more costly to all of us. The more we target Federal dollars toward areas of chronic unemployment, the more good those Federal dollars are doing, the more we are saving, for all of us.

As I mentioned, this House has recently been through an issue where we unfortunately broke down according to regional lines. I refer to the formula by which we proposed that low-income energy assistance be allocated. The formula that the House ultimately chose was intended, by its sponsors' admission, to place much greater emphasis on the need for heat than on need for cooling and energy relief in general. In other words, it was presented to the House as a Frostbelt versus Sunbelt issue. I would not object to the Frostbelt's basing a case on regional need. However, the statistic that 1,200 people died from heat this last summer went ignored. Need was not the basis for the House action.

The formula was intended to replace one from last year that was clearly unfair. Supporters of the Obey amendment acknowledged that too. Yet the new formula gives a number of Sunbelt States no more low-income energy assistance than they received last year, an acknowledged injustice, while it gave to other States still more money from a large supply. If we were wrong last year, we were even more wrong—albeit deliberately—this year. The House action was, in two words, a power play.

I think that there is a common assumption among my colleagues from the North and East that the Sunbelt is getting more than its share of Federal dollars. The facts from my own State, however, are different.

While it is true that the Sunbelt region as a whole sends more to Washington than it receives back, if you look at the spending patterns of the last few years, as pointed out in the Northeast-Midwest coalition's own studies and illuminated in a recent article in the Sacramento Bee, it is obvious that the trend in Federal spending clearly favors the Northeast, at the expense of the West.

For example, just 5 years ago, California ranked 28th in the ratio of tax dollars collected to Federal tax revenues spent in the State. In 1975, for every dollar paid out in taxes the Federal Government spent $1.11 in California. This went up in 1976 to $1.13 and California rose to number 25 in rankings, but since then my State has slid eight positions in the national rankings. Moreover, in 1979 for the first time in recent history, California received less than it paid out in taxes; 98 cents returned to the State for every dollar paid out.

On the other hand, States leading the Northeast-Midwest coalition, especially the New England States, have been very successful in acquiring an even larger share of the Federal pie each year. The most dramtic upward move came from the State of Massachusetts which rose from 36th in the national rankings, when it received 95 cents on the dollar, to 21st in only 4 years. In 1979, Massachusetts captured a healthy surplus of over $1.5 billion or an extra 13 cents for every dollar paid to the Federal Government in taxes.

Another example is New York, a fierce competitor with California for Federal dollars. In only 4 years, New York increased its return on Federal taxes by 11 cents, leaping from 85 cents on the dollar to 96 cents.

Further, New York has outpaced California in the battle for grants-in-aid to local and State governments. Even though New York has 5 million fewer people, in 1979 it received $621 million more than California in this highly competitive category of funding.

New England has been the real winner over the last 5 years, moving from a deficit of $762 million and spending ratio of 96 cents on the dollar to a surplus of $2.39 billion and a ratio of $1.09. The Mid-Atlantic States have also shown a modest increase, while the South and the Midwest—the region with the lowest return, 72 cents—have held steady. The real losers in the battle for Federal tax dollars have been the Western States which have shown substantial declines.

I hope that by dispelling notions that the South and West are getting more

than they deserve, or contribute, that I can help relieve my colleagues from elsewhere from the burden of feeling that they are losing ground in this House. Likewise, I hope that my colleagues from the South and West do not make the mistake on this vote that some made when we adopted the low income energy assistance formula. I hope we can all agree that what the gentleman from New York seeks to address here is a need, a need that can be evaluated without respect to region. Areas of unemployment are areas of need; we can all benefit by helping them. Support for the Maybank appeal represents the larger self-interest.

Thank you.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 1 minute to the gentleman from Kansas (Mr. GLICKMAN).

Mr. GLICKMAN. Mr. Chairman, I rise in opposition to the amendment. While I admit to defects within the procurement system of the Defense Department, I think that this amendment just compounds those defects.

I think that we have all sorts of programs in this Federal Government to target areas of high unemployment, whether they be CETA, public works, public works jobs, or all sorts of things.

The question we have to ask is whether we want to make the defense budget that kind of a program or whether we want to perhaps encourage new industries to move into areas of high unemployment so they can begin hiring some of these people.

I think this amendmnet moves in the wrong direction. It does not encourage any industry to move into areas of high unemployment. It does not work for the favor of the defense industry or the best possible price for military goods; so I urge its defeat.

Mr. ADDABBO. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. Mr. Chairman, I think Members are aware of the fact that I support a strong defense budget. I would not want to do anything to weaken that kind of budget; but I think we have to recognize that we want a strong defense in a strong country.

We were all happy to read that we are finally coming out of the most recent recession and that people are beginning to go back to work. That is the sort of thing we want to continue. What we have got to do if we are going to continue this economic recovery is to supply, first of all, the economic driver to continue that growth.

Second, I think we have got to recognize that if we are going to have a strong country, we have got to have a strong country everywhere. We cannot have pockets of lowered economic activity.

This subject was the subject of a good deal of debate, as some of my friends on this side of the aisle will remember, at the Democratic National Convention. There was a big issue as to whether we should or we should not have a $12 billion program recommended by the Senator from Massachusetts to create jobs.

Well, here we have, with the help of the gentleman from New York, a $157 billion program that can begin to put this country of ours back on its feet. Fortunately, in this 96th Congress, second session, we have begun to recognize the importance of a strong defense. We have appropriated the money. We have authorized the money and that money certainly ought to go toward helping to restore the economy of our country.

As has already been said, we are not talking about the weapons. We are not talking about the MX's or the aircraft. We are talking about some of the smaller things, the milk, the shoes, the gloves. Certainly they ought to be produced in all the areas of the country, not just in a few.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania (Mr. McDADE).

Mr. ADDABBO. I yield an additional 1½ minutes to the gentleman from Pennsylvania (Mr. McDADE).

The CHAIRMAN. The gentleman from Pennsylvania (Mr. McDADE) is recognized for an additional minute and a half.

Mr. McDADE. Mr. Chairman, I thank my colleague for yielding to me.

Mr. Chairman, my distinguished friend, the gentleman from New York, who just spoke in the well, has really focused this debate as it ought to be focused. I do not think anybody in this House would question this Chamber's dedication to a strong national defense. Certainly not my friend, the gentleman from New York, who last year when we spoke on this issue rightly called himself the only unreconstructed hawk left in the House. There may be a few others, but he sure as heck qualifies and we are proud of him and his work. He puts it in focus when he says that we are not talking about the large strategic items that are involved in the defense budget. Nobody is talking about nuclear carriers. Nobody is talking about missiles. What we are talking about is small component parts that can if competition is introduced not only help the Defense Department to meet its requirements, but help the citizens of this Nation get a better price break.

Now, let me just read the history of our small business set-aside. We have already got a small business set-aside in place. After we put that in place, there were dramatic cost savings in the Department of Defense because we introduced competition. Let me tell you what they were. Recently the DOD went out for just nuts and bolts assemblies and they had to pay because they went to a labor surplus area and into a small business $5.90 a unit. Prior to that they were paying $27. It represented a 500-percent saving. The difference between the two is illustrative.

We could go on with a list of others.

DOD was purchasing gears from a large business at $954 an item. We cut that cost in half when we went to competition.

Presently only 17.5 percent of all contracts over $10,000 are formally advertised. This is contrary to the provisions of past Defense Appropriations Acts that direct that "as far as practicable, all contracts shall be awarded on a formally advertised bid basis." Perhaps the DOD resists this method of procurement because competition is required.

The LSA set-aside is a competitive procurement method. If at any time the procurement officer believes that competition does not exist, he or she must, by law (Public Law 95-89) terminate the LSA method of procurement and use an alternative. Just as important is the contracting officer's absolute duty to terminate an LSA bid solicitation if he or she believes that the prices obtained are unreasonable (10 U.S.C. 2304(a)(15)). Both of these laws provide ample discretion to the Department of Defense to prevent any kind of unreasonable procurement.

For a moment, however, I would like to describe the very positive benefits that will flow from the approval of this amendment. We have in some areas of this Nation, severe and persistent unemployment problems. We have appropriated billions to solve hard core unemployment with little success. Although I will not claim that this amendment will solve these problems, I will say that the LSA procurement program will go a long way to help.

For the past 4 years we have attempted to force this Nation's largest purchasing arm into doing something that makes tremendous economic sense. Our chief argument has always been that an LSA program in DOD will help the small business community and as a result create many new jobs where they are most needed. We act as if DOD would be doing us a favor.

Let me say that DOD will reap as great an economic benefit from this proposal as those people we place back on the employment rolls. With an LSA program the Defense Department will be able to purchase better products for less money.

I already gave just a few specific examples of how this policy saves money for both DOD and the taxpayers.

The labor surplus set-aside program we are proposing for DOD will benefit the Defense Department and the taxpayer as much, if not more than the unemployed and small businesses.

We are merely proposing that DOD take advantage of this Nation's most innovative sector—small business.

We are merely proposing that this country's largest purchaser should contract competitively for quality goods at the lowest prices.

We are merely proposing that DOD should no longer ignore the fact that small business creates nearly 100 percent of all new jobs in this country and that some of those jobs should be created in areas where they are most needed.

The gentleman's amendment should be adopted.

Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. HUGHES).

Mr. HUGHES. Mr. Chairman, I strongly support the efforts of our distinguished colleague, the gentleman from New York, to repeal the Maybank amendment. All of us are conscious of keeping procurement costs to a minimum. It is obvious that the Maybank amendment has outlived its usefulness.

Mr. Chairman, I strongly support the efforts by our distinguished colleague from New York to repeal the Maybank amendment.

While all of us are conscious of keeping procurement costs to a minimum, it is obvious that the Maybank amendment has outlived its usefulness.

When the Maybank amendment was first conceived in the early 1950's, it was a progressive and prudent step for the Government to take. However, circumstances change and the time has come for this provision to be eliminated.

By freeing the Department of Defense from the restrictive provisions outlined in the Maybank language, Congress has the opportunity to bring the Department's procurement policies into line with those practiced by all civilian Federal agencies. Repeal of the Maybank provision will also provide a much needed shot in the arm to the various labor surplus areas around the country.

Clearly, labor surplus areas exist throughout the country. Consequently, this is not another of those Sunbelt-Frostbelt confrontations that pit Members from the North against those from the South and West. We all have a stake in this issue.

I would also like to call attention to the fact that Mr. ADDABBO has carefully crafted this amendment in two important ways. Major weapons systems and goods related directly to national security would not come under the provisions of his language. By repealing the Maybank amendment, Congress would not be locking the Defense Department into unreasonable requirements that would be impossible to meet. Rather, it gives the Department the flexibility necessary to make intelligent decisions on awarding contracts.

Now is the time to discontinue the Maybank amendment. It would be penny wise and pound foolish to keep on with this outdated practice in the name of economy. Mr. ADDABBO offers us the opportunity to bring our defense procurement policies in line with our economic needs. I urge my colleagues to vote for it.

Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New York (Mr. MITCHELL).

Mr. MITCHELL of New York. Mr. Chairman, I rise in support of the Addabbo amendment as a member of the Armed Services Committee, deeply concerned about the military and economic problems plaguing our Nation. The Addabbo amendment provides the opportunity to take positive action to address these problems.

Since 1953, the Maybank amendment has effectively crippled the implementation of Defense manpower policy No. 4 (DMP-4), a policy designed to strengthen and enhance the Nation's industrial base. President Truman was well aware, as we should be, of the military advantages of targeting Defense procurements. In order to be adequately prepared for war, the Nation must maintain a warm and broad production base—keeping at a minimum idle manpower and idle machinery. DMP-4 is designed to meet these industrial preparedness needs.

Anyone involved with the armed services of this country as I have been, has seen the steady decline in the Nation's industrial base. Our ability to mobilize U.S. industry has been deteriorating since the 1950's. Production on our current defense items is dangerously long—114 weeks for the Air Force A-10 airplane and 60 to 80 weeks for the main flight controls of the Air Force F-16. The Pentagon's own recently released mobilization simulation revealed that—

> Industry probably cannot provide additional new equipment during the early warning months of a short warning conflict.

A serious vulnerability.

There is some concern that the performance of contracts in areas of high unemployment will hurt our national security by interfering with the purchasing of strategic weapons. This is absolutely false. The Secretary of Defense has complete discretion on items related to our national security. The Addabbo amendment explicitly assures this. The Addabbo amendment states that only those contracts made by the Defense Logistics Agency, and other such contracts deemed appropriate by the Secretary of Defense, can be considered in the payment of a price differential to relieve economic dislocations. The Defense Logistics Agency buys only common items used by all the services, and beyond these contracts the Secretary of Defense has absolute discretion in matters of national security.

So, what we are really talking about here today are the large number of very common items which the Defense Department buys. I ask those who suggest that this program might affect our national security to take a look at a list of these items. This list includes such items as household furniture, paper clips, paper products, electrical applicances, and office supplies. There will be no compromises to our national security, but rather our national security will be enhanced by increased industrial capacity.

I am also, concerned by the objections I have heard that the Defense Department should not be involved in a socio-economic program. That is not a socio-economic program. Our Nation's defense is predicated on maintaining a strong economy, skilled manpower, and vibrant industry. Defense Departement objectives cannot be met, while our economy stagnates. We have appropriated billions of dollars to the Defense Department, let us begin to use it wisely—as Secretary of Defense Clark Clifford has stated:

> I do believe that the citizens of the United States have reason to expect—and indeed demand—that the element of Government which spends half of their Federal dollars, devote more of its time and more of its resources to those aspects of our domestic problems which are important to our total national security.

We can no longer afford the serious impediments to our National economic and military needs that the Maybank amendment presents. I urge my colleagues to join in support of the Addabbo amendment.

□ 1820

Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman.

Mr. EDGAR. Mr. Chairman, I would like to take this opportunity to respond to some of the questions most frequently raised about the impact of the repeal of the Maybank amendment to the defense appropriations bill.

Would repeal of the Maybank amendment reduce competition among defense suppliers and increase prices?

Repeal of the Maybank amendment would have only a limited effect on competition. First, competition is restricted only on those contracts set aside for the labor surplus area program. Contracts would be set aside for firms in labor surplus areas, however, only when the Defense Department has determined that enough firms would bid on them to insure adequate competition. Therefore, the Defense Department would not be required to target purchases to labor surplus areas if an unreasonable price would result or if it were not in the best interest of the Nation, as determined by the Secretary of Defense.

Second, it is unlikely that prices for goods and services purchased by the Defense Department would show more than a negligible increase. The Federal Preparedness Agency conducted a procurement study which compared the lowest price submitted by a labor surplus area firm to the price submitted by the eventual contract recipient. The results indicated that the prices submitted by firms in labor surplus areas were only 0.67 percent higher than the bids of contract winners; in other words, the price differential was less than three-quarters of 1 percent.

Would repeal of the Maybank amendment jeopardize awards to the best qualified and most efficient producers and result in decreased quality and delays in defense production?

The mere fact that a firm offers the lowest price does not, of itself, assure that the firm is the most efficient producer. Many of the Nation's best qualified manufacturers are located in labor surplus areas. In fact, nearly one-fourth of the Nation's cities, counties, and other eligible jurisdictions are designated as labor surplus areas. These manufactur-

ing centers, which over the years have tended to have high unemployment rates, probably have just as many if not more qualified firms than other parts of the country. States which historically have contributed heavily to the Nation's defense efforts—New York, California, New Jersey, Georgia, Connecticut, Florida, and Pennsylvania, for example—all have significant numbers of labor surplus areas. It is beyond reason to assume that companies in these States would not be counted among the best qualified and most efficient firms in the Nation.

In addition, it should be noted that the portion of the Pentagon's budget most affected by repeal of the Maybank amendment would be purchases made through the common stock fund of the Defense Logistic Agency, the branch of the Defense Department responsible for procuring goods and services widely used by all sections of the military. Other procurement affected by repeal of the Maybank amendment would be goods and services purchased by the Army, Navy, and Air Force for operations and maintenance.

This combined budget represents roughly $10 to $15 billion for the purchase of such common items as food, clothing, medical supplies, hardware, office furniture, animals, photographic supplies, insignia, hand tools, books, boxes, and so forth. It is clear that targeting such purchases to companies in high unemployment areas will neither jeopardize the national security nor result in decreased quality.

Would repeal of the Maybank amendment adversely affect the Nation's mobilization capacity by denying some firms the opportunity to compete for contracts?

On the contrary, the original purpose of defense manpower policy No. 4 (DMP-4) was to minimize idle manpower and machinery in connection with the Nation's efforts in Korea. By directing Federal purchases to firms in areas of high unemployment, the policy helps insure that the Nation's defense needs are met by a broad-based and diversified manufacturing capability. Repealing the Maybank amendment would help guarantee against procurement delays caused by a lack of trained manpower at qualified manufacturing facilities. In case of a war or other national emergency, there would be a greater number of firms "tooled up" for defense production.

Would repeal of the Maybank amendment increase the dependency of labor surplus areas on defense procurement contracts?

First, an evaluation study of 10 labor surplus areas found that—

For most private businesses, Federal contracts, direct and indirect, accounted for 5 to 20 percent of total sales, regardless of the size of the firm or the region from which it came.

The report pointed out that from the perspective of private industry, Federal contracts represent an additional, but not primary, market.

Second, private companies most interested in the labor surplus area program viewed it as a means of adding to their financial stability and supplementing their potential for receiving development loans. These firms did not anticipate the program opening up a long-term guaranteed market.

Does not the Defense Department already use the labor surplus area program?

The Defense Department is prohibited by the Maybank amendment from making total labor surplus area set-asides in the same way it now sets aside contracts for small businesses. Under current provisions, the only way the Defense Department can use the program and still comply with the law is to identify an item which can be purchased through two production runs. Half of the contract award is reserved for labor surplus area firms, and the other half is open to all bidders. The contracting officer first awards the "unreserved" portion of the contract on the basis of least cost. The other portion then is offered to labor surplus area firms at the base price as established by the lowest bidder on the unrestricted portion. The Defense Department may also use the program in the case of tie bids. If a firm in a labor surplus area submits a bid matching the lowest price offered by another company, the labor surplus area firm gets the contract.

The procedure of splitting contracts into two separate awards is so cumbersome that Pentagon procurement officials cannot actively use the program. As a result, the Defense Department has never targeted more than one-half of 1 percent of its annual procurement budget to businesses in labor surplus areas.

Would repeal of the Maybank amendment increase inflationary pressures on the Nation's economy?

Since full implementation of Defense manpower policy No. 4B (DMP-4B) would stimulate employment in labor surplus areas, repeal of the Maybank amendment represents a significant tool to combat the effects of a recession on distressed urban areas. It could make a significant contribution to realizing the national goal of full employment without fueling inflation.

As Dr. David Rasmussen, associate professor of economics at Florida State University, explained in testimony before the House Small Business Subcommittee on Capital, Investment, and Business Opportunities:

The labor surplus policy is one way to raise the employment effects of a given rate of growth. It is an attempt to selectively raise employment in areas which economic growth is last to reach. Such a policy lowers the amount of growth required to achieve any target rate of unemployment and therefore works to reduce inflationary pressures in the economy.

Some may view the labor surplus policy as a zero sum game: that jobs created in areas of persistent unemployment will be lost in other areas. This is a misperception. In fact, the view presented above suggests that the entire nation receives some benefits from efforts to increase the number of jobs in high-unemployment areas. If we take our commitment to full employment seriously, this policy will help produce conditions under which we can realize full employment in most labor markets with less inflation. Rather than having less than full employment in areas ineligible for the labor surplus policy, they may suffer less inflation when they do have full employment.

Monetary and fiscal policy can stimulate growth to generate full employment in most labor markets—these areas will not lose jobs because of the labor surplus policy. In fact, these regions benefit because the nation can reach full employment with less inflation. With a commitment to our stated goal of full employment, the labor surplus policy does not rob Peter to pay Paul.

In addition, Mr. Chairman a number of my colleagues have raised concern that the repeal of the Maybank amendment would somehow affect the procurement of goods which are critical to national security. This is absolutely incorrect. Let me clarify this point. The Addabbo amendment explicitly states that the repeal of Maybank applies only to contracts made by the Defense Logistics Agency, and other contracts outside of DLA that the Secretary of Defense determines will not affect our national security. I would like to share with my colleagues a list of these procurement items which are unrelated to national security:

Air conditioning equipment, alcoholic beverages, bags and sacks, bolts, bottles and jars, brooms, brushes, mops and sponges, building glass, tile, brick and block, cameras, circuit breakers, commercial fishing equipment, compressors and vacuum pumps.

Dogs and cats, draperies, awnings and shades, dyes, electric hardware and supplies, electric lamps, electrical connectors, fencing, fences, and gates, fertilizers, floor coverings, floor polishers and vacuum cleaning equipment, fuel oils, fuses and lightning arresters, games and toys.

Hose and tubing, flexible hospital furniture, equipment, utensils, and supplies, household furnishings, iron and steel scrap, jewelry, kitchen equipment and appliances, laboratory equipment and supplies, luggage, lumber and related basic wood materials, marine lifesaving and diving equipment, motorcycles, motor scooters, and bicycles, musical instruments, nails, keys, and pins, nuts and washers, optical equipment.

Padding and stuffing materials, paper and paperboard, passenger motor vehicles, perfumes, toilet preparations, and powers, personal toiletry articles, phonographs, radios, and television sets, photographic supplies, plumbing, heating, and sanitation equipment, plywood and veneer, punched card equipment, refrigeration equipment, road clearing and cleaning equipment, roofing and siding materials, screws, seeds and nursery stock, signs, advertising displays and identification plate, space heating equipment and domestic water heaters, storage tanks, surgical dressing materials.

Tents and tarpaulins, textiles and fabrics, time-measuring instruments, toiletry paper products, typewriters and office-type composing machines, underwear and nightwear, vending and coin-operated machines, winches, hoists, cranes, and derricks, wire and cable, electrical, woodworking machines, yarn and thread.

In times of chronic inflation and rising unemployment, it makes sense to reap the potential of the Federal Government's purchasing power. The labor surplus area program provides the Government with an effective, low cost tool to stimulate private-sector investment in areas of concentrated unemployment. This program works to broaden and diversify the Nation's defense industrial base, enhancing our national security. As these problems within our Nation continue to grow the Maybank amendment provides a major obstacle which we can no longer afford.

Mr. OBERSTAR. Mr. Chairman, the Defense Department must not be allowed to turn its back on unemployment in America. It must be called upon to do its job to create jobs in America and repeal of the Maybank amendment would be the most significant effort we could undertake to create jobs at little or no cost and without establishing a whole new Federal bureaucracy.

Will there be competition under repeal of Maybank? You bet there will be. They will be out there fighting and scraping for every job and for every dollar in the whole country. There are 150 labor surplus areas out of 4,000 counties in America. That is 26 million people. That is 2½-million people who are out of work in those areas, and you bet they will be scraping for jobs, for every one, and that will keep competition alive; that will put jobs where we need them most, in the places where there is high unemployment, and using that $65 billion checkbook that the Defense Department has to buy goods in the civilian sector of the economy.

Let us repeal the Maybank amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, here we go again on the Maybank amendment. I do not know how many years we are going to fight this thing.

Simply put, DOD cannot pay a premium to go into an area and let contracts. "Sure," the gentleman asks, "Will there be competition? You bet there will," he said. And I guess there will be if you can pay premiums for that competition.

We have a big, massive defense bill. We spend a lot of money on defense. There is no way that I can justify paying premiums for defense contracts when we are hurting so bad for defense money as it is. I started off yesterday talking in my remarks about the fact that we could easily spend $10 to $15 billion more this year if we had the money.

We would be foolish, I think, to put ourselves in a posture where we are having to pay premium payments for contracts that the Defense Department would let. So I urge my colleagues not to turn the defense bill into a welfare bill. I urge my colleagues to help us make every dollar count for defense that we can, to cut out as much waste as we can, and to not be paying premiums for contracts let for defense.

I urge the defeat of the amendment.

● Mr. ALEXANDER. Mr. Chairman, I rise in opposition to this amendment. I oppose it this year as I did its proposal last year, and for the same reasons.

Even when we attempt to insure, as the Maybank amendment does, that our scarce defense dollars buy as much national security value as possible there continues to be a gap between need and purchase. We should not widen that gap by spending more for defense items that we have to pay.

There are numerous Federal programs specifically designed to attack unemployment and economic and community development problems. Many of them use deliberately biased distribution formulas to direct the greater share of funding to our most heavily populated regions in the northeast and midwestern States. Although defense spending certainly has an economic value, the products it buys should not be diminished in favor of turning defense programs into domestic economic or community development programs.

Further, it would be positively ironic if those who are attempting to do so were successful in jerking our national defense programs into the nationally divisive regionalism battle being waged in the Congress.

It is argued that the amendment would help fight unemployment. National security activities should be aimed at keeping the people of the Nation secure and free to pursue programs for increasing job opportunities, but not be skewed for that purpose.

It has been said that the amendment before us would help combat regional decline. That, too, should not be the primary, or even a principal, consideration in our efforts to get the most our defense dollars can buy. Defense spending certainly ought not be used to put the brakes on the achievements the Nation has made thus far toward closing the regional gaps in per capita income and economic development that have existed between the Northeast and Midwest and the South and West for 100 years.

A warning about the dangers of deliberately designing Federal programs in such a way as to benefit one or more regions of the Nation while denying equitable treatment to others is contained in the recently published Advisory Commission on Intergovernmental Relations (ACIR) report "Regional Growth: Historic Perspective." ACIR is chaired by Abraham D. Beame, former mayor of New York City. Its 26 private and public commissioners include Members of Congress, Federal executive branch officials, State Governors and legislators, mayors and county government leaders.

In the conclusion to the Regional Growth report the ACIR warns that proposals designed to "prevent a reversal of the fortunes of one or more of the Nation's regions" have the following objectionable aspects:

(1) They exacerbate political conflicts and sectionalism;

(2) They hamper the necessary adjustments within, and between regional economies and thus, reduce overall economic efficiency;

(3) They ignore some of the important natural correctives already built into the nation's economy, e.g. the progressive tax system; and

(4) Their potential payoff is uncertain at best. . . .

One of the arguments that the regionalists use is that the Northeast and Midwest should get a bigger share of the Federal dollars because they pay more of the Federal taxes. Another recent ACIR publication "Regional Growth: Flows of Federal Funds, 1952–76" contains data relevant to that argument. In 1952, 57 percent of the Nation's population lived in the Northeast and Midwest, 68 percent of the Federal taxes were collected there, and 58 percent of the Federal dollars were spent there, although the per capita personal incomes in 13 of the 24 States located there was above the national average.

By 1976 the gaps were clearly narrowing. The 53 percent of the population living in the Northeastern and Midwestern States were only paying 55.6 percent of the Federal taxes and were receiving more than 50 percent of the Federal spending, although only 11 of the 31 States in the Nation with per capita incomes lower than the national average were located there.

In other words, between 1952 and 1976 the tax burden of the Northeastern and Midwestern States declined almost twice as fast as their share of the Federal expenditures did. On the other hand, the Southern and Western States share of the Federal tax bill has been rising faster than its share of Federal spending. In fact, in the five 2-year periods the ACIR study reports on, only once did the Northeast and Midwest get less than half the Federal dollars spent.

Thus, although the relatively rapid economic development trend in the South and West was certainly aided by Federal spending, more than half of this spending, with the exception of one short period, has consistently gone into the wealthier northeastern and midwestern region where less than one-third of the States with per capita incomes below the national average are located.

I would agree with our colleagues from the Northeast and Midwest that we must develop fair and equitable solutions to the economic problems of distressed areas, wherever they are located. We can not do that by tearing down the mechanisms, such as that provided by the Maybank amendment, we already have in place insuring equitable treatment for all regions. And, in building the programs we need, I would strongly urge that we keep clearly in mind the warnings in the ACIR report against seeking divisive, regionalist solutions.●

● Mr. BIAGGI. Mr. Chairman, as I have on several previous occasions, I rise to lend my enthusiastic support of the amendment offered by my good friend and colleague from New York, Mr. ADDABBO. The amendment would repeal an outdated if not patently unfair provision of law governing Defense Department procurement policies known as the Maybank amendment.

The Maybank amendment in essence prohibits the Department of Defense from paying a higher price for goods and services, even if it is aimed at relieving economic distress in certain areas of the Nation. Price differentials are in fact permitted to aid small and minority owned businesses.

Also on the books is Defense manpower policy No. 4B, which makes it the policy of the Federal Government to direct Federal procurement to businesses in so-called labor surplus or high unemployment areas.

The situation is inherently contradictory. DMP-4B governs all agencies in the area of procurement policy except the Department of Defense which is practically exempt by virtue of the Maybank amendment.

Repeal of the Maybank amendment may do more to stimulate economic activity in recession-impacted areas than any legislation we pass this year. According to the proponents of this amendment—repeal of the Maybank amendment would permit the Defense Department to target a substantial portion of roughly $10 to $15 billion in procurement of nonstrategic goods and services to areas of high unemployment.

The Addabbo amendment is inherently cost effective for with the targeting of billions of new Federal procurement dollars into hard-pressed areas—there is a corresponding private sector activity three to four times greater than the actual amount of the procurement award. The provision of new jobs in a stable industry will also lead to reductions in welfare payments, housing subsidies and unemployment benefits. Further, we could reduce our undue reliance on public service jobs for economic recovery which are at best short term in nature and highly inflationary.

This amendment promotes full uniformity in Federal procurement policies. It no longer permits the Department of Defense to stand alone in its method of bidding and awarding contracts.

This amendment is of potential real benefit to roughly one-quarter of the Nation's cities and counties, which are considered as labor surplus areas. This is not a regionalized amendment—the fact is 56 percent of these labor surplus areas are in the South and West; the remaining 44 percent in the Northeast and Midwest. I do point out however that the city of New York is a labor surplus area and this amendment would go a long way to promoting new economic stability in the city to move it farther along the road to economic recovery.

I urge my colleagues to vote for the Addabbo amendment. It makes good fiscal sense in a time when our priorities are directed at cost effectiveness in Federal spending. Unemployment remains our Nation's most serious economic problem. This amendment will help reduce unemployment and consequently keep our Federal deficit down. Every increase of 1 percent in unemployment means an additional $25 billion in the Federal deficit. This amendment is capable of immediate implementation—it does not require any new Federal budget authority—it is right and dese-ves passage.●

● Mr. RODINO. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York (Mr. ADDABBO). The amendment is a matter of social justice and commonsense.

Right now nearly one-quarter of our Nation's cities and counties are suffering from unusually high unemployment. All agencies of the Federal Government—except the Defense Department—set aside some of their contracts for businesses in those depressed areas. The Maybank proviso exempts the Defense Department from this labor surplus area program.

While this program is very important to cities in my congressional district—especially Newark and East Orange—and my State, I know that all areas of the country would benefit from the repeal of the Maybank proviso. The Northeast and Midwest have 44 percent of all labor surplus areas and the South and Midwest have 56 percent. This points out the seriousness of our unemployment problem and the urgent need for Congress to act.

Repeal of the Maybank proviso is one step in the right direction. By allowing private firms in high unemployment areas to qualify for preference when bidding on nonstrategic defense contracts, we will be helping to provide jobs where they are most needed. Also, our Nation's military preparedness will be enhanced by a broader industrial base.

Now more than ever we need this program which will help relieve the growing unemployment problem in our country while providing the essential defense goods our Government needs.

Mr. Chairman, I urge the adoption of the amendment.●

● Mr. MARKEY. Mr. Chairman, due to a previous commitment in my home district, I was unable to cast my vote favoring the Addabbo amendment repealing the Maybank provision of the Department of Defense Appropriations Act for fiscal 1981.

I believe that the labor surplus area program, known as Defense Manpower Policy No. 4B, represents a creative and cost-effective means of stimulating private sector economic development in areas plagued by spiraling unemployment. In my own district in Massachusetts, the cities of Revere and Everett have been classified as labor surplus areas by the Department of Labor. I can assure you that the Defense Department contracts for materials and equipment not related directly to national security, such as uniforms, food, medical supplies, and tools, would benefit these distressed areas immensely. In an era of economic stagnation and decreasing productivity, the labor surplus area program would provide the Federal Government with a much-needed stimulus for economic activity.

Further, repeal of the Maybank proviso would insure better utilization of the Nation's overall resources by employing manpower that might otherwise be lining up to collect unemployment compensation. By targeting procurements where necessary manpower and facilities already exist, this would serve to enhance the country's military preparedness by helping to avoid the late delivery of goods and services that often characterizes these contracts.

The Defense Department must no longer continue to be exempt from participation in the labor surplus program, as the Maybank proviso suggests. If the proviso were repealed, set-asides for labor surplus areas such as Revere and Everett would be authorized only if the Secretary of Defense "determines that there is a reasonable price." This would not interfere with the set-asides to small businesses or minority-owned firms nor make any compromises to our national security.

I believe this vote is one of tremendous importance to my district and to the Nation as a whole. The country's economic troubles have seriously eroded our economic base and I believe that repeal of the Maybank proviso will help to strengthen and diversify that base. It will help create new permanent sector jobs in the communities that need them most.●

● Mr. STOKES. Mr. Chairman, I rise in support of the Addabbo amendment to repeal the Maybank provision. At a time when millions of Americans are out of work, we should be using every tool possible to stimulate job production. The billions of dollars that are appropriated every year for Defense Department procurement for material and equipment unrelated to our national security have an enormous potential to bring about a positive economic impact, particularly for the high unemployment areas of this country. Today, we have the perfect opportunity to alleviate high unemployment in a noninflationary manner.

Repeal of the Maybank amendment will permit the Department of Defense to target part of its procurement budget to firms located in labor surplus areas. These set-asides for labor surplus areas will create private sector jobs and at the same time reduce dependency on welfare and public assistance programs. This can be accomplished with no adverse effect on competitive bidding or military preparedness. Surely, both high quality and efficient producers of such common items as food, clothing, hardware, medical supplies, and so on can be found in labor surplus areas which comprise nearly one-fourth of our Nation's cities and counties.

Mr. Chairman, it is time to delete the archaic Maybank provision from the fiscal year 1981 Defense appropriations

bill. The Defense Department should not be sacrosanct. All civilian agencies of the Federal Government currently award labor surplus area set-aside contracts. The Defense Department is the only Federal agency which does not participate in this set-aside program.

Mr. Chairman, it is time to use the billions of dollars spent for goods and services by the Defense Department as leverage to relieve economic distress and to create jobs where they are needed most. Repeal of the Maybank provision would accomplish this. Accordingly, I urge that the Addabbo amendment be adopted.●

Mr. ADDABBO. Mr. Chairman, I yield myself 30 seconds.

Mr. NOWAK. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from New York.

Mr. NOWAK. Mr. Chairman, I would like to thank my colleague from New York (Mr. ADDABBO) for yielding and for his leadership in offering this amendment to repeal the Maybank amendment.

Deletion of the Maybank provision would be highly beneficial to high unemployment areas and I wholeheartedly support this amendment.

For more than 25 years, the Maybank provision has prevented the Defense Department from targeting some of its purchases of nonstrategic goods and services to private firms in labor surplus or high unemployment areas.

Repeal of Maybank, therefore, would help create private sector jobs in economically depressed areas. This is a classic opportunity for using Federal funds to stimulate permanent, private job creation and at the same time help reduce Government expenditures—nonproductive expenditures—for unemployment insurance, food stamps, and other income maintenance expenses.

It simply makes good economic sense for the Government to target its resources to the areas of greatest need. With our Nation in the throes of a recession and soaring unemployment rates, it makes even more sense. Now is the time to repeal Maybank. For too long, the Pentagon has been exempt from a procurement policy that applies to all other Federal departments and agencies. I urge the adoption of the amendment of the gentleman from New York as a sensible way to help economically depressed areas without increasing Federal spending and without creating a new program.

Mr. ADDABBO. Mr. Chairman, I have a letter here from the National League of Cities. The letter reads as follows:

NATIONAL LEAGUE OF CITIES,
Washington, D.C., September 11, 1980.

Hon. JOSEPH P. ADDABBO,
House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. ADDABBO: On behalf of the National League of Cities and the 15,000 municipalities we represent, I would like to express our strong support for your proposal to repeal the Maybank amendment.

At NLC's Board of Directors meeting this past July, we spent considerable time developing and adopting a responsible economic stimulus statement. Part of our proposed package endorses targeted federal procurement to areas of high unemployment. We believe this to be a prudent federal action which will maximize the impact of already-approved-and-planned federal expenditures, without exacerbating the Nation's already unacceptable rate of inflation.

We understand that the perception in Congress is that repeal of the Maybank amendment is a "sunbelt/frostbelt" issue. It is not. A majority of NLC's Board of Directors are from the south and west. And, as you know, more than half of the labor surplus areas in the country are in the south and west. We believe that repeal of the Maybank amendment would be in the national interest and not merely of regional benefit.

We appreciate your efforts in this important matter.

Sincerely,

JESSIE M. RATTLEY,
President and Councilwoman, Newport News.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. ADDABBO).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. EDWARDS of Alabama. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 220, noes 179, not voting 33, as follows:

[Roll No. 548]

AYES—220

Addabbo
Albosta
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Applegate
Ashley
Atkinson
AuCoin
Bailey
Baldus
Barnes
Beard, R.I.
Bedell
Beilenson
Benjamin
Biaggi
Bingham
Blanchard
Boland
Bolling
Bonior
Brademas
Brodhead
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Burton, Phillip
Byron
Carney
Carr
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Cotter
Coughlin
Courter
D'Amours
Danielson
Daschle
Davis, Mich.
Deckard
Dellums
Derwinski
Dingell
Dodd
Donnelly
Dougherty
Downey
Drinan
Early
Edgar
Edwards, Calif.
Emery
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Florio
Ford, Mich.
Forsythe
Garcia
Gaydos
Gephardt
Giaimo
Gilman
Goodling
Gray
Green
Grisham
Guarini
Guyer
Hall, Ohio
Harkin
Harris
Harsha
Hawkins
Heckler
Hillis
Hollenbeck
Horton
Howard
Hubbard
Hughes
Hutchinson
Jacobs
Jeffords
Johnson, Calif.
Johnson, Colo.
Kastenmeier
Kildee
Kindness
Kostmayer
Latta
Leach, Iowa
Lederer
Lee
Lehman
Leland
Lent
Lowry
Lujan
Luken
Lundine
McDade
McEwen
McHugh
McKinney
Madigan
Maguire
Marks
Marlenee
Matsui
Mavroules
Mikulski
Miller, Calif.
Miller, Ohio
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Motti
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nolan
Nowak
Oberstar
Obey
Ottinger
Pashayan
Patten
Pease
Pepper
Perkins
Peyser
Price
Pursell
Quayle
Rahall
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Sawyer
Scheuer
Schulze
Seiberling
Sharp
Simon
Smith, Iowa
Snowe
Solarz
Solomon
Spellman
St Germain
Stangeland
Stanton
Stark
Steed
Stewart
Stokes
Stratton
Studds
Thompson
Traxler
Udall
Vander Jagt
Vento
Walgren
Walker
Weaver
Weiss
Williams, Mont.
Williams, Ohio
Wirth
Wolff
Wolpe
Wydler
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NOES—179

Abdnor
Akaka
Alexander
Andrews, N.C.
Anthony
Archer
Aspin
Badham
Bafalis
Barnard
Bauman
Bennett
Bereuter
Bethune
Bevill
Boggs
Boner
Bonker
Bouquard
Bowen
Breaux
Brinkley
Brooks
Broyhill
Burgener
Burlison
Butler
Carter
Chappell
Cheney
Coleman
Collins, Tex.
Corman
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, S.C.
Derrick
Devine
Dickinson
Dicks
Dixon
Dornan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Okla.
English
Fascell
Flippo
Foley
Fountain
Fowler
Frenzel
Frost
Fuqua
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Gramm
Grassley
Gudger
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hansen
Hefner
Heftel
Hightower
Hinson
Holt
Hopkins
Huckaby
Hutto
Hyde
Ichord
Ireland
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kogovsek
Kramer
Lagomarsino
Leath, Tex.
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lungren
McCloskey
McCormack
McDonald
McKay
Marriott
Martin
Mazzoli
Mica
Michel
Mineta
Montgomery
Moore
Moorhead, Calif.
Neal
Nelson
Nichols
Panetta
Patterson
Paul
Petri
Pickle
Porter
Preyer
Pritchard
Quillen
Railsback
Rhodes
Roberts
Robinson
Rose
Roth
Rousselot
Royer
Rudd
Santini
Satterfield
Schroeder
Sebelius
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snyder
Spence
Stack
Stenholm
Stockman
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Van Deerlin
Volkmer
Wampler
Watkins
Waxman
White
Whitley
Whittaker
Whitten
Wilson, Tex.
Winn
Wright
Wyatt
Wylie
Young, Alaska

NOT VOTING—33

Anderson, Ill.
Ashbrook
Beard, Tenn.
Campbell
Cavanaugh
de la Garza
Erlenborn
Fish
Ford, Tenn.
Hanley
Holland
Holtzman
Jenrette
Kemp
LaFalce
Leach, La.
McClory
Markey
Mathis
Mattox
Myers, Pa.
Nedzi
O'Brien
Oakar
Shannon
Staggers
Trible
Ullman
Vanik
Whitehurst
Wilson, Bob
Wilson, C. H.
Young, Fla.

□ 1840

The Clerk announced the following pairs:

On this vote:

Mr. Hanley for, with Mr. Campbell against.
Mr. LaFalce for, with Mr. Beard of Tennessee against.
Mr. Markey for, with Mr. Trible against.
Mr. Ashbrook for, with Mr. Whitehurst against.
Mr. Fish for, with Mr. Young of Florida against.
Mr. Kemp for, with Mr. McClory against.

Messrs. KELLY, ECKHARDT, WAXMAN, HAGEDORN, SANTINI, and LONG of Maryland changed their votes from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. PEASE

Mr. PEASE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PEASE: Page 61, after line 25, add the following new section:

SEC. 772. None of the funds appropriated by this act may be used to pay the salaries of, or provide benefits to, any individual employed to work in the Pentagon executive dining rooms.

Mr. PEASE. Mr. Chairman, in an effort to cut some "fat" from the Defense appropriations bill, I suggest we look to a significant source of calories, cholesterol, and carbohydrates—the Pentagon executive dining rooms. A constituent recently called to my attention the fact that money is appropriated each year to subsidize five dining rooms which serve high-level military officials and their guests in the Pentagon. I have since confirmed with D. O. Cooke, a Deputy Assistant Secretary of Defense, that meal prices in these executive dining rooms cover only the cost of food, laundry, equipment maintenance and tableware—not the cost of personnel.

Instead, Defense funds appropriated by the Congress and paid by U.S. taxpayers provide the salaries of the military personnel who staff the Secretary of Defense's mess, the Secretary of Army's mess, the Air Force executive dining room, the Secretary of Navy's mess, and the Joint Chiefs of Staff's mess. Hence, a select group of officers, high-ranking civilians, and their guests are able to enjoy fine foods at what can only be considered bargain prices. For example, the January menu for the Secretary of Defense's mess included the following entrees:

Chicken cordon bleu at $2.40 (a la carte).
Flank steak at $2.60 (a la carte).
Roulade of beef at $2.40.

The cost to the taxpayer for the personnel in these elegant institutions has been estimated to well-exceed $1 million. Taxpayers, facing rising food bills and hard economic times, have every right to question such use of their income. In the words of my constituent, Dorothy M. Trubey:

We taxpayers are aware of what's going on and has been for years—and now you expect us to sacrifice! Where can we eat as cheaply?

It is not my intention to deny our high military officials and their guests the pleasures of gourmet dining in a secluded environment. Rather, I wish, quite simply, to end a subsidy which neither the average taxpayer nor any Member of Congress enjoys. With your approval of this amendment, these dining rooms will have to become self-sustaining—exactly like the dining rooms which serve Members of the House. High-salaried military officials can well afford to pay for the service—as well as the food—which they enjoy at the executive dining rooms. In this era of belt-tightening, what could be more reasonable?

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I will be happy to yield to the gentleman from Alabama.

Mr. DICKINSON. Mr. Chairman, I have listened with interest to what the gentleman from Ohio has said and I have no doubt but what his remarks are true.

I wonder if the gentleman is aware that the two dining rooms we have, the Members' dining room and the Speaker's dining room, that they, too, are running a loss of about $500,000 a year?

If we are talking about people on high salaries, salaries of perhaps $60,000 a year plus, perhaps we should treat everyone alike. The Members are enjoying similar benefits.

The Committee on House Administration is studying this subject. It is possible that Members of Congress are enjoying benefits greater than those enjoyed by the people at the Pentagon.

Mr. PEASE. Mr. Chairman, I thank the gentleman for his observations. I did check with the staff of the Committee on House Administration and was told that the cost of meals in our dining rooms do include personnel costs as well as food and supplies.

□ 1850

Mr. ADDABBO. Mr. Chairman, I rise in opposition to the amendment.

The executive dining rooms were established to provide a facility where the Secretary of Defense and his principal staff could dine and host functions involving foreign dignitaries, official visitors, and other guests, as is required in the execution of their duties and responsibilities.

The dining rooms also serve top level senior Defense officials and their guests, providing a place in which they can eat and conduct official business without undue concern for security of their conversations. The general cafeteria, located in the Pentagon, is simply not suited for these purposes.

Accordingly, the Pentagon executive dining rooms are considered necessary and important elements of the Department and, for this reason, certain costs of their operation are paid from Defense funds, as is the case with other DOD activities. Other costs associated with the operation of the dining rooms, such as food and beverages, laundry, maintenance of equipment, cleaning supplies, silverware, and table china are considered as operating expenses and are fully covered by meal prices. Those using the facility, including Secretary Brown, pay for the meals provided.

I urge that the amendment be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. PEASE).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. PEASE. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

On a division (demanded by Mr. PEASE) there were—ayes 34; noes 78.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BONIOR OF MICHIGAN

Mr. BONIOR of Michigan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BONIOR of Michigan: Page 61, after line 25, insert the following new section:

SEC. 772. None of the funds appropriated by this Act shall be available for the purpose of converting to performance by a private contractor any commercial or industrial type function of the Department of Defense that on October 1, 1980, is being performed by Department of Defense personnel in an area in which the current rate of unemployment, as determined and published by the Bureau of Labor Statistics of the Department of Labor, pursuant to Section 4 of the Act of March 4, 1913 (29 USC 2), is in excess of 9 percent.

Mr. BONIOR of Michigan. Mr. Chairman, as I understand it, this is the last amendment, and at 7 o'clock we will be voting on the bill.

Mr. Chairman, I am offering my amendment to this bill today for the sole purpose of preventing the Defense Department from contracting out jobs presently being held by Federal employees in areas where unemployment exceeds the national average. I would have gone through the normal process in the Congress of bringing this before the subcommittee and full committee, but to my dismay and shock, I was notified just very recently that possibly 200 jobs in my district at an Air Force base—electricians, plumbers, pipefitters, these types of people—are threatened by this contracting out provision.

What is unusual about the argument that I wish to make here this afternoon is the fact that I do not represent a normal district in this country. I represent a district with an unemployment rate of 15 percent. I think it is unconscionable that this Government would think of coming in and taking out 200 jobs and inflicting the psychological damage that it does to a community already reeling under a high unemployment rate.

What I am asking is that the areas in the country defined in the public law, labor law, and at the MSA's, that have unemployment rates in excess of the national average of about 1¼ percent, using the 9 percent figure, that those districts be left alone until they can come to grips with the difficult problems they have in putting people to work.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. BONIOR of Michigan. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I want to tell my friend from Michigan that I have been one of the staunchest opponents of contracting out on the Defense Appropriations Committee because, not only for the reason the gentleman mentions, but because so often the work is done in a poor and shoddy way. The committee is taking a look at that problem.

I am somewhat concerned, though. I want to explain one thing to the gentleman. The reason we have contracting out all over the country is because we have imposed personnel ceilings on the Department of Defense because of the Leach amendment. What that means, then, is that if you have an area of 9-percent unemployment, that would be given that relief, but an area with less than 9-percent unemployment would then be penalized because of this particular restriction, because there are only so many billets because of the Leach amendment, because of the unemployment ceiling.

So, I am not opposing the gentleman's amendment, because I think anything we can do to point out the problems with contracting out is a step forward, but I do think the Members should understand that there might be a problem for areas with 9 percent or less unemployment because then they would have to take the burden of the Leach amendment.

Mr. BONIOR of Michigan. I appreciate the gentleman's argument. Frankly, it is one I had not heard before. But, in defense of my position, I would suggest that the problem the gentleman speaks of is one that ought to be addressed in continuing debate and discussion on contracting out, and we ought to get to it. But, the deep psychological problems caused by this type of action in unemployment areas of 15 or 16 percent is just unconscionable. You cannot explain that anywhere.

Mr. EDWARDS of Alabama. Mr. Chairman, I rise in opposition to the amendment. I am reluctant to oppose the amendment. We all have problems of unemployment. We all have pockets of unemployment that are great.

Our committee continually fights this battle between contracting out and in-house work. We try to get a handle on it. Frankly, I do not understand exactly what the impact of this amendment would be. It seems to me that it would be inappropriate to adopt an amendment like this when we really do not know what the impact is.

I believe that the better way to handle this would be to let the committee continue to work in trying to resolve the constant conflicts between contracting out on the one hand and in-house work on the other. We certainly want to do what we can to protect the rights of those civil service employees who work on bases and perform important service. We believe in the free enterprise system. We want that to work, so we have contracting out and we have in-house work.

I believe an amendment like this offered at this time, would not be the best way to resolve this problem.

Mr. Chairman, as I understand it, I have about 1 minute left.

The very able gentleman from Connecticut (Mr. GIAIMO), who is over there on the other side, is leaving our subcommittee at the end of this year, and I want to pay my respects to him for the work that he has done on our committee and in the Congress over the years. He not only has had the obligation of serving on our Defense Subcommittee, but for the last 4 years has been chairman of the Budget Committee, which has taken him away from us a good bit of the time.

□ 1900

Mr. Chairman, I have felt a great pride in serving with the gentleman from Connecticut (Mr. GIAIMO). I am sure the subcommittee shares my feelings that we hate to see him go. He has been a good Member of this House, one whom we all have been very proud to know.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the subcommittee chairman.

Mr. ADDABBO. Mr. Chairman, I wish to join my colleague, the gentleman from Alabama (Mr. EDWARDS), in commending the gentleman from Connecticut (Mr. GIAIMO), who has been running back and forth between the Budget Committee and the House, and coming over to the Defense Subcommittee when we needed him for a vote. He was always there when needed.

His retirement from the House will be a great loss to me, because he has been my right arm on the committee. I know that we will continue to applaud him for his expertise when he returns to the so-called civilian world.

Mr. Chairman, we wish the best for the gentleman and for his wonderful wife. We wish him a wonderful, happy life in his retirement.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Michigan (Mr. BONIOR).

The amendment was rejected.

Mr. TRAXLER. Mr. Chairman, I want to bring to the attention of the House a matter which is of great importance to the maintenance of Army vehicles, and the sad history of how the Army has delayed taking advantage of a technological breakthrough that can aid our combat readiness.

In 1967, the U.S. Army requested the silicone industry to develop an improved brake fluid for global operations. Over the next 11 years, industry worked closely with the Army to develop a fluid to meet the needs for an all-weather, noncorrosive brake fluid. Extensive Army field testing in the 1973–78 period proved that silicone brake fluid would meet the Army's requirements, culminating in a qualified product in 1978.

In July 1978, a cost-effectiveness study was approved by the involved Army agencies. It showed silicone brake fluid, although more expensive initially, would provide substantial cost savings. In addition, silicone brake fluid would make a major contribution to the improved combat readiness of Army vehicles as it eliminates corrosion and is compatible with brake system components during storage. A major overall improvement in reliability and greatly reduced maintenance in any foreseen climate would result.

In March 1979, a plan to convert the Army's vehicles to silicone brake fluid was approved with procurement to begin by mid-1979. Shortly thereafter, the conversion program was suddenly delayed and a variety of technical questions were raised and quickly answered. In July 1979, at a joint meeting of Army and industry representatives at the tank automotive readiness command (TARCOM), concluded that a "change from glycol to silicone brake fluid is not only cost-effective, but will provide improved reliability, availability, and maintain ability of hydraulic brake systems on military vehicles." However, additional costly studies were deemed necessary. The latest of these studies is now scheduled for DOA review later this year, and there is good reason to believe that some parties involved in this session will recommend still more studies.

While the Army vacillates, the U.S. Postal Service (USPS) is taking advantage of the benefits offered by silicone brake fluid. The USPS conversion began in 1979 and is 80 percent completed. There have been no reported failures to date attributed to the conversion. The objectives of: First, increasing reliability; second, reducing vehicle downtime; and third, reducing maintenance costs have all been met. Significant savings were realized the first year with an annual savings of 6.5 percent, and an annual savings of 30 percent of total system maintenance is projected when the conversion is completed. In addition to cost reductions, vehicle availability has been increased by the reduction of downtime for brake system repairs.

More than 10 years of development have yielded a single fluid vastly superior to the three fluids currently being used. The resultant major improvement in combat readiness contributes to the development of an assured and requisite all-weather mobile strike capability previously unattainable. The technology proven and the cost studies have shown it to be cost-effective. Further procrastination camouflaged under the guise of gathering additional information is nonproductive and represents an unacceptable cost when we are demanding that Federal agencies use their funds in the most productive fashions possible.

● Mr. HARRIS. Mr. Chairman, I would like to direct the attention of my colleagues to a section of the committee report entitled "Contracting Out Commercial/Industrial Type Activities" which accompanies this appropriation bill. The report contains a number of conclusions which support my contention that inflexible personnel ceilings result in the Government spending more than necessary for needed services.

In part, the committee report states:

Placing a hiring freeze and civilian ceiling limitation on DOD at a time when the Department has adequate appropriations to hire personnel to improve readiness and speed up operations will result in additional pressure to contract out activities.

Both OMB Bulletin 80-9 and Circular A-76 state that contracting with firms and institutions outside the Federal Government will not be used to alleviate or circumvent the effect of limitations on hiring or manpower ceilings. Despite the general policy there is considerable indication, that these hiring freezes and ceiling limitations do force additional contracting out of management support functions, engineering and technical support activities, as well as commercial and

industrial activities which are covered by Circular A-76.

Even if it can be shown that in-house performance is less expensive under the required A-76 comparisons, hiring freezes and ceilings can make it impossible to perform the function in-house.

Also, the use of ceilings prohibits bringing back in-house work that has been contracted out if for some reason it becomes more expensive to do it on contract or the contractor fails to perform satisfactory.

Contracting out and the application of A-76 cannot be a one-way street. In order to insure continued competition it is necessary to have the option to bring work back into Government facilities.

The committee has reached the same conclusions which I have reached after 2 years of investigation. My bill, H.R. 4717, would ensure that the contracting option is indeed a two-way street which exists to serve the needs of Government, not limit the Government in the decisionmaking process. It provides the flexibility necessary to guarantee that decisions are based on cost-effectiveness rather than arbitrary limitation.

I commend the committee for its attention to this matter, and I urge my colleagues to support all moves to make the contract option a double-edged sword whose purpose is to hack away at unnecessary Federal spending.●

● Mr. WEAVER. Mr. Chairman, I rise in support of this amendment, which would restore the $100 million for recruitment purposes which was cut by the Appropriations Committee.

This House has rightfully demanded that the armed services' recruitment programs be managed in such a way as to attract the best recruits possible to our Nation's Armed Forces. There is no question in my mind that the Volunteer Army can be an effective and unmatched fighting force—but to accomplish this goal, we must solve the twin problems of recruitment and retention of qualified personnel.

This amendment will restore 2,000 badly needed recruiting positions, and will allow the Department of Defense to mail recruiting information to the many young men who requested it on their draft registration forms.

These are the kinds of everyday needs which we must meet if we want a combat-ready Armed Force—yet we are constantly sacrificing these requirements in the face of a desire to obtain more and more exotic weaponry. Gold-plated weapons will never replace qualified men and women as the essential strength of America's military. It is time we learned that lesson, and began to act on it.●

● Mr. McDADE. Mr. Chairman, I rise to address the language contained in additional views of my colleagues from California on page 392 of the committee report. I am deeply concerned about the ammunition procurement section. Specifically, I wish to commend the chairman of the Defense Subcommittee and the ranking minority member for the thoughtful analysis provided by the subcommittee.

First, I want to set the record straight. In 1975, Norris Corp. and the Scranton Army Ammunition Plant bid in open competition for the right to produce this round, the M-509. After Scranton won, Norris tied up the contract for a year with bid protests that were denied by the GAO. Thereafter, the Scranton Army Ammunition Plant received a contract to produce 20,000 rounds of the 509 and began production.

Two Army design errors caused that contract to be stopped and subsequently the Scranton plant produced 4,000 of these rounds in a piecemeal fashion that the Army used to solve the design errors.

The M-509 manufacturing line at Scranton is now ready to produce this new and more effective shell and it is clear that the committee made the right decision. Let us look at the facts:

The Scranton plant has already made over 4,000 of these rounds. Norris has made none.

The Scranton plant has a trained work force available; Norris has to train its people.

The Scranton plant is ready to produce now (even though it will require another heating oven to make production easier). Norris is not ready to produce and cannot be ready for at least 4 months.

The Scranton plant has enough raw material (steel and aluminum) on hand to instantly start making over 7,000 of these rounds; Norris has none and must wait at least 4 months from the date of order to get what it needs to make even one of these rounds.

Most importantly, however, is the cost of production. If the initial production of this round goes to Norris, the Army will be buying the 509 at more than twice the cost per round. Under the Army plan, for a $15-million expenditure, Norris would test its production line and the Army will get 6,000 rounds for its stockpile, but the Army will get 15,000 rounds in the stockpile if it goes to the Scranton Army Ammunition Plant for production.

There are additional compelling reasons why the Scranton Army Ammunition Plant should be the producer of the M-509. The Scranton plant is a key producer in the Army mobilization plans. Scranton is the only active producer of conventional heavy ammunition. In addition, the Scranton plant is the most modern large caliber manufacturer. Scranton has a large and well-trained work force (average 20 years). The Scranton plant also provides technical and production improvements used throughout the ammunition industry and is the closest facility to the Army's engineering agency staff. When the total capacity of this plant is reviewed (over 10 different rounds), its importance to the Army is clear. Of the varieties produced at Scranton, seven rounds are manufactured only by the Scranton plant or most efficiently produced by the Scranton plant. Because of these skills, the Scranton plant is the sole supplier of foreign sales for conventional heavy ammunition.

The Army has already invested over $80 million in the Scranton Army Ammunition Plant and more importantly has already built a complete and functioning M-509 production line. That production line has already manufactured more than 4,000 M-509 shells.

There seems to me to be no reason to further delay production, particularly when this M-509 contract will insure that this Nation will have the benefit of keeping the only active manufacturer of conventional heavy ammunition from being considered for closing. The Norris facility, on the other hand, has six active contracts; four for production—two for facilitation.

Lastly, let me address the fire at the Scranton Army Ammunition Plant. Four years ago, the Scranton plant experienced a fire in one of its four furnaces. The only delay caused by the fire was the change to one of the other three idle furnaces. No diminution of capacity occurred. It certainly appears that a fire 4 years ago is no reason to delay the production of this necessary round.

Once again, let me state that we only have limited money. We need to get the most from that money and we need this shell now, not some time in the future.

The Army has spent well over $100 million and 10 years time to get ready to make this shell. The unfilled stockpile requirements are in the millions.

Why must we wait, why must we pay more? We need to build our military strength now.

The chairman and the ranking member together with the other members of the Subcommittee on Defense acted with wisdom and prudence. Their careful study of the whole situation resulted in the very strong committee language. This situation will be carefully monitored in the future.●

● Mr. OTTINGER. Mr. Chairman, I am greatly distressed that both the House of Representatives and the Senate have chosen to authorize funds for facilities and equipment for the production of binary weapons. The issue of binary weapons raises many objections and arguments. Unfortunately, this Congress has chosen to make a decision on it without the benefit of sufficient hearings and debate.

Chemical weapons munitions in current U.S. stockpiles can kill just as many people now as they could in the 1950's and 1960's when the Army produced enough to kill or maim many times over every human being within an area of thousands of square miles. Indeed, our current stockpiles may remain lethal for at least another 20 years. In light of this, why should we spend billions of dollars to resume production of binary weapons?

Production and deployment of the binary weapons will not reassure our NATO allies. Opponents of binaries repeatedly state the British and West Germans are highly unlikely to agree to store any chemical munitions on their territory. West Germany is bound by treaty not to store lethal agents on its territory, except those in U.S. bases, and has refused even to train its troops in the use of chemical weapons. Given the political opposition of the Europeans to storing these weapons, full scale production would anger, rather than reassure, NATO.

Furthermore, this proposal may destroy the arms limitation talks.

Due to the separation of the binary's

components, verification problems may arise. The Soviets will be forced to follow our lead and upgrade their chemical weapons arsenal. Evidence suggests that the Soviet missile buildup of the past 15 years is the result of the U.S. decision to develop MIRV. Are we not signaling to the world that the United States is about to push it into a new generation of sophisticated, expensive and devastating weaponry?

Mr. Chairman, the arguments opposing the entire binary weapons concept have been joined by arguments which call for a reasonable delay in the resumption of binary production. Not only has this Congress failed to afford the issue adequate consideration—I understand that only one committee dealt with the proposal and considered only four or five pages of testimony—but we have not properly consulted with our allies. Secretary of Defense Harold Brown argues that any decision to go ahead with production of binary weapons would have to allow for prior consultation with the allies, and this is an inopportune time to undertake such consultations, according to the Secretary.

The administration does not favor this proposal, and the President and the Secretaries of State and Defense have come down against it. In a letter to Chairman ZABLOCKI, Secretary Muskie wrote:

> A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.

At this time, an interagency examination is underway which will study these major issues. It will be completed and a decision will be made on binary weapons production in time for the fiscal year 1982 budget process. In the meanwhile, as Secretary Muskie points out, any such funding at this juncture would be premature.

During consideration of the military construction authorization bill last week, my distinguished colleague, Chairman ZABLOCKI, alterted us to the fact that the United States is working with its allies in the United Nations to support a resolution calling for an international investigation of Soviet chemical warfare practices. In today's New York Times, Flora Lewis writes "the U.S. stands to gain much more that way than by serving notice to the world that it is tooling up again for chemical warfare." Unfortunately, we seem to be ready to serve that notice, and embark on a policy which will fly in the face of our efforts in the U.N.

Once again we have been confronted with a proposal that is immensely costly without improving our security, but leaves us less secure as the Soviets are forced to modernize and expand their chemical warfare potential. Moreover, we are willing to engage in a policy that is estimated to cost $4 billion without giving it the consideration it deserves.

We clearly should not embark on this dangerous, counterproductive, and expensive endeavor at this time.●

● Mr. FRENZEL. Mr. Chairman, this bill is one of the largest, most complex, and most important appropriations bill this Congress will have to consider this year. H.R. 8105, the Department of Defense appropriations bill for fiscal year 1981, is designed to assure that American military posture will remain strong enough to provide protection to our country in the coming year, and in the years to come.

Overall, the bill provides for total defense spending of just over $157 billion. This figure, represents, in my judgment, about as much as we can spend effectively. It makes a good start in what is a long term campaign to raise the quality of our national defense to adequate levels. The 12 percent increase in the appropriation over last year represents a commendable effort by the members of the Appropriations Committee to control spending in areas where the entire appropriation for fiscal year 1980 has not been used up, and to provide essential increases in programs where there is a current shortfall.

One program which experienced a slight reduction in spending is the MX missile. While many Members of Congress, including myself, agree that the country needs a new missile system to replace our aging Minutemen, there has been considerable controversy over the basing mode for such a missile. However, the bill before us does not contain any instructions as to the basing mode. In fact, it is not even at issue at this time.

H.R. 8105 simply appropriates $1.44 billion for continued research and design of a new missile system. This figure is $120 million less than the Air Force's request for MX development, and represents the Appropriations Committee's impression that the Air Force's original request was larger than could be efficiently spent in fiscal year 1981. Approval of this measure will assure us that the development of a new missile system, and the study of alternative basing modes, will continue uninterrupted. The development and study of a basing mode should neither be accelerated, nor delayed.

The bill also takes into consideration the need to provide additional incentives to improve the retention rate of our enlisted and noncommissioned personnel by providing $713 million in additional compensation. These increases include the implementation of a variable housing allowance to help pay for members who are assigned to high cost housing areas, increases in sea pay rates by 15 percent, increases in officer and enlisted flight pay by 24 percent, and increases in the subsistence allowance by 10 percent.

These provisions, while only the start of what I hope will be a trend toward increases in military pay levels, should help to provide the immediate incentives to stop the flight of highly trained personnel out of our Armed Forces.

All in all, the bill is a good one. In view of our previous experiences with the appropriations process, I have a feeling that this appropriations bill will be the only one to come before the Congress this year which will satisfy a strong majority of this body. I urge my colleagues to support the bill.●

The CHAIRMAN. Are there any further amendments to title VII or to title VIII?

If not, the Chair recognizes the gentleman from New York (Mr. ADDABBO).

Mr. ADDABBO. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. WRIGHT) having assumed the chair, Mr. ROSTENKOWSKI, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having under consideration the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, had directed him to report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. FORSYTHE

Mr. FORSYTHE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. FORSYTHE. Yes, I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. FORSYTHE moves to recommit the bill, H.R. 8105, to the Committee on Appropriations.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

Mr. EDWARDS of Alabama. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 351, nays 42, not voting 39, as follows:

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[Roll No. 549]

YEAS—351

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Atkinson
Badham
Bafalis
Bailey
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Boggs
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Burlison
Butler
Byron
Carney
Carr
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hansen
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kindness
Kogovsek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Matsui
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Motl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
Oberstar
Panetta
Pashayan
Patten
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stratton
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Traxler
Udall
Van Deerlin
Vander Jagt
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
White
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Mo.
Zablocki
Zeferetti

NAYS—42

AuCoin
Baldus
Bellenson
Bingham
Bonior
Burton, John
Burton, Phillip
Cavanaugh
Chisholm
Clay
Collins, Ill.
Conyers
Dellums
Drinan
Edwards, Calif.
Forsythe
Garcia
Gephardt
Gray
Harkin
Johnson, Colo.
Kastenmeier
Kildee
Leland
Lundine
Maguire
Mitchell, Md.
Nolan
Obey
Ottinger
Paul
Rahall
Richmond
Rosenthal
Seiberling
Stark
Stokes
Studds
Thompson
Vento
Weaver
Weiss

NOT VOTING—39

Anderson, Ill.
Ashbrook
Aspin
Buchanan
Campbell
de la Garza
Dingell
Erlenborn
Fish
Ford, Tenn.
Hanley
Holland
Holtzman
Ichord
Jenrette
Johnson, Calif.
Kemp
LaFalce
Leach, La.
McClory
Markey
Mathis
Mattox
Mavroules
Murphy, N.Y.
Myers, Pa.
Nedzi
O'Brien
Oakar
Sebelius
Shannon
Staggers
Trible
Ullman
Vanik
Whitehurst
Wilson, Bob
Wilson, C. H.
Young, Fla.

□ 1920

The Clerk announced the following pairs:

Mr. Markey with Mr. O'Brien.
Mr. Nedzi with Mr. Ashbrook.
Mr. Staggers with Mr. Erlenborn.
Mr Vanik with Mr. Fish.
Mr. Murphy of New York with Mr. Whitehurst.
Mr. Jenrette with Mr. Kemp.
Mr Hanley with Mr. Young of Florida.
Mr. Dingell with Mr. Bob Wilson.
Mr. Aspin with Mr. Sebelius.
Ms. Holtzman with Mr. Trible.
Mr. LaFalce with Mr. Campbell.
Mr Shannon with Mr. Buchanan.
Mr. Johnson of California with Mr. McClory.
Mr. Mavroules with Mr. Myers of Pennsylvania.
Mr. Ullman with Mr. Charles H. Wilson of California.
Mr. de la Garza with Ms. Oakar.
Mr. Mattox with Mr. Ichord.
Mr. Ford of Tennessee with Mr. Holland.
Mr. Mathis with Mr. Leach of Louisiana.

Mr. McEWEN and Mr. ASHLEY changed their votes from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion too reconsider was laid on the table.

PERMISSION TO FILE REPORT ON H.R. 5192, EDUCATION AMENDMENTS OF 1980

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes.

The SPEAKER pro tempore (Mr. ALEXANDER). Is there objection to the request of the gentleman from Indiana?

There was no objection.

MAKING IN ORDER ON OR AFTER THURSDAY, SEPTEMBER 18, 1980, CONSIDERATION OF CONFERENCE REPORT ON H.R. 5192, EDUCATION AMENDMENTS OF 1980

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that it be in order on or after Thursday, September 18, 1980, to consider the conference report on the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

COMMUNICATION FROM CHAIRMAN ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER pro tempore (Mr. FARY) laid before the House the following communication from the chairman of the Committee on Public Works and Transportation, which was read and, without objection, referred to the Committee on Appropriations:

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, D.C., September 5, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Pursuant to the provisions of the Public Buildings Act of 1959, as amended, the House Committee on Public Works and Transportation approved the following projects on August 26, 1980:

11(b) RESOLUTIONS

Decatur and Huntsville, Alabama.
Chicago, Illinois.
Bakersfield, California.

CONSTRUCTION

Birmingham, Alabama, U.S. Courthouse.

CONSTRUCTION AND ALTERATION

Little Rock, Arkansas, Post Office-Courthouse.

ACQUISITION

Charlottesville, Virginia, Federal Executive Institute, Office of Personnel Management.

ALTERATIONS

New Haven, Connecticut, Post Office-Courthouse.
Greenville, South Carolina, Federal Building-U.S. Courthouse.
Detroit, Michigan, Secondary Truck Inspection, Border Station.

CONSOLIDATION-DIRECT FEDERAL CONSTRUCTION

Silver Spring, Maryland, Nuclear Regulatory Commission.

LEASES

Austin, Texas, Consolidation of seven agencies.
Arlington, Virginia, Pomponio Plaza, 1735 North Lynn Street.
Washington, D.C., Penn 17 Building, 1717 Pennsylvania Avenue, N.W.
Washington, D.C., Riddell Building, 1730 K Street, N.W.
New York, New York, U.S. Custom House, World Trade Center.
San Francisco, California, Departments of the Treasury, Transportation & Defense.
Los Angeles, California, Department of Defense, Housing & Urban. Development & Commerce, 2500 Wilshire Boulevard.
Los Angeles, California, Department of Defense, 4727 Wilshire Boulevard.
Seattle, Washington, Department of Health, Education, and Welfare.
Department of Housing and Urban Development.
San Francisco, California, Department of Health, Education, and Welfare.
San Francisco, California, Department of Housing and Urban Development.
Dallas, Texas, Internal Revenue Service.
Washington, D.C., Matomic Building, 1717 H Street, NW.
Washington, D.C., Merit Systems Protection Board.
Washington, D.C., Securities and Exchange Commission.
Los Angeles, California, Veterans Administration, 417 South Hill Street.
Washington, D.C., Department of Education, Department of Health and Human Services, National Aeronautics and Space Administration.

The original and one copy of the authorizing resolutions are enclosed.

Sincerely,

HAROLD T. (BIZE) JOHNSON,
Chairman.

Mr. ROUSSELOT. Mr. Speaker, what was that which was reported? Just a report?

The SPEAKER pro tempore. A report from the Committee on Public Works and Transportation.

Mr. ROUSSELOT. Just a report to be filed?

The SPEAKER pro tempore. And referred to the Committee on Appropriations.

Mr. ROUSSELOT. I thank the Speaker.

There was no objection.

THE NATIONAL INDUSTRIAL INNOVATION ACT OF 1980

(Mr. OTTINGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and to include extraneous material.)

Mr. OTTINGER. Mr. Speaker, I am today introducing "The National Industrial Innovation Act of 1980." This legislation creates a National Industrial Innovation Corporation empowered not only to provide loans, loan guarantees, but as well equity financing and authority for joint ventures with private industry for new or innovative products, processes, or worker incentive programs.

The Corporation will aid the United States in developing new technologies, improving old production processes, regaining lost markets, improving productivity, and revitalizing our economy. The bill address one of our most pressing national problems, the decline in the productivity of our industry and the loss of competitiveness with Japan and Europe in many industrial processes.

Mr. Speaker, Japan in particular and the European countries as well give more assistance to their business communities in becoming competitive than does ours. This will enable us to be on a par with the kind of effort their governments give to their industrial innovations.

Of particular significance is the authority for entering joint ventures and permitting equity financing. Many corporations can not participate in existing Federal loan and loan guarantee programs because of debt to equity limitations. They can participate, however, in the kind of equity partnerships authorized here. Also, it has long been my feeling that if the taxpayers put up a major portion of the capital for this kind of effort they should participate in the profits of any profitable ventures that result.

Mr. Speaker, innovation and technological change have been a hallmark of our economic success in the 20th century. Between 1929 and 1969, technological innovation was responsible for 45 percent of the Nation's economic growth. During that same period, advanced technology industries had twice the productivity, three times the real growth rate, six times fewer price increases, and nine times more growth in employment as compared to other industries.

Sadly, the share of innovation first marketed in the United States has consistently fallen since the 1950's. In a recent report to the Senate Democratic Task Force on the Economy, the Subcommittee on Industrial Innovation, headed by Senator ADLAI STEVENSON, also took note of this unsettling development. I cannot attribute this dropoff to a lack of new technology or innovative ideas. The brainpower remains as does the technology. Corporations and individuals simply cannot raise the capital necessary to develop and market their innovations.

Two examples illustrate the failure of the capital markets. International Power Technology, Inc. (IPT) has been unable to sell a single dual-fluid cycle, an innovative device which reportedly can cut turbine fuel costs by 30 percent. The reason? IPT cannot raise the $5 million needed to build a prototype. Sponsors are scarce, and public utilities will not advance the company the money for product development until they see a prototype. Decision Automation, Inc., another California based firm founded in 1979, plans to manufacture and market microcomputers designed for industrial data acquisition and control purposes. These computers could reduce the cost of computer control applications over conventional systems by 75 percent. The company cannot obtain financing for its project.

Apparently, the capital markets are reluctant to finance industrial innovation. Commercial banks are unwilling to take the risk involved in a new innovation when they can just as easily finance a traditional investment with a predictable return. These banks generally refuse to provide second stage financing for innovative projects with slow start up times. Many venture capital companies are unwilling to fund projects involving small sums, although they may later reap huge windfalls. Tax laws are driving individuals, once a primary source or funding for innovative ventures, to real estate, Treasury certificates, and other tax shelters. Add to this list the traditional bias of large companies against financing innovative products produced by others and a complete picture of a severe capital shortage emerges.

How then, do we revitalize the economy?

On August 28, President Carter announced a new economic revitalization program. He proposed accelerating and simplifying our depreciation system, increasing funding for research and development, and creating an economic revitalization board composed of representatives of Business, labor, and the public. Although likely to stimulate some investment and innovation, his proposals failed to address one of the most glaring weaknesses in our economy, the basic unwillingness of the capital markets to accept the substantial risks associated with financing industrial innovation initiatives. If we are to foster the new technology and industrial innovation necessary to encourage higher rates of productivity, a growing GNP, and an internationally competitive industrial structure, some entity must accept these risks.

Two weeks ago, the Senate Democratic Task Force on the Economy's Subcommittee on Industrial Innovation, headed by Senator ADLAI STEVENSON, recommended that Congress create an industrial financing bank willing to accept the risks associated with financing industrial innovation. The bank would provide capital to high-risk ventures in advanced technology "sunrise" industries with promising potential for growth and export.

Mr. Speaker, I am today proposing legislation which, if enacted, will create just such an entity, the National Industrial Innovation Corporation. This Corporation is designed to be an efficient and productive enterprise which will move necessary capital into innovative undertakings.

The Industrial Innovation Corporation will be efficiently managed by Directors with an intimate knowledge of business finance, and Government. Officers of innovative business enterprises and officers of a commercial bank, a pension fund, and an insurance company will constitute a majority of the corporation's nine member board. Three members of the public sector will complete the board.

The Industrial Innovation Corporation will select projects on the basis of scientific, technological, and financial merit; it is not a bailout firm. It will be limited to providing $100,000,000 in financing to any one firm.

The Corporation will encourage smaller innovative enterprises, and it will disseminate information about its activities to all eligible business entities. It will, however, hold all proprietary information in the strictest of confidence.

It will be flexible enough to aid any industrial innovation, as it will be able to provide loans, loan guarantees, or equity financing depending on the nature of the undertaking. Its equity operations will allow it to share in the profits of the successful undertakings which it finances. Thus, the American taxpayer can reap benefits from successful ventures of the Corporation.

The Industrial Innovation Corporation will be a large undertaking. However, it will not usurp the role of the

private capital markets. It will enhance the private financing role by assisting innovative enterprises to become viable risks and thereby encouraging the private financing of industrial innovation.

Industrial innovation is vital to our national interest. In recent years, we have seen U.S. innovations in automobiles, steel, electronics, and other technologies overtaken by our Japanese and European competitors. Their governments do far more than our own to foster innovation and exports. Now, the United States must commit itself to industrial innovation. The Industrial Innovation Corporation should be the centerpiece of that commitment.

The text of the bill follows:

H.R. 8131

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Industrial Innovation Act of 1980".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) the share of innovations first marketed in the United States has consistently fallen since the 1950s;

(2) estimates are that technological innovation was responsible for 45 percent of the Nation's economic growth between 1929 and 1969;

(3) high technology industries between 1929 and 1969 had twice the productivity growth rate, three times the real growth rate, six times fewer price increases, and nine times more growth in employment as compared to other industries;

(4) traditional sources of capital are being driven away from high technology industries by tax laws which favor tax-sheltered investments; and

(5) the United States is not lacking in technology, but United States companies are finding that they cannot raise the capital necessary to put that technology to work.

(b) It is therefore declared to be the purpose of this Act—

(1) to promote undertakings which utilize or create technological innovation;

(2) to increase innovation in the American economy;

(3) to increase productivity and provide jobs for more Americans;

(4) to improve the United States' ability to compete in international markets; and

(5) to nurture the emerging technologies that will form the industrial foundation of the future.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "Corporation" means the National High Technology Industrial Innovation Corporation created under title I;

(2) the term "Board" means the Board of Directors of the Corporation;

(3) the term "industrial innovation endeavor" means a new or innovative product, component, or process which is or may be commercially exploitable, which has significant potential for growth and export, and which is the result of a theoretical scientific or mathematical advance or the application of such an advance, and it also includes (A) the development and the manufacture or establishment of such a product, component, or process, and (B) any change in a process or worker incentive proposal designed to substantially improve productivity and international competitiveness of an industrial product or process; and

(4) the term "qualifying firm" means an individual, corporation, partnership, joint venture, or other business entity which is a citizen of the United States or is incorporated or otherwise organized in the United States, and the business of which can benefit from industrial innovation endeavors.

TITLE I—ESTABLISHMENT OF NATIONAL INDUSTRIAL INNOVATION CORPORATION

ESTABLISHMENT OF CORPORATION

SEC. 101. (a) There is hereby authorized to be created a National Industrial Innovation Corporation, which shall be an agency of the Government of the United States.

(b) The principal office of the Corporation shall be located in the District of Columbia, but the Corporation may establish agencies and branch offices at such other places as may be determined by its Board of Directors.

ORGANIZATION OF CORPORATION

SEC. 102. (a) As soon as possible after the date of the enactment of this Act, the President shall convene a temporary panel which shall consist of the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and the Chairman of the Board of Governors of the Federal Reserve System, and which shall act as the initial incorporators of the Corporation and serve as its board of directors until their successors are elected and qualified. The panel shall arrange for an initial stock offering in accordance with section 103, shall make specific recommendations to the President with respect to the appointment and composition of the Board of Directors to be designated under subsection (b) of this section, and shall take whatever other actions are necessary (with the approval of the President) to establish the Corporation. Upon the completion of its duties under this subsection, and in any event within a period of 120 days after it is initially convened (or within such longer period as the President may specify if additional time is necesary for the completion of such duties), the panel shall be relieved of all responsibilities under this Act and dissolved.

(b) The power of the Corporation to act shall (except as otherwise specifically provided) be vested in its Board of Directors, which shall be appointed by the President by and with the advice and consent of the Senate and which shall consist of 9 members as follows:

(1) three members who are from qualifying firms, one from a firm having annual sales of between $1,000,000 and $50,000,000, one from a firm having annual sales of between $50,000,000 and $100,000,000, and one from a firm having annual sales of more than $100,000,000 (determined in the case of any such member on the basis of sales data for the most recently completed year as of the time of his initial appointment);

(2) three members who are officers (respectively) of a commercial bank, an insurance company, and a pension fund which engage in the financing of industrial innovation endeavors; and

(3) three members from the public sector who are determined to be particularly qualified, by reason of their experience and expertise in industrial innovation endeavors, to participate in the conduct of the Corporation's affairs and otherwise to carry out the purpose of this Act.

(c) Each member of the Board shall be a citizen of the United States.

(d)(1) The President shall from time to time designate one of the members appointed under paragraph (1) or (2) of subsection (b) to be the Chairman of the Board.

(2) The Board may by resolution delegate to the Chairman such of its functions, powers, and duties as it deems appropriate, and the Chairman may by written instrument delegate any of the functions, powers, and duties assigned to him to such other full-time directors, officers, or employees of the Corporation as he deems appropriate.

(e) Members of the Board shall serve for terms of 6 years; except that (1) the terms of the members first appointed under each of the numbered paragraphs of subsection (b) shall be appropriately staggered to assure maximum continuity in the membership of the Board, and (2) no member appointed under paragraph (1) or (2) of subsection (b) shall serve as such for more than two consecutive full terms.

(f) The Corporation shall have a president, and such other officers as may be named and appointed by the Board. The members of the Board, and the officers of the Corporation, shall be compensated at rates fixed by the Board; and such officers shall serve at the pleasure of the Board.

(g) No officer of the Corporation shall receive any salary from any source other than the Corporation during the period of his service with or employment by the Corporation.

(h) The President of the Corporation with the approval of the Board shall appoint and fix the salaries of such employees as are necessary for the performance of the functions of the Corporation, including a permanent administrative and professional staff the size of which shall be determined by the Board according to its needs, and shall in addition procure outside assistance when necessary or desirable in the performance of the Corporation's functions.

(i) No member of the Board or officer of the Corporation shall participate in any way (1) in the consideration or evaluation of any application for assistance made by a qualifying firm in which such member or officer has any ownership interest or by which such member or officer was employed within the 10-year period immediately prior to the receipt of such application, or (2) in any other action taken with respect to such an application or any other matter or proceeding directly affecting or involving such a firm.

(j)(1)(A) Subject to subparagraph (B), in providing assistance and otherwise performing its functions under this Act, the Corporation shall be subject to the same requirements with respect to freedom of information as are other Federal agencies when engaged in generally similar activities.

(B) The Corporation may withhold information which is exempted from disclosure under section 552(b) of title 5, United States Code and subsection (k) as it pertains to minutes of meetings of the Board.

(2) The Corporation, upon receipt of any request for information, shall determine, promptly whether to comply with such request and shall promptly notify the person making the request of such determination. In the event of an adverse determination, and if requested by the person requesting the information, such determination shall be reviewed by the General Counsel of the Corporation.

(3) Section 1905 of title 18, United States Code, shall apply—

(A) to Directors, officers, and employees of the Corporation as if they were officers or employees of the United States; and

(B) to the Corporation as if it were a Federal agency.

(k)(1) All meetings of the Board held to conduct official business of the Corporation shall be open to public observation, and shall be preceded by reasonable public notice. Pursuant to such bylaws as it may establish, the Board may close a meeting if the meeting is likely to disclose—

(A) information which is likely to adversely affect financial or securities markets or institutions;

(B) information the premature disclosure of which would be likely to—

(i) lead to speculation in securities, commodities, minerals, or land; or

(ii) impede the ability of the Corporation to negotiate a contract for financial assistance; or

(C) matters of information exempted from public disclosure pursuant to paragraph (1), (2), (4), (5), or (6) of section 552b(c) of title 5, United States Code.

(2) The determination to close any meeting of the Board for any of the purposes specified in subparagraphs (A) through (C) of paragraph (1) shall be made in a meeting of the Board open to public observation preceded by reasonable notice. The Board shall prepare minutes of any meeting which is closed to the public, except for those portions thereof which, in the judgment of the Board, may be withheld under the provisions of subparagraphs (A) through (C) of paragraph (1).

FINANCING OF THE CORPORATION; CAPITAL STOCK AND DEBT OBLIGATION

SEC. 103. (a) The Corporation shall have capital stock of $1,000,000,000 subscribed by the United States of America acting by and through the Secretary of the Treasury, payment for which shall be subject to call in whole or in part by the Board and subject to the availability or appropriations therefor. There is hereby authorized to be appropriated to the Secretary of the Treasury $1,000,000,000 for this purpose. Not later than one hundred and eighty days after the close of each fiscal year of the Corporation, the Corporation shall declare and shall thereafter pay a dividend on its outstanding capital stock, in an amount determined in the discretion of the Board but not less than an amount computed by multiplying a percentage determined by the Secretary of the Treasury, taking into account the current average percentage yield on marktable obligations of the United States as of the close of such fiscal year, by the paid-in value of such outstanding capital stock; except that the Corporation may defer payment of any such dividend if the Corporation has no earned surplus as of the close of such fiscal year or if the Board determines that the funds otherwise available for payment of the dividend should, in furtherance of the purpose of this Act, be used to provide financial assistance pursuant to title II of this Act. Any dividend deferred pursuant to this section shall, until paid, bear interest at a rate determined by the Secretary of the Treasury and adjusted at the commencement of each fiscal year, taking into consideration the then current average annual percentage yield on marketable obligations of the United States.

(b)(1) The Corporation is authorized to issue and to have outstanding at any time notes, debentures, bonds, or other obligations in such amounts as shall be necessary to provide the financial assistance authorized under title II of this Act, subject to such annual limitations as may be provided in advance in appropriation Acts; except that the Corporation shall not issue any such obligation without the prior concurrence of the Secretary of the Treasury as to the method, source, interest rate, timing, and other terms and conditions of such obligation. The Secretary of the Treasury may direct that any such obligations issued by the Corporation be sold to the Department of the Treasury for its own account or to the Federal Financing Bank.

(2) For purposes of purchasing the obligations of the Corporation pursuant to this section, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under the Second Liberty Bond Act are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this section shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. Interest due on obligations of the Corporation held by the Treasury may be deferred, at the discretion of the Secretary, but any such deferred interest shall bear interest at the rate specified in this paragraph. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine any of the obligations acquired by him under this subsection. All redemptions, purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(3) All obligations of the Corporation issued under this subsection shall be fully and unconditionally guaranteed as to principal and interest and shall constitute general obligations of the United States, backed by the full faith and credit of the Government of the United States of America. Such guarantee shall be expressed on the face of all such obligations.

(c) Obligations of the Corporation issued under this section shall be lawful investments and may be accepted as security for all fiduciary, trust and public funds the investment or deposit of which is under the authority or control of the United States or any officer or officers thereof.

CORPORATE OBJECTIVE

SEC. 104. It shall be the objective of the Corporation in the performance of its functions under this Act, utilizing funds made available to it under section 103 and acting through the provision of assistance as described in title II to promote the development and commercialization of industrial innovation endeavors in the United States by supporting qualifying firms in undertaking such endeavors and in otherwise carrying out the purpose of this Act.

GENERAL POWERS OF CORPORATION

SEC. 105. In carrying out the purposes of this Act, the Corporation shall have the power—

(1) to adopt, alter, and rescind bylaws and to adopt and alter a corporate seal, which shall be judicially noticed;

(2) to make contracts with individuals and private or governmental entities;

(3) to lease or purchase and to dispose of such real property as may be necessary for the transaction of its business;

(4) to acquire and dispose of personal and intangible property (including money);

(5) to sue and be sued in its corporate name, and complain and defend in any court of competent jurisdiction, State or Federal;

(6) subject to the provisions of section 102(f), (g) and (h), to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business and to define their authorities and duties, require bonds of them, and fix the penalties thereof;

(7) to make provision for and designate such committees, and the functions thereof, as the Board may deem necessary or desirable;

(8) to determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid;

(9) to use the United States mails on the same terms and conditions as the executive departments of the United States Government;

(10) with the consent of any board, commission, independent establishment, or executive department of the executive branch, to make use of services and facilities thereof, with or without reimbursement, in carrying out the provisions of this Act; and

(11) to exercise all other lawful powers necessarily or reasonably related to the establishment and conduct of a corporate entity, to the achievement of its purposes, and to the exercise of its powers, purposes, functions, duties, and authorized activities.

TITLE II—FINANCIAL ASSISTANCE

GENERAL AUTHORIZATION OF ASSISTANCE

SEC. 201. (a)(1) Subject to the limitations set forth in this title, the Corporation is authorized and empowered, upon such terms and conditions as it may determine in carrying out its objective under section 104, to provide financial assistance to qualifying firms, in the form of loans, loan guarantees, and equity investments, for project involving industrial innovation endeavors, in accordance with sections 202 and 203. Such assistance shall be available only to firms which satisfy the applicable requirements of this title, and which would not otherwise receive sufficient financing for the projects involved on terms which would make them commercially feasible (as demonstrated by documented evidence of unsuccessful efforts to obtain financial assistance from other sources, and by such other evidence as the Board may consider indicative).

(2) The Corporation may also provide such assistance by entering into joint venture agreements with qualifying firms to promote industrial innovation endeavors, on such terms and conditions as it deems consistent with the purpose of this Act.

(b) In determining whether to provide assistance to an applicant under this title, the Corporation shall consider and take into account all relevant statistics which are available from the Board of Governors of the Federal Reserve System; but any such determination shall be made without regard to whether or not a patent has been applied for or granted on the product, component, or process involved.

(c) In providing assistance under this title, the Corporation shall treat large and small firms equally, and shall not take the size of an applicant into consideration in determining whether it qualifies for assistance. To the maxmum extent possible, the Corporation shall encourage and assist smaller firms in applying for such assistance, and shall provide such assistance without discrimination to qualifying firms making application therefor which are wholly or primarily owned or operated by members of minority groups.

(d) The Corporation shall make continuing and intensive efforts to publicize its activities under this title, with a view to assuring that all qualifying firms (particularly smaller firms) which might qualify for and benefit from assistance under this title will be fully aware of the availability of such assistance and the steps to be taken to obtain it.

(e) Costs incurred by the Corporation in considering and evaluating applications for assistance under this title (other than clerical and related costs which are reflected in fees charged under section 205) shall be considered administrative expenses and shall not be chargeable or attributable to the particular projects or proposals involved.

(f) Assistance under this title shall be available only to firms which—

(1) adopt and enforce (in the activities financed with such assistance) the labor standards generally required of recipients of assistance under similar programs conducted or administered by other Federal agencies, and

(2) provide reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of construction or modernization for which such assistance is provided under this Act will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have with

respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(g) Nothing in this title shall be deemed or construed to require or obligate the Corporation to provide financial assistance to any individual project or particular type of project.

(h) All contractual commitments of the Corporation to provide financial assistance shall be general obligations of the United States and backed by its full faith and credit.

Loans to and Equity Investments in Qualifying Firms.

SEC. 202. (a) The Corporation is authorized and empowered under this title to make a loan to or equity investment in any qualifying firm which fulfills the eligibility requirements set forth in this section and section 204, for any project described in subsection (b) of this section.

(b) A loan to or equity investment in a qualifying firm under this title shall be made only to assist such firm in planning and developing a project which (in the judgment of the Board) consists wholly or primarily of a single industrial innovation endeavor, or to assist such firm in producing and marketing the product, component, or process involved in such endeavor, or both. The specific purposes for which such a loan or equity investment may be made shall include assistance in financing the ownership, construction, conversion, or expansion of productive facilities, assistance in acquiring equipment, plant, machinery, supplies, or materials or acquiring land, mineral rights, or services, and assistance in providing the working capital needed to carry out the project in an efficient manner.

(c) When selecting projects from the pool of eligible proposals to receive such a loan or equity investment, the Corporation shall consider (with respect to each project)—

(1) the productivity of the industry of which the applicant is a part, as determined in accordance with the guide to productivity of the Bureau of Labor Statistics and any other reasonable measures of productivity;

(2) the availability of capital within the firm;

(3) the commercial feasibility of the project, and the potential marketability of the resulting product, component, or process;

(4) the likelihood of eventual repayment of the loan, or the likely return on the equity investment and its potential saleability;

(5) the impact that the project would have upon national energy use and its potential for leading to energy savings;

(6) the possibility of improvement in the United States' competitive position in the international market as a result of the project;

(7) the extent to which the loan or equity investment would aid the applicant in its primary line of business or in a line which is intended to become its primary line of business;

(8) any negative effect which the project might have by reducing or tending to reduce competition or by conferring upon the applicant a significant competitive advantage over other firms in the same industry;

(9) the risk involved in the project or undertaking, and the level of commitment of the applicant with respect to repayment of the loan; and

(10) such other factors as in the Board's judgment may bear upon the extent to which the loan or equity investment would aid in carrying out the purpose of this Act and the mission and objective of the Corporation.

(d) A loan made under this title with respect to any project may include an amount to cover the expenses incurred by the applicant in developing and submitting its proposal for such project if or to the extent that such expenses represent a significant part of the total cost of the project, as determined in accordance with guidelines prescribed by the Corporation.

(e) To the maximum extent possible, any equity investment in a qualifying firm by the Corporation pursuant to this Act shall be made on terms and conditions which provide for the purchase by such firm of the Corporation's investment within such period as the Board may determine to be reasonable.

(f) Nothing in this title shall prevent the Corporation from making a second-stage or follow-up loan or equity investment to a qualifying firm with respect to any project, whether the initial financing or other previous assistance for such project was obtained under this title or from another source, if the Corporation determines that (1) the project has been carried out in accordance with the provisions of this Act and the requirements imposed by the Corporation in connection with such previous assistance, (2) the product, component, or process involved promises to be commercially feasible and marketable, (3) the ability of the firm to complete the project and to commence the actual production and marketing of such product, component, or process depends at least in part upon the receipt of additional assistance, and (4) the making of such loan or equity investment would promote the purpose of this Act and protect the Corporation's interests.

LOAN GUARANTEES TO QUALIFYING FIRMS

SEC. 203. The Corporation is specifically authorized, on such terms and conditions as the Board may prescribe, to guarantee any lender against loss in whole or in part of principal and interest on securities, obligations, or loans (including the refinancing thereof) issued to provide funds to any qualifying firm, where such firm and the project involved meet the applicable criteria for loans under section 202 and such funds substantially contribute to the accomplishment of the purpose of this Act. All guarantees entered into by the Corporation under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the Government of the United States of America. Any guarantee made by the Corporation under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof; shall be conclusive evidence that such guarantee complies fully with the provisions of this Act and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans involved and of the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, or loan, except for fraud or material misrepresentation on the part of such holder. The Corporation shall be subrogated to the rights of any third party receiving payments of interest or principal out of funds provided by the Corporation under a guarantee arrangement authorized hereunder.

LIMITATIONS ON PROVISION OF FINANCIAL ASSISTANCE

SEC. 204. (a) Financial assistance provided by the Corporation shall be made upon such terms, and subject to such conditions and restrictions, as shall be deemed by the Board to be consistent with the purpose of this Act and the needs of the recipient. Financial assistance will be provided in a manner which, to the maximum extent possible, does not restrain trade or tend to promote a monopoly by the recipient.

(b) Interest rates, terms of repayment, and other conditions of any financial assistance granted by the Corporation to any recipient shall not be more favorable than the prevailing rates, terms, and conditions available to borrowers in the private market for activities of a similar scale and nature, unless the Corporation finds that more favorable rates, terms, or conditions are essential to the repayment of the assistance and to the success of the industrial innovation endeavor involved.

(c) The Corporation shall not have outstanding at any one time financial assistance in an aggregate amount in excess of $10,000,000,000. In calculating total financial assistance, the bank shall count not less than 25 per centum of any guarantees outstanding; and the aggregate amount of guarantees outstanding at any one time shall not exceed $20,000,000,000.

(d) No financial assistance may be provided unless an application therefor has been submitted to the Corporation in such manner and containing such information (including a detailed description of all technical, business, and economic aspects of the proposed project) as the Corporation may require, and the Corporation has reviewed such application. Nothing herein shall preclude the Corporation from providing financial assistance to two or more similar projects if it determines that such assistance is appropriate and consistent with the purpose of this Act.

(e) The outstanding principal amount of all loans made or guaranteed by the Corporation to any single firm under this Act may at no time exceed $100,000,000.

(f) Any financial assistance provided under this Act, and any of the terms and conditions thereof, may be renewed, modified, or extended by the Board in such manner and on such terms and conditions as the Board may deem appropriate, to the extent that such renewal, modification, or extension is consistent with the provisions of this Act and with any outstanding contractual agreements relating to such assistance.

FEES

SEC. 205. The Corporation may charge reasonable fees for making loans, guarantees, and commitments therefor pursuant to this title.

ACCESS TO INFORMATION

SEC. 206. Every applicant for financial assistance under this Act, shall, as a condition precedent thereto, consent to such examinations as the Corporation may require for the purpose of this Act, and shall further consent that any reports or examinations of the applicant by constituted authorities may be furnished by such authorities to the Corporation upon request therefor. The Corporation shall require such reports as it deems necessary from any firm receiving financial assistance under this Act regarding activities carried out pursuant to this Act. The Corporation is authorized to prescribe the keeping of records with respect to all such financial assistance and shall have access to such records at all reasonable times for the purposes of insuring compliance with the terms and conditions upon which the financial assistance was provided.

TITLE III—MISCELLANEOUS PROVISIONS

TAX STATUS

SEC. 301. The Corporation, its franchise, capital, reserves, surplus, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property owned in fee by the Corporation shall be subject to State, territorial, county, municipal, or other local taxation to the same extent, according to its value, as other similarly situated and used real property, without discrimination in the valuation, classification, or assessment thereof.

BUDGETARY TREATMENT

SEC. 302. The receipts and disbursements of the Secretary of the Treasury in connection with the purchase or redemption of, and income from, capital stock of the Corporation shall not be included in the totals of the budget of the United States Government. The receipts and disbursements of the Corporation in the discharge of its functions shall be included in the totals of the budget of the United States Government and shall be subject to any annual limitation imposed by statute on expenditures and net lending (budget outlays) of the United States.

MONEYS OF THE CORPORATION

SEC. 303. All moneys of the Corporation not otherwise employed may be—

(1) deposited with the Treasury of the United States subject to withdrawal by the Corporation, by check drawn on the Treasury of the United States by a Treasury disbursing officer, or

(2) with the approval of the Secretary of the Treasury, deposited in any Federal Reserve bank, or

(3) with the approval of the Secretary of the Treasury, and by authorization of the Board, used in the purchase for redemption and retirement of any notes, debentures, bonds, or other obligations issued by the Corporation.

FORMS OF NOTES, BONDS, AND OTHER OBLIGATIONS

SEC. 304. In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this Act, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the Treasury subject to delivery, upon order of the Corporation. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other obligations.

FISCAL YEAR; REVIEWS AND AUDITS

SEC. 305. (a) The fiscal year of the Corporation shall coincide with the fiscal year of the United States Government.

(b) On or before June 30 in each year, the Corporation shall submit to the Director of the Office of Management and Budget a financial and management plan, in such detail as the Director may prescribe, for the succeeding fiscal year.

(c) The Corporation shall retain a firm or firms of nationally recognized public accountants who shall prepare and report an annual audit of the accounts of the Corporation including the statements identified in section 106 of the Government Corporation Control Act. The General Accounting Office is authorized to conduct such audits of the accounts, and to report thereon to the Congress, as such Office shall deem necessary or as the Congress may request. All books, accounts, financial records, reports, files, papers, and property belonging to or in use by the Corporation and necessary to facilitate an audit shall be made available to the person or persons conducting the audit and facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

REPORTS

SEC. 306. (a) (1) The Corporation shall submit an annual report to the Congress and the President. The report will state the aggregate sums then outstanding or committed as loans, equity investments, loan guarantees, or other financial assistance and a listing of the qualifying firms involved.

(2) The annual report in which any expenditure or commitment to a firm is first noted shall contain a brief description of the factors considered by the Board in making such expenditure or commitment. The report shall also show the number, functions, and compensation of persons employed or under contract by the Corporation at salary rates exceeding $2,500 per month.

(b) The annual report shall set forth the audited financial statements and report prepared by the independent public accountants pursuant to section 305(c), and shall also contain a general description of the Corporation's operations during the year, a specific description of each project or activity in which the Corporation is involved, a status report on each such project or activity, and an evaluation of the contribution which the project or activity has made and is expected to make in fulfilling the purpose of this Act.

NUCLEAR POLLUTION OF THE OCEAN

(Mr. ANDERSON of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANDERSON of California. Mr. Speaker, there are indications, too numerous to ignore, that large amounts of nuclear waste material have been dumped in shallow areas far from the designated 6,000 foot deep ocean disposal sites, and that prohibited high-level waste has also been put in the ocean.

I have reviewed many previously ignored studies and reports which lead me to believe that contrary to testimony from the Environmental Protection Agency (EPA) before the Oceanography Subcommittee in 1978, high-level radioactive waste materials were dumped off the coast of California between 1946 and 1965. In addition, I have spoken with experts who have both interviewed ship captains who were in charge of disposing of the waste, and who have participated in scuba diving explorations of the dump region. Evidentally much of the wastes never made it to the licensed disposal site.

More than 48,000 drums and vaults of nuclear material were dumped off the coast of San Francisco between, 1946 and 1965. Most of this waste was to be dumped at dumpsites in 6,000 feet of water—approximately 50 miles off the coast. A 1957 Atomic Energy Commission (AEC) study by Arnold B. Joseph states:

> Because of such uncontrollable factors as sudden inclement weather and malfunctioning equipment some (few) packages of waste have been deposited in alternative areas.

The fact is, no one has ever completely examined the dump regions to determine how many of the drums really made it to the licensed areas. Even more alarming is there was no one specific disposal area. The October 22, 1958 license issued by the AEC to the Nuclear Engineering Co., of Walnut Creek, Calif., merely stated that:

> The licensee shall dispose of byproduct, source, and special nuclear material in either the Atlantic or Pacific Oceans at a minimum depth of 1,000 fathoms.

The actual location was clearly up to the discretion of the company.

The marine environment may be seriously threatened if high-level nuclear wastes were dumped without adequate protection, especially if they were illegally dropped in shallow water, rich in fish caught by sport and commercial fishermen alike. Amendment No. 1 to the Nuclear Engineering Co. license was issued on November 7, 1958. This allowed them to: "Transport and process as low-level waste a total of 4,000 gallons of liquid waste in concentrations not exceeding 2.0 micro-curies per milliliter." Although the term "low-level waste" is used, according to the definition of high-level waste by the Argonne National Laboratory, this material contained twice as much nuclear material as their classification for high-level liquid waste material.

Testimony by John A. Kaufman in 1958 described the methods used by the University of California Radiation Laboratory at Berkeley to dispose of all their nuclear wastes—both high and low level. He states:

> All nongaseous waste is packaged in concrete . . . The concrete packages are made so they can be stored safely for an indefinite period and eventually be safely transported by truck to a barge for disposal at sea at a depth of 1,000 fathoms (6,000 ft.). . . . The solid wastes from high-level operations are discharged into shielded waste containers.

At the waste processing area the waste container is placed "into a specially designed concrete block for sea disposal." The report goes on to say that—

> High-level large-volume aqueous wastes produced during high-level chemistry work . . . are discharged into specially designed and shielded waste containers. . . . The wastes are then solidified either in the waste container or in a specially-constructed concrete block.

It is clearly evident from this statement from an individual who worked in these laboratories, that high-level wastes were indeed packaged for disposal in our oceans.

EPA stated in their testimony before the Oceanography Subcommittee in 1978 that:

> Contamination (Plutonium 239-240) around the radioactive waste drums were at concentrations ranging from 2 to 25 times higher than the maximum expected weapons testing fallout concentration for this latitude and depth of water.

One must ask: If this is the concentration from low-level drums which they found broken open—what is the concentration at the high-level waste drums which they have not found?

The other important factor, which EPA has failed to report to us, was conveyed in the 1957 AEC report. While we were lead to believe that we knew where all the waste were presently situated, we were also told that it was known exactly how much nuclear waste material were in the drums. According to the AEC report there may be 10 times more nuclear waste sitting on the ocean bottom than their estimates now show.

I also seriously question the monitoring safeguards provided for in the licenses. For example, the September 1959 license issued to the Ocean Transport Co. stated that the "proposed operations will be under the direct supervision of a person who has had at least 4 years training and experience at Lawrence

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Radiation Laboratories." This is well and good for insuring compliance with radiation emission standards and drum-handling procedures—but this supervisor did not have to have any sea experience and would not know the difference between being out 25 miles at sea in 300 feet of water and being out 50 miles in 6,000 feet of water. This is very similar to another lax nuclear waste disposal license issued in March 1958 which stated that:

> A qualified member of Isotopes Specialties Company who is familiar with the administrative procedures, together with proper instrumentation for measuring dose rates and detecting contamination is to accompany the disposal crew on the sea journey.

It is evident that the AEC did not feel it was necessary for them to directly monitor these disposal operations with their own personnel.

It is also very apparent that the Federal Government clearly disregarded the wishes of the State of California to protect its coastal marine environment. On May 13, 1958, the State of California entered into an agreement with the companies licensed by the AEC to dump waste off our coast. The agreement stated:

> Wastes will be packaged in containers of such integrity that they will remain intact at the depths prescribed.

And that—

> All such wastes will be disposed of in at least 2,000 fathoms (12,000 feet) of water.

Every license I have examined that was issued after this date by the AEC continued to allow these companies to dump in 6,000 feet, and by EPA's own research it is evident that at least 25 percent of these drums were broken open by water pressure before they ever reached the bottom.

It is possible we may not be able to track down where the nuclear wastes have been dumped. If the reports I have received that some of the ships captains disregarded the license instructions to dispose of the waste in a minimum of 6,000 feet at a specific location, they surely would not have recorded where they dumped the material in their ship's log or reported it to the AEC. The naive assumption that original records were accurate has made all subsequent studies unreliable.

The Environmental Protection Agency has examined what they consider to be the proper disposal sites three different times. But when we asked them if they had investigated the possibility that not all the radioactive material made it to the safe dumpsite—they said they were told of the possibility several years ago by some newspapers but they were "not into muckraking."

As a member of the Merchant Marine and Fisheries Committee which wrote the Ocean Dumping Act to protect our oceans from radiological contamination, I find it absolutely incredible that the agency we designated to enforce these protections has been so cavalier.

Therefore, I am introducing a bill today which will mandate that the National Oceanic and Atmospheric Administration (NOAA) conduct an oceanographic survey of not only the areas where the wastes were supposed to be dumped, but also the areas where the nuclear material may actually be illegally located. NOAA will have to physically examine the drums and concrete vaults and determine whether in fact they are high-level wastes.

In addition NOAA must determine if these wastes pose any threat to the marine environment and to humans who eat fish exposed to radiation from these wastes.

Rumors and speculation abound concerning the actual disposal of these dangerous materials—some of which will remain radioactive for thousands of years. It is time to set the record straight. We must do a thorough examination. Only then can we begin to solve any potential problem.

SBA FALLS SHORT OF GIVING "SPECIAL CONSIDERATION" TO VETERANS

(Mr. HILLIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HILLIS. Mr. Speaker, earlier this year, on June 18, 1980, the Committee on Veterans' Affairs Subcommittee on Special Investigations conducted oversight hearings on the implementation of Public Law 93-237. Under the provisions of this law, our Nation's veterans were to be given "special consideration" by the Small Business Administration in their attempts to enter the field of business.

Testimony received at this hearing brought out clearly that SBA had done little, if anything, toward assisting veterans even though Public Law 93-237 had been the law of the land since January 1974. At the conclusion of the June hearing, I issued a statement sharply critical of both SBA Administrator Vernon Weaver and President Carter for their total lack of commitment to our Nation's veterans. In this statement, I said:

> Six years is far too long for the President to implement the goals of the Congress and it is far too long for our Nation's veterans to wait while the Federal bureaucracy ignores their needs.

My purpose in speaking today, Mr. Speaker, is to furnish my colleagues with an update of what has transpired since the June hearing.

Last week, the subcommittee conducted further hearings into this matter and I can report that while there has been some movement within SBA to assist veterans, there is still a long road to travel before Public Law 93-237 becomes fully implemented. At this most recent hearing on September 10, 1980, Deputy Administrator William H. Mauk testified on behalf of the SBA. While admitting that SBA had totally ignored the needs of our Nation's veterans until recent months, Mr. Mauk then attempted to paint a very rosy picture now that the agency had finally awakened to and recognized the existence of a 6-year-old congressional mandate.

But, I submit, Mr. Speaker, that is hardly the case. The fiscal year 1981 budget for SBA contains no specific funding for assisting veterans while over $13 million is earmarked for monitoring loan applications from women. Now, we can all be proud of SBA's success in the area of assisting women and minorities. But we should all be ashamed by the agency's lack of assistance to veterans.

Mr. Mauk testified that in the first 6 months of fiscal year 1980, 13 percent of all SBA loans went to veterans; yet veterans, their survivors, and their dependents comprise nearly 50 percent of our Nation's population. The SBA can and must do better. When he returned home, the Vietnam veteran received something less than a joyous welcome from his peers, and were he to seek the assistance today of the SBA he would also be received with something less than "open arms."

Mr. Speaker, as I have indicated, Public Law 96-237 has been the law of the land for 6 years, yet I predict that some time between now and election day, November 4, President Carter will hold a media event. He will profess his concern for all veterans, criticize the treatment many have received from Federal agencies, and then will sign an executive order directing SBA and all agencies to redouble their efforts in assisting the Vietnam veteran. This will be the height of hypocrisy.

It is reminiscent of his attending the American Legion Convention in Boston, stating his support of and concern for our veterans, only to veto a bill designed to improve the quality of health care a veteran receives from VA physicians in VA hospitals. It is unfortunately also reminiscent of the President's statement to the sailors aboard the *Nimitz*, returning from 144 days at sea, that he would support a cost-of-living pay increase for them, yet upon returning to the White House the President changed his mind. Then, after the Congress acted favorably on the Nunn-Warner amendment to effect such an increase, the President grandly held a bill-signing ceremony to accept credit therefor.

Now, after 3½ years of doing nothing to help veterans enter the arena of small business, he will sign the Executive order with great fanfare. I hope all Americans, and particularly our veterans, will see through this transparent attempt to garner votes.

It is my hope that the subcommittee will continue to monitor the actions of SBA and that further hearings will be promptly scheduled when necessary. At this time, however, I do want to commend the subcommittee's chairman, the Honorable RON MOTTL, for his tenacity in pursuing this issue. Without his support, and that of the veterans' organizations as well, the issue may well have remained dormat, with veterans continuing to be ignored by SBA.

□ 1230

DEADLINE MISSED ON SECOND BUDGET RESOLUTION

(Mr. REGULA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REGULA. Mr. Speaker, yesterday, I took the well of the House to remind colleagues and the Nation of the failure of this Congress to obey the law and complete action on the second budget resolution. The Budget Act requires that action on the binding second budget resolution be completed on or before September 15. September 15 was yesterday and the Senate has not passed a budget resolution and the House Budget Committee has not even scheduled markup sessions.

Today, I bring to the attention of my colleagues and the American people an equally serious example of fiscal and budget irresponsibility—the inability of Congress to pass the appropriation bills before the start of the new fiscal year.

Counting today, there are 11 legislative days left in the 1980 fiscal year; the new fiscal year begins on October 1. Yet, as of today, not a single one of the 13 major appropiration bills has passed the Congress.

The 1974 Budget Act changed the start of the fiscal year from July 1 to October 1 in order to allow more time for the Congress to consider the major spending bills. Action on the 13 major appropriation bills was to be completed before the adoption of the second budget resolution so that the second resolution could specify any "reconciliation" or spending reductions from the spending bills when viewed "in toto."

Mr. Speaker, let me be the first to offer the suggestion that the President may choose to follow in the footsteps of his avowed idol—Harry Truman—and call this Congress back into session—before the election, of course—to complete action on the appropriation bills.

If it were not for the obvious political motivation behind such a move, it would have my support; however, calling the Congress back should not be necessary because Congress should not adjourn before enacting all major appropriation bills.

A lameduck session is not the place to consider the most important bills a Congress must deal with. Adjournment before this important business is completed is a glowing example of the lack of priority this Congress puts on fiscal discipline.

IN TRIBUTE TO THE LATE ALDO BECKMAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. DERWINSKI) is recognized for 60 minutes.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Speaker, it is my sad duty to inform my colleagues of the death last week of an outstanding journalist and the respected chief of the Chicago Tribune's Washington bureau, Aldo Beckman. Aldo died of cancer last Wednesday, September 10, at his home in Arlington, Va. Although Aldo suffered a great deal before his passing, he never made any concession to the illness that he was enduring, and proceeded to work until the end. This was an example of the courage and dedication that he brought to his profession, which was almost without precedent.

I have asked for this special order so that the Illinois delegation and all those Members who knew Aldo may have the opportunity to bid farewell to a good friend and to one of the finest and ablest news correspondents.

Aldo's list of accomplishments was extensive. Although only 45 at the time of his death, Aldo Beckman had gained a well-deserved reputation for his keen and penetrating manner of reporting. He received several journalism awards during the period he served as the Tribune's White House correspondent. In 1975, he received the prestigious Merriman Smith Memorial Fund Award for his coverage of Sarah Jane Moore's assassination attempt on President Ford. Aldo won the Tribune's Edward Scott Beck Journalism Award for his coverage of President Nixon's trip to China in 1972. He had previously won this award for his exclusive report in 1966 on a story involving former Agriculture Secretary Orville Freeman's advice to Democratic congressional candidates to "duck" questions on consumer prices.

Aldo was born in Lima, Ill., attended Bradley University, and graduated from Western Illinois University in 1956. After serving in the Army for 2 years, he worked for the Chicago bureau of United Press International for 15 months before joining the Tribune staff in 1959.

After being transferred to Washington in 1965, Aldo spent a great deal of time covering the Congress, and earning our great respect and appreciation of his effective journalistic attributes.

From 1970 to 1976, Aldo was the Tribune's White House correspondent. In addition, he served a term as president of the White House Correspondents Association. He was recognized by his colleagues as well as the Presidents he covered, as a man full of affection and warmth, and with a colorful personality which was reflected in his wit, intellect, and writing.

In 1976, Aldo was appointed chief of the Washington bureau, climaxing a journalistic career with the Chicago Tribune which began in 1959. Aldo spent almost a decade in Washington circles, and became one of the National Capital's finest reporters and illustrious journalists. His honest judgment and conscience in portraying the Washington scene helped the readers of the Tribune get an accurate look at the work of their Presidents and the Congress.

Upon this sad occasion, my wife, Pat, joins me in extending our heartfelt sympathies to Aldo's wife, Marijo, their five children, and the entire Beckman family on their great loss. What he did in his life will long live with us.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Illinois.

SPECIAL TRIBUTE TO ALDO BECKMAN

Mr. RAILSBACK. I thank the gentleman for yielding.

Mr. Speaker, I have the privilege of representing the people of Lima, Ill., which is in the western part of our State, and which was the birthplace of Aldo Beckman. I met Aldo when he was a young reporter with the Chicago Tribune, and while I was a member of the Illinois State Legislature. However, it was after I had been elected to Congress in 1966 and moved with my family to Washington that we became good friends. As my wife reminded me, in the very first week after we had moved here from Moline, Aldo and his wife Marijo invited us to their home in Arlington for dinner. It was our first social gathering in Washington, and it helped to make us feel at home. Then from time to time Aldo and I would have dinner, not for purposes of discussing politics or business, but rather to relax and enjoy a good visit.

During my 14 years in Washington I followed Aldo Beckman's career, and I was very proud that he was born and raised in my district. Aldo's father, also named Aldo Beckman, has been a lifetime resident of Lima, and he is one of the area's most respected citizens. Occasionally I would report to his father back in Lima to tell him what a fine job his son was doing. But it was only last Friday, after Aldo's funeral, and many memorial tributes and letters that his father confided to me that he had had no idea of how outstanding his son was. It would have been out of character for Aldo to ever brag about himself.

During Aldo's unfortunately brief career as a reporter, and finally as head of the Washington Bureau for the Chicago Tribune, he did indeed perform in an outstanding manner. His intelligence and wit, his humor and honesty, and his ability to write, all exemplified the job that he did and the respect that he gained from colleagues, politicians, and readers. Traditionally and understandably there is oftentimes an adversarial relationship between politicians and journalists. In the case of Aldo Beckman, however, as far as I know, there was only respect. Politicians could expect to be treated factually and fairly. He made an effort to hear and tell both sides of a story.

The respect that we held for him made us even prouder when his own colleagues elected from President of the White House Correspondents Association. He received many honors during his lifetime, including the 1975 Merriman Smith Memorial Fund Award for his coverage of Sara Jane Moore's attempt to assassinate President Ford, and the Tribune's Beck Journalism Award, which he won in 1966, and again in 1972.

Lastly, Aldo leaves behind a wonderful family that was also very proud of him. I would like to express my deepest sympathy to his lovely wife Marijo, to his four daughters, Theresa, Patricia, Jennifer, and Mary Kathryn; to his son Eugene; to his father, whom I have already mentioned; and to his sister Joann Smith.

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Mr. DERWINSKI. Mr. Speaker, I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I thank my friend for yielding. I commend the gentleman from Illinois (Mr. DERWINSKI) for his thoughtfulness in taking this special order to commemorate a friend, Aldo Beckman, whose untimely death at the age of 45 years while he was chief of the Washington bureau of the Chicago Tribune has saddened all of us.

Aldo Beckman was certainly not your typical, cynical newspaperman, although he did a brilliant job and rose to the pinnacle of his profession by heading the bureau of a major American newspaper; but at the same time he was a man of gentleness, a very soft-spoken person, a person who was thoughtful and considerate of other people's feelings and who always listened and sought information rather than seeking to impart information during an interview.

I knew Aldo many years ago. As a matter of fact, I first met him when he was a witness in a criminal case that I was trying. I was defending and Aldo was called as a witness for the prosecution. I talked to him over the years. This is many years ago in Chicago and Washington. I have been out with him socially. I found him to be the sort of person that you could look up to and you would hope that someday your own children could be the sort of person that Aldo Beckman was.

Most significant was his courage and his bravery during the last few months of his terminal illness which must have been extremely painful. He faced it with a beautiful outlook. He was never complaining; brave, indeed, and set an enormous example that all of us can only aspire to.

Aldo was a beautiful, beautiful person, gentle, considerate, and I know that he is in a place of refreshment and peace. We will always miss him. We have been enriched by knowing him and we are impoverished by his loss.

Mr. DERWINSKI. Mr. Speaker, I thank the gentleman.

Mr. Speaker, all the Illinois Members and the other Members of the House who knew Aldo knew him to be a truly outstanding journalist and the type of man who was an example of the best professionalism in that field.

● Mr. ROSTENKOWSKI. Mr. Speaker, it is with a sense of great loss and sorrow that I now pay tribute to a most distinguished journalist, the late Aldo Beckman. On September 10, Aldo lost his private struggle with cancer.

Every profession has its small minority of individuals who combine both intellect and class. Aldo Beckman clearly demonstrated these two qualities and in so doing brought distinction to his profession and himself.

While he was only 45 at his death, Aldo's achievements are, to say the least, quite substantial. His career seemed to move at an ever-quickening pace. After graduating from Western Illinois University, Aldo worked for United Press International, then in 1959 moved to the Chicago Tribune. In 1965 he was promoted to the Washington Bureau of the Tribune. Once in Washington, Aldo wasted no time in establishing himself and in 1966 was awarded the Tribune's Beck Journalism Award for distinguished national journalism. In 1970 he was assigned to cover the White House and in 1972 was awarded his second Beck Journalism Award for his coverage of President Nixon's trip to China. In 1976 Aldo was named the Tribune's Washington bureau chief and from that time to his death, served in that capacity covering various Washington issues in all branches of Government.

He was hardworking and conscientious to the very end. He could not be bothered by his own physical infirmities, but rather he tried to work to his last days.

Aldo Beckman—a dedicated journalist, a man of unquestioned integrity, my dear friend—will long be missed by this Member of Congress.●

● Mr. YATES. Mr. Speaker, it is with a keen sense of loss that I rise to note the untimely passing of Aldo Beckman, the Washington bureau chief of the Chicago Tribune. Aldo had always recognized that one of the highest duties imposed upon the citizens of our country is that of keeping informed. He appreciated the awesome responsibility which this placed upon members of the press and undertook the task with dedication and honor. Moreover in a time in which much of the press has come to feel a need to be an adversary of those who practice the art of politics. It was rare to find a journalist, such as Aldo Beckman, who saw that both the press and the politicians strove toward common goals for the welfare of the people.

In the many years that I knew Aldo Beckman, both in Chicago and in Washington, I found him to be perceptive, incisive, and most persistent in obtaining the information he needed in his work, but always honorable and devoted to the truth. While Aldo and I may have disagreed on some matters, it never diminished the mutual regard, the respect and friendship that Aldo and I felt for one another. The citizens of Chicago as well as those of us in Congress will sorely miss his presence and his talent.●

● Mr. MURPHY of Illinois. Mr. Speaker, I was grieved to learn last week of the death of Aldo Beckman, the Washington bureau chief of the Chicago Tribune. Aldo Beckman was a fine human being who represented the very best in journalism. He was a conscientious reporter with keen, analytical judgment; both as a reporter and as an individual. Aldo was fair, considerate, and thoughtful in his dealings with his fellow man.

Aldo Beckman's achievements as a journalist are well known; even better known, I believe, is the high esteem and affection with which he was held by his colleagues and those who knew him in Congress.

Mr. Speaker, Bob Wiedrich of the Chicago Tribune wrote a moving portrait of Aldo Beckman last Friday. The column says of Aldo:

In my years of personal contact with Aldo Beckman, the newspaperman, I always appreciated his sense of history and his ability to place in proper perspective what was happening now with what had happened before.

To me, this is the very essence of good journalism.

I would like to draw my colleagues attention to this column of September 12:

ALDO BECKMAN'S TOO BRIEF TIME

(By Bob Wiedrich)

Aldo Beckman was an honorable man. A devious thought never crossed his mind.

He came from the rolling farm country of west central Illinois, where the terrain slopes to the Mississippi River in a tangle of glorious color and an earthy humor born of the land sustains its inhabitants through good times and bad.

Beckman brought that humor to the big city when he joined The Tribune staff as a young reporter in 1959.

He also brought with him a perspective on humanity that served him well during the 21 years that he worked as a reporter and writer for a newspaper that also had sprung from the Illinois prairie and reflected its values.

From Criminal Courts reporter to White House correspondent traveling world capitals, Beckman accepted people he met at every level of society for exactly what they were.

In writing about them, he reported accurately. He didn't produce puff pieces. Nor did he ever demean. He took life as he found it. He faithfully told his readers what he learned. He didn't embellish. The truth was his grail.

And so, in his more than two decades as a working newspaperman, Beckman left an indelible record of highly credible observations of historic events that few are privileged to witness, much less report.

Now Aldo Beckman is dead, taken by cancer this week at the age of 45. And he faced that dread disease as courageously as he confronted the challenges met during his reportorial career.

Perhaps the greatest joy of having known Beckman as a friend and colleague was his love and respect of his fellow man. Beckman found something interesting in everyone he met. And he was capable of conveying that interest to readers with enthusiasm.

When Beckman was assigned to the Criminal Courts Building beat in the early 1960s, he encountered the peaks and valleys of human behavior. For a young man, fresh from the small farming community of Lima, Ill., the jailhouse, with all its sordid sorrows and frustrations, must have been a shock.

Nevertheless, he treated everyone equally—from the lowliest defendant to the stateliest judge. And all became his admirers and friends. For they knew Beckman's word was good. He only lacked patience with phonies.

It was fun to watch Aldo Beckman grow professionally during those 21 years. He learned something new every day. He never became jaded. He had no time for cynicism.

During his apprenticeship at the Criminal Courts, he covered the big trials that made headlines.

But he also found time to write about the little people, the jail guards and bailiffs, court reporters and clerks, the low-profile jobs that make government work.

By giving them recognition, he educated and informed his readers. He also developed a network of loyal informants who kept him abreast of events on his beat, events that even the big shots of the criminal justice system knew nothing about.

Beckman took that same skill to Washington when he was transferred to the Tribune bureau there in 1966.

Within a short time, Tribune readers were relishing informative feature stories about the behind-the-scenes employes who make the top bureaucrats and congressmen on Capitol Hill look good.

And when Beckman became White House correspondent four years later, his stories about valets, butlers, chauffeurs, and Secret Service men, gleaned from the back corridors of the Executive Mansion, made not only for interesting reading but assured him a continuing supply of news tips.

In my years of personal contact with Aldo Beckman, the newspaperman, I always appreciated his sense of history and his ability to place in proper perspective what was happening now with what had happened before.

That knowledge and skill enriched his offerings to readers. It helped them better understand the world in which they lived.

Beckman's good works were not restricted solely to his own pen. He volunteered the unique access he enjoyed to great events to fellow journalists.

During his grueling trip to the People's Republic of China with former President Nixon in 1972, Beckman became the only person ever to call me collect from Peking.

The phone would ring. And there would be that friendly voice speaking across thousands of miles, inconveniencing himself to provide my column with perceptive sidelights of an unprecedented moment.

Aldo Beckman was what every newspaperman should aspire to be. He represented the finest of his craft. I am proud to have been his colleague, I am prouder still to have been his friend.

I am grateful that the Illinois heartland gave him to my profession to share his warmth, intellect, wit, and humanity, if only for a relatively short time.●

● Mr. ERLENBORN. Mr. Speaker, Aldo Beckman was a talented journalist and a good, decent human being. He was one of a comparative handful of reporters who contributed significantly over the past two decades to maintaining the Chicago Tribune's preeminence, not just in the Midwest but across the United States. He will be missed, not only by his wife and four children, but by the Tribune's millions of readers and especially by those of us in the Illinois congressional delegation who had the great and good fortune to know him and to work with him.

Our hearts, of course, go out to Aldo's family in their sorrow. May they find comfort in knowing we share their loss.●

● Mr. RUSSO. Mr. Speaker, the journalism world and the public at large suffers a great loss with the passing of Mr. Aldo Beckman. In the finest tradition of journalistic principles and skills, his work won him the admiration of his associates and the appreciation of the public.

It takes a special kind of person to manage some 20 items in 10 minutes, but that, I gather, is often the nature of news work. It is demanding. It is challenging. And while the virtues and the follies of the press may only reflect our own as a people and a country, we yet must call on it to do more, be more, because a free press in a free society bears an awesome responsibility.

Mr. Beckman met the challenge and handled the responsibility. The character of the press depends on those directing it, and we can be grateful for men like him, men of talent and insight and character.●

● Mrs. COLLINS of Illinois. I am pleased that my colleague, the Honorable EDWARD DERWINSKI, has called this special order to allow us to pay tribute to a well respected friend, Aldo Beckman.

As chief of the Washington bureau of the Chicago Tribune, Aldo was best known for his penetrating style of reporting. Those of us who were fortunate to know and work with him can truly appreciate his dedication and service in Washington. Many of us share fond memories as we reflect how Aldo presented every aspect of a true spirit of Illinois.

His accomplishments have been recognized and rewarded in the field of journalism. We can all agree that this was truly a great man and we will miss him. There can never be a replacement for someone as dear as Aldo.

Rossiter Worthington Raymond I quote in Aldo Beckman's honor:

Life is eternal; and love is immortal; and death is only a horizon; and a horizon is nothing save the limit of our sight.●

● Mr. O'BRIEN. Mr. Speaker, the passing of such a dedicated and talented man as Aldo Beckman, causes one to feel a sense of sadness that can only be felt by the loss of a special friend.

Aldo Beckman's journalistic career spanned almost a decade in the Washington circles. The various awards he received along the way and his work as Washington Bureau Chief of the Chicago Tribune, are a tribute to the talent of this well-respected gentleman.

There are many who were influenced by the work of this man. These, and many others, will feel his loss deeply.

I am grateful to have the opportunity of honoring my fellow Illinoisian. His passing leaves an emptiness that is truly noticed by us all.●

● Mr. McCLORY. Mr. Speaker, it was with a sense of personal emotion and sorrow that I recall the life and premature passing of the distinguished journalist, my friend, Aldo Beckman, chief of the Washington bureau of the Chicago Tribune.

In addition to his successful career as a journalist, primarily on the national scene, Aldo Beckman was truly a good friend of those of us on Capitol Hill who came to know him.

Earlier in his career Aldo Beckman served primarily in the press gallery of the House of Representatives, moving thereafter to devote more attention to the United States Senate and finally focusing his main attention on the White House and the entire executive department of the Federal Government.

Mr. Speaker, it can be truly said of this great journalist that he was never known to be unfair, inconsiderate, or even discourteous to a Member of this body. On the contrary, Aldo Beckman was a very great guy, one who obviously liked people just as we in our line of work are reputed to have that quality.

I recall particularly the winter of 1974–75 at Vail, Colo., when Aldo Beckman was following the early experiences of President Gerald R. Ford who was then newly occupying the office of Chief Executive of our land. Aldo Beckman and I met in the charming community of Vail, and he and his devoted and beautiful wife, Marijo, joined with my wife Doris and me for dinner and for other sociable contacts. In this friendly and unhurried atmosphere, we reflected on many of our common interests, including sports, the out-of-doors, and the exciting drama of political life in Illinois and in our Nation's capital.

Mr. Speaker, while an obviously friendly, plain-spoken individual, Aldo Beckman was at the same time a most perceptive and astute political observer and chronicler. His weekend columns in the Chicago Tribune provided analyses of developments and political trends in Washington which appeared to look behind the news columns to the events and changes that were truly happening. It was entirely appropriate that Aldo should have received special recognition as a political reporter. Aldo Beckman was a star in his profession as a journalist and in life as an individual as a husband, father, and friend. My wife Doris and I join in expressing affection and deep sympathy to his widow, Marijo, and to their children and other members of the Aldo Beckman family.●

GENERAL LEAVE

Mr. DERWINSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this Special Order eulogizing Mr. Beckman.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

A TRIBUTE TO CONGRESSMAN WILLIAM S. MOORHEAD OF PENNSYLVANIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania is recognized for 60 minutes.

Mr. GAYDOS. Mr. Speaker, Congressman JOE MCDADE and myself on behalf of the Pennsylvania delegation have taken these special orders to pay tribute to our good friend and fellow Pennsylvanian, Congressman BILL MOORHEAD, who is retiring at the end of this Congress.

Now, because of the many friends that BILL has that are here this evening, I am going to make an attempt to split evenly between both sides those who wish to speak and then will perform as the grand summation between myself and my good friend, the guy with the longest longevity in Pennsylvania, JOE MCDADE.

BILL MOORHEAD and I represent neighboring districts in southwestern Pennsylvania, an area which includes a major portion of the city of Pittsburgh and surrounding suburbs. In serving adjoining congressional districts, we share a knowledge and understanding of our respective constituencies—their attitudes, their needs, and the problems they face in their day-to-day lives.

Even before his election to Congress, BILL actively served the people of Pittsburgh, as a member of various community boards and committees, and more notably through his involvement in the city's redevelopment project known as Rennaissance I.

Since his election to Congress in 1958, BILL has held key assignments on the

Committees on Government Operations and Banking, Finance and Urban Affairs, and he has authored and passed several important bills. As chairman of the Subcommitee on Economic Stabilization, he was responsible for passage of the Energy Security Act of 1980, one of the major legislative accomplishments of the 96th Congress.

An able and knowledgeable legislator, BILL MOORHEAD has represented the people of Pittsburgh admirably, and the members of the Pennsylvania delegation have been able to look toward his expertise and leadership in serving their districts across the State. As dean of the Pennsylvania delegation, BILL, along with his competent staff, has always been readily available to be of assistance in matters affecting the State, and they have consistently maintained a close working relationship with the other members of the delegation.

Throughout this House, he has earned the respect of his colleagues on both sides of the aisle, and is rightfully held in their highest esteem.

I join with my colleagues today in honoring a great statesman and a true friend. It was indeed an honor to have served with BILL in the U.S. Congress, and I extend my sincerest thanks for the help and guidance he has provided. Although his strong leadership will be truly missed, I hope to maintain the friendship we have enjoyed through the years.

I wish BILL the best in his future endeavors and many long and happy retirement years with his lovely wife, Lucy.

At this time I yield to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Speaker, I thank my good friend for yielding.

I am pleased that he has taken this time, both he and my other colleague from Pennsylvania (Mr. MCDADE) to say to BILL MOORHEAD, we are sorry that you have decided to move on to something else. Your service here has been excellent. Those of us who try to follow the legislative process in which you were much involved as a member of the Committee on Banking and Currency very much regret that you have decided to depart, because we know that your contribution in that committee has been outstanding.

I wish to make it clear that BILL and I did not always agree on a lot of things. As a matter of fact, we did not agree too much, but the gentleman was extremely knowledgeable in the field of banking and currency and housing and in urban transportation, all of the areas that were covered by the Committee on Banking and Currency.

As chairman of the subcommittee, our good friend BILL was an extremely capable chairman, always made sure that the hearings had adequate balance as far as testimony, assured every member of the committee, the full committee, that there would be adequate time and place for all to participate; was always very careful to make sure that in a markup session all members of the committee, both subcommittee and full committee, were allowed the chance to fully participate, offer amendments, and if for some reason they had not been able to put their amendments together in the committee, he would make sure when handling the bill on the floor that adequate time was allowed for debate and full discussion on all issues.

I think there are few people in the Congress that have chaired committees that have been as fair as BILL MOORHEAD in making sure that all members of the committee, all people from the outside of the administration, whoever they were, had adequate time to present their views.

He was a very thorough legislator, making sure that all members of the committee were prodded into looking into all aspects of the legislation by which we were affected. Besides that, he was just a nice guy.

So we do say, BILL, we appreciate your service here. We know that your constituents were well served. We regret that you will not stay a little longer to help us maybe clean up some other things at HUD or other places that need attention; but we do appreciate your fine service.

I was pleased to participate tonight. I thank both my colleagues for taking this time. We are, indeed, sorry to see BILL leave the Halls of Congress, but we know that whatever he does he will be successful.

Mr. GAYDOS. Mr. Speaker, I thank my colleague, the gentleman from California.

I yield to the chairman of the Committee on Rules, the gentleman from Missouri (Mr. BOLLING).

Mr. BOLLING. Mr. Speaker, I thank the gentleman from Pennsylvania for yielding to me. It is a great pleasure for me to have the opportunity to participate in this series of statements about BILL MOORHEAD.

I had the privilege of meeting him, I guess, before he got here, or very early in his career in his district in Pittsburgh. We became friends then a long time ago and have been ever since.

I had the privilege of serving on a committee with him, the Joint Economic Committee. He was an excellent member of that committee.

The tribute we have just heard from the gentleman from California (Mr. ROUSSELOT) is, indeed, an important tribute, because I know none of those words would have been said by our friend who is known for his nonpartisanship if every word had not been deserved.

BILL MOORHEAD has been in my experience an utterly fair man and, above all, a good and committed public servant.

Unlike the gentleman from California, I can say that BILL and I usually agreed on issues, but I found him to have all the qualities suggested by the gentleman from California (Mr. ROUSSELOT), as well as a real talent for friendship, a very deep commitment to the public service and a sense of moderation that I found most useful and most appealing, particularly in economic matters when people have such strong feelings and are often sure that only their views are right, BILL always demonstrated a tolerance for the views of others and a commitment and concern for the broad-gage public interests.

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So it is a great pleasure for me to participate in this matter and a deep regret that he and his lovely wife are leaving the Congress, at least in part.

Mr. GAYDOS. I thank the gentleman from Missouri.

Because of a prior commitment I would like to deviate from the schedule of switching from one side to the other and, at this time, recognize the gentleman from Michigan (Mr. BLANCHARD).

Mr. BLANCHARD. I thank the gentleman from Pennsylvania for sponsoring this special order.

No State and no people have been blessed more than the State of Michigan by the services of BILL MOORHEAD. I happen to have served with BILL on the Banking Committee for 6 years and as his ranking Democrat on the Economic Stabilization Subcommittee for 4 years. But during this past year BILL and his staff and his family have had to tolerate hour after hour attention and concern to the problems of the depressed auto industry. Without BILL MOORHEAD, without his service, without his fairness, patience and thoroughness, we would never have had a Chrysler Loan Guarantee Act of 1979.

There are tens of thousands of workers at Chrysler, their suppliers, not only in Michigan and around the Great Lakes area, but throughout the country whose futures and livelihoods and families have been saved and given an opportunity by BILL MOORHEAD.

I have worked with BILL MOORHEAD closely and, of course, as JOHN ROUSSELOT and others on the Banking Committee will attest, he is not only a delightful person and a hard-working person, but is simply a nice guy. He is the father of synthetic fuels which, more than Chrysler, I am sure, in 10 or 20 years will be a hallmark achievement for BILL MOORHEAD. He is to all of us from Michigan and all of us who know him the consummate public servant.

So on behalf of all of my constituents, BILL, and everyone from Michigan and the entire Michigan delegation, and those younger members of the Banking Committee who appreciate your guidance and friendship, we are going to miss you terribly and we hope to see you back here maybe keeping an eye on your work and the heritage you have left. We thank you for having given so much of yourself to the Congress and the Government and we express our appreciation to your family for allowing us to have your services for so many years.

Mr. GAYDOS. I thank the gentleman from Michigan for his sincere remarks.

At this time I recognize the gentleman from Ohio (Mr. WYLIE).

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding. I want to thank the gentleman in the well, Mr. GAYDOS, and Mr. MCDADE for taking this time to allow us to say thank you, BILL MOORHEAD, for your contribution to our Nation. It has been my pleasure to serve on the Banking, Finance and Urban Affairs Committee with BILL MOORHEAD, along with the synthetic fuels conference of which BILL MOORHEAD was chairman.

I would like to say it is with a real sense of loss that I rise to pay my tribute to my friend BILL MOORHEAD. I say loss, Mr. Speaker, because with his retirement the 14th District of Pennsylvania and the Nation will be deprived of a brilliant, hard-working and conscientious Member whose achievements in the areas of economic policy, international affairs, and synthetic fuels will stand as a lasting momento to his career here in Congress.

I would say that BILL MOORHEAD never allowed party affiliation or disagreement with a Member to stand in the way of fairness and I would say equal treatment to all Members in the interest of passing important and meaningful legislation.

I for one, BILL, will miss your service in Congress. I hope that the future brings BILL and Lucy much happiness and even greater success, if that is possible.

Mr. GAYDOS. I thank the gentleman from Ohio.

At this time I recognize the chairman of the International Relations Committee, the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, at the outset I wish to commend the gentleman from Pennsylvania, our colleagues, Congressman MCDADE and Congressman GAYDOS, for arranging for this special order giving friends and admirers of BILL MOORHEAD an opportunity to pay tribute to a great American.

Mr. Speaker, the end of the 96th Congress will mark the retirement of one of our esteemed colleagues from the House, Representative BILL MOORHEAD, of the 14th District of Pennsylvania.

BILL has been a hard-working, dedicated legislator for 22 years and he will be sorely missed. Although I have not served with BILL on committees. I know how actively he serves on the House Banking, Finance and Urban Affairs Committee where his advocacy of responsible monetary and fiscal policies, as well as housing initiatives, has helped shape responsible legislation. As chairman of the Economic Stabilization Subcommittee, BILL has led the subcommittee successfully in reporting bills which respond to the special needs of our communities hit hard by inflation.

Mr. Speaker, BILL MOORHEAD is a well-respected Member of this body who channeled his interests in many legislative directions. He became closely involved in energy legislation, particularly the synthetic fuels bill; he worked closely on establishing the National Foundation for the Arts and Humanities; he regularly reviewed foreign-aid programs and military spending. BILL MOORHEAD had the ability to work closely on a number of issues in various fields keeping in mind the interrelation of various issues to overall U.S. policy.

I cannot recall when we disagreed on any issue. I have a deep admiration for BILL MOORHEAD. I know that he is a dedicated man with strong character and integrity. Whatever he chooses to do in the future, he will do well.

Mr. Speaker, I join our many colleagues in wishing BILL MOORHEAD, his wife and family, a pleasant, fulfilling, and rewarding retirement.

Mr. GAYDOS. I thank the gentleman for his comments and for his usual sincere remarks.

At this time I would recognize my colleague from Pennsylvania (Mr. KOSTMAYER).

Mr. KOSTMAYER. Mr. Speaker, these occasions which occur with increasing frequency at this time of year have about them, I think, a rather morbid quality. I should point out for those who will be reading the RECORD in the future that the gentleman from Pennsylvania (Mr. MOORHEAD) is very much alive and we are not laying him to rest here today, despite the remarks which might sound like that. He is going to have a second career and I know it will be a very happy and a very active and a very rewarding career.

Unlike so many of the Members who have spoken and who will speak, I have not had the privilege of enjoying a long personal friendship with the gentleman from Pennsylvania. I came to know him only as I came here to my service in the Congress at the beginning of 1977.

But since that time I have noticed about him, as I know my colleagues have, I think really two extraordinary attributes which I think are often not combined in Members of the House. The first is the quality of leadership. Clearly he has been a leader in the House, not only because of his seniority, but because of his effectiveness. With that he has combined the quality of kindness and gentleness. Those qualities of leadership and gentleness do not often go hand in hand. But while he has been a quiet and a gentle and kind Member, he has also been a tough and forceful advocate for his points of view and a good friend to the people of Pennsylvania and to the people of this country.

□ 1950

Finally, Mr. Speaker, I would say that Congressman MOORHEAD and I serve on the Committee on Government Operations together. I serve on the subcommittee currently chaired by the gentleman from North Carolina (Mr. PREYER), who I see is here in the Chamber, the Subcommittee on Government Information and Individual Rights. At one time this subcommittee, which is concerned I think with the most basic and fundamental rights of privacy of the American people, was chaired by Congressman MOORHEAD and was known at that time as the Subcommittee on Foreign Operations and Government Information. Mr. MOORHEAD chaired that subcommittee from 1971 through 1974 and followed in the distinguished footsteps of the gentleman from California, Mr. John Moss.

While he served as chairman of that subcommittee, he did a number of important things. I would just like to mention three or four of them. He strengthened the public's rights of access to Government documents through the Freedom of Information Act of 1974. The amendments to this act were the first veto of President Ford after he assumed the Presidency, and this vote was overridden. That fight was led on the floor of this House by BILL MOORHEAD. He authored the Privacy Act of 1974 with its important restrictions on the willy-nilly dissemination of information held by the Government on its citizens.

He held an important set of hearings following the publication of the Pentagon Papers and explored in great detail the intricacies of the Government's secret machinery, its security and classification system used to spy on the people of this country. He investigated the excessive use by the Federal Government of polygraphs and telephone monitoring in quizzing and spying on employees and private citizens alike throughout this country. He exposed executive privilege as a wall behind which is hidden example after example of executive wrongdoing. So as one who is deeply concerned about what is happening in this country with the role of Government and the size of Government and with the rights to privacy of the people who live in our country, I think all of us owe a great debt of gratitude to BILL MOORHEAD for his important work in this area.

I thank the gentleman.

Mr. GAYDOS. Moving to the other side of the aisle, I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. I thank the gentleman from Pennsylvania (Mr. GAYDOS) for yielding.

I cannot say that I have known BILL intimately over the years, but I have had the privilege of serving with him on the Committee on Banking, Finance and Urban Affairs. He is the sort of person that when you know him, immediately you like him. He is a thoroughgoing gentleman who conducts and who chairs any subcommittee meetings that I have been on with scrupulous fairness and with unstinting courtesy.

But BILL MOORHEAD is more than all of that. He is a very considerate person. I had the occasion to visit his great home town of Pittsburgh with my wife and my children. I called BILL and asked him if he could arrange a few tickets to the Pirates baseball game. I can only say that if King Farouk ever returned to America, he could not have been treated more royally than I was by BILL MOORHEAD and his staff. We were practically sitting on the Pirates bench for the game. We were treated royally, and it was an act of thoughtfulness and kindness that was that little extraordinary touch that BILL MOORHEAD is well known for.

There are few people who are as nice as BILL MOORHEAD is, as hard working, as knowledgeable, or who have achieved as much in Congress as has BILL MOORHEAD. I speak, of course, of the towering accomplishment of the Synthetic Fuel Corporation which is his accomplishment more than that of any other person.

I am proud to have known him, and I, for one, will surely miss him on the Banking Committee.

Mr. GAYDOS. I now yield to my colleague, the gentleman from Ohio (Mr. ASHLEY).

Mr. ASHLEY. I appreciate the gentle-

man's yielding. It is a particular pleasure for me to join in this tribute to BILL MOORHEAD. BILL and I have been friends for some 35 years, I believe going back to the halcyon days of youth—college days in New Haven. I was proud of BILL then; I was proud of him when he was elected to the Congress some 22 years ago; I am even prouder of him on this occasion as he looks to the weeks ahead when he will be leaving the Congress. I am more proud of him today than on those past occasions because of the record of achievement that he has compiled over this years in the U.S. House of Representatives.

I have had the privilege of serving with BILL on the Committee on Banking, Finance and Urban Affairs for the 22 years that he has been in the House. As has been said by others, there is nobody who has achieved a finer record of positive accomplishment for the district that he represents, for the committee, and the Congress that he serves, and indeed for the people of the United States than has BILL MOORHEAD.

His leaving us will be a void that will be hard to fill, and the people of his district in Pittsburgh will come to recognize that fact, regardless of who it is who is selected to replace him.

I wish nothing but success in the months and years to come for BILL and Lucy Moorhead. They are a wonderful couple. They are, as I indicated, wonderful friends. They have raised a fine family, and I wish them all good things in the days to come.

I thank the gentleman for yielding.

Mr. GAYDOS. I now yield to the gentleman from New York (Mr. GREEN).

Mr. GREEN. Mr. Speaker, I thank the gentleman from Pennsylvania in the well (Mr. GAYDOS) for yielding to me and commend him and the other gentleman from Pennsylvania (Mr. MCDADE) for taking this special order.

As a member of the House from New York City, I feel a special debt of gratitude to the gentleman from Pennsylvania (Mr. MOORHEAD) because of the leadership role he played in crafting and enacting the New York City financial aid legislation. All residents of the Big Apple owe him thanks for his leadership in that effort.

Subsequently it was my privilege to be appointed to the Banking Committee's Economic Stabilization Subcommittee which he chairs. As a member of that subcommittee, I can testify to the key role he played in developing an amendment to the Defense Production Act to utilize that act as the basis for a synfuels program. That initiative played a vital role in breaking the logjam in the House on energy legislation; indeed, it was that bill on which the House ultimately went to conference with the Senate, a conference that produced a law that is today the cornerstone of our Nation's energy policy. The Nation owes him a debt of gratitude for that initiative.

All of us will miss his leadership, his courtesy to his colleagues, and his professionalism as a legislator. Most of all, I personally shall miss the sense of fairness he always displayed, even if we were on opposite sides of a question. I wish him all the best in whatever the endeavors are to which he now chooses to turn.

I thank the gentleman for yielding.

Mr. GAYDOS. I yield now to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. I thank the gentleman for yielding. I just want also to echo the remarks of the previous speaker.

Mr. Speaker, I am glad to have this opportunity to commend my colleague and a fellow graduate of a highly esteemed academic institution. I know that BILL has served his district and this Congress well, and his contributions to the work of this body will be sorely missed.

BILL is particularly to be commended for his diligent and highly successful efforts on the amendments to the Defense Production Act. Last year he spearheaded the legislation which will help bring a synthetic fuels industry on line. I worked with BILL extensively on my own alternative fuels bill, H.R. 4345, the Replacement Motor Fuel Act. His support was helpful and deeply appreciated.

With the synthetic fuels legislation and many other important initiatives to his credit, the gentleman from Pennsylvania is an inspiration to his colleagues in the House.

Mr. GAYDOS. I now yield to the gentleman from Pennsylvania (Mr. ERTEL), a good and close colleague of the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. ERTEL. I thank the gentleman from Pennsylvania (Mr. GAYDOS) for yielding. I would like to commend him and the gentleman from Pennsylvania (Mr. MCDADE) for taking out this special order on behalf of our colleague from Pennsylvania (Mr. MOORHEAD).

When our distinguished colleague, BILL MOORHEAD, leaves this body at the end of the 96th Congress, his departure will be of major note, because his contributions to our Nation will be long remembered. During his career in this Congress BILL MOORHEAD was charged with the major responsibility for some of the most difficult policy issues of our time. In matters such as the Federal loan guarantees for New York City and the synthetic fuels program, there were no clear precedents and no tried and true solutions. Instead we were faced with seemingly intractable problems of tremendous dimensions. Were it not for the intellect, creativity, and legislative skill of BILL MOORHEAD, we might not have approved legislation in these areas. We might not have rescued New York City, and we might not have begun to march toward energy independence. We have BILL MOORHEAD to thank for these accomplishments, but we must thank him for much, much more. We should be grateful that a kind and gentlemanly individual like BILL MOORHEAD labored in our midst. He taught us that the burdens of human life must be met with continued dedication to our constituents and unfailing courtesy to each other.

BILL's ability to provide this example is a capstone of his productive career in the House. We will all miss him.

Mr. GAYDOS. I thank my colleague.

I now yield to the gentleman from North Carolina (Mr. PREYER).

Mr. PREYER. I thank the gentleman from Pennsylvania (Mr. GAYDOS).

If I may be pardoned a personal note, I first met BILL in law school, in which undertaking we lived across the hall from each other with our respective wives. Each one of us had his first child, in each case a son, born 1 day apart. We became fast friends and have remained fast friends. But when I came to Congress as a royal rookie, BILL was already a veteran and a powerful Congressman. I just want to say that I always will be grateful to him for his advice and counsel and assistance to me, which went well beyond the call of duty and went well beyond the call of friendship.

BILL's legislative accomplishments have been very impressive, and they have been recited here, but I think his deeds, although they make up a memorable record and one not often equaled in Congress, do not give us the whole man at all.

□ 2000

BILL is the kind of man whose influence runs far beyond the mere facts of his career. It cannot be measured by how many bills he passed. His range of warm friendship among opinion makers in Washington is probably the largest of any Member of Congress. He has served as an ambassador of good will and understanding from Congress to these opinionmakers, just as I am sure that their ideas have enriched his congressional life.

The role of Lucy, his splendid wife, in this enlarged career, wide-ranging career, in which he always first thought about his district but he also thought about his Nation and his world, the role of his wife cannot be overemphasized. They say that behind every successful man there stands a woman telling him he is wrong. Well, I am sure Lucy's influence and charm have helped him greatly in doing many things right. Such as BILL's important role in establishing the National Endowment of Arts and Humanities.

In her own right she is a published author and one of Washington's most charming hostesses, an art form that has more political importance—and I mean that in the best sense of the word—than is usually recognized.

BILL leaves a record that is enlightened and progressive but that is always sound. His kind of judgment, informed by compassion and his balanced approach to problems is something we will sorely miss.

One thing on the legislative side I did want to call attention to because I thought it would be overlooked—I did not want to pour much more syrup on that legislative pancake, but I am glad that PETER KOSTMAYER brought it to our attention and that is the great work he did on the Government Information and Individual Rights Subcommittee, as it is now known. He was the author of the Privacy Act of 1974, an Act that brought a little more protection to all of us in the way Government handles our records

and shares our personal secrets. PETER commented that he took the lead in overriding the foreign veto of the Freedom of Information Act amendments of 1974. These are both extraordinarily important acts.

BILL will also be remembered for putting the full text of the top secret 1970 Houston Plan in the CONGRESSIONAL RECORD, a plan which calls for embassy break-ins and other police state actions and was truly an attempt to institutionalize burglary as an instrument of Presidential policy.

BILL, in his fair way and in his quiet way, was one of the first to alert us to these dangers.

I am sure we are all going to be a little worse off for his departure, a little more vulnerable to undemocratic forces. I join all of his friends in saying to BILL, we are certainly going to miss you.

I thank the gentleman from Pennsylvania.

Mr. GAYDOS. I thank the gentleman from North Carolina and now recognize the gentleman from Kentucky (Mr. HUBBARD).

Mr. HUBBARD. Mr. Speaker, I join with my colleagues today to honor my good friend and talented colleague, WILLIAM S. MOORHEAD.

It is my privilege to serve with BILL MOORHEAD on the Banking, Finance and Urban Affairs Committee and to see firsthand his dedication and skills as an effective legislator. As chairman of the Subcommittee on Economic Stabilization, BILL guided the first synthetic fuels bill through Congress in 1979, which, after Senate inclusion of other forms of energy, and a House-Senate conference which BILL MOORHEAD chaired, became the Energy Security Act of 1980.

BILL MOORHEAD will not only be remembered for his legislative accomplishments, which are too numerous to mention, but also for his compassion and determination. Certainly he was liked and admired by his constituents of the 14th District of Pennsylvania—after all, they sent him to Congress for 22 years.

BILL MOORHEAD will be missed by all of us who had the privilege to know and work with him.

Western Kentucky is scheduled for four huge synthetic fuels plants because of our coal, rivers, transportation facilities and other factors. BILL, thank you.

I am hoping that in the late 1980's our colleague BILL MOORHEAD will visit my district and be an honored guest at the two synthetic fuels plants to be constructed at Geneva and Baskett in Henderson County, Ky.

Mr. GAYDOS. Mr. Speaker, I now recognize our colleague from Pennsylvania (Mr. WALGREN).

Mr. WALGREN. Mr. Speaker, I thank the gentleman from Pennsylvania for this opportunity to celebrate BILL MOORHEAD and his career in public.

We celebrate his decision to retire and a chance to look back on a very successful career as an individual. His career has been a success not only for the Nation in terms of the movement that he has led toward energy independence but we celebrate his success as a metropolitan region in Pennsylvania.

There are no programs particularly in the transit area and in the housing area that have come to Pittsburgh that have not been heavily marked by BILL MOORHEAD's efforts on their behalf and it is fair to say that they in all probability would not be there were it not for his efforts behind them.

We celebrate a successful career for his district, one in which the individual rights of black and white together have benefited from his sensitivity, to the importance of civil liberties and also the importance of economic opportunity in forms of jobs, housing and the like.

We all have special remembrances of roles BILL has played in our individual lives. I, perhaps, differently than others, coming from the district next door. When I ran for Congress 10 years ago as a young person who really did not know anything from anything, I went and asked BILL MOORHEAD for advice. The only thing that perhaps I can hold against him is that he encouraged me in the process.

I know, BILL, that the House will not forget you. I for one will not forget you but we all wish you Godspeed in your second and very successful career.

Mr. GAYDOS. Mr. Speaker, I would now like to recognize our colleague from the other end of the State, Congressman LEDERER from Philadelphia.

Mr. LEDERER. Mr. Speaker, I rise today to join my colleagues in honoring Chairman WILLIAM MOORHEAD of Pennsylvania, who leaves this body after 22 years of distinguished and devoted service to his constituents and to the Nation. It is fitting that we set aside this time to praise him and bring to the fore his achievements. I believe his record of tireless service will serve as an inspiration to young people considering public service will serve as an inspiration to young people considering public service and to all of us who strive to be better Americans.

BILL MOORHEAD came to the Congress in 1958 after an active career of community service in the Pittsburgh community. In his years in the Congress he has risen to be one of the ranking members of the Banking, Finance and Urban Affairs Committee and chairman of two subcommittees—the Subcommittee on Economic Stabilization and the Subcommittee on International Development Institutions and Finance. He is also chairman of the Joint Economic Committee's Subcommittee on Fiscal and Intergovernmental Policy.

In these leadership roles he has initiated and shepherded legislation affecting the core of American life such as major energy, housing, and cultural bills which form the basis of our domestic policy today. Chairman MOORHEAD saw the country enter hard times through two wars and various international crises. He spoke up early to end the Vietnam war and took firm stand in defense of the Nation in times of crises.

But more than this, I've come to know BILL MOORHEAD as a freshman Member of the Pennsylvania delegation when first elected to the House in 1976. BILL took the time to let each of us who came that year know that he was there to help. He gave a lot of his time and knowledge to see us through the rough first few months when it is all new and the ropes have not been climbed yet. BILL served as the cohesive force in what has become a delegation working for the benefit of the entire State of Pennsylvania. I credit much of what we have done in the past few years to BILL's quiet leadership, a task which is difficult in the House and is much ignored in this day of hyped media.

Behind the scenes, both in the Committees and in the floor work, BILL MOORHEAD has made a contribution to our daily lives which will be seen for many years to come. For that I thank him and for the guidance and counsel he gave me personally I thank him as well. BILL MOORHEAD will be missed in the hard times ahead, but I know that his service and that which he will render in this next phase of his life will give us the light to lead the way.

To BILL MOORHEAD, his wife Lucy and his children, I wish you well.

□ 2010

Mr. BAILEY. Mr. Speaker, will the gentleman yield?

Mr. GAYDOS. I yield to my colleague from Pennsylvania.

Mr. BAILEY. Mr. Speaker, I suppose that I could add very little to what has already been said here tonight in honor and to pay respects to BILL MOORHEAD. I am a new Member of Congress, and I have had occasion, I hope, I like to think, to learn a great deal. I have learned a great deal from him, and I suppose I could best illustrate and sum up my feelings by telling a little anecdote.

I greatly admire, and consider myself to be a student, of perhaps the greatest politician in the history of the western world—certainly of the United States—Abraham Lincoln. Our colleague from the eastern part of the State, Mr. MCDADE, would like that particular President, being a Republican, but I would, in the spirit of our bipartisan feelings about BILL MOORHEAD, tell this little story.

Lincoln had completed one term of office and was being interviewed by a reporter from one of Horace Greeley's newspapers, one of the New York papers. The reporter asked Lincoln what his greatest accomplishment in life had been, that thing which had brought him the greatest pleasure and that of which he was most proud. Lincoln sat back for a few seconds and very calmly and quietly, and with very deep sincerity, simply said, "The respect and admiration of my fellow man."

I suppose little could be added to what everyone thinks of BILL MOORHEAD, and I share those feelings. I thank the gentleman.

Mr. GAYDOS. I thank the gentleman.

Mr. Speaker, at this time I yield to Congressman MCDADE, who, as I mentioned before, has more seniority in the

Pennsylvania delegation, but hopefully will not be the dean next year. That is a little private arrangement we have in the Pennsylvania delegation, whereby the oldest member of the majority in the State is the one that lays claim to that dubious honor, dean of the delegation.

So, I yield to my good friend.

Mr. McDADE. Mr. Speaker, may I say to my distinguished colleague, with whom I share this special order, that I would not mind, just once, since I have been here 18 years, I would not mind just once being dean. But, whether I am dean or the gentleman is dean, we are both traveling in the shoes of a great successor, succeeding a great man. Whoever he is, we are still going to work together the way BILL and I have this year, because in addition to everything else, he has been dean of our delegation and I have been privileged to work with him as ranking minority member. Every time I have seen him or worked with him, I have seen him be totally impartial; I have seen him be totally dedicated and always courteous, and that is the mark of a real gentleman.

So, I am thrilled at having an opportunity tonight to join in honoring a man who has served this Nation and made it a better Nation through 22 years of public service. It has been my privilege to have, as my dean so said, the current dean, the acting dean, indicated that I do have next to BILL, I guess, the most seniority in Pennsylvania. So, I have shared with him 18 of his 22 years.

As a matter of fact, my first committee assignment was to the committee he serves on so ably, the Banking Committee, and as several of the new Members have referred to, I came here as a freshman Member and I look across the aisle and I see BILL sitting there, and my memory goes back to the days when I served on that committee with some of the giants we were with. I could watch BILL; I could watch Al Raines; I could watch Bill Widenour from the great State of New Jersey; our mutual friend, LUD ASHLEY, and so many others.

I can say without fear of history or qualification that my service with that great body of distinguished men helped me become a better legislator, and I am always eternally grateful. My colleague from the western part of the State wants to appropriate BILL, as just about everybody does, and appropriate Lincoln or appropriate BILL—either way, I do not not know, but let me say this: I am reminded, when I look at BILL, of just some of the things I want to refer to.

There was an evening with the late President Kennedy. He had assembled every living world recipient of the Nobel Prize at the White House, and of course it was a glorious evening, and it was a glorious dinner, magnificent.

The people who were there were all leaders in the world, and President Kennedy got up and said that this was without question one of the finest evenings in the history of this great House. He said that with just one exception there was more talent gathered here tonight than ever before in the history of the White House. That one exception was when Thomas Jefferson dined alone.

Well, when we look at BILL MOORHEAD and when we begin to think of what he has done in this Congress, we see a Jeffersonian man at work. He did not just represent Pittsburgh, he represented all of us. He represented all of us last year when he, in the midst of a tough energy crisis, led our delegation's efforts to avert a potential gas strike in the State of Pennsylvania.

He represented all of us in this Nation when he fought first for what was called the National Foundation of the Arts and Humanities, which later became the National Endowment for the Arts and the National Endowment for the Humanities.

He worked for all of us when he worked to uncover foreign aid abuses during the Vietnam war, and as has been said so rightly here tonight, he was the early leader in the fight for energy conservation, and served as floor manager for the synthetic fuels bill in 1979 which, in an enormous House-Senate conference—and it is a miracle that the bill has survived, a great tribute to his legislative skills—that that enormous conference brought back a bill which became known as the Energy Security Act of 1980.

He also made it possible for small businessmen to bid on Federal contracts through the passage of the 1978 Federal contract bill.

Think of this: It was his task to steer through this House aid to New York. We have already heard my friend, BILL GREEN, mention it. Also, a bill that helped the Chrysler Corp. with its thousands of employees survive. BILL is a guy who never said it could not be done. He was always working for all of us, and in the future, when we think of a legislator who took on the tough jobs and gave us the leadership that was needed to succeed, we will always think of the gentleman from Pennsylvania, my dear friend, BILL MOORHEAD.

I want to extend my warmest personal regards to BILL and to his lovely wife, Lucy. We wish you well, BILL, in all your future endeavors. We extend to you our deep thanks for making this a better Nation and a better world.

Mr. GAYDOS. Mr. Speaker, I want to thank the dean of the Pennsylvania delegation, because I know his remarks are sincere and well-founded.

GENERAL LEAVE

Mr. GAYDOS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to insert their remarks into the RECORD on the subject of my special order.

The SPEAKER pro tempore (Mr. FARY). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GAYDOS. Mr. Speaker, let me at this time give another aspect of BILL MOORHEAD. I listened with interest to my colleagues who set forth a BILL MOORHEAD that they had grown to know, and the one that they experienced, I would say, primarily if not exclusively from the legislative action on the floor of the House. But, I would like the RECORD to show at this point that the BILL MOORHEAD that I have been exposed to over the years was a very, very sensitive, warm individual who has a very unique history in Pittsburgh, a deep history, both political and otherwise.

□ 2020

A lot of people look at BILL and think he does not look like much of a politician because he is so gracious and has such a warm personality. As a matter of fact, for want of a better description of him, I might say that "You can turn your back on BILL MOORHEAD and not be concerned that he is behind you"—meaning that he is so very trustworthy.

Sometimes those attributes do not seem to belong to the so-called politician, but BILL MOORHEAD is a politician and was a politician for many years in Pittsburgh. I know his history. I was there the first day he was nominated by the late Governor Lawrence, who went on to be a national committeeman and was very active as the first Secretary of HUD in the Kennedy administration here in Washington, D.C.—a man well steeped in politics and a man with whom BILL MOORHEAD and his family were connected. That is an aspect of BILL MOORHEAD's career that a lot of people do not know about.

BILL was an excellent, dedicated politician and public servant. How else could he find his way down to these great halls if he did not have some semblance of a political know-how and political activity and connections?

And speaking for myself—and I think I speak on behalf of the entire Pennsylvania delegation and most Members in the House—I say that I relish in the descriptive term of being a "politician," one who is interested in government. As I look at the description and analyze the term, a politician is one who is interested in his Government and how it affects his fellow man. And what is more important than participating in Government and helping to make laws that govern a person, according to the old description, "from the cradle to the grave?" And that is becoming even more evident now.

Regardless of what we hear and read in all the newspapers, it is important that people stand ready to assume their political obligations. BILL MOORHEAD earned that right through his Joe Barr connections in Pittsburgh, through his political activities, and in particular, through his association with the great renaissance in the city of Pittsburgh.

Pittsburgh was the first city after World War II that took into being or into consideration a new law and put it into effect, and as a result they started tearing down and ripping out the heart of the old, dilapidated city of Pittsburgh and started building a new city. I wish that more of my colleagues were here now, because I would like to invite them specifically to come and visit the city of Pittsburgh, the new city that has arisen from the ashes of the old. It is a new, vibrant, clean—and I emphasize the word, "clean"—city with new leadership and a new concept.

Mr. Speaker, all of that had its beginning way back when BILL MOORHEAD—and this is something a lot of people do not know—was there and participated in that rebirth in the city of Pittsburgh. During that time BILL was interested in

and actively participating in all types of new activities, and all of these activities led cumulatively in his earning his credentials and coming to this House and doing the great job that he has done.

That is the BILL MOORHEAD that I know and the BILL MOORHEAD that I respect. That is the BILL MOORHEAD that I believe is known to the rest of our colleagues who spoke tonight. And I say that because we are a practical bunch in this House. The hour is late, and everybody has their commitments. Many of the Members wanted to go someplace, but at the same time they wanted to participate in this special order. In the special orders that I have witnessed during the last two or three times, there has been a greater number of Members staying here and wanting to participate and give their opinions and have them appear in the RECORD without the bullet, meaning that they wanted to give them personally. I am seeing more of that now, as I have said before, during the last five or six times we have taken special orders.

Mr. Speaker, I want to conclude by saying that the BILL MOORHEAD that I know and have grown to love is a warm person, a sincere person, one who is ready at his own inconvenience to help another person. And I must reemphasize again that he is a person in whom I have implicit trust. I have found it is just a fantastic pleasure to work with him. I might say, too, that I have been especially proud that he comes from an adjoining congressional district to my own because we have worked so well together.

All these good things about BILL I spread upon the record from my heart, because that is the BILL MOORHEAD that I have grown to know and respect. He is a person of whom I can say I have no hesitation to recommend anyplace, under any circumstances, to any person in any media, be it public or what have you, be it television or radio. That is the BILL MOORHEAD I know.

I know that my good friend and close colleague, JOE MCDADE, along with myself, has learned to respect and love BILL MOORHEAD.

Before I close, Mr. Speaker, I remind the Members that I have already asked unanimous consent that all Members have 5 legislative days to insert their formal remarks about our good friend, BILL. At this time, if there is no other Member who wishes me to yield, I would like to conclude my special order by expressing my best personal wishes on behalf of the Pennsylvania delegation to you, BILL MOORHEAD, your wife, Lucy, and that extraordinary family of yours—the family which I have not talked much about but which most of your friends know about. God's blessing on you. Our good wishes go with you, and we hope to see you on the floor in the future. My office is open to you, as you know, as are the offices of the full Pennsylvania delegation and every Member of this House. Our offices are open to you, BILL, for a visit in the future, formal or informal.

● Mr. O'NEILL. Mr. Speaker, I am delighted to join with my colleagues in a special order to pay tribute to one of the finest legislators in this Chamber, the Honorable WILLIAM MOORHEAD of Pennsylvania, on the occasion of his retirement from the U.S. House of Representatives.

For more than two decades, BILL MOORHEAD has served the 14th District of Pennsylvania with distinguished and dedicated service, and his legislative skills and incisive mind have contributed to a higher calibre of deliberations in this Chamber.

Those of us who have worked with BILL over the years greatly admire his many fine personal attributes which suggest quality and dependability. BILL MOORHEAD has been a Member whose word is golden, whose commitment is genuine and unwavering, and who understands the complexities of the legislative process.

BILL MOORHEAD has a certain reserve; he is not a headline seeker, nor is he interested in publicity for publicity's sake. Yet, he is reliable, a loyal Democrat, a good lieutenant to the leadership, and hard working. BILL MOORHEAD's position and stature in the House have contributed to the successful outcome of some of the most far reaching and precedent setting legislation of the past decade.

As chairman of the Economic Stabilization Subcommittee BILL MOORHEAD has been one of the driving forces in the House that put through the 96th Congress the synthetics fuels bill, which including other forms of energy became the Energy Security Act of 1980. Landmark energy legislation, this act is a cornerstone of our national commitment to become more energy self-sufficient.

Chairman MOORHEAD's subcommittee considered and steered through the House legislation to provide loan guarantees to New York City and the Chrysler Corp., two trying and difficult political decisions in which the national economic ramifications were unimaginable.

BILL MOORHEAD is a fair and just chairman who runs his subcommittee on a consensus and democratic basis. He lets his subcommittee work its will and believes in letting the various forces have their play in the committee deliberations and on the House floor.

Chairman MOORHEAD gives great latitude and flexibility to his subcommittee members and is well liked and respected by colleagues on both sides of the aisle. Each member of his subcommittee can testify to the fact that their chairman is always willing to listen with an open mind to the issues and concerns which affect each of their own districts.

I am proud to consider BILL MOORHEAD my friend, and a wise and trusted counselor. As a long-time member of the whip organization, BILL MOORHEAD has been a valuable part of the Democratic leadership team. I am eternally grateful for his friendship, support, and encouragement over the years.

BILL, you were a leader in Pittsburgh's revitalization programs before you made your impressive mark on the annals of congressional history. Twenty-two years ago you brought to the House of Representatives a keen intellect and a sense of purpose; and throughout your tenure of service in the House, you have pursued a chosen political and legislative course that has been a hallmark of dignity and responsible representation.

While I will greatly miss your wise and trusted counsel in the 97th Congress, I extend sincere best wishes for much happiness in the years ahead, and may God bless you.●

● Mr. BRADEMAS. Mr. Speaker, BILL MOORHEAD and I took our first oath as Members of the House of Representatives together in 1959. We have served with each other here ever since.

During those 22 years, Mr. Speaker, I have counted BILL MOORHEAD and his delightful wife, Lucy, as valued friends.

Few Members of the House have been as loyal and dedicated to it and to the ideals of sound and progressive government as has BILL MOORHEAD.

His decision not to seek reelection will leave a void not easily filled. The longer he served with us, it seemed, the more difficult became the legislation for which he was responsible and the busier he became.

Mr. Speaker, everyone of us is indebted to BILL MOORHEAD for the skill with which he managed such significant and major recent legislation as the Energy Security Act, that landmark program setting the United States on the road toward energy self-sufficiency; the Chrysler Corp. loan guarantee legislation; and the New York City loan guarantee program which saved our largest city from bankruptcy.

Beyond these major statutes, BILL MOORHEAD authored legislation guaranteeing insurance coverage to inner city residents, extending to small businessmen greater opportunities to bid for Federal contracts, and expanding and strengthening the Freedom of Information Act.

One of his more important accomplishments, Mr. Speaker, was his cosponsorship of the legislation creating the National Endowment for the Humanities and the National Endowment for the Arts.

BILL MOORHEAD, a Navy veteran of World War II, was an early and outspoken critic of the war in Vietnam. As a member of what was then the Military Operations Subcommittee of the Government Operations Committee, he was an effective opponent of wasteful and unnecessary military spending. As a member of the Foreign Operations Subcommittee, he was equally instrumental in ferreting out waste and abuses in the foreign aid program.

Today he continues to be a member of the Government Operations Committee where he serves on the Subcommittee on Legislation and National Security and the Subcommittee on Intergovernmental Relations and Human Resources. He is also a member of the Joint Economic Committee where he serves as chairman of the Subcommittee on Fiscal and Intergovernmental Policy and as a member of the Subcommittee on International Economics.

His contributions on those committees are great, but even greater have been his contributions from his seat on the Committee on Banking, Finance and

Urban Affairs. He has been a member of that committee for 22 years and now holds the chairmanship of the Subcommittee on Economic Stabilization.

Finally, Mr. Speaker, as majority whip, I have been particularly fortunate in having BILL MOORHEAD's counsel and dedication. I speak here of his service as a member of the majority whip organization. We of the majority side know his contributions there have been invaluable.

Mr. Speaker, all of us will miss BILL MOORHEAD, and I know that all of you join me in wishing BILL and Lucy continued good fortune.●

● Mr. MURTHA. Mr. Speaker, when I was reviewing Congressman BILL MOORHEAD's career to prepare these remarks, I was interested by the fact that BILL was first elected to Congress in 1958.

I stopped to think about the fact that BILL has really spanned one of the most fascinating periods in congressional history. He served in the last session of the Eisenhower years and with Speaker Sam Rayburn and the young Democratic President John Kennedy. His votes and philosophy were instrumental during the unprecedented legislative accomplishments of the Johnson years. BILL MOORHEAD also saw the frustration and give-and-take during the Nixon years, and finally the emergence of the modern Congress, better equipped and more involved than at any time in congressional history.

And the legislation which bears BILL MOORHEAD's name helps to illustrate the innovations and creativity that has now come to hallmark the congressional approach. Such farsighted legislation as the Freedom of Information Act and the National Endowments on the Arts and Humanities. And nowhere were his legislative skills more called upon than during the difficult but vital aid plans for New York City and Chrysler.

BILL MOORHEAD will always be remembered by me, not only for his legislative accomplishments, but because when I was elected to Congress he was the first Member to call me with his congratulations and helped in acclimating me to Congress.

We have heard a great deal this year about the Democratic tradition. I think that when you look over BILL MOORHEAD's career, and see his innovative legislative record, his concern for the poor and less fortunate in our society, his emphasis on jobs and economic development, and his compassion and integrity, that we see a man not only in the great traditions of his party, but a man who has brought pride and honor to the U.S. Congress and the United States of America.●

● Mr. RAHALL. Mr. Speaker, it is with great pleasure that I rise today to recognize the over 20 years of dedicated service our colleague, BILL MOORHEAD, has given this body and the people of the 14th District of Pennsylvania. As a result of his forthcoming retirement from Congress, he will certainly be missed.

BILL MOORHEAD's career has always focused on one major area, aid to the communities he has represented. His work on various boards, before his election to Congress, served to bring about the redevelopment of a great city, Pittsburgh.

Once in Congress, this work continued, as he served with distinction on the Banking and Urban Affairs Committee, and the Government Operations Committee.

Legislation to guarantee insurance coverage to inner city residents, a Federal contract bill for small businessmen, and the Freedom of Information Act, all have been pushed by BILL MOORHEAD.

Most of all, I believe one of his finest accomplishments was the bill to expand our Nation's efforts for the development of synthetic fuels, an achievement the United States will look back on in the years to come with great relief that someone had the foresight to champion such a cause.

Indeed, BILL MOORHEAD is a champion, in the "City of Champions." I wish him the best, and thank him for his insight, leadership and friendship.●

● Mr. BOLAND. Mr. Speaker, today we pay tribute to one of the most distinguished Members of the House, the Honorable WILLIAM S. MOORHEAD. Since his election to the 86th Congress in 1958, BILL MOORHEAD has served this country, the State of Pennsylvania, and the people of his district with dedication, diligence, and zeal. His retirement at the end of the 96th Congress will leave the House without one of the most creative and effective legislators of recent history.

The list of BILL MOORHEAD's achievements is a long one. BILL was responsible for the establishment of the National Foundation on the Arts and Humanities which later grew to become the National Endowment for the Arts and the National Endowment for the Humanities. He was instrumental in the fight to end our involvement in the Vietnamese conflict, and has helped bring about significant improvements in our foreign aid and defense spending programs.

As chairman of the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance, and Urban Affairs, BILL guided the House to enactment of legislation providing loan guarantees to New York City and Chrysler Corp.

In addition, as chairman of the conference committee which considered the Energy Security Act of 1980, BILL presided over the creation of the Energy Security Corporation. The Energy Security Act is one of the most significant and inspired pieces of legislation of the 20th century. BILL MOORHEAD's knowledge and leadership in these areas have helped the House grapple successfully with some of the most perplexing problems of our time. I am sure that the Members of the House will miss BILL's scholarly counsel on the difficult decisions which lie ahead.

I am delighted to join my colleagues in expressing our appreciation for BILL's many years of leadership, and extending our best wishes for success in his future endeavors.●

● Mr. BINGHAM. Mr. Speaker, I am grateful to our colleagues from Pennsylvania, Messrs. GAYDOS and MCDADE, for arranging for this special order to pay tribute to our retiring friend and colleague, BILL MOORHEAD, and I am happy to join in that tribute.

It will be a real wrench to many of us in this House when BILL MOORHEAD goes on to greener pastures.

He has been an outstanding member of the Banking and Currency Committee ever since I came to the House, and during the 90th Congress I had the pleasure of serving on that committee with him.

BILL has always been a courteous Member, considerate of his colleagues. In particular, those of us from New York City will always be grateful to him for his leadership in the fight to help that great metropolis stave off bankruptcy.

BILL will be sorely missed by his constituents and by his host of friends here in the House. Fortunately, however, he does not plan to leave Washington, so that those of us who have enjoyed the friendship of BILL and his lovely wife Lucy do not have to face the prospect of losing them from our community here.

We wish him well in whatever he undertakes, and we feel sure that he will continue to make a major contribution to the welfare of his country.●

● Mr. BIAGGI. Mr. Speaker, I am honored to join my colleagues in a most deserved tribute to my good friend BILL MOORHEAD, who has announced his retirement from Congress after more than 20 years of dedicated service.

His accomplishments are many, but as a New Yorker, none stand out in my mind more than BILL's effective handling of the New York City loan guarantee legislation. As chairman of the Subcommittee on Economic Stabilization, BILL was responsible for consideration of the New York City loan guarantee measure. Under his strong and effective leadership, extensive hearings on the issue were conducted. The city of New York was allowed to present its case in full, and as a result, the measure reported out of subcommittee was fair and responsible. A testimony to that fact was the overwhelming House passage of the loan guarantee measure by almost 100 votes.

As chairman of the Economic Stabilization Subcommittee, BILL was also responsible for steering the Chrysler Corp. loan guarantee legislation, and the Energy Security Act of 1980 through Congress.

Acting in my role as chairman of the Ad Hoc Congressional Committee for Irish Affairs, I would also like to praise BILL's commitment to achieving a just and lasting peace in Northern Ireland. He has joined myself and the other 130 members of the committee in focusing attention on the tragic situation that exists in Northern Ireland, and in working for a peaceful solution.

Mr. Speaker, the retirement of BILL MOORHEAD represents a major loss, not only to this Congress, but especially to his Pennsylvania constituents, whom he has served so effectively. However, he leaves behind an impressive record, and a shining example for those who will attempt to follow in his footsteps. I join my colleagues in wishing him a long and well-deserved retirement.●

● Mr. RITTER. Mr. Speaker, as a freshman Member of Congress, I was saddened to learn about the retirement of one of the most distinguished Members of the House and the Pennsylvania delegation. I have had the pleasure of working with BILL MOORHEAD on both the Housing Subcommittee and the House Banking Committee over the past 2 years. I wish it could have been a longer period of time.

BILL's committee accomplishments are numerous. I was honored to be a part of the formation of the synfuels bill in committee in which my respected colleague played a major role. His knowledge and skills in committee and on the floor will be missed.

I want to wish BILL the very best in his retirement. I can only hope that he will remain an active friend of the Pennsylvania delegation as well as all of us in Congress.●

● Mr. COUGHLIN. Mr. Speaker, I am honored today to join my colleagues in paying tribute to an outstanding Member of Congress and fellow Pennsylvanian, BILL MOORHEAD. As you know, BILL is retiring from the House this year after 22 years of distinguished service to the people of Pennsylvania.

Even before his election to Congress in 1958, BILL's dedication to the improvement of his home district of Pittsburgh was reflected by his record of service to the people of that district.

A record of BILL's achievements during his 22 years with the Banking, Finance, and Urban Affairs Committee point clearly to his longstanding interest in the economy of this Nation. The synthetic fuels bill, one of the major energy initiatives produced by this Congress, was first approved in BILL's Economic Stabilization Subcommittee. Subsequent passage of this bill, expanded to become the Economic Security Act of 1980, is in large part due to his competent leadership and persevering efforts.

BILL's skills as a legislator combined with his long administrative experience were instrumental in the passage of such difficult and controversial legislation as the Chrysler loan guarantees. It has been my pleasure throughout my years in Congress to have the opportunity to work with such an able and respected Member of the Pennsylvania delegation. I extend to BILL and his family my sincere best wishes for the future.●

● Mr. DERWINSKI. Mr. Speaker, I join with my colleagues in paying special tribute to a great statesman, WILLIAM S. MOORHEAD. BILL and I were first elected to the 86th Congress, and I am pleased to have him as a friend over the years that we have served together in the House.

BILL is retiring now after 22 years of dedicated and distinguished service. While his most notable contribution during this time is in the area of fiscal policy, his ability and expertise have been demonstrated over a wide spectrum of legislative issues. As a member of the Banking, Finance and Urban Affairs Committee, BILL has made great contributions in shaping a responsible economic outlook. As chairman of the Subcommittee on Economic Stabilization, he was instrumental in the passage of the first synthetic fuels bill which later became the Energy Security Act of 1980. In addition, he had a significant role in the Chrysler Corp. and New York City loan guarantee legislation.

BILL is also a member of the Joint Economic Committee where he serves as chairman of the Subcommittee on Fiscal and Intergovernmental Policy, and is a member of the Subcommittee on International Economics where he is dedicated to seeing that our Nation's best interests are served in funding investments in foreign aid programs and in limiting Government spending.

BILL has had an outstanding record of popularity among his constituency. The State of Pennsylvania and its 14th Congressional District is losing the service of an outstanding legislator who so ably represents the needs of our Nation.

BILL MOORHEAD may step down from his duties here in Congress knowing that he has served well and contributed significantly to the legislative process. We will certainly miss BILL's wise counsel and leadership.

It has been a true pleasure to know and work with BILL, and I want to take this opportunity to wish him a long and enjoyable retirement.●

● Mr. ANNUNZIO. Mr. Speaker, I rise in tribute to the Honorable WILLIAM S. MOORHEAD, who is retiring at the close of the 96th Congress after 22 years of outstanding service in the House of Representatives. It has been a truly rewarding personal experience for me to have known him as a colleague on the Banking, Finance and Urban Affairs Committee and to have worked with him during the 16 years I have been in the House.

Bill was first elected to the 86th Congress in 1958, and he has proved himself a most capable legislator and fully worthy of the trust and confidence of his constituents of the 14th Pennsylvania Congressional District.

This admiration for his leadership is not confined to the citizens of Pennsylvania, for he is respected by every Member of Congress. Having served for over two decades with outstanding dedication to high standards, BILL MOORHEAD has compiled a splendid record of excellence and achievement, and his inspiring example will be missed here in the House.

Few men have given more of themselves to good government, or have a more compassionate understanding of human problems than has BILL MOORHEAD as chairman of the Banking Committee's Housing Subcommittee and the chairman of its Subcommittees on Economic Stabilization and on International Development, Institutions and Finance. He is also a member of the Government Operations Committee and the Joint Economic Committee, where he serves as chairman of the Subcommittee on Fiscal and Intergovernmental Policy and as a member of the Subcommittee on International Economics.

BILL has been in the forefront of efforts to implement meaningful solutions and effective action on behalf of individual citizens, and one of many major legislative accomplishments was the passage of legislation to guarantee insurance coverage to residents of our Nation's large cities who had been redlined by the insurance companies and had no other place or person to turn. He also distinguished himself very early in his congressional career as a major force in the establishment of the National Foundation on the Arts and Humanities, the forerunner of the National Endowment for the Arts and the National Endowment for the Humanities.

BILL MOORHEAD can retire with the assurance that through his efforts mankind has benefited, and there is no tribute higher than this. I extend to BILL my best wishes for a healthy and happy retirement.●

● Mr. CLINGER. Mr. Speaker, I take this opportunity to honor a fellow member of the Pennsylvania delegation with the knowledge that the Keystone State, and the Nation as a whole, has benefited by the 25 years of service that Congressman WILLIAM S. MOORHEAD has contribute to this Chamber.

While I can comment only on the last 2 of Mr. MOORHEAD's 22 productive years in Congress, I can say without qualification that the attitude of Mr. MOORHEAD toward myself, a freshman Member of the opposition party, has been one of selfless helpfulness and a fairness transcending party lines.

I wish also, in this tribute to the retiring chairman of the Pennsylvania delegation, to note the legislative achievements of Mr. MOORHEAD. He is indeed a legislator, and although his achievements as a Member of the House are too numerous to record on this occasion, I make mention here of his contributions in areas as diverse as small business, the arts, and energy.

Mr. MOORHEAD was a key proponent of legislation making it possible for small businesspeople to bid on Federal contracts. In the arts, he was on the frontier as an early contributor to legislation establishing the National Foundation on the Arts and Humanities. And most recently, he has remained in step with the times and needs of our country by supporting on his subcommittee, legislation representing the first synthetic fuels bill.

These efforts are little more than highlights of a career that in the future will remain as one of the fine examples earning the compliment that all too often the finest Members of Congress leave the political arena for other endeavors.●

● Mr. BRINKLEY. Mr. Speaker, one of my earliest recollections of our esteemed friend, BILL MOORHEAD, relates to his service on the Banking Committee with my former, senior colleague from Georgia, Bob Stephens. Congressman Stephens is something of a scholar, but his conversation is couched in a rich southern flavor. Once BILL corrected Bob as to the pronunciation of his name being "Moorhead" and not "Mohead." Whereupon Congressman Stephens said, with some emphasis, that that was precisely what he had been saying all the time—to-wit, Congressman Mohead.

Those semantics never diminished the deep affection which existed between these two men and which I think spilled

over into the entire Georgia delegation. Seldom would the new man on the block be expected to fill such large shoes as Bob's, but DOUG BARNARD, who represents the same district, has done so with ability and with distinction. He vouches for BILL MOORHEAD, as all of us do, as being a man of uncommon ability and a Congressman's Congressman. We appreciate the high service that he has rendered, not only to the State of Pennsylvania, but to the entire United States of America.

● Mr. ADDABBO. Mr. Speaker, as the 96th Congress draws to a close, I would like to take this opportunity to pay tribute to a dear friend and trusted colleague, BILL MOORHEAD of Pennsylvania, who will be leaving the House after 20 years of dedicated and outstanding service. If ever a man could be considered a devoted, hard working, intelligent servant of the people, it will be BILL MOORHEAD.

It is not an easy task to say goodby to BILL, a man who has accomplished so much for the people of Pennsylvania, as well as for the Nation as a whole. Few men I have met in Washington have been as courteous and helpful as BILL, and few men have achieved so much, with so little fanfare. As a Representative he earned the respect and admiration of his peers for his expertise on a myriad of issues, and as a friend, he was never too busy to give you some of his valuable time.

He served with distinction on some of the most important and prestigious committees on Capitol Hill, among them the Banking, Finance and Urban Affairs Committee. As chairman of the Subcommittee on Economic Stabilization, BILL was instrumental in securing passage of the first synthetic fuels bill in 1979, which would eventually become the Energy Security Act of 1980. In addition, while chairman of that important subcommittee, it was his responsibility to consider the New York City loan guarantee legislation, legislation of which I and all New Yorkers will be forever grateful for his support.

Some of his other legislative triumphs, among many, include the passage of legislation to guarantee insurance coverage to inner city residents, as well as the adoption of amendments to the Freedom of Information Act. A friend of small business, he was greatly responsible for the passage of the 1978 Federal contract bill, which made it possible for small businessmen to bid on Federal contracts. A man of many interests, BILL very early was aware of the need to encourage and tap the creativity of many of our artists, musicians, and writers and he was a key force behind what is today the basis for the National Endowment of the Arts and the National Endowment for the Humanities.

BILL MOORHEAD will be missed by all who enjoyed working with him, and I am sure I am not alone in wishing him well in a retirement he has justly earned.●

● Mr. DRINAN. Mr. Speaker, I feel a personal and profound sense of loss in the fact that BILL MOORHEAD will not be with us next year.

Prior to his service in the Congress for 22 years, BILL MOORHEAD had a distinguished career. He served in the U.S. Navy during World War II and was commissioned a lieutenant. He had graduated from Yale College prior to that time and received his law degree, cum laude, from Harvard Law School in 1949.

In his native city of Pittsburgh, he served as assistant city solicitor and was a member of the board of visitors of the faculty of arts and sciences at the University of Pittsburgh. He was very active in the area of arts and humanities, and served on the board of directors of the Pittsburgh Council for the Arts.

In the Congress, BILL MOORHEAD has had a varied and very distinguished career. I know him best as a member of the Government Operations Committee where he served for a significant period of time as the chairman of the Subcommittee on Environment, Energy and Natural Resources. I was happy to be with him as one of the prime sponsors of the leadership's omnibus energy conservation bill in 1976.

Congressman MOORHEAD's work on the Banking Committee is well known to the Congress and to the entire country. He served as the chairman of the Subcommittee on Economic Stabilization and in that capacity has had a very significant impact on the entire world of banking and on the economic structure of America.

BILL has also served for many years on the Joint Economic Committee, where he was cochairman of the Fiscal and Intergovernmental Policy Subcommittee.

There are many major legislative triumphs for BILL MOORHEAD in the Congress. He will be known for his work in authorizing the President's Council on Wage and Price Stability, and for his managing of crucial legislation for aid to New York City.

BILL MOORHEAD has always been so self-effacing that even his colleagues do not fully appreciate the monumental legislation which he has sponsored, processed through committee, and managed on the floor. For example, many persons do not fully appreciate the fact that BILL MOORHEAD was one of the pioneers in bringing about legislation to initiate the Government's involvement in synthetic fuel.

BILL MOORHEAD will be greatly missed in the Congress where he was universally admired and respected. Our consolation is that BILL MOORHEAD will go on to other victories where he will serve the people of the country as he has served the people of greater Pittsburgh during more than two decades of devoted service.●

● Mr. BLANCHARD. Mr. Speaker, I am very pleased to have the opportunity to join in this tribute to Congressman BILL MOORHEAD. Bill is truly one of the unsung heroes of Congress. He is one of those quiet individuals who, behind the scenes, has been a major force in helping to enact vital legislation.

I have been privileged to serve for the past 4 years with BILL under his chairmanship of the House Economic Stabilization Subcommittee. Through his leadership that subcommittee has been at the cutting edge of key legislation affecting America's future. BILL has helped enact important economic development legislation to aid communities all around the country. He stepped forward, when it was not easy or popular to do so, to help pass the Chrysler Loan Guarantee Act, a bill which has protected thousands of jobs. The people of Michigan owe BILL MOORHEAD a great debt of gratitude.

BILL was also the father and pioneer of synthetic fuels legislation, which was recently enacted into law under the Energy Security Act. The Energy Security Act just might be the most important legislation passed by Congress in a decade and without BILL MOORHEAD's foresight, leadership, and dedication it would not have been done.

To me BILL MOORHEAD has not only been a leader and adviser on legislative issues, but also a friend. While I will miss BILL, more importantly, the Congress will miss him. I know that BILL MOORHEAD will continue to demonstrate the talents and abilities that are reflected in his numerous congressional accomplishments. He has been the consummate public servant and all of us who honor him are proud of our association with him.

I want to personally thank BILL for all of the help and guidance that he has provided me. I wish him and his family the very best in the years ahead.●

● Mr. SCHULZE. Mr. Speaker, it is my pleasure to take this opportunity to join with my colleagues in praise and recognition of the Honorable BILL MOORHEAD, the dean of the Pennsylvania delegation. It has been my great honor to serve with BILL for the last 6 years in the House of Representatives, and to work closely with him on many matters of importance to the Commonwealth of Pennsylvania and to the Nation.

I am proud to say that I was among the first supporters of what I consider to be BILL MOORHEAD's greatest legislative achievement: The Defense Production Act amendments of 1979. BILL's early recognition of the important role which synfuels have the potential to play in our Nation's future was the driving force behind the first step toward energy independence for America.

In my first term, I observed firsthand BILL's dedication to the job while serving on the House Banking Committee. The city of Pittsburgh, the Commonwealth of Pennsylvania and the Nation owe BILL MOORHEAD a debt of gratitude for his work on this committee, and in particular on the Housing Subcommittee. His exhaustive efforts have enabled countless thousands of the poor and elderly to be properly housed. The revitalization of the inner city of Pittsburgh is living proof of his dedication. As a freshman, I found his knowledge and expertise to be extremely valuable.

BILL MOORHEAD has labored tirelessly for the past 22 years for his constituents of the 14th District of Pennsylvania. His record speaks for itself in this regard. We will miss him, but he has well earned

his rest. He was, and I predict he will continue to be, the epitome of the civil servant. That will never change.●

● Mr. GOODLING. Mr. Speaker, as the 96th Congress progresses to a close, I would like to take a few moments in these proceedings to salute and extend my warmest wishes of success in the future to our esteemed colleague, BILL MOORHEAD, who has chosen to retire this year.

With his election to this venerable House in 1958 he brought with him his interest and already large knowledge of urban affairs and housing redevelopment which quickly made him a valuable member on the Subcommittee on Housing, and which became a useful tool in his chairing of both the Subcommittees on Economic Stabilization, and International Development, Institutions, and Finance.

We can all be proud of other contributions BILL has made. His guiding hand and strong support led to the establishment of the National Foundation for the Arts and Humanities which has been the source of many artistic performances I and my family have enjoyed. The Endowments on Arts and Humanities which evolved from the Foundation will continue to benefit artists and musicians throughout the United States for many years to come.

Another interest of his which has brought him much recognition in Congress, has been his work on our energy problems. Beginning with the first synthetic fuels bill in 1979, BILL has had the satisfaction of working toward and actually seeing its final fruition as the Energy Security Act of 1980.

It was with much regret that I learned of BILL MOORHEAD's decision to retire, but having worked with him and admired his many accomplishments, I know that the success this good Congressman has achieved here in Congress will follow him in whatever endeavors he puts his hand to next.●

● Mr. BROOKS. Mr. Speaker, it has been my distinct privilege and very great honor to have served with BILL MOORHEAD in this body for the past 22 years. When his Pennsylvania constituents elected BILL MOORHEAD to the House of Representatives in 1958, they sent us a fighter for human rights and a public servant determined to improve the quality of life in America.

During the past 22 years I have come to value BILL's wise counsel and willingness to work hard for the principles of our democratic heritage and the interests of the working men and women of our great country.

To all of us who have served with him, BILL MOORHEAD represents the very best our country has to offer. He is respected for his dedication, determination, and vision. He has contributed immeasurably to the economic progress our country has made during the past two decades. His early work in establishing the National Foundation on the Arts and Humanities, which later evolved into the National Endowment for the Arts, and the National Endowment for the Humanities, has greatly enriched the cultural life of all Americans.

As chairman of the House Committee on Government Operations, I know from first-hand experience that BILL MOORHEAD is an untiring enemy of waste and inefficiency in Government programs. His 17 years service on the Government Operations Committee has helped to bring greater clarity to the exercise of our oversight responsibilities over the executive branch of the Government. BILL MOORHEAD is an important member of my Subcommittee on Legislation and National Security. He has helped us uncover millions of dollars in wasteful military expenditures. The members of the Government Operations Committee will greatly miss BILL MOORHEAD when the 97th Congress convenes next January.

It was BILL MOORHEAD's vision and hard work on the first synthetic fuels bill in 1979, which led to the passage of the Energy Security Act of 1980. In no small measure, he has contributed directly to the opening of a new era in America's energy future.

I am going to miss BILL MOORHEAD's good natured presence next January. I consider him a very close friend, as well as a respected colleague, and I hope the future will bring him and his lovely wife Lucy, the very best life has to offer.●

● Mr. ST GERMAIN. Mr. Speaker, for 20 years I have sat next to BILL MOORHEAD on the Banking Committee. It is very difficult for me to realize that BILL will not be there next year.

On a very personal basis, I am going to miss BILL MOORHEAD. And I can tell my colleagues that the Banking Committee, and the entire House of Representatives, will feel the loss of this man's quiet effective work. BILL MOORHEAD has not sought the headlines, but those of us who have served with him on the Banking and Government and Operations Committees know that he has truly been one of the House's most productive Members.

A great number of people simply do not realize the wide swath that BILL MOORHEAD has cut in the legislative history of these two decades. Everything from Freedom of Information Acts to basic planks of the Nation's urban policy bear the imprint of BILL MOORHEAD. BILL MOORHEAD and I have worked together on the Housing Subcommittee and I can tell you, from firsthand day-to-day knowledge, that America's cities owe a tremendous debt to this little giant from Pittsburgh.

BILL MOORHEAD has not lived off of the froth of easy legislative efforts; he has often been tossed the hot potatoes, the issues that no one really wanted to tackle, New York City, I trust, realizes just what this willingness to tackle the tough jobs meant. And I trust that automobile workers at Chrysler plants around this Nation will not quickly forget BILL MOORHEAD's willingness and ability to see a tough job through to a successful finish.

It is not my purpose to run down the long list of Moorhead accomplishments this afternoon. They are many and they will not be forgotten.

It is difficult to imagine BILL not being involved in public service and as he departs to begin a new career, I know that he carries with him the best wishes of us all. There can be no doubt that he will be just as successful in any endeavor he pursues as he has been here in Congress.

Certainly, BILL, you have my best wishes and while I can honestly say I wish you were staying, I respect your decision with the understanding that your wise counsel and advice will always be available.●

● Mr. VAN DEERLIN. Mr. Speaker, BILL MOORHEAD, who is leaving us after 22 years of highly productive service, is one of our most accomplished legislators, particularly in shaping critical fiscal policies.

He has engineered successful bills for establishing the National Foundation on the Arts and Humanities, for stepping up production of synthetic fuels, for aiding small businesses and for strengthening the Freedom of Information Act. As a member of the Housing Subcommittee since 1959, he has had a hand in all the major housing legislation of the last two decades, and as a senior member of the Joint Economic Committee, BILL has helped to direct the evolvement of economic positions affecting not only this country but also our free world allies as well.

BILL is not known only for his impressive legislative achievements, of course. He is also widely regarded as a very decent human being. In describing him, his staff—most of whom have been with him for years—freely use words like "kind," "generous" and "compassionate." I think it is fair to say that these laudable traits have contributed significantly to the enlightened legislative leadership which BILL has provided over the years—his efforts have typically been directed to helping those most in need of help, like small business people, inner city residents and laid-off auto workers.

Our colleague is returning now to the private practice of law, in which he was successfully engaged before his first election to Congress. His wise guidance will indeed be missed when the 97th Congress assembles without him.●

● Mr. MITCHELL of Maryland. Mr. Speaker, I am glad to join my colleagues in this tribute to Congressman WILLIAM MOORHEAD. After over 20 years of service in the House of Representatives, this distinguished Member has announced his retirement from Congress.

Congressman MOORHEAD came to Congress with a deep sense of community involvement. His prior activities in community service and development in his home of Pittsburgh, Pa., formed a solid foundation for his subsequent activities as a member of the House Banking, Finance and Urban Affairs Committee. As a member of this committee myself, I can say that Congressman MOORHEAD has served with dedication, dignity, and strength. It was under the leadership of Mr. MOORHEAD that the Banking Committee's Economic Stabilization Subcommittee guided the passage of the first synthetic fuels bill in 1979. We know the expanded version of this measure today as the recently signed Energy Security Act of 1980.

Representative MOORHEAD is to be further commended for his distinguished service as a member of the Joint Economic Committee. In this capacity, he serves as chairman of the Subcommittee

on Fiscal and Intergovernmental Policy, and member of the Subcommittee on International Economics.

Congressman MOORHEAD's significant involvement in economic development activities has not detracted from his ability to provide leadership and impetus in other pertinent areas. One of his initial accomplishments in Congress was the establishment of the National Foundation on the Arts and Humanities, which is today the basis for the National Endowment of the Arts and the National Endowment for the Humanities.

I am proud to point to Congressman MOORHEAD's unwavering opposition to the Vietnam war; his critical role in uncovering abuses in the U.S. foreign aid program; and, his leadership in opposing wasteful and unnecessary military spending. He deserves our admiration and our sincere wishes for his complete fulfillment in whatever he seeks to do in the future.

I wish Congressman MOORHEAD the best as he leaves behind over 20 years of distinguished service to the U.S. House of Representatives.●

● Mr. REUSS. Mr. Speaker, I am delighted to join my colleagues in this special order honoring Congressman BILL MOORHEAD, who has announced his retirement at the end of this Congress. BILL and I have been friends since he first came here in 1958. We have worked closely together on the House Banking Committee, as well as the Joint Economic Committee. I know firsthand the diligence, intelligence, and expertise which he brought to the difficult legislative issues which came before us. He was often the unsung hero of major legislation, such as bills to assist New York City, to aid in the recovery of the Chrysler Corp., and to accelerate the Nation's development of synthetic fuels.

BILL has been a Representative in the truest sense of the word. He has earned the respect and affection of all his colleagues, on both sides of the aisle. I know that I speak for all of us when I say that these halls will miss him.●

● Mr. GLICKMAN. Mr. Speaker, BILL MOORHEAD has not been afraid to confront crises head on, and for that this Nation owes him very special thanks. He is a man who has recognized problems confronting us and developed creative solutions. Most particularly, his leadership in bringing before the House the initiative which led to enactment of the Energy Security Act warrants the thanks of every American. As chairman of the Subcommittee on Economic Stabilization, our colleague from Pennsylvania forcefully articulated the fact that our dependence on foreign petroleum was having a destabilizing effect on our economy and was threatening the Nation's ability to defend itself.

Clearly, the energy problem has not been solved, but thanks to the willingness of BILL MOORHEAD to take the bull by the horns and start the legislative process in the direction needed to promote large-scale synthetic fuels development, we are now headed toward ending our unwise dependence on foreign oil. BILL MOORHEAD is the man who turned the rhetoric which has emanated from Washington about the energy crisis into action aimed at a solution. The final product of his endeavors, S. 932, stands as a fitting tribute to the tireless efforts of this dedicated man. And, as one of the original advocates of alcohol fuels here in the House, it is absolutely clear to me that gasohol would not be as far along as it is today without the efforts of BILL MOORHEAD.

It has been a pleasure to know and work with BILL MOORHEAD here in the House. All of us will miss him, but I am sure I join each and every one of my colleagues in wishing him well in his well-deserved retirement.●

● Mr. YATRON. Mr. Speaker, with the retirement of Congressman WILLIAM S. MOORHEAD, the House of Representatives has lost a great statesman and leader, the Pennsylvania congressional delegation has lost one of its most distinguished members, the residents of the 14th District of Pennsylvania have lost a champion of their rights and concerns, and I have lost the opportunity to continue to work with a man I am honored to know, to have learned from and to call friend.

BILL MOORHEAD has served his constituents and his country for 22 years in the House of Representatives. His legislative accomplishments are innumerable, culminating this year with his sponsorship of synthetic fuels legislation. His active participation in major legislation considered by the Congress, on behalf of the residents of the 14th District of Pennsylvania and the American people, is well-known and deeply appreciated by all his colleagues in the House. For on many occasions, it has been his insight and expertise which have led to better and more comprehensive legislation.

Congressman MOORHEAD's legislative record very ably speaks for itself. We will all miss his valuable counsel and his concern for the people of America. The Pennsylvania congressional delegation will particularly miss his leadership and his voice on behalf of our great State.

I join with my colleagues in wishing BILL MOORHEAD every success in the future. I am honored to have had the opportunity to serve with him for 12 years and I consider it a privilege to have known him. He will be sorely missed.●

● Mr. DERRICK. Mr. Speaker, today I join my colleagues in the House in wishing farewell to a fellow Member from Pennsylvania, WILLIAM S. MOORHEAD.

BILL's 22 years of distinguished service in this body find few parallels. The House-Senate conference he chaired on the synthetic fuels bill of 1979 resulted in nothing less than perhaps the most significant piece of energy-related legislation to that date: the Energy Security Act of 1980.

The scope of legislative initiatives undertaken by BILL was far reaching, spanning from the establishment of the National Foundation of the Arts and Humanities, to consideration of the Chrysler Corporation and New York City loan guarantees.

And while the above highlights some of BILL's accomplishments, it by no means captures the entire extent of his influence in the House of Representatives during his tenure in office.

Having had the pleasure to serve with BILL on the House Banking, Finance and Urban Affairs Committee, I can attest to the tireless effort and dedication he had for his work in this office.

The citizens of Pittsburgh will be hard pressed to find a more capable representative. And BILL's success in public life stands as tribute to that fact.

Mr. Speaker, while I do wish to voice my regret over the departure of such a capable colleague from this body, I do want to extend to BILL my best wishes and good luck in what I am sure will be a continued career of distinction.●

● Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in the House in paying tribute to the Honorable WILLIAM S. MOORHEAD, who is retiring after serving the House and his constituents in Pennsylvania for 22 years.

BILL MOORHEAD's numerous legislative accomplishments, among them the establishment of the National Foundation on the Arts and Humanities and the first synthetic fuels bill in 1979, have greatly benefited all Americans. His leadership and expertise in legislative affairs will be sorely missed by the Congress.

We all wish BILL and his family the best of health and happiness in the years ahead.●

● Mr. O'BRIEN. Mr. Speaker, I am honored to place my congratulations among the many that my colleague BILL MOORHEAD will undoubtedly receive in his retirement from Congress.

His career as Representative from Pennsylvania's 14th Congressional District is one of many accomplishments. BILL MOORHEAD's work on establishing the National Foundation on the Arts and Humanities, is just one example of this.

As a member of the Foreign Operations Subcommittee of the Government Operations Committee, he was instrumental in uncovering abuses in our foreign aid program and in opposing wasteful and unnecessary military spending.

I am privileged to have served in Congress with such a dedicated gentleman. The devotion and care that he has given to his work, and to his fellow Members, further shows the kind of man that BILL MOORHEAD is.

He will be greatly missed and I wish him only the best in the years to come.●

● Mr. SHUMWAY. Mr. Speaker, I appreciate having this opportunity to pay tribute to our friend and colleague, BILL MOORHEAD, as he prepares to leave the Halls of Congress to begin a well-earned retirement.

While I have been privileged to work with BILL for only 2 of his 22 years in the House, that period of time was more than enough for me to be convinced of his dedicated service. As a member of the House Banking Committee, and of the Economic Stabilization Subcommittee of which BILL is the chairman, I have worked closely with him on almost a daily basis throughout my tenure in the Congress. The issues which have come before his subcommittee during the past several years have not been devoid of controversy; they include loan guarantees for the Chrysler Corp., and, prior to my service, for New York City. While I have not always shared the chairman's view regarding these issues, I have always respected his opinion, his legislative leadership, and the equitable manner in which he guided our proceedings.

I have also served with Mr. MOORHEAD on the Subcommittee on International Development Institutions and Finance. Again, his responsible approach to legislation and his experience as a Member of this body have created a favorable impression on those who are privileged to know him, and to work with him.

I am pleased to have this chance to offer best wishes to BILL MOORHEAD as he leaves the House, and to assure him that he will not be forgotten.

Thank you.●

● Mr. ERLENBORN. Mr. Speaker, it is with mixed emotions that I add my good wishes to the many others being offered today in honor of my retiring colleague, the Honorable WILLIAM S. MOORHEAD of Pennsylvania. I, of course, wish BILL well and I congratulate him for selecting his own time to retire. On the other hand, I know these Halls and this Chamber will be different without BILL MOORHEAD, and that prospect injects a hollow note.

BILL and I served together for 16 years on the Government Operations Committee. He was chairman of the Foreign Operations and Government Information Subcommittee in the early 1970's, when I was its ranking minority member.

Those were busy years during which major changes to the Freedom of Information Act were made and the Privacy Act was written with our chairman's patient and thoughtful guidance. We worked hard, we worked painstakingly, and we worked together, conferring and consulting to achieve a delicate balance between the public's right to know and the Government's need to keep sensitive material secret.

I expect BILL's representing the 14th District of Pennsylvania and my representing the 14th District of Illinois got our relationship off to a good start. It was, however, our learning about and from each other that built the good relationship we have had.

BILL can leave Congress knowing he was a responsive steward for the people of Pennsylvania's 14th District who left his mark on laws of national importance and who made many lasting friendships in Washington. I know I will always think of BILL kindly and warmly and I hope he has a healthy, happy and long retirement.●

● Mr. VENTO. Mr. Speaker, it has been my privilege to serve on BILL MOORHEAD's Subcommittee on Economic Stabilization of the Banking Committee for the past 4 years.

This experience has been a particularly rewarding one for me, due both to the important legislation which we have tackled and to the pleasure of working with BILL MOORHEAD.

BILL's leadership on the subcommittee has been important in pushing through some of the most important bills of the past two Congresses. BILL skillfully arranged a program of Federal assistance to develop new energy resources in this country and then successfully guided the Energy Security Act through the House and a conference committee. BILL also led the way on legislation to provide Federal loan guarantees for the city of New York and Chrysler Corp. These bills were certainly among the most important that we have passed in recent years, and I think they reflect BILL MOORHEAD's commitment to American working people and his belief in the need for a closer relationship between Government and industry.

BILL has also served this body well by his work in the Government Operations and Joint Economic Committees and as assistant Democratic whip. I know that we will all miss his contributions to resolving the difficult problems we will face in Congresses to come. We will particularly miss his valuable insight into complex economic and financial problems.

We are all losing a good friend in BILL MOORHEAD.●

● Mr. WALKER. Mr. Speaker, I am pleased to join with my colleagues today to pay tribute to our friend BILL MOORHEAD who has announced his retirement from the House of Representatives.

BILL MOORHEAD has ably served his constituents in the 14th Congressional District of Pennsylvania for 22 years. I have been privileged to work with BILL as a member of the Pennsylvania congressional delegation as well as the House Government Operations Committee and can attest to the fact that his leadership will be sorely missed in this House.

I would like to take this opportunity to express to BILL and to his family every good wish for happiness and continued success in the years ahead.●

● Mr. ROE. Mr. Speaker, I rise today with mixed emotions to salute a good friend and an outstanding lawmaker, BILL MOORHEAD of Pennsylvania.

I say mixed emotions because BILL has decided to retire this year and while I wish him well in his new life, neither Congress nor the Nation can afford to lose a man of his outstanding abilities. For the past 22 years the residents of Pittsburgh have been represented in the House by one of the finest lawmakers ever to serve in this Chamber.

Mr. Speaker, I have had the pleasure of working closely with BILL MOORHEAD on several major pieces of legislation. But perhaps the closest to my heart and the one that will have a long lasting effect on the future of our great Nation is the synthetic fuels bill that he introduced in 1979. BILL took the forefront to push for passage of this legislation that will serve as the cornerstone of our efforts to remove the United States from its continuing unhealthy dependence on foreign oil. As vice chairman of the National Alcohol Fuels Commission I can tell you that BILL MOORHEAD's legislation, which eventually became the Energy Security Act signed into law by President Carter this year, is truly a landmark bill.

BILL MOORHEAD is truly a man for all the people and his record in Congress speaks to that fact. He is mainly responsible for the establishment of the National Foundation on the Arts and Humanities, a body that has helped establish a strong cultural tradition for excellence. But he has also been a champion for those who have been unable to help themselves. The people of the Eighth Congressional District of New Jersey, which I proudly represent, will never forget his efforts as a key member of the Banking, Finance and Urban Affairs Committee that resulted in a law guaranteeing insurance coverage to inner-city residents.

BILL, we all miss you. But thank you for leaving us a record of outstanding achievements to serve as a model for all who will follow in your footsteps.●

● Mr. ASHLEY. Mr. Speaker, it is with profoundly mixed emotions that I join so many Members today in paying tribute to my good friend and colleague from Pennsylvania, Congressman BILL MOORHEAD. Having worked so closely with BILL for over 20 years in the Congress, I know better than most what a void his retirement will create in this body. I will miss him as an advisor and a fellow fighter in countless legislative battles, and I will miss him as a friend. But I also want to offer BILL my heartiest congratulations on his remarkable career, and my very best wishes for a very successful and rewarding career in the years ahead.

It has been my special pleasure to serve with and work with BILL on hundreds of issues through the years, especially those emanating from the House Banking Committee and the Economic Stabilization Subcommittee which he has so ably chaired in recent years. BILL's enormous contributions to such legislative landmarks as aid to New York City, COWPS, the aid package for Chrysler Corp., and synfuels—just to name a few—will be remembered for years to come. He has been a true legislative craftsman.

My hope is that BILL will be able to find time in the years ahead to return to Capitol Hill—taking time from what I know will be a very successful law practice—to visit with his old friends, and to offer his special brand of humor, friendship, and counsel. It has been a privilege to serve with him, and it has been a pleasure to be his good friend.●

● Mr. ROYBAL. Mr. Speaker, it is both a privilege and a pleasure to rise in tribute to my distinguished colleague, BILL MOORHEAD, whose retirement from Congress after more than 20 years of service will have a profound effect on all of us.

Like a star football player whose team has retired his number, one almost feels that BILL's seat should be retired right along with him. His profound commitment to the people he serves is reflected in his legislative record. One of his first accomplishments in Congress was the establishment of the National Foundation on the Arts and Humanities. In his capacity as a member of the Government Operations Committee, he has proved himself a true watchdog of the Federal process. He was an outspoken critic of the Vietnam war, was instrumental in uncovering abuses in our foreign-aid program, and has successfully

opposed wasteful and unnecessary military spending.

His success in managing sensitive bills is indeed impressive. Among his accomplishments are passage of legislation for aid to New York City and to authorize the President's Council on Wage and Price Stability.

Obviously, BILL's leadership will be sorely missed. I wish him the best of luck in all his future endeavors.●

Mr. GAYDOS. Mr. Speaker, I yield back the balance of my time.

GESMO SHOULD BE COMPLETED SOON

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. BROYHILL) is recognized for 5 minutes.

● Mr. BROYHILL. Mr. Speaker, in today's Washington Post, there appears a thought-provoking letter to the editor written by our colleague TOM CORCORAN, of Illinois, detailing his views on the so-called GESMO study. His letter is in response to a Post editorial critical of Mr. CORCORAN's amendment to the Nuclear Regulatory Commission's fiscal year 1981 authorization bill which would mandate that the NRC complete its rulemaking procedure on the GESMO study. The Corcoran amendment, adopted by a 22-to-20 vote in the full House Commerce Committee in June, with my full support, will be offered to the NRC bill when it is considered by the House in the very near future.

At this point, I would like to insert in the RECORD a copy of the Post's September 7 editorial and Mr. CORCORAN's response to it for the benefit of all my colleagues:

[From the Washington Post, Sept. 7, 1980]

THE GESMO GIZMO

Efforts are afoot again in Congress to prepare the way for the reprocessing of nuclear waste and for the associated recycle of the plutonium thus produced for use as fuel in existing types of reactors. The vehicle is an amendment to the Nuclear Regulatory Commission's authorization bill that would require the NRC to revive an exotic rule-making proceeding known familiarly as GESMO—Generic Environmental Statement on Mixed Oxide Fuel.

The law provides that such a statement must be completed and a postive ruling made before the NRC may grant licenses for reprocessing and recyle. Work on it was begun in 1974 but was suspended by the NRC in 1977, in conformity with the president's decision to defer indefinitely reprocessing in the United States. This decision was taken primarily on economic grounds, supported by non-proliferation considerations. Since 1977, both arguments have become, if anything, more compelling.

For reprocessing to make economic sense, the value of the plutonium recovered must be greater than the costs of recovery. Plutonium's value in this context hinges on the cost and availability of the uranium fuel it would be replacing. But since 1977 the price of uranium has dropped sharply, as have projections of future needs for uranium fuel.

The economic argument is buttressed by the fact that the spread of reprocessing technology offers any nation direct access to weapons-usable plutonium. Thus the proliferation risks asociated with a nuclear fuel cycle involving reprocessing and recycle are far greater than those of a cycle that never produces weapons-usable materials. Since 1977, Pakistan has vividly demontrated the point.

The ultimate irony is that reprocessing and recycle do not make the task of disposing of nuclear wastes any easier. Though some types of wastes are reduced, the process produces additional types so that the waste disposal knot—the one that must be untangled if nuclear power is to survive—remains as intractable as ever.

The last thing nuclear power needs now is a congressional directive that will pitch the NRC into three or four years of bootless debate over the pros and cons of reprocessing while urgent safety, health and waste disposal isue get shortchanged. The right approach for those who favor nuclear power is not to keep beating this dead horse, but to turn their attention to efforts to bring about a long overdue nuclear waste disposal program—one that does not involve reprocesing.

[From the Washington Post, Sept. 16, 1980]

LETTERS TO THE EDITOR—GESCO SHOULD BE COMPLETED

The Post's editorial of Sept. 7, "The GESMO Gizmo," following by a week an eight-page package of patently false White House GESMO [Generic Environmental Statement on Mixed Oxide Fuel] "facts" sent to me and my colleagues in the House by the phantom congressional lobbyist for the president, Frank Moore, suggests that, while Mr. Moore may not have much impact on Capitol Hill, he certainly has influence on other high places in Washington.

For the first time, economics was raised as a major argument against GESMO. Economics in this case is a bogus issue. Contrary to the pap the White House is now putting out on this, the only real argument against GESMO is non-proliferation of nuclear weapons.

The government's role in reprocessing is a regulatory one to make sure reprocessing is not harmful to public health, safety and the environment, and to determine whether there are standards and safeguards that would permit safe reprocessing. In a nutshell, that is what GESMO is all about. The economics of reprocessing is a matter for industry, not the taxpayers of this country, and that certainly suits me fine.

From the standpoint of both domestic energy and sensible nuclear waste management, however, I believe GESMO should be completed. That's why I authored the amendment to the NRC authorization bill to require that. Spent nuclear fuel yields a high percentage of uranium that can be used again. Plutonium, another byproduct, could be recycled through our power plants—not only providing more energy, but avoiding the problems associated with storing it underground forever. Finally, we would be left with much less high-level radioactive waste, ready for solidification and permanent storage.

So, to my mind, the real issue of GESMO is one of foreign policy. That is true today, as it was in 1977 and in 1978 when I supported President Carter's Nuclear Non-Proliferation Act. However, it's not a compelling argument today, because the world is not following our example on non-proliferation matters.

Under the leadership of the United States, a 66-nation international conference was convened to look for alternatives to reprocessing. In February of this year, it completed its work in Vienna, concluding that reprocessing "is an essential preliminary to many of the possible fuel cycles," and that proliferation is a political matter monitored and controlled by international safeguards.

Even before reaching those conclusions, countries such as England, France, Japan, the Soviet Union and West Germany were going ahead with their reprocessing facilities. So our leadership has been ineffective. A few years ago we were the world leader in nuclear technology and, therefore, we had the capacity to control the use of advanced fuel cycles. Had other countries stopped their programs in 1977 as we did, the United States would still be in the preeminent position. But they did not.

That's why GESMO is important. Reopening GESMO would signal that, because other countries didn't follow our noble example on reprocessing, we are reviewing that policy to make it more effective by regaining U.S. leadership in, and influence over, nuclear technology.

TOM CORCORAN,
U.S. Representative.

WASHINGTON.●

WORLDWIDE VOICE COMPETITIONS TO BE HELD AT ACADEMY OF MUSIC IN PHILADELPHIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. MCDADE) is recognized for 5 minutes.

● Mr. McDADE. Mr. Speaker, I would like to take this opportunity to salute a great man and a great institution who have joined forces to create a unique opportunity for aspiring young artists in the field of opera. This spring, the Opera Company of Philadelphia and the renowned tenor Luciano Pavarotti will hold worldwide voice competitions at the beautiful and historic Academy of Music in Philadelphia. This event is a testimony to the man whose dream it has been to hold such a competition. It is a testimony to a man who has not forgotten his beginnings.

Luciano Pavarotti has become recognized as "the reigning tenor of the lyric Italian opera" and has one of the worlds finest voices. He will give young artists with great promise a once in a lifetime opportunity to appear on stage with a master. That master is Luciano Pavarotti. For this competition will not award the winners with money as do most opera competitions, instead, Luciano Pavarotti will give the winners the same chance he had in 1962 when he appeared on stage in Italy and launched his own brilliant career. In addition to the opportunity to appear on stage with Luciano Pavarotti, the winners of the competition will be given 4 weeks of extensive training in voice, drama, and language from leading American and European coaches.

Mr. Pavarotti has chosen the Philadelphia Opera Company for all the right reasons; we know them well. The competition will focus the attention of the world on opera and on Pennsylvania. The Philadelphia Opera Company has been at the forefront of encouraging bright new talent. The opera company is widely acclaimed for the superlative quality of its performances and the Academy of Music has the historical backdrop befitting such an esteemed competition and glorious occasion. It is important that we continue to showcase exciting young talent and put new life into the arts. When the performances are given during the 1982 opera season, it will be a moment that the young singers will cherish and it will be a joy for us to behold. It is the spirit of this competition which enables the world to enjoy the likes of a Luciano Pavarotti and we are forever grateful.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. NELSON) is recognized for 5 minutes.

● Mr. NELSON. Mr. Speaker, due to official business in my district yesterday I was not present for rollcall vote No. 540. If I had been present I would have voted "yes" on the question of ordering a second on H.R. 6865, to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.●

BILINGUAL EDUCATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 15 minutes.

Mr. GONZALEZ. Mr. Speaker, throughout our history, the public schools have been the great catalyst of our society. It is the schools that have produced the world's most capable work force. It is the schools that have created in our people a sense of personal responsibility, a relief in liberty, and a profound understanding that in a free country like ours, the accident of birth is no bar to personal ambition or progress. It is the schools that have made our Nation of immigrants into a society with fundamental unity.

The Department of Education is now carrying out a rulemaking proceeding of profound importance; it addresses the issue of how our schools could better carry out their task of being an effective catalyst, better deal with the disparate needs of people who come from many different backgrounds, but with common hopes and purposes. There is much controversy about this rulemaking procedure, but we are fortunate that it is in the hands of a singularly capable Cabinet officer, Secretary Shirley Hufstedler. She personally opened hearings last week in San Antonio on the proposed bilingual regulation, and her comments are well worth reading. Accordingly, I offer for the RECORD my introduction of the Secretary, and her comments at that hearing:

BILINGUAL EDUCATION HEARING—INTRODUCTION OF THE SECRETARY OF EDUCATION

(Remarks of U.S. Representative HENRY B. GONZALEZ, September 8, 1980)

There could not possibly be a better place than this to begin hearings on the proposed bilingual education regulations. Here, in the Institute of Texan Cultures we see all around us the diversity of the American people—a diversity that has been and remains the wellspring of our strength as a nation. It says on our money, "E pluribus unum;" but our country is not only a federation of States, it is a federation of peoples; we are truly a nation of one, from many.

It is a special privilege for me to welcome and introduce the first Secretary of Education.

Education is the greatest engine of social progress. It has been in the American classroom that our nation of immigrants has learned the skills not just of survival, but of success. It has been in the American classroom that we Americans, coming as we do from many and diverse backgrounds, have learned not just to tolerate, but to respect and draw strength from each other.

Madame Secretary, you recognize the importance of education; to become Secretary you have left a distinguished career in law, and a position of high responsibility on the Federal bench to head the Department of Education—a department whose creation I have supported, and welcome as an agency that at long last recognizes the significance of the Federal role in education, and the importance of education to this nation.

For those who do not know Judge Hufstedler, I can say that I recall meeting her in 1968, when Lyndon B. Johnson nominated her to the Court of Appeals, and again when she was named to be Secretary of Education by President Carter. It would be truly modest to say that you are a person of formidable talent and accomplishment, respected not only as an able intellect, admired not only as a distinguished lawyer, and warmly regarded not only as an outstanding jurist; you are all of those things, and more: you are also a person of compassion, a person of deep and human concern, one who combines humanity with rare talent. You have given your talent in public service, and for that the nation is indebted to you.

Madame Secretary, there is nothing more complex than the question of how we can most effectively teach children who speak a language other than English. In my own school career, it was a question of sink or swim; a matter of giving me extra time in a grade, so that I could learn English. But there were many who sank. We have come a long way since then. We are no longer satisfied to see the children of first generation immigrants consigned to the bottom of the social and economic heap, nor to see those children of that generation stunted in their intellectual growth by reason of limited English ability. Today we believe that it is not only possible, but necessary, to effectively reach and teach children who come to school without a command of English. We know that this is not easy. We know that there are controversies that abound. But it is not an issue we can evade, and this hearing is evidence of that.

Madame Secretary, your presence here clearly underlines the importance of what you are trying to accomplish. Your presence demonstrates the urgency of the task. And your presence proves the depth of your own commitment and concern.

It is a privilege, pleasure, and honor, to welcome here, and to introduce the truly distinguished first Secretary of Education, the Honorable Judge Shirley Hufstedler.

REMARKS OF SECRETARY SHIRLEY M. HUFSTEDLER TO THE OPENING SESSIONS OF THE LAU HEARINGS

This is an important day in the life of the Department of Education and of the nation. The hearings that begin this morning will take us to six cities in two weeks. At each stop along the way parents, educators, community leaders and government officials will come together to address the needs of 3½ million youngsters who speak little or no English.

It will be a small exercise in Democracy, the kind that we Americans take so easily for granted. The witnesses will all be Americans, though the list of names will read like a roll call of the world's nations. We take that for granted, too. Yet there is nothing trivial about either fact. Taken together they say much about why we are here and what we can hope to accomplish. Taken separately, they speak of diversity and democracy, two paths which have converged in San Antonio today.

Our diversity springs from immigration, which has been at the core of our national experience for centuries. Recent arrivals adjusting to life in a new land have been features of our public life with a constancy—and on a scale—almost beyond the comprehension of other countries. That peculiarly American experience continues in the 1980s much as it did in the 1780s, and weaving new Americans into the diverse fabric of society remains a national priority. This hearing is a waystation on our well-worn path toward that goal.

By comparison the other path, that of democracy, seems at once older and newer. In one sense, we are concerned with a timeless problem of principle: Protecting the rights of a minority within a democratic state. Yet the modern concept of civil rights did not really take shape until the Supreme Court's landmark decision in Brown vs. Board of Education just 26 years ago. And it was not until 1964, with the passage of Civil Rights Act, that the principle was firmly established.

Ten years later, in the case of Lau vs. Nichols, the Supreme Court ruled that civil rights protections also extend to school children who do not speak English. Our efforts to meet that mandate put us on the path to this place and this moment.

It is altogether fitting that the ways have converged in San Antonio. The people of this State and this city have travelled both paths. They know them well.

Our gathering place offers eloquent testimony to the diversity and the strength of a State built by immigrants. A lively mixture of the cultures showcased here is at the very heart of Texas' vitality. The resulting enrichment of the State's intellectual, artistic and creative life is reflected not merely in museum exhibits but in every street of San Antonio. It lingers under the cypresses and along the river that winds through this historic city—a city that was bilingual hundreds of years before educators appropriated the term.

The builders of Texas came first from Spain and Mexico, then the United States, then throughout the world. From that endless stream of new arrivals Texas fashioned her unique character—and her most precious resources. The State's wealth resides neither in the vast and magnificent land, nor in the fabulous oil and mineral deposits beneath it. Texas' greatest treasures are her people.

That is why public education has been so important here. In a State built on people, Texans have always understood the value of investing in human resources. And the same logic, the same refusal to waste human potential, has led many to concentrate on the special needs of children who do not speak English.

San Antonio, which was the site of Texas' first public school in 1746, has been a leader in education ever since. Some of the earliest and best bilingual programs in the country were developed right here. I am looking forward to visiting several of them later today.

So Texans come to these hearings with a long and productive experience in the blending of cultures and languages. For you, diversity is a well-travelled path—an integral part of your heritage.

There is another side of that heritage, however, both in Texas and in the nation as a whole. Proud as we are of our diversity, American history is replete with examples of discrimination based on language. I wish that I could say that such problems were

behind us; but they are not. We have a long way yet to travel on the path toward equity and democracy.

Millions of non-English speaking children still face enormous obstacles in our schools. Some, unable to communicate with their teachers, are routinely classified as mentally retarded. Countless others fall hopelessly behind their peers during the crucial early years of school. For all too many, early frustration establishes a pattern of failure. School becomes an alien place, a kind of purgatory where catching up is impossibe, and respect for one's heritage is unheard of. The door to education is slammed shut and locked fast before these children have even one foot across the threshold.

Many citizens and communities have made conscientious efforts to overcome these problems. But there are also many who, under one cover or another, have done essentially nothing—leaving countless children to sink or swim. And heartbreaking numbers of those youngsters are sinking.

I do not believe that there could ever be justification for such a policy in a democratic society. But perhaps it mattered less in the days when few Americans completed high school and even fewer went on to college. Then, economic success in life was less closely tied to educational attainment. Today, however, the future for young people without schooling is bleak and getting bleaker all the time. Education cannot guarantee a happy life or productive employment; but lack of education is very nearly a guarantee of lifelong poverty, dependence and despair.

No one understood that better than a man who taught school in Cotulla, Texas in the 1930's. He went on to the White House; but he never forgot the little school where he learned first hand about language barriers and about poverty. Returning to Cotulla in 1966, he recalled those days so poignantly that I cannot resist reading some of what he said:

"Thirty-eight years have passed but I still see the faces of the children who sat in my class. I still hear their eager voices speaking Spanish as I came in. I still see their excited eyes speaking friendship.

"Right here I had my first lessons in poverty . . . and the high price we pay (for it in dropouts and blighted lives.) . . .

"How long can we pay that price?"

"Everything I want to work for as your President—to achieve peace, to conquer poverty, to build a worthy civilization—all of these depend in a very large degree on what happens in this school and what happens in other schools throughout the land."

I think Lyndon Johnson would be gratified with this hearing today. Gratified that we are moving ahead to see that no child is foreclosed from education by barriers of language. Gratified that a program he marched onstage has been lifted to cabinet level and to national attention by another President, Jimmy Carter, who understands, as he did, what will make the difference to a civilized society.

Broad concerns for democracy and for diversity have drawn us to San Antonio. But, now that we are here, the specifics of proposed regulations will command our attention. The regulations were written by the Department of Education under court order. It has been a sensitive task. We have tried to reflect both the needs of the 3½ million children involved and the concerns of 16,000 school districts responsible for serving them.

Throughout our work we have been guided by two principles: First, each child must learn English—and must learn it as quickly as possible. Second, while learning the language, children must not be allowed to fall behind their English-speaking classmates in other academic subjects. If either principle is neglected, all our promises of equal educational opportunity will remain empty rhetoric.

Shorn of detail, the proposed regulations would require schools to identify each student's primary language; to assess their skills both in English and the primary language; to provide effective services for teaching students English and helping them keep pace in other academic subjects; and, finally, to determine when those services are no longer needed and the students can be taught exclusively in English.

Since publication of the proposals last month, there has been a good deal of healthy discussion, and also a fair amount of confusion. In the interest of clarity, let me say just a word about what they are and what they are not.

They are not designed to suppress any language or subculture in the United States. But they are designed to ensure that all our children become both fluent and literate in English.

Cultural diversity is one of America's greatest strengths. We could not suppress it if we would; and we should not suppress it if we could. But unity is also America's strength. And the ability of every citizen to communicate in our national language is the keystone of unity.

The regulations are not designed to maintain any language or subculture in the United States. But they are intended to foster respect for the multiple heritages of our people.

I have no doubt that Americans of every background will continue to maintain their traditions as they have always done: through private institutions of family, community, and religion. If, in addition, individual states and localities wish to adopt a policy of maintenance, that is their right; but it is neither the right nor the intention of the Federal government to tell them to do so.

The regulations are not a sudden or surprising development. But they do contain some new features.

The legal requirement to meet the needs of non-English speaking children dates back sixteen years, and civil rights policies on bilingual education have long been in effect. The proposals we are considering today are a good deal easier to read and understand. They set much more practical and convenient thresholds for providing special services. And they acknowledge that children cannot learn subjects taught in a language which they cannot understand. Apart from that, they are not dramatically different from the earlier policies.

Finally, the proposed rules are not rigid or monolithic. But they do attempt to guarantee equal access to education for every child in this country—regardless of the language barriers he or she may face. No one is seeking to impose a single solution or philosophy on America's diverse school system. Instead the focus is on results—on the achievement of individual children. Within the proposed format, each school district would retain absolute freedom in matters of curriculum. And limited waiver provisions would permit districts already achieving the desired results through other programs to continue doing so.

In their simplest terms, the proposed regulations are a reaffirmation of this nation's love and concern for our children—and an investment in their futures.

Such investments have never been cheap, nor free from controversy. And our society has not always been skillful in handling the marriages of education and law that make them possible. Still, we have never shrunk from the investments, for we know the price of neglect. And processes like these hearings enable us to do a better job of managing the logistics with every passing day. I am absolutely confident that, together, we can produce sensible, effective regulations that will benefit the entire country.

Throughout these proceedings, the Department of Education must first and always be an advocate for children. That advocacy requires the courage to adhere to legal requirements without equivocation and the thoughtfulness to define educational responses with vision and with common sense. It also requires meaningful consultation with those persons who have the highest stake in what we do—concerned educators, community leaders, citizens and parents.

That process of consultation, which has been going on for many months now, reaches its climax in these next two weeks. The proposed regulations have come a long way. Yet, within the constraints of the law, nothing about them is beyond change. We have done our best to draft fair and flexible proposals. Now we are anxious to have the reaction of the American people.

I expect the witnesses gathered here and in the other cities across the country to offer a range of comments and insights that will cover—and, hopefully, improve—virtually every section of these regulations. But there are certain areas in which we are particularly anxious to have your advice—areas ranging from exit criteria, to staff requirements, to proper placement for children who are comparably limited in English and their primary language. We have attempted to frame these questions as clearly as possible in the Federal Register. I hope that, where appropriate, you will make reference to them in the course of your testimony.

You will doubtless take a measure of comfort in knowing that I have the advice and assistance of a virtual posse of Texans as these hearings begin. They are outstanding, experienced people who know the problems on a grassroots basis: Dr. Josue Gonzales, Director of Bilingual Education and Minority Language Affairs; Tony Califa who will be heading the team this morning; Ed Baca, the moderator; and, of course, the Chief of Protocol for the United States, Ambassador Albardo Valdez, who will be speaking to us in a moment.

You can be sure that team of Texans and I will be reading every word of testimony from San Antonio, and from the hearings which follow in Denver, San Francisco, New York, New Orleans and Chicago. And you can be sure that every idea that you offer will be carefully considered before we move to a final decision.

I began by remarking how casually we Americans glide over everyday reminders of democracy and diversity. That both are common enough to be taken for granted is a very good thing. Yet there is always the danger that we may lose sight of their true value.

I would like to close with a similar reflection on very large numbers. In our much-numbered society we glibly toss off figures that would have astonished our ancestors, yet we rarely pause to consider their real meanings. Consider, for example, the three-and-one-half-million children whose lives will be touched by what we begin here today.

Think of that: three-and-one-half-million human beings! Each one unlike any other person who ever walked the earth! Each one with limitless potential! What number can do them justice? How can we even begin to glimpse the possibilities of their future? Here is a clue:

Two hundred years ago, precisely three-and-one-half-million people joined together to found this nation. They dreamed radical dreams for their children—democracy, tolerance, education for all—and they made them come true. They changed the world.

We must dream no lesser dreams for children of today. They, too, have it in them to change and astonish the world.

GEN. FRIEDRICH VON STEUBEN TO BE COMMEMORATED IN CHICAGO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, September 17 is the anniversary of the birth of one of the heroes of the American Revolutionary War, Gen. Friedrich Wilhelm von Steuben. As a native German, von Steuben was one of those men whose spirit and imagination were aroused by the struggle for independence of a small group of colonies an ocean away and without the help of this valiant soldier, America's fight for freedom would have been much more difficult.

On Saturday, September 20, the German American Societies of Greater Chicago will present their 15th Annual von Steuben Day Parade. The parade will step off at noon, and I look forward to joining Americans of German descent in Chicago on the reviewing stand in commemorating the crucial and major contributions of this outstanding man in the winning of America's independence, as well as the contributions of German Americans throughout the entire history of our country. America is a land of immigrants, and the immigrants who settled here from Germany have made countless and inestimable contributions to our Nation's freedom and greatness, and to our Nation's rich scientific, cultural, and economic life.

After the colorful pageantry of the grand parade, which begins at Chicago's famous State Street and Wacker Drive, there will be an evening banquet in the Red Lacquer Room of the Palmer House Hotel. The capable and energetic Karl C. Laschet is serving again this year as the parade's general chairman and grand marshal, the honorary grand marshal is the mayor of Chicago, the Honorable Jane Byrne; Joseph Gies is the Honorary General Chairman, and Norbert Hozinger is serving as the parade marshal.

General Friedrich Wilhelm von Steuben won a special place among the heroes of America's War of Independence because of his many talents and his mature experience. He was 47 years of age when he arrived in 1777, a relatively old man for a period of history before modern amenities and medicine. He had already achieved high standing for his accomplishments in Prussia and was a member of the general staff of King Frederick the Great.

In early 1778, von Steuben reported for duty to General Washington at Valley Forge, at a time when the colonies were suffering through military setbacks, privation, and low morale. During the bitter days at Valley Forge, General von Steuben went to work with zest and spirit, sustaining the courage of the troops, and contributing his private funds for their well-being. He drilled and taught them up-to-date military practices so that when spring finally arrived, they were ready to engage the best army of that time in equal combat.

The U.S. Senate passed a joint resolution in 1961 authorizing the President to proclaim September 17 of each year as General von Steuben Memorial Day. A copy of that resolution follows:

RESOLUTION

Whereas the successful conclusion of the struggle of American colonists for liberty was immeasurably aided by sacrifices and services of freedom-loving nationals of many countries; and

Whereas General Friedrich Wilhelm von Steuben, following a brilliant military career in his native Germany, responded to the appeal for assistance from the beleaguered Colonies; and

Whereas General von Steuben, drawing upon his experience and his vision, instructed forces mobilized by the Continental Congress, directed training at Valley Forge, and established discipline and morale which enabled disordered, retreating forces to rally and reorganize following the Battle of Monmouth; and

Whereas General von Steuben served with distinction as inspector general of the colonial forces, in command of the district of Virginia, and during the stage of Yorktown; and

Whereas the drill regulations and rules of order and discipline for troops of the Colonies conceived and promulgated by General von Steuben were formally adopted by the Continental Congress as the governing code for forces of the Revolution; and

Whereas the ideas and methods advocated and perfected by General von Steuben were reflected in the establishment of the United States Military Academy; and

Whereas the United States regularly shows appreciation to heroes of other nationalities who were conspicuous in the fight for independence; and

Whereas the anniversary of the birth of General von Steuben and the anniversary of the completion of labors of the Constitutional Convention coincidentally fall on September 17: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, the President of the United States is authorized annually to issue a proclamation calling upon officials of the Government to display the flag of the United States on all governmental buildings each September 17 and urging the people of the United States to observe the day with appropriate ceremonies commemorating the birth and the services of General Friedrich Wilhelm von Steuben.

Mr. Speaker, on the occasion of this commemoration of the inspiring courage and heroism of General Friedrich von Steuben, I send my greetings and best wishes to all Americans of German heritage residing in the 11th District of Illinois, which I am honored to represent, the city of Chicago and all over this Nation who are celebrating this grand event.

The officers and membership of all the German American Societies of Greater Chicago are working hard to make the 15th Annual Von Steuben Day Parade into another great success and all of Chicago is looking forward to this patriotic event. I send my congratulations to them on their achievement and on their many fine contributions to making Chicagoland a better place to live, and to their general parade chairman, Karl C. Laschet. The names of the parade's leadership and committee membership follow:

Commitee: Felix Bachmeier, Melvin Brandt, Stefan Dama, Rudi Dick, Ludwig Erdbeer, Willi Follmer, John Hebling, Elisabeth Kraus, Fred Marunde, Josef Matzer, Wolfgang Reinke, Horst Seyferth, Willi Scharpenberg, Nick Schneider, Alfred Schmitke, Horst Tietz, Frank Workman.

Helen Meiszner, parade treasurer; Joseph Zottmann, Betty Center, and Louise Jochum, trustees.

Paula Zottman, cornflower chairlady; Clara Winkler, recording secretary; Marianne Gies, correspondence secretary; Virginia Vazzano, cordinator; Edward Kmiec, assistant coordinator.

Directoren: Joseph Anetsberger, Betty Center, Willi Follmer, Josef Frieberger, Karl Kurz, Alfons Schneemann, and Joseph Zottmann.

Finanzcommittee: Sarah Brantsch, Henrietta Baltis, Peter Kratich, and Josef Matzer.●

LEGISLATION EXONERATING BISHOP COLLEGE OF DEBTS OWED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. FROST) is recognized for 5 minutes.

● Mr. FROST. Mr. Speaker, today I am introducing a bill proposing to exonerate one of the oldest and largest black colleges in the country, Bishop College of Dallas, Tex., of $1,237,669 in outstanding debts owed to the Federal Government. This debt was identified in an audit covering the college's activities through 1974 and also includes miscellaneous debts accrued between 1974 and 1978. The debt resulted from questionable financial management practices, over a series of years, of former college officials who were unable to fully account for their use of Federal funds.

In August 1979 the Department of Health, Education, and Welfare and Bishop College culminated an intensive effort to settle this outstanding debt by agreeing to a 6-year repayment schedule. Under the terms of that schedule, Bishop is to begin repaying the $1,237,659 in September 1981, at a rate of $26,000 a month. Bishop entered into these negotiations in good faith and had every intention of living up to this agreement when the time came to begin making the payments.

As confident as I am of the integrity of those officials who signed that agreement, I have been advised by financial experts that Bishop College will have great difficulty continuing in operation if it is not relieved of this obligation before September 1, 1981. Mr. Speaker, Bishop is a pioneer in the field of black education. The 100th anniversary of its existence as a black liberal arts and teacher education college will be commemorated later on this week. If the Congress does not take the steps to relieve Bishop of its debt to the Federal Government, I do not believe it will survive to see its 101st anniversary commemorated.

Some people may question the need to continue black colleges in this country. These institutions remain a source of great pride to the black community nationwide. Many black church leaders are graduates of these colleges, and Bishop has played a leading role in this area. Moreover, black students still have special needs that in some cases can only be met by black institutions. These schools continue to play an important

function in integrating young black men and women into the job market.

I do not take the seriousness of my proposition lightly. The predicament of Bishop College is the product of many years of its own mistakes. But the story of this college is not merely the story of questionable management policies. It is symptomatic of a black college's stuggle to compete for the best and the brightest students at a time when educational costs were skyrocketing. The tragedy of Bishop College goes deeper than these audits, as it is the tragedy experienced by any institution where Federal funding plays an important role. Millions of dollars in Government funds were offered to Bishop during a critical time. Yet the myriad of rules, regulations, and accounting requirements that accompanied these funds were too much for a school led primarily by ministers to manage. The tragedy of Bishop College is also tragedy of a handful of men who mismanaged those funds in the belief that they were pursuing the only possible course if the college were to survive. But, Mr. Speaker, the real burden of this tragedy will fall upon the thousands of students who look to Bishop College for their education.

Since the August 1979 repayment agreement, this college has made much progress, and I am introducing this bill with the expectation that officials there will continue to improve their financial management techniques. In conjunction with the Department of Education, the United Negro College Fund, the Ford Foundation, the Dallas Citizens Advisory Council, a nationwide coalition of black churches, and my Congressional office, Bishop College has already begun modernizing its operations. An intensive effort began in 1979 to reconstruct its bookkeeping system. Professional personnel, skilled in the techniques of administering Federal funds, have been hired and are supervising the college's financial transactions. A technical assistance team has been on hand to oversee this operation and college officials are working closely with the Department of Education in planning for long-term operational needs. Bishop has a new chief executive officer and the board of directors will be participating in training sessions that will teach them modern administrative procedures. The scope of the college's service has been trimmed: Degree programs will be reduced, the operating budget has been slashed, empty dormitories will be converted to other uses, and excess land has been sold off. The college, for the present time, will concentrate on recruiting students from the Southwest area, discontinuing its efforts to recruit from Northern high schools. In short, Bishop officials are dealing with their problems in such a way as to life the college out of its present situation without destroying its chances for future growth.

Finally, Mr. Speaker, I will point out that not once during this controversy have the academic credentials of Bishop College been publicly called into question. Not once during the audits, the negotiations, or the trials have allegations of impropriety been levelled against the college as an institution of higher learning. As far as the business of educating young adults, Bishop's record of academic excellence has been sustained. In order to allow this college to continue serving the black community and to continue serving the needs of young men and women who are depending on its survival for their education, I respectfully request of my colleagues their prompt and favorable consideration of this bill.●

DOD APPROPRIATION BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BRADEMAS), is recognized for 5 minutes.

● Mr. BRADEMAS. Mr. Speaker, the Defense Department appropriations bill for fiscal 1981 which the House approved today provides this Nation a balanced approach to our security. The bill recognizes the need to increase selected portions of our military forces to counter a series of aggressively imperialistic moves by the Soviet Union.

This legislation helps assure the protection and maintenance of our position in the world.

It assures our allies that any fears they may harbor about our continued support are unwarranted.

In order to accomplish these objectives, Mr. Speaker, it has been necessary to increase the funds for the Defense Department substantially. This bill provides $157 billion in new budget authority for the Defense Department, $19.7 billion more than was appropriated last year and $2.5 billion more than was requested by President Carter.

The bill provides money for raises for our military personnel; money for additional raises already authorized by Congress will be included in a later supplemental measure.

A major item in the bill is $51.8 billion for what are known as operations and maintenance, a sum $7.1 billion higher than last year.

Mr. Speaker, the increased funds for military pay and for operations and maintenance are designed to deal with two of the more perplexing problems faced by our modern military forces. The salary increases should enable us to keep more experienced personnel from leaving the military and the funds for operation and maintenance should enable those personnel to keep their equipment in better condition and prolong its usefulness.

In addition, the bill provides $44.2 billion for the procurement of new weapons, a sum $8.7 billion higher than a year ago and $3.6 billion over the President's request.

The $14.8 billion appropriated for the research and development of new weapons includes money for the proposed MX missile system, and a new strategic manned bomber that will take full advantages of the latest antiradar technology.

Mr. Speaker, in addition to the overall importance of this bill in maintaining a strong and secure military force is an amendment, adopted by the House, which has much potential importance to areas like the district I represent in northern Indiana.

This amendment, offered by the distinguished chairman of the Defense Appropriations Subcommittee, the gentleman from New York (Mr. ADDABBO) would allow the Department of Defense to target some of its purchases of nonstrategic goods and services to firms in areas of high unemployment.

As I say, Mr. Speaker, the Addabbo amendment, in repealing the so-called Maybank amendment, potentially benefits communities like my own, where unemployment is substantially higher than the national average. But the Addabbo amendment is so written as to maintain competition for defense contracts and as to assure that the Defense Department will be able to select the most qualified competitor for weapons systems, aircraft and other items that are vital to our national defense. I was glad, Mr. Speaker, to give strong support to Mr. ADDABBO's amendment.

Let me, Mr. Speaker, also take this opportunity to congratulate Mr. ADDABBO on the outstanding job he has done in handling a piece of legislation essential to the security of our country. There is no harder working or dedicated Member of this body than JOE ADDABBO and the entire Nation is in his debt.●

THE GLOBAL 2000 REPORT TO THE PRESIDENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. BINGHAM) is recognized for 10 minutes.

● Mr. BINGHAM. Mr. Speaker, "The Global 2000 Report to the President" begins as follows:

If present trends continue, the world in 2000 will be more crowded, more polluted, less stable ecologically, and more vulnerable to disruption than the world we live in now. Serious stresses involving population, resources, and environment are clearly visible ahead. Despite greater material output, the world's people will be poorer in many ways than they are today.

For hundreds of millions of the desperately poor, the outlook for food and other necessities of life will be no better. For many it will be worse. Barring revolutionary advances in technology, life for most people on Earth will be more precarious in 2000 than it is now—unless the nations of the world act decisively to alter current trends.

This, in essence, is the picture emerging from the U.S. Government's projections of probable changes in world population, resources, and environment by the end of the century, as presented in the Global 2000 study. They do not predict what will occur. Rather, they depict conditions that are likely to develop if there are no changes in public policies, institutions, or rates of technological advance, and if there are no wars or other major disruptions. A keener awareness of the nature of the current trends, however, may induce changes that will alter these trends and the projected outcome.

As the President said in releasing the report on July 24—

Never before had our Government or any government attempted to take such a comprehensive, long-range look at interrelated global issues such as world populations, agriculture, water resources, forest resources, energy needs, and the overall environmental quality of the Earth we live on.

The report, 3 years in the making, tells us what the world will be like a mere 20 years from today—unless we and the

other nations of the world join together to change the course of history.

Secretary of State Muskie, in his statement on the release of the report, eloquently outlined the alternatives we face:

World population growth, the degradation of the earth's natural resource base, and the spread of environmental pollution collectively threaten the welfare of mankind. If these challenges are ignored, they will overwhelm our efforts to improve the quality of life and social opportunities for the world's people, including our own. If they are met and successfully overcome, we will face the twenty-first century with renewed hope and security.

The President has established a task force on global resources and environment to recommend measures by which our Government can respond to the challenge of the "Global 2000 Report." I consider it vital that Congress participate actively in the elaboration and implementation of these measures. I intend to be active in this effort on the Committee on Foreign Affairs, on which I serve. But since the issues transcend the jurisdictions of any single committee, I hope others will be involved as well.

Mr. Speaker, at this point I include a summary of the major findings and conclusions of the report:

MAJOR FINDINGS AND CONCLUSIONS

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PRINCIPAL FINDINGS

Rapid growth in world population will hardly have altered by 2000. The world's population will grow from 4 billion in 1975 to 6.35 billion in 2000, an increase of more than 50 percent. The rate of growth will slow only marginally, from 1.8 percent a year to 1.7 percent. In terms of sheer numbers, population will be growing faster in 2000 than it is today, with 100 million people added each year compared with 75 million in 1975. Ninety percent of this growth will occur in the poorest countries.

While the economies of the less developed countries (LDCs) are expected to grow at faster rates than those of the industrialized nations, the gross national product per capita in most LDCs remains low. The average gross national product per capita is projected to rise substantially in some LDCs (especially in Latin America), but in the great populous nations of South Asia it remains below $200 a year (in 1975 dollars). The large existing gap between the rich and poor nations widens.

World food production is projected to increase 90 percent over the 30 years from 1970 to 2000. This translates into a global per capita increase of less than 15 percent over the same period. The bulk of that increase goes to countries that already have relatively high per capita food consumption. Meanwhile per capita consumption in South Asia, the Middle East, and the LDCs of Africa will scarcely improve or will actually decline below present inadequate levels. At the same time, real prices for food are expected to double.

Arable land will increase only 4 percent by 2000, so that most of the increased output of food will have to come from higher yields. Most of the elements that now contribute to higher yields—fertilizer, pesticides, power for irrigation, and fuel for machinery—depend heavily on oil and gas.

During the 1990s world oil production will approach geological estimates of maximum production capacity, even with rapidly increasing petroleum prices. The Study projects that the richer industrialized nations will be able to command enough oil and other commercial energy supplies to meet rising demands through 1990. With the expected price increases, many less developed countries will have increasing difficulties meeting energy needs. For the one-quarter of humankind that depends primarily on wood for fuel, the outlook is bleak. Needs for fuelwood will exceed available supplies by about 25 percent before the turn of the century.

While the world's finite fuel resources—coal, oil, gas, oil shale, tar sands, and uranium—are theoretically sufficient for centuries, they are not evenly distributed; they pose difficult economic and environmental problems; and they vary greatly in their amenability to exploitation and use.

Nonfuel mineral resources generally appear sufficient to meet projected demands through 2000, but further discoveries and investments will be needed to maintain reserves. In addition, production costs will increase with energy prices and may make some nonfuel mineral resources uneconomic. The quarter of the world's population that inhabits industrial countries will continue to absorb three-fourths of the world's mineral production.

Regional water shortages will become more severe. In the 1970–2000 period population growth alone will cause requirements for water to double in nearly half the world. Still greater increases would be needed to improve standards of living. In many LDCs, water supplies will become increasingly erratic by 2000 as a result of extensive deforestation. Development of new water supplies will become more costly virtually everywhere.

Significant losses of world forests will continue over the next 20 years as demand for forest products and fuelwood increases. Growing stocks of commercial-size timber are projected to decline 50 percent per capita. The world's forests are now disappearing at the rate of 18–20 million hectares a year (an area half the size of California), with most of the loss occurring in the humid tropical forests of Africa, Asia, and South America. The projections indicate that by 2000 some 40 percent of the remaining forest cover in LDCs will be gone.

Serious deterioration of agricultural soils will occur worldwide, due to erosion, loss of organic matter, desertification, salinization, alkalinization, and waterlogging. Already, an area of cropland and grassland approximately the size of Maine is becoming barren wasteland each year, and the spread of desert-like conditions is likely to accelerate.

Atmospheric concentrations of carbon dioxide and ozone-depleting chemicals are expected to increase at rates that could alter the world's climate and upper atmosphere significantly by 2050. Acid rain from increased combustion of fossil fuels (especially coal) threatens damage to lakes, soils, and crops. Radioactive and other hazardous materials present health and safety problems in increasing numbers of countries.

Extinctions of plant and animal species will increase dramatically. Hundreds of thousands of species—perhaps as many as 20 percent of all species on earth—will be irretrievably lost as their habitats vanish, especially in tropical forests.

The future depicted by the U.S. Government projections, briefly outlined above, may actually understate the impending problems. The methods available for carrying out the Study led to certain gaps and inconsistencies that tend to impart an optimistic bias. For example, most of the individual projections for the various sectors studied—food, minerals, energy, and so on—assume that sufficient capital, energy, water, and land will be available in each of these sectors to meet their needs, regardless of the competing needs of the other sectors. More consistent, better-integrated projections would produce a still more emphatic picture of intensifying stresses, as the world enters the twenty-first century.

CONCLUSIONS

At present and projected growth rates, the world's population would reach 10 billion by 2030 and would approach 30 billion by the end of the twenty-first century. These levels correspond closely to estimates by the U.S. National Academy of Sciences of the maximum carrying capacity of the entire earth. Already the populations in sub-Saharan Africa and in the Himalayan hills of Asia have exceeded the carrying capacity of the immediate area, triggering an erosion of the land's capacity to support life. The resulting poverty and ill health have further complicated efforts to reduce fertility. Unless this circle of interlinked problems is broken soon, population growth in such areas will unfortunately be slowed for reasons other than declining birth rates. Hunger and disease will claim more babies and young children, and more of those surviving will be mentally and physically handicapped by childhood malnutrition.

Indeed, the problems of preserving the carrying capacity of the earth and sustaining the possibility of a decent life for the human beings that inhabit it are enormous and close upon us. Yet there is reason for hope. It must be emphasized that the Global 2000 Study's projections are based on the assumption that national policies regarding population stabilization, resource conservation, and environmental protection will remain essentially unchanged through the end of the century. But in fact, policies are beginning to change. In some areas, forests are being replanted after cutting. Some nations are taking steps to reduce soil losses and desertification. Interest in energy conservation is growing, and large sums are being invested in exploring alternatives to petroleum dependence. The need for family planning is slowly becoming better understood. Water supplies are being improved and waste treatment systems built. High-yield seeds are widely available and seed banks are being expanded. Some wildlands with their genetic resources are being protected. Natural predators and selective pesticides are being substituted for persistent and destructive pesticides.

Encouraging as these developments are, they are far from adequate to meet the global challenges projected in this Study. Vigorous, determined new initiatives are needed if worsening poverty and human suffering, environmental degradation, and international tension and conflicts are to be prevented. There are no quick fixes. The only solutions to the problems of population, resources, and environment are complex and long-term. These problems are inextricably linked to

some of the most perplexing and persistent problems in the world—poverty, injustice, and social conflict. New and imaginative ideas—and a willingness to act on them—are essential.

The needed changes go far beyond the capability and responsibility of this or any other single nation. An era of unprecedented cooperation and commitment is essential. Yet there are opportunities—and a strong rationale—for the United States to provide leadership among nations. A high priority for this Nation musht be a thorough assessment of its foreign and domestic policies relating to population, resources, and environment. The United States, possessing the world's largest economy, can expect its policies to have a significant influence on global trends. An equally important priority for the United States is to cooperate generously and justly with other nations—particularly in the areas of trade, investment, and assistance—in seeking solutions to the many problems that extend beyond our national boundaries. There are many unfulfilled opportunities to cooperate with other nations in efforts to relieve poverty and hunger, stabilize population, and enhance economic and environmental productivity. Further cooperation among nations is also needed to strengthen international mechanisms for protecting and utilizing the "global commons"—the oceans and atmosphere.

To meet the challenges described in this Study, the United States must improve its ability to identify emerging problems and assess alternative responses. In using and evaluating the Government's present capability for long-term global analysis, the Study found serious inconsistencies in the methods and assumptions employed by the various agencies in making their projections. The Study itself made a start toward resolving these inadequacies. It represents the Government's first attempt to produce an interrelated set of population, resource, and environmental projections, and it has brought forth the most consistent set of global projections yet achieved by U.S. agencies. Nevertheless, the projections still contain serious gaps and contradictions that must be corrected if the Government's analytic capability is to be improved. It must be acknowledged that at present the Federal agencies are not always capable of providing projections of the quality needed for long-term policy decisions.

While limited resources may be a contributing factor in some instances, the primary problem is lack of coordination. The U.S. Government needs a mechanism for continuous review of the assumptions and methods the Federal agencies use in their projection models and for assurance that the agencies' models are sound, consistent, and well documented. The improved analyses that could result would provide not only a clearer sense of emerging problems and opportunities, but also a better means for evaluating alternative responses, and a better basis for decisions of worldwide significance that the President, the Congress, and the Federal Government as a whole must make.

With its limitations and rough approximations, the Global 2000 Study may be seen as no more than a reconnaissance of the future; nonetheless its conclusions are reinforced by similar findings of other recent global studies that were examined in the course of the Global 2000 Study (see Appendix). All these studies are in general agreement on the nature of the problems and on the threats they pose to the future welfare of humankind. The available evidence leaves no doubt that the world—including this Nation—faces enormous, urgent, and complex problems in the decades immediately ahead. Prompt and vigorous changes in public policy around the world are needed to avoid or minimize these problems before they become unmanageable. Long lead times are required for effective action. If decisions are delayed until the problems become worse, options for effective action will be severely reduced.●

TRIBUTE TO JAMES A. BYRNE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. O'NEILL) is recognized for 5 minutes.

● Mr. O'NEILL. Mr. Speaker, it is with a deep sense of sadness that I rise on this occasion to pay tribute to one of the most decent and conscientious former Members of the House of Representatives, the late James A. Byrne.

For 20 years, James Byrne served the Third District of Pennsylvania with distinction and purpose. Hard working and dedicated, Congressman Byrne was a true son of the "City of Brotherly Love." Devoted to his constituents, Congressman Byrne concentrated his efforts on the attainment of important Federal programs which benefited the Philadelphia area.

An activist, a liberal, and a loyal Democrat, Congressman Byrne truly delivered on his campaign promises. His constituency service was legend. No task on behalf of a constituent was ever viewed an impossibility, and no constituency request was ever denied as long as James Byrne represented the interests of Pennsylvania's Third District. He was never too busy, too tired or too preoccupied to greet a friend or to meet a constituent in need. He once said, "When I walk down the street, people think I'm Santa Claus, and I hear confessions at all hours."

In every manner of measurement, James Byrne was a top-quality human being. Through compassionate representation, Congressman Byrne championed the anxieties, concerns and interests of the elderly and the hard-working men and women of Philadelphia. His beloved constituents were people who had to work hard for a living, and he felt a sincere obligation to lend a helping hand whenever possible.

I was honored and privileged to have served with James Byrne in the House of Representatives. I extend my deepest sympathy to his wife, Virginia, and to his entire family on the sorrowful occasion of his passing.●

PERSONAL EXPLANATION

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. BRADEMAS. Mr. Speaker, on Monday, September 15, 1980, I missed rollcall No. 540, a vote on ordering a second on a motion to suspend the rules and pass H.R. 6865, West Valley nuclear waste project. The second was agreed to by vote of 244 to 0, with one voting "present." Had I been present, I would have voted "yea."●

BOB CARR MAKES THE CASE FOR FLAUNTING STEALTH

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, with all the hullabaloo stirred up by the official Republican nominee for the Presidency. Mr. Reagan, over the confirmation, by Secretary of Defense Harold Brown, that the Defense Department is working on the Stealth bomber, several important facts have been lost sight of in some quarters.

First, of course, is the fact that public discussion of the project started during President Ford's administration, in 1976, when the lead article in Aerospace Daily announced that the Defense Department was sponsoring a program to build a Stealth prototype and that Lockheed was already building it. That was over 4 years ago. No additional details have been published by the administration except that the plane has since been built.

So much for the alleged security breach by Secretary Brown.

A second fact, much overlooked, is that the Secretary's statement came at a time when the Reagan camp, and some well-meaning supporters of the B-1 bomber, were making a renewed issue over President Carter's cancellation of it (which, lest we forget, was upheld by Congress), and were trying to promote the spending of billions of dollars on that obsolete concept. It would have been tragic if that effort had stampeded the Congress into appropriating more billions for the B-1 while B-52's are still adequate, when equipped with cruise missiles, and when a Stealth bomber may be deployed before the B-52's must be retired, in the 1990's.

Those of us who fought the B-1 contended from the outset that it would be obsolete before the planned fleet of B-1's was built. Stealth has only served to reinforce our point. Nevertheless, it was important that its existence be confirmed to Congress and the public.

Finally, even though the Soviets certainly knew of the Stealth project and the concept it involved, it was also important that the success of Stealth be confirmed to the Soviets, if it was to help deter any aggressive designs that might arise out of a belief that this leg of the strategic triad was becoming obsolete. It was also important that the existence of Stealth be made known to the rest of the world, to redress the psychological balance of power that has been adversely affected by the endless Republican campaign to "badmouth" the military capability of the United States.

Some of these points have been cogently made in an article by our colleague BOB CARR in the Washington Post of Sunday, September 14, 1980. The complete text of his article follows these remarks.

THE CASE FOR FLAUNTING STEALTH

(By BOB CARR)

Republican expressions of gleeful horror at recent public discussion of the Stealth radar-proof airplane may be good partisan politics, but they are bad history and worse national security policy.

Henry Kissinger claims the Ford administration succesfully kept the lid on the program. Ronald Reagan claims the Defense Department has given the Soviets a 10-year headstart on countermeasures. And Gerald Ford claims Stealth won't affect the strategic balance for 10 years. All are wrong.

Public discussion of Stealth began on Friday, July 23, 1976, during Ford's administration, in the lead article of Aerospace Daily. Here are some excerpts from that article, titled, "Lockheed's Kelly Johnson Building 'Stealth' Aircraft":

"Kelly Johnson is back.

"The nation's premier aircraft designer has returned to the famous 'Skunk Works' at Lockheed, where he is building a new 12,000-pound, one-man 'Stealth' aircraft. It is due to fly in about two years.

"The program is sponsored by the Defense Advanced Research Projects Agency (DARPA) . . .

"The goal is to reduce aircraft visibility through new technology. Lockheed was chosen from a field that also included McDonnell Douglas and Rockwell International on the strength of Johnson's conviction that he could do the job . . . Lockheed had . . . ambitious ideas in mind. The challenge was sufficient to lure Johnson out of retirement.

"The program is cloaked in tight security. Calls to Johnson's office . . . were not returned. It is known, however, that the Air Force and DARPA have been searching for ways to reduce aircraft signatures through combinations of aerodynamic configurations, absorptive materials, paint schemes and electronic countermeasures."

Whether or not Aerospace Daily's specifics are correct, it is clear that all of the information published and released during 1980 contains not one detail that was not in this 1976 article. In 1980 the Soviets and the world know only one thing they didn't know under Ford: They know the program has been a success.

Does this place the Soviets any nearer to countering Stealth? Certainly not; they know no more specifics than they knew in 1976.

Are they now motivated to work the problem harder? Most unlikely. As they read Aerospace Daily, the Soviets knew of Kelly Johnson's phenomenal 100 percent success record: at least seven successful all-new designs running from the World War II P38 fighter to the Mach 3—plus SR71 reconnaissance plane, each a major step forward in its time. Unless they were fools, the Soviets must have assumed a high probability that Johnson would succeed on this one and their $100-billion investment in anti-aircraft defense would become even less effective than it is today. They must have begun a serious effort to develop countermeasures.

Nothing in this year's public discussion has given the Soviets any reason to increase this effort. Fortunately, there has been no disclosure of specific Stealth technology details, for which the public has no need or use. While it may be that there is no counter to Stealth, there is no point in tempting fate.

While much has been said about the dangers of disclosure, the far more significant advantages of disclosure have been neglected.

Suppose Stealth were kept completely secret until the outbreak of a nuclear war, when Stealth-hidden cruise missiles or bombers would blow the Soviet Union to smithereens. If this happens, Stealth would have failed, since Soviet missiles would at the same time be blowing the United States to smithereens.

The primary target of any strategic weapon is not the adversary's assets. It is the adversary's mind. Stealth will be successful if it convinces Soviet leaders that aggression will cost them more than they will gain from it. This is deterrence. If Stealth were kept secret, it would have no effect on Soviet decisionmaking and would fail.

The question is of the balance between the need for secrecy to inhibit countermeasures versus the need for disclosure to intimidate. While the ideal course may be to hold a major new weapon secret until it is actually in the field, there are often good reasons to disclose the existence of such a program much sooner.

Unfortunately, much of the world is becoming increasingly convinced that the United States has lost military primacy to the Soviet Union. This conviction is growing not because of anything our allies or neutrals see for themselves, nor because of anything they hear from the Soviets. It is growing because of an unceasing campaign, principally by members of past and potential Republican administrations, to badmouth the military capability of the United States.

That this bad-mouthing is factually wrong, that it is based on specious selection and dishonest distortion of military measures, is beside the point. If we tell the world we are weak, why should it not believe us, since what rational reason can there be for a superpower to portray itself as weak when it is not?

So we now have our allies for the first time beginning to question our capability. Such questioning may encourage them to do more for their own defense. But its primary thrust is to loosen the alliance network which supports us all, and there is no way that can be beneficial.

We have not yet succeeded in convincing the Soviets of our inferiority. Their analysts are as good as ours, and there is no evidence that they have projected the outcome of military confrontation as anything other than dismal for the Soviet side. Probably we have not yet persuaded the Soviets of our own self-intimidation, although that is less clear. But if we continue the way we are going, we will do it. At that point they will be on the edge of major aggression, and we will all be on the edge of the next and last World War.

The leadership of the present Defense Department is well aware of this problem. It was not partisan politics for Defense Secretary Harold Brown to invite the press to watch demonstrations of the cruise missile or the Copperhead tank destroyer—major breakthroughs the Soviets are many years away from countering or duplicating. It was understanding that it is not enough to have the right stuff; we must also show the world we have it and we have confidence in it.

Stealth is a fundamental military breakthrough, comparable to the invention of radar. The world doesn't need to know how it works, but the world does need to know we have it. It began to have a major beneficial effect on the psychological strategic balance the moment Brown put it into the headlines. The cause of peace and security is most probably served by shouting the existence of this development from the housetops. The question is not why we are doing this; the question is why we didn't do it sooner.●

LEAVE OF ABSENCE

Mr. MCCLORY (at the request of Mr. RHODES), September 16 through September 20, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MARRIOTT) to revise and extend their remarks and include extraneous material:)

Mr. BROYHILL, for 5 minutes, today.
Mr. MCDADE, for 5 minutes, today.
Mr. FRENZEL, for 30 minutes, today.

(The following Members (at the request of Mr. KOSTMAYER) to revise and extend their remarks and include extraneous material:)

Mr. NELSON, for 5 minutes, today.
Mr. BROOKS, for 5 minutes, today.
Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. FROST, for 5 minutes, today.
Mr. BRADEMAS, for 5 minutes, today.
Mr. BINGHAM, for 10 minutes, today.
Mr. O'NEILL, for 5 minutes, today.
Mrs. COLLINS of Illinois, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. ALEXANDER, immediately preceding the remarks of Mr. EDWARDS of Alabama on the amendment offered by Mr. ADDABBO.

Mr. BIAGGI, immediately preceding the vote on the Addabbo amendment.

Mr. SEIBERLING, and to include extraneous matter.

Mr. ECKHARDT, immediately before the vote on the Simon amendment.

(The following Members (at the request of Mr. MARRIOTT) and to include extraneous matter:)

Mr. YOUNG of Alaska.
Mr. BROWN of Ohio.
Mr. MCKINNEY.
Mr. CLINGER in two instances.
Mr. COLLINS of Texas in three instances.
Mr. DOUGHERTY.
Mr. CORCORAN.
Mr. MCCLOSKEY.
Mr. EMERY.
Mr. DERWINSKI.
Mr. BROYHILL in two instances.
Mr. WYDLER.
Mr. RAILSBACK.
Mr. HILLIS in two instances.
Mr. DORNAN.
Mr. LAGOMARSINO.
Mr. MILLER of Ohio in four instances.
Mr. GILMAN.

(The following Members (at the request of Mr. KOSTMAYER) and to include extraneous matter:)

Mr. ROYBAL in two instances.
Mr. MAZZOLI.
Mrs. SCHROEDER in two instances.
Mr. EDWARDS of California.
Mr. MCDONALD in two instances.
Mr. JONES of Oklahoma.
Mr. FLORIO.
Mr. JONES of Tennessee.
Mr. RICHMOND.
Mr. OTTINGER in two instances.
Mr. NOWAK.
Mr. FLIPPO.
Mr. SKELTON.
Mr. FORD of Michigan in two instances.
Mr. MILLER of California in two instances.
Mr. OBERSTAR.
Mr. DRINAN.
Mr. MAGUIRE.
Mr. YATRON.
Mr. GUARINI.
Mr. MITCHELL of Maryland.
Mr. WOLFF.
Mr. MARKEY in four instances.
Mr. ERTEL.
Mr. BONKER.

ENROLLED BILLS SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 5766. An act to authorize additional Reserve Officers' Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes, and

H.R. 6940. An act to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that act to assure the safety and nutrition of infant formulas, and for other purposes.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 261. An act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes; and

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 26 minutes p.m.), the House adjourned until tomorrow, Wednesday, September 17, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5302. A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a cumulative report on rescissions and deferrals of budget authority as of September 1, 1980, pursuant to section 1014(e) of Public Law 93-344 (H. Doc. No. 96-370); to the Committee on Appropriations and ordered to be printed.

5303. A letter from the Principal Deputy Assistant Secretary of Defense (Comptroller), transmitting notice of the Defense Department's intention to obligate certain money in the Army stock fund for war reserve stocks, pursuant to section 736 of Public Law 96-154; to the Committee on Appropriations.

5304. A letter from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice that a decision has been made to convert the grounds maintenance function at Mather Air Force Base, Calif., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5305. A letter from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice that a decision has been made to convert the T-4/T-26A instrument flight trainer operator function at Sheppard Air Force Base, Tex., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5306. A letter from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice that a decision has been made to convert the commissary shelf-stocking and custodial services function at Lowry Air Force Base, Colo., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5307. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of certain defense equipment and services to Italy (Transmittal No. 80-103), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5308. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Army's proposed sale of certain defense equipment to Greece (Transmittal No. 80-119), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5309. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Thomas D. Boyatt, Ambassador-designate to Columbia, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5310. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Edwin G. Corr, Ambassador-designate to Peru, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5311. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Harry W. Shlaudeman, Ambassador-designate to Argentina, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5312. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by David E. Simcox, Ambassador-designate to Mozambique, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5313. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Arthur H. Woodruff, Ambassador-designate to the Central African Republic, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5314. A letter from the Director, Defense Security Assistance Agency, transmitting the quarterly report on foreign military sales as of June 30, 1980, pursuant to section 36(a) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5315. A letter from the Director, Defense Security Assistance Agency, transmitting addenda to the quarterly report on foreign military sales as of June 30, 1980, pursuant to section 36(a) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5316. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to the Netherlands (Transmittal No. 80-98), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5317. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment and services to Italy (Transmittal No. 80-103), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5318. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Greece (Transmittal No. 80-119), pursuant to section 36(b) of the Arms Export Control Act, together with certification that the sale is consistent with the principles contained in section 620 C(b) of the Foreign Assistance Act of 1961, as amended, pursuant to section 620C(d) of the act; to the Committee on Foreign Affairs.

5319. A letter from the Administrator of General Services, transmitting the annual report on records management activities of the Federal Government for fiscal year 1979, pursuant to 44 U.S.C. 2904(10); to the Committee on Government Operations.

5320. A letter from the Chairman, National Mediation Board, transmitting the 45th Annual Report of the National Mediation Board, including the report of the National Railroad Adjustment Board, covering fiscal year 1979, pursuant to section 4 (second) and section 3 (first) (w) of the act of June 21, 1934; to the Committee on Interstate and Foreign Commerce.

5321. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease for the expanded needs of the Federal Aviation Administration in East Point, Ga.; to the Committee on Public Works and Transportation.

5322. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of leased space for several agencies in Portland, Oreg.; to the Committee on Public Works and Transportation.

5323. A letter from the Administrator of Veterans' Affairs, transmitting his annual report for fiscal year 1979, pursuant to 38 U.S.C. 214; to the Committee on Veterans' Affairs.

5324. A letter from the Comptroller General of the United States, transmitting a report on ground water overdrafting (CED-80-96, Sept. 12, 1980); jointly, to the Committees on Government Operations, Agriculture, Interior and Insular Affairs, and Public Works and Transportation.

5325. A letter from the Comptroller General of the United States, transmitting a report on the U.S. program in high-energy physics (EMD-80-58, Sept. 16, 1980); jointly, to the Committees on Government Operations and Science and Technology.

5326. A letter from the Director of Central Intelligence, transmitting a draft of proposed legislation to amend title 18, United States Code, to provide criminal penalties for certain acts against intelligence personnel which interfere with the performance of their duties, and for other purposes; jointly, to the Committees on the Judiciary and the Permanent Select Committees on Intelligence.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. S. 885. A bill to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River power system to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes with amendment (Rept. No. 96-976, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BIAGGI: Committee of conference. Conference report on H.R. 4310 with amendment (Rept. No. 96-1320). Ordered to be printed.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 7939. A bill to amend the Securities Investor Protection Act to increase the amount of protection available under such act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission (Rept. No. 96-1321, pt. 1). Ordered to be printed.

Mr. ULLMAN: Committee on Ways and Means. H.R. 3637. A bill to carry out the obligations of the United States under the International Coffee Agreement, 1976, signed at New York on February 27, 1976, and entered into force for the United States on October 1, 1976, and for other purposes; with amendments (Rept. No. 96-1322). Referred to the Committee of the Whole House on the State of the Union.

Mr. DELLUMS: Committee on the District of Columbia. H.R. 7782. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to provide for the same cost-of-living adjustments in the basic compensation of officers and members of the U.S. Secret Service Uniformed Division as are given to Federal employees under the General Schedule; with amendments (Rept. No. 96-1323). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HALL of Texas: Committee on the Judiciary. S. 707. A bill for the relief of certain aliens (Rept. No. 96-1324). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CORMAN:

H.R. 8118. A bill to provide for a temporary program of Federal supplemental unemployment compensation; to the Committee on Ways and Means.

By Mr. ANDERSON of California:

H.R. 8119. A bill to require the Secretary of Commerce to undertake a study to determine the effects of certain past ocean dumping of radioactive wastes; jointly, to the Committees on Merchant Marine and Fisheries and Science and Technology.

By Mr. DEVINE:

H.R. 8120. A bill to amend the Internal Revenue Code of 1954 to provide that certain rentals to members of the taxpayer's family will not be treated as personal use by the taxpayer for purposes of the disallowance of certain expenses in connection with the business use of homes, rental of vacation homes, etc.; to the Committee on Ways and Means.

By Mr. DINGELL (for himself, Mr. BROWN of Ohio, Mr. OTTINGER, Mr. MOFFETT, Mr. MOORHEAD of California, Mr. WIRTH, Mr. STOCKMAN, Mr. MARKEY, Mr. CORCORAN, Mr. GRAMM, Mr. MAGUIRE, Mr. GORE, Mr. LOEFFLER, and Mr. SWIFT):

H.R. 8121. A bill to amend the Energy Policy and Conservation Act to improve the administration of the strategic petroleum reserve program, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. EMERY:

H.R. 8122. A bill to provide for the conveyance to the State of Maine of certain lands located in such State; to the Committee on Armed Services.

By Mr. FISHER:

H.R. 8123. A bill to amend the Internal Revenue Code of 1954 to promote capital investment in small business, and for other purposes; to the Committee on Ways and Means.

By Mr. HEFTEL:

H.R. 8124. A bill to amend the Internal Revenue Code of 1954 to permit tax-free sales of fuels for use in certain buses; to the Committee on Ways and Means.

By Mr. MAGUIRE:

H.R. 8125. A bill to require certain Federal agencies to analyze complaints regarding their delivery of services and benefits and to report their findings to Congress; to the Committee on Government Operations.

By Mr. OBERSTAR (for himself and Mr. VENTO):

H.R. 8126. A bill to revise the boundary of Voyageurs National Park in the State of Minnesota, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. PICKLE (for himself and Mr. SMITH of Iowa):

H.R. 8127. A bill to amend the Internal Revenue Code of 1954 to reduce corporate income tax rates; to the Committee on Ways and Means.

By Mr. SOLARZ:

H.R. 8128. A bill to amend the Internal Revenue Code of 1954 to eliminate the requirement that States reduce the amount of unemployment compensation payable for any week by the amount of certain retirement benefits; to the Committee on Ways and Means.

By Mr. STOCKMAN (for himself and Mr. BROWN of Ohio):

H.R. 8129. A bill to enhance the economic and military security of the United States by requiring completion of the strategic petroleum reserve at an expedited rate; to the Committee on Interstate and Foreign Commerce.

By Mr. TAUZIN:

H.R. 8130. A bill to exempt a portion of U.S. Highway 90 from federally required permits; to the Committee on Public Works and Transportation.

By Mr. OTTINGER:

H.R. 8131. A bill to establish a national industrial innovation corporation to provide financial assistance to industrial firms to assist them in conducting projects and activities which will increase innovation and productivity and enhance the competitive position of the United States in international markets; jointly, to the Committees on Banking, Finance and Urban Affairs and Science and Technology.

By Mr. WHITTEN:

H.J. Res. 610. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes; to the Committee on Appropriations.

MEMORIALS

Under clause 4 of rule XXII,

528. The SPEAKER presented a memorial of the Legislature of the State of California, relative to energy resources, which was referred to the Committee on Interior and Insular Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. FROST presented a bill (H.R. 8132) for the relief of Bishop College, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 5099: Mr. WHITTEN, Mr. MARTIN, Mr. STACK, Mr. COLLINS of Texas, Mr. JONES of Tennessee, and Mr. SYNAR.

H.R. 5947: Mr. DORNAN, Mr. DUNCAN of Tennessee, Mr. GIBBONS, Mr. JEFFORDS, Mr. LEDERER, Mr. O'BRIEN, Mr. PASHAYAN, Mr. SEBELIUS, Mr. BOB WILSON, Mr. CHARLES H. WILSON of California, and Mr. YOUNG of Alaska.

H.R. 6540: Mr. SEIBERLING.

H.R. 6722: Mr. SOLOMON, Mr. LEWIS, and Mr. AUCOIN.

H.R. 7127: Mr. QUAYLE and Mr. MOORHEAD of California.

H.R. 7189: Mr. HYDE, Mr. DERWINSKI, Mr. RAILSBACK, Mr. ERLENBORN, and Mr. FINDLEY.

H.R. 7230: Mr. GIBBONS, Mr. BEDELL, Mr. FAZIO, Mr. DOWNEY, Mr. SIMON, and Mr. OTTINGER.

H.R. 7332: Mr. SEIBERLING.

H.R. 7365: Mr. MOLLOHAN and Mr. SYMMS.

H.R. 7437: Mr. EVANS of Delaware, Mr. JEFFRIES, and Mr. PREYER.

H.R. 7506: Mr. BROOKS, Mr. DE LA GARZA, Mr. ENGLISH, Mr. FROST, Mr. GARCIA, Mr. GRISHAM, Mr. GUYER, Mr. HALL of Texas, Mr. HANCE, Mr. LATTA, Mr. MARRIOTT, Mr. MONTGOMERY, Mr. MOORHEAD of California, Mr. SENSENBRENNER, Mr. SHUMWAY, Mr. WHITE, Mr. WRIGHT, and Mr. WYATT.

H.R. 7521: Mr. MCDONALD.

H.R. 7634: Mr. APPLEGATE, Mr. FITHIAN, Mr. MOLLOHAN, and Mr. O'BRIEN.

H.R. 7744: Mr. ADDABBO, Mr. SOLARZ, Mr. HAWKINS, Mr. OTTINGER, Mr. LEHMAN, Mr. EVANS of the Virgin Islands, Mr. MITCHELL of Maryland, Mr. KILDEE, Mr. WHITEHURST, Mr. LAFALCE, Mr. GREEN, Mr. DUNCAN of Tennessee, Mr. MURPHY of Illinois, Mr. RATCHFORD, Mr. THOMPSON, Mr. HARRIS, Mr. MAZZOLI, Mr. AUCOIN, Mr. VENTO, Mr. STARK, Mr. JEFFORDS, Mr. WALGREN, Mrs. SPELLMAN, Mr. BRODHEAD, Mr. EDWARDS of California, Mr. SCHEUER, Mr. WOLFF, Mr. CLEVELAND, Mr. GUARINI, Mr. MADIGAN, Mr. SIMON, and Mr. MCDADE.

H.R. 7749: Mr. ROBINSON, Mr. SENSENBRENNER, and Mr. YOUNG of Alaska.

H.R. 7773: Mr. HAWKINS and Mr. BENNETT.

H.R. 7776: Mr. HEFTEL.

H.R. 7782: Mr. DELLUMS, Mr. MCKINNEY, Mr. FAUNTROY, Mr. BARNES, Mrs. SPELLMAN, Mrs. FENWICK, and Mr. HARRIS.

H.R. 7824: Mr. JEFFRIES, Mr. CONABLE, Mr. MATHIS, Mr. QUAYLE, Mr. ROTH, Mr. BROWN of Ohio, Mr. EVANS of Indiana, Mr. TAUZIN, Mrs. SMITH of Nebraska, Mr. ARDNOR, and Mr. HILLIS.

H.R. 7972: Mr. DUNCAN of Tennessee, Mr. PICKLE, and Mr. MARTIN.

H.R. 8027: Mr. ZABLOCKI, Mr. DERWINSKI, Mr. FRENZEL, and Mr. STANGELAND.

H.R. 8062: Mr. SAWYER.

H.R. 8081: Mr. CONYERS, Mr. MOFFETT, Mr. ANNUNZIO, Mr. MITCHELL of Maryland, Mr. HYDE, Mr. WALGREN, Mr. FLORIO, Mr. MCCLOSKEY, Mr. WILLIAMS of Ohio, Mr. OBEY, Mr. CAVANAUGH, Mr. GORE, Mr. PEASE, Mr. MINISH, Mr. LUNDINE, Mr. ASPIN, Mrs. CHISHOLM, Mr. HUBBARD, Mr. REUSS, and Mr. CLAY.

H.J. Res. 608: Mr. ADDABBO, Mr. BLANCHARD, Mr. HUGHES, Mr. HYDE, Mr. KINDNESS, and Mr. KRAMER.

H. Con. Res. 399: Mr. SIMON.

H. Con. Res. 422: Mr. DASCHLE, Mr. GORE, and Mr. SPENCE.

PETITIONS, ETC.

Under clause 1 of rule XXII,

433. The SPEAKER presented a petition of the City Council, Lorain, Ohio, relative to Puerto Rican statehood, which was referred to the Committee on Interior and Insular Affairs.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. PEYSER:

—Page 56, after line 15, insert the following:

"(5) In addition to the processing and settling of claims under subsection (s) of this section, the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $30,000,000 per fiscal year shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph. For purposes of section 532 of the Environmental Revenue Act of 1980, the payment of any amount under this paragraph shall not be deemed to be a payment for a claim for removal costs.

H.R. 7020

By Mr. DINGELL:

—Page 5, after line 18, insert "Where two or more noncontiguous areas meet the requirements of subparagraphs (A) and (B) and where they are reasonably related on the basis of geography or on the basis of the threat, or potential threat, to public health or the environment, the Administrator may treat such areas as a single inactive hazardous waste site for purposes of this Act.".

By Mr. STOCKMAN:

(Amendment in the nature of a substitute.)

—Strike out all after the enacting clause and substitute the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown.

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective clean-up of dangerous hazardous waste sites is necessary to protect public health and safety.

GOALS

SEC. 4. The goals of this legislation are to—

(1) provide grants for a State-by-State investigation of inactive hazardous waste disposal sites and the condition of such sites;

(2) provide grants for States to evaluate such sites, and set priorities among the sites, based on the danger they present to human populations; and

(3) provide grants to assist States in the containment and cost-effective clean-up of dangerous inactive hazardous waste disposal sites, to assure protection of the public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 5. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Release' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of this part and other applicable law.

"(3) 'Chief State Public Health Officer' means the State officer or employee designated by the Governor for purposes of this Act.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased);

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site as may be necessary to determine the extent of any health hazard which may be associated with such site;

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site; and

"(F) information concerning the proximity of the site to residences or other area used by individuals and its proximity to any water supply used for human consumption.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Upon the request of any person required to submit information under this subsection the Chief State Public Health Officer may grant a waiver to such person with respect to any information required to be submitted under this subsection where he determines that his submission of such information would be impracticable or unnecessary.

"(3) Where any person fails to comply with the requirements of this subsection with respect to any inactive hazardous waste site, or where information acquired from any person under this subsection with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of this Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (2) or such information as may be necessary to compile the information described in paragraph (2). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment if the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—(1) Each State shall, as expeditiously as practicable, undertake a continuing program to compile an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress.

"(2) On the basis of the inventory carried out under the preceding provisions of this subsection and on the basis of the State's

determination of the relative danger to public health and safety presented by the sites subject to such inventory, each State shall establish priorities among such sites. For purposes of determining the nature and extent of such danger at any site considered by the State to present a relatively high risk of such danger, the State may require the person referred to in subsection (a)(1) to submit information with respect to such site in addition to the information described in subsection (a)(2). Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purpose of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and safety presented by such sites. The Administrator shall utilize any priorities established by the States under section 3031 for the purpose of establishing national priorities under this subsection.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Upon his determination that any inactive hazardous waste site poses a reasonable likelihood of harm to public health or safety, the Chief State Public Health Officer may require any person and any Federal department, agency, or instrumentality which owns the site to—

"(1) monitor the extent to which hazardous waste associated with such site is released and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released in a manner which presents or may present a substantial threat to public health or safety.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Chief State Public Health Service Officer, he may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part.

Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—Hazardous Waste Response Authority

"EMERGENCY RESPONSE

"SEC. 3041. (a) EMERGENCY RESPONSE AUTHORITY OF ADMINISTRATOR.—(1)(A) Upon submission to the Administrator by the Chief State Public Health Service Officer of evidence that the release of any hazardous waste from or at an inactive hazardous waste site in such State presents or may present an imminent and substantial endangerment to public health or safety, or that there is a substantial threat of such a release, the Administrator may take such emergency response action as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such release or threatened release.

"(B) The Administrator shall not exercise the authority of this paragraph for undertaking any action unless he determines that the responsible party, or the State or local government will not take the proper action.

"(C) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any inactive hazardous waste site in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2)(A) Whenever the Administrator determines that an inactive hazardous waste site presents an unreasonable risk of harm to public health or safety, he may, after notice and opportunity for written or oral public comment relocate, contain, and clean up the hazardous waste at, or associated with such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary.

"(B) The Administrator shall not exercise the authority of subparagraph (A) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(C) Action may be taken under this paragraph only in accordance with the priorities established by the Administrator under section 3032.

"(3)(A) Upon submission to the Administrator by the Chief State Public Health Service Officer of evidence that there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste from or at an inactive hazardous waste site which conditions present or may present an imminent and substantial endangerment to public health or safety and whenever the Administrator is unable to determine after an inspection of the conditions by his duly appointed representative—

"(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

"(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions,

the Administrator may provide such assistance to State and local governments, and take such emergency response actions, as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such conditions.

"(B) The Administrator may exercise the authority of this paragraph for a period expiring on the earlier of—

"(i) three months from the date on which he initiates such action, or

"(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

"(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of the Administrator other than this part, the Administrator shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

"(4) The Administrator shall not exercise the authority of this subsection to engage in the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

"(A) less expensive than undertaking such activity onsite; or

"(B) essential to protect the public health or safety due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

"(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accommodate the hazardous waste transferred to that facility under paragraph (1) or (2) as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

"(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal, State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

"(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to

improve hazardous waste cleanup and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

"(6) Where the Administrator makes any determination under paragraph (1) or (2) with respect to any site owned or operated by a Federal department, agency, or instrumentality, the department, agency, or instrumentality shall take the action referred to in such paragraph (1) or (2) in lieu of action by the Administrator under such paragraphs.

"(7) Where the Administrator determines that a State or local government has the capability to carry out any or all of the actions required to be carried out pursuant to a determination of the Administrator under paragraph (1) or (2), and where such State or local government agrees to carry out such actions, the Administrator shall enter into—

"(A) cooperative agreements involving the expenditure of appropriated funds, or

"(B) contracts

with such State or local government to take such action. Such agreements shall be subject to the cost sharing provisions of section 3043.

"(8) Anyone authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same manner as provided for officers or employees of the Environmental Protection Agency under section 3007.

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site, any person who—

"(1) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste, or

"(2) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or safety.

"(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties takes remedial action with respect to such site which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined under rules promulgated by the Administrator.

"(d) DETERMINATION OF APPROPRIATE RESPONSE.—The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this section. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(1) the need for protection of public health and safety at the site under consideration, and

"(2) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or safety.

With respect to actions under paragraphs (1) and (3) of subsection (a), the Administrator shall make such determination taking into consideration the need for immediate action.

"(e) INTERIM SITES.—(1)(A) Upon receipt of evidence that the release of any hazardous waste from or at a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an imminent and substantial endangerment to public health or safety, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into safety from or at any hazardous waste site which is operating pursuant to an interim permit under section 3005(e) in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an unreasonable risk of harm to public health or safety, he may, after notice and opportunity for written or oral public com-

"(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order, including the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(3) When the Administrator or any State or local government has incurred costs pursuant to this subsection with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), the provisions of section 3071 shall apply for purposes of recovering such costs in the same manner as such provisions apply in the case of inactive hazardous waste sites.

"(4) As used in this subsection, notwithstanding section 3022(3)(A), the term 'release' includes the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping, or other transfer of hazardous waste to any land, air, or water at or from a hazardous waste site which is operating pursuant to a permit treated as having been issued under section 3005(e).

"(5) As used in this subsection, the term 'responsible party' means with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), any person who—

"(A) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

"(B) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or safety.

"(6) Where there are two or more responsible parties with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), if one or such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined under regulations promulgated by the Administrator.

"(7) The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this subsection. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(A) the need for protection of public health and safety at the site under consideration, and

"(B) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or safety.

With respect to actions under paragraph (1), the Administrator shall make such determination taking into consideration the need for immediate action.

"STATE CONTRIBUTION

"SEC. 3042. (a)(1) Not more than 75 percent of the total costs of actions taken by the Administrator with respect to any site under section 3041 may be paid by the United States. At least 25 per centum of such total costs shall be paid by the State in which the inactive hazardous waste site concerned is located. Not more than 75 percent of such total costs may be paid by the Administrator when any action under section 3041 is taken by the State pursuant to a determination under section 3041(a)(1)(B) or 3041(a)(2)(B). In any such case at least 25 percent of such total costs shall be paid by the State. No amount may be expended by the Administrator for any such action by the Administrator or the State unless the State has established assurances satisfactory to the Administrator that—

"(A) the aggregate costs of long-term maintenance associated with the hazardous waste site concerned will be funded from non-Federal sources,

"(B) a hazardous waste disposal facility which meets the requirements of part 1 of this subtitle will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released,

"(C) the State share of the costs under section 3041 will be available; and

"(D) such State will provide adequate measures to protect the health and safety of employees engaged in removal, containment, and other remedial actions undertaken pursuant to section 3041.

"(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which any action has been taken under paragraph (1) or (2) of section 3041(a).

"(3) For purposes of this subsection, the term 'long-term maintenance' shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

"(4) In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the Administrator shall grant the State a credit for amounts expended or obligated by such State after January 1, 1978, and before the date of the enactment of this Act, for purposes of remedial action taken by the State with respect to any release of

hazardous waste in such State. Such credit shall reduce the amount which the State would otherwise be required to pay in connection with assistance provided under this section until such time as the aggregate amount of credit granted by the Administrator to such State equals the amount required to be paid by such State. No credit shall be granted under this paragraph for any amount expended or obligated by any State for the temporary or permanent relocation of any individuals residing in the vicinity of, or otherwise affected by, the release involved.

"(b)(1) Paragraphs (1) and (2) of subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 per centum of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

"(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $300,000 with respect to any hazardous waste site.

"(3) During the period ending eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such eighteen month period.

"Subpart D—Hazardous Waste Response Fund

"ESTABLISHMENT OF FUND

"SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the 'Fund') which shall be available as provided in appropriation Acts, only for the purposes specified in subsection (c).

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) all amounts recovered by the United States under any law or rule of law permitting recovery by the United States of the costs to the United States of remedial action undertaken with respect to hazardous waste sites,

"(B) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041,

"(C) any penalties assessed under this part, and

"(D) amounts authorized to be appropriated to the fund under paragraph (2).

"(2) There is authorized to be appropriated to the Fund for the fiscal year—

"(A) 1981, $200,000,000,

"(B) 1982, $200,000,000,

"(C) 1983, $200,000,000,

"(D) 1984, $200,000,000, and

"(E) 1985, $200,000,000.

"(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimated by the Administrator and submitted to the Congress in the annual budget submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for action carried out under subpart C, including actions carried out by States pursuant to a determination of the Administrator under section 3041(a)(1)(B) or section 3041(a)(2)(B) and including reimbursement of excess costs pursuant to section 3041(c). Any amounts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

"Subpart E—Enforcement

"ENFORCEMENT

"SEC. 3061. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or mitigate the effects of such release, and other appropriate factors.

"(B) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Administrator or by a State or local government, or both, under section 3041 with respect to the release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(4) No civil penalty may be imposed under this section against any person for violation of an order under section 3041 unless such person is liable for costs under section 3071.

"(b) Criminal Penalty.—Any person who willfully fails to comply with the notification requirement of subsection (a) of section 3031 or who violates section 3035 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"Subpart F—Assistance to States for Recovery of Clean-up Costs

"ASSISTANCE TO STATES ATTORNEYS GENERALS

"SEC. 3071. The Administrator may make grants to State attorneys general for purposes of providing training and technical assistance to State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States. There is authorized to be appropriated not more than $50,000,000 for each of the following fiscal years to carry out the purposes of this section: 1981, 1982, 1983, 1984, and 1985.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting "Part 1—Standards and Permits for Hazardous Waste Management" immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"SUBPART B—INVENTORY, PRIORITIES, AND MONITORING

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"SUBPART C—HAZARDOUS WASTE RESPONSE AUTHORITY

"Sec. 3041. Emergency response.
"Sec. 3042. State contribution.

"SUBPART D—HAZARDOUS WASTE RESPONSE FUND

"Sec. 3051. Establishment of Fund.

"SUBPART E—PROHIBITIONS AND ENFORCEMENT

"Sec. 3061. Enforcement.

"Subpart F—Assistance to States for Recovery of Cleanup Costs

"Sec. 3071. Assistance to States' Attorneys Generals."

STUDY OF HAZARDOUS WASTE SITING

SEC. 6. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities; and

(5) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than one year after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $300,000 to carry out the study required under this section.

STUDY OF ADEQUACY OF FUNDING

SEC. 7. (a) The President shall submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United

States Senate within six months after the end of each fiscal year, beginning one year after the date of the enactment of this Act, a report summarizing the receipts and disbursements during that year from the fund established pursuant to this Act. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the President may have for improvement.

(b) Before January 1, 1984, the Administrator shall conduct a study, and submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a comprehensive report on experience with the implementation of the amendments made by this Act, including, but not limited to an analysis of:

(1) whether the requirements set forth in the amendments are effective;

(2) the extent to which the fund established under the amendments is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of hazardous waste;

(3) the cost of responding to, and the potential threat to public health or safety, posed by, hazardous waste remaining after actions taken pursuant to the amendments made by this Act; and

(4) State participation in the system of response, liability, and compensation established by such amendments.

In preparing the report under this subsection, the Administrator shall consult with appropriate Federal, State, and local agencies, affected industries and other interested parties. Based upon the analyses and consultation required by this subsection, the Administrator shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of the amendments made by this Act, including but not limited to recommendations concerning authorization levels, State participation, liability and liability limits, and financial responsibility provisions.

SUNSET PROVISIONS

SEC. 8. Unless reauthorized by Congress, the authority of the Administrator to inventory and clean up any inactive hazardous waste disposal site or to exercise any other authority conferred in this Act shall terminate five years after the date of enactment of this Act.

LIMITATION ON AUTHORIZATIONS

SEC. 9. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1980. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

Amend the title so as to read as follows: "A bill to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and safety, to establish a Hazardous Waste Response Fund, and for other purposes.".

—Strike all after the enacting clause and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective cleanup of dangerous hazardous waste sites is necessary to protect public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"PURPOSES

"SEC. 3022. (a) IN GENERAL.—The purposes of this part are to provide, through the use of Federal financial and technical assistance, for the establishment and implementation of effective State programs to assure the cleanup and containment of inactive hazardous waste sites by—

"(1) carrying out investigation and evaluation of the inactive hazardous waste disposal sites in the State;

"(2) establishing cleanup priorities among the sites, based on the danger they present to public health and safety; and

"(3) undertaking, based upon such priorities, the necessary remedial action for the protection of public health and safety from the hazardous waste associated with such sites.

"(b) RECOVERY OF CLEANUP COSTS.—It is also a purpose of this part to assist the States in recovering, from persons liable under otherwise applicable law, the costs of State cleanup and containment activities with respect to inactive hazardous waste sites.

"DEFINITION

"SEC. 3023. For purposes of this part, the term 'inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(1) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(2) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under section 3005 (including subsection (e) thereof) is required.

"FORMULA GRANTS

"SEC. 3024. (a) STATE PLAN.—Each State may, not later than 90 days after the date of the enactment of the Hazardous Waste Containment Act of 1980, submit to the Administrator a plan—

"(1) providing for the discovery and investigation by the State of inactive hazardous waste sites;

"(2) providing for the evaluation by the State of the threat to public health and safety posed by such sites and establishing cleanup and containment priorities among those sites which present, or may present, a substantial threat to public health and safety;

"(3) containing proposed methods and criteria for determining the appropriate emergency response to, containment of, and other remedial measures to be carried out for, releases or threatened releases of hazardous waste from inactive hazardous waste sites where such releases or threatened releases pose a substantial danger to public health and safety;

"(4) setting forth appropriate roles and responsibilities for Federal, States, and local governments and for interstate and nongovernmental entities, in carrying out the plan; and

"(5) establishing an active and effective program for recovering, from persons liable under otherwise applicable law, the costs incurred by the State in the cleanup and containment of inactive hazardous waste sites.

The provisions included in the plan under paragraph (3) shall provide that the State shall have the primary responsibility for carrying out the plan. The provisions included in the plan under paragraph (5) shall insure that the State will have sufficient investigative powers, financial resources, and legal expertise to recover the maximum feasible amount of cleanup and containment expenses incurred by the State.

"(b) EPA APPROVAL.—The Administrator shall approve a State plan described in subsection (a) and submitted under this section unless he determines that the plan—

"(1) does not comply with the requirements of subsection (a) or is otherwise generally inconsistent with the purposes of this part; or

"(2) would not result in a cost-effective use of Federal funds to be made available to the State under this section.

Any State may submit to the Administrator a modification of any State plan described in subsection (a), and any such modification shall be approved by the Administrator unless he makes the determination referred to in paragraph (1) or (2) of this subsection. Each State having a plan approved under this section shall be eligible for grants under subsection (c) unless the Administrator suspends such eligibility on the basis of his determination that the State is not carrying out the plan in good faith or has not properly used prior grants under subsection (c).

"(c) GRANTS.—Upon the application of any eligible State (as determined under subsection (b)), the Administrator shall make grants to such State to assist the State in carrying out the State plan approved under this section. Such grants shall be made not more frequently than annually and shall be allocated among such States on the basis of a formula based on population density, on the annual hazardous waste generators report required under regulations prescribed under this subtitle, and on the annual report for facilities that treat or store hazardous waste required under regulations under this subtitle. The Administrator shall, by rule, prescribe such formula not later than 60 days after the date of the enactment of the Hazardous Waste Containment Act of 1980. For any fiscal year after the first fiscal year in which a grant is made to a State under this section, grants shall be made by the Administrator to any State which applies for such a grant and certifies that the State plan approved under this section is being implemented.

"SUPPLEMENTAL GRANTS

"SEC. 3025. (a) GUIDELINES.—The Administrator shall promulgate guidelines for making supplemental grants to eligible States (as determined under section 3024) for purposes of assisting such States in undertaking remedial action with respect to inactive hazardous wastes sites. Such guidelines shall provide that the supplemental grants shall be made only for purposes of addressing emergency situations or for purposes of assisting States which have a disproportionate number of inactive hazardous waste sites which pose substantial threats to public health or safety. The guidelines shall provide for the allocation of supplemental grants under this section among the eligible States on the basis of the Administrator's determination as to the relative amounts required to be expended by the State for cleanup and containment of inactive hazardous waste sites, the significance of the threats to public health and safety posed by such sites, and the ability of the State to undertake remedial action without such supplemental Federal assistance.

"(b) GRANTS.—Upon the application of any eligible State (as determined under section 3024), the Administrator may make a grant to such State under this section in accordance with the guidelines prescribed under subsection (a). Any grant made to a State under this section in a fiscal year after the first fiscal year in which any grant was made to such State under this section or section 3024 shall be based upon such guidelines and on the Administrators determination that the State has acted properly in its expenditure of funds made available to the State under this section and section 3024 in prior fiscal years.

"TECHNICAL ASSISTANCE

"SEC. 3026. The Administrator shall undertake a program of (1) research with respect to hazardous waste management and (2) providing training and technical assistance to State officers and employees engaged in hazardous waste management activities. Such program shall include research, training, and technical assistance with respect to—

"(A) the evaluation of hazardous waste associated with inactive hazardous waste sites; and

"(B) emergency response actions which may be taken with respect to releases or potential releases of hazardous waste.

For purposes of the program under this section, the Administrator shall develop equipment, manuals, and other materials which will have a wide application to State programs for cleanup and containment of inactive hazardous waste sites.

"ASSISTANCE TO STATES ATTORNEYS GENERAL

"SEC. 3027. The Administrator may make grants to State attorneys general for purposes of providing not more than 50 percent of the costs of training and technical assistance for State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States.".

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 3028. (a) GRANTS.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of making grants to the States under section 3024 and section 3025:

"(1) $75,000,000 for the fiscal year 1981;

"(2) $150,000,000 for the fiscal year 1982;

"(3) $150,000,000 for the fiscal year 1983;

"(4) $75,000,000 for the fiscal year 1984; and

"(5) $50,000,00 for the fiscal year 1985.

Not less than 70 percent of the amounts appropriated under this section for any fiscal year may be used only for grants under section 3024.

"(b) RESEARCH AND TECHNICAL ASSISTANCE.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of research and technical assistance under section 3026:

"(1) $10,000,000 for the fiscal year 1981;

"(2) $15,000,000 for the fiscal year 1982;

"(3) $15,000,000 for the fiscal year 1983;

"(4) $5,000,000 for the fiscal year 1984; and

"(5) $5,000,000 for the fiscal year 1985.

"(c) ASSISTANCE TO STATE ATTORNEYS GENERAL.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of recovery assistance under section 3027:

"(1) $10,000,000 for the fiscal year 1981;

"(2) $10,000,000 for the fiscal year 1982;

"(3) $10,000,000 for the fiscal year 1983;

"(4) $10,000,000 for the fiscal year 1984; and

"(5) $10,000,000 for the fiscal year 1985.".

(b) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"Sec. 3021. Coverage of part.
"Sec. 3022. Purposes.
"Sec. 3023. Definition.
"Sec. 3024. Formula grants.
"Sec. 3025. Supplemental grants.
"Sec. 3026. Technical assistance.
"Sec. 3027. Assistance to States attorneys general.
"Sec. 3028. Authorization of appropriations.".

—Page 5, strike out lines 5 through 18 and insert in lieu thereof the following:

"(1) 'Inactive hazardous waste site' shall have the meaning prescribed by the Administrator in accordance with subparagraph (1)(A) of this section.

"(A) Not later than 120 days after the date of enactment of this Act, the Administrator shall promulgate a final rule establishing the definition of 'hazardous waste site' and submit such final rule to the Congress for review in accordance with subparagraph (1)(B) of this section. In developing such final rule, the Administrator shall consider—

"(i) the characteristics of the sites that would be encompassed in the proposed definition;

"(ii) the quantity and characteristics of the materials located at sites that would be encompassed in the proposed definition;

"(iii) the magnitude of the threat to public health and safety posed by the sites that would be encompassed in the proposed definition; and

"(iv) the costs and benefits to the nation as a whole of alternative definitions that encompass a larger or smaller number of sites than the proposed definition.

"(B)(i) Any final rule promulgated by the Administrator under this paragraph shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such final rule shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce, respectively.

"(ii) Any such final rule shall become effective unless, before the end of 30 calendar days of continuous session after the date such rule is submitted to Congress, either House passes a resolution stating in substance that such House does not approve such a final rule."

—Page 7, strike out lines 1 through 4 and insert in lieu thereof the following:

"(5) 'Threatened release' means a condition or situation in which, on the basis of information provided pursuant to section 3031(a) or on the basis of monitoring a particular site, the Administrator determines there exists a substantial likelihood of imminent release to the environment from an inactive site of material posing a significant threat to public health or safety."

—Beginning at page 7, line 22, strike out all that appears through page 9, line 3, and insert in lieu thereof the following:

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased);

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site as may be necessary to determine the extent of any health hazard which may be associated with such site;

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site; and

"(F) information concerning the proximity of the site to residences or other area used by individuals and its proximity to any water supply used for human consumption.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Upon the request of any person required to submit information under this subsection the Chief State Public Health Officer may grant a waiver to such person with respect to any information required to be submitted under this subsection where he determines that his submission of such information would be impracticable or unnecessary."

—Page 8, strike out lines 13 through 18 and insert in lieu thereof the following:

"(D) such information relating to the amount and characteristics of the hazardous waste at the site and the integrity of the site as may be necessary to determine the extent of any health hazard associated with such site;"

—Beginning at page 17, line 13, strike out all that appears through page 20, line 8.

—Page 16, line 21, strike out "or the environment" and insert in lieu thereof "and safety".

—Page 17, line 15, strike out "or the environment" and insert in lieu thereof "and safety".

—Beginning at page 18, line 23, strike out all that appears through page 20, line 8.

—Page 17, line 21, strike out "; or" and insert in lieu thereof a period. Beginning at page 17, line 22, strike out all that appears through page 18, line 22.

—Page 18, line 6, after "unreasonable risk" strike out all that appears through "action." on line 20.

—Page 22, strike out lines 15 through 25 and insert in lieu thereof the following:

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site any person who owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste."

—Page 23, line 23, strike out "the environment" and insert in lieu thereof "safety".

—Page 24, after line 8, insert the following:

"In determining whether an action is cost-

effective, the Administrator shall assess the social costs of such action, including but not limited to its effect on economic output and employment.".

—Beginning at page 24, line 12, strike out all that appears down through page 28, line 23.

—Page 24, line 17, strike out "or the environment" and insert in lieu thereof "safety".

—Beginning at page 25, line 10, strike out all that appears down through page 26, line 18.

—Page 25, line 19, strike out "; or" and insert in lieu thereof a period.

—Beginning at page 25, line 20, strike out all that appears down through page 26, line 18.

—Page 26, line 4, after "such unreasonable risk" strike all that appears through "applies." on line 15.

—Page 26, line 11, strike out "10" and insert in lieu thereof "3".

—Page 18, line 14, strike out "10" and insert in lieu thereof "3".

—Page 27, line 14, strike out ", or" and insert in lieu thereof a period.

Page 27, strike out lines 15 through 19.

—Page 28, after line 20, insert the following: "In determining whether an action is cost-effective, the Administrator shall assess the social costs of such action, including but not limited to its effect on economic output and employment.".

—Beginning at page 28, line 24, strike out all that appears down through page 29, line 8.

—Beginning at Page 29, line 14, strike out all that appears down through page 32, line 11.

—Page 32, line 13, strike out "90" and insert in lieu thereof "50".

—Page 32, line 16, strike out "10" and insert in lieu thereof "25".

—Beginning at page 33, line 22, strike out all that appears down through page 34, line 12.

—Page 34, strike out lines 21 through 23.

—Beginning at page 35, line 16, strike out all that appears down through page 36, line 15, and insert in lieu thereof the following:

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) an amount equal to all amounts recovered by the United States under subpart F,

"(B) any amount reimbursed to the fund as provided in subsection (a)(3) of section 3041,

"(C) amounts authorized to be appropriated to the fund under paragraph (2).

"(2) There are authorized to be appropriated to the fund for the fiscal year—

"(A) 1981, $100,000,000;

"(B) 1982, $100,000,000;

"(C) 1983, $100,000,000;

"(D) 1984, $100,000,000;"

Beginning at page 37, line 7, strike out all that appears down through page 45, line 18.

—Page 40, after line 20, insert the following:

"(7) No fee shall be imposed under this section on any quantity of feedstock or element or compound that is derived from a synthetic liquid or gaseous material produced from coal, oil shale, tar sands, or heavy crude oil. For the purposes of this paragraph, the term 'heavy crude oil' means crude oil with a gravity of 20 degrees API or less."

—Page 38, strike lines 20 through 24.

—Page 40, after line 20, insert the following:

"(7) No fee shall be imposed under this section on any quantity of feedstock or element or compound that is produced for sale outside the United States or that is used in the production of any material intended for sale outside the United States."

—Page 36, strike out lines 7 through 9 and insert in lieu thereof the following:

"(B) $100,000,000 for the fiscal year 1982,

"(C) $100,000,000 for the fiscal year 1983,

"(D) $100,000,000 for the fiscal year 1984."

—Page 44, strike out lines 7 through 11.

—Page 44, strike out lines 12 through 17.

—Beginning at page 44, line 18, strike out all that appears down through page 45, line 18.

—Beginning at page 45, line 21, strike out all that appears down through page 46, line 24.

—Page 46, line 11, strike out "two and one-half times the amount of".

—Beginning at page 46, line 2, strike out "on considerations of the size of the business of the owner, operator, or other person against whom the penalty is assessed,".

—Beginning at page 47, line 9, strike out all that appears down through page 50, line 7.

—Beginning at page 53, line 6, strike out all that appears down through page 55, line 2.

H.R. 7112

By Mr. WEISS:

—Page 3, after line 21 insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ALLOCATIONS TO STATE GOVERNMENTS.—

"(1) IN GENERAL.—In the case of each entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $2,300,000,000 to make allocations to State governments under section 107 for such entitlement period.

"(2) ENTITLEMENT PERIODS.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983."

Page 6, line 3, strike out the close quotation marks and the following period and strike out lines 4 through 20 and insert in lieu thereof the following:

"SEC. 107. ALLOCATIONS TO STATE GOVERNMENTS.

"From any amount appropriated pursuant to section 105(c)(1) for any entitlement period beginning on or after October 1, 1981, there shall be allocated to each State government an amount which bears the same ratio to the amount so appropriated for that period as the amount allocable to that State under section 106(b) bears to the sum of the amounts allocable to all States under section 106(b).".

(b) CONFORMING AMENDMENTS.—

(1) PAYMENTS.—Section 102(a)(1) of the Act is amended by striking out "the entitlement" and inserting in lieu thereof "the allocation, if any,".

Page 7, line 3, insert "and" after the semicolon and strike out lines 4 through 24 and redesignate the succeeding subparagraph accordingly.

—Page 3, after line 21 insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ADDITIONAL ALLOCATIONS TO LOCAL GOVERNMENTS.—

"(1) IN GENERAL.—In the case of any entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $920,000,000 to make additional allocations to local governments under section 107 for such entitlement period.

"(2) ENTITLEMENT PERIODS.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983.

Page 6, line 3, strike out the close quotation marks and the following period and insert after such line the following:

"SEC. 107. ADDITIONAL ALLOCATIONS TO LOCAL GOVERNMENTS.

"From any amount appropriated pursuant to section 705(c)(1) for any entitlement period beginning on or after October 1, 1981, there shall be allocated to each unit of local government an amount which bears the same ratio to the amount so appropriated for that period as the entitlement of that unit under section 108 bears to the sum of the entitlements of all units of local government under such section.".

—Page 16, immediately before line 1 insert the following new section (and redesignate the succeeding sections accordingly)

SEC. 104. ESTABLISHMENT OF TERRITORIAL ALLOCATIONS.

The State and Local Fiscal Assistance Act of 1972 is amended by inserting after section 109 the following new section:

"SEC. 110. AUTHORIZATION OF APPROPRIATIONS FOR PUERTO RICO, GUAM, AMERICAN SAMOA, AND THE VIRGIN ISLANDS.

"(a) IN GENERAL.—There is hereby authorized to be appropriated for each of entitlement period beginning on or after October 1, 1980, for the purpose of making payments under this tile to Puerto Rico, Guam, American Samoa, and the Virginia Islands an amount equal to one percent of the sum of the amount authorized for such entitlement period under section 105(b).

"(b) ALLOCATIONS.—

"(1) IN GENERAL.—From the amount appropriated under subsection (a) there shall be allocated to each territory an amount equal to the total appropriated under subsection (a) for the entitlement period multiplied by the applicable territorial percentage.

"(2) APPLICABLE TERRITORIAL PERCENTAGE.—For the purposes of this subsection, the applicable territorial percentage is equal to the quotient resulting from the division of the territorial population by the sum of the territorial population for all the territories.

"(3) DEFINITIONS.—For the purposes of this section—

"(A) The term 'territory' means Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"(B) The term 'territorial population' means the most recent population for each territory as determined by the Bureau of the Census.

"(c) PAYMENTS TO UNITS OF LOCAL GOVERNMENT.—The governments of the territories shall make payments to all units of local government within their jurisdiction from sums received under this section on the basis of population as determined by the Bureau of the Census.

"(d) APPLICATION OF GENERAL PROVISIONS.—The provisions of sections 121, 122, 123, 124, 125, 141, 142, and 143 shall apply to the funds allocated under this section.

H.R. 7244

By Mr. BEDELL:

—Page 9, after line 21, insert the following new section and redesignate the subsequent sections accordingly:

COUNTRY EXPOSURE LENDING SURVEY

SEC. 6. The Chairman of the Board of Governors of the Federal Reserve System shall transmit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of each Country Exposure Lending Survey which is prepared by the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency. Not less than two such surveys shall be prepared and transmitted during each calendar year.

EXTENSIONS OF REMARKS

CONGRESSIONAL AUTO TASK FORCE HEARING OF SEPTEMBER 15, 1980

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HILLIS. Mr. Speaker, on September 15, 1980, the Congressional Auto Task Force, of which I am cochairman along with Congressman WILLIAM BRODHEAD, held its second hearing. The following is a summary of the testimony presented at that hearing by myself, Owen Bieber, vice president, Automobile, Aerospace & Agricultural Implement Workers of America (UAW); Mr. Howard D. Samuel, president, Industrial Union Department, AFL–CIO, and chairman, Coalition of Automotive Component and Supply Workers; and Dr. David S. Potter, vice president, public affairs group, General Motors Corp.

OPENING STATEMENT BY CONGRESSMAN ELWOOD H. HILLIS

The American auto industry is undergoing major changes. It faces new challenges which must be met during the 1980's. The industry is half way through a ten year program designed to double the fuel efficiency of its product. That program may well be successful and certainly it will result in a changed industry. In that regard, this year represents a decisive turning point.

The problems of the industry need not be detailed—they are generally well recognized, I believe. On the other hand, solutions to those problems continue to evade us. We are faced with a Congress obviously unwilling to pass the type of legislation, such as Capital Cost Recovery, which would help the industry. Apparently, the Administration has yet to recognize the nature of the problems inasmuch as they consider the slump in auto sales to be a short-term, cyclical phenomenon. While the President has proposed a "revitalization" package, his proposals have met with mixed reaction.

The purpose of this task force is to consider the various aspects of the auto industry's problems. It is to review several of the recommendations which have been made to address those problems. And in the end, it is to build support for needed legislation and to work as a forum in building knowledge of the industry and its problems.

TESTIMONY OF OWEN BIEBER

The very fact that this task force was formed attests to the importance of the industry in the U.S. economy. In a good year the auto industry employs one million people. On average, every one of those jobs is directly tied to two additional jobs—in steel, rubber, glass, some auto parts, wholesale and retail trade, etc. Many more paychecks are generated as the impact of those jobs reverberate throughout the economy.

The importance of the auto industry to our entire economy as well as its current predicament point to the need for and the suitability of government intervention. This is all the more so because the actions of governments in other countries have had, and continue to have, a substantial bearing on the course of our own industry at home.

The Japanese government set out in the 1950's to cultivate a powerful auto industry. Its program included effective barriers against imports, favorable tax laws and outright subsidies, assistance in obtaining outside technology without foreign control, etc. With such treatment, the industry came into the 1970's as a full scale, technologically advanced sector well ready to compete effectively in the world market.

Thirty-one countries impose some form of content requirement. Our government has meanwhile adhered to a principle of free international trade which has turned industries as strategic as auto and auto-related into obvious targets for other countries' initiatives of expansion.

The costs of the government continuing to do nothing about this problem are staggering. To the approximately three-quarter million currently idled by the slump within the industry, one must add the multiplier effects. These are especially severe at those locations where plants have not only had shifts eliminated or hours cut, but where some have been mothballed or dismantled altogether.

We in the UAW are convinced that, by any measure, the costliest option for government is inaction.

At the top of our agenda is a program of import restraint. We have petitioned the International Trade Commission (ITC) for temporary import quotas which would limit the influx of imported cars and trucks to the level of 1976, as well as for stiff import tariffs. In fact, we would prefer to see an agreement between the American and Japanese governments on a rollback for Japanese vehicle shipments to the U.S.

TESTIMONY OF HOWARD D. SAMUEL

I would like to impress upon you today the urgent need for legislative and administrative solutions for the unemployment problems in the auto and auto-related industries.

Some of the member unions of the Coalition have been extremely hard hit by these shutdowns and by layoffs at other plants. For example, in the rubber and tire industry, the United Rubber, Cork, Linoleum and Plastic Workers union represents about 100,000 workers who produce tires for automobiles, trucks and buses and other automobile components. This year alone, 12,055 URW members have lost their jobs due to plant closures and another 15,800 have been laid off with little hope for early recall.

The United Glass and Ceramic Workers of North America whose members produce automotive glass lost nearly 3,000 members between December, 1979 and July, 1980, due to plant shut-downs or layoffs in the automotive glass industry.

The International Union of Electrical Workers (IUE) currently has some 43,000 members working on the production of auto parts, a reduction of 17,000 auto-related members from last year. An additional 10,000 of these 43,000 are on a four-day workweek. The machinists have about 41,000 members working on auto parts and components. About 25 per cent of these IAM workers are unemployed.

Within the United Steelworkers, auto-related membership declined by about 3,000 members in the past two years. And my own union, the Amalgamated Clothing and Textile Workers Union, has seen five auto-related plants closed since 1978, laying off over 7,000 workers.

According to the current law, these workers are not eligible for Trade Adjustment Assistance (TAA) because the auto components they produce for suppliers of the major auto companies are not "like or directly competitive" with automobile imports.

One legislative remedy to the worker displacement problems I have described would be enactment of the Vanik bill (H.R. 1543). This measure would provide trade adjustment assistance for workers who produce parts and components of imported articles.

While expanding TAA eligibility would offer some relief to unemployed auto-related workers, this program alone wouldn't get to the cause of the injury. The most immediate and effective solution would be to cut back Japanese imports through a negotiated agreement with Japan. The U.S. automobile industry will not be able to recover its health—nor will its workers be restored to their jobs—unless this devastating flood of imports is pushed back. Without immediate relief, the auto and components industries will be unable to finance the transition to producing a sufficient number of smaller, fuel-efficient cars for the American market of the mid-1980's and beyond.

That is the challenge squarely facing this Congress and the Carter Administration. We are convinced that the law allows our government to sit down and negotiate an agreement for the period of years required to allow the automotive industry to get back on its feet. The Administration has taken a few steps to help the industry, in delaying and modifying some regulatory standards and in giving it some tax incentives, but it has failed to take effective action to limit imports, no matter how temporarily.

Two avenues are available to the President for immediate action to limit auto imports. One is embodied in the resolution proposed by the Congressional Auto Task Force and introduced in a related form in the Senate (S.J. Res. 193) by Senator Riegle and 28 cosponsors; this would authorize the President to negotiate orderly marketing agreements (OMA's) with foreign governments to limit the importation of autos and trucks—with enforcement in U.S. ports by the U.S. Customs Service. The focus of these orderly marketing agreements would be to limit imports of autos at the U.S. border through the mechanism of an enforceable government-to-government agreement.

The other option is for the President to exercise his inherent powers to negotiate with foreign governments for export limitations enforceable in the expanding country. This course is readily available to the Administration and can and should be implemented now—before further harm is done, before more workers and communities are irreparably damaged.

Again, I must emphasize the need for immediate congressional and presidential action toward this end. In summary, the Industrial Union Department and the Coalition of Automotive Components and Supply Workers urges Congress: (1) to complete action on the Vanik bill extending trade adjustment assistance eligibility to component and supply workers; and (2) to encourage

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● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

the Administration to effect immediate relief from the flood of imported autos either through voluntary restraint agreements or through orderly market agreements.

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TESTIMONY OF DR. DAVID S. POTTER

In the past decade or two, the shift in this country toward more fuel-efficient automobiles was taking place at a relatively constant rate. Two events in the last decade, however, produced abrupt discontinuities which had a profound impact on the auto industry—the 1973 oil embargo, which followed the 1973 Mideast War, and the gasoline lines in California and on the East Coast, which followed the Iranian revolution in the spring of 1979. Both of these periods saw a sudden, sharp increase in the demand for smaller, more fuel-efficient cars. Both led to a shift in consumer demand toward imports.

In the summer of 1973—before the oil embargo—when there were growing signs that better fuel economy would become a more important factor with American customers, we made the decision to go ahead with the lighter-weight and more fuel-efficient cars that GM is producing today all around the world.

Since the introduction of these fuel-efficient cars coincided with the long gas lines in California and on the East Coast, their reception by the public was far greater than had been anticipated at the time we had made our production decisions. We did not have the means to produce all of the components required to increase production of our X-cars and other smaller models that suddenly came into much heavier demand.

Let me emphasize it was the government-imposed gasoline allocations that caused spot shortages in California and on the East Coast while plentiful supplies existed elsewhere. Until that time, the domestic auto industry's sales had been moving along at a record pace, and inventories of both small and large cars were in good balance. Consumer uncertainty about gas prices and availability slowed the pace of sales and created imbalances in demand to which the domestic industry could not instantly adjust.

Let me state that despite the abrupt shift in consumer demand over the past year and a half, and the ability of Japanese manufacturers to quickly capitalize on that shift, GM new-car deliveries have represented about 45 percent of the industry total—about in line with our experience over the past decade. In part, this reflects the timing of a second assembly plant dedicated to subcompact Chevette output, which was brought on stream in early 1979, as well as our new front-wheel-drive cars—the X-cars—which were introduced early in April, 1979 after a gestation period of nearly four years.

It follows, then, that our financial results in 1980—a $317 million loss through the first half—are largely due to other factors. Certainly one factor is the recession, which reduced our volume. Another is the mix of our product. But an equally significant factor is inflation.

We strongly believe that we can and should solve our problems through the marketplace. Our downsizing program to achieve increased fuel economy required a GM investment of more than $20 billion in the six years from 1974 through 1979. We now have a $40 billion worldwide program underway which we are confident will result in products that meet customer demands in the 1980's.

While we believe strongly in a market solution, there is, however, a problem-solving role for government to play in both the regulatory and the tax areas.

In the area of government regulation, we do not believe there is a full appreciation of the important and immediate relief which could be obtained by responsible and prudent regulatory changes. Since the enactment of the first federal auto regulatory legislation in 1966, there has been a profusion of regulations, instructions and directions from a growing list of government agencies. In GM, the talents and energies of the equivalent of 26,600 full-time employees were tied up last year in complying with regulation from all levels of government.

It must be recognized that the U.S. government now has means at hand that could be pursued in an attempt to improve the competitiveness of the domestic auto industry. For example, government policymakers could nurture a better climate for investment in American business by encouraging greater greater capital formation for new plants and equipment and funding for increased research and development. This can be accomplished through tax laws that allow faster write-offs of capital equipment and a lowering of corporate as well as individual tax rates to encourage more savings and investment.

We believe there should be a substantial tax cut directed toward capital formation. In accordance with the need for fiscal responsibility, it is important that the tax cut be "earned" by spending cuts. We cannot afford to have new inflationary forces cause a takeoff from the current unacceptably high level of inflation.

We want to emphasize that our government must take action now to improve the entire business climate—not just that of the auto industry.

Let me close by stating that General Motors has traditionally supported a policy of liberal trade because such a policy is in the best interests of the world economies, the U.S. and the auto industry. We continue to believe that. We further believe progress in eliminating trade barriers will marshal resources in the most efficient way to satisfy consumer demands.

But we also believe that practices currently being followed by some Japanese auto manufacturers are short-sighted and are causing pressures—both here and abroad—that could result in lasting harm to important world trade relationships.

We believe our government must take the initiative in persuading the Japanese government to protect its own self-interest by acting now—and by acting voluntarily—to adopt more prudent trade practices with the United States. Such prudence would help head off the wave of protectionist sentiment now building in this country—sentiment that threatens permanent harm to important trade relations between the U.S. and Japan.●

CONGRATULATIONS TO NORTH REDONDO BEACH BUSINESS ASSOCIATION

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DORNAN. Mr. Speaker, the North Redondo Beach Business Association will be celebrating its first anniversary on Thursday evening, October 2, at TRW Inc. in Redondo Beach Calif. I will be unable to attend this celebration and second installation banquet, so I would like to take this opportunity to congratulate the North Redondo Beach Business Association before this distinguished body.

The North Redondo Beach Business Association was founded by a group of concerned business men and women during the summer of 1979 to improve the image of the northern section of the city of Redondo Beach. I had the privilege to address this organization at their initial installation banquet and am pleased to report that the business association has pursued its founders' goals in an expeditious and professional manner.

During its first year in existence, the North Redondo Beach Business Association was successful in preventing the proposed installation of parking meters in the area and represented the community in a special task force which assisted in the preparation of a Redondo Beach revitalization survey and report. The organization monitored the progress of the undergrounding of utilities on Artesia Boulevard and expressed business concerns associated therewith, and was a motivating force in the creation of a local corporation established for the development and improvement of a business corridor. The association introduced the Redondo Beach Police Department's K-9 patrol dog program to the community at a public meeting and cooperates with the Lincoln Community Forum in the organization of an annual family picnic in Redondo Beach.

The North Redondo Beach Business Association was successfully guided by its president, Hank Courselle, vice president, Bob Weiss, treasurer, John Mozitis, and secretary, Carol Courselle, with the assistance and cooperation of the members of the association and its affiliate, the Redondo Beach Chamber of Commerce.

Congratulations for a job well done. I look forward to working with President Courselle and the North Redondo Beach Business Association in the coming year.●

SOVIETS' GLOBAL POSITION ERODING

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BINGHAM. Mr. Speaker, in these days when some would have us believe that the Russians are 10 feet tall and about to take over the world, it is refreshing to read a view from Moscow that shows just how much trouble the Soviets are in. An article in the September 11 Washington Post, dispatched from Moscow by Post correspondent Dusko Doder, provides just such a view.

Doder writes:

While the crisis in Poland is now bringing into focus internal problems of the Soviet bloc, the daily flow of bad news from countries along the Soviet borders, ranging from Norway to Japan, suggests a growing sense

of isolation here as a result of changes in the balance of forces, especially in Asia.

According to Doder, the three main reasons the Soviets see their global position eroding are the Sino-Japanese rapprochement in the Far East, the Camp David peace process that has shut Moscow out from the Middle East, and the rivival of Islamic fundamentalism throughout Central Asia.

Doder concludes:

This may come as a surprise to Washington, but the men in the Kremlin seem deeply troubled by a series of adverse events and by the threat of a new round in the arms race that would put additional strain on their economy.

While the Soviets do present us with serious challenges around the world, those challenges must not be exaggerated if our policies are to be realistic and effective. I think this article helps us keep things in perspective, and I hope my colleagues will read it. I include it at this point:

SOVIETS' GLOBAL POSITION ERODING

Moscow.—While the crisis in Poland is now bringing into focus internal problems of the Soviet Bloc, the daily flow of bad news from countries along the Soviet borders, ranging from Norway to Japan, suggests a growing sense of isolation here as a result of changes in the balance of forces, especially in Asia.

Coming after the deepening morass of Afghanistan, the Polish turbulence seems to be a new, major obstacle in the course of Soviet foreign policy that has successfully exploited the post-Watergate period of American vacillations.

But deeper changes in the strategic equation over the last two years—coupled with new U.S. assertiveness in foreign affairs—have renewed fears of "capitalist encirclement," a notion that party leader Nikita Khrushchev abandoned more than two decades ago when he inaugurated the policy of "peaceful coexistence."

According to senior Western diplomats, the two main changes contributing to the erosion of the Soviet global position involve the Sino-Japanese rapprochement in the Far East and the Camp David peace process that has shut out Moscow from the Middle East.

The third and unexpected element is the revival of Islamic fundamentalism throughout Central Asia.

As a result, Moscow sees itself surrounded by overtly or covertly hostile forces and left without friends on the vast Asian continent, with the exception of India and Vietnam. But even Soviets privately concede that both India and Vietnam draw far greater benefits from these ties than does the Soviet Union.

Moscow's crucial long-term concern is in East Asia, where it sees the United States using China and Japan to create Asian security arrangements "based on anti-Sovietism."

Japan has entered into this picture as a result of the Sino-Japanese peace and cooperation treaty signed two years ago. Increased trade and technological exchanges since then have prompted a flurry of articles, including one by Defense Minister Dmitri Ustinov last week, attacking ties between "the Chinese hegemonists and Japanese revenge-seekers."

The Soviets had an opportunity to prevent this course in Sino-Japanese ties had they been prepared to relinquish control over several small islands in the Kurile chain they had seized at the end of World War II. The Japanese have made their return a precondition for normalization of relations with Moscow.

The Soviets found it impossible to do so. However insignificant the island may be, their return to Japanese sovereignty is seen here as setting a precedent for a far more serious territorial dispute with Moscow's arch-rivals in Peking.

The Chinese have repeatedly denounced what they call "unequal treaties" imposed by the Russian empire on weak Chinese rulers in the last century. But Chinese territorial claims in this context are small compared to their claim on Mongolia, the large buffer state established by the Soviets in 1924 and for all practical purposes a colony of Moscow.

Mongolia—which is roughly the size of Texas, Arizona and California combined—was ruled by China from the 17th century until 1911. Four years later, Czarist Russia acknowledged in a treaty Chinese sovereignty over Mongolia. Susequently, Chiang Kai-shek formally accepted Mongolian independence.

Today, the Chinese view Mongolia as a military threat because of the presence of Soviet land and air forces there.

While they had long studied the implication of Japan's rapprochement with China, the Soviets were unprepared for the Camp David Peace process that re-established U.S. positions in the Middle East and effectively denied Moscow a voice in the course of events there.

The Soviets had thought of the Middle East in terms of a condominium with the United States, even after they were expelled from Egypt. The Arab-Israel conflict seemed to assure a substantial role for them in the region.

The loss of its Middle East positions, coupled with Moscow's overwhelming concern about what it sees as the emergence of an alliance involving China, Japan and the United States in the East Asian region, have produced a sense of strategic vulnerability. And this, according to Western diplomats, was the main reason for the Afghanistan invasion.

There were, of course, other elements such as the decline in U.S.-Soviet relations and the apparent collapse of SALT II as well as the climate of political instability in Central Asia after the Iranian revolution. Moreover, the Soviets had a problem on the ground as the Hafizullah Amin regime in Afghanistan appeared to be going down the drain as a result of the Moslem revival.

But, according to these diplomats, the long-term aim of the intervention was designed to neutralize what Moscow sees as Western strategic gains in crucial areas of the world. The Russians established in the 1970s positions in various parts of Africa and in South Yemen on the Arabian peninsula. But none of these could compare in wealth to the energy resources of the Middle East, the vast human resources of China or the industrial potential of Japan.

It should also be noted that the Soviet Union, while it has begun to export military power through the use of Cuban and Vietnamese proxies, remains a profoundly old-fashioned empire that regards territories contiguous to its own with greater concern than far away places.

The Afghanistan push, seen over the long term, is an effort to break what Moscow sees as the hostile ring around the Soviet Union and to establish a platform in Afghanistan from which the Soviets could pressure Pakistan, Iran and other countries in the region while exposing the West to risks and potential losses in the oil rich area.

Indeed, Soviet propaganda daily exerts pressure on Pakistan, and despite reports of Pakistani resistance, it is unlikely that over the long term the Pakistanis will be able to stand up to the Soviet in Baluchistan and Iran, that the Pakistani military government is headed toward a position in which its security in effect rests on the moral strength of nonalignments, the support of the Moslem world and the goodwill of its neighbors.

Diplomats also see possibilities for the Russians in Baluchistan and Iran. But in their view, an important aspect of Soviet intervention in Afghanistan was Moscow's willingness to use force to protect its friends. In the world of Central Asia, they say such actions cut deep, particularly if contrasted to the American unwillingness to protect the shah.

The move was also addressed to Soviet Central Asia, where there are about 50 million Moslems. The upsurge of Moslem fundamentalism following the Iranian revolution was seen as a threat to internal stability there.

What the Soviet leaders did not expect was the sustained and vigorous American opposition that created a change in public attitudes and, more importantly, produced a new American determination to meet Soviet challenges.

Nor did they expect turmoil in their vital backyard where the Polish crisis threatened the core of the Soviet political and security system and reminded Moscow that its hold on Eastern Europe is as precarious as ever.

This may come as a surprise to Washington, but the men in the Kremlin seem deeply troubled by a series of adverse events and by the threat of a new round in the arms race that would put additional strain on their economy. Their preception of Western intentions seems to have come full circle back to the time when "capitalist encirclement" was the slogan of the day.●

THE AGRICULTURAL CONSERVATION PROGRAM

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MURPHY of Pennsylvania. Mr. Speaker, since the agricultural conservation program was created under the Soil Conservation and Domestic Allotment Act of 1936, it has been a consistent and effective program throughout its 40 years of existence. Despite the necessity of imposing responsible controls on Federal spending in this and future years, it is imperative that we continue to support effective programs such as this. With approximately 400,000 farmers and ranchers participating in ACP activities and sharing 50 percent of the cost of the programs, we should support and approve the requested funding of $190 million so that the good conservation practices in rural communities throughout the country will continue. Because of this program, not only our farmers benefit—all Americans who enjoy clean water and unpolluted streams share in the benefits of this admirable program.

In considering this program we should also consider the fact that it is

administered by nonpartisan farmer elected committees well qualified to make the necessary decisions on needed conservation practices in their respective counties. Because of the regimentation imposed on the county organizations over the years we should now make this program more responsive to the local needs of county ASC committees. Because they live and work in their individual counties they know far better what each local need is and the best ways for serving those individual counties. The proper stewardship of the land is critical to this Nation's capability of producing more food than any other nation in the world. We cannot afford to fail in supporting those men and women who grow that food on our farms and ranches. I hope that the support of this body in funding the ACP will reflect not only its concern for the rural beauty of the country but will serve as a platform for continued support throughout the years and additional funding to preserve rural America.●

A TRIBUTE TO DONALDSON C. COLE, SR.

HON. ROBERT E. BAUMAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BAUMAN. Mr. Speaker, it is my sad duty to report that Mr. Donaldson C. Cole, a good personal friend and adviser and a leading citizen of Cecil County, Md., recently passed away.

Don Cole was born, raised, and lived his entire life in Cecil County where he was a successful businessman and involved in many community activities and organizations. I first met Don nearly 30 years ago when I was an aide to the late Congressman Ted Miller of Maryland. He won wide recognition as "The Watchdog of the Susquehanna," a title fondly applied to him because of his lifelong love for the work on behalf of the preservation of the Susquehanna River.

Throughout my tenure as a Member of the House and also as Maryland State senator, Don Cole was a valued adviser on many matters. He served as a member of the Republican State Control Committee of Cecil County. Long before and well after his official service on the Susquehanna River Basin Commission, he served as a one man task force, never too busy to give his time and energy to any effort which was made on behalf of the health of the Susquehanna and the upper Chesapeake Bay.

Don Cole was born in Perryville and returned there after receiving all-American football honors at Dickinson College in Pennsylvania. For many years, he owned and ran the Perryville Water Co. and also became a junior partner in his family's seafood company. It was said that his love and concern for the Susquehanna River stemmed from the fact that that body of water provided his family's livelihood for many years.

Don later became president of the National Bank of Perryville and served as a director of the Home Building & Loan Association of Perryville as well.

I and my family share a deep sense of loss with his wife, Gertrude, his sons, Don and Bill, and daughter, Becky, and other members of his family. I include with my remarks articles about this remarkable man from the Cecil Democrat, of Elkton, Md., and the Aegis, of Bel Air, Md.

COLE, FORMER STAR ATHLETE, DIES AT 74 IN RIVER CITY

Donaldson C. Cole, Sr., 74, of North East, died Thursday, Aug. 14, at Hartford Memorial Hospital, Havre de Grace after a long illness. He was the husband of Gertrude Cochrane Cole.

He retired about two years ago as President of the National Bank of Perryville. He was a Director of the Home Building and Loan Association.

Earlier, he was the owner of the old Perryville Water Company and was a junior partner in a family wholesale seafood business.

A member of the Cecil County Property Review Board and the Susquehanna State Park Advisory Committee, he was active in the adoption of the Susquehanna River Basin Compact.

Mr. Cole was also a member of the Upper Chesapeake Watershed Association and was a former member of the National Rivers and Harbors Congress.

A former chairman of the Republican State Central Committee for Cecil County, he was a former trustee of the Perryville United Methodist Church and a charter member of the Community Fire Company of Perryville.

He was a founder and former treasurer of the Friends of Rodgers' Tavern, which is working for the restoration of the pre-revolutionary tavern in the Perryville area.

At one time, he also wrote a column that appeared in papers in the Cecil County area under the initials K.E.G.G.O.

A former master of the Susquehanna Lodge of the Masons, he was a member of the Scottish Rite and Boumi Temple.

Born in Perryville, he was a graduate of the Tome Institute and of Dickinson College, where he was reportedly named as a reserve end on an all-American football team.

His interest in sports continued in later life as he played football for teams in Elk Mills and Perryville. He was a founder and captain of a team in Newark, Del.

He also served as manager of the Perryville baseball team in the old Susquehanna League.

In addition to his wife, Mr. Cole is survived by two sons, Donaldson C. Cole, Jr. of North East and William H. Cole, III of Rising Sun; a daughter, Rebekah C. Cameron of Rumson, N.J. and five grandchildren.

Funeral services were conducted from the Perryville United Methodist Church, Sunday, Aug. 17, at 2 p.m.

DONALDSON C. COLE, SR., DIES OF HEART ATTACK

Funeral services for Donaldson Craig Cole Sr., 73, banker, waterman and lifelong resident of Cecil County, were conducted at the Perryville United Methodist Church on Sunday, August 17 at 2 p.m.

Officiating clergymen were Rev. James J. Shand, rector of St. Mary Anne's Episcopal Church, North East, and Rev. John M. Gauger, Perryville United Methodist Church. Burial was in Principio cemetery, Perryville.

Mr. Cole died of a heart attack on Thursday, August 14, 1980 in the Harford Memorial Hospital at Havre de Grace.

Widely known as the "Watchdog of the Susquehanna," Mr. Cole represented the Cecil County Board of Commissioners as a member of the Susquehanna River Basin Commission.

He was a past president of the National Bank of Perryville and continued as an advisor to the bank.

Mr. Cole owned and operated the Perryville Water Company for many years and was a junior partner in the W. H. Cole & Co. Wholesale Seafood Company on the Susquehanna River at Perryville until the U.S. government leased the land for the Perry Point VA Medical Center.

Mr. Cole was born in Perryville on February 23, 1907, the son of the late Maurice Elias Cole and Margaret Craig Cole.

He was educated at Mrs. Currier's private school in Perryville; graduated from Tome Institute at Port Deposit, and Dickinson College, Carlisle, Pa. where he was an All-American football team end.

His residence in recent years was at his summer home on Cara Cove near North East.

Mr. Cole is survived by his wife Gertrude Cochran Cole; two sons, Donaldson Craig Cole Jr. of North East, William Hazlett Cole III of Rising Sun; a daughter, Rebekah C. Cameron of Rumson, N.J.; cousin Katherine C. Boyd of Perryville and five grandchildren.

Mr. Cole was a director of the Home Building & Loan Association of Perryville for many years. He was a past master of Susquehanna Lodge No. 130, AF&AM; member of Boumi Temple of the Shrine; charter member and past president of the Cecil County Hunters Association; managed the Perryville baseball team of the old Susquehanna League; organized and was captain of the Newark Yellow Jackets football team; played local football for Elk Mills and Perryville teams.

At one time Mr. Cole wrote a newspaper column under the byline of "KEGGO."

Mr. Cole was a charter member of the Community Fire Company of Perryville; former member of the National Rivers and Harbors Congress; member of the Cecil County Property Review Board; member of the Susquehanna Park Commission—Cecil and Harford counties; member of the Upper Chesapeake Watershed Association; former trustee of the Perryville United Methodist Church; former chairman of the Republican State Central Committee of Cecil County.

WATCHDOG OF THE SUSQUEHANNA

The "watchdog of the Susquehanna" is dead.

Donaldson C. Cole Sr. who died last Thursday at the age of seventy-three, was a prominent banker but he will be best remembered for his love of the Susquehanna River.

He told us years ago that he felt he owed it to the river to watch over its welfare because it had served his father and their family as the means of livelihood when the family was engaged in the fish business at Perryville.

Don Cole Sr. served the Cecil County Commissioners as their representative on the Susquehanna River Commission after it was established some years ago.

Before that, Don Cole acted as a one-man commission. This editor first met him when we were editing the Havre de Grace Record.

The city of Baltimore tried to obtain rights to siphon off Susquehanna River water by installing a huge pipeline in the river above the Conowingo Dam.

Don enlisted our editorial support and we crusaded against the proposal. Together we helped kill it—at least he always credited us for our efforts.

Don's vigilance was not a sometimes thing. He devoted much of his time to matters affecting not only the Susquehanna but also to the Upper Chesapeake Bay. An ardent waterman, he spent as much time as he could spare on the rivers.

We join his family in mourning the death of this unselfish friend whose considerable energies were spent as the "Watchdog of the Susquehanna."●

FARM LABOR CONTRACTOR REGISTRATION ACT

HON. TOM RAILSBACK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. RAILSBACK. Mr. Speaker, I rise to express my support for H.R. 7824, introduced by Congressman PANETTA and more than 100 other Members of the House to clarify the intent of Congress when it adopted the 1974 amendments to the Farm Labor Contractor Registration Act, and to refocus the resources of the Department of Labor on improving the lot of migrant farmworkers by effective enforcement of this act with regard to true farm labor contractors or crew leaders. This Congress has before it two proposals—the Boren-Panetta bill, which I support; and the Javits-Ford bill.

It is clear that the supporters of both bills agree on one conclusion: The present wording of the Farm Labor Contractor Registration Act, as interpreted by the Department of Labor, imposes needless and burdensome requirements on employers and inadequate protection for migrant farmworkers. Both sides of this debate agree that corrective action needs to be taken by the Congress. It is clear that the Department of Labor has no intention or inclination to interpret the act as intended by the Congress.

It is true that the proposal of the Congressman from Michigan would relieve most agricultural employers from the requirements of fingerprinting, annual registration, disclosure of salaries of employees, and some other administrative requirements that are unnecessary and burdensome; but the heart of that bill is to confirm the basic interpretation of the Department of Labor; namely, that Congress intended that most agricultural employment be brought under the regulatory requirements of this act.

The real issue here is whether the Congress is going to put its stamp of approval on the misinterpretations of the Department of Labor. This act, as I read its legislative history, was intended to protect migrant farmworkers in this country by requiring the registration and strict regulation of labor contractors or crew leaders who, for a fee and as a business, engage in the recruitment, transportation, furnishing or employment of migrant workers.

The act refers throughout to migrant farmworkers. What is a migrant farmworker? Unfortunately, the act fails to provide a clear-cut definition. The fact of the matter is that too many people, either deliberately or inadvertently, confuse seasonal farmworker with migrant farmworker. According to the latest figures available from surveys of the Department of Agriculture, the Nation's hired workforce in agriculture consists of about 1.8 million persons. Of that number, about half are seasonal workers, and of the total number of seasonal workers, less than 10 percent are migrants. The rest of the seasonal workers are local residents, many of them college and high school students, many are local housewives who work for short periods of time. These nonmigrant seasonal workers are almost never recruited, transported, or hired by labor contractors or crew leaders.

This issue is now before a Senate-House conference committee on the child nutrition bill, to which the Boren-Panetta amendments were attached during Senate debate. I hope my colleagues will join with me in expressing to the House conferees our support for the Panetta amendments as contained in the Senate-passed bill.●

H.R. 6865—A VITAL BILL

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. NOWAK. Mr. Speaker, passage by the House Monday of H.R. 6865, the West Valley Demonstration Project Act, represents a major step forward in our Nation's effort to develop an effective nuclear waste management program.

I would like to commend my colleague from New York, Mr. LUNDINE, for his yeoman efforts in achieving the compromise among the three authorizing committees in the House. I would also commend the chairmen of these three committees—Science and Technology, Interior, and Interstate and Foreign Commerce—for their leadership on this legislation, which is of vital importance not only to New York State but to the entire Nation. The bipartisan and multiregional support H.R. 6865 attracted evidences the importance of this demonstration program to solidify the high level liquid nuclear wastes at the Western New York Nuclear Service Center at West Valley.

The agreed upon 90 percent Federal cost-sharing formula is an acknowledgement of both the Federal Government's responsibility for assisting in alleviating the environmental hazards posed by these wastes at West Valley and also the benefits the Nation as a whole will reap from the project's advancement of research and development in the handling, processing, solidification and decommissioning techniques for high level nuclear waste.

H.R. 6865 also provides benefits to the taxpayers of the State of New York, which has neither the technical nor financial capability to solve the West Valley nuclear waste problem on its own. The cost-sharing formula of H.R. 6865—which provides a non-Federal cost share of no more than 10 percent—is an equitable solution for addressing the needs of West Valley.

This legislation is the product of months and months of discussion and negotiation that seeks to resolve some complex issues in a fair and equitable manner and seeks to insure that this project will be implemented in a safe and environmentally sound fashion.

I trust our colleagues in the Senate will move expeditiously to finalize this legislation so the West Valley project can proceed forthwith.●

EXCISE TAX AND THE SMALL BUS OPERATOR

HON. CECIL (CEC) HEFTEL

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HEFTEL. Mr. Speaker, in 1978, the Congress passed the Energy Tax Act—Public Law 95-618—which exempts specific bus operators from the Federal excise tax on diesel fuel. The intent was to encourage the use of the energy efficient intercity bus and to assure the continued viability of the intercity bus industry.

Internal Revenue Code section 6427B, however, requires a bus operator engaged in intercity, charter, local, and special operations to pay the excise tax and then file for a refund. Bus operators from across the country, including those from my own State of Hawaii, have advised me that this is an extremely inefficient procedure and is particularly burdensome to small bus operators.

The bill which I am proposing today will do nothing more than give effect to the intent of Congress as expressed in Public Law 95-618. Bus operators would no longer have to go through the long and complicated process of paying the tax and then filing for a refund. Essentially, they would be permitted to make their purchases free of the excise tax. The revenue impact would be minimal and would, in fact, save money in that the time and expense of processing and refunding the excise tax would no longer be necessary. The bill would also ease the time consuming and expensive burden of Federal paperwork requirements. The intercity bus industry is comprised of

primarily small businesses and the time and expense which they must now devote to Government paperwork requirements is staggering. My bill would help ease this burden and would enhance the ability of the small bus operator to utilize his time in more productive ways.

Mr. Speaker, in our energy conscious society, the bus engaged in charter, intercity or special operations is rapidly proving to be an effective means for Americans to lessen their dependence on foreign oil. It is the most fuel efficient mode of transportation, achieving 146 passenger-miles per gallon last year. Fully loaded, a bus can get nearly 300 passenger-miles per gallon. Equally important, the intercity bus industry currently provides service to over 15,000 U.S. communities. The vast majority of these communities—14,000—have no other form of public transportation. It is an essential form of transportation which carries more people than any other form of public intercity transportation.

Mr. Speaker, the legislation I am introducing today seeks to enhance the effectiveness of an important segment of our transportation industry, which plays a valuable role in our efforts to achieve energy independence. I urge my colleagues to support this important legislation.●

DEFENSE ACQUISITION REGULATIONS

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. CLINGER. Mr. Speaker, as we consider today the 1981 appropriations for the Department of Defense, we are all interested in seeing that the armed services procurement program, which is necessarily a very expensive program, makes the best possible use of the taxpayers' money. In this time of fiscal constraint, we must make sure that all programs, including defense, make the best, most economical use of appropriated funds. When we in Congress discover an aspect of procurement policy or practice that tends to defeat our efforts to get the most for our procurement dollar, the public interest that we serve obliges us to subject this policy or practice to serious and critical scrutiny and, if it proves desirable, to work toward its alteration.

An unfortunate example of what might be called mandated waste has just come to my attention. A small firm within my congressional district recently responded to an invitation to bid on a small construction project for the Department of Defense. This firm's bid to do the work for $40,000 was the low bid; however, in filling out the forms the firm had made a very small error. Under the bid bond requirement, the standard form specified bonding of "20 percent, not to exceed $3,000,000." In filling this part out, the firm wrote "20 percent or $3,000." Instead of $8,000, which is obviously 20 percent of their bid of $40,000, the firm inadvertently carried down the "3" from the form's stated bond limit of $3,000,000. This firm's low bid has been ruled "unresponsive" because of this trivial inadvertency, and the contract awarded to a bid that was higher by $5,000.

The error that the firm made in filling out the form, besides being entirely innocent and inadvertent, was also immaterial to the substance of the actual bid. Its correction or waiver would not have put any other bidder at an unfair disadvantage in the bid competition. Clearly the defense acquisition regulation that requires the rejection of a bid as unresponsive on the basis of such minor, obvious, and easily corrected errors hurts all of us. The regulation hurts the low bidder, who is not rewarded for his efficiency and conscientiousness. It hurts the contracting agency, which is forced to spend more of its precious funding on a project than it would if it were allowed more freedom to use its own discretion in correcting or waiving trivial errors. Most importantly, it hurts the American public, whose tax dollars are being wasted by this expensive regulatory practice.

My staff is presently investigating the application of the Defense acquisition regulations in this particular instance. However, we have already found that the ruling of a bid as "unresponsive" on the basis of such a trivial error is in fact quite a common, as well as expensive, occurrence. I believe, therefore, that it behooves the Congress to urge the various defense agencies, together with the General Accounting Office, to reexamine the relevant defense acquisition regulations with a view toward making these regulations more reasonable, more flexible, and more responsive to the needs of the agencies and the public.●

NUCLEAR NONPROLIFERATION POLICY—OPPORTUNITY FOR CHANGE

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. WYDLER. Mr. Speaker, now that committees in both Houses have acted on resolutions of disapproval on the shipment of nuclear fuel to India, I believe it is appropriate to put this question in proper perspective.

As I have stated before in "Dear Colleague" letters to Members of the House, it is important to support the President on this issue because it is the first major indication of his willingness to demonstrate flexibility with respect to the implementation of his nonproliferation policy. Constructive forces within the administration lead by Special Ambassador for Nonproliferation, Gerard C. Smith and, supported by Dr. Thomas Pickering, Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State, have worked tirelessly to have the administration adopt a more reasonable stance. This June, Science magazine carried a most informative article on this proposed policy shift and its prospects within the administration. I urge my colleagues to read this article and carefully reconsider the Indian fuel shipment before the resolution comes to the House floor:

OFFICIALS DEBATE NUCLEAR POLICY SHIFT

The shipment of uranium to India, widely viewed as a weakening of U.S. nonproliferation policy, is sparking opposition that could dim any chances for a State Department proposal to soften other key aspects of the policy. In a dispute that parallels the confrontation over Indian fuel, the State Department says the United States needs a gentler approach to breeder reactors and plutonium storage to strengthen its nonproliferation stance; critics say the nation should wield a firmer hand against such concepts, imposing stiff penalties for noncompliance with U.S. orders.

The State Department proposal, drafted by Gerard C. Smith, the special ambassador for nonproliferation, is being debated by an interagency presidential review committee chaired by the Secretary of State (Science, 2 May, p. 478).[1] The committee's deliberations are in limbo while the new Secretary, Edmund Muskie, becomes acquainted with the issues, but once that happens the committee will probably send a series of options to the President. At present, representatives from the National Security Council, the Council on Environmental Quality, and the Domestic Policy staff are arrayed against all others in their opposition to the policy shift. Two key legislators, Representative Jonathan Bingham (D-N.Y.) and Senator John Glenn (D-Ohio), have both sent critiques of the proposal to Smith's staff. The Natural Resources Defense Council has also forwarded its criticism.

At the center of the dispute between these groups are proposals by Smith that the United States withdraw opposition to breeder reactor research and development and to an international system of storing plutonium, a by-product of civilian nuclear programs that can be used to make bombs. Present Administration policy calls for the United States to discourage breeder programs by exercising its control over much of the world's uranium supply. But several important U.S. allies—primarily France and Japan—have signaled their intention to move ahead on breeder R & D with or without U.S. sanction.

U.S. control over the uranium fuel supplies of France and other European allies is actually quite limited, but Japan depends on continuous American authorization to accumulate in breeder fuel supply. Applications for fuel have, in the past, been granted to Japan on a case-by-case basis, but they have never been denied. "We give them a fight every time and then we give in," admits an Administration official. The policy shift is

[1] The committee includes the assistant secretaries of Energy and Defense, and representatives of the Office of Science and Technology Policy, the Arms Control and Disarmament Agency, the National Security Council, the Office of Management and Budget, the Domestic Policy Staff, and the Council on Environmental Quality.

designed to spare Japan the embarrassment of continually coming to the United States for an okay; this would be accomplished through blanket approval of fuel shipments needed for breeder R & D in any nation until 1990.

The policy would apply only to R & D plans that are already set. Thus it would not permit start-up of similar plans by other, presumably smaller, nations. Some countries of the Third World find the breeder attractive because it offers energy independence; presumably these nations would complain that the U.S. policy is unfairly discriminatory. Foreshadowing the U.S. proposal, American delegates to the recent International Nuclear Fuel Cycle Evaluation (INFCE) conference argued that breeders are feasible only in developed countries with high electrical demand, but the delegates had little success in getting their views across.

A top U.S. nonproliferation negotiator is unconcerned by the objections these countries might raise: "Nonproliferation is inherently discriminatory to developing nations," he says. But another claims that Third World opposition could be obstructive, and that as a result, the policy should not be openly announced. "You don't say that developing countries will never get plutonium; you just keep ad-hoc-ing, claiming this is not the right time, and so on," the U.S. policy-maker recently told a Washington gathering.

Despite the potential drawbacks in the Third World, State Department officials say the proposal will earn the United States good will with developed countries whose cooperation is needed on other nonproliferation goals. "Right now we concentrate so much on being evenhanded and consistent in our policy of denial that we have discriminated against our friends," says one official. Another says, "We want to introduce a note of practicality and predictability into the U.S. policy."

This is also the goal behind Smith's proposal that the United States agree to supply enriched uranium to reactor operators in foreign countries for the duration of a reactor's lifetime. Contracts are now granted for less than 5 years at a time, primarily to maintained leverage over the reactor's operation and the host country's behavior. But a State Department official says that "our present unilateral actions to interfere with fuel contracts during renewal are disruptive and tend to drive countries toward the acquisition of fuel cycle independence." The official suggests the United States could, in exchange for the contracts, extract assurances that a recipient country would not engage in independent uranium enrichment, from which plutonium might be easily diverted.

Smith's final proposal—that the United States support an international storage and reprocessing system—is clearly the most controversial. Present U.S. policy is to support storage of unreprocessed (uranium) fuel at independent sites. State Department officials claim that an international storage system would prevent the stockpiling of plutonium by the nations that push ahead with the breeder. Access to the stored fuel might be conditioned on pledges not to recycle the fuel in conventional reactors, one of the primary U.S. nonproliferation goals.

Critics worry it will encourage plutonium trade by absolving individual nations of reponsibility for storage and reprocessing. The INFCE report, for example, notes that "centralized facilities . . . would alleviate the concerns of countries with small nuclear programs in which suitable sites might not exist." Another critic says that "the most worrisome nations will not agree to any meaningful rules governing access, and as a result they'll develop their own storage and reprocessing facility."

Still unknown is the role to be played by Secretary Muskie in resolving this dispute. Despite more immediate distractions, Muskie—like his predecessor—has taken a personal interest in the policy review and intends to chair the review committee's next meeting. But whether this will enhance or diminish the likelihood of a major policy shift is not immediately clear.●

INTELLIGENCE IDENTITIES PROTECTION ACT

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. EDWARDS of California. Mr. Speaker, the following editorial from the San Jose Mercury News succinctly addresses the first amendment problems in H.R. 5615, the Intelligence Identities Protection Act. I commend the editorial to the attention of my colleagues:

PROTECT AGENTS—BUT

Congress is close to enacting a pair of spy protection bills that appear to clash headlong with the First Amendment and the people's right to keep an eye on their intelligence agencies. That troubles us greatly.

We are totally in sympathy with the intent of these measures, S. 2216 and H.R. 5615, which is to protect the identities of intelligence agents and informants. But we fear Congress is moving too fast and may, in the process, do considerable unintended damage.

At a minimum, these bills should be put over to the next Congress and subjected to extensive public hearings. Belatedly, the judiciary committees of both the House and Senate have interested themselves in the civil and consitutional rights aspects of this legislation, and that is encouraging.

The fuzzy language of S. 2216 and H.R. 5615 is so broad that it threatens responsible reporters, editors and publishers with fines and jail for reporting non-classified, legitimate public information about the CIA, the FBI and military intelligence. Such a sweeping ban is unacceptable.

What Congress is trying to do is laudable. It is seeking to muzzle the Philip Agees, the Louis Wolfs and similar self-appointed critics of the intelligence community who finger past and present agents, on occasion subjecting them to assassination attempts.

Agee is a disaffected former CIA agent whose disclosures five years ago were followed by the murder of the agency's station chief in Athens. The two bills before Congress would deal the Agee problem by making it a crime for anyone with access to classified intelligence information, including the names of agents and informants, to publish such data. That seems fair enough; the government has a right to protect itself against perfidious employees or former employees.

The Wolf problem is not so easily dealt with. Wolf publishes something called the Covert Action Information Bulletin, a publication deriving wholly from unclassified, publicly available information. In it, Wolf subjects this information to his own interpretative process and produces lists of individuals he identifies as intelligence agents and informants. Last month, the home of an American embassy official in Jamaica was attacked after Wolf identified him as the CIA station chief in Kingston.

The Wolf case raises a problem that obviously needs to be dealt with. S. 2216 and H.R. 5615 propose to deal with it by criminalizing the publication of unclassified intelligence information from any source whatever.

This, in our opinion, goes too far.

The problem was outlined succinctly in an Aug. 5 letter to Sen Edward M. Kennedy, D-Mass., chairman of the Senate Judiciary Committee, asking for further hearings on these bills. The letter, signed by nine individuals, including Charles Bailey, the editor of the Minneapolis Tribune, and Jack C. Landau, executive director of the Reporters Committee for Freedom of the Press, said in part:

". . . We believe it (this legislation) would have a chilling effect on vital and necessary news coverage. For example, it might have kept the media from reporting the CIA connections of some of the Watergate burglars. More recently, the White House was reported to be the source of leaks about details of the Iranian hostage rescue mission which may have compromised CIA agents and sources in Iran. Under (these bills) those reporting such stories could face prosecution . . ."

Last week, Rep. Don Edwards, D-San Jose, conducted two days of public hearings into the strengths and weaknesses of S. 2216 and H.R. 5615, and his civil and constitutional rights subcommittee will meet Tuesday to draft proposed amendments, which will be laid before the full House Judiciary Committee shortly. In addition, the Senate Judiciary Committee will begin its own hearings into these bills this week.

We hope the judiciary committee hearings will produce moderating amendments to these measures, which have been approved by the intelligence committees of both houses of Congress.

We agree that covert intelligence agents and informants need protection, but we believe firmly that the intelligence apparatus of this country performs best and most responsibly when it is kept under critical public scrutiny. We fear S. 2216 and H.R. 5615, as originally drawn, could make that scrutiny more difficult, perhaps even impossible.●

SPECIAL TRIBUTE TO GEORGE SMITH

HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. JONES of Tennessee. Mr. Speaker, I rise today to pay special recognition to one of my constituents, Mr. George Smith of Jackson, Tenn. Mr. Smith has been in business in this community for 50 years, owning a funeral home at first, and then adding other business enterprises to his endeavors as opportunities to do so came along.

Even with the heavy pressures of the business world, George Smith has found the time to repay his community for the opportunities and successes it has afforded him. He takes an active part in civic endeavors in the Jackson-Madison County area. He served the city for 16 years as mayor. He brings Christmas to many people in Jackson by dressing up in the traditional Santa

Claus costume and visiting schools and hospitals. In essence, he has sought to serve his fellowman throughout his life.

George Smith typifies to me the dedication and compassion that an individual feels for those around him. He has sought and continues to seek, even at 70 years young, to make his hometown and its surrounding area a better place to live for its people.

Recently, the Jackson Sun newspaper carried a story on Mr. Smith's work and his life. I would like to take this opportunity to insert that article in the RECORD in an effort to share his thoughts and philosophy with my colleagues.

HELPING PEOPLE

(By Lisa Frye)

Some things never change. Like George Smith stepping as lively down Main Street at 70 as he did at 35. George Smith, in dark suit and solemn demeanor, directing a funeral. George Smith, in white tuxedo, announcing a Golden Gloves boxing match. George Smith, in padded red suit and white beard, visiting schools and hospitals at Christmas.

"That's just kind of how this old boy ticks and operates," he would say.

Smith is one of those people who graduated from high school into the Great Depression 50 years ago and came out on the other side undaunted.

It was 1930 when Smith, at 20, decided to go into the funeral business—not a furniture store with a coffin shop in the back, still common at the time, but a funeral home.

"I don't know why I thought it would appeal to me, but somewhere, somehow I got the yearning. Some people say, 'I don't know how you could be in that business.' Well, all businesses have a not-so-desirable side. But there's a great deal of satisfaction in helping people who need help at a crucial time."

With a little money, a little credit and no experience, he opened his business on Baltimore Street. "That's the beauty about a young person," he says. "They challenge the world. They don't stop to think they can't do something."

The barter system—a funeral for a calf or a load of corn—and a mutual burial association whose members contributed to pay for one another's funerals saw the funeral home through the Depression.

The business came into its own as wakes at home and church funerals began to be replaced with funeral home services. Providing ambulance service for emergencies was for many years part of the funeral home's job, a service Smith embellished by adding two-way radios.

Smith's twin sons Jack and Jerry joined him in the business 30 years ago while they were still in high school, and his grandson Roger, a college student, works with them now. (His other son Robert is a surgeon.)

They hung a 50-year plaque this year at George A. Smith and Sons.

In the meantime, Smith has covered a lot of other ground. "Diversification" he calls it. In business, he's added a cemetery, Highland Memorial Gardens, and a nursing home, Maplewood Health Care Center. He also was a partner in the group that started the local cable television system.

In the social and political realm, he spent 16 years as mayor of Jackson, longer than anyone else. "Sixteen years, and not once did we raise the taxes," he says with satisfaction. "And it was after the war (World War II), and we were doing a lot of building, too."

Working with the Exchange Club, Smith helped to bring Golden Gloves boxing to Jackson, and helps to keep it going year after year.

And then, there is the matter of Santa Claus. For 35 years, Smith has been booking the old gentleman for 90 to 100 appearances a year in the weeks before Christmas. Already this year, he's carrying Santa's little black appointment book in his pocket. It's those wide eyes and big smiles that keep him coming back, he says.

Reflecting on where the past 50 years have brought him, Smith shares these thoughts:

On the funeral industry: The reputation for high prices and high-pressure sales is undeserved, he says.

Providing facilities, equipment, vehicles and 24-hour-a-day service is not inexpensive, he says. The person who has no other business but a funeral home "is just making a living."

At his funeral home, it is always Smith or a member of his family who makes the first call on families of those who have died.

He dispels the notion of high pressure sales by leaving family members alone to choose caskets in a room where each is clearly marked with a price that includes the full service. The least expensive sits near the door and carries a card that gives a price, but says it's available for whatever the family can pay. If they can pay nothing, it's theirs for free. "Golden Rule service," he calls it.

"Of course, as in every business, there are some bad ones, but that shouldn't bring a bad name to everyone."

On initiative: Smith, who came up through the Depression, says he doesn't see enough "operation bootstrap" these days. "I worry about so many people depending on handouts. They want a high standard of living, and they want it to start with."

On government: It's "trying to do everything for everyone, when we should be doing more for ourselves. That's not the basis on which this country was founded."

Too many officeholders are in public office "because it is their living. They do things that are not in the best interest of the people, and that concerns me."

On service: Whether it's political office or social service, "it all comes down to the same idea, people helping people."

"The Lord has been awfully good to me and my family. Jackson has been good to me. I just try to give something back—maybe not in cash. It might be the old man with the long white beard peeking in the window," he says with a smile. "It might be something else."●

RESULTS OF PRIVATE POLL ON PRESIDENTIAL ELECTION

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McCLOSKEY. Mr. Speaker, in five meetings with constituents this past weekend, approximately 250 people attending in five cities—Santa Clara, Sunnyvale, Palo Alto, Menlo Park, and Redwood City—I asked for a show of hands on three questions:

First, assuming Carter, Reagan, and ANDERSON are running relatively close on November 1—say 30 percent each in the polls with 10 percent undecided—how will you vote?

The results were as follows: Reagan, 38 percent; ANDERSON, 38 percent; Carter, 12 percent; and undecided or third party, 12 percent.

Second, assuming that on November 1, ANDERSON has no chance—the polls reflecting a tight race between Reagan and Carter, with ANDERSON at, say, 15 to 20 percent of the total nationally, as current trends indicate, how will you vote?

The results were as follows: Reagan, 47 percent; Carter, 34 percent; ANDERSON, 10 percent; and undecided or third party, 9 percent.

On the third question: "How should a Congressman vote if the issue goes to the House of Representatives where each of the 50 States will cast one ballot after a caucus of Members?"—presently 25 Democrats and 18 Republicans in California—a strong majority, perhaps 75 percent, felt a Congressman should vote as his or her district voted. The remaining 25 percent split evenly between (a) the Congressman's own judgment and (b) the way the State of California votes on November 4.

I believe the majority vote on this third question is correct: That a Congressman should vote his district's position, at least on the first ballot in his State's caucus. If elected, this is what I shall do, whether the winner be Reagan, ANDERSON, or Carter in the 12th District.

If, on November 4, ANDERSON is not a serious contender, I have reached the following conclusion after 3½ years of firsthand dealing with the Carter administration: The Carter administration's past record and potential future performance is so dismal and dangerous to the Nation's welfare that I will vote for and support the election of Governor Reagan.

I disagree with the Governor and the Republican platform on many counts, but intend to do everything I can to provide affirmative input on issues to both the Governor and the Republican leadership over the next several months and to assist a Reagan administration to be as competent and successful as possible.●

MELVIN LAIRD: MX SEA DEPLOYMENT DESERVES CONSIDERATION

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mrs. SCHROEDER. Mr. Speaker, former Secretary of Defense Melvin Laird presents, in the September 1980 Reader's Digest, a thoughtful discussion of the land versus sea deployment of our MX missile.

I commend it to my colleagues' attention:

SHOULD OUR MISSILE FORCE GO TO SEA?

(By Melvin R. Laird)

Suppose the United States could have, at a price we could afford, a truly effective new deterrent force, one that would put real spine into the positions we must take in future dealings with the Soviet Union. Suppose, too, that such a deterrent force would largely remove the American continent and the American people from the U.S.S.R.'s line of nuclear fire.

In fact, some military experts believe that we can have such a deterrent, and relatively quickly. Others disagree strongly. One thing seems obvious: we ought to conduct a thoroughgoing examination of the possibility before any more funds are spent on the hugely expensive deployment of the MX system planned for the western United States.

New Realities. Our present, fixed-silo, land-based ICBM deployment in the central and northern plains has become vulnerable. Given their huge ICBM force, the Soviets could now destroy virtually all of our missiles in their underground silos. Recognizing this, our defense planners want to replace this land-based force with another land-based force.

The difference is that the MX will be capable of carrying more nuclear firepower more accurately to more targets in the U.S.S.R. than our present first-line ICBM, the Minuteman. Also, the new system will be deployed in such a way that the Soviets would have no confidence that, if they shot at it, they could destroy enough MXs to avoid unacceptable retribution. The system's 200 missiles would be ferried among 4600 separate shelters, each a mile from any other, so that the Soviets could never be certain exactly where any of the missiles are. Proponents feel that such a deployment will ensure that half of the MX force would survive a full-scale Soviet attack. Presumably, this would keep the U.S.S.R. from attacking us in the first place.

There is no question that we need the accuracy and firepower the MX missile can deliver, and fast; development and production should proceed on an accelerated basis. The question is, how can we best deploy an MX force against the new realities of the Soviets' strategic strength, against the accuracy and firepower they can now bring to bear against our land-based missiles?

The Department of Defense and the Air Force insist that if we maintain the current schedule for deployment of the land-based MX, we can have an initial operational capability—a limited number of operational missiles—in 1986, and can be fully operational by 1989. But the Carter Administration has shown little inclination to support expensive new strategic-weapons programs (and the proposed MX land deployment would be the most expensive in our history). The Administration has canceled, cut back or delayed every major defense program that was on the agenda when it took office. So we must expect that the MX land deployment could not be fully operational for at least a decade.

Beyond sheer cost, however, the land-based, mobile MX would involve a profound environmental impact upon an area in Utah and Nevada roughly twice the size of New Jersey. It would affect land, water and mineral resources, rural and small-town lifestyles (because of the influx of construction workers and military personnel and their families) and the activities of thousands of outdoors lovers. Environmental interests are certain to fight the project, and apparently will have plenty of support from residents, more than 50 percent of whom, according to local polls, oppose it. Given the strong opposition to be expected wherever land deployment is recommended, I think it is arguable whether the MX will ever be deployed on land in the United States.

Shell Game. So, where do we put them? The answer may well lie at sea. Indeed, it is distinctly possible that we can spread our ICBM force over much of the 70 percent of the earth's surface that is water and keep it there, constantly moving, far from our shores. Not just in submarines, as we already do, but in surface ships. Initially, this would be done by utilizing such major combat ships as aircraft carriers, cruisers and large naval auxiliary vessels such as ammunition ships. But we also need to examine the use of ordinary merchant vessels and the feasibility of producing a fleet of special-purpose, high-speed surface vessels whose only mission would be to keep our ICBMs at sea and on the move.

Depending on the cost, we might want to build many more ICBM ships than ICBMs, so that we could have a lot of decoys at sea along with the missile carriers. We might even want to play an at-sea shell game, periodically switching missiles from one ship to another. Such a deployment would be far more difficult for an enemy to find than a mobile MX force on land, and would be impossible to destroy in a short space of time.

It has been proved that an ICBM can be made to float and then be launched straight out of water. All it needs is something—like a body of water—that will hold it stable in an upright position. The floating launch concept has been proved in actual test firings. If further, objective examination indicates a surfaceship ICBM force would make sense, we probably could begin deployment in three to four years—certainly during the first half of this decade.

Project Hydra. The principle of launching missiles straight out of water has long been known. The Navy began water-launch experiments in 1960 at its Point Mugu, Calif., missile center. The program was headed by Lt. Cmdr. John Draim, a Naval Academy graduate with an advanced degree in aeronautical engineering from M.I.T. The United States was getting into space exploration in a serious way, and Draim wondered why the many rocket probes being sent aloft from expensive, land-based launching pads could not instead be fired from the sea.

A rocket, he reasoned, could be made to float vertically by separating the center of gravity from the center of buoyancy, or by affixing some sort of floatation collar or jacket—or by doing both. Such a "water pad" would cost nothing, and the seas, lakes, lagoons and rivers of the world offer an infinite supply of reusable sites. The possibilities seemed attractive enough to warrant a serious experimental program.

It was called Project Hydra, after the many-headed monster of Greek mythology that grew two new heads each time one was cut off. Soon the Draim group was packing hundreds of pounds of research instrumentation into probe rockets, dumping them into the ocean and firing them into space. Results exceeded even Draim's expectations. The buoyancy of the water actually added lift and provided for faster acceleration on takeoff than was possible with a land-based launcher.

In five years, the Hydra group fired more than 50 rocket probes and test missiles in the world's oceans, in all kinds of sea conditions and weather. Missiles were rolled like depth charges off all kinds of ships, even tugs and ferryboats. The concept worked.

Common Sense. The advantages of floating-launch system are obvious. It would be impossible for an enemy to plan a simultaneous attack against several hundred moving ships scattered over the oceans. Indeed, such a force would require the Soviets to cut back on their enormous investments in offensive weaponry, in order to concentrate on ways to deal with an entirely new and immensely complicated defensive problem—an American ICBM force that could come at them from all points of the compass.

But the dictates of common sense are not always readily perceived. In 1957, when it became clear that the ballistic-missile submarine program ought to be accelerated, then-Rep. Gerald Ford and I tacked an amendment onto the budget providing for a speedup. We did this over the vigorous objections of both the Navy and the White House. But a few years later, during the Cuban missile crisis, President Kennedy was glad to be able to confront the Soviets with a strategic threat that included the Polaris submarines. Soon after I was named Secretary of Defense it became obvious that the cruise missile, adapted to Navy needs, could give us another effective sea-based strategic-weapons system; yet I had to bull-dose it past tough Navy resistance.

The idea of a sea-based ICBM force was attractive even then, but not as crucial as it is today. Our Minuteman ICBMs were not vulnerable at that point, and we were getting many other necessary programs under way, including the B-1 bomber, the Trident-submarine program,[1] cruise-missile programs for both the Navy and Air Force, and a Navy shipbuilding program which, had it been completed, would have had us in good shape by now.

A major problem with large weapons systems is that bureaucracies tend to form around them which take up cudgels, in self-defense whenever newer ideas come along. For example, opponents of the floating-launch-ICBM concept argue that there is no guidance system for it. That's true; but it is also true that it is now well within the state of the guidance-technology art to develop such a system. It would involve a research-and-development investment on the order of $1 billion, a small fraction of the $30-billion-plus cost estimates for the MX landmobile deployment.

There is also concern as to how guidance-to-target information would be inserted into missiles floating in the sea. For safety's sake, such information is not inserted into silo- or submarine-based missiles until a Presidential order to fire has been received and authenticated. The same thing would be done with surface-ship ICBMs—they would not be deployed into the water until after a Presidential firing command had been authenticated.

Other arguments are made: that ships can be tracked by submarine and satellite, and sunk; that a land-base force is more readily controlled; that communications with a sea-based force would be chancy.

As to the first point, our ICBM ships could be accompanied by escorts possessed of strong anti-submarine-warfare capabilities. And while it is likely that Soviet satellites can now or soon will be able to locate all of the ships at sea, as ours can, locating ships is one thing. It would be quite another matter simultaneously to identify and then sink several hundred ships many miles from one another and moving at high speeds on evasive courses.

As to control and communications, the National Command Authorities (the President and the Secretary of Defense) have long been able to maintain—as they must—

[1] The cost of the first Trident submarine will be more than $1.2 billion. It would be fiscally impossible to raise our submarine forces to the deterrent capability of a sea-base MX force.

reliable, round-the-clock communications with our forces throughout the world, including ballistic-missile submarines on submerged stations.

Compelling Case. The Russians apparently like the floating-launch concept. According to sources I consider highly reliable, all of the ballistic missiles carried by Soviet submarines are of the floating-launch type; they are not fired from tubes, as ours are, but floated to the surface and fired from there. "The evidence is abundant and conclusive," says one expert. "The Soviets now have at least 800 floating-launch missiles at sea."

If so, this means that Soviet submarines need not rise to vulnerable depths to fire, as ours must; and that the SALT II treaty restrictions on the number of ICBM launchers each side may have is a dangerous deception—since there is no limit to the number of ICBMs each side may have. Conceivably, the Soviets could float missiles in Murmansk's harbor and launch them to hit every significant target in this country.

The theoretical case for a sea-based ICBM force is compelling. Among those who believe it should be seriously examined are Rear Adm. George H. Miller, former director of the Navy Strategic Offensive and Defensive Systems Office, and two former chairmen of the Joint Chiefs of Staff, Gen. Maxwell D. Taylor and Adm. Thomas H. Moorer.

The Administration should convene without delay an impartial panel of weapons experts to study the possibilities. If the proposal proves sound, we should be able by the mid-1980s to confront the Soviets with a largely mobile strategic posture—a cruise-missile-equipped bomber force, ballistic-missile submarines, and ICBM surface ships scattered over the world's oceans. We would then have a deterrent that would be much harder to find and shoot at than the land-based ICBM force now being planned—and one that would compel the Kremlin to remove from its target list most of the American landmass and the American people who live on it.●

YWCA SENIOR CITIZEN WEEKEND CAMP

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. OTTINGER. Mr. Speaker, on August 10, the Senior Citizen Day Camp, sponsored by the YWCA of White Plains and Central Westchester, concluded its fourth season. This weekend camp provided a wonderful change of pace on summer weekends for seniors in Westchester County, and I wanted to bring the camp to the attention of my colleagues.

The Senior Citizens Weekend Day Camp was originally designed to fill lonely weekend hours for the seniors. However, since its inception its goals have expanded along with its camper population. This year almost 400 people from all over Westchester attended the six weekend programs.

The physical layout of the "YW" allows several simultaneous activities to be conducted within sight of each other. Activities include arts and crafts, music, movies, swimming, drama, lawn and card games, and educational discussions. Along with these activities are special events such as a talent show, theater with lunch, square dancing, a ping pong tournament, and a birthday party to celebrate the 50th anniversary of the YW of White Plains and Central Westchester.

July 19 was Special Guests Day and I had the opportunity to attend and talk briefly about some of the issues pending in Congress of concern to senior citizens. Also on this day certificates of appreciation for devoted services were presented to: Fred and Emily Crispens, Mary Louise Peck, Louisa Marcucella, Silas Morris, Eleanor Miller, and Ralph David. Mrs. Miller was given special recognition for her responsible and devoted services to the YWCA and the community. Mrs. Miller came to the YWCA Senior Citizen Day Camp 4 years ago. Refusing to be just a camper, she has served in an unpaid capacity wherever she was needed in the camp. Last year she volunteered in the handicapped program working every Saturday, September through June, with the Kool Camp children ages 5 to 12.

After visiting the camp, it is obvious the seniors feel comfortable and welcome in the YW surroundings, both indoors and outdoors. As the camp's director, Brenda Spyer, told me:

No senior need feel apart or lonely at the Weekend Camp. One example is the time when I happened to spot a camper reading in a very secluded corner of the building. Asking if there was something amiss—he responded with—no, he wanted to read and that it was different from reading at home because here he could put his book down any time and join 100 laughing people whenever he wanted to.

I believe this incident reflects the feeling of the camp. Congratulations are in order for all associated with this fine summer day camp.●

SOVIETS' GLOBAL POSITION ERODING

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BINGHAM. Mr. Speaker, there is a tendency these days, especially among critics of the Carter administration, to portray the last few years as a time of steady deterioration in the United States position in the world. Indeed, we tend to focus too much on our headaches, forgetting that the Soviets' troubles are more serious.

The erosion of the Soviet position is well brought out in an article in the Washington Post of September 10 by Dusko Doder writing from Moscow:

SOVIETS' GLOBAL POSITION ERODING

While the crisis in Poland is now bringing into focus internal problems of the Soviet Bloc, the daily flow of bad news from countries along the Soviet borders, ranging from Norway to Japan, suggests a growing sense of isolation here as a result of changes in the balance of forces, especially in Asia.

Coming after the deepening morass of Afghanistan, the Polish turbulence seems to be a new, major obstacle in the course of Soviet foreign policy that has successfully exploited the post-Watergate period of American vacillations.

But deeper changes in the strategic equation over the last two years—coupled with new U.S. assertiveness in foreign affairs—have renewed fears of "capitalist encirclement," a notion that party leader Nikita Khrushchev abandoned more than two decades ago when he inaugurated the policy of "peaceful coexistence."

According to senior Western diplomats, the two main changes contributing to the erosion of the Soviet global position involve the Sino-Japanese rapprochement in the Far East and the Camp David peace process that has shut out Moscow from the Middle East.

The third and unexpected elements is the revival of Islamic fundamentalism throughout Central Asia.

As a result, Moscow sees itself surrounded by overtly or covertly hostile forces and left without friends on the vast Asian continent, with the exception of India and Vietnam. But even Soviets privately concede that both India and Vietnam draw far greater benefits from these ties than does the Soviet Union.

Moscow's crucial long-term concern is in East Asia, where it sees the United States using China and Japan to create Asian security arrangements "based on anti-Sovietism."

Japan has entered into this picture as a result of the Sino-Japan peace and cooperation treaty signed two years ago. Increased trade and technological exchanges since then have prompted a flurry of articles, including one by Defense Minister Dmitri Ustinov last week, attacking ties between "the Chinese hegemonists and Japanese revenge-seekers."

The Soviets had an opportunity to prevent this course in Sino-Japanese ties had they been prepared to relinquish control over several small islands in the Kurile chain they had seized at the end of World War II. The Japanese have made their return a precondition for normalization of relations with Moscow.

The Soviets found it impossible to do so. However insignificant the island may be, their return to Japanese sovereignty is seen here as setting a precedent for a far more serious territorial dispute with Moscow's arch-rivals in Peking.

The Chinese have repeatedly denounced what they call "unequal treaties" imposed by the Russian empire on weak Chinese rulers in the last century. But Chinese territorial claims in this context are small compared to their claim on Mongolia, the large buffer state established by the Soviets in 1924 and for all practical purposes a colony of Moscow.

Mongolia—which is roughly the size of Texas, Arizona and California combined—was ruled by China from the 17th century until 1911. Four years later, Czarist Russia acknowledged in a treaty Chinese sovereignty over Mongolia. Subsequently, Chaing Kaishek formally accepted Mongolian independence.

Today, the Chinese view Mongolia as a military threat because of the presence of Soviet land and air forces there.

While they had long studied the implication of Japan's rapprochement with China, the Soviets were unprepared for the Camp David Peace process that re-established U.S. positions in the Middle East and effectively denied Moscow a voice in the course of events there.

The Soviets had thought of the Middle East in terms of a condominium with the United States, even after they were expelled from Egypt. The Arab-Israel conflict seemed to assure a substantial role for them in the region.

The loss of its Middle East positions, coupled with Moscow's overwhelming concern about what it sees as the emergence of an alliance involving China, Japan and the United States in the East Asian region, have produced a sense of strategic vulnerability. And this, according to Western diplomats, was the main reason for the Afghanistan invasion.

There were, of course, other elements such as the decline in U.S.-Soviet relations and the apparent collapse of SALT II as well as the climate of political instability in Central Asia after the Iranian revolution. Moreover, the Soviets had a problem on the ground as the Hafizullah Amin regime in Afghanistan appeared to be going down the drain as a result of the Moslem revival.

But, according to these diplomats, the long-term aim of the intervention was designed to neutralize what Moscow sees as Western strategic gains in crucial areas of the world. The Russians established in the 1970s positions in various parts of Africa and in South Yemen on the Arabian peninsula. But none of these could compare in wealth to the energy resources of the Middle East, the vast human resources of China or the industrial potential of Japan.

It should also be noted that the Soviet Union, while it has begun to export military power through the use of Cuban and Vietnamese proxies, remains a profoundly old-fashioned empire that regards territories contiguous to its own with greater concern than far away places.

The Afghanistan push, seen over the long term, is an effort to break what Moscow sees as the hostile ring around the Soviet Union and to establish a platform in Afghanistan from which the Soviets would pressure Pakistan, Iran and other countries in the region while exposing the West to risks and potential losses in the oil rich area.

Indeed, Soviet propaganda daily exerts pressure on Pakistan, and despite reports of Pakistani resistance, it is unlikely that over the long term the Pakistanis will be able to stand up to the Soviets in Baluchistan and Iran, that the Pakistani military government is headed toward a position in which its security in effect rests on the moral strength of nonalignments, the support of the Moslem world and the goodwill of its neighbors.

Diplomats also see possibilities for the Russians in Baluchistan and Iran. But in their view, an important aspect of Soviet intervention in Afghanistan was Moscow's willingness to use force to protect its friends. In the world of Central Asia, they say such actions cut deep, particularly if contrasted to the American unwillingness to protect the shah.

The move was also addressed Soviet Central Asia, where there are about 50 million Moslems. The upsurge of Moslem fundamentalism following the Iranian revolution was seen as a threat to internal stability there.

What the Soviet leaders did not expect was the sustained and vigorous American opposition that created a change in public attitudes and, more importantly, produced a new American determination to meet Soviet challenges.

Nor did they expect turmoil in their vital back yard where the Polish crisis threatened the core of the Soviet political and security system and reminded Moscow that its hold on Eastern Europe is as precarious as ever.

This may come as a surprise to Washington, but the men in the Kremlin seem deeply troubled by a series of adverse events and by the threat of a new round in the arms race that would put additional strain on their economy. Their perception of Western intentions seems to have come full circle back to the time when "capitalist encirclement" was the slogan of the day.●

CELEBRATION OF MEXICAN INDEPENDENCE AND HISPANIC HERITAGE WEEK

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. ROYBAL. Mr. Speaker, on this date 170 years ago, Mexico, our great neighbor to the south, proclaimed its independence from Spanish colonial rule, ending forever the reign of foreign tyranny in the Western Hemisphere. On September 16, 1810, Father Miguel Hidalgo Costilla urged the citizens of the small town of Dolores to take up arms against the oppressive Spanish rulers. Like the proclamation of our own Declaration of Independence on July 4, 1776, "el grito de Dolores" of 1810 inspired the revolt that brought freedom from European colonial domination.

In recognition of the importance of this date, and in celebration of Hispanic Heritage Week, I take great pride in paying sincere tribute to all of this Nation's Hispanic citizens.

Although Hispanic Heritage Week has been celebrated every year for over 12 years, very few people realize just how much those of Hispanic heritage have contributed to this country. Many people are now aware that the Hispanic community will soon be this Nation's largest ethnic minority group, and it is widely recognized that Hispanic art, music, food, and language have greatly enhanced the richness of American life. However, very few people are aware of the important role played by Hispanics in the development of the United States.

Mexican and Spanish immigrants began settling this country long before the Pilgrims landed at Plymouth Rock, establishing such cities as St. Augustine, El Paso, and Santa Fe. Many areas in the Southwest United States can point to over 200 years of Hispanic culture and history. Historians, however, have not given proper credit to this aspect of American history. Few people realize that Hispanics played an active role in the American Revolution, fighting against the British in the South. Few people realize that Hispanics were present among the defenders of the Alamo or that Hispanic and Anglo troops fought side by side during the Texas revolution against Mexico. And hardly anyone is aware that an estimated 75,000 black Americans escaped slavery by fleeing to Mexico, where they were easily assimilated into the Mexican culture.

There are countless other examples of Hispanic contributions to American society, and it is vital that these contributions be recognized and appreciated. The celebration of Hispanic Heritage Week is a step in the right direction. So is the growing political participation of the Hispanic community, and the inroads made by Hispanic workers in all levels of the government and private sector. And just as our Mexican brothers and sisters are now celebrating their Independence Day, Hispanics must recognize and celebrate our own proud heritage in the United States, now the fifth largest Spanish-speaking country in the world. I invite you all to join us in this celebration and self-discovery.●

THE CIA VERSUS THE CONSTITUTION—PART 3

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. EDWARDS of California. Mr. Speaker, yesterday I called to our colleagues' attention material I have received from professors of constitutional law who are concerned about section 501(c) of H.R. 5615, the Intelligence Identities Protection Act. That provision would subject private citizens to criminal liability for disclosing any information identifying a covert CIA employee, informant, or source, even if the information was not based in any way on classified sources. Obviously, such a provision would have a dramatic impact on our constitutional guarantees of free speech and free press. That is why constitutional lawyers are concerned. The press is also concerned. Following are letters from three major press organizations. All support legislation to protect covert agents' identities, as I do. But all agree—as I do—that H.R. 5615 is too broadly drawn and sweeps within its coverage legitimate news coverage and public debate. All three call for the narrowing or deletion, of 501(c) from H.R. 5615. Mr. Speaker, I urge our colleagues to read these letters while considering this legislation.

The letters follow:

THE NEWSPAPER GUILD,
Washington, D.C., August 29, 1980.

Hon. PETER W. RODINO, Jr.,
House Judiciary Committee, Rayburn Office Building, Washington, D.C.

DEAR REPRESENTATIVE RODINO: We in The Newspaper Guild would like to join other media organizations that have expressed concern to your committee over a critical provision of H.R. 5615, the Intelligence Identities Protection Act, that would subject members of the press to criminal penalties for news stories that might identify covert CIA agents or sources.

We have no quarrel with the bill's intent to give the government adequate means of halting the purposeful disclosure of its agents' identities by those entrusted with

that information. But H.R. 5615 is far too broadly drawn, infringing seriously on First Amendment guarantees of press freedom in the process.

As drafted, the bill would put reporters, publishers and others engaged in disseminating the news in danger of imprisonment for stories revealing the identities of covert agents regardless of the motive for such disclosure and whether or not the information was derived from unclassified sources. It could, as has been pointed out, have been used to prevent the media from reporting the CIA connections of some of the Watergate burglars or the relations between Jordan's King Hussein and the CIA.

We would urge that the bill's provisions be limited to those who have had access to classified information and that it be amended in line with action taken in the House Civil and Constitutional Rights Subcommittee, which removed the section covering public disclosure of agents' identities.

We recognize that the problem of protecting agents' identities without trespassing on cherished press freedoms is not an easy one. But we believe it is both possible and necessary.

Sincerely,

CHARLES A. PERLIK, Jr.,
President.

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
Washington, D.C., August 18, 1980.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The American Newspaper Publishers Association continues to be concerned about certain sections of HR 5615, the Intelligence Identities Protection Act, which is to be considered by your subcommittee August 20. We ask that this letter be included in the hearing record.

ANPA is a non-profit trade association representing more than 1300 member newspapers throughout North America. Membership includes more than 90 percent of U.S. daily and Sunday newspaper circulation. Many non-daily newspapers also are members.

As we expressed to Chairman Edward P. Boland, chairman of the Permanent Select Committee on Intelligence, in a July 22 letter (enclosed), we are particularly concerned about Section 501(c) of the bill which establishes criminal penalties for people who are not nor have ever been government employees, who reveal the names of covert agents.

ANPA is encouraged by an amendment, sponsored by Chairman Boland and approved by the Intelligence Committee July 26, which specifies that this provision would apply only to persons who reveal such identities "in the course of an effort to identify and expose covert agents with the intent to impair or impede" U.S. intelligence activity.

It remains questionable whether the amended language would in fact exempt from the law journalists involved in legitimate news coverage, and whether it would apply to those persons who obtain information from non-classified sources.

We are confident that the intent of the Intelligence Committee was to exempt legitimate news functions by passage of the Boland amendment. Because of the vagueness of the term "in the course of an effort," however, it is essential that legislative history for this bill, if passed, specifically state that the Congress does not mean to prevent distribution of news information in a society which bases its individual freedoms on the public's right to know.

Section 501(c) does not appear to be limited to the revelation of covert agents' names obtained from classified information. The language in the section extends culpability to the person who "discloses . . . any information that identifies a cover agent." It is unconscionable that legislation would establish criminal penalties for publishing information which is already in the public domain.

ANPA supports the intent of H.R. 5615 and supports efforts to safeguard the identities of U.S. foreign agents whose lives might be endangered by publication of their identities. However, as we stated previously, the proper way to safeguard all government secrets is through wise classification and declassification of information, careful selection of those authorized to handle classified information and prosecution of authorized officials who violate the trust.

We appreciate the opportunity to express our opinions on this bill.

Sincerely,

W. TERRY MAGUIRE,
Vice President/Legal and Government Affairs.

AMERICAN SOCIETY OF NEWSPAPER EDITORS,
Minneapolis, Minn., August 22, 1980.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I write to you in my capacity as chairman of the Freedom of Information Committee of the American Society of Newspaper Editors. As you know, the society represents more than 850 directing editors on newspapers throughout the United States.

ASNE is committed to the proposition that the press has an obligation, flowing from its privileged position under the First Amendment to the United States constitution, to provide complete and accurate reports on the performance of all branches of government—reports upon which citizens may base reasoned and informed decisions on public affairs. We believe history makes clear that reporting on activities of intelligence agencies has in many cases been essential to important public-policy decisions.

In this regard we are concerned about the reach of H.R. 5615, the "Intelligence Identities Protection Act." We have no quarrel with the intent of the bill, but we believe it still casts too wide a net.

In particular, section 501(c) of H.R. 5615 seems to us to be too broad. We recognize that the section as now drafted is an improvement on earlier versions, but we believe it is still fatally flawed because it appears to allow prosecution and punishment of those who publish unclassified information that is in the public domain. We believe that this language must be revised to make clear that it does not apply to the distribution of news and other constitutionally protected forms of speech, including books.

We believe that unless both the language of the bill and its legislative history make absolutely clear that it is not intended to punish those who publish unclassified information that is in the public domain, it will be of doubtful constitutionality. ASNE and its members appreciate the difficulty of constructing legislation that gives the government adequate tools to halt purposeful disclosure of agents and informers' names without infringing constitutional guarantees of free speech and press. One possible approach, as we and other groups suggested earlier, would be to limit any criminal liability to those who have or have had access to classified information. H.R. 5615 includes such limits in Secs. 501(a) and 501(b), but does not include such language in 501(c) as presently drawn.

Sincerely,

CHARLES W. BAILEY,
Chairman,
Freedom of Information Committee.●

OHIOANS COMMEMORATE THE 200TH ANNIVERSARY OF THE BATTLE OF PICAWEY

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROWN of Ohio. Mr. Speaker, in honor of the American Revolution Bicentennial Committee of Springfield and Clark County for their successful efforts to enrich the heritage of the State of Ohio, I would like to share with my colleagues in the U.S. Congress the following narrative demonstrating the historical significance of the Battle of Picawey:

We of Southwestern Ohio are heirs to an historic legacy dating before the American Revolution. Ours is the heritage of the Woodland Indian, the Revolutionary soldiers and the first pioneers who settled the fertile Ohio River Valley. Ours is the heritage of the triumph of courage over adversity, of the proud role our ancestors played in the early growth of our country, shed their blood and gave their lives on the frontier during a crucial period of our Nation's formation.

Today we have a deep realization of and commitment to the preservation of our early frontier heritage. This provides the basis for educating people, young and old, to the life and times of those who lived and fought in the War For Independence.

During the American Revolution, the frontier was aflame with Colonial and Indian conflicts in Kentucky and Ohio. One expedition, against the Kentucky post of Fort Liberty, precipitated Col. George Rogers Clark's march north of the Ohio River to destroy the Indian towns of Chillicothe (near Xenia) and Picawey (George Rogers Clark Park). On August 8, 1780, Clark's army engaged Shawnee, Delaware, Wyandot and Mingo tribes along the Mad River. The battle lasted the entire day with the Indians retreating to the north.

Comparative peace reigned on the frontier for more than one year after George Rogers Clark's successful battle against the Indians at Picawey. Meanwhile, immigration from the East increased greatly, lending more strength to defend the frontier, when defense was necessary. The Battle of Picawey squelched both the British and the Indians enough that they were never again able to mass their full strength in aggressive action against American frontier posts. From then on, they were on the defensive or, at best, involved in sporadic raiding of the settlements. This engagement ended the raids on Kentucky for several years and opened the Ohio Territory for settlement.

A first reenactment of the famous battle was presented near Clark Park in 1880. Twenty-five thousand attended, most of them making the trip from Springfield by horse or on foot.

In 1924, a statue honoring George Rogers Clark and Tecumseh was dedicated and funds approved for a new state park near the battlesite. The park, dedicated in 1930, was to be a focal point for planned Ohio Revolutionary trails. Many recognized the value of the battlesite and new park so plans were prepared for an early Ohio village and museum near the Hertzler House. The Depression put a stop to these plans but a second reenactment, commemorating the Picawey Battle, in October, 1930, was presented. This time 100,000 people attended. The Vice President key-noted the festivities with people arriving by car, wagon and the interurban. Old newspaper clippings attest to community spirit aroused by this event. Parades, seminars and pagentry were all a part of this Sesqui-centennial commemoration.

The State maintained the park until 1960 when it was sold to Springfield for one dollar. The park and battlefield again remained undeveloped until the Bicentennial of the American Revolution, in 1976, when thousands visited the Hertzler House and viewed "living history" programs hosted by the Ninth Virginia Regiment. A reactivated Revolutionary War unit, the Ninth Virginia still uses the park as its home base.

Extensive interpretive development of Clark Park and battlesite lands again become a reality with the formation of the Project '80 Committee, 1977. This group spent the next three years researching the battle and other related historic events connected with the area.

The work of the Project '80 Committee culminated this year in the reenactment of the Battle of Picawey on August 9 and 10, 1980, two-hundredth anniversary of the battle. Nearly 300 troops, portraying Colonials and Indians, participated in the reenactment, constituting the largest Revolutionary War reenactment to date in the Midwest.

The Project '80 Committee now has turned its responsibilities over to the George Rogers Clark Heritage Association which will work with the Springfield Board of Park Trustees on future park interpretive developments.●

TITO IN PERSPECTIVE: PART II

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McDONALD. Mr. Speaker, recent events in Poland demonstrate once more that communism is not representative of the beliefs and desires of the people of Eastern and Central Europe. These people were simply delivered to the Stalin regime at the end of World War II, when Communist puppet regimes were imposed upon them. The propaganda, on both sides of the Iron Curtain, has since maintained that, once a Communist regime takes over, it is expected to stay in power forever.

Josip Broz Tito of Yugoslavia stayed in power for 35 years. He was installed in power by both Stalin and the leaders of the Western Allies toward the end of World War II, and the people of Yugoslavia never had an opportunity, after that, to make any other choice.

Dr. Slobodan Draskovich is one of many thousands who have voted with their feet against Titoism; he had to leave his country or face destruction for opposing a Communist regime. He has spent many years in the United States attempting to expose the fraud of Titoism as some new, improved form of communism. His books include "Tito, Moscow's Trojan Horse," published in 1957, and "Will America Surrender?" published in 1973—paperback in 1976. The true function of Tito's leadership of the so-called nonalined countries is made clear by Dr. Draskovich:

TITO IN PERSPECTIVE: PART II

THE ESSENCE

What emerges clearly from the evidence about Tito and Titoism is:

1. Titoism is not different from communism; it is communism. Tito served not the goals of Western democracy, freedom, human rights, etc., but the aims of Lenin, Stalin, Mao Tsetung, Hua Guofeng, Kadar, Marchais, etc. Thus, all aid given to Tito was actually aid to world communism.

2. The "different road" which Tito used to perform his services was 100% Leninist-Stalinist. Lenin had made it clear and Stalin developed the point years later, that communism, in order to succeed, must be different in various countries, for it must adapt itself to the historical, political, economic, cultural, etc., conditions of every country. That is why, according to Stalin, communism must be "different in France than in Germany, different in Germany than in Russia". . .

Thus Tito, by being considered a "different" (independent, national, democratic) communist by Western innocents, was enabled to render a unique service to Moscow, by demonstrating that not all communism was bad. Tito elevated "good" communism to the rank of an acceptable alternative to war and violence, and even to Western social and political patterns, which seem inadequate for the needs of modern mankind.

It has, above all, served to confirm the claim of communist propaganda about communism being the wave of the future. So when, at Tito's funeral, Brezhnev and Hua Guofeng extolled his communist virtues, they knew what they were doing. It was recognition for services rendered and seeds sown.

3. Tito could not possibly have rendered the services he did, nor sown the seeds he sowed, without the decisive help and collaboration of the West.

Our foreign policy after World War II was not a policy of stopping and repelling world communism, but a policy of making possible its advance through appeasement, containment, co-existence and detente. It was a policy of historical surrender to communism, from the Conferences of Teheran, Yalta and Potsdam, to the wars in Korea and Vietnam and the revolts in Hungary (1956) and Czechoslovakia (1968), to the Soviet invasion of Afghanistan (December 1979).

The makers of our foreign policy, suffering from a lack of faith in the values of the United States and the West, came to view communism as historically imminent, an irresistible force with no "immovable object" to resist and stop it, and have therefore, under several Presidents, National Security Advisors and Secretaries of State, pursued a policy of reconciliation with the "inevitable" advance of communism in the world.

Western Titoist policy perfectly fitted into such an overall policy. Titoism, because it is communism and because it is conceived as an answer not only to the problems of Yugoslavia, but to world problems, is plainly a rejection of America and Americanism. America and its values and principles cannot solve the problems of the world, but Titoism ("good", independent, etc. but communism) can! Stalin said several decades ago: "Principles triumph, they do not become reconciled". He was absolutely right. If we attempt to strike a compromise between the Declaration of Independence and the Communist Manifesto, between all the record of America and the record of communism and between the interests of the free world and those of communism, we are doomed to inglorious defeat.

For if Tito is best for Yugoslavia, then inevitably all the other communist satraps in Europe and Asia and anywhere else (Kadar for Hungary, Husak for Czechoslovakia, Gierek for Poland, Kim Il Sung for North Korea, etc.) are best for those countries. And the leaders of the communist parties of the free world are best for those countries (Marchais for France, Berlinguer for Italy, Carillo for Spain, etc.). Ah, yes, Gus Hall is then best for America!

That is the message which we are beaming to the world by promoting Titoism. We are telling the peoples of Yugoslavia and all the peoples of the world, enslaved and free, that they no longer have the option between freedom and communism, but only the option between various names and labels of communism, all inexorably leading to a world-wide Gulag.

WHAT NOW?

An attack of the Soviet Union on Yugoslavia "to bring it back to the Kremlin fold", to use an inane Western liberal cliche, is not likely: (a) because both regimes (Soviet and Yugoslav) are communistic. If Western experts do not understand what this means, all communists do: solidarity in spite of and beyond all conflicts, dissensions, disagreements, etc., in fighting for the victory of communism in the world; (b) Afghanistan has proved too costly in terms of arms, casualties, logistics, new problems, etc.; (c) the present condition of Soviet-Yugoslav relations is, economically as well as politically, completely satisfactory from the Soviet viewpoint and with favorable prospects.

THE LAW OF INEVITABLE CHANGE

But if a Soviet military attack on Yugoslavia is not in the logic of the situation and of real Soviet-Yugoslav relations, that does not mean that internal, social and political peace is in the cards for Tito's heirs.

First, Tito, no matter how blown up out of all proportion as a shaper of history, has for such a long time been ravingly glorified that he had really become an element of stability in Yugoslavia.

But he is no more. And now his true "greatness" emerges without its sycophantic embellishments. He was not a great man, a mover of events and inspirer of people. He was an opportunist and a cynic. His death leaves a void not because he is no more, but because he helped create it by his lack of spiritual and human substance.

Second, the events of Iran and Afghanistan have put on the agenda the question of a thorough re-appraisal of the premises of our U.S. foreign policy. The deep gulf between President Carter's ideas of communism and the Soviet invasion of Afghanistan have temporarily been papered over, but the issue will not go away. And everybody knows and sees that there is increasing revolt and dissatisfaction in the countries behind the Iron Curtain. The resistance of the Afghans, in spite of the most brutal and inhuman Soviet methods to destroy them, is an ominous indication of the true mood of the people under communism.

Western Titoists insist that communist Yugoslavia after Tito will turn to the West and that a gradual evolution of Yugoslav communism will take place, bringing it closer to Western concepts and practice.

That is as realistic as expecting Nikita Khrushchev's shrimps to learn to whistle.

Western experts, counseled by Milovan Djilas, the chief political disinformer of the West, confuse two totally distinct categories: the regime and the people. The people never wanted communism. They were most loyal allies of the West and they have not changed. Communism was forced upon them.

As for the regime, Tito's heirs, in spite of all dialectical acrobatics, are communists and will very gladly continue to receive all the aid they possibly can from the West. But they also will, even more desperately than Tito, cling to Moscow for their political life. This is the crux of the whole problem: the source of power of the communist regime of Yugoslavia is not in the people, but ultimately in Moscow.

In the second place, the supreme concern for every communist is power. And the key element of power is the will. The communists have since 1917 (point Zero) until now, 1980, put under their domination well over one billion human beings by being politically bolder, more aggressive and unyielding. With the West's policy of weakness, they could not fail. Besides, in the present state of affairs, the U.S. does not dare stand for its own national interests much less for other nations' interests. Under those conditions, how could any communist be inclined to side with the West (the U.S.), the mighty but timorous ideological and historical enemy, and not with Moscow, the bold and aggressive ideological and historical Big Brother?

Titoism has so far been good for Moscow, for it has kept Yugoslavia under communism. It has, obviously, been good for the powerholders in Yugoslavia. It has been good for Western Titoists, whose chief concern is to "improve" communism and help "good" communism (Titoism) win over bad communism (Sovietism). But it has been bad for the people. And the people are less and less inclined to reconcile with communism, under whatever label, national democratic, liberal, with a human face, etc., no matter how ecstatic the Western "Liberals" may be about Titoism in the past and its outlook in the future.

The United States, which decisively helped bring Tito to power and keep him in power, must reappraise very thoroughly the wisdom of its long-standing policy of siding not with the oppressed people, who are natural and loyal allies of America, but with their communist oppressors, who are America's sworn enemies. Today, more than ever, the solidarity of all—free or enslaved—who cherish freedom, is a matter both of honor and of survival. The free cannot remain free if the enslaved remain enslaved.

We have no right to pursue any longer our disastrous policy of help to communism, based on the stubborn and defeatist refusal to face the stark reality of communist unconditional aggression and imperialism.

The communists have perpetrated too many horrendous crimes to make a reconciliation with them possible. They have killed some 120 million people since 1917, more than all people killed in all wars in history. On the other side, too many good people have toiled and fought and suffered and sacrificed and died to give dignity to the condition of man. A reconciliation between freedom and communism is morally reprehensible and politically suicidal.

The lesson of the whole story of Tito and Titoism is that America can survive, live and march forward only if it wins, not if it obtains from Moscow and Peking the license to whimper while being destroyed.

We have no right to surrender, no right to break faith with those who have died for freedom, against communism.

And we have every obligation to make their ideal of the victory of freedom and human dignity come true.●

ARCTIC WILDLIFE RANGE

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. YOUNG of Alaska. Mr. Speaker, I must confess that the policies and priorities espoused by the Department of the Interior with respect to energy development continues to perplex me to no end.

A prime example of how the Department of the Interior skews the facts is underlined in an editorial that was published in the Wall Street Journal on September 8, 1980. This editorial correctly points out that the Department of the Interior only opens its eyes when it wants to read data and closes them when data serves to weaken its position. The issues surrounding the potential oil reserves in the Arctic Wildlife Range have been misrepresented in many instances. I am hopeful that the report which was recently released by the General Accounting Office will shed some true light on the oil potential of the Arctic Wildlife Range in Alaska.

The United States has entered a period where it would be foolish to let ourselves be led by romanticism and emotion rather than logic and pragmatism. We cannot afford to mortgage our future and our lifeblood by continuing to import 50 percent of our Nation's energy needs. Americans should not allow themselves to be the victims of periodic price increases by the OPEC cartel.

The energy industry has the technology to produce oil in the Arctic onshore environment without damaging the environment. The trans-Alaska pipeline is living proof of this fact. Incidentally, the oil produced from Alaska's arctic environment accounts for 15 percent of domestically produced oil—1.5 million barrels per day).

It is time for the Department of the Interior to start being honest with themselves and with the American people concerning the energy resources in the United States. I urge my colleagues to read the editorial that appeared in the Wall Street Journal.

The text follows:

PLAYING FAST AND LOOSE

It seems we failed to make ourselves clear in our August 20 editorial, "Alaska's Endangered Wildcats." (See today's letters.) Perhaps, alternatively the Interior Department still hasn't learned how to read geologic estimates.

For those who came in late, we're debating a release Secretary Andrus issued when the administration wanted to include the National Arctic Wildlife Range in the Alaska wilderness area, putting it off limits to oil exploration. We contended that Interior's explanations played fast and loose with the data from the U.S. Geological Survey report in downgrading the range's oil potential. Interior now says that a General Accounting Office study of the release differed only on the conclusion, not on the handling of the underlying data.

"Interior's public report on the results," the GAO study actually reads, "is highly condensed and excludes certain data that would seem highly relevant in any assessment of the Range's oil and gas potential." In particular, Interior omitted two key items—the geologists' low-probability but high-payout estimates, and the estimates of potential pool size. The geologists' report "shows considerable potential for oil and gas," the GAO wrote. "However, this potential was not reflected in the Department's recent news release."

In support of Secretary Andrus' injunction that "the Wildlife Range should be the last place we look for oil and gas," Interior offered data showing that the geologists estimated that there was a 95 percent probability they would discover 0.16 billion barrels, and a 5 percent probability they could find 17 billion barrels. It omitted their estimate of a 1 percent probability of finding 32 billion barrels, almost enough to double proven reserves in the U.S. And it omitted the estimates of finding a "super-giant field," which in the first runs ran up to a 5 percent probability of finding a single field of 11 billion barrels, larger than anything outside the Middle East and USSR.

The low probabilities reflect the fact that no exploration has been done in the range, and that super-giant fields are necessarily rare. The high payouts reflect the fact that, based simply on geological evidence, the range is highly promising territory. In fact, oil exploration concentrates on high-risk, high-potential areas; even a small probability of finding a super-giant is worth large investments.

Alaska's State Geologist, who also criticizes "serious errors and omissions in Interior's report," says that the USGS figures mean the wildlife range "is an incredibly attractive exploration target unknown elsewhere in the United States onshore or offshore."

While it is harder to be charitable now that reports by the GAO and the Alaska Geologist are available for reading, we are willing to admit the possibility that this dispute arises because Secretary Andrus and his department don't understand oil exploration. On the other hand, since this administration has staked so much on the assumption of an "energy crisis," such as costly synthetic fuels projects, widespread government regulation and the like, maybe it just doesn't want the oil shortage to ease up.●

EPA STANDARDS INCREASE USE OF OIL BY 60,000 BARRELS PER DAY

HON. JAMES R. JONES

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. JONES of Oklahoma. Mr. Speaker, through the past 20 years we have constantly urged and pushed all segments of American industry to work to clean up our environment. We have asked that its residue not blight our beautiful land and rob us of our atmosphere, our water, and our land. The intentions behind our efforts

were, and are, good, and we believe in those intentions.

Noble as our intentions may be, economic realities have taught us some valuable lessons through these past 20 years. We have worked hard to clean up our environment, and we have met with a great degree of success. However, it has been expensive to accomplish our goals, and it is growing even more expensive than ever as efforts are made at removing the last vestiges of pollution from our Nation.

As any experienced dieter knows who has faced the prospect of losing 25 pounds, the first 20 are tough but manageable—the last 5 require more effort than the preceding 20. It is simply the law of diminishing returns.

We have discovered that the same principle applies to the elimination of pollution in our Nation. It was tough and expensive to remove the first 90 percent of pollution from our industrial processes, but we did it. However, we are discovering that it costs just as much or more to remove the last 10 percent.

A prime example of this problem is the Environmental Protection Agency's regulations concerning the scheduled reductions of the lead antiknock ingredients in gasoline. the EPA imposed these regulations in 1973 because of increasing concerns over the effects of lead in the atmosphere on Americans' health.

If there were no controls, it has been estimated that refiners would use an average of 1.5 grams of lead per gallon of gasoline to raise its octane rating to levels satisfactory for cars to run most efficiently.

In order to remove some of that lead, refiners must subject crude oil to additional refining procedures to achieve adequate octane ratings in compliance with EPA standards. These procedures require the use of additional oil.

To reach present EPA standards of an average 0.8 gram of lead per gallon, it has been estimated that refiners have had to import approximately 70,000 barrels of oil per day. This works out to almost 26 million barrels annually. At the present oil prices, we are paying approximately $800 million more than we otherwise would in order to import oil to meet EPA standards and produce the same amount of gasoline.

On October 1, the lead content will be required to be reduced from 0.8 to 0.5 grams per gallon of gasoline. It has been estimated that refiners will have to use as much as 60,000 barrels more of oil per day to achieve that 0.3 grams reduction. At a projected 21 million barrels a day—$700 million annually—that 0.3 reduction will be almost as expensive as the initial reduction to 0.8 grams.

The 0.5 standard was designed to go into effect in 1979. President Carter ordered that implementation of that standard be delayed because of his concern over our Nation's increasing dependence on foreign oil imports. In addition, there is conflicting evidence over whether the further reduction of 0.3 grams would have significant impact on health factors.

What price are we willing to pay to achieve a possible marginal improvement in air quality? It appears we have reached the point of diminishing returns, and I believe we must take a long, hard look at our ability to pay for our good intentions. We have made significant improvements in our environment in the past 20 years. Unfortunately, it is costing us more and more now to make improvements that may not be significant.●

CONGRESSIONAL AUTO TASK FORCE HEARING OF SEPTEMBER 15, 1980

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HILLIS. Mr. Speaker, on September 15, 1980, the Congressional Auto Task Force, of which I am cochairman along with Congressman WILLIAM BRODHEAD, held its second hearing. The following is a summary of the testimony presented at that hearing by Mr. Wendell Larsen, vice president, Chrysler Corp.; Mr. Will Scott, vice president, Ford Motor Corp.; Mr. Marvin W. Stucky, vice president, governmental affairs and corporate planning, American Motors Corp.:

STATEMENT OF WENDELL LARSEN, VICE PRESIDENT, CHRYSLER CORP.

You are familiar with the facts: The hysteria over fuel availability in 1979, a doubling of gasoline prices virtually overnight, and the inability of our industry to convert quickly enough to meet the sudden demand for 30 mile per gallon cars. Into that disrupted market—into that vacuum—moved the Japanese manufacturers. Today, one in four automobiles sold in the U.S. are built abroad, the overwhelming majority of those in Japan. The Japanese share of the U.S. market has almost doubled in just two years, from 12 percent in 1978 to more than 20 percent thus far this year. All U.S. automobile manufacturers are losing money, supplier plants are closing, automobile dealers are going out of business, and from all of this, hundreds of thousands of American workers are left without jobs.

Obviously, there are many reasons for our current crisis. The Japanese did not create the gasoline shortage, the high interest rates, and the double digit rate of inflation. Nor did we. But the fact is that in this environment, when all of us are scrambling to react to these unforeseen external factors, the Japanese auto manufacturers have deliberately and effectively launched a massive campaign to capture and to maintain permanently an inordinately larger share of the U.S. auto market. The resulting injury to the domestic industry is real and substantial. In the face of this onslaught, we believe it is necessary and appropriate for our government to act responsibly to make sure the injury is not permanent.

We do not advocate unreasonable steps that could start a trade war; we make no proposals that would abridge our obligations under international trade agreements. But we do believe that constructive solutions to the problem can be found within the framework of the trade laws and of sound bilateral relations. Specifically, we recommend that the President and his Special Trade Representative, with the support of the Congress, call upon the Japanese government and the Japanese auto manufacturers to declare a moratorium for two years on shipments to the U.S. of vehicles produced in Japan on overtime work shifts.

In addition to the need to contain foreign imports, Chrysler has in recent weeks made two additional proposals for restoring the domestic automobile industry to a position of strength, and to get people back to work as soon as possible.

First—We have proposed a personal investment tax credit to individuals who purchase new fuel efficient U.S. made automobiles when they trade in a pre-1976 car.

Second—The President has advanced certain tax proposals to help stimulate investment, and the Senate Finance Committee has reported a bill with similar objectives.

We remain convinced, Mr. Chairman, that only with a responsible approach to the immediate problems of this industry can we continue to employ millions of Americans in productive jobs, provide the economic foundation for communities in all parts of the nation, meet the needs of a dealer network that reaches into every town and village in America, and satisfy the basic need of the American people for reliable, economical, energy efficient and safe, personal transportation.

STATEMENT OF WILL SCOTT, VICE PRESIDENT, FORD MOTOR CORP.

As upbeat as we like to be at fall introduction time, there's no getting around the fact that the industry is in the midst of some very serious problems.

Today, even as we approach new model introductions, car and truck sales continue at a low ebb. The severity of the contraction is camouflaged by the historical practice of reporting sales on a total-industry basis. This kind of record-keeping fails to recognize that today, for all practical purposes, we have two auto industries in this country: the domestic industry, and an off-shore industry of foreign producers. On a total-industry basis, car sales have declined from 11.1 million in 1978 to a rate of 7.8 million in the Second Quarter of 1980. As bad as this drop is—over 3 million units—the domestic industry decline is far worse. Sales of domestically-produced cars in the Second Quarter of this year were at a 1959 rate—about 5.5 million units. the truck story is about the same. The rate of domestic truck sales, after more than doubling between 1970 and 1978, declined by more than half from 1978 to the Second Quarter of 1980.

Clearly, we are dealing here with more than a cyclical downturn. What's needed are policies aimed at getting the industry back on its feet and workers back on their jobs. The nation needs to create an environment that is conducive to capital generation. Tax policies must be aimed at stimulating modernization, R. & D. and productivity. Government budgetary policies should be directed at curbing the inflationary spiral. And we need regulatory moderation. But most importantly, we need trade policies that recognize the present imbalance in U.S./Japan auto trade.

I believe all of you know that temporary restraint of excessive and damaging exports from Japan has been at the top of Ford's list as an action which can have substantial near-term impact in aiding industry recov-

ery. I have just described the enormity of the effort under way to remake Ford's fleet. The facts are that since the conversion began 5 years ago Ford has launched 52 new, expanded or refacilitized plants and—through model year 1980—replaced 10 of its car lines and 70 percent of its light truck fleet with more fuel-efficient models. And we have another 5 years ahead of us before we complete this undertaking. Meanwhile, the abrupt change in consumer purchase patterns has handed the Japanese producers a windfall sales advantage, and they have exploited this advantage by resorting to overtime production to step up exports of their small cars to this country. The Japanese did not, despite what some would have you believe, develop these small cars in response to changing American demands. Instead, these cars were simply the obvious products of a home market where vehicle specifications have always been controlled by very expensive gasoline, narrow streets, traffic congestion and short travel distances.

What has happened, of course, is that the small car market in the United States suddenly has become the big market. Small cars now account for over 60 percent of U.S. car sales, and the Japanese have captured 37 percent of this market.

With small cars growing as a proportion of total U.S. sales over the next several years, Japan is uniquely positioned to gain an even larger share. Beyond this, Japanese producers are expanding production capacity despite the fact that home market demand has remained flat. We believe that between the 1979 and 1982 model years the Japanese will increase capacity by 2.8 million vehicles or almost 30 percent.

We think the consequences of allowing the imbalance of U.S./Japan auto trade to go unchecked may well be a permanently damaged domestic auto industry, with accompanying effects on U.S. industrial capacity and even on our ability to mobilize for defense.

We have urged the U.S. government to undertake negotiations with the Japanese government aimed at a better balance between the two countries in automotive jobs, production and trade dollars. The Administration, however, has contended that it does not have legal authority to even begin such negotiations without a final determination of the lengthy ITC investigation. • • •

Another priority is to get the tax system working for industrial revitalization instead of against it. One thing would be to make investment tax credits refundable—a concept endorsed by the Administration in its "economic renewal" package. This would both stimulate auto industry recovery and complement general policies aimed at encouraging modernization, R. & D. and increased competitiveness on the part of all U.S. industries. After all, the investment tax credit is intended to encourage investment in productive machinery and equipment in the U.S.—in fact, to support the modernization of industrial facilities—and thus stimulate the economy and create jobs. That it is not now refundable is largely an accident of history, growing out of the fact that it is administered under the tax laws.

Certainly to the extent that U.S. industrial policy encourages modernization, it need not cause anti-competitive effects by applying to companies only in those years when they operate at a profit. In fact, common sense would tell us that the very time when the credit is needed most is when firms aren't generating enough capital to support investment.

A third area where congressional action is needed is not so easily dealt with. The subject is regulation and we've all heard far too much about it in the past decade. There are two goals we'd like to see pursued. First, we would urge caution in drafting new statutes authorizing regulation and regulatory agencies.

Also, as the only overseer of the total regulatory complex, we hope that Congress will vigorously exercise its oversight authority to assure that the regulatory agencies give comprehensive and meaningful consideration to less costly, less burdensome and more efficient means of achieving societal goals.

The key word with regard to regulation is flexibility and here we suggest one additional area of Task Force leadership. Over three months ago both houses of Congress approved a bill originally introduced in the House by Representative Sharp, providing for a three-year carryforward/carryback of fuel economy credits used for measuring EPCA compliance—yet no conference has been convened. We hope the Task Force can assist in getting this important legislation back on track.

STATEMENT OF MARVIN W. STUCKY, VICE PRESIDENT, GOVERNMENTAL AFFAIRS AND CORPORATE PLANNING, AMERICAN MOTORS CORP.

RECOMMENDATIONS FOR GOVERNMENT ACTION

The following priority government actions are suggested.

1. An arrangement, hopefully voluntary, should be concluded to reduce Japanese passenger car imports substantially for two years.

2. The light duty truck (cab-chassis) tariff of 25 percent should be retained and not reduced in amount.

3. A refundable Investment Tax Credit with full credit applicable to assets having a useful life of three years or greater should be enacted to provide assistance in meeting future capital requirements. The U.S. Treasury should reimburse corporations for tax credits that cannot be utilized in periods of losses.

4. The financial community should be encouraged to cooperate with automobile manufacturers in making additional funds available for future programs.

5. The Automobile Fuel Efficiency Act of 1980 should be enacted.

6. Special emission regulations for high altitude and special California vehicle exhaust emission standards should be eliminated.

7. Proposed 1983 and subsequent model year light duty truck exhaust emission standards and related certification procedures should be deferred indefinitely.

8. Additional U.S. export incentives should be established.

The recent shift away from domestically produced vehicles to imported vehicles was triggered, at least in part, by the higher perceived fuel efficiency and the alleged better quality of imported vehicles. While in the past, imports may have outperformed U.S. vehicles in fuel economy, the new 1980 and 1981 models offered by U.S. carmakers are fully competitive. Nonetheless, another three years or so is required for the U.S. manufacturers to completely change over production facilities to new more fuel-efficient vehicles.

Foreign cars, particularly the Japanese, excel in "fit and finish" which has led buyers to believe they must be of a higher quality and therefore more durable. To the contrary, data indicates that the scrappage rate of domestic cars is lower than imported vehicles.

For example, as shown below, 21.5 percent of all seven-year old imported cars have been scrapped compared with only 16 percent of the U.S. cars. Or put another way, 78 percent of seven-year old imports survive seven-years of use versus 84 percent of U.S. cars.

CUMULATIVE CAR SCRAPPAGE RATES

[Average rates July 1, 1970 to July 1, 1979]

	Percent of initial registrations scrapped	
	U.S. cars	Import cars
Vehicle age:		
1	0.1	0.5
2	.9	1.6
3	2.5	4.0
4	4.2	6.7
5	6.6	9.8
6	10.3	15.1
7	16.0	21.5
8	24.3	29.2
9	35.3	39.3
10	48.6	48.2

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J. L. ATKINSON

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. SKELTON. Mr. Speaker, it is with great sadness that I inform my colleagues in the House of the recent death of a good friend and an outstanding citizen, J. L. Atkinson of Lexington, Mo., in a tragic automobile accident.

Mr. Atkinson was a native of Lafayette County, Mo., and attended Missouri Valley College, Central Missouri State University, and the University of Missouri, Kansas City. He served in the U.S. Army during World War II. He was a distinguished educator and school administrator and served as Lafayette County Superintendent of Schools, and as Superintendent of the Corder, Camden, and Santa Fe School Districts. His service in these positions was characterized by his tireless service to the public, and by his devotion to the betterment of young people through education.

Mr. Atkinson was also active in civic affairs. He served as executive secretary of the Lexington Chamber of Commerce, and was a member of the Lexington Lion's Club, the Missouri State Teachers Association, the Lexington Masonic Lodge 149 A.F. & A. M., and the Lexington United Methodist Church. For 20 years, he selflessly dedicated his energy and talents to the community as chairman of the Lafayette County Red Cross.

Despite his many professional and civic activities, J. L. Atkinson was never too busy for his family, or any of his many friends. He will certainly be missed by all who had the opportunity and the privilege to know him. I extend my deepest sympathy to his widow, Mrs. Lola B. Atkinson.●

CAMBODIA AND THE WORK OF THE MEDICAL MISSION SISTERS

HON. CHARLES F. DOUGHERTY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DOUGHERTY. Mr. Speaker, the pain and tragedy of the people of Cambodia is familiar to the Members of this body. Earlier this year, through efforts to address the needs of these suffering people, we sought to provide millions of dollars in the form of international disaster assistance. With that action the story has not ended. In fact, even today, there are American men and women laboring unselfishly in the refugee camps. Among these workers are members of a community of Roman Catholic religious women whose American motherhouse is in the Fourth Congressional District of Pennsylvania. I would like to share the story of the Medical Mission Sisters involvement in Cambodia with my fellow Americans.

In the fall of 1979, the Medical Mission Sisters received an urgent plea for help from the International Rescue Committee asking for sisters to provide immediate medical assistance to the refugees of Cambodia. The first members of the Medical Mission Sisters' team arrived in Bangkok, Thailand, on November 24, 1979. Since that time a total of 19 sisters—15 from the United States and 4 from Holland—have worked cooperatively with the International Rescue Committee and the International Committee of the Red Cross to provide medical relief personnel in the refugee camps of Thailand

In addition to caring for the sick and dying Cambodian people, the sisters served as field managers, directing the work of other volunteers. They were responsible for the tuberculosis and other contagious diseases ward at SaKaeo and the surgical ward at Kha-I-Dang. They were also involved in primary health care and outreach work in the Thai villages surrounding the camps; followup care on discharged TB patients; and teaching basic courses in medical, nursing, and laboratory procedures.

The sisters found themselves enmeshed in one of the saddest situations in our world today—a situation that touched each one and etched the anguished and suffering of the Cambodian people in their hearts and minds. The nightmare continues—the brutal fighting, the senseless killing, the unending hunger, and the overwhelming hopelessness.

Three sisters have shared their experience and I share these with each Member of this body:

SR. MIRIAM THERESE WINTER

I was part of a team of Medical Mission Sisters assigned to SaKaeo last November. In our tuberculosis ward, I watched people come alive in response to the love and compassion around them. There was promise of a future.

But what does such a future hold? Uprooted and without material possessions, these once proud people have only a few square meters of alien soil to call home. They must stand for hours in the hot tropical sun for their allotment of food, beg for a handout of clothing whenever a shipment arrives. Yet these are the lucky ones. Thousands of the sick and starving are still massed along the Cambodian side of the border in hope of deliverance. They are often shelled by Vietnamese troops or caught in the cross fire between antigonistic factions, and fear of a full-scale border war is growing.

To a large extent, the future of these people lies with the nations of the free world. We must care enough to ensure not only survival but a certain quality of life for those who have unjustly suffered so much. Such is our responsibility as Christians and as members of the human family.

SR. JOAN MARIE SEYDEL

The Khmer people impressed me deeply with their warmth, gentleness and friendly smiles. I could not help but wonder how they were able to respond so positively in the light of the tragedies that marked their lives these past four years.

One young patient, Pote, was 13 years old although he looked only eight. Pote had a diagnosis of pulmonary tuberculosis, malnutrition, parasites, and like many other patients, suffered from bouts of malaria. Physical symptoms connected with each of these problems added to the already overloaded psychological and emotional stress for Pote and others like him.

"Grandma" Houn, only 60 years of age, was so wizened that she looked more like 90 plus. She was a delightful lady, with adamant feelings about many things, ranging from just exactly which spot was best for her Streptomycin injection, to where the fly-stick papers should be hung in the ward.

"Prince Charmin" Runn was a bouncy five-year-old with a big tummy who looked three years younger than his stated age. He was personality plus—always seemed to be going somewhere with great purpose, at great speed, up and down the aisles. One of his favorite things was to wrap himself around my leg and stand on my foot—this occurred most frequently when I had the medicine basket in both hands but when it was time for his medicine he beat a hasty retreat.

"Chippy" Sinn who was the same age, was a contrast in this respect to Runn. He followed me around at medicine time and kept opening his little mouth like a bird until it was his turn.

Our last day in the ward was painful for us as patients embraced and kissed us, shook our hands and cried, even though our places were about to be filled by incoming volunteers.

We were quiet on the bus ride to Bangkok. As I looked out the bus window, I realized that so many faces of patients were flashing before my mind's eye, and that no longer would news about Kampuchea (Cambodia) be a lot of statistics.

These people were unique individuals and so were we, and we had deeply touched each others' lives, if even for a brief space of time.

SR. KATHRYN GATES

It's a memory now, not just an ordinary impression but an experience so wrenching that I will never be the same.

I was a volunteer for three short months, sharing the tragedy of the Cambodian refugees, the remnant of a gentle, peace-loving people. Without words we spoke—they unable to speak English, and I knowing not a word of Khmer. Yet no words could have spoken more forcefully. The story they told was etched on their bodies by the ravages of starvation . . . limbs so thin you could count each bone . . . muscles shrunken and burnt up to provide calories for survival when they had no food. But even more heart-wrenching was the story their eyes told. In each pair of eyes, I looked into bottomless wells of fear, misery and suffering too horrible to be put into words.

They arrived at SaKaeo camp in trucks and buses during the last big rain before the dry season. Thirty-six thousand of them came to this rice field 40 kilometers from the border. Many were too weak to walk or even stand. Five died from drowning that first day, unable to rise from the puddles into which they had fallen.

In the first days after arrival, their eyes were blank and staring, too numbed by what they had witnessed to respond to new surroundings. No one spoke, even though their cots in the hospital tent were so close together you could not walk between them. One hundred and twenty desperately sick people, crowded into one tent, longing to unburden their grief-stricken hearts, to release the pent-up anger and emotion, to ask for news of missing family members and friends, but no one spoke. The only sound was the continuous coughing from lungs wracked with tuberculosis and pneumonias.

Even the children did not respond. They just lay there, not smiling, or playing or fussing, not even crying. They even died quietly, almost without regret or struggle, about 30 each day, too far gone to respond to the food and medicines.

But it was the children who responded first as they gradually began to eat and to have the strength to sit up and then to walk around, buried under years of horror, those first smiles surfaced as real miracles, drawn from memories of an almost forgotten response.

Food began to allay the pangs of hunger and slowly restore strength to exhausted bodies; medicines fought the multitude of diseases that sapped their energy; bright colored sarongs and blouses brought sparks of life back into somber faces; balloons and soap bubbles would coax children to smile. But it was music that brought about the miracle. With the guitar and singing, hope came alive in faces that faced a hopeless future. And I will be forever grateful to the Cambodian people for allowing me to witness that miracle of rebirth.

Mr. Speaker, three-quarters of a million Cambodians are in the refugee camps in Thailand solely dependent on the generosity of others for food, water, shelter, clothing, and medical care. Thousands more are living in the various encampments along the Thai-Cambodian border often shelled by Vietnamese troops or caught in the crossfire between antagonistic factions. But at least on the border they have access to the food supplied by the international relief agencies.

The entire situation of the people of Cambodia is grave and precarious. The future is uncertain. They who have already suffered so much continue to suffer. However, through funds and, perhaps, more significantly, the gifts of such people as the Medical Mission Sisters the long and constant care of the American people for each human

person has once again been made real.●

RENTERS NEED TAX RELIEF TOO

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BIAGGI. Mr. Speaker, in each of the past three Congresses I have sponsored legislation aimed at correcting one of the longest standing inequities against a class of American taxpayers—those who rent their residences. My bills would allow tenants to deduct that portion of their rent which pays for property taxes.

This legislation is vitally needed for many Americans. About one-third of all taxpayers in this Nation are rental units. In Manhattan, more than 90 percent of all housing units are rented. For these Americans, relentless increases in property taxes are oftentimes passed on directly in the form of rental increases.

The House will soon begin deliberations on tax reform legislation. I intend to push for consideration of legislation to provide first time tax relief to renters. Recently WCBS radio issued an editorial endorsing legislation providing tax relief for renters. I urge my colleagues to read the editorial and support me in this important endeavor.

The editorial follows:

GIVE 'EM A BREAK

(By General Manager Robert Hyland)

Rent payments should be more than money down the drain.

New York State Tax Commissioner James Tully went to Washington yesterday on an important errand—to persuade Congress to give renters a tax break. We hope the Congressmen were paying attention and that they will soon take some action on Tully's suggestion.

Renters in New York State aren't the only ones who need a break. About one third of all households in the nation are rental units and the deck is stacked against every one of them. Our federal tax laws are written to encourage homeownership. That was fine maybe forty years ago when owning their own home was a dream most Americans could aspire to. Now, unfortunately, millions of Americans are locked out by the high prices and the dream of walking through their own front door remains just that—something they long for while they write out the rent checks.

Commissioner Tully's recommendation is to give America's renters a tax credit of up to twenty percent of their annual rent, not to exceed one thousand dollars. The lump sum is roughly the equivalent tax break homeowners get and it would in no way interfere with the tax relief landlords receive. Right now renters get no credit for the share of their rent that goes to pay property tax, although that share is often considerable.

Changing this part of the tax law would likely encourage more families to stay in cities and forgo the commutes to the suburbs. And it would help apartment dwelling senior citizens who live on fixed incomes.

Most important, it would have the government play fair with the millions of people who pay rent.●

THE "GESMO" GIZMO

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BINGHAM. Mr. Speaker, I commend to my colleagues an editorial which appeared in the Washington Post recently lambasting a congressional initiative at this time to reopen the so-called GESMO issue—the Nuclear Regulatory Commission's generic environmental statement on mixed oxide fuel. The matter could arise when the House takes up H.R. 7981, the NRC's fiscal year 1981 authorization legislation.

I share the Post's deep concern about any effort to require the NRC to resume its formal rulemaking proceeding on GESMO, which contemplates the wide-scale reprocessing and use of plutonium in existing types of nuclear reactors. I intend strongly to fight any such amendment, particularly from the standpoint of its potentially very serious negative impact on U.S. interests in stopping the spread of nuclear weapons.

The significance of the GESMO proceeding, which was terminated in 1977 by the NRC, is its underlying assumption that the United States will need in the near future to license commercial reprocessing and thermal recycle activities. In other words, contrary to being "just a study"—as GESMO's proponents have characterized it—GESMO signals the dawning of a time when plutonium will be transported and used commercially in a form readily usable for nuclear weapons. In 1977, the United States stood virtually alone in worrying about the security threat of this development. Now, after 2 years of intensive international cooperative studies, there is a clear consensus worldwide that reprocessing for recycle purposes makes little economic sense, and poses potentially significant proliferation risks.

Not only, therefore, does the idea of compelling NRC to reopen the GESMO at this time make little sense on its merits, but such a congressional vote—devoid as it would be of any substantive record in either committee with responsibilities for the NRC budget—would simply confound ongoing U.S. efforts to persuade and accommodate our international nuclear trading partners on an effective nonproliferation regime. Neither the nuclear industry nor the governments involved would be served by muddying the waters with unsubstantiated congressional decisions.

It is my strong hope that the proponents of GESMO will take these considerations, and the fact that the NRC has already embarked on an effort to decide GESMO in a rational manner, into account and decide not to offer their amendment.

The full text of the material submitted for the record follows:

THE GESMO GIZMO

Efforts are afoot again in Congress to prepare the way for the reprocessing of nuclear wastes and for the associated recycle of the plutonium thus produced for use as fuel in existing types of reactors. The vehicle is an amendment to the Nuclear Regulatory Commission's authorization bill that would require the NRC to revive an exotic rulemaking proceeding known familiarly as GESMO—Generic Environmental Statement on Mixed Oxide Fuel.

The law provides that such a statement must be completed and a positive ruling made before the NRC may grant licenses for reprocessing and recycle. Work on it was begun in 1974 but was suspended by the NRC in 1977, in conformity with the president's decision to defer indefinitely reprocessing in the United States. This decision was taken primarily on economic grounds, supported by non-proliferation considerations. Since 1977, both arguments have become, if anything, more compelling.

For reprocessing to make economic sense, the value of the plutonium recovered must be greater than the costs of recovery. Plutonium's value in this context hinges on the cost and availability of the uranium fuel it would be replacing. But since 1977 the price of uranium has dropped sharply, as have projections of future needs for uranium fuel.

The economic argument is buttressed by the fact that the spread of reprocessing technology offers any nation direct access to weapons-usable plutonium. Thus the proliferation risks associated with a nuclear fuel cycle involving reprocessing and recycle are far greater than those of a cycle that never produces weapons-usable materials. Since 1977, Pakistan has vividly demonstrated the point.

The ultimate irony is that reprocessing and recycle do not make the task of disposing of nuclear wastes any easier. Though some types of wastes are reduced, the process produces additional types so that the waste disposal knot—the one that must be untangled if nuclear power is to survive—remains as intractable as ever.

The last thing nuclear power needs now is a congressional directive that will pitch the NRC into three or four years of bootless debate over the pros and cons of reprocessing while urgent safety, health and waste disposal issues get shortchanged. The right approach for those who favor nuclear power is not to keep beating this dead horse, but to turn their attention to efforts to bring about a long overdue nuclear waste disposal program—one that does not involve reprocessing.●

EXPORTING NUCLEAR FUEL TO INDIA

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROWN of California. Mr. Speaker, the House will soon be faced with the decision on whether to back the shipment of enriched uranium fuel to India. As you know, the Nuclear Regulatory Commission voted against shipping fuel, and President Carter has asked the Congress to

accept his recommendation to send India this fuel anyway.

Nuclear nonproliferation is an important matter that deserves the most careful review by this body. I believe the House and Senate committees which have decided not to support President Carter have made the right decision. The President is wrong on this matter.

Mr. Speaker, I ask my colleagues to carefully review the pros and cons of this case. When this is done, I am confident the Congress will exercise its responsibility under the law and refuse this nuclear fuel shipment.

I commend to my colleagues the following editorial on this important subject:

[From the Los Angeles Times, Sept. 12, 1980]

REWARDING INDIA FOR NONCOOPERATION

The Carter Administration, stunned by House and Senate committee decisions to block a proposed sale of nuclear fuel to India, is lobbying vigorously to have the committee actions reversed on the floor of one house or the other. This is a fight that we hope the Administration loses.

The White House proposes to ship 38 tons of enriched uranium fuel to India for use in the Tarapur atomic power station. The transaction was disapproved by the Nuclear Regulatory Commission for the very good reason that it would violate the clear intent of the Nuclear Nonproliferation Act of 1978.

That law prohibits the transfer of nuclear materials to nations that do not accept international inspection of all their atomic facilities to prevent a diversion into nuclear bomb-making.

India exploded a nuclear device in 1974, using American and Canadian materials in violation of the supply agreements with both nations. To this day, the government of Indira Gandhi refuses either to accept international inspection or to promise that more nuclear devices won't be exploded. India is also among the holdouts that have never signed the multinational Nonproliferation Treaty of 1970, aimed at preventing the spread of nuclear weapons.

President Carter used the authority provided by the 1978 antiproliferation law to override the regulatory commission's finding. But his decision in turn can be overridden by a vote of both houses. The deadline for such a congressional veto is Sept. 27.

The State Department argues that, especially in the wake of the Soviet invasion of Afghanistan, the United States shouldn't be in the business of irritating India and possibly nudging that country into an even chummier relationship with the Soviet Union.

This is an appealing argument as far as it goes. But it overlooks the fact that rewarding India for its flat refusal to accept international safeguards could have even worse consequences.

Such action might, to begin with, virtually eliminate any prospect of dissuading Pakistan from pursuing its own nuclear bomb-making program. Even more important, it would deal a heavy blow to the credibility of the Administration's entire antiproliferation effort.

If the United States is prepared to overlook India's calculated noncooperation with the nonproliferation effort, other countries are justified in assuming that they can get away with the same sort of behavior without suffering any serious consequences.

We urge the House and Senate to back their committees and pass resolutions disapproving of the nuclear fuel deliveries.●

SOLAR POWER SATELLITE CONCEPT EXPLAINED

HON. RONNIE G. FLIPPO

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FLIPPO. Mr. Speaker, in 1968 Dr. Peter Glaser, vice president of Arthur D. Little in Cambridge, Mass., developed the concept of the solar power satellite (SPS). The idea of using this Nation's $100 billion investment in space exploration to help solve the long-term energy problem of the world has captured the imagination and attention of the scientific community throughout the world.

The House Committee on Science and Technology has held hearings on the SPS concept in 7 of the past 12 years. The House passed a Solar Power Satellite Research, Development, and Demonstration Act in 1978 and again in 1979 by a wide margin.

The Department of Energy is now in the final stages of completing a multimillion dollar 3-year study of the solar power satellite concept. A final report on this study evaluating the societal, environmental, economic, and technical aspects of the SPS concept is near completion. In addition the Office of Technological Assessment and the National Academy of Sciences are also nearing completion of separate and independent studies of the SPS concept. It is interesting to note, Mr. Speaker, that no other potential energy source has been subjected to such thorough and intensive examination and debate both within Congress and in the scientific community.

Mr. Speaker, I am pleased to submit for the consideration of my colleagues an article on the SPS concept prepared by Dr. Peter Glaser and published in a recent edition of the Christian Science Monitor:

ORBITING POWER PLANTS COULD EASE EARTH'S ENERGY CRISIS

(By Peter E. Glaser)

On May 9, 1971, the Sunday papers published a syndicated cartoon, "Our New Age," which illustrated how energy could be beamed from Space to Earth to generate electricity. While the technology depicted in the cartoon had all the earmarks of science fiction, it was in fact, based on a concept for a solar power satellite (SPS) which was proposed in 1968.

In 1980, such a power source now looks increasingly to be a technology whose time has virtually come. Its promise is enormous.

A single SPS could generate the equivalent power output of one to ten nuclear power plants. Placed in an orbit 22,300 miles above the equator, where the sun shines 24 hours a day during most of the year, and where the satellite would be stationary with respect to Earth (a geosynchronous orbit), the SPS would convert solar energy directly to electricity and feed it to microwave (radio) generators forming part of a transmitting antenna. The antenna would precisely aim a low-power density microwave beam to one or more receiving antennas at desired locations on Earth, and there microwave energy would be safely and efficiently reconverted to electricity and transmitted to users. The SPS is uniquely suited to generate power continuously because there are no interruptions by inclement weather and the diurnal cycle in this orbit.

Although it would be an advanced technology, such a power satellite system could be operational by the year 2000. It would be based on known technologies, which could be developed to accomplish the required functions in space. Of potential global benefit, the SPS concept has its roots in the scientific and technical resources, and aspirations, of a broadly based community which views space as a reservoir of unlimited energy and material resources. Since 1971 the SPS has been studied by academic institutions, industrial organizations, and government agencies in the United States, Canada, Britain, France, and Japan, by the European Space Agency, and by the Soviet Union. As a result, there is increasing recognition of its potential to meet future energy demands.

The most extensive assessment of the SPS concept was carried out during the past three years by the United States Department of Energy and the National Aeronautics and Space Administration. With a budget of $20 million, these two agencies had as their objective "to develop by the end of 1980 an initial understanding of the technical feasibility, economical practicality, and the societal and environmental acceptability of the SPS concept." The results of their assessment were reviewed at a conference held last April at the University of Nebraska, where 196 technical papers were presented on a wide variety of technical, economic, environmental, and societal issues.

The consensus emerging from the conference was that no reason has come to light for concluding that the SPS would not be technically feasible. Cost projections fall into a competitive range when SPS is compared with power-generation systems using renewable or nonrenewable energy resources. Environmental issues dealing with long-term exposure to low-level microwaves, land use associated with receiving antennas, and the effects of rocket exhaust products on the atmosphere are not likely to constrain SPS development. The SPS has the potential to be environmentally benign compared with other large-scale continuous power-generation methods based on considerations of climatic effects, waste heat, pollutant release, and energy requirements during construction. However, the involvement of the public will be essential to alleviate concerns with environmental effects and control over a centralized large-scale technology.

In view of the growing interest in the SPS in the scientific community and in Congress, the National Academy of Sciences and the Congressional Office of Technology Assessment are also assessing the concept. Results of these assessments are expected in 1981 and will influence the evaluations and experiments to be carried out as part of the SPS program during the next several years, as well as legislation that may be introduced in Congress. Congress has supported the SPS program efforts of the Department of Energy and the National Aeronautics and Space Administration in the past and there are indications that this support will continue in the future.

The SPS program is unique in that this major technology program focuses not just on key technology issues, but is concerned with the assessment of environmental ef-

fects and economic and societal issues so that risks and uncertainties can be identified before proceeding with the next phase of a ground-experiment program. This focus for the SPS program is appropriate at a time when public skepticism of complex, large-scale technologies has been justified by well-publicized failures, and there is distrust of assurances that technological systems will not contribute to involuntary exposure to environmental, health, and safety hazards.

The most significant aspect of the SPS concept is the global implications of continuous power generation available to all nations. Once the overall feasibility of the SPS concept has been established, and the evaluations and ground experiments are concluded with positive results, other nations may be interested in joining in the development and demonstration phases of the SPS program, and in experiments to be conducted on future space missions. Already there is significant international awareness of the SPS concept, as indicated by studies of the United Nations Committee for the Peaceful Uses of Outer Space, and discussions of frequency assignment and geosynchronous orbit positions at the World Administration Radio Conference which met in Geneva in August 1979. The SPS will also be discussed at an international symposium, sponsored by French government agencies, to be held in Toulouse, June 1980.

International participation in an SPS program would also provide assurance of the program's peaceful nature, adherence to agreed-upon environmental standards, and availability of power from space on a global scale. Furthermore, international involvement should assure that the SPS will not be controlled by any one industrial organization, sector of industry, or even one nation.

To derive the maximum benefits from a global SPS system, policies will have to be adopted which will be acceptable to other nations and lead to the formation of the most appropriate international organization devoted to SPS development and implementation. The organizational structure should be responsive to societal issues while the SPS is being developed so these issues won't have to be spliced in later. The organizational structure should also meet the common interests of participating nations, as already is the case with Intelsat, the organization controlling communications satellites and owned by more than 100 nations.

As the effects of the SPS technologies will extend past national frontiers, decisions regarding their development should not be left exclusively to national jurisdiction, but be made part of transnational affairs. The benefits of the SPS should be available on a global basis and should increase the opportunities for developing nations to take an active part in the utilization of energy available in space. The SPS concept should advance the complementary national interests of both developed and developing nations. A political consensus will need to emerge, in spite of diverse and contending interests, through widespread realization that humanity is embarked on a dangerous passage together in a world of finite resources, ultimate weapons, and unmet requirements.

The significant progress that has been made as a result of the many studies being performed on the SPS is resulting in the growing conviction that the SPS is one of the promising power-generation options which could contribute to meeting global energy demands in the 21st century. Its successful implementation, together with energy conservation measures and solar energy applications on Earth, could lead to the elimination of energy-related concerns.

The SPS could provide, not only the impetus for peaceful cooperation among nations because all can share the limitless resources of space, but could also help civilization to make the inevitable transition to renewable sources of energy. The SPS provides a focus for international endeavors to utilize space to improve the human condition on planet Earth and points a way toward a new direction for the evolution of the human species.●

A BILL INTRODUCED BY REPRESENTATIVE DAVID F. EMERY

HON. DAVID F. EMERY

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. EMERY. Mr. Speaker, I am today introducing legislation which would provide for the conveyance to the State of Maine of certain lands located in the State of Maine.

Public Law 85-185, which was passed by the Congress in 1957, authorized the Secretary of the Navy to convey approximately 28 acres of land to the State of Maine. This property, which formerly comprised part of the Fort Preble Military Reservation, is located on the campus of the Southern Maine Vocational-Technical Institute of South Portland.

When the property was conveyed to the State of Maine, the only uses envisioned for the land at the time were vocational and other school purposes. This restriction was then written into the original deed agreed to by the Navy and the State of Maine.

However, since 1957, a conservation zone and public park called the Spring Point Shoreway has been established along this particular portion of south Portland's coastline. Officials of the State of Maine and the Southern Maine Vocational-Technical Institute wish to now traverse this property for access to the beach area and parking lot but are partially prevented from doing so by the use restrictions contained in the Navy Secretary's deed.

Since this land is owned by the State of Maine, the State legislature acted this past spring to pass private and special legislation for the Spring Point Shoreway authorizing the commissioner of the Maine Department of Educational and Cultural Services to apply to the appropriate Federal agency for release of the use restrictions.

In a response to an inquiry initiated earlier this year by then Senator Muskie, Navy Secretary Edward Hidalgo indicated that legislation would be necessary to authorize removal of the restrictions in the deed. This is the substance of my legislation. A similar bill has already been introduced in the Senate by Mr. MITCHELL and Mr. COHEN.●

A TRIBUTE TO THE MEN AND WOMEN OF THE ALL-VOLUNTEER FORCE

HON. TOM CORCORAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. CORCORAN. Mr. Speaker, the letter printed below was recently sent to me by two of my constituents, Alfred and Mary Jane Thurston, upon their return from a visit with their son now serving in the U.S. Army in Fulda, West Germany. In recent days, heavy criticism has been leveled at our All-Volunteer Force, some of it justified; however, as these proud parents discovered, and as I have long advocated, the All-Volunteer Force can be made to work. Rather than belabor the points, I would urge all of my colleagues to read this most eloquently stated letter:

BATAVIA, ILL.

To: Members of Congress.
From: Two parents with a son in service.
Subject: Freedom and fences.

A recent visit to our service son stationed near the iron curtain that separates East and West Germany provided chilling evidence that there are two political divisions in the world today: those in captivity and those in the free world.

Our visit led us to the beautiful city of Fulda about thirty miles northeast of Frankfurt. This lovely, pastoral city serves as home base to the Eleventh Armored Cavalry Regiment. There we were greeted by the regimental commander.

Lt. Colonel Joseph C. Liberti, Master Sgt. William J. Toole, Staff Sgt. William J. Hutton, and Sp/4 George J. Thurston took time out of their busy schedules to brief two anxious parents on the status of the obligations of the United States army in West Germany. Their forthright briefing highlighted the border area.

At the conclusion of the briefing, a personal tour of several border points was arranged. As civilians, we were totally unprepared for the frightening detail of the iron curtain. M. Sgt. Toole and Sp/4 Thurston were unarmed during the inspection tour. Due to the many curves in the border itself, it is not possible to ride alongside the border; instead, the driver had to find side roads that led up to the border.

We discovered that it is possible for the West Germans to walk up to the border without worry or fear, for no barrier exists on this side of the border. However, don't, I repeat, don't stray beyond the simple stone markers set in the ground that delineates the border. For these simple stones, mark the end of the free world.

Beyond this imaginary line stands a ten foot high steel fence that stretches from the North Sea to Czechoslovakia. The first impression, and one that lasts, is that this fence walled up a monstrous animal in a zoo that is too dangerous to be set free. Beyond the fence and a stretch of grass are the concrete slabs designed to prevent anyone with a vehicle from going from one side to the other. Overseeing the steel fence every mile the guard towers with armed guards watching the fence.

Is the fence an honest attempt to mark the border? The armed guards with their live ammunition say no. But, that's not all the visible proof. This steel fence is very treacherous and deserves close attention as it is a deadly trap. Attached to every other fence post: first, head high; then, waist high; and lastly, knee high are the bombs. These are not grenades, they are bombs!

Fences, guard towers, and bombs, is that enough to tell the purpose of the fence? There is more. Just behind the fence on a tether that stretches between the guard towers are the guard dogs. Oftentimes, behind the dogs are additional mine fields.

What, then, is the purpose of the steel fence or the iron curtain? Is it to keep West Germans from entering East Germany? The answer is no. If that were true, the concrete slabs, the dogs, and the bombs are all on the wrong side of the fence. The truth is plain to see. In the Communist world of East Germany and Czechoslovakia, they have found it necessary to build fences to keep people in, for captive people want to be free.

Those who are entrusted with the responsibility of preventing that fence from moving to include us all are the many soldiers of different races, sexes, and religions from the many parts of the United States. These same soldiers are part of our volunteer army, because they care about the free world and the United States.

And, what about these soldiers? What manner of military abilities have they? What are they really like? The media has already spoken many times of their personal qualities. The media has chipped away at the morale of the troops by stereotyping the armed forces as inadequate. They, the media, have criticized the army for a lack of volunteers. But, what are these soldiers really like?

We can only speak for the Eleventh Armored Cavalry stationed in Fulda, Germany. We watched them on the Fourth of July play an officer versus enlisted men softball game in a sea of mud accompanied by a thousand laughs by all concerned. We shared hot dogs at a picnic for families on the fourth. We talked with their children at the picnic. We ran with them to the parade ground to watch the firework's show. We danced with them at the enlisted men's club. We joined with them in singing some of the good old songs as we all celebrated the birthday of our country far from wherever we all called home. They were, on the Fourth of July, the kid next door or the one down the block. However, on the fifth of July, it was busy as usual as they went about their deadly serious job of protecting us all.

The media has done us all a great disservice by inferring that these young men and women are not the best that America has to offer. The soldiers, that I saw, were professional soldiers doing their job in a professional manner.

I am convinced that these young men and women who stand alone each night and day to protect us as they patroi a lonely border halfway around the world deserve and merit our country's unquestioned support and prayers for their courageous vigil.

Without them, that fence could move far enough to include us all.

ALFRED G. THURSTON,
MARY JANE THURSTON.●

BROYHILL COMMENDS TEXTILE INDUSTRY ON ITS PRODUCTIVITY

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROYHILL. Mr. Speaker, yesterday I shared with my colleagues in the House the first part of an article by Mr. Rolfe Neill which appeared last week in the Charlotte Observer. In part 1 of his article, Mr. Neill described how North Carolina's textile industry has managed to survive economically, despite Federal tax policies which discourage productivity by our Nation's industries.

Mr. Neill further illustrates this point in part 2 of his article, which I now share with my colleagues. In the second part, Mr. Neill draws several comparisons between the prosperous textile industry and the financially troubled auto and steel industries, and traces the textile industry's success to its extensive investments in the most advanced equipment, rather than resulting from mass infusions of direct Government assistance.

Mr. Neill makes a number of important points concerning the growing influence of the Federal Government over private industry—points which I think we would all be well advised to consider. I am certain my colleagues will find Mr. Neill's remarks to be most interesting, and quite relevant in view of the great interest across the country in tax and regulatory reform legislation.

OUR STATE SHOWS 'EM—AN INDUSTRIAL SURVIVAL LESSON

The troubled steel and auto industries differ in several areas from thriving North Carolina textiles:

Textiles tend to small mills, often family owned. There are about 6,000 of them.

Steel and autos are concentrated in a few hands where the scale of everything is huge.

There are not many unions among textile plants.

Steel and autos are unionized throughout.

N.C. textiles are pushing into world markets. Competition has forced efficiencies on our plants which have made Carolinas mills the most productive anywhere. They also set the worldwide standard in quality.

Autos and steel are being beat by the Japanese and the Europeans who are shipping their products here. Autos and steel have old plants. You have your own opinion about U.S. auto quality.

Textiles are styling up for overseas markets—from sheets and towels to denim and carpet. Plain patterns are being replaced with colorful ones not offered by overseas competitors. A weakened dollar has been a boon to textile exports.

Autos and steel don't match their competitors.

Textiles, because it is has so many operators, tends to have prices set in the market.

Steel is considered so basic to the nation's economy that "for three consecutive settlements, the steel contract was literally reached at the White House," says U.S. Steel Corp. chairman David M. Roderick.

Textiles is dominated by no firm. Even giant Burlington Industries has but about 6 percent of the business.

What GM (with 46 percent of the U.S. field) does in auto pricing is mimicked by the other three.

There are few areas in our personal or corporate lives into which Uncle Sam's hand does not intrude. Often it is helpful and sometimes benign. Increasingly, however, it is a hand that disrupts.

Our state's textile industry scrambled to stay alive. It did so by pouring money into modernization at a dizzying rate. Productivity improved. An industry that was skidding became reinvigorated. The accomplishment was despite a hostile tax environment.

LOOK WHAT HAPPENED

Meanwhile, look what happened:

1. N.C.'s textile work force is 22 percent minority and 50 percent female.

2. Average hourly wages and fringes have climbed to $6.25.

3. While some textile workers are laid off or on shortened weeks this recession, it's nowhere near as severe as 1974–75.

4. Textile workers and their new machines are outperforming the U.S. economy in productivity gains.

Productivity is very much related to tax policy. Does a nation encourage its producers or discourage them?

U.S. Steel's Roderick is pleading in full-page magazine ads that "tax laws must change to allow American industry to be at least tax competitive with foreign competitors. Our tax laws must allow for the recovery of investments in plant and equipment in at least as short a period as our international competitors—not five to ten times longer as is the case today."

THE POWER TO DESTROY

Chief Justice Marshall observed in 1819: "The power to tax involves the power to destroy." Debate that, Ron Reagan and Jimmy Carter and John Anderson. Tell us what you will do to get America moving again at the factory level.

It really comes down to this:

Is the government better at making decisions than the marketplace?

Evidence is overwhelming that you, the buyer, are far smarter about managing money than the people you send to Washington. A cranial glaze comes over most of them once they get in office.

A parallel question is this one:

To whom does wealth belong, the people who earned it or the government which taxes it?

For 50 years now, politicians have played business against worker while confiscating from both. It is a slick game that can run a long time but must one day end. Meanwhile, the class warfare weakens us all. If left unchecked it will bring the second American Revolution.

Worker exploitation is a settled issue in this nation. Public policy forbids it. Government intervention was required to accomplish this needed objective.

SERVANT BECOMES MASTER

However, we have moved from exploitation by business to exploitation by government. The servant has become the master with predictable consequences.

On the front of each public building should hang a reminder:

You paid for this building. Nobody inside produces any wealth. They only consume it that the needy might benefit from services. Are you keeping up with the results?

Wealth is created only when someone provides a marketable good or service. That nation prospers most which never forgets this, whose laws encourage thrift within the family and in the government office. Presently, we have thrift in neither place.

Only you have the power to change it.●

ARTISTS NEED TAX CREDIT

HON. FREDERICK W. RICHMOND

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. RICHMOND. Mr. Speaker, on August 27, 1980, I had the pleasure of

introducing H.R. 8038, which would provide artists with a 30-percent tax credit on the art work they contribute to nonprofit tax-exempt organizations.

The 1969 tax reforms unjustly penalize artists by prohibiting creators of art work from taking tax deductions on the value of works they contribute to tax-exempt organizations. The purpose of the provision was to stop politicians from abusing the tax system, by contributing their personal papers to public institutions and receiving substantial tax deductions for these "gifts". Congress moved to stop these political abuses but, in so doing, stopped artists' contributions as well.

Over the past 11 years several bills have been introduced to reverse this decision as it relates to artists—all without success. There is nothing in the legislative history of the 1969 tax reforms that in any way indicates a congressional intent to prohibit artists from contributing their art works. Yet, over the past decade, artists' contributions of their works to museums, libraries and hospitals have all but stopped, because the creators of these works are no longer able to receive any more than the cost of their materials as a tax deduction.

This present tax system is quite unfair in another respect: The collector of artworks can receive a full fair market value deduction if he or she contributes the work to a public institution—but the creator of that work cannot receive any deduction.

Ironically, when the artist dies, the art work, which he or she was not able to give away for more than its cost of materials, is then taxed, for estate tax purposes, at the full fair market value of that work. Mr. Speaker, it is time to change this unfair law as it affects American artists. It is time for us to allow artists to contribute their works to nonprofit tax-exempt organizations and to receive more than just the cost of materials.

The bill which I have introduced would allow an artist a 30-percent tax credit on the value of art works contributed to tax-exempt institutions.

This would mean that if the artist had a $10,000 tax bill at the end of the year and during that year had contributed art work valued at $10,000, he would receive a $3,000 tax credit and would owe the Federal Government $7,000 in taxes. The total contribution allowed in any 1 year could not exceed $35,000, though the artist could contribute art works valued up to five times that amount and take the tax credit over a period of 5 years.

I believe that with a new tax bill coming before the House soon the time is ripe for the House to change the unfair provisions of the 1969 discriminatory law as they affect artists, and correcting them with the provisions of H.R. 8038. It should be noted that these proposed changes in our tax system were worked out on the floor of the Senate in 1974 between my good friends and colleagues Senator JAVITS and Senator LONG.

Mr. Speaker, I look forward to working with my colleagues in the House to insure the success of this bill quickly so that our museums, libraries, hospitals, and other nonprofit tax-exempt organizations can once again receive gifts of art works from artists. If we do not act quickly, an entire era of contemporary art may be lost to future generations.●

THE 200TH ANNIVERSARY OF THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DONNELLY. Mr. Speaker, I would like to share with my colleagues the text Chief Justice Edward F. Hennessey of the Massachusetts Supreme Judicial Court delivered so eloquently in the historic city of Quincy, Mass., on the recent celebration of the 200th anniversary of the ratification and adoption of the constitution of the Commonwealth of Massachusetts.

Chief Justice Hennessey's address of September 6, 1980, follows:

SPEECH OF CHIEF JUSTICE EDWARD F. HENNESSEY

It is appropriate that the City of Quincy, perhaps above all cities and towns, should mark the 200th Anniversary of the great Constitution of our Commonwealth; your city rightfully claims John Adams and the Adams family, and John Adams was the principal author of our Constitution.

It is also appropriate that I should address you on this occasion, not for personal reasons, but because I hold office as Chief Justice of the Supreme Judicial Court of the Commonwealth; the life of John Adams, the lawyer, tracked closely with some of the history of the Supreme Judicial Court.

Let us look back, for example, to a very special day in the life of the young lawyer Adams: February 26, 1761. On that day the Justices of the Court assembled in their usual courtroom on the upper floor of the building we now know as the Old State House. It is still standing at the head of State Street in Boston. The Court met to hear arguments as to writs of assistance. First of all, let me say here that the Supreme Judicial Court is the oldest court of continuous existence in the Western Hemisphere. It has existed since 1692, but of course on that day in 1761, and indeed up until 1775, the Justices were appointed by the King. And so the lawyers, on that gloomy February day, confronted five Justices of the Crown, arrayed in rich robes of scarlet English broadcloth, and adorned by immense and pompous judicial wigs.

The writs of assistance, used by the King's officers in the colony, were general search warrants, not limited as to scope or time. It was as though today the police were armed with documents which empowered them to search any house they chose at any time they chose. Speaking against the writs was James Otis, a famous lawyer who had many times spoken out against the excesses of the Crown. His argument that day was fiery and courageous and he, of course, stated the community's case for the later adoption of the Fourteenth Article of the Massachusetts Declaration of Rights against unreasonable searches. He also, relying on certain English legal authorities, foreshadowed the constitutional principle that it is the duty of the judiciary to declare unconstitutional statutes void, as he proclaimed, "This writ is against the fundamental principles of law * * * the privilege of house."

Young John Adams was in the courtroom that day, as were most of the lawyers of Suffolk and Middlesex Counties, arrayed in their black legal robes and tie-back wigs. It is certain that Adams was that day, of all days, inspired toward his great constitutional writings of later years. He wrote about it later, with these words, "But Otis was a flame of fire. * * * American independence was then and there born; the seeds of patriots and heroes were then and there sown. * * * Every man of a crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born. In fifteen years he grew to manhood, declared himself free."

If Adams had moved to the window of the chamber that day in 1761, and had craned his neck a little, he would have seen the place nearby where, a decade later, the Boston Massacre would occur. On that day, in 1771, words flew and stones flew between British soldiers and local citizens. Shots were fired by the British and deaths resulted. And once more Adams was before the Supreme Judicial Court in the Old State House. This time he was risking his reputation and his future in answering one of the highest calls of the lawyer's duty: defending the unpopular client. British Captain Prescott and several of his soldiers were charged with the homicides. Adams and his associate for five days defended the case before the Court and a jury. The defendants were convicted of modest charges and received short sentences.

Finally, in 1775, Adams became Chief Justice of the Supreme Judicial Court, not as an appointee of the King, but as the first Chief Justice chosen by the colony which had proclaimed its independence. He retained the office for only a year, and then went on to other great pursuits. Among these was the writing of our Massachusetts Constitution of 1780.

This document has been called the most remarkable and comprehensive expression of political freedom in history. It preceded the United States Constitution by almost a decade, and it was an all but complete model for that Federal document. Our sweeping Massachusetts Declaration of Rights provided each citizen with protection against self-incrimination; protection against unreasonable search and seizure; the privilege to meet accusers face to face; freedom of speech, press and assembly; protection against excessive bail and cruel and unusual punishment; trial by jury; and due process of law and protection of private property.

Our Constitution also provided a frame of government which was to be later emulated by the Federal document: three separate branches of government—legislative, executive and judicial—with a legislature of two houses. The independence of the judicial branch was proclaimed as never before in history.

What an extraordinary development in the history of freedom we commemorate in this anniversary year! Some of the constitutional principles had been written before in the jurisprudence of France, and particularly England, and other places. But never, until the coincidence of events and genius occurred in Massachusetts, had the great ideas been expressed at once so well and completely. What a wrenching intellectual exercise it must have been, to tear away from the prejudices and vested interests of all previous time! And what courage was summoned, as Adams and his colleagues literally lived (in his words) with a "halter around [their] necks."

Another Chief Justice of the Massachusetts Supreme Judicial Court, Oliver Wendell Holmes, said in 1891: "The electric current of large affairs turns even common mould to diamond, and traditions of ancient honor impart something of their dignity to those who inherit them." These eloquent words suggest a parallel thought. The Massachusetts Constitution, followed by the markedly similar Constitution of the United States, speaks to the highest idealism and morality. They make a heritage which should lift the heart and the mind of every citizen. The citizen who appreciates the nobility of this great heritage, as well as the courage and genius which created it, must surely add to the greatness of his community and his country.

Finally, I think that if John Adams and other giants of our past could speak to us, they might say in the words of the old song, "Of course you can never be like us. But be as like us as you can."●

EMPLOYING DISABLED YOUTH: A VERY WORTHWHILE PROGRAM

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MILLER of California. Mr. Speaker, this recent editorial from a newspaper in my district highlights an important program that helps to place handicapped individuals in productive employment. The Cross Agency project of the Industrial Education Council of California has had great success in placing young people just out of high school in jobs in the community. They, and the businesses who hire these youngsters, are to be commended. I urge all of my colleagues to look at the fine example set by this organization.

The editorial follows:

ANOTHER COURSE?

To all intents and purposes it was another agency luncheon—the summer banquet of the Cross Agency Project of the Industrial Education Council of California.

There was the name tag to stick on your lapel—"Hello, my name is . . ."

There was a choice of chicken crepes or fruit salad with creme de menthe parfait for desert.

The program listed a welcome, nine speakers and a slide show with a certificate presentation at the end.

Midway into the chicken crepes, one of those in attendance scanned the speaker list and remarked, "I hope they're brief. I have a 3 p.m. meeting."

But it turned out to be more than just another luncheon.

The Cross Agency Project educates, trains and places young people we have come to call "the handicapped."

They were there, these "handicapped," some in wheelchairs, some conversing in sign language, sharing the crepes and the parfaits with those of us we have come to refer to as the "more fortunate."

The hollowness and inadequacy—in fact, the inaccuracy—of those labels was apparent from the outset. For those who hadn't noticed, the first speaker quietly hammered home the point.

Fifteen-year-old Tami Lucio, a microphone before her on her wheelchair, told of what it meant for her to have a job, to have work waiting for her to do, to earn a wage, to be needed every day.

"I just wish," she concluded with the eloquence of those not accustomed to public speaking, "that when people looked at me, they'd see me and not just this wheelchair."

Some polished speakers followed Tami, and they had worthwhile, even moving, things to say, but they'd been upstaged from the start. The whole message had been conveyed before they ever stepped up to the microphone.

The director of the Cross Agency Project is Diane Pedonti. Inside her office at the project's headquarters (Suite 160, 2430 Stanwell Drive, Concord) is a slogan that sets the tone for this publicly funded undertaking. It says:

"To deny the rights of any person is to deny our own humanity."

Fifty-four students participated in the project this summer. Twenty-nine employers received certificates of appreciation at the luncheon's conclusion.

By that time it was 2:30, and one person's 3 o'clock meeting was in jeopardy. Somehow that didn't seem as important as it had back during the chicken crepes.●

MOSCOW, POLAND, AND FINANCING OF COMMUNIST COUNTRIES BY THE WEST—PART II

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McDONALD. Mr. Speaker, the recent announcement by President Carter of the granting of a $670 million loan to Communist Poland in the form of agricultural credit guarantees, unfortunately, is just the latest in a series of steps by which the United States and the free world is assisting the Communist bloc out of its troubles. This credit will enable the Soviet Union to continue to place its emphasis on weapons production. It will assist the Soviet Union in avoiding any tough decisions concerning its relations with Poland and will enable Poland's Communist Party to remain firmly in power. Does anyone think the Soviet Union would do us such a favor? Absolutely not, but it appears our Government will continue to sell the rope to hang us with. Just how helpful we have been to Leonid Brezhnev in this respect is pointed out in this, part II, of the article that appeared in the Washington Monthly for June 1980. Part I appeared in the CONGRESSIONAL RECORD on Monday, September 15, 1980 on pages E4339 and E4340.

FINANCING OF SOVIET BLOC BY WESTERN BANKS IS A MISTAKE—PART II

(By James M. Whitmire)

OUR PARTNER, LEONID

What began as a civilized courtship has degenerated into a shotgun marriage for Western banks. COMECON nations have begun asking that their debts be "rescheduled," stretching out repayment timetables and effectively lowering interest rates. Poland, the second-largest and most "overextended" of COMECON borrowers (the Soviet Union holds the most loans, followed by Poland, East Germany, and Hungary), has been heavily rescheduled. Even if it wanted to repay, it lacks the money to do so. It seems only a matter of time before other COMECON nations whose seven-year loans are coming due make the same "request."

Poland, according to an IMF source, recently came perilously close to default. It owes the West $18.5 billion. Debt service on that amount—or the interest needed to continue the loan, without retiring any principal—is $4.5 billion. Poland couldn't even come up with the debt service; the Soviet Union stepped in and covered $1 billion of the amount with gold.

In spite of such signs, bankers are willing to reschedule. The relationship is propelled by an internal dynamic that makes Western banks feel obliged to maintain the flow of loans, even against their better judgment. A very large debtor has substantial influence over his creditor, for he can undermine or even destroy the bank by refusing to pay. Nearly every major Western bank is involved in a syndicate that is on the hook: so the entire system, not just individual banks, is threatened. It recalls the adage, "Make a small loan and you have a debtor. Make a large loan, and you have a partner."

Banks often take the easy way out and reschedule loans because they seek to maintain what some disparagingly refer to as "the illusion of liquidity." When a large debtor can't or won't repay, banks are unwilling to force him into default. As is well known, banks are in the business of loaning their deposits (assets). They are required by law to keep only about seven percent of the money they "have" on hand for demand-withdrawals. The collapse of any large debtor like COMECON would inevitably cause depositors to demand their money back, which would drain the federal deposit-insurance pools, activate other risk-sharing syndicates, and spread the chaos further.

This prospect, one expert explains, lends overriding importance to "preventing nations from dropping out of the system altogether." It is, he says, the "symbolic effect of debt repudiation that is most feared."

As Richards Portes of the University of London points out, "If creditors force a country into default, they are in a fundmentally weak position, because the sanctions available to them are limited." Obviously, it would not be possible to "repossess" the tractors, computers, grain, and other goods already shipped to the Soviet bloc. A sheriff's deputy can't serve papers on a factory in Minsk.

It would seem that, even if he were afraid to cut his losses and call in existing COMECON paper, a timid banker would refrain from making fresh loans. But observers believe the banking community is caught in the "undertow syndrome," swirling ever deeper into trouble. Bankers tend to see no alternative to being sucked under the tide of more COMECON loans. As far back as 1976, Financial Times reported that banks making uninsured loans to the Soviet bloc were "likely to make every effort to continue to lend in order to protect the loans, they

have already made." Each individual banker afraid to go public, cut his losses, and take the heat now opts to postpone the crisis farther into the future with more doomed loans. It is a classic illustration of sending good money after bad.

COLD, HARD KALASHNIKOVS

While Western governments feign ignorance of their predicament, the Soviet bloc is fully aware of it. Although insiders widely believe that COMECON has no intention of honoring its debts, it surely will not repudiate them as long as there is no crackdown on repayment. To do so now would mean needless martyrdom for the goose that lays the golden egg, why refuse to accept this steady stream of gifts from the West? This is why, some believe, the Soviets were willing to make good some of Poland's debt service. As long as new loans continue, they probably would make the same gesture again. But they are testing COMECON's tactical leverage in subtle fashion, trying to "reschedule" rather than repay problem debts like Poland's.

Even if, in spite of the evidence, you refuse to believe that the Soviets have been planning all along not to honor COMECON debts, you cannot help but worry that they will be incapable of repayment. The rate of credit growth far exceeds the rate of real economic growth in the East. COMECON centralized planning, which has met its initial goals of some crude capital formation, has proved incompetent at managing a sophisticated modern economy. Central planners are finding it one thing to churn out carload after carload of steel, and quite another to fashion advanced computers. As a result, Soviet-bloc GNP growth rates have fallen off recently, for instance Russia's is growing at a rate of only 2.5 percent compared to 6 percent in 1970. The new rate is Russia's "lowest growth since the war," a State Department economist says. At the same time, Eastern worker productivity is declining; shortages, supply bottlenecks, and inflation are widespread throughout COMECON.

The only way the Soviet bloc could raise enough hard currency to satisfy its debts would be to sell products to the West. But Eastern countries produce few goods of sufficient quality to compete on world markets. The only high-quality Russian exports seem to be vodka and weapons. Although it may be fine irony that we drown our sorrows in Soviet liquor, not even Armand Hammer would suggest we stock our armies with AK-47s.

As a result of Soviet-bloc economic inefficiency, "East-West" trade in fact moves mostly in one direction toward the East. With the exception of Hungary, all COMECON nations are net importers of food. With the exception of the Soviet Union, all are net importers of energy. While goods in this "trade" are moving East, money does not move in any meaningful way. We create the loans to "pay" ourselves for what we send.

Right now the Soviet Union is well-stocked with gold, which could be used to cover some of the debt. Bankers maintain that all COMECON loans are backed by an "implicit guarantee" from the Soviets. Nowhere, they admit, is this guarantee written down. "It's never been forcibly exercised by a bank," says one informed official, "so it's impossible to tell if the implicit guarantee has any explicit value." Bankers also contend that, even if the gold were used up, the vast Soviet oil reserves stand as collateral for COMECON borrowing. Obviously, they prefer not to speculate about the logistical specifics of foreclosing on that oil. But even if the Russians wanted to give us oil to cover their debts, it's questionable that they could extract it fast enough. According to Central Intelligence Agency estimates, by 1982 Russia will be forced to begin importing 700,000 barrels of oil a day, just to meet its own needs. At the current price of $30 a barrel (certain to rise by 1982), that would cost the Soviets $7.6 billion a year. Can they obtain enough hard currency to repay COMECON debt to the West and cover this impending new expense?

BLITZKREDIT

The economic and political risks of the existing Soviet-bloc debt present immediate problems of frightening proportions. But unless bankers cease making new and equally hopeless loans to the East, things could become far worse. Unfortunately, the current recession descending on the U.S. which is predicted to take on global proportions later in the year presents the Soviets with an ideal opportunity to throw a full-court press at Western banks. It would be the financial equivalent of the infamous 1972 grain deals, when the Soviets, taking advantage of the open access to commodities markets, nearly cornered the grain supply. They used our own commodities practices—which provide little government regulation of the markets and allow brokers to buy up grain without revealing the identity of their clients—against us. The financial system is vulnerable to similar manipulation. Here's how it might work.

The private international credit market, like the grain market, is largely unregulated. Its transactions—especially knowledge of who is lending how much to whom—are shrouded in jealous secrecy. During the coming recession, when banks will once again be highly liquid and lack loan demand, the Soviets would blitz the credit markets, soaking up every loan available. (Since the new round of oil price increases, it has been estimated that OPEC will take in $300 billion in 1980, most of which will end up in Western banks.) Belatedly comparing notes, the bankers would find themselves accomplices to the runaway COMECON debt. Such a debt, say, pushed to about $150 billion, would be viewed, and rightly so, as a potential Dunkirk for Western banks.

Experts disagree on the susceptibility of the banking community to such blitzkredit tactics. Georgetown University economist Stanislaw Wasowski, an East-West trade authority, considers the blitz analogy alarmist. "While the banking community presents a closed front to the outside world," he says, "it is relatively small—perhaps a few thousand key bankers—and highly cohesive, with elaborate channels of communication." Wasowski believes word of a Soviet borrowing advance would spread quickly within this fraternity, causing bankers to react by moderating the eastward flow of funds.

This analysis overlooks the possibility that the Soviets will shrewdly wait for a recession to saddle lenders with excess capital. In that environment, bankers compete stridently for supposedly safe ways to unload their money. They would have an incentive to keep quiet about increased COMECON borrowing, if only to avoid public criticism. Does this sound implausible? It worked for the Soviet bloc during the 1974-75 recession. Bankers belonged to the same fraternity then, and whatever tips they passed to their brothers didn't prevent the initial round of bad loans from being made.

ALL OTHERS PAY CASH

Whatever happens in the future, the threat posed by the existing Soviet bloc debt is real and immediate. The Soviets are beginning to master the classic nuances of manipulating banks. They are learning to finesse and demur, allowing the bureaucratic momentum of good money after bad to work its magic unassisted.

The West shows little inclination to call in Soviet-bloc paper now, thus forcing the inevitable default. There would be a tremendous disruption of banks and business, but at least the losses would be cut and finished with. (A few losses could be avoided, for some of the COMECON debt involves goods not yet delivered.) Failing foreclosure, our only retaliatory threat is to cut off grain and technology shipments to the East.

(You may think this has already been done because of the alleged "grain embargo" imposed after Afghanistan. In fact, the "embargo" applies only to additional tons beyond the eight million metric tons the U.S. promised to export to Russia each year as part of the 1975 grain agreements. Shipments of that grain continue.)

Conventional wisdom holds that the prospect of a cutoff in grain, computers, and spare parts for vital machinery like oil drilling rigs is sufficient to deter the Soviets from any rash moves on the debt front. During times like these, that threat is certainly credible. But, as we've already established during "times like these" the Soviets have no interest in canceling COMECON debts, since they're receiving gifts as fast as they can unwrap them.

Perhaps the most chilling prospect is that the Soviets' debt card is likely to trump during a severe confrontation, when shooting has not yet started and probably can be avoided. During a severe crisis (similar, say, to the Cuban missile crisis), which side would be injured more by a default trade cutoff showdown? The Soviets would lose access to further loans (gifts) from the West, and face eventual shortages in grain and technology. But these would be long-term problems. The West's problem would be immediate; its banking system could well collapse into chaos. Trying to absorb the gigantic default would set in motion, many believe, a panic equal in magnitude to the stockmarket crash in 1929. The West would also have to absorb the collateral damage of disrupted farms and businesses that base their production on the funny-money Eastern trade. This combination would cause such frantic squabbing in the West distracting the attention of Western leaders that clearly it would be at least a short-run tactical triumph for the Soviets.

Most of the experts interviewed for this article believe that the Soviets would resort to default backmail only after a radical deterioration of the political atmosphere. Considering the invasion of Afghanistan, the predicted defeat of SALT II, and the Soviets' perception of Carter's Olympic boycott as a hostile act, such a deterioration is not unimaginable.

Several days after the Afghanistan invasion, NATO ministers boldly declared they were considering retaliating by shutting off Soviet credits. The idea was quietly dropped the day after it was announced.

NATO's fumbling response to the invasion of Afghanistan has given the Soviets an opportunity to observe how potent their default weapon is even when employed in a tacit, passive manner, for strictly defensive purposes. They must now be all the more impressed with that weapon's potential for an active, aggressive Soviet offensive designed to extract political concessions from a checkmated West.●

THE 75TH ANNIVERSARY OF THE IMMACULATE CONCEPTION CHURCH OF SAINT CLAIR, PA.

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. YATRON. Mr. Speaker, September 21, 1980, marks the 75th anniversary of the founding of the Immaculate Conception Church of Saint Clair, Pa. Under the guidance of Father John S. Beneck, the devotion displayed by the clergy and congregation of this church serves as an inspiration to their community and to our country as a whole.

On Sunday, Bishop Joseph McShea will celebrate the anniversary Mass with the congregation. I know that my colleagues join me in commending the Immaculate Conception Church on its diamond jubilee and in extending every good wish for continued service to its congregation and community.

The United States of America is justifiably proud of our freedoms which have flourished under our many denominations of spiritual belief. As citizens under God, we seek a higher vision to continually perfect ourselves and our country. The clergy and the congregation of the Immaculate Conception Church exemplify our Nation's commitment to God, our country, the betterment of mankind, and to peace. May they enjoy another 75 years and more, of devotion to God and America.●

"BAR TO PROSECUTION" MAILING IS MISLEADING

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DRINAN. Mr. Speaker, a number of Members of Congress have recently contacted the office of the Subcommittee on Criminal Justice, which I chair, requesting information concerning an alleged bar to prosecution in H.R. 6915, the Criminal Code Revision Act of 1980, which would supposedly give union bosses special protection against prosecution for extortion and crimes of violence. These inquiries are apparently in response to a mail campaign urging rejection of such a bar to prosecution.

Although the Senate criminal code bill—S. 1722—contains a bar to prosecution involving extortion committed during a legitimate labor dispute, H.R. 6915 does not employ such a device. Rather, H.R. 6915 would continue, without significant changes, current Federal law regarding extortion.

The Primary provision of Federal law used to prosecute extortion is the Hobbs Act (18 U.S.C. 1951). The Hobbs Act was construed by the Supreme Court, in *United States* v. *Enmons*, 410 U.S. 396 (1973). In that case, the Court held that the Hobbs Act does not reach conduct by union members and officials during a collective bargaining dispute where the goal of the dispute is a legitimate union objective, such as seeking higher wages in return for services rendered to the employer. The Court viewed use of the phrase "wrongful use of actual or threatened force, violence, or fear," as pertaining only to instances where the alleged extortionist has no lawful claim to the sought-after property. Because union members have a lawful claim to higher wages, legally obtainable through collective bargaining, there can therefore be no wrongful taking. The Court relied on the use of the word "wrongful" in the definition of extortion, and on the legislative history, which, in the Court's view, indicated no intent that the act be applied to activities such as those at issue in *Enmons*.

Section 2522 of the proposed criminal code prohibits extortion. That section requires that the individual have the intent "wrongfully" to obtain the property of another. The Judiciary Committee intends to carry forward the meaning of that term as it appears in the current Hobbs Act (18 U.S.C. 1951). As already noted this term has been interpreted by the Supreme Court to limit the Hobbs Act definition of extortion to the use of actual or threatened force, violence, or fear in order to obtain illegitimate objectives. *United States* v. *Enmons*, 410 U.S. 395 (1973).

The use of the word "wrongful" does not exempt labor unions, labor officials, and other labor representatives from prosecution for extortion. This is clear from the Supreme Court's decision in *United States* v. *Green*, 350 U.S. 415 (1956), upholding a Hobbs Act indictment for using threats of violence to obtain wages for unwarranted and unneeded work. In *Green*, the union local and official were charged with using threats of force to persuade a contractor to hire union laborers to scout ahead of each of his bulldozers to warn of approaching pitfalls. The employer did not want the laborers and saw no need for them. He had always done such work in the past without laborers. *United States* v. *Green*, 246 F.2d 155, 158 (7th Cir. 1957), on remand from 350 U.S. 415 (1956). In the area of labor disputes, personal payoffs, wages for unwanted and superfluous services, or payments prohibited by Federal labor laws could be a basis for a Federal extortion prosecution under the Hobbs Act. See *United States* v. *Enmons*, 410 U.S. 395 (1973), *United States* v. *Green*, 350 U.S. 415 (1956); *United States* v. *Arambasich*, 597 F.2d 609 (7th Cir. 1979); *United States* v. *Nell*, 570 F.2d 1251 (5th Cir. 1978); *United States* v. *Daley*, 564 F.2d 645 (2d Cir. 1977); *United States* v. *Quinn*, 514 F.2d 1250 (5th Cir. 1975); *Bianchi* v. *United States*, 219 F.2d 182 (8th Cir.), cert. denied, 349 U.S. 915 (1955); *United States* v. *Kemble*, 198 F.2d 889 (3d Cir.), cert. denied, 344 U.S. 893 (1925).

Some have argued that any incident of violence in a labor dispute should be prosecutable under the Federal extortion law, the Hobbs Act. Federal extortion law would be a very blunt instrument with which to prosecute incidents of violence. A minor assault in a picket line scuffle, for example, could only be prosecutable as extortion, which carries a maximum term of imprisonment equivalent to 10 years under current law.

As noted by the Secretary of Labor:

> [T]here is no more reason to make employee violence subject to the Federal Criminal Laws than there would be in making employer violence subject to these provisions. These isolated incidents of violence, which ordinarily could erupt in a tense strike situation, while not condoned, are far better dealt with by local authorities enforcing State and local laws.
>
> We are not convinced that State and local law enforcement officials are currently unable to deal with the problem of strike-related violence * * *
>
> Our experience in two recent labor disputes in the coal and trucking industries bears out our conviction that the best way to cool labor strife quickly and effectively is to allow the situation to be handled at the local level. In both of these situations, the Federal Government was able to establish a constructive Federal presence under existing law.

Letter of January 16, 1980 to Hon. Benjamin Civiletti, Attorney General, from Hon. Ray Marshall, Secretary of the Treasury.

Based on testimony before the Subcommittee on Criminal Justice, the committee is in agreement with the Secretary of Labor that no real evidence has been produced to show that States cannot adequately handle incidents of violence arising from labor disputes, nor that the limited resources of the FBI could be used to investigate such incidents more effectively than local and State law enforcement.

By retaining existing Federal law on extortion the committee is not condoning the use of violence for any purpose. Rather, this limitation embodies the committee's judgment that the policing, through the criminal process, of such matters as local labor disputes is not an appropriate matter for the Federal Government. Although the Federal Government has expressed a significant interest in insuring the proper conduct of labor-management relations as they affect interstate commerce, the Government already has a significant arsenal of weapons with which to attack unfair labor practices. The National Labor Relations Board can suspend employment rights of persons engaging in violence in connection with labor activities. Section 8(b)(1)(A) of the National Labor Relations Act (29 U.S.C. 158(b)(1)). The NLRB can also seek a temporary injunction against unfair labor practices. Section 10(j) of the National Labor Relations Act (29 U.S.C. 160(j)).

Employers also have the ability to protect themselves through suits in Federal and State courts to enjoin labor activities involving fraud or violence, see section 4(i) of the Norris-LaGuardia Act (29 U.S.C. 104(i)), and for damages. To add to these remedies the ability of the Federal Government to prosecute in Federal court would be to impinge seriously upon a sphere of Government activity—the enforcement of criminal laws—which is a very special preserve of the States.

The decision of the Judiciary Committee to carry forward the current scope of the Hobbs Act as enacted by Congress and interpreted by the Supreme Court is thus in accordance with the underlying principle of H.R. 6915 not expand Federal jurisdiction absent a showing of compelling need.

Of course, if coercive violence or threats of violence by labor are part of a significant and organized pattern of illegal activity, Federal prosecution may be possible under other sections of the proposed code, such as section 2701—racketeering—or section 2704—travel or transportation in aid of racketeering. Similarly, antilabor violence by management which involves travel in interstate commerce may be prosecutable under section 2107—strikebreaking—of the proposed code.●

LONG AND SHORT HAUL AMENDMENT TO THE RAIL ACT

HON. KENT HANCE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HANCE. Mr. Speaker, during the controversy over ICC review of and surcharges on rail rates in the Rail Act of 1980, a supposedly minor change in existing law made by the Commerce Committee bill has gone unnoticed. However, repeal of the "long and short haul" provision of the Interstate Commerce Act by section 303(a) of H.R. 7235 would have a far-reaching effect on many rural agricultural shippers which was apparently unintended by the committee. My amendment would restore the protection of the long and short haul provision to grain, cotton, soybean, and rice shippers.

THE LONG AND SHORT HAUL PROVISION

Section 10726 of 49 U.S.C. states that a railroad cannot charge more for a shorter haul in the same route and direction than for a longer haul. The original intent of the provision was to prevent railroads from undercutting water carrier competition on long hauls, where the two compete, to the point where water carriers were driven out of business, and subsidizing the long hauls with exorbitant rates on the intermediate hauls on the same route. With the decline in railroad dominance and the success of water carriers, the ICC has been granting routine relief from this section to allow railroads to compete with water carriers. The committee asserts that repeal of the section for railroads—it still would apply to water—is only conforming to current practice.

My amendment does not affect rail/water transportation competition. The railroads should be able to continue their current practice of meeting competition with water. The problem is discrimination against small shippers who are intermediate to heavier shippers on a rail line.

INTERMEDIATE APPLICATION

There are basically two types of rail rates: Bulk or three-car reduced rates that are established between individual points by the railroads; and higher group, or one-car rates established between a major origin/destination point—for example, Kansas City—and a group of origins/destinations—for example, northwest Texas. Under current law, every little town that does not have a published three-car rate is eligible for that rate which prevails at the next point beyond on the line. This is intermediate application.

The problem that may arise under the committee bill is that the railroads would not be prohibited from doing away with intermediate application of rates. Consequently, a shipper in an unnamed town would only be eligible for the high group or one-car rate for his area, no matter what bulk he shipped in or out. He is, therefore, discriminated against because he does not live in the town lucky enough to have a published rate.

Why does he not apply for a three-car rate? Under present law, of course, he does not really need to. Under proposed H.R. 7235 the railroad may not feel such a reduced rate was justified, given the cost of stopping, and the small shipper may not have the resources to fight the railroad. Besides, he probably could not afford the potential ill will from the railroad if he did fight.

The argument has been made that the railroads should, in fact, receive more compensation for stopping only infrequently in a town without a published three-car rate, even if shippers in that town have a bulk shipment. The railroads say that the cost of stopping a train is covered by bulk rates only if there are many bulk shipments out of a given point. With infrequent bulk shipments, the added cost of stopping is not covered. Consequently, the railroads contend, intermediate application of bulk rates is an unreasonable cost to railroads and should be repealed. If a destination or point of origin merits a published bulk rate, they may apply for it.

There is a major fallacy in this argument: The difference in one-car and three-car or bulk rates is not justifiable in terms of the added cost of stopping infrequently. One-car rates are on the order of 50 percent higher than three-car rates; however, the distribution system for railcars is in two stages: An express stops at a large railyard to drop off a whole series of individual shipments to small towns, and a milk run local drops off these shipments of varying sizes at small towns up and down the line from the yard. The cost of stopping the local only occasionally at any intermediate point does not justify such an increase over the three-car rate.

My amendment to section 303(a) of H.R. 7235 preserves the protection of the long and short haul provision for cotton and grain farmers and shippers. Increasing freight rates by 50 percent for hundreds of elevators in unnamed towns could wreak havoc with our agricultural economy.●

"BUY AMERICAN" POLICY

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FORD of Michigan. Mr. Speaker, I was tremendously pleased this week to learn that the Wayne County Road Commission, in Michigan, has instituted a "Buy American" policy, effective immediately.

With unemployment in Michigan already exceeding 14 percent, double the national average, no part of the Nation is more keenly aware that the United States has a serious unemployment problem.

In Michigan, the historic center of the automotive industry, we are also keenly aware of the role that foreign imports have had on declining auto sales and the resulting rise in unemployment.

Mr. Speaker, for that reason I am happy to see a major agency of Wayne County's government adopting a "Buy American" program. I commend the members of the road commission—Chairman Michael Berry and his fellow board members, Grace Hampton and Claude Dukes.

I insert in the RECORD at this point the board's September 12 press release announcing its new policy:

Concerned with the "depressed condition" of the American economy in general and that of Michigan in particular, the Wayne County Road Commission has instituted a "Buy American" policy effective immediately.

Road Commission Chairman Michael Berry, with the concurrence of his fellow board members, Mrs. Grace Hampton and Claude Dukes, said the new policy will encourage and support American manufacturers and suppliers.

The Board, in adopting the "Buy American" policy, stressed that it will remain in effect until the economy recovers from its tailspin and the unemployed are returned to jobs.

"We realize that alone, the importance of such a policy may appear as a bandaid approach to an extremely serious wound but hopefully, as others join the "Buy American" plan it will have a noticeable impact.

"We fully expect our national and state leaders, both the executive and legislative branches to do what is necessary to restore our nation's economic vitality and put people back on the payrolls of industry," Berry said.

"Our area, Detroit and the state, has one of the highest unemployment rates in the country. We must do something positive to demonstrate our concern and feel that American-made products must be given our fullest support," Berry said.

The Road Commission, with an annual road budget in excess of $100 million is active in road construction and road maintenance and operates both Detroit Metropolitan Wayne County and Willow Run Airports, with combined budgets approaching $50 million-a-year.

The Board's staff has been instructed, where available, that products and materials of domestic (American) origin be purchased.

In establishing the new purchasing policy, the Board made it clear that it will encourage its suppliers to look closely at supporting the "Buy Amercian" concept.

"The impact of foreign produced finished products and raw materials on our country's economy and the adverse affects of all these imports on the business and labor force in the United States is rapidly being recognized, by commissions such as us and by organized labor and industry," Chairman Berry noted.

He cited a recent business-labor meeting called by Mike Rinaldi, President of UAW Local 600, where UAW President Doug Fraser called for a concerted effort on the part of all—business and labor—to consider the plight of the American economy and to "Buy American".

"Since it appears that there are international restrictions when it comes to buying American-made products, we feel that it is time to show our unwillingness to purchase foreign-made products," Berry added.

To ensure that its new "Buy American" policy is well circulated, the Board also instructed its staff to notify, by letter, all of the state's major unions as well as its local suppliers and contractors.

The Board's policy will also be circulated to local governmental agencies and boards for possible action.

The Road Board also revealed that both gasoline and diesel tax revenues, from which road commissions, cities and the state obtain their operating funds, as reported by the Michigan Department of Transportation for the last quarter (April-June) were down 11 and 26 percent respectively compared to a year ago.

"This means to the Wayne County Road Commission that our revenues to build and maintain a viable road system, are reduced by nearly three-quarters of a million for one quarter of the year," Berry noted.

The downward trend in traditional methods of collecting revenues for maintaining and building highways, roads and streets, was also noticed in the previous quarter, reflecting the national, state and local economies sagging conditions, the Board reported.●

THE CONGRESSIONAL COUNTRY CLUB PROBED ON LABOR PRACTICES

HON. PARREN J. MITCHELL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MITCHELL of Maryland. Mr. Speaker, the Maryland Division of Labor and Industry has initiated an investigation of charges that the Congressional Country Club, one of the most prestigious private clubs in the Washington area, is alleged to have defrauded its employees of more than $1 million in wages over the last 30 years. Accordingly, an assistant State attorney general, armed with a court order, has begun to sort through thousands of club documents.

In the course of his inspection, this State official was forced to break open one file cabinet because club officials claimed to have lost the key. This incident, among others, indicates a reluctance on the part of the Congressional Country Club to cooperate with an investigation of its labor practices. Due to the gravity of the charges, such reluctance disturbs me. My dismay is further heightened by the fact that the club is a tax-exempt organization which enjoys all the privileges thereof. It would seem to me that the chief legal officer of the State and his designated representatives should be accorded more respectful treatment in their desire to examine the payroll practices of a government-sanctioned, tax-exempt organization.

Despite its name, the Congressional Country Club is in no way affiliated with the U.S. Congress. Nevertheless, because the case against the club raises serious questions about its management and tax-exempt organizations in general, I believe Congress should be kept informed of any developments in the case. In that regard, I am submitting the following article, taken from the Washington Star, entitled, "Congressional Country Club is Probed on Labor Practices," for my colleagues' perusal.

CONGRESSIONAL COUNTRY CLUB IS PROBED ON LABOR PRACTICES

(By Tonya D. Swanson)

An assistant Maryland attorney general yesterday moved into a former jail cell in the Montgomery County Courthouse to begin investigating the labor practices of the exclusive Congressional Country Club.

Assistant Attorney General David Blum will be reviewing the club records, which have been under lock and key at the courthouse since a club member filed suit on behalf of Congressional's employees two years ago.

The member, George W. Koch, and employees charge that Congressional has systemically cheated club workers over the past three decades out of over $1 million through various fraudulent schemes including a 20 percent payroll deduction from each employee's paycheck.

The club has maintained that the payroll deductions were standard practice for restaurants and has denied all other allegations.

Blum, assigned to represent the Maryland Division of Labor and Industry, is charged with investigating written complaints filed a few months ago by workers at the club. The Division of Labor and Industry investigates all such employee complaints.

The assistant attorney general and other state investigators are prohibited from removing any of the documents from among the approximately 60 cardboard file boxes stored at the courthouse.

As a result, Blum will be spending quite a bit of time in cell until the investigation is closed.

Yesterday, Blum brought a tool box with him to work because the club has been unable to produce a key for a three-drawer metal file cabinet containing some documents. As his first task, the investigator had to break into the cabinet.

The complaints against the club first came to light nearly three years ago when Koch, president of the Grocery Manufacturers of America, was contacted by a waitress, Juanita Chavis, who had been employed at the club for 24 years. She told Koch that money was being skimmed from her paycheck.

Chavis said she took her complaint to Koch after talks with other members listed in the club's directory proved futile.

Koch said, "I just felt a moral obligation to pursue the subject, and as a member to exercise my right and see if there was any money taken from the employees. . . . If so, it was a despicable act."

Further investigation led Koch to similar charges made by other club employees, many of whom are black and Hispanic.

Koch, considering himself a club stockholder, filed suit in Montgomery County Circuit Court in February 1977 seeking access to the club's records after all personal efforts at inspecting them failed.

"I'm sorry that it's taken the attorney general and a drill to bring out the truth," said Koch. "It's a hard way to extract the truth, but it is pleasing to know that even if they have to use a crowbar, the truth will come to light."

The suit has remained in litigation for such a lengthy period because of numerous legal motions—including one seeking to protect employees from retaliation—filed by attorneys for both sides during the extended period.

Although acting independently of his legal actions, the Division of Labor and Industry finally intervened in the Koch case.

As a result of the findings of his investigation, Blum said, the case held by Labor and Industry can be dismissed if, "We can find that the wage-payment complaints don't result in a valid claim under the statute."

He said if the investigation finds the claims are valid, "We can arrive at some kind of settlement. Or we can file suit on behalf of these claimants."

Chavis said, "I hope it will all be over with soon. I just regret that Mr. Koch was misunderstood. The man is a good man and he didn't have any bad motives. He was just trying to help the club stay up to its standards. I hope God will open the hearts of the members and let them see that Mr. Koch is a good man."

Saying he has no regrets over lost friendships at the club, Koch said he will continue his fight for access to the club's records.

"I was there last week, and I played tennis on Sunday. You don't garner friendships by overlooking moral or legal responsibilities," he noted.●

VOYAGEURS NATIONAL PARK AMENDMENTS

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. OBERSTAR. Mr. Speaker, the legislation I am introducing today to amend the Voyageurs National Park Act represents the product of literally years of cooperative effort among the people of my district, the National Park Service, the State of Minnesota, and Members of Congress.

It represents an essential step forward in the development of Voyageurs National Park.

The legislation would implement recommendations for boundary changes contained in the master plan developed by the Park Service. It would resolve a lingering controversy over hunting in the Black Bay area of the park. It would enable the Park Service to establish a development site in the area of International Falls, which has been delayed far too long.

The bill's major provisions would:

Delete approximately 782 acres in the Neil Point area of the park, as recommended by the Park Service master plan;

Add approximately 180 acres in the Black Bay Narrows area of the park;

Permit the Secretary of the Interior to lease 18.45 acres at the Kabetogama State Forestry Station from the State of Minnesota;

Permit the Secretary to obtain a permanent easement for development of road access along the Ash River trail;

Delete approximately 1,000 acres, almost entirely water, of Black Bay;

Increase the authority for land purchases by $10,995,000;

Direct the Secretary of the Interior to inventory road access to the park and report his recommendations for improving that access.

The legislation would return the management of the lands and waters of Black Bay to the State of Minnesota. The State of Minnesota would manage these areas as a wildlife management area, in which only duck hunting would be permitted. The State would also agree to develop a management plan for its lands adjoining Black Bay to preserve the natural character of the area to complement the management of the national park.

The Department of Natural Resources of the State of Minnesota has agreed to:

Lease the Kabetogama State Forestry Station to the National Park Service;

Grant the Park Service a permanent easement on 120 acres along the Ash River Trail for the development of a road into Sullivan Bay;

Establish a wildlife management area in that portion of Black Bay now within the park;

Develop a plan for the management of State lands riparian to Black Bay.

The deletion of the Neil Point area as recommended by the master plan would result in retention of approximately 625 acres of land in the private sector, and returning 25 acres of land to Koochiching County, and 133 acres of land and water to the State of Minnesota; 9 permanent residences, 13 seasonal cottages, and 1 commercial business—houseboat rental operation—will be affected.

The legislation would not require the State of Minnesota to transfer fee title to any additional land. Prior to the establishment of the park, the State donated 35,235 acres. This legislation would require that the State provide the Park Service with a lease on 18.45 acres and an easement for another 120 acres.

The legislation offers a sensible approach to land management by the Federal Government.

The increase in funding will enable the Park Service to acquire property on a willing-buyer/willing-seller basis. It is not intended to imply in any way that the Park Service is to resume condemnation of private lands within the park. The Park Service is, in fact nearing final action on a revised lands acquisition policy. That policy would limit condemnation to the acquisition of property necessary for development purposes and whose owners do not wish to sell or to prevent development inconsistent with the purposes for which the park was established. The funding increase proposed in this bill is necessary to insure that the Park Service has the authority to enter into agreements with landowners who wish to sell and the authority to proceed with long-promised development activities.

Finally, the bill directs the Park Service to undertake a comprehensive study of the road access to the park and to report to Congress on its recommendations to improve that access. This Congress has a responsibility to improve access to the park, and to upgrade those roads whose use of which is primarily generated by the presence of the park.

This legislation has the support of the State of Minnesota, the National Park Service, the Citizens Committee for Voyageurs National Park. It is compromise legislation which deals with the interests of the Park Service, the State, park users and the people who live in and around the park.

I hope this House will act quickly to pass this legislation. I urge my colleagues to join with me in cosponsoring.●

H.R. 4370: AN AMENDMENT

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FLORIO. Mr. Speaker, in accord with House rule XIII, clause 6, I am placing the following amendment, which would amend H.R. 4370, or its substitute, in today's CONGRESSIONAL RECORD.

The purpose of my amendment is to insure that the U.S. Environmental Protection Agency and the Departments of Energy, Transportation, and the Interior work together to recommend to the lead certifying agency the terms and conditions necessary to carry out the operation of coal slurry pipelines in such a way that such operation will not pose a threat to public health and the environment as a result of the discharge, disposal, or release of a hazardous substance or waste.

My amendment establishes an Interagency Environmental Task Force composed of the U.S. Environmental Protection Agency and the Departments of Energy, Transportation, and the Interior. The amendment requires the certifying agency to transmit the application for issuance of a certificate to the task force. The task force is directed to review the application and make recommendations to the lead agency, in this case the Interstate Commerce Commission, as to the terms and conditions of pipeline operation to insure that: First, no adverse effects on water quality occur at the point of discharge; second, waste disposal will be carried out in such a way as not to present an unreasonable risk to public health or the environment; and third, an accidental release of material from the pipeline will not endanger public health or the environment.

In hearings before the Interstate and Foreign Commerce Subcommittee on Transportation and Commerce, Federal agency representatives expressed repeatedly their limited understanding of the overlapping areas of responsibility both within and among agency programs and responsibilities with regard to coal slurry pipeline operations. On the basis of the hearing record and other information available to the subcommittee, I feel it is critical that we take an additional step to guarantee that environmental considerations, especially those associated with the management of hazardous materials and wastes, are addressed early in the planning process:

AMENDMENT TO SUBSTITUTE FOR H.R. 4370, REPORTED FROM THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, OFFERED BY MR. FLORIO

Page 40, line 12, strike out "and".

Page 40, line 16, strike out the period and substitute "; and".

Page 40, after line 16, insert:

(6) the Interagency Task Force established under subsection (k) has reviewed the application for issuance of such certificate in the manner required under such subsection and that the Commission has taken into account any terms and conditions recommended by the Task Force.

Page 46, after line 16, insert:

(k)(1) The Secretaries of the Interior, Transportation, and Energy and the Administrator of the Environmental Protection Agency shall jointly establish an Interagency Task Force for purposes of carrying out the review and making recommendations to the Commission under this subsection. Such departments and agency shall make available to the Task Force such personnel of the departments and agency as the Task Force deems necessary to carry out its functions under this subsection.

(2) Whenever application is made to the Commission for a certificate of public convenience and necessity under this section, the Commission shall promptly transmit a copy of such application to the Interagency Task Force established pursuant to paragraph (1). Upon receipt thereof, the Task Force shall review—

(A) the effects of the proposed pipeline and related facilities on water quality at the point of discharge;

(B) the extent to which solid waste (within the meaning of the Solid Waste Disposal Act) will be disposed of in connection with the operations of the pipeline and the hazards associated with such waste disposal; and

(C) any other effects which such pipeline may have on public health and the environment.

For purposes of such review, the Task Force may, in addition to any other information available to it, utilize information developed pursuant to the requirements of subsection (f) of this section.

(3) Following its review under paragraph (2) with respect to any application for a certificate of public convenience and necessity, the Interagency Task Force shall report to the Commission on its findings under (k)(2)(A)(B)(C) and shall make recommendations to the Commission, for inclusion in the certificate, the terms and conditions necessary to insure that the proposed pipeline will not—

(A) create undue adverse effects on water quality at the point of discharge;

(B) result in solid waste disposal which presents an unreasonable risk to public health or the environment; and

(C) present an unreasonable likelihood of releases of any material from the pipeline or related facilities which may endanger public health or the environment.

Page 56, line 4, strike out "air and water quality standards" and substitute "standards and requirements relating to air quality, water quality, and solid waste."

AMENDMENT TO AMENDMENT IN THE NATURE OF A SUBSTITUTE FOR H.R. 4370—OFFERED BY MR. FLORIO

(Page and line references are based upon introduced text of H.R. 7982)

Page 7, line 11, strike out "and".

Page 7, line 15, strike out the period and substitute "; and".

Page 7, after line 15, insert:

(6) the Interagency Task Force established under subsection (i) has reviewed the application for issuance of such certificate in the manner required under such subsection and that the Commission has taken into account any terms and conditions recommended by the Task Force.

Page 11, after line 25, insert:

(i)(1) The Secretaries of the Interior, Transportation, and Energy and the Administrator of the Environmental Protection Agency shall jointly establish an Interagency Task Force for purposes of carrying out the review and making recommendations to the Commission under this subsection. Such departments and agency shall make available to the Task Force such personnel of the departments and agency as the Task Force deems necessary to carry out its functions under this subsection.

(2) Whenever application is made to the Commission for a certificate of public convenience and necessity under this section, the Commission shall promptly transmit a copy of such application to the Interagency Task Force established pursuant to paragraph (1). Upon receipt thereof, the Task Force shall review—

(A) the effects of the proposed pipeline and related facilities on water quality at the point of discharge;

(B) the extent to which solid waste (within the meaning of the Solid Waste Disposal Act) will be disposed of in connection with the operations of the pipeline and the hazards associated with such waste disposal; and

(C) any other effects which such pipeline may have on public health and the environment.

For purposes of such review, the Task Force may, in addition to any other information available to it, utilize information developed pursuant to the requirements of subsection (f) of this section.

(3) Following its review under paragraph (2) with respect to any application for a certificate of public convenience and necessity, the Interagency Task Force shall report to the Commission on its findings under (i)(2)(A)(B)(C) and shall make recommendations to the Commission, for inclusion in the certificate, the terms and conditions necessary to ensure that the proposed pipeline will not—

(A) create undue adverse effects on water quality at the point of discharge;

(B) result in solid waste disposal which presents an unreasonable risk to public health or the environment; and

(C) present an unreasonable likelihood of releases of any material from the pipeline or related facilities which may endanger public health or the environment.

Page 20, beginning in line 1, strike out "air and water quality standards" and substitute "standards and requirements relating to air quality, water quality, and solid waste."●

THE AGENCY ACCOUNTABILITY ACT

HON. ANDREW MAGUIRE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MAGUIRE. Mr. Speaker, today I am introducing the Agency Accountability Act of 1980. This is legislation which I originally drafted in 1977. Because I believe it is important to consumers and to proponents of genuine regulatory reform, I am asking the House to consider this legislation again.

From October 4 through October 11, we will be observing Consumer Education Week. This is an important time for the consumers of this Nation and also for those of us in Congress who have fought for strong consumer protection legislation. The Federal agencies and the acts of Congress which they administer—whether the issue is clean water, clean air, motorist safety, the safety of flammable products, carcinogenic sleepwear—mean a great deal to consumers; probably more than some Members of Congress understand. The responsiveness of these agencies and their ability to serve our constituencies are major problems which those citizens marking this week are considering.

Unfortunately, most of the vital regulatory reform proposals have not received much attention this session. The sunset bill, the midprogram agency review embodied in H.R. 65, the suggested regulatory budget, exploration of agency innovation—like EPA's bubble policy—have all taken a back seat to amendments and measures which tie the agencies' hands. While such actions may provide short-term political advantage, they neither reform the regulatory structure in the long term, nor do they serve the very people these laws have been written to protect. Surely, we can do better.

Congress is capable of making concrete regulatory reforms which can have an immediate impact on consumers' contacts with the Federal agencies. Every day constituents call or visit our district offices seeking their Congressman's assistance. Over the last 5 years, my Paramus, N.J. office has been called upon to find thousands of social security checks. We have received hundreds of complaints about the indifference, the ineptitude, or the inability of agencies like the Postal Service or IRS to handle or to resolve consumer complaints. My district office staff repeats the same remedial actions for requests which fall in the same generic categories. Despite the fact that these problems recur constantly, the agencies seem incapable or unwilling to reform themselves.

Some of the constituent complaints are clearly not resolvable by an act of Congress. I do believe, however, that the agencies need a system by which the pattern and frequency of consumer complaints can be analyzed so that the pain and hardship attendant to these problems with agency services can be reduced. This is the goal to which my legislation is addressed.

The Agency Accountability Act would require the Federal agencies to compile and analyze the complaints which Members of Congress transmit through their congressional offices. The agencies would be required to aggregate the complaints according to categories descriptive of the general subject matter of complaints and by region—where appropriate—in which the complaint should be handled. The purpose of this requirement which we would place on the 11 agencies cited in the act is to determine if the pattern of complaints reported by congressional offices can be corrected by administration action or if they reveal a defect in the program which can only be cured through legislative action. By imposing this requirement and by further providing that the agencies submit the results of their analyses on an annual basis, the citizen/consumer complaints which we forward to the agencies will be doing two jobs instead of one. That is, not only will the Federal agencies be addressing each specific consumer complaint, but they will also be using this information in hopes of assuring that the problem does not crop up again, and again, and again.

The complaints forwarded to agencies by congressional offices can serve as a useful data base for the agencies and for Congress to suggest meaningful reforms which will truly serve consumers. Rather than crippling the activities of the agencies—which are, after all, designed to aid our citizens in the marketplace—we should be examining the programs that have caused consumers difficulty in hopes of making them better.

The Agency Accountability Act is printed below; I urge my colleagues to cosponsor and support this measure which contemplates genuine, pro consumer, regulatory reform.

H.R. 8125

A bill to require certain Federal agencies to analyze complaints regarding their delivery of services and benefits and to report their findings to Congress

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Agency Accountability Act of 1980".

SEC. 2. The Congress finds that—

(1) citizens experiencing difficulties with the delivery of services by certain Federal agencies often turn to the offices of Members of Congress for assistance in resolving their complaints;

(2) the incidence of such complaints is increasing;

(3) the information generated by each Member's office with respect to such complaints could be used by Federal agencies and could be analyzed to determine if such complaints fall within generic categories and if such complaints could be resolved for all citizens by the prescription of administrative or legislative remedies; and

(4) through the analysis by Federal agencies of such complaints, the frequency of such complaints could be reduced as could the hardship attendant to difficulties experienced by citizens when agency services do not function properly.

SEC. 3. For the purposes of this Act—

(1) the term "agency" means only the following authorities of the Government of the United States:

(A) The Food and Nutrition Service of the Department of Agriculture.

(B) The Department of the Air Force, the Department of the Army, and the Department of the Navy, of the Department of Defense.

(C) The Social Security Administration of the Department of Health and Human Services.

(D) The Immigration and Naturalization Service of the Department of Justice.

(E) The Office of Workers' Compensation Programs of the Department of Labor.

(F) The Internal Revenue Service of the Department of the Treasury.

(G) The National Railroad Passenger Corporation.

(H) The Small Business Administration.

(I) The Office of Personnel Management.

(J) The United States Postal Service.

(K) The Veterans' Administration;

(2) the term "complaint" means any written communication received by an agency from a Member of Congress regarding any difficulty experienced by a person in obtaining action on a matter regarding agency procedures, personnel, or physical facilities; and

(3) the term "resolution" and "resolved", when used to describe action taken by an agency with respect to a complaint, mean—

(A) action that conforms to the action requested by a person who communicated with a Member of Congress as described in a complaint,

(B) reference to statutory authority requiring such agency to refuse to take such requested action, or

(C) referral of a complaint regarding a matter over which such agency has no authority, to a unit of government that has authority over such matter.

SEC. 4. (a)(1) Not later than January 1, 1982, and not later than January 1 of each year thereafter, each agency shall submit a report to the Speaker of the House of Representatives and the President of the Senate. Such report shall include the number of complaints received from all Members of Congress during the preceding fiscal year—

(A) according to each agency region and, within each agency region, according to a set of categories descriptive of the general subject matter of complaints; or

(B) if agency regions do not exist for that agency, according to a set of categories descriptive of the general subject matter of complaints.

(2) Within each category referred to in paragraph (1), the report shall set forth—

(A) the number of complaints resolved by the agency and the amount of time elapsed between receipt and resolution of each complaint, measured in 30-day intervals (beginning on the date of receipt of the complaint elapsing before the date the complaint is resolved; and

(B) the number of complaints within each category not resolved by the agency.

(3) Each report submitted pursuant to paragraph (1) shall also include any suggestions of the agency for administrative or legislative changes to reduce the number of complaints received by the agency.

(b) Each report submitted pursuant to subsection (a)(1) shall be referred to the appropriate committees of the Congress.●

TRIBUTE TO TAYLOR STINGERS

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FORD of Michigan. Mr. Speaker, I would like to call our colleagues' attention to the first world championship ever won in sports competition by an entrant from my hometown of Taylor, Mich.

On Labor Day weekend, at Kinston, N.C., the Taylor Sporting Goods "Stingers" won the women's class A world softball tournament to become the U.S.S.S.A. world champions.

Competing with 91 other top-rated teams from throughout the Nation, my constituents won eight games and lost only one in the double-elimination tournament. They scored 107 runs and 155 hits during the competition—an average of more than 17 hits and nearly 12 runs per game.

The Stingers won their first seven games before losing a close contest, 7 to 4, to a tough team from Rochester, N.Y.

In the final playoff, the Taylor team defeated Rochester in a cliffhanger, 9 to 8, scoring the winning run in the final inning.

The Taylor team battled to a 6 to 0 lead in four innings, but the Rochester nine fought back, scoring four runs in their half of the fourth. The Stingers then added two more runs in the sixth inning, but the stubborn New Yorkers bounced back to tie the game in their sixth inning.

The Taylor Stingers then bore down, scoring one run in the top of the seventh, and holding Rochester scoreless in the bottom of the seventh to win the game.

The victory gave my constituents a season record of 68 wins and only 10 losses.

Lynn Putnam of the Stingers was voted the most valuable player of the tournament, with a 0.739 batting average and a perfect fielding record.

Five members of the Taylor team were named to the all-world team—Lynn Putnam, Pattie Silye, Jackie Huggins, Nancy Gumtow, and Sue Riedel.

Mr. Speaker, I want to express my public congratulations to this fine women's softball team and to its coaches. They have climaxed a fine season by bringing Taylor its first world championship, and by bringing great honor to themselves, their community, and their State.●

SAKHAROV APPEALS TO MADRID CONFERENCE: HUMAN RIGHTS ARE ESSENTIAL TO INTERNATIONAL SECURITY

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROWN of California. Mr. Speaker, I commend my colleagues' attention to the recent appeal for Soviet physicist and Nobel Laureate Andrei Sakharov, who has been exiled to Gorky. Dr. Sakharov stresses the fundamental link between human rights and international security. World peace and true national security will not be achieved until there is universal respect for human rights. Although the examples Dr. Sakharov cites are from the Soviet Union, we have examples closer to home. In our own hemisphere, disrespect for human rights—torture, murder, arbitrary imprisonment, and economic repression—by dictatorships in El Salvador and elsewhere are the root cause of political instability which threatens peace in Central America and hence our national security. Unfortunately, U.S. policies have not always been a positive factor in this regard.

In this context, Dr. Sakharov points out the great importance of the Madrid followup meetings to the 1975 Helsinki accords. It is vital that we and other signatories continue to participate in these fora so that nations can hold each other accountable for violations of human rights to which they are pledged internationally. It is also vital that we continue to recognize and support the efforts of individual citizens, such as the Helsinki watch groups, to hold governments, at home and abroad, accountable for human rights violations.

Mr. Speaker, the full text of Dr. Sakharov's article, which appeared in the Los Angeles Times on September 9, is printed here. It also contains an international appeal that Dr. Sakharov's son be reunited with his fiance, Elizaveta Alexeyeva. I hope our delegation to Madrid will request of Soviet delegates that Elizaveta be granted an exit visa by Soviet authorities as provided for by principle VII of the Helsinki accords.

The article follows:

WORLD SECURITY, HUMAN RIGHTS LINKED—SAKHAROV

The historic significance of the 1975 Helsinki Accords, the subject of a conference opening in Madrid today, lies in its affirmation of a crucial principle: International security and confidence are linked to respect for human rights.

The most complete statement of this idea is contained in Principle VII, Section 1(a) of the accords' Final Act, committing participating states to fulfill all the provisions of the International Covenants on Human Rights and of the Universal Declaration of Human Rights. These provisions include guarantees for freedom of opinion and information, freedom to choose one's country of residence (and not just within the context of family reunification), freedom to choose one's domicile within each country, freedom of religion and freedom of association.

The Helsinki Accords also acknowledged the right of the participating states to monitor each other's record of compliance. Such monitoring is regarded not as intervention in internal affairs but rather as a contribution to international security and confidence. The Final Act marked a new stage in the formulation of an international ideology of human rights. Unfortunately, its principles have not been put into practice in a satisfactory fashion. I suppose that human-rights violations have occurred in many countries, including Western countries, but I shall speak about what I know best—the situation in the Soviet Union and in Eastern Europe.

The observance of fundamental civil and political rights in these countries has not just failed in these countries to improve over the past five years; the situation has in fact grown worse. Repressions against groups organized to promote observance of the Final Act, including the Helsinki Watch groups in the Soviet Union and Charter 77 in Czechoslovakia, constitute the most brazen and challenging example of violations which demand from the participating states and unequivocal, uncompromising response—effective actions not limited to verbal protests.

More than 40 members of the Helsinki Watch groups are imprisoned. Many others also have been arrested—individuals who, although not formally members of the Watch groups, worked to promote the exchange of information and the defense of human rights as contributors to samizdat news magazines or journals of opinion, as participants in the movement for freedom of religion and freedom of emigration, or in other ways. The governments, nongovernmental organizations and concerned citizens of the participating states are under an obligation to defend all such victims of repression.

Peace in the world is indivisible. The consequences of any deviation from this principle only confirm its truth. Therefore, I cannot agree with those who consider the Soviet invasion of Afghanistan an event that is unrelated to security in Europe. I also cannot agree with those who suggest a boycott of the Madrid conference as a response to Soviet actions in Afghanistan or to the increased repression of dissenters. I believe that the participating states should use the opportunity offered by the Madrid conference to further a political settlement in Afghanistan, which must provide for the withdrawal of Soviet troops and international guarantees of peace, neutrality and free elections. The participating states should also promote the release of prisoners of conscience in the Soviet Union and in Eastern Europe, and in Western countries as well if persons are imprisoned there who have not used or advocated violence.

The critical international situation requires that the Western participating states coordinate their tactics and pursue their goals with more determination and consistency than at Belgrade. The Helsinki Accords, like détente as a whole, have meaning only if they are observed fully and by all parties. No country should evade a discussion of its own domestic problems, whether the problems of Northern Ireland, the Crimean Tatars or Sakharov's exile (here I am speaking objectively). Nor should a country ignore violations in other participating states. The whole point of the Helsinki Accords is mutual monitoring, not mutual evasion of difficult problems.

I wish to mention a personal matter, although I foresee that some newspapers will drop this paragraph, as if they know better what is important for me. My illegal exile to Gorky last January attracted the attention of worldwide public opinion and government officials. I appeal to all who expressed concern at that time: Help our son's fiancee, Elizaveta Alexeyeva, receive permission to leave the Soviet Union. I appeal in particular to both government and private persons who may meet with Soviet leaders. Liza's fate, the lengthy separation of two people who love one another, has become a means of pressure on me. This is a strictly personal matter, with no connection whatsoever to interests of state. I do not know what the authorities have in mind for the future, but the affair has already become tragic. I am hoping for assistance in this very concrete problem which is so important to me.●

BINARY CHEMICAL WEAPONS

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McCLOSKEY. Mr. Speaker, we voted today to permit the resumption, after 10 years, of the manufacture of nerve gas. This may or may not be an appropriate decision, but the fact remains that we have taken a new and significant initiative in foreign affairs without either meaningful testimony in committee hearings or debate by the committees of jurisdiction. We take this action over the opposition of both the Secretary of Defense, who has stated that the money is not needed this year, and over the objections of the chairman of the Committee on Foreign Affairs, who has urged no more than that this issue be fully debated. On an action of this kind it seems tragic that we do not require the ordinary process of hearing and debate which permits us to cast an informed vote.

I have attached a report on this controversy prepared by the staff of the Members of Congress for Peace through Law in order that over 400 of us who do not know the facts on this issue may have the chance to study them.

BINARY CHEMICAL WEAPONS

On June 27, 1980, the House of Representatives passed the Military Construction Appropriations bill, which includes $3.15 million for the construction of a binary weapons production facility at Pine Bluff, Arkansas. These funds, not requested by the Administration, are also contained in the Military Construction Authorization bill which is scheduled for House action on September 8 and Senate action later the same week. An additional $19 million to equip the binary facility is reportedly contained within the Department of Defense Appropriations bill as reported by the Subcommittee to the full Committee. This bill is due to be considered by both the House and Senate later this month.

Congressional approval of the plant and equipment funds would represent the first step in a five-year, $2.4 billion program.

This paper is intended to initiate a debate on this important issue by discussing the current chemical warfare preparedness of the NATO and Warsaw Pact countries, and by reviewing the arguments both for and against the production of binary weapons—the newest generation of chemical weapons to be considered.

BACKGROUND

I. What are binary weapons?

Chemical weapons (CW) were first used during World War I, when both sides used such agents as phosgene and mustard gas during the years of trench warfare. Since then, the possibility of retaliation-in-kind, the effectiveness of the gas mask and other protective equipment, and the difficulty of restricting lethal effects to enemy soldiers, have discouraged their actual use.

Over the years, CW munitions have become colorless, odorless, and more lethal. Most of the modern CW stocks possessed by the United States and the Soviet Union are composed of various types of nerve gas, which may be used as a liquid absorbed through the skin or as a vapor to be inhaled. Both countries, however, also possess substantial stocks of nonlethal chemical munitions, such as tear gas or herbicides.

A lethal dose of a chemical agent works quickly to cause heavy perspiration, poor vision, uncontrollable vomiting and defecation, constriction of the bronchial tubes, convulsions, and paralysis; death comes in minutes due to asphyxiation following respiratory failure. A marginally lethal dose will cause death over a period of hours; and even sub-lethal doses are suspected to cause long-term neurological, physiological and psychological problems. Some antidotes exist, but at present none is as effective as the use of protective clothing.

The newest generation of U.S. chemical weapons under consideration are binary munitions—a particular type of chemical weapon made up of two non-lethal chemical agents. These agents, called precursors, are produced and stored separately. Placed in an artillery shell or bomb just before firing, the precursors mix after firing to form a lethal gas or liquid prior to release over the target.

(NOTE.—Chemical weapons are to be differentiated from biological weapons. The production and stockpiling of biological weapons, as opposed to chemical weapons, is banned by an international convention signed and ratified by 84 nations, including the United States and the Soviet Union.)

II. U.S. and Soviet Supplies of CW

Neither the United States nor the Soviet Union has produced lethal chemical weapons since the late 1960's; in effect, since that time both nations have observed an undeclared and unofficial moratorium on such

production. Both nations do, however, stockpile significant quantities of lethal chemical munitions.

While no agreed upon estimate exists within the U.S. intelligence community, it is generally maintained that both the United States and the Soviet Union have more than 100,000 tons of lethal chemical weapons.

Neither the United States nor the Soviet Union has a separate branch of their respective armed forces devoted to the practical application of offensive lethal chemical weaponry. Both, however, possess troops trained to defend against chemical warfare.

In accordance with Congressional directive, the U.S. Army has spent over $200 million in each of the last three years on CW research and development, training, and the procurement of defensive equipment.

About 80% of the serviceable U.S. lethal chemical stockpile is composed of nerve gas. Delivery systems include artillery shells, aerial bombs, and land mines. Lethal chemical munitions are located mostly in the United States, although a supply which is adequate for two weeks of warfare is located in Europe, under U.S. control.

Contrary to general belief, U.S. lethal chemical stocks are not deteriorating. Current estimates place the total number of U.S. nerve gas projectiles at roughly 3 million—or enough for at least 100 days of warfare. Although some of the fuses were removed during the Vietnam War (leading some to assume that they were obsolete), these parts are now being replaced and the weapons restored to their original conditions. None of the chemical payload has been affected.

III. Treaties and laws concerning chemical warfare

Negotiated in response to poison gas use in World War I, the 1925 Geneva Protocol Prohibiting the Use in War of Asphyxiating, Poisonous, or Other Gases and of Bacteriological Methods of Warfare, commits its parties to no first-use in war of chemical weapons. Both the United States and the Soviet Union have ratified the Treaty, in 1975 and 1928, respectively.

Since 1976, the United States and the Soviet Union have been engaged in bilateral negotiations to prohibit the development, production, or stockpiling of any lethal chemical weapon. The talks were last held in July of this year, with general agreement on what items should be banned. While disagreement remains on specific verification procedures, both sides have agreed in principle to on-site verification. Compliance with and verification of terms of the convention will be based on a combination of national and international verification standards. This represents an important break-through in the negotiations.

At present, U.S. law restricts production of all chemical munitions. Section 409(f) of Public Law 91-121 (the fiscal year 1970 Department of Defense Authorization Act) allows funding for production of chemical weapons only if the President certifies that such weapons are "essential to the safety and security of the United States." Following construction of a CW weapons production facility, the law would have to be rescinded or the President would have to certify national security needs for actual binary weapons production to begin.

LEGISLATIVE HISTORY AND STATUS OF PENDING BINARY LEGISLATION

First proposed by the Army during the 1950's, research on binary munitions was not pursued until the phase-out of conventional chemical weapons began in 1969. At this point, the Army advanced binary as a "safe" CW alternative, and in both the fiscal year 1974 and fiscal year 1975 DOD Authorization and Military Construction bills, the Administration requested funds for binary. The House, however, rejected both efforts.

Over the past six years, the Republican and Democratic Administrations have consistently decided against requesting funds for the construction of a binary production facility. The Carter Administration has turned down several requests from the Army for the funding of the Pine Bluff facility. Nevertheless, on May 8, 1980, the House Armed Services Committee, without having held any public hearings on the issue, voted to authorize $3.15 million for the construction of the Pine Bluff facility. Although neither the House nor the Senate has acted on this bill (both are due to the week of September 8), the House did pass the Military Construction Appropriations bill, which also contains the $3.15 million.

Prior to House floor action on this bill, where there was no legislative attempt to delete the binary provision, the Carter Administration announced that it opposed the inclusion of the binary funds pending completion of an interagency study on U.S. chemical weapons policy.

On September 4, Secretary of Defense Harold Brown reportedly told members of the Senate Armed Services Committee, meeting in closed session, that the Administration's position is unchanged, and that Congress should not authorize the construction of the binary facility at this time.

To date, the Senate Armed Services Committee, which like its House counterpart has held no public hearings on the resumption of CW production, has yet to make a recommendation on the construction of a binary weapons facility. Whether or not it recommends funds, a floor debate and vote are likely.

If approved by Congress, this year's binary weapons price tag will be $22.15 million: $3.15 million for construction and $19 million for equipment. The plant to be constructed is scheduled to produce artillery shells and aerial bombs by 1984, with development and production of a land mine and rocket warhead at a later date. The $19 million for equipment has reportedly been inserted by the Defense Subcommittee of the House Appropriations Committee, in the DOD Appropriations bill.

ARGUMENTS FOR AND AGAINST BINARY WEAPONS

Unconfirmed media reports of the use of Soviet lethal chemical weapons in Afghanistan, Laos and Kampuchea have prompted some Members of Congress to advocate the production of binary weapons. In the present climate of heightened international tensions between the United States and the Soviet Union, there has been little opportunity for reasoned debate on U.S. chemical weapons policy. In many instances, the arguments of binary proponents have been unsubstantiated and have gone unchallenged. The following section seeks to summarize the arguments of both proponents and opponents of the production of binary weapons.

I. Are binary weapons safer?

Because the binary precursors can be separately manufactured and stored, its proponents argue that it is much safer to store than the present CW arsenal. With binary weapons, they claim, there would be a greatly reduced possibility of CW accidents.

Opponents of binary note that because it has never been tested or produced, its safety is a matter of conjecture. Some concede that it is probably the safest kind of CW to store; others note that present CW storage has never resulted in a major accident. Opponents also point out other logistical problems with binary's storage: they hold that the British and the West Germans are highly unlikely to agree to store binary or any other chemical munitions on their territory (West Germany is bound by Treaty not to store lethal agents on its territory, except those on U.S. bases, and has refused even to train its troops in the use of any chemical weapons.) Finally, opponents note that the ease with which binaries are produced and stored renders them far more dangerous than standard chemical munitions, as it is likely to make CW more accessible to those who do not now have it.

II. Is there military value in developing a new offensive chemical capability?

Binary proponents assert that since our CW stocks are old, they may have lost their capability; and that since we have redesigned our launchers, the chemical stocks may not be able to be fired in the new launchers.

Opponents of binary argue that CW munitions in existing U.S. stockpiles will remain lethal for at least another 20 years. In addition, they note that our NATO allies are opposed to stockpiling any chemical munitions. Finally, opponents of binary's military effectiveness point out that the prime victims of binary weapons would inevitably be the civilian population in West Germany. If both the NATO Warsaw Pact troops wore protective clothing, it would be the civilian population which would be vulnerable to aerosol clouds which can cause fatalities 20 Km from their detonation points. They would be vulnerable, too, to liquid binary agents, which remain lethal in the area for days or even weeks.

III. Will the production and deployment of binary weapons reassure our NATO allies?

Proponents claim that modernizing our CW arsenal with binary weapons will reassure our NATO allies that the United States will be able to deter any kind of Soviet chemical attack on Western Europe, and that given the state of the Western Alliance, we should be willing to take on this responsibility.

Opponents point out that chemical weapons used in a European war would kill more civilians than troops (West German casualties would probably be in the millions if the Warsaw Pact initiated an all-out chemical battle and NATO responded.) Furthermore, given the legal and political opposition of the West Germans and other Europeans to storing chemical weapons or training troops in their use, opponents hold that full-scale production of binary weapons would anger rather than reassure our NATO allies, and may even jeopardize NATO acceptance of the controversial Theater Nuclear Force decision.

IV. Will binary production serve as a bargaining chip to encourage the Soviets to negotiate a treaty banning CW?

Binary proponents hold that only aggressive action by the United States can force the Soviets into agreeing on disputed verification points; and they point out that construction of a binary plant—which does not automatically commit us to the next step of production—will serve as an incentive for the Soviets to agree on a treaty without starting a new generation of CW. They emphasize that the legislation being considered targets funds only for construction and equipment.

Opponents, on the other hand, hold that development of binary weapons will destroy these talks, rather than force the Soviets into an agreement. They point out that the "in-principle agreement" on on-site verification reached in July is significant and a major step forward; and they also note that production of binary would further complicate verification procedures, due to the separation of binary's components. They also believe that our development of binary would spur the Soviets to follow our lead and upgrade their own arsenal.

Finally, they hold that building a binary plant, even without producing binary, sends a message to both our allies and the Soviets that the United States is not interested in controlling chemical weapons; and that those who advocate the plant as a bargaining chip are the very ones who call it a "first step," and will most likely be the strongest advocates of full production.

CONCLUSION

The current U.S. policy of maintaining our present CW stocks and improving our defensive and protective capabilities—while withholding production of a new generation of CW—underscores the commitment of the United States to the success of the current U.S.-Soviet negotiations aimed at the prohibition of lethal chemical weapons.

Over the past ten years, both the U.S. and the U.S.S.R. have refrained from adding any new weapons to their existing CW stocks; building a binary plant at this time would signal our intent to end this moratorium on the production of lethal chemical weapons.

If Congress decides to authorize the construction of the plant, without the benefit of public Congressional hearings or even a complete Executive Branch review, the Soviets will be forced to modernize and expand their arsenal of chemical weapons. In the process, chemical weapons will acquire enhanced legitimacy among military and political leaders around the world. The technology for producing binary weapons might eventually be acquired not only by other governments, but by other fringe organizations or terrorist groups.

Although proponents argue that we need binary weapons to upgrade our chemical arsenal and deter the Soviets from a chemical attack, binary is, in fact, no military advance over existing chemical weapons, which remain operable. Given the significant progress which has been made at the bilateral CW talks, the production of binary munitions would, in the view of many experts, be a needless and costly escalation of the arms race.●

VETCO, INC.—50 YEARS OF LEADERSHIP

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I am proud to announce the 50th anniversary of Vetco, Inc., a multinational corporation based in Ventura, Calif. September 1980 marks Vetco's 50th year of technological leadership in the oil industry.

Vetco's celebrations will honor Fritz Huntsinger, Sr., who founded Vetco's forerunner, the Ventura Tool Co. in September 1930. Starting as an oilfield tool repair shop, Vetco Inc., now a subsidiary of Combustion Engineering, Inc. has always been closely linked with the oil industry. Vetco's association with the oil industry led to involvement in the earliest offshore drilling operations off the California coast in the 1950's. This early involvement led to Vetco's success as a leader in the design, manufacture, and supply of safe, technologically advanced equipment to the offshore oil industry. Vetco's equipment is now used worldwide in exploratory drilling and production of offshore oil reserves.

With Fritz Huntsinger's invention of a device to inspect damaged drill pipes, Vetco became a pioneer in the field of nondestructive testing of oilfield tubular goods. This service has now been expanded to include protective internal pipe coating capabilities. Both services are offered worldwide.

Today, Vetco provides equipment and services to all of the world's oil producing countries from over 60 locations in 30 countries, through the efforts of 2,700 employees.

Vetco's international headquarters are situated in Ventura, along with the headquarters of Vetco's offshore operations. Vetco's service operations are headquartered in Houston, Tex.

Fritz Huntsinger, Sr., founder and chairman of the board of Vetco Inc., immigrated to the United States from Germany, and became a floor sweeper for Schwab Tool Co., in Ventura, Calif., who served the then emerging oil industry in southern California. In 1926, he became a subforeman supervising 72 machinists and by 1928, rose to general foreman. In the height of the depression, the Schwab-Lane Tool Co. went bankrupt and Fritz bought the company in 1930 at a sheriff's sale with his life's savings, determination and six other souls. This was the birth of Ventura Tool Co., the parent of Vetco Inc.

Fritz, early in his career, began sharing his good fortune in his newly adopted country with the less fortunate. He has been a prime contributor to the establishment of the New Community Memorial Hospital in Ventura, donating to them one of the first brain and body scan diagnostic machines west of Chicago. He has contributed to the City of Hope and to other medical research efforts. In the field of education, he donated the Huntsinger Academic Center at Pepperdine University, an Aquatic Center to Hood College in Maryland for use by handicapped children in the three neighboring States. He contributed to a youth center in Celle, West Germany for orphaned children from the Eastern Zone. He has contributed to the California Institute of Technology since 1952 and is a member of the advisory council. He has always been a contributor to organizations fostering a strong American youth such as the Pyle's Boys Camp, the Boy Scouts of America, Y.M.C.A., Salvation Army, various little league baseball teams, and the Ventura girls' softball team which became the national champion 2 years in a row. In December 1977, the Ventura County Boy Scouts of America awarded Mr. Huntsinger with their highest award—the Golden Condor Award.

He is an active participant in civic affairs having served three sessions on the Ventura County grand jury, being foreman twice. He has been chairman of Ventura County Flood Control Committee since 1946. He is very active in trade associations which foster the preservation of the private enterprise system. He has been a frequent speaker before various government bodies providing expert testimony.

Mr. Huntsinger even has some time for hobbies which are deep sea fishing, ranching, and growing orchids.

Other affiliations: founder and past president of Ventura County Taxpayers Association, past president of Ventura Shrine Club, past president of chamber of commerce, board member of Ventura County Development Association, board member and vice president of the R. M. Pyles Boys Club since 1951, former president, now director of Community Memorial Hospital, chairman of county flood control district, member of board of regents of Pepperdine University, honorary doctor of laws of Pepperdine University, and member of the advisory council, California Institute of Technology; member of the executive board of the National Ocean Industries Association, Washington, D.C.; past president of Petroleum Production Pioneers, and life member; honorary member of the National Rotary Club of America; life and honorary member of the Navy League; in 1974 became Knight Commander of the Court of Honor and a member of the Legion of Honor of the DeMolays; received degree of doctor of humanities from Hood College in 1977; benefactor of the Ventura County Historical Museum, newly established and housed in 1977.

In 1971 Fritz accepted on behalf of Vetco Offshore Industries, Inc., the International Petroleum Exposition Special Meritorious Award for engineering innovation in development of the hydraulic motion compensator. In both 1971 and 1972, he received the Humanitarian Award from Lions International for service to mankind. Most recently, Fritz donated a new building and chapel to the order of DeMolay in Orange County, Calif. It was dedicated on September 10, 1977, and will serve as the southern California headquarters. On October 17, 1977, Mr. Huntsinger was elected to a 33 degree Mason—the highest honorary award of this fraternal order which is dedicated to helping handicapped youths and the needy of the world. He was also appointed by grand supreme commander as the first venerable master of the newly formed Ventura County Scottish Rites Bodies. He recently donated a mammograph to Ventura Community Memorial Hospital for diagnosis of breast cancer. In November 1977, Fritz was awarded the Spirit of Life Award by the Oil Industry Council for the City of Hope.

In addition, Fritz has been a good friend, occasional fishing companion, and an inspiration to me.●

TRIBUTE TO THE LATE WILLIAM FRANCIS GAUL

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in the House of Representatives in paying tribute to the late William Francis Gaul, who died in late July.

Bill Gaul and I shared more than just a common faith, a common profession, and worked together on the Education and Labor Committee, on which I served during my first 4 years in the House.

We shared a heritage and a special spirit and bond from the University of Notre Dame, our alma mater. Furthermore, we each had sons who attended Gonzaga College High School.

Bill was a true professional who commanded the respect of all who worked with him for his expertise in the field of education as well as for his strength of character, which was so amply displayed during the last few months of his life when he courageously continued his work despite his struggle against serious illness.

Bill's leadership and dedication will be sorely missed in these days when moral decay seems to have permeated the country from top to bottom.

I extend to his wife, Joan, and his children my deepest sympathy and condolences.●

JEWISH VOTERS' INTERESTS

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. WOLFF. Mr. Speaker, I would like to bring to the attention of my colleagues an article which appeared in today's New York Times written by Arthur Hertzberg, past president of the American Jewish Congress:

[From the New York Times, Sept. 16, 1980]

JEWISH VOTERS' INTERESTS

(By Arthur Hertzberg)

ENGLEWOOD, N.J.—Like all Americans, I want a President who will promote domestic tranquillity and make us strong but not warlike. The pollsters, however, type me as belonging to the "Jewish vote" and presume that my views are determined by my passion for Israel. Here they are finding something strange. Ronald Reagan is the most ardent pro-Israel "hard-liner" of the candidates and yet he has now, at maximum, one-quarter of the Jewish vote, with the rest divided between President Carter and John B. Anderson, and some people are still making up their minds.

The issue of Israel is thus a political paradox. It stirs the Jewish community in its entirety, and yet, when a supposedly clear voice is available between a maximalist Mr. Reagan and a moderate Mr. Carter, there is no stampede toward the Republican. Why?

Jews presume as beyond doubt that both major parties are for the existence of a secure, viable Israel. They know that disaster will not come to Israel—whoever is elected. Campaign promises about Israel are largely disbelieved, no matter who makes them, because Jews know that, whoever is elected, Israel's maximum demands will not be realized. Administration after Administration, Republican or Democrat, have taken turns in refusing to confront the Arab world as a whole on such issues as the ultimate control of the West Bank, the Palestinians, and the nature of the final settlement even in an undivided Jerusalem. Some actions that have flowed from this position, such as the substantial aid given to Egypt even before Camp David, have been quietly accepted by pro-Israel opinion. Others, such as America's failure to exercise its veto last month when the Security council censured Israel for its new law formally annexing Jerusalem's eastern sector, have created outcries that even Jewish moderates have joined. Ultimately, however, in the deep heart of majority Jewish opinion, it is known that even the friendliest of Administrations will act when in power more circumspectly than its campaign rhetoric indicates.

Leaders of the organized Jewish community are certainly aware of the complexities and even inevitable ambiguities of America's posture in the Middle East. Why then is their normal reaction almost automatic criticism of the President, whoever he may be? Sometimes such statements are meant with great passion. Very often they represent the strongly held views of Jewish "hard-liners" with which moderate Jewish opinion goes along, chiefly because it is presumed that such pressures are weights put into the scale against counterpressures from Arab governments, oil interests, and pro-Arab opinion.

The organized Jewish community in America and the temporary occupant of the White House have thus been playing a game for a long time within well-established rules. Pressure usually gains a few points. The government of the moment responds by doing something for Israel, or sometimes, alas, by doing something against Israel, such as an occasional, brief foot-dragging on aid. Fundamentally, both parties to this relationship know that they are fighting over nuances. This game has been going on at least since 1940, and the results have been remarkably stable. Even Dwight D. Eisenhower, the liberator of Europe and friend of the death-camp survivors, could get only 40 percent of the Jewish vote in 1952 against Adlai E. Stevenson, not known to be a passionate Zionist. In 1972, George McGovern was widely held to be "softer" on Israel than Richard M. Nixon and yet he got almost two-thirds of the Jewish vote.

There is some "float" in the Jewish vote of perhaps 10 percent that is really determined by the issue of Israel—but that is the maximum, even today. The basic truth is that American-Jewish statesmanship long ago succeeded in making the basic support of Israel a matter beyond party and thus, fortunately, beyond partisan vote. The determining consideration for American Jews, which they share with all other Americans, is a special and unique emphasis on domestic tranquility. Here, indeed, there is a "Jewish vote" up for grabs. Jews are at least as well off as Episcopalians and Presbyterians, and they should thus be voting very conservatively for their class interests. They do not, and the reason is not some as-yet-unbanished memory of the New Deal. Out of their experience as a persecuted minority, the Jewish "haves"—and it is the "haves" who are more likely to be liberals than some of the "have-nots"—fear social disorder more than any other group, because throughout their history Jews have been a favorite target of angry mobs.

In this election, as in all those before it in the last generation, American Jews will go into the polling booths not in fear that the candidate they did not vote for might do Israel in, but in the hope that the one they choose will, with all his faults, try to be a maker of internal peace and accommodation.●

WORK SHARING, JOB SECURITY, AND PRODUCTIVITY: A NEW DOMINO THEORY

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mrs. SCHROEDER. Mr. Speaker, W. Edwards Deming, a statistician and industrial productivity consultant, whom many credit with having a significant role in sparking Japan's high annual productivity growth rate, was recently interviewed by People magazine. Dr. Deming emphasizes how much job security is a key factor in productivity.

A bill I recently introduced, H.R. 7529, the Short-Time Compensation Act of 1980, ecnourages, partial layoffs—"work sharing"—in lieu of total layoffs, by allowing States to pay partial unemployment benefits. One immediate effect is increased job security and, if we are to believe Dr. Deming, increased productivity.

The interview follows:

"MADE IN JAPAN" IS NO JOKE NOW, THANKS TO EDWARDS DEMING: HIS NEW PROBLEM IS "MADE IN U.S.A."

There is one domestic problem that all 1980 presidential contenders, including the incumbent, preach against: the disturbing decline in U.S. productivity. Not surprisingly, Japan, with its annual productivity growth rate of 11 percent, is held up as a shining example of "re-industrialization"—already a bipartisan buzzword for Campaign '80. The world has come to rely so heavily on the value and durability of goods "Made in Japan" that it's easy to forget that only 30 years ago the phrase was a joke, a synonym for shoddiness. W. Edwards Deming, an Iowa-born statistician with a Ph.D. from Yale, may deserve as much credit as anyone for the new image and performance of Japanese industry.

In 1950 Deming, then a professor at New York University, made the first of 18 trips to Japan to teach businessmen his gospel of quality control and high productivity through statistical analysis. One indicator of his success is that today Japan's coveted annual award for industrial productivity is the Deming Prize, a silver plaque bearing the professor's tortoise-like profile. Deming, 79, has also advised companies in Taiwan, South Korea, Denmark, Hungary and West Germany, but until recently he was little known at home. Now, with the U.S.'s stagnant productivity (roughly defined as output per man-hour) contributing to both high costs and high prices, American companies are beginning to seek him out. William E. Conway, head of New Hampshire's

$600 million-a-year Nashua Corporation, hired Deming when Nashua decided to enter the copier business last year. "Basically," says Conway, "he told us to make it right the first time." Assisted by his mathematician wife, Lola, 74, Deming runs a consulting business from the basement of his Washington, D.C. home, where he was interviewed by Clare Crawford-Mason of People.

Japanese products were regarded as inferior when you first went there in 1950. How were they able to revolutionize their industry?

They had a magnificent work force, unsurpassed management and the best statistical ability in the world. What's more, everybody was dedicated to the company, and everybody was dedicated to Japan. I put those forces together, and inside four years manufacturers all over the world were screaming for protection from Japanese imports.

Why hasn't American industry adopted your methods?

People here think a statistician comes Monday morning, and by Friday night they're producing like the Japanese. They are not willing to commit to a long training program for all workers, as the Japanese did. And, to my horror, I have discovered that most American companies think they already have statistical control of quality. What they have is a lot of printouts full of irrelevant and out-of-date information.

To boost productivity, isn't a great deal of capital investment necessary?

No. If you don't understand how to run an efficient operation, new machinery will just give you new problems of operation and maintenance. The sure way to increase productivity is to better administrate man and machine.

What is the relationship between declining productivity in the U.S. and inflation?

Declining productivity and quality means your unit production costs stay high but you don't have as much to sell. Your workers don't want to be paid less, so to maintain profits, you increase your prices. That's inflation.

How much of our productivity problem is the fault of workers?

When I've asked managers this, the answer always is, "All of it." That is absolutely wrong. Research has shown that about 85 percent of the trouble is right in their own management—that is, in the production system itself, for which they alone are responsible.

What would be an example of a management-based problem?

If the material is uniformly bad, that's the fault of management. A shoe manufacturer, for instance, asked me to help him because his operators were spending most of their time threading the sewing machines. In about 24 hours I had located the trouble. Management was buying cheap thread. To save 15¢ per spool they were losing $150 per hour because the stuff required so much rethreading. They bought better thread, and the problem disappeared overnight.

Are managers out of touch?

Yes. The prevailing—and foolish—attitude is that a good manager can be a good manager anywhere, with no special knowledge of the production process he's managing. A man with a financial background may know nothing about manufacturing shoes or cars, but he's put in charge anyway.

What can be done about ineffective management?

For one thing, our business schools have to change. Their graduates get good economics, law, finance—overall a good education. But they don't teach statistical method in research and production. For instance, they don't teach the connection between what people need, the cost of materials and what can be produced economically.

Does job security affect productivity?

In Japan a company worker's position is secure. He is retrained for another job if his present job is eliminated by productivity improvement. If a worker has an idea, he can present it to the president, and the door is always open. The worker doesn't have to worry about whether he'll have a job tomorrow; he doesn't have to try to please somebody or conceal problems just to keep his job. There's such a difference between working in a secure position and working in an insecure position.

Is job security the key factor, then?

I don't know if it is, or if participation is. I've seen how deeply plant workers appreciate it when somebody recognizes and respects the storehouse of knowledge they accumulate day to day on the job. Giving people the opportunity to participate in improving the product pays off, because workers realize security isn't worth a hoot if the product is shoddy.

Does that mean that Japanese workers work harder than American workers?

Japanese workers work less hard. They work smarter, not harder. They produce more with less and less effort as the quality goes up.

How exactly do you hope to achieve improved U.S. productivity along with improved quality of our manufactured goods?

By using statistical methods to improve quality. Statistical analysis helps you stabilize the system so the product is the same today, tomorrow and thereafter. It helps you eliminate waste. By describing statistically exactly what is being done, the method locates problems, forces innovation and lets you measure your progress.

In simple terms, how does it work?

I set up a control chart for each major section of the production line. The worker takes readings of the performance of the machine or of his own handwork and makes a very simple calculation—maybe a subtraction, maybe taking an average—to plot an upper-control limit and a lower-control limit, two parallel lines on a graph.

Does this define the machine's normal range of reliability?

Yes. As the machine keeps running, management only has to investigate and correct points that fall outside these parallel lines. Eventually, as the work is corrected at this signal, points will all fall between the lines, and statistical control is achieved. It's worth it, because unnecessary adjustments, which waste time and raise costs, are eliminated. The goal is predictable variation, which is very comforting to management.

Isn't it expensive to troubleshoot the points that fall outside the limits?

No, it's a matter of fine-tuning the system. Most of the time you can use the same machinery, the same raw materials, the same people. For instance, a Japanese pharmaceutical company I advised tripled its production of an acid in six months without any new capital investment.

Can quality be assured through added inspections, as Chrysler is trying to do with its new K-cars?

No, inspection does not build quality. You can't get ahead by making some defective products, and you cannot afford to separate the good from the bad. It's wasteful, and so raises the price the consumer pays. Moreover, inspection is unreliable. It doesn't weed out all the bad. The point is that if you make it right in the first place—using statistical methods of control—you don't have to test it.

Which presidential candidate's platform do you think might best improve U.S. productivity?

I'd rather not comment. I'm only a statistician. I don't want to be a jackass.

Do we have the capacity to regain our momentum?

It's nonsense to say we can't. We invented the laser and the transistor and developed the best communication system in the world. A nation that can accomplish these feats can do almost anything it sets its mind to.●

AIR INTERNATIONAL, INC.

HON. ALLEN E. ERTEL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. ERTEL. Mr. Speaker, today, Air International, Inc., a newly formed airline with headquarters in Erie, Pa., applied to the Civil Aeronautics Board for authority to provide air service to various communities in Pennsylvania, New York, New Jersey, Ohio, Indiana, and Illinois. Air International's proposed DC-9 service will fill significant service voids in several communities and provide new competition in other markets.

Mr. Speaker, the Airline Deregulation Act was designed to encourage more service and greater competition in the airline industry. Air International's market plan is entirely in keeping with the purposes of the act. Where existing service is inadequate, Air International proposes to meet the unmet needs of the market. On routes where service is adequate already, Air International intends to attract passengers and further develop the market by providing low-cost, convenient service for consumers and stiff competition for existing carriers.

Since passage of the Airline Deregulation Act, we have seen the accelerated development of innovative competitors such as Southwest Airlines, Midway Airlines, Air Florida, Texas International, Altair, Empire, and, now, New York Air and Air International. Mr. Speaker, I am delighted with Air International's plans. I look forward to its anticipated expansion into Harrisburg, Pa., in my district. And, as one who strongly supported the Airline Deregulation Act, I am delighted that the act continues to fulfill its great potential.●

REPRESSION CONTINUES IN CHILE

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BONKER. Mr. Speaker, from time to time we are told that General Pinochet in Chile has moderated his harsh policies and therefore we should normalize our relationship with his military regime.

I would like to bring to the attention of my distinguished colleagues two items which deal directly with that

question. The first is an article in the New York Times of September 9, 1980, reporting that Amnesty International charges "arbitrary arrests and systematic torture have increased dramatically in Chile in the last 2 months." " "

The second is an editorial from the Washington Post of September 13, 1980, entitled "The Pinochet Straitjacket." As the editorial indicates, last week the people of Chile witnessed another charade by the Pinochet dictatorship as it conducted a controlled plebiscite and declared that 60 percent of the people support the Government. In fact, most saw the plebiscite as another attempt by the general to gain popular legitimacy for his personal rule. The State Department commented. "" " We do not believe that the plebiscite in its substance or process gave meaningful choices to the voters " " ."

The two articles follow:

RISE IN CHILEAN TORTURE CHARGED

(By Youssef M. Ibrahim)

LONDON.—Arbitrary arrests and systematic torture have increased dramatically in Chile in the last two months, according to an Amnesty International report issued here today. Chile is approaching the seventh anniversary of the military coup that brought President Augusto Pinochet to power.

Spokesmen for the private human-rights group said that since July 15 more than 1,000 and possibly as many as 2,000 people have been rounded up by the Chilean secret police.

Detailed reports coming out of Chile confirmed a pattern of systematic torture, including severe beatings, near drownings, prolonged administration of electric shocks and burning with cigarettes, to which most detainees were subjected. Many others, Amnesty International said, have not been heard from since their arrests. The report spoke of doctors overseeing the torture.

Saying it had several dozen detailed accounts by torture victims, the organization cited the case of a 25-year-old university student, Angelica Diaz Tapia of Santiago, who was seized from a restaurant by a dozen men.

She later testified to having been stripped and tied to a metal grid and given electric shocks. She said the torture was applied repeatedly between interrogation sessions until she fainted and was revived after each shock. She also said she was burned with cigarettes, beaten and threatened, the report said.

An Amnesty International source said that although the reports of torture have not ceased since the 1973 coup that brought President Pinochet to power, there has been a dramatic increase in the number of those arrested and tortured since the July 15 assassination of Lieut. Col. Roger Vergara Campos, the director of the army intelligence school. There was a surge in July, then a bigger surge in August, the source said.

The report was made public in the midst of what is becoming a major dispute between the British wing of Amnesty International and the Government of Prime Minister Margaret Thatcher over the Government's recent decision to end a five-year embargo on arms sales to Chile.

A spokesman for the Foreign Office said today that Britain had expressed its deep concern to Chile over the recent arrest and torture of a young woman who holds dual British-Chilean citizenship, but he said Britain had no intention of reimposing the embargo.

THE PINOCHET STRAITJACKET

The "YES" vote in the plebiscite on its new constitution was 70 percent, the Pinochet dictatorship in Chile declares. But perhaps the real tally was 70 percent. Who's to say? Gen. Pinochet ran his little charade in a way to guarantee that the results would be suspect. Wide and intimidating publicity was given, for instance, to a driver arrested for displaying a "no" bumper sticker. In the two-month run-up to the plebiscite, Amnesty International reported, there were sharp increases in arbitrary arrests and cases of torture. There was no independent audit of either the balloting or the counting. Absententions were counted as "yes."

The new constitution, though it is a carefully wrought instrument of "protected democracy," is not to take effect for five years. Meanwhile, Gen. Augusto Pinochet is offered a second eight-year term as president and, if he is up to it, another term after that. His junta is to act as a legislature through the 1980s and then a tame elected legislature gets to take over. The general is 65, and he obviously has in mind a system that will reflect his strong hand even when he is not around to lift it. His effort to gain popular legitimacy for personal rule is in the classic fascist tradition.

It begs belief that the Pinochet system will work and last as he intends. Traumatized as Chileans were by the disintegration before 1973 and the repression after, they have not lost the qualities that had made Chile one of the most vibrant and intensely political societies in the world. Indeed, even within the Pinochet straitjacket, Chileans sabotaged the regime's effort to intimidate and manipulate them by rendering fewer "yes" votes in this plebiscite than in the last in 1978. The Pinochet strategy is bound to fail. It is producing counterviolence that will increasingly have the tolerance if not the active sympathy of other people. The peaceable majority of Chileans will continue to find ways to press their evident longing for a quick return to democracy.●

GILMAN URGES NATIONAL ALCOHOL AND DRUG COALITION TO RAISE PUBLIC'S AWARENESS OF DRUG DANGERS

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. WOLFF. Mr. Speaker, this week the National Alcohol and Drug Coalition, which is composed of the Alcohol and Drug Problems Association, the National Drug Abuse Conference, and the National Drug Congress, has been holding a conference among professionals in the field of substance abuse.

The gentleman from New York, Mr. GILMAN, a member of our Select Committee on Narcotics Abuse and Control, of which I serve as chairman, addressed the plenary session of the coalition's conference.

As part of the select committee's efforts to raise the consciousness of the public regarding the dangers of narcotics trafficking and drug abuse, our colleague's remarks focused on the magnitude of the drug problem in this country and the urgency to elevate this problem to a top priority on our agendas. In highlighting some of the activities of the select committee, he stated:

No amount of Federal, State or local legislation will stop drug abuse if our citizens are determined to misuse and abuse drugs. Waging "war" on narcotics trafficking and drug abuse is a never-ending battle, requiring a commitment of 365 days a year of more stringent law enforcement, more effective education, and better treatment and rehabilitation facilities. Until that message comes across loud and clear to public officials and community leaders, to parents, teachers, school administrators and our youth and until the public realizes the debilitating effects of drug abuse, then lives will continue to be lost to deadly drugs and our Nation will sink into a bottomless pit of drug dependency and societal decay.

Mr. Speaker, I commend the gentleman from New York, Mr. GILMAN, for his diligent efforts to help raise the public's awareness regarding the complex problem of preventing and controlling drug abuse and in the interest of sharing his remarks with my colleagues, I am inserting at this point in the RECORD the complete text of his address at the conference of the National Alcohol and Drug Coalition:

ADDRESS BY CONGRESSMAN BENJAMIN A. GILMAN AT THE CONFERENCE OF THE NATIONAL ALCOHOL AND DRUG COALITION, WASHINGTON, D.C., SEPTEMBER 16, 1980

Mr. Chairman, ladies and gentlemen, I welcome this opportunity for participating in the plenary session of your conference of the National Alcohol and Drug Coalition and commend the leadership of the Alcohol and Drug Problems Association, the National Drug Abuse Conference and the National Drug Congress for their cooperative efforts in bringing all of you together to discuss the complex problems of alcohol and drug abuse.

Our House Select Committee on Narcotics Abuse and Control, of which I am a member, has, over the past four years, conducted extensive hearings on drug abuse among our youth, the elderly, among women, ethnic minorities, and in the military. Our Committee has reported on the deadly effects of the hallucinogen PCP, Cocaine, Marihuana, Talwin, Pyribenzamine, and has dug into the problems of narcotics trafficking throughout the world and the money laundering transactions associated with this sordid industry. As a result of the numerous narcotic field investigations, both here and abroad, I am fearful that our Nation is fast becoming a drug-oriented society whose citizens are becoming psychologically and physically dependent upon drugs and who are seeking to escape into deadly mind-altering substances to resolve their personal and societal problems.

Hardly a day goes by that the Federal, State and local law enforcement agents do not seize Heroin, Marihuana, Cocaine, PCP, Quaaludes, and other dangerous drugs, not by the pound but often by the ton, by the planeload and boatload.

Hardly a day goes by that U.S. Customs inspectors do not seize substantial sums of currency and monetary instruments from organized crime's attempt to launder money obtained from their nefarious drug transactions.

Hardly a day goes by that a hospital emergency room does not report some drug-related injury or a death resulting from the abuse of heroin, amphetamines, barbiturates, stimulants, depressants, and tranquil-

izers. Yet, each year, more and more of our citizens obtain drugs illicitly or through overly prescribed prescriptions.

This year narcotics trafficking and drug abuse have once again reached epidemic proportions. Nearly every region of the world . . . nearly every city, town, and school district in this Nation has become a victim to drug trafficking and drug dependency. The drug problem is a crisis comparable to our energy crisis and to the deplorable state of our economy.

Banner headlines reflect the magnitude of the drug epidemic in this Nation:

A Treasure in Opium Poppies is Ripe for the Plucking in Golden Triangle (New York Times, Sept. 8, 1980)

State Fears Heroin Deaths Rising (New York Post, Sept. 10, 1980)

Rise in Drug Addicts Strains Programs in New York State (New York Times, Sept. 1, 1980)

Heroin—It's Back and Deadlier (Herald Statesman, June 22, 1980)

The Dope Kids of 115th Street (Village Voice, July 2, 1980)

Mob Seen Cashing in on Drug Trade (Philadelphia Daily News, August 20, 1980)

Drug Abuse Up: Island Groups Apply for State Aid (Staten Island Advance, June 26, 1980)

Drug Crimes Shooting Up at Pharmacies (Wall Street Journal, June 30, 1980)

Cocaine is Linked to Birth Defects (Philadelphia Inquirer, August 22, 1980)

No nation is immune to the operations of the international narcotics traffickers who reap unknown billions of untaxed dollars from their nefarious business transactions, causing untold misery for millions of people throughout the world.

Opium production from the Golden Crescent of Pakistan, Iran and Afghanistan has more than doubled, from an estimated 700 tons in 1978, to approximately 1,600 tons for 1979. Favorable weather conditions this year in the Golden Triangle indicate an anticipated opium bumper crop displacing last year's drought yield of 150 to 200 tons and suggesting a windfall of 700 tons . . . far exceeding that area's usual annual opium production of 250 to 500 tons. Although Mexican law enforcement authorities have, to a large extent, been successful in controlling the illicit production of Heroin and Marihuana, Mexico annually produces an estimated 15 tons of opium and more than 2,000 metric tons of Marihuana.

Add to that the estimated 8 billion dollar Cocaine and Marihuana trafficking between the United States and Colombia . . . a business that far exceeds Colombia's largest legitimate export commodity, coffee, and ladies and gentlemen, you can readily see that narcotics trafficking is a gigantic, multibillion dollar business. Just in the United States alone drug trafficking is an estimated 50 billion dollar business, third in sales after Exxon and General Motors but far ahead of the approximately $37 billion sales of the Ford Motor Company.

In an effort to wage "war" against the highly sophisticated, well-financed billion dollar operations of the international narcotics traffickers, the Federal Government spends less than one billion dollars . . . millions, not billions . . . to interdict narcotics trafficking, to educate our citizens regarding the dangers of drug abuse, and to treat and rehabilitate those individuals who are dependent upon or addicted to drugs. And the United Nations, in its worldwide effort, has allocated from its Regular Budget a meager $6,450,000 out of more than $1.2 billion to combat drug abuse during the two-year period of 1980–81.

As you know, all of this increased opium production comes at a time when the Administration has proposed a cutback of $40 million in Federal treatment programs. Our Narcotics Select Committee recently held hearings to assess the impact of increased opium production and the Administration's proposed cutback in Federal treatment programs. The hearing record has just been printed, copies of which are available for you at this conference; additional copies of this publication may be obtained from our Narcotics Select Committee.

It is a mistake to believe that narcotics trafficking is limited to organized criminal syndicates. Unfortunately, doctors, lawyers, educators, military personnel, businessmen and other professionals have entered the drug trafficking business as independent entrepreneurs. Unscrupulous physicians, pharmacists, nurses, hospital employees, and "patients", have garnered hundreds of millions of dollars in illicit profits from the pill pushing and illicit prescription activities. The drug paraphernalia industry, whose neighborhood stores ("headshops") glorify the use of drugs, reap an estimated $1 billion each year through the sale of kits for inhaling, ingesting and injecting deadly mind-altering drugs.

Approximately 450,000 addicts in the United States reportedly spend $6 billion annually to support their drug habits. In 1978, more than 8,400 of our citizens, mostly our youth, were reported by medical examiners to have succumbed to drug overdoses, while more than 286,000 drug abusers were reported by hospital emergency rooms to have sustained drug-related injuries. Just last week, Julio Martinez, Director of the New York State Division of Substance Abuse, predicted that this year at least 600 individuals would die from Heroin overdose in New York—an increase of 27 percent over last year's figures.

Obviously, this data is only the tip of the iceberg. It does not account for the unknown thousands who are not reported as drug addicts. It does not include those who are not registered in drug treatment centers or who are physically and psychologically dependent upon Amphetamines, Barbiturates, Tranquilizers or who are cross addicted to pills and alcohol. With more than 260,000 prescription and over-the-counter drugs on the market in the United States and the annual purchase of an estimated 275 million psychoactive drug prescriptions, it is no wonder that this nation is fast becoming a drug-oriented society, where drugs are a way of life for relaxation and recreation or are used to sedate anxieties, tranquilize tender nerves and kill real or imaginary pain for millions of individuals who mistakenly believe that they can escape into mind-altering substances to resolve their problems.

National statistics indicate that women are more susceptible than men to drug abuse and more vulnerable to the promotional sales pitch of the drug industry and to the eager physicians who write prescriptions. The National Institute on Drug Abuse (NIDA) estimates that in the United States, 31 million women have used tranquilizers, compared to 18 million men; 2 million women have become dependent upon prescription drugs and 5 million women, including many who are dependent upon pills, are alcoholics. Sleeping pills are prescribed to twice as many women as men.

The most widely prescribed drug on the market to date and one that has become a symbol of our drug dependent society is Valium (Diazepam), a tranquilizer that is a household word for treating anxiety and a drug that, when abused singularly or in combination with other mind-altering substances, has sent more individuals into hospital emergency rooms than any other drug on the market. NIDA has estimated that in 1978, more than 45 million retail Valium prescriptions were filled (or the dispensing of more than 2.5 billion Valium tablets) to consumers to treat anxiety, convulsive disorders, skeletal muscle spasms and alcohol withdrawal. And these statistics do not include all of the Valium tablets that were illicitly obtained. In this regard, the New York State Division of Substance Abuse Services recently estimated that 552,000 men, 272,000 women, and 220,000 school children in the State of New York have taken Valium without any prescription.

NIDA estimates that nearly 31 million prescriptions were written in 1978 for the painkiller Darvon, 13.7 million prescriptions for the anti-anxiety sedative Dalmane, and 11.1 million prescriptions for Librium, the psychoactive cousin to Valium. In 1978, Valium overdoses accounted for an estimated 50,200 emergency room visits and an estimated 1,000 deaths . . . human tragedy and the loss of life that is statistically exceeded only by the overdose of alcohol, combined with other psychoactive drugs, accounting for an estimated 53,200 emergency room visits and 2,230 deaths. Valium/alcohol cross addition is not uncommon among many of our citizens.

Narcotics trafficking and drug abuse affects our young and the elderly, the poor and the affluent . . . men, women, minorities, members of our armed forces, individuals from every sector of society. Narcotics trafficking and drug abuse is too important a problem to be placed on the societal backburner. I find it distressing that so many public officials, community leaders, business representatives, farm and labor leaders, parents, teachers, students, school administrators, and the general public are naive about or unknowledgeable of the magnitude of drug trafficking and the debilitating effects of alcohol and drug abuse. Too often, they relegate this problem to the backburner on their agendas.

Through its hearings and investigations, the Narcotics Select Committee has sought to raise the consciousness of the public regarding the dangers of drug abuse. As the result of hearings on Phencyclidine, legislation was introduced providing criminal penalties for the unauthorized manufacturing of this dangerous hallucinogen. This legislative initiative is now Public Law 95–633, the Psychotropic Substances Act of 1978. Title II of that statute provides criminal penalties for unlawfully manufacturing, distributing, dispensing, or possessing PCP, including a maximum ten-year imprisonment and $25,000 fine, together with stiff reporting requirements and penalties for the unlawful use of piperidine, a key ingredient for the manufacture of PCP.

Our Select Committee's hearings in New York City and Miami, Florida, resulted in the Biaggi-Gilman measure (H.R. 2538) facilitating increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, including the interdiction of drugs on the high seas. H.R. 2538 passed the House on July 23, 1979. Yesterday (Sept. 15, 1980), the President signed this measure into law, which is now known as Public Law 96–350.

I have also introduced H.R. 3674, cosponsored by 44 of my colleagues, providing mandatory minimum prison sentences for persons illegally manufacturing, distributing or dispensing controlled substances.

Our hearings in Chicago in 1977 surfaced the money laundering activities by drug traffickers operating between Mexico and Chicago that led to H.R. 5961, which would close certain loopholes in our banking laws.

Our Narcotics Select Committee has gone into the jungles of Burma, into the border-

land areas of Pakistan and Thailand, over Mexico's treacherous mountain ranges, to the European Parliament, to the United States-Mexico Interparliamentary Conferences, to the leaders of Mainland China, the Soviet Union, and to the Vatican in waging our "war" on narcotics trafficking and drug abuse.

Ladies and gentlemen, no amount of Federal, State or local legislation will stop drug abuse if our citizens are determined to misuse and abuse drugs. Waging "war" on narcotics trafficking and drug abuse is a never-ending battle, requiring a commitment of 365 days a year of more stringent law enforcement, more effective education, and better treatment and rehabilitation facilities. Until that message comes across loud and clear to public officials and community leaders, to parents, teachers, school administrators and our youth and until the public realize the debilitating effects of drug abuse, then lives will continue to be lost to deadly drugs and our Nation will sink into a bottomless pit of drug dependency and societal decay.

A coalition of public officials, community leaders, parents, teachers, school administrators, youngsters, leaders from the business, farm and labor communities, health professions, law enforcement officials, individuals from all sectors of society is urgently needed to raise the consciousness of the public regarding the dangers of drug abuse and the insidious operations of the drug traffickers whose multibillion dollar untaxed operations cause so much misery for so many of our citizens.

We must raise the consciousness of the public regarding the misuse and abuse of licit drugs and the deadly dangers of drug abuse.

We urgently need to establish drug education programs in our schools to educate not only the youth of our Nation, but also parents, teachers, and school administrators regarding the debilitating effects of drug abuse.

We must elevate narcotics trafficking and drug abuse to a top priority on our agendas and provide real dollars to underwrite programs that will effectively combat this scourge of all mankind.

I commend all of you for your efforts to help raise the consciousness of the public. Let us commit ourselves to an all out offensive against drug abuse . . . there's a war that must be won!●

ANNETTE WOHRLE WELCOMED "HOME"

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MARKEY. Mr. Speaker, today, this House, in accepting my bill to enable Annette Wohrle of Stoneham, Mass., to remain in the United States, has acted with compassion and wisdom.

Annette Wohrle, whose early years involved much hardship, has found a haven with her adopted parents in this country. To deny Annette the right to remain with them because of the expiration of her student visa would have been an unnecessarily harsh application of the immigration law.

This country has historically provided a home to those whose hopes for a better life have drawn them to our shores. For the past 4 years, the Wohrles have given their daughter the security of family life, a life she had never known before.

I applaud the action taken today by the House in making it possible for a family to stay together, for a young woman to find a permanent home, and for opening her up to a bright future in America.●

EL GRITO DE DOLORES

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. ANDERSON of California. Mr. Speaker, today is the 170th anniversary of El Grito de Dolores, the inspiring call to freedom for Mexicans. On that day in 1810, Father Miguel Hidalgo y Costillo, a parish priest in Dolores, spurned his usual sermon in favor of asking his followers to take up arms against their Spanish oppressors. Although it was 11 years before independence was finally won, September 16, 1810, is commemorated as Mexican Independence Day.

Father Hidalgo's parishioners, consisting of Indians and mestizos, were fully prepared to answer the call, and a band of armed men began to attack Spanish outposts. Over the next few months, this group was augmented by others, tens of thousands joining the cause for independence. Inroads against Royalist troops were continually made, until Hidalgo's forces were ready to battle Spanish troops on the outskirts of Mexico City.

Unfortunately, these freedom forces were repelled and defeated, and Father Hidalgo was captured and later executed. Thus, the leadership of the rebel forces was passed on to one of Hidalgo's devotees, Father José María Morelos.

Father Morelos preferred the use of guerrilla tactics, and by these means was able to win control of substantial sections of southern Mexico. But, Mr. Speaker, Father Morelos was also captured, and after being defrocked as a priest, was shot in December 1815. Nonetheless, small bands of fighters kept the dream of independence alive.

In one of the quirks of history, Mexican independence came about when a rebellion in Spain forced Ferdinand VII to reinstate a liberal constitution. Alarmed that their religious, social, and economic privileges were threatened by this liberalism in the motherland, Mexican conservatives chose a Royalist officer, Agustín Itúrbide, to lead their cause. Itúrbide fought against Vicente Guerrero, the rebels' leader, until negotiations brought them together. Then, with his 2,500 troops and the support of the Mexican elite, Itúrbide defected to the rebels and their cause of independence. Other Royalist officers soon followed his example. Combined with the rebel forces as the Army of the Three Guarantees—independence, union, and the preservation of Roman Catholicism—most of Mexico was now under their control. When Juan O'Donoju, the Spanish viceroy of Mexico, arrived in Cordoba, he realized the futility of attempting to repress these forces any longer, and therefore he signed the Treaty of Cordoba on August 24, 1821. Thus, Spain finally acknowledged Mexico's independence, after 11 bloody and arduous years.

Mr. Speaker, the freedoms that those brave Mexicans were fighting for are universal in essence. Foreign domination is, unfortunately, being practiced in many parts of the world today. It is necessary and fitting that we honor those Mexicans and their descendants for contributing to the unending quest to maintain human dignity as well as preserving a unique cultural heritage. The battles were long and hard, but unity of purpose ultimately won out. Today I salute those Mexican Americans in my own 32d District of California, as well as Mexican Americans throughout the country on this, the day of El Grito de Dolores.●

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, SECOND SESSION

SENATE—*Wednesday, September 17, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. CARL LEVIN, a Senator from the State of Michigan.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

God of our fathers and our God, who has made and preserved us a nation, give us grace ever to heed the truth of Thy word that the judgments of the Lord are true and righteous altogether. As we labor keep us mindful that judgment day is every day.

Guide by Thy higher wisdom the President, the Congress, the judiciary, and all our leaders. Draw the people close to one another by keeping them close to Thee. Give us a part in the spiritual renovation of the Nation, in the recovery of national purpose, and a pure patriotism.

And to Thee shall be the thanksgiving and the praise. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 17, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CARL M. LEVIN, a Senator from the State of Michigan, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. LEVIN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the statement which I am about to make on the U.S. Senate appear at this point in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. So I yield to the distinguished minority leader if he has anything to say at this time in order for him to have an opportunity, if he so desires, and also to receive a message from the President of the United States.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

Mr. BAKER. Mr. President, I thank the majority leader. I have no need for my time under the standing order. I am aware of the fact that the distinguished majority leader is to comment this morning, I believe, on the anniversary of the occasion of the adoption of the Constitution or the publishing of the Constitution, and I offer to yield my time to him as well as the time that has been heretofore provided.

Mr. ROBERT C. BYRD. I appreciate the generous offer and I would like to have the time.

Mr. BAKER. Mr. President, I ask unanimous consent that I may yield my time under the standing order to the distinguished majority leader.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Chair will inform the majority leader that he has 34 minutes.

Mr. ROBERT C. BYRD. I thank the Chair.

THE UNITED STATES SENATE

Mr. ROBERT C. BYRD. Mr. President, 193 years ago today the Constitutional Convention concluded its work in Philadelphia and signed what would become the Constitution of the United States of America. Ours is the oldest continuing written Constitution in the world. It is a covenant between the people and their Government that has carried us through territorial expansion, civil war, industrialization, two world wars, Watergate, and the nuclear age.

William Ewart Gladstone, who was Prime Minister of England four times and who was the foremost political leader during the reign of Queen Victoria, said:

> As the British Constitution is the most subtle organism which has proceeded from the womb and the long gestation of progressive history, so the American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man.

Mr. President, the following is from *Formation of the Union under the Constitution*, by the U.S. Constitution Sesquicentennial Commission: the main origins of the United States Constitution "lie in centuries of experience in government, the lessons of which were brought over from England and further developed through the practices of over a century and a half in the colonies and early State governments, and in the struggles of the Continental Congress.

"Its roots are deep in the past; and its endurance and the obedience and respect it has won are mainly the result of the slow growth of its principles from before the days of the Magna Carta.

The Constitution does not "give us our rights and liberties. . . . It only guarantees them. The people had all their rights and liberties before they created the Constitution. The Constitution was created, among other things, in order to make the people's liberties secure, secure not only against foreign attack but against oppression by their own government."

All Members of the United States Senate swear to uphold the Constitution. That is our foremost duty and responsibility.

Inasmuch as I have, for the past several months, spoken on the historical development of the United States Senate, I should like to take this occasion to discuss the Constitution which created the Senate and defined our role and functions in the Federal Government.

Our Constitution has survived so long

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

and worked so well that we tend to forget the existence of an earlier Government of the United States. The first united action of protest in the preliminaries of the Revolutionary War was the Stamp Act Congress of 1765. It was held at New York, and nine of the 13 colonies sent delegates who had been appointed by the Assemblies, for the most part. The voting was by colonies, one vote accorded to each, and the Stamp Act Congress framed petitions to the King and to Parliament.

Following the efforts by the British Government to coerce Massachusetts into obedience to British measures, the colonies took action that led to the present Union.

The first Continental Congress met on September 5, 1774 in Carpenters' Hall at Philadelphia. Delegates from all the colonies, except Georgia, attended. As in the case of the Stamp Act Congress, the Continental Congress adopted the rule of one vote for each colony, regardless of population or size. This rule often hindered the competency of the general government and frequently impeded congressional action.

The Second Continental Congress met at Philadelphia on May 10, 1775. This organ of union did not possess the power to enforce its measures. The only instrument for enforcement was that of the States. Congress could recommend, but the States could do as they pleased, and in many instances they did nothing at all.

The Virginia Convention adopted a resolution on May 15, 1776, which instructed the colony's delegates to propose independence and gave approval to whatever measures were considered proper and necessary by the Congress "for forming foreign alliances, and a Confederation of the Colonies, . . ." Richard Henry Lee introduced legislation which was adopted by Congress on July 2, 1776, providing "that a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation. In 1777, the Articles of Confederation were agreed to and submitted to the States, but the Articles were not ratified until Maryland, the last state to ratify, finally agreed to the Articles on March 1, 1781.

The Articles remained in effect until the inauguration of the new government under the Constitution in March of 1789.

The Articles of Confederation reflected the suspicions that early Americans had of a centralized government. Having just freed themselves from the rule of a King, they were not about to accept strong executive leadership, either in the states or in the nation as a whole. The Articles, therefore, created only a single-chamber national legislature, without either an executive or a judiciary.

But Congress under the Articles represented more than just a league of sovereign states. As Professor Jack Rakove of Colgate University has pointed out in his study of the Continental Congress, "Congress was in fact a national government, burdened with legislative and administrative responsibilities unprecedented in the colonial past." Congress had the authority to determine foreign policy, to coin and borrow money, to requisition the states for men and money, to regulate Indian affairs, and to mediate disputes between the states. On minor matters a simple majority of seven votes was necessary (with each state having one vote), but on major matters of war, finance, and treaty making, a majority of nine votes was required. Amendments to the Articles required the unanimous consent of the states. Because there was so much disagreement between the states, north and south, large and small, merchant and agrarian, a majority of nine was extremely difficult to achieve on major issues, and unanimity among the states was almost impossible.

Administrative leadership under the Articles came only from congressional committees, but these were hobbled by a rule which prohibited members from serving in Congress for more than three out of every six years, thus restricting seniority and making it difficult for committee members to build up sufficient expertise. The proliferation of standing and special committees also proved a drain on the legislative functions of the Congress.

The government under the Articles of Confederation was not without its achievements—such as winning the war with Great Britain, and establishing the Northwest Ordinance of 1787 which organized the vast American territories which now comprise the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. But for the most part this government was known for its weaknesses and inefficiency. States frequently ignored its requests, continued printing their own money, and erected barriers to interstate trade. Many of the leading men of the era, George Washington, James Madison, Benjamin Franklin, and others, sought a stronger, more stable, more efficient form of government. They were particularly alarmed over an insurrection by debtors in Massachusetts, under the leadership of Daniel Shays. Washington was mortified that "Shays' Rebellion" had been led by a former officer in his army "I feel infinitely more than I can express," he wrote, "for the disorders which have arisen. Good God! Who besides a tory could have foreseen, or a Briton have predicted them."

The late constitutional scholar Clinton Rossiter very aptly described the reaction of men such as Washington to the events they witnessed under the Articles of Confederation:

> By 1787 men like Washington and Madison had come to see the commercial, financial, social, and diplomatic disorders of the new Republic as primarily political in character. The trouble with almost every state was that it was governed weakly or erratically; the trouble with the United States was that it was governed hardly at all. Since they also saw these disorders as primarily national in scope, as afflictions that no state could hope to cure on its own, the most unbearable ill was a palsied common government.

I again quote from the *Formation of the Union Under the Constitution:*

"The Confederation, under the Articles, had three great weaknesses. It had no means of revenue independent of that received through its requisitions on the states, which were nothing more than requests, which the states could and did disregard; and it had no control over foreign or interstate commerce. Behind these lacks was its inability to compel the states to honor the national obligations. It could make treaties but had no means to compel obedience to them; or to provide for the payment of the foreign debt. It had responsibility but no power as a national government; no means of coercing the states to obedience. . . . Its greatest weakness was that it had no direct origin in, or action on, the people themselves; but, unlike both the Declaration of Independence and the later Constitution, knew only the states and was known only to them, calling them sovereign."

In June of 1786, the Congress debated a motion by Charles Pinckney of South Carolina to amend the Articles to create a federal appeals court, and to strengthen the power of Congress to raise taxes from the state government (In February of that year the state of New Jersey had simply refused to pay a tax which the Congress had levied). But since a unanimous vote was clearly impossible, Congress did not even bother to submit Pinckney's proposals to the states.

Instead, in September 1786, nine states accepted the invitation of Virginia to meet in Annapolis, Maryland, ostensibly to discuss interstate commercial activities. The Annapolis conference, however, recognized the broader nature of the problem and proposed that all of the states send delegates to a new convention, to be held at Philadelphia the following year, to discuss all matters necessary "to render the constitution of the Federal Government adequate to the exigencies of the Union." Creating a new central government, wrote James Madison, was now a matter that would "decide forever the fate of republican government."

All of the States except Rhode Island appointed deputies to the 1787 Convention. The deputies were appointed by the legislatures. Seventy-four men were appointed deputies, of which 19 declined to serve or did not attend. Of the 55 who attended, 14 left before the Convention closed, and three more refused to sign the final draft. Only 38 signed, with the added signature of an absent deputy, John Dickinson of Delaware, making 39.

Of the 55 men who, in varying degrees, framed the Constitution, 47 were natives of the Colonies. The oldest was Franklin, at 81; the youngest was Dayton of New Jersey, at 26. Twenty-one deputies were under 40, 14 were 50 or over.

Twenty-five were college trained. Eighteen had been officers in the Continental Army, and 1 had been a British Army officer prior to the Revolution. Thirty-four were lawyers, or had at least studied the law. Eight were merchants or financiers. Six were planters, 3 were physicians, 2 were former ministers of the gospel, and several were college professors. Benjamin Franklin represented the Fourth Estate.

Forty-six had been members of one or both Houses of Colonial or State legislatures. Ten had attended State constitutional conventions. Several had been Governors or Presidents of States, and several had been state attorneys general, while several had served as justices of state courts.

Eight were signers of the Declaration of Independence. Thirty-nine or 40 had been delegates to the Continental Congress. Six had signed the draft of the Articles of Confederation, 7 had attended the Annapolis Convention, 3 had been executive officers under the Congress, and 1 had been a minister abroad.

The positions, therefore, which these men had occupied, are indicative of the respect and regard in which they were held by their fellow citizens.

Never before, I suppose, had such an illustrious gathering of wise, able, and farsighted men met together in a common cause as on that occasion.

George Washington was the most important man in the Convention, so great was his prestige. His fellow deputies from Virginia—Madison and Randolph—were very active, Madison becoming the principal architect of the Constitution. Wythe and Mason contributed knowledge and experience which had grown out of their prominent participation in earlier American affairs of state. Franklin had great prestige, and his advice and experience made him, like Washington, a great harmonizer. Gouverneur Morris, who was a firm believer in a national system, contributed much to the verbiage of the Constitution. Alexander Hamilton did not influence the actual verbiage of the Constitution as much as he later influenced the ratification of the document and the successful operation of the new Government.

James Wilson contributed much to the details and political theory of the document. Roger Sherman was a signer of the documents of the First Congress, the Declaration of Independence, the Articles of Confederation, and would be a signer of the Constitution.

Oliver Ellsworth was an able lawyer. Gerry and King were Harvard graduates. William Patterson, John Dickinson, and Luther Martin were prominent leaders in small States—men who were dedicated to the preservation of equality for the State. Rutledge, Charles Pinckney, Pierce Butler, and Charles Cotesworth Pinckney were active in preserving the advantage of the slave system which then undergirded the economic conditions of the South.

The man who deserved the title of "Father of the Constitution" was thirty-six-year-old James Madison, whom we have just this year honored with the dedication of the new Madison building of the Library of Congress. For those members of the Senate who have not yet visited the Madison building, it contains a handsome hall which houses a white marble statue of Madison, surrounded by selected quotations from his writings inscribed on the wood paneled walls. This is certainly a fitting—if belated—tribute to a man who contributed so significantly to our system of government.

Madison had served in Congress under the Articles but had to retire in 1783 because of the three-year limitation on service. During his years out of office he became increasingly concerned over the mounting sectional tensions and the inability of the central government to respond. Madison was an advocate of the new convention and became one of Virginia's delegates. James Madison did his homework and was able to cut through the maze of complicated issues facing the convention with a sharpness of mind and a degree of preparedness that deeply impressed the other delegates. He was a man who seized the initiative when he spotted it, and thus was able to shape the course of the convention. It was Madison, also, who kept the minutes of the debates, which were conducted in secret, and so it is to him that we are indebted, for the most part, for our knowledge of the inside deliberations which produced the Constitution.

The Convention was set for May 14, 1787, a Monday, but a necessary quorum did not develop until the 25th, when 7 States were represented. Before the end of May, 10 States were in attendance and voting. Maryland participated on June 2. New Hampshire, the 12th State, was present on July 23. New York was not voting after July 10.

The meeting was held in Independence Hall where the Declaration of Independence had been adopted and signed, and where the Congress had sat.

Washington was the unanimous choice for president of the Convention. Each State had one vote. Complete secrecy was the rule, as in the case of the Continental Congress, but it was occasionally violated.

The President, even in the intimacy of his private diary, gave no hint concerning the meetings. Other than the list of motions and votes, the formal journal provides rather skimpy details. The notes on the debates kept by Madison constitute the most important record thereof, and they were not made public as a whole until 1840. Notes were kept by various other members, especially those by Yates.

Of the 116 days between May 25 and September 17, inclusive, meetings were conducted on 87 or 88 days. Our knowledge of special committee meetings and private discussions is very scarce, and most of this is based on the unreliable form of later recollection. Yet, it was in these meetings and informal gatherings that much of the real work was done.

James Madison was the principal author of the "Virginia Plan"—introduced by Edmund Randolph—which became the working plan for the new system of government. In place of the 1-house legislature, the "Virginia Plan" called for a Senate and a House of Representatives, and, in addition, it proposed a national executive and a national judiciary. In the intervening years between the Articles of Confederation and the Constitution, Montesquieu's treatise on The Spirit Of The Laws had gained great acceptance among American leaders, and the Constitution-makers were determined to apply his theories of separation of powers.

The great French philosopher had, however, in turn borrowed much of his doctrine from the Englishman, John Locke, with whose writings, various members of the Convention were also familiar. But, as Dr. Louis Fisher of the Congressional Research Service has pointed out in his fine book, *President and Congress*, "Theory played a role, but it was always circumscribed and tested by experience."

The main origins of the original ideas of Government embedded in the Constitution lie in centuries of experience in government, the lessons of which were brought over from England and further developed through the practices of over a century and a half in the colonies and early state governments, and in the struggles of the Continental Congress. Its roots are deep in the past; and its endurance and the obedience and respect it has won are mainly the result of the slow growth of its principles from before the days of Magna Carta.

The constitution-makers were men of experience, in the tradition of American pragmatism. They understood from experience that a single branch could not adequately perform all of the functions of a central government, that some executive leadership was necessary, checked and balanced by a legislature and a judiciary.

Under the "Virginia Plan," the members of the Senate and House would have been apportioned according to the population of the states and would have the power to legislate in "all cases to which the separate states are incompetent," as well as to "negate all laws passed by the several states, contravening in the opinion of the national legislature, the articles of Union." The thrust of this proposal was a strong legislature: Congress would elect the executive and the members of the judiciary.

The larger states advocated the "Virginia Plan," while the smaller states countered with the "New Jersey Plan," which William Patterson introduced. This plan provided for equal rather than proportional representation of the states. While the New Jersey Plan basically would have continued the system under the Articles of Confederation, it added an important distinction, that the proposed constitution would be the "supreme law" of the land and would be superior to those of the states.

Between the Virginia and New Jersey plans came a proposal by Roger Sherman of Connecticut. This "Connecticut

Compromise" provided for proportionate representation in the House and equal representation in the Senate. On July 12, 1787, the convention agreed that the lower house should be apportioned according to the size of the population in each state, counting the total of white inhabitants and three-fifths of the slaves. Four days later, the convention accepted the principle that each state should have equal representation in the Senate. Thus, the unicameral legislature under the Articles of Confederation was replaced by a bicameral legislature under the Constitution, a decision to which we in the Senate owe our existence as a legislative body today.

Of course, two-house legislatures were not new to this country, but dated back to the early colonial governments. There the assemblies represented the popular local interests, while the smaller councils advised and generally supported the royal governors and the British crown. In his study of *The Upper House In Revolutionary America*, Professor Jackson Turner Main has traced the evolutions of these small councils of elites, who owed their appointments to the king, into democratically-elected legislative bodies. The colonial councils were comprised of large landholders, lawyers, and merchants, who were generally better educated, wealthier and more experienced than the members of the assemblies. After the Revolution, state constitutions turned these councils into working legislative bodies, which remained smaller than the assemblies, generally averaging fifteen members, and had longer terms in office. These upper bodies formulated, amended, and rejected laws, and acted as something of a check on the popular fervor of the lower houses. Although the upper houses had moved from an aristocratic to a democratic form, they continued to demonstrate a tendency to favor the upper classes and protect property holders. The existence of these upper houses in the states, therefore, provided the constitution-makers with models for the creation of the United States Senate.

Having decided on the basic tripartite form of government, the Convention then launched into a "Great Debate" during August and September 1787 to complete the specific details of the Constitution and enumerate the powers and responsibilities of each branch of the government. It was agreed that senators would serve for six years, while House members would be elected every two years. Senators would be elected by the state legislatures, a system which existed until the Seventeenth Amendment in 1913 provided for popular election. Congress would not have the blanket authority to legislate that the Virginia Plan originally contemplated, but would have specifically enumerated powers to tax, to borrow and coin money, to regulate commerce, to declare war, to raise and support an army, and to make all laws necessary for executing the powers vested in the government by the Constitution. Of course, we, like other branches, also operate under the "implied" powers of the Constitution as well as those enumerated.

We are, I think, all familiar with these Constitutional provisions for the Senate, but it might be instructive to look briefly at some of the proposals which were *not* adopted, and try to imagine how differently the Senate might have developed under them. I draw this material from a fascinating little book, *Constitutional Chaff, Rejected Suggestions of the Constitutional Convention*, compiled by Jane Butzer.

Delegates to the convention argued over the number of senators each state should send, whether it be one, two, or three. John Dickinson called for more than two hundred senators—this at a time when there were only thirteen states! His reasoning was that "by enlarging their number, their influence and weight will be increased by combining the families and wealth of the aristocracy, and thereby you will establish a balance against, and a check of, the democracy." Charles Pinckney of South Carolina called for states to be divided into three classes according to their respective sizes, with the largest states being allowed three senators, the middle-sized states two senators, and the smallest states one senator. David Brearley of New Jersey suggesting erasing all existing state boundaries and partitioning the lands of the United States into thirteen equal parts, since, as he said, "this is the only device by which the state equality of votes may be preserved without unfairness to the larger states."

It was suggested that the Senate be elected by the House of Representatives, or by electors, or that the president should appoint senators for life terms. Alexander Hamilton advocated that senators hold their seats for life, "or at least during good behavior." If not for life, then the terms of Senate service were proposed to be three, four, five, six, seven, or nine years. George Read of Delaware suggested a nine year term, with one-third up for election triennially. Mathematically, Read's plan would have required elections for the Senate to be held during odd years as well as even years—also, counting House elections, congressional elections would thus be held *every* year! The mind boggles at the thought.

Several delegates opposed having the vice president serve as president of the Senate. John Rutledge, reporting for the Committee of Detail, proposed that the Senate choose its own president. Elbridge Gerry—who would later become vice president himself argued that the intimacy between the vice president and president would make it "absolutely improper" for the vice president to preside over the Senate. George Mason saw such use of the vice president as an encroachment on the rights of the Senate. "It mixes too much the legislative and executive, which, as well as the judiciary department, ought to be kept as separate as possible."

On the question of recorded votes in Congress, Roger Sherman believed that the yeas and nays should not be required. "They never have done any good, and have done much mischief," Sherman argued. "They are not proper, as the reasons governing the voter never appear along with them." To this objection, Daniel Carroll of Maryland added that the Constitution should specify that any member of the Senate be at liberty to enter his reasons for casting a vote.

As to the provision that neither house of Congress could adjourn for more than three days without the consent of the other, several delegates argued that this was unnecessary since the Senate, as an advisory body to the president, should always be in session!

Then there was the question of whether or not to pay senators for their legislative services. Pierce Butler of South Carolina argued that senators should not be entitled to receive a salary, or any other compensation for their services. General Charles Cotesworth Pinckney agreed that the Senate should represent the wealthier classes and, therefore, if no salary were paid only the wealthy could serve. Benjamin Franklin also opposed a salary for senators. "If lucrative appointments shall be recommended," he warned, "we might be chargeable with having carved out places for ourselves." Edmund Randolph of Virginia, however, argued that senators and representatives should receive "liberal" compensation for their many duties.

Several delegates believed that the individual states should pay their senators' salaries, and that these salaries could vary according to the wealth and style of living in each state. Hugh Williamson of North Carolina objected to the eastern states having to pay the salaries of senators from the western states. "The new states to the westward will be poor—will pay little into the common treasury—and will have a different interest from the old states," said Williamson. "The old states, therefore, ought not to pay these expenses of men who will be employed in thwarting their measures and interests."

Mr. Williamson also suggested that a two-thirds vote should be required to pass all legislation. Thank goodness that his proposal was not adopted.

Mr. President, when we contemplate these failed proposals which would have established a Senate which was always in session, where members would serve for life at no salary or other compensation, and where a two-thirds agreement would be necessary for any piece of legislation—then we can appreciate the wisdom of the founding fathers for giving us the Senate that they did.

By September 17, the delegates had completed their work but there was still some dissension among them. Several members were unhappy with the system of government that had been wrought, and were not prepared to endorse the new Constitution. The Secretary opened the meeting with a complete reading of the magnificent document they had fashioned, and then Benjamin Franklin

"rose with a speech in his hand," as Madison noted. Franklin, at eighty-two, could not stand to deliver the entire speech, and so handed it to James Wilson, another member of the Pennsylvania delegation, to read for him. It was a wise and gentle speech, typical of the great man who wrote it. Franklin sought to still the doubts of some of the delegates and to coax them into signing the Constitution, which he readily admitted was not perfect, and of which he did not entirely approve himself. He reminded some of the dissenters that they were not infallible, and compared them to "a certain French lady," who in a dispute with her sister said, "I don't know how it happens, Sister, but I meet with nobody but myself, that's always in the right."

"On the whole, Sir," Franklin concluded his remarks, "I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument." At this point, Franklin shrewdly moved that they sign the Constitution in recognition of "the unanimous consent of *the States*" rather than of the individual delegates. The Constitution was thus signed by all the members except for Edmund Randolph, George Mason, and Elbridge Gerry, who declined to sanction its compromises.

It was at this point in the proceedings that James Madison closed his minutes to the Constitutional Convention, but he added this final anecdote, one which encapsulated the entire history of their debates:

> Whilst the last members were signing, Doctor Franklin, looking towards the President's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had found it difficult to distinguish in their art, a rising, from a setting sun. I have, said he, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President, without being able to tell whether it was rising or setting: but now at length, I have the happiness to know, that it is a rising, and not a setting sun.

So, Mr. President, one hundred and ninety-three years later, on this Wednesday, September 17, 1980, we can conclude that Benjamin Franklin was entirely correct; that it was, and still is, a rising sun. The Constitution, with its amendments, still stands. The system of checks and balances between the branches of the federal government still operate. And the United States Senate continues to perform the vast responsibilities which the Constitution has entrusted to it.

Mr. President, I ask unanimous consent to have printed in the RECORD the names of the signers of the Constitution of the United States.

There being no objection, the names were ordered to be printed in the RECORD, as follows:

GO. WASHINGTON—
President and deputy from Virginia.

New Hampshire

JOHN LANGDON, NICHOLAS GILMAN.

Massachusetts

NATHANIEL GORHAM, RUFUS KING.

Connecticut

WM. SAML. JOHNSON, ROGER SHERMAN.

New York

ALEXANDER HAMILTON.

New Jersey

WIL: LIVINGSTON, DAVID BREARLEY, WM. PATERSON, JONA. DAYTON.

Pennsylvania

B. FRANKLIN, ROBT. MORRIS, THO: FITZSIMONS, JAMES WILSON, THOMAS MIFFLIN, GEO: CLYMER, JARED INGERSOLL, GOUV: MORRIS.

Delaware

GEO: READ, JOHN DICKINSON, JACO: BROOM, GUNNING BEDFORD, JUN'R, RICHARD BASSETT.

Maryland

JAMES M'HENRY, DANL. CARROLL, DAN: OF ST. THOS. JENIFER.

Virginia

JOHN BLAIR, JAMES MADISON, JR.

North Carolina

WM. BLOUNT, HU. WILLIAMSON, RICH'D DOBBS SPAIGHT.

South Carolina

J. RUTLEDGE, CHARLES COTESWORTH PINCKNEY, CHARLES PINCKNEY, PIERCE BUTLER.

Georgia

WILLIAM FEW, ABR. BALDWIN.

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond 11 a.m. and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DOMESTIC AUTO INDUSTRY DETERMINED TO RECOVER

Mr. PERCY. Mr. President, as the auto industry in this country tackles the serious job of turning itself around and reasserting its position in the domestic and world markets, it is heartening to see the spirit and determination with which the heads of the major auto companies have taken on this challenge.

I was impressed in particular by the very positive, aggressive and hard-hitting approach to recovery taken by General Motors Chairman Thomas Murphy and recently described in an article in the Christian Science Monitor.

As the article points out—

> The world's largest automaker is turning out fuel-efficient cars as fast as it can. GM's two assembly plants that turn out the X-cars are working double shifts and overtime.

We are also informed that—

> GM is also intensifying its efforts to better the Government-mandated fuel standards. Mr. Murphy said that by 1985 it will produce a passenger car fleet that averages 31 miles per gallon. The federally mandated standard for 1985 fleets is 27.5 miles per gallon.

Lee Iacocca, chairman of Chrysler said their fleets average by 1985 would be 30 mpg. Ford and American Motors look forward to dramatic increases. This is welcome news indeed, of benefit to the individual American auto buyer and to our national energy position as well.

Because Illinois is a major State in the field of auto production and the related industries, I have been working with the heads of the four U.S. auto companies and the UAW to reach a consensus on how best to revitalize this key American industry. The vigorous leadership shown by Tom Murphy, as well as by the heads of the other companies, is necessary to the survival of the industry and certainly is an example of the resiliency that has always characterized American business.

Mr. President, I ask unanimous consent that the article by Ron Scherer from the Christian Science Monitor of August 27 be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GM CHAIRMAN SAYS AUTOS TO LEAD U.S. INDUSTRY FROM SLUMP

(By Ron Scherer)

DETROIT.—The automobile industry led the economy into the recession. Now, according to Thomas A. Murphy, chairman of the General Motors Corporation, "We're going to lead the economy back."

Interviewed in his 14th-floor Detroit office, Mr. Murphy also told the Monitor:

General Motors' recent price increases of 1.9 percent on its 1981 cars do not cover the automaker's rising cost of emission control devices and other hardware mandated by the government. The price GM sells its cars to the dealer—called the dealer discount—is actually down for some cars, but unchanged for GM's smaller cars. "We recognize the trend in buying and go with the flow in terms of pricing," he said.

In his view, the downturn in the economy will be short but the recovery will be modest. "The only thing that's preventing us from selling cars," he said, "is the lack of consumer confidence. . . . Uncertainty is our biggest problem. People delay making purchases from a month to two years depending on how confident they feel about the economy." Already, he related, "the used-car market has rebounded, and this is bound to help the new-car market. We are stepping up production now to meet expected growth and restore dealer stocks, which were badly depleted."

Interest rates will not rise markedly during the recovery. This should help the industry, because it was badly hurt during the Federal Reserve Board's credit tightening moves in March. The Fed's actions, Mr. Murphy commented, were not supposed to affect the auto industry adversely, but they did, because banks stopped extending credit to auto dealers.

General Motors will post another loss in the third quarter, a model changeover period. However, it's still too early to tell if it will show a loss in the fourth quarter.

Mr. Murphy shudders when asked why the automobile companies were so slow to react to the shift in demand to fuel-efficient cars. It is a criticism that he has heard often, and he is quick to inform a visitor that it takes some historical perspective to understand why the auto companies were not ready for the massive shift to small cars. Gasoline has been cheap, he intones, and still is underpriced. And the size of the American family

unit has until recently mitigated against small cars.

Furthermore, he said: "You have to look at the waves of small cars that have been produced and died of malnutrition—the Henry J. Nash, Corvair—demand for small cars was not there until 1979. Even the VW beetle, which was big in the '60s because to some degree it was challenging, not goodlooking, but dependable and economical, and had some success in the market, is now gone."

Even in 1973, he said, "after the oil embargo and the long gas lines, our main worry was how to make more family-size cars. As late as early 1979, our biggest problem was how to make more full-size cars. You know, up until 1978, foreign car sales were going down."

What triggered the rush to small cars?

"The misallocation of gas by the government in early 1979 resulted in the perception of shortages when there were none," the GM chairman replied. Then, he went on, the foreign manufacturers got lucky because they had large surpluses of small cars they could sell in this country. "They didn't anticipate the gasoline crisis. It's just that they always made small cars."

As for General Motors, the world's largest automaker is turning out fuel-efficient cars as fast as it can. GM's two assembly plants that turn out the X-cars are working double shifts and overtime. The company currently has a 48-day supply of the cars. So he tells a visitor, "If you want one, I can get it for you." Normally, the wait for a new 4-cylinder X-car in a specific color, with specific options, could take several months.

GM is also intensifying its efforts to better the government-mandated fuel standards. Mr. Murphy said that by 1985 it will produce a passenger car fleet that averages 31 miles per gallon.

Recently, Lee Iacocca, chairman of Chrysler Corporation, said Chrysler's fleet average would be 30 m.p.g. by 1985. The federally mandated standard for 1985 fleets is 27.5 m.p.g. In 1974 GM's average was 12 m.p.g. and for the 1981 models due in the showrooms in a few weeks it is 21.8 m.p.g.

Despite the remarkable rise in the number of fuel-efficient foreign cars sold in the US, Mr. Murphy said he doesn't believe the reason people buy cars has changed much over the past 25 years.

"There is still a lot of emotion involved in buying a car," he explained, "and people buy cars for a lot of different reasons, including, for example, what the neighbors will think."

Furthermore, Americans still like the performance, although he added, "I wouldn't say they are hot rodders." Mr. Murphy had a chance to get a consumer's reaction firsthand recently when his son borrowed the keys to a new Oldsmobile equipped with a diesel engine. "The car didn't have the pickup and response he was accustomed to," Mr. Murphy related, "which is just the way a fuel-efficient diesel acts."

HEARING HELD ON ALCOHOL FUELS BY PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. PERCY. Mr. President, on July 4, 1980, we celebrated the 204th anniversary of our Nation's independence. For most of our first 200 years, we enjoyed energy independence as well. Yet, in the last 10 years, we have gradually lost control of our energy future. Since the oil embargo of 1973–74, the United States has seemingly been at the mercy of a cartel of oil-producing nations. We remain so today—and in some respects, to a greater degree than we were during the original embargo.

The development of energy from renewable resources and the expanded use of one of our most abundant fossil fuels, coal, are both vitally important if we are to break free of our dependence on foreign oil. The production of ethanol from corn to make gasohol is practical on a commercial scale today. The Midwest, with its over 6 billion bushels of corn production, is a great national resource that can help us break OPEC's hold on our economy. And it can be done with a fuel that grows anew each year out of our rich soil: Alcohol produced from grain. More and more Americans are turning to this new alternative. The United States currently consumes 2 million gallons a day of gasohol, composed of nine parts unleaded gasoline and one part corn-made ethanol. Gasohol also accounts for 16 to 18 percent of the sale of one company, Texaco, Inc., in the 11 States where it is marketed. In addition to the clear advantage that gasohol offers in reducing America's dependence on foreign oil, it also increases octane and improves performance in many American cars.

The U.S. Senate Permanent Subcommittee on Investigations, of which I am ranking Republican member, held a hearing on alcohol fuels on August 12, 1980, in Springfield, Ill. We heard testimony that was extremely encouraging about the potential for alcohol fuels and gasohol. Farmers and small businessmen are extremely eager to put alcohol fuels to work for themselves and the Nation. Yet we also learned of the deep frustrations that Illinois farmers and entrepreneurs have experienced in their efforts to wage an all-out fight for energy independence. In particular, we heard of their problems in obtaining access to loan guarantees from the Farmers Home Administration.

The Congress has repeatedly affirmed its support for the development and production of alcohol fuels through tax exemptions and authorizations of loans and loan guarantees for plant construction. The recently passed Synthetic Fuels Corporation Act is only the most recent example of Congress support for alternative fuels. Back in 1977, I cosponsored a 4-cents per gallon Federal excise tax exemption for gasohol as an amendment to the 1978 energy tax bill that was designed to improve the competitiveness of alcohol fuels in the marketplace.

John R. Block, Illinois director of agriculture, was the leadoff witness at the Springfield hearing. He testified about the great potential of Illinois' corn production when turned into alcohol fuels. According to Block, just 30 percent of Illinois' corn production will produce almost twice as much fuel grade alcohol as is needed to meet the national goal of 500 million gallons a year in 1981. In addition to the 900 million gallons of alcohol worth more than $1.6 billion, this same corn contains 576 million pounds of high quality protein and oil worth more than $600 million. These facts, combined with the value of the foreign oil the alcohol will replace, bring the total to more than $2.8 billion. In contrast, this same quantity of corn is worth only $1.1 billion when sold at $3 a bushel.

Al Mavis, executive director of Agri Stills of America of Springfield, Ill., and president of the National Gasohol Commission, argued in his testimony that there has been far too little recognition on the part of the Federal bureaucracy that alcohol fuels are feasible now. He strongly believes further research and development studies simply waste tax dollars that should be used to expand commercial production of alcohol fuels.

Indeed, judging from some of the local success stories, commercial production of alcohol fuels is a practical, profitable reality. Archer Daniels Midland Co., (ADM), located in Decatur, Ill., is the single largest domestic producer of alcohol for the gasohol market. ADM distills more than 54 million gallons a year of fuel-grade alcohol—half of the United States total production of ethanol—and currently plans to expand production further. Richard E. Burket, vice-president and assistant to the chairman, testified that his company is in the process of both converting a beverage alcohol distillery in Peoria, Ill., and constructing a new alcohol fuels facility in Cedar Rapids, Iowa. By the end of 1981, ADM's plants alone will be capable of producing 260 million gallons a year—more than half of the national objective.

ADM's success is heartening, but for every ADM there are dozens or even hundreds of small businessmen who are having trouble getting their alcohol fuels projects off the ground. Unfortunately, these and other developers of new energy technologies have difficulty procuring private financing without Federal assistance in the form of loans and loan guarantees. For the moment, conventional financing sources are wary about these projects—both because of the risks attendant with a new industry and the lack of widespread experience in financing these businesses. Help is now on the way. In the recently passed Energy Security Act (P.L. 96–294), the Congress has appropriated $525 million to be used to encourage the development of alcohol fuels. Let us hope that this promising initiatitve can boost this important technology to the stage where it can attract conventional financing on is own.

It is essential that the Congress closely monitor administration of these plans. From what the subcommittee learned in Springfield, it appears that existing assistance programs have been poorly managed, and funds are not getting to the businessmen who need them. Of the $10 million currently earmarked for direct alcohol fuels loans, the Farmers Home Administration has obligated only $756,000. Less than 10 percent of the loan funds available for this fiscal year—which will end September 30—have been allocated.

But the fledgling small-scale alcohol fuels industry needs more than money to grow. In an unfortunate case that seems more the rule than the exception, C. D. Bond, of Rushville, Ill., testified

about his unsuccessful efforts to secure a $350,000 loan guarantee from the Farmers Home Administration. Mr. Bond had planned to build a relatively small 1 million gallon per year alcohol plant on his wife's farm. His plans had been certified by a registered engineer and had also served as a model for an alcohol fuels seminar conducted at Colby College in Colby, Kans. Moreover, a local bank had demonstrated its faith in his ability to get the job done by approving this loan request contingent upon an FmHA guarantee of 90 percent of the loan. Yet, Mr. Bond who is most knowledgeable about alcohol fuels but not Government loan procedures, received little help from FmHA in deciphering the highly complicated loan application.

Redtape and the lack of needed technical assistance, as evidenced in C. D. Bond's experience with the Farmers Home Administration, can effectively strangle the development of small-scale alcohol fuels production in this country. George Miller, President of the Illinois Independent Alcohol Producers, Inc., a group of 25 business and agriculture leaders in Taylorsville, Ill., that is planning to build a small distillery, testified that he is just beginning to receive information on loans and technical matters from the Farmers Home Administration after over a year of run-arounds at the State level. Unnecessary frustration like this is clearly a detour on the road to energy independence.

There is some evidence, however, that administration of these Government programs is changing for the better. James E. Thornton, associate administrator of the Farmers Home Administration, testified that public hearings would be held around the country in August to gather comments on a new loan and loan guarantee program for projects of less than $15 million which, under the Energy Security Act, will be administered by FmHA. (The Department of Energy will have authority for all projects of over $15 million.)

He also testified that improvements have been made in both the loan process and the level of technical assistance given to applicants. Additional technical training will be provided to loan officers to better acquaint them with both the credit and economic feasibility aspects of alcohol fuels technology. Furthermore, Thornton pledged that the Farmers Home Administration will commit the approximately $70 million in loans and loan guarantees remaining in this year's appropriation before the end of the fiscal year.

While aspects of the hearings were certainly disheartening, there were also elements that reinforced my belief in our ability to find our way out of today's energy problems. Drs. Kenneth E. Tempelmeyer and Charles B. Muchmore, both of Southern Illinois University, described a new process that can harness two great national resources located in the Midwest: Coal and alcohol from grain. This "ethacoal" process is created by mixing pulverized coal with alcohol. The result is a thick slurry that can be transported through a pipeline and then separated into distinct gaseous, liquid, and solid forms of energy products. The gas produced is similar to natural gas with a high British Thermal Unit (Btu) content. The resulting solid product resembles coal. There is, however, one important difference: The solid is 30 to 40 percent lower in sulfur, making it a far cleaner fuel to burn. Ethacoal, perhaps, may be the new wonder fuel—if it can cut oil use, give us cleaner air, and vastly expend the utilization of Midwestern coal reserves.

My esteemed colleague, Representative PAUL FINDLEY of Illinois, reported on another important energy-related discovery by a constituent of ours, Mr. Wilbur Clair, of Quincy, Ill. According to Mr. Clair, most carburetor floats installed in American cars absorb significant quantities of gasoline. The resulting increase in weight, according to follow-up studies conducted under a Department of Energy contract, causes excess gasoline consumption that may be responsible for anywhere from a 5- to 27-percent loss in fuel economy in most cars on the road today.

In California, Mr. Chuck Stone, president of Future Fuels of America, Inc., of Sacramento, Calif., has converted a Piper Super Cub to fly on methanol produced from industrial waste and natural gas, and potentially from coal. Former astronaut Gordon Cooper, and Bill Paynter, former chief pilot for Governor Reagan, piloted the plane to Springfield from Sacramento, Calif., in an attempt to achieve Federal Aviation Administration certification for it as the Nation's first alcohol-powered airplane. The plane was on dispiay outside the hearing site, and taxied around the fairgrounds along with several other pure alcohol-fueled vehicles at the conclusion of the hearing.

Technical innovations like the ethacoal process and Wilbur Clair's discovery, and entrepreneurs like the Independent Illinois Alcohol Producers and Chuck Stone can lead the way as America breaks out of the oil-producing nations' stranglehold on our economy and national security. Two hundred years ago, we undertook a revolution to achieve political independence. The "can do" attitude and determination of alcohol fuels proponents that I saw at the permanent Subcommittee on Investigations' hearing in Springfield, Ill., proves to me that we have the ability to regain our energy independence. Enthusiastic support of alternative fuels like alcohol is essential if America hopes to achieve a second revolution for energy indepndence, a revolution that is critical to maintaining our national security. I am determined to guarantee that the Federal bureaucracy will provide the technical and financial assistance to commercial development of alternative fuels on both large and small scales mandated by Congress.

Mr. President, our country is not alone in this battle for energy independence. Nor are we in the lead on alcohol fuels development. Our neighbor to the South, Brazil, is committeed to a massive alcohol conversion program as its principal means for reducing its dependence on foreign oil. If Brazil can do this, I see no reason why the United States cannot do so as well. I ask unanimous consent that an article from the August 19, 1980, Wall Street Journal, describing Brazil's alcohol fuels program, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BRAZIL'S ALCOHOL-RUN CAR STARTS UP

(By Everett G. Martin)

SAO PAULO.—Brazilians love to poke fun at the government. There was the time, for instance, that Sao Paulo voters nearly elected a hippopotamus to city office.

The butt of many recent jokes was the national government's apparent inaction on its program to substitute pure grain alcohol, or ethanol, for gasoline in cars. A favorite car-window sticker read: "Powered by alcohol—only the driver."

But that sticker has disappeared, and another kind of window placard is seen in more and more public vehicles, taxis and private cars. Each placard announces that the vehicle is powered by ethanol.

Brazil's ambitious alcohol program—after seemingly interminable delays—is finally under way. In the first half of 1980, the number of cars powered by alcohol mushroomed from 1,500—all experimental vehicles in government fleets—to about 40,000.

Auto-industry sources say that, by the end of this year, they can build a further 140,000 cars with engines modified to burn the 190-proof alcohol. But they say actual output will depend on whether the government eases the severe restrictions on car-sales financing, imposed to combat Brazilian inflation of nearly 100% this year.

The alcohol program was originally formulated in 1975 to cut the country's heavy dependence on imported oil. Virgilio Frizzotti, a private consulting engineer on alcohol projects here, says Brazil has the right ingredients for a successful program: It has the tropical climate suitable for growing sugar cane, which is an efficient raw material for distilling alcohol. It has ample unused land to expand cane production. And it has an industry sophisticated enough to supply equipment for alcohol projects.

U.S. WON'T SWITCH

He says other countries with comparable characteristics include Australia, South Africa and India. While the U.S. can produce some sugar cane plus some usable grains, questions of efficiency and competition for land use indicate that the U.S. won't switch to pure alcohol as an alternate fuel.

But gasohol, a mixture of 90% gasoline and 10% alcohol, is being used on a limited basis in the U.S. as a substitute for gasoline. Thus energy experts in the U.S. are interested in how Brazil fares with its alcohol program.

Brazil targeted 2.8 million gallons of alcohol output by 1985. But project approvals bogged down in red tape, there was no network of service stations with alcohol pumps, and the auto industry wasn't authorized to sell alcohol cars to the public.

But the latest big oil-price increase jolted the government into action. Alcohol cars went on sale last April. Alcohol projects now get approved in little more than a month. And a motorist can, in theory, travel from Sao Paulo north to Belem, at the mouth of the Amazon River, and find alcohol stations along the way.

At the heart of the alcohol program are government incentives for alcohol production and government price-setting to ensure that gasoline costs 35% more at the pump than alcohol.

Private industry is offered government loans at "giveaway" terms to plant virgin land in sugar cane and build distilleries nearby. The smallest project economically

feasible, according to Mr. Frizzotti, is a distillery that produces 82,000 gallons of ethanol a day using as fuel the sugar-cane husks supplied by 15,000 acres of cane. Such a project will cost about $20 million, with the government supply 80 percent of the financing through loans that carry 30 percent interest and aren't indexed to inflation.

A GUARANTEED MARKET

"With our inflation," Mr. Frizzotti says, "you pay back less than you borrow." Besides that, he adds, "you have a guaranteed market and a guaranteed price. You can't find many investments like that."

Some 280 projects with total estimated output of 1.9 million gallons of ethanol a year have been approved so far. At that rate, Mr. Frizzotti believes the target of 2.1 million gallons in 1985 will be reached. If so, a fourth of all Brazilian cars could be running on alcohol in 1985, saving 170,000 barrels of oil a day.

A key to the recent burst in progress was the auto industry's pledge to begin building alcohol cars. Its first commitment was to product 250,000 alcohol cars this year, or one-fourth of total auto output. But credit restrictions and buyer hesitation led them to cut back their plans.

"We can only build what we can sell," says Bernhard Eland, general sales manager at the huge Brazilian subsidiary of Volkswagen AG of West Germany. VW has half of Brazil's car market and 60 percent of the alcohol-car market. "When the market is there," he adds, "we can build all alcohol cars."

Ethanol cars cost about 10 percent more to make, Mr. Eland claims. They require special coatings in the fuel system to protect against alcohol corrosion and an extra two-quart tank for gasoline, which is used for starts on cold days. Because of its higher octaine rating, alcohol provides livelier performance, but the alcohol car needs about 10 percent more fuel than its gasoline-powered counterpart. That shouldn't be a disincentive to buying an alcohol car in Brazil because of the fuel-price differential maintained by the government.

STEELING FOR COMPLAINTS

VW is also steeling itself for a rash of customer complaints about the alcohol cars. "With distilleries all over the country producing alcohol, the quality is sure to be uneven," Mr. Eland warns, "and the car makers are going to get the blame for poor performance. It is very complicated to make such a big change so fast."

But Brazil must move fast to cut its dependence on imported oil. It imports 80 percent of its petroleum, and its oil-import bill will jump to $10 billion this year from almost $7 billion in 1979. Paying for petroleum takes half of the country's export earnings, and the mounting trade deficit requires more and more loans from abroad that could otherwise be used for economic development. With about $50 billion in foreign debt, Brazil is among the most heavily indebted countries in the world.

Despite extensive exploration in Brazil, there doesn't appear to be much long-range hope for domestic oil production. Thus the country plans to get most of its electricity from water power and to run at least half its cars on ethanol by the end of the decade. A pilot plant is being built to experiment with making even more ethanol from fast-growing eucalyptus trees, and there are less-defined plans for exploiting deposits of charcoal and coal. The country also has untapped shale-oil reserves.

A major unsolved problem is finding a suitable substitute for diesel oil in trucks, which account for 80 percent of total freight transport in Brazil versus 30 percent in the U.S. Chrysler Motores do Brasil, now a VW subsidiary, has an alcohol truck engine almost ready for production, but it consumes 65 percent more fuel than a diesel engine. The company plans to sell the trucks only to the sugar-cane industry, thus enabling it to become entirely self-sufficient in energy.

The goal is to lower petroleum's share in Brazil's total energy consumption from 58 percent today to 38 percent by 1990. Taking into account Brazil's anticipated economic growth, that means petroleum consumption would be about 1.2 million barrels a day in 1990, or about the present level.

SENATE PAGES

Mr. BAKER. Mr. President, I would like to share with my colleagues today a letter received by the secretary to the minority, Mr. Hildenbrand, from one of the Senate's always outstanding group of group pages.

I am sure many of my colleagues will remember Jim Jacobson of Maryland, who served as a Republican page for 3 weeks this past summer. As one who called on his services often, I remember and appreciate his diligence and courtesy.

And I would relay to my colleagues the message from young James' letter, for it really is addressed to us all:

He wrote of his service as a page:

It was a most meaningful experience, it is very popular to criticize our congressional leaders, but after working with them, I realize how well versed they are in a wide variety of areas . . . I have gained a greater respect for their work and dedication to it.

As well as this letter speaks of those of us in the Senate, Mr. President, it speaks all the more of the young man who wrote it, and of all those who serve the Senate as pages.

From time to time, the value of the page program, both to the Senate and those who participate in the program, is called into question. All of us can readily attest to the contributions these young men and women make to the Senate.

And I believe James' letter attests to the value this experience holds for the pages themselves.

All of our young people, Mr. President, and most particularly those who serve as our pages, are the legatees of the traditions and works of the Senate. So very soon, they will be the trustees of the Senate.

James' letter reassures me, Mr. President, that the Senate will be in good hands.

At this time, I ask unanimous consent that the text of the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JAMES W. JACOBSON,
Potomac, Md., September 6, 1980.

Mr. BILL HILDENBRAND,
Secretary for the Minority,
U.S. Capitol,
Washington, D.C.

DEAR MR. HILDENBRAND: Thanks for making it possible for me to be a Senate page. It was a most meaningful experience.

Seeing the United States Senate at work and exchanging words with some of the most important leaders in the country was an experience that I will long remember.

It is very popular to criticize our Congressional leaders, but after working with them I realize how well versed they are in a wide variety of areas. The amount of reading a Senator must do is staggering. I have gained a greater respect for their work and dedication to it.

Another fascinating point of being a page is associating and making friends with the other pages who are from around the country. It is great to hear about everyone's own home town.

It was a wonderful three weeks, and I hope I have the opportunity to do it again next year.

With many thanks,

JIM JACOBSON.

CONSTANTINO BRUMIDI DAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1042.

Mr. BAKER. Mr. President, reserving the right to object, and I will not, the reservation, Mr. President, is to advise the majority leader that that item is cleared on our calendar as well, and we have no objection to its consideration.

Mr. ROBERT C. BYRD. Mr. President, later I will ask that Calendar Order No. 1041 be indefinitely postponed.

Mr. BAKER. If the majority leader will yield, both of those items are cleared, and that procedure is satisfactory to us.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the joint resolution.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 594) to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day."

The Senate proceeded to consider the joint resolution.

Mr. ROBERT C. BYRD. Mr. President, I pause to reflect very briefly on the life and career of Constantino Brumidi.

Brumidi was born in Italy in 1805, came to the United States and painted many of the frescoes and friezes in the Capitol Rotunda and other areas of the Capitol.

He died at the age of 75, in 1880.

I remember one classic statement of of his, and I may not be entirely accurate. He said, "I no longer wish for fame and fortune. My only ambition and my only longlasting prayer is to live long enough to make the Capitol beautiful, in the only country in the world where liberty exists."

Brumidi did not live to finish his work, but he lived long enough to make the Capitol beautiful.

The distinguished Senator from New York (Mr. MOYNIHAN) and others who have joined in cosponsoring this resolution are to be congratulated on remembering this great man who came from Italy and whose desire was to make this Capitol beautiful and who believed so fervently in the United States of America as the only country, in his words, where liberty exists. I congratulate them. I am also a cosponsor.

I hope our remarks will reflect on the contributions that men like Brumidi have made, not only to the Nation's Capitol but also to the country.

I, for one, am a little tired of hearing the use of hyphenated names for many Americans. These are all Americans. They are not Jewish-Americans; they are not Greek-Americans; they are not Italian-Americans. They are Americans.

I am sure that not only those persons in America of Italian ancestry take great pride in the contributions Brumidi made, but others of us do as well.

The ACTING PRESIDENT pro tempore. The question is on the third reading of the joint resolution.

The joint resolution (H.J. Res. 594) was read a third time, and was passed.

The preamble was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar No. 1041 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PETER FREUCHEN'S FIGHT AGAINST GENOCIDE

Mr. PROXMIRE. Mr. President, Peter Freuchen is a man whose actions should inspire the Senate to ratify the Genocide Convention. Peter Freuchen was an Arctic explorer and newspaperman in his younger days. His wooden leg was the result of surgery he had performed on himself during an expedition in 1921.

Freuchen committed himself to fight the heinous crime of genocide long before the Nazi war machine brought its evil policies to his beloved Denmark. A middle aged Peter Freuchen helped to organize the Society To Help Nazi Victims. His private island served as a refuge for Jews smuggled out of Germany.

In one of his books, "Vagrant Viking," Freuchen explained how he personally saved several Jews. His island was strategically located on the Baltic Sea. As excursion boats sailed near his island home, passengers jumped overboard. Using his speedboat, he would pluck them from the icy water. When dry and reassured, he sent them to Sweden via small fishing vessels.

When the Nazis invaded Denmark, Freuchen joined the underground. He was captured by the Germans and sent to a concentration camp. During the distraction of an air raid, he managed to escape.

He resumed his activities with the underground. His unrelenting acts of courage against the Third Reich's genocidal policies resulted in recapture. This time the Nazis robbed him of his wooden leg to insure that he would not escape again.

But with the aid of the Danish underground, the indomitable Freuchen escaped again.

Mr. President, I believe this Senate should seek to emulate the spirit of Peter Freuchen in his crusade against genocide. This Senate should join the 85 other nations that have already ratified the Genocide Convention. We should delay no longer. Peter Freuchen demonstrated the persistence that was needed to combat the heinous crime of genocide. We should do no less. Let us act now to take a determined stand against the recurrence of genocide. Let us ratify the Genocide Treaty.

QUORUM CALL

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECESS FROM FRIDAY, SEPTEMBER 19, UNTIL MONDAY, SEPTEMBER 22

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on Friday, no later than 6 p.m., the Senate go into recess until Monday, at 12 noon.

I say 6 p.m. because of the religious holiday that begins at 6 p.m. on Friday and extends into Saturday.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUDGET ACT WAIVER

Mr. ROBERT C. BYRD. Mr. President, I have cleared this request with the minority leader.

I ask unanimous consent that the Senate proceed to the consideration of Senate Resolution 517 for not to exceed 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 517) waiving section 303(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 7631.

The resolution was considered and agreed to, as follows:

Resolved, That pursuant to section 303(c) of the Congressional Budget Act of 1974, the provisions of section 303(a) of such Act are waived with respect to the consideration of H.R. 7631, a bill making appropriations for the Department of Transportion and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

Such waiver is necessary to permit the appropriation of $166,000,000 to become available for a fiscal year for which the first concurrent resolution on the budget has not been agreed to. Specifically, the spending authority would become available for fiscal year 1982 for the capital program of the National Railroad Passenger Corporation. This advance appropriation is authorized under the provisions of Public Law 96-73, the Amtrak Reauthorization Act of 1979. The legislation recognizes that in purchasing passenger equipment, Amtrak must be able to make multiyear commitments, and that Amtrak has successfully initiated cost-effective purchasing programs using this authority.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMPETITION IN THE FUTURES INDUSTRY

Mr. HELMS. Mr. President, periodically—and with more frequency than most of us would desire—the Government goes beyond its day-to-day meddling in our economy, and really attempts to avert competition.

The editors of Financial Trend, a weekly business and investment publication in Dallas, Tex., recently described such intervention in a most revealing fashion. The article places a perspective on the Commodity Futures Trading Commission's role in attempting to preclude competition in financial futures in the industry that remains one of the last best bastions of the free enterprise system.

The Chicago Mercantile Exchange, which founded the International Monetary Market (IMM) in 1972, and the Chicago Board of Trade (CBT), have been trading a number of financial instrument futures contracts, including Treasury bills at the IMM and Treasury bonds at the CBT. Both exchanges have been particularly successful in their respective markets despite the approval of the trading of similar contracts at other exchanges.

These two exchanges dominate their respective markets for a simple reason. The marketplace, not a Federal agency, has thus far determined that they do their jobs well. These exchanges are big enough to provide the liquidity that enables hedges to get in and out when they desire. The management of the exchanges evidently has the skill to execute transactions well and promptly.

And not the least of reasons why an exchange becomes successful in the commitment each makes to its market by educating potential hedgers on how they can effectively reduce borrowing costs by hedging the risk associated with great interest rate volatility.

These exchanges have been successful and are respected throughout the futures trading industry. The exchanges involved have not sought any exclusive franchise on their work product but have sought to maintain their ability to compete with any of the newer exchanges now entering the market.

Recently, the Commodity Futures Trading Commission—which Congress created in 1974 with oversight responsibility—entered the competitive fray. It entered not for oversight purposes, but evidently to curtail competition among the exchanges by attempting to grant an exclusive franchise to deal in a specific Treasury bill futures contract. To give such exclusive rights to a particular exchange seems to be an action the Commodities Futures Trading Act does not allow. In fact, the courts upheld, in a recent decision, the right of the CME and CBT to trade in additional months of existing futures contracts. The court said that prior CFTC approval for this added trading was not necessary and the court further noted that such trading was specifically provided for in the exchanges' rules that had been approved by the CFTC.

Now, however, because of new intervening actions by the CFTC, it may be that these exchanges are not going to be able to trade in all the months of contracts without great cost and new regulatory hurdles.

Mr. President, I ask unanimous consent that the article in Financial Trend magazine be printed in the RECORD at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COMMODITIES CORRAL

(By Eugene R. Jackson)

To have an "open interest" of one in the futures market, there must be one person long a futures contract and another person short a futures to create an open interest (matched pair) of one.

Come to think about it, we have to have those matched pairs. One can not buy something unless someone sold it. And it is a bit difficult to sell something unless there is a buyer.

Anyway, the open interest in June Treasury bill futures on the last trading day was 1,921. Each T-bill futures is for $1 million worth of the 3-month bills. Total value of the longs and shorts represented $1.921 billion.

Had the folks who were long those futures decided they actually wanted to take delivery of them, the shorts would have had to go find some. And there was six billion dollars' worth of the little rascals floating around in the cash market from the previous Monday's auction.

At that time, the open interest in the June Government bond futures was a bit over 5,000 contracts. At $100,000 per futures contract, there was an involvement of about $50 million, and $25.4 billion in publicly-held bonds satisfying the delivery specifications.

The idea that someone might buy up all of the available supply and then squeeze the market seems a bit on the farfetched side of logic. Yet the Commodity Futures Trading Commission, Treasury officials, and the Federal Reserve Bank can't seem to find any better reason to oppose the trading of additional bill and bond futures on the Chicago markets—additional delivery months, that is.

Underneath all the oratory is a bit of free enterprise and government confrontation on a subject that isn't being talked about very much by the government boys. It goes like this.

The Chicago Board of Trade invented the GNMA and Treasury Bond futures contracts a few years ago. And the Chicago Mercantile's IMM division was first with the T-bill futures. They got off to a slow start and were quite expensive operations for a while as the exchanges were educating folks how to use them.

Wild interest-rate fluctuations showed a real need for these vehicles. And there were a lot of speculators who thought they knew more about interest rates than pork bellies and began trading the interest-rate futures. And the volume of trading began to expand. Then explode. A lot of commissions were generated. And the New York stock exchanges felt left out.

First to do something about it was the American Stock Exchange which gave birth to the American Commodity Exchange. The kid didn't do very well in the sterile climate of New York. Even the Big Apple boys felt they could get a better shake for their money in Chicago.

And the New York Stock Exchange still felt left out on all of those commission dollars they were missing. So they formed the New York Futures Exchange (NYFE, pronounced "knife") and took over the ACF offspring. They plan to begin operations in early August with some futures months of bonds and bills that were not being traded in Chicago.

Now anyone with any brains at all would know that those Chicago fellows would not just stand idly by and wish the competition the best of luck on a deal like this. So they recently added those New York months to their stable of tradeable futures. And New York doesn't have the exclusive merchandise they thought they would have. Now they have to compete. And that has not been their long suit for a number of years.

The New Yorkers, being regulated by the Securities Exchange Commission, etc., know a lot of folks in Washington. And they told their Washington friends what those Chicago fellows were up to, suggesting it sure would be nice if they could go ahead with their idea to horn in on the game with a bit of an advantage like a couple of exclusive futures.

The CFTC sent a message up to Chicago saying in effect, "Fellows, you didn't ask us for these new months. So knock it off and let New York play." And the fellows in Chicago said, "Hell, we didn't have to ask you. Get your head screwed back on straight."

And that is what they are really arguing about. It is fun to listen to. And one sort of hopes that the fellows wearing the white hats win.

U.S. CONSTITUTION'S 193D BIRTHDAY CELEBRATED IN NATION'S CAPITAL WITH EMPHASIS ON CITIZENSHIP RESPONSIBILITY

Mr. RANDOLPH. Mr. President, today is the 193d birthday of the Constitution of the United States.

It is appropriate that, as we gather in the Chamber of the U.S. Senate, the hall of the people, discussing and formulating the policies and laws of the United States of America, we reflect on the significances of our long march from serfdom to guaranteed freedoms.

This morning, with my colleagues Senators JAVITS and MORGAN, Representatives OTTINGER and HUGHES, and others, I was privileged to participate in a birthday party for our Constitution. We were joined by the representatives of over 100 national organizations active in 50 States, the District of Columbia, and the territories.

The conclave proclaimed the period from today's date through September 17, 1987, the 200th birthday of the Constitution to be the "The Constitution Era, a time for Citizenship Education." I urge my collegues to join in that proclamation which is both appropriate and timely.

In addressing the participants, I expressed my belief in the Constitution and my belief in the Government "of the people, for the people, and by the people."

I did express, however, concern that we are in danger of losing our status as a participatory democracy. As in 1978, when only 34 percent of eligible voters cast their ballots, we are faced with the anomalous siutation of a minority of voters setting the course for a majority who chose not to vote. A majority of the minority establishing the policy for the majority. I told the 250 citizens present: "We must disarm this tragic trend if we are to be worthy of the legacy given us by our Founding Fathers and Mothers."

The failure of 18-, 19-, and 20-year-olds to exercise the franchise granted them by the 26th amendment to the Constitution is of particular concern.

As the author of that amendment which I first introduced in 1942 as a Member of the House of Representatives and which was incorporated into the Constitution on July 2, 1971, I am deeply distressed when, as in the most recent general elections of 1978, only 20 percent of eligible 18- to 20-year-olds exercised their right to vote. The right to vote, as we know, carries with it also the responsibility to cast the ballot. If not exercised, this right will deteriorate, eventually ceasing to exist.

The sponsoring groups of today's event—Convention II, the National Association of Secondary School Principals, and the National Association of Student Councils, all are actively involved in promoting citizen involvement. In conjunction with other groups such as the Council for the Advancement of Citizenship, Operation PUSH, and the Institute for Political and Legal Education, the sponsors have implemented voter registration programs for young adults. They are to be encouraged and congratulated for their efforts.

Particular note should be made of the selfless efforts of individuals such as Boris Feinman and Tim Leighton of Convention II, Mary Ann Kirk from the Center for Citizenship Education and the Council for the Advancement of Citizenship, for their positive contribution to advancing meaningful citizenship in the United States.

This morning, there were 193 candles surrounding a relief map of the United States to commemorate the Constitution's birthday. Significantly, Mr. President, in the words of Bob Feinman, who coordinated today's events, "to symbolize the rootless, the bottom rung, the upward striving and the arrived—all of whom the Constitution is designed to serve" the children of three migrant farmworkers families lit the first candles. They were Joseph Greenwich, Heather Hernandez and Julio Alonzo.

Mr. President, I ask unanimous consent to have printed in the RECORD the names of the participating organizations of today's birthday celebration.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Advertising Council.
Amer. Assn. of School Administrators.
Amer. Bar Association.
American Legion.
American Legion Auxil.
Americans For Dem. Act. Youth Caucus.
Amer. Red Cross Youth Services.
Boy Scouts of America.
Camp Fire Girls.
Center For Citizenship Education.
Center For Policy Research.
Chamber of Commerce of USA.
Citizen Education Clearinghouse.
Close Up Foundation.
College Democrats.
College Republican National Committee.
Common Cause.
Community Involve. For Resp. Cit.
Convention II.
Convention II N.Y.
Council For Educ. Day and Research.

Council of Chief State School Off.
Council For Inter-Institutional Lead.
Council of State Governments.
Disabled American Veterans.
Education Commission Of the States.
Film Educators.
Four H Council.
Future Business Lead. Of America.
Future Homemakers of America.
Girl Scouts of the USA.
Girls Nation.
Inst. For Educational Leadership.
Inst. For Pol. & Legal Education.

PARTICIPATING ORGANIZATIONS

International Council on Law related Ed.
League of Women Voters.
M. P. Peyser & Associates.
Migrant Workers.
Mutual Broadcasting Co.
Nat. Assessment of Ed. Programs.
NAACP.
Nat. Assn. Elementary School Principals.
Nat. Assn. Of Independ. Schools.
Nat. Assn. of Manufact.
Nat. Assn. of Schools Of Pub. Affairs & Admin.
Nat. Assn. of Student Councils.
Nat. Catholic Educ. Assn.
Nat. Cath. Youth Orgs. Fed.
Nat. Conference of State Legislators.
Nat. Council For Social Studies.
Nat. Council of Negro Women.
Nat. Education Associate.
Nat. Energy Ed. Day.
Nat. Exec. Svce. Corps
Nat. Governors Assn.
Nat. League of Cities.
Nat. School Boards Assn.
Nat. School Resources Network.
Nat. School Volunteer Program.
Nat. Street Law Inst.
N.Y. State Council For Social Studies.
Pet Foods, Inc., Musselman Division.
Political and Legal Educational Associates.
Republican National Committee.
Research For Better Schools.
Robert F. Kennedy Memor.
Robert Taft Inst. Of Government.
Student National Ed. Association.
United Fed. of Teachers.
United States Jaycees.
U.S. News & World Report.
Vocational & Ind. Clubs of America.
Washington Monthly.
YWCA.

BOARDS AND SYSTEMS IN EDUCATION

Arkansas Dept of Ed.
Illinois Supt of Ed.
Maryland Assoc of Student Councils.
Maryland Council on Economic Ed.
Maryland Dept of Ed.
N.Y. State Dept of Ed.
Pennsylvania Dept of Ed.
Wash DC Board of Ed.
Wash DC Student Adv. Council.
Wash DC Supt Schools.
Washington State Dept of Ed.
Anne Arundel County.
Baltimore City.
Baltimore County.
Calvert County.
Carroll County.
Charles County.
Frederick County.
Howard County.
Mamaroneck Town.
New Rochelle City.
Westreville City.

SCHOOLS

Boiling Springs, Pa.
Greenbelt Jr. Hs., Md.
Ketterinf/Fairmont, Ohio.
New Rochelle HS.
Mamaroneck, HS, NY.
New Rochelle HS, NY.
Ossining HS, NY.
Washington DC Schools.

UNIVERSITIES

Alabama-Center for Public Law.
American-Law.
George Mason-Ed.
Georgia-Coll of Ed.
Georgetown-Commun. Action Coalition.
Indiana-Social Studies Development Center.
Johns Hopkins-Evening College.
Maryland.
Pace-Inst. For Sub/Urban Governance.
Portland State-Law Related Education.
Southern Assoc. of Colleges and Schools.
Temple.
Towson State.
Wright State-Coll of Education.
Wyoming-Coll of Ed.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that morning business be closed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 7631, which will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

UP AMENDMENT NO. 1587

(Purpose: To prohibit retroactive application of regulations in connection with the construction grants program)

Mr. JEPSEN. Mr. President, I send an amendment to the desk, and I ask unanimous consent that the names of Senator SIMPSON, Senator DOMENICI, and Senator GARN be added as cosponsors of the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. JEPSEN) for himself and others, proposes an unprinted amendment numbered 1587.

Mr. JEPSEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 17, line 21, before the period, insert the following: ": *Provided*, That none of the funds appropriated in this Act shall be used to enforce, retroactively, any regulation issued under the construction grants program or any project requirements or conditions not in effect at the time the grant for a project is awarded.

Mr. JEPSEN. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JEPSEN. Mr. President, it is reasonable to adequately protect the health of residents in our small towns and communities from unsafe or improper sewage treatment wastes. But the Environmental Protection Agency has been unreasonable in the regulatory changes it has imposed on small towns and communities retroactively. In effect, this has undermined their ability to provide this protection.

The amendment I am offering today will help eliminate some of the bureaucratic and regulatory roadblocks which have thrown off course the efforts of small communities to meet these regulations, causing unreasonable delays and costing millions of dollars to towns and communities throughout this country.

My amendment is very simple. Practically speaking, it prohibits EPA from blackballing the small community into accepting new, retroactive regulations after local planners believed and thought they had agreed on all the necessary conditions.

Obviously, since a sewage treatment plant is often the biggest investment a small community makes, the impact of a changed regulation can play havoc with a small town's budget, delay construction of the critical facility, and create a mountain of expensive, economically prohibitive paperwork.

State and local governments should be able to rely on the present rules of the Federal game when they decide to commit their limited resources. Reasonably speaking, Mr. President, this amendment will help assure them that complying with the Federal grant rules is not like trying to "paint a moving train."

I am not the first Senator to attempt such a change. Last year Senator BELLMON offered an amendment during committee consideration of EPA's appropriation request to prohibit the same retroactive regulation changes. The amendment was accepted by the full Appropriations Committee, but changed on the Senate floor when the EPA promised to provide an "administrative solution to the problem which would avoid a legislative change." EPA at that time also promised that they would instruct the "program that no new requirements are to be applied to a project with step 3 grant assistance where construction is underway or likely to be underway within 6 months of the grant award."

Unfortunately, step 3 retroactive changes have seldom been the problem. In fact, EPA rarely applies retroactive regulations if step 3 grant construction will be underway within 6 months of the award. The real problems occur in step 1, the planning phase, and step 2, the design and technical specifications stage. Approximately 80 percent of the engineering is completed at the end of steps 1 and 2. Changes in step 2 can send the project back to step 1, but without the additional grant moneys from EPA to help pay for the changes mandated retroactively by the agency.

Understand, Mr. President, that I am not in any way trying to establish a direction interfering with the actual compliance of regulations and ground rules

entered into during the negotiations and the workup of the grants. This amendment, I reemphasize, would only be to prohibit the use of retroactive regulations. Once everything has been worked up and approved, once everyone thinks they understand the rules of the ball game that were so carefully scrutinized and planned and they get moving down the road, contracting for engineers, builders and materials, EPA should not be able to come back and retroactively enforce regulations by holding back funds. That is blackjacking a city or community's progress.

I think that is very reasonable.

An argument will be put forth here, I am sure, concerning the health of the community and its citizens. If we overlook the new technology in a regulation, would we be overlooking the health and welfare of the people it affects? Of course not.

This amendment simply says that EPA will not be able to withhold the funds in enforcing a new regulation retroactively once the award has been granted.

I do not know of any mayor or any council in this country, if presented with new technology to enhance the safety, health, or whatever of their community, especially if it was proven by experts, that would not on a voluntary basis say, "Let us put that in." To insinuate otherwise is a direct insult to Mr. and Mrs. Main Street America who work on the firing lines with these things day in and day out. Concerning what is good for a neighborhood and community in regards to their health and welfare, of course the mayor and city council will do their best in complying with regulations.

Earlier this summer, the Environmental Protection Agency did respond to what they said they were going to do last year when they assured Senator BELLMON that they were going to correct the problem. They responded with their version of "an administrative solution," but I point out that the response, in the form of a "program requirements memorandum," is no more binding than a suggestion and, in fact, explicitly states that the Administrator reserves the right to require retroactive changes in requirements.

This feeble response, as part of a bureaucratic smokescreen, is unacceptable because it does not answer EPA's promise to either the Senate or to the House Public Works Subcommittee, both of which asked EPA to develop a policy which would restrict retroactive regulatory changes. So they come out with "bureaucratese" which explicitly states that the Administrator reserves the right to require retroactive changes and requirements.

This amendment today is a very simple, commonsense amendment. It is a vote for Mr. and Mrs. Main Street America, for all those folks who live, work, obey the laws, pay their bills, try to take care of their brothers and sisters in their own communities, and who willingly—maybe grudgingly—go along with the realization that we need some type of guidelines and regulatory control over the general health and welfare of large numbers of people.

They go through all the normal channels. They follow all the rules. Anyone who has had experience in local government knows how long it can take to get a Federal award. In many instances, hundreds of thousands, even millions, of dollars are spent. Then EPA comes along, arbitrarily, and says, "Whoops, back up, change horses, cancel that. We do not care what you spend. We say you do this and if you do not do it no funds."

I want to conclude with an example in my home State of Iowa. Last year an engineering firm in my home State of Iowa gave me some examples of towns which experienced unbelievable project delays in trying to comply with the EPA regulations for sewage waste treatment facilities.

At this time, Mr. President, I ask unanimous consent to have printed in the RECORD these examples to substantiate the headaches and the confusion that EPA regulatory changes can cause.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXAMPLES

TAMA, IOWA

Tama, Iowa constructed new secondary treatment facilities in 1973 and 1974 prior to initiation of the Public Law 92–500 requirements for infiltration/inflow consideration. One of the Federal Grant conditions for construction of their new plant, however, was that they initiate a study to determine the extent of infiltration and inflow in their sanitary sewer system. In 1975 in response to that Grant condition, the City filed a Grant application and a Plan of Study with the Environmental Protection Agency to do that work. A new regulation went into effect July 1, 1975 that said the Plan of Study must be approved by EPA before any work done would be grant eligible. The Grant application and Plan of Study were into EPA in plenty of time for review and approval prior to July 1, and, in fact, comments were received from EPA in mid-June asking for some final information prior to approval. The City Attorney filed that information and it was assumed that the Plan of Study would therefore be approved. The City authorized our company to proceed with the infiltration/Inflow Analysis, spending approximately $6,000 in the determination that there was excessive infiltration/inflow which required further identification in a Sewer System Evaluation Survey. When that report was filed with the Environmental Protection Agency, the City was notified that their Plan of Study had not officially been approved by July 1, although there were no changes required—it was just a lack of someone getting around to approve it. The work that had been done was said to be not grant eligible. The City filed a formal complaint based on the extenuating circumstances of the conditions and received a favorable ruling from EPA's Washington headquarters that their work would be reimbursable as soon as a grant offer was made for the Step I project.

To this date, the City of Tama does not have a Step I Grant and has not been reimbursed for the money expended on the Infiltration/Inflow Analysis in 1976, all because of regulation modification and the failure by the review agency to approve a document which was in proper form in their office in time for approval.

The City tried to perform the work required in their initial Grant condition and have yet to be reimbursed for the authorized work. In addition, the three-year delay has rendered most of the initial work done on the system worthless and, of course, has increased the total overall cost of the engineering work and any construction work significantly due to inflation.

NEVADA, IOWA

The City of Nevada, Iowa entered into the Grant program with the Environmental Protection Agency for upgrading their waste treatment facilities in 1975. The City Engineer did the Infiltration/Inflow Analysis work, and then our company was retained to do the remainder of the Sewer System Evaluation Survey and Facility Planning work for the City. Several regulation changes have caused significant time delays and increased costs on this project. Our original Step I contract was executed on November 15, 1976. As an example, an amendment was made to the Engineering Contract on April 3, 1976 to include revised Appendix C–1 regulations governing negotiations for engineering services, and also this amendment included revisions in the scope of work to include detailed study of land application alternatives, which are required nationwide, although their application in this particular part of the country is exceptionally questionable. This amendment increased the contract cost approximately $7,000 and increased the contract time by several months. Another amendment was added to the contract on the 5th of March, 1979, to again add revised Appendix C–1 regulations. No additional engineering charges were added for this contract amendment, although it is obvious that there was significant time expended and delays associated with preparing the amendment, getting it executed by the City and forwarding to the government agency for their review and approval. Another amendment to the Professional Engineering Contract was executed on July 2, 1979 to cover regulation revisions regarding sewer user charge system development and the utilization of Minority Business Enterprise in the engineering portion of the project. These regulation revisions added $3,500 to the contract and, again, delayed the project by several months. The regulation revisions, interpretation of rules and the delays have thus far added over $10,000 to this project cost, and it is not yet out of the planning stage. The real cost impact can only be determined when the inflationary increase caused by the significant time delays are fully taken into account.

MARSHALLTOWN, IOWA

An engineering contract to perform Step I planning work for the City of Marshalltown was originally signed on August 29, 1974 as a result of Public Law 92–500. Provisions of Public Law 92–500 made it possible for communities to bypass the Infiltration/Inflow Analysis portion of Step I work if they could prove beyond reasonable doubt that they had an excessive infiltration/inflow problem. Marshalltown had significant data over a period of several years which dynamically indicated the extent of their infiltration and inflow problem and presented this data both to the Environmental Protection Agency and the Iowa Department of Environmental Quality so they might proceed directly to the Sewer System Evaluation Survey. Neither Agency would accept the data and required the City of Marshalltown to expend nearly $17,000 on an Infiltration/Inflow Analysis which proved exactly what should have been obvious by inspection of the original data. The original rule was an excellent one but was never used in the manner in which it was intended, and much money was wasted.

Since that time additional engineering contracts and amendments have been necessary in order to provide for regulation modifications. All of these have caused time delays and additional costs to the owner and to the government. The Contract was amended in March of 1976 to include revised Appendix C–1 regulations regarding negotiation of engineering contracts as required by EPA. The Contract was again amended on the 24th of April, 1978 to include further revisions of Appendix C–1 regulations regarding negotiation of engineering contracts. Further detailed considerations of land application alternatives were included in the scope of the project at this time. The total costs for the regulation revisions and time delays associated with the project to this point added $10,000 to the Step I work and delayed the completion by several months.

The Step I work has recently been completed and is now being held for review by the Iowa Department of Environmental Quality due to an EPA Program Requirement Memorandum stating that justification of any treatment higher than conventional secondary treatment in which the incremental cost is more than $1 million must be reviewed and approved by the Washington EPA office. This project qualifies in this category and is now being held by the State and Regional office trying to determine what approach they should use in justifying the extra expense of this project for advanced secondary treatment when it does not appear it is necessary to meet reasonable stream standards. At this time we have no idea when this project that has been in the planning stage since August of 1974, will get beyond that stage into the construction of some needed pollution control facilities.

IOWA FALLS, IOWA

The original engineering agreement with the City of Iowa Falls was executed on April 9, 1976 to cover all phases of the planning, design and construction work for wastewater treatment improvements. Again, several regulation modifications have caused delays and cost increases in this project. On December 19, 1977, a contract amendment was executed which added the revised Appendix C–1 regulations regarding negotiations for engineering services. This contract amendment also included provisions for the direct retention of sewer cleaning and televising contractors by the engineer as required by regulation.

An additional amendment was executed on February 19, 1979, which again revised the Appendix C–1 regulations. This amendment further provided for the modification of the scope of the Facility Plan to include land application, detailed evaluation and other Program Requirement Memoranda details. The cost increase for this extra service from revised regulations was approximately $6,000 and again several months of time were lost in the process.

Mr. JEPSEN. Mr. President, did you know that there are 54 regulations or statutes along with those already in the Clean Water Act? What this means is that local governments have to spend hundreds and thousands of hours in figuring out what EPA wants when it imposes their initial regulations.

The extra burden of doing this is more than a small town in most instances can bear, but they go ahead and do that. Once they do and the grant has been approved—a great majority of the time after they have acquired expenses, people, personnel—EPA says, "Whoa, shift gears, change the rules." In the real world you cannot do business that way.

A year ago Senator BELLMON asked for this to be corrected. But the EPA has not corrected it, and our city and State officials unfortunately in many instances have given up attempting to comply with the latest EPA regulatory changes.

The time delays caused by these changes cost the taxpayers millions of dollars which small towns and local governments simply do not have.

Our citizens do not want to ignore, and I emphasize this, any necessary regulations EPA issues. They simply want to protect their health. All they want, Mr. President, are reasonable and reliable standards in the regulatory structure.

But once the ground rules have been laid down and met, they rebel at being blackjacked arbitrarily in the middle of the stream, so to speak. Their they are on the road to fiscally completing this project, and EPA says, "We don't care what you have done, how much money you have spent. You are not getting one single thin dime more from us unless you do as we say. It does not make any difference whether it makes any sense or not. We don't have to prove anything to you because we control the funds, and we will retroactively, as we have done many times before, lay it on you."

It is time we changed that, and that is what my amendment does.

Mr. President, I reserve the remainder of my time. I yield to the distinguished Senator, my colleague from Oregon, Senator HATFIELD.

Mr. HATFIELD. I thank the Senator.

I would suggest, Mr. President, that we are considering here a very important issue, and if we are truly interested in causing serious delays and inevitable cost increases in our sewage treatment construction program, I can think of no better way than to constantly revise minor sewage treatment regulations—and I emphasize minor—and then retroactively apply them. Yet this has been the case in the past, and it appears that the EPA intends to continue the trend.

Last year—and I think we ought to put this into some context—in this bill we included report language which suggested to EPA that this was an inappropriate practice.

Since then EPA has published a regulation in the Federal Register vowing not to do so unless circumstances warrant. In effect, Mr. Costle, the EPA Administrator, is saying, "Trust me." Senator JEPSEN is not a trusting soul in this case, and I tend to agree with him.

I agree because EPA does not consider the planning stage to be sufficiently into the program to warrant a curb on retroactivity. Yet most delays occur during this step.

As a result, most of the ultimate increases in costs to local governments for building treatment plants are directly attributable to EPA changes in the planning requirements. The irony of this is that most of the added facility planning requirements seldom result in major changes in the construction project. While regulations which can be written or changed are infinite, the number of water control pollution options are not.

In Oregon I think we can speak with some authority here from the standpoint that I think Oregon is probably the No. 1 State in the Union in the advanced progressive work in sewage water programs. We have been for many years before EPA ever came into existence, and one of the reasons is because we have been blessed in Oregon with conditions which make sewage control a less complex problem than in many other States.

Our program, therefore, functions smoothly. But this national stop-and-go strategy on sewage construction affects us as gravely as it affects those who are caught in this regulatory morass. Anyone who questions that statement need only look at the unobligated balances in the sewage construction program and question members of the Appropriations Committee, of which I am one, as to their effect on yearly appropriations.

Appropriations have dropped in the last several years, good years for other major programs, and the inability of States to get their programs off the ground and to spend their allotment has caused those declining appropriations.

In sum, no State is immune from the problems caused by delay in the sewage construction program.

This amendment is one part of the answer, although not the entire one. For that reason I support it.

I think what we have to have here is an answer to the simple question: Is the EPA interested in public health more than it is in bureaucratic regulation, because I emphasize again the real test as to the effectiveness of the program is the unobligated funds, and the States have been trying desperately to comply, but with the stop-and-go and the constant change in the rules of the game they have been bogged down in this kind of bureaucratic redtape.

Let us not kid ourselves. The technology in this field is not changing that rapidly. Again I emphasize it has had little impact on the actual construction part of the sewage program. All it has done is to stop those programs or to prevent them from beginning, and that has caused the increased costs to the whole project if and when they get approval.

Again I speak from a State which has not had difficulties in this realm. But it has affected us as it affects any other State because we have had, I guess, the longest heritage of any State in upgrading and updating our sewage water program.

But I have to lend my support to Senator JEPSEN's efforts here because it is a valid criticism, and I do not think the EPA has gotten the message. We tried to send them a message last year, and if they cannot get the message through report language, then the only other alternative we have is to go the route of language in the statute. I commend the Senator from Iowa.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, it is so ordered.

Mr. PERCY. Mr. President, I intend to support the amendment by the distinguished Senator from Iowa (Mr. JEPSEN) which would add language to the HUD/Independent Agencies Appropriation bill

to prohibit retroactive application of EPA regulations which were not in effect when grants were awarded to execute the sewage treatment plant grant program.

Mr. President, the Governmental Affairs Committee and the Commerce Committee have conducted 3 years of intensive seminars and study into the regulatory process.

I think we went through every possible grievance the American people, the business community, and labor unions have against the regulatory processes carried out by some 43 regulatory agencies. The frustrations that I saw expressed were very great indeed. We also had former directors and some chairmen of regulatory commissions testify as to the frustrations they had in attempting to carry out the law.

The types of problems that Senator JEPSEN is addressing today were raised many times by our committee investigations. We often heard that it was bad enough to try to implement regulations that were on the books that sometimes went beyond what was considered to be the spirit and intent of the law. However, when regulations were put in that were made retroactive, this was viewed as being unusually harsh.

I say to my distinguished colleague from Iowa, Senator JEPSEN, that I am supportive of this amendment. I know what he is trying to accomplish and I commend him for it.

My staff has been in touch with the Illinois EPA and they have raised a couple of questions about this amendment. It would be very helpful if the Senator's interpretation of these questions could be addressed on the record and incorporated as a part of the legislative history of this amendment.

The Illinois EPA has indicated some concern about the inclusion of phase I grant funding as a part of this amendment. Is it possible that the adoption of this amendment could reduce the ability of the U.S. EPA to insure that phase I planning programs are completed on schedule?

In order to expedite the completion of phase I programs, might it be useful to modify the language of the proposed amendment so that there would be a limit on the length of time during which a phase I program would be exempt from retroactive regulatory changes? Might 2 years from the granting of a phase I award be an appropriate length of time for such an exemption?

Mr. JEPSEN. Let me answer your questions by pointing to some examples in my home of Iowa where enforcement of retroactive regulations in phase I have delayed the construction of a sewage treatment facility for at least 6 years. In the small towns of Tama, Nev., and Marshalltown, Iowa, all of which began phase I in 1974, they have not been able to move beyond that phase due to retroactive regulatory changes. This has cost them thousands of dollars and leaves them with no sewage treatment system to protect the health of their citizens. I think it is clear from these examples that my amendment would aid the timely completion of phase I planning grants, not stall it.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first of all, I want to commend the Senator from Iowa for bringing up this amendment. He points the finger at a real critical problem for local government and local units of government.

The problem is the problem of retroactivity, changing rules in the middle of the game. That creates nothing but grief and headaches for our local governmental units across this country.

In the Governmental Affairs Committee we have a grant reform bill. I have successfully added to that bill an amendment which is very similar to the amendment of the Senator from Iowa. It has a little more discretion than does his amendment and there is a difference in that regard. But, basically, it is based on the same premise that the Agency should not change the rules after local governments have substantially relied on the old regulation.

I would like to suggest to the Senator from Iowa, however, one small addition to his amendment. There are circumstances where a subsequent law is passed or an Executive order is passed which really mandates an agency—in this case the EPA—to change its regulations. This is not the usual reason for changes in regulations, but it is one of the causes for changes in regulations.

I am wondering whether or not the sponsor of this amendment might add the following words at the end of his amendment on line 6: "except as expressly required by law or Executive order."

Again, I would assure him that this is not the usual reason for the change in the regulation. They are usually resulting from decisions of these agencies or their own tinkering with the regulations and, as he has pointed out, they create great headaches. But we have found, in some circumstances, that there are expressed changes in law or Executive order which are the reasons for the change. In those instances, unless the Agency is allowed to follow those expressed changes, we are creating a legal headache for the Agency, because they would be torn between this amendment which says to follow the old rule and a new law or Executive order which, under my hypothesis, expressly says that there must be a new one.

I am wondering if that might be acceptable to the Senator from Iowa. I do not think it is essential to his amendment. I think that probably the spirit would prevail in court, but I think it would avoid a lot of court litigation and the delay which would ensue.

Mr. JEPSEN. Mr. President, I have one reservation. I have no reservation with the spirit of this and the logic of it. I have no reservation whatsoever if we would confine the Senator's recommendation to a change in statutes. The Executive order, I do have a reservation on and would have trouble with.

Then my second reservation, which we can handle very quickly—I will suggest the absence of a quorum and I would like to meet to make sure that this is not in any way a contingency which, under rule XVI, paragraph 4, would immediately say that this is legislation on an appropriations bill. I want to make sure that would not be the case.

If that all is so, then I would gladly accept and recommend, in fact, that we state, as the Senator from Michigan so ably did, that this would not hold in the event there was a change in statute which would cause a conflict.

Mr. LEVIN. Mr. President, I accept the logic in the Senator's remarks in limiting this to the express requirement of the law. I think that goes most of the way in terms of what I was saying.

I would be happy to join in the request of the Senator in a discussion with the Parliamentarian during the quorum call, if he wishes to do that now.

Mr. JEPSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEPSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEPSEN. Mr. President, after discussing this matter with my distinguished colleague from Michigan, I would advise the Senate that I am pleased to accept the modification and would ask, to make sure that it is perfectly clear, for the Senator from Michigan to repeat his modification, at the end of which time I will accept it and ask unanimous consent to do so.

Mr. LEVIN. Mr. President, the words, "except as expressly provided by law" are to be added to the Senator's amendment. I am not pressing the Executive order aspect. In my opinion as a Senator, I think that is law, but I am not pressing that aspect at all. I am, however, suggesting, "except as expressly required by law."

The PRESIDING OFFICER. Is there objection to the modification? The Chair hears none. The amendment is so modified.

The amendment, as modified, is as follows:

On page 17, line 21, before the period, insert the following: ": *Provided*, That none of the funds appropriated in this Act shall be used to enforce, retroactively, any regulation issued under the construction grants program or any project requirements or conditions not in effect at the time the grant for a project is awarded, except as expressly required by law.

Mr. JEPSEN. Mr. President, I ask unanimous consent that the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Minnesota (Mr. DURENBERGER) be added as cosponsors to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1588

(Purpose: Make EPA changes in construction requirements fully funded by the Federal government)

Mr. HATFIELD. Mr. President, on behalf of Senator MATHIAS, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon (Mr. HATFIELD), on behalf of the Senator from Maryland (Mr. MATHIAS), proposes an unprinted amendment numbered 1588.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of Senator JEPSEN's amendment, before the period add: ", unless the grantee is totally reimbursed for all costs associated with the implementation of such a regulation, requirement or condition"

Mr. HATFIELD. Mr. President, Senator MATHIAS' amendment, which I have just sent to the desk, will allow EPA to require a grantee to make specific changes that are necessary to meet health and safety standards and to comply with new legislation and Presidential directives. However, EPA would be required to fully fund—that is provide 100 percent of—the money required to implement these changes. This amendment would avoid tying EPA's hands and, at the same time, preclude a grantee from having to bear the cost of such changes. In addition, Senator MATHIAS would expect that EPA would be more cautious in recommending such changes to waste water construction projects if they knew that the cost of these changes would be fully borne by the Agency.

Mr. President, Senator MATHIAS requested that this be presented as an amendment to the Jepsen amendment.

Mr. JEPSEN. Mr. President, I must respectfully object to that, in that rule XVI, paragraph 4, would apply. This amendment would put a limitation on there with a contingency which, therefore, if it were put to the body, would be legislation on an appropriation bill. It is my understanding that Senator MATHIAS has been advised of this.

Mr. HATFIELD. Mr. President, I am authorized on behalf of Senator MATHIAS to withdraw the amendment on the basis of the objection that the Senator from Iowa (Mr. JEPSEN) has raised. It is fully understood that there is this objection. Nevertheless, that does not in any way diminish Senator MATHIAS' concern about the possibility of putting EPA in a difficult role—a rather more inflexible role than perhaps Senator MATHIAS would want to see. But in no way does Senator MATHIAS fail to recognize the problems which the Senator from Iowa has raised on this amendment.

Mr. JEPSEN. Will the Senator yield?

Mr. HATFIELD. Yes.

Mr. JEPSEN. Mr. President. I commend the distinguished Senator from Maryland for this. I wish, frankly, that it would not place this amendment in jeopardy. Regulatory reform is long overdue because of the capricious and arbitrary punitive attitude that is sometimes taken. I do not mean to make a blanket condemnation of those folks who have all good intent and I shall not judge what is the intent in the heart of all the regulatory bureaucracy. But the end result of their actions across America is punitive in nature, prohibitive, and does not make, in many cases, reasonable sense.

The thrust of the amendment that Senator MATHIAS has presented, I think, is one to which Mr. and Mrs. Main Street America would say, "Amen, it's about time. If they are going to lay it on us and it's arbitrary on their part and, to us, it does not make sense, if we have to go along with it, the least they can do is pay for it." That is right thinking. He is right on target, except in this particular case, unfortunately, it does jeopardize, and for that reason only, I have to reject it.

I thank the Senator.

Mr. HATFIELD. Mr. President, I respect the judgment of the Senator from Iowa on this. As I indicated, the Senator from Maryland would not in any way want to jeopardize the main thrust of the Senator's amendment. I withdraw the amendment, therefore, offered on behalf of the Senator from Maryland at this time.

The amendment was withdrawn.

Mr. HATFIELD. Mr. President, I should like also to say that I think the Senator from Iowa has made a very good point, that those of us who either have consponsored or who support the amendment, do not in any way like the thought of leaving the impression that this is a broadside attack on EPA. I happen to be a very strong supporter of EPA, voted for its creation, support its existence, believe in its broad general principles and its objectives. I know I speak for the Senator from Maryland (Mr. MATHIAS) in making that statement, because he, likewise, has been a very staunch supporter of EPA.

But I should like to indicate that I believe that many of those forces today who would like to make a broadside attack on EPA, who were not sympathetic to the very beginnings of EPA or its policy since its beginnings, can so easily exploit these circumstances that we are addressing today in this Jepsen amendment, the kind of record established by the EPA in these minor and yet very troublesome points, and use that as ammunition against the whole concept of EPA.

I think those of us who are the friends of EPA realize that, sometimes, it is the little things that build up the public support in opposition to the total agency and the total purpose of the agency. They seem to swallow a camel and gag on a gnat in some of these things.

Therefore, I do not consider that those of us who are supporting the Jepsen amendment in any way are attacking the principle or the basic purpose of EPA. Rather, I consider myself a friend of EPA, and I know for one thing and I reemphasize now that my State has not had difficulties in the sense that we have been able to utilize all of our allocation under the formula, which I have offered amendments to change, the formula itself. The formula itself, to me, is a very discriminatory formula, because it discriminates against some of the progressive States and States like mine, which is both progressive and has had an easier way to develop these sewer projects, water projects, terrain, and geology, than a lot of other States, because we have a full allocation and we stand ready to qualify for additional allocations, because many of the communities in my State have already bonded themselves at the local level to comply with the Federal program.

Yet we stand waiting and those project costs are going to escalate because of the delay. We have completed all of the actions necessary to qualify. But here we find other States which have unobligated funds under the formula and are struggling to get out of this morass of bureaucratic regulation.

Oftentimes, as I indicated before, it does not really impact upon the basic construction program itself. So there those unobligated funds are and here we are, waiting for additional funds. It is just an inequitable and unfair penalty that a progressive State suffers under this kind of system.

Again, I commend the Senator from Iowa and say that, on behalf of my good friend (Mr. MATHIAS), we struggle with the Senator from Iowa in trying to correct these problems, but as friends of EPA rather than as opponents of EPA.

Mr. JEPSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I must resist this amendment. The issue is health and safety, and that is about as squarely as I can put it.

I point out that there have been no hearings on this amendment at all. We have no record. The Environmental Protection Agency says that this amendment could make it difficult to deal with very serious health hazards. They oppose it. They think it is wrong.

On the other hand, some Senators argue that we need to do something about changes in regulations that are applied retroactively and create serious difficulties for communities that have to accommodate themselves to the changes.

But there has been no discussion of this amendment in subcommittee, there has been no discussion in full committee, there is no hearing record. This is the wrong way to legislate.

There is no question that we are making policy on an appropriation bill, policy that should be considered by the authorizing committees and by the full Senate and House on the basis of a record. We do not have that record. And, as I say, we have sharply conflicting statements from EPA and from certain Senators. For this reason alone, I honestly hope that the Senate will reject this amendment.

This amendment would prohibit EPA from enforcing any regulation or requirement not in effect at the time a construction grant is awarded.

It should be opposed for the following substantive reasons:

One, EPA has issued a policy stating

that no new program requirements will be applied to projects that are in construction or where construction is likely to be underway within 6 months of the time of the grant award.

That policy was promulgated on July 24 of this year. Let us give it a chance to operate. EPA is doing administratively what the Jepsen amendment would propose to do, but they are doing it in an orderly way, in a way that gives them some degree of flexibility in the event a health hazard develops.

In the second place, EPA will avoid applying new requirements in the planning stages of a project unless they are essential to implement new laws or correct serious deficiencies.

In other words, they will retroactively apply new requirements if safety and health requires them to do so, otherwise they will not.

EPA has gotten the message and gotten it clearly.

In the third place, flexibility to accommodate new laws, Presidential directives, and new findings relative to public health, safety and cost effective design must be accommodated.

We have here a constantly changing situation. Almost every month we have new revelations and developments with respect to the highly complicated area of toxicity.

We may say that the American people resent regulations. Sure, they do. But, in the first place, when the Federal Government is spending the taxpayers' money, it has every reason to insist that the health and the safety of its citizens be protected.

I have seen polls that indicate that people resent regulations, as all of us do. I have talked to hundreds of thousands of constituents in my State over the years about these things. But I can say that there is one issue on which the American people overwhelmingly want protection, and that is with respect to their safety and health. That is what the EPA wants the flexibility to provide in administering its construction grant regulations.

Before making any changes in construction grant requirements, EPA will assess their impact, notably the affected parties and set forth the justification for such changes.

That is the way they would operate under the July 24, 1980, directive, which is currently in effect.

Mr. President, let me point to some examples of the kind of safety precautions this Agency has taken in the past but could not implement if this amendment passes.

I refer, in the first place, to regulations involving the toxicity of chemical grants for sewer rehabilitation.

EPA argues that they would have been prevented from effectively alerting grantees and their engineers of potential health hazards associated with a major chemical grout—AM-9—used in correcting sewer infiltration.

They argue that they would have been prevented from requiring that worker exposure to a catalyst—DMAPN—be completely avoided, effective immediately.

These were rulings they issued in the past. They feel that under the Jepsen amendment they would not have the authority to pursue these actions.

EPA argues that a new directive now under preparation will address safety requirements for preventing the explosion of and human exposure to hazardous gases in sewers. This could not be applied retroactively if we approve this Jepsen amendment.

They argue, as far as the implementation of statutory deadlines is concerned, that they would have been prevented from implementing a "Buy American" directive which was issued on February 17, 1978.

Mr. President, let me point out that EPA is determined to eliminate redtape and expedite construction grant project, and they have tried to do so, but they would have been inhibited from implementing that kind of acceleration through combining step 2 and step 3 construction grant awards, for example, had the Jepsen amendment been in effect.

A program directive permitted combined grants for small projects to decrease paperwork and shorten processing time prior to construction. EPA argues that they would not have been able to initiate that kind of change, which would certainly be in the interest of the community and the contractors, if this rigid amendment had been a part of the law. Of course, such a policy directive would be in the interest of local communities.

All of the actions I have cited are examples of directives EPA has been able to implement in the past which would have been barred had the Jepsen amendment been in effect. The Agency would not have been able to apply these directives retroactively. I will quickly repeat them.

EPA would not have been able to protect the health and safety of local people with respect to the toxicity of chemical grants for sewer rehabilitation; they would not have been able to implement the "Buy American" directive issued on the 17th of February, 1978; and they would not have been able to combine step 2 and 3 construction grant awards, thereby decreasing paperwork and shortening processing time, in the event this amendment had been in effect.

So, Mr. President, I would hope, given these facts, that the amendment would not be accepted.

Let me point out further, Mr. President, that the question of the retroactive nature of the EPA regulations was dealt with last year. It was my belief it was satisfactorily resolved through a commitment by EPA not to apply new program requirements retroactively to projects that are under construction or scheduled to begin construction within 6 months. I have already referred to that particular policy. Senator BELLMON withdrew his amendment to bar the retroactive application of waste treatment construction grant regulations last year upon a commitment by EPA to change the retroactive application of regulations in certain cases, which has been done, as well as a commitment from our former colleague and present Secretary of State, the Senator from Maine, Mr. Muskie, to explore the issue when the waste treatment construction grant program came up for reauthorization.

Mr. President, that is the proper way to react. We should rely on the authorizing committees and develop a record from hearings. We should solicit testimony from those who feel that the EPA has been too reluctant to comply with the obvious needs of communities, to keep a steady course and not to change that course once a project is underway. EPA should have an opportunity to testify and to show that they could mend their ways and implement a better policy.

Now we have to deal with an amendment that has come to the floor at the last minute. It was not considered by my Appropriations Subcommittee. I had no knowledge of this issue when we were holding hearings. It was not considered by the full Appropriations Committee. It was not considered by the authorizing committee. EPA opposes the amendment and warns us that it may create a serious safety and health hazard.

To act at this time, under these circumstances, it seems to me, cannot be considered responsible. It is my opinion that we must give the authorizing committee a chance to deal with this issue next year, when the waste treatment construction grant authorization expires. That would be an orderly way to proceed. We would like to act on the issue as promptly as possible, but the authorizing committee should have a chance to move, especially in view of EPA's good faith efforts to meet the problem by partially barring the retroactive application of new policies, and they have not. If we act now, we are simply usurping the prerogatives of the authorizing committee.

I yield the floor.

Mr. MATHIAS. Mr. President, I commend the Senator from Iowa for bringing this to the attention of the Senate, because it touches a subject that I think is important.

I have discussed with him privately, before this debate, some of the kinds of problems that have arisen in the State of Maryland.

For example, we have small coal operations in the Appalachian Mountains; and under existing EPA programs, the small coal miners are required to construct settling ponds so that we reduce the amount of acid mine drainage which gets into the streams and rivers of Maryland.

It is a matter of more than aggravation. It is a matter of economic law if any of these mine operations are told to build a settling pond and to provide spillover pipe of 6-inch diameter, and they go out and buy the 6-inch pipe at a substantial cost, and find that just before they are ready to install the pipe, EPA has changed the diameter and is requiring them to put in an 8-inch spillover pipe. They are there with an expenditure totally wasted for the purchase of 6-inch pipe, with delay occasioned by the necessity to get 8-inch pipe, and really with no recourse.

It was with that kind of experience in mind that I had suggested the proposal which was offered on my behalf a few minutes ago, which would provide some recourse to people who are affected by unreasonable changes that are made by EPA after an original standard has been established and then changed.

Earlier, Senator HATFIELD sent to the desk an amendment of mine on EPA construction grant regulations which would have allowed EPA to require a grantee to make specific changes necessary to meet health and safety standards and to comply with new legislation and with Presidential directives.

However, I believe that it would cure the problem that the Senator from Iowa wants to cure by requiring EPA to fully fund, a hundred percent, the cost of implementing the changes. This would have avoided tying EPA's hands and at the same time precluding a grantee from having to bear the cost of such changes.

In addition, I had hoped that EPA, if it was going to have to bear the cost—because the money would come out of its budget—if it was going to have to bear the cost, it would be much more reluctant, much more prudent, about making these changes. Therefore, there would be less of the aggravation and loss that have resulted as a result of this unreasonable action.

Without my amendment, I have some difficulty with the pending amendment, because I am not sure just exactly what it would mean, and perhaps the author of the amendment can explain to us.

I observe that on all the Senate desks there are pencils, and on all the pencils there are erasers. I conclude from that, however, that the manufacturers of pencils believe that human error is a very common occurrence in life. Unhappily, I have to agree with that. I do not think that EPA is any more immune from making mistakes than anybody else.

So that with all the sympathy I have with this amendment, with all I want to do to see the principle of it adopted, I am concerned that the author of the amendment will block very necessary corrections or mistakes.

For example, on the issue of toxicity of chemicals in sewer rehabilitation, EPA was able to alert the grantees and their engineers of potential health hazards associated with a major chemical grout used in correcting sewer infiltration. I cannot believe that the Senator from Iowa would want to prevent that kind of change.

On the other hand, I hope the Senator from Iowa would want to prevent the kind of silly changes that have been inflicted on the coal operators I have just described. Perhaps he could tell us exactly how he envisions the amendment working to achieve those two objectives.

Mr. JEPSEN. Mr. President, my distinguished colleague from Maryland, I believe, has brought up points that do not apply, in that we are not talking about mistakes. We are talking about a retroactive, new regulation and a blackjacking in the enforcement of those regulations by withholding funds.

I have been in the Senate a year and three quarters. It has been very difficult for me not to get Potomac fever. I have not got it, but I have to talk to myself and reflect about it sometimes, despite the heady atmosphere that takes place in Washington.

But if an honest mistake has been made, mature, compassionate, reasonable human beings in and out of Washington would say, of course, correct it. I keep hearing the arguments that this amendment would prohibit anything good happening for the health and welfare of the community. It does not at all. It is an insult to those folks outside of Washington, D.C., which is, thank goodness, where most of the American people live. It is an insult to the mayors and city councils to say that if a law or regulation came up that would affect community health on a positive basis, even revolutionary and brand-new technology, they would say do not do it. Of course, I can assure the Senator that I have not been away so long from Mr. and Mrs. Main Street America and my constituents where folks are compassionate and able to make decisions. They do not have to come to Washington to get some stroke of divine wisdom and counsel.

Mr. MATHIAS. I agree with the Senator. I agree with the Senator so completely. That is why I wish to be for his amendment. I think that very clearly the people who are out on the firing line very often have a better instinct about what needs to be done and exactly what the facts are. They are not reading it from some distilled report that has gone through 14 bureaucratic offices. They are out there looking at the ground. They are looking at the hole in the ground. So they understand the facts.

I have served in municipal government, and I have great confidence in the mayors and boards of aldermen across this country. But I also know that municipal government is in tough shape financially now, and mayors and boards of aldermen may have to cope with problems that will reflect financially on their particular situations, on the established tax rates, and on tax levies in municipalities. There are just a lot of inhibitions that may affect mayors, and that is why I wanted to take the financial burden off these small communities and the burden of retroactive change which I think can be so unreasonable, so unfair, and so economically burdensome.

In most cases I think we could say, "Well, let the mayor wait until the next tax year," in a given municipality, and "Let the board of aldermen hold up a decision until the next tax year when the funds may be available."

But the one class of cases that concern me is the health and safety class cases. There are just a number of those cases that have come to my attention that really do not have time to wait for the next budget of a town or for the next tax levy of a municipality because health and safety is a matter of timing as much as any other thing. If we could agree to exempt health and safety orders, I think maybe we would have a ground for agreement, since my amendment has been ruled out of order here. We would have a ground for agreement that at least sends a strong signal to EPA that Congress is concerned about the aggravation and the cost of retroactive orders and yet at the same time would not pose any present danger to health and safety in this country.

Mr. JEPSEN. Mr. President, will the Senator yield?

Mr. MATHIAS. I yield.

Mr. JEPSEN. The distinguished Senator as always brings up his deep concern for the health and the welfare of the people. He has a consistent record of being concerned for and about the health and safety of the people. But I suggest to the Senator that the very thing that he is concerned about is one of the very compelling reasons for supporting this amendment.

Mr. MATHIAS. I want to support it.

Mr. JEPSEN. What do we have because of these retroactive regulations? I could name hundreds of communities across this Nation where projects have been postponed, and people have been frustrated. In fact, some people have given up. You do not postpone the health and welfare of some people for 3 or 4 years because of an arbitrary and capricious feeling of someone in Washington who says, "Whoops, I want to change horses in the middle of the stream."

We should not postpone the health and welfare of people. They should be entitled to good health and clean water now, not 5 years from now after we satisfy some bureaucratic regulator.

And I repeat that this would be voluntary. Please understand that if we have technology good for the health and welfare of local communities that mayors and councils are going to change. There is nothing in this amendment that says they cannot change. It is voluntary, and of course they will.

Mr. MATHIAS. Mr. President, one of the difficulties it seems to me is that these questions of health and safety have some pattern to them. In other words, I do not think we want to get into a situation where we have one water standard in one community and another water standard in another community.

One of the great things about the United States of America as opposed to almost any other comparable land mass in the world is that we can with considerable confidence and safety eat a hamburger in the Northeast, Southwest, Northwest, and the Southeast. We have uniform standards of water quality and health inspections, and that uniformity is one of the reasons that makes it possible for Americans to live better in more places in America than any other place in the world.

I think, if we abandon that concept of the national standards of health and safety, we are abandoning a great deal.

But what I am proposing to the Senator goes a long way toward what he wants to achieve. For example, all the engineering and all the planning which have been subjected to wearisome, burdensome, aggravating, retroactive changes would get the benefit of his amendment. If we exempt health and

safety issues, we then do not raise any dangers in those areas, and I think we would just find an enormous reduction. I think the Senator would have done a very useful work for the people of this country.

Mr. PROXMIRE. Mr. President, will the Senator from Maryland yield on that point?

Mr. MATHIAS. I yield.

Mr. PROXMIRE. Mr. President, as I understand the amendment of the Senator from Maryland, and correct me if I am wrong, it will provide that if changes are made in a construction grant project because of the retroactive application of regulations by EPA, the full cost of those changes would have to be borne by the Federal Government, which initiated and instituted those changes. Is that correct?

Mr. MATHIAS. That was my amendment which was offered previously on my behalf. I felt that that would not only compensate whoever was affected by the retroactive changes but it would have a very sobering effect on the bureaucrats in EPA because they would find themselves having to take out of their own budgets the costs of these changes and they would be, No. 1, more careful to put out the plans originally that they were going to stick with and then, if there were some unavoidable change, they would make it a minimal change, and they would get to it as quickly as possible.

Mr. PROXMIRE. I am very sympathetic to that approach. It makes sense to me. I enthusiastically support it. I only have one problem with it. It seems to me that with a change in a formula of that kind, the authorizing committee should have some input. EPA should have the opportunity to make a presentation. We should have a record before us. We should have some knowledge of just what we are doing, what the effects are, what the reaction of EPA is, and what the reaction of grant recipients may be so that we do not change the formula without full knowledge and a full record.

I must say that what the Senator from Maryland proposes seems completely logical because it would make sure that we would protect the health and safety of our citizens. It would also make sure that a community was held harmless from any increased expense they might have to suffer because of the retroactive application of regulations.

Mr. MATHIAS. I think the Senator has stated what I proposed to do correctly, and I think it would really make a good deal of sense both as a deterrent to retroactive change which, I think, all of us would agree is bad, and as a softening of the impact on those who are affected by the change.

But if the Senator will let me just make a further observation here, there is a second way we could go which, I think, would be not as desirable as my first proposal, but that would be to exempt health and safety issues.

But in this whole discussion I do not think we can ignore the fact that some light seems to be breaking in EPA itself on this subject. I am interested about the fact on the 24th of July of this year Mr. Costle, the Administrator of EPA stated he was prepared to reaffirm the policy of EPA that—

> No new program requirements will be applied to projects having step 3 grant assistance where construction is already underway or likely to be underway within 6 months of the grant award.

Mr. JEPSEN. Mr. President, will the Senator yield?

Mr. MATHIAS. Let me finish this statement.

> The EPA will avoid applying new requirements retroactively to projects in step 1 or step 2 funding unless they are essential to implement new laws or to correct serious deficiencies in the program.

So I do not think we can assume that EPA is ignorant of the problem we have been discussing here.

Mr. JEPSEN. Mr. President, will the Senator yield?

Mr. MATHIAS. I believe the Senator from Wisconsin has the floor, but to the extent that I can yield it I am happy to do it.

Mr. JEPSEN. While the Senator from Wisconsin is talking to the Senator from Florida, who also wishes to speak on behalf of this amendment, I would point out to the Senator from Maryland that I have this statement from the U.S. Environmental Protection Agency dated July 24, 1980, and I quote it:

> It is fair to assume that there may be particular instances where this policy will hurt rather than help the progress of the program toward meeting the goals of the Clean Water Act. For these reasons I reserve the right to deviate from this policy in individual cases under rigorous standards for justification.

There you are, the most beautiful form of bureaucratese that contradicted everything they said they were going to do. It gives them full license to do what we asked them not to.

Mr. MATHIAS. I think it is only fair to read what Mr. Costle says in these words which follow immediately after the words the Senator from Iowa just read. He goes on to say:

> That is, before taking any such action EPA will assess the impacts of that action, and notify affected interest groups in writing of our intentions, setting forth the results of the assessment and the specific reasons why we feel this action must be taken. If any such requirements are then issued, they must be signed by me, the Deputy Administrator, or the Assistant Administrator for the Office of Water and Waste Management.

So, as I read that, EPA is concerned enough about this problem that they are saying:

> No little, petty bureaucrats down the line can issue these change orders any more. It is only clearly accountable administrators at the highest level, the top 3 people in EPA, who can issue these change orders, and that will only be done after a record is made of the reason for the change, and the assessment of the impact of the change, so that the degree of accountability which is being attained is much, much higher than it has been in the past.

I do not think that is necessarily the final word on this, and I would prefer that Congress act. But I do think we have to give Mr. Costle at least the opportunity to show what he can do before we completely alter the policy here. He has had since the 24th of July, which is less than 3 months ago, only that time, so the track record really is a very brief one, and I think he is entitled to an opportunity to make a case here.

The Senator from Florida, I think, is seeking the floor.

Mr. CHILES. I just wanted to join with Senator JEPSEN in saying that I really cannot think of anything about which I have heard more from my local governments. I recall the frustration that they have expressed to me as they have talked about this subject, and I can see the faces on some of those city commissioners who have come to my office.

I remember one particular city official saying:

> We were told we had raw sewage working its way into what could be our water systems because we had a very old sewer system. We had some trees that had roots that had pierced part of the pipes of the sewer system, and there was leakage and drainage. We were told by EPA that we had to fix that. We were cited. We were told we had a time certain in which we had to fix it. We did not know what in the world we were going to do to fix it.
>
> We went out and sought a grant to get the money. We finally got approval for the grant. We started forward on the basis of the grant approval and then, after we had that approval, EPA came back and in this particular instance said, "You do not have enough capacity because you may have more growth. You are in a growth area, and so you ought to have a larger plant now than you have approved."
>
> So they said they would not approve what we had gotten our grant approval for.

So, they went back to do that, and they could not get sufficient grant moneys. This particular city, therefore, floated a bond issue in which they put a bonded indebtedness on their people. It went through, and they got the new plans, and by the time they came back with the new plans, which they were told was the way to go to start with, EPA then decided they did not want the effluent to be sprayed out on the land. There had been a change for that, and they wanted to change the effluent, and so they were going to have to do it again.

Here was a city which first got the grant, got the first set of plans, got their first construction, and then was told that the project was not going to work, that they had to have more capacity. Then, since they did not have enough grant money, they had to get a bond issue. They got the money, and then EPA told them that they did not like the way the effluent was being sprayed, and so they had to go and do it again.

During this time period, which was about 3 to 5 years, the cost escalated on that project tremendously.

Certainly the people of that area were not served. If you talk about the health or safety of the people, the people would have been better off had they gone with any technology they had. But again, every time EPA could come up with something they thought was a little better, or tell them they thought it should be a little bigger, they delayed the project again.

I recall discussing this issue last year. Senator BELLMON offered an amendment, and EPA came in and said, "Do not put that amendment on. We will do this. We will do this administratively." Now we find that they have come up with a halfway administrative change.

I just cannot understand what EPA has done to small towns and cities and what they are really doing to the cost of this program. If they cannot get their act together and determine what requirements a city should meet with respect to one of these projects then I think that Congress has to act.

We cannot put this kind of burden on local government, nor can we put this kind of inflationary burden on the people, because every project delay has resulted in increased project costs.

I want to support the Senator from Iowa because I think that this amendment represents the direction in which we should go. I strongly support his amendment and hope that we will adopt it.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1589

(Purpose: To prohibit retroactive application of regulations in connection with the construction grants program)

Mr. MATHIAS. Mr. President, I send to the desk an amendment in the nature of a substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Maryland (Mr. MATHIAS) proposes an unprinted amendment numbered 1589 in the nature of a substitute for unprinted amendment No. 1587:
>
> In lieu of the language to be inserted, insert: On page 17, line 21, before the period, insert the following: ": *Provided*, That none of the funds appropriated in this Act shall be used to enforce, retroactively, any regulation other than regulations involving health and safety, issued under the construction grants program or any project requirements or conditions not in effect at the time the grant for a project is awarded".

Mr. MATHIAS. Mr. President, I have offered this substitute because I think it gives us an opportunity to examine a little more closely what are health and safety issues and to create some legislative history as to what would or what would not be prohibited to EPA under the Jepsen amendment.

I favor the principle of the Jepsen amendment. I am dismayed by the kind of problem created by retroactive changes on behalf of EPA. But I am apprehensive that if we prevent the correction of honest errors or corrections that may result from new information, that we will simply be cutting the erasers off our pencils and preventing ourselves from doing what is necessary to do in life, which is to correct our mistakes.

The Senator from Iowa has suggested that if we exempt health and safety issues we will be exempting almost the whole area of retroactive changes, but I do not think that that necessarily follows. We have an opportunity here and now to make this clear.

Perhaps if the Senator from Iowa would give us his attention he could define for the Senate what he feels health and safety issues to be, because that really seems to me to be the nub of this whole problem.

Are we denying to the people of the United States the kind of protection to health and safety that they would otherwise have if EPA were able to take advantage of new information or to correct mistakes in judgment or mistakes of fact embodied in previous orders?

I personally would say that I would not consider that this would exempt engineering changes that flowed from new estimates, for example. Perhaps the Senator from Iowa would be able to give us what he thinks would be exempted under this amendment.

Mr. HATFIELD. Will the Senator be gracious enough to yield so I may ask the Senator a question?

Mr. JEPSEN. Yes.

Mr. HATFIELD. Mr. President, I have gone on record today in support of the Jepsen amendment. As I indicated earlier on in this debate, we have not had a great number of difficulties of this type in our State. Our State has geological and other characteristics that have made sewage and other such programs rather easier to accomplish than some States have experienced.

In addition, our State has been the leader in the Nation in developing sewer-water programs for quite some time, long before EPA even came into the picture. Our problem has been basically to secure enough Federal matching funds, since the local governments have already qualified and are standing waiting, because of a formula I have tried to change, because as a progressive State we have been penalized.

So I am not speaking in other than that context, but I do raise the question that where other States have had this extraordinary difficulty it has affected us as well.

It seems to me that this is almost like saying that we are for motherhood, in the sense that anything can be justified under health and safety. We saw that operate through OSHA, until this Congress had to amend our own actions.

Mr. MATHIAS. Let me observe that that is exactly why I introduced this, so that we can, through this legislative history, define and limit what can be justified as a health and safety measure.

Mr. HATFIELD. But the basic thing is, the Senator, as I understood, said he could conceive where this might even be used to affect engineering.

Mr. MATHIAS. No. No. I specifically said that it would not be used.

Mr. HATFIELD. I am glad to have that better understanding of what the Senator said. I misunderstood him.

I would also, though, remind the Senator that the interesting thing is that these rules changes, this stop-and-go policy, in most cases has not affected the engineering aspects of the project. These have created delays outside of the field of engineering more frequently than not. So I do not know that we are really getting to the problem with this amendment.

EXECUTIVE SESSION

TREATIES

The PRESIDING OFFICER. Under the previous order, the hour of 12:40 p.m. having arrived, the Senate will now go into executive session to consider the resolutions of ratification of eight pending treaties, on which there shall be a total of 20 minutes debate to be equally divided and controlled by the Senator from Idaho (Mr. CHURCH) and the Senator from New York (Mr. JAVITS).

The clerk will state the Resolutions of Ratification.

THE FOOD AID CONVENTION, 1980

The Resolution of Ratification of Executive G was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Food Aid Convention, 1980, signed on behalf of the Government of the United States of America at Washington on April 29, 1980 (Executive G, Ninety-sixth Congress, second session).

PROTOCOLS FOR THE FIFTH EXTENSION OF THE INTERNATIONAL WHEAT AGREEMENT, 1971

The Resolution of Ratification of Executive FF was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 1979 Protocol for the Fifth Extension of the Wheat Trade Convention, 1971, and the 1979 Protocol for the Fifth Extension of the Food Aid Convention, 1971, both signed on behalf of the Government of the United States of America at Washington on May 16, 1979 (Executive FF, Ninety-sixth Congress, first session).

THE 1978 PARTIAL REVISION OF THE RADIO REGULATIONS

The Resolution of Ratification of Executive B was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Partial Revision of the Radio Regulations (Geneva 1959) signed on behalf of the United States at Geneva, March 5, 1978 (Executive B, Ninety-sixth Congress, second session).

AMENDMENT TO THE CONVENTION ON THE INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The Resolution of Ratification of Executive C was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, adopted at Bonn on June 22, 1979 (Executive C, Ninety-sixth Congress, second session).

PROPOSED AMENDMENTS TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

The Resolution of Ratification of Executive I was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendment to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, adopted at London

on October 12, 1978 (Executive I, Ninety-sixth Congress, first session).

CONVENTION ON THE INTER-AMERICAN INSTITUTE FOR COOPERATION ON AGRICULTURE

The Resolution of Ratification of Executive HH was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on the Inter-American Institute for Cooperation on Agriculture, signed at Washington on March 6, 1979 (Executive HH, Ninety-sixth Congress, first session).

MARITIME BOUNDARY TREATY WITH THE REPUBLIC OF VENEZUELA

The Resolution of Ratification of Executive G was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Maritime Boundary Treaty between the United States of America and the Republic of Venezuela, signed at Caracas on March 28, 1978 (Executive G, Ninety-sixth Congress, first session).

MARITIME BOUNDARY AGREEMENT WITH THE REPUBLIC OF CUBA

The Resolution of Ratification of Executive H was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Maritime Boundary Agreement between the United States of America and the Republic of Cuba, signed at Washington, December 16, 1977 (Executive H, Ninety-sixth Congress, first session).

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order to suggest the absence of a quorum with the time charged to neither side.

Mr. MATHIAS. Mr. President, reserving the right to object, I hope this will not delay the 1 o'clock vote.

Mr. HELMS. Mr. President, there is no need for a quorum call. I withdraw the suggestion.

Mr. CHURCH. Mr. President, I yield myself such part of the 10 minutes as I may require.

Mr. President, I urge the Senate to give its advice and consent to a series of unrelated treaties and other international agreements which have been considered by the Foreign Relations Committee and reported favorably.

They are identified as follows:

Maritime boundary treaties with Cuba and Venezuela.

Amendment to the convention on the prevention of marine pollution by dumping of wastes and other matter.

Protocols for the fifth extension of the International Wheat Agreement of 1971.

Food aid convention.

Convention on the Inter-American Institute for Cooperation on Agriculture.

1978 partial revision of the radio regulations.

Amendment to the convention on international trade in endangered species of wild fauna and flora.

The committee gave careful attention to these agreements. They were thoroughly considered in public hearings and they were reported favorably without dissenting vote.

While many of these treaties are noncontroversial and appear to be routine in nature, they are part of the important fabric of U.S. relations with particular states and with the international community as a whole. By acting on them promptly and favorably, the Senate will be furthering the orderly and efficient management of U.S. foreign relations and enhancing the Nation's standing as a reliable partner in the peaceful resolution of disputes and the pursuit of international comity.

Mr. President, I ask unanimous consent that a summary description of these treaties be printed in the RECORD at this point.

There being no objection, the summaries were ordered to be printed in the RECORD, as follows:

AMENDMENT TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

These amendments provide a system for the arbitration and settlement of any disputes which may arise in the interpretation of Marine Pollution by Dumping of Wastes. Under this Convention, considerable discretion is retained by the contracting parties and, to date, there have been no controversies calling for a negotiated settlement. Nonetheless, the original convention requires that a dispute-resolution procedure be set up, and the arrangements worked out in these amendments should provide a ready means to resolve any differences in interpretation which may arise. Although the amendments raise the possibility of an arbitral award against the United States, such an award could be made only after Congressional consideration and appropriation.

CONVENTION ON THE INTER-AMERICAN INSTITUTE FOR COOPERATION ON AGRICULTURE

This convention, which was opened for signature at the Organization of American States on March 9, 1979, revamps the original 1944 convention governing the establishment, organization and operation of the Inter-American Institute for Agricultural Sciences. The purpose of the new convention is to strengthen and expand the mandate of the Institute, which will be renamed as the Inter-American Institute for Cooperation on Agriculture.

Over the years the focus of the Institute's programs has changed from an emphasis on tropical agricultural research to programs which reflect the concerns of all the Inter-American member states, including those countries in the temperate climates. With its new emphasis on technical assistance, the Institute has undertaken programs to halt the spread of swine fever and a "systems" approach to encourage maximum crop yields from small farm plots. In addition, the Institute is working on a new agricultural marketing strategy for the Caribbean which hopefully will bring increased prosperity to the region.

1978 PARTIAL REVISION OF THE RADIO REGULATIONS (GENEVA 1959)

The primary purpose of this treaty is to update the international Radio Regulations as they apply to aeronautical communication to take into account the present technological state of the art and the increasing demands on these radio frequencies by national and international air carriers.

International radio regulations were last revised with respect to the Aeronautical Mobile (R) Service in 1966 and further revisions were required because of the increased complexity of radiocommunication techniques, coupled with heightened competition for space in the electromagnetic spectrum by a larger number of countries, as well as by changes in airline traffic patterns.

AMENDMENT TO THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

This amendment to the Convention on International Trade in Endangered Species formalizes the duty of the contracting parties to provide necessary funding to carry out the Convention's work. A multi-party financing arrangement has become necessary since the United Nations Environmental Program, which traditionally provided financial support, has decided to curtail funding. At the same time, various parties to the Convention have stated that they could not legally contribute unless the responsibility for doing so was formally set out in the Convention text. The amendment will make possible the establishment of a trust fund of $984,000 to pay for implementation of the Convention through 1981. The projected U.S. share under this arrangement will be $246,000.

PROTOCOLS FOR THE FIFTH EXTENSION OF THE 1971 INTERNATIONAL WHEAT AGREEMENT AND THE 1980 FOOD AID CONVENTION

The protocols for the Fifth Extension of the 1971 International Wheat Agreement, which continue U.S. participation in the 1971 Wheat Trade and Food and Aid Conventions through June 30, 1981, together constitute the International Wheat Agreement.

The Wheat Trade Convention, with 54 participating nations, plus the European Community, is a purely consultative arrangement without any economic provisions for price stabilization. It does provide for the continued operation of the International Wheat Council, an administrative body established in 1949 to conduct an annual review of the world wheat situation in order to provide member governments with information relevant to their respective domestic agricultural and price policies.

Negotiations on a new Food Aid Convention to supplant the 1971 convention were concluded on March 6, 1980. The new convention raises the total annual commitment to food aid to less developed countries by the 12 donor countries from 4.3 million metric tons to 7.6 million metric tons, with a goal of 10 million metric tons annually at some future date. The U.S. minimum pledge would increase from 1.89 million metric tons to 4.47 million metric tons annually.

No additional appropriations will be required by ratification of the Food Aid Convention as the United States already more than meets its commitments through the P.L. 480 programs.

MARITIME BOUNDARY TREATIES WITH CUBA AND VENEZUELA

The primary purpose of this treaty is to establish a permanent maritime boundary and eliminate overlapping jurisdictional claims between the United States and Mexico and Venezuela that have arisen in the Caribbean, the Gulf of Mexico and the Pacific Ocean.

In seeking to resolve their differences, the parties adopted negotiating guidelines which basically adhere to the delimitation principles of the 1958 Geneva Convention on the Continental Shelf and the criteria set forth by the International Court of Justice in the North Sea Continental Shelf cases.

These treaties mark an important step forward in protecting our fishery and offshore mineral resources, as well as in resolving potential problems in a cooperative fashion.

EXECUTIVE H (96TH-1ST), ORDER NO. 22, MARITIME BOUNDARY AGREEMENT WITH THE REPUBLIC OF CUBA

Mr. CHURCH. Mr. President, for the purpose of consideration of the maritime boundary treaty with Cuba, I yield the remainder of my time to the distinguished chairman of our Subcommittee on Western Hemisphere Affairs, the Senator from Nebraska (Mr. ZORINSKY).

Mr. ZORINSKY. Mr. President, in considering this agreement, let there be no mistake about it. Its sole and primary

purpose is to serve the interests of the United States. Period. There are no ifs, ands, or buts about it. This agreement serves the national interest.

It serves the national interest by doing what Congress mandated be done in the 1976 Fishery Conservation and Management Act. It establishes an internationally recognized maritime boundary between the United States and Cuba. It eliminates uncertainty and confusion. And it vastly reduces the potential for controversy and conflict on the high seas.

This is all the treaty does. It does nothing more. It does not extend formal recognition to the Castro government. It does not lift the embargo against Cuba. It does not circumscribe our rights to Guantanamo. It does not do anything but establish a mutually acceptable maritime boundary between our two countries.

Mr. President, this agreement is not a new one. It was concluded in 1977 and has provisionally been in force since January 1, 1978. By all accounts, it has worked and worked well. So far as the Foreign Relations Committee is aware, there is no opposition to this agreement. Indeed, the committee has sent it to the Senate floor by a unanimous vote of approval.

Having said this, Mr. President, I also recognize there is always the temptation to politicize anything having to do with the Castro government. In this instance, the Senate must resist such temptation if we are to avoid the kind of ill-advised foreign policy surgery which will only prove beyond a shadow of a doubt that we are fully capable of cutting off our nose to spite our face. Needless to say, such surgery never makes good sense.

In the final analysis, Mr. President, there is only one reason for supporting this agreement: It serves the national interest. For this reason and this reason alone, I ask my colleagues to vote aye.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, in the absence of Senator JAVITS, I yield myself such time as I may require.

Mr. President, the Senate will shortly go on record, one way or another, with regard to a maritime boundary treaty with Cuba.

As I understand it, we will have seven votes at approximately 1 o'clock, and then thereafter there will be one vote on the Cuban treaty.

Mr. President, the Senator from North Carolina feels that the Senate would be making a great mistake if it regards the matter as simply a technical issue devoid of political significance.

Indeed, to conclude any kind of agreement with Cuba at a time when Fidel Castro is seeking to subvert not only the Third World countries, but even the United States itself, would be the kind of action that causes the American people to doubt the sanity of this august body.

The fact is that this treaty, simply put, is a referendum on Castro. There are those who doubtless would prefer that it not be construed in that light. But as representatives of the American people, we have no choice but to construe it in that light. The American people will be calling many of us to the bar of justice on November 4. They will be scrutinizing our decisions here today very carefully, and I have no doubt what criteria they will use for that scrutiny.

Mr. President, at the appropriate time, I am going to offer an amendment to the Cuban treaty. It is not in order at this time, but I will offer it at the appropriate time.

The American people are going to note that Cuba is virtually an outlaw nation. Not only is Cuba shipping arms and providing training to export revolution throughout Central America and Africa, but she is acting as the surrogate of the Soviet Union to impose Marxist dictatorships in Ethiopia, Angola, Mozambique, and elsewhere.

They will note the fact that Cuba is a Soviet base. They will note the fact that Cuba has been provided with Soviet Flogger-D Mig-23's, and that Soviet pilots have been piloting Cuban planes. They will note that the Soviets have a submarine base in Cuba, and have even provided Cuba with a first submarine. They will note that the Soviets have a brigade in Cuba in a combat mode, and that they have not been withdrawn.

Moreover, they will note that there has been no positive assurance that the Soviets have not emplaced nuclear weapons on the island.

They will note, too, that Castro has been busy exporting his revolution to the United States. They are aware that the Puerto Rican National Liberation Front, one of the worst terrorist organizations in the United States, is funded and trained by Castro.

They will note that Castro's own people have repudiated him, and that thousands are clamoring to leave. They will note too that Castro cynically exploited the disaffection of his people by forcing criminals and social degenerates to join in the exodus, thereby hoping to discredit the emigrants in general.

They will note too that secret agents have been included in the exiles, in order to stir up trouble and social unrest, and for more sinister purposes. They will note that we have had 10 hijackings in 5 weeks, all perpetrated by supposedly "disillusioned" Cubans.

But we know that Castro's agents—the agents of the DGI, his secret police—operate with impunity in the United States. We know how they seek to intimidate Cuban exiles. Hubert Matos has testified how DGI agents follow him constantly; and now he has to live in a virtual fortress in Miami for fear of assassination from Castro's agents.

And the atmosphere of terror works the other way, too, bringing the war between communism and freedom to our own territory. This very week, a Cuban DGI agent, Felix Garcia Rodriguez, disguised as an attaché at the Cuban U.N. mission in New York, was assassinated by persons claiming to be anti-Castro exiles. Moreover, the case of Orlando Letellier, reminds us how dangerous a man can be who is in the pay and under the direction of the Cuban DGI.

The papers found in his briefcase showed that he was not only receiving funds and direction from Havana, but was in contact with various KGB agents and terrorist agents in the United States and elsewhere.

On September 5, three Cuban nationals were arrested by the FBI in Miami under suspicion of spying for Castro. It is significant that they were carrying Nicaraguan papers supplied by the Marxist Sandinista Government.

Mr. President, I ask unanimous consent that an account of this incident, appearing in the Miami Herald of Saturday, September 6, 1980, be printed in the RECORD at the conclusion of my remarks.

Mr. President, if we vote for approval of the resolution of ratification of this treaty in the current state of relations with Castro, the American people will hold us responsible. I am, therefore, offering an amendment to the resolution of ratification which calls for all Soviet military units to be withdrawn before the treaty goes into effect. The language of the resolution is simple:

Provided however, That the consent to ratification given hereby is subject to the express condition that the instruments of ratification of said Treaty contain the following: "The Senate of the United States denounces and deplores the continued presence of the Soviet combat brigade and Soviet advanced attack aircraft in Cuba. Accordingly, the Parties expressly agree that the terms of the Treaty ratified hereby shall not come into force until all Soviet military units have been withdrawn from Cuba and the President of the United States has certified to the Congress of the United States that no Soviet military units remain within Cuba or anywhere else in the Western Hemisphere.

If such language is added, then the American people will begin to consider the treaty in a somewhat more favorable light.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

Mr. President, the treaties which are before us deal with problems affecting different parts of the world and a wide range of subjects; they are simply part of the broad assortment of activities between governments—whether we approve of those governments or not, or whether there are other sources of conflict with those governments—which make up the stuff that is international relations.

It is almost like saying that notwithstanding war, pestilence, or catastrophe, we still have to eat and we still have to sleep.

These treaties make up different aspects of our international life which we have to carry on so long as we are living in this world.

I joined yesterday in the exclusion of the Mexican treaty from the group of treaties which was first to be considered because we wanted to maintain a policy of complete information for any Members who desire it. There will now be an opportunity for Members to look into the situation respecting the Mexican treaty.

I wish to say, Mr. President, to those

who have raised issues in respect of the Mexican treaty that there may be oil resources somehow, though we do not know it, involved. We also have to recognize that there are important fishing interests involved, and that those who have those interests are very satisfied with the treaty. The person who raised these questions, a prominent geologist named Hollis Hedberg, actually testified before the Foreign Relations Committee and the committee hearings are included in the committee report. So the subject seems to me to have been covered, and the arguments, it seems to me, are still persuasive for approving this treaty.

Comparably on the Cuba treaty, I yield to no other Member in my own feeling about Soviet activities in Cuba. However, Cuba is there and we have just seen what happens with an uncontrolled incursion of Cubans leaving the island, almost without any warning as far as we are concerned, and the chaos and confusion which can be caused and the real dangers to human life which result. This treaty respecting marine boundaries with Cuba is occasioned by the fact that we both have extended our national fishing jurisdiction to the 200-mile limit. In waters of that kind, where our claims would otherwise overlap, this has to be subject to agreement or, again, it will be responsible for all kinds of confusion and conflict. Mr. President, the Senate has to determine that it must operate in this chaotic world, from the point of view of our own interests in peace and in some element of stability. We cannot have everything in conflict and everything in dispute and still operate in the world.

For all of those reasons, Mr. President, I commend the ratification of these treaties to the Senate and hope they will be ratified at this time.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The time will run equally against both sides.

Mr. CHURCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHURCH. Under the unanimous-consent agreement, is it now time for the Senate to proceed to a vote on the first package of seven treaties?

The PRESIDING OFFICER. Not until 1 o'clock.

Mr. CHURCH. At 1 o'clock, that vote will come?

The PRESIDING OFFICER. Yes.

Mr. CHURCH. I thank the Chair.

Mr. JAVITS. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. JAVITS. And how much time does the other side have?

The PRESIDING OFFICER. The other side has 3 minutes.

Mr. JAVITS. Mr. President, I yield myself the remainder of my time.

Mr. President, the first treaty to be voted on is the 1980 Food Aid Convention, which will raise the minimum annual commitments of food aid to developing countries by donor countries above the levels contained in the 1971 convention. We operate generally under the Public Law 480 program and there are certain modifications which relate to the 1980 food aid convention we shall be ratifying which are important to the operation of our own programs. We are also dealing with an extension of the Wheat Trade Convention in that same connection.

Similarly, amendments to the 1972 convention on marine pollution by dumping establish a system of dispute settlement, allowing a choice between arbitration and the International Court of Justice. The convention on the Inter-American Institute For Cooperation in Agriculture is a revision of an original convention adopted in 1944 and is of considerable importance to the Latin American countries. There was a world administrative radio conference in early 1978. The convention which is before us relates to a partial revision of the regulations respecting an increase in channels allocated to aeronautical communications. We make a minor change in an amendment to the Convention on International Trade in Endangered Species.

Then, of course, there are the three maritime boundary agreements with Venezuela, Mexico, and Cuba, which will be voted on in due course. As I mentioned before, as to the Mexican treaty, the committee concluded that the kind of treaty which the witness, Dr. Hedberg, would have preferred was simply not negotiable. In any negotiation, it is not a matter of what claims we can make, but what claims we can make stick. In addition, there is no assurance whatever that, in the absence of this treaty, we could do better in a future treaty negotiation.

We simply have to, like any other nation involved in negotiation, decide what is best, in the aggregate, for our national interest. We cannot expect to have every claim we assert fully recognized by others.

The PRESIDING OFFICER. All time has expired.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolutions of ratification. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

EX. G. (96TH-2D), ORDER NO. 14, THE FOOD AID CONVENTION, 1980

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows:

[Rollcall Vote No. 408 Ex.]

YEAS—94

Armstrong	Garn	Morgan
Baker	Glenn	Moynihan
Baucus	Gravel	Nelson
Bayh	Hart	Nunn
Bellmon	Hatch	Packwood
Bentsen	Hatfield	Pell
Biden	Hayakawa	Percy
Boren	Heflin	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Helms	Pryor
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Riegle
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Sarbanes
Chafee	Javits	Sasser
Chiles	Jepsen	Schmitt
Church	Johnston	Schweiker
Cochran	Kassebaum	Simpson
Cohen	Kennedy	Stennis
Cranston	Laxalt	Stevens
Culver	Leahy	Stevenson
Danforth	Levin	Talmadge
DeConcini	Long	Thurmond
Dole	Lugar	Tsongas
Domenici	Magnuson	Wallop
Durenberger	Mathias	Warner
Durkin	Matsunaga	Weicker
Eagleton	McClure	Williams
Exon	Melcher	Young
Ford	Metzenbaum	Zorinsky
	Mitchell	

NOT VOTING—6

Goldwater	Stafford	Stone
McGovern	Stewart	Tower

The PRESIDING OFFICER. Two-thirds of the Senators present and voting have voted in the affirmative, the resolution of ratification is agreed to.

EX. FF (96TH-1ST), ORDER NO. 15, PROTOCOLS FOR FIFTH EXTENSION OF INTERNATIONAL WHEAT AGREEMENT, 1971

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from ARIZONA (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows:

[Rollcall Vote No. 409 Ex.]

YEAS—94

Armstrong	Cochran	Hayakawa
Baker	Cohen	Heflin
Baucus	Cranston	Heinz
Bayh	Culver	Helms
Bellmon	Danforth	Hollings
Bentsen	DeConcini	Huddleston
Biden	Dole	Humphrey
Boren	Domenici	Inouye
Boschwitz	Durenberger	Jackson
Bradley	Durkin	Javits
Bumpers	Eagleton	Jepsen
Burdick	Exon	Johnston
Byrd, Harry F., Jr.	Ford	Kassebaum
Byrd, Robert C.	Garn	Kennedy
Cannon	Glenn	Laxalt
Chafee	Gravel	Leahy
Chiles	Hart	Levin
Church	Hatch	Long
	Hatfield	Lugar

NOT VOTING—6

Goldwater	Stafford	Stone
McGovern	Stewart	Tower

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

EX. H (96TH-2D), ORDER NO. 16, 1978 PARTIAL REVISION OF RADIO REGULATIONS (GENEVA 1959)

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows:

[Rollcall Vote No. 410 Ex.]

YEAS—94

Armstrong	Garn	Morgan
Baker	Glenn	Moynihan
Baucus	Gravel	Nelson
Bayh	Hart	Nunn
Bellmon	Hatch	Packwood
Bentsen	Hatfield	Pell
Biden	Hayakawa	Percy
Boren	Heflin	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Helms	Pryor
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Riegle
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Sarbanes
Chafee	Javits	Sasser
Chiles	Jepsen	Schmitt
Church	Johnston	Schweiker
Cochran	Kassebaum	Simpson
Cohen	Kennedy	Stennis
Cranston	Laxalt	Stevens
Culver	Leahy	Stevenson
Danforth	Levin	Talmadge
DeConcini	Long	Thurmond
Dole	Lugar	Tsongas
Domenici	Magnuson	Wallop
Durenberger	Mathias	Warner
Durkin	Matsunaga	Weicker
Eagleton	McClure	Williams
Exon	Melcher	Young
Ford	Metzenbaum	Zorinsky
	Mitchell	

NOT VOTING—6

Goldwater	Stafford	Stone
McGovern	Stewart	Tower

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

EX. C (96TH-2D), ORDER NO. 17, AMENDMENT TO CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows:

[Rollcall Vote No. 411 Ex.]

YEAS—94

Armstrong	Garn	Morgan
Baker	Glenn	Moynihan
Baucus	Gravel	Nelson
Bayh	Hart	Nunn
Bellmon	Hatch	Packwood
Bentsen	Hatfield	Pell
Biden	Hayakawa	Percy
Boren	Heflin	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Helms	Pryor
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Riegle
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Sarbanes
Chafee	Javits	Sasser
Chiles	Jepsen	Schmitt
Church	Johnston	Schweiker
Cochran	Kassebaum	Simpson
Cohen	Kennedy	Stennis
Cranston	Laxalt	Stevens
Culver	Leahy	Stevenson
Danforth	Levin	Talmadge
DeConcini	Long	Thurmond
Dole	Lugar	Tsongas
Domenici	Magnuson	Wallop
Durenberger	Mathias	Warner
Durkin	Matsunaga	Weicker
Eagleton	McClure	Williams
Exon	Melcher	Young
Ford	Metzenbaum	Zorinsky
	Mitchell	

NOT VOTING—6

Goldwater	Stafford	Stone
McGovern	Stewart	Tower

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

EX. I (96-1ST), ORDER NO. 18, PROPOSED AMENDMENTS TO CONVENTION ON PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows.

[Rollcall Vote No. 412 Ex.]

YEAS—94

Armstrong	Boren	Byrd, Robert C.
Baker	Boschwitz	Cannon
Baucus	Bradley	Chafee
Bayh	Bumpers	Chiles
Bellmon	Burdick	Church
Bentsen	Byrd, Harry F., Jr.	Cochran
Biden		Cohen

Cranston	Jackson	Pressler
Culver	Javits	Proxmire
Danforth	Jepsen	Pryor
DeConcini	Johnston	Randolph
Dole	Kassebaum	Ribicoff
Domenici	Kennedy	Riegle
Durenberger	Laxalt	Roth
Durkin	Leahy	Sarbanes
Eagleton	Levin	Sasser
Exon	Long	Schmitt
Ford	Lugar	Schweiker
Garn	Magnuson	Simpson
Glenn	Mathias	Stennis
Gravel	Matsunaga	Stevens
Hart	McClure	Stevenson
Hatch	Melcher	Talmadge
Hatfield	Metzenbaum	Thurmond
Hayakawa	Mitchell	Tsongas
Heflin	Morgan	Wallop
Heinz	Moynihan	Warner
Helms	Nelson	Weicker
Hollings	Nunn	Williams
Huddleston	Packwood	Young
Humphrey	Pell	Zorinsky
Inouye	Percy	

NOT VOTING—6

Goldwater	Stafford	Stone
McGovern	Stewart	Tower

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

EX. HH (96TH-1ST), ORDER NO. 19, CONVENTION ON INTER-AMERICAN INSTITUTE FOR COOPERATION ON AGRICULTURE

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows:

[Rollcall Vote No. 413 Ex.]

YEAS—94

Armstrong	Garn	Morgan
Baker	Glenn	Moynihan
Baucus	Gravel	Nelson
Bayh	Hart	Nunn
Bellmon	Hatch	Packwood
Bentsen	Hatfield	Pell
Biden	Hayakawa	Percy
Boren	Heflin	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Helms	Pryor
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Riegle
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Sarbanes
Chafee	Javits	Sasser
Chiles	Jepsen	Schmitt
Church	Johnston	Schweiker
Cochran	Kassebaum	Simpson
Cohen	Kennedy	Stennis
Cranston	Laxalt	Stevens
Culver	Leahy	Stevenson
Danforth	Levin	Talmadge
DeConcini	Long	Thurmond
Dole	Lugar	Tsongas
Domenici	Magnuson	Wallop
Durenberger	Mathias	Warner
Durkin	Matsunaga	Weicker
Eagleton	McClure	Williams
Exon	Melcher	Young
Ford	Metzenbaum	Zorinsky
	Mitchell	

NOT VOTING—6

Goldwater	Stafford	Stone
McGovern	Stewart	Tower

The PRESIDING OFFICER. Two-thirds of the Senators present and vot-

ing having voted in the affirmative, the resolution of ratification is agreed to.

EX. G (96TH-1ST), ORDER NO. 21, MARITIME BOUNDARY TREATY WITH THE REPUBLIC OF VENEZUELA

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows:

[Rollcall Vote No. 414 Ex.]

YEAS—94

Armstrong	Garn	Morgan
Baker	Glenn	Moynihan
Baucus	Gravel	Nelson
Bayh	Hart	Nunn
Bellmon	Hatch	Packwood
Bentsen	Hatfield	Pell
Biden	Hayakawa	Percy
Boren	Heflin	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Helms	Pryor
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Riegle
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Sarbanes
Chafee	Javits	Sasser
Chiles	Jepsen	Schmitt
Church	Johnston	Schweiker
Cochran	Kassebaum	Simpson
Cohen	Kennedy	Stennis
Cranston	Laxalt	Stevens
Culver	Leahy	Stevenson
Danforth	Levin	Talmadge
DeConcini	Long	Thurmond
Dole	Lugar	Tsongas
Domenici	Magnuson	Wallop
Durenberger	Mathias	Warner
Durkin	Matsunaga	Weicker
Eagleton	McClure	Williams
Exon	Melcher	Young
Ford	Metzenbaum	Zorinsky
	Mitchell	

NOT VOTING—6

Goldwater	Stafford	Stone
McGovern	Stewart	Tower

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

MARITIME BOUNDARY AGREEMENT WITH THE REPUBLIC OF CUBA

Mr. HELMS. Mr. President, what is the pending business now?

The PRESIDING OFFICER (Mr. EXON). The vote on the resolution of ratification of the maritime boundary agreement with the Republic of Cuba.

UP AMENDMENT NO. 1590

Mr. HELMS. Mr. President, I have an amendment at the desk which I call up and ask that it be stated, and I wish for the clerk to read it carefully and slowly so Senators may understand it. There will be no debate on this amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1590:

Add at the end of the Resolution the following:

"*Provided, however*, That the consent to ratification given hereby is subject to the express condition that the instruments of ratification of said Treaty contain the following: 'The Senate of the United States denounces and deplores the continued presence of the Soviet combat brigade and Soviet advanced attack aircraft in Cuba. Accordingly, the Parties expressly agree that the terms of the Treaty ratified hereby shall not come into force until all Soviet military units have been withdrawn from Cuba and the President of the United States has certified to the Congress of the United States that no Soviet military units remain within Cuba or anywhere else in the Western Hemisphere.'."

Mr. ZORINSKY and Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

UP AMENDMENT NO. 1591

Mr. ZORINSKY. Mr. President, I send to the desk an amendment in the nature of a substitute to the amendment of the Senator from North Carolina and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. ZORINSKY) for himself and Mr. JAVITS proposes an unprinted amendment numbered 1591 to the Helms unprinted amendment numbered 1590.

In lieu of the language proposed to be inserted by the Senator from North Carolina, insert the following:

"Nothing in the treaty this resolution ratifies alters the view of the United States that Cuban military activities abroad and that the continued presence of Soviet combat forces in Cuba—and the transfer of advanced military equipment—constitute a grave concern to the United States and a continuing threat to the peace and security of the region."

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. EXON). The Senator from Nebraska.

Mr. ZORINSKY. Mr. President, I offer this on behalf of myself and the Senator from New York (Mr. JAVITS), and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. This is nothing but a gutting amendment, and I move to table it, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second on the motion to table by the Senator from North Carolina.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina to lay on the table the amendment of the Senator from Nebraska. The clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 35, nays 58, as follows:

[Rollcall Vote No. 415 Ex.]

YEAS—35

Armstrong	Durkin	Lugar
Baker	Exon	McClure
Bayh	Garn	Pressler
Bellmon	Hatch	Proxmire
Boschwitz	Hatfield	Roth
Byrd, Harry F., Jr.	Hayakawa	Schmitt
Cochran	Heflin	Schweiker
Cohen	Heinz	Simpson
Danforth	Helms	Thurmond
Dole	Humphrey	Wallop
Domenici	Jepsen	Warner
	Laxalt	Young

NAYS—58

Baucus	Hart	Nunn
Bentsen	Hollings	Packwood
Biden	Huddleston	Pell
Boren	Inouye	Percy
Bradley	Jackson	Pryor
Bumpers	Javits	Randolph
Burdick	Johnston	Ribicoff
Byrd, Robert C.	Kassebaum	Riegle
Cannon	Kennedy	Sarbanes
Chafee	Leahy	Sasser
Chiles	Levin	Stennis
Church	Long	Stevens
Cranston	Magnuson	Stevenson
Culver	Matsunaga	Talmadge
DeConcini	Melcher	Tsongas
Durenberger	Metzenbaum	Weicker
Eagleton	Mitchell	Williams
Ford	Morgan	Zorinsky
Glenn	Moynihan	
Gravel	Nelson	

NOT VOTING—7

Goldwater	Stafford	Tower
Mathias	Stewart	
McGovern	Stone	

So the motion to lay on the table the amendment of the Senator from Nebraska was rejected.

Mr. ZORINSKY. Mr. President, I request the yeas and nays on my amendment.

The PRESIDING OFFICER. The yeas and nays have been ordered on the amendment of the Senator from Nebraska.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order to get the yeas and nays on my amendment, as well.

The PRESIDING OFFICER. Is there objection?

Mr. ZORINSKY. I object.

Mr. ROBERT C. BYRD. Mr. President, I hope there will be no objection. It does not hurt anything for the Senator to get the yeas and nays on his amendment.

Mr. ZORINSKY. Mr. President, I withdraw my objection.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

UP AMENDMENT NO. 1592

Mr. HELMS. Mr. President, I send a perfecting amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1592 as a perfecting amendment to the Helms unprinted amendment numbered 1590:

Strike all after "following:" in line 3, and insert in lieu thereof:

"The Parties to the Treaty expressly agree that the terms of the Treaty ratified hereby shall not come into force nor be given any effect until such time as the President of the United States shall certify in writing to the Senate of the United States that Cuba is not conducting subversion in nor exporting revolution to any country, either directly or indirectly."

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. ROBERT C. BYRD. Mr. President, may I say to the distinguished Senator from North Carolina, I will be glad to yield to him if I do not lose my right to the floor.

Mr. HELMS. Will the distinguished Senator permit me to ask for the yeas and nays?

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate return to legislative session.

Mr. HELMS. Mr. President, I believe we ought to have the yeas and nays on this. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. McGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 55, nays 37, as follows:

[Rollcall Vote No. 416 Ex.]

YEAS—55

Baucus	Exon	Morgan
Bayh	Ford	Moynihan
Bentsen	Garn	Nelson
Biden	Gravel	Nunn
Boren	Hart	Pell
Bradley	Heflin	Proxmire
Bumpers	Hollings	Pryor
Burdick	Huddleston	Randolph
Byrd, Harry F., Jr.	Inouye	Ribicoff
Byrd, Robert C.	Jackson	Riegle
Cannon	Johnston	Sarbanes
Chiles	Leahy	Sasser
Church	Levin	Stennis
Cranston	Long	Stevenson
Culver	Magnuson	Talmadge
DeConcini	Matsunaga	Tsongas
Durkin	Melcher	Williams
Eagleton	Metzenbaum	Zorinsky
	Mitchell	

NAYS—37

Armstrong	Hatfield	Pressler
Baker	Hayakawa	Roth
Bellmon	Heinz	Schmitt
Boschwitz	Helms	Schweiker
Chafee	Humphrey	Simpson
Cochran	Javits	Stevens
Cohen	Jepsen	Thurmond
Danforth	Kassebaum	Wallop
Dole	Laxalt	Warner
Domenici	Lugar	Weicker
Durenberger	McClure	Young
Garn	Packwood	
Hatch	Percy	

NOT VOTING—8

Goldwater	McGovern	Stone
Kennedy	Stafford	Tower
Mathias	Stewart	

So the motion to return to legislative session was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The Senate continued with the consideration of H.R. 7631.

Mr. PROXMIRE. Mr. President, I understand that the pending amendment is the Mathias amendment to the Jepsen amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. PROXMIRE. I ask unanimous consent that I be listed as a cosponsor of the amendment by the Senator from Maryland.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, this substitute amendment is an amendment which I think is very logical. The Senator from Iowa (Mr. JEPSEN) offered an amendment which is highly controversial. It is an amendment on which there has been no discussion, no hearings, and no record in either the authorizing committee or the Appropriations Committee.

I have talked to members of the Public Works and Environment Committee in an attempt to find out how this amendment affects their jurisdiction. They have indicated they have not had an opportunity to become familiar with this matter.

So I earnestly hope the Senate will very seriously consider the Mathias amendment.

Mr. President, the amendment by the Senator from Iowa provides that none of the funds in this act shall be used retroactively to enforce any regulation issued under the construction grants program.

The Environmental Protection Agency has cited examples where they have issued regulations retroactively to protect the health and safety of American citizens.

The agency points out that an action it took with respect to the toxicity of chemical grants for sewer rehabilitation could not have been taken, in its judgment, if the amendment by the Senator from Iowa had been enacted into law.

On the other hand, if the Mathias substitute had been in effect, then that action could have been taken. EPA could have alerted grantees of the potential health hazards associated with grout used to correct sewer infiltration.

Mr. President, I think all of us recognize how very difficult it is, how expensive it is, and how utterly frustrating it can be when an agency as involved as the EPA is in our communities changes the signals. The Senator from Iowa deserves great credit for calling our attention to that problem.

But I think we are all aware of the importance of protecting health and safety. The Senators who vote against the Mathias amendment are assuming quite a responsibility. They are saying that the EPA, which is our expert adviser in this area, is wrong when it says the Jepsen amendment could affect the health and safety of American citizens.

What the Senator from Maryland is doing is to provide that the Jepsen amendment will be effective whenever health and safety are not involved.

I might point out, Mr. President, that even with respect to cases involving health and safety considerations, the policy of the EPA has changed in the last 6 weeks. On July 24 of this year, the EPA issued a policy statement that no new program requirements will be applied to projects under construction, or where construction is likely to be underway within 6 months of the grant award.

What the Mathias substitute would do is to protect us against a situation that could endanger the public health and safety of our citzens, but prohibit the retroactive application of other EPA policies that would effect the design segment of a project.

No one can say that the Mathias substitute is without effect. It does have an effect. It has a specific effect. But it does not prevent the EPA from taking actions that all of us would expect it to take whenever it finds that vital public health and safety considerations have to be considered.

Mr. President, I do want to remind Senators that before we go as far as the Jepsen amendment would go, and thus override the opinion of the EPA that the amendment would affect the health and safety of our citizens, at the very least we should have hearings in the Committee on Public Works and the En-

vironment. The authorizing committee should have an opportunity to create a record. The EPA should testify under cross-examination. Those who disagree with the EPA should testify also. This is the way we produce virtually all of our legislation.

But it is wrong to come to the floor of the Senate with this amendment without any opportunity for the authorizing committee to act and without any opportunity for the Appropriations Committee to have hearings. My Appropriations Subcommittee has jurisdiction in this area. We did not receive a word of testimony about this amendment. Under these circumstances, it seems to me to be a mistake to add this far-reaching amendment to this bill before us today.

For that reason, Mr. President, I do hope that the amendment offered by the distinguished Senator from Maryland (Mr. MATHIAS) will be accepted.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JEPSEN. Mr. President, I move to table the Mathias amendment to the Jepsen amendment and ask for a voice vote.

Mr. PROXMIRE. Mr. President, in the first place, I ask the Senator if he would desist for a minute so I can point out a problem.

The PRESIDING OFFICER. The motion to table is not debatable.

Mr. PROXMIRE. I would have to ask for the yeas and nays on the Mathias substitute, which I could do. The difficulty is that the Senator from Maryland will be back shortly, but he may miss this vote and it is on his amendment.

Out of courtesy, I hope the Senator will defer any further action until the Senator from Maryland returns. The staff tells me he is expected to return soon.

The PRESIDING OFFICER. Does the Senator from Iowa withdraw his motion?

Mr. JEPSEN. The Senator from Iowa does not withdraw his motion to table.

Mr. PROXMIRE. Then I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum. Nobody has voted as yet.

The PRESIDING OFFICER. The clerk will call the roll on the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. JEPSEN addressed the Chair.

The PRESIDING OFFICER (Mr. BRADLEY). The Senator from Ohio.

Mr. JEPSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued the call of the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. PROXMIRE. Mr. President, it is my understanding that the Senator from Maryland will not be back until about 3:15, so we will have to go ahead with the vote.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Maryland. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Ohio (Mr. GLENN), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 59, nays 29, as follows:

[Rollcall Vote No. 417 Leg.]

YEAS—59

Armstrong	Exon	Melcher
Baucus	Ford	Nunn
Boschwitz	Garn	Packwood
Bumpers	Hatch	Percy
Burdick	Hatfield	Pressler
Byrd, Harry F., Jr.	Hayakawa	Pryor
Byrd, Robert C.	Heflin	Riegle
Chafee	Heinz	Roth
Chiles	Helms	Schmitt
Church	Humphrey	Schweiker
Cochran	Javits	Simpson
Cohen	Jepsen	Stennis
Danforth	Johnston	Stevens
DeConcini	Kassebaum	Talmadge
Dole	Laxalt	Thurmond
Domenici	Leahy	Wallop
Durenberger	Levin	Warner
Durkin	Lugar	Weicker
Eagleton	Matsunaga	Young
	McClure	Zorinsky

NAYS—29

Bayh	Inouye	Pell
Bentsen	Jackson	Proxmire
Biden	Kennedy	Randolph
Boren	Long	Ribicoff
Bradley	Magnuson	Sarbanes
Cranston	Metzenbaum	Sasser
Culver	Mitchell	Stevenson
Hart	Morgan	Tsongas
Hollings	Moynihan	Williams
Huddleston	Nelson	

NOT VOTING—12

Baker	Goldwater	Stafford
Bellmon	Gravel	Stewart
Cannon	Mathias	Stone
Glenn	McGovern	Tower

So the motion to table Mr. MATHIAS' amendment (UP No. 1589) was agreed to.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Iowa. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Nevada (Mr. CANNON), the Senator from Ohio (Mr. GLENN), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BUMPERS). Are there any other Senators wishing to vote?

The result was announced—yeas 75, nays 12, as follows:

[Rollcall Vote No. 418 Leg.]

YEAS—75

Armstrong	Ford	Mitchell
Baucus	Hart	Morgan
Bayh	Hatch	Nunn
Bellmon	Hatfield	Packwood
Bentsen	Hayakawa	Percy
Boren	Heflin	Pressler
Boschwitz	Heinz	Pryor
Bumpers	Helms	Riegle
Burdick	Huddleston	Roth
Byrd, Harry F., Jr.	Humphrey	Sasser
Byrd, Robert C.	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Javits	Simpson
Church	Jepsen	Stennis
Cochran	Johnston	Stevens
Cohen	Kassebaum	Stevenson
Culver	Laxalt	Talmadge
Danforth	Leahy	Thurmond
DeConcini	Levin	Tsongas
Dole	Long	Wallop
Domenici	Lugar	Warner
Durenberger	Magnuson	Weicker
Durkin	Matsunaga	Young
Eagleton	McClure	Zorinsky
Exon	Melcher	
	Metzenbaum	

NAYS—12

Bradley	Moynihan	Randolph
Cranston	Nelson	Ribicoff
Hollings	Pell	Sarbanes
Kennedy	Proxmire	Williams

NOT VOTING—13

Baker	Goldwater	Stewart
Biden	Gravel	Stone
Cannon	Mathias	Tower
Garn	McGovern	
Glenn	Stafford	

So Mr. JEPSEN's amendment (UP No. 1587), as modified, was agreed to.

Mr. MCCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JEPSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MILITARY CONSTRUCTION APPROPRIATIONS, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 7592, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 7592) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill.

Mr. HUDDLESTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUDDLESTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is H.R. 7592.

Mr. HUDDLESTON. Mr. President, I am pleased to bring before the Senate today the Military Construction Appropriation bill for fiscal year 1981, which begins on October 1, 1980, and ends September 30, 1981.

The purpose of this bill is to provide appropriations in fiscal year 1981 for planning, design, construction, alteration, and improvement of military facilities in the United States and abroad for both the Active and Reserve Forces. It also finances the military family housing program, certain types of community impact assistance and the U.S. share of the NATO infrastructure program.

The fiscal year 1981 budget request, as revised in March, totaled $5,387,136,000 in new budget authority. The recommendation of the committee is $5,148,370,000. This recommendation is $346,391,000 above the House recommendation but $238,766,000 under the budget estimate.

The bill is within the subcommittee's allocation under the first concurrent resolution (FRC) on the fiscal 1981 budget in terms of both budget authority and outlays. In order to keep the recommendations within the subcommittee allocation, we were, however, forced to leave out a number of budgeted, authorized, and desirable projects.

Action taken by the committee on individual construction projects is listed by State and installation on pages 61 through 93 of the committee report, Senate Report 96-931.

I would, however, like to comment on several of the larger projects, principally because there is significant bill and report language relating to them.

INDIAN OCEAN/PERSIAN GULF

As chairman of the Subcommittee on Military Construction of the Senate Appropriations Committee, I have been particularly concerned about policy and planning for the Indian Ocean/Persian Gulf area. The subcommittee in March received a fiscal 1980 supplemental request of $71.5 million for planning and design of facilities in Diego Garcia, Kenya, Somalia, and Oman and for certain construction on Diego Garcia. At the same time it received a fiscal 1981 budget amendment requesting $297 million for the area.

These requests marked the first efforts by the administration to implement its policy of securing access to a network of facilities in the Indian Ocean/Persian Gulf area. The requested funds would be used to construct storage capacity and upgrade certain logistical and operational facilities at various sites in the region.

Instead of funding individual projects as requested in the budget, the subcommittee, consistent with the Senate authorization committee, recommended the creation of a special construction fund for the Indian Ocean/Persian Gulf area, which would be funded at a level of $245 million. It has taken this approach because of the fluidity of the situation in the region and the likelihood of further shifts in priorities as the administration refines its program.

In order to retain control and exercise oversight over use of the funds, however, the subcommittee in report language specified the following procedures for use of the funds:

Prior to the obligation of any funds, the Department shall notify the Committee in writing of: (a) the amount involved in the project, (b) the country involved, (c) the date the country-to-country agreement and legal interpretation were submitted to the Committee, (d) the site or sites within the country involved, (e) the type of facilities to be constructed, including provision of a 1391 form on each, (f) the impact construction or modification of the proposed facility will have on operational capabilities and readiness, (g) other similar or related facilities being constructed under the fund, (h) other similar or related facilities within the area and (i) alternatives, if the proposed facilities do not become available. The Department may proceed with the project if it receives no objection from the Committee within 15 days of the Committee's receipt of the notification.

From the beginning, the Subcommittee has recognized both the symbolic and the operational importance of an enhanced U.S. presence and capability in the area from which such a significant portion of United States and allied nations' oil supplies come. Developments in Iran and the Soviet invasion of Afghanistan have reinforced concerns about the stability of the region and the reliability of supply lines. But, from the beginning, the subcommittee has also been concerned about vagueness in planning and lack of program definition. For this reason, there is what I consider to be extremely important report language relating to the expenditure of funds in the area.

The original March request for Indian Ocean/Persian Gulf facilities focused on Diego Garcia, Kenya, Somalia, and Oman. Even then, however, there was discussion in Government circles of other potential sites, and observers both within and outside Government were suggesting alternative locations which might be more operationally feasible, more politically acceptable and more economical than those selected initially.

Recent reports regarding possible sites in Egypt as well as other nearby countries would seem to confirm that a larger, more extensive network of facilities is under consideration. For this reason, we have continued to press for a concept plan for the entire area. The Department of Defense needs to prepare and justify a comprehensive program so that the subcommittee can judge the parameters of the entire program.

The subcommittee also requires such a plan so that it can evaluate various alternative sites against one another. Under the requests already submitted, construction has been proposed at a number of individual sites. As noted previously, several sites in Egypt and other countries are now under consideration. Certainly there may be instances where duplication is advisable, but we must also guard against any unnecessary multiplication of sites.

During our deliberations, it also became clear to me that the country-to-country agreements might have been more definitive. If the United States is going to spend tax dollars to construct facilities abroad, then it must have reasonable assurances that it will be able to use those facilities—and use them for the purposes required—when the need arises. Consequently, no funds are to be committed to projects in any country until a country-to-country agreement has been signed and until the agreement has been submitted to the committee, accompanied by a legal interpretation of the access and use rights which the agreement gives the United States and the nature of any consultation required prior to use.

Finally, I think our proceedings emphasized two other important points. One is that there are instabilities within the area to which the United States needs to be particularly sensitive. The political advisability of seeking facilities in certain countries of the area is questionable. The United States should not position itself so as to be drawn into local, internal conflicts. If there is any lesson from the past that we should continue to remember, that is certainly one. Second, U.S. allies, who are more dependent upon Middle Eastern oil than the United States, must bear a fair share of the cost of securing oil supplies. The U.S. effort to obtain access to facilities in the Indian Ocean/Persian Gulf area follows closely major efforts to upgrade NATO. Both are needed, but the United States cannot—and should not—have to shoulder a disproportionate amount of the cost of both. The economies of several allies are performing better than ours, and those countries in particular must make a reasonable contribution.

I have recited the above not to question the commitment in the Indian Ocean/Persian Gulf area, but to demonstrate that we are embarking upon a new commitment which carries with it a number of unresolved issues. These issues will continue into future military construction requests, and I hope we have in this bill laid the groundwork for a rational and comprehensive approach

to evaluating the facility/construction requirements in the region.

MX

Another program of magnitude in the military construction budget is the MX basing system. The bill before us contains $17 million for MX test facilities at Vandenberg Air Force Base, Calif. This is in addition to the $57 million provided last year.

Furthermore, as much as $97 million of the Air Force's fiscal 1981 planning and design funds may be used to prepare for the $20 billion construction program anticipated for the MX.

Again, the subcommittee included language which I consider particularly important in guiding the Department of Defense during the early part of the construction effort. Under this language, the Department must comply fully with the National Environmental Policy Act prior to the obligation of any funds for the design of site specific facilities. This is to insure that all environmental issues—issues which are of prime importance to the citizenry of the affected areas—are fully considered.

There is also language directing that a good faith effort be made in studying base sites alternative to the preferred sites in Utah and Nevada. While the subcommittee does not wish to delay the scheduled initial operating capability (IOC) of the MX missile, it does expect the split basing option to be fully and carefully evaluated.

We have also sought to provide some direction for the use of community impact assistance and the mitigation of the adverse effects which will result from construction and deployment of a system of this size.

SPACE SHUTTLE

The bill includes $88 million to continue construction at the western launch site for the Space Shuttle, located at Vandenberg Air Force Base, Calif. Despite the problems encountered by the Space Shuttle, the subcommittee remains convinced that the program is an important national one and that every effort should be made to bring it to operational status as soon as possible.

The language in the House bill prohibiting the obligation of any fiscal 1981 funds until completion of the first successful manned orbital flight of the Space Shuttle has been deleted from the Senate version. That flight is currently scheduled for March 1981, at Kennedy Space Center, Fla. Meeting the projected schedules, particularly for several extremely sensitive DOD missions, does depend upon a successful manned flight from Kennedy Space Center, but it also depends upon prompt orbiter delivery and meeting the Vandenberg construction dates. The construction schedule has already slipped because of higher than anticipated bids on the launch pad modification package. Further delays, such as could result from the House prohibition, could well jeopardize the June 1984 initial operating capability (IOC) now planned for Vandenberg.

OTHER PROVISIONS

The bill contains $244.8 million for the U.S. contribution to the NATO infrastructure program. This represents concurrence with the House reduction of $50 million in the $300 million request. The subcommittee believes that much of this $50 million can be covered by recoupments from NATO for projects which the United States prefinanced in previous years but which either were or were expected to become eligible for infrastructure financing.

The further reduction of $5.2 million covers the amount the Department intends to pay in foreign property taxes for certain off-base housing. The House, in bill language, prohibited payment of the property taxes. That language has been deleted. The recommended offset seeks to make the same point to the Department of Defense and foreign governments: The United States should not have to pay these taxes. The Senate approach would, however, give the Department the time to negotiate changes in the status of forces agreement (SOFA) and host nation support which is necessary if the United States is to be relieved of commitments under existing agreements.

For some time, the subcommittee has been concerned about the ability of U.S. business to compete for construction projects abroad. The bill retains the language first included last year directing that U.S. steel producers be given the opportunity to compete for steel procurement contracts. This provision was directed toward the NATO infrastructure program where U.S. producers had encountered difficulties.

The committee report on the bill also contains language regarding preferences for U.S. contractors and dredgers on projects in the Indian Ocean/Persian Gulf area. This language builds upon directives in the conference report on the fiscal 1980 supplemental appropriations bill, Public Law 96-304. As previously mentioned, the construction program in the region is an expanding one. The subcommittee expects not only that U.S. firms will receive a preference on projects approved in fiscal 1980 and 1981 but also that future country-to-country agreements will make provision for such preferences.

Of the planning and design funds included for the various services, $18.8 million has been earmarked for projects dealing with conversion from oil to alternate fuels. Because the Department of Defense is a major energy user, it must demonstrate some initiative in energy conservation and the use of fuels alternative to oil and natural gas.

No funds are included in the reported bill for the binary chemical munitions production facility at Pine Bluff, Ark. The House bill included $3.150 million.

The $19.9 million requested to prefinance the deployment of the ground-launched cruise missile in Great Britain has been restored in the reported bill, as has the $28.2 million requested to exercise the option of the Mariana Islands land lease.

Initial funding is included for the Defense Intelligence Agency (DIA) building. The Senate Armed Services Committee authorized the building, contingent upon completion of a study of alternative sites to Bolling Air Force Base, which was the site proposed in the original budget request.

The bill includes restoration of funds cut by the House for utilities, furnishings and leasing in the family housing program.

The important fraud, abuse, waste and error provisions proposed by Chairman MAGNUSON have been included in the bill. These deal with fourth quarter spending, use of consultants, unresolved audits and collection of overdue debts owed to the Government.

Also included is a provision prohibiting the use of funds to pay contractors who have employed illegal aliens.

Mr. President, we have had an interesting, if somewhat difficult, military construction appropriation bill this year. We have had a number of new and significant issues to deal with. We have had to work within rather restrictive budget limitations. We have been faced with a number of budget changes and some shifting of priorities.

I want to thank our ranking member, Senator LAXALT, for his interest and cooperation as we have worked our way through the process. He has been most helpful both during the hearing and markup sessions. I appreciate the time and effort he has given to the matters in the bill.

I also want to thank my authorization counterpart, Senator HART, for his cooperation. Our subcommittees held several joint hearing sessions, and we have worked closely together in recent days in order to move this bill quickly.

Mr. President, that concludes my opening statement.

Mr. President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc and that the bill as amended be considered as original text for the purpose of further amendment, with the understanding that no points of order be considered as having been waived by reason thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments agreed to en bloc are as follows:

On page 2, line 7, strike "$828,308,000", and insert in lieu thereof "$865,980,000";

On page 2, line 19, after "therefor" insert the following: : And, *provided further*, That $4,700,000 of the funds available for planning and design shall be available only for activities related to the conversion of facilities to alternative fuels.

On page 3, line 6, strike "$732,873,000", and insert in lieu thereof "$680,323,000";

On page 3, line 18, after "Georgia", insert the following: : And, *provided further*, That $8,100,000 of the funds available for planning and design shall be available only for activities related to the conversion of facilities to alternative fuels.

On page 4, line 3, strike "$783,797,000", and insert in lieu thereof "$812,230,000";

On page 4, line 5, strike "$134,400,000", and insert in lieu thereof "$139,400,000";

On page 4, line 11, strike "$4,000,000", and insert in lieu thereof "$5,000,000";

On page 4, line 14, after "areas", insert the following: : And, *provided further*, That $6,000,000 of the funds available for planning and design shall be available only for activities related to the conversion of facilities to alternative fuels.

On page 5, line 1, strike "$136,100,000", and insert in lieu thereof "$637,400,000";

On page 5, strike line 17 through and including page 6, line 4;

On page 6, line 10, strike "$34,364,000", and insert in lieu thereof "$84,000,000";

On page 7, line 7, strike "$33,000,000", and insert in lieu thereof "$24,700,000";

On page 7, after line 15, insert the following:

MILITARY CONSTRUCTION, RESERVE COMPONENTS GENERALLY

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the reserve components of the Armed Forces, $20,000,000, to be allocated by the Secretary of Defense for the use of the reserve components of the Armed Forces.

On page 8, line 9, strike "$1,981,593,000", and insert in lieu thereof "$2,051,793,000";

On page 8, line 14, strike "$82,118,000", and insert in lieu thereof "$82,133,000";

On page 8, line 16, strike "$86,703,000", and insert in lieu thereof "$86,786,000";

On page 8, line 18, strike "$43,348,000", and insert in lieu thereof "$53,575,000";

On page 8, line 20, strike "$493,000", and insert in lieu thereof "$468,000";

On page 8, line 23, strike "$1,635,326,000", and insert in lieu thereof "$1,693,726,000";

On page 13, strike line 7 through and including line 24;

On page 14, line 1, strike "118", and insert in lieu thereof "115";

On page 14, line 7, strike "119", and insert in lieu thereof "116";

On page 14, strike line 10 through and including line 23;

On page 14, line 24, strike "122", and insert in lieu thereof "117";

On page 15, line 6, strike "123", and insert in lieu thereof "118";

On page 15, after line 12, insert the following:

SEC. 119. Notwithstanding any other provision of law, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.

SEC. 120. (a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—or any major administrative subdivision thereof, during the fiscal year ending September 30, 1981, to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than forty-five days after the end of each quarter of the fiscal year, the head of each department and establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(d) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department and establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

SEC. 121. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving questioned expenditures, arising after the enactment of this Act shall be resolved within six months of completing the initial audit report.

SEC. 122. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

SEC. 123. (a) For fiscal year 1982 and thereafter, a department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which such funds are located; and a brief description of the need for consulting services, including a list of major programs that require consulting services.

(b) For fiscal year 1982 and thereafter, the Inspector General of such department or establishment, or comparable official, or if there is no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that Jim Smith of the Senate Armed Services Committee be given the privilege of the floor during consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUDDLESTON. Mr. President, as I mentioned previously the assistance and help given in the preparation of this bill by the distinguished minority member of our subcommittee, the Senator from Nevada (Mr. LAXALT), has been very substantial.

I appreciate the assistance that he has given and the attention that he has paid to the pending measure.

I yield at this time to the Senator from Nevada for any comment he might make.

Mr. LAXALT. Mr. President, I thank the distinguished Senator from Kentucky (Mr. HUDDLESTON) for his advice and cooperation throughout the course of the processing of this bill.

Mr. President, the distinguished chairman of our subcommittee (Mr. HUDDLESTON), has provided the Senate with the details on the fiscal year 1981 military construction appropriations bill now before us. I would like to make but a short statement on this bill.

The bill recommended by the committee includes $3.2 billion for military construction projects and $1.9 billion for family housing construction and operations and maintenance. The total bill—at $5.148 billion—is $238 million less than the amended budget request and $346 million more than the House allowance. The total is within the amount allocated to the subcommittee by the first concurrent resolution on the fiscal year 1981 budget in both budget authority and outlays.

The amount reported to the Senate is some $300 million less than the authorization bill. Because of the large difference between the authorization bill and the subcommittee allocation, we have been forced to make some hard decisions—especially with regard to projects added during the authorization process but not included in the budget. Our recommendations were made after careful consideration of all projects, and we worked with the Defense Department and took their priorities into our consideration of the bill. I believe we have proposed a well-balanced program for fiscal year 1981.

Of significance is the Indian Ocean/Persian Gulf recommendation of $245 million for facilities in that area of the world. Also, $244.8 million for the U.S. contribution to the NATO infrastructure account.

With regard to the MX missile system, the chairman and I have worked closely on the report and bill language. I support the language wholeheartedly. The bill contains $17 million for test facilities for the MX at Vandenberg Air Force Base. Also included is about $98 million—part of the $139 million recommended in total—for planning and design of the initial basing mode deployment of the MX system.

With this initial planning money, we are about to venture into an enormous construction program for MX which will last 10 years or more and cost in the $20 billion range. Mr. President, the committee is acutely aware of the far-reaching consequences not only for U.S. strategic forces and policy, but also of the impact to the regions of this country where the construction is scheduled. The committee has worked closely with the Air Force to insure that their needs, as well as those of the others concerned, are met. We have included language which covers such areas as the National Environmental Policy Act; split basing;

point security; State water rights; construction impact; community and economic impact planning; and local contractors.

Of importance to my State of Nevada and to the State of Utah, is the $5 million for the impact assistance planning. This money is to be used to help the State and local governments in these States to assess their needs for the near-term and long-term impact of the MX system. I recommended and the committee agreed with report language to insure that local contractors are given every opportunity to receive contracts on this huge venture.

I believe that between our recommendations and those made by the House—which I might add are very similar—we have tried to meet the concerns of all parties concerned with the deployment of the MX.

Mr. President, I would like to express my sincere thanks to the chairman, Senator HUDDLESTON, for his advice and cooperation on the MX issue. As with all other sections of the bill, we are in complete agreement. This was the first year that our subcommittee has tried to consider the requests presented to us on a "mission" basis. I believe our hearings were very successful, and I support the chairman in his plan to continue the mission approach to the projects requested.

Mr. President, I support this bill as reported and urge my colleagues to accept the bill without amendment.

UP AMENDMENT NO. 1593

(Purpose: To provide funds for the initiation of construction of a binary weapons production facility at Pine Bluff Arsenal, Arkansas)

Mr. JACKSON. Mr. President, I call up an amendment I am offering for myself and Senators HOLLINGS, NUNN, and WARNER.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Washington (Mr. JACKSON), for himself and Messrs. HOLLINGS, NUNN, and WARNER, proposes an unprinted amendment numbered 1593:

On page 2, line 7, strike out "$865,980,000" and insert in lieu thereof "$869,130,000".

Mr. JACKSON. Mr. President, yesterday, in its consideration of the fiscal year 1981 military construction authorization bill, the Senate put itself on record as supporting the initiation of construction of a binary weapons production line at Pine Bluff, Ark., this year. We had a good debate on this issue, both the proponents and opponents having had an opportunity to state their cases, and the Senate affirmed the recommendation of its Armed Services Committee to take this important step in fiscal year 1981.

Today, Senator HOLLINGS, Senator WARNER, and I are offering a conforming amendment which will bring the military construction appropriations bill as reported by the Senate Appropriations Committee into line with the substantive decision taken yesterday by the full Senate. I see no need to take the time of the Senate once more to discuss the sound and compelling reasons behind yesterday's 52-to-38 vote in favor of the Pine Bluff construction. Suffice it to say, the Senate's action on this issue is sending the right signal to the Soviet Union about our determination to deter chemical war and to encourage an effective, reciprocal chemical arms control agreement.

Mr. President, I think this issue has been resolved. I hope that the committee will accept this amendment.

Mr. WARNER. Mr. President, I rise in support of the amendment. The underlying issue was thoroughly considered by the Senate yesterday and passed on, in one way or another, but my recollection is by at least three votes.

Therefore, I urge my colleagues to expedite this matter and accept the amendment.

Mr. HUDDLESTON. Mr. President, the subcommittee and full committee, in preparing this legislation, considered the question of a binary weapons production line and came to the conclusion that the matter should be left to future determination.

However, yesterday, the Senate very thoroughly debated the issue and expressed its will.

The House has provided funding, in the same amount as suggested by the Senator from Washington, in its bill.

That being the case, and the Senate having already spoken on this issue, I am prepared to accept the amendment as offered by the Senator from Washington.

I yield to the Senator from Nevada.

Mr. LAXALT. Mr. President, the minority has no objection to the amendment.

Mr. PRYOR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1594

Mr. PRYOR. Mr. President, I have a perfecting amendment to the Jackson amendment. I see the Senator in the Chamber. I do not know whether the Senator wants to make a statement in behalf of his amendment at this time.

Mr. JACKSON. I have made my statement.

Mr. PRYOR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. PRYOR) proposes an unprinted amendment numbered 1594 to the unprinted amendment numbered 1593 by Mr. JACKSON:

At the end of the amendment offered by the Senator from Washington, add the following:

"And *provided further*, That none of the funds appropriated in this Act for the construction of any facility for the production of binary chemical weapons at Pine Bluff Arsenal, Arkansas, may be obligated or expended before March 1, 1981.".

Mr. PRYOR. Mr. President, the amendment I propose relates directly to the debate we had yesterday in this Chamber. I propose this amendment at this time to give the Members of the U.S. Senate a final opportunity to reverse what I believe was an absolutely catastrophic decision that the Senate made yesterday, by one vote, in turing down the amendment offered by the Senator from Colorado (Mr. HART).

I am not going to take a great deal of time in making my argument today, because the issue was debated extensively yesterday. However, I do feel very strongly that to reverse, at this moment, an 11-year-old policy with regard to the manufacture of chemical agents in this country, to inaugurate a new and massive commitment of some $4 billion, in all likelihood, to the manufacture of chemical agents, when we have an adequate supply available, does not make military sense nor does it make economic sense.

Mr. President, in addition, we have an ongoing study—not a new study but an ongoing study—at this time, an interagency study being conducted by the administration.

If we are going to reverse this policy, the least we can do is to wait until a report is made to Congress assessing the impact on relations with our allies and the worldwide community.

I think that we need an update on the amount of chemical warfare agents and weapons that we actually have in stock at this point.

We need to consider the possibility of a closed session to allow the Secretary of Defense, the Secretary of the Army, the Secretary of State, and maybe even the President to come before us and report what the facts are with regard to our chemical warfare capability.

Mr. President, it is not too late to restore a little bit of sanity to what we did yesterday, when this body voted 47 to 46 against the amendment of the Senator from Colorado.

I firmly believe that if a proper study is completed and a proper report made to Congress, we will be much better served. We will be given the opportunity to make a proper and studied decision based upon fact—not based upon allegation, not based upon emotion, not based upon an article that has been written in the Reader's Digest. It will be a decision based upon logic and commonsense, a decision based upon the facts that we need before we legislate in this very, very sensitive area.

Mr. President, I conclude by saying that I deeply appreciate the fact that 46 Members of this body supported the Hart amendment yesterday. I am only hopeful that they will support this substitute amendment which will preclude the spending of any of these funds until March 1, 1981. This will provide us with the time we need to hear from the proper officials regarding the circumstances as exist today, in the world and in this country.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, I rise in opposition to the amendment.

Yesterday the Senate voted decisively to support the authorization for the Pine Bluff facilities.

Today I hope my colleagues will support with equal conviction the appropriations for this very necessary step toward providing a chemical warfare deterrent and an incentive for the Soviets to negotiate an arms limiting treaty.

The pending Jackson-Warner amendment is just a conforming amendment that has the overwhelming support of the Armed Services Committee. That committee voted 14 to 3 in favor of funding the Pine Bluff facilities and yesterday the Senate voted 52 to 38 in favor of this amendment.

It is important to bear in mind that we are not appropriating funds for production of weapons, only the improvement of facilities, and with due respect to my colleague from Arkansas, the first sentence that he uttered today was that we are establishing a policy for the production of chemical and biological warfare. That is inaccurate. This is merely a legislative process to provide funds for developing the Pine Bluff facilities. Should this Nation, at a subsequent time, and only after instructions from the President and a further judgment by this body, decide to produce these weapons, only then would we go to the production of weapons.

Personally, I hope it will never be necessary to produce these weapons. If our actions today encourage the Soviets to conclude an effective chemical weapons treaty, then our purpose could not be better served. But if we fail to take this action, the signal to the Soviets will be clear: The United States will once again have chosen to negotiate from a position of weakness.

I urge my colleagues to join me in support of this vital amendment.

Mr. PRYOR. Mr. President, I say to the Senator that I am aware that the immediate question we are discussing is $3.15 million to construct a facility.

However, yesterday the other body appropriated $19 million to equip the facility.

What we are embarking on, I say to my friend from Virginia, is a long-term $4 billion project. At the same time, we are going to be possibly manufacturing a binary type nerve gas that has no military advantage whatsoever to the present stockpile that we have. It does not make sense.

Mr. WARNER. Mr. President, I ask my colleague from Arkansas to clarify. We are not starting the production of any binary weapons. It is nothing more than bricks and mortar.

Mr. PRYOR. This appropriation is for bricks and mortar, but it is the beginning of a reversal of the policy of the past three administrations over the past 11 years. What we are doing will be interpreted, no matter in what fine language we discuss it on the floor, as a commitment to go back into the chemical weapons race.

Mr. WARNER. That commitment would have to be subsequently ratified by the President, and would require subsequent actions by Congress.

Mr. PRYOR. My point is this: Why do this? Why make this decision when we have not had proper testimony in the Senate, when the only testimony is that of Secretary Brown in a closed session before one committee in the Senate? Why is it that we have to rush into this matter in the closing days of this session of Congress when we know that the decision can wait until March 1981, after a proper report has been given this policy? Why is that?

Mr. WARNER. I should like now to resume the colloquy with my distinguished friend from Arkansas. I reopen it by asking a question: Am I not correct that what we are considering today is nothing more than an appropriation for bricks and mortar, and it is not in any way the commencement of the manufacture of binary weapons?

Mr. PRYOR. I would answer the distinguished Senator from Virginia by saying that it is the beginning of a process. It will be perceived, I think, by the worldwide community as a commitment of our resources to chemical weapons production and a reversal of policy. It amounts to an expenditure over the next few years of approximately $4 billion for the production of new chemical weapons, when we have a sufficient stockpile, and the destruction of our present munitions.

I do not see the reason for hurrying in the last hours of this session and appropriating this money before we have the administration's report. Why does the Senator fear a report to the Congress before we vote?

Mr. WARNER. In response to that question I say I do not fear it. I think it is a useless waste of time and taxpayers' money. We already have had 21 studies on this issue.

Mr. PRYOR. Upon what facts does the Senator base his decision to appropriate $3.15 million and then an additional $19 million in a few days to equip this facility? What facts does the Senator have to base that vote upon?

Mr. WARNER. This body has coequal responsibility with the executive for making decisions relative to national defense.

Mr. PRYOR. The President is the Commander in Chief.

Mr. WARNER. He is not here and we do not need him on this issue. This issue can independently be judged by the Members in this Chamber.

Mr. PRYOR. Based upon what facts though? We have had no hearings.

Mr. WARNER. We have every reason to believe that the Soviet Union has in no way lessened its intention to go forward with this area of warfare capability.

Mr. PRYOR. Is the Senator referring to the article in the Reader's Digest of last year? That seems to be the best authority in this Chamber.

Mr. JACKSON. Mr. President, will the Senator yield right there?

Mr. WARNER. I yield to the Senator from Washington (Mr. JACKSON).

Mr. JACKSON. I think there is a lot of nonsense being introduced into this debate. Is the Senator aware that the Secretary of Defense appointed a special science advisory board on this very subject?

Mr. PRYOR. All I am aware of is the Secretary of Defense 2 weeks ago testified against this proposal.

Mr. JACKSON. I would ask the Senator to answer the question.

Mr. PRYOR. I will admit to the Senator from Washington that I am not familiar with it.

Mr. JACKSON. I think the Senator ought to know that the Secretary of Defense appointed a science advisory board to review this question. We went into it yesterday, and the DSB's findings are clearcut. The board says that we should go ahead with this binary program, and I think the Senate is entitled to know about it. They said specifically to go ahead with the binary project.

Mr. PRYOR. Who was on the board I ask the distinguished Senator? Who were the members of the board?

Mr. JACKSON. Well, I am happy to tell the Senator the distinguished members of this panel. The chairman of it is John Deutch.

Mr. PRYOR. I am sorry the Senator from Arkansas does not know the gentleman you have reference to.

Mr. JACKSON. For the Senator's information, Dr. Deutch is a very prominent scientist who served in several senior capacities in the Department of Energy during most of the junior Senator from Arkansas' service in the Senate.

Mr. PRYOR. Maybe that is why I do not know him.

Mr. JACKSON. The Senator ought to know, if he is talking to leading scientists, if he is really going into this problem. He is one of the foremost chemists in the United States. He is the head of the department at Massachusetts Institute of Technology.

I will go down the list here.

Mr. PRYOR. Fine. Has Dr. Deutch discussed with any of our foreign allies whether or not they are going to store this binary gas?

Mr. JACKSON. Wait a minute, you asked who was on the Secretary's Defense Science Advisory Board. The chairman was John Deutch and I am sure the senior Senator from Arkansas is very familiar with John Deutch.

I will go down the list: Prof. Joshua Lederberg, Dr. Ivan Bennett—keep in mind these were all appointed by the Secretary of Defense, Mr. President; these are not appointees of the Senate—Gen. George Blanchard, Dr. Victoria Chan-Palay, Brig Gen. Niles Fulwyler, Dr. Reuven Leopold, Dr. Herbert Ley, Dr. Raymond Murray, Rear Adm. Harry Schrader, Adm. Isaac Kidd, Jr., Mr. Carl Feldbaum, Brig. Gen. Harry Goodall, Dr. Norman Hackerman, Dr. Ivan Sutherland, Brig. Gen. Gerald Watson, Ambassador Seymour Weiss, Dr. Roberta Wohlstetter, Prof. Henry Rowen, Ms. Shelia Buckley, Brig. Gen. Harry Goodall, Ms. Amoretta Hoeber, Ambassador Thomas Pickering, Col. John Tengler.

Now, you say this matter has not been reviewed. That is nonsense, pure nonsense. As my colleagues on the Armed Services Committee know, we have been trying to get administration witnesses

up here to testify. We had to wait and wait and wait to get the Secretary of Defense to come up and testify on this. I made the request and Chairman STENNIS cooperated 100 percent in my efforts.

Finally, the Secretary appeared before us and, I must say, we went into this quite thoroughly. We had the Secretary of Defense together with the head of the Defense Intelligence Agency.

If it is studies you want, as the Senator from Arkansas knows, there have been studies and studies, and if you look at page 25475 of the RECORD of yesterday they are all set out, a long list of all these studies, dating from December 1971 right on down to March 1980.

I think that I can agree with the Senator from Arkansas on one point: Chemical warfare is a nasty business and we ought to outlaw it.

But I have been around this body long enough to observe Russian behavior. They are not going to negotiate to eliminate something when they have it in large quantities and we do not. After all we have been negotiating in Geneva since 1976 and not one line of a draft treaty has been agreed to, not one line, Mr. President. I must say that if you are going to get an agreement—which I want to see—an agreement that is enforceable, an agreement that is viable so that we can really get rid of chemical agents, then it will be necessary for us to be credible at the bargaining table.

I hope the United States will not have to build any of these binary weapons. I hope it is possible to get an effective agreement, but let us not kid ourselves, Mr. President. We have already seen what has happened in connection with the treaty adopted in 1975 on biological warfare. Biological weapons were to be outlawed; no biological agents were allowed to be manufactured at all except for peaceful research purposes. And now we have the Sverdlovsk incident. I hope my good friend from Arkansas will take a look at that incident and get the classified intelligence briefing. It is obvious from what we know that something far beyond what is permitted under the agreement was going on at Sverdlovsk when all of a sudden a large number of people die of anthrax.

The Russians gave as an excuse that some kind of an epidemic started in a slaughter house. All of the experts that we have had in and asked about that say that that alibi makes absolutely no sense at all. Clearly, there are indications that they are in violation of that treaty. But the U.S. is reluctant to press the issue. Oh, we have meetings and conferences going on. and the like, but that's the extent of it. All of which proves the point that the kind of arms control agreement we need to limit and control this nasty chemical business—and the kind of agreement we must be able to negotiate—is a verifiable one.

All I am seeking in our amendment today—as in the amendment approved by the Senate yesterday—is to give the United States a credible bargaining position.

There is nothing in the post-World War II history that will corroborate the view of the Senator from Arkansas that by not going forward with the modernization of our chemical capabilities, the Soviet Union will somehow come around and sit down at the table. That is the unilateral approach. We have tried it before. This country has a noble record in that regard, if I may say so. As I have said before, back in 1946, we offered to turn over all of our nuclear weapons to an international agency to be created by the United Nations in the Acheson-Baruch-Lilienthal proposal. The Russians vetoed it because they did not have nuclear weapons at that time, although they did have, of course, the spies that made it possible, in a large measure, for them to get nuclear weapons as they did in September of 1949 when they exploded their first bomb.

Then again, in the mid-1960's, we made another effort at unilateral restraint, when President Johnson offered to shut down a number of our plutonium weapons-producing reactors and called upon the Russians to do the same. You know what they did. We shut ours down and, instead of shutting some of theirs down, they added to their capacity to produce nuclear weapons.

The reality today is that, if we are going to get an agreement on chemical warfare, the Soviets must understand that we are going to go forward with an important modernisation program here unless they agree with us to outlaw the use of chemical agents. If you do not have offensive chemical munitions in sufficient, deliverable quantities, your deterrent lacks credibility. The Senator from Arkansas—and I take this time now, because I did not bother to get into all the details yesterday—was talking about the viable stockpile we have, the ample quantities and the good condition of our chemical munitions.

I would point out to the Senator that our present unitary chemical weapons are highly toxic and dangerous for those who have to handle them—namely, those who have to participate in any kind of movement of these chemical agents around today. Each weapon is terribly toxic in itself. By contrast, what we are proposing here is a process in which it takes a mixture of the two agents by firing the weapon to create the toxic agent. It offers a tremendous advance in safety among other things.

I am amazed that the Senator from Arkansas wants to continue to keep on with this present stockpile which is highly dangerous—highly dangerous to handle and highly dangerous to administer. The binary program would allow for greater safety, and would provide the safeguards that this Nation needs in the administration of its chemical deterrent program.

I can only say that it seems to me that we are moving down the road to better negotiations, hopefully, if we go this course. If we do not go this course and if we stay where we are now, we are going to continue to see the Soviet Union becoming even more active in the use of these chemical agents.

Mr. WARNER. Will the Senator yield on that point?

Mr. JACKSON. Yes.

Mr. WARNER. Secretary Brown confirms precisely what my distinguished colleague from Washington has represented. I will read from a classified document. I cannot read it in its entirety, but it is here for inspection, of course, to my distinguished colleague from Arkansas. It is dated October 4, 1979, sent by Secretary Brown to the Assistant to the President for National Security Affairs. Here is the pertinent paragraph that verifies Senator JACKSON's representation (this portion is not classified):

> We have been participating in the bilateral negotiations with the Soviets since 1976 and see little or no movement on their part to resolve critical differences. In view of the continuing degradation of our deterrent stockpile and the serious asymmetry of capabilities in this area, I directed, in the Amended Program Decision Memorandum dated August 29, 1979, that the binary chemical munitions facility be included in the amount of $19 million in the Department of the Army basic budget submission.

I also have the Department of Army basic budget submission, dated December 7, 1979, in which the Department of Defense requested not only the $19 million referred to by the Secretary, but also the same $3 million which Senator JACKSON and I seek today, under the line item Facilitation of Binary Munitions.

Now, there is clear documentary proof available for inspection by my colleague of the decision within the Department of Defense to proceed on this question of facilities.

Mr. PRYOR. If the Senator from Virginia will yield, I am just going to take a minute or two because I think we have debated this issue fairly well in the last day or two. But, first, the Secretary of Defense on September 4 testified against it. That is more recent than the October 1979 report that the Senator just quoted.

(Mr. MITCHELL assumed the chair.)

Mr. WARNER. Mr. President, I suggest to my colleague, to be more accurate in the representations, that Secretary Brown's testimony was not against it. It was simply that the timing could be adjusted—he was not against the concept of binary weapons.

Mr. PRYOR. If the Senator is using the Secretary of Defense as his authority, then why does he not accept the Secretary's advice, accept my amendment and wait until March to fund this program?

Mr. JACKSON. Will the Senator yield?

Mr. WARNER. May I just finish this one point? The Secretary was overruled by OMB in his funding request and, therefore, quite naturally, he had to toe the line and talk about timing.

Mr. JACKSON. Will the Senator yield?

Mr. WARNER. Yes.

Mr. JACKSON. That is exactly the point. In the formulation of the budget for fiscal year 1981, as the Senator from Virginia will recall the testimony, the program for this project went over to the White House. This was killed in the White House, and the Secretary of Defense does not take a position different from the position taken by the President; or from OMB, which speaks for the President. The Army request was in the Defense Department program when it went over to OMB. In fact, the Army was directed by the Secretary of Defense to

bring this program together in the budget process. They brought it over for interagency review and it was killed in the White House.

Now, that just happens to be the truth. The pseudonym for it is the OMB and the OMB acts under the direction of the President. Now, those are the facts about why this item was taken out, and why the Secretary is saying what he now says.

Mr. PRYOR. Mr. President, I say to my distinguished friend, if he will yield a moment, that I do not oppose the Senator's amendment and offer this perfecting amendment because I trust the Russians. I do not have any great trust for the Russians. And I do not do this because I want us to have a weak defense posture.

Senators can check my record and it will show that I have voted for every appropriation and every authorization that has, I think, been meaningful and constructive to a strong national defense.

Earlier the Senator mentioned destroying our present stockpile. The Army is spending millions of dollars every year to destroy our present stockpile of usable chemical weapons. At the same time the Army is saying, "My goodness, look at our stockpile. It is leaking, deteriorating."

Building a binary weapons facility in Arkansas, or anywhere else, will not strengthen our position one bit at the bargaining table because we will simply have substituted our present stockpile of chemical agent for a new stockpile that is a little bit safer to make, a little bit safer to store, and a little bit safer to transport.

We have actually not had any fatalities and very few accidents with our present stockpile of chemical munitions. Hopefully we never will.

Militarily, it will not strengthen us one bit because binary nerve gas does not have one iota of military advantage over our present stockpile. There is no need for us to consider this at this time. We should wait until a final report is sent to this Congress so that all of us will know the facts, not just the views of one commission, but the facts from those in the Department of State and the Department of Defense who are responsible for carrying out our military and foreign policy. Those agencies should bring us the facts that we so desperately need before we vote on such a global issue.

Mr. JACKSON. Mr. President, mention has been made about our stockpile. I have in front of me an unclassified report on certain aspects of our stockpile entitled "Leaking Munitions, Quarterly Report."

I am informed that at the present time we have nearly 4,000 leaks per year, toxic leaks, in the stockpile.

As this report suggests our outmoded stockpile does present a real danger to our own people and is wholely inadequate as a deterrent.

Mr. President, the proposal which is before us is to avoid that kind of a situation. A leak from one of the binary weapons would not in any way create a toxic environment. But the current stockpile does so and consequently creates a very dangerous situation for those who have to manage our chemical weapons and those who have to handle them. When we have 4,000 leaks, which is the current leakage rate per year, that in itself, I think, speaks for the need to change our whole approach. I am surprised that anyone would want our Nation to rely on a leaking, deteriorating stockpile.

Mr. WARNER. If the Senator will yield, he has raised a pertinent point. I regret that Senator HART is not on the floor at this time, he is our major opponent on this issue. I am reading from a press release of Senator HART dated February 26, 1980, this year, in which he addressed this very question. He says as follows:

> I am convinced that the bombs

And he is speaking here of the Weteye—

> that the bombs in their leaking condition should be detoxified immediately and not simply stored indefinitely at the Rocky Mountain Arsenal. It makes little sense to maintain a chemical warfare stockpile which, due to its leaking conditions, is a hazard to the people of Colorado as well as to the military personnel who eventually might use these weapons.

Mr. JACKSON. Will the Senator yield at that point?

Mr. WARNER. I yield.

Mr. JACKSON. I note, too, from the information we have received in the Armed Services Committee, by 1990, through deterioration, leaks, and obsolescence, the United States will no longer have a militarily usable stockpile of chemical munitions. What is the Senator from Arkansas proposing to do about this?

Mr. President, I ask unanimous consent that a fact sheet entitled "Binary Chemical Munitions" be printed at this point in the RECORD.

There being no objection, the fact sheet was ordered to be printed in the RECORD, as follows:

SUBJECT: BINARY CHEMICAL MUNITIONS

NEED

U.S. has not produced chemical munitions since 1969.

Our only chemical production facility is inactive and in a state of disrepair.

The Soviet Union outnumbers the U.S. 35 to 1 in chemical units; 11 to 1 in chemical personnel; 10 to 1 in decontamination equipment; 8 to 1 in chemical munitions; 5 to 1 in ground based delivery systems; and 14 to 1 in production facilities.

SITUATION

Chemical weapons have been historically used against nations having no retaliatory capability: by Germany in WWI; by the Italians in Ethiopia, 1935; by the Japanese in China, 1937; by the UAR in Yemen, 1967; by the Vietnamese in Laos and Kampuchea; and by the Soviets in Afghanistan, 1980.

U.S. policy is one of deterrence/retaliation. However, inaction and the effects of deterioration and obsolesence will equate to unilateral chemical disarmament.

Bilateral negotiations with the Soviet Union, ongoing since 1976, have produced no substantative results.

SOLUTION

Binary Weapons—involves two non-toxic chemicals not mixed until the munition is inflight to the intended target. Chemicals would be procured, shipped and stored separately. Binaries which are safe in production, in transportation, and in storage would also facilitate any future demilitarization.

Phase I—155MM Artillery, GB: Requires funding of $3.15M in military construction and $19M in Ammunition Procurement, Army. FY 81 start would not yield a production capability until late 1983, early 1984.

Phase II—8 inch Artillery, VX: FY 82 start would yield a production capability in 1985.

Phase III—Bigeye Bomb, VX (Air Force and Navy): FY 83 start would yield a production capability in 1986.

REQUIREMENT

FY 81 Authorization and Appropriation of $3.15M Military Construction for Pine Bluff Arsenal, Arkansas. House has authorized; House has appropriated.

FY 81 Appropriation of $19M Ammunition Procurement, Army for procurement of necessary Phase I production equipment.

Mr. PRYOR. Why have we spent over $150 million to demilitarize and destroy our present stockpile? The reason is that the Army loves to make things. That is why they want to get back into the manufacturing of binary nerve gas. Why have they not asked for more money to defend ourselves from chemical attack?

Mr. JACKSON. The answer is they have asked for those funds. That is only one part of the problem, the need for a defense system. And funds are being sought for those purposes.

I would point out to the Senator that the idea of maintaining a leaking system that is hazardous to the personnel in our armed services should bear heavily on all of us here. The solution to this—and the Army wants to do this, to protect their own personnel among other things—is to have a binary type of stockpile where you will not be asking your people to handle dangerous, leaking, toxic substance.

Senator HART has expressed his deep concern, as have all of us on the committee, because the current stockpile is leaking, and I just gave the figures, at the rate of 4,000 leaks per year—all involving toxic substances.

Mr. President, this program is not just to provide a credible deterrent and to bring us progress at the negotiating table, in order that we may get a sensible, reciprocal agreement and do away with this nasty business. It is also a program to allow us to manage effectively our chemical deterrent without endangering the lives of our personnel.

May I say, to answer an earlier question about the investments in defensive systems, the Army has programmed $1.8 billion for the fiscal years 1982 to 1986 for defensive systems. That is an important aspect of the problem, but, it is one that is being addressed.

But, Mr. President, you cannot be credible simply by building defensive systems when the other side has a viable offensive system and you are going to be on the receiving end of it.

In World War II, Hitler did not use gas because he knew that if he used gas they would be hit a lot harder. In World War I, they were able to get away with it because the Germans had mustard gas, among other things, and the Western Powers did not.

So we are simply inviting the use of it, And I do not need to say to my colleagues once more, the Russians are believed

to be using it now in Afghanistan and, through proxies, in Cambodia and Laos.

Mr. PRYOR. If the Senator will yield, I would like to say that my friend from Virginia (Mr. WARNER) did make a statement a while ago with which I agree 100 percent. The distinguished Senator from Virginia said that he wished Senator HART of Colorado was on the floor at this time. I wish he were here at this time. But he could not be here, so I am having to substitute for him.

I know that he knows this issue much better than I.

Mr. WARNER. I say to my colleague from Arkansas, my remarks was not directed to him. He is very ably presenting this subject. It was simply that I do not like to quote from a colleague's press statements or representations unless he is here to verify their accuracy, but I have the document from his office.

Mr. LEVIN. Will the Senator from Arkansas yield?

Mr. PRYOR. I shall be glad to yield to my friend from Michigan but first would like to respond to one thing my friend from Washington mentioned. I want to quote from the GAO report I put into the RECORD yesterday as to the condition of our stockpile. The 1977 GAO report stated:

> The true condition of the stockpile is unknown. Its serviceability may have been greatly understated. For example, many of the unserviceable classifications are a result of minor nonfunctional defects, such as container rust, which do not affect usability.

I could go on and read further evidence from that GAO report but the thrust of the report is that no one really knows the condition of our stockpile, which, once again, gives substance, reason, and justification for not expending this money at least until 1981, until we have a total, full, and accurate report of the facts. Then we can decide this issue in a voting environment that is not based on conjecture and speculation.

Mr. President, I yield to my friend from Michigan.

Mr. LEVIN. Mr. President, I wanted to comment on the statement of the Senator from Virginia relative to the position of Secretary Brown. Actually, I wish the Senator from Colorado were here for an additional reason. Not only is he a good friend of ours, but he was present when Secretary Brown testified, as were the Senator from Virginia and the Senator from Washington.

That testimony has been classified, for reasons that I am not clear on, but it is classified. Parts of that testimony of Secretary Brown are unclassified, and I should like to read for my friend from Virginia a portion of the testimony that is unclassified, because it is not consistent with what the Senator said earlier in terms of whether Secretary Brown really means what he says—is he doing this because OMB has now told him he has to do it, or the White House, or because he really means what he says, and how do the words speak for themselves? It sounds to me—and I was there—like more than somebody mouthing words to be consistent with a program somebody else has said must be it. Rather, it sounds heartfelt to me, as it did when I was there. This is Secretary Brown, unclassified:

> My personal opinion is that at some time we should move forward to modernize the stockpile, but I think the time is wrong now.
>
> But there is a broader issue beyond even arms control negotiations, and that is relations with our allies, which I have also discussed. It seems to me that is largely a matter of timing and education. I think the ground now is uncertain. I think it is realistic that a precipitate decision on our part or what they would see as a precipitate decision, even though, as you correctly point out, we have been hashing this out for several years, would have very negative consequences.

Mr. President, the Secretary of Defense has informed us in unclassified testimony that proceeding now without getting our allies on board—and they are critical to be on board if we are going to have forward deployment—will have, using Secretary Brown's words, "very negative consequences." Negative for what?

Mr. WARNER. Will the Senator yield for a clarification?

Mr. LEVIN. Yes, I yield.

Mr. WARNER. He used the words "modernize the stockpile." That is not what we are doing today. He is referring to modernizing the stockpile of the weapons. That is not the issue before the Senate. It is simply modernizing the facility; they are two very distinct courses of action.

Mr. LEVIN. Mr. President, I understand that well. I suggest that the allies are going to respond in the following way, as they have before in chemical weapons. I think the Senator from Washington will remember the last time chemical weapons were raised in terms of forward deployment in Germany in 1969, what kind of response we got from them. We need to get a positive response from our allies if we are going to succeed in the two purposes that I believe the Senator from Virginia and the Senator from Washington want to achieve. The Senator from Washington tells us, and I happen to agree with him, that the Russians only appreciate strength and will only negotiate from strength, and I agree. But if our allies reject forward deployment of these weapons because they have not been consulted, which they have not been, we are then going to find we are not negotiating from strength but from weakness.

Mr. President, you cannot go to the bargaining table with the Russians on chemical weapons with our allies refusing forward deployment and feel that you have a bargaining position, because you have not. It is hollow. Your position will be weak, because our allies are not with us. I suggest now that we have these high-level discussions with our allies before we make a unilateral position and they perceive that that is exactly what we are wishing on ourselves.

In terms of the purposes of the Senators from Virginia and Washington, it is counterproductive to proceed now before we have the consent of our allies to deploy these weapons on their soil. That is point No. 1.

The other reason we want to proceed, and I think there is some merit to this, too, though I have not resolved it in my mind, is that we want a deterrent to Russian effective chemical capability. We want to be able to respond in kind. I think there is a good thing to be said for that. I happen to think it is a reasonable argument. But again, if our allies reject forward deployment because we unilaterally make a decision, which is what this Senate is about to do, on proceeding with either the improvement of the production facility or the production of weapons—and I suggest that is very much blurred in terms of perceptions—as my friend from Virginia knows, perceptions are what count in Europe.

If they are looking at our unilateral decision to proceed, they are not going to distinguish between proceeding to modernize a plant to make something and making it. They will perceive this as modernization of chemical weapons. And they are going to say, when their people object to storage of chemical weapons on their territory, they are going to have to say, "The U.S. Government did this without our consent." Then we are in the position of having no deterrent in terms of the Russians. We shall have to store the stuff here instead of there. So not only do we not have a good negotiating position—which is what the purpose of the Senator from Washington is—we do not have a good deterrent. I think that is a critical flaw in the timing of the request and of the amendment that has been proposed by the Senator from Washington and supported by the Senator from Virginia.

Mr. WARNER. If I may reply to my distinguished colleague's statement, with no disrespect to my collegaue, the weakness in his argument is most apparent because he is mixing facts. I come back again and again to the fact that this is a simple request for appropriations to fund a $3 million facility. It cannot be construed as a major policy decision to go forward unilaterally, as Senator PRYOR has suggested, with a $4 billion program which, I agree would require consultation beforehand with our allies.

Mr. LEVIN. What is the purpose of proceeding with the facility?

Mr. WARNER. To make certain that the Congress of the United States of America, under article I, section 8 of the Constitution, is providing for the common defense of this Nation in the event we discover, at some later point in time, positive evidence that the Soviet Union has progressed with their research, development, and production of chemical and biological weapons.

The weakness in the Senator's argument is that he talks about forward depolyment. That is not germane to this discussion whatsoever. We are not in any respect trying to impose on this body a decision now to go forward with the production of weapons. We are not trying to impose on this body a unilateral decision on an issue which would require consultation with our allies.

We are simply taking precautionary

steps to prepare a deterrent in the event a President of the United States, under the law, directs these weapons go into production and the Congress concurs in that decision.

Mr. LEVIN. If the Senator from Virginia will yield for a question, does he not think it wise before we proceed to modify the plant, which, in turn, gives us these items, that we consult with our allies before they read about this in the paper? Would that not be wise?

Mr. WARNER. I disagree. I simply think this country has a right to proceed as we believe best in terms of our constitutional responsibility, and we do not need to consult with our allies simply to build a $3 million facility on a military base.

Mr. LEVIN. I will read for the record a portion of an article which appeared in the August 13, 1980, London Times, in which the London Times said:

> Thus the decision of the United States House of Representatives last month to agree to a request from the American Department of Defence for funds to resume manufacture of chemical weapons is a sombre, and clearly politically profound, development.

That is the issue. That is our best ally, or one of them, speaking.

They are profoundly concerned with the question of storage of chemical weapons. They have indicated this over and over again in the past.

We are taking a step which can have no symbolic meaning to our friends in Europe, and this is not my meaning. This is the way this step will be read in Europe, that we are taking the first step toward modernization of chemical weapons, and they can have no real deterrent value. They can have some, but no real deterrent value, unless they are forward deployed.

Mr. WARNER. Our allies only need to read the proceedings of this Chamber to seek clarification of this step.

If the Senator would be so kind as to reread one phrase of that article, I copied it as "the House resuming the manufacture of weapons."

That is not what we are doing.

Is that not what the article said?

Mr. LEVIN. That is what the article says.

Mr. WARNER. Then it does not pertain to this debate.

Mr. LEVIN. That is what I read.

The Senator's distinction between proceeding with a plant capable of producing weapons, which on this floor has been said over and over again we must produce, the Senator from Washington has given us statistics, and others think we are far behind and we must proceed.

I do not see there is any other way they will read this except that this is a first step toward the modernization.

Perhaps the Senator from Virginia is right. Time will tell. But I predict that this will be construed in the European press as the first step, made without consultation, toward the manufacture of modern chemical weapons.

Again, I repeat, they can only have a deterrent effect—I agree with the Senator from Washington that they can only have a deterrent effect, which is what we are seeking, if they are forward deployed. We want that deterrent effect.

I say to my friend, if the allies read what we are doing as the first step towards modernization, and if we take it unilaterally, without consultation, they will be faced with a political barrage at home that they do not want, the storage of these weapons. They will have to make commitments to their people that they will not accept them and we will undercut the point the Senators from Virginia and Washington and Nebraska, and others, are seeking to achieve.

Mr. WARNER. May I state a question to the Senator from Washington?

Mr. JACKSON. Yes.

Mr. WARNER. We have two freshmen Senators, one says the record will make clear what we are doing, the other indicates that this record could well be perceived as a commitment to embark on a $4 billion program. I call upon Senator JACKSON for clarification.

In the Senator's years of experience is there any question about whether we have made it clear in the record exactly what we are doing?

Mr. JACKSON. Absolutely none.

Mr. President, I will yield, if I may just finish, to the Senator from Nebraska.

We have had this exchange about our allies. Let us look at it sensibly.

We do have chemical agents deployed abroad. It is classified, the amount, and so on. Let us just say that we have chemical agents deployed abroad.

The report is that those agents could be extremely hazardous, under certain circumstances, and if we want to have a credible force, it is better to be able to have one we can deploy rapidly. We do not to have stockpile in Europe. The advantage, again, of a modern system, the binary approach, is that we can transport these agents without the danger, and in the event of an accident, or whatever, of a toxic situation being created in that area.

The allies should be interested in modernizing. If they knew or understood in detail the problem we have with the existing stockpile, I would think they would truly be outraged. I cannot understand why anyone in this body would be opposed to modernizing the stockpile from the standpoint of safety of handling, if nothing else, and the safeguards with it.

Mr. PRYOR. If the distinguished Senator's amendment passes, and I will be honest, I think his amendment will pass, but if it does pass——

Mr. JACKSON. Why do we not just stipulate as much?

Mr. PRYOR. I am not ready to stipulate that.

But if it passes, and we make binary chemical weapons in Pine Bluff, Ark., will the Senator say he is willing to store them in Washington State?

Mr. JACKSON. May I say to the Senator, we do our part in the State of Washington. We have in our State 90 percent of the Nation's stored, radioactive military nuclear waste today. We are most responsive to the legitimate requirements of our national defense.

But I am amazed that the Senator from Arkansas would want to be calling for the maintenance of the status quo, which means allowing our stockpile to consist of growing numbers of leaking chemicals.

Why does the Senator not introduce legislation to abolish the whole chemical stockpile, if that is his position here, because it is leaking? As I understand his philosophy or his position, he does not want to convert the existing stockpile into one with adequate safeguards, and that is what the binary approach is all about.

This is a two-pronged thing, Mr. President.

Mr. PRYOR. The GAO has stated that they do not know the condition of our stockpile. They say the facts are not known.

Mr. JACKSON. I say to my good friend from Arkansas—Senator HART could not be here—but he has a problem of leaking chemical weapons situated in his State. We are 100 percent supportive of resolving that problem and, as the Senator from Nebraska will recall, we went into this in the Armed Services Committee, and we have insisted upon the relocation of those weapons from the Rocky Mountain arsenal because of the hazardous nature of the situation.

If we had a binary system, we would not have a problem of dangerous toxic leakages. But we have it with our present weapons and it will grow. At the very least, we need to convert our existing capability into one with adequate safety and safeguards. This will make our chemical deterrent more credible. That is one thrust of this effort.

A second, thrust will be, hopefully, to make the Russians understand that we are ready, willing, and determined to reach an agreement. Hopefully, they will come around when they recognize that in going forward with this program that will be credible, we mean business.

Mr. LEVIN. Will the Senator from Nebraska yield so I can respond?

Mr. EXON. Yes.

Mr. LEVIN. One, to determine the importance of forward deployment, I urge my colleagues to read page 22 of the classified testimony of Secretary Brown.

Second, as my friend from Virginia points out, the article referred to, from the London Times, said that the approval by the House of Representatives for funds to resume manufacture of chemical weapons is somber, and a politically profound development.

That reporter did not distinguish between the production facility which was voted on by the House and the production of weapons which he reported in his article. That is exactly the point.

As my friend from Virginia pointed out, this article talks about developing weapons and producing weapons, but the action which was being reported, which was taken by the House of Representatives, was an action to improve the facility.

So the very point I made, that there can be no difference in the perception whether we are improving the facility or producing the weapons, is borne out by this article's characterization of the action of the House of Representatives.

I thank the Senator from Nebraska for yielding.

Mr. EXON. Mr. President, unfortu-

nately, the Senate wastes a great deal of time repeating itself, over and over again, and I hope I will not be repetitious with respect to what I said yesterday.

I have sat here very patiently and listened to the discussion, and I do not suspect that a great number of minds are going to be changed when we vote eventually on this matter, as opposed to the vote on yesterday. However, I should like to make a point or two.

In his opening statement on this matter, the Senator from Arkansas indicated that we should not rely upon a reprint of an article in the Reader's Digest. I have looked through the RECORD of yesterday, and as near as I can tell the only Senator who introduced anything into the RECORD—and I did not read it—was this Senator.

It seems to me that the Reader's Digest article that my friend from Arkansas referred to had very little, if any, effect, one way or the other, on the vote of yesterday. However, since he brought it up once again, I believe it would be well for all of us who are interested in this matter to look at the Reader's Digest article.

True, it is a scenario of war games, if you will. But in these perilous times in which we live, in which those of us who serve on the Armed Services Committee have a very special responsibility, we have to look at all sides of every issue and all sides of every threat.

I do not believe we need to split hairs on what is intended by the House of Representatives or what is intended by the action we took yesterday and the action I hope we are about to take in the Senate today.

The fact is—and I believe any reasonable person will agree to the fact—that the Soviet Union is far ahead of the United States in the development of the type of chemical warfare we are considering now.

Mr. President, if we want to play second fiddle to the Soviet Union—in fact, without any fiddle at all—with regard to chemical warfare, we should go along with the recommendations that have been made by the Senator from Arkansas and others and let them pick up that one vote they lost yesterday.

I was interested to see the various news accounts of the vote. They all picked the final vote. By and large, the news media somehow do not understand that the key vote yesterday was a one-vote margin in which those of us who felt that we have to have more defenses in this area prevailed. It was not the larger vote by which that measure finally passed. One thin vote.

Mr. President, I do not believe we have to continue to apologize for what we do in the U.S. Senate with regard to the defenses of our forces and what our allies in Europe think about all these matters.

Senators will recall the debate not too long ago with regard to the neutron bomb. It was said that it was politically unimportant, that it could not be done, that our allies in Europe would not agree to the deployment of the neutron bomb. It seems to me that much of that has changed.

Mr. President, if we had waited until all our allies agreed on every step we should take, we probably would not have developed some of the advanced technology we now have in our new, modern day means of defending ourselves.

I am a little weary of hearing, time and time again, that we in the Congress of the United States must do this or must do that because it would be perceived incorrectly in other nations. The fact is that we have more than 300,000 troops, supposedly fighting men and women, ready for combat, to defend NATO. As important as NATO is to our defenses, I believe we should remember that when we are defending ground in Europe, we are defending foreign soil that our troops have been called upon to defend in wars in the past. But if we are going to have 300,000 of our troops ready for combat in Europe, then, regardless of what the Europeans think, I believe we should take at least some steps—a tiny step, if you will—in the right direction to provide them with some of the defensive, if not offensive, chemical weapons that we are confident the Soviet Union now has.

Senator JACKSON mentioned earlier today in this Chamber the difficulties the Soviet Union is now having with regard to what they described as an anthrax outbreak. We know that was not a sudden outbreak of anthrax in the Soviet Union. We know, if we want to face the fact, that they are far ahead of us in this deadly business of a possible future war.

Therefore, we should not become sidetracked on the issue of whether or not the NATO allies agree with us on everything we develop. I do not believe we should be sidetracked on whether or not we have leaky chemical warfare agents of a toxic nature today, because we know we do have.

Let us face the issue head on. Let us recognize that we are far behind. Let us realize that the Soviet Union has approximately 180,000 troops who are specialists in chemical warfare. Yet, we have people on the floor of the U.S. Senate today who say, "No, wait a minute. Let's do a study. Let's think about this before we go into this very onerous part of any kind of offensive or defensive weapons."

None of us likes to authorize money for this kind of program; but I believe that those who are against authorizing money, as has been recommended by the Armed Services Committee and by the House of Representatives, are not being realistic in facing the situation that exists today.

Mr. President, I yield back the remainder of my time.

Mr. THURMOND. Mr. President, is there a time limitation?

The PRESIDING OFFICER. There is no time limitation.

Mr. THURMOND. Mr. President, I support the amendment offered by the distinguished and able Senator from Washington. I simply wish to make a few remarks on this subject. I spoke in more detail several days ago, when the matter was up for consideration.

The Armed Services Committee has considered this matter carefully. They have gone into every aspect of it and voted 14 to 3—I repeat, 14 to 3—to support this matter.

Who are the 14 members of the Armed Services Committee who voted for it? Senator STENNIS, the chairman of the committee; Senator JACKSON, the ranking majority member of the committee; Senator CANNON; Senator HARRY F. BYRD, JR.; Senator NUNN; Senator EXON; Senator MORGAN. All those are on the majority side.

On our side, we have the ranking minority member, Senator TOWER; I supported it; Senator GOLDWATER; Senator WARNER; Senator COHEN; Senator HUMPHREY; Senator JEPSEN.

In other words, all but three members of the Armed Services Committee supported this proposal, and the members whose names I read are the senior members of the committee.

They have been around here 5, 10, 15, 20, 25, and 30 years. It seems to me that should carry great weight with the full Senate on this question.

Mr. President, furthermore, we voted in the full Senate. We have already voted on it day before yesterday. We voted 52 to 38 for this amendment. Now are we going to have to fight the battle all over again? I hope not.

The House of Representatives has already acted on this. The House Armed Services Committee has approved it. The House Appropriations Committee has approved it. The Senate authorization committee, the Armed Services Committee, has approved it, and the full Senate has voted in favor of the authorization.

So this is the last step to attach it to this appropriation bill of the Senate. I sincerely hope that that will be done.

We are supporting this amendment simply because it is another step in the preparedness of the proper defense for this Nation. We cannot wait until the last minute to see to our defenses. If a war should come, we have to be ready. It is not like it was in World War II. The oceans protected us then. We had time to recruit men, train men, equip men and send them overseas. Now we will not have that time. With the continental ballistic missiles that can go from here across the ocean in 30 minutes, or vice versa, with airplanes that fly several times the speed of sound, war will be fought and fought quickly. We will not have time. We will not have time, I repeat, to do all the things we did in World War II.

Now this step in my judgment will be a step of deterrence. I am firmly convinced that if we go forward and do what we should in this field of binary weapons, then the Soviets, if we do have an engagement with them, will be deterred from using theirs.

We say we will not use binary weapons first. But if we have these binary weapons, they will be a deterrence to the Soviets because they know we will retaliate in kind to a chemical attack. But if we do not have these weapons then they have a green light, the field is wide

open to them, and they will be tempted to use them.

The Joint Chiefs of Staff say that our stockpile is only 25 percent of what would be needed for a deterrent capability. I repeat 25 percent. In other words, we are 75-percent deficient. Are we just going to sit around and not try to remedy that? I hope not.

Mr. President, I repeat, also, that this is not production. We are not going into production, although I would not object to it, to be frank with the Senate. This is only a facility to produce. We need this facility. It may take a year or 2 to build this facility, but we will have it built and then we can quickly go into production if the need arises. If the need does not arise, then we do not have to use it.

In my judgment, if we want to get a treaty with the Soviets to prevent the use of binary weapons, this is the best way to do it.

The same thing happened with the antiballistic missile known as the ABM. Virtually same circumstance existed then. So if we have the capability we can come nearer to getting a treaty than if we do not have the capability.

Mr. President, in closing, I say this, that our commander in Europe, General Rogers, the NATO commander who is there facing the Warsaw Pact countries, has made a strong statement on this question, and I shall read a few lines of his statement here to show what his position is. These are his words:

> I support an adequate and modern retaliatory capability to deter a chemical attack by the Soviet bloc nations. At present we do not have an adequate or modern capability. This binary round would give us that capability.

Here is our top commander in case war comes. There is no one higher than he is. He is the man who has to fight the battle. He is the man who is facing the enemy. What does he say?

> At present we do not have an adequate or modern capability. This binary round would give us that capability.

Mr. President, we need that capability. We should have that capability. We cannot take the chance. The freedom of the people of this country is at stake. The freedom of the people of the free world is at stake.

We should go forward. We should do it now. We have been too late with everything. That is the reason we are behind. That is the reason the Joint Chiefs of Staff now, against their wishes, have to acknowledge that the Soviets are now ahead of us in conventional weapons and the Soviets are now ahead of us in strategic weapons.

We do not want that to happen again in other fields. So let us go forward and add this amendment and be prepared to protect this country.

Mr. COHEN. Mr. President, if I could have the attention of the Senator from Washington, Senator JACKSON is recognized, I think, by his colleagues as being quite expert in dealing with the Soviet Union. He travels there a great deal and has spoken about Soviet relations with the United States on many occasions.

I watched this morning's newscast with former Ambassador Toon who appeared on one of the morning programs. I was interested to hear what he had to say, that on his departure from the Soviet Union he noticed there was a growing arrogance bordering on contempt for the United States and he pointed to that growing arrogance as an indication that we are going into very dangerous times in the eighties with the Soviet Union and that the danger is going to be precipitated or exacerbated by this sense that the United States is lacking in willpower to meet the Soviet Union on its conventional or strategic terms and that if anything would precipitate a war it would be the Soviet's miscalculation of the intentions or the ability of the United States to meet their aggression with whatever force is necessary.

I came in during the middle of the debate when the Senator from Arkansas was talking about safety. I sat in on the hearings when Secretary Brown came before the Armed Services Committee, and I do not recall that the Secretary focused upon safety. What he said was in response to some questions that he noticed that the Army had requested this kind of production facility for about 4 years now. First, he pointed out that it was Congress who said no, and that is true. Congress had rejected it 4 or 5 years ago. But Congress is capable of rectifying its errors. Then the following year it was not Congress; it was OMB. Now it is not OMB, but it is the executive department.

And the reason was not safety. That was not cited by Secretary Brown. It was not safety. It was timing and politics.

What the Secretary was saying is that they did not think that the timing was right just now but this might somehow interfere or jeopardize these ongoing negotiations with the Soviet Union.

I do not possess the expertise of Senator JACKSON as far as dealing with the Soviet Union, but I have never known the Soviets to ever be magnanimous in dealing with a weaker adversary. I do not think anyone could point to that. We certainly could not look to Afghanistan for any kind of magnanimity from the Soviet Union in dealing with a much weaker opponent, to say the least.

I reject the notion that we are going to achieve any significant treaty arrangement with the Soviet Union as long as we are dealing from a position of weakness and inferiority.

Now, the Senator from Arkansas indicated that we have a credible deterrent. Well, the Senator from South Carolina has just pointed out that our top officials in the military do not think we have a credible deterrent, and while we are precluded on this floor from going into specifics, I think it is fair to say that if the American people knew the kind of disadvantage we are placing our troops in and our people in, they would be seriously outraged about the imbalance and the inequity of the situation.

So, Mr. President, when we talk about safety, if anyone is really concerned about safety, then we should vote in favor of the Jackson proposal and not against it. As a matter of fact, our situation is such that the current chemical weaponry we have is deteriorating at such a pace and under such circumstances that the Navy will not even take it aboard. What we should be concerned about is producing safer chemical weapons and not simply stockpiling or continuing to stockpile the ones in existence now.

So the Senator from Washington makes a good point. If safety is your principal objection to this matter or to this measure, then you ought to be supporting a resolution to destroy or get rid of the current stockpile and modernize it consistent with the Senator's objectives.

I would simply say, in closing, Mr. President, that if we are going to have a serious negotiation to arrive at a fair and balanced treaty, we have to do so from a position of at least equality, and that equality currently does not exist.

We found with our allies—and I find it ironic that now the administration is suggesting we have not had time to consult with our allies—this issue has been bounced around for the past 4 years, and now we are told we have not had time to consult with our allies. We found when our allies made the decision to modernize their theater nuclear weapons systems, only then did the Soviet Union express interest in conducting negotiations to limit their expansion.

I would suggest to my colleagues that the same thing applies here, that the only time we are going to be able to achieve a balanced and equitable treaty is if we have a balanced and equitable capability of inflicting the same kind of damage they can inflict.

So I hope the measure that has been offered as a substitute of Senator JACKSON's amendment will be defeated and that we will reaffirm the vote that was taken just yesterday, and that we move forward, not to actually increase our deterrent—because this will not increase our deterrent capability—but toward acquiring the facilities that will produce that deterrent, should it be necessary.

It may reduce that—I hate to use the phrase—window of vulnerability that we talked about in our strategic weapons. The same window of vulnerability exists now. It is a bay window. We may be able to reduce it by 1 or 2 years if we do it now. But to simply put it off until next March for another study or another report will just delay it even further.

Mr. President, I would reject the attempt to modify the amendment of the Senator from Washington.

Mr. JACKSON. Mr. President, I want to commend the Senator from Maine for his excellent statement. I think he summarized all of the arguments very well.

It is clear we are addressing here two fundamental problems: One, to make our present stockpile safer in the handling of those munitions; and two, to have a credible force so that we can reach an agreement, with the Soviets, that will be verifiable and hopefully one which will outlaw entirely these hasty, chemical weapons.

I think the Senator from Maine made

an excellent contribution when he referred to the expert comment of Ambassador Toon regarding the attitude of the Soviet Union during this period.

Clearly if we turn back the vote of yesterday when we, by a good majority, on final passage approved the amendment, then we are sending a signal which can only make the Soviets more contemptuous of the United States and increase their arrogance.

I say that in approving our amendment, our bipartisan amendment, we will be sending the right signal. This signal is, "Let us get on with negotiations, and if you do not, we are prepared to have a credible deterrent to prevent you from ever seeking to use chemical weapons against us or our allies."

I yield to the Senator from Georgia.

Mr. NUNN. Mr. President, I will not delay this matter but for just 1 minute. I do not think anything is clearer in all of the military analyses that have been ongoing regarding NATO in the last 5 to 10 years than that we have a monumental deficiency in chemical weapons, both as far as offense and as far as defense are concerned. There is nothing clearer than that.

It is also clear that this matter has been studied and studied and studied and studied by military people both in the United States and in NATO.

We do not need any more military studies to tell us what everyone who has looked at this with any degree of objectivity already knows.

My third point is that it should be abundantly clear that unilateral restraint in this area, contrary to testimony we have had from administration officials in terms of their hopes and expectations back in 1977, contrary to those expectations, unilateral restraint has not worked. There is absolutely no indication or evidence that I know of whatsoever that unilateral restraint in this area is going to produce any kind of agreement, any kind of meaningful, substantive, verifiable, and equitable agreement.

I think that—the final point I would like to make to those who are most fervent in their belief—and I know there are people on both sides of this question who are fervent in their belief, and I am one of them—we should do everything possible to outlaw chemical warfare forever; to those who really believe that, it should be abundantly clear from history that the only way we are going to be able to do that is to demonstrate to the Soviet Union that in the absence of such an agreement they will not be in a posture of total, complete or even substantial dominance with their own chemical weapons by the default of the United States and NATO.

So I believe that those who want an agreement should be the most enthusiastic in support of the Jackson amendment.

I thank the Senator from Washington and the Senator from Virginia for their leadership in this area. I think it is an important area that has been neglected for too long. I am proud to be a cosponsor of the amendment, and I urge the Senate to support the Jackson amendment and to oppose those amendments that would delay the beginning—and this is only the beginning—of what is going to take a long time to correct, and that is a very significant military deficiency.

Mr. JACKSON. I thank the Senator from Georgia for an excellent statement. He has been tremendously helpful in the committee and on the floor in this very important debate.

As I indicated, Mr. President, I will be offering a motion to table, right after the Senator from Arkansas has had a chance to make a statement. I yield to him for that purpose.

Mr. PRYOR. I thank the Senator from Washington for yielding to me.

Mr. President, in conclusion, my perfecting amendment to the Jackson amendment does not kill this program. It does not say that we are going to be weak. It does not say we trust the Russians. It does not say we are not going to have chemical weapons.

My amendment simply says if we reverse this policy, let us do so only after we have the facts. Today we do not have the facts. We have assumptions, we have allegations, we have innuendo, we have a few articles, we have an absolute void of testimony before the proper committees in the U.S. Senate and before the Senate itself.

We will be casting our vote in the dark, Mr. President, if we cast our vote now, prematurely before we have the benefit of the ongoing study that would be completed and reported to the Congress of the United States. That, Mr. President, is what my amendment does. It is saying "Let us wait 5 months until this report is given to the Senate and to the other body," so that we can legislate in wisdom. This major decision that will have global implications should be based upon facts and the most thorough assessment of all military foreign policy, and arms control factors.

Mr. JACKSON. Mr. President, I move to table the Pryor amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table offered by the Senator from Washington. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ZORINSKY (when his name was called). Mr. President, on this vote I have a live pair with the Senator from Delaware (Mr. BIDEN). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Hampshire (Mr. DURKIN), the Senator from Colorado (Mr. HART), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Tennessee (Mr. SASSER), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Colorado (Mr. HART) would vote "nay."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator frc Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 49, nays 38, as follows:

[Rollcall Vote No. 419 Leg.]

YEAS—49

Armstrong	Hatch	Melcher
Baker	Hayakawa	Morgan
Bellmon	Heflin	Moynihan
Bentsen	Heins	Nunn
Boschwitz	Helms	Pell
Byrd, Harry F., Jr.	Hollings	Pressler
Byrd, Robert C.	Humphrey	Ribicoff
Cannon	Inouye	Roth
Chiles	Jackson	Schmitt
Cohen	Javits	Schweiker
DeConcini	Jepsen	Stennis
Dole	Johnston	Stevens
Domenici	Laxalt	Thurmond
Exon	Long	Wallop
Ford	Lugar	Warner
Glenn	Magnuson	Young
	McClure	

NAYS—38

Baucus	Eagleton	Packwood
Bayh	Gravel	Percy
Boren	Hatfield	Proxmire
Bradley	Huddleston	Pryor
Bumpers	Kassebaum	Randolph
Burdick	Kennedy	Riegle
Chafee	Leahy	Sarbanes
Church	Levin	Simpson
Cochran	Mathias	Stevenson
Cranston	Matsunaga	Tsongas
Culver	Metzenbaum	Weicker
Danforth	Mitchell	Williams
Durenberger	Nelson	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Zorinsky, for.

NOT VOTING—12

Biden	Hart	Stewart
Durkin	McGovern	Stone
Garn	Sasser	Talmadge
Goldwater	Stafford	Tower

So the motion to lay on the table Mr. PRYOR's amendment (UP No. 1594) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. JACKSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on agreeing to the amendment offered by the Senator from Washington.

The amendment (UP No. 1593) was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HUDDLESTON. Mr. President, for the benefit of the Members, I would like to note that our bill now is at the point where only three or four amendments remain to be offered. I think we can accept these amendments without the necessity of rollcall votes. That should bring us to passage about 6 p.m.—not later than 6. Personally, I have not requested the yeas and nays on passage, but I understand that the request will be made. As a matter of fact, I understand it is certain to be made, so I will make the request in order to have it understood.

I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further amendment?

Mr. HUDDLESTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1595

(Purpose: To provide funds for construction of small arms firing range at Malmstrom Air Force Base)

Mr. MELCHER. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 1595.

Mr. MELCHER. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 3, strike: "$812,230,000" and insert in lieu thereof, "$812,970,000".

Mr. MELCHER. Mr. President, the amendment I am offering adds $740,000 to the fiscal year 1981 amount for military construction in the Air Force for construction of a small arms firing range at Malmstrom Air Force Base in Montana. Originally the project was set for construction in fiscal 1983. However, the military construction authorization bill, which the Senate passed yesterday contained my amendment authorizing the project in fiscal 1981.

As I look through the report on this appropriations bill I come to the section marked "Military Construction Program by State." On page 68 of that report, the State on the top of the page is Missouri. The next State listed is Nebraska. Montana is not there. In this entire military construction funding bill, not 1 cent for construction is assigned to Montana. That is especially sad when you consider that Malmstrom Air Force Base, one of the keystones in our strategic missile defenses, is in need—clear need—of a firing range in order to augment base security.

The project is for $740,000 to construct a 2,000-square-foot building, four classrooms, office space for nine instructors, paving, utilities, construction of M-60 machinegun and shotgun ranges, and modification of existing M-16 and 0.38 caliber pistol ranges. Separate arrangements would be made for grenade launchers.

More than 6,000 people a year need to qualify on some or all of these weapons.

The following list shows the number of people who must receive training in arms use:

1. Annual 341st Strategic Missile Wing and 24th NORAD Training requirements:

M-16	
Security Police Group	2,085
Maintenance (MB)	144
WARSKILL—Wartime Augmentee	50
Prime BEEF (Mobility Force)	210
Prime RIBS (Mobility Force)	30
Communications Squadron	54
Permanent Change of Station	300
Addition for Failure Rate of 1.5%	43
Total	2,916
.38 Pistol	
SPG	630
MB	239
Operations (DO)	303
WARSKILL (Wartime Augmentee)	50
Prime BEEF (Mobility Force)	25
Helicopter Crews	15
Addition for Failure Rate of 1.5%	13
Total	1,272
Shotgun	
SPG	12
MB	436
Addition for 1.5% Failure Rate	4
Total	452
M-60 Machine Gun	
SPC (450 twice/year)	900
40mm Grenade Launcher (450 twice/year)	900
Total Annual 341st SMW and NORAD Range Training Requirement	6,640

2. Annual Montana Air National Guard Training Requirements (MANG provides its own instructors):

M-16	
Security Policy (SP)	132
SP Augmentees and Mobility Force	85
Total	217
38 Caliber Pistol	
SP	88
SP Augmentees and Aircrews	55
Total	143
Total Annual MANG Range Training Requirements	360

Mr. President, this is not just a routine activity. Most of the personnel receiving training on these weapons are responsible for the security of missile silos and command centers or other high security areas. They must protect these important military installations during inspection, maintenance, and at times of emergency. Under current conditions the Wing Commander must waive small arms proficiency requirements for an average of 600 security personnel each year. These waivers are required for up to 3 to 4 months in some cases because of of the lack of a year-round small-arms training facility. I have no doubt that these security personnel are well-trained and competent; however, it makes no sense to me that they should be deprived of training in this critical skill. This flies directly in the face of Congress' mandate that we upgrade the quality of training of our military personnel.

Of equal importance is the waste of tax dollars that will result from delaying this project.

Currently, training is conducted at a range in Helena, Mont., almost 100 miles from Malmstrom. The expense involved in holding these training sessions in Helena rather than at Malmstrom amounts to $10,000 per session for transportation and approximately $4,000 per session for per diem costs. These unnecessary costs amount to $28,000 per year. Further, it takes three times as long for personnel to qualify at Helena as it would if there were an all-weather range at Malmstrom, resulting in the waste of 800 man-days. Finally, the $740,000 cost estimate for the firing range is in 1981 dollars; if it is delayed another 2 or 3 years, we know well from past experience that the cost will escalate and the taxpayer will be the loser.

These weapons training requirements are vital to Malmstrom Air Force Base. Security is a major aspect of the maintenance of a missile complex. The task of maintaining proficiency in weapons use becomes increasingly difficult with inadequate facilities. We have the opportunity to take a definite step toward upgrading the ability of the 341st Strategic Missile Wing to fulfill its mission.

Mr. President, this amendment conforms with the amendment I offered yesterday to the authorization bill which will provide $740,000 in fiscal year 1981 for military construction at Malmstrom Air Force Base for a target range that is absolutely essential.

Mr. President, I hope the managers of the bill can accept it.

Mr. HUDDLESTON. Mr. President, we have examined this amendment. On this side, we are prepared to accept it.

Mr. LAXALT. The minority has no objection, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1595) was agreed to.

Mr. MELCHER. I move to reconsider the vote by which the amendment was agreed to.

Mr. HUDDLESTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1596

(Purpose: To increase appropriations for Ellsworth Air Force Base, South Dakota)

Mr. HUDDLESTON. Mr. President, I send to the desk an amendment. This amendment is submitted on behalf of the Senator from South Dakota (Mr. MCGOVERN).

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON), for Mr. MCGOVERN, proposes an unprinted amendment numbered 1596:

On page 4, line 3, strike out "$812,970,000" and insert in lieu thereof "$816,130,000".

The PRESIDING OFFICER. If the Senator from Kentucky will permit the Chair to say, this amendment would only be in order by unanimous consent. It

amends a part of the bill already amended.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent it be in order to consider this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUDDLESTON. Mr. President, this provides for construction of a new dining facility at Ellsworth Air Force Base in Rapid City, S. Dak. The cost of the new facility is $3.16 million.

Mr. President, I ask unanimous consent that a statement on behalf of Senator McGOVERN be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR McGOVERN

This amendment would fund construction of a new dining facility at Ellsworth Air Force Base in Rapid City, South Dakota.

The cost of the new facility is $3,160,000.

Since the new facility had not been authorized prior to consideration by the Appropriations Committee of the Military Construction Appropriations bill (H.R. 7592), this amendment is necessary to appropriate the funds required for the dining facility.

The project is needed to improve morale at the base. The exodus of experienced personnel is a major problem for the armed services. While pay raises are necessary to stem this flow, improvements in the living conditions of our personnel are also critically important. Senator McGovern learned from his inspection trips to Ellsworth that the men and women regard a new dining hall as a high priority.

The second reason is cost-effectiveness. The current dining hall was built in 1952. It is classified as a Code 3 structure, which means that it is deteriorating structurally and requires excessive amounts of repair funds to keep it operating. This drains repair funds away from other needy projects and contributes to the overall decline in real property standards. Replacing the Korean War-era structure with a modern new hall will save repair funds over the long run and help preserve other base structures.

The third reason is safety. The old dining hall is a wooden structure almost 30 years old. It is a fire hazard which endangers the lives of the Ellsworth personnel.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Kentucky on behalf of the Senator from South Dakota.

The amendment (UP No. 1596) was agreed to.

Mr. HUDDLESTON. I move to reconsider the vote by which the amendment was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1597

(Purpose: To provide funds for a launcher laboratory at the Naval Underwater Systems Center, Newport, R.I.)

Mr. PELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL), for himself and Mr. CHAFEE, proposes an unprinted amendment numbered 1597.

Mr. PELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 6, strike out "$680,323,000" and insert in lieu thereof "$684,673,000".

Mr. PELL. Mr. President, my amendment would increase the total appropriation for Navy construction by $4.35 million, to provide for the construction of a launcher laboratory at the Naval Underwater Systems Center, in Newport, R.I. This project was authorized by the Senate yesterday as part of H.R. 7301, and is cosponsored by my colleague, Senator CHAFEE. Submarine weapons research, to increase the firepower and effectiveness of weapon launching systems, is of tremendous importance to the Navy. Planning for this launcher laboratory has been underway for a number of years, and it is high on the Navy's unfunded priority list. This item was dropped from the administration's budget submission at the very last minute, but I strongly believe that this launcher laboratory should go forward in 1981.

Since this project is not included in the House bill, I very much hope the managers of the bill will accept my amendment so that we can seek the disposition of our House colleagues on this item.

Mr. CHAFEE. Mr. President, I join my colleague and good friend, the senior Senator from Rhode Island, in support of our amendment to the military construction appropriation bill for 1981.

I commend the Senator for the lead he has taken on this. I am delighted that it appears the Appropriations Committee will accept it.

Mr. President, I am pleased to join my colleague and good friend, the senior Senator from Rhode Island, Senator PELL, to support our amendment to the military construction appropriations bill for 1981.

Mr. President, last month Melvin Laird, former Secretary of Defense, with whom I served as Secretary of the Navy, published an article in the Reader's Digest titled "Should Our Missile Force Go To Sea?" In this article, former Secretary Laird asks the very pertinent and perceptive question:

How can we best deploy an MX force against the new realities of the Soviets' strategic strength, against the accuracy and firepower they can now bring to bear against our land-based missiles?

Secretary Laird's response to this question, is "The answer may lie at sea."

I concur with Secretary Laird that the theoretical case for a sea-based ICBM force is compelling, and I would suggest we are well advised to maintain and improve any facilities we may now have that will assist in the further development of such capabilities.

Mr. HUDDLESTON. Mr. President, we have examined the amendment submitted by the distinguished Senator from Rhode Island. We have no objection to it.

Mr. LAXALT. Mr. President, the minority has no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island (Mr. PELL).

The amendment (UP No. 1597) was agreed to.

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1598

(Purpose: To provide funds for an aircraft maintenance hangar shop addition at Fort Riley, Kans.)

Mrs. KASSEBAUM. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Kansas (Mrs. KASSEBAUM), for herself and Mr. DOLE, proposes an unprinted amendment numbered 1598.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 7, strike out $869,130,000 and insert in lieu thereof $870,020,000.

The PRESIDING OFFICER. The Chair states to the Senator from Kansas that because it amends a section of the bill already amended, it would require unanimous consent to be considered.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that it be in order to consider the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Mr. President, this is an amendment that would provide assistance for a maintenance hangar at Fort Riley, which has been given top priority by the Army, rated 100 percent as far as completion in the markup staff and ready to put on contract in fiscal year 1981.

We feel it is of great importance to the furtherance of upgrading the defense preparedness at Fort Riley and feel, also, because it is included in the authorizing bills in both the House and the Senate that it is an amendment of merit.

Mr. DOLE. Mr. President, I rise in support of the amendments to be offered by my distinguished colleague from Kansas, Senator KASSEBAUM, which will address some very important matters in Fort Riley and Fort Leavenworth, Kans.

Mr. President, as you know, both of these military bases represent a significant portion of our national defense and it is important that we maintain them in an effective operational status. The amendments that we are offering today will contribute significantly to this readiness.

Mr. President, the first amendment will add $890,000 to the amount appropriated for the Department of the Army for the construction of an aircraft hangar maintenance shop at Fort Riley.

Language authorizing this project is

contained in both House and Senate authorization bills, and was included in the Department of Defense's original budget request.

Very simply, Mr. President, without this new hangar the facilities at Marshall Army Airfield, Fort Riley, will be inadequate to effectively maintain aircraft readiness when the provisional aviation battalion is activated in fiscal year 1981 as a regular unit.

Mr. President, I am pleased to note that the committee has agreed to accept this amendment.

While the following three amendments will not be accepted by the committee, I, nevertheless, would like to comment on their worthiness.

FORT LEAVENWORTH HOSPITAL

The second amendment, Mr. President, requests $9,900,000 be added to the amount appropriated for the Department of the Army for upgrading the hospital at Fort Leavenworth.

Again, the justification for this amendment is quite obvious. The purpose of this amendment is to bring this hospital up the current life safety standards and codes established by the National Fire Protection Association, the Joint Committee on Accreditation of Hospitals, the National Electric Code and OSHA. It is also important to note that since the recent closing of the Richard-Gabaur Air Force Base and its hospital, the medical care demands on Fort Leavenworth's hospital has increased significantly.

DENTAL CLINIC

This amendment will authorize $1,250,000 for much needed improvements of the dental clinic at Fort Leavenworth, Kans. This request, which is identical to that submitted by the Department of Defense, will be used to replace 12 inadequate dental treatment rooms with only 8 new rooms.

Last year, the Department of Defense requested funding for 12 new treatment rooms, four of which would accommodate dependent dental care. The committee rejected this request because it felt these dependent facilities were not justified. This year the request reflects the wishes of the committee.

The fourth amendment requests addition of $6,500,000 to the amount appropriated for the Department of the Army for an administrative building renovation at Fort Leavenworth.

This amendment will help to renovate and create approximately 300 administrative offices and some conference rooms.

Some concern has been expressed that the cost of renovation may exceed the cost of constructing a new building. While this may be true, I would note that this building is located in the historical district of Fort Leavenworth and the renovation plans carry out the mandate of Executive Order 11593 protection and enhancement of the cultural environment which requires Federal agencies to initiate measures and procedures to provide for the maintenance through preservation, rehabilitation, or restoration, of federally owned and registered sites.

Mr. President, these amendments are important if we are to maintain an effective and combat ready organization. I urge the conference committees on the military construction authorization and appropriation to adopt these important measures.

Mr. HUDDLESTON. Mr. President, we have examined the amendment.

The Senator from Kansas knows how it is to strike the heart of the floor manager of the bill, because this happens to be a project at the military installation where I conducted my basic training and induction into the service some several years ago.

Mr. President, we have no objection to this amendment.

Mr. LAXALT. Mr. President, the minority has no objection whatsoever.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas.

The amendment (UP No. 1598) was agreed to.

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1599

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 1599:

At the appropriate place insert the following new section:

No part of the funds appropriated in this Act may be used for the purchase of foreign steel for the construction of the shelters or bases of the proposed MX missile system.

Mr. HATCH. Mr. President, for the past several years we have seen the balance of payments of this Nation fall further and further in the red. With the additional cost of imported oil, added to the greater number of imported automobiles, we have become a nation deeply in debt.

One of the areas of industry that has been hardest hit by this influx of foreign products has been the American steel industry. Within the past year we have witnessed several steel plants closed by the parent companies, only to have the results being larger numbers of Americans, men and women who want to work and have a tradition of working, swelling the ranks of the unemployed. This situation is intolerable and we in the leadership of the Nation should make every effort to insure that we do not contribute to the problem.

This particular bill contains some of the initial money for the planning of the future deployment of the MX missile. I am familiar with this issue, as can be well imagined, for it is in my State that a large part of this system is proposed to be deployed. The construction of this system will require a large amount of material, including a great deal of steel. I have seen estimates that as much as 1 million metric tons of steel will go into the construction of the MX and its shelters. This is by any consideration a large amount of steel. It is also my feeling that this should be American steel.

I believe that the trigger price mechanism has not worked adequately. I believe our American steel manufacturers can compete with any in the world. But I think because of the failure to enforce antidumping statutes, that our people have been bereft of protections they deserve.

I am against protectionist legislation. But, on the other hand, I believe this particular amendment is a worthwhile one. The amendment that I offer is a simple one. It is one that I hope every member of this body will support, for it means employment for American workers.

I urge my colleagues to support this amendment, which reads as follows:

No part of the funds appropriated in this Act may be used for the purchase of foreign steel for the construction of the shelters or bases of the proposed MX missile system.

Mr. HUDDLESTON. Mr. President, throughout the consideration of this entire matter of the MX and its basing, we have had the benefit of the counsel of the ranking member of the subcommittee, the distinguished Senator from Nevada (Mr. LAXALT) and the distinguished Senator from Utah (Mr. GARN), who serves on the full committee.

We did provide in our report that local contractors—that is, contractors in the States of Nevada and Utah—should have ready access to work on the MX on the basis of merit and that procedures be taken to insure that they had such access.

Mr. HATCH. We are very grateful for the wonderful work done by the distinguished Senator from Kentucky in these particular areas, because our people in our States are very upset and concerned about the impact of this. I congratulate him and thank him for considering our States.

Mr. HUDDLESTON. I thank the Senator from Utah.

I believe that the addition the Senator is offering here, which would prohibit foreign steel from being used in this construction, is very valid. There would be something ironic about our building up our strategic defense with foreign steel. I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Utah (Mr. HATCH).

The amendment (UP No. 1599) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. I thank my colleagues.

NEEDED FUNDING FOR FORT DRUM

Mr. JAVITS. Mr. President, I have noticed in this military construction appropriation measure that we are con-

sidering now that the Senate version does not contain $4.25 million which the House of Representatives recommends for use at Fort Drum in New York for the purpose of starting the process of construction for some very badly needed new barracks. For the first time in many years, some active Army forces, an engineers battalion, are being assigned to Fort Drum. The present barracks there are World War II vintage. New ones are needed, and, indeed, construction on some has already started. However, the present construction plan is not large enough for the troops to be assigned to Fort Drum, and funding has to be provided now to have enough new barracks built by the time that the full engineers battalion will be at Fort Drum. Therefore, Mr. President, I believe that the House has acted properly and wisely on this matter, and I hope the Senate will closely listen to the House arguments on this issue when this bill goes to conference.

We were in the same position with respect to the military construction authorization bill on this issue yesterday. Accordingly, I wrote to the chairman and ranking minority member of the Military Construction Subcommittee of the Senate Armed Services Committee urging the same action I am urging here today. I am very hopeful that the result from the military construction authorization conference will be a positive one and that the appropriations conferees will act similarly.

FORT DRUM

Mr. MOYNIHAN. Mr. President, I seek consideration by the body of a small but worthwhile project at Fort Drum in New York: The construction of a barracks to house an engineer battalion that is to be stationed there. For a number of reasons, including a late decision by the Army to deploy this unit at Ford Drum, this item was not included in the authorization bill passed by the Senate yesterday, but I am hopeful that our conferees will understand the merits of this project and agree to the appropriation of $4.25 million as passed already by the House.

This redeployment has been made necessary by increasing use of Fort Drum by active Army units for winter exercises, in addition to use of the fort facilities by over-80,000 Reserve component soldiers for their annual 2-week training. The battalion will be responsible for the maintenance of roads and ranges on a year-round basis, and are to be housed in a pair of barracks, one of which has already been completed. This first building will make possible the stationing of a single company of engineers at Fort Drum, but unless the second barracks is funded now, the assignment of men to this post will be interrupted.

Mr. President, the inflation of construction costs is always an argument of sorts for completing projects like this one early. In this instance, there is an additional, and more compelling reason for moving ahead quickly. The construction of the first barracks offers us a contractor, equipment, and work crew on the scene at Fort Drum, ready to continue work on the second facility. This should make a very favorable bid possible, and would complete the project at significantly lower cost than would be possible with a delay in the work.

The only alternative to a new barracks for this unit would be to house the men in temporary barracks erected during World War II—intended to be temporary, that is, almost 40 years ago. These lack insulation, lack adequate plumbing, even lack rooms. Fortunately, we have the opportunity to prevent such hardship housing arrangements—and, for once, at a real savings. I hope that the advantages of including this project in the fiscal year 1981 budget will be recognized in the upcoming conference.

MILITARY CONSTRUCTION APPROPRIATIONS

Mr. ROBERT C. BYRD. Mr. President, I wish to thank the distinguished Senator from Kentucky, Mr. HUDDLESTON, for his contribution as floor manager of the fiscal year 1981 military construction appropriations bill. I also wish to extend the gratitude of the Senate to the minority floor manager of the bill, the distinguished Senator from Nevada (Mr. LAXALT).

This legislation is complex and extremely important. One measure of a society's greatness is reflected in how well it maintains its physical structures—its buildings, highways, towns, and cities. This principle also is true with regard to a nation's military programs. One measure of the strength of a nation's defenses is the level of maintenance given to that nation's military bases and ports; to its military buildings and training facilities; and to the other structures that form the foundation for military programs.

This bill meets that standard and that need. It contains our next installment toward a 5-year NATO military construction program. It contains funds for construction of test facilities for the MX missile, the mainstay of the land-based leg of our strategic triad in the future. It contains construction funds for the space shuttle program, which may be of enormous military significance. And it contains construction funds for other military facilities throughout our Nation and around the world.

This legislation represents months of work by the Military Construction Appropriations Subcommittee, chaired by the able Senator from Kentucky, Mr. HUDDLESTON. He skillfully and fairly managed the bill, and with the help of the ranking minority member of the subcommittee, Mr. LAXALT, the issues in the bill were resolved, and the deliberations of the Senate were carried to a successful conclusion.

These two Senators, and the other members of the subcommittee, and the chairman and ranking minority member of the Appropriations Committee, have the gratitude of the Senate and of the Nation for a job well done.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

(Disturbance in the Visitors' Galleries.)

Mr. ROBERT C. BYRD. Mr. President, may we have order in the gallery?

The PRESIDING OFFICER (Mr. METZENBAUM). The Senate will suspend until the Sergeant-at-Arms has restored order in the gallery. After the Sergeant-at-Arms has restored order the Senate proceedings will continue.

The Senate is in order, and the clerk will proceed.

The legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Colorado (Mr. HART), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Tennessee (Mr. SASSER), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. DURKIN), and the Senator from North Carolina (Mr. MORGAN) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 84, nays 3, as follows:

[Rollcall Vote No. 420 Leg.]

YEAS—84

Armstrong	Ford	Moynihan
Baker	Glenn	Nelson
Baucus	Hatch	Nunn
Bayh	Hayakawa	Packwood
Belmon	Hefiin	Pell
Bentsen	Heins	Percy
Boren	Helms	Pressler
Boschwitz	Hollings	Pryor
Bradley	Huddleston	Randolph
Bumpers	Humphrey	Ribicoff
Burdick	Inouye	Riegle
Byrd, Harry F., Jr.	Jackson	Roth
Byrd, Robert C.	Javits	Sarbanes
Cannon	Jensen	Schmitt
Chafee	Johnston	Schweiker
Chiles	Kassebaum	Simpson
Church	Kennedy	Stennis
Cochran	Laxalt	Stevens
Cohen	Leahy	Stevenson
Cranston	Levin	Talmadge
Culver	Long	Thurmond
Danforth	Lugar	Wallop
DeConcini	Magnuson	Warner
Dole	Mathias	Weicker
Domenici	Matsunaga	Williams
Durenberger	McClure	Young
Eagleton	Melcher	Zorinsky
Exon	Metzenbaum	
	Mitchell	

NAYS—3

Hatfield	Proxmire	Tsongas

NOT VOTING—13

Biden	Hart	Stewart
Durkin	McGovern	Stone
Garn	Morgan	Tower
Goldwater	Sasser	
Gravel	Stafford	

So the bill (H.R. 7592) was passed.

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HUDDLESTON. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. HUDDLESTON, Mr. JOHNSTON, Mr. INOUYE, Mr. SASSER, Mr. LAXALT, Mr. STEVENS, Mr. MAGNUSON, and Mr. YOUNG conferees on the part of the Senate.

Mr. HUDDLESTON. Mr. President, I just want to take a minute to express my appreciation to the staff who have worked so diligently to prepare this legislation, on the majority side the subcommittee staff director, Carolyn Fuller, and her assistant, Dorothy Douglas; and Rick Pierce on the minority side.

Again, I thank our ranking minority member, the Senator from Nevada (Mr. LAXALT) for helping put together what was a somewhat unusual military construction bill this year.

We had significant budget amendments submitted in March modifying the January request. We had the Indian Ocean/Persian Gulf situation develop. That policy is still in an evolving stage, and we have had to deal with a number of issues associated with U.S. policy there.

There was, of course, the MX missile request which included test facilities and raised many important questions relating to the basing site and mode. We also had the Space Shuttle, which as I mentioned in my opening statement, has significant military applications. And, finally, we had to work within budget constraints.

So I think everybody made a significant effort to contribute to the final product.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1981

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will now proceed to the consideration of H.R. 7831, which the clerk will state by title.

The assistant legislative clerk read as follows:

Calendar 1017. H.R. 7831, an act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WEST VALLEY DEMONSTRATION PROJECT ACT

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2443.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2443) entitled "An Act to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. This Act may be cited as the "West Valley Demonstration Project Act".

SEC. 2. (a) The Secretary shall carry out in accordance with this Act, a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities:

(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solidification.

(2) The Secretary shall develop containers suitable for the permanent disposal of the high level radioactive waste solidified at the Center.

(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal.

(4) The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of high level radioactive waste under the project.

(5) The Secretary shall decontaminate and decommission—

(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

(B) the facilities used in the solidification of the waste, and

(C) any material and hardware used in connection with the project,

in accordance with such requirements as the Commission may prescribe.

(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

(2) The Secretary shall consider the various technologies available for the solidification and handling of high level radioactive waste taking into account the unique characteristics of such waste at the Center.

(3) The Secretary shall—

(A) undertake detailed engineering and cost estimates for the project,

(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques,

(C) conduct appropriate safety analyses of the project, and

(D) prepare required environmental impact analyses of the project.

(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 under which the State will carry out the following:

(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

(B) The Secretary shall provide technical assistance in securing required license amendments.

(C) The State shall pay 10 per centum of the costs of the project, as determined by the Secretary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

(c) Within one year from the date of the enactment of this Act, the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project. The agreement shall provide for the following:

(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan, the Secretary shall publish a notice in the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secretary does not revise the plan to meet objections specified in the comments of the Commission, the Secretary shall publish in the Federal Register a detailed statement for not so revising the plan.

(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

(3) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger to the public health

and safety which may be presented by the project.

(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, and the commercial operator of the Center.

SEC. 3. (a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

SEC. 4. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

SEC. 5. (a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. This Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

SEC. 6. For purposes of this Act:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "State" means the State of New York.

(4) The term "high level radioactive waste" means the high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high level radioactive waste for purposes of protecting the public health and safety.

(5) The term "transuranic waste" means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

(6) The term "low level radioactive waste" means radioactive waste not classified as high level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(7) The term "project" means the project prescribed by section 2(a).

(8) The term "Center" means the Western New York Service Center in West Valley, New York.

Mr. JACKSON. Mr. President, the House has recently adopted an amendment in the nature of a substitute for the text of the act S. 2443. It is important that this legislation be enacted in this Congress so that the nuclear waste stored at the Western New York Service Center in West Valley, N.Y., can be processed into a form suitable for permanent disposal. I, nonetheless, feel that the House-passed version of S. 2443 contains deficiencies which must necessarily be corrected in order to achieve enactment of a workable bill. The Senate-passed version of S. 2443 contained, under the provision for a cooperative agreement with the State of New York, a requirement that the Department of Energy be party to the licensing amendment which will be required in order to conduct the project. I believe that reinserting this provision will insure that the interests of the Federal Government, which will bear 90 percent of the cost of the project, will be protected.

A further amendment is required to section 2(c) of the act in order to clarify the status of the Secretary's activities with respect to the Nuclear Regulatory Commission's responsibilities. The proviso which is proposed to be added to section 2(c) makes it clear that the review and consultation by the Nuclear Regulatory Commission will be performed on an informal basis and not require formal procedures or actions by the Commissioners themselves. This approach is in full keeping with the longstanding tradition of informal review by the nuclear regulators of Federal Government nuclear activities not intended to result in commercial activity.

In this process the Department of Energy provides full technical information to the staff of the Nuclear Regulatory Commission. This information is carefully reviewed, critiqued, and analyzed to insure that the project is conducted with standards fully equivalent to those imposed on licensed activities. The Commission communicates its concerns back to the Department of Energy, and the Department of Energy acts to resolve the concerns by providing further technical information or by making modifications in the facilities.

With these changes, I believe the bill will provide the full opportunity for the Department of Energy and the State of New York to move quickly forward to establish a project for the safe processing of the high-level nuclear waste stored at the West Valley site. I wish to commend Senators MOYNIHAN and JAVITS for their leadership in this bill and the Members of the New York delegation in the House of Representatives.

An editorial published in today's New York Daily News aptly summarizes the process, except that the editors were remiss in not including New York's distinguished senior Senator, Senator JAVITS who, as the bill's cosponsor has worked intensively with me, with my distinguished colleague Senator MCCLURE and with all those involved in the West Valley bill and deserves recognition as do his colleagues. Indeed, New York's two Senators, its Governor, and certainly West Valley's Congressman STAN LUNDINE have aptly represented the State's and the Nation's concern that these stored wastes be safely and swiftly disposed.

I hope the House of Representatives will accept the amendments to the bill without asking for a conference to resolve these differences. With the shortness of time and the need for beginning action in the fiscal year 1981, I hope that we can send the bill to the President in the next few days.

Mr. MOYNIHAN. Mr. President, today the Senate will act on the West Valley nuclear waste solidification bill—S. 2443—setting in motion a technological enterprise which is so vital to our basic education in managing nuclear waste. Senate passage of the West Valley bill—nearly identical to the version it passed on June 12, 1980—marks the first time in 4 years that the Senate and House of Representatives have agreed on the nature of the Federal role in the project. It has not been easy.

West Valley is the site of this Nation's only commercial nuclear fuel reprocessing plant. Over 75 percent of the high-level waste at West Valley is from Federal facilities or commercial reactors under contract with the former Atomic Energy Commission. The high level wastes at West Valley are the only such wastes in the United States that are not managed by the Federal Government. New York State does not belong in the nuclear waste business. It is important that the facility be under the care and management of the Department of Energy which possesses the necessary technical resources to oversee the solidification and safe removal of the wastes.

On March 8, 1977, the GAO recommended that the Nuclear Regulatory Commission develop criteria for handling the waste and decommissioning the site. The GAO report also recommended that the NRC and the Department of Energy develop a policy of Federal assistance to New York for the site. On March 15, 1978, the DOE Task Force for Review of Nuclear Waste Management stated that "DOE should accept responsibility for the high level waste at West Valley."

Over a year later, Secretary James Schlesinger wrote to Governor Hugh Carey expressing DOE's willingness to accept overall management responsibility and bear a portion of the costs of a program of high-level liquid waste solidification, storage, transfer to a Federal repository for solidified wastes, and decommissioning of all facilities associated with these activities. As recently as September 21, 1979, Secretary Duncan wrote to Governor Carey expressing his desire to reach a final agreement on arrangements for beginning the waste solidification project at West Valley. However, the

Department of Energy cannot proceed on the project without the proper authorization. That is the purpose of S. 2443.

The House has returned S. 2443 to the Senate with few changes of substance. For example, the consultative role of the Nuclear Regulatory Commission has been made more explicit in the House version of the bill. Language in other provisions of the bill has been tightened to leave little doubt of the intent of Congress to see this unique undertaking proceed in the most open and deliberate manner. No party's legal responsibilities are the lesser for this law.

I would be remiss if I failed to record at this time my profound gratitude to Dr. James Schlesinger, Dr. John Sawhill—soon to be chairman of the Synthetic Fuels Corporation—and Dr. Worth Bateman. These three gentlemen, in their unenviable position of running the Department of Energy past and present, have conscientiously negotiated with the State of New York, on behalf of the Federal Government. There were many complications associated with this project during these 4 years which I am sure gave them pause to consider another line of employment. Nonetheless, each stayed the course and for this each is to be commended.

It would not be an overstatement to suggest that Senator HENRY JACKSON is, in the end, the individual most responsible for the successful culmination of the West Valley legislation. His unwavering support and his generosity in lending the assistance of his staff have brought us to this day.

Mr. JAVITS. Mr. President, this is the third time the Senate has passed the legislation to clean up West Valley and we believe this final version of our bill will serve the interests of New Yorkers well. We have sent to the House for final passage a bill which makes the State of New York a partner with the Federal Government in a 10-year, $200 million project to solidify and dispose of the nuclear wastes which have threatened the health and wellbeing of New Yorkers in this rich farmland area on the outskirts of Buffalo.

It is high time, after the 4 long years that Senator MOYNIHAN, Congressman LUNDINE, and I have worked to enact such a program, that the United States assume its rightful responsibilities and clean up that waste and take it away from the highly populated area where it now lies. Further, I intend to see to it that, once enacted, this program goes forward without any further delay and I am certain that we can continue to count on the excellent support we have had from the Senate Energy Committee and particularly its distinguished chairman.

UP AMENDMENT NO. 1600

Mr. MOYNIHAN. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is the Senator moving to concur in the House amendments with an amendment?

Mr. MOYNIHAN. Mr. President, I will ask in a moment that the Senate concur in the House amendment with an amendment which I now send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an unprinted amendment numbered 1600.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 4, after line 23, insert the following:

(D) submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration;

On page 5, line 2, strike the period and insert the following: ": *Provided*, That review and consultation by the Commission pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other law."

Mr. JAVITS. Mr. President, I ask unanimous consent that my name be added to that amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I move that the Senate concur in the House amendment with the amendment I have sent to the desk.

The motion was agreed to.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to exceed 15 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE NEXT WEEK

Mr. ROBERT C. BYRD. Mr. President, this has been cleared with the Republican leader, and the acting Republican leader is here with me and can speak for himself.

I ask unanimous consent that on Monday the Senate proceed to the consideration of the State-Justice appropriation bill, provided the HUD appropriation bill has been disposed of by that time and provided that the Department of Transportation appropriation bill and the military construction appropriation bill have been disposed of by that time, but in any event that the State-Justice appropriation bill follow the disposition of the three aforementioned measures, with the further understanding that on Tuesday, of course, the nuclear fuels sale to India proceed as under the previous order and that the Senate then pick up on Wednesday with the disposition of any of the aforementioned appropriation bills and that following the State-Justice appropriation bill the Interior appropriation bill be taken up.

Mr. STEVENS. Mr. President, that has been agreed to.

The PRESIDING OFFICER. May the Chair inquire of the distinguished majority leader whether or not that means that the Tarapur sale of enriched uranium to India will follow State, Commerce, Justice if it has not been passed on Monday?

Mr. ROBERT C. BYRD. No. Under the pervious order, on Tuesday the Senate will come in at 9 o'clock, and following the two leaders and any orders for the recognition of Senators, the Senate is to proceed to the Tarapur matter, the disapproval resolution.

Mr. MCCLURE. Mr. President, reserving the right to object—and I do not intend to object—it is my understanding that the Interior Department appropriation bill will not come up before next Wednesday?

Mr. STEVENS. And will not occur before Tarapur.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. BUMPERS. Mr. President, reserving the right to object, I discussed the State, Justice, Commerce bill with Senator HOLLINGS a moment ago and told him that I cannot be here on Friday or Monday. I have a very important amendment which I think Senator HOLLINGS and I will be able to agree on. But in the event that we are not, would it be possible to defer final votes on that bill until after the sale to India resolution in order that I might offer the amendment if Senator HOLLINGS and I cannot agree?

Mr. ROBERT C. BYRD. Yes. It is agreeable—in order to protect the Senator from Arkansas (Mr. BUMPERS) on the amendment to the State, Justice, Commerce bill—to carry that amendment only and, of course, final passage, over beyond Monday. Am I understanding the Senator correctly?

Mr. BUMPERS. The Senator is correct.

Mr. ROBERT C. BYRD. So if State, Justice, Commerce appropriations was to reach the point where it was about to go to third reading on Monday, with no other amendments, the Senator would be protected and that bill would be put over until an appropriate time, consonant with the order entered, so as to give the Senator his opportunity to call up his amendment thereto.

Mr. BUMPERS. And the majority leader amends his request to make that specific?

Mr. ROBERT C. BYRD. Yes.

Mr. BUMPERS. I thank the majority leader very much.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER (Mr.

PRYOR). Without objection, it is so ordered.

OMNIBUS RECONCILIATION ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on the Budget be discharged from further consideration of H.R. 7765, the Omnibus Reconciliation Act of 1980 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the budget for the fiscal year 1981.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 7765 be amended by striking out all after the enacting clause and inserting in lieu thereof the texts of S. 2885 and S. 2939 as passed by the Senate, and that the bill as amended be considered to have been read a third time and passed; that the motion to reconsider be laid on the table, that the Senate insist on its amendments to H.R. 7765 and request a conference with the House thereon and that the Chair be authorized to appoint conferees on the part of the Senate.

Mr. STEVENS. Mr. President, reserving the right to object, and I shall not object, I understand what this does is put the Senate-passed bills in conference with the House of Representatives on the budget process; is that correct?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair appointed Mr. HOLLINGS, Mr. MOYNIHAN, Mr. EXON, Mr. BELLMON, and Mr. DOMENICI, from the Committee on the Budget;

Mr. TALMADGE, Mr. MCGOVERN, Mr. HUDDLESTON, Mr. HELMS, and Mr. HAYAKAWA from the Committee on Agriculture, Nutrition, and Forestry, solely for the consideration of matters within the jurisdiction of that committee;

Mr. NUNN, Mr. HARRY F. BYRD, JR., and Mr. JEPSEN from the Committee on Armed Services, solely for the consideration of matters within the jurisdiction of that committee;

Mr. CANNON, Mr. EXON, Mr. PACKWOOD, and Mrs. KASSEBAUM from the Committee on Commerce, Science, and Transportation, solely for the consideration of matters within the jurisdiction of that committee;

Mr. RANDOLPH, Mr. BENTSEN, Mr. BURDICK, Mr. STAFFORD, and Mr. PRESSLER from the Committee on Environment and Public Works, solely for the consideration of matters within the jurisdiction of that committee;

Mr. LONG, Mr. TALMADGE, Mr. BOREN, Mr. DOLE, and Mr. ROTH from the Committee on Finance, solely for the consideration of matters within the jurisdiction of that committee;

Mr. RIBICOFF, Mr. GLENN, Mr. PRYOR, Mr. PERCY, and Mr. STEVENS from the Committee on Governmental Affairs, solely for the consideration of matters within the jurisdiction of that committee;

Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. SCHWEIKER, and Mr. STAFFORD from the Committee on Labor and Human Resources, solely for the consideration of matters within the jurisdiction of that committee;

Mr. CRANSTON, Mr. TALMADGE, and Mr. SIMPSON from the Committee on Veterans' Affairs, solely for the consideration of matters within the jurisdiction of that committee, conferees on the part of the Senate.

THE CARTER TAX INCREASE

Mr. THURMOND. Mr. President, in recent days, numerous issues have surfaced in the Presidential campaign. We have run the gamut from defense policy to foreign policy and back around to who will—and who will not—debate whom, under what conditions and where.

Mr. President, amid the shouts, and aside from the purely partisan distractions, the central issues stand out. One is national security and national defense. The other is the state of our economy.

Not that there are not other issues of a pressing nature in need of discussion and clarification. There certainly are. Not that we should preoccupy ourselves solely with strategies for dealing with the current combination of inflation and recession. We should not.

Yet, Mr. President, surveys show that the American people, by a 2 to 1 margin, feel that the economy is the single most pressing problem facing our Nation today. This is understandable. It is hard for the average American to concentrate on other issues in this election year when he is trying harder than ever to make his checkbook balance after paying higher fuel bills, higher grocery bills, higher rent and higher mortgage interest and higher costs across-the-board for essential household items.

On August 28, President Carter announced his "economic renewal" program for the Nation. His announcement was preceded by a great deal of fanfare and heightened expectations on the part of weary wage earners. Unfortunately, the program unveiled by the White House does not live up to these expectations. After 3½ years and six previous Presidential economic programs, President Carter has yet to get it right. It would appear that he and his economic advisers fail to understand basic economics—in particular, the link between Government taxation and spending.

President Carter's proposed tax reduction is, in reality, no tax reduction at all but rather an offset of the higher social security tax increase scheduled to go into effect next year. The much-needed tax reduction for individuals is nowhere to be found among his proposals.

I am also disturbed by the absence in the Carter program of any real restraints on Federal spending. In fact, there are substantial spending increases proposed in some areas.

While I compliment the President on his proposal for more liberal depreciation allowances for business and industry, it is unfortunate that it took him so long to recognize this need. As you know, Governor Reagan much earlier had made this a key feature of his economic revitalization program, and many of us in this body have urged adoption of this approach for years.

Mr. President, one of the better analyses of President Carter's program—especially his so-called tax reduction proposal—appeared in the August 29, 1980 issue of the Wall Street Journal. I should like to share this brief but precise analysis with my colleagues. I therefore ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE CARTER TAX INCREASE

To add a bit of perspective to the economic policy the President officially unveiled yesterday, let's start by citing a few statistics:

Federal spending in the fiscal year that begins a month from now is estimated at $633 billion, a full one-third higher than last fiscal year and rising;

The federal deficit in the current fiscal year is already near $60 billion, 50 percent over the January predictions;

The rising burden of inflation and taxation has made it necessary for a family of four to earn just over $20,000 this year to equal the purchasing power of $10,000 in 1970;

Worker productivity, which rose steadily during the years the U.S. was making significant gains in living standards, has been going downhill since the end of 1978.

After the anemic tax reductions proposed yesterday by Mr. Carter, the federal tax burden will rise yet another $80 billion next year.

Mr. Carter's latest economic policy, his seventh try at this in three and a half years, displays no real awareness of any of these stark numbers. Is the country being strangled by taxes? Too bad. Is federal spending racing out of control? Then we need more money spent on what Teddy Kennedy dignifies with the description "jobs programs."

About the only thing of merit in the tax cuts Mr. Carter has proposed is a liberalization of depreciation allowances for business, which will make some new equipment purchases more attractive. This, however, is overshadowed by the futility of a piddling tax credit to offset part of the sharp increase in the Social Security wage tax due next year. Mr. Carter apparently still has not learned why the $50 tax rebate he first proposed and then dropped in 1977 was of no economic value. And the idea of shipping cash, in the form of an investment credit, to money-losing companies is, at worst, a stimulant to inefficiency, and, at best a Band-Aid for the wounds this administration has inflicted on business profits. The same goes for the grab-bag of "community help" programs.

Other problems of this economy are to be dealt with by convening an "Economic Revitalization Board" made up of government, industry and public representatives. Will this committee come up with a lot of new ideas for restoring competition and efficiency? Or will it come up with ideas for protecting existing corporations, labor unions and government bureaus from threats to their present security? Give yourself a correct score if you chose answer number two.

Mr. Carter's reason for doing so little to reverse economic stagnation is that any genuine measure to slow the federal spending-taxing rise might exacerbate inflation. Or, as everybody knows, you cure inflation by trying to balance the budget, even if the spending keeps outrunning the revenues while you are trying to do all that, and the inflation keeps getting worse.

In fact, you do not cure inflation by raising taxes. If that were the case it is unlikely the inflation rate could have tripled over the last three years at a time when federal tax receipts were rising 50 percent. Inflation can be cured by sound central bank money growth control coupled with federal policies that do not discourage production and efficient use of resources. It is not necessary to be absolutist about the Laffer curve or supply-side economics to argue that on the record of the last three years, arresting the tax rise, particularly as it affects investment and work incentives, is more likely to reduce inflation than the continued piling on of additional tax. And certainly federal spending must be brought under control.

The fact that the Carter administration refuses to accept this suggests to us that the problem goes deeper than a mere misreading of economic trend lines. There is every reason to believe that we are faced here with a government that has been taken over by the inmates and that its only dynamic comes from men and women in power centers who are busily designing new forms of activism to pour into Stu Eizenstat's hopper. When it all comes out we don't get programs that address economic problems but yet another wish list reflecting all the things Carter administration functionaries would like to busy themselves doing.

Can this process be reversed? That may well be the most important economic issue we face.

KIM DAE-JUNG

Mr. CHURCH. Mr. President, last night, Mr. Kim Dae-jung, a Korean political leader, was convicted of sedition and sentenced to death. I rise today as a friend of South Korea to urge President Chon Du-hwan and the Korean Government to show clemency when reviewing Kim's trial. Otherwise, I fear that our long and close relationship with South Korea will suffer.

From my perspective, Mr. Kim's past political activities have put his life in jeopardy, not his role in recent student demonstrations protesting martial law. His views represent the aspirations of millions of Koreans, who wish to have a real role in their country's political process. For myself, I am committed to doing anything within my power to see that those hopes are fulfilled.

Obviously, if a Korean law has been broken, the government is justified in meting out some sort of punishment. In this case, however, I am convinced, as are international observers, that Mr. Kim's alleged crimes do not justify the death penalty. His sentencing was a political act, pure and simple; one to demonstrate that political opposition to the new government will be dealt with harshly. This is not justice, and certainly not what we here in America had come to expect from Korea.

Mr. President, Senator JAVITS, as ranking minority member of the Committee on Foreign Relations, and I, as chairman, are preparing a letter to President Chon urging the Korean Government to show clemency in Kim's case. That letter will state our steadfast commitment to the security of the Republic of Korea. It will also state our deep concern that the Korean Government's handling of the Kim Dae-jung case could adversely affect relations between our two countries.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:03 a.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 1873. An act to establish a procedure for the processing of complaints directed against Federal judges, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment in which it requests the concurrence of the Senate:

S. 2489. An act to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 3292) to assist the States in developing fish and wildlife conservation plans, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 6511) to designate the building known as the Federal Building in Morgantown, W. Va. as the "Harley O. Staggers Federal Building".

The message further announced that the House has passed the following bill without amendment:

S. 215. An act for the relief of Renuka Pavla.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3806. An act to establish a U.S. Court of Appeals for the Federal Circuit, to establish a U.S. Claims Court, and for other purposes;

H.R. 6686. An act to discontinue or amend certain requirements for agency reports to Congress;

H.R. 7626. An act to amend title 37, United States Code, to improve certain special pay and allowance benefits for members of the uniformed services, and for other purposes; and

H.R. 7941. An act to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 3806. An act to establish a U.S. Court of Appeals for the Federal Circuit, to establish a U.S. Claims Court, and for other purposes; to the Committee on the Judiciary.

H.R. 7626. An act to amend title 37, United States Code, to improve certain special pay and allowance benefits for members of the uniformed services, and for other purposes; to the Committee on Armed Services.

H.R. 7941. An act to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act; to the Committee on Energy and Natural Resources.

HOUSE BILL HELD AT THE DESK

The following bill received from the House was held at the desk pursuant to previous order:

H.R. 6686. An act to discontinue or amend certain requirements for agency reports to Congress.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4632. A communication from the Acting Assistant Secretary of the Air Force, reporting, pursuant to law, that a study has been conducted with respect to converting the grounds maintenance function at Mather Air Force Base, California, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4633. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to NATO for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4634. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Italy for defense articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4635. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Army's proposed Letter of Offer to Greece for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4636. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation to amend title 14, United States Code, to provide for selective pre-appointment travel to the Coast Guard Academy for cadet applicants; to the Committee on Commerce, Science, and Transportation.

EC-4637. A communication from the Comptroller General of the United States

transmitting, pursuant to law, a report entitled "Increasing Costs, Competition May Hinder U.S. Position of Leadership in High Energy Physics," September 16, 1980; to the Committee on Commerce, Science, and Transportation.

EC-4638. A communication from the Administrator, General Services Administration transmitting, pursuant to law, a prospectus which proposes a new lease for approximately 137,658 square feet of space for the expanded needs of the Federal Aviation Administration in East Point, Georgia; to the Committee on Environment and Public Works.

EC-4639. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes the acquisition of leased space for several agencies in Portland, Oregon; to the Committee on Environment and Public Works.

EC-4640. A communication from the Chairman, National Mediation Board, transmitting, pursuant to law, the 45th annual report of the NLRB; to the Committee on Labor and Human Resources.

EC-4641. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Employment Service Needs to Emphasize Equal Opportunity in Job Referrals," September 17, 1980; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. RIBICOFF, from the Committee on Governmental Affairs, with an amendment (in the nature of a substitute):

H.R. 4417. An act to provide for the coordination of federally supported and conducted research efforts regarding the Chesapeake Bay, and for other purposes (Rept. No. 96-950).

By Mr. BUMPERS from the Committee on Energy and Natural Resources, with an amendment:

S. 1135. A bill to add certain lands to the Moapa Indian Reservation, and for other purposes (Rept. No. 96-951).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute) and an amendment to the title:

S. 2364. A bill to establish the Langmuir National Research Area in the State of New Mexico, and for other purposes (Rept. No. 96-952).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with amendments:

S. 1910. A bill to authorize and direct the Secretary of the Interior to convey, by quitclaim deed, all right, title, and interest of the United States in and to certain lands that were withdrawn or acquired for the purpose of relocating a portion of the city of American Falls out of the area flooded by the American Falls Reservoir (Rept. No. 96-953).

S. 1985. A bill to authorize the Secretary of Agriculture to convey certain lands in the State of Arizona, and for other purposes (Rept. No. 96-954).

By Mr. HOLLINGS, from the Committee on the Budget, without amendment:

S. Res. 517. A resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 7831.

By Mr. CHILES, from the Committee on Appropriations, with amendments:

H.R. 7583. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 95-955).

By Mr. MATSUNAGA, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute):

S. 2774. A bill to authorize an accelerated research, development, and demonstration program to advance in situ technologies for energy production from underground coal deposits and unconventional gas resources (Rept. No. 96-956).

By Mr. MELCHER, from the Select Committee on Indian Affairs, with an amendment (in the nature of a substitute):

S. 2829. A bill to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes (Rept. No. 96-957).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary:

Harry Alan Scarr, of Virginia, to be Director of the Bureau of Justice Statistics.

Blandina Cardenas Ramirez, of Texas, to be a Member of the Commission on Civil Rights.

Brian P. Joffrion, of Louisiana, to be U.S. Marshal for the Western District of Louisiana.

(The above nominations from the Committee on the Judiciary were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. KENNEDY, from the Committee on the Judiciary:

Richard L. Williams, of Virginia, to be U.S. district judge for the eastern district of Virginia.

Hipolito Frank Garcia, of Texas, to be U.S. district judge for the western district of Texas.

James Harry Michael, Jr., of Virginia, to be U.S. District Judge for the Western District of Virginia.

George Howard, Jr., of Arkansas, to be U.S. district judge for the eastern and western districts of Arkansas.

Charles P. Kocoras, of Illinois, to be U.S. district judge for the northern district of Illinois.

Susan C. Getzendanner, of Illinois, to be U.S. district judge for the northern district of Illinois.

Richard C. Erwin, of North Carolina, to be U.S. district judge for the middle district of North Carolina.

David Vreeland Kenyon, of California, to be U.S. district judge for the central district of California.

Consuelo B. Marshall, of California, to be U.S. district judge for the central district of California.

Norman P. Ramsey, of Maryland, to be U.S. district judge for the district of Maryland.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LEVIN:

S. 3121. A bill to amend title IV of the Social Security Act to allow States to make AFDC shelter payments in the form of vendor payments where an AFDC recipient has failed to make two consecutive rent payments, and for other purposes; to the Committee on Finance.

By Mr. THURMOND (for himself and Mr. KENNEDY):

S. 3122. A bill to amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to revise the laws governing the U.S. Court of Military Appeals, to provide for review of decisions of such court by the Supreme Court, and for other purposes; to the Committee on the Judiciary.

By Mr. THURMOND (for himself and Mr. HEFLIN):

S. 3123. A bill to establish a Federal Jurisdiction Review and Revision Commission; to the Committee on the Judiciary.

By Mr. DANFORTH (for himself, Mr. JACKSON, Mr. PELL, Mr. STONE, Mr. BOSCHWITZ, Mr. CRANSTON, Mr. BAKER, Mr. STEVENS, Mr. BAUCUS, Mr. BAYH, Mr. CHILES, Mr. CHURCH, Mr. COHEN, Mr. DECONCINI, Mr. DURKIN, Mr. EAGLETON, Mr. EXON, Mr. GARN, Mr. HART, Mr. HATFIELD, Mr. HEINZ, Mr. JAVITS, MRS. KASSEBAUM, Mr. MATHIAS, Mr. MATSUNAGA, Mr. MCGOVERN, Mr. METZENBAUM, Mr. MOYNIHAN, Mr. PERCY, Mr. PRESSLER, Mr. RANDOLPH, Mr. RIBICOFF, Mr. ROTH, Mr. SARBANES, Mr. SASSER, Mr. STENNIS, Mr. STEVENSON, Mr. TSONGAS, Mr. WALLOP, Mr. WARNER, and Mr. WILLIAMS):

S. 3124. A bill to establish the U.S. Holocaust Memorial Council; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND (for himself and Mr. KENNEDY):

S. 3122. A bill to amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to revise the laws governing the U.S. Court of Military Appeals, to provide for review of decisions of such court by the Supreme Court, and for other purposes; to the Committee on the Judiciary.

U.S. COURT OF MILITARY APPEALS ACT OF 1980

Mr. THURMOND. Mr. President, today, I am introducing a bill which will restructure to some extent the U.S. Court of Military Appeals, a court created by the Congress in 1951 and a court that is essential to reconcile the demands of discipline and due process in our Armed Forces.

This bill would increase the number of judges who serve on the court from three to five; provide a means whereby the Supreme Court can directly review, by writ of certiorari, the decisions of the U.S. Court of Military Appeals; and insure that future appointments to the court are for full 15-year terms rather than for the unexpired portions of terms that currently exist.

For instance, one of the judges is now serving an appointment of only some 12 months in duration, which is the unexpired portion of a predecessor's term. Stability at the court is important to the military justice system and this bill would increase that stability and would not permit the impasse that resulted recently when there were only two judges who had different judicial philosophies.

Over the years, I have been interested in providing a means whereby the Supreme Court could directly review, by writ of certiorari, the decisions of the U.S. Court of Military Appeals. The legislation I now propose would authorize such access to the Supreme Court by both service members and the Government. I believe it fills a significant gap.

I should emphasize that the legislation I am now proposing is substantively the same as a proposal of the administration to strengthen and stabilize the court of military appeals. A more detailed explanation of the need for this legislation is contained in a letter from the Office of General Counsel of the Department of Defense dated January 2, 1980, which I am inserting in the RECORD at the conclusion of my remarks.

Often our consideration of military needs involves appropriations of billions of dollars for new weapons systems or for military pay and allowances. This bill does not involve significant amounts of money; but it does respond to needs which are basic and which must be met now if a strong system of military justice is to be maintained for our Armed Forces.

Mr. President, I ask unanimous consent that the letter from the Office of General Counsel of the Department of Defense be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

GENERAL COUNSEL OF
THE DEPARTMENT OF DEFENSE,
Washington, D.C., January 2, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is forwarded herewith a draft of proposed legislation "To establish the United States Court of Military Appeals as an independent court under article I of the Constitution of the United States, and for other purposes" and a sectional analysis thereof. It is proposed to cite this act as the "Military Appellate Procedures Act of 1979".

The proposal is part of the Department of Defense legislative program for the 96th Congress. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. It is recommended that the proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to improve the appellate process in the court-martial system by enhancing the stature of the Court of Military Appeals. The Court of Military Appeals was created by Congress in 1951 as a result of enactment of the Uniform Code of Military Justice. The Court is empowered to review cases arising under the Uniform Code of Military Justice in which there is a sentence of death, a punitive discharge, confinement for one year or more, and in certain other cases. The Court has a significant impact on the operation of the court-martial system, the state of discipline in the armed forces, and the rights of servicemembers.

The Court consists of three members, appointed from civil life by the President with the advice and consent of the Senate. No more than two of the judges may be from the same political party. Each seat on the Court carries a fifteen year term. If a vacancy develops within a fifteen year term, the successor appointed to that seat fills only the remaining balance of the term. The Court is dependent upon the Department of Defense for administrative support. The judges are eligible for civil service retirement if they meet the requirements of the civil service laws. The judges are compensated at the same rate as the judges of the circuit courts.

In recent years, membership on the Court has been characterized by considerable turnover. During the past ten years, eight different judges have held the Court's three seats. Within a four year period, there were seven judges who sat at various times in nine different combinations. Only two of the vacancies during the past decade resulted from illness or death, suggesting that there are fundamental problems with the Court that are causing this turnover. A member of the Court recently resigned to accept a federal district court judgeship. This marks the second time within the past six years that a member of this appellate court has departed to accept an appointment to the federal trial bench. Such turnover on a three-member court has introduced substantial instability and unpredictability into the military justice system. The result has been to create a situation of uncertainty in the law that presents substantial problems for both the government and the accused.

A further difficulty with the current system is that the appellate process is not subject to direct review in the Supreme Court. At present, court-martial convictions are reviewed in the federal courts only through collateral proceedings such as a petition for habeas corpus filed in the federal district courts by the accused. There is no stautory authority for decisions of the Court of Military Appeals adverse to the government to be reviewed in the federal courts.

For the accused, the absence of direct review by the federal courts leads to "a judicial trek that has been criticized as inefficient, costly, time-consuming, and redundant."[1] If, for example, the accused in a general court-martial receives a sentence that includes a punitive discharge, there is legal review by a judge advocate in the field, automatic appeal to a Court of Military Review, and the opportunity to petition for review by the Court of Military Appeals. The accused then is faced with a complex array of options for mounting collateral attack in which the opportunity for obtaining review and the scope of review can differ considerably depending on the court in which review is sought and the nature of the remedy sought. The doctrine of exhaustion of remedies may require the accused to pursue further actions in the military system prior to obtaining review in a federal district court. Even if relief is obtained at the district court level, there is the likelihood of further review by the a court of appeals. The situation is complicated by the procedural aspects of federal court review. Moreover, the substantive treatment of the case may vary not only among the courts of appeal but also within particular circuits.

For the government, on the other hand, there are no complex choices to be made. If there is a determination adverse to the government in the Court of Military Appeals, there is no other tribunal to which the government can appeal. This leaves the government at a very substantial disadvantage. The absence of direct review in an Article III court is of particular concern because of the nature of the issues decided adversely to the government by the Court of Military Appeals can have a substantial effect on the state of discipline in the armed forces.

As a result of these issues, the Department of Defense conducted an extensive study of the military appellate process. The enclosed legislative proposal contains reforms that are designed to enhance the stature of the court and bring stability to its membership. The key provisions include:

An increase in the size of the Court to five members to bring greater stability to the Court and reduce the impact of any turnover;

Full fifteen year terms for each appointee to reduce the amount of personnel turbulence;

Discretionary review of decisions of the Court of Military Appeals by the Supreme Court through writs of certiorari.

COST AND BUDGET DATA

Enactment of the legislation will not have an appreciable impact on the budget of the Department of Defense. There will be an additional cost in terms of salary and support costs of approximately $300,000 per year. It is recommended that the proposed legislation be enacted by the Congress.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

[1] H. Moyer, Justice and the Military 1182 (1972).

By Mr. THURMOND (for himself and Mr. HEFLIN):

S. 3123. A bill to establish a Federal Jurisdiction Review and Revision Commission; to the Committee on the Judiciary.

FEDERAL JURISDICTION REVIEW AND REVISION COMMISSION ACT

Mr. THURMOND. Mr. President, I am introducing today along with the Senator from Alabama (Mr. HEFLIN) legislation to establish a Federal Jurisdiction Review and Revision Commission that will be directed to study the jurisdiction of the courts of the United States and the several States. I do so because of my belief that our legal system is drifting into a posture of blurring the jurisdiction between the State and Federal courts. In a recent speech to the American Law Institute by Chief Justice Warren Burger, the Chief Justice noted:

> In the past decade Congress has enacted not less than 70 new statutes enlarging the jurisdiction of Federal courts. Many of these statutes expand Federal jurisdiction to cover relief already available in State courts. It is fair to say that the Federal courts, and ultimately, the Supreme Court, have tended to give expansive, rather than restricted, interpretation to these statutes, along with a narrowing of the scope of immunity of Government officials.

It was this observation by the Chief Justice and my own experiences as a member of the Senate Judiciary Committee which led me to introduce this legislation. Increasing caseloads in the Federal courts reveal a trend which could eventually lead to a total breakdown of traditional federalist principles as we know them.

The bill would establish a commission made up of 16 members; 4 to be appointed by the President, 4 by the Senate; 4 by the House; and 4 by the Chief Justice of the United States. The membership shall be selected in a manner that will represent a broad range of interests, needs and concerns.

The commission would be asked to study the relevant aspects of Federal and State court jurisdiction, including problems of substantive law, civil and criminal procedure, workload and caseload of the courts, case processing and State and Federal bars. It would also be asked to make recommendations for legislative action. The commission will be in existence for only 2 years and is to

issue a final report upon completion of its work.

Mr. President, often the creation of commissions simply leads to a report that ends up gathering dust on the shelf. I cannot believe, however, that the subject of this study will suffer that fate. The relationship between Federal and State courts is one that should have the attention of everyone interested in our judicial system.

As State courts surrender more and more jurisdiction to the Federal courts, traditional concepts of federalism are eroded. Federal courts were originally intended to deal only with unique and narrow disputes involving national rights and obligations, while State courts were left to deal with the day-to-day legal disputes of citizens. Interest in the development and nurturing of State courts may well diminish if all the emphasis is on Federal courts.

For these reasons, it is important for the relationship between State and Federal courts to be carefully studied and I believe the commission created under this legislation is the best way to proceed.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3123

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Jurisdiction Review and Revision Commission Act".

ESTABLISHMENT AND PURPOSE OF THE COMMISSION

SEC. 2. (a) ESTABLISHMENT AND PURPOSE.—There is established a Federal Jurisdiction Review and Revision Commission (hereafter in this Act referred to as the "Commission"). The Commission shall study the jurisdiction of the courts of the United States and of the several States, and shall report to the President and the Congress on the revisions, if any, of related provisions of the Constitution and laws of the United States which the Commission deems advisable on the basis of such study.

(b) COMMISSION STUDY.—The study shall include—

(1) a discussion of the application, consequences, and interpretation by the courts of the provisions of the Constitution and laws of the United States which establish Federal and State jurisdiction;

(2) an analysis of the interrelation between the jurisdiction of Federal courts and of the State courts;

(3) a discussion of the impact of jurisdictional provisions on the judicial system and on the litigant;

(4) a discussion of the nature and scope of any problems in Federal or State jurisdiction relating to—

(A) substantive law;
(B) civil and criminal procedure;
(C) workload and caseload of the courts;
(D) case processing; and
(E) State and Federal bars; and

(5) recommendations, if any, for legislative action.

MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) NUMBER AND APPOINTMENT.—The Commission shall be composed of sixteen members appointed, within 90 days from the date of enactment, as follows:

(1) Four members appointed by the President of the United States.

(2) Four members of the Senate appointed by the President pro tempore of the Senate, two of whom shall be appointed upon the recommendation of the majority leader and two of whom shall be appointed upon the recommendation of the minority leader.

(3) Four members of the House of Representatives appointed by the Speaker of the House of Representatives, two of whom shall be appointed upon the recommendation of the majority leader and two of whom shall be appointed upon the recommendation of the minority leader.

(4) Four members appointed by the Chief Justice of the United States.

(b) REPRESENTATION OF VARIED INTERESTS.—The membership of the Commission shall be selected in such a manner as to be broadly representative of the various interests, needs, and concerns which may be affected by the jurisdiction of Federal and State courts.

(c) TERM OF OFFICE AND VACANCIES.—The term of office of each member shall be for the life of the Commission. Vacancies in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(d) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and a Vice Chairman from among its members.

(e) QUORUM.—Eight members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 4. (3) FEDERALLY EMPLOYED MEMBERS.—A member of the Commission who is an officer, or full-time employee, of the United States shall receive no additional compensation for his or her services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission, but not exceeding the maximum amounts authorized under section 456 of title 28, United States Code.

(b) OTHER MEMBERS.—A member of the Commission from the private sector shall receive $200 per diem for each day (including traveltime) during which he or she is engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties, but not in excess of the maximum amounts authorized under section 456 of title 28, United States Code.

POWERS OF THE COMMISSION

SEC. 5. (a) (1) HEARINGS.—The Commission or, on the authorization of the Commission, any subcommittee thereof may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee may deem advisable. Subpenas may be issued under the signature of the Chairman or Vice Chairman, or any duly designated members, and may be served by any person designated by the Chairman, the Vice Chairman, or such member.

(2) In case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection, any district court of the United States or the United States court of any possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is being carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon applications by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, to produce evidence if so ordered, or to give testimony touching the matter under inquiry; and failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) OFFICIAL DATA.—Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, shall furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information and assistance as the Commission deems necessary to carry out its functions under this Act, consistent with applicable provisions of law.

(c) ADMINISTRATIVE POWERS.—Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.

(d) CONTRACTING AUTHORITY.—The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(e) NONGOVERNMENTAL ASSISTANCE.—The Commission is authorized to receive financial assistance from sources other than the Federal Government, including assistance from private foundations.

FINAL REPORT

SEC. 6. The Commission shall transmit to the President and to the Congress, not later than two years after the first meeting of the Commission, a final report containing a detailed statement of the findings and conclusions of the study conducted by the Commission under section 2, together with such recommendations as it deems advisable. The Commission may also submit interim reports prior to submission of its final report.

EXPIRATION OF THE COMMISSION

SEC. 7. Ninety days after the submission to Congress of the final report provided for in section 6, the Commission shall cease to exist.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 9. This Act shall take effect October 1, 1980.

By Mr. DANFORTH (for himself, Mr. JACKSON, Mr. PELL, Mr. STONE, Mr. BOSCHWITZ, Mr. CRANSTON, Mr. BAKER, Mr. STEVENS, Mr. BAUCUS, Mr. BAYH, Mr. CHILES, Mr. CHURCH, Mr. COHEN, Mr. DECONCINI, Mr. DURKIN, Mr. EAGLETON, Mr. EXON, Mr. GARN, Mr. HART, Mr. HATFIELD, Mr. HEINZ, Mr. JAVITS, Mrs. KASSEBAUM, Mr. MATHIAS, Mr. MATSUNAGA, Mr. MCGOVERN, Mr. METZENBAUM, Mr. MOYNIHAN, Mr. PERCY, Mr. PRESSLER, Mr. RANDOLPH, Mr. RIBICOFF, Mr. ROTH, Mr. SARBANES, Mr. SASSER, Mr. STENNIS, Mr. STEVENSON, Mr. TSONGAS, Mr. WALLOP, Mr. WARNER, and Mr. WILLIAMS):

S. 3124. A bill to establish the U.S. Holocaust Memorial Council; to the Committee on Governmental Affairs.

U.S. HOLOCAUST MEMORIAL COUNCIL

● Mr. DANFORTH. Mr. President, I am introducing a bill, together with 40 of my colleagues, which puts on a statutory basis the U.S. Holocaust Memorial Council, which was established and is currently in existence pursuant to executive order. The Council is working to carry out the recommendations of the President's Commission on the Holocaust. The bill provides the Council with a 3-year authorization.

Mr. President, as you may recall, the President's Commission on the Holocaust was established on November 1, 1978, to recommend a fitting memorial to those who perished in the Nazi holocaust as well as other victims of persecution. It finished its work and issued a report on September 27, 1979. The Commission's two principal recommendations were that a permanent, living memorial/museum to the victims of the holocaust be established in Washington, D.C. and that 1 week each year be designated as "Days of Remembrance" to be marked by a national, civil commemoration and appropriate, private and public observances. The legislation we are introducing today charges the Council with implementing these two recommendations.

The U.S. Holocaust Memorial Council consists of 50 distinguished individuals, each with a special sensitivity to the holocaust, as well as 5 Members of the House of Representatives and 5 Members of the Senate. I ask unanimous consent that a list of the members of the Council, and a brief description of them, be printed in the RECORD.

Under the legislation, each current member would serve for a term of from 5 to 10 years in order that the Council have continuity and stability in carrying out its mandate. Then, as the terms of the current members expire, the President will appoint new members for 5-year terms to continue to carry out the mandates of the Commission.

The costs to the Government of the Council and memorial should be minimal. The operating costs of the Council will be below $750,000 in fiscal year 1981. The cost of the memorial itself should be financed primarily through direct, private contributions.

Mr. President, I believe Americans should always remember the horror of the holocaust, so it is never repeated. The fulfillment of the recommendations of the President's Commission on the Holocaust will serve as a living reminder to all and a call to eternal vigilance against persecution.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

THE U.S. HOLOCAUST MEMORIAL COUNCIL MEMBERS

Mr. Elie Wiesel, Chairman. Survivor, distinguished author and scholar; served as Chairman of the President's Commission on the Holocaust; New York City.

Mr. Mark Talisman, Vice Chairman, Director of the Washington Action Program for the Council of Jewish Federations, and a founder and instructor at the John F. Kennedy Institute of Politics at Harvard University; Washington, D.C.

Rabbi Joseph Asher, National Vice President of the American Jewish Congress; San Francisco, California.

Mr. Tibor Baranski, Social Services Department, Catholic Charities, Buffalo, New York; honored by Yad Vashem for his actions saving Hungarian Jews during the Holocaust.

Mr. Irving Bernstein, National Executive Vice President of the United Jewish Appeal; New York City.

Dr. Marver Bernstein, President of Brandeis University; Waltham, Massachusetts.

Mr. Hyman Bookbinder, Washington Representative of the American Jewish Committee, who has also served as Washington Chairman of the Ad Hoc Coalition for Ratification of Genocide and Human Rights Treaties; Washington, D.C.

Mr. Victor Borge, the actor, long active in Tribute to the Danes, a foundation designed to honor the Danes for their efforts in World War II; Greenwich, Connecticut.

Dr. Robert McAfee Brown, Professor of Theology and Ethics, Pacific School of Religion; Berkeley, California.

Professor Harry James Cargas, Chairman of the Department of Literature, Webster College, and author of books on the Holocaust; St. Louis, Missouri.

Ms. Esther Cohen, Chair of the Simon Wiesenthal Center for Holocaust Studies, member of the Golda Meir Club, a trustee of Yeshiva University; Los Angeles, California.

Professor Gerson D. Cohen, Chancellor and Jacob H. Schiff Professor of History at the Jewish Theological Seminary of America; New York City.

Honorable Mario Cuomo, Lieutenant Governor of New York, former attorney and law professor, and a member of the Legal Committee for Soviet Jewry; Albany, New York.

A. Arthur Davis, Esquire, a Des Moines, Iowa, attorney active in civic and humanitarian affairs.

Professor Terrence DesPres, Professor of English at Colgate University and author of The Survivor, a study of how people survived the Holocaust; Hamilton, New York.

Pastor Constantine N. Dombalis, Theologian and Dean of the Greek Orthodox Cathedral, active in the National Conference of Christians and Jews Brotherhood; Richmond, Virgina.

Mr. Jaroslav Drabek, a survivor, former member of the Underground Czechoslovakia Against Nazi War Criminals, and an attorney who prosecuted Nazi war criminals in Czechoslovakia; Washington, D.C.

Ms. Kitty Dukakis, President of the National Center for the Study of the Holocaust and Armenian Genocide who was chairman of the Holocaust Subcommittee on Education; Brookline, Massachusetts.

Professor Willard Fletcher, former Chairman of the History Department at the University of Delaware, and who assisted the Office of the Public Prosecutor in West Germany in gathering evidence against Nazi war criminals; Newark, Delaware.

Mr. Irvin Frank, Chairman of the Board of Zochrim, Zachor: The Holocaust Resource Center, New York City, and past president of the Tulsa (Oklahoma) Jewish Community Council; Tulsa, Oklahoma.

Mr. Sol Goldstein, a survivor, a businessman and Chairman of the Chicago Committee for Holocaust Commemoration; Skokie, Illinois.

Cantor Isaac Goodfriend, a survivor, Cantor of Ahavath Achim Congregation in Atlanta, Georgia.

Professor Alfred Gottschalk, President of the Hebrew Union College—Jewish Institute of Religion; Cincinnati, Ohio.

Dr. Irving Greenberg, a rabbi, author, Holocaust scholar, and Director of the National Jewish Resource Center; New York City.

Ms. Dorothy Height, President of the National Council of Negro Women; New York City.

Father Theodore Hesburgh, President of Notre Dame University; South Bend, Indiana.

Professor Raul Hilberg, McCullough Professor of Political Science at the University of Vermont, author of The Destruction of the European Jews; Burlington, Vermont.

Julian E. Kulas, Esquire, a Chicago, Illinois, attorney and banker, Chairman of the Helsinki Monitoring Committee of Chicago, and of the Interfaith Group of the Jewish Federation of Chicago.

Professor Norman Lamm, President of Yeshiva University in New York City, an author, lecturer, and rabbi, Director for the Union of Orthodox Jewish Congress of America.

Mr. Frank R. Lautenberg, President of the United Jewish Appeal, a businessman and philanthropist; Clifton, New Jersey.

Mr. Miles Lerman, a survivor, businessman, and Vice Chairman of the National State of Israel Bonds; Vineland, New Jersey.

Professor Franklin Littell, Chairman of the Board of the National Institute on the Holocaust, a professor of religion at Temple University; Philadelphia, Pennsylvania.

Steven A. Ludsin, Esquire, attorney and investment banker, President of Remembrance of the Holocaust Foundation, on the board of directors of American Friends of Haifa University; New York City.

Mr. Aloysius A. Mazewski, President of the Polish American Congress of Chicago and the Polish National Alliance; Chicago, Illinois.

Mr. Benjamin Meed, a survivor, businessman, President of the Warsaw Ghetto Resistance Organization; New York City.

Professor Ingeborg G. Muaksch, distinguished professor of nursing at Vanderbilt University, active in community affairs and human rights causes; Nashville, Tennessee.

Mr. Set Momjian, a human rights activist who was a U.S. representative to the U.N. General Assembly in 1978–79 and White House representative to the Human Rights Commission in Geneva in 1979; Huntingdon Valley, Pennsylvania.

Father John T. Pawlikowski, Professor of Social Ethics at Catholic Theological Union, a member of the National Conference of Catholic Bishops and the Secretariat for Catholic-Jewish Relations; Chicago, Illinois.

Rabbi Bernard S. Raskas, Rabbi of Temple of Aaron Congregation in St. Paul, Minnesota, an author of Jewish affairs.

Mrs. Hadassah Rosensaft, a survivor, lecturer and author on the Holocaust; New York City.

Mr. Bayard Rustin, President of the A. Philip Randolph Education Institute; New York City.

Dr. Abraham Sachar, Chancellor and former President of Brandeis University; Waltham, Massachusetts.

Edward Sanders, Esquire, attorney and former Senior Advisor to President Carter; Los Angeles, California.

Mr. Julius Schatz, Director of the National Commission on Jewish Life and Culture of the American Jewish Congress, active in various Holocaust organizations; New York City.

Richard Schifter, Esquire, an attorney and former President of the Maryland State Board of Education; Washington, D.C.

Mr. Sigmund Strochlitz, a survivor, Pres-

ident of American Friends of Haifa University, where he endowed a chair in Holocaust Studies; New London, Connecticut.

Mr. Kalman Sultanik, a survivor, Vice President of the World Jewish Congress, Executive Co-President of the World Conference of General Zionists; New York City.

Mr. Glenn E. Watts, President of the Communications Workers of America; Washington, D.C.

Mr. Siggi B. Wilzig, a survivor, businessman and a national lecturer on the Holocaust; Jersey City, New Jersey.

Mr. Eli Zborowski, a survivor, businessman, Honorary President of the American Federation of Jewish Fighters, Camp Inmates and Nazi Victims, and member of the executive committee of Yad Vashem; New York City.

CONGRESSIONAL REPRESENTATIVES

The Honorable James J. Blanchard, House of Representatives.

The Honorable Rudy Boschwitz, U.S. Senate.

The Honorable John C. Danforth, U.S. Senate.

The Honorable Bill Green, House of Representatives.

The Honorable Henry M. Jackson, U.S. Senate.

The Honorable William Lehman, House of Representatives.

The Honorable Claiborne Pell, U.S. Senate.

The Honorable Stephen J. Solarz, House of Representatives.

The Honorable Richard B. Stone, U.S. Senate.

The Honorable Sidney R. Yates, House of Representatives.●

ADDITIONAL COSPONSORS

S. 2783

At the request of Mr. WALLOP, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 2783, a bill to amend the Internal Revenue Code of 1954 with respect to the treatment of certain shale oil property as energy property for purposes of the energy investment credit.

S. 2977

At the request of Mr. THURMOND, the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2977, a bill to amend title 38, United States Code, to provide a new educational assistance program for veterans and persons who serve on active duty with the Armed Forces after December 31, 1980, and for persons who perform service in the Selected Reserve of the Ready Reserve of an Armed Force after such date, and for other purposes.

S. 3006

At the request of Mr. WALLOP, the Senator from New Mexico (Mr. DOMENICI), and the Senator from Wyoming (Mr. SIMPSON) were added as cosponsors of S. 3006, a bill to amend the Internal Revenue Code of 1954 to provide a nonrefundable tax credit for investment in qualified industrial energy efficiency and fuel conversion projects.

S. 3087

At the request of Mr. SASSER, the Senator from Alabama (Mr. HEFLIN) was added as a cosponsor of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

SENATE JOINT RESOLUTION 197

At the request of Mr. MOYNIHAN, the Senator from Minnesota (Mr. DURENBERGER), the Senator from North Carolina (Mr. MORGAN), the Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from Maryland (Mr. SARBANES), the Senator from Oregon (Mr. HATFIELD), the Senator from Rhode Island (Mr. PELL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Arizona (Mr. DECONCINI), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Mexico (Mr. DOMENICI), the Senator from Texas (Mr. BENTSEN), the Senator from Pennsylvania (Mr. HEINZ), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of Senate Joint Resolution 197, a joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day."

SENATE CONCURRENT RESOLUTION 120

At the request of Mr. HEINZ, the Senator from Oregon (Mr. HATFIELD), the Senator from Alabama (Mr. HEFLIN), and the Senator from Minnesota (Mr. BOSCHWITZ) were added as cosponsors of Senate Concurrent Resolution 120, a concurrent resolution congratulating the people of Poland on the successful conclusion of the strike.

AMENDMENTS SUBMITTED FOR PRINTING

DISASTER RELIEF ACT AMENDMENTS OF 1980—S. 3027

AMENDMENT NO. 2338

(Ordered to be printed and to lie on the table.)

Mr. SCHWEIKER submitted an amendment intended to be proposed by him to S. 3027, a bill to extend authorization for the Disaster Relief Act, and for other purposes.

● Mr. SCHWEIKER. Mr. President, the amendment I am submitting today is similar to amendment No. 1975, which I submitted for printing August 19. At the suggestion of the Federal Emergency Management Agency, I have modified my original amendment.

My modified amendment does what amendment No. 1975 does—it relieves six Pennsylvania libraries of liability for repayment of erroneously made contributions by the United States to certain nonprofit libraries, plus it entitles these six libraries to disaster relief assistance as if eligible under the provisions of the Disaster Relief Act of 1970. Let me explain the need for this additional language.

Following Hurricane Agnes, the Federal Disaster Assistance Administration mistakenly approved disaster relief applications for six Pennsylvania libraries. It was not until 1976 that the FDAA realized that these community libraries—which were privately owned but used by the public and publicly funded—were ineligible for disaster relief assistance. Under section 252(a) of the Disaster Relief Act of 1970, only publicly owned facilities could receive disaster relief assistance of the type provided to the libraries.

When the ax fell on these six libraries in 1976 and the FDAA demanded reimbursement, four of the six libraries had received full reimbursement from the Federal Government for their restoration work; two libraries had not. It is these two libraries and their plight I want to address with my modified amendment. Under my original amendment, the language of which passed the Senate twice as S. 400 and S. 1147, four of the six libraries would have been covered for the total cost of their restoration work. The other two libraries would have had to pick up some of the restoration costs themselves.

As GAO points out in a report to Chairman RODINO of the House Judiciary Committee, "if audit and settlement had taken place before the determination of ineligibility, these two libraries would now find themselves in the position of the other (four libraries). They would be provided relief in the amount of eligible costs of library restoration." GAO also states that to treat these two libraries as if they were eligible for disaster assistance "would insure equal and consistent treatment of all communities concerned. No community would be penalized simply because it had not been able to arrange a Federal audit and settlement of its claims before the determination of ineligibility."

The Federal Emergency Management Agency supports this change because of its concern that these libraries be treated equally and consistently. For these and other reasons, I strongly urge my colleagues on the Environment and Public Works Committee to accept my amendment.

I ask unanimous consent that my amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 2339

On page 2, after line 10, add the following new section:

"SEC. 4. (a) Notwithstanding any provision of the Disaster Relief Act of 1970 (the Act), any unit of local government or any of the privately owned nonprofit libraries listed in subsection (b) is relieved from any liability for the repayment of contributions erroneously made by the United States for disaster relief activities for the benefit of such libraries which were damaged or destroyed by Hurricane Agnes in 1972 in the State of Pennsylvania.

(b) The following libraries are hereby entitled to assistance as if eligible under the provisions of the Act as in effect at the time of such disaster:

(1) the William D. Himmelreich Memorial Library in Lewisburg, Pennsylvania;

(2) the Milton Library in Milton, Pennsylvania;

(3) the Shippensburg Public Library in Shippensburg, Pennsylvania;

(4) the West Shore Public Library in Camp Hill, Pennsylvania;

(5) the Osterhout Library in Wilkes-Barre, Pennsylvania; and

(6) the West Pittston Library in West Pittston, Pennsylvania.

(c) In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by this Act.".●

MARITIME BOUNDARY AGREEMENT WITH THE REPUBLIC OF CUBA—EX. H (96–1)

AMENDMENT NO. 2340

(Ordered to be printed.)

Mr. HELMS proposed an amendment to Ex. H (96–1) the Maritime Boundary Agreement With the Republic of Cuba, signed at Washington, D.C., on December 16, 1977.

AMENDMENT NO. 2341

(Ordered to be printed.)

Mr. ZORINSKY (for himself and Mr. JAVITS) proposed an amendment to amendment No. 2340 proposed to Ex. H (96–1), supra.

AMENDMENT NO. 2342

(Ordered to be printed.)

Mr. HELMS proposed an amendment to amendment No. 2340 proposed to Ex. H (96–1), supra.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate today to consider only S. 2216, the Intelligence Identities Protection Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today to hold an executive session in order to hear administration officials on U.S. military access agreements with Oman, Kenya, and Somalia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the sessions of the Senate today and tomorrow to hold hearings on the role of the worker in the 1980's.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

GEOPOLITICS OF OIL

● Mr. JACKSON. Mr. President, the Committee on Energy and Natural Resources has been conducting a major study on the geopolitics of oil over the past 10 months. The purpose of the study has been to assess the political, social, economic, military and other factors that will influence the availability and price of oil over the next 10 to 20 years. As part of this study, the committee has conducted a series of 14 hearings on each of the major oil producing and consuming regions of the world and on alternative policies for securing supplies at reasonable prices in the future. The proceedings of the public hearings will soon be available in printed form.

I wish to draw the attention of the Senate and of the public to a recent statement prepared by Mr. Elihu Bergman, executive director of Americans for Energy Independence, on the subject of the geopolitics of oil. Mr. Bergman's statement contains several interesting observations about international energy developments and their implications for U.S. energy policy. Americans for Energy Independence is committed to policies that will reduce U.S. strategic and economic vulnerabilities that result from excessive dependence on insecure foreign oil sources.

In his statement, Dr. Bergman discusses the political adversities the United States is suffering in the international arena as a result of our oil dependence. He brings to this discussion insights acquired as a result of extensive work and research experience in Europe, the Middle East, and Latin America. Mr. Bergman stresses the critical link between our foreign policy and our energy security over the next 10 to 20 years, a link which has been the focus of the Energy Committee's study of the geopolitics of oil.

A version of Mr. Bergman's statement is scheduled for publication in the winter 1980–81 issue of Middle East Review. In order to make his excellent statement available to a wider audience, I request that it be printed in the RECORD.

The statement follows:

A GLOBAL PERSPECTIVE ON U.S. ENERGY POLICYMAKING

During the decade of the 80's, the Middle East will remain the world's major single source of oil. The conditions of Middle East oil availability, and its impact on world politics and economics, will be determined by how the major consuming countries handle their energy requirements and their strategic interests.

Actions by the consuming countries, the Western alliance and principally the U.S., will determine both the economic value of Middle East oil, and the political value of the region. For the U.S. the stakes in this reckoning process, and its outcome, are critical to the economic health of the U.S., and to our strategic and political interests in the Middle East and elsewhere in the world. A reduction in the value of Middle East oil would enhance U.S. stature and capabilities in the world. The maintenance and increase in its value, as the result of continuing dependence on it, has the opposite effect.

Clearly the ball is in our court, and we have not been handling it so well, neither the U.S., nor our traditional partners in the Western alliance. An erosion of American leadership in the international arena has compounded a pattern of political and economic weakness. The costs and consequences of this deterioration are somber to contemplate, not only for the energy and economic well-being of the U.S., but for the maintenance of national values we traditionally assert, and share with our Western allies.

External perceptions of the U.S. by allies and adversaries alike fosters behavior that further erodes common interests and values. What they see is an America still traumatized by the anguish of the Vietnam war, guilt-ridden, complex-ridden, and unable to cope with post Vietnam realities. They observe increasingly a lack of clarity in defining American interests and objectives, and a lack of will in carrying them out. These perceptions have exacted a heavy cost among friends who traditionally have relied on the U.S. as a major factor in securing mutual interests, and have provided opportunities for adversaries in asserting their objectives.

Among our traditional allies, the costs of American weakness came into dramatic and depressing focus during the Venice Summit in June. There we witnessed a melancholy spectable of allies publicly and collectively turning their backs on the United States, for all the world to see, in rejecting the common effort in pursuit of shared values that had characterized our relationship since the end of World II. It was every man for himself in a headlong rush to seek refuge in insecure ports in the storm, the favorite ones being Moscow and Riyadh. There was anxious quest for self-serving alternatives to joint action. Our allies appeared to abandon any commitment to collective responsibility and political solidarity that is at the root of the Western Alliance. Much of this because of uncertainties and anxieties about the Middle East oil supplies on which they are so reliant.

During previous months, there had been ample evidence of the unravelling commitment in Western Europe and Japan. There was an equivocal response to the U.S. call for a trade embargo on Iran. There was a comparable response in asserting a condemnation of the Soviet invasion of Afghanistan, most visibly in a boycott of the Moscow Olympics. There has been the undisciplined provision of nuclear capability to anybody who wants to buy it. There was the forfeiture of an opportunity during a short-term global oil glut for exercising joint leverage in the oil market, as each nation scrambles to make the best deal to protect its short-term interest. And finally, at Venice, there was the assault on the U.S.-sponsored Camp David peace formula, which has produced a first and remarkable breakthrough in more than 30 years of Middle East hostilities. The cosmetics that occurred during President Carter's visit that followed their meetings during the previous week could not camouflage their earlier assertions of self-interest.

For the proud nations of Western Europe, the display of contempt for a commitment that had served them so well during the past thirty years reflects not only a disabling anxiety, but a loss of self-respect, and perhaps even of a part of the moral purpose of their nationhood. This summer, they have reverted to the level of paranoid shopkeepers. But they have gotten there largely because of their lack of faith in the United States.

Among our adversaries, the perceptions and realties of U.S. and Western weakness provide unparalleled opportunities to pursue historic objectives. It is now six months after the Soviet invasion of Afghanistan dramatized the strategic vulnerability into which the U.S. and our allies have declined. No matter that the Soviets have gotten more than they bargained for in Afghanistan in terms of costs and casualties; they still have come out ahead.

The Soviet move was a response both to Western weakness and internal instability in the region, conditions that have fed off of one another. The Soviets based their move in Afghanistan on a calculation of great opportunity, coupled with low cost and low risk, in taking another step toward an historic objective of greater Russian foreign policy—the establishment of Russian control on the Persian Gulf. The opportunity was created by the collapse of Iran into a condition of tribal anarchy, the increasing conditions of unrest and instability in Saudi Arabia, and the growing assertiveness of Soviet clients in the Persian Gulf area. The minimal risks and costs were driven home to Soviet decisionmakers as they witnessed an erosion of U.S. power in the Middle East, symbolized by the agonizing failure to res-

cue some 50 Americans held hostage by terrorists in Tehran. The Soviets observed an ambiguity of U.S. will coupled with a lack of capability for action by the U.S. and our allies.

No longer was there an effective Western deterent in the Persian Gulf region. Since the British withdrew from Aden in 1969, there had been no direct Western military presence. And with the collapse of the Shah in 1979, the last remaining surrogate for a direct Western military presence, ill-advised that this particular formula for an assertiion of Western power may have been, was removed from the scene.

Beyond our traditional allies and principal adversary, there is a third sector of the international community, whose behavior is influenced by perceptions of the U.S. and our actions, and whose condition and opportunities are very much determined by our role in the international community. These are the Third World nations in the Middle East, Asia, and Africa, a few of them with oil resources who are "haves", but most of them with limited resources and rapidly expanding populations who are 'have nots". With the "haves" we have attempted to create influence and special relationships because of the obvious value of their oil. And among some of the "have nots" we have sought special relationships because of the strategic significance of the particular geography they occupy. Because of our particular vision of how the international community should live together, the U.S. traditionally has been committed to the expansion of opportunity for all these countries, "haves" and "have nots", and their populations.

Yet among all of these countries, there is growing unease and uncertainty about the U.S. Among the "have nots" there is an increasing climate of insecurity largely because of the oil tribute exacted by the "haves", which deprives them of even limited opportunities to pursue their self-interest as they conceive it, and compels them in the name of self-preservation to grasp at any manner of lifesaving device, no matter who offers it, and at what price. Within this environment, there is a growing conviction that it is open season on U.S. interests, which can be challenged at will and with impunity. The new regime in Iran has provided the most blatant display of such behavior.

Some of the major oil-producing countries now pose a unique requirement for interdependence with the U.S. and the West. For better or worse, and for the time-being, we need one another—we for the oil they can supply, and we for the security blanket we can provide. Because of conditions internal to these countries, their relationships within the region, and the existing condition of Western strategic capability on their behalf, this is a vulnerable and perilous environment for all concerned.

It is an environment characterized by conditions of instability and the absence of constructive relationships both internal and external, in which Soviet ambitions and capabilities are the common denominator and principal beneficiary. The ingredients of this highly volatile environment are reflections of the historic experience of the populations and regimes of the area. They are nothing new. They involve an overlapping set of adversary relationships reflecting historic political, economic, religious, ethnic, and tribal diversities and rivalries.

The internal pattern of conflict is illustrated by current upheavals, which by no means have run their course. Iran is the obvious and most dramatic showcase for these ingredients and their consequences. The revolution in Iran is the product of longstanding grievances involving the impact of Western modernism, the maldistribution of wealth, the abuse of political and economic power, intolerable levels of corruption among the leadership, and the persecution of non-Persian ethnic minorities. Catalyzed by the explosion of oil wealth, these grievances were successfully manipulated by a coalition of strange bedfellows, embracing militant religious fundamentalists, secular political radicals of various persuasions, and a small group of upper middle class reformers who concluded that matters had deteriorated too far. Now, all of these groups are at each other's throats, competing for political power.

Variations of this pattern, and replications of its ingredients and dynamics, have surfaced in other key countries in the region. The Mecca Mosque episode last winter, and the less publicized, but recurrent insurrections in Saudi Arabia, illustrate the chronic and increasing instability created by combinations of oil wealth, rivalries within the ruling family, conflicts between a small but growing cadre of modernists and Islamic traditionalists, and the inevitable tribal grievances.

In Iraq, which has emerged as the major Soviet-supplied military force in the Middle East, with an arsenal of tanks larger than the armored force of any single NATO country, there is another variation of conflict and instability. The principal factors in the Iraqi pattern, which were illustrated during the past year by a series of bloody vendettas within the political leadership, involved clashes between factions of the dominant Baathist political ideology, overlapping the traditional conflict between the Sunni and Shute sectors of Islam. Here again, the burgeoning oil wealth increases the stakes involved in the outcome.

This is the environment of instability in the three countries with the largest immediate oil-producing capability in the Middle East. It should be noted in passing that none of these volatile ingredients are directly related to Egypt, Israel, Camp David, the Palestinians, the PLO, nor the West Bank. But in the absence of internal resolution and external deterrent, they are ripe objects for Soviet manipulation.

Nobody can project with certainty how events will transpire during the coming weeks and months. But let us consider a worse-case scenario, which is neither fantasy nor an unrealistic prospect: Political cadres dominated by the Soviets are the only elements capable of restoring order to the increasing anarchy in Iran. The trained and skilled political operations already are on the scene in the key separatist provinces of Abezbaijan, Kurdistan, Baluchistan, and Khuzistan, where Iranian oil is produced. Now that Iran is effectively surrounded by the Soviet Union, and its clients in Traq and Afghanistan, the activation and backstopping of these elements is an enterprise the Soviets can accomplish with relative ease when they choose to do so. When Soviet surrogates assume political control in Iran, the Russians, in effect, will have arrived physically on the Persian Gulf.

Once there, they are in a unique position to exploit the increasing unrest and instability in Saudi Arabia. Recent events in Saudi Arabia beg the question of when a coalition of traditionalists and radicals, comparable to the one that toppled the Shah, will remove the incumbent Saudi regime. In this enterprise, the surrounding Soviet surrogates in Iraq, Iran, and South Yemen, orchestrated and manipulated by the Soviets, would be available for supporting roles. It is unlikely that the remaining traditional oil producing regimes on the Persian Gulf—Kuwait and the United Arab Emirates—could resist the bandwagon impact for long.

Thus, the Soviets not only would be sitting on shores of the Persian Gulf, they would add effective control over 35 percent of the world's current oil producing capacity to the 18 percent they themselves produce. The Soviets would control more than half (53 percent) of the world's current oil-producing capacity.

Once they controlled the oil, it is unlikely that the Soviets would impose embargoes on export to the West. As now, they would require maximum production to generate the revenues needed to support domestic and foreign policy objectives. But consider the enormous increase of more than 500 percent in the amount of world oil production under nominal Soviet control, and the corresponding fivefold increase in oil revenues subject to their influence. Here is a permanent windfall of enormous proportions available to sustain Soviet global objectives for as long as the world needed oil. With this resource, the Soviets would not even have to bother with price and supply manipulations readily available to the controller of more than 50 percent of the world's oil production.

This worst-case scenario is no longer fanciful; it is real, it could happen and it could be somewhere on the horizon.

An obvious priority of U.S. foreign policy during the months and years ahead, is to prevent this worst-case scenario from happening. In addressing this objective, our national energy policy is the critical adjunct of foreign policy. To attain the goal, U.S. policy must be directed at two interrelated targets: (1) A reduction of dependence on Middle East oil; and (2) The effective security of the residual Middle East oil sources we and our allies will continue to require.

The securing of Middle East oil requires nothing less than a clear assertion of U.S. interest, determination and strength in a tangible commitment in the form of a regional security net. Such a structure would perform the dual function of unmistakably assuring both the local regimes and the Soviets of the particular U.S. interest in the region.

The parallel reduction of dependence on Middle East oil requires a vigorous U.S. commitment—far more so than heretofore—to three mutually reinforcing objectives: (1) A reduction in oil consumption by the conservation and more efficient use of all energy supplies; (2) The expansion and diversification of oil supply sources, both domestic and foreign, and (3) The substitution of presently available alternative energy sources for oil wherever they can be used.

A meaningful reduction of dependence on Middle East oil requires the replacement of a "sellers" market that now exists with a "buyers" market. As the world's major oil consumer—we use 30 percent of global production—with access to the widest range of substitutes for oil, the U.S. plays a critical role in accelerating the transition. In pursuing these objectives, the primary target for U.S. energy policy is the power of the foreign producers, who presently enjoy discretion over the level of their oil productions—notably Saudi Arabia, Kuwait, and the United Arab Emirates. They produce more than they need to sell. The other producers need to sell everything they can produce to meet their revenue requirements.

This target is achieved by collapsing the demand for oil to a level where oil producers, of whatever political stripe, would require customers more than the consumers require the oil. The attainment of this goal involves decreases in the demand for existing oil production below the level required by the producing countries to meet their current obligations—to pay their bills. Once this goal has been achieved, the producers will need to compete with one-another for markets, thus assuring a secure supply for consuming countries, moderating the rate of price increases, and perhaps even reducing prices. Under these conditions, a marketplace dominated by the consumers—not the producing countries—will determine the quantity of oil produced, and its price. The amount of oil involved has been estimated at about 5 million barrels a day, less than 8 percent of current world consumption. Clearly this is a manageable goal, especially when the stakes in achieving it are so high.

In addition to generating enough income to meet their current and increasing financial obligations, two other sets of objectives determine production decisions by the major oil producers. One is to align production and prices with the requirements of Western economic systems, at levels that do not disrupt the viability of these systems, in which the producers have an increasing stake. The other is to maintain production and prices at levels that do not encourage significant shifts to petroleum substitutes, and thus undermine the long-term value of their resource and the related economic and political influence. Here again, despite the rhetoric, a Palestinian solution is not a factor in this decisionmaking process.

These remedies for turning around the existing condition of U.S. weakness are within reach. For the well-being of the nation, it is critical that they be used, because the stakes are so high. Doing so requires energy policy decisions transacted in an atmosphere of reality and national interest; not in a world of symbolism and mythology where too many of them have been made.●

OUR DANGEROUS DEPENDENCE ON FOREIGN SOURCES OF STRATEGIC MATERIALS

● Mr. SCHMITT. Mr. President, I have been speaking out on our strategic minerals crisis now for some time because I fear that this country's best interests are threatened by our dangerous dependence on unstab'e foreign sources for many of our strategic minerals. It is bad enough to import 45 percent of needed crude oil, but it is equally if not more dangerous to be imvorting 65 percent of our strategic minerals.

The Commerce Committee has been working on this problem and recently held 4 days of hearings on the subject of a strategic materials policy. It is apparent that the Carter administration does not really have a strategic minerals policy any more than it has a realistic energy policy.

On September 11, 1980, the New York Times printed an article detailing the recent trip made to the People's Republic of China during which the Chinese preliminarily agreed to sell the United States quantities of titanium, vanadium, and tantalum, all of which are necessary for aircraft production.

As I and others have repeatedly stated, the United States must rapidly develop a minerals and materials policy since there is a long leadtime required to actually put new mines or smelting plants into operation. At present, too many of our critical strategic minerals come from foreign nations where, at some point in the future, we may be unable to purchase the needed materials or to protect our lines of supply. Our policy should emphasize increased domestic exploration and production as well as efforts to produce synthetic material to further reduce our dependence.

While I am glad to see that we are at least diversifying our sources of strategic minerals, such action should not blind us to the fact that this action in no way lessens our dependency on foreign sources and thus the need for a coherent and realistic minerals and materials policy is as great as ever.

Mr. President, I request that the article I referred to earlier be printed in the RECORD.

The article follows:

CHINA WILL SELL U.S. METALS NEEDED TO MAKE PLANES

PEKING, September 10.—China has indicated it would be willing to sell the United States some of its plentiful supplies of three metals that are critical for defense manufacturing but which America lacks, a senior Pentagon official said today.

Dr. William J. Perry, the Under Secretary of Defense for Development, Research and Engineering, said Chinese and American experts met today for a preliminary discussion on the sales. The metals—titanium, vanadium and tantalum—are lightweight, heat-resistant and necessary for aircraft production.

Dr. Perry also said that negotiations between China and private companies in the United States for the purchase of American military equipment were proceeding "at a brisk pace" despite a cutback in Peking's military budget.

Peking has made no purchases since the Carter Administration announced last winter that it was willing to sell China military equipment and technology but not weapons, Dr. Perry said. The Pentagon has granted licenses to American companies for such sales and Dr. Perry said he expects some sales within a few months.

ADD SUBSTANCE TO U.S. POLICY

Dr. Perry is leading a 22-member Defense Department mission of technical and scientific experts on a 13-day visit to China. The trip follows one by Secretary of Defense Harold Brown last January and is part of an effort to "add substance" to Washington's policy of making United States military technology available to China, Dr. Perry said.

Dr. Perry said the Chinese had again sought permission to buy weapons, but he said he had told Chinese military officials, including a deputy chief of staff, Liu Huaqing, that the Carter Administration had not changed its restrictions on arms sales.

He said the Chinese had not exerted any pressure on the United States. "We believe, and they do too, that there is ample room for progress under the current guidelines," Dr. Perry said at a news conference at the home of Ambassador Leonard Woodcock.

SALE OF COMPUTER APPROVED

He also disclosed that he had told the Chinese the United States had approved the sale of an advanced high-speed computer made by the Western Geophysical Company of Houston to process oil and gas prospecting data. The Chinese have sought permission since last year to buy the computer, which has possible military applications. Secretary Brown had given them preliminary indications that the purchase would be approved.

The computer is more advanced than any American equipment approved for sale to the Soviet Union, Dr. Perry said.

He said the technology and equipment the Chinese had shown the most interest in were electronics, semiconductors, testing equipment, instrumentation, radar, radios and transport helicopters.

Bell Helicopter is reportedly negotiating to build a helicopter factory in Harbin in the northeast, not far from the Soviet border.

About 400 licenses for dual-use technology—technology with both military and civilian applications—have been approved by the Pentagon, Dr. Perry said. The Defense Department has also cleared 10 or 20 applications for licenses for sales of military support equipment, he said, adding that American companies must now complete the sales.

PUBLICITY ON GLAMOR WEAPONS

China has been cautious about buying arms, despite widespread publicity about its possible orders for glamorous weapons like Britain's Harrier jump jet or French anti-tank and antiaircraft missiles. A major stumbling block is China's low military budget.

It was announced last week at the National People's Congress, the nominal legislature, that the military budget would be cut by $2 billion this year because the army overspent last year during the brief border war with Vietnam. The cut will reduce military spending to $13.1 billion.

Gen. Shi Shiyu, a member of the Military Affairs Commission, was quoted by the New China News Agency as urging "understanding and support" on all sides over the low level of appropriations for defense.

Dr. Perry and his delegation left Peking today for visits to Chinese military bases and research and production facilities. He is scheduled to visit Xian, Nanjing, Hangzhou and Shanghai.●

EXCESSIVE GOVERNMENT TRAVEL

● Mr. SASSER. Mr. President, over the past 2 years, I have taken the floor on several occasions to bring to the attention of my colleagues certain instances of waste and abuse in Federal Government travel.

A $500 MILLION TRAVEL CUTBACK

Last year, in response to these abuses, I introduced legislation designed to reduce the Federal Government's travel and transportation budget by $500 million. This legislation received strong bipartisan support and was quickly enacted.

According to testimony by the OMB Deputy Director before the Senate Appropriations Committee earlier this year, the $500 million travel cutback legislation, which I sponsored and which was solidly supported by Senator MAGNUSON and Senator YOUNG, is being implemented successfully.

A MATTER OF CONCERN

Excessive travel is a matter that is of concern to both the Congress and the administration. Unfortunately, it seems that some Federal departments and agencies are still paying insufficient attention to curbing excessive travel despite the efforts of the Congress and the Office of Management and Budget.

EXCESSIVE MEETINGS AND CONFERENCES

Mr. President, for a number of years, the Office of Management and Budget has had in effect certain policies designed to control official travel of Federal employees. I question however, whether these policies are being taken seriously by the various agencies of the Government.

Mr. President, one of the recommended methods for curtailing official travel and reducing travel costs, as outlined in OMB Bulletin No. 76-9, reads as follows, and I quote:

> Limitation of attendance at conferences—when attendance is determined to be necessary for accomplishment of agency missions—to a single individual responsible for summarizing and reporting the results to other staff members.

This recommendation seems straightforward enough—send one person to the

conference and let that individual report back to the others. The OMB and the administration are to be commended for efforts such as this to curb and eliminate nonessential travel expenditures.

FOREST SERVICE EXAMPLE

In response to my request that some insight be gained on just how a particular agency might implement this OMB recommendation, the auditors from the General Accounting Office examined the implementation of this policy at the U.S. Forest Service.

FOREST SERVICE STATED POLICY

Under the Forest Service's "meetings management" policy statement, the Service should, and I quote:

In recommending and approving attendance of more than one employee at a meeting consider the following: "Possibility of one employee representing several Forest Service units and reporting information to all those units."

FOREST SERVICE ACTUAL POLICY

So far, so good. But only a couple of pages further into the manual is found the following quote:

1. The following employees are authorized to attend national meetings without further Washington Office approval:

a. The Chief, Associate Chief, Deputy Chiefs, Associate Deputy Chiefs, Regional Foresters, Station Directors, and Area Directors.

ENTOURAGE OF 35 CAN ATTEND SOME MEETINGS

Mr. President, the GAO informs me that the Forest Service has 5 Deputy Chiefs, 8 Associate Chiefs, 9 Regional Foresters, 9 Station Directors, and 2 Area Directors. So while the Forest Service pays lipservice to the desirable policy of sending one person to, "national meetings" only four pages later, in the same manual, they give blanket approval for an entourage of 35 people to attend, "national meetings" without further Washington office approval.

ONE HUNDRED AND ELEVEN EMPLOYEES AUTHORIZED TO TRAVEL TO ONE CONFERENCE

In another case, Mr. President, the GAO auditors found blanket authorization for the 35-person entourage to attend one meeting—to be accompanied by 76 additional employees for a total of 111 employees at one single conference.

I submit, Mr. President, that the travel practices of the Forest Service as announced in its travel manual bear no resemblance at all to the frugal and rational approach stated in formal policy—that is, send one conference participant and let that individual return and brief the others.

WIDESPREAD PATTERN OF EXCESSIVE TRAVEL

One might ask, Mr. President, just how often do these conferences and "national meetings" arise? Am I pointing out isolated instances of travel abuse or is there a widespread pattern of excessive travel at the Forest Service.

To get the answer, one need go no further than the Forest Service travel manual.

No less than 77 individual organizations are listed. Attendance at the annual conferences of all of these organizations does not require Washington office approval. Blanket approval has already been given in the travel manual which ranges from 5 to 76 attendees. The average is 21 employees for each of the 77 meetings. Plus the 35-person entourage mentioned earlier. Plus additional personnel such as those in the program to present papers and those employees who happen to be national officers or committee members of the 77 favored organizations.

OVER 4,000 ATTENDEES

If the blanket approvals are fully utilized, Mr. President, the American taxpayers are sending over 4,000 Forest Service personnel on expense paid trips to 77 conferences each year.

A $4 MILLION EXPENDITURE

If one assumes that the typical conference costs the Government $1,000 for travel, lodging costs, per diem costs, and registration costs per attendee, then Uncle Sam is picking up a $4 million annual travel tab so that Forest Service personnel can attend just one category of meetings entitled, "national conferences."

A 50-PERCENT INCREASE IN APPROVED CONFERENCES

I might say, Mr. President, that the GAO auditors found that between 1977 and 1979, while the Congress and the OMB were implementing new efforts to curb excessive travel expenditures, the Forest Service was heading in just the opposite direction. Between 1977 and 1979, the Forest Service added 27 conferences to its list for which no Washington office approval was required. This is a 50-percent increase in conferences in just 2 years.

LIST OF CONFERENCES AND APPROVED ATTENDEES

Mr. President, I shall submit a listing of the approved conferences and the authorized participation by Forest Service personnel be printed in the RECORD at the conclusion of my remarks.

IRONIC SITUATION

I think this situation—this flaunting of the stated policy of sending one participant and having that individual return and brief the others—is especially ironic, Mr. President. We have a situation in this country where the farmers are having difficulty borrowing the money to plant their crops, but the Foerst Service of the Agriculture Department can find the funds to conduct the boondoggles I have just described.

CONCLUSION

Mr. President, I am hopeful that the officials at the Agriculture Department and the Foerst Service will take note of my comments here today and initiate new efforts to root out nonessential Federal expenditures. I hope the staffs of the other departments and agencies take note of my comments and examine their own policies and procedures to see if they are living up to the letter and the spirit of the OMB policy of sending only one individual—not 111 as the Forest Service does—to a conference and having that individual report back to brief the others.

The table follows:

TITLE 1300—MANAGEMENT

EXHIBIT 1

Sponsoring organization	Authorized participation by unit: Regions (9)	Stations (9) and forest products laboratory (1)	Areas (2)	Washington office	Total attendees
FSM 6/79 AMEND 66					
1. American Agricultural Economics Association	1	1	1	1—Res, NFS, A.P. & D.	[1] 24
2. American Association for the Advancement of Science.		1		1—TMR, FER, FIDR	13
3. American Association of Petroleum Geologists	1			1—M. & G.	10
4. American Association of State Highway & Transportation Officials.	1			1—E	10
5. American Congress on Surveying & Mapping	1	1	1	4—E	25
6. American Fisheries Society	2	1	1	1—WL, FER	32
7. American Forest Institute	1	1	1	1—OI	22
8. American Forestry Association	1	1	1	1—OI, Rn, TMR, A. & F. M.	25
9. American Geophysical Union	1	1	1	1—APD	22
10. American Institute of Mining, Metallurgical & Petroleum Engineers.	1			2—M. & G.	11
11. American Institute of Planners			1	2—APD, 1—LMF	5
12. American Mining Congress	1			2—M. & G.	11
13. American Personnel & Guidance Association	1			1—HRP	10
14. American Phytopathological Society	1—except R8 and R9	2	2	1—FIDM, FIDR	33

Sponsoring organization	Authorized participation by unit: Regions (9)	Stations (9) and forest products laboratory (1)	Areas (2)	Washington office	Total attendees
FSM 9/79 AMEND 67					
15. American Right of Way Association	1			2—L	11
16. Association for Computing Machinery		1	1	1—CT, 1—DM, 1—CSA	24
17. American Society for Information Sciences		1	1	1—S. & P.R., E, CSA, DM, AM	17
18. American Society for Public Administration	1	1		2—AM	23
19. American Society of Agricultural Engineers	1, 2—R1, R5	1		2—E	23
20. American Society of Automotive Engineers	1, 2—R1, R5			2—E	13
21. American Society of Civil Engineers		1—INT		2—E	12
22. American Society of Farm Managers & Rural Appraisers.	1—R2, R3, R4, R6, R9			1—L	6
23. American Society of Landscape Architects	2, 1—R10	1—PSW, NE, NC, SE	1	2—RN, 1—E	26
24. American Society of Photogrammetry	1	1	2	3—E, 1—FRER, 1—FIDM	28
25. American Society of Training & Development	1, 2—R2 (1 OMA)	1	1	3—PM, 1—A. & F.M., E, HRP	29
25a. American Water Works Association	1			2—E	11
26. Association of Engineering Geologists	1	1—RM, PNW, PSW, NE		2—E, M. & G.	17
27. Association of Federal Appraisers	1			2—L	11
28. Association of Government Accountants	3—R1 through 9:1—R10	1	1	2—F. & A.M., P.D. & B.	41
29. Association of Interpretive Naturalists	1	1		3—Rn	22
30. Classification Compensation Society	1			5—PM	24
31. Conservation Education Association	1		1	1—OI	12
32. Data Processing Management Association	1			2—CT, 1—CSA	12
33. Entomological Society of America	2—except R8, R9	2	3	2—FIDR, 2—FIDM	44
34. Federal Employed Women	1	1	1	2—CR	23
35. Forest History Society	1	1	1	2—AM and 1—Rn	24
36. Forest Products Research Society [2]	1—R1, 2, 4, 3, 9, 10; 2—R3, 6; 3—R5.	4, 10—FPL	4	5—CFM, 3—FRER, FRER, 1—TM	76
37. Geological Society of America	1			1—M. & G.	10
38. Great Plains Agricultrual Council	1—R1, 2, 3	1	1	1—CF, 1—TMR	17
39. Helicopter Association of America	1; 2—R5	1—PNW		2—A. & F.M., 1—AS, CFFP, F.F. & A.S.R., FPER.	17
40. IMAGE	1	1		2—CR	21
41. International Personnel Management Association	1, 2—P2 (1 OMA)	1	1	5—PM	25
42. Izaak Walton League of America	1			1—WL, Rn, OI	12
43. National Agricultural Aviation Association	1—R1, 3, 4, 5, 6			2—A & F.M., 1—FTDM	8
43a. National Association of Conservation Districts	1		1	2—S. & P.F.	13
FSM 4/79 AMEND 65					
44. National Association of County Engineers	1			1—E	10
45. National Association of Review Appraisers	1—R1 through 9			2—L	10
46. National Association of State Foresters	1		1	1—OI, RPA, 4—S. & P.F.	17
47. National Audubon Society	1	1	1	2—WI, 1—FER	24
48. National Cattlemen's Association	1	1—RM, INT		1—Ree, FER	13
49. National Coal Association		1, 2—INT	1	1—FER, CF, WS, MG	17
50. National Computer Conference	1	1		1—CT, 1—DM, 1—CSA	22
51. National Council of State Garden Clubs	1			1—OI	10
52. National Forest Recreation Association	1—R1, 2, 3, 4, 6, 3—R5	1—PNW		2—Rn, IL	13
53. National Recreation & Parks Association	1	1		1—WL, FER, RPA, A. & F.M., OI, 3—Rn	27
54. National Safety Congress	1, 2—R1, 2, 5	1	1	1—Rn, PM, AS, A. & F.M., E	29
55. National Ski Areas Association	1			1—Rn	10
56. National Watershed Congress	1	1	1	2—A.P. & D., 1—WS	24
57. National Wildlife Federation	1	1	1	2—WL	23
58. National Wildlife Management Institute	1			2—WL, FER, 1—OI, CF	27
59. National Woolgrowers Association	1			1—FER, Ree	11
60. Outdoor Writers Association of America	1			1—OI, RPA	11
61. Raptor Research Foundation	1	1		1—WL, FER	21
62. Rocky Mountain Oil & Gas Association	1—R1 through 4			1—M. & G.	5
63. Sierra Club	1	1	1	1—Rn	22
64. Society for Range Management	2, 1—R10	3—INT, PNW, PSW, RM, 2—NC, SE, SO.	1	3—Ree	40
65. Society of American Archeologists	2	1	1	1—AM, Rn	32
66. Society of American Foresters	2	2	2	Per special authorization letter	42
67. Society of Federal Labor Relations Professionals	1	1	1	3—PM	24
68. Society of Technical Communications		1	1	1—E, 1—OI	14
69. Soil Conservation Society of America	1	1—PNW, PSW, NE, INT	1	2—A.P. & D., I, FER, RPA	19
70. Soil Science Society of America	1	1		1—E, FER, TMR 2—W. & M.	24
71. Technical Association of Pulp & Paper Industries	1	1, 5—FPL		1—FRER, 2—FRER	17
72. Technology Transfer Society	1	1	1	3—S. & P.F.	24
73. Transportation Research Board	2		2	5—E	27
FSM 9/79 AMEND 67					
74. Water Pollution Control Federation	1			1—E	10
75. Western History Association	1	1—RM, INT, PNW, PSW, NC.		1—AM, Rn	16
76. Western Interpreters Association	1	1		1—Rn	20
77. 430. added					
Total attendees authorized without Washington Office approval.					1,563

[1] Add 35 attendees to all figures for total authorized. [2] No. 36 above authorized (76 plus 35) for total of 111 employes. ●

SAMMY DAVIS, JR., HONORED FOR HIS CONTRIBUTIONS TO THERAPEUTIC LIVING CENTERS FOR BLIND PERSONS

● Mr. CRANSTON. Mr. President, one of America's great entertainers—Sammy Davis, Jr.—will be honored in Los Angeles on September 21 for his unique contribution to the world of entertainment and to a very special organization with which he is associated.

The Therapeutic Living Centers for the Blind is an organization founded by the parents of a blind boy who is severely handicapped in other ways, as well. When Seymour and Bunny Pearlman found out that there was no institution, no organization which could help their son and hundreds of other blind children with multiple handicaps, they organized and helped finance the first Therapeutic Living Center (TLC).

Sammy Davis, Jr., heard about the Therapeutic Living Centers and offered to help. His assistance has provided TLC's with new hope, new money, and new determination to enlarge its work of helping the most helpless of all handicapped individuals—blind disabled children.

Sammy Davis, Jr., will be honored this Sunday for his contribution to TLC's at a banquet in the Los Angeles Music

Center in the Dorothy Chandler Pavilion by Los Angeles civic leaders and public officials. He will be recognized not only for his artistic abilities but also for his deep, humanitarian concern for those who have needed a helping hand, our blind children with multiple handicaps.

For his tremendous contributions to entertainment, for his compassion and thoughtfulness, for his deep caring for others and his desire to reach out to others—I ask the Senate to join me today in this tribute.●

BURLEY TOBACCO INVENTORY

● Mr. HUDDLESTON. Mr. President, over the past decade, the floor of the House and Senate have witnessed many debates on the continuation of the tobacco price support program. It has consistently been upheld as the most practical method of stabilizing the price of this commodity and matching supply and demand.

The continuing success of this 40-year-old program has recently been highlighted by the Burley Tobacco Growers Cooperative Association, Lexington, Ky., announcing the sale of 21 million pounds of pool stocks thus reducing their inventory to less than 2 million pounds. For comparative purposes, it should be remembered that at one time, Burley pool stocks amounted to 500 million pounds. Informally, I have been advised that the balance left in the pool is most likely to be sold prior to the opening of the 1980 marketing season in December.

I want to pay public tribute to the president of the association, Mr. Joe McDaniel, and his staff for the diligence and patience they have displayed in bringing about this remarkable achievement. Operated by and for the tobacco growers, the association has demonstrated again and again the resourcefulness of the American farmer when given the opportunity.

Mr. President, I ask that the press releases issued by the association on September 2 and 8, 1980, concerning this recent turn of events be printed in the RECORD.

The press releases follows:

WAVE OF BURLEY POOL SALES REACHES 21½ MILLION POUNDS

(By Bennett Roach)

A series of heavy sales over the past two weeks has brought pooled burley tobacco stocks to their lowest level in many years.

The Burley Tobacco Growers Cooperative Association said today that as of September 1, total storage stocks now amount to only 2½ million pounds, and that sales are pending which may take most of this.

Alvin R. Beckley, executive secretary-treasurer, announced that since the middle of August the Association has sold 21½ million pounds, all of it to manufacturers and dealers. One purchase amounted to about 15 million pounds.

The sales figures:

1978 crop: 19,617 hogsheads—18,819,434 pounds.

1979 crop: 2,841 hogsheads—2,682,425 pounds.

Totals 22,458 hogsheads—21,501,829 pounds.

Joe McDaniel, president, said "The Association is deeply gratified over the sales. True it almost cleans us out, but that is what we are here for—to conduct the price support program for the benefit of the growers, and to offer a dependable, orderly way for loan stocks to reach the manufacturers and dealers."

McDaniel added: "Our members can look forward to some extra returns over the next two or three years. Those who had part of their crops to go under loan will share in some net gains which the Association has been able to earn for them."

Most of the sales have been on a deferred basis, said Beckley, with delivery up to a year later. For growers who cosigned portions of their crops to the Association under loan, extra payments will be forthcoming on a basis of each year's crop settlement, if net gains are shown on the year's holdings.

Commenting on the success of the Association and the tobacco program, McDaniel said, "The recent sales put our organization in even stronger position, from the standpoint of its record of rendering services to the growers, and in paying off Federal loans and interest. Again, as in many instances over the past 40 years, the farmers and the Association's directors and officers are proud of our operation."

Some distribution from the recent sales is assured, but the payoff, as in former years, must await delivery, tabulation of costs such as storage, processing, insurance, transportation and others, plus final interest settlement with the Commodity Credit Corporation.

The movement of pooled leaf into the hands of dealers and manufacturers is usually spread over many months, or even years. So the buying wave of recent weeks marks a sharp departure from the normal periodic purchases of leaf stocks.

Pooled burley sales are year-around and not seasonal. Manufacturers and large export and domestic suppliers, as well as small job-lot dealers, are regularly "shopping" the wares of the burley association through inventory listings supplied to the trade.

During any month the association at its offices at Lexington receives calls for samples of specified grades, sometimes resulting in sales, sometimes not.

At times the association has had portions of a half-dozen or more crop years on hand, and at one time some twenty years ago the inventory totaled 500 million pounds of unsold leaf. Gradually this was taken by manufacturers and dealers, until in recent years the pool supplies have been no more than 50 to 75 million pounds at any time.

Acting as banker overseeing sales, prices and terms, the Commodity Credit Corporation prescribes rules and guidelines under which the pool selling program operates. The Washington based agency, which finances the farmer-owned burley co-op, dictates grade prices and policies.

Apparently the recent activity is the continuation of a heavy buying movement following a short crop last year.

Near-record purchases took some 50 million pounds of pool held storage stocks last fall before the market opened.

Last March the buying resumed in large scale lots, reflecting the 1979 crop shortage and dwindling supplies of loan stocks, until only the 1978 and 1979 crop holdings were left.

All holdings of earlier years were sold out before the 1979–80 market season opened.

POOLED BURLEY STOCKS LOWEST IN 40 YEARS

(By Bennett Roach)

Burley tobacco news this week is highlighted by more sales of old stock pooled leaf, new and higher grade loan rates for the 1980 market, and good progress in harvesting the current crop.

All loan stocks except 718,224 pounds from last year's crop have now been sold. The August buying wave which 21½ million pounds has continued into September, with an additional 3 million pounds being taken by the trade, on Sept. 3, 4 and 5.

Reporting pool stocks down to their lowest level in 40 years, Alvin R. Beckley, executive secretary-treasurer of the Burley Tobacco Growers Cooperative Association, said the first week in September took all remaining 1977 and 1978 leaf, plus 1.9 million pounds of 1979, for total sales of 3,040,769 pounds.

It is the first time on record that loan stocks held by the Association have fallen below 1 million pounds, since price supports started in 1941.●

JIM DILLEY DAY

● Mr. CRANSTON. Mr. President, on September 21, the community of Laguna Beach, Calif., will be celebrating a special day in the city's history: a day in honor of the founder of the Laguna Greenbelt, Jim Dilley—a former professor and longtime friend of mine.

Twelve years ago, Jim founded the Laguna Beach Greenbelt Committee with the idea of creating an urban open space in Orange County. Through his hard work and enthusiasm, the people of his community were awakened to a new awareness of the natural beauty of their coastal environment and of the need to preserve it. Although Jim Dilley, sadly, has not lived to see his "day" it seems fitting that his good work should be recognized by the residents of Laguna Beach who are the beneficiaries of his vision.

I would like to share with my colleagues a resolution recently passed by the Orange County Board of Supervisors in honor of Laguna Beach's Jim Dilley Day. I ask that it be printed in the RECORD.

The resolution follows:

RESOLUTION

Whereas, Jim Dilley moved to the coastal environment of Laguna Beach in 1958; and

Whereas, Jim developed a strong belief that a portion of the rustic, natural south County environment which he loved must be preserved for future generations; and

Whereas, he was the principal founder of the Laguna Beach Greenbelt Committee 12 years ago to promote this open space dream; and

Whereas, this small, local organization with Jim serving as a guiding force has grown from a handful of concerned friends to a countywide organization of over 1,500 members; and

Whereas, Jim's dream of a designated urban open space or greenbelt area is now finding fulfillment in the Orange Coast National Park;

Now, therefore, be it resolved that the Orange County Board of Supervisors does congratulate the residents of Laguna Beach for recognizing the late Jim Dilley with this special day, September 21, 1980, and further commends them for holding the recognition event at Laguna's main beach in a setting so befitting the beauty of nature which this dedicated environmentalist sought to preserve.●

REPRESENTATIVE RUSSELL "RUSTY" HELLMAN

● Mr. LEVIN. Mr. President, I rise to speak of a man from the Upper Peninsula of Michigan who has had major impact on all the citizens of our State, Representative Russell "Rusty" Hellman.

Rusty has served in the Michigan

Legislature for 20 years. As chairman of the joint capitol outlay committee, his imprint has been left on schools, hospitals, and many public projects.

As a fighter for the people of his district, thousands know of his good deeds.

But perhaps most important have been Rusty's efforts on behalf of Michigan's forests and forest products industry. His dedication to maintenance of forests in Michigan has been noted throughout the State, and his impact has been national.

Mr. President, in the very near future "Rusty" Hellman will be retiring from the Michigan State Legislature, although his good deeds will continue.

Mr. President, I ask that an editorial from the Daily Mining Gazette from Houghton, Mich., regarding the retirement of Michigan's No. 1 lumberjack be printed in the RECORD.

The article follows:

RUSTY HELLMAN DAY

Government officials from the local to State levels have declared Wednesday "Rusty Hellman Day" in the Copper Country and we can't think of a more fitting tribute to a man who has spent the last 20 years of his life representing residents of the 110th District.

Unlike some legislators, Rusty has never rested on his laurels, preferring to keep slugging away—ruffling feathers if necessary—to do the best job he knew how for his constituents.

He has been outspoken and unafraid to call a spade a spade. As a result, he has often been faced with opposition in his bids for reelection. But each time he has prevailed.

Rusty's forte has been forestry. Early in his Lansing career he became known as an expert in the field. Since then he has earned himself a place in Upper Peninsula history books as the man who has done more than any other to keep the industry strong.

Currently, he has a bill before the Legislature which will implement many of the suggestions made in the Jaakko Poyry company study of Upper Peninsula forestry. The bill, if passed, could have a profound impact on the economy of the Upper Peninsula.

Rusty's friends and constituents will gather Wednesday evening at Dee Stadium in Houghton to show him their appreciation. We join them in saluting the State's No. 1 lumberjack.●

THE STRATEGIC PETROLEUM RESERVE—TIMID LEADERSHIP COSTING THE AMERICAN PUBLIC $1 BILLION

● Mr. DOLE. Mr. President, for the last 13 months this administration has refused to buy oil for the strategic petroleum reserve. This single act of timidity has cost the American public dearly in protections against an interruption of oil imports. It has left our military preparedness and our overall defense posture in doubt. And at a time when all are concerned with holding the line on Federal spending, President Carter's inaction has also wasted precious taxpayer dollars.

If the administration had filled the gulf coast sites at a rate of 250,000 barrels per day since August of 1979 when reserve storage was halted, the cost to our economy would have been $2.27 billion. But because the price of oil on the world market has rocketed from $14.50 per barrel delivered in August of 1979 to $32 per barrel now, the same amount of oil for the strategic reserve would cost $3.26 billion—even if President Carter begins today and we make the obviously conservative assumption that OPEC will not raise its prices for the next 13 months!

In other words, the Carter administration's refusal to buy oil for the strategic reserve these last 13 months has cost the American public more than $1 billion.

Only now is the executive branch moving to renew fill of the reserve—not because DOE and President Carter think it is finally the right time—but because Congress directed the President to renew crude oil purchases.

Mr. President, it has been nearly 1 year since the Senate debated the merit of and subsequently expressed its will in adopting the so-called Dole-Bradley amendment to S. 932 dealing with the purchase of crude oil to be used to begin filling our strategic petroleum reserve. That amendment, which the President signed on June 30, 1980, requires him to resume purchasing oil for SPR at the minimum average daily rate of 100,000 barrels.

We should ask "when would the 'right time' occur?" How much of a world oil glut and how long at peak industrial storage before the administration would recede from its position of OPEC paranoia and agree to begin reserve storage?

Mr. President, with the near certainty of an oil import interrupation of 2 to 3 million barrels per day sometime in the next 10 years, we cannot afford to have a petroleum reserve only one-tenth its intended strength, nor can we permit timidity to threaten the Nation's security.

Our oil vulnerability, exacerbated by more than a year of neglect, and the $1 billion price tag for this leadership void, have hurt strategically and economically. We must move with dispatch to renew fill of the petroleum reserve.

Mr. President, I cannot stress strongly enough that our reliance upon oil imports from politically unstable countries carries with it the threat of an embargo or other supply interruption which could place the security of the United States in jeopardy. This country is so unprepared and strategically vulnerable due to our weak SPR that an extended oil embargo would not only devastate our economy to the point where no President, regardless of party affiliation, could hope to reverse the situation, but would also make us vulnerable to foreign military and political aggression. It is essential that this country pursue an energy policy which will free us from dependence on OPEC and insure future generations of energy security as well as military security.

SPR: NONPARTISAN ISSUE

This is not a partisan attack on the administration. Many of my Decocratic colleagues in both the House and Senate feel as I do that the OPEC paranoia and timidity displayed by the Carter administration on the issue of filling our strategic petroleum reserve is a break of our national security, an imperilment of America's defense preparedness, and, because of delays, an incredible economic waste to taxpayers. Mr. President, these are not new revelations. As long ago as October 31, 1979, I made these very points in various statements given before the full Senate. On November 8, 1979, during debate on the Dole-Bradley Amendment I warned my colleagues of the consequences of refusing to fill SPR. And again on April 23, 1980, in a colloquy with several of my colleagues I expressed my deep concern over the Carter administration's total lack of commitment to the SPR program. I stated then and I will state again today that in my opinion this must be one of the most important aspects of our comprehensive energy program, if in fact we are truly committed to energy independence and a defense capability second to none.

Mr. President, to illustrate the nonpartisan nature of this issue, Chairman DINGELL, in a hearing September 15, 1980 before his Energy and Power Subcommittee said:

> Despite a temporary worldwide glut of oil, despite billions of dollars in appropriations (for oil purchases) which will expire at the end of this year, despite the cost to the taxpayer of $9 million per day, despite the peril to national security, the Department of Energy still refuses to fill the strategic petroleum reserve.

Mr. President, simply put, the Carter administration has wasted over $1 billion and has threatened our national security by:

Ignoring statutory requirements for an early storage reserve of 150 million barrels by December 1978;

Refusing offers of oil at a time when 110 million barrels of oil are presently floating in tankers available for purchase, and at a time when industrial storage is at peak levels; and

Increasing our vulnerability to anticipated oil supply interruptions.

Mr. President, I ask that documents prepared by the staff of the Energy and Power Subcommittee of the House Committee on Interstate and Foreign Commerce be printed in the RECORD.

The material follows:

SUBCOMMITTEE ON ENERGY AND POWER,
Washington, D.C., September 1980.

MEMORANDUM

To John D. Dingell, Chairman.
From Subcommittee staff.
Subject The Empty Oil Cupboard.

Despite a temporary worldwide glut of oil, despite billions of dollars in appropriations which will expire at the end of this year, despite the cost to the taxpayer of $9 million per day, despite the peril to national security, the Department of Energy still refuses to fill the Strategic Petroleum Reserve (SPR). This is in direct conflict with the announced policy of the President—one of the key points of his energy program—and is in marked contrast to what is being done in other industrialized nations.

The Energy Policy and Conservation Act, which was passed in December 1975, called for an Early Storage Reserve of 150 million barrels by December 1978. It also provided for an SPR of up to one billion barrels. The last oil was bought for the SPR in November 1978—before the Iranian oil interruption. Since that time the Department has been unsuccessful in its efforts to purchase oil and indeed has turned away offers to sell oil to it. This policy of inaction by the Department is having the following effects:

It is costing the taxpayer the equivalent of $9 million a day in increased oil prices.

It is imperiling national defense preparedness.

As many as 3 million jobs may be lost in the next embargo if the SPR is not filled.

110 million barrels of oil are presently floating in tankers available for purchase.

The Department of Energy is refusing offers of oil.

Every other industrialized country is building its oil stockpiles.

The Subcommittee has conducted a number of hearings on various aspects of the Strategic Reserve and has held at least four hearings within the last year solely on the issue of fill. On April 25, 1980 Secretary Duncan promised regarding the Reserve that fill would commence in early June. As of this date no oil has yet been put in the Reserve. The Subcommittee also heard similar promises in its May hearing from Secretary Duncan and Assistant Secretary Ruth Davis in two of its February hearings.

$9 MILLION PER DAY

At the request of the Administration and in order to expedite the purchase of oil for the Reserve, the Congress authorized the use of the entitlements program to purchase oil for the SPR. This was done in the Energy Security Act (P.L. 96-294), which the President signed into law on July 2. Since that time the Department has put into place regulations to implement this legislation. However, it has not taken advantage of the opportunity to buy inexpensive oil. The difference in old oil and new oil prices means that the Department can save roughly $23.50 on every barrel of oil that it purchases for the Reserve. At a normal anticipated fill rate of 400,000 barrels of oil per day, this means that the taxpayer is missing the benefit of $9 million per day. This further equates to a potential loss in entitlements of nearly $3.4 billion between now and September 30, 1981, when the entitlements program expires. The failure of the Department to take effective action on purchasing oil is particularly distressing since one oil company notified us that it had made an offer of up to 12 million barrels of oil for the Reserve and had received not even the courtesy of a response from the Department.

LOSS OF JOBS

The Congressional Budget Office (CBO) conducted a study for the Subcommittee and analyzed the potential impact of an inadequate SPR. The CBO concluded that the failure to fill could result in disastrous consequences in terms of loss of jobs and loss of Gross National Product. For example, every barrel of oil not in the SPR could represent as much as $350 in lost Gross National Product in the event of another embargo similar to the 1973 oil interruption. This would translate into rates of unemployment in excess of 20 percent. The Director of the Congressional Budget Office, Dr. Alice Rivlin, testified that the consequences could very well resemble the economic hardships during the Depression of the 1930's. The Executive Associate Director for Budget of the Office of Management and Budget, W. Bowman Cutter confirmed this analysis.

FLOATING INVENTORIES

Never has the situation been so ripe for oil purchases for the Reserve. One oil company official has advised the Subcommittee staff that in his company's analysis there are presently between 70 and 110 million barrels in oil tankers in the Caribbean which cannot be off-loaded because of the glut. His company is presently struggling to dispose of surplus oil. It is seriously considering reducing commitments to take oil under existing contracts because of problems with managing inventories. This statement was mirrored by statements from other oil company officials who had similar experiences to relate. For example, one oil company advised that they were ready to sell 1.7 million barrels on an unsolicited spot basis beginning in late August of this year. They were advised by the DOE that the DOE could not accept unsolicited proposals at that time.

Everyone agrees there is a temporary glut. The duration is unanswered; however, best estimates indicate that this glut will last somewhere between four and ten months, possibly a little longer. Everyone agrees that this will end and tight oil markets will return. Because of a fear that tight oil markets will return, the companies are reluctant to refuse delivery of oil under existing contracts, because this would affect their position in times of short supply.

OTHER NATIONAL SPR'S

All other Western and industrialized nations are stockpiling oil. Since the Iranian interruption in early 1979, Japan and Germany have both increased their Reserves. Chile is building its Strategic Reserve. Other Western nations are increasing their Reserves. The only country which has not added to its SPR is the United States. The contrast is stark: everybody is buying oil except the United States of America.

POSSIBLE SOURCES OF OIL

At a July 27, 1980 meeting with the Department of Energy official responsible for filling the Reserve, Chairman Dingell discussed possible sources of oil:

Royalty Oil
Alaskan North Slope Oil
Spot Solicitations
Government-to-Government Arrangements

These re-identified possible sources which the Subcommittee has insisted the Department consider. These points have been raised at hearings and explored since at least the summer of 1978. The official at the Department, Abram Chayes, said those would be considered. However, we have learned from discussions with DOE staff that no efforts have been made to obtain supplies from these potential sources.

PROGRAMMED OIL FILL

In 1973, the Arab oil embargo cost the United States uncounted millions of dollars in lost Gross National Product. The Energy Policy and Conservation Act in 1975 established a Strategic Petroleum Reserve which would reduce the impact of future oil supply interruptions. The original Reserve plan called for 500 million barrels in storage by the end of 1980. In 1977 the Administration, citing its strategic importance, accelerated the plan so there would be a 500 million barrel Reserve by the end of 1980. Reemphasizing its importance in 1978, the President expanded its ultimate size to one billion barrels.

Initial fill of the reserve with crude oil began in July of 1977. The purchase of oil was officially terminated at the outset of the Iranian oil crisis. The Reserve now stands at 92 million barrels. In the Synthetic Fuels Bill, Congress required that fill of the Reserve start at the rate of at least 100,000 barrels per day within 90 days of enactment of the Synfuels bill, or oil production would be required to be shut in at the Naval Petroleum Reserve at Elk Hills. The Synfuels bill in no way required that the oil production at Elk Hills be put in the Strategic Petroleum Reserve. However, the Department of Energy determined that the best way to achieve the 100,000 barrels per day mandate was to obtain voluntary exchanges of Elk Hills production for crude oil delivered to the Strategic Petroleum Reserve states in Texas and Louisiana. Responses to the solicitation were due September 3 and are being evaluated by the Defense Fuel Supply Center.

It should be noted that the Congressional requirement of 100,000-barrels-per-day fill in the reserve was intended as a minimum fill: in no way was it to be assumed that this was to be the maximum or that it was the desired rate. The Department of Energy has made no other attempts to procure oil for the Strategic Petroleum Reserve. It was offered and has accepted the relatively insignificant amount of 10,000 barrels per day as part of a turnback on a contract for oil from the Naval Petroleum Reserve at Elk Hills. Even this oil, at the rate of 10,000 barrels per day, is scheduled to go to the Reserve only until November.

The Department of Energy has decided to swap Elk Hills crude s the best possible way to fill the Reserve. The Energy Regulatory Administration has proposed rules which would mandate the swapping of Elk Hills oil for oil going into the Strategic Petroleum Reserve. There has been unanimous objection by the oil industry to these rules. The industry has used some of the strongest language to date characterizing the DOE as not only robber brons but the equivalent of "Vlad the Impaler". The industry claims to be mystified why the Department of Energy is not now obtaining additional quantities of oil for the SPR. (See the summary of industry comments attached to this memorandum.) The *Wall Street Journal* on Tuesday, September 9, characterized the crude oil situation on the Gulf Coast as a "petroleum glut".

Since the crude oil market is soft and this is the proper time for the DOE to purchase for the SPR, it is important to question why the DOE is not doing so at this time. At the April 25, 1980 Energy and Power hearing, Secretary Duncan pleaded with Subcommittee members to allow him to delay resuming purchases for the Reserve until June. Two and one-half months have now elapsed and the only initiative for the Reserve has been that required by the minimum Congressional mandate contained in S. 932.

The hearing scheduled for Monday, September 15 will present appropriate witnesses to investigate the situation. Representatives from the oil industry will present their opinions. The State Department will be asked to discuss the international ramifications of increased purchases for the SPR. The Central Intelligence Agency in a closed session will give assessment of the world crude market at this time. Mr. Abrams Chayes, Special Advisor to the Secretary of Energy for the Strategic Petroleum Reserve, will address the Department's concerns.

INDUSTRY STATEMENTS IN SUPPORT OF FILLING THE STRATEGIC PETROLEUM RESERVE MADE AT DOE'S PUBLIC HEARINGS ON NAVAL PETROLEUM RESERVE EXCHANGE ON AUGUST 27, 1980 IN LOS ANGELES, CALIFORNIA, AND SEPTEMBER 4, 1980, IN WASHINGTON, D.C.

CONOCO has always supported the development of a Strategic Reserve. We recognize the precarious supply situation prevalent in today's crude oil market and the United States' vulnerability to supply interruptions. We feel such a reserve can help to counter the effects of a major supply interruption. When excess supplies appear on the crude oil market as there are today, every effort should be made to store this excess and protect the United States from future shortages. J. M. McNeese, Manager, Regulations Crude Oil Supply and Trading, CONOCO, Inc.

Union Oil has supported the idea of an SPR from its conception. We continue to support it in the belief that an effective SPR program will be of benefit to every American citizen, and to our Nation's allies as well. An effective program should serve as a deterrent to future international oil embargoes. In the event of such an embargo, or of some other major supply interruption, the SPR will protect U.S. citizens against the worst possible effects. And, of course, only with an

effective SPR can we meet our National obligations under the International Energy Agreement. By its existence, the SPR will serve to protect our foreign and domestic interest and our control over these interests. John L. Rafuse, Manager of Regulatory Economics, Union Oil Company of California.

AMOCO endorses the decision to resume filling the Strategic Petroleum Reserve. In the long run, the SPR will provide the best assurance that the United States will have a substantial inventory of oil physically available on our shores in the event of another embargo or supply interruption. The Strategic supply would also be important to other consuming countries in view of our country's participation in the International Energy Agency's crude sharing agreements.

AMOCO believes that now is a good time to resume filling the SPR. United States and world crude stocks are at a high level. U.S. demand is down substantially from a year ago and conservation is increasing. World prices are soft in comparison to those of 1979 and spot market bargains are available. Domestic crude prices for decontrolled crude are down. Domestic refiners are having few, if any, problems in finding adequate supplies of available crude. N. J. Rubash, Vice President, Supply, Standard Oil (of Indiana).

Filling the SPR is Federal and Administration Policy, and there could hardly be a better time to acquire oil than in a glutted market such as exists today. Ottie T. Vipperman, Vice President, TOSCO Corporation.

MacMillan supports the concept of filling the Strategic Petroleum Reserve as mandated in the Energy Security Act. Jerry Engelhardt, MacMillan Ring-Free Oil Company, Inc.

We feel that the filling of the Strategic Petroleum Reserve is somewhat overdue. John E. Armstrong, Vice President, Supply and Distribution, Fletcher Oil and Refining Company.

We fully subscribe to a National energy policy which would provide the country with assured crude supplies in the case of another oil embargo. At this point in time, it appears that the Strategic Reserve is our best (and possibly only) option to provide such assurance. Therefore, with the current short-term crude surplus in the world, we concur that it is timely to resume moving crude supplies to the Strategic Petroleum Reserve. Arthur L. Malacky, Vice President, Governmental Affairs, Edgington Oil Company, Inc.

OPENING STATEMENT OF THE HONORABLE JOHN D. DINGELL AT HEARINGS ON STRATEGIC PETROLEUM RESERVE SEPTEMBER 15, 1980

Everyone has oil except DOE.

Despite a temporary worldwide glut of oil, despite billions of dollars in appropriations which will expire at the end of this year, despite the cost to the taxpayer of $9 million per day, despite the peril to national security, the Department of Energy still refuses to fill the Strategic Petroleum Reserve. This is in direct conflict with the announced policy of the President—one of the key points of his energy program—and is in marked contrast to what is being done in other industrialized nations.

The Energy Policy and Conservation Act, which was passed in December 1975, called for an Early Storage Reserve of 150 million barrels by December 1978. It also provided for an SPR of up to one billion barrels. The last oil was bought for the SPR in November 1978—before the Iranian oil interruption. Since that time the Department has been unsuccessful in its efforts to purchase oil and indeed has turned away offers to sell oil to it. This policy of inaction by the Department is having the following effects:

It is costing the taxpayer the equivalent of $9 million a day in increased oil prices.

It is imperiling national defense preparedness.

As many as 3 million jobs may be lost in the next embargo if the SPR is not filled.

110 million barrels of oil are presently floating in tankers available for purchase.

The Department of Energy is refusing offers of oil.

Every other industrialized country is building its oil stockpiles.

The Subcommittee has conducted a number of hearings on various aspects of the Strategic Reserve and has held at least four hearings within the last year solely on the issue of fill. On April 25, 1980 Secretary Duncan promised regarding the Reserve that fill would commence in early June. As of this date no oil has yet been put in the Reserve. The Subcommittee also heard similar promises in its May hearing from Secretary Duncan and Assistant Secretary Ruth Davis in two of its February hearings.

At the request of the Administration and in order to expedite the purchase of oil for the Reserve, the Congress authorized the use of the entitlements program to purchase oil for the SPR. This was done in the Energy Security Act (Public Law 96-294), which the President signed into law on July 2. Since that time the Department has put into place regulations to implement this legislation. However, it has not taken advantage of the opportunity to buy inexpensive oil. The entitlement benefit amounts to roughly $23.50 on every barrel of oil that it purchases for the Reserve.

At a normal anticipated fill rate of 400,000 barrels of oil per day, this means that the taxpayer is missing the benefit of $9 million per day. This further equates to a potential loss in entitlements of nearly $3.4 billion between now and September 30, 1981, when the entitlements program expires. The failure of the Department to take effective action on purchasing oil is particularly distressing since one oil company notified us that it had made an offer of up to 12 million barrels of oil for the Reserve and had received not even the courtesy of a response from the Department.

The Administration seems loathe to enter the world oil markets to boost the fill rate at a time of acknowledged world crude oil surplus. A number of other possible sources of oil are available, such as royalty oil, Alaskan North Slope oil, spot solicitations and government-to-government arrangements. However, the Department, with no apparent explanation, has failed to pursue any of these possible alternatives.

The Congressional requirement of 100,000 barrels per day fill reserve was intended as a minimum fill rate; in no way was this to be the maximum, or desired rate. Quite to the contrary, the Congress intended the Department to pursue the most expeditious source for additional oil at rates substantially greater than 100,000 barrels per day.

Even with this mandate, the Department of Energy failed to take sufficient action. In fact, the Department did not even understand the mandate. On September 4, 1980, the Department made the following incorrect statement:

"The Energy Security Act signed June 30, 1980 requires us to begin filing SPR at an average rate of 100,000 barrels per day, beginning October 1, 1980, and further that we may not sell or otherwise dispose of our share of crude oil from the Naval Petroleum Reserve except to fill the SPR directly or be exchanged with other oil with certain specified exceptions."

Later today, I will be introducing a bill to take the SPR away from the Department of Energy and transfer it to an independent agency. I invite my colleagues to join me in cosponsoring this important piece of legislation.

Today, the Subcommittee will hear from a number of witnesses representing private oil companies, the Department of State, the Department of Defense, the Department of Energy and the Central Intelligence Agency. Hopefully, the information provided by this group of witnesses will shed some light on the reluctance of the Department of Energy to start and increase the fill rate for the Strategic Petroleum Reserve.●

HAPPY BIRTHDAY TO THE UNITED STATES CONSTITUTION

● Mr. BAYH. Mr. President, today I call on my distinguished colleagues to pay homage to the Constitution. One hundred ninety-three years ago today our U.S. Constitution was adopted by a convention of the States and was subsequently ratified by the several States on June 21, 1788. The birthday celebration of the Constitution is indeed a most appropriate time for us to stop for a moment and bless our stars and stripes that we truly are a very fortunate Nation. Happy birthday to our U.S. Constitution.

By any objective reckoning, this date should stand with Independence Day as a great national holiday, yet it passes, year after year, with usually the most perfunctory recognition. However, this year, the Constitution was honored with a birthday party. Yes a birthday party, with a magnificent cake in the shape of the United States surrounded with 193 red, white, and blue candles. The birthday celebration was sponsored by a group of highly motivated young people, members of convention II and their executive director, Boris Feinman, the founder and chairman of convention II. In addition, the celebration was cosponsored by the National Association of Secondary School Principals and the National Association of Student Councils. This celebration took place in the halls of the Senate Dirksen Office Building with the full cooperation of Congress and its Members. Over 100 national, State and local organizations were guests of honor at this celebration from all aspects of American life.

Mr. President, I would like to pause for one moment more to thank the distinguished sponsors, cosponsors, and guests. I commend them to national attention for their work in advancing the cause of citizenship education and in fostering participation in the political process. I shall submit the formal announcement of this celebration for the CONGRESSIONAL RECORD at the end of my statement.

Mr. President, I shall also submit for the RECORD an article by Esther Van Wagoner Tufty be placed in the CONGRESSIONAL RECORD, following the formal announcement of the Constitution's birthday party.

The crucial importance of the Constitution sometimes escapes us for the simple reason that it seems almost anticlimactic by comparison with the mighty, ringing phrases of the Declaration of Independence, and the heroic struggles of the Revolution. It is, after all, not so much a great statement of principle as a blueprint for the formation and conduct of our form of government, a blueprint that continues to serve us surpassingly well nearly two centuries later. As a practical blueprint of government, the Constitution of the United States has no

peer anywhere in the world today. As a statement of principle, when considered as part of a great amalgam, which includes the Bill of Rights and the Declaration of Independence, it comprises the definitive statement of principles and aspirations of modern representative democracy.

A century ago, William Ewart Gladstone, the grand old man of English politics who served four times as Prime Minister of Great Britain, gave his thoughts on the Constitution of the United States. His words of tribute have not been surpassed since then, and they merit repetition today:

The American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man.

So it remains in 1980, so too, it will remain for many, many years to come.

In its every particular, the Constitution of the United States righly merits our praise and recognition: In the distinction of its authorship, in its excellence, clarity and brevity of form, in its remarkable adaptability to changing conditions, in its perseverance, and in its salutary effect on the affairs of men and women the world over.

Mr. President, Justice Learned Hand called the Constitution "the best political document ever made." Each American, not only on September 17 of each year, but also throughout the year should understand and reflect on the wisdom of that statement. Citizenship Day and Constitution Week are worthy and fitting complements to Independence Day. I hope that my colleagues will call on their own constitutents to reflect on the Constitution's purpose "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty."

Mr. President, at this time, I would like to indulge my colleagues for one additional birthday wish. It is most appropriate that my chief counsel and executive director of the Judiciary Subcommittee on the Constitution, Kevin Faley, is also celebrating his birthday today, September 17. I call on the Senators to join me in wishing Kevin a very happy birthday and to thank him for his dedication to the principles on which our Constitution was founded.

The announcement and the article follow:

ANNOUNCEMENT

You are cordially invited to celebrate the 193rd Birthday of the Constitution at a commemorative breakfast in the Senate of the United States, Wednesday, September 17, 1980, 8:30 a.m., Dirksen-1202. We shall proclaim the period from now till 1987 as the Constitution's Era, a Time For Citizenship Education, Convention.

We the people who believe the Constitution of the United States is one of the most magnificent inventions in the history of Man hold:

That our country is in need of an up beat . . . a national focus on a definite concept which can evoke the same spirit and depth of pride in achievement as did our hockey team at Lake Placid;

That in the war for the mind one such concept which seizes the soul and fills the essence is the American Constitution. It has imparted to the world:—Brotherhood, Democracy, Freedom, Equality of Opportunity, Responsibility;

That we have a winner in the Constitution . . . that by focusing on it from now until its 200th birthday in 1987 we will generate a substantive and challenging uplifting of the American soul . . . to growth and greatness tomorrow built upon the greatness of all of our yesterdays.

Meeting . . . in the facilities of Congress, and in cooperation with Congress, we warmly acknowledge the presence or assistance of Senator Jennings Randolph, Chair, Committee on Environment And Public Works; Senator Birch Bayh, Chair, Subcommittee On The Constitution; Representative Carl Perkins, Chair, Committee on Labor and Education; and Senator Harrison Williams, Chair, Committee On Labor And Human Resources.

Representative Edward Beard.
Senator Rudy Boschwitz.
Representative M. Caldwell Butler.
Representative Carroll Campbell.
Representative Baltasar Corrada.
Senator Alan Cranston.
Representative Arlen Erdahl.
Representative William Goodling.
Senator Mark Hatfield.
Representative William Hughes.
Representative Jack Kemp.
Representative Mike McCormack.
Senator Robert Morgan.
Representative Richard Ottinger.
Senator Claiborne Pell.
Representative Peter Peyser.
Senator Donald Riegle.
Representative F. James Sensenbrenner, Jr.
Representative Floyd Spence.
Representative Edward Stack.
Representative Antonio Won Pat.
Representative Leo Zeferetti.

Our guests are from all aspects of American life. We are honored by their presence. We commend them to national attention for their work in advancing the cause of citizenship education and in fostering participation in political process. They are from the following organizations:

Advertising Council.
Amer. Assn. of School Administrators.
Amer. Bar Association.
American Legion.
American Legion Auxil.
Americans For Dem. Act. Youth Caucus.
Amer. Red Cross Youth Services.
Boy Scouts of America.
Camp Fire Girls.
Center For Citizenship Education.
Center For Policy Research.
Chamber of Commerce of USA.
Citizen Education Clearinghouse.
Close Up Foundation.
College Democrats.
College Republican National Committee.
Common Cause.
Community Involve. For Resp. Cit.
Convention II.
Convention II N.Y.
Council For Educ. Dev. and Research.
Council of Chief State School Off.
Council For Inter-Institutional Lead.
Council of State Governments.
Disabled American Veterans.
Education Commission Of the States.
Film Educators.
Four H Council.
Future Business Lead. of America.
Future Homemakers of America.
Girl Scouts of the USA.
Girls Nation.
Inst. For Educational Leadership.
Inst. For Pol. & Legal Education.
International Council on Law related Ed.
League of Women Voters.
M. P. Peyser & Associates.
Migrant Workers.
Mutual Broadcasting Co.
Nat. Assessment of Ed. Programs.
NAACP.
Nat. Assn Elementary School Principals.
Nat. Assn of Independ. Schools.
Nat. Assn of Manufact.
Nat. Assn of Schools of Pub. Affairs & Admin.
Nat. Assn of Secondary School Principals.
Nat. Assn of Student Councils.
Nat. Catholic Educ. Assn.
Nat. Cath. Youth Orgs. Fed.
Nat. Conference of State Legislators.
Nat. Council For Social Studies.
Nat. Council of Negro Women.
Nat. Education Associat.
Nat. Energy Ed. Day.
Nat. Exec. Svce. Corps.
Nat. Governors Assn.
Nat. League of Cities.
Nat. School Boards Assn.
Nat. School Resources Network.
Nat. School Volunteer Program.
Nat. Street Law Inst.
N.Y. State Council For Social Studies.
Pet Foods, Inc., Musselman Division.
Political and Legal Educational Associates.
Republican National Committee.
Research For Better Schools.
Robt. F. Kennedy Memor.
Robert Taft Inst. of Government.
Student National Ed. Association.
United Fed. of Teachers.
United States Jaycees.
US News & World Report.
Vocational & Ind. Clubs of America.
Washington Monthly.
YWCA.

BOARDS AND SYSTEMS IN EDUCATION

Arkansas Dept of Ed.
Illinois Supt of Ed.
Maryland Assoc of Student Councils.
Maryland Council on Economic Ed.
Maryland Dept of Ed.
N.Y. State Dept of Ed.
Pennsylvania Dept Ed.
Wash DC Board of Ed.
Wash DC Student Adv. Council.
Wash DC Supt Schools.
Washington State Dept of Ed.
Anne Arundel County.
Baltimore City.
Baltimore County.
Calvert County.
Carroll County.
Charles County.
Frederick County.
Howard County.
Mamaroneck Town.
New Rochelle City.
Westreville City.

SCHOOLS

Boiling Springs, Pa.
Greenbelt Jr HS, Md.
Ketterinf/Fairmont, Ohio.
New Rochelle HS.
Mamaroneck HS, N.Y.
New Rochelle HS, N.Y.
Ossining HS, N.Y.
Washington, D.C. Schools.

UNIVERSITIES

Alabama—Center For Public Law.
American—Law.
George Mason—Ed.
Georgia—Coll of Ed.
Georgetown—Commun. Action Coalition.
Indiana—Social Studies Development Center.
Johns Hopkins—Evening College.
Maryland.
Pace—Inst. For Sub/Urban Governance.
Portland State—Law Related Education.
Southern Assoc. of Colleges and Schools.
Temple.
Towson State.
Wright State—Coll of Education.
Wyoming—Coll of Ed.

ELECTION AGENCIES

Federal Election Commission.
Illinois State Board.
New York State Board.

FEDERAL GOVERNMENT

Executive Branch

The President's Asst. for Liaison with Congress.
Dept. of Agriculture.
Dept. of Education, Law related Ed., Migrant Ed., Nat. Diffusion Net.

Judicial Branch

Office of the Chief Justice.

PROGRAM

8:30 am—Breakfast. Boris Feinman, Founder, Convention II, Welcome and Keynote.

8:50—Your Hosts. George Melton National Association of Student Councils and National Association of Secondary School Principals, G. Timothy Leighton, Convention II.

9:05—The Citizenship Education Movement, Barbara Presseisen, RBS-Research For Better Schools; Howard Mehlinger, Indiana University Center For Social Studies Development.

9:12—Gifts For The Constitution, Mary Ann Kirk, Center For Citizenship Education; Boris Feinman, Convention II.

9:20—Lighting The Birthday Candles. All; Members of Congress, assisted by Frank Moore, The President's Assistant For Liaison with Congress, and a group of Migrant Workers will lead. Remarks by Frank Moore.

9:40—Senator Randolph. At the Conclusion of Senator Randolph's remarks the meeting will be open to the Floor.

BORIS FEINMAN

(By Esther Van Wagoner Tufty)

WASHINGTON.—The United States seems to be fresh out of heroes and then along comes a man with an heroic objective.

Boris Feinman is such a man. His self-appointed task is not glamorous, or even new, and to interest people in "citizenship education" calls for continuing dedication, unlimited patience and no expectation of glory.

The need is apparent, says this New Rochelle, N.Y., businessman, who is a bipartisan political activist of a rare kind. Simply, he is encouraging everyone, especially young people, "to participate in the political process."

"When in 1978, two-thirds of the Americans eligible to vote shun the polls, democracy begins to die," said this 64-year-old engineer, saleman, World War II veteran and a part-time teacher of civics.

The timing for such an effort is called perfect. Approaching is the 200th birthday of the United States Constitution on Sept. 17, 1987.

On this Sept. 17th, he is the host of a big party to celebrate the 193rd birthday of the Constitution right on Capitol Hill. At the moment, Feinman is trying to arrange for a cake big enough to display 193 candles.

It all began with this hero's love of the U.S. Constitution.

A naturalized American citizen (born in Riga, Latvia, in 1916), his brown eyes light up when he speaks of the joy of living in the United States. He doesn't take freedom for granted for he can recall the horror stories told him by his parents under the Russian Czar. In his efforts to encourage Americans to participate in the political process he seems to be saying "thank you" for the U.S. Constitution "which made this a country by law."

To achieve his objective, Feinman begins with the young students contending "the road to the ballot starts at the school."

So he originated Convention II, "a model constitutional convention which convenes annually in the halls of the Congress to consider amendments to the Constitution which the young delegates propose in response to challenges confronting America."

The Congress is so impressed that the sessions are held in various committee rooms with the final meeting right on the floor of the House of Representatives . . . thus setting a precedent. Their decisions are reported to the White House.

At the last constitutional convention, the delegates proposed that an amendment be made to the Constitution to provide for the direct election of the President and Vice President. It was defeated.

Convention II isn't the only way this unsung hero uses to encourage more citizenship education.

He even thinks you can fight city hall. In New Rochelle, he set up a "City Hall School" . . . right in city hall! There young students learned in an experimental social studies course how citizens can make their local government respond to their needs. Feinman was the teacher. He is interested "in making a marriage between the political system and the educational system."

Other organizations are planning prebirthday celebrations during the seven years leading up to the 200th birthday of the Constitution. Two of these are joining Convention II in the 193rd party Sept. 17th: the National Association of Secondary School Principals and the National Association of Student Councils.

The guests at this first-of-a-kind birthday party . . . some 200 . . . will be VIPs from the Congress (many of whom are already sponsors of Convention II), top educators, representatives of such organizations as the U.S. Chamber of Commerce, Common Cause, the League of Women Voters, the Camp Fire Girls and others, plus some young people in Convention II. One enthusiastic supporter, Senator Jennings Randolph (D-W.Va.) has personally invited President Carter to blow out a candle.

Who finances the first-of-a-kind party? Boris Feinman, the official host.●

THE TRIAL OF KIM DAE JUNG

○ Mr. DOLE. Mr. President, the Government of South Korea has experienced numerous drastic changes since President Park Chung Hee was assassinated on October 26, 1979. Initially, acting President Choi Kyu Ha proposed a revision of the Constitution and took positive steps to remove controls over political and civil liberties which had existed in the Park Administration. Political Parties became active again and steps were taken to allow for a presidential election in the following year.

However, that election never took place. When Lt. Gen. Chun Doo Hwan, a strong follower of Park, became acting director of the Korean Central Intelligence Agency, student uprisings and violence escalated. The right wing in the military used the unrest as a cover to take complete control of the Government. Over 50,000 students rebelled in Seoul on May 14 and 15. The country was put under strict martial law. In protest, 200,000 South Korean citizens took control of the city of Kwangju. But, in the end the repression of the new military successors to Park became total.

Later, Mr. Kim Dae Jung, the chief opposition leader, who ran for parliament four times and even ran remarkably close to Park in the 1971 presidential elections, was arrested as the instigator of these riots and charged with sedition. Most of the charges appear to be based on his previous opposition to government policies.

SOUTH KOREA ON TRIAL IN THE WORLD'S EYES

The proceedings against Mr. Kim have begun, but the South Korean Government prohibited outside observers from attending. Foreign reporters covering the trial were forced to rely on pool reports from two colleagues who are allowed to attend. Mr. Bert Lockwood, who is the director of the Urban Morgan Institute for Human Rights, has been denied a visa to attend the trial as a nongovernmental observer for the International Commission of Jurists. The same is true for other organizations such as Amnesty International. It is becoming increasingly apparent that Mr. Kim is being denied vital judicial and human rights, making it impossible for him to receive a fair trial. His lawyers were supposedly arrested and tortured until they stated they would not represent Mr. Kim. Witnesses were tortured to make confessions and to testify. New attorneys were appointed for Kim by the Government.

Korea has tried to filter news of the trial to the rest of the world. Reports of the trial proceedings were censored to include only the charges and accusations against Kim and none of his responses or denials.

The right to a fair and open trial and to choose one's counsel are basic human rights that Mr. Kim has been denied. It represents a tragic setback to the progress of democracy in South Korea. It is an abomination against internationally understood concepts of justice and human rights. The South Korean Government should be made to understand that its actions in this case are severely damaging to its standing in the world community. Wide-ranging disapproval and outright condemnation have issued from all corners of the globe.

DEATH SENTENCE GIVEN

Today it was learned that a death sentence has been imposed on Mr. Kim, subject to further appeal. The appeals process will no doubt be as ersatz as the trial itself. Rumors in the diplomatic community are strong that at the last minute, President Chun will step in and mercifully commute the death sentence. This is a blatant attempt to increase the stature and legitimacy of his regime in the eyes of the world. It is also an attempt to win approval from his countrymen, since Mr. Kim is very popular among the people of Korea, and indeed in many areas of the Far East. he is recognized as a spokesman for democracy, freedom, and human rights.

Kim's trial and death sentence have been an exercise in intimidation for the Korean people. Perhaps a little personal revenge by the Korean authorities was part of it, too. The pressure brought by the western democracies to release Kim, however, has been a lesson of a different sort to President Chun and his corulers. The death sentence is inappropriate and premature. for Mr. Kim has yet to receive the due process of law to which he is entitled.

The United States should make it clear that we feel this farcial trial should be set aside by the South Korean authorities. For the good of their nation, Mr. Kim should be granted a new trial—an open trial with counsel of his own

choosing and proper judicial proceedings. Whether Mr. Kim is guilty or innocent of the charges, it is his right to have a fair trial. South Korea owes it to itself. President Chun owes it to the Korean people.

Mr. President, I ask that an article by Mr. William Chapman recently published in the Washington Post, which describes the current conditions in South Korea be printed in the RECORD.

The article follows:

NEW LEADERS IN SEOUL EXPLOIT GENERAL YEARNING FOR STABILITY

(By William Chapman)

SEOUL.—Chin Soon Ja, a 35-year-old shopkeeper, is of two minds about the wave of purges, arrests and more subtle forms of repression that have swept into every corner of life since the South Korean military established itself in absolute power last May.

People are frightened by the arrests and what she describes as "invisible pressures" exerted by the government, she says. But uppermost in their minds, she thinks, is a desire for economic stability after nearly a year of turmoil and the advent of a severe recession. Her sales are down 40 percent from a year ago and have been declining for months. "Actually, ordinary people do not care much about politics," she adds. "What we want is a better living."

The belief that what Koreans want most is a dose of stability seems to be widespread. It is a theme on which the new government plays skillfully to justify its tactics. For many average South Koreans, it has a ring of truth and helps them to swallow the bitter political pills.

Their response calls to mind the haunting phrase Walter Lippmann once used to describe the acceptance of facist governments in depression-ridden Europe during the 1920s and 30s. The people accepted shackles on their wrists, Lippmann wrote, to keep their hands from shaking.

For thousands of citizens, of course, there has been no choice. Thousands have been designated "hooligans" and marched off to reeducation camps. Thousands of government officials, from top bureaucrats to lowly tax assessors, have been purged. Rich people are being forced to give up their fortunes and businesses required to fire or demote persons whose views are unacceptable.

Most respond with quiet resignation. One prominent professional man sat recently in a Seoul restaurant and described his fate. He had worked hard all his life, rising from a poor family to attain national prominence in his profession. He had been privately critical of the new government but by no means an enemy of the state.

His employers were forced to seek his resignation, he explained, but were able to soften his punishment by transferring him to a less important position. Throughout the dinner, he cast wary glances over his shoulder and fell silent when waiters hovered nearby. What would he do with his life now? "From now on, I shall keep a very low profile," he said.

The low profile is the solution of many. Dissidents who once sought out foreign journalists to advance their causes now do not return telephone calls. Those who do give interviews are swarmed over later by investigators who want to know what the reporters sought to find out.

Government surveillance and attempts at thought-control were facts of life under the rule of the late president, Park Chung Hee. What is different now, under Chun Doo Hwan, is the systematic character of the intrusions. Especially in its later years, the Park government exhibited a somewhat erratic and bumbling approach to keeping citizens in line, which many mocked. Nobody mocks the cold efficiency of the Chun era.

An example is the new application of one of Park's favorite exercises, the *saemaul*, or "new community" movement. *Saemaul* is a government rural retreat at which businessmen and government leaders are expected to undergo periodic spiritual renewal sessions heavily laced with propaganda. In Park's era, many prominent people scoffed at those sessions as boring and refused to attend.

No longer. The Ministry of Home Affairs has announced that precisely 32,504 social leaders will undergo the spiritual renewal lectures. No one doubts that they will go. The chilling thought is how the government decides that exactly 32,504 people need their spiritual life and devotion to country revitalized.

The purges, arrests, and other reprisals have extended into every segment of Korean society and have ranged far beyond the political enemies who once went in and out of Park's jails with a revolving door regularly. Several of Park's own cronies have fallen victim to Chun's purges and even one eccentric mystic thought to have influenced Park's daughter is under house arrest.

Even popular music has not escaped. Twenty-four top entertainers have been banned from television and radio, their careers in ruins, for what the newspapers described as "their indecent personal lives and debased singing." At the top of the list, ironically, was a pop singer, Sim Su Bong, who had been one of Park's favorites and in whose arms Park reportedly died after being shot by an assassin in a dining hall last October.

In none of these cases has the victim been permitted to defend himself in a public hearing. The determination of guilt is made solely by military investigators. People confess to "hooliganism" or to amassing illicit wealth to escape punishment worse than an education camp or a surrender of assets. A hearing process or public trial for all those singled out might take 20 years. The government has no time for that, one government official explained.

The government's justification for this widespread "purification" is its belief that under Park's waning rule a sense of corruption had come to pervade South Korean society, encouraged from the top by greedy businessmen and favor-selling bureaucrats. "Park had a soft spot for those around him," said one highly placed official, "and did nothing to punish them."

Another explanation is that Chun and his military cronies needed a popular program to justify their own accession to power. A government official agreed that in its early months the military junta was extremely unpopular. Weeding out the big wheeler-dealers and the small-time punks called "hooligans" has a certain appeal to the average Korean who puts in an honest day's work and who has never shared in the spoils of economic growth. To him, purification may be a fine idea.

"It's a good thing for a lot of people to see them clean up on the hoodlums and street gangsters," said Kim Young Gil, a 41-year-old taxi driver. "The question is how long the drive can go on before many of them come back to resume their business."●

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose only of considering the following nominations:

The nominations under National Council on the Handicapped, those under National Advisory Council on Women's Educational Programs, those under National Council on Educational Research, and the one under Federal Council on the Aging.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that those nominations, namely, those appearing under the National Council on the Handicapped, those appearing under National Advisory Council on Women's Educational Programs, those appearing under National Council on Educational Research, and the one appearing under Federal Council on the Aging be re-referred to the appropriate committees and reported back forthwith en bloc.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I take this opportunity only to advise that the procedure that is now being followed by the majority leader in this respect has been the subject of rather extensive negotiations and consultation on this side and seems to be the best way to handle these nominations under the circumstances.

I wish only to advise the majority leader that it is a satisfactory arrangement to us and we have no objection to his request.

Mr. ROBERT C. BYRD. Mr. President, I thank the minority leader.

Mr. President, I ask unanimous consent that the RECORD show that the report back has been made.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominees be considered en bloc, confirmed en bloc, that the President be notified of the confirmation of the nominees, and that the motion to reconsider en bloc be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

NATIONAL COUNCIL ON THE HANDICAPPED

Nelba R. Chavez, of Arizona, Nanette Fabray MacDougall, of California, John P. Hourihan, of New Jersey, Edwin O. Opheim, of Minnesota, Elizabeth Monroe Boggs of New Jersey, Mary P. Chambers, of New Hampshire, Jack Genair Duncan, of South Carolina, Thomas Joe, of the District of Columbia, Donald E. Galvin, of Michigan, Judith E. Heumann, of California, Howard A. Rusk, of New York, J. David Webb, of Georgia, and Henry Williams, of New York, to be Members of the National Council on the Handicapped.

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

Maria Concepcion Bechily, of Illinois, Barbara M. Carey, of Florida, Virginia FOXX, of North Carolina, K. Jessie Kobayashi, of California, Jewel Limar Prestage, of Louisiana, and Rhine Lania McLin, of Ohio, to be Members of the National Advisory Council on Women's Educational Programs.

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

Maria B. Cerda, of Illinois, Joseph J. Davies, Jr., of Louisiana, Timothy S. Healy, of the District of Columbia, John S. Shipp, Jr., of Florida, and Maria B. Cerda, of Illinois, to be Members of the National Council on Educational Research.

FEDERAL COUNCIL ON THE AGING

Jacob Clayman, of Maryland, to be Member of the Federal Council on the Aging.

FARM CREDIT ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the nominees under Farm Credit Administration on page 7 of the calendar.

Mr. BAKER. Mr. President, reserving the right to object, and I will not, that item also was cleared on our calendar and we have no objection to the consideration of the nominees and their confirmation.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination will be stated.

The legislative clerk read the nomination of Ralph Raikes, of Nebraska, to be a member of the Federal Farm Credit Board, Farm Credit Administration.

The PRESIDING OFFICER. The nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will read the next nomination.

The legislative clerk read the nomination of William D. Wampler, of Virginia, to be a member of the Federal Farm Credit Board, Farm Credit Administration.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask that the President be notified of the confirmation of the nominees.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF CERTAIN SENATORS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, Messrs. BAKER, YOUNG, BELLMON, and DOLE be recognized, as follows: Mr. BAKER, 5 minutes; Mr. BELLMON, 10 minutes; Mr. YOUNG, 5 minutes; Mr. DOLE, 10 minutes, and that they be followed by Messrs. HOLLINGS and CHILES, each for not to exceed 15 minutes, and that the Senators may appear not necessarily in the order listed but in whatever order suits their convenience.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 975 and Calendar Order No. 1040.

AUTHORIZING FEASIBILITY INVESTIGATIONS

The Senate proceeded to consider the bill (H.R. 5278) to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 3, beginning with line 19, insert the following:

(14) To determine the cause and extent of the high groundwater levels which developed in and adjacent to the town of Moses Lake, Washington, following the initiation of irrigation of the lands in and adjacent to the town and determine by the studies authorized herein measures to resolve the problems caused by the high water levels in the area.

(15) The Cle Elum Dam and Tieton Dam powerplants, Yakima Project, Washington.

(16) The Owyhee Dam powerplant, Owyhee Project, Oregon.

(17) The Wickiup Dam powerplant, Deschutes Project, Oregon.

(18) The Tiber Dam powerplant, Lower Marias Unit, Marias Division, Pick-Sloan Missouri Basin Program, Montana.

(19) The New Siphon Drop powerplant, Yuma Project, Arizona-California.

(20) The Guernsey Dam powerplant enlargement, North Platte Project, Wyoming.

(21) Increasing the height of the Theodore Roosevelt Dam, Salt River Project, Arizona.

(22) The Sly Park Extension Unit, American River Division, Central Valley Project, California.

(23)* The Prineville Dam powerplant, Crooked River Project, Oregon.

On page 6, beginning with line 3, strike all through and including line 18, and insert in lieu thereof the following:

SEC. 5. (a) Notwithstanding any other provision of law, the Secretary of the Interior is authorized to enter into new negotiated concession agreements with the present concessionaires at Lake Berryessa, California. Such agreements shall be for a term ending not later than May 26, 1989, and may be renewed at the request of the concessionaire with the consent of the Secretary of the Interior for no more than two consecutive terms of 10 years each. Concession agreements may be renegotiated preceding renewal. Such agreements must comply with the 1959 National Park Service Public Use Plan for Lake Berryessa, as amended, and with the Water and Power Resources Service Reservoir Area Management Plan: *Provided*, That the authority to enter into contracts or agreements to incur obligations or to make payments under this section shall be effective only to the extent and in such amounts as are provided in advance in appropriation Acts.

(b) Notwithstanding any other laws to the contrary, all permanent facilities placed by the concessionaires in the seven resorts at Lake Berryessa shall be considered the property of the respective current concessionaires. Further, any permanent additions or modifications to these facilities shall remain the property of said concessionaries: *Provided*, That at the option of the Secretary of the Interior, the United States may require that the permanent facilities mentioned herein not be removed from the concession areas, and instead, pay fair value for the permanent facilities or, if a new concessionaire assumes operation of the concession, require that new concessionaire to pay fair value for the permanent facilities to the existing concessionaire.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committee amendments be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1601

Mr. ROBERT C. BYRD. Mr. President, I send to the desk amendments by Messrs. HART and ARMSTRONG with respect to the proposed Wayne N. Aspinall and Closed Basin units; an amendment by Mr. CRANSTON on water payments; an amendment by Mr. DECONCINI on solar-hydro study; and an amendment by Mr. CHURCH on moratorium, and ask that these amendments, in addition to those to be offered by Mr. BAKER on behalf of Senators on his side of the aisle, be considered and agreed to en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that statements by various Senators be printed in the RECORD at appropriate places in support of the amendments designated.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the authorization for the Closed Basin Division, San Luis Valley Project, and to rename the Curecanti Unit, Colorado River Storage Project in honor of Wayne N. Aspinall)

Proposed by Mr. HART (for himself and Mr. ARMSTRONG):

At the appropriate place insert the following:

SEC. . The Reclamation Project Authorization Act of 1972 (Public Law 92-514, 86 Stat. 964) is amended—

(a) by inserting in section 101 of such Act, following "on this project", "as modified by the plans shown in the Definite Plan Report of the Water and Power Resources Service, dated November 1979";

(b) by inserting in section 102(b) of such Act, following "domestic wells in existence", "outside the project boundary"; and

(c) by striking in section 109 of such Act "$18,246,000 (April 1972 prices)" and inserting in lieu thereof "$57,139,000 (October 1979 prices)".

SEC. . The Curecanti Storage Unit of the Colorado River Storage Project constructed under the authority of the Act of April 11, 1956 (70 Stat. 106) is hereby designated and hereafter shall be known as the Wayne N. Aspinall Storage Unit of the Colorado River Storage Project. Any law, regulation, record, map, or other document of the United States referring to the Curecanti Storage Unit shall

be held to refer to the Wayne N. Aspinall Storage Unit.

CLOSED BASIN AND TRIBUTE TO WAYNE ASPINALL

● Mr. HART. Mr. President, I offer this amendment on behalf of myself and Senator ARMSTRONG. The amendment includes two sections, each identical to a bill we have jointly sponsored. The first section, which is the same as S. 2584, changes the authorization of the Closed Basin water project to conform that authorization to the current project plans. The second section of the amendment, which is the same as S. 2324, renames the existing Curecanti unit of the Colorado River storage project in honor of former Congressman Wayne N. Aspinall.

The change in the authorization for the Closed Basin project will allow it to be constructed according to the most effective design.

The Closed Basin project is a division of the San Luis Valley project and is located in Saguache and Alamosa Counties in southwestern Colorado. The project is a noncontroversial, environmentally sound project to transfer water into the Rio Grande River from a nearby closed basin—where water collects underground, trapped above impermeable rock in a watershed with no outlet. The water in that closed basin is not now being put to any beneficial use, and cannot effectively be put to use within that basin.

The project includes a series of wells to pump water from the aquifer in the closed basin, with conveyance channels to transfer the salvage water to the Rio Grande. The project design does not include any dams.

The project is essential to enable Colorado to deliver to downstream States the full amount of water required by the interstate agreements governing the Rio Grande River. Under a 1968 agreement among Colorado, New Mexico, and Texas, Colorado is required to deliver a certain amount of water to the downstream States in each and every year. To meet this delivery obligation, Colorado has been forced to drastically curtail its previous diversions from the San Luis Valley. With the augmentation of the Rio Grande River by the Closed Basin project, Colorado will be able to use its historic water rights and fulfill its obligations to New Mexico and Texas.

Additional waters transferred by the project would be used to meet the needs of two national wildlife refuges, to eliminate any accumulated deficit in deliveries which Colorado may owe under the Rio Grande Compact, and finally for irrigation and other beneficial uses within Colorado.

The project is so obviously beneficial that Congress authorized its construction before a feasibility report was completed. The project is now in a construction phase, with appropriated construction funding.

The construction funding was initially requested by the Carter administration as one of the few new construction starts requested by this or any other recent administration.

Before beginning actual construction operations, the Water and Power Resources Service completed drilling test wells into the closed basins aquifer, and finalized other design features. Based on this work, it became clear that the most effective design for the project is different from the design assumed by Congress at the time of the project's authorization. The major design change is the enlargement of the land area in which wells need to be drilled to collect the underground water. This and the other changes will raise the project's eventual total cost to $57 million, approximately $17 million (in 1979 dollars) above the current authorization level.

Congress needs to amend the authorization before the WPRS can make an irrevocable commitment to the final design. To avoid delays in this year's construction activities, the WPRS, in an arrangement worked out with the Colorado delegation and the authorizing committees, has undertaken various construction activities but has avoided any steps involving a definite decision on the complete design of the project. Because the agency will soon be at the point of having to choose between the different designs, Congress needs to rapidly resolve the authorization question to prevent any delay in the construction work. Any construction delays, of course, would increase the final costs of the project.

The amendment Senator ARMSTRONG and I are proposing will resolve this problem by increasing the authorization ceiling to $57 million, and by clarifying that Congress intends for the project to be constructed according to the WPRS design.

The amendment also makes it clear that all existing water rights will be protected from harm by the project. The project authorization already includes a provision insuring that the diversion of water from the aquifer will not cause the water level from existing wells to drop more than 2 feet. Our amendment makes it clear that this protection applies to all wells throughout the basin, not just those within the actual boundaries of the project area.

The second section of our amendment renames the Curecanti Unit of the Colorado River storage project after former Congressman Wayne N. Aspinall. This is a most appropriate tribute to a monumental figure in our history of water resource development. People throughout America owe a major debt of gratitude to Congressman Aspinall for his assistance in helping all regions of the country meet their water needs. However; those of us from Colorado are particularly aware of his efforts on behalf of the people of our State.

Simply put, Congressman Aspinall has done more than any other person to help Colorado store and use its water. As chairman of the House Committee on Interior and Insular Affairs, Congressman Aspinall was largely responsible for the many Federal water projects which have made possible the life Coloradans know and enjoy. In particular, he was uniquely responsible for the authorization of the Colorado River storage project. This project implements the "law of the river"—the various treaties, interstate compacts, and congressional statutes governing the allocation of the water in the Colorado River among the several States in the river basin.

The Curecanti unit is the first project unit authorized by the Colorado River Storage Project Act, and the only project unit entirely in Colorado. As such, it is a fitting memorial to Congressman Aspinall. The existence of the unit is itself already a memorial to Congressman Aspinall. The legislation we are proposing merely gives that memorial the right name.

The legislation would rename the Curecanti unit as the Wayne N. Aspinall unit. The individual dams and reservoirs which comprise the unit would retain their existing names.

Since Senator ARMSTRONG and I first proposed this tribute to Congressman Aspinall on January 3, many people have agreed that this is a fitting tribute to Congressman Aspinall. Assistant to the President, Stuart Eisenstat, has written to me, indicating President Carter's support for this measure. Many Coloradans have also expressed their support. Included among these Coloradans are Governor Lamm and the members of the Colorado General Assembly, which has passed a resolution supporting this measure. I ask that Governor Lamm's letter and a copy of the general assembly resolution be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF COLORADO,
March 24, 1980.

Hon. GARY HART,
U.S. Senate,
Washington, D.C.

DEAR GARY: I was most pleased to learn that you have introduced legislation to rename the Curecanti Storage Unit in honor of Wayne Aspinall. I can think of no more fitting way to recognize the long years of service he has rendered on behalf of water resources development in Colorado.

Your bill certainly has my support.

Sincerely,

RICHARD D. LAMM,
Governor.

SENATE CHAMBER,
STATE OF COLORADO,
April 23, 1980.

Hon. GARY HART,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: The Senate and House of Representatives of the Fifty-second General Assembly of the State of Colorado have adopted the enclosed Senate Joint Resolution No. 25 and directed that a copy be forwarded to you for your information.

Sincerely,

MARJORIE L. RUTENBECK,
Secretary of the Senate.

SENATE JOINT RESOLUTION NO. 25

Whereas, Wayne N. Aspinall has been a resident of the Grand Valley of western Colorado since early boyhood and for the great majority of his almost eighty-four years; and

Whereas, Wayne N. Aspinall unselfishly devoted forty-eight years of his life to elective office in the service of his fellow man; and

Whereas, Wayne N. Aspinall served as an outstanding legislator in both the House of Representatives and the Senate of the General Assembly of the state of Colorado for a period of sixteen years; and

Whereas, Wayne N. Aspinall was elected twelve times to the House of Representatives

of the Congress of the United States, serving there for twenty-four years, during which time he was for twelve years chairman of the important House Committee on Interior and Insular Affairs which acted upon approximately one-fifth of the bills introduced into the Congress; and

Whereas, In 1956, while Wayne N. Aspinall was chairman of the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs, during which time there was bitter opposition to Colorado River water resource development projects, the Congress enacted the "Colorado River Storage Project Act", which at that time was the largest reclamation authorization act ever approved by the Congress, containing authorization to construct for large water conservation storage units (Curecanti, Flaming Gorge, Glen Canyon, and Navajo) and eleven participating irrigation projects in Colorado and her three sister states in the Upper Colorado River Basin, and containing authorization for priority of planning for twenty-five additional participating projects in the Upper Colorado River Basin; and

Whereas, In 1962, Wayne N. Aspinall was directly instrumental in securing the passage of legislation by the Congress authorizing the construction of the Fryingpan-Arkansas Project in Colorado and the San Juan Chama and Navajo Indian Irrigation Projects in Colorado and New Mexico; and

Whereas, In 1964, Wayne N. Aspinall successfully sponsored legislation in the Congress that authorized the construction of the Bostwick Park, Fruitland Mesa, and Savery-Pot Hook participating projects of the Colorado River Storage Project in western Colorado; and

Whereas, In 1968, Wayne N. Aspinall was a major force in maneuvering through the Congress the "Colorado River Basin Project Act" which then became the largest single reclamation project act in history, and which authorized construction of the Central Arizona Project and five additional participating irrigation projects of the Colorado River Storage Project in western Colorado; and

Whereas, Under the chairmanship of Wayne N. Aspinall, the House Committee on Interior and Insular Affairs reported to the United States House of Representatives numerous bills, including bills which, upon their enactment, created and expanded units of the national park system, established basic laws pertaining to environmental improvement and outdoor recreation opportunities, protected the water and related land resources of our nation, and added two new states, Alaska and Hawaii, to the United States of America; and

Whereas, Wayne N. Aspinall has dedicated the major portion of his life to service to the nation, the Upper Colorado River Basin, the state of Colorado and especially to western Colorado with the result that Colorado is a much better place to live than it otherwise would be without his diligent and tireless efforts which enhanced the conservation, orderly development, and wise utilization of Colorado's water, land, and mineral resources; and

Whereas, A bill has been introduced in the United States Congress to designate the Curecanti Storage Unit of the Colorado River Storage Project as the Wayne N. Aspinall Storage Unit of the Colorado River Storage Project; now, therefore,

Be it resolved by the Senate of the Fifty-second General Assembly of the State of Colorado, the House Representatives concurring herein:

That the General Assembly of the State of Colorado does hereby enthusiastically support and does hereby urge the Congress of the United States to promptly enact legislation to designate the Curecanti Storage Unit of the Colorado River Storage Project as the Wayne N. Aspinall Storage Unit of the Colorado River Storage Project.

Be it further resolved, That copies of this resolution be transmitted to the President of the United States, to the President of the Senate and the Minority Leader of the Senate of the Congress of the United States, to the Speaker of the House of Representatives and the Minority Leader of the House of Representatives of the Congress of the United States, to the chairman of the House Committee on Interior and Insular Affairs, to each member of the Congress of the United States from the State of Colorado, to the Governor of the State of Colorado, and to the President of Club 20, Grand Junction, Colorado.●

CLOSED BASIN AUTHORIZATION AMENDMENT

● Mr. ARMSTRONG. Mr. President, I join my colleague from Colorado and urge the adoption of the Hart-Armstrong Closed Basin authorization amendment. The adoption of this amendment will amend the authorization for the Closed Basin diversion unit of the San Juan project allowing the project to be built utilizing the most efficient construction design.

The Closed Basin unit is located in south-central Colorado, in the San Luis Valley. This valley possesses a highly developed agricultural economy which is dependent upon the availability of adequate irrigation water supplies. Previous investigations have established the water needs of the valley. These studies have established the need for optimum salvage of water now being consumed nonbeneficially in the valley to improve Colorado's status under the Rio Grande compact and to make additional water supplies available for irrigation use in the valley. The principal opportunity for the economical salvage of water in the valley lies in the reduction of water losses within the Closed Basin sump area where unconfined ground waters, surface runoff from tributary streams, and return irrigation flows are presently lost through evaporation.

The Closed Basin unit, when completed, will salvage and deliver to the Rio Grande River approximately 100,800 acre-feet of water that otherwise would be lost through evaporation. The first priority for the water made available by completion of the project is to assist Colorado in making its annual delivery of water to the Colorado-New Mexico State line per the requirements of the Rio Grande compact which will ease irrigation restrictions in the valley. Once this requirement is met, additional water will be furnished to establish wildlife refuges, wildlife and recreational enhancement and water for fish.

Congress approved construction funds for this project last year. However, since then the Water and Power Resources Service has discovered that several project modifications will greatly increase the effectiveness of the project. These modifications are a result of continued investigations by the WPRS to optimize the salvage of the groundwater and minimize environmental impacts. The new project design increases the Closed Basin unit's underground water collection system by approximately one-third and will increase the cost of the project from the current authorized level of $40 million to approximately $57 million.

The adoption of the Hart-Armstrong Closed Basin amendment will allow the WPRS to continue to develop the Closed Basin by utilizing the most efficient construction design. In addition, this amendment clarifies that not only existing water rights in the project area but all water rights in the Closed Basin area are protected from any possible unforeseen effects due to the project's completion.

Mr. President, as a result of demands on the Rio Grande River under the Rio Grande compact and the Mexican Treaty, the Colorado State water engineer has been forced on occasion to curtail water diversions in the San Luis Valley. This has resulted in severe hardship in an area which is already economically depressed. The resulting bitterness toward State officials and among neighbors in competition over the same water supply is a condition which can be greatly eased by the completion of this project. I urge that my colleagues agree to adopt the Hart-Armstrong Closed Basin authorization amendment and allow this project to be completed in a timely manner.

WAYNE N. ASPINALL UNIT

Mr. President, I urge my colleagues to adopt the amendment to H.R. 5278 which would rename the Curecanti unit of Colorado River storage project as the "Wayne N. Aspinall unit."

Wayne Aspinall unselfishly dedicated the major portion of his life to the service of the Nation and the residents of Colorado. He served 24 years in the House of Representatives enacting legislation which greatly enhances the quality of life in Colorado and throughout the Western United States.

Wayne Aspinall's name is synonymous with Western reclamation projects. In 1956, as chairman of the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs, he was responsible for the enactment of the "Colorado River Storage Project Act," which at that time was the largest reclamation authorization act approved by Congress. This was the first of many of the successful reclamation bills Wayne Aspinall guided through Congress.

As chairman of the House Interior and Insular Affairs Committee, he clearly demonstrated that he was indeed a man of vision. He understood that water was the key resource in determining whether the Western States would be able to contribute to America's prosperity and future. Today, as the Nation looks to the West for the development of our energy resources, Wayne Aspinall's water planning and accomplishments will enable our State to begin to develop these resources. To meet future demands, we must continue to follow Mr. Aspinall's tradition for water planning and development.

Mr. President, it is only fitting that Americans honor Wayne Aspinall's accomplishments by renaming the Curecanti unit of the Colorado River storage project as the "Wayne N. Aspinall storage unit."●

(Purpose: To expand the options available to the Secretary of the Interior in requiring advance payment for water delivered from Federal reclamation projects)

Proposed by Mr. CRANSTON:

At the end of the bill, add a new section:

SEC. . Section 1(5) of the Act of July 2, 1956, 70 Stat. 483, is hereby amended to read as follows: "(5) Provide for payment of rates under any contract entered into pursuant to said subsection (e) in advance of delivery of water on an annual, semiannual, bimonthly, or monthly basis as specified in the contract."

ADVANCE PAYMENT AT FEDERAL RECLAMATION PROJECTS

● Mr. CRANSTON. Mr. President, this amendment would amend existing law to expand the options available to the Secretary of the Interior in requiring advance payment for water delivered from Federal reclamation projects.

The 1956 statute requires that the payment for such water be made "in advance of delivery of water on an annual or semiannual basis." This requirement creates tremendous cash flow problems for water districts in some areas, particularly in California. I understand that it also complicates marketing problems for the Water and Power Resources Service of the Department of the Interior.

Recognizing this problem, the Water and Power Resources Service has, for the past several years, permitted bimonthly advance payments for districts within the service areas of the Federal Central Valley project in California. It has worked well from the standpoint of both the water districts and the Department of the Interior.

This amendment would reconcile the law with the current advance water payment practice in California by expanding the current options of annual and semiannual payment to include bimonthly or monthly payment. Both the Water and Power Resources Service and the affected California water districts have expressed a desire for this change in the 1956 statute.

Mr. President, I understand that the amendment is acceptable to the floor managers of the bill, and I ask that it be adopted.●

Proposed by Senators DECONCINI, CRANSTON, and HAYAKAWA.

At the end of the Bill add a new Section:

"Sec. . The Secretary of the Interior in coordination with the Secretary of Energy shall conduct a three year study of the feasibility of integrating a solar powerplant in Arizona, Nevada and California into the Federal hydroelectric system, including but not limited to consideration of the applicable solar technology, the operation of the Federal hydroelectric system and the integration of electric power generated by such a powerplant in the Federal system. The study shall specifically consider operations of Department of Energy Project 76-2-b, 10 MW Solar Thermal Power and related technology development. The Secretary shall complete the study by January 1, 1984 and submit a report to the President and the Congress."

FEASIBILITY GRADE STUDY RE: COLORADO RIVER BASIN

● Mr. DECONCINI. Mr. President, the amendment I have offered will authorize the Secretary of the Interior to conduct a feasibility grade study of the integration of solar and hydroelectric power in the Lower Colorado River Basin. The amendment is entirely germane to H.R. 5278 in that it simply adds one more study to the list included in the bill. The amendment is very similar to S. 2368 which I introduced on February 28 of this year.

The Department of Energy and the Water and Power Resources Service have jointly funded a preliminary assessment to determine to what extent solar-thermal electric plants could augment existing WPRS hydroelectric facilities. This approach is similar to the wind power investigation conducted jointly by the two agencies.

The initial findings are quite encouraging. It has been determined that the hydro facilities under consideration could support at least 750 MWe of solar electric facilities. The specific recommendation for further study involves the technical and economic viability of integrating a 100 MWe solar thermal powerplant into the Federal Southwest grid system.

The proposed 3-year study would focus on: site selection, power system integration, hydrology integration, solar powerplant performance, and solar powerplant economics.

The conceptualized powerplant is an advanced central receiver system. This type of system uses a central tower receiver surrounded by a field of heliostats. The heat created from the reflected solar energy is used to produce steam which is then used to drive a conventional steam turbine to generate electrical energy. The solar energy receiver as originally conceived would have a capacity of 140 MWe along with the conventional steam turbine generator to allow marketing of energy at 100 MWe. Annual production would be about 350,000 MWe of electricity.

Mr. President, during the preliminary study, the two agencies considered over 60 possible sites in three States. All of these sites were in the Southwestern climatic region of the United States where solar energy availability is the greatest on an annual mean daily basis. This area also includes the hydroelectric system of Hoover, Davis, and Parker Dams, which has the potential for energy storage needed to successfully use solar energy systems. The three most likely sites are Mormon Mesa, near Las Vegas, Nev., Yuma, Ariz., and East Mesa in California.

The performance of a solar powerplant is coupled with local meteorological events. Typically, there are only 700 hours of cloudy weather during the year at Yuma. Most of the cloudy periods correspond to the winter months when peak loads at Hoover Dam are minimal. During the test year of 1978, the downtime from cloudy days would not have exceeded 2 consecutive days.

Mr. President, there are three major considerations that must be the basis of any project involving the hydroelectric system: The requirements of the downstream water users cannot be modified; the operation of reservoirs cannot be modified to exceed legal or environmental specified limits; and the hydroelectric system must be able to provide the back-up required to firm the intermittent solar power generation.

The integration of a powerplant into a hydrosystem allows using the water control capability as a "battery." When excess solar power is generated, water is stored in the hydrosystem, and when cloudy days occur, the excess water is released to make up the deficiency. Integration of a 100-MWe solar powerplant into the hydroelectric grid would not change the water releases that are required to meet the needs of water users in downstream areas. The hydrologic impacts of integration would be increased fluctuations in the levels of Lake Mead and Lake Mohave. The fluctuations could require a maximum of 10 inches of additional drawdown in Lake Mohave which fluctuates about 15 feet annually. The operation of Hoover Dam would be modified to act as a "battery" to store water during brief periods when solar energy production is above 100 MWe and release water to produce hydroenergy during cloudy and below average solar generation periods. The effects of integration on present and future operations of power users and the benefits derived by producing power from the solar powerplant will be carefully evaluated.

The proposed plan of study indicates that outside agencies will be included on the study planning team to cover the environmental aspects of siting a solar powerplant. Also, close coordination will be maintained with utility companies and other interested parties within the area through public involvement programs. The WPRS has been informed, on an informal basis, that DOE/solar thermal will support any project by providing technical assistance from a lead laboratory and by training WPRS personnel as necessary to effectively determine and manage the design, construction, and operation of solar plants.

Mr. President, the Department of Energy solar thermal projects, which I support, are directed at commercialization through non-Federal users. The proposed integration of solar and hydro powerplants will not hinder that effort, and should, in fact, accelerate commercialization. The anticipated decrease in installment costs of future powerplants will result mainly from the mass production of heliostats.

Mr. President, the domestic production of energy has become the most important issue in the United States today—and it will be tomorrow, and it will still be in the years to come. The frightening cost projections, resulting from uncertain energy resources, demand an advance in large-scale solar applications. In the area of the United States that has the greatest potential for solar energy, the Lower Colorado area, over half of the power generated is fueled by gas and oil: An incredible 51.2 percent.

Mr. President, my only regret is that this study will take up to 3 years. I wish we had made a greater effort in the past, but our only choice is to go forward as expeditiously as possible.

I hope, Mr. President, that the committee's distinguished floor manager will accept this amendment. It has the support of the Department of the Interior and Department of Energy, and the response from the people of Arizona to this concept has been extremely positive and supportive.●

Proposed by Mr. CHURCH.

At the end of the bill, add a new section, numbered appropriately, as follows:

Sec. . That the proviso contained in section 201 of the Colorado River Basin Project Act (43 U.S.C. 1511) is amended by striking out "the Secretary" and inserting in lieu thereof "any Federal official".

MORATORIUM ON FEASIBILITY STUDIES

● Mr. CHURCH. Mr. President, the amendment I am offering is identical to the text of a bill, S. 2237, which I introduced earlier this year. Since introducing the bill on January 30, Senators JACKSON, MAGNUSON, MELCHER, MCCLURE, and BAUCUS have joined as cosponsors.

As my colleagues know, there is presently a statutory prohibition banning the Secretary of the Department of the Interior from undertaking studies of any plan for the importation of water into the Colorado Basin. The effect of the amendment that I offer today would be to broaden the scope of the present ban to include all Federal officials.

As you will recall, the original moratorium which was adopted by the Congress in 1968 was directed specifically at the Secretary of the Interior and provided for a 10-year period in which studies of interbasin transfers of water into the Colorado Basin were prohibited. In 1978, the Congress unanimously extended the moratorium for another decade—once again prohibiting studies by the Secretary of the Interior.

Recently, it has come to my attention that the Environmental Protection Agency, during the course of a study on Western water, has engaged in the study of potential transfers of water from the Columbia River Basin and its tributaries, to the Colorado River Basin. Earlier this year, a draft of this study, performed under EPA contract, was presented before a meeting of the Western States Water Council in San Antonio, Tex.

Clearly, it is now necessary to spell out for other Federal officials that the study of transferring water from the Pacific Northwest to other areas is banned. Adoption of this amendment and passage of the bill will put an end to Federal agencies attempting to do what current law clearly prohibits the Secretary of the Interior from undertaking.

Mr. President, periodically, proposals have been made to divert water from the Pacific Northwest to other areas. The fact of the matter is that water is extremely precious in the Pacific Northwest and all available supplies are claimed or committed to future use. Nevertheless, the threat of diversion hangs over the Pacific Northwest water user, and is a detriment to the orderly development of remaining resources. Adoption of this amendment will give us in the Pacific Northwest the assurance of a breathing space in which we can pursue the best use of our most valued resource.●

(Purpose: To amend Section 206 of the Reclamation Project Authorization Act of 1972)

Proposed by Mr. DOMENICI.

At the end of the bill, add a new section:

SEC. . Section 206 of Public Law 92-514 is amended to read as follows: "There is hereby authorized to be appropriated for construction of the Brantley project the sum of $172,728,000 (based on April 1979 prices), plus or minus such amounts, if any, as may be justified by reason of changes in the construction costs as indicated by engineering costs indexes applicable to the types of construction involved and, in addition thereto, sums as may be required for operation and maintenance of the project."

BRANTLEY DAM PROJECT

● Mr. DOMENICI. Mr. President, I am pleased that the committee is willing to accept my amendment to H.R. 5278 which would raise the authorization ceiling on the Brantley Dam project.

Brantley Dam was originally authorized in title II of Public Law 92-514, which was approved October 20, 1972. The dam is to solve the real need for flood control in the Carlsbad, N. Mex., area and the need for an additional supply of irrigation water. However, since authorization, plans for the dam have undergone a number of changes.

As a result of a dam safety analysis, it was necessary to relocate the dam alinement to find safe abutments and foundation. After four consultations, it seems that a safe site has been located. The design change has resulted in increased costs which require the dam's authorization ceiling to be raised. Total cost of construction is now estimated to be $172,728,000.

There is no doubt, Mr. President, that flood protection is absolutely necessary for the area downstream of the proposed dam; 25 percent of the city of Carlsbad is considered within a 100-year flood zone. This 25 percent constitutes a good majority of the downtown section of Carlsbad. Consequently, I am pleased that the committee has accepted this necessary amendment.●

Proposed by Mr. ARMSTRONG (for himself, Mr. WALLOP, Mr. DECONCINI, Mr. GOLDWATER, Mr. SCHMITT, Mr. HATCH, Mr. GARN, Mr. CANNON, Mr. SIMPSON, Mr. HART, Mr. HAYAKAWA, and Mr. LAXALT).

At the end of the bill add a new section numbered accordingly:

Section . The Secretary of Interior is hereby authorized to engage in feasibility studies of the following salinity control proposals:

(1) Lower Gunnison Basin unit, located in Delta, Montrose, and Ouray Counties, Colorado.

(2) Glenwood-Dotsero Springs unit, located in Garfield and Eagle Counties, Colorado.

(3) Meeker Dome unit, located in Rio Blanco County, Colorado.

(4) McElmo Creek unit, located in Montezuma County, Colorado.

(5) Uinta Basin unit, located in Duschesne and Uintah Counties, Utah.

(6) Dirty Devil River unit, located in Sanpete, Sevier, Emery, and Wayne Counties, Utah.

(7) Price-San Rafael Rivers unit, located in Carbon, Emery, and Sanpete Counties, Utah.

(8) La Verkin Springs unit, located in Washington County, Utah.

(9) Lower Virgin River unit, located in Clark County, Nevada, and Mohave County, Arizona.

(10) Big Sandy River unit, located in Sweetwater County, Wyoming.

COLORADO RIVER BASIN SALINITY FEASIBILITY INVESTIGATIONS AMENDMENT

● Mr. ARMSTRONG. Mr. President, today, my colleagues and I are offering the Colorado River Basin salinity feasibility investigations amendment for adoption to H.R. 5278. The adoption of this legislation will insure that we continue to examine ways in which our water supplies can be developed so as to insure the future development and protection of the water in the Colorado River basin.

This amendment is identical to S. 3017 which was considered and favorably reported out of the Senate Energy Committee on September 10, 1980. It is essential that this legislation be acted upon this year if Congress is to continue its commitment to preserve the water quality of the Colorado River Basin. Due to the time constraints facing Congress, I believe it is important that this amendment be adopted to H.R. 5278.

The Colorado River Basin salinity feasibility investigations amendment allows the Water and Power Resources Service (WPRS) to conduct feasibility studies for several salinity control projects in Colorado, Arizona, Nevada, Utah, and Wyoming. The completion of these studies will help the seven Colorado River Basin States in meeting their commitments to reduce the salt concentration in the Colorado River Basin.

The proposed feasibility studies will enable the WPRS to evaluate the effectiveness of the proposed salinity projects. By examining the salinity concentration of irrigation flows and the seepage rates of irrigation canals and laterals, a project can be designed and evaluated that would reduce the salt loading from the irrigated areas. These proposed studies will also examine a combination of irrigation improvements, vegetation management, and watershed management for the most cost-effective project.

The significance of the Colorado River Basin to our Western States is unparalleled. This river epitomizes our region's dependence and concern over one of our most scarce resources—water. Comparisons of our Nation's rivers by volume shows that the Colorado River ranks only 25th. For example, it is smaller than the Wabash in Indiana. But by almost any other comparison—wildness of rivers, grandeur of setting, and life sustaining capacity—the Colorado is unequalled.

The Colorado River flows 1,450 miles through our Western States sustaining life along its path. Over 11 million people in our region depend upon the waters of this magnificant river for municipal, industrial, and agricultural purposes.

As the Colorado River travels through the Western States, the salinity level of the river increases. Increased salinity levels result both from natural sources such as salt domes or springs and through increased use of the water for irrigation and other uses. As a result of the contributions of nature and the continued development of the Colorado River, the salt content of the river has increased over the past several years.

For several reasons, salinity concentration is a major concern for the future development of the Colorado River Basin First, without salinity control, water users in the Colorado River Basin can expect increasing salinity accompanied by major economic detriments. These

losses, which occur to irrigators through decreased crop yields and to municipal and industrial users through increased water treatment costs, are estimated to reach $124 to $160 million annually by the year 2000 if salinity control measures are not implemented. Second, as my colleagues are aware, the Nation is turning toward the West for the development of our vast energy resources. The development of these resources is dependent upon the quality and quantity of available water supplies in the Colorado River Basin. Finally, both the lower basin projects authorized under title I of the Salinity Control Act and the upper basin projects authorized under title II will contribute materially to international comity with Mexico by meeting our agreements with that country on Colorado River quality. For these reasons, I think it is important that we continue to search for ways to reduce the salt content of this vital river basin.

Mr. President, I believe there is no doubt as to the value of this program. I urge the adoption of the Colorado River Basin salinity feasibility investigations amendment to H.R. 5278.●

Proposed by Mr. McCLURE and Mr. HATFIELD.

H.R. 5278 is amended by adding at the end thereof the following new section:

"SEC. 5. Nothing in this Act shall be interpreted to preclude or delay issuance of a license by the Federal Energy Regulatory Commission."

FEASIBILITY STUDY, POWER DEVELOPMENT

● Mr. HATFIELD. Mr. President, I support passage of H.R. 5278 to authorize feasibility studies of power development at several existing reclamation projects. In doing so, however, I recognize the possibility of non-Federal developments at several of these projects, including three in Oregon at the Wickiup, Owyhee and Prineville Reservoirs. I believe it entirely appropriate that a responsible non-Federal entity, particularly an irrigation district which runs a project, develop the power potential at a reclamation dam and save the Government the expense. The important thing is that the power be developed at the earliest possible time.

We in the Pacific Northwest are facing projected power supply deficits in the 1980's, and there is very little that can make a difference in this picture except conservation efforts and small generation projects which have relatively short leadtimes.

Therefore, I would not move to take the Oregon projects out of this bill on the hope that the non-Federal interests will actually make good on their intentions to develop the power, realizing, as I do, that this bill is just one of two acts of Congress which must be passed in order for a Federal feasibility study go ahead. The second act is, of course, an Appropriations Act, and I will not support the funding of any of the Oregon feasibility studies so long as responsible local interests are proceeding apace with their own studies which will lead to optimal power development at these projects. The region needs the power, as I have said, and it matters less to me who actually develops it.

Mr. President, with this clarification of my position on the pending matter, I am prepared to vote for its passage.●

The PRESIDING OFFICER. Without objection, the amendments (UP No. 1601) are considered and agreed to en bloc.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. I move to reconsider the vote by which the bill passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMERICAN BUFFALO WEEK

The Senate proceeded to consider the resolution (S. Res. 482) to designate the third week of September of each year as "American Buffalo Week," which had been reported from the Committee on the Judiciary with an amendment on page 2, line 1, strike "third week of September of each year" and insert "week of September 14 through 20, 1980,".

The amendment was agreed to.

The resolution, as amended, was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas the buffalo provided a source of food and clothing vital to expansion into the western United States;

Whereas by providing such necessities the buffalo played an integral part in American history;

Whereas the American Buffalo Association and the National Buffalo Association have organized to save the buffalo from extinction as well as to preserve the history of the role of the buffalo;

Whereas these organizations are attempting to educate the American people regarding the significance of these peaceful yet magnificent animals; and

Whereas the consumption of buffalo meat is increasing and the buffalo is once again becoming an important food source:

Now, therefore, be it

Resolved, That the week of September 14 through 20, 1980, be designated as "American Buffalo Week" and urges Federal, State, and local government agencies, and urges the people of the United States, to observe such week with appropriate programs, ceremonies, and activities.

The title was amended so as to read:

A resolution to designate the week of September 14 through 20, 1980, as "American Buffalo Week".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL HELD AT DESK PENDING FURTHER DISPOSITION (H.R. 6538)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 6538, New Mexico oil and gas leases, is received in the Senate Chamber, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF TIME FOR FILING REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Indian Affairs Committee have until 7 p.m. today to file a bill and a report.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO REDUCE THE TIME OF THE TWO LEADERS TO 10 MINUTES ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders or their designees be reduced to 10 minutes, to be equally divided, on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, following the recognition of the two leaders or their designees under the standing order, and the recognition of Senators for whom orders have been previously entered tomorrow, the Senate will resume consideration of the Transportation appropriation bill, and at no later than 12 o'clock noon tomorrow, the Senate will resume consideration of the HUD appropriation bill.

There will be rollcall votes on tomorrow.

May I ask, have I correctly stated the orders pertaining to tomorrow?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 9 o'clock tomorrow morning.

The motion was agreed to; and at 6:41 p.m., the Senate recessed until tomorrow, Thursday, September 18, 1980, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 17, 1980:

THE JUDICIARY

Myron H. Thompson, of Alabama, to be U.S. district judge for the middle district of Alabama, vice Frank M. Johnson, Jr., elevated.

Ralph W. Nimmons, Jr., of Florida, to be U.S. district judge for the middle district of Florida, vice a new position created by Public Law 95-486, approved October 20, 1978.

Israel Leo Glasser, of New York, to be U.S. district judge for the eastern district of New York, vice a new position created by Public Law 95-486, approved October 20, 1978.

Philip Weinberg, of New York, to be U.S. district judge for the eastern district of New York, vice Jacob Mishler, retired.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

The following-named persons to be associate judges of the Superior Court of the District of Columbia for terms of 15 years:

Dorothy Sellers, of the District of Columbia, vice Edmond T. Daly, deceased.

Richardo M. Urbina, of the District of Columbia, vice Normalie Holloway Johnson, elevated.

NATIONAL RAILROAD PASSENGER CORPORATION

The following-named persons to be Members of the Board of Directors of the National Railroad Passenger Corporation for the terms indicated:

William T. Cahill, of New Jersey, for a term expiring July 18, 1982, vice Robert G. Dunlop, resigned.

W. Howard Fort, of Ohio, for a term expiring July 18, 1984, vice Harry Edwards, resigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 17, 1980:

NATIONAL COUNCIL ON THE HANDICAPPED

The following-named persons to be Members of the National Council on the Handicapped for the terms indicated:

For a term of 1 year:

Nelbe R. Chaves, of Arizona.

Nanette Fabray MacDougall, of California.

John P. Hourihan, of New Jersey.

Edwin O. Opheim, of Minnesota.

For a term of 2 years:

Elizabeth Monroe Boggs, of New Jersey.

Mary P. Chambers, of New Hampshire.

Jack Genair Duncan, of South Carolina.

Thomas Joe, of the District of Columbia.

For a term of 3 years:

Donald E. Galvin, of Michigan.

Judith E. Heumann, of California.

Howard A. Rusk, of New York.

J. David Webb, of Georgia.

Henry Williams, of New York.

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

The following-named persons to be Members of the National Advisory Council on Women's Educational Programs for the terms indicated:

For terms expiring May 8, 1982:

Maria Concepcion Bechily, of Illinois.

Barbara M. Carey, of Florida.

Virginia Foxx, of North Carolina.

K. Jessie Kobayashi, of California.

Jewel Limar Prestage, of Louisiana.

For a term expiring May 8, 1983:

Rhine Lana McLin, of Ohio.

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

The following-named persons to be Members of the National Council on Educational Research for the terms indicated:

For the remainder of the term expiring September 30, 1980:

Maria B. Cerda, of Illinois.

For terms expiring September 30, 1982:

Joseph J. Davies, Jr., of Louisiana.

Timothy S. Healy, of the District of Columbia.

John S. Shipp, Jr., of Florida.

For a term expiring September 30, 1983:

Maria B. Cerda, of Illinois.

FEDERAL COUNCIL ON THE AGING

Jacob Clayman, of Maryland, to be a Member of the Federal Council on the Aging for a term expiring December 19, 1982.

FARM CREDIT ADMINISTRATION

The following-named persons to be Members of the Federal Farm Credit Board, Farm Credit Administration, for terms expiring March 31, 1986:

Ralph Raikes, of Nebraska.

William D. Wampler, of Virginia.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

WITHDRAWAL

Executive nomination withdrawn from the Senate September 17, 1980:

Fred D. Gray, of Alabama, to be U.S. district judge for the middle district of Alabama, vice Frank M. Johnson, Jr., elevated, which was sent to the Senate on January 10, 1980.

HOUSE OF REPRESENTATIVES—*Wednesday, September 17, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious Lord, incline Your ear to our supplications and minister to us in the depths of our hearts. Sustain us in our daily concerns and forgive us our transgressions. As the day follows the night so fill our world with the brightness of Your radiance, that trusting in Your love, we may go forth to serve You and our neighbor. May we not despair with problems great or small, but continue in faithful dedication to those good values that never change. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

ELECTION OF HON. IKE SKELTON AS MEMBER OF COMMITTEE ON ARMED SERVICES

Mr. FOLEY. Mr. Speaker, as chairman of the Democratic Caucus and by the authority of the Democratic Caucus, I send to the desk a privileged resolution (H. Res. 786) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 786

Resolved, That the following-named Member be, and is hereby, elected to the following standing committee of the House of Representatives:

Committee on Armed Services: Ike Skelton of Missouri.

The resolution was agreed to.

A motion to reconsider was laid on the table.

DOUBLE STANDARD OF JUSTICE

(Mr. DONNELLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DONNELLY. Mr. Speaker, I rise to call attention to a travesty of justice that must not pass unchallenged. In July, 17 Lithuanian Americans including the great patriot Simas Kudirka were arrested after a peaceful protest at the Soviet Embassy while voicing outrage at the recent Soviet invasion of Afghanistan and the occupation of their native Lithuania since 1940.

Later in July, 192 pro-Khomeini demonstrators were arrested after repeated clashes with District and U.S. Park Police which resulted in injuries to several police officers and bystanders.

Beyond the evident contrasts in these incidents the Justice Department has chosen to handle these cases with an unduly flexible and expedient definition of equal justice. The Iranian students were released under what amounts to blanket amnesty, yet amazingly the U.S. attorney's office intends to prosecute these American citizens to the fullest extent of the law.

Last week I introduced a resolution, cosponsored by Mr. SAWYER, of Michigan, expressing the discontent of the Congress with this double standard of justice. I urge my colleagues on both sides of the aisle to reaffirm our time-honored commitment to equal justice by lending support to this resolution.

NO TAX CUT

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, at a meeting of the Ways and Means Committee yesterday, I learned that there will be no consideration of a tax cut by the House before election, and I suspect therefore there will be no tax cut this year. Rank and file House Members can do nothing about it but complain to the majority members of the Ways and Means Committee. They have allowed their party's leadership, and the fuzzy-headed policymakers of the White House, to do their thinking for them, and plenty of badgering by the Ways and Means minority has not moved them. I feel some affection for my majority colleagues on Ways and Means, and regret their willingness to risk blame which should properly be placed elsewhere for the highest Federal tax burden in history. Please talk to them, and remind them of the proud traditions of independence which the committee has earned.

What will we in the House do when the Senate sends us its tax cut measure about 2 weeks from now? I, for one, shall feel like weeping for the American taxpayers, and the House of Representatives.

A CESSPOOL OF POLITICAL HYPERBOLE

(Mr. LOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, last month Andy Young was the author of a vindictive article in the Washington Post in which he tried to call up ghosts of the past and criticized Governor Reagan for even going to Philadelphia, Miss. And, of course, he did not like the mention of States' rights.

And now President Carter has taken up the invective. In a speech in Georgia yesterday he stooped to the worst kind of inflammatory language. He too slurred the term "States' rights" and the State of Mississippi. You would think a former Governor would know that States rights is a fundamental principle in American constitutional law.

Mr. Speaker, I resent this negative reference to Governor Reagan's trip to the Neshoba County Fair in Mississippi and regret that President Carter has fallen into such a cesspool of political hyperbole.

A LOWER TONE OF POLITICAL DEBATE

(Mr. HYDE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, there are many unique advantages in being President of the United States, especially when one is running for reelection. Millions and millions of dollars have been dumped into areas where the President needed a boost, including my beloved Chicago. We have seen a resumption in activity in Mideast negotiations, the disclosure of a new secret radar-proof aircraft, and a fifth new economic plan.

There are disadvantages to being President in a campaign however. One of them is that the President of the United States should not say everything his instinct for the jugular dictates. The President is the President of all the people, 24 hours a day, 365 days a year, whether he is campaigning or not.

President Carter has obviously forgotten the demands of civil discourse his high office requires. Yesterday he demeaned his office by uttering inflammatory, even venemous innuendo.

He implied, as we all heard on the news, that Republicans are filled with hatred and racism. He said that "States rights" was some kind of code phrase which proved we are lowly creatures living in another age.

What he said was irresponsible, and a deliberate attempt at polarizing segments of our population. He has lowered the tone of political debate. I think he owes Ronald Reagan and all Americans an apology.

THE RUTTED ROAD OF CAMPAIGN INVECTIVE

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, as was pointed out by the Washington Post this morning. President Carter has steered his way along the road of invective that has already become well rutted in this young fall campaign.

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Mr. Speaker, of course, I am referring to those comments that have already been referred to wherein President Carter injected the question of racism, States' rights as racism and other things into this campaign.

As one who, in the month of August, was back in his district defending the sincerity and honesty of the President despite saying that he ought to be voted out of office, I must say that I am at a loss for words to try to explain or defend him any longer. It seems to me that the President is well on his way in a campaign where he plays issues such as racism like an accordion, where he folds back and forth on it wherever it might give him the highest note for his campaign. This is the type of thing we do not need in this campaign; this is the type of thing from which the President ought to refrain and for which he ought to apologize to the American people.

PRESIDENT DECIDED TO LEAK STEALTH

(Mr. BADHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BADHAM. Mr. Speaker, the former CNO, a Democrat, former Democratic candidate for the U.S. Senate, Adm. Elmo Zumwalt, testified before the Armed Services Investigations Subcommittee yesterday under oath about his statement: "there appears to be no doubt, based on my contacts with the White House staff and Pentagon officials, that the decision was made by the President to disclose the existence of this technology and that the method chosen was first 'leak' the existence and then be forced to confirm the leak."

□ 1010

Mr. Speaker, the White House was quick to respond. They accused Admiral Zumwalt of lying. I think that this cover-up is reprehensible. If the White House really thinks that the admiral lied under oath, they ought to press charges, not press innuendo.

The former CNO was asked if he had heard rumors about a certain source of leak. He said only that he had heard the rumors.

I say again that Admiral Zumwalt has clearly said the leak started with the President; the technology was confirmed after the leak; the Soviets were given information they did not previously have; the White House has tried to "cover-up"; and they have been caught. This deplorable, desperate, disastrous situation can only be laid at the feet of Jimmy Carter.

LAMEDUCK SESSION WILL ACCOMPLISH LITTLE

(Mr. BETHUNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BETHUNE. Mr. Speaker, most of the good people in my district in Arkansas have the feeling that the budget is the most important piece of business that the Congress should do in each session. I think that I agree with that proposition.

Now here we are supposed to have finished our work on that important document on September 15. We violated the law. We are 2 days in default. One of the great mysteries around the Congress today is the question of what we are going to do about it. I have been trying to find out. I know Members have been trying to find out. Of course, that is in the hands of the Democrats, who have a two-thirds majority in this House, but one of the first things that has been mentioned is, well, we will have a lame-duck session. Members who get defeated in this election will come back after the election and take care of some of the loose ends that need to be tied up.

But now it is rumored, if we do come back, we will only come back for a couple or 3 days and piddle around a little while and take care of a few odds and ends, then recess and let the next Congress take care of business without ever dealing with the most important piece of legislation, the budget.

I think it is not even fair now to call it a lameduck Congress. I think it is more in the nature of a dead-duck Congress.

LET US ENFORCE OUR IMMIGRATION LAWS

(Mr. ROYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROYER. Mr. Speaker, according to this morning's Washington Post, Attorney General Benjamin Civiletti has refused to grant the INS permission to resume immigration raids designed to locate illegal aliens. Initially the ban had been ordered to insure that the 1980 census count was accurate. While I disagreed with that judgment because it does not seem to me you maintain respect for the law by suspending its enforcement, the necessity for the ban no longer exists since the census count is over. Now the INS is clamoring for reinstatement of its right to conduct these raids. But the delay continues evidently due to political considerations—something not unheard of in this administration. I wonder does this administration ever do the right thing regardless of the "alleged" political consequences? The immigration laws exist, Mr. Attorney General, and your duty is to enforce them.

CALL OF THE HOUSE

Mr. BROOMFIELD. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 550]

Abdnor
Addabbo
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bowen
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Burgener
Burlison
Burton, John
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Fish
Fithian
Flippo
Florio
Ford, Tenn.
Fountain
Fowler
Frenzel
Frost
Fugua
Garcia
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hance
Hanley
Hansen
Harkin
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McDade
McDonald
McEwen
McHugh
McKay
Madigan
Maguire
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patten
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Pursell
Quayle
Quillen
Rahall
Rallsback
Rangel
Ratchford
Regula
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Royer
Rudd
Russo
Sabo
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solars
Solomon
Spellman
Spence
St Germain
Stack
Stangers
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weiss
White
Whitehurst
Whitley
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Mo.
Zablocki
Zeferetti

□ 1030

The SPEAKER pro tempore (Mr. ROSTENKOWSKI). On this rollcall, 349 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 3210. An act to terminate the authority to make grants to the Las Vegas Valley Water District under the act of August 27, 1954.

The message also announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 670. An act to require the Secretary of Agriculture to establish and maintain a rural development policy management process, and for other purposes; and

S. 2223. An act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 1197) entitled "An act to simplify the tonnage measurement of certain vessels," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. CANNON, Mr. LONG, Mr. EXON, Mr. HEFLIN, Mr. JACKSON, Mr. JOHNSTON, Mr. FORD, Mr. BUMPERS, Mr. MELCHER, Mr. METZENBAUM, Mr. SCHMITT, Mr. WARNER, Mrs. KASSEBAUM, Mr. HATFIELD, Mr. MCCLURE, Mr. DOMENICI, and Mr. STEVENS to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res 108. Concurrent resolution to disapprove the determination of the President not to provide import relief for the leather wearing apparel industry.

ITALIAN-AMERICAN HERITAGE WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 568) to authorize and request the President to issue a proclamation designating October 19, 1980, as "Italian-American Heritage Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. WOLFF. Mr. Speaker, reserving the right to object, and I shall not object, I just take this time to thank the gentleman from New York (Mr. GARCIA), chairman of the subcommittee, for his expeditious handling of this bill and to thank the 224 other Member cosponsors of this resolution.

Mr. Speaker, I rise in support of House Joint Resolution 568, which would designate the week of October 12–19 as "Italian-American Heritage Week." I feel that this is a most significant piece of legislation, as it would bestow recognition upon one of America's most energetic and creative ethnic communities.

The contributions of the Italian-American community to our American way of life are too numerous to mention here. As Americans, we owe an immeasurable debt to the man who discovered the New World, Christopher Columbus, as well as to the man who lent it his name, Amerigo Vespucci. It is with a deep and abiding sense of respect that I mention the names of those two courageous individuals, who risked life and fortune in what was to become the great American tradition of exploring the unknown. It was a similar thirst for freedom which brought waves of Italian immigrants to our shores in the late 19th century. It was a similar drive toward achievement which motivated the likes of Fiorello LaGuardia, Frank Sinatra, and Enrico Fermi to not only excell but to reach the very zenith of their chosen professions.

As a New Yorker, I am quite familiar with the unique Italian cultural heritage which is expressed by Italian Americans in a variety of ways, whether be culinary, artistic, or literary. America would not be the same without its heavy doses of pasta, great expanses of frescos, and huge helpings of Italian song and wit. Our Italian-American ethnic neighborhoods contain a delightful collage of small merchants and businessmen who do credit to our free enterprise system with their lively and vivacious market acumen. We owe a great debt to those who have served and continue to serve in this very Chamber as model legislators and innovative lawmakers. Even the magnificent aesthetics of this building are mainly the result of the intense creativity of 20 Italian artists, who in some cases defied death itself while attempting to complete their most difficult task.

I could continue for hours, yet logistics prohibit me from doing so. I wish to commend the over 220 cosponsors of this resolution, who undoubtedly feel as strong an affection as I do for this great American ethnic community. I also wish to commend the Order of the Sons of Italy in America, the largest organization in the country representing Italian Americans. The order is celebrating its 75th anniversary this year, and I would like to thank them on behalf of the Members of this body for their fine work on behalf of the Italian-American community. It is my hope that the implementation this year of Italian-American Heritage Week will prompt greater awareness across the Nation of the outstanding contributions of this rich ethnic culture.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. WOLFF. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Speaker, I rise in support of the legislation and take this opportunity to thank the gentleman from New York (Mr. GARCIA) and commend the gentleman for his expeditious production of this legislation. I also would like to thank the other gentleman from New York (Mr. WOLFF) for his authorship of this legislation.

Mr. Speaker, as an American of Italian descent and a cosponsor of House Joint Resolution 568, I rise in enthusiastic support of this resolution. I commend my colleague from New York (Mr. WOLFF) for his sponsorship of this important measure. The Italian-American heritage is a rich one and worthy of the special attention that this resolution provides.

The justification for such a proposal is clear. We live in a nation discovered by an Italian and named for an Italian. From Christopher Columbus and Philip Mazzei to PETER RODINO and Judge John Sirica, Italo-Americans have contributed as much as any other ethnic group to the growth of our great Nation.

Currently, there are some 30 million Italian Americans in the United States and over 30 Members of Congress. At a time when all ethnic Americans are becoming increasingly aware of their backgrounds, it is essential that the Italian-American community be given this well-deserved and long-overdue opportunity to make itself more visible and take pride in their heritage.

In recent weeks, two outstanding Italian Americans have gained national recognition. The first was passage of a resolution by Congress designating September 18, 1980, as Constantino Brumidi Day. The second took place this past Friday when President Carter presented the Congressional Medal of Honor, the Nation's highest award to Anthony Casamento for outstanding bravery in World War II.

In addition, a commemorative airmail stamp honoring Italian-American patriot Philip Mazzei will be issued later this year.

Let us use the occasion of Italian-American Heritage Week to rededicate ourselves to the removal of all remaining forms of discrimination which exist against Italian Americans. Discrimination can and does take many forms. It can be as blunt as a denial of admission into a university or as subtle as an advertisement on television. Italian Americans are still victimized by unfortunate and unwarranted stigmas and stereotypes. Italian-American Heritage Week and its commitment to presenting the positive elements of the Italian-American experience may go a long way to removing these barriers. I urge adoption of this resolution.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. WOLFF. I yield to the gentleman.

Mr. GILMAN. Mr. Speaker, I rise in support of the resolution sponsored by the gentleman from New York (Mr. WOLFF) and want to commend him and the distinguished Subcommittee chairman from New York (Mr. GARCIA) for bringing this measure (H.J. Res. 568) before us today, designating October 12–19 as "Italian-American Heritage Week".

Italian-Americans have made numerous significant contributions over the years to the development of the United States. Accordingly, it is fitting that we pause to pay tribute to our Nation's Italian-American community in which we observe the birthday of Christopher Columbus, the first Westerner to venture out to our continent.

Earlier this month, the House honored Constantino Brumidi, the artist whose creativity and monumental work we observe every day as we walk about our Capitol Building. At that time, I suggested that the House should expand its tribute to include all Italian-Americans. I am pleased that we now have that opportunity in adopting this resolution today and in providing our Nation with the opportunity to acknowledge the rich heritage of our Italian-Americans and their contributions to our Nation's history.

Mr. CARNEY. Mr. Speaker, will the gentleman yield?

Mr. WOLFF. I yield to the gentleman from New York.

Mr. CARNEY. Mr. Speaker, on June 17, 1980, I had the honor to speak in support of a bill I sponsored designating June 22 as "National Italian-American Day." I applaud the author of this bill, the gentleman from New York (Mr. WOLFF). As I said at that time, I believe that it is fitting that a nation discovered by an Italian, named for an Italian, and which has grown and prospered through the efforts of its citizens which have included over 5 million Italian immigrants should, in turn, honor those citizens and their descendants.

Our country's history is replete with the names of outstanding Italian-Americans who worked and fought to make ours the greatest nation in the world, including, to name a few examples: Philip Mazzei, Thomas Jefferson's neighbor, confidant, and friend whom Jefferson credited with originating the concept that "All men are created equal," which became the cornerstone of our democratic government; Luigi Palma Di Cesnola, the founder of the Metropolitan Museum of Art in New York; who, as a Union general in the Civil War, was the first of many Italian-Americans to be awarded the Congressional Medal of Honor; Constantino Brumidi, called the Michelangelo of the U.S. Capitol; Enrico Fermi, the father of nuclear science; and Mother Cabrini, the first American to be proclaimed a saint by the Roman Catholic Church. It is impossible to find a field, be it in the arts, science, business, labor, or politics where Italian immigrants and their descendants, have not excelled.

I am proud to cosponsor this resolution.

Mr. WOLFF. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. RITTER. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I rise in support of House Joint Resolution 568, designating October 12–19, 1980, as "Italian-American Heritage Week." During a week in which we commemorate the discovery of America by Italian explorer Christopher Columbus, the American people should recognize the great contributions many Italian Americans have made to our Nation.

In the Lehigh Valley, the Italian-American community has fostered a rich heritage of Old World customs, family tradition, and ethnic pride. Many community organizations deserve our thanks and tribute: the Knights of Columbus, the Sons of Italy, the Sons of Italy Ladies' Lodge, the Holy Cross Society and its ladies auxiliary, the Castel di Lucio Society and its ladies auxiliary and the Circle of San Placido. These local organizations, which include many first-generation Italians, preserve the pageantry and ritual of religious and village traditions as well as the "buona festa" spirit of the Italian people for all of us in the Lehigh Valley to appreciate and enjoy.

Let us call upon all Americans to honor the Italian-American contribution to our national heritage with "Italian-American Heritage Week."

Mrs. HECKLER. Mr. Speaker, will the gentleman yield?

Mr. RITTER. I yield to the gentlewoman.

Mrs. HECKLER. Mr. Speaker, I rise in support of this resolution which I think has great significance for the country.

Mr. Speaker, it is a pleasure to join with my colleagues today as the House unanimously proclaims October 12 through October 19, 1980 as "Italian-American Heritage Week."

Italo-Americans have every reason to be proud of their heritage and the fundamental role they have played in the historical development of our country. Long before 1492 when the Italian navigator, Christopher Columbus, discovered America, Italy was contributing to a nation yet to be born—a nation that would give birth to the democratic ideals developed in ancient Rome.

More than 5 million Italian immigrants have arrived on our shores and have shared with us their heritage, not only in my home State of Masachusetts, but in every State of the Union. They have enriched our lives by adding the Italian flavor to the blend in the American melting pot. Today the U.S. population includes more than 25 million Italian Americans who will continue on every level of society to contribute significantly to the culture and education, to the strength and structure, which underpin the basic greatness of our country.

Through the Sons of Italy and other Italo-American organizations, this rich Italian heritage has been shared for more than three quarters of a century throughout the United States.

Columbus Day celebrations across the country give non-Italian Americans the opportunity to salute this special heritage. As this Columbus Day approaches, it is entirely appropriate that an official act of recognition by the U.S. Congress be made of the Italo-Americans' contribution to the greatness of America.

● Mr. RODINO. Mr. Speaker, I want to add my strong support for House Joint Resolution 568 and urge its adoption by the House. The many contributions of Italian-Americans of Italian descent have helped to build America into the great country that it is today, and Italian-Americans play an important part in America's future.

As the author of the legislation making Columbus Day, October 12, a national holiday, I strongly believe that a week dedicated to celebrating Italian heritage in America is long overdue.

I believe that such a week of recognition will help strengthen the bonds that hold together all ethnic groups of America because it will honor the values that we hold so dear—family, community, and service to our country. The Italian immigrants who came to our country endured countless hardships and sacrifice so that their children could partake in the American dream. The rich heritage of Italian culture can never be forgotten by our children and our children's children because it has been woven into the fabric of American folk life.

Mr. Speaker, I think it is important that during the week of October 12 through 19 all Americans of Italian origin come together, not only to proudly proclaim our heritage but to ask ourselves some questions as individuals and as a community of people sharing common aims. How can we better serve this America we love so dearly? How can we help make tomorrow better for ourselves and our children? How can we help not only ourselves but others achieve the American dream?

Mr. Speaker, I believe that Italian-American Heritage Week will enhance appreciation for Italian culture in our Nation and help promote understanding and compassion among all Americans. I urge its prompt passage.●

● Mr. ADDABBO. Mr. Speaker, I rise in support of the resolution (H.J. Res. 568) authorizing the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week." I urge my colleagues to vote in favor of this measure which appropriately honors and recognizes the countless Italian-Americans who have made vital contributions to this great country of ours. I commend its sponsor Mr. WOLFF and Mr. GARCIA for his expeditious action.

Italian-Americans, as have other nationalities, have played important roles in the growth and advancement of our Nation since its inception. Appropriately enough, the second Monday of October is also the day in which all Americans celebrate the formal discovery of America by the famous Italian geographer-navigator-explorer, Christopher Columbus. It is a day in which all people are reminded just how far back in American history Italians have been making their mark. For almost 500 years Italian-Americans have carved a special niche for themselves in countless fields, among them, music, art, communication, government, law, sport, and science. In literally every city in America the hard working, dedicated, and patriotic spirit of these people is as strong as ever.

Italian-Americans have brought to this country a lifestyle rich in culture and tradition that they have enjoyed sharing

with all Americans. Their sharing has added so much to communities from coast to coast. We invite all our colleagues to join in our wonderful Columbus Day parade sponsored by the Columbus Day Citizens Committee a great charitable organization.

Again, I urge my colleagues to support this resolution so we all can say thanks to all Italian-Americans. Without them, and the rest of the numerous ethnic groups that exist in this country, this Nation would be a far bleaker place to live in.●

● Mr. DOWNEY. Mr. Speaker, as a cosponsor of House Joint Resolution 568, I welcome the opportunity to speak to my colleagues in support of this resolution to authorize and request the President to issue and proclaim October 12–19 as "Italian-American Heritage Week."

I believe that such a designated week would be an important occasion for all of us to honor the role Italian-Americans have played in the development of our Nation. Being of half Italian ancestry myself, I understand the importance of designating such a week to honor the many contributions of Americans of Italian descent to our society.

Italian heritage is in many ways the heritage of all Americans. Many of the first explorers and settlers of the American continent were Italians. Italian-Americans have fought side by side with people of other ethnic origins to establish and preserve this Nation in times of war and peace.

Though the Italian immigrant had to overcome differences in languages and customs, many of these same differences have remained to add significantly to the diversity and dynamism of American society. They have continued through many generations of Italian-Americans to add greatly in the areas of music, art, political, economic and cultural leadership, athletics, and many other areas of our national life.

Therefore I believe we should set aside 1 week to honor Italian-Americans and commemorate the many contributions they have made to our country.●

● Mr. ANNUNZIO. Mr. Speaker, I was glad to join my colleagues in cosponsoring House Joint Resolution 568, which was introduced by my good friend from New York, the Honorable LESTER L. WOLFF, to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week," and I am delighted today to join my colleagues in the House in paying tribute to the great contributions that Italo-Americans have made, not only to the discovery of America, but since the discovery of America, to the development of the United States.

Each year in my own city of Chicago, the Joint Civic Committee of Italian Americans sponsors a gigantic Columbus Day parade to celebrate the courage, foresight, and intrepid fortitude of a man who dared follow his ideals. Only two men in U.S. history have been honored by designation of a public Federal holiday—the first was George Washington, Father of our Country; and the second was Christopher Columbus, father of all immigrants.

America is a nation of immigrants, and Italy has provided us with many of our citizenry. From William Paca, who was a signer of the Declaration of Independence, to the present, Italian Americans have made enormous and lasting contributions to the strength and greatness of the United States. Philip Mazzei, who assisted our Nation's Founding Fathers in the Revolutionary War, was born in Italy and is being honored this year in a new commemorative postage stamp.

Although everyone knows that Cristoforo Columbo discovered America and almost everyone knows that America was named after Italian Amerigo Vespucci, not everyone is aware that Giovanni Cabota—John Cabot—first explored its mainland; that Giovanni da Verrazzano discovered New York Bay; and that Alessandro Malaspina was the first white man to explore Alaska, Vancouver, and the coast of California. It was Henry Tonti who explored the land of the Mississippi River, built Fort Niagara, and started the first settlement in Arkansas; Paolo Busti, through whose skillful planning as manager of the Holland Land Co. that 5 million acres of land evolved into American towns and cities and who chose the location where Buffalo, N.Y., was to be built; and Francesco Vigo, a prominent Italian fur trader in the West, who assisted the victory of Gen. George Rogers Clark at Fort Vincennes in 1779 which preserved American sovereignty over an area that later became the States of Illinois, Ohio, Indiana, Wisconsin, and Michigan.

Italians fought heroically in all of America's wars for freedom including Richard Tagliaferro, a colonel killed at the battle of Guilford Hall during the American Revolution, and Salvatore Catalano, a naval hero who recaptured the *Philadelphia* from pirates. Anthony Casamento recently joined John Basilone and a number of other courageous Italian Americans who have won our Nation's highest military award for bravery, the Congressional Medal of Honor.

In all walks of our country's life, Americans of Italian heritage have made innumerable and lasting contributions. In all types of music from classic to modern, Italian names are well known, such as Arturo Toscanni, and Ezio Pinza, and Luciano Pavarotti in opera; and in popular music there is Frank Sinatra, Tony Bennett, Perry Como, and many others too numerous to mention. The names Henry Fonda and Jimmy Durante come to mind among many in show business; and Rocky Marciano, Vince Lombardi, Yogi Berra, Joe DiMaggio, and so many others have excelled in sports.

Constantino Brumidi, who died 100 years ago this year, was the major artist who decorated our Nation's Capitol Building, and Mario E. Campioli, who retired this year as Assistant Architect of the Capitol, was the director of architecture in the restoration of colonial Williamsburg, Va., from 1949 to 1957.

In politics, the first Italian to hold public office in America was Onorio Razzolini, who was born in Venice but settled in Annapolis, Md., where in 1736 he was appointed Armourer and Keeper of the Stores of Maryland. Many other Italian names appear in the political history of our country, and of course, perhaps the most famous of all is Fiorello LaGuardia, who was mayor of New York City longer than any other individual and who was elected after serving 14 years as a Congressman.

In science, we have Dr. Enrico Fermi, the father of nuclear energy, Dr. Anthony R. Curreri, the first president of the Uniformed Services University of the Health Sciences, and Dr. Vincent T. DeVita, Jr., the Director of the Division of Cancer Treatment of the National Cancer Institute.

The designation of "Italian-American Heritage Week" is a tribute to the role of Italian immigrants in making our country strong and free, and Americans of Italian descent continue to carry forward the new-world tradition of determination, hard work, and courage begun by Christopher Columbus. I urge the support of my colleagues for this resolution.●

● Mr. VENTO. Mr. Speaker, I rise in support of House Joint Resolution 568, a fitting tribute to the many contributions Italian Americans have made in the history of our country.

On October 12, we commemorate Christopher Columbus Day, the first of many Italians whose hard work and determination have enriched our country's heritage.

My own resolution (H.J. Res. 385) seeks to commemorate the 500th anniversary in 1992 of Columbus' voyage, but beyond that, this House Joint Resolution 568 would serve as a commemoration of all Italian Americans and their ancestors. It is only proper that we authorize the designation of October 12–19 as "Italian-American Heritage Week."

I thank the resolution's sponsor, Mr. WOLFF, and my many fellow cosponsors for their recognition of the proud role Italian Americans have played in our country's development and whose contributions to our Nation's history are a source of pride in our American heritage.●

● Ms. FERRARO. Mr. Speaker, I rise in support of House Joint Resolution 568, to urge the President to designate the week of October 12–19 as Italian American Heritage Week.

I am pleased to join my colleagues in recognizing the role that Americans of Italian descent have played in the development of this Nation. Italian immigrants have come and continue to come to America to seek better lives for themselves and their children. They bring with them the history of a rich culture that has, through the ages, been woven into the tapestry of civilization. We have only to walk through the halls of the Capitol and see the works of Brumidi to see that ours is a vivid, imaginative culture. We need only to look back through our history books to see the contributions of hard work and dedication that Italians and Italian Americans have given this Nation. Columbus holds a special significance for us. Many of Filipo Mazzei's writings, translated into English by Thomas Jefferson, have enriched American democracy. There are countless others who have given much and others who will continue to give.

Our heritage is one of which we are proud, one whose values we can carry with us now and into the future. As we become increasingly aware of the necessity and the value of retaining our traditions, we can put them to work. Today, Italian Americans continue to be hardworking individuals, seeking changes that will not only benefit ourselves and our country, but also seeking changes that will make the world a better place for all of us. An Italian American, Judge John Sirica, judicially paved the way for Americans to hear the full story of Watergate. Italian Americans like Attorney General Benjamin Civiletti, Gov. Ella Grasso, and members of the Italian American delegation in Congress are meeting the challenges that we, as a Nation, face. The President's Special Assistant on Ethnic Affairs, Dr. Steven Aiello, is an Italian American. The list is endless. We are using the traditions that our parents and grandparents held so dear to strengthen the fabric of society.

On September 12, the President honored Anthony Casamento with the Congressional Medal of Honor. He is one example of many Italian Americans whose actions reflect a deep and abiding commitment to America. We are proud of him, proud that an Italian American has been so honored. But we are equally proud of the traditions and values that have been handed down from generation to generation. And more than that, we seek to integrate them into the American way of life and to share them with all Americans of all backgrounds.●

Mr. RITTER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 568

Whereas the Congress fully recognizes that it is essential for the people of the United States of America to understand and respect the rich heritage of all American ethnic groups if we are to maintain and foster the national unity and

Whereas the many great contributions of Italian-Americans to our country must be recognized and the deep Western roots of Italian-American culture, history, and traditions must be appreciated; and

Whereas the long recognized American holiday of Columbus Day is celebrated on the second Monday of October to commemorate the discovery of America by the famous Italian geographer-navigator-explorer, and this day is of special significance to the Italian-American community as a symbol of their essential contributions to American society as courageous immigrants, hard-working citizens, and true American achievers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week" and calling upon the people of the United States, State, and local government agencies, and interested organizations to observe that week with appropriate ceremonies, activities, and programs.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL AGRICULTURE DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 560), to proclaim March 19, 1981, as "National Agriculture Day," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. JONES of Tennessee. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I am pleased that the House is acting today to adopt legislation which will proclaim March 19, 1981, as National Agriculture Day.

I am pleased, also, that this recognition of the importance of American agriculture to all of our people has such broad and nonpartisan support in the House. Since House Joint Resolution 560, establishing National Agriculture Day, was introduced last June, more than 230 Members of the House in both parties have joined me and Mr. WAMPLER, of Virginia, ranking minority members of the House Committee on Agriculture, as sponsors.

The resolution will authorize and request the President to issue a proclamation calling on all Americans to observe next March 19 with ceremonies and activities emphasizing the interdependence of rural and urban people.

Most Americans think of themselves as living in an urban society. But American agriculture, which includes both our farmers and all others who work with them to produce, process and distribute food and fiber, is the Nation's largest and most productive industry. This means that no matter where we live, we cannot escape from the fact that a healthy farm economy, working in partnership with an efficient agribusiness sector, is the cornerstone on which the national economy rests.

All Americans, therefore, will be well served if they are given a clear understanding of the role that agriculture plays in their lives and the many direct and indirect ways it affects their well-being. One of the effective ways of promoting this understanding in recent years has been the annual observance of Agriculture Day. Enactment into law of the resolution we are passing in the House today will—without involving any cost to taxpayers—bring the added support of formal Government recognition to the work farmers and their allies have already begun toward making the 1981 Agriculture Day a truly effective observance.

In past years, Agriculture Day has been celebrated in communities all across the country with special activities calling attention to the impact of agriculture on the interests of all citizens. In 1981, we will see farmers and ranchers, farm and commodity groups and all other segments of the agricultural community working in another united effort to speak to the American people.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. WAMPLER. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I rise in support of House Joint Resolution 560, authorizing the President to proclaim March 19, 1981, as National Agriculture Day. Without question, American agriculture is still this Nation's biggest single industry—with well over 15 million people involved in it in some form or another, from the farmers who grow the food and fiber to those who transport it to market and those who actually sell it at the stores. There are some 4.4 million workers on farms in this country—and that is more than the combined payrolls of the steel, transportation, and automobile industries.

All in all, agriculture is responsible for one out of every five jobs in the private enterprise system of this country. No other industry, occupation, or business can come close to these numbers.

These are some of the reasons I am so pleased to support this resolution for a "National Agriculture Day" next March 19. In fact, I would be perfectly amenable to the idea of establishing a National Agriculture Day on a regular basis—designating a special date each year to honor the men and women who have contributed so much to this great Nation of ours. My feeling is that if we can pay tribute to such great leaders of the past as George Washington—who himself was a farmer—with a national holiday, if we can salute the Nation's veterans to whom we owe so much on a special day each year, if we can honor working men and women on Labor Day, then we can surely set aside 1 day each year to honor the American farmer and American agriculture.

The fact is that agriculture in this country is not simply our biggest industry nor our only source of food and fiber. It's not just our largest employer nor our most productive industry. Agriculture is the key to this Nation's survival, as well as that of many other countries—for it produces the one essential of life we cannot live without. It is the backbone of our economic strength—for its assets total close to the combined assets of all manufacturing corporations in the United States.

What is amazing to me is that this one industry on which this Nation was built had not been singled out long ago for a special holiday. I think establishment of a "National Agriculture Day" would serve as a most important reminder of what we owe this vital segment of our economy and what we need and expect from it in the future.

I urge my colleagues to support this resolution honoring this segment of our

economy that is so vital to this Nation and the world.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

□ 1040

Mr. COELHO. Mr. Speaker, I reserve the right to object.

Mr. Speaker, as a cosponsor of this joint resolution I rise not only to encourage its passage, but to invite my colleagues to celebrate National Agriculture Day on March 19 next year in a big way.

In my congressional district nothing is closer to our hearts than the fertile farmland, the roar of a tractor or mechanical harvester over an endless expanse of row crops gorged by a bright, vibrant sun. The crating of vegetables in the packing house and trucking to market—this is our life in what we call the Garden of Eden, grower of everything in the Nation's richest agricultural State. When it comes to working the soil and tending the fields we are proud to be the undisputed world champions. Farm income in California last year was $12½ billion, 25 percent higher than the second leading State, Iowa. And the forecast for gross farm receipts is expected to increase another 5 percent this year with a bold jump of 17 percent in our State's field crops such as cotton, wheat, and sugar beets leading the way.

Consider that assets in U.S. agriculture are equal to four out of every five dollars tied up in the assets of all manufacturing corporations in this country. As many people are employed in American farming as are in the transportation, steel, and automobile industries combined. A full fifth of all private sector jobs in the United States are tied to agriculture.

Look at our rate of farm productivity: We are producing almost three times the food and fiber today that we did just 20 years ago. Agricultural exports are far and away the leading factor on the positive side of our balance of trade. With less than 7 percent of the world's land we provide many more times the world's supply of food products, about half the planet's wheat, for example.

In commemorating the contribution of the American farmer to our way of life, those of us in positions of community and government leadership are obligated to promote the best interests of agriculture. We must encourage even greater farm productivity, an even more dynamic export program, expanded domestic food programs, and policies which create a climate of economic viability for all those engaged in the agricultural sector.

Mr. Speaker, I know this resolution may seem insignificant to many. But to California agriculture it is a tribute which they are most proud to receive.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. Res. 560

Whereas agriculture is this Nation's most basic industry, and its associated production, processing, and marketing segments, together provide more jobs than any other single industry; and

Whereas the productivity of American agriculture is a vital ingredient in our strength as a Nation, both domestically and on the world scene; and

Whereas to maintain a healthy agriculture it is necessary that all Americans should understand how agriculture affects their lives and well-being, and should be aware of their personal stake in an abundant food and fiber supply: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 19, 1981, is hereby proclaimed "National Agriculture Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this day with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on both of the joint resolutions just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 7112, STATE AND LOCAL FISCAL ASSISTANCE ACT AMENDMENTS OF 1980

Mr. DERRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1325) on the resolution (H. Res. 787) providing for the consideration of the bill (H.R. 7112) to authorize an extension and amendment of the revenue sharing program to provide general purpose fiscal assistance to local governments, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5615, INTELLIGENCE IDENTITIES PROTECTION ACT

Mr. DERRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1326) on the resolution (H. Res. 788) providing for consideration of the bill (H.R. 5616) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR A PROCEDURE FOR RESPONSE TO SUBPENAS

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 723 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 723

Resolved, That during the consideration of the resolution (H. Res. 722) providing a procedure for response to subpenas, debate in the House shall continue not to exceed one and one-half hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Rules: *Provided*, That it shall be in order to consider during said debate, without intervening motion, the two amendments to said resolution printed in the Congressional Record of June 18, 1980, by Representative Bauman of Maryland, and the previous question shall be considered as ordered on said amendments, if offered, and on the resolution to final adoption without intervening motion.

The SPEAKER pro tempore. The gentleman from South Carolina (Mr. Derrick) is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the usual 30 minutes to the gentleman from Maryland (Mr. Bauman), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 723 is the rule providing for the consideration of House Resolution 722, providing for a procedure for response to subpenas.

Under clause 4 of rule XI, a resolution reported from the Committee on Rules is a matter of privilege and can be called up for consideration in the House at any time. A resolution repealing or amending any of the rules of the House of Representatives is considered in the House under the hour rule and amendments to the resolution are not in order unless the manager of the resolution yields for that purpose.

In this case, however, the Rules Committee granted a rule to House Resolution 722 to make in order during the consideration of the resolution in the House two amendments to the resolution printed in the Congressional Record of June 18, 1980, by, and if offered by, Representative Bauman, of Maryland. The amendments shall be considered without intervening motion, and the previous question shall be considered as ordered on the amendments, if offered, and on the resolution to final adoption without intervening motion.

Mr. Speaker, last February 13, the House adopted House Resolution 578 instructing the Committee on Rules to inquire into the circumstances surrounding a subpena that was served on the Clerk of the House for records relating to the official functions of his office and of the House of Representatives. It had been reported in the public press that the House of Representatives had engaged in a secret effort to block a subpena. The Rules Committee held 3 days of hearings on this matter. During the course of these hearings, it became clear that the dictates of House Resolution 10, which is the procedure the House adopted at the beginning of this Congress for responding to subpenas served on Members, officers, and employees of the House, and which the Clerk had followed in responding to the subpena, needed to be revised. A task force was then appointed by the committee to further study the procedure and practices followed under the provisions of House Resolution 10 and to recommend a new procedure. The Rules Committee subsequently ordered reported House Resolution 722 revising House Resolution 10.

The committee felt very strongly that any Member, officer, or employee who is served a subpena shall comply, consistent with the rights and privileges of the House, with the subpena. Further, that when a Member, officer, or employee is served a subpena, the House be notified of its receipt and informed of the records or information sought. In a departure from previous House resolutions, House Resolution 722 provides for a formal notice and publication procedure. And finally, the committee was very careful that the procedure of House Resolution 722 protect the rights and privileges of the House, and of its Members, officers, and employees.

Mr. Speaker, I urge my colleagues to adopt House Resolution 723, the rule providing for the consideration of House Resolution 722.

Mr. BAUMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from South Carolina has done more than an adequate job in describing the rule. There is no point in discussing the merits of the resolution brought up once this rule is adopted. I do want to express my appreciation to the members of the Committee on Rules for allowing the two amendments that will be made in order and also my personal appreciation to the chairman of the Rules Committee, the gentleman from Missouri (Mr. Bolling), for his guarantee and now the fact that this resolution will be considered by the House today. I know there was some discussion in private that this matter might be better delayed or not considered at all in this Congress. I think it is an important matter and the rule we now have before us will allow us to address the question.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Illinois.

Mr. YATES. The gentleman referred to two amendments. In the Congressional Record on page 15418 reference is made to three amendments by the gentleman: On page 1; on page 2, section 2; and on page 2 at the end of section 3.

Mr. BAUMAN. Mr. Speaker, the gentleman is correct but the rule before us makes in order two of the amendments en bloc since they deal with the same matter so, in effect, there will be three amendments; however, there are but two questions before the House.

Mr. Speaker, I yield back the balance of my time.

Mr. DERRICK. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 722 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 722

Whereas, by the privileges of this House, no evidence of a documentary character, under the control and in the possession of the House of Representatives can, by the mandate of process of the ordinary courts of justice be compelled or taken from such control or possession except by its permission: Therefore, be it

Resolved, That when any Member, officer, or employee of the House of Representatives is properly served with a subpena or other judicial order directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any documents relating to the official functions of the House, such Member, officer, or employee shall comply, consistently with the privileges and rights of the House, with said subpena or other judicial order as hereinafter provided, unless otherwise determined pursuant to the provisions of this resolution.

Sec. 2. Upon receipt of a properly served subpena or other judicial order directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any documents relating to the official functions of the House, such Member, officer, or epioyee shall promptly notify, in writing, the Speaker of its receipt and such notification shall then be promptly laid before the House by the Speaker, except that during a period of recess or adjournment of longer than three days, no such notification to the House shall be required. However, upon the reconvening of the House, such notification shall then be promptly laid before the House by the Speaker.

Sec. 3. Once notification has been laid before the House, the Member, officer, or employee shall determine whether the issuance of the subpena or other judicial order is a proper exercise of the court's jurisdiction, is material and relevant, and is consistent with the privileges and rights of the House. The Member, officer, or employee shall notify the Speaker prior to seeking judicial determination of these matters.

Sec. 4. Upon determination whether the subpena or other judicial order is a proper exercise of the court's jurisdiction, is material and relevant, and is consistent with the privileges and rights of the House, the Member, officer, or employee shall immediately notify, in writing, the Speaker of such a determination.

Sec. 5. The Speaker shall inform the House of the determination of whether the subpena or other judicial order is a proper exercise of the court's jurisdiction, is material and relevant, and is consistent with the privileges and rights of the House, and shall generally describe the records or information sought, except that during any recess or adjournment of the House for longer than three days, no such notification is required. However, upon the reconvening of the House, such notification shall then be promptly laid before the House by the Speaker.

Sec. 6. Upon such notification to the House that said subpena is a proper exercise of the court's jurisdiction, is material and relevant, and is consistent with the privileges and rights of the House, the Member, officer, or employee shall comply with such subpena or other judicial order by supplying certified copies, unless the House adopts a resolution to the contrary; except that under no circumstances shall any minutes or transcripts of executive sessions, or any evidence of witnesses in respect thereto, be disclosed or copied. Should the House be in recess or adjournment for longer than three days, the Speaker may authorize compliance or take such other action as he deems appropriate under the circumstances during the pendency of such recess or adjournment. And upon the reconvening of the House, all matters having transpired under this section shall be laid promptly before the House by the Speaker.

Sec. 7. A copy of this resolution shall be transmitted by the Clerk of the House to any of said courts whenever any such subpena or other judicial order is issued and served on a Member, officer, or employee of the House.

Sec. 8. Nothing in this resolution shall be construed to deprive, condition or waive the constitutional or legal rights applicable or available to any Member, officer, or employee of the House, or of the House itself, or the right of a Member or the House to assert such privilege or right before any court in the United States, or the right of the House thereafter to assert such privilege or immunity before any court in the United States.

Sec. 9. This resolution shall apply with respect to subpenas served on or after the date of its adoption; and, with respect to those subpenas, House Resolution 10 shall be of no force or effect.

The SPEAKER. Pursuant to the provisions of House Resolution 723, the gentleman from South Carolina (Mr. Derrick) will be recognized for 45 minutes, and the gentleman from Maryland (Mr. Bauman) will be recognized for 45 minutes.

The Chair recognizes the gentleman from South Carolina (Mr. Derrick).

Mr. DERRICK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the resolution we have before us today, House Resolution 722, providing for a procedure for response to subpenas, revised the procedure by which Members, officers, and employees of the House shall comply with subpenas served on them in conjunction with their official duties.

House Resolution 722 clarifies as well as revises the current House procedure the House adopted at the beginning of this Congress in House Resolution 10.

It requires that all Members, officers, and employees shall comply with any subpena that is consistent with the rights and privileges of the House. And when a subpena is received, the Member, officer, or employee shall immediately notify the Speaker and the House of its receipt, of the information and materials sought, and as to whether or not it is a valid subpena.

Mr. Speaker, for the first time, the House would be formally notified when any and every subpena relating to the official functions of the House are served on its Members, officers, and employees. Presently, there is no obligation to provide public notice. The resolution clearly spells out the precise obligations Members, officers, and employees have in complying with subpenas.

The resolution arises from a subpena served on the Clerk of the House on September 24, 1979, for certain of his records.

Mr. Speaker, House Resolution 722 provides general authority to the Members, officers, and employees of the House to comply with subpenas served on them in relation to their official functions.

Further, it establishes the procedure by which subpenas shall be complied with.

Until the 95th Congress, whenever a Member, officer, or employee received a subpena, the House had to adopt a resolution granting authority to the person to respond. The House would decide in each case whether the person should or should not comply with the subpena and appear in court with the requested documents. Then on January 4, 1977, and again on January 15, 1979, the House adopted House Resolution 10 which granted general authority to Members, officers, and employees to respond to subpenas duces tecum. The resolution established a procedure by which automatic compliance could be effected without the necessity of a House vote.

House Resolution 722 continues to provide the general compliance authority of House Resolution 10. However, House Resolution 722 revises the procedure for complying with subpenas in four particularly important ways:

First. The resolution mandates compliance. The intent of the resolution, which is clearly stated in the resolve clause, is that any Member, officer, or employee shall comply with any subpena that is consistent with the privileges and rights of the House. While the resolution presupposes compliance, it does not deny the person his constitutional right to due process—to defend the rights and privileges of the House, its Members, officers, and employees against unwarranted attacks.

In light of the Supreme Court pronouncements handed down over the last 10 years concerning the rights and privileges of Members, officers, and employees of Congress, the resolution recognizes the fact that it may be necessary to seek judicial guidance regarding certain documents requested in the subpena.

Second. The resolution requires that any member, officer, or employee who intends to seek a judicial determination must first notify the speaker prior to doing so. The purpose of this requirement, which does not presently exist in House Resolution 10, is to inform the speaker when legal proceedings, that could involve the rights and privileges of the House, its Members, officers, and employees, are anticipated. It is the opinion of the committee that the Speaker, who is the constitutional officer of the House, should be notified before the person seeks to undertake legal proceedings, in order that the Speaker can properly discharge his duties in the protection of the House and in the preservation of its integrity and rights and privileges.

Third. The resolution provides a formal notice and publication procedure. In a departure from the procedure of House Resolution 10 and prior House resolutions, House Resolution 722 requires that the Speaker and the House be notified when a subpena is received. Further, when a determination has been made regarding the validity of the subpena, the Speaker and the House are so notified.

In the majority of cases, subpenas are quickly and routinely complied with, and notice to the Speaker and the House could combine the two steps. In those cases when a subpena calls into question the rights and privileges of the House, or when time is needed before a determination can be made due to the extensive nature of the request, the House would first be notified of its receipt and then subsequently notified when a determination is made.

An example of when additional time might be requested is when the party filling in the subpena requests all of a Member's records dating back over the past 10 years. In all cases, however, notice would be given prior to complying with the subpena, so as to provide the House the opportunity, should it so choose, to introduce a privileged resolution regarding the subpena. Under rule IX of the rules of the House, a Member may at any time call up in the House a privileged motion regarding the disposition of papers or other matters of privilege relating to a subpena served on a Member, officer, or employee of the House. The House may determine, by resolution, whether to allow the documents specified in the subpena to be released or testimony given, or take other action as it deems necessary.

Fourth. The authority and procedure for complying with subpenas in House Resolution 722 extends to all subpenas served on Members, officers, and employees in conjunction with their official duties. Whether a Member, officer, or employee is served a subpena duces tecum (requesting testimony in court and documents) or a subpena ad testificandum (for testimony only), he or she would now be required to notify the Speaker and the House of its receipt and to comply with the subpena in accordance with the provisions of the resolution.

Presently, there is no guarantee that subpenas for testimony will be brought to the attention of the House. The majority of the committee members felt that all subpenas should be subject to the compliance and notice provisions of the resolution. That there should be no exceptions. This belief was not, however, unanimously shared by all members of the committee. The minority stated in its views to accompany the report that House Resolution 722:

> Enormously broadens the scope of the resolution to apply also to subpenas ad testificandum.

One of the two amendments that the gentleman from Maryland (Mr. BAUMAN) intends to offer today would omit subpenas ad testificandum from the notice and publication procedure. I oppose the gentleman's amendment. By exempting subpenas ad testificandum from the provisions of the resolution, Members, officers, and employees would have no affirmative duty to inform the Speaker or the House of the receipt or of any judicial clarification sought by the Members, officer, or employee.

I would like to discuss in summary the procedure for complying with subpenas:

When a Member, officer, or employee is served a subpena, he shall promptly notify, in writing, the Speaker of its receipt and the Speaker shall lay such notification before the House. In a period of recess or adjournment of the House for longer than 3 days, notification to the House is not required. However, as soon as the House reconvenes, the Speaker will lay the notification before it.

Then a determination of whether the subpena is a proper exercise of the Court's jurisdiction, material and relevant, and is consistent with the privileges and rights of the House shall be made, notification to the Speaker shall be made prior to undertaking legal proceedings. Once determination is made, and most determinations are routinely made and compliance routinely effected, the Speaker is again notified, in writing, and the notification is laid before the House, prior to compliance, with a general description of the documents or information sought.

Unless the House adopts a resolution prohibiting the release of the information or documents or prescribing other action, compliance shall be effected by supplying certified copies, except that under no circumstances shall any minutes or transcripts of executive sessions or any evidence of witnesses thereto, be disclosed or copied. If the House is in a recess or adjournment of longer than 3 days when the Speaker is notified of the determination, the Speaker may authorize compliance or take such other action as he deems appropriate. Upon the reconvening of the House, the Speaker will promptly lay before the House all matters that transpired during this time.

Since 1879, all House resolutions regarding the disposition of House papers have provided that only copies be produced, embodying the privilege based on the protection and control of original House documents. House Resolution 722 continues to embody this privilege and provides that only certified copies may be produced.

The resolution also continues to bar the release of executive session material or testimony. Since 1950, when the House first denied the release of its executive session material, most House resolutions have included language prohibiting the release of executive session documents and testimony.

The resolution further directs the Clerk to send a copy of the resolution to the Court whenever a subpena is issued and served on a Member, officer, or employee of the House informing it of the House procedure.

And, it concludes with the important affirmation that, nothing in this resolution shall be construed to deprive, condition or waive the constitutional and legal rights of any Member, officer, or employee, or of the House itself.

The committee was concerned in drafting the resolution that it provide the right balance in protecting the rights and privileges of the individual Members, officers, and employees of the House, as well as of the House as a whole.

Mr. Speaker, the Committee on Rules recommends that House Resolution 722 revising House Resolution 10 be adopted. It is the opinion of the majority of the committee, that the procedures contained in House Resolution 722 will protect the integrity, and rights, and privileges of the House and of its Members, officers, and employees, and will insure an orderly

method of compliance with subpenas served on its Members, officers, and employees. This resolution serves to strengthen the House as an institution of integrity and honor. It is in the interest of this institution and the country. I urge my colleagues to adopt House Resolution 722 as reported.

□ 1100

Mr. YATES. Mr. Speaker, will the gentleman yield for a question?

Mr. DERRICK. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, in the course of the procedures that are outlined in section 6, the Member, officer, or employee shall comply with the subpena unless the House adopts a resolution to the contrary.

The question I should like to ask is: How is that resolution activated? Who files it? How is it filed once the notice has been given by the Speaker to the House that the request is pending?

Mr. DERRICK. Mr. Speaker, it may be filed by any Member.

Mr. YATES. Any Member may file a resolution?

Mr. DERRICK. That is right, he may offer a privileged resolution.

Mr. YATES. And it may be brought up at any time?

Mr. DERRICK. At any time.

Mr. YATES. Mr. Speaker, I thank the gentleman.

The SPEAKER. The gentleman from South Carolina (Mr. DERRICK) has consumed 13 minutes.

The Chair recognizes the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I yield myself 10 minutes.

Mr. YATES. Mr. Speaker, will the gentleman yield for a question before he starts his address?

Mr. BAUMAN. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, as I understand the thrust of the gentleman's amendments, at least the first two amendments, the ones which he intends to offer en bloc, he would strike the phrase, "directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any documents relating to the official functions of the House," and he proposes to insert in lieu thereof the following: "for the production or disclosure of certain and sundry papers in the possession and under the control of the House of Representatives."

In other words, if I understand the thrust of the gentleman's proposed amendment, it is to open up the possibility of obtaining any papers that are within the possession and under the control of the House, not necessarily only those relating to the official functions of the House. Is that a correct interpretation?

Mr. BAUMAN. Mr. Speaker, the gentleman raises a question about this resolution now pending that has bothered the gentleman from Maryland, and that is one of the reasons that the amendment referred to address that section. We have never had the phrase, "official functions of the House," in any resolutions or House rules relating to subpenas in the past, and it is my opinion that that broad phrase ought to be stricken. In the past the Parliamentarian of the House, Mr. Brown, who was the drafter of House Resolution 10 now governing subpenas, said that there was a difficulty with overly broad subpenas, and so he drafted House Resolution 10 to include specific documents.

The "official functions" phrase that I would remove creates in my view a whole area of new litigation that could be used to prevent subpenas from being honored by Congress. I simply want to narrow the resolution to cover those documents and papers in the possession of officials of the House, but not to include the direct oral testimony of a witness relating to the official functions of the House.

Mr. YATES. Mr. Speaker, the gentleman just indicated that his amendment proposes to include the papers within the possession and control of the House. That is any papers within the possession or control of the House.

The phrase the gentleman uses is the phrase, "certain and sundry papers." What does the phrase, "certain and sundry papers," mean?

Mr. BAUMAN. Mr. Speaker, it goes to any documents in the possession of the officials of the House such as the Clerk and the Sergeant at Arms, but it specifically does not include, at my suggestion—because this is dealt with elsewhere in the resolution—the transcripts and papers that have been taken in committee executive session. That is an historic exception, and the courts are not allowed to take those executive papers from the House without our specific permission. The phrase would include all the records of the Clerk and the Sergeant at Arms, including records of employment of personnel, and other documents of that nature.

Mr. YATES. Mr. Speaker, will the gentleman yield for another question?

Mr. BAUMAN. Yes, I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, let us suppose that one of the Members of the House is engaged in a contested divorce suit and the attorney for the defendant's spouse wants to investigate papers within the control of the House and files a subpena with the House. I would think that those do not relate to the official functions of the House inasmuch as they relate to a private lawsuit.

Under the gentleman's amendment, would the Member then have to comply or would the Clerk of the House have to comply with the request in that subpena by making available whatever papers were requested in that subpena?

Mr. BAUMAN. Mr. Speaker, I think the gentleman has drawn a very clear and important distinction, and I think it will probably influence the outcome of a great many Members' decisions on how they will vote on these amendments.

My amendments do not affect in any way the right of any individual Member to claim his personal legal privilege or to assert his rights or his privilege as a Member of the House to resist subpenas.

What my amendments go to are situations such as we had a few months ago—and I will address that matter in my remarks in general debate—where a Member is assisted by an official of the House gratuitously and the Clerk of the House resists a subpena all the way to the Supreme Court without the knowledge of the House. The House knew nothing about that matter.

So my amendment would prevent the Clerk from doing that, but it would not prevent an individual Member, as the gentleman indicated, in a domestic relations matter from asserting his own privilege. But certainly the Clerk of the House or the Sergeant at Arms should not go all the way to the Supreme Court fighting a subpena, as they did then, in a matter in which an individual Member is involved. That could conceivably happen, I suppose, too, under the new rule.

Mr. YATES. Mr. Speaker, will the gentleman yield for another question?

Mr. BAUMAN. Yes, I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, let us suppose a request is made for the official records of the House relating to the telephone calls that have been made by a Member of the House, relating to personal calls that the Member may have made.

Under the gentleman's proposed amendment, which translates into the disclosure of any "papers in the possession and under the control" of the House of Representatives, as I understood from what the gentleman said previously, would not the Clerk of the House have to make available the records of the Member's calls?

Mr. BAUMAN. Mr. Speaker, the Supreme Court in the Eilberg case ruled specifically on the question of telephone calls, and as I recall the ruling—and I only paraphrase it—it was that some telephone records of a Member could fall within the protection of legislative privilege and would not have to be disclosed. But again the Member can assert that protection personally.

The only thing I am saying is that the Clerk or other officials of the House, rather than Members, should not have the discretion to fight against these subpenas. The Member himself will retain that right regardless of the outcome of this debate today, but the Clerk or the Sergeant at Arms or other officials of the House should not be able to assert what is peculiarily a private and special privilege of the Member in the name of the full House unless the full House has a right to approve that action.

But in the case of the telephone records in the Eilberg matter the Supreme Court ruled that some are under the legislative and official functions of the House.

Mr. YATES. Mr. Speaker will the gentleman yield for another question?

Mr. BAUMAN. Yes, I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, in connection with the phrase, "disclosure of certain and sundry papers," again it is translated to mean any papers in the possession and under the control of the House of Representatives.

Do we have any idea as to how many types of papers or documents are within the control of the staff and would be subject to being subpenaed under the gentleman's proposed amendment?

Mr. BAUMAN. Mr. Speaker, we really heard no testimony on the scope, but I

think the gentleman, without having to use his imagination, can assume the enormous number of such papers.

Mr. YATES. It would be an enormous number?

Mr. BAUMAN. It would include an enormous amount of documentary evidence.

Mr. YATES. All of that, as I understand it, under the gentleman's amendment would be subject to subpena, then?

Mr. BAUMAN. It is now.

Mr. YATES. Well, no, not as I understand it. It is not now because I think the only materials subject to subpena are those relating to the official functions of the House or a Member.

Mr. BAUMAN. No. Any documentary matter now in the files of the House can in fact be subpenaed. Whether the subpena succeeds is something else again.

Mr. YATES. As I understand the effort of the majority in this case, it is to limit the subpena to the official functions of the House. The gentleman strikes that language, and I wait anxiously to hear the gentleman's statement. I would like to hear why the gentleman proposes to strike it.

Can the gentleman tell us why he proposes to change the language?

□ 1110

Mr. BAUMAN. Because the gentleman from Maryland, amongst other things, finds the phrase "official functions" to be a possible major roadblock in compliance with legal subpenas. It appears to me that the phrase "official functions," which is not defined anywhere in this resolution and has never appeared in the rules before, in relation to subpenas, is not a mandate to give evidence, but a very broad block to giving evidence when in fact the full House might wish to allow that evidence to be given.

Mr. YATES. But does not the gentleman believe that, in striking the term "official functions" from the phrase and not using it in the gentleman's amendment, it opens up the entire panorama of papers to nonofficial as well as official functions?

Mr. BAUMAN. Unfortunately, as is quite often the case in the law, it has the opposite effect. By removing the broad and undefined phrase of "official functions" and "witness relating to the official functions of the House," it limits it to my suggestion that the only matter should be for the production and disclosure of certain and sundry papers in the possession and under the control of the House, which is traditional as a definition.

Mr. YATES. The phrase "certain and sundry papers——

Mr. BAUMAN. Under the control of the House.

Mr. YATES. As I understand it, the gentleman told me before that the phrase "certain and sundry papers" means any papers in the possession and under the control of the House.

Mr. BAUMAN. That is true.

Mr. YATES. I thank the gentleman.

Mr. BAUMAN. Mr. Speaker, how much time have I consumed?

The SPEAKER. The gentleman has consumed 9 minutes.

Mr. BAUMAN. Mr. Speaker, I yield myself an additional 10 minutes.

Mr. Speaker, on February 9, 1980, a banner headline appeared on the front page of the Washington Post: "House Loses Secret Bid For Immunity."

And here it is. It was, at the time, a topic of a great deal of discussion amongst Members, and for most of us it was the first notice that in fact the House of Representatives as such had not only lost a bid for immunity for one Member, but that we even were engaged in such a bid. The essence of the article that appeared—and it was in fact the reason we conducted the investigation and the reason we are having this debate today—was that secretly the Clerk of the House of Representatives and his legal staff, had decided to challenge a subpena that had been served against the Clerk for certain documents necessary—at least the court thought—for investigation into the matter of the gentleman from California (Mr. CHARLES H. WILSON). By implication in the article, whether it was true or not, all Members stood accused either directly or by inaction of having sought to resist the subpena.

As I said, what really happened was that the legal staff of the Clerk, not the House, had taken it upon themselves to challenge the subpena, and they carried their arguments all the way to the U.S. Supreme Court without the knowledge or approval of the House or without the knowledge of the Speaker; or at least that was the testimony that the Rules Committee received from the Speaker's personal counsel, that he was not informed until the matter was finally resolved by the Supreme Court saying that in fact the subpenas had to be honored,

Because of this article and the embarrassment that did result, debate ensued on the floor of the House in February, and by a unanimous rollcall vote, 310 to 0, this House directed the Committee on Rules to investigate this matter as to the truth or falsity of the charges in the Washington Fost article and also to recommend any rules changes that might remedy the problems that caused this controversy.

I think it is worth noting, in passing, that the report issued by the Rules Committee does not pass at all on the falsity or truth or the circumstances surrounding the particular article, even though that was the suggestion that the House wanted done, and a reading of the transcript I think will largely support the main thrust of that article, even though we do not comment on it.

Mr. Speaker, may I make a personal observation at this time?

The amendments that I am offering today were made in order by the Rules Committee, and I appreciate that. I think this entire investigation, with the task force headed by the gentleman from South Carolina, including the gentleman from Texas (Mr. FROST) and myself, was done in a nonpartisan manner. We debated the issues on a legal basis. All sides tried to go into it from the viewpoint of what was the best course for the House to balance the constitutional right and privileges of the Members of the House against the public's need to be informed and the court's need to have certain information before them to pursue their deliberations.

Some of the Members have received a "Dear Colleague," which will probably stand alone in the annals of the House, signed jointly by the very distinguished gentlewoman from New York, SHIRLEY CHISHOLM, and myself, supporting the two amendments that I will offer. I offer this letter as evidence, if that is the term to be used, in this debate to show that my arguments here are not partisan, and I know there is a feeling on the part of some Members that the gentleman from Maryland and others on both sides are often motivated by partisanship.

I want to say, Mr. Speaker, that the gentleman from Maryland loves this institution and has been associated with it for most of his adult and a good part of his juvenile life. The comments that are made here today are the product of that profound respect for the House of Representatives and not by any partisan motive.

I also know that the manner in which this resolution will be treated will be largely to lean on the advice of the gentleman from South Carolina or the gentleman from Maryland, depending upon which party you belong to.

I would only ask the Members of the House—many of them are not lawyers and feel themselves lucky not to be members of the legal profession in this day and age—to at least look closely at the arguments that are made and to try and decide on that basis and not on any partisan basis. I think the issues here will, as I indicate in my remarks, go well beyond any individual Members or either party as to their importance in the future.

I will try to condense my remarks because I know that this is a complicated matter and this House has other matters with which to deal.

But let me just refer for a moment to the historical perspective in which we debate the issue of subpenas today.

Historically, whenever a subpena used to be received by the House of Representatives for a Member of the House or the staff, a resolution was offered at the desk, was considered, and the House either said comply or do not comply. In recent years, we have had a whole rash of subpenas brought before the House, and it became apparent that we had to have some mechanism in our rules to insure compliance, particularly when the House was not in session. That is why, back in 1973, the first of two House Resolutions 10 were put in place in the Rules of the House at the opening of the sessions. Those resolutions, as their predecessor resolution, House Resolution 9, required automatic compliance with subpenas which were received by the House when we were not in session.

In 1977 and 1979 the House adopted a similar resolution, with almost no debate—in fact, we have almost no legislative history of what the intent was—and those resolutions contained some of the features of the resolutions adopted in prior Congresses, but they were also applicable for the first time when the House was not in session as well as when it was. That was a change from the past.

In effect, what we were saying in these

rules changes was that the House wanted to comply with reasonable and proper subpenas that were offered, without taking up the time of the House by passing a resolution in each case.

During the Rules Committee hearings on this matter before us, the distinguished Parliamentarian of the House, William Holmes Brown, testified, and he said that, as the drafter of Resolution 10, which this resolution today would change, it was clearly his intent and the major thrust when he drafted it to insure voluntary compliance with subpenas when the House was in session as well as when it was not.

That is the background of the rules we now have in the House. But the proposal we have before us offered by the gentleman from South Carolina and as reported by the Rules Committee stands this historic intent on its head. It changes the entire thrust of our current rule as it is now written. Rather than automatic compliance upon receipt of a subpena by an official of the House, even a subpena already containing a court's finding that it is material and relevant to the court's inquiry—and that is one of the requirements that our rules now state—this new proposal, if the Members vote for it today, allows and mandates adjudication of the subpena's propriety in almost every instance. It places on the individual official, the Clerk of the House, the Sergeant at Arms, any other official who might be in any way the subject of a subpena, it places on them the discretion to go all the way to the Supreme Court to resist every subpena. And that I do not think the House should do, nor do I think we want to do it, in light of the charges that have been made against Members of the House in recent months and could be made at any moment. No one, including the gentleman from Maryland, ever knows when the day may arrive that a subpena or legal action could be taken against him in his official capacity, and it seems to me that we all ought to proceed with the possibility that that could happen.

Now, notification of the House, if a subpena is received, is one of the very positive aspects of the resolution now before us, and I praise the majority and I agree with that notice to the House. That will be required. But as was highlighted by a question from the gentleman from Illinois (Mr. YATES), that notice is all that we get, and then an individual Member would have to take it upon himself to inquire into the subpena, make a judgment, offer a resolution, call it up under privilege, and act on the floor. So once that notification has been made to the House under this new procedure suggested today, House officials and their staff are given a free hand to attempt to quash the subpena, fight it all the way to the Supreme Court if they deem it necessary, but they would be fighting in the name of the full House of Representatives if this rules change is adopted without amendment.

My point is that the full House should address that question. It should not be left to the Clerk or any other official of the House to take that upon themselves without the House giving its consent. We emphatically do not believe—I do not believe and I do not think many in the House believe—that that power ought to be delegated by the full House to any of its employees or officers, especially when the integrity of the House is at stake.

□ 1120

What does that mean? That means in very concrete terms that in the Abscam case or any other case, that if the Clerk decides that the full House will in its name be taken to court, he could do so without our actual permission and fight those subpenas against the records of the Member.

Now, this is an important distinction. I bring it to your attention.

House Resolution 10, which now governs our rules, only covers subpenas relating to documents; but this resolution before us today, if we adopt it, reported by the Committee on Rules, enormously broadens the scope of the resolution to apply also to subpenas relating to testimony.

In other words, for the first time, we are saying subpenas dealing with testimony could also be the subject of opposition in the court without the House ever saying anything about it.

Mr. LOTT. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Mississippi.

Mr. LOTT. On that particular point, why was this done? I do not see anything in the report, and I do not recall a sufficient explanation in the Committee on Rules as to why this change was made. Could the gentleman enlighten the House on why it was expanded in this way?

Mr. BAUMAN. The broadening of the scope of the resolution to include testimonial evidence as opposed to simply documentary evidence was explained to me by the gentleman from South Carolina—he can comment on it himself—as a necessity, because quite often officers of the House will have to testify in person as to the documents that have been subpenaed. In other words, they have to verbally tell the court the nature of the document and the privilege or whatever other matter that is raised. But that is not defined in the resolution before us.

The SPEAKER. The time of the gentleman from Maryland (Mr. BAUMAN) has expired.

Mr. BAUMAN. Mr. Speaker, I yield myself an additional 10 minutes.

In response to the gentleman from Mississippi, further, unfortunately the way this resolution before us today is written, it does not confine itself just to testimonial evidence having to do with documents. What it means is that if theoretically, and we do not know this because the resolution does not define it, if the gentleman from Mississippi is subpenaed to testify in a matter, not only could he resist it with his privileges as a Member of the House and fight it all the way to the Supreme Court, but the Clerk of the House could join with him possibly, if perhaps there were documents in his possession or joint possession.

Mr. LOTT. Without the House being notified?

Mr. BAUMAN. The House would be notified the subpena had been served, but the House would never be told the resistance was occurring, and it could occur in camera or secret session, and the full House of Representatives, without their knowledge, the name of the institution would be used to defend the individual Member and his resistance to testifying in court.

Mr. LOTT. Is not that a fundamental point we were supposed to try to correct with this resolution, House Resolution 722, to put the House on notice? It seems to me now the decision could still be made by an employee of the House to pursue this all the way to the Supreme Court without the House being aware this was going on.

Mr. BAUMAN. The only safeguard is the House will be notified when the subpena is served. There is no other additional requirement of notice to the House if resistance to the subpena is to be followed by the official of the House.

The Speaker must be informed under this proposal before us today, but the Speaker has no obligation to inform the House or to do anything. He may simply allow the House official to fight the subpena.

So what, in effect, would happen would be a subpena is served on an official of the House. It is laid before the House, perhaps with no reference to what is sought, and no Member perhaps might notice this act. In fact, I do not know if the Members know how many Abscam subpenas have been laid before the House in recent months. There have been many.

The Clerk would say to the Speaker, probably in writing, "I intend to fight this to the Supreme Court," and the Speaker could take no action. It would be opposed possibly most likely in secret because they are often grand jury proceedings. After all of that at the end of the road, the Supreme Court might rule, as they did in the Wilson matter, "You must honor the subpena and turn over the records," or, "You must testify," and then, and only then would the House be told this had happened. It could be months later. So the House would be called into public ridicule very possibly.

Mr. LOTT. I thank the gentleman for yielding for the question.

Mr. BAUMAN. Mr. Speaker, let me proceed further and just make the point that if we broaden the rules of the House today with this resolution to include the testimonial evidence in addition to documentary evidence could place the House in the inappropriate position of arguing cases for Members under indictment or being considered for indictment rather than simply protecting House documents. That would provide, I think, the legal staffs of the Clerk and the Sergeant at Arms with a whole array of new activities which they might have to respond to at great cost and, in fact, with very little limit. If one Member had the right to be depended, the others would want to avail themselves of the legal services of Congress to resist these subpenas; and it could be to the detriment of the full House.

As I said, currently, under the rules of the House the only thing that can be

contested is the terms and relevancy of specific documents. But now we are going to go to documents relating to the official functions of the House, that new term we hear about, as well as testimonial evidence.

I would strongly hope that the amendments that I will offer to address that would be supported, as the gentlewoman from New York (Mrs. CHISHOLM) and myself both argue it should.

Mr. THOMAS. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from California.

Mr. THOMAS. I thank the gentleman for yielding.

A question: My concern is that as a member of the Committee on Standards of Official Conduct, when we were discussing the Wilson matter in front of the committee, I was personally embarrassed and was embarrassed for the House as I attempted to get the Department of Justice to explain to me why they would not release certain information to the committee, with full guarantees that the information would not be divulged in any public manner, while at the same time staff members of the House were withholding information and attempting to wend that subpena all the way to the Supreme Court to continue to withhold that information.

In the colloquy that the gentleman just had with the gentleman from Mississippi, the gentleman's indication is then that the only information I would receive under this resolution, which I had hoped would solve the problem, is that the House is informed that there is a subpena. Is that correct?

Mr. BAUMAN. Yes. That is the only requirement initially, when a subpena is served on an officer of the House, or employee, that it be laid before the House. The practice informally has been in the last few months, since this controversy arose, that the subpena is laid before the House by the Speaker and is read but the name of the Member is not even disclosed. It has been the practice of the gentleman from Maryland to go to the Parliamentarian and ask who is involved. Every Member would have a notice that a subpena was somewhere and had been served, but you would have to find out who was involved and what was involved.

Mr. THOMAS. This Member would personally have to inquire as to this?

Mr. BAUMAN. All 435 Members would have to inquire if any cared to do so.

Mr. THOMAS. If additional decisions were made to attempt to quash the subpena, what would this Member have to do to try to find out what was occurring without the knowledge of the House in general or any particular Member of the House? What would I have to do to be informed about attempts to quash the subpena?

Mr. BAUMAN. The gentleman would have to ask the official involved to see the subpena. It might describe what the court is seeking. Then the gentleman would have to make some judgment in his own mind with whatever evidence he could personally gather, whether the subpena should be honored. If the gentleman felt it should be honored, he would have to draft a resolution, present it on the floor of the House as a privileged matter and debate it for 1 hour and have the House decide whether or not the subpena should be stopped.

Mr. THOMAS. The gentleman's amendment would do what in this portion of the resolution?

Mr. BAUMAN. My amendment would say that the official of the House would comply with all subpenas showing materiality and relevancy requirements as they have in the past.

Mr. THOMAS. So that I would have assurance, if the gentleman's amendment passes, that when various papers of the House are subpenaed that the House will be informed without my having to follow up to find out whether or not they were supplied or derived?

Mr. BAUMAN. That is the way it was supposedly going to be under the current rules, House Resolution 10, automatic compliance. It was the Wilson case that raised, for the first time, the opposition of the Clerk and legal counsel all the way to the Supreme Court, without our knowledge. All I am saying is that should not happen again and if such resistance is to be permitted, the House should know about it beforehand.

Mr. THOMAS. That was my understanding of the whole purpose of having the Committee on Rules take up an examination of rule 10. What the gentleman has told me then is the original intent of Resolution 10, which was not carried out and purportedly was supposed to be changed by the resolution in front of us, does not do that unless the Bauman amendment is accepted.

□ 1130

Mr. BAUMAN. As I have used the phrase, the proposal before us today if we vote for it "turns on its head" the current rules and does not solve the problem of the Wilson matter. It codifies the Wilson procedure into our rules and allows resistance to subpenas without the House having first to do anything about it.

My amendment would reverse that and say that if we are going to fight subpenas in the courts, the House should know that and should act positively on it.

Mr. THOMAS. I appreciate the diligence of the gentleman from Maryland in making sure that the resolution as finally presented before the body resolves the problem that took it to the Rules Committee in the first place.

Mr. BAUMAN. And understand, and I am not going to belabor it, because it is the argument of the other side, there is a legitimate argument against allowing the House as a whole to address itself to subpenas against officials or Members. The argument is that we would act in a political matter and that a Charles Diggs of Michigan might be pilloried on the floor for political reasons, even though the subpena is not in proper form and should not be honored.

I am willing to trust. I have my concerns, too, about that, but I am willing to trust the collective judgment of the House as opposed to the individual judgment of a member of a staff of the House. That I think is a far greater evil. Without any personal reference to the current staff members or officials of the House; they are political officers elected by the majority party and it seems to me that the full House in whose name these actions are taken should have the final say.

Mr. FROST. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. Yes, I yield to the gentleman from Texas.

Mr. FROST. Pursuing the line of questioning that the gentleman has just been engaging in, if an individual Member of the House wished to know whether or not it was the intent of an officer of the House to contest a subpena in court, could that Member ask that question of the Speaker of the House?

Mr. BAUMAN. Most assuredly, he could ask the Speaker, or he could ask the official involved.

Mr. FROST. Now, under the provisions of the resolution before us, the Speaker of the House would have received notification if any officer of the House were going to contest the subpena; is that correct?

Mr. BAUMAN. That is true. The Speaker would be notified, but he would have no requirement to notify the House.

Mr. FROST. He would have been notified and then an individual Member, should he be particularly interested in this matter, could ask the Speaker whether or not he had received notice that this matter was going to be contested in court.

Mr. BAUMAN. That is correct.

Mr. FROST. My only other question is, Does the gentleman have any doubt that the Speaker would, in fact, give a full and complete response to that question by any Member?

Mr. BAUMAN. I have no doubt that the incumbent Speaker or any future Speaker who had been elevated to that position would fully and truthfully respond to the Member's inquiry.

The SPEAKER pro tempore. (Mr. YATES). The time of the gentleman from Maryland has expired.

Mr. BAUMAN. I yield myself 5 additional minutes.

My problem, I would say to the gentleman from Texas, is that the average Member of the House burdened as he is with other duties is not going to avail himself of the notice in the RECORD. They are not going to inquire. These matters will progress at the discretion of the officials of the House and we will learn perhaps too late that the resistance has occurred in the name of the full House. That is the concern that I expressed today and my amendments go to this. It is the basic difference, I think, that I have with the resolution.

Mr. FROST. Would the gentleman yield for one further question?

Mr. BAUMAN. Yes.

Mr. FROST. Does the gentleman have any doubt that each party would on a regular basis follow up on these matters, as the gentleman from Maryland has, as the gentleman has indicated today that he personally has followed up on these matters every time a notice has been published in the RECORD?

Mr. BAUMAN. After almost 30 years of association with this House, my guess is that after this current matter blows over, no one will pay attention to subpenas until the next scandal in which the House is embarrassed by an official fighting all the way to the Supreme Court.

Mr. FROST. With the possible exception of the gentleman from Maryland.

Mr. BAUMAN. Well, the gentleman from Maryland may not always be here. There is an effort right now in my district to change that.

Mr. DERRICK. Mr. Speaker, would the gentleman yield for just a moment?

Mr. BAUMAN. I yield to the gentleman.

Mr. DERRICK. As I recall on the morning that the conversation took place before the gentleman from Maryland and the Speaker down here in the well, as I recall the gentleman from Maryland indicated that he had no problem whatsoever with the Speaker making these sort of judgments on jurisdictional matters.

Mr. BAUMAN. Is the gentleman talking about the discussion that occurred in the front row here last February?

Mr. DERRICK. A friendly conversation that took place.

Mr. BAUMAN. Well, I would not like to divulge the contents of that discussion because, if I quoted the Speaker fully, it would be just as embarrassing to the other side as the gentleman's quotation is to my side at the moment. I think that was a private discussion.

Mr. DERRICK. Well, as I recall, I overheard that part of the conversation.

Mr. BAUMAN. That is hearsay and not admissible in any court, I might say.

Mr. DERRICK. It is not hearsay if I heard it.

Mr. BAUMAN. Mr. Speaker, let me just conclude, because the distinguished ranking member of the Committee on Rules would like to speak on this matter.

I believe in view of the continuing Abscam investigations and other indictments that might occur that we are going to be inundated in this House with subpenas for documents. Undoubtedly Members and officials are going to be asked to appear in court.

I doubt very much that most Members know how many subpenas have been served in the last few months. I have not kept a record, either. There have been a great number. There undoubtedly is a list that has been compiled; but this just underscores my contention that mere general notice is not enough. Under this proposal before us, the legal staff of the Clerk and of the Sergeant at Arms and other officials will be able, and for all I know, even anxious to invoke the name of the entire House in challenging these subpenas that will be coming to us.

So I offer these two amendments on the floor today that will go to redress the unbalance that I think this resolution proposes.

I would have to say that if these amendments are not adopted, particularly the second amendment that deals with affirmative compliance before resistance to subpenas, I could not support the resolution and I would urge other Members not to support the resolution because, in effect, we would be voting for a new system that would make it very difficult for the public and the courts to find out legitimate information about what could be improprieties on the part of the House or of its Members. No change at all in the rules would be better than the resolution before us.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Illinois.

Mr. HYDE. I want to thank my friend for yielding.

In the hypothetical situation that the House is not in session, that it is in recess or has adjourned, and a subpena duces tecum is served, what is the procedure then? What action occurs as a result of the gentleman's amendments?

Mr. BAUMAN. Well, either with or without my amendments, when the House is not in session and under current rules of the House, those subpenas can be honored or resisted; but under this resolution, I do not change that. When the session reconvened, the Speaker would have to notify the House of the subpena, but not of the resistance, as I understand it.

Mr. HYDE. But would the Clerk have to comply with the subpena duces tecum? I know the Member has his rights to object and to make a motion to quash, et cetera; but is there any discretion in terms of what the Clerk's office must do when the House is not here to express its will?

Mr. BAUMAN. Either the Clerk or other official of the House would have to comply with the subpena if it was accompanied by a finding of materiality and relevancy by the court. That is the procedure now.

Mr. HYDE. In other words, we are depriving the House of a right, a power to resist a subpena duces tecum under the amendments of the gentleman from Maryland if the House is not in session, whether that is appropriate or not.

Mr. BAUMAN. Well, that is the present system now, voluntary compliance.

The SPEAKER pro tempore. The time of the gentleman from Maryland has again expired.

Mr. BAUMAN. I yield myself 1 additional minute.

That is the present system now, voluntary compliance, unless the Clerk or others would wish to resist. That is what happened in the Wilson case; but the fact of the matter is that we are never out of session for more than a month or 6 weeks any more and the procedures, as the gentleman well knows, being a distinguished member of the bar, these matters drag on, as in the case of the gentleman from California (Mr. WILSON), for 8 or 9 months; so that there is an occasion for the House to resist the subpena.

Mr. HYDE. Well, I do not want to prolong this discussion; but I am concerned that we are depriving the Members of the power to resist a subpena that is issued during the interim.

Mr. BAUMAN. Well, may I make this very plain to the gentleman from Illinois. We are not depriving the Members——

Mr. HYDE. I mean as a House, not the individuals.

Mr. BAUMAN. We are depriving the officers of the House from stepping in and saying in the name of every Member of the House that we will not honor the subpena, Your Honor.

Mr. HYDE. But it may be appropriate when the House is not in session.

Mr. BAUMAN. But the Members may still claim their own privilege and resist subpenas for their records which may be in the hands of others.

Mr. DERRICK. Mr. Speaker, I yield myself 5 minutes.

Mr. BAUMAN. Mr. Speaker, would the gentleman from South Carolina permit me to yield to the gentleman from Tennessee? The gentleman is just going to make a brief statement.

Mr. DERRICK. Yes.

Mr. BAUMAN. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee (Mr. QUILLEN).

Mr. QUILLEN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, it is not often that I take issue with the work of my committee, but in the case of House Resolution 722, I must. Our committee has identified a case of an unbridled, runaway legal staff in the House, and instead of reining it in, as we should have, we have, in this resolution, given it a riding crop and a free run of the track. Instead of reclaiming the exercise of our constitutional rights and privileges, we have, in this resolution, given House legal staff and open-ended license to litigate over these rights and privileges, without our knowledge or approval. In short, we have, in this resolution, made a bad situation even worse by legitimizing the very abuse which fomented this controversy in the first place.

As my colleagues may recall, back in February of this year the House voted overwhelmingly for House Resolution 578 which instructed the Rules Committee to investigate the truth or falsity of a newspaper account that claimed that the House had lost a secret effort in the courts to block a subpena for House records relating to a House Member under investigation by a grand jury. What so enraged House Members about this article and led to the adoption of that resolution was the fact that the House had no prior knowledge of this legal challenge on its behalf; it had never even been informed of the existence of the subpena for House documents.

Furthermore, as our investigation later revealed, not even the Speaker had been informed by the Clerk or his legal staff that they were challenging a subpena for House documents, all the way to the Supreme Court, as it turned out. The Speaker was not informed until after the Supreme Court denied the Clerk's motion to stay the lower court's compliance order, pending an appeal of the motion to quash. And, to add insult to injury, the whole matter was not laid before the House until after the subpenaed materials had already been turned over to the court. In other words, the House had been completely shut out of this whole process, even though it was the name of the House and the rights and privileges of the House which had been drug through the courts, and finally into the mud.

Mr. Speaker, although House Resolution 578 called on the Rules Committee to inquire into the facts of this case and report back its findings and recommendations to the House, the report on the resolution before us today is strangely silent on just what happed and why. You have to turn to the "minority views" to learn what really prompted this whole inquiry and why. Perhaps it should not seem too strange that the majority report ignores the facts of this case since the resolution being propounded by the majority as a remedy only codifies the kind of staff abuse which got us into this whole mess.

What our hearings did reveal was that the legal staff in the Office of the Clerk of the House came up with a very imaginative interpretation of what should have been the governing procedure in this case, House Resolution 10, and used that interpretation to justify their unilateral court challenges without the knowledge or authority of the House. In short, they took the term "proper court" in House Resolution 10 as the basis for their challenge, claiming that since, in their opinion, the subpenaed House payroll records were protected by the "speech or debate clause" of the Constitution, they were beyond the reach of any court, and therefore no court was a proper court for the purpose of issuing such a subpena.

But what our hearings further revealed in testimony elicited from the House Parliamentarian who had authored House Resolution 10, was that it was never the intention that the term "proper court" should be so construed for the purpose of launching a constitutional challenge to a subpena before the matter had even been laid before the House. The whole purpose of House Resolution 10 was to require compliance with a subpena for House records once a proper court had determined its materiality and relevance and the matter had been laid before the House, unless the House at that point voted to challenge the subpena.

It should have been obvious to us in the Rules Committee that what was really needed was a further clarifying revision of House Resolution 10 to insure that this practice would be followed in the future. The fact is that the language of House Resolution 10 is somewhat ambiguous and the legislative history and intent behind it is practically nonexistent, though a simple chat with the Parliamentarian could have cleared up any possible misinterpretations.

Instead, what we have in House Resolution 722 which is before us today, is a new procedure which practically mandates judicial challenges to subpenas on such grounds as court jurisdiction, materiality and relevancy, and consistency with the rights and privileges of the House, before the House is to be informed of such judicial challenges. The resolution makes a slight improvement by requiring that the Speaker and House be immediately informed when a subpena is served, but then it requires that only the Speaker be informed of any judicial challenge, and he is under no obligation either to approve the challenge or inform the House of it. It is not until after the matter is finally disposed of in the courts that the House is to be informed of the challenge—hardly a propitious moment for the House to decide whether it wants to invoke its rights and privileges.

What the Rules Committee has done in House Resolution 722 is to throw House Resolution 10 out the window and not only save the bath water but codify it—if such a thing is possible with bath water. Instead of moving to further protect the right of the House to assert its own rights and privileges in the courts, House Resolution 722 blindly delegates this important constitutional authority and prerogative to staff.

Mr. Speaker, I cannot imagine that this House will sit idly by and accept such a blind delegation of authority to staff when it can only lead to more abuses and embarrassments. Have we not suffered enough ridicule, humiliation and scandal to avoid ever putting ourselves in such a box again? Are we not sufficiently capable of determining for ourselves when our own rights and privileges should be invoked in the courts to resist the blind delegation of such authority to staff? This whole issue goes to the very heart of our representative form of government, and I fear if we cannot accept direct responsibility for asserting our constitutional prerogatives, then we are in danger of forfeiting our rightful role under the Constitution in other respects as well.

Mr. Speaker, to put it all quite bluntly, what we are confronted with in this matter is a case of "staff infection," a disease which is likely to spread if we do not, like the wise physician, resolve to heal ourselves.

The gentleman from Maryland (Mr. BAUMAN) will be offering two amendments which will help cure this "staff infection." The first amendment will narrow the coverage of this procedure to subpenas for House documents as originally provided in House Resolution 10. House Resolution 722, on the other hand, for some inexplicable reason, would broaden the scope of the procedure to include subpenas for testimony and papers relating to the official functions of the House, whatever those may be. The second Bauman amendment would require that, before any judicial challenge to a subpena may be initiated by an officer or employee of the House, the House must give its affirmative approval to such a challenge. While this in no way interferes with the right of a Member to assert his constitutional privileges in the courts, it does make it quite clear that our officers and employees are under the direct control and supervision of the House and cannot invoke the rights and privileges of this House without our permission. I strongly urge the adoption of these two amendments.

□ 1140

Mr. DERRICK. Mr. Speaker, I yield 5 minutes to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I had not intended to participate in this debate but, having read the committee record and having listened to today's discussion, I felt that it was appropriate to make certain comments.

In the first instance, I do not think it is a good idea to draft legislation based upon news reports and various newspapers which may or may not be accurate. Certainly I was concerned and surprised to learn, as I did learn, that the House had, in fact, taken the matter up to the Supreme Court in resisting subpena. But it seems to me that the solution which has been proposed by the Rules Committee in this resolution is a totally appropriate solution. It is a matter of providing prior notification of the subpena to the House, and if any action, by way of contesting the subpena or testing its validity, is to be taken that the Speaker of the House should be notified of that action.

It is the Speaker of the House who, under the Constitution and by precedent, is embodied with the responsibility of asserting the rights and privileges of the House, not the rights and privileges of the Members, and that is not what is at stake here. The question is: Should there be a procedure where the Members of the House can know what the House is doing in asserting any rights and privileges it may have in resisting a subpena?

I believe this resolution is a very, very good manner of solving that problem because the Members have to be notified of the service of the subpena and the Speaker has to be notified if there is any action taken in defending the subpena. Indeed, I think this resolution is a great improvement over the present situation.

The gentleman from Mississippi asked the question about why should subpena for testimony be covered by this resolution. I think it is very important for the Members of the House to know if an employee of the House has been subpenaed to testify in a particular matter and if that person is resisting that subpena. At the present time there would be no requirement of any notification. So what we are now providing is an opportunity for the House to insist either that the subpena be resisted or that the subpena be complied with.

The other thing that is a great improvement, and the gentleman from Illinois touched upon that in another context, is that this resolution requires compliance with valid subpenas. So the House is, in effect, saying we have got to comply with subpenas which are validly served. There is a requirement to comply with subpenas.

I listened very attentively to the comments of the gentleman from Maryland (Mr. BAUMAN) that the real fundamental difference between his approach and the approach embodied in the Rules Committee resolution is that he feels the House should affirmatively vote in each instance as to whether or not a subpena should be resisted or tested in the courts. That is the key issue according to the gentleman from Maryland.

I submit to the Members that if it is important for the House to make that determination, then, in any situation where it is relevant, that determination can be made without requiring the House to adopt a resolution for every subpena.

The resolution provides that when any subpena is received the following will occur; the House will be notified, assuming anybody reads the CONGRESSIONAL RECORD, of the service of the subpena. Before an effort can be made to resist that subpena, the Speaker will be notified. The gentleman from Maryland has already stated, and I think quite correctly, that neither this Speaker nor a future Speaker would hesitate from supplying the information upon request as to whether or not a subpena would be resisted. Any Member who seeks that information, because they feel it is important, will be provided the information, at which point a privileged resolution could be introduced, which would be voted on at any time, either to prevent that subpena from being tested in the court or to require that it be tested.

I think this is a perfectly appropriate solution to the problem. It does not strip the Speaker of his authority to defend and assert the privileges and rights of the House of Representatives, and it does not provide that the Speaker shall assert the rights and privileges of individual Members.

Mr. DERRICK. Mr. Speaker, I yield myself such time as I may need.

Mr. Speaker, I would like to comment on a point, and I thought it was a very good point that the gentleman from Illinois (Mr. HYDE) made on behalf of our resolution. The point is that we are really in danger of taking a right or privilege away from a Member if during the recess period we force an officer of this House—and as the gentleman from Maryland knows, the officer as well as an employee has been held by the courts to be in a fiduciary capacity to the membership—if we force them to comply during a recess period we are taking away a right that they have. But let me comment, if I may, on House Resolution 722 and the proposed amendments thereto. This resolution, House Resolution 722, is an affirmative, a positive, resolution. It mandates compliance with subpenas within the structure of House Resolution 722. It says that the House shall comply, unless by a resolution introduced on the floor of the House, the Members determine otherwise.

Further, this is the first time in the history of this institution that public notice, as well as notice to the Speaker and to the membership, is given when a subpena is first received by a Member, officer, or employee of the House. Then, if that subpena is to be contested on some jurisdictional matter, the Speaker is notified.

The gentleman from Maryland and everyone that I have heard speak on this matter indicate to me that they have no problem with the Speaker handling this. They should not have any problem because this is the Speaker's constitutional right given to him under the Constitution of this country of ours to protect the rights and privilege of this House.

If the gentleman from Maryland or if someone else is concerned that the Speaker might do something that would not be to their liking, they have two ways to overcome this under our resolution. They can be attentive to the RECORD, and I know the gentleman from Maryland is. He reads it every day, line by line, word by word. Also they can go to the officer or employee involved and request that they be notified if there is further action to be taken on the subpena. I know that the employee or officer, certainly the officer would be mandated to do so, would notify the gentleman from Maryland.

But if there is further concern, I direct the gentleman from Maryland's attention to two letters that I have here, one from the Honorable THOMAS P. O'NEILL, the Speaker, addressed to the chairman of the Rules Committee. If I may, I would like to read it into the RECORD. It is under date of September 17, 1980.

WASHINGTON, D.C.,
September 17, 1980.

Hon. RICHARD BOLLING,
Chairman, Committee on Rules,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Since last March, beginning with litigation pending before the Federal Trade Commission, *In the Matter of Exxon Corporation, et al.*, I have, upon notification by an officer of the House in receipt of a subpoena for documents, convened a meeting of the Joint Leadership to apprise the Majority and the Minority of the officers intention to oppose or to seek a modification of the subpoena.

Mr. Rhodes, in a letter addressed to me on March 25, stated that this policy "is a good one for the institutional strength of the House." It is my intention to continue this bipartisan consultation process if H. Res. 722, as recommended by the Rules Committee, is adopted.

Sincerely,

THOMAS P. O'NEILL, Jr.,
The Speaker.

□ 1150

I further refer to Mr. RHODES' letter addressed to the Speaker under date of March 25, 1980:

DEAR MR. SPEAKER: This is in response to the litigation *In the Matter of Exxon Corporation, et al.* pending before the Federal Trade Commission and its impact on both the Congressional Research Service and the Congress itself.

Based upon my briefing and understanding of this matter, I want you to know I concur in the basic position taken by the Senate and recommended by House Counsel. I believe that in civil cases particularly we should be extremely careful in permitting agency or litigant discovery of documents and communications between Members of Congress and our staff and support components.

I also want you to know that I appreciate your willingness to consult and discuss matters of this nature with me in my capacity as the Minority Leader. I believe such a policy is a good one for the institutional strength of the House.

Further, we are very concerned—and I know that I do not single out anyone particularly and certainly not the Member from Maryland—that under the gentleman from Maryland's amendment which would require a vote before we might go forward in the House on a jurisdictional matter concerning a subpena, consideration of the subpena in the House could very well turn into a political matter rather than a bipartisan matter on the floor. Before the Member, officer, or employee, as the case may be, has had an opportunity to really have his day in court, before he has ever been indicted or the procedure goes very far, the entire legal procedure will be aired on the floor of the House.

This amendment would put the House to an awful lot of trouble. Common Cause in one instance, in one case, has served 40 subpenas on this body, and to suggest that we may have to deal with each of those on a vote, I think the gentleman would see that we would have to manufacture several more Christmases to finish the session. There is no provision for a recess in the gentleman's amendment. As to the gentleman's amendment that deals with the matter of excluding testimony, I feel that House Resolution 722 really constricts rather than liberalizes this procedure, because, as the gentleman knows, today with House Resolution 10, the House has no control whatsoever over employees and officers who might be called to testify concerning the official functions of the House. We have no control over an officer or an employee of the House who may be called to testify on a matter dealing with an executive session.

There is no provision for notice in the gentleman's amendment.

What we are trying to do in House Resolution 722 is to bring this category of subpenas for testimony under the purview of House Resolution 722. As the gentleman further knows, I am sure, when officers, Members, and employees of the House are called to testify before a court concerning documents relating to the official functions of this body, they are in many instances further called upon to add testimony of clarification of the documents that are before the House. We want this included in the purview of House Resolution 722.

In House Resolution 722, we are constricting and bringing within the purview a class of subpenas that the House presently exercises no control over under House Resolution 10. I suggest to the Membership that House Resolution 722 which received a great deal of thought and work by the members of the Committee on Rules will operate in the years to come and will bring within the purview of this resolution all subpenas, subpenas for testimony as well as subpenas for documents. House Resolution 722 will well serve this House and our country. I urge your support for the resolution as reported.

Mr. BAUMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Mississippi (Mr. LOTT).

Mr. LOTT. Mr. Speaker, I will be brief because I think we have pretty well hashed over this issue. I just want to take a minute, though, as a member of the Committee on Rules, to commend the task force composed of the gentleman from South Carolina (Mr. DERRICK), the gentleman from Maryland (Mr. BAUMAN), and the gentleman from Texas (Mr. FROST), for the job they did, and

I think it was truly in a bipartisan manner.

Mr. Speaker, House Resolution 722 is the result of efforts by a Rules Committee task force to address certain problems dealing with the way the House responds to subpenas for its documents. Although the original resolution specifying the House's response to these subpenas has been revised somewhat, it is most disheartening that the task force product is still so imperfect. The new resolution leaves us in much the same predicament we are in operating under current House Resolution 10. In fact, the situation which demonstrated the need for changes in the resolution is precisely the kind of action which will be allowed under the proposal we have before us.

In February of this year, newspaper reports revealed that the House had tried to quash a subpena for documents relating to an investigation of one of its Members. What had happened was that the Clerk of the House had challenged a subpena for House records without, not only the House's approval, but the House's knowledge. What ensued, aside from great embarrassment to the House as a body, was an investigation into the matter and the finding that House Resolution 10 is indeed a sieve which invites Members, officials, and employees to invoke the rights and privileges of the House in the courts without its knowledge or permission. I believe all of the members of the Rules Committee agreed that the language of House Resolution 10 did need further clarification. Consequently the task force undertook the job of drafting a new resolution which would hopefully provide specific guidance to Members, employees, and officials in their future responses to subpenas.

However, House Resolution 722, the product of the task force's efforts, is an insufficient attempt at plugging only some of the holes of the sieve. The largest and most glaring loophole is that which requires notification to the Speaker, but not to the House, before a Member, employee, or official pursues a challenge to a subpena for House documents. House Resolution 722 provides that Members and the Speaker are to be notified upon receipt of a subpena. However, a Member, employee, or official is still able under the new resolution to challenge a subpena in the courts without notification to the House. There is the rub: Under the proposal before us, the name of the House of Representatives and its rights and privileges may be invoked in the courts without anyone except the Speaker of the House having knowledge of the challenge. This is a responsibility which should be shared by all Members, and the House as a body should be given an opportunity to disapprove each and every such action.

I support the pending amendment which provides proper notification to the House and allows a judicial determination to be sought only after an affirmative vote by its Members. Thus, we can prevent a reoccurence of past events. We can be sure that the House does not pursue its former legal activities without specific authorization. This amendment is a satisfactory plugging of a loophole which could allow unwarranted exercise of the rights and privileges of the House without its knowledge and which could be a great embarrassment to its Members. Without this amendment, we will be institutionalizing that which caused us such consternation in the first place.

Mr. BAUMAN. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, there is an honest difference of opinion about this matter. We must balance the rights of Members of the House and the House as a whole against the necessity of responding to the courts and their valid subpenas for information which may have to do with Members of the House or its officers. But I suggest to you once again that the larger issue involved here is indeed the House of Representatives itself. We have to balance those rights and privileges of Members in the House against the public's right to know that the activities of the House of Representatives are being conducted in an open, forthright, honest and in a legal manner. When a headline can appear, as I referred to in my opening remarks, saying that the full House of Representatives has fought all the way to the Supreme Court against a subpena, which the Supreme Court eventually ruled was legal and proper, then all of our names and the institution are being dragged down to a level that should never even be approached.

I say to you in good faith today that despite all of the arguments that you have heard, the resolution before you unamended will institutionalize a situation in which the House will, yes, know that a subpena has been served on someone but then can be resisted all the way to the very top echelons of our judicial system in the name of the full House of Representatives, without the full House every having a say about it unless some Member, somewhere, sometime, reads the CONGRESSIONAL RECORD, or happens to be here at the end of a day when a subpena is laid down, takes enough time from his duties to follow that subpena, and introduces a resolution of privilege to negate resistance to it.

All I am saying is that we should not make it easier to yield the privileges and rights of the House when the Constitution says we should defend them, but we should seek to comply with the courts when they are moving in a proper manner to get information the public and the courts have a right to.

Let me offer to you a little indication of what the sponsors of this resolution, or at least some of them, intended. On page 8 of this report you see a statement of the majority and what their intent is in this matter. I read to you from the second paragraph:

> It is intended that the Member, officer or employee may seek the advice of counsel within the House and/or outside of Congress in determining whether the subpoena raises substantive or procedural questions.

I do not know whether that is the intention of the majority of this House or not, but at one point in our proceedings the suggestion was made to us that we embody in this resolution a permanent House Legal Counsel that would be triggered by the Speaker, which would serve to defend any and all Members and any and all employees who might in any way be charged. I do not think that this House ought to be getting into the business of defending and offering legal counsel to individual Members and officials who may have conducted themselves in such manner that the House should not want to give that assistance to them. They still have their individual rights to fight against such subpenas and charges.

The whole drift of this resolution I am afraid is contrary to the public's best interests and contrary to the best interests of this institution.

□ 1200

I would hope that the House would consider the two amendments that I will offer with the endorsement of the gentlewoman from New York (Mrs. CHISHOLM) to try to correct the inequities that I feel exist in this resolution. Failing that, as I said, I would oppose the resolution.

Mr. DERRICK. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. BOLLING).

Mr. BOLLING. Mr. Speaker, I am glad the gentleman from Maryland feels that this matter was handled in a manner that was bipartisan. I made a commitment to the House that it would be and I made a commitment to the House that it would be brought up in this session. I feel quite strongly that the task force did a good job and I think the committee did a good job. I am glad that the gentleman from Maryland feels that the disagreement over the substance is a matter of opinion because I think that is accurate.

The gentleman from Maryland's approach is more the traditional approach which I believe was entirely suitable for a different time. The new approach which is contained in the matter that is before the House at this time is designed to maintain the best of the past and improve the procedure in the interest not only of the House and its Members but in the interest of the country.

We carefully saw to it that all the people who were involved in the process in modern times were consulted. We tried to come to a compromise that would be suitable to the minority and for reasons that were apparent were unsuccessful. However, it is, in effect, a compromise in time, in substance and in purpose. I think it is a very good compromise and I think it should be adopted.

Mr. Speaker, I have no hesitation in adding, too, that in addition to the traditional people who would be involved, the parliamentarian and others, that we consulted with the Speaker and we attempted to keep the minority side informed on events, to see to it that, as much as possible, this would be an action of the institution. I think despite the objections or reservations perhaps of the gentleman from Maryland and others, the product of the majority is such a compromise and I think it deserves to be supported on that basis and in the interest of all concerned.

I think it is always important to remember that we, after all, do not own the House, that it belongs to the people

of the country and that is more than just a pious statement, that that is a reality and as far as I am concerned this resolution was drawn in the interest of the people of the country and not in the interests of any particular group in the House.

Mr. Speaker, I think it would be a mistake to overturn it by the amendments of the minority. I hope we are able to pass this by a very substantial margin without change.

AMENDMENT OFFERED BY MR. BAUMAN

Mr. BAUMAN. Mr. Speaker, I offer an amendment as permitted under the rule.

The Clerk read as follows:

> Amendment offered by Mr. BAUMAN: On page 1, in the first resolved clause, strike "directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any documents relating to the official functions of the House", and insert in lieu thereof the following: "for the production or disclosure of certain and sundry papers in the possession and under the control of the House of Representatives"; and
>
> On page 2, in section 2 strike "directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any documents relating to the official functions of the House", and insert in lieu thereof the following: "for the production or disclosure of certain and sundry papers in the possession and under the control of the House of Representatives".

The SPEAKER pro tempore. The Chair would inquire of the gentleman from Maryland whether the gentleman from Maryland would like to use the 2 minutes he has at the present time.

Mr. BAUMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Does the gentleman from South Carolina desire to address himself to the amendment?

Mr. BAUMAN. Mr. Speaker, is not the gentleman permitted to speak under the 5-minute rule?

The SPEAKER pro tempore. The Chair will advise the gentleman from Maryland that the 5-minute rule does not apply under the terms of House Resolution 723, debate is in the House.

Mr. BAUMAN. The gentleman from Maryland was not aware of that.

Mr. Speaker, I will use my 2 minutes, then.

Mr. DERRICK. Mr. Speaker, in courtesy to the gentleman from Maryland, I will advise the gentleman that I plan to move a call of the House when the gentleman is finished. Or else I will do it right now.

Mr. BAUMAN. The gentleman from South Carolina may do as he wishes. I do not think it will make any difference whether the Members are here or not.

The SPEAKER pro tempore. The gentleman from Maryland is recognized for 2 minutes.

Mr. BAUMAN. Mr. Speaker, I yield myself 1 minute of the time.

Mr. Speaker, this amendment now pending simply narrows the scope of this resolution to situations in which documents are sought by subpenas. That is the present rule of the House. I see no reason why we should broaden the rules of the House to allow the officials of the House to resist a subpena for testimony. When they are subpenaed to testify, they do not even know what they are subpenaed to testify about. It may be generally mentioned in the subpena. But for the House to allow them on their own volition, after a notice to the House that a subpena has been served, to say they will not even testify, is well beyond anything we have ever adopted before. My amendment would simply leave the rule precisely as it is now and that is, they could still resist subpenas dealing with documents as opposed to testimony, and I would urge its adoption.

CALL OF THE HOUSE

Mr. DERRICK. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device and the following Members responded to their names:

[Roll No. 551]

Abdnor
Addabbo
Akaka
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Donnelly
Dornan
Dougherty
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hightower
Hillis
Hinson
Holland
Hollenbeck
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Marks
Marlenee
Marriott
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solars
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stockman
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolf
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Alaska
Young, Mo.
Zablocki
Zeferetti

□ 1220

The SPEAKER pro tempore (Mr. FOLEY). On this rollcall 373 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

PROVIDING FOR A PROCEDURE FOR RESPONSE TO SUBPENAS

The SPEAKER pro tempore. The Chair recognizes the gentleman from South Carolina (Mr. DERRICK).

Mr. DERRICK. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, may I ask, is it the intenton of the Speaker to speak on this amendment or the next amendment. I would rather reserve my time and speak on the second amendment.

Mr. DERRICK. Mr. Speaker, it is my understanding that the Speaker intends to speak on both the amendments.

Mr. BAUMAN. Mr. Speaker, I believe I have 1 minute remaining of my own time, and I have 3 minutes that were just yielded to me.

The SPEAKER pro tempore. The gentleman from Maryland (Mr. BAUMAN) has 5 minutes of his own time remaining.

Mr. BAUMAN. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, the first amendment, the amendment before us now, I again mention for the purposes of political support,

is supported by the gentlewoman from New York (Mrs. CHISHOLM). I think we all have to admit that that is an unusual combination of political forces in the House, and I am very pleased to be honored with that support.

This amendment before us simply holds the House rules to their present status regarding subpenas served upon officers of the House, and I will ask the Members to please keep in mind that neither of these amendments has to do with Members of the House individually. They have to do with officers and employees of the House. In no way do these amendments affect Members' rights as Members of the House of Representatives or as individual citizens.

My first amendment does limit to the traditional role the rules of the House have in the past covered regarding subpenas. The amendment renarrows the scope of this pending resolution to the traditional rules of the House saying that an officer or employee of the House may resist a subpena regarding documents, but he ought to respond to a proper subpena to testify.

The way this resolution is written, with a broad definition of "official functions of the House"—in fact, there is no definition at all—it means that the House of Representatives, on the determination of an employee, without our say, could resist all the way to the Supreme Court, as occurred in the Wilson case, a valid subpena, only to find out later that the matter had been resisted in our names without our approval.

Mr. Speaker, I urge the Members to adopt this first amendment so the rule involved only has to do with subpena of documents, as opposed to one dealing with testimony.

Mr. DERRICK. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts, the Speaker of the House, Mr. THOMAS P. O'NEILL.

Mr. O'NEILL. Mr. Speaker, may I make this clear at the outset: There is nothing partisan whatsoever in this. This is not a vote for TIP O'NEILL or against TIP O'NEILL. This in my opinion is a vote for the country. I think it is a vote for this institution, and I think it is a vote that greatly concerns the future of this body.

I rise in support of the committee resolution and in opposition to the amendment. As Speaker, my primary concern is to see to it that my obligations, under the Constitution and the rules of this House, are exercised responsibly and the duties I owe to the Members of this House and to the people of this Nation are carried out honestly and faithfully.

□ 1230

The role of the Speaker has traditionally carried with it the task of representing this coordinate branch of Government in its formal context with the other coordinate branches. And on occasion, as has its parliamentary ancestor, the Speaker of the House of Commons, the Speaker of the House has defended the constitutional rights and the privileges of this body.

House Resolution 722 places great responsibility in me as Speaker to see to it that the Members, the officers and the employees of this House do not seek to avoid compliance with a proper court order and to see to it that the constitutional prerogatives of this House are not abandoned or ignored in face of the process being served by another branch.

The amendment conditions and reduces the discretion traditionally given to the Speakers in these matters. The Speaker is an elected officer of the House. As Speaker, I have on occasion moved forward to protect a threatened privilege, such as the speech and debate clause, when I filed a brief before the Supreme Court in the Helstoski matter. In the Helstoski matter, as the Members will recall—Helstoski is a former Democratic Member of this House who was defeated for renomination and ran as an independent and was responsible for a Republican taking his place—there was a question as to whether or not certain pieces of legislation that he had filed should be brought before the Court or not.

The Clerk of the House had the duty of protecting the files. And then I ordered, without a subpena, that we go to the Supreme Court, and the Supreme Court upheld, under the speech and debate clause, the bills that had been filed by Members were protected under the speech and debate clause and they should not be turned over to the court. If 10 years from now, somebody came in and wanted the records as to why you filed legislation 10 years ago, and we adopt this amendment I would have to say that those records, particularly if we are out of session, would have to be turned over. I think this is a complete erosion, a complete erosion of the rights that the Founding Fathers gave to us under the speech and debate clause.

Believe me, I hold no brief as to what you are going to do. You may act any way you want. But I think we are destroying this institution ultimately, some time along the line.

When I was talking about the Helstoski case, I filed a brief in the matter. My attorneys argued it for 15 minutes before the Supreme Court.

I have no intention of debating my remarks, if the gentleman will be kind enough to sit down. I am just making a statement. I have no intention of debating my remarks.

Mr. RHODES. I have no intention of asking for debate, if the distinguished Speaker will yield.

Mr. O'NEILL. I yield to the gentleman from Arizona.

Mr. RHODES. I just want to compliment the Speaker for the statement he is making.

Mr. O'NEILL. I appreciate that.

Mr. RHODES. I am very familiar with this matter, as the Speaker knows. We have handled these matters of subpena together. I have no criticism of the way the Speaker has handled these matters in the past. I think some of the House employees have gotten out of line, and assumed responsibilities which were not theirs, which is the reason for this resolution being here, today. I believe that the prerogatives of the House will be adequately protected by the resolution, and I join the Speaker in urging its adoption without amendment.

Mr. O'NEILL. I appreciate the remarks of the minority leader.

In the Helstoski case, my position was sustained by the Supreme Court. The position of the executive branch was rejected. The speech and debate clause was protected against the clear attempted encroachment by the Executive.

The Founding Fathers wrote a Constitution that provided for the election of a Speaker, the protection of the speech and debate clause, and the separation of powers. I take my constitutional role seriously, as do I take the constitutional guarantees such as the speech and debate clause seriously.

By adopting this amendment, we will inevitably be eroding the protection of this branch as was given it by the Founding Fathers to insure its independence and the vigorous representation of its constituents. Therefore I urge a vote against the amendment.

I want to congratulate the task force of the Rules Committee. They did a serious study along the line. There have been criticisms of the officers of the House. I cannot truly criticize the Sergeant at Arms or the Clerk of the House.

We put into their hands through the years the protection of the records of this House, whether it was a criminal case or whether it was a civil case. Now there are so many criminal cases out there that people get upset, and I thoroughly understand it. If the House is in session, by virtue of the ruling all subpenas must come to the House. But what happens if the House is not in session? You are relegating to the Speaker, who is an elected, constitutional officer, a role below a Member. It is my opinion that the prerogatives of the Speaker should be kept not for "TIP" O'NEILL but for the posterity of this House and what has gone before years ago.

The Founding Fathers knew what they were doing, and I do not think we should tinker with it at this time.

The SPEAKER pro tempore. The Chair announces that there are 3 minutes remaining on each side.

Mr. DERRICK. Mr. Speaker, I reserve the balance of my time.

Mr. BAUMAN. Perhaps each of us could yield 1 minute to the gentlewoman from New York.

Mr. DERRICK. I will be glad to yield 1 minute to the gentlewoman, yes.

Mr. BAUMAN. Mr. Speaker, I yield 1 minute to the gentlewoman from New York (Mrs. CHISHOLM).

The SPEAKER pro tempore. The gentlewoman from New York (Mrs. CHISHOLM) is recognized for 2 minutes.

Mrs. CHISHOLM. Mr. Speaker, the Bauman-Chisholm amendment will continue the historic practice of covering only subpenas relating to documents. House Resolution 722 broadens the scope

of the resolution to include subpenas relating to testimony. We assert that the scope should not be broadened. The amendment would allow the House to continue to assert its rights and privileges regarding documents in its possession, and allow Members to continue to assert their individual rights and privileges as Members of the House, but would not unnecessarily broaden the resolution. Second, House Resolution 722 substitutes the term "documents relating to the official functions of the House" for the prior language which was "certain and sundry papers in the possession and under the control of the House." We seek to return to the latter language. Although Mr. DERRICK may argue that the language is too vague and there exists actual legal definitions for the term "official functions of the House." However, that legal definition is open to interpretation and in actuality could open up litigation, rather than narrowing it.

Generally, it is my feeling that House Resolution 722 is a broad modification of House Resolution 10 that opens up potential avenues of litigation thereby defeating the intent of House Resolution 10, which is automatic compliance with subpenas, unless there are compelling reasons for seeking judicial determination of their appropriateness. I believe that the Bauman amendments will better restore the intent of the original resolution while protecting the House from the kind of situation with which it was faced in the Wilson case.

The SPEAKER pro tempore. The time of the gentlewoman from New York (Mrs. CHISHOLM) has expired.

Mr. BAUMAN. Mr. Speaker, I yield 1 additional minute to the gentlewoman from New York.

□ 1240

Mrs. FENWICK. Mr. Speaker, will the gentlewoman yield?

Mrs. CHISHOLM. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentlewoman for yielding.

I would like to associate myself with the gentlewoman's remarks and support the amendment.

Mr. DERRICK. Mr. Speaker, I reserve the balance of my time.

Mr. BAUMAN. Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Maryland (Mr. BAUMAN).

The amendment was rejected.

AMENDMENT OFFERED BY MR. BAUMAN

Mr. BAUMAN. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BAUMAN: On page 2, at the end of section 3, strike the period, and insert the following: ", and in no event whatsoever shall any formal judicial determination be sought by any officer or employee without the House or Representatives having first voted affirmatively to authorize such action.".

PARLIAMENTARY INQUIRY

Mr. BAUMAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. BAUMAN. Mr. Speaker, we have only 3 minutes remaining, do we not, before a vote?

The SPEAKER pro tempore. The Chair would like to advise all Members that in 3 minutes all time will expire on the debate on the second amendment just reported by the Clerk, and we will proceed to vote on the second amendment in 3 minutes and thereafter on the resolution, and for the advice of Members, the Chair emphasizes this fact.

Mr. BAUMAN. Mr. Speaker, I strongly urge that the Members vote in favor of this amendment. This amendment simply says that no employee of the House shall have the right to go into a court as an employee of the House without our permission and fight a subpena all the way to the Supreme Court as was done in the Wilson case.

If the Members vote against this amendment, the Members are saying that what happened in the Wilson case is all right with them, and they are going to institutionalize that process in our rules. That should not happen.

The amendment before the House not only has the support of the gentlewoman from New York, but all the minority members of the Committee on Rules.

I was surprised to learn only a few moments ago the position of the minority leader. His present position is a marked change from past discussions I have had with him on this matter.

But I think this is a worthy amendment. I would hope we could get away from partisanship on this matter and uphold the institution of the House of Representatives.

There is no way that we can avoid future disrepute for the House if this amendment is not adopted, because possibly in secret, officials of the House will be using our name and the name of the House of Representatives to oppose all the way to the Supreme Court future subpenas.

Yes; the House of Representatives is the issue, as the Speaker has rightly said. I hope my colleagues will uphold this institution and adopt the amendment. That is what is embodied in this vote.

Mr. DERRICK. Mr. Speaker, I yield myself 2 minutes, the balance of my time.

If the Members support the Bauman amendment, what they do is strip the Speaker of the House of the powers that he was given under the Constitution of this country to protect the rights and privileges of this body.

Now if the Members really want to see a partisan situation, they can support Mr. BAUMAN's amendment, because that is exactly what they are going to get. They are going to have a Member's rights debated on this floor as to the jurisdictional matter before he has ever had an opportunity to have his day in court, even as far as indictment is concerned before a Grand Jury. If the Members want to get home every year after Christmas, then vote with the gentleman from Maryland. The amendment of the gentleman from Maryland suggests that we are going to have to vote on every subpena that comes before this House.

Common Cause in one case presented this House with 40 subpenas. If the Members want to vote on every one of them, I suggest they support the gentleman's amendment.

Mr. RHODES. Mr. Speaker, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Arizona, the minority leader.

Mr. RHODES. I just want to ask the gentleman if it is not true that under the resolution reported by the committee that an employee of the House no longer can take a matter like this to the courts without the Speaker giving his assent?

Mr. DERRICK. That is correct.

Mr. RHODES. Prior to this time, that was not true. The Speaker will now be in charge completely of the handling of subpenas?

Mr. DERRICK. The gentleman is correct.

Mr. O'NEILL. Mr. Speaker, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Massachusetts.

Mr. O'NEILL. The gentleman describing it said the employees of the House. He did not mention the fact of the officers of the House, and the Speaker of the House is an officer of the House.

Mr. DERRICK. The gentleman is certainly correct.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Maryland (Mr. BAUMAN).

The question was taken; and on a division (demanded by Mr. BAUMAN) there were—yeas 19; nays 162.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 55, nays 353, not voting 24, as follows:

[Roll No. 552]

YEAS—55

Archer	Gradison	Martin
Badham	Hammer-schmidt	Moorhead, Calif.
Bauman	Hansen	Pashayan
Bereuter	Hinson	Paul
Bethune	Holt	Porter
Broyhill	Ichord	Quillen
Buchanan	Jacobs	Rousselot
Chisholm	Jeffords	Sensenbrenner
Collins, Tex.	Jeffries	Shumway
Courter	Kemp	Solomon
Daniel, R. W.	Lagomarsino	Stangeland
Dannemeyer	Latta	Stockman
Dickinson	Leach, Iowa	Stump
Dornan	Lewis	Symms
Edwards, Okla.	Lott	Taylor
Erdahl	Lungren	Thomas
Gilman	McDonald	Wylie
Goldwater	Marks	Yatron
Goodling		

NAYS—353

Abdnor	Atkinson	Blanchard
Addabbo	AuCoin	Boland
Akaka	Bafalis	Boling
Albosta	Bailey	Boner
Alexander	Baldus	Bonior
Ambro	Barnard	Bonker
Anderson, Calif.	Barnes	Bouquard
Andrews, N.C.	Beard, R.I.	Bowen
Andrews, N Dak.	Beard, Tenn.	Brademas
Annunzio	Bedell	Breaux
Anthony	Bellenson	Brinkley
Applegate	Benjamin	Brodhead
Ashley	Bennett	Brooks
Aspin	Bevill	Broomfield
	Biaggi	Brown, Calif.
	Bingham	Burgener

Burlison	Harsha	Petri
Burton, John	Hawkins	Peyser
Burton, Phillip	Heckler	Pickle
Butler	Hefner	Preyer
Byron	Heftel	Price
Campbell	Hightower	Pritchard
Carney	Hillis	Pursell
Carr	Holland	Quayle
Carter	Hollenbeck	Rahall
Cavanaugh	Hopkins	Railsback
Chappell	Horton	Rangel
Cheney	Howard	Ratchford
Clausen	Hubbard	Regula
Clay	Huckaby	Reuss
Cleveland	Hughes	Rhodes
Clinger	Hutchinson	Richmond
Coelho	Hutto	Rinaldo
Coleman	Hyde	Ritter
Collins, Ill.	Ireland	Roberts
Conable	Jenkins	Robinson
Conte	Johnson, Calif.	Rodino
Conyers	Johnson, Colo.	Roe
Corcoran	Jones, N.C.	Rose
Corman	Jones, Okla.	Rosenthal
Cotter	Jones, Tenn.	Rostenkowski
Coughlin	Kastenmeier	Roth
Crane, Daniel	Kazen	Roybal
Crane, Philip	Kelly	Royer
D'Amours	Kildee	Rudd
Daniel, Dan	Kindness	Russo
Danielson	Kogovsek	Sabo
Daschle	Kostmayer	Santini
Davis, Mich.	Kramer	Satterfield
Davis, S.C.	LaFalce	Sawyer
Dellums	Leath, Tex.	Scheuer
Derrick	Lee	Schroeder
Derwinski	Lehman	Schulze
Devine	Leland	Sebelius
Dicks	Lent	Seiberling
Dingell	Levitas	Sharp
Dixon	Livingston	Shelby
Donnelly	Lloyd	Shuster
Dougherty	Loeffler	Simon
Downey	Long, La.	Skelton
Drinan	Long, Md.	Smith, Iowa
Duncan, Oreg.	Lowry	Smith, Nebr.
Duncan, Tenn.	Lujan	Snowe
Early	Luken	Snyder
Eckhardt	Lundine	Solarz
Edgar	McCloskey	Spellman
Edwards, Ala.	McCormack	Spence
Edwards, Calif.	McDade	St Germain
Emery	McEwen	Stack
English	McHugh	Staggers
Ertel	McKay	Stanton
Evans, Del.	McKinney	Stark
Evans, Ga.	Madigan	Steed
Evans, Ind.	Maguire	Stenholm
Fary	Markey	Stewart
Fascell	Marlenee	Stratton
Fazio	Marriott	Studds
Fenwick	Mathis	Swift
Ferraro	Matsui	Synar
Findley	Mavroules	Tauke
Fish	Mazzoli	Taustin
Fisher	Mica	Thompson
Fithian	Michel	Traxler
Flippo	Mikulski	Trible
Florio	Miller, Calif.	Udall
Foley	Miller, Ohio	Van Deerlin
Ford, Tenn.	Mineta	Vander Jagt
Forsythe	Minish	Vanik
Fountain	Mitchell, Md.	Vento
Fowler	Mitchell, N.Y.	Volkmer
Frenzel	Moakley	Walgren
Frost	Moffett	Walker
Fuqua	Mollohan	Wampler
Garcia	Montgomery	Watkins
Gavdos	Moore	Waxman
Gephardt	Moorhead, Pa.	Weaver
Giaimo	Mottl	Weiss
Gibbons	Murphy, Ill.	White
Ginrich	Murphy, N.Y.	Whitehurst
Ginn	Murphy, Pa.	Whitley
Glickman	Murtha	Whittaker
Gonzales	Musto	Whitten
Gore	Myers, Ind.	Williams, Mont.
Gramm	Natcher	Williams, Ohio
Grassley	Neal	Wilson, Tex.
Gray	Nelson	Winn
Green	Nichols	Wirth
Grisham	Nowak	Wolff
Guarini	O'Brien	Wolpe
Gudger	Oakar	Wright
Guyer	Oberstar	Wyatt
Hagedorn	Obey	Wydler
Hall, Ohio	Ottinger	Yates
Hall, Tex.	Panetta	Young, Alaska
Hamilton	Patten	Young, Mo.
Hance	Patterson	Zablocki
Hanley	Pease	Zeferetti
Harkin	Pepper	
Harris	Perkins	

NOT VOTING—24

Anderson, Ill.	Ford, Mich.	Nedzi
Ashbrook	Holtzman	Nolan
Boggs	Jenrette	Shannon
Brown, Ohio	Leach, La.	Stokes
de la Garza	Lederer	Ullman
Deckard	McClory	Wilson, Bob
Dodd	Mattox	Wilson, C. H.
Erlenborn	Myers, Pa.	Young, Fla.

□ 1300

Mr. DANIEL B. CRANE and Mr. PHILLIP BURTON changed their votes from "yea" to "nay."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. SHARP). Under the rule, the previous question is ordered on the resolution.

The question is on the resolution.

The question was taken; and on a division (demanded by Mr. BAUMAN) there were—yeas 112, nays 18.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 380, nays 23, not voting 29, as follows:

[Roll No. 553]

YEAS—380

Abdnor	Byron	Evans, Ind.
Addabbo	Campbell	Fary
Akaka	Carney	Fascell
Alboata	Carr	Fazio
Alexander	Carter	Fenwick
Ambro	Cavanaugh	Ferraro
Anderson, Calif.	Chappell	Findley
Andrews, N.C.	Cheney	Fish
Andrews, N.Dak.	Chisholm	Fisher
Annunzio	Clausen	Fithian
Anthony	Clay	Flippo
Applegate	Cleveland	Florio
Ashley	Clinger	Foley
Aspin	Coelho	Ford, Mich.
Atkinson	Coleman	Ford, Tenn.
AuCoin	Collins, Ill.	Fountain
Badham	Conable	Fowler
Bafalis	Conte	Frenzel
Bailey	Conyers	Frost
Baldus	Corcoran	Fuqua
Barnard	Corman	Garcia
Barnes	Cotter	Gavdos
Beard, R.I.	Coughlin	Gephardt
Beard, Tenn.	Courter	Giaimo
Bedell	D'Amours	Gibbons
Beilenson	Daniel, Dan	Gilman
Benjamin	Daniel, R. W.	Gingrich
Bennett	Danielson	Ginn
Bereuter	Daschle	Glickman
Bethune	Davis, Mich.	Goldwater
Bevill	Davis, S.C.	Gonzales
Biaggi	Dellums	Goodling
Bingham	Derrick	Gore
Blanchard	Derwinski	Gradison
Boggs	Devine	Gramm
Boland	Dickinson	Grassley
Bolling	Dicks	Gray
Boner	Dingell	Green
Bonior	Dixon	Grisham
Bonker	Donnelly	Guarini
Bouquard	Dougherty	Gudger
Bowen	Downey	Guyer
Brademas	Drinan	Hagedorn
Breaux	Duncan, Oreg.	Hall, Ohio
Brinkley	Duncan, Tenn.	Hall, Tex.
Brodhead	Early	Hamilton
Brooks	Eckhardt	Hance
Broomfield	Edgar	Hanley
Brown, Calif.	Edwards, Ala.	Harkin
Buchanan	Edwards, Calif.	Harris
Burgener	Edwards, Okla.	Harsha
Burlison	Emery	Hawkins
Burton, John	English	Heckler
Burton, Phillip	Erdahl	Hefner
Butler	Ertel	Heftel
	Evans, Del.	Hightower
	Evans, Ga.	Hillis
	Holland	Mikulski
	Hollenbeck	Miller, Calif.
	Holt	Miller, Ohio
	Hopkins	Mineta
	Horton	Minish
	Howard	Mitchell, Md.
	Hubbard	Mitchell, N.Y.
	Huckaby	Moakley
	Hughes	Moffett
	Hutchinson	Mollohan
	Hutto	Montgomery
	Hyde	Moore
	Ichord	Moorhead, Calif.
	Ireland	Moorhead, Pa.
	Jacobs	Mottl
	Jeffords	Murphy, Ill.
	Jeffries	Murphy, N.Y.
	Jenkins	Murphy, Pa.
	Johnson, Calif.	Murtha
	Johnson, Colo.	Musto
	Jones, N.C.	Natcher
	Jones, Okla.	Neal
	Jones, Tenn.	Nelson
	Kastenmeier	Nichols
	Kazen	Nowak
	Kelly	O'Brien
	Kemp	Oakar
	Kildee	Oberstar
	Kindness	Obey
	Kogovsek	Ottinger
	Kostmayer	Panetta
	Kramer	Pashayan
	LaFalce	Patterson
	Lagomarsino	Pease
	Latta	Perkins
	Leach, Iowa	Petri
	Leath, Tex.	Peyser
	Lee	Pickle
	Lehman	Preyer
	Leland	Price
	Lent	Pursell
	Levitas	Quayle
	Lewis	Rahall
	Livingston	Rangel
	Lloyd	Ratchford
	Loeffler	Regula
	Long, La.	Reuss
	Long, Md.	Rhodes
	Lowry	Richmond
	Lujan	Rinaldo
	Luken	Ritter
	Lundine	Roberts
	McCloskey	Robinson
	McCormack	Rodino
	McDade	Roe
	McEwen	Rose
	McHugh	Rosenthal
	McKinney	Rostenkowski
	Madigan	Roth
	Maguire	Roybal
	Markey	Royer
	Marks	Rudd
	Marlenee	Russo
	Marriott	Sabo
	Martin	Santini
	Mathis	Satterfield
	Matsui	Sawyer
	Mavroules	Scheuer
	Mazzoli	Schroeder
	Mica	Schulze
	Michel	

NAYS—23

Archer	Hansen	Quillen
Bauman	Hinson	Rousselot
Brewhill	Lott	Sensenbrenner
Collins, Tex.	Lungren	Stump
Crane, Daniel	McDonald	Symms
Crane, Philip	Myers, Ind.	Thomas
Dannemeyer	Patten	
Hammer-schmidt	Paul	
	Porter	

NOT VOTING—29

Anderson, Ill.	Jenrette	Pritchard
Ashbrook	Leach, La.	Railsback
Brown, Ohio	Lederer	Sebelius
de la Garza	McClory	Shannon
Deckard	McKay	Shuster
Dodd	Mattox	Stokes
Dornan	Myers, Pa.	Wilson, Bob
Erlenborn	Nedzi	Wilson, C. H.
Forsythe	Nolan	Young, Fla.
Holtzman	Pepper	

□ 1320

The Clerk announced the following pairs:

Mr. Nedzi with Mr. McClory.
Mr. Lederer with Mr. Forsythe.
Mr. de la Garza with Mr. Bob Wilson.
Mr. Pepper with Mr. Young of Florida.

Mr. Mattox with Mr. Shuster.
Mr. Myers of Pennsylvania with Mr. Railsback.
Mr. Jenrette with Mr. Pritchard.
Mr. McKay with Mr. Sebelius.
Mr. Nolan with Mr. Dornan.
Mr. Dodd with Mr. Ashbrook.
Ms. Holtzman with Mr. Brown of Ohio.
Mr. Shannon with Mr. Deckard.
Mr. Stokes with Mr. Erlenborn.
Mr. Charles H. Wilson of California with Mr. Leach of Louisiana.

Mr. KEMP changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DERRICK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 1125, FEDERAL CROP INSURANCE ACT OF 1980

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 784 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 784

Resolved, That during the consideration of the conference report on the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, all points of order against said conference report for failure to comply with the provisions of clause 3, rule XXVIII, are hereby waived.

The SPEAKER pro tempore. The gentleman from South Carolina (Mr. DERRICK) is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Mississippi (Mr. LOTT), for purposes of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 784 makes in order the consideration of the conference report to accompany S. 1125, the Federal Crop Insurance Act of 1980. Conference reports in general have privilege to be called up at any time under clause 1 of rule XXVIII after they have laid over in the House for 3 days. The conference report to S. 1125 was filed in the House on August 28.

In this case, however, a rule was granted waiving any point of order that may be raised under clause 3 of rule 28 with respect to one provision of the report which is technically outside the scope of the conference. Clause 3 of rule XXVIII limits the contents of the conference report to the scope of the differences between the two Houses.

The particular provision in section 106 of the report would allow a farmer to reduce his Federal crop insurance premium by a prescribed amount that may not be less than 15 percent, nor more than 30 percent, of the full cost of the Federal crop insurance coverage, if he elected to obtain hail and fire coverage from a non-Federal insurer. The House amendment had provided that, for any producer who makes such election, the Federal crop insurance premium would be reduced by 25 percent, but not to exceed the premium for the substitute coverage.

The conference substitute modifies the House amendment to provide a flexible discount range to more accurately reflect the variety of risk associated with hail and fire in different parts of the country. There is no comparable provision in either the Senate bill or current law. As the report's discount range of from 15 to 30 percent would provide for a reduction in the premium that could be lower or greater than the House's 25 percent figure, the conference provision is technically outside the scope of the conference. Therefore, the rule waives clause 3 of rule XXVIII against the provision.

Mr. Speaker, the report provides for expansion and improvement of the present Federal all-risk crop insurance program by authorizing its availability on all commodities in all counties of the United States. It assures that the program is affordable to all farmers by requiring the Federal Crop Insurance Corporation to pay a portion of the premium cost. It includes reinsurance provisions which enable the private insurance industry to offer a comprehensive all-risk insurance policy to the farmer and otherwise provides for use of the private sector in carrying out the program. And, it extends the disaster payment program for the 1980 crop and provides for its phaseout in 1981 as crop insurance is made generally available to producers in the country.

Mr. Speaker, I urge my colleagues to adopt House Resolution 784 so that the House may consider the conference report to the Federal Crop Insurance Act of 1980.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the rule to accompany the conference report on the Federal Crop Insurance Act has been adequately explained. It simply waives clause 3 of rule XXVIII against consideration of the report. This clause calls for limiting the contents of the conference report to the scope of the differences between the two Houses.

Apparently there is one provision of the conference report which is outside the scope of the conference report. The House version of the bill would have allowed a 25-percent credit for farmers who obtain fire and hail coverage from a non-Federal insurer. The Senate bill contained no such provision. The conference substitute adopts the House provision with a modification relating to the determination of the amount of the premium reduction. Under this change, the Federal crop insurance premium for a farmer who elects to obtain hail and fire coverage from a non-Federal insurer would be reduced by 40 percent of the prevailing average county insurance premium.

Although there was some controversy over specific provisions of the bill when it came before the House, conferees have reached an acceptable level of compromise consolidating the best features of both the disaster payment and crop insurance programs. The hesitation which some segments of the insurance industry felt has been dispelled, since the final version of the bill allows the utilization of private carriers to the maximum extent possible.

The other body agreed to this conference report on Monday, September 8, by a voice vote. Thus I urge the adoption of this rule and fully support implementation of the program at an early date to assure farmers the protection they need.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. DERRICK. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 5192, HIGHER EDUCATION EXTENSION AND REVISION

Mr. FORD of Michigan submitted the following conference report and statement on the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 96–1337)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Education Amendments of 1980".

TITLE I—ESTABLISHMENT OF A NEW TITLE I OF THE HIGHER EDUCATION ACT OF 1965

Sec. 101. New programs established.

"TITLE I—CONTINUING POSTSECONDARY EDUCATION PROGRAM AND PLANNING

"PART A—COMMISSION ON NATIONAL DEVELOPMENT IN POSTSECONDARY EDUCATION

"Sec. 101. Findings.
"Sec. 102. Establishment of the Commission on National Development in Postsecondary Education.
"Sec. 103. Duties of the Commission.

"Sec. 104. Powers and administrative provisions.
"Sec. 105. Authorization.
"PART B—EDUCATION OUTREACH PROGRAMS
"Sec. 111. Findings.
"Sec. 112. State allotments.
"Sec. 113. Comprehensive statewide planning.
"Sec. 114. Information services.
"Sec. 115. Continuing education.
"Sec. 116. Federal discretionary grants.
"Sec. 117. National Advisory Council on Continuing Education.
"Sec. 118. Definitions.
"Sec. 119. Appropriations authorized and payments.".
TITLE II—AMENDMENT AND EXTENSION OF TITLE II OF THE HIGHER EDUCATION ACT OF 1965
Sec. 201. Extension and revision of library programs.
"TITLE II—COLLEGE AND RESEARCH LIBRARY ASSISTANCE AND LIBRARY TRAINING AND RESEARCH
"Sec. 201. Purpose; authorization.
"Sec. 202. Notification of State agency.
"PART A—COLLEGE LIBRARY RESOURCES
"Sec. 211. Resource development grants.
"PART B—LIBRARY TRAINING, RESEARCH, AND DEVELOPMENT
"Sec. 221. Grants authorized.
"Sec. 222. Library career training.
"Sec. 223. Research and demonstrations.
"Sec. 224. Special purpose grants.
"PART C—STRENGTHENING RESEARCH LIBRARY RESOURCES
"Sec. 231. Eligibility for assistance.
"Sec. 232. Geographical distribution of grants.
"PART D—NATIONAL PERIODICAL SYSTEM
"Sec. 241. Purpose.
"Sec. 242. Establishment.
"Sec. 243. Functions of the Corporation.
"Sec. 244. Board of Directors.
"Sec. 245. Director and staff of Corporation.
"Sec. 246. Nonprofit nature of Corporation.
"Sec. 247. Authority of Corporation.
"Sec. 248. Implementing the design.
"Sec. 249. Copyright Act.
"Sec. 250. Definitions.
"Sec. 251. Authorization of appropriations.".
TITLE III—ESTABLISHMENT OF A NEW TITLE III OF THE HIGHER EDUCATION ACT OF 1965
Sec. 301. Programs authorized.
"TITLE III—INSTITUTIONAL AID
"Sec. 301. Findings and purposes.
"PART A—STRENGTHENING INSTITUTIONS
"Sec. 311. Program purpose.
"Sec. 312. Definitions.
"Sec. 313. Duration of grant.
"PART B—AID TO INSTITUTIONS WITH SPECIAL NEEDS
"Sec. 321. Program purpose.
"Sec. 322. Definitions.
"Sec. 323. Duration of grant.
"Sec. 324. Federal share.
"PART C—CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B
"Sec. 331. Establishment of challenge grant program.
"Sec. 332. Applications for challenge grants.
"PART D—GENERAL PROVISIONS
"Sec. 341. Applications for assistance.
"Sec. 342. Waiver authority and reporting requirement.
"Sec. 343. Application review process.
"Sec. 344. Cooperative arrangements.
"Sec. 345. Assistance to institutions under other programs.
"Sec. 346. Limitations.
"Sec. 347. Authorizations.".
TITLE IV—STUDENT ASSISTANCE
PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION
Sec. 401. Statement of purpose.
Sec. 402. Pell grants.
Sec. 403. Supplemental educational opportunity grants.
Sec. 404. Grants to States for State student incentives.
Sec. 405. Special programs for students from disadvantaged backgrounds.
"SUBPART 4—SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS
"Sec. 417A. Program authority; authorization of appropriations.
"Sec. 417B. Talent search.
"Sec. 417C. Upward bound.
"Sec. 417D. Special services for disadvantaged students.
"Sec. 417E. Educational opportunity centers.
"Sec. 417F. Staff development activities.".
Sec. 406. Special program for migrant and seasonal farmwork students.
Sec. 407. Veterans' cost-of-instruction payments.
PART B—GUARANTEED AND INSURED STUDENT LOANS
Sec. 411. Extension of programs.
Sec. 412. Loan limitations.
Sec. 413. Deferral of repayment.
Sec. 414. State agencies as lenders of last resort.
Sec. 415. Interest rate and payment.
Sec. 416. Collection practices.
Sec. 417. Administrative improvements.
Sec. 418. Loan information program authorized.
Sec. 419. Loans to parents.
Sec. 420. Special allowances.
Sec. 421. The Student Loan Marketing Association.
Sec. 422. Prompt due diligence determinations.
Sec. 423. Miscellaneous amendments.
PART C—WORK-STUDY PROGRAMS
Sec. 431. Purpose; appropriations authorized.
Sec. 432. Allotment to States.
Sec. 433. Use of certain unused college work-study program funds for the support of cooperative education programs.
Sec. 434. Grants for work-study programs.
Sec. 435. Distribution of assistance.
Sec. 436. Job location and development.
Sec. 437. Work study for community service-learning.
PART D—NATIONAL DIRECT STUDENT LOANS
Sec. 441. Extension of program.
Sec. 442. Alternative funding for direct loans; recapture of current balances.
Sec. 443. Loan limitations.
Sec. 444. Deferral of repayment.
Sec. 445. Collection practices.
Sec. 446. Interest rates.
Sec. 447. Student loan information program authorized.
Sec. 448. Miscellaneous amendments.
PART E—GENERAL PROVISIONS
Sec. 451. Student assistance general provisions.
"PART F—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS
"Sec. 481. Definitions.
"Sec. 482. Need analysis.
"Sec. 483. Forms and regulations.
"Sec. 484. Student eligibility.
"Sec. 485. Institutional and financial assistance information for students.
"Sec. 486. Training in financial aid and student support services.
"Sec. 487. Program participation agreements.
"Sec. 488. Transfer of allotments.
"Sec. 489. Administrative expenses.
"Sec. 490. Criminal penalties.
"Sec. 491. National Commission on Student Financial Assistance.".
TITLE V—AMENDMENT AND EXTENSION OF TITLE V OF THE HIGHER EDUCATION ACT OF 1965
Sec. 501. Extension of programs.
Sec. 502. Teacher Corps amendments.
Sec. 503. Teacher centers amendments.
Sec. 504. Teacher training.
Sec. 505. Training for teachers of handicapped children in areas with a shortage.
Sec. 506. Education professional development.
"PART C—TRAINING FOR ELEMENTARY AND SECONDARY SCHOOL TEACHERS TO TEACH HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE
"Sec. 541. Grants authorized.
"Sec. 542. Application.
"Sec. 543. Stipends and institution of higher education allowances.
"Sec. 544. Fellowship conditions.
"Sec. 545. Definition.
"Sec. 546. Appropriations authorized.".
"PART D—COORDINATION OF EDUCATION PROFESSIONAL DEVELOPMENT
"Sec. 551. Findings.
"Sec. 552. Policy.
"Sec. 553. Office of Education Professional Development.".
TITLE VI—ESTABLISHMENT OF A NEW TITLE VI OF THE HIGHER EDUCATION ACT OF 1965
Sec. 601. Programs authorized.
"TITLE VI—INTERNATIONAL EDUCATION PROGRAMS
"PART A—INTERNATIONAL AND FOREIGN LANGUAGE STUDIES
"Sec. 601. Findings and purposes.
"Sec. 602. Graduate and undergraduate language and area centers.
"Sec. 603. International studies centers.
"Sec. 604. Undergraduate international studies and foreign language programs.
"Sec. 605. Research; studies; annual report.
"Sec. 606. Equitable distribution of funds.
"Sec. 607. Authorization of appropriations.
"PART B—BUSINESS AND INTERNATIONAL EDUCATION PROGRAMS
"Sec. 611. Findings and purposes.
"Sec. 612. Education and training programs.
"Sec. 613. Authorization of appropriations.
"PART C—GENERAL PROVISIONS
"Sec. 621. Advisory board.
"Sec. 622. Definitions.".
TITLE VII—AMENDMENT TO TITLE VII OF THE HIGHER EDUCATION ACT OF 1965
Sec. 701. Amendment.
"TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES
"Sec. 701. General purposes.
"Sec. 702. Appropriations authorized.
"PART A—GRANTS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF UNDERGRADUATE ACADEMIC FACILITIES
"Sec. 711. State plan.
"Sec. 712. Basic criteria.
"Sec. 713. Allotment of funds.
"PART B—GRANTS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES
"Sec. 721. Grants.
"PART C—LOANS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES
"Sec. 731. Eligibility conditions, amounts, and terms.
"Sec. 732. General provisions for loan program.
"Sec. 733. Revolving loan and insurance fund.

"Sec. 734. Annual interest grants.
"Sec. 735. Academic facilities loan insurance.
"PART D—GENERAL
"Sec. 741. Recovery of payments.
"Sec. 742. Definitions.".
TITLE VIII—COOPERATIVE EDUCATION
Sec. 801. Extension of program.
TITLE IX—GRADUATE PROGRAMS
Sec. 901. Grants to institutions of higher education.
Sec. 902. Graduate fellowships.
"PART B—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY
"Sec. 921. Statement of purpose.
"Sec. 922. Program authorized.
"Sec. 923. Award of fellowships.
"Sec. 924. Authorization of appropriations.".
Sec. 903. New program authorized.
"PART C—NATIONAL GRADUATE FELLOWS PROGRAM
"Sec. 931. Award of national graduate fellowships.
"Sec. 932. Allocation of fellowships.
"Sec. 933. Stipends.
"Sec. 934. Fellowship conditions.".
Sec. 904. Training and legal assistance profession program authorized.
"PART D—ASSISTANCE FOR TRAINING IN THE LEGAL PROFESSION
"Sec. 941. Program authorized.
"Sec. 942. Authorization of appropriations.".
Sec. 905. Law school programs included in title IX.
"PART E—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS
"Sec. 951. Program authorization.
"Sec. 952. Applications.
"Sec. 953. Authorization of appropriations.".
TITLE X—ESTABLISHMENT OF A NEW TITLE X OF THE HIGHER EDUCATION ACT OF 1965
Sec. 1001. Fund for the Improvement of Postsecondary Education.
"TITLE X—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION
"PART A—ESTABLISHMENT AND OPERATION OF FUND
"Sec. 1001. Authorization of program.
"Sec. 1002. Consultation.
"Sec. 1003. National Board of the Fund for the Improvement of Postsecondary Education.
"Sec. 1004. Administrative provisions.
"Sec. 1005. Authorization of appropriations.".
TITLE XI—ESTABLISHMENT OF A NEW TITLE XI OF THE HIGHER EDUCATION ACT OF 1965
Sec. 1101. Program authorized.
"TITLE XI—URBAN GRANT UNIVERSITY PROGRAM
"Sec. 1101. Findings and purpose.
"Sec. 1102. Appropriations authorized.
"Sec. 1103. Project assistance.
"Sec. 1104. Limitation.
"Sec. 1105. Definitions.".
TITLE XII—GENERAL PROVISIONS
Sec. 1201. Amendments.
"Sec. 1203. Federal-State relationships; State agreements.
"Sec. 1204. Treatment of territories and territorial assistance.
"Sec. 1205. National Advisory Committee on Accreditation and Institutional Eligibility.".
TITLE XIII—MISCELLANEOUS PROVISIONS
PART A—GENERAL EDUCATION PROVISIONS
Sec. 1301. Contingent extension.
Sec. 1302. Enforcement of the rules.
Sec. 1303. Science education programs.
Sec. 1304. Commission on the Review of the Federal Impact Aid Program.
Sec. 1305. Evaluation reports.
Sec. 1306. Education impact statement.
PART B—NATIONAL INSTITUTE OF EDUCATION
Sec. 1311. Extension of authority.
Sec. 1312. Declaration of policy.
Sec. 1313. Research and development priorities.
Sec. 1314. Repealer.
PART C—AMENDMENTS TO THE REHABILITATION ACT OF 1973
Sec. 1321. Composition of the Architectural and Transportation Barriers Compliance Board and transmission of report.
Sec. 1322. Information clearinghouse for handicapped individuals.
PART D—NATIVE HAWAIIAN EDUCATION STUDY
Sec. 1331. Study authorized.
PART E—SPECIAL IMPACT AID PROGRAM
Sec. 1341. Program authorized.
PART F—THE NAVAJO COMMUNITY COLLEGE ASSISTANCE PROGRAM
Sec. 1351. Amendments to the Navajo Community College Act.
PART G—NEW LAND GRANT COLLEGES
Sec. 1361. American Samoa and Micronesia land grant colleges.
PART H—MEMORIALS
SUBPART 1—THE ROBERT A. TAFT INSTITUTE
Sec. 1371. Short title.
Sec. 1372. Grants for development.
Sec. 1373. Authorization of appropriations.
SUBPART 2—GENERAL DANIEL JAMES MEMORIAL HEALTH EDUCATION CENTER
Sec. 1376. Financial assistance authorized.
Sec. 1377. Authorization of appropriations.
SUBPART 3—THE WILLIAM LEVI DAWSON CHAIR OF PUBLIC AFFAIRS
Sec. 1381. Short title.
Sec. 1382. Assistance for the establishment of the William Levi Dawson Chair of Public Affairs.
Sec. 1383. Authorization of appropriations.
PART I—TECHNICAL PROVISIONS
Sec. 1391. Administrative amendments.
Sec. 1392. Contract authority.
Sec. 1393. Effective dates.

TITLE I—ESTABLISHMENT OF A NEW TITLE I OF THE HIGHER EDUCATION ACT OF 1965

NEW PROGRAMS ESTABLISHED

SEC. 101. (a) Title I of the Higher Education Act of 1965 (hereafter in this Act referred to as the "Act") is amended to read as follows:

"TITLE I—CONTINUING POSTSECONDARY EDUCATION PROGRAM AND PLANNING

"PART A—COMMISSION ON NATIONAL DEVELOPMENT IN POSTSECONDARY EDUCATION

"FINDINGS

SEC. 101. The Congress finds—

"(1) that institutions of higher education in our Nation and their human and intellectual resources are critical to the future of the American society, and that the Nation's economic potential, its strength and freedom, and the quality of life for all citizens are tied to the quality and extent of higher education available;

"(2) that it is the responsibility of the Federal Government, consistent with the rights, duties, and privileges of States and institutions of higher education, to promote—

"(A) equality of access to postsecondary education, without regard to age, race, sex, creed, handicap, national origin, geographic location, or economic status:

"(B) freedom of choice to students who wish to participate in postsecondary education, to select institutions and programs which meet their needs and abilities;

"(C) quality of postsecondary education, including the maintenance and extension of academic freedom, responsibility, and educational diversity;

"(D) responsiveness of postsecondary education to rapidly changing social and economic needs; and

"(E) the efficient use of resources in postsecondary education, and the optimal allocation of human, physical and financial resources, through efficient planning and management to achieve these goals; and

"(3) that demographic, economic, and social changes will require institutions of postsecondary education to adapt to the future needs of individuals and of American society.

"ESTABLISHMENT OF THE COMMISSION ON NATIONAL DEVELOPMENT IN POSTSECONDARY EDUCATION

"SEC. 102. (a) There is established a Commission to be known as the Commission on National Development in Postsecondary Education to review the effectiveness of policies to promote the Federal responsibilities set forth in clauses (A) through (E) of section 101(2).

"(b) The Commission shall be composed of twenty-five members as follows:

"(1) Nine members shall be appointed by the President of the United States.

"(2) Eight of the members shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader and the Minority Leader.

"(3) Eight members shall be appointed by the Speaker of the House of Representatives.

"(c)(1) Of each class specified in subsection (b) not more than four members shall be from the same political party, except in the case of the members appointed under clause (1), in which case not more than five members shall be from the same political party. The members of the Commission appointed from private life shall be individuals who by reason of experience or training are especially qualified to serve on the Commission.

"(2) In making appointments under subsection (b) of this section the President, the President pro tempore, and the Speaker of the House of Representatives shall give due consideration to the appointment of individuals who, collectively, will provide appropriate representation of institutions of higher education, State agencies responsible for postsecondary education, labor, the business community, and public service.

"(d) Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

"(e) The Commission shall select a Chairman and a Vice Chairman from among its members.

"(f) Thirteen members of the Commission shall constitute a quorum for the transaction of business, but the Commission may establish a lesser number as a quorum for the purpose of holding hearings, taking testimony, and receiving evidence.

"(g)(1) Members of the Commission who are Members of Congress or officers or employees of the executive branch of the Government shall serve without additional compensation but shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in carrying out the duties of the Commission.

"(2) Members of the Commission not otherwise employed by the Federal Government shall receive compensation at a rate equal to the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, including traveltime for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

"DUTIES OF THE COMMISSION

"SEC. 103. (a) The Commission shall study and investigate the extent to which national

policies promote the objectives set forth in clauses (A) through (E) of section 101(2). Such study shall include, but not be limited to, consideration of—

"(1) the extent to which postsecondary educational planning by States and localities and institutions of higher education is designed to identify the future needs of education in American society;

"(2) the effectiveness of Federal financial assistance to students and institutions of higher education in promoting national development of postsecondary education in the most efficient manner.

"(3) the physical and financial capacity of institutions of higher education to carry out their mission, including the conduct of basic and applied research in the humanities and scientific and technical fields, and the relationship between institutions of higher education, public agencies, and the private sector in developing the capacity of higher education to promote such research;

"(4) the human and technical resources currently and prospectively available to institutions of higher education to enable them to address and respond to national and worldwide social and economic forces;

"(5) the effect of demographic changes on institutions of higher education and their constituent disciplines and professions and the ability of such institutions to meet national needs; and

"(6) the extent to which Federal student assistance may be used to promote the recruiting of individuals to serve in the Armed Forces and to retain members of the Armed Forces.

"(b)(1) In addition, the Commission shall conduct a study of the remaining barriers to adult postsecondary education which analyzes the characteristics of current or potential adult postsecondary students, the Federal response to the needs of adult postsecondary students, and the ability of educational institutions to respond to the growing postsecondary student population. For the purpose of the study conducted under this subsection, the term 'adult postsecondary student' means individuals twenty-two years of age or older.

"(2) In analyzing the characteristics of current or potential adult postsecondary students and the Federal response to their needs, the Commission shall—

"(A) review the extent to which such students are motivated by employment goals, and whether these students seek further education in order to enter the labor force or reenter after an extended absence, advance in a current career, or move from one career to another;

"(B) analyze the relationship between different employment motivations and sources of financial assistance for education, choice of institution or patterns of participation in postsecondary education;

"(C) evaluate the extent to which the unavailability or inaccessibility of financial aid sources may prevent educational participation by economically or socially disadvantaged adults, or otherwise limit their choice of educational focus or intensity of study; and

"(D) evaluate the extent to which age represents a barrier to participation in postsecondary education and the potential for greater participation in postsecondary education by individuals age 60 and older.

"(3) In analyzing the ability of postsecondary institutions to respond to the potential adult postsecondary student population, the Commission shall, at a minimum—

"(A) review the availability of outreach, information, counseling, or supportive service programs, with particular attention to programs serving adults such as homemakers or retirees who are least likely to have access to normal sources of educational information; and

"(B) review the availability of alternative methods of evaluating past education credits and experience to promote adult participation in postsecondary education, and the availability of remedial courses for adult students.

"(4) The Commission shall coordinate the study conducted under this subsection with the research and demonstration priorities of the National Institute of Education, and such other studies on student financial assistance as are authorised by this Act.

"(c) The Commission shall submit to the President and to the Congress such interim reports as it deems advisable and, not later than December 31, 1983, a final report of its study and investigation together with such recommendations, including recommendations for legislation, as the Commission deems advisable.

"(d) The Commission shall cease to exist 60 days after the submission of its final report.

"POWERS AND ADMINISTRATIVE PROVISIONS

"SEC. 104. (a) The Commission or, on authorization of the Commission, any subcommittee or member thereof, may, for the purposes of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, as the Commission or such subcommittee or member may deem advisable.

"(b) The Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government, shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law.

"(c) The Commisison is authorized to—

"(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

"(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

"(3) enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services;

"(4) procure supplies, services, and property, and make contracts without regard to the laws and procedures applicable to Federal agencies; and

"(5) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

"AUTHORIZATION

"SEC. 105. There are authorized to be appropriated $3,000,000 to carry out the provisions of this part for the period beginning October 1, 1981 through March 1, 1984.

"PART B—EDUCATION OUTREACH PROGRAMS

"FINDINGS

"SEC. 111. The Congress finds that—

"(1) the rapid pace of social, economic, and technological change has created pressing needs for postsecondary educational opportunities for adults in all stages of life;

"(2) postsecondary educational opportunities in the United States are traditionally provided for individuals between the ages of eighteen and twenty-two;

"(3) many adults are barred from advancement or self-sufficiency by lack of access to, and lack of retention in, postsecondary educational opportunities appropriate to their needs, or by lack of information or support services concerning the availability of postsecondary educational opportunities;

"(4) access to postsecondary educational opportunities is severely limited for adults whose educational needs have been inadequately served during youth, or whose age, sex, race, handicap, national origin, rural isolation, or economic circumstance may be a barrier to such opportunities;

"(5) with declining population growth rates, the future of postsecondary education in the United States is largely dependent upon its ability to respond to the challenges of new student populations;

"(6) service in continuing education will be better achieved through increased emphasis on planning and coordination which more effectively utilizes existing resources of both public and private sectors; and

"(7) to meet the unique problems and needs of adults who are disadvantaged in seeking access to postsecondary educational opportunities, resources must be marshalled from a wide range of institutions and groups, including community colleges, community-based educational institutions, business, industry, labor, and other public and private organizations and institutions.

"STATE ALLOTMENTS

"SEC. 112. (a)(1) From 90 per centum of the funds appropriated for this part for each fiscal year, the Secretary shall—

"(A) allot to each State having an agreement under section 1203 of this Act an amount which bears the same ratio to 60 per centum of such amount as the adult population of that State bears to the adult population of all States, and

"(B) allot 40 per centum of such amount to all States having an agreement under section 1203 on an equal basis,

except that no State shall receive less than $187,500 in any such fiscal year. If 90 per centum of the sums appropriated for any fiscal year are insufficient to pay the allotment specified in clauses (A) and (B) of the previous sentence and the exception contained in the previous sentence, the amount of each State's allotment under such clauses (A) nd (B) (but not the amount in the exception) shall be ratably reduced. If 90 per centum of the sums appropriated for any fiscal year are insufficient after the application of the previous sentence, the amount of each State's allotment shall be equal. In case additional funds become available in making such payments in any fiscal year during which the second and third sentence of this paragraph are applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(2) Ten per centum of the funds appropriated for this part shall be available for carrying out section 116.

"(b) If, in any fiscal year, a State does not wish to conduct comprehensive planning pursuant to section 113, the Secretary shall allot to such State an amount equal to the amount the State would otherwise receive for the conduct of programs of continuing education and information services under this part. The Secretary shall reallot the funds that would have been used by such State for the conduct of statewide planning under section 113 to all other States having agreements under section 1203. Such reallotments shall be made in proportion to their allotments pursuant to subsection (a).

"COMPREHENSIVE STATEWIDE PLANNING

"SEC. 113. (a)(1) Subject to paragraphs (2) and (3), each State with an agreement pursuant to section 1203 of this Act shall use at least 15 per centum but not to exceed 20 per centum of its allotment for the purpose of conducting comprehensive statewide planning for improving access and retention within the State to postsecondary educational programs for traditional and nontraditional learners, coordinating educational and occupational information and counseling services to youth and adults throughout the State, and promoting more effective and efficient use of available resources for continuing education within the State.

"(2) In any fiscal year in which appropriations for this part are equal to or exceed $18,500,000 but are less than $24,000,000, each State with an agreement pursuant to section 1203 of this Act shall use at least 10 per centum but not to exceed 15 per centum of its allotment for the purpose described in paragraph (1) of this subsection.

"(3) In any fiscal year in which the appropriations for this part are equal to or exceed $24,000,000, each State having an agreement pursuant to section 1203 of this Act shall use not to exceed 10 per centum of its allotment for the purpose described in paragraph (1) of this subsection.

"(b) A State shall submit to the Secretary at the end of each fiscal year for which sums have been received a list of programs assisted under this part, a brief description of the purposes of the programs, and an analysis of the relationship between grants and contracts awarded under this part and comprehensive statewide planning for postsecondary education.

"(c) Of the sums granted to States for comprehensive statewide planning, not less than 50 per centum shall be for the purpose of carrying out a program of statewide planning for continuing education in order to improve access for adults within the State to post-secondary education programs and to promote more effective and efficient use of available resources, including efforts to ensure equal treatment of applicants in the evaluation of grant proposals, except that the Secretary may, upon application, grant a waiver to a State which has demonstrated that the State has adequately provided for meeting the needs of adult learners in its statewide planning activities. Such planning shall give particular consideration to the educational needs of adults who have been inadequately served by programs of postsecondary education.

"(d) Planning undertaken pursuant to this section shall be coordinated, to the maximum extent feasible, with the planning activities under subpart 4 of part A and part B of title IV and section 485 of this Act; the Vocational Education Act; the Comprehensive Employment and Training Act; the Older Americans Act of 1965; the Rehabilitation Act of 1973; the Career Education Incentive Act; the Adult Education Act; the Veterans Readjustment Assistance Act; and other Federal, State, and local activities intended to provide outreach, guidance, counseling, and educational, student aid, and occupational information to persons within the State.

"(e) Each State may use the funds available for this section to conduct studies of student financial assistance needs and resources, information coordination, continuing education, and other topics consistent with the purposes of subsections (a) and (c) of this section.

"INFORMATION SERVICES

"SEC. 114. (a) Each State shall use not less than $50,000 nor more than 12 per centum of its allotment, whichever is greater, to conduct programs to develop and coordinate new and existing educational and occupational information and counseling programs to eliminate unnecessary duplication and to provide a more comprehensive delivery of services to both traditional and nontraditional learners seeking educational information and to youth and adults seeking occupational information.

"(b) Such educational and occupational information and counseling programs shall be coordinated to the maximum extent possible with those authorized by subpart 4 of part A and part B of title IV and section 485 of this Act; the Vocational Education Act; the Comprehensive Employment and Training Act; the Older Americans Act of 1965; the Rehabilitation Act of 1973; the Career Education Incentive Act; the Adult Education Act; the Veterans Readjustment Assistance Act; and other Federal, State, and local activities intended to provide outreach, guidance, counseling, and educational, student aid, and occupational information to persons within the State.

"(c) For the purposes of carrying out this section, each State may make grants to, and enter into contracts with, institutions of higher education, public, and private institutions and organizations, business, industry, and labor, or any combination thereof.

"CONTINUING EDUCATION

"SEC. 115. (a) Each State shall use such sums as may remain available from that State's allotment after reserving the amounts required to carry out the provisions of sections 113 and 114 of this part for the purpose of—

"(1) promoting access to and retention in postsecondary educational programs for adults whose educational needs have been inadequately served;

"(2) expanding and improving postsecondary education programs which help adults develop their occupational potential and prepare for transitions between education and work;

"(3) eliminating barriers posed by previous education or training, age, sex, race, handicap, national origin, rural isolation, or economic circumstance which may place adults at a disadvantage in seeking postsecondary educational opportunities;

"(4) strengthening statewide and other mechanisms of information, counseling, and referral which provide access to postsecondary education and serve the special needs of adults; and

"(5) developing strategies to promote the financial self-sufficiency of postsecondary education programs initiated pursuant to this part.

"(b) To promote the purposes of subsection (a), each State may make grants to and enter into contracts with public and private institutions and organizations, institutions of higher education, business, industry, and labor, or any combination thereof, for programs, such as—

"(1) the creation or expansion of labor education, training and technical assistance programs, and the development of cooperative relationships between State and local labor organizations and institutions and agencies which provide opportunities for continuing education;

"(2) the removal of barriers to continuing education caused by rural isolation or other rural-related factors;

"(3) legal, vocational, and health educational services and information services for older individuals who use preretirement education as a means to adjust to retirement;

"(4) the promotion of resource sharing for innovative uses of technology, including telecommunications, either on an interstate or intrastate basis, to overcome barriers to postsecondary educational opportunities;

"(5) educational and occupational information and counseling services designed to meet the special needs of adult women, particularly homemakers, and to assist their entry or reentry into postsecondary education and the labor force;

"(6) the collection and dissemination of information, including data banks, on sources of student financial assistance and information designed to assist individuals to make choices among postsecondary institutions, programs, and other educational opportunities;

"(7) community education service activities consistent with the purpose of this section for adults in rural areas;

"(8) postsecondary educational programs suited to individuals whose educational needs have been inadequately served, especially the handicapped, older individuals, migrant and seasonal farmworkers, individuals who can participate in programs only on a part-time basis, and individuals who otherwise would be unlikely to continue their education beyond high school;

"(9) child care services to assist individuals desiring to participate to enter or reenter the field of postsecondary education and the labor force; and

"(10) the promotion or delivery of postsecondary education services to women at the place of their employment or in conjunction with their employment.

"(c) No grant or contract may be entered into to carry out the activities described in clause (9) of subsection (b) unless the agreement to make the grant or the contract contains provisions designed to assure that—

"(1) the State will provide assurances that the State has established a cooperative agreement between the State entity responsible for planning under section 113 and the agency responsible for coordinating child care services within the State; and

"(2) funds made available pursuant to such grant or contract will be used for services furnished only by child care providers licensed in the State or child care providers who have applied for renewal of such a license and are determined by the State to be likely to be approved for renewal.

"(d) Each State may use an amount which does not exceed 5 per centum of sums available for this section or $40,000, whichever is greater, for the administration and operation of programs described in subsection (b) of this section.

"FEDERAL DISCRETIONARY GRANTS

"SEC. 116. (a) From 10 per centum of the sums appropriated to carry out the provisions of this part, the Secretary is authorized to make grants to and enter into contracts with public and private institutions and organizations, institutions of higher education, business, industry, labor, and States, or any combination thereof for activities which—

"(1) develop and evaluate innovative delivery systems to increase access to postsecondary education for underserved adults;

"(2) expand the range of educational and community resources used to meet the needs of underserved adults for continuing education;

"(3) promote the development of interstate educational delivery systems, cooperative and consortial arrangements, and programs (including telecommunications) which more effectively address regional needs for continuing education;

"(4) stimulate and evaluate creative approaches to the problems of access for adults inadequately served by existing educational offerings;

"(5) develop statewide, regional, or national programs to coordinate educational and occupational information, including information on student financial assistance, through creation and expansion of data banks for the more effective coordination and dissemination of such information;

"(6) assist States to perform their functions of authorizing institutions of higher education effectively; and

"(7) provide preservice and inservice training to teachers and administrative personnel involved in child care programs, including the recruitment and training of

low-income parents for child care positions, and provide specialized training in early childhood education, and to provide improved teacher certification criteria for child care programs.

"(b) No grant may be awarded under this section within a State unless the Secretary has provided the State entity responsible for comprehensive planning under section 1203, if applicable, an opportunity to comment on the relationship of the proposed grant to such planning.

"NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION

"SEC. 117. (a) The President shall appoint a National Advisory Council on Continuing Education consisting of eight representatives of Federal agencies having postsecondary continuing education and training responsibilities, including but not limited to, one representative each from the Departments of Education, Agriculture, Defense, and Labor, and the Veterans' Administration; and twelve members, not full-time employees of the Federal Government, who are knowledgeable and experienced in the field of continuing education, including State and local government officials, representatives of business, labor, and community groups, and adults whose educational needs have been inadequately served. The Advisory Council shall meet at the call of the chairman but not less than twice a year.

"(b) The Advisory Council shall advise the Secretary in the preparation of general regulations and with respect to policies and procedures arising in the administration of this title.

"(c) The Advisory Council shall examine all federally supported continuing education and training programs and make recommendations with regard to policies to eliminate duplication and to effectuate the coordination of programs under this title and other federally funded continuing education and training programs and services.

"(d) The Advisory Council shall make annual reports to the President, the Congress, and the Secretary, commencing on September 30, 1981, of its findings and recommendations, including recommendations for changes in the provisions of this title and other Federal laws relating to continuing education and training activities. The President shall transmit each such report to the Congress with his comments and recommendations. The Advisory Council shall make such other reports or recommendations to the President, the Congress, the Secretary, or the head of any other Federal department or agency as may be appropriate.

"(e) The Advisory Council may utilize the services and facilities of any agency of the Federal Government as may be necessary. The Advisory Council may accept, employ, and dispose of gifts or bequests to carry out its responsibilities under this title.

"DEFINITIONS

"SEC. 118. For the purpose of this subpart—

"(1) the term 'Commission' means the Commission on National Development in Postsecondary Education established under section 102;

"(2) the term 'Advisory Council' means the National Advisory Council on Continuing Education established under section 117;

"(3) the term 'adults whose educational needs have been inadequately served' means individuals eighteen years of age or older who, because of circumstances of age, sex, low income, handicap, minority status, rural isolation, status of unemployment or underemployment, lack of education, or other significant barriers have been discouraged from obtaining equal educational opportunities;

"(4) the term 'continuing education' means postsecondary instruction and support services designed to meet the educational needs of adults, including the expansion of available learning opportunities for adults whose educational needs are inadequately served by current educational offerings in their communities; and

"(5) the term 'adult population' means the population eighteen years old and older of a State and of all the States which shall be determined by the Secretary on the basis of the most recent satisfactory data available from the Department of Commerce.

"APPROPRIATIONS AUTHORIZED AND PAYMENTS

"SEC. 119. (a) There is authorized to be appropriated $20,000,000 for fiscal year 1981, $30,000,000 for fiscal year 1982; $40,000,000 for fiscal year 1983; $50,000,000 for fiscal year 1984; and $60,000,000 for fiscal year 1985 to carry out the provisions of this part.

"(b) Payments under this part shall not exceed two-thirds of the cost of activities assisted under this part. The non-Federal share may be in cash or in kind, but may not include payments received under any other Federal program.

"(c) Each State is authorized to use not more than 50 per centum of the funds provided under section 113 for the purpose of carrying out programs under section 118.".

(b) Subpart 5 of part A of title IV of the Act is repealed.

TITLE II—AMENDMENT AND EXTENSION OF TITLE II OF THE HIGHER EDUCATION ACT OF 1965

EXTENSION AND REVISION OF LIBRARY PROGRAMS

SEC. 201. Title II of the Act is amended to read as follows:

"TITLE II—COLLEGE AND RESEARCH LIBRARY ASSISTANCE AND LIBRARY TRAINING AND RESEARCH

"PURPOSE; AUTHORIZATION

"SEC. 201. (a) The Secretary shall carry out a program to assist—

"(1) institutions of higher education in the acquisition of library resources, including law library resources, and in the establishment and maintenance of networks for sharing library resources in accordance with part A;

"(2) in the training of persons in librarianship and to encourage research and development relating to the improvement of libraries (including the promotion of economical and efficient information delivery, cooperative efforts, and developmental projects) in accordance with part B;

"(3) the Nation's major research libraries, in maintaining and strengthening their collections, and in making their holdings available to other libraries whose users have need for research materials, in accordance with part C; and

"(4) the establishment of a National Periodical System Corporation, in accordance with part D.

"(b)(1)(A) There are authorized to be appropriated to carry out part A $10,000,000 for the fiscal year 1981, $30,000,000 for the fiscal year 1982 and for each of the two succeeding fiscal years, and $35,000,000 for the fiscal year 1985.

(B) There are authorized to be appropriated to carry out part B $10,000,000 for the fiscal year 1981, $30,000,000 for the fiscal year 1982 and for each of the two succeeding fiscal years, and $35,000,000 for the fiscal year 1985.

(C) There are authorized to be appropriated to carry out part C $10,000,000 for the fiscal year 1981, $15,000,000 for the fiscal year 1982 and each of the three succeeding fiscal years.

"(2) Notwithstanding paragraph (1), no funds are authorized to be appropriated for part D unless the appropriation for each of parts A, B, and C equals or exceeds the amount appropriated for each such part, respectively, for fiscal year 1979.

"(c) No grant may be made under this title for books, periodicals, documents, or other related materials to be used for sectarian instruction or religious worship, or primarily in connection with any part of the program of a school or department of divinity.

"NOTIFICATION OF STATE AGENCY

"SEC. 202. Each institution of higher education which receives a grant under this title shall annually inform the State agency designated pursuant to section 1203 of its activities under this title.

"PART A—COLLEGE LIBRARY RESOURCES

"RESOURCE DEVELOPMENT GRANTS

"SEC. 211. (a) From the amount appropriated for this part, the Secretary shall make grants to institutions of higher education or combinations thereof (and to each branch of an institution which is located in a community different from that in which its parent institution is located), and to other public and private nonprofit library institutions whose primary function is to provide library and information services to institutions of higher education on a formal, cooperative basis. The amount of a resource development grant under this section shall not exceed $10,000.

"(b) A grant under this part may be made only if the application provides—

"(1) information about the institution and its library resources as prescribed by the Secretary in regulations;

"(2) satisfactory assurance that the applicant will expend, for all library material expenditures (exclusive of construction) during the fiscal year for which the grant is sought, from funds other than funds received under this part, an amount not less than the average annual aggregate amount or the average amount per full-time equivalent student it expended for such purposes during the two fiscal years preceding the fiscal year for which assistance is sought under this part;

"(3) for such fiscal control and fund accounting procedures as are necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(4) for making such reports as the Secretary may require and for keeping such records and for affording such access thereto as the Secretary deems necessary to assure the correctness and verification of such reports.

"(c) If the Secretary determines, in accordance with regulations, that there are very unusual circumstances which prevent the applicant from making the assurance required by subsection (b)(2), the requirement for such assurance may be waived. For purposes of this subsection, the term 'very unusual circumstances' means theft, vandalism, fire, flood, earthquake, or other occurrence which may temporarily reduce the level of expenditures for library materials and total library purposes, or which resulted in unusually high expenditures for library materials and total library purposes.

"(d) Grants under this part may be used only for books, periodicals, documents, magnetic tapes, phonographic records, audiovisual materials, and other related library materials (including necessary binding) and for the establishment and maintenance networks for sharing library resources with other institutions of higher education.

"PART B—LIBRARY TRAINING, RESEARCH, AND DEVELOPMENT

"GRANTS AUTHORIZED

"SEC. 221. From the amount appropriated for this part, the Secretary shall make grants in accordance with sections 222, 223, and 224. Of such amount, one-third shall be available for the purposes of each such section.

"LIBRARY CAREER TRAINING

"SEC. 222. (a) The Secretary shall make grants to, and contracts with, institutions of higher education and library organizations or agencies to assist them in training persons in librarianship. Such grants or contracts may be used by such institutions, library organizations, or agencies (1) to assist in covering the cost of courses of training or study (including short term or regular session institutes), (2) to establish and maintain fellowships or traineeships with stipends (including allowances for travel, subsistence, and other expenses) for fellows and others undergoing training and their dependents, not in excess of such maximum amounts as may be determined by the Secretary, and (3) to establish, develop, or expand programs of library and information science, including new techniques of information transfer and communication technology.

"(b) Not less than 50 per centum of the grants made under this section shall be for the purpose of establishing and maintaining fellowships or traineeships under subsection (a)(2).

"RESEARCH AND DEMONSTRATIONS

"SEC. 223. The Secretary is authorized to make grants to, and contracts with, institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration projects related to the improvement of libraries, training in librarianship, and information technology, and for the dissemination of information derived from such projects.

"SPECIAL PURPOSE GRANTS

"SEC. 224. (a) The Secretary is authorized to make special purpose grants to (1) institutions of higher education to meet special national or regional needs in the library or information sciences, (2) combinations of institutions of higher education which demonstrate a need for special assistance in establishing and strengthening joint-use library facilities, resources, or equipment, (3) other public and private nonprofit library institutions which provide library and information services to institutions of higher education on a formal, cooperative basis for the purpose of establishing, developing, or expanding programs or projects that improve their services, and (4) institutions of higher education which demonstrate a need for special assistance to develop or expand programs or projects that will service the communities in which the institutions are located.

"(b) A grant under this section may be made only if the application therefor (whether by an individual institution or a combination of institutions) is approved by the Secretary on the basis of criteria prescribed in regulations and provides satisfactory assurance that (1) the applicant will expend during the fiscal year for which the grant is sought (from funds other than funds received under this title), for the same purpose as such grant, an amount from such other sources equal to not less than one-third of such grant, and (2) the applicant will expend during such fiscal year from such other sources for all library purposes (exclusive of construction) an amount not less than the average annual amount it expended for such purposes during the two fiscal years preceding the fiscal year for which the grant is sought under this section.

"PART C—STRENGTHENING RESEARCH LIBRARY RESOURCES

"ELIGIBILITY FOR ASSISTANCE

"SEC. 231. (a)(1) From the amount appropriated for this part, the Secretary shall make grants to institutions with major research libraries.

"(2) For the purposes of this part, the term 'major research library' means a public or private nonprofit institution (including the library resources of an institution of higher education), an independent research library, or a State or other public library, having a library collection which is available to qualified users and which—

"(A) makes a significant contribution to higher education and research;

"(B) is broadly based and is recognized as having national or international significance for scholarly research;

"(C) is of a unique nature, and contains material not widely available; and

"(D) is in substantial demand by researchers and scholars not connected with that institution.

"(b) No institution receiving a grant under this part for any fiscal year may receive a grant under section 211 of 224 for that year.

"GEOGRAPHICAL DISTRIBUTION OF GRANTS

"SEC. 232. In making grants under this part, the Secretary shall endeavor to achieve broad and equitable geographical distribution throughout the Nation.

"PART D—NATIONAL PERIODICAL SYSTEM

"PURPOSE

"SEC. 241. It is the purpose of this part to assess the feasibility and advisability of, and, if feasible and advisable, prepare a design for a national periodical system to serve as a national periodical resource by contributing to the preservation of periodical materials and by providing access to a comprehensive collection of periodical literature to public and private libraries throughout the United States.

"ESTABLISHMENT

"SEC. 242. There is established a nonprofit corporation, to be known as the National Periodical System Corporation, which shall not be considered an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this part, and to the extent consistent with this Act, to the laws of the jurisdiction where incorporated.

"FUNCTIONS OF THE CORPORATION

"SEC. 243. (a) The Corporation shall assess the feasibility and advisability of a national system and, if feasible and advisable, design such a system to provide reliable and timely document delivery from a comprehensive collection of periodical literature. A design may be implemented by the Corporation only in accordance with the provisions of section 248.

"(b) Any design for a national periodical system shall include provisions for such system to—

"(1) acquire current and past issues of periodicals, and to preserve and maintain a dedicated collection of such documents;

"(2) provide information on periodicals to which the system can insure access, including those circulated from private sector sources, and cooperate in efforts to improve bibliographic and physical access to periodicals;

"(3) make such periodicals available through libraries, by loan, photoreproduction or other means;

"(4) cooperate with and participate in international borrowing and lending activities as may be appropriate for such purposes;

"(5) ensure that copyright owners who do not wish to participate in such system are not required to participate;

"(6) ensure that copyright fees are fixed by the copyright owners for any reproduction or dissemination of a document delivered through the system;

"(7) complement and not duplicate activities in the private sector to provide access to periodical literature;

"(8) ensure, to the maximum extent feasible, that such system not adversely affect the publication and distribution of current periodicals, particularly scholarly periodicals of small circulation; and

"(9) ensure coordination with existing programs to distribute periodical literature, including programs of regional libraries and programs of interlibrary loan and library networks.

"(c) Any design shall include provisions for the role, if any, of the Corporation in the governance, administration, and operation of the system.

"(d) Any design shall be accompanied by an estimate of the cost for each fiscal year of carrying out the system proposed in the design.

"BOARD OF DIRECTORS

"SEC. 244. (a) The Corporation shall have a Board of Directors, consisting of fifteen members, including fourteen members appointed by the President, by and with the advice and consent of the Senate, and the Director of the Corporation.

"(b) The members of the Board appointed by the President shall be equitably representative of the needs and interests of the Government, academic and research communities, libraries, publishers, the information community, authors, and the public. Except for the initial Board of Directors, the members shall be appointed after consultation with the Board.

"(c) The members of the initial Board of Directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the laws of the jurisdiction in which it is incorporated.

"(d) The term of office for each member of the Board (other than the Director) shall be two years except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Notwithstanding the preceding provisions of this paragraph, a member whose term has expired may serve until his successor has taken office.

"(e)(1) The members of the Board shall not, by reason of membership, be deemed employees of the United States. Except as provided in paragraph (2), members shall, while engaged in activities of the Board, be entitled to receive compensation at the rate equal to the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day and, while away from their homes or regular place of business, may be allowed travel expenses.

"(2) Members of the Corporation who are full-time officers and employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Corporation.

"(f) Eight members of the Board shall constitute a quorum.

"(g) The Board shall elect annually one of its members to serve as the Chairman.

"(h) The Board shall meet annually or at the call of the Chairman or a majority of its members.

"DIRECTOR AND STAFF OF CORPORATION

"SEC. 245. (a) The Corporation shall have a Director, and such other officers as appointed by the Board for the terms and at rates of compensation fixed by the Board. The Director shall manage the operations of the Corporation, subject to such rules as may be prescribed by the Board.

"(b) Subject to such rules as may be prescribed by the Board, the Director may appoint and fix the pay of personnel and may procure temporary and intermittent services.

"NONPROFIT NATURE OF CORPORATION

"SEC. 246. (a) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

"(b) No part of the incomes or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

"(c) The National Periodical System Corporation shall be exempt from taxation now or hereafter imposed by the United States, or any territory or possession thereof, or by any State, county, municipality, or local taxing authority.

"AUTHORITY OF CORPORATION

"SEC. 247. (a) The Corporation is authorized to—

"(1) obtain grants from and to make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;

"(2) conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

"(3) lease, purchase, or otherwise acquire, own, hold, improve, use or otherwise deal in and with any property (real, personal, or mixed), or any interest therein, wherever situated;

"(4) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets; and

"(5) enter into contracts, execute instruments, incur liabilities, and do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

"(b) To carry out its functions and to engage in the activities described in subsection (a), the Corporation shall have the usual powers conferred upon a nonprofit corporation by the jurisdiction in which the Corporation is incorporated.

"(c) The Corporation may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States. The Administrator of General Services shall provide to the Corporation on a reimbursable basis such administrative support services as the Corporation may request.

"(d) The Corporation is authorized to accept, hold, administer, and use gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the authority of the Corporation pursuant to section 243. For the purpose of Federal income, estate, and gift taxes, property accepted by the National Periodical System Corporation shall be a gift, bequest, or devise to the United States.

"(e) The Corporation shall be subject t the provisions of section 552b of title 5, United States Code.

"IMPLEMENTING THE DESIGN

"SEC. 248. Any design established under this part shall be submitted to the Congress not later than December 31, 1981, and may not be implemented until the design is approved in whole or in part by enactment of a joint resolution of the Congress approving such design.

"COPYRIGHT ACT

"SEC. 249. Nothing in this part shall be considered to amend, affect, or redefine the provisions of title 17, United States Code, relating to copyrights.

"DEFINITIONS

"SEC. 250. As used in this part—

"(1) the term 'access' means the ability to identify, locate, and obtain a specific item (generally a periodical article), and includes both bibliographic access (the ability to identify a specific item from its description) and physical access to materials (the ability to obtain the text of an item in an appropriate form, such as visual, audio, or printed formats);

"(2) the term 'Board' means the Board of Directors of the National Periodical System Corporation;

"(3) the term 'comprehensive collection' means a collection of periodical titles which will provide access to approximately 90 per centum of the requests received, except that such titles need not all be physically located in the same place;

"(4) the term 'copyright owner' means the owner of any one of the exclusive rights comprised in a copyright;

"(5) the term 'Corporation' means the National Periodical System Corporation established under this part;

"(6) the term 'dedicated collection' means a collection of periodicals maintained for the sole purpose of assuring the provision of permanent physical access;

"(7) the term 'document' means any portion or the entire issue of a periodical;

"(8) the term 'periodical' means a publication consisting of issues in a continuous series under the same title published at regular or irregular intervals, over an indefinite period, individual issues in the series being numbered consecutively or each issue being dated; and

"(9) the term 'private sector' means nongovernmental, non-profit, and for-profit organizations.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 251. (a) There are authorized to be appropriated, for the purpose of carrying out this part, $750,000 for each of fiscal years 1981 and 1982, and such sums as may be necessary for each of the fiscal years 1983, 1984, and 1985.

"(b) In any fiscal year after the joint resolution described in section 248 is enacted, there are authorized to be appropriated such additional sums as may be necessary to implement an approved design for any such fiscal year ending prior to October 1, 1985.".

TITLE III—ESTABLISHMENT OF A NEW TITLE III OF THE HIGHER EDUCATION ACT OF 1965

PROGRAMS AUTHORIZED

SEC. 301. Title III of the Act is amended to read as follows:

"TITLE III—INSTITUTIONAL AID

"FINDINGS AND PURPOSES

"SEC. 301. (a) The Congress finds that—

"(1) many institutions of higher education in this era of declining enrollments and scarce resources face problems which threaten their ability to survive;

"(2) the problems relate to the management and fiscal operations of certain institutions of higher education, as well as to an inability to engage in long-range planning, recruitment activities, and development activities;

"(3) the solution of the problems of these institutions would enable them to become viable, thriving institutions of higher education; and

"(4) these institutions play an important role in the American system of higher education, and there is a strong national interest in assisting them in solving their problems and in stabilizing their management and fiscal operations.

"(b) It is the purpose of this title to assist such institutions through a program of Federal assistance.

"PART A—STRENGTHENING INSTITUTIONS

"PROGRAM PURPOSE

"SEC. 311. (a) The Secretary shall carry out a program, in accordance with this part, to improve the academic quality, institutional management, and fiscal stability of eligible institutions, in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

"(b) From the sums available for this part under section 347(a)(1), the Secretary may award grants to any eligible institution with an application approved under section 341 in order to assist such an institution to plan, develop, or implement activities that promise to strengthen the institution. Special consideration shall be given to applications which propose to engage in the following activities pursuant to the institution's plan:

"(1) faculty development;

"(2) funds and administrative management;

"(3) development and improvement of academic programs;

"(4) acquisition of equipment for use in strengthening funds management and academic programs;

"(5) joint use of facilities such as libraries and laboratories; and

"(6) student services.

"DEFINITIONS

"SEC. 312. For purposes of this part:

"(1) The term 'educational and general expenditures' means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support scholarships and fellowships, operation, and maintenance expenditures for physical plant, and any mandatory transfers which the institution is required to pay by law.

"(2) The term 'eligible institution' means—

"(A) an institution of higher education—

"(i)(I) which, in the case of an institution which awards a bachelor's degree, has an enrollment which includes a substantial percentage of students receiving awards under subpart 1 of part A of title IV, the average amount of which is high in comparison with the average amount of all grants awarded under such subpart to students at such institutions, and (II) which, in the case of junior or community colleges, has an enrollment which includes a substantial percentage of students receiving awards under subpart 1 of title IV, the average amount of which is high in comparison with the average amount of all grants awarded under such subpart to students at such institutions;

"(ii) except as provided in section 342(a), the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

"(iii)(I) is legally authorized to provide, and provides within the State, an educational program for which it awards a bachelor's degree, or (II) is a junior or community college;

"(iv) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation;

"(v) except as provided in section 342(b) has, during the five academic years preceding the academic year for which it seeks assistance under this part—

"(I) met the requirement of either clause (iii)(I) or (iii)(II), or of both such clauses (simultaneously or consecutively); and

"(II) met the requirement of clause (iv); and

"(vi) meets such other requirements as the Secretary may prescribe; or

"(B) any branch of any institution of higher education described under subparagraph (A) which by itself satisfies the requirements contained in clauses (i) and (ii) of such subparagraph.

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under subparagraph (A)(i) shall be given twice the weight of the factor described under subparagraph (A)(ii).

"(3) The term 'full-time equivalent students' means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve) at such institution.

"(4) The term 'junior or community college' means an institution of higher education—

"(A) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

"(B) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

"(C) that—

"(i) provides an educational program of not less than two years that is acceptable for full credit toward such a degree, or

"(ii) offers a two-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semi-professional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"DURATION OF GRANT

"SEC. 313. (a) The Secretary may award a grant to an eligible institution under this part for—

"(1) not to exceed three years, or

"(2) not less than four nor more than seven years,

subject for each fiscal year to the availability of appropriations therefor. The Secretary shall not accept the application of an eligible institution for a grant under both paragraphs (1) and (2) for a fiscal year.

"(b) The Secretary shall not award a grant under this part to an eligible institution that has, for any prior fiscal year, received a grant under subsection (a)(2).

"(c) Notwithstanding subsection (a), the Secretary may award a grant to an eligible institution under this part for a period of one year for the purpose of assisting such institution in the preparation of plans and applications under this part.

"PART B—AID TO INSTITUTIONS WITH SPECIAL NEEDS

"PROGRAM PURPOSE

"SEC. 321. (a) The purpose of this part is to provide for a program of short-term Federal assistance to strengthen the planning, management, and fiscal capabilities of institutions with special needs.

"(b) From the sums available for this part under section 347(a)(1), the Secretary may make grants to any institution with special needs with an application approved under section 341 in order to assist such an institution to plan, develop, or implement activities consistent with the purpose of this part. Such activities shall include—

"(1) faculty development;

"(2) funds and administrative management;

"(3) development and improvement of academic programs;

"(4) acquisition of equipment for use in strengthening funds management and academic programs;

"(5) joint use of facilities such as libraries and laboratories; and

"(6) student services.

"DEFINITIONS

"SEC. 322. (a) For purposes of this part:

"(1) The term 'educational and general expenditures' means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation, and maintenance expenditures of physical plant, and any mandatory transfers which the institution is required to pay by law.

"(2) The term 'institution with special needs' means—

"(A) an institution of higher education—

"(i)(I) which, in the case of an institution which awards a bachelor's degree, has an enrollment which includes a substantial percentage of students receiving need-based assistance under title IV of this Act, the average amount of which assistance is high in comparison with the average amount of all assistance provided under such title to students at such institutions, and (II) which, in the case of junior or community colleges, has an enrollment which includes a substantial percentage of students receiving need-based assistance under title IV, the average amount of which assistance is high in comparison with the average amount of all assistance provided under such title to students at such institutions, and

"(ii) except as provided in section 342(a), the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

"(iii)(I) is legally authorized to provide, and provides within the State, an educational program for which it awards a bachelor's degree, or (II) is a junior or community college;

"(iv) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation;

"(v) except as provided in section 342(b) has, during the five academic years preceding the academic year for which it seeks assistance under this part—

"(I) met the requirement of either clause (iii)(I) or (iii)(II), or of both such clauses (simultaneously or consecutively); and

"(II) met the requirement of clause (iv);

"(vi) has an enrollment of not less than 100 full-time equivalent students in the academic year for which the determination is made; and

"(vii) meets such other requirements as the Secretary may prescribe; or

"(B) any branch of any institution of higher education described under subparagraph (A) which by itself satisfies the requirements contained in clauses (i), (ii), and (vi) of such subparagraph and which is located in a community different from that in which its parent institution is located.

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under subparagraph (A)(i) shall be given the same weight as the factor described under subparagraph (A)(ii), and the Secretary may also consider the factors specified under subsection (b) of this section.

"(3) The term 'full-time equivalent students' means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time at such institution (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve).

"(4) The term 'junior or community college' means an institution of higher education—

"(A) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

"(B) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

"(C) that—

"(i) provides an educational program of not less than two years that is acceptable for full credit toward such a degree, or

"(ii) offers a two-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semi-professional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"(b) In determining whether an institution is an institution with special needs under subsection (a)(2), the Secretary may also consider the following factors:

"(1) extreme financial limitations requiring low faculty salaries, low costs of instruction for students, and low library expenditures;

"(2) a little or no endowment, whether or not unrestricted;

"(3) a high student to faculty ratio;

"(4) a substantial percentage of students receiving need-based Federal student assistance;

"(5) limited library resources;

"(6) a low percentage of faculty with doctorate degrees;

"(7) poor physical facilities and limited resources to maintain physical facilities;

"(8) little or no support from foundations, alumni, or corporations;

"(9) limited or no sponsored research or faculty publications;

"(10) inadequate development offices and a limited capacity for long-range planning; and

"(11) poor or inadequate fiscal management and accounting procedures.

"DURATION OF GRANT

"SEC. 323. The Secretary may make a grant to any institution with special needs under this part for a period of not more than five years. A grant to enhance the planning capabilities of an institution shall not exceed one year.

"FEDERAL SHARE

"SEC. 324. The Federal share of the cost of grants made to institutions with special needs under this part shall be 100 per centum for the first two years in which an institution receives a grant, 90 per centum for the third year an institution receives a grant, 80 per centum for the fourth year an institution receives a grant, and 70 per centum for the fifth year an institution receives a grant.

"PART C—CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B

"ESTABLISHMENT OF CHALLENGE GRANT PROGRAM

"SEC. 331. (a)(1) From the sums available under section 347(a)(2) for each fiscal year, the Secretary may award a challenge grant to each institution—

"(A) which is an eligible institution under part A or would be considered to be such an institution if section 312(2)(A)(iii) referred to a postgraduate degree rather than a bachelor's degree; or

"(B) which is an institution with special needs under part B or would be considered to be such an institution if section 322(a)(2)(A)(iii) referred to a postgraduate degree rather than a bachelor's degree.

"(2) The Secretary may waive the requirements set forth in subparagraphs (A) and (B) of paragraph (1) with respect to a postgraduate degree in the case of any institution otherwise eligible under such paragraph for a challenge grant upon determining that the institution makes a substantial contribution to medical education opportunities for

minorities and the economically disadvantaged.

"(b) The Secretary may make a grant under this section for a period of not more than 5 years. A grant under this section may be used for the programs and activities described in part A or part B, as the case may be.

"APPLICATIONS FOR CHALLENGE GRANTS

"SEC. 332. (a) Any institution eligible for a challenge grant under section 331(a) may apply for such a grant under section 341, except that the application for the purpose of this part shall—

"(1) provide evidence that funds are available to the applicant to match funds that the Secretary is requested to make available to the institution as a challenge grant;

"(2) in the case of an application by a public institution, contain the recommendations of an appropriate State agency responsible for higher education in the State, or provide evidence that the institution requested the State agency to comment but the State agency failed to comment; and

"(3) in the case of an application by an institution described under section 331(a)(1)(B), demonstrate how challenge grant funds will be used to eradicate the conditions enumerated in section 322(b)(1) through (11), and lead to greater financial independence.

"(b) Not later than April 1 of the fiscal year preceding the fiscal year in which any grant is to be made under this part, the Secretary shall determine which institutions will receive challenge grants under this part and notify the institutions of the amount of the grant.

"(c) In approving applications for grants under this part, preference shall be given to institutions which are receiving, or have received, grants under part A or part B.

"PART D—GENERAL PROVISIONS

"APPLICATIONS FOR ASSISTANCE

"SEC. 341. (a) Any institution which is eligible for assistance under this title may submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate its need for assistance. Subject to the availability of appropriations to carry out this title, the Secretary may approve an application for a grant under this title if the application meets the requirements of subsection (b) and shows that the applicant is eligible for assistance in accordance with the part of this title under which the assistance is sought.

"(b) An institution, in its application for a grant, shall—

"(1) set forth, or describe how it will develop, a comprehensive development plan to strengthen the institution's academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this title);

"(2) set forth policies and procedures to ensure that Federal funds made available under this title for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 311(b) or 321(b), and in no case supplant those funds;

"(3) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this title;

"(4) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this title;

"(5) provide for making such reports, in such form and containing such information, as the Secretary may require to carry out his functions under this title (including not less than one report annually setting forth the institution's progress toward achieving the objectives for which the funds were awarded), and for keeping such records and affording such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports;

"(6) provide that the institution will comply with the limitations set forth in section 346;

"(7) include such other information as the Secretary may prescribe; and

"(8) describe in a comprehensive manner any development project for which funds are sought under the application and include—

"(A) a description of the various components of the development project, including the estimated time required to complete each such component;

"(B) in the case of any development project which consists of several components (as described by the applicant pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this title in conjunction with other parts of the development project (as specified by the applicant);

"(C) an evaluation by the applicant of the priority given any development project for which funds are sought in relation to any other projects for which funds are sought by the applicant under this title, and a similar evaluation regarding priorities among the components of any single development project (as described by the applicant pursuant to subparagraph (A));

"(D) in the case of a request for an award for a period of more than one year, a statement of reasons explaining why funds are necessary for each year of such period and why a single year award would be inadequate;

"(E) information explaining the manner in which the development project will assist the applicant to prepare for the critical financial problems that all institutions of higher education will face during the subsequent decade as a result of declining enrollment, increased energy costs, and other problems;

"(F) a detailed budget showing the manner in which funds for any development project would be spent by the applicant; and

"(G) a detailed description of any activity which involves the expenditure of more than $25,000, as identified in the budget referred to in subparagraph (F).

"WAIVER AUTHORITY AND REPORTING REQUIREMENT

"SEC. 342. (a)(1) The Secretary may waive the requirements set forth in section 312(2)(A)(ii) or section 322(a)(2)(A)(ii) if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A or as an institution with special needs under part B (as the case may be) is otherwise consistent with the purposes of such parts.

"(2) The Secretary shall submit to the Congress each year a report concerning the institutions which, although not satisfying the criterion contained in section 312(2)(A)(ii) or section 322(a)(2)(A)(ii), have been determined to be eligible institutions under part A or institutions with special needs under part B, as the case may be. Such report shall—

"(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with section 312(2)(A)(ii) or section 322(a)(2)(A)(ii), as the case may be; and

"(B) contain a list of each institution determined to be an eligible institution under part A or as an institution with special needs under part B and include a statement of the reasons for each such determination.

"(b) The Secretary may waive the requirement set forth in section 312(2)(v) and 322(a)(2)(v) in the case of an institution—

"(1) located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians;

"(2) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Spanish-speaking people;

"(3) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of individuals living in rural areas, whose needs are for the most part unserved by other postsecondary education institutions;

"(4) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of low-income individuals; or

"(5) wherever located, if the Secretary determines that the institution has traditionally served substantial numbers of black students.

"APPLICATION REVIEW PROCESS

"SEC. 343. (a)(1) All applications submitted under this title by institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary. The Secretary shall ensure that no individual assigned under this section to review any application has any conflict of interest with regard to the application which might impair the impartiality with which the individual conducts the review under this section.

"(2) All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this title and consistent with the provisions of this title, including—

"(A) explanations and examples of the types of activities referred to in section 311(b) that should receive special consideration for grants awarded under part A of the types of activities referred to in section 321(b) that should receive special consideration for grants awarded under part B;

"(B) an enumeration of the factors to be used to determine the quality of applications submitted under this title; and

"(C) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this title, the amount of any such grant, and the duration of any such grant.

"(b) In awarding grants under this title, the Secretary shall take into consideration the recommendations of the panel made under subsection (a).

"(c) Not later than June 30 of each year, the Secretary shall notify each institution of higher education making an application under this title of—

"(1) the scores given the applicant by the panel pursuant to this section,

"(2) the recommendations of the panel with respect to such application, and

"(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this title, and any modifications, if any, in the recommendations of the panel made by the Secretary.

"COOPERATIVE ARRANGEMENTS

"SEC. 344. (a) The Secretary may make grants to encourage cooperative arrangements—

"(1) with funds available to carry out part A, between institutions eligible for assistance under part A; or

"(2) with funds available to carry out part B, between institutions eligible for assistance under part B;

for the activities described in section 311(b) or section 321(b), as the case may be, so that the resources of the cooperating institutions might be combined and shared to achieve the purposes of such parts and avoid costly duplicative efforts.

"(b) The Secretary shall give priority to grants for the purposes described under subsection (a) whenever the Secretary determines that the cooperative arrangement is geographically and economically sound.

"(c) Grants to institutions having a cooperative arrangement may be made under this section for a period as determined under section 313 or 323, as the case may be.

"ASSISTANCE TO INSTITUTIONS UNDER OTHER PROGRAMS

"SEC. 345. (a) Each institution which the Secretary determines to be an eligible institution under part A or an institution with special needs under part B shall be eligible for waivers in accordance with subsection (b).

"(b)(1) Subject to, and in accordance with, regulations promulgated for the purpose of this section, in the case of any application by an institution referred to in subsection (a) for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.

"(2) The provisions of this section shall apply to any program authorized by title II, IV, VII, or VIII of this Act.

"(c) The Secretary shall not waive, under subsection (b), the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 per centum of the appropriations for the program for any fiscal year.

"LIMITATIONS

"SEC. 346. The funds appropriated under section 347 may not be used—

"(1) for a school or department of divinity or any religious worship or sectarian activity;

"(2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution;

"(3) for an activity that is inconsistent with a State plan of higher education applicable to such institution; or

"(4) for purposes other than those set forth in the approved application under which the funds were made available to the institution.

"AUTHORIZATIONS

"SEC. 347. (a)(1) There are authorized to be appropriated to carry out parts A and B $175,000,000 for the fiscal year 1982, $185,000,000 for the fiscal year 1983, $200,000,000 for the fiscal year 1984, and $220,000,000 for the fiscal year 1985. Of the amounts appropriated under this paragraph for each fiscal year, 50 per centum shall be made available to carry out part A and 50 per centum shall be made available to carry out part B.

"(2) There are authorized to be appropriated to carry out part C $25,000,000 for the fiscal year 1982, $35,000,000 for the fiscal year 1983, $45,000,000 for the fiscal year 1984, and $50,000,000 for the fiscal year 1985.

"(b) In the event of a multiple year award to any institution under this title, the Secretary shall make funds available for such award from funds appropriated for this title for the fiscal year in which such funds are to be used by the recipient.

"(c)(1) Of the sums appropriated under subsection (a)(1) for any fiscal year for part A, the Secretary shall make available to use for the purposes of each such part—

"(A) not less than 24 per centum to institutions that are junior or community colleges, and

"(B) the remainder to institutions that plan to award a bachelor's degree during that year.

"(2) Of the sums appropriated under subsection (a)(1) for any fiscal year for part B, the Secretary shall make available to use for the purposes of each such part—

"(A) not less than 30 per centum to institutions that are junior or community colleges, and

"(B) the remainder to institutions that plan to award a bachelor's degree during that year.

"(d) Of the sums appropriated under subsection (a)(1) for the purpose of part A for any fiscal year, the Secretary shall make available not less than 25 per centum for grants under section 313(a)(2). Any funds made available under this subsection for such grants which are not expended during the fiscal year for which such funds were appropriated shall remain available for expenditure for the purpose of making such grants during subsequent fiscal years.

"(e) The Secretary shall assure that in each fiscal year the amount available under part B for institutions with special needs that historically serve substantial numbers of black students will not be less than 50 per centum of the amount received by such institutions for fiscal year 1979.".

TITLE IV—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

STATEMENT OF PURPOSE

SEC. 401. Section 401(a) of the Act is amended—

(1) by striking out "qualified students" and inserting in lieu thereof "eligible students (defined in accordance with section 484)"; and

(2) by striking out "of exceptional need who, for lack of such a grant, would be unable to obtain the benefits of a postsecondary education" in paragraph (2) and inserting in lieu thereof "who demonstrate financial need".

PELL GRANTS

SEC. 402. (a) Section 411(a)(1) of the Act is amended to read as follows:

"SEC. 411. (a)(1)(A) The Secretary shall, during the period beginning July 1, 1972, and ending September 30, 1985, pay to each eligible student (defined in accordance with section 484) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a basic grant in the amount for which that student is eligible, as determined pursuant to paragraph (2).

"(B) The purpose of this subpart is to provide a basic grant that (i) as determined under paragraph (2), will meet in academic year 1985–1986, 70 per centum of a student's cost of attendance not in excess of $3,700; and (ii) in combination with reasonable parental or independent student contribution and supplemented by the programs authorized under subparts 2 and 3 of this part, will meet 75 per centum of a student's cost of attendance, unless the institution determines that a greater amount of assistance would better serve the purposes of section 401.

"(C) Basic grants made under this subpart shall be known as 'Pell Grants'.".

(b)(1) Section 411(a)(2)(A)(i) of the Act is amended to read as follows:

"(2)(A)(i) The amount of the basic grant for a student eligible under this part shall be—

"(I) $1,900 for academic year 1981–1982,

"(I) $2,100 for academic year 1982–1983,

"(III) $2,300 for academic year 1983–1984,

"(IV) $2,500 for academic year 1984–1985, and

"(V) $2,600 for academic year 1985–1986,

less an amount equal to the amount determined under section 482 to be the expected family contribution with respect to that student for that year.".

(2) Section 411(a)(2)(A)(ii) of this Act is amended by striking out "February 1 of each year" and inserting in lieu thereof "January 1, 1981, October 1, 1981, and on October 1 of each succeeding year".

(c)(1) Section 411(a)(2)(B)(i) of the Act is amended to read as follows:

"(B)(i) The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed—

"(I) 50 per centum of the cost of attendance (as defined under section 482(d)) at the institution at which the student is in attendance for that year, when the maximum grant is less than or equal to $1,900;

"(II) 55 per centum of such cost of attendance when the maximum basic grant is more than $1,900 but is less than $2,100;

"(III) 60 per centum of such cost of attendance when the maximum basic grant is at least $2,100 but is less than $2,300;

"(IV) 65 per centum of such cost of attendance when the maximum basic grant is at least $2,300 but is less than $2,600; and

"(V) 70 per centum of such cost of attendance when the maximum basic grant is $2,600.".

(2) Section 411(a)(2)(B)(ii) of the Act is amended by striking out "actual" each time it appears.

(3) Section 411(a)(2)(B)(iv) of the Act is repealed.

(d)(1) Section 411(a)(3) of the Act is repealed.

(2) Paragraph (4) of section 411(a) of the Act is redesignated as paragraph (3).

(e) Section 411(a)(3) of the Act (as redesignated by subsection (d)(2)) is amended to read as follows:

"(3) The period during which a student may receive basic grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance. Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature which are determined by the institution as necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree.".

(f) Section 411(b)(3)(B)(i) of the Act is amended to read as follows:

"(B)(i) If, during any period of any fiscal year, the funds available for payments under this subpart are insufficient to satisfy fully all entitlements, the amount paid with respect to each such entitlement, as calculated prior to the cost of attendance limitation provided in section 411(a)(2)(B)(i) under this subpart, shall be—

"(I) the full amount in the case of any student's eligibility index which is less than 601;

"(II) 90 per centum of the amount when the student's eligibility index is 601 but less than 801;

"(III) 80 per centum of the amount when the student's eligibility index is 801 but less than 1001;

"(IV) 70 per centum when the student's eligibility index is 1001 but less than 1201;

"(V) 60 per centum when the student's

eligibility index is 1201 but less than 1601; and

"(VI) 50 per centum when the student's eligibility index is 1601 or greater.

For the purpose of this division, a 'student's eligibility index' is the index of need of a student established by the Secretary in carrying out section 482, relating to the family contribution schedule.".

(g) Section 411(b)(5) of the Act is amended to read as follows:

"(5)(A) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $370,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not at least equal $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount which was available for student loans during the preceding fiscal year,

no payment may be made in excess of $1,800 on the basis of entitlements established under this subpart in excess of such amount.

"(B) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $400,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not at least equal $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount which was available for student loans during the preceding fiscal year,

no payment may be made in excess of $1,899 on the basis of entitlements established under this subpart in excess of such amount.

"(C) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $440,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not at least equal $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000 or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount which was available for student loans during the preceding fiscal year,

no payment may be made in excess of $2,299 on the basis of entitlements established under this subpart in excess of such amount.

"(E) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $480,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not equal at least $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount which was available for student loans during the preceding fiscal year,

no payment may be made equal to or in excess of $2,500 on the basis of entitlements established under this subpart which are equal to or in excess of such amount.".

(h) Subsections (d) and (e) of section 411 of the Act are repealed.

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

SEC. 403. (a) Section 413A(a) of the Act is amended by striking out "who, for lack of financial means, would be unable to obtain such benefits without such a grant" and inserting in lieu thereof "who demonstrate financial needs in accordance with the provisions of section 482".

(b)(1) The first sentence of section 413A(b)(1) of the Act is amended by inserting before the period a comma and the following: "and $350,000,000 for the fiscal year 1981, and for each of the succeeding fiscal years ending prior to October 1, 1985".

(2) Section 413A(b)(3) of the Act is amended by inserting "second" before "fiscal year" the second time it appears in such section.

(c)(1) Section 413B(a)(2)(A) of the Act is amended to read as follows:

"(2)(A) The amount of the payment to any student pursuant to paragraph (1) shall be equal to the amount determined by the institution, in accordance with the provisions of section 482, to be needed by that student to enable him to pursue a course of study at the institution, except that such amount shall not exceed $2,000.".

(2) Section 413B(a)(2)(B) of the Act is amended by adding at the end thereof the following new sentence: "For a student enrolled for less than a full academic year, the minimum payment required shall be reduced proportionately.".

(3) Section 413B(a)(2) of the Act is further amended by striking out subparagraph (C).

(4) Section 413B(b) of the Act is amended to read as follows:

"(b)(1) The period during which a student may receive supplemental grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance.

"(2) A supplemental grant awarded under this subpart shall entitle the student to whom it is awarded to payments pursuant to such grant only if the student meets the requirements of section 484, except as provided in section 413C(c).".

(d) Section 413C of the Act is amended to read as follows:

"SELECTION OF RECIPIENTS; AGREEMENTS WITH INSTITUTIONS

"SEC. 413C. (a) An individual shall be eligible for the award of a supplemental grant under this subpart by an institution of higher education which, in accordance with section 487, has an agreement with the Secretary applicable to this subpart, if the individual makes application at a time and in a manner consistent with the requirements of the Secretary and that institution, and meets the requirements of section 484.

"(b) From among individuals who are eligible for supplemental grants for each fiscal year, the institution shall, in accordance with the agreement under section 487, and within the amount allocated to the institution for that purpose for that year under section 413D(b), select individuals who are to be awarded such grants and determine, in accordance with section 413B, the amounts to be paid to them.

"(c) An eligible institution may use not more than 10 per centum of its allocation for less-than-half-time undergraduate students who are determined by the institution to be in need of such grants and who meet the requirements of section 484, other than the requirement of clause (2) of section 484(a).".

(e)(1) Section 413D(a)(1) of the Act is amended by striking out "persons" each place it appears and inserting in lieu thereof "undergraduates".

(2) Section 413D(a)(2) is amended by striking out "section 431A(b)(2)" and inserting in lieu thereof "section 413A(b)(2)".

(3) Section 413D(b)(1)(B)(ii) of the Act is amended to read as follows:

"(ii) Allocations under division (i) by the Secretary to such institutions shall be made in accordance with a formula which determines institutional need for funds under this subpart by subtracting from 75 per centum of total student expenses the sum of

expected family or independent student contributions, awards made under subparts 1 and 3 of this part, and 25 per centum of grants and awards made by the institution from its own resources. In addition, the Secretary, in establishing equitable criteria, shall not issue any regulation which has the effect of penalizing institutions that under existing State law must provide scholarships or grant assistance from their own funds and yet are not free under laws in effect on January 1, 1979, either to select the recipients of such assistance or to adjust the criteria by which the recipients are selected. The formula established under this division shall not result in any institution receiving an amount less than—

"(I) 100 per centum of the amount such institution received and used under this section of fiscal year 1979 in the case of any fiscal year for which the appropriation for this part is less than $400,000,000;

"(II) 80 per centum of such amount in the case of any fiscal year for which such appropriation is at least $400,000,000 but less than $420,000,000;

"(III) 60 per centum of such amount in the case of any fiscal year for which such appropriation is at least $420,000,000 but less than $440,000,000;

"(IV) 40 per centum of such amount in the case of any fiscal year for which such appropriation is at least $440,000,000 but less than $460,000,000; or

"(V) 20 per centum of such amount in the case of any fiscal year for which such appropriation is at least $460,000,000 but less than $480,000,000.".

(4) Section 413D(b)(2) of the Act is amended by adding at the end thereof the following new sentence: "Such allocation shall be made in accordance with the formula prescribed by regulation under division (ii) of paragraph (1)(B) of this subsection.".

(f) Section 413D(b) of the Act is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Each institution receiving allocations under this subsection from apportionments made to the State under subsection (a)(1) and under subsection (a)(2) may use its allocations for initial supplemental grants and for continuing supplemental grants in such manner as the institution determines will best achieve the purposes of this subpart.".

GRANTS TO STATES FOR STATE STUDENT INCENTIVES

SEC. 404. (a) Section 415A of the Act is amended to read as follows:

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 415A. (a) It is the purpose of this subpart to make incentive grants available to the States to assist them in providing grants to eligible students attending institutions of higher education.

"(b)(1) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1981 and 1982, $150,000,000 for fiscal year 1983, $200,000,000 for fiscal year 1984, and $250,000,000 for fiscal year 1985, for payments to the States for grants to eligible students under this subpart.

"(2) Sums appropriated pursuant to paragraph (1) for any fiscal year shall remain available for payments to States for the award of student grants under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated.".

(b) Section 415B(a)(1)(A) of the Act is amended by inserting before the period a comma and the following: "except that no State shall receive less than the State received for fiscal year 1979".

(c) Section 415C of the Act is amended—

(1) in subsection (a), by striking out "shall submit" and inserting in lieu thereof "shall have a State agreement pursuant to section 1203 and shall submit";

(2) in subsection (b)(1), by inserting "under section 1203" immediately after "agency";

(3) in subsection (b)(2), by striking out "$1,500" and inserting in lieu thereof "$2,000", and by striking out "as an undergraduate";

(4) in subsection (b)(4), by inserting immediately before the semicolon at the end thereof the following: "or in any State in which participation of nonprofit institutions of higher education is in violation of a statute of the State which was enacted prior to October 1, 1978"; and

(5) in subsection (b), by striking out "and" at the end of clause (5), by redesignating clause (6) as clause (8), and by inserting after clause (5) the following new clauses:

"(6) provides that institutions of higher education, with the approval of the State agency, may use any proportion of the payments received in any fiscal year for grants to otherwise eligible students who fail to meet the requirement of section 484(a)(2);

"(7) provides for State expenditures under such program of an amount not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years; and".

(d) Section 415E of the Act is repealed.

SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS

SEC. 405. Subpart 4 of part A of title IV of the Act is amended to read as follows:

"SUBPART 4—SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS

"PROGRAM AUTHORITY; AUTHORIZATION OF APPROPRIATIONS

"SEC. 417A. (a) The Secretary shall, in accordance with the provisions of this subpart, carry out a program of making grants and contracts designed to identify qualified individuals from disadvantaged backgrounds, to prepare them for a program of postsecondary education, to provide special services for such students who are pursuing programs of postsecondary education, and to train persons serving or preparing for service in programs and projects so designed.

"(b)(1) For the purposes described in subsection (a), the Secretary is authorized, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), to make grants to, and contracts with, institutions of higher education, public and private agencies and organizations, and, in exceptional circumstances, secondary schools for planning, developing, or carrying out one or more of the services assisted under this subpart.

"(2) In making grants and contracts under this subpart, the Secretary shall consider the prior experience of service delivery under the particular program for which funds are sought by each applicant.

"(c) For the purpose of making grants and contracts under this subpart there are authorized to be appropriated $400,000,000 for fiscal year 1982 and such sums as may be necessary for each of the succeeding fiscal years ending prior to October 1, 1985.

"(d) For the purposes of this subpart—

"(1) the term 'first generation college student' means a person neither of whose parents completed a baccalaureate degree; and

"(2) the term 'low-income individual' means an individual from a family whose taxable income for the preceding year did not exceed 150 per centum of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

"(e) No individual who is an eligible veteran, as that term is defined by section 1652(a) of title 38, United States Code, shall be deemed ineligible to participate in any program under this subpart by reason of such individual's age.

"TALENT SEARCH

"SEC. 417B. (a) The Secretary shall carry out a program to be known as talent search which shall be designed—

"(1) to identify qualified youths with potential for education at the postsecondary level and to encourage such youth to complete secondary school and to undertake a program of postsecondary education;

"(2) to publicize the availability of student financial assistance available to persons who pursue a program of postsecondary education; and

"(3) to encourage persons who have not completed programs of education at the secondary or postsecondary level, but who have the ability to complete such programs, to reenter such programs.

"(b) A talent search project assisted under this subpart may include, in addition to the services described in paragraphs (1), (2), and (3) of subsection (a), tutorial services for youths being encouraged to undertake or reenter programs of postsecondary education if such tutorial services are not otherwise available to such youths through a project assisted under this subpart.

"(c) In approving applications for talent search projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require that such participants be persons who either have completed six years of elementary education or are at least twelve years of age but not more than twenty-seven years of age, unless the imposition of any such limitation with respect to any person would defeat the purposes of this section or the purposes of section 417E; and

"(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 417E.

"(d) In approving applications for talent search projects under this subpart for any fiscal year, the Secretary shall require assurances that the project will be located in a setting accessible to the persons proposed to be served by the project.

"UPWARD BOUND

"SEC. 417C. (a) The Secretary shall carry out a program to be known as upward bound which shall be designed to generate skills and motivation necessary for success in education beyond high school.

"(b) Any upward bound project assisted under the subpart may provide services such as—

"(1) instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

"(2) personal counseling;

"(3) academic advice and assistance in high school course selection;

"(4) tutorial services;

"(5) exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

"(6) activities designed to acquaint youths participating in the project with the range of career options available to them;

"(7) instruction designed to prepare youths participating in the project for careers in which persons from disadvantaged backgrounds are particularly underrepresented;

"(8) on-campus residential programs; and

"(9) programs and activities as described in paragraphs (1) through (8) which are

specially designed for students of limited English proficiency.

"(c) In approving applications for upward bound projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require an assurance that the remaining youths participating in the project proposed to be carried out under any application be either low-income individuals or be first generation college students;

"(3) require that there be determination, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond high school; and

"(4) require that such participants be persons who have completed eight years of elementary education and are at least thirteen years of age but not more than nineteen years of age, unless the imposition of any such limitation would defeat the purposes of this section.

"(d) Youths participating in a project proposed to be carried out under any application may be paid stipends not in excess of $60 per month during June, July, and August, and not in excess of $40 per month during the remaining period of the year.

"SPECIAL SERVICES FOR DISADVANTAGED STUDENTS

"SEC. 417D. (a) The Secretary shall carry out a program to be known as special services for disadvantaged students (hereinafter referred to as 'special services') which shall be designed to provide supportive services to persons participating in the projects.

"(b) A special services project assisted under this subpart may provide services such as—

"(1) instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

"(2) personal counseling;

"(3) academic advice and assistance in course selection;

"(4) tutorial services;

"(5) exposure to cultural events and academic programs not usually available to disadvantaged students;

"(6) activities designed to acquaint students participating in the project with the range of career options available to them;

"(7) activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs; and

"(8) programs and activities as described in paragraphs (1) through (7) which are specially designed for students of limited English proficiency.

"(c) In approving applications for special services projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application—

"(A) be physically handicapped, or

"(B) be low-income individuals who are first generation college students;

"(2) require an assurance that the remaining students participating in the project proposed to be carried out under any application either be low-income individuals, first generation college students, or physically handicapped;

"(3) require that there be a determination, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond high school; and

"(4) require that such participants be enrolled or accepted for enrollment at the institution which is the recipient of the grant or contract.

"(d) In approving applications for special services projects under this subpart for any fiscal year, the Secretary shall require an assurance from the institution which is the recipient of the grant or contract that each student enrolled in the project will receive sufficient financial assistance to meet that student's full financial need.

"EDUCATIONAL OPPORTUNITY CENTERS

"SEC. 417E. (a) The Secretary shall carry out a program of paying up to 75 per centum of the cost of establishing and operating programs to be known as educational opportunity centers which shall be designed—

"(1) to provide information with respect to financial and academic assistance available for individuals desiring to pursue a program of postsecondary education; and

"(2) to provide assistance to such persons in applying for admission to institutions at which a program of postsecondary education is offered, including preparing necessary applications for use by admissions and financial aid officers.

"(b) An educational opportunity center assisted under this subpart may provide, in addition to the services described in clauses (1) and (2) of subsection (a), tutorial and counseling services for persons participating in the project if such tutorial and counseling services are not otherwise available through a project assisted under this subpart.

"(c) In approving applications for educational opportunity centers under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require that such participants be persons who are at least nineteen years of age, unless the imposition of such limitation with respect to any person would defeat the purposes of this section or the purposes of section 417B; and

"(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 417B.

"STAFF DEVELOPMENT ACTIVITIES

"SEC. 417F. For the purpose of improving the operation of the programs and projects authorized by this subpart, the Secretary is authorized to make grants to institutions of higher education and other public and private nonprofit institutions and organizations to provide training for staff and leadership personnel employed in, or preparing for employment in, such programs and projects. Such training shall include conferences, internships, seminars, and workshops designed to improve the operation of such programs and projects and shall be carried out in the various regions of the Nation in order to ensure that the training opportunities are appropriate to meet the needs in the local areas being served by such programs and projects. Grants for the purposes of this section shall be made only after consultation with regional and State professional associations of persons having special knowledge with respect to the needs and problems of such programs and projects.".

SPECIAL PROGRAM FOR MIGRANT AND SEASONAL FARMWORK STUDENTS

SEC. 406. Subpart 5 of part A of title IV of the Act is amended to read as follows:

"SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK

"SEC. 418A. (a) The Secretary shall maintain and expand existing secondary and postsecondary high school equivalency program and college assistance migrant program projects, which shall be designed to provide services to students of families who are engaged in migrant and seasonal farmwork. The services authorized by this subpart include—

"(1) instruction in reading, writing, study skills, mathematics, communication skills, and other subjects necessary for success beyond high school, and in preparation for the examination for a certificate of high school equivalency;

"(2) personal and academic counseling;

"(3) outreach and recruitment, special admissions, and financial assistance;

"(4) tutorial services;

"(5) career-oriented work study;

"(6) housing support and on-campus residential programs;

"(7) activities designed to acquaint youths participating in the project with the range of career options available to them;

"(8) exposure to cultural events, academic programs and other activities not usually available to migrant youth; and

"(9) other essential supportive services, as needed to ensure the success of eligible migrant and seasonal farmwork students at the secondary and postsecondary levels.

"(b) There is authorized to be appropriated $9,600,000 for the fiscal year 1981, $12,000,000 for the fiscal year 1982, $14,000,000 for the fiscal year 1983, $16,000,000 for the fiscal year 1984, and $18,000,000 for the fiscal year 1985, to carry out the provisions of this subpart.".

VETERANS' COST-OF-INSTRUCTION PAYMENTS

SEC. 407. Section 420 of the Act is amended to read as follows:

"VETERANS' COST-OF-INSTRUCTION PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

"SEC. 420. (a)(1) During the period beginning July 1, 1972, and ending September 30, 1985, each institution of higher education shall be entitled to a payment under, and in accordance with, this section during any fiscal year if—

"(A) the number of persons who are veterans receiving vocational rehabilitation under chapter 31 of title 38, United States Code, or veterans receiving educational assistance under chapter 34 of such title, and who are in attendance as undergraduate students at such institution during any academic year, equals at least—

"(i) 10 per centum of the number of such recipients who were in attendance at such institution during the preceding academic year, or

"(ii) 10 per centum of the total number of undergraduate students in attendance at such institution during such academic year and if such number does not constitute a per centum of such undergraduate students which is less than such per centum for the preceding academic year; and

"(B) the number of such persons is at least 25.

"(2) With respect to any academic year ending on or before September 30, 1986, each institution which has qualified for payment under this section for the preceding year shall be entitled during such academic year, notwithstanding the provisions of paragraph (1)(A), to a payment under this section if—

"(A) the number of persons referred to in paragraph (1) equals at least the number which bears the same ratio to the number of such recipients who were in attendance at such institution during the first academic year in which the institution was entitled to payments under this section as the number of such recipients in all institutions of higher education during the academic year for which the determination is made bears to the number of such recipients in all institutions of higher education for the first such academic year; or

"(B) in the event that subparagraph (A) of this paragraph is not satisfied, the Secretary determines, on the basis of evidence presented by such institution, that such institution is making reasonable efforts, taking into consideration the extent to which the number of persons referred to in such paragraph (1) falls short of meeting the ratio criterion set forth in such subparagraph (A), to continue to recruit, enroll, and provide necessary services to veterans.

"(3) For any fiscal year beginning after September 30, 1980, the Secretary may waive the provisions of paragraph (1) of this subsection for any institution of higher education which has qualified for payment under this section for any preceding fiscal year but subsequently became ineligible, if—

"(A) the institution would have been eligible had section 420(a)(2) been in effect when such institution became ineligible,

"(B) the institution has had a full-time office of veterans' affairs since that institution was so eligible, and

"(C) the appropriations made available in any such fiscal year for this section are in excess of (i) $14,380,000, or (ii) the amount requested for carrying out this section in the budget of the President submitted under section 201 of the Budget and Accounting Act, 1921, whichever is greater, by an amount sufficient to make payments to all institutions meeting the requirements of clauses (A) and (B) of this paragraph.

"(b)(1) The amount of the payment to which any institution shall be entitled under this section for any fiscal year shall be—

"(A) $300 for each person who is a veteran receiving vocational rehabilitation under chapter 31 of title 38, United States Code, or a veteran receiving educational assistance under chapter 34 of such title 38, and who is in attendance at such institution as an undergraduate student during such year; and

"(B) in addition, $150 for each person who is in attendance at such institution as an undergraduate student during such year and who has been the recipient of educational assistance under subchapter V or VI of chapter 34 of such title 38, or who has a service-connected disability as defined in section 101(16) of such title 38, or who is disabled, as determined in accordance with regulations promulgated by the Secretary after consultation with the Administrator of Veterans' Affairs.

"(2) In any case where a person on behalf of whom a payment is made under this section attends an institution on less than a full-time basis, the amount of the payment on behalf of that person shall be reduced in proportion to the degree to which that person is not attending on a full-time basis. In no case shall a payment be made on behalf of a person who attends an institution on less than a half-time basis.

"(c)(1) An institution of higher education shall be eligible to receive the payment to which it is entitled under this section only if it makes application therefor to the Secretary. An application under this section shall be submitted at such time or times, in such manner, in such form and containing such information as the Secretary determines necessary to carry out the functions of the Secretary under this title, and shall—

"(A) set forth such policies, assurances, and procedures as will insure that—

"(i) the funds received by the institution under this section and available to it after the requirements of subsection (e) have been met will be used solely to defray instructional expenses in academically related programs of the applicant;

"(ii) the funds received by the institution under this section will not be used for a school or department of divinity or for any religious worship or sectarian activity;

"(iii) the applicant will expend, during the academic year for which a payment is sought, for all academically related programs of the institution, an amount equal to at least the average amount so expended during the three years preceding the year for which the grant is sought; and

"(iv) the applicant will submit to the Secretary such reports as the Secretary may require by regulation;

"(B) contain such other statement of policies, assurances, and procedures as the Secretary may require by regulation in order to protect the financial interests of the United States; and

"(C) set forth such plans, policies, assurances, and procedures as will insure that the applicant will make an adequate effort—

"(i) to maintain a full-time office of veterans' affairs which has responsibility for veterans' outreach, recruitment, and special education programs, including the provision of educational, vocational, and personal counseling for veterans,

"(ii) to carry out programs designed to prepare educationally disadvantaged veterans for postsecondary education (I) under subchapter V of chapter 34 of title 38, United States Code, and (II) in the case of any institution located near a military installation, under subchapter VI of such chapter 34,

"(iii) to carry out active outreach (with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans), recruiting, and counseling activities through the use of funds available under federally assisted work-study programs (with special emphasis on the veteran-student services program under section 1685 of such title 38),

"(iv) to carry out an active tutorial assistance program (including dissemination of information regarding such program) in order to make maximum use of the benefits available under section 1692 of such title 38, and

"(v) to coordinate activities carried out under this part with the readjustment counseling program authorized under section 612A of title 38, United States Code, and with the veterans employment and training initiatives authorized under the Comprehensive Employment and Training Act and under chapters 41 and 42 of title 38, United States Code, in order to assist in serving the readjustment, rehabilitation, personal counseling, and employment needs of veterans,

except that an institution which the Secretary determines, in accordance with regulations jointly prescribed by the Secretary and the Administrator of Veterans' Affairs (hereinafter referred to as the 'Administrator'), cannot feasibly itself, in terms of the number of veterans in attendance there, carry out any or all of the programs set forth in subclauses (i) through (v) of clause (C), may carry out such program or programs through a consortium agreement with one or more other institutions of higher education and shall be required to carry out such programs only to the extent that the Secretary determines, in accordance with regulations jointly prescribed by the Secretary and the Administrator, is appropriate in terms of the number of veterans in attendance at such institution. The adequacy of efforts to meet the requirements of clause (C) of this paragraph shall be determined by the Secretary, based upon the recommendations of the Administrator, in accordance with criteria established in regulations jointly prescribed by the Secretary and the Administrator.

"(2) The Secretary shall not approve an application under this subsection unless he determines that the applicant will implement the requirements of clause (C) of paragraph (1) within the first academic year during which it receives a payment under this section.

"(d)(1) The Secretary shall pay to each institution of higher education which has had an application approved under subsection (c) the amount to which it is entitled under this section.

"(2) The maximum amount of payments to any institution of higher education, or any branch thereof which is located in a community which is different from that in which the parent institution thereof is located, in any fiscal year shall be $75,000. In making payments under this section for any fiscal year, the Secretary shall apportion the appropriation for making such payments, from funds which become available as a result of the limitation on payments set forth in the preceding sentence, in such a manner as will result in the receipt by each institution which is eligible for payment under this section of the first $9,000 (or the amount of its entitlement for that fiscal year, whichever is the lesser) and then additional amounts up to the limitation set forth in the preceding sentence.

"(e) Not less than 90 per centum of the amounts paid to any institution under subsection (d) in any fiscal year shall be used to implement the requirement of clause (C)(i) of paragraph (1) of subsection (c), and to the extent that such funds remain after implementing such requirement, funds limited by such 90 per centum requirement shall be used for implementing the requirements of subclauses (ii) through (v) of clause (C) of such paragraph (1), except that the Secretary may, in accordance with criteria established in regulations jointly prescribed by the Secretary with the Administrator, waive the requirement of this subsection to the extent that he finds that such institution is adequately carrying out all such requirements without the necessity for such application of such amount of the payments received under this subsection.

"(f) The Secretary, in carrying out the provisions of this section, shall seek to assure the coordination of programs assisted under this section with programs carried out by the Veterans' Administration pursuant to title 38, United States Code, and the Administrator shall provide all assistance, technical consultation, and information otherwise authorized by law as necessary to promote the maximum effectiveness of the activities and programs assisted under this section.

"(g) The program provided for in this section shall be administered by an identifiable administrative unit in the Department of Education.".

PART B—GUARANTEED AND INSURED STUDENT LOANS

EXTENSION OF PROGRAMS

SEC. 411. (a) Section 424(a) of the Act is amended—

(1) by striking out "1981" and inserting in lieu thereof "1986"; and

(2) by striking out "1985" and inserting in lieu thereof "1990".

(b) Section 428(a)(5) of the Act is amended—

(1) by striking out "1981" and inserting in lieu thereof "1986"; and

(2) by striking out "1985" and inserting in lieu thereof "1990".

LOAN LIMITATIONS

SEC. 412. (a) Section 425(a)(1) of the Act is amended—

(1) by redesignating clauses (A), (B), and (C), as clauses (B), (C), and (D), respectively;

(2) by inserting immediately before clause (B) (as so redesignated) the following new clause:

"(A) that in the case of an independent student (defined in accordance with section 482(c)(2)) who has not successfully completed a program of undergraduate education, the total of such loans may not exceed $3,000,"; and

(3) by striking out "clause (B)" in the last sentence of such section and inserting in lieu thereof "clause (C)".

(b) Section 425(a)(2) of the Act is amended by striking out "$7,500, in the case of any student who has not successfully completed a program of undergraduate educa-

tion, and $15,000 in the case of any graduate or professional student" and inserting in lieu thereof "$12,500 in the case of any student (other than an independent student) who has not successfully completed a program of undergraduate education, $15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case of any graduate or professional student".

(c) The matter preceding division (i) of section 428(b)(1)(A) of the Act is amended—

(1) by inserting after "student" the following: "(other than an independent student)"; and

(2) by inserting after "undergraduate education," the following: "or not more than $3,000 in the case of an independent student (defined in accordance with section 482(c)(2)) who has not successfully completed a program of undergraduate education,".

(d) Section 428(b)(1)(B) of the Act is amended by striking out "$7,500, in the case of any student who has not successfully completed a program of undergraduate education, and $15,000 in the case of any graduate or professional student" and inserting in lieu thereof "$12,500 in the case of any student (other than an independent student) who has not successfully completed a program of undergraduate education, $15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case of any graduate or professional student".

(e) Section 428A of the Act is amended—

(1) by striking out "$2,500 (in the case of a student who has not successfully completed a program of undergraduate education) or $5,000 (in the case of a graduate or professional student)" in subsection (a)(1)(A) and in subsection (a)(2)(A) and inserting in lieu thereof in each such place the following: "$2,500 (in the case of a student, other than an independent student, who has not successfully completed a program of undergraduate education), $3,000 (in the case of an independent student (as defined in section 482(c)(2)) who has not successfully completed a program of undergraduate education), or $5,000 (in the case of a graduate or professional student)"; and

(2) by striking out "$7,500 in the case of any student who has not successfully completed a program of undergraduate education, and $15,000 in the case of any graduate or professional student" in subsection (a)(1)(A) and in subsection (a)(2)(A) and inserting in lieu thereof in each such place the following: "$12,500 in the case of any student (other than an independent student) who has not successfully completed a program of undergraduate education, $15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case any graduate or professional student".

(f) Part B of title IV of the Act is further amended by inserting immediately before the period at the end of section 425(a)(2) and immediately before the semicolon at the end of sections 428(b)(1)(B), 428A(a)(1)(A), and 428A(a)(2)(A) the following: ": except that the Secretary may increase the limit applicable to graduate or professional students who are pursuing programs which the Secretary determines are exceptionally expensive".

DEFERRAL OF REPAYMENT

SEC. 413. (a) Section 427(a)(2)(C) is amended—

(1) by inserting "or is an officer in the Commissioned Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii); and

(2) by striking out "or (v)" and inserting in lieu thereof the following: "(v) not in excess of three years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954; (vi) not in excess of two years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; (vii) not in excess of three years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled; or (viii)".

(b) Section 428(b)(1)(M) of the Act is amended—

(1) by inserting "or is an officer in the Commissioned Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii); and

(2) by striking out "or (v)" and inserting in lieu thereof the following: "(v) not in excess of three years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954; (vi) not in excess of two years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; (vii) not in excess of three years during which the borrowed is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled, or (viii)".

(c) Section 427(a)(2)(C) of the Act is amended—

(1) by striking out "and any such period" and inserting in lieu thereof "that any such period", and

(2) by inserting before the comma at the end thereof a comma and the following: "and that no repayment of principal of any loan for any period of study, training, service, or unemployment described in this clause or any combination thereof shall begin until six months after the completion of such period or combination thereof".

(d) Section 428(b)(1)(M) is amended by inserting before the semicolon at the end thereof a comma and the following: "and that no repayment of principal of any loan for any period of study, training, service, or unemployment described in this clause or any combination thereof shall begin until six months after the completion of such period or combination thereof".

(e) Section 435 of the Act is amended by adding at the end thereof the following new subsection:

"(j) The term 'temporarily totally disabled' when used with respect to a borrower means a borrower who, by reason of injury or illness, cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed three years. Such term when used with respect to the spouse of a borrower means a spouse who, by reason of injury or illness, cannot be expected to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed three years and who during such period required continuous nursing or other similar services.".

STATE AGENCIES AS LENDERS OF LAST RESORT

SEC. 414. Section 428 of the Act is amended by adding at the end thereof the following new subsection:

"(h)(1) From sums advanced by the Association pursuant to section 439(p), each State agency and nonprofit private institution or organization with which the Secretary has an agreement under subsection (b) of this section or an eligible lender in a State described in section 435(g)(1) (D) or (F) of the Act is authorized to make loans directly to students otherwise unable to obtain loans under this part.

"(2)(A) Each State agency or nonprofit private institution or organization which has an agreement under subsection (b) of this section or an eligible lender in a State described in section 435(g)(1) (D) or (F) and which has an application approved under section 439(p)(2) may receive advances under section 439(p) for each fiscal year in an amount necessary to meet the demand for loans under this section. The amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the average of the loans guaranteed by that agency, institution, organization, or lender for the three years preceding the fiscal year for which the determination is made. Whenever the determination required by the preceding sentence cannot be made because the agency, institution, organization, or lender does not have three years previous experience, the amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the loans guaranteed under a program of a State of comparable size.

"(B) Each State agency or nonprofit private institution or organization which has an agreement under subsection (b) of this section and each eligible lender in a State described in section 435(g)(1) (D) or (F) shall repay advances made under section 439(p) in accordance with agreements entered between the Association and such agency, institution, organization, or lender.

"(3) Loans made pursuant to this subsection shall have the same terms, conditions, and benefits as all other loans made under this part.".

INTEREST RATE AND PAYMENT

SEC. 415. (a)(1) Part B of the Act is amended by inserting immediately after section 427 the following new section:

APPLICABLE INTEREST RATES

"SEC. 427A. (a) With respect to any loan to cover the cost of instruction for any period of instruction beginning on or after January 1, 1981, the rate of interest applicable to any borrower shall—

"(1) not exceed 7 per centum per annum on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has an outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, other than a loan for which the interest rate is determined under paragraph (2) or (3) of this subsection;

"(2) except as provided in paragraph (3), be 9 per centum per annum on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, or who has such an outstanding balance on a loan for which the interest rate is determined under this paragraph; or

"(3) be 8 per centum per annum on the unpaid principal balance of the loan in the case of any borrower not subject to paragraph (1) or (2) for any loan to cover the cost of education for any period of enrollment beginning on or after a date which is three months after a determination made under subsection (b).

"(b) If for any twelve-month period beginning on or after January 1, 1981, the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned for such twelve-month period is equal to or less than 9 per centum, the interest rate for loans under this part shall be the rate prescribed in subsection (a)(3) for borrowers described in such subsection.

"(c) Nothing in this section shall be construed to prohibit a lender from charging a borrower interest at a rate less than the rate which is applicable under this part.".

(2) Section 427(b) of the Act is amended by striking "No maximum" and inserting in lieu thereof "Except as provided in section 427A, no maximum".

(3) Section 428(a)(3)(B)(ii) of the Act is amended by striking out "7 per centum per annum on the unpaid principal balance" and inserting in lieu thereof "the applicable interest rate under this part".

(4) Section 428(b)(1)(F) of the Act is amended by inserting immediately before the semicolon at the end thereof a comma and the following: "except as otherwise required by section 427A".

(5) Section 428(d) of the Act is amended by striking out "7 per centum per annum" and inserting in lieu thereof "the rate specified in this part".

(b)(1)(A) Section 427(a)(2)(B) of the Act is amended by striking out "nine-to-twelve-month period" the first time it appears and inserting in lieu thereof "six months".

(B) Such section 427(a)(2)(B) is further amended by striking out "nine months nor later than one year" and inserting in lieu thereof "six months".

(2)(A) Section 428(b)(1)(E) of the Act is amended by striking out "nine-to-twelve-month period" the first time it appears and inserting in lieu thereof "six months".

(B) Such section 428(b)(1)(E) is further amended by striking out "nine months nor later than one year" in both places that it appears and inserting in lieu thereof "six months".

COLLECTION PRACTICES

SEC. 416. (a)(1) Section 430(b) of the Act is amended by inserting "(1)" after "(b)" and adding at the end thereof the following new paragraph:

"(2)(A) For the purpose of promoting responsible repayment of loans covered by Federal loan insurance pursuant to this part, the Secretary shall enter into cooperative agreements with credit bureau organizations providing for the exchange of information concerning student borrowers in accordance with the requirements of this paragraph. For the purpose of assisting such organizations to comply with the Fair Credit Reporting Act, such agreements may provide for timely response by the Secretary to requests from such organizations for responses to objections raised by such borrowers. Subject to the requirements of subparagraph (C), such agreements shall provide for the disclosure by the Secretary to such organizations with respect to any loan for which the Secretary has received a notice of default under subsection (a) of this section of—

"(i) the date of disbursement and the amount of any such loan;

"(ii) information concerning collection of any such loan, including information concerning the status of any defaulted loan on which the Secretary has made a payment pursuant to subsection (a) of this section; and

"(iii) the date of cancellation of the note upon completion of repayment by the borrower of any such loan or payment by the Secretary pursuant to section 437.

"(B) Such agreements may also provide for the disclosure by such organizations to the Secretary, upon receipt from the Secretary of a notice under subparagraph (A)(ii) that such a loan is in default, of information concerning the borrower's location or other information which may assist the Secretary in proceeding to collection of the defaulted amount.

"(C) Agreements entered into pursuant to this paragraph shall contain such provisions as may be necessary to ensure that—

"(i) no information is disclosed by the Secretary unless its accuracy and completeness have been verified, and no information stating that a loan is in default is disclosed until the Secretary has made a reasonable effort to collect the debt;

"(ii) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the Secretary with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 6811);

"(iii) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

"(iv) except for disclosures made to obtain the borrower's location, the Secretary (I) shall not disclose any such information until he has notified the borrower that such information will be disclosed to credit bureau organizations unless the borrower enters into repayment of his loan, but (II) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than thirty days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(D)(i) The Secretary shall, within ninety days after the date of enactment of this paragraph, take such steps as may be necessary to establish the disclosure of information described in subparagraph (A)(i), (ii), and (iii) as a routine use in accordance with section 552a(b)(3) of title 5, United States Code, and to establish a system for the prompt notification of any borrower of any disclosure made pursuant to this paragraph.

"(ii) Information disclosed by the Secretary to credit bureau organizations under the requirements of this paragraph shall be constitute a system of records within the meaning of section 552a of title 5, United States Code (the Privacy Act of 1974); and credit bureau organizations which enter into agreements with the Secretary under this paragraph shall not be considered Government contractors within the meaning of that Act.".

(2) Section 427(a)(2) of the Act is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H)(i) contains a notice of the system of disclosure of information concerning such loan to credit bureau organizations under section 430(b)(2), and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations,".

(b) Section 430(c) of the Act is amended by adding at the end thereof the following new sentence: "Any forbearance which is approved by the Secretary under this subsection with respect to the repayment of a loan shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and due diligence in the collection of the loan.".

(c) Section 432 of the Act is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, the Secretary may provide to eligible lenders, and to any State or any nonprofit private institution or organization having a guaranty agreement under section 428(c)(1), any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived.".

ADMINISTRATIVE IMPROVEMENTS

SEC. 417. (a) Section 428(b)(1)(H) of the Act is amended by inserting before the semicolon a comma and the following: "and insures that the proceeds of the premium will not be used for incentive payments to lenders".

(b)(1) Section 428(c)(6)(A)(ii) of the Act is amended—

(A) by striking out "and" the first time it appears and inserting in lieu thereof a comma; and

(B) by inserting after "prevention" a comma and the following: "and the administrative costs of monitoring the enrollment and repayment status of students".

(2) Section 428(c)(6)(B) is amended—

(A) by striking out "and" at the end of clause (i) and inserting in lieu thereof a comma;

(B) by inserting "and" at the end of clause (ii); and

(C) by adding after clause (ii) the following:

"(iii) 'administrative costs of monitoring the enrollment and repayment status of students' means any administrative costs by a guaranty agency which are directly related to ascertaining the student's enrollment status, prompt notification to the lender of such status, an audit of the note agreement to determine if the provisions of that agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note to assure that the repayment provisions are consistent with the provisions of this part,".

(3) Section 428(f)(1)(A) of the Act is amended—

(A) by striking out "or" at the end of clause (iii);

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following new clause:

"(iv) the administrative costs of monitoring the enrollment and repayment status of students; or".

(4)(A) Section 428(f)(1) of the Act is amended by striking out "(f)(1)(A)" and inserting in lieu thereof "(f)(1)" and by striking out subparagraphs (B) and (C).

(B) Such section is further amended by redesignating clauses (i) through (v) as clauses (A) through (E), respectively.

(5) Section 428(f)(2) of the Act is amended—

(A) by striking out "or" at the end of clause (iii);

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following new clause:

"(iv) the administrative costs of monitoring the enrollment and repayment status of students; or".

(6) Section 428(f)(3) of the Act is amended—

(A) by striking out "and" at the end of clause (B);

(B) by striking out the period at the end of clause (C) and inserting in lieu thereof a comma and the word "and"; and

(C) by adding after clause (C) the following new clause:

"(D) 'administrative costs of monitoring the enrollment and repayment status of students' means any administrative costs by a guaranty agency which are directly related to ascertaining the student's enrollment status, prompt notification to the lender of

such status, an audit of the note agreement to determine if the provisions of that agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note to assure that the repayment provisions are consistent with the provisions of this part,".

(c) Section 428(f)(3)(A) of the Act is amended by redesignating clauses (iv) and (v) as clauses (vi) and (vii) respectively, and by inserting after clause (iii) the following new clauses: "(iv) the costs of providing interest and special allowance computation and billing services to lenders, (v) the amount of non-Federal funds expended by an insurer as incentive payments to lenders to induce them to improve or expand their program participation,".

(d) Section 428 of the Act is amended by adding at the end thereof the following new subsection:

"(i)(1) Any State agency or any nonprofit private institution or organization which has an agreement under subsection (b) of this section may enter into an agreement with any eligible lender (other than an eligible institution or an agency or instrumentality of the State) for the purpose of authorizing multiple disbursements of the proceeds of a loan under which the lender will pay the proceeds of such loans into an escrow account to be administered by the State agency or any nonprofit private institution or organization in accordance with the provisions of paragraph (2) of this subsection.

"(2) Each State agency or each nonprofit private institution or organization entering into an agreement under paragraph (1) of this subsection is authorized to—

"(A) make the disbursements in accordance with the note evidencing the loan;

"(B) commingle the proceeds of all loans paid to it pursuant to the escrow agreement entered into under such paragraph (1);

"(C) invest the proceeds of such loans in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

"(D) retain interest or other earnings on such investment; and

"(E) return to the eligible lender undisbursed funds when the student ceases to carry at an eligible institution at least one-half of the normal full-time academic workload as determined by the institution.".

LOAN INFORMATION PROGRAM AUTHORIZED

SEC. 418. Title IV of the Act is amended by adding after section 433 the following new section:

"STUDENT LOAN INFORMATION BY ELIGIBLE LENDERS

"SEC. 433A. Each eligible lender shall enter into an agreement with the Secretary under which the eligible lender will, at the time such lender makes a loan to a student borrower which is insured or guaranteed under this part, provide thorough and accurate loan information on loans insured or guaranteed under this part to the student borrower. The loan information required by this section shall include—

"(1) the yearly and cumulative maximum amounts that may be borrowed by a student;

"(2) the terms on which repayment will begin;

"(3) the maximum number of years in which the loan must be repaid;

"(4) the interest rate that will be repaid, and the minimum amount of required monthly payment;

"(5) any special options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

"(6) a definition of default and the consequences to the borrower if the borrower should default, including a description of any arrangements made with credit bureau organizations; and

"(7) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.".

LOANS TO PARENTS

SEC. 419. Part B of title IV of the Act is amended by inserting immediately after section 428A the following new section:

"LOANS TO PARENTS OF DEPENDENT UNDERGRADUATE STUDENTS

"SEC. 428B. (a) Parents of a dependent undergraduate student (as defined by regulations by the Secretary) shall be eligible to borrow funds under this part in amounts specified in subsection (b), and unless otherwise specified in subsections (c) and (d), such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section the terms 'student' and 'student borrower' used in this part shall include a parent borrower under this section.

"(b)(1) Subject to paragraphs (2) and (3), the maximum amount parents may borrow for one student in any academic year or its equivalent (as defined by regulation by the Secretary) is $3,000.

"(2) The aggregate insured principal amount for insured loans made to parents on account of an undergraduate dependent student shall not exceed $15,000.

"(3) No loan may be made to any parent or student under this part which would cause their combined loans for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance as certified by the eligible institution under section 428(a)(2)(A) of this part. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

"(c)(1) Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by a lender.

"(2) No payments to reduce interest costs shall be paid pursuant to section 428(a) of this part on loans made pursuant to this section.

"(3) Interest on loans made pursuant to this section shall be at the rate of 9 per centum per annum on the unpaid principal balance of the loan, except that, if the loan is to cover the cost of education for a period of enrollment which begins on or after a date which is three months after the date on which the Secretary has made a determination under section 427A(b) and that borrower, on the date of entering into the note or other written evidence of the loan, has no obligation to repay any amount of principal or interest on any other loan made under this section with respect to the same student, then the interest shall be at the rate of 8 per centum per annum on the unpaid principal balance of the loan.

"(d) Loans made under this section shall be insured by the Secretary in a State only if—

"(1) the State is not served by a State agency or nonprofit private institution or organization having an agreement with the Secretary pursuant to section 428(b), or

"(2) an agency, institution, or organization in a State having such an agreement does not authorize loans under this section (A) within one hundred and twenty days after the effective date of this amendment, or (B) if a State is prohibited from authorizing loans under this section because of existing State law, one hundred and twenty days after the adjournment of the next regular session of this State legislature which convenes after the effective date of this amendment.".

SPECIAL ALLOWANCES

SEC. 420. (a) Section 438 of the Act is amended to read as follows:

"SPECIAL ALLOWANCES

"SEC. 438. (a) In order to assure (1) that the limitation on interest payments or other conditions (or both) or loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to establish an improved method for the determination of the quarterly rate of the special allowances on such loans, and to provide for a thorough, expeditious and objective examination of alternative methods for the determination of the quarterly rate of such allowances.

"(b)(1) A special allowance shall be paid for each of the three-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any three-month period shall be a percentage of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by such holder during such period.

"(2)(A) Subject to subparagraph (D) and paragraph (4), the special allowance paid pursuant to this subsection on loans for which the applicable interest rate is 7 per centum per annum or less shall be computed (i) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (ii) by subtracting 3.5 per centum from such average, (iii) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (iv) by dividing the resultant per centum by four.

"(B) Subject to subparagraph (D) and paragraph (4), the special allowance paid pursuant to this subsection on loans for which the applicable interest rate is 8 per centum per annum shall be computed (i) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (ii) by subtracting 4.5 per centum from such average, (iii) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (iv) by dividing the resultant per centum by four.

"(C) Subject to subparagraph (D) and paragraph (4), the special allowance paid pursuant to this subsection on loans for which the applicable interest rate is 9 per centum per annum shall be computed (i) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (ii) by subtracting 5.5 per centum from such average, (iii) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (iv) by dividing the resultant per centum by four.

"(D)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954 shall be one-half the quarterly rate of the special allowance established under subparagraph (A), (B), or (C). Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.

This subparagraph shall not apply to loans which were made or insured prior to October 1, 1980.

"(ii) The rate set under division (i) shall not be less than (I) 2.5 per centum per annum in the case of loans for which the applicable interest rate is 7 per centum per annum (II) 1.5 per centum per annum in the case of loans for which the applicable interest rate is 8 per centum per annum, or (III) 0.5 per centum in the case of loans for which the applicable rate is 9 per centum per annum.

"(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with section 420(b) of the Education Amendments of 1980.

"(3) The holder of an eligible loan shall be deemed to have a contractual right against the United States, during the life of such loan, to receive the special allowance according to the provisions of this section. Subject to paragraph (4) the special allowance determined for any such three-month period shall be payable at such time, after the close of such period, as may be specified by or pursuant to regulations promulgated under this section.

"(4)(A) If payments of the special allowances payable under this section or of interest payments under section 428(a) with respect to a loan have not been made within thirty days after the Secretary has received an accurate, timely, and complete request for payment thereof, the special allowance payable to such holder shall be increased by an amount equal to the daily interest accruing on the special allowance and interest benefits payments due the holder.

"(B) Such daily interest shall be computed at the daily equivalent rate of the sum of the special allowance rate computed pursuant to paragraph (2) and the interest rate applicable to the loan and shall be paid for the later of (i) the thirty-first day after the receipt of such request for payment from the holder, or (ii) the thirty-first day after the final day of the period or periods covered by such request, and shall be paid for each succeeding day until, and including, the date on which the Secretary authorizes payment.

"(C) For purposes of reporting to the Congress the amounts of special allowances paid under this section, amounts of special allowances paid pursuant to this paragraph shall be segregated and reported separately.

"(5) As used in this section, the term 'eligible loan' means a loan which is insured under this part, or made under a program covered by an agreement under section 428(b) of this Act.

"(6) The Secretary shall pay the holder of an eligible loan, at such time or times as are specified in regulations, a special allowance prescribed pursuant to this subsection subject to the condition that such holder shall submit to the Secretary, at such time or times and in such a manner as he may deem proper, such information as may be required by regulation for the purpose of enabling the Secretary to carry out his functions under this section and to carry out the purposes of this section.

"(c) The Secretary shall adopt or amend appropriate regulations pertaining to programs carried on under this part to prevent, where practicable, any practices which he finds have denied loans to a substantial number of eligible students.".

(b) In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, to be eligible to receive a special allowance under section 438(b)(2)(D) of the Higher Education Act of 1965, the Authority shall submit to the Secretary a plan for doing business. The Secretary shall approve or disapprove such plan within 30 days after the date of its submission. Each such plan shall contain provisions designed to assure that—

(1) no eligible lender in the area served by the Authority will be excluded from participation in the program of the Authority and that all eligible lenders may participate in the program on the same terms and conditions if eligible lenders are going to participate in the program;

(2) no director or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation from any agency that would contract to service and collect the loans of the Authority;

(3) student loans will not be purchased from participating lenders at a premium or discount amounting to more than 1 per centum of the unpaid principal amount borrowed plus accrued interest to the date of acquisition, but a reasonable loan transfer fee may be paid by the purchaser;

(4) the Authority will, within the limit of funds available and subject to applicable State and Federal law, make loans to, or purchase loans incurred by, all eligible students who are residents of, or who attend an eligible institution within, the area served by the Authority;

(5) the Authority has a plan under which the Authority will pursue the development of new lender participation in a continuing program of benefits to students together with assurances of existing lender commitments to the program; and

(6) there will be an annual audit of the Authority by a certified public accounting firm which will include review of compliance by the Authority with the provisions of the plan.

THE STUDENT LOAN MARKETING ASSOCIATION

SEC. 421. (a)(1) Section 439(a)(1) of the Act is amended by striking out "Government-sponsored".

(2) Section 439(f) of the Act is amended to read as follows:

"(f)(1) The Association shall have common stock having such par value as may be fixed by its Board of Directors from time to time which may be issued only to lenders under this part, pertaining to guaranteed student loans, who are qualified as insured lenders under this part or who are eligible institutions, as defined in section 435(a), other than an institution outside of the United States.

"(2) Each share of common stock shall be entitled to one vote with rights of cumulative voting at all elections of Directors. Voting shall be by classes as described in subsection (c)(3).

"(3) The maximum number of shares of common stock that the Association may issue and have outstanding at any one time shall be fixed by the Board of Directors from time to time. Any common share issued shall be fully transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

"(4) To the extent that net income is earned and realized, subject to subsection (e)(2), dividends may be declared on common stock and nonvoting common stock by the Board of Directors. Such dividends as may be declared by the Board shall be paid to the holders of outstanding shares of common stock and nonvoting common stock, except that no such dividends shall be payable with respect to any share which has been called for redemption past the effective date of such call.

"(5) The Association is authorized to issue nonvoting common stock having such par value as may be fixed by its Board of Directors from time to time. Any nonvoting common stock shall be freely transferable, except that, as to the Association, it shall be transferable only on the books of the Association.".

(3) The first sentence of section 439(g)(1) of the Act is amended to read as follows: "The Association is authorized to issue nonvoting preferred stock having such par value as may be fixed by its Board of Directors from time to time.".

(b)(1) Section 439(d) of the Act is amended—

(A) in paragraph (1), by inserting "or repurchase," after "purchase" and by inserting "or resell, offer participations, or pooled interests," after "sell";

(B) by amending paragraph (2) to read as follows:

"(2) Any warehousing advance made under paragraph (1) of this subsection shall be made on the security of (A) insured loans, (B) marketable obligations and securities issued, guaranteed or insured by, the United States, or for which the full faith and credit of the United States is pledged for the repayment of principal and interest thereof, or (C) marketable obligations issued, guaranteed, or insured by any agency, instrumentality or corporation of the United States for which the credit of such agency, instrumentality or corporation is pledged for the repayment of principal and interest thereof, in an amount equal to the amount of such advance. The proceeds of any such advance secured by insured loans shall either be invested in additional insured loans or the lender shall provide assurances to the Association that during the period of the borrowing it will maintain a level of insured loans in its portfolio not less than the aggregate outstanding balance of such loans held at the time of the borrowing. The proceeds from any such advance secured by collateral described in clauses (B) and (C) shall be invested in additional insured student loans."; and

(C) by adding at the end thereof the following new paragraph:

"(4) Securities issued pursuant to the offering of participations or pooled interests under paragraph (1) of this subsection may be in the form of debt obligations, or trust certificates of beneficial ownership, or both. Student loans set aside pursuant to the offering of participations or pooled interests shall at all times be adequate to ensure the timely principal and interest payments on such securities.".

(2) Section 439(l) of the Act is amended by inserting "including those made under subsection (d)(4)" immediately after "All obligations issued by the Association".

(c) Section 439(e)(A) of the Act is amended by striking out "$50,000,000" and inserting in lieu thereof "$75,000,000".

(d)(1) Section 439(h)(1) of the Act is amended to read as follows:

"(h)(1) The Association is authorized with the approval of the Secretary of Education and the Secretary of the Treasury to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association. The authority of the Secretary of Education to approve the issuance of such obligations is limited to obligations issued by the Association and guaranteed by the Secretary pursuant to paragraph (2) of this subsection. Such obligations may be redeemable at the option of the Association before maturity in such manner as may be stipulated therein. The Secretary of the Treasury may not direct as a condition of his approval that any such issuance of obligations by the Association be made or sold to the Federal Financing Bank.".

(2) Section 439(h)(2) of the Act is amended—

(A) by striking out "July 1, 1982" and inserting in lieu thereof "October 1, 1984"; and

(B) by adding at the end thereof the following new sentence: "Nothing in this section shall be construed so as to authorize the Secretary of Education or the Secretary of the Treasury to limit, control, or constrain

programs of the Association or support of the Guaranteed Student Loan Program by the Association.".

(3) Section 439(h) of the Act is amended by adding at the end thereof the following new paragraphs:

"(4) Upon receipt of a request from the Association under this subsection requiring approvals by the Secretary of Education or the Secretary of the Treasury, the Secretary of Education or the Secretary of the Treasury shall act promptly either to grant approval or to advise the Association of the reasons for withholding approval. In no case shall such an approval be withheld for a period longer than sixty days unless, prior to the end of such period, the Secretary of Education and the Secretary of the Treasury submit to the Congress a detailed explanation of reasons for doing so.

"(5) The Secretary of the Treasury is authorized to purchase any obligations issued by the Association pursuant to this subsection as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $1,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

"(6) Notwithstanding any other provision of law the Association is authorized to sell or issue obligations on the security of student loans, the payment of interest or principal of which has at any time been guaranteed under section 428 or 429 of this part, to the Federal Financing Bank.".

(e)(1) Section 439 of the Act is amended by adding at the end thereof the following new subsections:

"(o)(1)(A) The Association or its designated agent may, upon request of a borrower who has received loans under this title from two or more programs or lenders, or has received any other federally insured or guaranteed student loan, and where the borrower's aggregate outstanding indebtedness is in excess of $5,000, or where the borrower's aggregate outstanding indebtedness is in excess of $7,500 from a single lender under this part, make, notwithstanding any other provision of this part limiting the maximum insured principal amount for all insured loans made to a borrower, a new loan to the borrower in an amount equal to the unpaid principal and accrued unpaid interest on the old loans. The proceeds of the new loan shall be used to discharge the liability on such old loans.

"(B) The Association in making loans pursuant to this subsection in any State served by a State agency or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b) or an eligible lender in a State described in section 435(g)(1) (D) or (F) may designate as its agent such agency, institution, organization, or lender to perform such functions as the Association determines appropriate. Any agreements made pursuant to this subparagraph shall be on such terms and conditions as agreed upon by the Association and such agency, institution, organization, or lender.

"(2) Loans made pursuant to this subsection shall be insurable either by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1) or by a State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b), except that such State or nonprofit private institution or organization shall provide the Association with a certificate of comprehensive insurance coverage. The terms of loans made under this subsection shall be such as may be agreed upon by the borrower and the Association and meet the requirements of section 427, except that (A) the ten-year maximum period referred to in section 427(a)(2)(B) may be extended to no more than twenty years, and (B) clause (ii) of section 427(a)(2)(B) shall not be applicable.

"(3)(A) Notwithstanding any other provision of this part, the Association, with the agreement of the borrower, may establish such repayment terms as it determines will promote the objectives of this subsection including, but not limited to, the establishment of graduated, income sensitive repayment schedules.

"(B) For any borrower who has received two or more loans under this part bearing interest at the rate of 9 per centum per annum on the unpaid principal balance of the loan and who requests a new loan under this subsection for the purpose of consolidation on a date after the date on which the Secretary has made a determination under section 427A(b), the rate of interest on such new loan shall not exceed 8 per centum per annum on the unpaid principal balance of such new loan.

"(4) The Association shall develop a program to ensure the dissemination of information to students, lenders, and institutions of higher education regarding the loans authorized by this subsection.

"(p)(1) The Association shall make advances in each fiscal year from amounts available to it to each State agency, nonprofit institution or organization, and eligible lender described in subsection 428(h)(1) which has an agreement with the Association which sets forth that advances are necessary to enable such agency, institution, organization or lender to make student loans in accordance with section 428(h) of this title and that such advances will be repaid to the Association in accordance with such terms and conditions as may be set forth in the agreement and agreed to by the Association and such agency, institution, organization, or lender. Advances made under this subsection shall not be subject to section 439(d)(2) of this Act.

"(2) No advance may be made under this subsection unless the State agency or nonprofit institution, organization, or lender makes an application to the Association, which shall be accompanied by such information as the Association determines to be reasonably necessary.

"(q)(1)(A) Whenever the Secretary determines that eligible borrowers in a State not served by a State agency or nonprofit private institution or organization having an agreement pursuant to section 428(b), or an eligible lender in a State described in section 435(g)(1) (D) or (F) are seeking and are unable to obtain loans under this part, the Association or its designated agent may begin making loans in accordance with this subsection at the request of the Secretary. The Association shall give preference to such States in making loans under this subsection.

"(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1).

"(2)(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the agency in a State or nonprofit private institution or organization having an agreement pursuant to section 428(b), or an eligible lender in a State described in section 435(g)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent may begin making loans in accordance with this subsection at the request of the Secretary.

"(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pursuant to section 428(b). For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

"(3) The Association or its designated agent shall cease making loans under this part in any State at such time as it is determined by the Secretary, with regard to loans made under paragraph (1), or by any party to the agreement required by paragraph (2), that—

"(A) the conditions which caused the implementation of this subsection have ceased to exist; or

"(B) the implementation of this subsection has either (i) further reduced the availability of loans from other sources in the applicable geographical area, or (ii) inhibited the formation in a State of an agency which would have an agreement pursuant to section 428(b) of this part which would have the responsibility of developing local sources of funds for student loans.".

(2) Section 435(g)(1) of the Act is amended by striking out "and" at the end of subparagraph (E), by striking out the period at the end of subparagraph (F), and by adding at the end thereof the following:

"(G) for purposes of making loans under section 439 (o) and (q), the Student Loan Marketing Association; and

"(H) for purposes of making loans under section 428(j), a State agency or a nonprofit private institution or organization having an agreement under section 428(b).".

PROMPT DUE DILIGENCE DETERMINATIONS

SEC. 422. Section 430(a) of the Act is amended by adding at the end thereof the following new sentence: "The Secretary shall make the determination required to carry out the provisions of this section not later than ninety days after the notification by the insurance beneficiary and shall make payment in full on the amount of the beneficiary's loss pending completion of his due diligence investigation.".

MISCELLANEOUS AMENDMENTS

SEC. 423. (a)(1) Section 427(a)(1) of the Act is amended to read as follows:

"(1) made to a student who (A) is an eligible student under section 484, and (B) has agreed to notify promptly the holder of the loan concerning any change of address; and".

(2) Section 428(a)(2)(B)(i) of the Act is amended to read as follows:

"(i) a student's estimated cost of attendance means the cost of attendance for

such student determined in accordance with section 482(d);".

(b) The first sentence of section 428(c)(1)(A) of the Act is amended by striking out everything after "of any insured loan" and inserting in lieu thereof a period.

(c) Section 428(e) of the Act is amended to read as follows:

"(e) From funds appropriated to carry out this part in any fiscal year, the Secretary shall pay to each eligible institution the amount of $10 per academic year for each student enrolled in that institution who is in receipt of a loan described in paragraph (1) of subsection (a) of this section or made under section 428B, for that year. Payments received by an institution under this subsection shall be used solely for the purpose of offsetting the costs to the institution for the program under this part.".

(d) Section 428(f) of the Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) The Secretary shall make payments in accordance with this paragraph to an agency, institution, or organization in any State which has an agreement under subsection (b) of this section which provides a lender referral service for students who meet the requirements of subparagraph (B).

"(B) A student is eligible to apply for lender referral services to an agency, institution, or organization in a State if (i) such student is either a resident of such State or is accepted for enrollment in or is attending an eligible institution in such State, and (ii) such student has sought and was unable to find a lender willing to make a loan under this part.

"(C) The amount which the Secretary shall pay to any eligible agency, institution, or organization under this paragraph shall be equal to one-half of 1 per centum of the total principal amount of the loans upon which insurance was issued under this part on loans made to a student described in subparagraph (B) who subsequently obtained such loans because of such agency's, institution's or organization's referral service.

"(D) Nothing in this or any law shall prohibit an agency from using all or a portion of the funds received under this part for the payment of incentive fees to lenders who agree to participate in a loan referral service.

"(E) There is authorized to be appropriated such sums as are necessary to carry out the provisions of this paragraph.".

PART C—WORK-STUDY PROGRAMS

PURPOSE; APPROPRIATIONS AUTHORIZED

SEC. 431. Section 441 of the Act is amended to read as follows:

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 441. (a) The purpose of this part is to stimulate and promote the part-time employment of students, particularly students who are in need of earnings from employment to pursue courses of study at eligible institutions.

"(b) There are authorized to be appropriated for carrying out this part $670,000,000 for fiscal year 1981, $720,000,000 for fiscal year 1982, $760,000,000 for fiscal year 1983, $800,000,000 for fiscal year 1984, and $830,000,000 for fiscal year 1985.".

ALLOTMENT TO STATES

SEC. 432. Section 442 of the Act is amended—

(1) by striking out "2 per centum" in subsection (a)(1) and inserting in lieu thereof "1 per centum";

(2) by striking out "Puerto Rico," in subsection (a)(1);

(3) by striking out "subsection (e)" in subsection (a)(2) and inserting in lieu thereof "subsection (f)";

(4) by inserting "second" immediately after "until the close of the" in subsection (d); and

(5) by striking out "Puerto Rico," in subsection (e).

USE OF CERTAIN UNUSED COLLEGE WORK-STUDY PROGRAM FUNDS FOR THE SUPPORT OF COOPERATIVE EDUCATION PROGRAMS

SEC. 433. (a) The first sentence of section 442(d) of the Act is amended by inserting before the period a comma and the following: "except that the Secretary shall give preference for the first 50 per centum of such reallotments to eligible institutions for use for initiating, improving, and expanding programs of cooperative education conducted in accordance with title VIII of this Act".

(b) Section 442(d) of the Act is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) The requirement for preferences under reallotment contained in the exception of the first sentence of paragraph (1) of this subsection shall be made upon application by the eligible institution to the Secretary in such manner and such form as the Secretary may require. The Secretary shall allot funds under such preference based upon the ratio of the number of students assisted under the cooperative education program authorized by title VIII for the fiscal year for which the determination is made enrolled in the eligible institution making application under this paragraph to the number of such students for such year enrolled in all eligible institutions applying under this part.".

GRANTS FOR WORK-STUDY PROGRAMS

SEC. 434. Part C of title IV of the Act is amended by striking out sections 443 and 444 and inserting in lieu thereof the following:

"GRANTS FOR WORK-STUDY PROGRAMS

"SEC. 443. (a) The Secretary is authorized to enter into agreements with institutions of higher education under which the Secretary will make grants to such institutions to assist in the operation of work-study programs as provided in this part.

"(b) An agreement entered into pursuant to this section shall—

"(1) provide for the operation by the institution of a program for the part-time employment of its students in work for the institution itself (except in the case of a proprietary institution of higher education) or work in the public interest for a Federal, State, or local public agency or private nonprofit organization under an arrangement between the institution and such agency or organization, and such work—

"(A) will not result in the displacement of employed workers or impair existing contracts for services;

"(B) will be governed by such conditions of employment as will be appropriate and resonable in light of such factors as type of work performed, geographical region, and proficiency of the employee;

"(C) does not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship; and

"(D) will not pay any wage to students employed under this subpart that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938;

"(2) provide that funds granted an institution of higher education, pursuant to section 443, may be used only to make payments to students participating in work-study programs, except that an institution may use a portion of the sums granted to it to meet administrative expenses in accordance with section 489 of this Act, may use a portion of the sums granted to it to meet the cost of a job location and development program in accordance with section 447 of this part, and may transfer funds in accordance with the provisions of section 488 of this Act;

"(3) provide that in the selection of students for employment under such work-study program, only students who demonstrate financial need in accordance with the provisions of section 482, and who meet the requirements of section 484 will be assisted, except that each eligible institution may reserve and award not more than 10 per centum of the funds made available under this part for each fiscal year for less-than-half-time students who are determined by the institution to be in need of such grants and who meet the requirements of section 484, other than the requirement of clause (2) of section 484(a);

"(4) provide that no student in a work-study program under this part shall be required to terminate that employment during a semester (or other regular enrollment period) at the time income derived from any employment (including work-study or non-work-study or both) is in excess of the determination of the amount of such student's need for that semester under clause (3) of this subsection, but when such excess income equals $200 or more, continued employment under a work-study program shall not be subsidized with funds appropriated under this part;

"(5) provide that the institution will meet the requirements of section 487(2) of this Act (relating to maintenance of effort);

"(6) provide that the Federal share of the compensation of students employed in the work-study program in accordance with the agreement will not exceed 80 per centum of such compensation; except that the Federal share may exceed 80 per centum of such compensation if the Secretary determines, pursuant to regulations adopted and promulgated by him establishing objective criteria for such determinations, that a Federal share in excess of 80 per centum is required in furtherance of the purposes of this part;

"(7) include provisions to make employment under such work-study program reasonably available (to the extent of available funds) to all eligible students in the institution in need thereof, and to make equivalent employment offered or arranged by the institution reasonably available (to the extent of available funds) to all students in the institution who desire such employment;

"(8) provide assurances that employment made available from funds under this part will, to the maximum extent practicable, complement and reinforce the educational program or vocational goals of each student receiving assistance under this part; and

"(9) include such other provisions as the Secretary shall deem necessary or appropriate to carry out the purposes of this part.".

DISTRIBUTION OF ASSISTANCE

SEC. 435. (a) Section 446(a) of the Act is amended by inserting at the end thereof the following new sentence: "The criteria established under this subsection shall not result in any institution's receiving an amount less than the institution used under this section for fiscal year 1979, unless there is a substantial decline in the student enrollment of the institution.".

(b) Section 446 of the Act is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) Of the sums granted to an eligible institution under this part for any fiscal year, 10 per centum may, at the discretion of the institution, remain available for expenditure during the succeeding fiscal year to carry out programs under this part. Any of the sums so granted to an institution for a fiscal year which are not needed by that institution to operate work-study programs

during that fiscal year, and which it does not wish to use during the next fiscal year as authorized in the preceding sentence, shall remain available to the Secretary for making grants under section 443 to other institutions in the same State until the close of the second fiscal year next succeeding the fiscal year for which such funds were appropriated.

"(c) Up to 10 per centum of the sums the Secretary determines an eligible institution may receive from funds which have been appropriated for a fiscal year may be used by the Secretary to make grants under this part to such institution for expenditure during the fiscal year preceding the fiscal year for which the sums were appropriated.".

JOB LOCATION AND DEVELOPMENT

SEC. 436. Section 447 of the Act is amended by striking out "$15,000" and inserting in lieu thereof "$25,000".

WORK STUDY FOR COMMUNITY SERVICE-LEARNING

SEC. 437. Part C of title IV of the Act is amended by adding at the end thereof the following new section:

"WORK STUDY FOR COMMUNITY SERVICE-LEARNING ON BEHALF OF LOW-INCOME INDIVIDUALS AND FAMILIES

"SEC. 448. (a) The purpose of this section is to encourage and enable institutions of higher education to develop work study programs involving eligible students in community service-learning designed to develop, improve, or expand services for low-income individuals and families or to solve particular problems related to the needs of low-income individuals.

"(b) For the purpose of this section—

"(1) 'community service-learning' means a program of student work that—

"(A) provides tangible community services for or on behalf of low-income individuals or families; and

"(B) provides participating students with work-learning opportunities related to their educational or vocational programs or goals; and

"(2) 'community services' means direct service, planning or applied research activities designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs including, but not limited to, such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

"(c) Each institution participating under this part may use funds made available under the last sentence of section 489(a) to conduct that institution's program of community service-learning, including—

"(1) development of mechanisms to assure the academic quality of the student experience,

"(2) assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives, and

"(3) collaboration with public and private nonprofit agencies in the planning and administration of such programs.".

PART D—NATIONAL DIRECT STUDENT LOANS

EXTENSION OF PROGRAM

SEC. 441. (a) Section 461(b)(1) of the Act is amended to read as follows:

"(b)(1) For the purpose of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $400,000,000 for each of the fiscal years 1981 and 1982, $475,000,000 for fiscal year 1983, $550,000,000 for fiscal year 1984, and $625,000,000 for fiscal year 1985, except that no funds are authorized to be appropriated for any fiscal year which begins after there has been a capital distribution under section 466(a).".

(b) Section 461(b)(2) of the Act is amended—

(1) by striking out "for the fiscal year ending September 30, 1980, and each of the three succeeding fiscal years" and inserting in lieu thereof "for fiscal year 1985 and each of the five succeeding fiscal years"; and

(2) by striking out "October 1, 1980" and inserting in lieu thereof "October 1, 1985".

ALTERNATIVE FUNDING FOR DIRECT LOANS; RECAPTURE OF CURRENT BALANCES

SEC. 442. (a) Part E of title IV of the Act is amended by adding at the end thereof the following new sections:

"ALTERNATIVE SOURCE OF FUNDS

"SEC. 468. (a)(1) The Secretary shall, not later than April 1 of each fiscal year, issue and have outstanding at any one time notes, debentures, bonds, or other obligations in such amounts as shall be necessary to carry out functions under this part, subject to such annual limitations as may be provided in an appropriation Act with respect to such fiscal year, except that the Secretary shall not issue any such obligation without the prior concurrence of the Secretary of the Treasury as to the terms and conditions of such obligations. The Secretary of the Treasury may direct that any such issuance by the Secretary be sold to the Department of the Treasury for its own account or to the Federal Financing Bank.

"(2) The Secretary of the Treasury is authorized and directed to purchase any obligations issued under this section, and for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under the Second Liberty Bond Act are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this section shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. Interest due on obligations of the Secretary held by the Treasury may be deferred, at the discretion of the Secretary, but any such deferred interest shall bear interest at the rate specified in this section. The Secretary of Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public debt transactions of the United States.

"(3) All obligations of the Secretary issued under this section shall be fully and unconditionally guaranteed as to principal and interest and shall constitute general obligations of the United States backed by the full faith and credit of the Government of the United States of America. Such guarantee shall be expressed on the face of all such obligations.

"(4) Obligations of the Secretary issued pursuant to this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. All stock and obligations issued by the Secretary pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States.

"(5) In order that the Secretary may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this section, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Secretary, to be held in the Treasury subject to delivery, upon order of the Secretary. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Secretary shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other obligations.

"(6) All moneys of the Secretary not otherwise employed may be—

"(A) deposited with the Treasury of the United States subject to withdrawal by the Secretary, by check drawn on the Treasury of the United States by a Treasury disbursing officer, or

"(B) with the approval of the Secretary of the Treasury, deposited in any Federal Reserve bank, or

"(C) with the approval of the Secretary of the Treasury, and by authorization of the Secretary, used in the purchase for redemption and retirement of any notes, debentures, bonds, or other obligations issued by the Secretary.

"(b)(1) The Secretary shall make payments under this section for any fiscal year to each institution of higher education having an agreement under section 463 on the basis of the estimated needs of that institution for making student loans taking into consideration—

"(A) the cost of attendance at that institution,

"(B) the financial need of students at that institution to meet the cost of attendance as determined under section 482, and

"(C) the financial assistance received by students at that institution under parts A and C of this title, or any other provision of Federal law (other than part B), and other scholarship, grant, work, and loan assistance received by students,

subject to the limitations specified in section 464(a)(2). No application under subsection (c) shall be approved which requests an amount greater than the amount determined under this subsection to be needed by that institution.

"(2) If the total amount of Federal capital contributions requested in applications under subsection (c) exceeds the amount available under this section for a fiscal year, the request from each institution shall be ratably reduced, except that no reduction may be made under this sentence to an amount which, together with funds available to the institution of higher education under section 463(a)(2)(A) and (B) for that fiscal year 1980. In case additional amounts become available for such contributions in any fiscal year in which requests have been so reduced, such requests shall be increased on the same basis as they were reduced, except that no such request shall be increased above the amount requested in the application.

"(c) Any institution of higher education desiring to receive payments of Federal capital contributions from the apportionment under subsection (b) shall submit an application therefor to the Secretary at such time as the Secretary prescribes.

"(d) There are authorized to be appropriated such sums as may be necessary to pay the differential between the rate of return on obligations of the Secretary made under this section and the interest collected on student loans made under this part.

"(e) In carrying out the provisions of this part, the Secretary is authorized—

"(1) to consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note evidencing a loan which has been made under this part;

"(2) to enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption;

"(3) to conduct litigation in accordance with the provisions of section 432(a)(2); and

"(4) to enter into a contract or other arrangement with State or nonprofit agencies and, on a competitive basis, with collection agencies for servicing and collection of loans under this part.

"RECAPTURE OF CURRENT BALANCE OF STUDENT LOAN FUNDS

"SEC. 469. If, by April 1 of any fiscal year, the Secretary has made available for deposit in student loan funds pursuant to section 463(a)(2)(C) an amount which equals or exceeds $1,000,000,000 to be available for loans for such fiscal year, there shall be collected from each student loan fund established under this part the current balance of such student loan fund as follows:

"(1) The Secretary shall first be paid an amount which bears the same ratio to the balance in such fund (excluding any portion of such balance which was deposited pursuant to section 463(a)(2)(C)) as the total amount of Federal capital contributions to such fund by the Secretary from funds appropriated under section 461 or under title II of the National Defense Education Act of 1958 bears to the sum of such Federal capital contributions and the institution's capital contribution to such fund. Such amounts shall be deposited in the Treasury of the United States.

"(2) The remainder of such balance, excluding any portion of such balance which was deposited pursuant to section 463(a)(2)(C), shall be paid to the institution.

"(3) Any portion of such balance which was deposited pursuant to section 463(a)(2)(C) shall be retained in the student loan fund for use in accordance with this part.".

(b)(1) Section 463(a)(2) of the Act is amended to read as follows:

"(2) provide for the deposit in such fund of—

"(A) Federal capital contributions from funds appropriated under section 461;

"(B) a capital contribution by such institution in an amount equal to not less than one-ninth of the amount of the Federal capital contributions described in subparagraph (A);

(C) Federal capital contributions from funds provided by the Secretary under section 468;

"(D) collections of principal and interest on student loans made from deposited funds other than those described in subparagraph (C);

"(E) charges collected pursuant to regulations under section 464(c)(1)(H); and

"(F) any other earnings of the funds;".

(2) Section 463(a)(3)(D) of the Act is amended by striking out "section 464(c)(1)(G)" and inserting in lieu thereof "section 464(c)(1)(H)".

(3) Section 463(a) of the Act is further amended by striking out "and" at the end of paragraph (5), by redesignating paragraph (6) as paragraph (9), and by inserting immediately after paragraph (5) the following new paragraph:

"(6)(A) provide that collections of principal and interest on student loans made from funds described in paragraph (2)(C), after deduction of any costs of litigation and other servicing and collection costs agreed to by the Secretary in connection with the servicing and collection of such a loan (and interest thereon) or a charge assessed pursuant to regulations under section 464(c)(1)(H), shall be paid to the Secretary at such time and in such manner as the Secretary may prescribe by regulation and shall be deposited in the Treasury of the United States; or

"(B) provide that, if an institution of higher education determines not to service and collect student loans made from funds described in paragraph (2)(C), the institution will assign, at the beginning of the repayment period, notes or evidence of obligations of student loans made from funds described in such paragraph to the Secretary;".

(4) Section 463(b) of the Act is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) An institution which has entered into an agreement under subsection (a) and has elected to assign the notes or evidence of obligations of student loans in accordance with paragraph (6)(B) of such subsection shall be eligible to receive, from funds available to the Secretary, an amount equal to $10 per academic year for each student enrolled in that institution who in that year received a loan from funds described in paragraph (2)(C) of subsection (a) of this section. Payments received by an institution under this paragraph shall be used for the purpose of offsetting the costs to the institution for the program under this part.".

(5) Section 464(c)(1)(G) of the Act is amended by inserting before the semicolon a comma and the following: "and except as necessary to carry out section 463(a)(6)(B)".

(6) Section 465(b) of the Act is amended by inserting immediately before the period at the end of the first sentence the following: ", minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 468".

(c) Section 466 of the Act is amended—

(1) by striking out "September 30, 1984" each place it appears in subsection (a) and inserting in lieu thereof "September 30, 1990";

(2) by striking out "March 31, 1985" each place it appears in subsections (a) and (b) and inserting in lieu thereof "March 31, 1991";

(3) by striking out "September 30, 1978" in subsection (b) and inserting in lieu thereof "September 30, 1981"; and

(4) by striking out "October 1, 1984" in subsection (c) and inserting in lieu thereof "October 1, 1990".

LOAN LIMITATIONS

SEC. 443. Section 464(a)(2) of this Act is amended—

(1) by striking out "$10,000" in clause (A) and inserting in lieu thereof "$12,000";

(2) by striking out "$5,000" in clause (B) and inserting in lieu thereof "$6,000"; and

(3) by striking out "$2,500" in clause (C) and inserting in lieu thereof "$3,000".

DEFERRAL OF REPAYMENT

SEC. 444. (a) Section 464(c)(2)(A) of the Act is amended—

(1) by inserting "or is an officer in the Commissioned Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii);

(2) by striking out "or" at the end of clause (iii), by striking out the period at the end of clause (iv) and inserting in lieu thereof a semicolon, and by inserting after clause (iv) the following new clauses:

"(v) is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

"(vi) is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; or

"(vii) is temporarily totally disabled (as defined in section 435(j)), as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled.";

(3) by striking "clause (ii), (iii), or (iv)" in the second sentence of such section and inserting in lieu thereof "clause (ii), (iii), (iv), (v), or (vii)"; and

(4) by inserting immediately after such sentence the following new sentence: "The period during which repayment may be deferred by reason of clause (vi) shall not exceed two years.".

(b) Section 464(c)(1)(A) of the Act is amended by striking out "nine months" each place it appears and inserting in lieu thereof "six months".

(c) Section 464(c)(1)(A) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C) No repayment of principal of, or interest on, any loan for any period of study, service, or disability described in subparagraph (A) or any combination thereof shall begin until six months after the completion of such period of study, service, disability, or combination thereof.".

(d) Section 464(c)(3) of the Act is amended by inserting "(A)" immediately after "(3)" and by adding at the end thereof the following:

"(B) Pursuant to uniform criteria established by the Secretary, the repayment period for any student borrower who during the repayment period is a low-income individual may be extended for a period not to exceed ten years and the repayment schedule may be adjusted to reflect the income of that individual.".

COLLECTION PRACTICES

SEC. 445. (a) Section 463(a) of the Act (as amended by section 442(b)(3)) is further amended by inserting after paragraph (6) the following new paragraph:

"(7) provide that, notwithstanding any other provision of law, the Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to him, from whatever source such information may be derived;".

(b)(1) Section 463 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1) For the purpose of promoting responsible repayment of loans made pursuant to this part, the Secretary shall enter into cooperative agreements with credit bureau organizations to provide for the exchange of information concerning student borrowers concerning whom the Secretary has received a referral pursuant to section 467.

"(2) Each cooperative agreement made pursuant to paragraph (1) shall be made in accordance with requirements of section 430(b)(2) except that such agreement shall provide for the disclosure by the Secretary to such organizations, with respect to any loan for which the Secretary is responsible, of—

"(A) the date of disbursement and the amount of any such loan;

"(B) information concerning collection of any such loan, including information concerning the status of any defaulted loan; and

"(C) the date of cancellation of the note upon completion of repayment by the borrower of any such loan.".

(2) Section 464(c)(1) of such Act is amended by striking out "and" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; and", and by adding at the end thereof the following new subparagraph:

"(I) shall contain a notice of the system of disclosure of information concerning default on such loan to credit bureau organizations under section 463(c).".

(c) Section 467 of the Act is amended by inserting "(a)" after "SEC. 467." and by adding at the end thereof the following new subsection:

"(b) The Secretary shall continue to attempt to collect any loan assigned under section 463(a)(5) or (6) or referred under subsection (a) of this section until a date

which is not earlier than four years after the date of default (determined in a manner consistent with section 430(e)).".

INTEREST RATES

SEC. 446. Section 464(c)(1)(D) of the Act is amended by inserting immediately after "3 per centum per annum" the following: "or 4 per centum per annum in the case of any loan made on or after October 1, 1980".

STUDENT LOAN INFORMATION PROGRAM AUTHORIZED

SEC. 447. (a) Section 463(a) of the Act (as amended by section 442(b)(3)) is amended by inserting immediately after paragraph (7) the following new paragraph:

"(8) provide assurances that the institution will comply with the provisions of section 463A;".

(b) Part E of title IV of the Act is amended by adding after section 463 the following new section:

"STUDENT LOAN INFORMATION BY INSTITUTIONS

"SEC. 463A. Each institution of higher education, in order to carry out the provisions of section 463(a)(7), shall, at the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on loans made under this part to the student borrower. The loan information required by this section shall include—

"(1) the yearly and cumulative maximum amounts that may be borrowed by a student;

"(2) the terms on which repayment will begin;

"(3) the maximum number of years in which the loan must be repaid;

"(4) the interest rate that will be repaid and the minimum amount of required monthly payment;

"(5) any special options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

"(6) a definition of default and the consequences to the borrower if the borrower should default, including a description of any arrangements made with credit bureau organizations; and

"(7) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.".

MISCELLANEOUS AMENDMENTS

SEC. 448. (a) Section 462 of the Act is amended by striking out subsection (d).

(b) Section 463(b) of the Act is amended by striking out "section 493" and inserting in lieu thereof "section 485".

(c)(1) Section 464(b) of the Act is amended to read as follows:

"(b) A loan from a student loan fund assisted under this part may be made only to a student who demonstrates financial need in accordance with section 482 and who meets the requirements of section 484.".

(2) Section 464(e) of the Act is repealed.

(d) Section 465(a)(2) of the Act is amended by striking out the last sentence and inserting in lieu thereof the following: "For purposes of this paragraph, the term 'handicapped children' has the meaning set forth in section 602(1) of the Education of the Handicapped Act.".

(e) Section 465(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(5) The amount of a loan, and interest on a loan, which is canceled under this section shall not be considered income for purposes of the Internal Revenue Code of 1954.".

PART E—GENERAL PROVISIONS

STUDENT ASSISTANCE GENERAL PROVISIONS

SEC. 451. (a) Part F of title IV of the Act is amended to read as follows:

"PART F—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

"DEFINITIONS

"SEC. 481. (a)(1) For the purposes of this title, except subpart 5 of part A and part B, the term 'institution of higher education' includes, in addition to the institutions covered by the definition contained in section 1201(a)—

"(A) a proprietary institution of higher education;

"(B) a postsecondary vocational institution;

"(C) a department, division, or other administrative unit in a college or university which provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing; and

"(D) a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree.

"(2) The term 'accredited' when applied to any program of nurse education means a program accredited by a recognized body or bodies approved for such purpose by the Secretary.

"(b) For the purposes of this section, the term 'proprietary institution of higher education' means a school (1) which provides less than a six-month program of training to prepare students for gainful employment in a recognized occupation, (2) which meets the requirements of clauses (1) and (2) of section 1201(a), (3) which does not meet the requirement of clause (4) of section 1201(a), (4) which is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose, and (5) which has been in existence for at least two years. Such term also includes a proprietary educational institution in any State which, in lieu of the requirement in clause (1) of section 1201(a), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution. For purposes of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.

"(c) For the purposes of this section, the term 'postsecondary vocational institution' means a school (1) which provides not less than a six-month program of training to prepare students for gainful employment in a recognized occupation, (2) which meets the requirements of clauses (1), (2), (4), and (5) of section 1201(a), and (3) which has been in existence for at least two years. Such term also includes an educational institution in any State which, in lieu of the requirement in clause (1) of section 1201(a), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"(d) For the purpose of any program under this title, the term 'academic year' shall be defined by the Secretary by regulation.

"NEED ANALYSIS

"SEC. 482. (a)(1) For the purpose of determining a student's need for financial assistance under this title (other than under subpart 3 of part A and under part B), the Secretary shall publish in the Federal Register, no later than July 1, 1981, April 1, 1982, and on April 1 of each succeeding calendar year, a proposed schedule of expected family contributions for the academic year which begins after July 1 of the calendar year which succeeds such calendar year for various levels of family income, which, except as is otherwise provided in paragraph (2), together with any amendments thereto, shall become effective July 1 of the calendar year which succeeds such calendar year. During the thirty-day period following such publication the Secretary shall provide interested parties with an opportunity to present their views and make recommendations with respect to such schedule. Such schedule shall be adjusted annually.

"(2) The schedule of expected family contributions required for each academic year shall be submitted to the President of the Senate and the Speaker of the House of Representatives not later than the time of its publication in the Federal Register. If either the Senate or the House of Representatives adopts, prior to October 1, 1981, July 1, 1982, or July 1 of any succeeding year following the submission of such schedule as required by this paragraph, a resolution of disapproval of such schedule, in whole or in part, the Secretary shall publish a new schedule of expected family contributions in the Federal Register not later than fifteen days after the adoption of such resolution of disapproval of such schedule, in whole or in part, consideration such recommendations as may be made in either House in connection with such resolution. If within fifteen days following the submission of the revised schedule either the Senate or the House of Representatives again adopts a resolution of disapproval, in whole or in part, of such revised schedule, the Secretary shall publish a new schedule of expected family contributions in the Federal Register not later than fifteen days after the adoption of such resolution of disapproval. This procedure shall be repeated until neither the Senate nor the House of Representatives adopts a resolution of disapproval. The Secretary shall publish together with each new schedule a statement identifying the recommendations made in either House in connection with such resolution of disapproval and explaining his reasons for the new schedule.

"(3) The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall develop a proposed schedule of expected family contributions each year for publication in the Federal Register.

"(b)(1) For the purpose of this section, the term 'family contribution' with respect to any student means the amount which the student and his family may be reasonably expected to contribute toward his postsecondary education for the academic year for which the determination is made, as determined in accordance with regulations. In promulgating such regulations, the Secretary shall follow the basic criteria set forth in paragraph (2) of this subsection.

"(2) The basic criteria to be followed in promulgating regulations with respect to expected family contributions are as follows:

"(A) The amount of the effective income of the student or the effective family income of the student's parents.

"(B) The number of dependents of the family of the student.

"(C) The number of dependents of the student's family who are in attendance in a program of postsecondary education and for whom the family may be reasonably expected to contribute for their postsecondary education.

"(D) The amount of the assets of the student and the assets of the student's family.

"(E) Any unusual expenses of the student or his family, such as unusual medical expenses and those which may arise from a catastrophe.

"(F) Any educational expenses of other dependent children in the family.

"(3) For purposes of subparagraph (A) of paragraph (2), the term 'effective family income' with respect to a student, means the annual adjusted family income, as determined in accordance with regulations prescribed by the Secretary, received by the parents or legal guardians of the student minus Federal, State and local taxes paid or payable with respect to such income, and includes any amount paid under the Social Security Act to, or on account of, the student which would not be paid if he were not a student and one-half any amount paid the student under chapters 34 and 35 of title 38, United States Code. The term 'effective family income' includes any effective student income after any offset as determined by regulations prescribed by the Secretary.

"(4) In determining the expected family contribution under this section for any academic year after academic year 1978–1979, an assessment rate of not more than 14 per centum shall be applied to parental discretionary income for families with adjusted gross family income which does not exceed $25,000 for each such year. The Secretary may set an assessment rate or a series of assessment rates to be applied to parental discretionary income for families with adjusted gross income which exceed $25,000 for each such year for income in excess of $25,000.

"(5) For the purposes of paragraph (2)(D), the assets shall be determined by—

"(A) excluding all equity in a single principal place of residence from the computation of assets;

"(B) deducting an asset reserve of not less than $10,000 from the net value of all assets; and

"(C) if net assets include farm or business assets, deducting an additional asset reserve of not less than $50,000 from the net assets.

"(c)(1) The Secretary shall promulgate special regulations for determining the expected family contribution and effective family income of an independent student. Such special regulations shall be consistent with the basic criteria set forth in paragraph (2) of subsection (b). In addition, such regulations shall—

"(A) provide that the portion of assets which shall be exempt from assessment for contribution for an independent student who has one or more dependents shall be the same as the portion so exempt for the family of a dependent student;

"(B) provide that the rate of assessment for contribution on that portion of assets of such an independent student which is not exempt under subparagraph (A) shall be the same as the rate applied to the comparable portion of assets of the family of a dependent student;

"(C) in establishing a portion of effective family income which shall be exempt from assessment for contribution by reason of subsistence requirements of independent students who have no dependents, use the same method for computation of such portion for such students as is used for dependent students and for independent students who have dependents;

"(D) in determining the family contribution for an independent student who has one or more dependents, provide that the assessment rate which is to be applied to the student's discretionary income shall be the same as the assessment rate applied to discretionary income of the family of a dependent student; and

"(E) provide that a married student shall be considered independent if, notwithstanding prior dependency status, such student certifies that in the year of application he (i) will not live with parents for more than six weeks; (ii) will not be claimed by parents as a dependent on any tax return filed for purposes of Federal income taxes; and (iii) will not receive more than $750 in support from parents.

"(2) For purposes of this title, the term 'independent student' means a student who is determined, pursuant to regulations of the Secretary, to be independent of the parents or legal guardians of the student.

"(d) For the purposes of this title, the term 'cost of attendance' means—

"(1) tuition and fees normally, assessed a full-time student at the institution at which the student is in attendance;

"(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses;

"(3) an allowance for room and board costs incurred by the student which—

"(A) beginning in academic year 1981–1982 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

"(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

"(C) for all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by such students for room and board; and

"(D) for students with dependents, shall be an allowance based on the expenses reasonably incurred by such students for room and board;

"(4) for a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

"(5) for a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study;

"(6) for a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

"(7) for a handicapped student, an allowance for those expenses related to his handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

"(e) Nothing in this section shall prohibit an institution, in individual cases, from adjusting the financial need determination for a student aided under subpart 2 of part A or part C or E of this title if the basis for such adjustment is documented.

"FORMS AND REGULATIONS

"SEC. 483. (a) The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall prescribe a common Federal financial aid application form to be used to determine the need and eligibility of a student for financial assistance under this title (other than under subpart 3 of part A and under part B). No student or parent of a student shall be charged a fee for processing the data elements of the form prescribed by the Secretary. The Secretary shall, to the extent practicable, enter into not less than three contracts with States, institutions of higher education, or private organizations for the purpose of processing the application required under this subsection and issuing eligibility reports. The Secretary may also contract for additional services to assure coordination of financial aid from both Federal and non-Federal sources, and to provide information, training, and similar services to institutions, aid officers, counselors, lenders, parents and students. Nothing in this section shall prohibit States, institutions, or private organizations from simultaneously collecting data elements, in addition to the data elements prescribed by the Secretary, as may be necessary to determine the eligibility of a student for financial aid funds not covered by this title (or covered under subpart 3 of part A or under part B of this title).

"(b) Copies of all rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this title shall be provided to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives at least thirty days prior to their effective date.

"(c) To help insure access to postsecondary education by providing early notice to students of their potential eligibility for financial aid, the Secretary is authorized to enter into contracts with States, institutions of higher education, and private organizations for the purpose of—

"(1) developing a common pre-eligibility Federal financial aid form,

"(2) distributing and processing such form on a year-round basis free of charge to students, and

"(3) issuing on the basis of information reported by the student on such form a pre-eligibility index designed to estimate the amount of Federal (and, if feasible, non-Federal) funds for which the student might qualify in later completing and submitting the application form called for under this section.

The Secretary shall widely disseminate the pre-eligibility form through post offices and other appropriate Federal installations, schools, postsecondary institutions, libraries, and community-based agencies, including projects assisted under subpart 4 of part A of this title.

"STUDENT ELIGIBILITY

"SEC. 484. (a) In order to receive any grant, loan, or work assistance under this title, a student must—

"(1) be enrolled or accepted for enrollment at an institution of higher education that is an eligible institution in accordance with the provisions of section 487;

"(2) except as otherwise specifically provided, be carrying or planning to carry at least one-half the normal full-time workload for the course of study the student is pursuing, as determined by the institution;

"(3) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing according to the standards and practices of the institution at which the student is in attendance;

"(4) not owe a refund on grants previously received at such institution under this title, or be in default on any loan from a student loan fund at such institution provided for in part E, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at such institution; and

"(5) file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution.

"(b) Any permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands shall be eligible for assistance under this title to the same extent that citizens of the United States are eligible for such assistance.

"INSTITUTIONAL AND FINANCIAL ASSISTANCE INFORMATION FOR STUDENTS

"SEC. 485. (a)(1) Each eligible institution participating in any program under this title shall carry out information dissemination activities for prospective and enrolled

students regarding the institution and financial assistance under this title. The information required by this section shall be produced and be made readily available, through appropriate publications and mailings, to all current students, and to any prospective student upon request. The information required by this section shall accurately describe—

"(A) the student financial assistance programs available to students who enroll at such institution;

"(B) the methods by which such assistance is distributed among student recipients who enroll at such institution;

"(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such application;

"(D) the rights and responsibilities of students receiving financial assistance under this title;

"(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;

"(F) a statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of cost, as described in clause (E) of this paragraph;

"(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, and (iii) the faculty and other instructional personnel;

"(H) each person designated under subsection (b) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection;

"(I) special facilities and services available to handicapped students;

"(J) the names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs, and the procedures under which any current or prospective student may obtain or review upon request a copy of the documents describing the institution's accreditation, approval, or licensing; and

"(K) the standards which the student must maintain in order to be considered to be making satisfactory progress, pursuant to section 484(a)(3).

"(2) For purposes of this section, the term 'prospective student' means any individual who has contacted an eligible institution requesting information concerning admission to that institution.

"(b) Each eligible institution shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in subsection (a). The Secretary may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution in which the total enrollment, or the portion of the enrollment participating in programs under this title at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

"(c) The Secretary shall make available to eligible institutions descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (1) assist students in gaining information through institutional sources, and (2) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs.

"TRAINING IN FINANCIAL AID AND STUDENT SUPPORT SERVICES

"SEC. 486. (a) The Secretary is authorized to enter into contracts with appropriate public agencies or nonprofit private organizations or institutions of higher education to provide training for financial aid administrators student peer counselors, student staff or volunteers, and other part-time staff and volunteers who provide financial aid, admissions and academic counseling and outreach, and student support programs in postsecondary education in postsecondary institutions, communities or statewide programs.

"(b) Financial assistance under this section may be used for—

"(1) development of materials and inservice training and career awareness programs;

"(2) operation of short-term training institutes designed to improve the skills and career awareness of participants in such institutes; and

"(3) special programs to assist in training of students and part-time staff or volunteers at institutions eligible for assistance under title III of this Act.

"(c) There are authorized to be appropriated $1,000,000 to carry out the provisions of this section for fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1985.

"PROGRAM PARTICIPATION AGREEMENTS

"SEC. 487. (a) In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for purposes of that program) and shall, except with respect to a program under subpart 3 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

"(1) The institution will use funds received by it for any program under this title solely for the purposes specified in, and in accordance with, the provisions of that program.

"(2) In the case of an institution participating in any program authorized under subpart 2 of part A or part C of this title for any fiscal year, the institution will continue to spend in its own scholarship and student aid program, from sources other than funds received under such parts, not less than the average expenditures per year made for that purpose during the most recent period of three fiscal years preceding the effective date of the program participation agreement, except that, under special and unusual circumstances prescribed by regulation, the Secretary is authorized to waive the requirements of this paragraph.

"(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this title.

"(4) The institution will comply with the provisions of subsection (b) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

"(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part E, to holders of loans made to the institution's students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purposes of this title.

"(6) The institution will comply with the requirements of section 485.

"(b)(1) Notwithstanding any other provisions of this title, the Secretary is authorized to prescribe such regulations as may be necessary to provide for—

"(A) a fiscal audit of an eligible institution with regard to any funds obtained by it under this title or obtained from a student who has a loan insured or guaranteed by the Secretary under this title;

"(B) the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title;

"(C) the establishment, by each eligible institution under part B responsible for furnishing to the lender the statement required by section 428(a)(2)(A)(i), of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to reenroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than sixty days after such termination or failure to re-enroll; and

"(D) the limitation, suspension, or termination of the eligibility for any program under this title of any otherwise eligible institution, or the imposition of a civil penalty under paragraph (2)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing on the record, that such institution has violated or failed to carry out any provision of this title or any regulation prescribed under this title, except that no period of suspension under this section shall exceed sixty days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time.

"(2)(A) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this title of any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

"(B)(i) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution—

"(I) has violated or failed to carry out any provision of this title or any regulation prescribed under this title; or

"(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed $25,000 for each violation or misrepresentation.

"(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

"(3) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

"(c) For the purpose of this section the term 'eligible institution' means any such institution described in section 435(a) of this Act.

"TRANSFER OF ALLOTMENTS

"SEC. 488. Up to 10 per centum of the allotment of an eligible institution for a fiscal year under section 413D or 446 of this Act, may be transferred to, and used for the purposes of, the institution's allotment under the other section within the discretion of such institution in order to offer an arrangement of types of aid, including institutional and State aid, which best fits the needs of each individual student. The Secretary shall have no control over such transfer, except as specifically authorized, except for the collection and dissemination of the information.

"ADMINISTRATIVE EXPENSES

"SEC. 489. (a) From the sums appropriated for any fiscal year for purposes of the program authorized under subpart 1 of part A, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 487, an amount equal to $10 for each student at that institution who receives assistance under subpart 1 of part A. In addition, an institution which has entered into an agreement with the Secretary under subpart 2 of part A or part C (other than section 448), of this title or under part E of this title shall be entitled for each fiscal year for which it receives an allotment by payment under any such part to a payment for the purposes set forth in subsection (b). The payment for a fiscal year shall be payable from each such allotment by payment in accordance with regulations of the Secretary and shall be equal to 5 per centum of the institution's first $2,750,000 of expenditures plus 4 per centum of the institution's expenditures greater than $2,750,000 and less than $5,500,000, plus 3 per centum of the institution's expenditures in excess of $5,500,000 during the fiscal year from the sum of its grants to students under subpart 2 of part A, its expenditures during such fiscal year under part C for compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part E, excluding the principal amount of any such loans which the institution has agreed to assign under section 463(a)(6)(B). The payment for a fiscal year for the purpose of subsection (b) with respect to section 448 shall be payable from each allotment under part C in accordance with regulations of the Secretary, and shall be 10 per centum of the institution's expenditures during such fiscal year under such section.

"(b) The sums paid to institutions under this part are for the sole purpose of offsetting the administrative costs of the programs described in subsection (a).

"CRIMINAL PENALTIES

"SEC. 490. (a) Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds, assets, or property provided or insured under this title shall be fined not more than $10,000 or imprisoned for not more than five years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud, false statement, or forgery does not exceed $200, the fine shall not be more than $1,000 and imprisonment shall not exceed one year, or both.

"(b) Any person who knowingly and willfully makes any false statement, furnishes any false information, or conceals any material information in connection with the assignment of a loan which is made or insured under this title shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) Any person who knowingly and willfully makes an unlawful payment to an eligible lender under part B as an inducement to make, or to acquire by assignment, a loan insured under that part shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

"(d) Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under this title with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part, shall upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

"NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

"SEC. 491. (a) There is established, as an independent agency within the executive branch, a National Commission on Student Financial Assistance (referred to in this section as the 'Commission').

"(b)(1) The Commission shall be composed of twelve members. Four of the members shall be appointed by the President. Four of the members shall be appointed by the Speaker of the House, including two Members of the House, one from each political party. Four of the members shall be appointed by the President pro tempore of the Senate, including two Members of the Senate, one from each political party.

"(2) The Chairman shall be designated by the President from among the members appointed by him. If the President has not appointed four members of the Commission and designated a Chairman within sixty days of the enactment of this Act, the members of the Commission appointed by the Speaker of the House and the President pro tempore of the Senate shall elect a Chairman who shall continue to serve for the duration of the Commission.

"(3) Any vacancy in the Commission shall be filled by appointment of the same person who appointed the person who has left the Commission.

"(c)(1) The Commission shall make a study of the following issues:

"(A) more effective means to reduce default, fraud, abuse, and delinquency in the programs authorized by this title;

"(B) the appropriate balance between loans and other sources of financing postsecondary education from the point of view of the needs and welfare of students and their parents;

"(C) the adequacy of capital to serve the postsecondary educational needs of students or their parents for credit; if adequate credit is available, the likelihood it will continue to remain available; if adequate credit is not available, the likelihood it will become available and the steps that can be taken to provide adequate credit for the postsecondary educational needs of students;

"(D) the impact of various levels of student borrowing, grants, gift aid, and employment on the educational performance, future career choices, and future educational choices of students;

"(E) the impact of various levels of parent borrowing for postsecondary education on parents;

"(F) the appropriate annual and aggregate self-help limits and gift aid for parents, dependent students, and independent students;

"(G) the most appropriate mechanism for the effective and efficient origination, servicing, and collection of student loans and for the effective and efficient delivery of other forms of student assistance;

"(H) the most appropriate source or sources of student loan capital considering both the cost and the reliability of adequate availability;

"(I) the appropriate level of public subsidy to students and parents for the cost of capital for student loans;

"(J) the impact of the availability of Federal student financial assistance on the availability of student financial assistance from all other sources;

"(K) the impact of the availability of student assistance, particularly from Federal sources, on the level of postsecondary education costs;

"(L) the most appropriate mechanism to provide students and parents with the flexible repayment options and opportunities for consolidation of student loan indebtedness;

"(M) means to remove barriers to capital availability caused by patterns of lender discrimination;

"(N) the cost to the Federal Government of the arbitrage derived from revenue bonds issued by agencies for the purpose of making or purchasing loans under part B of this title and the appropriate role of such bonds as a mechanism for raising student loan capital; and

"(O) the effectiveness in serving the purposes of this title of the existing formulas for allotment among the States in subpart 2 of part A and in parts C and E of this title.

"(2) The Commission shall make a study of the insurance premium charged by an insurer pursuant to section 428(b)(1)(H) in order to determine if the rate of the insurance premium exceeds the rate necessary to protect the reserves of the insurer and to determine if a statutory limit should be enacted for the rate of such premium.

"(3)(A) The Commission shall make a study of an improved method or methods for determination of the quarterly rate of special allowances paid under part B of this title which the Commission determines will carry out the objectives set forth in section 438(a).

"(B) The Commission shall make every effort to reach a unanimous decision with respect to the method for determination of the quarterly rate of the special allowances required to be studied by this paragraph.

"(C) In developing the method for the determination of the quarterly rate of the special allowances under this paragraph, the Commission shall consider—

"(i) the experiences of students and eligible lenders under the method in operation during the period of the study,

"(ii) the administrative costs of various types of eligible lenders under part B of title IV,

"(iii) relevant and widely available financial indicators which accurately reflect the costs of capital invested in programs under such part, or substitute financial indicators which equitably represent the cost of such capital.

"(iv) an administrative mechanism necessary to produce a prompt and rapidly disseminated determination of the quarterly rate of the special allowances, in order to avoid delays in the determination and dissemination of that rate and in the actual payment of the special allowances to eligible lenders, and

"(v) such other factors as the Commission considers necessary to carry out the purposes of section 438(a).

"(4) The Commission shall conduct a study to determine if institutions of higher education which meet the requirements of section 1201(a) (other than the provisions of subclauses (A) and (B) of clause (5) of such section), but fail to meet such requirements because the institution is not located in a State, should be included in the definition of institution of higher education under section 481.

"(5) The Commission shall conduct a study to determine if student eligibility for financial assistance under section 484 on the basis of maintaining satisfactory academic progress should include provisions which would require that a student complete successfully a specified portion of the workload undertaken during the academic period for which assistance was received by the student.

"(6) The Commission shall, in consultation with the National Center for Education Statistics, conduct longitudinal studies of high school students in order to determine the effect of federally authorized student assistance programs upon postsecondary education access and choices of high school students.

"(7)(A) The Commission shall, in consultation with appropriate higher education associations and representatives from institutions of higher education, collect data necessary for the study of graduate education throughout the United States required by this paragraph. Such study shall—

"(i) analyze trends and shortcomings in the sources of support available to students for the financing of graduate education, and compare the nature and level of support available in the various academic disciplines, including sources of support from student assistance and research programs sponsored by—

"(I) the Federal Government,

"(II) State and local governments,

"(III) foundations, corporations, and other private entities, and

"(IV) institutions of higher education, and

in addition, consider the resources of the students and the students' families;

"(ii) examine the extent to which students may be dissuaded from pursuing graduate education on financial grounds, to the consequent detriment of—

"(I) the major fields of knowledge which need to attract the most able and talented students of each generation if they are to remain strong and vigorous; and

"(II) the Nation as a whole, if some of its most promising students are precluded because of financial circumstances from developing their capacities and abilities to the fullest possible extent;

"(iii) investigate existing and projected levels of graduate student indebtedness, and consider the implications (for the students involved and for the health of graduate education generally) or existing and projected expectations for borrowing to meet the costs of graduate education;

"(iv) assess the desirability of modifying existing Federal fellowship and student assistance programs or establishing a new Federal graduate student assistance program in which the selection of students and the amounts of their awards are based on merit or financial need or both, particularly with regard to the special needs of students in the humanities and social sciences or other disciplines; and

"(v) examine and assess the financial and educational needs of individuals from disadvantaged backgrounds in order to enhance their participation in graduate and professional education and their potential for employment in occupational areas where these individuals are underrepresented.

"(B) In conducting the study described in this paragraph, the Commission shall consult with representatives of the National Science Foundation, the National Endowment for the Humanities, the National Endowment for the Arts, and representatives of higher education institutions and associations, learned societies, and professional organizations.

"(8)(A) The Commission shall conduct a study of a proposal to amend the guaranteed student loan program authorized by part B of title IV by recapturing interest subsidies from borrowers who do not obtain loans for undergraduate study under such part by reason of need or who borrow under such part for graduate study to the extent such loans are made for graduate study. In conducting such study, the Commission shall analyze the long term effect on the Budget of the United States of recapturing the interest subsidy in accordance with such proposal outlined in this paragraph and the impact of such proposal on the availability of funds for postsecondary education for students.

"(B) In conducting the study under this paragraph, the Commission shall also consider other alternative proposals designed to reduce the cost of the guaranteed student loan program under part B of title IV in fiscal years subsequent to fiscal year 1982 and the impact of such proposal on the availability of funds for postsecondary education for students.

"(d)(1) The Commission shall prepare and submit reports and recommendations to the President and to the Congress on the studies required to be conducted under subsection (c) of this section. The reports for the studies required by paragraphs (2), (3), (5), and (8) of such subsection shall be submitted as soon as practicable but in no event later than one year after the date of the first meeting of the Commission. The reports for the studies required by paragraphs (1), (4), (6), and (7) shall be submitted as soon as practicable but in no event later than July 1, 1983.

"(2) Any recommendations and reports submitted under this paragraph which contemplate changes in Federal legislation shall include draft legislation to accomplish the recommendations.

"(3) The Commission shall cease to exist 90 days following the submission of its final report.

"(e)(1) Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(2) Members of the Commission who are not officers or full-time employees of the United States may each receive $150 per diem when engaged in the actual performance of duties vested in the Commission. In addition, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(f) Such personnel as the Commission deems necessary may be appointed by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS-18 of the General Schedule.

"(g)(1) The Commission or, on the authorization of the Commission, any committee thereof, may, for the purpose of carrying out the provisions of the Act, hold such hearings and sit and act at such times and such places within the United States as the Commission or such committee may deem advisable.

"(2) In carrying out its duties under the Act, the Commission shall consult with other Federal agencies, representatives of State and local government's, and private organizations to the extent feasible.

"(3) The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment or instrumentality, information, suggestions, estimates, and statistics for the purpose of this section, and each such department bureau, agency, board, commission office establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.

"(4) For the purpose of securing the necessary data and information the Commission may enter into contracts with universities, research institutions, foundations, and other competent public or private agencies. For such purpose, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

"(5) The heads of all Federal agencies are, to the extent not prohibited by law, directed to cooperate with the Commission in carrying out this section.

"(6) The Commission is authorized to utilize, with their consent, the services, personnel, information and facilities of other Federal, State, local and private agencies with or without reimbursement.

"(7) The Commission shall have authority to accept in the name of the United States, grants, gifts, or bequests of money for immediate disbursement in furtherance of the functions of the Commission. Such grants, gifts, or bequests, after acceptance by the Commission, shall be paid by the donor or his representative to the Treasurer of the United States whose receipts shall be their acquittance. The Treasurer of the United States shall enter them in a special account to the credit of the Commission for the purposes in each case specified.

"(8) Six members of the Commission shall constitute a quorum, but a lesser number of two or more may conduct hearings.

"(h) There is authorized to be appropriated an amount not to exceed a total of $10,000,000 for fiscal years beginning on or after October 1, 1980, to carry out the provisions of this section, which shall remain available until expended or until the termination of the Commission, whichever occurs first.".

(b) Section 440 of the Act is repealed.

(c) The amendments made by section 8 of the Middle Income Student Assistance Act shall take effect on July 1, 1972.

(d) Section 438 of the Act is amended by striking out subsections (e), (f), and (g).

TITLE V—AMENDMENT AND EXTENSION OF TITLE V OF THE HIGHER EDUCATION ACT OF 1965

EXTENSION OF PROGRAMS

SEC. 501. (a) Section 511(b) of the Act is amended to read as follows:

"(b) For the purpose of carrying out the provisions of this part, there are authorized to be appropriated $45,000,000 for the fiscal year 1981, $50,000,000 for the fiscal year 1982, $60,000,000 for the fiscal year 1983, $70,000,000 for the fiscal year 1984, and $80,000,000 for the fiscal year 1985.".

(b) The first sentence of section 531 of the Act is amended to read as follows: "There are authorized to be appropriated $20,000,000 for the fiscal year 1981, $30,000,000 for the fiscal year 1982, $40,000,000 for the fiscal year 1983, $50,000,000 for the fiscal year 1984, and $55,000,000 for the fiscal year 1985 to carry out the provisions of this part.".

TEACHER CORPS AMENDMENTS

SEC. 502. (a) Section 513(a) of the Act is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and" and by inserting after such paragraph the following:

"(10) make grants to schools, colleges and departments of education and local educational agencies with high concentrations of low income students for the purpose of—

"(A) developing, improving or expanding curriculum offerings or instructional materials for the purpose of improving instruction in the areas of—

"(i) biological sciences, natural sciences and earth sciences,

"(ii) physical sciences, and

"(iii) mathematics; and

"(B) providing training opportunities for teachers to increase their effectiveness in developing instructional materials and teaching science and mathematics related subject matter.".

(b) Section 513(c)(2) of the Act is amended—

(1) by striking out "Not to exceed 5 per centum" and inserting in lieu thereof "Not to exceed 2 per centum"; and

(2) by striking out "Puerto Rico," each place it appears.

(c) Section 513(d) of the Act is amended by striking out "section 205(a)(2) of Public Law 874, Eighty-first Congress, as amended," and inserting in lieu thereof "section 130 of the Elementary and Secondary Education Act of 1965".

(d) Section 513(f) of the Act is amended by striking out "goal" and inserting in lieu thereof "the goal".

(e) Section 514(a)(2) of the Act is amended by striking out ", not to exceed $150 per week plus $15 per week for each dependent".

TEACHER CENTERS AMENDMENTS

SEC. 503. (a) Section 531 of the Act is amended by striking out "the event that sums exceeding $50,000,000 are appropriated in any fiscal year for purposes of carrying out this part, each" and inserting in lieu thereof "Each".

(b) Section 532(a)(2) of the Act is amended—

(1) by striking out "local educational agency (or a combination of such agencies) which serve" and inserting in lieu thereof "local educational agency, a combination of such agencies, or an educational service agency which serves";

(2) by inserting "and, where desirable, in collaboration with one or more institutions of higher education which serve teachers" immediately after "experts as may be necessary";

(3) by inserting ", including the use of technology and telecommunications immediately before the semicolon in subparagraph (A);

(4) by inserting ", testing," immediately after "curriculum development" in subparagraph (B).

(c) The first sentence of section 532(b) of the Act is amended by inserting before the period "and, where appropriate, bilingual education teachers".

TEACHER TRAINING

SEC. 504. Section 533 of the Act is amended to read as follows:

"TRAINING FOR HIGHER EDUCATION PERSONNEL

"SEC. 533. (a) The Secretary is authorized to make grants to schools of education for the purposes of—

"(1) developing model projects within schools of education to carry out improved preservice or support activities for preparing elementary or secondary school teachers;

"(2) achieving diversification and redirection of education programs for elementary and secondary school teachers in order to make maximum use of human resources in the fields of education and public service;

"(3) retraining faculty members of such schools of education to provide courses of study for training elementary and secondary school teachers to teach in programs of career education, education of the gifted and talented children, education of handicapped individuals, community education, adult education programs, earth sciences, and other related programs;

(4) training and orientation projects for faculty members of schools of education designed to prepare the faculty to teach and train personnel to work in conjunction with personnel who carry out projects under the Comprehensive Employment and Training Act and under title VIII of this Act, relating to cooperative education and training of individuals to prepare for the workplace; and

"(5) training educational personnel who will specialize in the implementation of the urban and environmental policies of the United States, and for other areas of critical need within education which are developing or are likely to develop as provided in section 406(b)(5) of the General Education Provisions Act.

"(b) The Secretary is authorized to make grants to schools of education for the fiscal year 1981 and for each of the four succeeding years to carry out model projects for the purposes set forth in subsection (a). No grant may be made under this subsection unless an application is made to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(c)(1) The Secretary is authorized to enter into agreements with consortia of schools of education for planning programs designed to help member schools of the consortium to diversify and redirect programs and curricula of the member schools of education.

"(2)(A) The Secretary shall develop criteria for determining the regions of the country in which consortia of schools of education are to be established.

"(B) No consortium may receive a grant in excess of $200,000 in any fiscal year under this section.

"(C) No cooperative agreement may be entered into under this section unless an application is submitted through the State education agency of the State in which the applicant is located. Each such State agency will review and approve the application to assure its consistency with the comprehensive plan mandated by sections 404(a)(12) and 522(2) of the Elementary and Secondary Education Act of 1965. Such application shall be submitted at such time, in such manner, and containing or accompanied by such other information as the Secretary may reasonably require.

"(d) For purposes of this section, the term 'schools of education' means institutions of higher education, and administrative units of institutions of higher education, specializing in the training of individuals to serve as teachers, guidance and counseling personnel, administrative personnel, or other education specialists.".

TRAINING FOR TEACHERS OF HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

SEC. 505. (a) Title V of the Act is amended by adding after part B the following new part:

"PART C—TRAINING FOR ELEMENTARY AND SECONDARY SCHOOL TEACHERS TO TEACH HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

"GRANTS AUTHORIZED

"SEC. 541. (a) The Secretary is authorized to make grants, in accordance with the provisions of this part, to State educational agencies to enable such agencies to support a fellowship program of stipends and allowances to institutions of higher education for teachers to be trained to provide special education for handicapped children.

"(b) The Secretary shall establish criteria for—

"(1) determining if there is a shortage of teachers in the area of special education for handicapped children in the State;

"(2) assuring that the institutions of higher education, at which recipients of fellowships awarded under this part are pursuing courses of study, offer a program designed to prepare such recipients in the area of special education for handicapped children; and

"(3) assuring that individuals trained with assistance under this part receive specialized training in the subject areas in which there is the greatest need for such teachers.

"(c) The Secretary shall assure an equitable distribution among the States of grants made under this part, consistent with criteria established under subsection (b).

"APPLICATION

"SEC. 542. (a) No grant may be made under this part unless an application is made by a State educational agency at such time, in such manner and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall—

"(1) describe a fellowship program under which the State will make stipends to recipients and make allowances to institutions of higher education, in accordance with the provisions of this part, for teachers and other specialists to be trained in special education for handicapped children;

"(2) provide assurances that each recipient of a fellowship under this part will enter into an agreement with the State under which the recipient will—

"(A) within the five-year period after the completion of the training for which the fellowship was awarded, teach for a period of not less than two years in an elementary or secondary school of a local educational agency of that State, a public elementary or secondary school of that State, or a public educational program approved by the local educational agency of the State, which has, or has provided assurances that it will have, a special education program for handicapped children, or

"(B) repay all of the stipend awarded to the recipient plus the allowances paid to any institution of higher education based upon that fellowship in the event that the conditions of clause (A) are not complied with, except when such conditions are not complied with for reasons beyond a recipient's control;

"(3) provide procedures under which recipients of fellowships who teach, for reasons beyond their control, less than the two-year period required under clause (2) of this subsection will have the repayment requirement reduced according to a schedule established by the State agency;

"(4) provide procedures under which stipends and institutions of higher education allowances will be paid by the State agency in accordance with the provisions of this part; and

"(5) provide that the State agency will make continuing efforts to encourage recipients of fellowships under this part to continue to provide special education for handicapped children in areas where there is a shortage of such teachers.

"(b) The Secretary shall approve any application which meets the requirements of subsection (a) of this section. Prior to approving any applications under this section, the Secretary shall prepare regulations setting forth detailed requirements with respect to clause (2) and (3) of subsection (a).

"STIPENDS AND INSTITUTION OF HIGHER EDUCATION ALLOWANCES

"SEC. 543. (a)(1) Each State educational agency receiving a grant under this part shall pay to individuals awarded fellowships under this part such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs.

"(2) No stipend may be paid to any single recipient in any one year in excess of $9,000.

"(b) Each State educational agency receiving a grant under this part shall (in addition to the stipends paid to persons under subsection (a)) pay to the institution of higher education at which such individual is pursuing a course of study such amounts as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the institution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"FELLOWSHIP CONDITIONS

"SEC. 544. (a) An individual awarded a fellowship under the provisions of this part shall continue to receive the payments provided in this part only during such periods as the State educational agency finds that the individual is maintaining satisfactory progress and devoting at least one-half of the full-time academic workload to study in the field in which such fellowship was awarded in an institution of higher education, and is not engaging in gainful employment other than employment approved by the Secretary by or pursuant to regulation. The amount of any payment to an individual engaged in such gainful employment shall be appropriately reduced pursuant to regulation.

"(b) The State educational agency is authorized to require reports containing such information in such form and to be filed at such times as it determines necessary from any individual awarded a fellowship under the provisions of this part. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education approved by the State educational agency, stating that such individual is making satisfactory progress in, and is devoting at least one-half of the full-time academic workload to, the program for which the fellowship was awarded.

"(c) No fellowship shall be awarded under this part for study at a school or department of divinity.

"DEFINITION

"SEC. 545. As used in this part 'special education' has the same meaning as prescribed by section 602(16) of the Education of the Handicapped Act.

"APPROPRIATIONS AUTHORIZED

"SEC. 546. There are authorized to be appropriated $2,000,000 for the fiscal year 1981, $3,000,000 for the fiscal year 1982, and $5,000,000 for the fiscal year 1983 and for each of the fiscal years ending prior to October 1, 1985 to carry out the provisions of this part.".

(b) The Secretary shall promulgate regulations to carry out the amendment made by subsection (a) of this section not later than 30 days after the date of enactment of the Education Amendments of 1980.

EDUCATION PROFESSIONAL DEVELOPMENT

SEC. 506. Title V of the Act is further amended by adding after part C (as added by section 504) the following new part:

"PART D—COORDINATION OF EDUCATION PROFESSIONAL DEVELOPMENT

"FINDINGS

"SEC. 551. The Congress finds that—

"(1) any Federal programs have been enacted to train and develop education professionals;

"(2) such programs make Federal funds available to States, local education agencies, colleges and universities, and other agencies;

"(3) such programs should be coordinated at the Federal level to avoid unnecessary duplication of effort; and

"(4) such programs should be responsive to State needs and priorities for education professional development.

"POLICY

"SEC. 552. Federal programs which support education professional development should be administered in a coordinated manner, and the activities authorized under such programs should have complementary purposes whenever possible in order to provide the most effective use of Federal funds.

"OFFICE OF EDUCATION PROFESSIONAL DEVELOPMENT

"SEC. 553. (a) There is established in the Department an Office of Education Professional Development, the function of which is to review the operations of and to coordinate program activities among the various Federal education professional development programs within the Department to eliminate unnecessary duplication of effort.

"(b) The Office shall review on a biennial basis each education professional development program administered by the Department and shall—

"(1) identify inconsistencies in program policies and procedures;

"(2) identify overlap in program purpose and operations; and

"(3) coordinate program activities among the various Federal education professional development programs, and wherever necessary, make legislative recommendations to coordinate such programs.

"(c) The Secretary shall report biennially to the Congress on the findings and recommendations of the Office.".

TITLE VI—ESTABLISHMENT OF A NEW TITLE VI OF THE HIGHER EDUCATION ACT OF 1965

PROGRAMS AUTHORIZED

SEC. 601. (a) Title VI of the Higher Education Act is amended to read as follows:

"TITLE VI—INTERNATIONAL EDUCATION PROGRAMS

"PART A—INTERNATIONAL AND FOREIGN LANGUAGE STUDIES

"FINDINGS AND PURPOSES

"SEC. 601. (a) The Congress finds that—

"(1) knowledge of other countries is important in promoting mutual understanding and cooperation between nations;

"(2) strong American educational resources are a necessary base for strengthening our relations with other countries;

"(3) present and future generations of Americans should be given the opportunity to develop to the fullest extent possible their intellectual capacities in all areas of knowledge pertaining to other countries, peoples, and cultures; and;

"(4) the economy of the United States and the long range security of the Nation are dependent upon acquiring such knowledge.

"(b) It is the purpose of this part to assist in the development of resources and trained personnel for international study, international research, and foreign language study and to coordinate programs of the Federal Government in the areas of international study and research and foreign language study.

"GRADUATE AND UNDERGRADUATE LANGUAGE AND AREA CENTERS

"SEC. 602. (a)(1) The Secretary is authorized to make grants to, and enter into contracts with, institutions of higher education, or combination of such institutions, for the purpose of establishing, strengthening, and operating graduate and undergraduate centers and programs which will be national resources for the teaching of any modern foreign language, for instruction in fields needed to provide a full understanding of the areas, regions, or countries in which such language is commonly used, or for research and training in international studies and the international aspects of professional and other fields of study.

"(2) Any such grant or contract may be used to pay all or part of the cost of establishing or operating a center or program, including the cost of faculty, staff, and student travel in foreign areas, regions, or countries, the cost of teaching and research materials, the cost of curriculum planning and development, the cost of bringing visiting scholars and faculty to the center to teach or to conduct research, and the cost of training and improvement of the staff, for the purpose of, and subject to such conditions as the Secretary finds necessary for, carrying out the objectives of this section.

"(3) The Secretary may make grants to centers described in paragraph (1) having important library collections for the maintenance of such collections.

"(b) The Secretary is also authorized to pay stipends to individuals undergoing such advanced training in any center or program approved by the Secretary under this part, including allowances for dependents and for travel for research and study in the United States and abroad.

"(c) No funds may be expended under this part for undergraduate travel except in accordance with rules prescribed by the Secretary setting forth policies and procedures to assure that Federal funds made available for such travel are expended as part of a formal program of supervised study.

"INTERNATIONAL STUDIES CENTERS

"SEC. 603. (a)(1) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating graduate and undergraduate centers which will be regional resources to increase access to research and training in international and foreign language studies and the international aspects of professional and other fields of study. Activities carried out in such centers may be concentrated either on specific geographical areas of the world or on particular fields or issues in world affairs which concern one or more countries, or on both. In addition to providing training to students enrolled in the institution of higher education in which the center is located, the centers serving as regional resources shall, in order to qualify for assistance under this section, offer programs to strengthen international studies and foreign languages in the two-year and four-year colleges and universities in the region served by each such center.

"(2) The Secretary may also make grants to public and private nonprofit agencies and organizations, including professional and scholarly associations, whenever the Secretary determines that such grants will make an especially significant contribution to attaining the objectives of this section.

"(b) Grants under this section may be used to pay part or all of the cost of establishing, strengthening, equipping, and operating research and training centers, including the cost of teaching and research materials and resources, the cost of programs for bringing visiting scholars and faculty to the center, and the cost of training, improvement, and travel of the staff for the purposes of carrying out the provisions of this section. Such grants may also include funds for stipends (in such amounts as may be determined in accordance with regulations of the Secretary) to individuals undergoing training in such centers, including allowances for dependents and for travel for research and study in the United States and abroad.

"(c) Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the purposes of this section.

"UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAMS

"SEC. 604. (a) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, to assist them in planning, developing, and carrying out a comprehensive program to strengthen and improve undergraduate instruction in international studies and foreign languages. Grants made under this section may be for projects and activities which are an integral part of such a comprehensive program, such as—

"(1) planning for the development and expansion of undergraduate programs in international studies;

"(2) teaching, research, curriculum development, and other related activities;

"(3) training of faculty members in foreign countries;

"(4) expansion of foreign language courses;

"(5) programs under which foreign teachers and scholars may visit institutions as visiting faculty;

"(6) programs designed to integrate undergraduate education with terminal Masters Degree programs having an international emphasis; and

"(7) the development of an international dimension in teacher training.

"(b) The Secretary may also make grants to public and private nonprofit agencies and organizations, including professional and scholarly associations, whenever the Secretary determines such grants will make an especially significant contribution to attaining the objective of this section.

"RESEARCH; STUDIES; ANNUAL REPORTS

"SEC. 605. (a) The Secretary may, directly or through grants or contracts, conduct research and studies which contribute to the purposes of this part and part N of title III of the Elementary and Secondary Education Act of 1965. Such research and studies may include but are not limited to—

"(1) studies and surveys to determine the need for increased or improved instruction in modern foreign languages and in other fields needed to provide a full understanding of the places in which such languages are commonly used;

"(2) research on more effective methods of providing instruction and evaluating competency in such foreign languages and other fields; and

"(3) the development of specialized materials for use in providing such instruction and evaluation or for use in training individuals to provide such instruction and evaluation.

"(b) The Secretary shall prepare and publish an annual report which shall include an index and analysis of the books and research materials produced with assistance under this title.

"EQUITABLE DISTRIBUTION OF FUNDS

"SEC. 606. (a) The Secretary shall make excellence the criterion for selection of grants awarded under section 602.

"(b) To the extent practicable and consistent with the criterion of excellence, the Secretary shall award grants under this part (other than section 602) in such manner as will achieve an equitable distribution of funds throughout the Nation.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 607. There are authorized to be appropriated $45,000,000 for fiscal year 1981, $50,000,000 for fiscal year 1982, $60,000,000 for fiscal year 1983, $70,000,000 for fiscal year 1984, and $80,000,000 for fiscal year 1985, to carry out the provisions of this part.

"PART B—BUSINESS AND INTERNATIONAL EDUCATION PROGRAMS

"FINDINGS AND PURPOSES

"SEC. 611. (a) The Congress finds that—

"(1) the future economic welfare of the United States will depend substantially on increasing international skills in the business community and creating an awareness among the American public of the internationalization of our economy;

"(2) concerted efforts are necessary to engage business schools, language and area study programs, public and private sector organizations, and United States business in a mutually productive relationship which benefits the Nation's future economic interests;

"(3) few linkages presently exist between the manpower and information needs of United States business and the international education, language training and research capacities of institutions of higher education in the United States, and public and private organizations; and

"(4) organizations such as world trade councils, world trade clubs, chambers of commerce and State departments of commerce are not adequately used to link universities and business for joint venture exploration and program development.

"(b) It is the purpose of this part—

"(1) to enhance the broad objective of this Act by increasing and promoting the Nation's capacity for international understanding and economic enterprise through the provision of suitable international education and training for business personnel in various stages of professional development; and

"(2) to promote institutional and noninstitutional educational and training activities that will contribute to the ability of United States business to prosper in an international economy.

"EDUCATION AND TRAINING PROGRAMS

"SEC. 612. (a) The Secretary shall make grants to, and enter into contracts with, institutions of higher education to pay the Federal share of the cost of programs designed to promote linkages between such institutions and the American business community engaged in international economic activity. Each program assisted under this part shall both enhance the international academic programs of institutions of higher education and provide appropriate services to the business community which will expand its capacity to engage in commerce abroad.

"(b) Eligible activities to be conducted by institutions of higher education under this section shall include, but are not limited to—

"(1) innovation and improvement in international education curricula to serve the needs of the business community, including development of new programs for nontraditional, mid-career, or part-time students;

"(2) development of programs to inform the public of increasing international economic interdependence and the role of American business within the international economic system;

"(3) internationalization of curricula at the junior and community college level, and at undergraduate and graduate schools of business;

"(4) development of area studies programs and interdisciplinary international programs;

"(5) establishment of export education programs through cooperative arrangements with regional and world trade centers and councils, and with bilateral and multilateral trade associations;

"(6) research for and development of specialized teaching materials, including language materials, and facilities appropriate to business-oriented students;

"(7) establishment of student and faculty fellowships and internships for training and education in international business activities;

"(8) development of opportunities for junior business and other professional school faculty to acquire or straighten international skills and perspectives; and

"(9) development of research programs on issues of common interest to institutions of higher education and private sector organizations and associations engaged in or promoting international economic activity.

"(c) No grant may be made and no contract may be entered into under the provisions of this part unless an institution of higher education submits an application at such time and in such manner as the Secretary may reasonably require. Each such application shall be accompanied by a copy of the agreement entered into by the institution of higher education with a business enterprise, trade organization or association engaged in international economic activity, or a combination or consortium of such enterprises, organizations or associations, for the purpose of establishing, developing, improving or expanding activities eligible for assistance under subsection (b) of this section. Each such application shall contain assurances that the institution of higher education will not use the assistance provided under this part to supplement and not to supplant activities conducted by institutions of higher education described in subsection (b).

"(d) The Federal share under this part for each fiscal year shall not exceed 50 per centum of the cost of such program.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 613. There are authorized to be appropriated $7,500,000 for fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1985, to carry out the provisions of this part.

"PART C—GENERAL PROVISIONS

"ADVISORY BOARD

"SEC. 621. (a) Not less than four times each year the Secretary shall convene meetings of an advisory board on the conduct of programs under this title. The board shall consist of—

"(1) one member selected by the Secretary of State;

"(2) one member selected by the Secretary of Defense;

"(3) one member selected by the Secretary of the Treasury;

"(4) one member selected by the Secretary of Commerce;

"(5) one member selected by the Secretary to serve as Chairman and coordinator of the activities of the board;

"(6) one member selected by the Chairman of the National Endowment for the Humanities;

"(7) one member selected by the Director of the International Development Cooperation Agency;

"(8) one member selected by the Director of the International Communication Agency;

"(9) one member selected by the President and Chairman of the Export-Import Bank of the United States;

"(10) one member selected by the Administrator, Small Business Administration;

"(11) five members selected by the Secretary from among representatives of the postsecondary educational community;

"(12) two members selected by the Secretary from among representatives of the elementary and secondary education community;

"(13) three members selected by the Secretary from among members of the public; and

"(14) three members selected by the Secretary from among representatives of the business community.

"(b)(1) The Advisory Board shall establish two subcommittees to carry out the functions described in paragraphs (2) and (3) of this subsection.

"(2) The first such subcommittee shall consider the grants made, or contracts entered into, under part A and part N of title

III of the Elementary and Secondary Education Act of 1965. The board shall advise the Secretary on (A) any geographic areas of special need or concern to the United States, (B) the specific foreign languages to be designated under section 394(b)(3) of the Elementary and Secondary Education Act of 1965, (C) innovative approaches which may help to fulfill the purposes of this title, (D) activities which are duplicative of programs operated under other provisions of Federal law, (E) changes which should be made in the operation of programs under this part to ensure that the attention of scholars is attracted to problems of critical concern to United States international relations, and (F) the administrative and staffing requirements of international education programs in the Department.

"(3) The second such subcommittee shall review the programs under section 612 and shall advise the Secretary, who shall seek the advice of the Secretary of Commerce, on (A) changes which should be made to advance the purposes of Part B and to assure the success of the programs authorized by part B, (B) special needs of such programs, and (C) any program elements which are duplicative of programs operated under other provisions of Federal law.

"DEFINITIONS

"SEC. 622. (a) As used in this title—

"(1) the term 'area studies' means a program of comprehensive study of the aspects of a society or societies, including study of its history, culture, economy, politics, international relations and languages;

"(2) the term 'international business' means profit-oriented business relationships conducted across national boundaries and includes activities such as the buying and selling of goods; investments in industries; the licensing of processes, patents and trademarks; and the supply of services;

"(3) the term 'export education' means educating, teaching and training to provide general knowledge and specific skills pertinent to the selling of goods and services to other countries, including knowledge of market conditions, financial arrangements, laws and procedures; and

"(4) the term 'internationalization of curricula' means the incorporation of international or comparative perspectives in existing courses of study or the addition of new components to the curricula to provide an international context for American business education.

"(b) All references to individuals or organizations, unless the context otherwise requires, mean individuals who are citizens or permanent residents of the United States or organizations which are organized or incorporated in the United States.".

(b) Title III of the Elementary and Secondary Education Act of 1965 is amended by adding at the end thereof the following new part:

"PART N—INTERNATIONAL UNDERSTANDING

"SHORT TITLE; DECLARATION OF FINDINGS; PURPOSE

"SEC. 393. (a) This part may be cited as the 'International Understanding Act'.

"(b) The Congress finds that—

"(1) the well-being of the United States and its citizens is affected by policies adopted and actions taken by, or with respect to, other nations and areas; and

"(2) the United States must afford its citizens adequate access to the information which will enable them to make informed judgments with respect to the international policies and actions of the United States.

"(c) It is the purpose of this part to support educational programs which will increase the availability of such information to students in the United States.

"PROGRAM AUTHORIZED

"SEC. 394. (a)(1) The Secretary is authorized, by grant or contract, to stimulate educational programs to increase the understanding of students and the public in the United States about the cultures, actions and interconnections of nations and peoples in order better to evaluate the international and domestic impact of major national policies.

"(2) Grants or contracts under this section may be made to any public or private agency or organization, including, but not limited to, institutions of higher education, State and local educational agencies, professional associations, education consortia, and organizations of teachers.

"(b)(1) Financial assistance under this part may be used for assistance for inservice training of teachers and other education personnel, the development of materials to link language learning to international studies, the compilation of existing information and resources about other nations in forms useful to various types of educational programs, and the dissemination of information and resources to educators and educational officials upon their request, but such assistance may not be used for the acquisition of equipment or remodeling of facilities.

"(2) Financial assistance under this part may be made for projects and programs at all levels of education, and may include projects and programs carried on as part of community, adult, and continuing education programs.

"(3) Financial assistance under this part may be used by local educational agencies to introduce instruction in foreign languages designated by the Secretary as having critical importance for the Nation which have not been offered by the schools of the local educational agency in the three academic years preceding the year in which the grant is made.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 395. There are authorized to be appropriated $5,250,000 for fiscal year 1981, $6,750,000 for fiscal year 1982, $8,250,000 for fiscal year 1983, and $9,000,000 each for fiscal years 1984 and 1985 to carry out the provisions of this part.".

(c)(1) Title VI of the National Defense Education Act of 1958 is repealed.

(2) Title I of the International Education Act of 1966 is repealed.

TITLE VII—AMENDMENT TO TITLE VII OF THE HIGHER EDUCATION ACT OF 1965

AMENDMENT

SEC. 701. Title VII of the Act is amended to read as follows:

"TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

"GENERAL PURPOSES

"SEC. 701. The Secretary shall carry out programs of financial assistance to institutions of higher education and to higher education building agencies for the construction, reconstruction, or renovation of academic facilities and the acquisition of special equipment if the primary purpose of such assistance is—

"(1) to enable such institutions to economize on the use of energy resources, with a priority for the use of coal, solar, and renewable resources;

"(2) to enable such institutions to bring their academic facilities into conformity with the requirements of—

"(A) the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968,

"(B) section 504 of the Rehabilitation Act of 1973, or

"(C) environmental protection or health and safety programs mandated by Federal, State, or local law, if such requirements were not in effect at the time such facilities were constructed;

"(3) to enable such institutions to construct, reconstruct, or renovate the Nation's research facilities, including libraries, and to acquire special research equipment;

"(4) to enable institutions with unusual increases in enrollment (according to data and criteria established by the Secretary) to construct, reconstruct, or renovate their facilities; or

"(5) to enable such institutions to detect, remove, or otherwise contain asbestos hazards in academic or other facilities used by students, in accordance with regulations prescribed by the Secretary.

"APPROPRIATIONS AUTHORIZED

"SEC. 702. There are authorized to be appropriated $100,000,000 for fiscal year 1981 and for each succeeding fiscal year ending prior to October 1, 1985, for part A. There are authorized to be appropriated $80,000,000 for the fiscal year 1981 and for each succeeding fiscal year ending prior to October 1, 1985, for part B. There is authorized to be appropriated $80,000,000 for the fiscal year 1981 and for each succeeding fiscal year ending prior to October 1, 1985, for part C, and such sums as may be necessary for each such fiscal year for section 734.

"PART A—GRANTS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF UNDERGRADUATE ACADEMIC FACILITIES

"STATE PLAN

"SEC. 711. (a) Any State desiring to participate in the grant program authorized by this part shall have an agreement pursuant to section 1203 and submit annually to the Secretary, through the State agency designated in such agreement, a State plan which shall—

"(1) provide that the plan shall be administered by the State entity having an agreement under section 1203;

"(2) set forth objective standards and methods which are consistent with basic criteria established under section 712, for—

"(A) determining the relative priorities of eligible projects submitted by institutions of higher education within the State, and

"(B) certifying the Federal share of the cost of each project;

"(3) provide for every applicant an opportunity for a hearing before the State agency regarding the priority assigned to such project, or any other decision by the State agency adversely affecting such applicant; and

"(4) provide for accounting procedures necessary to assure proper disbursement of Federal funds.

"(b) The Secretary shall not disapprove any State plan, or modification thereof, without first affording the State agency reasonable notice and opportunity for a hearing.

"(c) Whenever the Secretary finds that the State plan substantially fails to comply with this section, the Secretary shall notify the State that it is ineligible to participate in the program under this part until a determination is made that there is no longer a failure to comply.

"BASIC CRITERIA

"SEC. 712. (a) The Secretary shall, by regulation, prescribe basic criteria for the consideration of State plans which ensure—

"(1) flexibility for States to accommodate the varied needs of institutions in the States;

"(2) consideration of the degree to which applicant institutions are effectively using existing facilities; and

"(3) that the Federal share shall not exceed 50 percent of the development costs of a project.

"(b) Section 553 of title 5, United States Code, shall apply to the prescription of regulations under this section.

"ALLOTMENT OF FUNDS

"SEC. 713. (a) From the sums appropriated pursuant to section 702 to carry out the purposes of this part, not less than 24 per centum shall be allotted to States under subsection (b) for public community colleges and public technical institutes. The remainder of such sums shall be allotted States under subsection (c) for all other institutions of higher education.

"(b)(1) For the purpose of making grants to public community colleges and public technical institutes, the Secretary shall allot to each State an amount which bears the same ratio to the amount available for allotment under this subsection as the product of—

"(A) the number of persons in the State who have graduated from high school or received an equivalent certificate during the previous school year, and

"(B) the State's allotment ratio,

bears to the sum of the corresponding products for all the States.

"(2)(A) Except as provided in subparagraph (B), the allotment ratio shall be 1.00 less the product of—

"(i) 0.50, and

"(ii) the quotient obtained by dividing the income per person for the State by the income per person for all States (not including Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam).

"(B) Notwithstanding subparagraph (A)—

"(i) the allotment ratio shall in no case be less than 0.33⅓ or more than 0.66⅔;

"(ii) the allotment ratio for Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam shall be 0.66⅔; and

"(iii) the allotment ratio of any State shall be 0.50 for any fiscal year if the Secretary finds that the cost of school construction in such State exceeds twice the median of such

SEC. 903. Title IX of the Act is amended by him on the basis of statistics and data as the Secretary shall deem adequate and appropriate.

"(C) Allotment ratios shall be promulgated annually by the Secretary on the basis of the average personal income in the State and in all the States for the three most recent consecutive calendar years for which data are available from the Department of Commerce.

"(c) For the purpose of making grants to all other institutions of higher education, the Secretary shall allot to each State—

"(1) an amount which bears the same ratio to 50 per centum of the amount available for allotment under this subsection as the number of students enrolled in institutions of higher education in such State bears to the number of students so enrolled in all States; and

"(2) an amount which bears the same ratio to 50 per centum of the amount available for allotment under this subsection as the number of students enrolled in grades nine through twelve of schools in such State bears to the total number of students so enrolled in all the States.

"(d) The aggregate amount allotted to any State under subsections (b) and (c) for any fiscal year shall not be less than $100,000. If the sums appropriated pursuant to section 702 are not sufficient to make payments to each State, then the amount of each State's allotment shall be ratably reduced.

"(e) Any portion of a State's allotment under subsections (b) and (c) for any fiscal year for which applications from qualified institutions have not been received by the State agency prior to January 1 of such fiscal year shall, by request, be available for payment of the Federal share of cost of other approved projects.

"(f) Amounts allotted under this section for any fiscal year which are not used by the close of the fiscal year, shall be reallotted by the Secretary among the States which are able to use these funds without delay during the next fiscal year.

"(g) Funds available under this part may be used for construction, reconstruction, or renovation of undergraduate facilities and combined graduate and undergraduate facilities.

"PART B—GRANTS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES

"GRANTS

"SEC. 721. (a)(1) Funds available for this part shall be used by the Secretary to make grants to graduate institutions of higher education whose applications for assistance are consistent with the objectives of this title.

"(2) The total payment for any fiscal year made to institutions of higher education in any State shall not exceed 12.5 per centum of sums appropriated for this part.

"(b) In making grants under this section, the Secretary shall seek the advice and recommendations of a panel of specialists who are not regular full-time employees of the Federal Government and are competent to evaluate such applications.

"(c) The amount of the grant shall not exceed 50 per centum of the development cost of the project.

"PART C—LOANS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

"ELIGIBILITY CONDITIONS, AMOUNTS, AND TERMS

"SEC. 731. (a) From the sums available for this part, the Secretary shall make and insure loans to institutions of higher education and to higher education building agencies for programs consistent with the purposes of this title. No loan shall be made unless the Secretary finds that—

"(1) not less than 20 per centum of the development cost of the project will be financed from non-Federal sources;

"(2) the applicant is unable to secure the loan from other sources upon terms and conditions equally as favorable as those applicable to loans under this part;

"(3) the project will be undertaken in an economical manner; and

"(4) for any project with regard to an infirmary or other outpatient care facility for students and institutional personnel, assistance will not be provided under title IV of the Housing Act of 1950.

"(b) Loans shall be repaid within fifty years and shall bear interest at (1) a rate annually determined by the Secretary which shall be not less than one-quarter of 1 percentage point above the average annual interest rate on all interest-bearing obligations of the United States forming a part of the public debt as computed at the end of the preceding fiscal year, adjusted to the nearest one-eighth of 1 per centum, or (2) the rate of 4 per centum per annum, whichever is less.

"GENERAL PROVISIONS FOR LOAN PROGRAM

"SEC. 732. (a) Financial transactions of the Secretary, except with respect to administrative expenses, shall be final and conclusive on all officers of the Government and shall not be reviewable by any court.

"(b) In the performance of, and with respect to, the functions vested in him by this part, the Secretary may—

"(1) prescribe such rules and regulations as may be necessary to carry out the purposes of this part;

"(2) sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and any action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of the Secretary or any vacancy in such office: but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under his control, and nothing herein shall be construed to except litigation arising out of activities under this part from the application of sections 507(b) and 517 and 2679 of title 28, United States Code;

"(3) foreclose on any property and bid for and purchase at any foreclosure, or any other sale, any property in connection with which he has made a loan pursuant to this part; in the event of such an acquisition, notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary may complete, administer, remodel and convert, dispose of, lease and otherwise deal with, such property; except that (A) such action shall not preclude any other action by him to recover any deficiency in the amounts loaned and (B) any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

"(4) sell, exchange, or lease real or personal property and securities or obligations;

"(5) modify, with respect to the rate of interest, the time of payment of principal, interest, security, or any other term of any contract or agreement to which he is a party, including (A) granting a moratorium on the repayment of principal or interest to a party temporarily unable to make such repayment without undue financial hardship provided the applicant files, and the Secretary approves, a plan to make repayment, and (B) for any party for which a loan has been authorized prior to January 1, 1976, granting the option to pay into the fund pursuant to section 733, 75 per centum of the party's total obligation if the party desiring to exercise such option makes payment from non-Federal sources prior to October 1, 1985; and

"(6) include in any contract such other covenants, conditions, or provisions necessary to ensure that the purposes of this title will be achieved.

"REVOLVING LOAN AND INSURANCE FUND

"SEC. 733. (a) There is created within the Treasury a revolving loan fund for the purpose of making and insuring loans under this part (hereafter called the 'fund') which shall be available to the Secretary without fiscal year limitation. The total of any loans made from the fund in any fiscal year shall not exceed limitations specified in appropriations Acts.

"(b)(1) The Secretary shall transfer to the fund appropriations provided under section 702 to provide capital for making loans. Interest and principal payments on loans, and any other moneys, property, or assets derived from activities under this part shall be deposited in the fund.

"(2) All loans, expenses, and payments pursuant to operation of this part shall be paid from the fund, including expenses and payments in connection with sale, pursuant to section 302(c) of the Federal National Mortgage Association Charter Act, of participations in obligations acquired under this part. At the close of each fiscal year, the Secretary shall pay interest on the cumulative amount of funds paid out for loans under this part less the average undisbursed cash balance in the fund during the year. The interest rate shall be determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of maturity comparable to the average maturity of loans made from the fund during the month preceding each fiscal year. Interest payments may be deferred with the approval of the Secretary of the Treasury, but interest payments so deferred shall themselves bear interest. If the Secretary determines that moneys in the fund exceed the present and prospective needs of the fund, the excess may be transferred to the general fund of the Treasury.

"ANNUAL INTEREST GRANTS

"SEC. 734. (a) To assist institutions of higher education and higher education building agencies in reducing the cost of borrowing from other sources for projects under this part, the Secretary may make annual interest grants to such institutions and agencies with respect to any project made over a fixed period not exceeding forty years, and provision for the grants shall be embodied in the contract guaranteeing their payment. Grants shall not be greater than the difference between (1) the average annual debt service which would be required to be paid during the life of the loan on the amount borrowed from other sources for the construction of such facilities, and (2) the average annual debt service which the institution or agency would have been required to pay during the life of the loan if the applicable interest rate had been determined by the Secretary in accordance with section 731(b).

"(b) The total amount of annual interest grants which may be paid to institutions of higher education and higher education building agencies in any year pursuant to contracts entered into for such year under this section shall not exceed $13,500,000.

"(c) The total payment for any fiscal year made to institutions of higher education and higher education building agencies in any State shall not exceed 12.5 per centum of sums appropriated for this section.

"(d) No annual interest grant shall be made unless (1) assurance is provided that not less than 10 per centum of the costs of the project will be financed from non-Federal sources, (2) the applicant is unable to secure a loan from other sources upon terms and conditions as favorable as those applicable to loans under this title, and (3) the project will be undertaken in an economical manner. Loans for which an interest grant is made shall, for purposes of this section only, not be considered financing from a non-Federal source.

"ACADEMIC FACILITIES LOAN INSURANCE

"SEC. 735. (a)(1) In order to assist institutions of higher education and higher education building agencies to procure loans for programs consistent with the purposes of this title, the Secretary may insure the payment of interest and principal on such loans if such institutions and agencies meet criteria prescribed under section 734 for the making of annual interest grants.

"(2) No loan insurance may apply to any loan principal which exceeds 90 per centum of the development cost of the academic facility.

"(b)(1) The United States shall be entitled to recover from any institution or agency to which loan insurance has been issued under this section the amount of any payment made pursuant to that insurance, unless the Secretary waives its right of recovery. Upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payment with respect to which the payment was made.

"(2) Any insurance issued under subsection (a) shall be incontestable in the hands of the institution or agency on whose behalf insurance is issued, and as to any lenders which make or contract to make a loan to such institution or agency in reliance thereon, except for fraud or misrepresentation on the part of such institution or agency or on the part of the lender who makes or contracts to make such loan.

"(c) Insurance may be issued by the Secretary under subsection (a) only if he determines that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed a per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, considering interest rates prevailing in the private market for similar loans and the risks assumed by the United States. The Secretary may charge a premium for such insurance in an amount determined by him to be necessary to cover administrative expenses and probable losses under subsections (a) and (b). Such insurance shall be subject to such further terms and conditions as the Secretary determines to be necessary.

"PART D—GENERAL

"RECOVERY OF PAYMENTS

"SEC. 741. (a) The Congress declares that, if a facility constructed with the aid of a grant under part A or B of this title is used as an academic facility for twenty years following completion of such construction, the public benefit accruing to the United States will equal in value the amount of the grant. The period of twenty years after completion of such construction shall therefore be deemed to be the period of Federal interest in such facility for the purposes of this title.

"(b) If, within twenty years after completion of construction of an academic facility which has been constructed, in part with a grant under part A or B of this title—

"(1) the applicant (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or

"(2) the facility ceases to be used as an academic facility, or the facility is used as a facility excluded from the term 'academic facility', unless the Secretary determines that there is good cause for releasing the institution from its obligation,

the United States shall be entitled to recover from such applicant (or successor) an amount which bears to the value of the facility at that time, or so much thereof as constituted an approved project or projects) the same ratio as the amount of Federal grant bore to the cost of the facility financed with the aid of such grant. The value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

"(c) Notwithstanding the provisions of subsections (a) and (b), no project assisted with funds under this title shall ever be used for religious worship or a sectarian activity or for a school or department of divinity.

"DEFINITIONS

"SEC. 742. The following definitions apply to terms used in this title:

"(1)(A) Except as provided in subparagraph (B) of this paragraph, the term 'academic facilities' means structures suitable for use as classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students, or for research, or for administration of the educational or research programs, of an institution of higher education, and maintenance, storage, or utility facilities essential to operation of the foregoing facilities. For purposes of part A or C, such term includes infirmaries or other facilities designed to provide primarily for outpatient care of student and instructional personnel. Plans for such facilities shall be in compliance with such standards as the Secretary may prescribe or approve in order to insure that projects assisted with the use of Federal funds under this title shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons.

"(B) The term 'academic facilities' shall not include (i) any facility intended primarily for events for which admission is to be charged to the general public, or (ii) any gymnasium or other facility specially designed for athletic or recreational activities, other than for an academic course in physical education or where the Secretary finds that the physical integration of such facilities with other academic facilities included under this title is required to carry out the objectives of this title, or (iii) any facility used or to be used for sectarian instruction or as a place for religious worship, or (iv) any facility which (although not a facility described in the preceding clause) is used or to be used primarily in connection with any part of the program of a school or department of divinity, or (v) any facility used or to be used by a school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of optometry, school of podiatry, or school of public health as these terms are defined in section 724 of the Public Health Service Act, or a school of nursing as defined in section 843 of that Act, except that the term 'academic facilities' may include any facility described in clause (v) to the degree that such facility is owned, operated, and maintained by the institution of higher education requesting the approval of a project; and that funds available for such facility under such project shall be used solely for the purpose of conversion or modernization of energy utilization techniques to economize on the use of energy resources; and that such project is not limited to facilities described in clause (v) of this subsection.

"(2)(A) The term 'construction' means (i) erection of new or expansion of existing structures, and the acquisition and installation of initial equipment therefor; or (ii) acquisition of existing structures not owned by the institution involved; or (iii) a combination of either of the foregoing. For the purposes of the preceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, except books, curricular, and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed in connection with construction; and the terms 'equipment', 'initial equipment', and 'built-in equipment', shall be more particularly defined by the Secretary by regulation.

"(B) The term 'reconstruction or renovation' means rehabilitation, alteration, conversion, or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of such equipment) of existing structures. For the purposes of the preceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, except books, curricular, and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed either in connection with construction as defined in paragraph (2)(A), or as part of the rehabilitation, alteration, conversion, or improvement of an existing structure, which structure would otherwise not be adequate for use as an academic facility; the terms 'equipment', 'initial equipment', and 'built-in equipment' shall be more particularly defined by the Secretary by regulation, and the term 'rehabilitation, alteration, conversion, or improvement' includes such action as may be necessary to provide for the architectural needs of, or to remove architectural barriers to, handicapped persons with a view toward increasing the accessibility to, and use of, academic facilities by such persons.

"(3)(A) The term 'development cost', with respect to an academic facility, means the amount found by the Secretary to be the cost, to the applicant for a grant or loan under this title, of the construction, reconstruction, or renovation involved and the cost of necessary acquisition of the land on which the facility is located and of necessary site improvements to permit its use for such facility. There shall be excluded from the development cost—

"(i) in determining the amount of any grant under part A or B, an amount equal to the sum of (I) any Federal grant which the institution has obtained or is assured of obtaining, under any law other than this title, with respect to the construction, reconstruction, or renovation that is to be financed with the aid of a grant under part A or B, and (II) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant; and

"(ii) in determining the amount of any loan under part C, an amount equal to the amount of any Federal financial assistance which the institution has obtained, or is assured of obtaining, under any law other than this title, with respect to the construction, reconstruction, or renovation that is to be financed with the aid of a loan under part C.

"(B) In determining the development cost with respect to an academic facility, the Secretary may include expenditures for works of art for the facility of not to exceed 1 per centum of the total cost (including such expenditures) to the applicant of construction, reconstruction, or renovation of, and land acquisition and site improvements for, such facility.

"(4) The term 'Federal share' means in the case of any project a percentage (as determined under the applicable State plan) not in excess of 50 per centum of its development cost.

"(5) The term 'higher education building agency' means (A) an agency, public authority, or other instrumentality of a State authorized to provide, or finance the construction, reconstruction, or renovation of, academic facilities for institutions of higher education (whether or not also authorized to provide or finance other facilities for such or other educational institutions, or for their students or faculty), or (B) any corporation (no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual (i) established by an institution of higher education for the sole purpose of providing academic facilities for the use of such institution, and (ii) upon dissolution of which, all title to any property purchased or built from the proceeds of any loan made under part C will pass to such institution), or (C) an institution of postsecondary education.

"(6) The term 'public community college and public technical institute' means an institution of higher education which is under public supervision and control, and is organized and administered principally to provide a two-year program which is acceptable for full credit toward a bachelor's degree, or a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge; and the term includes a branch of an institution of higher education offering four or more years of higher education which is located in a community different from that in which its parent institution is located.

"(7) The term 'public educational institution' does not include a school or institution of any agency of the United States.

"(8) The term 'State' includes in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.".

TITLE VIII—COOPERATIVE EDUCATION

EXTENSION OF PROGRAM

SEC. 801. (a) Section 801(a) of the Act is amended—

(1) by striking out "fiscal year 1979" in paragraph (4) and inserting in lieu thereof "fiscal years 1979 and 1980";

(2) by striking out "for each of the fiscal years 1980, 1981, and 1982, $25,000,000" in paragraph (5) and inserting in lieu thereof "for each of the fiscal years 1981, 1982, 1983, 1984, and 1985, $30,000,000"; and

(3) by striking out "alternating periods" and inserting in lieu thereof "alternating or parallel periods".

(b) Section 801(b) of the Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out "fiscal years 1978, 1979, 1980, 1981, and 1982," in paragraph (4) and inserting in lieu thereof "fiscal years 1978, 1979, and 1980; and";

(3) by inserting immediately after paragraph (4) the following new paragraph:

"(5) $5,000,000 for each of the fiscal years 1981, 1982, 1983, 1984, and 1985,".

(c) Section 802(a) of the Act is amended—

(1) by striking out "$175,000" and inserting in lieu thereof "$325,000"; and

(2) by striking out "$125,000" and inserting in lieu thereof "$250,000".

(d) Section 802(c) of the Act is amended by inserting "individual unit of" immediately before "institution of higher education".

TITLE IX—GRADUATE PROGRAMS

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

SEC. 901. (a) Section 901 of the Act is amended—

(1) in subsection (a)(1), by striking out "to strengthen, improve and where necessary expand" and inserting in lieu thereof "to maintain, strengthen, and improve"; and

(2) in subsection (c), by striking out "1980" and inserting in lieu thereof "1985".

(b) Section 903(b)(2) of the Act is amended by striking out "expansion" and inserting in lieu thereof "maintenance and improvement of quality".

GRADUATE FELLOWSHIPS

SEC. 902. (a) Part B of title IX of such Act is amended to read as follows:

"PART B—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY

"STATEMENT OF PURPOSE

SEC. 921. It is the purpose of this part to provide, through institutions of higher education, a program of grants to assist in making available the benefits of post-baccalaureate education to graduate and professional students who demonstrate financial need.

"PROGRAM AUTHORIZED

"SEC. 922. (a) The Secretary shall make grants to institutions of higher education to enable such institutions to make grants in accordance with the provisions of this part.

"(b)(1) In making such grants the Secretary shall, to the maximum extent feasible, ensure an equitable geographic distribution of awards and an equitable distribution among eligible public and independent institutions of higher education.

"(2) The Secretary shall not make a grant to a single institution of higher education of less than $75,000 from the sums appropriated under this part of any fiscal year.

"(3) Whenever the Secretary determines that an institution of higher education is unable to use all of the amounts available to it under this part, the Secretary shall, on such dates during each fiscal year as the Secretary may fix, reallot such amounts not needed to institutions which can use the grants authorized by this part.

"(c) Any eligible institution of higher education offering a program of post-baccalaureate study leading to a graduate or professional degree may apply for grants under this part. Each such institution may make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(d) In making grants to institutions of higher education, the Secretary shall—

"(1) take into account present and projected needs for highly trained individuals in all areas of education beyond high school;

"(2) take into account present and projected needs for highly trained individuals in other than academic career fields of high national priority; and

"(3) consider the need to prepare a larger number of individuals from minority groups, especially from among such groups which have been traditionally underrepresented in colleges and universities, but nothing contained in this paragraph shall be interpreted to require any educational institution to grant preference or disparate treatment to the members of one minority group on account of an imbalance which may exist with respect to the total number of percentage of individuals of such group participating in or receiving the benefits of the program authorized in this section, in comparison with the total number or percentage of individuals of such group in any community, State, section, or other area.

"(e) The Secretary shall assure that, in making grants under this part, awards are made to—

"(1) individuals who plan to pursue a career in public service;

"(2) individuals who plan to pursue advanced study in domestic mining and mineral and mineral fuel conservation including oil, gas, coal, oil shale, and uranium; and

"(3) individuals from traditionally underrepresented groups, as determined by the Secretary, undertaking graduate or professional study.

The Secretary shall assure that the amount expended for categories of fellowships described in paragraphs (1), (2), and (3) of this subsection for each fiscal year is not less than the amount expended for each category in fiscal year 1979.

"(f) From sums required to be expended by the Secretary for grants under subsection (e), the Secretary may (in addition to the awards made to individuals) pay to the institution of higher education at which such person is pursuing his course of study such amounts as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the institution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"(g) No fellowship shall be awarded under this part for study at a school or department of divinity.

"AWARD OF FELLOWSHIPS

"SEC. 923. (a) An institution of higher education receiving funds under this part shall make available to financially needy graduate and professional students an award determined by such institution of higher education, except that no award under this part may exceed $4,500, or the demonstrated level of financial need according to measurements of need approved by the Secretary, whichever is lower.

"(b) No student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and

devoting essentially full time to, study or research in the field in which such fellowship was awarded and is not engaging in gainful employment other than part-time employment by the institution of higher education involved in teaching, research, or similar activities, approved by the Secretary. Such period shall not exceed a total of 3 years, except that the Secretary may provide by regulation for the granting of such fellowships for a period of study not to exceed one twelve-month period, in addition to the 3 year period set forth in this section, under special circumstances which the Secretary determines would most effectively serve the purposes of this part. The Secretary shall make a determination to provide such twelve-month extension of an award to an individual fellowship recipient upon review of an application for such extension by the recipient.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 924. There are authorized to be appropriated to carry out the provisions of this part $60,000,000 for each of the fiscal years 1981 and 1982 and such sums as may be necessary for the fiscal year 1983 and each of the succeeding fiscal years ending before October 1, 1985."

(b) Parts C, D, E, and F of such title IX are repealed.

NEW PROGRAM AUTHORIZED

SEC. 903. Title IX of the Act is amended by inserting after part B (as amended by this this Act) the following new part:

"PART C—NATIONAL GRADUATE FELLOWS PROGRAM

"AWARD OF NATIONAL GRADUATE FELLOWSHIPS

"SEC. 931. (a) During the fiscal year ending September 30, 1981, and each of the succeeding fiscal years ending prior to October 1, 1985, the Secretary is authorized to award not more than 450 fellowships in accordance with the provisions of this part for graduate study in the arts, humanities, and social sciences by students of superior ability selected on the basis of demonstrated achievement and exceptional promise. Such fellowships shall be awarded for such periods as the Secretary may determine, but not in excess of forty-eight months.

"(b) The Secretary may allow a fellowship recipient to interrupt periods of study for a period not to exceed twelve months for the purpose of work, travel, or independent study away from the campus, if such independent study is supportive of the fellowship recipient's academic program, except that for such period the Secretary shall make no payments to the fellowship recipients or payments to institutions pursuant to the fellowship award of the recipient.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this part.

"ALLOCATION OF FELLOWSHIPS

"SEC. 932. (a)(1) The President shall appoint a National Graduate Fellows Program Fellowship Board consisting of not less than nine and not more than fifteen individuals representative of both public and private institutions of higher education especially qualified to serve on the Board. In making appointments, the President shall give due consideration to the appointment of individuals who are highly respected in the academic community.

"(2) The Board shall—

"(A) establish general policies for the program established by this part and oversee its operation;

"(B) select each year the fields in which fellowships under this part are to be awarded;

"(C) determine the number of fellowships each year to be awarded under this part in each designated field;

"(D) appoint distinguished panels in each field for the purpose of selecting fellows; and

"(E) prepare and submit to the Congress, at least once in every three year period, a report on any modifications in the program that the Board determines to be appropriate.

"(3) In carrying out its responsibilities, the Board shall consult on a regular basis with representatives of the National Science Foundation, the National Endowment for the Humanities, the National Endowment for the Arts, and representatives of institutions of higher education and associations of such institutions, learned societies, and professional organizations.

"(4) The term of office of each member of the Board shall be six years; except that (A) the members first taking office shall serve as designated by the President, one-third of the members for terms of two years, one-third of the members for terms of four years, and one-third of the members for terms of six years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed. No member may serve for a period in excess of eight years.

"(5) The President shall call the first meeting of the Board, at which the first order of business shall be the election of a Chairman and a Vice Chairman, who shall serve until one year after the date of their appointment. Thereafter each officer shall be elected for a term of two years. In case a vacancy occurs in either office, the Board shall elect an individual from among the members of the Board to fill such vacancy.

"(6)(A) A majority of the members of the Board shall constitute a quorum.

"(B) The Board shall meet at least four times a year.

"(7) Members of the Board, while serving on the business of the Board, shall be entitled to receive compensation at rates fixed by the President, but not exceeding the rate prescribed for GS-18 of the General Schedule under section 5332, title 5, United States Code, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

"(b) The recipients of fellowships shall be selected in each designated field from among all applicants nationwide in each field by distinguished panels appointed by the Fellowship Board to make such selections under criteria established by the Board. The number of recipients in each field in each year shall not exceed the number of fellows allocated to that field for that year by the Fellowship Board.

"(c) Each recipient shall be entitled to use the fellowship in a doctoral program at any accredited institution of higher education in which the recipient may decide to enroll.

"STIPENDS

"SEC. 933. (a) The Secretary shall pay to individuals awarded fellowships under this part such stipends (including such allowances for subsistence and other expenses for such individuals and their dependents) as the Secretary may determine to be appropriate, adjusting such stipends as necessary so as not to exceed the fellow's demonstrated level of need according to measurements of need approved by the Secretary.

"(b) The Secretary shall (in addition to the stipends paid to individuals under subsection (a)) pay to the institution of higher education at which such person is pursuing his course of study such amount as the Secretary may determine to be appropriate, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the institution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"FELLOWSHIP CONDITIONS

"SEC. 934. (a) An individual awarded a fellowship under the provisions of this part shall continue to receive payments provided in section 933 only during such periods as the Secretary finds that he is maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, in an institution of higher education, and is not engaging in gainful employment other than part-time employment by such institution in teaching, research, or similar activities, approved by the Secretary.

"(b) The Secretary is authorized to require reports containing such information in such form and to file at such times as the Secretary determines necessary from any person awarded a fellowship under the provisions of this part. The reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archives, or other research center approved by the Secretary, stating that such individual is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.".

TRAINING AND LEGAL ASSISTANCE PROFESSION PROGRAM AUTHORIZED

SEC. 904. Title IX of the Act is amended by adding after part C (as added by section 904 of this Act) the following new part:

"PART D— ASSISTANCE FOR TRAINING IN THE LEGAL PROFESSION

"PROGRAM AUTHORIZED

"SEC. 941. (a) The Secretary is authorized prior to October 1, 1985, to make grants to or enter into contracts with, public and private agencies and organizations other than institutions of higher education for the purpose of assisting individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary, to undertake training for the legal profession.

"(b) Grants made, and contracts entered into, under subsection (a) may cover, in accordance with regulations of the Secretary, all or part of the cost of—

"(1) selecting individuals from disadvantaged backgrounds for training for the legal professions,

"(2) facilitating the entry of such individuals into institutions of higher education for the purpose of pursuing such training,

"(3) providing counseling or other services designed to assist such individuals to complete successfully such training,

"(4) providing, for not more than six months prior to the entry of such individuals upon their courses of training for the legal profession, preliminary training for such individuals designed to assist them to complete successfully such training for the legal profession,

"(5) paying such stipends (including allowances for travel and for dependents) as the Secretary may determine for such individuals for any such period of preliminary training or for any period of training for the legal profession during which such individuals maintain satisfactory academic proficiency, as determined by the Secretary, and

"(6) paying for administrative activities of the agencies and organizations which receive such grants, or with which such contracts are entered into, to the extent such activities are for the purpose of furthering activities described in clauses (1) through (5).

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 942. There are authorized to be appropriated to carry out the provisions of this part $5,000,000 for fiscal year 1981, $5,000,000 for fiscal year 1982, $7,500,000 for fiscal year 1983, $7,500,000 for fiscal year 1984, and $10,000,000 for fiscal year 1985.".

LAW SCHOOL PROGRAMS INCLUDED IN TITLE IX

SEC. 905. Title IX of the Act is amended by adding at the end thereof the following new part:

"PART E—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS

"PROGRAM AUTHORIZATION

"SEC. 951. (a) The Secretary is authorized to enter into grants or contracts with accredited law schools in the States for the purpose of paying not to exceed 90 per centum of the cost of establishing or expanding programs in such schools to provide clinical experience to students in the practice of law, which includes any form of law student work involving performance in the role of a lawyer exercising legal skills and roles such as those of an advocate, counselor, negotiator, investigator, and ethical practitioner, whether by way of the provision of representation of or services to an identifiable client in actual cases or situations (subject to existing State or local limitations upon such provision) or by way of simulation of such provision through appropriate exercises. The cases and situations handled in actuality or by simulation may encompass any one or more of the following:

"(1) judicial, administrative, executive, or legislative proceedings, including the full range of preparation therefor;

"(2) office or house counsel problems; or

"(3) factual investigation, empirical research, or policy or legal analysis.

"(b) Such costs may include necessary expenditures incurred for—

"(1) planning;

"(2) training of faculty members and salary for additional faculty members;

"(3) travel and per diem for faculty and students;

"(4) reasonable stipends for students for work in the public service performed as part of any such program at a time other than during the regular academic year;

"(5) equipment and library resources;

"(6) involving practicing lawyers in the process of training law students to perform as lawyers; and

"(7) such other items as are allowed pursuant to regulations issued by the Secretary.

"(c) No law school may receive more than $100,000 in any fiscal year pursuant to this part, no part of which may be used to pay for indirect costs or charges.

"(d) For the purpose of this part the term 'accredited law school' means any law school which is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose, including any combination or consortium of such schools.

"APPLICATIONS

"SEC. 952. (a) A grant or contract authorized by this part may be made by the Secretary upon application which—

"(1) is made at such time or times and contains such information as he may prescribe;

"(2) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(3) provides for making such reports, in such form and containing such information as the Secretary may require to carry out his functions under this part, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

"(b) The Secretary shall allocate grants or contracts under this part in such manner as will provide an equitable distribution of such grants or contracts throughout the United States among law schools which show promise of being able to use funds effectively for the purposes of this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 953. There are authorized to be appropriated $5,000,000 for the fiscal year 1981, $8,000,000 for the fiscal year 1982, $8,000,000 for the fiscal year 1983, $9,000,000 for the fiscal year 1984, and $10,000,000 for the fiscal year 1985, to carry out the purposes of this part.".

TITLE X—ESTABLISHMENT OF A NEW TITLE X OF THE HIGHER EDUCATION ACT OF 1965

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

SEC. 1001. (a) Title X of the Act is amended by striking out everything preceding part C and inserting in lieu thereof the following:

"TITLE X—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

"PART A—ESTABLISHMENT AND OPERATION OF FUND

"AUTHORIZATION OF PROGRAM

"SEC. 1001. Subject to the provisions of section 1002, the Secretary is authorized to make grants to, and contracts with, institutions of postsecondary education (including combinations of such institutions) and other public and private educational institutions and agencies (except that no grant shall be made to an educational institution or agency other than a nonproofit institution or agency) to improve postsecondary educational opportunities by providing assistance to such educational institutions and agencies for—

"(1) encouraging the reform, innovation, and improvement of postsecondary education, and providing equal educational opportunity for all;

"(2) the creation of institutions and programs involving new paths to career and professional training, and new combinations of academic and experiential learning;

"(3) the establishment of institutions and programs based on the technology of communications;

"(4) the carrying out in postsecondary educational institutions of changes in internal structure and operations designed to clarify institutional priorities and purposes;

"(5) the design and introduction of cost-effective methods of instruction and operation;

"(6) the introduction of institutional reforms designed to expand individual opportunities for entering and reentering institutions and pursuing programs of study tailored to individual needs;

"(7) the introduction of reforms in graduate education, in the structure of academic professions, and in the recruitment and retention of faculties; and

"(8) the creation of new institutions and programs for examining and awarding credentials to individuals, and the introduction of reforms in current institutional practices related thereto.

"CONSULTATION

"SEC. 1002. No grant shall be made or contract entered into under section 1001 for a project or program with any institution of postsecondary education unless it has been submitted to the appropriate State entity having an agreement under section 1203, and an opportunity has been afforded such entity to submit its comments and recommendations to the Secretary.

"NATIONAL BOARD OF THE FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

"SEC. 1003. (a) There is established a National Board of the Fund for the Improvement of Postsecondary Education. The Board shall consist of fifteen members appointed by the Secretary for overlapping three-year terms. A majority of the Board shall constitute a quorum. Any member of the Board who has served for six consecutive years shall thereafter be ineligible for appointment to the Board during a two-year period following the expiration of such sixth year.

"(b) The Secretary shall designate one of the members as Chairman. A majority of the members of the Board shall be public interest representatives, including students, and a minority shall be educational representatives. All members selected shall be individuals able to contribute an important perspective on priorities for improvement in postsecondary education and strategies of educational and institutional change.

"(c) The Board shall—

"(1) advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education on priorities for the improvement of postsecondary education and make such recommendations as it may deem appropriate for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice;

"(2) advise the Secretary and the Director of the Fund on the development of programs to be carried out by the Fund and on the selection of projects under consideration for support by the Fund in its competitions;

"(3) advise the Secretary and the Director of the Fund on the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund; and

"(4) meet at the call of the Chairman, except that it shall meet (A) at least four times during each fiscal year, or (B) whenever one-third of the members request in writing that a meeting be held.

"(d) The Director shall make available to the Board such information and assistance as may be necessary to enable the Board to carry out its functions.

"ADMINISTRATIVE PROVISIONS

"SEC. 1004. (a) The Secretary may appoint, for terms not to exceed three years, without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, not more than five technical employees to administer this title who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) The Director shall establish procedures for reviewing and evaluating grants and contracts made or entered into under this title. Procedures for reviewing grant applications or contracts for financial assistance under this section may not be subject to any review outside of officials responsible for the administration of the Fund for the Improvement of Postsecondary Education.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1005. There are authorized to be appropriated to carry out this title $20,000,000 for fiscal year 1981, $30,000,000 for fiscal year 1982, $40,000,000 for fiscal year 1983, $45,000,000 for fiscal year 1984, and $50,000,000 for fiscal year 1985.".

(b)(1) Part C of title X of the Act is redesignated as part B, and sections 1071 and 1072 thereof are redesignated as sections 1021 and 1022, respectively.

(2) Section 1021(a) of the Act (as so redesignated) is amended by striking out "this title,".

(c) Section 404 of the General Education Provisions Act is repealed.

TITLE XI—ESTABLISHMENT OF A NEW TITLE XI OF THE HIGHER EDUCATION ACT OF 1965

PROGRAM AUTHORIZED

SEC. 1101. Title XI of the Act is amended to read as follows:

"TITLE XI—URBAN GRANT UNIVERSITY PROGRAM

"FINDINGS AND PURPOSE

"SEC. 1101. (a) The Congress finds and declares—

"(1) that there exists within the Nation's urban universities an underutilized reservoir of skills, talents, and knowledge applicable toward the amelioration of the multitude of problems that face the Nation's urban centers;

"(2) that the skills, talents, and knowledge of urban universities must be applied in a systematic and sustained manner to make a significant contribution toward the solution of these problems;

"(3) that the application of the skills, talents, and knowledge of urban universities is hindered by the limited funds available to sustain their commitment; and

"(4) that it is the policy of the United States to encourage and facilitate the application of the skills, talents, and knowledge of urban universities toward serving the needs of urban centers of the Nation.

"(b) The Secretary shall carry out programs in accordance with the provisions of this title, for the purpose of aiding urban universities to help find answers to urban problems, and aiding such universities to make their resources more readily and effectively available to the urban communities in which they are located.

"APPROPRIATIONS AUTHORIZED

"SEC. 1102. (a) For the purpose of carrying out the provisions of this title there is authorized to be appropriated $15,000,000 for fiscal year 1981, $25,000,000 for fiscal year 1982, $35,000,000 for fiscal year 1983, $45,000,000 for fiscal year 1984, and $55,000,000 for fiscal year 1985.

"(b) In the event of a multiple-year grant to any urban university under this title, the Secretary shall make funds available for such grant from funds appropriated for this title for the fiscal year in which such funds are to be used by the recipient.

"PROJECT ASSISTANCE

"SEC. 1103. (a) (1) The Secretary shall make grants to urban universities to pay the Federal share of the cost of carrying out projects consistent with the purposes of this title.

"(2) The Secretary shall give priority to applications containing cooperative arrangements between urban universities within an urban area.

"(b) An application submitted under this section shall contain provisions designed to show that the chief executive of the local agency or agencies of general government within whose jurisdiction fall the need or needs to be addressed by the project or projects described has been afforded a reasonable opportunity to review and comment upon the proposed project or projects. In making grants under this title, the Secretary shall consider the degree to which there is evidence in the application of (1) the participation of such local agency or agencies of general government and of the community in the development of the project or projects for which assistance is requested under this section; (2) local government and community participation in the implementation of the proposed project or projects; and (3) a commitment by such local agency or agencies of general government to pay the portion of the non-Federal share of the cost of such project or projects required by subsection (d) of this section. Not more than one-half of such non-Federal share may be in the form of services, supplies, or equipment.

"(c) The Secretary may request the advice of any Federal agency the Secretary considers appropriate before approving an application for project assistance under this section.

"(d) Each grant under this section shall be 90 per centum of the cost of the project for which assistance is granted.

"(e) An institution of higher education which receives a grant under this section shall be designated by the Secretary as an 'urban grant university'. The Secretary shall annually publish a list of the institutions of higher education which have been so designated.

"LIMITATION

"SEC. 1104. (a) The total amount of payments in any fiscal year under section 1103 to institutions within any one State shall not exceed 15 per centum of the total amount paid.

"(b) In allocating assistance under section 1103 of this title, the Secretary shall endeavor to achieve broad and equitable geographical distribution throughout the Nation.

"DEFINITIONS

"SEC. 1105. As used in this title—

"(1) 'urban area' means a standard metropolitan statistical area having a population of not less than five hundred thousand persons; or, in any State which has no standard metropolitan statistical area within its borders which has such a population, the entity of the State having an agreement under section 1203 may, or if no such entity has an agreement, the Secretary shall designate one urban area for the purposes of this part;

"(2) 'urban university' means an institution of higher education which (A) is located in an urban area, (B) draws a substantial portion of its undergraduate students from the urban area in which it is located or contiguous urban areas, (C) carries out programs to make postsecondary education opportunities more accessible to residents of such urban area or contiguous areas, (D) has the present capacity to provide resources responsible to the needs and priorities of such urban area and contiguous areas, (E) offers a range of professional or graduate programs sufficient to sustain its capability to provide such resources, and (F) has demonstrated and sustained a sense of responsibility to such urban area and contiguous areas and its people;

"(3) for the purposes of paragraphs (2) and (4) of this section, 'institution of higher education' includes any combination of such institutions, any one of which meets all the qualifications of paragraph (2); and

"(4) 'resources' are programs of institutions of higher education including specialized training, research services, and technical assistance responsible to the needs and priorities of the urban area and contiguous areas.".

TITLE XII—GENERAL PROVISIONS

AMENDMENTS

SEC. 1201. Title XII of the Act is amended by striking out sections 1202, 1203, 1205, 1206, and 1208, by redesignating section 1207 as section 1202, and by adding after such section the following new sections:

"FEDERAL-STATE RELATIONSHIPS; STATE AGREEMENTS

"SEC. 1203. (a) Any State which desires to receive assistance under an applicable program, as described in subsection (f), shall enter into an agreement with the Secretary pursuant to subsection (b) setting forth the terms and conditions for the relationship between the Federal Government and that State for the purposes set forth in the applicable programs.

"(b) Such agreement shall consist of assurances by the State, including a description of the means to be used by the State to fulfill the assurances, that—

"(1) the State will provide for such methods of administration as are necessary for the proper and efficient administration of any program in keeping with the purposes of the applicable programs described in subsection (f);

"(2) the State will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State under any title of this Act;

"(3) the State will follow policies and practices of administration that will ensure that non-Federal funds will not be supplanted by Federal funds, and that equitable and appropriate criteria will be used in evaluation of applications or proposals for grants or contracts under any such applicable program; and

"(4) the State has a comprehensive planning or policy formulation process which—

"(A) considers the relation between State administration of any such applicable program, and administration of similar State programs or processes;

"(B) encourages State policies designed to consider effects on declining enrollments on all sectors of postsecondary education in the State;

"(C) considers the postsecondary education needs of unserved and underserved individuals within the State, including individuals beyond the traditional college age;

"(D) considers the resources of institutions, organizations, or agencies (both public and private) within the State capable of providing postsecondary educational opportunities in the State; and

"(E) provides for direct, equitable and active participation in the comprehensive planning or policy formulation process or processes of representatives of institutions of higher education (including community colleges, proprietary institutions, and independent colleges and universities), students, other providers of postsecondary education services, and the general public in the State.

Participation under subclause (E) shall, consistent with State law, be achieved through membership on State planning commissions, State advisory councils, or other State entities established by the State to conduct federally assisted comprehensive planning or policy formulation.

"(c) The information and assurances provided by a State in accordance with paragraphs (1), (2), and (3) of subsection (b), and regulations issued by the Secretary related directly to such assurances, shall be satisfactory for the purposes of, and shall be considered in lieu of, any comparable requirements for information and assurances in any applicable program described in subsection (f).

"(d) (1) An agreement of a State shall remain in effect subject to modification as changes in information or circumstances require.

"(2) Whenever the Secretary, after reasonable notice and opportunity for a hearing has been given to the State, finds that there is a failure to comply substantially with the assurances required in paragraph (1), (2), or (3) of subsection (b), the Secretary shall notify the State that it is no longer eligible to participate in any applicable program described in subsection (f) until the Secretary is satisfied that there is no longer any such failure to comply.

"(e) (1) For the purpose of this section, the selection of the State entity or entities authorized to act on behalf of the State for the purpose of entering into an agreement with the Secretary shall be in accordance with the State law of each individual State with respect to the authority to make legal agreements between the State and the Federal Government.

"(2) (A) Nothing in this section shall be construed to authorize the Secretary to require any State to adopt, as a condition for entering into an agreement, or for participation in an applicable program as defined in subsection (f), a specific State organizational structure for achieving participation in the planning, or administration of programs, or for statewide planning, coordination, governing, regulating, or administering of postsecondary education agencies, institutions, or programs in the State.

"(B) Nothing in this section shall be construed as a limitation on the authority of any State to adopt a State organizational structure for postsecondary education agencies, institutions, or programs which is appropriate to the needs, traditions, and circumstances of that State, or as a limitation on the authority of a State entering into an agreement pursuant to this section to modify the State organizational structure at any time subsequent to entering into such an agreement.

"(f) For the purposes of this section an 'applicable program' is defined as—

"(1) title I;

"(2) subpart 3 of part A of title IV; and

"(3) part A of title VII.

"TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE

"SEC. 1204. (a) The Secretary is authorized to provide such modifications of any programs under this Act as the Secretary deems necessary in order to adapt such programs to the needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. Such program modifications may include the consolidation of grants for any single program on a regional or interterritorial basis. Such program modifications shall be established in cooperation with the governments of such territories and shall be governed by a memorandum of understanding between such governments and the Department of Education.

"(b) In conjunction with the development of program modifications under subsection (a), the Secretary shall, within eighteen months after the date of enactment of this section, conduct an analysis of the unique educational needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, and report to the Congress on the results of such analysis. Such report shall include recommendations of the Secretary with respect to the most appropriate form of Federal postsecondary education assistance for such territories, an evaluation of the effectiveness of the authority contained in subsection (a), and whether such authority should be extended or modified.

"(c) Pending legislative implementation of the recommendations submitted by the Secretary under subsection (b), there are authorized to be appropriated $2,000,000 for each fiscal year ending prior to October 1, 1985 to support the cost of providing postsecondary education programs on Guam for nonresident students from the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Such sums shall be allocated by the Secretary among the educational institutions on Guam providing such programs on the basis of the number of students enrolled from the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Sums authorized under this subsection shall remain available until appropriated and sums appropriated under this subsection shall remain available until expended.

"NATIONAL ADVISORY COMMITTEE ON ACCREDITATION AND INSTITUTIONAL ELIGIBILITY

"SEC. 1205. (a) There is established in the Department of Education a National Advisory Committee on Accreditation and Institutional Eligibility which shall be composed of 15 members appointed by the Secretary from among individuals knowledgeable concerning education, and including persons who are (1) representative of institutions, (2) representative of students and youth, (3) representative of professional associations, (4) representative of State educational agencies, and (5) representative of the general public. The Chairman of the Committee shall be appointed by the Secretary.

"(b) The term of office of each member of the Committee shall be three years, except that—

"(1) the members first appointed to the Committee shall serve as designated by the Secretary, five for a term of one year, five for a term of two years, and five for a term of three years, and

"(2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term.

"(c) The Committee shall, with respect to all matters pertaining to institutional eligibility—

"(1) advise the Secretary with regard to the responsibility to publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered, including advising the Secretary with respect to the criteria and procedures for carrying out such responsibility;

"(2) advise the Secretary with regard to the responsibility to designate State agencies as reliable authorities on the quality of public postsecondary vocational education or training;

"(3) develop and recommend to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish the eligibility of such institutions on an interim basis for participation in federally funded programs; and

"(4) carry out such other advisory functions relating to accreditation and institutional eligibility as may be assigned by the Secretary.

"(d) The Committee shall meet not less than twice each year at the call of the Chairman. The date of, and agenda for, each meeting of the Committee shall be submitted in advance to the Secretary for approval. A representative of the Secretary shall be present at all meetings of the Committee.

"(e) The Committee shall, not later than November 30 of each year, make an annual report through the Secretary to the Congress. The annual report shall contain a list of the members of the Committee and their addresses, a list of the Committee's functions, a list of dates and places of each meeting during the preceding fiscal year, and a summary of the activities, findings, and recommendations made by the Committee during the preceding fiscal year.

"(f) Subject to section 448(b) of the General Education Provisions Act, the Committee shall continue to exist until September 30, 1985.".

TITLE XIII—MISCELLANEOUS PROVISIONS

PART A—GENERAL EDUCATION PROVISIONS

CONTINGENT EXTENSION

SEC. 1301. (a) The first sentence of section 414 of the General Education Provisions Act is amended by striking out "for one additional fiscal year" and inserting in lieu thereof the following: "for—

"(i) two additional fiscal years for any applicable programs authorized to be included in the Appropriation Act for the fiscal year preceding the fiscal year for which appropriations are available for obligation, or

"(ii) one additional fiscal year for any other applicable program".

(b) The second sentence of such section is amended by striking out "for such additional year" and inserting in lieu thereof "for each additional fiscal year".

ENFORCEMENT OF THE RULES

SEC. 1302. The second sentence of section 431(d)(1) of the Act is amended by inserting before the period a comma and the following: "in whole or in part".

SCIENCE EDUCATION PROGRAMS

SEC. 1303. The General Education Provisions Act is amended by inserting after section 406 the following new section:

"AUTHORIZATION OF APPROPRIATIONS FOR SCIENCE EDUCATION PROGRAMS

"SEC. 406A. There is authorized to be appropriated to the Secretary of Education for fiscal year 1981—

"(1) $2,500,000 for the purpose of carrying out the Pre-College Science Teacher Training program, and

"(2) $5,000,000 for the purpose of carrying out the Minority Institutions Science Improvement program

transferred to the Secretary from the National Science Foundation by section 304 of the Department of Education Organization Act.".

COMMISSION ON THE REVIEW OF THE FEDERAL IMPACT AID PROGRAM

SEC. 1304. (a) Section 1015(d) of the Education Amendments of 1978, relating to the impact aid study, is amended by striking out "December 1, 1980" and inserting in lieu thereof "September 1, 1981".

(b) All funds available to the Commission for its operating expenses shall, notwithstanding any other provision of law, be made available to such Commission, and remain available to such Commission to carry out the amendment made by subsection (a) of this section. The Secretary of Education shall, notwithstanding any other provision of law, make available to such Commission, from funds appropriated to the Department of Education, such funds as may be necessary to enable the Commission to maintain its level of operations, consistent with the amendment made by subsection (a) of this section, except that the total amount so available for any month shall not exceed 110 per centum of the average monthly amount available for expenditure by the Commission during the fiscal year 1980.

(c) The terms of office of the members of such Commissions shall be coterminous with the duration of the Commission and the number of such members shall be equal to the number who are in office at any time, except that such number shall not exceed the number specified in such section 1015. A quorum of the Commission shall be equal to a majority of the members of the Commission who have qualified.

(d) The Commission shall terminate September 30, 1981.

EVALUATION REPORTS

SEC. 1305. Section 417(a)(1)(F) of the General Education Provisions Act is amended by inserting immediately before the period a comma and the following: "including tabulations of available data to indicate the effectiveness of the programs and projects by the sex, race, and age of its beneficiaries".

EDUCATION IMPACT STATEMENT

SEC. 1306. Part A of the General Education Provisions Act is amended by adding at the end thereof the following new section:

"EDUCATION IMPACT STATEMENT

"SEC. 409. Notwithstanding any other provision of law, no regulation affecting any institution of higher education in the United States, promulgated on or after the date of enactment of this Act, shall become effective unless such agency causes to be published in the Federal Register a copy of such proposed regulation together with an educational impact assessment statement which shall determine whether any information required to be transmitted under such regulation is already being gathered by or is available from any other agency or authority of the United States. Notwithstanding the exception provided under section 553(b) of title 5, United States Code, such statement shall be based upon the record established under the provisions of section 553 of title 5, United States Code, compiled during the rulemaking proceeding regarding such regulation.".

PART B—NATIONAL INSTITUTE OF EDUCATION

EXTENSION OF AUTHORITY

SEC. 1311. Section 405(j) of the General Education Provisions Act is amended to read as follows:

"(j)(1) There are authorized to be appropriated to carry out the provisions of this section, $120,000,000 for fiscal year 1981, $130,000,000 for fiscal year 1982, $145,000,000 for fiscal year 1983, $160,000,000 for fiscal year 1984, and $175,000,000 for fiscal year 1985.

"(2) Sums so appropriated shall, notwithstanding any other provision of law unless enacted in express limitation of the subsection, remain available for the purposes of this subsection unless expended.".

DECLARATION OF POLICY

SEC. 1312. The first sentence of section 405(a)(1) of the General Education Provisions Act is amended by inserting after "sex" a comma and "age, handicap".

RESEARCH AND DEVELOPMENT PRIORITIES

SEC. 1313. Section 405(b)(2) of the General Education Provisions Act is amended by—

(1) striking out "and" at the end of clause (D);

(2) by redesignating clause (E) as clause (G);

(3) by adding after clause (D) the following new clauses:

"(E) overcoming the special problems of the nontraditional student, including the older student (with special consideration for students over age 45) and the part-time student, and the institution which the student attends;

"(F) encouraging the study of languages and cultures and addressing both national and international education concerns; and"; and

(4) by adding at the end of the following sentence: "In carrying out this paragraph, the Institute shall give attention to the needs of early adolescents and the schools which serve them.".

REPEALER

SEC. 1314. (a) Section 405(f)(3) of the General Education Provisions Act is repealed.

(b) Paragraph (4) of section 405(f) of such Act is redesignated as paragraph (3).

PART C—AMENDMENTS TO THE REHABILITATION ACT OF 1973

COMPOSITION OF THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD AND TRANSMISSION OF REPORT

SEC. 1321. (a)(1) Section 502(a)(1)(B)(i) of the Rehabilitation Act if 1973 is amended to read as follows:

"(i) Department of Health and Human Services.".

(2) Section 502(a) of such Act is amended by adding the following clause immediately after clause (x):

"(xi) Department of Education.".

(b) Section 502(h) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) The Board shall, at the same time that the Board transmits the report required under section 7(b) of the Act entitled 'An Act to ensure that certain buildings financed with Federal funds are so designated and constructed as to be accessible to the physically handicapped', approved August 12, 1968 (commonly known as the Architectural Barriers Act of 1968) transmit that report to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.".

INFORMATION CLEARINGHOUSE FOR HANDICAPPED INDIVIDUALS

SEC. 1322. (a) The first sentence of section 15(a) of the Rehabilitation Act of 1973 is amended by striking out "may" and inserting in lieu thereof "shall".

(b) Section 15(c) of such Act is amended by striking out "Any" and inserting in lieu thereof "The".

PART D—NATIVE HAWAIIAN EDUCATION STUDY

STUDY AUTHORIZED

SEC. 1321. (a)(1) The Congress finds that—

(A) like other Native Americans, Native Hawaiians rank among the lowest in level of educational attainment and per capita income; and

(B) existing Federal, State, and local assistance in the field of education fails to address the basic and special needs of Native Hawaiians.

(2) The Congress declares its commitment to assist in providing the educational services and opportunities which Native Hawaiians need.

(b) There is established the Advisory Council on Native Hawaiian Education which shall consist of seven members appointed by the Secretary of Education, after consultation with the Governor of Hawaii, from among individuals who are professionals in the various fields relating to human development, and who are familiar with the educational problems of Native Hawaiians.

(c) The Council shall—

(1) advise the Secretary with respect to the operation of programs administered by the Department of Education and other programs making educational assistance available to Native Hawaiians;

(2) conduct a study which shall (A) evaluate the effectiveness of State and federally assisted educational programs in serving Native Hawaiian children and the extent to which such programs achieve their purposes with respect to such children, and (B) take into account the special health, social, and psychological needs of Native Hawaiian children; and

(3) submit a report to the Secretary and to the Congress not later than January 31, 1983, containing the findings and recommendations of the Council with respect to the matters described in paragraphs (1) and (2).

(d) The Council shall terminate 60 days after the submission of its report under subsection (c).

(e) There are authorized to be appropriated a total amount of not more than $500,000 for the fiscal years 1981, 1982, and 1983 to carry out this section.

PART E—SPECIAL IMPACT AID PROGRAM

PROGRAM AUTHORIZED

SEC. 1341. The Act of September 30, 1950 (Public LAW 874, 81st Cong.), relating to impact aid, is amended by adding after section 4 the following new section:

"SPECIAL PROGRAM

"SEC. 4A. (a)(1) Any local educational agency that experiences an enrollment increase in any school year of at least 20 students as a result of the entry into any school supported by such agency of eligible children shall be eligible to receive payment for such children enrolled in its schools in accordance with the provisions of this section.

"(2) For purposes of this section the term 'eligible children' means—

"(A) aliens who fled from Cambodia, Vietnam, or Laos and who, on or after January 1, 1979—

"(i) were admitted into the United States as refugees under section 207 of the Immigration and Nationality Act;

"(ii) are applicants for asylum or have been granted asylum in the United States; or

"(iii) were paroled into the United States as refugees under section 212(d)(5) of the Immigration and Nationality Act; or

"(B) aliens who fled from Cuba or Haiti and who, on or after November 1, 1979—

"(i) were admitted into the United States as refugees under section 207 of the Immigration and Nationality Act;

"(ii) are applicants for asylum or have been granted asylum in the United States;

"(iii) are paroled into the United States as refugees under section 212(d)(5) of the Immigration and Nationality Act; or

"(iv) are Cuban-Haitian entrants (status pending) who entered the United States on or after such date.

"(3)(A) Each such local educational agency is authorized to receive for the fiscal year 1981 an amount equal to the product of the number of eligible children in average daily attendance in the schools of such agency in excess of 20 such eligible children multiplied by the current local expenditure rate of that local educational agency, plus $200 for each such eligible child in excess of 20.

"(B) For the purpose of this paragraph the current local expenditure rate shall be deemed to be the non-Federal expenditure rate of the local educational agency.

"(4) No provision of this Act which is inconsistent with the provisions of this section shall apply to the administration of this section.

"(5) Each local educational agency which is authorized to receive assistance under this section shall provide the Secretary with assurances that no eligible child counted for the purpose of this section shall be counted for payments made under any other provision of this Act.

"(b) There are authorized to be appropriated for the fiscal year 1981 such sums as may be necessary to carry out the provisions of this section.".

PART F—THE NAVAJO COMMUNITY COLLEGE ASSISTANCE PROGRAM

AMENDMENTS TO THE NAVAJO COMMUNITY COLLEGE ACT

SEC. 1351. (a) Section 5(a)(1) of the Navajo Community College Act is amended by striking out "two" and inserting in lieu thereof "three".

(b) Section 5(b) of such Act is amended by striking out paragraphs (1) and (2), by redesignating paragraph (3) as paragraph (2), and by inserting immediately before such paragraph the following:

"(b)(1) There is further authorized to be appropriated for grants to the Navajo Community College, for any fiscal year beginning on or after October 1, 1979, an amount equal to the amount necessary for operation and maintenance of the college, including, but not limited to, administrative, academic, and operations and maintenance costs.".

(c) Such Act is further amended by adding at the end thereof the following new section:

"EFFECT ON OTHER LAWS

"SEC. 6. Except as specifically provided by law, eligibility for assistance under this Act shall not, by itself, preclude the eligibility of the Navajo Community College to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.".

PART G—NEW LAND GRANT COLLEGES

AMERICAN SAMOA AND MICRONESIA LAND GRANT COLLEGES

SEC. 1361. (a) Section 506 of the Education Amendments of 1972 is amended—

(1) by inserting ", the Community College of American Samoa, the College of Micronesia," immediately after "The College of the Virgin Islands" in subsection (a);

(2) by striking out "Virgin Islands and Guam" each place it appears in subsection (b) and inserting in lieu thereof "Virgin Islands, Guam, American Samoa, and Micronesia"; and

(3) by striking out "Guam," in such subsection and inserting in lieu thereof "Guam and an equal amount to American Samoa and to Micronesia.".

(b) Section 5 of the Act of August 30, 1890 (7 U.S.C. 327), commonly referred to as the Second Morrill Act, is amended by inserting ", American Samoa, and Micronesia," immediately after "the Virgin Islands".

(c) Any provision of any Act of Congress relating to the operation of or provision of assistance to a land grant college in the Virgin Islands or Guam shall apply to the land grant college in American Samoa and in Micronesia in the same manner and to the same extent.

(d) Nothing in this section shall be construed to interfere with or affect any of the provisions of the April 17, 1900 Treaty of Cession of Tutuila and Aunu'u Islands or the July 16, 1904 Treaty of Session of the Manu'a Islands as ratified by the Act of February 20, 1929 (45 Stat. 1253) and the Act of May 22, 1929 (46 Stat. 4).

PART H—MEMORIALS

Subpart 1—The Robert A. Taft Institute

SHORT TITLE

SEC. 1371. This subpart may be cited as the "Robert A. Taft Institute Assistance Act".

GRANTS FOR DEVELOPMENT

SEC. 1372. (a) In recognition of the public service of Senator Robert A. Taft, the Secretary of Education is authorized to make grants to the Robert A. Taft Institute of Government, located in New York, New York.

(b) The total amount of grants under this section in any fiscal year may not exceed the total amount of private contributions received by the Institute for the fiscal year for which the grants are made.

(c) No payment may be made under this subpart except upon an application at such time, in such manner, and containing or accompanied by such information as the Secretary of Education may require.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1373. There are authorized to be appropriated $750,000 for the fiscal year 1981 and for each fiscal year ending prior to October 1, 1985.

Subpart 2—General Daniel James Memorial Health Education Center

FINANCIAL ASSISTANCE AUTHORIZED

SEC. 1376. (a) In recognition of the public service of General Daniel James and as a memorial to General Daniel James, the Secretary of Education shall, in accordance with the provisions of this title, make a grant to establish the General Daniel James Memorial Health Education Center to be located at Tuskegee Institute, Tuskegee, Alabama.

(b) No grant may be made under subsection (a) of this section unless an application is made to the Secretary at such time and in such manner as the Secretary may provide. The application shall contain provisions designed to assure that—

(1) the building known as the General Daniel James Memorial Health Education Center will be located on the campus of Tuskegee Institute, Tuskegee, Alabama;

(2) the memorial will serve as a regional center for preventive health education and as a repository for papers and memorabilia relating to the life of General Daniel James; and

(3) such other reasonable conditions as the Secretary may require.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1377. (a) There are authorized to be appropriated $6,000,000 for the fiscal year 1981 to carry out the provisions of this title.

(b) Funds appropriated pursuant to this title shall remain available until expended.

Subpart 3—The William Levi Dawson Chair of Public Affairs

SHORT TITLE

SEC. 1381. This subpart may be cited as the "William Levi Dawson Chair of Public Affairs Act".

ASSISTANCE FOR THE ESTABLISHMENT OF THE WILLIAM LEVI DAWSON CHAIR OF PUBLIC AFFAIRS

SEC. 1382. (a) The Secretary of Education is authorized to provide financial assistance in accordance with the provision of this section to establish the William Levi Dawson Chair of Public Affairs at Fisk University, Nashville, Tennessee.

(b) No financial assistance under this title may be made except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1383. (a) There are authorized to be appropriated such sums, not to exceed $750,000, for the fiscal year 1981, as may be necessary to carry out the provisions of section 1802 of this title.

(b) Funds appropriated pursuant to this title shall remain available until expended.

PART I—TECHNICAL PROVISIONS

ADMINISTRATIVE AMENDMENTS

SEC. 1391. (a)(1) The Act is amended by striking out "Commissioner" wherever it appears (except in section 1201(f) and inserting in lieu thereof "Secretary".

(2) The Act is further amended by striking out "Commissioner's" whenever it appears and inserting in lieu thereof "Secretary's".

(3) The Act is further amended by striking out "Secretary of Health, Education, and Welfare" wherever it appears (except in section 1201(e)) and inserting in lieu thereof "Secretary".

(b)(1) Section 1201(e) of the Act is amended to read as follows:

"(e) The term 'Secretary' means the Secretary of Education.".

(2) Section 1201(f) of the Act is repealed.

(3) Section 1201 of the Act is amended by adding at the end thereof the following:

"(m) The term 'Department' means the Department of Education.".

CONTRACT AUTHORITY

SEC. 1392. The authorization to enter into contracts or other obligations under the Act, as amended by this Act, shall be effective for fiscal year 1981 and any succeeding fiscal year only to the extent or in such amounts as are provided in advance in appropriation Acts.

EFFECTIVE DATES

SEC. 1393. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on October 1, 1980.

(b)(1) The amendment made by section 301 of this Act to title III of the Act shall take effect October 1, 1981.

(2) The amendment made by section 404 (c)(4) of this Act to section 415C(b)(4) of the Act shall be effective October 1, 1979.

(3) The amendment made by section 405 to subpart 4 of part A of title IV of the Act shall take effect October 1, 1981.

(4) The amendments made by part B of title IV of this Act shall take effect, except as otherwise provided therein, on January 1, 1981, and to the extent such amendments make changes in such part B which affect student loans, such changes shall apply to outstanding loans as well as to loans made after the amendments take effect, except that the amendments made by section 415 (b) shall apply with respect to any loan to cover the cost of instruction for any period of instruction beginning on or after January 1, 1981, to any student borrower who has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 on the date on which the borrower enters into the note or other written evidence of the loan.

(5) The amendments made by part D of title IV of this Act shall apply to loans made under part E of the Act on or after October 1, 1980.

(6) The amendment made by section 701 of this Act adding section 731 of the Act shall apply to loans made under section 731 on or after October 1, 1980.

And the Senate agree to the same.

CARL D. PERKINS,
FRANK THOMPSON, JR.,
JOHN BRADEMAS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
MARIO BIAGGI,
PAUL SIMON,
AUSTIN J. MURPHY,
TED WEISS,
PETER A. PEYSER,
WILLIAM RATCHFORD,
GEO. MILLER,
JOHN M. ASHBROOK,
JOHN A. BUCHANAN, JR.,
JAMES M. JEFFORDS,
MICKEY EDWARDS,
THOMAS J. TAUKE,
THOMAS E. PETRI,

Managers on the Part of the House.

CLAIBORNE PELL,
HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
EDWARD M. KENNEDY,
THOMAS F. EAGLETON,
ROBERT STAFFORD,
DICK SCHWEIKER,
JACOB K. JAVITS,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

IN MEMORIAM

The conferees note with great sadness the absence from our deliberations of Mr. William F. Gaul, Associate General Counsel of the House Committee on Education and Labor.

Mr. Gaul has provided a central thread of informed judgment and wise counsel throughout all previous conference committee deliberations on the Higher Education Act, from its original enactment in 1965 through the amendments of 1968, 1972, and 1976.

Mr. Gaul worked tirelessly on the House version of this reauthorizing legislation through its enactment last November. But shortly thereafter, he was stricken by a fatal illness which confined him to a hospital quarters during our conference committee deliberations.

We have greatly missed his good and wise counsel in our deliberations. We wish he could have been with us. But most of all, we wish to record, as a part of this conference report, our great and continuing indebtedness to Mr. Gaul for the extraordinary contributions he has made throughout the last fifteen years to the creation, development, and refinement of the Higher Education Act.

On behalf of the millions of postsecondary students and the thousands of postsecondary institutions who have and will continue to benefit from the Higher Education Act, we wish to state that Mr. William F Gaul's leadership role in constructing this legislation will be greatly noted and long remembered.

TITLE I—EDUCATION OUTREACH

1. The Senate amendment, but not the House bill, in Part A of Title I establishes a new Commission on National Development in Postsecondary Education, a tripartite Commission of 25 members to be appointed by the President, the President pro tem of the Senate, and Speaker of the House. The function of the Commission shall be to review national, state, and institutional planning policies to examine the effectiveness of Federal financial assistance to students and institutions in conjunction with State and institutional aid policies; to consider the research capacity of institutions and the relationship between institutions and the public and private sector in promoting research; and to examine the resources of institutions and the effect of demographic changes which will impact on their ability to meet social and economic needs. The Senate amendment authorizes $3 million for the Commission for the period beginning October 1, 1981, through March 1, 1983.

The House recedes with an amendment extending the life of the Commission through December 31, 1983, and adding as a purpose of the Commission a study of the needs of adult postsecondary students.

2. The provisions of the House bill and the Senate amendment with respect to the allocation of funds under Title I of the House bill and Part B of Title I of the Senate amendment are described in the following tables:

ALLOCATION FORMULA

[Unless indicated, each State must have an agreement for comprehensive statewide planning in order to receive funds under the following provisions:]

HOUSE—TITLE I	SENATE—TITLE I–B
Statewide Planning Program—Sec. 102. 20 percent of total appropriation is allotted on the basis of adult population for Statewide planning. Each State must receive at least $60,000.[1]	Sec. 112. From 90 percent of appropriation, each State shall receive an amount equal[1] to the FY 1979 level of funding for title I, Sec. 418A, and Sec. 1203. If the level of appropriations exceeds that amount the excess shall be distributed on the basis of adult population. (If, in any fiscal year, a State does not wish to enter into an agreement for statewide planning, the Secretary shall allot to that State an amount equal to the amount the State would receive for continuing education and education information services.)
State Grant Program—Sec. 103. 70 percent of the total appropriation is allotted to States for education information and continuing education services. Half of this amount is allotted equally to all states, and half is allotted on the basis of adult population. Each State must receive at least $90,000.[1]	Sec. 116 10 percent of the appropriations shall be reserved for the Federal discretionary grant Program established under Sec. 116.
Federal Discretionary Grant—Sec. 107. 10 percent of the total appropriation shall be reserved for the Federal discretionary grant program.	

[1] Ratable reduction language is provided in the event appropriations are insufficient.

AUTHORIZATION OF APPROPRIATIONS

[Dollar amounts in millions, fiscal years]

HOUSE		SENATE	
Title I	Amount	Title I	Amount
1981	$100	Part A (for period from Oct. 1, 1981 thru Mar. 1, 1983).	$3.0
1982	125	Part B:	
1983	150	1981	18.5
1984	175	1982	21.5
1985	200	1983	24.0
		1984	27.5
		1985	32.0
		Part C:	
		Subpart I (for each of 1981–85).	9.5
		Subpart II (for each of 1981–85).	7.5
		Subpart III (for each of 1981–85)	50.0

USE OF FUNDS

STATEWIDE PLANNING

HOUSE—TITLE I	SENATE—PART B
	If the appropriation level is less than $18.5 million, each State must use at least 15 percent, but not more than 20 percent, of its allotment for statewide planning. If the appropriation level is more than $18.5 million, but less than $24 million, each State shall use at least 10 percent but not to exceed 15 percent, of its allotment for statewide planning. If the appropriation level exceeds $24 million, then a State shall not use more than 10 percent of its allotment for statewide planning.
At least 50 percent of a State's allotment must be used for planning continuing education activities for adults.	Same as House provision except the Secretary may waive if State can demonstrate it has fulfilled the statewide planning needs for adults.
Up to 50 percent of a State's allotment may flow through for use under the State grant program, at the State's discretion.	

INFORMATION SERVICES

State's discretion as to amount of funds used for information services under State grant program.	Not less than $50,000 nor more than 12 percent, whichever is greater, shall be used for information services.

CONTINUING EDUCATION

State's discretion as to amount funds used for continuing education activities under State grant program.	Each state shall use amounts remaining after reserve for statewide planning and information services.

Following is the conference agreement:

Allocation formula and uses of funds

The House recedes to Senate Part B with an amendment which provides that, with respect to statewide planning, up to 50 percent of a State's funds available for this program may be used for continuing education programs under section 115 and that, for the purposes of operating educational information programs, states may make grants to and enter into contracts with institutions of higher education, public private institutions and organizations, business, industry, and labor and any combination thereof. The conferees intend that the list of continuing education activities under section 115 is not exclusive.

The Senate recedes with an amendment which provides that, for the purposes of state grants, each state shall receive an allotment of funds from available appropriations based 60 percent on relative state adult population and 40 percent on an equal basis, except that no state shall receive less than $187,500 in any fiscal year. Of its allotment, any state may use up to 5 percent or $40,000 of its portion available for continuing education, whichever is greater, for the purposes of administration or operation of continuing education activities.

Authorization of appropriations

The conference substitute authorizes the following amounts for Part B:

Fiscal year:	*Millions*
1981	$20
1982	$30
1983	$40
1984	$50
1985	$60

3. Both the House bill and the Senate amendment contain comparable provisions concerning the use of comprehensive statewide planning funds.

The conference substitute incorporates all provisions.

4. The Senate amendment, but not the House bill, permits the Secretary to waive the requirements that States use 50 percent of comprehensive statewide planning funds for planning for Continuing Education if the State demonstrates it has adequately provided for meeting the needs of adult learners.

The House recedes.

5. The House bill, but not the Senate amendment, restricts the use of funds which a State may use for conducting studies of topics consistent with the purposes of comprehensive statewide planning and statewide planning for Continuing Education.

The Senate recedes.

6. The House bill, but not the Senate amendment, specifically authorizes States to make grants and enter into contracts with institutions of higher education, public and private institutions and organizations, business, industry and labor, and any combination thereof.

The Senate recedes.

7. The House bill, but not the Senate amendment, requires particular attention to homemakers in the provision of educational and occupational information and counseling services.

The Senate recedes.

8. The Senate amendment, but not the House bill, authorizes the provision of child care services to assist individuals in Continuing Education.

The House recedes.

9. The Senate bill contains the following restrictions for the use of funds for providing child care services:

(A) that the State has established a cooperative agreement with the agency responsible for coordinating child care services in the State,

(B) that funds available for child care services will be paid only to child care providers licensed or likely to be licensed in the State, and

(C) that a State may not use more than 5 percent of the sums available for Continuing Education programs provided directly by the State.

The House recedes on item (A); the Senate recedes on item (B); and the House recedes on item (C) with an amendment providing that there may be spent for the administration of programs under section 115 and the direct operation by the State of continuing education programs 5 percent of the sums available or $40,000, whichever is greater. The "operation" of a program under the 5 percent or $40,000, whichever is greater, provision applies only to those programs that are not otherwise competing for funds under the remainder of the continuing education monies.

10. (a) The House bill, but not the Senate amendment, authorizes the Secretary to provide funds to assist States to effectively perform their functions of authorizing institutions of higher education.

(b) The Senate amendment, but not the House bill, authorizes the Secretary to provide funds to support demonstration child care projects and to provide pre-service and in-service training to personnel involved in child care programs.

a. The Senate recedes.

b. The House recedes with an amendment eliminating the support of demonstration child care projects.

11. The House bill provides that payments made under Sections 102 and 103 shall not exceed two-thirds of the cost of activities funded under those Sections. The Senate bill provides that payments under all of Part B of the Title I of the Senate amendment shall not exceed two-thirds of the cost of activities assisted under that part.

The House recedes.

12. The House bill, but not the Senate amendment, provides that States may use 50 percent of the funds received under Section 102 (relating to statewide planning) for the purpose of carrying out programs under Section 103 (relating to State grant programs).

The Senate recedes.

13. The Senate amendment, but not the House bill, requires the Secretary to evaluate the extent to which age is a barrier to participation in postsecondary education and the potential for greater participation in such education by individuals age 65 and older.

The House recedes with an amendment changing the age to 60.

14. The House bill, but not the Senate amendment, requires the Secretary to report to the President and the Congress on the results of the investigation and study not later than two years after the date of enactment of this Act. The Senate amendment, but not the House bill, requires the Secretary to coordinate the study with the activities of the Commission on National Development in Postsecondary Education, the National Institute of Education, and other studies authorized by this Act.

The Conference substitute incorporates all of the provisions of this special study within the Commission of National Development in Postsecondary Education authorized by Part A of this Title.

15. The Senate amendment, but not the House bill, establishes a new Part C of Title I to induce institutions of higher education to engage in limited programs of policy development to test essential areas for growth and adaptation in future years.

The Senate recedes.

16. The Senate amendment, but not the House bill, authorizes grants and contracts to States and postsecondary institutions to attempt cost-effective conversions of curriculum, transformations of staffing and research patterns, and collaborative cost-sharing relationships with institutions to replace duplicative educational programming and shared arrangements based on demographic and labor market trends.

The Senate recedes.

17. The Senate amendment, but not the House bill, authorizes a program to encourage and to support the efforts of all forms of postsecondary institutions to serve women in their workplaces with the collaboration of labor unions and employers.

The Senate recedes with an amendment expanding the continuing education activities under Part B of Title I to include the promotion or delivery of postsecondary education to women at the place of their employment or in conjunction with their employment.

18. The Senate amendment, but not the House bill, authorizes a program of providing to 50 educational institutions incentives to devote their community service and research resources to solve the problems of massive youth unemployment. This provision creates a demonstration program whereby the colleges would organize their technical assistance capabilities in a discretionary grant program and assist local decision-making in several areas: (1) development of individual employability plans for the young people who are assisted in comprehensive community efforts to remedy youth unemployment; (2) design of community-oriented achievement benchmarks for student progress; (3) means to establish labor union and employer collaboration on skills certification mechanisms to assist transitions from education and training to work; (4) development of detailed local labor market statistics and forecasts so as to assist the education and employment services in skills remediation and preparation of lasting value to young people experiencing comprehensive youth employment efforts; and (5) exploration of applying college resources in retraining unemployed persons.

The Senate recedes.

TITLE II—COLLEGE AND RESEARCH LIBRARY ASSISTANCE AND LIBRARY TRAINING AND RESEARCH

19. The House bill authorizes appropriations of $60 million for Part A, $60 million for Part B, $20 million for Part C, and $15 million for Part D of Title II for each of the fiscal years 1981–1985. The Senate amendment authorizes appropriations for Part A and B combined of $15 million for fiscal year 81, $17 million for fiscal year 82, $19.5 million for fiscal year 83, $22 million for fiscal year 84, and $25 million for fiscal year 85. The Senate bill also authorizes for Part C $8 million for fiscal year 81, $9 million for fiscal year 82, $10.5 million for fiscal year 83, $12 million for fiscal year 84, $14 million for fiscal year 85. The Senate amendment authorizes $750,000 for each of fiscal years 81 and 82 and such sums as may be necessary for any remaining fiscal year ending prior to October 1, 1985 for Part D.

The conference substitute authorizes the following amounts:

	Millions
Part A:	
Fiscal year:	
1981	$10
1982	30
1983	30
1984	30
1985	35
Part B:	
Fiscal year:	
1981	10
1982	30
1983	30
1984	30
1985	35
Part C:	
Fiscal year:	
1981	10
1982	15
1983	15
1984	15
1985	15
Part D:	
Fiscal year:	
1981 and 1982	750,000
Fiscal years 1983 to 1985—such sums.	

20. The House bill, but not the Senate amendment, provides that no funds are authorized to be appropriated for Part D unless each of the appropriations for Part A, B or C equals or exceeds the amounts appropriated for that Part for fiscal year 79.

The Senate recedes.

21. The House bill, but not the Senate amendment, extensively reorganizes Title II of the Act. Part A is focused on general support for college libraries. The special grants currently authorized in Part A are transferred to Part B where there are emphasized two forms of special purpose assistance. The maximum Basic Grant under Part A is increased from $5,000 to $10,000. The House bill repeals the authority for Supplemental grants and for the Advisory Council on College Library Resources. In addition, the House bill repeals the authority of the Secretary to make grants to educational institutions which are not accredited on the basis of the finding that acquisition of library sources would render the institution accreditable.

The Senate amendment retains current law in Part A of Title II.

The Senate recedes.

22. The House bill, but not the Senate amendment, requires that institutions applying for funds under Title II supply information about the institution itself and its library resources to the Secretary. There is no comparable provision in current law, which is retained by the Senate amendment.

The House bill, but not the Senate amendment, amends current law to permit a grant recipient in the grant year for which funds are sought to choose between the average annual aggregate amount or the average amount per full-time equivalent student it expended for library material expenditures during the two preceding fiscal years to substantiate its maintenance of effort. Current law requires the use of the average annual aggregate amount.

The House bill, but not the Senate amendment, amends current law to specify under which circumstances the Secretary may waive the maintenance of effort provisions.

The Senate recedes.

23. The House bill provides for a division of the available funds of one-third for library career training, one-third for research and demonstration and one-third for special purpose grants.

The House bill deletes the special advisory committee to the secretary on research and demonstration for the improvement of libraries and training in librarianship. The House bill deletes language relating to section 3709 of the Revised Statutes (41 U.S.C. 5). The House bill deletes the authorization for special purpose grants to institutions of higher education which demonstrate a special need for additional library resources and which indicate such a grant would make a substantial contribution to the quality of educational resources. The House bill removes the restriction under special purpose grants to combinations of institutions of higher education that the funds may be used only for books, periodicals, documents, magnetic tapes, phonographic records, audio-visual materials and other related library materials. The House bill adds a provision to the authorization for special purpose grants to public and private nonprofit library institutions limiting the grant's purpose to establishing, developing or expanding programs or projects that improve their services. The House bill adds a new authorized activity to the special purpose grant program permitting grants to institutions of higher education to develop or expand programs or projects to serve the community in which the institution is located. The House bill does not give the institution of higher education a choice in base years for providing maintenance of effort for special purpose grants. It requires the institution to expend during the grant year at least as much as it did for all library purposes in the two fiscal years immediately prior to the grant application. Current law permits either this approach or using the two fiscal years immediately prior to June 30, 1965. The House bill prohibits an institution from receiving a resource development grant or a special purpose grant if it receives a grant under Part C.

The Senate amendment continues existing law under all of Part B.

The Senate recedes.

24. The House bill authorizes the establishment of a National Periodical Center. The Senate amendment authorizes a study of the feasibility and advisability of establishing a National Periodical system, and, if found feasible and advisable, authorizes the preparation of a design for such system. Both bills establish a nonprofit corporation to carry out the purposes of Part D of Title II.

The House recedes.

25. The House bill, but not the Senate amendment, contains provisions relating to cost reimbursement, cooperative agreements with certain national, State, and local institutions, the establishment of regulatory offices, and the coordination of the training of librarians..

The House recedes.

26. The Senate amendment, but not the House bill, contains certain provisions as to the participation and fees payable to copyright owners, duplication of, or adverse impact on, private sector activities, and coordination with existing library programs.

The House recedes.

27. The Senate amendment, but not the House bill, requires any design to implement the periodical system to specify the role of

the Corporation in the management of the system and an estimate of the cost of carrying out the system for each fiscal year.

The House recedes.

28. The Senate amendment, but not the House bill, requires the Board to be equitably representative of certain groups and interests.

The House recedes.

29. The House bill provides that the term of office of Board members shall be six years. The Senate amendment provides terms of two years. The House bill provides for staggered terms and provides that no member shall be eligible to serve more than two 6-year terms.

The House recedes.

30. The Senate amendment, but not the House bill, specifically provides that the Corporation shall be subject to the Government in the Sunshine Act.

The House recedes.

31. The House bill provides for annual reports from the Corporation on March 1st of each year. The Senate bill provides for submission of the implementing design not later than December 31, 1981, and provides that the design may not be implemented unless it is approved in whole or in part by a Joint Resolution of the Congress.

The House recedes.

TITLE III—INSTITUTIONAL AID

32. The House bill makes major revisions in Title III. The purposes are briefly stated in the title's opening section. Institutional assistance under Title III must be used to improve the academic quality, institutional management and fiscal stability of developing institutions. Eligibility as a developing institution is based on an institution's enrollment of a substantial percentage of students from low-income families and average educational and general expenditures which are low per full-time equivalent student in comparison with average educational and general expenditures per full-time equivalent student of institutions that offer similar instruction.

The House bill provides that a branch institution is eligible to compete for funds under Title III in and of itself.

The Secretary is authorized to waive the requirement that an institution have a low educational and general expenditure per full-time equivalent student in certain cases.

The House bill provides an authorization of $140 million in fiscal year 1981; $160 million in fiscal year 1982; $180 million in fiscal year 1983; and $200 million for fiscal years 1984 and 1985. Under the new Challenge Grant program, additional authorizations of $25 million for fiscal year 1982; $35 million for fiscal year 1983; $45 million for fiscal year 1984; and $50 million for fiscal 1985 are provided.

The House bill provides that grant awards for community and junior colleges cannot be less than 24 percent of the funds in any fiscal year, but may be greater.

In addition to the two criteria used to establish eligibility to compete as a developing institution, any institution applying for assistance under this title must also be degree-granting for at least five years prior to applying for assistance and accredited by a nationally recognized accrediting agency or association.

The House bill authorizes the Secretary to waive the five-year degree-granting requirement for institutions applying for assistance if the development of that institution will substantially increase the higher education opportunities of American Indians, Hispanics and low-income rural people.

The House bill instructs the Secretary to give special consideration to any institution submitting an application to improve that institution's faculty development, funds and administrative management development and improvement of academic programs, acquisition of equipment for use in strengthening funds management and academic programs, joint use of facilities such as libraries and laboratories, and student services.

The House bill establishes two categories of grants. Any eligible institution can apply to receive assistance for one-to-three years. Such a grant is renewable indefinitely. Under a second category, institutions can apply for a non-renewable grant of four-to-seven years. The bill requires that 25 percent of the appropriation (excluding the appropriation for the Challenge Grant program) be reserved for nonrenewable grants. If an insufficient number of institutions apply for the non-renewable grants and all funds are not obligated, the bill provides that the funds be carried over to the succeeding fiscal year for later use in the four-to-seven year program.

In a case where the institution receives notification of a multiple-year award under Title III, the bill requires that the Secretary make awards annually from the appropriation for the fiscal year in which the grant is to be used.

The Secretary may make one-year awards for the purpose of planning grants. The planning must be consistent with the purpose of the title.

The applicant institution must submit a detailed analysis of how it will provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available under this title. The bill eliminates from current law the provision that required institutions to participate in consortia or a bilateral arrangement. The bill permits this activity.

The House bill requires that any institutions receiving assistance under this title must report at least annually on the progress of its development activities. Any institution failing to comply with this requirement may, at the Secretary's discretion, have its future year grants withheld.

The House bill establishes a method for selecting independent readers who are responsible for reviewing application proposals. Institutions submit reader nominees to the Secretary. The Secretary then selects reviewers who have expertise in the evaluation of Title III projects. Included among these individuals must be representatives of the types of institutions receiving Title III grants. The Secretary is required to assure that no reader has any conflict of interest regarding the application being evaluated which might impair the impartiality with which the individual conducts the review.

All readers must receive instruction from the Secretary regarding the evaluation process, including (1) explanations and examples of the types of activities that should receive special consideration for grant awards; (2) an enumeration of the factors to be used to determine the quality of the applications; and (3) an enumeration of the factors to be used to determine whether a grant should be awarded, and the amount and duration of the grant. In awarding grants, the Secretary may only consider those factors which are explained to the readers.

A Committee on Review is established which would review all grant award recommendations made by the readers which were used by the Secretary to make grant awards. The Committee would then submit a report to the Secretary which contains (1) the recommendations of the independent readers; (2) recommendations the Committee considers appropriate to provide for equitable adjustments in the amounts recommended by the readers in order that the total amount recommended for all grants not exceed the amount appropriated for Title III; and (3) recommendations regarding the amount and duration of any grant after adjustment. After reviewing the Committee's report, the Secretary would make final awards.

The Committee on Review will consist of ten members appointed by the Secretary with one representative each from private junior colleges, private institutions that award bachelor's degrees, public junior or community colleges, public institutions that award bachelor's degrees and six other members representing the above institutions. The Secretary will appoint these members after consultation with the various postsecondary education institutions. No officer or employee of the United States can serve as a Committee member and the term of office will be two years.

Not later than June 30 of each year, the Secretary must publish in the Federal Register the name of each institution which submitted an application, the average score given to the applications by the readers, any changes in the average scores recommended by the Committee, and the recommendations of the Committee regarding the recipients and amounts of the grants.

The House bill establishes a new Challenge Grant program, the purpose of which is to provide an incentive for institutions to seek alternative sources of funding.

The Challenge Grant program, like the basic Title III program, is a competitive grant program and all requirements, limitations and procedures applicable in the basic Title III program are also applicable in the Challenge Grant program, unless otherwise stated.

In the Challenge Grant program, the House bill requires the Secretary to give priority to those institutions participating in the four-to-seven-year grant program.

33. The Senate amendment completely rewrites existing Title III, Strengthening Developing Institutions program. It divides the Title into two parts: Part A would provide short-term Federal assistance to institutions with special needs. Such institutions have enrollments which include a substantial percentage of students from low income families and low general and educational expenditures for full time equivalent undergraduate students. In determining institutional eligibility the Secretary may also consider institutional characteristics, such as limited library resources, little or no endowment, low percentage of faculty with doctorate degrees, and a high student-to-faculty ratio. Part A assistance will be used to provide for faculty development, administrative development, the improvement of academic programs, the development of new and improved student services, joint use of facilities such as libraries and laboratories among institutions, and the acquisition of equipment to strengthen and improve management and academic programs. Assistance under this Part would be limited to five years with institutional matching required after the second year, in an effort to "graduate" institutions from the program and to achieve an institutional commitment to the purposes of this Part.

Part B of this Senate amendment recognizes that institutions which enroll a large number of students from low income families face a special burden. These institutions do not need project grants; they need general operating assistance. Part B would provide that assistance. The factors that would determine eligibility for Part B assistance would be factors such as the percentage of low income students at the institution, the per student expenditure at the institution, the amount of public and private funds available to the institution, and the institution's own program of financial assistance to those students. There is no time limit to receiving assistance under Part B.

The Senate amendment also establishes a new challenge grant initiative under Part A of Title III from a 10 percent set-aside of funds appropriated and available for that Part. In order to be eligible for a challenge grant, on a 50-50 matching share basis, an institution must have received, or be eligible to receive, a grant under Part A criteria established for institutions having special needs. The 50 percent matching share for institutions must come from new sources; the Federal Government will not match money that is already available to the institution.

Existing law provides that 24 percent of funds under Title III must go for awards to community and junior colleges. The Senate amendment provides that not less than 30 percent of the funds awarded in Parts A and B should go to community and junior colleges.

The Senate amendment provides that a branch institution located in a community different from that of its parent institution is eligible to compete for funds under this Title in and of itself. The Senate amendment also requires the Secretary to give priority to cooperative arrangement applications in awarding funds under Part A of this Title.

Existing Title III permits the Secretary to grant waivers to Title III recipients for matching requirements under Titles II, IV, VI, or VII of the Higher Education Act. The Senate amendment does not permit such waivers. However, the Senate amendment does allow the Secretary to waive the 5-year degree granting requirement of Part A to institutions which will substantially increase the higher education opportunities of American Indians and Hispanics, of individuals living in rural areas whose higher education needs are being unserved, of low income individuals, and of black students.

The Senate amendment establishes the following authorization levels:

Fiscal year:	
1981	$161,000,000
1982	185,000,000
1983	213,000,000
1984	245,000,000
1985	284,000,000

Appropriations for each fiscal year must be divided evenly between Parts A and B of the Title. For purposes of making challenge grants the Secretary can reserve up to 10 percent of Part A funds. In addition, the Secretary shall assure that in each fiscal year the amount available to the sector of traditional black colleges and universities shall not be less than the amount that sector received in Fiscal Year 1979.

The conference substitute creates a title III program which contains three parts. Part A, Strengthening Institutions, is derived from the provisions of the House bill. Part B, Aid to Institutions with Special Needs, contains provisions that were in Part A of the Senate Amendment. Fifty percent of the appropriation will go to each of these parts.

Under Part B of the conference substitute, the institutions that historically have served substantial numbers of Black students shall be assured that their sector will receive not less than 50 percent of the amount that such sector received in fiscal year 1979 under the current Title III program.

The conference substitute incorporates the provisions of the House bill pertaining to challenge grants to institutions eligible for assistance under Part A or Part B.

The conference substitute modifies the provisions of the House bill establishing an application review process and a committee on review to provide only for an application review process.

The conferees intend that unique institutions such as the College for Human Services, which charge no tuition fees, rely exclusively on CETA wages to support its students and serve students who meet the Department of Labor's low-income guidelines, be recognized as a developing institution eligible to apply for funds under this program.

The criteria used to determine eligibility for participation in the title III program under either Part A or Part B includes the average educational and general expenditure per full-time equivalent undergraduate student. The inclusion of the word "undergraduate" was intentional.

During the Senate's deliberation on this legislation, some concerns were raised that this language was not entirely clear and furthermore, may create some reporting difficulties since many institutions would not be able to identify separately the expenditures made for undergraduate instruction.

Clearly the intent of the conference in accepting this Senate language that would apply to the educational and general expenditures definition under both Part A and Part B was that the Secretary should not consider institutional expenditures for high cost professional training such as medical, dental, and legal programs which are organized, budgeted, and conducted separately from regular graduate and undergraduate instruction.

The conference substitute authorizes the following amounts for Parts A and B:

Fiscal year:	*Millions*
1982	$175
1983	185
1984	200
1985	220

The substitute provides the following authorizations for the challenge grant program:

Fiscal year:	*Millions*
1982	$25
1983	35
1984	45
1985	50

TITLE IV—STUDENT ASSISTANCE

34. The House bill extends the Basic Educational Opportunity Grant program through FY 1986. The Senate amendment extends this program through FY 1985.

The House recedes.

35. The House bill, but not the Senate amendment, provides that the purpose of the Basic Grants program is to provide a Basic Grant that will meet 75 percent of the students' costs of attendance for academic year 1985–86, but not in excess of $3,600.

The Senate recedes with an amendment changing 75 percent to 70 percent and $3,600 to $3,700.

36. The Senate amendment, but not the House bill, designates Basic Grants as "Pell Grants".

The House recedes.

37. Both the House bill and the Senate amendment provide Basic Grants in specified amounts minus an amount determined to be the expected family contribution. The amounts specified are as follows:

Academic year	House bill	Senate amendment
1981–82	$1,980	$1,900
1982–83	2,160	2,000
1983–84	2,340	2,200
1984–85	2,520	2,400
1985–86	2,520	2,600

The Conference substitute provides for the following maximum Basic Grants:

$1900 for academic year 1981–82.

$2100 for academic year 1982–83.

$2300 for academic year 1983–84.

$2500 for academic year 1984–85.

$2600 for academic year 1985–86.

38. The House bill changes the date for publication of a schedule of reductions for less than full-time attendance from February 1 to January 1 of each year. The Senate amendment changes this date from February 1 to October 1 of each year.

The Conference substitute provides for publication dates of January 1, 1981, October 1, 1981, and October 1 of each succeeding year.

39. Both the House bill and the Senate amendment limit the amount of Basic Grants to a percentage of the cost of attendance based upon the amount of the maximum grant which is available for that year. These limitations are as follows:

Percentage of cost of attendance	Maximum grant amount: House bill	Maximum grant amount: Senate amendment
50 percent	Less than $1,980	Less than $2,000.
55 percent	$1,980 to $2,159	$2,000 to $2,399.
60 percent	$2,160 to $2,339	$2,400 or more.
65 percent	$2,340 to $2,519	
70 percent	$2,520 or more	

The Conference substitute provides that the cost of attendance limitation shall be 50 percent when the maximum Pell Grant is less than or equal to $1900; 55 percent when the maximum Pell Grant is more than $1900 but less than $2100; 60 percent when the maximum Pell Grant is at least $2100 but less than $2300; 65 percent when the maximum Pell Grant is at least $2300 but less than $2600; and 70 percent when the maximum Pell Grant is $2600.

40. The House bill allows the Secretary through regulation to develop a schedule of reduction in cases of less than full funding. Such schedule is required to contain a single reduction formula in which the percentage increases uniformly as the entitlement decreases, and requires that no payment of less than $200 shall be made in any case.

The Senate amendment establishes a statutory schedule of reductions to be paid in the case of less than full funding. Such schedule is based upon the student's eligibility index as calculated prior to the cost of attendance limitation.

The House recedes. The conferees intend that the term "eligibility index" have the same meaning as it has in the regulations governing this program.

41. The House bill, but not the Senate amendment, provides that an institution of higher education entering into agreements to disburse Basic Grants shall not be deemed, by virtue of such agreement, a contractor maintaining a system of records to accomplish a function of the Secretary of education.

The Senate recedes. The Conferees wish to emphasize that the provisions of this Section apply solely to the Privacy Act and in no way are meant to interfere or impinge upon any civil rights statutes.

42. The Senate amendment, but not the House bill, removes the five academic year eligibility limitation and substitutes a limitation based on the period required for completion of the first undergraduate baccalaureate course of study.

The Senate amendment also removes the one-year extension of eligibility for noncredit remedial courses of study and substitutes an extension for such study determined by the institution as necessary to enable the student to earn a baccalaureate degree.

The House recedes.

The conferees note that this provision should not be construed to allow a student to pursue a second baccalaureate degree at another school with such grants. The conferees also intend that a period of study in a non-baccalaureate degree program should be included as part of the period required for the completion of a baccalaureate degree. Finally, the conferees intend that this provision should not be construed to deny eligibility to students enrolled in a non-baccalaureate degree program.

43. The Senate amendment, but not the House bill, eliminates the definition of "noncredit remedial course of study".

The House recedes.

44. The House bill extends the provisions of the Basic Grant program which require

that no Basic Grant be paid for any fiscal year unless the appropriations for certain other programs equal or exceed certain specified amounts. The House bill raises the minimum required for Supplemental Educational Opportunity Grants from $370 million to $400 million (or $480 million when appropriations are available to make Basic Grants of at least $1,980). The House bill raises the amount required for Work-Study payments from $500 million to $550 million. The House bill continues the requirement that appropriations for Direct Loans capital contribution equal or exceed $286 million, and adds a requirement that appropriations for State Student Incentive Grants equal or exceed $76,750,000.

The Senate amendment provides that no Basic Grants in excess of certain specified amounts should be made unless the amount appropriated for certain specified programs equals or exceeds certain levels. These amounts are as follows:

Maximum basic grant payment	Appropriations—		
	For SEOG	For work-study	For NDSL
$1,900	$370,000,000	$500,000,000	$286,000,000
$2,000	400,000,000	500,000,000	286,000,000
$2,200	420,000,000	500,000,000	286,000,000
$2,400	440,000,000	500,000,000	286,000,000
$2,400 or more	480,000,000	500,000,000	286,000,000

The Senate amendment further provides that these requirements shall not be construed as directing the Committees on Appropriations to make specific appropriations and amounts available.

The conference substitute provides that Pell grants in excess of $1800 may not be paid unless appropriations are provided for the SEOG, Work-Study, NDSL and SSIG programs at various specified levels. The Senate conferees wish to point out, however, that, in their opinion, these specified funding levels are advisory.

45. The House bill, but not the Senate amendment, eliminates the authority to make administrative cost payments of $10 per student to institutions of higher education. The House bill, but not the Senate amendment, eliminates the existing authority of the Secretary of Education to enter into agreements with States for the processing of Basic Grant applications.

The Senate recedes.

46. The House bill but not the Senate amendment provides that it is the purpose of the Supplemental Grant program to provide grants which, in combination with family or student contribution and Basic Grant and State Student Incentive Grant assistance, will meet 75 percent of the student's cost of attendance, unless the institution determines that a greater amount of assistance would better serve the purposes of part A of title IV.

The House recedes.

47. Current law (which the Senate amendment extends) contains a separate authorization of appropriations for payments to students in their initial academic year and for payments to students in succeeding academic years. The House bill eliminates this separate authorization and provides a single authorization of appropriations of $500 million for fiscal year 1980 and fiscal year 1982, $600 million for fiscal year 1983, $700 million for fiscal year 1984, and $800 million for fiscal year 1985.

The conference substitute maintains the separate authorizations for initial year and continuing year appropriations for the SEOG program. In addition, the conference substitute authorizes initial year appropriations of $350 million for fiscal years 1981 through 1985 and authorizes appropriations of such sums as may be necessary for continuing year SEOG awards for fiscal years 1981 through 1985.

48. The House bill, but not the Senate amendment, eliminates the limitation contained in current law which restricts the amount of Supplemental Grants to one-half of the sum of the total amount of student financial assistance provided to such student by an institution of higher education.

The Senate recedes.

49. The House bill, but not the Senate amendment, limits the period for receipt of Supplemental Grants to five academic years (or an additional year in the case of students requiring noncredit remedial courses of study). The Senate amendment eliminates the academic year limitation from current law.

The House recedes.

50. The Senate amendment, but not the House bill, specifically requires that less-than-half-time students meet all eligibility requirements.

The House recedes.

51. The House bill, but not the Senate amendment, revises the apportionment and allocation provisions of the Supplemental Grant program (1) to make such provisions applicable to a single appropriation (rather than to the appropriations for only first year students); (2) by basing the minimum allotments of States on the amount of their allotment for fiscal year 1979 (rather than on the apportionment of first year funds for fiscal year 1972); and (3) by basing the allocation on the number of fulltime equivalent undergraduate students (rather than the number of fulltime equivalent number of undergraduate and graduate students).

On item (1), the House recedes: item (2) the House recedes, and item (3) the Senate recedes.

52. The Senate amendment, but not the House bill, revises the intrastate allocation requirements to require the Secretary of Education to allocate funds in accordance with a formula which determines institutional need for Supplemental Grant funds by subtracting from 75 percent of the total student expenses the sum of family and student contributions and Basic Grants and SSIG assistance. The Senate amendment, but not the House bill, prohibits the Secretary from issuing any regulation for such formula which has the effect of penalizing institutions that are required by State law to provide student financial assistance from their own funds, and yet are not free under laws in effect on January 1, 1979 either to select the recipients of such assistance or to adjust the criteria by which the recipients are selected. The House bill prohibits the Secretary from issuing any regulation which has the effect of penalizing institutional or State efforts to provide need-based assistance. The Senate amendment, but not the House bill, further provides that the allocation formula not result in any institution receiving less Supplemental Grant funds than it received for fiscal year 1979.

The conference substitute determines institutional need for supplemental grant funds by subtracting from 75 percent of the total student expenses the sum of family and student contributions, Pell grants, SSIG assistance including that portion of State funds required to match Federal SSIG funds, and 25 percent of grants and awards made by the institution from its own resources. The substitute retains the Senate provision prohibiting the Secretary from issuing any regulation which has the effect of penalizing institutions that are required by state law to provide student financial assistance from their own funds, yet are not free to select the recipients of such assistance. The substitute further provides a declining institutional hold-harmless related to increased availability of appropriations for the program.

For the purposes of determining each institution's need for SEOG funds, the conferees intend that SSIG funds be counted in each institution's SEOG application in a manner that reflects total state grants (the federal SSIG contribution plus total state matching contribution) received for students at that institution. The conferees have been advised that certain states maintain separate accounting procedures for distribution of federal SSIG funds and State SSIG funds. Where this procedure is used, and given the manner in which the SEOG formula determines institutional need, certain institutions could be unfairly penalized. Thus, the conferees believe it important to emphasize that for the purpose of determining SEOG need, SSIG funds allotted to a State and the State contribution shall be considered proportionately utilized in each state student grant.

53. The Senate amendment, but not the House bill, provides that funds received from first-year and subsequent year appropriations need not be segregated by the institutions for first-year and subsequent year students.

The House recedes.

54. Current law (which the Senate amendment extends) contains a separate authorization of appropriations of $50 million for initial SSIG grants and such sums as may be necessary for subsequent SSIG grants. The House bill eliminates this separate authorization and provides a single authorization of appropriations of $100 million for fiscal year 1981 and fiscal year 1982, $150 million for fiscal year 1983, $200 million for fiscal year 1984, and $250 million for fiscal year 1985.

The Senate recedes.

55. Current law (which the House bill extends) provides for the allocation of SSIG funds on the basis of the number of students in attendance at institutions of higher education in a State. The Senate amendment, but not the House bill, (1) provides that the amount allotted to any State shall not be less than the amount allotted to that State for fiscal year 1979; (2) provides that any amount appropriated in excess of the amount appropriated for fiscal year 1979 shall be allotted as follows: (A) 90 percent of such excess shall be allotted on the basis of the number of students in attendance at the institution of higher education in a State; and (B) 10 percent of such excess shall be allotted on the basis of the need-based student aid for students in attendance at institutions of higher education in a State.

The House recedes on (1) and the Senate recedes on (2).

56. The House bill, but not the Senate amendment, revises the allocation formula for SSIG funds to treat differently States which are "overmatched" and States which are "undermatched". The State allotment formula is modified with respect to the distribution of funds in excess of the current appropriation level, $76.75 million. Of the excess funds, States whose State grant effort is less than their eligibility for Federal SSIG dollars will initially be eligible for 20 percent more of the funds than they would otherwise be under the current law. The remaining funds will then be made available to the States whose State grant effort is equal to or greater than Federal SSIG dollars received. If the undermatched States do not increase their grant effort sufficiently to capture the additional dollars offered, the funds will then first be offered to other undermatched States and then reallotted to the overmatched States.

The House recedes.

57. The House bill, but not the Senate amendment, requires any State desiring to receive SSIG funds to have an agreement under section 1203 (as amended by the House bill).

The Senate recedes.

58. The House bill, but not the Senate amendment, eliminates the requirement that SSIG recipients be undergraduate students.

The Senate recedes.

59. The Senate amendment, but not the House bill, provides that funds received from first-year and subsequent year appropriations need not be segregated by the institutions for first-year and subsequent year students.

The Senate amendment also specifically provides that, with the approval of the State agency, institutions of higher education may use any proportion of their SSIG funds for less-than half-time students.

The Senate recedes on the first paragraph and the House recedes on the second paragraph.

60. The House bill, but not the Senate amendment, provides that all States will be required to maintain their State grant effort at the level of their average aggregate level of the previous three fiscal years or at the level of their average level per full-time equivalent (FTE) student for the previous three fiscal years. The undermatched States will also receive new Federal matching funds only on the basis of State grant expenditures in excess of those for the previous year.

The conference substitute provides that all states will be required to maintain their state grant effort at the level of the average aggregate level of the previous three fiscal years or at the level of their average level per full-time equivalent student for the previous years.

61. The Senate amendment, but not the House bill, authorizes the Secretary to make grants to and contracts with public agencies and organizations.

The House recedes.

62. The Senate amendment, but not the House bill, requires the Secretary to consider the prior experience of applicants for TRIO funds.

The House recedes. The conferees express their strong dissatisfaction with the way that the TRIO programs were administered during the past year. Many institutions were not notified of the decisions of the Department until mid-August, thus causing severe disruptions in their programs and in their services to students. The conferees are also distressed by the discourteous treatment of applicants by the program administrators. The conferees admonish the new Department of Education to remedy these glaring defects in its performance with respect to these programs.

63. The House bill, but not the Senate amendment, requires the Secretary to determine that each participant in a Talent Search Project has a need for academic support in order to successfully pursue education beyond the high school.

The House recedes.

64. The House bill, but not the Senate amendment, requires that the Secretary determine that each participant in an Educational Opportunity Center project has a need for academic support in order to successfully pursue education beyond the high school.

The House recedes.

65. The Senate amendment, but not the House bill, provides statutory authority for the HEP/CAMP programs under the Higher Education Act of 1965.

The House recedes.

66. The Senate amendment, but not the House bill, repeals Section 419 of the Act (relating to payments to institutions of higher education).

The Senate recedes.

67. The Senate amendment, but not the House bill, deletes the provisions of current law providing for the continuing eligibility of institutions for VCI funds despite declining enrollment of veterans.

The House recedes.

68. The Senate amendment, but not the House bill, authorizes the Secretary to waive the minimum veteran enrollment requirements for previously eligible institutions if the institution has a full time veterans affairs office and the appropriations for VCI exceed $14,380,000, or the amount requested in the President's Budget, whichever is greater, by an amount sufficient to meet payments to all institutions meeting such requirements.

The House recedes.

69. The House bill authorizes payments with respect to veterans who are disabled or incarcerated (in accordance with regulations prescribed by the Secretary of Education). The Senate amendment authorizes payments with respect to veterans who have a service-connected disability.

The Senate recedes with an amendment to give service-connected disability priority over non-service connected disability. The amendment further removes the term incarcerated from the list of eligible veterans for whom an institution receives payments.

70. The Senate amendment, but not the House bill, eliminates the requirements that applicants include programs designed to prepare educationally disadvantaged veterans for postsecondary education under Subchapter VI of Chapter 34, Title 38, United States Code, relating to predischarge education programs.

The Senate recedes.

71. The House bill requires active outreach with special emphasis for handicapped veterans. The Senate amendment requires active outreach with special emphasis for service-connected disabled veterans.

The Conference substitute requires that both special emphasis provisions be included.

72. The Senate amendment, but not the House bill, requires that applicants make maximum use for outreach services of benefits available under Federally assisted work-study programs.

The Senate recedes.

73. The House bill, but not the Senate amendment, requires that coordinated readjustment counseling programs be necessary to serve the unique readjustment, rehabilitation, personal counseling, and employment needs of veterans.

The Senate recedes with an amendment requiring that there be coordination among the programs providing readjustment counseling for veterans.

74. The Senate amendment, but not the House bill permits the Secretary to allow consortia agreements for any institution which cannot feasibly itself, in terms of the number of veterans in attendance there, carry out any or all of the programs required.

The House recedes.

75. The House bill reduces the maximum VCI payment to any institution or branch from $135,000 to $100,000. The Senate amendment reduces this amount to $75,000.

The House recedes.

76. The House bill, but not the Senate amendment, increases the maximum total amount an undergraduate dependent student may borrow under the federally-insured loan program from $7,500 to $12,500.

The Senate recedes.

77. The Senate amendment, but not the House bill, contains a conforming amendment to increase the aggregate loan limitations applicable to Guaranteed Student Loans consistently with those increases made with respect to federally-insured student loans.

The House recedes.

78. The House bill, but not the Senate amendment, increases the maximum amount required to be insured, under the supplemental guarantee agreement provisions, for undergraduate dependent students from $7,500 to $12,500.

The Senate recedes.

79. The Senate amendment, but not the House bill, permits State guarantee agencies and other non-profit organizations operating State loan programs to be eligible to receive from the Student Loan Marketing Association up to 25 percent of the average unpaid principal balance of loans guaranteed by that agency for the preceding three years, in order to make loans to eligible students who were otherwise unable to borrow money under Part B of Title IV.

The House recedes with an amendment clarifying the relationship between state agencies and the Student Loan Marketing Association.

80. The Senate amendment, but not the House bill, increases the interest rate to student borrowers under Part B of Title IV from 7 percent to 9 percent.

The House recedes with an amendment increasing the interest rate to 9 percent for new borrowers, except that the rate will decrease to 8 percent if the annualized rate of 91-day Treasury bills is 9 percent or less.

81. The Senate amendment, but not the House bill, reduces the grace period (following periods of attendance) from 9–12 months to four months.

The House recedes with an amendment reducing the grace period to six months for new borrowers.

82. The Senate amendment, but not the House bill, exempts from the prior notice requirement of disclosure to credit bureau organizations, disclosures made to obtain the borrower's location.

The House recedes.

83. The Senate amendment, but not the House bill, provides that information disclosed by the Secretary to credit bureau organizations is not subject to the Privacy Act of 1974 and provides that credit bureau organizations which enter into agreements with the Secretary shall not be considered government contractors within the meaning of that Act.

The House recedes.

84. The Senate amendment authorizes States to charge an insurance premium of not to exceed 1 percent per year of the amount of the loan to defray the cost of their insurance and administrative, spending, and overhead costs. The House bill retains current law which provides that States may not charge an excessive insurance premium.

The Senate recedes with an amendment providing that the Commission on Student Financial Assistance which is authorized by Section 491 of this Title shall study the entire issue of insurance premiums and report to the Congress within one year of its establishment on the results of that study. The amendment further provides that the proceeds of the insurance premiums will not be used for incentive payments to lenders. The conferees wish to emphasize that the term "not excessive" should not be interpreted to result in an insurance premium that is more than States are currently permitted to charge. Furthermore, the conferees believe that, in determining the amount of an insurance premium that is to be charged, the reserves of States and the effects of insurance premiums on student borrowers should be taken into account.

85. The Senate amendment, but not the House bill, vests responsibility in the State guaranty agency to ascertain whether the student borrower is enrolled on at least a half-time basis, to notify the lender when a student ceases to be so enrolled (thereby triggering the timing of the repayment period), to audit the note to determine that its provisions with regard to the amount of principal guaranteed match with agency records, and to examine the note to assure that its repayment provisions are consistent with the requirement of the law. The Senate amendment allows expenses in the performance of this function to be treated as allowable administrative costs.

The House recedes.

86. The House bill, but not the Senate amendment, repeals provisions in current law requiring specific percentages of administrative costs allowances to be expended for specified purposes.

The Senate recedes.

87. The Senate amendment, but not the House bill, expands the definition of allowable administrative costs of promotion of commercial leader participation to include costs of providing interest and special allowance computation and billing services to lenders and expenses by an insurer as incentive payments to lenders to induce them to improve or expand their program participation.

The House recedes. The Conferees wish to emphasize that in their opinion, these types of activities have been allowable since October 12, 1976. The Conferees further wish to emphasize that, since the administrative cost allowance can cover the expenses attributable to lender incentive payments, no insurance premiums shall be used to pay for these lender incentive fees.

88. The Senate amendment, but not the House bill, authorizes guarantee agencies, for the purpose of making multiple disbursements of loans to students, to act as escrow agents for lenders under specific terms of an agreement between the lender and the guarantee agency.

The House recedes.

89. The Senate amendment, but not the House bill, contains a provision requiring eligible lenders to provide thorough and accurate loan counseling to student borrowers.

The House recedes with an amendment changing counseling to information throughout this provision.

90. The Senate amendment, but not the House bill, deems parents to be student borrowers for the purpose of construing the various provisions of Part B of Title IV.

The House recedes.

91. The House bill provides that, with respect to parent borrowers who elect to commence installments more than 60 days after disbursement of a loan, interest which would accrue within such interval is to be deducted from the loan prior to disbursement. The Senate amendment provides, with respect to parent borrowers who make such an election to defer payment, that interest on the loan shall be at a rate of 14 percent, which shall accrue during the deferral period.

The conference substitute eliminates the option for parents to begin repayment later than 60 days after disbursement of a loan.

92. The House bill provides, with respect to parent borrowers who elect to begin installment payments not later than 60 days after the date of disbursement of a loan, that the interest rate on the loan shall be 7 percent. The Senate amendment provides that the interest rate on loans to borrowers who make such an election shall be 9 percent.

The House recedes with an amendment providing an interest rate of 9 percent, except that the rate will decrease to 8 percent if the annualized rate of 91-day Treasury bills is 9 percent or less.

93. The Senate amendment, but not the House bill, revises the special allowance provisions to adjust those allowances in the case of new loans on which borrowers would be required to pay a 9 percent interest rate or a 14 percent interest rate (in the case of parent borrowers electing to defer payment).

The House recedes with an amendment revising the special allowance in light of the 8 percent or 9 percent interest rate to be paid by parents.

94. The Senate amendment, but not the House bill, revises the special allowance provisions to reduce by one-half (but to a rate not less than .5 percent per year) the special allowance payable with respect to loans made or purchased with funds obtained by the holder from the issuance of tax exempt bonds.

The House recedes with an amendment that the revised special allowance shall apply only to loans made or purchased from the proceeds of tax exempt bonds issued after October 1, 1980.

The amendment further provides that such special allowance shall not be less than 2.5 percent in the case of loans having an interest rate of 7 percent, 1.5 percent in the case of loans having an interest rate of 8 percent, or .5 percent in the case of loans having an interest rate of 9 percent.

95. The House bill repeals provisions establishing a Committee on the Process of Determining Student Loan Special Allowances. The Senate amendment revises these provisions and provides that the Committee is to prepare and submit, within one year, recommendations for improvements in the computation of special allowances which the Congress may, by joint resolution, approve in whole or in part.

The Senate recedes with an amendment incorporating the special allowance study within the National Commission on Student Financial Assistance authorized by Section 491 of this Title. The Commission shall report to the Congress within one year after its establishment on the results of this special study.

96. The Senate amendment, but not the House bill, requires holders of loans which were made or purchased with funds obtained from tax-exempt bonds, as a condition of receiving special allowance payments on such loans, to submit to the Secretary for approval a plan for doing business.

The House recedes with an amendment requiring that the Secretary approve or disapprove such plan within 30 days.

97. The House bill, but not the Senate amendments, authorizes appropriations for the purpose of repaying certain amounts (based on years of qualifying service) of loans to borrowers under Part B or E of Title IV who serve as enlisted members of the Armed Forces reserves or serve on active duty as enlisted members of the Armed Forces. The House provisions require the Secretary of Defense to prescribe by regulation for the allocation of funds, in the event that appropriations are not sufficient to make all eligible payments among various services and military occupational specialties.

The House recedes.

98. The House bill eliminates the authority of the Secretary to prescribe the maximum number of shares of common stock the SLMA may issue, but retains the authority of the Secretary to prescribe regulations governing transferability of such stock. The Senate amendment makes both the maximum number and the transferability of common stock subject to control by the board of directors of the SLMA.

The House recedes.

99. The Senate amendment provides that proceeds from any warehousing advance made to a lender which is secured by collateral (whether insured loans or other securities) must be invested in additional insured loans. The House bill provides that the proceeds of advances secured by insured loans must be invested in additional insured loans, or the lender must make assurances to the SLMA that its aggregate insured loans have not decreased.

The Senate recedes.

100. Current law requires lenders receiving advances from the SLMA not to condition receipt of a loan by a student or his family on maintaining a business relationship with a lender. Lenders with less than $50 million in deposits are exempt from this requirement. The House bill, but not the Senate amendment, raises this amount to $100 million.

The Senate recedes with an amendment changing the limit to $75,000,000.

101. The Senate amendment, but not the House bill, limits the authority of the Secretary to approve new SLMA bonds to those bonds guaranteed by the Secretary.

The House recedes.

102. Both the House bill and the Senate amendment extend the authority of the Secretary to guarantee SLMA bonds. The House bill extends this authority to October 1, 1984, and the Senate amendment extends this authority to July 1, 1984.

The Senate recedes.

103. The Senate amendment, but not the House bill, prohibits the Secretary of Education and the Secretary of Treasury from limiting, controlling, or constraining programs of the SLMA.

The House recedes.

104. The House bill authorizes the SLMA to issue bonds secured by student loans to the Federal Financing Bank. The Senate bill does not restrict the sales to the Federal Financing Bank.

The Senate recedes.

105. Both the House bill and the Senate amendment authorizes the SLMA to make loans to borrowers under Title IV for the purpose of consolidating that borrower's loans. In addition, the Senate amendment authorizes consolidation of federally insured or guaranteed student loans under other provisions of law. With respect to consolidation loans made by the SLMA, the Senate amendment also waives the maximum insured principal amount for all insured loans made to a borrower.

The House recedes with an amendment providing for consolidation at the interest rate applicable to the Guaranteed Student Loan program at the time of consolidation.

106. [Note: See note 79 pertaining to State agencies as "lenders of last resort."]

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

107. Both the House bill and the Senate amendment authorize the SLMA to make loans in States in which a substantial portion of eligible borrowers are seeking and are unable to obtain loans under Part B of Title IV. In addition, the Senate amendment provides that the SLMA shall give preference to making loans in States not served by a guarantee agency or a State direct lender.

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

108. The House bill requires the Secretary to consult with represenatives of a State (including representatives of guarantee agencies) prior to authorizing the SLMA to make lender-of-last-resort loans. The Senate amendment requires the Secretary to consult with representatives of guarantee agencies or direct State lenders prior to authorizing such loans.

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

109. The Senate amendment, but not the House bill, requires the Secretary's consent to the termination of SLMA loans in States given preference by reason of the lack of a guarantee agency or State lender.

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

110. The House bill, but not the Senate amendment, provides that the SLMA, in making student loans, shall not be deemed to be a creditor for any purpose of the Consumer Credit Protection Act.

The House recedes.

111. The House bill, but not the Senate amendment, provides that the Truth in Lending Act shall not apply to any loans made under Title IV of the Act.

The House recedes.

112. The Senate amendment, but not the House bill, authorizes guarantee agencies, upon the request of a borrower who has received loans from two or more programs or lenders, to issue new loans to consolidate those prior obligations, under certain circumstances.

The Senate recedes with an amendment authorizing the Student Loan Marketing Association to contract with a variety of entities to act as the Association's agents for the purpose of loan consolidation.

113. The Senate amendment, but not the House bill, requires the Secretary to make due diligence determinations within 90 days after notification by the insurance beneficiary and to make prompt payment pending completion of such determination.

The House recedes.

114. The Senate amendment, but not the House bill, establishes a four-month grace period prior to resuming repayment following completion of public services qualifying for deferral of repayment.

The House recedes with an amendment establishing the grace period at six months for new borrowers.

115. The Senate amendment, but not the House bill, contains provisions requiring repayment, in installments, to the United States of certain interest subsidies unless the borrower: (A) has exhausted the ability to obtain NDSL loans, (B) has borrowed more than $7,500, (C) has borrowed from a State acting as a lender of last resort, or (D) has received an interest subsidy for more than three years.

The House recedes with an amendment providing that the National Commission on Student Financial Assistance shall conduct a special one-year study of the recapture of interest subsidies.

116. The Senate amendment permits administrative cost payments with respect to parent loans (as well as with respect to student loans). The Senate amendment further provides that such administrative cost payments be used by the institution first for the purpose of carrying out student information requirements.

The Conference substitute permits administrative cost payments for parent loans as well as student loans.

117. The House bill, but not the Senate amendment, authorizes appropriations for the purpose of making payments in amounts not to exceed .5 percent of the principal amount of loans to guarantee agencies which provide a lender referral service for students unable to find an available lender.

The Senate recedes.

118. The House bill, but not the Senate amendment, deletes from the statement of purpose for the Work-Study Program special emphasis on students who are in great financial need.

The Senate recedes.

119. The Senate amendment extends the authorization for work-study for fiscal year 1983 through fiscal year 1985 at the level provided for fiscal year 1982 ($720 million). The House bill provides an increasing authorization from $670 million for fiscal year 1981 up to $990 million for fiscal year 1985.

The conference substitute provides the following authorizations:

Fiscal year:	*Millions*
1981	$670
1982	720
1983	760
1984	800
1985	830

120. The House bill, but not the Senate amendment, reduces the amount reserved for the Territories from 2 percent to 1 percent, treats Puerto Rico as a State rather than as a Territory, and extends the availability of reallotted funds for an additional fiscal year.

The Senate recedes.

121. The Senate amendment, but not the House bill, provides that any funds not used in any annual cycle in the Work-Study Program be reallotted by setting aside 75 percent of the reallotted amount for eligible institutions to use for initiating, expanding, and improving cooperative education programs. Such reallotment is required to be based upon the number of students assisted under the cooperative education program enrolled in eligible institutions.

The House recedes with an amendment changing the set-aside to 50 percent. The Conferees wish to emphasize that this assistance is not intended to be used for general program assistance but for the purposes of cooperative education in accordance with Title VIII of this Act.

122. The House bill, but not the Senate amendment, deletes the definition of eligible institution from Part C of Title IV.

The Senate recedes.

123. The House bill, but not the Senate amendment, deletes requirements from Part C requiring Work-Study recipients to be enrolled on at least a half-time basis, show need for assistance and show evidence of academic or creative promise, and substitutes, in Part F, the general requirement that the students be eligible and in financial need.

The Senate recedes.

124. The House bill, but not the Senate amendment, deletes from current law requirements that institutions make employment under Work-Study reasonably available to all eligible students in need, and make equivalent employment offered or arranged by the institution reasonably available to all students who desire such employment.

The House recedes.

125. The House bill, but not the Senate amendment, deletes all provisions of current law imposing special conditions with respect to student eligibility in area vocational schools.

The Senate recedes.

126. The House bill, but not the Senate amendment, authorizes the institution in which the student is enrolled to determine the amount of the student's Work-Study award allocable to non-education related living expenses.

The House recedes.

127. The Senate amendment, but not the House bill, authorizes each eligible institution to use no more than 10 percent of its Work-Study funds for less than half-time students.

The House recedes with an amendment clarifying that less than half-time students have to meet all the eligibility requirements of Section 484 of this Title except the requirement of clause two of Section 484.

128. The Senate amendment, but not the House bill, provides that Work-Study funds will be used to complement and reinforce the education programs of a percentage of students increasing from 10 percent in fiscal year 1981 to 30 percent in fiscal year 1985.

The House recedes with an amendment requiring that institutions shall provide employment that, to the maximum extent practicable, complements and reinforces the educational program or vocational goal of each student receiving assistance under this part.

129. The Senate amendment, but not the House bill, provides that criteria established to allocate funds shall not result in any institution receiving less than it used for Work-Study for fiscal year 1979, unless there has been a substantial decline in enrollment.

The House recedes.

Due to some problems encountered by local institutions of higher education in receiving an adequate share of funds under the so-called "fair share" formula devised by the Department of Education for the distribution of campus-based program funds, the conferees have adopted the provision contained in the Senate amendment holding all institutions harmless to the level of Work-Study funds they used in fiscal year 1979. In taking this action, the conferees urge the Department of Education to review that formula so that all institutions are not being held to the same national standards. For instance, some institutions, such as Berea College, wish to emphasize Work-Study programs more than grant or loan programs. Any formula for the distribution for all these funds should respect such local decisions.

130. The House bill permits an eligible institution to carry over 10 percent of its Work-Study funds for the succeeding fiscal year, or to carry back 10 percent to the previous fiscal year, to carry out programs under this part. The Senate amendment permits an eligible institution to carry over or carry back 7.5 percent, but provides that prior to carrying over or carrying back such funds, compliance must be obtained with the requirements for reallocation for cooperative education.

The Senate recedes.

131. The Senate amendments, but not the House bill, permits institutions of higher education to use 10 percent of their administrative allowance for Work-Study to establish community service learning programs in which students are provided service-oriented jobs relating to their academic or vocational goals, and which provide tangible community service for or on behalf of low income individuals and families.

The House recedes.

132. The Senate amendment, but not the House bill, establishes a new nonprofit agency in the Executive Branch of the Federal Government, the National Direct Student Loan Association. This Association will be responsible for administration of an expanded program of need-based loans available to students on-campus through their institution's financial aid office.

The Association's Board of Directors shall consist of the Secretary of Education and eight other members appointed by the President, subject to the advice and consent of the Senate.

In administering the National Direct Student Loan Program, the Association shall provide, either directly or by way of contract or other arrangement with Senate guaranty agencies or other appropriate agencies, organizations, and institutions for collection of Direct student loans, programs of preclaims assistance for default prevention, and other programs which the Board of Directors deems necessary to assure the success of the program. State guaranty agencies shall be offered the first right of refusal to carry out these activities in their respective States.

The Association will be authorized to enter into agreements with students for prepayment of loans made under the existing National Direct Student Loan Program. Since it will have the responsibility for collection of outstanding loans made under current law, it may receive information regarding student borrowers from the Secretary and, pursuant to agreements with institutions regarding collection, make such information available to them.

The Association is authorized to issue notes, debentures, bonds, or other obligations necessary to make loan capital available to institutions for their needy students. However, all such obligations are specifically limited by annual limitations in appropriations Act, which will control the amount of money available to the Association for payment of interest on its obligations. In

addition, the Association may not issue any obligation without the prior concurrence of the Secretary of the Treasury as to the obligation's terms and conditions. The Secretary of the Treasury may direct that any issuance by the Association be sold to the Department of the Treasury or to the Federal Financing Bank. The Secretary of the Treasury is authorized to purchase any obligations of the Association, upon such terms and conditions as to yield a rate determined by him, taking into account the current average yield on outstanding obligations of the United States of comparable maturity. Interest owed by the Association may be deferred, in the discretion of the Secretary, but such deferred interest shall bear interest. The Secretary may sell any of the obligations he acquired, upon such terms and conditions as he decides, and at such prices as he determines. All actions of the Secretary shall be treated as public debt transactions of the United States.

All obligations of the Association shall be guaranteed as to principal and interest, and shall constitute general obligations of the United States, backed by the government's full faith and credit. Association funds not otherwise employed may be deposited with the Treasury, with the approval of the Secretary of the Treasury, deposited in a Federal Reserve bank, or with the approval of the Secretary of the Treasury and the Board of Directors, used in the purchase (for redemption and retirement) of the Association's obligations.

The Association shall prepare annually and submit a budget as provided by the Government Corporations Control Act. In addition, it shall maintain an integral set of accounts with respect to loans made, which the General Accounting Office shall audit once every three years. The Association shall report annually to the Congress and the President on the general operations of the National Direct Loan Program, including a specific description of the progress made on collection of student loans for which the Association is responsible.

There are authorized to be appropriated such sums as may be necessary to the Association for administrative costs of carrying out the National Direct Student Loan Program, to pay the differential between the rate of return on the Association's obligations and the interest rates collected under the Program, and for the costs of repayment of student loans in the event of default, death, or disability.

Upon the winding down of the current Direct Student Loan Program, institutions shall return to the Association the 90 per- of making new Direct Loans to students. loan funds, retaining the 10 percent institutional contribution on campus. As additional repayments of Direct Loans are made to the Association, that capital shall be available to the Association for the purpose of making new Direct Loans to students New student notes entered into under the Direct Loan Program shall be assigned to the Association for collections purposes. As noted earlier, institutions with good collection records may apply to the Association to continue as collection agents.

The Senate recedes.

133. The House bill extends the provisions of the direct student loan program under Title IV for six years and increases the level of authorization of appropriations from $400 million for fiscal year 1981 and fiscal year 1982 to $625 million for fiscal year 1985.

The Senate recedes.

134. The Senate amendment, but not the House bill, replaces the existing National Direct Student Loan Program with a new program administered by the National Direct Student Loan Association. The National Direct Student Loan Association is responsible for providing funds to institutions of higher education to enable them to make loans to students with demonstrable financial need. Each institution with an agreement with the Association will analyze the overall financial need of students on its campus, taking into account other financial aid (other than Guaranteed Loans) available to them.

Subject to appropriations available to allow the Association to borrow money from the Federal Financing Bank, the Association will make necessary loan funds available to colleges based on their aggregate need for student loans. It will do so in installments, to avoid unnecessary accumulation of capital at the institutional level, taking into account the institution's actual disbursement of student loans. The first such payment by the Association will be made as soon as possible after October 1, 1980.

The Association's agreement with an institution of higher education shall provide for the establishment and maintenance of a student loan fund at the institution. Payments made to the institution under this part, as well as any other earnings of the funds, shall be deposited into the loan fund. The fund shall be used only for loans to students, based on their need as demonstrated by the uniform needs analysis, costs of administration, distributions of capital, if any, and costs of litigation or collection, if required by the Association.

If the institution wishes to act as a collection agent, it may apply to the Association for that purpose. It will be required to demonstrate that it has a good collection record in the existing Direct Loan Program, in order for the Association to enter into an agreement with the institution. Not to exceed 10 percent of an institution's loan funds may be used for loans to less than half-time students who need assistance, in the direction of the student financial aid administrator.

Direct Student Loans would bear an interest rate of seven percent, beginning nine months after the borrower ceases to carry at least a half-time workload, and ending ten years after that date. Repayments may, at the option of the borrower, be made in graduated installments, with larger payments due later in the repayment period, and with provision for acceleration of repayment of the loan, in whole or in part. The normal minimum repayment shall be $30 per month, unless the Association provides, by regulation, for a lower payment for one year to avoid hardship to the borrower, or unless the borrower is employed in a low-income occupation during the repayment period, in which case the repayment schedule may be adjusted to reflect his income. Repayment obligations are deferred for additional education on more than a half-time basis, for service in the Armed Forces or the Commissioned Corps of the Public Health Service, Peace Corps or VISTA service and related activities.

The Senate amendment eliminates all provisions concerning cancellation of direct Student Loans for various types of public service.

The House recedes with an amendment which retains the current structure of the NDSL program, increases the interest rate to 4 percent, and provides for an alternative financing mechanism through borrowing by the Secretary to meet the student loan capital needs of institutions of higher education through procedures by which existing campus revolving funds revert to the federal government. The conferees note that the intended hold-harmless level is the amount loaned by a school during the 1979–80 academic year. The NDSL grace period prior to beginning repayment is reduced from 9 months to 6 months.

135. Both the House bill and the Senate amendment raise the applicable aggregate loan limits of the Direct Loan Program in identical amounts.

There is no difference between the House and the Senate provisions.

136. Both the House bill and the Senate amendment add identical provisions relating to periods which deferment may be made.

There is no difference between the House and the Senate provisions.

137. The Senate amendment, but not the House bill, excludes periods of deferral of repayment from the maximum duration of repayment, and establishes a grace period with respect to such deferral periods (allowing repayment to begin up to six months after the completion of the deferral period).

The House recedes.

138. The Senate amendment, but not the House bill, allows the repayment period to be extended for an additional ten years for, and the payment schedule to be adjusted to reflect the income of, low-income individuals.

The House recedes.

139. The House bill repeals the definition of a veteran. The Senate amendment retains a comparable provision.

The Senate recedes.

140. The House bill, but not the Senate amendment, authorizes the Secretary to provide institutions with any information with respect to the names and addresses of Direct Student Loan borrowers or other relevant information, from whatever source derived, notwithstanding any other provision of law.

The Senate recedes.

141. The House bill contains provisions authorizing the Secretary to enter into cooperative agreements with credit bureau organizations to provide for the exchange of information concerning Direct Student Loan borrowers, in a manner comparable to the provisions added by both the House bill and the Senate amendment with respect to guaranteed and insured student loans. The Senate amendment contains comparable authority for the National Direct Student Loan Association for Direct Student Loan borrowers.

The Senate recedes.

142. The House bill, but not the Senate amendment, requires the Secretary to continue to attempt to collect any defaulted student loans for not less than four years.

The Senate recedes.

143. The House bill, but not the Senate amendment, conforms the definition of handicapped children used for determining teacher eligibility for loan cancellation to the definition of handicapped children contained in the Education of Handicapped Children Act. The Senate amendment eliminates all cancellation provisions.

The Senate recedes.

144. The House bill, but not the Senate amendment, provides that cancellation of a Direct Student Loan or the interest thereon shall not be considered as income for purposes of Federal income tax.

The Senate recedes.

145. [See discussion of provisions concerning cancellation for military service in Note 97.]

The House recedes.

146. The Senate amendment, but not the House bill, includes in the definition of institution of higher education accredited institutions of higher education which are not located in a State, but which otherwise meet the requirements of Section 1201(a)(1) through (4).

The House recedes with an amendment mandating the National Commission on Student Financial Assistance to conduct a study of whether institutions chartered by but not located in a state should be eligible institutions under Title IV.

147. The Senate amendment, but not the House bill, requires institutions, as a condition of eligibility for Title IV programs, to be in compliance with certain fiscal responsibility requirements.

The House recedes.

The conferees clarify a minor difference between the Senate and House language regarding the requirement for having an agreement with the Secretary as a condition of program participation by an eligible institution. Section 487 of the Senate amendment is entitled "Institutional Eligibility Agreements." A similar provision, Section 422 of the House bill, is entitled "Institutional Eligibility." The conferees change the title to "Participation Agreements" to clarify the delineation between the determination of the statutory characteristics comprising institutional eligibility and the reciprocal responsibilities in an agreement between the institution and the Secretary as a condition to program participation.

Since the enactment of the Higher Education Act in 1965, an eligible institution has been defined as an institution which has been determined to meet the relevant basic statutory requirements as articulated in § 1201 and other provisions of the Act.

An eligible institution has always been regarded as one which meets the Act's threshold requirements which would therefore make it eligible to apply for program participation or funding under one or more programs authorized by the Act. Not all eligible institutions are eligible for all programs. In adopting this language the conferees intend that the distinction between "eligibility" and "participation" shall continue, and that an eligible institution is not necessarily a participating institution in any one program unless that eligible institution has completed and filed a terms of agreement which has been approved by the Secretary for that particular program.

In adopting this language, the conferees note that the term "eligible institution for the purposes of any program authorized under this title" shall be construed as the institution's eligibility to participate in a specific program and that this language in no way impinges upon the original determination of an institution as an "eligible institution."

148. [See discussion relating to Work-Study for Community Service Learning in note 131.]

The House recedes.

149. The House bill, but not the Senate amendment, contains a provision authorizing any prospective student to obtain and review copies of documents describing the institution's accreditation, approval, or licensing.

The Senate recedes.

150. The House bill continues certain provisions of current law relating to student financial aid training, but provides that all authority with respect to such programs terminates September 30, 1986. The Senate amendment authorizes the Secretary to enter into contracts to provide training for financial aid administrators, student peer counselors, and other financial assistance personnel. The House bill authorizes $280,000 and the Senate bill authorizes $1,000,000 for fiscal years 1981–1985.

The House recedes.

151. The House bill requires the publication of expected family contribution schedules not later than July 1 of each calendar year, and the Senate amendment requires this publication not later than April 1 of each calendar year.

The Senate recedes with an amendment providing that such Family Contribution Schedule shall be published no later than July 1, 1981, April 1, 1982, and April 1 of each succeeding calendar year.

152. The Senate amendment, but not the House bill, authorizes a resolution of disapproval with respect to any part of the expected family contribution schedule (or any resubmission of such schedule).

The House recedes.

153. The Senate amendment, but not the House bill, includes any expenses to a handicapped student as part of the basic criteria to be followed in promulgating regulations with respect to the family contribution.

See explanation following note 154.

154. The House bill, but not the Senate amendment, includes reasonable child care expenses of a student as part of the basic criteria to be followed in promulgating regulations with respect to the family contribution.

The Conference substitute provides that these expenses shall be considered in calculating cost of attendance under Subsection d of this Section.

155. Current law, which the House bill extends, defines effective family income as the annual adjusted family income received by the parents or guardian of a student (or persons having an equivalent relationship to the student) minus Federal income tax payable or paid with respect to that income. The Senate amendment defines effective family income as the annual adjusted family income received by the parents (or the adoptive parents of the student minus Federal, State, and local taxes payable or paid with respect to such income, and adds any effective student income (after any offset as determined by regulations prescribed by the Secretary).

The House recedes with an amendment striking "adoptive parents" and adding in its place "guardians".

156. In determining expected family contribution, current law provides for an assessment rate of not more than 10.5 percent to be applied to parental discretionary income under the Basic Grant program. The Senate amendment applies this assessment rate for all need computations under Title IV but only to families with adjusted gross family incomes less than $25,000, and authorizes the Secretary to establish an assessment rate or rates to be applied to income in excess of $25,000. The House bill establishes no assessment rate with respect to parental discretionary income.

The House bill, but not the Senate amendment, requires that in determining expected family contribution, parental assets be determined by excluding equity in a principal place of residence, deducting an asset reserve of not less than $10,000, and, if assets include farm or business assets, deducting an additional asset reserve of not less than $50,000.

The House recedes with an amendment changing the assessment rate to not more than 14 percent. The Senate recedes with respect to the treatment of assets. It is the clear and express intent of the conferees that, in considering farm assets, the value of the principal place of residence, even if it is located on the farm, will be excluded in its entirety before taking into consideration the assets reserve of not less than $50,000 for farm assets. The conferees also wish to stress that it is their intention that stock in cooperative apartments be considered an asset in terms of equity in a principal place of residence.

157. The House bill, but not the Senate amendment, requires that regulations concerning the expected family contribution and the effective family income of an independent student provide (A) that the portion of assets exempted from assessment for independent students with families be the same as the portion exempted for families of independent students; (B) that the rate of assessment for such students be the same as the rate for such families; (C) that the portion of the effective family income for independent students without families which shall be exempt from subsistence requirements be computed in the same manner as for dependent students or independent students who have dependents; (D) that in determining the family contribution for independent students with families, the assessment rate on discretionary income shall be the same as that applied to the discretionary income of the family of a dependent student; and (E) that a married student shall be considered independent if the student certifies that he will not reside with parents for more than six weeks, will not be claimed as a dependent on tax returns, and will not receive more than $750 from parents.

The Senate recedes.

158. The House bill defines cost of attendance to include, beginning in academic year 1981–82, an allowance of not less than $600 for books, supplies, and miscellaneous personal expenses. The Senate amendment does not require a minimum of $600 and does not identify an academic year in which such allowance is to begin. In addition, the Senate amendment includes transportation as an element of this allowance.

The House recedes.

159. The House bill provides an allowance of not less than $1,150 for room and board for a student without dependents residing at home. The Senate amendment sets this allowance at not less than $1,100.

The House recedes.

160. The Senate amendment, but not the House bill, excludes from the definition of students who are maintaining satisfactory progress those students who, while receiving assistance under Title VI, failed to complete successfully at least three-fourths of the academic workload undertaken with such assistance, until the student successfully completes that or an equivalent workload, unless the institution determines that exceptional circumstances exist and that failure to waive these requirements would result in undue hardship to the student.

The Senate recedes. The Conferees intend that the issue raised by the Senate amendment be studied by the National Commission on Student Financial Assistance authorized by Section 491 of this Title and that such study be reported to the Congress within one year of the Commission's establishment.

161. Current law, which the Senate amendment continues, authorizes the Secretary to prescribe such regulations as may be necessary to provide for (A) fiscal audit of institutions with regard to funds obtained directly or indirectly under this title, (B) the establishment of reasonable standards for financial responsibility and administrative capacity of student financial assistance, (C) the establishment by institutions of policies and procedures to inform lenders under Part B of the latest known addresses and enrollment status of student borrowers under that Part, and (D) the limitation, suspension, or termination of eligibility for any program under Title IV of institutions which have violated or failed to carry out any provisions of Title IV or any regulation thereunder. The House bill contains comparable provisions with respect to limitation, suspension, or termination of eligibility.

The House recedes.

162. The Senate amendment, but not the House bill, authorizes the Secretary to suspend or terminate the eligibility of institutions for any or all programs under Title IV if the Secretary determines that the institution has engaged in a substantial misrepresentation of its educational program, its financial charges, or the employability of its graduates.

The House recedes.

163. The Senate amendment, but not the House bill, authorizes the Secretary to impose a civil penalty not to exceed $25,000 upon an institution which violated or failed to carry out provisions of Title IV (or any regulation thereunder), or has engaged in substantial misrepresentation of the nature

of its educational program, its financial charges, or the employability of its graduates.

The House recedes with an amendment requiring that any such determination by the Secretary shall be made only after reasonable notice and opportunity for hearing on the record are provided.

164. The Senate amendment, but not the House bill, continues a provision of current law which requires the Secretary to publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education.

The House recedes.

165. The Senate amendment, but not the House bill, requires the Secretary to enter into not less than three contracts for processing students aid applications.

The House recedes.

166. The Senate amendment, but not the House bill, permits the Secretary to contract for educational services to assure coordination of financial aid from Federal and non-Federal sources, and to provide information, training and similar services.

The House recedes.

167. The Senate amendment, but not the House bill, specifically permits appending to or incorporating additional data elements in the general financial aid form.

The Senate recedes. The Conferees wish to point out that they consider "simultaneously collecting" to include "appending to or incorporating into."

168. The Senate amendment, but not the House bill, authorizes the Secretary to develop a system of pre-eligibility assistance to provide students with an early notice of their potential eligibility for financial aid.

The House recedes.

169. The House bill, but not the Senate amendment, establishes a National Commission on Student Financial Assistance. The Commission is composed of 12 members. The President, the Speaker of the House and the President Pro Tem of the Senate each appoint one third of the members. The members appointed by the Speaker will include two members of the House, one from each political party, and likewise the members appointed by the President Pro Tem will include two members of the Senate, one from each political party. The Commission is required to make a final report to the President and the Congress not later than July 1, 1983, and is required to include draft legislative language in its report to accomplish any changes in current law which it recommends.

Among the issues the Commission is charged with analyzing are:

More effective means to reduce default, fraud, abuse and delinquency in the Title IV programs;

The appropriate balance between loans and other forms of student assistance;

The adequacy of student loan capital;

The impact of various forms of student assistance on student career educational choices;

The most appropriate delivery systems for the student loan programs and other forms of student assistance;

The appropriate level of public subsidy for student loans;

The impact of student assistance on educational prices;

The means to remove barriers to loan availability for students caused by patterns of lender discrimination (a concern also noted above in the discussion of the Guaranteed Student Loan program); and

The appropriate role of tax exempt bonds as a mechanism for raising student loan capital and the cost to the Federal Government of the arbitrage derived from such bonds, the proceeds of which are used to make student loans.

An authorization of $10 million is provided for the Commission.

The Senate recedes with an amendment adding additional charges to the Commission as noted throughout this statement.

170. The Senate amendment, but not the House bill, authorizes the Secretary to conduct a comprehensive study of Federally authorized assistance programs on postsecondary educational access and choice of high school students.

The Senate recedes with an amendment providing that this study shall be conducted by the National Commission on Student Financial Assistance authorized under Section 491 of this Title.

171. The House bill, but not the Senate amendment, provides that amendments made by Section 6 of the Middle Income Student Assistance Act shall take effect on July 1, 1972.

The Senate recedes.

TITLE V—TEACHERS CORPS AND TEACHER TRAINING PROGRAM

172. The House bill extends the existing authorization of $100,000,000 per fiscal year for the Teacher Corps program through Fiscal Year 1985.

The Senate amendment provides authorization levels for this program as follows:

$43,000,000 for Fiscal Year 1981,
$50,000,000 for Fiscal Year 1982,
$57,500,000 for Fiscal Year 1983,
$66,000,000 for Fiscal Year 1984,
$76,000,000 for Fiscal Year 1985.

The conference substitute authorizes the following amounts:

$45,000,000 for Fiscal Year 1981,
$50,000,000 for Fiscal Year 1982,
$60,000,000 for Fiscal Year 1983,
$70,000,000 for Fiscal Year 1984,
$80,000,000 for Fiscal Year 1985.

173. The House bill extends the existing authorization for Teacher Training programs of $100,000,000 per fiscal year through Fiscal Year 1985.

The Senate amendment establishes authorization levels for these programs as follows:

$16,500,000 for Fiscal Year 1981,
$19,000,000 for Fiscal Year 1982,
$22,000,000 for Fiscal Year 1983,
$25,000,000 for Fiscal Year 1984,
$28,000,000 for Fiscal Year 1985.

The conference substitute provides for the following authorizations:

$20,000,000 for Fiscal Year 1981,
$30,000,000 for Fiscal Year 1982,
$40,000,000 for Fiscal Year 1983,
$50,000,000 for Fiscal Year 1984,
$55,000,000 for Fiscal Year 1985.

174. The House bill, but not the Senate amendment, with respect to the Teacher Corps program removes Puerto Rico from the list of Territories and treats it like a state. It also lowers from 5 to 2% the number of Teacher Corps members to be allocated to the Territories.

The Senate recedes.

175. The House bill, but not the Senate amendment, removes the teacher intern compensation limitation of $150.00 per week plus $15.00 per week for each dependent.

The Senate recedes.

176. The House bill, but not the Senate amendment, adds a new authorized activity for the Teacher Corps Program by permitting grants to schools, colleges, and departments of education, and local education agencies with high concentrations of low income students for programs in biological, natural, earth, and physical sciences and mathematics.

The Senate recedes.

177. The House bill requires that the Secretary seek to provide an equitable geographic distribution of Teacher Center Grants when the appropriation is less than $50,000,000.

The Senate amendment requires each State to receive a Teacher Center Grant regardless of the appropriation.

The House recedes.

178. The House bill, but not the Senate amendment, permits educational service agencies to receive Teacher Center Grants.

The Senate recedes. The conferees note that the term "educational service agency" refers to an intermediate school district, county school district or board of cooperative education services, officially recognized by a state, which performs administrative or service functions for local educational agencies, including but not limited to handicapped education programs, inservice and preservice training, computer services and curriculum development.

179. The House bill, but not the Senate amendment, expands the definition of Teacher Centers to require that any site operated by a local educational agency must collaborate with one or more institutions of higher education which serves teachers.

The Senate recedes with an amendment to encourage, but not require, teacher centers to collaborate with institutions of higher education.

180. The House bill, but not the Senate amendment, includes the use of technology and telecommunications as a permissible activity of the Teacher Center.

The Senate recedes.

181. The House bill, but not the Senate amendment, adds bilingual education teachers as members of the Teacher Center Policy Board.

The Senate recedes with an amendment adding such teachers were appropriate.

182. The House bill, but not the Senate amendment, adds institutions of higher education as eligible Teacher Center Grant recipients.

The House recedes. The Conferees, although not requiring that institutions of higher education be added as eligible Teacher Center Grant recipients, wish to encourage collaboration between higher education institutions and eligible recipients in such Teacher Center grants.

183. See previous note.

The House recedes.

184. See note number 179.

The House recedes with an amendment to encourage, but not require, Teacher Centers to collaborate with institutions of higher education.

185. The House bill rewrites section 533 to provide for grants to schools of education for development of model in-service education projects and support activities for elementary and secondary school teachers. It also provides for grants for achieving diversification and redirecting education programs, retraining faculty members in new educational programs, training faculty for projects in conjunction with the Comprehensive Employment and Training Act, and training educational personnel to specialize in the implementation of urban and environmental policies.

The Senate amendment retains the existing law authority for training for higher education personnel.

The Senate recedes with an amendment which would provide assistance for pre-service instead of in-service activities focused on preparing elementary or secondary school teachers and striking associations as eligible recipients.

186. The House bill, but not the Senate amendment, establishes an Office of Education Professional Development in the Department of Education to review professional development operations and to coordinate their activities among the various Federal education programs.

The Senate recedes. The Conferees suggest that the appropriate location for such an office is in the Office of the Assistant Secretary for Educational Research and Improvement.

187. The Senate amendment, but not the House bill, authorizes a new program of training for elementary and secondary school teachers to teach handicapped children in areas where there is a shortage of such teachers. This training program is in the nature of fellowships to individual teachers who must within 5 years after completion of training teach for at least 2 years in a special education program or repay the stipend awarded to the individual.

The Senate amendment establishes the following authorization levels for this new program:

$2,000,000 For Fiscal Year 1981;
$3,000,000 For Fiscal Year 1982;
$5,000,000 For Fiscal Years 1983 through 1985.

The House recedes.

TITLE VI—INTERNATIONAL EDUCATION PROGRAMS

188. The Senate amendment, but not the House bill, authorizes grants and contracts with combinations of institutions of higher education and requires that centers and programs funded by the Secretary would be national resources for teaching of foreign languages and instruction in related fields.

The House recedes. The Conferees intend that the Section 602 National Research Centers be selected on the basis of excellence and that such centers contribute to the national interest by conducting advanced research and training. The Conferees also intend that the eligibility of four-year institutions under Section 602 be limited to programs of national import deemed exemplary for the nation in terms of excellence and innovation.

189. The House bill allows grants or contracts to cover the cost of faculty, staff and student travel in foreign areas, regions or countries and the cost of travel of foreign scholars to teach or conduct research.

The Senate amendment allows grants or contracts to cover the cost of teaching and research materials, the cost of curriculum planning and development, the cost of visiting scholars and faculty to the Center to teach or conduct research or the cost of training and employment of the staff.

The Conference substitute combines these provisions and activities.

190. The Senate amendment, but not the House bill, authorizes the Secretary to make grants to centers having important library collections for the maintenance of such collections.

The House recedes.

191. The Senate amendment, but not the House bill, authorizes the operation of undergraduate centers to serve as regional resources, in addition to providing training to students enrolled at the institution in which the Center is located. Such regional resource centers offer programs to strengthen international studies in foreign languages in the colleges in the region served by such Center.

The House bill limits support to graduate centers which would be national and international resources for research and training.

The House recedes. The Conferees stress that these centers should become effective regional resources, in part, through national outreach to other colleges, local education agencies and the community. Section 603 centers may apply to become Section 602 centers.

192. The Senate amendment, but not the House bill, includes, as authorized activities under graduate instruction programs, programs designed to integrate undergraduate education with terminal masters degree programs having an international emphasis and the development of an international dimension in teacher training.

The House recedes. The Conferees stress that it is the purpose of the Section 604 International Studies Program to encourage diversity and stimulate the growth of foreign language in international studies throughout the spectrum of higher education.

193. The Senate amendment, but not the House bill, moves the Grant Program to Promote Cultural Understanding to Title III of the Elementary and Secondary Education Act as a new Part N of the Special Projects Act.

The House recedes. The conferees intend that this program will continue to be administered by the Office of International Education located under the Assistant Secretary for Postsecondary Education.

194. The Senate amendment, but not the House bill, allows financial assistance under this Part to be used for the development of materials to link language learning to international studies.

The House recedes.

195. The House bill provides that funds may be used by local educational agencies to introduce instruction in foreign languages not offered by their schools in the three academic years preceding the year in which the grant is made.

The Senate amendment provides that funds may be used by local education agencies to introduce instruction in foreign languages designated by the Secretary as having critical importance to the Nation.

The Conference substitute merges the two provisions. Grants may be made only for foreign language instruction designated by the Secretary as having critical importance to the Nation and not offered by the school in the three preceding academic years.

196. The Senate amendment, but not the House bill, contains a separate authorization of appropriations for the Cultural and International Understanding program.

The House recedes.

197. The Senate amendment, but not the House bill, provides that excellence be the criterion for selection of grants awarded under the graduate and undergraduate language and area center program. With respect to other programs under this Title, the Senate amendment requires that the Secretary award grants in such a manner as will achieve an equitable distribution of funds throughout the Nation.

The House bill requires that the Secretary shall award grants under this Title in such a manner as will achieve a broad equitable distribution of funds throughout the Nation.

The House recedes. The Conferees wish to stress that excellence should be the criteria with regard to grants for language and area center programs. With respect to other programs under this Title, consistent with the criterion of excellence, grants should be awarded in such a manner that will achieve an equitable distribution of funds.

198. The Senate amendment, but not the House bill, authorires the Secretary to conduct research on evaluating competency in foreign languages.

The House recedes. The Conferees suggest that the National Institute of Education be the agency to conduct such research.

199. The House bill authorizes the Secretary to prepare and publish an index and analysis of the books and research material produced with the assistance under this title. The Senate amendment authorizes the Secretary to prepare and publish an annual report which shall include such an index and analysis.

The House recedes.

200. Both the House bill and the Senate amendment contain an Advisory Board. The House bill's Advisory Board shall meet not less than four times each year. The Advisory Board in the Senate amendment shall meet not less than three times each year. The House will require a representative selected by the Director of Central Intelligence, four members representative of postsecondary education and four members of the public. The Senate amendment also includes one member selected by the Secretary of the Treasury, one member selected by the Secretary of Education to serve as Chairman and coordinator of the activities, one member selected by the Chairman of the National Endowment for the Humanities, one member selected by the Director of the International Development Corporation Agency, one member selected by the Chairman of the Export-Import Bank, one member selected by the Administrator of the Small Business Administration, five members from postsecondary education, three members from the public and three representatives of the business community.

The House recedes with an amendment requiring that the Board meet at least four times a year.

201. The Advisory Board under the House bill shall advise the Secretary on areas of special need, areas which duplicate other programs and changes which should be made in the operation of the law.

The Senate amendment requires the establishment of two subcommittees. One subcommittee shall consider grants and contracts made under Part A of Title VI and under Title III of the Elementary and Secondary Education Act and shall advise the Secretary of geographic areas of special need or of concern to the United States, specific foreign languages to be designated as critical under Title III of the Elementary and Secondary Education Act, other innovative approaches to international education, activities which would duplicate other Federal programs, changes necessary in program operations, and administrative and staff requirements of international education programs in the department

The House recedes.

202. The Senate amendment provides that the second subcommittee shall review the business and international education programs and advise the Secretary, who shall seek the advice of the Secretary of Commerce.

The House recedes.

203. The House bill authorizes $100,000,000 for Fiscal Year 1981; $105,000,000 for Fiscal Year 1982; $110,000,000 for Fiscal Year 1983; $115,000,000 for Fiscal Year 1984; and $120,000,000 for Fiscal Year 1985, except that no funds shall be available for carrying out the grant program to promote cultural understanding unless $16,000,000 is made available for carrying out the rest of Title VI.

The Senate amendment authorizes $34,500,000 for Fiscal Year 1981; $40,000,000 for Fiscal Year 1982; $46,000,000 for Fiscal Year 1983; $53,000,000 for Fiscal Year 1984; and $61,000,000 for Fiscal Year 1985 for the purposes of Title VI. The Senate amendment provides a separate authorization for the Cultural Understanding Program.

The conference substitute provides the following authorizations:

$45,000,000 for Fiscal Year 1981,
$50,000,000 for Fiscal Year 1982,
$60,000,000 for Fiscal Year 1983,
$70,000,000 for Fiscal Year 1984,
$80,000,000 for Fiscal Year 1985.

204. The Senate amendment, but not the House bill, authorizes a new Part B—Business and International Education Programs. This new Part establishes a dollar for dollar matching grant program to postsecondary institutions which have entered into agreements with business enterprises, trade organizations or consortia of such organizations to establish or expand curricula to serve the international needs of the American business community.

The Senate amendment authorizes an annual appropriation of $7,500,000 for Fiscal Year 1981 through 1985 for the purposes of this new Part.

The House recedes.

TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

205. The Senate amendment, but not the House bill, expands the purpose of this Title to emphasize a priority in the use of coal, solar, and renewable resources.

The House recedes.

206. The Senate amendment, but not the House bill, allows institutions to use funds

awarded under this Title to detect, remove, or otherwise contain asbestos hazards in their facilities used by students.

The House recedes.

207. The House bill establishes an authorization level of $300,000,000 for each Fiscal Year ending prior to October 1, 1985, for Part A of Title VII.

The Senate amendment authorizes the following authorization levels for the same Part:

$30,000,000 for Fiscal Year 1981,
$35,000,000 for Fiscal Year 1982,
$40,000,000 for Fiscal Year 1983,
$45,000,000 for Fiscal Year 1984,
$55,000,000 for Fiscal Year 1985.

The House bill authorizes an $80,000,000 appropriation for each Fiscal Year ending prior to October 1, 1985, for Part B.

The Senate amendment authorizes the following appropriation levels for the same Part:

$5,000,000 for Fiscal Year 1981,
$10,000,000 for Fiscal Year 1982,
$15,000,000 for Fiscal Year 1983,
$20,000,000 for Fiscal Year 1984,
$25,000,000 for Fiscal Year 1985.

The House bill establishes an authorization level of $200,000,000 for each fiscal year ending prior to October 1, 1985, for Part C.

The Senate amendment establishes a $50,000,000 authorization level for the same period of time for the same Part.

The conference substitute provides an authorization level for Part A of $100,000,000 for each fiscal year ending prior to October 1, 1985.

The substitute provides an authorization of $80 million per year for Part B.

The substitute authorizes $80 million per year for Part C.

208. The Senate amendment, but not the House bill, authorizes a procedure by which a State which does not wish to enter into an agreement pursuant to section 1203 may participate in Title VII programs.

The Senate recedes.

209. The House bill provides that grants for the construction, reconstruction and renovation of graduate academic facilities shall not exceed 50 percent of the cost of the project.

The Senate amendment provides that such grants shall not exceed 75 percent of the cost of the project.

The Senate recedes.

210. The House bill contains the interest rate at 3 percent per year.

The Senate amendment increases the interest rate to 7 percent.

The Senate recedes with an amendment increasing the interest rate to 4 percent.

211. The Senate amendment, but not the House bill, provides for recovery of payments on buildings which have been renovated or reconstructed with Federal funds if they cease to be used as an academic facility.

The Senate recedes.

212. The House bill, but not the Senate amendment, provides a definition of the term "Federal share."

The Senate recedes.

TITLE VIII—COOPERATIVE EDUCATION

213. The Senate amendment, but not the House bill, combines the authorizations of appropriations for grants for programs of cooperative education and training, demonstration, and research grants. The authorization of appropriations provided in the House bill and the Senate amendments are as follows:

Fiscal year	House bill: Sec. 802 authorization	House bill: Sec. 803 authorization	Senate bill authorization total
1981	$30,000,000	$5,000,000	$27,000,000
1982	30,000,000	5,000,000	31,000,000
1983	30,000,000	5,000,000	36,000,000
1984	30,000,000	5,000,000	41,000,000
1985	30,000,000	5,000,000	47,000,000

The Senate recedes.

214. Both the House bill and the Senate amendment raise the maximum grant which may be made to any individual institution, and the maximum amount which may be made per institution for consortia. The House bill raises the first amount from $175,000 to $250,000 and the second amount from $125,000 to $200,000. The Senate amendment raises the first amount to $400,000 and the second amount to $300,000.

The Senate recedes with an amendment providing $325,000 per institution and $250,000 per consortia member.

215. The Senate amendment, but not the House bill, provides that no "individual unit of any institution of higher education" may receive grants for more than five years. Current law which the House does not amend, provides that no institution may receive a grant for more than five fiscal years.

The House recedes.

216. The House bill provides that the Secretary may waive the percentage limitations on the amount of administrative cost which an institution may receive. The Senate amendment, which continues current law, prohibits waiver of such limitations.

The House recedes.

217. The Senate amendment, but not the House bill, specifically provides that training, research, and demonstration grants and contracts include grants and contracts for the conversion and expansion of comprehensive cooperative education programs in institutions of higher education.

The Senate recedes.

TITLE IX—GRADUATE PROGRAMS

218. The House bill, but not the Senate amendment, deletes from the statement of purpose and from authorized activities the intent to "expand" the quality of graduate and professional programs and substitutes the intent to "maintain" such programs.

The Senate recedes.

219. The House bill, but not the Senate amendment, adds a requirement for the Secretary to collect data necessary for the periodic assessment of the state of graduate education on an annual basis. Further, the House bill requires findings based on the Secretary's studies to be included in the Secretary's annual report under Title IX.

220. The House bill, but not the Senate amendment, requires the Secretary, within two years after the date of enactment of this Act, to prepare and submit to the Congress and the National Committee on Student Financial Aid a special report on financial aid in graduate education

The House recedes with an amendment requiring that such an assessment and study be conducted by the National Commission on Student Financial Assistance.

221. The House bill, but not the Senate amendment, generally extends the provisions contained in Parts B, C and D of Title IX of the Act through Fiscal Year 1985, with the following revisions: (A) to reduce the authority of the Secretary to approve or disapprove particular programs of graduate education; (B) to require the Secretary in the allocation of public service fellowships, to seek to attract persons of ability from disadvantaged backgrounds; (C) to require the Secretary to separately find that a program is in effect of to be readily put into effect, and that the application describes the high quality or reasonable expectation of high quality of the program.

The Senate amendment consolidates the provisions presently contained in Parts B, C and D, except that it provides a separate authorization for programs of assistance for training in the legal profession. The Senate amendment authorizes the Secretary to award fellowships, up to $10,000, under the consolidated part, for each year, with the requirement that at least as much money be spent each year on public service and mining fellowships, and fellowships for the disadvantaged, as was spent in fiscal year 1979.

The conference substitute provides for a program of campus based grant awards to graduate and professional students based on financial need. The maximum award to a student is $4,500 per year for three years. The substitute also provides for the maintenance of the level of awards (including institutional allowances) for the public service, mining and graduate and professional opportunity fellowship programs. The conferees intent that native Hawaiians be included among those considered to be "individuals from traditionally underrepresented groups." The substitute authorizes $60 million for fiscal year 1981 and for fiscal year 1982 and such sums as may be necessary for fiscal year 1983 through 1985.

222. The Senate amendment, but not the House bill, repeals Part C (Public Service Fellowships), Part D (Fellowships for other purposes), Part E (annual fellowship report) and Part F (General Assistance to Graduate Schools) of Title IX.

The House recedes.

223. The Senate amendment, but not the House bill, enacts a new Part C which provides National Graduate fellowships. This part would provide 450 portable competitive fellowships each year in the arts, humanities and social sciences. Selection of these fellowships would be based on merit, with the stipend awarded being related to the recipient's financial need. The National Graduate Fellows Program Fellowship Board would be created to select the areas in which the fellowships are to be awarded and to appoint panels for the selection of recipients.

The House recedes with an amendment requiring the membership of the National Graduate Fellows Program Fellowship Board be composed of representatives of both public and private institutions of higher education.

224. The Senate amendment, but not the House bill, establishes a new Part D of Title IX which provides for national talent grants for first year graduate and professional study. Grants under this new part are awarded by institutions of higher education to exceptionally qualified first-year graduate students who demonstrate need. No institution of higher education may receive more than three-fourths of 1% of the sums appropriated and no individual award may exceed $2,000. There are authorized to be appropriated for this purpose $15 million for fiscal year 1981 and fiscal year 1982, and such sums as may be necessary for fiscal year 1983, fiscal year 1984, and fiscal year 1985.

The Senate recedes. See explanation of the conference substitute on Part B.

225. The Senate amendment, but not the House bill, establishes a new Part E in Title IX. This part continues authority for assistance for training of the legal profession presently contained in Part D of Title IX which the House bill extends.

The House recedes.

226. The House bill, but not the Senate amendment, deletes a restriction in current law that prohibits preliminary training from being given more than three months prior to entry of individuals into courses of instruction in the legal profession.

The Senate recedes with an amendment limiting the period to six months.

227. The House bill authorizes $5 million for fiscal year 1981 and fiscal year 1982, and $10 million for fiscal year 1983, fiscal year 1984, and fiscal year 1985 for the training in the legal profession program. The Senate amendment authorizes $5 million for each of such years for that program.

The conference substitute provides the following authorizations:

Fiscal year:	Millions
1981	$5
1982	5
1983	7.5
1984	7.5
1985	10

228. Both the House bill and the Senate amendment continue the authority for the Law School Clinical Experience Program in Title IX (deleting such authority from Title XI).

Both provisions are identical.

229. The House bill provides that no law school may receive more than $75,000 in any fiscal year for the Law School Clinical Program. The Senate amendment provides that no law school may receive more than $125,000 in any fiscal year for such program and that no part of such funds may be used to pay for indirect costs or charges.

The House recedes with an amendment providing for a ceiling of $100,000.

230. The Senate amendment, but not the House bill, includes in the definition of accredited law school, organizations and associations of law schools.

The Senate recedes.

231. The House bill authorizes $10 million for the Law School Clinical Program for each of the fiscal years 1981–1985. The Senate amendment authorizes $5 million for fiscal year 1981; $6 million for fiscal year 1982; $7 million for fiscal year 1983; $8 million for fiscal year 1984; and $9 million for fiscal year 1985 for such programs.

The conference substitute authorizes the following amounts:

Fiscal year:	Millions
1981	$5
1982	8
1983	8
1984	9
1985	10

TITLE X—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

232. The Senate amendment, but not the House bill, includes a requirement that the Director of the Fund for the Improvement of Postsecondary Education establish procedures for reviewing and evaluating grants and contracts which shall not be subject to any review by officials outside of the Fund.

The House recedes.

233. The House bill authorizes appropriations for the Fund for the Improvement of Postsecondary Education of $75 million for each of the Fiscal Years 1981 through 1985. The Senate amendment authorizes appropriations for the Fund of $20 million for fiscal year 1981; $23 million for fiscal year 1982; $27 million for fiscal year 1983; $31 million for fiscal year 1984; and $36 million for fiscal year 1985.

The conference substitute provides the following authorizations:

$20,000,000 for Fiscal Year 1981,
$30,000,000 for Fiscal Year 1982,
$40,000,000 for Fiscal Year 1983,
$45,000,000 for Fiscal Year 1984,
$50,000,000 for Fiscal Year 1985.

TITLE XI—URBAN GRANT UNIVERSITY ACT

234. The authorizations of appropriations provided by the House bill and the Senate amendment are as follows:

Fiscal year	House	Senate
1981	$50,000,000	$11,250,000
1982	70,000,000	18,750,000
1983	80,000,000	26,250,000
1984	90,000,000	33,750,000
1985	100,000,000	41,250,000

The conference substitute authorizes the following amounts:

$15,000,000 for Fiscal Year 1981,
$25,000,000 for Fiscal Year 1982,
$35,000,000 for Fiscal Year 1983,
$45,000,000 for Fiscal Year 1984,
$55,000,000 for Fiscal Year 1985.

235. The House bill provides that funds appropriated for the Urban Grant University Program are to remain available for the duration of a funded project in order to permit multiple year funding of projects. The Senate amendment also permits multiple year grants but provides that funds for the purpose of such grants for any year must be drawn from the appropriation for that year.

The House recedes.

236. The Senate amendment, but not the House bill, requires the Secretary to give priority to applications containing cooperative arrangements for urban universities in a single urban area.

The House recedes.

237. Both the House bill and the Senate amendment require local officials to be afforded a reasonable opportunity to review and comment upon the proposed project or projects. The House bill provides that these local officials are the chief executive of local agencies of general government within whose jurisdiction fall the needs to be addressed by the project or projects. The Senate amendment requires that the local officials to be consulted are the chief executives of local agencies of general government within the urban area and contiguous areas within which the urban university is located.

The Senate recedes.

238. The Senate amendment, but not the House bill, requires the participation of the community in the development of projects assisted under this title.

The House recedes. The conferees require the Secretary to take into account the degree of participation of the affected community in developing any project under this title. The conferees intend that, during the planning and development of a Title XI project, affected citizens, community organizations and members of the public be afforded opportunities to express their interests and concerns. However, the conferees do not intend that this provision be construed to give standing, as a matter of right, to any individual, organization or agency to be made a part of the project planning process. The conferees emphasize that this provision does not authorize the Secretary to issue any regulations defining the phrase "community" nor to establish by regulation or guideline any rigid set of standards or procedures necessary to meet this requirement. The conferees believe that appropriate community participation could be achieved, for example, through public hearings held within the affected community, community discussions and wide solicitation for public comment.

239. The House bill, but not the Senate amendment, allows the non-Federal share of costs to be provided in the form of services, supplies, or equipment.

The House recedes with an amendment requiring that not less than one-half of the non-Federal share shall be cash contributions.

240. The House bill requires the Secretary to designate one urban area in any state in which there is no SMSA with a population of 500,000. The Senate bill provides that such an area is to be designated by the state entity under Section 1203.

The Conference substitute requires that if there is no 1203 entity within the State the Secretary shall designate one urban area.

TITLE XII—GENERAL PROVISIONS

241. Both the House bill and the Senate amendment repeal Section 1205 (establishing an Advisory Council on Graduate Education) and Section 1208 (containing certain funding requirements). In addition, the House bill repeals Section 1202 (requiring states to establish post-secondary education commissions) and Section 1206 (authorizing the Commissioner to require cost of education data from institutions of higher education).

The Senate recedes.

242. Both the House bill and the Senate amendment establish a new Section 1203 of the Act relating to Federal-State relations, which replaces Sections 1202 and 1203 of current law. This new section replaces requirements in current law that States establish or designate a State commission with a specified structure (popularly referred to as "1202 commissions"), in order to be eligible for Federal assistance for comprehensive statewide planning. The new Section 1203 contained in both the House bill and the Senate amendment replaces certain structural requirements with functional requirements, in order to permit States discretion in their internal organization.

The House bill requires each state desiring to receive assistance under certain identified applicable programs to submit an agreement to the Secretary which is to include (A) a designation of a State agency or agencies responsible under State law for comprehensive statewide planning or financing for postsecondary education; (B) a designation of the responsible agency and a description of their activities under the applicable programs; (C) a description of the activities of all entities responsible for educational and occupational information to youth and adults, continuing education services, student assistance administration, authorizing institutions of higher education, and statewide coordination of governance of postsecondary education sectors; (D) a description of the relationship between planning activities of State entities previously identified; and (E) assurances by the State that all interested persons are involved in the comprehensive statewide planning process, that the State will properly and effectively administer the program, that the State will use fiscal and accounting procedures necessary to proper control of Federal funds, and that the State will not use Federal funds to supplant other resources.

The Senate amendment provides that each State desiring to receive assistance under applicable programs must submit an agreement containing assurances by the State that (A) the State will provide for the proper and efficient administration of applicable programs, (B) the State will provide fiscal and accounting procedures necessary for the proper control of Federal funds, (C) the State will insure that Federal funds will not be used to supplant other resources, and that equitable and appropriate criteria will be used in evaluating applications and proposals for grants and contracts under applicable programs, and (D) that the State has a comprehensive planning and policy formulation process which considers the relationship between State administration of applicable programs and similar State programs, encourages State policy to consider the effect of declining enrollments, consider the postsecondary education needs of unserved and underserved individuals (including those beyond traditional college age), considers the resources of various institutions capable of providing postsecondary education opportunities, and provides for direct, equitable and active participation in the comprehensive planning or policy formulation process of all interested persons.

Further, the Senate amendment provides that such participation be insured by including at least one representative of certain specified categories of interested persons as representatives in the State entity, unless prohibited by State law.

The House recedes with an amendment which modifies the language in the Senate amendment requiring participation through membership on a state entity by substituting language which provides states with increased flexibility to achieve such participation, as consistent with state law, through membership on state planning commissions, advisory councils or other state entities established by the state to conduct a federally assisted comprehensive planning or policy formulation process. The amendment further

limits the authority of the Secretary to deny eligibility for applicable programs only to matters of proper and efficient administration, fiscal control and fund accounting, anti-supplanting, and use of equitable criteria for evaluation of applications.

243. The House bill, but not the Senate amendment, contains a specific provision prohibiting the Secretary from requiring any State to adopt, as a condition for entering into a 1203 agreement, or for participation in any applicable programs, a specific State organizational structure.

The Senate recedes.

244. The House bill defines applicable programs as programs under Title I (Education Outreach), Subpart 3 of Title IV–A (State Student Incentive Grants), and Part A of Title VII (Construction of Higher Education Facilities). The Senate amendment excludes from this definition Subpart 3 of Title IV–A.

The Senate recedes. The conferees, by including the State Student Incentive Grant Program as an applicable program, wish to emphasize that this should not be interpreted as a requirement, or even a suggestion, that any state with a state student assistance agency separate from the state agency responsible for comprehensive planning should merge such agencies or place one agency in a subordinate relationship to the other. The concept of a single state agreement should not be interpreted as a requirement for a single state agency. The assignment of responsibility for administration of the various applicable programs shall be for each state to determine in accordance with state law and the state's unique governance structure.

245. The House bill, but not the Senate amendment, authorizes the Secretary to make such modifications of any program under the Act as he deems necessary in order to adapt such programs to the needs of the territories, and requires the Secretary within 18 months after the time of enactment to conduct an analysis of the unique educational needs of the territories.

The Senate recedes.

The Conferees stress that such modifications shall be limited only to the programs to which the territories are entitled to the purposes of those programs, and shall not be construed to authorize the termination of any program.

246. The House bill, but not the Senate amendment, authorizes $2 million for each fiscal year to support the cost of postsecondary education programs in Guam for nonresident students from the other Pacific Territories.

The Senate recedes with an amendment limiting the authorization to five years.

247. The Senate amendment, but not the House bill, establishes a National Advisory Committee on Accreditation and Institutional Eligibility to advise the Secretary.

The House recedes with an amendment limiting the mission of the Committee to the current statutory functions of the Secretary and to the mandate of the former committee.

248. The Senate amendment, but not the House bill, contains certain conforming amendments to reflect the establishment of the Department of Education.

The House recedes.

TITLE XIII—MISCELLANEOUS PROVISIONS

249. Under the Senate amendment, but not the House bill, the free-standing provisions of the Education Amendments of 1980 would take effect upon enactment.

The House recedes.

250. The Senate amendment, but not the House bill, provides that the amendments made by Part B of Title IV of the Act (guaranteed and insured student loans) shall apply to loans made on or after October 1, 1980.

251. The Senate amendment, but not the House bill, provides that the provisions of Part E of Title IV of the Act (direct student loans) in effect prior to October 1, 1980 shall continue to apply to loans made from funds appropriated prior to September 30, 1980.

The conference substitutes provide for appropriate effective dates to meet the unique requirements of implementing the amendments to Title III, Parts A, B and E of Title IV and to Title VII of the Higher Education Act of 1965.

252. The Senate amendment, but not the House bill, makes the College of Micronesia a land grant college.

The House recedes.

253. The Senate amendment, but not the House bill, extends the authorization of appropriations for the National Institute of Education at a rate equal to certain specified percentages of the sum of the amount appropriated or available to the Department of Education. That percentage increases from .75 percent in fiscal year 1981 up to 1.5 percent for fiscal year 1985.

The conference substitute provides the following authorizations:

$120,000,000 for Fiscal Year 1981,
$130,000,000 for Fiscal Year 1982,
$145,000,000 for Fiscal Year 1983,
$160,000,000 for Fiscal Year 1984,
$175,000,000 for Fiscal Year 1985.

254. The Senate amendment, but not the House bill, adds age to the category of demographic characteristics on which the United States is not to discriminate in the provision of quality higher education opportunities.

The House recedes with an amendment adding handicap to the category.

255. The Senate amendment, but not the House bill, adds, as a priority for research by the National Institute of Education, special problems of the non-traditional student, including older and part-time students.

The House recedes with an amendment encouraging studies of language, international education and culture, and the needs of early adolescents.

The Conferees note that little information has been gathered systematically on the needs of early adolescents and the schools which serve them. The Conferees intend that the National Institute of Education, in each of its mandatory priority research and development areas, give particular attention to research regarding this age group and their schools. The Conferees anticipate that the NIE will support research and development activities to determine (1) what organization of schooling is best in meeting the needs of early adolescents, and (2) what policies, programs, practices and services are essential to meet the needs of early adolescents. The NIE's activities in this area should include efforts to identify and promote the best approaches to professional development for faculty, administrators, and others who provide educational services to early adolescents.

The Conferees further recognize that if the condition of schooling for early adolescents is to be improved as the Conferees believes it must, it is essential to create easier access to data, program and research information about this age group and school population. Access to and dissemination of appropriate research information as well as successful program models is particularly critical in light of this Conference's efforts to stimulate major education and training program initiatives in secondary schools during the coming year. Without intensified concentration of research and development resources on successful programming for the early adolescent, schools serving these students will not be equipped, in a timely fashion, to mount the kinds of school-to-work transition programs envisioned by the Conferees.

It is the Conferees' intention that the NIE will not confine its initiatives on early adolescents to the one subunit that has begun to work in this area, but will encourage appropriate activities by other work teams. The Conferees expect that clear documentation of these research, development and dissemination activities and an assessment of the results of those activities concerning early adolescents and the schools serving them will be included in the NIE's annual report to the Congress.

The Conferees mandate that not less than three members of the National Council on Educational Research shall be experienced and knowledgeable in the conduct of educational research.

Since only one member of the NCER is currently engaged in educational research, the Conferees were persuaded that the Council would be strengthened by this requirement, and that the individuals so appointed would provide greater leadership to the Council and the NIE. Due to current vacancies on the Council, no current member will be asked to step down as a result of this amendment.

The Conferees also expect that the National Council on Educational Research should represent the broad array of entities and individuals who will be directly or indirectly involved with NIE research activities. It is the Conferees' view that such broadened representation will be drawn from (1) public and private non-profit community-based organizations, such as those which provide educational support and training services to special needs students or youth who have dropped out of school; (2) education advocacy organizations which are engaged in independent monitoring of school policies and practices; (3) state and local level education researchers, practitioners and policymakers who are involved in the daily operation and administration of education programs; and (4) students and the parents of students.

Given the Conferees' recognition of the increasing need for linkages between education professionals and others who either serve young people or will employ them as they grow to be adults, it is critical that educational research activities reflect this breadth of views. Since NCER is the policymaking body for the nation's foremost educational research agency, the NIE, the Conferees anticipate that broadened membership of the NCER wil enable it to address research needs spanning the wider network of institutions and agencies providing educational services to students of every age.

While the Conferees note that existing law requires the NIE to submit an annual report to the President and the Congress, it anticipates that in the future, this annual report shall include a list and description of all grants and contracts awarded by the Institute subsequent to submission of the previous annual report to the Congress, and shall specify (with respect to each grant and contract listed in the report) the amount of the grant or contract, its purpose and duration, and the educational policy issue to be addressed by the project conducted under the grant or contract; shall include the major findings of any research projects completed under the auspices of the Institute subsequent to submission of the previous annual report to the Congress; and shall include an assessment of the progress of the Institute in achieving its priority research and development needs.

The Conferees note that during its short history the NIE has lacked the continuity of leadership necessary to the centerpiece of educational research in the Department of Education.

To assure greater continuity in the future, the conferees encourages the appointment of the NIE Director for a period of five years, serving, of course, at the pleasure of the President. The Conferees believe that setting a specified term of office similar to that provided the Director of the National Science Foundation and the Chairman of the Arts and Humanities Endowments would lend stability to the Institute without restricting the authority of the President to remove the Director, if desired. It is understood that any individual serving as the Director may be reappointed to that office.

The Conferees direct the NIE to expand the scope of its activities and participants through increased involvement of groups and individuals outside the traditional research community. As different sectors of the society become involved in providing basic, remedial and employment related education, it becomes increasingly necessary to involve these groups in research, development, and dissemination activities conducted by the federal government.

The Conferees hope that in awarding grants the NIE would avoid a closed circle of reviewers, grantees and contractors which has characterized other national research agencies. The Conferees believe that the Institute should broaden the base of its review panels to include representatives of social advocacy oraganizations and public and private nonprofit community-based organizations involved with education policy and practice.

In addition, the Institute, to the extent practicable, should include among those awarded research and development grants and contracts the following: research institutions other than laboratories or centers which receive funds from the NIE, private and public community-based non-profit organizations, education practitioners, and education policymakers employed at both State and local levels. Organizations of this nature are becoming more and more involved in formulating education policy and both they and the NIE should benefit from a closer working relationship. Nothing in this paragraph should be interpreted to diminish open and fair competition under the standards of peer review for all grants and contracts.

The Conferees wish to clarify the intent of Sec. 405(e)(3) of the General Education Provisions Act providing the Director of the Institute with the authority to establish and maintain research fellowships. It is the intent of the Congress that such fellowships should be supported without regard to the physical location of individual fellows. Conferees understand that a departmental interpretation of the fellowship authority has limited support to fellows physically located in the Institute's offices. The House Committee's version clarified this authority by stating that fellows could be supported in other locations. It is the intent of the Congress that the purpose of the authority to support highly qualified research fellows from the United States and abroad should be implemented without regard to the physical location of the fellow.

It is the intent of the Conferees that regular oversight be conducted by Congress to insure the intent of this title as the NIE will be the major research component of the new Department of Education. If the Institute is found to be wanting in its efforts to carry out the provisions of this title, then Congress will take appropriate legislative steps to correct such inconsistencies. It is the hope of the Conferees that the NIE will continue to engage in ongoing dialogue with Congress as it carries out its research activities.

256. The Senate amendment, but not the House bill, repeals the authority for the Panel for the Review of Laboratory and Center Operations.

The House recedes.

The conferees agreed with the Senate amendment deleting from the National Institute of Education's authorization Section 405(f), the authority for the Panel for the Review of Laboratory and Center Operations. The Panel submitted its final report to Congress in 1979. However, the conferees wish to emphasize that deletion of the Panel authority does not in any way diminish its belief in the importance of the educational research and development conducted by the laboratories and centers. The conferees endorse the Panel's final report and concur that the labs and centers are an important cornerstone of our educational system. As such, the conferees applaud NIE's decision to enter into longterm contractual relationships with these institutions. With the transfer of NIE to the Department of Education, the conferees fully expect that both the Institute and the Department will continue to support and strengthen the laboratories and centers. As part of this process, the Institute should give consideration to creating new laboratories in the currently underserved regions of the Upper Midwest and Northeast.

257. The Senate amendment, but not the House bill, authorizes the establishment of the Robert A. Taft Institute Trust Fund to assist in the development of the Robert A. Taft Institute of Government. $11.25 million is authorized to be appropriated to the fund, the income from which shall be paid to the Institute to match the total amount of private contributions received by the Institute in the preceding fiscal year.

The House recedes with an amendment authorizing an appropriation of $750,000 per year to be matched by funds from private sources.

258. The Senate amendment, but not the House bill, amends the contingent extension provision of the General Education Provisions Act to authorize the contingent extension of any forward funded program for two fiscal years.

The House recedes.

259. The Senate amendment, but not the House bill, amends the General Education Provisions Act to authorize the Congress to disapprove Department of Education regulation *in whole or in part*.

The House recedes.

260. The Senate amendment, but not the House bill, authorizes appropriations to the Secretary of Education for fiscal year 1981 of $2.5 million for the College Science Teacher Program, and $5 million for the Minority Institution Science Program.

The House recedes.

261. The Senate amendment, but not the House bill, extends the life of the Commission on the Review of the Federal Impact Aid Program for the purpose of enabling such Commission to prepare and submit to the President and to Congress not more than three supplemental reports after the submission of its final report.

The House recedes with a substitute amendment extending the reporting period of the existing Impact Aid Commission until September 1, 1981, and providing that the Commission shall terminate on September 30, 1981.

262. The Senate amendment, but not the House bill, amends the General Education Provisions Act to provide that no regulation affecting any institution of higher education in the United States shall become effective unless the agency promulgating such regulation publishes in the Federal Register an educational impact assessment statement which shall identify what information specified by the regulation is available from another authority of the United States and assess the burden of compliance with the regulation by institutions of higher education.

The House recedes with an amendment providing that such statement shall only determine whether any information required to be transmitted under such regulation is already being gathered by or available from any other authority or agency of the United States.

263. The Senate amendment, but not the House bill, directs the Secretary of Education to make a comprehensive study of programs authorized by the Elementary and Secondary Education Act, the Vocational Education Act, and the Education of the Handicapped Act in order to analyze if there are duplications, conflicts, and unnecessary reporting requirements contained in those laws or regulations. The Secretary shall submit a report to Congress on this study. In carrying out the study, the Secretary is authorized to enter into agreements with not less than four nor more than 10 States for the conduct of study projects. The Secretary, through the National Institute of Education, shall analyze the State study projects and shall develop, with cooperation with the Intergovernmental Council on Education, a plan for carrying out the study. Such plan shall be submitted to Congress. The Secretary shall make a final report to the Congress on the study not later than January 1, 1983. $7 million is authorized for each fiscal year 1981–1982, and $1 million is authorized for fiscal year 1983. The Secretary is also authorized to use funds from other available sources.

The Senate recedes.

264. The Senate amendment, but not the House bill, updates Section 502 of the Rehabilitation Act of 1973 by redesignating the Secretary of the Department of Health, Education and Welfare as the Secretary of the Department of Health and Human Services and adding the Secretary of Education to the Architectural and Transportation Barriers Compliance Board.

The House recedes.

265. The Senate amendment, but not the House bill, amends Section 502(h) of the Rehabilitation Act of 1973 to require that the Architectural and Transportation Barriers Compliance Board transmit its annual report to the Labor and Human Resources Committee in the Senate and the Education and Labor Committee in the House.

The House recedes.

266. The Senate amendment, but not the House bill, mandates the creation of the Office of Information Clearinghouse for Handicapped Individuals within the Department of Education.

The House recedes.

267. The Senate amendment, but not the House bill, authorizes $750,000 for fiscal year 1981 to establish the William Levi Dawson Chair of Public Affairs at Fisk University at Nashville, Tennessee.

The House recedes.

268. The Senate amendment, but not the House bill, amends the Impact Aid Act to create a new Title IV which is to provide benefits for Native Hawaiians in a manner comparable to the benefits of Native Americans under the Indian Education Act (Public Law 92–318) and establishes certain additional programs with respect to elementary and secondary education, postsecondary education, adult education, and teacher training for Native Hawaiians.

The House recedes with an amendment establishing an advisory counsel to evaluate the needs of native Hawaiians and the effectiveness of existing state and federally assisted education programs in meeting such needs. A total of $500,000 is authorized for the period of fiscal years 1981 through 1983.

269. The Senate amendment, but not the House bill, authorizes $6 million for fiscal year 1981 for a grant to establish the General Daniel James Memorial Health Education Center to be located in the Tuskegee Institute in Tuskegee, Alabama.

The House recedes.

270. The Senate amendment, but not the House bill, contains certain provisions that: (1) extend the authorization of appropriations for construction under the Navajo Community College Act for one year; (2) change the funding formula to require that credit hours for the fall, spring, and summer terms for independent students be totalled and divided by 15 for the purpose of deter-

mining the number of full-time, equivalent students; and (3) modify Title I of the Tribally Controlled Community College Assistance Act of 1978 to permit Navajo Community College to receive funds under the Higher Education Act and other applicable Federal programs.

The Conference substitute extends the authorization of appropriations for construction for one year, changes the authorization to an amount based on the actual cost of operation and maintenance of the institution, and includes the modification permitting the institution to receive funds under the Higher Education Act and other applicable programs.

271. The Senate amendment, but not the House bill, amends the Impact Aid Act to provide funds to local education agencies experiencing increased enrollments due to the entry into the schools of refugee children, and authorizes appropriations of such sums as may be necessary for this purpose.

The conference substitute authorizes a one-year provision amending the Impact Aid laws to provide special assistance to local school districts facing influxes of Cuban, Haitian and Indo-Chinese refugee children.

This provision is intended as a stop-gap measure while the Congress deliberates a more comprehensive program to meet the needs of these children. This provision is adopted because school districts are faced with the immediate need for funds, and this is the most expeditous means to provide this aid.

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN BRADEMAS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
MARIO BIAGGI,
PAUL SIMON,
AUSTIN J. MURPHY,
TED WEISS,
PETER A. PEYSER,
WILLIAM RATCHFORD,
GEO. MILLER,
JOHN M. ASHBROOK,
JOHN A. BUCHANAN, Jr.,
JAMES M. JEFFORDS,
MICKEY EDWARDS,
THOMAS J. TAUKE,
THOMAS E. PETRI,
Managers on the Part of the House.

CLAIBORNE PELL,
HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
EDWARD M. KENNEDY,
THOMAS F. EAGLETON,
ROBERT STAFFORD,
DICK SCHWEIKER,
JACOB K. JAVITS,
Managers on the Part of the Senate.

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CONFERENCE REPORT ON S. 1125, FEDERAL CROP INSURANCE ACT OF 1980

Mr. JONES of Tennessee. Mr. Speaker, I call up the conference report on the Senate bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of August 28, 1980.)

The SPEAKER pro tempore. The gentleman from Tennessee (Mr. JONES) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. MADIGAN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. JONES).

Mr. JONES of Tennessee. Mr. Speaker, I yield myself such time as I may need for the purposes of explanation of the conference report.

Mr. Speaker, I rise in support of the conference report to S. 1125, a bill to expand and improve the Federal Crop Insurance Corporation. The bill is the result of 3 years of comprehensive study and hard work on the part of the Senate and House Agriculture Committees, the administration, producer organizations, and private industry. I want to express my deep gratitude to my colleague, the gentleman from Illinois (Mr. MADIGAN) for his hard work and close assistance in the achieving of the results that we have before us today. He has been deeply involved in the development of this legislation and put forth a tremendous effort on the minority side of the committee in helping us reach our goals.

The development of this legislation has not been without controversy.

What has emerged in the form of the conference report, I feel, is legislation that addresses in an effective fashion the concerns that have been expressed by a wide spectrum of interests. The compromises incorporated into this conference report have had the effect of strengthening this legislation to the point that it now carries the support of a wide range of interested groups.

Three years ago, at the inception of the debate leading to this conference report, there was general agreement that the piecemeal collection of Federal disaster programs for agriculture was confusing and inequitable. Secretary Bob Bergland termed these disaster programs disasters themselves. The disaster payment program, a form of free insurance available only to producers of wheat, feed grains, cotton, and rice, was especially criticized.

It is an expensive system. It benefits producers of only six crops, and a disproportionate amount of its benefits go to certain higher risk areas of the country, thus encouraging production where it probably should not be encouraged. The disaster payments program is another example of the "public dole."

S. 1125 would change that. It would, through a creative public-private partnership, permit a nationwide, all-risk crop insurance program to become the primary form of Federal disaster protection for farmers. Rather than producers of only six crops being granted protection, all farmers in every county in the United States would eventually be given the choice of insuring themselves against natural disasters. Rather than a giveaway program, crop insurance requires farmers to responsibly anticipate their own capacity to bear risk and assume part of the cost of insuring themselves if they choose to do so.

These amount to substantial changes in public policy.

Agricultural producers are involved in a high risk business both in terms of economic swings and vagaries of natural phenomena. In a matter of days or even hours a natural disaster can wreak financial ruin on an individual farmer or perhaps an entire rural community. If disaster strikes, a farmer can lose not only his crop but also his equity in his land and the ability to continue in operation in the future. The seriousness of the need of private financial protection to farmers cannot be underestimated. The summer of 1980 has brought this forcibly to our attention as a result of record heat and drought in many areas of this country.

The Federal crop insurance program now in effect has remained essentially a pilot program even though it was first established over 40 years ago. Several factors which have prohibited program growth are addressed in S. 1125. Current law limits expansion of the program each year to a maximum of 150 counties and three additional commodities. Funds authorized or made available to the Corporation have been too limited to provide for even this limited expansion. Currently, over 400 counties have requested coverage from the Federal Crop Insurance Corporation. Due to significant losses during the early years of the program, the limits on expansion represented prudent public policy. However, now with over 40-years' experience and compilation of actuarial data, a more expansive approach is in order.

In brief, S. 1125 would provide farmers with insurance coverage of up to 75 percent of average yield. Coverage would be valued by a price elected by the farmer, the highest of which would be no less than 90 percent of projected market price. In order to encourage the widest possible participation, premiums charged for coverage would be subsidized 30 percent from public funds. The program would be made widely available. It would be sold through county ASCS offices and by insurance agents and brokers. Private companies would be encouraged to write all-risk crop insurance. To achieve their participation, the Federal Crop Insurance Corporation would offer reinsurance services to qualified companies.

Sound insurance principles would be strictly followed in insuring crops, whether directly by FCIC or through insurance written by reinsured companies.

Present limitations on the rate of expansion placed on FCIC would be removed. Every effort would be made to rapidly expand the number of counties where crop insurance is available. Under the report, a farmer would be allowed to select from at least two levels of coverage, 50 percent and 75 percent of his recorded or appraised average yield. As a rule of thumb, 50 to 75 percent of the average yield roughly represents sufficient production to cover the variable cost of producing most crops. The bill provides a premium subsidy designed to bring insurance protection within the financial means of all farmers and to guarantee sufficient participation in the program to make it successful. The

Federal Government would be required to pay 30 percent of the cost for crop insurance premiums covering 65 percent of the recorded yield.

By the end of the 1984 crop year, 99 percent of the acreage devoted to wheat, feed grains, cotton, and rice will be insurable. Moreover, producers of other crops will be offered the opportunity to insure their crops. Expansion into new crop coverage will be aggressively pursued. As the primary form of Federal disaster protection for farmers, crop insurance would replace the disaster payment program beginning with the 1982 crop year. The 1981 crop year will serve as a transition period, permitting the producers of those crops eligible for disaster payments to choose between disaster payments or subsidized crop insurance. The report would make applicable to the 1981 crops the farm disaster payment and prevented planting disaster payment provisions for wheat, feed grains, upland cotton, and rice of the Agricultural Act of 1949.

In 1981, a producer of any of these commodities would have the option of choosing between such disaster payments or participating in the crop insurance program provided in the bill under which the Federal Government contributes to the cost of the premium. The producer could obtain the protection of both only if he pays the full premium cost of the crop insurance program.

I mentioned earlier the role of private insurers in this program. Let me take just a few moments to expound on that. This conference report requires the Federal Crop Insurance Corporation to the maximum extent feasible, to use the delivery system of the private insurance industry to market and service Federal all-risk crop insurance on a commission or contract basis. Private industry can bring a wealth of expertise and well-trained personnel to the expanded, nationwide crop insurance program.

There are 25,000 to 30,000 private crop insurance agents across the Nation who could sell and service crop insurance. The report provides for the Federal Crop Insurance Corporation to make use of this valuable resource pool to implement the crop insurance program.

Provision is included in the report to assure that the crop insurance program will complement and will not unfairly compete with the private and State fire and hail insurance business. To this end the report provides that producers may elect to have deleted from Federal crop insurance policies any coverage against hail and fire risks and obtain equivalent hail and fire coverage from a private or State insurer.

For any producer who makes such election, the Federal crop insurance premium would be reduced by an amount equal to 40 percent of the prevailing average county insurance premium charged by non-Federal insurers for full coverage hail and fire insurance that provides the same amount of protection. However, a farmer's premium could not be reduced by less than 15 percent, nor more than 30 percent, of the full cost of Federal crop insurance coverage. A range is provided so as to accurately reflect the variety of risk associated with hail and fire in different parts of the country.

Up to now, private insurance companies have not been able to successfully write all risk crop insurance such as offered by the Federal Government. Several companies have tried, but failed after finding the uncertainties, risks, and losses too great. The report removes a constraint in current law which limits reinsurance proposals to a 20 county area and stands in the way of private insurance companies entering into reinsurance agreements with FCIC.

In addition, it would require the Corporation, to the maximum extent possible, to provide reinsurance to private insurance companies and Government entities that provide crop insurance to farmers under plans acceptable to the Corporation, and make available a test program of reinsurance to begin not later than with the 1982 crops. The Corporation would pay operating and administrative costs to insurers of policies that are reinsured to the same extent that such costs on the Corporation's policies of insurance are covered by the Corporation.

The conferees felt that Federal reinsurance was necessary to cover the risks of catastrophic losses such as those that arise from large scale droughts, floods, or freezes. I want to emphasize that this bill represents a good partnership between Government and the private sector, and is an example of "good government."

The report deletes the $12 million limit on annual appropriations to cover the Corporation's operating and administrative costs; authorizes annual appropriations to the Corporation to cover agents' commissions, Federal premium payments, direct costs of crop inspections and loss adjustments, and interest on Treasury notes; and authorizes the Corporation to obtain emergency funding whenever moneys available to the Corporation are insufficient to cover claims for loss indemnification.

For this purpose the Secretary of Agriculture could use the funds of the Commodity Credit Corporation whenever the Board of Directors of the Federal Crop Insurance Corporation requests such use of funds (the Secretary's authority to use CCC funds would expire 1 year after the date on which the authority is first used); and the Corporation could borrow from the U.S. Treasury to the extent provided in advance in appropriation acts.

The report also contains a number of changes in the funding provisions to assure that the Federal Crop Insurance Corporation will have the financial resources to meet the needs of the program. It increases the authorized capital stock of the Corporation from $200 million to $500 million and cancels all outstanding capital stock leaving the Corporation with authority to issue stock in the amount of $500 million as needed upon the appropriation of necessary funds.

In summary, the report provides a basis for a creative three-way partnership among farmers, Government, and the insurance industry. It represents the culmination of 3 years of development efforts by Congress, the administration, the insurance industry, and farmers.

It builds upon established institutions by utilizing 40 years of FCIC experience and the great resources and talents of the private sector. It will benefit farmers, the insurance industry, and the taxpayer.

Mr. Speaker, the Federal Crop Insurance Act of 1980 is among the most important pieces of legislation reported out of our committee this year. It puts on a sound basis the various programs necessary to aid farmers when disaster strikes, such as this year when drought has taken a heavy toll on our agricultural economy. I urge my colleagues to join in supporting this measure. It is needed and it will afford the best protection possible for farmers and the taxpayer.

I urge the Members to join me in voting for this measure.

□ 1340

Mr. MADIGAN. Mr. Speaker, I yield such time as he may consume to the distinguished ranking minority member of the Committee on Agriculture, the gentleman from Virginia (Mr. WAMPLER).

Mr. WAMPLER. Mr. Speaker, I rise in support of the conference report to S. 1125, a bill to improve and expand the Federal crop insurance program. I wish to associate myself with the remarks of my distinguished colleagues and urge swift passage of the conference report.

Mr. Speaker, there is a need for this legislation. The current disaster payments program, established in 1973, has helped many farmers hard hit by natural disaster.

Nevertheless, the program has been strongly criticized as costly and inequitable. Only six major farm crops, which also benefit from price support programs, are presently eligible for disaster payments—wheat, cotton, rice, corn, grain sorghum, and barley. Also, available coverage is generally inadequate, protecting only about one-third of a farmer's production costs. This is not enough protection to meet the needs of our farmers. This legislation should provide that protection.

As agreed to in conference, S. 1125 is designed to replace the current inadequate disaster payment program. It provides for expansion of the present Federal all-risk crop insurance program by making such insurance available on all commodities in all counties of the United States, and it insures that the program is affordable to all farmers by requiring the Federal Crop Insurance Corporation to pay a portion of the premium cost.

I am particularly pleased that the conference report seeks to provide for broadened participation by the private insurance industry in delivering crop insurance to farmers, either on a commission basis or through reinsurance programs.

Mr. Speaker, this legislation is a positive step toward improving current disaster loss assistance while meeting the insurance needs of our farm sector, and I urge support for the conference report.

In conclusion, I wish to express my

concern about an investigation of certain personnel in the Federal Crop Insurance Corporation and personnel practices and policies in effect at that agency since 1977, which investigation was conducted by the Office of Investigation of the U.S. Department of Agriculture.

Under general leave to revise and extend remarks, I wish to insert a copy of a USDA news release dated August 12, 1980, which noted that two of the top officials of FCIC were recommended for removal "for allegedly engaging in prohibited or irregular personnel practices." The two individuals were the FCIC deputy manager and the assistant manager for administrative management.

The news release also indicates that administrative action against a third official, the FCIC manager, was being held up "pending a ruling on his application for disability retirement." However, according to news reports over the weekend, the application of the FCIC manager for disability retirement has been denied by the Office of Personnel Management.

Subsequently, a fourth FCIC management official was proposed for removal.

The USDA Office of Investigation has forwarded a copy of a report of investigation covering this matter. The report is substantial in detail, and is shocking in its content.

The investigation and the special review summarily disclosed "a number of unlawful personnel management actions perpetrated under either the joint or independent direction" of the FCIC manager, deputy manager or the assistant to the manager.

I commend Mr. COLEMAN and Mr. GLICKMAN of our committee who have pursued this matter vigorously, and I commend our colleagues from the other body, Senators DOLE and ZORINSKY, who were instrumental in insisting that the investigation of FCIC misconduct and mismanagement be thoroughly conducted.

The investigation and its results do not bear directly on this conference report, which I support, but it does reflect adversely in my opinion on the conduct of certain administration officials, their policies and practices.

It is a matter which I hope the Congress will pursue further in both bodies. It is a matter of concern in the House to the Committee on Agriculture, the Committee on Post Office and Civil Service, and the Committee on Government Operations.

USDA PROPOSES REMOVAL OF FEDERAL CROP INSURANCE OFFICIALS

WASHINGTON, August 12.—Winston L. Wilson, deputy under secretary of agriculture for commodity programs, today proposed the removal of two officials of the Federal Crop Insurance Corporation (FCIC) for allegedly engaging in prohibited or irregular personnel practices.

The two officials are W. Otto Johnson, FCIC deputy manager, and Roy L. Alton, assistant manager for administrative management.

Administrative action against a third official, FCIC manager James D. Deal, is being held up pending a ruling on his application for disability retirement.

All three were relieved of their duties and responsibilities July 3 and placed on administrative leave pending completion of an investigation into allegations of improper personal conduct and personnel practices in the FCIC.

The results of the investigation are contained in reports prepared by USDA's Office of Personnel and Office of the Inspector General.

"None of the allegations against these officials reflect on the basic mission of the FCIC," said Wilson. "They are strictly administrative matters.

"There has been and will be no interruption in the services that the FCIC has provided to over 250,000 farmers for more than 40 years, nor will there be any changes in new crop insurance legislation," Wilson said.

Wilson also said that Everett Sharp, former head of actuarial services, will continue as acting manager of FCIC. Roland Wentzel, former assistant to the under secretary for International Affairs and Commodity Programs, will remain acting deputy manager.

Johnson and Alton have 10 days to respond to the proposals, during which time they will remain in nonduty status with pay. If a final decision is made to implement the proposal, the decision will be effective in not less than 30 days, Wilson said.

Mr. JONES of Tennessee. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. BALDUS), a member of the subcommittee.

Mr. BALDUS. Mr. Speaker, I, too, would like to commend both the chairman of the subcommittee and the ranking minority member for their patience in the production of this bill.

Mr. Speaker, I urge your support for the conference report on S. 1125, providing for an expanded and improved Federal crop insurance program for farmers.

When the 95th Congress began, I was one of the few cosponsors of this legislation. It is through the long hours of dedication and hard work put in by my friend from Tennessee, Congressman ED JONES, that we have the opportunity to vote on this conference report today. Certainly, at the beginning of this Congress the smart money was saying that this bill would not ever get out of committee.

But this legislation is needed by our farmers. It is imperative that our current program of incomplete insurance offering partial coverage to selected farmer-clients and backed up by emergency give-away disaster programs be updated and replaced.

By utilizing some of the funding which has traditionally gone into the disaster programs for farmers, we can maintain an effective reinsurance program available to all farmers in all counties in the country and covering all crops and all risks.

Farmers will be willing to pay the premiums for this coverage. Premium payments can easily be worked into the budget of expenses for most farms. The regularity of the payments adapts well into a well-managed farm.

But, more importantly, a farmer who suffers a disaster will receive direct payment for his losses according to the premiums which he pays. No longer will farmers just be given the opportunity to borrow disaster money and be saddled with the responsibility of extending their credit further and further.

Loans and debts have become an all too standard part of American agriculture. As forces push farmers deeper into debt, they soon require more and more money just to keep their farms afloat.

The consumer will gain from the new stability which our farms achieve under this new insurance program. Ultimately, for less money than is now spent on disaster programs, they will benefit from the strength the program gives to our farms.

I urge my colleagues to vote for the conference report.

Mr. MADIGAN. Mr. Speaker, I yield 5 minutes to the gentleman from Missouri (Mr. COLEMAN).

Mr. COLEMAN. Mr. Speaker, it has been mentioned earlier that this agency has been fraught with a number of personnel problems since the last time the House had this bill before it. I just want to take a few moments to discuss those problems.

I think out in front, I ought to say that I voted against this bill in committee when it got out of the committee by a vote of 21 to 20. I voted against it previously, and I will vote against it today. Separate from that, I will say that I am voting on the merits of the bill, but I do want to discuss some of the personnel problems that the FCIC has had.

The highly irregular, if not illegal, personnel practices of the agency have been investigated by the Justice Department and by the Inspector General of the USDA. So far we have seen four—count them, four—of the top administrators of this agency removed by the Department subsequent to the allegations that have been made in the press and through this investigation. Those administrators include the very too individual in the FCIC, the Deputy Manager, the Assistant Manager for Administrative Management, and the FCIC Personnel Director. All have been fired from their posts.

Mr. Speaker, one thing which bothers me is that in one instance the Manager was given a preview of the findings of the Inspector General's report before it was made public. This was done and has admittedly been done by a member of the Secretary's staff prior to its publication, and then, as to that particular individual, it was suggested that he seek disability retirement.

In fact, recently he was turned down on that by the Office of Personnel, but not after apparently an officer of the Secretary had been involved in counseling him to do so and was doing it prior to the publication of this particular report. That shows the lack of leadership and the irregular practices that this officer and others in that particular agency conducted.

I mention this, as I said, not because I am counseling any Member to vote against this particular conference report but because I think it is necessary for those of us on the Committee on Agriculture and indeed in the whole House to recognize that there is a problem with the administration of this

agency. As we give them millions of more dollars to spend and give them authority to hire hundreds of more people at this very time when the agency is undergoing such a transition without any leadership, it is very important for us to maintain our oversight function.

So because of that I have asked that we have a hearing on some of these personnel practices and have representatives of the Department in to answer questions as to what really did happen.

□ 1350

We have an Inspector General who is going to report back to our committee on a continuing and an ongoing investigation. I would just simply say that I would like to work with Chairman JONES as we pursue this matter to insure that our committee and the Subcommittee on Conservation and Credit realize the importance of the new, additional responsibilities and duties that we are giving to this agency, and that we follow up with the oversight function which is necessary, I think, to keep them on track.

I would like to have the chairman respond, if he would at this time, to a question, and that is: Does the chairman intend to have periodic oversight hearings on the Federal Crop Insurance Corporation in the next year, as I assume this bill will pass and become law, and I would like to get an affirmative answer from the chairman that we will have those hearings.

Mr. JONES of Tennessee. If the gentleman will yield, my answer to the gentleman is the same answer that I think I gave to the gentleman off the floor one day: That we will continue to have some hearings. In fact, the truth of the matter is that as soon as we can get the Office of the Inspector General's attention, we are going to invite him back up here for a meeting of the considerations that the gentleman just raised.

Mr. COLEMAN. I would also stress to the chairman and hope that he will join with us in pursuing an oversight function next year as we return, after the new authority is on the books and they are attempting to administer this program. It is going to be difficult, at best, and, with four top administrators gone, I think it is wise that we on the subcommittee and the committee make sure that the agency realizes what our intent is by the passage of this legislation today.

Mr. JONES of Tennessee. If the gentleman will yield further, I assure him that this will be done. I am just as interested and concerned as the gentleman is about the administration of the Federal crop insurance program.

Mr. COLEMAN. I thank the gentleman for his response.

Mr. JONES of Tennessee. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. PANETTA), a member of the subcommittee.

Mr. PANETTA. Mr. Speaker, I urge the House's support today for S. 1125, the conference report on a bill to amend the Federal Crop Insurance Act. This measure which the Agriculture Committee and the Subcommittee on Conservation and Credit, on which I serve, have been working on for over 2 years, represents a significant step toward Federal restraint and a return to individual responsibility.

This legislation will put an end to a program of disaster assistance which is itself a disaster. It will expand upon a proven crop insurance program and thereby make a significant contribution to the reduction of uncertainty and income instability on the farms across this Nation.

We have labored long and hard on this proposal which is before the House today. We have taken this issue to the field and have talked to farmers across the Nation. It is an equitable and financially responsible approach to the very real problems facing farmers.

Perhaps more than any other profession, farming involves risks and uncertainties completely beyond the control of the farmer. An entire season's work and investment can be washed away in a matter of days. An entire life's work in some cases can be withered by drought or destroyed by disease while the farmer stands helplessly by. It is the nature of the risk, which works itself in particularly swift and severe ways, that persuaded this body to crease a disaster assistance program. Our experience with that program since its enactment in 1973 has taught us, however, that flatout indemnification for farmers' losses due to disaster is not a responsible use of taxpayers' funds.

The cost of the disaster assistance program has risen to about one-half billion dollars a year. It covers the six basic commodities and admittedly works as an incentive to farmers to comply with Government set aside requirements. But the program has proved to be very costly and to lack effective control or fiscal accountability. In addition, it simply does nothing to meet the needs of farmers of crops other than the basic commodities.

Our objective is clear—to help farmers reduce the uncertainty and risk involved in farming and to level out the peaks and valleys in farm income that result from the uncertainties of nature. The most rational and effective means of accomplishing this worthy goal is to provide a comprehensive crop insurance program in which a farmer may elect to purchase coverage. This approach is consistent with the fiercely independent nature of our farmers and ranchers who do not want any Government hand-out but only the opportunity to purchase affordable protection against disaster.

In the long run, I am convinced that this legislation will provide an all-risk crop insurance program to agriculture producers at a lower cost to the Federal Government than the present commodity disaster program and the crop insurance program which it will replace. It will provide more widespread protection from disaster and thus more stability in the agricultural sector.

The present disaster assistance program is itself a disaster. It is an unfortunate reality that there are farmers in this country who farm disaster programs by planting crops on marginal land that has a history of disaster. There is no incentive not to do this because if a crop is wiped out the Government will pay for it. It is time to put a stop to this kind of abuse by creating a crop insurance program that ties premiums to risk.

The Federal Crop Insurance Corporation (FCIC), has a proven track record. It has refined and improved its operations over the years. Today it is ready to take on the challenge of providing an all-risk, all-crop insurance policy. Over the past 30 years the FCIC has extended $21.5 billion worth of insurance coverage. It has collected $1.15 billion in premiums and paid $1.13 billion in indemnity for a payout of 98 cents on each dollar of premium received. It makes good sense to expand upon this program and to put an end to the disaster assistance program.

The key provisions of this legislation are simple and straightforward. It expands a good program and phases out a bad one. This legislation represents a healthy shift in policy that will benefit our economy and our farmers as well. It turns away from the idea of indiscriminate absorption of farmers' loss and moves toward self-help where farmers themselves share the cost of the program. The idea is a responsible one. It is closely tied to traditional notions of Government as partner rather than provider. I urge your support for the conference report.

Mr. MADIGAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. Mr. Speaker, I rise in support of the conference report, and again I want to add my commendation to both the chairman and the ranking minority member on the subcommittee for the really superwork they have done on this very difficult piece of legislation.

Mr. Speaker, I agree with my colleagues who have spoken in favor of this legislation.

This legislation and conference report is designed to replace the current complex and inadequate disaster payment program. It provides for expansion and improvement of the present Federal all-risk crop insurance program by authorizing its availability on all commodites in all counties of the United States.

There is, however, one provision in the legislation and conference report that I would like to mention. This provision, which I offered and the House Committee on Agriculture accepted, authorizes the FCIC to conduct pilot insurance programs on such things as livestock poisoning and disease, destruction of bees due to the use of pesticides and other unique problems of special risk related to agriculture.

Livestock diseases such as brucellosis can be devastating. Many of us have also been contacted by beekeepers who are concerned that agricultural chemicals, improperly applied, are destroying colonies of honey bees. Because of the seriousness of these losses and the cost to

the Government of indemnity programs, I believe that diseases such as brucellosis and bee colony losses due to improper chemical risks should be considered as insurable risks under the Federal crop insurance program. I am convinced that it would be less expensive for the Government to do so.

I join with my colleague in asking the House to approve this conference report and this legislation so that we can reduce Government costs.

Mr. JONES of Tennessee. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. HANCE), a member of the subcommittee.

Mr. HANCE. Mr. Speaker, I rise in opposition to the conference report. I opposed this in the subcommittee and in the full committee and on the floor and on the conference committee for several reasons.

One, I think that you are going to find that it is going to be more costly. There are budget estimates that will not be. But my prediction is that within 4 years you are going to see a lot more money expended in this program than ever has been spent in the disaster program.

I have the utmost respect for the chairman of the subcommittee and for the ranking minority member, and I enjoyed working with them. In fact, I even agreed to work out a compromise on the bill. My idea of a good compromise on this bill would be to kill the bill and to eliminate it, but they did not agree with me at the time.

The other thing I would like to point out is that the Federal Crop Insurance Corporation, at this time is being investigated concerning irregularities and illegalities that have been going on in that agency. It is a Government agency. The top four people have been asked to step down because of a scandal. Now we are passing a bill that will give more power and more authority to that agency. I think it is a bad policy.

The other thing, the most important thing and the reason I would urge the Members to vote against this bill, is that the "sunset clause" that was originally in the bill was eliminated in the conference committee. For us to give this agency that has a scandal over it at the present time additional powers without a sunset provision holding them accountable is unwise and bad policy. I would urge a no vote on the conference report.

Mr. MADIGAN. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. STANGELAND).

Mr. STANGELAND. Mr. Speaker, I rise in support of this bill. We all recognize the need to provide adequate insurance coverage at a reasonable cost to the farmer and the Government. The overriding concern of those who had reservations about this legislation was the lack of provisions in the bill as reported by the Agriculture Committee to insure private industry's participation in the expanded program. The House adopted the Jones-Madigan amendments requiring the administration to bring the private sector into the program wherever possible. At that time, Members expressed apprehension about the administration's commitment to carrying out the intent of the House to have the private insurance sector participate as fully as possible in the program. I shared that concern. However, I have been informed that the private sector can live with the bill which has emerged from conference, and I intend to support the conference bill.

Although I intend to support this measure, I must say that any apprehension which I had about the administration's good will was exacerbated by a letter which I just received from the Secretary of Agriculture. Although we recognize that the present program is piecemeal, we must live with it until the new program goes into effect. Under the current program many crops were neither included in the crop insurance program nor the disaster payment program. As a consequence of this reality, earlier this summer I introduced legislation necessitated by the fact that 14 counties in my district in northwestern Minnesota were declared a disaster area due to drought conditions. These 14 counties provided over two-thirds of the sugar beet and potato crops in Minnesota in 1979 and also provided over 60 percent of the State's flaxseed and sunflowers, yet none of these crops are currently eligible for disaster payment assistance and only a limited number of the farmers growing these crops had the option this spring of purchasing Federal crop insurance.

My bill, H.R. 7794, would expand the disaster payment program for the 1980 crop to include flaxseed, soybeans, sugar beets, sunflowers, potatoes, and pinto beans. I have urged Chairman JONES to schedule consideration of my bill at the earliest possible date. During its consideration I intend to expand its coverage to grasses, in particular timothy and bluegrass and oats.

Assuming that the Secretary shared my concern over the unfortunate situation of these farmers, I wrote to him to ask his support of my bill. At this point, I would like to insert in the RECORD a copy of the Secretary's response to my request:

DEPARTMENT OF AGRICULTURE,
Washington, D.C., September 10, 1980.

Hon. ARLAN STANGELAND,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN STANGELAND: This is in response to your recent letter requesting support for H.R. 7794, a bill "to authorize the Secretary of Agriculture to provide disaster payments to producers of the 1980 crops of flaxseed, soybeans, sugarbeets, sunflower, potatoes, and pinto beans for crop losses caused by natural disasters." You also indicated your intent to offer an amendment to the bill to include grass seeds.

We believe the Administration's comprehensive all-risk crop insurance legislative proposal, that we hope will be soon approved by Congress, is a much preferable alternative to increasing Government handouts to persons who suffer because of natural disasters. While your bill deals with a few crops affected by this year's drought, there are more than 200 crops in the country adversely affected by bad weather not now covered by the disaster relief payments. It is our intention to phase out all of these disaster payment schemes and replace them with this new, broadened Government sponsored insurance program.

If Congress acts on the insurance program before the first of October, we will be offering insurance contracts on most major crops next Spring and on additional crops as data is accumulated.

Sincerely,

BOB BERGLAND,
Secretary.

Although I hope that the new program will preclude a piecemeal approach to disaster coverage, I cannot believe the cavalier, callous attitude toward thousands of American farmers who have suffered severely due to natural phenomena over which they had absolutely no control. Farmers have already suffered from the grain embargo imposed by the administration, and now natural disasters are something which we are asked to accept.

I do not consider disaster payments to farmers for whom a significant source of income has been destroyed as handouts. My bill limits payments to 60 percent of normal value, an amount which barely recovers the farmer's cost. He is still left with no income from his crop. If this is the attitude of the Secretary of Agriculture whose primary interest should be the American farmer, then I have grave doubts that the administration will look after the private insurance's interest any more than it has the farmers.

□ 1400

Mr. Speaker, I yield back the balance of my time.

Mr. JONES of Tennessee. Mr. Speaker, I yield 4 minutes to a member of the subcommittee, the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Speaker, first of all, I would like to commend our subcommittee chairman (Mr. JONES of Tennessee) and the ranking minority member, the gentleman from Illinois (Mr. MADIGAN). In my opinion, this bill would have never come out of our full committee if it had not been for the tremendous admiration that the members of the committee have for both our committee chairman and the ranking minority member.

I hope as we look at this bill, we will look at exactly what it does, because I think we should realize what we are doing as we pass this legislation.

At this time Federal crop insurance is subsidized to where the taxpayer pays for the cost of administration, selling and settlement cost. This is approximately 20 percent of the total cost of the Federal crop insurance program, including the payments made to the farmers.

This bill would add to that 30 percent of the premium cost of Federal crop insurance, which is to say that under this bill the taxpayers will be paying roughly half of the total cost of Federal crop insurance, at least up to 65 percent coverage.

Now I ask the Members how it is that we are going to start doing this for one segment of our society and say to small business, "When you come to us, you do not get any subsidy for your insurance

which you also need," or how we say it to the senior citizen who is living on very limited income and has to pay all of their own insurance.

I think we are taking a very, very, very dangerous step when we say that the taxpayers are going to subsidize not only the cost of administration, selling and settlement, but also 30 percent of the premium cost.

I absolutely agree that we need to expand our Federal crop insurance program. I agree it should be for the other crops that are not covered, but there is no reason that it cannot be done and still have it pay the cost of the program. In fact, in my area where this program is very successful, it is successful because they have an adequate sales effort and are getting out and letting the farmer know exactly how good it is and the opportunity that exists, for those who use it.

The previous speaker said farmers are not interested in getting a handout. That is just why I am here before the Members today. My farmers do not want a handout. My farmers believe that they indeed should be expected to pay the fair cost of the premium of the insurance, particularly when we have a 20-percent administrative subsidy.

We have tried to bring private industry into the act. I question whether we should have a subsidy that applies therein as well. We talked about the disaster program. Absolutely there are problems with the disaster program. But should we not have the courage to address those problems individually? Should we have to say that the only way we can correct something that is wrong is putting in some other big subsidy for some other program?

I believe we should have the courage to address the problems that exist with that program, and second, I hope we will realize that when we have a farm program we have to have incentives for people to come into the farm program; and in the past, one of those incentives has been the disaster program. If we have a farm program and the disaster program is no longer in effect, we are somehow going to spend some money to give some incentive for farmers to participate in our farm program.

Coming from a farm State as I do, I still believe that if we are concerned about our Federal budget, if we are concerned about the taxpayers, then we should have the courage to address the disaster program, make the corrections that need to be made in it, and to have a Federal crop insurance program which is adequate, which provides for coverage of the various crops, which provides for coverage in the various geographical areas, but in which the farmer pays the fair share of the cost and does not ask for a handout from the taxpayer.

Mr. MADIGAN. Mr. Speaker, I yield 5 minutes to the gentleman from Iowa (Mr. GRASSLEY), and pending that, I yield such time as he may consume to the gentleman from Illinois (Mr. PORTER).

Mr. PORTER. Mr. Speaker, I rise in opposition to the conference report.

Mr. Speaker, perhaps I would not arise on this conference report today if I were not changing my vote from the original bill on Federal crop insurance considered earlier this year. Agriculture is not a subject of strong self-interest in my suburban district, although its importance to the country as a whole obviously cannot be overestimated.

But I am changing my vote, and it is not because the sunset provision contained in the House bill has been dropped in the conference or because the special premium subsidies for small farmers contained in the original bill cannot be found in the conference report. These are important differences, and I am disturbed at their deletion, but they are not strong enough considerations to be supportive of a 180-degree turn.

No, Mr. Speaker, I have simply gained a better perspective on this entire subject matter in the months that have intervened. I understand better today than I did then, the implications of this legislation for our private enterprise system, and this is more than sufficient to persuade me to change my vote.

Of course we want to protect our farmers against the vagaries of nature. Of course we want to insure that the family farm survives. Of course we want to maximize production to insure food not only for ourselves but for the people of other countries unable to match our agricultural resources or technology.

But do we wish to do this by extending yet again the reach of the Federal Government—a new program into a new area, displacing private industry still further, ultimately costing more, if not to the farmer, to all the American people who have to pay for the subsidies? I think not.

It is argued that private insurance sources are still able to compete. For how long? Does anyone doubt that the FCIC, perhaps not consciously, will see private industry as its competitor in the field and take all steps necessary, quietly and subtly of course, to clear the field of competition. "Partnerships" of this type between Government and industry, a sharing of the field, are fiction. Government always wins out and preemption is always the ultimate result. And when that happens, will we really be better off? Will greater efficiency have resulted? Again, I think not.

I regret my earlier vote and now urge my colleagues who supported the bill earlier, as I did, to reconsider. We should oppose this extension of Federal power into yet another broader area better left to the competition of a free marketplace.

Mr. GRASSLEY. Mr. Speaker, I rise in opposition to the conference report.

Mr. Speaker, I find it necessary, as I did in the original debate on this bill, to rise in opposition to it; and I do it with a full understanding that if there is going to be a bill on this subject, this bill is probably as good as a compromise as could be worked out.

In regard to that, I have to compliment the gentleman from Tennessee and the gentleman from Illinois for working to get a rational approach to what is considered a Government-private sector partnership in this area. I guess I would have to say that my concern is that this Government-private sector partnership may result in the private sector having minority voting rights in the partnership and farmers perhaps having no vote at all.

□ 1410

If it is going to be a partnership, this may be the best that can be worked out in this area in this Congress, but I find fault with the premise that we had to arrive at that conclusion at this point in the process of trying to deal with the problems of disaster programs and insurance programs for crops. I have some grave reservations about the legislation which a Federal Government-private sector partnership does little to resolve.

I honestly feel that when there is such a partnership between Government and the private sector, as in the case with other insurance programs like the flood insurance program, it is not long until the Government dominates that portion of the insurance industry it is subsidizing. Too often that subsidized program in and of itself is used as a lever to get Government compliance in many other areas as well. I am sure the gentleman from Tennessee does not want to use this as a lever for other Government intervention into agriculture practices or into insurance coverage, contracts, and so forth. But let me assure the gentleman from Tennessee that in my opinion other partnerships between the insurance industry and the Federal Government have ended up in just such domination by Government in the industry it subsidizes, plus it is being used to accomplish greater public policy goals that may offend the independence of the farmers whom it is presumably designed to protect.

I might suggest to the gentleman that in the area of flood insurance there have been some land use policies that could not otherwise have been adopted by this Congress which have been pushed on to private industry and private property interests, under the guise of Federal subsidy of uninsurable risks for flood prone areas. How many Members of Congress who voted for that measure intended such result?

So we have the problem, do we not, of how we are going to solve this Federal relationship? When the Federal Government gets involved, I submit its goal is to dominate. There is a good record here by the private industry of offering hail-fire insurance coverage in agriculture. By and large farmers have been satisfied with the protection offered and the service received on claims.

When we have such a good record by the private sector, then there ought to be an overwhelming reason before the Federal Government should be brought in to become a partner and/or dominate. That presumption has not been proven as far as I am concerned, and I hope this view is shared by a large number of Members in this House.

Yet I do not find the people that this program is supposed to serve, the farmers of the State of Iowa, asking for this massive infusion of Government involvement. In fact, apart from the serious management problems that have surfaced, the message I am getting is one of general satisfaction on the part of farmers and the people of Iowa with the program for disaster and with the program for private insurance on hail, recognizing that there is room for improvement of both. I would like to have that consideration be given utmost concern by this Congress before we go as far as this bill does.

The management problems at the Federal Crop Insurance Corporation alone should cause us to put a hold on this bill. The recent investigations of FCIC have resulted in removal action against the top four officials of the Corporation. We should not be mandating massive new authority to this agency until we are certain all those problems have been straightened out.

In my opinion there are parts of the State of Iowa which will feel the effects of this legislation greater than others. I have traveled throughout the State and talked to farmers and people involved in the insurance industry and on balance I do not believe that this particular legislation is in the best interests of those in the entire State of Iowa who would be most directly affected by it.

I urge opposition to the conference report.

Mr. JONES of Tennessee. Mr. Speaker, I yield 2 minutes to a member of the subcommittee, the gentleman from Kansas (Mr. GLICKMAN).

Mr. GLICKMAN. Mr. Speaker, I rise in support of the conference report.

I want to commend the gentleman from Illinois and the gentleman from Tennessee for their work.

This is a fairly controversial piece of legislation, because as has been said so many times before, it amends the existing programs involving disaster payments, which has heretofore been limited to a few basic crops, this bill expands such coverage to a kind of comprehensive crop insurance program subsidized in part, which would be offered for practically every crop that is grown in America.

Therefore, people in many parts of this country who are not eligible for the disaster program will be eligible for insurance under the Federal crop insurance program.

Now, I did sign the conference report. I was one of the Members, however, who worked with the gentleman from Missouri (Mr. COLEMAN) concerning the improper behavior by some of the senior members of the Federal Crop Insurance Corporation. As has been already said, there has been some disciplinary action taken and that investigation should not be impeded by failure to pass this crop insurance bill. This bill is too important for the farmers of America and actually is one of the most significant pieces of legislation that we can pass for our farmers, because for the first time it will provide reasonable production against peril and loss; but I do want to serve notice on the Federal Crop Insurance Corporation that our subcommittee and our committee is going to hold their feet to the fire to see that they administer this program properly.

Unfortunately, an amendment I had offered in committee which provided for a sunset to this bill was not agreed to in conference, but even though we do not have a sunset on this bill, I expect and will push very strongly for continuing oversight hearings to make sure that the Federal Crop Insurance personnel are capable and competent to manage this new and very expansive program; but I do not want to let that take away from the nature of the program itself. This is a good bill for farmers all over America and I urge its passage.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at the outset, if I may, I should like to have the attention of the distinguished gentleman from Tennessee, the chairman of the Subcommittee on Conservation and Credit.

Mr. Speaker, section 104 of S. 1125 requires that FCIC reimburse private insurance companies for the administrative and program expenses incurred by them "under terms and provisions and rates of compensation consistent with those generally prevailing in the insurance industry." Later, in the same section, reference is made to the fact that licensed private insurance agents and brokers "shall be reasonably compensated" for their successful efforts to sell Federal all-risk crop insurance policies.

I interpret the words "shall be reasonably compensated" to mean that private insurance agents and brokers are to be compensated for their services according to terms and provisions and rates of compensation generally prevailing in the insurance industry for similar services. Such an interpretation tracks the language in section 104 regarding the compensation of insurance companies. It also reflects the congressional intent to provide the same basis for computing the compensation of both private insurance companies and private insurance agents and brokers.

So my question is this: Does the Congressman from Tennessee accept this interpretation as accurately reflecting his understanding of the intent of the agent compensation provisions of section 104?

Mr. JONES of Tennessee. Mr. Speaker, will my friend, the gentleman from Illinois, yield?

Mr. MADIGAN. I would be happy to yield.

Mr. JONES of Tennessee. The answer is yes.

Mr. MADIGAN. Mr. Speaker, I want to thank the gentleman for his assistance.

Mr. Speaker, the purpose of this legislation is to lay the base for replacing the inadequate, overlapping, and complex and embarrassing farm disaster assistance programs now in effect, and which some of the speakers here want desperately to continue. Currently, the biggest part of our disaster aid goes to the producers of a half-dozen commodities in only a few States. By revising the Federal crop insurance program, taxpayer dollars can be spent more efficiently to provide natural disaster protection nationwide to producers of all commodities, rather than just a few in just a few areas.

The seriousness of the need to provide adequate financial protection to farmers cannot be underestimated. A natural disaster can bring about financial ruin on an individual farmer or an entire rural community within a matter of days or even hours. If disaster strikes, a farmer with a large annual operating loan for the purchase of seed, fertilizer, chemicals, fuel, and labor may not only lose his crop, but also equity in his land and the ability to continue his farm operation the next year.

S. 1125, as agreed to in conference, will meet the financial protection needs of our agricultural sector. The bill amends the Federal Crop Insurance Act of 1938 to provide for the expansion and improvement of the present Federal all-risk crop insurance program by authorizing its availability on all commodities in all counties of the United States. In order to insure that the program is affordable to all farmers, the legislation requires the Federal Crop Insurance Corporation to pay a portion of premium costs. The bill includes reinsurance provisions which will enable the private insurance industry to offer a comprehensive all-risk insurance policy to farmers, and it also provides for phaseout of the disaster payment program in 1981 as crop insurance is made generally available to producers throughout the country.

I would like to point out that the cost of the expanded crop insurance program would be about the same as the cost of the current limited Federal crop insurance program and the present embarrassing disaster payment program combined. Furthermore the present crop insurance program and the current disaster program combined offer only $6.1 billion worth of crop protection to farmers. This legislation would provide an estimated $15.2 billion worth of crop protection by 1985.

This legislation envisions utilizing the private insurance sector to the maximum extent possible in delivering this much needed program to farmers. Producers could elect to purchase hail and fire-risk coverage from the private sector, have such coverage deleted from the Federal policy, and receive a premium reduction on the Federal policy.

In the determination of the amount of the premium reduction, the conference agreement sought to reflect the various degrees of risk associated with hail and fire in different areas of the country while also insuring that the Federal all-risk policy would not compete unfairly with the private hail and fire policies. Thus, the conferees provided a flexible range for the determination of the amount of the premium reduction so that in areas of high risk, the amount deducted from the premium would be greater than 25 percent and in areas of

low risk, the deduction would be less than 25 percent. I might add that this provision of the conference agreement has the support of the private insurance industry.

Mr. Speaker, farmers experiencing financial loss due to crop damage from insects, diseases, or natural disasters will be adequately protected by the provisions of this legislation. It is a significant step toward simplifying current disaster loss assistance, and I feel it will provide the means to best serve the insurance needs of our farm sector. Therefore, I urge my colleagues to vote for the passage of the conference report.

□ 1420

I appreciate all of the kind remarks that have been made about the gentleman from Tennessee (Mr. JONES) and myself, by Members on both sides of the aisle.

Mr. Speaker, I reserve the balance of my time.

Mr. JONES of Tennessee. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. STENHOLM), a member of the Committee on Agriculture.

Mr. STENHOLM. Mr. Speaker, I rise again in strong opposition to the conference report before us. I have opposed this bill in committee and opposed it on the floor and I still oppose the bill.

I want to commend the gentleman from Iowa, Mr. BEDELL, for the remarks he made and associate myself with his very good description of why we should oppose this conference report.

I want to amplify just a little further on some of his remarks. It is true we could have had a better Federal Crop Insurance Program to meet the needs. I was on the Texas ASC Committee when the original proposal came down and it was much better than the proposal we are about to act on in this House.

That proposal was much better for two major reasons. One, it provided for getting the insurance out to the local farmers in a manner which would have been much better than what we are about to do because it associated the ASCS system in a more direct manner for serving our farmers' insurance needs.

Second, we did not address the basic problem that we now have with this insurance program, the tremendous costs. I think that in the years ahead we are going to find that the cost of this is going to be much greater. The additional $15 billion in coverage, who is going to pay for that? There is no free lunch in the country today.

We are creating another giant federal bureaucracy. That is the best way to say what we are doing. Again, when the people of America are asking us to make our Government smaller, we, by passing this legislation, are expanding another Federal agency that is going to have to grow in leaps and bounds if it is going to serve our farmers.

I predict that those in the agricultural communities who are supporting this legislation today, when our farmers come back to us in the years ahead, when we find out that it is not serving the needs of our farmers, and it is costing the taxpayer tremendously, we are going to wish we had done a better job, when we had the chance, than what we have done in putting together this package.

I ask you to vote "no."

Mr. MADIGAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES of Tennessee. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. AKAKA), a member of the Committee on Agriculture.

Mr. AKAKA. Mr. Speaker, I rise in support of S. 1125.

I commend the subcommittee chairman from Tennessee (Mr. JONES), the ranking minority member from Illinois (Mr. MADIGAN), and the full committee chairman, from Washington (Mr. FOLEY) for their outstanding efforts in the formulation of this comprehensive piece of legislation over a 3½-year period. The Federal Crop Insurance Act of 1980 contains significant improvements for disaster crop insurance.

One of the significant inclusions is for a public-private relationship which will better provide all-risk, all-crop disaster insurance to farmers.

Another outstanding inclusion is the provision for crop insurance or reinsurance of agricultural commodities in the Trust Territory of the Pacific Islands in the same manner as for producers in the States.

Mr. JONES of Tennessee. Mr. Speaker, I yield my remaining 2 minutes and 30 seconds to the gentleman from Iowa (Mr. HARKIN), a member of the subcommittee.

Mr. HARKIN. Mr. Speaker, I rise in support of this bill. I have worked for 3 years with the chairman of the subcommittee on this legislation, and I also consider it a very significant piece of legislation for our farmers.

My interest in this legislation was heightened in 1977. That year, one of the worst droughts that ever hit Iowa struck our farmers. My area, Southwest Iowa, was especially hard hit, and I saw how poorly the disaster payments program worked. At that time farmers were reduced to getting maybe 5, 10 bushels an acre for their corn yields. At the same time, under the disaster payments program, they were getting $1 a bushel for their corn up to 60 percent of the average yield. That was it.

If the yield, however, dropped to just one bushel above that cutoff point, they got zero. They got absolutely nothing.

At the same time, everybody that had soybeans planted got zero, because soybeans were not covered under the disaster payments program.

So as a result of that drought in Iowa in 1977 the Farmers Home Administration and the SBA had to come in there with over $300 million in extra money just to help out the farmers.

So let us look at what this bill would do with the same situation happening this year. Take that "typical" farmer. The target price this year is $2.35. First of all, you have to have a yield reduction to 60 percent of average yield. Then you get paid at one-half the target price for each bushel below that up to 60% of the average yield. So if a farmer had a 100-bushel yield average and the yield was reduced to 50 bushels an acre, he would get $1.75 a bushel on 10 bushels, the difference between his actual yield and 60 percent of his average yield, or he would have a total of $11.75 for that loss on each acre.

Under this new bill, with the same 100-bushel yield average, and it dropped down to 50 bushels, then he would get paid at the rate of 90 percent of projected market price, which this year looks to be about $3 a bushel, or the farmer would get $2.70 a bushel for up to 25 bushels, since he can get covered up to 75 percent of his average yield, or he would have $67.50 payment for each acre as opposed to the $11.75 under the disaster payments program.

So any way we cut it this bill is in favor of the farmer and will help the farmer more than the disaster payments program ever has in the past. For that reason it ought to be adopted overwhelmingly.

● Mr. FOLEY. Mr. Speaker, I rise in support of the conference report on S. 1125, the Federal Crop Insurance Act of 1980. The report is the culmination of several years effort on the part of the committee and represents a compromise of the best provisions of the bills passed by the House and the Senate.

The report provides for expansion and improvement of the present all-risk crop insurance program by authorizing its availability on all commodities in all counties of the United States. It assures that the program is available to all farmers by requiring FCIC to pay a portion of the premium costs.

It provides for a partnership with private industry in making the program fully available to farmers throughout the country. The private insurance industry would be used to the maximum extent possible in delivering the crop insurance program. In addition, the conference report strengthens a provision in the House amendment which permits farmers the option of substituting private hail and fire insurance for hail and fire insurance provided in the Federal all-risk policy. To that end the FCIC would provide farmers with a credit on the Federal policy that reflects the cost of hail and fire coverage provided by private companies. The report also includes reinsurance benefits which enable the private insurance industry to offer a comparable all-risk insurance policy to the farmers carrying out the program. Finally, it extends producers the option in 1981 in choosing between a disaster payment program or participation in the crop insurance program provided in the bill under which the Department would share in the cost.

Agriculture constitutes one of this Nation's most important treasures. It provides the food and fiber necessary to sus-

tain our national health; it contributes much to the well-being of the national economy, and provides export trade of some $40 billion, contributing almost $25 billion to the U.S. balance of trade. However, agriculture remains one of the highest risk undertakings in our economy. Historically, 1 out of every 12 acres planted is not harvested because of natural disasters. This year farmers have been particularly hard hit by hot weather and drought. The legislation that we bring before you today provides a comprehensive program under which farmers with assistance from the Federal Government can protect their capital investments in food and fiber production.

I urge the support of the Members in voting for the conference report.

I would like to thank Mr. ED JONES, chairman of the subcommittee for his leadership in bringing this matter to a successful conclusion. He has been supported in these efforts by the able assistance and cooperation of Mr. ED MADIGAN, ranking minority member of the subcommittee. I also would like to commend Chairman TALMADGE and his colleagues on the Senate Agriculture Committee for their efforts to this end.●

● Mr. HAGEDORN. Mr. Speaker, an awareness of the high-risk nature of the farming business is necessary in order to understand the need for a new Federal crop insurance bill. The conference report on S. 1125, the Federal crop insurance bill, is a compromise which addresses both the concerns of farmers and private insurance agents.

Farmers not only face the uncertainty of selling what they produce, but also the uncontrollable hazards of nature which can wipe them out. Historically, 1 out of every 12 planted acres is not harvested because of adverse weather or natural disasters.

When disaster strikes, a farmer is often unable to repay the money he frequently had to borrow in order to plant. The loss of a single crop is sometimes enough to force a farmer into bankruptcy and losses in successive years can cause widespread hardship across wide regions of agriculture.

Congress recognized the unusual hazards of farming in 1938 when it established the Federal crop insurance program. For the payment of a small but regular annual premium, the farmer can protect his crops from failure caused by weather, insects, and disease.

The program is voluntary and premiums vary widely depending upon the crop that is insured, the risks of the area and the amount of protection required per acre. Although the program covered only wheat at first, it has been broadened over the years to protect 26 commodities against practically all natural causes of crop loss.

Another form of Federal protection is the disaster payments program, which was authorized by Congress in 1973. One difference between disaster payments and crop insurance is that disaster protection is provided without cost to eligible producers. Losses for any reason beyond a farmer's control are covered if production yields fall below eligibility levels.

Over the past few years, the problems with both crop insurance and disaster aid have increasingly surfaced. For one thing, Federal crop insurance is available in only half the counties of the country and it fails to cover all major commodities in counties where it is available. In many instances, the program is not available when and where it is needed most. As a result of these and other factors, participation by farmers in the program has been low.

The limited participation was a major reason for setting up the disaster payment program. While the program has helped thousands of farmers who have been hit hard by natural causes, it has also been criticized as overly expensive, limited to just six crops and inequitable in its application.

The conference legislation would extend Federal all-risk insurance as rapidly as possible to all counties and all crops which are important to the agricultural income of a given area. During 1981, farmers eligible for disaster payments could elect either that system of protection or use of the new insurance program in areas where it is offered. Alternatively, a farmer willing to pay the full, unsubsidized insurance premium rate could get both insurance and disaster payment eligibility.

Although I favored the major portions of this bill, I opposed the original legislation in the House Agriculture Committee because I felt the concerns of private hail, fire and lightning insurance companies had not been adequately addressed. As passed by the committee, this legislation would have significantly reduced the capability of the private insurance industry to compete with the Government Federal crop insurance program.

However, I am pleased that the conference legislation incorporated the major features of the House version in allowing for wide participation by the private insurance industry in delivering crop insurance to farmers, either on a commission basis or through reinsurance programs. To assure fair treatment of private insurance firms, the conference bill provides opportunities for private agents and firms to sell the Federal policies and directs adoption of a reinsurance program to the maximum practicable extent. The Federal Crop Insurance Corporation would be directed to develop, by 1982, a pilot program under which at least one private firm would write all-risk crop policies—reinsured by FCIC—offering all the benefits of direct Federal policies.

This bill also gives farmers the option of eliminating hail and fire coverage from their Federal policies and substituting coverage from private firms. In cases where this is done, the premium charge on the Federal policy would be reduced by amounts ranging from 15 to 30 percent, depending on rates for private insurance in individual areas, to offset the reduced coverage.

As agreed to in conference, this bill will place the Federal Government and the private insurance industry on a more equal footing and will provide the farmer with the flexibility to select the type of protection he desires. In essence, this legislation will individualize crop insurance by putting more responsibility on the farmer to determine and provide the type of coverage he feels will adequately protect his interests.

Mr. Speaker, for the above-mentioned reasons, I would urge my colleagues to vote in favor of this legislation.●

The SPEAKER pro tempore. All time has expired.

Mr. JONES of Tennessee. Mr. Speaker, since all time has expired, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BEDELL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 235, nays 150, answered "present" 2, not voting 45, as follows:

[Roll No. 554]

YEAS—235

Abdnor
Addabbo
Akaka
Albosta
Ambro
Andrews, N.C.
Anthony
Applegate
Aspin
Atkinson
Bailey
Baldus
Barnard
Beard, Tenn.
Benjamin
Bennett
Bevill
Blanchard
Boling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Buchanan
Burgener
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Chappell
Chisholm
Clausen
Clay
Coelho
Collins, Ill.
Convers
Corcoran
Corman
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
Davis, S.C.
Derrick
Dickinson
Dicks
Dingell
Dixon
Donnelly
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Calif.
Erdahl
Ertel
Evans, Ga.
Fary
Fascell
Ferraro
Fisher
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gilman
Gingrich
Ginn
Glickman
Gore
Gray
Green
Grisham
Guarini
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hanley
Harkin
Harris
Harsha
Hawkins
Hefner
Heftel
Hillis
Hinson
Hollenbeck
Horton
Hubbard
Huckaby
Hughes
Hyde
Jeffords
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kildee
Kindness
Leland
Lent
Levitas
Livingston
Lloyd
Long, La.
Long, Md.
Lott
Lowry
Lujan
McCloskey
McCormack
McDade
McEwen
McKay
McKinney
Madigan
Marlenee
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Mineta
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moorhead, Pa.
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patterson
Pepper
Perkins
Petri
Peyser
Pickle
Preyer
Price
Pursell
Rahall
Rangel
Reuss
Richmond
Ritter
Robinson
Roe
Rosenthal
Roybal
Royer
Satterfield
Sawyer
Sebelius
Seiberling
Shelby
Shumway
Smith, Nebr.
Snowe
Solarz
Spence
St Germain
Stack
Staggers
Stangeland
Stark
Stratton
Studds
Swift
Thomas
Thompson
Traxler
Trible
Udall
Van Deerlin
Vento
Walgren
Wampler
Waxman
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Winn
Wirth
Wolpe
Wright
Wyatt
Yatron
Young, Alaska
Zablocki
Zeferetti

NAYS—150

Anderson, Calif.
Andrews, N.Dak.
Archer
Ashley
Badham
Bafalis
Barnes
Bauman
Bedell
Bellenson
Bereuter
Bethune
Boland
Breaux
Broomfield
Burlison
Cheney
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Dannemeyer
Deckard
Dellums
Derwinski
Devine
Dougherty
Early
Edgar
Edwards, Okla.
Emery
English
Evans, Del.
Evans, Ind.
Fenwick
Findley
Fish
Fithian
Forsythe
Frenzel
Gephardt
Giaimo
Goldwater
Goodling
Gradison
Gramm
Grassley
Hammer-schmidt
Hance
Hansen
Heckler
Holt
Hopkins
Howard
Hutchinson
Ichord
Jacobs
Jeffries
Kazen
Kelly
Kemp
Kogovsek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Lewis
Loeffler
Luken
Lundine
Lungren
McDonald
McHugh
Maguire
Markey
Marriott
Michel
Miller, Ohio
Minish
Moffett
Moore
Moorhead, Calif.
Mottl
Murphy, N.Y.
Nolan
Nowak
Patten
Paul
Pease
Porter
Pritchard
Quayle
Railsback
Ratchford
Regula
Rhodes
Rinaldo
Roberts
Rodino
Rostenkowski
Roth
Rousselot
Rudd
Russo
Sabo
Santini
Schroeder
Schulze
Sensenbrenner
Sharp
Shuster
Simon
Skelton
Smith, Iowa
Snyder
Solomon
Spellman
Stanton
Steed
Stenholm
Stockman
Stump
Symms
Synar
Tauke
Tauzin
Taylor
Vander Jagt
Volkmer
Walker
Watkins
Weaver
Wilson, Tex.
Wydler
Wylie
Yates
Young, Mo.

ANSWERED "PRESENT"—2

Gonzalez
Quillen

NOT VOTING—45

Alexander
Anderson, Ill.
Annunzio
Ashbrook
AuCoin
Beard, R.I.
Biaggi
Bingham
Boggs
Brown, Ohio
Broyhill
Carr
de la Garza
Dodd
Dornan
Erlenborn
Fazio
Gibbons
Guyer
Hightower
Holland
Holtzman
Hutto
Ireland
Jenrette
Jones, Okla.
LaFalce
Leach, La.
Lederer
McClory
Marks
Mattox
Myers, Pa.
Nedzi
Rose
Scheuer
Shannon
Stewart
Stokes
Ullman
Vanik
Wilson, Bob
Wilson, C. H.
Wolff
Young, Fla.

□ 1440

The Clerk announced the following pairs:

On this vote:

Mr. Broyhill for, with Mr. Ashbrook against.

Mr. Fazio for, with Mr. Dornan against.

Mr. Stokes for, with Mr. Erlenborn against.

Mr. Biaggi for, with Mr. Guyer against.

Mr. Lederer for, with Mr. McClory against.

Mr. Annunzio for, with Mr. Young of Florida against.

Until further notice:

Mr. Jenrette with Mr. Vanik.

Mr. Wolff with Mr. Brown of Ohio.

Mr. Bingham with Mr. Gibbons.

Mr. Rose with Mr. Jones of Oklahoma.

Mr. Myers of Pennsylvania with Mr. Scheuer.

Mr. Alexander with Mr. Bob Wilson.

Mr. AuCoin with Mr. Nedzi.

Mr. Beard of Rhode Island with Mr. Mattox.

Mrs. Boggs with Mr. Holland.

Mr. Dodd with Mr. Hutto.

Mr. LaFalce with Mr. Carr.

Mr. Marks with Mr. Ireland.

Ms. Holtzman with Mr. Stewart.

Mr. Shannon with Mr. Charles H. Wilson of California.

Mr. Ullman with Mr. Hightower.

Mr. de la Garza with Mr. Leach of Louisiana.

Messrs. HAMMERSCHMIDT, TAUZIN, RODINO, and BURLISON changed their votes from "yea" to "nay."

Messrs. SHELBY, BUCHANAN, HUGHES, NELSON, and WYATT changed their votes from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT THURSDAY, SEPTEMBER 18, 1980, DURING 5-MINUTE RULE

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit tomorrow, Thursday, September 18, 1980, while the House is proceeding under the 5-minute rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. KINDNESS. Mr. Speaker, reserving the right to object, and I shall not object, I would ask the gentleman from California whether the business sought to be considered by the Committee on the Judiciary will be confined solely to the regulatory reform bill.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. KINDNESS. I yield to the gentleman from California

Mr. DANIELSON. That is the business which we have in mind. There are on the committee's calendar two other very minor bills. We will get to them if we can, but I do not believe we will have time to get to them.

Mr. KINDNESS. Two other bills could be considered. Do those bills have to do with two Federal charters?

Mr. DANIELSON. Mr. Speaker, I am having difficulty hearing the gentleman from Ohio, but the purpose of the request is to consider the regulatory reform bill.

Mr. KINDNESS. That is the principal purpose?

Mr. DANIELSON. There are two other minor matters which may be considered if time permits.

Mr. KINDNESS. Mr. Speaker, I thank the gentleman from California, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1450

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST HOUSE JOINT RESOLUTION 610, CONTINUING APPROPRIATIONS, 1981

Mr. LONG of Louisiana, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1338) on the resolution (H. Res. 789) waiving certain points of order against the joint resolution (H.J. Res. 610) making continuing appropriations for the fiscal year 1981, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF H.R. 7244, INTERNATIONAL MONETARY FUND QUOTA INCREASE

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 726 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 726

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7244) to amend the Bretton Woods Agreements Act to authorize consent to an increase in the United States quota in the International Monetary Fund, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban

Affairs, the bill shall be read for amendment under five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. After the passage of H.R. 7244, it shall be in order in the House to take from the Speaker's table the bill S. 2271, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and to insert in lieu thereof the provisions contained in H.R. 7244 as passed by the House.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. LONG) is recognized for 1 hour.

Mr. LONG of Louisiana. Mr. Speaker, I yield the usual 30 minutes to the gentleman from Missouri (Mr. TAYLOR) for the purpose of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 726 is the rule providing for the consideration of the bill, H.R. 7244, to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund.

Mr. Speaker, this is a simple open rule and there are no waivers of points of order. The rule provides 1 hour of general debate, with the time to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs. Upon conclusion of consideration of the bill for amendment, the previous question shall be considered ordered on the bill as amended, without intervening motion except one motion to recommit.

House Resolution 726 also provides that after passage of H.R. 7244 it shall then be in order to consider the Senate companion bill, S. 2271, and to strike all after the enacting clause of the Senate bill and to substitute the provisions of H.R. 7244 as passed by the House.

Mr. Speaker, this legislation authorizes an increase in the quota of the United States in the International Monetary Fund (IMF) of approximately $4 billion special drawing rights (SDR), from $8.4 billion SDR's to $12.6 billion SDR's. This is the equivalent of approximately $5.5 billion.

This increase is part of a general increase in the quotas of all IMF members and is essential for two reasons:

First, to help the IMF keep pace with the growth of world trade and payments; and

Second, to help stabilize the world monetary system in the wake of OPEC oil price increases.

The OPEC price rises have led to tremendous balance-of-payments surpluses in oil exporting countries, while creating balance-of-payments problems for most of the oil-importing countries. This legislation will better equip the IMF to assist the oil-importing nations in stabilizing their economies, as well as to give the IMF a greater role in attempting to "recycle" the surplus held by the oil-exporting countries.

In addition, H.R. 7244 directs the U.S. representatives to the IMF and the World Bank to seek policy changes providing for a greater accounting of "basic human needs" in their loan programs. Chairman REUSS has provided valuable leadership in urging the IMF to look beyond the need for short-term exchange stability to deal with the longer term problems plaguing the international monetary system. This involves seeking better coordination between IMF and World Bank programs to jointly deal with the balance of payments and developmental objectives of debtor countries.

Finally, H.R. 7244 expresses the sense of the Congress that oil-exporting countries assume a greater burden for financing balance-of-payments deficits related to oil price hikes. The IMF is encouraged to develop "innovative proposals" to promote the recycling of the surplus held by oil-exporting nations.

Mr. Speaker, to my knowledge this is a noncontroversial rule. Members on both sides of the aisle support this bill. I urge my colleagues to adopt the rule so that we can proceed expeditiously to the consideration of this important legislation.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, this is a straight 1-hour open rule, providing for the consideration of the International Monetary Fund quota increase.

There are no restrictions on amendments and no waivers of points of order. In order to expedite going to conference, the rule provides that after passage of the House bill, the House-passed language may be inserted in the Senate bill.

The bill made in order by this rule authorizes an increase in the quota of the United States in the International Monetary Fund of approximately $4.2 billion special drawing rights, which is the equivalent of approximately $5.5 billion.

The increase in the U.S. quota would be part of a general increase of all members' quotas. With only minor exceptions, they would all be increased by 50 percent.

The Committee on Banking, Financing and Urban Affairs reported the bill by a vote of 35 to 4. However, there are dissenting views in the report filed by the gentleman from Texas (Mr. PAUL) opposing the bill.

Mr. Speaker, at this time I yield 5 minutes to the gentleman from Texas (Mr. PAUL).

Mr. PAUL. Mr. Speaker, I have no objection to the rule. The rule is an open rule. I would like to take a few moments, though, to make a few points about the bill we are working on today.

I think there is reason to be alerted to the fact that we are dealing with legislation that is of rather serious consequence to the American taxpayer. A lot of times the IMF bill goes through without much discussion. I hope today that we have full discussion of this bill and what it means.

We do know that we are going to increase the funding by $5.5 billion. It has frequently been said that this does not matter too much to the American taxpayer because it appears as an asset on the books, and we are not any poorer for it. I happen to hold an opposing view of this, because I do believe the American taxpayer suffers from this because that $5.5 billion has to come from either taxation or expansion of the money supply, and therefore is reflected back to the American citizen in inflation and higher prices.

I do not believe for 1 minute that we can accept the argument that this is not of concern to the American taxpayer. The IMF happens to be a fund that we have had, since the Second World War and has done everything except stabilize our currency, the stated intended purpose.

□ 1500

It is supposed to stabilize the international monetary system. If we would just look back at the history of what we have had since 1945, I would say it is rather chaotic and not stable in any sense of the word.

I do not question the good intentions of my colleagues who will give strong arguments for the passage of this legislation, but I am afraid that all the arguments that are given for the support of this legislation provide only short-run and patchwork solutions. It is true that we face serious problems in the international currency market. The plain truth is that not only is our country threatened by runaway inflation but the entire Western World faces a serious threat from the same condition. There is a cancer in the land, and there is a cancer in Western civilization. It needs treatment.

Usually when we think about giving treatment for inflation, we talk about giving a shot in the arm, and we usually give a shot in the arm by giving ourselves more inflation. This is what we are doing on an international scale today.

But I am afraid that this $5.5 billion is not even a shot of morphine for the treatment of pain from inflation; it is more like aspirin. It is not something to take care of the problem; it may hide the pain or the problems for a few more days, but we still have this tremendous problem in the Eurodollar market. We have more than a trillion dollars in the Eurodollar market, and it is an uncontrollable situation. It has been estimated that there is more than $400 billion that the Third World owes to the West. About $125 billion of this amount is owed to governments, and the rest of this amount is owed to private commercial banks. Let us keep in mind that there is no way that these bills and these loans will ever be paid. The Third World nations cannot even pay the interest. There has been a lot of rescheduling, and yet a very serious threat to the banking system still exists. It never seems to help to just merely throw more money at it and prop it up for a little while longer, because

that is the No. 1 problem that we begin with.

The whole concept is wrong, and the idea that the IMF will stabilize the currencies around the world has not worked. It never did work, and it will never work.

Ever since the system got off any fixed exchange rates, we have had nothing but serious chaos in the monetary system. The balance of payments can never get put back on track unless we have currencies that are redeemable in something of real value. When currencies are forever changing in value on a daily basis due to the fact that every nation is today inflating, that is, they are running their printing presses rapidly, and under these conditions it is most difficult and in fact impossible to ever have exchange stability and stability of the economy, and for this reason we will face economic and monetary chaos eventually.

Putting $5.5 billion more into the IMF will do nothing to help. It will do nothing but give another aspirin, another bandaid, or a little more patchwork to hold this system together for a short time.

Mr. Speaker, in spite of this, in spite of the IMF and all its intentions and all its plans and all the things it does to try to stabilize things, for one reason it seems to have something that is still of value. In spite of itself, the IMF still retains 100,000,000 ounces of gold. At today's prices it is worth $60 billion, and so it truly does have an asset which I believe should be returned to the nations that contributed it in order to help reestablish sound currencies in these nations.

The SPEAKER pro tempore. The time of the gentleman from Texas (Mr. PAUL) has expired.

Mr. LONG of Louisiana. Mr. Speaker, I have no further requests for time.

Mr. TAYLOR. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LONG of Louisiana. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CAMPBELL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 379, nays 3, not voting 50, as follows:

[Roll No. 555]

YEAS—379

Abdnor
Addabbo
Akaka
Alboeta
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Anthony
Applegate
Archer
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Bingham
Blanchard
Boland
Boling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzales
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Purseell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Stark
Steed
Stenholm
Stockman
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Mo.
Zablocki
Zeferetti

NAYS—3

Bauman
Hansen
McDonald

NOT VOTING—50

Alexander
Anderson, Ill.
Annunzio
Ashbrook
Badham
Biaggi
Boggs
Brown, Calif.
Brown, Ohio
Broyhill
Carr
Clay
Davis, S.C.
de la Garza
Deckard
Dodd
Dornan
Erlenborn
Gibbons
Guyer
Harsha
Holland
Holtzman
Ireland
Jenrette
Kindness
LaFalce
Leach, La.
Lederer
Leland
McClory
Madigan
Mathis
Mattox
Murphy, N.Y.
Myers, Pa.
Nedzi
Nolan
Peyser
Rose
Scheuer
Shannon
Staggers
Stewart
Stokes
Vanik
Wilson, Bob
Wilson, C. H.
Wolff
Young, Fla.

□ 1520

The Clerk announced the following pairs:

Mr. Annunzio with Mr. Ashbrook.
Mrs. Boggs with Mr. Badham.
Mr. Biaggi with Mr. Harsha.
Mr. Jenrette with Mr. Guyer.
Mr. Lederer with Mr. Erlenborn.
Mr. Rose with Mr. Bob Wilson.
Mr. Murphy of New York with Mr. Young of Florida.
Mr. Stokes with Mr. McClory.
Mr. Wolff with Mr. Madigan.
Mr. Nedzi with Mr. Kindness.
Mr. Nolan with Mr. Brown of Ohio.
Mr. Clay with Mr. Broyhill.
Mr. de la Garza with Mr. Dornan.
Mr. Dodd with Mr. Holland.
Mr. Vanik with Mr. Gibbons.
Mr. Peyser with Ms. Holtzman.
Mr. Myers of Pennsylvania with Mr. Ireland.
Mr. Alexander with Mr. Anderson of Illinois.
Mr. Brown of California with Mr. Carr.
Mr. LaFalce with Mr. Leach of Louisiana.
Mr. Davis of South Carolina with Mr. Deckard.
Mr. Leland with Mr. Mattox.
Mr. Mathis with Mr. Staggers.
Mr. Charles H. Wilson of California with Mr. Stewart.
Mr. Shannon with Mr. Scheuer.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 601, INTERNATIONAL MONETARY FUND APPROPRIATIONS, 1981

Mr. ZEFERETTI. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 778 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 778

Resolved, That upon the adoption of this resolution it shall be in order to consider the

joint resolution (H.J. Res. 601) making an appropriation for the International Monetary Fund for the fiscal year ending September 30, 1981, in the House as in the Committee of the Whole.

The SPEAKER pro tempore. The gentleman from New York (Mr. ZEFERETTI) is recognized for 1 hour.

Mr. ZEFERETTI. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Maryland (Mr. BAUMAN), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 778 provides for the consideration of House Joint Resolution 601, which makes an appropriation for the International Monetary Fund for the fiscal year ending September 30, 1981.

Under this rule, House Joint Resolution 601 will be considered in the House as in the Committee of the Whole. This procedure will allow the House to dispense with general debate and go directly into the amendment process under the 5-minute rule.

Mr. Speaker, House Joint Resolution 601 provides the budget authority for a 50-percent increase in the U.S. quota for the International Monetary Fund. The quota increase represents approximately $5.4 billion. However, this appropriation will result in no actual net spending but budget authority only, thereby incurring no net cost to the U.S. taxpayer. The proposed quota increase will temporarily halt the decline in IMF resources in regard to world trade and will add a greater amount of resources to counter the expected increases in trade deficits due to price hikes by OPEC.

Mr. Speaker, the International Monetary Fund is an essential mechanism for keeping order in the world's monetary system and only through legislation such as this can the United States maintain a strong leadership role in the international economic market.

I urge my colleagues to support House Resolution 778 so we may proceed to the consideration of the International Monetary Fund appropriation for 1981, House Joint Resolution 601.

Mr. BAUMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, what we are seeing here today in this bum's rush to get this legislation through the House of Representatives is a little bit of legislative sleight-of-hand. Over the years the international Monetary Fund and the billions of dollars that we have given out to it usually are part of the foreign aid authorization bill and the foreign aid appropriation bill. Because foreign aid is not a popular topic these days in the Congress of the United States, we are seeing this bill split off from the foreign aid bill and treated separately.

Now mind you, the appropriations this rule makes in order will carry out the $5.5 billion check that the authorizing legislation the Members just made in order with the previous rule authorizes.

Today, as we wind down this session and move toward the magic date of October 4, on which day we all leave to try and get ourselves reelected, presumably dropping all of the business of the American people, dropping the budget process, dropping tax cuts, dropping the balanced budget, dropping everything, we have to be here debating $5.5 billion to be added to our national debt and to our unbalanced budget so that the International Monetary Fund can be taken care of. That is a good example of the priorities of the leadership of this House.

We have not passed the appropriation bill for the Department of Agriculture through Congress, or the Department of Health and Human Services, but we have got to get the International Monetary Fund through.

Now this rule before us is not controversial in the sense that it is a rule that will allow the appropriation bill to be brought up in the full House.

Since it will be considered as in the Committee of the Whole, amendments will be allowed. I think that is very generous. There may well be some amendments offered to cut the amounts, but I am indebted to some of my colleagues on both sides of the aisle; the gentleman from Indiana (Mr. JACOBS), the gentleman from Oregon (Mr. WEAVER), the gentleman from New York (Mr. KEMP), and others, for sending around "Dear Colleagues" letters on this bill. I hope the Members read them.

There is a real question whether or not this authorization and this appropriation and these rules are even needed.

The argument is made by the opponents of the International Monetary Fund that we do not need this money, that the IMF's principal role will not be enhanced by giving them another $5.5 billion out of the U.S. Treasury, the Treasury that is already verging on bankruptcy.

They point out that the IMF has other means of acquiring capital if they so wish by borrowing on the open market, and they also, I think rightly, show that the International Monetary Fund, if this legislation, the appropriation, goes through, will be the recipient of interest subsidies from U.S. taxpayers. Instead of going into the open market and borrowing at the current rates, as the average person who wants a home loan or mortgage would have to do, the IMF has subsidized interest.

What we are doing is not only taking out of the capital market money that somebody in our district may need for mortgages, but we are subsidizing the International Monetary Fund with special interest rates that none of our constituents could possibly get in the open market because they are not part of the IMF. They are just plain taxpayers who will be forced to subsidize the IMF.

I think there has to come a time in this Congress when we stop bailing out other countries and think about the best interests of the United States first.

I am well aware many of my liberal colleagues feel the best way to protect our interest is to give away our money in a rough equivalent of trying to buy friendship.

Well, we have given away hundreds of billions of dollars since the end of World War II, and the United States, today, is probably less respected and less liked by other nations of the world than at any time in our history. I hope that we will defeat the appropriation and the authorization bill and will devote ourselves, as we wind down this Congress and await a lameduck session, to the important matters before us. This is not the most important, nor is this rule the most important.

Mr. Speaker, I yield back the balance of my time.

Mr. ZEFERETTI. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

INTERNATIONAL MONETARY FUND QUOTA INCREASE

Mr. NEAL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7244) to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. NEAL).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7244, with Mr. BEILENSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from North Carolina (Mr. NEAL) will be recognized for 30 minutes, and the gentleman from Iowa (Mr. LEACH) will be recognized for 30 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. NEAL).

□ 1530

Mr. NEAL. Mr. Chairman, I yield such time as he may consume to the gentleman from Wisconsin (Mr. REUSS), the distinguished chairman of the full Committee on Banking, Finance and Urban Affairs.

Mr. REUSS. Mr. Chairman, I thank the gentleman from North Carolina (Mr. NEAL) and congratulate him and the gentleman from Iowa (Mr. LEACH) and other members of the subcommittee who have labored so long to bring this well-crafted bill before us.

There are all kinds of good reasons why the House ought vigorously to support continued U.S. participation in the International Monetary Fund. We need to increase our exports in order to, in some measure, repair our oil-induced deficit.

One out of every seven U.S. manufacturing jobs and one out of every three acres of U.S. farmland produce for export. Continued support of the IMF is essential if we want U.S. customers to be able to solve their problems in an orderly way and thus continue to be our customers.

The IMF, too, is a necessary part of our overall foreign policy. Stable economies the world over redound to our benefit and IMF is a leading force in making possible those stable economies.

I am the first to recognize that in the past the IMF has sometimes assumed too hard nosed an attitude, and where there were two ways of attaining its goals of financial stability, too often the IMF has taken that route which bore down most heavily on the ordinary citizen of the developing countries who were getting IMF assistance.

Under an amendment adopted by your committee to this bill, however, we, for the first time, on an across-the-board basis with respect to the International Monetary Fund, mandate host observance of what is called human needs. In a nutshell, the committee amendment prescribes that the IMF programs of stabilization for countries who are getting exchange assistance should take into account human needs, jobs, real income, the gap in wealth between rich and poor, social programs such as health, housing, and education. We, therefore, have in a very real sense repaired what otherwise might have been a gap in a well-constructed IMF program.

I am told that an amendment will be offered by the gentleman from Iowa (Mr. HARKIN), which I believe to be generally acceptable, which will make even stronger this human needs emphasis inherent in H.R. 7244.

So because of our interest in expanded exports, because of our interest in an orderly world, I think it is a good time to remember today that just 25 years ago the International Monetary Fund candle was lighted at Bretton Woods. Now it is a very easy thing to blow out that candle today and say that the United States is turning its back on its world responsibility. But I am confident this House will not do that. I am confident that this House will take into account that the International Monetary Fund in its 35 years has avoided international monetary crises such as those which brought the world to its knees in the twenties and thirties and brought on World War II and that because those crises have been averted the World War III which so many feared has also been averted.

So for all those reasons I hope that the product of Mr. NEAL's subcommittee will be overwhelmingly endorsed.

Mr. JACOBS. Mr. Chairman, will the gentleman be kind enough to yield?

Mr. REUSS. My time has expired but I will undertake to see that the gentleman gets time.

Mr. NEAL. Mr. Chairman, I am happy to yield to the gentleman for one question.

Mr. JACOBS. The gentleman indicated if this bill did not succeed that the candle that was lighted at Bretton Woods would burn out. Is it not more accurate to say it would continue to burn at its present level? I mean this really would not end this, it would just not add any more money to the Fund; is that not correct?

Mr. REUSS. Will the gentleman yield?

Mr. JACOBS. I yield to the gentleman.

Mr. REUSS. I would respectfully differ with the gentleman from Indiana. The United States has always gone along with the necessary augmentation of the International Monetary Fund funding. For it now to turn its back would, I think, extinguish the candle. I do not like to deal in metaphors particularly, but I think it would not continue.

Mr. NEAL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 7244 authorizes an increase in the U.S. quota in the International Monetary Fund, the free world's main instrument for keeping free economies free. Despite its importance, the role of the IMF is not widely understood. I would like to clarify this role, and respond to several questions which have been raised about U.S. participation in the IMF. Then I will address the major issue—the compelling need for an increase in the quotas of all IMF members.

Mr. Chairman, the IMF lends to countries in need of temporary assistance in overcoming balance-of-payments problems. It lends only on the condition that the borrower adopt fairly stringent macroeconomic policies designed to redress the underlying balance-of-payments problem. These so-called "adjustment programs" require a degree of discipline in the economic policies of countries that are, simply put, living beyond their means. This discipline is never easy to take, and it does not always work. But it works well enough to help many countries adjust their balance-of-payments deficits to manageable proportions with less suffering than they would otherwise have to endure.

The IMF lends funds obtained by drawing on the quotas of countries with relatively strong balances-of-payments. The IMF may well draw dollars to fund part of its future loans, but it will certainly not draw solely, or even primarily, on the U.S. quota. It will also draw on the quotas of Germany, Japan, Britain, and others, including OPEC quotas. The proposal before the Congress to increase the U.S. quota is not a unilateral initiative. All members will be increasing their quotas by 50 percent.

Mr. Chairman, this U.S. quota increase will have no impact on our budget deficit, because it will entail no net outlays from the U.S. Treasury. When the IMF draws on our quota, we are credited with an increase in our "reserve position" in the IMF. That "reserve position" is a genuine international monetary reserve asset. The increase in that asset offsets the outflow from the Treasury when the IMF draws on the U.S. quota, so there is no net budgetary outlay. It is analogous to depositing money in a bank account: an outflow—the funds deposited—is offset by a receipt— the increase in the bank balances.

Some have questioned whether our "reserve position" in the IMF is really a useful asset. There should be no doubt that it is a perfectly sound, fully available, and extremely valuable asset. In fact, we have often drawn on it, most recently in 1978. Our "reserve position" is a "hard" asset because it represents an uncontested, unconditional right to draw, from the IMF, an equivalent amount of foreign currencies when we need them to support the dollar. We did just that in 1978, by drawing the equivalent of $3 billion in German marks and Japanese yen, which we needed to arrest the precipitous decline of the dollar on foreign exchange markets. That drawing represented the cashing in of the claims we had accumulated through prior IMF drawings on our quota. And it was not the only time we have drawn on our "reserve position." Throughout the life of the IMF, we have drawn over $7.5 billion in foreign currencies, on 24 different occasions. In fact, U.S. drawings have been the second largest of all IMF members.

Mr. Chairman, though the IMF lends a fair amount to developing countries, those loans are not a form of foreign aid. IMF credit is not associated with development projects, and it is available to all members.

If successful, IMF programs will certainly help a country return to the path of development. But the balance-of-payments problems for which IMF assistance is appropriate can, and do, arise in developed as well as developing economies. Overcoming those problems is a prerequisite to further economic progress, by developed as well as by developing economies. Historically, the industrial nations have been the largest users of IMF resources.

Some have argued, Mr. Chairman, that the IMF does not need a quota increase because the lure of larger loans is not what induces countries to turn to the IMF for assistance. They come, instead, because their balance-of-payments problems have become so severe that they would be cut off from private credit unless they agree to implement an IMF "stabilization" program. While that may, in some cases, be true, it points to one of the reasons a quota increase is needed. With more financing available from the IMF, it will become more attractive for some countries to turn to the IMF before their situation deteriorates to such a hopeless state that private banks cut them off entirely from private credit. The condtions the IMF attaches to its loans are often difficult for a country to implement because it fails to seek IMF assistance until its problems have become so severe that relatively mild corrective policies will no longer suffice. Many countries naturally prefer to postpone the hard adjustments they must eventually undertake—until reality forces their hand.

The adjustment process would be more effective, and less painful, if countries would seek IMF assistance in the early stages of their balance-of-payments disequilibrium. Higher quotas, implying larger loans, may induce some countries to do just that. Mr. Chairman, it is sometimes argued that IMF assistance is nothing but a "bail out" of banks overextended in their loans to LDC's. The record of past bank behavior refutes the charge. In most cases, banks have increased their net lending to a country which has taken out an IMF loan and adopted an IMF adjustment program.

Lenders regard these adjustment pro-

grams as positive steps that strengthen a country's balance of payments, and thus render it more credit-worthy. Even if the debtor country tried to pay off its creditors with the proceeds of an IMF loan, it could liquidate only a very minor portion of its outstanding debt. IMF loans serve only to bridge the gap between receipts and essential payments over the period necessary for adjustment policies to take effect. Without such interim financing, adjustment would be forced on an economy abruptly and harshly, at considerable damage to its welfare and development.

Mr. Chairman, some critics of the quota increase contend it will impose a heavy cost on the American taxpayer. That is a gross misconception. We get back from the IMF approximately what we put in it—plus interest. We get the money back in two ways. In the first instance, the IMF simply repays us, with interest, when it is repaid by its debtors. And, Mr. Chairman, no country has ever defaulted on an IMF loan. In the second case, we get our money back in the form of foreign currencies, which we can draw from the IMF when we need them. As I have already noted, we have done that on many occasions, as recently as 1978. Finally, we may also make some profit on these transactions, in addition to the interest we earn. Our assets and liabilities vis-a-vis the IMF are denominated in special drawing rights, SDR's, which change in value against the dollar. When the dollar depreciates against other currencies, it also falls against the SDR. As you know, the dollar has declined quite a bit over the last decade. While that was not a fortunate development, it did bring us, as a side-effect, some large capital gains on our assets in the IMF. The Treasury has tried to calculate the total costs and total earnings from our IMF transactions over the past decade, and they report that we have, in fact, made a net profit of about $200 million.

In other words, aside from the real benefits we have derived from a strong IMF—in terms of its contribution to balance-of-payments adjustment and international monetary stability—we have also made a profit on our investment. While there is no guarantee we will continue to make money in that way, it should be clear that the IMF has not and will not impose any great cost on the American taxpayer.

Mr. Chairman, the bill before us goes beyond the simple authorization of a quota increase, as originally requested by the administration. It contains an important policy initiative on "basic human needs." IMF "adjustment programs" have been criticized for being too severe, too harsh on the living standards and welfare of the poor. The Banking Committee has gone a long way to respond to this criticism. We direct the administration to try to insure that the IMF, and the borrowing country, take full account of the impact of these programs on the "basic human needs" of the poor. We call on the World Bank to coordinate its programs more closely with the IMF, so the two institutions develop simultaneous and parallel strategies.

The World Bank should concentrate on development programs that primarily serve "basic human needs," while the IMF focuses on programs that promote balance-of-payments adjustment. We try to get the IMF and the World Bank to work together more closely so that neither undercuts the other. The World Bank is called upon to increase its lending to countries undergoing IMF stabilization programs. If more World Bank loans are made in tandem with IMF loans, the IMF program can be made more flexible and stretched out over a longer period. That should mitigate somewhat the short-term adverse consequences of balance-of-payments adjustment, while insuring that the countries do make reasonable progress, over an appropriate time period, in overcoming their excessive deficits.

Finally, Mr. Chairman, I want to make clear why a quota increase is needed now. The OPEC oil price increases will cause massive balance-of-payments deficits in many countries. On the whole, these deficits will be financed by private capital, primarily through commercial banks. However, the banking system is not capable of financing the full extent of these deficits, or even as large a portion as it financed in the wake of the 1973 OPEC price increase. Alternative channels must be found. The IMF is not the only alternative channel—but it should assume a growing share of this "recycling" process, since it can combine "recycling" with sensible adjustment programs.

We have a large economic and political stake in the fate of many of the countries that will need IMF assistance. They offer growing markets for our exports. They may be important allies. In the mid-1970's, for example, the largest IMF loans went to Britain and Italy. An important and successful IMF program was also implemented in Portugal. Just recently the IMF has announced a major loan, among the largest it has ever granted, to Turkey, an ally whose economic recovery is of crucial importance to our strategic interests.

Mr. Chairman, the world financial markets, nervous and uncertain about our policies, could well interpret any delay or uncertainty over this quota increase as a weakening of American support for one of the most important international economic institutions. If our commitment to a strong IMF were put in doubt, confidence in the stability of the international monetary system would be severely tested. Confidence is the underpinning of any monetary order. The dollar—the currency most widely held and traded around the world—would stand to suffer most from any such crisis of confidence. We need an immediate, strong, and convincing show of support for the IMF.

□ 1550

Mr. CAVANAUGH. Will the gentleman yield?

Mr. NEAL. I would be happy to yield to the gentleman from Nebraska.

Mr. CAVANAUGH. I thank the gentleman from yielding. First of all, I want to commend the chairman of the subcommittee for an outstanding job in conducting one of the most comprehensive hearings in the history of the Congress 35 years in this country's involvement in the International Monetary Fund. I think that the gentleman from North Carolina (Mr. NEAL) has done an exceptional job in laying before the American people a record upon which they can place a judgment as to the role and the importance of the International Monetary Fund to our country's leadership in the world and to the stability of the world system. I think for that the gentleman should be particularly noted and recognized.

I would like just briefly to speak to the legislation itself, which I do support, to make the point that it is my feeling that those who would argue that this quota increase is not needed I think either seriously misunderstand the function of the International Monetary Fund or choose to ignore the realities of the economic world in which we live. The facts are that this year we will experience or anticipate experiencing more than $120 billion of OPEC surpluses, resulting in a displacement of $70 billion among industrial nations of the world and some $50 billion among the poor and less developed nations of the world.

Unless there is a mechanism by which those deficits and surpluses can be adjusted in the international monetary system, the consequences are, of course, chaotic. The International Monetary Fund has served that function of facilitating those adjustments throughout the past 35 years, but when we look at the Fund today and compare it with the capacity that it had in the past, we find that throughout the 1950's the Fund possessed the resources of roughly 10 to 15 percent of the world trade volume, and throughout the 1960's possessed the resources equivalent to approximately 8 or 10 percent of the world trade volume.

Without this quota increase today, the resources of the Fund will amount to less than 4 percent of the world trade volume and, therefore, seriously incapacitate the Fund in terms of serving this function of facilitating adjustments in these huge imbalances that the oil pricing system has imposed upon the world economic system. I think that that is the critical fact.

As the chairman well knows, my concern in this has largely been a concern related to the impact upon the less developed countries of the world and the poorer nations of the world who have suffered disproportionately in trying to absorb these huge oil price increases. The fact is that the Fund has reacted poorly to those conditions for two reasons, I believe: First, a basic insensitivity within the International Monetary Fund, but, second, and directly relevant to this legislation is an inadequacy and a growing inadequacy of resources upon which they can provide to these struggling poor nations, struggling with their oil bills, adequate resources in which they can make the adjustment processes within their own economies in a way which is not socially repressive and economically disruptive.

Without these added resources, we will

not be able, in spite of the fact that this legislation mandates that our representative at the Fund do all he can, to assure that future adjustment programs of the Fund promote much more investment, real per capita income improvements and income distribution, and the objective of social programs, of health, housing, and education. We, I think, and the chairman particularly of the full committee, the gentleman from Wisconsin (Mr. REUSS), who is primarily responsible for this language, are embarking our Nation on a whole new approach to the International Monetary Fund of bringing our representative to the Fund there with a special mission of seeing that the economic conditions which the Fund imposes for purposes of economic adjustment are done in a context that is appreciative of the economic, social, and political goals and aspirations and best interests of the peoples of those countries who must make those economic adjustments. That is a major change in policy for our country but one that cannot be carried out without adequate resources, and if we are going to be the leader in promoting human economic rights in the world, we cannot do that without contributing to the price that that is going to entail.

Given the magnitude of this $120 billion trade deficit purely related to oil this year, this $5 billion is minuscule in relation to the magnitude or problem it must confront, but it is absolutely essential if we are, as the chairman, the gentleman from Wisconsin (Mr. REUSS), has said, to maintain any hope of the stability we have enjoyed for the past 35 years. For that reason I will vigorously support this legislation and wholeheartedly commend the chairman for his outstanding efforts in bringing this legislation to the floor.

Mr. NEAL. I would like to thank the gentleman for his kind comments and also commend him for the many long hours that he devoted to this legislation. His work resulted in many improvements in the bill, especially in its human rights provisions. He has rendered an important service on this legislation.

Mrs. FENWICK. If the gentleman will yield, I have a very brief question. I have only a question. Did I understand correctly the gentleman to say that the United States has made a profit over the last decade of something around $200 million?

Mr. NEAL. Something over $200 million; that is correct.

Mrs. FENWICK. I thank my colleague.

PARLIAMENTARY INQUIRY

Mr. MITCHELL of Maryland. Mr. Chairman, I have a parliamentary inquiry. How much time does the gentleman have left?

Mr. NEAL. I would have to ask the Chairman of the committee.

The CHAIRMAN. The gentleman has 5 minutes left.

Mr. MITCHELL of Maryland. I thank the Chairman.

Mr. NEAL. I would be happy to yield at this time.

Mr. MITCHELL of Maryland. I appreciate that. I intend to support the legislation, but I wanted to propound a question. Maybe it might be best for me to get 2 or 3 minutes from the gentleman in terms of my support for the legislation rather than take up time now.

Mr. NEAL. I would be happy to yield time whenever the gentleman wishes. I would rather keep a few minutes if I could, at this time, and yield to the minority side.

Mr. MITCHELL of Maryland. I thank the gentleman.

Mr. LEACH of Iowa. I would like to yield at this point to the distinguished ranking minority member of the committee, the gentleman from Ohio (Mr. STANTON).

Mr. STANTON. Mr. Chairman, I appreciate the colloquy that we had between the chairman of the subcommittee and one of the younger but certainly more capable members of our committee, the gentleman from Nebraska (Mr. CAVANAUGH). I regret in this particular case, as always, that there are such few Members on the House floor and hope that they are listening.

Mr. Chairman, I rise in support of this legislation to increase the U.S. quota at the International Monetary Fund by 50 percent.

As my colleagues know, the IMF performs a vital role as the world's central monetary institution. The articles of agreement of the Fund that regulate countries' international monetary behavior are the same rules which keep the world's trading system functioning smoothly. At the center of the system the Fund plays a dual role. It monitors countries' compliance with international monetary norms, and it provides short-term financing for countries in balance-of-payments deficit—bridge financing which enables countries to adopt longer term solutions to their economic problems.

As the world's central bank, the International Monetary Fund is often confused with the World Bank and the other foreign aid institutions. However, there are important differences in function, in cost to taxpayers and in who benefits. The IMF gives short-term loans only to countries which demonstrate a genuine balance of payments need. As a quid pro quo, the IMF requires that the country adopt austerity measures to insure its eventual economic recovery.

Contrary to the impression left by one group opposing this bill, only a small proportion of IMF financing goes to Third World countries. In fact, the single largest user of IMF resources over the last 30 years has been Great Britain. The United States is a close second, followed by Italy and France. The United States has borrowed 25 times from the Fund, most recently in November 1978 as part of the administration's dollar rescue program.

All the members of the IMF, large and small, rich and poor will increase their quotas by 50 percent. There is general agreement that IMF resources are too small if compared to the volume of world trade. Demands on IMF resources have historically borne a close relationship to the amount of international economic activity. The ratio of Fund resources to world trade was 12 percent in 1960, 9.6 percent in 1970, but has fallen to 4 percent in 1980. Fund resources have to be increased if it is going to continue to play an important role in financing deficits.

The OPEC surplus this year is projected to be about $120 billion, resulting in a $70 billion deficit for developed countries and $50 billion deficit for developing countries. These deficits combined with the growing international recession will require even greater financing by commercial banks and the Fund. Of course, the IMF only finances a small portion of total balance-of-payments deficits. The bulk of them continue to be financed by commercial banks. It is a fact however, that the larger commercial banks who have been active in international lending, are reaching their lending limits to certain foreign borrowers and are not in a position to meet a growing demand for lending over the next few years. This makes the quota increase at the Fund all the more important.

I am certain my colleagues realize that there has been organized opposition to this bill—much of it generated by the National Taxpayers Union. It is particularly distressing that their opposition is based on mischaracterizations and false assertions about the IMF and its functioning. Their chief argument is that of a costly waste of taxpayers' dollars. In fact, it costs us virtually nothing. Our quota remains on deposit in the Fund until loaned to other countries. It is always repaid in less than 3 years, and always repaid with interest. This bill has virtually no impact upon the budget. But even if there were taxpayer costs, I would argue that it would be a small price to pay to maintain stability in the international economic system from which our country benefits greatly.

The National Taxpayers Union also characterizes this bill as a bank bailout. While there is no truth to this assertion, it is a fact that U.S. commercial banks will benefit from a healthy international economic system—as will U.S. labor, U.S. exporters, American farmers, and American consumers. There is no justification for the charge that commercial banks have lent imprudently. Commercial banks have done the world an invaluable service by providing the bulk of balance-of-payments lending since the oil price increases of the early seventies.

It is extremely important that the Congress act favorably on this legislation now. World financial markets are increasingly nervous, reflecting uncertainties about U.S. economic policy. Many are beginning to question this administration's commitment to maintaining U.S. leadership in the international economy. The psychological fallout of a failure to pass this bill could have a devastating impact. With the finance ministers of over 130 countries making their way to Washington for the IMF's annual meeting later this month, it is important that Congress give the International Monetary Fund a vote of confidence, and sufficient resources to maintain international economic stability. I urge strong support for the bill.

□ 1600

Mr. LEACH of Iowa. Mr. Chairman,

I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 7244, increasing the U.S. quota to the International Monetary Fund.

We are considering this legislation at a time when economic distress is fast becoming the rule rather than the exception. The unprecedented inflation and burgeoning unemployment plaguing our domestic economy also predominate to varying degrees in other industrialized countries. At the same time, the debt burden shouldered by developing nations has become the most destabilizing international issue of the decade.

The most immediate cause of worldwide economic instability is the oil pricing and supply decisions of the OPEC cartel. The doubling and then redoubling of crude oil prices and the consequent massive transfer of wealth to the oil producers means that the United States along with other oil importers has started to lose control over a substantial part of our national independence and economic destiny.

We are all familiar with the oil dependency predicament of our own country, but the non-OPEC developing world is in markedly more desperate straits. It is estimated that developing countries will show a current account deficit this year of approximately $58 billion, a $33 billion increase from 1978. What makes the situation particularly troublesome is that this new deficit will be piled on top of an already alarming debt burden. The aggregate developing country deficit from 1973 through 1979 stood at $168 billion. It is projected to reach $296 billion by yearend 1981. The other side of the coin is that OPEC members have massed between 1973 and 1979 a current account surplus of $220 billion and probably will garner another $100 billion this year alone. By 1985 it is estimated that the aggregate surplus will near $600 billion.

The success or failure of efforts to recycle ever-accumulating revenues from surplus-rich OPEC to deficit-ridden oil importers will greatly influence whether the latter group of states can reasonably and effectively cope with their vulnerability to price and supply actions. In the aftermath of the first oil shock and resultant payments imbalances, recycling was mainly channeled through large, internationally oriented commercial banks bulging with OPEC deposits. However, most observers now believe that, because of already excessive debts and dubious repayment ability, an equivalent infusion of private capital to satisfy new credit demands is unlikely. In addition, internal constraints such as capital adequacy and portfolio diversification requirements make specious any complacent assumption that commercial banks alone can once again rescue seriously indebted countries from the edge of the economic precipice.

Adequate recycling simply cannot be carried out as before through private financial markets without more substantial involvement from international institutions. Prospects for orderly adjustment of balance-of-payments dislocations will depend in large measure on the International Monetary Fund's capacity to take a much more active part in the recycling process. Crucial to fulfillment of this role is adequacy of resources and in this connection the quota increase authorized by this legislation and similarly in the other IMF member countries is imperative.

Mr. Chairman, the gentleman from North Carolina has succinctly described the IMF's purpose and mode of operation. I would like to briefly address as well the major points made by opponents of this measure.

It is argued that Fund stabilization programs have not been successful but have actually been counterproductive and more impoverishing. The IMF study alluded to by critics of this bill does state that only one-third of the programs have been fully successful but it goes on to say that—

> Even when countries carried out only part of the agreed policies, most of them were able to arrest a worsening economic position and all of them prevented the crisis situation that would have developed had no program been in effect.

The primary reason for limited success has been that deficit countries put off turning to the IMF until their payments difficulties become virtually intractable with default imminent. The stabilization policies subsequently accepted are by necessity austere. The quota increase in conjunction with the recent easing in conditionality should encourage utilization of the IMF at an earlier stage and thus improve the chances for success and at the same time make the redress more tolerable.

It must also be remembered that stabilization arrangements are worked out between the Fund and the respective governments. The IMF determines the degree of adjustment needed and the individual governments formulate the policies for implementation. If adjustment is to be effective, governments must be convinced of the necessity and provide thorough backing. To lay all the blame for failure on the IMF indicates a misconception of how the Fund operates and how crucial governmental follow-through is. Moreover, the record of the IMF reflects the inability of governments generally to manage their economies at a time of both high inflation and unemployment. Having to function in this environment, the Fund should not be regarded as a panacea nor should it stop trying altogether because of experienced shortcomings.

Some assert that this legislation is meant to bail out banks that are overextended and others say that, to the contrary, there is no need to protect international banks since only an imprudent few would be unable to withstand defaults. The truth of the matter lies somewhere in between. By temporarily bridging deficits the IMF improves the borrower's repayment ability and credit worthiness. Additional bank lending which is a prerequisite for continued adjustment and renewed development usually follows. Both the deficit country and the banks benefit, the former by maintaining access to private capital and the latter by strengthening loan assets. Undoubtedly the risks involved have heightened as more banks have lent greater sums. In fact, during the 1970's the dramatic increase in commercial lending far outstripped the growth in bank capital to the extent that outstanding loans on average exceeded by 30 times the moneys retained against potential losses. A wave of defaults would have major repercussions not only on the private sector but also on the overall international monetary system. Expanding the IMF's recycling role is a recognition of the more cautious attitude among bankers and, as importantly, is an acknowledgement of the ongoing and indispensable participation of private sources once the IMF completes its short-term task.

The critics of H.R. 7244 also contend that the American taxpayer has to come across with $5.5 billion. This view must derive from confusion about how the IMF operates or a preconceived notion that a quota in some way represents a cost. Technically, as my colleague from North Carolina has explained, the subscription increase will not enlarge our budget deficit because there will be no net outlays. Beyond that, any consideration of gains or losses is overwhelmed by the benefits we receive from a financially strong IMF. It is to our advantage because Fund lending allows borrowing countries to continue to engage in world trade, including purchases of American exports.

Moreover, as the second largest recipient, we have utilized the IMF to stabilize the dollar's value in volatile exchange markets. Demands placed on the international financial system at present are heavy and as the most influential economy in the world the United States has a great deal more to lose by not participating in the IMF than it can ever save by not joining other members in expansion of the Fund's resources.

Mr. Chairman, all of us are concerned that the OPEC nations have not fairly shared in the responsibility for financing huge payments imbalances. The anomaly of OPEC's unwillingness to alleviate the financial misery largely brought on by the cartel cannot continue unnoticed. For this reason, I introduced and the committee accepted an amendment to this legislation pointing out that these strains can only be relieved if oil exporting countries increase their contributions to international lending institutions, particularly the IMF, and engage in direct recycling themselves.

In addition, the amendment stipulates a feasibility study of the IMF borrowing funds in private capital markets for onlending to its members. Closer coordination between the Fund and commercial banks is encouraged to establish a better flow of basic economic and sociological information. In addition, the committee believes that the possibility of cofinancing of loans as currently practiced through the World Bank should be explored as should the possibility of the IMF acting as an insurer or guarantor for OPEC lending to deficit countries, thereby increasing the leverage from its financial resources. Closer IMF-bank cooperation could prevent instances in which banks are played off against the IMF enabling chronic deficit countries to avoid going to the Fund.

Another amendment I introduced in committee stipulates that negotiations within the Fund to establish a substitution account ought to proceed expeditiously. The negotiations are presently in abeyance but it is my belief that substitution, that is, allowing member governments to place surplus currency in the Fund and in return receive interest-bearing SDR's, is an alternative mechanism for recycling petro dollars which could serve to alleviate currency instability.

At the same time, substitution provides unique protection to lenders who become insulated from potentially explosive pressures to nationalize foreign assets. From the point of view of oil importing countries like the United States the substitution process is a method of recycling that involves the sale of debt rather than country assets, such as farmland or equity securities, and is thus less jeopardizing to national economic autonomy.

Mr. Chairman, the world economy is entering unchartered waters. We should not mimic the ostrich which attempts to avoid danger by refusing to face it. H.R. 7244 is an essential measure to provide the flexibility and strength so essential to international financing today.

In this regard, the distinguished committee chairman, the gentleman from Wisconsin, used the analogy of the candle of Bretton Woods being snuffed out if this bill is defeated. To the contrary the gentleman from Indiana argued that the flame of the candle would simply be kept burning at the same level. The gentleman from Indiana is technically correct, but in substance very, very wrong. The flame may be kept at the same level, but the fact is that the room to be lit in 1980 is much larger than the one of 1945. IMF resources are currently very low—4 percent of world imports—down from 12.3 percent in 1960 and 9.6 percent in 1970. We need a larger candle or we run the risk of going lightless in a large part of the world.

Mr. Chairman, I urge adoption of H.R. 7244.

At this point, Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I would like to salute the chairman of the subcommittee, the gentleman from North Carolina (Mr. NEAL), and the ranking minority member, the gentleman from Iowa (Mr. LEACH), for their very effective leadership in this difficult, complicated and important legislation. I would also like to commend the gentleman from Nebraska (Mr. CAVANAUGH), who is approaching the end of his career, at least his first career, in Congress. The gentleman from Nebraska has been an extraordinarily useful member of this subcommittee.

Mr. Chairman, I would like to voice my strong support for this measure to increase the U.S. quota at the International Monetary Fund.

The IMF is of critical importance to the United States and the other major trading countries. Unlike the development lending institutions, the IMF puts our interests first. Of the hundreds of international institutions to which the United States belongs, none begins to compare to the IMF in importance to maintaining stability in international finance. As the world's largest trading country, we gain more than any other from strong and effective institutions at the center of the trade and monetary system. The IMF has done an admirable job at maintaining a stable monetary climate for 30 years. As that system has evolved, with the U.S. dollar at its center the interests of stability and U.S. national economic priorities have increasingly become one and the same.

We are now asked to approve an increase in the U.S. quota at the Fund. Because the size of the international trading system keeps growing, members of the IMF periodically vote to increase their quota subscriptions to keep pace with this growth in trade. Five and one-half billion dollars sounds like a high price tag, Mr. Chairman; but, in fact, its not so large when compared to trade growth. Demands on the Fund's resources are roughly proportional to the volume of world trade. When viewed by this measure, IMF resources are currently very low—4 percent of world imports—down from 12.3 percent in 1960 and 9.6 percent in 1970.

The recent round of OPEC oil price increases has put added pressure on Fund resources as some countries find they are unable to make adjustments without financial assistance. It has been estimated that non-OPEC developing countries may need as much as $150 billion from private banks this year in order to finance deficits and to service existing debts. Yet the Chairman of the Federal Reserve and other U.S. banking regulatory authorities have begun to pressure U.S. banks to limit their exposure in LDC's. Similar concerns in Europe and Japan produced a 40-percent drop in Eurodollar loans to LDC's in the first quarter of 1980, compared to 1979.

With serious potential financing problems among developing countries, the private sector less flexible and the international economy less buoyant, the prospects for smooth adjustment to major balance-of-payments dislocations expected in 1980 and 1981 will depend in large measure on the strength of the International Monetary Fund, the adequacy of its resources, and its capacity to play a greater role in the recycling process. The developing countries, it should be emphasized, are not the only countries which depend on IMF resources. Since the IMF was formed, the United States has drawn 25 times from our quota at the Fund. It was crucial to our dollar support program in 1978 that we were able to borrow $2 billion in foreign currencies to defend the dollar's value. The alltime record for Fund borrowing belongs to Great Britain—hardly a developing country.

Our committee has given explicit recognition to the fact that most of the current imbalance in the system results from price gouging by the oil producing countries. As a committee we are concerned that as a group the OPEC countries have not borne their fair share of their responsibilities. We have amended the bill in committee to add an amendment—offered by the distinguished ranking member from Iowa—to encourage OPEC members to assume a greater burden for financing deficits through the Fund and to increase their contributions to the development lending institutions. In a second amendment, the committee asks the Treasury and the Fund to study the feasibility of increasing Fund resources by direct borrowing from member, particularly OPEC, countries.

In closing, Mr. Chairman, let me note that this bill will not contribute to the deficit. Our transactions with the Fund rarely result in net outlays even though we will authorize and appropriate the full amount. Rarely do we get to vote for a bill from which we get so much for so little. We have a crucial interest in the financial stability of the other countries of the world—we have a huge defense budget so that we might resist aggressive communism—we need economic weapons as well in an increasingly dangerous world.

I urge my colleagues to support this important legislation.

Mr. NEAL. Mr. Chairman, I would like to yield time to the gentleman from Indiana (Mr. JACOBS) and any remaining time I would yield to the gentleman from Maryland (Mr. MITCHELL). Perhaps if necessary, the gentleman from Iowa (Mr. LEACH) could yield time to the gentleman from Maryland as well.

□ 1610

Mr. LEACH of Iowa. I would be happy to honor a time request from either gentleman.

Mr. JACOBS. Mr. Chairman, if the gentleman will yield, it is not my purpose to take time from the gentleman's side if it is required. If there is a surplus I should be very grateful, otherwise I think I can state my views during the 5-minute rule.

Mr. LEACH of Iowa. Mr. Chairman, I would be delighted to yield 1 minute to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, I rise in support of this excellent bill. It is my fervent hope that the House will pass it with minimum damage by amendment.

The International Monetary Fund is no foreign-aid agency. It is involved in no giveaway programs.

It was created to provide stability in the trade and financial relationships of a complex and interrelated world. Supported by every living ex-Secretary of the Treasury including such tight-fisted fellows as George Schultz and Bill Simon, it is deemed critical to international commerce.

The moneys to be authorized and appropriated are not likely to be actually spent. Historically this contribution, although clearly a call on our Treasury, has not required actual expenditure of funds.

The largest users, that is borrowers, from the Fund, have been the United States and the United Kingdom. We have found the Fund a convenient

source of funds to support our intervention operations in defense of the dollar.

The biggest need, however, is to finance trade imbalances of developing countries, mostly occasioned by energy price increases. Without the IMF, these countries will have to scale back imports, and they constitute a huge market for the United States and have been the bright spot in our otherwise dim trade picture.

The IMF is not free. Our participation costs us something, but it delivers advantages which far outweigh its costs.

Mr. LEACH of Iowa. Mr. Chairman, I would now like to yield such time as he may consume to the gentleman from New York (Mr. GREEN).

Mr. GREEN. Mr. Chairman, I rise to support this bill. I believe that the International Monetary Fund has been a useful instrument. It has seen the world's monetary system through some very difficult times. It has been useful in imposing economic discipline on those nations it has assisted.

However, I must raise a warning flag. The IMF and the other international financial institutions have been effective and worthy of U.S. support in large part because they have been operated in a thoroughly professional, not political way.

Now there is a threat to that tradition. Efforts are being made to give the PLO observer status at the IMF and other international financial institutions. I want to make it clear that this effort to politicize the IMF and the other international financial institutions, if successful, will force me—and, I believe many other Members of this House who like me have been supporters of these institutions—to reconsider the utility of continued U.S. participation in them.

Mr. LEACH of Iowa. Mr. Chairman, I would like to yield 5 minutes to the distinguished and thoughtful gentleman from Texas (Mr. PAUL).

Mr. PAUL. Mr. Chairman, I rise in opposition to this bill. I have spoken earlier about some of the concerns I have about the international banking situation. I think we are facing a serious international banking crisis, but I do not think that which we are doing here today does anything but compound that problem and makes it much, much worse.

A lot has been said here today about human needs, expressing a sincere concern about the underdeveloped nations in the world, and I too am concerned about human needs. I for one, though, happen to believe that the human needs of the bankers in New York are going to be better served by this bill than any poor person any place in the world. It is the banks that are in trouble.

There are $400 billion owed to the West from the Third-World nations, on top of another $60 billion to $80 billion by the East Europe Communist nations. They have us over the barrel. They have us under the gun. These debts are a greater weapon than any military weapon because they can close down our banks at their choosing.

Some may say, "Well, this is a strong argument for further subsidizing this system, to keep the system together," but $5.5 billion is nothing compared to what is going to be needed when this mountain of debt comes down on us. We are sitting on a mountain of debt, not only in this country but throughout the Western civilization. Unfortunately, the mountain is sitting on its peak. There is no foundation whatsoever, and for this reason we must not further compound it, by creating more inflation.

So what do we do? We take $5.5 billion of Federal Reserve notes—paper, IOU's—send it to the IMF, and they convert it into $4.2 billion SDR's, IOU's, paper.

I can take any 10-year-old, or any 8-year-old, or even a 6-year-old, and have them look at SDR's and also something of real value, whether it is silver or gold, and they will make the right choice. But, here we in the Congress continue to choose that which has no value, no stability whatsoever, and we depend on the false promises of all the Western nations to run a sound economic order.

It has been stated here that the IMF funding is to our benefit. We can go to the IMF and borrow, and that we have. This is not a good sign. This is a bad sign. This is a sign that our economy is in trouble. It is a sign that we are not much better off than the Third-World nations in the way we run our system. It is a tragedy that we have to go and borrow.

Some claim this enhances our trade. I have never been able to quite figure this out—take the money from the American people, give the money to some banker or a corporate giant, and the goods go overseas. It is supposed to enhance our trade. The question that is never asked is: "Would those funds have been used to generate jobs and be stimulating to the economy if we had not extracted them and used them artificially and used them unwisely?" Those funds would have been used by the marketplace if we had not taken them. They would have accomplished the same thing, but the accomplishment would have been much sounder. It would not have been going to encourage this unsound system, this sea of debt that we are living under.

Therefore, I say to compound this by perpetuating it and further subsidizing it is ill advised. I cannot see anything other than that this will bring chaos to us, but it is going to be much bigger and much worse when it eventually comes.

Some claim that these funds are needed to keep pace with world trade. Today, we need much more funds to keep pace with the greater amount of trade we have. We are not keeping pace with trade. All we are doing is keeping pace with monetary expansion. The money supplies are forever increasing. It has been mentioned that England has to continue to borrow frequently from the fund. Their economy has been worse off than ours. Sure, they have had to borrow. Our economies are declining and dying. Our currency is dying because the currency is being destroyed, deliberately destroyed by us, the Congress, and the Federal Reserve System by insisting that we can print as much as we want. We can monetize any amount of debt, and therefore eventually destroy the money.

Some claim it is the Arabs' fault. They claim that since the price of oil went up this has caused all of the problems. That is nonsense also, because the price of oil is only reflecting the increase in the money supply. That is a consequence and not a cause. You cannot blame it on the Arabs. They did not create the imbalance in trade and the imbalance in payments. That is only a consequence of a monetary policy we follow in this country which is not reliable and totally irresponsible.

Mr. LEACH of Iowa. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Delaware (Mr. EVANS).

Mr. EVANS of Delaware. Mr. Chairman, I rise in support of H.R. 7244, which would authorize an increase in the quota of the United States in the International Monetary Fund (IMF). A 50-percent overall expansion of quotas for the member countries of the IMF has been agreed upon as a key element of the international community's response to the increasingly serious world balance-of-payments problems. This bill was overwhelmingly reported by the House Banking Committee on a bipartisan vote of 35 to 4, and was passed by the Senate earlier this year by the impressive margin of 55 to 25.

I must admit that I share the concern of many Members about the size of the quota increase and its timing in light of the serious budgetary problems facing the Government of the United States. However, I would like to reinforce the earlier comments of my colleagues by pointing out that U.S. participation in the IMF does not result in any net budget outlays. The outlays from the U.S. Treasury in the form of cash transfers to the IMF will be offset by additional interest payments from the IMF based on the increased U.S. reserve position in the Fund. The net result of these transactions has little impact on the Federal budget.

I also feel it is unfair to characterize U.S. participation in the IMF as a form of foreign aid. The IMF can more accurately be described as an international financial institution which utilizes a revolving fund of currencies which have been provided by the members through their quota contributions to extend temporary financing to support the economic stabilization programs by countries facing balance-of-payments problems. The primary purpose of the IMF is to allow its members to correct imbalances in trade payments without resorting to policies which destroy their own economies or further aggravate the disequilibrium characterizing the country's balance-of-payments situation.

The United States has a significant national interest in continuing its involvement with this loan facility. The United States has been a frequent user of the Fund's resources; in fact, we are the second biggest user of the financing arrangements available from the IMF. We have utilized the IMF on over 25 occasions for draws equaling $7.8 billion. Our contributions to the IMF guarantee the opportunity for the United States to call on a larger amount of the Fund's resources if we find ourselves in serious balance-of-payments difficulties. The most recent drawing by the United States

against its "reserve tranche" came in November of 1978 when the administration needed $3 billion to finance its program to rescue the tumbling value of the U.S. dollar in the international currency markets.

From an international economic standpoint, it is important to insure that the IMF has adequate capital resources to help all the oil-importing countries to cope with the major price increases announced by OPEC in 1979. The quadrupling of oil prices by the OPEC cartel and profound structural problems facing the consuming countries have raised the prospects for dangerous balance-of-payments difficulties for both the developing and industrialized countries. The OPEC countries have tremendous current account surpluses which are expected to grow to upward of $500 billion within the next 5 years. This projected surplus by definition means that many countries will have to find some way to cope with their oil-related deficits.

Over the next several years, the international community faces the difficult task of assuming that sufficient financing is available to establish reasonable prospects for world economic development and growth. At a time when payments imbalances and therefore the likely number of demands on the IMF are increasing, the ratio of IMF resources to world trade has dropped to dangerously low levels. As Treasury Secretary Miller has so ably pointed out in his speeches around the country, the IMF must possess the resources to meet the potential demands for short-term financing which will be needed to encourage international monetary stability.

Although the commercial banking system played the biggest role in handling the recycling problems following the 1973–74 round of price increases, the exposure of the banks to the deficit-ridden developing countries will force them to exercise greater precautions before making any additional loans. It appears that the increased hesitancy of private bankers to move very aggressively to handle the financing problems of the LDC's will force the IMF and other international institutions to increase their lending activities. Without the 50-percent quota increase contemplated in this bill, the IMF will not be able to provide even the 5 percent of total financing resources it provided following the first round of OPEC price increases.

Mr. Chairman, the international monetary system is facing a disquieting future. The major challenges to the world economy over the next several years include the establishment of the proper means to finance the huge payments imbalances that will continue to exist due to OPEC pricing decisions and to promote fundamental adjustments to the threatening world energy situation which is at the heart of global economic problems.

The challenge to the United States, and especially to the Members of the Congress, is to avoid taking the easy way out by turning inward and thereby risking the possibility of precipitating a disastrous international financial crisis. Ambassador Elliot Richardson, among others, has thoughtfully pointed out that the global situation today demands a broader, not a narrower, international perspective in the formulation and conduct of U.S. policy.

Finally, I would like the Members of this body to recognize that the United States has given its word to an international forum that it will continue to participate voluntarily and as a full partner in the financing arrangements for the Fund. At a time when America's credibility is dangerously low in the eyes of friends and foes alike, I do not believe we should break our word by rejecting this legislation and seriously undercutting the U.S. position in the IMF. We have a compelling obligation in this instance to live up to our word and increase our quota in the IMF along with the other member countries.

I urge my colleagues to carefully consider the implications of voting against this needed legislation. Despite the large numbers associated with the quota increase, the impact of this legislation on the budget is truly negligible. With the U.S. contribution, the IMF can position itself to play a constructive role in meeting the payments crisis which could strangle the world and to assist all types of countries to undertake the structural readjustment programs which are needed to revitalize their economies. I urge my colleagues to recognize the compelling need for the United States to play a responsible role in the international economy and support the bill.

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Mr. Chairman, I yield back the balance of my time.

Mr. LEACH of Iowa. Mr. Chairman, once again I yield to our very fine colleague, the gentleman from Texas (Mr. PAUL), a member of the committee, and this time I yield 2 minutes to the gentleman.

Mr. PAUL. Mr. Chairman, the one thing that I think is very important to understand in order to get a different perspective on this bill and to recognize the fundamental difference between my viewpoint and the prevailing opinion here is that if we create credit or if we create a paper asset, the feeling is that in some manner or in some mysterious way we are able to increase wealth. Nobody has ever done this in the history of man. It has been attempted for thousands and thousands of years.

In the olden days they did it in a different way, but today we do this in a very sophisticated manner, allegedly by increasing the supply of money through credit extension and credit creation. This is all done with good intentions. Nobody does this with an ill intent to hurt people. We all are always desirous of helping the poor, but yet in passing this legislation all we do is unfairly redistribute wealth. It takes the wealth from the poor and gives it to the wealthy.

It is the New York banker who is over the barrel. It is the banker who will be bailed out, and it is the dictators in the Third World nations today who will benefit, because 99 percent of them will receive some benefit by this appropriation and it will enhance their power and their positions in their socialist dictatorships. We are not spreading freedom around the world and we are not spreading a productive economy around by doing this.

We are doing the exact opposite. We are encouraging the system which has deceived the people. It is a deception upon all the people. The deception is in the Congress, the deception is in the Federal Reserve Board, and a lot of people in the country are starting to catch on to this. They are starting to realize that paper assets have no value, that this is only a game we are playing, that this is patchwork type of economics, and that eventually we will all suffer the consequences because we cannot do it forever.

Mr. Chairman, the mountain of debt is too great, and eventually we are going to have to settle down and develop a sound currency.

Mr. NEAL. Mr. Chairman, may I inquire, how much time do I have remaining?

The CHAIRMAN. The gentleman from North Carolina (Mr. NEAL) has consumed 25 minutes and has 5 minutes remaining. The gentleman from Iowa (Mr. LEACH) also has 5 minutes remaining.

Mr. NEAL. Mr. Chairman, I will yield the balance of my time to the distinguished gentleman from Maryland (Mr. MITCHELL), but before I do that, I yield myself such time as I may consume.

Mr. Chairman, I would just like to thank the Members on the majority and minority sides who have worked long and hard to develop this legislation.

This is not popular legislation. There is no constituency in our country for it. Few Americans can see the immediate gain from this legislation. Yet it provides a stable world order that serves all of us.

Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Maryland (Mr. MITCHELL).

Mr. MITCHELL of Maryland. Mr. Chairman, let me state to my colleagues here that one person asked me today, "Are you going to support the IMF bill, particularly in light of the story that appeared in the Baltimore papers and the Washington papers about a total now of some 12,000 or 15,000 unemployed people in Baltimore applying for 75 jobs?"

I think the question that was put to me shows the lack of understanding of what the IMF is all about. I think if the person who put that question to me understood what we were doing, he would not have put the question.

Mr. Chairman, I support this legislation. I have some questions about the situation with Jamaica, and I intend to raise that issue at the proper time. But let me indicate to the Members that I do not think this Nation can afford the luxury of retreating into a kind of neo-isolationist position in world economic development. I just do not think we can do that.

I do not think all the MX missiles and all the other weaponry we are funding now through the Congress is the answer to America's role in the world order of things, nor do I think our par-

ticipation in the IMF ought to be aimed primarily at the containment of communism. That is the lesser consideration in my mind.

My argument is that this Nation will sustain itself as a viable international entity to the extent and degree that two things happen: First, the extent and degree that we continue to participate in international trade, operating with a sound currency; and, second, the extent and degree to which we continue to help the undeveloped or lesser developed nations.

We are witnessing in our time a whole new arrangement in geopolitics and in the international money markets and in international relations. If we fail to support an IMF approach, then I think we jeopardize our position in the world.

Mr. Chairman, I do want to raise one question, and perhaps I should do it now. That is with reference to the situation in Jamaica. It has been indicated to me that there is some evidence that IMF officials have attempted to interfere in the internal politics of the nation of Jamaica.

If that is true, then it is totally and terribly wrong for IMF to do that. It is a misuse and an abuse of the IMF legislation and funds.

Mr. Chairman, can the distinguished chairman of the subcommittee enlighten me on the situation with reference to Jamaica?

Mr. NEAL. Mr. Chairman, if the gentleman will yield, I would like to respond by pointing out that the statement by Mr. Walter Robichek, which was quoted in the Black Caucus letter to the Secretary of the Treasury, does not, in my opinion demonstrate any interference in Jamaica's external or internal affairs. I believe the gentleman would agree with my interpretation.

Mr. Robichek's comment was meant to be read internally within the IMF. It concerned some statements that Prime Minister Manley had made publicly and how those statements might impact on the economy. But there was no attempt to change that country's internal policy.

Mr. MITCHELL of Maryland. Mr. Chairman, I will accept the subcommittee chairman's response.

Mr. NEAL. That is my understanding.

Mr. MITCHELL of Maryland. But I do think that as we consider this legislation under the 5-minute rule, we bought to consider an amendment or language in the report which would clearly indicate that there cannot and shall not and must not be any use of IMF funds or IMF personnel to attempt to affect the internal political structure of a given nation.

Jamaica is the only nation that was brought to my attention, and I was concerned because of the form of government that is there. It is a socialist form of government, and that is what they have decided to have. It would be just totally and terribly wrong, it seems to me, to use the IMF to steer that government in another direction.

Mr. Chairman. I rise in support of the bill, H.R. 7244, the International Monetary Fund quota increase amendments, to amend the Bretton Woods Agreement Act and provide for the increased participation by the United States in the International Monetary Fund.

Several months ago, I supported similar legislation, the international financial institutions authorizing bill. Today, my reasons for supporting the legislation before us are not significantly different and remain equally important because our participation in the International Monetary Fund is an essential ingredient of U.S. policy toward the developing countries of the world.

This legislation would authorize the participation of the United States in the supplementary financing facility within the IMF. Such a facility is necessary because of the inability of many IMF members to finance balance-of-payments deficits caused by increases in the price of imported oil. This year's oil bill for the poor countries of the world will exceed $50 billion.

Energy consumption in the developing countries is projected to grow at 6.2 percent a year throughout the 1980's, according to a recently published World Bank report. The oil bill of these countries will therefore double in real terms. The report also indicated that most of the 92 developing countries depend on imported oil and of the 92 import dependent countries, there are 64 countries, including some of the poorest, that depend on imports for more than 75 percent of their commercial supplies. Since there are presently no new facilities to substantially reduce the oil dependency of the developing countries, and the investment climate in the world is not favorable, the IMF will continue to play a dominant role in assisting these countries to reduce their oil deficit.

World trade will expand this year by 2 to 3 percent, in comparison to 6 percent in 1979, as estimated by the General Agreement on Tariffs and Trade, the 85-nation organization that monitors world trade activity. The decrease in world trade is ascribed to changing patterns in the demand and supply of oil. Given such a slowdown in economic activity in the United States and the rest of the industrial world, developing countries will have even greater difficulty in improving their economic position. In essence, the need for this legislation reflects the dilemma of the non-OPEC developing countries and the U.S. role in north-south global economic negotiation. Of course, to the extent that we do not recognize the significance of our role in north-south global economic negotiations and the related components, we will only contribute to the gap that exists between the developing countries and the industrialized nations of the world.

Several arguments have been raised in opposition to increasing the U.S. quota to the International Monetary Fund. One of these arguments is that the U.S. budget deficit will increase by increasing the quota because the United States will have to borrow in capital markets, and this will increase interest rates. However, this argument focuses only on the demand side of world capital markets. Yet the activities of the IMF with respect to fostering stability and growth in the developing countries will increase the supply of capital by an amount sufficient to more than offset any initial demand on interest rates.

Another budget related argument is that since the United States can only use its reserves in the IMF to help finance its balance-of-payments deficits, such spending is inflationary. Yet, any borrowing we do to finance balance-of-payments deficits will be a result of temporary aberrations rather than major structural deficiencies in our economy. Further, to argue that a balance-of-payments deficits is inflationary is to misunderstand the cause of inflation since it is a monetary phenomenon and there is no relationship between our transactions with the IMF and the rate of growth of our money supply.

These arguments center around the question as to whether the costs of the legislation outweigh the benefits. Those who are opposed to our participation in the Fund consider the costs in a vacuum. I would submit that although nothing we do is without cost, the benefits of this legislation are far greater than its costs.

Our participation in the Fund contributes to the 37-percent share of U.S. exports consumed by the non-OPEC developing countries. In the absence of these markets, U.S. manufacturing and agricultural exports would be sharply reduced—1.2 million American workers depend on exports to the developing countries for their employment. These factors notwithstanding, the overall activity of the International Monetary Fund is directly tied to the economic growth and political stability of the world. What could be a greater benefit?

I understand the concerns about human rights violations since the Fund's activities are aimed at improving the quality of life in the recipient countries. However, I do not think that the human rights issue should prevent our participation in the Fund or encumber the IMF in any way. Indeed, in the long run the cause of human rights throughout the world is likely to benefit more from activities of the Fund in conjunction with other forms of developmental assistance than from preoccupation with the mere form of human rights.

I urge my colleagues, given the compelling arguments for increasing our participation in the Fund, to vote for H.R. 7244 without any crippling amendments.

Mr. LEACH of Iowa. Mr. Chairman, I yield myself the balance of my time, and I will make one final observation.

This bill has been brought before this House as a bipartisan measure. The leadership of the gentleman from North Carolina (Mr. NEAL) is particularly appreciated. The legislation draws support on our side, although certainly not unanimous support, as we have heard from the distinguished gentleman from Texas (Mr. PAUL), who has grave concerns. But speaking for myself and speaking for the ranking Republican member of the full committee, I would strongly encourage passage of this bill.

● Mr. KEMP. Mr. Chairman, according to Treasury Secretary G. William Miller:

The purpose of the International Monetary Fund is the maintenance of a strong and orderly international monetary system.

If this is the criterion for judging IMF performance, there seems little justification for approving another increase in the IMF quota of the United States. Despite, and in some cases as the result of, the efforts of the IMF, the international monetary system today is neither strong nor orderly.

The IMF was established to oversee the adjustment of international payments under the Bretton Woods gold-exchange standard. Unfortunately, this proved an impossible task, since the nature of a gold-exchange standard is to block the automatic mechanism for adjusting international payments. When one or more currencies are privileged as reserve currencies—that is, used as reserve assets by central banks—two pyramids of credit may be erected on the same gold reserve. A balance-of-payments deficit in the reserve currency country can duplicate itself; under the Bretton Woods system, dollars sent abroad were counted as reserves by foreign central banks, which simultaneously reinvested them back in the United States. This caused monetary expansion abroad and prevented any correction of the overexpansion of American credit which caused the payments deficit in the first place. The dollar became overvalued, and the system broke down under the weight of outstanding claims against American gold.

When the gold-exchange standard was replaced by the nonsystem of "floating" exchange rates without gold convertibility, the main role of the IMF should presumably have ceased. After all, when American monetary authorities closed the gold window, they argued that floating rates would make balance-of-payments adjustments unnecessary; instead, overabundant currencies like the dollar would simply be allowed to depreciate. Needless to say, the regime of the past 9 years compares dismally with the Bretton Woods system, flawed as it was.

Yet the IMF found a new function: "recycling" international oil payments, especially for the Third World countries. Why this could not be handled exclusively by commercial banks is a mystery, unless the role of the IMF is to guarantee the imprudent overextension of risky credit by those banks.

Treasury Secretary Miller is speaking nonsense when he says, in arguing for this quota increase, that "the changed world energy situation is at the heart of current global economic difficulties." Instead, the magnitude and intensity of the energy crisis can be traced to irresponsible U.S. monetary policies, in which Mr. Miller himself figured largely, as Chairman of the Federal Reserve Board, and to U.S. energy policies.

Because world oil prices are quoted in dollars, hikes in the world price of oil are in the first instance a result, not the cause, of the dollar's devaluation. Combined with U.S. controls on the price of domestic energy and subsidies of oil imports, which have discouraged both production and prudent conservation, most of the real and nominal rise in the world price of oil can be traced to Washington, not to Tehran.

In any event, the record of the IMF in "recycling" oil payments has been less than spectacular. Peru, Zaire, and Turkey are only a few examples of countries "saved" from defaulting on their debts, only to sink into deeper financial troubles under the policies imposed by the IMF.

Since World War II, through international institutions like the IMF, we have been encouraging less developed countries to adopt "development" policies which are antithetical to those on which our own development was based: Deficit spending, import protection and substitution, grandoise government projects and income redistribution. Today, these countries are buried under the debt we encouraged them to undertake, and we have destroyed their ability to repay it. High tax rates, supposed to finance staggering debt service and discourage the import of luxuries, instead crushed incentives to produce, save and invest, to the vanishing point. The tax rates naturally fail to yield enough revenues to meet the debt schedules, and the LDC's borrowed further and depreciated their currencies to cover their debt finance.

Mr. Miller now tells us that a further increase in the IMF quota will enable these countries "to borrow substantially more from the IMF," and "maintain needed imports" while "these adjustment measures" take effect.

A friend of mine suggests, only half humorously, that our intelligence officials could save a great deal of effort in trying to predict where in the world the next revolution will take place. A simpler plan, he says, is to assign one agent to follow the IMF's team around the world as it prescribes "adjustment measures." A revolution is sure to follow within 6 months. This certainty seems to be the case in Turkey, a crucial NATO ally.

I recognize that the amount of the quota increase we are discussing will have little real effect, one way or the other, in Mr. Miller's words, in "the maintenance of a strong and orderly international monetary system." Even if the quota increase is approved, IMF quotas will represent only one-third the share of world trade they held throughout the 1960's—when the IMF proved totally incapable of preventing the breakdown of the Bretton Woods system.

More to the point is the fact that such an increase would go in exactly the wrong policy direction—in fact, several wrong directions. To speak of increasing the total IMF quota from SDR 39 billion to SDR 58 billion when the world is awash in liquidity and suffers raging inflation is, as one astute observer said when SDR's were first proposed, "like discussing irrigation plans during a flood." Likewise, an increase in IMF quotas means two things—an increase in the capacity of deficit countries—including the United States—to borrow, and an increase in the obligation of the more responsible surplus countries to lend. And finally, another $5.5 billion in "off-budget" Treasury borrowing would seem to conflict with the rhetoric, at least, of this administration regarding fiscal responsibility.

I believe it is long past time to reexamine and revise our domestic monetary policy, the international monetary system, and the nature of our supposed assistance to the Third World. I believe we will find that if we wish to end inflation, restore world economic stability, and provide a climate of prosperity for all countries, we must devise a new international gold standard in which no national currency is privileged as a reserve asset.

In the meantime, Mr. Speaker, I cast my vote against the proposed IMF quota increase to protest the role of the United States in encouraging a dangerous overexpansion of debt which threatens the collapse of the world's financial system. The IMF has proven that it will not, or cannot, initiate the reexamination of policy which is necessary. While I am sure there is a role for the IMF in a reconstituted, stable international economic order, at this time the IMF is doing little but encouraging this Nation, and the world, to postpone a serious debate on how to restore stability and prosperity to the international monetary system.●

● Mr. EDWARDS of California. Mr. Chairman, it is with great reservation that I vote for H.R. 7244, the bill which authorizes the United States to contribute an additional $5.6 billion to the International Monetary Fund. My reservation stems from several sources and I would like to take this opportunity to express them here.

Few people realize the unseen role the IMF exercises in determining our foreign policy, with particular regard to developing nations. Because of its large currency pool of $51 billion, of which the United States is the largest contributor, it has a great influence over developing nations which come to the Fund for assistance during balance-of-payments difficulties. Yet, the American people and the policymakers have little influence or knowledge over how the Fund exercises its control over the economies of these nations.

If we take the time to note the impact the IMF has on the nations of the world, we begin to notice that their initiatives frequently have results contrary to announced U.S. foreign policy. For instance, in 1976, the Fund loaned $464 million to the Government of South Africa. This loan appears even more reprehensible when we consider that it occurred during the height of the Soweto massacres. Consequent with this loan, South African imports of weapons increased significantly and the South African defense budget increased by $450 million.

In Nicaragua, the Fund loaned $22 million to the Government of Somoza a few short weeks before the total collapse of his government. Even the staff of the IMF recognized the absurdity of the loan, stating "the program which the Nicaraguan authorities have submitted to the Fund in support of a request for a standby arrangement involves substantial risks."

The Fund also has a history of making loans to nations which are notorious human rights violators. Included in this list are loans to Chile, Argentina, the Philippines, Idi Amin's Uganda, and the Central African Empire.

It is difficult for me to understand how the Fund can persist in loan actions which are contrary to our foreign policy as expressed by the President and the

State Department. The United States is the major contributor to the Fund and as such has the greatest voting power. I would suggest that the Department of Treasury and the Department of State exercise greater liaison and utilize our voting power in a means which is consonant with our expressed foreign policy.

Another source of my concern over the operation of the IMF is the impact which their financial conditions impose on developing nations which borrow from the Fund. IMF financial assistance is frequently conditional on certain behavior by the recipient government. The conditions are designed to force the recipient to become more financially sound, and I applaud the Fund for their attempts at this goal. However, in reality, the conditions often result in deleterious domestic economic situations which strike harshly at the poor citizens of the developing nation and result in IMF riots.

Peru is a nation which had severe domestic consequences resulting from IMF mandated policy initiatives. The economic policies which Peru was forced to follow initiated widespreads unemployment and a deteriorating standard of living for large segments of the population. The Fund also forced Peru to cut back on development programs which other aid agencies were spending $395 million to promote.

Egypt was also forced to inflate the prices of wheat flour and cotton cloth, sparking an IMF riot among the unemployed that left 30 dead.

I have enclosed an editorial in the RECORD which further delineates some of the disastrous domestic consequences of IMF conditions for financial assistance.

The amendment to be introduced by Representative HARKIN will hopefully reduce the unstabilizing aspects of the IMF arrangements. The amendment would instruct the U.S. Executive Director to be more attentive to basic human needs in the conditions it fixes on loans to less developed countries. In this regard, the Harkin amendment will help to address one of my reservations on IMF funds and I commend it to my colleagues.

My other reservations toward further IMF fund increases are financial and should have broad support among Members of Congress.

Of course, IMF fund increases have costs for the American taxpayer which must be examined. As most of my colleagues are aware, I support most foreign aid programs and am not opposed to using U.S. funds to support a genuine aid program which has reciprocal benefits for both our Nation and the recipient nation. Many would argue that IMF funds are not foreign aid money and should not be viewed as such. Despite the fact that the United States does rely on the Fund on occasion, we must recognize that many foreign nations view the Fund as an organization to resort to during times of need, an aid organization. Our perception of the Fund must incorporate the views of the recipient nations. Viewing the Fund impact on the international financial sys- this way, I question whether these dollars cannot be better spent.

The second, and most serious, financial question involving the Fund relates to what many perceive to be its destabilizing tem. This is especially ironic when one considers that the Fund was established after World War II to maintain financial stability in international currency transactions. Due to its close symbiotic relationship with private banks, the Fund has often made loans of questionable financial integrity.

During recent years, Third World nations have been accumulating larger and larger amounts of foreign exchange debts in order to finance the imports necessary to maintain their countries. Of course, the largest import here has been petroleum products, the price of which has increased astronomically. These nations are forced to turn to large private banks to borrow the hard currency necessary to purchase the required imports. The banks have been quick to respond to these requests and consequently the developed nations have increased their debts to private banks from $9.5 billion in 1971 to $85 billion in 1977.

The scale of this indebtedness raises serious questions concerning the stability of our international financial system. Recognizing the potential for default resulting from this magnitude of indebtedness, the banks come to the IMF to request loans to those nations which seem unable to meet their loan commitments. The IMF in turn comes to our Nation to request an increase in our contributions to the Fund which, if approved, places us in the position of upholding a questionable financial system. If we are going to assume this role, it is essential that we demand further disclosure of the activities of the Fund and the private banks which it is assisting.

The editorial follows:

[From the Boston Globe, July 2, 1980]

THE FUND NEEDS TO LEND GOODWILL

(By Jim Morrell)

The International Monetary Fund is one of those gray, undramatic Washington institutions that make boring news copy and draw no public attention, although they draw quite freely on the public treasury.

With its currency pool of $51 billion, contributed by the United States and other member nations, the IMF does much to determine the underlying structure of U.S. relations with the Third World. It lends money to Third World countries facing balance-of-payments deficits, requiring in return painful austerity programs that always strike most cruelty at the poor.

The programs exacerbate the huge gap between the rich and the poor and frequently cause "IMF riots" and changes of government. Invisible and unsensational as the IMF is. Therefore, it is time the American public learned more about this giant international agency, especially since it is now seeking a record-high $5.6 billion replenishment from Congress.

That amount, although it is not, strictly speaking, a budgetary outlay, is still more than the total $4.8 billion authorization for all foreign aid recently approved by the Senate. Taken out of the Treasury and refunded as a personal income tax rebate, the IMF's money would amount to a $69 refund to an average taxpayer with a family of four. But it is not only fiscal problems, it is also moral and human rights issues that have many members of Congress upset about the IMF. Consider these cases from the monetary agency's recent loan files:

In 1976 it lent South Africa $464 million, which enabled the government to increase defense spending by $450 million. The IMF's aid came at the height of the Soweto massacres.

In the name of free trade, it pressured Haiti to lift import restrictions on luxury automobiles.

In the name of fiscal austerity, it made the Philippines jack up the price of rice, canned milk, sugar, cooking oil, electricity and bus fares—all striking regressively at the poor.

In the name of fighting inflation, its overpaid staff pressured Bolivia to cut back the wages of tin miners making three dollars a day.

In the name of austerity, it made Egypt inflate the prices of wheat flour and cotton cloth, sparking an "IMF riot" among the unemployed that left 30 dead.

In the name of fiscal conservatism it forced Peru to cut back on the same development programs that other aid agencies were spending $395 million to promote.

While finding $2.5 billion to lend to such notorious human-rights violators as South Africa, Argentina, South Korea, the Philippines, Idi Amin's Uganda, the Central African Empire, it loaded such impossible conditions on its loans to Jamaica and Tanzania that the democratically elected leaders of those countries had to refuse them, despite urgent need.

To correct these abuses members of Congress have been trying for years to pass a human-rights amendment. They've been stopped in their tracks by the Carter Administration's conservative Treasury Department.

The periodic necessity of the IMF to return to Congress for money gives the public its last remaining lever of democratic control. A few well-chosen words could go a long way with legislators who today are only hearing from the Treasury Department of Citibank. With a little prodding from constituents, a majority of Congress would be happy to tell the IMF to do without its requested $5.6 billion, at least until it learns to respect human dignity and assist rather than impoverish the poor.

Jim Morrell is an associate for the Center for International Policy in Washington.●

□ 1630

The CHAIRMAN. All time for general debate having expired, the Clerk will read.

The Clerk read as follows:

H.R. 7244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

INCREASE IN UNITED STATES QUOTA

SECTION 1. The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 32. The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 4,202.5 million Special Drawing Rights, to such extent or in such amounts as are provided in appropriation Acts.".

Mr. NEAL (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk concluded the reading of section 1.

AMENDMENT OFFERED BY MR. BAUMAN

Mr. BAUMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BAUMAN: On page 2, line 9, strike out the period and quotation marks and add the following:

": *Provided further*, That none of the special drawing rights authorized in this act shall be made available until such time as the President of the United States certifies in writing to the Congress that the revenues of the United States Government are equal to or greater than the total expenditures of the United States Government for one full fiscal year.".

Mr. NEAL. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Chairman, I would be glad to have the gentleman from North Carolina make his point of order, if he would like.

Mr. NEAL. Mr. Chairman, I am not prepared to make the point of order now. I would like to reserve the point of order.

The CHAIRMAN. The gentleman from North Carolina (Mr. NEAL) reserves a point of order.

Mr. BAUMAN. Mr. Chairman, the gentleman from Maryland earlier, during consideration of the rule on the companion appropriation bill to this authorizing bill, made the point of the fiscal solvency of the United States and the additional obligation imposed upon the Treasury of the United States and the taxpayers by the terms of this bill.

The offering of this amendment simply seeks to make contingent the availability of the approximately $5½ billion or $4,202.5 million special drawing rights, upon the fiscal solvency of the United States, that is a balanced budget.

The amendment simply says that these rights will not be available until such time as the President certifies in writing to the Congress that we have either balanced the budget or have a surplus for 1 full fiscal year.

This is not at all out of keeping with the Bretton Woods Agreement Act. I would call attention of the committee to Public Law 95–435, adopted on October 10, 1978, and section 7 of that act, which was an amendment to the Bretton Woods Agreement Act, which reads as follows:

Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

That is the provision of the Bretton Woods Act known as the Grassley amendment. The Members will note from its own terms intrinsically that section 7 does not take effect until October 1 of this year. That is just a few days away.

I assume because it is the Federal statute that it will happen, that on October 1 there will be a balanced budget; because there it is, folks, in Federal law, and nobody would defy Federal law, I am quite sure. Least of all the Congress. So on October 1, if we believe the Bretton Woods Act, as amended in 1978, the budget will be balanced.

Perhaps I have overstated the case. Maybe the Federal budget will not be balanced. But against that possibility I have offered my amendment now pending, which I believe to be germane to the bill, which simply makes contingent the payment of these special drawing rights on a certification from the President that the budget is in balance or that there is a surplus. I do not think it is too much to ask that the International Monetary Fund await this additional support from the U.S. Treasury and our taxpayers until such a time as our own economy and our national budget is in a condition to allow such payments. To vote against my amendment is to oppose a balanced budget and to support instead $5½ billion of increased national debt at the expense of the taxpayers.

Mr. LEACH of Iowa. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would only comment that, as a supporter of the Grassley amendment and also as a supporter in principle of a balanced budget, I am convinced that this is an inappropriate place to present the type of amendment the gentleman from Maryland has.

The amendment is mischievous and belies an understanding of the nature of the IMF per se. In the history of the IMF, the United States has earned rather than lost income. Adoption of this amendment would deny us participation in an income-earning program. On these grounds, as well as others even more profound, I would strongly oppose the amendment as presented by the gentleman from Maryland.

Mr. CAVANAUGH. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I think that the gentleman from Iowa has succinctly stated the difficulty with this amendment. This is not a very ingenious way of saying that the United States should pull out of the International Monetary Fund, particularly in this fiscal year, and abandon its responsibilities to the world community and to international economic stability. That clearly would be the consequence of this amendment.

It would be, I think, a far more legitimate approach to offer an amendment that clearly articulated that as a goal rather than this more subtle method of putting forth that really catastrophic and devastating consequence for the United States and, indeed, for the whole international economic structure.

It would seem to me to be more candid for the gentleman from Maryland to simply offer an amendment which proposes to remove the United States from participation in the International Monetary Fund, and it says to the rest of the world this country, the major country and the leading country in the world, no longer will assume its position of leadership, it seeks to abandon those responsibilities by which the world community has been sustained for 35 years, and it seeks in effect the economic destruction of this world which we have enjoyed these past 35 years, because that is the clear, I think, and comprehensive and catastrophic consequence of the adoption of this amendment, and it would be nothing less than terribly destructive for us to adopt it.

Mr. NEAL. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think, as the gentleman from Nebraska said, this is clearly an attempt to kill the IMF legislation. If the gentleman from Maryland wants to kill the legislation, I would ask a question: Why does not the gentleman just offer an amendment that would kill this bill?

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Chairman, I intend to vote against the legislation if this amendment is not adopted. I do not think the IMF necessarily should be killed, but I do think we should wait until such a time as we can afford to contribute to the IMF. That is really my point.

Mr. NEAL. I would point out to the gentleman that the IMF does not cost us any money. What is the gentleman's understanding of how the IMF costs us money and how it affects our budget deficit?

Mr. BAUMAN. Oh, well, the gentleman from North Carolina is the expert on this, but is the gentleman telling us that there is no transaction whatever that involves the credit of the United States in the legislation before us? Because if so, why is the bill before us?

Mr. NEAL. Every drawing against our currencies by the IMF is offset by a corresponding credit balance. So there is, as a matter of fact, no impact on our budget deficit.

Mr. BAUMAN. Then, if the gentleman will yield, why do we need a $5½ billion appropriation bill to follow this bill? Are we just playing games?

Mr. NEAL. Well, it may be a bit of a game because there is no budgetary impact on our deficit. There is an impact on the authorization, but there is absolutely no impact on the expenditure of budgeted funds. In fact, over the last 10 years we made a return on our investment of over $200 million through our participation in the IMF. Now, we cannot predict that we will continue to gain a return on our investment in the IMF. That all depends on interest rate and exchange rate fluctuations, and so on. But, as a matter of fact, we did make about $200 million over the last 10 years.

Let me just say to the gentleman, if I can, that I am fully in accord with his desire to see this country balance its budget. I think it is critically important. But this bill has nothing to do with that question. The defeat of this bill would not help us to balance the budget. In fact, because of its adverse effect on our world trade relationships, it would make a balanced budget much more unlikely.

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Iowa.

□ 1640

Mr. LEACH of Iowa. One further point should be made. The United States of America is not asked to alone provide new lending resources to the IMF. We are doing this in concert with other countries. For us not to go forth would deny us the availability of approximately $20 billion put in by other nations.

The issue is not really whether we can afford the IMF. The issue is that we cannot afford not to have the IMF.

Mr. NEAL. The gentleman makes a

very good point. Unlike other international financial organizations, IMF member countries want to increase their relative share in the IMF because it increases their influence in the IMF. At this point we have about a 21½-percent share, which essentially gives us veto power over any major IMF decisions. Major decisions require an 80-percent vote. Since we have that 21½-percent share, we can, in effect, veto any major decisions.

I would also point out that the IMF is market oriented. It makes recommendations to countries that are in fact, market oriented.

I am convinced that the market-oriented systems around the world are working. The collective systems around the world are not producing for their people. The IMF helps all kinds of countries, but it especially helps countries that are trying to keep market systems alive.

The CHAIRMAN. The time of the gentleman from North Carolina (Mr. NEAL) has expired.

(By unanimous consent, Mr. NEAL was allowed to proceed for 2 additional minutes.)

Mr. NEAL. I would just like to say to the gentleman from Maryland that I share his concern for a balanced budget. But I would argue again that this amendment will not help to achieve a balanced budget for this country.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Maryland.

Mr. BAUMAN. As the gentleman knows, if this authorization passes, we will subsequently consider House Joint Resolution 601. I quote to him in part from that resolution, which is entitled "Making an Appropriation for the International Monetary Fund," that, "The following sum is appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year ending September 30, 1981, namely," and then on the next page, "The IMF receives $5,537,-839,000 at the equivalent special withdrawal rates."

Could the gentleman explain why this is not an appropriation?

Mr. NEAL. The funds are appropriated, but not expended. It is a quirk of our budget process.

Mr. BAUMAN. It is a major quirk.

Mr. NEAL. I am just telling the gentleman the facts. This is the fact of the matter. They are appropriated, but not expended.

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. In layman's term what happens is like an individual taking money out of one bank account and placing it in another. The funds are not transferred until they are drawn upon and when drawn upon they are in effect lent rather than expended.

Mr. PAUL. Mr. Chairman, I rise in support of the amendment.

I would like to compliment the gentleman from Maryland for introducing this amendment, and I strongly endorse it.

I would like to address the subject for a moment about whether or not this is an a transfer of funds. They claim it is not appropriation. I agree this is true. It is an appropriation because we took it out of one fund, our Treasury, out of the pockets of the American people and put it in the IMF and put it in the pockets of a socialist dictator; but on the ledger it says we still have that $5.5 billion, and we are just as rich, so they tell us.

But our claim is, and my claim is, that we are truly poorer. We have either taxed our people, or we have caused more inflation for our people, and therefore they will suffer more for it. No matter what kind of bookkeeping you have and whether you call this an appropriation or not, it still is a penalty on the American people.

I would also like to go back to the general debate of the gentleman from Maryland (Mr. MITCHELL), about the idea of the involvement on the internal affairs, I believe, the gentleman said, of Jamacia.

I happen to think this should be of great concern to the gentleman. It was of great concern to me in 1976 when we revised the Bretton Woods Agreement, because there was a portion of that bill that specifically said that we should have surveillance of the internal affairs and economic policies of nations who were in trouble.

Let me just read from the report, the committee report at that time. It says:

> All members are obliged to collaborate with the Fund and with other members to promote respect for these principles. The Fund is given the role of overseeing the system, exercising "firm surveillance over the exchange rate policies of members," and adopting, "specific principles for the guidance of all members with respect to those policies." In sum, the new Article 4 defines some principles, appoints an umpire and lays down the outlines of an exchange rate system.

At the time in the legislative history I can remember clearly that it was construed to be able to impose on negligent nations certain rules and regulations on how they should run their economy. That would apply to us, too, if we continue the way we are going.

Mr. MITCHELL of Maryland. Mr. Chairman, will the gentleman yield?

Mr. PAUL. I yield to the gentleman from Maryland.

Mr. MITCHELL of Maryland. I thank the gentleman for yielding.

My inquiry was not with reference to the IMF's role in the economic systems within a given country. It was with reference to direct political, direct intervention in the political process in those countries. That is an entirely different thing.

If I may continue for just one moment, under the Bretton Woods agreement, yes, certain rules can be imposed on those countries which want to use IMF funds. In the case of Jamaica, I think that a statement was made which was an injurious statement. I am satisfied with the chairman's explanation that it was not in an attempt to influence the political direction of the nation of Jamaica, but I would hope that the gentleman would join me in attempting to draft an amendment, or get some language in the report which would clearly spell out that IMF funds or personnel cannot, shall not, must not be used to influence the political structure or the political process in a given nation.

Mr. PAUL. I would be glad to look at that. I would have to say possibly, our definitions of political intervention and economic intervention must be different because intervention in our country, dictating to us from the IMF what to do and what not to do, I would understand as being very political and not just economics.

Mr. JACOBS. Mr. Chairman, will the gentleman yield?

Mr. PAUL. I yield to the gentleman from Indiana.

Mr. JACOBS. I think up until about 5 days ago the official word from the U.S. Treasury Department was over the past decade our participation in the International Monetary Fund had, in fact, cost the American taxpayers about $180 million in differential between the amount of money the Treasury paid in this market to rent the money and the amount of rent that this country got from the IMF and the consequence of forwarding the money to the IMF.

It is only within the last 5 days that the Treasury sharpened their pencils and concluded that in consequence of some sort of capital gain, which so far as I can tell has never been realized, that we have actually made money, made $200 million in the last decade. Now, in my opinion, that is rather like having a $1,000 dog because you trade it off for two $500 cats. It is not anything that is real.

I think the gentleman from Maryland is right in offering his amendment. It has already been determined, I think, by default that it is germane. I think most taxpayers would find it germane to wait until we have a little money ahead.

The CHAIRMAN. The time of the gentleman from Texas (Mr. PAUL) has expired.

(At the request of Mr. JACOBS and by unanimous consent, Mr. PAUL was allowed to proceed for 2 additional minutes.)

Mr. JACOBS. If the gentleman will continue to yield, that we wait until we have a little money ahead before we add to the International Monetary Fund on contribution.

More important, the chairman of the full committee has said that the candle will flicker out if this legislation is not passed. I think people should bear in mind this legislation is to increase our quota, not to do away with the present quota, not to do away with participation in the present quota, and the amendment of the gentleman from Maryland, as I understand it, and the gentleman can correct me if I am mistaken, only would prevent an increase in our contribution or our quota or however you want to put it to the International Monetary Fund until such time as the U.S. Government had some money ahead. Right now we are way behind.

□ 1650

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. PAUL. I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. The gentleman was not on the floor when I discussed

earlier his candle analogy, but it should be clear that while the candle stays the same size, as he correctly states, the room itself becomes much bigger. A bigger candle is needed because international trade has expanded so dramatically.

Second, on the gentleman's point about funding, the fact of the matter is that there are advantages to the IMF well beyond whether we make incrementally more or less money by using our resources in another way. One of those advantages is that we have stability in international finance. The United States 2 years ago drew $2 billion in foreign currency from the IMF. We thus protected the value of the dollar, and if we had not we would have had greater inflation in America. The advantage of the IMF as a currency-stabilizing institution is so enormous that it far overcomes any argument that we might have made more money by investing it at a slightly higher interest rate in another investment mechanism.

Mr. JACOBS. Mr. Chairman, would the gentleman yield just for one quick point?

Mr. PAUL. I yield to the gentleman from Indiana.

Mr. JACOBS. I agree with the gentleman from Iowa that the room has grown larger, and I agree with the gentleman that the candle should grow larger. The only thing that has not grown larger is the resources of the U.S. Government to provide a larger candle.

Mr. STANTON. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I have been sitting here next to the author of the amendment and wondering why he did not tell the committee what this amendment was going to be. I have come to the conclusion now that if the gentleman from Maryland, our good friend, had had some more time in which some of us could have talked to him, I honestly do not think he would have offered the amendment. I really and truly honestly believe he would not do it.

As the speakers before me have so eloquently put it, you know, we are not giving this to Nicaragua or to India or to Iran or Vietnam or to somebody else. If you think in your heart that you are not putting up this quota increase for the United States of America, vote against it as our friend, the gentleman from Maryland, is going to do; just plain vote against it. It is absolutely that simple.

I am only sorry truthfully that I cannot get up and offer a larger increase than the 50 percent that we are going to put up.

Now, the gentleman from Iowa just said, "Why are we using this?"

The special drawing right is an exchange of assets. It is different than any particular money. Fundamentally, exactly what it is called, it is an exchange of assets, a program that came into effect in 1969. We have these assets there. What we did borrow, as the gentleman said, in the best interests of the United States was $2 billion in German marks in 1978. We borrowed 24 times before that. That is the purpose of the IMF.

We do not lend directly. The countries that borrow from the IMF are both the developed and the developing countries. They have to pay back in 3 years the money that they borrow. We are not lending directly. It is an exchange of assets for the United States of America.

Now, the amendment to which the gentleman alludes of our friend, the gentleman from Iowa (Mr. GRASSLEY) was added by the other body. It was a totally nongermane amendment. The only reason it is on the IMF is that somebody tacked it on over there. Somebody was telling me about a bill coming back tomorrow from the other body that has another nongermane amendment.

We took the Grassley amendment on a House vote and instructed the conferees at that time to get a balanced budget.

So it is unfortunate that the gentleman picked this bill, but he picked it and so what we have to do is totally defeat it.

But as I say, if you do not personally want the IMF, if you want to oppose the best interests of the United States, vote against this legislation; but if you do not want it, do not vote for this amendment which really in reality has no place here.

I am sure that while the vote is being taken I will have more time to explain this to my good friend, the gentleman from Maryland, and regrettably, we did not have this extra time.

Mr. NEAL. Mr. Chairman, will the gentleman yield to me?

Mr. STANTON. I will quickly yield.

Mr. NEAL. We have found that a point of order does not lie against the amendment. But I would like to make one comment. If this amendment were to pass, it would kill this legislation.

Mr. STANTON. Oh, yes.

Mr. NEAL. It is clearly an attempt to kill the legislation. Every Member should know that if he votes for this amendment, he or she is voting to kill the International Monetary Fund and thus to weaken severely the economic security of our Nation and the world.

Mr. STANTON. Let me say to my friend from North Carolina, I am glad the gentleman checked on the point of order. I would not have even bothered. If the gentleman from Maryland is going to put an amendment, you can be sure it is germane, there is no question about that; but it is the content of the amendment that we should strongly oppose.

The CHAIRMAN. Does the gentleman from North Carolina insist on this point of order?

Mr. NEAL. No, Mr. Chairman. I withdraw the point of order.

The CHAIRMAN. The gentleman withdraws his point of order.

Mr. JACOBS. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

Mr. Chairman, the amendment pending would not kill this legislation. It would just make it a sleeping beauty until we could afford it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. BAUMAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. BAUMAN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 556]

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Donnelly
Dougherty
Downey
Drinan
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Gresham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Holtzman
Hopkins
Horton
Howard
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McCloskey
McCormack
McDade
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio

Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Molloban
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rosenthal
Rostenkowski
Roth
Rousselot
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solars
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Yates
Yatron
Young, Alaska
Young, Mo.
Zablocki
Zeferetti

□ 1710

The CHAIRMAN. Three hundred and eighty-three Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Maryland (Mr. BAUMAN) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 156, noes 248, not voting 28, as follows:

[Roll No. 557]

AYES—156

Abdnor
Andrews, N.C.
Andrews, N.Dak.
Applegate
Archer
Atkinson
Badham
Bafalis
Bauman
Beard, R.I.
Beard, Tenn.
Benjamin
Bennett
Bethune
Bevill
Boner
Bouquard
Brinkley
Brooks
Brovhill
Burlison
Burton, John
Byron
Campbell
Carney
Carter
Chappell
Clausen
Coleman
Collins, Tex.
Corcoran
Cotter
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, Mich.
Deckard
Dickinson
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
Emery
English
Evans, Ga.
Evans, Ind.
Fithian
Flippo
Fountain
Fuqua
Gaydos
Gingrich
Goldwater
Goodling
Gramm
Grassley
Grisham
Gudger
Guyer
Hall, Tex.
Hammer-schmidt
Hance
Hansen
Harsha
Hefner
Hightower
Hillis
Hinson
Holt
Hopkins
Hubbard
Huckaby
Hutto
Ichord
Jacobs
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kelly
Kemp
Kogovsek
Kramer
Lagomarsino
Leath, Tex.
Lee
Lent
Loeffler
Lott
Luken
Lungren
McDonald
Madigan
Marlenee
Marriott
Martin
Mica
Miller, Ohio
Mitchell, N.Y.
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Myers, Ind.
Nichols
O'Brien
Pashayan
Paul
Perkins
Pickle
Quayle
Quillen
Ritter
Roberts
Robinson
Roth
Rousselot
Rudd
Russo
Santini
Satterfield
Schroeder
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snyder
Solomon
Spence
Stangeland
Stenholm
Stump
Symms
Taylor
Tauke
Tauzin
Thomas
Thompson
Traxler
Trible
Udall
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Weaver
White
Whitehurst
Whitley
Whittaker
Wilson, Tex.
Wyatt
Yatron
Young, Alaska

NOES—248

Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Annunzio
Anthony
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnard
Barnes
Bedell
Bellenson
Bereuter
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Bonior
Bonker
Bowen
Brademas
Breaux
Brodhead
Broomfield
Brown, Calif.
Buchanan
Burgener
Burton, Phillip
Butler
Carr
Cavanaugh
Cheney
Clay
Cleveland
Clinger
Coelho
Collins, Ill.
Conable
Conte
Conyers
Corman
Coughlin
D'Amours
Danielson
Daschle
Dellums
Derrick
Derwinski
Dicks
Dingell
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Calif.
Erlenborn
Ertel
Evans, Del.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Frenzel
Frost
Garcia
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Gore
Gradison
Gray
Green
Guarini
Hagedorn
Hall, Ohio
Hamilton
Hanley
Harkin
Harris
Hawkins
Heckler
Heftel
Holland
Hollenbeck
Holtzman
Horton
Howard
Hughes
Hutchinson
Hyde
Jeffords
Johnson, Calif.
Johnson, Colo.
Kastenmeier
Kasen
Kildee
Kindness
Kostmayer
LaFalce
Leach, Iowa
Lehman
Leland
Levitas
Lewis
Lloyd
Long, La.
Long, Md.
Lowry
Lujan
Lundine
McCloskey
McCormack
McDade
McHugh
McKay
McKinney
Maguire
Markey
Marks
Matsui
Mavroules
Mazzoli
Michel
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Molloban
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Murtha
Musto
Natcher
Neal
Nelson
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Petri
Peyser
Porter
Preyer
Price
Pritchard
Pursell
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Royer
Sabo
Sawyer
Scheuer
Sebelius
Seiberling
Sharp
Simon
Smith, Iowa
Snowe
Solars
Spellman
St Germain
Stack
Staggers
Stanton
Stark
Steed
Stewart
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Thomas
Thompson
Traxler
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Walgren
Waxman
Weiss
Whitten
Williams, Mont.
Williams, Ohio
Wilson, C. H.
Winn
Wirth
Wolff
Wolpe
Wright
Wydler
Yates
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—28

Ashbrook
Brown, Ohio
Chisholm
Davis, S.C.
de la Garza
Devine
Dodd
Dornan
Erlenborn
Ireland
Jenrette
Latta
Leach, La.
Lederer
Livingston
McClory
McEwen
Mathis
Mattox
Myers, Pa.
Nedzi
Railsback
Rose
Shannon
Stokes
Wilson, Bob
Wylie
Young, Fla.

□ 1720

The Clerk announced the following pairs:

On this vote:

Mr. Ashbrook for, with Mr. Dornan against.

Mr. Devine for, with Mr. McClory against.

Mr. Latta for, with Mr. Railsback against.

Mr. Young of Florida for, with Mr. Wylie against.

Mr. BROOKS and Mr. HIGHTOWER changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. NEAL. Mr. Chairman, I ask unanimous consent that we limit the time for debate on the remaining amendments and all amendments thereto to 1 hour from now, excluding a 10-minute period of time for the gentleman from Indiana (Mr. JACOBS).

The CHAIRMAN. The Chair would advise the gentleman that he must first ask unanimous consent to open the bill up. Does the gentleman so request?

Mr. NEAL. Mr. Speaker, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Are there any further amendments to this part of the bill?

AMENDMENT OFFERED BY MR. PAUL

Mr. PAUL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PAUL: Page 2, line 5, strike out "The" and insert in lieu thereof "(a) Subject to subsection (b), the".

Page 2, line 9, strike out the quotation marks and the period at the end thereof.

Page 2, after line 9, insert the following:

"(b) The authority granted by subsection (a) may not be exercised until all gold which was contributed to the Fund by any country and which was held by the Fund on September 1, 1980 is returned to such country. If the amount of gold held by the Fund on such date was less than the total amount of gold contributed to the Fund, each country shall receive that percentage of such gold which is equal to the ratio, expressed as a percentage which the total amount of gold contributed to the Fund by such country bears to the total amount of gold received by the Fund from all countries.".

Mr. STANTON. Mr. Chairman, I have not seen the amendment. Therefore, I will reserve a point of order against the amendment.

The CHAIRMAN. The gentleman reserves a point of order against the amendment.

The gentleman from Texas (Mr. PAUL) is recognized for 5 minutes.

Mr. PAUL. Mr. Chairman, this amendment is not complicated, and I can assure the committee that if we pass this amendment the IMF bill probably would be passed unanimously because it would satisfy our side as well as your side, and we would still fund the IMF. It is not complicated. It goes with the intent of the IMF bill of 1976.

It is the policy of the U.S. Government, and it is the policy of the IMF, to demonetize gold. We have been living under those conditions, and I for one think that even though it was intended to create stable conditions, it has created very unstable conditions. But I would like to say, in spite of that, I am willing to continue the policy of demonetization of gold. This amendment, in essence, would do this: If we go ahead and fund an additional $5.5 billion, each country which has contributed to the IMF in terms of gold would get their percentage of gold back.

In 1976, after the passage of the IMF amendments, there were 150 million ounces of gold in the IMF. Since that time, 25 million ounces were sold off and a fund was established to help the Third World nations. Another 25 million, in this attempt to demonetize gold, was returned to contributing nations.

Now, under the rules that were set up and the intention of the 1976 IMF bill, we could continue to do that very easily. Let me quote from the report from the bill, the IMF bill of 1976:

In 1971 the United States abolished the convertibility of the dollar into gold. Since then it has been the objective of the United States, with the support of this Committee, to hasten the demonetization of gold so as to reduce its role in the world monetary system. It became evident that, given the nature of modern economies, and the evolution of international monetary relations, a system in which gold is an important reserve component, and in which major countries attempt to preserve the gold convertibility of their currencies at stable par values, is no longer viable.

Under today's condition, I certainly agree with that—

Such a system, under modern conditions, would be erratic, crisis prone, and unmanageable.

□ 1730

I happen to disagree with that because what we have today is an acute crisis that has become unmanageable.

Further the report contains this language:

To the extent that the international monetary system needs a reserve asset whose growth and management is under rational control, this Committee feels that Special Drawing Rights (SDR's) offer an alternative preferable to gold.

Further, it says that the Fund "has decided, under existing authority to sell one-third of its gold stock over the next four years."

That was planned, and that has been done.

Then further down in the report, in the description of what we were doing in 1976, it says:

The amendments will however, empower the Fund to dispose of its remaining gold holdings in a variety of ways, including sales to members at the present official price.

So, Mr. Chairman, this is what I am proposing. The amount of money we give now in the appropriation of $5.5 billion would, if this amendment passed, allow us the return of approximately 30 million ounces of gold. I think that this is a wise move. It would satisfy those of us who are trying to reestablish a sound monetary order, and it would still permit those who want to send out $5.5 billion to bail out the Third World nations and the New York banks to do that.

So I think it is a good solution for us to do this. We originally put in 47.9 million ounces of gold. Since 1976 we had a return of 5.7 million. That leaves us 42 million ounces of gold still in the Fund. We however have given more of our gold away since the IMF has sold an additional 25 million ounces in the open market. For that reason we are now entitled under this amendment to approximately 30 million ounces of gold as our proportionate share.

Some people will say that this is not what we are supposed to do, instruct the IMF on what to do, that we are supposed to wait until they vote on something and then come in like lambs and plan legislation to enforce whatever the IMF has done.

I feel a moral and a constitutional responsibility to defend the American people, the American taxpayers, and say that it is our obligation to instruct the IMF what to do.

I believe this amendment is consistent with the intention of the IMF. They said they wanted to demonetize gold. They said it is permissible, and they intended to return the gold.

Mr. Chairman, I think this is an exceptionally good opportunity for us to do so, and I believe this amendment should be passed.

Mr. REUSS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is a particularly irresponsible and silly amendment. It should be promptly voted down.

What it says is that the $70 billion worth of IMF-held gold at current market value should be returned to the members. World financial stability should not really be the subject of jokes like this amendment.

If this amendment were adopted and thus the $70 billion of IMF gold were returned to its members, it would cause a collapse of the international monetary system and wild inflation all over the world, including this country, since billions of dollars would be added overnight to the money suppy.

King Midas came to an untimely fate many years ago when he, by touching objects, turned them to gold, and he was himself inundated and done in by it. Well, that is exactly what would happen to this country if we adopted the Paul amendment.

So, Mr. Chairman, I do not really think it is necessary to debate this amendment longer. Let us have an immediate vote and vote it down.

Mr. CHAIRMAN. Does the gentleman from Ohio (Mr. STANTON) insist on his point of order?

Mr. STANTON. No, Mr. Chairman, I do not, but I will seek time.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio (Mr. STANTON).

Mr. STANTON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will reiterate what the chairman of our committee has said. This is a totally impractical, unworkable solution. Maybe it would be getting some gold back, but I would have to say to our friend on our committee that this amendment which instructs the IMF is unworkable.

Contrary to what the gentleman said, we cannot instruct the IMF. The IMF is not instructing us on anything. Two years ago the plans for implementation of this quota increase took place. The discussions for the quota were started under former Treasury Secretary Bill Simon 4 years ago. This is not some Carter administration idea. It started under a Republican administration some 4 years ago.

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. STANTON. I yield to the ranking minority member.

Mr. LEACH of Iowa. Mr. Chairman, I would only comment that while the issue is described in different terms, the amendent has the exact same effect as the Bauman amendment would have had, and I hope we defeat it resoundingly.

Mr. PAUL. Mr. Chairman, will the gentleman yield?

Mr. STANTON. I yield to the gentleman from Texas.

Mr. PAUL. Mr. Chairman, let me ask the gentleman, does he think we should reject the condition of 1976 that gold should be demonetized? Is the gentleman arguing that gold should be demonetized? Is the gentleman arguing that gold should be put back in SDR's? This is the argument of the subcommittee chairman and the gentleman, that gold should be demonetized?

Mr. STANTON. Mr. Chairman, I will argue anyplace and at anytime on the value of gold, but we will not accomplish anything with amendments of this kind.

Mr. PAUL. How can it be so silly when we have already got rid of one-third, and here we get rid of the rest of it. The intention is to get rid of all of it. I am saying that we should follow through with our intentions.

Mr. STANTON. Mr. Chairman, I hope this amendment will be defeated and I yield back the balance of my time.

Mr. NEAL. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I want to say again that this counters the purpose of the bill. The whole purpose of the bill is to strengthen the International Monetary Fund, not to destroy it. The effect of this amendment would be to destroy the IMF. Mr. Chairman, I urge a no vote on the amendment. Let us get it over with.

The CHAIRMAN. The question is on

the amendment offered by the gentleman from Texas (Mr. PAUL).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. PAUL. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

□ 1740

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The pending business is the demand of the gentleman from Texas (Mr. PAUL) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

BASIC HUMAN NEEDS

SEC. 2. (a) The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 33. (a) The President shall instruct the Secretary of the Treasury, the Secretary of State, and other appropriate Federal officials to use all appropriate means to encourage countries, in formulating economic adjustment programs to deal with their balance of payments difficulties, to design those programs so as to safeguard, to the maximum feasible extent, jobs, investment, real per capita income, policies to reduce the gap in wealth between rich and poor, and social programs such as health, housing, and education.

"(b) To ensure the effectiveness of economic adjustment programs supported by Fund resources and the reinforcement of those programs by longer term efforts to promote sustained growth and improved living conditions—

"(1) United States representatives to the Fund shall seek amendments to decisions by the Fund on the use of Fund resources to permit stand by arrangements to be extended beyond three years, as necessary to enable the Fund member to implement its adjustment program successfully;

"(2) United States representatives to the Fund, to the Bank, and to other appropriate institutions shall work toward improving coordination among these institutions and, in particular, shall work toward formulation of programs in association with economic adjustment programs supported by Fund resources which (A) will, among other things, promote employment, investment, real income per capita, improvements in income distribution, and the objectives of social programs such as health, housing, and education, and (B) will, to the maximum extent feasible and consistent with the borrowing country's need to improve its balance of payments position within a reasonable period, ameliorate any adverse effects of economic adjustment programs on the poor;

"(3) United States representatives to the Fund and the Bank shall seek amendments to decisions on policies on the use of Fund and Bank resources to provide that, where countries are seeking Extended Fund Facility or upper credit tranche drawings from the Fund and are eligible to receive financing from the Bank, the Fund and Bank will coordinate their financing activities in order—

"(A) to take into account the effects of economic adjustment programs on the areas listed in clause (A) of paragraph (2),

"(B) to provide, to the extent feasible, Bank project loans designed to safeguard and further basic human needs in countries adopting economic adjustment programs supported by Fund resources, and

"(C) to provide, as appropriate, Bank financing for programs of structural adjustment that will facilitate development of a productive economic base and greater attainment of basic human needs objectives over the longer term; and

"(4) United States representatives to the Fund and the Bank shall request the Fund and the Bank to provide periodic analyses of the effects of economic adjustment programs supported by Fund or Bank financing on jobs, investment, real income per capita, income distribution, and social programs such as health, housing, and education.

"(c) The National Advisory Council on International Monetary and Financial Policies shall include in each of its annual reports to the Congress a statement detailing the actions and progress made in carrying out the requirements of subsections (a) and (b) of this section.".

(b) Section 30 of the Bretton Woods Agreements Act (22 U.S.C. 286e-9) is amended—

(1) in subsection (a) by striking out "entered into pursuant to loans from the Supplementary Financing Facility";

(2) in the first sentence of subsection (b) by striking out "entered into pursuant to loans from the Supplementary Financing Facility"; and

(3) in the second sentence of subsection (b) by striking out "by the Supplementary Financing Facility".

Mr. NEAL (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will continue to read.

The Clerk continued the reading of the bill.

COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: Page 3, line 3, strike out all that follows through line 8 and insert in lieu thereof the following:

(1) United States representatives to the Fund shall recommend changes in Fund guidelines, policies, and decisions that would—

(A) permit stand-by arrangements to be extended beyond three years, as necessary to enable Fund members to implement their economic adjustment programs successfully;

(B) provide that any such program take into account the effect such program will have on jobs, investment, real per capita income, the gap in wealth between the rich and poor, and social programs such as health, housing, and education, in order to seek to minimize, consistent with the attainment of the basic objectives of economic adjustment programs, the adverse impact of those programs on basic human needs; and

(C) provide that letters of intent submitted to the Fund in support of such programs reflect that the member country has taken into account the effect such program will have on the factors listed in subparagraph (B);

Mr. REUSS (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will continue to read.

The Clerk concluded the reading of the committee amendment.

Mr. JACOBS. I move to strike the requisite number of words.

(By unanimous consent, Mr. JACOBS was allowed to proceed for 5 additional minutes.)

Mr. JACOBS. Mr. Chairman, I have asked for some extra time owing to the fact that during the general debate there was insufficient time for those opposed to this bill generally to express their views.

The first thing I would like the committee to understand—and I believe I would have the agreement of the proponents to this—is that the U.S. Government does not owe the $5.5 billion to the International Monetary Fund under any existing agreement at present.

The bill we are considering today will partly determine whether we shall have an increased quota assessed against our Treasury. The International Monetary Fund participants must vote, as I understand it, 75 percent to create the additional obligation. The United States has 21 percent of the vote in the IMF.

In essence—and this is not a certainty, but I think it is fair to say that it is quite likely—if this bill is not passed and the 21-percent vote is not cast in the IMF, there is little likelihood that a 75-percent vote can be obtained.

Mr. STANTON. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from Ohio.

Mr. STANTON. I appreciate the gentleman's yielding.

Mathematically, the gentleman is correct. It takes 75 percent to ratify it. We are 21 percent. But under the gentleman's agreement, the agreement of 10, the overall increase of which our 50 percent is $5.5 billion, a part of this, 20 percent, in other words, $25 billion-plus increase in IMF will not take place. It is a gentleman's agreement, fundamentally, to the best of my knowledge. I could be wrong. But the other countries probably would not go through with this if the United States——

Mr. JACOBS. Yes, that is what I am saying. That is my understanding. So I think it should be understood by the membership.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from North Carolina.

□ 1750

Mr. NEAL. It is my understanding that the other member countries probably

would go ahead with it, but the net result for the United States, would be that we would weaken our overall position in the Fund. Countries want to increase their participation in the IMF. Unlike the other international financial organizations, where countries might benefit by contributing as little as possible, the IMF's members want to invest more. The larger the investment, the more say a country has in the Fund's operations.

If we did not participate, it is my clear understanding that the other countries would increase their quotas and influence and we would just reduce our influence in the Fund.

Mr. JACOBS. Well, the gentleman is entitled to his opinion. I disagree with that opinion. I think there is little likelihood if the United States does not increase its quota, does not vote for the quota increase generally, that an increase will be voted by the other countries simply for the mathematical suggestion I have already made that it requires a 75-percent vote, and we control 21 percent of that vote at present, franchised to do so.

Second, it has been said before, and I think it should be understood clearly that we are not talking about aiding poor countries generally, even in the case of Third World countries. Only one-third of the lending during the past decade, as I understand it, has gone to so-called Third World countries, and it has gone to the Third World countries that are best off financially. So it is not a matter really of helping the poorest countries in the world.

Now that raises the question of what would happen if the United States did not make available the additional credit for an additional quota from the United States to the International Monetary Fund.

The gentleman is talking about not the impoverished Third World countries. The gentleman is talking about countries that are better off relatively. Where would they do their borrowing if the United States did not enable the International Monetary Fund to make larger loans or make additional loans? It seems rather clear to me that they would borrow from the same place that the U.S. Treasury would borrow from in order to come up with the $5.5 billion to meet the appropriation or to meet the callable obligation of the $5.5 billion to the International Monetary Fund, namely, the private markets in the United States notably and perhaps in Europe and elsewhere as well.

Now, if the United States does borrow the $5.5 billion, I think it should also be understood that it is analogous really to an FHA loan where there is an interest subsidy. At least that has been the experience over the last 10 years.

Simply stated, the U.S. Government goes into the capital markets of the United States principally, borrows the $5.5 billion, pays something on the order of 10 percent at present, I believe, for the money, and then as the first 25 percent of the quota is required to be paid immediately, somewhere around $1.5 billion, the U.S. Treasury is obligated to pay the interest off on that $1.5 billion immediately.

Then the countries to which it has lent will pay a certain amount of interest to the IMF. The IMF will in turn pay a certain amount of interest to the United States, but that interest historically has been right at 50 percent of the interest that we pay.

So when it was said in the general debate that this is nothing more than taking money out of one bank account and putting it into another, it would have to be added that the bank account that you took it out of or the place that you went to borrow it was not your bank account in the first place, you simply went and borrowed at 10 percent and then put it into a savings account that paid you 5 percent, not really the brightest financial transaction that anybody ever engaged in. I think that should be understood as well.

Now, finally, Mr. Chairman, I note from the Wall Street Journal of today that the Treasury Department has said in essence that if we advance the amount of money that this bill would authorize to the International Monetary Fund, we are really, as Americans, going to make $3 for every $1 that we advance. Well, is that not wonderful?

I also hear that we will be assured stable world order if this bill passes. Is that not wonderful? If both were true or either were true, I believe I would be in the well supporting the bill.

The other is only by the most convoluted logic, remotely related to reality. Else, if that were true, alchemy has been discovered, and we should not be giving $5.5 to the International Monetary Fund. We should give every penny in the U.S. Treasury, and we can even afford to go borrow something at interest like that, something like 200 percent per annum.

So, I would suggest not that we take that assertion with a grain of salt, but perhaps the whole saltshaker.

Finally—and here is another finally for you—but nonetheless, the showcase loan of the IMF was supposed to have been Turkey. What did we really accomplish by the IMF loans in Turkey? Inflation there is running between 75 and 100 percent a year right now.

I think the best thing to do is to vote down the bill. The House may not choose to do that. But if not, at least, I would hope that the Members would study the record, study the debate, and know that this was not just a pep rally for the proposition.

Many things that have been accepted as the norm in this country for decades, this country has changed its mind about. I hope that today the debate will begin the process of more careful examination. It is, in fact, a $5.5 billion examination.

I yield back the balance of my time.

Mr. NEAL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to make a couple of points in opposition to what the gentleman has just said.

Mr. Chairman, the IMF is not foreign aid. It is a monetary institution, unique in the world. It exists to preserve monetary stability. It is not, I would emphasize to the gentleman, a foreign aid institution at all. So it should come as no surprise to him that the majority of the assets do not go to the poorest nations in the world.

Mr. Chairman, a reduction in the appropriation requested to maintain the U.S. quota share in the IMF would have serious consequences for the IMF and the U.S. role in the management of the international monetary system.

The proposed increase in the U.S. quota was carefully negotiated to maintain our share intact. The competition in the IMF is to increase quota shares, not reduce them as is the case in other institutions. If you understand the IMF, you know why—other countries certainly do, as they try to increase their own shares at our expense.

Mr. Chairman, the IMF is not foreign aid. It is a monetary institution, unique on the international landscape, the world's central institution for preserving international monetary stability.

Quotas determine voting power—influence over basic decisions on the nature and operations of the international monetary system. Given the dollar's key role in the system, our vote is of critical importance to the United States.

Quotas determine access to IMF resources. Our use of IMF resources is the second largest in the IMF's history.

Quotas determine shares of SDR allocations. SDR's are a major part of our international reserves, and played a key role in the highly successful November 1978 program to support the dollar against speculative attack.

Quotas do not represent a financial cost. Every transfer of funds to the IMF under quotas is immediately offset by receipt of an IMF reserve position—an interest-earning reserve asset which can be drawn on in balance of payments need. In our own budgetary terms, quota transfers to the IMF do not affect net budget outlays or the Federal deficit.

Mr. Chairman, a cut in the proposed appropriation would be seen as the United States symbolically turning its back on a valuable international institution, an institution designed to promote monetary cooperation and stability, and an institution fundamentally supportive of the broadest U.S. foreign economic interests. This would undercut the IMF's authority and weaken its ability to cope with the looming financing pressures of the 1980's. And this would be accomplished for what benefit?

No fiscal savings. No fiscal prudence. Only a cut in U.S. influence in and benefits from the IMF. The United States fought hard, and successfully, in connection with its quota increase to resist efforts by other countries to further increase their own shares at our expense. Enactment of the proposed amendment would, by our own hand, reduce U.S. voting power in the IMF for the direct benefit of others.

Mr. Chairman, the proposed amendment should be seen against the reality of a growing effort, in various international fora, to reduce U.S. influence in

the IMF. The object of this well-orchestrated campaign is to turn the IMF into another U.N. agency directed by the tyranny of the small country majority. This would effectively destroy the usefulness of the IMF—one of the few well and efficiently run institutions on the international scene—and severely cripple our ability to confront the potential financial disruptions of the coming decade.

Mr. JACOBS. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Indiana.

Mr. JACOBS. I thank the gentleman for yielding.

I would like to point out on the other hand, the U.S. contribution is the greatest, and unlike several other countries, the United States has never borrowed beyond its quota.

Mr. NEAL. Let me say to the gentleman that it is not accurate to characterize this as a contribution in any way.

Mr. JACOBS. If the gentleman will yield further, it has never borrowed beyond its quota. I think it is fair to say other countries have borrowed beyond their quota and gotten a lot more out of it than we have.

Mr. NEAL. I would say to the gentleman that other countries borrow beyond their quotas because they have gotten themselves in serious financial difficulties. They need to borrow beyond their quota and subject themselves to conditions laid down by the IMF because they have not run their economies responsibly.

Fortunately for this country, we have never gotten ourselves in such serious difficulty that we have been unable to manage our own affairs.

Mr. JACOBS. There is a tangible trace of that in this country. It is known as borrowing yourself out of debt.

Mr. NEAL. I would have to agree that there is no way that any country can borrow itself out of debt.

□ 1800

AMENDMENT OFFERED BY MR. HARKIN AS A SUBSTITUTE FOR THE COMMITTEE AMENDMENT

Mr. HARKIN. Mr. Chairman, I offer an amendment as a substitute for the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. HARKIN as a substitute for the committee amendment: In lieu of the text proposed to be inserted by committee amendment No. 1 (shown in italic type beginning on page 3, line 9 of the bill as reported) insert the following:

"(1) United States representatives to the Fund shall recommend and shall work for changes in Fund guidelines, policies, and decisions that would—

"(A) permit stand-by arrangements to be extended beyond three years, as necessary to enable Fund members to implement their economic adjustment programs successfully;

"(B) provide that in approving any economic adjustment program the Fund shall take into account the effect such program will have on jobs, investment, real per capita income, the gap in wealth between the rich and poor, and social programs such as health, housing, and education, in order to seek to minimize the adverse impact of those adjustment programs on basic human needs; and

"(C) provide that letters of intent submitted to the Fund in support of an economic adjustment program reflect that the member country has taken into account the effect such program will have on the factors listed in subparagraph (B);

"(2)(A) before voting on the approval of any standby arrangement with respect to any economic adjustment program, the United States Executive Director shall review—

"(i) any analysis of factors prepared by the Fund or the member country in accordance with subparagraphs (B) and (C) of paragraph (1), or

"(ii) if no such analysis is prepared and available for such review, an analysis which shall be prepared by the United States Governor of the Fund which examines the effect of the program on the factors listed in subparagraph (B) of paragraph (1); and

"(B) the United States Executive Director of the Fund shall take into account the analysis reviewed pursuant to subparagraph (A) of this paragraph in voting on approval of that standby arrangement;

Page 4, line 6, strike out "(2)" and insert in lieu thereof "(3)"; line 21, strike out "(3)" and insert in lieu thereof "(4)"; and on page 5, line 17, strike out "(4)" and insert in lieu thereof "(5)".

Page 5, line 6, strike out "(2)" and insert in lieu thereof "(3)".

Mr. HARKIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk concluded the reading of the amendment.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. HARKIN. I would be delighted to yield to the distinguished chairman.

Mr. NEAL. I would like to say to the gentleman that we have examined his amendment and we find it perfectly acceptable. We would urge adoption of the amendment.

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. HARKIN. Yes.

Mr. LEACH of Iowa. The minority has examined the amendment as well and is willing to accept it.

The leadership of the gentleman from Iowa is certainly appreciated on the human rights issue.

Mr. HARKIN. Well, I thank both the gentleman from North Carolina and my colleague, the gentleman from Iowa (Mr. LEACH), the ranking minority member, for their work on behalf of the human needs amendments on the IMF.

I was prepared to go through a whole list of horror stories on the IMF and what it has done in less developed countries. I do not believe it is necessary to do so.

Let me just say that if I thought that the IMF were to continue on in the future, as it has in the past few years, I would be one of the first voting against this bill on the floor. Perhaps I find myself a hopeless optimist. I believe perhaps that IMF can do better. I believe that it can fulfill a needed role in the world today, especially in the LDC's, the less developed countries; however, it has not done so in the past. I am hopeful that with this type of human needs amendment that they will begin to take into account the conditionalities that it lays down for the Third World countries and that rather than just imposing upon these countries the old "Milton Friedman" type economics, that it will take into account that these Third World countries need longer term type of help, not just this short-term type of assistance, which really gets them into deeper trouble, but they need a longer type of assistance that will enable them to build up their own economic structure in their own countries to help themselves. This they have not been doing in the past.

I know that the chairman of the full committee, the gentleman from Wisconsin (Mr. REUSS), the gentleman from Nebraska (Mr. CAVANAUGH), and also the gentleman from North Carolina (Mr. NEAL) and the gentleman from Iowa (Mr. LEACH) all share with me, I believe, this concept and this goal. We have, however, differed in the past on the means to accomplish this. I am hopeful that in the coming months as we see how the IMF now works under this legislation that they will, in fact, begin to pay more attention to how their policies really affect the poor in these countries.

You know, I doubt that any Member on this floor right now, with the exception of maybe two or three, could get into a taxicab and go to the IMF headquarters in Washington and find it; but I would tell you how you can find the trail of the IMF. You do not need to be any kind of an Eagle Scout to follow this trail. Go to that Third World country where they have had a reduction in real income. Go to that Third World country where they have had an increase in malnourishment. Go to that Third World country where they have cut back on health and education and go to that Third World country where they have had all these things, an increase in unemployment to boot, and also on the other hand they kept importing their luxury goods, the rich keep living affluently as they have in the past, with no progressive income taxes; you find those countries and you are on the trail of the IMF because chances are the IMF has been there.

I am hopeful, however, that the IMF will change its policy. We have seen indications that they are doing so in the recent past, that they are taking these things into account. If they do so I believe the IMF can be a force for good in the world.

Mr. MILLER of California. Mr. Chairman will the gentleman yield?

Mr. HARKIN. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman I would like to associate myself with the gentleman's remarks and to compliment him on his perseverance in pursuing the human rights element and the recognition that many of these Third World countries, the developing countries, have much more severe problems than the traditional day to day allowances that the IMF is willing to grant them.

I would hope that the gentleman's

amendment and the attention that he has brought to the IMF in regard to Third World countries would cause them to change the manner in which they have done business.

I want to strongly associate myself with the gentleman's remarks.

Mr. HARKIN. I thank the gentleman.

It is not just those of us who are here in this Congress and in the United States, but the studies by the Brandt Commission also found the same thing. I would read just one sentence from that finding of the Brandt Commission. They feel:

The fund has tended to impose conditions which go beyond its legitimate interests of insuring that it gets its money back on the due date within the framework of the fund's articles, since these can be satisfied by far less rigorous programs.

So not only those of us here in the Congress, but the Brandt Commission, the U.S. Presidential Commission on World Hunger, and even some commercial bankers from our largest banking institutions in the United States have all said that there has to be structural changes within the IMF to address these problems in those Third World countries.

If these changes are made in the way they set down their conditions, then the IMF along with the other multilateral institutions, such as the World Bank, IDA, Inter-American Development Bank, can indeed be a force for stability based on social and economic justice in the LDC's.

Mr. HYDE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I certainly do not object to this amendment and I think it perhaps is useful in focusing on human needs. We can never focus on human needs too much.

I think the gentleman from Iowa is to be commended for constantly focusing us on this very important element; but I think it should be stated that the IMF has a function to perform. It is the function of the physician to administer the castor oil. There are other international development agencies that are specifically designed to target their assistance to meet the human needs that the gentleman from Iowa has spoken about so eloquently. There are the international development institutions, such as the Inter-American Development Bank, the Asian Development Bank, the African Development Bank and the African Development Fund; IDA, and so many others, who are structured to focus on human needs as well as economic development; but the IMF comes in when things are fairly desperate and sometimes must issue a prescription that may be rather bitter to adhere to; but I think it must be said that many times these countries are in difficulty because of inept government, because of policies and programs that are counterproductive and that further dig the economic hole that the people find themselves in day after day and year after year.

Somebody has to tell them what they are doing wrong and what they must do to correct a situation that is badly in need of correction; but having said that, I do think this amendment ought to be supported. I do think we ought to always bear in mind that the IMF is not another international agency that is designed to alleviate human suffering per se.

It is designed to help a country regain economic stability, and having done that, human suffering ought to be alleviated in due course; but the governments of many of these countries need to be guided. They need to be told what they are doing wrong. The IMF is perhaps the only agency in international finance that is structured to do that. But again I think the amendment is worth while, and I do support it.

□ 1810

Mr. BAUMAN. Will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the gentleman for yielding. Perhaps the gentleman is not the best one to answer, but in the course of the gentleman from Iowa's presentation, he said something about this amendment, if I heard him correctly, would put an end to the Milton Friedman economics on the IMF.

Mr. HYDE. I hope the gentleman did not think I said that.

Mr. BAUMAN. No, no, the gentleman did not say it, but I think the gentleman would be better able to answer it than the gentleman from Iowa since he has a prejudice against Milton Friedman.

Mr. HYDE. The Milton Friedman economics have worked wonderfully in Chile and Argentina in considerably bringing down inflation from three digits in both of those countries. I think it has been a great success story in at least Chile and Argentina where the Chicago School of Economics has been in effect.

Mr. BAUMAN. I knew the gentleman would be partial, and rightly so, to the Chicago School of Economics, or anything including Chicago. But my question is, Does this amendment in some way provide accomplishment or do away with private enterprise, private-sector development by the IMF? Does it favor socialism, because if that is the intention, I would certainly not want to support it.

Mr. HYDE. No. I do not think every amendment that directs itself toward human needs is necessarily supportive of socialism. On the contrary, I think socialism has shown a wretched record of concern for the fulfillment of basic human needs.

Mr. BAUMAN. I just think it is a terrible day when Milton Friedman has become a buzz word.

Mr. HARKIN. Mr. Chairman, will the gentleman yield?

Mr. HYDE. Yes, I yield to the gentleman from Iowa who I know is a great supporter of Milton Friedman.

Mr. HARKIN. The gentleman from Iowa has no prejudice whatever against Milton Friedman, just his economics.

Mr. BAUMAN. I am sure Mrs. Friedman would be glad to hear that.

Mr. HYDE. I have nothing more to say. I yield back the remainder of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa (Mr. HARKIN) as a substitute for the committee amendment.

The question was taken; and on a division (demanded by Mr. BAUMAN) there were—ayes 17, noes 5.

So the amendment offered as a substitute for the committee amendment was agreed to.

The CHAIRMAN. The question is on the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The CHAIRMAN. Are there further amendments to section 2 of the bill?

AMENDMENT OFFERED BY MR. PASHAYAN

Mr. PASHAYAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PASHAYAN: On page 6, line 15, add the following new section:

SEC. 3. Strike section 7 of Public Law 95-435, the Bretton Woods Agreements Act Amendments of 1978, which reads:

"Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts."

And insert in lieu thereof:

"The Congress reaffirms its commitment that beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts."

And renumber the sections accordingly.

Mr. NEAL. Mr. Chairman, I would like to see a copy of the amendment.

Mr. PASHAYAN. I believe the gentleman has the substance of the amendment. This is a new section that we are adding that in working it out with the Parliamentarian was determined the best way procedurally.

The CHAIRMAN. The amendment has been read. The gentleman from California (Mr. PASHAYAN) is recognized to speak on behalf of the amendment.

Mr. PASHAYAN. Mr. Chairman, this amendment is being put on the floor here by myself in order to assure that a section of the 1978 law does not die by neglect.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. PASHAYAN. Yes, I yield to the gentleman from North Carolina.

Mr. NEAL. I thank the gentleman for yielding. I would like to say that I have examined the amendment, and I think it is laudatory. I think we would be prepared to accept it.

Mr. LEACH of Iowa. If the gentleman will yield, this side would be willing to accept the amendment.

Mr. PASHAYAN. I thank the gentleman. May I have a minute to simply explain what it does.

In the 1978 act, Mr. Chairman, the Congress promised the American people to balance the budget beginning in fiscal year 1981, and that is in October only a few days away. What this amendment simply does is to say that Congress reaffirms that commitment made in 1978 to balance the budget beginning in fiscal year 1981.

Mr. Chairman, over 220 of our colleagues have cosponsored House Resolution 525, and that language in House Resolution 525 is virtually identical to the language of this amendment. Once again I should like to say, and I shall read it, that it is the sense of the House of Representatives that it reaffirms its commitment to balancing the Federal budget in fiscal year 1981 as authorized

in Public Law 95–435, which is the Bretton Woods Agreement Act.

Mr. Chairman, unless this body has the will to balance the budget, we shall not do it, and I should like to see this body adopt this amendment and go on to balance the budget this year as we promised the American people we would do 2 years ago. In 1978 we made that solemn promise to do it this fiscal year, and I think this Congress must take upon itself the duty to fulfill that commitment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. PASHAYAN).

The amendment was agreed to.

Mr. BEDELL. I move to strike the requisite number of words.

Mr. Chairman, I had planned to offer an amendment which would have required that the survey which is performed by the Federal Reserve twice per year, and which shows the lending of American lending institutions to foreign banks and foreign governments, would be supplied to the committee twice each year. I have talked to members of the committee. It is my understanding that they are willing to request that of the Federal Reserve so that it will be accomplished without the necessity of having to put an amendment on the bill.

Mr. STANTON. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I will be glad to yield to the gentleman from Ohio.

Mr. STANTON. I thank the gentleman for yielding. First, let me compliment the gentleman for bringing this subject to the attention of the House. It is an excellent idea. It is a question of a little bit of germaneness maybe in putting this in the International Monetary Fund, but on the merits it is excellent. I want to assure the gentleman that when we get to next year to amending the Federal Reserve System that we will put it in there, or, if we can, proceed in this year in a statement on behalf of the managers alluding to the fact that this was brought up, and informally ask for it at this time. I compliment the gentleman for bringing it to our attention.

Mr. NEAL. Will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from North Carolina.

Mr. NEAL. I thank the gentleman for yielding. I also would like to compliment and thank him for this contribution. We will cooperate fully with him in making sure the appropriate committees of the House have these reports. I know that the chairman of the full Banking Committee is grateful for the gentleman's efforts in this regard.

Mr. BEDELL. I thank the gentleman. I would point out the reason we need to watch this is the fact that the external debt of the non-oil-producing, less-developed countries. has risen from $70 billion in 1970 to between $300 and $400 billion today, and the amount of debt which is owing to private banks as opposed to official sources has increased from 47 percent in 1973 to 58 percent today. I think it makes sense, with the importance of keeping our financial institutions sound, with the urgent needs that we have for loans to our local economy, that the Banking Committee keep track of this and watch so that we do not find ourselves in a difficult situation. I thank the people for accepting this responsibility to check on this.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

RECYCLING BALANCE-OF-PAYMENTS SURPLUSES

SEC. 3. (a) It is the sense of the Congress that (1) the interests of the United States and those of other member countries require an effective International Monetary Fund equipped with resources adequate to facilitate orderly balance-of-payments adjustments; (2) persistent balance-of-payments surpluses in oil exporting countries have placed, and will continue to place, severe strains on the resources of oil importing countries and on the liquidity of the Fund; (3) the willingness of the United States Government in the future to increase its contributions to the international financial institutions will be contingent upon the assumption by the oil exporting countries of a greater burden for financing balance-of-payments deficits through direct methods of recycling their surpluses and through proportionally greater contributions to the Fund and to the international lending institutions; and (4) the Fund must explore innovative proposals to encourage more direct recycling of oil surpluses and to increase its own liquidity.

(b) The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new sections:

"SEC. 34. The Secretary of the Treasury, in consultation with the United States Executive Director of the Fund, shall study and, following consultations with member countries, shall report to the Congress prior to May 15, 1981, with respect to—

"(1) the current adequacy of Fund resources, together with projected needs of the Fund over the next five years;

"(2) their feasibility of increasing Fund liquidity by encouraging the Fund to borrow directly from the governments of oil exporting countries;

"(3) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow in private capital markets through the issuance of securities backed by Fund resources;

"(4) the feasibility of an offer by the Fund of incentives to oil exporting countries, including financial guarantees by the Fund for government-to-government loans to countries with balance-of-payments deficits, in order to promote more direct recycling of oil surpluses; and

"(5) methods to enhance cooperation between commercial banks and the Fund to promote the availability of adequate resources for balance-of-payments financing.

□ 1820

Mr. NEAL (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the bill be dispensed with and that the bill be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk continued the reading of the bill.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 6, line 23, strike out "(3)" and all that follows through the semicolon in line 5 on page 7 and insert in lieu thereof the following: "(3) these strains can only be relieved if the oil exporting countries assume a greater burden for financing balance-of-payments deficits through direct methods of recycling their surpluses and through proportionally greater contributions to the Fund and to the international lending institutions;"; and on page 8, strike out lines 18 through 25 and insert in lieu thereof the following new section:

SEC. 35. It is the sense of the Congress that the Secretary of the Treasury and the United States Executive Director of the Fund shall encourage member countries of the Fund to negotiate a dollar-Special Drawing Rights substitution account in which equitable burden sharing would exist among participants in the account, and shall report to the Congress prior to May 15, 1981 with respect to progress toward achieving this goal.

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: Page 9, after line 8, insert the following new section 4:

DEBT RESCHEDULING COMPARABILITY

SEC. 4. Section 29 of the Bretton Woods Agreements Act is amended by striking out "on the use of the facility".

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. Are there further amendments to section 3? If not, the Clerk will read section 5.

The Clerk read as follows:

TAIWAN

SEC. 5. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 36. It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China) shall be granted appropriate membership in the Fund and that the United States Executive Director of the Fund shall so notify the Fund.".

The CHAIRMAN. Are there any amendments to section 5 of the bill?

COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: Page 9, after line 21, insert the following new section 6:

EFFECTIVE DATE

SEC. 6. This Act shall take effect on its date of enactment, except that funds may not be appropriated under any authorization contained in this Act for any period prior to October 1, 1980.

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

AMENDMENT OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 9, after line 21, insert the following new section and redesignate the subsequent sections accordingly:

PALESTINE LIBERATION ORGANIZATION

SEC. 6. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. It is the policy of the United States that the Palestine Liberation Organization should not be given membership in the Fund or be given observer status or any other official status at any meeting sponsored by or associated with the Fund. The United States Executive Director of the Fund shall promptly notify the Fund of such policy. in the event that the Fund provides either membership, observer status, or any other official status to the Palestine Liberation Organization, such action would result in a serious diminution of U.S. support. Upon review of such action, the President would be required to report his recommendations to the Congress with regard to any further U.S. participation in the Fund."

Mr. GILMAN. Mr. Chairman, at the end of this month the International Monetary Fund will be holding its annual meeting here in Washington. Several Arab States are working overtime to insure that that meeting will include a confrontation that promises to have disastrous effects for developed and developing nations alike. Through the use of oil revenue they are seeking to force the acceptance of the Palestine Liberation Organization as a formal and legitimate observer to the Fund annual meeting.

Very simply, Mr. Chairman, my amendment—originally authored by the gentleman from Florida (Mr. YOUNG)—would amend the Bretton Woods Agreements Act to state as plainly as possible that it is U.S. policy that the PLO should not be given membership or any official status with the International Monetary Fund.

As stated in an editorial in yesterday's Washington Post:

> Observer status is not worth much. It offers the opportunity to attend meetings that are, in any case, public—although not to participate in them. The Arabs' purpose is to try to endow the PLO with some degree of official recognition in as many places as possible. More broadly they are seeking, with a rising sense of frustration, strategies to translate their great financial resources into political influence.

Under the bylaws of the IMF, observers to the annual meeting may be invited by the chairman of the meeting. Currently there are over 40 such accredited observers from the African Centre for Monetary Studies to the United Nations Educational, Scientific, and Cultural Organization. Without exception all of these "observers" are bodies whose activities are sufficiently closely related to those of the Fund. It is obvious that the PLO does not qualify.

If allowed to go unchallenged, the Arab threats to withhold funds unless the PLO is admitted will politicize the work of the Fund and set a most dangerous precedent. Far from an economic institution, the PLO remains the leading terrorist organization in the world today. Its acceptance in the Fund and the issues it would seek to inject would undoubtedly set the pace for other radical political groups in a process that would be the beginning of the end for the Fund.

Let us remember just what the PLO stands for and what it represents. Just 4 months ago, the dominant Al Fatah wing of the PLO stated its goals "to liberate Palestine completely and to liquidate the Zionist entity politically, economically, militarily, culturally and ideologically." One can get little comfort from their attitude about the United States which they consider to be "the leader of the enemies of our people and nation." Their policy toward this nation is "to strengthen the international front against the United States, wage war on its policies, and strike at U.S. interests in the region." This agenda of hate hardly relates to lofty goals and policies of the IMF.

The adoption of this amendment would be fully consistent with current U.S. policy on this question. It is extremely important that we indicate to the executive branch and the world community our strong support for the policies embodied in this amendment. It should not go unnoticed that it is becoming harder and harder for the Congress to support and justify the many international aid programs. The abuse and misuse of those institutions and programs as proposed by the Arab States may well spell doom to a broad range of international cooperative efforts as we lose faith in their usefulness.

Our response to this challenge is simple. We must draw the line on this abuse. As the Washington Post editorial concludes:

> On principle, the right choice is to refuse to admit the PLO as an observer. Its right . . . because it keeps these . . . institutions out of an altogether extraneous political quarrel.

Our actions in opposition to PLO status will not alone prevent such a decision. Ultimately the United States is only one voice in this affair. Many nations, both rich and poor, are represented on the governing board of the IMF. As the Washington Post points out.

> If the Third World government stay together, they may well have the strength to bring in the PLO. But they can do it only by risking, in some degree, the real and substantial financial aid now flowing to their own countries. It is the governments of the poor countries that now have to resolve the dilemma.

The passage of my amendment will make the choices they face—crystal clear.

At this point in the RECORD, I would like to insert the extire text of the September 16, 1980, Washington Post editorial:

ECONOMIC AID AND THE PLO

Several Arab governments are now pressing an ugly dilemma on the two big international financial institutions crucial to the Third World. The World Bank and the International Monetary Fund hold their annual meetings here at the end of the month. The Arabs want them to admit the Palestine Liberation Organization as an observer.

If they do not, the Arabs hint that they will retaliate by refusing to lend their oil wealth to the bank and the fund. But if they do admit the PLO as an observer, their support in the United States—by far their largest contributor—will be jeopardized. In either case, the bank and the fund are being drawn into a kind of corrosive political combat that can only damage their real work.

In practical terms, observer status is not worth much. It offers the opportunity to attend meetings that are, in any case, public—although not to participate in them. The Arabs' purpose is to try to endow the PLO with some degree of official recognition in as many places as possible. More broadly they are seeking, with a rising sense of frustration, strategies to translate their great financial resources into political influence.

If the two institutions refuse the PLO and if the Arabs carry out their threat, the costs to the world's poor nations will be real. The Arab oil-exporting countries would presumably continue to leave much of their money in the Western financial markets where the bank and the fund could borrow it indirectly. But that would mean higher interest for the borrowers and perhaps less money to be lent. Those conditions are not crippling, but neither are they trivial. As for the other alternative, admitting the PLO as an official observer, the Carter administration is already having great difficulty getting funds for international aid out of Congress. The authorization for the latest contribution to the IMF is likely to come to the Senate floor this week.

On principle, the right choice is to refuse to admit the PLO as an observer. It's right not because it avoids offending American senators, but because it keeps these two institutions out of an altogether extraneous political quarrel. Most Third World governments, unfortunately, still reflexively support the Arabs. They are getting increasingly uneasy about it, as the damage done them by the oil price increases becomes evident. But most of them consider the PLO a valid spokesman of one group of the world's dispossessed.

The World Bank and the International Monetary Fund are run by boards representing the member countries, both rich and poor. If the Third World governments stay together, they may well have the strength to bring in the PLO. But they can do it only by risking, in some degree, the real and substantial financial aid now flowing to their own countries. It's the governments of the poor countries that now have to resolve the dilemma.

□ 1830

The CHAIRMAN. The time of the gentleman from New York has expired.

(At the request of Mr. LAGOMARSINO and by unanimous consent, Mr. GILMAN was allowed to proceed for 2 additional minutes.)

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I rise in strong support of the amendment of the gentleman from New York. The PLO is a terrorist organization and has no business being given this status. In fact, if the PLO is granted observer status, a precedent would be established that would allow other terrorist organizations like this and other so-called liberation movements to make similar demands.

It is very important that we vote on this and very, very strongly support it today, because this Friday there will be a vote on whether or not to allow the PLO to be admitted, and our strong support

of the gentleman's amendment today could well avert that move.

Mr. GILMAN. I thank the gentleman for his remarks in support of my amendment.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I would be pleased to yield to my colleague from New York.

Mr. WOLFF. I thank the gentleman for yielding.

Mr. Chairman, I just want to say that I support the amendment of the gentleman from New York, and indicate that it has been revealed that the attack on our Embassy in San Salvador was by terrorists who were trained by the PLO. I think this adds further emphasis to this organization, and I shall take my own time to speak to this amendment.

Mr. GILMAN. I thank the gentleman for his support.

Mrs. HECKLER. Mr. Chairman, I would like to thank the gentleman from New York for yielding, and to congratulate him on his significant amendment. The inclusion of the PLO, with any status, in the IMF, would be detrimental to the very order of the international monetary system which this legislation is intended to maintain.

The IMF has long been an example of cooperation and compromise between the governments of many nations. It would be unwise, therefore, to allow a nongovernment, such as the PLO to observe the delicate IMF proceedings. The PLO is not the government of any nation, and it has not demonstrated the spirit of cooperation and compromise which must exist in order for the IMF to operate effectively.

I believe we should not jeopardize the IMF by allowing this nongovernment entity to participate in any capacity. I urge my colleagues to approve the Gilman amendment.

The CHAIRMAN. The time of the gentleman from New York has again expired.

(At the request of Mr. NEAL and by unanimous consent, Mr. GILMAN was allowed to proceed for 3 additional minutes.)

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I will be pleased to yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, I would like to say to the gentleman that I support, I think, everything he said. However, he did refer to the Fund as being some kind of aid program, which it is not. I would like to correct that one little observation. The IMF is a self-sustaining organization which serves our interests. It is certainly not an aid program.

But I do agree with his comments about the PLO. It is my understanding that the clear position of our country is that the PLO should not be seated by the Fund.

The wording of the final paragraph of the gentleman's amendment troubles me some because it might set a precedent that we would severely regret. As the gentleman indicated, the International Monetary Fund has never to this time been politicized. It has made its judgments solely on the basis of economic considerations. That has been the IMF's great strength.

I would agree with the gentleman that if the IMF were to seat a PLO observer in any way, that that would be a politicization of the Fund. We very strongly hope that this would not happen. We do not want to give any ammunition to those who would want to politicize the Fund. I have a concern that the final section of the amendment might do that. If this amendment were to succeed, some day in the future some other country might look back on this amendment and use it as a precedent to express political concern about another country.

Historically, the Greeks and the Turks do not object to each other's use of the Fund. There has been no objection to Israel drawing on the Fund. There has been no political objection to any of the Arab countries using the Fund. In other words, we have kept politics and all sorts of other considerations out.

When this House approved the IMF's Witteveen Facility in 1978, human rights amendments were offered that many of us wanted to support. But we fought the language because we thought it added a political dimension to the Fund. We were successful.

I would just ask the gentleman to review the last paragraph of his amendment—although I certainly agree with his intent—to see if he could withdraw that paragraph and leave the rest. I think that he would still accomplish what he wants to do.

The CHAIRMAN. The time of the gentleman from New York has again expired.

(At the request of Mr. ROUSSELOT and by unanimous consent, Mr. GILMAN was allowed to proceed for 4 additional minutes.)

Mr. GILMAN. In response to the gentleman, we have wrestled over the language of this amendment. There were many who would have liked stronger language and would have liked to have deleted funding altogether at this point because, apparently, our Nation is not having much success in keeping the PLO out of the Fund as a political observer.

□ 1840

The purpose of the resolution is to do away with the politicization of the IMF, not to encourage it. As the gentleman has stated, the intent of both of us is to try to avoid the politicization of this financial organization, and allowing a terrorist organization that certainly has no sovereignty and certainly has nothing to do with a financial institution such as the IMF to sit in and take part in the deliberations is certainly reprehensible.

What we are trying to do is to prevent that from happening, and by this language, if it does occur, we want to give the President an opportunity to reconsider our position. This strengthens the hands of our State Department in what it is seeking to do.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague's yielding.

I, first of all, want to thank the gentleman from New York (Mr. GILMAN) for offering this amendment. I think it is terribly important, especially at this time.

My understanding, having studied the IMF in the past and having been on the Banking Committee, is that the IMF and the World Bank have both limited observer status to financial institutions. The PLO is not a financial institution. The fact is that it is a terrorist organization, and, therefore, the gentleman's last paragraph in his amendment is very appropriate in that regard.

There is no tradition at the IMF for having anybody as an observer that is not a financial institution. So on that basis alone, setting aside the fact—which none of us want to do—of the terrorist status of this organization, clearly the PLO does not have a reason to be there in a financial capacity.

So, Mr. Chairman, I complement my colleague, the gentleman from New York (Mr. GILMAN), and I think the language in the last paragraph of his amendment is absolutely essential.

Mr. Chairman, in the past, the IMF and World Bank have limited observer status to financial institutions such as the Bank for International Settlements; Central American Bank for Economic Integration; Commission of the European Communities; European Investment Bank; and 37 other financial organizations. In no case has an organization like the PLO been given such observer status.

Mr. GILMAN. Mr. Chairman, I thank the gentleman from California (Mr. ROUSSELOT) for his support.

Mr. DOUGHERTY. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am pleased to yield to the gentleman from Pennsylvania.

Mr. DOUGHERTY. Mr. Chairman, I rise in support of the amendment offered by my distinguished colleague, the gentleman from New York (Mr. GILMAN).

As a Member who has voted in the past for the IMF and would be supporting it this time around, I would find it impossible to support the IMF in the future if indeed the PLO were seated even as an observer at the meetings.

Tonight we have an opportunity to serve notice to the world at large that the U.S. Congress is not going to support the PLO in any way, shape, or form, that we are not going to hide behind the bureaucratic trappings that the IMF is a certain kind of an organization, and that if we do something, something else is automatically going to happen.

The fact of the matter, Mr. Chairman, is that the PLO is not a nation and it is not a grouping of nations. The PLO is a terrorist organization. There is absolutely no way any person with any sense of dignity and responsibility could condone allowing the IMF to seat the PLO as an observer.

It seems to me that if this action is going to take place, the IMF should know ahead of time the strong sentiments of the Congress against such an action, and it should be made aware of the resultant effect, if they do seat the

PLO, which is not a nation and is not a grouping of nations—it is in fact a terrorist organization—that there will be strong opposition to the IMF in the Congress in the future.

The CHAIRMAN. The time of the gentleman from New York (Mr. GILMAN) has again expired.

(On request of Mr. DOUGHERTY, and by unanimous consent, Mr. GILMAN was allowed to proceed for 4 additional minutes.)

Mr. DOUGHERTY. Mr. Chairman, if the gentleman will yield further, in conclusion, I would thank the gentleman for presenting this amendment tonight. It is a clear and concise statement of our feelings about the PLO. I want to commend the gentleman for offering the amendment.

Mr. GILMAN. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. DOUGHERTY) for his contribution and for his support of the amendment.

Mr. GREEN. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am pleased to yield to the gentleman from New York.

Mr. GREEN. Mr. Chairman, I thank my colleague, the gentleman from New York, for yielding.

As I indicated in my remarks during the general debate, I think a critical part of the successful role that the IMF and other international financial institutions have played up until now has been the confidence of the world in the fact that they would not be politicized, and that the decisions that they were making were essentially professional decisions based on economic considerations and not on world politics.

I would say that an agreement by any of the international financial institutions to take into even an observer status a terrorist organization like the PLO would obviously represent a breach of what has been a very important part of their tradition to date. The ability of these organizations to function in a professional way has given weight to their recommendations, both as to international monetary matters and as to the actions that should be taken by individual countries to put their own houses in order when they were facing financial difficulties, and it has been a key part of the role that these organizations have played in this world.

If these organizations are now going to abandon that professional role and instead start getting involved in the same kind of politicization that we have seen in the General Assembly of the United Nations, for example, I think their ability to perform the functions that they have performed for the world comes into question, as does the extent to which we should continue to support them.

So, Mr. Chairman, I want to commend my colleague, the gentleman from New York (Mr. GILMAN), for offering this amendment, because I think it will put the world on notice that the politicization of these organizations would be a very dangerous thing for the world.

Mr. GILMAN. Mr. Chairman, I thank the gentleman from New York (Mr. GREEN) for his remarks.

Mr. WOLFF. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I had intended to offer a much stronger amendment than the one offered by the gentleman from New York (Mr. GILMAN). I do think that we must put on notice all world bodies that we will not countenance terrorism of any kind nor a politicizing of these very important organizations which are to serve either economic interests or political interests or the cause of peace.

Mr. Chairman, I understand that the IMF may soon vote to give the PLO observer status, despite the strong opposition of the United States. I am extremely concerned by this development. While the final vote will not be in for several days, the present expectation is that observer status will be granted.

Granting observer status to the PLO at the U.N. and related agencies has been used to legitimize this terrorist group in the international community. This constant politicizing the U.N. by the PLO has made the General Assembly a joke, and made mockery of many issues totally unrelated to the Middle Eastern situation. Witness the recent Copenhagen Mid-decade Conference on Women which turned into a PLO propaganda circus, rather than concentrating on the important problems faced by women worldwide.

But this move to include the PLO into the IMF takes this whole issue a step further. While the U.N. General Assembly has little authority to take any action, the IMF is intimately involved in the world financial structure. This body has been essential for the United States to help with temporary balance-of-payments difficulties, and is increasingly important in helping the Third World countries cope with rising oil prices. To include the PLO in the IMF, even as an observer, is to confer more than just some sort of political legitimacy upon it—this move seems to be aiming at giving the PLO almost a "government in exile" standing—to participate in financial matters.

The U.S. Government must not stand for this. We have a policy of not recognizing and not dealing with the PLO, as the PLO openly seeks to destroy Israel. OPEC oil price increases have weighed on the international financial system, until it seems ready to crumble like a house of cards. Many nations have had to rely increasingly on the IMF, especially Third World countries, to help finance this dreadful burden. Now these OPEC countries want to inject politics into this international financial institution. I am not sure that this situation might not be the straw that breaks the camel's back.

Some of my colleagues would like to see us withdraw completely from the IMF. I do not agree. Our power in the IMF is dwindling, in comparison with the OPEC countries, and therefore I support the increase in our special drawing rights (SDR's) to insure that we retain significant control over the IMF. However, we must let the international community know that we object strenuously to the possibility of giving the PLO observer status, and we must let them know that we will not sit idly by and fund the politicization of the IMF and the World Bank.

Last year the Congress passed an amendment I offered which reduces our contribution to the U.N. by our share of the budgets of the two PLO propaganda committees there. If the move to give observer status is passed, I think the Congress should reassess our role in this organization.

Mr. Chairman, I congratulate the gentleman from New York (Mr. GILMAN) for the language that he has created here in his amendment. It does no violence to the IMF, and it preserves that agency from the violence of the PLO.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. WOLFF. I am delighted to yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, let me say to the gentleman from New York (Mr. WOLFF) that my only problem—and maybe we can resolve the problem here and now—is that I want to make it clear that it is not our intent to politicize the IMF. It is our intent merely to depoliticize the IMF and to keep it free of political considerations.

Is that the intent of the author of the amendment and of the gentleman from New York (Mr. WOLFF)?

Mr. GILMAN. Mr. Chairman, if the gentleman will yield, it is certainly the intent of the author of the amendment and the intent of all of us to keep the PLO out of financial institutions such as the IMF.

Mr. NEAL. Mr. Chairman, I certainly support the intent of the gentleman as long as we in no way are attempting to politicize the IMF and are in fact doing this to make sure that we depoliticize it.

Mr. WOLFF. Mr. Chairman, that is the effect of this amendment, to see to it that we do depoliticize the IMF. The fact is that the PLO is attempting to politicize it, just as some of the PLO's allies have been doing.

Mr. NEAL. Mr. Chairman, may I say to the gentleman that, looking at it in that light, I think we would certainly be prepared to accept the amendment.

Mr. STANTON. Mr. Chairman, will the gentleman yield?

Mr. WOLFF. I yield to the gentleman from Ohio.

Mr. STANTON. Mr. Chairman, I appreciate the gentleman's yielding.

We cannot forget that what this is is a sense-of-Congress resolution fundamentally. Second, it really backs up the position that the IMF and the administration are taking at this time in opposing the PLO observation. So we are in effect backing up the present actions of our country by taking this action today.

Mr. Chairman, we do support the amendment on this side.

Mr. WOLFF. Mr. Chairman, one aspect of this that is extremely important is that although the United States has a

weighted vote at the IMF, they cannot even get a quorum there to take this measure up, and as a result of that fact the PLO will be granted observer status without even a vote being taken there.

□ 1850

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. WOLFF. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I do not want to take the time of this body, but I cannot let this resolution go by without at least saying how heartily I support it. We simply cannot afford to have more of these armed terrorists appearing in the United Nations and its functions, and I think this ought to pass at once.

Mr. PHILIP M. CRANE. Mr. Chairman, will the gentleman yield?

Mr. WOLFF. I yield to the gentleman from Illinois.

Mr. PHILIP M. CRANE. I thank the gentleman from New York for yielding.

Mr. Chairman, I would simply like to join in support of the amendment offered by my colleague, the gentleman from New York (Mr. GILMAN), and to associate myself with his remarks. I commend the gentleman for introducing this amendment.

Frankly, it was my own inclination to introduce an amendment which went beyond what has been proposed here in the language, suggesting a serious diminution of U.S. support.

The CHAIRMAN. The time of the gentleman from New York (Mr. WOLFF) has expired.

(On the request of Mr. WEISS and by unanimous consent, Mr. WOLFF was allowed to proceed for 1 additional minute.)

Mr. PHILIP M. CRANE. If the gentleman will yield for just one further statement, it was my own inclination to suggest an absolute cut-off of any further U.S. aid if this atrocity is perpetrated.

So I commend my colleague for what I think is perhaps gentler language and language more compatible with the interests of this House, but I support him in that effort.

Mr. WEISS. Mr. Chairman, will the gentleman yield?

Mr. WOLFF. I yield to the gentleman from New York.

Mr. WEISS. I thank the distinguished gentleman for yielding, and I want to associate myself fully with his remarks.

I want to commend my distinguished colleague, the gentleman from New York (Mr. GILMAN), for offering this amendment which I fully support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. GILMAN).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GILMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 386, noes 2, not voting 44, as follows:

[Roll No. 558]

AYES—386

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Coughlin
Courter
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Holtzman
Honkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kasen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Robinson
Rodino
Roe
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stockman
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NOES—2

Conyers
Johnson, Colo.

NOT VOTING—44

Anderson, Ill.
Ashbrook
Brown, Ohio
Burton, Phillip
Cheney
Clay
Cotter
Crane, Daniel
Daschle
Davis, S.C.
de la Garza
Devine
Dodd
Dornan
Early
Erlenborn
Glaimo
Ireland
Jenkins
Jenrette
Latta
Leach, La.
Lederer
McClory
Mathis
Mattox
Myers, Pa.
Nedzi
Nolan
Quayle
Roberts
Rose
Shannon
Solars
Staggers
Stokes
Symms
Ullman
Wilson, Bob
Wilson, C. H.
Wydler
Wylie
Young, Alaska
Young, Fla.

□ 1900

Messrs. FINDLEY, SEIBERLING, and RAHALL changed their votes from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1910

Mr. NEAL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. BEILENSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7244) to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund, and for other purposes, had come to no resolution thereon.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendment of the House with amendments to a bill of the Senate of the following title:

S. 2443. An act to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 7765) entitled "An act to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981," disagreed to by the House; requests a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and appoints Mr. HOLLINGS, Mr. MOYNIHAN, Mr. EXON, Mr. BELLMON, and Mr. DOMENICI from the Committee on the Budget; Mr. TALMADGE, Mr. MCGOVERN, Mr. HUDDLESTON, Mr. HELMS, and Mr. HAYAKAWA from the Committee on Agriculture, Nutrition, and Forestry, solely for the consideration of matters within the jurisdiction of that committee; Mr. NUNN, Mr. HARRY F. BYRD, JR., and Mr. JEPSEN from the Committee on Armed Services, solely for the consideration of matters within the jurisdiction of that committee; Mr. CANNON, Mr. EXON, Mr. PACKWOOD, and MRS. KASSEBAUM from the Committee on Commerce, Science, and Transportation, solely for the consideration of matters within the jurisdiction of that committee; Mr. RANDOLPH, Mr. BENTSEN, Mr. BURDICK, Mr. STAFFORD, and Mr. PRESSLER from the Committee on Environment and Public Works, solely for the consideration of matters within the jurisdiction of that committee; Mr. LONG, Mr. TALMADGE, Mr. BOREN, Mr. DOLE, and Mr. ROTH from the Committee on Finance, solely for the consideration of matters within the jurisdiction of that committee; Mr. RIBICOFF, Mr. GLENN, Mr. PRYOR, Mr. PERCY, and Mr. STEVENS from the Committee on Governmental Affairs, solely for the consideration of matters within the jurisdiction of that committee; Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. SCHWEIKER, and Mr. STAFFORD from the Committee on Labor and Human Resources, solely for the consideration of matters within the jurisdiction of that committee; Mr. CRANSTON, Mr. TALMADGE, and Mr. SIMPSON from the Committee on Veterans' Affairs, solely for the consideration of matters within the jurisdiction of that committee be the conferees on the part of the Senate.

APPOINTMENT OF CONFEREES ON H.R. 7590, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1981

Mr. BEVILL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Alabama? The Chair hears none, and appoints the following conferees: Mr. BEVILL, Mr. BOLAND, MRS. BOGGS; Messrs CHAPPELL, JENRETTE, FAZIO, HEFNER, WHITTEN, MYERS of Indiana, and BURGENER; Mrs. SMITH of Nebraska, and Mr. CONTE.

CONFERENCE REPORT ON H.R. 5164, SMALL VESSEL INSPECTION AND MANNING

Mr. BIAGGI submitted the following conference report and statement on the bill (H.R. 5164) to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 96-1342)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5164) to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same.

THOMAS L. ASHLEY,
MARIO BIAGGI,
JOHN BREAUX,
WILLIAM J. HUGHES,
PAUL N. MCCLOSKEY,
GENE SNYDER,
BOB LIVINGSTON,
Managers on the Part of the House.

HOWARD W. CANNON,
RUSSELL B. LONG,
HOWELL HEFLIN,
BOB PACKWOOD,
JOHN WARNER,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 5164, to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment added a sentence to section 4 of the bill. The House disagreed to the Senate amendment.

The Committee of Conference recommends that the House recede from its disagreement to the amendment of the Senate and agree to the same.

SUMMARY AND DESCRIPTION

The bill, as reported by the two Houses, amends several sections of title 46, U.S. Code and repeals related sections—all of which are concerned with the inspection and manning of small commercial vessels carrying passengers or freight for hire. The bill addresses various acute problems of the small commercial vessel industry, particularly the party boat fishing industry and the offshore oil and mineral supply vessel industry, and should materially assist in keeping these industries safe and viable. It makes important changes in the law governing able seamen for the entire maritime industry. It clarifies the law on the inspection and manning of vessels under 100 gross tons and subjects all offshore supply boats, as defined in the bill, to Coast Guard safety inspection and manning requirements. It also modifies the requirements for licensed engineers and deck officers on vessels of under 300 gross tons.

The only issue in contention is that part of section 4 of the bill that amends section 13 of the Act of March 4, 1915 (38 Stat. 1169), as amended (46 U.S.C. 672).

The House version of section 13(b)(3) reads as follows:

"(3) 'Able seaman-special' qualified for special service on any vessel on any waters shall have at least twelve months' service on deck on vessels operating on the oceans or the navigable waters of the United States including the Great Lakes.".

The Senate version of section 13(b)(3) reads as follows:

"(3) 'Able seaman-special' qualified for special service on any vessel on any waters shall have at least twelve months' service on deck on vessels operating on the oceans or the navigable waters of the United States including the Great Lakes. For service on a vessel of less than five hundred gross tons engaged in support of exploration, exploitation, or production of offshore mineral or energy resources, a person may be rated as able seaman-special who has at least six months' service on deck on vessels operating on the oceans or the navigable waters of the United States including the Great Lakes.".

Simply stated, the Senate bill contains an additional sentence to section 13(b)(3). The House bill requires a seaman to have at least twelve months' service on deck before qualifying as an able seaman-special for employment on any vessel of 500 gross tons or less, or on a seagoing barge, tug, or towboat. The Senate bill retains this same requirement; however, it permits six months' service on deck as prerequisite experience for able seaman employed on vessels of less than 500 gross tons engaged in support of exploration, exploitation, or production of offshore mineral or energy resources.

The Committee of Conference agreed to the Senate amendment.

THOMAS L. ASHLEY,
MARIO BIAGGI,
JOHN BREAUX,
WILLIAM J. HUGHES,
PAUL N. MCCLOSKEY,
GENE SNYDER,
BOB LIVINGSTON,
Managers on the Part of the House.

HOWARD W. CANNON,
RUSSELL B. LONG,
HOWELL HEFLIN,
BOB PACKWOOD,
JOHN WARNER,
Managers on the Part of the Senate.

PERMISSION TO WAIVE 3-DAY RULE FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 5164, SMALL VESSEL INSPECTION AND MANNING

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that the provisions of rule XXVIII(2)(a) shall be waived for purposes of House consideration tomorrow or any day thereafter of the report of the committee of conference on H.R. 5164, a bill regarding small commercial vessel inspection and manning.

Mr. Speaker, the conference report and joint explanatory statement of the committee of conference on H.R. 5164 was filed today and will be printed in today's CONGRESSIONAL RECORD. The matters at issue are noncontroversial. The measure continues to have strong bipartisan support. The Senate is expected to act without delay.

Accordingly, it would be advantageous for the conferees to have the flexibility

of bringing the conference report to the floor as soon as possible—in order to facilitate floor scheduling of other major substantive legislation during the closing weeks of this session.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 3904, PRIVATE MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

The was no objection.

MAKING IN ORDER ON OR AFTER FRIDAY, SEPTEMBER 19, 1980, CONSIDERATION OF CONFERENCE REPORT ON H.R. 3904, MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that it be in order on or after Friday, September 19, 1980, to consider the conference report on the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

RESIGNATION AS CONFEREE AND APPOINTMENT OF CONFEREE ON CHILD NUTRITION LEGISLATION

The SPEAKER laid before the House the following resignation as a conferee:

WASHINGTON, D.C.
September 17, 1980.

Hon. CARL PERKINS,
Education and Labor Committee, Rayburn Building.

DEAR MR. CHAIRMAN: In compliance with House Rule XLIII, I must refrain from participation in the business of the committees of which I am a member.

Consequently, I am unable to act as a conferee on the Child Nutrition legislation and would ask that you excuse me from this duty and appoint another member to the conference committee.

Sincerely yours,

MICHAEL O. MYERS,
Member of Congress.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

The SPEAKER. The Chair appoints the gentleman from New Jersey (Mr. THOMPSON) to fill the vacancy, and the Senate will be notified of the action of the House.

WEST VALLEY DEMONSTRATION PROJECT ACT

Mr. FUQUA. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the Senate bill (S. 2443) to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y., with Senate amendments to the House amendment, and concur in the Senate amendments to the House amendment.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendments to the House amendment, as follows:

Page 4, after line 23, of the House engrossed amendment, insert:

(D) Submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration.

Page 5, line 2, of the House engrossed amendment, after "project" insert ": *Provided*, That review and consultation by the Commission pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other law".

Mr. OTTINGER (during the reading). Mr. Speaker, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from New York?

Mr. DINGELL. Mr. Speaker, I reserve the right to object only to note that I have a reservation to the earlier unanimous-consent request. I would indicate to the Chair that I will probably not assert that objection.

The SPEAKER. There is no objection to the suspension of the reading?

Mr. DINGELL. I do not object to that. I just want to make sure that the Chair is aware of the fact that I have a reservation earlier noted.

Mr. Speaker, I withdraw my reservation of objection to the reading of the amendments.

The SPEAKER. Is there objection to the request of the gentleman from New York (Mr. OTTINGER) to dispense with the reading of the amendments?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Florida (Mr. FUQUA)?

Mr. LUJAN. Mr. Speaker, reserving the right to object to bringing up the bill by unanimous consent, I do so simply to ask the gentleman if this was the research bill that we had for West Valley and how does the Senate bill differ from the House passed bill?

Mr. FUQUA. Let me say to the gentleman from New Mexico, this is the bill that passed the House on suspension on Monday relating to the West Valley, or commonly referred to as the West Valley bill. It is the R. & D. program.

The Senate did add two germane amendments, one requiring that the license be jointly complied with by the Department of Energy and the other that there were not required to be formal actions by the Nuclear Regulatory Commission. Both are germane amendments.

Mr. LUJAN. Mr. Speaker, if the gentleman would continue to yield, on the first amendment I do not quite understand what that is all about, that both the Department of Energy and the State of New York must agree to the provisions?

Mr. LUNDINE. Mr. Speaker, will the gentleman yield to me?

Mr. LUJAN. I yield to the gentleman from New York.

Mr. LUNDINE. The original bill that came out of the Committee on Science and Technology provided that the Department of Energy and the State of New York would jointly apply for an amendment to the existing license to allow this demonstration project to occur. When the bill was considered by the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce, the requirement that the Department of Energy join the State of New York was eliminated from that version of the bill and, thereby, eliminated from the House passed bill last Monday.

In discussions with several Senators and the minority, as well as the majority, the feeling was that they did not want the State of New York going in and applying a loan for an amendment to this license, that they wanted a provision in it that the amendment to the license would be agreed on by the Department of Energy.

Therefore, the original Science and Technology Committee language was replaced in the Senate bill and that is what this action is.

□ 1920

Mr. LUJAN. I would agree with the gentleman that that is a desirable provision.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida (Mr. FUQUA)?

Mr. OTTINGER. Reserving the right to object, I reserve the right to object to get some clarification from the Chairman. In the second Senate amendment it says that it will not require formal procedures or actions. The exact language is:

The Commission—

That is the Nuclear Regulatory Commission—

pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other law.

I want to make it clear that Senator JAVITS informs me that it was the intent of the Senate that this should mean they will not require formal procedures such as licensing procedures, but it does not preclude the Commission from taking any action that otherwise would be authorized by law.

Mr. FUQUA. If the gentleman will yield, I think the gentleman has explained it very well. I think that is the intent.

Mr. LUJAN. Mr. Speaker, will the gentleman yield?

Mr. OTTINGER. I yield to the gentleman from New Mexico.

Mr. LUJAN. I thank the gentleman for yielding. Is it not because it is a research project that you do not go into a full blown licensing proceeding?

Mr. OTTINGER. That was the accommodation that was reached on the bill. The question of whether you need licensing research and development or demonstration projects has not fully been resolved.

Mr. LUJAN. If the gentleman will yield, at least in this particular one we do not.

Mr. OTTINGER. That is correct. That is correct.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida (Mr. FUQUA)?

Mr. DINGELL. Mr. Speaker, I have not withdrawn my reservation of objection.

Mr. Speaker, referring to the committee print, H.R. 6865, if I could have the attention of my good friend from the State of Florida, I would observe that I believe the first amendment—and that is the amendment which relates to the "submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration"—would appear, if I am correct, at page 5, line 10, is that correct, as a new item (D)?

Mr. FUQUA. If the gentleman will yield, that is my understanding of the House bill.

Mr. DINGELL. I continue the reservation of objection. I would assume that clause, which sort of floats, would be made into a full sentence, because if it appears at that point in the bill, it simply says:

Submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration.

I believe that should read:

The agreement shall provide for the submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration.

Otherwise we have a clause which hangs and which without some good exercise of the human mind is inoperative. Am I correct in that appreciation?

Mr. FUQUA. If the gentleman will yield, I think there could be a technical error in the bill, and I would certainly have no objection to making a technical correction in the amendment as passed by the Senate.

Mr. DINGELL. I am not sure whether that does not get us to the point where we maybe have to accept this and then send it back to the Senate with an amendment. That makes extra problems, but we do want to pass a piece of legislation for the gentleman from New York that is going to deal with the question and not leave hanging and dangling a lot of questions unanswered. I recognize, indeed, the desire for speed in this matter, but I am troubled that we should proceed carefully.

The second question is, as I understand it, the other bill, the House version of the bill, would include the second language which says:

Provided, That review and consultation by the Commission—

And so forth, would go in at the end of the sentence after the word "project" at line 14 of page 5. Is that correct? Am I correct in my appreciation that that amendment should go there?

Mr. FUQUA. If the gentleman will yield, it is my understanding that that is the correct place where the amendment should be inserted.

Mr. DINGELL. Mr. Speaker, I thank my good friend, the gentleman from Florida (Mr. FUQUA).

Mr. Speaker, the Senate action has been to add two amendments to the bill which passed the House. The House action was to accept a modified version of the bill which was reported by the Committee on Interstate and Foreign Commerce, and thus the Senate action was to accept our committee's version of the bill with two amendments.

The first amendment directs the Secretary of Energy to jointly submit a license amendment to the Nuclear Regulatory Commission to allow the activities to occur on the West Valley site. This subjects the Secretary to the jurisdiction of the Nuclear Regulatory Commission and places the Secretary in the position of a colicensee in regard to all aspects of the project.

The second amendment provides that the agreement between the Secretary of Energy and the Nuclear Regulatory Commission provide for informal procedures for the Commission's review and consultation of the Department's plan. This requirement for informal procedure applies only to the provisions of the agency agreement executed pursuant to subsection 2(c) and does not affect the procedures which would be used when the Secretary jointly submits the required license application amendment pursuant to section 2(b)(4)(D) nor does it affect the provisions of section 5(a) which states that nothing in the bill, including the two Senate amendments shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida (Mr. FUQUA)?

There was no objection.

A motion to reconsider was laid on the table.

COMMUNICATION FROM THE PRESIDENT OF THE UNITED STATES REGARDING HOUSE RESOLUTION 745

The SPEAKER laid before the House the following communication from the President of the United States, which was read and, together with the accompanying papers, referred to the Committee on Foreign Affairs and the Committee on the Judiciary:

THE WHITE HOUSE,
Washington, September 17, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: I am writing in response to H. Res. 745 passed by the House of Representatives on September 10, 1980.

On July 23, 1980, Chairman Rodino of the Committee on the Judiciary and Chairman Zablocki of the Committee on Foreign Affairs requested that I comment on H. Res. 745. On August 18, 1980, I submitted to those Committees a statement by me and a report of my counsel, together with the information to be furnished by two Executive Branch Departments, which contained the answers and related information called for in the Resolution.

The August 18, 1980 submission and the supplemental report of my counsel dated September 17, 1980 and attached to this transmittal letter constitute my response to H. Res. 745 as passed on September 10, 1980. I am also enclosing letters from the Department of State and the Department of Justice which confirm that these Departments have fully complied with paragraphs 6 and 7 and paragraphs 8 and 9 of H. Res. 745 respectively.

Sincerely,

JIMMY CARTER.

WILLIAM S. MOORHEAD

(Mr. DANIELSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANIELSON. Mr. Speaker, I join with my colleagues in wishing good things in his future endeavors for BILL MOORHEAD, who I have had the privilege and the pleasure of serving with in this body for 10 years.

Although I have not served on any House committees with BILL, I do have the opportunity of sharing his counsel every Thursday morning when we both participate as part of the majority whip's organization.

BILL MOORHEAD has amassed an excel-

lent legislative record in the areas of community development, housing, energy, the arts and humanities, freedom of information, economic revitalization, and frugality in defense spending.

I know that we will all miss BILL, and I am sure that he will do well in whatever future activities he chooses to undertake.

PRIVATE HOUSING DEVELOPMENT

The SPEAKER pro tempore (Mr. FARY). Under a previous order of the House, the gentleman from Minnesota (Mr. FRENZEL) is recognized for 30 minutes.

● Mr. FRENZEL. Mr. Speaker, one of the most severe aspects of the current housing crisis is the lack of available, affordable rental housing. The national vacancy rate is down to 5 percent, the lowest figure in the 24 years that this kind of data has been collected. Of the little rental housing that will be constructed in 1980, it is estimated that 75 percent will be subsidized or insured by the Federal Government. At a time when demand for rental housing is on the rise—as the cost of homeownership becomes increasingly prohibitive—the private development of rental housing has virtually ground to a halt.

The reason for the lack of private development is simple: The increasing costs of financing, building material, labor and land, together with lagging rents and rising operating costs, have rendered multifamily rental housing a lousy investment.

Today I am introducing a bill, the Rental Housing Tax Incentive of 1980, H.R. 8111 which would restore the financial viability of private residential rental housing development.

My bill encourages both the construction of new residential rental housing and the rehabilitation of existing rental housing. The latter is especially important, as preservation of existing rental housing is the cheapest and most efficient method of insuring an adequate and affordable supply of rental housing. Over 41 percent of the Nation's rental housing was built in 1939 or earlier.

The bill has three major provisions. The first two deal with incentives for new construction and the third provides an incentive for the rehabilitation of existing stock. Each of these provisions is outlined below:

First. Ten year straight line depreciation for new construction of residential rental housing.

Currently, all new construction may be depreciated over the useful life of the building—25 to 30 years—in a straight line method, or an accelerated schedule can be used. However, virtually all developers have used the straight line method, as accelerated schedules are subject to the minimum tax and recapture provisions.

My bill defines useful life as 10 years, accelerating the depreciation schedule significantly without the penalties currently incurred when a rapid depreciation schedule is used. Because the depreciation method our bill uses is straight line, there is no excess depreciation which may be penalized through the minimum tax or recapture provisions.

Second. Repeal of section 189 of the Internal Revenue Code of 1954 as it applies to residential rental housing.

Currently, section 189 calls for the 10-year amortization of all construction period interest and taxes. These are out of the pocket costs at the time incurred.

My bill repeals this for the construction of rental housing, and allows an immediate writeoff of such costs.

Third. Extension of section 167(k) of the code to all existing rental housing.

Section 167(k) is a provision that allows a 5-year amortization of rehabilitation expenses for improvements made on low-income rental housing.

My bill extends the rapid amortization provision to all existing residential rental housing. It also eliminates the excess depreciation created by the rapid amortization schedule as an item of tax preference. Finally, the bill increases the expenditure limitation allowable under this provision in order to bring it into line with current costs of rehabilitation.

I encourage the support of my colleagues for this much needed piece of legislation.●

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ASSASSINATION OF FELIX GARCIA RODRIGUEZ

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. LELAND) is recognized for 15 minutes.

Mr. LELAND. Mr. Speaker, I rise to express my grief and outrage over the assassination of Felix Garcia Rodriguez, the Cuban attaché to the United Nations. Mr. Garcia Rodriguez was slain with a single bullet that struck the left side of his head at 6:30 p.m. last Thursday as he drove west on Queens Boulevard in Woodside, N.Y.

Minutes after the shooting, an anonymous caller informed UPI that—

> Omega 7 commandos are responsible for the execution and we intend to continue to eliminate all these traitors from the face of the earth and we are going to continue on executing all these people.

Another caller indicated that the next victim would be Raul Roa, the Cuban ambassador to the United Nations.

Terrorism, wherever and by whomever, cannot be tolerated. It strikes at the very basis of society, and terrorism within the diplomatic community strikes at the very basis of all international relations. Whether in Iran or New York, we all must arise to speak against it. When terrorism results in the death of diplomats, we must not only speak against it, but also actively seek actions that will bring justice to the terrorist and peace and security to all of us.

Since Omega 7 first proclaimed itself after a February 1975 bombing, the group has taken responsibility for more than 20 bombings and three assassinations—those of Felix Garcia Rodriguez; last November's murder of Eulalio Jose Negrin, a Cuban refugee leader who favored visits of exile families to Cuba, and Carlos Muniz, another advocate of visiting Cuba.

In October 1978, Omega 7 bombed the offices of the Spanish language newspaper El Diario-La Prensa and threatened the life of its editor, Rudy Garcia. El Diario is a feverently anti-Castro newspaper, but it had the gall to call Omega 7 members "pipsqueak commandos" and asked the intimidated Cuban-American community to help the FBI in exposing them.

More recently, Omega 7 has taken responsibility for bombing the Soviet mission to the U.N. once and the Cuban mission twice and the Aeroflot offices in New York. The bombing of the Soviet mission shattered windows as high as 18 stories in a residential block of New York's East Side.

On March 25 of this year they tried to assassinate Cuba's United Nations Ambassador, Raul Roa. Fortunately, one of his bodyguards discovered the device before it exploded. But now, after assassinating Felix Garcia Rodriguez, Omega 7 has stated that Mr. Roa is next.

We must realize that Omega 7's net of terror spreads far more widely than Cuban diplomats in the United States. Eulalio Jose Negrin was himself an exile from Castro's Cuba. He was a member of the Committee of 75, a group of Cuban exiles who participated in a dialog with the Cuban Government in 1978 and successfully negotiated the release of over 3,000 political prisoners and facilitated travel to and from Cuba, thereby making the reunification of Cuban families a possibility. What kind of organization is it that assassinates individuals who organize the release of political prisoners and work for family reunification?

In the press release in which they officially took responsibility for the slaying of Carlos Muniz in San Juan, Puerto Rico, Omega 7 warned that any Cuban, Puerto Rican, or American "who travels to Cuba, regardless of his motives, is considered our enemy * * * we will be forced to judge them as we did Muniz." Since then, countless other Cubans have been threatened with violence and now live in constant fear for their lives. Does this threat mean that if a committee of Congress were to go to Cuba to investigate conditions there, would they, too, be in danger?

The Omega 7 have gone beyond threatening those who have some relationship to Cuba. In March 1979, Omega 7 exploded a bomb at Kennedy International Airport in luggage about to be loaded on a Trans World airlines flight carrying 155 passengers and crew members to Los Angeles. They made no pretense of claiming that any of the passengers had anything to do with Cuba or Castro. It was an act of terrorism that demonstrated that Omega 7 had no scruples about injuring entirely innocent Americans.

The popularity of terrorism among small, fanatical groups who lack a political power base stems from the wide sphere of influence that a single act of terrorism can generate. For terrorism also affects those who have not been its immediate victims. To be simply threatened by terrorists is also to be victimized by terrorism.

The FBI has described Omega 7 members as—

> Hoods who use "Castro out of Cuba" as an excuse for their criminal activities. They were never in Cuba. They can extort money, go about their daily routine and be big shots in their community by virtue of violence.

Indeed, much of their violence is directed toward their own community businessmen who might resist their efforts at extortion. But, we must recognise that their violence has repercussion far beyond their own community.

One of the United Nations' most respected envoys, Tommy Koh of Singapore said in response to the assassination of Felix Garcia Rodriguez:

> It will be very bad for the United States if they don't find the killer and bring him to justice. The United States has received the active support of the whole world on their pleas that Iran release the hostages and respect the time-honored code of diplomatic immunity. They cannot expect to do less than they expect others to do for them.

We have made ourselves susceptible to international condemnation. Tass, the official Soviet press agency, said that the murder had occurred with the "full connivance" of U.S. authorities. I absolutely resent and reject that interpretation. But, I worry about the effect it has on the rest of the world.

The Cubans, themselves, reject the Soviet interpretation. The official Cuban newspaper, Granma, acknowledged Secretary of State Muskie's and Ambassador McHenry's expressions of sympathy and commitments to achieving justice for the terrorists. At the funeral of Felix Garcia Rodriguez, Cuban Vice President Carlos Rafael Rodriguez stated that the U.S. Government had publicly condemned the assassination and that both Muskie and President Carter had extended their condolences.

In spite of the anger and shock that the Cubans feel over this issue, they have refrained from attacking the United States. Rather, they have attacked Omega 7 and have called for justice.

On innumerable occasions, we have heard from this well anti-Castro and anti-Cuban statements. Is it because Mr. Castro is considered an enemy that we have not heard outrage from this body over the assassination of a U.N. diplomat in New York? Is it because there is so much disdain for Mr. Castro that we have heard no cries for justice for this heinous crime? I contend that the majority of the American people reject these notions and call for justice to be done.

In March of this year, the FBI stated that it regarded Omega 7 as the most dangerous terrorist organization in the United States and that it had placed the highest priority on seizing members of the group. In May, a special 20 member task force to investigate terrorist activities in New York City was set up by the FBI and the city's police department. But, still not one member of Omega 7 has been arrested.

After the assassination of Felix Garcia Rodriguez, the head of the FBI-police task force stated:

> If they thought the heat was on before, they ain't seen nothing yet.

I implore the FBI and the Attorney General to fulfill these promises of justice. The history of the United States is scarred with conflict and assassinations. But through each successive struggle, this Nation has emerged stronger and more willing to amend its political agenda to reflect the changing needs of the times.

Terrorism against the innocent, such as practiced by Omega 7, threatens the very fabric of society. Terrorism against diplomats, whether in Iran or the United States, threatens the basis of all international relations. We must act quickly and decisively, with all the haste that the due process guaranteed in our Constitution allows. We must demonstrate to the world that we will not tolerate such violations. Terrorism throughout the world must be eliminated. Terrorism here at home must be eliminated immediately.

Felix Garcia Rodriguez was a human being who resided within the United States of America.

Felix Garcia Rodriguez was a human being who gave his life in the service of his nation.

MICKEY LELAND, if he is but alone, stands shattered by the tragic loss of this human being, and wishes to convey his condolences publicly to the family of Felix Garcia Rodriguez and to the nation of Cuba.

DOUBTS MOUNTING ABOUT ALL-VOLUNTEER FORCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska (Mr. CAVANAUGH) is recognized for 5 minutes.

● Mr. CAVANAUGH. Mr. Speaker, a recent article published in Science magazine highlights several shortcomings in the All-Volunteer Force which I and others in the Congress perceive as the most serious threat to the national security and which must be resolved within the context of the current debate over military manpower policy.

Although the major emphasis of this article is directed toward the capabilities of today's recruits, it touches on the even more critical issue of the basic fairness of a system which relies to a disproportionate degree on minorities to meet the manpower needs. I believe it is essential that we in the Congress address the lack of fairness in our current system, possibly through a system of national service such as I have proposed and which Professor Moskos endorses; but in any event we must make the effort and make it now. The article follows:

[From Science magazine, Sept. 5, 1980]

DOUBTS MOUNTING ABOUT ALL-VOLUNTEER FORCE

Tank gunners who don't know where to aim their battle sights, mechanics who can't repair anything, missile firers who can't tell the difference between a Soviet and a U.S. fighter plane—the evidence is piling up that there is a disturbingly high number of such individuals in today's armed services.

For some years now there have been persistent murmurings about the quality of the all-volunteer force, which has made up the nation's defense manpower since the draft was abolished in 1970. The murmurings are getting louder and louder, particularly in the wake of the recent revelation that almost half of the Army's new recruits belong in the lowest mental category accepted in the armed services.

Some members of Congress are getting worried about the situation and want to put a ceiling on the number of what some have called "dummies" allowed in uniform. So at the end of July the House-Senate conference on the 1981 defense authorization bill agreed to provisions that would limit the proportion of recruits in the lowest allowable mental category to 25 percent in each service, with an ultimate goal of 20 percent. It also told the Army that at least 65 percent of its recruits will have to be high school graduates.

Supplementing these stipulations were $2 billion worth of additional educational benefits designed to lure better quality recruits.

These measures were in response to a situation that has become increasingly embarrassing for the military. All four services are suffering from shortages of trained technical manpower, and none achieved their full recruiting goals last year. But the Army is having the worst time of it. In 1979 it managed to achieve a 70 percent rate of high school graduates among its recruits; this year, the rate by March (halfway through fiscal 1980) was 38 percent, and it will be lucky to end up with 55 percent.

Particularly discomfiting for the Army have been the results of a study, released in July, recalibrating the results of entry-level Armed Forces Qualification Tests (AFQT's), which are administered to all potential recruits. The AFQT's bear some similarity to standard intelligence tests, measuring reading skills, ability in arithmetic, and spatial perception: The AFQT (part of a larger test called ASVAB for Armed Services Vocational Aptitude Battery) was introduced as a measure of general trainability in 1950. The content has changed over the years, but each new AFQT has been calibrated so that its results would be comparable to those of ability tests given the armed forces during World War II.

The accuracy of the new 1976 AFQT began to be suspect in 1977 when Marines noted that recruits arriving at boot camp appeared to be less able than their scores indicated. This led to studies by the Center for Naval Analysis, the Army Research Institute, and the Educational Testing Services in Princeton, N.J. A panel of academic experts was asked to evaluate the results of these studies and came out with the July report. They found that the methods used to convert raw scores into percentiles had resulted in overestimates of the scores of recruits in the lower range of the five mental categories into which scores are assigned. Categories I and II are above average, III is average, IV is below average (the 10th to 30th percentile), and V is out of the question.

The Army had been using test scores to defend the quality of the all volunteer Army, pointing out that the percentage of recruits

in category IV (called "Cat Fours") was around 9 percent, considerably lower than the 21 percent who participated in World War II. However, the corrected scores showed that a whopping 46 percent fell into that category.

This news has come on top of relevations concerning Army Skill Qualification Tests. The skill tests were inaugurated in 1976 and are administered to enlistees after they have been trained in their Military Occupational Specialties and have some field experience in their use. They were intended as a feedback device to gauge the effectiveness of training. Several members of congressional armed services committees, including Sam Nunn (D-Ga.) in the Senate and Robin Beard (R-Tenn.) in the House, have gotten hold of the results of some of these tests and find them appalling.

Nunn, in a June speech in which he accused the Army of a "massive deception campaign," revealed, for example, that Skill Qualification Tests in 1977 and 1978 were failed by 90 percent of nuclear weapons maintenance specialists and 98 percent of tank turret and artillery repairmen. In 1979 he reported, 91 percent of aviation maintenance personnel and 51 percent of military intelligence personnel failed.

In a list of Army skill qualification scores obtained by Beard for 370 Military Occupational Specialties, there was a 40 percent or higher failure rate in 179 of them. (The Army band stands out as one of the few specialties in which scores were consistently high.)

These figures reflect what critics of the all-volunteer force perceive to be a grave and deteriorating situation. Contrary to predictions of the Gates Commission, which envisaged a fast and lean military—"a smaller, better trained active force, supported by a larger, well equipped force"—training appears to be inadequate to prepare the type of men, who seek to make a career in the all-volunteer Army.

The primary documentation for this is contained in the report of an Army Training Study conducted in 1977 and 1978, which has still not been officially released.

Science took a look at a bootlegged copy of the summary of the report, which had come in over the transom at Representative Beard's office. The report noted that there was "general tolerance of low training standards" among officers and noncommissioned officers and that "many trainers do not know current training philosophy"—that is, "they do not know how to train." The report stated that one and one-half times as much training—in both duration and frequency of repetition—is required for a category IV recruit as a category III one and that the cost of training materials such as ammunition was 40 percent more ("the effect of the lesser qualified trainee is disturbing").

The study zeroed in on a selection of 1288 tank crewmen in the United States and Europe and found that most indicated a need for more and better training. They found low performance levels in both tank commanders and gunners—aggravated by high "turbulence," which means turnover and general lack of job stability—and they also noted that "performance decay" was "significantly greater among lower mental groups."

Specifically, the study found that 17 percent of the tank commanders in Europe and 21 percent of those in the United States "did not know where to aim when employing battlefield gunnery techniques." Among the gunners, 21 and 28 percent, respectively, did not know where to aim when using battle sights. On the whole, they found tank crew proficiency 40 and 50 percent below what should be expected. Of the 1288 tank crewmen, 20 percent of the commanders and 25 percent of the gunners "did not know some of the essential basics of battlefield gunnery."

The study also looked at performance in several other specialties. It found that tank repairmen's chances of correctly diagnosing a repair problem were between 15 and 33 percent, and chances of fixing the problem, once correctly identified, were between 33 and 58 percent. One problem seemed to be that mechanics were hyperspecialized and incapable of working across the "broad spectrum" of their occupational specialties as would be necessary in actual combat.

A survey of men in charge of shooting Redeye missiles revealed that most of them felt inadequately trained. What's more, they found that the gunners in the lower mental category appeared to be incapable of learning the Range Ring Profile, which entails being able to differentiate between the silhouettes of Soviet and American planes.

The study also polled officers for their attitudes about training and found a high degree of complacency, with most expressing "apparent satisfaction with poorly trained personnel." There has been "little perceived change in the training environment since 1971. The environment is still seen as hostile to the conduct of good training."

The report lamely notes at one point that in visits to the field, investigators did encounter "many pockets of competence."

The Army is trying to pull up its socks in the face of all this bad news. All its ability and skills tests are undergoing extensive reevaluation, and it plans to develop a coherent Army-wide system of training. But meanwhile, its responses to criticism have been evasive, the tendency being to minimize the problem by lowering standards. Many training manuals, for example, have been rewritten to conform to a 7th grade reading level. Skill qualification scores required for promotion have been lowered from 80 to 60 percent. And last June the Army quietly ordered that AFQT scores be removed from the files of 400,000 soldiers, allegedly to prevent their "abuse."

Trapped in a situation with shrinking resources and shortages of well-trained personnel, the Army has gone heavily into public relations as defense. Although the Defense Department's general stance is one that supports the validity of its various ability and skills tests. Army Secretary Clifford Alexander has done his best to denigrate them.

In June authorization hearings before the House Armed Services Committee, Alexander dismissed the mental categories as "fundamentally irrelevant." He said the AFQT was "really not a useful device" and that category IV was "not a mental category because it is not based on an intelligence test." Alexander said ASVAB was useful for picking people's occupational specialties, but of the AFQT he said "I am not sure that it measures anything." Asked by one member what category he thought a retarded person would end up in, Alexander insisted he didn't know.

As for the Skill Qualification Tests (which are only used by the Army) the Army has taken the stance that these are still in the early stages of development and have not been properly validated against job performance. An Army public relations person explained to *Science* that if a man's job was, for example, maintaining the UH-1 helicopter, he could not very well pass a test on maintaining all Army helicopters. The Army is attempting to get out of the Skill Qualification Test bind by revising tests to minimize pencil-and-paper work and putting the emphasis on evaluations of actual performance.

Whether this will improve the results is open to question. Although the Army, in common with everyone else who attacks aptitude and IQ tests, insists that verbal skills and ability in handling written tests are not necessarily indicators of how a person will actually function, this is a debatable proposition. Literacy in the Army is notoriously low. For example, a check at Fort Benning in 1976 revealed that 53 percent of the enlistees had a 5th grade or lower reading ability. There are many experts who regard literacy not just as one of many desirable skills, but as a fundamental indicator of mental ability. One of these is Juri Toomepuu, a management analyst at Fort Benjamin Harrison in Indianapolis. Toomepuu says there are plenty of studies that demonstrate a correlation between reading ability and ability to perform most jobs, one of them being "Project 100,000," a study conducted in the late 1960's to assess trainability of category IV recruits. Toomepuu (who emphasizes that he is speaking for himself and not for the Army) says there is abundant evidence showing a high correlation between intelligence, as measured by aptitude tests, and combat performance. He also says a high correlation has been demonstrated between the AFQT and the Skill Qualification Tests and between AFQT scores and reading levels. An official at the Army Research Institute confirmed that they had found a strong relationship between AFQT's and Skill Qualification Tests and added, "historically there has been a high correlation between reading and general ability and trainability."

It would appear that Secretary Alexander and the Army are in the uncomfortable position, because they are politically compelled to support the all-volunteer Army, of bucking certain unpleasant facts. Removing the designation of "mental categories" from the AFQT's, as recommended by the authors of the report on test calibrations, may be a step toward bringing the Army in line with enlightened civilian practices (where any form of labeling is now frowned on), but it will not change the composition of the force.

The fact is, as any observer of the armed forces will admit, there is no longer a middle class among Army enlistees. Says one House staffer, "We are now recruiting the cream of the lower middle-class blacks and the dregs of the white community." Toomepuu puts it even more strongly: "We are approaching a homogenous population of high grade morons." And what makes things worse, according to Toomepuu, is that low ability also correlates highly with everything else regarded as undesirable—low morale, poor discipline, lack of motivation, and high rates of attrition.

What makes the problem especially sensitive is the fact that blacks now constitute about 30 percent of the armed forces (they make up 13 percent of the general population). This puts political liberals in a particularly uncomfortable position. It was they who brought to the nation's attention the fact that blacks were being sacrificed disproportionately in Vietnam. And the disproportion will be much greater if another war comes. But Secretary Alexander, who himself is black, finds himself compelled to ignore the arguments about equitable representation of all groups in society in the armed forces in favor of the argument that it doesn't matter what color a soldier is as long as he can fight.

If no changes are made, the problem will only become more severe. Because of the lower birthrates in the 1960's, the manpower pool will continue to shrink through the 1980's. And the discrepancy between poorly trained or incompetent servicemen and the increasingly sophisticated demands being made on their skills by delicate, highly specialized, and extremely expensive weapons will continue to grow.

One of the adverse effects of denial of unpleasant evidence is manifested in this country's assessment of the outcome of conflict with members of the Warsaw Pact. The DOD's Concepts Analysis Agency each year plays an Omnibus Game with its computer in which Warsaw Pact forces are pitted against U.S. and NATO allies. The computer assumes optimal operating efficiency of both men and machines. But if those who operate and maintain equipment are in the dismal state of readiness that critics allege, then the results of the computer analysis are nothing but fantasy.

The armed services of the 1980's will require more technical competence than ever before. A Marine manpower study, for example, projects a 25 percent increase in the need for high school graduates (who, while not necessarily smarter than their dropout peers, have demonstrated much higher motivation).

If the recent congressional initiatives don't improve the situation, there may still be alternatives to restoration of the draft. Military sociologist Charles Moskos of Northwestern University, for example, believes the problem can be solved by restoring the GI bill, raising pay for officers, and making federal educational assistance contingent on some kind of national service.

"The Navy is a system devised by geniuses to be run by idiots," runs an old saying. If that also applies to the Army, then the "idiots" the geniuses had in mind were not Cat Fours.

—Constance Holden ●

VICTIM/WITNESS ASSISTANCE PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. RODINO) is recognized for 5 minutes.

● Mr. RODINO. Mr. Speaker, I wish to bring to the attention of my colleagues an important, recent action by the American Bar Association on the special problems of victims and witnesses of crime.

On August 4, a statement I prepared on that issue was presented at the annual meeting of the American Bar Association. I outlined the background and details of the bills I have introduced to provide assistance to victims and witnesses of crime.

The ABA has been working on this issue for many years. In 1976, its Section on Criminal Justice established a Committee on Victims. The study and work of that group led to a set of recommendations titled "Reducing Victim/Witness Intimidation: A Package," published in June of this year. The Criminal Justice Section adopted those recommendations, and its resolution was unanimously approved by the ABA's House of Delegates at the August meeting.

There are differences between the provisions of my legislative proposals and the recommendations of the ABA, but we clearly are embarked on parallel paths. The ABC's action is a big step forward in correcting a weak link in our system of justice.

The intimidation of victims and witnesses of crime, along with the difficulties they endure within the criminal justice system, has been a persistent problem for many years. It is a crime in which only unsuccessful attempts are ever reported or discovered. Intimidation is an offense which inherently thwarts the processes of the criminal justice system.

That system has given high priority to protecting the rights of the accused, to providing humane treatment for convicted offenders, and to delivering essential services to ex-offenders. Enormous sums of money are spent each year to house offenders and to provide them with medical services, legal counsel, and rehabilitation programs. All of these protections and services, even if they do not work as well as we would like them to, are necessary in a society that would call itself just and civilized.

But the basic needs of crime victims and witnesses have been so badly neglected that many valid prosecutions are short-circuited because victims and witnesses would rather avoid dealing with the system. The plain fact is that the victim or the witness can be "twice victimized"—once by the offender and a second time by the system which is supposed to render justice.

Aside from the inconvenience and the distress which the system inflicts on the victims or witnesses, they often face—in hard core criminal cases—actual or implied intimidation about which law enforcement agencies can do very little. There is no police force in the United States that is equipped to provide protection for every witness or victim who is being intimidated by the offender and/or his family and friends. There has been an increase in the number of prosecutions of intimidation cases, but there has been very little improvement in the system to take care of the disastrous consequences of a crime on victims and witnesses.

In many cases that have come to the attention of the Judiciary Committee, victims and witnesses who have been intimidated will refuse to cooperate with law officers. They are then subjected to extraordinary pressure, inconvenience, and distress. They are questioned repeatedly. They sacrifice work days and pay for transportation or child care for seemingly endless court appearances, many of which are postponed or canceled with no advance notice. It is not unusual that stolen property held as evidence is never returned to the owner.

The American Bar Association's resolution recommends particularly: First, that "friend in court" systems be organized in the community to assist victims or witnesses; second, establishment of victim-witness information centers to keep them posted on the progress of a case, to avoid needless loss of pay for pointless appearances; third, establishment of victim-witness hot lines to provide information as well as emergency police service; and fourth, development of post-trial supporting systems involving telephone or personal contacts to avoid post-trial problems.

The ABA's unanimous vote on this resolution is a strong reminder that the time has come to enact legislation to alleviate this vexatious problem. We have been aware of it for many years. The President's Commission on Law Enforcement and Administration of Justice—in 1967—and the National Advisory Commission on Criminal Justice Standards and Goals—in 1973—spotlighted the problem and called for special efforts to correct the deficiencies in the system which I have described. In recent years, some steps have been taken throughout the country to develop special programs to help people deal with the financial and emotional strains of the victim or witness experience.

Since 1965, 27 States have established compensation programs which help victims pay for medical costs and wage losses. Most of these programs do not compensate for property loss, place a ceiling on the amount recoverable, and require that claimants cooperate with prosecutors. At present, the Federal Government provides no financial assistance to the State programs. For several years, Congress has been considering legislation to provide Federal funding. In the 96th Congress, my bill, H.R. 4257, was favorably reported by the House Committee on the Judiciary. This bill would provide grants to qualifying State programs in an amount equal to 25 percent of the cost of compensating victims and witnesses.

It is clear that we need comprehensive Federal legislation to cover the special problems inherent in the criminal justice system for victims and witnesses. Failure to do so would perpetuate the unjust situation I have described.●

NOTICE OF SUBCOMMITTEE MEETING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. HARRIS) is recognized for 5 minutes.

● Mr. HARRIS. Mr. Speaker, the Subcommittee on Human Resources will be meeting on Thursday, September 18, 1980, at 9:30 a.m. in 311 CHOB for the purpose of marking up H.R. 7674, the Consulting Reform Act of 1980. This notification was omitted from the weekly schedule of meetings published in the CONGRESSIONAL RECORD due to the deadline changes caused by the congressional holiday on September 12.●

STATEMENT OF CHAIRMAN AL ULLMAN, COMMITTEE ON WAYS AND MEANS, WITH RESPECT TO THE RULE TO BE REQUESTED ON H.R. 7054, RELATING TO THE DUTY ON PLASTIC FROM WHICH CERTAIN NETTING IS MADE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. ULLMAN) is recognized for 5 minutes.

● Mr. ULLMAN. Mr. Speaker, on July 22, 1980, the Committee on Ways and Means favorably reported to the House H.R. 7054, to amend the tariff schedules of the United States in order to make the duty on plastic netting approximately equal to the duty now charged on the raw plastic from which the netting is made. H.R. 7054, as amended by the committee would amend the tariff schedules of the United States to add a separate tariff classification to increase the column 1 (MFN) rate of duty on netting of rubber or plastics to 17 percent ad valorem, approximately equal to the duty charged on the raw plastic from which the netting is made, and to provide a column 2 rate of duty of 47 percent ad valorem.

Pursuant to the rules of the Democratic Caucus, I take this occasion to advise my colleagues as to the nature of the rule that I will request for the consideration of H.R. 7054 on the floor of the House. The Committee on Ways and Means has specifically instructed me to request the Committee on Rules to grant a closed rule which would only provide for:

First, committee amendments, which would not be subject to amendment;

Second, 1 hour of general debate, to be equally divided;

Third, waiving all necessary points of order; and

Fourth, one motion to recommit.

We will request to be heard before the Committee on Rules.●

PERSONAL EXPLANATION

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. HANLEY. Mr. Speaker, last evening I was committed to participate in the Federal employee awards program.

Due to that commitment I had to be absent for the vote on the Addabbo amendment repealing the Maybank amendment and allowing the Secretary of Defense to limit bids for certain types of nonstrategic defense contracts to those companies in areas of high unemployment.

While the RECORD notes that I am paired for the Addabbo amendment, I want to make my strong support for it quite clear, and passage of the bill, also.

PERSONAL STATEMENT

(Mr. MARRIOTT asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. MARRIOTT. Mr. Speaker, due to prior commitments in my district, it was necessary that I be absent on September 8, 9, and 10. Had I been present and voting on the rollcalls for those 3 days, I would have voted as follows:

Rollcall No. 523 (resolve to Committee of the Whole), "yea."

Rollcall No. 524 (committee amendment to H.R. 6790), "yea."

Rollcall No. 525 (H.R. 6790), "yea."

Rollcall No. 526 (H.R. 7956), "yea."

Rollcall No. 527 (H.R. 7817), "yea."

Rollcall No. 528 (H.R. 6629), "yea."

Rollcall No. 530 (Eckhardt amendment), "nay."

Rollcall No. 531 (Staggers amendment), "yea."

Rollcall No. 533 (Albosta amendment), "nay."

Rollcall No. 534 (H.R. 7235), "yea."

Rollcall No. 537 (table House Resolution 745), "nay."

Rollcall No. 538 (to resolve into Committee of the Whole), "yea."

Rollcall No. 539 (H.R. 7301), "yea."

I ask unanimous consent that these remarks be inserted in the permanent RECORD following those rollcall votes.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. STOKES (at the request of Mr. WRIGHT), for today, on account of a necessary absence.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MARRIOTT) to revise and extend their remarks and include extraneous material:)

Mr. FRENZEL, for 30 minutes, today.

Mr. DOUGHERTY, for 60 minutes, on October 2.

(The following Members (at the request of Mr. LELAND) to revise and extend their remarks and include extraneous material:)

Mr. GONZALEZ, for 15 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. LELAND, for 15 minutes, today.

Mr. CAVANAUGH, for 5 minutes, today.

Mr. RODINO, for 5 minutes, today.

Mr. BINGHAM, for 5 minutes, today.

Mr. HARRIS, for 5 minutes, today.

Mr. ULLMAN, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. MARRIOTT) and to include extraneous matter:)

Mr. MOORHEAD of California.

Mr. MCKINNEY.

Mr. HOLLENBECK.

Mr. DANIEL B. CRANE.

Mr. DANNEMEYER.

Mr. FORSYTHE.

Mr. DERWINSKI.

Mr. BEREUTER.

Mr. COLLINS of Texas in three instances.

Mr. SOLOMON.

Mr. QUAYLE.

Mr. SHUSTER.

(The following Members (at the request of Mr. LELAND) and to include extraneous matter:)

Mr. MAZZOLI.

Mr. DOWNEY.

Mr. LLOYD.

Mr. EVANS of Indiana.

Mr. BAILEY.

Mr. FORD of Michigan.

Mr. RODINO.

Mr. MCDONALD in three instances.

Mr. FISHER.

Mr. TRAXLER in two instances.

Mr. SCHEUER.

Mr. PEPPER.

Mrs. CHISHOLM.

Mr. HAMILTON.

Mr. MILLER of California.

Mr. COTTER.

Mr. VENTO.

Mr. MOFFETT.

Mr. DRINAN in two instances.

Mr. IRELAND.

Mr. MURPHY of New York.

Mr. BONKER.

Mr. SOLARZ.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 215. An act for the relief of Renuka Pavla; and

S. 2223. An act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons.

ENROLLED BILLS SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3210. An act to terminate the authority to make grants to the Las Vegas Valley Water District under the act of August 27, 1954; and

H.R. 6511. An act to designate the building known as the Federal Building in Morgantown, W. Va., as the "Harley O. Staggers Federal Building."

ADJOURNMENT

Mr. LELAND. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 42 minutes p.m.) the House adjourned until tomorrow, Thursday, September 18, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5327. A letter from the President of the United States, transmitting his response to House Resolution 745, the resolution of inquiry in the matter of Billy Carter; jointly, to the Committee on the Judiciary and Foreign Affairs.

5328. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment and services to NATO (Transmittal No. 80-107), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5329. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of Turkey for permission to transfer certain U.S.-origin defense equipment to the Federal Republic of Germany, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5330. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment and services to NATO (Transmittal No. 80-107), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5331. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment and services to Canada (Transmittal No. 80-108), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

REPORT OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. EDWARDS of California: Committee on the Judiciary. H.R. 4736. A bill to establish certain pretrial and trial procedures for the use of classified information in connection with Federal criminal cases, and for other purposes; with amendment (Rept. No. 96-931, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. ZEFERETTI: Committee on Rules. House Resolution 787. Resolution providing for the consideration of H.R. 7112. A bill to authorize an extension and amendment of the revenue sharing program to provide general purpose fiscal assistance to local governments, and for other purposes (Rept. No. 96-1325). Referred to the House Calendar.

Mr. MURPHY of Illinois: Committee on Rules. House Resolution 788. Resolution providing for the consideration of H.R. 5615. A bill to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources (Rept. No. 96-1326). Referred to the House Calendar.

Mr. WHITTEN: Committee on Appropriations. House Joint Resolution 610. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes; with amendment (Rept. No. 96-1327). Referred to the Committee of the Whole House on the State of the Union.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 2545. A bill to provide that the lake referred to as the Birie Lake on Willow Creek, in Bonneville County, Idaho, shall hereafter be known as "Oscar Johnson Lake" (Rept. No. 96-1328). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 4131. A bill to change the name of the China Bluff Access Area being constructed by the Army Corps of Engineers as part of the Tennessee-Tombigbee Waterway near Warsaw in Sumter County, Ala., to the "S. W. Taylor Memorial Park" (Rept. No. 96-1329). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 4645. A bill to change the name of Clayton Lake which is an element of the flood control project for the Clayton and Tuskahoma Reservoirs, Kiamichi River, Okla., to "Sardis Lake" (Rept. No. 96-1330). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 4941. A bill to name a dam and reservoir on the San Gabriel, River, Tex., as the "North San Gabriel Dam" and "Lake Georgetown", respectively (Rept. No. 96-1331). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 6243. A bill to provide that the park referred to as the East Lake Park located within the West Point Lake project on the Chattanhoochee River, Ga., shall hereafter be known and designated as the "R. Shaefer Heard Park" (Rept. No. 96-1332). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 7544. A bill to designate the U.S. Federal Building in New Haven, Conn., as the "Robert N. Giaimo Federal Building" (Rept. No. 96-1333). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H. R. 8018. A bill to rename a reservoir and dam in the Little Miami River Basin, Ohio, as the "William H. Harsha Lake" and the "William H. Harsha Dam"; with amendment (Rept. No. 96-1334). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 8024. A bill to change the name of Aubrey Lake, Tex., to "Ray Roberts Lake"; with amendment (Rept. No. 96-1335). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. S. 1895. A bill to change the name of the Los Esteros Dam (New Mexico) to the Santa Rosa Dam and Lake, and to designate Clark Hill Dam and Lake on the Savannah River, Ga., and S.C., as "Clarks Hill Dam and Lake" (Rept. No. 96-1336). Referred to the House Calendar.

Mr. FORD of Michigan: Committee of conference. Conference report on H.R. 5192. (Rept. No. 96-1337). Ordered to be printed.

Mr. LONG of Louisiana: Committee on Rules. House Resolution 789. Resolution waiving certain points of order against House Joint Resolution 610. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes (Rept. No. 96-1338). Referred to the House Calendar.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 7588. A bill to designate the U.S. Post Office and Courthouse Building in Concord, N.H., as the "James C. Cleveland Building"; with amendment (Rept. No. 96-1339). Referred to the House Calendar.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5898. A bill to establish the Rattlesnake National Education and Recreation Area and Wilderness in the State of Montana; with amendment (Rept. No. 96-1340). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 7554. A bill to amend the Securities Act of 1933 and the Investment Company Act of 1940 to provide incentives for small business investment, and for other purposes; with amendment (Rept. No. 96-1341). Referred to the Committee of the Whole House on the State of the Union.

Mr. BIAGGI: Committee of conference. Conference report on H.R. 5164 (Rept. No. 96-1342). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BEARD of Tennessee:

H.R. 8133. A bill to amend title 38, United States Code, to allow the Veterans' Administration to furnish hospital care to certain members of the Armed Forces injured during a period of war or other armed conflict, and to establish the Federal interagency health resources committee to coordinate the sharing of medical resources between facilities of the Veterans' Administration with those of the Department of Defense; jointly, to the Committees on Armed Services and Veterans' Affairs.

By Mr. BEREUTER:

H.R. 8134. A bill to amend the Wild and Scenic Rivers Act to provide for the designation of a protected agricultural river; to the Committee on Interior and Insular Affairs.

H.R. 8135. A bill to amend the National Trails System Act to provide for trail interpretation centers along the route of any national scenic or national historic trail to present information to the public about the trail; to the Committee on Interior and Insular Affairs.

By Mr. COTTER:

H.R. 8136. A bill to authorize social security coverage, under the agreement entered into with the State of Connecticut pursuant to section 218 of the Social Security Act, for certain employees of the city of Hartford who are not members of such city's municipal retirement plan, and to validate the past coverage of such employees in cases where wage reports were duly filed and the prescribed equivalent of social security taxes was duly paid; to the Committee on Ways and Means.

By Mr. HOLLAND (for himself and Mr. CORMAN):

H.R. 8137. A bill to encourage film corporations to donate certain historical film to educational organizations by increasing the limit on the charitable contribution deduction of such corporations; to the Committee on Ways and Means.

By Mr. KASTENMEIER:

H.R. 8138. A bill to amend title 38, United States Code, to provide a presumption of service connection for the occurrence of certain diseases in veterans who were exposed to phenoxy herbicides contaminated by dioxins; to the Committee on Veterans' Affairs.

By Mr. LEDERER:

H.R. 8139. A bill to amend the Internal Revenue Code of 1954 to increase the existing investment tax credit for the rehabilitation of existing structures from 10 to 25 percent; to the Committee on Ways and Means.

By Mr. TRAXLER:

H.R. 8140. A bill to provide for the issuance of a postage stamp to commemorate the 150th anniversary of the birth of Dr. Samuel A. Mudd; to the Committee on Post Office and Civil Service.

By Mr. ULLMAN:

H.R. 8141. A bill to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to establish policies and procedures (including restrictions and exchange requirements) to be followed by Federal agencies prior to the acquisition of private lands or interests in private lands, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. ULLMAN (for himself, Mr. JONES of Tennessee, Mr. FOLEY, Mr. UDALL, Mr. JOHNSON of California, Mr. WHITTEN, Mr. WAMPLER, and Mr. MADIGAN):

H.R. 8142. A bill to establish a program to direct financial and technical assistance to those geographic areas of the United States which have particularly severe and chronic soil erosion, soil erosion-related, or irrigation water management problems; to the Committee on Agriculture.

By Mr. WHITE (for himself, Mrs. HOLT, Mr. MONTGOMERY, Mr. KAZEN, Mr. WON PAT, Mr. NICHOLS, and Mr. HILLIS):

H.R. 8143. A bill to amend chapter 55 of title 10, United States Code, to authorize the provision of full dental care benefits to dependents of members of the uniformed services on active duty under the civilian health and medical program of the uniformed services and in facilities of the uniformed services; to the Committee on Armed Services.

By Mr. ATKINSON:

H.J. Res. 611. Joint resolution authorizing the President to proclaim March 16 of each year as "Freedom of Information Day"; to the Committee on Post Office and Civil Service.

By Mr. LOTT:

H.J. Res. 612. Joint resolution to designate September 21, 1980, as "National Ministers Day"; to the Committee on Post Office and Civil Service.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. HIGHTOWER presented a bill (H.R. 8144) for the relief of the Wesley United Methodist Church, Wichita Falls, Tex., which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 154: Mr. PORTER.

H.R. 1918: Mr. LATTA.

H.R. 3764: Mr. MINETA.

H.R. 5311: Mr. FITHIAN.

H.R. 5813: Mr. QUILLEN.

H.R. 6300: Mr. MCDADE, Mr. GINN, Mr.

GINGRICH, Mr. SPENCE, Mr. MADIGAN, Mr. MOORHEAD of California, Mr. ROBERT W. DANIEL, JR., Mr. BUTLER, Mr. SENSELIUS, Mr. BEVILL, and Mr. CHARLES WILSON of Texas.

H.R. 6726: Mr. ANDREWS of North Dakota, Mr. CHENEY, Mr. HALL of Texas, Mr. HANSEN, Mr. JOHNSON of Colorado, Mr. MARLENEE, Mr. SENSELIUS, and Mr. SYMMS.

H.R. 7173: Mr. LEWIS.

H.R. 7557: Mr. NICHOLS.

H.R. 7562: Mr. FRENZEL and Mr. LUKEN.

H.R. 7574: Mr. HUCKABY.

H.R. 7674: Mr. EDGAR, Mr. GRAY, Mr. FINDLEY, Mr. MOTTL, Mr. ERDAHL, and Mr. SAWYER.

H.R. 7717: Mr. MINETA, Mr. WALKER, Mr. BLANCHARD, Mr. WINN, Mr. ROE, Mr. FORSYTHE, Mr. OTTINGER, Mr. RITTER, Mr. BROWN of California, Mr. HUGHES, Mr. MCCLORY, Mr. GUARINI, Mr. EDGAR, and Mr. CARNEY.

H.R. 7738: Mr. GINGRICH.

H.R. 7739: Mr. GINGRICH.

H.R. 8006: Mr. BEILENSON, Mr. COLEMAN, Mr. DANNEMEYER, Mr. DUNCAN of Tennessee, Mr. FORSYTHE, Mr. GILMAN, Mr. HUGHES, Mr. LAGOMARSINO, Mr. LENT, Mr. MICHEL, Mr. MOTTL, Mr. PORTER, Mr. RINALDO, Mr. ROTH, Mr. SAWYER, Mr. THOMAS, Mr. WHITEHURST, Mr. WOLFF, Mr. YATRON, and Mr. BEDELL.

H.J. Res. 511: Mr. SANTINI.

H. Con. Res. 317: Mr. LUJAN and Mr. SENSENBRENNER.

H. Con. Res. 405: Mr. STENHOLM, Mr. AMBRO, Mr. LEVITAS, Mr. PORTER, Mr. SHUMWAY, Mr. NEAL, Mr. MARKS, Mr. DUNCAN of Tennessee, Mr. ROTH, Mr. DANNEMEYER, Mrs. BYRON, and Mr. MOORHEAD of California.

H. Con. Res. 406: Mr. GRADISON, Mr. HUGHES, Mr. STARK, Mr. ROE, Mr. CORCORAN, Mr. CARTER, Mr. BROWN of Ohio, Mr. KOGOVSEK, Mr. LIVINGSTON, and Mr. EDGAR.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. DONNELLY:

—On page 21, on line 12, delete "water capacity of more than 3,500 gallons" and substitute "oil capacity of more than 4,200 gallons".

By Mr. PEYSER:

(Amendment to the amendment offered by Mr. BREAUX.)

—Page 56, after line 15, insert the following:

"(5) In addition to the processing and settling of claims under subsection (a) of this section, the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $10,000,000 per fiscal year shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph. For purposes of section 532 of the Environmental Revenue Act of 1980, the payment of any amount under this paragraph shall not be deemed to be a payment for a claim for removal costs.

H.R. 7020

By Mr. DANNEMEYER:

(Amendment in the nature of a substitute.)

—Strike out all after the enacting clause and substitute:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 3. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—INACTIVE HAZARDOUS WASTE SITES

"Subpart A—General Provisions

"COVERAGE OF PART

"SEC. 3021. (a) COVERAGE.—The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Release into the environment' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of applicable law.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carried out at such site;

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

"(3) Where any person fails to comply with the requirements of paragraph (2) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (2) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of the Solid Waste Disposal Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (1) or such information as may be necessary to compile the information described in paragraph (1). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment of the Hazardous Waste Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the Administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives within two years of the date of enactment of the Hazardous Waste Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The report under this subsection shall include but not be limited to—

"(1) a listing by State of the numbers of active and inactive hazardous waste sites;

"(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

"(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

"(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in paragraph (3).

"(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the Hazardous Waste Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a substantial threat to public health or the environment. The priorities shall be—

"(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

"(2) consistent with the National Hazardous Waste Response Plan.

"(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for the purpose of establishing national priorities under this subsection. The one hundred inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the 'top priority sites'.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Each person and each Federal department, agency, or instrumentality who owns any inactive hazardous waste site which poses a reasonable likelihood of harm to public health or the environment shall, in such manner and at such times as required under regulations promulgated by the Administrator—

"(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonaoly necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—National Hazardous Waste Response Plan

"NATIONAL HAZARDOUS WASTE RESPONSE PLAN

"SEC. 3041. (a) PLAN.—The President after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the 'Plan'). Following such review and public hearings, but not later than eighteen months after the date of the enactment of the Hazardous Waste Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

"(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

"(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, of hazardous wastes into the environment which pose substantial danger to the public health or to significant environmental resources;

"(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carried out;

"(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

"(5) provision for identification, procurement, maintenance, and storage of response equipment and suppliers; and

"(6) a method for and assignment of responsibility for reporting the existence of hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such sites.

Following publication of the revised National Hazardous Waste Response Plan emergency assistance, the removal and containment of hazardous waste, and other actions shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

"(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

"(1) methods and procedures for the removal of released hazardous waste;

"(2) criteria for development of local and regional hazardous waste removal contingency plans; and

"(3) procedures, methods, and equipment and other requirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

"(c) PROTECTION OF EMPLOYEES.—The plan under this section shall include provisions for the establishment of a program for the protection of the health and safety of employees involved in remedial actions at hazardous waste sites. Such program shall be developed jointly by the Administrator, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. The program shall include, but not be limited to, measures for identifying hazards to which persons engaged in such remedial actions may be exposed, methods to protect such employees from such hazards, and regulatory and enforcement measures necessary to assure employee protection in connection with such remedial action. Contracts entered into with the United States under any authority of law for purposes of such remedial action shall include provisions for the protection of employees consistent with the plan provisions adopted pursuant to this subsection and with other applicable law.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for preparation and publication of the plan under this section, not more than $3,000,000, to remain available until expended.

"Subpart D—Enforcement

"ENFORCEMENT

"SEC. 3051. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, and other appropriate factors.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(b) CRIMINAL PENALTY.—Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.".

(b) The following provisions of the Solid

Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": sections 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—National Hazardous Waste Response Plan

"Sec. 3041. National Hazardous Waste Response Plan.

"Subpart D—Prohibitions and Enforcement
"Sec. 3051. Enforcement.".

STUDY OF HAZARDOUS WASTE SITING

SEC. 4. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(5) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(6) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options. The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than eighteen months after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $2,000,000 to carry out the study required under this section.

By Mr. SOLOMON:

—Page 36, line 21, after "for" insert "(1)".

Page 36, line 24, before the period insert: ", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

Page 50, after line 11, insert the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

"ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned or State permitted facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulations shall provide for the annual allocation of grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.".

Page 50, after line 15, insert:

"SEC. 3012. ASSISTANCE FOR STATE OR REGIONAL FACILITIES.".

By Mr. WYDLER:

—Strike page 12, line 3 through page 13, line 3 and insert the following new paragraph:

"(d)(1) The Administrator shall establish, within the Environmental Protection Agency, an Office of Remedial Research, to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The Office of Remedial Research shall review the inventories submitted to the Administrator under paragraph (b) or compiled by the Administrator under paragraph (c) and publish a report on, dumpsites in the United States which contain significant volumes of toxic chemical and hazardous wastes.

"(2) The report shall include—

"(A) an enumeration of all dumpsites which (i) contain toxic chemicals or hazardous waste in sufficient amounts to present a clear danger to public health, and (ii) were closed before the date of enactment of this act setting forth in such enumeration a description of the location of, type of waste contained in, and specific danger presented by each dumpsite;

"(B)(1) a listing by State of the numbers of active and inactive hazardous waste sites;

(2) an analysis of the numbers of various types of sites and the numbers of site and volumes of waste contained in them by industry category;

(3) A list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in (3).

"(C) an assessment of the status of technology generally applied to the disposal of toxic chemical and hazardous waste;

"(D) recommendations as to what technology should be used to clean up the dumpsites enumerated under subparagraph (A);

"(E) a description of problems at specific dumpsites requiring research and development for their resolution;

"(F) a plan for research, development, and demonstration respecting the findings of the study, including recommendations regarding the appropriate government and private sector roles under the plan; and

"(G) legislative recommendations resulting from the study to appropriate committees of Congress.

"(3) The Administrator shall submit the report under subparagraph (2) to the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate and to the Committee on Interstate and Foreign Commerce and the Committee on Science and Technology of the House of Representatives within two years of the date of enactment of the Hazardous Waste Containment Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal.

"(4)(A) There shall be created an independent Toxic Chemical and Hazardous Waste Advisory Board, comprised of industry, academic, and Government toxicologists, which will review the findings and recommendations in the report. The members of the Advisory Board shall be named by the Director of the Office of Science and Technology Policy.

"(B) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Advisory Board in carrying out this subsection and shall provide such information as the Advisory Board deems necessary to carry out this subsection.

"(C) All data and support research which was used in the compilation of the Administrator's report on toxic chemical and hazardous wastes shall be made available to the Advisory Board.

"(D) All members of the Advisory Board shall be entitled to reimbursement for travel and other exepnses actually incurred, including a per diem allowance in accordance with section 5703(b) of title 5, United States Code, while engaged in performing service as such members.

"(5) There is authorized to be appropriated not to exceed $15,000,000 for the fiscal year 1982 to carry out this paragraph."

On page 21, line 9, after (B) strike "Not" and add the following: "In fiscal year 1981, not".

On page 30, following line 16, add the following new paragraph:

"(5) necessary research and development activities respecting toxic chemical and hazardous waste;"

Renumber the following paragraphs.

H.J. RES. 610

By Mr. LEVITAS:

—At the end of section 111, add a new section as follows:

SEC. . No part of any of the funds appropriated by this Act shall be available to implement, administer, or enforce any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

EXTENSIONS OF REMARKS

SUPPORT OF TECHNOLOGICAL INNOVATION AND ECONOMIC PRODUCTIVITY

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. HOLLENBECK. Mr. Speaker, as a member of the Science and Technology Committee and its Subcommittee on Science, Research, and Technology, I have been actively involved in supporting proposals which will spur technological innovation and economic productivity. As a supporter of a variety of legislative proposals on this subject, I believe it is appropriate for the Members of this body to be aware of an address given by John J. Horan, chairman and chief executive officer of Merck & Co., Inc., on this most important issue. Mr. Horan's remarks are as follows:

TEXT OF REMARKS OF JOHN J. HORAN

A great deal of concern is being voiced these days, in many quarters, about the apparent decline in innovation in American industry. That concern is well founded. I would like to share with you today some thoughts on this subject, particularly as it relates to the pharmaceutical industry.

The United States has a proud history of generating innovation and of putting this innovation to work to expand its economy and to improve the standard of living of the American people. It is a history which has been much admired and greatly valued throughout the world. Indeed, in the years to come, America's position in the world and the vitality of American society will depend largely on this nation's ability to fulfill its promise of innovation, economic development, and benefits to society. We must seek policies that fulfill that promise.

We in the pharmaceutical industry know something about the power of innovation. We are an industry which has lived and thrived by making change. We have dealt with the most basic of human needs—health—and we have brought profound progress by innovation. We have addressed problems of disease and suffering which have persisted through man's history, and in many cases have virtually eliminated them through research and scientific discovery.

In a very real sense, we are what a recent report by the Committee for Economic Development, "Stimulating Technological Progress," describes: "Firms that have invested heavily in developing technology and carrying it forward into commercial products have been shown to have about twice the productivity rate, three times the growth rate, nine times the employment growth, and one-sixth the price increases as firms with relatively low investment in these activities."

And yet, when we look to innovation at this critical moment in our history, we do not see research and development being strengthened to meet the challenges we face. There is alarming evidence today of the erosion of the systems which stimulate and sustain innovation. There are ominous signs that our creative drive is dissipating. For example:

Between 1970 and 1979, research and development expenditures in the United States fell from nearly 2.7 percent of the Gross National Product to about 2.25 percent. During that period, R&D expenditures as a share of GNP increased slightly in Japan, West Germany, and the Soviet Union.

Excluding defense spending, research and development expenditures as a percentage of GNP in the U.S. dropped 13 percent (from 1.87 to 1.62 percent) between 1967 and 1975 alone, while in Japan and West Germany it rose by 27 percent and 23 percent, respectively.

Similarly, factoring out inflation, and looking at the picture in terms of constant (1972) dollars, expenditures by U.S. industry for research and development since 1964 have not surpassed the $21 billion figure reached in that year. In the 1972-1976 period, this figure had actually dropped to $19 billion due to the recession. And, in the same period, government and academic spending for research and development also remained relatively static. In short, while the economy has grown in real terms, R&D has not.

Within this same general time period, there has actually been a reduction in the number of scientists and engineers in the labor force in the United States, while this number has risen markedly in Japan, West Germany, and the Soviet Union. From 1968 to 1978, the number of scientists and engineers in the U.S. labor force declined by 13 percent, but that number in Japan rose by 62 percent, in West Germany by 59 percent, and in the USSR by 55 percent. One reason for the decline in the U.S. has been the relatively static employment levels on the faculties of our colleges and universities, where much of the basic research is done. E. Patrick McGuire of The Conference Board has warned that this is resulting in a steady aging of our academic scientific manpower—in a field where some of the most creative work has historically been done by younger scientists.

What have been the consequences of this relative deterioration of our research and development activity? While R&D is not the only factor influencing productivity, one might note that during the period from 1972 to 1978, U.S. productivity had a compound annual growth rate of less than 2 percent per year. At the same time, productivity in both West Germany and Japan increased at a rate of about 5 percent per year. Clearly, our economic competitors who invest more substantially in research and development are pulling ahead in the productivity race.

To underscore that point—according to Derek Price, the distinguished science historian at Yale—in 1967 the U.S. accounted for 33 percent of the world's accomplishments in science and technology; in 1980 that share will have declined to 25 percent.

Similarly, a survey of scientists and engineers indicates that of the 500 innovations of the post World War II period which they regarded as most significant, U.S. scientists had been responsible for about four-fifths developed during the late 1950s and early 1960s, but by the 1970s U.S. scientists accounted for only a little over half of the significant innovations.

While that study is judgmental and also reflects the industrial recovery and growth in Europe and Japan after World War II, statistics of the U.S. Patent Office tell the same story. In 1961, U.S. inventors accounted for over four-fifths of the patents issued. By 1975, that figure was down to less than two-thirds. The bulk of foreign inventors to whom patents are issued are Germans and Japanese, reflecting once again their proportionately higher investment in research and development.

Our own industry—the pharmaceutical industry—looks to innovation as a central business strategy. We are and have traditionally been one of the most research intensive of all U.S. industries. On the average, U.S. pharmaceutical companies spend six percent of their total sales on research and development, compared to two percent for all industries. In contrast to U.S. industry as a whole, where real investment in R&D has not increased since 1964, research and development in the pharmaceutical industry—factoring out inflation—rose by 97%, or almost doubled, between 1964 and 1979.

Nevertheless, our industry has not escaped the adverse trends. According to the final report of the Department of Commerce Advisory Committee on Industrial Innovation, ". . . over the past 15 years, the rate at which new drugs have been developed and approved in this country has declined significantly. A decade and a half ago new chemical entities were introduced at a rate of 42-a-year on the average; today the rate is 16, a decrease of 62 percent."

A comparison between 1962 and 1977 describes the pharmaceutical industry's dilemma very succinctly. In 1962, it took two years and an investment of approximately $4 million to introduce a new drug. By 1977, the time frame had increased to 7 to 10 years and the cost to over $50 million.

Of particular concern to us is the time it takes to bring a new drug to market. This is critical because the new drug is normally under patent protection during most of the time it takes for development, testing, and FDA approval. The effective patent life of a new drug, after FDA approval, has dropped from the 17 years originally legislated to less than ten years in some instances today. As you know, the patent system provides a major incentive for research and innovation in scientific and technological fields. The innovative company receives its financial return on investments in research and development from the sales of patented products free from unlicensed competition. Such pharmaceutical companies could never assume the cost of the massive research involved in developing and introducing new drug entities if forced to compete with companies which could immediately copy its successes.

The case is clear, I believe, that the drive which brought America to a position of technological pre-eminence in the world is fading.

We are facing a time when the forces which have already slowed the drive of innovation elsewhere in the American economy may begin to impact on our own industry. The U.S.-based pharmaceutical industry

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● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

is already being challenged by stiff international competition. There is no automatic assurance that we will maintain our competitive position—any more than the steel industry, or the television manufacturing industry, or others did before us.

We must take strong and timely action. There are many things that can be done. I believe that five steps are absolutely essential if we are to preserve innovation in the pharmaceutical industry and continue to realize the benefits it can and should bring to society.

1. We must have a cooperative effort by the pharmaceutical industry and the Food and Drug Administration, supported by Congress, to shorten the length and cost of the regulatory process, while maintaining the integrity of the drug supply and the protection of the public.

2. It is essential that we restore the full statutory 17-year duration of patent protection for inventions in the drug field. This will require legislation. It is clearly essential to halt and reverse the steady erosion of patent protection caused by the regulatory process.

3. We must amend our tax laws to provide for accelerated depreciation for capital investment in research facilities and equipment. The United States lags far behind our competitors in this regard. The United Kingdom, Canada, and Ireland allow a 100 percent or higher tax deduction of a new R&D facility in the year in which the expenditure is incurred. France, Germany, Australia, and Japan allow a deduction of over 40 percent in the first year. The United States allows only 18 percent. If the United States is to remain competitive with other leading countries, investment in research and development must be effectively encouraged by our tax laws.

4. We must encourage expansion of Federal support of basic research in universities, to assure an ongoing flow of "leading edge" technology into the broader innovative process. We must also maintain patent policies which encourage close working relationships between the universities and industry.

5. We must encourage policies which permit the patient and the physician to make individual judgments about the relative cost and value of competing pharmaceutical products. Simply, a patient should not be required to entrust his or her health to the lowest bidder, if patient and physician attach a greater value to the drug therapy provided by the research-based company. Such policies not only respect the right of choice of physician, pharmacist, and patient, but ensure that innovative pharmaceutical companies which regain their investment in research and development through the sales of their products will not be excluded by government action from competition with companies which do not bear the costs of innovation.

The effective application of our technological skills offers a principal key to the solution of the economic problems our nation faces. In the health field, research and development can and should continue to serve society well in improving and lowering the cost of health care. It is clear that in recent years many factors have contributed to a loss of incentives to research investments. It is time—indeed, past the time—when we as a nation should address ourselves vigorously to encouraging research and development in our society.●

A TRIBUTE TO CONGRESSMAN WILLIAM S. MOORHEAD OF PENNSYLVANIA

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FORD of Michigan. Mr. Speaker, having missed the opportunity to join yesterday in the special order for our colleague, BILL MOORHEAD, I want to take this occasion to add my own personal tribute.

Like our colleagues who spoke yesterday, I deeply regret that BILL MOORHEAD has decided to retire at the end of this session. He is a Member of this body who will truly be missed by us all.

BILL has been a public servant in the finest sense of the term. He has mastered the legislative process and he has become the House expert in the fields of his committee assignments.

We in Michigan owe a special debt to BILL MOORHEAD for his strong and effective support last year of the Chrysler Loan Guarantee Act. Every American has benefited from the legislation he has helped create and adopt during his 22 years in the Congress.

I have worked with him for 16 of those years, and have come to admire him as a legislator, and respect him as a friend. I know that he will continue to be an active citizen, and I wish him well in all his future endeavors.●

DR. RALPH J. BUNCHE

HON. SHIRLEY CHISHOLM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mrs. CHISHOLM. Mr. Speaker, for many of us, our first heroes and impressions of good leadership are derived from stories about famous men and women. Such impressions are lasting and these examples become the yardsticks with which we measure our leaders.

Such a model is Dr. Ralph J. Bunche, who for the better part of 30 years was actively involved in the struggle for peace and justice at home and abroad.

Yesterday, nearly 9 years after his death, a park was dedicated in his honor opposite the United Nations in New York City. Along with those present at yesterday's ceremonies, I would like to take this time to honor and remember the legacy left to us and our children by Dr. Bunche.

[From the New York Times]

A PARK FOR RALPH BUNCHE

HE ROSE HIGH IN WHAT SEEMED AN IMPROBABLE FIELD

(By Hugh Price)

The horizons of black children reared in segregation a generation ago were clouded at best. Careers were limited and dreams of joining the American mainstream were usually wasted. To inspire dispirited young people nevertheless to dare to dream, the walls of black schools were typically adorned with the images of black heroes, like Langston Hughes, the poet, and George Washington Carver, the scientist.

Among those who had risen to prominence, in what then seemed like the most improbable field of all for American blacks, was Ralph J. Bunche, an extraordinary diplomat, architect of the armistice that ended the Arab-Israeli War in 1949 and winner in 1950 of the Nobel Peace Prize.

Today, almost nine years after his death, a park is being dedicated in his honor across from the United Nations where he worked so long and hard. A 50-foot obelisk, called "Peace Form One," has been erected there in his memory.

Ralph Bunche acquired a leading role in the diplomacy of the Middle East after Count Folke Bernadotte of Sweden, the U.N.'s mediator, was assassinated in Jerusalem. Dr. Bunche, a former Howard University professor, was serving on the same mission, representing Secretary General Trygve Lie. With skills that earned the admiration of all hands, including David Ben-Gurion, Israel's first Prime Minister, Dr. Bunche persuaded the combatants to start peace talks in 1949 on the island of Rhodes. Egypt came to terms first, followed by the other Arab nations. These were virtually the only Arab-Israeli negotiations until President Sadat's journey to Jerusalem 30 years later.

Dr. Bunche also supervised U.N. peacekeeping forces along the Suez Canal in 1956; in the Congo following the 1960 secession of Katanga Province; and in Cyprus in 1964. As Undersecretary General, he was the most trusted troubleshooter for Secretary General Dag Hammarskjold and his successor, U Thant.

His international achievements notwithstanding, Dr. Bunche was often accused by blacks of standing aloof from the civil rights struggle at home. It was a misguided and unfair charge. The grandson of a slave, he had collaborated with Gunnar Myrdal in researching and writing "An American Dilemma," the first definitive portrait of the black condition in America. Dr. Bunche walked his first picket line in 1937 and, despite failing health, joined the Selma and Montgomery marches in 1965. What he would not do was display hostility toward whites as such. And he refused to complicate his difficult diplomatic tasks by combining them with agitation for civil rights at home.

He was a professional conciliator, determined to see all sides of contentious international issues. No one, therefore, could seriously question his fairness to Israel, or Arabs, or the propriety of a black person spearheading the search for peace in Africa as well as the Middle East. In his day, the slogan around the U.N. was, "Send Bunche and everything will be all right." For American diplomats, he established the standard that the civil rights struggle was a domestic matter, and that men of peace come in all colors.●

IN TRIBUTE TO THE LATE ALDO BECKMAN

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. PHILIP M. CRANE. Mr. Speaker, when my brother died at the age of 27, I had many doubts and questions as to why God had permitted one so young—and with so much living to do—to be taken from this Earth before he had the opportunity totally to experience life. This is the same feeling I had when my good friend Aldo Beckman passed away recently.

No matter how one measures success, during his brief lifetime Aldo accomplished a great deal. He was a teamplayer working at the Chicago bureau of the United Press International before joining the Tribune in 1959 as a court reporter. Since 1965, he was a national correspondent for the Tribune's Washington bureau and was the White House correspondent from 1970 to 1976. At the time of his death, he was the chief of the Washington bureau.

He was the recipient of several journalism awards during this time including the 1975 Merriman Smith Memorial Fund Award for his coverage of Sarah Jane Moore's assassination attempt on President Ford. He twice received the Tribune's Beck Journalism Award.

Although some would want to measure success as a listing of tangible awards, I would tend to believe that Aldo would rather cherish the friendships and the relationships he cultivated and the reputation he so justly earned for fairness not only from his peers but the people he wrote about.

Perhaps no greater tribute can be obtained than an acknowledgment of one's efforts by one's peers. He was elected by his colleagues as president of the White House Correspondents Association. Aldo was respected by his peers, admired by professionals, and held in esteem by those fortunate enough to work for and with him.

He was a dedicated and skilled wordsmith, and his passing away leaves an empty void which cannot be matched. We all knew him as a professional, we cherished his friendship, but as those whose lives he touched directly know, he was also a compassionate human being. He is survived by his wife, Marijo; four daughters, Theresa, Jennifer, Mary, and Kathryn; and a son, Eugene—all of Arlington. We will all miss him.●

FLORIDIAN TO COORDINATE FIFTH WORLD CONGRESS OF POETS IN 1981

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. PEPPER. Mr. Speaker, I would like to draw your attention, for a moment, to the fact that the United States will be the host country for the Fifth World Congress of Poets, being held next year in San Francisco, Calif.

Many States, this year, have again proclaimed Poetry Day for October 15. They are: Florida, Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington, Wisconsin, and Wyoming.

Dr. Frances Clark Handler, national director of the National Poetry Day Committee, Inc., an honored resident of Miami Beach, Fla., who has been instrumental in bringing the importance of poetry to the official attention of these States and who has long delighted and thrilled Floridians and others with her own poetic gifts, will also coordinate the Fifth World Congress of Poets.

Such a gathering of the famous, the ardent, and interested comers among poets of the world, here in our own country, will doubtless provide enrichment for our cultural life this year and next, as well as entertain and educate our citizens with the wit, the grandeur, the insights, or the thoughtfulness of good poetry. I commend to your kind attention the following proclamations relating to Poetry Day, 1980, and the grand occasion, the Fifth World Congress of Poets in 1981.

PROCLAMATION OF EDMUND G. BROWN, JR., GOVERNOR OF CALIFORNIA

"When power corrupts, poetry cleanses, for art establishes the basic human truths which must serve as the touchstone of our judgment." These words by John F. Kennedy most aptly describe the value which poetry holds in our lives and in our society. Through the images and ideas which poetry creates, it enhances both the life of the individual and the life of the community as a whole.

Therefore, I am pleased to join in observing October 15 as "Poetry Day" and encourage citizens to enjoy this unique form of literature.

STATEMENT BY PIERRE S. DU PONT, GOVERNOR OF DELAWARE

Whereas the art of poetry is a vital part of our culture; and

Whereas many of our citizens enjoy this form of literature and many also are talented and write poetry; and

Whereas this form of expression is taught in our schools and used in many special activities in our lives; and

Whereas poetry has been honored as an art and as an important part of our society's culture; and

Whereas, the United States has been honored by being selected as the site of the 5th World Congress of Poets in 1981; and

Whereas Dr. Frances Clark Handler is the coordinator for the 5th World Congress of Poets.

Now, therefore, I, Pierre S. du Pont, Governor of the State of Delaware, do hereby declare October 15, 1980, as Poetry Day in the State of Delaware, and urge all Delawareans to recognize the importance of poetry in our lives.

PROCLAMATION OF BOB GRAHAM, GOVERNOR OF FLORIDA

Whereas the art of poetry is a vital part of our culture; and

Whereas many of our citizens enjoy this form of literature, and many also are talented and write poetry; and

Whereas this form of expression is taught in our schools and used in many special activities in our lives; and

Whereas poetry has been honored as an art and as an important part of our society's culture; and

Whereas the United States has been honored by being selected as the site of the 5th World Congress of Poets in 1981 and many Floridians will be involved in that Congress;

Now, Therefore, I, Bob Graham, by virtue of the authority vested in me as Governor of the State of Florida, do hereby proclaim October 15, 1980 as Poetry Day in Florida and urge all citizens to join with me in saluting the contributions of poetry and poets to our everyday lives and our culture.

PROCLAMATION OF JAMES R. THOMPSON, GOVERNOR OF ILLINOIS

The art of poetry is a vital part of our culture.

Several of Illinois' poets have been winners of the honored Pulitzer Prize.

A special day in October has been set aside for centuries for acknowledgement and appreciation to the world's poets.

The United States has been honored by being selected as the site of the 5th World Congress of Poets in 1981 and many Illinoisans will participate in that Congress.

Therefore, I, James R. Thompson, Governor of the State of Illinois, proclaim October 15, 1980, Poetry Day in Illinois and urge our citizens to join with me in saluting the contributions of poetry to our everyday lives and our culture.

PROCLAMATION OF HARRY HUGHES, GOVERNOR OF MARYLAND

Whereas throughout the course of history, poets have chronicled the human condition through their writings and examined the intricate workings of man's psyche and the societies in which they lived; and

Whereas the contributions made by poets to the richness of our culture is incalculable; and

Whereas there exists a need to acknowledge the vital role that poets play in endowing human existence with greater richness and meaning; and

Whereas the State of Maryland has a rich heritage of such poets, including Edgar Allan Poe, Sidney Lanier, Josephine Jacobsen and Lucille Clifton;

Now, therefore, I, Harry Hughes, Governor of the State of Maryland, do hereby proclaim October 15, 1980, as Poetry Day in Maryland, and commend this observance to all our citizens.

PROCLAMATION OF JAMES A. RHODES, GOVERNOR OF OHIO

Whereas through the adoption of a joint resolution of the Ohio General Assembly in January 1938, Ohio became the first State in the Union to exercise its legislative authority in promoting the fine art of poetry in the public schools and in seeking to assure it the high cultural position it merits in the public mind; and

Whereas the Joint Resolution of January 1938 provided that the third Friday in October of each year shall be set aside as Ohio Poetry Day in honor of and to give special recognition to the poets of Ohio and empowered the Superintendent of Public Instruction to prescribe a special observance for the study of poetry in public schools; and

Whereas the Ohio Department of Education—recognizing that this phase of culture, like music and the kindred arts, exerts a molding influence in helping to shape the ideals and purposes of our nation—has

issued fine anthologies for use in the public schools and has cooperated with the Ohio Poetry Association in the preparation of the special school programs; and

Whereas this year, Friday, October 17, has been set aside as an occasion for special observance and study of poetry in the public schools of Ohio:

Now, therefore, I, James A. Rhodes, Governor of the State of Ohio, do hereby designate Friday, October 17, 1980, as Ohio Poetry Day and urge our citizens to pay merited tribute to the gifted men and women of Ohio whose talent and genius have contributed immeasurably to Ohio's cultural and literary life.

PROCLAMATION OF DICK THORNBURGH, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA

Poetry, the lyrical expression of thought, has emotional, intellectual and aesthetic appeal. From the romantic works of Elizabeth Barrett Browning to the modernist conscience expressed by Lawrence Ferlinghetti, poetry has, throughout history, served as a literary showcase for the views of society. The works of poets, through the ages and today, touch millions of people throughout the world with mystic beauty and wonderfully diverse conceptions of our universe.

Since 1508, October 15 has been set aside for the traditional observance of Poetry Day, a time to recognize aspiring and established poets whose creative efforts enrich the lives of so many. On this day, civic, community and educational leaders are urged to take part in the annual celebration by encouraging interest and enthusiasm in poetry.

Therefore, I, Dick Thornburgh, Governor of the Commonwealth of Pennsylvania, do hereby proclaim October 15, 1980 as Poetry Day in Pennsylvania in recognition of this annual day of appreciation for all poets and poetry lovers.

OFFICIAL MEMORANDUM BY WILLIAM P. CLEMENTS, JR., GOVERNOR OF TEXAS

Greetings:

October 15, 1980, will be observed as Poetry Day throughout the world. This day is set aside to honor those poets of the past and present who enrich the lives of so many people.

Poetry Day observance was organized in Texas in 1947 and has grown since that time to a worldwide event.

It has been said that today poetry is an absolute necessity. The world needs it for its vitalizing strength. Poetry came into being because of this need, and it is perpetuated for the same reason.

Much of the poetry has come to us in the Twentieth Century as a cultural heritage, passed down from the past, giving tone and character to the culture of today. The poetry of this generation will give similar impetus and strength to the lives of coming generations.

The United States has been honored by being selected as the site of the 5th World Congress of Poets in 1981 and many citizens of Texas will participate in the event.

Our State is proud of its poets and of the poetic expression which have originated here, and in recognition of their contributions to our cultural life it is fitting that we should set aside a day to honor those poets of the past and present.

Therefore, I, as Governor of Texas, do hereby designate October 15, 1980, as Poetry Day in Texas, and call upon all citizens to join in its observance.

CERTIFICATE OF RECOGNITION

By virtue of the authority vested by the Constitution in the Governor of the Commonwealth of Virginia, John N. Dalton, there is hereby officially recognized: Poetry Day 1980.

The words of poets add beauty to language and garnish truth with phrases well remembered from childhood, through school years and throughout life.

In tribute to poets past and present and to their influence on our lives, the National Poetry Day Committee has set aside October 15, traditionally a time of remembrance, as Poetry Day and I call its significance to the attention of all Virginians.●

THE PLO DOES NOT BELONG IN THE IMF

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. SOLARZ. Mr. Speaker, I regret that due to a long-standing commitment in my district I will not be present during this evening's House debate on the Gilman amendment to prevent the PLO from gaining observer status or any formal role in the International Monetary Fund.

The PLO is a terrorist organization which continues to present a threat, not only to Israel, but to innocent civilians all over the world. Over the course of the last decade, the PLO has been responsible for almost 1,000 terrorist actions which have claimed the lives of hundreds of innocent victims. Close to 5,000 people have been wounded by their ruthless attacks which have occurred in Israel and in 25 other countries around the world. The victims of the PLO have included dozens of American citizens and at least three American diplomats who were struck down without warning or reason.

I think it is important today that in light of what the PLO is, that the Congress go strongly on record in opposition to any and all attempts to legitamize the Palestine Liberation Organization and somehow wipe away the blood and horror it has wrought over the last 10 years.

The International Monetary Fund is designed by its charter to promote and maintain a strong and stable world economy—not to engage in pernicious political propaganda. The IMF provides important short-term financing to member countries facing balance of payments problems, and the United States has made use of this program on at least 24 different occasions.

I urge the 140 members of the IMF to maintain their commitment to a healthy world economy and deny any role in the IMF to the PLO.●

SMALL BUSINESS REGULATORY REFORM

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. FISHER. Mr. Speaker, as a legislator, I have witnessed any number of pendulum swings, and I am always gratified when I can be part of a move toward more balanced, rational approaches. In giving my strong support to the regulatory reform initiatives of S. 299, I am confident that this Congress is moving in the right direction.

Unfortunately this is not as major a step as many of us had hoped for. It does not require that regulations be drafted to address more effectively the concerns of small business; however, it does lay crucial groundwork. The analyses required by S. 299 of the effect of regulations on small business and other small entities will, I believe, clearly show the need to establish two-tiered regulations.

Until Congress mandates two-tiered regulation, with one of the tiers dealing separately with small business, I am confident that Congress intent that the executive agencies will take the analyses seriously has been clearly indicated in committee hearings and floor debate. Unquestionably, regulations can be struck down by the courts if an analysis of the effects on small entities is not done, is incomplete, or it ignores significant information presented by individuals.

Small businesses are the innovators in American technology and their diversity is a key to our economic strength. As separate entities, however, they lack the power to challenge inappropriate regulations. Costly requirements and burdensome paperwork have relatively greater impact on small concerns.

The strength of an individual small business on the other hand derives from its management's intimate involvement daily operations. Given alternatives such as performance standards and other approaches outlined in S. 299, these small entrepreneurs are in a much better position to find a solution which most effectively achieves original intent of the regulation.

Too often the intent of Congress has been lost in a maze of complex and sometimes unreasonable regulations. I strongly support the provision of S. 299 which will require a review of all existing regulations over a 10-year period. This is a crucial step to regulatory reform, and as soon as possible we should extend this review and develop sunset and cost/benefit analysis of all regulations.

I am convinced that the small business men and women in my district applaud the intent of much that Congress has attempted to do, but they are deeply frustrated when they are required to commit their resources to approach which they know from

direct experience are not the best way to achieve the stated purpose.

I am proud of my part in environmental protection, minority rights, worker safety, energy conservation, and other worthy legislative goals. We have taken a significant step by passing S. 299 in more effectively achieving these goals by setting up a mechanism which can help lift unreasonable, counterproductive regulations from small businesses and bring them in as full, respected participants in shaping constructive solutions.●

CONTINUED COMPETITION IN THE BEEF PACKING INDUSTRY

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. BEREUTER. Mr. Speaker, during the past 4 years the Small Business Committee Subcommittee on SBA and SBIC Authority and General Small Business Problems has been conducting an investigation of the beef industry. With a well-financed and qualified staff of investigators and economists in addition to public hearings, the subcommittee endeavored to determine whether the large commercial feeders and beef packers are eliminating small operators by simultaneously causing artificially depressed cattle prices and high consumer beef prices. As a member of the full committee, I am certainly interested in the work of the subcommittee. After a close reading of the subcommittee's record, I am satisfied that the beef packing industry is still a competitive industry.

The theme for these hearings was not new. Complaints by cattlemen losing money during well-recognized cyclical downturns in the highly volatile cattle industry and consumers feeling the pinch of high retail beef prices have triggered numerous investigations searching for a scapegoat. But almost always the investigators come away from those investigations convinced that supply and demand fluctuations and other natural causes—not sinister packer activities—are responsible.

After looking at the subcommittee's findings I still find nothing in the record that substantiates charges that a few packers have, in concert, monopolized the beef industry. Accordingly, proposals for remedial legislation seem unnecessary and ill-advised.

One underlying premise for the hearings was to determine whether there is a monopoly that could overcharge for retail beef. The basis for this premise was a recent article written by two economists—Parker and Conner, commissioned by USDA—which maintained that the entire U.S. food industry is dominated by huge processors which compete not on the basis of price but in such nonprice ways as advertising, resulting in a monopoly overcharge to consumers of $13 billion per year. Importantly for this subcommittee's purposes, Parker and Connor concluded that meatpacking was the one segment of the entire food industry where there was no overcharge. However, there are some who say that a monopoly overcharge in beef is on the way because the next evolutionary step after boxed beef primals will be packer prepared retail cuts—"portion-control"—which packers will probably want to identify with their individual brands. It is further alleged that they will probably spend vast sums advertising, like soap, and pass the advertising cost on to consumers as a monopoly overcharge. Such a scenario ignores the fact that portion control is not a reality but rather a future development that is at least 10 years away. In addition, none of the new-breed packers, like Iowa Beef Packers—IBP—or Missouri Beef Packers—MBPXL—has even attempted to develop a consumer brand for beef or a significant consumer advertising budget. From the record it is difficult to see how anyone can apply the Parker and Connor study to the beef industry as the rationale for increased consumer food prices since that study clearly excepts beef from its allegations on the food industry.

NO BEEF MONOPOLY

It is clear from the studies and testimony of witnesses that there is no monopoly in the beef industry. In June 1979 the General Small Business Problems Subcommittee commissioned livestock economist Willard F. "Doc" Williams to do a study of "the changing structure of the beef packing industry." Williams concluded that the packing industry had a serious overcapacity and was going through a shakeout period in which some medium-sized packers would probably be eliminated because they would be unable to compete. Williams further concluded that small packers, with established supplies and local distribution, would be able to compete effectively with large packers aiming at the high-volume, low-price supermarket trade. He speculated that, in that environment—page 149—

> A large efficient and aggressively growth oriented packer could possess and exercise improved power to enhance market dominance. It might acquire and use power to preempt market supplies partly by paying more for live cattle than other large competing packers could afford.

Although Williams was willing to speculate, about what could or might happen, he specifically and repeatedly disavowed that he had even studied the subject of the conduct of any particular packer. For example:

> It is important to recognize that the data on which this paper is based are strictly structural in nature. Little or no data were obtained on competitive tactics or strategies of plants and firms comprising the steer-heifer slaughtering industry. We can only infer certain types of conduct and performance from specified structural characteristics and historical developments. [Williams, "The Changing Structure * * *", p. 4].

We must emphasize that the study was structural in character. * * * The matter of structure is concerned with organizational characteristics of an industry, with such things as size, in other words the brick and mortar, and is not greatly concerned itself [sic] with the matter of conduct or what firms do.

The study was not directed, this particular study, at what individual firms have done or will do. [Williams' Testimony before Smith's Subcommittee, June 25, 1979, Tr. 4-5].

Thus, Williams did not even purport to analyze whether IBP or any other packers were engaging in some sort of anticompetitive conduct that might cause monopoly overcharge in beef. Moreover, during his testimony, before the Subcommittee, Williams stated his personal opinion that the beef packing industry in general and IBP in particular had certainly achieved improved operational efficiency through new technology, and that the larger packers are highly competitive, engaged in a dog-eat-dog business where the cost-price margins are narrow. Williams specifically said that recent publicity concerning excessive farm-retail margins certainly cannot be traced to meatpackers. Williams' testimony, June 25, 1979, transcript 4, 20-21; June 26, 1979, transcript 42-43.

Recently, Williams credited newcomers IBP and MBPXL with making needed pioneering alterations in both slaughtering and distribution systems which reduced costs and, through competition, forced other firms to adopt the new lower cost techniques. Furthermore, he admits that the new giants are big, they are efficient and I have no personal knowledge of antitrust violations and that many of the large numbers of smaller packers that have disappeared from the industry deserved to go, or were scheduled in any case for disappearance, while others were forced out by more stringent inspection requirements. Williams, "Cattleconomics," Beef magazine, June 1980, page 39.

Recently, the U.S. Department of Agriculture's Agricultural Marketing Service—packers and stockyards program—prepared a report on concentration in the meat packing industry, which was presented to the subcommittee on April 29, 1980. Dr. Everett Stoddard, the P. & S. economist in charge of the study in response to questions about whether the demise of the small packers was caused by predatory pricing practices, said: "* * * the most important cause was their relative inefficiency—high kill costs which made it hard for them to compete with large plants operating double shifts." Transcript 22-23.

When the questioning of the subcommittee shifted to whether there was a significant shared monopoly in box beef, Mr. Stoddard and his supervisor, Ms. Barbara Schlei, said P. & S. did not have data that would support that conclusion. Transcript 24-27.

During committee questioning of Mr. Stoddard an insinuation by one questioner that the cattle procurement market is not fully competitive and there is a tendency toward monopolistic price making buying practices was rejected.

Apparently, the question was referring to a theoretical situation where a few packers share a buying territory and have the ability to control prices through tacit agreements. No such real-life situation was identified—and none exists or could exist since producers always have the option of sending their cattle to a central terminal market or selling to more remote packers if the local price level is depressed by more than the freight cost to an alternate selling point.

Dr. J. C. Williamson—Stoddard's immediate supervisor—said that historically, competitive forces in the industry had tended to contrain development of monopolistic buying patterns and, as to the current situation, "We do not have adequate statistics to answer fully the kind of questions you are posing." Transcript 30-31.

During a line of questioning a questioner suggested that the beef industry was headed for portion control and the use of advertising to fool the consumer, Dr. Williamson said that since beef was a fresh product, that would be difficult to do. And when the questioner said the old-line packers had tried to promote branded fresh products in 1918 and 1920, with some success, Dr. Williamson said: "I am not aware that there was great success in fresh products in identifying a differentiated product." Transcript 33-34.

In response to a question as to whether packer feeding of cattle was a threat to competition and pricing in the live cattle market, as it had been in the lamb industry, Mr. Stoddard said that data collected by P. & S. from packers' annual reports do not show any significant trend in packer feeding of cattle and P. & S. had not found any cattle procurement problems such as there had been with lambs. Transcript 37-38, 49-50.

In response to suggestions that, as cattle numbers increase—moving out of the low point in the cattle cycle—producers could expect concentration at the packer level and producers low leverage in selling cattle to have a most devastating effect, Ms. Barbara Schlei said that USDA's data did not indicate any significant increase in the number of packers, going out of business. Transcript 43.

Dr. Stoddard in response to allegations that a couple of big packers were doing something questionable to run their plants at near capacity during the low point in the cattle numbers cycle, while small packers were cutting their slaughter, said that was usual. He expanded his comments by saying that, "when cattle supplies get tight, it is the 'better financed firms that are able to keep operating and the small firms have cut back because the banks won't support them.'" 45-46.

Ms. Barabara Schlei, head of the USDA Agricultural Marketing Service, suggested that the Williams study and the USDA study revealed a situation that could demand some action. Dr. Stoddard responded:

> We believe that at this time we have not determined that any packer or packers are exercising their market power in this manner at this point in time.

Similarly, in 1977, Packers & Stockyards hired National Economic Research Associates—NERA—a nationwide economics consulting firm, to determine whether any action should be taken against IBP for monopolizing the beef industry or engaging in anticompetitive conduct. NERA concluded that beef packing is not unduly concentrated, that IBP does not have a monopoly position, and that there is little current indication of known conduct by IBP which inherently is anticompetitive. A noted agricultural economist, Dr. Vernon Mund, was hired by P. & S. to review NERA's conclusions and he said he did not know how it would be shown that IBP is a dominant firm possessing market power.

Thus, the record does not support the premise that there is a monopoly in the beef industry at this time. Further it rejects the notion that the beef packing industry is a shared monopoly in which large packers are reaping excessive profits by overcharging for beef and engaging in unspecified buying practices which depress cattle prices. Shared monopoly is a recently-coined phrase to describe as yet unsuccessful efforts by the Federal Trade Commission and the Department of Justice to attack, as a monopoly, not one company but several companies which, together, are alleged—as in the FTC's cereal case—to have monopoly power; for example, power to control price or output in their industry. No one has ever shown that one or more beef packers can dictate beef prices to the Nation's supermarkets. Rather, the typical concern is that retailers dictate prices to beef packers, which accounts for their low profit margins and precarious existence.

The subcommittee record rather than substantiating the allegations that the large packers are forcing small packers out of business through a classic cost-price squeeze-bidding up the price of cattle, but depressing the wholesale price of beef, proved something else again.

Rather it established that the cost-price differential between live cattle and wholesale beef prices does not indicate either a monopolistic overcharge to retailers and therefore consumers or a predatory squeeze on packers.

USDA's chief economist, Howard Hjort, specifically told the subcommittee on May 5, 1980—8—that its studies indicated that consumers were not overcharged as a result of monopolistic conditions in the meatpacking industry, which was in sharp contrast to the rest of the food-manufacturing industries. He attributed this exemplary performance to the fact that the meatpacking industry is a textbook example of an industry with relatively perfect competition, large number of firms, low product differential and low average profits.

On the other hand, Dr. Stoddard explained that any cost-price squeeze some packers may be experiencing is due to their relative inefficiency and consequent high kill costs. The most important component of kill cost is labor and virtually every packer that has gone out of business in recent years has publicly stated that the principal cause was inability to negotiate a realistic contract with the Amalgamated Meat Cutters Union. Although union intransigence may well be the greatest threat to packer survival today, the issue of economic impact of possible union intransigence has not been explored by the subcommittee. It would have been a very useful addition to the record for the subcommittee to explore the issue of whether the Meat Cutters' contracts preclude retailers from taking advantage of the efficiencies of boxed beef.

WHY ADDITIONAL GOVERNMENT REGULATION?

It is unsupportable on the basis of this record to suggest that the conditions in the beef industry today resemble those that precipitated the 1920 consent decree and the enactment of the Packers and Stockyards Act. In 1920, four companies—Swift, Armour, Wilson and Cudahy—slaughtered 50 percent of all red meat and controlled the stockyards through which livestock were marketed. In 1978, four companies—IBP, Swift, MBPXL and Armour—slaughtered only 24.4 percent of the cattle, as compared with the four-firm concentration ratio of 34.4 percent for hogs and 56.4 percent for sheep. These same companies slaughtered 31.6 percent of fed steers and heifers, which some economists contend is the relevant product market for measuring size and power. Nonfed cattle do effectively compete with fed cattle and have a significant effect on price, as any cattle feeder who lived through the liquidation phase of the cattle cycle in 1974-77 will testify. Moreover, a four-firm concentration ratio of only 31.6 percent is well below the 40-percent level at which some economists begin to be concerned about whether industry structure may cause unhealthy behavior.

In a study prepared expressly for the subcommittee, the USDA has concluded that beef industry concentration levels are considerably lower than concentration in the early 1900's which led to the monopolistic control of the industry and subsequent passage of the Packers and Stockyards Act. "Some Structural Changes in the Beef Production and Marketing Sector," USDA staff paper, January 1980, page 29. Moreover, 90 percent of all slaughter cattle are now purchased directly from feeders or through country auctions, so packer control of the Nation's marketing facilities is no longer even an issue. Finally, the large-scale automated plants of the new-breed packers demand a steady flow of cattle to maintain operational efficiency and reduce per head kill costs, which means that the modern packer needs the producer as much as he needs the packer and precludes packers from exerting any undue influence on producers.

According to the USDA staff paper, page 27, there were only 17 plants each slaughtering over 250,000 steers and heifers per year in 1970; in 1978 there were 26—and 9 of them killed over 500,000 each. USDA has recommended to farmer cooperatives considering branching into meatpacking that the optimum size is at least 375,000 head. "The Future Role of Cooperatives in the Red Meat Industry," USDA Market Research Report 1089, April 1978. As Dr. Hjort pointed out in his testimony before the subcommittee—pages iii, 33—these efficient new plants take advantage of economies of scale, but necessitate better coordination of the flow of cattle and operation at a consistently high percentage of capacity.

The industry has been changing and that should come as no surprise. It would be folly to ignore the reality that the new economies of scale require large efficient plants. It would be irresponsible to require the perpetuation of the cost inefficiencies of smaller, obsolete plants that necessarily must be passed on to someone—either back to the producer in lower cattle prices or forward to the retailer and consumer in higher beef prices—or both.

Government regulation of the meatpacking industry has in fact been an abysmal failure. The 1920 consent decree, while perhaps correcting some procurement abuses, also appropriately or inappropriately stopped the packers from integrating into retailing and thus providing competition to retailers. Of course one of the greatest concerns of producers and of analysts of the industry has been the growing power of the large retailers. Moreover, the Federal Government recognized that the consent decree was obsolete and in 1979 voluntarily agreed to modify it to remove the kinds of restrictions some now want to resurrect. But this came too late for the old-line packers like Swift and Armour which, when prohibited from taking advantage of their vast branchhouse distribution system to evolve a new place in the industry and saddled with obsolete facilities and ill-suited labor rates, have now virtually abandoned cattle slaughtering altogether.

If anything, Government regulation seems to have in effect prohibited some potentially important new forms of competition and exterminated some fine competitors. Accordingly, we should be very reluctant to impose similar regulations on the new-breed beef packers even before it is demonstrated that they are behaving improperly or are doing anything but making the packing segment more efficient and competitive.

During the subcommittee's recent hearings, the USDA personnel responsible for monitoring the behavior of the packing industry repeatedly emphasized that they could handle any anticompetitive aspects that might develop and questioned the need and appropriateness of additional legislation. Their advice should be heeded unless cause is shown to the contrary.●

POSTAGE STAMP TO HONOR DR. SAMUEL A. MUDD

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. TRAXLER. Mr. Speaker, it is important that we take the time to remember and honor those who have been significant figures in the history of our Nation. It is for this reason and with great pride that I have today introduced a bill which calls upon the U.S. Postal Service to issue a commemorate postage stamp on December 20, 1983, to honor the 150th anniversary of the birth of Dr. Samuel A. Mudd.

Many remember Dr. Mudd as the individual who was the doctor accused of assisting John Wilkes Booth after Booth had assassinated President Abraham Lincoln on April 14, 1865. Union soldiers arrested Dr. Mudd after it had become known that Dr. Mudd had treated Booth for the fractured leg he had suffered when Booth had jumped to the stage in Ford's Theater after shooting the President.

But Dr. Samuel Mudd is a much more important figure than commonly known history reveals. Dr. Mudd can be considered as a symbol for those who attempt to survive adversity and remember the importance of assisting those who need help. For while Dr. Mudd was imprisoned in Fort Jefferson, Fla., a yellow fever epidemic occurred and the prison doctor, Sim Smith, died leaving Dr. Mudd—a prisoner—to take over the hospital and the care of the soldiers and prisoners at the facility. It was this self-sacrifice in the face of a dreaded disease that led to the soldiers and prisoners at Fort Jefferson to petition President Andrew Johnson to release Dr. Mudd in recognition of his duty.

President Johnson granted Dr. Mudd a pardon in 1869, expressing doubts about the finding of guilt by the military court that had convicted Dr. Mudd in 1865. Dr. Mudd returned to his medical practice, with the stigma of his conviction. His life remained dedicated to medicine until he died in 1883 at the age of 49 as a result of pneumonia that he developed while making night calls.

Since the death of Dr. Mudd, many Americans, including many of the Members of Congress throughout these years, have attempted to clear the record in behalf of Dr. Mudd. There have been many reports of this incident, all of which have pointed to how Dr. Mudd remained an unselfish individual and a believer in the American system that had so unjustly branded him as a criminal.

It is my sincere hope that the issuance of this commemorative postage stamp, a fair tribute to an American who lived the American spirit, will help us to once again remember the debt that is owed to Dr. Mudd and the importance of the individual in American society and American history.●

FIFTH ANNUAL SLOVAK HERITAGE FESTIVAL

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. GUARINI. Mr. Speaker, I am pleased to announce that a very special event will take place on Saturday, September 20, 1980, at the New Jersey Garden State Arts Center at Holmdel.

The fifth annual Slovak Heritage Festival will be an occasion of great cultural enrichment, saluting the outstanding contributions which hundreds of thousands of Slovak-Americans have made to our great Nation.

With traditional Slovak hospitality, the festival will be a lively day of celebrating the folklore, music, dance, cuisine, and other aspects of the rich and colorful Slovak heritage.

Slovakia, a geographical entity in its own right, has been an integral part of Czechoslovakia since the end of World War I. Its people have had many, many American friends, including our great humanitarian President, Woodrow Wilson.

A former Governor of New Jersey, President Wilson has often been called the godfather of the Republic of Czechoslovakia, as well as one of history's most ardent supporters of the right to self-determination for all nations.

Sacrificing their traditional way of life, the first generation of Slovaks to set foot on American soil left their families behind and underwent numerous hardships to reap the blessings of their promised land.

Despite the difficulties of language and customs which these early Slovak immigrants encountered, they persevered and earned the respect of our Nation, as well as the unique benefits of our great land.

Today, Americans of Slovak descent truly embody the spirit of our country.

Although Czechoslovakia has been a Communist state for the past 32 years,

many Americans still recall vividly the month of August 1968, when Soviet troops invaded Czechoslovakia while the Slovak and Czech peoples were experiencing the democratic climate of the Prague spring.

Today—12 years later—Slovaks continue to celebrate their roots at such joyful events as the heritage festival which will take place on Saturday in Holmdel.

At this year's salute to Slovak culture, my dear friend, the Honorable Joseph J. Talafous, a former judge of Jersey City, will again serve as general chairman.

He will be assisted by such outstanding Slovak leaders as Andrew Venglarchik, president of Sokol, U.S.A.; Tibor Kovalovsky, secretary of Slovak Catholic Sokol; and John Sopici, treasurer of Sokol, U.S.A.

They will be joined by another dear friend, John C. Sciaranka, the erudite editor of Slovak Catholic Sokol, a Passaic, N.J.-based group whose membership exceeds 50,000. Ecumenical services will be conducted by Msgr. Michael Churak, pastor of Holy Trinity Roman Catholic Church, Perth Amboy, and Rev. Dr. John Shintay, associate pastor of Holy Trinity Church, Union, N.J.

Among the great Slovak artists and performers who will participate in the festival are singers Janka Guzova, Ruzena Gregus, and Ann Marie Kulhan. The Limbora Slovak Folk Ensemble will also offer entertainment, interpreting varied aspects of Slovak folk culture in dance, as well as song.

In addition, the champion gymnast Ellen Kovaks and the rock group, the Dash (Taktici) will perform.

Throughout the festival, which will stretch from 11 a.m. to 9 p.m., the work of Slovak artists and craftspeople will be on display.

Demonstrations of Slovak calisthenics, gymnastics, and dance will also be given, and Slovak delicacies, as well as other refreshments, will be served.

This year's festival will honor the centennial birthday of the late Gen. Milan Rastislav Stefanik, the famous Slovak astronomer, scientist, and military leader who served heroically in World War I. Until his death in a mysterious airplane crash in 1919, General Stefanik was an outspoken foe of communism.

Proceeds from the festival will be contributed to the Garden State cultural center fund, which provides free entertainment for senior citizens, disabled veterans, the blind, and school children from across the State of New Jersey.

Having had the privilege of attending last year's highly successful festival, I am looking forward to this year's celebration.

I am certain that my colleagues in the House would enjoy this spirited event, and I cordially invite them, one and all, to take part in this unique display of Slovak heritage and pride.●

SOLOMON SUPERFUND AMENDMENT

HON. GERALD B. H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. SOLOMON. Mr. Speaker, today I have inserted in the RECORD an amendment to the superfund legislation, H.R. 7020, which is intended to assist in the cleanup of hazardous waste sites.

I do have some reservations concerning the superfund bill.

My major concern about the bill as it is currently drafted is that it encourages the proliferation of storage landfills and the expansion of existing landfills rather than the development of high technology facilities which would destroy or neutralize toxic wastes.

The construction of high technology facilities to reclaim, incinerate, or neutralize the chemical properties of hazardous waste is the surest way, in fact, the only way to assure an environment protected from the potential future hazards of chemical waste.

H.R. 7020 concerns only existing inground hazardous waste sites and provides funds only for remedial work on suspect landfills. It does not at all apply itself to the construction of high technology facilities which would reclaim, incinerate, or neutralize toxic materials thus making it unnecessary to put substances into the ground that are still toxic and leachable. By avoiding or failing to address the very important and necessary method for the future control of such waste, this bill and the Congress imply that the best way to deal with hazardous waste is to bury it in the ground.

I do not agree.

If we are to properly control toxic materials, it is imperative that we attack the problem from two angles. Certainly the need to make funds available for cleaning up dangerous landfills is vital. With my amendment, the bill also provides us with the perfect mechanism for avoiding similar mistakes in the future.

My amendment would earmark a certain percentage of the fund to be used as matching grants to States which are willing to construct the facilities for the environmentally sound handling of toxic waste.

In short, my amendment would allow the Government to take action to encourage the development of facilities which can completely destroy or neutralize hazardous waste.

My amendment explicitly prohibits the use of such earmarked funds for the building or operation of landfills.

At present the only method available to most generators of hazardous waste is landfills. What Congress is proposing by enacting the superfund and what it is encouraging through its present tax-exempt limitation on hazardous waste facilities will result in a proliferation of landfills.

As I have already pointed out, this legislation will actually increase the number of landfills across the country and will expand existing landfills that already pose a threat to this Nation's drinking water. Over 50 percent of all Americans depend on ground water for their drinking supply and the creation of more landfills will jeopardize this water supply.

Senator John B. Daley, chairman of the New York State Senate's Hazardous Waste Committee, fully endorses this amendment. He has written:

> It would appear to me that the Federal Government would be wiser indeed if it took strong steps to encourage the States to immediately begin to look at the final answer to hazardous waste and this means the destruction or neutralization, rather than the storage of waste in secure landfills.

I would also like to point out that my amendment would take effect 2 years from the date of enactment of the superfund. In this way the primary purpose of the legislation—to provide the authorities with a way to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment—would not be adversely affected by my amendment.

There is growing support for my amendment from both the environmental and economic sectors of this country and I hope you will join with me in supporting it when H.R. 7020 reaches the House floor.●

ASSASSINATION OF ANASTASIO SOMOZA DEBAYLE

HON. JOHN M. MURPHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. MURPHY of New York. Mr. Speaker, Anastasio Somoza Debayle is dead. He was incinerated today—along with his chauffeur and bodyguard—in Paraguay by a cadre of Nicaraguan Communists taking orders from the U.S.-supported Communist junta now ruling that formerly friendly nation to our south.

I have been criticized by some in this House and many in the press for my support of the Somozan government. But let me restate today just a part of the legacy left to this United States by Anastasio Somoza Debayle.

Supported the United States in the United Nations and the OAS on terrorism: Nicaragua always supported and worked hand in hand with the United States in the common cause against international terrorism and opposed the Soviet bloc on this issue.

The expulsion of Nationalist China: Nicaragua was the only Latin American country that supported the position of the United States to avoid the expulsion of China from the United Nations.

Israel: Whenever the United States asked Nicaragua to speak in defense of an Israel position in the United Nations—and it was usually by request of the U.S. mission—the Nicaraguan delegation supported Israel's position. In 1977 in the General Assembly on a vote on a draft resolution against Israel, Nicaragua joined with the United States in support of Israel's position.

Disarmament: At the request of the U.S. delegation, Nicaragua always took the floor and argued against the U.S.S.R. and for the American position on disarmament.

South Korea: At the request of the United States, Nicaragua cosponsored the U.S.-backed Korean peace plan.

Puerto Rico: Whenever Cuba presented draft resolutions in different committees and the General Assembly calling for Puerto Rican independence, Nicaragua supported the United States.

Cuba: Whenever the Cuban delegation insulted the U.S. Government and its Presidents, Nicaragua took the floor in defense of the United States and its many administrations.

In the Security Council, Nicaragua consistently supported the different motions presented by the United States.

Nicaragua was one of two Latin American countries that supported the U.S. military base in Iceland.

Cuba: Nicaragua voted with the United States against lifting the OAS ban on Cuba.

On a historical note, Nicaragua was the second country to declare war against the Axis countries in World War II and was the first Latin American country to give the United States rubber and raw materials for the war effort. Nicaragua was the No. 1 exporter of rubber to the United States in World War II.

Formerly one of the few democratically elected leaders in South America, Somoza was blown up in his car in downtown Asuncion, Paraguay, by six Communist assassins using military bazookas. As the car burned the killers raked the vehicle with machinegun fire. Eyewitnesses said the burned bodies were shredded.

The assassins escaped.

Under pressure from the United States, Somoza fled Managua, Nicaragua on July 17, 1979, abandoning one of the few democratically elected governments in South America to a Communist junta, which to this day has not scheduled free elections. Free elections, by the way, were what the revolution—which cost 40,000 lives—was supposed to be about.

Within days of the takeover, the junta served notice that Somoza, his family, his friends, and members of his government would be searched out and brought to "justice." On August 21, 1979, just a month after the revolution, the junta issued the following statement upon the arrival of Somoza in Paraguay, according to CIA intercepts:

> The Nicaraguan revolutionary government reacted today to the arrival of Gen. Anastasio Somosa in Paraguay by saying it will pursue him to any part of the world. "We are going to pursue Somoza all over the Earth. The many crimes committed by him and his clique against the interests of the Nicaraguan people cannot go unpunished," Deputy Foreign Minister Alvaro Ramires Gonzales said today.

The junta's first big success in meting out its form of justice came some 3 months later when Pablo Emilio Salazar, popularly known as Commandante Bravo—a U.S-trained Nicaraguan military hero—was brutally assassinated in Honduras while delivering a planeload of food and medical supplies to Nicaraguan refugees huddled along the Honduran border. The medical supplies and food had been provided by Members of the U.S. Congress. Commandante Bravo (Pablo Emilio Salazar) was kidnaped, tortured, and mutilated before he was murdered.

Junta member and commander of the Nicaraguan secret police Tomas Borge discussed Bravo's death with thousands of young people at Espana Stadium in Managua on October 17, 1979. Borge, a self-confessed murderer, rejoiced in the accomplishments of the terrorists under his command when he taunted the gathering crowd with the following twisted truths:

> The truth is that the henchman today is 7 (feet underground). (Applause, shouts.) He was the coordinator of the Somozist counterrevolution—but the truth is that the head of that sector of the counterrevolution has been cut off. (Applause.) The enemies of our people will fall one by one, and sooner or later assassin Anastasio Somoza's turn will come (applause).

Comrade Borge is a self-confessed Communist, trained in Cuba and Russia. Borge's terrorist prediction came true today when his assassins butchered one of the last democratic leaders to hold power in South America. The junta's "sooner or later" was today, and the world is the worse for it.

Last Friday, September 12, 1980, President Carter signed a "determination" implementing the foreign aid bill that will advance $75 million in U.S. dollars to support the activities of the ruling Communist junta in Nicaragua.

It is not lost on those of us who know first hand the cold, calculating brutality of the Communists that they waited until President Carter committed the $75 million to commit their murder. After all, the Sandinista Minister of Agrarian Reform and Cuban trained terrorist said in New York: "We are going to use the capitalist money of the American imperialists to finance Communist revolution."

It saddens me to know that the United States, by its support of the Sandinista regime, not only played an indirect role in this terrorist massacre, but the massacres Tomas Borge has planned for the future.●

FACTSHEET ON SHIPMENT OF NUCLEAR FUEL TO INDIA

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. MARKEY. Mr. Speaker, I am submitting for consideration by my colleagues an excellent factsheet on the issue of the shipment of nuclear fuel to India. I urge my colleagues to support the Bingham resolutions of disapproval when they are voted on today.

One issue is whether India has a strong legal claim that rejection of the pending exports violates a U.S. obligation under the 1963 supply contract.

Our fuel supply agreement with India pledges us to supply sufficient nuclear fuel for the efficient and continuous operation of the Tarapur reactors until 1993, in accordance with the terms, conditions, and delivery schedule set forth in a contract to be made between the parties. The contract in turn states that India "comply with all applicable laws, regulations, and ordinances of the United States." India is not now in compliance with the currently applicable law, the requirement of the Non-Proliferation Act that she place all her nuclear facilities under international safeguards. The agreement and the contract provide for no obligation by the United States toward any Indian fuel fabrication facilities. This legal interpretation is backed up by a paper from the Ameri an Law Division of the Congressional Research Service dated July 22, 1980.

The factsheet follows:

QUESTIONS AND ANSWERS ON THE PROPOSED URANIUM SHIPMENTS TO INDIA

The Congress must soon decide whether to overturn a Presidential Executive Order approving the export to India of 38 tons of enriched uranium after the NRC had unanimously rejected the license applications for such shipments as not meeting the requirements of U.S. law.

The sending of this fuel at this time to a country that, after two years of negotiations, has refused to place all its nuclear facilities under safeguards and has announced a possible interest in future nuclear explosions, risks the destruction of U.S. credibility in the area of nonproliferation.

In contrast to the Administration's arguments, this paper will show, via a Question and Answer format, that neither U.S. nonproliferation objectives nor broader U.S. foreign policy objectives will be well-served by allowing these shipments to India to proceed.

1. IMPORTANCE OF TARAPUR DECISION

Q. Why are these particular shipments of such importance?

A. The pending fuel exports to Tarapur constitute a first landmark test of whether the United States will continue nuclear trade with nations which are deliberately and unambiguously keeping open the option of developing nuclear weapons by refusing to allow international inspections (safeguards) on all of their nuclear activities. In enacting the Nuclear Non-Proliferation Act (NNPA) in 1978, the U.S. declared that it would no longer extend the privilege of nu-

clear trade to nations unwilling to accept safeguards across-the-board.

The Act provided a two-year grace period (ending March 10, 1980) before the export cut-off would be triggered, for negotiations with nations which had not yet agreed to such comprehensive, or "full-scope" safeguards. Although negotiations with a number of our trading partners, including Argentina, Brazil, and Spain, are apparently close to succeeding, India has steadfastly refused to accept the required inspections.

Among the nations subject to the full-scope safeguard export restriction, moreover, India stands alone as the only nation which has overtly used unsafeguarded facilities to produce and test a nuclear explosive device (the Indian test of May 1974) and which, according to a recent statement by Mrs. Gandhi before the Indian Parliament, refuses to rule out future tests. Most recently, India demonstrated, by putting a satellite into orbit, that she is developing an IRBM capability.

Thus the basic question posed by the pending exports is whether the United States, having said two years ago that it would stop nuclear trade with nations unwilling to place all their facilities under safeguards, will now continue business as usual with its one trading partner that has an actual history of misusing unsafeguarded facilities to produce nuclear explosives and whose future plans in this regard are, perhaps, the most suspect of all our export recipients. The impact of U.S. action is this regard on other nations will be consequential, and is explored later on.

2. THE FULL-SCOPE SAFEGUARDS CRITERION

Q. Contrary to the State Department assertion, was the NRC correct in its legal interpretation that the NNPA provision on full-scope safeguards applies to these shipments?

A. Yes. The NNPA and its legislative history support the NRC position that after March 10, 1980, no license for nuclear exports can be approved for any country not having all its nuclear facilities under safeguards. The State Department argument that full-scope safeguards are not required for these fuel licenses has been demolished in a further analysis of the issue by the NRC's Office of General Counsel. (See Appendix I.)

3. IMPACT ON THE NPT AND ON THE ADOPTION OF FULL-SCOPE SAFEGUARDS BY OTHER NATIONS

Q. What will be the impact on other nations if the U.S. sends this fuel at this time?

A. The impact is at least 3-fold.

(a) The Nuclear Nonproliferation Treaty (NPT), signed by 113 nations (but not India), will be undermined. A member nation, which has necessarily accepted full-scope safeguards and forsworn nuclear weapons in return for nuclear trade and assistance, might well question the value of membership when India receives nuclear trade and assistance without the same kind of political commitment.

(b) Non-NPT U.S. export recipients with whom negotiations are not yet complete on the full-scope safeguards question will undoubtedly balk when they realize that even though they have never taken any actions towards proliferation which begin to compare with those of India, they would be submitting to U.S. export control not being applied to that country.

(c) Nuclear supplier nations, some of whom now require full-scope safeguards as a condition for exports (Australia and Canada) and others who may be moving in this direction (France and West Germany), will surely take our permitting these exports in the normal course, as a sign that we are not serious about the full-scope safeguards requirement; undoubtedly they will begin to rethink their own position on this subject. For the U.S. to appear to other suppliers to be retreating at the first test from its full-scope safeguards stand taken in the Non-Proliferation Act only two years ago could have a devastating impact on the prospects for enhanced supplier cooperation on this vital issue.

4. SIGNIFICANCE OF SAFEGUARDS

Q. Why are full-scope safeguards of significance for India? Does India have significant indigenous unsafeguarded facilities?

A. The nuclear facilities that India used for her 1974 explosion are still unsafeguarded. This includes the Cirus heavy water research reactor, the Nangal heavy water facility, and the Trombay reprocessing plant.

Completed additional unsafeguarded facilities include a heavy water reactor (Rapp 2), a reprocessing plant at Tarapur, and three heavy water facilities (Tuticorin, Baroda, and Talcher).

Additional unsafeguarded facilities, either under construction or with design completed, include 4 heavy water reactors (Mapp 1 and 2, and Napp 1 and 2), one Fast Breeder Test Reactor, a reprocessing plant at Kalpakkam, and a heavy water facility at Kota.

It is therefore clear that if all these facilities remain unsafeguarded, India will be in a position to stockpile thousands of kilograms of unsafeguarded plutonium during this decade. (One Nagasaki-sized bomb can be produced from approximately 8 kilograms of plutonium.)

5. INDIAN ATTITUDE ON SAFEGUARDS

Q. Two years ago, when fuel licenses for Tarapur were being reviewed by Congress, the State Department argued that sending the exports would be an inducement to the Indians to cooperate on the safeguards question. The exports were sent. What has been the Indian attitude on this issue since then?

A. Two years of negotiations with India have produced no discernible movement on their part on this issue. On the contrary, there have been repeated public statements by Indian officials adamantly opposing the adoption of full-scope safeguards.

One example illustrating the Indian attitude and the question it raises concerning the future direction of the Indian nuclear program concerns the recent sale by the Soviet Union to India of 250 tons of heavy water (needed by India to operate some of her reactors until her own heavy water production capabilities rise). According to a report in Nucleonics Week (April 17, 1980), "The Indians have so far been holding up the operation of the Rapp-2 nuclear reactor rather than using Soviet heavy water supplies because they do not want to submit the reactor, and all other facilities which use any of its products, to international inspection."

6. U.S.-INDIA OBLIGATIONS

Q. What are major U.S. and Indian obligations under the U.S.-India agreement for cooperation and fuel contract relevant to this case?

A. Our fuel supply agreement with India pledges us to supply sufficient nuclear fuel for the "efficient and continuous operation" of the Tarapur reactors until 1993, "in accordance with the terms, conditions, and delivery schedule set forth in a contract to be made between the parties." The contract, in turn states that India "comply with all applicable laws, regulations, and ordinances of the United States . . ." India is not now in compliance with the currently applicable U.S. law, the requirement of the Non-Proliferation Act that she place all her nuclear facilities under international safeguards. The agreement and the contract provide for no obligation by the U.S. toward any Indian fuel fabrication facilities.

7. POSSIBLE INDIAN LEGAL CLAIM

Q. Does India have a strong legal claim that rejection of the pending exports violates the U.S. obligation to supply the Tarapur reactors and that India is, therefore, released from her obligations under that agreement?

A. No. The NRC has determined that India has enough stockpiled fresh fuel on hand to last until at least 1982 (see Appendix II). India cannot legitimately claim that withholding these particular shipments is a breach of U.S. obligations (see answer to previous question). Moreover, the fuel contract language suggests that the U.S. would not be in breach of the Agreement as long as India does not satisfy the provisions of the NNPA. This legal interpretation is backed up by a paper from the American Law Division of CRS (See Appendix III).

8. POSSIBLE INDIAN ACTIONS AND CONSEQUENCES

Q. Despite the U.S. legal position, what would be the practical consequences if India violated the Agreement by reprocessing without our permission, 200 tons of U.S.-origin spent fuel stored at Tarapur and/or removed safeguards from the Tarapur facility?

A. There is no provision in the Agreement for a judicial or other 3rd party resolution of any conflict between the U.S. and India over the provisions of the Agreement. The removal of safeguards from the facility by India would almost certainly be condemned worldwide. Moreover, from a strictly practical point of view, the Indians will have access to thousands of kilograms of unsafeguarded plutonium in the next few years if they don't accept full-scope safeguards. By way of comparison, the spent fuel at Tarapur contains approximately 100 kgms. of plutonium.

On the issue of reprocessing and plutonium recycle, the Indians are moving to establish a mixed oxide fuel facility that would allow them to use recycled plutonium as a fuel in their reactors, even if uneconomic. It will take at least 3-4 years before such a facility is ready to operate. The reprocessing of U.S.-origin spent fuel at Tarapur would not appreciably change the time at which the Indians might be ready to demonstrate plutonium recycling.

In any case, the State Department fears about an implicit threat by India to take certain actions in the event of a U.S. cutoff to Tarapur leads to a policy without end. Must the U.S. continue to supply India indefinitely because of the fear of Indian actions described above if we don't? Is this an appropriate response to such an implicit threat? The answer is surely negative on both counts.

Thus, while Indian actions in the wake of a cutoff are a cause of concern, the abandonment of U.S. non-proliferation principles implied by the shipments and the associated impact on other countries is, in a real practical sense, cause for much greater concern, as indicated in answers to other questions.

9. CONTINUING DIALOGUE

Q. Will a cutoff cause irreparable damage to U.S.-Indian relations, thus making a continuing non-proliferation dialogue with India impossible, as claimed by the State Department?

A. No. According to reports in the Indian press, particularly the Times of India, some elements in India suggest that the Tarapur issue is a festering sore, blocking the improvement of Indo-U.S. relations, that could be cleared up through a clean break in nuclear relations. Certainly, the State Department has achieved no discernible progress with India in more than 2 years of negotiations on the full-scope safeguards issue during which time nuclear trade has continued. Moreover, as discussed below, progress is more likely to depend on events external to our nuclear trading position. Because of substantial contact between the U.S. and India in other areas (e.g. economic and military assistance) and our common concerns over the Pakistan nuclear program, there will be ample opportunity to maintain a constructive dialogue.

10. "UNRELIABLE SUPPLIER" ARGUMENT

Q. Will a cutoff to India reinforce the image of the U.S. as an "unreliable supplier", as implied by the State Department?

A. No. It is U.S. policy under the NNPA to be a reliable supplier "to nations which adhere to effective nonproliferation policies". There is no evidence that other nations consider India's nuclear policies as effectively contributing to nonproliferation. The Canadians for example, have not reestablished nuclear trade with India since the 1974 explosion. Moreover, in contrast to India, the vast majority of our export recipients have accepted full-scope safeguards by signing the Non-Proliferation Treaty. They recognize—and know that we recognize—that India stands apart and that actions we take with respect to her do not affect our reliability with respect to meeting their needs. If the U.S. has an image problem in this area, it has to do with the apparent inconsistency of our nonproliferation policy. Seen in this light, approving the fuel shipment will worsen rather than improve our image.

11. INDIAN FOREIGN POLICY

Q. What evidence is there to indicate that our nuclear trade with India has substantially affected India's foreign policy?

A. None. India's fundamental strategic goal is to maintain its nonaligned status by preserving a reasonable balance in its relations with the superpowers. In this context the Tarapur controversy has not been and is unlikely to be a significant factor in influencing Indian foreign policy.

Given India's overriding national interest of maintaining her nonaligned posture, it is most unlikely that India will drastically reduce her ties outside the nuclear trade area with the United States in favor of the U.S.S.R. as a result of the Tarapur controversy. There is no information provided in the State Department Fact Sheet to support a contrary conclusion. This controversy must be seen as a matter of limited significance in the overall fabric of India's superpower relations.

India is currently pursuing a foreign policy in many areas which is distinct from, if not in opposition to, U.S. objectives. For example, India has entered into a major trade agreement with Iran. (See Appendix IV—A copy of the front page of the Statesman (Delhi), dated June 14, 1980, with headline entitled, "India to Help Iran Beat U.S. Sanctions.") This appeared three days before the Senate Foreign Relations Committee held its first open hearing on Tarapur.

India has also recognized the pro-Soviet regime in Kampuchea, and she has recently signed a $1.6 billion arms deal with the Soviets. All of these highly visible events, of considerable political importance to the region, it may be noted, occurred after President Carter had reportedly promised Mrs. Gandhi the pending Tarapur fuel, and the recognition of the Kampuchean government came after the President had signed the now pending Executive Order overruling the NRC and authorizing these exports. Without raising the question of whether we should now reward Mrs. Gandhi for her actions by allowing these fuel shipments, at the very least, these events make clear that where major questions of India's foreign diplomacy are concerned, the Tarapur fuel is a bargaining chip of dubious value.

12. REMAINING U.S.-INDIAN TIES

Q. If the pending shipments are rejected, will the U.S. be left without any substantial economic or military links to India?

A. No. The State Department analysis grossly exaggerates the significance of the Tarapur exports to the promotion of U.S. interests in this region. It is simply not true, as the State Department asserts, that by withholding these exports we would "deal ourselves out of the game" with India. On the contrary, our nuclear trade with India is but one of our many political, economic, and military ties to that country. For example, President Carter has just announced a major sale to India of several thousand TOW anti-tank missiles, a sale which would be proceeding even as the Congress held back the Tarapur licenses. Furthermore, the U.S. currently provides India $131 million in economic assistance; this assistance will continue whether or not the pending exports are approved. Thus whatever action is taken on these exports, we will hardly have dealt ourselves out of the game with India; rather, the overall level of our exports and assistance, taking into account the TOW missile sale, will probably be increasing.

13. FUTURE U.S.-INDIAN NUCLEAR TIES

Q. If this export is turned down, does that necessarily mean the end of all nuclear trade with India?

A. Not necessarily. Once rejected, the pending exports could be reconsidered next year via resubmission of the President's Executive Order as provided in the NNPA under the section on waivers for full-scope safeguards (Sec. 128). Thus, far from foreclosing further negotiations with India, we would be maintaining a basis for continued discussions in a bargaining context more favorable to the U.S. than that which now prevails.

14. INDIAN-SOVIET NUCLEAR TIES

Q. If these shipments are rejected, won't the Indians turn to the Soviets for help?

A. From a strictly legal point of view, the rejection of these shipments would not provide the occasion for the U.S.S.R. to step in as an alternative supplier of Tarapur fuel; in any event substitution of Soviet for U.S. fuel would have limited significance, as indicated below.

(a) No legal basis. Since a rejection of the pending exports under the terms proposed here would not violate the U.S. commitment to maintain the "efficient and continuous operation" of the Tarapur reactors, India could not turn to the U.S.S.R. during the next year for supply without herself breaking the agreement (which specifies that Tarapur will be operated only on U.S. fuel).

(b) Soviet controls strict. Even if at some future point Russia were to step in as an alternate fuel supplier, that country has invariably required strict safeguards and other non-proliferation controls on nuclear projects she has aided. (Recall the safeguards requirement under the heavy water contract). Indeed, the U.S.S.R. is required by her adherence to the Non-Proliferation Treaty and the Nuclear Suppliers Guidelines to require safeguards on all exported nuclear material and, under the latter document, is also committed not to undercut U.S. actions in furtherance of non-proliferation objectives. Thus, at the least, Soviet supplied fuel would be safeguarded and the Soviets might conceivably require as a condition of supply that safeguards be maintained on the U.S.-origin spent fuel now at Tarapur.

If India continues to follow a program of unsafeguarded indigenous nuclear development, there is likely to be only a limited role for the U.S.S.R. in the Indian program because of the application of safeguards to any Soviet-supplied materials or facilities.

15. EFFECT ON PAKISTAN

Q. What will be the impact on our effort to dissuade Pakistan from pursuing a nuclear weapons option if we provide the fuel for Tarapur?

A. The U.S. had ceased military and economic assistance to Pakistan in 1979 because of that nation's suspect nuclear development activities, but after the invasion of Afghanistan we had offered to lift this barrier and supply $400 million in aid. The offer was rejected and the official U.S. position, despite our recent approval of the rescheduling of Pakistan's debt, has reverted back to where it was in 1979. Permitting the Tarapur exports, particularly in light of Mrs. Gandhi's statements that future nuclear tests are not ruled out, will give rise to Pakistani claims that we have discriminated against her by using sanctions to redirect her nuclear program but taking no action with respect to India. Our effort to deter the Pakistanis from developing a weapons option will suffer accordingly.

16. IMPACT ON NUCLEAR TRADE

Q. Is support for a cutoff inconsistent with a pro-nuclear attitude?

A. No. Thoughtful advocates of nuclear energy should consider whether the future prospects for nuclear trade are enhanced in an environment in which such trade and the development of nuclear weapons are closely intertwined in the mind of the public. This suggests the importance of maintaining and building public confidence that the U.S., through its exports, is not aiding the nuclear programs of countries interested in nuclear explosions. If the public believes the U.S. is forsaking its commitment to effective nuclear export controls, including full-scope safeguards, it will be difficult to effectively dispel the trade/weapons connection, and the efforts of those seeking an end to all nuclear trade will receive a significant boost.

In this case, following the counsel of nuclear extremists on the other side who wish to see an end to effective nuclear export controls could have the unintended effect of severely damaging the industry as well as contributing to proliferation.

17. PAST MISUSE OF U.S. NUCLEAR EXPORTS

Q. Have the Indians ever misused any nuclear materials we have exported to them under a valid sales agreement?

A. Yes. The U.S. sold India 25 tons of heavy water under a 1956 sales agreement that pledged the Indians to use the material only for peaceful purposes. In 1970, the U.S. sent an aid-memoire to India pointing out that the U.S. would consider it a violation of the agreement for our heavy water to be used in a nuclear explosives program. Despite this, India proceeded to use our heavy water in the Cirus research reactor to produce the plutonium for her 1974 nuclear explosion.

The State department reaction in response to a Congressional inquiry was to first deny that any U.S. heavy water was involved, and then to recant the denial when it became obvious on the basis of computations that the Indians did not, in fact, replace all the U.S. material with their own during the period when the plutonium was produced.●

A JOURNEY BY THE STARS

HON. CECIL (CEC) HEFTEL

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. HEFTEL. Mr. Speaker, I would like to bring an article to the attention of my colleagues which I believe is inspirational and informative. In these fast-paced times when technology may seem to be taking over our lives, one often wonders if we are still capable of working in close harmony with our surroundings, or maintaining that appreciation for and understanding of our planet's natural survival aids which were of crucial importance to our ancestors.

The recent, successful voyage of the double-hull canoe Hokule'a from Hawaii to Tahiti and back again was navigated entirely by the stars, not unlike the many ocean journeys taken centuries ago bringing diverse polynesian peoples to their new home in the Hawaiian Islands. The following article by one of the Hokule'a navigators, Will Kyselka, was printed in the July Bishop Museum newsletter, Ka 'Elele, and I believe it teaches us that we have much to offer the future by calling upon our past for guidance:

HOKULE'A 1980

Can we learn the principles of noninstrument navigation by furthering our knowledge of the sea and stars; and then, with only mind and senses to guide us, make successful landfall in the Tuamotu Group or Tahiti?

This was the question that confronted us as Nainoa Thompson, the noninstrument navigator of the 1980 voyage of Hokule'a, and I prepared for the journey. Based on the assumption that basic principles of noninstrument navigation can be learned through study of the stars in the Planetarium, we spent hundreds of hours in the Bishop Museum Planetarium sailing back and forth between Hawaii and Tahiti.

This method is unique; and we have discovered several possibilities for noninstrument navigation that have never before been described in existing literature.

Other investigators of noninstrument navigation, such as Thomas Gladwin and David Lewis, sailed with some of the few Micronesian navigators who are still practitioners of the art in order to learn from them. However, cultural and language barriers make this approach difficult. Westerners think in terms of measurement, while Micronesians are most comfortable with metaphor.

In the Planetarium we observed the changes in the rising and setting positions of stars as we changed latitude. As clues to latitude, we investigated the synchronous rising of stars, meridional star pairs, and the "cut of the moon." So accurate did these methods prove to be at sea, that Nainoa was usually within 3 to 5 miles of the precise latitude.

I recall when Hokule'a cleared the Hilo breakwater on March 15, 1980 and headed out into heavy seas and a squall. For several days weather conditions concealed the stars: yet, to my amazement, Nainoa was very accurate in estimating the position of the vessel. Five degrees further south the sky cleared and that night the escort vessel Ishka received a radio message from Nainoa. "The work that we did in the Planetarium is really paying off now. The stars give me greater precision."

Knowledge of stars is an essential part of noninstrument navigation, but learning the ways of the winds, birds, and, above all, the sea, is also important. Nainoa realized this. He needed sea experience and a teacher to help him gain this knowledge. So, in March 1979, Nainoa went to Micronesia and met with Mau Piailug, who had guided the Hokule'a to Tahiti in 1976 without the use of instruments. Mau agreed to come to Honolulu. From him we learned how to read the wind, the waves, sea swells, the flight pattern of birds and the stars, integrating this understanding into the "shape of the sea and sky", central to his way finding art.

We tested our findings, in the March-June 1980 voyage of Hokule'a to Tahiti and back. Twice a day Nainoa gave his assessment of the position of the Hokule'a to Steve Somsen, the documentor aboard. Steve then radioed the data to Ishka where it was plotted to generate a course line. Nainoa determined this data relative to latitude, the reference course, direction and distance to Hawai'i, Marquesas, Tahiti and Cooks.

Hokule'a made successful landfall at Tikihau in the Tuamotu Group on April 15, 1980. The return voyage was achieved with even greater confidence. Nainoa was surprised to see that the satellite fix put his position 145 miles east of Cape Kumakahi. He had estimated 150 miles!

What we have gained from our work in the Planetarium and from the voyage of Hokule'a will have effective results. We have documented our understanding of noninstrument navigation. It is rational, efficient, and explicit in thought. Nainoa's methods are based on a set of principles that governs the relationship between various phenomena. These principles can be learned and used by others.

Certainly there must be parallels between these principles and those developed long ago by the Polynesians of old. Perhaps greater insight will be achieved by encoding the information we have attained about the stars into a Hawaiian navigational chant that might be learned by navigators who would like to repeat the venture. This might also lead to better understanding of cognitive mapping and of the metaphor in the sailing methods of the peoples of Oceania today.

oli e oli e o Hawai'i
e ulu, e oli mau na hana apau o
Hokule'a.

rejoice, rejoice Hawaii
Let it grow, let it live forever,
all the works of Hokule'a.

E o e Hokule'a (Announcing Hokule'a) a chant by Keli'i Tau'a from "The Musical Saga of The Hokule'a."●

ANTHONY CASAMENTO—MEDAL OF HONOR WINNER AND TRUE AMERICAN HERO

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. BIAGGI. Mr. Speaker, on Friday, September 12, I had the distinct honor of attending a ceremony at the White House at which President Jimmy Carter awarded the Congressional Medal of Honor to Mr. Anthony Casamento. The ceremony was one of the most moving I have ever had the occasion to attend.

As President Carter explained it, Anthony Casamento, in receiving this Nation's highest honor, received it for the performance of a deed "the kind of which makes legends." I wish to especially commend President Carter for his personal intervention in the matter which broke a 15-year stalemate despite the efforts of myself and my colleagues to see justice done. Anthony Casamento's courage has earned him a lasting place in the annals of World War II history.

It is appropriate on this day when the House has passed legislation designating October 12-19 as Italian American Heritage Week that I place into the RECORD the complete text of the President's speech of this past Friday saluting Anthony Casamento, who has made all Italian Americans proud of their heritage.

REMARKS OF THE PRESIDENT AT THE PRESENTATION OF THE CONGRESSIONAL MEDAL OF HONOR TO MR. ANTHONY CASAMENTO

THE PRESIDENT. Secretary Hildalgo, General Barrow, Mr. Anthony Casamento, beloved members of the Casamento family, this is indeed a pleasure and an honor for me as President of our nation and as Commander in Chief of the military forces of the United States of America. On August 19th, 1940, more than a year before Pearl Harbor, Anthony Casamento enlisted in the United States Marine Corps. By volunteering for service in the Marines, he proved himself to be a patriot. Two years later in the jungles of Guadalcanal, he proved himself to be a hero as well.

The deed which Anthony Casamento performed is the kind that makes legends. Because of men like him, the name of Guadalcanal has taken its place along the side of the other great battles of history in the annals of military valor. On November the 1st, 1942, in the course of an American attack, Corporal Casamento led his section to a ridge-top position, then during a series of fierce Japanese counterassaults, Corporal Casamento held firm. He fought on until all of his comrades had either been killed or were too seriously wounded to help. He fought on after he himself had been wounded, again and again. Manning a machine gun, he held out until reinforcements could reach him. He lost consciousness. He had protected more than his own position. He had secured the vulnerable flanks of the companies below his ridge and in so doing, he made possible the success of the American attack.

Corporal Casamento went beyond the struggle of most fighting men to survive. He went beyond the call of duty. He heard the call of his country and the honor of the Marine Corps and he fought on. By the time he was found unconscious by his fellow Marines, Corporal Casamento had been wounded 14 times. Since that day, for 38 years, he has carried the disability of those wounds as courageously and indomitably as he faced the enemy in 1942.

Today, the men and women of the armed forces of the United States draw strength from the same tradition and the same degree of sacrifice and service always potential for them, which was personified and is personified by Anthony Casamento.

While less dramatic, the sacrifices they make are just as important to the security and to the liberty of our nation. The kind of determination that Anthony Casamento has shown is what all of us need if we are to win the things for which we struggle—human rights for all, peace for our country and throughout the world. His valor reminds us of our nation's reserves of determination and strength and courage and his sufferings remind us of the horrors of war.

War is a terrible thing, wasting the young, destroying much that is timeless and beautiful and irreplaceable; yet it is our solemn duty to be prepared for war because that preparation is essential to the prevention of war.

In World War II, when men like Anthony Casamento performed great acts, our soldiers fought for freedom for all people. Today, we're not in the trenches or the jungles of physical combat and we thank God for it, but we're still fighting. We fight for those things for which American veterans have always fought. We are using peace to fight for peace. We are using our own human rights to gain human rights for others and we're using the strength that created this country to make this country stronger still.

This recognition of Anthony Casamento has been a long time coming, but heroism such as his is never diminished by the passage of time. He has the gratitude of a nation to which he will always be an example and an inspiration. I'd like to ask now the Secretary of the Navy to read the citation for this heroic man who has brought great credit to our nation, gratitude from us and admiration from all. [Applause.]

Secretary HILDALGO. The President of the United States in the name of the Congress, takes pleasure in presenting the Medal of Honor to Corporal Anthony Casamento, United States Marine Corps for services set forth in the following citation: For conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty while serving with Company D, First Battalion, Fifth Marines, First Marine Division on Guadalcanal, British Solomon Islands, in action against the enemy, Japanese forces on One November, 1942. Serving as the leader of a machine gun section, Corporal Casamento directed his unit to advance along a ridge near the Mantanikau River, where they engaged the enemy.

He positioned his section to provide covering fire for two flanking units and to provide direct support for the main force of his company, which was behind him. During the course of this engagement, all members of his section were either killed or severely wounded, and he himself suffered multiple grievous wounds. Nonetheless, Corporal Casamento continued to provide critical supporting fire for the attack and in defense of his position. Following the loss of all effective personnel, he set up, loaded and manned his unit's machine gun, tenaciously holding the enemy forces at bay. Corporal Casamento single-handedly engaged and destroyed one machine gun emplacement to his front and took under fire the other emplacement on the flank. Despite the heat and ferocity of the engagement, he continued to man his weapon and repeatedly repulsed multiple assaults by the enemy forces—thereby protecting the flanks of the adjoining companies and holding his position until the arrival of his main attacking force.

Corporal Casamento's courageous fighting spirit, heroic conduct and unwavering dedication to duty reflected great credit upon himself and were in keeping with the highest tradition of the Marine Corps and of the United States Naval Service. [Applause.]●

TRIBUTE TO HON. WILLIAM MOORHEAD

HON. JAMES R. JONES

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. JONES of Oklahoma. Mr. Speaker, what an honor it is for me to join my colleagues in this tribute to WILLIAM MOORHEAD. My only regret is the occasion which joins us together to heap upon him the encomiums he so richly deserves is the approach of his retirement rather than his election to yet another term in Congress. It is one of the easiest tasks we face in the House, Mr. Speaker, to praise a man such as BILL, whose record through 22 years in Congress has been so consistent and so outstanding.

When I came to this Chamber 8 years ago, BILL MOORHEAD was already a veteran with 14 years' experience under his belt. He was someone whom I looked up to, and a true public servant whose wise counsel was always available to less experienced Members, and I often sought his advice.

As a member of the Joint Economic Committee and our House Committee on Banking and Currency, BILL's opinions on fiscal and monetary policy have always been valuable to me. He has combined superior legislative skills, finely honed for over two decades, with a large dose of commonsense and total commitment to public service. The result has been sterling representation for the 14th District of Pennsylvania, and outstanding service to his State and Nation. His talents and friendship will be sorely missed in the House of Representatives. Although I know his commitment to public service will not end with his service in the House, I hope he is able to enjoy the fruits of the retirement he has so ably earned.●

TRIBUTE TO HON. BILL MOORHEAD

HON. HAROLD T. JOHNSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. JOHNSON of California. Mr. Speaker, the opportunity to make a few remarks about the quality and quantity of the achievements of our honorable colleague, BILL MOORHEAD, is a welcome one indeed.

Far from welcome, however, is the thought of bidding farewell to the dedicated Member from Pennsylvania, whose thoughtfulness and boundless energies will be sorely missed.

BILL and I came to Washington in the same year—1959.

In the years since, he has brought keen perception and diligence to a wide variety of legislative endeavors.

BILL has concerned himself with issues in the realm of national and international economics, foreign aid, and military operations abroad.

His Subcommittee on Economic Stabilization was responsible for the synthetic fuels bill in 1979, legislation in which I also had particular interest.

BILL helped establish the National Foundation on the Arts and Humanities, in one of his first major contributions to this country as a Member of the House of Representatives.

Although I have never had the pleasure to serve on the same committee with BILL, I am particularly aware of his legislative leadership through the work he did as chairman of the Foreign Operations and Governmental Information Subcommittee, where he took over from our former colleague from California, John Moss.

John had nothing but praise for his successor.

In BILL MOORHEAD's 4 years as chairman of that subcommittee, he was instrumental in drafting significant amendments to the far-reaching Freedom of Information Act which John Moss had originated.

BILL MOORHEAD went on to create an important corollary piece of legislation, the Federal Privacy Act.

BILL is a humane man, fair and judicious.

We will miss him.●

SOUTH AFRICAN EDITOR CALLS FOR INTERNATIONAL PLAN TO END APARTHEID

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. DRINAN. Mr. Speaker, in a recent Washington Star column, a distinguished editor of the Johannesburg Post, Percy Qoboza, reminds us of the global dangers of a civil war in South Africa. In so doing, he warns us in the Congress that we have a vested interest in pressing for a peaceful resolution to the injustices perpetrated by the apartheid policies of the South African Government. I believe his suggestion that the international community take the initiative in formulating a program to end apartheid is a good one. Mr. Qoboza's analysis of the current political climate in South Africa is deserving of our attention, and for this reason I am reprinting the article in the RECORD. The article from the Washington Star dated September 5, 1980, follows:

IN SOUTH AFRICA: THE REAL TRAGEDY OF APARTHEID

(By Percy Qoboza)

A special session of South Africa's Parliament is due to meet at the beginning of October. This is the second time in living memory that Parliament has had to be reconvened. The last time was amidst a growing crisis brought about by World War II and further complicated by Afrikaaner resistance to South Africa's fighting on the side of the Allies.

Next month's session is also necessitated by a crisis. The government is going to forge ahead with new constitutional proposals within the apartheid structure, in spite of massive rejection of the new constitution by the country's blacks, Asians, people of mixed blood and the official white opposition party in Parliament. The new constitutional proposals provide for a State President's Council. Originally, the Council envisaged by the government provided for whites, coloreds and Asians to belong to one body. Blacks would form another.

Both Asians and coloreds rejected the plan and insisted that they would only participate if blacks were included. Last month, Prime Minister Pieter Botha summoned tribal leaders—officially named homeland leaders—to solicit their support. They also rejected the formation of a separate body divided along racial lines. Soon after, an angry Botha announced that plans to form a separate black council have been scrapped. New negotiations, he announced, will be initiated but meanwhile the government would proceed with its own all-white Council.

THE GROWING CRISIS

These developments underline the growing crisis facing that nation as pressure from both an angry black population and a weary international community continue to pile on the South African government. The government is not unmindful of the forces at work. In the last year, a massive propaganda plan was unfolded in which the ruling party attempted to create the impression that serious and radical change was taking place in that country.

The plan, led by such cabinet ministers as Piet Koornhof, was kicked off right here in Washington when Koornhof told an American audience that apartheid was dead. Given the dynamics—or lack of them—of the South African situation, this was a radical thing to say, especially by a ruling party leader. The statement seems to have made an impression on many people here. The only problem is it made very little impact on the black communities in South Africa and the continent of Africa.

Their reaction to Koornhof's "apartheid is dead" statement was that, if it were true, hurried funeral arrangements must be made. For all purposes, the body was still around and was creating a terrible political health hazard. It's slightly more than a year since this statement was made and until last week, when I left South Africa, apartheid was still alive and well, continuing to play havoc with the lives and security—and the future—of millions of South Africans.

When South Africans talk of change, people must not make the basic mistake of reading too much into that statement. Change in South Africa means a little window dressing here, an adaptation there and a little easing up around the corner. But the basic structures of apartheid remain intact. The philosophy is not tampered with. The deep hurt and humiliation perpetrated against the blacks of the country remain as vicious and ungodly as ever. Coercion rather than negotiation remains the order of the day.

As the levels of resistance against the apartheid system continue to plague the government, so does the government's determination to maintain the system. Outside of the Iron Curtain, there is perhaps no nation that so closely regulates its citizens' lives as South Africa.

PRESS AND STATE

Security legislation in that country is unprecedented in Western democracies. Imprisonment without trial—not of criminals but of political opponents—has become a fact of life to those who dare to stand up for what they believe is right and just. Skirmishes with a courageous and consistent English-speaking press have become the government's favorite pastime. A "commission on the media" is presently sitting and there is no doubt that the commission is merely an excuse to introduce further restrictions on an already restricted press.

For many Southern Africans, therefore, next month's special session of Parliament is just another in a string of academic exercises. It does not solve the problems but merely compounds them. It's another attempt to force down the throats of blacks another solution worked out by whites.

Given the levels of anger, impatience—and the almost fanatical dedication to overthrow the system reigning in the black community—one would have thought genuine attempts to come to grips with our problems would be No. 1 on the program for reform. Instead, the government continues to indulge in irrelevancies while increasing the power of vigilance of the police force and spending by far the largest slice of the national budget on purchasing arms.

The result of this intransigence on the part of the government has had the tragic effect of giving violence the credibility it does not deserve. Those black leaders who still believe in a nonviolent transformation of our society are becoming an extinct species, most of them about to be delegated to the political museums of the country.

The real tragedy is that when the final blow-out hits South Africa—and now it is only a matter of time—then the whole of Southern Africa will be engulfed in the bloodiest of conflicts. This carries with it frightening prospects for the international community. This is why South Africa's case has long ceased to be an internal problem. There are things happening within that nation that spell danger to the entire world. A global solution to apartheid has therefore become urgent.●

RESOLUTION 463 OF THE VETERANS OF FOREIGN WARS

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. McDONALD. Mr. Speaker, the Veterans of Foreign Wars of the United States, during its 81st national convention in Chicago, Ill., August 15-21, 1980, passed "Resolution No. 463." This resolution pointed up the need to reestablish our Nation's internal security. The activities of terrorists, Soviet spies, certain so-called Iranian students, and Cuban intelligence agents all point up the great need for these actions. As regards a House Committee on Internal Security, I have introduced a measure, House Resolution 48, to do just that; 156 Members of Congress have joined me in this measure. It is needed now more than ever.

The text of the VFW resolution follows:

RESOLUTION NO. 463

Whereas the perfidy and continued dedication to world-wide domination by the Soviet Union is well known and has been for some sixty-two years; and

Whereas the House and Senate of the United States formerly enjoyed the services of special committees to oversee subversion, terrorism, spies and far left-wing militants, and the like; and

Whereas the Justice Department of the United States Government formerly has an Internal Security Division, which was abolished; and

Whereas the obvious necessity for reestablishing all three of these useful governmental instruments for the control of our internal security is apparent; Now, therefore, be it

Resolved by the 81st National Convention of the Veterans of Foreign Wars of the United States, That we urge the immediate reestablishment of the Senate Subcommittee on Internal Security, the House Internal Security Committee, and the Internal Security Division of the Justice Department.

Adopted by the 81st National Convention of the Veterans of Foreign Wars of the United States held in Chicago, Illinois, August 15-21, 1980.●

H.R. 8123, THE SMALL BUSINESS INVESTMENT ACT OF 1980

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. FISHER. Mr. Speaker, it is becoming increasingly evident that a significant part of the next major tax cut bill will focus on business in general and small business in particular. This is appropriate in light of the contribution which small business has made to our gross national product and in light of the fact that in the past it has provided more than half of the new jobs and technological advancements in the private sector. This is essential because at the present time small business is in desperate need of investment capital not only to expand and grow, but merely to survive.

Earlier this year, the first White House Conference on Small Business was held, and it offered many suggestions for new legislation to help small business. I have reviewed those recommendations touching on tax policy and yesterday introduced the Small Business Investment Act of 1980, which incorporates many of them. A similar bill has been introduced in the Senate by Senator NELSON, who is chairman of the Senate Select Committee on Small Business. As a member of the Ways and Means Committee and of the House Small Business Task Force, I will push in the House for the serious consideration of these proposals during the deliberations on any major tax cut bill. They represent a tight yet comprehensive package designed to encourage investment in small business. I urge my colleagues to review this package carefully. With this in mind, I have prepared the following summary of this bill.

Section 1 designates the short title of this bill as the "Small Business Investment Act of 1980."

Section 2 increases the number of permissible shareholders in a subchapter S corporation from 15 to 25. This section is intended to promote investment in electing small business corporations or subchapter S corporations. The legal effect of a subchapter S election is that it permits a business which is organized as a corporation to be treated as a partnership for Federal income tax purposes. One of the consequences is that operating losses from the business can be passed through the corporate entity to individual shareholders. These losses may be entered on individual tax returns as an offset to other income.

The development of new small businesses may take 5 to 10 years. During these formative years, there usually are major expenses for activities such as product development and marketing. The subchapter S structure is compatible with this business formation pattern where losses can be utilized by investors and the business can raise needed capital. The subchapter S structure has considerable potential for assisting new and small businesses to raise the capital they need to generate new jobs, increase sales, and create new products and greater competition.

Section 3 eliminates the requirement that businesses file a midyear W-2 form for employees who leave the business. Present law requires that whenever a worker leaves a job during the year, a W-2 wage report must be issued to him. A change in this law along the lines which I have recommended would save the business community $300 million and not cost the Treasury anything. Small businesses with tight cash flow situations would particularly benefit. Under this section, the W-2's would be issued once, at the end of the year, for all employees. Those having special needs to obtain the form earlier could do so by request.

Section 4 would allow for the issuance of small business participating debentures. They would be a vehicle by which investors could share in the profits of a company, but operating control would remain solely with the company. The SBPD would be issued as a general obligation of a qualified small business and would bear a stated rate of interest, have a fixed maturity date and provide for the payment of a share of the company's earnings to the investor. Distribution of earnings would be treated as long-term capital gains for the investor. Qualified businesses would be able to deduct such payments as interest expenses. A small business would qualify to issue SBPD's if they have less than $25 million in equity capital, less than $1 million in outstanding SBPD's and no outstanding securities subject to SEC regulation. This new debt instrument could only be issued by domestic businesses.

Section 5 would permit employees to take stock options in lieu of salary without an immediate recognition of income. To attract and retain key employees, a small business will frequently desire to provide its key personnel with a share of the business. Under current law, however, if stock is awarded to an employee or is sold to him at a bargain price as compensation for services, the market value of the stock—or in the case of the bargain sale, the difference between the market price and the bargain price—will be taxable to the employee in the year of receipt or purchase at ordinary income rates. Moreover, resale restrictions imposed by Federal and State security laws often prevent the use of the stock to raise cash to pay the tax. Stock options may be awarded to avoid a current tax, but the problems for the employee are merely postponed. Not only does the eventual exercise of the option require a cash expenditure by the employee, but if the market value of the stock has increased, the employee will also be required to pay tax at ordinary income rates on the difference between the amount paid upon exercise and the fair market value of the stock at the time of exercise.

This section provides that a stock option which is granted to an employee would be taxed at capital gains rates when the employee sells the stock. It will allow small companies to attract talented managerial staff at a modest cost.

Section 6 would increase from $150,000 to $250,000 the amount of accumulated earnings that a business may retain. The increase would be phased in over 2 years. In 1981 the amount would be increased to $200,000, and beginning in 1982 the amount would rise to the full $250,000.

Under current law, a tax is imposed on corporations improperly accumulating surplus earnings and profits beyond the reasonable needs of the enterprise. This is a penalty tax, rather than a normal corporate tax on income. Basically, a corporation is allowed a safe harbor rule whereby it may accumulate up to $150,000 in earnings and profits before the penalty tax is imposed. The current amount of permissible accumulated earnings was established in 1975.

During the past 5 years, inflation alone has increased the cost of doing business by approximately 40 percent. This indicates that the amount of permissible accumulated earnings should be raised to a minimum of $210,000. This proposal would increase the amount to $250,000 to take into consideration future inflation. It would be particularly helpful to small innovative businesses which require substantial amounts of capital investment in the early startup years.

Section 7 would increase the amount of used equipment eligible for the general 10-percent investment tax credit from $100,000 to $200,000. The increase would be phased in over 2 years. In 1981 the amount of equipment eligible for the investment credit could be $150,000 and beginning in 1982 the amount would be increased to $200,000.

This section, therefore, simply doubles the amount of used machinery eligible for the investment tax credit. In comparison, the amount of new machinery eligible for the investment credit is unlimited. This proposal would adjust the used machinery allowance for the inflation induced increase in the cost of capital equipment that has occurred since the existing allowance was enacted in 1975. It is also intended to provide flexibility to cover anticipated future inflationary increases. Many small businesses start out by purchasing one or two used machines. New and small firms simply cannot afford to purchase sophisticated new equipment. The savings resulting in this proposed change in the law can be used for additional purchases and to meet cash flow requirements.

Section 8 would prevent the retroactive application to the year 1979 of the IRS Revenue Ruling 80-60. Under this section, the ruling would only apply to taxable years beginning after December 31, 1979.

Section 9 would allow bus operators engaged in intercity, charter, local, and special operations a special exemption from the 4-cents-per-gallon Federal excise tax imposed on diesel and other special motor fuels. Currently these operations must pay the tax and then file for a refund. The current procedure contributes to a cash flow problem and additional paperwork to the bus industry.

Section 10 would allow taxpayers to defer the capital gains tax on the sale of an interest in a qualifying small business, provided that the proceeds from the sale are reinvested in another small business within 18 months from the date of the sale.

Present laws encourage those who own an interest in a small business to sell out to large companies because the acquiring company may exchange its stock for stock of the small business.

The entire transaction is tax free under present law. The small businessman who sells out may defer the immediate payment of capital gains until he ultimately sells his new stock. This same advantage is unavailable if the small businessman sells his business for cash to another independent businessman. In this case he must pay an immediate capital gains tax on the sale.

This proposal would provide greater incentives for reinvesting in small businesses. It would allow anyone owning an interest in a small company with a net worth of $15 million or less to sell that interest for cash, reinvest that money in another small business and defer any capital gains tax on the sale until the proceeds are taken out of the small business and not reinvested within an 18-month period.

Section 11 would change the corporate tax rate with particular emphasis on small business. After a transitional period, the rate structure would be lowered to 15 percent on the first $50,000 of income, 30 percent on the amount between $50,000 and $100,000 of income and 45 percent on the amount over $100,000 of income. This change in the current tax law focuses on smaller businesses in recognition of

the fact that the changes in the laws governing depreciation, which have been proposed and will probably eventually be enacted, will primarily benefit larger businesses.●

INDIANA FOURTH DISTRICT STUDENTS VIEW GOVERNMENT IN ACTION

HON. DAN QUAYLE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. QUAYLE. Mr. Speaker, it is my privilege to welcome to the Nation's Capital this week the fourth group of Fourth Congressional District students from Indiana. Mr. Speaker, these students were selected on a nonpartisan, competitive basis, and I commend them for their success and enthusiasm.

Their education is being enhanced this week by seeing government in action, and I hope their interest in becoming involved in the governmental and political process will be stimulated by their Washington experience. Our young people truly are the most valuable resource of this Nation.

I would like to thank my colleagues in the House, Minority Leader JOHN RHODES, Congressmen PHIL CRANE, JACK KEMP, and TOM DOWNEY, and you, Mr. Speaker, for clearing time from a busy schedule to share views with these Hoosier students. I also appreciate the time taken by Indiana Senators BIRCH BAYH and RICHARD LUGAR to meet with the students.

This program was created 4 years ago to stimulate increased student interest in government. This weeklong inside look at Washington is aimed at creating a greater awareness of government and to encourage them to become participants and not just spectators in governing ourselves.

Incidentally, the program is made possible through the contributions of interested individuals and firms in the Fourth District through a nonpartisan, not-for-profit organization.

The following students are this year's participants:

Cindy Reynolds, Fort Wayne Christian School; Laura Stutzman, Woodland High School; Patricia Clark, South Side High School; Julia Kennedy, Carroll High School; Mari Rose Zenk, Eastside High School.

Jenny Gray, Freemont High School; Laura Mirely, Lakeland High School; Lisa Spear, Churubusco High School; Elaine Westrick, Whitko High School; Sherry McCurley, Huntington North High School.

Connie Peebles, Southwood High School; Ron Mader, Paul Harding High School; Jerry Bowman, Wayne High School; Tom Pilchak, Elmhurst High School; David Hosler, Leo High School.

Tim Buell, Hamilton High School; Mike Schoenle, Bishop Dwenger High School; Casey Miller, West Noble High School; Scott Perry, Central Noble High School; and sponsors Mr. and Mrs. Jim Waffle of Fort Wayne.

Again, Mr. Speaker, it is my honor to welcome these students.●

CAPTIVE NATIONS WEEK

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. DERWINSKI. Mr. Speaker, Captive Nations Week, held annually during the third week in July, gives us a chance to recognize the courage and persistence of those peoples who today still search and fight for their own freedom that has been suppressed by the policies of the Communist rulers.

I wish to insert several news reports on this year's commemoration of Captive Nations Week. The first article comes from the Chattanooga, Tenn., News-Free Press, which is followed by a letter to the editor of the Pittsburgh, Pa., Press. News reports on the various rallies appeared in the Klamath Falls, Oreg., Herald and News and from the San Francisco Chronicle. These articles follow:

[From the Chattanooga (Tenn.) News-Free Press, July 26, 1980]

CAPTIVE NATIONS WEEK

Not many realize that we are in the midst of "Captive Nations Week 1980," but it's an event worth thinking about.

We usually think of the Captive Nations as being in Eastern Europe near the great captor—the Soviet Union. But there is a new series of captive peoples inside Southeast Asia, including Vietnam, Laos and Cambodia. Cuba, which is also under the domination of the Soviets, should be included on this list.

Rep. Donald Ritter, a Republican from Pennsylvania who has taken a special interest in this subject, helps define the issue. "Wherever Soviet-style Communism and Soviet power extend themselves you find the tragedy of captivity."

Rep. Ritter makes this statement, "I am very much concerned about the quality of the people called on to make our policies and deal with the Soviets. You get people who have studied things in the abstract, but have never seen a person lying, beaten, on the floor of a Soviet cell.

"Many policymakers don't understand the blood; they don't understand the tears. They don't understand what it means to be beaten or persecuted for having written a political satire, for being a religious person, for wanting to see your country free.

"They don't really believe those things go on as the formal policy of the Soviet government.

"What we need is an infusion, a real infusion, of the experience of our American ethnic communities who have seen this, who have experienced it, and who have studied history—people who know where the Communists have been, what they have done, and where they are going.

"Let's hear the voices of those who really know what it means to fall under Soviet domination. The change for the better would be dramatic."

That's the message of Captive Nations Week.

[From the Pittsburgh (Pa.) Press, July 18, 1980]

(By Anne Burdick)

CAPTIVE NATIONS LIST STILL GROWING

President Carter has designated this week as Captive Nations Week.

In the 63 years since the first communist takeover, in Russia, the communist have succeeded in taking 63 countries, an average of one per year! Unfortunately, 1980 will be no exception, with Afghanistan virtually controlled and several Central American countries under attack.

It has been said that a perspective of the world today does not exempt the United States from future control by communism, that the infiltration and forces of communism have never been stronger, and that communism finds in religion today invaluable allies in its quest for world domination.

Let us listen to the heroic fighters for human rights and freedom who know whereof they speak, such as Alexander Solzhenitsyn, Andrei Sakharov and others, who are challenging tyranny.

Let us observe this week with appropriate ceremonies and renew our dedication to the cause of all people who seek freedom, independence, and basic human rights, with special remembrance of our American hostages in Iran.

[From the Klamath Falls (Oreg.) News, July 21, 1980]

SF RALLY, AIMED AT RUSSIANS

SAN FRANCISCO.—More than 100 anti-Soviet demonstrators burned red flags and bombarded the Russian Consulate with eggs Sunday to protest what they said was the execution of 15 Lithuanian soldiers in the Soviet Army after they refused to shoot civilians and prisoners of war in Afghanistan.

After the demonstration, a noisy motorcade of cars went to a noon rally at Union Square where representatives of a dozen nations gathered for "Captive Nations Day," which was held as Olympic competition began in Moscow.

Among the protesters were refugees from Vietnam and Eastern Europe.

"Captive Nations Day" is proclaimed by Congress every year in July for refugees and descendants of people in countries under Soviet domination.

Sayed Nasir, an Afghani refugee from San Diego, told the rally, "We are here because the Afghani people have been robbed, killed, and molested not by the hundreds, but by the millions . . ."

[From the San Francisco (Calif.) Chronicle]

ANTI-SOVIET THEME IN S.F. DEMONSTRATIONS

(By Bill Soiffer)

More than 100 anti-Soviet demonstrators burned red flags and threw eggs at the Russian consulate in San Francisco yesterday to protest what they said was the execution of 15 Lithuanian soldiers in the Soviet Army who had refused to shoot civilians and prisoners of war in Afghanistan.

After the demonstration at the consulate, a motorcade of 50 horn-honking cars led by a hearse went to a noon rally at Union Square. There protesters from more than a dozen countries gathered to remember Captive Nations Day and decry the opening of the 1980 Olympics in Moscow.

Refugees from Vietnam and Eastern Europe chanted, "Nyet, Nyet, Soviet," and "Down with the Communists." They carried signs that read, "No Human Rights in Vietnam," and "Stop Soviet Aggression."

Captive Nations Day is proclaimed by Congress every year in July for refugees, and relatives of persons in countries under Soviet domination.

"We are here because the Afghani people have been robbed, killed, and molested not by the hundreds, but by the millions," the Union Square rally was told by Sayed Nasir, an Afghani refugee from San Diego.

Saturday night, 15 Lithuanian-Americans carrying black flags staged a sit-in at the Soviet Consulate at 2790 Green Street and were ordered to move by police. No arrests were made at either demonstration or the rally.

Antanas Mazeika, spokesman for a group called Lithuanian Americans to Protest the Afghanistan Invasion, said the demonstrations were being held because of the executions last January of 15 Lithuanian soldiers who were impressed into the Soviet Army and refused to kill Afghani civilians and prisoners of war. He said the executions were recently made known through Austrian press reports, and were confirmed by the U.S. State Department.

"We have to wipe out the Soviet cancer in humanity," Mazeika told the crowd of more than 200 persons at the Union Square rally.

The crowd heard speeches denouncing Soviet aggression from the leaders of the Captive Nations Committee of Northern California.

According to the demonstrators, the Russians made a formal protest to the State Department over the flag burning and egg throwing at the consulate. No one at the Soviet Consulate could be reached for comment.

[From the San Francisco (Calif.) Chronicle, July 28, 1980]

IT'S NOT RUSSIA

(By B. Korolyshyn)

I think that it's time that you and the American news media in general stopped referring to Ukraine, Latvia, Uzbekistan, etc. as Russia and their citizens as Russians. It is rather enigmatic that on the same page in the July 21 edition of your paper you have one article devoted to a Captive Nations Day demonstration and right next to it you put an Associated Press article about a Ukrainian family that is divided about returning home to Ukraine but entitle it "Boy, 12, Fighting His Parents Over Going Back to Russia"; a direct slap in the face to the Ukrainian people, one of the founders of Captive Nations Day.

Ukraine is not in Russia, it is a constituent republic of the Soviet Union, as is Russia, and is a member state in the United Nations. And no, the Ukrainians don't want the Russians in their country any more than do the Afghanistanis and they've shed much more blood fighting them.

I can assure you that Mr. Polovchak has no desire to go to Russia. What his heart yearns for is Ukraine. Despite Soviet Russian oppression, Russification, and discrimination, he will be among his own people, Ukrainians, and will be able to raise his family in an environment relatively free from pornography, excessive and perverse sexuality, race riots, mammonism, drug abuse, big city crime and violence, etc.

The Polovchaks find themselves between a rock and a hard spot; either way they go they will be among slaves. In one country among slaves of sin and in the other slaves of a foreign power.●

THE FIRST UNITED CHURCH OF CHRIST CELEBRATES 125TH ANNIVERSARY

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. LUKEN. Mr. Speaker, on Sunday, September 21, the First United Church of Christ will celebrate its 125th anniversary with a dinner. The celebration will continue with a reception for the members and their guests after the morning services on September 28, 1980.

The church was founded in September 1855, when George Godelman, John Suelau, and William Poppe led a meeting of the German Protestant people of the Cumminsville community to discuss the organization of a Christian church. The following October, the congregation constructed its first house of worship.

This founding congregation consisted of 16 individuals. From these humble beginnings, the church has grown and prospered to the present membership of 1,200 believers, and now worships in a building which includes a fellowship hall and the Gudberlet gymnasium.

The First United Church of Christ has a rich heritage of community service. On the first Thursday of each month the church sponsors a noontime meal for roughly 250 senior citizens of the community. An emergency food pantry is also kept stocked by the members, always open to help feed the area's needy and transient people.

In addition, the church sponsors blood banks, CPR seminars, and a multitude of other community services.

In addition to its community outreach, the church supplements its active spiritual life with activities for the members of the congregation, including a growing Sunday school program, the church choir and handbell choirs, Sunday coffee hours, Christmas family nights, and picnics.

Mr. Speaker, I am delighted to take this opportunity to congratulate the congregation of the First United Church of Christ of Cincinnati, so ably led by Rev. Jim Lahman and church president William Henrich, for 125 years of dedicated service to God, to its membership and to the community. I would especially like to congratulate those faithful members who will be honored for 65 or 50 years of consecutive membership.●

NEW RESTRICTIONS ON SOVIET JEWS SEEKING TO EMIGRATE

HON. ANTHONY TOBY MOFFETT

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. MOFFETT. Mr. Speaker, many Members of the House and the Senate have adopted refuseniks—Soviet Jews who are repeatedly denied exit visas—and have sought to assist them in their efforts to emigrate. I, for one, have been hopeful that my refusenik—Isaak Shkolnik—would soon be able to join his wife and daughter in Israel, as he has completed his 7-year prison term. But I was shocked today, and deeply saddened, by two events: First, an article in the Washington Post by Kevin Klose, entitled "New Bars Seen to Emigration by Soviet Jews," and second, word that Isaak Shkolnik had once again been denied an emigration visa.

Congress can react to the Soviet Union's new, incredibly repressive emigration policy in a number of ways. For one, we can make sure that it is a topic of discussion at the upcoming Madrid conference. We can continue to contact Soviet authorities on their human rights policies. But it is clear that the Congress must take bolder, louder steps. During the next few days, I will be studying our options for combating the Soviet Union's harsh emigration restrictions. In the meantime I submit the following article for my colleagues' perusal:

NEW BARS SEEN TO EMIGRATION BY SOVIET JEWS

Moscow, Sept. 16.—Soviet authorities have introduced new restrictions on Jews seeking to emigrate, according to well-informed sources.

Activists now say that Soviet authorities in the major Ukranian city of Kharkov, considered by many Jews here to be a bellwether of Soviet emigration policies, are refusing to reconsider the case of any Jew who has once been denied permission to emigrate.

The new practice of barring reapplication represents a stark departure from longstanding Soviet policy of allowing so-called refusednikes—Jews prevented from emigrating chiefly because they allegedly possess state secrets—to reapply for a visa every six months. In many instances, repeat applicants eventually have been allowed to leave, although some have had to wait years.

The activists said in recent interviews that anyone turned down for emigration now must sign a declaration asserting he has been "warned that I have been refused (emigration permission), that my refusal is final, and that I have no right to reapply. I must get a job in a month."

The Kharkov activists, Yevgeny Chudnovsky, David Soloveichik, Yuri Tarnopolsky and Alexander Paritsky, estimated that some 500 families there have been refused exit visas in the past year and only a handful allowed to leave. The men say they believe the crackdown in Kharkov, which survived as a traditional cultural center for Ukrainian Jews until after World War II despite Stalinist repressions and a Nazi massacre, may be motivated in part by rising Soviet fears of a "brain-drain."

Western analysts of the mass exodus of more than 200,000 Soviet Jews from the land of their birth in the past decade say the emigres are drawn largely from better-educated sectors of Soviet society.

Yet recent figures available in the West also show that the Soviets have steadily shut the emigration tap this year, a probable reflection of the chill on East-West relations in the aftermath of the Afghanistan invasion. While more thn 50,000 Jews were allowed to leave last year, a record, so far in

1980, about 15,000 have been allowed to leave during the first eight months.

Part of that sharp decline is attributable to the Moscow Olympics, when visa officials were processing tourists. But early reports for September indicate that not more than 1,500 are likely to be allowed to leave this month, matching the pre-Olympic record low of 1,500 for June.

"There is no incentive for them to increase the amounts," one activist said.

So far, Moscow activists say, no similar ban on reapplication for visas has been imposed by regional emigration officials elsewhere in the country. Yet Kharkov and Odessa, another major Ukrainian city, were the first places last year to begin systematically using a much tighter definition of family relations to allow Jews to qualify for family reunification abroad.

Prior to that time, the Soviets frequently allowed relatives as distant as cousins and nephews and nieces to emigrate. That has largely been ended, with the officials insisting that only parents, children, siblings and spouses can be considered under the reunification provisions of the 1975 Helsinki act, which spurred Jewish emigration.

Some Westerners had speculated that the Soviets, faced with the Madrid conference in November to review compliance with the Helsinki accords, might suddenly allow a sharp rise in emigration to improve its image and standing among the 34 other signatory powers. Yet that seems unlikely now in the view of observers here.●

KIM DAE JUNG FACES DEATH IN SOUTH KOREA

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. BONKER. Mr. Speaker, as expected, after a show trial, Kim Dae Jung, who has dedicated his life to the task of restoring freedom and democracy in Korea, was sentenced to death today by a South Korean military court. The charges against him have been characterized by the State Department as "farfetched."

We must continue to indicate to General Chun—the self-proclaimed President of Korea—that the death of Kim Dae Jung will not bring domestic tranquillity and economic progress to that troubled land. If anything, it will only help to facilitate General Chun's alienation from the Korean people. Furthermore, it will be increasingly difficult to justify to the American people the continuation of our close relationship.

The crime of Kim Dae Jung was to advocate free elections, a government with broad popular support, an end to martial law, and the return of the military to the barracks.

By law General Chun has the power of reviewing the death sentence. He must know that Kim's death will not serve any purpose. Force should not be the answer to legitimate dissent. Discontent in South Korea will not disappear until all Koreans are assured the full protection of their basic human rights and a fair voice in their Government.

By commuting Kim's death sentence the general will signal the world his willingness to return Korea to the ranks of the civilized world where reason prevails over force. Surely General Chun knows that the stability of the Korean Government, indeed its security, as well as our own, is dependent on domestic tranquillity, which can only be achieved by a broad national consensus.●

ANDREI SAKHAROV CALLS FOR A CONCERTED EFFORT IN MADRID ON BEHALF OF HUMAN RIGHTS

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. DRINAN. Mr. Speaker, as the preliminary meeting to the Second Review Conference of the Helsinki Final Act opens in Madrid, we are again reminded of the actions of the Soviet Government earlier this year when they illegally exiled Nobel Peace Prize winning physicist Andrei Sakharov. Compliance with the Helsinki Final Act, which will be the subject of the Madrid Conference when it formally begins on November 11, was clearly and unequivocally violated when Dr. Sakharov was removed from his Moscow apartment and told he could not leave his "new" home in Gorkey.

In a brilliantly worded statement which appeared in yesterday's Boston Globe, Dr. Sakharov comments on the meaning of the Helsinki accords in the context of international security and confidence. Dr. Sakharov urges all nations to fully examine their own record of compliance, and he states that, in the case of the Soviet Union and Eastern Europe, the situation has grown worse. In closing, he offers an appeal for his son's financee who is waiting anxiously to emigrate.

I urge all Members to read the following article by Andrei Sakharov which appeared in the Boston Globe, September 16, 1980:

THE FUTURE OF HUMAN RIGHTS

(By Andrei Sakharov)

The historic significance of the Helsinki Accords, the subject of a conference opening today in Madrid, lies in its affirmation of a crucial principle: International security and confidence are linked to respect for human rights.

The most complete statement of this idea is contained in the Final Act of the Accords, which commits the participating states to fulfill all the provisions of the International Covenants on Human Rights and of the Universal Declaration of Human Rights.

These provisions include guarantees for freedom of opinion and information, freedom to choose one's country of residence (and not just within the context of family reunification), freedom to choose one's domicile within each country, freedom of religion and freedom of association.

The Helsinki Accords also acknowledged the right of the participating state to monitor each other's compliance; such monitoring is regarded not as intervention in internal affairs but rather as a contribution to international security and confidence.

The Final Act marked a new stage in the formulation of an international ideology of human rights. Unfortunately, its principles have not been put into practice in a satisfactory fashion. I suppose that human-rights violations have occurred in many countries, including Western countries, but I shall speak about what I know best—the situation in the Soviet Union and in Eastern Europe.

The observance of fundamental civil and political rights in these countries has not simply failed to improve over the past five years; the situation has grown worse. Repression against groups organized to promote observance of the Final Act constitute the most brazen and challenging example of violations that demand from the participating states an unequivocal, uncompromising response—effective actions not limited to verbal protests.

More than 40 members of the Helsinki watch groups are imprisoned. Many others also have been arrested; individuals who, although not formally members of the Watch groups, worked to promote the exchange of information and the defense of human rights as contributors to "samizdat" news magazines or journals of opinion, as participants in the movement for freedom of religion and freedom of emigration, or in other ways. The governments, nongovernmental organizations and concerned citizens of the participating states are under an obligation to defend all such victims of repression.

Peace in the world is indivisible. The consequences of any deviation from this principle only confirm its truth. Therefore, I cannot agree with those who consider the Soviet invasion of Afghanistan an event unrelated to security in Europe. I also cannot agree with those who suggest a boycott of the Madrid conference as a response to Soviet actions in Afghanistan or to the increased repression of dissenters.

I believe that the participating states should use the opportunity offered by the Madrid conference to further a political settlement in Afghanistan, which must provide for the withdrawal of Soviet troops and international guarantees of peace, neutrality and free elections. The participating states should also promote the release of prisoners of conscience in the Soviet Union and Eastern Europe, and in western countries as well if people are imprisoned who have not used or advocated violence.

The critical international situation requires that the participating western states coordinate their tactics and pursue their goal with more determination and consistency than at Belgrade. The Helsinki Accords, like detente as a whole, have meaning only if they are observed fully and by all parties. No country should evade a discussion of its own domestic problems, whether they be the problems of Northern Ireland, the Crimean Tartars or Sakharov's exile (here I am speaking objectively). Nor should a country ignore violations in other participating states. The whole point of the Helsinki Accords is mutual monitoring, not mutual evasion of difficult problems.

I wish also to mention a personal matter. My illegal exile to Gorky last January attracted worldwide attention. I appeal to all who expressed concern at that time: Help our son's fiancée, Elizaveta Alexeyeva, receive permission to leave the Soviet Union. I appeal in particular to both government and private people who may meet with Soviet leaders. Liza's fate, the lengthy separation of two people who love one another, has became a means of pressure on me. This is a strictly personal matter, with no connection whatsoever to interests of state. I do not know what the authorities have in mind for the future, but the affair is already tragic. I am hoping for assistance in this very concrete problem that is so important to me.●

REPUBLICANS SUPPORT REVENUE SHARING

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. SHUSTER. Mr. Speaker, yesterday the House Republican Policy Committee adopted a formal policy statement in support of H.R. 7112, the Local Government Fiscal Assistance Amendments of 1980. This is only appropriate, Mr. Speaker, since revenue sharing is a concept conceived by, born under, and nurtured by the Republican Party. Unfortunately, Mr. Speaker, the bill as reported by committee, and as supported by the Carter administration, completely deletes revenue sharing for State governments. The Policy Committee, therefore, also endorsed an amendment to be offered on the floor of the House, and sponsored mainly by Congressmen JACK WYDLER and BARBER CONABLE, which will restore the State share of the revenue-sharing program for fiscal years 1982 and 1983.

Mr. Speaker, I am attaching the full text of the committee statement so that my colleagues may more fully understand the importance of revenue sharing and the reasons behind the policy committee's action.

REPUBLICAN POLICY COMMITTEE REAFFIRMS SUPPORT OF REVENUE SHARING

"We will continue to press for the enactment of General and Special Revenue Sharing * * * a means of returning to the people powers which for 40 years have grown increasingly centralized in the remote Washington bureaucracy." (Republican Platform—1972).

"Revenue Sharing is an effort to reverse the trend toward centralization. Revenue Sharing must continue without unwarranted federal strictures and regulations." (Republican Platform—1976).

"Block grants and Revenue Sharing provide local government with the means and flexibility to solve their own problems in ways most appropriate for each locale * * * we pledge to continue and redouble our efforts to return power to the state and local governments." (Republican Platform—1980).

The concept of Revenue Sharing is one conceived by, born under, and nurtured by the Republican Party. It is, therefore, appropriate that the House Republican Policy Committee endorses H.R. 7112—the Local Government Fiscal Assistance Amendments of 1980—a bill to extend the revenue sharing program through fiscal year 1983.

As reported from Committee, H.R. 7112 would extend payments to local governments at an annual funding level of $4.6 billion. The money is allocated to general purpose units of local government on a formula which takes into account a government's population, per capita income, and tax effort.

As currently drafted, H.R. 7112 does not continue the revenue sharing program providing funds to state governments. The Policy Committee recognizes that fiscal restraint and a balanced budget call for sacrifices. Nonetheless, the same amount of savings could have been attained by trimming some of the 496 different categorical grant programs rather than completely eliminating the state revenue sharing program.

Fortunately, a compromise between continuation and curtailment of the state program is possible. The House Republican Policy Committee supports this compromise in the form of an amendment, authored by Congressmen Jack Wydler (R-N.Y.) and Barber Conable (R-N.Y.), which will be offered on the Floor of the House to authorize state funding in fiscal years 1982 and 1983 at the current level of $2.3 billion per year. No funding will be authorized for fiscal year 1981, however, thereby complying with the Budget Resolution for fiscal year 1981. In addition, under this amendment Congress would retain control of the program because:

Any future funding of state governments would be subject to the appropriations process; and

No entitlement funding for state governments would exist, although such a funding mechanism has been retained for local governments under the bill.

This approach has the salutary effect of giving Congress flexibility in future determinations of how to assist state governments. In addition, it provides the opportunity for the next President, Ronald Reagan, to eliminate some of the 496 grant programs and funnel money back to the states and localities in a more reasonable fashion.

Revenue sharing represents an efficient use of taxpayers money while returning decision making power to the level of government closest to the people. It fosters intergovernmental cooperation and preserves the foundation and heritage of our form of government—federalism. The House Republican Policy Committee, therefore, urges all Members to support adoption of the Wydler-Conable Amendment and passage of H.R. 7112, the Local Government Fiscal Assistance Amendments of 1980.

This is the 260th day of the 26th consecutive year of Democrat control of the House of Representatives.●

TRIBUTE TO THE MOST REVEREND FRANCIS F. REH

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. TRAXLER. Mr. Speaker, it is a great honor and privilege for me to call the attention of our Nation to the service of one of my most noteworthy constituents, the Most Reverend Francis F. Reh, who is currently retiring as Bishop of the Catholic Diocese of Saginaw. Through the years I have felt privileged to know Bishop Reh, and I have always looked with the greatest admiration and respect upon the work he has performed in my congressional district and throughout the country.

Bishop Reh was born in New York City. As a young man he attended the North American College and the Pontifical Gregorian University in Rome, Italy. There he earned a B.S. licentiate in sacred theology and was later awarded an honorary doctor of laws from Ionia College in New Rochelle.

Bishop Reh began his priestly life in 1935 when he was ordained in Rome. He then continued his education in cannon law at the Pontifical Gregorian University.

Upon returning to America, Bishop Reh served in New York from 1939 to 1962. In October of 1958 he was called to Rome by Cardinal Spellman to attend the conclave which elected Angelo Cardinal Roncalli as Pope John XXIII. In 1963 he was one of the religious leaders invited to the White House for a conference with President Kennedy on social justice for our black fellow citizens.

After serving in New York and later as Bishop of Charleston, S.C., Bishop Reh was called back to North American College in Rome, in 1964, and was appointed rector of the college. As rector, he ordained over 200 students into the priesthood.

In 1968 Bishop Reh was appointed by Pope Paul VI as third bishop of the Diocese of Saginaw where he has had care of 176,000 Roman Catholics and 105 parishes. Since then he has ordained 41 priests and 19 deacons. He has been responsible for highly successful education programs in my district, encompassing 5 high schools and 26 elementary schools with a present enrollment of 9,636 students. In other nonschool education programs initiated by the Bishop there are 21,310 students enrolled.

In the Saginaw Diocese, Bishop Reh has established the diocesan finance board, created the liturgical commission, initiated the diocesan deposit and loan fund to assist parishes in building programs, established the senate of priests and the diocesan personnel board. He has established several ongoing educational and ministerial in-service programs for priests and initiated televised Mass in the area. Further he has maintained offices of campus ministry at 3 colleges and universities where 17,000 catholic students participate.

Beyond these duties which Bishop Reh has so diligently executed, he has developed our area's Vietnamese refugee resettlement program, the office of rural life ministry, the Guadalup Center, the office of family life, the office of special projects which includes the administration of the campaign for human development and the office of social and apostolic action.

Bishop Reh is loved and respected not only by all the members of the Catholic diocese, but by the entire community he has served so well. He has touched the lives of countless individuals and enriched us all through his dedication. I am proud to call him my friend, and grateful that he was sent to serve in our area. His life has been a true inspiration to all who strive to serve God and help their fellow man.

Mr. Speaker, I feel greatly honored to be able to tell the Congress about the Most Reverend Francis F. Reh.●

CLEVELAND AMENDMENT: THE BEST POSSIBLE TRANSPORTATION FOR THE NATION'S HANDICAPPED

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. McKINNEY. Mr. Speaker, in the next few weeks, the House will consider H.R. 6417, the Surface Transportation Act of 1980. Included in that legislation is an amendment offered by Representative JAMES C. CLEVELAND, Republican of New Hampshire, which I believe is an excellent means toward expansion and improvement of transportation for the Nation's handicapped. The proposed amendment would allow alternatives to the Department of Transportation's—DOT—published regulations which require that all buses be fully accessible to the handicapped within 10 years. These regulations were issued to comply with section 504 of the Rehabilitation Act of 1973. However, I believe that the handicapped populations of the Nation's cities, towns, and rural areas could be better served by a policy which allows individual communities to implement either the 504 regulations, or an alternative system better tailored to the needs of the handicapped in that particular community. Under the Cleveland amendment, communities would be given that option. However, if the Cleveland amendment is rejected, DOT's requirements will be mandatory and could potentially result in the elimination of other, more successful, transportation systems. Local communities, which must administer and sustain transit systems, best understand the complexities of, and barriers to, transportation in their areas. They should be permitted to utilize their limited mass transportation dollars to provide the best possible alternatives for the handicapped.

As my colleagues know, the Cleveland amendment would grant localities the freedom to develop the most feasible transportation system for handicapped travelers. However, the proposal also insures that the right of the handicapped to safe, reliable, and accessible transit is not violated. The amendment contains explicit standards which any proposed alternate transportation service must satisfy. If these requirements are not met, the community must continue to adhere to section 504 regulations. The standards set forth in the amendment include: Expenditure of a minimum of 3 percent of the community's mass transit funds for transportation for the handicapped; the provision of service at comparable rates and covering the same geographic area as that provided by regular fixed-route transit; and the provision of door-to-door service within 24 hours of request. In addition, the amendment requires that any alternative to full compliance with DOT's regulations be developed in consultation with the handicapped members of the community. This element is the key feature of the amendment. The insight of a handicapped person into the particular difficulties faced by a wheelchair-bound or otherwise handicapped traveler is essential to the development of successful alternate plans for each community.

For instance, rural, hilly areas, sidewalks in disrepair, and crowded conditions on busy, urban streets can pose an insurmountable obstacle to those confined to wheelchairs. The possibility of theft or other crime in some urban areas may deter all but the most dauntless from venturing from the safety of their homes. Despite the good intentions of those who issue regulations, only a handicapped person will best understand the limitations within which a community must work in developing a practical transportation plan. While a plan deemed most suitable might fully comply with 504 requirements, specialized door-to-door taxi services may be more workable in many areas. The Cleveland amendment would permit either full compliance with DOT's regulations, the formulation of a plan for taxi service or other alternative, or any combination of, or variation on, these two systems which meets the standards set forth in the amendment. In any event, the handicapped in each community should have a voice in determining the most appropriate method for that community.

Beyond involvement on the part of the handicapped, however, some communities continue to face obstacles to implementing what they consider to be the most beneficial program for their riders, due to limited financial resources. A Federal mandate to equip all business with wheelchair lifts might preclude the development of a more practical and financially feasible transporation alternative, or the continuation of an already successful one. I need only look to the Fourth Congressional District of Connecticut for an example.

Several years ago, the Westport Transit District, with the assistance of the mobility advisory group, developed an innovative transportation system comprised of both fixed-route "minnybuses" and demand-responsive "maxytaxys." The system currently provides an excellent level of service to both handicapped users and the general population. A handicapped person can be picked up at his or her home by a maxytaxy, with an average wait time of only 30 to 40 minutes, pay half the fare charged to a nonhandicapped rider—25 cents—and be delivered directly to a destination elsewhere in Westport. That person need never contend with either the hilly terrain characteristic of many parts of New England or long waits at bus stops in inclement weather. Furthermore, since the Westport system is an integrated one, nonhandicapped as well as handicapped riders use the maxytaxy—with no detraction in service to the handicapped—thereby providing a mainstreaming into society to which the handicapped have an indisputable right. Using 11 vans, only 2 of which are equipped with wheelchair lifts—lifts are planned for the other 9, if funds are available—Westport serves an average of 20 summer and 25 winter handicapped citizens per day. By contrast, the Connecticut Department of Transporation has invested $2.8 million to equip 280 buses with wheelchair lifts in Harford, New Haven, and Stamford. Has this investment resulted in increased use on the part of the handicapped? Unfortunately, the answer is no. Approximately 93 total wheelchair trips are taken on these buses every month, or about 1 trip per city per day. Under 504 regulations, Westport could be forced to equip all of its buses with lifts. Thus, funds would have to be diverted from the current maxytaxy system, potentially destroying its proven record of success. Further, the purchase of additional wheelchair lifts for the widely used maxytaxy would have to be postponed or abandoned entirely.

The Westport Transit District's Mobility Advisory Group is composed of representatives of Westport's elderly and handicapped population, including two members who are confined to wheelchairs. This type of advisory group could be instrumental in other communities if the Cleveland amendment were enacted. The Westport group has contacted me several times in the past few weeks to urge my support for the Cleveland amendment. Their letters state, in part:

We believe the integrated services of the minnybus and maxytaxy provide effective transit solutions for a suburban community and serve the needs of the elderly and handicapped community in a sensitive and feasible way.

The Westport Transit District has a direct interest in the accessibility requirements of section 504 and fully supports House bill H.R. 6417, which contains an amendment offered by Representative James Cleveland allowing local options in providing transportation services for elderly/handicapped persons.

The district finds itself in an untenable position in attempting to comply with the section 504 regulations. With limited Federal funds available, the purchase of lift-equipped replacement minnybus transit coaches diminishes the availability of funds to purchase replacement accessible maxytaxy vehicles.

Maxytaxy provides comparable or better service to the elderly/handicapped communities than would accessible vehicles on a minnybus route.

The range of options contained within the Cleveland amendment can produce alternative transportation systems for the handicapped which are better suited to some communities than those mandated by section 504. The Westport system has proven more cost effective than maintaining full accessibility on fixed-route vehicles, while providing first-rate service which is integrated with the rest of the community. The Congressional Budget Office confirmed in a study that a larger number of handicapped persons can be served at less cost by the door-to-door option than on regular transit vehicles. While cost savings such as these are a definite plus, my primary concern is with the quality of service to the handicapped. I maintain that quality can best be assured by allowing the handicapped a voice in determining the most feasible and accessible option for their local communities. I urge my colleagues to support expanded transportation opportunities for the handicapped by casting a positive vote on the Cleveland amendment.●

TRIBUTE TO CABLE AIRPORT

HON. JIM LLOYD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. LLOYD. Mr. Speaker, the aviation community of southern California has been well served by Cable Airport near Upland. This month the fine men and women who operate this excellent general aviation facility are marking the 35th anniversary of its beginnings. I have piloted aircraft in and out of Cable hundreds of time. I am pleased to be affiliated with such an airport. The article below, from the August 30 edition of the Pomona Progress Bulletin, sums up the airport's phenomenal growth and the pride the residents of the 35th Congressional District feel toward this fine facility:

CABLE AIRPORT

Nestled near the foothills Cable Airport celebrates its 35th anniversary as the only privately owned airport in the valley.

Cable, billed as "the largest private airport in the world," has grown considerably since it first opened in May 1945. As the interest in flying grew and aviation pulled the world closer together, the dream of Dewey Cable and his late wife Maude, also prospered.

It has gone from 105 acres of bare land to a facility that has 370 single- and twin-engine aircraft based there, auxiliary services for general aviators and their machines, 222 hangars and a showplace for local pilots' groups.

When Cable, an Iowa farmer who brought his family west in 1923, purchased the land north of the Upland city limits he settled on an area that was generally free of fog even when zero visibility made flying impossible at other valley airports. He had been an aviation enthusiast since his brother built and flew a plane while the family was still in Iowa.

He and the late Mrs. Cable worked for the Civil Air Patrol and operate Rubidoux (now Riverside) Airport before deciding to open their own general aviation airport on May 27, 1945.

The couple constructed the original 2,000-foot runway. Initially, there were only five planes to use that runway. Construction soon began on the office building that still stands today. The facility was initially known as the Cable Claremont Airport.

"Originally there were no hangars," recalled Paul Cable, the eldest Cable son of Dewey and Maude Cable, who now serves as the airport's general manager. "They built a seven-sided building for maintenance. The first hangars were built in 1949. They housed 20 airplanes."

Hangars have been added on an incremental basis since then, he said. The airport now has 222.

"We expand some every year. We do some building improvements and lengthen the runway and taxi way. It's a constant building program," Cable said.

Previous expansions included the extension of the runway to 3,600-feet in 1962, annexation into the city in 1966, and the gradual additions of the various airport businesses.

The airport has stopped additional expansions and improvements until a city-ordered master plan of the airport and its intended expansions are accepted by the state, county and Upland City Council. Public hearings on that master plan are expected to begin next month.

Members of the Cable family all played important roles in developing the airport as a family affair and business. A Cable brother was a barnstormer and test pilot; son Paul was a mechanic for fighter planes in the South Pacific; son Walter was a pilot in the Air Force and holds the world altitude record for small aircraft; son Roger and daughter Mildred received their pilots' license as soon as they were old enough; and daughter-in-law Maxine also held a pilot's license as do several grandchildren.

Cable Airport is a family corporation with Dewey, Paul, Walter, Roger and Mildred as the owners. Businesses on the grounds include Foothill Aircraft Sales and Service, owned by Walter and his son Robert; Cable Air Flight School, owned and operated by Paul Kochman; California Air Radio with Richard Skoglund as owner-manager; Sky West Instruments, Bob Hemphill, owner-manager; Cable Cafe, owned and managed by Frank Hill; Ira Lund Aircraft Parts, owned and managed by Lund; and Southwest Aircraft, owned by Bob Haer. A squadron of the Civil Air Patrol is also housed at the airport.

Dewey Cable is retired. Besides Paul, the airport staff includes Charles Barnett, assistant manager; Dave Cable, maintenance foreman; and Peggy Smith, secretary and bookkeeper.●

PROF. HANS F. SENNHOLZ EXAMINES SUPPLY-SIDE ECONOMICS

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. McDONALD. Mr. Speaker, there has been a growing trend in recent years toward repudiation of Keynesian economics, which many of us are pleased to note. However, as with all human nature, many economists are reluctant to recognize the error of their ways and some are promoting what has come to be called supply-side economics. Supply-side economics as Professor Sennholz, a distinguished professor at Grove City College in Pennsylvania, recently pointed out in the Review of the News for September 10, 1980, is only a halfway point on the scale of returning to economic sanity in this country. What really needs to be done is explained in his article, which follows for the edification of my colleagues:

PROF. HANS F. SENNHOLZ EXAMINES SUPPLY-SIDE ECONOMICS

There is mounting evidence that the age of Keynesian economic policies is drawing to a close. The new trend points toward "supply-side economics," which is a curious blend of old virtues and modern temptations. It is eloquently expressed by such eminent economists as Laffer, Feldstein, Boskin, and others, and spear-headed by a growing number of politicians who are sensing its political ramifications and benefits. The American business community, almost without exception, is hailing it as a return to an economic order of reason and justice.

The Keynesian blueprint, which put the federal government in the driver's seat for economic stability and full employment, is falling into disrepute as its consequences become apparent. The blueprint, which guided economic planners from President Franklin Delano Roosevelt to Jimmy Carter, calls for full employment through fine-tuning of aggregate demand by the federal government. But unfortunately this fine-tuning has meant radical government intervention that has aggravated instability and unemployment and precipitated deficit spending and inflation. Moreover, full employment through demand stimulation, as envisioned by Lord Keynes, lent its support to universal stimulation of consumption by a gigantic Welfare State and transfer system that is now consuming economic resources faster that they can be produced.

With standards of living falling and unemployment rising, the supply-side economists are offering a major challenge to the Keynesian orthodoxy. They are emphasizing the importance of production, rather than consumption, urging immediate tax breaks for savers and business. They seek to encourage saving and investment to promote economic growth, to reduce the disincentive to work through lower tax rates, to stimulate business through accelerated depreciation and tax credits. In short, they are designing intriguing supply-side models that are manipulated to achieve the greatest increase in supply or G.N.P.

Most Conservatives are applauding the supply-side economists who promise new hope through tax reductions. But, despite all of the applause, this economist cannot escape the strong concern that some of these supply-side advocates want merely to substitute the collectivist Keynesian blueprint with their own, and replace the demand-side tinkerers in Washington with a new team of collectivist supply-side tinkerers.

We must rejoice at the disrepute into which the Keynesian econometric models are falling. And we readily admit that the rise of supply-side-economics, under certain conditions, affords new light and hope for a better economic future. But we cannot ignore some glaring problems that cast serious doubt on its efficacy.

CUT GOVERNMENT SPENDING

First we must emphasize that tax cuts do not necessarily reduce the burden of government. Given a continued high level of government spending, a tax cut merely shifts the burden to the two other sources of government revenue—to creditors who buy Treasury obligations, and to victims whose purchasing power is reduced through monetary inflation. Contrary to popular belief, it

is the level of government spending that determines the cost of government. Taxation is just one form of government revenue which, in this age of deficit spending, covers merely a fraction of the total cost. A tax reduction, therefore, may be only a popular device for shifting costs to other victims.

To be meaningful as a supply-side measure, the tax reduction would have to be significant. To make it politically acceptable, it would have to be paired with income-tax cuts for the benefit of the poor and "underprivileged," which taken together would tear a sizable hole in the federal Budget. If government spending is maintained at previous levels, or even increased for any reason, the inevitable deficit would trigger an inflation the disastrous effects of which might far surpass the deleterious effects of unrelieved taxation.

The supply-side economists are quick to argue that a tax reduction tends to force government to reduce its spending to the level of revenue, or at least to a manageable deficit. But in the light of recent Budgetary deficits of some $50 billion annually, we must question whether this alleged moral force will in fact reduce spending in the face of tax cuts. The American people have grown accustomed to large deficits. Supply-side policies, therefore, might result in continued deficits and further feed the raging inflation.

Supply-side economists angrily reject this conclusion. They are convinced that a cut of business taxes would lead to an astonishing burst of business activity, which would boost government revenue and therefore reduce the budgetary deficit. They point at President Kennedy's tax cuts that led to remarkable economic expansion and employment. But they conveniently overlook the fact that the Kennedy New Frontier and the Johnson War on Poverty thereafter launched numerous special spending programs that, in the end, cost more than the expansion gained. In fact, transfer spending since then has risen at twice the G.N.P. growth rate and, throughout the 1970s, has gradually reduced the real income of most Americans. Therefore, we are led to believe that economic expansion when the benefits are subsequently seized by government is dubious business. It whets the appetites of countless transfer beneficiaries who will want to seize more income and wealth from the producers than the expansion is adding in national income and G.N.P.

SUPPLY-SIDE INTERVENTION

If the supply-side economists were to work as diligently toward a reduction of government spending as they are working on tax cuts, which are more popular politically, and if they were to elevate the balanced budget now and forever to their fiscal ideal, they would be applying a formula for growth and prosperity. And there is no doubt that government can promote economic expansion and development as readily as it has discouraged them during the last 50 years. It can devise controls and regulations, taxes and penalties, that hamper consumption. In fact, it is conceivable that government may use its powerful apparatus of coercion to promote saving and investing, industrial expansion and modernization. But such a policy, unfortunately, does not represent a return to individual freedom and free markets. It is radical interventionism that breeds more government power.

Supply-side policies accompanied by transfer restraint and monetary discipline may lead to astonishing economic growth rates, to which the economies of West Germany and Japan clearly attest. The miracle of German and Japanese reconstruction and development since World War II sprang from supply-side economic policies. The heavy hand of government guided industry and commerce every step of the way. While basic tax rates were as high (or even higher) than U.S. rates, many entrepreneurs and capitalists who met government stipulations and requirements enjoyed complete tax freedom. There were ample tax breaks for savers, accelerated depreciation rates for business, generous tax credits, and many other favors to businessmen complying with the government plan.

An economy built on supply-side interventionism may thus temporarily achieve astonishing growth rates. But it is always walking a tightrope that is strung by the fortunes of politics. With the government stringing the ropes that support business, powerful pressure groups are vying for government power in order to restring the ropes. Economic life is overshadowed by political life that may radically alter the former at the next national election.

OUR YARDSTICK IS FREEDOM

The economics of Free Enterprise points beyond supply-side economics. It rejects all attempts by government to manipulate economic life and redirect the economic actions of millions of people. Devoid of all Napoleonic complexes, it does not deliberate in terms of aggregate demand or supply, nor does it set out to manage the massive U.S. economy along political lines. It offers no policy advice to politicians—except to get out of the way of individual freedom and the dynamic market process. In short, it prefers a self-generating, spontaneous order to the coercively imposed order of any kind or color.

Free Enterprise economics hinges upon the inalienable rights of the individual to his life and property. It opposes any and all kinds of political intervention that negates individual rights and fosters political power. It abhors all sorts of government intervention that distorts the value and price signals by which individual choices and preferences are made known to producers. It makes no value judgment on the different types of spending, such as consumption versus investment, and bestows no particular favors. But it is dead set against political favors that breed economic and social conflict through economic redistribution on a massive scale, weakening the bonds of peaceful cooperation until society is torn apart.

Free Enterprise economists favor the repeal of all previous legislation that favors some people at the expense of others, that redistributes, income and wealth by political force, that restricts the economic freedom of some and bestows privileges to others, and otherwise creates social tension and conflict. This is why we strenuously oppose any and all inflationary policies—which we consider to be the most insidious political evil impoverishing many millions of thrifty, hard-working Americans. In our judgment, the federal Budget must be balanced immediately and permanently, and the monetary authorities must abstain from any further money and credit expansion. To balance the Budget the federal government must reduce its transfer spending, which is sowing the seeds for ever more social conflict.

When federal spending is reduced, federal taxes must be lowered. Free Enterprise economists would proceed with an immediate reduction and ultimate elimination of all those taxes that are punitive, discriminative, and regulatory. They would search for "neutral" taxation that would support or even strengthen the peace-keeping and defense functions of government, but in no way would interfere with the economic choices and preferences of the people. They favor "fiscal" taxation, but reject economic and social tax levies. In particular, they would immediately abolish the confiscatory marginal rates in the upper brackets of the personal income tax and the estate tax, which yield little revenue, but are designed to search and destroy.

Free Enterprise economists would also erase the distinction between certain types of income that are taxed at different rates, such as "earned income" (i.e., income from labor services, vs. "unearned income," i.e. income from savings and investments). Above all, they would eliminate the corporate income tax, which is the most discriminatory and destructive of all levies. It is a double tax on individuals engaged in productive activity that is the inalienable right of all free people. This tax causes countless distortions of personal and corporate decision-making, of costs and prices, spending and saving. Born from envy and resentment against business activity, it suppresses economic life and pursuit more effectively than any other government intervention.

FRIENDS OR FOES?

Are we pleased with the recent rise of supply-side economics and its clear challenge to the Keynesian orthodoxy? In a sense we are. We are applauding the fall of the Keynesian monster into long overdue dispute, but are fearful that it is merely assuming another color. Wherever the supply-side economists and politicians sincerely seek to reduce the size and strength of government, we shall rally to their intellectual and political support. But wherever they are merely changing its color, which is so much easier politically, we cannot join them in their fascinating maneuvers.

We are aware, of course, that some supply-side champions also are staunch defenders of individual freedom and the competitive order. They are promoting supply-side policies as popular interim steps on the way to a freer order. We shall readily support them if they openly and courageously state this position and, in their policies, remain on guard against new deficit spending and inflation. But wherever they forget to confront the transfer cancer, when they are working diligently to increase the national economic pie with bigger transfer slices for everyone, boosting the prestige and power of government, we must stand aside and sound the alarm. Whenever, for urgent political reasons, they prefer to remain silent on the roots of the evil, preferring short-run political gains over long-run consequences, we must avoid their company and go our own way. And if, for any reason whatever, they should fall prey to the temptations of deficit spending and rampant inflation, we must vigorously oppose their schemes and unmask them for what they really are.●

BILL MOORHEAD

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. COLLINS of Texas. Mr. Speaker, let me join in extending my best wishes for the future to my good friend, BILL MOORHEAD of Pennsylvania. BILL has been a hard-working Congressman, but I can never recall seeing him when he did not have a pleasant and friendly smile on his face. Considering all the problems we have before us in Congress, it is good to be a man who always takes things in stride with a positive outlook for the future.

BILL represents an unusual combination. He is a Yale man who went through Harvard Law School and represents the solid industrial city of Pittsburgh. When I think of those Pittsburgh Steelers and a combination of Harvard-Yale as their Representative, we have a well-rounded man.

We are counting on BILL to stay active in Washington. We need your advice to help us in these crucial years of the 1980's.●

FUEL-SAVING PATENTS: FACTS AND FALLACIES

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. DANNEMEYER. Mr. Speaker, concern about energy independence has renewed interest in fuel-saving carburetors and in claims that major oil companies have suppressed these carburetor inventions.

In order to establish the facts and fallacies regarding the claimed existence of these super carburetors, and the rumors of their suppression, the following research into the technical aspects of carburetion and the U.S. patenting system should be conclusive.

CARBURETORS: LIMITS TO EFFICIENCY

There is a limit to the efficiency of a carburetor, and that limit has been nearly reached by automakers, according to experts. Their testimony reveals, moreover, that the super carburetor exists only on paper, and even that does not pencil out.

Under normal driving conditions the energy available from a gallon of gasoline is inadequate to provide the mileage economy promised in carburetor legends. Much credence is lent to the miracle carburetor stories by the often astounding results honestly obtained from special "miles-per-gallon" contests. Oil companies sponsor these contests each year to show that an automobile can obtain 100 or more miles from 1 gallon of gasoline. The vehicles are made as friction free as possible. They are tuned to conserve gas at the cost of performance. However, the largest factor in the competition is not the machines but the special driving technique. Momentum is conserved to the maximum extent and the engine is turned on for brief periods of acceleration between long-coasting periods. Neither the vehicle performance nor the driving techniques would be tolerable or safe in normal driving conditions.

Testimony from four sources offers expert opinion on this subject.

Research at the California Institute of Technology, Pasadena, Calif., indicates that:

> Private brand carburetors . . . past and present, have generally fallen short of the efficiency and reliability of those supplied by automakers . . . the standard modern carburetors approach a practical optimum in performance. Potential increases in performance are small and rarely worth the excessive increases in cost and complexity required.

Mr. Eric Dahlquist, former editor of Motor Trend magazine and a leading authority on the carburetor, contends that most carburetor legends appearing over the past 40 years have had fraudulent origins. However, a number of inventions, Dahlquist claims, have appeared. In some cases, companies were found to produce superior carburetors. However, Mr. Dahlquist noted that in each case the designs have had technical problems. He observed that the carburetors offering significantly improved gas mileage, generally 10 percent, did so at the cost of simplicity.

The Kirk-Othmer Encyclopedia, in an article entitled, "Common Fallacies Concerning Gasolines," had this to say about optimum gasoline performance:

> Over the years, a number of misconceptions about gasoline have cropped up again and again. Some are the products of wishful thinking; others stem from a lack of understanding or a misunderstanding of gasoline behavior in engines. Rumors of some suppressed invention, such as a special carburetor or miraculous fuel additive, that would give fuel economies of 100-200 miles per gallon, fall into the wishful thinking category . . . a myth beyond the bounds of possibility.

Mr. Robert Knoll, a research and testing scientist with the Automotive Research Laboratory of Consumers Union submitted that—

> There are no unknowns or mysteries about the carburetion process and today's carburetors approach the practical limits of efficiency.

The question arises of how much of an improvement is possible over today's designs? According to Mr. Dahlquist and other experts, the answer is, unfortunately, very little. The optimum fuel ratios and the optimum fuel vaporization conditions are all well established. Today's carburetors closely approach these ideal conditions within reasonable cost constraints, Dahlquist states.

From the above information, it is difficult to believe there exists a miracle fuel-saving device. Even if there were such high-mileage devices, they could not be hidden from the public under the current patenting system.

PATENT SYSTEM: OPEN FOR INSPECTION

The owner of a patent has certain control over who may make, use, or sell the invention for a period of 17 years, but thereafter, the public may use the invention with complete freedom. This term may only be extended by a special act of Congress, and this occurs very rarely and only in exceptional circumstances. Even during the 17-year term of protection, the public has unrestricted access to all information concerning the invention in the patent document and the Patent and Trademark Office files.

Every patent which has ever been issued in the United States is available in these files. Records are available showing all patent ownerships and transfers of rights. Therefore, if the oil companies were, in fact, buying up patents, they would have no way of hiding it from the public. Secrecy of any invention is only maintained while the patent is pending, a matter of months.

Specifically identified, energy-conserving carburetor patents have been cited only twice in recent correspondence to the Patent and Trademark Office. In both instances, all the patents identified have expired and may be freely utilized by anyone. Neither the patents nor the Patent and Trademark Office files indicate that the inventions involved in these patents would provide any substantial fuel savings. Furthermore, neither of these patents has ever been assigned to an oil company as is commonly alleged.

The Library of Congress has recently studied the issue of suppression of patents on carburetors and other fuel-saving carburetor attachments. Their study did not discover the existence of suppression of patented carburetor technology which would achieve extraordinary fuel economy.

OIL COMPANIES: THE RECORD

Each of the major oil companies: Standard Oil of Indiana, Exxon, Atlantic Richfield, Texaco, Union 76, and Shell, has certified in writing to me that they do not, and never have owned patents on carburetors or gas-saving devices.

Mr. John Tessieri, vice president of the Research, Environment, and Safety Department of Texaco, Inc., pointed out another reason why oil companies would be unsuccessful in suppressing gas-saving devices:

> Because the patent system is an open system, it seems highly unlikely that automotive companies would not become aware of patented devices for improving fuel economy. Since the automobile manufacturers are under heavy regulatory pressure to achieve government-mandated Corporate Average Fuel Economy (CAFE) standards, any such practical devices would be avidly sought to improve the precarious position of the industry.

Concern about energy independence has given the public a genuine reason to hope that there is some element of truth in the carburetor legends. Since the 1950's, stories of 200- and 300-mile-per-gallon carburetors alleged to have been lost in the Patent Office or suppressed by oil firms have been revived at roughly 5-year intervals. How and why this happens has always been a puzzle. But in these times of rising prices and spot shortages, the reason for these latest rumors seems clear. Unfortunately, a myth is still a myth, regardless of its rate of revival.●

DR. JOHN CARMICHAEL HONORED

HON. DON BAILEY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. BAILEY. Mr. Speaker, it is a rare man who has the extraordinary sensitivities and insights that are held by Dr. John Carmichael, the finest educational entrepreneur I have had the privilege to know.

In the past 6 years, Dr. Carmichael has been the driving force behind the strident growth of the Westmoreland Community College. Under his incisive guidance, it has become a highly respected educational institution, recognized by the Middle States Association. Currently, its student enrollment is more than 8,000.

While I congratulate Dr. Carmichael on his appointment to superintendent/president of Union County-Technical Institute and Vocational Center, I must admit that I regret to see him leave. No troop likes to lose a good general.

With a highly impressive academic record of his own, a summa cum laude graduate of Suffolk University, a master of arts from Columbia University Teachers College, a master of business administration and a Ph. D. in vocational education from the University of Michigan, Dr. Carmichael has built a community college in Westmoreland County with a highly talented and knowledgeable faculty to offer thousands of youngsters and adults expanding educational opportunities and many, many support programs.

During his tenure as president, Dr. Carmichael expanded the educational opportunities to include over 25 branch locations, finalized construction of several additional buildings, completed the college strategic long-range master plan, and initiated a college foundation to secure additional funds for college programing. He also is to be commended for his dedicated efforts to improve educational opportunities for handicapped students.

In a word, "success" is synonymous with Dr. Carmichael. His unselfish outlook and overwhelming enthusiasm and ambition also have spurred him to be extremely active in civic affairs. Currently the president of the Pennsylvania Commission for Community Colleges, he has served as vice president of the Central Westmoreland Chamber of Commerce, chairman of the Westmoreland County Heart Association, and presently is a member of Judicial Review, Private Industry Council, and the Economic Development Planning Commission.

Again Mr. Speaker, it is with great pride and admiration that I bring this man of outstanding capabilities and character to your attention. Many, many persons are grateful to have benefited by his wisdom and guidance. I congratulate him and thank him.●

SUPERFUND BILLS SUPPORTED BY CHEMICAL MANUFACTURERS

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. DOWNEY. Mr. Speaker, the superfund bills, H.R. 7020 and H.R. 85, are coming to the floor for our consideration this week. Recently, ABC's "Nightline" program was devoted to this legislation. The transcript of that conversation between Congressman AL GORE and the chemical manufacturers' representative, Robert Roland, is an interesting discussion of the issues involved and includes the surprise conclusion of CMA's support for superfund. I make the Chemical Manufacturers Association statement available to my colleagues, and the text of the program is as follows:

ERIC OSKER. Our waters are going to become polluted, our children and our children's children are going to come down with cancer and genetic damage.

TED KOPPEL. The Surgeon General warns that increasing danger to the public health from the dumping of toxic chemicals. There is a major bill in Congress aimed at dealing with the problem. We'll be talking live tonight with one of its chief sponsors, and from the chemical industry, one of its chief opponents.

And on day 313 of the hostage crisis, Iran's President says the United States has hampered his efforts to win the hostages' release.

ANNOUNCER. This is ABC News Nightline. Reporting from Washington, Ted Koppel.

TED KOPPEL. Good evening.

Most of us tend to be somewhat apathetic to the dangers of chemical waste in places it has been polluting the air and the land and water for years. But because that pollution is frequently invisible and because its effects sometimes take many more years to develop and to surface in our bodies, it is one of those problems which most of us are waiting for someone else to solve.

The question of who should bear that burden is the focus of our broadcast tonight. But first, here's Steve Shepard with a closer look at the problem.

STEVE SHEPARD. No modern industrial society can exist without chemicals. But chemicals are not an unmixed blessing.

This fire ripped through a chemical waste storage facility in Elizabeth, New Jersey. Toxic fumes billowed over populated areas of northeastern New Jersey and parts of New York City.

Woburn, Massachusetts, just north of Boston. Here chemical wastes are suspected to have contaminated air, soil and ground water on an 800-acre chemical dump site. Local residents have suffered higher than normal death rates, and the incidence of childhood leukemia is also unusually high.

Love Canal, Niagara Falls, New York. Hundreds of families have been forced to vacate their homes built on top of a dump once used by Hooker Chemical. Residents have experienced abnormally high rates of cancer, birth defects, and other diseases.

There may be as many as 50,000 chemical waste storage sites around the country. And at least 800 of the sites are known to be dangerous.

James McCarthy and his family live near a chemical dump in Jackson Township, New Jersey. McCarthy lost a nine-month old daughter to a rare form of kidney cancer and later lost his own kidney to the disease.

The ground water he used for drinking was apparently contaminated by the chemical dump near his home. Last month he paid $1,500 to bring a new water line to his house, but he's not yet sure that line is safe.

McCarthy is not alone in his problems. In a report released today the Surgeon General says toxic chemicals are a rapidly growing public health hazard.

Surgeon General JULIUS RICHMOND. We think there will be damage to human health, causing disease, cancer, neurological disease, chromosome damage. We don't know.

SHEPARD. The EPA says that 126 billion pounds of hazardous chemical waste will be produced in the U.S. this year, most in the old industrial states of the northeast and midwest. But those wastes will end up everywhere. Exotic chemicals such as myrex, dioxin, lindane [?] and others will find their way to waste chemical dumping sites all over the map.

There are ways to deal with these chemical wastes, and the government would like to take action.

But if there is a will and a way, there is one missing ingredient: money. Some experts say a nationwide cleanup could cost as much as $44 billion.

But figures like that don't mean much to victims like James McCarthy. They are more concerned about their future and their children.

JAMES MCCARTHY. I have two children. Am I going to see them live? Or are they going to live? Somebody's got to help us.

SHEPARD. Steve Shepard, ABC News, Washington.

KOPPEL. But who will help? And who is going to foot the bill for all the damage caused by chemical waste? That in a moment.

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Koppel. It is clear that an enormous amount of money is needed to deal with the nation's toxic waste problem. The question is who pays and how much.

Legislation that would start a national cleanup has been stymied in the Congress mainly because of those questions. Here's Capitol Hill correspondent Britt Hume.

BRITT HUME. What happens to this bill, Senate No. 1480, in the coming weeks will determine if this Congress acts or not on the crisis in chemical waste.

A bit of background:

In the House, the Commerce Committee earlier this year voted out a bill creating a $600 million five-year trust fund financed half-in-half by government and industry to clean up hazardous waste dumps. But the bill was sent to the tax writing Ways and Means Committee where it seemed likely to be weakened. But surprise. It was strengthened to a $1.2 billion fund financed three-quarters by industry and a quarter by government. That legislation is presently down on the House floor where its final shape will be decided next week. But passage seems certain.

Meanwhile, in the Senate the Public Works Committee has produced S-1480. And it is a really strong bill. A $4.1 billion cleanup fund financed seven-eighths by industry and the rest by government. What's more, this bill would provide compensation for victims of chemical waste and it would allow victims to sue companies in federal court, a provision that is not popular with the chemical industry and its Senate allies.

It is now so late in the legislative session that any further delay in the Senate would likely mean that there will be no bill at all to clean up chemical waste dumps. And there are some here on Capitol Hill who believe that the chemical industry, while publicly supporting the concept of a cleanup fund is working privately in the Senate to stall and thereby kill the whole idea.

Britt Hume, ABC News, on Capitol Hill.

KOPPEL. Standing by now on Capitol Hill is one of the chief sponsors of legislation to fund the cleanup of toxic waste, Democratic Congressman Albert Gore of Tennessee. And here in our Washington studios, the president of the Chemical Manufacturers Association, Robert Roland.

Let me begin, if I may, with you, Congressman Gore. Is it not true that you are one of those who believes that the chemical industry is trying to kill that legislation?

Congressman ALBERT GORE. There's no doubt in my mind, Ted, that the industry would like to see this bill killed this year. Publicly they take the position that it supports some kind of bill, but they're holding out for provisions that a majority will not accept, and they're using the crowded legislative calendar to kill it by delaying it today while they publicly pronounce their acceptance of the principles embodied in it.

KOPPEL. All right. We have a representative of the chemical industry here. Mr. Roland, would you like to respond to that charge?

ROBERT ROLAND. Certainly, Ted.

That statement or that impression is just as erroneous as most of the information that's been surfaced on the superfund legislation or the whole matter of chemical waste disposal. The chemical industry, specifically manufacturers of chemicals have been trying for over a year to get sensible legislation enacted. And today, in testimony before the Senate Finance Committee on S-1480, we indicated once more that we support 7020—HR-7020, the Florio Bill, on the House side. We believe——

KOPPEL. What does that bill do?

ROLAND. That is a superfund-type bill that deals with abandoned waste sites and provides for a fund contributed by industry and government.

KOPPEL. Now what would the breakdown be?

ROLAND. The breakdown would be 75% industry and 25% government. It would be $1.2 billion.

KOPPEL. Now what's wrong with that, Congressman Gore? I mean, does that meet your impression of what's going on on the Hill?

Congressman GORE. That's what's going to pass on the House side, Ted, in my opinion. The problem is on the Senate side. And the opponents of the bill in the United States Senate have effectively delayed the bill until the end of the session. And its chances now are not good unless public pressure is focused on this problem.

KOPPEL. All right. I don't want to get too trapped now in the jargon of these various bills on the House side or the Senate side. The issue I think we ought to get into is whether in fact the chemical industry is going to come up with a great deal of money. Now Mr. Roland seems to suggest that it is.

Congressman GORE. Well, you know, he just said a moment ago that the industry has been trying for over a year to get a bill. You know, for those of us who've been in the trenches fighting this battle, that comment is really quite surprising, because we've been fighting against the industry. They've put up obstacles at every step along the road, and they're still doing so in the United States Senate today.

We're going to pass legislation in the House of Representatives, but it's going to be up to the public to put the pressure on the United States Senate if we're to have legislation out of the Congress and signed by the President this year.

KOPPEL. Mr. Roland, are you trying to stymie things over on the Senate side?

ROLAND. He expressed it perfectly. Congress has been fighting the industry on this subject, and particularly on the Senate side. S-1480 is such an unreasonable bill, drawn so broadly, creating an over $4 billion fund with special port law provisions that go well beyond the established law and the state and at the federal level today, and creating a scope of coverage that is well beyond what is needed to clean up the dump site problem.

KOPPEL. All right. Let me get right down to the——

ROLAND. And I don't think industry is needed to accept——

KOPPEL. Let me get down to basics, if I may, Mr. Roland. Do you accept the responsibility, does the chemical industry accept the responsibility that each should pay for the cleanup?

ROLAND. We think that anybody who is a waste disposer, if they violate the law, they should be responsible and they should pay for it.

KOPPEL. Yeah, but then we have the problem of deciding who the waste disposer is. Would the chemical industry accept that responsibility?

ROLAND. We have already said today in testimony that we are opposed to the idea of an industry fund placed on people who were not responsible for a previous action. But it is clear that the public will, as expressed by the Congress and in general public comment is that industry should pay something. And we said that we would contribute to that fund.

Congressman GORE. Ted, if I may comment. I think we've seen something new here on your program tonight. If Mr. Roland is indeed speaking for the industry and can communicate to the United States Senate that the industry will accept a 75 percent burden with 25 percent on—coming out of general revenues, and a fund of $1.2 billion, then I think the United States Senate would pass that legislation expeditiously if the opponents of the legislation got that message from the chemical industry and the lobbyists that they've hired to work it.

KOPPEL. All right. Now Mr. Roland, you're the president of the Chemical Manufacturers Association, so you clearly speak for the industry. Is that what you're saying?

ROLAND. What we're saying is we will contribute to a reasonable fund in a reasonable fashion.

Congressman GORE. A moment—a moment ago——

ROLAND. Now wait a second, let me finish, please.

Congressman GORE. A moment ago you said 75/25 and $1.2 billion.

ROLAND. On one dollar——

Congressman GORE. You're talking over $4 billion on the Senate side and you're talking more than 80% on the Senate side.

KOPPEL. I mean, I think we have the workings of a compromise here, Mr. Roland.

ROLAND. That's precisely so.

KOPPEL. If in fact you are talking about the chemical industry of coming up with 75% of the $1.2 billion. Is that what you're saying?

ROLAND. That's right. And we think that the $1.2 billion figure is important because the amount that is specified in the Senate bill is excessive for the job that needs to be done. And that's only the beginning, Ted.

Congressman GORE. Let me——

ROLAND. The most important part of the liability provisions that are contained in S. 1480 that are not contained in the House bill, in either version of the House bill. And that's what we have to negotiate.

What I'm telling you and what we've said from the beginning is the chemical industry believes and knows that it's part of the problem and we've been working to be part of the solution. We have been fought every step of the way by the committee staff and by people in Congress. We have not been recalcitrant. And that's part of the misinformation that I think has been communicated to the public on this.

KOPPEL. Mr. Roland, I have one small consolation for you. You've just had the last word.

Thank you very much, and thank you, Congressman Gore.

In a moment, a look at a controversy over toxic waste in a community on Long Island.

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KOPPEL. While everyone agrees that toxic wastes are dangerous, there are many cases where there can be no certainty of just how dangerous because it does take so long for effects of some chemicals to be known. Rita Sands reports on one Long Island community where that uncertainty has produced a controversy.

RITA SANDS. These gulls are drawn to what man creates in abundance, garbage. A mountain of waste covering more than 50 acres. It's the Hauppaugh landfill. Buried somewhere underneath this mess, toxic chemicals. No one knows how much or when they were put here, but it is known they seeped into and contaminated some of the underground water supplies.

The dumping of chemical waste has stopped, but officials admit there is a health hazard, and that a landfill should not be in the middle of this residential community and over its supply of drinking water.

THOMAS HRONCICH (Environmental Commission). I'd say—actually there's no good place for the landfill.

SANDS. What is the alternative?

HRONCICH. There aren't many right now, and that's one of the problems we're running into, is that there . . .

SANDS. Not everyone agrees. Some residents of Hauppaugh think the dump should be closed immediately, with steps taken to stem the flow of the chemicals. Eric Oster is director of Dump the Dump.

ERIC OSTER. Love Canal unfortunately they found out too late to stop it. Those people have to move out of Love Canal. And unless we do something about it, that's what's going to happen.

Our water's going to become polluted, our children and our children's children are going to come down with cancer and genetic damage unless . . .

SANDS. Mrs. Elsie Rotzman and her family moved into this house 26 years ago when there was no dump. Four years ago she found out her well water was unfit to drink.

MRS. ELSIE ROTZMAN. All this time we felt we were going to enjoy this forever. But it was only short-lived.

SANDS. There has been no official documentation yet of sickness related to the toxic waste in the dump, but fear persists.

This elementary school near the dump was closed five months ago after traces of vinyl-chloride were found in the cafeteria. Though officials maintain the school is safe, parents suspicious are afraid to bring their children back.

These people are coming to realize that while you can't always taste or smell toxic chemicals, the danger they pose is very real.

Rita Sands, ABC News, Hauppaugh, New York.

KOPPEL. We'll have the latest on Iran in a moment.

• • • • •

KOPPEL. It's day 313 of the crisis in Iran and Iranian President Bani Sadr says it is United States policy that has been delaying a solution to the hostage issue. Bani Sadr did not elaborate, but it's believed he was referring to Iranian demands that the U.S. apologize for its past actions in Iran.

That's our report for tonight. This is Ted Koppel in Washington. For all of us here at ABC News, good night.

ANNOUNCER. This has been Nightline, a presentation of ABC News.●

PATRIOTISM ALIVE AND WELL

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. MOORHEAD of California. Mr. Speaker, Mr. Aarno Davidson of Sunland, Calif., was recently guest editorialist for the Record Ledger, one of the leading newspapers in California's 22d District. Mr. Davidson, a naturalized citizen of our country, is a well-known writer and has been a recipient of the Freedoms Foundation Award on four different occasions. His love for his adopted country is often and openly expressed in his writings. I believe my colleagues will appreciate Mr. Davidson's view that patriotism is not dead in America.

The editorial follows:

PATRIOTISM ALIVE AND WELL

(By Aarno Davidson)

Contrary to some people's conception patriotism, like God, is not dead. Not in the U.S.A.! True, some vociferous soap-box orators of pessimism are dishing out the gospel of Armageddon through the three D's: Damn, Doom, Discord. In this respect they resemble the front page headlines which accentuate the worst traumatic occurrences. Thus, the adage, "no news is good news" has been changed to "good news is no news."

To counteract this fashionable trend of thought, numerous organizations are providing to us and to the outside world that it is fallacious to judge this great country by front page headlines, by R or X rated movies in movie houses, radio and T.V. (Tantrum Violence?). Contrastingly, our guardians of positivism, peace and freedom continue to herald the wholesome side of American life. Freedoms Foundation at Valley Forge, Pa. leads the way. During the past three decades it has made enormous strides for the enhancement of freedom in general and the preservation of the American heritage in particular. To elucidate:

Every year it inaugurates a National Awards Program, stimulating people from all walks of life to participate in a hundred different contests on vital subjects: education, religion, science, journalism, literature, radio, television, film, corporates, non-profit organizations, et cetera. These contests are judged by a panel of Supreme Court Judges, top officers of national and patriotic organizations. These judges select almost a thousand winners whose names are inscribed permanently in the Foundation's Annual National Awards Book. Sixty pages of information about and pictures of the truly great, the near-great and hundreds of everyday thinking people devoted to freedom's cause.

Then, too, almost 5,000 high school juniors have participated in seminars on the U.S.A. and their role in the responsibilities for its future. Similarly, about 5,000 high school teachers from every state have partaken in graduate credit seminars preparing themselves to better teach American values, including the American private enterprise system.

The national headquarters of this nonprofit, non-sectarian organization is Valley Forge, Pennsylvania. No other historical landmark offers more surety symbols of American Heritage than this town where self-sacrifice, discipline and devotion keep uninterrupted the torch of freedom and patriotism alive. Here one may awe at "Faith of Our Father's Chapel," an imposing edifice representing the major religious faiths in the United States; "Independence Gardens," a collection of stones and bricks from the birthplaces of the signers of the Declaration of Independence; "Spirit of '76 Library Building" with innumerable original early American manuscripts. Many more kindred memorabilia of America's glorious past are here enshrined on public display.

Be it stated that I hail from the cosmopolitan metropolis of Amsterdam, Holland, where chauvinism is practically non-existent. Furthermore, I've traveled extensively through Europe, South America, certain parts of the Orient, Canada and Mexico. With deep conviction I feel justified to emulate those who say that in spite of all its shortcomings this is still the sunniest spot on our shadowy planet. Freedoms Foundation is doing its utmost to keep it so.

Author Ben J. Wattenberg, "Only a nation that knows what it has accomplished in the past can know what it is able to do in the future. We are ill-served by the 'nothing works' boys. Americans came through a turbulent value-busting era and they coped well. The real heroes of the past dozen years have been American people. Wiser, tougher, calmer, shrewder and more forgiving than the critics to Right and to the Left." In his fascinating book of poems, Western Star, Stephen Vincent Benet wrote, pensively:

Americans are always on the move
And when the whistle blows they go away,
Sometimes there never was a whistle blown
But they don't care, they blow their own.
A dozen tunes but only one refrain:
We know where we are going and are on our way.

I was privileged to acquire that whistle the day an amiable Federal Judge handed me my American Naturalization Certificate. This certificate I consider, together with my four Freedoms Foundation Awards, the most treasured possession of all my life. Since acquiring this whistle I've often put it to good use. Sometimes it sounds a bit out of tune but this does not stop me from whistling. . . .

So long as there are American organizations like Freedoms Foundation I shall keep on whistling the haunting tunes of "America The Beautiful" or Irving Berlin's popular song, "God Bless America, my home sweet home." A home I adopted decades ago and have been cherishing it ever since.

It is my firm belief that we can pay just homage to our Founding Fathers by seeing to it that our "present-day fathers" (and mothers) in whom we trust our present and future, never lose faith in our two-century old system of Democracy. Thus keeping the torch of liberty forever aglow!●

THE WAY OF OUR FATHERS?

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. GINGRICH. Mr. Speaker, the term "enterprise zones" is quickly becoming familiar across the United States, mainly due to a bill introduced by New York Congressmen JACK KEMP and ROBERT GARCIA. The bill is H.R. 7563, the Urban Jobs and Enterprise Zone Act.

Enterprise zones is not a new concept. The British and Irish Governments are experimenting with enterprise zones as a means to stop urban decay. And the idea has been introduced in Congress before, but was laid aside for the conventional methods of urban development.

Recently, an article on enterprise zones appeared in the Atlanta Constitution by Gene Tharpe, a noted economics writer. I found his points about "enterprise zones" being similar to the old-fashioned term "free enterprise" very interesting. I want to share his remarks with you. The text of the article is printed below:

THE "WAY OF OUR FATHERS"?

(By Gene Tharpe)

The "reindustrialization of America" has become a buzzword in the 1980 presidential election, and Republicans and Democrats alike are talking about the need to regenerate the industrial strength of the U.S. But get ready for another buzzword which, so far, is primarily the property of the Republicans (although some Democrats are singing the tune, too)—"Enterprise Zones."

Enterprise Zones, to be true, are an interesting concept. Even if what they are is just old-fashiond free enterprise.

The modern-day concept, however, of Enterprise Zones was the idea of Sir Geoffrey Howe, who is now chancellor of the exchequer in the British Conservative Party government. He first proposed the concept in 1978 when he was a member of the "shadow Cabinet" of the Conservative Party, which was then out of office in opposition to the Labor Party.

The Howe idea, basically, is to apply almost 100-percent-pure free-enterprise capitalism to solve urban decay. In blighted urban areas designated as Enterprise Zones, the government would seek to stimulate the growth of business (especially small businesses) and jobs by reducing tax burdens, eliminating restrictive labor practices, and eliminating restrictive regulations including the ending of overly strict zoning and greatly reducing the amount of government paperwork required of businesses.

Howe's bottom-line contention is that the market would solve the economic and social problems that decades of government planning and regulating had failed to do in Britain. Now that the Conservatives are in power, the British government is moving to set up five or six Enterprise Zones this year, although it is not cutting the "red tape" as extensively as Howe originally proposed.

In the United States, the Enterprise Zones idea began catching on last year, and some politicians soon were touting the new-found old-time religion.

This summer in Congress, a conservative Republican and liberal Democrat teamed up to introduce the Urban Jobs and Enterprise Zone Act. Rep. Jack Kemp, R-N.Y., and Rep. Robert Garcia, D-N.Y., said their bill calls for Congress to "'greenline' the poorest urban (and rural) areas of the U.S. by providing major tax incentives to create jobs and promote small business within these zones."

Among the tax incentives they list in their bill are reduced payroll, capital gains and corporate taxes, accelerated depreciation of assets, and the establishment of foreign trade zones within the Enterprise Zone. "To receive these benefits a business would have to employ at least one-half of its employees from within the zone," the two sponsors say.

As might be expected, some liberals oppose Enterprise Zones because they fear a return to the "robber baron and sweat shop" days. On the other hand, some conservatives say the concept doesn't go far enough in "freeing up" the urban economy from the heavy hand of government regulations. The chasm of difference among those who support the Enterprise Zone idea can be seen in that both Ronald Reagan and John Anderson have endorsed the concept.

The goal of Enterprise Zones—break the cycle of the urban poor, stop the further decay of America's cities, and revitalize declining areas by attracting business and jobs and population back into the inner cities—is one long sought by various governments in numerous ways. The majority of such attempts, of course, consisted of governments spending billions of dollars in subsidies, welfare and projects, and the steady growth of government controls and regulations.

Only minimum progress has been made, in U.S. cities for sure. The great urban renewal surge in America during the 1960s has borne more costly failures than successes. The nation's urban poor remains, as Vernon Jordan said, America's "boat people without boats." How to attract and keep jobs-providing businesses in the central cities has baffled urban leaders for years; could it be that Enterprise Zones, fundamentalist free enterprise, the "way of our fathers," is the answer?●

H.R. 6520: THE ANTIFAMILY FARM BILL

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. MILLER of California. Mr. Speaker, H.R. 6520, the so-called Reclamation Reform Act, is currently before the Rules Committee, which is exactly where it should remain.

This atrocious piece of legislation may well represent the most serious threat to the family farm ever contemplated by the Congress. And ironically, the reclamation program was designed and funded specifically to assist small farmers and protect them from monopolization of agriculture by agribusiness.

Over 97 percent of current reclamation farms are complying with the law today. H.R. 6520 would emasculate the reclamation program for the benefit of the tiny percentage of violators. This is extremely unwise and unjustifiable public policy. It represents not only a frontal assault on the principles of the reclamation program and the small farmer, but it also poses a severe danger to agriculture in other, nonreclamation areas of the country.

I wanted to share my testimony on the Reclamation Act amendments before the Rules Committee last week.

The testimony follows:

STATEMENT OF CONGRESSMAN GEORGE MILLER OF CALIFORNIA

Mr. Chairman, H.R. 6520 is a severely flawed piece of legislation which, if enacted, would totally undermine the 80-year old Federal reclamation program. It would convert a program which was designed to encourage small family farmers into one of lucrative taxpayer subsidies for agribusinesses which have undermined the family farmers of this country.

H.R. 6520 is the first major modification of the reclamation laws in 40 years. If this highly controversial legislation is sent to the House floor in the waning weeks of the 96th congress, we will be asking Members without much background knowledge of the issues to make judgments involving billions of dollars in Government subsidies which could well determine the future of family farming in this country.

Can a reasoned decision be made by the House under these circumstances in so brief a time? Could we achieve a compromise with the very different, but still objectionable, Senate version of this legislation? And lastly, is it likely that a conference on these two bills will produce a piece of legislation acceptable to the administration, which has indicated on several occasions its intention of vetoing any proposal which resembles either the House or Senate versions?

The committee must consider these issues when deciding whether to place this legislation before the House at this time. If you do approve a rule, I strongly urge that it be an open rule allowing all amendments, including substitutes, and that it protect time for any amendments which have been printed in the RECORD. Because of the relative lack of attention the reclamation program has received from the whole House during the tenure of virtually every current Member, I also recommend a minimum of three hours of general debate.

My objections to the specific provisions of H.R. 6520 are detailed in the dissenting views in the report of the Interior Committee, which were signed by 11 committee members.

I can best summarize the bill's numerous flaws by contrasting its stated "purposes" with the actual policies it would establish:

"• • • To family farms • • •"

Over 97 percent of the farms today meet the 960-acre limitation advocated by the administration. The vast majority of these farms are even below the 160-acre ceiling in current law. H.R. 6520, which permits farms of 3,360 acres, is not needed by these 45,000 farms, but only by the 2 percent of farmers who have sought every litigative, administrative and now legislative device by which to avoid complying with a law, under which they voluntarily placed themselves, and under which they have greatly profited. These very powerful special interests are, in the reclamation west as in other agricultural areas, the mortal enemies of true family farmers for whom this program was created.

"• • • To provide opportunity for a maximum number of farmers on the land • • •"

The top 1 percent of reclamation farmers, just 435 people, currently control 20 percent of all the land in the program. The top 2.4 percent control nearly one-third of all the land. This evasion hardly helps to prevent the "monopolization of benefits by the privileged few" against which Interior Secretary Harold Ickes warned in the mid-1940s.

This bill does not assure that beneficiaries are truly "on the land." The longstanding residency provision of reclamation law is repealed by H.R. 6520, and is replaced by a vague "agricultural participation" requirement which is far weaker than that originally proposed either by Chairman Udall or myself. In fact, it is so weak that the newsletter of the large farming interests recently advised its readers, "• • • The majority of the farmers in most States will not be affected by the agricultural participation test"! The largest loophole in this provision is the total waiver of the participation requirement for any farmer living within 50 miles of his land, whether he is involved in farming to any extent or not.

"• • • To distribute widely the benefits of federally subsidized reclamation projects• • •"

H.R. 6520 would effectivley gut the program at the time that much of the distribution of benefits is scheduled to occur. It would allow corporate and agribusiness interests to retain control of hundreds of thousands of acres, of which they had voluntarily agreed to dispose. Moreover, H.R. 6520 would exempt many of the most longstanding violators—those in the Corps of Engineer projects service areas in the Central Valley of California—from compliance with even the diluted provisions of this bill, despite administrative and judicial determinations to the contrary.

"• • • to preclude speculative gain • • •"

H.R. 6520 is riddled with provisions granting special benefits to banks, trusts and other interests which could use federally developed and subsidized projects to reap enormous private benefits.

The bill encourages the speculative resale of taxpayer subsidized water by allowing irrigators to sell it for uncontrolled prices.

"• • • to provide for sound repayment practices • • •"

The water service and capital cost repayment provisions of H.R. 6520 lavish billions of dollars in subsidies on the wealthiest agricultural interests in the country and permit many grant landowners to circumvent the law by paying higher prices. While employing the rhetoric of "Full Cost Repayment," the maximum prices allowed by the bill actually assure that a majority of districts will never repay more than 40 percent of project costs, and some would repay as little as 15 percent! No district will repay more than 72 percent.

This committee should be on notice that the spokesmen of the large California farms have publicly stated their intent to impose a pricing "cap" on the cost of water which would restrict the "full" price to about two-thirds of the subsidized amount already in the bill.

"• • • to promote the efficient use of water resources • • •"

Contrary to the worthwhile goal of promoting water conservation, H.R. 6520 would encourage the wastefull misuse of dwindling western water resources. This bill provides guarantees of subsidized prices for water based on past usage, regardless of whether irrigators have any legal right to that water. The bill permits resale of subsidized water at rates far above those originally paid to the Government, which obviously encourages irrigators to take their full share. The weak conservation "mandate" in the subcommittee bill was removed, and was replaced with meaningless and ineffectual rhetoric. In commenting on the bill, the Assistant Secretary of Interior wrote to me that the formula currently in H.R. 6520 "favors inefficiency" and fails to "reward efficient use or encourage water conservation."

Mr. Chairman and members of the committee, these are but the highlights of my objections to H.R. 6520. They are shared, either wholly or in large part, by such farm organizations as the National Grange and the National Farmers Union, as well as by numerous religious, consumer and organized labor groups through the country.

Lastly, proponents of this legislation argue, despite the 97 percent of reclamation farms which do comply with the acreage limitation, that family farms are economically inferior to corporate farms, and that we should abandon the small farm ideal.

But over a half dozen studies, including one financed by these large operators, have established that efficient production is maximized at 640-960 acres.

The average farm in the United States is just 450 acres. Since over 97 percent of the farms currently in the reclamation program are less than 960 acres, and even in the highly controversial westlands district over a third of the farms are less than 500 acres, it would seem patently obvious that small farms can, and do, economically survive and profit.

H.R. 6520, contrary to its title and its stated purposes would not "reform" the reclamation program. It would virtually repeal it and hand over billions of dollars in taxpayer subsidized projects to the very forces which are threatening to make the family farm extinct throughout the United States.

Reclamation accounts for just 1 percent of all the farms in the United States, and the excess land in controversy is only one-tenth of 1 percent. On that small amount of farmland, we should continue to support the successful reclamation program which encourages and supports real family farming in the west.

H.R. 6520 would undermine those family farms and would thereby stimulate the further concentration of food production resources into fewer hands, a situation which already costs the American consumer $16 billion a year.

And still the special interests are not satisfied. Spokesmen for the biggest farming interest to benefit from H.R. 6520 have been quoted as pledging to fight hard on the floor to remove all limitations on farm size, and to impose a rigid ceiling on water prices for the biggest irrigators.

"If we don't see improvement in those two areas," said William MacFarlene, president of California Westside Farmers, "we may have to shift our position to all out opposition."

If these two provisions are deleted, then there is not even a semblance of this bill being for the benefit of small farmers or the taxpayer. Why would the Congress approve so tainted a piece of legislation?

And if these two provisions are not deleted, the few select interests who currently support H.R. 6520 are telling us they will oppose it on the floor.

Who is the constituency for this bill?

Not the small, family farmer.

Not the taxpayer.

Not the American consumer.

Not the competing farmer in non-reclamation States.

And, apparently, perhaps not even the special interests who have spent extraordinary time and money to push this legislation.

This bill is unworthy of this committee or the House. And yet we are told that unless it is worsened, it will be opposed even by its few supporters. Under those circumstances, it is best to withhold action on H.R. 6520 this year.●

HOSTAGES AND OTHER POW'S

HON. DANIEL B. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. DANIEL B. CRANE. Mr. Speaker, I hope the administration will forgive me if I bring up a sensitive subject: This is another day of imprisonment for our hostages in Iran. As the following editorial points out, we seem to be relegating these brave men to the ash heap of painful thoughts we sweep out of our minds whenever possible.

In a very real sense, the hostages have joined the American prisoners of war still in Southeast Asia as subjects we just don't like to think about. But think about them we must. More than think about them, we should be planning ways for their release. All of the adjectives have been repeated. All of the self-flagellation that accompanied this tragedy has been accomplished. All of the plans and schemes have been examined and, if we are to believe the administration, either tried or ruled out.

This is not a time for acrimony or for Monday morning quarterbacking. Fifty-two of our citizens are held prisoner. What are we doing about it, today? What will a new President do about it?

It would be immoral to allow these men to slip out of our daily prayers and actions. The editorial, from the August 16 edition of the Paris, Ill., Beacon-News, follows.

REMEMBER TEHRAN!

This is another day of imprisonment for the American hostages in Iran.

We call attention to this because most Americans seem to have stopped counting. The hostage crisis, like hunger in Cambodia and the war in Afghanistan, has assumed the status of an accepted reality, however cruel and unjust.

This is so in part because Americans, as well as their government, see no likely prospect of freeing the hostages anytime soon. Consequently, the temptation is to lapse into resentful, resigned silence.

In Washington, this sort of posture is known as a "low profile." As diplomatic strategy in the wake of the failed rescue mission of last April, it makes considerable sense. Shouting at the Iranians didn't free the hostages during the 171 days that preceded the rescue attempt. There is even less reason to think that it might do so now.

Better, perhaps, to permit passions to cool on both sides and hope that even the Ayatollah Khomeini comes to realize that holding diplomatic hostages is counterproductive. Khomeini's willingness to release the hospitalized Richard Queen may reflect just such a realization.

But there is also a danger in this muted approach. As Washington deliberately deemphasizes its confrontation with Iran, popular awareness of the hostages themselves tends to dissipate. Their reported dispersal to secret locations in unknown cities far from the hothouse atmosphere of Tehran only services to dim further the national consciousness.

This must not be allowed to happen. The imprisonment of this country's diplomatic mission to Iran is as outrageous and unacceptable today as it was on the morning of Nov. 4, 1979.●

TEXTBOOK ON FEDERAL GRANT LAW

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. SCHEUER. Mr. Speaker, there has come to my attention the recent publication of a pioneering study of the Federal grant system. This work of scholarship deals with the emerging "law of Federal grants," a subject which I am sure will interest my colleagues and the public at large.

The work is entitled "Rights and Remedies Under Federal Grants." It was written by Richard B. Cappalli, a law professor at Temple University. It is published by the Bureau of National Affairs, one of the Nation's largest law book publishers located here in Washington, D.C.

Professor Cappalli patiently worked his way through the thousands of pages of rules, regulations, and statutes underlying 700 programs administered by 24 Federal agencies in order to extract essential principles and practices.

The result of his monumental labors is an absorbing exposition of the emerging law of Federal grants, in which he covers very thoroughly the theory and structure of grants, agency enforcement of grant conditions, the expanding judicial role, and the Federal grant as a unique legal creation. He also examines the actual status of the law as it concerns grantee and subgrantee rights in the context of alleged infractions of Federal rules.

Because rights without remedies are "gossamer and puffs of smoke," Professor Cappalli gives special attention to the need for grantee due process—that is, effective administrative hearing provision for the defense of grant practices and policies and the assertion of grantee powers and rights. Opportunities for grantees and grant applicants to be heard are, he notes, woefully inadequate and lacking in procedural fairness at present.

Professor Cappalli concludes his study—which is notably practical and realistic in approach and liberally illustrated with true-life examples of the everyday problems of the grantee and the grant administrator—by proposing the creation of a grant disputes board subject to a grantee bill of procedural rights. His recommendations are receiving careful consideration, in view of the current embryonic efforts—represented, for example, by the Federal Grant and Cooperative Agreement Act of 1977—to bring order to the anarchy that, in the view of some observers, is the present condition of the Federal grants system.

Mr. Speaker, I would like to congratulate Professor Cappalli and Temple Law School for having produced this much-needed exposition and analysis of the Federal grant system. Many benefits will be derived from consideration of this work by grant administrators, lawyers, and policymakers, and I am pleased to bring this work to the public's attention.●

PRIVATE SECTOR INITIATIVE PROGRAM

HON. RICHARD C. WHITE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. WHITE. Mr. Speaker, yesterday the House adopted H.R. 6796, a bill to extend the private sector initiative program (PSIP) embodied in title VII of the Comprehensive Employment and Training Act. I heartily endorse the extension of this program, for there is little doubt the PSIP has been effective in encouraging the involvement of the private business community in the employment and training of economically disadvantaged individuals.

In an effort to further strengthen the program, I would point out the success of the payback provision which has been initiated by the El Paso, Tex., Private Industry Council as part of the PIC's classroom training program. In implementing title VII of CETA, the PIC has gained approval from the Department of Labor for a payback provision allowing the PIC the latitude to request from classroom trainees a commitment to perform a moderate amount of volunteer community service to partially repay the community for the education and training. I am proud to say this program is now on line, and we all have the highest of expectations for its success.

I would emphasize that the PIC does not require community service of any individual who is unable for family or financial reasons to fulfill such a commitment. Each participant volunteers his or her services commensurate with his or her ability and circumstances.

Additionally, the plan enjoys the benefit of allowing participants an excellent opportunity to further learn through service, since the job assignments are designed to complement the education. In El Paso, for instance, licensed vocational nurse trainees are able to fulfill their community service by working in local hospitals as nurses aides.

The service concept reinforces title VII of the CETA program by emphasizing self-reliance in the participant. This concept adds to our efforts to assist individuals in becoming economically independent, not dependent, and to appreciate the values and benefits of the work world, including self-esteem and initiative.

I compliment those dedicated individuals who have so ably created and implemented this program. Under the capable leadership of Mr. Richard Azar, Chairman, and Mr. Thomas A. Draschil, Executive Director, this program can serve as an excellent model of how we as legislators might further strengthen the private sector initiative program by adding a community service element. I urge my colleagues to give strong consideration to the community service concept during any further discussion of this legislation.●

BEWARE OF ECONOMIC MODELS BEARING POLICY POSITIONS

HON. WILLIAM R. COTTER

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. COTTER. Mr. Speaker, the September 22 issue of Business Week contains an article which every Member and their staff should read. Not only does it undermine the notion that social security lessens personal savings, but it constitutes an eloquent statement on the danger of relying on econometric modeling to make decisions on public policy.

For those working on the proposal to reduce taxes, this article is especially important and I am placing it at this point in the RECORD.

A SPECTACULAR DEBUNKING OF SOCIAL SECURITY CRITICS

The notion that Social Security has seriously depressed personal savings in the U.S. has become the conventional wisdom largely because of the results of a 1974 study by Harvard University's Martin S. Feldstein, president of the National Bureau of Economic Research. New findings presented at a packed session in Denver by Dean R. Leimer and Selig D. Lesnoy of the Social Security Administration have thrown the whole issue into the limbo of uncertainty. The study seems likely to increase skepticism about the use of econometric work as the basis for policy making. It reveals that an elementary programming error in Feldstein's original econometric work dramatically overestimated the negative impact of Social Security on saving. And Feldstein, who chaired the session at which the new results were aired, acknowledged the error.

In his 1974 study Feldstein argued that Social Security has affected saving in two opposing ways: (1) By providing benefits upon retirement, it reduced the need to save for old age; (2) By inducing earlier retirement and therefore expanding the span of retirement, it raised the amount of total assets required for retirement, thereby increasing the need for private savings.

To determine which effect has been dominant, Feldstein constructed an elaborate econometric model covering the period 1930-74, which included a key variable for Social Security wealth (the present value of Social Security pension benefits anticipated by individuals) that affected present consumption and saving. Expected future Social Security wealth grew rapidly after 1956, by Feldstein's measure, which meant that people believe they needed less of a nest egg.

So the net impact of the system was to increase consumption and inhibit savings. His numbers were spectacular, showing that the introduction of Social Security had reduced personal savings by a phenomenal 50%, or $63 billion, in 1974 alone, and had cut the nation's capital stock by as much as 38% over the years.

Leimer and Lesnoy intended simply to see whether alternative assumptions about how individuals view their future Social Security "wealth" would affect Feldstein's results. But in replicating Feldstein's work, they discovered a programming error in accounting for a 1957 change in Social Security legislation. The effect was to inflate the significance of Feldstein's Social Security wealth variable.

Correcting for the programming error and simply replicating Feldstein's work produced results strikingly different from his original findings. While the study indicates a considerably smaller negative impact on savings over the whole 1930-1974 period, the effect is not statistically significant. More important, looking at only the postwar 1947-74 period, Feldstein's model now implies that consumers actually saved $114 billion more in 1974 than they would have in the absence of Social Security—a finding that is statistically significant but defies reason. Even Leimer and Lesnoy brand it as inherently "implausible."

Because the impact of Social Security on savings is now obviously an open question, the new finding could blunt recent attacks on the system. As the Brookings Institution's Henry J. Aaron, who was a discussant of the Leimer and Lesnoy paper, put it: "It's as if they went hunting for ducks and bagged an elephant."●

EXAMINING THE FEDERAL SYSTEM

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. HAMILTON. Mr. Speaker, I insert my Washington report for Wednesday, September 17, 1980, into the CONGRESSIONAL RECORD:

EXAMINING THE FEDERAL SYSTEM

When the nation's governors recently called for a national commission on federalism to consider a realignment of power in the federal system (that is, the assignment of certain functions to the federal government and others to the states), they were raising one of the most difficult and perplexing questions of American government.

It is no coincidence that I often find Hoosiers raising the same question in a variety of different ways. Some constituents are concerned about the degree of federal control over specific programs; others think that too many tax dollars are lost by sending them through Washington; still others complain about the inefficiency or ineffectiveness of federal programs or the unresponsiveness of federal officials. Views such as these are apparent at nearly every session I have with Ninth District residents: the welfare system does not work; the university has an almost adversarial relationship with government; too many ineligible people receive food stamps; the states are required to implement federal environmental directives which are frequently distasteful to localities; a wide gap between expectation and performance characterizes the medicare program.

The governors argue that things have gotten out of hand in Washington. The five hundred programs of categorical grants

that make up the federal system may be a bonanza for federal politicians, but they have created a bureaucratic nightmare. For example, the system has not one, but five separate programs for sewage disposal. Moreover, once a program is established it cannot be easily eliminated. Committed constituencies develop quickly, and they fight tooth-and-nail against every proposed cutback. Then, too, it is virtually impossible to draft guidelines from Washington to fit a diverse nation. The essence of the governors' argument is that the federal government is taking more of the tax dollar, returning less of it to state and local government, and dictating how state and local government will use its own tax dollar. In the opinion of the governors, the federal system is cumbersome and wasteful. They also think that it is beyond the control of the people.

So the governors want a national commission on federalism to search for a new distribution of power among federal, state, and local units of government. They want a serious debate in the 1980's to sort out both the responsibilities and the sources of revenue in the federal system. As political realists, the governors do not expect change to come rapidly. However, they are confident that they will find a climate receptive to their thinking. I believe that the governors are right, and I hope that they will succeed.

The governors' position finds support in a recent study of the federal system released by the Advisory Commission on Intergovernmental Relations. The study identifies four major problems in the federal system that require attention:

Administration: There is simply too much red tape and confusion, too little cooperation and coordination, all along the line of program administration, from top federal policy makers and administrators to state and local administrators and officials.

Effectiveness: Federal programs are ineffective, marked by poor performance and inadequate results. They come up well short of standards.

Cost: Federal programs are plagued by costly administrative waste.

Accountability: There has been substantial weakening both in the responsiveness of government and in its accountability to the people. People cannot steer government in the direction they want it to go.

Underlying concern about problems in the federal system is a fear that the "consent of the governed"—the concept on which the legitimacy of our government is based—is being badly strained. The strain is due to the shift of power from the people and their elected representatives to special interest groups and unelected bureaucrats.

It will not be easy to correct the problems in the federal system. Many responsible observers think that we should not even try because, for them, federalism has had its day. Other observers point out that we cannot turn back the clock and try to fit federalism into the patterns of a slower and less complex era. I acknowledge that there is no infallible theory which we might use to guide us in redesigning the federal system and realigning functions within it. Nevertheless, it seems to me that there is a need to reassess federalism, to examine—comprehensively and in detail—federal, state, and local roles in the various areas of public policy.

We should approach our examination of federalism without preconceptions. More than anything else, we must be willing to think in new ways. I endorse the governors' proposal for a national commission on federalism. The problems of the federal system are enough to persuade me that we should be prepared to weigh the possibility of far-reaching changes.●

VOLUNTARY INITIATIVE AND HEALTH-CARE COSTS

HON. DAVID W. EVANS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. EVANS of Indiana. Mr. Speaker, our Nation was founded and has prospered on the voluntary effort of our citizens and business community to improve and enhance the health and lifestyles of our citizens.

I would like to share with my colleagues a speech by Lowell H. Stein, M.D.—who I might add is a fellow Hoosier—presented to the National Governors' Association. It is a fine and worthy example of how voluntary efforts by concerned citizens and the business community can work together in an effective manner to deter escalating costs, especially in the health-care industry. The voluntary effort is a practical and workable approach, and by far a better, more efficient, and less costly approach to the needs of society than the excessive and wasteful government intrusion into our personal lives and individual businesses.

I hope the members of this Chamber will take a moment to review his speech.

The speech follows:

THE BEST OF ALL POSSIBLE REALITIES

As an individual physician and as a spokesman, I am indeed pleased to have this opportunity to tell you what voluntary initiative is doing against health-care costs.

It's good to be able to go before you, the nation's Governors, and report that providers, payers, and consumers of care have been able to scale down the cost rise—by working together in a national, state, and local coalition.

It's good to be able to tell you that this coalition—the Voluntary Effort—was instrumental in saving consumers about $3 billion in 1978–79, its two full years of existence.

And it's good to be able to tell you that such effort is designed not as a "quick win" for the applause of today. . . but as a broad program for the needs of tomorrow.

While much as been done to restrain the cost rise, much more needs to be done. And I have to tell you that doing it won't be easy.

Cost has to be seen as part of the steady cross-fertilization between health care's capabilities and consumer expectations.

Generally consumers know that through one medical and financial recourse or another, they will be kept as well as possible. . . for as many years as possible.

And those years keep adding to cost in a society where the ratio of elderly people—and hence of degenerative disease—keep growing.

Whenever shadows have been cast on some area of personal or social health, concerted moves have been made to bring light. All such undertakings add to cost.

There is the huge repair bill for damage wrought upon health by self-indulgent lifestyles. Many consumers who expect the most from care are those who have done the least for health.

In terms of the massive consumer demands and expectations it has to meet, health care is indeed a mass industry—with over 5,000,000 personnel, over 7,000 hospitals, some 375,000 active physicians, and so forth.

But it is not a mass production industry. It handles one patient at a time, according to his or her individual needs. Hence, it is not subject to the same per-unit measures of output and cost as a canning factory. Health care is something very special that has to be handled with care.

The need for cost restraint has to be balanced with other great needs—notably the health-care quality and availability that Americans expect and demand.

Achieving this balance is no easy task. It is not easy for hospitals. It is not easy for physicians, who order most of the cost-impactive procedures in hospitals.

None the less, physicians and hospitals are the natural and logical choices for being given the core of responsibility for this task. They alone are in a position to see exactly how cost restraint can be effective without being disruptive. And they should work at the task together.

That's the outlook that prompted the American Medical Association, American Hospital Association, and Federation of American Hospitals to originate the Voluntary Effort late in 1977 . . . after individually recognizing cost restraint as a top priority.

The Voluntary Effort, or VE, immediately became expansive—representationally and geographically.

Its national steering committee includes people in health insurance, health-product manufacture, business affairs, consumer affairs, local government, and labor.

Far from being a national monolith, the VE is organized in states and communities—and depends on them. It's tremendously helpful that the governments of some states are represented on state committees.

The national steering committee shapes broad objectives and monitors what the states are doing. But it does not dictate formulas to the states, the way the federal government might. It recognizes that situations vary from place to place and call for indigenous approaches.

Predictably, the amount of progress also has varied from place to place. A number of states have made truly notable progress—and four examples that spring to mind are Pennsylvania, North Carolina, Texas, and the state that Governor Bowen, M.D., and I share: Indiana.

Each of the vocations represented in the VE has made a distinctive contribution to cost restraint.

Partly through management engineering, numerous hospitals have boosted their productivity while holding the *proper* line on hiring of personnel and utilization of services.

By *proper* line, I mean doing what can be done without cutting the quality and needed availability of care.

Alternative forms of health-care delivery, such as outpatient and home care, have been stimulated as ways to reduce hospital utilization.

Economies have also been achieved though sharing of services among hospitals and development of multi-hospital systems.

The American Hospital Association and the Federation of Hospitals have been catalysts of these endeavors.

Physicians . . . with the help of advice and criteria from the AMA . . . are heavily involved in the utilization review and control in hospitals.

Well aware that physicians can be preoccupied with quality of care to the exclusion of cost, the AMA has tried to make them more conscious of cost . . . and of how various hospital and office procedures can be

made more economical, or eliminated, without sacrificing quality.

The Blue Cross and Blue Shield Associations—which are VE partners—have their "medical necessity" program . . . aimed at denying reimbursement for hundreds of hospital procedures except in instances when medically justified.

These are procedures regarded as routine, outmoded, or capable of being done on an outpatient basis.

The Health Industry Manufacturers Association—a VE partner—has significantly helped hospitals in group purchasing and through economical product design.

Cooperation, as well as what the VE partners have done on their own, is reflected in the cost-restraint record to date.

Hospitals decelerated their increase in expenses from 15.6 percent when the VE was formed to an inflation-adjusted figure of 11.6 percent last year. A further deceleration of 1.5 percent, inflation-adjusted, is the 1980 goal.

Physicians in the last couple of years kept their fee-increase rate below the consumer price index rate . . . in keeping with appeals from the AMA.

This year the differential will be harder to sustain—one big reason being that recessions traditionally increase the pressures on medical services and costs.

However, any amount of de-escalation achieved through the voluntary effort has a special economic advantage.

The advantage is that the VE's participants have enabled it to do its job without creating any full-time bureau . . . or hiring any extra personnel . . . or spending any extra money. The costs it saves the consumer are complete savings.

In particular, I want you to bear in mind that the Voluntary Effort is not a movie-lot facade . . . but a growing structure for tomorrow. The coalition is here to stay—with long-range and deep-going objectives.

One huge subject for long-term consideration is employee health benefits. Business is, in effect, the largest consumer of health protection . . . and picks up most of the tab for it.

The VE can be a guide to management and labor in negotiating health benefits aimed at greater cost effectiveness and lower cost. Here's a field that symbolizes the advantages of the voluntary approach to cost.

Employee health benefits have already drawn a good deal of attention from the AMA . . . particularly in the wake of recommendations made in 1977 by the AMA-sponsored National Commission on the Cost of Medical Care—a broad-based group of 27 that had met over an 18-month period.

Among other things, the Commission report envisions a broad market in the financing of employee and other health-benefit plans—a market characterized by fair competition and consumer incentives.

A selection from the Commission's 48 recommendations was submitted by the AMA to the VE National Steering Committee last month, in connection with long-range planning.

Other VE partners have their own long-range ideas. And what all the ideas betoken is that the VE represents an ongoing momentum for action.

The momentum does not mean that change will come momentarily. Change affecting the whole health-care system has to be weighed and sorted out before it is meted out—or else the whole system will come unglued.

That is something that many outsiders seem unable to realize. But rather than complain about outsiders, I want more people to be insiders.

I want more people to develop a close knowledge of the voluntary effort—and get the information that is readily available.

More to the point, I want more state governments to get inside the VE—and take vigorous part in it. The greater the cooperation between you and your state VEs, the easier it will be to get a secure handle on common concerns.

The Voluntary Effort is not a closed shop . . . but an open forum with open minds.

It does not, and cannot, offer the best of all possible worlds. It cannot sidestep the plain truth that health-care quality, demand and supply, and technological and organizational needs are all in the same pressure cooker as cost.

But while it does not offer the best of all possible worlds, the Voluntary Effort does offer the best of all possible realities. I invite you, the nation's governors, to help make those realities come true.●

BALANCING THE FREEDOM OF SPEECH WITH THE NEED TO PROTECT U.S. INTELLIGENCE AGENTS

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. MAZZOLI. Mr. Speaker, I commend to the attention of my colleagues the following editorial, "The Boundaries of Free Speech," which appeared in the September 5, 1980, Washington Star.

It makes a persuasive case that our constitutional freedom of speech is not absolute. As we know, it does not permit shouting "fire" in a crowded theater. There was to be a balance struck when the issue is the identities of our undercover foreign intelligence officers.

Both the House Intelligence and Judiciary Committees, on which I serve, have approved such a balanced approach in reporting H.R. 5615, which makes it a crime to disclose the names of undercover agents and officers serving abroad.

The unauthorized disclosure of the identities of undercover agents renders our intelligence agents and officers ineffective. It hinders our country's ability to defend itself. And as illustrated in the recent machinegun attack on the home of a staff member of the U.S. Embassy in Jamaica after his name was disclosed by a Washington-based group as an alleged CIA agent—it places the lives of loyal Americans and their families in jeopardy.

It is only appropriate—and long overdue—that such actions be made a Federal crime and the offenders be subject to severe penalties for unauthorized disclosure.

H.R. 5615, as reported, would make it a Federal crime for someone with present or past access to classified information identifying undercover agents to reveal names of undercover agents learned during the period the individual had access to such information.

H.R. 5615 would also criminalize the disclosure of identities of covert agents by those who have had access to classified information.

Finally, it would make criminal the disclosure of information identifying the undercover agents by anyone—including a member of the press—if, but only if, the disclosure were in the course of an effort to identify and expose undercover U.S. agents posted abroad.

The bill mandates that disclosures be part of a course of effort which must be undertaken with the intent to impair or impede the foreign intelligence activities of the United States. Furthermore, H.R. 5615 requires that the specific disclosure of the name or names also must be done with the intent to impair or impede the foreign intelligence activities of the country.

The requirement that the disclosure be "In the course of an effort to identify and expose" makes it clear that the defendant must have been engaged in a conscious plan—a program, pattern or practice—to seek out undercover intelligence operatives and expose them with the intent to destroy U.S. intelligence efforts. Therefore, this provision strongly tends to eliminate regular journalistic practice.

In H.R. 5615, the Judiciary and Intelligence Committees have endeavored to protect all but the conscious and systematic and intentional exposure of American operatives.

We have tried to act only to protect recognizable and important government interests and then only in a very specific and in a very limited fashion.

This legislation is well balanced and I strongly urge my colleagues to resist any efforts on the floor to strengthen or weaken the provisions of H.R. 5615.

The editorial follows:

THE BOUNDARIES OF FREE SPEECH

Those who are resisting the current effort in Congress to protect U.S. intelligence agents against the marauding of Philip Agee and Louis Wolf offer two disclaimers. They are, they claim, as outraged as the rest of us by the disclosures of Mr. Agee and his free-lance protege, Mr. Wolf, who make it their business to identify covert agents and expose them to injury or death. They also protest that they do not consider First Amendment rights absolute, and ask only that the legislation not "chill" legitimate reportorial inquiry.

These disclaimers must be taken at face value: and Congress would indeed waste its time if it passed a bill that would be easy prey for the first court to take formal notice of it.

Nonetheless, we may be sure that if the cavils of the ultra-libertarians are heeded, Congress will leave itself small leeway for effective legislation. If the handiwork of the Wolfs of this world is to be curbed, we must face the risk that legislation strong enough to curb it could tempt adventurous prosecutors to interfere with legitimate reporting.

But while the danger to be dealt with is real and present, the worries about a "chill-

ing effect" on the press are, as we shall suggest below, dim and hypothetical. Moreover, the libertarians may have met their forensic match this time. There is no more zealous advocate of strong protective legislation for U.S. covert intelligence agents than Sen. John Chafee of Rhode Island, whose uncle, the late Zechariah Chafee of Harvard Law School, was in his day a pre-eminent authority on free speech. With those credentials, Senator Chafee is not easily depicted as an enemy of the First Amendment. In defense of the Senate bill he is co-sponsoring, he cites his uncle's dictum that "the boundary line of free speech . . . is fixed close to the point where words will give rise to unlawful acts."

If that is the proper boundary line, as we in fact believe, there is no doubt that the Agee and Wolf disclosures have crossed it. The 1975 assassination of Richard Welch, then the CIA's station chief in Athens, followed within a month the disclosure of his covert function in the Greek press; and that information came directly from Agee's Counterspy magazine. "Public identification of Richard Welch," as was said at the time, "was tantamount to an open invitation to kill him."

More recently, Wolf's bizarre public identification of 15 CIA agents serving in Jamaica (complete with details) was immediately followed by a nocturnal attack on the residence of one with submachine guns and explosives. No life was lost, but several U.S. agents and their families had to be evacuated.

Those who make it their ghoulish business to furnish the enemies of the U.S. with information that invites and facilitates violence against its public servants obviously do not approve of what those servants are doing. It is their right to disapprove; it is their right to agitate against the authority and policy that authorizes their activities.

But the issue before Congress is more basic; it has nothing at all to do with the free play of opinion or dissent and everything to do, rather, with outrageous disclosures that place the authorized intelligence operatives of the U.S. in physical peril and thereby tend to confound and thwart a function that Congress has seen fit to sanction. In the present state of the law, the Agees and Wolfs are apparently free to make these disclosures under cover of the First Amendment.

The absolutism of the First Amendment, so interpreted, lies in the impractical refusal of its interpreters to recognize the boundary line that commended itself years ago to Zechariah Chafee ("where words . . . give rise to unlawful facts") and still commends itself to most of us. Or indeed any other boundary line, for that matter.

The debating trick by which this absolutism is argued by critics of remedial legislation is familiar. It consists in raising endless hypothetical possibilities, all objectionable, which might eventuate if the law were misused. That way lies not free speech and press but consititutional paralysis.

The ultra-libertarians, dwelling upon their unsavory side-effects, in effect mount the disabling argument that we are powerless to defend the cover of U.S. intelligence agents abroad for fear of "chilling" legitimate inquiry and publication. Yet, interestingly, their objections, hypothetical as they are, have been heeded and reasonably answered, by Senator Chafee and others.

Consider one example. In a memorandum of August 4, the American Civil Liberties Union cites, among the conceivable "situations" that might arise from passage of the pending bills, the following: "An investigative reporter seeks to determine if the Watergate burglars have CIA connections. She discovers that several of them do and that one is a CIA agent. She prints that fact, naming the person."

Obviously, no such reporting should be thwarted. Would the bills now before Congress do so? The Senate bill supported by Senator Chafee and others—and more carefully drawn, as we see it, than the bill approved this week by the House Judiciary Committee—lays down a number of conditions designed to distinguish between malicious disclosure and mere reporting.

If the name of an agent, not previously acknowledged, were disclosed, the disclosure would be unlawful only if it were within "a pattern of activities intended to identify and expose covert agents . . . with reason to believe that such activities would impair or impede the foreign intelligence activities of the U.S." In view of these provisos, the Senate intelligence committee's report of August 13 specifically rejects the ACLU's contention. "A journalist," it declares, "writing stories about the CIA would not be engaged in the requisite 'pattern of activities' even if the stories . . . included the names of one or more agents, unless the government proved that there was intent to identify and expose agents . . . with reason to believe it would impair or impede foreign intelligence activities." To meet the bill's standard of prosecution, the Senate report says, "a discloser must be engaged in . . . the business of 'naming names.'"

Probably no legislation can be both effective and foolproof; and there are fools about. But effective government is often a matter of choices, sometimes distressing and imperfect choices. The present no-holds-barred license for disclosure that covers everyone, while permitting the Agees and Wolfs to pursue their seditious business, is of debatable usefulness to free speech and press legitimately understood. But its perils and costs are not debatable. It tends to disarm and cripple U.S. intelligence capacity and to jeopardize the lives and limbs of U.S. agents serving in dangerous and sensitive missions.

No other free government on earth—to say nothing of others unfree—remotely begins to tolerate the casual (and sometimes malicious) interference with its intelligence services that Americans have come to countenance in the name of protective "exposure," by those who may or may not have the nation's interest at heart. We think Congress should do whatever is necessary, taking due but not paralyzing heed of constitutional scruples, to protect our covert intelligence and counterintelligence agents. Otherwise, it would be well to admit that we are too paralyzed by constitutional scruples to conduct an effective foreign intelligence system in this dangerous world, and stop asking our people to risk their lives in its service.

We can't have it both ways.●

POL POT DECISION MOCKS U.S. HUMAN RIGHTS POLICY

HON. EDWIN B. FORSYTHE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1980

● Mr. FORSYTHE. Mr. Speaker, I am outraged at the recent news that, once again, the administration has decided to support the seating of the Pol Pot government in the United Nations. What was an opportunity to stand proudly for the cause of human rights and dignity has instead made a mockery of our dedication to that policy. I would like to share with my colleagues the letter which I sent to the Presdent concerning this matter:

DEAR MR. PRESIDENT: I am compelled to write you after learning of your recent decision to support the seating of the Pol Pot regime in the United Nations should a challenge to their credentials occur.

I need not recite a litany of Pol Pot's accomplishments in Democratic Kampuchea. It is a matter of public record that he ravaged his country and devastated its capital city of Phnom Penh by systematically murdering all those who could read or write and by purposely starving countless thousands in an effort to establish agrarian communism in Cambodia. How can the United States in good conscience lend even the most minimal support to such a government?

I am fully aware of our Asian allies interests in this matter and our own hopes of reaching a negotiated settlement that would remove the Vietnamese presence in Cambodia. However, I do not believe that U.S. interests are best served by supporting the government of Pol Pot. Since neither Pol Pot nor the Vietnamese backed regime of Heng Samrin are representative of the will of the Cambodian people, the best alternative would be to vote to leave the seat vacant. By pursuing this course, the United States can effectively demonstrate its abhorance of regimes that deny the value of human life.

Mr. President, your vigorous devotion to human rights is beyond question, but, I am confounded as to why the United States should vote to support a regime that has so audaciously denied their very essence.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 18, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 19

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold oversight hearings on the scope of science and technology policy.
235 Russell Building

*Conferees
To resume on S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.
2128 Rayburn Building

Judiciary
To hold hearings to review in detail the President's proposal to admit refugees to the United States in 1981, and to receive the President's annual report to Congress on U.S. refugee programs.
2228 Dirksen Building

9:45 a.m.
Appropriations
Business meeting, to mark up H.R. 7724, appropriating funds for fiscal year 1981 for the Department of the Interior and related agencies, and H.R. 8061, appropriating funds for fiscal year 1981 for the government of the District of Columbia.
S-128, Capitol

10:00 a.m.
Energy and Natural Resources
To continue oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

SEPTEMBER 22

10:00 a.m.
Governmental Affairs
Permanent Subcommittee on Investigations
To hold oversight hearings on the role of the Department of Energy in U.S. energy emergency preparedness.
3302 Dirksen Building

Judiciary
To hold hearings on the nomination of Myron H. Thompson, to be U.S. district judge for the middle district of Alabama.
2228 Dirksen Building

SEPTEMBER 23

9:00 a.m.
Governmental Affairs
Permanent Subcommittee on Investigations
To resume closed oversight hearings on the Department of Labor's investigation of alleged mismanagement and criminal activities of the Teamsters Union's Central States pension fund.
3302 Dirksen Building

Labor and Human Resources
Employment, Poverty, and Migratory Labor Subcommittee
Business meeting, to mark up title I, to increase the future employability of disadvantaged youths by increasing basic educational competency and workplace skills of S. 2385, proposed Youth Act.
4232 Dirksen Building

Select on Small Business
To hold joint hearings with the Committee on Environmental and Public Works on the possible economic costs of acid rain, focusing on economic losses to tourism, sport and commercial fishing, agriculture and forestry, damage to public buildings, and threats to public health.
424 Russell Building

9:30 a.m.
Energy and Natural Resources
To hold hearings on the nomination of Wallace O. Green, of the District of Columbia, to be Assistant Secretary of the Interior for Territorial and International Affairs.
3110 Dirksen Building

10:00 a.m.
Judiciary
To hold hearings on pending nominations.
2228 Dirksen Building

11:00 a.m.
Labor and Human Resources
Business meeting, to mark up S. 2385, authorizing funds for fiscal years 1981 through 1984 for youth training and employment programs and to revise such programs, for the private sector initiative program, the Job Corps, and the summer youth program; and H.R. 7859, providing assistance to State and local agencies for the education of Cuban and Haitian refugees.
4232 Dirksen Building

Veterans' Affairs
To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion.
318 Russell Building

2:00 p.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold joint hearings with the Energy and Natural Resources' Subcommittee on Energy Research and Development on the substance of H.R. 6889, proposed Methane Transportation Research, Development, and Demonstration Act.
3110 Dirksen Building

Conferees
To resume on H.R. 2977, authorizing funds through fiscal year 1983, to establish a program to increase participation by States and local governments to prevent domestic violence, to provide assistance to victims of crime, and to establish Commissions on National Youth Service.
S-145, Capitol

Energy and Natural Resources
Energy Research and Development Subcommittee
To hold joint hearings with the Commerce, Science, and Transportation's Subcommittee on Science, Technology, and Space on H.R. 6889, proposed Methane Transportation Research, Development and Demonstration Act.
3110 Dirksen Building

Office of Technology Assessment
The Board to meet and discuss pending business items.
EF-100, Capitol

SEPTEMBER 24

9:30 a.m.
Labor and Human Resources
Health and Scientific Research Subcommittee
To hold oversight hearing on the implementation of the National Health Service Corps program of the Health Services Administration under the Department of Health and Human Services.
1114 Dirksen Building

10:00 a.m.
Governmental Affairs
To hold hearings on S. 2606, proposed Office of Strategic Trade Act, focusing on current U.S. policies governing the export of strategic technology to Soviet bloc nations.
3302 Dirksen Building

Governmental Affairs
Energy, Nuclear Proliferation, and Federal Services Subcommittee
To hold hearings to review the accuracy of the 1980 census count.
1224 Dirksen Building

*Labor and Human Resources
To hold oversight hearings on the implementation of the home energy assistance program.
4232 Dirksen Building

10:30 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

2:00 p.m.
Conferees
To continue on H.R. 2977, authorizing funds through fiscal year 1983, to establish a program to increase participation by States and local governments to prevent domestic violence, to provide assistance to victims of crime, and to establish Commissions on National Youth Service.
S-145, Capitol

SEPTEMBER 25

9:30 a.m.
*Labor and Human Resources
To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.
4232 Dirksen Building

Select on Small Business
To resume oversight hearings on the Small Business Administration's surety bond guarantee program, focusing on alleged organized criminal involvement in the program.
424 Russell Building

10:00 a.m.
Commerce, Science, and Transportation
To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

Governmental Affairs
To continue hearings on S. 2606, proposed Office of Strategic Trade Act, focusing on current U.S. policies governing the export of strategic technology to Soviet bloc nations.
3302 Dirksen Building

2:00 p.m.
Finance
Health Subcommittee
To resume hearings on the FBI's current and prospective investigation into medicare and medicaid fraud, focusing on the current status of the Department of Health and Human Services' efforts in antifraud and antiabuse activities.
2221 Dirksen Building

SEPTEMBER 29

9:30 a.m.
Finance
Health Subcommittee
To hold hearings on S. 3029, to establish

a National Professional Mental Health Services Commission.
2221 Dirksen Building

SEPTEMBER 30

10:00 a.m.
Governmental Affairs
Federal Spending Practices and Open Government Subcommittee

To resume oversight hearings on the implementation of certain programs of the General Services Administration.
3302 Dirksen Building

Labor and Human Resources
Health and Scientific Research Subcommittee

To resume oversight hearings on the implementation of the National Health Service Corps program of the Health Services Administration under the Department of Health and Human Services.
4232 Dirksen Building

OCTOBER 1

10:00 a.m.
Governmental Affairs
Federal Spending Practices and Open Government Subcommittee

To continue oversight hearings on the implementation of certain programs of the General Services Administration.
3302 Dirksen Building

CANCELLATIONS

SEPTEMBER 19

2:00 p.m.
Conferees

To continue on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.
S-145, Capitol

SENATE—*Thursday, September 18, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. DAVID L. BOREN, a Senator from the State of Oklahoma.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, giver of every good and perfect gift, give us the mental stamina and the moral rectitude to stand for something lest we fall for anything. Nourish our minds on the truth of Thy word. Conform our lives more to the pattern of the Master who went about doing good. Rule the mind of the President, the Congress, and all who minister in the affairs of state. Keep ever before us the reality that both the temporal and the spiritual are under Thy rulership.

I would be true, for there are those who trust me;
I would be pure, for there are those who care;
I would be strong, for there is much to suffer;
I would be brave, for there is much to dare.
—HOWARD ARNOLD WALTER.

In the Redeemer's name, we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 18, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID L. BOREN, a Senator from the State of Oklahoma, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. BOREN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader, the Senator from West Virginia, is recognized for not to exceed 5 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may reserve my time until the orders for the recognition of Senators has been completed or for use therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader, the Senator from Tennessee, is recognized.

THE PRESIDENTIAL CAMPAIGN

Mr. BAKER. Mr. President, as I am certain every Member of the Senate has heard me say at one time or another, I take great pride in the profession of politics in which we all here are engaged. For politics is the manifestation and expression of the public will. Through politics, public policy is established. There is no higher, secular calling than that which we share.

For that very reason, Mr. President, I am dismayed of late as I read and learn of the remarks of President Carter in reference to the Republican Presidential nominee, Ronald Reagan.

With just about 6 full weeks remaining before the November 4 election, the campaign of President Carter has taken on an ugly and vicious nature—demeaning to our political process and to President Carter himself.

I have known Governor Reagan for many years. He is an honorable man. I have no intention of honoring the President's remarks about the Governor by repeating them today. Suffice it to say that the President's behavior during the recent days of his campaign has been nothing less than reprehensible and contemptuous.

As the lead editorial in the Washington Post so accurately noted this morning, the President's behavior of late is, sadly, not an aberration. Rather, as the Post editorial stated:

It fits . . . Jimmy Carter's miserable record of personally savaging political opponents . . . whenever the going got rough.

Important far beyond the outcome of this Presidential election, Mr. President, is the continual restoration of public confidence in our electoral process and government institutions. We have begun in recent years to regain that confidence. If, however, the American electorate is to witness 6 more weeks of hate-mongering by the President of the United States, our progress will be negated.

I would like to hope, as the Post editorial hoped, that President Carter has "a better case for his reelection" than the one he is now making.

I fear, however, that he does not have a better case.

In conclusion, I ask unanimous consent that the text of the Washington Post editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

RUNNING MEAN

It is a staple of this year's cynical political wisdom that running for office is what Jimmy Carter does best. We have a different view. We think it may be what he does worst. Mr. Carter, as a candidate, tends to convey a mean and frantic nature. This has been demonstrated in many ways over the past several weeks—and months.

First, the president seems determined to discredit, rather than to prevail over, his opposition. It's as if he doesn't quite believe they are entitled to run against him, and so he won't actually fight them, but rather will only provide an endless series of complaints about their candidacies and their character. You don't have to be a John Anderson fan to be made uncomfortable by the way in which Mr. Carter has sought to paint the Anderson effort as somehow illegitimate, not entitled to a hearing. And you don't have to be a Reagan fan to have noticed that Mr. Carter has abandoned all dignity in his round-the-clock attack on Mr. Reagan's character and standing, jumping him (in a most sanctimonious tone of voice) for "offenses" similar to many Mr. Carter himself has committed, and, most recently, concluding from all this that Mr. Reagan is a "racist" and a purveyor of "hatred." This description doesn't fit Mr. Reagan. What it fits, or more precisely, fits into is Jimmy Carter's miserable record of personally savaging political opponents (Hubert Humphrey, Edward Kennedy) whenever the going got rough.

Ronald Reagan is not a hater and he is not a racist; there are real reasons to challenge his claim to the presidency, but these are not those reasons. Mr. Carter's "evidence" for his charges is so weak as to be pitiable and also puts one in mind of a series of comparable failures and defaults of his own over the years, from "ethnic purity" in 1976 to silence on the civil rights bill in 1964 that could as easily have been distorted by an opponent. In a way, the most disturbing feature of the Carter campaign technique is that he displays a certain contempt for the evidence of our own eyes, asserting these things that run counter to what we can see and already know, as if he believed it didn't matter, that people would believe anything they were told. Only the day before his racism-and-hatred remarks, for instance, Mr. Carter—the man who has managed to keep out of debates with his competitors for a year now, and who has reduced his press conferences to the merest trickle—was telling the public, in his most outraged-for-democracy fashion that it was a terrible thing that Mr. Reagan was refusing to be "cross-examined" as anyone who aspired to the presidency should be.

So the president calls names, and he baldly recreates his own record (for the better) and that of everyone else (for the worse) and he displays an alarming absence of magnanimity, generosity and size when he is campaigning. No, of course, the other candidates are not just going around tossing basketsful of May flowers to each other either, and yes, their campaigns are full of borderline fouls and blurrings of the record. But Jimmy Carter, as before, seems to have few limits beyond which he will not go in the abuse of opponents and reconstruction of history.

The purpose of a campaign is to get elected. But a campaign can win at too great a cost. A campaign can be conducted in a way that casts doubt on the purposes and policies

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

of an incumbent's own government and record. And a campaign can offend and turn off the very people the candidate expects to win, people who want to and normally would support him, if he is ruthless and reckless in seeking their vote. There must be a better case for his reelection than the one the president is now making.

THE HORTICULTURAL CAREER OF MRS. MARGE HAYAKAWA

Mr. BAKER. Mr. President, I would like to call to my colleagues' attention a perfectly delightful pair of newspaper articles that appeared in the garden section of the San Jose, Calif., Mercury News last month.

The articles chronicle the devoted horticultural career of Marge Hayakawa, the wife of the distinguished Senator from California (Mr. HAYAKAWA).

For the past 25 years, her interest and active role in horticultural studies and publications have taken her from a garden inherited from the previous owners of her and Senator HAYAKAWA's home in Mill Valley to the presidency of the California Horticultural Society, the editorship of the respected California plant life publication, Fremontia, and the presidency of the prestigious Pacific Horticultural Foundation, a position she currently holds.

As one who possesses a more than casual interest in flowers, particularly the magnificent marigold of which I have spoken often from this floor, I was inspired by the following passage from Mrs. Hayakawa in behalf of horticultural activities:

It is as worthy of support as a museum, a ballet company or a scientific society . . . Plants remind people of their relationship with the natural world. Something very important is going on here.

Important, indeed, Mr. President. Those eloquent words of Mrs. Hayakawa call to mind another eloquent passage on the same subject—this from the works of the late Dorothy Frances Gurney:

"The Kiss of the Sun for pardon,
The song of the birds for mirth,
One is nearer God's heart in a Garden,
Than anywhere else on Earth."

Mr. President, my good friend, Senator HAYAKAWA, is a most fortunate man to have a wife and companion so devoted to the sharing of the beauty and nobility of horticulture.

I commend these articles concerning Mrs. Hayakawa to my colleagues and ask unanimous consent that they be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the San Jose (Calif.) Mercury News, Aug. 1, 1980]

GARDENER HAYAKAWA—THE SENATOR'S WIFE GOT HOOKED ON WILDFLOWERS; ONE THING LED TO ANOTHER

(By Joan Jackson)

Marge Hayakawa blames it all on the wildflowers. "I had always heard from my flower-loving family about the glorious wildflowers and the wealth of gardening plants grown in California, and suddenly I found myself in the middle of them," she says, explaining how she got so involved with horticulture that she is now regarded as one of the influential figures in the field on the West Coast.

"I'm not a horticultural expert," she protests. "I'm too much a generalist, a dabbler, for that. I'm interested in disseminating the knowledge of the real plant experts to the public. I'm really an editor. I've been editing one publication or another since grade school."

Expert or not, she is president of Pacific Horticulture Foundation, which publishes the handsome quarterly Pacific Horticulture, and is also the editor of Fremontia, the quarterly journal of the California Native Plant Society.

How this very down-to-earth lady, wife of the United States senator, got hooked on wildflowers and came to be so involved in horticulture is a story in itself.

She was a literature major who planned to write novels. She met and married Samuel Ichiye Hayakawa at the University of Wisconsin, and they later moved to Chicago where, she says, "Our only garden was a tub of avocados grown for our salads."

In 1955, Dr. Hayakawa accepted a professorship at San Francisco State College. They intended to build a house and moved "temporarily" into what is still their Mill Valley hillside home. Her brother Wesley Peters, who is chief architect for Frank Lloyd Wright Foundation, remodeled the brown shingle house in a way that strikes some people, but not the owners or the architect, as Oriental.

"There were some unusual plants in the garden, from the time of the first owner," Mrs. Hayakawa says, "along with a lot of the usual things in old Marin gardens. Coming from the Midwest, I didn't know any of them. It took me a year or more to find out all I had and how to care for them. I took courses, read books, and discovered the California Horticultural Society, to which I owe most of my education." Later she was to serve for seven years as a member of "Cal Hort's" Council and for two years as its president.

For Mrs. Hayakawa, it was not a case of "lending her name" to an organization. She is a mover and a doer, an organizer who works hard and expects everybody else to work just as hard.

Always interested in native California plants, since 1973 she has edited Fremontia, a quarterly distributed to the members of the California Native Plant Society, a statewide conservation organization with 18 chapters. In 1975 she was appointed by the California Horticulture Society to the governing board of the California Horticulture Journal, a prestigious publication which circulates to the 2,300 members of four societies—Cal Hort, Strybing Aboretum Society, Western Horticulture—based in Palo Alto and serving the peninsula and San Jose area—and Southern California Horticultural Institute in Los Angeles.

These societies in 1963 had set up the Pacific Horticultural Foundation, a nonprofit corporation, to publish the journal. Increasing costs were making the journal too expensive to publish for just those 2,300 members. Mrs. Hayakawa and others figured there were a lot of others out there in the general public who might subscribe individually to an enlarged, attractive magazine aimed at dedicated gardeners.

Besides Mrs. Hayakawa, F. Owen Pearce, longtime journal editor, Richard Hildreth, director of Saratoga Horticultural Foundation, F. George Waters, horticultural photographer, were appointed to a committee.

Out of a year's work by them came a new West Coast garden magazine, Pacific Horticulture, illustrated in color, with a golden California poppy on the cover of the January 1976 issue.

Later, Editor Owen Pearce retired and George Waters took over as editor. The subscription list has increased fivefold since the changeover. (The address for subscriptions is Pacific Horticulture Box 485 Berkeley CA 94701; cost $8.)

Marge Hayakawa says when she became president of the foundation in 1977 she somewhat to her surprise found herself the head of a publishing corporation. But it is a job for which her enthusiasm for the magazine and her past experience have prepared her well. She gave up commuting to Washington, D.C. with her senator-husband and, instead, now gives Pacific Horticulture a major portion of her time.

Working with her are such volunteers as Betsy Clebsch of Palo Alto, who heads the subscription drive, and Keith Bickford of Los Altos, a retired Bechtel executive, who heads the advertising department. Also on the board are Ed Carman, a Los Gatos nurseryman; William Moore of Los Gatos, an attorney with Varian Associates, and Joseph Williamson, garden editor of Sunset Magazine.

All of the editorial material is gratis, and the only money paid out is for editing and production. The current subscription is $8, and this cost is part of the dues of all four of the participating societies. (Membership in Western Horticulture Foundation is available through Vivian Hawkins, 538 Lincoln Ave., Palo Alto.)

What Mrs. Hayakawa brings to Pacific Horticulture Foundation, she says, "is my knowledge that I can persuade the societies to the possibilities of horticulture." She believes—and wants others to believe with her—that advanced horticulture is a significant contribution to the quality of life. "It is as worthy of support as a museum, a ballet company or a scientific society," she says.

Her job as president the past year has involved opening the foundation's first office, for the circulation department in Berkeley; recruiting horticulturalists, landscape architects, and arboretum directors to serve on an advisory council; setting up a Friends of Pacific Horticulture group to raise needed funds, and applying for grants from foundations and corporations.

She sees an increasing interest in plants and horticulture at the present time. "There are many young people joining the horticultural societies and wanting to make a career around their interests in plants," she says. "They have strong environmental and conservation interests. The drought brought an increased interest in the use of native plants and of plants from other Mediterranean climates similar to California's. We began to question our spendthrift ways with water. Look at the tremendous yearning for house plants among city dwellers. Plants remind people of their relationship with the natural world. Something very important is going on here."

INSIDE MARGE'S GARDEN

Marge Hayakawa admits she is a growing horticulturalist as well as a writing-editing-organizing one, and her own garden proves it.

"I like to try one of everything. Some survive, some don't," she says about the hundreds of plants around her.

"My husband is really vague about gardening," she laughingly admits. "It's funny. People think, oh, how lucky, your husband is Japanese and the Japanese are so good at gardening. Well, he thinks this is all very nice, but he is interested mostly in the vegetables."

The garden, not quite an acre in size, is situated on a hillside below street level, on a cool slope of Blithedale Canyon. It is four miles from the ocean, and the weather is typically morning overcast-afternoon sun. Native live oaks are the dominant factor in both the garden and woodland sections, combined with the native hazelnuts and sword ferns that grow naturally on the site.

"The framework of the garden was here when we moved in," she says about the rock retaining walls, "and I've gradually been making changes." Some old plantings of hydrangea and clematis, plus a wall covered with creeping fig, remain from the first owner's garden. A great many ferns, California natives, rock plants, Japanese maples and some rhododendrons and azaleas have been added.

"What you see here are survivors of the drought," she says. They survived with only the water that could be carried from the kitchen and bath, and a few truckloads of recycled water. A few things flourished; many more died, especially a number of her prized ferns. She now has about 100 hardy ferns in the ground and in hanging baskets.

Much of the garden is shady, or partially so. Here grow the hydrangeas, rhododendrons, camellias and azaleas, where they can be watered. In drier shade, epimedium, vancouveria (a native sometimes called "inside-outside flower"), hellebores of several species, Japanese iris, western native iris, species of asparagus, cyclamen, and woodland groundcovers grow.

On the entrance patio, a waist-high wall forms the rock garden. Here are small species of wild geraniums, mats of dianthus and other rock plants and a weeping pine. Higher up the slope, in larger scale, is a bed of perennials, including salvia, penstemons, clarkias, monkey flowers—all natives—and a collecution of campanulas.

Other groupings of plants, according to their need for sun, shade and water are in a small bog areas with buried sinks hidden underground to give more water to the water lovers such as native yellow-eyed grass and wetland ferns; a peat garden where small shrubs, ground orchids and other plants liking more humus and moisture are planted; and out in one of the few bright sunny spots, a vegetable garden in raised beds of railroad ties.

"I'm always adding something," she says about the vast collection. "I figure I have one of everything. And, there is as much upkeep to this as you would want to do."

It turns out, she does it all herself with the aid of a one-day-a-week gardener—right down to the watering and weeding. It takes about an hour to water all the pots and sprinkle the area. "Basically, I'm not a fanatic about organic gardening. But I try to keep it natural, and I compost everything from the garden.

Mrs. Hayakawa has carefully labeled the plants in her garden. "I know everything I have. But, off hand, I'd forget without the labels."

She also tries to keep a record of each thing she plants, and how it performs, but admits she is falling behind on the task more and more. "I've got so busy with horticulture," she laughs, "that I have no time for gardening." And no time to write those novels.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I ask unanimous consent that the remainder of my time under the standing order, which I understand was abbreviated to a period of 5 minutes this morning, may be aggregated together with the time allotted to me under the special order for this morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I further ask that the total time provided for in the special orders on last evening for the Senator from Tennessee, the Senator from North Dakota (Mr. YOUNG), the Senator from Oklahoma (Mr. BELLMON), and the Senator from Kansas (Mr. DOLE), which totals 30 minutes, be aggregated together and placed under the control of the Senator from Tennessee or his designee.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE BUDGET PROCESS

Mr. BAKER. Mr. President, we are coming now to the final and concluding days, perhaps weeks, of this session of Congress.

It had been my hope from the beginning that this Congress would act with dispatch and diligence and that we would do the things that needed to be done and adjourn sine die in time for the election in November.

The things that must be done, it is clear, include the necessary reauthorizations of existing Federal programs, as well as a number of other important matters which already have been dealt with. But perhaps most important of all the 13 regular appropriation bills, the keystone and the crown jewel of our fiscal congressional policy, is the adoption of the second, and presumably the final, budget resolution, the second concurrent budget resolution.

That is the business yet to be transacted—the appropriation bills, the second concurrent budget resolution, and legislation in respect to reconciliation, assuming that that is necessary, and I believe it is necessary.

Mr. President, I believe that we can do those things, that we can finish that job and leave this Chamber with the public's work done, without returning for a post-election session.

I point out that the Budget Act provides that the second concurrent budget resolution must be adopted by September 15, which has now come and gone. I recall, as my friend the majority leader recalls, that I jousted on this floor about whether we would change the time for the adoption of the second concurrent budget resolution from September 15 to a time earlier in August; and, frankly, I opposed that, thinking that we would not have time to do it by then.

Mr. President, that date, the September date, has passed; and it is increasingly apparent, and I believe, that the majority in this body does not want to deal with the budget resolution before the election. I believe that is a disservice to the people of the United States, because I believe that the second concurrent budget resolution, which is on this calendar in the Senate, will disclose that, instead of a balanced budget or anything approaching a balanced budget, this administration has produced a deficit that will range from $20 to $50 billion. To postpone that reality and the publication of that fact until after the election is a $50 billion surprise for the American people, which they will find out about after they go to the polls in November.

Mr. President, I believe that we can deal with the second concurrent budget resolution. I believe we must deal with the appropriation bills, the second concurrent budget resolution, and a tax adjustment bill, and do all that before the suggested time for adjournment or recess on October 4.

Mr. President, I now yield to the distinguished Senator from Oklahoma.

Mr. BELLMON, I thank my friend, the distinguished minority leader.

I am happy to join in trying to make public what I believe is a very serious mistake which the Senate is now in danger of making.

I must say that I do this with some sorrow, because I feel that the budget process up to now has made a major contribution to the financial health of the country.

I do it, also, with some sorrow that my friend the chairman of the Budget Committee is not in the Chamber at this time, although I am sure he will arrive soon. I do not want what I am about to say to be taken as criticism of him, because he has worked hard at his job; and, on balance, I believe he is doing an excellent job in the budget process, although there is this one area in which I disagree with the decisions that have been made.

Mr. President, I join with my Republican colleagues this morning to oppose what I believe to be one of the most serious threats to the fiscal health of our Nation that I have witnessed in 12 years' service in this body. The leadership of the Senate is moving key spending legislation of paramount economic importance while withholding any debate on the effect of this legislation on the size of the deficit until after the election. By refusing to debate the second budget resolution until after the election, the leadership is participating in an act of budgetary chicanery which must not be allowed to slip by unnoticed.

Mr. President, the Senate Budget Committee completed its markup on the second concurrent budget resolution for fiscal 1981 on August 21, almost 1 month ago. The report on the committee's resolution was filed on August 27, before the August 28 deadline that was insisted upon earlier this year. This report was distributed throughout the Senate on September 4 and each Senator has had ample opportunity to review the committee's budget recommendations carefully.

Moreover, the Senate has done little in recent days. In fact, we were not even in session on either of the last two Fri-

days. There is no lack of time, but apparently simply a lack of will.

For the record, let me review the budget recommendations. The second concurrent resolution for fiscal year 1981 sets a ceiling on budget authority of $699.6 billion, a ceiling on outlays of $633 billion, and recommends that revenues be no lower than $615.2 billion. In other words, this budget resolution proposes a deficit of $17.9 billion, compared to the $200 million surplus in the first budget resolution this spring.

Mr. President, I believe this is an important point. Our first resolution was not only balanced, but it had a slight surplus. But the second resolution that the committee has approved, and I might say I did not agree with that decision, is in deficit by almost $18 billion, without taking into account the need to make room for a tax reduction, and this is the problem.

The voters of this country, the citizens of the country are still remembering that we have a balanced budget and they do not realize the decision Congress is now about to make.

So, as I say, the budget resolution is now $18 billion in deficit and it avoids the tax cut issue by containing no margin for a tax reduction, but the committee report says the issue of a 1981 tax cut is open for "reconsideration at an appropriate time," and that is a direct quote from the report. That simply means that after the election when Members are less likely to be punished by voters for agreeing to a huge deficit and the inflation which is certain to follow, then we will take up these matters.

In my additional views in the budget report, I make very clear my own position that the level of spending in this resolution is fiscally imprudent, given the prospect of high and rising inflation. I will not undertake to debate that viewpoint now, but I do believe that it should be fully debated and soon, and certainly before major spending legislation which will have substantial impact if the deficit passes the Senate.

Mr. President, the Senate is currently embarked on a course that will lead to a deficit potentially in excess of $50 billion and a return to high inflation, probably getting up again to the 20-percent level.

I believe that American voters should be aware of this fact when they make their choices on November 4. The Senate Appropriations Committee has reported or is in the process of reporting six appropriation bills. The budget authority levels contained in these bills exceed the Appropriations Committee's own allocation under the first concurrent resolution targets by $4.1 billion and exceed even the significantly higher second concurrent resolution ceiling by $5 billion. Moreover, the outlay levels in these bills exceed the first resolution by $4.9 billion and exceed the second resolution ceilings by $3.9 billion. In other words, if the remaining appropriation bills follow the same pattern set in the first six bills, and there is no reason to assume otherwise, the outlays would be $10 to $12 billion higher than the first resolution and at least $8 to $10 billion higher than the recommended levels in the expanded second budget resolution.

Moreover, there are indications that the hoped for reduction in the fiscal year 1981 deficit of over $10 billion contained in the reconciliation bill may not be fully realized or where savings are achieved, other spending programs may simply take their place. It also appears that what started out to be multiyear savings are in danger of becoming one shot efforts. For instance, just this week, the conferees on the higher education bill gave up several billion in savings over the next 5 years that would have been achieved under the Senate version of the reconciliation bill. Using Budget Committee economic assumptions, with which, I might say, I do not agree, the combination of higher appropriation levels and lower reconciliation savings would raise fiscal year 1981 spending to the $646 to $648 billion range and the deficit to at least $35 billion, before consideration of a tax cut. This level of spending represents a 31-percent increase in Federal spending since fiscal year 1979. Such rapid spending growth in the face of virulent inflation which currently exceeds 13 percent is, I believe, irresponsible. Further, if we add the $18 billion first fiscal year cost of the tax cut in the Senate Finance Committee's bill, the fiscal year 1981 deficit then rises to more than $50 billion, which is the figure that our minority leader just mentioned. Fifty billion dollar deficit is what is in store for our American taxpayers unless something is done quickly. I remind my colleagues that this is the budget President Carter and Congress promised no later than June 12 would be balanced. We promised a balanced budget. We approved a first resolution which was in balance, and now American citizens are threatened with a $50 billion deficit and the runaway inflation which is certain to follow.

American voters are entitled to know that they are being hoodwinked by not bringing this matter to the floor for action before the election and they need to know that they are going to be hit with this $50 billion deficit within a very few days after the election is behind us.

It is no wonder that there is effort being made to hide what I consider to be a fiscal scandal until after the November elections are passed.

Mr. President, I do not believe that our country's economic system nor the electorate will tolerate another deficit of $50 billion on the heels of the $63.3 billion deficit that is expected this year.

Government borrowing to cover this debt means drastically increased interest rates, 20-percent inflation, and high unemployment.

The U.S. economy is now recovering. If Congress fails to act in a fiscally responsible manner now, it will bear the direct responsibility for plunging the Nation again into a deep recession.

I am convinced that the only discipline that will make Congress act responsibly is to set fiscal policy before, not immediately after, the election. Voters now believe we have balanced the 1981 budget. Congress can keep the budget in balance and thus help control inflation if we act now before the elections. Waiting means waste, irresponsibility, and great hardship for American workers. I urge our Senate leaders to schedule the second concurrent budget resolution (S. Con. Res. 119) for immediate floor consideration so our voters will know when they cast their votes November 4 whether Congress has acted responsibly or cowardly.

Mr. BAKER. Mr. President, I yield now to the distinguished Senator from Kansas, the senior Republican on the Finance Committee.

Mr. DOLE. I thank the distinguished majority leader, and I will take just a couple minutes.

I just say at the outset——

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator will yield, he has spoken somewhat prematurely.

Mr. DOLE. Me?

Mr. ROBERT C. BYRD. He spoke somewhat prematurely.

Mr. DOLE. Excuse me. The distinguished minority leader.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. DOLE. I wondered why I felt so good today.

But in any event, I picked up the Washington Post this morning which I do frequently, and I hope the story I read which says headlines "Key Senate Democrats Opposition Snags Preelection Action on Tax Cut Measure" is not accurate.

As I look at the economy today and as everyone else looks at the economy today it is obvious this country needs a tax cut and needs one this year.

Mr. President, this country needs a tax cut and it needs one this year. Over 8 million men and women are out of work. The Producer Price Index is zooming upward at a 20-percent rate. Real growth in GNP is falling at an astonishing rate and taxes may increase by $86 billion in 1981.

In a word this Nation is in economic trouble. If we permit the Federal Government to take so many additional billions in the current economic atmosphere, bad may well turn to worse. This was the clear consensus of the economic experts and other witnesses who have testified before the Finance Committee and the Joint Economic Committee this year.

Responding to this crisis the Senate Finance Committee ordered reported 2 weeks ago a tax cut bill that was nearly unanimously supported. In fact, the vote was 19 to 1 in the committee. Under the leadership of Senator LONG, we fashioned a bill that responds to the economic needs of our Nation in a responsible way. That bill has been praised throughout the country. It will increase incentives for savings, investment, and productivity

and serve to offset the enormous scheduled tax increase next year.

Some in this town have attempted to thwart this process at every step. First they said there is not enough time. In four incredible days of markup the Finance Committee, Democrats and Republicans, proved them wrong. When the national good is at stake, we can act quickly.

Then, expressing their cynical attitude toward the Senate, Congress and, I believe, the political process, they said we should not act because we are incapable of passing a bill which is not laden down with special interest provisions. Those of us, Democrats and Republicans on the Finance Committee, responded to this insult this week by agreeing to oppose all special interest amendments to this tax cut bill. In doing so, I believe, we exposed for all to see, those who can not put the Nation's good above politics and those who believe that self interest and special interest should be elevated above economic recovery.

I just suggest, Mr. President, that the record should be clear. The Finance Committee, in talking with the Democrats and Republicans on the Finance Committee, is willing to support cloture and will band together to oppose all special interest amendments to the tax cut bill. I believe they will be supported by most Republicans and Democrats in the Senate. This bill will not become a Christmas tree. That straw man, as far as I am concerned, is torn down.

So I just say, finally, Mr. President, that I read with interest the resolution introduced by 48 Democrats in June of this year in which they direct the Finance Committee to study and report on a tax program. The honor roll goes on and on. The second person on that honor roll is the distinguished majority leader.

I ask unanimous consent that Senate Resolution 481 be printed in full following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. DOLE. Mr. President, I am very impressed with that resolution, and I say with all the sincerity I can muster that I can understand the politics and I can understand President Carter's interest in not acting this year. But it seems to this Senator that we have an obligation to comply with Senate Resolution 481 cosponsored by 48 Democrats, we have an obligation to support the Finance Committee in its efforts to pass a bill, which they passed by a vote of 19 to 1. I hope we will resolve, as the resolving clause states in Senate Resolution 481, that the committee, having reported a bill to the Senate, shall pass this bill to take effect in 1981, because I believe the Finance Committee bill is designed to increase employment, give relief to individuals, encourage thrift, improve America's productivity, and to stimulate competitiveness in foreign markets.

I will not go into that resolution any further. It is another effort made by the Democratic task force.

In yet another attempt to stop the Congress from passing this tax cut bill, the disciples of high taxes and stagnation tell us that if the Senate passes this bill we could set off "inflationary expectations." Mr. President, as I said before, the Producer Price Index is increasing at the rate of about 20 percent, the CPI is going up at the rate of about 13 percent. Do you know anyone in America who does not already have "inflationary expectations?" If there is such a person in this country, I suggest he is living too close to a Government expense account.

These people who talk about the fear of "inflationary expectations" fail to explain why our passing the bill will encourage them but the President's recommending a tax cut with precisely the same effective date will not encourage them. I suggest that the answer is grounded more in politics than in economics.

Mr. President, finally those who have fought against this bill say that the American people do not want a tax cut. The short form of this argument is simply "a tax cut will hurt your reelection chances." This Senator will not dwell on the irony of such an argument being made by those who sanctimoniously accuse others of political motivation. As support for this position they cite, I suspect, a series of polls that show Americans responding negatively to the question "do you want more inflation, more unemployment and a tax cut?" A very recent survey taken by the Gallup organization for the chamber of commerce shows that our constituents support a tax cut. Further the survey results show strong support for a tax cut bill much like the one reported by the Finance Committee.

For example 57 percent of those contacted support an individual income tax rate reduction of at least 10 percent this year. When asked whether they favor rate reductions, the Finance Committee approach, or a cut in social security taxes, 76 percent wanted income tax rate cuts; 55 percent believed that people will work harder if taxes are cut.

Mr. President, I ask unanimous consent that the survey results be printed in the RECORD, as well as another document showing how tax receipts will be increased by many billions of dollars.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONSUMER ATTITUDES TOWARD GOVERNMENT TAXATION AND SPENDING

The survey was conducted by the Gallup Organization for the U.S Chamber Survey Center. Face-to-face interviews of 1,536 U.S. consumers were conducted by the Gallup Organization in early August, 1980. The study involved a national probability sample of U.S. consumers, 18 years and older. The sample design was that of a replicated probability sample which was stratified by area size. The sample is weighted primarily by "times at home" and education. It is very probable (95 chances out of 100) that survey findings are within three percentage points of the figure that would have been obtained if the whole population had been interviewed.

1. If federal income taxes were cut this year, so that everyone's tax rate was reduced by 10 percent, what do you think would be the effect on each of the things listed on this card? First, what do you think would be the impact on inflation—would inflation be increased, be reduced, or would the rate of inflation not be much affected by a 10 percent cut in federal income tax rates? How about employment—I mean the number of people with jobs—would employment be . . . How about investment by business firms in new plant and equipment—would business investment be . . .

[In percent]

	Inflation	Employment	Investment
Increased	24	30	47
Reduced	21	15	6
Not much affected by a 10 percent cut in tax rates	39	40	27
Don't know	16	15	19

2. All things considered, would you favor a 10 percent rate reduction in the federal income taxes people pay this year, or do you think it would be better *not* to cut income tax rates this year?

	Percent
Favor 10 percent reduction	54
Better not to cut tax rates	30
Reduce *more* than 10 percent (volunteer)	3
Reduce *less* than 10 percent (volunteer)	1
Don't know	13

3. Now, assume that there is a cut of 10 percent in federal income tax rates this year, and that the government collects less money in taxes as a result. But also assume that federal spending is also reduced by the same number of dollars—what do you think would be the effect of these two changes on each of the things listed on this card?

[In percent]

	Inflation	Employment	Investment
Increased	16	26	39
Reduced	36	22	11
Not much affected	29	31	27
Don't know	18	18	23

4. Looking at this card, which alternative would be best this year—a cut in both taxes and spending, a tax cut with no spending cut, a spending cut with no tax cut, or a cut in neither taxes nor spending?

	Percent
Cut in both taxes and spending	48
Tax cut, but no spending cut	10
Spending cut, but no tax cut	23
Neither taxes nor spending cut	9
Don't know	11

5. If your own federal income tax rates were reduced by about 10 percent this year, do you think you would spend most of the extra money or save most of it?

	Percent
Spend most	41
Save most	40
Both about equally	11

Don't pay taxes (volunteered)	3
Don't know	5

6. Assuming there is a federal tax cut this year, which would you favor—a cut in personal income tax rates, or a cut in social security taxes?

	Percent
Personal income tax rates	76
Social security taxes	14
Don't know	10

7. Assuming there is a federal tax cut this year, which would you favor—cut in personal income tax rates, or a cut in taxes on the income that people get from their savings and investments?

	Percent
Personal income tax rates	64
Income from savings and investments	25
Don't know	11

8. If there is a cut this year in the taxes that people pay, which would you favor—a cut in the taxes that people pay on their incomes, a cut in the taxes that people pay when they buy things, or a cut that is divided half and half between taxes on incomes and taxes on buying things?

	Percent
Cut taxes on incomes	42
Cut taxes on buying things	14
Half and half	36
Don't know	7

9. Some people believe that a substantial reduction in the income tax rates that people pay would cause people to work less hard or work fewer hours because they could take home as much as they did before, even if they worked less. Some other people believe a substantial reduction in income taxes would cause people to work harder or work more hours because they would take home a larger proportion of what they earn each hour. What do you think—would a substantial cut in income taxes cause people to work less or work more?

	Percent
Less	18
More	55
Don't know	26

10. Some people say that it is important to cut individual income taxes in order to increase consumer spending. Some other people say that it is important to cut taxes paid by business in order to increase business investment in new and more efficient plant and equipment. What is your opinion—is it more important at present to increase consumer spending or to increase business investment?

	Percent
Increase consumer spending	38
Increase business investment	38
Don't know; can't decide	24

11. If defense spending had to be raised, what do you think would be the best way for the government to pay for it—raise taxes, increase the deficit, or reduce other expenditures?

	Percent
Raise taxes	6
Increase the deficit	5
Reduce other expenditures	77
Don't know	11

12. Considering all kinds of taxes you pay—federal, state, and local—do you think you are required to pay your fair share of taxes, or are you required to pay more than your fair share, or less than your fair share?

	Percent
Fair share	45
More than fair share	45
Less than fair share	3
Don't know	7

13. As you probably know, the federal income tax laws provide that people with higher incomes are required to pay a higher percent of their income in taxes than are people with lower incomes. At present, do you think people with high incomes are required to pay more taxes than they should or less than they should, or are the present tax requirements about right in this respect?

	Percent
More than should	18
Less than should	40
About right	33
Don't know	10

14. How about tax loopholes—I mean people finding legal ways to take advantage of the tax laws to pay less tax than they fairly should—do you think many people do this, some people do this, or only a few people do this?

	Percent
Many	56
Some	27
Only a few	12
Don't know	5

15. How about tax evasion—I mean people not paying the taxes the law says they are supposed to pay—do you think many people do this, some people do this, or only a few people do this?

	Percent
Many	32
Some	36
Only a few	27
Don't know	6

16. Here is a card listing some of the things the federal government spends money on. For each one, would you please tell me whether you think the government should be spending more money than it is now, less money than it is now, or should the government continue spending about the same amount as now? First, how about defense . . .

[In percent]

	More	Less	About the same	Don't know
Defense	58	11	25	5
Welfare	13	58	25	4
Health	46	12	36	5
Education and training	49	15	32	5
Social Security	46	10	38	5
Energy	52	15	25	7

17. During the last ten years, the federal government has increased in size by about 30 percent more than inflation. From your own standpoint, do you feel the additional services provided by the government are worth more, about the same, or less than the additional money the government has spent to provide those services?

	Percent
Worth more	5
About the same	25
Worth less	56
Don't know	14

18. Most people agree that the growth in our economy and growth in industrial output have been disappointingly small in recent years. Some people say that the increased size of government has been a major cause of slow growth in the economy. Some other people say there have been many other reasons for slow growth. What is your opinion—would growth in the economy have been larger if the government were not so large, or has growth in the economy been slow mainly for other reasons?

Growth would have been larger	Percent
if government not so large	40
Growth slow mainly for other reasons	37
Don't know	22

19. Of all the money the government spends, on all of its programs, about what percentage do you think is *wasted*—that is, does not serve any useful purpose?

Percentage wasted	Percentage of respondents
0	1
1–5	1
6–10	6
11–20	13
21–30	24
31–40	15
41–50	16
51–70	7
71–90	8
More than 90	2
Don't know	12

20. How about welfare—about what percentage of the money that the federal government spends on welfare do you think is received by the people who need welfare and are entitled to it?

Percentage of welfare received by people who need and are entitled to it	Percentage of respondents
0	*
1–5	3
6–10	7
11–20	6
21–30	12
31–40	9
41–50	22
51–70	16
71–90	12
More than 90	2
Don't know	10

*Less than 0.5 percent.

21. Looking at this card, what do you think is the most important cause of waste in government spending? What is second most important?

[In percent]

	Most important	Second most
Misguided administration of laws and regulations	26	19
Misguided lawmakers in Congress	13	21
The system by which laws and regulations are made (Congressional committees, etc.)	17	19
The problems in our society are so complex that waste is unavoidable	10	10
The government tries to solve problems it shouldn't try to solve	24	17
Don't know	10	13

In its midsession review of the budget, the Administration proposes that total tax receipts will rise by $86.1 billion between FY 1980 and FY 1981.

Adjusted for a calendar year (CY) basis, this suggests a $91.4 billion increase in tax receipts between CY 1980 and CY 1981.

The estimated breakdown of these estimates is as follows:

Fiscal year—1981 over 1980:

	Billion
Taxflation	$16
Social security	16.6
Windfall profit tax	14.4
Cash management proposals	4.8
Motor fuels tax	3.4

(The administration still expects approval of a 10 cents/gallon tax.)

	Billion
Witholding on interest and dividends	$3.4
Foreign tax credit	0.7
Independent contractors	0.6
Tax exempt mortgage bonds	1.1
Airport Trust Fund tax	0.9
Railroad retirement tax	0.3
Oil & hazardous substance cleanup	0.2
Subtotal	61.9

Effect of Real Growth & Inflation:

	Billion
Other excise taxes	*$6.7
Estate & gift taxes	*0.2
Customs duties	*0.5
Misc. receipts	**16.8
Total	86.1

Calendar year—1981 over 1980:

	Billion
Taxflation	$20.15
Social security	22.1
(from 1977 changes)	15.4
Windfall profit tax	19.6
Cash management proposal	4.3
Motor fuels tax	8.5
Withholding on interest and dividends	3.2
Subtotal	68.7
Other:	
(Other miscellaneous items, as identified above under fiscal year receipts will total	$23.6
Total	91.4

* There are no new tax proposals in these areas. These increases in estimated receipts from FY 80 to FY 81 are caused by a combination of inflation and real economic growth.

** This includes general growth in tax revenues from an expanding tax base (economic growth and from inflation). The apparent but illusory "growth" in the economy as inflation raises prices and wages and also increases nominal tax revenues even at the same rates. This is distinct from taxflation, which results from people moving into higher brackets and being taxed at higher rates.

For purposes of the foregoing list, it is assumed that:

(1) Administration receipts proposal (e.g., cash management) would not take effect before FY 1981 or CY 1981;

(2) Windfall profit tax is measured as though it first took effect in FY 1981 or CY 1981.

These assumptions are made to dramatize the real tax increases the administration advocates: otherwise tax increases in FY 1980 would tend to understate the growth in the tax burden caused by Carter administration initiatives.

Mr. DOLE. Mr. President, I will conclude these brief remarks the way I began them. We need a tax cut and we need one now. If the leadership of this body, acting I am sure under heavy pressure from the White House, will not bring the Finance Committee bill to the floor, I will offer it as an amendment to the first revenue measure that we do consider. If we are not to have a tax cut bill passed before the election, I want every Member of this body and, hopefully every Member of the House, to have an opportunity to cast a vote on the subject and to go home and accept the thanks of their constituents.

EXHIBIT 1

S. RES. 481

Whereas the best interests of the Nation should be placed first to assure that any tax cut is meaningful and beneficial to all Americans instead of rushing into an ill-considered and inadequate program for the purpose of trying to seize some partisan political advantages; and

Whereas inflation is still the major concern for all Americans; and

Whereas it is essential that our Nation achieve vigorous, sustained economic growth and curtail inflationary pressures in the decade of the 1980's; and

Whereas a tax cut is a necessary part of such a coherent economic policy; and

Whereas our Nation needs an equitable, consistent, coordinated, and comprehensive economic policy for the 1980's; and

Whereas such an economic policy must be designed to reduce unemployment, create jobs for everyone willing to work, and to hold down inflation; and

Whereas the details of a tax cut must be subject to the normal congressional processes which include careful committee consideration through hearings and markup; and

Whereas a midyear review of the economy will provide additional data on unemployment, inflation, and the Federal budget, which data is critical to an informed judgment on fiscal policy, and on the nature, size, and timing of a tax reduction; and

Whereas section 9 of H. Con. Res. 307, the First Concurrent Budget Resolution for Fiscal Year 1981, provided that "no bill or resolution which would reduce Federal revenues in fiscal year 1981 by more than $100,000,000 shall be enrolled until after the Congress has completed action" on the Second Concurrent Budget Resolution; and

Whereas a tax reduction is necessary to induce an orderly recovery from the current recession so as to promote economic growth without inflation: Now, therefore, be it

Resolved, That the Senate Finance Committee shall report to the Senate no later than September 3, 1980, a responsible, targeted anti-inflationary tax cut to take effect in 1981, and designed to increase employment, give relief to individuals, encourage thrift, improve America's productivity and stimulate competitiveness in foreign markets; and be it further

Resolved, That the Democratic Task Force on the Economy recommend to the Senate a comprehensive economic policy at the earliest possible date.

Mr. BAKER. Mr. President, I yield 5 minutes to the distinguished Senator from New Mexico.

Mr. DOMENICI. I thank the Chair and I thank the Senator from Tennessee. I say to my good friend I appreciate the 5 minutes.

I do want to make a point right in my very opening remarks that everyone should know if a budget resolution, the second one, comes to the floor the time is greatly limited.

Mr. DOLE. Mr. President, will the Senator yield me just 10 seconds?

Mr. DOMENICI. Yes.

Mr. DOLE. I would just add to my remarks in the event, for some unforeseen reason, we cannot agree on the tax cut, that the Republicans will then offer the tax cut proposal as an amendment to appropriate bills this year.

Mr. DOMENICI. Mr. President, just to complete the statement——

Mr. ROBERT C. BYRD. Did the Senator say appropriate bills or appropriation bills?

Mr. DOLE. Most everything I see looks appropriate. [Laughter.]

Mr. DOMENICI. Mr. President, to complete just that opening thought, so that there will be no misunderstanding by the Senate, the law limits debate on a second resolution to 15 hours. There are some technical issues as to whether rollcalls count or not, but the Senate ought to know we are not talking about something that can be filibustered or unduly delayed.

The Senate, earlier this year, passed a first concurrent budget resolution, which I supported, that promised the American people the first balanced budget in more than a decade, pledged to reduce the rate of increase in the Federal budget, and began to reverse the dangerous trend of underfunding in national defense that has prevailed during the past decade.

This "balanced budget" was much ballyhooed throughout the land. I suspect that many in this body will run for reelection less than 50 days from now by proclaiming their support for this balanced budget in 1981, much as President Carter pledged a balanced budget first by 1980 and then again by 1981.

Yet, the balanced budget has been destroyed, in part because of the recession and in part because many of the decisions on spending that prior Congresses have made are coming home to haunt us.

The second concurrent budget resolution, which must be passed before this Congress adjourns sine die, recognizes these new realities and offers the Senate a chance to once again cut spending, cut taxes, and cut the anticipated 1981 deficit.

Yet, continuing a long line of delays in the budget process, the Senate has failed to consider the resolution. This delay threatens the entire budget process. And, the delay is entirely motivated by political considerations—the Senate wishes to spare itself the tough decisions that facing the budget resolution head-on will force us to make. That is the only reason the budget resolution has languished for 2 weeks, while a long line of spending measures begin to wind their way through this Chamber.

No one can claim that the resolution is not ready; it has been ready for 2 weeks. No one can claim that the resolution will disrupt the Senate's schedule; the law contains a time limitation that will allow it to be disposed of within a full day. No one can claim that the resolution is not important; indeed, the resolution provides the only forum within which spending, taxing, and fiscal restraint can be coherently addressed. One must conclude, reluctantly, that the resolution has been delayed, and continues to be delayed, because it is a hostage to the politics of this election year, and that decision is a political one.

What makes the second concurrent budget resolution such a political time-bomb? Why has the leadership put it on a back burner for so long?

The second concurrent budget resolution is like an orphan child, unwanted and unrecognized, simply because it squarely puts to the Congress three fundamental questions: Will the Congress show the courage to restrain spending in this election year? Will the Congress demand a reduction of the onerous taxes now burdening the taxpayer in this election year? Will Congress allow a real attack on inflation or will Congress resort to a sham that allows the seeds of a virulent inflation to continue to grow?

The second resolution increases spending in the 3 months since this body adopted the first concurrent resolution on the budget by $19.4 billion. The second

resolution moves from the surplus of $200 million in the first resolution to a deficit of at least $17.9 billion, and a probable deficit of perhaps $40 billion or more, a point upon which I will amplify later. And, the second resolution allows spending to increase by about the same percentage that we anticipate inflation will increase, thus continuing the inflationary bias of the Federal budget. While the American people clamor for less Federal spending, the second resolution offers more spending. While the American people ask for relief from the highest proportion of taxation in our history, including the World War II year of 1944, the second resolution advocates more taxes and no tax cut of any nature. While the American people ask Government to lead the way in fighting inflation, the second resolution caves in to inflation and continues "business as usual."

No wonder the second concurrent budget resolution has not seen the light of day.

And, what is happening while the second budget resolution is bottled up in a desk somewhere?

The first six appropriations bills reported by the Appropriations Committee, or marked by that committee's subcommittees, exceed the recommendations of the first concurrent budget resolution by about $4.1 billion in budget authority and by about $4.9 billion in estimated outlays. Even compared with the pending second concurrent budget resolution the six bills exceed the binding limits by $5.0 billion in budget authority and $3.9 billion in estimated outlays. And, remember this, these bills account for only about a quarter of the moneys allocated to the Appropriations Committee under the first resolution.

What is the likely outcome of this, then? Well, I foresee three possibilities. First, I foresee an all-out attack on defense spending, cutting it by such a large amount that the Appropriations Committee will meet its overall outlay and budget authority allocations. This would occur of course, at the expense of the Nation's basic security. Second, the Congress may decide that the disciplines of both the first resolution, which is the expressed will of the Congress, and the pending second resolution are simply too harsh, and may amend the second resolution upon our return after the election in order to accommodate still more spending. This will give us a deficit well beyond any public prediction by either the administration or the Congressional Budget Office and put more pressure on the Nation's economy. Or, third, the Congress may simply disregard the entire budget process, allow any and all spending to occur and give lipservice to the Budget Act of 1974 next year by a revised resolution and a massive supplemental appropriations measure.

Now, I ask you, Mr. President, what is the common theme in all of this?

The common theme is that taxes will rise, spending will rise, the deficit will rise, and the chances increase that our military security will not improve.

In order to avoid these results—and I hear all of my colleagues ready to decry each and every one of the results I have speculated upon—we must take up the second concurrent budget resolution now.

We can cut spending during consideration of the resolution. We can cut taxes, and I have a proposal to both cut spending and taxes at one fell swoop. We can reduce the deficit and improve our military spending trend lines.

But, we can do none of these things while the second concurrent budget resolution is held hostage.

I know that cutting programs and offending special groups is not popular less than 50 days before the election. But, if we are to exercise the leadership we were elected to exercise, and to say "no" to those plans that will endanger the Nation, then the time to do so is now and the vehicle by which to do so is the pending concurrent budget resolution.

Without this resolution, we may run a deficit of as high as $45 billion.

Without this resolution, the pending conference on reconciliation, which will cut about $10 billion off the projected 1981 deficit, may well fall into disarray.

Without this resolution, the parade of bloated appropriations bill will continue.

Without this resolution, spending in 1981 may exceed 1979 spending by as much as 31 percent.

And, without this resolution, the American people will not be able to gage just how their elected officials feel about the relationship of spending and taxes for this country.

The stakes are high. One hundred million American taxpayers are about to be hit by the largest single increase in taxes in our history. Two hundred and twenty-five million Americans are about to suffer another year of double-digit inflation. And, more than a billion free world citizens are looking to America to reverse the trend in defense spending that has made us a question mark in the eyes of the world. Only through consideration of this resolution can we cut taxes, strike out at inflation, and insure that defense spending will make this world a safer place in which to live.

I would say that holding the resolution hostage is bad policy. But, more accurately, holding this resolution hostage is simply and purely immoral.

I want to commend Senator BELLMON for his opening remarks. I do hope every Senator will read his remarks. He has been a staunch supporter of this process. He used some harsh words here today, and I think he is right.

I also commend him for his remarks about our distinguished Democratic chairman (Mr. HOLLINGS), complimenting him on the work he has done. He was not here when the Senator said that. I agree with Senator BELLMON. But we have to disagree on this one with him and others on the Budget Committee and ask that the resolution be brought up and the issues be fairly and squarely faced at this point.

Mr. BAKER. Mr. President, I now yield 5 minutes to the Senator from Delaware.

Mr. ROTH. Mr. President, I agree with my colleagues that we must complete all essential public business before we recess in October. Essential public business would include legislation required under the Congressional Budget Act such as spending bills and the second budget resolution, and the tax cut bill.

Mr. President, these matters must be decided before we recess. I understand the current plan is to recess October 4 and reconvene November 12. I cannot believe we are going to subject the American people and our beleaguered economy to the needless speculation and uncertainty which undoubtedly will persist in that month and a half. Are we really going to ignore the budget process for the second time in 2 years, and leave several spending bills and possibly the second budget resolution, too, until the middle of November? I fear that pretty soon we will abuse the process to the point of passing our budgets and spending bills after each fiscal year.

Realizing that this is an election year, I feel the American people have a right to know in what direction their leaders have steered the economy. The American people have a right to cast their vote based upon the complete performance of this Congress—that means record votes on spending, tax cut measures and other essential public business.

Mr. President, some have said the economic future of this country is too important to be decided in an election year. I believe it is too important to be delayed.

Mr. President, the American people expect this Congress to deal with all essential business before they go home. I can tell you that, having traveled around my State of Delaware as well as elsewhere in this Nation, the American people are deeply concerned about the state of our economy. They are concerned about inflation. They are worried about whether they are going to have jobs in the future. They are concerned about the fact that their take-home pay is falling, and they are worried about high interest rates.

For us to go home without working our will on essential legislation is, in my judgment, unconscionable. We are breaking faith with the American people.

Let me say to my good friends on both sides of the aisles: Make no mistake. If we go home without doing our job, without enacting the second budget resolution which we are required to do by law, without working our will on the tax cut that has been fashioned jointly in the Finance Committee by Democrats and Republicans alike, and without working our will on the appropriations bills, the American people will be able to label this is a "do-nothing" Congress—make no mistake about that—because it is a "do-nothing" Congress.

The most serious concern of the people, of the working people, of the poor, of all Americans, is what direction this country is going to go. We cannot duck and dodge. But if we do, the American people will be entitled to say we would rather play politics than make policy.

Mr. President, it is a well known fact that the American people are losing confidence in our election processes. Fewer and fewer people are going to be voting because they do not see the democratic institutions able to cope with the problems we face. There has been a lot of talk in this Congress in the years gone by

about open government, about letting the American people know where we stand. And yet now Congress is trying to go home on October 4 or earlier without dealing with these very serious economic problems. No wonder so many Americans say they are not even going to bother to vote.

Mr. President, I think we can change this picture. I think we can reverse this trend if Democrats and Republicans will work together in the remaining days to act on these most critical aspects of the economy.

I would just point out to my distinguished colleagues on both sides of the aisle that I think what was accomplished in the Finance Committee can be accomplished here on the floor. There the Republicans and Democrats, working together under the leadership of the distinguished Chairman RUSSELL LONG and the ranking member BOB DOLE, were able to report out almost unanimously a bill providing for tax cuts.

In closing I would say that we can do the same thing. If we work together here in these closing days, we can accomplish what is essential and go home with a record of which we can be proud.

Mr. BAKER. Mr. President, I thank the Senator from Delaware. Might I inquire of the Chair how much time remains under the special order?

The ACTING PRESIDENT pro tempore. There are 2 minutes remaining.

Mr. BAKER. Mr. President, with my apology to the Senator from Colorado, I yield the remaining time, which I understand is only 2 minutes, to the Senator from Colorado.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I appreciate the Senator yielding. I compliment the distinguished minority leader for taking the lead on this issue.

Frankly, it is pretty hard to find any thoughtful, responsible people in this body or around the country to take seriously the budget process. Certainly, I do not think there are any at this point who have the faith and confidence or credibility in this that it once had or that we all hoped it would have.

But I suggest to my friends in the leadership that if they go on through with the announced plan of putting off the budget resolution until after the election, there will not be a shred of credibility left in this budget process. It has already been seriously eroded and abused and politicized. If we go forward with this plan, there will not be an ounce of faith on the part of anybody in this budget process.

Now, there is absolutely no reason for us to put this off. There remains time enough, even between now and October 4, to adopt the budget resolution, to have a full and fair debate on it and to put those policies clearly before the Senate and before the House and the people of this country, to adopt reconciliation bills, to act on the appropriation bills, and to act on the tax cut. There is absolutely no reason to put this off.

But perhaps there is one single reason, and it is the reason which the minority leader and the ranking Republican member of the Budget Committee and others have alluded to, and that is the political reason, the fear of some Members to come to grips with this issue.

I will suggest to you that if there is ever an issue that deserves to be voted on before the election so the people of this country will know where their Senators stand on the most important economic issue facing this country, it is this budget resolution. It will truly be a travesty if we duck the issue.

Well, Senators and others may be wondering: So what? A bunch of Members of the minority party are making a lot of noise today saying we ought to do this, we should not put off the issue. Some may be wondering what can we do about it. But I think that remains to be seen.

Today, Mr. President, we are just expressing our concern. But it is my hope that the minority leader or others will bring a motion to the floor to put this issue in very clear perspective and to make it clear that Republican Members of the Senate are eager to bring for debate and decision the economic policy of this country.

I trust that at the right time such a motion will be proposed and that perhaps even now the majority leadership will decide that perhaps there is room for further consideration and further negotiation.

The scheduling of legislation is uniquely the prerogative of the majority leader. I think on our side of the aisle that we would be very reluctant and only as a last resort would we attempt to undermine or preempt that prerogative or to force a showdown vote on that issue. So I would plead with my friends on the other side, particularly the distinguished chairman of the Budget Committee, who I see is on the floor, and the majority leader and others who are responsible on the Democratic side for this decision, to not to put us in that position. Do not put the Senate in that position. Do not put the budget process to that kind of a test.

I plead with them to let this bill come to the floor in the regular process, to be considered in the regular way, for amendments to be considered, and a responsible, thoughtful decision to be made. Barring that, I can see, Mr. President, no choice but for those of us on our side of the aisle to take whatever action and by whatever parliamentary means may be available.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Under the previous order, the Senator from South Carolina (Mr. HOLLINGS) is recognized for not to exceed 15 minutes.

Mr. HOLLINGS. Mr. President, the budget process is alive and viable and working. The Senator from Colorado might think that somehow or other the process represents no confidence in the American people, not one word of credibility and all of these other things that he talks about.

The fact of the matter is that the Budget Committee, on schedule, reported here in August and printed its report. For the information of those who will talk about chicanery and hiding, the thrust of the entire argument—well, not the entire argument, because the Senator from Kansas and the Senator from Delaware are confused. They cannot get their act together. They either want to hold down the deficit and hold down inflation or they want a tax cut. Now, Kemp-Roth, Kemp-Dole, Kemp-Reagan, are still running for the Presidential election and they want a tax cut and they want to run up the deficit. The others say that we are late and behind time and we ought to move forward and hold the line on the deficit.

The fact of the matter is that we are on schedule. Your chairman appeared before the National Press Club last week and laid the entire matter out. Nobody is sneaking anything by by not calling the budget resolution, and the news media know it. They were there. I do not see but one or two in the gallery, bless them. It is early in the morning. But I saw 200 to 300 in the National Press Club last week when your chairman addressed that group and answered all of their questions. So do not give us any of this chicanery and hiding.

If the Senator from Tennessee will come back, I am going to tell him exactly what is going on. Amongst the difficulties that we have, the biggest, of course, is that we have no constituency, I say to Senator BELLMON.

When our friend went after us in the first resolution, he listed, and I wish I had that list here, though I have it somewhere in the file, all the special interests of labor unions and everybody else who were against the resolution, which, in essence, means they are against the budget process.

The chairmen of both Appropriations Committees are against the process. They do not like the restrictions. They like to spend all the money they can.

Amongst other things, I pointed out that over on the House side they play politics with it. What they do is they vote for what they want, like high defense matters, and never vote for the budget resolution. And that, Senator DOMENICI, is where we are this morning. You know why we cannot pass a budget. It is because of the House.

To the credit of the Republicans, until this morning, they did not play politics with this budget resolution.

I can tell you here and now, if we were in a boxing match, the referee would call the Republicans for hitting and holding. They hold us over on the House side and they hit us on the Senate side. And they know it. We cannot get it through because the House is not going to pass it. You and I have discussed it, Senator BELLMON has discussed it, Senator CHILES, both sides of the aisle. We know what the facts are.

So we decided, why not go along with Dr. BELLMON, the mighty economist. He is the best economist I know.

He told us when we were marking up this resolution that we were way off, that we were panicking, that we had gone to 9.5 percent according to the CBO or a 9-percent average annual 1981 unemployment. Dr. BELLMON thought it would be 8 percent. It was he who made the motion.

Well, that was a little too much for all of us. That was as optimistic as it could be. But he is nearer right than wrong.

We compromised at 8.5 percent. We should have followed Dr. BELLMON, according to the indicators here this morning, because we find Paul Samuelson saying, that in the first quarter unemployment will go to 8.3 percent and gradually come back to where it is right now, 7.6 percent. So the 8-percent average would be pretty close.

So, Mr. President, the longer we hold off the more money we can save. If we had passed the budget this last week, we would have had to add $3 billion to $4 billion, though I hope not to have to add it if Dr. BELLMON is correct.

So there are good economic reasons, Dr. BELLMON's reasons, why not to go forward. I discussed this with him.

He has his loyal moments on that side. We find him using the word "chicanery." He knows differently. There is no chicanery. How did he get to the $50 billion? He gets to the $50 billion with $18 billion that we found. I voted for it.

On the reconciliation, we go into conference this afternoon and we hope to save. We have every indication that we will. Even the Speaker, TIP O'NEILL, has asked to address the reconciliation conference. So we will save the $10 billion, not add to the $18 billion, but not go forward with Senator DOLE.

No wonder you cannot go forward if Senator DOLE and Senator ROTH are running off in one direction to add to the deficit. That is what they really want. They care nothing about the budget. They could care less. They want Ronnie's tax cut. That is what your Budget Committee saved in that budget resolution, that across-the-board, infusion into the consumer stream.

Inflation? Who wants to go back to the high inflation, the 18-percent interest rates, when you cannot buy a car, and the housing industry gets back down in the gutter again?

That is what we are still fighting. That is what Paul Volcker testified to last week. He said no tax cut this year, period. He went along with the Budget Committee. No stimulus. We held off. We did not go the stimulus route. And no tax cut.

So we go along with the best business judgment and they call it chicanery?

They cannot play that game with us.

The minority leader came and said earlier this year that it was too early when we tried to put the budget deadline up to August. Then comes the Dole tax cut. Senator ARMSTRONG told us when we marked up the first resolution we were using "2-month-old figures," they are "obsolete," he said. Now he is begging this morning to guarantee obsolescence.

So if we wait from September 15 to November 15, I say to the Senator from Tennessee, we will avoid that obsolescence. We can look at the budget, you can look at it, and the House can look at it, all at the same time.

When was the second concurrent resolution passed? Last year, on November 16, after they had passed the appropriations bills.

When was it passed in 1975? On December 11.

There is no aberration, no reason to believe that all of a sudden the world is going to end this year. You have politics in this thing now. There is every reason for not taking up a tax cut measure. You cannot pass one responsibly with the election on us, and that pertains to the budget resolution as well.

They write up every one of the issues. We get into who recommended what econometric plan, program, Presidential platform, Republican or Democratic platform, and the people get lost in the mess.

If we sit steady and tight, we are saving money.

I picked up the paper this morning and housing had gone up 12 percent. We are coming back.

Dr. BELLMON, you are right. You have been right as rain. You have proven yourself every day. But do not call deliberate, intentional withholding so that we can all look at it together in November chicanery. Do not suggest that we are trying to sneak by $50 billion.

Heavens above, the Senator knows the chairman's mark in the Budget Committee. If I had prevailed, there would be no problem. Where did the $18 billion come from? Eight billion dollars came from the high unemployment figures. You know that. Then the trade adjustment, unemployment compensation, food stamps. Four billion dollars came from inflation and $4 billion came from accelerated spending in defense. That is $16 billion. Then we added on $1.1 billion for the Eximbank. We added on for SPRO. We want to get that going again. That was $18 billion. We did not go wild. But from that $8 billion, we come back over $4 billion, according to Dr. BELLMON's figures. I am hopeful that will continue, that he will prove I am wrong and he is right.

Let us not call this thing chicanery when they run all over the lot with little prepared releases that get into the national press, about "Whoopee for Ronnie, we hit them today. They don't know where it is coming from. Let them get into the mess. When we get into the mess, and a mess there is bound to be, we will say that this is a Democratic Congress. Elect Ronald Reagan."

That is what we hear this morning, a political move.

We know we should hold up at this particular time and examine exactly what we are doing, as we will. I have even talked to the distinguished ranking member about revising the budget in November since we are going to have to take care of more disaster loans which could come into the debate on Monday. Those loans were sent up afterward. We are a little miffed with our OMB office. They are sending up things willy-nilly, and that hurts us. We all resent it, but we will have to take care of that. Then public housing, we will have to take care of that. But we can also take care of a lesser amount of unemployment that Senator BELLMON predicted and moved for in committee.

This is deliberate, conscious, and open. I said before the National Press Club what our intent was, to come back in November and it is not because of chicanery or trying to sandbag or surprise the voters with $50 billion.

I am trying to forbid that $50 billion deficit. No, we did not get a balanced budget. But, when you come from a $63 billion deficit that we have in this fiscal year, down to $18 billion, I say to the Senator from New Mexico, you have cut $45 billion out of the inflationary process. You have relieved the capital markets from having the Federal Government sticking its nose in there trying to borrow this $45 billion. That is better than all the other things we have heard—Laffer curves, Kemp-Roth, and all those other things.

I yield to the Senator from New Mexico if I have a minute left here.

Mr. DOMENICI. Mr. President, I was going to ask the Senator when he talked about the House not wanting to do anything, that does not preclude the Senate——

Mr. HOLLINGS. Certainly it does.

Mr. DOMENICI. That does not preclude us from taking the lead.

Mr. HOLLINGS. There is no lead. The Senator knows it is parliamentary, procedurally impossible to pass a budget on the House side. The Senator is not responsible for that and I am not. But to call the budget now and let it sit on the griddle and have a big argument about tax cuts and platforms in this body I do not think is particularly wise, when we are winning on Senator BELLMON's projections by doing nothing. I firmly advocate doing nothing but sitting still and waiting until the middle of November.

Mr. DOMENICI. Mr. President, let me say to the Senator, just as certain as he is that we might save $45 billion, which he says will not go into the fires of inflation, this Senator is convinced that the path we are on is going to add $45 billion. The reason I am here is not political, other than it is the majority's responsibility to decide whether we bring it up or not. I believe what we are going to do is have a tax cut. We are going to overspend even the second concurrent resolution, and the appropriations bills begin to look like that. When you add up what I think is going to happen, the deficit is going to be $45 billion. My theory is that now is the time for this body, in spite of all the problems the Senator described, to say what it is that this institution, through the budget process, wants to recommend to the Senate, not sit back and say, we are going to adjust later. That is my theory and I would appreciate the Senator's thoughts on it.

The ACTING PRESIDENT pro tempore. The Senator's 15 minutes have expired.

RECOGNITION OF SENATOR CHILES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Florida (Mr. CHILES) is recognized for not to exceed 15 minutes.

Mr. CHILES. Mr President, I listened with great interest this morning to the remarks of our Republican friends from

the other side of the aisle. I listened with particular care, as I always do, to the remarks of our distinguished friend from Oklahoma, the ranking member of the Committee on the Budget, who has meant so much to the budget process. The work that he has devoted and the counsel he has given to the budget process, I think, have a great deal to do with the fact that the process is still working. Especially to the fact that we have been able to work it in a bipartisan way in the Senate and to try to instill some discipline through that process.

I listened to the remarks he made today, Mr. President, and I want to associate myself with the basic thrust of those remarks. He talks about the fact that the American people do not want a deficit in excess of $50 billion. He is right; they do not. We in Congress certainly do not.

He also says that he feels that it is going to take hard work on our part to try to impose additional restraint. He is right. He is correct. I agree with that judgment.

The only difficulty I had, Mr. President, was after our distinguished friend from Oklahoma sat down. After listening to him, I thought that the thrust of this morning's debate is going to be that the Republicans are saying we need discipline, that inflation is a problem, that excess spending is a problem, that the deficit growing is a problem—because I think those are things that we certainly agree with. But then I listened to the distinguished Senator from Kansas get up and, in the same colloquy, during the same 30 minutes of time, I did not hear anything about restraint. I did not hear anything about inflation. I did not hear anything about holding down the deficit. What I heard was tax cut, tax cut, additional deficit, additionl inflation. Although he did not talk about additional inflation, he did talk about a tax cut, and he spoke of the great need for the tax cut.

Now I am a little confused, Mr. President. Are the Republicans talking about the need to pass the second budget resolution because we need fiscal restraint, or are they talking about passing the second concurrent resolution because they want to spend more, because they want to inflate the economy more, do they want to raise the ceiling to have this kind of tax cut?

I really think that some of our friends on the Republican side have used the distinguished Senator from Oklahoma as their stalking horse. They have sent him out there to do that job that he believes in, that he wants to do, to talk about holding down spending, to talk about restraint. But it really, seems the other Republicans want to open up the resolution so that they can breach the discipline and so that they can have a tax cut.

Mr. President, why is that necessary? Primarily because the first concurrent resolution says if you have a measure that reduces revenues by more than $100 million, that measure has to stay at that desk until we pass a second concurrent resolution. I think that is the key to what this debate is really about this morning. I think it is the key to what my distinguished friend from New Mexico was referring to, although I am not sure that he has completely focused on that. It is the $100 million procedural restraint on reducing revenues that we wrote into the first budget resolution that is giving our colleagues on the other side such a problem. That is why they want the second concurrent resolution come up, so that they can eliminate that restraint.

Mr. President, I listened to this talk about a tax cut. It is interesting that in all the talk I heard about a tax cut this morning, I missed some key words that I used to hear earlier in the year. I used to hear always the Roth-Kemp tax cut. Man, I heard that all over. In fact, there was a sort of talking show that went around the country and had an elephant at one time, and some other things. It had buttons and pins and all they talked about was the Roth-Kemp tax cut.

As I remember, and I think I remember right, earlier in the year, our friends from the other side were attempting to tack that massive Roth-Kemp tax cut on about every measure that came out of here, and it was something that was needed to save the country. They said if we did not have Roth-Kemp, the country was going down, it was going to sink, we were not going to be able to save the country. It was tacked onto all kinds of vehicles.

Now, I do not hear the Senator from Delaware talking about Roth-Kemp. In fact, Governor Reagan has quit talking about Roth-Kemp. I read that he is abandoning Roth-Kemp. The tax cut we are beginning to hear about now is the tax cut that the Finance Committee worked on. Yes, it is a bipartisan product. I think it is certainly a better tax cut than Roth-Kemp was. It includes important economic incentives that a lot of people are discussing now. But there are still some of us who question whether we ought to have any tax cut this year. I think there are some on the Republican side of the aisle who question that, although I am not sure how many any more. If we are concerned about inflation, if we are concerned about a deficit, then I think we have to be concerned some about that tax cut.

I listened to my distinguished friend from New Mexico, who will soon be the ranking member of the Budget Committee and who also has done yeoman work on the Budget Committee. I think he has been one of our most outstanding Members since the time that the process started.

I listened to him talking about his concern, that this was being held as a political hostage. I listened carefully to what he said, and thought about this changing story on tax cuts as I was listening, I really listen to whatever he says because I have such great respect for him and for his views. As he was talking, I really believed that he is right. This is being held as a political hostage.

But I think we need to concern ourselves as to who has the hostage and who wants to do ill to the person of the hostage?

The first concurrent resolution has a little feature there that says, you cannot reduce revenues by more than $100 million. Any measure that does that gets held up at the desk.

But if they take that feature out in a second concurrent budget resolution, then they inflict upon the hostage, upon the person of the hostage, a change that says Congress abandons that restraint. We would have a wide open situation in which Governor Reagan can be able to talk about a tax cut.

But is that politics? Of course, it is. Many things we do in this body are politics, and may be that is all right.

But what does that do to the economy? What does that do, really, for the people?

I think there is a concern that is shared by many of us here that now is not the time to pass a tax cut. Now we see that the economy is recovering. If we are going to do anything about a tax cut, it ought to be in the sober light of the post-election period so we do not have to concern ourselves that we have to put something for everybody in an across-the-board tax cut.

It is so interesting, because I remember when the Democrats used to always have that in their tax cut and Republicans used to chide us about it. They used to call it a wasting money, that we put it in for everybody across the board. They used to say that money is so precious that we need to use it to fuel the economic engine, to develop the capital we need to create real lasting jobs and economic growth.

I say that is now reversed. For some reason, the Democrats are talking about not having across-the-board tax cuts, about the need to develop capital investment. We have, not all Republicans, but some, including Governor Reagan, who say they want to make it across the board and give consumers, business, and everybody else a tax cut.

I think we can look at that in a much more sober, reflective way after the election. I think we would be better off to keep that restraint that we have, so that any measure that would cut revenues by more than $100 million will be kept at the desk.

That is what we have as long as the first concurrent budget resolution stays in effect. I think that is a necessary protection to the people and the economy.

So if that is holding it hostage, then maybe that is good. I am for holding the hostage, if it provides protection against bigger deficits and more inflation.

But I really feel, as I say, that the harm being inflicted on the hostage is coming from the other side of the aisle.

Mr. BELLMON. Will the Senator yield?

Mr. CHILES. I am delighted to yield.

Mr. BELLMON. Mr. President, I have to say that much of what the Senator from Florida has said today meets my own requirements. I feel that we do need restraint and I hope nothing I said today would indicate otherwise.

I think my friend from Florida knows I do not support borrowing money to cut taxes. I think we ought to have that

debate now. I think where we disagree is whether or not we have more restraint before or after the election.

I happen to believe the mood of the country now is for fighting inflation, which most people perceive to be the greatest villain. I think we would have more restraint now than we would have after the election, when we get so much pressure from those who want more and more spending and have very little concern about what it does to the fiscal health of the Nation.

Also, Mr. President, if there is time, I would like to respond quickly to one comment made by the distinguished Senator from South Carolina.

The use of the word "chicanery" which I have used in my statement, but the Senator did not hear, was not in any way aimed at my friend, the chairman of the Budget Committee.

I feel the chicanery comes in the fact that we on the Budget Committee did our work, as required, before the 28th of August, brought the resolution out under some difficult circumstances, and now the leadership of the Senate refuses to let it come to the floor for a vote.

That is where I think the problem is. We should go ahead and set our fiscal policy before elections, while there is pressure from those who want a sound fiscal policy.

I am afraid that will be lost once the elections are behind us.

Mr. HOLLINGS. Will the Senator from Florida yield?

Mr. CHILES. Yes.

Mr. HOLLINGS. I agree with the Senator from Oklahoma. We are on schedule. We thought by bringing out our resolution we would pressure the House, and we did to the point where this will move forward, and we are, this afternoon, on reconciliation.

But there is no way we can get time to sit down on a second concurrent resolution that has any chance of passing and that will result in a Christmas tree prior to election.

All economists say a tax cut should not be effective before January 1. We could pass it now, or after January 1. But passing it prior to January 1 would be giving the wrong signal and building a Christmas tree.

In spite of the unanimous agreement of the Finance Committee, they did not control a lot of Senators here.

Similarly, if we got this resolution, it would end up as a Christmas tree with special interests getting a vote on record prior to the election.

Then, knowing we could not do it, I advised, along with the majority, to hold up doing it, because it would waste the time of the Senate, and actually, with the predictions and projections becoming more true each day, that delay will actually save us money and result in a lower deficit and less inflation.

Mr. CHILES. Mr. President, in the short remaining time that I have, I say again that I agree with what the Senator from Oklahoma says. I know what his motives are, and they are responsible.

My concern is that when we talk about the second budget resolution being a restraint, if everyone on that side was making the same remarks as the Senator from Oklahoma, then I would say he is right and we ought to take it up.

But when I see, as part of this debate this morning, the distinguished Senator from Kansas, the ranking member of the Finance Committee, and listened to his remarks, all I hear is: tax cut, tax cut, tax cut. I listened to the Senator from Delaware talk about the need for the tax cut, and he says that is what the American people are demanding right now, this tax cut. Then I do not get any great feelings of restraint from the other side of the aisle, and I get really worried that if we passed that tax now and added that to the deficit, and added it to the projected inflation, interest rates would go sky high again.

Now we have an economy that is beginning to turn around, and we have housing beginning to pick up. If we add the stimulus of a tax cut now, then the credit markets will say we no longer care about balancing the budget and reducing inflation. Then they will skyrocket those interest rates again and tumble us back into a worse recession, as housing and auto sales drop back down to nothing. It would be an exact replay of last winter.

Mr. HOLLINGS. Another particular point, the Senator from Oklahoma and the Senator from New Mexico should consider the best example we have. Both Houses voted on the Federal retirees' cost-of-living adjustment, to make it permanent, and save $6 billion by not having to transmit it to the veterans and social security.

Now, as we move toward the election, we have already lost that in the House version of reconciliation, and it was difficult for me to get a conference committee without saying I would be in the soup on that particular point.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. HOLLINGS. Let us get by this election so we can have restraint and less deficit and inflation.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 30 minutes, and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, does the distinguished majority leader plan now to go back to the appropriations bill?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. Handled by Mr. BAYH and Mr MCCLURE?

Mr. ROBERT C. BYRD. Yes.

Mr STEVENS Is it the intention of the leadership to go to another bill today?

Mr. ROBERT C. BYRD. Yes; under the order, at noon, the Senate will proceed to the HUD appropriations bill.

Mr. STEVENS. I am trying to get some understanding as to what the plan might be for the remainder of the day and tomorrow. I have a request on that.

Mr. ROBERT C. BYRD. For the remainder of the day, I am sure the Senate would be on the HUD appropriations bill. If the Senate does not finish that bill today, which it probably will not, it will be on the bill tomorrow.

Mr. STEVENS. Is it the intention of the Senator to have votes tomorrow?

Mr. ROBERT C. BYRD. Yes; on the HUD appropriations bill.

Mr. STEVENS. But not to go back to the transportation bill?

Mr. ROBERT C. BYRD. It is my understanding that there is a good chance of finishing the DOT bill by noon. If not, and we were within earshot of finishing it, perhaps Senator PROXMIRE and the manager on the other side might be willing to let us go a little longer.

Mr. STEVENS. It is my hope that we might finish DOT today, if possible. Some of us interested in that matter intend to go to a convention in San Francisco, the Mining Congress. If it is possible to finish that bill, it is my hope that we can do that.

Mr. ROBERT C. BYRD. I hope we can.

Mr. TSONGAS. We will be in morning business, then, until 10 minutes to 11, at which time we will take up the DOT measure?

Mr. ROBERT C. BYRD. No. We will proceed immediately with the DOT measure if there is no further morning business.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 7631, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, under the order, the HUD appropriation bill will come back before the Senate at noon, if action is not completed on the DOT bill by that time.

I have explored the matter on this side of the aisle, and I find that Senators would prefer—and it is agreeable with Mr. PROXMIRE, the manager—to continue on the Department of Transportation bill until it is finished, before the Senate returns to the HUD appropriation bill.

It is conceivable that the Senate could finish the Department of Transportation appropriation bill by noon today, but it is equally conceivable that it would take another half-hour or hour or hour and a half. In any event, it is felt that it would be better to complete it before going to the HUD appropriation bill.

I have discussed this with the minority leader. I will make the request and he may reserve the right to object.

Mr. President, I so make that unanimous-consent request.

Mr. BAKER. Mr. President, reserving the right to object, I frankly think that is a better arrangement than the one that is now in existence. I think there is a certain value that attaches to continuing that bill once we start it.

It is my expectation, I might say, that we are unlikely to finish HUD appropriations today anyway and that we probably will have to go into tomorrow in order to do that.

So, in recognition of reality and under the circumstances, I advise the majority leader there will be no objection to that request on this side.

Mr. ROBERT C. BYRD. I thank the minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I thank our distinguished majority leader and distinguished minority leader as well as our distinguished colleague, the Senator from Wisconsin, for making it possible to have the time necessary to finish this bill in the manner in which it can best be done.

I think we have an excellent opportunity of finishing it in the allotted time. However, if for reasons that are important to Senators that is not the case, we now know we can maintain our debate on this in a continuous fashion and not have to have it interrupted.

So I thank the majority leader for his thoughtful consideration.

Mr. President, I shall make just some brief opening remarks.

The Transportation Subcommittee, of which I have the honor of being chairman, held extensive hearings over a period of several months on the fiscal year 1981 budget of the Department of Transportation and the related agencies which fall under the subcommittee's jurisdiction. I express my appreciation to the members of the subcommittee for their active participation throughout the hearings and markup of the bill. I particularly thank my distinguished friend and colleague, the Senator from Idaho, Senator MCCLURE for his very diligent and careful attention to the bill. During our markup, several of his amendments were accepted in the bill, as well as the report, and I think those changes certainly have improved the consideration of this bill and make it possible for us now to present a bill which has a broader degree of input in it and is better prepared to deal with some transportation problems which confront our country today.

Mr. President, I am pleased to present to the Senate a bill that is under the President's budget requests by over $967 million, and that is almost $1 billion. Also, it is under the House bill by $61 million, even though we considered $413.5 million in budget amendments by our colleagues in the House.

So, I compliment the members of the subcommittee and the full Appropriations Committee at this time of inflated costs for being able to come in at about $1 billion under the President and almost a half billion dollars under the House which I think is salutary to say the least and could not have been done without a cooperative spirit in our effort to try to make ends meet and balance the that budget.

Our subcommittee's recommendations, I wish to point out to my colleagues, are also below our subcommittee's allocation under the first budget resolution by $294 million. This also was not easy to accomplish. We have cut back on the programs for which, in other years, under other circumstances, we might have recommended higher levels of funding.

I know myself there were several programs where I would wish to have seen more money invested and I think could have been invested profitably for the people of this country in the area of transportation.

But we have worked hard to present a balanced bill which provides adequate funds for each program and each agency in the Department and to also recognize the need to be fiscally responsible as we allocate these resources, not reduce programs below prudent levels, particularly where the safety of the traveling public is concerned.

I point out that we have included several provisions in the bill at the request of our distinguished full committee chairman, Senator MAGNUSON, which will enable us to get a better handle on DOT's use of consultants; its management of appropriations so that obligations will not occur at the last minute at the end of the fiscal year, and to force the Department to do a better job of ferreting out fraud, abuse, waste, and error in their programs. Senator MAGNUSON is one of the most knowledgeable Members of the Senate on transportation issues and I am grateful for his counsel on this measure.

Mr. President, the subcommittee considered budget estimates totaling $12.8 billion in new budget authority, as well as $9.9 billion in liquidating cash appropriations. We have provided $11.8 billion in new budget authority—a reduction of almost $1 billion below the President's requests. For liquidating cash to pay for obligations incurred under contract authority programs, the bill provides $9.8 billion, slightly below the President.

Mr. President, the committee report which accompanies the bill contains a summary of major recommendations on pages 1 through 9, so I will not repeat all of them at this time. I ask unanimous consent that those itemizations be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY

OFFICE OF THE SECRETARY OF TRANSPORTATION

For the Office of the Secretary, we recommend $35,740,000 and 625 positions, as well as $10,788,699 for transportation planning, research, and development. Of this amount, $1,000,000 is to enable the Secretary to conduct a series of studies to assess the auto industry and forecast auto demand, the role of new technology, interaction between the industry and its primary suppliers, energy trends, and the impact of the auto industry on other economic and employment conditions.

COAST GUARD

For the Coast Guard, the bill includes the full budget estimates of $1,193,112,000 for operating expenses; $324,392,000 for acquisition, construction, and improvement programs; $232,000,000 for payments to retired Coast Guard personnel; $45,007,000 for reserve training; $25,000,000 for research and development; $12,000,000 for the offshore oil pollution fund, and $1,500,000 for the supply fund.

FEDERAL AVIATION ADMINISTRATION

For the FAA's operations, we recommend $2,233,520,000. This will allow for increased air traffic control personnel at centers and towers—24,341 positions vs. 24,185 last year—or an increase of 156 positions. We state concern in our report that FAA has not reached the level of personnal provided for fiscal 1980. As of April 30, 1980, total staffing was 750 positions short of estimated end-of-year levels projected in the January budget document.

For procurement of facilities and equipment, the full budget request of $350,000,000 is provided. This will fund necessary improvements at centers and towers, flight service stations, airport control facilities, and air navigation facilities.

For obligations from the Trust Fund for airport development grants, the Committee recommends a level of $700,000,000. This is $50,000,000 over the President's request. Also, a limit on aircraft loan guarantees is set at $400,000,000.

For research, engineering, and development, we have provided $75,000,000. That amount is $10,000,000 under the budget but a carryover of $3,750,000 from Fiscal 1980 will also be available for this program. We have included strong language in our report relative to FAA's en route air traffic control computers. Our investigative staff is nearing completion of a year-long study of this system and has found that numerous major changes in FAA's management of its en route system will be necessary if we are to insure the continued high level of aviation safety we've had in the past. We have made nine recommendations in the report relative to the system and expect FAA to follow through on them. If additional resources are needed to do the job, we want to know in time for Conference with the House.

Relative to FAA's planned procurement of a replacement computer system for en route centers, we direct them to consider costs vs. benefits of en mass replacement as opposed to selected upgrading at centers

which are reaching capacity. If the new system is justified, by all means, let's move forward on it, but not spend over $3 billion and add a second story to every center to house the new computers if there is a more cost effective way to achieve the same level of competence and safety for the future.

FEDERAL HIGHWAY ADMINISTRATION

For the Federal-aid highway program, we recommend an obligation level of $8.4 billion. This is $350,000,000 below the House bill but is the same level requested by the President. We also recommend the full $7.5 billion requested by the President to liquidate obligations incurred under the program.

We included no funds for auto use management since the program has not been authorized.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

For NHTSA, we have included $99,500,000 for operations and research. Of this amount, $10,000,000 is to enable NHTSA to fund the purchase of air bag equipped government vehicles. For state and community highway safety programs, we recommend $43,593,000. This is $10,000,000 below the budget but $20,000,000 above the House bill. The Committee intends that $40,000,000 be made available to states for enforcement of the national 55 MPH speed limit. Also, the full obligation limit requested in the budget—$150,405,000—is provided for this program for fiscal 1980.

We have striken from the bill the House provision prohibiting the use of funds for implementation of a passive restraint standard. This issue is presently in Conference on the NHTSA authorization bill and properly belongs there.

Finally, we have modified the House provision in the bill concerning state vehicle inspections so that no funds may be used to assist states, directly or indirectly, in imposing mandatory inspection fees or sticker requirements on vehicles which meet the laws of the state in which they are registered and, where appropriate, Federal Motor Vehicle safety requirements.

FEDERAL RAILROAD ADMINISTRATION

For Amtrak, the bill includes $900,000,000. This is $25,000,000 under the budget and $13,100,000 above the House bill. We have increased the capital budget to $221,000,000, which is $32,000,000 above the budgeted level. This amount, when coupled with the advance capital appropriation of $166,000,000 for fiscal 1982 should enable Amtrak to continue making improvements in the equipment which are so vital if people are to ride Amtrak regularly rather than only occasionally.

For the Northeast Corridor Improvement Program, the full $350,000,000 budget request is provided.

For rail rehabilitation, $100,000,000 is provided for grants and a limit on loans under the 511 program is set at $770,000,000.

Also included are appropriations of $27,250,000 for rail safety programs; $50,000,000 for rail research and development; $85,000,000 for local rail service grants; $9,423,000 for the Minority Business Resource Center, and $9,000,000 for rail labor assistance.

URBAN MASS TRANSPORTATION ADMINISTRATION

For UMTA, we have recommended $2,140,000,000 for capital grants under section 3. That's $262,000,000 under the budget, but $430,000,000 above last year's level. We have included a provision in the bill designed to strengthen "Buy America" laws. It is imperative that we find ways to enable plants located in the United States to successfully compete with overseas companies in bidding on transit procurements. We cannot continue to allow jobs to go overseas to build transit equipment for U.S. cities when 80 percent of the cost of the equipment is paid for by Federal taxes.

We have also included a provision intended to give local communities the option of how best to meet the public transit needs of their elderly and handicapped citizens rather than mandating that all transit equipment be equipped with lifts.

For urban formula grants, we recommend $1,400,000,000. This is $170,000,000 below the budget but is the same as last year's level. For nonurban formula grants, the bill contains an appropriation of $80,000,000 which is $15,000,000 above the House bill but $11,000,000 under the budget request.

For interstate transfer grants, the full $800,000,000 budget request is provided.

RELATED AGENCIES

For the ICC, CAB, NTSB, Panama Canal, WMATA, and USRA, we have provided the funds necessary for these agencies to administer the programs under their jurisdictions. Included for the USRA is $185,000,000 for the purchase of Conrail securities. This amount is not adequate to keep Conrail going for all of fiscal 1981, but is the full amount of remaining authorizations. Conrail legislation will likely be necessary later this year and the Senate will want to fully review Conrail's future at that time.

Finally, we have included a provision transferring over $350,000,000 from the Panama Canal Commission Fund back into the General Fund of the United States Treasury. That is possible because tolls have now come in to cover the fiscal year 1980 appropriation, and if we don't take back the general funds from the Commission, they would have over $350,000,000 sitting in the Panama Canal Commission Fund for the full twenty year life of the treaty.

Mr. BAYH. I would, however, highlight the following items:

First. For FAA's personnel, $2,233,520,000 is provided, along with the full budget request of $350 million for facilities and equipment and an obligation ceiling of $700 million for airport development grants.

Second. For the Coast Guard's personnel, the bill includes $1,192,878,065. Also included is the full budget request of $324,392,000 for acquisition, construction, and improvements.

Third. For the Federal-aid highway program, we recommended the full budget level of $8.4 billion in obligations. We also include a provision requested by Senator MAGNUSON that will allow all emergency projects to proceed expeditiously.

Fourth. For Amtrak, we recommend $900 million. That is $13 million over the House, but $25 million under the budget request. Also, the bill includes $350 million for Northeast Corridor construction, and $185 million for Conrail, $100 million for rail rehabilitation grants, and $85 million for local rail service assistance.

Fifth. Finally, for mass transit, we have included $2,140,000,000 for capital grants under section 3; $1,400,000,000 for formula grants under section 5, and $800 million for interstate transfer grants.

Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendments to the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, with the exception of the cooperative automotive research appropriation on page 25 of the bill, lines 5 through 9, and the matter contained in section 318, lines 9 through 17, on page 38.

The PRESIDING OFFICER. Will the Senator repeat that last request.

Mr. BAYH. With the exception of the cooperative automotive research appropriation on page 25 of the bill, lines 5 through 9, and on page 38, section 318, lines 9 through 17.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The committee amendments agreed to are as follows:

On page 2, line 9, strike "$35,680,000", and insert in lieu thereof "$35,740,000";

On page 2, line 15, strike "$11,100,000", and insert in lieu thereof "$10,788,699";

On page 2, line 19, strike "$60,253,000", and insert in lieu thereof "$56,843,000";

On page 3, line 7, strike "$1,206,967,000", and insert in lieu thereof "$1,193,112,000";

On page 4, line 2, strike "$339,585,000", and insert in lieu thereof "$324,392,000";

On page 4, line 23, strike "$25,100,000", and insert in lieu thereof "$25,000,000";

On page 6, line 4, strike "$700,000,000", and insert in lieu thereof "$350,000,000";

On page 6, line 20, strike "$22,310,000", and insert in lieu thereof "$20,000,000";

On page 7, line 14, strike "$359,000,000", and insert in lieu thereof "$350,000,000";

On page 8, line 6, strike "$85,000,000", and insert in lieu thereof "$75,000,000";

On page 9, line 22, strike "$16,200,000", and insert in lieu thereof "$5,350,000";

On page 10, line 19, after the colon, insert the following:

Provided, That the funds in this Act shall be available for the guarantee of loans even if such aircraft are financed and delivered in fiscal year 1981 for reasons beyond the control of the purchasing carrier so long as the applicant has submitted a loan guarantee application before October 1, 1980; the Federal Aviation Administration has indicated that the applicant was conditionally eligible for a guarantee; and the aggregate of all such guarantees when combined with guarantees issued during fiscal year 1980 does not exceed $650,000,000 in principal amount."

On page 11, line 9, strike "$190,705,000", and insert in lieu thereof "$191,882,000";

On page 12, line 7, strike "(j)";

On page 12, beginning on line 8, strike "and" through and including "$6,100,000" on line 9, and insert in lieu thereof "$7,200,000";

On page 13, line 10, strike "$1,675,000", and insert in lieu thereof the following: balances appropriated under "access highways to public recreation areas on certain lakes" contained in Public Law 95–85"

On page 13, line 21, strike "$7,600,000,000", and insert in lieu thereof "$7,500,000,000";

On page 14, line 12, strike "$82,253,000", and insert in lieu thereof "$99,500,000";

On page 14, line 13, strike "$25,255,000", and insert in lieu thereof "$27,702,000";

On page 14, line 15, strike "$35,587,000", and insert in lieu thereof "$51,386,000";

On page 14, line 16, strike "$11,034,000", and insert in lieu thereof "$11,749,000";

On page 14, line 22, strike "$23,593,000", and insert in lieu thereof "$43,593,000";

On page 14, line 23, strike "$21,000,000", and insert in lieu thereof "$41,000,000";

On page 15, line 13, strike "$52,000,000", and insert in lieu thereof "$50,000,000";

On page 15, line 24, strike "$86,600,000" and insert in lieu thereof "$90,577,000";

On page 16, line 1, after the comma, insert the following:

"and $100,000,000 for railroad restructuring assistance authorized by title V of Public Law 94–210, as amended".

On page 16, line 19, after "purpose", insert a colon the following: "*Provided further*, That all public at grade-level crossings remaining along the Northeast Corridor upon completion of the project shall be equipped with protective devices including gates and lights."

On page 17, line 5, strike "$886,900,000", and insert in lieu thereof "$900,000,000";

On page 17, line 6, strike "$674,900,000", and insert in lieu thereof "$550,000,000";

On page 17, line 12, strike "$183,000,000", and insert in lieu thereof "$221,000,000";

On page 17, line 18, strike the colon through and including page 18, line 2;

On page 19, line 4, strike "$8,600,000", and insert in lieu thereof "$10,640,000";

On page 19, line 20, strike "$600,000,000", and insert in lieu thereof "$770,000,000";

On page 19, line 24, after "$7,500,000", insert the following: "together with $1,500,000 for a new career training assistance under section 119 of the Rock Island Transition and Employment Assistance Act,"

On page 20, line 17, strike "$57,820,000", and insert in lieu thereof "$68,000,000";

On page 20, line 18, strike "$55,820,000", and insert in lieu thereof $66,000,000";

On page 21, line 2, strike "$2,220,000,000", and insert in lieu thereof "$2,140,000,000";

On page 21, beginning on line 3, strike the following: "of which $705,000,000 shall be available only upon the enactment of authorizing legislation";

On page 21, beginning on line 2, strike "Provided" through and including line 12, and insert in lieu thereof the following: "*Provided further*, That none of the funds provided by this Act shall be used to enforce the provisions of 43 F.R. 235, page 57145, with respect to any projected contract entered into after the date of enactment of this Act unless obligated pursuant to the provisions of section 401, Public Law 95–599;"

On page 22, line 5, strike "$65,000,000", and insert in lieu thereof "$80,000,000";

On page 22, line 10, strike "$1,500,000,000", and insert in lieu thereof "$1,400,000,000";

On page 23, strike line 9 through and including line 13;

On page 24, line 23, strike "$29,820,000", and insert in lieu thereof "$32,558,000";

On page 24, line 24, strike "$10,691,000" and insert in lieu thereof $13,429,000";

On page 26, line 2, strike "$17,900,000", and insert in lieu thereof "$18,500,000";

On page 27, beginning on line 7, strike the following "or any other legislation";

On page 29, strike line 24 through and including page 30, line 2;

On page 30, after line 2, insert the following:

REIMBURSEMENT OF GENERAL FUND

For reimbursement to the General Fund of the Treasury from the Panama Canal Commission Fund, the total outlays in fiscal year 1980 from accounts 9501201 Panama Canal Commission Operating Expenses and 95X1201 Panama Canal Commission Capital Outlay, but in no case less than $350,000,000. The reimbursement shall be made within 30 days after submission by the General Accounting Office of the report on audit of the Panama Canal Commission accounts as required by section 1313 of the Panama Canal Act of 1979.

DEPARTMENT OF TREASURY

OFFICE OF THE SECRETARY

INVESTMENT IN FUND ANTICIPATION NOTES

For the acquisition, in accordance with section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, and section 803 of Public Law 95–620, of fund anticipation notes, $100,000,000.

On page 31, line 1, strike "$28,500,000", and insert in lieu thereof "$29,260,000";

On page 31, line 25, strike "$725,000,000", and insert in lieu thereof "$700,000,000";

On page 34, line 12, strike "(3)" through and including the comma on line 16;

On page 35, line 2, strike "$5,750,000,000", and insert in lieu thereof "$5,400,000,000";

On page 35, line 12, after the colon, insert the following:

Provided further, That notwithstanding any other provisions of law, the Secretary of Transportation shall, not later than 60 days after date of enactment of this Act, designate under 23 U.S.C. 103(e)(1) as a route on the National System of Interstate and Defense Highways 3.03 miles in the State of Missouri extending I–170 southward from I–70 to tie into U.S. 40: *Provided further*, That there shall be no obligation constraints placed upon ongoing emergency projects funded under the Discretionary Bridge Replacement Fund or the Emergency Relief Fund.

On page 36, strike line 14 through and including line 19;

On page 36, line 20, strike "313", and insert in lieu thereof "312";

On page 37, line 1, strike "314", and insert in lieu thereof "313";

On page 37, line 5, strike "315", and insert in lieu thereof "314";

On page 37, line 15, strike "316", and insert in lieu thereof "315";

On page 37, strike line 20 through and including line 24, and insert in lieu thereof the following:

SEC. 316. None of the funds in this Act shall be used to assist, directly or indirectly, any State in imposing mandatory State inspection fees or sticker requirements on vehicles which are lawfully registered in another State, including vehicles engaged in interstate commercial transportation which are in compliance with Part 396—Inspection and Maintenance of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation.

On page 39, line 1, strike "320", and insert in lieu thereof "318";

On page 39, strike line 8 through and including line 21;

On page 39, after line 21, insert the following:

SEC. 319. (a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department, agency, or establishment (as defined in 31 U.S.C. chapter 1, subchapter I, section 2) or any major administrative subdivision thereof during the fiscal year ending September 30, 1981, to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than 45 days after the close of each quarter of the fiscal year, the head of each department, agency, or establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(c) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department, agency, or establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results and impact of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

SEC. 320. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving questioned expenditures, arising after the enactment of this Act shall be resolved within 6 months of completing the initial audit report.

SEC. 321. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

SEC. 322. (a) Notwithstanding any other provision of this act, the amounts otherwise available to agencies under the act for procurement of consultant services shall be reduced by the following amounts: Department of Transportation, $3,894,000.

(b) For fiscal year 1982 and thereafter, a department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which such funds are located; and a brief description of the need for consulting services, including a list of major programs that require consulting services.

(c) For fiscal year 1982 and thereafter, the Inspector General of such department or establishment, or comparable official, or if there is no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

SEC. 323. None of the funds in this Act may be used for the planning or execution of programs to compel local transit authorities to purchase wheelchair lifts to comply with section 504 of the Rehabilitation Act of 1975.

SEC. 324. None of the funds in this Act shall be used to create paperwork flowing from profit or nonprofit businesses, private persons, or State or local governments, to any agency covered by this appropriation in fiscal year 1981, in excess of paperwork requirements for the previous fiscal year.

For the purposes of this provision "paperwork" means reports, applications, forms, or other written presentations that any agency "covered by this Act", under statutory authority, requires to be submitted to the local, State, or Federal Government.

SEC. 325. None of the funds in this Act shall be used to implement, administer, or enforce any regulation which has been dis-

approved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

Mr. BAYH. Mr. President, I ask unanimous consent that the bill, as thus amended, be regarded for purposes of amendment as original text, provided that no point of order shall have been waived if the request is agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I know we have two or three colleagues here who are ready to propose amendments.

Mr. SCHMITT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. TSONGAS. Mr. President, will the Senator withhold his request?

Mr. SCHMITT. We are trying to get the ranking minority member here so he can make his opening statement.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, as the ranking minority member of the Transportation Subcommittee, I rise in support of the comments made by the chairman. We have all worked hard on this bill, and I, first of all, want to express my appreciation not only to the chairman but to the members of the staff on both sides of the aisle, the majority staff and minority staff, as well as the other members of the subcommittee who directly and through their staffs have had input into this bill.

We have painstakingly looked for areas to cut all the way through this process, and I think it is commendable that we have come to the floor with a bill which is under the House by almost $61 million and under the President's budget estimate by almost $1 billion.

I think it interesting to note that, contrary to my normal experience, we came away from the subcommittee markup on this bill not with more add-ons but rather with additional cuts in the neighborhood of $14 million. As the chairman has pointed out, we are now below the first budget resolution by $294 million.

Last year, when we were on the floor with this bill, I made the prediction that the ingenuity and resourcefulness that we display in continuing to deal with our transportation problems in this Nation will be a bellwether of our ability to cope with other difficulties with which we will be faced. I would like to reiterate that point, because I think it is more important now than ever that we begin to come to grips with some fundamental transportation issues.

We need to do a much better job than we have done in the past in prioritizing our transportation needs. For example, in this bill we have increased limitations on loan guarantees under the railroad rehabilitation and improvement financing funds account by $170 million over the House bill and we have also addressed the administration's request for additional funding for a new railroad restructuring assistance program. As presently encompassed in this bill these two accounts represent almost $1 billion of the taxpayer's money, much of which will be used to assist with railroad restructuring efforts, particularly in the Midwest.

We have all been made painfully aware of the difficulties associated with our Nation's railroads and this committee is striving very hard to work with the authorizing committees so that we address these needs in a responsible manner. With that in mind, we have attached language in the report attached to this bill which will for the first time require that in administering the section 505 and 511 programs for rail rehabilitation, only the highest priority and most viable projects be funded. We have directed the FRA to provide, and expect to receive from them, quarterly reports detailing all applications received, which ones are funded, which ones are rejected, and the reasons for all of these decisions.

We must establish a degree of accountability with regard to transportation which permits us to make better decisions in this area. In that connection. I have had much difficulty with the tendency in this bill to earmark funds for specific projects in the absence of adequate justifications. I have no difficulty with earmarkings, so long as they are justified. The problem in the past, however, has been that we are flooded with earmarking requests, frequently at the last minute, which create a very poor context for making decisions about which projects are viable and which are not.

I have discussed this problem at great length with the chairman and would put my colleagues in the Senate on notice that in the future we intend to establish a process whereby the committee will require justifications and perhaps testimony which will be put into the committee records and which will provide us with a valid basis for making judgments on which earmarkings are justified and which ones are not. There are also a number of other areas in this bill where we have attempted to tighten up accountability for transportation decisions. For example, under the Federal Highway Administration, the committee intends to require expanded accountability with regard to administration of Federal-aid highway and offsystem roads programs. I am also extremely concerned about the impact of defense fund supply centers pricing policies on the Coast Guard and look forward to having a status report on this issue before the end of this calendar year.

I might add that I am sorry that it has been so slow in coming. We have directed that it be done, and I expect that they will give us that report in a timely fashion before the end of this calendar year.

I do not want to be redundant, and I do not want to repeat the summary of the bill given by the chairman, so I will just make a few other observations concerning items that remain of significant concern to me:

I continue to be frustrated about the inadequacy of the Federal Highway Administration in administering a viable safer offsystem roads program. Each year the administration budget request comes over with language indicating that the safer offsystem roads program can be addressed within the normal FHWA accounts, but at the same time we continue to be bombarded with indications from the various States that there is no significant program in this area. I cannot overstress my dismay at the failure of the current administration to make realistic authorizing proposals to deal with this problem which is so pervasive, especially in the West. I would welcome the opportunity to work with any of my colleagues in addressing this problem in an authorizing context in the future.

Another area that is of vital concern to me is our continuing failure to address Amtrak debt retirement in this bill. In that connection, we have also highlighted this problem in the report and I think it is high time that authorizing steps be taken to deal with this situation. Our track record in reducing Amtrak's indebtedness in any regular fashion is terrible and I think we had better begin looking for other answers in dealing with this problem.

A further area where we need authorizing activity has to do with the so-called cooperative automotive research program which is funded for the first time in the bill. We have taken this funding step in the absence of any major authorizing effort to address our needs in this area and had a considerable discussion about it in the full committee markup.

Again, I feel it safe to say that one cannot overstress the need to pursue a workable R. & D. program in the basic automotive research area. And yet there is no authorizing structure for doing so.

Finally, I want to raise an issue which has been festering since it came to my attention last year. Specifically, I am very distressed about the FAA's reluctance to reissue medical certificates to pilots who have recovered from cardiovascular conditions. I have received over 100 letters from pilots and doctors around the country which conclude unanimously that the FAA's regulations in this area are obsolete and excessively time consuming.

I am going to ask the committee to investigate this regulatory problem. We must answer many questions such as why the FAA contracted with the most renowned cardiovascular experts in the world at the Eighth Bethesda Conference to study cardiovascular problems associated with aviation safety, and then ignored the findings of the conference. Perhaps the FAA's Federal Air Surgeon, Dr. H. L. Reighard, could answer this and additional questions which the committee will be asking.

Hopefully, we will be able to work closely with the appropriate authorizing committees in the future in addressing all of these needs to which I have alluded. Meanwhile, I think the bill, H.R. 7831, which is now before you represents a balanced and responsible approach to our transportation needs in fiscal year 1981 and would urge your support in its consideration.

Mr. BAYH. Mr. President, I want to again, as I did earlier, thank my distinguished ranking Republican member for the cooperation he has given us. He pointed out again some of the matters that are of particular concern to him. The committee, of course, will be giving attention to those matters in the future.

Mr. TSONGAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. TSONGAS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. TSONGAS. Is there an amendment on the floor that was part of the committee amendment regarding the so-called CARP program, which would be on page 25, lines 5 through 9?

The PRESIDING OFFICER. The Senator is correct.

The clerk will state the first excepted committee amendment.

Mr. BUMPERS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. After the clerk finishes reporting, I will recognize the Senator.

Mr. BUMPERS. My parliamentary inquiry, Mr. President, goes to the introduction of the amendment.

In the unanimous-consent agreement of a few moments ago, the chairman offered all committee amendments except this one. Is this the one that is now being offered?

The PRESIDING OFFICER. The first amendment which was excepted is now before the Senate.

Mr. BUMPERS. Is this the same amendment that was excluded in the distinguished floor manager's unanimous-consent request when he offered the committee amendments to the bill?

The PRESIDING OFFICER. This amendment was excluded and, therefore, will now be the first committee amendment before the Senate.

Mr. BUMPERS. It is not now being offered as a committee amendment?

The PRESIDING OFFICER. It is a committee amendment. It is a reported committee amendment. It is the first amendment before the Senate.

Mr. BUMPERS. It is the same amendment as the amendment at the desk by Senator TSONGAS?

The PRESIDING OFFICER. The Chair is unable to answer that.

Mr. BAYH. Mr. President, could the Senator from Indiana, as chairman of the subcommittee, if the Senator from Massachusetts will permit him, explain for our friend from Arkansas what the parliamentary procedure is under the rules so that he, the Senator from Massachusetts, and the Senator from New Mexico will have a chance to take full advantage of their rights?

The rules say that when a measure like this is presented and certain amendments are excepted from being considered in the bill on the floor, then those excepted amendments come up in order as the pending business. So the first excepted amendment, the one of concern to the Senator from Arkansas is the pending business. I understand the Senator from Massachusetts now has presented an amendment in lieu of the amendment which was excepted from being a part of the bill.

The PRESIDING OFFICER. The Chair will advise the Senator that the Senator from Massachusetts has not yet offered his amendment. He cannot offer his amendment until the committee amendment is reported. The committee amendment is the first amendment before the Senate under the Senate rules.

Mr. BAYH. Speaking at his sufferance, since he has the floor, and I appreciate his courtesy, will the Senator from Massachusetts yield 30 seconds for a unanimous-consent request concerning staff?

Mr. TSONGAS. I am happy to yield.

Mr. BAYH For the Commerce Committee, I would like to ask that the following Commerce Committee staff members be granted the privileges of the floor during debate on this bill: Candy Vernetti, Ed Hall, Aubrey Sarvis, Bill Semos, Bill Johnson, and Dave Yudin.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the first excepted committee amendment.

The assistant legislative clerk read as follows:

FIRST EXCEPTED COMMITTEE AMENDMENT

On page 25, after line 4, insert the following:

COOPERATIVE AUTOMOTIVE RESEARCH

For necessary expenses to discharge the functions of the Cooperative Automotive Research Program for conducting basic automotive research, $12,000,000 to remain available until expended.

The PRESIDING OFFICER. The Senator from Massachusetts.

UP AMENDMENT NO. 1602

(Purpose: To revise provisions relating to cooperative automotive research)

Mr. TSONGAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. TSONGAS) for himself, Mr. RIEGLE and Mr. LEVIN, proposes an unprinted amendment numbered 1602:

On page 25, strike lines 5 through 9 and substitute the following:

COOPERATIVE AUTOMOTIVE RESEARCH

For necessary expenses to discharge the functions of the Cooperative Automotive Research Program for conducting basic automotive research, $12,000,000 to remain available until expended: *Provided*, That the amount of funds obligated during the period ending 6 months after the date of enactment of this section shall not exceed $6,000,000 unless the Secretary of Transportation submits to the Congress a comprehensive assessment of all automotive research being undertaken by all Federal agencies including recommendations with regard to appropriate oversight, coordination, and implement strategies for the effective conduct of automotive research programs.

Mr. TSONGAS. Mr. President, this is a minor amount, admittedly, and obviously is not a program that is well known, either here in the Senate or in the country generally. But I think given the state of the automobile industry in this country—and no one knows that better than the Presiding Officer—what we are looking at is a program that has enormous long-term implications.

Why has this thing been put together? The technology of the automobile is the fruit of science developed over the past two centuries. One need not be an expert in the field to know that the fundamental knowledge base that we have been utilizing has pretty much run dry. If we are going to see any kind of serious breakthrough in the future in terms of automobiles, then that research has to continue and really has to be stimulated. This is what this program is all about.

It has been obvious for some time that our automobile industry was in some difficulty. We spent a lot of time last year on the Chrysler package, so I think we are all pretty familiar with that.

Let me read the chronology that led to the establishment of this program.

In December 1978, in a rather well documented and promoted speech, then-Secretary Brock Adams urged the automotive industry to join the Government in a major new program in research. That was the time, as we all know, that the problems of the industry were just beginning to be understood.

Two months later, in February 1979, there was a conference on basic research directions for advanced automotive technology. More than 700 scientists and engineers from institutions throughout the United States and around the world attended that conference. That was a major step in looking at the automobile industry not as an old industry but, in fact, from the perspective of what directions should now be defined and looked at.

In May 1979 there was a meeting at the White House between President Carter and the heads of the domestic automotive manufacturers. Out of that meeting came an agreement on the concept and principles of this program, the cooperative automotive research program, CARP for short, and that began what has been a continuing dialog between industry and Government officials.

Two months later, in July, there was established an interagency planning staff chaired by the Department of Transportation, including every agency in the Government that has an interest in this field. The President's Office of Science and Technology, NSF, the Department of Energy, NASA, Commerce, and Defense all worked together. That activity involved thousands of man-hours to investigate and resolve issues affecting the program.

In November of last year there was the initiation of a process to establish the research agenda for the program. It involved the participation—on their own time, I might add—of nearly 100 leading scientists and engineers from universities, industry, and Government to identify and define the critical research needs and opportunities.

So what we have had here is a coming together of the best minds in the country to try to establish an agenda for research in the automobile industry.

In January of this year, there was the establishment by the President's Office of Science and Technology of a panel of experts to advise the Secretary of Transportation on a management structure for a basic research program in the Department of Transportation. Those recommendations were delivered in February of this year.

Also in January, there was a favorable review of the proposed program agreement between Government and industry by the Justice Department and the FTC to resolve the problems of Government and the private sector working together.

In April of this year, DOT was identified by the Executive Office of the President as the lead Federal agency for this program and NSF was identified as the other Federal participant.

In May, there was a second meeting at the White House between President Carter and the heads of the domestic automotive manufacturers to review the progress of this program. Then in June 1980, the detailed recommendations by the working group were presented.

On June 24 of this year, there was the culmination of detailed discussions among various participants and the proposed program agreement by Secretary of Transportation Goldschmidt and the White House and the Science and Technology Adviser, Frank Press, who spoke with me this morning in support of this program.

Two manufacturers, Chrysler and Ford, have endorsed the agreement and plan to participate and other manufacturers are expected to join as well.

What has happened, Mr. President, is that there has been recognition of the problem, the coming together of the best minds in this country, the participation of every conceivable agency involved and now, for the first time, a definition of what the basic research has to be if the automobile industry is going to survive.

Clearly, the automobile industry is spending millions if not billions of dollars to retool and so forth. What we are looking to in this program is long-term basic research. I have here a document that is rather lengthy. I may or may not put it in, depending on whether there is a need for it, but it is a rather lengthy document which goes into the research program that this $12 million speaks to. I challenge anybody to show me a government program that has been as well thought out and well structured as this one.

What we are talking about, Mr. President, is getting this thing going and, hopefully, having a U.S. automobile industry that can survive. One out of every six Americans is employed in some fashion in relation to the automobile industry. What we are looking at is whether the automobile industry, down the road—to use a somewhat inappropriate metaphor—will be competitive with the Japanese and the Germans. Both countries have long engaged in this kind of research in cooperation with their industry. I hope and expect that the United States is now prepared to do the same thing. It is in this spirit that I offer the amendment.

(Mr. HEFLIN assumed the chair.)

Mr. SCHMITT. Mr. President, I have a very strong warm spot in my heart for basic and even applied automotive research. When I was Director of NASA's energy research and development programs a few years ago, I had the privilege of working out interagency agreements with the Department of Energy for NASA and the then ERDA—Energy Research and Development Agency—which would begin the long path toward rejuvenating the basic research and applied research foundations for transportation technology and, in particular, automotive technology. I think that more can be done. I think there has been a very successful experience by the Federal Government, in cooperation with both industry and academia, in the aeronautics research and development area since the early part of this century, and that we should be looking for ways in which a similar successful experience can take place under somewhat different circumstances with respect to automotive research and development.

However, Mr. President, I rise today in opposition to the committee amendment and to the substitute that has been proposed by the distinguished Senator from Massachusetts. I am asking the Senate to exercise some basic commonsense in addition to some fiscal responsibility on this matter this morning.

After the Senate has heard the arguments by me and the distinguished Senator from Arkansas (Mr. BUMPERS), I believe the Senate will support us in opposing the addition of $12 million to the fiscal year 1981 transportation appropriations bill for the purposes of initiating a cooperative automotive research program, commonly known as CARP. The money is, in fact, earmarked for that purpose. However, I think it is clear that this is a question of putting the CARP before the horse.

First, this program does not really have a price tag of $12 million. As proposed by the administration in a bill presently before the Congress, it is the first appropriation for a massive but presently unauthorized Government program that the administration estimates will cost $800 million over the next 10 years to realize any benefits.

Second and more importantly, there is no authorizing legislation for this program. S. 2015, which would have authorized such expenditures, was referred to three committees—Banking, Housing, and Urban Affairs, Commerce, Science, and Transportation, and Environment and Public Works. None of these committees has yet reported the bill or the provision in the bill authorizing expenditures for basic automotive research.

Third, this concept is not politically dead in the various committees. It is very much alive.

I am, I hope, one of the principal reasons that it is alive. It is a very important area of policy consideration for Congress.

The Science, Technology, and Space Subcommittee of the Senate Commerce Committee held 3 days of hearings last spring. The testimony was varied as to the structure of such a program, the type of research, basic and applied, that would yield the most benefits, the appropriate lead agency and cooperative agencies, and the level of funding required. As a result of the hearings, the chairman of the Commerce Committee, the distinguished Senator from Nevada (Mr. CANNON), requested the Office of Technology Assessment to submit to the committee its analysis and recommendations regarding the country's needs for automotive research and development, and the institutional mechanism in which the program would operate.

This report is due in January and will be an important supplement to the studies that have been described by the Senator from Massachusetts, one which will add some objectivity to the Congress' deliberations.

Additionally, several other bills representing different approaches to automotive research must be considered by Congress. S. 3015 would make NASA the lead agency. S. 1250, which has already passed the Senate and House, would set up generic technology centers which could undertake basic automotive research. The Senator from Illinois (Mr. STEVENSON) is, at this time, very much attracted to this idea.

Fourth, recent House action reflects a different approach to a cooperative automotive research program than is anticipated by the funding in this bill. H.R. 4678 was reported out of two House committees. This bill sets up an automotive research program but makes NASA the lead agency. Despite my background with NASA, I question the wisdom of this approach; however, I must admit that it is one of many alternatives before Congress.

I have not made up my mind on the best way to structure a program within the executive branch to realize the objectives of the cooperative automotive research program.

In addition, automotive research is currently underway at agencies within the Government. The Department of Energy has tended to be the lead agency in this area, with reimbursable funding, as well as direct funding, available in NASA, in the National Science Foundation, the Environmental Protection Agency, and the Department of Transportation on a limited scale.

The Commerce Committee hearing record reflects that the Department of Transportation as compared to the other agencies does not have any experience or tradition in basic automotive research. A question was asked of a Department of Transportation witness, "What do you know about basic research in DOT?" The DOT answer—"We know very little—we are very anxious to build such competence."

I am not against a cooperative automotive research program, Mr. President, I hope that is clear. I do not think anyone that will support my efforts today and those of Senator BUMPERS are against such a program.

No one can deny that the American automotive industry is in the midst of a crisis. This industry is fighting for survival in the face of increasing numbers of high quality foreign imports, costly domestic regulations, previous poor management decisions in both industry and Government and a decline in technical innovation because of unfavorable tax, patent, and other regulations.

There has been a recognized need for new R. & D. programs to assist the auto industry, in cooperation with the industry and academia, in rebounding from their current slump. However, it is time we begin to learn the lessons from our past mistakes and not just pour money into a problem without a well thought-out plan, an infrastructure to insure that the solutions actually come about.

We have done this in the past successfully, and I have already mentioned the experience in aeronautics research.

Many of our colleagues are familiar with the tremendous success in agricultural research that occurred through the years through a well-structured plan, based primarily within the university system in this country.

This type of technology will require different solutions. Clearly, we have not thought this problem through enough to know what is the best solution, except the prevailing opinion before the Commerce Committee, and before many others, that it should not be the Department of Transportation that is the central, leading agency in such an effort.

Those arguing against the position we are taking today say the following:

First. No authorization is required. This money can be spent out of general R. & D. for DOT. Technically that is correct but they miss the point. And authorization gives congressional approval to a national policy and sets congressional guidelines for implementation of that policy. In addition, it assures close congressional oversight of the program. I would not oppose this amendment if I did not believe that this program should have a specific authorization before it is begun on a scale as massive and far-reaching as that proposed by the administration.

Remember, we are talking about the start of a program the administration itself says will use up $800 million in the next 10 years.

Second. The proponents of such a program say it is only $12 million, 40 percent of which is to be transferred to the National Science Foundation. My response is that this money is enough to set up a framework in DOT for a program that Congress may wish to structure differently or even make another agency the lead, a different agency, or even a new agency, or even find an agency that has experience in R. & D. to head such a program, other than DOT.

Third. A deletion of $12 million will set back the program and stop important basic automotive research is argued by the proponents of the amendment before us.

This is baloney. The program plan requires a 10-year effort and $800 million. It is not a program designed with short-term results in mind. Current Federal spending on basic automotive research will continue. This includes about $112 million of research on engines, gas turbines and electric vehicles at the Department of Energy and NASA; EPA will continue to test emissions of various engines in a broad range program; the National Science Foundation spends about $9 million a year on combustion structure mechanics, aerodynamics, control systems and technology.

The estimated total of all this work, including $35 million for basic research, is about $175 million.

A deletion of $12 million from the DOT appropriation will not set back the program, and based on our evidence may actually prevent it from being retarded and put into terminal illness.

For these reasons, I ask Members to vote with us against the proposed amendment.

Mr. President, I will submit for the RECORD a table that shows the basic research program that is currently under way in the Government totaling almost $35 million, broken down into the areas that have been identified as part of the correct program.

There are areas including combustion, thermal and fluid sciences, structural mechanics, electrochemistry, aerodynamics, materials science and processing, control systems, tribology, acoustics and vibration, surface science, and catalysis, with totals in the following agencies, Departments of Commerce, Defense, Energy, Transportation, NASA, and NSF, coming to $34,674,000.

Mr. President, I ask unanimous consent that that table be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE 2-4.—FEDERALLY SPONSORED AUTOMOTIVE-RELATED BASIC RESEARCH: FUNDED BY RESEARCH AREA AND SPONSORING AGENCY, FISCAL YEAR 1979

[In thousands of dollars]

Federal agencies	Combustion, thermal and fluid sciences	Structural mechanics	Electro-chemistry	Aerodynamics	Materials science and processing	Control systems	Tribology	Acoustics and vibration	Surface science and catalysis	Agency totals
DOC	134				50					184
DOD	1,782	757	798	163	3,095	40	815		268	7,718
DOE	7,204		2,954	100	2,695		90		1,034	14,077
DOT		68		15		377	8	35		503
NASA	1,620		290		810			600		3,320
NSF	2,705	400	242		4,498	53	156		818	8,872
Research area total	13,445	1,225	4,284	278	13,261	470	1,069	635	2,120	34,674

Mr. SCHMITT. Mr. President, before yielding to the distinguished Senator from Arkansas, I say that Senator TSONGAS made the point that many support this program. There is no question but that is true.

I make two points. One, that the science technology of the Space Subcommittee hearings, 3 days of hearings, reflects a wide divergence of opinion with regard not only to the types of research and which agencies should manage such research but also the level of effort that would be required.

As I indicated, aside from the administration's witnesses, there is a fairly prevailing opinion that the Department of Transportation is not necessarily the appropriate agency for such work.

Also, I believe it is important for Congress to continue to remember that it is responsible for the final approval of national policy; and an amendment of this kind in an appropriations bill, without the completion of the authorization process or even the hearing process in various committees, both in the House and the Senate, is hardly the way in which we should be setting national policy. Clearly, such deliberations have not been completed. We should, however, complete those at the earliest possible time, either this year or next year.

Mr. President, I understand that the Senator from Michigan wishes an opportunity to speak, and then I will yield to Senator BUMPERS.

I yield the floor.

Mr. RIEGLE. Mr. President, the amendment I am offering with Senator TSONGAS would insure a timely start for the cooperative automotive research program (CARP).

I wish to take issue with my friend from New Mexico. It is very important that we stay on target with an intelligent, well thought out advanced research effort than can strengthen the auto industry in the United States.

The auto industry includes not only the major manufacturers but also thousands of supplier companies, and dealerships across the country. Communities in almost every State have a major stake in what happens in this industrial sector. It is essential that we think very carefully about what we do here.

In the last several years we have come a long way in understanding the problems of the U.S. auto industry within the context of the national economy and national public policy.

The $12 million that the Appropriations Committee, in its wisdom, included for CARP, is an important downpayment on a national effort to regain and maintain technological and competitive leadership in the world automotive industry. Frankly, there is reason to believe that

we may have relinquished that at the present time.

A major article in yesterday's Wall Street Journal dealt with the tremendous gains that the Japanese automobile industry has made in recent years. This fact is well known to most Members. I ask unanimous consent that that article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. RIEGLE. The article states that we have fallen behind in world automotive competition and that we have a great deal of catching up to do.

CARP is a very carefully worked out and very limited initiative that promises to help strengthen America's international competitiveness in the long run.

CARP is not just another Federal research program. It is a new effort designed to build cooperation between the public and private sectors in America, on one of the Nation's most pressing industrial problems.

This $12 million item is important to the future of the U.S. auto industry. It is a modest beginning on what must become a major national enterprise. It is an acorn precisely where we will need an oak.

There are several compelling reasons why Congress should fund the President's request for the CARP program.

First, the program is badly needed. Americans have been made starkly aware of the competitive power of foreign automotive makers. The surge of imports into the American market is an ominous warning that the United States must act decisively or we will continue to incur enormous costs in unemployment, Government spending, and huge trade deficits.

We are running a $10 billion deficit alone in the automotive trade account with Japan this year. That capital is leaving the United States at a time when it is desperately needed in our own domestic industry.

It is clear that most foreign auto makers are successful, to a large extent, because their governments have been cooperating directly with them for decades. The tremendous power of Japanese automakers was nurtured since the early 1950's, when the Japanese Government targeted auto manufacturing as a major source of future foreign exchange.

Their strategy has paid off handsomely for them. The Japanese allocated credit through large bank consortia, encouraged joint ventures, and even raised trade barriers to keep cars from the United States and other countries out of their market. In that way they created hothouse conditions to bring their industry along at a faster pace.

The German Government owns 40 percent of Volkswagen and has invested an estimated $1 billion to support research and develoument that produced the Rabbit automobile.

By comparison, the United States is talking about $12 million spread across an entire industry, with dollar-for-dollar matching funds coming from private industry.

Other governments have worked closely with their auto industries to assure their long-term competitive strength. In the United States, by contrast, such support has been negligible. In fact, in the United States, we have had not a cooperative relationship, but an adversary relationship. And cooperation is long overdue.

Second, this program is carefully designed to have a solid, long-term payoff.

It is significant that private industry will contribute 50 percent of the funding and will participate directly in setting the research agenda. This program will concentrate on the technology breakthroughs that are needed to build the kinds of cars that this Nation will need in the decades ahead.

CARP will help attract some of this Nation's best minds to the technical problems that must be solved if the American economy is to have a strong auto industry in the next decade and beyond. It will help build new generations of automotive engineers. It will help insure the jobs of future generations of American workers.

This private sector involvement will help insure that these new funds will go for research that will strengthen the industry's own efforts. It will not go to finance activities that are simply mandated by Government.

We do not want something that is irrelevant to the needs of American industry. We do not need a group of government scientists, whether they be in NASA or some other place, trying to pursue their own research goals.

Third, and this is important, the authorization for this legislation is already in place. It is in existing law. The law charges the Department of Transportation to "promote and undertake research and development relating to transportation." That is 49 U.S.C. 1653.

The Department's enabling legislation authorizes the Department to contract with educational institutions, public or private agencies or organizations, or persons for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Department.

CARP is consistent with major research activities of the Department over the last 13 years.

We have asked the Chief Counsel of the Department of Transportation to give us a legal opinion on the authority of the Department of Transportation to participate in a program of cooperative automotive research, such as CARP.

I ask unanimous consent to have printed in the RECORD the document to which I have made reference.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION TO PARTICIPATE IN A PROGRAM OF COOPERATIVE AUTOMOTIVE RESEARCH

Among the specific responsibilities of the Secretary of Transportation is a charge to "promote and undertake research and development relating to transportation" (49 U.S.C. 1653). This comprehensive authority is in addition to statutory R&D authorities entrusted to various predecessor agencies, such as the U.S. Coast Guard and the former Federal Aviation Agency. The Secretarial charter is in furtherance of the Congressional purposes underlying the creation of the Department, inter alia, to "stimulate technological advances in transportation" (49 U.S.C. 1651).

There can be no question that the Cooperative Automotive Research Program is "research and development relating to transportation" and that its very purpose is to "stimulate technological advances in transportation."

Under these broad authorities to promote and conduct research in all phases of transportation, the Department's enabling legislation authorizes contracting with educational institutions, public or private agencies or organizations, or persons for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Department (49 U.S.C. 1657 (q)(1)).

According to consistent practice during the 13 years of the Department's existence, the broad research and development authority across the transportation spectrum authorized in the DOT Act has been considered to be sufficient authorization for the Department to seek appropriations. Further, this is consistent with the authority and practice of the predecessor agencies. In operating under the authority of the DOT Act, the Department has started major new research and development efforts in tunnelling technology, noncontacting suspension and propulsion technology for high speed ground systems, systems engineering and university research. It has never been suggested, either by the Appropriations Committee or any of the substantive committees which have cognisance over DOT programs that annual authorizations for research and development activities authorized by the DOT Act were required. This contemporaneous and invariable practice indicates that it was never the intention of the Congress to review and approve specific proposed research programs on an annual basis.

For almost a decade, the Department has operated a program of university research in which transportation research in a variety of disciplines often of a fundamental nature, is supported under contract at academic institutions. This program is quite analogous to the Cooperative Automotive Research Program. Appropriations for the university research program have invariably been made on the basis of the DOT authorities without ever having been subject to annual authorizations.

Mr. RIEGLE. Mr. President, the notion that authorization is lacking here is just false. We have the authorization.

Fourth, this program is ready to be implemented. Comprehensive discussions have been held with all the parties. On July 24, the administration transmitted the program plan to each of the domestic auto firms.

I understand that both Ford and Chrysler have already agreed to participate and that the other companies are expected to join shortly. Funds are being committed by private firms. If we fail to appropriate the Federal share, the effort will be derailed and needlessly delayed.

Mr. President, the amendment that Senator TSONGAS and I are offering fully meets the concerns of those Senators who are reluctant to start any new program. I am frank to say I am reluctant as well.

This amendment would require the administration to conduct a comprehensive assessment of all basic automotive research, at an early stage in the

CARP effort. This amendment would permit valuable new research work to proceed while insuring that these new initiatives will neither conflict with nor duplicate other Federal efforts. I might say that if the Department of Transportation decided that NASA or some other Government agency has the capacity to carry out elements of the research agenda, they can subcontract with that agency. They do not have to duplicate. They do not have to conflict with ongoing Federal efforts.

But clearly the agency to take the lead in this national effort is the Department of Transportation, which has responsibility for implementing one national transportation policy.

Mr. President, last June, Congress determined that, "It is a goal of the United States to achieve technological superiority in the world automobile and truck industry." That goal was established in Senate Concurrent Resolution 101, a concurrent resolution that passed the Senate on a record vote by a margin of 90 to 4. That resolution was cosponsored by 81 Senators. The same resolution passed the House of Representatives unanimously.

Now, this very modest appropriation is the Senate's first opportunity to begin to follow through on that commitment to reestablish world industrial leadership in this basic industry.

EXHIBIT 1

JAPANESE AUTO MAKERS TRY TO RIDE OUT STORM OVER EXPORTS TO U.S.

(By Urban C. Lehner)

TOKYO.—Presidential hopeful Ronald Reagan says "Japan is part of the problem" that has put nearly a million American auto and related workers out of jobs.

Labor Secretary Ray Marshall warns of a "political groundswell" in the U.S. "when unemployed American auto workers read that Japanese auto workers are working overtime to penetrate the U.S. market."

Other U.S. officials brusquely demand that Japan's auto makers cut their U.S. exports from year-earlier levels.

Clearly the pressure on Japan's auto makers is intensifying. What are the Japanese doing about it?

So far at least, not much. For the most part, they are nervously trying to wait out the storm. They hope that time and circumstances will dissipate the pressure, allowing them to avoid even voluntary restraints.

It isn't that they are completely ignoring the growing protectionist sentiment in the U.S. Officials of the Japanese government are publicly and privately urging their auto industry to hold down exports. And Toyota Motor Co. and Nissan Motor Co., the No. 1 and No. 2 Japanese producers, forecast that their U.S. exports in 1980's second half will about equal those of a year earlier, putting them well below the torrid pace of earlier this year though still above what U.S. officials have demanded.

PREDICTIONS CAN BE OFF

But forecasts by Japan's auto makers have often proved conservative, and Toyota is exporting to the U.S. this fall a new small car that could be a hot seller. The Toyota Starlet is said to get 39 miles to the gallon; it reportedly will sell for under $4,000.

Even if the forecasts come true and shipments by Nissan and Toyota do slow down, increased shipments by other producers could make up the difference. "Toyota and Nissan shipments may decline (in the second half of 1980 from the first half), but on balance, total shipments of Japanese cars may not decline," says a Japanese securities analyst.

The Japanese are playing their waiting game primarily because they don't want to give up their U.S. gains. Besides, they doubt that a reduction in their shipments would do Detroit much good. "We don't think restraint on our side will be of any help," says Shigenobu Yamamoto, Toyota's executive vice president.

A Japanese diplomat who is a veteran of U.S.-Japanese trade wars agrees. "For us to cut our exports won't help unemployed American auto workers," he says. "The problem isn't Japan. The problem is the temporary inability of American manufacturers to supply the demand for small cars." Next week a Japanese auto trade group plans to take out ads in U.S. newspapers to defend the Japanese industry.

REBOUND EXPECTED

As the Japanese see it, the U.S. economy soon will emerge from recession—it may already be doing so—and that in itself should lift Detroit's sales and employment. In addition, the U.S. makers are starting to market more and more of their own small, fuel-efficient cars. Thus, the Japanese argue, the U.S. industry will recuperate, but the Japanese differ among themselves as to whether Detroit's success will come at the expense of the Japanese' 21 percent share of the U.S. market. In any event, they reason, once Detroit rebounds, protectionist pressure will subside.

"Both sides, the American side and the Japanese side, should watch very carefully to see how the new models of the American manufacturers sell before relying on restrictive measures," says Masataka Okuma, executive vice president of Nissan, maker of Datsuns. "If they sell successfully, there may not be any need for us to do anything."

But the Japanese realize they are playing a high-risk game in attempting to wait out U.S. protectionism. They know they could well be overestimating Detroit's ability to make a comeback—or underestimating how hot an issue Japanese exports could become during a U.S. presidential election campaign with the U.S. jobless rate near 8 percent.

Government and industry officials here fear that as pressure in Washington builds, their own seeming inaction will itself become an issue. But so far, what the Japanese have mainly done is just step up their rhetoric. Recently, for example, Trade Minister Rokusuke Tanaka publicly named Toyota and Nissan as companies that ought to practice export restraint.

UAW LEADER ANGRY

Some of the powers-that-be in Detroit have already criticized the Japanese waiting game. United Auto Workers President Douglas Fraser calls the Japanese "artists in delaying" and "absolute marvels and experts at procrastination." He says his union filed its petition for export relief with the U.S. International Trade Commission because it got "tired of delays and procrastination." Ford Motor Co. has filed a similar petition. General Motors Corp. says it would prefer voluntary restraint by the Japanese.

A report prepared by the commission staff says that U.S. auto makers have been hurt more by unanticipated shifts in consumer demand than by imports, but the commission itself has yet to rule.

A commission finding that the U.S. industry has been hurt by imports would give President Carter a number of alternatives, including imposing quotas. The union hoped that the ITC would rule before the presidential election, with the idea that stronger action would be likely if President Carter had to make a decision during the heat of the campaign.

That strategy backfired: The ITC announced it wouldn't make its findings until after the election, and the very fact that ITC action is pending may be contributing to Japanese reluctance to take voluntary measures.

"Faced with possible restrictions in 1981, they may not be in a mood to make reductions now, and then have to face a new round of further reductions in their exports early next year," says Harald Malmgrem, a former U.S. negotiator who now writes a trade newsletter.

One thing that could change the picture would be clear signs from Washington that the Carter administration is prepared to take action against auto imports before the election, without waiting for the ITC. But such signs haven't been received here, and unless they are, the Japanese aren't likely to exercise restraint voluntarily.

It is true that Toyota and Nissan shipments may go down, but even those two companies deny they are practicing restraint. They say they are merely forecasting U.S. demand for their products. Anyway, declines in Nissan and Toyota shipments don't mean that Japanese shipments overall will drop. Honda Motor Co., for example, bluntly declares that it wants to increase its exports to the U.S. the rest of this year.

It is easy to see why Japan deems its exports to the U.S. so important. In this year's first half, Japan's nine auto companies sold a total of 5.5 million vehicles at home and abroad, including trucks and buses. Nearly a quarter of those were sold in the U.S. Whereas sales in Japan rose a scant 0.2 percent in this year's first half from a year ago, to 2.6 million, exports to the U.S. jumped 40 percent to 1.3 million.

Nissan and Toyota expect their U.S. auto exports to slow in the short run. In this year's last six months, Nissan predicts, its auto shipments to the U.S. will about equal the 238,239 in last year's second half, well below the 274,177 in this year's first six months. Mr. Yamamoto of Toyota predicts that Toyota's car shipments will also about equal, or be up only slightly from, those in last year's second half, when they totaled 251,228. In this year's first half, the figure was 296,219.

But Honda, which hopes to ship 377,000 cars to the U.S. this year, up 9.6 percent from 1979, had only shipped 217,000 as of the end of July. Managing Director Hirobumi Nakamura says, "We still expect to meet our forecast," meaning that shipments in the next few months will be stepped up.

Honda calls a 9.6 percent a prudent increase and makes no apologies. It points out that it is building an auto plant in Ohio, making it the only Japanese auto company with plans to produce cars in the U.S. (Nissan plans to build a U.S. pickup-truck plant.)

For Honda's new U.S. plant to succeed, Mr. Nakamura argues, "We will need a strong dealer network of about 800 to 1,000 dealers in the U.S. We have only 760 now." To expand the dealer network and to allow each dealer to generate enough profits to improve his service, Honda must export more cars to the U.S., Mr. Nakamura maintains.

As for light pickup trucks, the Japanese expect to be hurt by the recent increase in the U.S. tariff to 25 percent from 4 percent. They still hope the duty will be rolled back, at least partly. But if it wasn't, Nissan's Mr. Okuma says, his company, at least, will pass the higher duty on to the consumer. That $750 to $1,000 price increase will hurt sales, he believes.

Looking beyond the next few months, Japanese auto executives figure that Detroit's new small, fuel-efficient models will prove strong competition. The only question, says a Toyota sales executive, is "how soon they will be able to produce small cars in sufficient

quantities" to make serious in-roads into the imports.

"They are very good cars, and they will be very well-accepted by American consumers," says Nissan's Mr. Okuma.

Because of the new models and because Japanese producers increasingly are raising their U.S. prices to offset rising costs (Nissan's Datsuns cost an average of $572 more in the U.S. now than they did last March), Mr. Okuma believes that Japan's auto exports will begin to slow in several months. "I judge very safely that the sales situation of Japanese imports in the U.S. will be a rather moderate one," Mr. Okuma predicts. A government official says confidently. "The Japanese share of the U.S. market will decline."

Not everyone here shares that view. Setsuo Kashiwagi, a spokesman for the automobile manufacturers' association, believes that "there will be an increase in U.S. sales with the new models but total sales will go up to, so our sales won't be hurt." He predicts that the Japanese share of the U.S. market will remain essentially unchanged.

Mr. RIEGLE. Mr. President, so I at this point yield to my colleague from Massachusetts before yielding the floor. Does the Senator from Massachusetts wish me to yield to him?

Mr. TSONGAS. Mr. President, will the Senator yield?

Mr. RIEGLE. I yield.

Mr. TSONGAS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. TSONGAS. Is it correct that I may modify this amendment at any point until such time as the yeas and nays are ordered?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAYH. Mr. President, will the Senator from Massachusetts permit us together to explore with our distinguished colleagues who have a different perspective as well as those who have a similar perspective in the spirit of compromise a possibility of resolving this? If it is possible to work this out, then we might be able to handle it expeditiously. If we are going to have a fight over it, then we might as well fight over the $12 million. I was wondering. I will let the Senator from Massachusetts proceed with the idea he was going to propose and then get some reaction.

Mr. BUMPERS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, there are a number of our colleagues working on compromise language that may break the impasse between the points of view that surround this issue of basic automotive research. I thought I might utilize a few of these moments while they are working on that compromise and that language to express my own view.

It seems to me that we are trying desperately to respond to a problem that afflicts the automotive industry—a very basic and a very important segment of our economy in this country. We are very close to doing what is typically the way the Congress and political affairs react to problems of the Nation, and that is identify a problem, create a Federal program, appropriate moneys and embark upon a solution to the problem, with the expectation that the only solution is in governmental action, without perhaps looking at the other side of the coin; that perhaps we are in the problem we are in because we have had too much governmental action and that maybe the appropriate response to the problems confronting this basic industry is not another Federal program of basic research or otherwise and not another Federal appropriation for this or other programs but perhaps to examine the relationship of our Government and our business enterprises in this country in a more fundamental way.

We talk about the relations and we have got to have this program in order to respond to the competition of Japanese and German auto imports. Then there has been a little bit of discussion about what kind of basic research do the Germans and Japanese have in this area and how do they assist their auto industries and why are they better competitors.

Let me go outside this discussion for a moment to remind my friends that the relationship of Government to business in Japan and business to Government in Germany is much different than it is in this country and that may be one of the reasons we are in trouble is because of regulatory and tax burdens and not because of the lack of governmental expenditures.

Maybe the way we ought to be addressing our problems in basic steel, basic automobiles, basic chemical industries is not to look at whether or not we can create another Federal program with another Federal bureaucracy and another Federal appropriation and another Federal tax bill, but to look at what we might be able to do in revising the existing regulatory and tax structures so that Government and business are not adversaries but are partners in a common enterprise of keeping our people employed and the welfare of the public enhanced thereby.

Mr. President, I do not want to suggest that we go back to an earlier era where there is no government intervention in business. I am not talking about laisse-faire economics. I am talking about a constructive relationship in which government, instead of being against business, attempts to solve problems, is sympathetic to the concerns expressed by industry and attempts to accommodate, through the existing economic and regulatory measures, by removing some Federal restraints.

I want to remind my friends that as a member of the Environment and Public Works Committee, as we went through the Clean Air Act amendments a few years ago, I suggested to some who would listen, and suggested to others who would not listen, that the imposition of safety standards, of regulatory burdens, of mileage standards, and of the pollution emissions under existing tax structure would bankrupt the American automotive industry because they could not marshal enough capital to do the job as rapidly as we were legislating they should do.

That is not to say that I am against what they are trying to achieve, against pollution and emission controls which we have legislated, or against the mileage standards that we are trying to achieve.

But I am suggesting that when other countries have a different business-tax-governmental relationship than we have, they find it easier to modernize their plant and equipment over a shorter period of time than does industry in this country.

Maybe that is the problem that we ought to be addressing rather than saying, "Now we have an industry in trouble. We are going to create another Federal program with another Federal bureaucracy to administer it. We are going to study it some further. We are going to come up with all these neat and nifty new ideas about how to build automobiles that will make us competitive while our competitors overseas still are able economically to modernize, to change, to change product lines, to innovate and to bring products to market much more rapidly, much more economically, much more efficiently than we can in this country."

Perhaps we also ought to look at why it takes us from 100 to 500 more man-hours of labor to produce an automobile in this country than it does in Japan. Maybe we ought to look at what it is that we have done through the statutes and practices that we have adopted that makes it more difficult for business in this country to compete with the modern production techniques that are being applied overseas.

I again want to say to my friends who are trying to arrive at a compromise on this issue I hope we can do so, but let us not oversell the idea that a research program is going to be a panacea that is going to solve the problems, where, as a matter of fact, the much more important solution may lie in looking at other policies that are more basic to industry generically, and perhaps in the attitudes of the Congress, that business is evil and big business is even more evil.

We have prevailing in the land a conception that seems to be expressed in the halls of this Congress far too often, that business evils must be eradicated even at the expense of killing the country in order to do it.

I do not want to be blind to business evils. I do not want to be blind to the fact that there can be excesses. But I think one of the excesses has been in government that has been so greedy to collect taxes so rapidly that we have made it almost impossible for business enterprises to succeed. That is one of the reasons many of us are so adamantly insistent that if we are to get economic recovery in this country we must look at some basic economic facts and we must arrive at some modern economic conclusions, and we must revise economic programs to the extent that business will be able to compete on an equal footing with competitors overseas.

Mr. TSONGAS. Will the Senator yield?

Mr. McCLURE. I am happy to yield to my friend from Massachusetts.

Mr. TSONGAS Let me say that I share many of the sentiments of the Senator from Idaho. I would only add that one of the problems of the automobile industry, and I sat through the Banking Committee hearings ad nauseam, is the fact that while the European and Japanese manufacturers were gearing toward an energy-short world, we were still, in essence, providing cars that were based on speed, power, comfort, sort of a macho approach. That was fine for a period of time. But the problem that Detroit had was, unless the American people accepted the problem of the energy crisis, they were sort of caught betwixt and between.

I think part of the problem was the inability of Detroit to look into the future. It is not the only problem. The Senator has raised a number of others also.

Mr. McCLURE. If my friend will yield, I certainly agree that Detroit had that problem, but I think we have to go back into history a little and look at the efforts of Detroit, various of the automobile makers, to produce, build, and market a small, stripped-down automobile, which absolutely bombed in the market because the American public would not buy it.

Mr. TSONGAS. If I may reclaim my time, I may be the only Senator who had the misfortune of owning both a Vega and Pinto. I can say why it bombed. It simply was not competitive. The Honda and Rabbit were far superior.

Mr. McCLURE. But some bombed at earlier dates as well.

Mr. TSONGAS. I wish they had bombed before I made my purchases. But that is neither here nor there.

If I may at this point introduce into the RECORD the report I referred to earlier, I should like to do so. I do not want to burden the RECORD as it is 112 pages, but since this will be looked at, and will become relevant next year, assuming the language can be worked out, the complete structure on the research program which has been suggested by those who participated should be in the RECORD for review. I ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

COOPERATIVE AUTOMOTIVE RESEARCH PROGRAM

(Technical Framework; Research Area Working Groups)

COMBUSTION THERMAL AND FLUID SCIENCES

Professor John P. Longwell*, Massachusetts Institute of Technology.

Dr. Charles Amann, General Motors Company.

Professor C. Thomas Bowman, Stanford University.

Dr. Irvine Glassman, Princeton University.

Dr. D. L. Hartley, Sandia Laboratory.

Professor John Heywood, Massachusetts Institute of Technology.

Dr. Howard Palmer, Pennsylvania State University.

Dr. Steven Pope, Massachusetts Institute of Technology.

Dr. David Pratt, University of Michigan.

Dr. Robert Sawyer, University of California, Berkeley.

Dr. William Sirignano, Carnegie-Mellon University.

Dr. Rodney Tabaczynski, Ford Motor Company.

Dr. P. H. Walzer, Volkswagenwerk.

STRUCTURAL MECHANICS

Dr. Max Williams*, University of Pittsburgh.

Dr. Steven Fenves, Carnegie-Mellon University.

Mr. Richard N. Hadcock Grumman Airspace Corporation.

Dr. Thomas Johnson, Jr., United States Steel Corp.

Dr. Mounir M. Kamal, General Motors Research Labs.

Dr. Frank N. Kelly, University of Akron.

Dr. James W. Mar, Massachusetts Institute of Technology.

Mr. Stanley Paprocki, Columbus, OH 43204.

Mr. Jerome Persh, Department of Defense.

Dr. Allen S. Russell, Aluminum Company of America.

Mr. U. Seiffert, Volkswagenwerk.

ELECTROCHEMISTRY

Professor Fred Anson,* California Institute of Technology.

Professor Richard Alkire, University of Illinois.

Dr. J. J. Auborn, Bell Laboratories.

Professor Allen J. Bard, The University of Texas.

Dr. John Dunning, General Motors Research Laboratories.

Professor Larry R. Faulkner, University of Illinois.

Dr. Jerome Kruger, National Bureau of Standards.

Dr. Ernest B. Yeager, Case Western Reserve University.

AERODYNAMICS

Prof. Frederick H. Abernathy,* Harvard University.

Dr. Timothy M. Barrows, Dept. of Transportation Systems Center.

Mr. James V. Chabot, Ford Motor Co.

Dr. George Lea, National Science Foundation.

Dr. H. M. Nagib, Illinois Institute of Technology.

Mr. Gary F. Romberg, Chrysler Corp.

Professor Anatol Roshko, California Institute of Technology.

Mr. A. M. O. Smith, San Mario, CA.

Mr. Gio Sovran, General Motors Research Labs.

Professor Sheila E. Widnall, Massachusetts Institute of Technology.

Mr. Martin Zlotnick, U.S. Dept. of Energy.

MATERIALS SCIENCE AND PROCESSING

Mr. Julius Harwood,* Ford Motor Company.

Professor George Ansell, Rensselaer Polytechnic Institute.

Professor K. Bowen, Massachusetts Institute of Technology.

Dr. R. Charles, General Electric Company.

Professor M. Fine, North Western University.

Professor M. Fleming, Massachusetts Institute of Technology.

Professor C. Laird, University of Pennsylvania.

Dr. S. Matas, Republic Steel Company.

Professor E. R. Parker, University of California, Berkeley.

Professor B. Pipes, University of Delaware.

Professor Roger Porter, University of Massachusetts.

Dr. John Riggs, Celanese Company.

Dr. A. Russell, Aluminum Company of America.

Professor John Tien, Columbia University.

Dr. J. Wachtman, National Bureau of Standards.

Dr. J. Wernick, Bell Telephone Laboratories.

CONTROL SYSTEMS

Dr. Michael Athans,* Massachusetts Institute of Technology.

Dr. George Ball, Chrysler Corporation.

Dr. Paul Blumberg, Ford Motor Company.

Dr. John Cassidy, General Motors Research Labs.

Professor Steve Citron, Purdue University.

Professor J. David Powell, Stanford University.

Professor Larry Sweet, Princeton University.

TRIBOLOGY

Mr. Donald Buckley,* NASA/Lewis Research Center.

Professor Normal S. Eiss, Jr., VPI and State University.

Dr. Chet Jatczak, The Timkin Company.

Dr. Kenneth L. Kreuz, Texaco Incorporated.

Professor Kenneth Ludema, University of Michigan.

Dr. John E. Mayer, Jr., Ford Motor Company.

Dr. Carl N. Rowe, Mobil Research and Development Corporation.

Mr. Fred G. Rounds, General Motors Corporation.

ACOUSTICS AND VIBRATIONS

Dr. Raymond Cohen,* Purdue University.

Dr. Eric Bender, Bolt, Beranek & Newman.

Dr. Malcolm J. Crocker, Purdue University.

Dr. Lynn Faulkner, Battelle Memorial Institute.

Mr. David Flanigan, Ford Motor Company.

Dr. Robert Hickling, General Motors Research Laboratories.

Mr. Seymour A. Lippman, Uniroyal Tire Company.

Dr. Richard Lyon, Massachusetts Institute of Technology.

Dr. Michael J. Percy, Cummins Engine Company.

SURFACE SCIENCE AND CATALYSIS

Dr. Michael Boudart,* Stanford University.

Dr. Ralph A. Dalla Betta, Catalytica Associates, Inc.

Professor John B. Butt, Northwestern University.

Professor Herbert Kaesz, University of California at Los Angeles.

Dr. Michael L. Knotek, Sandia Laboratories.

Professor Gabor A. Somorjai, University of California, Berkeley.

Dr. Kathleen C. Taylor, General Motors Research.

Professor J. M. White, University of Texas.

Dr. Paul Wynblatt, Ford Scientific Laboratory.

Dr. John Yates, National Bureau of Standards.

COMBUSTION, THERMAL AND FLUID SCIENCES

INTRODUCTION

Long term goal: Achieve quantitative predictive capability of the chemical and physical processes involved in heat engine combustion.

This area of research is primarily relevant to the fuel, combustion and exhaust system of automotive heat engines. Until recently, the types of fuel available and engine design evolved to macth a slowly changing fuel supply and cost and slowly changing requirements for engine performance. The need for major improvement and for continuing and efficient re-optimization of the automotive propulsion system calls for quantitative predictive tools for use by the engine designer and developer.

The major goal of this basic research program is to make these quantitative predictive tools available and to point to new directions for improved systems. The chemistry and fluid mechanics involved in automotive pro-

*Research area working group leader.

pulsion systems are of such a level of complexity that the goal of complete understanding and prediction from first principles of the processes taking place is unlikely to be achieved within the next fifty years; however, significant contributions to the development process have been made through basic understanding and substantial and rapid increases in contributions to the development process can be expected through a vigorous research program.

Because of the size and complexity of the problem, some selectivity is indicated. The following introductory discussion briefly indicates some of the major developmental questions and problems apparent at this time. The sections on basic research reflect these problems.

The Homogeneous Charge Spark Ignition Engine.—The efficiency of this engine is limited by the occurrence of knock as compression ratio is increased and by the need for power output control through inlet mixture throttling. Emission of nitric oxide formed by high temperature reaction of oxygen and nitrogen is a serious problem, as is the emission of unburned fuel. Under rich mixture operations, carbon monoxide emission can be important.

The Diesel Engine.—From the viewpoint of energy conservation, there is a major incentive for expanded use of the automotive diesel engine. Its high thermal efficiency is due to the high compression ratio used and to the use of fuel throttling for load control, in contrast to air throttling for the conventional gasoline engine. Combustion takes place in a very high temperature turbulent diffusion flame which produces nitric oxide and also hydrocarbons plus soot emissions (amounting to approximately 0.5 wt% of the fuel burned). Some of these hydrocarbons are found on the soot, both of which are environmentally detrimental.

Spark Ignition Stratified Charge Engines.—By the use of direct fuel injection not dependent upon compression ignition, a continuous spectrum of degrees of fuel/air homogeneity at the time of ignition can be achieved. The degree of homogeneity can be varied from essentially homogeneous to the high degree of stratification employed in the diesel engine. This class of engine, while still in very limited use, offers important alternatives to the standard diesel and gasoline engines, and basic is research relevant to its problems.

Continuous Combustion Engines.—Gas turbine, Stirling and Rankine cycle engines allow continuous combustion of fuel and air and offer substantial advantages in control of all emissions, as well as the greatest flexibility in acceptable fuel composition. On this basis, they are all candidates for future application. However, the low efficiency and high weight requirements of the Rankine cycle engine appears to rule it out. The gas turbine potentially offers high efficiency at optimum load conditions but suffers in efficiency at low output when compared with the reciprocating engines. The Stirling cycle engine offers attractive possibilities for efficiency, but is currently limited by the capabilities of high temperature heat transfer materials and by its merchanical complexity.

Future Fuels.—Reduced demand for heavy fuel oil, and increased use of low hydrogen content crudes is already resulting in decreased hydrogen content (higher aromatics content) of jet and diesel fuel. Products from coal liquefaction will tend to have decreased hydrogen content and require improved combustion techniques for minimizing production of soot and mutagenic hydrocarbons. Improved combustion technology is clearly needed.

The use of continuous combustion and spark ignition stratified charge engines offers the possibility of using fuels of a wide range of volatility and composition. Understanding of combustion of a wider variety of fuels is therefore needed.

I. Chemistry and kinetics:

The objective is to: Improve understanding of the basic chemistry and kinetics of the large and small molecules involved in automotive combustion and pyrolysis process.

The overall rate of conversion of hydrocarbon fuels to CO_2 and H_2O is sufficiently high that, if the criterion is maximum heat release, the reaction is for all practical purposes complete in current combustion systems. The emission of unreacted trace quantities of hydrocarbons, soot, nitric oxide, etc. and the occurrence of limiting ignition problems, are controlled by the details of the many chemical processes involved. Basic knowledge of the reactions involved varies from quite complete to quite primitive. This is a result of the greatly increased number of chemical species involved as reactions involving hydrocarbon species with more than one carbon atom are considered.

Current treatments of combustion chemistry are generally limited to free radial reactions of unexcited species. Excited species and flame generated ions are present and their role should, where appropriate, be included in kinetic studies. The status and research approaches are quite different for studies of elementary reactions of species containing less than three carbon atoms from, for example, studies of the processes involved in formation of soot particles. There are important research problems in both areas.

A. Small molecules:

The advent of the high capacity computer has made practical the kinetic treatment of large sets of reactions. In principle, if all the elementary reactions involved in a reacting system are known, it is possible to describe quantitatively the information and disappearance of all species. Combustion of complex molecules, such as methane, acetylene and methanol, require very large reaction sets but, with continued research and judicious elimination of unemportant reaction, appear to be tractable. The following discussion treats, in more detail, reactions where there is currently reason to expect that the overall reactions of interest can be practically described in terms of a set of well known (and well chosen) elementary reactions.

1. Nitrogen Chemistry.—The chemistry of the formation and destruction of fixed nitrogen compounds (NO_x NH_3 HCN, R-CN, etc.), as related to control of emissions of these compounds in automobile exhaust, is an area of high scientific and practical priority. The Zeldovich reactions for the thermal oxidation of atmospheric nitrogen accounts for the bulk of nitrogen oxides produced in present engines; however, other reactions involving fuel nitrogen compounds and N_2-hydrocarbon reactions to form products such as NO_x, HCN, NH_3, etc. are poorly understood and are also of importance in both formation and destruction of fixed nitrogen compounds. While the rates of many of the elementary reactions involved are known, there are important gaps, particularly in the rates of elementary reactions involving nitrogen-containing compounds and carbonaceous species, and especially in the quantitative chemistry of the hydrocarbon species involved. Studies could include:

Experimental and theoretical determination of the kinetics of selected elementary reactions of CH_x, NH_i, CN-X, NO_x species;

Experimental studies of premixed flames and post-flame zones with sufficient measurement of kinetically important species to allow model validation;

Generation of useful kinetc models giving net production (and destruction) of fixed nitrogen species in the presence of flame-generated carbonaceous species.

2. Oxidation and Pyrolysis.—Quantitative treatment, in terms of proven elementary reactions, of oxidation and pyrolysis of one and two carbon atom fuels, while not yet achieved, seems within reach. Such treatments would be of great value in understanding, interpreting, and modeling combustion and reactive flows. Among the 1-2 carbon atom fuels, methanol and ethanol are of interest and an accurate and detailed kinetic treatment of their chemistry would be a major contribution. Full kinetic treatment of oxidation of molecules, such as acetylene, ethylene and formaldehyde, will be valuable in developing kinetic treatments of more complex molecules and their mixtures and will greatly strengthen the foundation on which combustion research is based. Studies could include:

Experimental and theoretical determination of kinetics of selected elementary reactions of 1-3 carbon species;

Experimental studies of oxidation, pyrolysis and combustion reactions of 1-2 carbon fuels such as methane, methanol, ethanol, acetylene, formaldehyde, etc. with sufficient measurement of kinetically important species to allow testing and validation of kinetic models;

Generation of kinetic models useful for quantitative treatment of pyrolysis, preflame reactions, knock, lean and rich flames and post-flame reactions;

Development, from this basic kinetic information, of overall research mechanisms for facilitation of modeling.

B. Large molecules:

Large molecules are defined here as fuels or their reaction products. The number of carbon atoms per molecule complicates a complete kinetic description. Present optimum research strategy is to lump sets of elementary reactions into "global" reactions, or to search for controlling kinetic steps and mechanisms, and determine overall rates experimentally. Since most practical fuels are mixtures of a very large number of individual compounds, it is also frequently necessary to lump together "global" reactions or mechanisms for related compound types. A common practice, for example, is to determine a global expression for the conversion of the large molecules into molecules whose subsequent reactions can be described by known elementary reactions. Studies for this type and elucidation of reaction pathways and controlling reactions are badly needed for application to quantitative understanding of phenomena occurring within heat engines.

Since the relative importance of the many elementary reactions involved in fuel combustion depends on conditions such as pressure and temperature, it is usually important that research on these reactions be carried out under kinetic conditions that can be related to automotive systems.

1. Pre-Ignition Chemistry.—Substantial chemical modification of fuel molecules can occur before the onset of highly exothermic "combustion" reactions. This chemistry leads to phenomena such as knock, determines ignition delay time, and can produce problems such as deposits, exhaust odor and hydrocarbon pollutants. It is believed that modern analytical and instrumentation techniques offer opportunity for accelerated progress in the complex chemistry of this area. Studies could include:

Experimental and theoretical studies of the early stages of oxidation and pyrolysis. Here detailed kinetics seem attainable and should be sought;

Investigations of the reactions leading to ignition. Both composition and rate (ignition delays) are of interest over a wide range of conditions.

2. Flame Zone Chemistry.—This category refers to the chemistry taking place in the flame zone, where high concentrations of

active radicals and ions occur and where temperature and, therefore, reaction rates are high. The rate and mechanism of conversion to small species is of interest in both fuel-lean and rich flames. For fuel-rich flames, the formation of intermediate-size compounds which can diffuse to a cold boundary to cause deposits or polymerize to high molecular weight aromatic molecules and to soot are of special interest, as are both the chemistry and physics of formation of the liquid and solid particles leading to soot. The role of flame-generated ions is poorly understood and should be included, where appropriate, in kinetic studies. In this area of research, detailed mechanistic studies may require working at low pressures and include:

Experimental measurements of rate of conversion to small molecules whose further conversion can then be described by sets of elementary reactions;

Identification and chemistry of complex intermediates, with special emphasis on those species that can survive to form deposits or post-flame zone hydrocarbons.

Polymerization and growth to high molecular weight hydrocarbons and particulates under diffusion and premix flame conditions.

3. Post-flame Zone Chemistry.—The post-flame zone is characterized by temperatures ranging from slightly below adiabatic flame temperature to engine exhaust temperatures of 600° C or lower, and by a radical pool that may decay to a level orders of magnitude lower than is encountered in the flame zone. Hydrocarbons and soot that escape conversion in the flame zone continue to react, but more slowly. The chemistry resulting in changes in composition and quantity of these materials is of great importance because of the potential environmenal and health effects involved. Studies could include:

Experimental studies of the chemistry of flame-generated polynuclear aromatics at high temperature but very low oxygen concentrations;

Studies of the chemistry of polynuclear aromatics and other exhaust components in the presence of oxygen but at temperatures where reaction rates are slow enough to be limiting;

Studies of the chemistry and physics of growth and oxidation of soot over the entire range of temperature and oxygen concentrations.

II. Fluid mechanics, thermodynamics, heat and mass transfer:

The objectives are to:

Improve quantitative understanding of the fluid mechanics, turbulence, and mass and heat transfer in combustion systems.

Investigate new and superior models which can be coupled into computer simulation models of engine operating cycles.

The operating conditions in heat engines are such that, in nearly all cases, the flows of interest are turbulent, and the processes of interest—chemical reaction, heat and mass transfer—are dominated by the turbulence. Consequently, a better understanding of the relevant turbulent flows is important. This understanding can then be coupled with the processes of interest listed above. The least well understood flows are the transient flows that occur inside internal combustion or other positive displacement engines. Better definition of these flows, and new models describing these flows, are important research objectives.

With liquid fuels, a two-phase mixing process of the fuel with air is a necessary preliminary to combustion. The details of this fuel-air mixing process are often the controlling factor in the combustion process, and hence determine the operating and emission characteristics of many of the engines of interest. The details of liquid fuel atomization and vaporization processes, and the mixing of fuel vapor with air in a turbulent flow, are poorly understood. They are especially important to the development of stratified charge engine concepts and to the reduction in emissions from diesel engines.

Many of the heat transfer processes in the flows which occur in engines—in manifolds, through valves, within engine cylinders, in combustors, heat exchangers and turbomachinery—have not been studied to date at a fundamental level. The optimization of desired heat transfer processes, and the reduction in undesirable heat losses are most important to the development of more efficient internal combustion engines, gas turbines and Stirling engines. Convective heat transfer is of primary importance; radiative heat transfer is also important in stratified charge, diesel and possibly continuous flow combustion engines. Radiation heat transfer is significantly affected by fuel composition, by the details of the combustion process, and, via its impact on the thermal loading of critical engine components, affects engine lifetime.

Basic research activities in the combustion, thermal and fluid sciences area can contribute to the development of much more accurate computer simulations of engine operating cycles, and to submodels for the individual processes. Research with a thermodynamics emphasis, devoted to the development of improved frameworks for these simulations, and methodologies for use of these simulations to examine the characteristics of potentially attractive engine systems, is an important and complementary part of the research activities in this area.

A. Turbulent flow modeling:

In engines, flows in ducts, through valves and ports, within cylinders, in combustors, and in turbomachinery components are all important. These flows are turbulent, occur in complex three-dimensional geometries, and are often transient. An additional complication is the fact that for many phenomena of interest (such as heat and mass transfer, and flame quenching), the relevant flows occur within relatively small volumes. These flow processes significantly influence engine operating characteristics.

Flow visualization experiments are starting to define the qualitative features of the flow patterns within various engine components, but detailed quantitative information is scarce, and modeling these flows is at an early stage of development. An improved quantitative knowledge of the turbulence is a prerequisite to describing heat and mass transfer processes, and combustion and emissions formation mechanisms.

In recent theoretical and experimental studies of turbulence, most progress has been made for simple shear flows—jets, mixing layers, boundary layers, etc. In transient flows, the changing velocity field may not allow the turbulence to attain an equilibrium structure. The effects of compression on turbulence are also poorly understood. Density variations add another uncertainty to this problem area.

Extensive experimental and modeling activities in these areas are required. Flow visualization experiments in both realistic engine configurations and simpler geometry devices, quantitative flow-field mapping experiments, and both conceptual and numerical modeling are examples of research activities which would contribute. Studies could include:

Turbulent unsteady flows in ducts, through valves and ports, and within engine cylinders;

The effects of compression and expansion through boundary displacement or combustion on relevant turbulent flow fields within cylinders;

Flows in small-sized turbomachinery components relevant to automotive engine systems;

Development of appropriate calculation techniques for these flows, with special emphasis on flows with moving boundaries and where small regions of the flow are critical.

B. Two-phase flows and mass transfer:

In all heat engines, the fuel must mix with many times its mass of air prior to complete combustion. This mixing may be essentially completed before the combustion process takes place, as in a spark-ignition engine, or fuel-air mixing and combustion may overlap substantially, as in a diesel engine or gas turbine. Achieving the appropriate fuel-air mixing rate for each of these different engine types, over the entire operating range of the engine, is a formidable problem. The fuel-air mixing process is important because it significantly influences the engine combustion process, and thus the engine's operating, emissions, and fuel consumption characteristics.

Knowledge of liquid-fuel atomization processes, fuel vaporization in liquid fuel sprays, and the subsequent turbulent fuel-air mixing processes, and the degree of mixture in homogeneity with different types of fuel, fuel injector design and ambient environment, is poorly developed, especially with multi-component fuels. Here improved understanding is needed of transient droplet heating and vaporization, secondary atomizations (including microexplosions), near critical and supercritical vaporization. Studies could include:

Experimental and theoretical research on fuel atomization and on the subsequent transport of droplets and air;

Fuel vaporization involving multicomponent mixtures with a wide range of volatility and two-phase mixtures such as oil-water emulsions;

Development of predictive models which can be coupled with combustion and emission formation models;

C. Heat transfer:

Convective and radiative heat transfer processes in engines are poorly understood. In internal combustion engines and gas turbines, heat losses degrade engine efficiency and power. In closed cycle engines such as the Stirling engine, heat transfer processes in the heater, cooler and regenerator must be optimized; in the ducting, flow through valves and within the cylinders it should be minimized. The convective heat transfer processes are dependent on the details of the turbulent flows. Studies could include:

Experimental and theoretical research in simpler-geometry simulations of engine components, as well as in real engines, aimed at developing a fundamental data base on engine heat and mass transfer processes;

Application of fundamental data to modeling of the actual engine heat transfer processes.

III. Combustion and reactive flows:

The objectives are to:

Increase basic understanding of the chemistry and physics of pre-ignition and post-flame combustion reactions, including processes at cold boundaries.

Improve understanding of externally caused and spontaneous ignition processes.

Extend basic knowledge of laminar flame chemistry and physics of droplets and vaporized fuels to high temperatures and pressures and to understand and integrate the chemistry and physics of turbulent flames.

Relevant basic research can cover a wide variety of investigations ranging from, for example, a study of limits and rates of laminar flame propagation, to studies of the transient heterogeneous turbulent diffusion flames found in diesel engines. The experimental equipment can range from simplified laboratory burners to specially modified and instrumented engines capable of providing qualitative and quantitative insight into the combustion problem being addressed. Input-output testing of modified engine designs is

not included. Development of quantitative models of the various engine-related processes is integral with the experimental program which provides the qualitative and quantitative understanding of engine processes, useful for model formulation and validation.

A. Pre-ignition and post-flame reactive flows:

In reciprocating engines, analysis of the fuel-air mixture prior to ignition has shown that major chemical changes have occurred that can have an important effect on subsequent combustion. In some cases, part of this reacting fuel-air mixture escapes ignition and is found in the engine exhaust where additional reaction can take place. Knowledge of both composition and amount of the decomposed and partly reacted hydrocarbons are important. These reactions take place in an environment of rapidly time-varying temperature, pressure and composition, and a full description involves understanding and analysis relating the chemistry, fluid mechanics and heat transfer interactions involved.

1. Pre-ignition Reactions.—Limited studies of pre-ignition reactions have been carried out in spark ignition engines, and more extensive measurements have been made of ignition delay time. Study of these problems with modern experimental and chemical analytical equipment offers the possibility of important contributions. Advances in chemistry and computer modeling techniques should be of importance in treating the complex fuel composition, chemistry and flow-related interactions. Studies could include:

The composition changes occurring in homogeneous fuel—air mixtures under conditions and flows typical of the compression stroke in an engine; interaction effects involving fuel composition as related to spontaneous ignition and to exhaust emissions are of special importance;

Composition changes prior to ignition in diffusion flames or in other systems where composition gradients are important the composition gradients can involve vaporized fuel or can also include vaporizing droplets.

2. Post-flame Reactive Flows.—Under very fuel-rich or very fuel-lean conditions, important amounts of hydrocarbons escape destruction in the flame zone by either bypassing the flame zone in flames near either the rich or the lean limit of flame propagation or, in the case of very fuel-rich flames, hydrocarbon molecules ranging from methane to soot are found in the post-flame gases. There has been insufficient quantitative study of the reactions that take place under the cost-flame conditions of the expansion stroke or in the engine exhaust system. Advances here will guide efforts to predict and to eliminate these undesirable exhaust components. Experimental and theoretical studies could include:

The reaction-flow interactions of fuel and fuel fragments that have by-passed active combustion under the mixing, pressure and temperature circumstances typical of the expansion stroke in reciprocating engines;

The unburned hydrocarbon and soot composition changes taking place under the flow and temperature conditions attainable in the exhaust system of all classes of automotive engines (including the effect of increasing temperature, oxygen mol fraction in the exhaust, etc.).

3. Reactions Near Cold Boundaries.—The details of reactions and flow near the relatively cold metal surface of automotive combustion chambers are of interest because of the formation of solid deposits on the surface and the existence of unburned and partially reacted hydrocarbons and lubricating oil in this "quench zone". These deposits are known to cause premature ignition and knock as well as other problems. Little is known of detailed chemistry and physics of these phenomena. Experimental and theoretical studies would include:

Diffusion to combustion chamber walls and subsequent polymer formation of reactive flame-generated species from the flame and pre-flame zone;

Unburned hydrocarbons within the quench layer and of their subsequent interaction with the surrounding combustion products.

B. Ignition:

Much remains to be done to achieve quantitative treatment of ignition under the variety of conditions and fuels that occur in automotive engines, where the effects of uncontrolled ignition or lack of ignition, interfere with the attainment of high efficiency and low emissions.

Criteria characterizing ignition should be based on more detailed understanding of the chemical and turbulent flow processes involved than presently exists. Practical contributions from this research can be of major importance since much of the cost and energy consumption of fuel manufacture has been, and will be, related to control of the ignition properties of fuels.

1. Spontaneous Ignition.—The term, spontaneous ignition, refers to ignition resulting from the heat and active species generated by the pre-ignition reactions that result from the compression heating of a fuel-air mixture. In the diesel engine, treatment of this problem involves simultaneous fuel evaporation, mixing and heat transfer in a complex turbulent flow field. Research aimed at raising the level of quantitative understanding of the fuel chemistry and fluid mechanics in this area is clearly indicated.

Knock in the spark ignition engine refers to spontaneous combustion of part of the fuel-air charge. This undesirable phenomenon can be avoided by decreasing compression ratio (and, therefore, engine efficiency), or by use of special fuels which require energy-consuming manufacturing processes. As in the case of the diesel engine, fluid mechanics, mixing and heat transfer processes are also important, and techniques such as charge stratification are effective but bring their own problems. Application of modern tools to the understanding of the basic interaction of these many factors because of its major importance in transportation energy requirements. Studies could include:

Ignition of fuel vapor of fuel droplets, injected into hot gases;

The compression ignition of fuel-air mixtures as related to knock;

The fluid mechanics and physical effects of the pressure wave resulting from knock.

2. Ignition by External Energy Sources.—The advantages and need for efficient fuel-lean combustion, where ignition and subsequent combustion require large energy sources, have led to new incentives for study of this area and to experimentation and use of ignition by jets and hot combustion products. The interaction of turbulence with the ignition process is of special interest since performance-limiting effects, such as cycle-to-cycle variations in flame propagation and sporadic lack of ignition under lean mixture conditions, are attributed to this interaction.

The uncontrolled initiation of ignition by hot surfaces is a troublesome practical problem that is reflected in rather poorly defined requirements for fuel composition and engine design which becomes more severe as the compression ratio is increased to improve cycle efficiency. Studies would include:

Spark ignition of turbulent fuel-air mixture. Basic understanding of ignition energy requirements as related to fluctuations in mixture composition and velocity, shear, etc., are needed;

Ignition of lean mixtures by hot jets of burned gases;

Ignition of turbulent flowing fuel-air mixture by hot surfaces.

C. Flame propagation:

At stoichiometric flame temperatures, the chemical rate of oxidation of fuel is sufficiently high that it is generally true that the overall rate of heat release is controlled by molecular and turbulent mixing processes. The nature of these mixing processes and their interaction with the flame chemistry is largely determined by the flow in the combustion system. In these circumstances, the interaction between chemistry and flow processes is critical and highly varied under the many circumstances encountered in existing and future automotive engines. In this area there is opportunity for a wide variety of studies ranging from establishing basic understanding of simplified systems where both chemistry and fluid mechanics are relatively well understood, to diagnostic and simplified modeling studies of combustion as it occurs in systems of practical interest. Well chosen research involving laminar, turbulent, premixed, diffusion, steady and unsteady flow in various combinations is relevant and can contribute to the ultimate advancement of automotive engine technology.

1. Laminar Flames.—Even though the flames encountered in automotive combustion systems are predominantly turbulent, study of the laminar flame is of considerable importance in automotive research. Experimental and theoretical study of these systems can serve to validate the applicability of chemical kinetic treatments and simplifications related to both the chemistry and the physics of combustion. Combustion in which the predominant turbulent scale is large compared to flame thickness may well be usefully treated by relating the turbulent process to laminar flame properties. Studies could include:

Laminar premixed flames at high preheat temperatures, high pressure and high rate of flame surface extension;

Small, high pressure laminar diffusion flames involving either vaporized fuel or droplets as the fuel source. Effects of ambient temperature and composition are important;

Diagnostics for determining the role of laminar flame properties in automotive combustion systems.

2. Turbulent Flames.—A detailed, quantitative treatment of the turbulent flames encountered in automotive engines can be considered an ultimate long-range goal of basic research in this area. The chemistry and fluid mechanics involved have not been individually worked out, and the two areas are strongly interactive, greatly increasing the complexity of the problem. Basic research in the form of diagnostic studies of combustion systems, aimed at development and validation of simplified models, can make important contributions and provide guidance to other basic studies. The research should go beyond the description and simple input-output measurements. The goal should be quantitative assessment of the relative importance of the many processes taking place and development and validation of quantitative models covering a wide range of conditions.

a. Continuous Flow Pre-Mixed and Inhomogeneous Systems.—Combustors in gas turbine and Stirling cycle engines are designed to operate in these regimes. Such systems are characterized by flame stabilization, usually by a recirculating flow, followed by a burnout zone. Much remains to be done, especially in developing understanding of these systems to the point where they can be optimized for minimum emissions over the entire automotive operating range. Studies could include:

Basic studies of turbulent premixed combustion of pure and mixed fuels with emphasis on characterizing emissions of hydrocarbons, soot and NO_x over the entire range of mixture conditions;

Basic studies of turbulent combustion involving stoichiometry gradients, as in staged systems or where liquid fuel drops are injected into the flowing air system.

b. Unsteady-flow Premixed System.—This category refers to the type of combustion encountered in the homogeneous charge spark ignition engine and in those stratified charge engines where a volatile fuel is injected well before ignition. Problems of special importance are flame extinction when the flame is required to propagate through mixtures approaching the lean inflammability limit, interaction of flame propagation rate with knock, and the formation of particulates where fuel stratification results in locally fuel-rich gases. Studies could include:

Experimental and modeling studies of combustion rates as a function of time for homogeneous charge systems, with emphasis on flame structure relationships to turbulent flame propagation, knock and to completeness of combustion near the lean inflammability limit;

Experimental and modeling studies of premixed stratified charge systems with emphasis on turbulent mixing as related to NO_x formation, completeness of combustion, particulates formation, and knock.

c. Unsteady-flow Heterogeneous Flames.—This category includes combustion typical of the diesel engine and spark ignition stratified charge engine, where the stratification at the time of ignition is extreme and where part of the fuel may still be in the form of liquid drops. This system involves the interaction of a number of chemical and physical processes which are very poorly understood and better understanding of the flows and general nature of the combustion is needed. Diagnostic studies, accompanied by derivation of empirical models of the major features, are called for, along with development of the more sophisticated tools needed for detailed basic understanding. Studies would include:

Observations of flow patterns, flame structure and composition, and development of appropriate models for prediction of combustion rate, NOx formation and particulate formation;

Detailed study and analyses of specific features of the combustion process to aid in overall model development, to provide guidance on needed detailed mechanistic studies and to make use of the basic information gained in study of simpler systems.

IV. Experimental methods:

The objective is:

To advance knowledge of engine combustion processes by utilizing new advanced scientific measurements and observational techniques in test engines, combustion simulators, and laboratory devices such as shock tubes.

The challenge of providing the detailed information which describes the engine intake, mixture preparation, ignition, flame propagation, and exhaust processes discussed in preceding sections, requires a broad spectrum of experimental configurations, with the corresponding constraints on the diagnostic techniques to be used. Such studies can be conducted in operating research engines, in engine simulators, and in fundamental laboratory experiments.

A. Research engine and engine simulator measurements:

A significant subset of the required research will necessarily be performed with research engines. These engines should be made compatible with the research objectives and with simplified geometrical constraints, but retaining the important features of modern engine design, such as, in a diesel swirl, fuel injection, and high compression ratio.

The engine experiments not only play an important role in bridging the gap to industrial programs, but help determine the important subprocesses that need to be investigated in further detail. Ultimately these engine experiments test the synthesis of subprocesses which have been developed in more fundamental experiments. The following discussion treats, in more detail, the specific diagnostic needs for research engine experiments. Research would include new concepts for:

Another subset of required research will be performed in carefully designed experiments which closely simulate conditions of pressure, temperature, and geometry of research engines, but are simplified in order to remove some of the complexity. Combustion bombs and rapid compression machines are examples of experimental systems which can isolate chemical and physical phenomena and their interactions. The geometrical simplicity generally offered by these simulators also provides opportunity to use line-of-sight instrumention methods, which allow access for minor species, droplet, and particulate analysis. They also serve as excellent test-beds for development of diagnostics for eventual application to research engine analysis. Research could include concepts for:

Visualization of engine fuel flow and combustion processes;

Determination of flow and combustion temperatures in engines;

Measurement of major and minor species concentrations in engine combustion streams;

Characterization of droplets and particulates in engine environments.

B. Fundamental laboratory experiments:

Much of the required research will be performed in fundamental laboratory devices such as shock tubes, premixed and diffusion flames, and flow reactors. These experiments should be designed specifically to isolate individual chemical and physical processes which occur in internal combustion engines. Research on the chemistry of hydrocarbon fuel combustion, turbulent fluid mechanics, and the interaction of the two, pose special diagnostic problems. The techniques discussed in the above two subsections can contribute to fundamental flame analysis, but the simplicity of these experiments allows for use of additional methods. Some of the methods are discussed below:

Species Concentration and Temperature in Laminar Flows—Conventional techniques for measuring species concentration and temperature in laminar flows have been successfully used for many years. Physical probes with mass spectrometers and species-specific gas analyzers are available to study many of the fundamental problems introduced in Sections II–IV. Some of the new laser-based techniques, however, such as stimulated Raman scattering, laser fluorescence, and tunable-laser absorption, can provide unambiguous and accurate measurements of important combustion species such as HCN, NH_3, OH, and CH_3. These optical techniques can also be used to evaluate and calibrate more conventional measurement methods.

Species Concentration and Temperature in Turbulent Flows—The measurement of mean and fluctuating values of species and temperature in turbulent flows requires spatial and temporal resolution similar to that in engine experiments. In clean laboratory experiments, laser Rayleigh scattering has been demonstrated to be useful diagnostic for the measurement of temperature and density fluctuations. Pulsed Raman scattering can also provide species fluctuation measurements.

Particulates—The measurement of submicron particulates, and their precursors, in steady flames continues to be a challenging problem. As mentioned in the subsection above, more development is warranted.

STRUCTURAL MECHANICS

INTRODUCTION

(Long-term goal to be added).

The design of automotive structures (body, frame, suspension system and tires) follows a logical sequence of interrelated events. First, the requirements of the structure must be determined. Such overall characteristics as length, height, weight must be fixed and features of the operating environment determined. Next, the structural designer needs to determine the loading conditions that the structure is expected to encounter. These include normal operating loads as well as the loads encountered in a collision.

The designer, utilizing knowledge of loads, materials and structural mechanics performs a preliminary design of the structure. Further analysis refines the design to meet the requirements. Failure modes are examined, and the anticipated life cycle of the structure is estimated.

Finally, the design must be verified and tested before the details are set for the manufacturing process.

Interwoven throughout the entire process are considerations such as, manufacturability, cost, safety and availability of materials.

There is a strong use of instrumentation science and electronic data processing. Elements of the design cycle frequently are statistical in nature, for example, the frequency and magnitude of normal loading, and the unusual loads that occur during collision.

Thus, the physical design of a vehicle structure involves a complex process with many feedback locps which take into account many external considerations. Because of its relationship to energy consumption, a major contemporary factor in the design of automotive vehicles is weight reduction. One way to increase gasoline mileage is to reduce vehicle weight, both through smaller vehicles and by utilizing materials having higher strength per unit of mass and where appropriate, by substitution of plastics, aluminum and magnesium. These new materials must be fully characterized, forming properties thoroughly understood, and their responses to environmental factors must be known.

The following sections focus upon the structural design process and upon suggestions of basic research area likely to provide new knowledge and improved analytical and computational technique leading toward new capabilities for the designer.

I. Requirements research:

The objective is to:

Improve the scientific base for technical requirements of vehicle structures.

Before the structural design of an automotive vehicle can commence, internally imposed or externally mandated requirements must be set. Many of the requirement decisions are concerned with the overall features and may be derived from experience, legal and practical considerations. Other requirements are of a technical nature and may be improved by increased scientific knowledge, better instrumentation and analysis of technical limits. Requirements of a technical nature may involve, for example, issues such as erosion and corrosion, safety device response time, structural integrity in collisions, and structural use of vehicle glass. Research could include:

Erosion-corrosion chemical contamination and degradation to load or non-load carrying components; e.g., engine, converter, main frame corrosion, tire checking;

Safety device response time and structural integrity, e.g., bumpers, collision sensitive interior design, individual personnel protection (air bags, belts);

Combined optical and structural performance of plate glass substitution; e.g., visibility, abrasion, fail-safe fracture mode;

Combined behavioral science and structural interaction, e.g., high frequency noise levels from light weight panels, tire noise

and tread design, (subjective) passenger response to different lateral, longitudinal, and roll suspension systems, deceleration rates and braking efficiency.

II. Operating and collision loads research:

The objective is to:

Improve the scientific base for determining vehicle structure loads.

The loads of importance in a vehicle are dead loads (e.g., engine weight), and live loads including those forces involved in collisions, wind forces, acoustic loading, thermally induced forces, and mechanically induced forces associated with engine operation and vehicle movement.

From a structural view point a vehicle can be considered in three major parts, the frame, the body, and the suspension system. The body is not particularly stress sensitive in that it is not usually designed for fatigue life. The suspension system is stress sensitive and is designed for fatigue life.

Major components of the automobile, for example, wheels, tires, engine, transmission, and collision design of the body/frame, are stress or deformation controlled. Minor components of the automobile windshield wipers, handles, dashboards, exhaust systems, etc., usually incorporate structural considerations and one or more type of loads.

Reducing the weight of an automobile requires a new look at design techniques because the structural changes are not a simple matter of linear scaling. The volume of the structure needs to be as large as possible to accommodate people and yet the overall weight must be reduced. One driving force for improving knowledge of loading conditions is to be able to design light weight structural members so that they operate close to engineering design limits. A major problem is the interactive nature of the design. For example, a weight reduction in one place must be factored into numerous other design calculations. Management of this interaction can be accomplished through the use of computers. A second and more difficult question for research is the determination of accurate and reliable data describing the range of loads (forces) involved in the operation and use of vehicles. As down weighting of the vehicle occurs, factors such as wind-loading, and penetrability of light weight skin panels, play an increasingly stronger role in the design of the vehicle structure.

A. External dynamic loading:

Road roughness imposes significant dynamic loading on the vehicle structure, particularly the suspension system. Continued research into external dynamic loadings imposed upon vehicles over a wide range of road conditions, including degraded ones is needed in order to provide new and superior techniques for determining dynamic loading. Other external loads include those arising from wind gusts. Studies could include:

Techniques for improved characterization of road roughness;

New mathematical techniques for treatment of non-linear problems associated with the analysis of road roughness;

Methodologies for optimization of the accumulation of loading data from dynamic loading tests;

Investigations of the characteristics of side loads (wind gusts, etc.);

Methodologies for characterization of tire loads, including thermomechanical and friction loads.

B. Collision loading:

As vehicles become smaller more attention must be paid to the structure. While substantial research is devoted to the subject, only recently has quantitative information suitable for predictive structural analysis begun to emerge for the case of head-on collisions. The general design problem is to minimize catastrophic collapse or penetration of the passenger compartment and at the same time obtain a deceleration rate as low as possible. Ideally the energy of deceleration is absorbed in such a manner that the probability of collapse of the passenger compartment is minimized. Consideration of angle collisions greatly increases the complexity of the design problems and additional research is required to improve design methodologies. Studies could include:

Investigation of analytical crash models, e.g., cylindrical tubes under impact;

Modeling concepts for side impacts and passenger safety;

Investigations of energy absorption concepts, e.g., foams, honeycombs, hydraulics;

Model foreign object penetration of lightweight skin panels.

III. Structural synthesis and analysis:

The objective is to:

Improve structural synthesis and analysis methods for satisfying operating and collision loads.

Thorough knowledge of the properties of materials is essential for the structural designer. In addition to designing a component to fulfill a function the part must be manufacturable. For example, when sheet materials are used, the design must be integrated with the properties of the materials which control the degree of formability. For new materials such a high strength sheet steels the properties, including formability characteristics, must be fully understood before applications are widespread. The selection of new materials will evolve as processing characteristics and mechanical performance become better known in automotive technology.

A. Materials characterization:

As used in structural mechanics, material characterization refers to the quantitative stress-strain relation, (constitutive relations), including as appropriate, the influence of multiaxiality, temperature, time or strain rate, and the magnitude of the (finite or infinitesimal) deformation. Characterization also includes the response to environmental conditions, such as erosion or corrosion, and in a more general sense to any engineering property such as toughness or formability.

The term constitutive law is used increasingly more because with the advent of plastics and elastomers the sensitivity of these materials is known to be relatively more dependent on temperature and time or strain rate, more so than metal creep for example. There is a new body of technical literature devoted to mechanical property characterization of such materials with a usual restriction of linear (visco) elasticity. When the behavior is non-linear the analysis is generally not available, especially in multiaxial stress states, and its mathematical description is thus substantially restricted.

Sophisticated finite element programs show potential for analyzing large-strain large-deflection behavior of structures. These techniques can be extended and improved to predict the formability of sheet metal components and energy absorbing characteristics of automobile components. However, material properties presently available do not adequately define the constitutive laws needed for such analyses, particularly when more than uni-directional behavior is required.

Special efforts should be directed at methodologies for obtaining multi-axial property data needed for structural analysis of the complicated geometrical configuration of complex composite materials. Studies could include:

Quantitative description of stress-strain-rate-temperature with special attention to large deformations (finite elasticity for tires) and high rate elasto-plastic flow (forming and processing conditions as well as during collision impact);

Structure-property relationships for polymers, composites, metals, and ceramics for various strain rates and temperatures, including processing conditions;

Mechanics of foam deformation, including connected or unconnected pores, with or without fillings;

Experimental methods need to be developed to measure the anisotropic material constants, particularly in composites, required later for accurate stress analysis;

Powdered metal characterization and effect of contaminants and processing conditions on mechanical properties as reflected in the stress-strain (constitutive) laws;

Surface characterization, especially corrosion, and the general tribology and wear, as interpreted through emerging developments in the mechanics of adhesion and degradation.

Analysis of materials characterization specimens with special emphasis on simplified ways to evaluate multiaxial characteristics;

Relationships assessing rate of structural degradation resulting from chemical environments;

Methodologies for determining relationships between thermal environments and structural integrity, including adhesion of coatings.

B. Mechanics of formability:

Stress analysis is of particular importance in the mechanics of formability because the high volume, low cost constraints of automotive technology require that maximum use be made of rapid stamping and forming operations. Improvements in computer aided manufacturing technology would be assisted significantly by applying the methods of structural mechanics analysis to large deformation, high rate, high energy forming processes. Such research should lead toward greater ease of incorporating energy and economic constraints into the design process. Studies could include:

New concepts for estimating die shapes, forming forces and induced residual stress states;

Investigation of finite inelastic deformations, including the mechanical effects of phase change during forming;

Establish constitutive relations for large displacement, large strain inelastic analysis for light weight materials;

Characterize the friction between the tools and work pieces as a necessary element in applying structural mechanics analysis to improve design of manufacturing tools;

Investigation of the micro- and macro-analytical boundaries of composite materials to define, for example, where assumptions of isotropy and homogeneity are valid;

Experiments and analysis of micro-interfacial bebonding to define criteria for macro-property constitutive behavior.

C. Stress and deformation in composite elastomers:

Composite elastomers are found in tires and engine mountings. Analytical and numerical structural analysis methods need to be improved to include finite deformation and thermomechanical interactions. Elastomer structures, in addition to their structural characteristics are important in vibration control and in the case of tiers considerable energy is converted to heat in the structure as a result of flexing. Studies could include:

Structural mechanics mathematical models of life-cycle of elastomer structures;

Improved analysis methods for accelerated life-cycle testing;

New concepts for experimental stress analysis methods for high speed strain measurements over extended periods of time;

Investigations of the relationships between cord-rubber, composite geometry, cord material and internal hysteresis of tires.

D. Failure and life cycle prediction:

Automotive structural design is primarily based upon the endurance limit approach for fatigue performance. Significant progress is being made in developing fatigue design procedures based on strain-life fatigue data. The SAE fatigue design handbook is currently being rewritten to include recent advances. Some downweighting can be accomplished by material substitution and or weight reduction of components which are traditionally designed for high stiffness or handling loads. This requires more accurate analysis predicting fatigue which can be used to assess the tradeoff between the weight of the component and safety reliability thresholds. The areas of importance are the techniques of fracture mechanics and crack propagation prediction. Studies could include:

Fracture characterization of interfaces in composites;

Fatigue life-cycle analysis;

Model systems for evaluation of crashworthiness;

New methods for non-destructive evaluation of major structural components;

Selective destructive testing methodologies for validating theoretical predictions of structural integrity.

E. Biochemical analysis:

Structural mechanics analyses related to anthropomorphic structures is a particularly difficult area of research because of the complexity of the human structure and difficulties involved in building and verification of anthropomorphic model. Further cross-discipline efforts between structural mechanics and medical disciplines should lead to new developments quantifying deceleration effects. Studies could include:

Extension of anthropomorphic model research to include a wider range of loads, e.g., side loading.

F. Non-linear analysis:

Structural mechanics research involves several areas where additional emphasis should be placed on new concepts for analytical and numerical solutions to the non-linear problems associated with automotive structures. Vehicle suspension systems are important areas where non-linear problems are particularly important. Studies could include:

Investigation of improved structural analysis methods, especially for non-linear couplings, interrelating tire and suspension systems.

New methods for non-linear vibration analysis of suspension systems.

Methods need to be developed to handle the large-displacements, finite-strain static and dynamic problems which arise from models of tires, highly non-linear suspension systems and materials forming processes.

G. Numerical analyses and computational mechanics:

Numerical analysis complements and supports essentially all aspects of structural mechanics analysis. The automotive industry already makes extensive use of numerical modeling for many automobile components and systems. There is need, however, for basic research in computational methods to handle efficiently some of the models unique to the automobile industry. Numerical analysis is an important component of computeraided design (CAD), and is closely coupled with computer-aided manufacturing (CAM). Its further development should be encouraged.

Frequently geometric designing (styling) structural design, and manufacturing (e.g., forming) use different and often incompatible geometric models for tht same component. Compatible computer data base models representing all structural quantities of interest should also be developed. Studies could include:

Investigation of improved three-dimensional finite element codes;

Compatible geometrical models for geometric and structural design and manufacturing;

Optimization methods capable of handling realistic automotive structures, including all aspects of optimizing large scale structural models.

IV. Design verification and testing research:

The final design for a vehicle is the sum of a number of individual designs which must be verified in some manner. Ultimately the industry evaluates the structure or component by sub-scale or full-scale testing. The costs and time requirements for performance testing may be reduced by better methods for verification of the mathematical models and improved methodologies for evaluating the performance of components, particularly those having new configurations or those made from unusual materials. Studies could include:

Mathematical models of the vehicle system replete with material, configuration, loading and failure parameters;

Investigation of cost effective mathematical models for comparison with sub-scale or full scale models;

Experimental stress analysis methods, e.g., strain gages for elastomers which exhibit large strains.

ELECTROCHEMISTRY

INTRODUCTION

Long-term goals include:

A fundamental understanding of the thermodynamics, kinetics, electrocatalysis, mass transport, and materials synthesis and fabrication as they relate to energy efficient propulsion systems for automobiles or other vehicles based on electrochemical power sources.

The creation of new knowledge for the conceptual design of corrosion-resistant and wear-resistant metallic and non-metallic components of automobiles.

New electrochemical principles for display, monitoring, and control.

Electrochemistry is the science concerned with the transfers of electronic and ionic charges across interfaces and the chemical transformations that accompany them. The charge transfer may proceed spontaneously and release useful electrical energy as in batteries and fuel cells, or a non-spontaneous reaction may be forced to occur by imposing energy from an external source as in electrodeposition or electromachining processes. The most fundamental questions in all electrochemical processes surround the kinetics and mechanisms that control the acts of interfacial charge transfer and basic research in electrochemistry addresses these questions.

Electrochemistry is centrally involved in many aspects of present-day manufacture and operation of automobiles. Besides the batteries used to start cars, electrochemistry is at the heart of the destructive process of corrosion and of the procedures employed to protect against it such as anodization, electroplating and electropainting. Electrochemical machining of critical components is also a widely practiced procedure.

Efforts directed at the conservation of critical materials may also depend upon developments in electrochemical science. For example, attempts to substitute molybdenum, which is mined in the U.S., for some of the chromium used in many automotive applications would require that a large amount of new, fundamental electrochemical knowledge about molybdenum be acquired.

I. Electrocatalysis and kinetics studies:

The objective is to:

Improve fundamental understanding of homogeneous electrocatalyzed reactions and mechanisms, and to establish the relationships of electronic and morphological properties to the reactions.

Electrochemical catalysis is part of the broader field of heterogeneous catalysis and involves the use of electrode surfaces which promote specific electrochemical reactions by providing sites favorable for the adsorption of reactants, products and/or intermediates in addition to serving as a source or sink for electrons in the charge transfer steps. Kinetic studies of the rates of electrochemical reactions as a function of the electrode potential as well as electrode surface properties are of central importance to electrocatalysis. Illustrations of electrode processes which involve electrocatalysis are the oxidation of hydrogen and the reduction of oxygen in fuel cells. Large surface area electrocatalysts such as platinum on carbon are used to catalyze these reactions. Both of these electrochemical reactions involve adsorbed intermediate species and are strongly dependent on the electronic and morphological properties of the electrocatalytic surfaces. Very effective electrocatalysts exist for the hydrogen oxidation reaction but the lack of sufficiently active electrocatalysts for the oxygen reduction results in substantial voltage losses in fuel cells and air consuming batteries of considerable promise for vehicle propulsion.

Many electrochemical reactions appear attractive for battery applications on a thermodynamic basis but the rates of the reactions are too slow to be practical with presently available electrodynamics. Illustrations include the direct electrochemical oxidation of methanol, ethanol or synthetic hydrocarbons in fuel cells. While present electrocatalysts are inadequate at attractive temperatures, it is likely that a sufficiently active electrocatalyst can be found for such processes, thus affording far higher energy conversion efficiency than is possible with internal combustion engines. This would constitute a major breakthrough.

In some instances it is desirable to reduce the catalytic activity of the electrode surface for reactions which compete with the desired electrochemical reaction and lead to accelerated consumption of reactants and loss of energy conversion efficiency. Examples include the generation of hydrogen at the negative electrode and oxygen at the positive electrode during the charging of zinc-nickel oxide storage batteries. There is a need for more effective additives that can be introduced into the electrode or electrolyte to impede these undesired reactions. Studies could include:

Electrocatalyzed battery and fuel cell reactions with emphasis on reactions at metal and semiconductor-catalytic surfaces;

Relationships of adsorption kinetics to the electronic and morphological properties of the surfaces and electrolytes, and the effect of impurities on electrocatalyzed systems; theoretical studies of adsorption on surfaces and clusters using empirical molecular orbital methods.

Theoretical studies of electrocatalytic processes such as the hydrogen discharge reaction and other electrode processes, such as the individual steps involved in the reduction of oxygen to water;

Investigation of new electrocatalyst systems including electrode surfaces modified to accept and hold catalytically active species, the deposition of monolayers or less of metals on inactive supports, implantation of metal atoms in matrices, and the addition of catalysts to gaseous reactants being fed to electrode surfaces;

Theoretical and experimental studies of the kinetics and temperature dependence of heterogeneous reactions under non-catalyzed conditions to develop a comprehensive basis for predicting rate constants of heterogeneous electron transfer reactions;

Kinetics homogeneous electron transfer reactions and the complex ion dissociation and association reactions.

II. Interfacial structure:

The objective is to:

Achieve fundamental understanding of the relationship between interfacial structure and the electrochemistry of corrosion, adhesion and electrocatalysis.

An understanding of the role played by the interfacial region of an electrode is fundamental to all electrochemical processes. This region is the arena where electrochemical interactions are carried out.

Because of the central role played by the interfacial region in the electrochemistry of a solid exposed to a reactive environment, all technologies that involve exposure of solid surfaces to such environments will depend on an understanding of this role.

Knowledge of the interfacial structure of a surface is of special importance to automobile technology because it bears strongly on one of the major problems in this technology—corrosion, and electrochemical process.

The properties of the extremely thin passive films that are present on metal surfaces determine whether the metal can survive in the corrosive environments to which automobiles are exposed, e.g., cooling systems, fuels and the atmosphere.

Moreover, the interactions between the interfacial region and paints, inhibitors and other corrosion protective schemes can be developed.

Better understanding and control of these interfacial films could lead to the development of lightweight, cheap alloys composed of non-critical metals that would form effective passive layers to resist corrosion.

Knowledge of the interfacial structure of surfaces has an important bearing in many areas of automobile technology, in addition to corrosion. Examples include energy generation (fuel cells and battery electrodes) and pollution control (electrocatalysis, recycling, plating bath regeneration).

One of the major long-term purposes in the study of the interfacial region on metal surfaces is to learn how to prepare interfaces with desired structures and compositions. This could lead to tailor-made interfaces on cheap, non-critical metals that could provide better corrosion protection or supply superior electronic and morphological characteristics for electrocatalysts, and improved battery electrodes.

A. Interfacial composition and structure of metal surfaces:

The chemical and mechanical stability of passive films exposed to various relevant environments (resistance to breakdown and ability to self-repair) are the key issues. The nature of surface states at interfaces and the ways that they control adsorption and charge transfer processes that are involved in corrosion, electrocatalysis and energy generation also need to be much better understood. Because many of the films formed on metal surfaces are semiconductors, the mechanics of ionic and electronic transport through such films need to be probed and methods developed to control them. Such knowledge would be of critical importance in the control of localized corrosion.

The need for more knowledge about passive films on metal surfaces is matched by that for more detailed knowledge of the fine structure and properties of the electrical double layer region that exists at the film-electrolyte interface.

B. Non-metallic surfaces:

The factors controlling interfacial energies at non-polar, liquid-liquid electrolyte interfaces are inadequately understood. The stability of such systems is quite important in processes such as the electrodeposition of paints on automobile bodies. The structure and composition in interfaces at conducting polymeric and ceramic surfaces also needs study since such materials are likely to play an increasing role in advanced automotive technologies. An important question is how films that form spontaneously on such materials affect their long term stability. Better knowledge is needed on how surface structure and composition affect the adhesion of electrodeposits and paints to metals and plastics. Wear and corrosion in many automobile parts might be reduced by application of this knowledge.

C. Localized corrosion:

The role played by the metal interfacial surface structure, composition and degree of stress in determining the sites where localized corrosion (pitting, cracking) initiates is inadequately understood. The effects of interfacial structure and composition on the breakdown of the micro passive layer and the repair processes that are thought to control localized corrosion need elucidation. Progress in this area could lead to the development of more corrosion-resistant alloys as well as providing a basis for *in situ* monitoring of such corrosion. Accelerated tests methods for evaluating resistance to pitting, stress corrosion and crevice corrosion in automobiles might also result.

III. Electrolytes and membranes:

The objective is to:

Improve understanding of physical and electrochemical properties of molten salts, solid electrolytes and ionic solutions.

Increase knowledge of the thermodynamic properties of electrolytes in non aqueous solutions.

Electrolytes are ionic species that are required to provide conductance in electrochemical cells. The solid, liquid or gaseous media containing these ionic materials are also referred to as electrolytes. Electrolytes through which selective ionic transport is the predominant feature are called membranes. Examples of electrolytes having particular relevance toward energy conversion and storage are the concentrated sulfuric acid solution in lead-acid batteries, the aqueous potassium hydroxide solution in alkaline cells, phosphoric acid electrolytes used in fuel cells, molten lithium chloride-potassium chloride salt mixtures used in high temperature batteries, etc. The ionically conducting, electronically insulating, ceramic materials used to separate reactive liquids such as sodium and sulfur in other high temperature batteries can be regarded as both electrolytes and membranes. Thin polymer films having selective ionic transport properties such as Nafion are also important ingredients in certain types of batteries and fuel cells. Electroplating solutions and baths for electrowinning metals are other examples of electrolytes of relevance to the automotive industry.

A. Multi-component electrolyte systems:

Although a moderate understanding of the physical and chemical properties of dilute solutions exists, satisfactory models for more complex and concentrated multicomponent systems are lacking. Fundamental research is needed to facilitate better estimates of the identities, solubilities, activities and transport properties of the ionic species in solution over as wide a temperature range as possible. The properties of very concentrated aqueous solutions such as ionic hydrate melts and their application as media for electrochemical processes also need investigation.

Particular emphasis should be placed on organic and inorganic substances in nonaqueous solutions exhibiting high conductivity and rapid mass transport properties. Polymer membranes and polymer-salt complexes also offer exciting possibilities worthy of further exploration. Questions of physical properties, thermal and chemical stability and practical utility need to be addressed.

B. Electrochemistry in molten salts:

Molten salts are close to ideal electrolytes for batteries. Unfortunately, most are high temperature systems and tend to be very reactive towards other materials. However, recent research has identified several low temperature systems where the advantage of high ionic conductivity and high decomposition potential are preserved and corrosion problems are alleviated. Additional research is required to establish the solution properties of these systems and the chemistry occurring in them. Corrosion and the interaction of molten salts with electrode and cell materials are particularly relevant.

C. Solid state chemistry of ionic materials:

Ionically conductive solids are useful as battery or fuel cell electrolytes, display devices, membranes for chemical separation, instrumentation and detectors. Solid electrolytes include crystalline materials, ceramics, glasses and polymers. Additional fundamental research in solid state chemistry could lead to crystal structures with high ionic conductivity at lower temperature than is possible with existing materials.

IV. Electrodes—structure, morphology and electrocrystallization:

The objectives are:

Understanding the effect of the incorporation of metal atoms into the crystal lattice of porous electrodes.

Identification of factors controlling electrodeposition of both metals and polymers on substrates.

This section is concerned with the processes which control the crystal structure of an electrodeposited material and the morphological changes that are associated with electrochemical dissolution of electrodes or the formation of solid products at electrodes. These considerations are of critical importance in rechargeable batteries used in automobile manufacturing.

A. Rechargeable batteries:

The cycle of life of many rechargeable batteries is limited by morphological changes which occur in porous electrodes. It can be anticipated that this limitation will be relevant to advanced batteries as well. Cycling ability is reduced when uncontrolled movements of active material causes reduction in the surface area of porous electrodes, blockage of pores, detachment of active material from electronic conductors, or the formation of dendritic deposits. Additional fundamental research is needed to understand the incorporation of metal atoms into the crystal lattice during electrodeposition.

The processes of precipitation and dissolution of solid reaction products in certain electrodes (for example, the zinc electrode in aqueous systems or the iron disulfide electrode in molten salt systems) also need further investigation. The evolution of changes in the morphology of the electrodes with cycling needs to be understood. Very little fundamental work in this area has been attempted, probably as a result of the complexity of the systems. Diffusion mechanisms in solid phases are of importance as well. The stabilization of phases which are electrochemically inactive needs to be understood and controlled. A good example is the manganese dioxide electrode which, if rechargeable, would offer a low cost alternative to the nickel oxide electrode in alkaline zinc batteries. Studies could include:

Electrodes which do not undergo large morphological changes, such as electrodes based on intercalation;

Liquid electrodes stability at high temperature;

Molten salt electrolytes;

B. Electrodeposition:

The properties of surfaces produced by electrodeposition are dependent on electrode surface morphology. The fundamental aspects of electrodepositing of alloys and composites require much additional research. Control of plating operations has been an art in the past and fundamental understanding is only now beginning to have an impact. Surface properties such as hardness and roughness of electrodeposits and their relation to subtrate structure, bath additives, the control of plating current (e.g., pulse electrodeposition), and other variables are in need of fundamental study. Newer processes such as the electrodeposition of polymers invite added fundamental scrutiny.

V. Chemical systems:

The objectives are to:

Improve the understanding of the chemical behavior of important electrochemical substances.

Investigate new electrochemical materials.

Many technological problems in electrochemical systems arise from a lack of knowledge of, and a consequent inability to control, the chemistry of the system. For example, failure mechanisms in batteries, inefficient utilization of oxygen in fuel cells, and corrosion of metals all arise from such difficulties. The need for detailed knowledge of the chemical behavior of important well-known substances in their various forms is acute. However it is also important to conduct parallel studies on non-conventional materials. General chemical studies that promise to infuse new substances into electrochemistry are of interest and much recent research in synthetic chemistry present opportunities for extension and exploitation by electrochemists. Studies could include:

Simple reactions of high-energy reagents, such as alkali metal and halogens; chemistry of small, potentially plentiful species, such as oxygen, hydrogen, carbon monoxide, carbon dioxide, water; media for storage of hydrogen; chemistry in molten salts fundamental research;

Catalytic redox chemistry of small molecules such as those listed above; homogeneous catalysts that can be attached to electrode systems by surface modification;

Suspended-particulate redox catalysts; metal clusters; catalytic micellar systems; solid state ionic conductors; intercalation chemistry; electronically conducting polymers and molecular solids; chemistry of alloys; polymers as modification agents for electrodes, redox properties of polymers, polyelectrolytes are also of interest; semiconductors as electrodes and catalysts in single crystals and polycrystalline forms.

VI. Thermodynamics:

The objective is to:

Increase the range of thermodynamic information of electrochemical systems.

Thermodynamics data, including enthalpies, free energies of formation, phase diagrams, and equilibrium properties of chemical substances, are important in predicting whether a given process might occur. They bear on feasibility studies, projections of safety and environmental impact, and understanding of device degradation. Substances of interest would include molten salts and molten salt solutions, solid electrolytes, metals, oxides, mixed oxides, semiconductors, polymers, concentrated aqueous electrolytes and nonaqueous solutions. Measurements are especially needed at the temperatures and pressures likely to be encountered in the technological applications.

VII. Electrochemical and surface characterization—methods and instrumentation:

The objectives are:

Improve characterization of mechanisms at electrode surfaces; improve trace elements analysis, and achieve *in situ* characterization of electrodes.

Investigate new electrochemical display concepts and improve understanding of fundamental electrochemical sensor mechanisms.

The further development of electrochemical methods and instrumentation can lead to new techniques for the characterization of the properties and behavior of chemical systems. New methodology is needed for the study of the composition and structure of interfaces. The development of such methods is important in a number of areas related to automotive research. These include designing new electrocatalysts and studying how catalytic electrode surfaces change with time; producing sensors for monitoring automotive processes and emissions (e.g., in combustion studies); studying corrosion processes, especially for accelerated life tests; monitoring the condition and state-of-charge of batteries. While the investigation of such techniques is of importance in automotive research, they can also be of importance in other areas of science, including energy research, environmental studies, and in characterization of materials.

A. Electrochemical characterization:

1. Characterization of solid surfaces.—The nature of electrode surfaces during electrochemical investigations is currently studied by a variety of optical techniques. Alternate, very powerful methods, such as electron spectrocopy for chemical analysis (ESCA) and Auger electron spectroscopy, low energy electron diffraction (LEED) and secondary ion mass spectrometry (SIMS), involve removal of the electrode from the electrolyte environment and transfer into a high vacuum chamber for study. While these techniques have been very useful they do suffer from several limitations. The necessity of removal of the electrode and transfer to the spectrometer raises the possibility of changes in the electrode surface during the transfer. Moreover, some of these methods lack chemical or structural specificity. New methods for examining electrodes *in situ* during electrochemical experiments are needed. Studies could include:

Investigation of new spectroscopic techniques for *in situ* determination of electrode structure and composition of sub-monolayers.

2. Characterizing electrochemical systems.—Needed are systems for more rapid and more accurate electrochemical measurements and improved techniques of signal enhancement and processing (e.g., Fourier transform and convolution methods). The application of microcomputer and microprocessor technology in electrochemical measurement and control systems and the development of new techniques for studying adsorption, electron-transfer rates, and actual electrode surface areas appear worthwhile.

3. Trace analysis.—Many electrochemical techniques have been devised for trace analysis in solutions and in the gas phase: these include pulse polarography, stripping analysis and a number of related methods. These methods can be important in the detection and control of impurities in electrochemical systems and in environmental studies (e.g., determination of emitted pollutants). Especially needed are methods for the determination of organic materials at concentrations below one part per million, methods for analyzing the form and oxidation state of an element (speciation) and new ways of preconcentrating very low level components.

B. Sensors and display concepts:

1. Electrochemical sensors.—Sensors are devices for the conversion of concentrations of chemical species or given physical properties to electrical signals for analysis or control of the system. Present-day electrochemical sensors include voltametric and potentiometric, species-selective electrodes; investigation of the operating mechanisms of these sensors should be expanded. Methods for studying speciation in chemical systems (e.g., Complex ions and ion pairs in electrolytes) are also needed.

2. Fundamentals of display mechanisms.—Displays may be important for read-out of sensors and in automotive diagnostic devices. A number of electrochemical reactions have potential for application to such displays. These include electrochromic processes (coloration of oxide films, electrodeposition of highly colored substances), electrophoretic processes, modification of electrodes by polymer and electrogenerated chemiluminescence.

VIII. Modeling and electrochemical engineering:

The objective is to:

Develop new scientific models and improved mathematical techniques for modeling of electrochemical processes.

The scientific method consists of observing events, constructing a hypothesis for explaining those events, and then testing the hypothesis by observing still more events. Upon repeated application and pursuit, the scientific method can evolve refined hypothesis wherein the salient features can be approximated by mathematical analogs, or models. Such models can, by inversion, be used to test additional refinements in scientific hypothesis, as well as to predict behavior under new circumstances such as required for engineering design and optimization. Therefore the development of modeling techniques is an integral component of research in electrochemical science and engineering. Thus, modeling activities make for easier technology transfer from research laboratory to process application.

The major electrochemical fields in which modeling will augur toward improved automotive technology are: batteries and fuel cells, wastewater treatment processes, electroplating and corrosion. These processes are all characterized by complex interactions which require mathematical models to be understood. Studies could include:

Modeling of fundamental mechanisms;

Investigation of Improved computational methods for solving non-linearly constrained optimization problems;

Improved methods for analysis of surface shape change phenomena;

Modeling of transport to electrode surfaces, both smooth and rough, in both single- and multi-phase flows, including high speed flow effects on corrosion and electroplating, gas evolution, turbulence promoters, and particle impaction;

Detailed transport models in porous electrode systems;

Modeling transport in membranes relating membrane structure to performance.

IX. Electrochemical data and information banks:

There is need for a comprehensive and up-to-date system for the accumulation, appraisal and dissemination of largely numerical electrochemical data. Collecting and compiling such data from the literature is not a challenge that attracts many scientists but the need is too great to go unmentioned. The solution to this problem must include critical evaluation as well as careful collection of the data so that experienced scientists must participate at some level. It would be highly desirable to find ways to provide strong incentives for those who may be prepared to undertake this important task.

AERODYNAMICS

INTRODUCTION

Long-term goals:

To develop a body of detailed knowledge and a scientific understanding of the difficult interactive fluid mechanical elements which dominate the aerodynamics of road vehicles.

Through increased understanding of flow phenomena and the factors which influence them, to develop a rational basis and framework for prediction and control of drag and other forces, for interpretation of test results, and for analysis and design in general.

To devise new techniques of flow measurement to enable complex three-dimensional flows to be investigated more effectively.

Cars, trucks, and buses operate in air and are subjected to aerodynamic forces of lift

and drag just as are aircraft. For the successful development of today's airplane, the understanding of these aerodynamic forces, their prediction, and control were crucial. The early need for high lift and low drag configurations led to long slender streamlined shapes where the flow is largely two-dimensional and relatively amenable to analysis. Over a period of many years, a substantial body of knowledge has been developed which makes it currently possible to analyse and predict performance of aircraft at the design stage.

In the historic development of automobiles, aerodynamic forces were of minor importance. Cars were heavy and their fuel requirements were of much less concern than they are today; consequently the aerodynamics of road vehicles—three-dimensional bluff bodies—remained largely undeveloped.

At the present time lift, drag, and other aerodynamic forces have begun influencing automobile design, and will become more important as vehicles become lighter in weight and fuel becomes less available and more costly. Currently a 10% decrease in drag forces results in about 3% fuel saving in the EPA composite of highway and urban driving. Because most of the aerodynamic improvements are incorporated in easy to modified surfaces of road vehicles, aerodynamic reduction is a very cost effective way of decreasing the fuel consumption of future automobiles, trucks, and buses. Aerodynamic drag will not go away, but it can be decreased and lifting forces can be controlled if we increase our understanding of basic fluid mechanics and apply the knowledge appropriately.

The aerodynamics developed for aircraft are not directly applicable to the three-dimensional bluff body problems of road vehicles even though the equations which describe fluid motion for the two situations are derived from the same basic laws of nature. The fluid mechanical developments made for aeronautics do, however, put us in a position to ask intelligent questions and to assess possible benefits to be derived from future research.

A new effort is needed to understand, predict, and control the exceedingly complex flow over the automobiles, trucks and buses of tomorrow.

I. Three-dimensional bluff bodies:

The objective is to:

Understand and predict aerodynamic basic flows, drag, lift and momentum characteristics for three-dimensional bluff bodies.

The aerodynamics of road vehicles is so different from that of aircraft that the instincts of experienced aeronautical researchers sometimes prove to be wrong. Some cars which appear ungainly or boxy have lower drag coefficients than other cars with smoother profiles which appear more streamlined. A major difference between road vehicles' shapes and aircraft configuration is the bluffness of cars and trucks which is associated with their function. There are major regions of separated flow on road vehicles, which make aerodynamic analysis beyond our present capabilities and compel us to rely heavily on expensive and time consuming wind tunnel testing.

Boundary layer effects can be calculated fairly routinely for some two-dimensional bodies or for bodies of revolution aligned with the flow. However, for a body of revolution at an angle of attack or yaw, the calculation of the boundary layer flow is a research problem itself; for a configuration which appears more like a car, the problem is still more complicated.

It is necessary to understand the role of body shape in determining pressure forces on the vehicle. In addition to the overall flow, there are smaller portions or flow elements whose importance needs to be investigated. If some of these flow elements appear to be important contributors to lift or drag, it might be possible to improve the flow by adding devices to control or manage the flow as is often done in aeronautical situations. In addition, a car or truck which performs well in quiet air must also operate in natural gusts, wind and crosswinds, as well as in those environments caused by the surroundings. Each of these problems constitutes a major area of research.

A. Effects of shape:

Present understanding of the flow past short three-dimensional bluff bodies is primitive. It is not possible to gain an adequate understanding of such flow by only studying its component parts in isolation, i.e., it is necessary to study the flow around the body as a whole. Results from such studies can be used interactively with the studies on flow elements described in Section B. This is important for developing understanding of basic flows, relating diverse research activities and generalizing results. Research includes:

1. Parametric Studies.—In aeronautical development, studies of airfoil families have proven to be very beneficial. Similar studies of families of three-dimensional shapes can be expected to be equally useful in the automotive field. Such an experimental data base is necessary as a foundation for theoretical developments. Studies could include:

Shapes which establish the range of flow conditions that may be relevant, e.g., from very high to low drag;

Reference bodies for use in experimental flow and flow-control research allowing different investigators to start from a common baseline and verify their results;

Parametric studies which elucidate or emphasize particular flow phenomena of interest, e.g., separation, unsteadiness, vortex generations, etc.

2. Inviscid Flow Models.—The relationship between circulation and body shape is known for the case of wings and slender lifting bodies. However, for general three-dimensional bluff bodies such as road vehicles, the laws for modeling the flows are not known. For example, there is no obvious generalization of the Kutta condition. As a first step towards the understanding of such flows, models based on potential flow but with elements of vorticity and circulation should be developed. Such models can be used to study the generation of trailing vorticity and its relation to lift and drag. These models might be analytical, computational or experimental.

3. Multiple Bodies.—Strong interactions, which may or may not be beneficial, occur between bodies in close proximity. Research should be carried out to determine the mechanisms of such interactions and to evaluate their effects. This category would include, but not be limited to, such vehicles as tractor-trailers and trailer-behind-car configurations.

B. Flow elements:

While overall shape produces identifiable flow phenomena which in general interact with each other, there are flow elements which need to be studied by themselves as well as in combination. Regions of separated flow are the rule for three-dimensional bodies. Some of these regions close on the body surface while others are open and connect to the wake regions. It is not known in detail how these flow elements contribute to drag or lift. Research includes:

1. Boundary Layers, Separation, and Separated Regions.—The three-dimensional boundary layers on road vehicles are not simply thin viscous regions responding to pressure gradients determined by the viscid flow; the interaction is more complicated. Organized vortex structures can be formed at separations, which may be connected to the wake. These structures alter the pressure gradients and the aerodynamic forces on the vehicle. Studies could include:

Three-dimensional boundary layers in the presence of typical vehicle pressure fields, their development and prediction;

Closed and open separated regions, including small separation bubbles associated with boundary layer transition and free shear layers;

The mechanisms of flow separation leading to the development of organized vortex structures convected to the wake.

2. Three-Dimensional Wakes.—Vehicle wakes are complex flow regions which are not well understood. The near wake is important because it controls particle deposition and dispersion of the exhaust. The extent to which the near wake is influenced by vortex structures in the wake, or by certain vehicle body characteristics, is not clearly understood. Studies should include:

Velocity and turbulence distributions; vorticity distributions and their effects on the wake; wake persistence and factors which influence it; and near wake structure.

3. Through Flows and Special Situations.—While most of the air passes over the surface of a vehicle, a significant amount of the air actually passes through the vehicle engine compartment, wheel wells, passenger compartment with the windows open, as well as through the engine. Studies would include:

The influence of flow through vehicle cavities and its influence on external aerodynamics, as well as the contribution of through flow to total drag;

The aerodynamic phenomena occurring inside wheel wells, including the effects of wheel rotation, and water spray generation.

4. Flow Instabilities.—The importance of flow instability and unsteady flow effects on the various flow elements that lead to unsteady forces on the vehicle may result in alterations in drag.

C. Flow management devices.

Control of the flow field and its elements can be achieved by both overall and local body shaping. In addition, passive or active devices may be used to suppress, enhance or otherwise modify a specific flow element. Such devices have a long history of development and use in aeronautics and have recently found application to vehicles. The application of such devices to vehicle aerodynamics should be further investigated. Better understanding of the mechanisms by which these devices act on the various flow elements could lead to their more frequent use and increased vehicle performance.

II. Effects of surroundings:

The objectives are to:

Increase understanding of the relationships between body system configurations and ground proximity on vehicle driving characteristics.

Increase knowledge of relationships between aerodynamic environments caused by winds, proximity to other moving vehicles and vehicle handling characteristics.

The operating environment of road vehicles contains special features which influence the aerodynamic forces on, and the flow field around a vehicle. The body shape which is ideal under one set of environmental conditions can be far less ideal under apparently slightly different conditions.

A. Ground proximity effect:

Road vehicles typically operate with body-to-ground clearances on the order of 3–15% of their body length. The influence of such clearances on their aerodynamics is body-configuration dependent, e.g., streamlined vs. boxy. Better understanding of this inter-relationship can contribute to more appropriate body shaping of these vehicles in the presence of the ground. Representative subjects of interest are the ground-proximity effects on:

Wake size, stability and flow pattern;

Vehicle pitch angle and ground clearance for minimum drag;

The shape of vehicle forebodies for low drag;

The flow rate through internal passages and cavities.

B. Effects of aerodynamic environment:

The air through which a road vehicle moves is rarely still because it is conditioned both by natural factors (wind, local terrain) and by disturbances generated by other vehicles. Information about the sensitivity of the aerodynamic characteristics of representative vehicle configurations to various approach-flow parameters should permit better identification of body shapes most suitable for actual on-road conditions. Research needed includes understanding the effects of:

Spatial non-uniformity in velocity and stagnation pressure of the mean flow;

Turbulence intensity, its scale and spectrum;

Effects of mean wind cross flow.

C. Traffic-induced aerodynamic effects;

The distortion and intensification of a road vehicle's flow-field caused by another vehicle passing in close proximity generate force transients which affect directional stability. These sudden variations in aerodynamic characteristics (magnitude and direction of resultant force) bear on vehicle handling characteristics. Information on the nature and magnitude of these transients, and their relationship to the parameters of vehicle shape is needed so that body configurations with unacceptable directional sensitivity can be avoided. Traffic situations of interest include:

Vehicles traveling in opposite directions and in overtaking modes;

Vehicles of different type and size (e.g., car-car, car-truck, truck-truck).

III. Experimental methods:

The objective is to:

Explore new concepts and techniques for determination of and increasing the precision of on-road aerodynamic drag coefficients.

No existing method of aerodynamic testing of road vehicles provides data free of uncertainty associated with the exact relationship between the measured variable and the desired variable, and of uncertainty created by extraneous constraints and unsimulated effects. There is need for research to (1) define the reliability and accuracy of the various techniques; (2) develop methods for correcting data for experimental constraints; and (3) compare and establish the range of validity of the measurements obtained from different testing methods.

A. Laboratory methods:

1. Wind Tunnel Tests.—Testing of models in wind tunnels is an important technique which is used successfully in aeronautics. The primary difficulties with using this technique for road vehicle aerodynamics are associated with scale effects, finite-stream effects of the wind tunnel test section, and simulation difficulties.

Ground plane simulation is not perfect due to the existence of a boundary layer on the ground plane of a wind tunnel but in the on-road situation. This boundary layer can be reduced by using a moving ground plane or boundary layer section, but some uncertainties exist regarding the efficacy of these techniques and the circumstances in which they may be important.

Other uncertainties such as the wall-proximity effects are due to the finite extent of the stream. Aeronautical researchers have developed fairly reliable corrections for airplane and missile configurations. A need exists for correction methods for three-dimensional bluff bodies.

Model scale effects can be eliminated by using full size vehicles and actual flow velocities in wind tunnels. Such facilities are expensive and still lack simulation of on-the-road environmental conditions. Smaller scale models can be used in smaller wind tunnels if the Reynolds number replicates on-the-road conditions. How important it is to replicate the Reynolds number is not known in detail for various features of the flow. With very small model sizes it is difficult to maintain model scale-fidelity (for example, the effects of not simulating rotating wheels, engine air intakes, or underbody features). Studies could include:

Further development of correction techniques for finite stream effects, i.e., wall effects due to proximity of boundaries;

Evaluation of the need for simulating the ground plane and of the effectiveness of the various methods used for more realistic simulation;

Development of techniques for simulating environmental effects such as wind gust identified under section IV.

2. Other Laboratory Techniques.—Because of the imperfect simulation which occurs in the wind tunnel, there is an interest in other techniques which can simulate certain flow phenomena more accurately. Such phenomena include the ground boundary layer, the penetration of a crosswind gust by a vehicle flow over rotating wheels, etc. An alternative to moving the air past a fixed body is to support the body on a carriage and move the body through the ambient atmosphere, thus eliminating the effects of wind tunnel walls. There are simulation advantages; however, the technical complexity of the test is increased.

There is a need for development and improvement of laboratory techniques which have the potential of providing more reliable information on those particular flow phenomena which cannot be accurately simulated in the wind tunnel. Such techniques can be used to establish when the wind tunnel is providing useful information and when it is not.

B. Road testing research:

Because of the extreme complexity of the flow fields involved, research on road-vehicle aerodynamics will be primarily experimental for the foreseeable future. Furthermore, the wind tunnel, and not road testing, will be the fundamental research tool because of its controlled and repeatable test environment. However, even though it is not itself a convenient technique and is sensitive to the variabilities and uncertainties of atmospheric conditions, road testing provides the *only* way that the real-life validity of wind tunnels can be established. Without adequate validation there will always be uncertainty about the degree of applicability of some wind tunnel research to on-road driving. It is therefore crucial to the aerodynamic research that road-testing techniques suitable for this purpose be developed.

Of the components describing the aerodynamic characteristics of a vehicle, drag is probably the most important and offers the greatest possibilities for tunnel-to-road validation. However, no method currently exists for direct measurement of on-road drag. There are, however, techniques which attempt to extract it from measurements of total resistive force (i.e., drag plus rolling resistance).

In coastdown tests the total resistance can be accurately determined from measured decelerations in still air. If the rolling resistance dependence on ground speed is accurately known, the drag force could be satisfactorily deduced. The driving torque method attempts to overcome the uncertainty in the rolling resistance's dependence on ground speed, by keeping ground speed constant and measuring the torque required to move the vehicle through different steady wind conditions. In principle each method is valid; however, extraneous and uncontrolled factors invariably contaminate the test. As a consequence, it is not presently possible to extract the drag coefficient from road tests with sufficient accuracy to adequately validate wind tunnel measurements. Studies could include:

Improvement in these two techniques and their methods of analysis, to increase the precision of on-road drag coefficients;

Exploration of new concepts for determining on-road drag coefficients;

Improvement of road testing methods for systematic measurements of stability, aerodynamic noise, and direct deposition of particles on the vehicle.

IV. Research to evaluate the aerodynamic environment:

The objective is to:

Investigate relationships between atmospheric environments, fuel efficiency, and vehicle stability.

Vehicles driving on the open roads and highways rarely encounter the aerodynamic environment of still air relative to the ground simulated in wind tunnels, and generally used for the conditions of on-road testing. On the open road, the air is generally moving with respect to the ground. The environment in which a single road vehicle operates is the time dependent turbulent boundary of the atmospheric weather patterns moving with respect to the earth. The environment is further modified by the active and passive elements or objects in the vicinity of the vehicle. Which parts of the environment are important is not known and is worthy of research.

At this time, it does not appear to be of value to attempt to obtain a large data base of purely descriptive measurements of the aerodynamic environment. Rather it appears that a more appropriate approach is to discover what parts or characteristics of the atmosphere significantly affect vehicle fuel efficiency and which are important aerodynamic inputs to vehicle stability. Once these elements have been identified, techniques for simulating them in wind tunnels and on-road conditions need to be devised Research identifying the aerodynamic effects needs to be integrated with research conducted under the paragraphs Part II, Effects of Surroundings.

Road vehicles designed for minimum drag in still air may not be optimally or near optimally designed aerodynamically for on-road conditions in moderate winds disturbed by wakes of other vehicles, the environmental conditions under which most miles are driven. Before aerodynamic design changes can even be contemplated it will be necessary to verify that measurable effects in on-road drag coefficient can be associated with particular elements of the aerodynamic environment. For time dependent features such as wind gusts and wake transients, it will be necessary to have statistically significant time dependent measures of the drag coefficient, a task which appears exceedingly complex in light of the current difficulties encountered in attempting to verify steady state wind tunnel measurements in still air. Studies could include:

Assess existing data on the atmospheric boundary layer, including statistical information covering velocity profiles, the turbulence intensity, spectrum and correlations of the several components in the first ten meters of the atmosphere;

Identify and describe those elements in the aerodynamic environment which have a significant impact on measured drag coefficient;

Identify and describe those elements in the aerodynamic environment which significantly influence the forcing functions for vehicle stability;

Devise methods to stimulate the identified important aerodynamic features in experimental and analytical modeling.

MATERIALS SCIENCE AND PROCESSING

INTRODUCTION

Long term goals include:

Improved knowledge of the formability, processing, durability/reliability and recov-

ery of metals, plastics, ceramics and composites of value for vehicles.

Improved materials for automotive information transfer and control.

Issues of energy conservation and vehicle fuel economy have markedly highlighted the important role of materials in advanced fuel efficient vehicle designs. Light weight materials and associated fabrication and processing technologies have become key features of vehicle weight reduction startegies involving downsizing, downweighting, and the development of alternative propulsion systems. Materials also are key elements in the development and design of vehicles with improved crashworthiness and emission control systems.

The automobile traditionally has been predominantly a product of steel and cast iron technologies and processing. But replacement of low carbon sheet steel, the traditional materials workhorse of the automobile, by such lighter weight or higher strength steels, aluminum alloys, plastics and composites is proceeding at a rapid pace. However, wider-spread application of these and other classes of materials often is inhibited by such factors as:

Immature materials technology;

Materials cost;

Capacity, supply and availability;

Inadequate manufacturing and processing methods for economic and reliable farbrication;

Inadequate data base on properties, characterization and design;

Lack of experience in design and application.

There should exist the constant recognition that high production rate, large volume and cost considerations are primary factors underlying utilization of materials and processing technologies within the automotive industry. A large bulk of vehicle materials usage is related specifically to the properties and performance of stampings and moldings fabricated from sheet materials. Cost constraints, availability and manufacturing issues predominate as essential aspects in the linking of research opportunities to advanced automotive technology. The choice of materials and their fabricated form and the automotive performance envelope and environment in which they operate that will serve to distinguish CARP from general research programs. The list of research topics is neither complete nor exhaustive.

I. Light weight materials and structures:

The objective is to:

Understand the structure-property-performance relationships in light weight materials and structures, including basic understanding of forming, processing and joining procedures and ultimate durability/reliability.

Fuel economy and vehicle weight have a direct relationship. Utilization of lighter weight and higher strength materials represents significant opportunities for weight reduction in advanced vehicles. Steels represent about 60% of the weight of an average automobile. Much of this is in the form of low carbon sheet, shaped by stamping methods and joined by welding to form a variety of body and chassis components. High fabrication rates, manufacturability and reasonable costs are characteristics which bound cost-effective materials substitution options. Research on forming and fabrication, durability and reliability characteristics and structure property relationships in fabricated shapes, relevant to automotive needs, would enhance the technology base required for the increased utilization of alternative materials, e.g. high strength-low alloy steels, aluminum alloys, plastics and composites, etc. Research on solidification and casting processes for light weight materials and thin wall castings would assist innovation in or substitution for conventional cast iron technology. Research could include:

A. High strength steels:

A large bulk of vehicle materials usage is related specifically to the properties and performance of stampings and moldings fabricated from sheet materials, especially low carbon steel. Substitution by thinner sections of high strength low alloy steels could result in vehicle weight reductions.

1. Formability and Processing.—Metal deformation processing is a major component of fabricating sheet steel for automotive applications. Research on forming techniques per se and how subsequent microstructures and properties are affected by processing is needed to optimize procedures. Studies could include:

Formability research on high strength-low alloy steel sheet as function of structure, composition, thermo-mechanical history and shape variables;

Characterization of forming limit diagrams and related formability prediction techniques;

Exploration of strain-path behavior, temperature, stress-state, strain rate effects;

Analytical modeling for formability prediction; development of constitutive equations to predict deformation behavior;

Relationship of materials properties with die design and processing conditions;

Study of edge cracking tendencies as function of materials parameters.

2. Durability/Reliability Characteristics.—In order to optimize vehicle reliability, durability, safety, crash-worthiness and damageability, it is necessary to have a firm understanding of fatigue and fracture behavior of high strength steels. Research studies could include:

Failure mechanisms, particularly in sheet steels, as a function of metallurgical variables, processing history and service conditions (simulated or real);

Crack initiation and crack growth studies;

Fatigue—low cycle and high cycle fatigue characterization and mechanisms; effects of composition, structure, surface condition, prior thermal mechanical history, notches, structural discontinuities;

Fatigue of welded joints—particularly spot welded joints in sheet steels;

Life prediction methodologies—analytical modeling and simulation of service conditions by laboratory testing;

Hydrogen embrittlement phenomena in automotive high strength steels;

Corrosion—fatigue and stress corrosion behavior of high strength steels in simulated vehicle environments.

3. Structure-Property Fundamentals.—The basic goal of materials science and engineering is understanding how microstructure and microchemistry affect materials properties and performance. Greater utilization of high strength steels in automobiles will require research studies such as:

Phase transformation processes in microalloyed and dual phase steels as function of composition and thermo-mechanical history;

Mechanisms of strengthening, deformation and formability; mechanism of work hardening and control of structure and composition to increase work hardening in dual phase steels, work hardening of steels under complex loading conditions;

Role of interstitials and alloying elements on the nature of ferrite to elucidate ductility, strain aging and texturing characteristics;

Effects of inclusions on mechanical properties and mechanisms of inclusion control;

Optimization of structure and composition for property and fabrication improvement.

B. Aluminum alloys:

The relatively low density of aluminum alloys offers the possibility of substitution for steel in some automotive applications, with an attendant weight reduction. A large body of knowledge exists about structure-property-performance characteristics of aluminum alloys. However, there are certain forming, joining, casting, and durability characteristics of aluminum specific to automotive applications that need additional basic understanding.

1. Formability.—The same general knowledge base for forming aluminum alloys is needed that is required for high strength steels. Some specific research topics are:

Formability characterization and forming limit diagrams as related to mechanical properties, microstructure, alloy composition, processing variables and shape factors;

Fundamentals of die design principles to accommodate alloys with varying properties;

Effect of lubricant and surface films on forming characteristics;

Analytical modeling of forming operations.

2. Spotwelding and Adhesive Bonding.—Joining of aluminum alloys by spot welding and adhesive bonding presents some special research opportunities. Studies could include:

Nature of oxide film on aluminum alloys and control of thickness and conductivity characteristics;

Mechanisms of electrode buildup and tip sticking;

Process characterization and study of welding variables for high quality joints;

Effects of surface characteristics on bond performance; influence of chemical environments and mechanical treatments on process variables;

Effect of notches and discontinuities on properties of adhesive bonded joints.

3. Solidification and Casting Research.—Casting of aluminum alloys for automotive applications requires further understanding of specific casting processes and process variables. Research could include:

Modeling of fluid flow and heat transfer in semi-permanent mold and die casting processes;

Research on higher strength/higher ductility alloys for complex shape castings;

Study of process variables and their relation to reproductibility of properties.

4. Structure Property Relationships.—As in the case of high strength steels, understanding structure-property-performance behavior of aluminum alloys is vital, particularly as to how microstructure affects mechanical behavior. Some research topics could be:

Association of properties such as strength, elongation, fatigue resistance and toughness with microstructure, composition, casting and thermomechanical treatments;

Research on alloy behavior for optimization of mechanical properties, corrosion behavior and formability; research on high modulus aluminum alloys;

Influence of processing variables, impurities and composition on fatigue and fracture.

C. Plastics:

Plastics are playing an increasingly important role in the automotive industry because of their relatively light weight, the ability to synthesize new polymers with unusual properties and advances in polymer processing techniques.

1. Preparation and Synthesis.—A most important aspect of polymer science as it relates to plastics for use in automotive vehicles is the need and ability to prepare and synthesize new polymers with tailored properties for specific applications. Some research opportunities are:

Synthesis of new polymers of high thermal stability and mechanical strength;

Development of improved moisture and environmentally resistant systems;

Fundamental studies of chemistry of polymerization, crosslinking mechanisms, curing agents and catalysts, development of faster processing thermoplastics and thermosets;

Fundamental studies of polymer blends; synergistic property development.

2. Structure and Properties.—Unlike metals or ceramics, polymers are made up of entangled long chain molecules, arranged in amorphous, semi-crystalline or crystalline arrays. This presents some unusual challenges in understanding properties in terms of structure. Some research topics are:

Research on high modulus (non-reinforced) polymer systems;

Molecular models for macroscopic physical properties of amorphous and semi-crystalline polymers;

Molecular structure/physical property relationships for cross-linked polymers and gels;

Molecular dynamics and macroscopic rheological properties of crosslinked polymer solutions and dispersions;

Phase separation and morphology in block and graft copolymers;

Diffusion of orangic compounds, water ions through polymer films;

Rheological studies of polymer melts;

Rheological studies near the glass transition temperature or below the melting point;

Composition and morphology of polymer and interface surfaces.

3. Durability/Reliability Characteristics.—Degradation of polymers, like metals and ceramics, reduces the useful lifetime and requires often costly repairs and on replacement of "failed" parts. Some research topics, specific to polymer reliability/durability are:

Photo-degradation of amorphous crosslinked polymer;

Thermal-oxidative degradation of elastomer;

Bio-degradation of polymeric materials and additive;

Failure modes in polymer;

Studies of fatigue, fracture, crazing and large deformation under load;

Surface hardening and transparent coatings to increase wear and fracture resistance (for glass replacement).

D. Structural composites/fiber reinforced polymers:

As a result of aerospace and military needs the science and engineering of fiber reinforced composites has progressed greatly in the last decade or so. High performance composites are often expensive and relatively difficult to manufacture in large quantities. A need exists to better understand many aspects of processing and behavior of light weight lower cost fiber reinforced polymers for automotive structured applications.

1. Preparation and Fabrication.—Processing and fabrication of fiber reinforced composites into useful components requires a knowledge of rheology, polymer chemistry and physics and engineering design. Studies could include:

Fundamentals of crosslinking and solidification;

Role of the fiber matrix interface and development of optimum fiber finishes;

Effect of environment on performs and processing conditions;

Role of fiber wetting by the matrix or resulting composite performance;

Identification of optimum polymer matrix rheological behavior in fabrication;

Fundamental behavior of polymer matrix and composite in sheet molding compounding, molding, pultrusion, thermoplastic stamping and fabrication processes, in general;

Rheology of fiber reinforced composites during processing;

Kinetics of thermoset molding reactions;

Heat transfer relationships in polymeric composite processing;

Adhesive bonding and joining of composites;

Molding of composite fabrication processes.

2. Structure and Properties.—Structure-property studies of fiber reinforced polymers requires a knowledge of the nature of the matrix, the fiber, and the fiber/matrix interface, and how these behave during processing and subsequently influence properties. Some areas for research are:

Models for macroscopic properties of polymer composites;

Interactive roles of the fiber, the matrix and the interface on composite properties;

Effect of environment on maintenance of fiber-matrix adhesion;

Property characterization for single fiber type and hybrid reinforced composites; effects of fiber orientation;

Design of composite structures consistent with optimal properties;

Failure modes and mechanisms in composites;

Crack initiation and propagation in reinforced composites;

Impact resistance of composite laminated structures;

Energy absorption and strain-rate behavior in composites (toughness);

Fiber length effects; continuous versus short fiber reinforcement;

Investigation of glassy metals and organic derived materials as reinforcement materials;

Hydrothermal degradation of organic matrix composites;

Fatigue characterization of composites;

Non-destructive evaluation techniques; e.g. ultrasonics, acoustic emissions.

3. Metal/Polymer Laminates.—Hybrid composites such as metal/polymer laminates offer some unusual research challenges, including:

Characterization of properties of metal/polymer laminates as function of nature of metal skin (e.g. steel, aluminum) and polymer core;

Formability behavior of metal/polymer laminates;

Fracture and fatigue characterization;

Research on design parameters as function of component functional criteria; analysis of weight saving potential.

E. Cast magnesium alloys:

Magnesium alloys are some of the lightest structural materials available to the automotive industry. They suffer from poor corrosion resistance, high flammability and generally poorer mechanical properties than steel or aluminum alloys. More widespread use of magnesium alloys in vehicles could result in great weight savings. Some fertile areas for research are:

Studies on die cast magnesium alloys: influence of processing variables upon properties;

Higher modulus and higher strength cast magnesium alloys;

Studies on segregation and refining of recycled scrap;

Mechanisms of corrosion prevention—particularly by metallic corrosion design.

F. Materials characterization:

In all of the above research on light weight materials and structures there is a need to characterize the materials at all stages of processing and to use the most advanced instrumentation to understand how microstructure and composition influence properties and performance.

Research is needed on techniques for microstructural characterization of advanced automotive materials including surface analytic techniques (ESCA, SIMS, AES, photoemission spectroscopy, etc.), electron transmission (STEM) for characterization of fine scale features, pattern recognition and imaging techniques for structure delineation; advanced x-ray, neutron scattering, acoustic microscopy and others.

Flaw detection (non-destructive evaluation) techniques are especially important. There are research opportunities in ultrasonics, acoustic emission, vibration analysis, radiography and x-ray topography, optical scanning and holography, etc. with particular emphasis on joints and processing flaws in composite materials.

II. Ceramics:

The objective is to:

Understand the processing techniques, microstructure and desired properties needed to effectively use ceramics as high temperature structural materials.

Development of an efficient automotive gas turbine requires ceramic materials for hot flow path components capable of operating at temperatures of 1300°C or higher. High strength, creep resistance, thermal shock resistance, fracture toughness, reproducibility and reliability, component manufacturability, ceramic design methodologies and nondestructive evaluation techniques are some of the issues underlying such developments. Similar issues prevail for the potential utilization of ceramics for advanced Sterling engines. The goal of research in this area is to advance the state of ceramic materials and processing technology to support the design and development of ceramic heat engines.

1. Ceramic Preparation, Processing and Fabrication.—The methods used to prepare ceramic powders, the processing to dense bodies and the fabrication to useful shapes all affect the structures compositions, and properties of structural ceramics. Considerable research is needed if these brittle materials are to achieve prominence as high temperature structural components for use in automotive applications. Studies could include:

New methods of preparation of silicon nitride, silicon carbide, Sialon, low expansion ceramics and related ceramic materials for high temperature use;

Techniques for powder characterization;

Sintering and densification processes to achieve theoretical density in oxide and silicon ceramics; effects of particle size and shape, pressure, environment, additives;

Mechanism, and kinetics of silicon nitriding processes;

Modeling of green ceramic forming processes, including rheology and flow during injection molding and particulate movement and coagulation during slip casting;

Mechanisms and kinetics of reaction sintering processes;

Hot pressing and hot isostatic pressing (H P) processes;

Chemical vapor deposition for bulk ceramics and coatings;

Methods of material removal for silicon ceramics with minimum surface damage;

Ceramic to metal and ceramic to ceramic bonding methods and mechanisms.

2. Structure-Property Characterization.—The brittleness of ceramics is related to their electronic bonding, crystal structure, defect structure, microstructure and chemical composition. Crystalline aggregates often contain flaws remaining from processing and fabrication; these affect the low and high temperature mechanical behavior. Some research needs include studies of:

Effects of structure, composition, flaws, environment on high temperature mechanical properties;

Phase relationships and stability in silicon ceramics;

Phase transformation strengthening in ceramics;

Effects of processing and composition history on reproducibility of strength properties and Weibull modulus;

Influence of microstructure and processing history on thermal shock resistance;

Structure and characterization of grain boundaries—influence of impurities and glassy phases on boundary cohesion and strength;

Oxidation studies of non-oxide ceramics.

3. Durability and Reliability.—For structural ceramics to operate at high temperatures in severe environments, it is necessary to understand how stress, temperature, and environment influence component lifetimes. Studies could include:

Effects of environment and oxidation on performance and life;

Fracture mechanics and failure modes and mechanisms;

Modeling of life prediction methodologies and probabilistic failure analyses;

Non-destructive evaluation techniques for flaw detection;

Mechanisms of slow crack growth and techniques for crack measurement under load;

Probabilistic design methodologies for ceramic components;

Development of reliable high temperature properties base.

III. Advanced materials processing and fabrication methods.

The objective is to:

Understand how present and new processing and fabrication methods can be brought to bear to economically manufacture improved components for automotive applications.

Significant advances are achievable in the processing of materials and in the fabrication of components and devices of extending and applying the science base underlying processing technologies. Improvements in productivity, cost reduction, shape and dimensional control and property reliability, for example, could accrue from major research programs aimed at increasing the science base for materials processing and the opportunities for technological innovations in fabrication and manufacturing methods. Of particular importance to the automotive industry is the need of high volume-high rate processing methods adaptable to advanced light weight materials. The identification of areas of materials processing for which an improved science base could have a potential impact on processing technologies and/or processing economics and exploration of the technical issues relevant to processing technologies for the control of shape, structure and properties of materials are objectives of this section.

A. Metal forming:

Metal deformation processing is a major processing method for forming, shaping and stamping of sheet metal components for automobiles. The extent to which forming operations are economical and result in components with desirable properties greatly influences automotive manufacturing. Research opportunities include studies of:

Fundamentals of formability and macro plastic deformation behavior of materials;

Analytical and computer modeling of formability processes;

Forming limit diagrams and related laboratory methods to predict formability;

Computer aided design of forming dies;

Closed loop, feedback forming processes;

Materials, die and design factors affecting springback;

Material aspects of friction and wear—effects of lubrication.

B. Fabrication of polymers and fiber reinforced composites:

Plastics and fiber reinforced polymer composites have unique processing requirements, not generally encountered in metal processing. Studies could include:

Research and characterization of new processing methods, such as thermoplastic stamping, elastic reservoir molding, etc;

Development of thermoplastic and thermoset preforms and optimization of high speed processing conditions;

Shortening cycle times in plastic and composite moldings;

Control of surface imperfections and finish;

Adaptation of molding design and process parameters to complex shapes;

Reaction injection molding (RIM/RRIM) of filled plastics and composites;

Adhesive bonding;

New concepts of equipment and techniques for high speed manufacture.

C. Casting and solidification:

Casting is a major method of producing metallic shaped parts. Improved process controls and understanding of how process variables affect properties of cast parts is needed. Some research areas for study include:

Fundamental understanding of heat and mass flow;

Analytical and computer modeling of casting processes;

Mold-liquid metal interactions;

Methods for producing thin wall castings (e.g. cast iron);

Characterization of new casting processes—rheo casting, thixo casting, evaporative mold casting, low pressure and semi-permanent mold casting;

Improved innoculation techniques for nodular iron;

Sand and core technology research;

Process and composition control for optimization of cast microstructure and properties;

Research on casting of light weight materials (Al, Mg);

Research on cast irons for thinner wall, lighter weight/higher strength components;

Structure/property/processing relationships to optimize properties of castings.

D. Near net shape fabrication:

In order to avoid expensive machining, grinding and milling operations it is highly desirable to produce parts to near net shape. There is a major resurgence of powder metallurgy including such forming operations as cold/warm forging and cold/warm pressing of powder preforms to help accomplish near net shape primary fabrication. Some research opportunities include studies of:

Rapid solidifaction rate powder processing;

Sintering and densification studies to achieve theoretical density;

Hot isostatic processing;

Sintering of metastable metal powders;

Optimization of process and compositional factors;

Fundamentals of die wear in forging and pressing of powder preforms;

Interactions of materials with process and die design.

E. Welding and joining:

One of the most important manufacturing operations in automotive production involves welding and joining of components from a variety of material classes. Research studies could include:

Process modeling of bonding processes and development of predictive relationships;

Welding studies of light weight materials—particularly spot welding;

Effects of surface microstructure and topology on heat transfer rates and mechanisms;

Adhesive bonding;

NDE methods for evaluation of metal/metal, metal/plastic, metal/ceramic bonds;

Techniques for ceramic-ceramic bonding, particularly adaptable to complex shapes;

Fundamentals of electron beam welding and laser welding for high strength-light weight materials;

Hydrocynamics of metal flow during fusion welding;

Fluxless brazing of aluminum alloys for radiators and heat exchanger applications;

Rapid, inexpensive non-destructive evaluation techniques for on line use—particularly for spot welds.

F. Metal (materials) removal processes:

Materials removal by machining, grinding, milling, etc. constitutes expensive operations. Minimization of materials removal costs requires better understanding of tool wear and failure, the interaction of tool with the workpiece, and tool lifetime improvement. Research could include:

Fundamentals of cutting and chip making processes;

Tool wear and tribological phenomena at high cutting speeds;

Interfacial interactions between work piece and tool;

Role of lubricants and tribological factors;

Mechanisms of tool wear and failure;

Improved machine tool systems for high cutting speeds;

Extension of data base on cast irons, steels and aluminum alloys at high cutting speeds;

Development of laboratory tests to quantitatively simulate production experience;

Surface coatings (ion implantation, vapor deposition, etc.) on tool bits for tool life improvement;

New approaches to metal cutting and material removal;

New tool materials.

G. Heat treatment:

Tailoring of alloy microstructures by heat treating results in automotive components whose properties are optimized for specific applications. Research involving heat treatment could include:

Energy conservation in heat treating processes;

Controlled hardenability of shallow hardening steels;

New surface hardening processes;

Rates of reaction of gas species important in heat treating atmospheres;

Influence of trace elements of hardenability;

Heat transfer mechanisms during quenching.

IV. Materials supply and resource availability:

The objective is to:

Design processes and methodologies to more effectively recover scrap automotive materials and to substitute for strategic materials or materials with a health hazard.

A. Materials recycling of scrap automotive material:

Because of scarce mineral resources and the large requirements often required to produce materials from ores, there is a need to more effectively and economically recycle scrap automotive material. Studies could include:

Methods of segregation and purification of homogeneous plastics from mixed residues;

Effects of microalloy constituents in high strength steel scrap on steel making operations;

Release of graphite fibers to environment during recycling processing of fiber reinforced composites—effect of hybridization, matrix variables and fiber forms upon release behavior.

B. Substitution for "critical" materials:

The need to substitute for strategic materials with high import dependence, such as chromium, cobalt and the noble metals, and for materials, such as asbestos, which may pose a health hazard is an important new research goal for the country. Some automotive-related research could include:

Non-noble metal catalysts to replace platinum;

Non- or low-chromium bearing stainless steels and oxidation resistant alloys;

Low cobalt magnet materials;

Replacements for tungsten carbide-cobalt cutting tools;

Asbestos replacement for brake systems;

Design of alloys compatible with recycling processes;

Methods of segregation and recovery of aluminum alloys from automotive scrap;

Improved remelting procedures and mechanisms of impurity control for efficient recycling;

Characterization of wrought alloys processed from automotive aluminum scrap.

V. Information transfer systems:

The objective is to:

Investigate new sensor principles and display concepts.

A. Sensor materials:

Development of new sensor devices and sensor materials, with sustained reproducible properties, should be supported by basic research efforts in the following areas:

Detection of gases, catalytic phenomena, high temperature electronic and ionic properties, interface phenomena, non-equilibrium processes, magnetism and magnetic devices, piezoelectric materials, optical sensors and fiber optics, physics of small devices, shape-memory alloys.

Materials for lean-burn sensors (high air/fuel ratio);

Factors affecting durability and performance of A/F sensors—structure/property stability in operating environments; improved zirconia and titania based sensors;

Ion permeable or other ion sensitive sensors for oxygen, carbon monoxide, oxides of nitrogen and hydrocarbon.

B. Sensor display materials:

A general need exists for new approaches to information display in the automobiles. Several display technologies are being explored (liquid crystal, light emitting diodes (LED's), electrochromics, thin film electroluminescent, and plasma (gas discharge) panels).

Research opportunities exist for new approaches to optical modulation (passive display) and for high brightness active display systems. Research on thin film systems for new approaches to light generation is indicated.

Liquid crystal displays are presently the *cheapest* and consume the least power (1 uw/cm²) when compared with other technologies (LED's, electrochromics, electroluminescent, etc.) now under development. They can be made to exhibit color, they can be multiplexed, they exhibit speeds greater than 10 ms, they presently exhibit life-times greater than 5 years and they are commercially available. They suffer, from the standpoint of vehicle use, from the fact that presently available liquid crystal materials can only be used in the range of 0 to 70° C.

Liquid crystals are generally supercooled liquids. Violent agitation will result in crystallization. The nucleation mechanism is unknown. Thus, long range research programs should be supported for the study of the physics and chemistry of liquid crystals (mechanism of ordering, nature of intermolecular forces and the role of molecular structure in determining molecular order). This information should help in the eventual discovery and/or development of new materials. In addition, fundamental phase transition studies and the physics and chemistry of solid surface-liquid crystal interfaces need to be explored, since for the latter it is this interaction that plays an important role in the alignment of the molecules at the inside surfaces of the glass enclosures.

The synthesis of new longer-lasting dye materials is a worthy material research problem.

VI. Electrical, optical and magnetic materials:

The objective is to:

Investigate (for vehicle conditions) optical fiber failure mechanisms, new magnetic materials, microelectronic materials, and packaging materials for semiconductors.

A. Optical fibers and detectors:

The technology of silicate glass optical fibers for telecommunications at 0.90 um, 1.3 um and 1.5 um is developed. Fracture strengths are high and adequate (800,000 psi), adequate polymer coatings exists, and cabling technology has been developed.

Perhaps one of the first large uses of bundles of optical fibers for motor vehicle use will be for illumination purposes. The optical loss requirements for the short lengths required for this use are lower and thus the fibers will be cheaper. As microcomputer feedback systems become increasingly used for many contemplated vehicle information and control functions, metal conductors will have to be replaced by optical fibers to avoid interference by pickup of electromagnetic noise. Therefore, optical wavelengths multiplex loops for several wavelengths must be used.

The basic problems that must be examined are static and cyclic fatigue behavior (failure mechanisms) of glass fibers in complex chemical environments (atmosphere and exhaust fumes), and similar studies of polymer coatings and bundling materials.

Light emitting diodes and detectors (for 0.9 um) are available for telecommunication purposes, and they are in final development for 1.3 um and 1.5 um. As with other semiconductor devices for the vehicle environment, packaging reliability, and failure mechanism studies must be performed.

B. Semiconductor device reliability:

Increasing use of electronic control systems and microprocessor based engine control focuses attention on semiconductor device reliability. Research on new packaging materials which will withstand the chemical, thermal and mechanical stress environment of an automobile will be needed. Solutions to failure mechanisms such as electromigration and interdiffusion, solved for devices not used in harsh environments, must be explored.

C. Electronmagnetic interference phenomena:

Effects of material variables on radio frequency generation or attenuation;

Influence of electrode materials on electrical breakdown in spark gaps;

Effects of electromagnetic phenomena upon performance of IC devices and microprocessors.

D. Magnetic materials/devices:

Higher magnetic energy density materials can lead to redesigned motors and devices for weight and energy savings. More research is needed for more economical versions and improved fabrication of these new materials and for replacement of critical materials (e.g. rare earth cobalt magnets). Research on composition, processing and microstructure control for improved ceramic magnets is another area. New cheaper Fe-Cr-Co alloys are now coming on the same scene and they will be replacing Alnicos; fundamental studies of transformation behavior and microstructure control are required.

E. Microscience; surfaces, interfaces, synthetic microstructures and new materials:

Microelectronics and the drive toward packing more circuit functions on a single crystal chip have brought into sharp focus in recent years the importance of and need for basic understanding of surfaces and interfaces and of the interaction of a programmed array of materials of submicron dimensions on a multilayered substrate. In addition, there is the need to develop new conductor materials in submicron dimensions to interconnect the active and passive circuit elements. The "two-dimensional" nature of the materials results in properties unlike their bulk counterparts and little is known about the behavior of these materials.

The discovery of the quantum nature of properties and device potentialities of synthetic microstructures of semiconductors (e.g., composition modulated alloys with features <100A) have recently stimulated the synthesis of submicron structures of alloys to enhance physical and mechanical properties. Basic research opportunities in the synthesis of modulated structures of metals, dielectrics, and metal-dielectric materials exist.

CONTROL SYSTEMS

INTRODUCTION

Long-term goal:

Increase the knowledge base in systems and control engineering necessary to define overall automotive system configurations.

The basic research needed to accelerate the development of advanced vehicle control systems is outlined. A systems engineering approach must be utilized to achieve a vehicle whose components support and complement each other to the fullest possible extent. Basic research advances in systems engineering are needed to provide the underpinning necessary to integrate advanced control systems into vehicle design.

The area of control systems in this report includes the broad interpretation implied by systems science and engineering. This includes suitable control-oriented models for the processes, actuators, and sensors, optimization, multivariable control system synthesis, human-machine interfaces, failure monitoring, and system integration issues.

Advances in control system design methodology, coupled with low cost digital electronics, offer the potential for realizing new concepts (e.g., multi-fuel engines, hybrid propulsion) for improvement in fuel economy, emissions, and vehicle performance.

The overall research must simultaneously address the following system issues:

Specifications.

Objectives.

Constraints.

Effects of Dynamics.

Control System Configuration.

It is evident from the above that relevant advanced research in control engineering for future automotive vehicles must involve a blending of physical and hardware issues, in terms of their mathematical modeling, systematic optimization and digital control synthesis to define superior control logic structures for improved performance. Because automotive systems are characterized by a high degree of dynamic uncertainty, the development of reliable control systems structures is a challenging task, since the automotive control problem is very complex due to the inherent multi-user, multi-mission and changing environmental conditions.

Fundamental advances are needed in the following research topics:

Experimental and analytical models of the diverse physical phenomena in the entire automotive system;

Sensing and actuation principles;

Model validation methodology and experimental verification of concepts;

System integration methodologies;

Multivariable control systems methodologies.

In view of the system engineering approach needed, strong interaction is essential between the research on Control Systems and the other research areas (such as Combustion, Electrochemistry, Materials Science, Surface Science and Catalysis) especially in the fields of sensing and models of physical phenomena.

I. Automotive modeling research:

The objectives of control systems modeling research are to:

Identify key physical phenomena and define analytical dynamic models for control system needs.

Validate models through systematic experimental approaches, and investigate methods of aggregation of submodels.

The automobile as we know it today is a well-developed and mature technological product. It is comprised of a great many subsystems such as powerplant, driveline, chassis, suspension, etc. which have been carefully integrated over the past decades to produce a relatively comfortable, durable, reliable and low cost form of transportation. Nevertheless, many elements relating to the detailed dynamic interactions of the various subsystems, and the overall system design

and control issues that derive from these considerations, remain unexplored.

In conducting a program of basic research in the systems engineering and control area, one must recognize the unique aspects and requirements imposed on the automotive system. These include:

The wide range of operating conditions and human operators to which the vehicle is exposed.

The largely transient (non steady-state) mode of operation which characterizes the typical use of the automotive system;

Complex behavior of some of the major components, e.g., internal combustion engine, tires, vehicle structure, etc.;

The multivariable and interactive nature of the major subsystems in determining overall system performance; for example, the selection of powerplant, driveline, chassis and tires in determining drive quality and ride;

The variable time scales over which many of the important phenomena occur; see for example, Table I for the wide range of time constants associated with today's vehicle system;

The natural and unavoidable variability associated with components, subsystems and systems produced in quantities of millions of units per year.

Fundamental underpinning of a program designed to address basic issues in system engineering methodology and control technology, as applied to the automobile, requires a thorough and quantitative understanding of the behavior or the elements of the system. The time constants involved in automotive processes cover an extremely wide range as illustrated in the following table.

TABLE I.—*Approximate time constants associated with vehicle and internal combustion engine dynamic processes*

Processes:	Time constant, seconds
Combustion process chemical kinetics	$<10^{-8}$
Ignition system and flame propagation processes	10^{-3} to 10^{-2}
Fuel and air induction processes	10^{-2} to 10^{-1}
Engine, drivetrain, and vehicle inertia responses	10^{-1} to 10^{2}
Engine thermal capacitance response	10^{3}
Changes in altitude, ambient temperature and humidity	10^{3}
Degradation in engine characteristics	10^{7}
Vehicle lifetime	10^{8}

The fundamental purpose of modeling is the development of a basic understanding of the process being modeled. It is only through the development of such understanding that system design can be approached in a manner consistent with goal specifications. However, in the development of models it is necessary to recognize that detailed first-principle models may not be directly useful to the control (systems) engineer. In this regard models for very detailed system simulation are generally nonlinear in nature and have other complexities. Simpler linearized models are used for understanding dynamic interactions in a narrow range of conditions. Both types of models have their uses.

In particular, models of sufficient complexity to stimulate system response are key to evaluating system performance and controller performance under a variety of conditions. Such models also provide a starting point for the development of the more aggregated models that may be used for the mathematical analysis of control systems. By far the greatest research need is in the area of suitable dynamic models for system simulation and control system design.

A. Basic research modeling:

The challenge in control system modeling is to derive as simple a model (structure and parameters) as possible that captures the physical behavior important to system studies. The term "aggregation," used in the following discussion, refers to the systematic process of reducing more complex models to simpler representations while maximizing the capability of the simplified models to reflect the physical phenomena of importance to the (control) system study.

1. Physical phenomena modeling.—An important aspect of a successful modeling approach is the need to describe a subsystem in the overall context of control of the entire automobile. It is vital that the interaction between the various subsystems be understood and characterized. It is crucial that this work be closely allied with that of other research areas, e.g., combustion, catalysis, etc. The challenge is to identify key physical phenomena and define the structure of the models adequate for control systems needs. Fundamental experimental work should be a significant factor in this effort.

2. Aggregation of detailed mechanistic models.—Models of a very detailed nature exist for certain state-of-the-art components, e.g., NO_x combustion kinetics. Additional models of this type will be forthcoming from other research areas of the technical framework. Systematic aggregation procedures that will generate simple models adequate for control studies which exploit the information contained in the more detailed models should be investigated and developed.

B. Total systems methodology.

Modeling approachs which include the interaction of the driveline system with such other vehicular subsystems as suspensions, steering, braking, and body structure should be investigated. Control of the interactions between these systems will have importance as vehicles become smaller and lighter.

1. Validation.—It is absolutely essential that improved methods of vehicle validation be developed. A key issue would be the systematic use of experimental approaches to validate both model structure and parameter values.

2. Widely separated time constant models.—The range of the time constants in the automotive control problems covers 11 orders of magnitude (see Table I). Very difficult questions are involved in understanding the appropriate array of models required to handle the spread of the dynamics inherent in this system.

3. Aggregation vs. accuracy.—In general simplification of models results in less accuracy. The challenge is to develop systematic procedures for controlling the trade-off between complexity and accuracy and for defining model structures consistent with a specified level of accuracy.

4. Combined physical principle and empirical models.—Since the availability of completely analytical first principle models is minimal, there is a need to develop systematic procedures to integrate analytical and empirical approaches. The desired result would be a modeling procedure involving a minimum amount of experimental data consistent with a desired level of modeling accuracy.

II. Sensors and actuators:

The Objectives are to:

Investigate basic physical phenomena leading toward indentification of sensor principles.

Investigate the dynamical stochastic characteristics of new sensors for automatic controls and laboratory use.

Develop basic principles for understanding the interdependency between actuators and physical requirements of systems.

At present the control designer is attempting to accomplish goals where the index of success involves knowledge of states (variables) that can not be sensed on-board the vehicle in real time at reasonable cost, e.g., emissions, driveability, etc. it is easy to appreciate that control goals could be accomplished more easily if the relevant quantities could be directly measured, thus serving as inputs to the controller.

A. Sensors:

To this end a systematic investigation is required of basic physical phenomena leading toward identifying sensor principles likely to lead to low cost and reliable on-board sensors.

Simulation models would be fruitful tools for identifying where sensor are likely to have significant payoff. For any given sensor, detailed models of their dynamic and stochastic characteristics are crucial not only for the development of the necessary control logic, but in addition for the development of "smart sensors," failure detection, and a failure management system.

In addition to research related to low cost and reliable sensors to be used on-board the automotive vehicle, there is need for sensors to be used for laboratory and test-cell measurements. These laboratory sensors are necessary to validate dynamic models. Much of our current ignorance about the significant dynamics of emissions are due to the fact that laboratory sensors are not available to measure key emission variables in rapid time scales.

B. Actuators:

There is very little basic research that deals with actuators per se. Rather, the basic research directions deal with the identification of actuation variables for improved performance. In other words, basic research is needed to identify the degrees of freedom (or control variables) that should be dynamically coordinated by the control system for improved performance of the entire power train. Thus, there is a strong interaction between the selection of these actuation signals, the powertrain dynamics, (including exhaust cleaning devices), the performance, and the control system design. Such interactions will have to be modeled.

Once the actuation signals have been established, then the physical actuator characteristics that are necessary for implementation should be assessed. There are important trade-offs that have to be carried out relating the cost, reliability, dynamic characteristics (bandwidth), and degree of nonlinearity (including dead-zone and hysteresis effects) of such physical actuators upon the overall improvement in performance. Such trade-offs are always part of careful systems engineering research; improvements in methodology for relating actuation and actuator models to hardware complexity and to system performance are needed.

III. Vehicle integration and control system design methodology:

The objectives are to:

Investigate methodologies for integration of subsystems models.

Advance the theory of reliable control system design.

Advance fundamental knowledge of man-machine interfaces needed to improve automotive control systems.

Improve static optimization methodologies by understanding the effects of random variables.

Improve numerical computation techniques enhancing dynamic systems modeling.

The automobile is a complex system which combines powerplant, exhaust treatment, driveline, chassis, and even structure into an integrated whole. As the level of sophistication in vehicle technology increases, the interactions among the individually complex subsystems need to be understood. A cornerstone of the control and vehicle systems area is a methodology for integration of these subsystems in a coordinated design process that will result in smaller lighter weight vehicles that achieve the performance and personal comfort levels of contemporary vehicles.

The complexity of the integrated vehicle implies that numerous variables will be sensed, manipulated by on-board computers, and used to control an array of hardware components distributed throughout the powerplant, exhaust treatment devices, and other subsystems. This type of structure is referred to as a multi-variable control system. Another class of system discussed in this section is adaptive control systems, which have the potential for maintaining performance under varying operating and environmental conditions, fuel properties, component aging, etc. over the longer periods of time indicated in Table 1.

The use of digital electronics (microprocessors) opens up new avenues for the implementation of superior control system designs; on the other hand, it poses theoretical and design challenges requiring basic research related to the most appropriate way of incorporating computational constraints (in terms of speed, memory, accuracy) into the very formulation of the digital control problem. The introduction of more actuation and sensing devices in the control system for performance improvement, raises fundamental issues in the control system reliability, since many more components (actuators and sensors) which can fail are introduced. Thus, the traditional notions of control system design have to be extended so as to include real time failure monitoring, failure isolation, and reorganization of the control system following a (hard or soft) failure for adequate performance and for a minimal "limp home" capability. This calls for significant advances in the theory of reliable control system design.

A. Human-machine control interfaces:

The human acceptance of the automobile, in terms of driveability, ride quality, etc. and safety of the driver/vehicle system are important in establishing specifications for automotive control syatems. Such considerations are particularly important as engine/transmission controllers evolve towards direct acceleration/velocity command systems (in contrast to the present indirect control through air flow manipulation). Driveability is a key issue for hybrid propulsion systems, where multiple power sources and/or storage devices must be coordinated to yield an acceptable response.

Human-machine systems considerations are also important to design for ride quality, handling safety, and driver information systems. As weight and structure are reduced, active control technology may be used to minimize adverse vibration and directional stability problems. The potential also exists for display of information to the drivers regarding means for minimizing their fuel usage, vehicle diagnostics, and traffic control information oriented towards smoothing the driving cycle.

In summary, basic research is needed where human-machine system interfaces are important, and the constraints on system performance are imposed by limits on human performance and tolerance. Research will provide foundations for establishing requirements for automotive control systems.

B. Static optimization research:

The methodology of using nonliner programming techniques to optimize in a steady-state sense the operation of an engine using experimental data (engine maps) is well established. Typical performance criteria include minimization of consumed fuel subject to emission and other physical constraints. Once models are established and it is experimentally verified that they include random effects. research in the area of optimization of such stochastic static models is needed. The reason is that the research to date has ignored random variations inherent in static optimization. Such random variations arise from normal variations among engines and environmental variables (e.g., temperature, altitude, fuel quality, etc.). A random (or stochastic) approach to the steady state of optimization problem should yield more insight into the limitations of static optimization, and provide a better interface with control designs based upon dynamic optimization.

C. Dynamic optimization research:

Recent experimental research has shown that decreased fuel consumption over the EPA cycle can be achieved when the control sytsem is designed to accommodate system transients. Encouraging results point to the long-range potential for control systems optimized to include important system dynamics.

The dynamic system optimization should be based on the control-oriented, nonlinear models described previously, and well-established methodologies for computing the required control functions. Due to the significant computational requirements associated with such procedures, refinements in numerical methods and systematic techniques for translating open-loop controls into feed-back structures will be useful.

Extensions of results for the optimal control system should include analysis of the sensitivity of the optimal solution and trade-offs among performance, fuel economy, and emissions.

D. Control synthesis research:

Research in this area should lead toward the development of techniques for synthesizing control systems that retain the performance of those resulting from the optimization process, yet may be implemented realistically in diverse user population situation. Relevant issues include:

The impact of additional sensors and actuators upon complexity and performance; system simplification through linearization and decomposition through time scale separation and weak coupling effects; robust and adaptive control designs which are insensitive to disturbances and system parameter changes; and fail-safe system reliability.

All of these investigations will have a significant impact upon the architecture of the microprocessor based automotive digital control system.

TRIBOLOGY

INTRODUCTION

Long-term goals include:

Understanding the surface science of tribological materials

Improved knowledge of the physics and chemistry of solid and liquid lubricants and the chemistry of their interactions with environmental constituents.

Tribology is an interdisciplinary research field in which the adhesion, friction, wear and lubrication of solid surfaces in solid state contact are studied. The practical areas involving tribology include such things as mechanical bearings, gears, seals and all situations where two solid surfaces are in contact and some relative motion is imposed between those surfaces. Adhesion and lubrication of solid surfaces is very important in certain instances where motion is not necessarily involved, as in electrical contacts.

Tribology, as a science, emerged since the end of the Second World War. Prior to that time some basic research was conducted in research laboratories in this country and abroad, principally in England. However, most of the activity in the field was empirical in nature, components were tested and evaluated.

The automobile contains literally thousands of systems which involve tribology. Major systems are contained in the engine, transmission, differential, drive mechanism, wheel assemblies, and steering mechanisms. Significant energy is expended in the friction between tires and road.

Many of the materials that are currently used have not been specifically formulated or manufactured for use in tribological systems. That is, the components have not been specifically designed to have low adhesion, friction and wear properties. Basic research should result in an improved base of scientific knowledge for use in the design and selection of tribological system for automotive applications.

There are a host of fundamental concepts which must be addressed in the field of tribology. The chemical aspects involved in tribology have been studied by researchers in the lubrication manufacturing and production laboratories, such as oil companies and oil additive manufacturing organizations and by the automobile manufacturers. Very little research has been conducted in the area of surface physics.

I. Tribological materials:

The objective is to:

Improve understanding of the tribological characteristics and behavior of materials, including new alloys, polymers, ceramics and composites.

New materials are needed for friction and wear applications in future automotive components. These materials include metals, alloys, polymers, ceramics and composites as well as carbon structures. Improved understanding of the effect of various parameters on the tribological behavior of lighter weight metals is needed to enhance incorporation of these materials in automotive tribological systems. It is known, for example, that aluminum is a very poor friction material and care must be taken to insure minimum adhesion, friction and wear. Fundamental research on adhesion, friction and wear properties of the lightweight alloys including aluminum and magnesium is warranted.

A. Tribological alloys concepts:

From a fundamental point of view, alloys could be "tailor made" to suit the particular tribological application and thereby achieve a minimum of friction and wear. Very little effort has been put forth to formulate specific alloys and to develop the chemistry and physics of alloys specifically for tribological needs. Frequently tribological alloys have been selected because they may have the proper mechanical properties. Studies could include:

The chemistry of alloys in terms of tribological characteristics;

Correlation of fundamental chemical properties of materials with variation in tribological properties.

B. Tribological polymers:

Polymers are attractive, because of weight considerations for use in automotive applications as well as for those areas which involve tribological behavior. Many polymers have good lubricating properties when in contact with other materials such as metals and alloys. Polymers such as polytetrafluoroethylene and the polymides which have inherently desirable friction and wear properties have been studied. These polymers are relatively expensive. High density polyethylene has shown promise in artificial prosthesis and may be useful in many tribological automotive applications. Further research is needed to characterize the friction and wear properties of polyethylene. The influence of polymer properties on adhesion, friction and wear for polymer-polymer and polymer material contents should be investigated for polysthylene and other polymers. The fundamental role of additives in polymer adhesion, friction and wear behavior needs additional study.

Polymers may also be used as solid lubricants when films are deposited on surfaces. The chemistry of adhesion of polymers to metals for tribological applications is poorly understood. Adhesion of the polymer to the

substrate surface is very important. Plasma deposition techniques such as sputter deposition show considerable promise for future use in automotive areas. Studies could include:

The role of molecular characteristics of polymers affecting tribological properties;

Tribological characterizations of the role of additives;

Molecular level mechanisms (physics and chemistry) of adhesion, and deposition of polymeric films on substitutes.

C. Composite tribological systems:

Composite materials could be utilized in the formulation of materials for piston ring construction, for gears, seals, and in brake and clutch materials. While there is a considerable amount of materials science composite research for structural members of systems, very little research has been conducted to characterize tribological composites.

There is a need for formulation of self-lubricating composites. In addition, there is a need for development of composite materials having inherently high friction properties but low wear characteristics for brakes and clutches. Carbon materials are of interest because the friction and wear characteristics may be modified and controlled by incorporating additives. Studies could include:

Characterization of composites incorporating lubricants;

Investigation of tribological properties of carbon composites.

D. Tribological ceramics:

Ceramics could be used for those tribological applications where corrosion is a problem and for applications where temperatures are in excess of limits of effective lubrication. Areas where lubricant additive or environmental factors contribute to corrosive mechanical wear of metals and alloys are also of potential interest. Studies could include:

Investigation of tribological properties of ceramics at high temperatures;

Characterization of the tribological properties of ceramics.

II. Lubricants:

The objective is to:

Improve methods for characterizing the physical and chemical properties of liquid and solid film lubricants.

Lubricants are the key to many extremely important tribological systems and a wide variety of lubricants are required for various automotive applications. These vary from mineral or synthetic oils for transmission, to solid coatings and lubricants such as graphite. Virtually all lubricants contain additives, synthetic or natural, to enhance the tribological characteristics for that particular use. Fundamental knowledge of lubricants has increased yet much remains to be learned about the influence of molecular structure on tribological behavior. The effect of chemical interrelationships between additives and tribological properties are not well understood.

A. Liquid lubricants:

Synthetic lubricants are used in aircraft application because of their superior performance at high temperatures where greater thermodynamic efficiency may be achieved. Such lubricants maintain their viscosity over a broader temperature range than mineral oil lubricants. Because of these properties automotive uses are being developed. Detailed basic studies on the influence of molecular structure of synthetic lubricants are needed. Further progress can be made if molecular characteristics can be correlated with desirable lubricating properties. The characteristics of synthetic organic molecules which are desirable for lubrication of automotive components is not known.

The basic chemical and physical interactions of simple mineral oils with solid surfaces such as the iron and aluminum are poorly understood. Surface physics and chemistry studies would reveal the interactions of both natural and synthetic lubricants with metals in both the oxide free and oxidized state.

Both synthetic and natural lubricants are compounded from base lubricating fluids, anti-oxidants, anti-wear agents, anti-foam agents, etc. Unfortunately, the role of the interaction of a single additive with the solid surface is not well known. The interaction of combinations of additives with the base lubricant and with themselves is poorly understood. Each of the individual classes of materials used as additives to a lubricating oil should be studied in a manner independent of the actions of the others. For example, the influence of a anti-wear additive in a simple mineral oil should be explored and the surface characterization conducted. Once surface characterization with analytical surface tools has been accomplished and the system understood are defined, then the interactions of additional members of that particular class of additives could be determined. Once one particular additive system is very thoroughly understood the effect of a second additive and in the same fashion a third additive can be explored.

This knowledge combined with the knowledge of the effect of molecular structure would provide guidance for formulation of superior lubricant. Mechanical activity frequently produces enough energy in the interfacial region to breakdown the molecular.

A polymeric structure develops from the radicals generated due to the mechanical activity at the solid surfaces. The result is referred to as a friction polymer. These polymers have been observed in lubrication systems involving conventional mineral oils.

Such materials in synthetic oils need to be identified and studied. It is well known that certain metal surfaces catalyze the formation of friction polymers and others do not. Surface metallic coatings or inclusion of small concentrations of alloy constituents which either retard or promote friction polymer formation might be utilized as a substitute for conventionally used additives.

Friction polymers, however, must be generated in a controlled manner, and the chemistry of interaction at the solid surface and the role of the metal in catalyzing the polymer of film formation must be understood.

B. Solid film lubricants:

There are a number of ways in which solids are used as lubricants, for example, graphite is used for odometer cables. Graphite and molybdenum disulfide are incorporated into composites, and graphite can also be utilized in the presence of a grease. Solid lubricants can also be thin films applied to surfaces. The science of solid film lubricants is presently well developed. However, when these materials are incorporated into composite structures the mechanisms of lubrication are not known and further research is needed.

Solid film lubricants have been applied to surfaces as thin coatings to provide lubricating films in the dry state. One of the difficulties encountered has been in gaining good adhesion of solid film lubricants to the solid surface. A considerable amount of research has been conducted in recent years using ion plating and sputtering for depositing thin film lubricants of soft metals, inorganic compounds such as molybdenum disulfide and organic compounds such as polytetrafluoroethylene. Extremely thin films can be utilized, and a 2,000 angstrom thick film of sputter deposited polytetrafluoroethylene is a very effective lubricant. Research is warranted to better understand adhesion mechanism of polymer films to solid surfaces, and to characterize these films. Surface analytical tools are available to pursue this area of research.

Solid film lubricating material in oils necessitates colloidal size particles and the use of detergents and dispersants to achieving good suspensions. Colloidal chemistry will assist in understanding methods for maintaining suspensions as well as the complex interactions between the colloidal material and the solid surface being lubricated.

III. Tribological environment:

The objective is to:

Understand the effect of chemical interactions of environmental constituents upon tribological behavior of systems.

The environment in which tribological systems operate is of considerable importance. The operating environment may contain water vapor, oxygen, combustion products, trace of components of atmospheric pollutants and road contaminants which have potential for chemical modification of the system. For example, the presence of oxygen and water vapor dissolved oils plays a very marked role in the behavior of additives on solid surfaces. Thus, the chemical composition of the environment can change the surface chemistry and the friction and wear characteristics. It is important to understand the role of environmental constituents and their interaction with solid surface and the lubricant system.

Temperature is an important parameter of tribological systems. Temperature affects fundamental properties such as viscosity and the rate of lubricant chemical reactions. Temperature effects may exist because of the location of the tribological system; localized high pressures may also result in high transient temperatures in thin films of lubricants. The effect of temperature. Further investigation is needed to clarify the impact of temperature upon wear and friction. Studies could include:

The influence of chemical and physical environment on the interactions of basic lubricant structures in both mineral and synthetic lubricants;

Role of temperature in the surface chemistry of lubricated surfaces and determination of the significance of temperature on the friction and wear of solid surfaces as a friction of particular lubrication systems.

Acoustics and Vibrations

Introduction

Long-term goals:

Understanding of the sources of noise and vibration and their transmission paths to the human receiver.

Improved analytical methods for predicting the sources and transmission of noise and vibration in the initial stages of vehicle design.

Improved measurement procedures to identify and quantify the sources of noise and vibration and the transmission paths.

Better understanding of polymeric, composite, and lightweight materials and structures as these relate to noise and vibration control.

Automobiles, vans and other lightweight road vehicles, although not as noisy as trucks and buses, are by virtue of their greater number significant contributors to the noise environment. Noise and vibration can cause driver fatigue. For many users a quiet, vibrationless vehicle is synonymous with high quality. Sound and vibration can signal users that the vehicle is operating properly, or that something is amiss. Very subtle characteristics of sound, which are poorly understood, can spell the difference between a feeling of well-being or a sense of concern to drivers. Improved techniques for diagnosing sound and vibration problems have great potentials for new developments in automotive manufacture, design and repair.

Although fundamental knowledge of vehicular noise and vibration exists, the present noise control technology is very limited and difficult to apply.

Almost every aspect of vehicle design has implications for acoustics and vibrations. For example, differences in materials, in sizes and

shapes of components, in types of tires and suspensions, and in engine modifications all affect the acoustics and vibrations.

Some aspects of vibration analysis such as used for structural fatigue predictions have been applied during the conceptual stage of design. However, design engineers do not know how to account for or control structure-borne and air-borne noise in the early stages of design.

Exceptions do exist in rare instances, but noise is handled with incomplete theories and questionable procedures. Thus, after prototypes are built, much effort is spent on reduction of noise and vibration with empirical methods; then changes in basic design are often impossible to make. Good predictive techniques and guidelines are needed prior to model construction. Better techniques for measurement and data analysis are also needed to reduce the great effort spent on noise and vibration problems in the prototype stage of design.

Increased acoustic knowledge is essential if significant reductions in the levels of noise and vibration are to be achieved, especially with the advent of lighter weight vehicles and lighter weight, higher speed engines. The research must take cognisance of the vehicle as a system. System concepts are important so that solutions to noise and vibration problems are compatible with safety, fuel economy, reliability, performance, durability, emission control, and user preferences.

Solution of noise and vibration problems for vehicles requires an understanding of the sources of acoustical and vibrational energy, the paths by which this energy is transmitted and the response of the human receiver.

I. Mechanical noise and vibration:

The objectives are to:

Improve measurement techniques and methods for analyses of acoustical paths in structures.

Improve prediction of acoustical properties of structures and cavities for use in dynamic modeling of noise generation of structural components, tires and passenger compartments.

The amount of energy required to produce vibrations is directly related to the mass of a body. As cars become lighter, new materials will be used, and new concepts for the frame and other structural components will be developed. The higher strength steels will have different acoustical transmission properties, members such as doors will have lower mass, and acoustic disturbances. New methods for assessing the acoustical and vibrational properties of structures in the design stage can result from application of fundamental knowledge. Basic research on noise and vibrations in structures and on the transmission of noise in complex structures will lead toward new acoustical design concepts.

A. Cavity noise and vibration:

Nearly all the sound and vibration to which occupants of a vehicle are exposed, and part of the exterior sound, are significantly influenced by the acoustical characteristics of the structure. The structure acts as a transmission path for vibrational energy from the engine, suspension system, and other sources. Aerodynamic noise is transmitted through the structure to the interior of the vehicle. Acoustical cavities determined by the shape of the structure that are of importance are the passenger compartment, engine compartment, and the partial cavity between the vehicle and the road. The theory of conventional room acoustics is inadequate to predict the acoustical behavior of these cavities.

Transmission of sound through the structure between the cavities needs to be better understood. Appropriate theory and analytical techniques do not exist for the coupled panel-cavity modes, their relation to exterior airflow, and the effect of window openings.

Vehicle designers need tools that will allow them to predict structural transmission and radiation of sound and vibration with greater accuracy. The energy transmission is important over a very wide range of frequencies. Different analyses and theories will probably be required for the low, mid, and high frequency portions. Studies could include:

Methods of analysis and measurement techniques for determining acoustical and vibration paths in vehicle structures;

Develop better models for junctions between structures;

Measurement methods and models for the acoustical properties of cavities at low, mid, and high frequencies.

B. Power transmission induced noise:

Noise and vibration of the transmission and driveline system is a major area of interest in automotive design due because of decreased size and weight. Changing designs require increased understanding of the sources of noise and vibration in the driveline components and of the coupling with the engine and each other. Certain phenomena associated with transmissions, for example, cannot be excited nor studied without the mechanical coupling of the transmission to the engine.

Improved measurement methods, modeling, predictive capability, and a better understanding of the mechanism of noise and vibration generation should be goals of research. Studies could include:

Investigation and modeling the sources of noise and vibration within and between the drivetrain components and of the transfer of vibrational energy to the vehicle.

II. Combustion process noise:

The objective is to:

Improve analytical capability for predicting noise sources and emissions from engines.

One of the predominant sources of noise and vibration in automobiles is the engine. This is especially true for diesel engines. Most urgently needed are guidelines which will enable engine designers to deal with noise early in the design process when new designs are being evaluated and compared. In engine design projects, noise is generally dealt with empirically in the prototype stage. Usually this is too late to make major modifications to the engine structure.

A. Combustion induced noise:

Engine noises and vibrations can come from combustion, mechanical impacts, and unbalance. They are transmitted to the vehicle's interior by air-borne and structure-borne paths and are radiated as acoustical energy to the exterior. Although some progress has been made recently in the development of improved methods of measurement and analysis of engine noise, considerable effort is needed to establish experimental methods and analyses for sources, transmission paths, and radiation properties.

With the need to improve fuel efficiency and to reduce the weight and size of engines, there will be an increase in the number of new engine projects, including continuing efforts with alternative engines (electric, stirling, turbine, etc.). Studies could include methods of vibration and acoustic measurements and analysis of data for:

Transfer functions (force and moment functions, use of Fourier, coherence, correlation techniques) for inferring source and path characteristics;

Acoustic and surface intensity methods related to acoustic radiation;

Relations of structural characteristics to the vibratory input and damping at junctures between components.

Studies could also include theoretical models for:

Combustion sources (pressure-time characteristics and relation to operating and acoustic parameters);

Mechanical impacts (e.g., piston slap, valve trains, injectors);

Transmission of vibrational energy to the vehicle, to radiating surfaces of the engine itself, and to and from the power train;

Damping and radiation efficiencies;

Prediction of engine noise using the various models above.

B. Combustion stream flow noise:

The exhaust is potentially the loudest noise source of a vehicle. Intake of air to the fuel system produces less noise but it is a significant source. Because pressure drops in the intake and exhaust system decrease engine efficiency, the acoustic design must be integrated with the overall design of the carburetion, emission control and exhaust system. Acoustic models should be integrated with other physical models of the system. Study of the exhaust system is complex because of the temperature and pressure gradients encountered. Studies could include:

Determination of the nonlinear relationships between large and amplitude unsteady pressure fluctuations, thermal gradients, and the performance of the exhaust and intake systems;

Modeling of surface noise radiation from intake and exhaust systems.

III. Flow induced noise.

The objective is to:

Predict noise emission characteristics of mechanically induced flows and velocity.

Develop new concepts for predicting low and moderate aerodynamic flow noise

Fluids in turbulent motion under some conditions produce vibrations in the audible range. This noise is associated with the operation of engine cooling fans, heating and air conditioning blowers, and to a lesser extent with the flow of air around a moving vehicle as well as with the interactions of air with tires and pavements. Superior acoustical performance should result from improved analytical understanding of the noise producing mechanisms and integration of this knowledge into the design of automative systems.

A. Mechanically induced flow noise:

Various kinds of fans and pumps are capable of generating noise in vehicles. These include the engine cooling fan, the alternator fan, the blower used in the heating and air-conditioning (H–A/C) system, the air-conditioning compressor, the air-injection pump for adding air to the exhaust, the water pump, the power-steering pump, and the engine turbocharger. The engine cooling fan can be a major source both of exterior and interior noise. The H–A/C blower can be a major source of interior noise, sometimes to the extent that there is speech interference. Noise from the cooling fan can be cut off through the use of a thermally-controlled clutch; however, intermittent operation of a noisy fan can still be a source of annoyance. Studies could include:

Investigation of the noise mechanisms associated with different types of fans, pumps, and turbochargers as they are used in a vehicle with attention to their interrelationships with performance.

Development of acoustical models which can be used in the design process with design objectives of minimum noise with optimum performance.

B. Aerodynamic flow noise:

The noise induced by airflow can be experienced both inside and outside the vehicle. The "wind rush" noise heard inside a vehicle moving at higher speeds is probably the best known effect. Even with the windows closed, this noise can sometimes be loud enough to cause speech interference.

Sound inside a vehicle from airflow outside the vehicle results from the pressure fluctuations in the separated turbulent flow regions.

Exterior noise due to airflow has recently been recognized to be significant; and at higher speeds, the noise level with some

vehicles has been shown to be comparable to that of tire noise.

Also, annoying tonal effects can sometimes result from the frontal grille work, mirrors, luggage racks, and other objects protruding into the flow. These tones can be heard both inside and outside the vehicle but are generally most annoying to the vehicle occupants.

Disturbing noise effects can sometimes result from airflow past an open window or sunroof, particularly when a resonant coupling occurs with the cavity formed by the vehicle interior. Another area of interest is the relation of the noise due to airflow around a vehicle to aerodynamic drag. Studies could include:

Investigation of the mechanisms of noise generated by airflow around the vehicle as a function of parameters describing the vehicle shape and configuration.

C. Tire noise and vibration:

Tires are one of the most important sources of environmental noise and automotive interior noise and vibration; yet they are perhaps one of the least understood. Although many noise and vibration models have been proposed, there has been little experimental validation of them.

There does not yet exist a body of empirically validated technology which may be used to relate tire and pavement system parameters to noise and vibration levels.

The development of this technology requires an understanding of the excitation, dynamic response and acoustical radiation of tires and the transmission of vibrations through the suspension system and vehicle structure.

This area of research must be concerned with the quantitative interrelationships between objectives for noise and vibration and for many other performance requirements for the tire and suspension systems; e.g., directional control of the vehicle, durability, safety, wear, reduced rolling resistance, and avoidance temperatures at high speeds.

The evaluation of the role of the tire in noise and vibration phenomena must account for dynamic and complex effects, such as the excitation forces at the tire pavement interface.

These effects involve road surface irregularities and textures and the vibration of the tread elements tread band, and sidewalls in the vicinity of the contact area.

The complex behavior of the tire in relationship to the road and to the vehicle itself as characterized by the dynamic impedances at the axle needs to be better understood and modeled.

Standard road surfaces for tests cannot be specified until the interactions in the contact area are better understood.

Identification techniques need to be applied to understand and quantify tire noise mechanism and their relation to tire design, road surfaces and operating conditions. Better structural mechanics models of tires and suspension systems are needed to relate tire design parameters to the noises and vibrations of the tire and vehicle system.

Such models are expected to be of use also for treating the other tire design criteria already mentioned. Complex linear and nonlinear models are believed necessary for representing the many complicated phenomena. The use of damping in these models is expected to be difficult, but important.

The mechanics of polymeric compounds and reinforcing materials as applied to tires and isolators in vehicles is not understood adequately to allow accurate predictions of performance models. Studies could include:

Analysis of tire noise mechanisms and their relations to tire design parameters, road parameters, and vehicle operating conditions;

Characterization of road irregularities that pertain to vehicle noise and vibration;

Analysis and quantification of how the textures and macro profiles of pavements react with tires to generate noise and vibration;

Investigation of analytical dynamic tire models describing the dynamic interaction between the vehicle and the pavement, predicting noise and vibration as a function of tire design, road parameters, and vehicle operating conditions;

Prediction schemes for dynamic modules, non-linear properties, and directional damping of engineering structures and composites as a function of polymeric compounds, reinforcing materials, geometric parameters, strain and temperature.

IV. Noise and vibration control materials:

Noise and vibration control materials are utilized at many locations in vehicles, engine mounts, suspension bushings, shock absorbers, tires, hood blankets, head liners, floor mats, panel dampers. Many pertinent details of the mechanical properties of the materials now in use are not known, and thus the accurate quantitative design of system and structures using these materials is not feasible. The stick-slip phenomenon which manifests itself in brakes, tires, and body squeaks could probably be controlled through a better understanding of how material properties affect it. Research into the possibilities for controlling vibrations through special combinations of newly developed or discovered material properties needs to be explored.

The dynamic behavior of polymeric materials is often nonlinear and time-dependent and related to temperature, shape, frequency, state of stress, and rate of loading. These factors are presently evaluated empirical and require full-scale vehicle testing. Theory and analytical techniques need to be improved to utilize these material properties in such a way that their performance in a vehicle can be predicted. Studies could include:

Transmissibility of vibrations as a function of dynamic properties of elastmers and other materials;

Effects of acceleration and frequency of vibration, damping characteristics, and material strength properties in noise and vibration control materials;

Analytical techniques and theories to predict acoustical and vibration behavior of polymeric materials;

Identification of those material characteristics likely to lead to successful use and synthesis of new materials having the characteristics;

Degradation of polymeric materials through fatigue failure or environmental agents.

Surface Science and Catalysis

Introduction

Long-term goal:

Understand at a molecular level the location and dynamics of events involved in heterogeneous catalysis and interfacial phenomena encountered in automotive engineering.

Surfaces, or more exactly interfaces, are the seat of communication between any two phases. Hence, surface chemistry pervades the automotive industry since adhesion, lubrication, fuel modification, exhaust control, corrosion, and plating all involve surfaces. Several of these applications involve both surface science and heterogeneous catalysis. In the future, surface science and catalysis will play an increasing role in automotive research and development.

Seven broad research areas have been identified. Each area has short term and long term components but all must be supported to meet technological needs since they stimulate invention and innovation.

Naturally, the perceived needs of the automotive industry should be considered in a significant fraction of the work that is supported, but there is no ready formula for determining the appropriate fraction.

As an example, consider the work initiated in several laboratories, where beams of molecules in selected energy states are directed toward catalytic surfaces and the products are caught at various angles of scattering and energy analyzed.

This type of state to state chemistry has been practiced for some time in the gas phase. Its extension to surface catalyzed reactions may appear esoteric at first but applications are possible. Thus the kind of energy required for activated chemical processes may well depend on the chemical nature of the surface.

More importantly, the partitioning of the heat of reaction between the solid and the products may determine the stability of the catalytic material. Indeed, the phenomenon of catalytic etching in which commercial platinum catalysts are slowly destroyed when ammonia is oxidized over their surface has been known for over sixty years but is still uncontrolled because of lack of understanding.

Surface science, i.e. surface physics and chemistry, provides the central methodology of heterogeneous catalysis and the rallying point where engineers, chemists, and physicists can meet to solve problems in the eight areas noted above.

But heterogeneous catalysis is a coherent discipline that also relies on inorganic chemistry, colloid chemistry, organic chemistry, coordination chemistry, theoretical chemistry, solid state chemistry and physics, material sciences and chemical reaction engineering—including mass transfer, heat transfer, and fluid mechanics.

Moreover, the concerted application of many spectroscopic and analytical instruments is crucial to the study of catalytic reactions and the complex interfaces at which they occur.

Most of these tools have appeared within the past fifteen years and more are just being developed. Others are still needed but remain to be invented. These new opportunities have created new problems.

First, the new techniques are not only expensive but advances in understanding catalytic reactions and the structure and chemistry of catalysts result not from the application of any one experimental technique but rather from the concerted application of the techniques best suited to the system under study.

I. Mechanisms of catalytic reactions:

The objective is to:

Achieve a fundamental understanding of the chemical and physical factors that determine catalyst selectivity and activity.

Reaction mechanisms lie at the heart of catalysis and the opportunity now exists to understand them at the molecular level and control them in practice. What is needed are studies at very low and normal pressures, on very large and very small crystals, with the tools of surface science and the methods of chemical reaction engineering.

The search for alternate catalytic materials as well as the optimization of catalyst performance depends on our understanding of the mechanism of catalytic reactions such as the oxidation of carbon monoxide and unburned hydrocarbons to CO_2 and H_2O, the reduction of nitric oxide to nitrogen, the steam reforming of hydocarbons, and the water-gas shift reaction. Other important reactions are those occurring at the surface of electrocatalysts in fuel cells and batteries.

A. Catalyst activity and selection:

In general, the overall reaction depends upon both the catalyst and the reaction conditions. For example, in the reduction of NO to N_2 over 3-way catalysts under net lean conditions, NO and O_2 compete for the reducing agent which is in short supply. Alternatively, the product distribution may reflect the competition of reacting gases for surface sites. Thus, wide differences in selectivity for the NO–CO–O_2 system have been observed even over closely related catalysists such as the noble metals.

The intrinsic catalyst properties that determine product distributions in this system are unknown. Basic research is needed to identify the factors that determine catalyst activity and selectivity for reactions of interest. Mechanistic and kinetic studies of reactions in networks made of reactions in parallel and in series, are needed for providing input to mathematical models of catalytic devices. Basic understanding of the controlling factors in a catalytic reaction will also steer the search for new catalysts.

B. Experimental techniques:

Although heterogeneous catalysis is now a coherent body of scientific knowledge, it is fair to say that we are just now beginning to understand some of the details of the dynamics of catalytic reactions, for example, CO oxidation or NO reduction. It is, therefore, important to study these reactions on big single crystals at very low pressures and on the very small crystals of commercial supported catalysts, ultimately with auto exhaust gases. With presently available techniques involving high pressure reactors interfaced to ultrahigh vacuum chambers, it is now possible for a single investigator to bridge partially the well known gap between high and low pressure studies.

Perhaps even more important are recent developments in infrared and Raman spectroscopy which allow measurements of surface species on large single crystals to be made while heterogeneous reactions are occurring at high pressures. The possibilities here for measurements under controlled practical working conditions are very exciting. This is also the case for the characterization *in situ* of very small crystals found on supported catalysts, by means of absorption of X-rays (EXAFS) available from powerful new sources such as synchrotron radiation or other instruments now being developed. For the structural determination of reaction intermediates during reaction conditions, infrared spectroscopy will continue to play a crucial role.

For a few of the simpler reactions, the relations between surface coverage, adsorption rate, partial pressures, total pressure, temperature, metal particle size, product formation rate and desorption rate should be established for a broad range of the process variables. Techniques to be used range from velocity selected molecular beam scattering, low energy electron diffraction, and the many forms of electron spectroscopy to controlled atmosphere electron microscopy, and election spin resonance.

This list is not complete but is intended simply to indicate the broad range of techniques which one must bring to bear on these many-variable problems. Such detailed work would provide a systematic set of benchmark experiments of greater permanent value to the surface science/catalysis community and of immediate use in the automotive industry.

It is important to stress the very basic character of this particular research. A great deal is already known about the overall features of, for example, the carbon monoxide oxidation reaction. What is now needed are molecular level descriptions of these processes for a very broad range of experimental conditions. Present experimental methods will be taxed to their limits to provide the requirement data. Excellent progress can be made because the tools are available. And with new tools, discovery awaits the prepared scientist.

C. Chemical reaction engineering:

In addition to these molecular level studies, studies in reaction mechanism and engineering are equally needed. The use of isotopes as tracers and in kinetic investigations will continue to provide incisive mechanistic details. Quality kinetic data on reaction networks are essential priod to careful modeling which finally combines the chemistry with heat and mass transfer. Stability of reactions in the case of multiple regimes of operation and stability of catalytic materials in the case of poisoning and of thermal or mechanical degradation, should be studied in new types of reactors operating at the stationary state or in transient fashion e.g. as in temperature programmed reactions.

D. Combustion and post combustion catalysis:

Many of the problems of gasoline engines carry over to Diesel engines. However, important differences do exist. Among them are the visibility of carbonaceous particulates emitted at lower exhaust temperatures. With these come new demands on the catalytic exhaust systems. In particular, the soot must be collected and burned or prevented from being formed altogether. Here, as in the case of gasoline engines, either new catalytic materials are needed or radically new solutions must be found, for example, by an additive to the exhaust stream to control emission.

II. Conceptual design of catalysts:

The objectives are to:

Understand surface electronic and atomic structure in order to predict surface properties and synthesize catalysts with defined specifications.

Understand the relationship between catalytic activity and catalyst promotors and poisons and to correlate at the atomic level the effects of catalyst sintering or crystal growth with catalytic activity.

Fundamental investigations of surface physics, surface chemistry, catalysts and chemical reactor engineering are needed to achieve modification of existing catalysts by promotion, poisoning and sintering.

One of the most important, difficult and neglected areas in surface science and catalysis has to do with catalyst modification either by design or by accident as the result of aging under use. Included in this subarea are poisoning, promotion and sintering. Examples are the poisoning of non noble metal catalysts by sulfur and phosphorus from fuel or oil combustion, the promotion of certain catalysts with alkali and alkaline earth metals and the control of active metal disperson with lanthanide metal oxides.

A. Surface chemical physics methods:

The physics and chemistry underlying these multifaceted phenomena are largely unknown, and understanding at the molecular level is inadequate to explain the facts. Much of this research will rely on the many types of electron and ion spectroscopies, each of which needs to be carefully quantified, for data against which various theories can be tested. Preliminary data on the effect of carbon, oxygen, or sulfur overlayers on reactivity of metallic single crystals are most encouraging.

B. Surface chemistry:

In addition to these surface chemical physical studies, many painstaking surface chemistry studies are needed. These include chemisorption and reaction experiments on single crystal metals whose properties are altered by controlled oxidation, sulfiding and promotion. An essential companion to this work is the investigation of reaction kinetics at high pressures with supported materials and with well-characterized single crystals. From these measurements a detailed picture should emerge of the relationship between activity, specificity, selectivity and structure, as controlled by the addition of promotors and poisons.

C. Surface characterization:

A somewhat separate category of catalyst modification involves sintering and/or crystal growth. Morphology, surface mobility, reactivity and structure should be correlated, all at the atomic level. Electron microscopy and field ion microscopy will be very helpful, as they have been in the recent past, in throwing light on these phenomena with atomic scale resolution. High temperature chemistry can provide additional concepts and data. Other aspects of catalyst modification by loss of specific surface area depend upon the thermodynamics and thermochemistry of interfaces and is discussed below.

III. Catalytic materials research:

The objective is to:

Systematically investigate new concepts for less expensive automotive catalysts.

The present reliance on precious metals catalysts should be alleviated by the introduction of less expensive new materials. Research involving alloys, mixed metals, and mixed metal oxides on a variety of supports called for in order to find suitable substitutes for the precious metals, particularly platinum (Pt), palladium (Pd), and ruthenium (Rh), used in automotive catalysts. Catalytic chemists as well as surface and materials scientists should be heavily involved. Detailed reconsideration of metals or alloys deemed inadequate following earlier work is in order because advances in surface characterization now permits us to decide whether present or absent surface impurities, or the wrong surface structure might have been responsible for the reported inadequacy. A good example is the recent discovery that tungsten is as active as nickel in the methanation of carbon monoxide although earlier studies had assigned it a much lower activity. A second example is the discovery of the platinum-rhenium reforming catalyst which becomes superior to the conventional platinum catalyst only after treatment with sulfur impurities. Another area, ripe for exploration, involves alloy and compound catalysts. Some new clues may be gained from the emerging metallic cluster organometallic literature.

Research on novel catalyst preparation techniques should be pursued that interprets the chemical and physical events that occur during each stage of catalyst preparation.

Combinations of precious metals and precious metals with base metals constitute an important area of research. New combinations between noble and base metal oxides deserve further attention. A variety of supports should be investigated at both the molecular and macroscopic levels. It cannot be stressed enough that a catalytic material which appears attractive at the laboratory scale, may be marginal at the bench scale and fail altogether in field tests.

One way to alleviate pressures on world supplies of precious metals, particularly Pt and Pd, is to recover and recycle materials. New practical methods to regenerate catalysts should be developed.

IV. Thermodynamics and thermochemistry of interfaces:

The objective is to:

Increase fundamental interfacial thermodynamic and binding energy data of relevance to catalysis.

Catalytically relevant, interfacial thermodynamic and binding energy data for metals, metal compounds, and absorbed species exist for only a few systems. Since numerical values of these are necessary in any quantitative calculation of process energetics and stability, measurements are essential and should be determined.

A. Thermodynamics of interfaces:

An important consideration in hetrogeneous catalysis is interface thermodynamics—the measurement of surface free energies and species binding energies. While the macroscopic underpinnings of bulk and surface thermodynamics have been worked out, thermochemical data vital to the development of our ability to predict materials properties,

are woefully lacking. As examples, surface energies of the noble metals and noble metal oxides are largely unknown. The surface energy of gamma aluminum oxide, a widely used support, is unavailable. The numerical values of interfacial thermodynamic properties are just as valuable as the atomic and molecular weights of the species present because they enter the calculation of the energetics of surface processes, including sintering and metal-support interactions. Measurements of surface energy of refractory metal oxides and noble metal oxides with small molecules containing carbon, nitrogen, oxygen and sulfur are important.

B. Thermochemistry:

For correlation and screening of catalytic materials, as well as the choice of probable reaction mechanisms, the thermochemistry of reaction intermediates, i.e. surface species, must be available either experimentally through calorimetry or adsorption equilibria, or through quantum-mechanical calculations. Experimental data are needed to check theoretical methods and to accelerate further the calculations through introduction of simplifications that have been sanctioned by experiment.

V. Catalyst-support interactions:

The objective is to:

Obtain the fundamental understanding of the interactions between the catalyst and support necessary for optimizing catalyst utilization, activity, selectivity and stability.

All precious metal exhaust catalysts are supported by dispersing them onto an oxide support (also called substrate.) Alumina is the conventional support. The question of how metal atoms interact with oxide supports is an old and important question because such interactions may alter the metal particle size, its structure and its electronic properties. If the alteration is sizeable, it can be used to optimize catalytic systems. Recent work has shown that important metal-substrate interactions occur when transition metals with variable oxidation states.

This interaction affects not only specific activity and selectivity but also thermal stability and sintering. With time and at high temperatures, dispersed metal particles tend to grow to larger particles which leave fewer and fewer transition metal atoms exposed at the surface. Consequently the catalytic activity per atom of metal in the catalyst tends to decline. There is also the question of how the metal in its oxidized form is also responsible for chemisorption of gas phase species and conversion of surface species. In some cases, it appears that both the reduced and the oxidized forms of the metal participate in the reaction.

A. Catalysts supports:

Automotive catayst now rely on alumina supports which have excellent intrinsic thermal stability and which, generally speaking, do not interact strongly with exhaust constituents. In spite of its durability alumina is not the perfect material. Modifications of it and development of entirely new materials should be pursued, with emphasis on light weight, high porosity and resistance to thermal shock.

The characterization and description of the metal-support interactions from the perspective of selectivity and activity of real catalysts at normal pressures is a clear-cut catalytic chemistry problem. On the other hand, characterization of model systems at very low pressures in terms of electronic structure and surface order is a surface science problem. Finally, development of new supports with high and stable specific areas is a problem that requires further definition.

Metal support interactions in real catalysts can be studied by chemical probes (chemisorption, catalytic activity) and physical probes (electron microscopy, x-ray photoelectron spectroscopy, x-ray absorption) in concerted studies of structure and reactivity. The experiments should involve detailed description of the catalyst preparation technique with regard to (a) characterization of all materials used with special emphasis on concentrations of minor constituents, and (b) the steps leading to the genesis of the catalyst (impregnation, calcination and reduction).

B. Surface science studies:

A second approach involves surface science studies of the structure of transition metals and metal oxides substrates when submonolayer to multilayer concentrations of the former are deposited on single crystals of the latter.

Low energy electron diffraction, ultraviolet photoelectron spectroscopy, x-ray photoelectron spectroscopy, high resolution energy loss spectroscopy and optical spectroscopy can be used to show how the separate components are altered when they are linked together, how this alteration changes the vibrational and electronic structure of intermediates formed upon chemisorption, and how ordered structures are formed when a metal vapor is deposited on a single crystal oxide.

A third class of experiments combines low and high pressure studies on model systems in reactor chambers coupled by a metal-sealed valve to an ultrahigh vacuum chamber or by a small, internal, rapidly-evacuable reactor cup in an ultrahigh vacuum chamber.

A fourth class of experiments is under development. It involves the preparation of small particles of a metal evaporated on a single crystal or polycrystalline suoport. The system can be studied by the low pressure methods of surface science and perhaps ultimately at high pressures by means of the coupled reactor apparatus described above.

VI. Sensor concepts:

The objective is to:

Gain fundamental understanding of sensor reactions to guide acquirement of new sensors.

Solid devices that respond quickly and reliably to gas composition are needed for the monitoring and feedback controlling of engine combustion. Research into how gas phase molecules interact with the surfaces of these devices is needed, to lengthen their durability and shorten their response time.

A promising route for improved engine efficiency and emission control involves changing the engine parameters such as fuel/air ratio and spark advance in responses to changes in the exhaust composition. What is needed is a very durable, rapidly responding sensor which detects concentration changes of various exhaust components such as carbon monoxide, nitrogen oxides and oxygen. The responses must be converted to electrical outputs and interfaced to a microprocessor. The microprocessor drives electromechanical devices which adjust the engine parameters. Such control is an integral part of three-way catalyst systems.

The sensors must be based on just the kind of data outlined in the previous sections since they respond through surface interactions with exhaust molecules through adsorption and/or reaction. In addition, with thin film detectors, surface science techniques can be used to study the interface between the thin film and its support in order to increase the life of these devices. From such investigations insights will arise to guide the development of discriminating, fast and variable sensors. Solid state chemistry and electrochemistry are branches of materials science which ought to help in the synthesis and selection of appropriate materials.

VII. Interfacial phenomena:

The objective is to:

Investigate new experimental methods for acquiring fundamental information concerning surface composition, structure, bonding and dynamics.

Surface analysis is critical to the understanding of interfacial phenomena in hetrogeneous catalysis, adhesion, corrosion, lubrication, and materials science problems related to automotive engineering. Surface analysis in turn depends on the continuing elaboration of new experimental approaches emerging from a variety of scientific disciplines and engineering.

Instruments are providing information at the atomic scale which provides the scientific answers to explain and control interfacial phenomena. As an example, field ion microscopy provides data on surface mobility of atoms that controls aging of automotive exhaust catalysts.

This broad research area depends on the emerging tools of surface science. Interfacial phenomena are encountered in a host of materials problems in today's automotive engineering. Thus, hydrogen storage materials load and unload fuel at their surfaces, new light metals in body and engine components corrode, materials age through surface segregation at grain boundaries, composite materials owe their strength to the chemistry of adhesion at bonding interfaces, catalytic combustion depends on the stability of refractory catalytic materials, and moving parts wear by friction at a solid-oil interface.

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This will provide an understanding of the molecular basis of catalysis, adhesion, lubrication, corrosion, and the development of new materials for automotive systems. Studies could include new experimental methods for examining all of the combination of solid-liquid-gas interactions encompassing mobility of atoms, high-pressure molecular and atomic interactions at interfaces, mechanisms and prevention of corrosion, the evolution of new lubricants, improved efficiency of combustion, and the role of particulate emissions in the environment.

Mr. McCLURE. I may say the American people are not fools. They make rational choices. They are intelligent. When energy was cheap, it was rational for them to buy things which consumed energy in prodigious quantities. As energy becomes shorter, they make a different judgment saying that now they will buy a smaller automobile.

Mr. TSONGAS. I will also say that the faith and rationality of the American public also comes to those who are in the elective process, who have been elected.

Mr. McCLURE. I think there was the frustration on the part of many that there was no incentive within the automobile industry to build that smaller automobile because the American public would not buy it. The American public would not buy it because energy was so much available. I remember back 12 years ago at the time we were debating the oil import quota program, when the Northeastern States wanted a flood of cheap foreign oil. If we had had that flood of cheap foreign oil, it would have been more apparent than the American people making their choice to opt for the high guzzling automobile because it did not cost much to use it.

Mr. TSONGAS. Mr. President, at this point I yield to the distinguished Senator from Michigan.

Mr. LEVIN. Mr. President, I rise in support of the substitute amendment offered by the distinguished Senator from

Massachusetts. I strongly urge my colleagues to oppose efforts to delete this $12 million from the DOT appropriation bill.

If the $12 million were eliminated for cooperative automotive research, it would be a major step backward in administration and congressional efforts to restore the economic well-being of the automobile industry. The cooperative automotive research program represents a cooperative effort among public and private sector funded jointly by these groups. It is based on principles developed by the industry and Federal officials. Over 100 scientists and engineers from industry, universities, and Federal laboratories throughout the Nation have been involved in preparing a detailed research agenda.

Efforts to solve the critical problems of the auto industry are both long and short term. The long-term solutions are no less important than the short. This cooperative venture is an important element in a program to insure the long-term technological health and international competitiveness of the U.S. automobile industry. It will help produce a new generation of scientists and engineers to meet the technical manpower needs of the industry. Competitive strength of the auto industry depends on its technological edge and we will undermine progress toward that goal if we eliminate this initial appropriation.

Deletion of these funds would disrupt the work of a year and a half of consultation and discussions between the administration, the automobile industry, scientists, and engineers across the Nation. In the area of research and development we must address the long-term health of the auto industry now. It would be irresponsible to turn our backs on efforts which will promote the long-term viability and competitiveness of the auto industry.

The absence of authorizing legislation should not obstruct the appropriation of initial funds for this cooperative research effort. Leaders of the automobile industry and Government have reached agreement on a set of guiding principles for a new, mutually supported program aimed by increasing the level of basic research in the sciences and engineering related to the automobile industry.

I urge my colleagues to reject the proposal which eliminates these funds and support the compromise substitute which requires the Secretary of Transportation to report on the collective efforts of the Federal Government in the area of automotive research and development.

Mr. TSONGAS. Mr. President, as I understand it I may modify my amendment. Is that correct?

The PRESIDING OFFICER (Mr. PRYOR). The Senator is correct.

UP AMENDMENT NO. 1602, AS MODIFIED

Mr. TSONGAS. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. The modification will be stated.

The assistant legislative clerk read as follows:

Modify the amendment as follows:

On page 25, strike lines 5 through 9 and substitute the following:

COOPERATIVE AUTOMOTIVE RESEARCH

For necessary expenses to discharge the functions of cooperative automotive research program for conducting basic automotive research, $10,000,000. *Provided*, That the amount of funds obligated during the period ending 6 months after the date of enactment of this section shall not exceed $6,000,000: *Provided further*, That no additional funds shall be expended thereafter, unless authorized by Congress. Provided further that it is also the intention of the Senate that an authorization bill with positive or negative recommendations be reported out by the appropriate committees of the Senate within said period.

Mr. TSONGAS. Mr. President, what the modification reflects is the workmanship of those who participated in the discussions in the last half hour. I shall try to state it, and if the Senator from New Mexico and the Senator from Arkansas would listen, they can correct me if I am wrong. What we do is change the second line of the amendment so that the cooperative automotive research program does not have capital letters so it is not a capitalized program in that sense. The $12 million remains. The 6-month period remains in effect as in the original amendment.

The two provisos that are added are: One, that it is the intent of Congress that no more funds be expended until a program of this nature is specifically authorized by Congress, which then gives the various committees the year in which to come up with that recommendation; provided, however, that the committees come before the Senate and the Congress with a bill, either positively or negatively, as to their recommendations, giving the direction of the program.

In other words, the committees could not simply sit on this for 2 years and kill the program by a process of omission.

Is that a fair statement?

Mr. RIEGLE. Will the Senator yield for a question?

Mr. TSONGAS. Yes.

Mr. RIEGLE. I just want to clarify the understanding with regard to the $12 million figure. What would happen, under the agreement, when we get out beyond 6 months and into the seventh or eighth month and the committees of jurisdiction have not come back to the Senate with a recommendation either for or against? I assume that the remainder of the $12 million can be obligated.

Mr. TSONGAS. Only if the Secretary has issued the report stated in the amendment.

Mr. BUMPERS. If I may inject myself and the Senator will yield, Mr. President, I think the Senator from Massachusetts misspoke himself. I think that part of the amendment that requires the Secretary to send his analysis down as to the efficacy of this program and so forth has been stricken from this amendment.

Mr. SCHMITT. If the Senator will yield further, I think it is important to recognize that having that remain in there will be redundant, because the administration has done their homework as they perceive it, they have made a recommendation to Congress. I think it is important that we encourage, repeat that recommendation at the earliest possible moment in the next Congress, and then also work in our various committees and with our various influences to see that there is a program of sequential referral to the three committees of jurisdiction so that the intent of the language offered now as a modification by the Senator from Massachusetts is, in fact, carried out. I think everybody that was involved in the discussions is committed to that process.

Let us reiterate here, and if anybody disagrees, let us hear about it. I have made that commitment, and I think everybody who was talking here has made the commitment to see that this actually happens and that there is an authorizing bill for the cooperative automotive research program, under whatever structure it may be finally designed, before the Congress.

Mr. TSONGAS. If I may restate the case, inasmuch as the language beginning with the word "unless" has been deleted, inasmuch as that was really an attempt to meet some of the concerns, the answer to the question would be: After the 6 months, the Secretary would have the authority to begin drawing down on the balance.

Mr. REIGLE. Mr. President, that nails that down. On the second point that Senator BUMPERS has raised, we are now striking the residual language about the report, because the Senator from New Mexico has suggested that it is now redundant. Does the Senator from Massachusetts also agree with that? As the clerk read the modification, it omits those references.

Mr. TSONGAS. The Senators from Arkansas and New Mexico are correct.

Mr. RIEGLE. The Senator from Massachusetts indicates that he has taken account of the comment of the Senator from Arkansas that this remaining language about the Secretary of Transportation submitting a comprehensive assessment has been dropped out of the amendment. It is his intention that the language be left out because that assessment is going to have to be done anyway in preparing legislation.

Mr. BUMPERS. Mr. President, I want, if I may, to make just a few remarks regarding this amendment and also state my position on this whole thing and how I got into it.

The Senator from New Mexico brought this up in the Committee on Appropriations the other day and pointed out to the committee that this $12 million appropriation for this cooperative automotive research program was in there and had been put in by the committee, that the President had not requested it, that the only hearings by any of the authorizing committees were held in the Commerce Committee, which did not report this out.

Mr. President, ever since I have been in the Senate, I have been on the Committee on Energy, and I know that we are spending a tremendous amount of money now on automobile research, both applied and basic. These figures may be subject to some misinterpretation, they may even be slightly erroneous but, based on the figures I have here, in 1979, the U.S. Government spent $35 million on basic research for automobiles. Some of it was spent by NASA, some by DOE,

some by the Department of Defense, and so on.

We have put tremendous sums of money into trying to develop the Stirling engine. We spent $112 million in applied research and development. Mr. President, that is at least $147 million in 1979 that the U.S. Government has put into automobile research and development and I doubt that the Japanese spent that much last year on their automobile industry as far as research is concerned. I know that the German Government owns 40 percent of Volkswagen; we are going to own that much or more of Chrysler before long—not because we want to.

Mr. President, I want to say that I have absolutely no objection to the concept here, and I do not think either of the Senators from Michigan or the Senator from Massachusetts or the Senator from Indiana should have any fear about an authorizing bill being on the floor within 6 months from October 1. If the White House is as excited about this program as they have indicated they are, since they found out I was involved in trying to strike it, they will not have any trouble getting an authorizing bill down here.

Mr. President, there is another point I want to make. This cooperative agreement apparently has been executed between the United States, through the Department of Transportation and the Secretary thereof, and Ford and Chrysler. All of us have been led to believe here, and I do not think there is any dispute about this, that the industry is going to put up 50 percent of the money for this program.

I do not believe that, right now, industry is committed to 50 percent of the program. I think that Ford and Chrysler have said they will put up their fair share—I do not know whether that is based on the number of automobiles sold or manufactured in a certain period of time or what—but General Motors is not a signatory to this agreement yet. I have been told they will enter into it and I hope they will.

My main objection to this is that nobody from the administration has made a case here. This committee bill says that this money is to be spent for basic research and the question, to a layman like me, is, what kind of basic research? If you look at the kind of research we are doing right now, here they are. This is basic research, in which we put $34,674,000 last year.

Mr. SCHMITT. Will the Senator yield at that point for a clarification?

Mr. BUMPERS. Yes.

Mr. SCHMITT. The listing of the table the Senator has is in the RECORD; I have placed it in the RECORD. It has the same items mentioned in the administration's bill as being the basis of their program.

Mr. BUMPERS. I thank the Senator. I shall not belabor that point, then. But the point I want to make and I want every Senator in this body and every Senator who happens to be listening on his squawk box back in his office to know that we are embarking on an $800 million program.

Everybody understands that this $12 million that we are appropriating, only $6 million of which can be spent until an authorizing bill comes through, that this is the camel's nose under the tent.

That may be the best money we ever spent. If it is, I will be the first to stand on the floor of the Senate and insist we appropriate the balance of it.

The $800 million which the administration says this program will ultimately cost, I do not know. I would like to ask the Senator from Massachusetts, if he knows, does that mean $400 million from the U.S. Government and $400 million from industry, or is that $800 million from the United States alone?

Mr. TSONGAS. That figure of $800 million is in some question. I do not think there has been any determination whatsoever made on that.

My understanding is that the programs that will be undertaken, that research will be cooperative by definition. So, theoretically, half the cost will be borne by the private sector.

But there is no definitive study that I know of that suggests that $800 million is a figure we can rely upon.

Clearly, given the language, if the argument for the research cannot be made next year, it stops.

Mr. BUMPERS. I appreciate the Senator saying that.

Mr. SCHMITT. If the Senator will yield again for clarification, in the administration bill, S. 2015, introduced for the administration by Mr. RANDOLPH, on page 8, line 22:

> There is authorized to be appropriated not to exceed $800 million to be derived from the Energy Security Trust Fund and for allocation by the President, to carry out cooperative basic automotive research to advance the state of knowledge underlying automotive technology.

That is the administration's proposal.

So, in due deference to the Senator from Massachusetts, the administration has made up its mind, at least this year, what that would require.

Mr. BUMPERS. Finally, Mr. President, I conclude by saying that I express my gratitude to the distinguished floor manager (Mr. BAYH), and the three strong supporters of this, Senators TSONGAS, RIEGLE, and LEVIN, for their efforts to compromise on the matter.

Sometimes this may not be the best way to legislate, but in this case I feel that the effort has been effective.

My objection is that nobody really knows what we are embarking on. We all know these things develop a language of their own once they start.

One reason I was reluctant to agree to this appropriation is that, once we spend $6 million, it is like Rasputin, it will be tough to kill.

So I serve notice on everybody that I think we have a good meeting of the minds about the intent of the amendment.

If this program holds the promise that those who support it hold out for it, I will be on the floor debating in favor of the authorization bill and the appropriation.

If it is not definitive, and if it looks as though it is a duplication of a large part of the basic or applied research we are doing now, I will be the first to scream like a pig under a gate to try to torpedo this program.

Mr. President, I yield the floor.

Mr. SCHMITT. Mr. President, I concur in the commitment the Senator from Arkansas has made.

I also say that I think in the ensuing weeks and months, we, the Congress, must be sure we understand just what industry's commitment to this is.

I say to the distinguished Senator from Illinois (Mr. STEVENSON), who is on the floor, that I am sure he recalls in the course of our hearings that industry's commitment was not nearly as clear and strong as has been implied and even may be written by them subsequently.

They have a very clear idea in their own minds what basic research is, and it is not sure that is the same idea the Government will have.

I think we have to make sure that is clarified.

Certainly, there is nothing in the proposed legislation, S. 2015, that defines industry's commitment. That is going to be a gentleman's agreement, more than anything, between industry and the administration, and we should not be too sure right now what that implies.

Mr. STEVENSON. Will the Senator yield?

Mr. SCHMITT. I yield to the Senator from Illinois.

Mr. STEVENSON. Did the administration, in the hearings on the program, indicate to the Congress the elements of this program beyond vaguely describing it as an automotive research program?

Mr. SCHMITT. The only definitive elements that were given, and, as I recall, definitive by the administration, were those listed on page 9 of the bill, previously referenced, and the same ones that were used to construct the table printed in the RECORD dealing with current basic research.

Mr. STEVENSON. And then having done that, did they not indicate that there was a great deal of synergism between different modes of transportation, and rather than just to automotive research, that the program ought to apply to all transportation?

Mr. SCHMITT. I recall that did tend to be part of the discussion.

One justification was that it would have a fallout into other modes of transportation.

Mr. STEVENSON. With respect to the industry, I share the Senator's impression. There was, at best, lukewarm support for this program.

Am I correct that there is no support from General Motors?

Mr. SCHMITT. As of this time, I do not think there is any available agreement with General Motors.

The Senator from Michigan may have more current information.

Mr. STEVENSON. Let me ask the Senator, the strong impression I have, based on some recent contacts with that corporation, is that it will not commit to

this program until it knows what it is, which raises a large question in my mind as to whether the Congress ought to commit to this program until it knows what it is, and whether the program is properly structured.

I have some more questions I would like to ask the distinguished Senator from New Mexico, but would be delighted if the Senator from Michigan can answer that question about the commitment of General Motors to this program.

Mr. RIEGLE. Let me try to respond to the Senator.

I cannot speak for General Motors. I understand that discussions are ongoing, that both Ford and Chrysler, at this point, have reached agreement, that General Motors has not reached agreement. My sense board is that that is not to be read either way.

The presumption I have been operating on is that in due course they will participate. Of course, the amount of money that the Government would spend is directly related to the number of private-sector participants. So that if General Motors were not in, then the amount of spending by the Government would decrease by exactly the amount the company did not put it.

I think it is essential they participate. It is my feeling that the Department of Transportation feels that, as well, and, therefore, there will be a meeting of the minds, as there should be.

In other words, I want the research program designed to be one that makes sense, essentially, to the entire industry.

So I do not think there is any desire here to not have that be the case or think that, in the end, it will not be the case.

Mr. STEVENSON. I thank the Senator.

But the question is not just a financial one, at least in my mind. If the industry is reluctant to make a commitment to this program, it may be for sound reasons, or at least it may be premature for anyone to make a commitment, including the taxpayers, until they know what it is.

It is my impression that that is the reason, the principal reason, for General Motors' reluctance. There are some other reasons.

I ask my friend from New Mexico, who presided over these hearings with me, what is the reputation and the record of the Department of Transportation for conducting basic research?

Mr. SCHMITT. My personal experience, as well as the testimony provided to our committee, indicates that their record is not very great. At the present time, they are undertaking about $500,000 of research, defined research.

The National Highway Traffic Safety Administration does safety testing to assess the state of the art, to determine regulations. Other than in related automotive research, they do not do very much. At one time, they were doing some aerodynamic work which they actually contracted out to NASA to do.

I am sure the Senator is aware of their efforts to conduct applied research in mass transportation systems, none of which has a record of success, at least to my knowledge. There has been a record of failures that have been most unfortunate. The DOT is not recognized as having a basic research capability of any kind. That, by the admission of DOT, is a quoted statement which I read into the RECORD earlier today.

Mr. STEVENSON. I believe this is an important point. An agency has been singled out for this research responsibility, with no track record and with responsibilities that are in conflict.

There are other agencies—NASA, for example—with strong research records and a strong record for effectively transferring technology to industry. It has a solid relationship with industry.

My question to the Senator is whether, instead of proposing this research responsibility in a department which is basically a regulatory agency, the industry might not be more enthusiastic about cooperating and putting up money that it appears to be at present if the research was to be organized by a different agency.

Mr. SCHMITT. The Senator asks a question that was explored in the course of our hearings and which both he and I explored with the industry witnesses.

They did express concern about the regulatory aspect of DOT overwhelming the research and development aspects, as it has in other agencies where this has been attempted—the AEC being one of the earlier examples; the Department of Energy being a very current example.

However, the testimony basically was that they had been assured by the administration, and by the Secretary of Transportation in particular, that all those things would be worked out, and their support on the program was based on there being no impact from the regulatory side of the agency on the R. & D. side.

That is great in theory, but as yet, in government, I have not seen an example of where a secretary of any regulatory agency that has R. & D. responsibilities can literally wear two hats. He must always—it is his duty by law to do so—balance the conflicting demands within his agency.

Frankly, that is why the AEC failed in many aspects of the development of a safe and viable nuclear power technology. It is why the Department of Energy research and development program really has not got off the ground to the degree that is necessary, because the people at the top and the person at the top continually have their attention diverted or are compromised by the regulatory hat they must wear.

The industry recognizes that. In their testimony they said, "We accept that, and we are accepting the administration's assurances that that won't happen in this case."

I submit, in rebuttal, as I did in the hearings, that there has not been a single point in this history of the Government of the United States in which it has worked in spite of the good intentions of the agency and the administration.

Mr. STEVENSON. I really do not know the answer to this question, but any cooperative research program involves antitrust questions, as we encountered in the drafting and during the enacting of the Technology Innovation Act of 1980. It also involves some complex questions of patent ownership and rights.

Has the CARP program addressed and answered the inevitable questions about the application of the antitrust laws to research involving cooperation among the automobile companies and the questions that inevitably would arise about the ownership and the use of any patents which might emerge from such cooperative research programs?

Mr. SCHMITT. The Senator has raised two additional questions which were not explored fully in our hearings, nor do I believe they have been explored fully in the activities of the Banking Committee or the Environment and Public Works Committee—that of antitrust implications and that of patent law.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. SCHMITT. I conclude by saying—

Mr. STEVENSON. I will yield to the distinguished Senator from Idaho and then I will yield the floor.

My conclusion, on the basis of the hearings we held, is that there is a need for cooperative research, more automotive research. With respect to research for the automobile industry, which in most instances has applications outside it, the need is for basic research through the point of demonstration on a variety of technological problems that come up in all transportation modes; and it would be more practicable and ultimately productive to tailor a cooperative research program to transportation.

By that, I do not mean space and air, which is already addressed by NASA, but surface transportation, for which we have not made a systematic commitment as we have in the case of air. But in putting it together, a great many questions have to be resolved, many of them of a technical nature; many not.

For example, we had to address patents and antitrust question's in connection with the Technology Innovation Act. That act, which we expect to become law in this Congress, will establish new model for cooperative research in the United States, a model that might be more appropriate to this particular exercise than fitting it into a regulatory agency with no good track record either on basic research or on transferring it to industry, in cooperation with industry.

There are other possibilities. NASA is a possibility. The Department of Commerce, which has a lead role in the innovation center model that comes out of the Innovation Act, is another possibility. Of all the possibilities we have been able to examine—and there are more in the Department of Energy and elsewhere—the Department of Transportation may be the least probable or likely.

I have not heard all this debate, I regret to say, and I am not certain at this point what the parliamentary situation is. I concur with what the Senator has said. It is reflected in the hearing record—so far as I know, the only record in the Senate—on this program.

I think we might be wiser appropriating a modest amount to the Department of Transportation not for the program but for a study and a report which finally does what the Department should

have done in the first instance; namely, tell us what this program is before requesting a substantial initial amount and a commitment to what might become over time a very large amount.

This study could consider not only technological requirements for research but also the institutional requirements, including such possibilities as innovation centers.

It might also develop more industry cooperation than we have any evidence of at the moment.

My impression is that the industry does not want to get into this and make commitments until it knows what the program is going to be, too. I do not think we lose time and, in fact, we might gain some time if instead of this $12 million we were to appropriate $1 million or $2 million for a study with some directions as to what goes into that study and then in the next Congress act on this important subject which I do think needs an additional Federal commitment, but then with the benefit of more information and a sense of where the effort is going than the Senate has today.

Mr. SCHMITT. Mr. President, I appreciate very much the Senator's remarks. I think he has added to the foundation of the legislative history that has already been established. I wish that we could get an agreement to do exactly what he has proposed. I do not think that is possible.

I yield to the Senator from Massachusetts to comment on the proposal of the Senator from Illinois. It may be that he will want to bring back into the amendment the one section that was stricken and the provision that does specifically say to the Department of Transportation, if I recall it correctly, that they should provide us that assessment.

But I yield to the Senator from Massachusetts for further comment.

Mr. TSONGAS. The Senator from Massachusetts is quite flexible. We have been in here for 2 hours. This is a $20 billion appropriation. We are talking about $12 million, and at this point I would probably accept almost anything. So if they want to put that proviso back in, it is fine; if they want to keep it out, that is fine also.

It seems to me at some point the Senate should get on to other business, given the fact we worked out a compromise, and I just think there is a point in which the discussion in everyone's interest should end.

So, to conclude, if there is a desire to have this clause include, it is acceptable. It is up to the Senators from New Mexico and Illinois.

The PRESIDING OFFICER. The Senator does have a right to modify his amendment. Does he desire to so modify his amendment?

Mr. SCHMITT. Mr. President, I ask the Senator from Illinois to examine that and see if he thinks it is helpful.

Mr. STEVENSON. Mr. President, I suggest the absence of a quorum.

Mr. TSONGAS. Mr. President, will the Senator withhold?

Mr. STEVENSON. I withhold.

Mr. TSONGAS. I wonder whether we could do it this way, whether I could ask unanimous consent that the compromise amendment be agreed to subject to the right of the Senator from Illinois to include that proviso before the end of the deliberations on this appropriation bill so we can get on to the remainder of the bill. Is that acceptable?

Mr. BAYH. Mr. President, we have been on this for an hour and a half or 2 hours, and we can set it aside temporarily and go on to something else as far as another amendment is concerned.

I share the feeling of the Senator from Massachusetts, that instead of picking watermelons we are picking acorns.

Mr. SCHMITT. Mr. President, I think the Senator underestimates the importance of this issue. It is certainly important to the Senators from Michigan and it is important to this Senator if we are, in fact, embarking on an $800 million R. & D. program. I think we can move on very quickly. The Senator from Illinois suggests the absence of a quorum. Or we can lay it aside. But I reserve the right to object.

Mr. McCLURE. Mr. President, let us lay it aside temporarily.

Mr. BAYH. Let us lay it aside.

I say to my friend from New Mexico I do not suppose he has any more interest in automobiles in New Mexico than we do in Indiana. The question is now that we go ahead and do the best job of the research that we are all trying to do here.

Mr. RIEGLE. Mr. President, does the chairman hold the floor or yield at this point for a comment?

Mr. BAYH. I yield.

Mr. RIEGLE. Mr. President, I wish to settle this. We have been at it now a long time. We all have other things we have to do. Hearings are underway, and so forth. I want to try to accommodate as many people as we can. I thought we had an agreement. Can we not make a modification that is generally acceptable and complete this now? We should be able to settle it within a minute or two.

Mr. SCHMITT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SCHMITT. I believe a unanimous-consent request is before the Senate.

Mr. TSONGAS. I simply stated that as a possibility. I did not make it official.

Mr. RIEGLE. Mr. President, could we understand what the issue is here? Is this a new snag? We have been all over this ground already.

Mr. McCLURE. Mr. President, I ask unanimous consent that this amendment be laid aside temporarily with the understanding that it be the pending business upon the conclusion of the next amendment that is dealt with.

Mr. RIEGLE. Mr. President, reserving the right to object, the Senator from Idaho has been gracious, courteous, and helpful all the way through here, but I just wish to see us resolve this. I would rather we take another couple minutes and see if we can settle it.

Mr. TSONGAS. Mr. President, will the Senator yield?

Mr. RIEGLE. I yield.

Mr. TSONGAS. Perhaps we can do it this way: Allow the request to be granted and if there is any change, other than the discussion on the proviso, we be called back so we may consult on it; if not, we will be comfortable with whatever is arrived at. I also have a conflict.

Mr. RIEGLE. Mr. President, will the Senator from Massachusetts have any objection? If I understand it correctly, all the Senator from Illinois is asking to do is to put in language that was originally in the amendment as it was offered. I see no reason to object to putting it back in.

Mr. TSONGAS. The question is whether the Senator from Illinois wants it in. Either way is fine with me.

Mr. RIEGLE. Does the Senator from Illinois want it in or out? It is out now and we are happy to put it in.

Mr. STEVENSON. Putting in the proviso does not satisfy the problems of the Senator from Illinois.

Mr. President, I ask unanimous consent that the amendment be laid aside temporarily and the Senate return to this amendment upon the disposition of the next amendment to be brought up.

The PRESIDING OFFICER. Is there objection?

Mr. RIEGLE. Mr. President, I withdraw my objection with reluctance because I wish we could get this thrashed out here.

Mr. McCLURE. Mr. Chairman, has the Chair ruled on the unanimous-consent request?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I ask unanimous consent that the second committee amendment be temporarily laid aside and the Senator from Kansas be recognized to offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Kansas is recognized.

UP AMENDMENT NO. 1603

(Purpose: To revise provisions relating to the transportation of the handicapped)

Mr. DOLE. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself, Mr. WILLIAMS, Mr. CRANSTON, Mr. RANDOLPH, Mr. KENNEDY, Mr. RIEGLE, and Mr. MATHIAS proposes an unprinted amendment numbered 1603.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 43, line 6, strike out "1975" and the period and insert in lieu thereof the following: "1973, except—

"(1) to the extent which would be required under the amendment contained in section 118 of S. 2720, (96th Congress, Federal Public Transportation Act of 1980), as passed by the Senate on June 25, 1980, or

"(2) where such authorities have elected to purchase such lifts.".

Mr. DOLE. Mr. President, I will quickly summarize the amendment

which I think has been agreed upon by all the interested parties.

This amendment is to section 323 of the Transportation appropriations bill, H.R. 7631. The amendment which I am introducing, and which is privileged to have as cosponsors, the distinguished Senators WILLIAMS, CRANSTON, RANDOLPH, KENNEDY, RIEGLE, and MATHIAS, would not prohibit funding for the next fiscal year for purposes of complying with section 504, but would permit local communities to exercise a degree of flexibility in their planning for transportation services to handicapped individuals.

On June 25 of this year, when we were considering S. 2720, the reauthorization of the Urban Mass Transportation Act of 1964, the Senate passed an amendment to section 504 that is currently awaiting action on the House side. At that time, we agreed that, since its implementation, section 504 has not been without its problems, and we attempted to address some of the problems encountered by local communities. The amendment which the distinguished Senator from Nebraska introduced at that time provided for increased flexibility at the local level in implementing transportation systems for the handicapped in compliance with section 504. It is possible that a conference with the House will result in a further improvement of the Zorinsky language, and we would like to leave the door open to this possibility, while at the same time upholding current law in the event that for some unforeseen circumstances, the basic requirements of the Zorinsky amendment are defeated in conference.

It is my intention to assure that criteria similar to that expressed in the Zorinsky amendment be put into effect in providing access to transportation for handicapped individuals. This plan allows for consideration of available local resources and varying population size in implementing transportation plans within communities. However, some form of transportation for the handicapped should be assured at the local level. It may be that, in conference, population criteria will be worked out which would prove to be even more reasonable than what was previously outlined in the Zorinsky amendment. However, under these provisions, the special needs of population areas of 50,000 inhabitants or less, 50,000 to 750,000, and 750,000 or over would be taken into consideration in local planning of transportation systems in compliance with section 504.

I want to make it clear that the intent of Congress is to give communities a local option in complying with section 504 of the Rehabilitation Act of 1973. The discretionary authority given the Secretary of Transportation is an important aspect of the Zorinsky amendment. The Secretary should make every effort to work closely with those communities wishing to provide an alternative form of handicapped transportation.

The reason I think this amendment is appropriate at this time is to make sure that we do not send negative signals to the handicapped community who have regarded section 504 as their only recourse in law—the only provision they have which resembles the same kind of civil rights that are guaranteed to other minorities under the Constitution. Although the Senator from Kansas understands the intent of section 323, in withholding funds until more practical outlines for implementation are decided upon, I think it is unwise to withhold all funds to be utilized for this purpose. My amendment would provide flexibility at the local level and would still assure that, in the event that the provisions of S. 2720, which affect this issue are defeated, transportation services in compliance with section 504 will still be in effect. I ask your support in continuing and improving transportation facilities for this significant segment of our Nation's population.

I think that has been done through the efforts of the distinguished Senator from Nebraska, Senator ZORINSKY, and others.

I do not know of any objection to the amendment.

● Mr. WILLIAMS. Mr. President, I would like to strongly support the amendment of the Senator from Kansas.

This amendment would simply conform the restriction on the use of Federal funds for the purchase of wheelchair lifts contained in section 323 of the appropriations bill, to the provisions that passed the Senate as part of the mass transit authorization bill.

Under the language of section 323, no fiscal 1981 funds could be used "for the planning or execution of programs to compel local transit authorities to purchase wheelchair lifts to comply with section 504 of the Rehabilitation Act."

Under the Senator's amendment, there would be two exceptions to the prohibition against the use of Federal funds for the planning and execution of programs to compel the purchase of wheelchair lifts: First would be where the program is consistent with the provisions of section 118 of the authorizing bill (S. 2720) as passed. This would assure that local option plans which are consistent with the requirements of that section would be eligible for Federal assistance.

The second instance is where a transit authority elects to purchase lift-equipped buses. This would assure that a community that elects to comply with the DOT 504 regulations in lieu of submitting a local option plan would still be eligible for Federal assistance. This ability to make this election is contemplated in the language of the authorizing bill.

By way of background, section 504 of the Rehabilitation Act of 1973 does not specifically mandate the purchase of wheelchair lifts on buses. It simply prohibits discrimination against the handicapped in federally assisted programs and activities. The Department of Transportation, in implementing section 504 with respect to Federal transit programs, has chosen to mandate that all new buses be equipped with wheelchair lifts to make them accessible to handicapped persons.

These regulations have been extremely controversial: Many communities have argued that full accessibility is inappropriate for their community; and some members of the handicapped population have expressed concern that specialized "dial-a-ride" type transportation service may no longer be available to them under the Department's regulations. On the other hand, many organizations representing the handicapped believe that substantial progress toward accessible public transit is an essential part of making handicapped people able to function in the mainstream of life.

In order to try to resolve this controversy, during floor action on the transit authorization bill, the Senate adopted a proposal—as a result of discussions between Senators ZORINSKY, EXON, McCLURE, CRANSTON, and myself—to attempt to respond to these legitimate concerns. The thrust of the adopted amendment was to allow a significant degree of local discretion in structuring a program to provide effective transportation services for handicapped persons, in lieu of meeting the DOT regulations if a community so desires.

Under this amendment a community would be required to provide an overall level of service no less beneficial than that available to the general public, utilizing a locally determined mix of special services and accessible buses. As a threshold, urbanized area of less than 750,000 would be required to purchase 50 percent of their new buses with lifts; urbanized areas of over 750,000 would have a basic requirement to purchase all their new buses with lifts. In both cases, the Secretary could adjust the required percentage if he finds that a different percentage is consistent with the plan. The intent of this provision was fully discussed in the statement of Senator CRANSTON, a cosponsor of the amendment.

In effect, Mr. President, the amendment adopted on the Senate floor represents a compromise in a very positive direction that would embody the spirit of local discretion within the principles of section 504.

The amendment adopted by the Senate is part of a continuing process to resolve the difficult and sensitive question of the transportation needs of our handicapped citizens. My subcommittee's staff, as well as staff of the relevant House committee, DOT, and affected interest groups have been engaged in an intensive series of negotiations to try to develop a broadly acceptable approach.

The purpose of the Senator's amendment to the appropriations bill is simply to assure that the decision already made by the Senate in the authorizing process is not contradicted in the appropriations bill, so we can avoid conflicting mandates that would complicate the ongoing process of resolving this complex problem.

It is my basic view that neither the existing language of section 323, nor my proposed amendment should be part of the appropriations bill—particularly when authorizing committees in both Houses are working tirelessly and responsibly to resolve the problem. In fact, language similar to section 323 was struck from the House appropriations bill on the floor for the very reason that

the question was being properly addressed by the authorizing committee.

Nevertheless, I believe that a reiteration of the Senate's already adopted position—as an outside boundary, in effect—will not harm the delicate process that is underway.

Mr. President, the language of section 323 as reported has been strongly criticized by handicapped groups and is opposed by the Department of Transportation. Unless amended, it can not only create a legislative and administrative nightmare, but will also undermine much of the progress we have made in Congress to give disabled people their rightful opportunity to fully participate in this society.

I urge adoption of the amendment.●

● Mr. CRANSTON. Mr. President, I express my strong support for this amendment. I think it is a grave disservice to America's disabled citizens that we are being asked once again to consider language which has as its underlying purpose an effort to blunt section 504 of the Rehabilitation Act—the basic protection of the civil rights of disabled individuals.

Section 323 of this bill would affect, detrimentally, hundreds of thousands of handicapped and elderly persons' access to the world in which they live. The Congress of the United States made a commitment to disabled and elderly people when it stated that it is unlawful for any program receiving Federal funds to discriminate against an individual solely on the basis of handicap. Most of my colleagues who support the language in section 323 of this bill would bend over backwards trying to convince themselves and the people whose lives they affect that they have not the slightest intention to back away from that commitment. Section 323 of this bill is nothing more than a method for backing away from that commitment and should be seen in that light.

I congratulate the Senator from Kansas for his leadership in moving to amend this section.

Mr. President, we cannot shout loudly on one day that we are strong believers in equal rights and then walk quietly onto the floor of the Senate on another day and cast an appropriations vote against those rights. We should not be so foolish as to believe that disabled people in this country cannot recognize double talk when they see it.

Just 2 months ago, on June 25, the Senate spoke on this issue during consideration of the urban mass transportation authorization bill—S. 2720. An attempt was made at that time to limit tremendously the applicability of section 504 in the transportation of handicapped persons. That attempt failed when the Senate adopted a compromise which was offered by Senator ZORINSKY and coauthorized by myself and Senator WILLIAMS.

I outlined at some length at that time the intent underlying the Zorinsky amendment.

I continue to believe that the Zorinsky language—as it has come to be known—represents a workable compromise taking into account the needs of disabled individuals and the fiscal ability of cities to meet these needs. That carefully crafted compromise should not be allowed to be undone by the language contained in section 323.

The amendment I am joining in offering today with my colleague from Kansas (Mr. DOLE) would simply require that Federal funds be used to enforce section 504 in the area of transportation, where a community elects a local option approach, only to an extent consistent with the Zorinsky language which was adopted by the Senate on June 25, 1980.●

● Mr. MATHIAS. Mr. President, I am pleased to cosponsor this amendment with Senator DOLE clarifying our intent concerning the use of UMTA funds for the purchase of wheelchair lifts by local transit authorities.

On July 25 of this year, the Senate passed the Department of Transportation authorization bill, S. 2720. That legislation included the so-called "Zorinsky compromise" by my distinguished colleague from Nebraska. It was the proper place for the Senate to express its position on local option transportation systems and the issue of wheelchair lifts on buses.

The language of section 323 of the bill before us is inconsistent with the action which the Senate took in the authorization bill in June. And it will cause confusion for the Department of Transportation which must implement congressional directives as well as for local transit authorities.

The language of our amendment simply references section 118 of the authorization bill to be used as a guide in implementing this appropriation. That section assures the civil rights of disabled persons while providing useful guidance to local transit authorities on alternate means of assuring those civil rights pursuant to title V of the Rehabilitation Act of 1973 by providing substantially equivalent transportation at the option of the locality.

I urge my colleagues' adoption of this amendment.●

Mr. BAYH. Mr. President, the Senator from Indiana has no objection to the amendment. He discussed it with the distinguished ranking Republican, and I think the Senator from Kansas is stating what we really should be doing in this area.

Mr. McCLURE. Mr President, will the Senator from Kansas yield?

Mr. DOLE. Yes.

Mr. McCLURE. I thank the Senator for yielding.

I have no objection to the amendment. I think it carries out what I intended by the amendment I offered in the committee, and I am perfectly happy to accept this as an improvement on what the committee has already done, and I commend the Senator from Kansas for offering the amendment.

Mr. DOLE. I also want to thank the distinguished Senator from Idaho for his leadership on a matter many of us have been concerned about, and I thank him for his assistance.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas.

Mr. DOLE's amendment (UP No. 1603) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAYH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment offered by the Senator from Massachusetts.

Mr. BAYH. Mr. President, if there is no objection, can we proceed to the consideration of a Baucus amendment on the same basis as the amendment we have just been considering?

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Montana is recognized.

UP AMENDMENT NO. 1604

(Purpose: Relating to reduction in funds for advertising and public relations activities)

Mr. BAUCUS. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. BAUCUS) proposes an unprinted amendment numbered 1604:

At the appropriate place in the bill, insert the following new section:

SEC. . Notwithstanding any other provision of this Act, any amount appropriated by this Act for the fiscal year ending September 30, 1981, for any department, agency, or instrumentality of the United States Government, which is available to pay for or conduct advertising or public relations activities is reduced by 10 percent.

Mr. BAUCUS. Mr. President, this amendment is designed to cut advertising expenses of the Department of Transportation's budget by 10 percent. I propose this amendment because it is my intuitive sense that there is excessive advertising not only in the Department of Transportation's budget but in the budgets of all agencies.

AN AMENDMENT TO CUT ADVERTISING EXPENSES

I think we all agree that in all probability there is at least 10 percent waste in the advertising budget of that agency.

In order to document my suspicion, I conducted a little survey. I first began to seek out the advertising budgets of the various agencies and found that I was unable to learn how much they were spending because there are no line items for "advertising" or "public relations." We have no way of knowing the degree to which various agencies spend the money on advertising. We do not even know how they define advertising; that is, whether the amount they spend in printing or producing TV spots and other public relations work, is advertising.

What I did do was to ask my office this morning to go down to the Department of Transportation. I sent two people to DOT. They spent only one-half an hour down at the Department of Transportation looking for any printed matter published by the Department of Transportation.

Well, Mr. President, I have here on my desk just a sample of that effort. It is

a 30-pound box of individual samples of various printed matter in the Department of Transportation.

Let me just take 2 or 3 minutes to point out to the Members of the Senate what some of these items are. Here is one I just picked up at random, a little brochure, a glossy print, a little slick. It says "Cities are for living." Well, Mr. President, I would hope that cities are for living. I would not think that cities are for dying.

Here is another one, another glossy publication from the Department of Transportation, entitled "Common Sense in Buying a Safe Used Car." Mr. President, this pamphlet is 20 pages, and I think we all agree we want to exercise a little commonsense when we buy a used car.

The trouble is, however, you do not learn commonsense by reading a book. Commonsense is something you learn through experience. In addition to that, I doubt that anybody, when he buys a used car, happens to have this handy book in his back pocket.

Here is another one, which is on bicycling, another big glossy print, lots of pictures, lots of big print.

Let us look at some of the headings. One right here is, of all things, "The Ups and Downs of Pedal Power." That is the chapter title of one representative sample in this book.

Here is another one. It is titled "On the Run." It is produced by the FRA. It is a 28-page pamphlet produced by the Deparment of Transportation. It is designed to guide, to help runaway youth in transportation centers. Mr. President, we all want to help runaway youths. We want to, first, prevent them from running away and, second, we want to make sure we will help them come back home. But I wonder how many people read this pamphlet, a guide for helping runaway youth? I doubt that many runaway youth read this, and I doubt very seriously whether anybody reads it.

Here is another one, "Transportation USA." Here is a big article, some of you on the floor can see it, it is a big picture of a lobster, and the title of the article is, "When Lobsters Travel They Go By Air," and it is just all about lobsters traveling by air, again produced by the Department of Transportation.

I do not want to take too much time of the Members of the Senate, but I believe you should look through those materials and I invite each of you to come over here and look at all these articles produced by the Department.

Here is another one, another booklet, and, ironically, let me just read one paragraph on the concluding page. It is entitled, "Cutting Red Tape." It says:

One of the biggest byproducts of international trade is red tape.

It goes on and says:

The Department of Transportation has recommended changes that will reduce paperwork costs by at least 45 percent and save U.S importers, exporters, and Government Agencies $3 billion a year.

Mr. President, I simply recommend to the Department of Transportation that they adopt their own advice and begin to cut paper costs. I do not know if they can save $3 billion a year, but certainly they can cut their budget by 10 percent, and that is very simply what I am recommending.

Mr. President, I found something else fairly interesting in my research. There is a statute, a small provision probably not recognized or known by many people. Let me read it:

Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose. 5 U.S.C. 3107 (enacted October 22, 1913).

Mr. President, according to this statute, the law now requires that we itemize advertising expenditures. Yet, we do not do it. When we look at our appropriation bills there is no line item for advertising expenses. They are hidden somewhere. We do not know where. And I submit that the advertising expenditures of the various agencies are used primarily to justify agency budgets and to keep public relations staff employed. I also submit that the only people who read all this stuff are the people who print it.

But the important point to make here is that under current budgeting practices Congress is unable to determine how much is to be spent each year by the Federal Government for advertising. This is contrary to existing law. It is also contrary to wise public policy.

Consider for a moment the recommendations the General Accounting Office made in the following report that I request be printed in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

GAO REPORT ENTITLED: "DIFFICULTIES IN EVALUATING PUBLIC AFFAIRS GOVERNMENT-WIDE AND AT THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE" (JANUARY 18, 1979)

DIGEST

"Public affairs" is an umbrella term for numerous ways any activity, public or private, attempts to inform the public about its services and programs. In the Federal Government public affairs includes such activities as press releases, reports, news conferences, photographs, speeches, publications, exhibits, audiovisual materials, advertising, and facilities for answering daily questions from journalists and taxpayers.

Evaluating public affairs activities has been, and still is, difficult because Government agencies do not uniformly define "public affairs" and are not consistent in reporting and evaluating their public affairs costs. Campaigns—those promotional efforts which emphasize specific issues over a specified period—also are not uniformly defined and evaluated.

Uniform definitions and budgeting are needed not only to evaluate the effectiveness of public affairs and campaigns but also to assess their costs and to manage them properly.

Once Government-wide definitions of public affairs activities have been developed:

Definite lines of management responsibility can be drawn; departmental coordination and congressional oversight can be strengthened; and total costs can be assessed.

These improvements also would make it easier to develop criteria for measuring public affairs work forces. Further, the ability of the Congress and the executive branch to oversee public affairs activities would be greatly improved.

Managing nationwide campaigns, particularly those concerned with health issues and behavior change, is one of the more difficult tasks in public affairs. However, the inconsistencies observed in campaign management approaches, funding, and use of the media leads GAO to believe that more questions need to be answered before undertaking a campaign:

How does each funding request relate to the past and future efforts?

How is the amount of advertising to be used determined?

What management structures have been considered to best achieve program objectives?

These and other questions need to be more fully explored and costs need to be more carefully analyzed. If managers evaluated elements—early in the decisionmaking process—similar to those included as appendix I, they would be better prepared to answer such questions and to establish a firm basis for program activities and costs.

MANAGING PUBLIC AFFAIRS AT THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

In the Department of Health, Education, and Welfare (HEW), public affairs activities are managed by the Office of the Assistant Secretary for Public Affairs and by 30 other offices. Although the Assistant Secretary's office is responsible for coordinating and reviewing public affairs activities, departmental oversight has been weak.

Both GAO's initial work and an internal study indicated a fragmented and unfocused management structure. Public affairs plans, budgets, audiovisual products, and publications were not always submitted to the Assistant Secretary's office for review, contrary to HEW's instructions.

Recognizing the need to improve management control, the Secretary of HEW approved management and organizational changes in late 1977. At the end of GAO's work, information on the scope and cost of public affairs was being compiled. This is a major step toward improving management control. Other actions being taken include developing procedures to ensure that publications, audiovisual proposals, and service contracts are reviewed in the Assistant Secretary's office before products are produced or contracts awarded. GAO believes HEW should continue to emphasize improving public affairs management and work toward centralized oversight of planning, budgeting, and evaluating.

EVALUATING HEALTH CAMPAIGNS

Over the years, HEW has conducted many public information campaigns aimed at fostering a healthy society. Effective campaign management depends largely on how thoroughly certain essential elements, such as objectives and audience targeting, are evaluated before starting the campaign.

GAO examined two health education programs; the new initiative on smoking and health and the National High Blood Pressure Education Program.

There was little indication that the smoking and health managers had considered many of the essential elements of campaign development. Although HEW is justified in its involvement with smoking and health, the basis for the fiscal year 1979 budget request for some aspects, especially the public information campaign and research on childhood determinants of smoking, is unclear. Further, although several activities are already underway, goals have not been established.

The high blood pressure program, on the other hand, is well managed and appears to have had some success in controlling hypertension.

GAO found differences in the way campaigns are funded and the emphasis placed on use of the media to disseminate information. Although such differences may not always be detrimental, GAO believes they point out the need to better define and plan campaigns and to establish a firm basis for activities and costs.

GAO discussed its findings and recommendations with HEW and Office of Management and Budget officials and they generally concurred. Their comments have been incorporated where appropriate.

RECOMMENDATIONS

To provide for Government-wide oversight, a greater means for evaluating public affairs organizational structures, and a basis for measuring the effectiveness of specific public affairs activities, GAO recommends that the Director, Office of Management and Budget:

Work with the agencies to develop uniform definitions of "public affairs" and "campaigns".

Require all Government agencies, once such definitions have been developed, to identify in their annual budgets the costs for their public affairs activities.

GAO also recommends that the Secretary of Health, Education, and Welfare:

Establish guidelines for the evaluation of communications activities to include what activities should be evaluated and what types of evaluations should be conducted.

Require explanations of how public affairs projects submitted for review and approval will be evaluated. If an evaluation is not planned, an adequate justification should be provided.

Develop procedures to ensure that criteria, such as those included as appendix I, be adequately and consistently applied to the Department's public affairs activities and information campaigns.

Mr. BAUCUS. Next month we will celebrate the 67th anniversary of the enactment of 5 U.S.C. 3107. It has been nearly 2 years since GAO called for line items in Federal budgets for advertising expenses. Yet, despite all this time, no advertising budget items are available for review by Congress.

So I had to dig this information out myself. Frankly, I do not trust this information, because I suspect it substantially understates actual expenses. To acquire this information was difficult in many instances, because the agencies did not want to reveal how much they spend on publicity.

Mr. President, I ask unanimous consent that a table appear at this point displaying the Federal Government's publicity expenses for the years 1978–80.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

AGENCY TOTALS

NOTE.—The figures for 1980 are for October 1, 1979, through May 31, 1980, only.

Department of Energy	
1978	$12,122,000
1979	38,274,000
1980	38,509,000
H.H.S.	
1978	$11,666,471
1979	12,985,196
1980	10,722,161
Department of State	
1978	$876,529
1979	1,128,649
1980	601,414
U.S.D.A.	
1978	$26,495,000
1979	31,090,000
1980	20,096,000
Department of the Interior	
1978	$5,525,537
1979	6,515,862
1980	4,055,453
H.U.D.	
1978	$1,567,159
1979	2,495,659
1980	927,489
Department of Labor	
1978	$9,062,000
1979	11,700,000
1980	12,204,000
Department of Defense	
1978	$20,370,000
1979	21,562,000
1980	22,912,000
Commerce	
1978	$1,716,000
1979	3,386,000
1980	2,609,000
Education	
1978	$1,315,800
1979	1,091,600
1980	2,284,000
Department of Justice	
1978	$1,268,976
1979	1,567,056
1980	844,410
Treasury	
1978	$5,169,124
1979	5,487,891
1980	4,326,942
Transportation	
1978	$2,245,488
1979	2,426,813
1980	1,876,648
Independent agencies	
1978	$23,872,824
1979	27,600,549
1980	26,492,607
Grand total	
1978	$123,272,800
1979	167,311,275
1980	148,451,124

Mr. BAUCUS. As can be seen from these figures Federal agencies are spending hundreds of millions of dollars for advertising.

In the bill before us today, I estimate there will be spent at least $2 million—probably much more than that—for advertising. Consider the following tables:

ADVERTISING EXPENSES IN DOT APPROPRIATIONS FOR PRIOR YEARS

	In-house	Outside	Total
FISCAL YEAR 1978			
Department of Transportation:			
Office of Secretary	$858,000.00	0	$858,000.00
Coast Guard	926,000.00	0	926,000.00
Federal Aviation Administration	0	0	0
Federal Highway Administration	18,730.44	$158	18,888.44
National Highway Traffic Safety Administration	142,600.00	0	142,600.00
Federal Railroad Administration	300,000.00	0	300,000.00
Urban Mass Transportation Administration	(1)	(1)	(1)
Total for Department of Transportation	2,245,330.44	158	2,245,488.44
Independent agencies:			
National Transportation Safety Board	0	0	0
Civil Aeronautics Board	201,419.00	0	201,419.00
Interstate Commerce Commission	181,512.00	8,462	189,974.00
Panama Canal Commission	282,000.00	0	282,000.00
Total for independent agencies	664,931.00	8,462	673,393.00
Grand total	2,910,261.44	8,620	2,918,881.44
FISCAL YEAR 1979			
Department of Transportation:			
Office of Secretary	858,000.00	0	858,000.00
Coast Guard	1,100,400.00	0	1,100,400.00
Federal Aviation Administration	0	0	0
Federal Highway Administration	18,747.25	866	19,613.25
National Highway Traffic Safety Administration	148,800.00	0	148,800.00
Federal Railroad Administration	300,000.00	0	300,000.00
Urban Mass Transportation Administration	(1)	(1)	(1)
Total for Department of Transportation	2,425,947.25	866	2,426,813.25
Independent agencies:			
National Transportation Safety Board	0	0	0
Civil Aeronautics Board	212,020.00	0	212,020.00
Interstate Commerce Commission	224,811.00	10,308	235,119.00
Panama Canal Commission	206,000.00	0	206,000.00
Total for independent agencies	642,831.00	10,308	653,139.00
Grand total	3,068,778.25	11,174	3,079,952.25
FISCAL YEAR 1980 (TO DATE)			
Department of Transportation:			
Office of Secretary	858,000.00	0	858,000.00
Coast Guard	598,500.00	0	598,500.00
Federal Aviation Administration	0	0	0
Federal Highway Administration	8,020.85	58	8,078.25
National Highway Traffic Safety Administration	106,640.00	5,430	112,070.00
Federal Railroad Administration	300,000.00	0	300,000.00
Urban Mass Transportation Administration	(1)	(1)	(1)
Total for Department of Transportation	1,871,160.85	5,488	1,876,648.85
Independent agencies:			
National Transportation Safety Board	0	0	0
Civil Aeronautics Board	227,978.00	0	227,978.00
Interstate Commerce Commission	179,976.00	11,079	191,055.00
Panama Canal Commission	170,000.00	0	170,000.00
Total for independent agencies	577,954.00	11,079	589,033.00
Grand total	2,449,114.85	16,567	2,465,681.85

[1] Information yet to come.

Mr. BAUCUS. Mr. President, I have been interested in the problem of wasteful spending for advertising expenses since I came to Congress. As I was preparing to speak today, I reviewed a report prepared for me over 3 years ago by the General Accounting Office. This report is a clear statement of the problem. Unfortunately, I believe the situation is at least as bad today as it was when this report was prepared, and I ask unanimous consent that it be printed in full at this point in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., July 12, 1977.

Hon. MAX BAUCUS,
House of Representatives.

DEAR MR. BAUCUS: In your May 20, 1977, letter, you asked that we examine how much the Government spends for television, radio, and magazine advertising. You also wished to know where these expenditures are accounted for in each agency's budget and whether this type of advertising is effective.

GOVERNMENT ADVERTISING COSTS

Although information in the form you requested is not available without surveying each agency and bureau, we have information on hand that may meet your needs. We answered a similar congressional inquiry in 1975 by obtaining total advertising costs from 31 agencies. This information shows the costs by type of media for commercially procured advertising. In-house costs, however, are not broken out.

These 31 agencies spent $141.6 million for advertising by private agencies in fiscal year 1974 and estimated that $145.5 million would be spent in fiscal year 1975. In addition, the agencies spent $47.5 million for in-house advertising in fiscal year 1974 and estimated $53.3 million for in-house advertising in fiscal year 1975. Therefore, these 31 agencies spent about $189 million and $199 million, respectively, for fiscal years 1974 and 1975.

The expenditures and various types of media purchased from private agencies are as follows:

	1974 (actual)	1975 (estimated)
Television	$4,929,300	$9,596,000
Radio	2,006,400	2,428,700
Newspapers and magazines	30,168,400	30,487,800
Posters, billboards, and displays	15,592,100	13,004,000
Brochures and catalogs	25,673,000	31,676,000
Films	5,464,400	6,277,900
Other	57,757,700	52,029,000
Total	141,591,300	145,499,400

Other costs include items such as military recruiting costs which were not clearly reported by type of media used, give-away recruiting items, visitors programs, advertising research, and related travel costs.

REPORTING ADVERTISING COSTS

There is no requirement that agencies identify advertising costs within their budgets. Also, budgeting of these costs varies by agency. For example, military recruiting advertising is budgeted under Operations and Maintenance for each of the military departments, and Energy Research and Development Administration recruiting is budgeted under Program Direction. Program Support. Energy Research and Development Administration public information is budgeted under Supporting Activities, Program Support, and National Institute of Drug Abuse public information is budgeted under Management and Information, Drug Abuse, Direct Program. Further, there is no Government-wide definition of advertising and no central location within the Government where this information can be obtained. Consequently, total Government advertising costs have previously been obtained by special studies or one-time reporting, with the definitions established for each report. This approach was used in our aforementioned study.

In July 1975, the Office of Management and Budget reported to the Chairman, House Appropriations Committee, on the total Government contract advertising costs. This report covered all agencies with more than 100 employees. The method of defining advertising costs for the Office of Management and Budget study differed somewhat from our study of the same period, in that we were more specific as to what costs should be reported. As a result, the reported costs differed. We reported advertising from private firms at $141.6 million in fiscal year 1974, and the Office of Management and Budget reported $128.8 million. Our report also pointed out that some agencies had reservations about identifying certain costs as advertising.

EFFECTIVENESS OF ADVERTISING PROGRAMS

We discussed advertising effectiveness with an official of the American Association of Advertising Agencies. According to him, advertising effectiveness depends on many factors, such as type of presentation, timing, and media. Further, each program is designed for a particular group. This diversity would likely cause the effectiveness to vary from program to program. Consequently, we believe that an effectiveness evaluation of Government advertising could best be viewed on a program-by-program basis.

We have been able to locate only a few evaluations of the effectiveness of Government advertising programs. We evaluated the effectiveness of the Army's advertising aimed at recruiting persons for the all-volunteer forces ("Advertising For Military Recruiting; How Effective Is It?" March 29, 1976). In that report, we pointed out that although the all-volunteer forces program had been successful, all available evidence indicates that the contribution of advertising had been modest at best. A copy of the report is enclosed.

In addition to our work, we are aware of two other evaluations of advertising programs. Both are available through the National Technical Information Service. They are:

"Public Awareness of a NIAAA Advertising Campaign and Public Attitudes Toward Drinking and Alcohol Abuse".

"Effects of Anti-Smoking Campaigns Aimed at Less Hazardous Smoking".

We trust this information will satisfy your needs.

Sincerely yours,

R. G. ROTHWELL
(For Fred Shafer, Director).

LINE-ITEM ADVERTISING BUDGETS ARE NECESSARY

Mr. BAUCUS. Mr. President, I recommend that the appropriate committee, the Committee on Governmental Affairs, review this problem. I believe it should consider legislation requiring that agencies itemize advertising expenses so that we can get a better handle on this waste and cut back on it. That, Mr. President, is essentially the reason why I am offering this amendment.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. BAUCUS. I yield to the Senator from Montana.

Mr. MELCHER. I think my colleague's remarks are right on target, and I ask unanimous consent to become a cosponsor of the amendment. I think it is an excellent amendment.

Mr. BAUCUS. I ask unanimous consent that my colleague be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I am authorized by the Senator from Indiana to indicate his support for the amendment and, as minority manager of the bill, I state I am willing to accept the amendment.

Mr. BAUCUS. May I inquire of the Senator as to the degree to which, if it goes to conference, the conferees will fight for its retention?

Mr. McCLURE. The Senator knows that I will not say we are going to conference and chuck his amendment. The Senator has my assurance we will give reasonable effort to take the amendment, and I would suspect Members of the House, in the mood the Congress is in today, will very likely see the wisdom and merit of this amendment and be as ready to accept it as we are today.

Mr. BAUCUS. I thank the Senator from Idaho for his acumen, his vision, and his support.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana (Mr. BAUCUS).

The amendment (UP No. 1604) was agreed to.

Mr. LEVIN. Mr. President, if it is in order, I will send an amendment to the desk which I believe the managers of the bill have accepted. If it is not in order, I ask unanimous consent that it be in order to do so.

Mr. McCLURE. Mr. President, reserving the right to object, and I do not intend to object, I think, under the previous order, the pending business would be the amendment that was set aside temporarily.

The PRESIDING OFFICER. The Senator from Idaho is correct.

Mr. McCLURE. Mr. President, a further parliamentary inquiry. Under the rules of the Senate, the next amendment would be the second committee amendment upon which reservation was stated earlier?

The PRESIDING OFFICER. The Senator from Idaho is correct.

Mr. McCLURE. Mr. President, might I inquire of the Senator from Michigan how long it will take to dispose of this amendment?

Mr. LEVIN. About 3 minutes.

Mr. McCLURE. Mr. President, I ask unanimous consent that, in the event the amendment is set aside, that it may be set aside temporarily, not to exceed 5 minutes, for the consideration of the amendment of the Senator from Michigan.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 1605

(Purpose: To restrict the use of certain funds)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN) proposes an unprinted amendment numbered 1605.

Mr. LEVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 43, after line 21, insert the following:

SEC. 326. None of the funds provided in this Act shall be available for interstate highway I-69 between Charlotte and Lansing, Michigan for a period of 120 days after the date of enactment of this Act.

Mr. LEVIN. Mr. President, the amendment which I am introducing today with Senator RIEGLE—which I understand is acceptable to both the majority and minority floor leaders—would simply delay further work on interstate I-69 highway between Charlotte and Lansing, Mich., until a 90-day review of the route has been completed by the Secretary of Transportation.

We are acting on this matter at the request of Congressman HOWARD WOLPE, who has been attempting to work with the State of Michigan for over 2 years in representing the concerns of local citizens, and we are acting after discussions initiated by the Secretary of Transportation concerning problems with the route which has been selected by the Michigan Department of Transportation.

The goal of completing this interstate highway is one which I fully support, but given the concerns as expressed by Congressman WOLPE and the Secretary of Transportation, it seems appropriate that the Department be given authority to review the alinement.

Cooperation between the Michigan Department of Transportation, citizens who have expressed opposition, the regional planning authority and the Secretary of Transportation, is of course essential if this venture is to be successful. It is my understanding that within this limited time-frame, the Department of Transportation could conduct public hearings which would provide all parties with an opportunity to make their views known and to consider the various factors which were involved in the selection of the alinement. The Department of Transportation has informed us that this delay could not take place without this amendment. Senator RIEGLE and I have informed the Federal Highway Administration that we are introducing this amendment after assurances from the Department that, no matter what the outcome of the review, Michigan would not lose any employment or Federal dollars and that the Department remains committed to the completion—in the most effective and least damaging way—of this needed interstate system. The Michigan Department of Transportation will have final authority over the project after the 90-day review period.

Mr. RIEGLE. Mr. President, I would like to add to the comments of my colleague that I think this is an important amendment. We appreciate the consideration of the committee on both sides of the aisle on the matter.

Mr. President, I join with Senator LEVIN in introducing this amendment which allows the Department of Transportation to conduct a review of that segment of I-69 between Charlotte and Lansing, Mich.

Congressman HOWARD WOLPE from Michigan, who is the Congressman in the area affected, has given considerable leadership to the effort to try to make sure that some of the concerns that have been raised have an opportunity to be examined carefully. We think this will be constructive. The amendment goes further to make it clear that there will be no loss of funds or loss of jobs to Michigan by the purpose of this special 90-day review.

The following groups have expressed their opposition to the current proposed route: Bellevue Township, Benten Township, Brookfield Township, Carmel Township, Eaton Township, Oneida Township, Roxand Township, Walten Township, Chester Township, Eaton Rapids Township, Kalamo Township, Sunfield Township, Village of Bellevue, Village of Sunfield, Eaton County Board of Commissioners, Eaton County Planning Commission, Tri-County Regional Planning Commission, Michigan Department of Agriculture, Michigan Commission of Agriculture, Eaton County Chapter of the Michigan Townships Association, Transportation Task Force of the Citizen Advisory Council of Tri-County Planning Commission, Transportation Review Committee Tri-County Regional Planning Commission, Eaton County Farm Bureau, Michigan Farm Bureau, Thornapple-Grand Soil Conservation District, Eaton County Holstein-Friesian Association, Capitol Area United Auto Workers Community Action Program Council, and State Senator Richard Allen.

Our amendment simply provides for a limited final review period—which is not to exceed 90 days—after which the Michigan Department of Transportation shall have final authority over the project.

It is our understanding that Michigan shall not lose any employment or Federal dollars as a result of this amendment.

Mr. McCLURE. Mr. President, will the Senator from Michigan yield?

Mr. LEVIN. I am happy to yield.

Mr. McCLURE. Mr. President, I have reviewed the amendment, along with the comments in support of the amendment.

I want to state only one reservation in my mind with respect to the amendment. I want to make very clear at this time that we are not now trying in any way to subvert the ordinary process of decisions upon the construction of highways. I noted in the remarks of the Senators that they indicated that the final decision is the decision of the Michigan Department of Transportation. That is where the decision, under existing statutes, must be made. We are not trying to change that by indicating that this delay that we are in any way expecting the Federal Highway Administration or the Congress of the United States to change the ultimate authority in the highway location decisions.

Mr. LEVIN. The Senator is correct.

Mr. McCLURE. I thank the Senator. I have no objection to the amendment.

Mr. BAYH. Mr. President, the Senator from Indiana has no objection to the amendment.

The PRESIDING OFFICER (Mr. EXON). The question is on agreeing to the amendment of the Senator from Michigan (Mr. LEVIN).

The amendment (UP No. 1605) was agreed to.

Mr. RIEGLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, is the Senator from North Carolina correct in his understanding that one of the excluded committee amendments is now the pending business?

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. HELMS. Yes.

Mr. SCHMITT. Mr. President, I believe the unanimous-consent request was for the amendment offered by the Senator from Massachusetts to be pending at this point. We are close to having that language drafted. It is not quite drafted. I think there is agreement now on what it should be.

Mr. President, I ask unanimous consent that that amendment be laid aside further until the disposition of the next pending committee amendment.

Mr. HELMS. Mr. President, I thank the distinguished Senator.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

SECOND EXCEPTED COMMITTEE AMENDMENT

The PRESIDING OFFICER. The clerk will report the next committee amendment.

The legislative clerk read as follows:

On page 38, strike line 9 through and including line 17;

On page 38, line 18, strike "319", and insert in lieu thereof "317";

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, for Senators on the floor and for those who may be listening to this debate on their loudspeakers in their offices, this is the air-bag amendment. If Senators favor adding $200 to the price of a new car, then they will vote for the Senate committee amendment which, Mr. President, strikes section 318 (a) and (b) on page 38, lines 9 through 17.

Mr. President, in the judgment of the Senator from North Carolina, the Senate has an opportunity today to show the American people that it is willing to come to the aid of the American automobile industry, which is ailing.

Admittedly, delaying implementation and enforcement of the airbag standard will not, in and of itself, guarantee the survival of the American automobile industry. We have a lot of adjustments to make in terms of how far we have strayed from the fundamentals of the free enterprise system before we can have any assurance of that type. But, by delaying implementation and enforcement of this airbag standard, the Senate will be sending a signal that we are willing to take steps to eliminate some of the costly and excessive regulations by the Federal Government that are hampering U.S. automobile manufacturers.

Mr. President, there is at least one compelling reason for the Senate to vote on this issue today, to take a stand and let the people back home know where we stand: That is the condition of the U.S. automobile industry.

I think I am correct in saying that nearly 1 million American workers in the automobile and related industries are jobless today. Only 300,000 of these workers actually work directly for the auto manufacturers. The vast majority of them work, or would like to be working again, for automobile dealers, suppliers, and component makers throughout this Nation.

In my State of North Carolina alone, many are out of work as a result of the slump in automobile sales and automobile production.

The North Carolina textile industry, in particular, has been adversely affected.

Mr. President, I would hate to try to estimate the number of letters I have received. I cannot count them. They are from people back home. They are letters insisting that Congress do something about those "blankety-blank" Japanese imports, except when many of the people write they do not use "blankety-blank."

How does one respond with any intellectual honesty?

You have to tell them as I do, Mr. President, that we should not blame the Japanese; we ought to blame the real culprit, the Federal Government of the United States. The policies of our Government have resulted in the Japanese imports. These policies are chiefly responsible because it is the myriad of unwise Federal policies that have created the competitive advantage by foreign automakers over the U.S. automobile industry.

I am going to require a vote on this proposition, Mr. President, because this air-bag issue is just one example of what I am talking about.

The National Highway Traffic Safety Administration's current section 208 passive restraint standard actually creates a competitive advantage for foreign automobiles. This standard provides that only large cars need comply by 1982.

What does that mean? It means that for all practical purposes only American-made cars are so adversely affected. Intermediate-size cars would have to comply by 1983. Again, these include mostly American-made cars.

So we have a situation that not until the year 1984 will any substantial number of imported cars have to comply with these standards. In the meantime, down the tube go thousands upon thousands of additional jobs that American workers so desperately need today.

We have a lot of overworked cliches in our vocabulary these days, one of which is "shooting ourselves in the foot." Well, we are doing that. This is a prime example of it. We are imposing restrictions and standards on our own people that we do not impose on imported products.

As to the air bag, it is estimated that when in full production air bags will add $200 to the price of a new car, and the replacement cost, Mr. President, will be two and a half times that, $500. So for at least 2 years foreign automobiles imported into this country will enjoy a substantial competitive advantage over American-made cars, courtesy of the policies of the Federal Government of the United States. That is, unless Congress votes to delay implementation and enforcement of this standard.

I suppose the amendment put into this bill by the House of Representatives, and which the Senate committee proposes to strike, can best be described as a fair play amendment: Fair play to the American automobile industry; fair play to people who buy automobiles; fair play to people who are out of work as a result of this policy; and others, instituted and implemented by the Federal Government.

So, the Senate is going to take a stand today on this amendment. Interestingly enough, I am bound to observe, Mr. President, that some of the very same Senators who support the air bag rule have been calling for Government intervention to limit foreign car imports in order to save the American automobile industry.

Well, they do not have to do that. Just let the American free enterprise system work, give it a chance to be competitive, and we do not have to have these trade embargoes. We just need to have some faith and some fairness toward the best economic system the world has ever had—the free enterprise system.

That is the reason I am raising this question today and why I want to vote on this amendment—because Senators will have a chance to show their intention to take positive steps to aid the ailing U.S. automobile industry. I urge Senators to show their support for the industry and all of the people employed by it and ancillary businesses by voting to delay implementation and enforcement of NHTSA's passive restraint standards.

Mr. President, I am going to ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I say to the distinguished managers of the bill that I shall be glad to vitiate the yeas and nays—I have an indication that there will be no attempt to strike the yeas and nays.

Mr. McCLURE. Will the Senator yield?

Mr. HELMS. I am glad to yield.

Mr. McCLURE. As the Senator knows, when this matter was discussed in the other body, they added an amendment which would, in effect, prohibit the air bag program. When that matter came before the subcommittee, it was suggested that we go ahead with the air-bag program and that the language prohibiting such a program be stricken from the bill.

The Senator from Idaho, at that time, indicated, as he indicates now, that I am no supporter of the air-bag program. I am not convinced that it is cost-effective or that it is, indeed, as good for safety as the proponents claim it to be. I agreed at that time that the language be stricken and that it could then be discussed, both on the floor of the Senate—as is now being done—or, in the event it was not discussed here, in the conference, knowing that the House already had had a vote on it and it would be within the conference if omitted from the Senate bill.

I have no illusions that we shall not have that discussion here, on the floor of the Senate. I had no illusion, and certainly, no expection, that the matter was concluded by the action of the subcommittee in striking the language from the bill.

It will be debated, I am certain, and either settled on the floor today by a vote of the Senate, or will be, again, the subject of a spirited debate in the conference.

I might add to that that, following the action taken by the committee, which, in effect, left the debate to a different forum, there was a demonstration mandated in a purchase by GSA as the result of an amendment offered by the Senator from Washington (Mr. MAGNUSON). So there is a program in which GSA will be involved in the purchase of automobiles equipped with air bags if they are economically available on models which are to be purchased for the GSA fleet.

Other than that, the matter is, as has been suggested by the Senator from Idaho, a matter of longtime debate, longtime discussion. I do not think, there is any need to go any further, from my standpoint, into the merits or demerits of the air bag proposals. But I do know that the Senator from Indiana has indicated that he is unwilling to accept the amendment of the Senator from North Carolina. Therefore, I did indicate to the Senator that there would be no disposition on the part of the committee to accept the amendment and that, therefore, he should not withdraw his request for the yeas and nays.

Mr. BAYH. Mr. President, with all due respect to the very strong feelings of our distinguished colleague from North Carolina, I have to urge that this amendment not be accepted. We have had that amendment in our bill several times in previous years. We just sort of let it go by the board because it has not had any effect, since the standard was not scheduled to go into effect in those years. But if there ever was an example where we should not have legislation on an appropriation bill, I say to my colleagues, this

is where it is, particularly when, this year, this is an item that is being worked out in the House-Senate conference by the respective authorizing committees.

Mr. President, I think it would be very unfortunate for us to put a prohibition in there which not only deals with airbags but with seatbelts and, without getting involved in the merits of lives saved—which the Senator from Indiana could do with very little provocation—I address the parliamentary question of urging my colleagues not to interfere with what the authorizing committees are doing right at this very moment in the conference.

Our distinguished colleague from New Mexico (Mr. SCHMITT) is on our committee. He is a conferee on that authorizing committee. He told us that this issue will be worked out in conference in a relatively short period of time. I just urge the Senate to vote down the amendment of the Senator from North Carolina.

● Mr. RIEGLE. Mr. President, I oppose the proposal introduced by my distinguished colleague from North Carolina, Mr. HELMS, which would, in effect, bar the Department of Transportation from spending any funds in fiscal year 1981 to enforce standard 208—the passive restraint standard.

At this very moment Senate and House conferees are working toward a compromise on this issue and I believe that it can best be resolved by the committees involved.●

● Mr. LEVIN. Mr. President, it is with a good deal of reluctance that I vote to sustain the committee's decision not to address the issue of passive restraint issues. On substantive grounds, I find airbags to be an expensive and, at this time, unjustified mechanism. I am particularly offended by the proposed provisions for phasing in the requirement which clearly works to the disadvantage of American producers.

But having said that, I believe there is good reason to sustain the committee's action on this issue at this time. I base that conclusion on two factors. First, this issue is being addressed now in a conference between the House and Senate. I have been informed about the progress of those negotiations and while it appears that they will not go as far as I would like toward minimizing the requirements for airbags, they have clearly addressed the phase in issue and have restricted the requirement for airbags. This amendment could create uncertainty which the industry does not need. Secondly, I am disturbed by the language of the amendment which is being offered. As I read it and as I listen to the explanation being offered, it may well have the effect of preventing continuing efforts to find nonairbag passive restraint systems.

While I have concluded that airbags are not a desirable safety mechanism, I have not reached the same conclusion about other passive systems and, accordingly, I cannot support an amendment which would have the effect of preventing advancements in this area.

Mr. President, while I commend the Senator from North Carolina for his willingness to raise this issue, I am afraid that my disagreement with his timing and the excessive scope of his language, compells me to vote against him.●

Mr. HELMS. Mr. President, if nothing further remains to be said, I move to lay the committee amendment on the table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the committee amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Tennessee (Mr. SASSER), the Senator from Illinois (Mr. STEVENSON), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. STEVENSON) would vote "nay."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 30, nays 56, as follows:

[Rollcall Vote No. 421 Leg.]

YEAS—30

Armstrong	Hatch	Morgan
Baker	Hayakawa	Nunn
Biden	Heflin	Roth
Boren	Helms	Simpson
Byrd, Harry F., Jr.	Hollings	Thurmond
Church	Humphrey	Tower
Dole	Johnston	Wallop
Domenici	Kassebaum	Weicker
Durenberger	Lugar	Zorinsky
Exon	McClure	
	Melcher	

NAYS—56

Baucus	Glenn	Packwood
Bayh	Gravel	Pell
Bellmon	Hart	Percy
Bentsen	Hatfield	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Huddleston	Pryor
Bumpers	Inouye	Randolph
Burdick	Jackson	Ribicoff
Byrd, Robert C.	Kennedy	Riegle
Cannon	Laxalt	Sarbanes
Chafee	Leahy	Schmitt
Chiles	Levin	Schweiker
Cochran	Long	Stennis
Cohen	Magnuson	Stevens
Cranston	Matsunaga	Tsongas
Culver	Metzenbaum	Warner
Danforth	Mitchell	Williams
Ford	Moynihan	Young
Garn	Nelson	

NOT VOTING—14

DeConcini	Jepsen	Stevenson
Durkin	Mathias	Stewart
Eagleton	McGovern	Stone
Goldwater	Sasser	Talmadge
Javits	Stafford	

So the motion to lay on the table the committee amendment, page 38, line 9, was rejected.

Mr. BAYH. Mr. President, I move to reconsider the vote by which the motion to lay the amendment on the table was rejected.

Mr. WARNER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the committee amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognised.

Mr. PROXMIRE. Mr. President, will the Senator yield so that I may get the yeas and nays on passage?

Mr. BENTSEN. I yield.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Texas is recognised.

Mr. BENTSEN. Mr. President, I ask unanimous consent that I be allowed to proceed out of order with an amendment that has been cleared, as I understand it, by the managers for the majority and the minority.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Mr. President, the Senator from Indiana has no objection but from a parliamentary standpoint should we not dispose of the amendment which we are presently dealing with or can we put this aside just momentarily?

The PRESIDING OFFICER. It can be put aside by unanimous consent.

Mr. BAYH. Mr. President, I ask unanimous consent that we put it aside temporarily to take care of the Senator from Texas and the Senator from Washington.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I did not hear the request. I reserve the right to object. What was the request?

Mr. BENTSEN. The request was that we proceed out of order with an amendment that has been cleared by the managers for the majority and minority.

Mr. HELMS. Mr. President, certainly I will not object.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Where does the committee amendment stand relative to this amendment?

The PRESIDING OFFICER. It is the pending question.

Mr. HELMS. The proposal is to set that aside; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I have no objection.

Mr. BENTSEN. I think this will take a couple minutes.

Mr. HELMS. I have no objection and I am delighted to accommodate the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1606

Mr. BENTSEN. Mr. President, I have an amendment which I send to the desk and ask the clerk to state.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from TEXAS (Mr. BENTSEN) for himself, Mr. RANDOLPH, Mr. STAFFORD, Mr. DOMENICI, Mr. PRESSLER, and Mr. CHAFEE proposes an unprinted amendment numbered 1606.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 35 after line 21, insert:

(a) For fiscal year 1981, the Secretary of Transporation shall control the obligation of the limitation imposed by section 310 by allocation according to the following formula: 80 per centum in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to a State for fiscal year 1981 bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year: *Provided*, That the collective obligations of all the States may not exceed one-fourth of the obligation ceiling imposed by section 310 in each of the first two calendar quarters of fiscal year 1981; the remaining 20 per centum not so allocated, in the order in which States have obligated all such sums so allocated submit projects on or after August 1, 1981, to the Secretary of Transportation for his approval and in the amounts for such projects.

(b) Notwithstanding subsection (a), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code;

(2) after August 1, 1981, revise a distribution of the 80 per centum made under subsection (a) if a State will not obligate the amount distributed during fiscal year 1981 and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during fiscal year 1981; and

(3) not distribute amounts authorized for administrative expenses.

Mr. BENTSEN. Mr. President, I offer this amendment for myself and Mr. RANDOLPH, Mr. STAFFORD, Mr. DOMENICI, Mr. PRESSLER, and Mr. CHAFEE.

This amendment adds a new section to deal with a problem that we have had this year with allocation of Federal-aid highway program obligational authority.

Under existing law, States can obtain obligational authority on a first come, first served basis. If there is a diminution of the amount available for obligation, it can have serious ramifications for some of the States. In the past year, an executive deferral of obligational authority created a situation which severely cut back available obligational authority.

Section 310 in this bill calls for an $8.4 billion obligation limitation. The amendment I propose now will require the Secretary of Transportation to allocate the obligation limitation among the States. This amendment is the same as the amendment I offered on June 25, 1980 to S. 2720, which was accepted and agreed to by the Senate at that time. I offer the amendment today, because it is unlikely that S. 2720 will become law by October 1, 1980, since it has not yet been considered by the House of Representatives.

On October 1, if neither S. 2720 as amended nor this amendment has been enacted into law, then in fiscal year 1981 we will be operating under the same first come, first served rule that occasioned the problem we seek to guard against here.

In short, this amendment seeks to give all States a degree of certainty about the obligational limitation available to them. It will require the Secretary of Transportation to split up the obligation limitation which is set in section 310 of H.R. 7831, so that each State has reserved to it in fiscal year 1981 a certain portion of what will be available for the total Federal-aid highway program in fiscal year 1981.

I remind the Senators that this amendment was proposed, debated, and passed by this body on June 25, 1980, and it pertains only to the obligational authority for fiscal year 1981. In fiscal year 1982, States should be prepared to go on the first come, first served basis.

Mr. President, what this amendment does is it deals with the allocation formula for the States. In the obligation authority that is created under our statutes, we have the situation that developed with some of the deferral of funds where we have been operating on a first-come-first-served basis and that meant that a lot of the smaller States were not able to achieve the funds that they needed for the highway construction.

What we have done in this piece of legislation is to do by amendment to this one what we did earlier in the year to a bill that is now resting over in the House of Representatives and will perhaps not be acted on. If it is not acted on, we are going to find that a number of small States are going to have some real problems on their allocation of funds, and this will see that the Secretary of Transportation is under the obligation to see that these States have an opportunity to obtain some of the funds.

As I say, it has been cleared by the managers of the bill on the majority and the minority side and has previously been acted on by this Senate.

Mr. PRESSLER. Mr. President, I rise in support of the amendment offered by Senator BENTSEN which I am pleased to cosponsor.

The intent of this amendment is to provide an orderly procedure for obligating Federal-aid highway funds so that each State will have an effective highway program next year. We saw a situation last year of changing obligational ceilings and allocation formulas which completely disrupted the States Federal-aid highway programs. We no longer have more money available than the States can obligate for highway projects. This practice has the potential for creating panic among the States that unless they rush to obligate October 1, they will get left out.

I believe we want to avoid that situation and this amendment would accomplish that purpose. It would provide a stable, assured amount of funds for each State and enable responsible planning through the entire fiscal year. Under the terms of this amendment, each State would retain the right to set its own priorities in funding highway projects. It would allow States like South Dakota, which are slower obligating States, an adequate amount of time to obligate their highway funds. This is necessary because in a number of States in my part of the country, construction is limited to a few months during the year.

It is intended that this allocation formula be in place only during fiscal year 1981 and after that period consideration be given to resuming the first come, first serve obligation procedure used in the past.

Mr. DOMENICI. Mr. President, the apportionments for the Federal-aid highway program for fiscal year 1981 will be made on October 1, 1980. Unless legislation is enacted before that date, the money will be available for obligation by the States on a first come, first serve basis.

I believe my distinguished colleagues are well aware of the disruption experienced by the States in their Federal-aid highway programs this past year due to a deferral of highway budget authority and the subsequent allocation formulas and resulting court suits.

The States now realize that there may not be sufficient funds available to meet all their highway needs and their experience last year has taught them that obligating funds early in the fiscal year may be the only way to assure a highway program. I believe this creates a real potential for a panic situation on October 1 when apportionments become available for obligation. It may also encourage States to obligate funds for any project which can be ready in a hurry, rather than funding high priority projects. States may believe, and justifiably so, that if they do not obligate immediately all the money will be gone.

In the past, there have been faster obligating States and slower obligating States. This is due to many reasons including the length of the construction season, the procedure for raising and making available revenues for the States' matching share, and the procedure for letting contracts. I believe it is unfair to penalize a State or deny them a highway program because, for example, their State legislature wants to be involved in the process of allocating revenues.

After the kind of experience my own State of New Mexico had last year, I believe it is imperative that we establish a procedure at the beginning of the fiscal year which will provide each State with a stable, assured amount of funding for their highway program during the next fiscal year.

Language similar to that contained in the amendment has already been passed

by both the House and Senate. However, it is unclear at this time whether the legislation containing this language will be passed in time and it is included here only because of the urgency of having a plan in place by October 1, 1980 when the apportionments will be made, to assure an orderly implementation of the highway program during the next fiscal year.

I am pleased to be a cosponsor of this amendment offered by Senator BENTSEN and I believe it will be effective in preserving a meaningful Federal-aid highway program for each State during fiscal year 1981.

Mr. BENTSEN. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from Vermont.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR STAFFORD

During the past year we have seen a situation developing where the States have been able to spend more money on Federal-aid highway projects than the Federal Government can provide.

The President's deferral of $1.15 billion in Federal-aid highway funds during fiscal 1980 and the subsequent allocation of the remaining funds demonstrated the difficulty in dividing limited resources among States with increasing highway needs. The purpose of the formula contained in this amendment is to provide each State with a definite amount of money in order that the necessary planning can be accomplished by the States throughout the year in order to maximize the benefit of the Federal funds available. At the same time there is adequate flexibility in the formula for the Department of Transportation to address any unique or unforeseen situations that may develop. This formula is intended to apply only during fiscal year 1981.

My own State of Vermont was adversely impacted by the changing allocation formulas during this fiscal year. Because of several factors including a construction season limited to the summer months, Vermont has traditionally been one of the slower obligating States. This Senator believes the amendment will preserve an effective highway program for Vermont and for all States. Similar language has already been passed by both the House and the Senate. I believe it is important to include it in H.R. 7831 because of the urgency of having an allocation formula in place by October 1, 1980 when highway apportionments for fiscal year 1981 are made.

Mr. CHAFEE. Mr. President, I am pleased to cosponsor the amendment offered by Senator BENTSEN. The allocation formula for the Federal-aid highway program contained in this amendment is absolutely necessary to assure a viable highway program for each State during fiscal year 1981.

It is important that such a procedure is in place by October 1, 1980, when the apportionments for the Federal-aid highway program are made to the States. No one wants to repeat the situation the States experienced last year when the formulas and obligational limitations were changed in midyear. We know how difficult it is to implement a formula once the States have begun obligating funds.

If an allocation formula is not in place by October 1, 1980, the apportioned Federal-aid highway funds are immediately available to the States for obligation on a first-come, first-serve basis. This has been an effective way of administering the highway program in the past when there were sufficient funds to meet all the States highway needs. However, that situation has dramatically changed during the past year for a number of reasons including inflation, a rapidly deteriorating highway system, and competing national priorities for limited Federal funds.

The Federal-aid highway program and the Federal and State interest in that program must be reexamined. Until we have the opportunity to make decisions regarding the future of the program, it appears that the most equitable procedure is to provide each State with a stable, assured level of funding so each State can have a highway program in fiscal year 1981.

Mr. President, if a first-come, first-serve procedure is used during fiscal year 1981, there is a good possibility some States will be unable to obligate funds quickly enough before the collective obligation ceiling is reached. After October 1, 1980, States will have apportionments available totaling over $15 billion with an obligational limitation for fiscal 1981 somewhere around $8.4 billion. Rhode Island is a State which could potentially be adversely affected if funds are obligated on a first-come, first-serve basis. For a variety of reasons it has, in the past, been a slow obligating State. This allocation formula contained in this amendment will allow States like Rhode Island to carefully plan their highway priorities throughout the fiscal year.

Mr. BAYH. Mr. President, I am happy to accept the amendment of the distinguished Senator from Texas. He describes it accurately.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas.

The amendment (UP No. 1606) was agreed to.

UP AMENDMENT NO. 1607

(Purpose: To make clear that grants in aid for airports can be made for both noise compatibility planning and programs)

Mr. MAGNUSON. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the consideration of the amendment offered by the Senator from Washington?

Mr. HELMS. Is there not an amendment pending?

The PRESIDING OFFICER. The committee amendment is pending, in respone to the inquiry of the Senator from North Carolina.

Mr. HELMS. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. They have been ordered.

Mr. BAYH. Mr. President, does the Senator from North Carolina object? The Senator is completely within his rights but since we just voted on that issue is it necessary to have another yea and nay vote?

The PRESIDING OFFICER. The yeas and nays have been previously ordered the Chair so advises the Senator from North Carolina.

Mr. HELMS. Very well.

The PRESIDING OFFICER. Is there objection to the amendment being considered at this time?

Mr. HELMS. Yes, I object. We have pending business.

The PRESIDING OFFICER. Objection is heard.

Mr. BAYH. Mr. President, will the Senator from North Carolina permit us to put aside the pending business for 2 minutes out of deference to the President pro tempore to consider an uncontroversial amendment?

Mr. HELMS. If it is no longer than that, all right. I have been here in this Chamber for 3 hours. I have two conferences at which I am supposed to be present. I want to accommodate every Senator, but I have stepped aside for eight Senators now. But I will be delighted if it will not take over 2 or 3 minutes. I am delighted to yield to my friend from Washington.

Mr. MAGNUSON. This will take a minute.

Mr. HELMS. I am delighted to yield.

The PRESIDING OFFICER. Without objection, the agreement has been made to set aside the committee amendment.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Washington (Mr. MAGNUSON) proposes an unprinted amendment numbered 1607:

At page 32, line 2, subtitute "noise compatibility planning and programs" in lieu of "noise compatibility planning".

Mr. MAGNUSON. Mr. President, the change I am proposing to section 302 of H.R. 7831 is technical in nature. Section 302 is a general provision which limits the amounts of obligations that the Department of Transportation can enter into for grants in aid for airports during the upcoming fiscal year.

However, the language of section 302 this year also appears to narrow the purposes for which those funds could be used beyond the language included in the authorization. For example, in past years—and consistent with the authorization act—airport sponsors could receive grants from the Department of Transportation for implementing their noise compatibility plans. Under this year's appropriation bill, only noise compatibility planning seems to be eligible under section 302, not noise compatibility programs to implement those plans.

My amendment merely makes clear that, as in years past, airport sponsors can receive grants from DOT under the authorization and the section 302 limitation on obligations for both "noise compatibility planning and programs."

I hope the chairman and ranking member of the Transportation Appropriations Subcommittee will be able to accept this amendment to settle the technical concern of the Department of Transportation.

Mr. BAYH. Mr. President, the Senator from Indiana is happy to accept the amendment of our distinguished chairman of the Appropriations Committee.

The PRESIDING OFFICER. The Chair interrupts with apologies to the Senator from Indiana. The Chair has been very patient at the several conversations that are going on in the Chamber but now it reaches the point where the Chair is having difficulty hearing Senators who are entitled to be heard in the Chamber.

I ask the Senator to please be in order so we might continue and if Senators must carry on conversations please retire to the cloakroom for that purpose.

With my apologies, the Chair recognizes the Senator from Indiana.

Mr. MAGNUSON. Mr. President, I ask for a vote on my amendment.

The PRESIDING OFFICER. The Senator from Indiana was recognized.

Mr. BAYH. Mr. President, the Senator from Nebraska did the Senator from Indiana a great service. He has nothing further that needs to be said.

The PRESIDING OFFICER. Is there objection?

Mr. SCHMITT. Mr. President, this is a very difficult morning, particularly for the Senator from Indiana, and I have no known objections to this amendment. However, I do know that the ranking minority member has not seen it. If we could have a moment or two to find out where he is and have him look at the amendment it would be, I think, wholly appropriate.

I suggest the absence of a quorum while that is done.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BAUCUS). Without objection, it is so ordered.

Mr. BAYH. Mr. President, I ask unanimous consent that the amendment of our distinguished colleagues from Washington be put aside for not to exceed 3 minutes, and I yield to the Senator from New Mexico to finish the business, which is really the pending business, which has been put aside for about 3 hours now.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

UP AMENDMENT NO. 6602 (AS FURTHER MODIFIED)

Mr. SCHMITT. Mr. President, first of all I apologize to my distinguished colleague and friend from North Carolina. Things have gotten a little bit out of control and, hopefully this will establish a small measure of control to our proceedings.

Mr. President, at the request of Senator STEVENSON, we have drafted language to be inserted in the pending amendment presented by Senator TSONGAS, and we have agreement among the Senators concerned, including Senator STEVENSON, that this language be inserted after line 9 of the amendment as presently at the desk.

Mr. President, I ask unanimous consent that the amendment proposed by the Senator from Massachusetts be modified as follows——

The PRESIDING OFFICER. Will the Senator please send his modification to the desk?

Mr. SCHMITT. For the clarification of the clerk, the insert "A" is to follow after line 9.

The PRESIDING OFFICER. The clerk will report the modification. Will the Senator please repeat his explanation?

Mr. SCHMITT. After the number "$6 million."

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 25, strike lines 5 through 9 and substitute the following:

COOPERATIVE AUTOMOTIVE RESEARCH

For necessary expenses to discharge the functions of a cooperative automotive research program for conducting basic automotive research, $12,000,000: *Provided*, That the amount of funds obligated during the period ending 6 months after the date of enactment of this section shall not exceed $6,000,000; *Provided further*, That the Department of Transportation, in cooperation with the Department of Commerce, Department of Defense, National Science Foundation, National Aeronautics and Space Administration, Environmental Protection Agency, and Department of Energy, report to the Congress within 6 months of enactment of this Act its assessment of current federal automotive and other surface transportation research and development and its analysis of options for the federal management structure, areas of research, detailed objectives and funding requirements for a cooperative automotive research program, *Provided further*, that no additional funds shall be expended thereafter, unless authorized by Congress. *Provided further*, That it is also the intention of the Senate that an authorization bill with positive or negative recommendations be reported out by the appropriate committees of the Senate within said period.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

Mr. SCHMITT. Mr. President, there will be one technical correction in the final printing of the bill. I would recommend that the acronyms for the various agencies be spelled out, and that the first agency in the amendment is the Department of Commerce not the Department of Energy.

I believe this amendment now is acceptable to all persons concerned. The legislative history, I think, has already been well stated in the record, and I would suggest that we agree to the amendment.

Mr. BAYH. Mr. President, I urge us to do so expeditiously.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Massachusetts.

Mr. TSONGAS' amendment (UP No. 1602), as further modified, was agreed to.

The PRESIDING OFFICER. The question now recurs to agreeing to the first excepted committee amendment, as amended.

The first excepted committee amendment, as amended, was agreed to.

SECOND EXCEPTED COMMITTEE AMENDMENT

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Washington.

Mr. FORD. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. FORD. Did the Senator from North Carolina propose an amendment to the bill eliminating moneys as relating to airbags of $25 million?

Mr. HELMS. Will the Senator yield Mr. President?

Mr. FORD. I am asking the question.

Mr. HELMS. The situation is that the committee struck the provision and the Senator from North Carolina moved to table the committee amendment striking the House amendment, if that is not confusing.

Mr. FORD. Well, as you know, I have had something to do with NHTSA, as the chairman of the Consumer Subcommittee.

As I understand, the House language forbids the use of any funds as they relate to airbags.

Mr. HELMS. That is correct.

Mr. FORD. On this side the committee struck the House language.

The PRESIDING OFFICER. That is correct, with an amendment striking it.

Mr. FORD. But then it also put in $25 million for the Government to buy cars for the use of airbags.

Mr. BAYH. $10 million.

Mr. FORD. $10 million. Was it $25 million over the next 3 years or $10 million just in 1981?

Mr. BAYH. Ten million dollars.

Mr. FORD. For 1981 or when?

Mr. BAYH. Yes.

Mr. FORD. For 1981.

Mr. WARNER. Will the Senator from Kentucky, Mr. President, yield for a point of clarification?

Mr. FORD. I think we had better clear it up because we have a conference going on now and if that conference completes its business what we are doing here eliminates the judgment of the conference, as I see it.

Mr. WARNER. Absolutely. I sit with you on the conference.

The point is the House action, if left in the bill, would remove money for the enforcement of any passive device, airbags, including the new passive safety belts, so it is an across-the-board elimination of any funds to implement a standard to provide consumer choice for these devices.

Mr. FORD. Let me ask, Mr. President—may I continue? Is there any time constraint?

Mr. SCHMITT. Just passive time.

[Laughter.]

Mr. WARNER. There is no time constraint.

The PRESIDING OFFICER. The Chair informs the Senators there is no time control.

Mr. FORD. Mr. President, I would like to have a colloquy with the Senator from Virginia (Mr. WARNER). If I understand the Senator from Indiana, who is the floor manager of the bill, there is $10 million in this legislation for the implementation of the passive restraints, and that $10 million is there for the purchase by the Federal Government of vehicles containing airbags or is it just for passive restraints?

Mr. SCHMITT. If the Senator will

yield, Mr. President, I think I can clarify that. The language is the language of passive restraints and would include any form of passive restraint, including airbags.

Mr. FORD. Let me just read to you from the bottom of page 35.

The Committee has provided an additional $10 million to the National Highway Traffic Safety Administration to fund a demonstration program of air bag systems using fleet purchases of cars equipped with air bags. Under this program, the Department of Transportation would fund the incremental cost of air bags in 1982 model cars purchased by the General Services Administration, State and local governments, and by police departments.

Now, that is $10 million for airbags. That is what this bill says and that is what we are voting on. That is not what we are in conference on as it relates to NHTSA.

I understand what the House language does. It eliminates all the use of money. But I understand what this language does, too. It preempts what our conference is doing.

Mr. BAYH addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield?

Mr. FORD. I yield to the Senator from Indiana.

Mr. BAYH. Mr. President, the purpose of that money and the purpose of the language was in no way designed to try to subvert or circumvent the language of the authorizing committee. In fact, the Senator from Indiana authored the amendment to strike it out of there for the very purposes suggested by the Senator from Virginia and the Senator from Kentucky.

This money is provided so that GSA can buy 25,000 cars as a testing procedure, so we will know more about them after they have had a chance to use them for a year. It does not deal at all with the general population of cars. This is a testing program.

If the Senator from Kentucky would feel better about the language being included in the conference report to permit passixe restraints as well as airbags, the Senator from Indiana has no problem with that.

Mr. FORD. Mr. President, I say to the Senator from Indiana, as I recall the conference and its discussion and the vote on our side and what came out of the conference, there was very little sentiment for expending this kind of money as it relates to the purchase of airbags, an airbag experimental system as it relates to the Federal Government.

What we were intending to do was impose a procedure—I think that is what is in conference now. I do not think it is flying. I think we might have to go back to conference to narrow the fields a little bit to designate lines of vehicles within the industry. We turned everything around to prevent small cars from getting airbags or passive restraints. I thought we came up with a reasonable procedure. But now I am not sure where we are, since the conference, at least on our side, was opposed to the implementation of the large expenditure of funds as it relates to a demonstration program.

The Senator from Virginia may recall it differently, but that is the way I recall the conference that we had.

Mr. WARNER. If the Senator will yield, it seems to me that there are two separate questions that may be presented to the Senate. The first one, and the one I regard as the most important, is the committee amendment which will strike the House language. That is found on page 38 of the bill resting on our desks, section 318.

The Senate committee amendment would strike section 318 from the statute. If left in, 318 would negate the work of the conference.

Mr. FORD. That is correct.

Mr. WARNER. Therefore, it is my strong recommendation to our colleagues that the committee amendment be supported. Now, that support has been manifested here by a vote, as I recall, of 30 to 52.

Mr. FORD. Mr. President, I beg the Senator's pardon. That was to eliminate the committee language as it related to reinstating, as I read the amendment.

Mr. WARNER. The vote was 32 to 55.

Mr. FORD. I am talking about the motion to table that part of it.

Mr. WARNER. It is my understanding that the motion was to table section 318. Am I not correct?

Mr. BAYH. Yes.

Mr. WARNER. That is correct.

Mr. FORD. I yield to the Senator.

Mr. WARNER. It is my understanding, Mr. President, that the Senator from North Carolina is contemplating asking for the yeas and nays on an up-or-down vote on the committee amendment, which effect would be to strike from the bill a House provision which would restrain the Department of Defense from using any funds to implement standards which apply to both airbags and passive seat belts.

So, I think, if I might suggesst, Mr. President, if it is appropriate, to the managers of the bill to call up this amendment at this time, we should ask for an expression of an opinion of the Senator from North Carolina as to whether or not he desires the yeas and nays or if he is willing to accept the judgment of the Senate as manifested by this vote a moment ago in which the Senate clearly stated it would accept the committee amendment.

Mr. BAYH. Mr. President, I think the Senator from North Carolina has already expressed himself rather unequivocally on that matter.

Mr. HELMS. And the yeas and nays have been ordered.

Mr. FORD. Mr. President, I offered, as I recall, this sort of procedure in our conference, and it was turned down by the conferees I think we are getting into a posture here where we are forcing airbags, whether we want them or not, and we are forcing a demonstration at a cost of $10 million to the taxpayers of this country. This is just for the purchase of automobiles for airbags.

I am not opposed to airbags, as such, as I am not opposed to passive restraints, as such. But I think what we were trying to do here was implement the passive restraints through NHTSA, which is an agency of the Department of Transportation. I thought we were saying to industry—and industry was asking us to take this off their backs—that we switch the responsibility and the size of the automobile as to when we would require the passive restraints within the industry.

This proposal does not outline anything. It just says "Go get 'em" at approximately $400 apiece, at a cost of $10 million.

Mr. CANNON. Will the Senator yield?

Mr. FORD. Yes.

Mr. CANNON. Is it not a fact that there will not be any airbags available in the 1981 model year?

Mr. FORD. The Senator is correct.

Mr. CANNON. This appropriation is for 1981. So the earliest time that they could come onstream would be a 1982 model year.

Mr. FORD. Possibly, as we go back and look at it, the Senator is correct that when we brought the medium-size cars to the top and the larger cars last, because they are changing the larger automobile in size, that we reversed the trend. What the committee is about to do here is to spend $10 million and, as we say down home, "It ain't there." And we are going to put $10 million into a program.

Mr. BAYH. If the Senator will yield, this was put in in the full committee by our distinguished chairman, the Senator from Washington. And it is not necessary for the Senator from Indiana to speak for him, but the thrust of this was to give us a chance to have a thorough testing in which Government vehicles would be used; that these vehicles will be available in the latter part of the fiscal year for 1982 models. That is what the money is supposed to be spent for—let us have a comprehensive test of a sufficient number of these vehicles and we can decide, once and for all, the pluses and minuses for airbags, not just to have a test run on a bunch of dummies.

Mr. FORD. Mr. President, I say to my good friend from Indiana that that is what our conference was trying to do as it relates to NHTSA. That was our responsibility from the Commerce Committee as you relate it to the differences between the Senate and the House. And the Senate and the House agreed on something different, and the Senate's proposal was something different than what is included in this piece of legislation we are attempting to pass here today.

So the $10 million that is in the committee bill was not approved by the conference committee as it related to the conference between the House and Senate on NHTSA and passive restraints.

Mr. BAYH. Mr. President, I ask my friend from Kentucky, are we not talking about apples and oranges?

Mr. FORD. Mr. President, we are talking about $10 million going against something that the conference committee of the Senate did not agree to. And the Commerce Committee has the responsibility in this area.

Mr. BAYH. Mr. President, the Senator

from Indiana is fully aware of how many dollars we are talking about, and he is fully aware of what the authorizing committee is trying to do. But I say to my friend from Kentucky that he can distinguish between what he is doing in the authorizing committee as it applies to national policy and what we are telling the automobile manufacturers they have to do—and you have reached a compromise, I understand.

Mr. FORD. No; we did not. It is still in conference. We have not reached a compromise.

Mr. BAYH. That is the reason we are striking this language out of here so that we do not presuppose what you are going to do. What this language is designed to do—and perhaps I should let the Senator from Washington make the explanation, because I am not having very much luck the way I am going about it—but what we are trying to do is say: "OK, you fellows decide what the national policy should be as far as the automobile producers are concerned. We are going to give GSA the opportunity to run a test on these. We are not telling the automobile companies what to produce. We are going to buy automobiles that they produce according to the instructions that you give them in the authorizing committee."

Then we are going to test them and see how people are protected or not protected and come back in a year and give a report to the Senate and perhaps the authorizing committee would want to change its position. Perhaps it would make sense.

Mr. McCLURE. Will the Senator yield?

Mr. BAYH. I am happy to yield.

Mr. McCLURE. The comment was made that these will not even be available during 1981. I would suggest that if in fact they are not available because of decisions made in the law or in the manufacturing sector, then this question is moot because the money would not be expended, whether it is made available or not. The only way in which this provision for a GSA purchase could have any effect at all is if, as a matter of fact, appropriate automobiles are available with this equipment that might be purchased by GSA as part of the Government fleet. If they are not available, obviously, GSA could not buy them.

Mr. FORD. I might say to my good friend from Idaho that what we were trying to do was to get the airbags tested in the system, or passive restraints tested in the system.

We are not doing that here, in my opinion. It just says to buy them. There is no procedure, there is no direction, as I read it. There may be a different intent than what I read.

"This amendment is not intended to encourage the purchase of car models other than the usual models purchased by the participating agencies."

Well, that may be true, but how are you going to distribute them? How are you going to make a comprehensive study when there is nothing, apparently, in the language of the legislation that says what you must do with them?

Maybe they are all going to be bought for Washington, D.C., and we will drive up and down Constitution Avenue and Pennsylvania Avenue and see if there are accidents. That does not make a lot of sense to me.

I go back to what we are trying to do. We are trying to work out something with the auto industry. We are trying to work out something for the citizens to have an opportunity to use it. Now we are usurping that part of the conference that we were trying to put into the permanent, long-range study as it affects the citizens and as it relates to the auto industry.

Mr. President, I am very concerned about the $10 million. If we just take the $10 million out and let it float around where we can use it somewhere else, that is all right. I understand now how it got in there and I understand why.

Mr. President, I am very much opposed to the procedure and very much opposed to the $10 million. I think it is time that we do not want to eliminate the possibility of the Department of Transportation having an opportunity to look at it and have a study made, but I do not think we want to spend $10 million in taxpayer money on top of what we are already spending when the system can work itself and we have the opportunity to see that the system works itself without any additional taxes or additional budgetary figure.

Mr. President, I am going to be looking at this amendment——

Mr. WARNER. Will the Senator yield?

Mr. FORD. I yield.

Mr. WARNER. Just so that it is clear to our colleagues since we have worked on this for some time, I do believe that the Magnuson amendment is supportive of the ultimate objective of the conference. The objective of the conference is to see that an adequate body of statistics is developed on the highways of America with respect to the alternative passive restraints available. There are only two today: The airbag system and a seatbelt, be it a passive or active type of seabelt.

As I understand Senator MAGNUSON's amendment, it would provide $10 million. It says that the General Services Administration in its broad discretion could buy automobiles for use by the Federal Government and those automobiles, assuming the models were available, would be equipped with airbags.

I am certain that the GSA, in performing this responsibility, would distribute those automobiles reasonably even throughout the United States on the various highways such that a statistical base could be developed from this Government fleet of airbag equipped automobiles. It is for that reason that I am supportive of that part of the bill, that language in the bill.

I yield to the Senator from Washington.

Mr. MAGNUSON. Mr. President, it is not the intention of the committee, if appropriate car models are not available with airbag systems, to expend the funds.

There are several Government agencies which have expressed interest, 400, as a matter of fact——

Mr. FORD. Four hundred agencies have expressed interest?

Mr. MAGNUSON. Local and State government agencies that want to buy them. There are about 400 of them. I have the list here.

Mr. FORD. I would like to see the list.

Mr. MAGNUSON. There is ample precedent for this. The Senator from Kentucky was not a member of the Commerce Committee when this first came up, but long before Nader we established a test program for safety devices on cars which were being purchased by GSA. GSA is the biggest single customer of the automobile industry. There were certain safety features we knew should be put on cars, such as four-wheel brakes, and safety glass. There were seven different items. We suggested to the manufacturers that they put those items on cars to be purchased by GSA.

Well, naturally that led to putting these safety devices, seven of them—rearview mirrors and things of that kind, four-wheel brakes, shatterproof glass—on all cars. The automobile manufacturers decided, "If we are going to sell cars to GSA with those items on them, we will put them on all models." So they are standard procedure now.

All we are trying to do here is to suggest a test to see whether airbags are feasible or not. Since there was so much fuss and feathers going on about airbags, we thought this would be a good idea to make a test.

I do not know what the NTSA conference committee has done. I have not had the chance to be there as much as I should because I have been busy with appropriations.

However, all this provision does is to set aside $10 million to fund a demonstration of airbags.

There are many agencies that would like to participate in this test. I have a whole list of them.

Mr. FORD. What are the agencies?

Mr. MAGNUSON. They are mainly police departments, sheriffs departments, things of that kind.

Mr. FORD. And GSA is going to buy the cars for local police departments?

Mr. MAGNUSON. No; just the airbags. They are not going to buy the cars.

Mr. FORD. But the Department of Transportation will furnish airbags for local police departments under this language?

Mr. MAGNUSON. Yes.

Mr. WARNER. If the Senator will yield——

Mr. MAGNUSON. This is merely a test proposition.

It does not tell the manufacturers what to do at all.

Mr. WARNER. If the Senator will yield, I am generally supportive of the objective of this amendment which has been incorporated into the bill. As a practical matter, it is my understanding that the airbag is not an off-the-shelf item that might be purchased and installed at some time subsequent to manufacture, but it has to be integrated into the automobile as that car is going through the assembly line. Therefore, as I interpret the language, it would provide a sum of money such that the Government, in the future as it acquires new vehicles, can acquire those vehicles in the models customarily bought by the Gov-

ernment with the airbag installed by the manufacturer. Will the Senator accept that as a clarification?

Mr. MAGNUSON. Yes; yes, I will.

Mr. WARNER. Airbags are not going to be an item that will be displayed in the showroom window so that you can come in, drive up your car and, like a muffler, have it installed in an afternoon. It is a frightfully complicated system and it must be installed at the factory, during the integration of all the other parts of the automobile. Consequently, the Senator's amendment, while highly worthy in objective, I think has to be technically correct to reflect that, in the future, as GSA acquires cars made, presumably, by American manufacturers, they would acquire a certain number of cars, up to a total not to exceed $10 million, which have airbags in them.

It is unlikely that this can be achieved in a period of time of less than 3 or 4 years, because in model year 1982, in America, only the Lincoln and, I believe, the Mark VI will offer as an option by an American manufacturer the airbag. I am confident that there will be very few Lincolns and Mark IV's bought by the Federal Government. So it is probably in the model years 1983 and 1984, when the midsized smaller cars come on, that we can utilize the fund included in this bill.

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have printed in the RECORD a synposis of the 1978 canvass of the interest of State and local governments and law enforcement agencies, as well as commercial organizations, including taxicab companies, public and private utilities, industry and insurance companies, in purchasing cars equipped with airbags.

There being no objection, the synopsis was ordered to be printed in the RECORD, as follows:

Industry, number of replacement vehicles (yearly), and size:

1. General Mill, Inc., Minneapolis, Minnesota: 200, Intermediate.
2. Service Systems—A Subsidiary of Del-Monte Corp., Buffalo, N.Y.: 120, Intermediate.
3. W. R. Grace & Co., New York, N.Y.: 60, Full; 350, Intermediate.
4. Home Savings & Loan Association, North Hollywood, California: 26, Full; 100, Intermediate; 150, Compact.
5. Getty Oil Company, Los Angeles, California: 11, Full.
6. General Casualty Companies, Madison, Wisconsin: 75, Full.
7. Missouri Edison Company, Louisiana, Missouri: 3, Full; 7, Intermediate.
8. Bituminous Insurance Companies, Rock Island, Illinois: 75, Intermediate.
9. N. C. Farm Bureau Insurance, Raleigh, North Carolina: 60, Full.
10. Superior Water, Light and Power Co., Superior, Wisconsin: 1, Full.
11. Erie Insurance Group, Erie, Pa.: 105, Intermediate.
12. Federal Nat'l Mortgage Association, Washington, D.C.: 1, Full.
13. Minnesota Mining & Manufacturing Co., St. Paul, Minnesota: 500, Compact; 500, Intermediate.
14. Monsanto Company, St. Louis, Missouri: 350, Intermediate.
15. Chubb & Son Co., New York, N.Y.: 500, Intermediate.
16. Western Agricultural Insurance Co, Phoenix, Arizona: 6, Full.
17. CAL-Farm Insurance Company, Berkeley, California: 70, Intermediate.
18. Ina Corporation, Philadelphia, Pa.: 700, Intermediate.
19. Peninsular Fire Insurance Co., Jacksonville, Florida: 4, Full.
20. DOW Chemical U.S.A., Midland, Michigan, 1300, Intermediate.
21. City of Baton Rouge & Parish of East Baton Rouge, Louisiana: 250, Full; 250, Intermediate.
22. Goodyear Tire & Rubber Co., Akron, Ohio: 300, Intermediate.
23. Preferred Risk Mutual Insurance Co., Des Moines, Iowa: 30, Intermediate.
24. Independent Indemnity Co., Insurance Carrier, Santa Ana, Calif.: 6, Intermediate; 4, Full.
25. Hooker Chemicals & Plastics, Corporation, Niagara Falls, N.Y.: 10, Intermediate.
26. Follett Corporation, Chicago: 30, Intermediate; 5, Full.
27. The Concord Group Insurance Co., Concord, New Hampshire: 40, Intermediate.
28. National Farmers Union Insurance Co., Denver, Colorado: 50, Intermediate; 10, Full.
29. Harleysville Insurance Co., Harleysville, Pa: 65, Compact.
30. Alabama Power Co., Birmingham, Alabama: 250, Compact.
31. Louisville Gas & Electric, Louisville, Kentucky: 25, Compact.
32. Arizona Public Service Co., Phoenix, Arizona: 10, Intermediate.
33. Pekin Insurance, Pekin, Illinois: 20, Intermediate; 10, Full.
34. General Dynamics, St. Louis, Missouri: 700, Intermediate; 200, Full.
35. American Telephone & Telegraph Company, New York, N.Y.: 4000, Compact.
36. Nabisco, Inc., East Hanover, New Jersey: 100, Intermediate.
37. Allstate Insurance Co., Northbrook, Illinois: 1000, Intermediate; 1500, Subcompact.
38. State of Maine, Dept. of Public Safety, Augusta, Maine: 50, Intermediate.
39. Chromalloy Photographic Industries, St. Louis, Missouri: 75, Subcompact; 75 Intermediate.
40. Oregon Mutual Insurance Co., McMinnville, Oregon: 10, Intermediate.
41. Etna Insurance Company, Hartford, Connecticut: 200, Compact.
42. Kansas City Power & Light Company, Kansas City, Missouri: 50, Intermediate.
43. Caterpillar Tractor Co., Peoria, Illinois: 125, Intermediate.
44. Beatrice Foods Co., Chicago, Illinois: 500, Full; 400, Intermediate; 100, Compact.
45. Robertshaw Controls Company, Richmond, Virginia: 150, Subcompact; 150, Intermediate.
46. Vermont Yankee Nuclear Power Corporation, Rutland, Vermont: 2, Full.
47. Rochester Gas & Electric Corp, Rochester, N.Y.: 5, Full; 45, Compact.
48. Meridian Insurance Company, Indianapolis, Indiana: 70, Intermediate.
49. Nashville Electric Service, Nashville, Tenn.: 20, Compact; 5, Intermediate.
50. Hercules Incorporated: 190, Intermediate.
51. Dept. of Water & Power, Los Angeles, Calif.: 100, Compact.
52. Ranger Insurance Co., Houston, Texas: 80, Intermediate.
53. The LTV Corporation, Dallas, Texas: 50, Compact; 100, Intermediate; 50, Full.
54. Keystone Automobile Club, Philadelphia, Pa.: 8, Compact.
55. Kemper Insurance Companies, Long Grove, Illinois: 500, Intermediate.
56. The Continental Insurance Co., New York, N.Y., 300, 600, 400, Full; Intermediate; Compact.
57. Potomac Electric Power Co., Washington, D.C.: 10, Compact.
58. Xerox Corporation, Rochester, N.Y.: 1,000, Intermediate.
59. State Street Bank & Trust Co., Boston, Mass.: 45, Compact.
60. Grinnell Mutual Reinsurance Co., Grinnell, Iowa: 40, Intermediate.
61. The Home Insurance Co., Manchester, New Hampshire: 375, intermediate.
62. Baker Service Tools, Houston, Texas: 50, Full.
63. Northwest Natural Gas Co., Portland, Oregon: 38, Full.
64. Fairchild Industries, Germantown, Md.: 9, Full.
65. McCormack & Company, Inc., Hunt Valley, Md.: 200, Intermediate.
66. MFA Insurance Companies, Columbia, Missouri: 210, Intermediate.
67. Iowa National Mutual Insurance, Cedar Rapids, Iowa: 40, Intermediate.
68. Transport Indemnity Co., Los Angeles, Calif.: 40, Intermediate.
69. Selected Risks Insurance Co., Branchville, N.J.: 50, 5, Compact; Intermediate.
70. Nationwide Insurance, Columbus, Ohio: 350, 150, Subcompact; Intermediate.
71. Heinz U.S.A., Pittsburgh, Pa.: 200, 10, 20, Compact; Intermediate; Full.
72. Reliance Insurance Companies, Philadelphia, Pa.: 250, Intermediate.
73. Tri-State Insurance Company, Luverne, Minnesota: 15, Compact.
74. Attleboro Mutual Fire Insurance Co., Attleboro, Mass.: 1, Full.
75. The Philadelphia Contributionship Fire Insurance Co., Philadelphia, Pennsylvania: 2, Full.
76. AVA Leasing Service Co., Atlanta, Georgia: 75, Full.
77. Yellow Cab Inc., Indianapolis, Indiana: 100, Full.
78. Motorola Inc., Phoenix, Arizona: 80, Intermediate.
79. California Taxi Cab Association, Sacramento, Calif.: 500, Intermediate.
80. Government Employees Insurance Co., Washington, D.C.; 45, 45, Intermediate; Compact.
81. Federated Life Insurance Co., Owatonna, Minnesota: 25, 25, Compact; Full.
82. Mandeville Signs, Pawtucket, Rhode Island: 10, Full.
83. Prudential Property & Casualty, Insurance Co., Holmdel, N.J.: 150, Compact.
84. The Hamilton Mutual Insurance Co., Cincinnati, Ohio: 8, Intermediate.
85. Michigan Millers Mutual, Insurance Co., Lansing, Michigan: 40, Intermediate.
86. Benjamin Moore & Co., Montvale, N.J.: 50, 50, Compact, Intermediate.
87. Northway, Inc., Columbia, Ohio: 25, Full.
88. Evans Products Co., Portland, Oregon: 75, Intermediate.
89. Unigard Insurance Group, Seattle, Washington: 60, Intermediate.
90. Pennwalt Corporation, Philadelphia, Pa.: 650, Compact.
91. Thompson-Hayward Chemical Co., Kansas City, Kansas: 80, Full.
92. Fitchburg Mutual Fire Insurance Co., Fitchburg, Mass.: 6, Full.
93. AETNA Life & Casualty Co., Hartford, Connecticut: 750, Compact.
49. Iowa Kemper Insurance Co., Mason City, Iowa: 25, Intermediate.
95. Occidental Petroleum Services, Inc., Houston, Texas: 250, Intermediate.
96. AMICA Mutual Insurance Co., Providence, Rhode Island: 50, Full.
97. Amalgamated Casualty Insurance Co., Washington, D.C.: 8, Full.
98. National Mutual Casualty Insurance Company, Harrisburg, Pennsylvania: 50, Intermediate.
99. Mission Insurance Group, Inc., Los Angeles, California: 40, Full.
100. Western National Mutual Insurance Company, Minneapolis, Minnesota: 15, Full.
101. Orange & Rockland Utilities, Inc., Spring Valley, N.Y.: 72, Intermediate.
102. State Farm Mutual Automobile Insurance Co., Bloomington, Illinois: 3,000, Intermediate.
103. Employers Mutual Companies, Des Moines, Iowa: 9, 67, Full; Intermediate.
104. Merchants & Business Men's Mutual Insurance Company, Harrisburg, Pennsylvania: 55, Full.
105. Citizens Security Red Wing Mutual Insurance Co., Minnesota: 9, Full.
106. California Mutual Insurance Co., Monterey, Calif.: 18, Intermediate.
107. Farmers Alliance Mutual Insurance Co., McPherson, Kansas: 40, Intermediate.
108. Holyoke Mutual Insurance Co., Salem, Massachusetts: 10, Intermediate.
109. Church Mutual Insurance Co., Merrill, Wisconsin: 35, Intermediate.
110. Austin Mutual Insurance Co., Minneapolis, Minnesota: 10, Intermediate.
111. Peerless Insurance Co., Keene, New Hampshire: 30, Compact.
112. Minnesota Mutual Fire & Casualty, Minneapolis, MN: 15, Intermediate.
113. Holy Cross Novitiate, Bennington, Vermont: 50, Full.
114. Union Oil Company of Calif., Los Angeles, Calif.: 175, Compact; 175 Intermediate.
115. National Grange Mutual Insurance Co., Keene, New Hampshire: 30, Intermediate.
116. Preferred Mutual Insurance Co., New Berlin, New York: 3, Full.
117. Grain Dealers Mutual Insurance Co., Indianapolis, Indiana: 25, Intermediate.
118. Pennsylvania Lumbermens Mutual Co., Philadelphia, Pa.: 10, Intermediate.
119. Montgomery Ward Insurance Co., Chicago, Illinois: 30, Intermediate.
120. Central Louisiana Electric Co., Alexandria, Louisiana: 40, Intermediate.
121. Ralston Purina Company, St. Louis, Missouri: 12, Full.
122. Cooper Laboratories, Inc., Parsippany, New Jersey: 50, Intermediate.

Total number of replacement vehicles (yearly) as of April 26, 1978, 27,946.

States, number of replacement vehicles (yearly), and size:

1. Minnesota: 500, Full.
2. Florida: 250, Compact; 250, Intermediate.
3. West Virginia: 200, Intermediate.
4. New Mexico: 250, Intermediate.
5. Mississippi: 250, Intermediate; 250 Full.
6. Maryland: 1,320, Full.
7. Montana: 400, Compact; 150, Full; 70, Intermediate.
8. Wisconsin: 600, Compact; 300, Intermediate; 200, Full.
9. South Dakota: 200, Intermediate.
10. Colorado: 250, Intermediate; 250, Full.
11. Vermont: 50, Intermediate.
12. Maine: 45 Intermediate.
13. Idaho: 125, Compact; 125, Intermediate.
14. Washington: 650, Intermediate.
15. Oregon: 165, Compact; 20, Intermediate.
16. Pennsylvania: 1,000, Compact; 1,200, Intermediate.
17. New Jersey: 250, Compact; 250, Intermediate.
18. Louisiana: 300, Compact; 375, Intermediate.
19. New York: 500, Compact; 500, Intermediate; 200, Full.
20. Wyoming: 100, Intermediate; 55, Full.
21. Missouri: 250, Full.
22. District of Columbia: 150, Intermediate.
23. Nebraska: 300. Comoact.
24. Hawaii: 29, Subcompact; 51, Compact; 8, Intermediate.
25. Iowa: 120. Compact.
26. Alaska: 10. Intermediate.
27. Connecticut: 800, Intermediate.
28. Georgia: 95, Full; 60 Compact.

Total number of replacement vehicles (yearly) as of April 26, 1978, 13,473.

Police and local list, number of replacement vehicles (yearly), and size:

1. New York State Police, Albany, N.Y.: 700, Full.
2. Department of California Hwy. Patrol, Sacramento, Calif.: 1,200, Full.

3. County of Ventura Sheriff's Department, Ventura, Calif.: 40, intermediate.
4. City of Burbank Police Dept., Burbank, Calif.: 27, intermediate.
5. Reno Department of Police, Reno, Nev.: 20, full.
6. City of Oakland Police Dept., Oakland, Calif.: 70, intermediate.
7. City of Huntington Beach, Police Dept., Huntington Beach, Calif.: 40, intermediate.
8. City of Concord, Police Dept., Concord, Calif.: 20, intermediate.
9. State of Rhode Island, Div. of State Police, North Scituate, R.I.: 25, full.
10. County of Santa Clara Office of the Sheriff, San Jose, Calif.: 40, full.
11. City of Berkeley Police Dept., Berkeley, Calif.: 20, intermediate.
12. City of San Diego Police Dept., San Diego, Calif.: 100, compact.
13. San Bernardino County Sheriff, San Bernardino, Calif.: 80, intermediate.
14. City of San Jose Police Dept., San Jose, Calif.: 125, full.
15. City of Downey Police Dept., Downey, Calif.: 15, full.
16. City of Stockton, Police Dept., Stockton, Calif.: 32, intermediate.
17. City of Norwalk, Calif., Police Dept.: 5, intermediate.
18. City of Anaheim, California; Police Department: 25, Intermediate.
19. City & County of San Francisco, Police Department: 48, Intermediate.
20. City of Concord, Concord Calif.: 20, Full.
21. City of Berkeley, Berkeley, Calif.: 10, Compact.
22. County of Alameda California, Oakland, California: 40, Compact.
23. County of Los Angeles, Los Angeles, California: 345, Compact.
24. County of Hawaii, Hilo, Hawaii 12, Compact.
25. City of Hayward, Hayward, Calif.: 27, Compact.
26. City of Santa Ana, Santa Ana, Calif.: 30, Intermediate.
27. County of San Diego, Dept. of General Services, San Diego, California: 10, Full.
28. Department of General Services Seattle, Washington: 450, Compact.
29. City of Portland Oregon, Bureau of Fleet Mgmt., Portland, Oregon: 20, Compact.
30. University of California, San Diego, California: 20, Compact.
31. City of Lakewood, Lakewood, Calif.: 2, Intermediate.
32. Contra Costa County Public Works Dept., Martinez, Calif.: 45, Intermediate; 75, Compact.
33. Denver Police Department, Denver, Colorado: 150, Intermediate.
34. County of San Mateo, Redwood City, Calif.: 15, Full.
35. City of Fort Lauderdale, Florida: 20, Full; 20, Intermediate.

Total number of replacement vehicles (yearly) as of April 26, 1978, 3,943.

Mr. FORD. Mr. President, things are getting a little strange here. Perhaps I arrived after Ralph Nader became so important, as the Senator from Washington said, but I stood right down there 3 years ago and led the battle for passive restraints. I was the floor manager of the bill. It was my introduction to the fiery pit. I think I have some background and some knowledge relating to passive restraints.

The Senator from Virginia is defending $10 million in the bill and, really, we do not know what the $10 million is going for. One says police departments, another says there will not be any models ready until 1982 or 1983, and this is fiscal year 1981. So why put them in? Why buy them? Why put $10 million in when it is 3 years from now before we are ever going to use the money?

What we were trying to do—I thought—in the conference committee was develop a system through the industry on how they are going to use passive restraints. If I remember correctly, I asked the distinguished Senator from Virginia just this question. He said, "No, I do not want them to be guinea pigs." Those were his words: "I do not want these people to be guinea pigs." Now he is supporting a $10 million investment by GSA to make Government employees guinea pigs.

Mr. President, somewhere along the way, we are going to have to say yes or no to this and we are going to have an up or down vote. What I say to the Senator is there are going to be $10 million that the Senator himself says are not going to be spent in this fiscal year. We have $10 million that GSA is going out to make all the purchases with. They are going to keep all the records and we are not going to have anything to keep records of. It does not help the industry, it does not help the people, it does not support the conference committee and the decision the Senator and I made in that conference as to passive restraints and NHTSA.

So, Mr. President, I hope that we can reconsider the position we are in and, if nothing else, cut it in two. That will give us $5 million that we shall not have to spend today. It will be $5 million that we are not going to spend anyhow. We are going to have $5 million left, based on the Senator's own statement, so we really do not need the 10. So just take the 10 out.

Mr. WARNER. The Senator is accurate. During the course of the conference, there was a discussion about whether we should or not make it mandatory, require the Federal Government to acquire a certain number of cars for the purposes of experimentation. I did say at that time, and I stand by the statement, that I personally would not want to force anybody to use an airbag in a car against his will. But as I read this, it will be an optional thing for the GSA and State and local governments to decide whether or not a certain percentage of their cars—be they State-owned cars or whatever, police cars—will have the bag in them. I hope that the Senator from Washington will agree to that interpretation of the language.

As a practical matter, the Senator from Kentucky and I know from our work on the committee that no American manufacturer will have an airbag-equipped car in model year 1982 except Ford, and they will be on two very high-priced models.

With the exception of perhaps a few that are bought for high-ranking Cabinet officers, I doubt that any additional will be bought by the Federal Government and it is most unlikely that any substantial number will be bought by State or local governments.

So, as a practical matter, Mr. President, it will be in the out years when this fund will be available on an optional

basis for a State or Federal authority to acquire a car with the airbag. It is supportive of the work of the conference in the sense that it gives a few more vehicles out on the road to provide test data.

In addition, I think it is supportive of industry, because both the Senator from Kentucky and I were deeply concerned about inventories of airbag-equipped cars being accumulated until such time as the marketplace absorbed them. At least this will give an incentive to State and local authorities to buy cars with airbags and, in that way, help the production line in the industry.

Mr. MAGNUSON. Will the Senator yield for a question?

Mr. WARNER. Yes, I yield.

Mr. MAGNUSON. I do not believe the airbag provision will interfere with what the conference decides at all. The conference will make a decision. It does not interfere with the conference at all. Does the Senator from Virginia agree with me?

Mr. WARNER. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. WARNER. May we have a clarification? A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. WARNER. May we have a clarification of what the vote is?

UP AMENDMENT NO. 1607

The PRESIDING OFFICER. The pending amendment is the amendment offered by the Senator from Washington, unprinted amendment No. 1607. The question is on agreeing to the amendment.

The amendment (UP No. 1607) was agreed to.

SECOND EXCEPTED COMMITTEE AMENDMENT

The PRESIDING OFFICER. The question recurs on the second excepted committee amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), the Senator from Georgia (Mr. TALMADGE), and the Senator from North Carolina (Mr. MORGAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Missouri (Mr. EAGLETON) would vote "nay."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Maryland (Mr. MATHIAS), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 48, nays 38—as follows:

[Rollcall Vote No. 422 Leg.]

YEAS—48

Baucus	Hatfield	Pell
Bayh	Heinz	Percy
Bellmon	Inouye	Pressler
Boschwitz	Jackson	Proxmire
Bradley	Kennedy	Ribicoff
Bumpers	Laxalt	Riegle
Cannon	Levin	Sarbanes
Chafee	Long	Sasser
Cochran	Magnuson	Schmitt
Cohen	Matsunaga	Schweiker
Cranston	Melcher	Stennis
Culver	Metzenbaum	Stevens
Danforth	Mitchell	Stevenson
Dole	Moynihan	Tsongas
Garn	Nelson	Warner
Gravel	Packwood	Williams

NAYS—38

Armstrong	Exon	Leahy
Baker	Ford	Lugar
Bentsen	Glenn	McClure
Biden	Hart	Nunn
Boren	Hatch	Pryor
Burdick	Hayakawa	Randolph
Byrd, Harry F., Jr.	Heflin	Roth
Byrd, Robert C.	Helms	Simpson
Chiles	Hollings	Thurmond
Church	Huddleston	Tower
Domenici	Humphrey	Weicker
Durenberger	Johnston	Young
	Kassebaum	Zorinsky

NOT VOTING—14

DeConcini	Jepsen	Stewart
Durkin	Mathias	Stone
Eagleton	McGovern	Talmadge
Goldwater	Morgan	Wallop
Javits	Stafford	

So the excepted committee amendment (No. 2) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

UP AMENDMENT NO. 1608

(Purpose: To require the Panama Canal Commission to operate in accordance with the Government in Sunshine Act)

Mr. HELMS. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1608:

On page 37, line 4, delete the period and insert the following: ", or for meetings of the Board established by Section 1102 of the Panama Canal Act of 1979 (93 Stat. 456) unless such meetings are open to the public in accordance with the provisions of the Government in the Sunshine Act of September 13, 1976 (90 Stat. 1241; 5 U.S.C. 552b).".

Mr. HELMS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct. The Senate is not in order. Senators who wish to converse will please cease to do so in the Chamber. The Senate is not in order.

The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, I will be very brief.

This amendment would require meetings of the Supervisory Board of the Panama Canal Commission to be conducted in the open in accordance with the provisions of the Government in the Sunshine Act (5 U.S. Code section 552b). The Supervisory Board is provided for by article III of the 1977 treaty and is established by section 1102 of the Panama Canal Act of 1979 (93 Stat. 456).

The Board is composed of five nationals of the United States and four nationals of the Republic of Panama, all appointed by the President of the United States with Senate confirmation of the five U.S. nationals, which, of course, constitutes a majority of the Board.

Legal experts who have examined the question agree that the Board falls squarely within the provisions of the Government in the Sunshine Act which requires open meetings of Government agencies headed by a collegial body composed of two or more members, a majority of whom are appointed by the President and confirmed by the Senate.

Notwithstanding the clear provisions of the act, however, the Board of the Panama Canal Commission has adopted regulations assuming complete control of the Commission and providing that meetings of the Board shall be closed to the public. This amendment would nullify that regulation and require open meetings in accordance with the policy of the Government in the Sunshine Act.

Mr. BAYH. Mr. President, if the Senator will yield, I believe that the activities of that Commission should be in the public and in the sunshine, and I am prepared to accept the amendment.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1608) was agreed to.

UP AMENDMENT NO. 1609

(Purpose: To provide $2.25 million for access to public recreation areas)

Mr. SCHMITT. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT) proposes an unprinted amendment numbered 1609:

On page 13, line 10, insert the following: Strike out "$4,275,000" and insert in lieu thereof "$6,525,000".

Mr. SCHMITT. Mr. President, this amendment would provide $2.25 million for the construction of an access road to the Sims Mesa facility at Navajo State Park in New Mexico.

Navajo Lake State Park consists of two developed areas, Sims Mesa and Pine River. Due to access deficiencies to the Sims Mesa facility, this fully developed recreational area is virtually unused while Pine River is severely overcrowded. Sims Mesa is equipped with a visitors center, public campgrounds, boat launching ramp, restrooms and maintenance facilities. But because the 15-mile dirt access road is unpaved, posing a danger to motorists and their cars, only 5 percent of all the visitors to the park use the Sims Mesa area.

The New Mexico Natural Resources Department has analyzed this matter in detail and has provided extensive documentation on the need for this project. In particular, they have provided evidence of the heavily imbalanced use of the nearly identical facilities at Navajo Lake. For example, in 1979, 217,500 people used the Pine River facility while only 8,850 visited Sims Mesa. According to State Park officials, this is entirely due to the inadequate and hazardous access road to Sims Mesa.

In addition, the U.S. Department of Interior, in a letter dated April 21, 1980, noted the deficiencies in the access to the Pine River area and recommended section 115 (U.S.C. 155), authorizing appropriations for constructing access highways to public recreation areas on lakes and reservoirs as an appropriate source of funds.

Finally, it should be noted that the facilities at the Navajo Lake Park were constructed and financed by the Federal Government with little input from the State of New Mexico. As the popularity of this area has increased over the years due to population growth related to energy development, many problems have become apparent, most important of which is the fact that visitors are simply unwilling to traverse 15 miles of unimproved roads to use the Sims Mesa site. The result is a significant underutilization of facilities constructed at Federal expense. Under these circumstances an appropriation of $2.25 million is needed and will result in substantial benefits to visitors from any of the Western States.

The managers of this bill I believe have agreed to this amendment.

Mr. President, I urge the adoption of the amendment.

Mr. BAYH. Mr. President, the Senator from New Mexico makes a good case. If he is going to have a reservoir he better be able to get into it. I am glad to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (UP No. 1609) was agreed to.

PROPOSED DULLES ACCESS ROAD AMENDMENT

Mr. WARNER. Mr. President, it is my intention to send to the desk an amendment, the effect of which would be to restore $13 million for the construction of the Dulles access road to I-66. But in deference to my distinguished colleague from Idaho who initiated the action in the committee in the first instance to remove these funds, I will await sending that amendment to the desk until such time as he has had an opportunity to speak.

I yield to the Senator from Idaho.

Mr. McCLURE. Mr. President, I make clear to my friend from Virginia the reason that I took in the committee for striking this money was because there was some confusion and remains some confusion about what the intention is with respect to the expenditure of the money and what would flow from that as a result of the extension of the Dulles access road to I-66.

What I am seeking is the information upon which I can be certain that there is not inherent in this action or flowing from it a change in the rules with respect to the kind of traffic having access to the Dulles access road.

The extension, per se, just the physical extension to connect I-66 certainly does not have my opposition nor do I know of anyone who does oppose it.

But as the Senator will know better than the Senator from Idaho does, there has been a longstanding discussion and a tremendous amount of conflict with respect to what kind of traffic may use the Dulles access road legally and it is now restricted to that which is flowing to or from Dulles Airport, those buses which are entitled to use the Reston exit under special permission, a limited carpool arrangement which will expire in 1985, and those restrictions, being well known, I assume would be continued. There would be no broadening of the policy with respect to access to the Dulles highway with the exception that it would simply be extended to the I-66 route when completed.

Mr. WARNER. Mr. President, the Senator from Idaho is correct, and I will provide him with the assurance from the Federal Aviation Agency to that effect.

Mr. McCLURE. Mr. President, let me say to the Senator from Virginia if I receive those assurances from the appropriate Federal agencies that have control over the Dulles access road by the time we get to the conference I will not object to the Senate's receding in conference and therefore receding to the position of the House of Representatives which would leave the funds intact for this extension.

Mr. WARNER. I assure the Senator from Idaho that I will make it my personal responsibility to see that he is given that information prior to the conference, and I thank him for his courtesy and willingness to work out this problem.

Mr. President, therefore, I withdrew my request to send to the desk an amendment.

Mr. McCLURE. I thank the Senator from Virginia.

The PRESIDING OFFICER (Mr. BRADLEY). The Senator from Arkansas is recognized.

UP AMENDMENT NO. 1610

(Purpose: To limit the obligation or expenditure of funds for contracts for consulting services)

(Purpose: To require the provision of information concerning the contractor who prepared a report and the contract under which the report was prepared)

Mr. PRYOR. Mr. President, I have two amendments that I ask unanimous consent to consider en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I do send this amendment to the desk at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. PRYOR) proposes amendments en bloc numbered unprinted numbered 1610.

Mr. PRYOR. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, strike out lines 18 through 24 and insert the following:

SEC. 317. Except as otherwise provided under existing law or under an existing Executive order issued pursuant to an existing law; the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are (1) a matter of public record and available for public inspection, and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

On page 39, strike out lines 1 through 7 and insert the following:

SEC. 318. No part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) for a contract for services unless such executive agency (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning (A) the contract pursuant to which the report was prepared and (B) the contractor who prepared the report pursuant to such contract.

Mr. PRYOR. Mr. President, these two simple amendments very basically relate to our use of consultants and our contracting out of many of the obligations and duties of the Federal system of government.

In our investigation of the Government's use of these contractors I found that most agencies have a list for internal management use and some agencies make the listing available to the public.

This amendment only assures that the Department of Transportation will maintain basic contract information in such a manner that the public can determine where their money is being spent by listing the contractor's name, the date of award, and the completion date of the contract, the original and current amount of the contract award, and whether or not the contract was competitively bid.

It is the basic minimal information which is required if we are to bring any sunshine into this particular area.

Mr. President, with the passing of this amendment the agencies will maintain a list of contracts awarded and that list will be available to the public. In my investigation of the Government's use of consultants I have found that most agencies have such a list for internal management use and some agencies make the listing available to the public. This amendment assures that DOT will maintain basic contract information in such a manner that the public can determine

where the money is being spent and for what purposes.

Such a list should contain at a minimum the basic information concerning the contract, such as—

The contractor's name.

The contract identification number assigned by the agency.

The date of award and the estimated completion date.

The original and current amount of the contract award, and

Whether the contract was competitively bid.

It is the basic, minimal information which is required if we are to bring any sunshine into this area. It is the minimum of information that can be provided if we are to allow the taxpayers to know where their tax moneys are being spent.

Mr. President, the second amendment is also a simple amendment. The purpose is to require basic information on all reports prepared by contractors and on agency reports prepared substantially from such contractor-prepared reports. The need for this particular amendment has recently been made crystal clear in a GAO report issued just last month. GAO's review of seven agencies found that consultants and contractors were used to meet over 40 percent of their congressionally-mandated reporting requirements during fiscal years 1977 to 1979. Consulting services accounted for almost two-thirds of the total costs thus incurred. Undoubtedly, the most disturbing finding in the GAO report was the fact that approximately 60 percent of these reports either did not disclose or that they inadequately disclosed consultants' involvement in their preparation.

Mr. President, each year the Congress received hundreds if not thousands of reports from agencies that were prepared entirely or substantially by contractors. As the GAO found, often times we do not know who actually wrote the reports because the agencies simply do not disclose that information. This cannot be permitted to continue. The Congress needs to know who prepares the reports sent to us by the agencies. The basic attribution information called for in my amendment will provide the necessary information for Members of Congress to decide how much reliance to place on the conclusions and recommendations contained in these reports. Such information that would be required to be disclosed includes—

The name of the contractor who prepared or contributed to the report.

The total dollar value of the contract.

The contract identification number assigned by the agency.

Whether the contract was awarded competitively or noncompetitively, and in any case in which a contractor used a subcontractor to prepare any portion of the report, the name of the subcontractor and the amount paid to the subcontractor.

This is the minimum level of disclosure that will satisfy the intent of this amendment. The GAO report stated very succintly why the amendment I am offering today is necessary—"Since congressionally mandated reports have the potential to influence the congressional oversight process, we believe that the Congress should be fully apprised of consultants' roles in preparing these reports." I could not agree more with that statement.

Mr. President, I ask unanimous consent that the article appearing in the September 10, 1980, Washington Post by Federal Columnist Mike Causey on this GAO report be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GHOSTWRITING COSTS TAXPAYERS PLENTY

Ghostwriting for Uncle Sam has become a multimillion-dollar business. Nobody knows for sure its size and scope. But it is a heck of a lot bigger than a breadbox.

An estimated four of every 10 reports that federal agencies send Congress as their own are, in fact, written by people who do not work for Uncle Sam, except as consultant ghostwriters.

Federal agencies are paying outsiders millions to write up congressionally mandated reports designed to tell the legislative branch of government what the executive branch is doing. It is not known if Congress hires its own outside experts—ghostreaders—to study and digest the reports. What is known is that the taxpayers foot the entire bill.

In a spot check of the report-writing habits of seven large and small federal departments, the General Accounting Office found that 40 percent of the products they send Congress under their own by-lines are written in whole or part by outsiders.

Between 1977 and 1979 the seven agencies spent $17 million for the ghostwritten products. Several explained to GAO investigators that the expenditures were necessary because nobody in government has the time or talent to do them. The U.S. government is the nation's largest single employer with 2.7 million workers, many of them presumably able to write a report on what they and their agencies do.

The outfits spot-checked by GAO are: Environmental Protection Agency; Housing and Urban Development; Department of Transportation; Federal Communications Commission; Federal Trade Commission; National Aeronautics and Space Administration and the Nuclear Regulatory Commission.

GAO's report was made for Sen. David Pryor (D-Ark.). Pryor, who heads the Senate Civil Service subcommittee has the feeling that Uncle Sam employs too many outside experts doing work that should be done in-house. In the case of the reports required by Congress, Pryor questions the legality and wisdom of having outsiders prepare work which agencies send on, under their own by-lines, advising Congress of their progress.

EPA, DOT and HUD, for example, told the congressional watchdog agency that in most cases they had to spend money on outside help because of "limited resources and time constraints" or because of "lack of special expertise." In other words their people didn't have the time or talent.

Although everybody needs outside help sometimes—maybe to unstop the bathroom or move to another state—many federal workers believe the government is suffering a runaway consultant problem.

Several interesting questions come to mind. If seven agencies spent $17 million during a two-year period, what is the ghostwriter total governmentwide? And what is the government—which last year spent 33,334,637 hours training people—training its people to do?

The report is less an indictment of the typical career bureaucrat than it is of the top management and a system which decides it doesn't have the time or money to do a job but does have the time and money to hire outsiders to do it.

Mr. PRYOR. Mr. President, once again this would require further and more detailed reporting in order that the taxpayer and the general public would have a greater understanding of where their tax dollars were going.

I understand these are acceptable and I hope they are.

I yield to the distinguished chairman.

Mr. MAGNUSON. Mr. President, I wish to compliment the Senator from Arkansas for these amendments. They follow a pattern he and I have been pursuing for a long time.

Mr. PRYOR. The Senator is absolutely correct.

Mr. MAGNUSON. Checking upon all consultants and these contracts.

As far as I am concerned and the Senator from Indiana, we are glad to accept them.

Mr. PRYOR. I thank the chairman.

Mr. McCLURE. Mr. President, we accept the amendments. We have seen them and have discussed them with the distinguished Senator, and we are prepared to vote.

Mr. PRYOR. I thank the Senator from Idaho.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that I be added as a cosponsor on both amendments.

Mr. PRYOR. I am honored to have the chairman as a cosponsor.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. PRYOR. Mr. President, I thank the managers of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment (UP No. 1610) was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the language on page 35 beginning with the last paragraph of "The committee" and through the top of page 36 ending with "system" be eliminated from the committee report.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Mr. President, reserving the right to object, and I shall not object, the Senator identified language but he did not state that it is in the committee report. Do I understand that it is?

Mr. FORD. It is in the committee report, page 35, the last paragraph, beginning with "The committee," and ending on page 36 with the word "system."

Mr. McCLURE. Mr. President, this would present the issue that we have discussed earlier with respect to the $10 million that has been provided by the Department to the National Highway Traffic Safety Administration which would then be transferred and made available to GSA for the purpose of automobiles equipped with airbags. Is that correct?

Mr. FORD. The Senator is correct.

Mr. MAGNUSON. Mr. President, the Senator from Kentucky seeks to change the report language; is that correct?

Mr. FORD. The Senator is correct?

Mr. MAGNUSON. It knocks out the $10 million.

Mr. FORD The Senator is correct because everyone stated here today that no airbags will be available in the fiscal year in which the $10 million is to be made available.

Mr. MAGNUSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to the request? Without objection, it is so ordered.

Mr. FORD. I thank the Senator very much.

Mr. MAGNUSON. Now, Mr. President, the bill is open for further amendment.

UP AMENDMENT NO. 1611

(Purpose: To prevent the use of appropriated funds to reduce air carrier operations at Washington National Airport until the I-66 extension to the Dulles access road is completed)

Mr. MELCHER. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 1611:

Page 9, line 18, strike the period and insert immediately thereafter the following:

"*Provided further* That none of the funds here appropriate shall be used to require any reduction in the total number of flights at Washington National Airport below the number operated on September 12, 1980.

Mr. MELCHER. Mr. President, on August 15, the Secretary of Transportation announced a new policy statement for Washington National Airport. This statement was developed after a long and complicated administrative procedure. It becomes effective January 1, 1981.

The decision in many ways is a fine and balanced document and was carefully reviewed by the Senate Appropriations Committee. However it raises one serious matter of concern to Montana and all the States along the northern tier. The decision calls for an 18.5-percent reduction in scheduled operations.

So far the Secretary has not indicated how these reductions are to be made or which cities will lose convenient access to Washington. One thing is clear. An 18.5-percent reduction in flights will cause a number of cities to lose service or sustain substantial service reductions.

Most of the States along the northern tier have very limited service to Washington, D.C. All of the service from my State and most along the northern tier to Washington is via National Airport. For example, Montana now has two direct flights per day from Washington. We cannot accept forced reductions on these levels. Some States have unlimited service to Washington National Airport and that service is expected to continue even with the cutbacks. For example, Eastern Airlines operates a shuttle service to New York and may operate as many shuttle flights as it desires without regard to the 18.5-percent reduction. The CAB has indicated by approving Texas International's participation in the committee that allocates slots at National Airport that more service to New York is desirable. But I do not think service to the Upper Midwest and West should be reduced 18.5 percent when service to New York is not subject to the same cutbacks. We need protection for our service to Washington.

I want to emphasize that the amendment would have no import on the allocation of slots of any FAA operation, limited airports and, in particular, on the ability of FAA to allocate those slots in the absence of an agreement among competing air carriers.

Secretary Goldschmidt has proposed that flights that are canceled at Washington National could simply be moved to Dulles. That is not as easy as it sounds. First I-66 inside the beltway and the extension to Dulles have not been completed. It still takes about an hour to reach Dulles from downtown Washington in the rush hour against a few minutes to National Airport. There is no rapid rail transit system to Dulles as there is to National Airport, one of the best public transit systems in the country. Dulles has no system at all. A feasibility study of a transit system to Dulles is in this bill but completion is many years off. Cost is also a factor. A cab to Dulles is about $25 one way. Frankly, switching flights to Dulles is just not reasonable until the ground access is improved.

Even the Secretary of Transportation apparently believes access to Dulles is inadequate. The Secretary has decided to keep his own fleet of aircraft at National instead of moving to Dulles. The Coast Guard aircraft used by the Secretary and the Commandant are still at National. The FAA's fleet of executive jet aircraft are also based at National. I suspect the FAA fleet is something like 60 to 70 jets, and they have still got them at National rather than at Dulles. If the Secretary were convinced of the convenience of Dulles, there is no reason not to shift his aircraft there. I can only conclude he regards Dulles as inconvenient. If it is inconvenient for him, it is just as inconvenient and expensive for my constituents.

Mr. President, when we are talking about reducing commercial flights 18.5 percent out of National but not touching the shuttle, I think we are talking about eliminating a lot of cities from some service throughout the country. It must be that at least 20 to 25 different cities, perhaps 30 to 35 cities, will have reduced service. I do not believe this is worthwhile.

I think the Secretary of Transportation has many fine things in his proposal, but I do not believe that beginning in January of 1981, just a few months away, starting to lop off the number of flights that can be at National is appropriate, and I do not think we are ready for it.

If the amendment is accepted, it is going to freeze the number of flights for a year. Despite all the efforts of the Secretary in these long-winded hearings—and, believe me, I sympathize with the Department of Transportation and the FAA on their hearing procedures and the amount of data they have collected and the amount of effort they have put into this—I simply do not believe we are ready to make the step to start the reduction of these flights, and that is exactly what is going to happen as of January 1 if the rule goes into effect.

I hope, Mr. President, that Senators from various parts of the country are listening to this. I have spoken about the Northern Tier States and the Northwest, but I can assure you that if 20 to 25 cities have got to have a reduction in service, it is going to mean an awful lot of cities across the heartland of the United States and probably even in the Northwest are going to have a reduction in service.

Mr. WARNER. Mr. President, I rise in strong opposition to the proposed amendment.

During the course of the committee deliberations language was put into the report on page 27 which addresses the issues raised by this amendment, and I refer to that language:

The Committee is pleased to see the FAA adopt a final metropolitan Washington airports policy regarding the operations of Washington National and Dulles International Airports.

The Committee has raised no objections to the proposed changes in operating procedures at Washington National. It is concerned, however, that before any further reduction in the number of hourly flights, below the 36 which would be permitted under the new rule, the FAA should consult with this and other appropriate committees as well as all the carriers serving National Airport.

The Committee expects prompt implementation of this policy through the issuance of appropriate Federal regulations.

An obvious imbalance exists in the utilization of the three major airports serving the Baltimore-Washington metropolitan area. While on the one hand we have a gross underutilization of two large international airports, we find that on the other hand, National Airport absorbs approximately as much traffic as the other two combined. Although it is difficult to achieve a balance in addressing this problem, the Committee feels that the FAA's recent announcement of a metropolitan Washington airports policy is a step in the right direction.

I urge my colleagues to join me in rejecting this amendment, because the FAA policy was arrived at only after a thorough process in which all interested parties could come forward and express their viewpoints. It is a policy directed toward a reduction in noise, an improvement in safety, and the consequent improvement in health to those residents in nearby communities that are impacted by this airport.

I believe that it would be entirely inappropriate if we were to, at this unexpected moment on this bill, accept an amendment which would completely reject the work of that agency of the Federal Government; namely, the FAA, which has jurisdiction over these airports.

It is for that reason, Mr. President, that I strongly urge my colleagues to reject this amendment.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I join my colleague from Virginia in opposing this amendment and in underscoring the very long and considerable process in which the parties concerned have engaged in order to address this issue.

This is a very difficult matter to those of us who think that the FAA policy is not fully responsive to the problems which we confront with respect to the use of these airports. But at least, in our view, it is an effort to move to address some of these questions.

The proposed amendment would really preclude any effort to address the tremendous impositions now being made upon the areas surrounding National Airport, and also to address very important safety considerations with respect to the heavy use of National Airport, matters which have been underscored, in fact, by professionals in the airline field.

So I would very much hope that the Senate will not accept the amendment and will instead support the committee and the committee report.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, the Department of Transportation News in describing this rule, the proposed rule which will go into effect on January 1, 1981, says:

> The present FAA high density rule for National (14 C.F.R. 91.193) was adopted in 1969 and has never been changed. Air carrier operations, the principal source of noise impact on National's neighbors, have been limited to 40 per hour. This limitation no longer provides the same protection it originally did. Over the years, the carriers have increasingly substituted larger, heavier airplanes for the ones they originally flew. Jets have almost completely replaced propeller-driven aircraft. This trend has contributed to increased noise levels and airport congestion.

Mr. President, I use National and where we live in Maryland it is under a flight path that is sometimes used for National. So I understand exactly what the FAA has been trying to do and what the Secretary of Transportation has been trying to accomplish by this rule.

But the fact is that there are better ways of arriving at the reduction of noise and the congestion at National than what has been proposed in this rule. It could be a compromise worked out under the auspices of the FAA which will arrive at their very meritorious goals but which will not jeopardize the service to a number of cities throughout the United States from National.

I offer the amendment in this rather strong fashion on an appropriations bill not by choice but by a set of circumstances which forces us to recognize that unless something is done right now the rule will go into effect on January 1 and the carving up then or the reduction in the number of flights will start to take place.

I think it is too big of a reduction. I think it will be made, probably, with all good intentions. But I believe that the results would be damaging to too many cities throughout the United States. For that reason, I offer the amendment.

Mr. CANNON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. CANNON. Mr. President, I was going to address this question to the Senator from Maryland, but perhaps I should address it to the chairman of the committee.

I am wondering why it would not be advisable for this matter to come to the Commerce Committee and let us have a chance to look at it and see whether we wanted to approve the policy that is proposed to be put into effect which, of course, could be done if the Senator from Montana's amendment were approved.

In other words, as I understand his amendment, it would not permit any of the funds to be used for the purpose of reducing the number of flights in and out of National at the present time. Is that correct?

Mr. MELCHER. Yes. It would just freeze them. But if the chairman of the Commerce Committee is saying that the committee is willing to act on this prior to the implementation of the order, I would be perfectly satisfied.

Mr. CANNON. Well, I am not sure that we could act prior to the implementation of the order. What I am saying is that it ought to be something that we ought to look at. Perhaps the Senator's amendment would be the best way of permitting us to look at it, if his amendment were to freeze the system as it is now, and give us the opportunity in the Commerce Committee to look at the proposal in detail and see whether we did or did not want to approve it.

Maybe the chairman of the committee would like to comment on that.

Mr. WARNER. Will the Senator yield?

Mr. CANNON. Yes.

Mr. WARNER. Mr. President, I in no way mean to be disrespectful to the chairman. I am on the Commerce Committee.

But we see about to take place, when this order takes effect, a policy that has been derived only after considerable work by the executive branch. It is my opinion that we should let this policy go into effect and, in due course, within our committee, schedule the hearings to review the impact of the policy and whether or not we agree with it. Therefore, the hearings could take place in an orderly procedure following the implementation of the policy and some benefit of the experience under the policy.

Mr. CANNON. May I say to the distinguished member of our committee that our procedure is not normally to let a policy go into effect and then look at it.

The administration proposes a number of policies that we take a look at before they ever become effective. We are two independent branches of the Government. When they propose a policy, we frequently say: "We will take a look at it in committee and see whether it should or should not be put into effect."

Mr. WARNER. I agree wholeheartedly with my distinguished colleague, but I respectfully say that I testified when our counterpart committee in the House was reviewing this during the early spring, I believe. We were on full notice of the potential implementation of this policy and the fact that the FAA was formulating the policy. Yet our committee did not take any steps.

Mr. SARBANES. Will the Senator yield?

Mr. CANNON. Certainly.

Mr. SARBANES. It is my understanding that a formal policy statement on the traffic question at National was required by the courts before there could be any proceeding with respect to construction of improvements at National Airport. That is what has been formulated here, and this policy put forward. I think it is an effort to be responsive to a number of conflicting pressures. I do not think the policy should be set aside at this point. I think the policy should be allowed to be implemented. If the committee then chooses to hold oversight hearings on the policy and feels that the policy needs to be altered that is a matter that can be taken up and accomplished through the normal process.

This is an effort, first, to address some judicial questions that have been raised and, second, to deal with some of the very real problems which exist with respect to the heavy usage of National Airport and the problems that presents.

Mr. WARNER. I agree.

Mr. CANNON. If I may respond to the Senator, I am wondering if he is correct on what he said as to the Court's requirement. Was it not that the Court required an environmental impact statement be accomplished rather than requiring precisely what has been proposed here?

Mr. SARBANES. My understanding is that the environmental impact statement runs to the usage of the airport; that is what it is about. This formal policy statement, in effect, responds to the issues raised or seeks to respond to the issues raised, in the environmental policy statement; it addresses those very questions.

I simply do not think we ought to set it aside here.

The more logical and constructive way to proceed, it seems to me, is to reject this amendment. If the chairman then chooses to hold oversight hearings with respect to the matter, that would be a subsequent contribution in reviewing this issue.

Mr. CANNON. What I am suggesting here is that it might be better to take a look at it before we got to the stage of oversight hearings. For example, all of the questions have not been addressed. There has not been an addressing of the question as to how they are even going to allocate the reduced number of slots that will come out of this proposal. That is still floating around, as to what is going to be done. Will they draw straws to see who gets the allocations? Believe me, we will really have serious questions raised by a number of carriers and a number of cities as to the allocation of the reduced number of slots in and out of Washington National.

What I am suggesting is to take a look at the whole proposal they have made prior to having it put into effect.

Mr. MELCHER. Will the chairman yield to me?

Mr. CANNON. Yes.

Mr. MELCHER. I think I can add to this at this point and might resolve it.

The Senator from Virginia and the Senator from Maryland have very appropriately said that there is a lot of work that has gone into this and it seeks to resolve some tough questions.

The Senator from Virginia made the very pertinent remark, I believe reading from the committee report, that the Secretary of Transportation and the FAA would be discussing very diligently with the appropriate committees in the Congress the implementation of the rule on several aspects. That is principally the rule on the allocation of slots.

There are other very fine points in the rule, by the way, that I do not think should be interferred with or slowed down at all.

I would suggest as a compromise that I modify my amendment to read April 1, to have it held up until April 1. I do not think that would disturb the FAA or the Department of Transportation but it would give the Senate Commerce Committee a chance to look at it and to have some substantial input before the slot part is implemented. I wonder if that would be acceptable to the Senator from Virginia, the Senator from Maryland, and the chairman of the committee.

Mr. CANNON. If I could respond to the Senator, I want to say that we would have the opportnuity to investigate the issue, to hold a hearing, to consider the issue prior to that time. I think the Senator's amendment is defective in some particulars and perhaps ought to be restructured if he is going to do that.

As I read it now, all it does is to say that there shall be no reduction in the number of flights. So it does not address the other issues that are involved or would be involved with respect to freezing the entire system into place as it is now until we have had an opportunity to review it. The other Senators will have to speak for themselves on the part of the question addressed to them.

Mr. WARNER. Mr. President, I continue to oppose even the compromise because we have no assurance that the Commerce Committee will conclude its hearings within that brief period of time. Perhaps the chairman would want to address that aspect.

As I understand the proposal, it is a deferral until April 1. I presume he is going to revise this with that point. The effect of the revision would be to defer the implementation with respect to National Airport and Dulles until April 1.

Mr. CANNON. On the question of whether we would be able to address it, I would say yes, in that period of time I think we would be able to address it in the Commerce Committee. We would be able to hold hearings to consider the matter. January, February, and March would total 3 months.

Mr. WARNER. Mr. President, my concern is the safety and heatlh aspects of this policy. I am not at liberty, in my judgment, to continue to expose my constituents and those, I am certain, in Maryland, to a situation which I consider to be great jeopardy with respect to the present manner in which National Airport is operated and the equipment operating in and out of there. In that period of 90 days, January 1 to April 1, an accident might have been precluded by implementation of this new policy. It is for that reason that I am unable to accede to the Senator's request for a compromise and must continue to oppose the amendment.

Mr. MAGNUSON. Mr. Prsident, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BELLMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BELLMON. Mr. President, the Transportation Subcommittee has worked diligently to bring us a bill that is within its allocation under the first budget resolution. However, as Senator McCLURE pointed out when the full Appropriations Committee marked up this bill, the transportation function—Function 400—would be cut substantially by the Budget Committee's recommendations in the second budget resolution as reported. He made the point then that, should those cuts be sustained through the conference on the second budget resolution, Congress would be faced with going back and cutting this bill further.

This bill is consistent with the first resolution in budget authority. With later requirements it will likely exceed the first resolution assumptions for outlays by at least $200 million. That estimate does not include any supplemental appropriations for Conrail or for Amtrak. Both Conrail and Amtrak have said they will need supplemental funding. Those supplementals are, however, discretionary—so I have not included them in my assumptions about later requirements. They can be denied; and if they are denied it is probable that transportation funding (at least with respect to budget authority) will be held to the levels allocated to the Transportation Subcommittee under the first budget resolution.

Mr. President, some will describe this as a very tight transportation budget. Some may even argue that the amounts in this bill are not sufficient to meet the need—particularly in view of our desire to encourage a shift to public transportation and save energy. Let me point out, Mr. President, that Federal outlays for transportation increased $3.5 billion from 1979 to 1980.

I think the Senate ought to be aware of that, that our outlays for transportation increased by $3.5 billion from 1979 to 1980.

$1.5 billion of that increase may be attributed to a change in accounting, but that still leaves a real increase of $2 billion. Most of the increased funds were provided in the supplemental appropriations bill. That bill came so late in the year that most of the increased funds will actually be spent in fiscal year 1981. We will, therefore, have significantly higher spending levels in 1981, whether we provide any funding over the 1980 levels or not. This bill will increase funding in fiscal 1981 $1.5 billion over fiscal 1980 levels. Adding that to the funds from the supplemental gives us a very substantial boost in the transportation area.

I commend the subcommittee, Mr. President, for reporting a bill with new budget authority consistent with the first budget resolution—and for its stated intent to stay within whatever amending levels are ultimately available for transportation in the final congressional budget. I remain concerned, however, that appropriation bills which have been reported thus far are at least $5 billion over the budget already. If we continue as we are going, we will wind up billions of dollars in deficit at a time when that is simply foolhardy because inflation remains high and threatens to get worse unless we adopt a sound fiscal policy.

I intend to vote for this bill, but do so with the reservations and concerns I have just expressed.

Mr. LONG. Mr. President, it seems to me that the Secretary of Transportation has done the best he can, like any public servant. He has tried to resolve the differences between the environmental concerns and the need for controlled growth. He has tried to consider the needs of every group. I believe that some of the fears of the Senator from Montana will not be realized. I believe that the Secretary's plans should be permitted to go into effect. Therefore, Mr. President, I move to lay the amendment on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment on the table.

The motion to lay on the table was agreed to.

Mr. LONG. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MELCHER. Mr President, I suggest the absence of a quorum

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BELLMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1612

(Purpose: To establish a system for scheduling and reporting outlays)

Mr. BELLMON. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Oklahoma (Mr. BELLMON) for himself, Mr. PERCY, Mr. BOSCHWITZ, and Mr. DOMENICI, proposes an unprinted amendment numbered 1612.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert the following language at the appropriate place in the bill:

OUTLAY SCHEDULES AND REPORTS

Departments and independent agencies receiving appropriations in excess of $50 million under this act shall, within 30 days following enactment, submit to the Committees on Appropriations of the two Houses of Congress a schedule of anticipated Outlays for each month of the Fiscal Year beginning October 1, 1980. These departments and agencies shall also submit to the Appropriations Committees within 30 days after the end of each calendar quarter, reports showing actual Outlays for the preceding quarter and any necessary change in the schedule of Outlays originally submitted. In the event a Department or agency determines that its total Outlays during the Fiscal Year will vary by more than 1 percent from the total projected in its original schedule, it shall immediately submit to the Committee on Appropriations of the two Houses a revised schedule. Unless disapproved by both of the Appropriations Committees within 15 legislative days after submission, the Department or agency may implement the revised Outlay schedule.

Departments and agencies shall submit copies of the Outlay schedules and reports required herein to the Congressional Budget Office concurrently with their submission to the House and Senate Committees on Appropriations. The Congressional Budget Office shall analyze these schedules and reports and assess their implications for Congressional budget and appropriation policies and submit the results of its analyses on a timely basis to the Committees on Appropriations and Budgets of the two Houses of Congress.

Mr. BELLMON. Mr. President, this amendment addresses a problem that Congress must respond to if we are to fulfill our responsibility to deal with fiscal policy in an effective way. The problem I refer to is the incredible growth in outlays in recent years. I think Members ought to realize that when we deal with budget matters, we deal primarily with what is called budget authority.

Up to now, we have let outlays sort of take their own pace. The result is they are proceeding at breakneck speed, and we have no way to bring them under control so far.

Mr. President, I ask unanimous consent that a table which has been placed on each Senator's desk be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

COMPARISON OF BUDGET TARGETS AND CEILINGS WITH ACTUAL EXPERIENCE FOR FISCAL YEARS 1976–79 AND ESTIMATED ACTUALS FOR FISCAL YEARS 1980–81

[In billions of dollars]

	Fiscal year					
	1976	1977	1978	1979	1980	1981
First Budget Resolution targets:						
Budget authority	396.6	455.1	504.35	568.85	604.4	697.2
Outlays	367.8	414.2	461.85	498.8	532.0	613.6
Final Budget Resolution ceilings:						
Budget authority	408.8	471.1	501.0	559.2	[1] 658.85	
Outlays	375.8	410.1	459.15	494.45	[1] 572.65	
Actual fiscal year 1976–79, Estimate fiscal year 1980–81:						
Budget authority	416.1	466.1	501.5	556.7	657.3	699.6
Outlays	366.4	402.7	450.8	493.7	580.3	633.0
Outlay change (actual versus First Resolution)	−1.4	−11.5	−11.05	−5.1	+48.3	+19.4

[1] The ceiling figures shown for fiscal year 1980 are from the revised Second Budget Resolution, adopted in June 1980. The original Second Resolution, adopted in November 1979, contained ceilings of $638,000,000,000 for budget authority and $547,600,000,000 for outlays.

Mr. BELLMON. Mr. President, as shown by this table, in fiscal years 1979–79, total Federal outlays fell below the targets set by Congress. But in fiscal year 1980—I think Members will be shocked by this—outlays will exceed by about $48 billion the targets originally set by Congress in May 1979.

I say again, in fiscal 1980, the year that is about to conclude, our outlays will exceed our expectations by some $48 billion, and the target we set was set in May 1979.

Fiscal year 1980 outlays are now $32 billion above the outlay ceiling approved by Congress last November. This incredible growth in outlays did not result, for the most part, from deliberate congressional decisions to increase spending. Rather, most of it resulted from upward reestimates of spend-out rates under various Federal programs. The net result is that Federal fiscal policy shifted from the restrictive posture Congress initially approved—under which outlays would have grown by only 8 percent over fiscal year 1979—to a stimulative one under which fiscal year 1980 outlays are growing by 17.5 percent.

Mr. President, I am not sure how many Members are shocked by that, but the Senator from Oklahoma certainly is.

We wanted to hold our outlay growth in 1980 to 8 percent over the 1979 level. The actual result is that they have grown about twice as much, by 17.5 percent.

Mr. President, as elected representatives of the people of this country, Congress has the responsibility to oversee the movement of Federal funds into the economy. The Congressional Budget Act of 1974 requires Congress to specify in its budget resolutions the "appropriate level" of new budget authority, outlays, and deficit for a given fiscal year. Clearly, it was the intent of the Budget Act that Congress exert greater control over Federal outlays as well as new budget authority. It is outlays which are the most significant reflection of fiscal policy, outlays which determine the borrowing needs of the U.S. Treasury and outlays which determine the impact that this year's budget will have upon inflation and interest rates. By addressing only the question of how much new budget authority to grant in an appropriation bill without also examining seriously the potential outlays in the fiscal year to which the bill relates, we are attacking a long-term problem, which is commendable, but are ignoring the problem that confronts us right now—fiscal year 1981 outlays.

Mr. President, when the budget process was in its initial years, it was a difficult task for each of us to understand the significance of the "budget authority" concept. We have now learned too well that the concept represents total new obligations, commitments or programs entered into by the Federal Government. Some budget conscious individuals have maintained that controlling budget authority is all that is required to eventually control Federal spending. But I would maintain, Mr. President, that the control of outlays is equally important. Outlays do not merely "happen" once budget authority is granted, spend-out rates in many instances are conscious and crucial policy decisions.

The Congressional Budget Office estimated that as of January 1980, more than $775 billion in budget authority enacted in prior years had not yet resulted in outlays.

Mr. President, we have $775 billion, in effect, laying there ready to be spent when the agencies and the administration decide to spend that money and to outlay those funds. Based on earlier analyses, it appears that about $490 billion of this budget authority had been obligated, while about $285 billion of prior year authority remained unobligated. This means that Federal departments and agencies in the aggregate have tremendous flexibility in the use of resources at their disposal. Their decisions on the timing and rates of obligation and outlays can modify substantially the fiscal policy Congress thinks it has set for a given fiscal year.

Let me run those figures again: $775 billion of budget authority which Congress enacted, not yet spent, and of that about $490 billion already obligated, and will be spent, but $285 billion not obligated, and, therefore, that sum of money can be spent with great flexibility. Even for the money obligated, there is the possibility of exercising some control over the rates those funds spend out, as well.

Because of unanticipated increases in the rate of outlays, the fiscal year 1980 budget has shifted from a relatively restrictive 8 percent growth to an unintended but much more stimulative 17.5 percent growth, severely retarding the Congress battle against inflation. Moreover, Mr. President, I am of the view that the faster Government spends, the more it will spend in the long run.

Mr. MAGNUSON. Mr. President, this amendment was voted on, I think, twice in the Appropriations Committee and turned down every time. The last vote, I think, was 6 to 3, or something like that.

I would have to oppose the amendment to carry out the wishes of the Appropriations Committee.

Mr. BELLMON. I understand.

For that reason, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BELLMON. Mr. President, when Congress treats outlay rates as being totally under the control of the executive branch, it is put in the reactive posture of adjusting its spending targets in response to the spending reports it receives from downtown. We are in danger of becoming little more than a validator of executive branch estimates.

For these reasons, Mr. President, I am proposing this amendment that would provide for increased congressional oversight of the actual outlays of Federal funds by the executive branch. Mr. President, my amendment requires the following:

First, departments and agencies receiving appropriations in excess of $50 million under this bill, within 30 days following enactment, must submit to the Committees on Appropriations of the two Houses of Congress a schedule of anticipated outlays for each month of the fiscal year beginning October 1, 1980.

That eliminates the small agencies. We are only going to the agencies that have major fiscal responsibility and income.

Second, the affected departments and agencies shall also submit to the Appropriations Committees, within 30 days after the end of each calendar quarter, reports showing actual outlays for the preceding quarter and any necessary change in the schedule of outlays originally submitted.

Third, in the event a department or agency determines that its total outlays during the fiscal year will vary by more than 1 percent from the total projected in its original schedule, it is required to immediately submit to the Committee on Appropriations of the two Houses a revised schedule. Unless disapproved by both of the Appropriations Committees within 15 legislative days after submission, the department or agency may implement the revised outlay schedule. If both committees disapprove the revised outlays schedule, the department or agency would be required to manage outlays according to the original schedule or as otherwise agreed by the Appropriations Committees.

The fourth requirement of this amendment is that departments and agencies submit copies of schedules and reports to the Congressional Budget Office concurrently with their submission to the House and Senate Commitees on Appropriations. The Congressional Budget Office is directed to analyze these schedules and reports and assess their implications for congressional budget and appropriation policies and submit the results of its analyses on a timely basis to the Commitees on Appropriations and Budget of the two Houses of Congress.

Mr. President, I understand that some of my colleagues are concerned because they believe this amendment may be inconsistent with the effort to reduce Federal paperwork.

Mr. President, it is not a question of generating more paperwork. The departments and agencies already prepare outlay schedules, and revisions of those schedules, for OMB. Departments and agencies submit monthly reports of actual outlays to the Treasury Department. The question this amendment addresses is whether Congress will receive on a timely basis the schedules and reports already being prepared and whether Congress has the opportunity to assure that Federal outlays are being managed in a manner consistent with congressional decisions.

The only new paperwork that this amendment imposes is the requirement that departments and agencies notify the Appropriations Committees immediately when they determine that their total outlays will vary by more than 1 percent from the fiscal year total originally scheduled. This seems to me a totally justifiable requirement and one that will generate very little additional paperwork on the part of the executive branch or on the part of Congress.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks two tables analyzing outlay growth beyond the congressional targets during fiscal year 1980.

The PRESIDING OFFICER (Mr. MITCHELL). Without objection, it is so ordered.

(See exhibit 1.)

Mr. BELLMON. Mr. President, I call attention to the fact that outlays in function 400—transportation—will be $2.8 billion higher in fiscal year 1980 than the targets set by Congress in June 1979. I believe that shows why this bill is an obvious vehicle to get this process started. This is a 15-percent increase. Moreover, we have already had considerable growth in fiscal year 1981 outlay estimates for transportation programs over the amounts predicted in the President's budget.

So we are not engaging in an academic exercise. The Transportation Subcommittee and the Full Appropriations Committee need to keep a closer eye on outlays in transportation programs. This amendment will give them that opportunity.

Mr. President, without more direct oversight of Federal outlays, Congress will continue to be seriously handicapped in its efforts to control fiscal policy and limit the size of the deficit. Outlays cause the deficit. I make that point again. It is the rate and amounts by which moneys are spent that produces the amount of spending and leads to the deficit we face at the end of the fiscal year. This amendment is a modest first step which will provide the Congress with tools it must have to discharge its responsibilities.

Mr. President, I am joined in this amendment, as cosponsors, by Senator PERCY, Senator BOSCHWITZ, and Senator DOMENICI and I thank them for their support of this proposal.

EXHIBIT 1

TABLE 1.—*Summary of spending change, fiscal year 1980: First Budget Resolution, fiscal year 1980 vs. latest CBO reestimates*

[Dollars in billions]

Economic	27.2
Non Economic (Higher discretionary spending, program reestimates, estimating errors, etc.)	21.0
Total	48.3

TABLE 2.—CAUSES OF SPENDING CHANGE BY FUNCTION, FISCAL YEAR 1980

[In billions of dollars]

Function	Outlay change	Cause
Economic:		
350	0.8	Timing of commodity sales from grain embargo due to agriculture commodity price levels.
370	5.0	Lower GNMA asset sales.
550	3.0	Medicare and medicaid.
600	10.0	Income support programs.
700	.2	Inflation impact on indexation.
900	8.3	Higher interest rates.
Subtotal	27.3	
Noneconomic:		
050	12.3	Higher spend out for existing contracts.
150	2.7	Shift in mix of Exim financing and Saudi drawdown.
250	.2	Space Shuttle.
270	−.5	Reduction in SPRO.
300	2.5	More rapid spend out on water projects and EPA construction grants.
400	2.8	Shift in highway funding to emergency road repair and shift in mass transit funding to bus purchases.
450	2.2	Disaster funding and higher spend out of community development grants.
500	−.2	Lower spend out due to DOL hiring freeze in CETA title VI.
550	.8	Higher utilization of medicare.
750	.2	Pay raise.
800	.1	Miscellaneous estimates.
850	.5	Underestimate of payments in lieu of taxes.
950	−2.6	Increased royalty and rent payments.
Subtotal	21.0	
Total	48.3	

Mr. YOUNG. Mr. President, will the Senator yield?

Mr. BELLMON. I yield.

Mr. YOUNG. As the Senator knows, the Stealth program is a good example. Only two or three members of the Appropriations Committee know how much money is allocated for secret weapons programs such as Stealth or money for intelligence purposes.

Would the Defense Department have to report each month the amount of money they have spent for intelligence and secret weapons and the amount of money they have remaining, or would an exception be made for them?

Mr. BELLMON. The answer to the question is, "No." The Defense Department would not be expected, nor would any other department be expected, to make a total breakdown. They would file with the Appropriations Committee, at

the beginning of the fiscal year or 30 days after the bill is passed, how much they expect to outlay for each month, for whatever purpose. We would not use this means to determine where the money is going. We would ask the total amount. So they would not need to be specific as to where it is going.

Mr. YOUNG. I thank the Senator. This will help.

● Mr. PERCY. Mr. President, I am a cosponsor of the amendment being offered by the Senator from Oklahoma. In his capacity as ranking Republican of the Budget Committee, he is making a valid and important point with this amendment today.

We designed the Budget Reform Act back in 1974 as a tool to be used by Congress to deal more rationally with the spending priorities we face each year. When I first came to Congress from private industry, I was startled to see that there was no overall picture of the Federal budget. Rather, we only looked at Federal spending in the increments of individual appropriations bills.

The budget process has not had an easy time of it this year, but substantial progress has been made since it was first implemented in 1975. We now have a systematic way to gage Federal spending patterns in the upcoming fiscal year. We can also see the implications of spending decisions with the addition of multiyear spending projections. Those little programs that we are told will cost so little look much different when we can see they will cost billions in just a few years.

The process of writing a budget is not perfect, however. Our tools are limited. In recent years, some agencies have underspent their budgets and others have spent willy-nilly at the very end of the fiscal year, to avoid a budget cut in the next year. The Senator from Oklahoma has told us that agencies may spend as much as $32 billion over the budget ceilings we voted just last November. If this takes place, it will be the most significant breach in the budget process to date. We cannot let outlays take on a life of their own, independent of the congressional budget.

I support the innovative amendment of my colleague, which will require agencies to plan their spending at the start of the fiscal year. Major agencies will have to submit a monthly outlay schedule to the Appropriations Committees. It will serve as an anchor for Senator BELLMON's concept. The heart of his plan is to measure actual outlays against this initial schedule. In cases where outlays will diverge by 1 percent or more from the total projected in the schedule, agencies will have to report to Appropriations Committees which, in turn, have 15 days to consider and disapprove the revised outlay schedule.

This will bolster the budget process and I strongly support it.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Maryland (Mr. MATHIAS), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

Mr. MAGNUSON. Mr. President, may we have order in the well?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MAGNUSON. Mr. President, I call for the regular order.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 63, nays 17, as follows:

[Rollcall Vote No. 423 Leg.]

YEAS—63

Armstrong	Garn	Nunn
Baker	Glenn	Packwood
Baucus	Gravel	Pell
Bellmon	Hart	Percy
Biden	Hatch	Pressler
Boren	Hayakawa	Proxmire
Boschwitz	Heinz	Pryor
Byrd, Harry F., Jr.	Helms	Randolph
Byrd, Robert C.	Humphrey	Riegle
Cannon	Inouye	Roth
Chafee	Kassebaum	Schmitt
Cochran	Laxalt	Schweiker
Cohen	Leahy	Simpson
Cranston	Levin	Stevens
Culver	Lugar	Thurmond
Danforth	Magnuson	Tower
Dole	McClure	Warner
Domenici	Melcher	Weicker
Durenberger	Metzenbaum	Young
Exon	Mitchell	Zorinsky
Ford	Moynihan	
	Nelson	

NAYS—17

Bentsen	Heflin	Sarbanes
Bradley	Hollings	Sasser
Bumpers	Huddleston	Stevenson
Burdick	Jackson	Tsongas
Chiles	Johnston	Williams
Church	Matsunaga	

NOT VOTING—20

Bayh	Jepsen	Stafford
DeConcini	Kennedy	Stennis
Durkin	Long	Stewart
Eagleton	Mathias	Stone
Goldwater	McGovern	Talmadge
Hatfield	Morgan	Wallop
Javits	Ribicoff	

So Mr. BELLMON's amendment (UP No. 1612) was agreed to.

Mr. MAGNUSON. Mr. President, the bill is open for further amendment.

UP AMENDMENT NO. 1613

(Purpose: To prevent the use of appropriated funds to reduce air carrier operations at Washington National Airport until the I-66 extension to the Dulles access road is completed)

Mr. MELCHER. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 1613:

After line 26, add a new section:

SEC. 326. "None of the funds in this Act shall be used to require any reduction in the total number of flights at Washington National Airport below the number operated on September 12, 1980 until April 1, 1981."

Mr. MELCHER. Mr. President, the effect of this modified amendment, which we have been discussing among various Senators during the past 2 hours, is to delay any reduction in scheduled operations until April 1, 1981.

As it stands now the reductions could begin to be implemented in flights out of National on January 1, 1981, under the proposed rule of the Secretary of Transportation.

How quickly he would start to reduce flights after January 1 is not clear. All I want, and all I am asking the Senate to agree to, is to hold off on this until April 1, 1981. Before any reductions are put into effect, the Senate Commerce Committee, which has jurisdiction, should be given a chance to look at the plan. The House Commerce Committee should have the same equal opportunity.

The plan will then automatically go into effect April 1, 1981. However, if my amendment is accepted, the implementation date will go over into next year so that congressional committees will have an appropriate opportunity to review the plan.

On August 15, the Secretary of Transportation announced a new policy statement for Washington National Airport. This statement was developed after a long and complicated administrative procedure. It becomes effective January 1, 1981.

The decision in many ways is a fine and balanced document and was carefully reviewed by the Senate Appropriations Committee. However, it raises one serious matter of concern to Montana and all the States along the northern tier. The decision calls for an 18.5 percent reduction in scheduled operations.

So far the Secretary has not indicated how these reductions are to be made or which cities will lose convenient access to Washington. One thing is clear. An 18.5-percent reduction in flights will cause a number of cities to lose service or sustain substantial service reductions.

Most of the States along the northern tier have very limited service to Washington, D.C. All of the service from my State and most along the northern tier

to Washington is via National Airport. For example, Montana now has two direct flights per day from Washington. We cannot accept forced reductions on these levels. Some States have unlimited service to Washington National Airport and that service is expected to continue even with the cutbacks.

For example, Eastern Airlines operates a shuttle service to New York and may operate as many shuttle flights as it desires without regard to the 18.5 percent reduction. The CAB has indicated by approving Texas International's participation in the committee that allocate slots at National Airport that more service to New York is desirable. But I do not think service to the upper Midwest and West should be reduced 18.5 percent when service to New York is not subject to the same cutbacks. We need protection for our service to Washington. I want to emphasize that the amendment would have no impact on the allocation of slots of any FAA operation and limited airports, and in particular on the ability of FAA to allocate those slots in the absence of an agreement among competing air carriers.

I think that is wise and I think that accomplishes what is in the committee report when it says that the Secretary will consult with the appropriate committees of Congress and interested parties before making the reduction. I think this gives a little more practical basis for it, and I hope the managers of the bill will accept the amendment.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I oppose the amendment. The policy which is going to be implemented is one that was worked out after a great deal of effort. The specific issue before us is an integral part of that policy, and to freeze that part of it jeopardizes the entire policy.

The policy was developed in part in response to a court order, and to undertake now to amend it in this way I think negates all of what has been accomplished.

The committee report indicates that it has raised no objections to the proposed changes in the operating procedures, and goes on to say that there should be consultation before any reduction could take place below what is proposed.

It seems to me we ought to stick with this policy, which has been adopted by the Department of Transportation and reflects a great deal of work and effort, and is endorsed by committee's recommendation. Therefore, I hope Members of the Senate will reject the amendment.

Mr. MELCHER. Mr. President, will the Senator yield for just a moment?

Mr. SARBANES. I yield.

Mr. MELCHER. I wonder if the Senator is aware that the FAA has stated that so far they cannot properly project the impact of this reduction? I think that is an extremely important statement. All I am saying to the Senate and to my good friend from Maryland is let us make sure there is an opportunity for congressional input into this before the reductions are actually made. We are asking only 90 days.

Mr. SARBANES. I would say to the Senator there has been congressional input. What we are really talking about, and I think to some extent what is at stake here, is jeopardizing a solution which has been carefully developed to a very difficult and complicated problem.

There are some very real health and safety problems involved which have to be addressed. The policy is an effort to address them.

There is no guarantee that what we fear will not happen in any event. But I, for one, would not want to assume the responsibility after we have been warned about the safety and health by a number of experts of delaying this policy and conceivably jeopardizing it altogether—and then having to pay the consequences. Therefore, I hope the amendment will be rejected.

Mr. CANNON. Mr. President, as I said to the distinguished Senator from Montana earlier, the Commerce Committee would have the time to take a look at this proposal prior to April 1 and consider a number of issues that are likely to be raised. One of those are how the slots are to be allocated when the reductions start to take place. Another is how the service to West Virginia may be continued from Washington National if the slot reductions are about to take place.

We would like to have the opportunity to review this and take a good look at it. We can do that between now and April 1. I support the amendment.

May I say that the distinguished Senator from Louisiana also expressed the fact that he was in support of the amendment.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, I continue to rise in opposition. Each Member of the Senate should clearly understand that a vote in favor of this amendment is taking unto yourselves the responsibility to make judgments with regard to safety at National Airport, because this policy which is to go into effect on January 1 and is now proposed by the amendment to be delayed to the 1st of April, touches on a number of basic considerations. And if, by delay of the policy, an accident were to happen, the responsibility would fall squarely on the shoulders of those supporting this amendment.

The distinguished Senator from Nevada, also the chairman of the Commerce Committee of which I am privileged to be a member, asked that the Senate, as it rightfully may through its committee structure, review this policy. I encourage that review.

But we must balance the review of the policy on a deferred basis against the safety considerations. It seems to me clearly that the safety considerations outweigh any possible disadvantage that might be incurred through the delay from January 1 to April 1.

It is going to be a most difficult task to review this policy, because I would dare say that two-thirds of the Members of this Senate, in one way or another, rely on air transportation out of National Airport that could be affected by this policy. You will have to weigh your own individual considerations along with what I view to be the overriding considerations of safety of the residents that live in areas adjoining this airport.

Mr. President, I ask unanimous consent that an editorial published in the Washington Post entitled "Is National Airport Really Safe?" be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

IS NATIONAL AIRPORT REALLY SAFE?

"National Airport is so dangerous, it's safe." That's what an aviation safety expert said recently to Post reporter Douglas Feaver. He explained that the landing approach down the Potomac River is so tricky that pilots never take it for granted. Thus, one of the causes of airplane accidents—pilot inattentiveness—is eliminated.

To aviation buffs, that may be an encouraging analysis of what goes on in the air around the Nation's 10th-busiest airport. And it may help explain National's enviable safety record—no fatal accident since 1949. But as airliners and electronic landing systems get better and more complex, does it make sense to continue to stake so much on the ability of pilots to wend their way down that curving approach over the Potomac River bridges?

The question arises now because of the proposal of the Federal Aviation Administration to open National to bigger and, it is claimed, quieter jets. The Air Line Pilots Association says it has doubts about the safety aspects of flying these planes in and out of that airport. But the FAA believes there will be no safety problems.

We haven't seen enough evidence yet to form an opinion on the ALPA's assertions. But there is an obvious conflict of interest here that is disturbing. The FAA is the final arbiter of the safety of airports. It is also the operator of National Airport. That means the FAA must decide whether its own proposal meets its own standards for airport safety.

In some situations, that conflict might be little more than routine. But this time, the FAA is being pressured by many members of Congress to permit as many passengers to use National as can be crammed into it. The FAA is also being pressured to reduce the noise made by the airplanes that use those runways. Letting bigger jets into National provides a tempting answer to those competing pressures—more passengers can travel in fewer and quieter big planes. But whether the FAA can pull off this solution depends upon whether the FAA decides the big planes can be operated safely there.

The situation is somewhat analogous to that which led to the breakup of the old Atomic Energy Commission. It was finally understood that the AEC's dual roles of promoting the use of atomic energy and ensuring it was used safely put the commission into a perpetual, and often difficult, internal conflict. Could the same thing be happening to the FAA with its legislatively imposed roles of promoting aviation, ensuring aviation safety and operating two major airports?

Congress could eliminate this conflict by

getting the FAA out of the business of running airports and repealing the mandate of the agency to promote aviation. National and Dulles airports could be operated just as well by some other federal agency or, even better, by a regional or state authority. That might not have a direct impact on the airports' safety records, but it would remove one persistent question: does the FAA's prime interest at National lie in overseeing the safety of what happens there or in providing a convenient airport for members of Congress who oversee the agency's budget?

Mr. WARNER. Mr. President, I will also read the following from an article from the Washington Post:

Twice in 1977, the captains of passenger-carrying Boeing 727s elected to abort their takeoffs from National's main runway. Both times it was raining; both times the airplanes rolled to halts in the mud just off the north end of the runway a few feet from the Potomac River.

After the incidents the runway was regrooved to increase traction and airport officials speeded their efforts to build a still-unapproved 500-foot overrun for the runway.

A jetliner captain's favorite approach to any airport is a nice, fully instrumented endeavor where he can line up straight with the center of the runway from a long way out and just follow his instruments and his nose to touchdown.

National's down-river approach presents none of these niceties. To reduce noise, and to avoid flying over the White House, and through the Washington Monument, planes landing to the south snake down the Potomac River, glide to the left just over the Tidal Basin, then make a hard right turn on top of the 14th Street Bridge to line up with the runway and touchdown. Instruments are of no help once planes have passed the Georgetown Reservoir, because the instruments available now work only on straight-in approaches.

That is just but one example of the record that was before the FAA when they made the judgment that ultimately led to this policy. Therefore, I fervently ask my colleagues to let the policy, derived after due consideration by the appropriate officials in the executive branch entrusted with this heavy responsibility, take effect on January 1 and then, in due course, the Commerce Committee of the U.S. Senate may review that policy and make whatever adjustment in the ultimate wisdom of this body may be necessary.

Mr. MAGNUSON. Vote.

Mr. CANNON. Mr. President, I know the Senator from Virginia would not want to have the RECORD stated incorrectly. He said that the number per hour would be changed. That is not correct. The allocation is reduced for the air carriers but awarded to the commuters, so the same number per hour would still exist, the same number of flights. From the standpoint of number of flights, the safety impact is not affected.

Mr. WARNER. Mr. President, I respect that technical evaluation of the amendment, but it is my concern that the Secretary of Transportation might view the action of delaying any part of the policy as a basis on which to delay the entire policy. I think that is a risk that is unacceptable.

Mr. MELCHER. Mr. President, I just want to briefly state that what this amendment does is, just for 90 days further after January 1, it says that if you are going to remove flights from such cities as Kansas City or Miami or Boston or Tampa or Louisville or Minneapolis, we want to look at it before you do it. That is all this does. If you reduce those numbers flights, there has to be about 15 to 20, maybe 25 cities where there is reduced service.

I do not want to delay the policy or safety features of the Secretary's efforts and the FAA's efforts. I just want to know what cities are going to be reduced and try to work it out.

The best deal, after all, would be to put wide bodies in there, such as the DC-10, which makes less noise, lands on just as short a runway, and has a very fine landing record. Maybe that is the way to go.

Mr. WARNER. Will the Senator yield for a question?

Mr. MELCHER. I am delighted to yield.

Mr. WARNER. Mr. President, on the 11th of June, I went over to the House of Representatives to testify in a hearing that was, in a sense, an oversight of this very policy. Why did not the Senator from Montana at that time urge the Commerce Committee to initiate the hearings parallel with the House and review this matter in an orderly way, rather than wait here on the eve of a late vote on this appropriations measure?

Mr. MELCHER. I regret that I did not encourage the Senate Commerce Committee to do it earlier. But I do believe that it is appropriate to ask for a short period of time for it, so the Senate Commerce Committee can take a look at it.

I hope the amendment can be agreed to. I do not think it is a big request, but I think it is very appropriate that we do allow this time.

Mr. LONG. Mr. President, I wish to make clear my understanding of the intent of Senator MELCHER's amendment. Senator MELCHER's proposal would have the affect of maintaining the number of slots at National Airport at the current level through April 1, 1981. It would in no way preclude the implementation of other parts of the proposed new National Airport plan on January 1, 1981. Neither would Senator MELCHER's amendment preclude a reduction in the number of slots at National Airport after April 1, 1981.

● Mr. MATHIAS. Mr. President, on July 2, 1980, several of my colleagues, Senators WARNER, SARBANES, HARRY BYRD, HATFIELD, DOMENICI, GRAVEL, and JAVITS, joined me in a resolution designed to convey to the Secretary of Transportation and the Administrator of the Federal Aviation Administration the sense that a responsible attitude prevails in Congress in regard to the difficult subject of National Airport and the scope of its operations.

The FAA on August 15, 1980, adopted a policy which acknowledged the overutilization of National Airport and took a modest first step toward establishing a more balanced relationship among the three airports of our region, National, Dulles, and BWI.

Eleven years have passed since the Senate held hearings on the acute overuse of National Airport and the safety and environmental concerns which that facility generates. No changes in National's role as Washington's primary jetport have occurred since that time. National Airport continues to handle nearly 70 percent of the commercial jet operations in our region, even though it was built in 1941 in the "pre jet" age.

Dulles Airport, built in 1962 totally with Federal funds to be Washington's primary jetport, handles only 15 percent of our region's jet traffic. Indeed, there are fewer commercial jet flights at Dulles now than there were 10 years ago. Baltimore Washington International Airport has undergone major expansion of passenger freight terminals, as well as runway resurfacing.

In the past decade, however, passenger traffic at National has increased by almost 50 percent to the present level of 15,500,000 per year. Because of its proximity to downtown Washington, users of National Airport cannot avoid using the same routes that commuters take, further clogging our congested highways.

The safety issue at National cannot be ignored any longer. National Airport has a single main jet runway, only 6,800 feet long. By contrast, Dulles—like all modern jetports—utilizes parallel runways, and they are 11,500 feet in length. Baltimore Washington International has two major runways 9,500 feet in length fully instrumented as well as a separate general aviation runway.

While National operates at maximum capacity much of the day, squeezing more than 60 operations an hour into this airport, Dulles' runways are never used at more than 30 percent of capacity and BWI's is at 40 percent of capacity.

The FAA has not only crowded more and more operations into National, but has succumbed to airline pressure to utilize bigger and bigger aircraft. First, jets were brought in, and then "stretched" 727's were allowed into National in 1967.

Now, FAA proposes to bring in wide-bodied aircraft even though the Airline Pilots Association has said that this would present a serious safety hazard. Indeed, using FAA's own figures, the pilots tell us that the risk of accident at National Airport with such planes is 471 percent greater than the risk of accident at New York's La Guardia Airport.

The environmental problems at National are no less serious. The mall and recreation areas along the Potomac are difficult, and sometimes impossible, to enjoy. More importantly, tens of thousands of area residents are exposed to literally hundreds of overflights a day, with the constant thundering overhead becoming an unending and unfair intrusion into their lives.

The present use of National has been justified by some on the altar of convenience. But the facts belie this conclusion. In truth, National is more convenient only to some of the people, some of the time. It is closer to downtown Washington, of course, than either Dulles or BWI. But a 1968 Department of Transportation study shows that only 25 percent of the passengers using National are

coming to or from downtown Washington.

Today, with the proliferation of business and industry in the Tyson's Corner, I-270, and Baltimore-Washington corridor, that percentage may even be lower. For thousands of others, Dulles or BWI would be a preferred choice, actually more convenient than National or no more than minutes further away. For example, BWI is served by scheduled limousine service from downtown Washington hotels 24 times a day. In October the Amtrak rail passenger station will open at BWI linking the airport to the Northeast Corridor rail project. This will provide yet another regularly scheduled connection from Washington to BWI from the Union Station Visitor Center.

Why then, if National is not overwhelmingly more convenient, do three out of every four travelers in our region use National? The answer is that they have no choice. Of 66 operations a day between Washington and Chicago, only 1 flight uses Dulles Airport. Of 90 flights a day between Washington and Atlanta, only 6 use Dulles. There are no rush hour flights to or from New York from Dulles and one cannot fly from Dulles at all to Buffalo, Pittsburgh, Cincinnati, Cleveland, Detroit, or Charlotte. Indeed, the only one-plane service to some 14 cities west of the Mississippi is from National Airport. The airlines force the public to use National, and National alone, because it is plainly more economical for them to build, staff, and maintain complete facilities at one airport, rather than three.

It is time, however, that we take such factors as safety and environmental considerations into account in establishing a regional airport policy. It is neither rational nor defensible to continue the gross overutilization of National Airport. It is bad enough that we have allowed the Potomac River corridor to become a "noise sewer." It would be far worse if we allow industry pressure to compel us to take no action until a major and tragic accident occurs at National Airport. I urge my colleagues to reject the Melcher amendment which seeks to thwart implementation of the FAA Metropolitan Washington airports policy.

● Mr. MATHIAS. Mr. President, I call to the attention of my distinguished chairman and ranking minority member an oversight in a part of our committee report on this appropriations bill having to do with Metropolitan Washington airports policy.

That report language which is found on page 27 of the committee report, lauds the adoption by the Federal Aviation Administration of a final Metropolitan Washington airports policy regarding the operations of Washington National and Dulles International Airports. My reading of that airports policy leads me to believe that future airline slot reductions (beyond the initial proposed four slots per hour) at National are contemplated by FAA and that such reductions are an integral part of that policy.

The Appropriations Committee report states, in part, however, that "before any further reduction in the number of hourly flights, below the 36 which would be permitted under the new rule, the FAA should consult with this and other appropriate committees as well as all the carriers serving National Airport."

It is that sentence, Mr. President, which causes problems. The policy adopted by the FAA makes clear that a 17 million annual passenger limit at Washington National will be adhered to. The policy notes that the FAA expects that ceiling to be reached in 1983. Concurrent with and implicit in that 17 million passenger "cap" is a limit on aircraft "slots" at National.

The FAA policy states, and I quote:

PASSENGER CEILING

National Airport will not be permitted to accommodate more than 17 million total passengers per year. That level will be maintained by periodically adjusting the number of "slots", or rights to schedule landings or takeoffs, that are available to certificated and commuter air carriers. The FAA expects the ceiling to be reached in 1983.

The policy goes on to note under "other issues" that:

A separate notice of proposed rulemaking will be issued within thirty days on the allocation of slots among carriers. It will contain one or more alternative methods to assure that nonstop service to National is equitably distributed among cities within the perimeter.

A second rulemaking will be issued to establish a mechanism for determining the number of slot reductions required in the future to assure that the number of passengers served at National does not exceed 17 million.

I would ask my chairman, the distinguished Senator from Indiana, if his reading of the Metropolitan Washington airports policy leads him to believe the FAA may well have to further reduce airline slots at National in the future.

Mr. BAYH. The Senator from Maryland is correct. The policy indicates that future slot reductions at National may have to be implemented in order to stay within the 17-million-passenger ceiling.

As the airlines begin to use wide-body jets with larger passenger volumes, it is fairly obvious that sooner or later, the number of those larger planes will have to be cut back to avoid the ground traffic jams which are already occurring and likely to occur in the future.

Mr. McCLURE. I would note to my colleague from Maryland, that this issue of the impact of heavy passenger loads on National's ground facilities are addressed in the FAA policy. I quote from the policy's "Underlying Considerations":

Existing limitations at National are simply not adequate to deal with the potential for growth. Although the number of flights per hour have been limited, the airlines have been able, through the introduction of larger two- and three-engine aircraft, to increase substantially the number of passengers. The readily observable result has been the continuing ground and terminal congestion passengers and carriers at National must face. The capacity of roadway and parking facilities has long been overwhelmed by growth. Aircraft aprons are undersized and crowded. Even counter space is too limited to handle passenger loads efficiently. The cure to this problem cannot be reconstruction of the terminal alone. National has limited space on which to expand, and there are further limits to the ground transportation network.

Mr. MATHIAS. I thank my colleagues for this clarification that, indeed, future airline slot reductions may be necessary at Washington National.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana (Mr. MELCHER). The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Alabama (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Arkansas (Mr. PRYOR), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Louisiana (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Maryland (Mr. MATHIAS), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 47, nays 29, as follows:

[Rollcall Vote No. 424 Leg.]

YEAS—47

Baker	Heflin	Mitchell
Baucus	Helms	Moynihan
Bellmon	Huddleston	Pell
Boren	Humphrey	Proxmire
Boschwitz	Inouye	Randolph
Bradley	Jackson	Riegle
Burdick	Johnston	Sasser
Byrd, Robert C.	Kassebaum	Schweiker
Cannon	Laxalt	Stevens
Chiles	Leahy	Stevenson
Church	Levin	Tower
Dole	Lugar	Weicker
Durenberger	Magnuson	Williams
Ford	Matsunaga	Young
Garn	McClure	Zorinsky
Glenn	Melcher	

NAYS—29

Armstrong	Danforth	Nunn
Bentsen	Domenici	Packwood
Biden	Exon	Percy
Byrd, Harry F., Jr.	Hart	Roth
Chafee	Hatch	Sarbanes
Cochran	Hayakawa	Schmitt
Cohen	Heinz	Simpson
Cranston	Hollings	Thurmond
Culver	Metzenbaum	Tsongas
	Nelson	Warner

NOT VOTING—24

Bayh	Javits	Pryor
Bumpers	Jepsen	Ribicoff
DeConcini	Kennedy	Stafford
Durkin	Long	Stennis
Eagleton	Mathias	Stewart
Goldwater	McGovern	Stone
Gravel	Morgan	Talmadge
Hatfield	Pressler	Wallop

So Mr. MELCHER's amendment (UP No. 1613) was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1614

(Purpose: To prevent the misuse of Federal funds for collective bargaining)

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1614:

On page 43, after line 21 add the following:

None of the funds in this Act shall be used for training labor union or management personnel on matters relating to labor-management relations.

Mr. McCLURE. Mr. President, to protect the rights of workers to unionize and bargain collectively, the Federal Government created the National Labor Relations Board (NLRB). The Board determines the proper collective bargaining unit and eliminates unfair practices by which the unions and the employer might interfere with the rights of employees.

It is not, Mr. President, the function of the Board or any other tax-supported Federal agency to train labor and management representatives how to develop the necessary skills to participate in the collective bargaining process. Unfortunately, this prohibition has not been made clear to the Urban Mass Transportation Administration (UMTA). Indeed, the Glendale News Press recently printed an article which stated that UMTA awarded a $153,330 grant to a consortium of unions for the following purpose: "To develop and demonstrate a training and education program for local union representatives with respect to skills needed to carry out their responsibilities in administering collective bargaining contracts." Additional details concerning the purpose of this UMTA grant are reported in the article. I ask unanimous consent that the article be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. McCLURE. Mr. President, this grant is not only a misuse of the taxpayers' money, but it is also an insult to labor. Labor negotiators have proven time and time again that they can handle collective bargaining aggressively and effectively. They do not need a $153,000 crutch from UMTA or any other Federal agency.

It is unfortunate that this issue has to be raised in the U.S. Senate. Because I do not want this to happen again, I am today offering an amendment which would prevent the use of funds in this act to train labor and management personnel on matters relating to labor-management relations.

I am certain my colleagues will agree that the intent of my amendment is clear. I trust the administrative bureaucracy will also understand its purpose.

EXHIBIT 1

TAX MONEY GOING TO UNION CONSORTIUM

(By Howard Jarvis)

It always amazes me when I pick up a newspaper and read how our tax money is spent.

I don't mean the budget figures that run into the hundreds of millions of dollars—those are numbers you have to be in Congress to accept with nonchalance.

What I'm talking about is a $153,330 grant the Urban Mass Transit Administration (UMTA) recently awarded to a consortium of unions.

The purpose of this grant?

Why, to train union officials in the mass transit business how to deal with grievances, arbitration, contract administration and other subjects of concern to the taxpayer's who are funding the future union boss' on the job training.

In pure "bureaucrat-ese," UMTA, in its July 22, 1979, letter awarding the grant, said, "The purpose of this grant is to . . . develop and demonstrate a training and education program for local union representatives with respect to skills needed to carry out their responsibilities in administering collective bargaining contracts. It is anticipated that the activities conducted under this grant will improve transit system operations, reduce costs and increase passenger and employee safety and security."

That's just about the most ridiculous bit of bureaucratic double-talk I've ever heard!

I have a couple questions I'd like the UMTA people to answer, since they seem so eager to give our tax money away to union officials.

Question Number One: What does collective bargaining contract administration have to do with "passenger and employee safety and security?"

Question Number Two: Why in the hell are the taxpayers paying for what is essentially a union training program (and can we be assured that the participants in this publicly funded program will never in the future lead a strike against the public interest using the skills we paid for?)

But those are just two of the most obvious questions . . . questions I'm certain UMTA would hesitate to answer . . . even if there was any non-political justification for their $153,330 giveaway.

Mr. McCLURE. Mr. President, I understand that this amendment is acceptable to the majority.

Mr. BELLMON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. McCLURE. Yes, I yield.

Mr. BELLMON. Mr. President, I ask unanimous consent that Judy Albro be granted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Idaho.

So the amendment (UP No. 1614) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1615

(Purpose: To repeal the provisions of title 23 of the United States Code requiring a national maximum speed limit of 55 miles per hour)

Mr. HAYAKAWA. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from California (Mr. HAYAKAWA) proposes an unprinted amendment numbered 1615.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. TSONGAS). Without objection, it is so ordered.

The amendment is as follows:

On page 43, after line 21, insert the following:

SEC. 326. Title 23 of the United States Code, relating to highways, is amended—

(1) in section 141 by striking out subsection (a) and redesignating subsections (b) through (e) as (a) through (d), respectively, and in such redesignated subsection (c) by striking out "141(c)" and inserting in lieu thereof "141(b)"; and

(2) by striking out section 154 and the reference thereto in the analysis of chapter 1.

Mr. HAYAKAWA. Mr. President, the purpose of this amendment is to restore to the States and the municipalities the right to establish speed limits. In other words, what I wish to do is abolish the national 55-mile-an-hour speed limit so as to give municipalities and cities and States the opportunity to set higher or lower speed limits, according to their knowledge of their own State and their own highways.

The 55-mile-an-hour speed limit is claimed to have saved many, many lives. But even if their figures are correct, the question is, Why have those lives been saved?

Mr. President, since March 4, 1974, the National Highway Traffic Safety Administration has been telling us how wonderful the national 55 mile-per-hour speed limit is, in terms of the number of deaths it has prevented and the amount of fuel it has saved. Recently, NHTSA stated that the 55 mile-per-hour speed limit has prevented in excess of 5,000 deaths per year, and saved 125,000 to 273,000 barrels of petroleum per day. Even if these figures were significant to the question of maintaining the national speed limit, I would object as an infringement of States' rights; the fact is, however, that these figures misrepresent the impact of the national speed limit on highway safety and fuel consumption.

Traffic fatalities for 1973 totaled 54,052; recent estimates for 1979 fatalities are 50,745. If a simple scale is used, these figures represent a 3,307 life savings over a period of 6 years, or 551 lives saved each year—hardly the 5,000 which

NHTSA boasts. However, a simple scale does not tell the whole story. After 1973, traffic fatalities dropped off dramatically, by 3,856 in 1974, to a low of 44,525 in 1975. These figures were immediately explained as the result of the national speed limit. Starting in 1976, though, fatalities began to increase, and continue to increase today. Since the decrease in fatalities was attributed to the 55 mile-per-hour speed limit, shall we attribute the increases as well? We cannot have it both ways.

In an effort to promote the benefits of the national speed limit, NHTSA and the Department of Transportation overlooked several factors which contributed to the change in traffic fatalities. First among these is the Arab oil embargo, which, in 1974, reduced the amount of gasoline available, and, in turn, reduced the volume of traffic. This reduction in traffic had a great impact on the number of accidents and traffic fatalities occurring in 1974. Its impact can be better viewed, moreover, by the increase in traffic which followed the resolution of the oil embargo, and the corresponding increase in traffic fatalities occurring at the same time.

The fact is that these figures of decreasing and increasing traffic deaths simply show an increase or decrease in the number of cars being driven.

Other significant contributions to the change in the fatality rate are the increased use of seatbelts, greater safety features on new cars, and safety inspections.

Similarly, gasoline consumption is less a factor of speed change than driving habits and automotive efficiency. In fact, Department of Energy figures show that gasoline consumption has increased from 6.674 million barrels per day in 1973 to 7.030 million barrels per day in 1979. While the national speed limit may have contributed to a possible savings, it would seem that educating the consumer and providing adequate mass transit alternatives is necessary to reduce our total gas consumption.

In effect, the national speed limit has extremely limited impact on either safety or fuel conservation. Moreover, the fact that at least half of all highway motorists travel at speeds in excess of 55 miles per hour demonstrates that the public does not support the national speed limit.

I am, therefore, offering an amendment to repeal the national speed limit and return the responsibility to the States to establish speed limits that meet the safety and economic needs of each State.

I urge adoption of this amendment.

I say, Mr. President, that the 55-mile-an-hour speed limit is a law that is not being observed in California, or in any other State.

The normal rate of travel on, for example, Highway 80, from San Francisco to Sacramento, is 65 miles an hour. So long as we do not go over 65, the police do not bother us.

On a great highway, engineered for high speeds, like Interstate 5 down the Central Valley, people normally drive 70 to 75 miles an hour and we do not get into trouble until we hit 80, although that highway was engineered for 80.

Throughout the State, we find these anomalies where it is routine to go over the 55-mile-an-hour speed limit. If we want to go at the 55-mile-an-hour speed limit, our car is in danger and we are endangering the lives of other people by getting in the way and obstructing the free flow of traffic.

This is the situation in California. The situation in Hawaii must be very, very different. It must be different in Delaware, which is a much smaller State. It is different in Nevada where we have vast areas of desert where at 80 we are not in danger of hitting anything.

So in many ways, the 55-mile-an-hour limit is something that should be decided by the States and municipalities themselves.

There are places where 25 miles an hour is far too fast, and places where 70 is far too slow.

But these are matters known to local authorities. It is not my function as a Senator from California to tell the people of Georgia at what speeds they should drive on their highways, and it is not the function of the people of Georgia, who have not driven our California highways, to tell us how we should drive on ours.

This national 55-mile-an-hour speed limit, as I say, is a law much more observed in the breach than in the observance.

Therefore, it is an anachronism, makes no sense, and, furthermore, wastes gasoline because truckers, with their CB radios, warn each other of police traps. So they slow down and stop, and slow down and stop as they go along. This is using more gasoline than otherwise, if they went steadily at 65 miles an hour. In fact, it is counterproductive in almost every way.

Therefore, Mr. President, I submit this amendment for the consideration of the Senate and urge its adoption.

Mr. PROXMIRE. Mr. President, what the amendment would do would be to repeal the 55-mile-an-hour speed limit. That is its purpose, clearly stated by the distinguished Senator from California.

Therefore, it is clear that it constitutes legislation on an appropriation bill. I make the point of order against the amendment on the grounds that it represents legislation on an appropriation bill.

Mr. HAYAKAWA. I ask for a ruling of the Chair on this.

The PRESIDING OFFICER. The amendment clearly is legislation on an appropriation bill, and the point of order is sustained.

Mr. HAYAKAWA. Is the point of order sustained?

The PRESIDING OFFICER. Yes.

Mr. HAYAKAWA. Mr. President, I will not appeal the ruling of the Chair.

I am of the conviction that we abuse the right of amendment very often, to legislate on a basis where it should not. So I shall be consistent with my own principles.

But I take this opportunity to submit the amendment, basically, because I want to inform my colleagues that I intend to offer this amendment at another more appropriate time.

I wish to warn my colleagues that this is an issue that matters to a lot of people in California and elsewhere, because it is an extremely irrational demand that we are making.

UP AMENDMENT NO. 1616

(Purpose: To establish ridesharing programs nationwide)

Mr. HAYAKAWA. Mr. President, I send to the desk another unprinted amendment, the purpose of which is to establish ridesharing programs nationwide.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. HAYAKAWA) proposes an unprinted amendment numbered 1616.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 43, after line 21, insert the following:

TITLE IV—RIDESHARING

SHORT TITLE

SEC. 401. This title may be cited as the "National Ridesharing Act".

DEFINITIONS

SEC. 402. (a) The term "ridesharing", for purposes of this Act, means group travel by any mode, including carpooling, vanpooling, public or private buspooling, shareride taxi, fixed route or unregulated jitney, and public transit, either in mixed flow traffic or on exclusive high-occupancy vehicle facilities.

(b) The term "outreach effort" includes planning, survey analysis, implementation or evaluation of ridesharing programs, and marketing of rideshare activities.

FINDINGS AND PURPOSE

SEC. 403. (a) Congress finds that—

(1) a principal source of air pollution is the private automobile; and

(2) the automobile is a principal consumer of gasoline.

(b) The purposes of the National Ridesharing Act are to—

(1) promote and facilitate availability and use of alternatives available to the single occupant automobile for both work and nonwork related trips;

(2) establish viable ridesharing programs in urbanized and nonurbanized areas where none currently exist; and

(3) support and enhance existing ridesharing programs.

(c) The benefits expected to result from the accomplishment of the objectives are—

(1) reductions in transportation related energy consumption, air pollution, and highway congestion;

(2) reduced dependency on foreign sources of oil;

(3) improvement of the balance of trade for the United States;

(4) strengthening of the United States dollar abroad;

(5) increases in disposable income available to United States citizens for non-transportation-related purposes; and

(6) increases in consumer transportation choice and mobility, especially in times of gasoline shortages.

ESTABLISHMENT OF NATIONAL OFFICE OF RIDESHARING

SEC. 404. The Secretary of Transportation (hereinafter referred to as the "Secretary") shall establish a National Office of Ridesharing. The director of such office shall report directly to the Secretary.

DEVELOPMENT OF THE PROGRAM

SEC. 405. (a) The National Office of Ridesharing shall develop a national ridesharing program to assist states, counties, municipalities, metropolitan planning organizations, other units of local and regional government, providers of ridesharing services, publicly owned operators of mass transportation services, and private entities in developing and implementing ridesharing programs.

(b) The National Office of Ridesharing shall have responsibility for the development and coordination of any and all ridesharing activities supported in total or in part by Federal funds. The National Office of Ridesharing shall administer funds and programs authorized under this legislation and shall coordinate those programs with other ridesharing activities within the Department of Transportation, the Department of Energy, and other branches of the Federal Government.

(c) The Director of the National Office of Ridesharing shall coordinate the development of ridesharing programs pursuant to this Act with the Administrator of General Services to ensure that such programs are consistent with and complementary to efforts made by other Federal agencies to promote ridesharing in accordance with Executive Order 12191 Federal Facility Ridesharing Programs.

(d) The Secretary of Transportation and the Secretary of Energy shall establish a process for coordinating their Departments' activities related to the planning and implementation of ridesharing programs. All ridesharing-related Department of Energy moneys shall be coordinated with the requirements of section 134 of title 23, United States Code.

FUNDING

SEC. 406. Commencing September 30, 1982, funds for the establishment of new programs or for significant expansions of existing programs shall be allocated at the discretion of the Secretary.

PLANNING PROCESS

SEC. 407. (a) The development of ridesharing programs shall be based upon the continuing, cooperative, and comprehensive planning process as required under section 134, title 23, United States Code, and section 1607, title 49, United States Code. The Secretary of Transportation shall not approve any project in an urbanized area unless he finds that the project is based on such process.

(b) The national ridesharing program shall be administered in a flexible manner to ensure participation of State departments of transportation, metropolitan planning organizations, counties, municipalities, providers of ridesharing services, publicly owned operators of mass transportation services, other local transportation planning and implementation agencies, and the private sector.

PUBLIC TRANSIT'S ROLE

SEC. 408. The national ridesharing program shall be developed to ensure that the various modes of ridesharing are implemented in a complementary rather than competitive manner. Carpooling, vanpooling, buspooling, jitneys, and other high occupancy vehicle programs shall be developed with full coordination with and participation by operators of publicly owned mass transportation systems. The Secretary shall not approve any programs which have not been developed pursuant to these requirements.

SPECIAL CONSIDERATION FOR LOCAL EFFORT

SEC. 409. The Secretary, in making discretionary apportionments to eligible recipients shall give special consideration to those applicants who have shown particular commitment to ridesharing by virtue of their use of non-Federal funds or eligible Federal highway funds in their ridesharing programs.

Mr. HAYAKAWA. Mr. President, I am offering an amendment to establish an Office of Ridesharing within the Department of Transportation to promote ridesharing, vanpooling, carpooling, and shared-ride taxis and jitneys.

This amendment will be similar to the National Ridesharing Act, S. 2696, which I introduced last May. This amendment, however, requires no additional appropriations for the Department of Transportation. Funding for the office, and the programs it will carry out, is left to the discretion of the Secretary.

Because many areas of the country are not adequately served by mass transit, I believe alternate forms of transportation must be made available. Many localities have already begun this by providing vanpool systems and other forms of shared-ride programs. I have concluded that a national ridesharing program is necessary to move us in the direction of energy self-sufficiency.

By establishing an Office of Ridesharing, activities of the Department of Transportation, the Department of Energy, and other branches of the Federal Government will be coordinated and spearheaded to promote efficient and reliable group transportation. This amendment is intended to encourage private ownership and operation of transportation alternatives. This will bring about the creation of new and innovative transportation ideas, and the emergence of others, perhaps used in the past but now long forgotten.

The energy savings potential of ridesharing is enormous. Moreover, traffic and parking congestion are relieved, air pollution is reduced, and personal expenses are cut. Certainly, the benefits of ridesharing are outstanding.

I urge adoption of this amendment.

Mr. PROXMIRE. Mr. President, the purpose of this amendment is to establish a national ride-sharing program. It would establish an office in the Department of Transportation. It is clearly legislation on an appropriation bill, and therefore I make the point of order that it is not in order.

The PRESIDING OFFICER. The Senator from Wisconsin is correct, and the point of order is sustained.

Mr. HAYAKAWA. Mr. President, I shall not appeal the ruling of the Chair on the point of order. As I said on my last amendment I wish to inform my colleagues of my concern about this matter. I intend to offer this amendment at another more appropriate time.

UP AMENDMENT NO. 1617

(Purpose: To delete funding for the National Highway Traffic Safety Administration)

Mr. HAYAKAWA. Mr. President, I send to the desk an amendment to delete funding for the National Highway Traffic Safety Administration.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from California (Mr. HAYAKAWA) proposes an unprinted amendment numbered 1617:

Beginning on line 6, page 14, strike out through line 2, page 15.

Mr. HAYAKAWA. Mr. President, this amendment is short in length, but long in history and ramifications. The amendment I am now proposing simply deletes all funding—we are dealing with appropriations now—for the National Highway Traffic Safety Administration.

This is not merely an exercise to amuse my colleagues. I believe in earnest that NHTSA has contrived statistics and manipulated them to support actions which are wholly unwarranted, and detrimental to the automobile industry, the public, and traffic safety in general. Among the actions taken by NHTSA to which I strongly object are: Promoting the national 55-mile-per-hour speed limit, which I have previously discussed; mandating passive restraints in automobiles, and especially endorsing airbags; persecuting the Ford Motor Co. for an alleged defect in their automatic transmissions; and promulgating useless regulations which are self-serving at best and dangerous to the safety and economical well-being of the country.

Inasmuch as I have argued the faults of the national 55-mile-per-hour speed limit just a few minutes ago before this body, I will not dwell on the subject. It will suffice to say that NHTSA has manipulated statistics and overlooked important matters relevant to fuel economy and highway safety which would otherwise render arguments in favor of this law void.

The 1977 rule mandating passive restraints on all automobiles by 1983 has been a source of constant discomfort to me for some time. Aside from safety considerations, which I will get to in a moment, I abhor this kind of cradle-to-grave security which the Federal Government feels is necessary to the well-being of the American people.

The Government likes to treat us as infants.

If we accept in theory that highway fatalities and injuries are serious enough to warrant Federal protection, we are free to accept responsibility for the many other serious risks in everyday life. Certainly the old adage, "a man's home is his castle," will not stand up under this scrutiny, and we can look forward to many more years of Government activity to assure that our citizens get the best protection that we can mandate in the construction of furnaces, kitchens, air conditioners, and everything else around the house. This, in my judgment, is further than a democratic government should go. The concern for safety is a worthy cause. Use of active and passive restraints should be encouraged and made available at the option of the automobile purchaser. But to force their use through mandatory rulings threatens an even worthier cause: The protection of our basic freedoms and rights.

With respect to the preferred choice

of NHTSA, I will say only that airbags have not been demonstrated to provide adequate security to passengers in a variety of circumstances. They do not protect passengers in accidents other than head-on collisions.

They do not protect passengers seated in the rear seats. They do not protect children who are not securely restrained by seat belts. In short, they are not a substitute for seat belts, which is what they have been billed to be. It has not been demonstrated to this Senator that there is any substitute for seat belts, and I believe the American people must be free to choose whether to use them.

The next matter of concern to me is the harassment which the Ford Motor Co. has experienced at the hands of NHTSA. On June 11, 1980, NHTSA announced that an initial determination of a safety defect had been made regarding transmissions manufactured by Ford.

The news release detailed the extent of the defect, and finally announced a scheduled meeting where views and arguments could be made. To date, no final determination has been made, but the Ford Motor Co. has been the victim of a trial by media accusation. Without being presented with the facts from both sides, I objected to this kind of scare tactic used to "alert" consumers about an undetermined safety defect.

Furthermore, the American people should be warned not to leave their cars unattended while the engine is running as a matter of course. Certainly, there are a number of problems which may occur in that situation. I do not believe, however, that a full-scale recall is in order.

Two rules, which were published in the Federal Register recently, caught me as being prime examples of overregulation.

They are docket No. 78-01, and docket No. 76-06. The rules are sufficiently absurd that I ask unanimous consent to have them printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[4910-59]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; DEPARTMENT OF TRANSPORTATION

[Docket No. 78-01; Notice 1]

PART 510—INFORMATION GATHERING POWERS

Procedures and Requirements Governing the Use of Compulsory Process.

Agency: National Highway Traffic Safety Administration, DOT.

Action: Interim rule.

Summary: This rule establishes requirements and procedures governing the issuance and use of compulsory process by the National Highway Traffic Safety Administration in the course of investigations conducted to carry out its missions under the National Traffic and Motor Vehicle Safety Act, as amended, and the Motor Vehicle Information and Cost Savings Act, as amended. Recent Administration experience in both enforcement and rulemaking activities has shown the desirability of having compulsory information gathering powers available so that the agency may obtain such information as it deems necessary for a particular task. The Administration believes that it is in the public interest to set out the procedures it will use to implement those powers to gather information, and the rights that persons subject to those procedures will have. This notice is intended to inform the members of the public of those procedures and of the rights they have with respect to those information gathering powers.

Date: This rule will become effective, on an interim basis, on December 27, 1977. The deadline for commenting on this rule is February 10, 1978.

Address: Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that ten copies be submitted.

For further information contact: David A. Zisser, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-9511.

Supplementary information: This regulation sets out the requirements and procedures relating to the agency's use of compulsory process. The agency will be able to issue subpenas requiring persons and business or other entities to testify and to produce documents or things. In addition, the agency will be able to hold investigational hearings for the purpose of taking testimony or receiving documents, and will also be able to require answers to written requests for information.

The regulation also sets out the rights of persons or entities subject to compulsory agency process, including the right to counsel when required to testify, and the right to seek to have a subpena quashed. In addition, any person required to testify will be allowed to make objections on the record and examine the transcript of the testimony before signature.

Compulsory process under this regulation will be available to the agency for investigations conducted in connection with any agency activity, including both rulemaking and enforcement. However, this rule does not govern discovery in formal adjudications. Such discovery will be controlled by regulations governing formal adjudications, which the agency is now preparing.

Because this rule is procedural, it is being issued without public notice or opportunity for comment as an interim final rule. Opportunity for public comment is provided before the agency adopts a permanent final rule.

The National Highway Traffic Safety Administration issues on an interim basis 49 CFR 510, as set forth below. This action is taken under the provisions of the National Traffic and Motor Vehicle Safety Act, as amended, (section 112 and 119, 15 U.S.C. 1401 and 1407), and the Motor Vehicle Information and Cost Savings Act, as amended, (Titles I, II, IV, and V) and the delegation of authority at 49 CFR 1.50.

The lawyer principally responsible for the development of this regulation is David A. Zisser.

Issued on December 19, 1977.

JOAN CLAYBROOK,
Administrator.

Accordingly, Part 510 of 49 CFR is added as follows:

Sec.
510.1 Scope and purpose.
510.2 Definitions.
510.3 Compulsory process and the service thereof.
510.4 Subpenas.
510.5 Investigational hearings.
510.6 General or special orders seeking information.
510.7 Supplementation of responses.
510.8 Fees.
510.9 Remedies for failure to permit authorized investigations.

AUTHORITY: National Traffic and Motor Vehicle Safety Act, as amended (sections 112 and 119, 15 U.S.C. 1401 and 1407), and the Motor Vehicle Information and Cost Savings Act, as amended (Titles I, II, IV, and V) and the delegation of authority at 49 CFR 1.50.

§ 510.1 Scope and purpose.

This rule governs the use of the information gathering powers of the National Highway Traffic Safety Administration in connection with its functions under the National Traffic and Motor Vehicle Safety Act, as amended, 15 U.S.C. 1381 et seq., and the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 et seq.

§ 510.2 Definitions.

"Administration" means the National Highway Traffic Safety Administration.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration.

§ 510.3 Compulsory process and the service thereof.

(a) The Administration may use any of the following means to conduct investigations, inspections, or inquiries to obtain information to carry out the Administration's functions under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381 et seq., and the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 et seq.:

(1) Subpenas;
(2) Investigational hearings; or
(3) General or special orders.

(b) Service of the compulsory processes specified in paragraph (a) of this section is effected:

(1) By personal service upon the person, or agent-in-charge of the sole proprietorship, partnership, corporation, or other entity being investigated, inspected, or inquired of; or

(2) By mail (registered or certified) or delivery to the last known residence or business address of such person or agent.

(c) The date of service of any of the compulsory processes specified in paragraph (a) of this section is the date on which the process is mailed by the agency, or delivered in person, as applicable. Whenever a party is required or permitted by compulsory process, under this part to do an act within a prescribed period after service, if service is by mail the party has until three days after the prescribed period to perform the act.

(d) Anyone submitting information in response to any of the compulsory processes specified in paragraph (a) of this section and desiring confidential treatment of that information shall state whether the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the agency to be entitled to exemption from disclosure by the agency under the provisions of the Freedom of Information Act (5 U.S.C. 552). Any statement asserting this claim of confidentiality must be in writing, and any request for exemption of the information from disclosure must be made in accordance with the Administration's Freedom of Information Act regulations.

§ 510.4 Subpenas.

(a) The agency may issue to any person, sole proprietorship, partnership, corporation, or other entity a subpena requiring the production of documents and things (subpena duces tecum) and/or the attendance and testimony of witnesses (subpena ad testificandum) rating to any matter under investigation.

(b) The person, sole proprietorship, partnership, or corporation under subpena may file with the Deputy Administrator of the Administration a motion to limit or quash the subpena. Any such motion must set forth the reasons why the subpena should be limited or quashed and may be accompanied by memoranda, affidavits, or other documents supporting the motion.

(c) All motions to limit or quash a subpena are ruled upon by the Deputy Administrator of the Administration. The Office of the Deputy Administrator serves the decision on the motion to limit or quash the subpena upon the moving party or the counsel of the moving party. The decision on the motion to limit or quash is final and is not subject to reconsideration.

§ 510.5 Investigational hearings.

(a) The Administration may issue a subpena to compel any person, sole proprietorship, partnership, corporation or other entity to provide information as a witness at an investigational hearing. Such hearings are for the purpose of taking the testimony of witnesses under oath and receiving documents and other information relating to any subject under investigation, including rulemaking or enforcement. The Administrator or his designee presides at the hearings. The hearings are stenographically reported, and a transcript thereof is made a part of the record.

(b) The transcript of the testimony of a witness who testified under subpena is submitted to him for his signature unless he waives the right to sign the transcript. If such witness desires to make any changes in form or substance in the transcript, he shall submit, together with the transcripts, a separate document setting forth the changes and stating the reasons for such changes. If the testimony is not signed by the witness within 30 days of its submission to the witness, or such shorter time as the Administration may designate, an Administration designee signs it and states on the record the fact of the waiver of the right to sign, or the fact of the witness' unavailability or inability or refusal to sign together with the reason, if any, given therefor. The testimony referred to herein may be used in any investigation or any administrative or judicial adjudicative proceeding.

(c) The release of the record of such hearing is governed by the Administration's regulations under the Freedom of Information Act, 5 U.S.C. 552, other applicable laws or regulations, or both.

(d) Any person, agent, or officer of a sole proprietorship, partnership, corporation, or other entity who is required by subpena to produce documentary evidence or give testimony as a witness at an investigational hearing conducted under this section may be accompanied by counsel. Any member of the bar of a Federal Court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, representative, or official or employee of the person, sole proprietorship, partnership, or corporation under subpena may act as counsel. However, a person who is subpenaed to produce documentary evidence or give testimony at an investigational hearing cannot act as counsel or representative for another witness at the same proceeding.

(e) During an investigational hearing:

(1) A witness appearing under subpena may confer, in confidence with his counsel or representative concerning any questions asked of the witness. If such witness, counsel, or representative objects to a question, he shall state the objection and basis thereof on the record. In the case of an objection based upon the privilege against self incrimination, the privilege must be asserted by the witness. If a witness appearing under subpena refuses to answer a question or provide other information, the presiding officer may immediately order such witness to answer the question or provide the information requested, except in circumstances where an immediate ruling would be unwarranted and except where such refusal is based upon the privilege against self incrimination, which shall be handled in accordance with the procedure set forth in 18 U.S.C. 6002 and 6004. All other objections shall be ruled upon by the presiding officer at the time the objection is made.

(2) Objections timely made under the section are noted on the record, are treated as continuing, and preserved, throughout the course of the proceeding.

(3) Except as provided by this section, counsel for or a representative of a witness may not interrupt the examination of the witness by making arguments or statements on the record.

(4) Upon completion of the examination of a witness, the witness may clarify on the record any of his answers.

(f) Any such person, agent, or officer who is required to appear in person at an investigational hearing may retain a copy of any document submitted by him. Upon payment of lawfully prescribed costs, he or she may procure a copy of his or her own testimony as recorded.

(g) The Administrator or the Administration designee who presides at an investigational hearing takes all necessary action to regulate the course of the hearing, to avoid delay and to assure that reasonable standards of orderly and ethical conduct are maintained in any case in which counsel for a witness has refused to comply with the designee's directions, or to adhere to reasonable standards of orderly and ethical conduct in the course of the hearing, the designee states on the record the reasons for the refusal and immediately reports the refusal to the Administrator. The Administrator thereupon takes such action as the circumstances warrant.

§ 510.6 General or special orders seeking information.

The Administration may require by the issuance of general or special orders, any person, sole proprietorship, partnership, corporation, or other entity to file with the agency in such form as the Administration may prescribe periodically and/or special reports or answers in writing to specific questions which furnish to the agency such information as it may require, including but not limited to information relating to its organization, business, conduct, practices, management, and relation to any person, sole proprietorship, partnership, corporation, or other entity. Such reports and answers must be made under oath, or otherwise, as the Administration may prescribe and must be filed with the Administration within such time as the Administration may prescribe.

§ 510.7 Supplementation of responses.

(a) A person, sole proprietorship, partnership, corporation, or other entity who has provided information under this Part in a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except:

(1) A person, sole proprietorship, partnership, corporation, or other entity is under a duty to supplement his response with respect to any question directly addressed to the identity and location of persons having knowledge of information obtainable under this Part.

(2) A person, sole proprietorship, partnership, corporation, or other entity is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he knows that the response was incorrect when made, or he knows that the response, though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(b) This section in no way limits the Administration's authority to obtain supplemental information by specific demands through the means specified in section 510.3 (a) of these regulations.

§ 510.8 Fees.

Any person compelled to appear in person in response to a subpena at an investigational hearing shall be paid the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, Section 1821.

§ 510.9 Remedies for failure to permit authorized investigations.

In the event of failure to comply with any investigative process or order authorized by these rules, the Administration may seek appropriate action pursuant to the authority conferred by the National Traffic and Motor Vehicle Safety Act or the Motor Vehicle Information and Cost Savings Act, including actions for enforcement, civil penalties, or other sanctions.

[FR Doc. 77-36696 Filed 12-29-77; 8:45 a.m.]

[49 CFR Part 510]

DEPARTMENT OF TRANSPORTATION: NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 78-01; Notice 3]

INFORMATION GATHERING POWERS

Agency: National Highway Traffic Safety Administration, DOT.

Action: Final rule.

Summary: This notice establishes a final rule governing the issuance and use of compulsory process by the National Highway Traffic Safety Administration (NHTSA) in carrying out its duties under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, (the Safety Act), and the Motor Vehicle Information and Cost Savings Act, as amended, (the Cost Savings Act). This final rule was preceded by an interim final rule, which set forth the procedures the agency would use in exercising its information gathering powers, and solicited comments on those procedures. This rule informs the public of those procedures, and of the rights which the public has with respect to those procedures.

Effective date: This rule will become effective June 16, 1980.

For further information contact: Steve Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2992).

Supplementary information: A. Background. At 42 FR 64628, December 27, 1977, NHTSA published an interim final rule establishing 49 CFR Part 510, Information gathering powers. That regulation set forth the procedures to be followed by NHTSA in exercising its information gathering powers. It was issued as an interim final rule without prior notice or opportunity for comment. This is permitted by 5 U.S.C. 553(b)(3)(A), which allows rules which are strictly procedural to be issued without the normally required notice and opportunity for comment. However, because of this agency's policy of encouraging public participation in all agency activities. Part 510 was issued as an interim rule, and comments from interested members of the public were solicited. On February 2, 1978, the comment period was extended for an additional 30 days in response to a petition requesting such an extension; see 43 FR 5516, February 9, 1978. The agency received many comments on Part 510 from members of the automotive industry, automotive associations both large and small, associations of automobile users and consumers, and at least one private citizen who did not indicate any affiliation. All comments were considered and the most significant ones are addressed below.

In response to the comments received, several changes have been made to the interim rule. However, most of these changes are for the purpose of clarification or to make explicit what had been implicit in the interim rule. The most significant changes are outlined below.

B. Most significant changes. The following are the most significant differences between the interim rule and this final rule:

1. The final rule reorganizes the category of "investigational hearing" contained in the interim rule into two smaller categories. The first reorganized category is the "information gathering hearing" in which the agency can compel a witness to appear and answer questions under oath. The agency's rulemaking meetings are the most common example of this type of proceeding. Generally, these hearings will be public, and questioning of the witness will be limited to the presiding officer and any other members of a panel. The other reorganized category, which is derived from the interim rule's investigational hearing, is the "administrative deposition". This is used in investigations and is modeled after a deposition under the Federal Rules of Civil Procedure.

2. The final rule requires that any process issued under it recite the statutory authority under which the process is issued.

3. The final rule requires that any process issued under it contain a brief description of the investigation or inquiry in connection with which it is being issued.

4. The final rule adds a form of compulsory process, the written request for the production of documents and things. This was implicit in the concept of the general or special order established in the interim rule, but has been made explicit in this final rule to avoid any confusion as to the availability and proper uses of this form of process.

5. The final rule expands the right to counsel by deleting the authority for the agency to exclude a person as counsel if such person were counsel for a number of other witnesses in the same investigation or if such person had personally been subpoenaed to testify.

6. The interim rule had not specified any time limitations on the duty to supplement responses to compulsory process. This final rule includes the following limitations: with respect to process issued in connection with a rulemaking action, the duty to supplement terminates when a final rule is issued or the action is otherwise ended. With respect to process issued in connection with an enforcement investigation, the duty to supplement responses terminates when the defect investigation is closed. Finally, with respect to process not issued in connection with a specific rulemaking action or enforcement inminates 18 months after the date of the original response to the process.

C. Discussion of comments. 1. Comments on the procedure followed for issuing this rule. One commenter suggested that the interim rule may be void because it was issued without a prior notice of proposed rulemaking and opportunity for public comment. Moreover, this defect might not be cured by the publication of a final rule after consideration of comments received, according to this commenter, in which case the final rule would also be void.

The commenter asserted that any rule which substantially affects the rights of persons subject to the authority of an agency must be promulgated with notice and opportunity for comment, no matter whether the rule is labeled substantive or procedural. However, the authority cited by the commenter does not support that assertion. Instead, the cases suggest that when it is difficult to determine whether a rule is substantive or procedural, the court will consider the impact on the regulated parties. If that impact is significant, it is likely that the rule is substantive. Thus, in *Pickus v. United States Board of Parole*, 507 F.2d 1107 (D.C. Cir. 1974), the board of parole argued that its regulation was procedural, but the regulation also established some criteria for parole eligibility. In *Pharmaceutical Manufacturers Association v. Finch*, 307 F. Supp. 358 (D. Delaware 1970), the FDA established procedural regulations which also set up the requirements with which drug manufacturers would have to comply to establish that a new drug was safe and effective. And in *National Motor Freight Traffic Association v. United States*, 268 F. Supp. 90 (D.D.C. 1967), *aff'd*, 393 U.S. 18 (1968), the Interstate Commerce Commission's procedural regulations also established a remedy for the recovery of overcharges. In none of these cases did the court find the regulation to be purely procedural.

Numerous cases have upheld the validity of procedural rules issued without notice and opportunity for comment, even when the rules had a major impact on the parties. *See Eastern Kentucky Welfare Rights Organization v. Simon*, 506 F.2d 1278 (D.C. Cir. 1974) *vacated on other grounds*, 436 U.S. 26 (1976); *Shell Oil Co. v. Federal Power Commission*, 491 F.2d 82 (5th Cir. 1974); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948 (6th Cir. 1971). The agency believes that Part 510 is purely procedural, since it does not even arguably establish any criteria for obtaining favorable consideration by the agency, nor does it establish any remedies for violations of substantive agency rules. Indeed, it appears to NHTSA that the regulation does not substantially affect the rights of any parties, since Part 510 only implements information gathering powers and remedies for violations of those powers granted to NHTSA in various statutes, without adding to or deleting from those powers and remedies in any way.

Furthermore, even if NHTSA accepts *arguendo* the commenter's claim that the interim rule should have been preceded by notice and opportunity for comment, that failure would be cured by the agency's solicitation of comments on the interim rule and the issuance of this final rule in response to the comments received. The commenter's position that no "cure" is possible is based on four cited cases. Three of those cases involved a situation where the agency involved never issued a notice indicating that there had been any consideration of the comments received and no modifications of the rule were ever made. Hence, the courts in *Community Nutrition Institute v. Butz*, 420 F. Supp. 751 (D.D.C. 1976), *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969), and *National Motor Freight Traffic Association v. United States, supra*, were not presented with the issue of whether a defectively issued rule can be cured by soliciting and considering comments.

The other case cited by the commenter for the position that no cure is possible was *City of New York v. Diamond*, 379 F. Supp. 503 (S.D.N.Y. 1974). In that case, the Department of Labor published a rule as final without any prior notice or opportunity for comment. There was a statement in the rule that any comments received in response thereto would be acted upon as though the rule were a notice of proposed rulemaking. No final rule showing some consideration of comments was ever published.

The court held that this rule was void for failure to comply with the requirements of the Administrative Procedure Act. The rationale for the decision is explained at 379 F. Supp. 517, where the court said, "Permitting the submission of views after the effective date is no substitute for the right of interested persons to make their views known in time to influence the rulemaking process in a meaningful way." The court expressed doubts that an after-the-fact opportunity to comment would be meaningful since people would be unlikely to submit comments and the agency would be unlikely to consider changes after a *fait accompli*.

This reasoning is inapposite in the instant situation. There has been no claim by this or any other commenter that they were not allowed to make their views known in time to influence the rulemaking process. The doubts that comments would be submitted can be allayed with regard to this interim rule. A total of 26 written comments were submitted in response to the invitation for comments in the interim rule, and many of these were long and detailed. The comments have been considered at length. Changes outlined above have been made to the interim rule in response to the comments received.

Further, the remedy for a defectively issued rule is that the invalidly issued rule is void and the agency must follow the notice and comment procedures before promulgating any new rule on the subject. In this case, voiding the permanent rule and requiring the agency to solicit comments is unnecessary. Detailed comments have already been submitted by representatives of many different segments of the interested public. Reissuance of a proposal identical to the interim rule would serve no useful purpose.

2. *General comments.* Several commenters expressed concern that the issuance of Part 510 signalled an end to a relatively cooperative relationship concerning the agency's information gathering needs, and a beginning of a new, more adversarial relationship. NHTSA believes this concern is unfounded. The agency has always had the power to compel the production of information, and has in fact made numerous mandatory requests for information before the issuance of Part 510. Part 510 is simply an effort by the agency to state, its authority with regard to information gathering, and set forth the procedures it will follow in exercising that authority, as well as setting forth the rights parties have when confronted with compulsory process by this agency.

The existence of this rule will not change the agency's general reliance on the voluntary submission of information. For its part, the agency will continue where feasible to rely on persons and entities to voluntarily provide the agency with information if the party will do so. NHTSA believes that most parties will continue to do so, since it is in the interest of those persons, as well as that of the agency and the public, for NHTSA to be well informed in its activities.

There were also repeated concerns that the information gathering powers in Part 520 are potentially oppressive, and could violate the right to privacy. The information gathering authority of this agency has been used and will continue to be used in a responsible manner.

Persons subject to the agency's information gathering powers have protections more secure than this agency's assurances of good intent. Under the provisions of Part 510, persons may informally protest the exercise of the information gathering powers and seek to informally negotiate terms of compliance that would not be oppressive. If the party chooses, there are more formal ways of protesting at the administrative level such as filing motions to quash or modify the process before the Deputy Administrator. Finally, a person who has been served with compulsory process and exhausted the available administrative remedies may raise any available defense in an action brought by NHTSA to enforce the process in the appropriate United States District Court.

A number of commenters, particularly those representing small businesses, stated that additional Federal paperwork requirements would be unbearable. This agency is aware of the problems caused business, especially smaller businesses, by requirements which cause the business to prepare more paperwork. As explained above, issuance of this rule will not lead to a significant change in the information gathering practices of this agency.

One commenter inquired whether the agency would seek out differing opinions in the information gathering process. NHTSA has always tried to obtain a variety of views in its information gathering activities, particularly in the area of rulemaking, where the policy issues involved are best considered in

the light of contrasting opinion. The agency has in the past sought information and views from various persons and entities. Typically, voluntary requests and compulsory process are sent to manufacturers, since they are most likely to possess the type of information needed by the agency. To inform the public of these information gathering efforts, copies of the process and requests are placed in the dockets. This information gathering has been supplemented at the notice and comment stage of rulemaking by such means as inviting public participation to ensure that a wide range of views is represented.

Several commenters expressed the view that the information gathering powers discussed in Part 510 were unnecessary, duplicative of the authority of the National Transportation Safety Board, and not contemplated by Congress. It is clear that Congress has given the agency broad information gathering powers. Before the 1974 amendments to the Safety Act, NHTSA's investigative and information gathering authority under that Act was relatively circumscribed. In 1974, the Congress amended the Safety Act to give the agency broad authority similar to the authority it already possessed under Title I of the Cost Savings Act. With respect to the 1974 amendments, the House Committee stated that the amendments authorize:

the Secretary to conduct informational hearings and to obtain evidence from any person who has information relevant to the implementation of the Act. *Despite the vital importance of information gathering to successful implementation of the Act, the Secretary does not possess general authority for this purpose.* This lack is anomalous in view of the extensive information gathering authority in the property damage reduction provisions of the Motor Vehicle Information and Cost Savings Act. *This paragraph would give the Secretary similar broad authority in the more important pursuit of preventing highway deaths and injuries.* (emphasis added) H. Rept. 93–1191, 93rd Cong. 2d Sess. at 36–37.

In connection with the agency's duties under Title V of the Cost Savings Act, dealing with automotive fuel economy, Congress granted similar broad information gathering authority in section 505. To assist NHTSA in its duties to prevent odometer fraud, Congress also granted the agency broad information gathering powers in Title IV of the Cost Savings Act at section 414.

NHTSA's information gathering powers complement, but do not duplicate those of the National Transportation Safety Board (NTSB). The functions and information needs of the two agencies, even in the safety area, differ significantly. The function of the NTSB is to investigate significant transportation accidents, whether on the highways, rails, sea, or air, to determine the cause of those accidents. NTSB then publicly reports the results of these investigations. It also issues general recommendations for reducing the risks of accidents and publishes reports on the general transportation safety consciousness of other government agencies.

The functions of NHTSA include issuing specific rules to prevent highway deaths and injuries, reduce property damage in the event of an accident, increase the average fuel economy of automobiles, and prevent odometer fraud. Any validly issued rule which is violated subjects the violator to civil penalties. These differing functions illustrate why the two agencies have differing information needs. Further NTSB does not obtain any information which could be used to assist NHTSA in its fuel economy, damageability, or odometer fraud activities. With respect to NHTSA's safety activities, this agency is concerned with more than just the cause of an accident. NHTSA must also obtain information which could support the establishment of safety standards in the area, establish that there has been some noncompliance with such standards, or show the existence of a safety-related defect.

3. Specific comments. a. Recitation of authority. A commenter suggested that Part 510 require that any process issued thereunder indicate the statute that authorizes the particular process. The agency agrees that this is a reasonable requirement and § 510.3(b)(2) of the final rule includes this requirement. The agency would like to note that the practice under the interim rule has been to indicate the statutory basis for the process issued thereunder, although the interim rule did not require this.

b. Statement of purpose. There were also a number of comments suggesting that Part 510 should be amended to require that any compulsory process contain a brief description of the purpose and scope of the investigation in connection with which the process is issued, so that a respondent or a reviewing court would have a basis for determining whether the process is reasonably relevant to that investigation. This agency agrees to change the interim rule to add a requirement in § 510.3(b)(4) of the final rule that compulsory process contain a brief description of the purpose and scope of the agency's investigation. Again, the agency notes that process issued under the interim rule has routinely carried a brief description of the purpose of the agency's investigation.

It must be kept firmly in mind that the agency need not and will not go into a detailed and specific discourse about any investigation to support compulsory process. As stated by the Court of Appeals for the District of Columbia Circuit in *Federal Trade Commission* v. *Texaco*, 555 F.2d 864 (D.C. Cir.); cert. den., 431 U.S. 974 (1977):

> • • • an investigating agency is under no obligation to propound a narrowly focused theory of a possible future case. Accordingly, the relevance of the agency's subpoena requests may be measured only against the general purposes of its investigation. 555 F.2d at 874 (emphasis in original)

More recently, the District Court for the District of Columbia decided a case dealing specifically with the information gathering powers of NHTSA in *United States* v. *Firestone Tire and Rubber Co.*, 455 F. Supp. 1072 (D.D.C. 1978). The court there addressed this issue saying:

> The agency need not narrow its focus from the beginning, and it is not for this court to determine whether the information sought is relevant to whatever eventual action the agency might take. This court may look only to the *general* purpose of the investigation and determine if the information sought, however broad, is relevant to that purpose. 455 F. Supp. at 1083 (emphasis in original)

One commenter suggested that Part 510 be amended to require that compulsory process inform the respondent of the identity of the person or entity under investigation. In most enforcement investigations the agency now identifies the persons subject to the investigation in its information requests and compulsory process. The agency must be free, however, to gather information relevant to the general purpose of investigations which are not yet focused on potential violations and violators. There may also be investigations in which nondisclosure of the identity of those under investigation will be necessary to prevent harm to the outcome of the investigations or harm to informants. The Supreme Court has said that it is a proper purpose for an administrative subpoena "to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the Administrator's judgment, the facts thus discovered should justify doing so." *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, at 201 (1946). In other words, agency investigations and compulsory process issued in connection with those investigations need not be focused on a limited number of persons or entities, but can be intended simply to determine if there are violations of any standards; *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950). Adoption of the requirement urged by this commenter in all cases would unduly hamper NHTSA's ability to conduct these authorized and proper types of investigations and the comment is, therefore, rejected.

c. *Production of documents.* Interim Part 510 listed a subpoena *duces tecum* as the only form of compulsory process through which this agency could compel the production of documents. Although it was not specifically identified as such, the authority to issue general or special orders includes the authority to compel the production of documents.

The agency's authority to issue a type of compulsory process that required the production of documents outside the context of a hearing, in which a subpoena would be issued, was upheld in *United States* v. *Firestone Tire and Rubber Co., supra.* In that case, NHTSA issued a special order to Firestone commanding the company to produce and provide information about a group of documents. Firestone specifically challenged the agency's authority to compel the production of documents outside the context of a hearing. NHTSA argued that section 112(c)(2) of the Safety Act (15 U.S.C. 1401(c)(2)) gave the agency this authority. The court analyzed the legislative history of this section and found that Congress had intended to give the agency broad investigatory powers. In conclusion, the court said:

> Following Firestone's argument would emasculate these newly-granted investigatory powers. As such, the court must read the requirements of this Act within the context of Congressional intent. The Secretary's investigative power is broad enough to compel the production of documents and the analysis thereof. 455 F. Supp. at 1082.

It is clear from this analysis that NHTSA has the power to compel the production of documents by the use of general or special orders under the Safety Act. Sections 104(a)(2), 204(b), 414(c)(2), and 505(b)(1)(B) of the Cost Savings Act (15 U.S.C. 1914(a)(2), 1944(b), 1990d(c)(2), and 2005(b)(1)(B)) use language identical to that used in section 112(c)(2) of the Safety Act. The use of identical language shows the same intent to give NHTSA broad authority and necessarily grants that broad authority.

To make it explicit in this final rule that the agency may exercise this authority, a form of compulsory process not specifically set forth in the interim rule has been added to this rule. The process is called a written request for the production of documents and things. This process may be issued alone or as a part of a general or special order. A written request for the production of documents and things is the functional equivalent of a subpoena *duces tecum.*

d. *Service of process; when and where returnable.* One commenter argued that service of compulsory process should be effected only by personal service, rather than allowing the agency the option of mail service, as is permitted by section 510.3(c). The reason offered for this requested change is that personal service is the only permissible service for process issued by the courts of the United States in civil matters, as set forth in Rule 45(c) of the Federal Rules of Civil Procedure. Personal service, of course, offers the greatest certainty that the person named in the process received actual notice thereof. However, a requirement of personal service would add a great deal of cost, time, and burden for the agency in connection with the issuance of compulsory process.

The commenter cited no authority which would prohibit the agency from effecting service by mail, nor is the agency aware of any authority. In fact, many Federal agencies use mail service for their compulsory process. *See, e.g.* 16 CFR 4.4(a) (Federal Trade Commission); 17 CFR 201.4(b)(3). (Securities and Exchange Commission). The judgment made by these agencies is that the possibility of a party not receiving notice by mail service is so slight that the additional expenditure of taxpayers' money required to effect personal service would not be justified. This agency concurs with that determination and will, therefore, permit service by registered or certified mail, if the respondent does not receive the process when it is served by mail. NHTSA will give that fact due consideration when determining the appropriate action to be taken in response to the respondent's failure to comply.

The same commenter raised the question of issuing compulsory process to foreign citizens or nationals of foreign countries residing abroad who are not served with process in the United States, or who have not appointed an agent for the service of process in the United States. The commenter argued that subpoenas to such persons would have to be considered requests, rather than commands, because such persons would be beyond the jurisdiction of the United States. The agency's compulsory process is bounded by the jurisdictional limits of the United States courts where the process is enforceable. The agency has no doubt, however, that a corporation or person amenable to service can be required to produce records located outside the territorial limits of the United States.

Several commenters suggested that when service is effected by mail, the date of service should be the date the respondent receives the process, rather than the date on which the service is mailed, with three additional days allowed to perform the required act, as is required by § 510.3(d). One commenter urged that the agency could easily determine the date of receipt by using return receipt mailing methods. The provision in the interim rule was adopted directly from Rule 6(e) of the Federal Rules of Civil Procedure. This provision has not led to any difficulties or unfairness in the Federal courts such as some commenters suggested would result from this provision in Part 510.

Return receipt mail would add costs for the agency and could add delay and cause other difficulties in delivering process. These burdens would not be outweighed by being able to ensure absolutely that the respondents actually had available to them the period to respond to the process which was stated in the process. The agency will always entertain motions to extend the return date of its process, if the respondent can show that the period available to it was inadequate. Since these motions can be filed for all process issued by the agency, the benefit of using return receipt mailing would be insubstantial.

One commenter suggested that Part 510 should allow service of compulsory process to a business to be made upon an agent designated to receive service, as an alternative to the agent-in-charge. NHTSA agrees with this suggestion, and the rule has been modified to reflect this new provision.

Many commenters addressed the issue of the amount of time which should be permitted to respond to compulsory process. Generally, the commenters indicated that compulsory process should be returnable in a reasonable amount of time. Although this was not specifically required by the interim rule, NHTSA intends to continue its policy of requiring that process be returnable in a reasonable amount of time. Further, NHTSA believes that the requirement for a reasonable amount of time to respond to compulsory process is so fundamental that it need not be explicitly stated in the final rule.

Some commenters suggested that a certain period of time, such as 30 days, be presumed by the agency to be a minimum reasonable time. Other commenters noted special factors which should lengthen the amount of time that could be considered reasonable. Examples of these special factors were language differences and the size of the companies to which the process was directed.

NHTSA concurs with the implicit statement in these latter comments that the determination of what is a reasonable period of time to respond must necessarily be an *ad hoc* one, which will of necessity consider the facts involved in each individual case. The agency notes that, in addition to the burden imposed on the respondents, the determination of what is a reasonable time period in which to respond must also consider the agency's need for the information so that it can perform its functions in a timely manner. However, the fact that a determination of what is a reasonable period of time must, almost by definition, be made on a case-by-case basis leads the agency to conclude that the establishment of even a presumptively reasonable amount of time in in which to respond would unnecessarily limit the ability to consider the particular facts of each case. In the past, NHTSA has been willing to grant extensions of time for responses to compulsory process where it appeared that such extensions were necessary and consistent with the public interest. No departure from that policy is contemplated.

One commenter inquired where NHTSA's compulsory process would be returnable. Although most compulsory process will be returnable at the offices of NHTSA, situations may arise where the process would be returned at some other place. This question of where process must be returned should also be considered on a case-by-case basis.

e. *Investigational hearings.* The interim rule set forth one section which was intended to cover all agency hearings and which referred to all hearings as investigational hearings. These hearings were structured to be a mechanism with which to gather facts, opinions, or other data relevant to an agency investigation, inquiry or rulemaking and were not adjudicative or quasi-adjudicative procedures. The presiding officer at these hearings would have had the authority to rule on objections, "unless an immediate ruling would be unwarranted, and except where a refusal to answer was based upon the privilege against self-incrimination. "This limitation was necessary because the presiding officer would not be a judicial officer, and so would not rule on any legal points.

The problem which became apparent with this formulation was that the differences between hearings in connection with rulemaking and hearings in connection with enforcement proceedings make it impossible to describe both hearings in one section. Although the section in the interim rule dealing with investigational hearings did set forth all fundamental points of the two types of hearings which the agency will hold, it was not an entirely accurate description of either hearing.

In the final rule, § 510.5 sets forth the procedures for hearings in connection with rulemaking, which are called "information gathering hearings." Section 510.6 sets forth the procedures for hearings held in connection with enforcement investigations, and these are now called "administrative depositions." By separating these types of hearings, this final rule provides a more accurate description of each.

The information gathering hearings will generally be open to the public. Information gathering hearings include hearings in connection with pending rulemaking actions, hearings on an initial determination by the agency of a safety-related defect or noncompliance with an applicable Federal motor vehicle safety standard, held pursuant to the authority of section 152 of the Safety Act (15 U.S.C. 1412), and hearings on whether a manufacturer has reasonably met its obligation to notify and remedy a defect or failure to comply, which hearings are held pursuant to the authority of section 156 of the Safety Act (15 U.S.C. 1416) In addition to the presiding officer, one or more other persons may be designated as members of the panel. The members of the panel may question any witness. If any person not a member of the panel wishes to pose a question to a witness, that person may write down the question and submit it to the panel. Any member of the panel may then pose the question if that member feels it appropriate to do so. The presiding officer at an information gathering hearing runs the hearing, and ensures that it proceeds in an orderly fashion.

The administrative deposition, which is held in connection with enforcement investigations, will generally be closed to the public. This proceeding has been adapted from the procedures for deposition procedures set forth in the Federal Rules of Civil Procedure. An officer authorized to administer oaths will put the deponent under oath and record the person's testimony. NHTSA will examine the witness first and then the witness' attorney may examine the witness.

A number of commenters argued that the right to counsel provided in interim Part 510 was too restrictive. One commenter stated that the provisions of the interim rule, which allowed any witness at an investigational hearing to be accompanied by counsel, to confer with counsel, and to allow counsel to raise and explain any objections to any question asked of the witness was a limitation on the right to counsel guaranteed in the Administrative Procedure Act at 5 U.S.C. 555, where a person compelled to appear in person before an agency is entitled to be "accompanied, represented and advised" by counsel. This commenter stated that the words "accompanied", "represented," and "advised" have different shades of meaning signifying varying rights under the law. NHTSA agrees with this latter statement. It is not clear to this agency, however, what the words "accompanied, represented and advised" mean in addition to the rights to have counsel present, to confer raise and explain and to have that counsel raise and explain objections, which were granted in the interim rule. Notwithstanding this point, NHTSA has no objections to modifying the language of Part 510 in this final rule to track the language of the Administrative Procedure Act.

Another commenter suggested that the rights of counsel to state and argue objections should be expanded. The interim rule provided that counsel could object to any question and state the basis for that objection on the record. This commenter believes that the right to counsel consists of, at a minimum, the right to make objections on the record and argue briefly the basis for the objections. NHTSA does not believe that it would be appropriate to modify the final rule to permit counsel to argue objections. In the information gathering hearings, the presiding officer will not be ruling on legal points, so no useful purpose would be served by airing legal points at length during the course of the hearing. With respect to the administrative depositions, the presiding officer as set forth in the interim rule has been replaced in this final rule by an officer authorized to administer oaths, and this officer will not rule on any objections. Accordingly, once the objection has been stated and the basis therefor explained, no purpose, other than delaying the deposition, would be served by arguing the objection.

Several commenters urged that the final rule should allow cross-examination of witnesses at investigational hearings. Since the investigational hearings in the interim rule have been divided into information gathering hearings and administrative depositions in this final rule, the comment has been considered with respect to both forms of hearings. At an information gathering hearing, there will be more than one witness, and these witnesses will be expressing differing views and opinions. If each of these witnesses could be cross-examined the hearing would be lengthened considerably. Especially since interested persons may submit questions to be asked by the presiding panel and are typically permitted a chance to supplement their comments after these hearings, the agency concludes that the rule should not be amended to permit cross-examination of witnesses.

Administrative depositions will focus on one witness, and the testimony of that witness will be considered by NHTSA in determining whether an enforcement action is necessary. If the agency decides to pursue an enforcement action it will be important that the testimony of the witness be as probative and accurate as possible. In this context, examination of the witnesses will generally be more administratively workable, because there will be only a single witness. The final rule has been accordingly modified to allow the witness's attorney or representative to examine the witness after NHTSA finishes its examination of the witness. Following this examination, NHTSA may reexamine the witness, and the witness's attorney may then reexamine the witness, and so forth, as appropriate.

Many objections were raised to the provision in the interim rule which excluded persons who were subpoenaed to testify at an investigational hearing from acting as counsel or representative for any other witnesses at that investigational hearing. One commenter argues that this provision could easily be abused by NHTSA to improperly exclude a counsel or representative. After a consideration of these comments and a reexamination of the exclusion, the agency has determined that the final rule should be modified.

The reason for including this authority was to prevent a situation where a counsel or representative advising a number of persons in the same proceeding could interfere with the investigation by, either consciously or subconsciously, tailoring testimony to conform with testimony already given. Several courts have stated that this general purpose is legitimate, and could support a decision to exclude a counsel or representative in these circumstances. *SEC* v. *Csapo*, 553 F.2d 7 (D.C. Cir. 1976); *SEC* v. *Higashi*, 359 F.2d 550 (9th Cir. 1966). However, both these cases indicate that authority to exclude counsel must be kept within permissible limits. The automatic exclusion of counsel has been deleted for both the information gathering hearings and the administrative depositions. For information gathering hearings § 510.5(e) of this final rule retains authority for the Administrator to take appropriate action if a counsel or representative refuses to comply with the presiding officer's directions or to adhere to reasonable standards of orderly and ethical conduct. Appropriate actions could include the exclusion of that counsel or representative from the hearing.

For an administrative deposition, the rule does not specifically provide for any exclusion, regardless of the behavior or conduct of a counsel or representative. In the event that it becomes necessary to prevent annoyance, embarrassment, oppression, or undue expense or delay to the witness or the agency, NHTSA will file an action in a United States District Court to seek an order to enforce the subpoena and to end the annoyance, embarrassment, oppression, or undue expense or delay, pursuant to the provision of § 510.6(c)(5). This motion would be analogous to a motion for a protective order, which could be filed under Rule 26(c) of the Federal Rules of Civil Procedure.

As an adjunct to this modification, the agency is changing the requirements of § 510.6(f) to provide that NHTSA may, in a nonpublic investigation and for good cause shown, decline to provide a copy of the transcript of his or her testimony to the witness. In those cases, the witness will be limited to an inspection of the transcript of the deposition. Such a limitation is explicitly authorized by the Administrative Procedure Act; 5 U.S.C. 555(c). The purpose of this change is to prevent witnesses from tailoring their testimony to conform to testimony given by previous witnesses.

One commenter sugested that the provision in Part 510 regarding the time in which a witness is allowed to sign the transcript of his or her testimony be made more flexible. The 30-day period included in the interim rule was drawn directly from Rule 30(e) of the Federal Rules of Civil Procedure, where experience has not shown it to be inadequate. Nonetheless, the language in § 510.6(d) has been modified to allow the agency to designate some period other than 30 days as the period by which the testimony must be signed. The agency will allow a longer or shorter period as appropriate in particular circumstances.

A section has been added to the final rule which would also permit the agency to correct errors in the transcript of the deposition. Upon receiving a copy of the testimony given at the disposition, NHTSA would note any errors it believed had occurred in the transcription of the deposition, and forward notice of the alleged errors to the witness at the deposition, along with the transcript of the deposition. The notice would ask the witness to stipulate that the errors had occurred and agree to the corrections. If the witness would not make this stipulation, NHTSA would ask the presiding officer to have the record of the testimony reflect the dispute and show the NHTSA's version of the testimony as well as the version signed by the witness. The parties could then attempt to get an affidavit from the stenographer as to which version was most accurate, or take other steps to try to verify their version as the most accurate.

f. Subsequent use of testimony. Several commenters objected to the interim rule insofar as it provided that testimony obtained pursuant to NHTSA's information gathering authority may be "used in any investigation or administrative or judicial adjudicative proceeding." It was claimed that that agency could not and should not attempt to control what a Federal judge or an administrative law judge would admit into evidence in a proceeding before the judge. It was further stated that the absence of certain procedural rights in the investigational hearings, such as the right to cross-examine witnesses, would automatically preclude the use of the testimony in a subsequent adjudicative proceeding.

NHTSA obviously cannot control, nor did it seek to control, what a presiding judge will admit into the record of the proceeding over which he or she presides. The reason that this language appeared in the interim rule was to put respondents on notice that any information obtained under Part 510 could be considered and used by NHTSA in the manner it deems most appropriate, including *offering* such information into the record of an administrative or judicial proceeding. Whether such information would be allowed into the record is, of course, a decision which must be made by the presiding judge, in accordance with the applicable rules of evidence.

g. Motions to modify, limit, or quash process. A number of comments were received addressing motions to quash compulsory process. A number of comments were received adagency has determined that the interim rule's provisions should be retained almost in their entirety.

Many commenters argued that the agency should expand the availability of these motions, so that a recipient of a general or special order could file a motion to modify, limit, or quash that process. Some of these commenters argued that NHTSA was required to permit these motions for general and special orders. If it chose to permit them for subpoenas. This issue was before the court in *United States* v. *Firestone Tire and Rubber Co., supra*, and the court held that the interim rule's provisions allowing motions to modify, limit, or quash subpoenas, but not allowing such motions for general or special orders, were legally acceptabe. 455 F. Supp. at 1080.

As a practical matter, NHTSA issues general and special orders and written requests for the production of documents and things far more frequently than it does subpoenas. To require the Deputy Administrator to consider all of the possible objections to each of these forms of compulsory process would place an overwhelming burden on that office. Furthermore, the practice under interim Part 510 and before of not allowing formal objections to be filed to these types of compulsory process has worked very satisfactorily for both the agency and the respondents to its compulsory process. Given the acceptability of the present procedures and the fact that expansion of motions to quash to include all forms of compulsory process could readily be abused to delay compliance for frivious and insubstantial reason, the agency has determined that only subpoenas should be the subject of motions to modify, limit, or quash.

One commenter stated that respondents to the agency's compulsory process should be permitted to informally negotiate the terms of compliance with that process. NHTSA believed that the opportunity for informal negotiation of the terms of compliance with process was implicit in the interim rule. However, the agency has no objection to modifying the final rule to state explicitly that informal negotiations as to the terms of compliance are permissible, so § 510.3(f) now states that the Chief Counsel is authorized to negotiate the terms of compliance with any process issued under Part 510.

As set forth in this final rule, motions requesting some change to the terms of process will be decided by the Deputy Administrator. If the Deputy Administrator is not available, these motions will be decided by the Associate Administrator for Administration. In response to a comment, the final rule makes explicit what the agency had considered to be implicit in the interim rule; i.e., the Deputy Administrator is free to structure relief, through modifications or limitations of the subpoena, to achieve the resolution he or she believes is most appropriate. The final rule has also been modified to require that any motions to modify, limit, or quash process be filed not later than 15 days after service of the process or five days before the return date of that process, whichever is earlier, except in the rare event that the return date is less than five days after the service of the process. This requirement, similar to time limtations on these motions suggested in several comments, will eliminate last minute filings of these motions. the elimination of last minute filings will serve two important purposes. First, these motions will not be subject to abuse as a means of delaying compliance. Second, the prompt filing of these motions will facilitate more reasoned responses by the NHTSA to such motions.

It was suggested by many commenters that the filing of a motion to modify, limit, or

quash should automatically toll the return date of the process. NHTSA has not adopted that suggestion, since any automatic tolling provision would be easily subject to abuse as a dilatory tactic. However, the agency will entertain requests to extend the return date of any process, and will consider such requests on the basis of the individual set of circumstances. The pendency of a good faith objection would be given due consideration.

One commenter suggested that the agency catalog the grounds upon which process can be modified, limited, or quashed. The rule has not been changed in this way, since the agency does not wish to foreclose any legitimate grounds for protesting some process. NHTSA will state that it believes that most objections will be based upon the alleged burdensomeness of the process, some assertion of privilege, or a question of the relevance of the information. However, this is not an exhaustive list of the possible objections, and any objections will be considered on their merits.

Many commenters objected to the provision that would have the Deputy Administrator deciding motions to quash. These commenters believed that the Deputy Administrator could not impartially decide these motions, because the process would have been issued by that individual, or with the concurrence of that individual or a superior, such as the Administrator. This situation was said to establish an institutional bias in favor of the validity of the process which, according to those commenters, violates the due process requirements of the Fifth Amendment.

NHTSA believes that this comment reflects a serious misunderstanding of the purpose of this agency level mechanism for considering objections to the compulsory process. This mechanism will not be and is not intended to be an adjudication of the rights of the affected parties. The due process rights to an impartial decisionmaker do not apply outside the context of a determination of the rights of the affected parties. The sole purpose of having an agency review of any objections is to provide a respondent with a means which guarantees that senior agency officials will consider any objections raised by respondents to compulsory process issued by this agency. This ensures that any position taken on the motion or objection is the final agency position. Given this purpose, it is perfectly proper to have an official as senior as the Deputy Administrator personally consider the respondent's objections and decide the validity thereof. Any respondent desiring a hearing which comports with the due process requirements and determines the rights of the respective parties can obtain this by resisting compulsory process and raising its objections in an enforcement action in a United States District Court.

h. Duty to supplement responses to process. Several comments were received relating to the duty to supplement responses to compulsory process based on after-acquired information. The language in the interim rule which imposed the duty to supplement responses was taken almost verbatim from Rule 26(e) of the Federal Rules of Civil Procedure, which requires that a response be supplemented when after-acquired information shows that the response was incorrect when made or the response, though correct when made, is no longer correct, and the failure to amend the response is a knowing concealment. Two basic objections were raised to this requirement. First, it was asserted that the duty to supplement was not limited by any time period, and would therefore impose a perpetual duty to provide the agency with information. The commenters stated that this result would be extremely burdensome to respondents while yielding minimal benefits to the agency, since much of the amended information would concern investigations which had been ended. These commenters pointed out that the duty imposed by the Federal Rules ends when the litigation ends.

NHTSA agrees with the commenters that the duty to supplement should not be open-ended. Accordingly, the final rule has modified the requirements of the interim rule to specify a limitation on the duty to supplement. If process is issued in connection with a rulemaking action or enforcement investigation, the duty to supplement terminates with the issuance of a final rule or termination of the rulemaking or with the closing of the investigation, respectively. In the case of process not issued in connection with a specific rulemaking action or enforcement investigation, the duty to supplement expires 18 months after the date of the response.

It should be noted that this amendment does not in any way diminish the agency's authority to specifically require a respondent to update some response after the duty under this part to supplement has expired. Further, the authority of the agency to require specific supplementation of responses while the general duty to supplement is in effect is not limited by that general duty.

The second basic objection to the duty to supplement as set forth in the interim rule concerned the burden imposed on respondents to correct "trivial" or "minor" errors. One commenter urged that the duty to supplement should be limited to instances where there is a "significant" change in the information originally given to NHTSA. The agency has not adopted this suggestion. Respondents are under a duty to give accurate responses to compulsory process. Errors which appear to be trivial or minor to a respondent exercising the utmost good faith may not be so judged by the agency in the context of all the information gathered by the agency. NHTSA believes that it must determine whether a change is trivial. This requirement does not impose any significant added burden on respondents, because it should typically be easier for a respondent to write down the changed information and send it to NHTSA than to inform a responsible agency official of the change and have him or her examine the change to determine whether it can properly be deemed trivial. Since there is a little additional burden imposed in requiring the change to be submitted to the agency and the information is necessary for NHTSA to properly perform its function of evaluating the significance of the change, the final rule does not limit the duty to supplement as suggested.

One frequent comment on the duty to supplement was that it would be extremely burdensome for the respondents to constantly check their responses for accuracy, even if the requirement were not open-ended. NHTSA disagrees with this assertion. The duty to supplement can be wholly satisfied by checking on a periodic basis with the sources within respondent having knowledge of the area to determine whether any new facts or information have arisen which might trigger a duty to supplement. If there are such new facts or information, the respondent promptly informs the agency about them. NHTSA agrees that this creates some burden for respondents, but does not agree that the burden is excessive or substantial. Moreover, NHTSA notes that much of the factual information which is subject to change, such as reports of warranty claims, is compiled for the respondents' own purposes on a regular basis. In those cases, the duty to supplement will be readily satisfied by making the update promptly available to the agency.

i. Confidentiality of information. Great concern was expressed over the confidentiality of alleged trade secret and confidential business information obtained by the agency by using its information gathering powers. NHTSA has published a notice of proposed rulemaking on this general subject entitled Part 512, *Confidential business information*; 43 FR 22412, May 25, 1978. That notice proposes a detailed scheme for the treatment of confidential business information received by NHTSA. The agency anticipates that the final rule on this subject will soon be published. When Part 512 is published, its requirements will supersede those set forth in § 510.3(e). Until that time, however, NHTSA will follow the procedures set forth in § 510.3(e) for handling and evaluating allegedly confidential information obtained by the use of compulsory process. That paragraph provides that any claims for confidentiality must be made in writing, that information for which confidential treatment is requested will be kept confidential until the confidentiality claim is evaluated, and that the agency will afford reasonable advance notice to the submitter of the information of the contemplated release of any information for which the submitter requested confidential treatment.

j. Fees. Several comments were received addressing the issue of compensation by NHTSA of persons or entities for expenses incurred in connection with the responses to the agency's compulsory process. One commenter suggested that the agency make explicit that the term "person", as used in the section which provides reimbursement for the travel expenses of "persons" subpoenaed to testify at hearings, includes officers, agents, and employees of corporations. NHTSA has amended the rule to state that the term "person" as used in this and all other sections of the rule includes agents, officers, and employees of corporations in their individual capacities.

One commenter stated that a witness compelled to testify orally before the agency should not be required to pay for a copy of his or her testimony. The agency still finds it reasonable to require a person who wishes to retain a copy of his or her testimony at either an information gathering hearing or an administrative deposition to pay for that copy in most circumstances.

Copies of transcripts will be furnished without charge or at a reduced charge if the Associate Administrator for Administration determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

Any witness has the right to inspect the transcript of his or her testimony at no charge, and a provision is made in connection with administrative depositions for the submission of a copy of the witness' testimony to that witness for his or her signature. Hence, NHTSA does not believe that there is any financial barrier to the opportunity of any witness to thoroughly review his or her testimony.

Several commenters stated that respondents to compulsory process should be reimbursed completely for their expenses incurred in complying with the process. The agency does not believe that complete reimbursement is appropriate. First, it must be noted that the provision for reimbursement contained in NHTSA's authorizing statutes allows the agency to pay witnesses the same mileage and fees that can be paid witnesses in the courts of the United States. *See* section 112(c)(5) of the Safety Act, 15 U.S.C. 1401 (c)(5) and sections 104(a)(5), 204(e), 414 (c)(5), and 505(b)(3) of the Cost Savings Act, 15 U.S.C. 1914(a)(5), 1944(e), 1990d (c)(5), and 2005(b)(3). Part 510.11 of this rule expressly authorizes the payment of these fees.

NHTSA recognizes that the expense associated with complying with compulsory process is a major component of the burden-

someness of that process. The question, however, is whether an *undue* burden is imposed. If respondents believe the burden to be undue, they can file a motion with NHTSA to quash the process and can litigate this issue if the agency does not resolve it to their satisfaction.

k. Remedies for failure to comply with compulsory process. Several commenters made strenuous objection to the provision of the interim rule which allows the agency to seek civil penalties against a respondent which fails to comply with NHTSA's compulsory process. The arguments made were basically that the availability of civil penalties for failure to comply was not contemplated or authorized by the Cost Savings Act of the Safety Act, and that if the penalties were authorized, that authorization would be unconstitutional. NHTSA rejects these contentions for the reasons set forth below.

There were two primary arguments raised to support the view that the agency does not have the authority to seek the imposition of civil penalties for a failure to comply with compulsory process. First, it was asserted that the authorizing statutes provide judicial enforcement of compulsory process in a United States District Court as an exclusive remedy for the failure to comply with compulsory process. With respect to Titles I, II, and IV of the Cost Savings Act, this assertion is plainly inaccurate. Sections 106(a)(3), 206(1), and 416 of the Cost Savings Act (15 U.S.C. 1916(a)(3), 1946(1), and 1990(f)) state that no person shall fail to provide the information requested by the agency. A violation of this prohibition subjects the violator to civil penalties, which shall be assessed by the agency. Sections 107(a), 208(a), and 412(a) of the Cost Savings Act; 15 U.S.C. 1917(a), 1948(a) and 1990b(a).

The commenters specifically pointed to the fact that the Safety Act at section 112(c)(4), 15 U.S.C. 1401(c)(4), and Title V of the Cost Savings Act at section 505(c)(2), 15 U.S.C. 2005(c)(2), provide that the agency may seek judicial enforcement in the case of a failure to respond to compulsory process. However, the commenters did not point out that the respective Acts also authorize the agency to impose civil penalties for a failure to comply with any "rule, regulation, or order" issued under the information gathering authority contained in that title; section 108(a)(1)(E) and 109(a) of the Safety Act, 15 U.S.C. 1397 (a)(4) and 1398(a), and section 507(3) and 508 of the Cost Savings Act, 15 U.S.C. 2007(3) and 2008. No commenter cited any language in the statutes themselves or the relevant legislative history which states that judicial enforcement was intended to be the exclusive remedy for a failure to comply.

NHTSA believes that the availability of civil penalties for a failure to comply with compulsory process is a necessary complement to judicial enforcement. If judicial enforcement were the sole remedy for failure to comply with the agency's compulsory process, a respondent could always fail to comply with the agency's compulsory process until such time as the agency began a judicial enforcement proceeding. Then, at any time before the court entered its order compelling compliance with agency process, the respondent could comply with the order, thereby mooting the enforcement action. Any respondent would have available to it a penalty-free mechanism for delaying compliance with NHTSA's compulsory process. There is no indication that Congress intended or sanctioned such a mechanism. Considering "the vital importance of information gathering to the successful implementation of the Act," H.R. Rep. 93-1191, 93 Cong., 2d Sess. at 37, and the absence of any indication whatsoever that judicial enforcement was to be the sole remedy, NHTSA is not persuaded by this argument.

The second argument raised to support the view that the agency lacks authority to impose civil penalties was that subpoenas and general and special orders were not "orders" within the meaning of section 108(a)(1)(E) of the Safety Act and section 507(3) of the Cost Savings Act, the violation of which can give rise to civil penalties. The argument is that subpoenas are not "orders", because both statutes discuss "order" and "subpoena" in the disjunctive. Since a subpoena is not an order, the argument concludes that general and special orders are not "orders" either, because general and special orders are the functional equivalent of subpoenas.

This argument is not convincing. It is a well established and accepted rule of statutory construction that the words of a statute are to be given their common meaning, absent some indication of a contrary legislative intent. 2A Southerland, Statutory Construction, § 47.28 and the cases cited therein (4th ed. 1973). The word "order" is defined in *Webster's Second International Dictionary* as "a rule or regulation made by competent authority; also a command; mandate; precept; direction". The *Oxford English Dictionary* defines "order" as "an authoritative direction, injunction, mandate; a command, oral or written; an instruction." It is obvious that both subpoenas and general and special orders fall within this common meaning of the word "order", and that the Acts must be construed in that manner unless there is a contrary legislative intent.

The only authority which has been cited by a commenter to show a contrary intent is the language in Section 112(c)(4) of the Safety Act, and section 505(b)(2) of the Cost Savings (called "the judicial enforcement sections" for the rest of this discussion) giving the district courts of the United States authority to compel compliance with any subpoena or order issued by NHTSA. General and special orders are specifically referred to as "orders" in these judicial enforcement sections. Sections 108(a)(1)(E) and 109 of the Safety Act and 507(3) and 508 of the Cost Savings Act (called the civil penalty sections for the rest of this discussion) give NHTSA authority to impose civil penalties for the violation of any "rule, regulation, or order". There is no reason to believe that the "order" referred to in the civil penalty sections does not include the forms of process included within the meaning of "order" in the judicial enforcement sections. Congress has shown its intent that the violation of general and special orders issued by NHTSA would subject the violator to possible civil penalties.

The reference to subpoenas and orders in the disjunctive occurs in the judicial enforcement sections, which provide that compliance with a subpoena or an order can be mandated by a court. NHTSA's authority to issue subpoenas and general and special orders comes from two different grants of authority, and so it is grammatically necessary to use the disjunctive to indicate that compliance with either can be mandated by a court. There is, however, no indication in the Acts or the legislative history that Congress intended for subpoenas and general and special orders to be enforced differently. Indeed, the judicial enforcement sections treat these forms of process identically for enforcement purposes. Accordingly, the agency concludes that the use of the disjunctive in the judicial enforcement sections is not by itself a sufficient showing of a Congressional intent that subpoenas not be included within the meaning of "order" as that term is used in the civil penalty section, and so Congress intended that the word "order" as used in the civil penalty sections have its common meaning. The common meaning embraces all compulsory process issued by NHTSA, whether general or special orders, subpoenas, or written requests for the production of documents and things.

The commenters raised two Constitutional arguments in support of the position that the civil penalties could not be imposed for failure to comply with the agency's compulsory process. The first argument was that the agency could not constitutionally impose civil penalties, since this self-enforcement would give judicial power to NHTSA, a grant Congress could not make. One commenter was concerned that NHTSA was trying to set up a procedure where the agency could hold a respondent in contempt. NHTSA has never intended to hold a noncomplying respondent in contempt of the agency, and the interim rule contained no such provision. To enforce and collect any civil penalty will require the agency to bring an action in a United States District Court, requesting the court to enforce the penalty. No question of self-enforcement arises in connection with this procedure.

A more complex issue was raised by commenters in the second Constitutional argument, which was that a party desiring to mount a good faith challenge to the validity of compulsory process issued by the agency could do so only by refusing to comply with that process. If the agency were to impose a penalty for this refusal, the argument runs, the respondent would have had a penalty imposed on it for exercising its right to have a judicial review of the validity of the process.

NHTSA agrees with the commenters' assertion that there is a due process right to contest the validity of a legislative or administrative order without having to pay substantial penalties if the suit is lost. However, this right does not mean that penalties begin to accrue only upon a final judgment in NHTSA's favor. In *St. Regis Paper Co. v. United States*, 368 U.S. 208 (1961), the FTC had ordered a company to file special reports with that agency. Section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, specified a penalty of $100 for each day a special report was overdue. The company challenged this provision of the Act, alleging that it had been denied its day in court to challenge the validity of the underlying order to file special reports. The company alleged that, in effect, the order was not judicially reviewable except if the company paid the civil penalty, and that this scheme violated the due process requirements.

The Supreme Court found this penalty scheme to be consistent with due process, because the petitioner had an opportunity for judicial review without having to pay the penalty. Specifically, the Court found that the company could have filed an action for declaratory judgment and a concurrent motion to stay the effective date of the FTC order pending a ruling by the court on the validity of the order. This opportunity for review is sufficient to satisfy the requirements of due process. 368 U.S. at 225-227.

This reasoning has been applied to the civil penalty provisions for failure to comply with an NHTSA order requiring a manufacturer to furnish notification of a defect to owners, purchasers, and dealers, and to remedy the defect without charge, as specified in section 152 of the Safety Act (15 U.S.C. 1412). In *Ford Motor Co. v. Coleman*, 402 F. Supp. 475 (D.D.C. 1975) *aff'd*, 425 U.S. 927 (1976); it was asserted that this statutory provision violated the due process rights of the manufacturer by forcing the manufacturer to either comply with an erroneous order or risk a substantial civil penalty if it lost its challenge to the order. The court stated that this statutory provision did not offend due process rights, since a manufacturer which could present a substantial, nonfrivolous challenge to the validity of NHTSA's determination could obtain a preliminary injunction against the enforcement of the order. The court would have jurisdiction to issue a temporary order restraining the imposition of the penalties pending its determination of the motion for preliminary injunction, and to issue a preliminary injunction that would stay the accrual of penalties until the completion of the *de novo* enforcement proceedings in district court on the underlying order. The civil penalties would begin accumulating against the manufacturer only if the manufacturer could not convince the court to issue a preliminary injunction, i.e., if the manufacturer could not show that it had reasonable and substantial grounds for contesting the order. According to the opinion, the due process right to a judicial determination of the validity of the order does not require that a manufacturer be permitted to press a frivolous or insubstantial objection without risk of a penalty.

Several commenters cited *Reisman v. Caplin*, 375 U.S. 440 (1964) as authority for the proposition that the civil penalty scheme as set forth in the interim rule would violate due process rights. That case involved an order by the Commissioner of Internal Revenue to a taxpayer to furnish certain documents. The taxpayer contended that since he had to risk a large fine and imprisonment for not complying with the order, he had been effectively denied the due process right to a judicial review of the validity of the order. The Court disagreed with this contention, stating that the statute authorizing civil and criminal penalties for failure to comply with an order must be read so as not to apply while a respondent is making a good faith challenge to the validity of the order. In this agency's opinion, this reasoning is identical to that used in *St. Regis, supra*, and *Ford Motor Co. v. Coleman, supra*. The civil penalty provisions in the interim rule do not restrict the right of a respondent to process to obtain a judicial review of the validity of that process without a civil penalty, if the challenge is not insubstantial. Since this complies with the requirements of due process, no change has been made to the civil penalty section of this rule from that set forth in the interim rule.

In consideration of the foregoing, Chapter V of Title 49, Code of Federal Regulations is amended by revising Part 510, *Information Gathering Powers*, to read as set forth below.

The attorney principally responsible for the development of this final rule is Stephen Kratzke.

Authority: Sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act 1966, as amended, 15 U.S.C. 1401 and 1407, and sections 104, 204, 414, and 505 of the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1914, 1944, 1990d, and 2005; delegation of authority at 49 CFR 1.51.

JOAN CLAYBROOK,
Administrator.

PART 510—INFORMATION GATHERING POWERS

Sec.
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510.12 Remedies for failure to comply with compulsory process.

Authority: Secs. 112 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1401 and 1407); secs. 104, 204, 414, and 505 of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1914, 1944, 1990d, and 2005); delegation of authority (49 CFR 1.51).

§ 510.1 Scope and purpose.

This rule governs the use of the information gathering powers of the National Highway Traffic Safety Administration contained in section 112 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended 15 U.S.C. 1401, and sections 104, 204, 414, and 505 of the Motor Vehicle Information and Cost Savings Act, as amended 15 U.S.C. 1914, 1944, 1990d, and 2005 .

§ 510.2 Definitions.

(a) "NGTSA" means the National Highway Traffic Safety Administration.

(b) "Administrator" means the Administrator of the National Highway Traffic Safety Administration.

(c) "Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

(d) "Deputy Administrator" means the Deputy Administrator of the National Highway Traffic Safety Administration.

(e) "Person" includes agents, officers, and employees of sole proprietorships, partnerships, corporations, and other entities.

§ 510.3 Compulsory process, the service thereof, claims for confidential treatment, and terms of compliance.

(a) NHTSA may use any of the following means to conduct investigations, inspections, or inquiries to obtain information to carry out its functions under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381 *et seq.*, and the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 *et seq.*:

(1) Subpoenas;
(2) Information gathering hearings;
(3) Administrative depositions;
(4) General or special orders; and
(5) Written requests for the production of documents and things.

(b) A person, sole proprietorship, partnership, corporation, or other entity served with compulsory process under this part shall be provided with the following information at the time of the service—

(1) The name of the person, sole proprietorship, partnership, corporation, or other entity to which the process is addressed;
(2) The statutory provision under which the compulsory process is issued;
(3) The date, time, and place of return;
(4) A brief statement of the subject matter of the investigation, inspection, or inquiry; and
(5) In the case of a subpoena *duces tecum* or a written request for the production of documents and things, a reasonably specific description of the documents or things to be produced.

(c) Service of the compulsory processes specified in paragraph (a) of this section is effected:

(1) By personal service upon the person, agent-in-charge, or agent designated to receive process under 15 U.S.C. 1399(e) of the sole proprietorship, partnership, corporation or other entity being investigated, inspected, or inquired of; or

(2) By mail (registered or certified) or delivery to the last known residence or business address of such person or agent.

(d) The date of service of any compulsory process specified in paragraph (a) of this section is the date on which the process is mailed by the agency, or delivered in person, as the case may be. Whenever a period is prescribed for compliance with compulsory process, and the process is served upon the party by mail, 3 days are added to the period.

(e)(1) Any person, sole proprietorship, partnership, corporation, or other entity submitting information or producing documents or things in response to any compulsory process issued under this part may request confidential treatment for all or part of that information or for those documents or things.

(2)(i) Except as provided in paragraph (e)(2)(ii) of this section, requests for confidentiality shall be in writing, and addressed to the Chief Counsel.

(ii) Requests for confidentiality made during an information gathering hearing or an administrative deposition may be made orally to the presiding officer. Any oral request for confidentiality shall be supplemented by a written request, and this written request must be addressed to the Chief Counsel and received by NHSTA within five days of the date of the oral request.

(iii) A written request for confidentiality under paragraph (e) of this section shall specify the information, documents, or things which are to be kept confidential, specify the grounds upon which the claim is based, provide such information as may be necessary to permit the NHTSA to determine whether the claim is valid, and specify the period of time for which confidential treatment is requested.

(f) The Chief Counsel, or his or her delegate, is authorized to negotiate and approve the terms of satisfactory compliance with any compulsory process issued under this part.

§ 510.4 Subpoenas, generally.

NHTSA may issue to any person, sole proprietorship, partnership, corporation, or other entity a subpoena requiring the production of documents or things (subpoena *duces tecum*) the testimony of witnesses (subpoena *ad testificandum*), or both, relating to any matter under investigation or the subject of an inquiry. Subpoenas are issued by the Executive Secretary. When a person, sole proprietorship, partnership, corporation, or other entity is served with a subpoena *ad testificandum* under this part, the subpoena will describe with reasonable particularity the matters on which the testimony is required. In response to a subpoena *ad testificandum*, the sole proprietorship, partnership, corporation, or other entity so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and set forth, for each person designated, the matters on which he or she will testify. The person so designated shall testify as to matters known or reasonably available to the entity.

§ 510.5 Information gathering hearings.

(a) NHTSA may issue a subpoena to compel any person, sole proprietorship, partnership, corporation, or other entity to provide information at an information gathering hearing. The subpoenas are used for the purpose of obtaining testimony from a witness under oath and obtaining relevant documents and things. The Administrator, or a NHTSA employee designated by the Administrator, presides at the hearing. Information gathering hearings are open to the public unless the presiding officer rules otherwise, and the hearings are stenographically reported.

(b) In addition to the presiding officer, one or more other persons may comprise the panel. Each member of the panel may question any witness at the hearing. No person who is not a member of the panel may ask questions of a witness. However, any person may submit to the panel, in writing, proposed questions to be asked of a witness. A member of the panel may pose these questions to the witness if that member deems the questions useful and appropriate. Proposed questions may be submitted to the panel at any time before or during the course of the hearing.

(c) The stenographic record of each witness's testimony will be available to the public, unless the testimony was not given pub-

licly and the witness requests confidential treatment for some or all of his or her testimony. When an oral request for confidential treatment is made during the course of a witness's testimony, the presiding officer may order the hearing closed to the public at that point and continue the questioning of the witness, or may note the request for confidentiality and direct the witness not to answer the question at that time, but require the witness to answer the question in writing within some specified period, or take such other action as the presiding officer deems appropriate. If a request for confidential treatment is made, the release of the record is governed by the applicable laws or regulations relating to the handling of allegedly confidential information. To the extent that some or all of a witness's testimony is not publicly available, that witness may procure a copy of his or her testimony as recorded upon payment of lawfully prescribed costs.

(d) (1) Any person who is required by subpoena or designated by an entity that is required by subpoena to provide information at an information gathering hearing conducted under this section may be accompanied, represented, and advised by counsel. Any member of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, and any representative, official, or employee of the sole proprietorship, partnership, corporation or other entity under subpoena may act as counsel.

(2) A witness appearing in response to subpoena may confer in confidence with his or her counsel or representative concerning any questions asked of the witness. If such witness, counsel, or representative objects to a question, he or she shall state the objection and basis therefor on the record.

(e) The presiding officer at an information gathering hearing takes all necessary action to regulate the course of the hearing, to avoid delay, and to assure that reasonable standards of orderly and ethical conduct are maintained. In any case in which counsel for or a representative of a witness has refused to comply with the presiding officer's directions, or to adhere to reasonable standards of orderly and ethical conduct in the course of a hearing, the presiding officer states on the record the reasons given, if any, for the refusal and, if the presiding officer is someone other than the Administrator, immediately reports the refusal to the Administrator. The Administrator thereupon takes such action as the circumstances warrant.

(f) Where appropriate, the procedures established in this subsection may be utilized in informal hearings conducted by NHTSA pursuant to its authority under sections 152 and 156 of the Safety Act (15 U.S.C. 1412, 1416) to receive data, views and arguments concerning alleged safety-related defects. The rights accorded to witnesses in this subsection may also be accorded to witnesses who appear voluntarily at such hearings.

§ 510.6 Administrative depositions.

(a) NHTSA may issue a subpoena to compel any person, sole proprietorship, partnership, corporation, or other entity to provide information as a witness at an administrative deposition. These depositions are for the purpose of obtaining information from the witness under oath and receiving documents and things relevant to an agency investigation. These depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the deposition is taken. Unless otherwise ordered by the Administrator, administrative depositions are closed to the public.

(b) Any person who is required by subpoena or designated by an entity that is required by subpoena to produce documents or things or to give testimony as a witness at an administrative deposition conducted under this section may be accompanied, represented, and advised by counsel. Any member of the bar or a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia and any representative, official, or employee of the person, sole proprietorship, partnership, corporation, or other entity under subpoena may act as counsel.

(c) During an administrative deposition:

(1) The presiding officer before whom the deposition is to be taken puts the witness on oath and personally, or by someone acting under his or her direction and in his or her presence, records the testimony of the witness. The testimony is stenographically reported.

(2) After NHTSA has examined the witness at the deposition, that witness' counsel or representative may examine the witness. NHTSA may then reexamine the witness and the witnesses' counsel or representative may reexamine the witness and so forth, as appropriate.

(3) A witness appearing in response to a subpoena may confer in confidence with his or her counsel or representative concerning any questions asked of the witness. If such witness, counsel, or representative objects to a question, he or she shall state the objection and the basis therefor on the record.

(4) Objections to the qualifications of the officer taking the deposition, or to the manner of taking it, or, to the evidence presented, and any other objection to the proceedings shall be noted by the officer on the record, and shall be treated as continuing. Evidence objected to shall be taken subject to the objections. Errors and irregularities occurring at a deposition in the manner of the taking of the deposition, in the form of questions or answers, or in the oath or affirmation, and errors of any kind which might be obviated, removed, or cured if promptly presented shall be deemed to be waived unless reasonable objection is made thereto at the taking of the deposition.

(5) If the witness refuses to answer any question or answers evasively, or if the witness or his or her counsel engages in conduct likely to delay or obstruct the administrative deposition, such refusal, evasive answer or conduct shall be a failure to comply with the subpoena issued to the witness.

(6) Upon completion of the examination of a witness, the witness may clarify on the record any of his or her answers.

(d) the transcript of the testimony of a witness who testified in response to a subpoena at an administrative deposition is submitted to the witness for signature, unless the witness waives the right to sign the transcript. If a witness desires to make any changes in the form or substance contained in the transcript, the witness shall submit, together with the transcript, a separate document setting forth the changes and stating the reasons for such changes. If the deposition is not signed by the witness within 30 days of its submission to the witness, or such other period as the NHTSA may designate, the officer before whom the deposition was taken or a NHTSA employee signs the transcript and states on the record the fact of the waiver of the right to sign or the fact of the witness' unavailability or inability or refusal to sign together with the reasons, if any, given therefor.

(e) The transcript of the testimony of a witness will be inspected by NHTSA to determine if there are any errors in the transcription of the questions posed to the witness and the testimony in response to those questions. If NHTSA discovers any errors, it notes that fact and forwards the notation of errors together with the transcript to the witness, requesting the witness to stipulate that the transcript is in error and that the corrections made by NHTSA are accurate. If the witness will not make this stipulation, NHTSA may make a motion to the presiding officer to include its notation of error and its corrections in the record along with the version of the testimony signed by the witness.

(f) (1) Upon payment of lawfully prescribed costs, any person who is required by subpoena or designated by a sole proprietorship, partnership, corporation, or other entity that is required by subpoena to appear as a witness at an administrative deposition may procure a copy of the deposition as recorded, except that in a nonpublic investigatory proceeding, the witness may, for good cause, be limited to an inspection of the record of the deposition.

(2) A copy of the record of the deposition may be furnished to the witness without charge or at a reduced charge if the Associate Administrator for Administration determines that waiver of the fee is in the public interest because furnishing the copy can be considered as primarily benefitting the general public. Any witness who seeks a waiver of the copying charge may apply in writing to the Associate Administrator for Administration, and shall state the reasons justifying waiver of the fee in the application.

(g) The testimony obtained in an administrative deposition may be used or considered by the NHTSA in any of its activities, and may be used or offered into evidence in any administrative proceeding in accordance with the provisions of 5 U.S.C. 554, or in any judicial proceeding.

§ 510.7 General or special orders.

The NHTSA may require by the issuance of general or special orders any person, sole proprietorship, partnership, corporation, or other entity to file with the NHTSA, in such form as NHTSA may prescribe, periodic or special reports or answers in writing to specific questions. The responses to general or special orders will provide NHTSA with such information as it may require, including, but not limited to, information relating to the organization of that person, sole proprietorship, partnership, corporation, or other entity, its business, conduct, practices, management, and relation to any other person or entity. General or special orders which are required to be answered under oath are issued by the Chief Counsel. Any general or special order issued under this section contains the information specified in section 510.3(b). Reports and answers filed in response to general or special orders must be made under oath, or otherwise, as NHTSA may prescribe.

§ 510.8 Written requests for the production of documents and things.

The NHTSA may, by the issuance of a written request for the production of documents and things, require any person, sole proprietorship, partnership, corporation, or other entity to produce documents and things. A written request for the production of documents and things may be issued alone, or as a part of a general or special order issued under section 510.7. Written requests for the production of documents and things are issued by the Chief Counsel. Any written request for the production of documents and things issued under this section shall contain the information specified in section 510.3(b).

§ 510.9 Motions to modify, limit, or quash process.

(a) (1) Any person, sole proprietorship, partnership, corporation, or other entity served with a subpoena issued under section 510.4 may file with the Deputy Administrator a motion to modify, limit, or quash that subpoena. If there is no Deputy Administrator, or the Deputy Administrator is not available, such motions shall be filed with and decided by the Associate Administrator for Administration. A motion to modify, limit, or quash must be filed not later than 15 days after the service of the process or five days before the return date specified in the process, whichever is earlier, except that, if the process is served within five days of its return date, such motion may be filed at any time before the return date. Any motion must set forth the grounds and theories of why and how the party believes the process should be modified, limited, or quashed and must contain all facts and arguments which support those grounds and theories.

(2) The Deputy Administrator may, upon receiving a motion filed pursuant to paragraph (a) (1) of this section—

(i) Deny the motion;

(ii) Modify the return date of the subpoena;

(iii) Modify, limit or quash the subpoena;

(iv) Condition granting the motion upon certain requirements; or

(v) Take any other action he or she believes to be appropriate in the circumstances.

(v) Take any other action he or she believes to be appropriate in the circumstances.

(3) The Office of the Deputy Administrator serves the decision on the motion on the moving party or the counsel or representative of the moving party. This service may be made by personal service, by registered or certified mail, or by reading a copy of the decision to the moving party or the counsel or representative of the moving party.

(4) A denial of any motion properly filed under this section shall be in writing, and shall contain a brief statement of the facts involved and the conclusions drawn from those facts by the Deputy Administrator.

(b) The Deputy Administrator's decision on the motion to modify, limit, or quash, filed under paragraph (a) of this section is not subject to reconsideration by NHTSA.

§ 510.10 Supplementation of responses to process.

(a) A person, sole proprietorship, partnership, corporation, or other entity which has provided NHTSA with information under this part, which information was complete and accurate at the time the information was given to NHTSA, is not required to supplement that information in the light of after acquired information, except:

(1) The person or entity to whom the process is addressed shall supplement the response with respect to any question directly addressed to the identity and location of persons having knowledge of information obtainable under this part.

(2) The person or entity to whom the process is addressed shall seasonably amend a prior response if that person or entity obtains information upon the basis of which the person or entity knows that the response was incorrect when made or the person or entity knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(b) The requirement to supolement information set forth in paragraph (a) of this section terminates when:

(1) The compulsory process stated that it was issued in connection with a contemplated rulemaking action, and a final rule is issued on that subject or a notice is isued announcing that the rulemaking action has been suspended or terminated.

(2) The compulsory process stated that it was issued in connection with an enforcement investigation, and the investigation is closed.

(3) The compulsory process does not state that it is issued in connection with a specific rulemaking action or enforcement investigation, and 18 months have passed since the date of the original response.

(c) This section in no way limits NHTSA's authority to obtain supplemental information by specific demands through the means specified in section 510.3.

§ 510.11 Fees.

Any person compelled to appear in person in response to a subpoena issued under this part at an information gathering hearing or an administrative deposition is paid the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, Section 1821.

§ 510.12 Remedies for failure to comply with compulsory process.

Any failure to comply with compulsory process authorized by law and issued under this part is a violation of this part. In the event of such failure to comply, NHTSA may take appropriate action pursuant to the authority conferred by the National Traffic and Motor Vehicle Safety Act or the Motor Vehicle Information and Cost Savings Act, as appropriate, including institution of Judicial proceedings to enforce the order and to collect civil penalties.

[FR Doc. 80-13444 Filed 4-29-80; 10:30 am]

[49 CFR Part 571]

DEPARTMENT OF TRANSPORTATION; NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 76-06; Notice 9]

FEDERAL MOTOR VEHICLE SAFETY STANDARDS; SPEEDOMETERS AND ODOMETERS

Agency: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

Action: Final rule (response to petitions for reconsideration and final action on notice of proposed rulemaking).

Summary: This notice amends Federal Motor Vehicle Safety Standard (FMVSS) No. 127, *Speedometers and Odometers*. It responds to petitions for reconsideration of FMVSS 127 and takes final action on a notice of proposed rulemaking.

This notice grants petitions for facilitating compliance with the odometer marking option, clarifying the odometer marking requirements, and providing an additional optional method of compliance with the odometer tampering requirements. It also grants a petition to exempt all police vehicles from the provision limiting the maximum speed which speedometers may indicate. The standard is amended accordingly.

Pursuant to the proposal, this notice amends FMVSS 127 by exempting motorcycles from the odometer tampering requirements, specifying the four tampering methods that odometers complying with the irreversibility option must resist absent breakage, specifying the tools to be used in each of those methods, requiring the differentiation of replacement odometers and wheels, and clarifying and further specifying the requirements for odometers complying with the encapsulation option. These amendments make the standard more effective and objective and thereby facilitate compliance.

Dates: Effective dates: The odometer requirements in sections S4.2 through S5.2 become effective September 1, 1981. This is the effective date previously established in the final rule published March 22, 1979 (44 FR 17500). The amendment of the speedometer provisions of section S4.1.3 becomes effective June 16, 1930.

For further information contact: Mr. John W. Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2720).

Supplementary information: On March 16, 1978, the NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 127, Speedometers and Odometers (43 FR 10919). With respect to odometers, the standard is intended to reduce the incidence of odometer tampering in order to prevent consumer fraud and the presence of potentially dangerous vehicles on the nation's highways. As originally written, the final rule required that odometers be immovable in the reverse direction and that they indicate when the distance traveled by a vehicle had exceeded 99,999 miles or kilometers.

On July 27 1978, the NHTSA published a response to an initial set of petitions for reconsideration of the final rule (43 FR 3431). With regard to odometers, that response amended FMVSS 127 so that manufacturers could comply by choosing either (1) the marking option which required that odometers permanently mark the wheel registering ten thousands of miles or kilometers as it rotates, or (2) the irreversibility option which specified that odometers could be reversed up to a maximum of 10 miles but that any further reversal must render the odometer "permanently and totally inoperable."

Following receipt of a second set of petitions for reconsideration of the final rule, the agency published a response on March 22, 1979 (44 FR 17500). In that response, the irreversibility option was amended. The requirement that odometers be irreversible unless rendered "permanently and totally inoperable" was replaced with a less stringent one. It required that odometers be constructed so that reversal beyond 10 miles or kilometers could not be accomplished without breaking or destroying the odometer in one or more of five specified ways. In the preamble to the response to petitions, the agency designated the methods of tampering with which the five specified types of telltale breakage are associated and described ways in which manufacturers could ensure that these methods would result in the specified types of telltale breakage. The response to petitions also postponed the effective date of the odometer requirements from September 1, 1980, to September 1, 1981.

Following publication of the March 22, 1979, response to petitions for reconsideration, the agency received the third and current set of petitions for reconsideration. Petitions were submitted by General Motors Corporation, Ford Motor Company, Chrysler Corporation and Thomas D. Regan. The petitions addressed the provisions of FMVSS 127 as modified by the March 22, 1979, response to the second round of petitions for reconsideration. A discussion of the issues raised by these petitions and their resolution is presented in this notice in two parts, one concerning odometer requirements and the other concerning speedometer requirements. All petitions are denied except as otherwire noted.

Simultaneously with the publication of the March 22, 1979, response to petitions for reconsideration, the agency also issued a notice of proposed rulemaking (44 FR 17532, March 22, 1979). This notice did not propose that any changes be made in the marking option, but did propose that the irreversibility option be modified and reorganized into two separate but related options. It was proposed that the list of tampering methods which apoeared in the preamble to the March 22, 1979, response to petitions be incorporated into the text of the irreversibility option. As published in the March 22, 1979, response to petitions, the irreversibility option required that odometers be constructed so that reversal beyond 10 miles or kilometers could not be accomplished at all or could not be accomplished without resulting breakage or destruction of the odometer in one or more of five specified ways which included breaking a rigid or semi-rigid shield that totally or partially encapsulated the odometer. The notice proposed that the encapsulation provision be taken out of the irreversibility option and made into a second option. Accord-

ingly, compliance with the irreversibility option would require prevention of tampering by any of the designated methods, or alternatively resulting telltale breakage of the odometer, while the encapsulation option would require prevention of tampering, or alternatively resulting breakage of the encapsulation. The notice also requested comments concerning the possible need for further refinement of the odometer tampering provisions of FMVSS 127.

In addition, the notice of proposed rulemaking proposed that "each replacement wheel for an odometer and each wheel on a replacement odometer * * *" be visibly differentiated from wheels on odometer installed in new vehicles as original equipment. In the case of odometers built in compliance with the marking option, for example, the proposal was intended to prevent tamperers from replacing marked ten thousands wheels with identical new unmarked ones. In the case of odometers built to comply with the irreversibility option, the proposal was intended to prevent tamperers from simply removing reversal resistant odometers and replacing them with new identical odometers set to lower mileage readings. The notice also proposed to require that the ten thousand miles/kilometers wheel on each odometer be visibly differentiated from all other wheels on the odometer.

Today's final rule provides manufacturers with a wide range of compliance options which the agency believes will be reasonably effective in reducing the incidence of odometer tampering. However, manufacturers can improve the effectiveness of any option that they choose to adopt by notifying purchasers of the means they are using to deter and prevent tampering. The agency urges manufacturers to provide this information to purchasers of their vehicles and will monitor the efforts made to determine whether the provision of such information should be made mandatory.

RESPONSE TO PETITIONS FOR RECONSIDERATION CONCERNING ODOMETER REQUIREMENTS

In their petitions for reconsideration, General Motors Corporation, Chrysler Corporation and Ford Motor Company all requested modification of the odometer marking option. General Motors requested that the agency either (1) suspend the effective date of the odometer requirements of FMVSS 127 and provide a period of at least three years between the issuance of a new final rule and its effective date, or (2) modify the odometer marking option to allow a system that marks each numeral on the 10,000 miles/kilometers will wheel within 500 miles or kilometers after that numeral disappears from view. The agency has decided that the second alternative should be granted. The information on which this decision rests includes a June 14, 1979, meeting reported in the docket at which General Motors demonstrated its system. Rather than marking each numeral on the 10,000 miles/kilometers wheel as the numeral turns out of the driver's view, the General Motors' system employs a continually moving stylus which faintly scratches the numeral and/or the background after each mile of operation, gradually removing the original color and revealing an underlying contrasting color. With each mile travelled, the contrasting color becomes more visible. By the time the vehicle has travelled 500 miles after the rotation of the 10,000's wheel, the contrasting color is visible enough so that but for the wheel having turned the numeral out of view in order to register increased mileage, the color would be visible to a person occupying the driver's position. In addition, the contrasting color can be easily seen by the driver when the numeral reappears. The agency has concluded that this system will reduce compliance costs without compromising achievement of FMVSS 127's objective of reducing odometer tampering. Language implementing this decision has been incorporated into section 4.2.6.1 of the final rule being published today.

General Motors also proposed in a May 10, 1979, meeting with NHTSA officials that the language of section 4.2.7.1 as it appears in the March 22, 1979, response to petitions be clarified. Ford made the same request in its petition for reconsideration. Section 4.2.7.1 required that the odometer marking device mark by "permanent means, readily visible to the driver, each numeral on the wheel registering ten thousands of miles or kilometers as the numeral disappears from the driver's view." This provision has been clarified in section 4.2.6.1 of the final rule published today. Section 4.2.6.1(b) of today's final rule relaxes slightly the requirements for the location of the mark.

The agency suggests that manufacturers electing to use the marking option build their systems so that the numbers on the odometer wheels will not be totally obliterated and rendered illegible when marked. The course of action will ensure the readability of odometers on high mileage vehicles. The same suggestion is made for systems used to indicate (in accordance with section S4.2.3 of today's rule) that the number of miles/kilometers registered on the odometer has exceeded either 89,999 or 99,999. This suggestion has not been incorporated as a mandatory requirement in today's final rule due to the lack of notice. Further, NHTSA does not contemplate proposing the requirement since the agency believes that, due to consumer preferences, manufacturers would not be inclined to build odometers that will become unreadable after having recorded 100,000 miles.

General Motors and Chrysler both petitioned for deletion of the requirement that all odometers, including those built to comply with the requirements of the marking option, "* * * be movable in only the forward direction when driven through the odometer gear train * * * except as provided in S4.2.8." (S4.2.4, March 22, 1979, response to petitions). Section 4.2.8 indicated that this requirement would be moderated in the case of odometers built to comply with the irreversibility option to permit reversal up to a maximum distance of 10 miles. The petitioners stated that the section 4.2.4 requirement constituted a substantive change from the July 27, 1978, version of FMVSS 127, that it would not "enhance the security of marking type odometers, and that it would unnecessarily increase the cost of vehicles * * *" to consumers. The petitioners argued that an odometer complying with the marking provision alone would prevent rollbacks of 10,000 miles or more by providing a visible indication of those rollbacks. The marking option would also indirectly prevent rollbacks of lesser magnitude because such rollbacks are not cost effective to persons seeking to sell vehicles whose mileage has been altered.

The agency agrees with the petitioners that gear train drivability requirement of section 4.2.4 would not appreciably enhance the effectiveness of marking-type odometers. Therefore, the agency is granting General Motors' and Chrysler's petitions by deleting this requirement to the extent that it applies in marking-type odometers. However, this requirement will continue to be applicable to odometers complying with the irreversibility or the encapsulation options included in the final rule published today.

In their petitions for reconsideration, both Ford and General Motors discussed the modifications made to the irreversibility option by the March 22, 1979, response to petitions. Ford petitioned for the deletion of the language which made the irreversibility requirements specifically applicable to all odometers regardless of whether they are installed in or removed from vehicles. Ford stated that by adding this language, the agency had both added additional detail to the requirements and failed to provide manufacturers with prior opportunity for comment, thus negating design work undertaken by the company in order to make its odometers more tamper resistant. General Motors stated that the language should have been subject to public comment, and that it provides further evidence of the need to suspend the effective date of the standard.

In its petition, Ford also questioned the practicability and effectiveness of the modified irreversibility requirements. Ford expressed doubt that any available mechanical odometer could meet the requirements subsequent to its removal from a vehicle. Pointing to the provisions requiring that odometers be irreversible absent the prerequisite performance of one of five specified operations, Ford stated that three of the operations would not be obvious to a prospective vehicle owner and that the provision as a whole would "merely change the mode of operation . . ." of odometer tamperers. Ford also concluded that, by requiring that original equipment odometers be made more tamper resistant, the agency would simply encourage tamperers to substitute odometers from wrecks and stolen vehicles and would create another market for stolen parts.

The agency has concluded that Ford's petition should be denied. The agency does not agree that Ford and the other manufacturers have been deprived of an opportunity for comment. By specifically modifying the language of the final rule in the March 22, 1979, response to petitions, the agency simply clarified the language of earlier rulemaking actions concerning the applicability of the irreversibility requirements. Each of these rulemaking actions stated that Safety Standard No. 127 is both a vehicle and an equipment standard. It is applicable to specified vehicle types and to speedometers and odometers for use in those vehicle types. It also appears that Ford has been acting upon this same understanding about the broad applicability of the requirement since the company stated at a meeting with NHTSA officials on September 27, 1978, that it was designing an odometer that was difficult to remove from the vehicle. A description of this meeting may be found in the docket. Further, this requirement was included in the March 22, 1979, notice of proposed rulemaking and comments pertaining to any aspect of tamper resistance were requested.

The agency also rejects General Motors' comments regarding notice. The modification of the irreversibility option has the effect of easing the manufacturers' burden of compliance by providing more flexibility and greater opportunity to employ less costly and complicated technology. Further, as noted above, the March 22, 1979 proposal requested comments pertinent to these changes.

With respect to Ford's arguments concerning the practicability, effectiveness and probable consequences of the irreversibility requirements, the agency has reached the following conclusions. The modified requirements are practicable. This has been shown by, for example, the fact that Ford demonstrated at a meeting with NHTSA officials on April 4, 1979, an odometer that apparently meets the requirements of both of the March 22, 1979, rulemaking actions. It is true that if odometer reversal were accomplished after performance of three of the operations specified in the irreversibility option, it would not be obvious to the potential vehicle purchaser. However, the agency has concluded that an irreversibility option that will in all cases ensure that the potential purchaser sitting in the driver's seat is provided with evidence of tampering would be too costly at this time. Further, the irreversibility option as modified will

serve the goal of decreasing the incidence of odometer tampering by making tampering more difficult and by providing evidence which investigators can detect.

With respect to Ford's statement that the irreversibility requirements will encourage greater use of odometers from wrecks or stolen vehicles, the agency agrees that this may be true in some cases. Partially in response to this potential problem, the agency proposed Section S4.2.9 of the notice of proposed rulemaking which would require that new replacement odometer components be different from original equipment components. The agency's action on that proposal is discussed at the end of this preamble.

In its petition, General Motors also took issue with the agency's statement in the preamble to the March 22, 1979, response to petitions that the tampering indicator used in the company's odometer design provided an insufficiently visible indication of reversal. General Motors' odometer operated so that upon an attempt to forcibly rotate any of the odometer wheels, a tear strip holding the opinion carrier plate tabs was torn and the carrier plates rotated to reveal shiny metal separations between the wheels rather than the normal black separations. At a meeting on June 14, 1979, General Motors stated that this design had been altered so that the carrier plates would rotate to reveal distinctively colored separations between the wheels and so that the tear strip could not be easily removed during tampering and then replaced afterward. General Motors stated in its petition that this modified design would comply with the requirements of the irreversibility option as published in the March 22, 1979, response to petitions, and therefore the agency should rescind its opinion that the odometer would not comply with FMVSS 127. The agency has concluded that this odometer design would be tamper resistant although it does not completely meet the requirements of any of the compliance options presented in the March 22, 1979, rulemaking actions. Consequently, the agency has granted General Motors' petition as it relates to this issue by incorporating a third tamper resistance option in section 4.2.5.3 of the final rule which will specifically enable this type of odometer to comply with FMVSS 127.

Mr. Thomas D. Regan submitted a petition seeking modification of FMVSS 127 as published on March 22, 1979, and resubmitted comments and petitions previously submitted in response to earlier versions of FMVSS 127. Since these earlier comments and petitions were considered and discussed in prior rulemaking actions, that discussion will not be repeated here. In his most recent petition, Mr. Regan requested that the agency amend FMVSS 127 by: (1) making the odometer requirements specifically applicable to all new and replacement odometers; (2) replacing the word "reversible" where it occurs, with the term "resettable" or "changeable in the forward or reverse direction at a rate not faster than its normal recording rate"; (3) restricting reversal to 10 miles for all types of devices; (4) prohibiting removal of component parts for all types of devices; (5) specifying that compliance with the irreversibility option requires that odometers be constructed so that they are resistant to tampering by any of the listed operations or so that performance of any of these operations will leave telltale damage; (6) specifying that compliance with the irreversibility option requires that odometers be constructed in accord with point 5 above or that they be encapsulated such that any attempt to breach the encapsulation would be obvious to anyone viewing the odometer while it is installed in the vehicle; (7) eliminating the marking option or requiring installation of a marking device that cannot be moved or removed without leaving telltale signs; and (8) revising the test procedures so that all odometers must be tested for compliance by a tester who would attempt to rollback the odometer.

The agency has taken the following action on Mr. Regan's petition. Point 1 of the petition is denied because FMVSS 127 already applies to all odometers intended for use in passenger cars, multipurpose passenger vehicles, trucks, and buses. Point 2 of the petition is denied. The agency agrees that replacing the word "reversible" with the word "resettable" would improve the irreversibility option in the final rule by making it specifically applicable to tampering accomplished both by turning the odometer wheels backward and by turning the wheels forward past zero. However, the agency is not including a specific requirement to this effect in today's final rule due to the lack of notice. Nonetheless, the agency urges manufacturers who choose the irreversibility option to voluntarily build odometers resistant to tampering accomplished by moving the odometer wheels either forward or backward. The agency will monitor efforts made in this area in determining whether a mandatory requirement should be proposed. Point 3 of the petition is denied with respect to odometers complying with the marking option since, as discussed earlier, addition of the requirement would not enhance the tamper resistance of marking type odometers. Point 3 of the petition is moot with respect to odometers built in compliance with other options in the final rule since allowable reversal of such odometers is already limited to 10 miles. Point 4 of the petition is denied because it would be extremely difficult to measure compliance with a standard which prohibits removal of component parts from odometers. In support of Point 5 of his petition, Mr. Regan stated that the irreversibility option was faulty because it does not result in odometers that are resistant to tampering by the five specified operations and that these operations do not leave telltale evidence. Point 5 of the petition is denied for two reasons. First, the irreversibility option is not intended to prevent completely any reversal accomplished by one of the five specified operations. The option states that an odometer that can be reversed only as a result of one of these operations complies since performance of any one or more of these operations will generally leave telltale damage. Second, although in some cases the resulting telltale evidence will be apparent only to the trained investigator, the agency believes that making the requirements more stringent at this time would unduly increase the difficulty and cost of compliance. For the same reason, Point 6 of the petition is also denied. Point 7 of the petition is aimed at preventing premeditated alteration of vehicle mileage, i.e., the adjusting of a vehicle's odometer prior to sale of the vehicle in order to prevent proper recording of mileage or proper operation of a marking device. The agency does not believe that this type of tampering will be a significant problem. It is especially unlikely that individual vehicle owners, who own most vehicles, will engage in this sort of activity. Therefore, Point 7 of the petition is denied. Finally, Point 8 of the petition is denied because the agency lacks the wherewithal to test all odometers and because the petitioner's proposed test procedures are insufficiently objective and are unworkable since they put no limit on the time or ingenuity of the compliance tester who tries to tamper with an odometer. The agency believes that the testing procedures included in today's final rule and discussed later in this preamble provide a far more workable procedure.

The National Conference on Weights and Measures, a group comprised of Federal and State officials, did not submit a petition for reconsideration but did make suggestions pertinent to the March 22, 1979, response to petitions for reconsideration. The Conference suggested that section S4.2.2 of FMVSS 127 published March 22, 1979, be made consistent with the National Bureau of Standards' Handbook 44, *Code for Odometers*, which requires that odometers be capable of indicating distances in units of one-tenth of either a mile or of a kilometer. The Conference stated that this change would be desirable in order to promote uniformity of all requirements concerning odometers. Since most vehicles already meet the Conference's proposed requirement, the agency did not include it in any notice of proposed rulemaking. Further, the agency does not currently contemplate undertaking any rulemaking to establish it.

RESPONSE TO PETITIONS FOR RECONSIDERATION CONCERNING SPEEDOMETER PROVISIONS

In its petition, General Motors requested that the agency exempt not only passenger cars sold to a law enforcement agency for law enforcement purposes, but all police vehicles from the requirement that speedometers not indicate speeds over 85 mph and 140 km/h (S4.1.4 in the March 22, 1979, response to petitions). The company indicated that law enforcement agencies are buying a significant number of multipurpose passenger vehicles and trucks and that these vehicles may be driven at high speeds. Based on its familiarity with several jurisdictions, the agency agrees. General Motors concluded and this agency agrees further that a speedometer that does not register over 85 mph (140 km/h) could be a safety hazard for the drivers of these vehicles. This agency therefore grants this portion of General Motors' petition for reconsideration and has included language to effect this action in section S4.1.3 of today's final rule.

In its petition, General Motors also requested that test conditions applicable to speedometer accuracy tests (section S5.2, FMVSS 127 as published March 22, 1979) be modified. According to General Motors, the requirement that the test vehicle be equipped with "tires recommended by the manufacturer" should be modified by insertion of the following language following the word "recommended": "and installed as original equipment . . ." The company stated that it does not control the installation of tires owned by certain truck and bus purchasers and should not be held liable for the effects of these tires on speedometer accuracy.

This aspect of General Motors' petition was previously granted. The speedometer accuracy requirements were deleted from FMVSS 127 by a final rule published at 45 FR 6404, January 28, 1980. The petitions leading to the deletion of the speedometer accuracy requirements submitted by both General Motors and International Harvester stated that the accuracy of both speedometers and odometers is dependent upon the same factors and that these factors made full compliance with the accuracy requirements impossible. In responding to these petitions and deleting the speedometer accuracy requirements, the agency inadvertently omitted language to delete the odometer requirements. Since the rationale for deleting accuracy requirements whether applicable to speedometers or odometers is the same and has already been published in the Federal Register this notice deletes the odometer accuracy requirements (section S5 of the March 22, 1979, final rule) without further explanation.

FINAL ACTION ON THE NOTICE OF PROPOSED RULEMAKING

As previously described, the notice of proposed rulemaking published March 22, 1979, proposed requirements intended to deter tamperers from circumventing the marking and irreversibility provisions by using replacement parts and odometer assemblies. Other proposed requirements were intended to refine and improve the provisions of the irreversibility option. Each of the sections of the proposed amendments will be discussed in numerical order with reference made to the new section numbers of the final rule.

In the final rule being published today, section 4.2.4 (section 4.2.5 in the notice of proposed rulemaking) states that all odometers except motorcycle odometers must comply with one of the options set out in sections 4.2.5 or 4.2.6 (i.e., the irreversibility, encapsulation, reversal indicator, or marking options). Motorcycles have been excluded in response to comments which pointed out that motorcycles have a relatively short useful life (approximately 7,400-18,600 miles) and that buyers of used motorcycles rely more heavily on inspection of the vehicles than on odometer readings in ascertaining the condition of the vehicles.

Section 4.2.6.1(a) of the proposed rule would have required that odometers not be reversible when subjected to any of four specified tampering techniques. One commenter stated that section 4.2.6.1 should apply only to the wheel registering ten thousands of miles or kilometers (the 10,000 miles kilometers wheel) since this is the only wheel likely to be manipulated. Chrysler stated that only one type of odometer would comply with the requirements of S4.2.6 and that the section should be modified to reflect this. Such an odometer would be movable in the forward direction only when driven through the odometer gear train, it would not be removable from the speedometer/odometer assembly unless the material used to hold the rolls shaft were broken and it would have inseparable rolls.

The agency has decided not to limit the application of section S4.2.5.1 (renumbered as S4.2.5.1 in today's final rule) to the ten thousands wheel alone because this would result in an odometer which could be reset by forcing the pinions on lower distance wheels out of mesh and driving the ten thousands wheel backward through the gear train. The agency declines to incorporate Chrysler's proposed requirements into the standard because they would be too design restrictive and other odometer designs that meet the requirements of section S4.2.5.1 of the final rule have been demonstrated to the agency's engineering staff.

Two commenters generally questioned the effectiveness of section S4.2.6.1 in reducing the incidence of odometer tampering. Ford noted that if, for example, the breakable feature of an odometer were the drive teeth, a driver would not notice for as much as 9,000 miles that the ten thousands wheel was incapable of advancing and that his odometer had been subjected to tampering. The provisions being discussed here are designed to reduce the incidence of odometer tampering at a reasonable cost. Ford's example does not demonstrate that the standard is ineffective in reducing the incidence of odometer tampering. It demonstrates only that the standard, like other standards, may not be totally effective in all instances. In Ford's example, it is true that if a tamperer broke the drive teeth on the 10,000 miles wheel when the 1,000 miles wheel indicated 0 a driver might not notice that the 10,000 miles wheel was incapable of advancing until after having traveled 9,000 miles. However, there is equal probability that the 1,000 miles wheel would indicate some other number from 1 to 9 at the time that the tamperer broke the drive teeth of the 10,000 miles wheel. In such instances, the driver would notice the tampering sooner.

General Motors' comments suggested that the section fails, in several respects, to provide the objectivity and specificity required by the National Traffic and Motor Vehicle Safety Act. First, the company expressed concern that the section would require a manufacturer to foresee all possible methods of odometer tampering which might fall within the outlines of the methods described in proposed section S4.2.6.1. Second, the company argued that the proposed subsection S4.2.6.1 (b) would not compensate for this lack of specificity despite its provision that odometers need not be resistant to the tampering methods in proposed section S4.2.6.1(a) if use of those methods would result in specified types of breakage. According to the company, information concerning the details of the tampering method, the dexterity to be used in employing that method and the physical characteristics of the tampering tool is a prerequisite for determining whether certain types of breakage will result from a given tampering technique and for producing replicable compliance test results. Finally, the company added that this section "invites compliance contractors to resort to extreme measures to demonstrate noncompliance which might include specially tailored tampering procedures and combinations of tools and techniques." The result would be, according to General Motors, that "any successful combination, whether it was ever used to defeat an odometer in the field . . . would constitute noncompliance."

Although the agency does not agree with all of General Motors comments, it does agree that proposed section S4.2.6.1 should be changed. The agency has concluded that the most effective method for improving proposed section S4.2.6.1 (S4.2.5.1 of the final rule) and in resolving the issues raised by the comments is to indicate in section S5 of today's final rule the tools to be used during compliance testing.

The specified tools are similar to those mentioned in the proposal. The proposal suggested that a dental pick, an ice pick, a small screwdriver, or other similar instruments or a person's hands could be used to force odometer wheels out of mesh with the pinion gears. It also noted that the hands or other means (e.g., pliers) could be used to apply rotational pressure to odometer wheels. All of the tools mentioned in the preamble and specified in this notice are readily available and useful for grasping or prying. Since none of the commenters questioned the appropriateness of those tools or suggested the use of others, the agency has relied on these factors and on its knowledge of various odometer designs in specifying the tools to be used alone or in combination for each of the techniques in section S4.2.5.1(a) of the final rule in the event that the technique cannot be performed with the hands alone. The tools listed in section S5.1 of the final rule are of specified dimensions and include the two types of pliers; a pick, which will serve as surrogate for any thin pointed instrument such as a dental pick or ice pick; and a probe, which will serve as a surrogate for any screwdriver or other type of flat blade. As to permissible combinations of tools, S4.2.5.1(a) and S5.2 of the final rule indicate the tools to be used for each tampering method.

General Motors also suggested that proposed section S4.2.6.1 should specify the precise details of each tampering technique and the dexterity to be employed in practicing the technique. The agency believes that the odometer is such a simple mechanism that the different ways in which the hands and the specified tools can be used to perform each tampering method are relatively few and do not differ substantially.

One commenter stated that complete enclosure of the odometer counter mechanism appeared to be the best means of adding tamper resistance but that this would be quite costly. According to the commenter, this cost could be reduced if proposed section S4.2.6.1 (b) were amended to require that odometers be tamper resistant only when installed in the vehicle or upon removal of the entire instrument panel. In the commenter's view, this would permit use of such simple methods of ensuring tamper resistance or telltale breakage as riveting the speedometer/odometer assembly base plate to the instrument panel or connecting the speedometer/odometer assembly to the instrument panel with a lead seal, which would leave evidence of tampering if disturbed. The agency has not allowed the use of a lead seal because a tamperer could remove the seal, reset the odometer and then replace the seal without leaving any evidence. The agency has not permitted the riveting method because it would neither deter nor provide evidence of tampering accomplished while the speedometer/odometer assembly remained in the vehicle.

Under section 4.2.6.2(a) of the proposed rule, manufacturers could have elected to comply with FMVSS 127 by providing either (1) total encapsulation of each odometer or (2) partial encapsulation accompanied by secure fixing of the odometer shaft in the odometer assembly. Two commenters stated that the section should be modified to permit the protrusion beyond the encapsulation of functional components such as the drive gear or emissions control system maintenance reminder. The latter device, which may be a flag appearing on the odometer or any other type of visible or audible indicator, must be provided on vehicles whose emissions control systems require maintenance more frequently than every 50,000 miles of vehicle travel.

The agency agrees that the language of the section concerning partial encapsulation should be modified to indicate that the functional protrusions such as the drive gear or emissions control system maintenance reminder need not be encapsulated. This is because these devices as currently designed could not operate properly if encapsulated. If for example, the drive gear on a mechanical partially encapsulated odometer were encapsulated, it would not engage with the other gear that eventually connects it to the speedometer cable input. This change has been added in section 4.2.5.2(a) of the final rule published today.

One commenter stated that total encapsulation is unnecessary since tampering could be discouraged by encapsulating only those odometer wheels registering thousands or ten thousands of miles or kilometers. The commenter added that fixing the odometer shaft as required in section 4.2.6.2(a)(2) of the proposed rule (4.2.5.2(a)(2) of the final rule) is unnecessary since any tampering accomplished by reorienting or rotating the shaft would be obvious to the driver. The agency has concluded that an odometer constructed so that only the 10,000 or 1,000 miles/kilometers wheel were encapsulated would be too vulnerable to tampering. Accordingly, the agency has not modified the final rule to permit this type of partial encapsulation. The agency believes, too, that the requirement for fixing the odometer shaft is necessary to deter tamperers from simply snapping out the partially encapsulated odometer drum, sliding the drum out of the capsule, resetting it, replacing it in the capsule and reinstalling the encapsulated drum in the speedometer/odometer assembly.

Section 4.2.6.2(b) of the proposed rule, would have required that no part of an encapsulated odometer be "contactable by fingers or by any instrument unless it is necessary to deflect, penetrate, or fracture the encapsulation in order to make the contact." One commenter raised four different objections to proposed section 4.2.6.2.(b). First, that prevention of contact is unnecessary and unjustifiable if the contact cannot result in a rollback. Second, that compliance with the requirement is impossible because a thin instrument could be slipped through the clearance which must be provided in a partially encapsulated odometer between the end of the capsule and the drive gear so that the gear can turn. Third, that the designation of "any" instrument" is too subjective. Fourth, that deflection (i.e., bending) of an odometer capsule would produce no evidence of tampering. The agency agrees with these comments and has rewritten the section

(section 4.2.6.2.(b) of the final rule). It now specifies, with two exceptions, that odometer wheels indicating tens of miles/kilometers or larger units of distance shall not be contactable by a straight rod .5 mm or more in diameter. The first exception permits contact which occurs when the rod is inserted essentially parallel to the odometer shaft. This exception makes compliance easier and rests on the fact that it would be extremely difficult if not impossible to tamper with an odometer built in compliance with the encapsulation option by using a rod inserted parallel to the odometer shaft. The second exception permits contact if it is necessary to first penetrate or visibly damage the encapsulation or other odometer components in order to make that contact. The size of the rod is specified so that manufacturers will be aware of the smallest size rod that may be used in compliance testing.

In section 4.2.6.2.(c) of the proposed rule, the agency stated that the encapsulation requirements must be met without the speedometer face or the speedometer/odometer lens in place. The faces and lenses were excluded because of the agency's concern that the encapsulation requirement could be defeated if an easily removable lens or face were considered a part of the encapsulation. Commenters stated that this proposed requirement is design restrictive because it eliminates potential innovative designs which might, for example, make use of the face or lens as part of the encapsulation by using fastener techniques that make removal of the face difficult or leave visible evidence if removal is attempted. The agency believes that these comments are valid and has modified section 4.2.5.2.(c) of the final rule so that the face or lens will be considered part of the encapsulation so long as it cannot be removed by removal of fasteners such as screws which are easy to remove and do not leave evidence of removal.

In section 4.2.6.2(d) of the proposed rule, the agency proposed that material used for encapsulation have resistance to deflection, penetration and fracture equivalent to the resistance of a 2 mm thickness of Lucite in the configuration of the encapsulation. Commenters stated that a strength requirement should not be specified. They also stated that a strength requirement of 2 mm Lucite would be inappropriate since "Lucite" is a registered trade name, and ineffective since this material is not difficult to cut, drill or melt through a weaker material would provide evidence of tampering. They also noted that current odometers cannot accommodate such a thick plastic without substantial redesign and retooling. It was stated, however, that a thinner encapsulation material would necessitate less extensive redesign and retooling. One of the commenters also noted that use of material, weaker or more brittle than Lucite, would suffice since it would break easily and leave evidence. The commenter also suggested that the deflection resistance requirement should be deleted.

Although a brittle encapsulating material could provide evidence of tampering, the agency is concerned that use of an excessively brittle material would allow a tamperer to break the encapsulation, completely remove it and reverse the odometer without leaving any evidence. In cases where the encapsulation is not part of the speedometer face or speedometer/odometer lens, this result is particularly likely since a person looking at the odometer through such a face or lens would be unable to determine whether the odometer encapsulation had been removed. Consequently, the agency seeks to prevent the use of excessively brittle encapsulating material and believes that this can best be accomplished by specifying a strength requirement. The agency does agree, however, that a strength requirement should not be based on the properties of 2 mm Lucite due to the availability of similar thinner materials, which manufacturers could use without undertaking extensive redesign. Since the agency believes that the properties of hardness and impact resistance exhibited by 2 mm Lucite are desirable but that the specified thickness is troublesome, the strength requirement in the final rule has been modified to specify a thinner plastic with similar hardness and impact resistance as described in terms of standardized measuring units. Section 4.2.5.2(d) of the final rule specifies a plastic with an IZOD number of 1 ft.-lb./inch, a Rockwell number (this is not a trade name) of R-75 and a thickness of 1 mm with an allowance for thinning down to .5 mm provided that the thinned areas do not exceed 10 percent of the total area of the encapsulation. Localized thinning is permitted to allow manufacturers needed flexibility in fashioning the encapsulating material into an appropriate shape. The agency believes that, because of the reduction in required thickness of the encapsulating material, these requirements are slightly less stringent than the proposed requirement of 2 mm Lucite. Accordingly, these requirements have been incorporated into section 4.2.5.2(d) of the final rule. The agency has decided not to delete the requirement that the encapsulation be resistant to deflection because it believes that this requirement is needed to prevent tamperers from resetting certain types of odometers by simply bending the encapsulation.

In the notice of proposed rulemaking, the agency requested comments on whether it should specify strength requirements for the staking, crimping, welding, and adhesives specified in sections 4.2.6.1(b) and 4.2.6.2(a)(2) (sections 4.2.5.1 and 4.2.5.2 of the final rule). The purpose of these sections is primarily to make tampering more difficult and to ensure that when tampering does occur some physical evidence will remain behind. Comments received indicated that "attempts to specify strength would be cumbersome and would probably become inadvertently design restrictive." One commenter also indicated that a strength requirement would create "compliance concerns when in fact erring on the minimum strength would have no effect on safety or prevention of fraud." Another commenter stated that a strength requirement should be specified as part of an objective test procedure but that it could not suggest specific requirements. The commenter also asserted that the proposed requirements for staking, crimping, welding and adhesives are not performance oriented. In light of these comments and the purpose of sections 4.2.5.1 and 4.2.5.2 of the final rule, the agency has decided not to specify strength requirements for the staking, crimping, or welding for two reasons. First, it would be difficult to specify a strength requirement without resorting to a level of detail that would make compliance testing by both the manufacturer and this agency unduly costly and complex. Second, such a requirement might not increase the effectiveness of these sections since breakage of the staking, crimping, or welding during tampering would in most cases leave telltale evidence. However, with respect to adhesives the agency had added interpretive language to clarify the fact that the adhesives used should be appropriate, according to general practice, for the materials being joined. The agency believes that this language makes the sections more objective but does not increase the difficulty of compliance.

The bulk of the comments received in response to the notice of proposed rulemaking concerned section 4.2.9, which would require differentiation of replacement odometers and wheels. This discussion initially focuses on those comments concerning the potential effectiveness and cost of the differentiation requirements and then on comments concerning the actual content of those requirements.

Manufacturers, in general, opposed the requirement in section 4.2.9(a) that each replacement wheel for an odometer and each wheel on a replacement odometer be visibly different from each wheel on an original equipment odometer. They also opposed the requirements in section S4.2.9(b) that the 10,000 miles/kilometer wheel be visibly differentiated on all odometers. The commenters argued that the agency failed to substantiate its contentions that the differentiation requirements would enhance the protection of consumers from fraud, that the requirements are responsive to a safety need or that their economic impact on manufacturers and consumers would be negligible. Some commenters stated that the requirements would be ineffective because tamperers would be able to obtain original equipment odometer wheels and assemblies from junk and scrap dealers for use as replacement parts. Others stated that consumers would be unwilling to purchase vehicles containing replacement odometer wheels or assemblies because they would conclude that the odometers on such vehicles had been reset even if the replacement components were installed for a legitimate purpose. Consequently, a stigma would be attached to vehicles containing replacement odometer components and the resale value of such vehicles would decline.

Commenters, all of them manufacturers, also stated that the differentiation requirements would increase costs for both manufacturers and consumers. Section 113 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1402) requires any manufacturer who opposes safety rulemaking on the ground of increased cost to submit cost information in sufficient detail to permit the agency to properly evaluate the manufacturer's statement. In this instance, the manufacturers stated that the differentiation requirements would increase costs because they would necessitate use of two production lines, lower the production volume of each type of odometer and increase the need for inventory control and additional storage of replacement parts. However, these comments did not provide estimates of just how much these factors would increase costs, or other detailed information helpful to the agency in evaluating their validity. Thus, the agency does not consider the manufacturers' unsupported comments sufficient to justify deletion of the differentiation requirements. In the agency's view, the safety need for these requirements, as described below, outweighs the costs likely to be incurred.

The agency proposed the differentiation requirements as a logical extension of the other provisions of FMVSS 127 which are intended to result in construction of odometers that are difficult to tamper with and will show some telltale sign of tampering. The agency believes that once these provisions go into effect, tamperers are likely to respond by using complete replacement of odometers (i.e., the shaft bearing wheels marked with numerals) or replacement speedometer/odometer assemblies as their prime method of tampering. To combat this, the agency proposed requirements whose purpose is to reduce the supply of new replacement equipment suitable for use in tampering. The differentiation requirements were not aimed directly at reducing the availability of original equipment odometers and parts from junk and scrap dealers for two reasons. The first is the difficulty of devising an effective Federal regulatory scheme to accomplish this goal. The second and more important reason is based on this agency's expectation that tamperers would frequently opt to replace the entire speedometer/odometer assembly rather than the

odometer alone, since this more limited replacement might well leave remaining telltale evidence or breakage. This means that a tamperer would not only have to find a speedometer/odometer assembly with the appropriate mileage but one manufactured specifically for the type of vehicle being subjected to tampering because no other assembly would be likely to fit correctly in the vehicle's dashboard. In this agency's view, the process of combing junk yards and scrap businesses for such a speedometer/odometer assembly would be time consuming, thus expensive and not nearly so cost effective to the tamperer as simply installing a new replacement assembly bearing the appropriate mileage. This conclusion is based in part on the fact that NHTSA investigators have observed a tampering operation in which new replacement speedometer/odometer assemblies were installed in vehicles. In addition, NHTSA investigators have discovered that new replacement speedometer/odometer assemblies, preset to the mileage desired by the purchaser, can be easily obtained for about $25 apiece.

The agency does not agree that some consumers will attach a stigma to vehicles containing replacement odometer parts or assemblies. Ford already distinguishes its replacement odometers by using a red wheel for indicating tenth's of a mile instead of the usual white one included in original equipment odometers and has not experienced a decrease in the resale value of its vehicles. In addition, the presence of replacement odometers or parts in a vehicle is expected to encourage consumers to ask questions about the mileage of such vehicles and to request that they be shown the seller's disclosure of mileage statement which is required by section 408 of the Motor Vehicle Information and Cost Savings Act.

The agency believes that once consumers become familiar with these statements any stigma which may be associated with the presence of a replacement odometer would be dissipated. It is true, of course, that the disclosure form can be falsified but, the machinery for dealing with this problem, which includes both civil penalties and criminal prosecution, is already in place pursuant to the Motor Vehicle Information and Cost Savings Act.

With respect to the specific requirements of proposed section 4.2.9, one commenter suggested that the section be modified to require differentiation of odometer assemblies alone, rather than both assemblies and wheels, since odometer parts such as odometer wheels are not generally supplied to the automotive industry for replacement parts. According to the commenters, malfunctioning odometers are generally replaced with a new odometer or speedometer/odometer assembly. Others stated, in comments also directed to section 4.2.9(b), that there is no incentive to tamper with an odometer by replacing its wheels unless it is built in accordance with the marking option.

The agency does not agree that the requirements for differentiation of replacement wheels should be totally eliminated from the final rule due to information indicating that some replacement odometer wheels are produced and sold to the automotive industry. Accordingly, section 4.2.7 of today's final rule requires that each numeral on the wheels of an original equipment odometer be colored with a color other than red and that all numerals on replacement odometer wheels be colored red. The agency further agrees that use of replacement wheels is likely to become the tampering method of choice only with respect to odometers built in accordance with the marking and irreversibility options. With respect to a marking type odometer, for example, it might well be much easier for a tamperer to simply replace the marked 10,000 miles/kilometers wheel than to obtain a marking type replacement odometer or speedometer/odometer assembly bearing the appropriate mileage reading. Similarly, with respect to an odometer built in compliance with the irreversibility option such that the 10,000 miles/kilometers wheel among other odometer components must be broken in order to reset the odometer, it might well be more cost effective for the tamperer to simply replace the broken or inoperative wheel. Accordingly, section 4.2.7 of today's final rule is intended to reduce the supply of original equipment odometer wheels which could be used during tampering. The section requires that the 10,000 miles/kilometers wheel on each odometer built in compliance with either the marking or irreversibility options be differentiated from all other wheels on that odometer.

Two commenters addressed the question of how the 10,000 miles/kilometers wheel should be differentiated. One suggested that manufacturers be permitted to make the 100,000 miles/kilometers wheel the same color as the 10,000 miles/kilometers wheel. The agency has not adopted this suggestion because it would dilute the effectiveness of section 4.2.9(b) by increasing the number of wheels that could be used by tamperers as replacement parts. The other commenter suggested that manufacturers be permitted to differentiate the 10,000 miles/kilometers wheel from the other odometer wheels by making it mechanically noninterchangeable instead of unique in appearance. The agency believes that this modification of the rule would serve as further disincentive to tamperers seeking to use replacement parts. Accordingly, the agency has incorporated this suggestion in section 4.2.7(a)(2) of the final rule published today.

The notice of proposed rulemaking requested comments on what method should be used to differentiate replacement odometers and wheels from original equipment and stated the agency's initial preference for use of a particular color. Many of the comments suggested that manufacturers should be permitted to decide what method of differentiation to use and some noted that the development of different systems by different manufacturers would make circumvention more difficult. It was also suggested that standardization would lead to minor compliance problems on items like color value. Other commenters favored standardization because it would make it easier for potential vehicle purchasers to determine whether the odometer in a particular vehicle had been replaced.

The agency agrees with this last point and has also concluded that standardization will enhance the ability of investigators to detect instances of odometer tampering. It appears that the development of different systems by different manufacturers would make this task more difficult. Accordingly, today's rule specifies in section S 4.2.7 that all replacement odometers must have numerals that are the color red on all wheels.

To make this requirement as workable as possible, today's rule incorporates by reference the color tolerances established by the U.S. Department of Transportation, Research and Special Programs Administration, at 49 CFR § 172.407(d), for use in determining compliance with its labeling requirements for hazardous materials. This agency believes that use of this system of color tolerances will simplify compliance with today's rule in that it includes a set of color charts which show, for example, all of the various shades and tones of red that may be used. Use of these charts will enable both manufacturers and enforcement officials to check compliance with the standard by simple visual inspection and will preclude the need for sophisticated light measuring equipment.

The notice of proposed rulemaking also stated the agency's expectation that manufacturers will use their owners' manuals to inform consumers of the significance of the visible differentiation of replacement odometer equipment. In addition, the agency urges those manufacturers who do not provide owners' manuals to provide this information in some other written form that accompanies the vehicle when it is sold.

The agency has considered the economic impact of this final rule and determined that it is not significant within the meaning of Executive Order 12044 and the Department of Transportation's policies and procedures for implementing that order. The agency has determined further that the impact is so minor as not to require preparation of a written evaluation of it. The only new requirement imposed by this rule is the differentiation of original and replacement odometers and wheels. Compliance can be achieved simply and inexpensively by using a different colored ink. The agency believes that the remainder of the final rule published today clarifies and reorganizes the requirements previously included in the March 22, 1979, response to petitions and expands the range of compliance options that are open to manufacturers. Thus, the final rule imposes no new costs upon manufacturers and seeks to lessen the difficulties of compliance to the extent consistent with the goal of reducing the incidence of odometer tampering.

In consideration of the foregoing, 49 CFR 571.127 is amended in the manner set forth below. 49 CFR 571.127 is reprinted below in its entirety in order to set forth all amendments that have been made to the standard since its publication on July 27, 1978 (43 FR 32421). These amendments include deletion of the speedometer accuracy requirements previously included in section S 4.1.3 (45 FR 6404, January 28, 1980) and appropriate renumbering.

The lawyer and program official principally responsible for this rule are Debra Weiner and George L. Parker, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on June 9, 1980.

JOAN CLAYBROOK,
Administrator.

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49 CFR 571.127 is revised in the heading and text to read as follows:

§ 571.127 Standard No. 127, Speedometers and odometers. (Effective September 1, 1981.)

S1. *Scope.* This standard establishes requirements for the installation of speedometers and odometers in motor vehicles, limits the speed which can be indicated on a speedometer, and requires that odometers be tamper-resistant.

S2. *Purpose.* The purpose of this standard is to insure that each motor vehicle is equipped with instruments needed for monitoring driving speeds, maintaining proper vehicle maintenance schedules, and providing an indication of the vehicle's probable condition.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, motorcycles and buses, and to speedometers and odometers for use in vehicles to which this standard applies. Motor driven cycles whose maximum attainable speed in one mile is 30 mph or less are excluded.

S4. *Requirements.*

S4.1 *Speedometer.*

S4.1.1 Each motor vehicle shall have a speedometer that meets the requirements of S4.1.2 through S4.1.4 of this section.

S4.1.2 Each speedometer shall be graduated in miles per hour and kilometers per hour.

S4.1.3. No speedometer shall have graduations or numerical values for speeds greater than 140 km/h and 85 mph and shall not otherwise indicate such speeds. This paragraph does not apply to a speedometer designed for use in or installed in a vehicle sold to a law enforcement agency for law enforcement purposes.

S4.1.4 Each speedometer shall include the numeral "55" in the mph scale. Each speedometer, other than an electronic digital speedometer, shall highlight the number "55" or otherwise highlight the point at which the indicated vehicle speed equals 55 mph.

S4.2 *Odometer.*

S4.2.1 Each motor vehicle with a gross vehicle weight rating (GVWR) of 16,000 pounds or less shall have an odometer that meets the requirements of S4.2.2 through S4.2.6 of this section.

S4.2.2 Each odometer shall be capable of indicating distance traveled either, at the manufacturer's option, (1) from 0 to not less than 99,999 miles in 1-mile units, or (2) from 0 to not less than 99,999 kilometers in 1-kilometer units, or (3) both.

S4.2.3. As installed in the vehicle for which it is designed, each odometer, other than a motorcycle odometer, shall clearly indicate to the vehicle driver by a sixth wheel or digit, registering whole miles or kilometers, or by a permanent means such as inking, when the number of whole miles or whole kilometers, as appropriate, has exceeded either, at the manufacturer's option, 89,999 or 99,999.

S4.2.4 Each odometer, other than a motorcycle odometer, shall comply with, at the manufacturer's option, either S4.2.5 or S4.2.6.

S4.2.5 Each odometer manufactured in accordance with this section shall meet the requirements of S4.2.5.1, S4.2.5.2 or S4.2.5.3. Each odometer manufactured in accordance with S4.2.5.1 or S4.2.5.2 shall not be reversible beyond a maximum distance of 10 miles or kilometers when driven through the odometer gear train or when driven by manipulation of devices such as the drive gear or omissions control system maintenance reminder, which protrude beyond the encapsulation of an odometer manufactured in accordance with S4.2.5.2(a)(2).

S4.2.5.1(a) Except as provided in paragraph (b) of this section and in S4.2.6, each odometer shall not be reversible whether installed in or removed from the vehicle, by any of the following means:

(1) Manually forcing the odometer wheels to override the interference of the pinion gears through use, alone or in combination, of the hands, or the pliers or pick specified in S5.1;

(2) Manually forcing the odometer wheels apart or out of mesh with the pinion gears through use, alone or in combination, of the hands, or the pliers or probe specified in S5.1;

(3) Manually rotating the pinion gear carrier plates through use, alone or in combination, of the hands or the pliers specified in S5.1;

(4) Manually disassembling the odometer, adjusting the distance reading, and reassembling the odometer through use, alone or in combination, of the hands or any of the tools specified in S5.1.

(b) Each odometer may be reversible by one or more means specified in paragraph (a) of this section if one or more of the following operations must be performed in order to reverse the odometer by any of those means:

(1) Breaking one or more rigid or semi-rigid parts of the odometer so that its recording of distance is impaired;

(2) Breaking one or more rigid or semi-rigid parts of the odometer so that, when the odometer is installed in the vehicle, the breakage is visible to a person occupying the driver's seating position;

(3) Breaking or otherwise defeating the staking, crimping, welding or adhesive appropriate for the materials being joined, used to hold the odometer shaft in the speedometer/odometer assembly; or

(4) Breaking or otherwise defeating the staking, crimping, welding or adhesive appropriate for the materials being joined, used to secure the retainers that prevent the odometer wheels from moving along the shaft.

(c) Local cosmetic damage to the odometer caused by the teeth of the pliers specified in S5.1 and chips, less than 3mm² in area, caused by the probe specified in S5.1 do not constitute breakage for purposes of paragraph (b) of this section.

S4.2.5.2 Each odometer manufactured in accordance with this section shall meet the requirements in paragraph (a)-(d) of this section.

(a)(1) The odometer or speedometer/odometer assembly shall be totally encapsulated; or

(2) The odometer shaft shall be held in the speedometer/odometer assembly by staking, crimping, welding or adhesive, appropriate for the materials being joined, and all of the odometer shall be encapsulated except for functional protrusions, such as the drive gear or the emissions control system maintenance reminder, located at the ends of the odometer shaft.

(b) The odometer wheels indicating tens of miles or kilometers and larger units of distance shall not be contactable by a straight rod .5 mm or more in diameter unless such contact results when the rod is inserted essentially parallel to the odometer shaft or unless it is necessary either to penetrate the encapsulation or to damage the encapsulation or other odometer components to make that contact. This requirement applies both when the speedometer/odometer assembly, including all parts of the encapsulation, is installed in and when it is taken out of a vehicle.

(c) The requirements in paragraphs (a) and (b) of this section shall be met without the speedometer face or the speedometer/odometer lens in place, unless the speedometer face or speedometer/odometer lens forms part of the encapsulation, and cannot be removed by removing screws or other types of fasteners which can be removed and replaced without leaving any evidence of removal visible to a person occupying the driver's seating position.

(d) The material used for encapsulation under paragraph (a) of this section shall have:

(1) a thickness of 1 mm but it may have a minimum thickness of .5 mm in localized areas provided that the total area of the encapsulation having a thickness less than 1 mm does not exceed 10 percent; and

(2) resistance to deflection, penetration and fracture that is not less than the resistance of a piece of plastic having a hardness of Rockwell R-75 when tested in accordance with American Society for Testing and Materials (ASTM) D785-65. Test for Rockwell Hardness of Plastics and Electrical Insulating Materials, and an Izod impact resistance of 1 ft.-lb./inch when tested in accordance with ASTM D256-78. Test for Impact Resistance of Plastics and Electrical Insulating Materials.

S4.2.5.3(a) Upon the forcible reversal of any wheel or wheels for registering ten or hundred thousands of miles or kilometers, each odometer, whether installed in or removed from the vehicle, shall provide an indication of that reversal.

(b) The indication required by subsection (a) of this section shall be visible to a person occupying the driver's seating position.

(c) The shaft of each odometer shall be attached in the speedometer/odometer assembly by staking, crimping, welding or adhesive appropriate for the materials being joined.

(d) When installed in the speedometer/odometer assembly, the mechanism which controls the odometer reversal indicator shall not be contactable by a straight rod .5 mm in diameter inserted parallel to a line perpendicular to the odometer shaft. If such a rod is inserted parallel to the odometer shaft through any openings in the speedometer/odometer assembly, the rod shall be at least 3 mm away from the mechanism which controls the odometer reversal indicator. This requirement applies both when the speedometer/odometer assembly, including all parts of the reversal indicator, is installed in and when it is taken out of a vehicle.

S4.2.6

S4.2.6.1(a) Each mechanical odometer shall score, indelibly ink, or otherwise mark by permanent means each numeral on the wheel registering ten thousands of miles or kilometers within 500 miles or kilometers, as appropriate, after that numeral disappears from the driver's view.

(b) The mark required by paragraph (a) of this section, without further marking, shall be visible to a person occupying the driver's seating position if the ten thousands wheel is rotated so that the marked numeral reappears in the driver's view. The mark shall be located on each numeral or on the center 1/9 of the total area on the wheel for each numeral. The total area for a numeral is determined by orienting the odometer so that its shaft is horizontal and measuring that portion of the wheel that is bounded by horizontal lines midway between that numeral and the numerals immediately preceding and following it. The center 1/9 of that total area is determined by trisecting the area first with horizontal lines and then with vertical lines.

S4.2.6.2 Each electronic digital odometer, whose reading appearing in the position for registering tens of thousands of miles or kilometers has been reduced, shall visibly indicate to a person occupying the driver's seating position that such a reduction has occurred.

S4.2.7(a)(1) Each numeral on a wheel of an original equipment odometer shall be colored with a color other than red.

(2) Each 10,000 miles/kilometers wheel which either is on an original equipment odometer manufactured in accordance with S4.2.5.1 or is on an original equipment odometer manufactured in accordance with S4.2.6.1 shall be visibly different from or mechanically noninterchangeable with all other wheels on the odometer.

(b) Except for numerals on a replacement wheel registering tenths of a mile or kilometer, each numeral on a replacement wheel for an odometer and each numeral on a wheel of a replacement odometer shall be colored red.

(c) For purposes of this section, the color red on an odometer wheel, upon visual examination, must fall within the color tolerances established for that color by Title 49 Code of Federal Regulations Section 172.407(d).

S5 *Test procedures.*

S5.1 The tools used in determining compliance with S4.2.5.1 are:

(a) one slip joint pliers with jaws 25.4 mm or less in length.

(b) one chain nose pliers with a nose length of 45 mm or less,

(c) one hardened steel probe that is 5 mm wide, is tapered uniformly from a thickness

of 0.1 mm at its tip to a thickness of 0.5 mm at a distance of 5 mm from its tip and tapered uniformly from the latter point to a thickness of 1 mm at a distance of 25 mm from its tip, and is attached to a rigid handle, and

(d) one round hardened steel pick not less than 80 mm in length with a sharp tip that tapers uniformly from a diameter of 0.1 mm at its tip to a diameter of 4 mm at a distance of 40 mm from its tip and that has a uniform diameter of 4 mm from the latter point to its end, and is attached to a rigid handle.

S5.2 In determining compliance with S4.2.5.1, the pick and pliers specified in S5.1 (a), (b) and (d) are used to turn the odometer wheels and the probe specified in S5.1(c) is used to separate the wheels, in cases where use of the hands alone is insufficient to achieve these results.

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Mr. HAYAKAWA. Mr. President, the first rule was published by NHTSA, and defines the powers of NHTSA. Not only does this rule establish, by regulation, the regulatory powers of the agency, it does so in two documents, which are separated in time of publication by 3 years. I find this kind of action totally unnecessary, and irresponsible on the part of NHTSA.

The other rule is merely a waste of time and effort. In 10 pages of small type in the Federal Register NHTSA has determined that the dials of odometers must be changed. I question the importance of this rule as a matter of traffic safety, and I commend the Agency to spend its time in a more useful manner. Maybe they should resign.

The last concern I will bring to the attention of this body is the poor performance report NHTSA received from the Comptroller General. I would advise all my colleagues to carefully read this document, if they have not done so already. I am sure that those who have read it will agree with me that NHTSA must go.

I ask for the adoption of the amendment, and call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, I must rise in opposition to this proposed amendment. I serve as a member of the Commerce Committee and on the Subcommittee of Consumer Affairs which has oversight responsibilities with respect to this small Government Agency.

First, I wish to direct a question to my distinguished colleague from California. I have listened very attentively to his supporting argument. My question is, is there anything that this Agency is doing right today in his judgment?

Mr. HAYAKAWA. I must say I cannot think of anything.

Mr. WARNER. So if I understand the amendment it is to abolish in its entirety the entire Agency?

Mr. HAYAKAWA. That is right.

As the Senator knows, we won our elections on the promise to abolish agencies that are not necessary.

Mr. WARNER. I assure my distinguished colleague from California that this is rather painful for the Senator from Virginia to suggest that we continue on with this Agency from the standpoint of my overall objective to try to limit the growth of Government. But the Senator's amendment clearly implies there is not one single thing of value being done by this Agency today, and there is no basis for compromise.

Mr. HAYAKAWA. If the distinguished Senator from Virginia will produce evidence of utility and value of some of their regulations I shall be prepared to compromise, but I have had none presented to me.

Mr. WARNER. During the 2 years in which I have had the responsibility to participate in the oversight responsibilities, many actions of this Agency have come to my attention and I endorse them. While I do not agree with all of the proposals and steps, in my judgment the Agency does perform a very valuable function for the citizens of our United States and since there is no basis on which there is any compromise with the distinguished Senator from California I will have to oppose the amendment. Were he to select one program or two programs and convince me that they were ineffective and not worthy of the taxpayers' dollars, then I would be receptive perhaps to some curtailment, but just a complete eradication of a Government agency to me is an improper approach to the solution to the problem.

I am willing to assure the Senator from California that if he would reconsider his amendment, be willing to withdraw it, I personally would bring up at the forthcoming oversight hearing any issue he wishes to be raised and in that manner try and effectively through the exercise of our oversight responsibility require this Agency to conform to the legislative purpose for which it was established.

Mr. HAYAKAWA. I thank the distinguished Senator from Virgina for his comments and his objections which are rational ones.

As I have already indicated, I am ready to compromise this on being given evidence of the usefulness of the regulations promulgated by this Agency. Perhaps it takes more research on my part and more reading. He will help me in it, I trust, so that I can find out.

But to my knowledge up to this point the Agency has been nothing but a headache to manufacturers, raising costs of American cars to the great benefit of Japanese and German cars, and imposing upon us a kind of a Big Brother attitude of Government toward citizens. That kind of paternalism is something I profoundly resent.

Mr. President, I think that the Senator from Virginia and I have much more to discuss on this matter. So I shall withdraw my amendment at this time, giving notice that this is my point of view at present and it can be modified provided what I may learn from the Senator from Virginia. But I shall look forward to his cooperation in working out some reins upon the power of NHTSA.

Mr. WARNER. Mr. President, by way of clarification I am not able at this late hour to bring forth a documentation to support every possible program. I know from personal experience, particularly in the area of highway safety, that I do have confidence in the objectives of this agency and the personnel with respect to their actions on behalf of this particular area of responsibility.

Do I understand the Senator's representation to withdraw is based on my representation that I personally in the forthcoming oversight hearings will be willing to take up any matter which the Senator wishes addressed, or are we going to try to resolve it here in an hour and go back to the same amendment?

Mr. HAYAKAWA. No, we are not going to try to resolve it here in an hour. Let us resolve it over time because it requires more study on my part perhaps, as well as on the part of the Senator from Virginia and his committee. So I am perfectly content that we not resolve it now.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The yeas and nays were ordered on the amendment. The yeas and nays would have to be vitiated.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that the request for the yeas and nays be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is withdrawn.

Mr. WARNER. Mr. President, I thank my distinguished colleague from California for the very responsible way in which he has withdrawn this amendment and I give him my personal assurance that in the coming year of the Senate I will work with him and that I will represent his viewpoints at the forthcoming oversight hearings. While I do not have the authority, I am certain that Chairman FORD of the subcommittee, assuming that he is the chairman in the next Congress, will more than likely be pleased to have the Senator from California participate actively in the oversight hearing.

Mr. HAYAKAWA. I thank the distinguished Senator from Virginia and look forward to working with him.

UP AMENDMENT NO. 1603

Mr. PROXMIRE. Mr. President, earlier today the distinguished occupant of the Chair, the Senator from Massachusetts, offered an amendment on cooperative automotive research, it is my understanding, and that amendment was subject to compromise, and I understand that when it was submitted there was an order of provisos to be changed.

Mr. President, I ask unanimous consent that the second proviso, and it is clearly marked in the written copy of the amendment I have, be treated as the first proviso and the first proviso be treated as the second proviso.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will receive the revised provisos.

BICYCLE SPENDING

Mr. CHAFEE. Mr. President, I wish to express my regrets that this legislation fails to contain funds for the section 141 program encouraging bicycle transportation.

I believe that the demand for an effective bicycle program in this country is strong. There is a need to make roadway improvements—from separate paths to improve road shoulders and wider curb lanes—in order to provide a greater degree of safety for cyclists.

When an individual cycles to work, both the individual and the Nation benefit. The individual benefits with better health and in less expenditures for travel to work. The Nation benefits with less air pollution, less energy use, and less auto traffic, which means more congestion-free roads, allowing those who must drive to work to travel at a more convenient speed. It also lessens the demand for new roads and road maintenance.

Thus a few million dollars spent to encourage bicycling could save tens of millions of dollars in investment in other transportation modes.

I recognize that the committee does not see a need to appropriate new funds at this time due to the tardiness which the Department of Transportation has acted to obligate funds already available. Grant regulations were not published until last May, so, of course, the money has not been fully spent.

But the demand is there. State and local governments made over 500 project requests, totaling some $40 million, for these limited section 141 program funds. That clearly indicates to me that a strong need exists for this program.

I urge that the Department of Transportation move rapidly to obligate and expend that $4 million in fiscal year 1980 moneys. I would hope that once this occurs, that the administration and the Appropriations Committees will consider an appropriation for this very important section 141 program. It is a small program, but it will prove to be a significant investment.

I would make one further point regarding the increasing demand for bicycle transportation facilities. One of the impediments to commuter bicycling has been the unwillingness of both the public and private sectors to provide adequate and safe bicycle parking facilities for their employees. S. 2080, which the Senate passed earlier this year, mandates that the General Services Administration provide safe bicycle parking facilities at all Federal buildings. Once that occurs, we should confront even greater demand for safe bicycle routes. This is why this section 141 program is so essential.

TRUCK SAFETY

● Mr. SCHWEIKER. Mr. President, earlier this year Pennsylvania, in an attempt to insure greater safety on the State's highways, instituted a requirement that commercial vehicles in excess of 17,000 pounds display a valid vehicle inspection certificate. The requirement applies across the board—to trucks registered in Pennsylvania and trucks registered in other States.

Section 316 of H.R. 7831, the transportation appropriations bill, eliminates Federal funding "used to assist, directly or indirectly, any State in imposing mandatory State inspection fees or sticker requirements on vehicles which are lawfully registered in another State." Section 316, in effect, would prohibit Pennsylvania from implementing its new safety law.

The Pennsylvania inspection requirement has been challenged in the courts, and I will not comment on the validity of the statute itself. I would like to clarify the provisions of the Pennsylvania requirement, however, and express concern about the committee's action in restricting State motor safety efforts in section 316 of this bill.

Current Pennsylvania law simply requires that commercial motor vehicles in excess of 17,000 pounds display a valid inspection certificate from Pennsylvania, its State of registration, or any other State. The law does not impose Pennsylvania safety standards on inspected motor vehicles, since a trucker displaying a valid inspection certificate from any State is in compliance with Pennsylvania law. The law is not calculated to impose additional delays on motor vehicles crossing Pennsylvania, since enforcement is contemplated utilizing normal truck weight checks and standard speed and safety enforcement. And the law is not intended as a State revenue-raising measure, since the maximum fine for noncompliance is a modest $25.00.

Section 316 of this bill, by restricting States abilities to insure the safe operation of out-of-State vehicles traversing their highways, raises serious questions about the appropriateness of Federal limitations on State highway safety efforts.

I understand the committee's concern over unnecessary restrictions States may impose on interstate commerce. I am equally concerned, however, about the situation facing States which believe in the efficacy of vehicle inspections as a method of improving highway safety. Under section 316, States like Pennsylvania are forced to permit 80,000-pound uninspected vehicles on their roads.

The committee's bill does require that trucks be in compliance with Federal motor carrier safety regulations. I would like to remind my colleagues, though, that these regulations are being "flagrantly ignored," according to Commerce Committee report language accompanying the Truck Safety Act adopted by this body in February by a vote of 69 to 16.

I am hopeful that the conference on H.R. 7831 will provide an opportunity to modify section 316 to attempt to accommodate the legitimate highway safety interests of States like Pennsylvania. The House version of this bill does not contain restrictive language affecting interstate commercial motor vehicles and I am hopeful we can work together to reach a reasonable balance between the need for ease in interstate commerce and highway safety.●

RAILROAD REHABILITATION FUNDING

● Mr. DOLE. Mr. President, I am worried that this transportation appropriation bill includes only $100 million for the Federal Railroad Administration's railroad rehabilitation program. The administration had requested $250 million, and is likely to request an additional $200 million later this year. Over the course of the next year, $100 million simply will not do the job.

More distressingly, the House version of the DOT appropriations bill contains no funding for railroad rehabilitation.

The needs during the coming year will be great. Up to one-half of the Rock Island's system's 10,000 miles of track are likely to need assistance. The Midwest has other railroads in serious financial shape. In my State alone, several hundred miles of Rock Island track across northern Kansas are going to require massive rebuilding that can only be accomplished through this program. Costs have skyrocketed at the same time. The rehabilitation of main line track can run as high as $400,000 per mile.

This fall we will begin to get a better picture of our rehabilitation needs as disposition of the Rock Island proceeds. Moneys will be needed as the construction season begins next spring. We cannot do without this money.

I would hope that the conferees on the transportation appropriation bill would hold steadfast in support of at least the $100 million in the Senate bill for railroad rehabilitation. We cannot afford to compromise downward simply because the House failed to include any funding whatsoever for such a crucial program.

I would also hope that the appropriations committee will be open to a supplemental appropriations bill in the coming months. As we define our needs this fall and anticipate construction next spring, the need for additional funds is sure to become obvious. This should be a priority, even as we cut back on Federal spending. An efficient rail system can save energy and money in the long run. When that need is apparent, I urge the committee to act.●

● Mr. McCLURE. Mr. President, I can assure the Senator from Kansas we would not have adopted the level of funding we did without intending to support it in conference. The House failed to include rail rehabilitation moneys simply because the request was received too late for consideration. I am confident that the House will see the merits of rail rehabilitation in fiscal 1981.

I would also point out that the committee report includes language indicating the committee's willingness to consider supplemental appropriations during the coming year as rehabilitation applications are filed. The committee is aware of the seasonal nature of this rebuilding and the importance of providing funds next spring should present trends continue.●

THE PIONEER RURAL TRANSPORTATION SURVEY

● Mr. DURENBERGER. Mr. President, the American farmers' success in producing record grain harvests is unmatched anywhere in the world. Unfortunately, that success has been accompanied by a growing realization that our rural transportation system lacks the capacity to move these harvests to national and international markets in a timely, cost-efficient manner.

The Pioneer Hybrid International Corp. recently conducted a remarkable survey on the impact of these transpor-

tation problems in the 16 major grain-producing States. The project involved three steps:

First. A poll of farmers and grain elevator managers to determine how they are being affected by the grain transportation situation, and how they believe the problem should be addressed.

Second. Selection of an advisory panel of farmers and transportation specialists to suggest options for addressing the problems—in light of the farmers' and elevator managers' opinions and the realities of economics, transportation, and politics.

Third. Wide distribution of the options developed by the advisory panel to farmers and others who have an interest in efficient grain transportation.

The scope of the survey was remarkable—over 35,000 farmers and 2,000 elevator managers responded. The information compiled from those responses represents a base of data that should play an essential role in guiding the rural transportation policies of the future. Every legislator, every farmer, and every other person involved in planning those policies should take the time to read this study and reflect on its results. So that the Members of this body will have an opportunity to review those results, I submit for the RECORD a summary of the results and the policy options suggested.

The material follows:

COUNTY ROADS AND BRIDGES: A GROWING PROBLEM WITH NO SIMPLE ANSWERS

34 Percent of Farmers Say Roads and Bridges a Problem in Moving Grain and Farm Equipment.

For some farmers, grain transportation problems begin when they leave their driveways and head for the local elevator.

About one third of those replying to the Pioneer poll said deterioration of county roads and bridges is a current problem. Another 17 percent said they expect them to become a problem in 3 to 5 years.

A look at the farm equipment used to grow, harvest and haul crops to market tells you that county roads and bridges are going to be under increasing strains. Narrow bridges restrict movements of wider farm machinery unless railings can be removed. More and more farmers are buying tandem axle trucks. Grain wagons designed for pulling in tandem with 4-wheel drive farm tractors have reached a capacity of 600 bushels, a gross weight of 80,000 or more pounds for a pair of these trailers. A system built for half-ton trucks can't cope with these weights; bridges are the weakest link.

All of this is happening because of the fuel efficiency that is possible through moving larger loads. Labor savings are also important. And the farther grain moves by truck—whether it's in a farmer's truck to an elevator or from an elevator to a unit train loader or a barge terminal—the bigger those economies become.

So we have two forces moving toward one point, and that point is the strain on county roads and bridges. Loads are getting wider and heavier; the dollars spent for road and bridge maintenance or replacement buy less each year.

PROBLEM MOST SERIOUS IN SEVEN STATES

Concern over county roads and bridges varies greatly by state. When asked "Is the deterioration of county roads and bridges a problem affecting your area, insofar as moving farm machinery or hauling grain from the fields or to the elevator," state-by-state response ranged from 19% to as high as 61%. In seven of the 16 states polled, roads and bridges are already an important problem, according to farmers.

The wide range of opinions among states indicates the problem can probably best be dealt with on a state or local basis, the Advisory Panel feels. Whatever the source of funds, Panel members agreed that control over spending should be in local hands. Not only would priorities fit local needs better, but considerably more work could be accomplished for a given number of dollars.

[In percent]

	Roads and bridges already a problem	Not a problem now, but likely to be in 3 to 5 yr	Total
16-State average	34	17	51
Oklahoma	61	22	83
Missouri	59	19	78
Indiana	54	15	69
Illinois	50	19	69
Ohio	50	19	69
Kansas	48	18	66
Michigan	46	14	60

ACTIONS FAVORED BY FARMERS

While the seriousness of the problem seen by farmers varies greatly from state to state, the philosophy of what to do is fairly simple across the 16 poll states.

Nearly one-third (31 percent) were willing to try to live with the present system. This would require reducing weight limits on certain roads. Forty-two percent disagreed with this approach, with 27 percent being not sure or unwilling to answer the question.

Not surprisingly, the idea of "pruning" the county road system—upgrading certain key roads and dropping others from the system—was one of the least preferred solutions. Only 18 percent preferred this route, with 50 percent opposing it. Twenty percent were not sure.

There were four other choices, each aimed at getting more money for the county road system. They are listed on page five, followed by the percent agreeing, disagreeing, and not being sure/having no opinion. The three figures do not add up to 100 because there were some who did not answer certain questions.

[In percent]

	Agree	Disagree	Not sure
Additional Federal funds should be earmarked for repair and/or upgrading of bridges and county roads	57	18	14
Change allocation formula to take State funds from primary road system and apply them to county system	51	16	21
Reduce or eliminate agricultural motor fuel tax exemption, earmarking the added revenues for county roads and bridges	22	54	14
Levy a county tax on all real estate to bring the entire system up to needed standards	12	58	18

ADVISORY PANEL CONCLUSIONS

Based on these results, farmers obviously—and understandably—would prefer federal or state funds for upgrading county roads and bridges. In some states, like North Carolina, Virginia, West Virginia and Delaware, the state has taken over the maintenance and rehabilitation of the county road system.

But the Advisory Panel saw little chance of this being feasible. Federal and state road-building funds are also in a two-way squeeze: Higher prices of fuel are putting emphasis on more fuel-efficient cars and trucks and also reducing miles driven. Result: Fewer gallons of fuel on which taxes can be collected.

Highway building and maintenance costs have risen even faster than the general level of prices. With this kind of pressure on federal and state highway funds, the chances of getting more money for county roads and bridges seem slim.

That leaves two less-than-popular courses from which to choose: (1) Settling for less roads—fewer miles and perhaps less maintenance or (2) paying more in taxes. It's possible that you'll have to put up with both of these possibilities—paying more taxes and still having fewer miles of quality roads.

PRUNING COUNTY SYSTEM NOT POPULAR, BUT . . .

The farmer members of the panel wrestled with these alternatives. While slimming down the road system is a bitter pill, it may be impossible to avoid. The reasoning in favor of pruning includes:

1. Pruning would bring land now in roads back into production.

2. Field sizes and shapes could be laid out more efficiently. (Some of this has already taken place where Interstate highways have cut county roads.)

3. The level of maintenance on remaining roads could be maintained or improved.

4. Assuming that increased road and bridge costs are going to fall heavily on farmers, trimming the overall system could keep the farm tax burden from rising further.

Disadvantages of reducing the system include:

1. Travel distance to fields and trade centers could be increased.

2. Drainage patterns might be disrupted by putting roads back into farmland.

3. Some farms will be affected little, or could even benefit if they are located on roads marked for upgrading, while others will suffer inconvenience.

Who should pay for rural roads and bridges? As the recent downturn in the farm economy has once again proved, agriculture is basic to the economy. It therefore seemed reasonable to the Advisory Panel that the costs of maintaining the system of county roads and bridges ought to be shared by as many taxpayers as possible. Thus, a county level earmarked for this purpose—even though this was the least palatable choice among farmers polled—is more equitable than removing the motor fuel tax exemption.

SUMMARY OF OPTIONS

1. With the reduction in number of farmsteads, it appears that removing some roads from the county system should be feasible in order to properly maintain the remaining part of the system.

2. Those whose livelihoods depend upon doing business with farmers should share costs of maintaining an efficient system of county roads.

3. Reduction of weight limits in an effort to hang on to the current system is not a workable long-range solution.

4. Local control over the setting of priorities and supervision of work should be maintained, regardless of the source of funds.

ELEVATOR MANAGERS NOT AS AWARE OF COUNTY ROAD PROBLEM

Similar questions asked of grain elevator managers in the 16 poll states show they are not as aware of the road and bridge problem as are farmers. This is probably due to elevators being located on or close to hard-surfaced roads.

[In percent]

	Serious problem	Some problem	Little or no problem
Is the deterioration of county roads and bridges a problem for farmers in your area insofar as their hauling grain to your elevators?	7	33	55
Is the deterioration of county roads and bridges a problem for you in hauling feed, fertilizer and other inputs to farmers?	5	31	58

The same proposed solutions were offered to elevator managers as to farmers. Their choices differed considerably from those of farmers.

[In percent]

	Agree	Disagree	Not sure
Upgrade key county roads and drop others from the system	25	50	18
Change allocation formula to take State funds from primary system and apply them to county system	41	27	25
Reduce or eliminate agricultural motor fuel tax exemption, earmarking the added revenues for repair of county roads and bridges	36	42	15
Continue present program, reducing weight limits, where necessary, for vehicles using county roads and bridges	24	56	14
Earmark additional Federal funds for repair and/or upgrading of county roads and bridges	49	26	16
Levy a county tax on all real estate to bring the entire system up to needed standards	18	57	17

Because of their mutual interest in county roads and bridges, it would seem that farmers and elevator managers should get together on the preferred solutions. Some compromise on the part of both groups could help forge a strong and united opinion when the tough choices have to be made.

LOCAL ELEVATORS FACE MAJOR ADJUSTMENTS IN NEXT DECADE

Successful elevators will have to adjust to fit transportation changes and needs of farmers.

The origin of many towns can be traced to the elevator. It is the major business and biggest employer in many small towns. So it's little wonder that elevators are thought of as much more than a piece of the marketing system.

That extra dimension which elevators have in the minds of many people was revealed by the response to the statement, "The primary goal of our grain transportation system should be to increase its efficiency even though such changes might work hardships on local elevators and small communities." Thirty-five percent agreed, but there were 40 percent who disagreed. Twenty-one percent of those answering were not sure or had no opinion.

When the Advisory Panel began discussing the place of local elevators in our grain marketing system, it began by looking at elevators' real purpose—their reason for existence. Panel members agreed that elevators which provide a competitive market for grain—competitive in both price and service—are likely to remain in business.

So the real question the Panel—along with farmers—must answer is this: Are those elevators which fall short of meeting this criteria over a period of time worth "saving" for some other purpose? How important is their contribution to keeping the local community alive, or in offering another marketing option to grain producers?

To answer that question, you have to put a price tag on the cost of saving the elevator . . . and decide who's going to pay it. Here are some of the options the Advisory Panel examined in regard to saving a non-competitive elevator.

1. Farmers could support such an elevator by continuing to sell at least some of their grain to it, or buying some of their supplies from the elevator. Assuming that they could get better grain prices or lower prices on inputs if they dealt with another elevator, this action reduces farmers' net income.

In fact, some farmers consciously do this. They may do it because they believe strongly in maintaining the local elevator. They may support an elevator in order to maintain some competition, giving them another option when marketing grain.

2. The local business community, recognizing the importance of the business the elevator brings to town, might decide to invest in or make a loan to the elevator. More than likely, they would only be willing to do this if they thought their funds were going to help the elevator become more competitive—by creating new facilities that would make it more efficient, such as a unit train loading facility, or by expanding its base of operations to spread fixed costs over more business volume.

3. Or, the elevator management or board of directors might decide to increase efficiency by merging with a nearby elevator, going into a joint venture with another elevator, or through some other arrangement that could make them more competitive.

Put quite simply, if you want to maintain more options for marketing your grain by keeping a less-efficient elevator in business, it's going to cost something. In some cases, that investment may be only your time and leadership in persuading others that a new direction is needed, but it's still going to cost something.

The important place that many people believe elevators occupy in preserving small towns is one reason that the question of branch line abandonment generates such heated discussion. In response to the statement "The loss of the elevator in a small town will cause the town to go downhill pretty rapidly", 61 percent agreed. Only 19 percent disagreed, and 15 percent weren't sure or had no opinion.

When people were then asked how they felt about the statement "An elevator won't stay in business very long if it loses its branch line service," 39 percent agreed, 34 percent disagreed. Looking at the response in states where grain transportation is heavily dependent on railroads—primarily states west of the Mississippi River—the percentage agreeing with that belief rose sharply.

[In percent]

Response	North Dakota	Kansas	Nebraska	Texas	Oklahoma	Colorado
Agree	76	59	55	51	48	45
Disagree	16	20	25	26	17	25
Not sure/no opinion	7	17	16	20	30	25

Note that in many of these states, those agreeing outnumbered those disagreeing by more than two-to-one.

Is there evidence to show that elevators "die" when they lose their branch line service? Several midwestern universities have conducted studies on this question. All have concluded that elevators that have lost their rail lines have remained in business.

One study measured the volume of business done by elevators which had recently lost branch line rail service, and also the volume of retail business done in the town. These elevators survived by using alternate transportation and perhaps changing their business emphasis. They did not grow as fast as elevators on rail lines but they did grow and produce positive earnings—sometimes as large as other elevators'. In no case did the feared demise of the elevator occur as many people thought it might.

A similar question was asked of elevator managers in the Pioneer poll. Their questionnaire asked them to agree or disagree with this statement: "A local elevator must have rail service if it expects to stay in business." Notice the contrast in those who currently have branch line service and those who don't . . . and how distance from a barge terminal affects the answers.

[In percent]

Response	16-State average	Elevator location: Main	Branch	No rail
Agree	44	47	50	16
Disagree	46	44	40	73
	Distance from barge terminal (miles): 0–75	76–150	151–250	250 plus
Agree	26	39	44	62
Disagree	59	51	48	31

The question of the future of local elevators is one in which farmers can easily become involved and have some effect . . . in contrast to some other grain transportation issues which are more complicated and which require influencing a lot of other people—carriers, government, etc. This is particularly true if your town has a co-op elevator.

The Advisory Panel concluded that maintaining a local elevator which does not meet the test of helping move grain to its ultimate market efficiently is going to cost someone money. You may feel that the convenience and increased competition supplied by another outlet for your grain is worth that price. You may even be able to persuade others in the local community to help shoulder that cost.

It would seem logical, though, that at some point a move should be made to remedy the problems that are keeping that elevator from providing really effective competition. In the end, competitive forces have a way of winning out—unless some artificial factors are introduced. Support of a non-competitive elevator without insisting on improvement is more of a goodwill gesture than a business investment.

Almost certainly, the characteristics of local elevators are going to change in the next ten years. This is one area where you can take an active part once you decide what you expect from the elevator. As the customer, you can call the shots . . . and as the one who pays the bill for less-than-efficient operations, you have a right to be interested and active in guiding the change.

DECISIONS ON RAILROAD BRANCH LINES NEED TO BE BASED ON REALISTIC, LONG RANGE VIEW

Farmers generally favor profit incentives, rejecting more regulation or takeovers.

Railroad branch lines are generally in bad shape. Overall, only 18 percent of the farmers responding to the Pioneer poll rated branch line conditions as excellent or pretty good. Variations among states are wide, ranging from 7 percent in South Dakota to 35 percent in Colorado and 36 percent in Texas.

Elevator managers were kinder in their appraisal. Nearly 29 percent of them said

branch lines in their areas were in pretty good or excellent condition.

No matter how decrepit they may be, however, branch lines hold a special place in farmers' minds. Two questions in the poll reveal why.

Thirty-nine percent agree that "An elevator won't stay in business very long if it loses its branch line service." Sixty-one percent agree that "The loss of the elevator in a small town will cause the town to go downhill pretty rapidly."

So even though only 30 percent of the farmers responding see much of their grain being shipped over branch lines, there's a desire to hang onto these lines for reasons that go far beyond their grain transportation function.

CONSIDER ON INDIVIDUAL BASIS

"Branch lines" can't be lumped into one category. Some are thriving, providing good service for shippers and profits for the railroad. So the attention should be aimed at those that are in trouble.

A number of courses were outlined in the questionnaire. They can be grouped into three types of action:

(1) Force the railroads to operate all their branch lines, even those that are not profitable;

(2) Allow the railroals to earn enough on branch lines so they would have incentive to improve them and continue service;

(3) Inject money—loans or grants—from government or users of the railroad.

FORCING WON'T WORK

The Advisory Panel agreed with the poll results on the question of forced service. By a 42-to-28 margin, farmers rejected this idea. In only two states—Kansas and Oklahoma—were there more farmers favoring than opposing forced service. In both of these latter states, a high percentage of farmers ship a majority of their grain over branch lines.

The alternative to forcing continued operation of unprofitable branch lines is, of course, eventual abandonment. The Advisory Panel concluded that those farmers who implied approval of dropping unprofitable branches recognized that profits are necessary if railroads are to provide good service. Perhaps many of the current rail service problems are due to the past success of shippers in delaying or preventing abandonments of unprofitable branches.

The panel agreed with the majority view on this issue because forcing railroads to operate unprofitable branch lines reduces the earnings needed to repair track. Poor maintenance tends to shift traffic to nearby lines or to trucks . . . further cutting income on the poorly maintained line. This results in further declines in service.

Eventually, this vicious cycle results in abandonment of service—even though the line may not yet be officially abandoned. Branch lines must earn a profit or they face abandonment; experience bears this out.

INCREASING REVENUE MOST EFFECTIVE ANSWER

Instead of a "whip", the Panel—and a strong majority of farmers—felt that a "carrot" would be more effective. Nearly 56 percent agreed with the idea of letting railroads raise rates enough on branch line service to make it profitable. Only about 10 percent disagreed with this idea; 21 percent weren't sure.

Even in Kansas and Oklahoma, where branch line service is so important, farmers favored this "free enterprise" approach by 51-to-34 and 71-to-13 margins, respectively.

The Panel emphasized that rate changes—not necessarily increases—should be permitted. In some cases, lower rates could encourage enough additional traffic to make the line profitable. Rate increases may be needed, however.

The important point is that revenues—rates times volume—determine whether a line is profitable or unprofitable.

MIXED REACTIONS TO OTHER POSSIBILITIES

But if neither the whip nor the carrot seems to fit the situation, what about governments, individuals or groups investing in branch lines?

Of the half dozen such options offered in the questionnaire, only two received much support. By a 52-to-28 margin, farmers approved of state or federal longterm, low interest loans (not grants) to railroads for upgrading branch lines. By a 37-to-31 margin, they also favored similar loans to cooperatives made up of shippers and/or farmers for purchase or repair of branch lines. Grants, other kinds of loan and direct investments by governments, farmers or users were not popular.

And farmers were 71-to-7 opposed to state government buying and operating branch lines.

PANEL RECOMMENDS AGAINST SHIPPER INVESTMENTS

The repayment record on loans made to railroad branch lines is not good, especially if they are made to bankrupt or near-bankrupt railroads.

For example, many loans were made by shippers or by combinations of shippers and governments to the Rock Island Railroad. With the liquidation of the Rock Island, it is highly questionable whether all of these outstanding loans will ever be repaid in full. Some of these may, instead, turn out to be grants to the Rock Island estate.

Such loans, if made at all, should be secured by collateral or made with the condition that repayment comes ahead of unsecured creditors. And shippers on the line, whether or not they are tied in financially, should commit themselves to utilize the track.

TAKEOVERS SELDOM WORK

Takeover of a line by private industry or investors does not always work. Success is most unlikely in rural areas that lack the steady revenue from shipping by other, less-seasonal businesses along the route.

If the line offers the kind of potential needed for successful operation by a "takeover" group, it probably wouldn't have been threatened with abandonment in the first place. In fact, if shippers made the same degree of commitment to using a railroad branch line as they would if they owned it, its chances of survival would be good. This could be done through a contract specifying annual shipment volume, car supplies, rates and other aspects of service.

The Panel's final advice on branch lines: Farmers should not be bystanders. What to do about branch lines is not just a problem for elevator operators—because the outcome will affect the costs of moving grain from your area. And those costs are assessed, in most cases, to the farmer.

RAILROAD MAIN LINES: KEY TO INCREASED MOVEMENTS OF GRAIN TO PORTS

Improvements at terminals should come first, advisory panel says.

Probably no other issue in the Pioneer Poll on Grain Transportation received such a strong vote of agreement: Railroad main lines are important. Fifty-four percent said they are "very important". Another 19 percent said they are fairly important, for a total of 73 percent.

The percentage rises sharply among those who said grain transportation is a "serious problem." Seventy percent of these farmers said main lines are very important and another 15 percent said they are fair important.

As a result, three of the methods for putting money into main line improvements received strong approval from farmers.

[In percent]

	Agree	Disagree	Not sure
Long-term, low-interest loans from the State or Federal government should be made available to railroad companies for the purpose of upgrading main lines	58	21	14
Railroads should be allowed higher freight rates in order to make the rebuilding of main lines financially attractive to them	53	20	21
Federal grants should be made available for the upgrading of those main lines important in moving grain to market	45	33	15

Three other ideas—two of which involved direct federal investment—were not favored. When asked if railroads should be allowed to abandon unprofitable branch lines in order to provide additional earnings for rebuilding main lines, 41 percent disagreed and only 29 percent agreed. Another 24 percent were unsure.

The ideas of direct federal involvement were soundly defeated. The first, that of nationalizing the roadbeds but allowing railroads to continue operating the trains, went down by a 51-to-21 percent vote. Again, there was a large number that were not sure (21 percent).

Regarding total nationalization of the railroad industry, only 13 percent favored this step while 55 percent opposed it. More than 23 percent were unsure. In only four states—Minnesota, North Dakota, South Dakota and Wisconsin—were 15 percent or more of the farmers in favor of railroad industry nationalization.

In discussing the options for main line improvement, the Advisory Panel delved into some basic questions.

Is repairing of main lines the best investment that can be made to speed grain to export terminals?

Why have some main lines fallen into such a rundown state?

Should every main line be preserved?

IMPORTANT TO UNDERSTAND RAILROADS' HISTORY OF DEVELOPMENT

There was no "master plan" for railroads when their development took place. The government granted land to some investors willing to build railroads to help tap the frontier lands. Railroads, along with the rivers, brought people to the new land areas, hauled in the machinery and other supplies needed, hauled out grain and livestock. No highway system existed, so branch lines reached out from the main lines. Elevators sprouted every 5 to 10 miles so that farmers could haul grain and other products by horse and wagon.

By the time this "topsy-like" system was in place in Iowa, for example, nearly everyone was within a half-day's drive (with horses) of the railroad.

Ironically, railroad companies helped educate farmers and townspeople to the needs of an all-weather road system. They sent educational caravans to show how poor roads were keeping farmers from reaching railroad stations, especially in the rainy season. The better road movement, which began in the 1920's, reached its high point with passage of Interstate Highway system legislation.

During the 1930's, a system of locks and dams was built on the Mississippi River in order to maintain a 9-foot channel for barges. The big surge in barge traffic came after World War II. In 1945, for example, only 4 million tons of grain moved past St. Louis. By 1978, that had grown to 78 million tons.

Other changes took place that cut into railroad business. Hog and cattle slaughter moved from a few points such as Omaha, Chicago and Indianapolis to dozens of more modern plants located in major feeding

areas. And most of the processed meat went to metropolitan centers by refrigerated trucks, high-balling along the Interstate system. Even fresh fruit and vegetables from the West Coast switched from refrigerated rail cars to trucks.

You can get arguments on both sides of the fence: Did railroad service decline because shippers switched to trucks and barges, or did shippers switch because railroads gave poor service?

Resolving that question isn't important now. The need is to understand what can be done, under today's situation, to make best use of railroad main lines.

TOO MUCH TRACK FOR THE BUSINESS

It is clear that many of the major grain producing states are "over-railroaded"—there are simply too many miles of track chasing too little business. For example, until the Rock Island line was ordered dissolved, there were five main lines between Omaha and Chicago, five between the Twin Cities-Chicago, Kansas City-St. Louis and Kansas City-Houston.

It is in such areas and others with an overabundance of trackage that main lines (and branch lines) are in the poorest shape. What is the cause?

One of the most widely held beliefs is that railroad tracks are in bad shape because earnings were not put back into the railroad, but were instead used to diversify by investing in other businesses.

This idea got its start with the Penn Central, which did, indeed, "bleed" the railroad in an attempt to diversify. It eventually became the heart of Conrail, the government-financed railroad serving much of the northeastern quarter of the U.S. at an annual cost to taxpayers of $200-$400 million.

Similar charges are made about the Illinois Central Gulf. But IC Industries, the parent company for the ICG railroad, claims it has put more back into the railroad than it has ever taken out. And an Interstate Commerce Commission investigation could find no widespread proof that railroad companies were diverting rail earnings into other kinds of businesses.

The "diversion earnings" idea persists, however. Elevator managers, 68 percent of whom believe their rail service is affected by lack of reinvestment in rail facilities, clearly blame diversion of earnings.

"If you feel lack of reinvestment is a problem, how much do you think is due to railroad companies diverting earnings from their rail operations into their non-railroad businesses?" When elevator managers were asked this question, 50 percent answered "A great deal" and another 38 percent said "Some."

And they felt so strongly that 63 percent agreed with the idea of prohibiting railroads from investing any of their rail earnings in nonrailroad businesses.

Elevator managers strongly disagreed (45-to-26 percent) with the idea of forcing railroads to continue operating unprofitable operations. And 78 percent felt that if railroads were allowed more freedom to set rates and drop unprofitable parts of their system, they should reinvest in roadbeds and equipment.

The most likely reason for lack of rail investment is simply lack of profits. Unlike locomotives and rail cars, which can be financed through banks and trusts, borrowing to build railroad track is not an option open to the majority of railroads. Except for a handful of railroad companies, the low rate of return (less than 3 percent) of most rail carriers keeps them from attracting the capital they need at a reasonable cost.

GOVERNMENT LOANS MADE FOR MAIN LINE IMPROVEMENT

Beginning in 1976, the federal government began making long-term, low interest loans for improvement of main lines. Decisions on where the money went were supposed to be based on the likelihood of enough earnings being generated to repay the loans.

Such loans have tended, in some cases, to perpetuate the "over-railroaded" condition of some areas. For example, $25 million was appropriated to improve one of the five lines from the Twin Cities to Chicago—and an additional $16 million has recently been added to bring this project to completion.

State governments have flirted with the idea of helping save main lines felt to be critically important. The Iowa legislature in 1980 authorized issuance of up to $100 million of revenue bonds for purchase of the Rock Island east-west main line. It required that repayment of the bonds was to come from profits, not from the state's general fund. This condition may make the bonds difficult to sell.

WHERE SHOULD INVESTMENTS BE MADE?

With repairs to severely beaten main lines costing $100,000 or more per mile, the question remains: Is this the best place to invest money to speed grain shipments?

Probably not, in the opinion of the Advisory Panel. Improvements at railroad terminals, like Kansas City and Houston, could probably pay bigger dividends and pay off more quickly.

Houston offers a prime example. Improvements could be made there for an estimated $4.5 million—the cost of upgrading about 40 miles of main line. These would permit unit grain trains to bypass two congested areas in the Houston yard and to be quickly reassembled after unloading for the trip north. One estimate places the time savings at 8 days—which means that unit grain trains could cut turnaround time by about 40 percent.

This possibility has existed for some time. But little happened until Iowa shippers, Houston rail terminal authorities and labor representatives were brought together. They discovered each would gain if changes were made to boost efficiency: Houston could continue to be a major grain export terminal, providing jobs for railroad and dock workers, and Iowa shippers would not have to divert grain to other ports.

Incidentally, proof that profitable railroads will invest in better facilities is evident at North St. Paul, Minnesota and North Platte, Nebraska. The Burlington Northern built a new terminal yard at North St. Paul and the Union Pacific built a huge classification yard at North Platte—both of which speed the movement of freight trains.

CONCLUSIONS OF ADVISORY PANEL

The following facts should be considered relative to railroad main lines, according to the Advisory Panel:

1. Loans by federal or state governments for main line improvement in areas which are "over-railroaded" should be made very selectively. Making a low-interest loan available may simply "prolong the agony" and draw off enough business on the improved line to keep more viable lines in the same area from getting enough traffic to be profitable in their own right.

2. Attempting to control how railroads invest their earnings would probably not be effective or practical.

3. Allowing railroads to increase rates or to reduce branch line mileage in order to increase earnings is the most effective way to improve service. Profitable railroads provide service, pay taxes, hire people and spend money in order to maintain or improve efficiency.

4. There is simply too much main line track in some areas for the amount of potential business. From a farmer's viewpoint, it is probably better to be served by elevators located on a single profitable railroad than to have the choice of selling to elevators located on two or more unprofitable lines. The biggest sacrifice or adjustment will fall on elevators formerly served by lines that do not survive.

RAIL CARS FOR SHIPPING GRAIN: HOW DO WE MAKE THEM WORK HARDER WHEN WE NEED THEM?

Better utilization may be only way to move larger volumes of grain.

It's common knowledge that there's a shortage of rail cars for hauling grain. Right?

Like a lot of other grain transportation issues, the answer needs to be hedged—

It depends on whether you're looking for boxcars or hopper cars.

It depends upon what time of year you ask the question.

It depends upon whether you recognize that the hauling capacity of the U.S. fleet of grain cars is a product of number of cars times the number of round trips they make each year.

A study made in 1979 showed that the average grain hopper car makes only 13 round-trips a year. If that could be increased to 17 trips—by shaving the turnaround time from 4 weeks to 3 weeks—the present number of cars is adequate for all but the biggest peak demands. And it would be adequate, based on expected export growth, until 1985!

In fact, getting more round trips from each grain car may be the only way to handle the expected surge of grain exports. Based on 5 to 6 percent annual growth in grain exports and 3.5 percent for other uses of hopper cars, a doubling of the hopper car fleet would be needed by 1990—unless round trips per year can be boosted beyond the current 13.

Not only would the cost of these added cars be staggering ($5 billion in 1980 dollars) but the increased car numbers would probably not solve the problem. In slack times, they would clutter up sidings and terminals. In periods of heavy shipments, more cars could aggravate congestion at terminals such as Kansas City and Houston.

ELEVATOR MANAGERS TELL VIEWS

Questions about the supply of grain cars were included in the Pioneer poll questionnaire sent to elevator managers. Two areas were explored. How can we increase the effective car supply and how much has the car allocation authority of the Interstate Commerce Commission helped spread cars where they're needed?

The managers had mixed reactions toward the ICC authority. During periods of car shortages, the ICC has the authority to reallocate rail cars among shippers. It can't increase the number of cars, however—only shift around the existing supply.

"Do you think this authority, as practiced by the ICC in the past five years, has improved the ability of the nation's grain transportation system to move more total grain?"

When that question was put to the elevator managers, the response looked like this:

21 percent said the ICC authority helped move more grain.

46 percent said the ICC authority didn't help;

28 percent were not sure whether the ICC had helped or not.

But when asked whether the ICC's authority to reallocate cars should be ended, more elevator managers voted to continue it than to end it. Thirty-five percent favored continuing the authority; only 21 percent said "end it" and 37 percent weren't sure or had no opinion.

HOW SHOULD SUPPLIES BE INCREASED?

If elevator managers aren't convinced that shifting cars around is the best way to move more grain, how would they go about increasing the effective supply of cars?

Four choices were offered, and the managers were to indicate their first, second, third and fourth choices. Here are the results based on first choices.

[In percent]	1st choice of—
Shippers, receivers and carriers should work together to get more efficient use of present car fleets	63
Shippers and receivers should continue supplementing the supply of railroad-owned cars by owning or leasing cars	18
Railroads should be required to provide all the cars needed so elevators can ship grain whenever they wish	16
Federal or State governments should purchase or lease cars to meet peak demands and growing needs	4

BOX CARS ON WAY OUT

One fact which creates an actual shortage of grain shipping cars is the declining number of box cars. The number of box cars being junked far exceeds the number being built. Only the Burlington Northern still has a sizeable number of box cars suitable for grain.

So if your elevator sits on a branch line that can't take 100-ton hopper cars, there probably is a car shortage. Worse, some grain buyers will not accept grain in box cars because of the labor required to unload them. Unless a branch line can be upgraded to carry hopper cars, the only future for an elevator on that line is truck shipment to a nearby elevator that can handle hopper cars or to a sub-terminal or barge point.

TACKLING SLOW TURNAROUND PROBLEMS

Four factors are primarily responsible for stretching out the turnaround time for grain cars.

1. Cars get delayed by congestion at terminals or by grain inspection procedures.

2. They may not be started toward their destination promptly after loading or unloading.

3. Poor track, both branch line and main line, may slow the trip.

4. They may not get loaded and unloaded promptly.

Toward the solution of these problems, the Advisory Panel believes these actions would be helpful.

1. Terminal improvements referred to in the discussion of railroad main lines would be most helpful. Improvements in terminals that allow trains to move through in a shorter time can save days, whereas improvements in main line track generally shave only hours off the round-trip time. Railroad companies may have to be prodded by shippers to make these changes—and they also must see enough potential profit to make the changes attractive.

2. Demurrage charges levied against grain receivers should be increased. The charges now assessed against receivers if they fail to unload cars promptly are often not enough to make it profitable for them to pay overtime rates that may be needed to get cars unloaded promptly.

A similar penalty for railroads which fail to pick up cars when they're ready to move would also lead to better car utilization.

A contract between a shipper and a railroad includes some provision which gives the railroad an incentive to move cars as quickly as possible. Along with specifying rates, annual shipping volume and car supply terms, some contracts usually include a penalty or reward for the carrier based on turnaround time. For this reason alone, contracts are likely to become more frequent as we look for ways to beter utilize rail cars and move grain more efficiently.

3. When federal grading of grain cars is performed at a terminal, this can delay cars as much as 5 or 6 days. While terminals with grain grading staffs will resist being bypassed, efficient utilization of grain cars demands a better system.

OWNERSHIP OR LEASING OF HOPPER CARS

Even if the total hopper car fleet was at its optimum level, the attraction for an elevator to own or lease hopper cars is strong when the railroad can't deliver. But caution is needed in taking such a step.

Be sure the railroad will accept your cars by granting OT-5 authority before you lease or buy cars. Either purchase or lease is a long term commitment—5 or 12 years, typically, in the case of leases. If there are more cars available than grain to haul, cars owned or leased by the elevator may not be used. Or the railroad may insist that half the cars you load be theirs. A hopper car sitting empty is very expensive.

Large shippers have an advantage in that they can move cars around to get higher utilization. But the smaller elevators may lack that choice.

MAJORITY FAVOR EQUITY IN TREATMENT OF ALL TRANSPORTATION MODES

Past subsidies should be ignored in apportioning future aid.

Are barge companies, truckers and railroad companies subsidized by government? If so, are some getting more than their "fair share"?

Put those questions to representatives of the three major grain transportation modes and you'll generate a heated discussion. But you'll get very little agreement . . . for reasons explained later.

Both the farmer and elevator manager poll questionnaires contained a question on this issue. "Barge lines, unlike railroads or trucks, do not currently pay the cost of maintaining and operating their 'roadways.' What part, if any, of the costs of providing and maintaining the navigable waterway system do you think barge companies should pay? Assume that if they pay part of the costs, some of this additional expense would be added to the costs of shipping grain."

The answers were clearly in favor of equity. Sixty-three percent of the farmers and 60 percent of the elevator managers said all modes should pay the same share of costs incurred in the operation of their systems.

But defining that share is practically impossible. So the Advisory Panel finally said, in effect, "There is no way to determine how much subsidy each mode has received in the past, so let's forget the past and consider each mode individually under today's circumstances."

TAXING FUEL USED BY BARGE TOWS

The need to replace Locks and Dam 26 near Alton, Illinois brought attention to waterway user charges three years ago. The Administration refused to approve funding for the new lock—a bottleneck that restricts Illinois and Upper Mississippi river traffic, much of which is agricultural products—unless Congress also approved a tax on fuel oil used by barge tows.

A tax, starting at 4 cents per gallon in 1980, and ranging up to ten cents by 1985, was put on the books. And funding was approved for Locks and Dam 26.

Construction finally began in the spring of 1980. Legal action by environmentalists and railroads delayed the start of the project over five years. Completion is expected to take a minimum of eight years unless another legal challenge is successful in stopping construction.

The tax will add from 0.4 cents to 1 cent per bushel for barging grain from Iowa to the Gulf. The U.S. Department of Transportation estimates that the ten cents per gallon tax will provide about a quarter of the operating costs of the inland waterway system. The new feedral fuel tax on barges is the same as the federal fuel tax currently being paid by the trucking industry. The trucking industry also pays state taxes for highway maintenance and construction.

INLAND WATERWAYS SERVE MANY PURPOSES

The Advisory Panel and a majority of the 35,000 farmers polled agreed that full recovery of all costs involved in the operation and maintenance of the waterways should not be levied against barge lines because of the wide range of benefits derived from waterway projects. The 27 dams between Minneapolis-St. Paul and St. Louis help control floods and increase the value of flood plain land. The system contributes to the stability of water supply to communities along the river. Locks are necessary to allow boats—including thousands of pleasure boats—to navigate past the dams. At some of the dams, turbines generate valuable electricity. Also, the dams form large lakes for recreational purposes, and result in bayous and marshes ideal for fish, waterfowl and other wildlife. Regional development of vast geographical areas adjoining the rivers is another major benefit of the water projects.

RAILROAD PICTURE ALSO CONFUSING

While the railroad industry contends waterway carriers are given an unfair advantage because the water right-of-way is subsidized by government and rail routes are not, the barge people, too, can bring up a number of difficult questions. Didn't railroads accept the right-of-way land grants from the government in exchange for extending their lines—land which has become a large revenue source because of its valuable resources? What about government subsidies to Conrail and the right-of-way loans and grants to railroads under the 4 R Act? Hasn't government subsidized the Railroad Retirement Act fund?

To which the railroads point out that until 1946 they hauled government freight—including millions of tons during World War II—at half price. Railroad penetration of the frontier made this land useful by giving it access to markets, and it tied the nation together—as did the inland waterway system. It is argued that Conrail exists for social purposes—to provide freight service where it is not economically feasible—not for the benefit of the railroads.

Truckers argue that their license fees and fuel taxes cover their share of highway costs, the same point the water carriers are trying to make now that user charges are being implemented. Another argument states that if it weren't for truck traffic, motorists wouldn't have the Interstate system. And the primary system would be a much slimmer network. A similar argument can be made on behalf of the inland waterway system.

It was because of this endless parade of competing viewpoints that the Advisory Panel finally decided there is no way to accurately determine whether past subsidies among modes of transportation have been equal.

The Panel suggests these guidelines or actions relative to inland waterways:

1. In making future charges to users of waterways, all past investments should be considered to have been expended for flood control or for other social purposes.

2. An appropriate portion of future investments and operating costs of the inland waterway system—apart from those necessary to maintain flood control and electrical generation—should be shared by recreational and commercial navigation, with regional development benefits considered as a cost offset.

3. A second 600-foot lock should be added at the same time that the new 1,200-foot lock is built at Locks and Dam 26, as recommended by the Rural Transportation Advisory Task Force earlier this year.

4. Since barge companies are now expected to pay a portion of maintenance and operational costs of inland waterways, they should have some "say" on what projects are developed. It is unfair to ask barge companies—and the farmers whose grain they haul—to pay for projects which are built primarily to provide employment or to benefit a limited area.

5. Future subsidies in whatever form to the other transportation modes should likewise be considered for reasonable recovery. The Pioneer poll indicates that farmers want railroads and barge companies to repay loans and not consider them as grants. In short, do the best possible job of equitably recovering future government investment and subsidies to each transportation mode—separating out investments made for social or non-transportation purposes.

FARMERS AND PANEL FAVOR LESS FREIGHT RATE REGULATION, BUT TOTAL FREEDOM NOT PRACTICAL EVERYWHERE

Need for stable, predictable freight rates, protection of shippers prevents total deregulation.

Trucks and barges carrying grain are completely exempt from government control over their rates, which move up and down according to supply and demand.

Railroads, which must compete with trucks and barges, are required to follow specific procedures in changing rates. Changes generally require at least forty-five days to put into effect. The Interstate Commerce Commission also questions the railroad's rate decisions, particularly if shippers or competitors protest the change.

Question: Are there reasons to continue this different treatment of competing transportation modes?

Question: If not, which way do we move to equalize the situation? Do we give the railroads more freedom in rate setting? Or do we apply some of the railroad rate regulation machinery to trucks and barges?

Farmers—and elevator managers as well—put in their bid for less regulation, not more. While the Advisory Panel agreed, some reservations surfaced when the possibility of total deregulation was considered. "Regulatory reform" seemed more practical.

LESS OR MORE REGULATION OF RAILROAD RATES?

[In percent]

Option	Opinions of Farmers	Opinions of Elevator managers
Total grain rate deregulation	15	16
Deregulate where adequate competition exists	25	24
Continue ICC regulation—speed up changes	19	23
Total approving looser regulation	59	63
Regulate truck and barge rates like railroad rates	9	12
No change	7	14
Uncertain/no answer	24	13

Three proposals in the questionnaire dealt with easing or eliminating rail rate regulations. Together they earned the approval of about 60 percent of the respondents.

At the other extreme, a proposal to regulate truck and barge grain rates in the same way as rail rates was unpopular. So was a suggestion of leaving the situation as it now stands.

The Advisory Panel rejected complete deregulation of railroad freight rates on grain. But it believes changes need to be made, and chose a middle-of-the-road open-minded course. The reasons, though not simple, make sense.

WHY TOTAL DEREGULATION NOT PRACTICAL

Allowing railroads total freedom would almost certainly cause problems. The Panel felt that deregulation could boomerang and lead to even stricter regulation in the future.

Among the risks of total deregulation:

1. It is almost inevitable, especially in areas with limited competition, that there would be charges that railroads were abusing their power by setting rates too high.

2. Joint-line rates (rates for hauls that require movement by two or more railroads) would be more difficult to set. At present, such rates are set by "rate bureaus" whose meetings are granted anti-trust immunity because of the need for railroads to coordinate rates.

3. Perhaps most important, rapid fluctuations in grain shipping rates would seriously hamper grain marketers. Sales contracts for grain are made several weeks or months in advance of actual grain movement. Such business would be almost impossible under total deregulation unless shippers and carriers could write long-term contracts.

While the panel favors legalizing contracts, it does not believe that contract rates should be forced on shippers.

FREEDOM WITHIN LIMITS A POSSIBILITY

One step toward more freedom would be to set a "zone" within which rates could move freely. A floor rate, equal to variable costs for each particular route, would be set. Since variable costs cover only a portion of the full cost of staying in business, the ceiling rate would be set at perhaps 180 to 200 per cent of the floor.

Rates could be adjusted up or down between the floor and ceiling without any ICC involvement—but if a railroad wanted to charge rates outside the flexibility zone, it would have to present its case to the ICC.

While such a system offers advantages—it combines rate flexibility with some protection from abuses—it doesn't provide the stability needed by grain shippers. Another criticism is that rates might be moved up as barge rates move up, but might not be moved down when barge rates decline.

Seasonal rates also have shortcomings. These would rise and fall according to traffic and car supply.

Such rates would have to be on a fixed time schedule, or at least announced well in advance of changes. Therefore, they may not truly offer the needed flexibility to meet fast changing conditions.

Another possibility would be to allow railroads to publish rate changes for certain traffic on shorter notice. The Advisory Panel felt this would be of some benefit in making railroads more competitive. However, several members have reservations about full endorsement.

CONTRACT RATES: A NEW DEVELOPMENT

If you knew you had a volume of product to move between two points, it would seem to make sense to make a mutually-beneficial contract with the carrier. It would cover a specific period of time and would spell out the shipper's and the carrier's obligations.

A high percentage of barge freight is moved under such contracts. But until 1978, the Interstate Commerce Commission said that such contracts between shippers and railroads were illegal. Now that the ICC has changed its mind, another option is open to grain shippers.

A contract can provide many advantages:

1. Stable, predictable rail rates needed for long-range grain sales.

2. Incentives for more efficient use of rail cars, by rewarding the railroad for cutting down round-trip time or penalizing it for longer turn-around.

3. Guaranteed car supplies for shippers, and guaranteed minimum traffic volumes for the railroads.

4. Agreement on other specific services or conditions beneficial to one or both parties.

Contracts are not without problems, however. Shippers who do not want to sign contracts or who are not in a situation that adapts to contract rates worry that contract shippers will monopolize car supplies.

The idea of each shipper negotiating his own terms also raises the possibility that carriers would favor certain shippers over others. To answer this fear, some have proposed that all terms of contracts be made public . . . and that any shipper should be offered the same terms negotiated by any other shipper. However, some shippers feel this invades their privacy by revealing too much about their business operations.

It was agreed that permission for shippers and railroads to negotiate contract rates should be put into law, rather than being at the discretion of the ICC. There was a feeling that "what the ICC giveth, it may also taketh"—and that this uncertainty keeps many shippers who would like to try contract rates from negotiating them.

ADVISORY PANEL DIVIDED ON RATE FLEXIBILITY

While the Panel agreed that contract rates should be encouraged, it is divided on rail rate flexibility.

On one hand, rate flexibility could help improve car utilization and generate additional revenues from branch lines, improving their chances of remaining in service.

But the lack of stability and the possibility that railroads might abuse rate flexibility in "captive shipper areas" kept the Panel from fully endorsing complete rate flexibility.

Loosening regulation of railroad grain freight rates has its risks, as does increased use of contract rates. But the Panel believes the risks are necessary . . . to improve car supply and utilization, to reduce the inflexibility of government regulation and ultimately, to move grain in the most efficient ways.

If railroads are expected to correct their shortcomings without added regulation, they must have more freedom to change. With the exception of areas where competition is lacking, the law of supply and demand will penalize those transportation systems which attempt to extract unfair profits—and reward those which do a good job.

NEED FOR INCREASED PRODUCTIVITY REQUIRES CHANGES IN LABOR-MANAGEMENT RELATIONS

Advisory panel suggests compulsory arbitration when bargaining fails.

"Productivity per man hour on the railroads is very low. If railroad workers put in the effort that farmers have to, there would be no problems in the rail transportation system."

"The railroad system needs a shakeup or a change in its management and operators."

These are two comments typical of those received from Pioneer poll respondents. More than half of the farmers responding took the time to write comments at the end of the questionnaire—an indication of how strongly they feel on various grain transportation issues. Many of these dealt with railroad labor and management.

Farmers have little direct contact with either railroad labor or management. Their feelings are thus based on what they hear, read or observe. Their comments have the ring of conversations heard in a farm-town coffee shop.

Railroad management is felt to be lacking both in skills and willingess to push for innovations. Farmers were especially critical of management for failure to maintain tracks. Labor caught its share of brickbats, too, for having negotiated work rules that reduce efficiency, while collecting high wage rates and benefits that push up operational costs.

Most of the comments, whether applied to management or labor, boil down to complaints about lack of productivity. Many of the poll respondents drew a comparison between the increase in agriculture's efficiency and that made by railroads.

UNEQUAL BARGAINING POSITIONS

The process of railroads bargaining with labor has often been affected by the unique nature of the services supplied by railroads. As a result, such negotiations are frequently a lopsided contest.

When a manufacturer of a product is struck by a labor union, users of that product can usually find an alternate supplier. Or they can lay in a stockpile prior to the strike. You can't "store" railroad service, however, and doing without it may be next to impossible. At best, alternative transportation can be costly.

This essential, "perishable" nature of rail service often gives labor a stronger hand than railroad management in negotiating issues affecting productivity. Labor's "voting power" advantage over management's tends to deter government intervention.

Stoppage of railroad service—or the threat of it—brings a lot of pressure on railroad management to reach a settlement. Shippers dependent on rail service press for a settlement at nearly any cost.

Once a settlement is reached and service resumes, however, the railroad is faced with the task of getting approval of freight rate increases needed to cover higher labor costs. Those who urged settlement at any price are by this time worrying about whether they can pass on the increased freight rates.

The pressure applied to railroads to settle on a contract, and lack of provisions for compulsory arbitration if they fail to reach agreement, has helped preserve work rules that hinder efficiency, and wage rates and benefits to railroad workers that most farmers feel are out of line.

HUNDRED-MILE RULE MOST CRITICIZED

High hourly rates, an abundance of paid holidays and substantial pension plans for rail workers are criticized by farmers. But nothing riles them more than the 100-mile rule—a method of calculating railroad operating men's wages that has persisted for years.

The system came about when the federal government took over the railroads during World War I. To replace the variety of methods being used to compute wages of operating personnel (engineers, firemen, brakemen and conductors), a uniform system was installed. By the time the railroads were returned to private ownership in 1919, it was firmly entrenched.

The system paid by the mile while the train moved. For time spent on the job before and after the train began its run, each hour was considered to be the equivalent of 12.5 miles. This derived from the fact that in those days, the average crew working 8 hours covered about 100 miles—or 12.5 miles per hour.

Inflation has, of course, pushed the mileage rates higher since this system was put into place. At the same time, runs of 250 to 300 miles are commonly made in eight hours due to more powerful locomotives, better track and improved coordination. A typical mileage rate for a freight engineer of 80 cents per mile thus results in a day's pay ranging from $200 to $240—and on "hot trains" carrying perishable products, 350 miles might be covered for a payment of $280.

Of course, on railroads with track conditions or equipment restricting 8-hour runs to shorter distances, operating workers' pay is not as high. The basic problem is that the present system, which got its start with the 100-mile rule, does not allow railroads to benefit as much as they might from increasing the speed of their trains through investment in better equipment and track.

Railroad union spokesmen defend the 100-mile rule as being simply a different method for coming up with the same result as if workers were paid by the hour. Other work rules are defended as being necessary for safety of workers and the public.

The decline in the number of railroad workers during the past 35 years has no doubt given union management an incentive to preserve as many jobs as possible through work rules. Some of the decline has come about because of changes in railroad operations—substitution of diesel for steam locomotives, longer trains and dropping of passenger service, for example. The resulting increase in output per worker from these and other changes has not kept other modes of transportation from gaining a bigger share of freight volume, however.

With only modest increases in freight volume, railroads haven't been able to absorb the workers displaced by changes made to boost efficiency. This has made it difficult for railway labor unions and their members to accept the elimination of certain positions or reductions in crew sizes.

Even so, railroad worker numbers have declined sharply. Excluding Amtrak, employment shrank from over 1 million in 1955 to 471,000 in 1978.

HOPEFUL SIGNS OF CHANGING VIEWS

Economics say that changes in work rules leading to greater efficiency could result in more jobs through lowering unit labor costs. Even though this is a difficult principle to support when immediate jobs are at stake, some railroad labor leaders are now recognizing that certain work rules may be having the effect of reducing jobs rather than protecting them.

A prime example of how railroads lose business—and workers lose jobs—is cited by one Advisory Panel member. What could have been a one-day round trip shipment of grain to a processor ended up going by truck rather than rail because of "crew area" requirements. It happened that the 55-mile trip involved three crew areas; the changes in crew increased costs and delayed the shipment, making for inefficient utilization of grain cars.

The result: The grain moves by truck rather than rail. The railroad missed getting a good piece of steady business. Labor has less employment. Trucks put extra strain on the highway system.

But there are hopeful signs. Experiments aimed at increasing efficiency are taking place at the Houston and St. Louis terminals. These involve cooperation between rail operating unions and the railroads. Various practices not now permitted under the work rules are being tried on an experimental basis; those which are successful can then be negotiated into contracts. Those which fail can be dropped without disturbing present agreements.

LABOR NOT ONLY PRODUCTIVITY PROBLEM

The Advisory Panel recognizes that railroad labor is not the sole cause of low productivity. Productivity in any industry depends not only on its workers but on the facilities and equipment with which they are provided. If, for example, "slow orders" on a section of track reduce the speed of trains—thereby decreasing labor productivity—one can hardly blame the workers. Lack of investment in railroad property, often brought about by lack of profits, is the culprit in this instance.

Railroad management counters that high labor costs contribute to lack of profits, which result in poor track maintenance, which further increase labor costs due to low productivity. It's a vicious cycle.

PANEL RECOMMENDS EQUALIZING OF POWER

While recognizing that farmers want less, not more, government intervention in the railroad industry, the Advisory Panel believes government is needed to put railroad companies and labor unions on a more equal footing in labor negotiations.

It proposes that if the two parties cannot reach an agreement through collective bargaining, unresolved issues should go to compulsory, binding arbitration. Rail service would be continued during the arbitration period—so that the commerce of the nation and the jobs of its citizens can continue uninterrupted while the issues are being settled.

This position supports that taken by the USDA-DOT Rural Transportation Advisory Task Force. It recommended that "special legislation be enacted to set up a procedure by which, in the event collective bargaining over work rules reaches an impasse, compulsory binding national arbitration shall go into effect."

Perhaps the frustration relative to railroad management attitudes and workers' productivity was best summed up by one farmer responding to the poll. "We know how to get to the moon but we don't know how to solve the transportation problems here on earth."

Perhaps the fact that government was an essential part of the moon shot's success is a lesson for railroad labor relations. There may be no other way to resolve the problems. At least, the knowledge that binding arbitration can be applied might cause both sides to work harder to reach mutual agreement.●

THE COAST GUARD STATION IN NEWPORT, OREG.

Mr. HATFIELD. Mr. President, I bring to the attention of Senator BAYH a matter which has been of extreme concern to me and which he may already be aware of. Briefly, it concerns report language attached to the House bill as a result of conversations that I have had with Congressman DUNCAN concerning the need to repair damage and accomplish facility improvements at the Coast Guard station in Newport, Oreg. My staff and I have had numerous conversations with the Coast Guard as well as with the committee, and I must say that I am not at all pleased with the response of the Coast Guard to the urgent needs at the Newport facility.

Mr. BAYH. I can assure my colleague from the State of Oregon that the committee staff has made us well aware of his desires with respect to the Newport facility. I have seen his correspondence dated April 4, 1980, and can assure him that the committee intends to do all it can to see that repair and facility improvements occur at Newport during fiscal year 1981. I must say that I cannot understand the Coast Guard's reluctance to proceed with this project. His correspondence began with them in the early part of 1980, and we still have seen no progress in the direction of coming up with a contract award nor for that matter even completing any sort of design work.

Mr. HATFIELD. As the Senator knows the cost estimate for this project is approximately $3.2 million, and it is my firm hope that the committee would see fit to underscore in the conference the need to proceed with activities at this facility. I suppose, under the circumstances, the best way to assure that result may be to request that I be made a conferee in order that my views be made clear on this matter.

Mr. BAYH. There will certainly be no problem with the Senator being a conferee, although I can assure him that we have discussed this matter with Congressman DUNCAN and that we are fully

apprised of the Senator's needs in this area and intend to do everything that we can do to help him. If necessary, we will perhaps even add additional funding for that project in the conference agreement.

Mr. HATFIELD. I thank the distinguished chairman of the Transportation Subcommittee and commend him for his cooperation in this matter.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. CULVER. Mr. President, I would like to ask the distinguished chairman of the Transportation Appropriations Subcommittee, Mr. BAYH, several questions concerning transportation issues of great interest to the citizens of Iowa.

As he knows, this bill contains $85 million for local rail service assistance. This is the program used by States to repair deteriorating branch lines, and is vitally important in States like mine with substantial miles of light density lines. Last year, the chairman and I worked to increase the appropriation for this program on the Senate floor and, as a result, the fiscal year 1979 appropriations bill approved by the conferees contained an additional $5 million for branch lines over the House version of the bill.

This year, the House only approved $75 million for branch line aid. I believe that it is vital that the conferees approve the full $85 million contained in the Senate bill. I would like to ask the chairman if he will do all he can, as I am confident he will, to convince the House conferees to approve branch line funding at the level of $85 million.

Mr. BAYH. Mr. President, the Senator from Iowa is right on target, as usual. We are going to do everything we can to defend the Senate position on that, because we think that funding level is absolutely necessary.

Mr. CULVER. Mr. President, I thank the chairman for his remarks. He understands very well the importance of the branch line rehabilitation program to small and rural States, because I know of his leadership with regard to his own State of Indiana, and I greatly appreciate his attempt to keep funding at the level provided by the Senate.

I would like to ask the chairman one other question. Currently, the Nation is trying to decrease its reliance on imported oil by expanding its use of domestic coal. I support this trend, and the evidence suggests that we can increase coal use without having an adverse impact on the environment.

One negative consequence of increased coal use has, however, occured. Many small communities have been bisected by coal-hauling unit trains. These trains, sometimes hundreds of cars long, have a severe impact on local transportation, disrupting traffic and often cutting residents off from essential community services.

In order to deal with this situation, the Senate recently enacted legislation to use windfall profit tax revenues to build grade separations where coal trains interfere with local transportation. This program would be of great benefit to a number of Iowa communities that are inconvenienced of unit trains.

Since the legislation has not been given final congressional approval, the fiscal year 1981 transportation appropriation bill contains no funding for this "energy impacted" road program. I would like to ask the chairman if he believes that it is possible to appropriate funds for this program—perhaps through a supplemental appropriation—once the final authorization has been completed?

Mr. BAYH. The Senator from Iowa correctly outlined the situation concerning these coal roads. I have cosponsored similar legislation myself. I think it is important to Indiana, Iowa, and elsewhere, that this matter be fully funded and dealt with appropriately, with adequate resources, as soon as the authorizing legislation is completed. We look forward to working with the Senator from Iowa to accomplish that goal.

Mr. CULVER. I appreciate the Senator's remarks. I know that his State has also been affected by the movement of unit trains, and I will continue to work with him to secure necessary appropriations once the authorizing legislation is signed into law.

Mr. CANNON. I would like to ask the distinguished chairman about the CAB's appropriation as it relates to their implementation of the airline deregulation law. Chairman BAYH, Majority Leader BYRD, and myself joined a number of our other colleagues in petitioning the Board to withdraw its interim decision that provides discriminatory upward fare protection based upon market lengths. That petition was filed several months ago, yet the Board still has not acted to provide equal protection for all markets and to demonstrate moderation in its zeal to accelerate the law's deregulation schedule. In addition, there have been disturbing reports that when the Board does act it may either adopt a new formula which continues to discriminate or establish a fair ceiling so high as to provide de facto deregulation of air fares more than 2 years in advance of the law's schedule for that event.

My question, Mr. President, is if it would be your opinion that the CAB's appropriation is being provided as to require the Board's equal implementation of the deregulation law in accordance with the legislative language and intent of Public Law 95-504? Or may the Board continue to administer the law on its own terms as I have described on the fare protection matter.

Mr. BAYH. I share the distinguished Commerce Committee chairman's concern about the Board's action in the fare flexibility case and, as you have noted, I was a signatory to the petition filed on this matter. I certainly am of the opinion that we are clearly providing the CAB operating funds to implement the deregulation law as intended by Congress, and I would note the conference report specifically told the Board members not to adopt their own deregulation schedule. Additionally, we expect all agencies to provide equal and nondiscriminatory protection in the programs under their jurisdiction. I certainly hope the Board moves swiftly to vitiate our concerns, but if not I believe we should confer to decide what further action might be appropriate by either or both of our committees.

Mr. ROBERT C. BYRD. I wish to join both my colleagues in their expressions of concern on this matter and pledge my help to see that all communities get fair and equal protection provided under the law.

Mr. PRESSLER. Mr. President, as the Senate considers the Department of Transportation appropriations legislation, I wish to join my colleagues in citing the air transportation problems in our rural areas.

As one of the six Members of the House of Representatives who voted against airline deregulation, I continue to fear its impact on smaller communities. During the 1978 debate, proponents promised lower fares and improved service. That has not been the case in our rural areas. In South Dakota, we are constantly threatened with loss of service. And this problem will be even more noticeable in 1983 when complete deregulation is mandated. In South Dakota, the absence of rail passenger service makes affordable, dependable air transportation essential.

The Civil Aeronautics Board (CAB) has now added to our burdens by proposing the elimination of all price controls on flights of 200 miles or less. While some price restraints would remain on longer hauls, the airlines could increase fares in short haul markets as so desired. Mr. President, I find this ruling to be a discriminatory action. Such a proposal is unfair to airline consumers in our rural communities where airline competition is minimal and often nonexistent. Citizens in these areas are being forced to pay exorbitant fares for air service while competition and Federal restraints will control fares in the long haul markets.

I realize the high costs airlines are experiencing. However, I am also aware of the transportation needs in our rural areas. The economic growth and development of these communities greatly depend on transportation services. Business and tourism would suffer greatly from such a discriminatory ruling.

Mr. President, we must safeguard our rural communities from bearing a disproportionate share of the air travel costs. I join my colleagues in urging the CAB to revise this proposed fare flexibility ruling. I trust that the Board will recognize the special conditions in the low-density markets and provide an equitable level of protection for these areas. The Federal Government should not overlook the air transportation needs of rural America.

Mr. President I have heard from many South Dakotans on this matter, and I ask that some of these letters be printed at this time.

The letters follow:

HURON AREA CHAMBER OF COMMERCE,
Huron, S. Dak., July 9, 1980.

Senator LARRY PRESSLER,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PRESSLER: Thank you for your letter to our Transportation Committee on June 17.

For the past two years, the Huron Chamber has attended numerous De-Regulation hear-

ings both in South Dakota and Minnesota to speak out in opposition to airline De-Regulation. I feel that the proposed under 200 mile ruling simply verifies that our position on the issue was correct. De-Regulation will do more harm than good for all communities of South Dakota.

Sincerely,

JAMES R. MARTIN,
Executive Vice President.

WESTERN SURETY CO.,
Sioux Falls, S. Dak., July 30, 1980.

Hon. LARRY PRESSLER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PRESSLER: I am sorry to be late in answering your letter of June 16, 1980, with regard to airline deregulation.

You are absolutely correct that the people of South Dakota are bearing a large burden in the price of airline tickets because of lack of competition. For instance, it is cheaper to get to the West Coast from Minneapolis than it is from Sioux Falls, although Minneapolis is about 200 farther. Another example is the rates charged between San Francisco, California, and Los Angeles, which is a distance longer than from Sioux Falls to Rapid City, and yet the California rate on Western Airlines, at latest count, was $53 whereas the South Dakota rate was $77.

This is not a new situation, however. Prices on locked-in routes have always been higher than they are where competition is available.

If Republic Airlines is successful in merging with Air West, the competition could change considerably.

The airlines are somewhat involved in a Catch 22 situation. While their ticket prices are going up as are their expense of operation, their passenger boardings are going down because of the price. I noticed in yesterday's paper that Western Airlines has lost $14 million for the quarter. Obviously, they are not losing that money in South Dakota at the fares they are charging, so they must be losing it on the competitive routes such as the California route mentioned above.

As a member of the Sioux Falls Airport Board, I am aware of the loss of revenue to the Airport since landing fees are based upon weight and with fewer people flying, the Airport's revenues have decreased and as has every other business, Airport expenses are increasing.

Air service to South Dakota is vital as you are well aware. It won't be too many years before we will find out whether or not commuter airline service will be installed to take the place of the regional carriers. I believe a good commuter airline could actually be an increased asset to communities now being served by the regional carriers. It could result in better service and more service. Hopefully, that will be the case.

I appreciate your correspondence.

Yours very truly,

TOM KIRBY, Jr.

NORTHWESTERN TRAVEL AGENCY,
Sioux Falls, S. Dak., June 24, 1980.

Senator LARRY PRESSLER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PRESSLER: Thank you for your letter of June 16th sharing your concern regarding the CAB removing all regulatory price restraints on flights under 200 miles.

While I am an advocate of the free enterprise system, I am concerned since this ruling may permit carriers to unjustifiably recoup increased costs on long haul markets on routes under 200 miles.

I agree that a viable air transportation system is essential to the prosperity of South Dakota. Further, we must be able to offer equivalent fare levels to those being offered in more populated markets such as Minneapolis/St. Paul to popular vacation and business destinations.

As a travel professional, I am aware of the discriminatory fare levels relative to South Dakota. If I can ever provide you with details, please feel free to contact me.

Sincerely yours,

JIM GREENE, *Manager.*

CITY OF SIOUX FALLS, S. DAK.,
June 25, 1980.

Senator LARRY PRESSLER,
Dirksen Senate Office Building,
Washington, D.C.

DEAR LARRY: In response to your letter of June 16 concerning the removing of all regulatory price restraints on flights under 200 miles: I'm 100% in agreement with you that by the lack of controls here in South Dakota it's hurting us badly.

I remember not long ago when a round-trip to Pierre cost $39.00. Today it is well over $100.00. To me this seems ridiculous! I realize that some of this is paying for the security systems in airports. But in checking into charter lines, such as Business Aviation, the fares aren't all that much cheaper except when you take 6 or 8 persons.

I fully understand and appreciate that fuel costs have soared, but I agree with you that rural areas should not have to subsidize the longer distant flights, such as from New York to Los Angeles.

If there's any way that we can help here on the local level feel free to contact us.

We thank you for your concern in this very important matter.

Sincerely,

VERN WINEGARDEN,
Commissioner.

Mr. TSONGAS. It is my understanding that section 141 of the Surface Transportation Act has not been funded this year. Am I correct?

Mr. BAYH. Yes, that is correct. However, as the Senate committee report points out, the programs which were to be funded in section 141 shall be included as a substantial part of the auto use management program.

Mr. TSONGAS. I appreciate the chairman's attention to this important program. However, the report language expresses a concern that the program's funds were not obligated. This is not the case. The Department of Transportation intends to have obligated all the funds available by the end of the fiscal year. The difficulty was that the $4 million program generated $45 million worth of grant proposals. In light of the strong interest, in fact demand for the program, I ask that when the chairman has received authorizing legislation for the auto use management program, that he remember that the section 141 program was not funded in this bill and that he pledge to support funding for the auto use management program in order to provide funding for the bicycle grant program.

Mr. BAYH. I share your concern for this important program, Senator TSONGAS. As soon as the committee receives the authorizing legislation and we consider an appropriations bill. I will work to include funding for the bicycle grant program within the auto use management program.

MASS TRANSIT FUNDING FOR HOUSTON

Mr. BENTSEN. I would like to discuss an issue with Senator BAYH, the distinguished chairman of the Transportation Subcommittee and the majority floor manager of this bill, on a matter relative to the section 3 capital grant program of the Urban Mass Transit Administration described on pages 47 through 49 of the committee report. I am concerned regarding the new systems construction program funding. In this bill the funding level is set at $430 million; this is $5 million below the House bill and $35 million below the budget request. Is it the understanding of the committee that this $430 million would be adequate to cover existing commitments in Atlanta, Baltimore, Buffalo, and Miami as well as adequate funds to enable UMTA to initiate feasibility studies at other cities planning the development of fixed rail systems?

I am particularly concerned that the city of Houston—one of the fastest growing cities in the country and one is desperate need of an effective mass transit system—would not be able to begin the process of moving forward in developing such a system. For example, the city of Houston has raised its taxes to provide its matching funds for a mass transit system; it would be a severe consequence to the city of Houston if it could not begin to undertake the feasibility studies necessary to obtain subsequent new system funding this coming fiscal year.

Mr. BAYH. The distinguished Senator from Texas raises a good point. In developing this legislation, the committee staff discussed new system funding with UMTA and was given to understand that the $430 million figure was adequate to cover these needs. However, after the committee markup and a closer study of the funding demands, it now appears that the $430 million figure may be tight and may not be enough to meet all the needs. I want to assure my colleagues that it was the intent of the committee to provide adequate funding of the new system program, including funds to conduct the feasibility studies for the Houston system. I will carefully study the needs and funding levels in the new system program during the conference on this bill and will recede to the House funding level if necessary to carry out the program.

I would further state that I will recommend conference report language to state that it is the intent of Congress to fully fund the ongoing new system commitments plus the feasibility studies deemed appropriate by the UMTA Administrator including the Houston proposal. I would also like to say to my colleague from Texas that the committee is well aware of the efforts of the city of Houston to develop a sound mass transit system and fully appreciates the magnitude of such a task. I would like to compliment Houston in taking the responsible attitude of developing a solid funding source at the beginning of its efforts. The committee fully supports the city of Houston in its development of a mass transit system.

Mr. BENTSEN. I thank my distinguished colleague for his consideration of the matter and for his kind remarks about the largest city in Texas.

Mr. CANNON. I would like to ask the distinguished chairman a question about the Appropriations' report language which identifies individual ADAP projects. The Commerce Committee has become concerned about this spreading process which would seem to substitute the Appropriations Committee's priorities for those priorities established by the Commerce Committee in the ADAP authorization law.

Is it the distinguished chairman's intent that such report language require FAA to fund the listed projects before meeting higher priority safety needs of the system?

Mr. BAYH. Not at all. The chairman of the Aviation Subcommittee has identified a concern I also share. What we have done is to put a noninclusive list of projects in our report which are examples of the type of projects we expect to receive the FAA priority attention. We did not specify project amounts or the nature of these projects because we realize that safety needs must come first, and indeed not all of the identified projects may be able to receive their requested level of funds. We clearly expect the FAA to be guided by the priorities set out in the authorization legislation, however, a number of Members of the Senate and the Appropriations Committee felt it was important to draw the FAA's attention to projects in their State.

Mr. CANNON. I thank the distinguished Senator from Indiana. Your explanation does much to ease my concern, and I hope to see that FAA understands the proper context of this report language.

Mr. MELCHER. Mr. President, the committee report on this bill refers to pending applications for loan guarantee financing under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976. We want to be sure that the reference to the pending applications is no indication as to qualifications or eligibility of any of the pending applications mentioned. The financing under section 511 will be essential for the rehabilitation and improvement of marginal railroads and bankrupt railroads such as the Milwaukee and the Rock Island. We want to be sure that financing under section 511 continues to be limited to rehabilitation and improvement of existing rail facilities and can be used for limited new construction only as a necessary part of a rehabilitation and improvement project and will not be used for projects not directly incidental and related to rehabilitation and improvement of the existing railroad system.

Mr. President, I ask the managers of the bill whether they agree with that statement on section 511.

Mr. BAYH. Mr. President, I concur with the remarks of the Senator from Montana on the rehabilitation.

Mr. MELCHER. I thank the Senator. Does the minority concur, also?

Mr. McCLURE. Mr. President, I think this does conform and supplements the statement I made earlier that we intend to track how these funds are applied, to make sure it is pursuant to the authorizing legislation. We want to take a look and see how it is being administered.

I concur with the statement of the Senator from Montana.

Mr. MELCHER. I thank my colleague from Idaho.

Mr. STEVENS. As the chairman of the Appropriations Committee is aware, there have been some allegations recently concerning the water/rail rates of the federally owned Alaska Railroad. The committee has included report language which directs the Department of Transportation to examine the Alaska Railroad pricing policies to insure that these rates are fully compensatory and that the subsidy received by the Alaska Railroad does not result in predatory or noncompensatory water/rail service. I certainly support the committee's efforts but do want to discuss two concerns with the chairman of the Appropriations Committee if I may.

There is some concern in Alaska that the report language will affect the through rates to Fairbanks. It is my understanding from this language that, as long as the through rates are not predatory or noncompensatory they will not be affected simply because they are through rates. Is that understanding correct?

Mr. MAGNUSON. That is correct. The committee is simply concerned that the Alaska Railroad interstate water/rail contract rates and water/rail tariff charges may be predatory or noncompensatory. As long as the rates do not fall into these categories they will not be affected simply because they are through rates.

We are concerned that the Government owned railroad not use tax money to artificially reduce the rate and threaten the existence of private carriers.

Mr. STEVENS. I thank the chairman for clarifying that point and I certainly concur. I do have one other concern which I think can be worked out. I have just received a telegram from the Governor of Alaska this morning which indicates that the Governor has requested the attorney general of Alaska as well as the commissioners of the Alaska Department of Commerce and Economic Development and the Department of Transportation and Public Facilities to conduct a State-sponsored study of this issue. The Governor has requested that the study conducted by the Federal agencies be coordinated with the State study. I certainly think that coordination between the two would be beneficial and hope that the chairman would agree that the Department of Transportation and the State of Alaska should work together to resolve this.

In addition, the State of Alaska has indicated that it would be difficult for them to complete their study by April 1, 1981. Since the two entities will be working together on this, I wonder if the chairman would be willing to indicate to the Department of Transportation that their study should be completed not later than June 1, 1981. This will allow the information gathered by the State of Alaska to be considered in the report to be issued by the Department of Transportation.

Mr. MAGNUSON. I certainly agree with the Senator from Alaska that it would be beneficial to coordinate the Federal and State investigation of this matter. It will also allow for more time for participation by the Alaska Railroad as well as the affected private carriers. Both reports will undoubtedly be more complete as a result of this coordination. In order to have the information gathered by the State of Alaska considered in the report to be issued by the Department of Transportation, I think that it will be possible to indicate in the conference report that the study by the Department of Transportation be completed no later than June 1, 1981, instead of April 1, 1981.

Mr. STEVENS. I thank the chairman for discussing these matters with me and very much appreciate his cooperation. The allegations regarding the railroad's pricing policies are a serious concern to both of us as well as to the State of Alaska and it is my hope that these studies will resolve the question equitably. I ask unanimous consent that a letter written to me by Dr. William R. Wood regarding this issue be included in the RECORD at this time.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FAIRBANKS INDUSTRIAL DEVELOPMENT CORP.,
Fairbanks, Alaska, August 14, 1980.

Senator TED STEVENS,
U.S. Senate,
Senate Office Building, Washington, D.C.

DEAR SENATOR STEVENS: As you know, the Fairbanks independent small business dealers in the building materials have been deeply concerned over the contract rates that have been established by the Alaska Railroad. They have met with the Railroad officials and also with the two competing carriers, Sea Land and Tote. Arrangements have been worked out, apparently, with Sea Land so that they will be able to survive this season. The picture for next year, however, remains bleak for all except the one large dealer from Anchorage that has a branch here and is able to take advantage of the special contract rates of the Railroad.

Yesterday the group whose names are attached met in my office for several hours, toward the end of which they asked me to join them and I agreed to send the materials which they are presenting directly to your office.

There was considerable discussion over the matter of federal subsidy for the Railroad. In no way are Fairbanks merchants opposed to essential subsidy for the Railroad, only if any part of the subsidy might be used in a manner that would be unfair to competing carriers from the private sector. They fully appreciate the great need which Alaska now has for improved and expanded service of the Railroad, especially a capability for bulk materials hauling: grain; coal; mineral ores; sand and gravel, as well as petrochemical products from the Interior to the coast. They also recognize the tremendous value for our growing tourist trade to maintain a passenger service to McKinley Park and Anchorage during the summer months, and look forward to the time when there will be attractive programs for visitors during the winter as well.

The Railroad problem is growing in significance for Alaska. Something major, even drastic in the present setup ought to be made without delay. Your long experience and knowledge in depth suggests that you might take the lead in bringing the issue to a point of decision. Hopefully, this will be a strong possibility following the November election.

Sincerely yours,

WILLIAM R. WOOD,
Executive Vice President.

● Mr. CANNON. Mr. President, I would like to commend the members of the Appropriations Committee for their

thorough efforts on behalf of this bill. Considering the difficulty of their task during this period of extreme budgetary restraint, I believe the Appropriations Committee members have very carefully reviewed all transportation requests and needs in an extremely responsive manner.

The Senate Appropriations Committee recommends a total of $11,795,831,815 while the House bill recommends a total of $11,866,784,065. The Senate bill represents a reduction of $70,952,250. The Senate Appropriations Committee succeeded in reducing the amounts in new budget authority for fiscal year 1981 while also taking into account several areas of concern that the House bill did not address.

I do not want to comment on every agency and program in this bill since its contents have already been summarized, but there is an observation I would like to make with respect to an area that I judge to be of particular importance and relate directly to Commerce Committee jurisdiction.

With respect to section 505 of the railroad rehabilitation program—title II of the Commerce Committee's Employee Protection and Railroad Financing Modification Act of 1980, S. 2530 authorized an additional $400 million over a 2-year period, fiscal years 1981 and 1982. S. 2530 was limited to $180 million authorization for fiscal year 1981 for restructuring and rehabilitating our Nation's rail system. I was pleased to note that the Appropriations Committee's report states the extreme importance of railroad national transportation priority.

In light of the budgetary restraints I am in support of the Appropriation Committee's level of funding for rail service assistance, especially in view of the deferral of consideration of this matter by the House. I fully recognize the limitations placed on program funding by the Appropriations Committee and have confidence that this level can be increased at a later date. I have a letter that I would like to read into the record from Secretary of Transportation Goldschmidt, indicating his concerns with the Appropriations Committee's level of funding for this important program and the needs of railroad restructuring and a higher level of funding for the future.

The letter follows:

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 17, 1980.

Hon. HOWARD CANNON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CANNON: I am gratified to hear of your concern about the adequacy of funds for restructuring and rehabilitating our nation's rail system in FY 1981. Since we have all struggled for enactment of forthcoming legislation to reduce regulation and provide funding assistance to the railroads, it would seem tragic not to capitalize on the opportunities which are about to present themselves.

As you know, we have not only requested an FY 1981 appropriation of $250 million for Restructuring Assistance, but also expect to submit a $200 million supplemental for this program, as recently announced by the President.

These estimates are based on our conviction that funds are needed and could be well used in the next fiscal year. Recognizing that some members of the Senate do not yet share this conviction, we would encourage you to point out to them:

That mainline track rehabilitation can be very costly—averaging $400 thousand per mile on the type of lines we would deal with. At this rate, $100 million would only pay for about 250 miles of work, perhaps only enough for a single major project;

That failure to appropriate sufficient funds for FY 1981 would mean that some important lines would continue to deteriorate until the summer of 1982, the beginning of the next work season;

That provisions of Title V excluded some key carriers from participation in the Section 505 program. Under the pending Section 516 program, however, we would be able to work with greater flexibility (e.g., labor protection) and with more participants. We therefore believe that FRA will be able to utilize available funds at an accelerated rate;

That the Rock Island Trustee will release engineering and real estate data in October, clearing the way for purchase and rehabilitation of these properties with Federal Assistance. Similarly, a court decision by January is expected to determine the future status of Milwaukee II, opening further funding opportunities.

If I can be of any help in providing you with further points to raise in this debate, please let me know. Your support in this matter is most appreciated.

Sincerely,

NEIL GOLDSCHMIDT.●

WHY THE DOT AND RELATED AGENCIES APPROPRIATIONS BILL IS TOO HIGH

Mr. PROXMIRE. Mr. President, I rise to state to the Senate my reasons for voting against this bill on final passage.

First of all I want to make clear that my reasons have nothing whatsoever to do with the managers of this bill and the job they have done.

The Senator from Indiana (Mr. BAYH) has worked hard to bring this bill in at $3.76 billion below the budget estimates. When one considers the pressures from the groups with economic interests in this bill—highways, airways, mass transit, waterways, the Coast Guard, and others, the Senator from Indiana's performance, and that of his counterpart, the Senator from Idaho (Mr. MCCLURE) are commendable.

I congratulate them for the job they have done and for the civic courage it has taken for them to beat back all the proposals to not only push this bill over the budget but massively so. The Senate and the public owes them its gratitude. So measured against the pressures for spending, this bill has great merit.

NEED TO CUT BUDGET AND BALANCE THE BUDGET

However, measured against the need to fight inflation and to cut the budget, we should do and must do more, not only on this bill but on every bill before us.

We were promised a balanced budget for fiscal year 1981. That has now vanished and the midyear estimate was for a deficit of at least $30 billion.

The inflation rate has dropped somewhat over the last 3 months but there is every reason, particularly if one looks at the wholesale or producer price indexes, to believe that it will rise in the near future. Today's wholesale prices are tomorrow's consumer prices, and the former have been rising.

Interest rates have dropped somewhat and housing starts have improved. But there is every indication that interest rates will rise, and especially mortgage rates, and the present improvement in housing starts at a 1.4-million annual rate is still far below the 2 million in 1977 and 1978 and the 1.75 million, last year.

SPENDING TOO HIGH

Therefore even though this bill is below the budget estimate and its managers have performed well, I believe it is still too high compared with the needs of the country and the economy.

First, it is about 16 percent more than the Congress appropriated last year and that was too high. So there has been no effective cut from last year.

Second, this bill contains massive subsidies of one kind or another for highways, railways, mass transit systems, and airways which the legislative committees have written into law over the past decade or more and which provide a base level of spending which I believe is far too high. It is no fault of the Appropriations Committees that these funds have been provided in the past. Nevertheless it is also true, in my view, that by any objective standard we spend too much of the taxpayers' hard-earned income for these purposes.

In fact, while the ordinary citizen over the last year has had to eat his or her share of inflation and to take a reduced level or standard of life, the institutions funded by this bill are kept whole because the increases are as much, if not greater, than the rate of inflation.

In relative terms, then, both the Federal Government agencies and the private, State and local institutions funded by this bill have it quite a bit better than the ordinary citizen.

Thus, while this bill is under the budget there is no real decline in spending compared with last year.

This country is still the victim of rampaging inflation.

Interest rates are excessively high and will remain high as long as the inflation rate remains high.

Because of all this our rate of economic growth and rate of productivity have fallen disastrously.

While Government spending is by no means the only cause of our problem, it is nonetheless a major cause and a major contributor to our problems.

In my view we need to cut spending even further on this bill and on every other bill.

Because of our overwhelming economic and inflationary problem, I am voting against this bill notwithstanding the extraordinarily high level of performance by its managers which resulted in a bill below the original budget estimates.

FISCAL YEAR 1981 TRANSPORTATION APPROPRIATIONS

Mr. ROBERT C. BYRD. Mr. President, section 1 of the Transportation Act of 1940, entitled "Transportation Policy," prescribes that the United States recognize and preserve the inherent advantage of each mode of transportation. The measure before the Senate today, H.R. 7831, making appropriations for the Department of Transportation and related agencies for fiscal year 1981, continues that mandate.

We have the able and experienced chairman of the Appropriations Subcommittee on Transportation, Mr. BAYH, to thank for the responsible approach and realistic recommendations contained in this bill. The distinguished senior Senator from Indiana has chaired the Transportation Appropriations Subcommittee since 1976. I might add that he took over the chairmanship of that subcommittee from me, so I know firsthand the rigorous demands of his job. As the bill clearly reflects, Senator BAYH is meeting those demands.

I know that he was ably assisted by Senator MCCLURE, the ranking minority member on the subcommittee. The members of this subcommittee, as well as the members of the full Appropriations Committee, have thoroughly reviewed every department and agency request and have made recommendations to meet those requests in a fiscally responsible manner.

This bill contains numerous important transportation programs—programs which reflect the need for a coordinated and coherent transportation policy for this country. This need has never been greater than it is today. The current energy situation has significantly altered the transportation requirements of this Nation. H.R. 7831 addresses those requirements in terms of both our present and our future needs.

Under title I, Department of Transportation, there is funding for such important programs as the Federal Highway Administration, the Federal Railroad Administration, and the National Highway Traffic Safety Administration. The FHA administers programs including motor carrier safety, highway safety and research development, and carpool and vanpool projects.

Title I also provides funds for Amtrak operating and capital expenses. The improvement of this important passenger rail network was a top priority of the 96th Congress, and the moneys provided here reflect cost savings accomplished by the Rail Passenger Service Act. It recognizes, however, that trains such as the Blue Ridge and the Cardinal, which serve my own State of West Virginia, are vital to meet the transportation needs of communities located in more rural areas.

The National Highway Traffic Safety Administration is responsible for maintaining the national 55-mile-per-hour maximum speed limit program. This national program was established to meet the goals of reducing highway fatalities and reducing motor fuel consumption. This policy has saved over 37,500 lives and reduced injuries by 2 million in a 5-year period. Fuel economy from the 55-mile-per-hour limit accounts for a savings of 3.4 billion gallons of gasoline each year.

The Federal Aviation Administration is also funded in this bill. The Transportation Appropriations Subcommittee has carefully and thoughtfully considered appropriation levels for the operation of the FAA, which is charged with the responsibility of assuring the air safety of the traveling public. The subcommittee has made a sobering assessment that the FAA has not done an effective job of managing the air traffic control system and has offered a series of detailed recommendations which it expects to be carried out expeditiously. This work exemplifies the type of program review and evaluation which is a key element of the appropriations process. In this instance, the Transportation Subcommittee has acted to insure the best use of Government resources to further public safety.

This bill is a good one. It reflects a recognition of changing energy realities and transportation needs. It successfully addresses these new realities and needs. Again, I commend the distinguished chairman of the Subcommittee on Transportation Appropriations, Mr. BAYH, the ranking minority member, Mr. MCCLURE, and the members of both the subcommittee and the full committee for their work.

Mr. HEINZ. Mr. President, I rise for the purpose of calling the attention of the Senate to a provision of the Department of Transportation appropriations bill which I believe will have potentially negative impact upon the efforts of States to protect their citizens from unsafe trucks. Specifically, this legislation, in section 316 of H.R. 7831, would in effect prohibit all State efforts to regulate the safety conditions of out-of-State trucks.

I am particularly concerned about the far-reaching impact this provision could have in my State of Pennsylvania. This past year, my home State of Pennsylvania enacted legislation to increase its truck weight limit to 80,000 pounds, thus joining the majority of States in adopting this standard. At the same time, in recognition of the greater threat heavier trucks pose to other highway users, Pennsylvania adopted legislation requiring trucks using its highways to display a valid safety inspection certificate. Section 316 of the legislation now before us would penalize the State of Pennsylvania for its efforts to promote highway safety by denying the State Federal highway funds which might be used directly or indirectly to implement its law.

The Pennsylvania law is now under litigation and it would be inappropriate for me to comment on it merits. However, I want to take this opportunity to express my deep concern over the committee's attempts, in section 316 of this bill, to prohibit in effect all State efforts at regulating the safety condition of out-of-State trucks. I am concerned that, if section 316 remains in its present form, States will have no choice but to permit on their highways 80,000-pound vehicles which must comply only with Federal regulations that are ineffectively enforced. I know the committee is concerned about unnecessary restrictions on interstate commerce and States using specific safety standards and sticker requirements as revenue-raising devices. These concerns should be addressed and can be addressed without placing an absolute prohibition on safety inspection requirements as is contained in section 316.

The point that must be stressed is that the move toward bigger, heavier trucks is being accompanied by increases in truck related accidents. Between 1977 and 1978, the total number of accidents involving motor carriers in interstate commerce increased from 30,563 to almost 34,000. Fatalities and injuries increased from 34,691 to 35,755.

It is also clear that if this trend is to be reversed, it will have to be done with the help of State law enforcement agencies. In its report on S. 1390, the Truck Safety Act, which was passed by the Senate earlier this year, the Senate Commerce Committee concluded that motor vehicle safety rules are being flagrantly ignored and that State enforcement powers should be upgraded. The Department of Transportation's Bureau of Motor Carrier Safety is currently responsible for enforcing Federal motor carrier safety regulations. This agency, however, has only 176 inspectors to cover the entire United States. With enforcement spread so thin, it is not surprising that the Bureau is finding that many trucks are not in compliance with its regulations. In fact, 59 percent of the trucks stopped by the Bureau of Motor Carrier Safety at a roadside inspection in Berwick, Pa., this past spring were placed out of service for failing to meet Federal standards.

In addition to its stifling effect on safety initiatives, section 316 raises the possibility of unintended consequences that the committee may have overlooked in its addition of this language to the bill without full debate on its merits. Pennsylvania utilizes vehicle strickers on trucks as road tax markers, for example, to facilitate revenue collection. Other States may use sticker requirements for similar valid purposes.

Mr. President, we cannot ignore the compelling interest and responsibility of the States in protecting their citizens, and I am extremely disappointed that the Senate Appropriations Committee has taken the action it has, before the courts have had the opportunity to rule on Pennsylvania's law. It is my hope that Congress will soon act to encourage rather than block State efforts to prevent needless deaths on our highways due to lax compliance with and enforcement of safety standards. I would ask that the members of the Appropriations Committee who will represent the Senate in conference on this legislation reexamine the action they have taken and be open to ways to assist States in addressing this critical problem.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill, having been read the third time, the question is. Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the

Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. MELCHER), the Senator from North Carolina (Mr. MORGAN), the Senator from Arkansas (Mr. PRYOR), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Louisiana (Mr. LONG) would vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Idaho (Mr. MCCLURE), the Senator from South Dakota (Mr. PRESSLER), the Senator from Wyoming (Mr. WALLOP), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 67, nays 10, as follows:

[Rollcall Vote No. 425 Leg.]

YEAS—67

Baker	Ford	Nunn
Baucus	Garn	Packwood
Bellmon	Glenn	Pell
Bentsen	Gravel	Percy
Biden	Hatch	Randolph
Boren	Hayakawa	Riegle
Boschwitz	Heinz	Sarbanes
Bradley	Hollings	Sasser
Burdick	Huddleston	Schmitt
Byrd, Robert C.	Inouye	Schweiker
Cannon	Jackson	Simpson
Chafee	Johnston	Stennis
Chiles	Kassebaum	Stevens
Church	Leahy	Stevenson
Cochran	Levin	Thurmond
Cohen	Lugar	Tower
Cranston	Magnuson	Tsongas
Culver	Mathias	Warner
Danforth	Matsunaga	Weicker
Dole	Metzenbaum	Williams
Durenberger	Mitchell	Zorinsky
Durkin	Moynihan	
Exon	Nelson	

NAYS—10

Armstrong	Hart	Laxalt
Byrd, Harry F., Jr.	Heflin	Proxmire
Domenici	Helms	Roth
	Humphrey	

NOT VOTING—23

Bayh	Kennedy	Ribicoff
Bumpers	Long	Stafford
DeConcini	McClure	Stewart
Eagleton	McGovern	Stone
Goldwater	Melcher	Talmadge
Hatfield	Morgan	Wallop
Javits	Pressler	Young
Jepsen	Pryor	

So the bill (H.R. 7631) as amended, was passed.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives, and that the Chair be authorized to appoint the conferees on behalf of the Senate.

The motion was agreed to; and the Chair appointed Mr. BAYH, Mr. MAGNUSON, Mr. STENNIS, Mr. ROBERT C. BYRD, Mr. EAGLETON, Mr. DURKIN, Mr. MCCLURE, Mr. MATHIAS, Mr. WEICKER, Mr. YOUNG, Mr. HATFIELD, and Mr. STEVENS conferees on the part of the Senate.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now renew consideration of H.R. 7631, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate resumed consideration of the bill.

ERISA—CONFERENCE REPORT

Mr. WILLIAMS. Mr. President, I submit a report of the committee of conference on H.R. 3904 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings.)

Mr. WILLIAMS. Mr. President, the conferees on H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1980, have resolved the differences between the House and Senate on the two matters previously in disagreement. The Senate had provided an exemption from the preemption provision of the Employee Retirement Income Security Act of 1974 for the Hawaii Prepaid Health Care Act. The House had not provided such an exemption.

On this matter, the House prevailed and the exemption for the Hawaii law has been deleted. I expect, however, that this important provision will be considered in the context of another bill in the near future.

The conferees also had to resolve the differences between the House and the Senate provisions for modifying the requirement of current law that unemployment compensation be reduced by the amount of any pension or retirement benefits.

The Senate provision allowed the States to apply the reduction in unemployment benefits only when the pension is maintained, or contributed to, by a base period employer or an employer who is chargeable for the unemployment compensation benefits. The Senate provision also allowed the States to limit the reduction in unemployment benefits in accord with the employee's share of contributions to the pension fund, so that an individual's investment from his own funds in the pension would not be used against him when he qualifies from unemployment compensation benefits after retirement by reason of being involuntarily unemployed, available for work, and seeking work.

The House provision retained the essential elements of the Senate language and made three significant changes therein. First, the House language also allowed the States to totally disregard any amount of retirement income under the Social Security Act or the Railroad Retirement Act. Second, it allowed the States to disregard pension maintained or contributed to by a base period employer, if eligibility for or the amount of such pension were not affected by postretirement earnings. Third, the House language applied the pension offset only when the pension is paid by a base period, but not a chargeable employer.

The Senate provision essentially prevailed, and the conference agreement departs from the Senate provisions only in one respect. Except in the case of retirement benefits received under the Social Security Act or the Railroad Retirement Act, the pension offset would not apply when postretirement income did not effect either eligibility for or the amount of the pension maintained or contributed to by a base period of chargeable employer.

In respect to this controversial issue, therefore, the Senate can be satisfied that its position has been sustained, in virtually every respect, by the conference agreement.

Mr. President, I am pleased that these remaining items of disagreement have been resolved, and urge support for this important measure to provide retirement security for 8 million Americans and their families.

Mr. BRADLEY. Mr. President, I am delighted that we are finally resolving a problem which created serious burdens, particularly for senior citizens, in my State and throughout the country.

Since April 1 of this year individuals who would otherwise qualify for full unemployment benefits are finding those

benefits diminished—even wiped out totally—solely because they receive social security or other pension benefits. An effort which started long before I was a Member of this body to reform unemployment abuses has proven to be a major abuse itself.

Senator JOHN CHAFEE and I sought to eliminate that injustice and offered a corrective amendment to the Multiemployer Pension Act amendments. I am pleased that the Senate-House conference committee has chosen to sustain that corrective effort.

I would like to outline for the record what we have accomplished by the adoption of the conference report. I offer some examples of how the new law will work as of 1981:

First, an individual at company A retires and begins to collect social security. For whatever reason, this person then goes to work for company B and, after 6 months there, is terminated. Assuming the individual is eligible for unemployment insurance because of the work done at company B, the level of unemployment insurance compensation will not be reduced at all. This is because the base period employer is not the same as the social security employer. The offset would apply, however, if the individual had returned to work for company A instead of working for company B. Under those circumstances, the base period employer and the social security employer would be the same.

Second. A worker at company A retires at age 65 after 35 years of service there and begins collecting a pension of $600 per month. He then unsuccessfully seeks new employment and files an unemployment insurance claim. The State computes this individual's unemployment benefit rate at $130 per week, or $520 per month, because of the past earnings reported to the State. This individual would not be eligible for unemployment insurance payments because the amount of the pension received from the base period employer exceeded the unemployment insurance payments that were to be paid.

Third. The individual described in examples 1 and 2 finds work with ABC Construction and works a sufficient number of weeks to establish eligibility for unemployment insurance payments under State law. This individual would be eligible for unemployment insurance payments not subject to the offset provision. This is because an individual whose unemployment insurance payments were reduced or taken away entirely because of the base period employer proviso could restore his eligibility for unemployment insurance payments not subject to the offset provision by gaining employment with an employer separate and apart from the past employer who is paying the worker's pension.

Fourth. Now, let us go back to example No. 2. Take the same individual who has worked for the same company, but with a different retirement plan. In this case, the individual contributed one-third of the value of the $600 pension payment received. So the portion of the pension subject to the offset would be $400. This person would be eligible for unemployment insurance payment of $30 per week because the total amount of the unemployment insurance payment this individual was otherwise eligible to receive would be reduced by the $400 pension received from the base period employer.

These examples show that older Americans who, under the law in operation since April 1, have been denied unemployment compensation, will now be eligible to receive it. Hardworking Americans and New Jerseyans have a right to unemployment benefits. Our amendment recognizes and assures that right.

Mr. STEVENS. Mr. President, is the matter before the Senate H.R. 3904?

The PRESIDING OFFICER. The conference report thereon; the Senator is correct.

Mr. WILLIAMS. Mr. President, I think we are ready to act on the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

RAIL TRANSPORTATION POLICY ACT OF 1980

Mr. CANNON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1946.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1946) to reform the economic regulation of railroads, and for other purposes.

(The amendment of the House is printed in the RECORD of September 9, 1980, beginning at page 24883.)

UP AMENDMENT NO. 1618

Mr. CANNON. Mr. President, I move that the Senate agree to the House amendment to S. 1946 with an amendment which I send to the desk on behalf of myself and Mr. PACKWOOD, striking all after the enacting clause and substituting the amendment I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON), for himself and Mr. PACKWOOD, proposes an unprinted amendment numbered 1618.

Mr. CANNON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT No. 1618

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—RAILROAD TRANSPORTATION POLICY

SHORT TITLE

SEC. 101. This title may be cited as the "Railroad Transportation Policy Act of 1980".

PART A—GENERAL

RAILROAD TRANSPORTATION POLICY

SEC. 102. Section 10101 of title 49, United States Code, is amended—

(1) in subsection (a), by striking the first word and inserting in lieu thereof "Except where policy may have an impact on rail carriers, in which case the principles of subsection (b) of this section shall govern, to";

(2) by redesignating subsection (b) as subsection (c); and

(3) by adding immediately after subsection (a) the following new subsection:

"(b) In regulating transportation provided by rail carriers, the Commission shall consider the following as being in the public interest:

"(1) development and maintenance of a healthy, efficient freight transportation system, in the private sector, in which various modes of transportation are subject to impartial regulation;

"(2) maximum reliance on competitive market forces and on actual and potential intramodal and intermodal competition to provide transportation services at fair prices and to enable efficient and well-managed carriers to earn adequate profits and to attract capital;

"(3) avoidance of undue concentrations of market power on the part of rail carriers and the maintenance of regulatory protection for shippers and receivers against the abuse of market power;

"(4) reduction of regulatory barriers to entry into and exit from the industry;

"(5) maintenance of fair wages and working conditions;

"(6) operation of transportation facilities and equipment without detriment to the public health and safety;

"(7) development and maintenance of a transportation system responsive to the needs of the public and the national defense, in which regulatory decisions are reached fairly and expeditiously;

"(8) encouragement of the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

"(9) cooperation with each State and the officials of each State on transportation matters in an effort to assure that intrastate regulatory jurisdiction is exercised in a manner consistent with the standards established in this subsection;

"(10) elimination of noncompensatory rates for rail transportation; and

"(11) encouragement and promotion of energy conservation.".

PART B—RATEMAKING

REASONABLENESS OF RAIL RATES

SEC. 103. Section 10701(b) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking the last two sentences; and

(2) in paragraph (2)(B), by striking "and incremental".

MAXIMUM RATE REGULATION

SEC. 104. Section 10701 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(s)(1) A rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish any rate for such transportation if such rate yields a revenue-to-variable cost ratio that is equal to or less than the average ratio of revenue-to-variable cost established by the Commission pursuant to this subsection.

"(2) At regular intervals, but in no event less often than annually, the Commission shall determine on the record after a hearing and publish the average ratio of revenue-to-variable cost that rail carries would be required to realize from transportation provided by such carriers under honest, economical, and efficient management in order to cover total operating expenses including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business sufficient to attract and retain capital in amounts adequate to provide a sound transportation system in the United States. The first such average ratio shall be determined and pub-

lished by the Commission no later than 120 days from the date of enactment of this subsection, until which date a ratio of revenue-to-variable cost (expressed as a percentage) of 150 percent shall be considered to constitute such average ratio for the purposes of this section and the related provisions of sections 10704, 10705, 10707, and 11701 of this title.

"(3) Within 1 year after the date of enactment of this subsection, the Commission shall complete and submit to the Congress a study to determine the feasibility and desirability of the use of a return-on-investment standard as an alternative to the ratio of revenue-to-variable cost standard set forth in paragraph (2) of this subsection.

"(4) Notwithstanding any other provisions of this subchapter, the Commission shall not have authority to find any rate for transportation authorized under this subsection to be unjust or unreasonable on the basis that such rate exceeds a reasonable maximum for the service rendered or to be rendered, nor may the Commission suspend or investigate such rate as unreasonably high under section 10707 of this title.".

RAIL COST ADJUSTMENT INCREASES

SEC. 105. Section 10701 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(f)(1) A rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may increase any rate for such transportation so long as the new rate is equal to or less than the adjusted base rate for such transportation plus any increases effected under subsection (g) of this section.

"(2) For the purposes of this subsection—

"(A) the base rate for the transportation of a commodity shall be the rate in effect on January 1, 1980 and on January 1 of every 5th year thereafter: *Provided, however*, That if the Commission finds such rate to be unreasonably high, the Commission may prescribe a different base rate for the transportation of such commodity: *And provided further*, That such base rate shall not include any rates authorized under section 111 of the Railroad Transportation Policy Act of 1980;

"(B) if no commodity rate existed for the transportation of a commodity on January 1, 1980, the base rate for the transportation of such commodity shall be the commodity rate for the most nearly comparable commodity and service, divided by the latest rail cost adjustment factor published by the Commission pursuant to paragraph (3) of this subsection at the time the transportation is commenced: *Provided*, That a base rate determined pursuant to this subparagraph shall be subject to challenge on the issue of whether it represents the most nearly comparable commodity or the most nearly comparable service; and

"(C) the adjusted base rate for the transportation of a commodity shall be an amount determined by multiplying the base rate for the transportation of such commodity by the latest rail cost adjustment factor published by the Commission pursuant to this subsection.

"(3) As often as practicable, but in no event less often than quarterly, the Commission shall publish, commencing with the fourth quarter of 1979, a rail cost adjustment factor which shall be a fraction, the numerator of which is the latest published Index of Railroad Costs (which index shall be compiled or verified by the Commission, with appropriate adjustments to reflect the quality and mix of material and labor), and the denominator of which is the same index for the fourth quarter of 1979 or for the fourth quarter of every 5th year thereafter as appropriate.

"(4) Notwithstanding any other provision of this subchapter, the Commission shall not have authority to find any rate for transportation authorized under this subsection to be unjust or unreasonable on the basis that such rate exceeds a reasonable maximum for the service rendered or to be rendered, nor may the Commission suspend or investigate such rate as unreasonably high under section 10707 of this title.".

RATE FLEXIBILITY ABOVE COST INCREASES

SEC. 106. Section 10701 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(g)(1) During any calendar year a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may increase the rate for such transportation by an amount not exceeding 5 percent of the adjusted base rate for such transportation as defined in subsection (f)(2) of this section: *Provided*, That in no event shall the total increase under this subsection during the period from January 1, 1980, to December 31, 1984, or during each consecutive period of 5 years thereafter, result in rates which exceed an amount equal to 114 percent of the adjusted base rate for such transportation as defined in subsection (f)(2) of this section.

"(2) Any part of a rate increase authorized under paragraph (1) of this subsection which is not implemented in a calendar year may be implemented in the next succeeding calendar year: *Provided*, That in no event shall the total increase under this subsection in any calendar year result in rates which exceed an amount equal to 110 percent of the adjusted base rate for such transportation as defined in subsection (f)(2) of this section.

"(3) Notwithstanding the provisions of section 10707 of this title, the Commission may not suspend any rate increase authorized by this subsection as unreasonably high pending final Commission action, nor may it begin an investigation proceeding under section 10707 of this title with regard to the reasonableness of a rate increase authorized by this subsection, except as otherwise provided in paragraph (5) of this subsection: *Provided*, That an interested party may file a complaint under section 11701(b) of this title alleging that such increase violates the provisions of this subtitle.

"(4) Not later than 3 years after the date of enactment of this subsection, and at least every 3 years thereafter, the Commission shall submit to the Congress a report that analyzes the revenue needs of rail carriers and makes such recommendations for the modification of this subsection as the Commission determines may be necessary.

"(5)(A) Within 120 days after the date of enactment of this subsection, the Commission shall determine on the record, after a hearing a single ratio of revenue-to-variable cost (expressed as a percentage) which, for the purpose of this subsection and other rate increases which exceed those authorized under this subsection, and new rates which exceed the adjusted base rates authorized under subsection (f) of this section, shall constitute a point at which, upon challenge by an affected shipper, the Commission shall be authorized to investigate the reasonableness of the proposed rate or new rate. Notwithstanding the provisions of paragraph (3) of this subsection, any rate increase which is above that allowed under subsection (f) of this section which would reflect a ratio which is greater than the ratio determined by the Commission as provided in this subsection, to the extent of the increase, may be investigated by the Commission on complaint of a shipper, or may be investigated on the Commission's own motion, under section 10707 of this title and shall also be subject to challenge by filing of a complaint under section 11701(b) of this title.

"(B) In determining whether to investigate or not to investigate such proposed rate or new rate, the Commission shall set forth its reasons therefor, giving due consideration to the following factors:

"(i) the amount of traffic which is transported at revenues below variable cost and efforts made to minimize such traffic;

"(ii) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

"(iii) the impact of the proposed rate or rate increase on the attainment of the national energy goal, taking into account the railroads' role as a primary source of energy transportation and the need for a sound rail transportation system in accordance with the revenue adequacy goals of section 10704 of this title.

This subparagraph shall not be construed to change existing law with regard to the nonreviewability of such determination.

"(C) In determining whether a rate is reasonable, the Commission shall consider, among other factors, evidence of the following:

"(i) the amount of traffic which is transported at revenues below variable cost and efforts made to minimize such traffic;

"(ii) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

"(iii) the carrier's mix of rail traffic to determine whether one commodity is paying a disproportionate share of the carrier's overall revenues.

"(D) In establishing the ratio in accordance with subparagraph (A) of this paragraph, the Commission shall consider all relevant factors, including but not limited to:

"(i) the average ratio developed pursuant to the provisions of subsection (e) of this section and the need for a differential between that ratio and the ratio developed under this subsection in order to realize the revenue adequacy goals of section 10704 of this title, as measured by economical and efficient rail management;

"(ii) inflationary impact of various levels of revenue-to-variable costs, particularly as such impact relates to the attainment of national energy goals; and

"(iii) the extent to which railroad revenue shortfall is not the result of unprofitable branch line service, rail traffic moving below variable cost or only marginally contributing to fixed costs, and excess capacity and the extent to which these factors are not the result of existing regulatory practices.

"(6) Notwithstanding the provisions of this subsection (except the provisions of paragraph (5)(B) of this subsection), the Commission shall be authorized to investigate the reasonableness of a rate proposed under this subsection if such rate is proposed by a carrier or carriers which have achieved an adequate revenue level (including fair return on equity) developed by the Commission for the purpose of this paragraph in accordance with the provisions of section 10704 of this title.".

GENERAL RATE INCREASES

SEC. 107. Section 10701 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(h)(1) A rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may put into effect a general rate increase described in section 10706(a)(3)(B)(i) of this title for the purpose of recovering increased costs, provided the increase does not exceed the following:

"(A) demonstrated cost increases if such general rate increase is filed with the Commission in the 1st year after the date of enactment of this subsection;

"(B) 90 percent of demonstrated cost increases if the increase is filed with the Commission in the 2d year after the date of enactment of this subsection, except that increases attributable to increases in the cost of fuel shall not be subject to such percentage limitation;

"(C) 85 percent of demonstrated cost increases if the increase is filed with the Commission in the 3d year or the first 180 days of the 4th year after the date of enactment of this subsection, except that increases attributable to increases in the cost of fuel shall not be subject to such percentage limitation; or

"(D) unless the Congress provides otherwise, 80 percent of demonstrated cost increases if such general rate increase is filed with the Commission at any time after the end of the 180th day of the 4th year after the date of enactment of this subsection, except that increases attributable to increases in the cost of fuel shall not be subject to such percentage limitation:

Provided, however, That increases taken under this section shall be considered in determining whether increases proposed under subsections (f) and (g) of this section equal or exceed the adjusted base rates for such transportation.

"(2) Each time that the Commission publishes a rail cost adjustment factor pursuant to section 10701(f)(3) of this title, it shall indicate what portion of any increase or decrease in such rail cost adjustment factor is attributable to an increase or a decrease in the cost of fuel used in providing rail transportation.

"(3) The Commission and the Secretary of Transportation shall each conduct a study of the need for general rate increases, the effect of the phase-down of general rate increases provided in this subsection, the impact of the additional rate flexibility provided by the amendments to this title made by the Railroad Transportation Policy Act of 1980, and the feasibility of eliminating general rate increases. At the end of the 3d year after the date of enactment of this subsection, the Commission and the Secretary shall separately transmit the results of such studies, along with any recommendations for legislative changes in this subsection, subsection (g) of this section, or any other provision of this title to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives.

"(4) As soon as practicable, but in no event later than 9 months after the date of enactment of this subsection, the Commission shall promulgate such final regulations as may be necessary to implement this subsection.

"(5) Nothing in this subsection shall be construed as limiting (A) the Commission's authority to deny or limit the application of general rate increases to particular movements; or (B) broad tariff changes described in section 10706(a)(3)(B)(ii) of this title.".

CONTRACT RATES

SEC. 108. (a) Title 49, United States Code, is amended by inserting the following new section immediately after section 10701:

"§ 10701a. Authority for rail carriers to establish contract rates and service

"(a) One or more rail carriers may enter into contracts with one or more purchasers of rail services to provide specified services under specified rates and conditions. Such contracts may contain provisions on subjects including, but not limited to, extension of credit to such purchasers, cancellation or termination, service, safety and inspection standards in excess of those required under existing law, escalation or reduction of charges, car compensation, force majeure, and financing of or investment in railroad equipment, plant and other facilities.

"(b)(1) Service under such a contract shall be deemed to be a separate and distinct class of service, and the equipment used in the fulfillment of such a contract shall not be subject to car service decisions under section 11123 of this title.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the existence of a contract shall not eliminate the obligation of a rail carrier to provide transportation or service on reasonable request, as set forth in section 11101 of this title. Upon complaint, the Commission may limit the right of a rail carrier to enter into future contracts under this section following a determination that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under section 11101 of this title.

"(3)(A) A contract entered into under this section may be investigated or suspended under section 10707 of this title only upon the following grounds:

"(i) that fulfillment of the contract will cause the carrier to be unable to fulfill its common carrier obligations under section 11101 of this title,

"(ii) that the carrier has discriminated by refusing to enter into a contract for rates and services with a prospective purchaser of rail services under similar conditions to the contract at issue, and that the complainant or affected shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered, or

"(iii) that the proposed contract constitutes a destructive competitive practice.

In making a determination under clause (iii) the Commission shall consider the difference between contract rates and published single car rates. If the Commission does not suspend or investigate a contract entered into under this section, it may not modify, abrogate, or otherwise impair the obligations under such contract: *Provided, however*, That the provisions of this subparagraph shall not interfere with the Commission's authority to order a carrier to provide rates and services substantially similar to the contract at issue upon a showing of discrimination.

"(B) If the Commission determines that the carrier has discriminated against a complainant or a prospective purchaser by failing to enter into a contract for rates and services under similar conditions to the contract at issue, and such complainant or prospective purchaser was ready, willing and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered, the Commission shall order the carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

"(c)(1) Any carrier may, without specific authorization from the Commission, enter into contracts involving utilization of carrier owned or leased equipment not in excess of 35 percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC): *Provided, however*, That with regard to proposed contracts between class I carriers and shippers originating an average of 1,000 cars or more per year during the past 3 years by major car type on a particular carrier, no more than 40 percent of carrier owned or leased equipment utilized on the average during the prior 3-year period may be used for such contracts without prior Commission authorization.

"(2) Carriers or other parties may seek relief from the limitations of paragraph (1) of this subsection, and the Commission may grant such relief as it deems appropriate, if it appears that additional equipment may be made available without impairing the carrier's ability to meet its common carrier obligations under section 11101 of this title.

"(3) Any interested party may request modification of the Commission's findings upon a showing of changed circumstances or other good cause.

"(d) Except as expressly provided in this section or in other sections of this title, contracts authorized under subsection (a) of this section shall not be subject to the provisions of chapter 107, subchapter II of chapter 111, or section 11701 of this title, except that complaints may be filed alleging violations of sections 11101 or 10741 of this title, subject to the limitation that available remedies for a violation of such sections shall not include modification or abrogation of contracts which have become effective without suspension or investigation. Contracts authorized under subsection (a) of this section shall be subject to the provisions of sections 10704, 10705, 10706, 10707, 10726, 10741, 10761, and 10762 of this title.

"(e) The Commission shall establish a railroad contract rate advisory service. The advisory service shall:

"(1) compile and disseminate to interested parties nonconfidential summaries of the provisions of individual contract information relating to the provisions of contracts entered into under this section with regard to various goods, items, and commodities covered by such contracts;

"(2) provide the Commission and interested parties with advice regarding contracts; and

"(3) assess the impact on competition among shippers of variations between contract rates for various shipments and the published single car rates and submit a report on such impact to the Congress not later than 90 days after the date of enactment of this section.".

(b) The index to chapter 107 of title 49, United States Code, is amended by inserting the following immediately after the item relating to section 10701:

"10701a. Authority for rail carriers to establish contract rates and service.".

EXPEDITIOUS DIVISIONS OF REVENUE

SEC. 109. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(A) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceeding preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(B) in all cases other than those specified in subparagraph (A) of this paragraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this subparagraph, it must report its reasons to Congress.".

RATE BUREAUS

SEC. 110. Section 10706 of title 49, United States Code, is amended—

(1) in the first sentence of subsection (a)(2)(A), by inserting immediately after "facilities and equipment" the following: "and including intrastate rates that affect interstate commerce";

(2) in subsection (a)(3)(A)(i), by striking "or" at the end thereof;

(3) in subsection (a)(3)(A), by redesignating clause (ii) as clause (iii);

(4) in subsection (a)(3)(A), by inserting immediately after clause (i) the following new clause:

"(ii) permit a rail carrier to participate in an agreement unless the terms of such agreement provide that transcripts or sound recordings shall be made of all meetings, that records of votes shall be made, and such transcripts or recordings and voting records shall be submitted to the Commission and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus: *Provided, however*, That such material shall be kept confidential and not subject to disclosure under the provisions of section 552 of title 5, United States Code or"; and

(5) by adding at the end of subsection (a)(3)(A) the following new sentences:

"Notwithstanding clause (i) of this paragraph, a rail carrier may participate in discussions related to single-line rates proposed by another rail carrier or rates related to a particular interline movement. Such discussions may include such matters as whether the proposed rates are noncompensatory, would result in discrimination between shippers or localities, would adversely affect the movement of traffic, would result in violations of section 10726 of this title, or would necessitate adjustments in other rates. Such discussions shall be limited to comments upon the proposal and shall exclude any agreement, express or implied, to approve, modify, disapprove or withdraw the proposals, except that in the case of a proposed interline movement, such agreements may be made by a rail carrier that can practicably participate in that movement.".

INVESTIGATIONS AND SUSPENSIONS OF RATES AND ORDERS SETTING RATES

SEC. 111. (a) Section 10704(a)(1) of title 49, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", subject to the limitations of sections 10701 and 10701a of this title".

(b) Section 10707 of title 49, United States Code, is amended—

(1) in the first sentence of subsection (a), by inserting immediately after "party," the following: "subject to the limitations of sections 10701 and 10701a of this subchapter,";

(2) in the first sentence of subsection (b)(1), by inserting immediately before the period at the end thereof the following: ", unless the proposed rate, classification, rule or practice is suspended, in which case the proceeding must be completed by the end of the 5th month after the rate, classification, rule or practice was to become effective";

(3) in the second sentence of subsection (b)(1), by inserting immediately after "7th month" the following: ", or the 5th month if suspension is involved,"; and

(4) in subsection (c)(1), by striking "7" and "10" and inserting in lieu thereof "5" and "8", respectively.

APPLICABILITY

SEC. 112. Section 10711 of title 49, United States Code, is amended—

(1) by designating the existing language as subsection (a); and

(2) by adding at the end thereof the following new subsection:

"(b) With respect to the relationship between water carriers and rail carriers, none of the amendments to this subtitle made by the Railroad Transportation Policy Act of 1980 shall be construed to modify the application of existing law with respect to competition and coordination, or to make lawful a competitive practice that is unfair, destructive, predatory or otherwise undermines competition.".

DEMAND-SENSITIVE RATES

SEC. 113. Section 10727 of title 49, United States Code, is amended to read as follows:

"§ 10727. Demand-sensitive rates

"A rail carrier may establish a tariff, subject to section 10701 of this title and other provisions of this chapter, for any movement or group of movements, under which rates, except those rates involving the movement of grain, may be raised and lowered, between published maximum and minimum levels, in response to either expected or actual fluctuations in demand for rail service. The Commission shall facilitate the establishment of such demand-sensitive rates.".

RELEASED RATES

SEC. 114. Section 10730 of title 49, United States Code, is amended—

(1) by designating the existing language as subsection (a);

(2) by inserting ", other than a rail carrier," immediately after "carrier" the first time it appears; and

(3) by adding at the end thereof the following new subsection:

"(b) A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may, subject to the provisions and procedures set forth in this chapter and the general tariff requirements of section 10762 of this title, establish rates for the transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by written agreement between the carrier and the shipper.".

TRANSPORTATION OF RECYCLABLE MATERIALS

SEC. 115. Section 10731 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of this title or any other law, within 90 days after the date of enactment of this subsection, all rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall take all actions necessary to reduce and thereafter maintain rates for the transportation of recyclable or recycled materials at revenue-to-variable cost ratio levels that are equal to or less than the average revenue-to-variable cost ratios initially established and thereafter published annually by the Commission pursuant to section 10701(e)(2) of this title, and any such rate which equals or exceeds such average revenue-to-variable cost ratio established by the Commission shall not be required to bear any further rate increases. The Commission shall have jurisdiction to issue all orders necessary to enforce the requirements of this subsection.".

NOTICE AND PUBLICATION OF TARIFFS

SEC. 116. Section 10762 of title 49, United States Code, is amended—

(1) in the first sentence of subsection (a)(1), by inserting immediately after "motor common carrier" the following: "or service by a rail carrier pursuant to a contract authorized under section 10701a of this title";

(2) in subsection (a), by adding at the end thereof the following new paragraph:

"(3) A rail carrier which has entered into a contract authorized under section 10701a of this title shall publish and file with the Commission, in such manner as the Commission may provide, the essential terms of such contract. Such filing shall constitute a tariff for the purposes of compliance with the provisions of section 10761 of this title. Such contracts shall not be subject to the normal tariff rules promulgated pursuant to this section (49 CFR 1300 et seq.), but the Commission if necessary may promulgate special tariff rules for such contracts. Any party to such a contract may, with the consent of the other parties to the contract, elect to file with the Commission information in addition to the essential terms of the contract. In such cases, the Commission shall, upon the request of any party to the contract, place any such additional information (other than the essential terms of the contract) in a confidential file. Notwithstanding such a request, the information filed with the Commission and kept in a confidential file may, at the discretion of the Commission, be made available to any party to a proceeding as authorized under section 10701a or other provisions of this title.";

(3) in subsection (b)(1), by striking the first sentence and inserting in lieu thereof: "Except in the case of a rail carrier, the Commission shall prescribe the form and manner of publishing, filing, and keeping tariffs open for public inspection under this section. In the case of a rail carrier, the Commission shall insure that tariffs are published, filed, and kept open for public inspection and may, in its discretion, prescribe the form and manner of such publishing, filing, and keeping tariffs open for public inspection.";

(4) in subsection (c)(3), by striking the second sentence and inserting in lieu thereof the following: "Except in the case of a rail carrier, a proposed change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier, a proposed change or a new or reduced rate shall not become effective for 20 days after the notice is published, except that, within the first 60 days after the date of enactment of this sentence, such change or rate shall not become effective for 30 days after the notice is published: *Provided, however*, That a contract authorized under section 10701a of this title shall not become effective for 30 days: *And provided further*, That a tariff authorized under section 10727 of this title shall not become effective for 30 days, nor shall rates raised or lowered within the published minimum and maximum levels of such a tariff become effective for 5 days, after the notice is published, filed, and held open as required under subsections (a) and (b) of this section."; and

(5) in subsection (d)(1), by striking "30-day" and inserting in lieu thereof "notice".

REPEALS

SEC. 117. (a) Section 10709 of title 49, United States Code, is repealed, and the item relating to section 10709 in the index to chapter 107 of title 49, United States Code, is stricken.

(b) Section 10729 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A proposed rate, classification, rule or practice for transportation by a rail carrier may not become effective under this section unless notice of intent to establish such

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SAVINGS PROVISION

SEC. 118. (a)(1) Notwithstanding any other provision of law, rail rates in existence on the date of enactment of this Act may not be challenged as exceeding maximum reasonableness, except in accordance with the procedures set forth in paragraph (2) of this subsection.

(2) A rail rate described in paragraph (1) of this subsection may be challenged as exceeding maximum reasonableness under the procedures set forth in chapter 107 and section 11701 of title 49, United States Code, if—

(A) such rate yields a revenue-to-variable cost ratio that exceeds the average ratio of revenue-to-variable cost described in section 10701(e)(2) of title 49, United States Code; and

(B) a complaint alleging that such rate exceeds maximum reasonableness is filed with the Interstate Commerce Commission within 270 days after the date of enactment of this Act.

(b) Effective on the date of enactment of this Act, rail rate increases may only be challenged in accordance with the provisions of chapter 107 of title 49, United States Code, as amended by this Act.

CAR UTILIZATION

SEC. 119. (a) Subchapter II of chapter 107 of title 49, United States Code, is amended by inserting at the end thereof the following new section:

"§ 10732. Car utilization

"In order to encourage more efficient use of freight cars, carriers shall be permitted to establish tariffs containing premium charges for special services or special levels of services not provided in any tariff otherwise applicable to the movement. The Commission shall facilitate development of such tariffs so as to increase the utilization of equipment.".

(b) The index to chapter 107 of title 49, United States Code, is amended by inserting the following immediately after the item relating to section 10731:

"10732. Car utilization.".

(c) The first sentence of section 511(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(a)) is amended by inserting immediately after "equipment" the following: "which includes but is not limited to computerized car management systems".

JOINT RATE SURCHARGE

SEC. 120. Section 10705 of title 49, United States Code, is amended by adding at the end thereof the following new subsections:

"(g)(1)(A) During the period in which this paragraph is effective, a rail carrier may publish and apply a surcharge increasing or decreasing a joint rate only in accordance with this subsection. This paragraph shall expire 3 years after the date of enactment of this subsection unless extended for 1 additional year by the Commission upon petition of any carrier and for good cause shown.

"(B) A carrier may publish and apply a surcharge increasing or decreasing any joint rate between any points without the concurrence of other carriers participating in such joint rate provided that the surcharge is applied in equal dollar amounts to all of the routes participated in by that carrier between each affected origin and destination and, when the surcharge increases the joint rate, to all of its competing single-line routes between each such origin and destination. The change in revenue resulting from such surcharge shall accrue solely to, or be borne solely by, the carrier applying the surcharge.

"(C) A carrier applying a surcharge which would increase a joint rate must notify the other carriers party to the joint rate 45 days before the proposed effective date of the surcharge.

"(D) In addition to any other remedy available under this chapter, a carrier which participates in any route subject to a surcharge applied pursuant to subparagraph (B) of this paragraph may by tariff or tariff supplement cancel the application of such surcharge to any such route if such carrier demonstrates that, under the applicable joint rate without the surcharge, or a new rate division increasing the share of the surcharge proposing carrier, or a new lawful rate, the surcharging carrier's share of the revenues for its participation over such route is not less than 110 percent of its variable costs of providing service over such route. Such canceling tariff may be suspended by the Commission pursuant to section 10707 of this title only on the grounds that the carrier proposing the cancellation has not made or is not likely to make such demonstration. Any rate differential resulting from such a cancellation shall not constitute unreasonable discrimination or a destructive competitive practice. For purposes of this paragraph, variable costs shall be determined only by using the unadjusted costs of the surcharging carrier calculated using the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed to account for current wage and price levels in the region in which the surcharging carrier operates.

"(E) A carrier may not apply a surcharge pursuant to this paragraph unless, for 1 year prior to the surcharge, it has participated in all increases in rates of general applicability agreed to by all other parties to the rates in question.

"(F) For purposes of maximum rate regulation under this title, only the carrier proposing a surcharge shall be required to defend the surcharge, and the lawfulness of the surcharge shall be determined without regard to the amounts received and the services performed by other carriers party to the joint tariff to which the surcharge is applied. The Commission may not investigate the lawfulness if the joint rate resulting from the application of a surcharge. In any subsequent proceeding to investigate the lawfulness of the joint rate to which a surcharge applies, that surcharge shall not be taken into consideration unless the Commission determines that each carrier participating in the surcharge is earning adequate revenues as defined in section 10704(a)(2) of subchapter I of this title.

"(2) A rail carrier may, without the concurrence of any connecting rail carrier, publish surcharges applicable to traffic originating or terminating upon any line of railroad originating and terminating less than 3,000,000 gross ton miles of traffic per mile in the most recent calendar year for which traffic data are available if, prior to the application of any such surcharge, the through charges applicable to traffic to and from any such line do not provide the surcharging carrier revenues adequate to cover 100 percent of the reasonably expected costs (including the cost of capital) of continuing to operate the line involved. The change in revenues resulting from any such surcharge shall accrue solely to the carrier applying the surcharge. The Commission shall not require, as a condition to the filing of an application to abandon a line of railroad or as a condition to the abandonment of such a line, a carrier to use the rights conferred herein; nor shall the Commission, in ruling upon any abandonment application, consider or give any weight to the failure of the application to have used the rights conferred herein.

"(h)(1) Notwithstanding any other law, prior agreement, or requirement of the Commission to the contrary, a carrier may cancel the application of such rate to any through route without the concurrence of any carrier party to the rate unless another carrier party to the rate over that route demonstrates to the Commission that the canceling carrier's share of the revenue under the joint rate or under a new rate division increasing the share of the carrier proposing to cancel the application of the rate or a new lawful rate is not less than 110 percent of the canceling carrier's variable cost of providing service over that route. For purposes of this subsection, revenue share may, at the option of the carrier canceling the application of a rate, be determined by reference to past revenue settlements actually made in the most recent calendar year by connecting lines, and variable cost shall be determined only by using the unadjusted costs of the canceling carrier calculated using the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed to account for current wage and price levels in the region in which the canceling carrier operates.

"(2) A carrier canceling the application of a joint rate pursuant to this subsection must notify the other carriers party to the rate 45 days before the proposed effective date of the cancellation.

"(3) When the application of a joint rate to a specific route or routes is canceled and a through rate other than a joint rate thereafter applies to such route or routes (irrespective of whether the newly applicable through rate displaces a higher applicable joint rate), the through rate shall divide as the separate factors of such rate are made. The cancellation of the application of a rate pursuant to this subsection shall not constitute unreasonable discrimination or a destructive competitive practice.

"(i) To ease the burden imposed upon small businesses desirous of challenging actions authorized by subsections (g) and (h) of this section, the Commission shall obtain, make readily available, and provide to class III railroads upon request analysis of the data necessary to support a challenge under subsection (g)(1)(D) and subsection (h) of this section. The Commission's Special Counsel or Public Counsel is authorized to assist such railroads in preparing actions under subsection (g)(1)(D) and subsection (h) of this section.".

PART B—STRUCTURE

MERGERS AND OTHER TRANSACTIONS

SEC. 121. (a) Section 11344 of title 49, United States Code, is amended—

(1) in subsection (b), by inserting immediately after "section" the following: "which involves the merger or control of at least two class I railroads, as defined by the Commission"; and

(2) by adding at the end thereof the following new subsection:

"(d) In a proceeding under this section which does not involve the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall approve such an application unless it finds that—

"(1) as a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

"(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In making such findings, the Commission shall, with respect to any application that is part of a plan or proposal developed under section 5 (a) through (d) of the Department of Transportation Act (49 U.S.C. 1654 (a) through (d)), accord substantial weight to any recommendations of the Secretary of Transportation.".

(b) Section 11345 of title 49, United States Code, is amended to read as follows:

"§ 11345. Consolidation, merger, and acquisition of control: rail carrier procedure

"(a) If a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title is involved in a proposed transaction under section

11343 of this title, this section and section 11344 of this title also apply to the transaction. The Commission shall publish notice of the application in the Federal Register by the end of the 30th day after the application is filed with the Commission and after a certified copy of it is furnished to the Secretary of Transportation. However, if the application is incomplete, the Commission shall reject it by the end of that period. The order of rejection is a final action of the Commission under section 10327 of this title. The published notice shall indicate whether the application involves:

"(1) the merger or control of at least two class I railroads, as defined by the Commission, to be decided within the time limits specified in subsection (b) of this section;

"(2) transactions of regional or national transportation significance, to be decided within the time limits specified in subsection (c) of this section; or

"(3) any other transaction covered by this section to be decided within the time limits specified in subsection (d) of this section.

"(b) If the application involves the merger or control of two or more class I railroads, as defined by the Commission:

"(1) Written comments about an application may be filed with the Commission within 45 days after notice of the application is published under subsection (a) of this section. Copies of those comments shall be served on the Secretary of Transportation and the Attorney General, each of whom may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Commission by the end of the 15th day after the date of receipt of the written comments.

"(2) The Commission shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it and given to the Secretary of Transportation by the 90th day after publication of notice under that subsection.

"(3) The Commission must conclude evidentiary proceedings by the end of the 24th month after the date of publication of notice under subsection (a) of this section. The Commission must issue a final decision by the 180th day after the date on which it concludes the evidentiary proceedings.

"(c) If the application involves a transaction other than the merger or control of at least two class I railroads, as defined by the Commission, which the Commission has determined to be of regional or national transportation significance:

"(1) Written comments about an application may be filed with the Commission within 30 days after notice of the application is published under subsection (a) of this section. Copies of those comments shall be served on the Secretary of Transportation and the Attorney General, each of whom may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Commission by the end of the 15th day after the date of receipt of the written comments.

"(2) The Commission shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it and given to the Secretary of Transportation by the 60th day after publication of notice under that subsection.

"(3) The Commission must conclude any evidentiary proceedings by the 180th day after the date of publication of notice under subsection (a) of this section. The Commission must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

"(d) For all applications under this section other than those specified in subsections (b) and (c) of this section:

"(1) Written comments about an application may be filed with the Commission within 30 days after notice of the application is published under subsection (a) of this section. Copies of those comments shall be served on the Secretary of Transportation and the Attorney General, each of whom may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Commission by the end of the 15th day after the date of receipt of the written comments.

"(2) The Commission must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Commission must issue a final decision by the 45th day after the date on which it concludes the evidentiary proceedings.

"(e) If the Commission does not issue a decision that is a final action under section 10327 of this title, it shall send written notice to Congress that a decision was not issued and the reasons why it was not issued.

"(f) The Commission may waive the requirement that an initial decision be made under section 10327 of this title and make a final decision itself when it determines that action is required for the timely execution of its functions under this subchapter or that an application governed by this section is of major transportation importance. The decision of the Commission under this subsection is a final action under section 10327 of this title.

"(g) The Secretary of Transportation may propose changes in transactions governed by this section when a rail carrier is involved. The Secretary may appear before the Commission to support those changes.".

ABANDONMENT

SEC. 122. (a) Section 10903 of title 49, United States Code, is amended—

(1) in subsection (b)(1), by striking the first sentence; and

(2) by striking subsection (c).

(b)(1) Section 10904(a) of title 49, United States Code, is amended—

(A) by striking all after "Commission" through "effective" in paragraph (1);

(B) by striking "and" at the end of paragraph (2)(A);

(C) by striking the period at the end of paragraph (2)(B) and inserting in lieu thereof "; and";

(D) by adding a new paragraph (2)(C) to read as follows:

"(C) a statement that the line is available for subsidy or sale in accordance with section 10905 of this title; a statement that the carrier will promptly provide to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation, calculated in accordance with section 10905 of this title; and the name and business address of the person who is authorized to discuss sale or subsidy terms for the carrier."; and

(E) by inserting in paragraph (3)(E) immediately after "satisfied" the following: ", and certifying that clauses (A)-(D) have been satisfied within the most recent 30 days prior to the date the application is filed".

(2) Section 10904(b) of title 49, United States Code, is amended to read as follows:

"(b) If no protest is received within 30 days after the application is filed, the Commission shall find that the public convenience and necessity require or permit the abandonment or discontinuance. In such a case, the Commission shall, within 45 days after the application is filed, issue a certificate which permits the abandonment or discontinuance to occur within 75 days after the application is filed.".

(3) Section 10904(c) of title 49, United States Code, is amended to read as follows:

"(c)(1) If a protest is received within 30 days after the application is filed, the Commission shall, within 45 days after the application is filed, determine whether an investigation is needed to assist in determining what disposition to make of the application.

"(2) If the Commission decides that no investigation is to be undertaken, the Commission shall, within 75 days after the application is filed, decide whether the present or future public convenience and necessity require or permit the abandonment or discontinuance, taking into consideration the application of the railroad and any materials submitted by protestants. If the Commission finds that the present or future public convenience and necessity require or permit the abandonment, it shall, within 90 days after the date of application, issue a certificate which permits the abandonment or discontinuance to occur within 120 days after the application is filed.

"(3) If the Commission decides that an investigation should be undertaken under this section, the investigation must be completed within 135 days, and an initial decision must be rendered within 155 days, of the date the application is filed. Thirty days after such decision, the initial decision shall become the final decision of the Commission unless, during the interim, the Commission decides to hear appeals. If an initial decision is appealed and considered by the Commission, the Commission shall issue a final decision within 255 days of the date of application. Whenever the Commission decides upon investigation that the present or future public convenience and necessity require or permit the abandonment or discontinuance of rail service, it shall, within 15 days of the final decision, issue a certificate which permits the abandonment or discontinuance to occur within 75 days of the date of the final decision.

"(4) The effective date of any certificate which permits abandonment or discontinuance may be stayed by the Commission pursuant to the provisions of section 10905 of this title.".

(4) Subsection (d) of section 10904 of title 49, United States Code, is redesignated as subsection (e), and immediately after subsection (c) the following new subsection is inserted:

"(d)(1) The burden is on the person applying for the certificate to prove that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

"(2) For applications approved by the Secretary of Transportation as part of a plan or proposal under section 5 (a) through (d) of the Department of Transportation Act (49 U.S.C. 1654 (a) through (d)), the Commission shall consider whether any detriment from the abandonment or discontinuance exceeds the transportation benefit from the plan or proposal as a whole.".

(5) Section 10904(e) of title 49, United States Code, as redesignated by paragraph (4) of this subsection, is amended by inserting immediately before the period at the end thereof the following: ": *Provided, however*, That the requirement of such description or identification in such diagram may be waived by the Commission if the application was approved by the Secretary of Transportation as part of a plan or proposal under section 5 (a) through (d) of the Department of Transportation Act (49 U.S.C. 1654(a) through (d)), or the application is filed by a railroad in bankruptcy".

(c) Section 10905 of title 49, United States Code, is amended to read as follows:

"§ 10905. Offers of financial assistance to avoid abandonment and discontinuance

"(a) In this section—

"(1) 'avoidable cost' means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

"(A) working capital and required capital expenditure;

"(B) expenditures to eliminate deferred maintenance;

"(C) the current cost of freight cars, locomotives, and other equipment; and

"(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes.

"(2) 'reasonable return' means—

"(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Interstate Commerce Commission; and

"(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Commission.

"(b) Any rail carrier which has filed an application for a certificate of abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Commission—

"(1) an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

"(2) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance;

"(3) traffic, revenue, and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over that part of the railroad line; and

"(4) any other information that the Commission may deem necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

"(c) When the Commission finds under section 10903 of this title that the public convenience and necessity require or permit abandonment or discontinuance, it shall, concurrently with service of the decision upon the parties, publish the finding in the Federal Register. Within 10 days following the publication, any person may offer to pay the carrier a subsidy or offer to purchase the line. Such offer shall be filed concurrently with the Commission. If the offer to subsidize or purchase the line is less than the carrier's estimate provided under subsection (b)(1) of this section, the offer shall explain the basis of the disparity, and the manner in which the offer of subsidy or purchase is calculated.

"(d) If, within 15 days after the publication required in subsection (c) of this section, the Commission finds that—

"(1) a financially responsible person (including a government entity) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued; and

"(2) it is likely that the assistance would be equal to—

"(A) the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or

"(B) the acquisition cost of that part of the railroad line;

the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance in accordance with subsections (e) and (f) of this section.

"(e) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate for so long as the agreement, or an extension or modification of the agreement, is in effect. If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission shall approve the transaction and dismiss the application for abandonment or discontinuance. If the carrier and a financially responsible person (including a government entity) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Commission establish the conditions and amount of compensation. If no agreement is reached within 30 days after the offer is made and neither party requests that the Commission establish the conditions and amount of compensation during the same period, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance.

"(f)(1) Whenever the Commission is requested to establish the conditions and amount of compensation under this section—

"(A) the Commission shall render its decision within 60 days;

"(B) where subsidy has been offered, the Commission shall determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transporation, plus a reasonable return on the value of the line; and

"(C) where an offer of purchase has been made in order to continue rail service on the line, the Commission shall determine the price and other terms of sale. In no case shall the Commission set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services).

"(2) The decision of the Commission shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Commission's decision. In such a case, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance, unless other offers are being considered pursuant to paragraph (3) of this subsection.

"(3) If a carrier receives more than one offer to purchase or subsidize, it shall select the offeror with whom it wishes to transact business, and complete the sale or subsidy agreement, or request that the Commission establish the conditions and amount of compensation prior to the 40th day after the date on which notice was published under subsection (c) of this section. If no agreement on subsidy or sale is reached within the 40-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request that the Commission establish the conditions and amount of compensation. If the Commission has established the conditions and amount of compensation and the original offer has been withdrawn, any other offeror may accept the Commission's decision within 20 days of such decision, and the Commission shall require the carrier to enter into a sale or subsidy agreement with such offeror, if such sale or agreement incorporates the Commission's decision.

"(4) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

"(5) Any subsidy provided under this section may be discontinued on notice of 60 days. Unless, within such 60-day period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was or was to be discontinued, the Commission shall, at the carrier's request, immediately issue a certificate authorizing the abandonment or discontinuance of service on the line.".

ENTRY

SEC. 123. (a)(1) Section 10901(a) of title 49, United States Code, is amended by striking "will be enhanced by" and inserting in lieu thereof "permit".

(2) Section 10901 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(d) Where a railroad has been issued a certificate of public convenience and necessity by the Commission authorizing the construction or extension of a railroad line, no other railroad may block the construction or extension by refusing to permit the carrier to cross its property: *Provided*, That (1) the construction does not unreasonably interfere with the operation of the crossed line; (2) the operation does not materially interfere with the operation of the crossed line; and (3) the owner of the crossing line shall compensate the owner of the crossed line. The carriers are responsible for establishing the conditions of such compensation. However, if the carriers cannot agree, the Commission may establish conditions of compensation.".

(b) Section 11103 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Commission may require railroads to enter reciprocal switching agreements where it finds such agreements to be practicable and in the public interest. The carriers are responsible for establishing the conditions and compensation for such agreements. However, if the carriers cannot agree, the Commission may establish the conditions and compensation for such agreements.".

(c) Section 11344 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) A rail carrier, or person controlled by or affiliated with a rail carrier may apply for approval of a transaction which involves motor carrier transportation prior or subsequent to rail transportation to serve inadequately served shippers located on another railroad. Such application shall be approved by the Commission if the shippers demonstrate present evidence of impaired rail service and inadequate motor common carrier service which results in the serious failure of the railroad serving the shippers to meet the rail equipment or transportation schedules of shippers or to seriously fail to otherwise provide adequate normal rail services required by shippers and which shippers would reasonably expect the railroad to provide. The Commission shall approve or disapprove applications under this subsection within 30 days after receipt of such application. The Commission shall approve applications which are not protested by interested parties within 30 days following receipt of such application.".

PART C—MISCELLANEOUS PROVISIONS

CAR SERVICE

SEC. 124. (a) Section 11123(a) of title 49, United States Code, is amended by striking "in a section of the United States,", and inserting in lieu thereof the following: "of

such magnitude as to have substantial adverse effects on rail service to the Nation or a substantial region of the Nation.".

(b) Paragraph (3) of section 11123(a) of title 49, United States Code, is amended by striking "terminals, including mainline tracks for a reasonable distance outside of those terminals,", and inserting in lieu thereof "facilities,".

(c) Section 11123 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(c) No action undertaken or order issued under the emergency powers of this section shall extend for more than 30 days from the date of initial Commission action unless, during the interim, the Commission has begun a proceeding to resolve the service problems on a more permanent basis. When the Commission has begun such a proceeding, an emergency order may be renewed and extended by the Commission for a maximum of 60 days.".

EXEMPTION

SEC. 125. Section 10505 of title 49, United States Code, is amended to read as follows:

"§ 10505. Authority to exempt rail carrier transportation

"(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service when the Commission finds that the application of a provision of this subtitle is not necessary to carry out the transportation policy of section 10101(b) of this title and either the transportation or service is of limited scope of the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power: *Provided, however,* That the Commission may not issue any exemption which will substantially lessen competition and coordination between water and rail carriers.

"(b) No exemption order pursuant to this section shall operate to relieve any common carrier by railroad from the common carrier liability for claims imposed under section 11707 of this title.

"(c) The Commission may where appropriate begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Commission may specify the time during which the exemption is effective.

"(d) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of section 10101(b) of this title.".

FEDERAL-STATE RELATIONS

SEC. 126. Section 11501 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by striking the first word and inserting in lieu thereof the following: "Where the Interstate Commerce Commission under other sections of this title has the authority to do so, the";

(2) in subsection (b)(1)(B), by striking "120th" and inserting in lieu thereof "90th";

(3) in subsection (b)(2), by inserting the following immediately after "Commission" the second time it appears: ", subject to its authority as provided in the other sections of this title,"; and

(4) by adding at the end thereof the following new subsection:

"(d) Federal withdrawal from certain areas of regulation shall not be construed as relinquishing Federal jurisdiction and State authorities are encouraged to exercise their regulatory jurisdiction in a manner consistent with standards established in the railroad transportation policy set forth in section 10101(b) of this title.".

FUEL ADJUSTMENT SURCHARGES

SEC. 127. (a) Chapter 115 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 11508. State authority over fuel adjustment surcharges

"Notwithstanding any other provision of law, no State (including the Commonwealth of Puerto Rico) shall have authority to prevent a rail carrier providing intrastate rail transportation from increasing rates for such transportation in order to pass through increases in the cost of providing such transportation that are attributable to increases in the cost of fuel used in such transportation if such increases do not exceed increases in the cost of fuel used in rail transportation as determined by the Commission pursuant to section 10701(h)(2) of this title.".

(b) The index to chapter 115 of title 49, United States Code, is amended by inserting the following immediately after the item relating to section 11507:

"11508. State authority over fuel adjustment surcharges.".

CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

SEC. 128. Section 809(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended—

(1) by inserting "(1)" immediately before the first sentence thereof; and

(2) by adding at the end thereof the following new paragraph:

"(2) There are authorized to be appropriated, for the purposes of carrying out the provisions of subsection (b)(2) of this section, not to exceed an aggregate amount of $20,000,000 for the fiscal years 1981, 1982, and 1983. Such sums shall remain available until expended: *Provided, however,* That, notwithstanding the provisions of subsection (b)(2) of this section, the Federal share for each grant made from the funds authorized to be appropriated pursuant to this paragraph may not exceed 80 percent of the total cost of any project.".

RAIL TECHNOLOGICAL IMPROVEMENTS AMENDMENT

SEC. 129. Notwithstanding any other provision of law, the Federal Railroad Administration shall have the authority and discretion to exempt from the mandatory requirements of the provisions of the Act of March 2, 1893, the Act of March 2, 1903, and the Act of April 14, 1910 (45 U.S.C. 1 through 16), also referred to as the Safety Appliance Acts, any railroad equipment, or equipment which will be operated on rails, when such requirements preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under the existing statutes.

AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 130. (a) Section 216(f)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(f)(5)) is amended by adding the following sentence after the first sentence thereof: "For purposes of this subsection, the Railway Labor Executives' Association shall be deemed to represent all of the representatives of crafts or classes of employees of the Corporation and its subsidiaries as though that organization held powers of attorney from each representative of a craft or class for the limited purposes of negotiating and agreeing upon an employee stock ownership plan.".

(b) Section 216(f)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(f)(5)) is further amended by adding the following sentence after the second sentence thereof: "The plan shall not be subject to change under the provisions of section 6 of the Railway Labor Act until after such time as securities have been distributed from the plan to the participants in the plan or their beneficiaries pursuant to the terms of the plan.".

(c) Section 216(f) of the Regional Rail Reorganization Act of 1973 (45 U.S.C 726(f)) is further amended by adding the following at the end thereof:

"(8)(A) Except as provided in subparagraph (B), no person described in subparagraph (C) shall have or be subject to any fiduciary responsibility, obligation or duty, nor shall any such person be subject to civil liability, under any Federal or State law, as a fiduciary or otherwise, (i) in connection with the employee stock ownership plan and related trust established by the Corporation pursuant to the requirements of this subsection or with ConRail Equity Corporation (x) on account of any reorganization or restructuring of the Corporation, its successors or assigns, or their assets or capital structure, or (y) on account of any action taken or not taken by the Corporation which may affect its ability to attain the performance levels established in connection with the plan pursuant to paragraph (2)(A)(ii) of this subsection, (ii) for or in connection with the establishment, continuation or implementation of the plan and related trust or of ConRail Equity Corporation or the acquisition of, investment in or retention of any security of the Corporation or ConRail Equity Corporation, or of any of their successors and assigns, by the plan or ConRail Equity Corporation, or the disposition of any such security to the extent that such disposition is made in connection with a reorganization or restructuring of the Corporation, its successors and assigns, or their assets or capital structure, as directed or approved by or on behalf of the Association or the United States, or the acquisition or retention of any cash, security or other property received in connection with any such reorganization or restructuring, or (iii) for or in connection with any other action taken or not taken pursuant to any term or condition of the plan or related trust agreement or of the articles of incorporation or bylaws of ConRail Equity Corporation: *Provided,* That any directions described in clauses (i)(x), (ii), or (iii) are taken at the directon, or with the consent, of the Association or of the Secretary or his designate.

"(B) Subparagraph (A) shall not be interpreted to relieve any person from any fiduciary or other responsibility, obligation or duty under any Federal or State law to take or not to take actions in respect to the plan in connection with (i) receiving contributions, (ii) exercising custodial responsibilities, (iii) determining eligibility to participate in the plan, (iv) calculating, determining and paying benefits, (v) processing and deciding claims, (vi) preparing and distributing plan information, benefit statements, returns and reports, (vii) maintaining plan records, (viii) appointing plan fiduciaries and other persons to advise or assist in plan administration and (ix) other than as provided in subparagraph (A), acquiring, holding or disposing of plan assets.

"(C) The term 'person' as used in subparagraph (A) shall mean each of the following:

"(i) the trustee or trustees of the plan, the Corporation and its subsidiaries, ConRail Equity Corporation, the Association, and any of their successors and assigns;

"(ii) each director, officer, employee and agent of the Corporation of any of its subsidiaries, of ConRail Equity Corporation, of the plan, of the Association or of any of their successors and assigns; and

"(iii) each member of the Finance Committee and any of their employees and agents.

"(D) Neither this paragraph nor paragraph (9) shall be construed to grant immunity

from any criminal law of the United States or of any State or the District of Columbia.

"(9) The United States shall indemnify, defend and hold harmless the persons described in paragraph (8)(C) from and against any and all liabilities, claims, actions, judgments, amounts paid in settlement, and costs and expenses (including reasonable fees of accountants, experts and attorneys) actually incurred in connection with the establishment, implementation or operation of the plan or ConRail Equity Corporation or with any transaction which is required by or is appropriate to effectuate fully the provisions of this subsection, except as may arise in connection with the execution of a responsibility, obligation or duty excluded from paragraph (8)(A) by paragraph (8)(B), if it is determined that such persons were acting in good faith. The indemnity provided in this paragraph shall be a full faith and credit obligation of the United States.

"(10) All securities of the Corporation, all securities of any subsidiary of the Corporation and of ConRail Equity Corporation and all interests in the employee stock ownership plan which are issued or transferred in connection with the employee stock ownership plan established by the Corporation pursuant to the requirements of this subsection shall be deemed for all purposes to have been issued subject to and authorized and approved pursuant to section 11301(b) of title 49 of the United States Code and any corresponding provision of any successor statute.".

TITLE II—EMPLOYEE PROTECTION AND RAILROAD FINANCING MODIFICATION

SHORT TITLE

SEC. 201. This title may be cited as the "Employee Protection and Railroad Financing Modification Act of 1980".

PART A—EMPLOYEE PROTECTION

FINDINGS AND PURPOSE

SEC. 202. (a) The Congress finds that the original provisions designed to protect railroad employees under title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) against deprivation of employment and reductions in railroad-related compensation contain inequities; that these inequities hinder the Consolidated Rail Corporation from achieving improved management of certain protected employees in its work force; and that elimination of these inequities would help reduce the cost levels of the Consolidated Rail Corporation, and thereby improve the Corporation's ability to provide carriage of goods in interstate commerce.

(b) It is declared to be the purpose of the Congress in this part to foster fair and equitable labor portection for certain railroad employees; to foster improvements in the ability of the Consolidated Rail Corporation to manage productively such employees in its work force; and to help reduce the cost levels of the Consolidated Rail Corporation by eliminating the inequities of the labor protection provisions, thereby improving the Corporation's ability to provide carriage of goods in interstate commerce by—

(1) revising the caah allowances for protected employees under title V of the Regional Rail Reorganization Act of 1973 to ensure that the employees receive a reasonable level of protection; and

(2) improving the ability of the Consolidated Rail Corporation to train or retrain certain protected employees for bona fide job vacancies.

(c) Nothing in this part is intended to affect any law, regulation, court order, or obligation pertaining to equal employment opportunity.

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 203. Section 505(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to his or her compensation, in accordance with the following:

"(1) PROTECTED EMPLOYEES OCCUPYING POSITIONS IN THE NONOPERATING CRAFTS.—Effective on and after the first day of the month immediately following the date of enactment of the Employee Protection and Railroad Financing Modification Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a maintenance-of-way employee) who has been deprived of employment or adversely affected with respect to his or her compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the aforesaid rate, and will be the actual hourly rate for hourly rated employees; the daily rate divided by 8 for daily rated employees; and the monthly rate divided by the working days in the claim month, further divided by 8 in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the positions relieved. Extra list employees will be guaranteed the extra list rate.

"(A) In the event a protected employee's position is abolished or he or she is displaced, and the employee is thereby required to occupy a position paying a lesser hourly rate than the employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position the employee is occupying and his or her guaranteed hourly rate for all hours included in the straight-time work schedule of the employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight-time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(B) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid his or her guaranteed hourly rate for the number of hours the employee would have worked in the straight-time work schedule of his or her previously held position.

"(C) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified therefrom, the higher rate shall become his or her protected rate.

"(2) PROTECTED EMPLOYEES OCCUPYING POSITIONS IN THE MAINTENANCE-OF-WAY CRAFTS.—Notwithstanding subsection (b)(1), effective on and after the first day of the month immediately following the date of enactment of the Employee Protection and Railroad Financing Modification Act of 1980, a protected maintenance-of-way employee shall be afforded his or her average monthly compensation computed in accordance with section 505(b) prior to such date (as used in this subsection (b), 'average monthly compensation'), but subject to a 'maximum', which maximum is defined as the employee's average monthly compensation divided by his or her average monthly time paid for, and further multiplied by 174 hours, or by his or her average monthly time paid for, whichever is less. If the average monthly compensation of a protected maintenance-of-way employee exceeds the maximum, the average monthly compensation of the employee will be reduced to the maximum for purposes of computing the employee's monthly displacement allowance, if any. If a protected employee is deprived of employment or if the employee's compensation in his or her current position is less in any month than the employee's average monthly compensation or the maximum, whichever is smaller, the employee shall be paid 75 percent of the difference between his or her earnings if any and the smaller figure, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual compensation (excluding overtime compensation earned by virtue of actually working in excess of 2 hours at the punitive rate of pay on any given day), monthly displacement allowance payments, and offsets applicable pursuant to this title is less than the employee's average monthly compensation subject to the maximum and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the monthly and the annual displacement allowance payments, earnings shall not include compensation received for overtime actually worked in excess of 2 hours at the punitive rate of pay on any given day. If in the previous calendar year an employee has received displacement allowance payments in excess of his or her annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(3) PROTECTED EMPLOYEES OCCUPYING POSITIONS IN THE OPERATING CRAFTS.—Effective on and after the first day of the month immediately following the date of enactment of the Employee Protection and Railroad Financing Modification Act of 1980, a protected operating employee (defined as any protected employee in ICC classifications 107 through 128) who has been deprived of employment or adversely affected with respect to his or her compensation shall be afforded his or her average monthly compensation computed in accordance with section 505(b) prior to such date, but subject to a 'maximum', which maximum is defined as one-twelfth of the average annual earnings per employee, computed by cumulating the employee earnings reported to the Interstate Commerce Commission by the Corporation on a monthly basis for calendar year 1977 for the ICC classification of operating service in which the employee performed the preponderance of his or her work in calendar year 1974, increased by applicable general wage increases. If the employee performed no operating service in 1974, the ICC classification will be determined by the preponderance of the employee's operating service in an immediately preceding calendar year. If the average monthly compensation of a protected operating employee exceeds the maximum, the average monthly compensation of the employee will be reduced to the maximum for purposes of computing his or her monthly displacement allowance, if any. If the average monthly compensation of a protected operating employee is less than the maximum, the average monthly compensation of the employee will be used to compute his or her monthly displacement allowance, if any. If a protected employee is deprived of employment, or if the employee is adversely affected with respect to his or her compensation such that the compensation in his or her current position is less in any month than the average monthly compensation of the employee or the maximum, whichever is

smaller, the employee shall be paid 75 percent of the difference between his or her earnings if any and the smaller figure, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual earnings, monthly displacement allowance payments, and offsets applicable pursuant to this title is less than his or her average monthly compensation subject to the maximum and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the annual payment, if during the calendar year an employee has been force assigned to, or has been required to exercise seniority to, a position in an ICC classification with a lesser maximum than the maximum applicable to that employee's 1974 ICC classification, the employee shall be paid the difference without credit being taken for compensation earned by virtue of actually working hours in the calendar year in excess of the number of hours paid for in the employee's average monthly compensation multiplied by 12 or his or her annual 1977 maximum, whichever is smaller. An employee's compensation for purposes of this subsection will not include savings sharing productivity payments received pursuant to paragraph (t) of the Crew Consist Agreement between the Corporation and the United Transportation Union dated September 8, 1978. If in the previous calendar year an employee has received displacement allowance payments in excess of his or her annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(4) PROTECTED EMPLOYEES OCCUPYING NONCONTRACT POSITIONS.—Effective on and after the first day of the month immediately following the date of enactment of the Employee Protection and Railroad Financing Modification Act of 1980, a protected noncontract employee who has been deprived of employment or adversely affected with respect to his or her compensation shall retain his or her average monthly compensation and monthly displacement allowance computed in accordance with section 505(b) prior to such date. In the event such noncontract employee exercises or has exercised seniority in a craft or class of operating employees, the employee's entitlement to a monthly displacement allowance and fringe benefits, and his or her eligibility for transfer, will be the same as the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised. In the event such noncontract employee exercises or has exercised seniority in a craft or class of nonoperating employees, the entitlement of the employee to a monthly displacement allowance and fringe benefits, and his or her eligibility for transfer, will be consistent with the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised, except that the protected rate of pay shall be based on the rate of pay of the position first obtained through the exercise of seniority, rather than the rate of any position held on or prior to September 1, 1979.

"(5) Notwithstanding the preceding provisions of this subsection, employees who, prior to September 1, 1979, accepted transfer to positions requiring a change of residence pursuant to section 505(d) of the Act, shall retain their average monthly compensation and monthly displacement allowance computed in accordance with section 505(b) prior to the date of enactment of the Employee Protection and Railroad Financing Modification Act of 1980.

"(6) In determining compensation in his or her current employment, the protected employee shall be treated as occupying the position producing the highest rate of pay to which his or her qualifications and seniority entitle the employee under the applicable collective bargaining agreement and which does not require a change in residence. A protected operating employee will be considered to be occupying the position producing the highest rate of pay if the employee occupies a position producing compensation equal to his or her average monthly compensation subject to the maximum.

"(7) With respect to a protected employee who has been deprived of employment, the monthly displacement allowance shall be reduced by the full amount of any unemployment compensation benefits received by the protected employee and shall be reduced by an amount equivalent to any outside earnings of the employee.

"(8) A protected employee's average monthly compensation or protected rate of pay shall be adjusted from time to time thereafter to reflect subsequent general wage increases.

"(9) The average monthly compensation or protected rate of pay provided by this section shall in no event exceed $2,500 in any month, except that such amount shall be adjusted to reflect general wage increases subsequent to April 1, 1976.

"(10) A protected employee and the employee's representative shall be furnished with the protected employee's protected rate of pay, or average monthly compensation and average monthly time paid for, subject to the maximum, computed in accordance with the terms of this subsection. Each protected employee who has been deprived of employment, or his or her representative, and the employer shall agree upon a procedure by which the employee shall keep the employer currently informed of the unemployment compensation benefits received by the employee and the earnings of such employee in employment other than with the employer.".

DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

SEC. 204. Section 505(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(c)) is amended to read as follows:

"(c) DURATION OF MONTHLY DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall continue until the attainment of age 65 by a protected employee with 5 or more years of service on the effective date of this Act and, in the case of a protected employee who has less than 5 years of service on such date, shall continue for a period equal to the employee's total prior years of service: *Provided*, That such monthly displacement allowance shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause; shall not be paid with respect to any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to the employee by the exercise of the employee's seniority rights in accordance with the provisions of this section; shall not be paid to a protected employee deprived of employment with respect to any period of failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions (provided that the payment of monthly displacement allowances shall be resumed upon termination of the emergency); shall not be paid with respect to any month that commences after the effective date of the Railroad Employee Protection Modification Act of 1980 for which the employee has failed to make a claim for such allowance within 3 full calendar months (unless otherwise agreed upon by the employee, or his or her representative, and the employer) after the last day of the month for which such allowance is sought, except that such 3-month limit shall not be applicable to claims which are the subject of or based upon arbitration decisions issued pursuant to section 507 and unless otherwise agreed upon by the employee, or his representative and the employer, the entitlement of an employee to an allowance shall be approved or denied within 150 days after the claim therefor is made for the first year following the date of enactment of the Railroad Employee Protection Modification Act of 1980 and within 90 days thereafter. Claims not approved or denied at the expiration of the time limits set forth in this subsection shall be deemed approved.".

TRAINING AND TRANSFER

SEC. 205. (a) (1) Section 505(d) (1) and (4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d) (1) and (3)) are each amended by inserting "or other employers with employees protected under this section" immediately after "Corporation" wherever it appears.

(2) Section 505(d)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(1)) is amended by inserting "or the system of other employers with employees protected under this section" immediatly after "Corporation's system".

(b) Section 505(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(4)) is amended to read as follows:

"(4) Transfers to vacancies requiring a change in residence shall be subject to the following:

"(A) The vacancy shall be first offered to the junior qualified protected employee or employees deprived of employment in the seniority district where the vacancy exists, and each such employee shall have 20 days to elect one of the options set forth in paragraph (1) of this subsection. The Corporation or other employers with employees protected under this section shall determine the number of junior qualified protected employees deprived of employment (not to exceed four employees per offer) who will be included in the offer of transfer. The vacancy will be awarded to the most junior qualified protected employee who accepts transfer. Other qualified protected employees who have accepted the transfer will retain their status as employees deprived of employment. Employees junior to the acceptor who have elected one of the options set forth in paragraph (1) of this subsection shall retain the option. If the vacancy is not filled, it may be again offered in inverse seniority order to remaining qualified protected employee(s) deprived of employment (not to exceed four employees per offer) in the seniority district.

"(B) If there are no qualified protected employees deprived of employment in the seniority district where the vacancy exists, the vacancy may be offered in inverse seniority order to qualified protected employee(s) deprived of employment (not to exceed four employees per offer) on the system, in accordance with the procedure in paragraph (4)(A) of this subsection. Employees offered transfer pursuant to this paragraph (4)(B) will be afforded 30 days to elect one of the options set forth in paragraph (1) of this subsection.

"(C) The provisions of this paragraph shall not prevent the adoption of other procedures pursuant to an agreement made by the Corporation or other employers with employees protected under this section and representatives of the class or craft of employees involved.

"(D) When no bona fide vacancies exist in a marine craft or class on the Corporation's system or the system of other employers with employees protected under this section, or in the craft or class of a Penn Truck Lines, Incorporated, employee, the Corporation or other employers with employees protected under this section may offer such employee comparable employment for which the employee is qualified, or for which the employee can be trained, in another craft or class. The Corporation or other employers with employees protected under this section shall first attempt to locate a comparable position in a seniority district which encompasses the employee's last work location, and if successful, a transfer notice may be tendered pursuant to paragraph (4)(A) of this subsection. If no such position exists, the Corporation or other employers with employees protected under this section may tender the employee a transfer notice involving a position elsewhere on the system pursuant to paragraph (4)(B) of this subsection. In the event it is necessary to train an employee after his or her acceptance of a position pursuant to this subsection, such training shall be provided by the Corporation or other employers with employees protected under this section at no cost to the employee.".

(c) Section 505(1)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775 (l)(1)) is amended by adding the following immediately before the last sentence: "The Corporation may simultaneously offer a position to not more than four protected noncontract employees. The position will be given to the protected employee accepting transfer whom the Corporation considers to be best qualified for the particular position involved. Other protected employees who have accepted the transfer will retain their previous status. Employees who have elected a voluntary suspension of employment at their home location in lieu of protective benefits or a severance of employment shall retain the option elected.".

PAYMENT, PROGRAM AUDIT AND REPORT

SEC. 206. (a) Section 509 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779) is amended to read as follows:

"PAYMENT, PROGRAM AUDIT AND REPORT

"SEC. 509. (a) PAYMENT.—The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title (including such amounts paid by the employer prior to the effective date of the Railroad Employee Protection Modification Act of 1980 and training costs incurred by the Corporation pursuant to section 505(d)(4)(D) of this title), other than provisions with respect to employee pension benefits, not to exceed an aggregate sum of $485,000,000, by the Railroad Retirement Board, upon certification to such Board in such detail as the Board may reasonably require, by the Corporation, the Association (where applicable), replacement operators, and acquiring railroads, of the amount paid such employees: *Provided*, That the aggregate amount of reimbursements made by the Board for the payment of monthly displacement allowances in the period after enactment of the Railroad Employee Protection Modification Act of 1980 shall not exceed $180,000,000. There is authorized to be appropriated to the Secretary annually such sums as may be required to meet the obligations payable hereunder, not to exceed the aggregate sum of $485,000,000. Upon the exhaustion of such authorization, the Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall retain responsibility for the payment of benefits otherwise reimbursable under this title, but they shall not be reimbursed therefor. There is further authorized to be appropriated to the Secretary such sums as may be necessary to provide for additional administrative expenses to be incurred by the Railroad Retirement Board in the performance of their functions under this section. Appropriations authorized under this section may be allocated by the Secretary to the Railroad Retirement Board.

"(b) PROGRAM AUDIT.—Commencing October 1, 1980, the Association is authorized and directed to audit the payment of benefits pursuant to this title and to evaluate the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its work force who are entitled to receive monthly displacement allowances, including the manner in which the Corporation manages the overtime worked by maintenance-of-way employees. Such program audits and evaluations shall be conducted in accordance with such rules and regulations as the Association may prescribe. The representatives of the Association shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to, or in use by or in connection with the Corporation, replacement operators, acquiring railroads, or the Railroad Retirement Board which pertain to the benefits provided protected employees pursuant to this title and which are necessary to facilitate such program audit and evaluation.

"(c) REPORT.—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on the payment of benefits under this title and the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its work force who are entitled to receive monthly displacement allowances."

(b) Notwithstanding any other provision of law, the authority of the Federal Railroad Retirement Board to make reimbursements provided under subsection (a) of this section shall not be effective until October 1, 1980. On and after such date, the Consolidated Rail Corporation and other employers with employees protected under title V of the Regional Rail Reorganization Act of 1973 may be reimbursed, from funds available pursuant to section 509 of such title, by the Federal Railroad Retirement Board for the amount of such payments, previously not reimbursed, as were made by the Corporation and other employers pursuant to the provisions of such title.

TECHNICAL AMENDMENTS

SEC. 207. (a) The table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by revising the caption

"Sec. 509. Payment of benefits."

to read

"Sec. 509. Payment audit and report.".

(b) Section 102(16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (16)) is amended to read as follows:

"(16) 'Secretary' means the Secretary of Transportation or the designated representative of the Secretary;".

(c) Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended by—

(1) revising subsection (d)(2) to read as follows:

"(2) three Government members, who shall be (A) the Secretary, acting directly or at any time through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, (B) the Secretary of the Treasury, acting directly or at any time through an officer of the Department of the Treasury who has been appointed with the advise and consent of the Senate, and (C) the Chairman of the Commission, acting directly or at any time through the Vice Chairman of the Commission; and";

(2) striking "through their respective Deputy Secretaries" from the first sentence of subsection (i) and inserting in lieu thereof "in the case of the Secretary, through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, and, in the case of the Secretary of the Treasury, through an officer of the Department of the Treasury who has been appointed with the advice and consent of the Senate"; and

(3) striking the first sentence from subsection (j)(4).

(d) Section 501 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771) is amended by—

(1) adding to paragraph (6) after "disability," in the last sentence "failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions,"; and

(2) striking "and" after the semicolon in paragraph (10), striking the period after paragraph (11) and inserting in its place "; and", and adding the following new paragraph:

"(12) 'compensation' means earnings in employment subject to the Railroad Retirement Act.".

(e) Section 507 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 777) is amended by adding after "section 504(d)" the phrase ", section 509(b), section 509(c)".

SINGLE COLLECTIVE-BARGAINING AGREEMENT

SEC. 208. Section 504(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 774(d)) is amended to read as follows:

"(d) NEW COLLECTIVE-BARGAINING AGREEMENTS.—Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this Act, the representatives of the various classes of crafts of the employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiation of a new single collective-bargaining agreement for each class and craft of employees covering the rate of pay, rules, and working conditions of employees who are employees of the Corporation, which collective-bargaining agreement shall include appropriate provisions concerning rates of pay, rules and working conditions but shall not include any provisions for job stabilization resulting from any transaction effected pursuant to this Act which may exceed or conflict with those established herein.".

PART B—FINANCING

EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 209. Sections 505(e), 507(a), 507(d), and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(e), 827(a), 827(d), and 829) are each amended by striking "September 30, 1980" wherever it appears and inserting in lieu thereof "September 30, 1982" in each such place.

REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 210. (a) Section 505(d)(3) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(d)(3)) is amend-

ed by striking "$700,000,000" and inserting in lieu thereof "$1,100,000,000".

(b) Sections 507(a) and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 827(a) and 829) are each amended by striking "$600,000,000" and inserting in lieu thereof "$1,100,000,000".

(c) Of the funds authorized to be appropriated pursuant to the provisions of title V of the Railroad Revitalization and Regulatory Act of 1976, not more than $180,000,000 is authorized to be appropriated in fiscal year 1981.

FINANCIAL ASSISTANCE TO APPROVED EMPLOYEE OR EMPLOYEE/SHIPPER OWNERSHIP GROUPS

SEC. 211. (a) Section 505(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(b)) is amended by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of law, the Secretary may approve applications to provide financial assistance to any employee or employee/shipper ownership group formed pursuant to a plan for the purchase and/or rehabilitation of a line or lines of railroad and/or rail facilities which are considered to be in the public interest. The Secretary shall not authorize funds which exceed 20 percent of such total funds available under this section. In considering the allocation of available funds and priority of eligible projects under this subsection, the Secretary shall consider the availability of viable alternatives to the ownership and/or rehabilitation by the eligible employee/shipper group for the continuation of rail service. Projects with no such alternative shall receive highest priority.".

(b) Sections 506 through 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 826 through 829) are amended by—

(1) inserting "employee or employee/shipper group" immediately after the word "railroad" wherever it appears;

(2) inserting "employee or employee/shipper groups" immediately after the word "railroads" wherever it appears; and

(3) inserting "employee or employee/shipper group's" immediately after the word "railroad's" wherever it appears.

EMPLOYMENT EFFECTIVENESS IMPROVEMENT ASSISTANCE

SEC. 212. (a) Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by inserting the following new section immediately after section 505 thereof:

"EMPLOYMENT EFFECTIVENESS IMPROVEMENT ASSISTANCE

"SEC. 505A. (a) The Secretary is authorized under such terms and conditions as the Secretary shall prescribe to provide financial assistance to any class I railroad, not to exceed 10 percent of the funds available for the rehabilitation and improvement financing program pursuant to section 505 of this title, to cover up to 100 percent of the railroad's payments to any eligible employee or former employee to whom the railroad is obligated to make payments under a labor-management agreement which results in a significant change in railroad operating practices or work rules and which the Secretary determines will significantly improve manpower effectiveness. In making such determination, the Secretary shall consider the relationship of the railroad's labor costs to its revenues and any evidence of efficiency gains that the railroad and labor organizations may demonstrate.

"(b) Before providing any financial assistance under this section, the Secretary shall require the railroad receiving assistance to agree to such terms and conditions as are sufficient in the Secretary's judgment to assure that the railroad has, through a long-term change in operating practices or work rules, improved its manpower effectiveness.

"(c) Whenever a railroad receiving assistance under this section, defaults on any provision of a financing agreement or security purchased pursuant to the section, the Secretary shall be entitled to exercise all remedies in law or equity and may request the Attorney General of the United States to commence a civil action for damages, specific performance or any other available remedy in any appropriate court.".

(b) The table of contents of such Act is amended by inserting the following new item immediately following the item referring to section 505:

"Sec. 505A. Employment effectiveness improvement assistance.".

RESTRICTING AMENDMENTS

SEC. 213. Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821), as amended, is further amended by—

(1) striking "and" at the end of paragraph (7);

(2) inserting "acquisition or sale of assets or securities," immediately after "merger" in paragraph (8):

(3) striking the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(4) adding at the end thereof the following new paragraphs:

"(9) 'consolidation' means the combination of separate rail facilities and the abandonment of the excess facilities, except that 'consolidation' does not include the combination by a single railroad of multiple tracks into fewer tracks where the tracks do not constitute separate physical and operating lines of railroad; and

"(10) 'coordination' means the combination of rail freight traffic flows through the use of joint facilities arrangements or internally that result in a reduction of service on at least one facility and includes (but is not limited to) arrangements for joint use of tracks or other facilities and the acquisition or sale of assets.".

APPLICABILITY

SEC. 214. Section 505(h)(4) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)(4)) is amended to read as follows:

"(4) This subsection shall apply to purchase offers submitted to the Trustee of the Rock Island Railroad Estate and filed with the Commission prior to September 15, 1980, or purchase applications filed with the Commission prior to September 15, 1980, and approved by the court having jurisdiction over the reorganization of the Rock Island Railroad or the Milwaukee Railroad, as the case may be, and by the Commission.".

TITLE III—CONSOLIDATED RAIL CORPORATION AND UNITED STATES RAILWAY ASSOCIATION

PART A—CONSOLIDATED RAIL CORPORATION

FINDINGS AND PURPOSES

SEC. 301. (a) The Congress hereby finds that—

(1) pursuant to section 206(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(a)), formulation of a final system plan was intended to effectuate the creation of a financially self-sustaining rail system in the Region as defined in that Act;

(2) despite Federal financing for the Corporation in the amount of more than $3,000,000,000 since enactment of the Regional Rail Reorganization Act of 1973, the goal of self-sustainability has not been achieved;

(3) existing funding is nearly exhausted and a request for a new Federal authorization may be forthcoming by mid- or late-1981;

(4) additional Federal investment for the Corporation should not be authorized in a time of inflation and severe budget constraints without assurance that a program is in place which will enable that carrier to become financially self-sustaining;

(5) there has been a certain amount of confusion among various agencies with regard to responsibility for the future of the Corporation;

(6) in order to insure that Congress has adequate information and to further insure cooperation between involved Federal agencies and the Corporation, it is imperative that Congress mandate specific recommendations and proposals by a time certain; and

(7) all parties should be fully aware that additional measures, such as implementation of a plan of rationalization, may be necessary in the near future.

(b) It is the purpose of this part specifically to identify measures designed to ensure a self-sustaining system in the Region (as defined in section 102(15) of the Regional Rail Reorganization Act of 1973) (45 U.S.C.702(15)) in accordance with the goals of such Act. To that end, this part requires the submission to Congress of recommendations dealing with the future structure and activities of the Corporation and future funding requirements for that carrier. Additionally, this part assigns responsibilities to various Federal agencies subject to strict statutory deadlines, and provides for input from States and other interested parties. Wide participation is desirable, as it is the intent of Congress to take such further action as may be necessary, following consideration of the recommendations submitted pursuant to this part.

DEFINITIONS

SEC. 302. For purposes of this part, the term—

(1) "Association" means the United States Railway Association;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Corporation" means the Consolidated Rail Corporation;

(4) "rail properties" means assets or rights owned, leased, or otherwise controlled by the Corporation which are used or useful in rail transportation service; and

(5) "Secretary" means the Secretary of Transportation.

RECOMMENDATIONS OF THE CORPORATION

SEC. 303. (a)(1) The Association shall, not later than November 15, 1980, make specific preliminary recommendations to the Congress with respect to future projected funding requirements of the Corporation. At the time of such submission, the Association shall also make specific preliminary recommendations to the Congress with respect to the future structure and activities of the Corporation in the Region (as defined in section 102(15) of the Regional Rail Reorganization Act of 1973) (45 U.S.C.702(15)) as it determines are necessary or appropriate to meet the goals set forth in section 206(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(a)), together with any specific legislation necessary to implement such recommendations.

(2) Following review of the preliminary recommendations by the Secretary and the Commission and comment by interested persons as provided in section 304 of this title, the Association shall develop and submit to Congress, not later than March 1, 1981, specific final recommendations with respect to (A) future projected funding requirements of the Corporation; (B) future structure and activities of the Corporation in the Region; and (C) legislative proposals if necessary to implement such recommendations. The specific preliminary and final recommendations shall set forth alternatives for the Congress to consider in the event it determines that modification of the Association's recommendations is warranted.

(b) In developing recommendations in accordance with this section, the Association shall identify measures designed to ensure a financially self-sustaining system in the Region. The recommendations shall be based on analyses of rail properties which might be proposed for abandonment or transfer to another railroad or qualified person and proposed operating efficiencies which could improve the Corporation's revenue/cost relationship. The Association shall, in developing recommendations under this part, analyze and consider—

(1) projections of the Corporation's future traffic, revenues, operating costs, and capital requirements;

(2) rail properties which might be proposed for abandonment or transfer to another railroad or qualified person, taking into account the potential impact of changes in the regulatory environment;

(3) the impact on communities served by lines proposed for abandonment or transfer;

(4) proposed operating efficiencies which could improve the Corporation's revenue/cost relationship;

(5) intercity and commuter passenger services provided by the Corporation and the impact of present and potential levels of train operations on both freight and passenger traffic on the Northeast Corridor;

(6) the impact on the Corporation of proposed mergers by connecting or competing railroads;

(7) employee motivation and labor productivity programs and a projection of labor protection costs which could result from the recommendations;

(8) the future capital structure of the Corporation; and

(9) any other factors identified by the Association to be relevant to the recommendations required to be developed and submitted pursuant to this part.

SUBMISSION OF RECOMMENDATIONS BY THE CORPORATION

SEC. 304. Not later than October 1, 1980, the Corporation shall submit to the Association its recommendations with respect to (1) proposed operating efficiencies; (2) rail properties which might be proposed for abandonment or transfer for continued operation to another railroad or qualified person; and (3) other recommendations which would assist in ensuring a self-sustaining system in the Region, together with proposed legislative changes necessary in connection with the proposed recommendation.

REVIEW AND EVALUATION

SEC. 305. (a) The Association shall, in the date of submission of preliminary and final recommendations to Congress, transmit copies of such recommendations to the Secretary, the Commission, the Governor and the public utility commissioner of each State which could be affected by such recommendations. Upon request, the Association shall furnish a copy of such recomendations to any interested person.

(b) As soon as practicable after submission to Congress of its preliminary and final recommendations, the Association shall publish in the Federal Register a summary of its recommendations and invite interested parties to comment on the recommendations.

(c) Within 30 days of receipt of the Association's preliminary and final recommendations, the Secretary and the Commission shall review such recommendations and submit a critique and evaluation thereof to Congress and the Association. In such evaluation, the Secretary and the Commission shall specifically indicate whether additional legislation is necessary or whether existing laws and procedures are adequate to implement such proposed recommendations.

RELATIONSHIP TO OTHER LAWS

SEC. 306. The antitrust laws, as defined in section 601(a)(3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791(a)(3)), are inapplicable with respect to any action taken in accordance with the provisions and under authority of this part.

AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 307. Section 210(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 720(e)) is amended by inserting immediately after "section" in the first sentence thereof the following: "or under subsection (a) of section 306 of this Act".

PART B—UNITED STATES RAILWAY ASSOCIATION

AUTHORIZATION OF APPROPRIATIONS

SEC. 308. Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—There are hereby authorized to be appropriated to the Association for purposes of its administrative expenses such sums as are necessary, not to exceed $31,500,000 for the fiscal year ending September 30, 1981, and $25,500,000 for the fiscal year ending September 30, 1982, to remain available until expended.".

TITLE IV—CONSOLIDATED RAIL CORPORATION EMERGENCY FUNDING

SHORT TITLE

SEC. 401. This title may be cited as the "Consolidated Rail Corporation Emergency Funding Act of 1980".

FUNDINGS AND PURPOSES

SEC. 402. The Congress hereby finds that—

(1) pursuant to section 206(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(a)), formulation of a final system plan was intended to effectuate the creation of a financially self-sustaining rail system in the Region as defined in that Act;

(2) despite Federal financing for the Corporation in the amount of more than $3,000,000,000 since enactment of the Regional Rail Reorganization Act of 1973, the goal of self-sustainability has not been achieved;

(3) existing funding is nearly exhausted and the Corporation forecasts a large additional Federal financial requirement during the period 1981–1985;

(4) the Corporation further forecasts that substantial additional Federal funding will be needed for continuance of operations during fiscal year 1981;

(5) additional Federal investment for the Corporation should not be authorized in a time of inflation and severe budget constraints without firm assurance that a program is in place which will enable that carrier to become financially self-sustaining;

(6) it is primarily the responsibility of the shippers to support the rail services provided through a willingness to pay, at minimum, the cost of such service, and without adequate shipper or community support loss of such service should be anticipated;

(7) there exists a need for the Corporation's management and rail labor to promote and implement a philosophy that stresses maximum employee productivity;

(8) the ultimate responsibility for the success of the Corporation rests with the affected communities, shippers, employees and rail management and appropriate coordinated efforts on the part of these parties should be made to reduce the need for additional Federal funding;

(9) Congress presently has under consideration specific proposals to ensure identification and implementation of measures designed to ensure a self-sustaining system in the Region (as defined in section 102(15) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702(15)) in accordance with the goals of that Act; and

(10) as an interim measure, while Congress is considering further action, any authorization should be subject to conditions mandating action with regard to:

(A) reduction of losses on light-density lines which do not return costs of operation, and

(B) analysis of alternative changes in labor agreements and related operational changes.

(b) It is the purpose of this title to provide interim Federal funding for the Corporation for fiscal year 1981, subject to conditions set forth herein, while Congress identifies alternative measures, including structural changes, that will lead to a self-sustaining rail system in the Northeast. In taking this action, deemed necessary to preserve rail service while further action is considered, Congress expresses concern with the Corporation's progress toward becoming financially self-sufficient and directs the Corporation to take such economy measures as can be implemented without causing substantial harm to operations or jeopardizing the Federal investment in the Corporation.

DEFINITIONS

SEC. 403. For the purposes of this title, the term—

(1) "Association" means the United States Railway Associations;

(2) "Commission" means the Interstate Commerce Commission; and

(3) "Corporation" means the Consolidated Rail Corporation;

AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 404. Section 216(b)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)(2)) is amended by adding a new paragraph (3) at the end thereof, as follows:

"(3) Unless the Finance Committee makes an affirmative finding as specified in paragraph 2, purchases of up to $329,000,000 of series A preferred stock shall be made by the Association, subject to the availability of appropriations, as required and requested by the Corporation, if the Finance Committee makes an affirmative finding that—

"(A) the Corporation has taken appropriate action to eliminate losses on lines which are classified in section 405 of the Consolidated Rail Corporation Emergency Funding Act of 1980 as both light density and unprofitable through (i) the negotiation of subsidy or trackage rights agreements which would ensure continued rail service; (ii) the sale or lease of those lines to other parties; (iii) the imposition of surcharges; or (iv) the abandonment of those lines; and

"(B) the Corporation has made good faith efforts to transfer lines classified as unprofitable but which are not classified as light density under such section to other interested parties.".

LIGHT DENSITY LINES

SEC. 405. (a)(1) Any line served by the Corporation which carried less than 3,000,000 gross ton miles of traffic per mile in the most recent calendar year for which traffic data is available shall be considered a "light density" line for the purposes of this section.

(2) Any line served by the Corporation which has revenues attributable to service on that line which are less than 110 percent of the Corporation's variable cost of transporting the traffic involved shall be considered an "unprofitable" line for the purposes of this section.

Such costs shall be determined by using the Corporation's unadjusted costs, calculated in accordance with the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates: *Provided, however*, That the costs shall be adjusted to reflect a system-average amount for normalized maintenance of track.

(3) Not later than January 1, 1981, the

Corporation shall prepare separate and complete lists of:

(A) light density lines;

(B) lines which, upon the basis of preliminary analysis, the Corporation believes likely to be unprofitable lines under this section; and

(C) lines which are both light density and likely to be unprofitable.

The Corporation shall transmit lists to the Commission, the Association, the designated State transportation agencies, and the government of each political subdivision of each State in which rail properties are located, and to each shipper who has used such rail service during the previous 12 months.

(b) Upon not less than 45 days' notice, the Corporation may establish surcharges on traffic originating or terminating on lines which are both light density and unprofitable under this section. Such surcharges shall not be deemed to affect joint rates, to require the concurrence of any connecting carrier nor be challenged on any ground except that (1) they are not "light density" as defined in this section; or (2) the surcharges would result in total revenues attributable to service on that line exceeding 110 percent of the Corporation's variable cost of transporting the traffic involved as determined in accordance with the provisions of subsection (a)(2).

(c) Upon reasonable request from any person interested in purchasing, leasing, subsidising, or obtaining trackage rights on any line which is classified as unprofitable under this section (or which the Corporation has indicated, based on preliminary analysis, is likely to be unprofitable), the Corporation shall promptly provide:

(1) its most recent reports on the physical condition of that line; and

(2) traffic, revenue, and other data necessary to determine the reasonable value of that line.

If the Corporation and the person offering to purchase the line enter an agreement for sale, lease, subsidy, or trackage rights, the Commission shall approve the transaction.

(d) When the Corporation files an application for abandonment of a railroad line and states that the line is both light density and unprofitable, the Commission shall determine, not later than 60 days after the application is filed, whether the line is light density and unprofitable under this section. Notwithstanding the provisions of subsections (a), (b)(1), or (c) of section 10903 of title 49, United States Code, if the Commission decides that the line is light density and unprofitable, the Commission shall issue a certificate of abandonment within 60 days, effective on date of issuance unless the Commission postpones the issuance under section 10905 of title 49, United States Code.

(e) The Commission shall adopt such regulations and expedited procedures as may be necessary to accomplish the intent of this section and to facilitate offers of financial assistance under section 10905 of title 49, United States Code.

RAIL LABOR STUDY

SEC. 406. Not later than January 1, 1981, the Corporation shall submit to the Congress an economic analysis that will forecast the full effects upon the Corporation and upon rail labor of alternative changes in labor agreements and related operational changes.

AUTHORIZATION OF APPROPRIATIONS

SEC. 407. (a) Section 216(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(a)) is amended by striking "$2,300,000,000" and inserting in lieu thereof "$2,629,000,000".

(b) Section 216(g) of such Act (45 U.S.C. 726(g)) is amended by striking "$3,300,000,000" and inserting in lieu thereof "$3,629,000,000".

Mr. CANNON. Mr. President, the text of the amendment which is before us is virtually identical to three railroad bills which the Senate previously has adopted—S. 1946, S. 2530, and S. 2527. The amendment includes technical corrections made necessary as a result of combining these bills.

Title I of the amendment which I have offered contains S. 1946, the Railroad Transportation Policy Act of 1980, which the Senate adopted on April 1, 1980, by a vote of 91 to 4. Title I is identical to S. 1946, as passed.

Title II of the amendment contains S. 2530, the Employee Protection and Railroad Financing Modification Act of 1980. The Senate adopted S. 2530 by unanimous consent on June 28 of this year. In section 205 of title II of the amendment which is before us, we have made one technical amendment in order to clarify the committee's and Congress intent in amending section 505(d) of the Regional Rail Reorganization Act of 1973. Under current law, Amtrak and other employers are not authorized to transfer surplus employees, as is Conrail, under section 505(d). Employees who work for different carriers, therefore, receive dissimilar treatment. This amendment would correct this discriminatory procedure by granting employers other than Conrail the same transfer rights with regard to all their protected employees.

In addition, the amendment which is before us includes an addition (section 210(c)) which specifies that not more than $180 million of the funds authorized to be appropriated pursuant to title V of the Railroad Revitalization and Regulatory Reform Act, which concerns railroad rehabilitation and improvement financing, is authorized to be appropriated in fiscal year 1981. This provision was included as part of the budget reconciliation measure adopted recently by the Senate, in S. 2885, but that measure contained instructions regarding S. 2530. Since S. 2530 is now being combined in this bill, it is necessary to include this provision once again in the bill which is before us.

Title III of the amendment contains S. 2527, an act which provides for the submission of recommendations regarding the future structure of Conrail, and for the authorization of appropriations for the U.S. Railway Association. S. 2527 was adopted by unanimous consent on May 22, 1980, and as included in this bill is identical to the version passed by the Senate.

Mr. President, title IV of this amendment is the one amendment which has not previously been considered by the Senate. Title IV will authorize the purchase by the U.S. Railway Association of an additional $329 million of Conrail series A preferred stock, to help assure the continuation of Conrail operations through fiscal year 1981, while the Congress attempts to resolve the future structure of that rail system.

Most of my colleagues are aware that railroads have played a decreasing role in the transportation market of this Nation. The impact of losing market share in freight to the trucking industry has been especially apparent in the Northeast quadrant of the Nation. The economy of that region has shifted from an industrial to a service-oriented, high-technology base. The result of this is the continuing decline, thus far over a period of 17 years, in the level of freight tonnage available in the region. The problem of decreasing freight tonnage and market share produced decreasing revenues for the predecessor bankrupted railroads which formed Conrail and continue to plague the 17,000-mile system.

Congress has authorized $3.3 billion in Federal funds since April 1, 1976, when Conrail began operations. While this Federal authorization has funded a considerable rebuilding of the rail plant Conrail inherited from the bankrupt predecessor railroads, Conrail has not been able to achieve the traffic levels originally planned or projected in the final system plan. As the 1980 recession has deepened, Conrail's traffic levels have continued the historic decline but at a more significant pace.

Conrail's traffic during the first week of July was about 30 percent below 1979 levels. As a result, Conrail's July 1, 1980, business plan for the 5-year period 1981-85 indicates a need for additional Federal funding ranging from $914 million to possibly more than $3 billion. The latest forecasts reveal a need for between $300 and $400 for fiscal year 1981 with existing funding to be used up by January 31, 1981.

If this Federal investment is not forthcoming, Conrail has indicated its only option will be further reduction in track rehabilitation, additions and improvements expenditures and severe reductions in some operations. Maintenance has already been reduced below normalized levels in an effort to minimize the required expenditures.

Mr. President, I would note here that the committee has received letters from the Department of Transportation, USRA and Conrail which all indicate strong concern that further reduction in normalized expenditures by Conrail could jeopardize the Federal investment already made in that rail system. They all support a limited additional authorization for Conrail's operations in fiscal year 1981. In addition to increasing Conrail's authorized Federal expenditures for fiscal year 1981, title IV of the amendment will also impose conditions requiring Conrail to take appropriate actions to eliminate or reduce losses from nonprofitable lines.

Expedited surcharge and abandonment procedures are provided for lines which are both light-density and unprofitable. The legislation also mandates an analysis of the impact of changes in labor agreements and related operational changes to assist in reducing Conrail's costs.

Mr. President, this amendment is unfortunately necessary to reserve the congressional option next year to develop a coordinated and comprehensive Conrail strategy without sacrificing the Federal investment made thus far in Conrail. This body has already passed S. 2527 which provides a mechanism for

the reevaluation of Conrail's route, pricing and cost structures with a view toward implementing changes that will meet the needs of shippers in the region, but at the lowest cost to taxpayers.

I offer this amendment clearly as an insurance policy to obtain the necessary time next year to confront the difficult choices which we must face as to Conrail's future and to assure the public that Conrail's service will be continued pending such congressional decision. It should be stressed that the proposed authorization will assist Conrail in obtaining financing in the private sector, and it will avoid the necessity of drastic programs which could result in further plant deterioration.

Mr. President, I would call your attention to the fact that the amendment provides an additional authorization only upon the condition that Conrail take action to minimize the need for additional Federal investment.

Mr. President, I ask unanimous consent that the section-by-section analysis of title IV of the amendment be printed in full in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF TITLE IV

Title IV, the Consolidated Rail Corporation Emergency Funding Act of 1980, provides interim funding for fiscal year 1981 while Congress considers more comprehensive legislation. As a condition of such funding, the bill mandates action by Conrail to reduce losses on unprofitable light-density lines and an analysis of the impact of changes in labor agreements and related operational changes.

Section 401 states the short title of this title, the "Consolidated Rail Corporation Emergency Funding Act of 1980".

SECTION 402

Section 402(a) contains a statement of ten specific findings which may be summarized as follows: Despite more than $3 billion in federal funding, Conrail has not become a self-sustaining rail system and additional federal funding is needed for the continuance of operations during fiscal year 1981. Any interim funding to continue Conrail operations through 1981 while Congress deals with a more comprehensive long-run solution for Conrail should be accompanied by a requirement that Conrail undertake actions to reduce losses on light density lines and analyze changes in labor agreements and related operational changes.

Section 402(b) states the purpose of this title, which is to provide interim funding for fiscal year 1981 while Congress considers more comprehensive legislation which will lead to a self-sustaining rail system in the Northeast.

SECTION 403

This section defines key terms used in the title.

SECTION 404

Section 404 adds a new paragraph (3) to section 216(b) of the Regional Rail Reorganization Act of 1973 (the "3-R Act"). Section 216 of the 3-R Act outlines the manner in which the United States Railway Association provides funding to Conrail. New paragraph 216(b)(3) would direct the Association to purchase up to $329,000,000 of series A preferred stock if the Association Finance Committee (composed of the Secretary of the Treasury, the Secretary of Transportation, and the Chairman of the USRA Board) makes an affirmative finding that Conrail has taken appropriate action to eliminate losses on unprofitable lines.

SECTION 405

This section establishes expedited surcharge and abandonment procedures for lines which are both light-density and unprofitable. For purposes of the title, a line which carried less than 3,000,000 gross ton miles of traffic per mile in the most current year for which data is available is considered "light-density". Profitability is based on a comparison of the revenues attributable to the lines with the variable cost of transporting the traffic involved; any line which does not return 110 percent of variable cost shall be considered "unprofitable". Costs will be determined in accordance with Rail Form A costing methodology, indexed to current levels, with one exception: costs shall be adjusted to reflect normalized track maintenance. The adjustment is necessary, since lines cannot be operated on an ongoing basis without such expenditures.

The section also requires Conrail to prepare and transmit to shippers and other interested parties, including State transportation agencies, separate lists of light-density lines, unprofitable lines, and lines which are both light density and likely to be unprofitable.

To encourage purchase, lease, subsidy, or trackage rights agreements with respect to unprofitable lines, Conrail is to provide any interested person with appropriate reports on the physical condition of the lines, together with traffic, revenue and other relevant data necessary to determine the reasonable value of such line. If agreement is reached, the legislation mandates approval of the transaction by the Commission.

SECTION 406

Section 406 directs Conrail to conduct and submit to the Congress by January 1, 1981, an economic analysis which will analyze the effects on Conrail and rail labor of alternative changes in labor agreements and the associated operational changes.

SECTION 407

This section authorizes $329,000,000 of additional funding for Conrail by increasing the amount of series A preferred stock of the Corporation which may be purchased by USRA under section 216(a) of the Regional Rail Reorganization Act of 1973. Section 216(g) of that Act is similarly amended by increasing USRA's appropriation for the purchase of Conrail securities by $329,000,000.

UP AMENDMENT NO. 1619

(Purpose: To delete provisions of the bill relating to joint surcharge)

Mr. CANNON. Mr. President, I send an amendment to the desk on behalf of Senators ZORINSKY and EXON and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON), on behalf of Mr. ZORINSKY and Mr. EXON, proposes an unprinted amendment numbered 1619:

Amend the amendment to the House amendment to S. 1946 by striking out section 120 from Title I of the amendment to be inserted in lieu of the House amendment.

● Mr. ZORINSKY. Mr. President, the amendment I offer is a simple one. It strikes section 120. This section was not included in the bill as it was reported by the Committee on Commerce, Science, and Transportation, rather it was a last-minute amendment offered on the Senate floor. There was very little debate on the amendment, and even less explanation of its effect on American shippers—in particular agricultural shippers.

A number of Senators, including myself, were caught short by the amendment. Since April we have had the opportunity to review more carefully the provisions of section 120. Moreover, during consideration of the railroad deregulation legislation by the House, a wealth of new information was brought to light information which may well have changed the positions of a number of my Senate colleagues.

Section 120 as it presently stands in the Senate bill allows any rail carrier not receiving at least 110 percent of its variable costs on any joint route to add a surcharge to its portion of the joint rate. Further, it would allow any carrier to cancel any joint rate on which it does not recover 110 percent of its variable costs.

The section does not sound particularly harmful. But it could be devastating to shippers in many parts of this country. Some shippers, particularly agricultural shippers in the Plains States regions, who are now served by scores of branch and short lines, could be left high and dry if the giants of the rail industry use this broad authority with impunity—as I have no doubt they will.

The section puts in the hands of the country's large railroads a tremendously powerful weapon to manipulate the availability of alternate routes. The 110-percent figure is the trigger which activates that weapon.

Quite simply, once the trigger level is hit, a rail carrier has a virtual carte blanche to raise rates to any exorbitant level it desires through the use of a surcharge. It is easy to see that by jacking up the joint rate through this surcharge, any of the larger and more powerful railroads may render any joint route economically unviable.

The flip side of the coin is the new authority to simply cancel any joint route which does not return at least 110 percent of variable costs. Whether a rail carrier chooses heads or tails, the effect is the same—the shipper loses his rail service. And he has no recourse.

The legislation we passed last April also contains new expedited abandonment procedures. I do not quibble with this section, Mr. President. But the combination of the easier abandonment provisions and the very broad new freedoms provided in section 118 is deadly for thousands of shippers.

By manipulating the joint rates and artfully selecting less desirable routes for cancellation, a rail carrier could place itself in the very envious position of being a monopoly carrier. Shippers will find themselves the unwilling captives.

Mr. President, I think it is important to emphasize that the section of the bill was not included in the Rail Transportation Policy Act as it was reported by the Commerce Committee. In fact, as my colleague from Kansas, Senator KASSEBAUM, pointed out during the abbreviated floor debate on this section, joint

rate and surcharge provisions were discussed by the committee during the markup of the bill, and it was the unanimous decisions of the committee at that time not to include any such provisions.

The House has already acted on this bill, Mr. President. And I am chagrined to report that provisions on joint rate surcharges and cancellation, even more harmful, have been included in the House bill.

The House and Senate will go to conference soon to iron out the differences in the two bills. This is our last chance to make the changes necessary in the Senate bill.

I recognize, Mr. President, that there is considerable interest in retaining some language on joint rates in the final bill. The House bill has a surcharge provision. Let us in the Senate knock it out of our bill so that the conferees will be able to discuss the questions of equity for farmers; equity for small businesses; and equity for rural America.●

Mr. CANNON. Mr. President, the amendment offered by Senator ZORINSKY and Senator EXON would strike the joint rate surcharge provision in S. 1946.

This is a provision that was carefully studied by the committee during the hearing process. Initially, the Commerce Committee did not make changes in the joint rate area. However, shortly before S. 1946 came to the floor, a substantial number of major railroads worked out a compromise. Since it was at that time (and continues to be) my view that effective rail reform legislation must address this important issue, I proposed a joint-rate surcharge provision along the lines of the compromise agreement; the amendment was adopted by the Senate on April 1, when we passed the rail bill by an overwheming vote.

I was very pleased that this amendment was adopted, since it goes a long way toward resolving the very difficult joint-rate issue. At the same time, I recognized that not all parties affected by the provision had time to fully study the matter.

For that reason, I offered assurance to my colleagues that appropirate changes would be made as we proceeded to the conference process. In the interim, the House has made a considerable number of changes in the provision—primarily to provide more adequate protection to short-line railroads and shippers. I am convinced that the compensatory joint-rate relief provision in the House bill (section 201 of H.R. 7235) represents a substantial improvement over section 118 of S. 1946.

Nevertheless, many of my colleagues have expressed concern with the House provision. Should further changes be warranted, they are afraid the Senate conferees might not have necessary flexibility, for example, if they wished to make changes in the light-density provision where both bills have similar wording and the same traffic figure: 3,000,000 gross ton-miles of traffic per mile.

While I believe we could find a way to handle the issue in conference if further changes in the surcharge provision are warranted, I do recognize and understand the very serious concerns of a number of my colleagues. Accordingly, I will agree to accept an amendment which will strike the joint rate provision of S. 1946 (title I of the amendment I have offered).

I would stress, however, the crucial need for a surcharge provision in the final legislation. I am accepting this amendment to insure that Senate conferees have flexibility to consider the matter further and to recommend such further changes as may be warranted.

Mr. LEVIN. Mr. President, I am pleased to join Senators ZORINSKY and EXON as a cosponsor of their amendment to S. 1946, the railroad deregulation bill. The Senate bill, as reported out of the Committee on Commerce, Science, and Transportation, maintained the status quo with respect to joint rate surcharges. When the bill reached the Senate floor, however, Senator CANNON introduced an amendment on joint rates which the Senate approved. This would strike that section, in part because of the concerns expressed that the section does not provide adequate protection from discriminatory pricing practices to short-line railroads.

Mr. President, when Senator CANNON introduced the amendment on joint-rate surcharges on April 1, 1980, he stated:

> I am aware that not all the railroads have had an opportunity to fully study the joint rate proposal and that there is some opposition to the language on the part of some carriers. But, as I said to my colleague earlier, I want to offer my assurance that appropriate changes can and will be made as we proceed to the conference process and that we try to satisfy the legitimate concerns of most everybody.

Since that time, representatives of many of Michigan's short-line railroads have brought to my attention their concerns about the joint-rate surcharge section, which they believe could place in jeopardy many short-line railroads throughout the country because it provides the larger railroads with the ability to cancel or increase a joint rate without the concurrence of other carriers. I believe that the amendment offered by Senators ZORINSKY and EXON will provide the conferees with the flexibility they need in order to expand upon the protections provided in the House railroad deregulation bill.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, it is my understanding that this was agreed to by the ranking member (Mr. PACKWOOD).

Mr. CANNON. The Senator is correct. It has been cleared with him.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1619) was agreed to.

● Mrs. KASSEBAUM. Mr. President, I rise in support of Chairman CANNON's decision to strike the surcharge provisions of the Senate rail bill. As you will recall, Mr. President, I made a similar motion during the Senate's original consideration of S. 1946.

I believed then, and I believe now, that the Senate provisions could have some very detrimental effects on agricultural interests. The House provisions are an improvement, but significant problems remain, particularly with regard to light-density lines which crisscross much of the Midwest.

I believe that removal of this section will give us the flexibility in the conference to fashion a provision generally satisfactory to all parties, and I appreciate the chairman taking this step.●

Mr. CANNON. Mr. President, I ask unanimous consent that Senator DOLE be added as a cosponsor to the Zorinsky amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, I ask unanimous consent that Senator LEVIN be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the motion that the Senate agree to the amendment of the House with the amendments (UP No. 1618 and UP No. 1619) of the Senate.

The motion was agreed to.

Mr. CANNON. Mr. President, I move that the Senate request a conference with the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. CANNON, Mr. LONG, Mr. EXON, Mr. PACKWOOD, and Mrs. KASSEBAUM conferees on the part of the Senate.

THE "SUPERFUND" BILL

Mr. CANNON. Mr. President, the Senate Committee on Commerce, Science, and Transportation has been examining with great concern S. 1480, the Environmental Emergency Response Act of 1980, which was reported by the Environment and Public Works Committee on July 11, 1980. This legislation would establish a mechanism for clean up of and compensation for damages resulting from releases of hazardous substances and would impose joint, several, and strict liability on those involved. I am strongly in support of the goals of this legislation. Senator RANDOLPH and the Senate Environment and Public Works Committee deserve credit for responding to these important societal concerns.

However, there is no doubt that, as the bill is presently drafted, it impacts greatly on the jurisdictional interests of the Senate Commerce Commitee in the areas of interstate commerce regulation, transportation and common carriage, and oceans and marine activities. As presently drafted, S. 1480 would have grave implications in these areas.

Since S. 1480 clearly affects areas within its jurisdiction, the Commerce Committee held 2 days of hearings on September 11 and 12 to explore the transportation and other commerce aspects of the bill. The committee received much revealing testimony from the Department of Transportation and the Environmental Protection Agency, the various transportation modes, shipper and manufacturing groups, insurance representatives, the U.S. Chamber of Commerce, representatives of the oil and natural gas

industries, and the Sierra Club. The testimony received reinforced my doubts about the soundness of certain provisions in the bill in light of their potentially detrimental effect on transportation and commerce.

A principal concern raised by S. 1480 relates to the establishment of broad and unlimited liability. Numerous groups have testified before the committee that S. 1480 in fact would cause severe economic disruption. The Hartford Insurance Co., Crum & Forster Insurance Co., the American Insurance Association, and the National Association of Insurance Brokers all have informed the committee that in their view S. 1480 is uninsurable, particularly in view of the fact that the bill does not contain a dollar limit on liability. The Department of Transportation has testified in this regard that the insurance problems engendered by this liability would be particularly acute for the small railroads in this country. The Environmental Protection Agency testified in support of a dollar limit. Without any such limit, the liability exposure is potentially enormous.

These problems associated with unlimited liability are compounded by the uncertainty of coverage stemming from the broad scope of allowable damages for loss of natural resources, property loss, and economic loss, which could be collected by an unlimited group of claimants, and by the uncertain limits on removal costs which could be recovered pursuant to broad, unfettered Presidential authority to take "remedial action" as appropriate. In addition, S. 1480 would set up difficult apportionment procedures whereby anyone who is found liable could only seek apportionment and contribution after all claims have been paid. While strict liability may be advisable as a matter of policy to insure due care and compensation for damages, it is essential that unlimited liability does not create the greater risk of uninsurability.

Transporter, shipper, and manufacturing groups also have stated that this legislation would have enormous inflationary impacts and that it is anticompetitive. They argue that many small transporters and shippers would be forced out of the marketplace due to their inability to meet the financial responsibility requirements of S. 1480. It is clear that such a result would be in direct conflict with the Airline Deregulation Act of 1978 and the Motor Carrier Act of 1980, both of which were passed by Congress in an effort to increase competition in the transportation industry.

Other key problems in S. 1480 relate to its breadth and ambiguity. The bill states that the "transportation" of hazardous substances is an "ultrahazardous" activity. In view of the broad and virtually unlimited definition of hazardous substances, what effect will such a statement have on the future regulation of, or liability for, such activity?

Representatives of transportation, shipper, manufacturing, and insurance groups all have testified that many of the provisions in the bill are so vague as to invite substantial litigation and are so broad as to impose unnecessary and burdensome regulatory requirements. For example, "facility" covers any storage container, any equipment, or any area where a hazardous substance has been placed or otherwise come to be located. These terms are not defined anywhere in the bill, and the potential coverage of a vast array of products is staggering. Any "release," which means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, or dumping from a facility into the environment, triggers all of the detailed and significant reporting and liability provisions of the bill. It is essential that the coverage and meaning of these terms be fully clarified before we can responsibly act on this legislation.

S. 1480 contains no exclusion for consumer products. Therefore, it has been suggested that this would mean that an individual consumer is subject to strict, joint, and several liability for a "release" from any product that contains one of the numerous hazardous substances listed on pages 24 to 28 of the Senate Environment and Public Works Committee report. While staff has been informed that such a result was not intended, the term "facility" as it is presently defined would include consumer products, and the report does not in any way clarify that this term does not include consumer products. An amendment will be offered to clarify this matter.

"Environment" is not a defined term in the bill. The State Department has informed the committee that such a term thus could mean "global environment," thereby extending the provisions of S. 1480 beyond the United States or any area where it could assert jurisdiction. Therefore, S. 1480 threatens to have potentially grave foreign policy implications by appearing to provide authority for the United States to assert jurisdiction over foreign vessels and foreign nationals in a manner inconsistent with general principles of international law and specific U.S. treaty obligations.

S. 1480 establishes a fund for compensation of damages and cleanup costs. The Commerce Committee has clear jurisdictional interests in the use of this fund when such use is otherwise funded pursuant to the committee's authorizing jurisdiction. Moneys in the fund can be used for actions relating to damage assessment, restoration of natural resources, and investigation of and enforcement as a result of hazardous substances releases. These matters are specifically under the authority of the National Oceanic and Atmospheric Administration and the Coast Guard, over which the committee has authorizing jurisdiction. In the interest of efficient and coordinated oversight of these, and any other, groups within its jurisdiction, the Commerce Committee must be in a position to review the adequacy of their funding.

Mr. President, the Commerce Committee has followed closely the evolution of this "superfund" legislation. As early as February 21 of this year, Senator PACKWOOD and I wrote a letter to Senator RANDOLPH, the chairman of the Public Works Committee, in which we expressed support for the efforts of his committee in this regard. In addition, we requested sequential referral to the Commerce Committee for a time certain in light of the many areas covered by the proposed legislation within the jurisdiction of the Commerce Committee. At that time, the Public Works Committee was not willing to agree to a referral, claiming that they were working solely on a staff working draft.

In July, after S. 1480 was reported by the Public Works Committee, we again wrote the committee requesting referral and reiterating our multitudinous jurisdictional concerns, only to be once again refused. Our most recent correspondence with the Public Works Committee, dated August 22, 1980, included one last request for sequential referral and also set forth in detail many of the specific matters within the Commerce Committee's jurisdiction which are impacted by S. 1480. This letter received the same negative response on the issue of referral.

Mr. President, I strongly support the goal of making our environment safer from pollution by hazardous substances, but this goal must be carried out carefully in order not to have unintended and potentially disastrous impacts on the commerce of this country. Thus, even without formal referral, the Commerce Committee continues to examine the bill and remains concerned about these and many other concerns. Although the Senate Environment and Public Works Committee has introduced amendments to address some of these concerns, the amendments still do not address some of the most significant problems with the bill. Therefore, I have instructed staff to work on amendments, for introduction on the floor, which would respond to these problems.

Mr. President, I am hopeful that favorable consideration of these amendments by the Environment and Public Works Committee and the Senate will facilitate favorable consideration of S. 1480 during the 96th Congress.

For the benefit of my fellow Members, I have included for the RECORD a few representative letters received by the Commerce Committee in conjunction with its hearings, which relate to the many concerns within the committee's jurisdiction. They are from the following groups:

American Farm Bureau Federation;
Crum & Forster Insurance Cos.;
American Insurance Association;
Department of State;
Transportation Association of America;
Association of American Railroads;
American Trucking Associations, Inc.;
American Institute of Merchant Shipping; and
American Nuclear Energy Council.

Mr. President, I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., September 11, 1980.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The American Farm Bureau Federation is a general farm organization representing more than 3.2 million member families in 49 States and Puerto Rico. Many Farm Bureau members use chemicals in crop and livestock production that would be classified as hazardous materials as defined in S. 1480. We are concerned that S. 1480, as reported by the Senate Environment and Public Works Committee, could have a serious effect on agricultural technology and production.

For purposes of discussion, we wish to divide the provisions of S. 1480 into three parts: (1) clean-up of waste disposal sites; (2) emergency federal response to hazardous materials spills; and (3) creation of a new liability scheme that would impose strict liability on the manufacturers and handlers of hazardous materials, including every farmer and rancher in the United States who uses pesticides as a part of the food and fiber production process.

Our principal concern with the bill involves the liability scheme provisions.

S. 1480 declares the transportation, storage, and use of hazardous materials to be an "ultrahazardous activity" subject to the liability provisions of S. 1480. Most farmers purchase pesticides, transport them home, and store them until the time of use when they are again transported to the site of application. The bill, at this time, specifically excludes field application from the liability scheme, although the farmer would be held strictly liable at all other times. We also suggest that any such exclusion granted by Congress could be subject to removal in the future.

We have not been able to quantify the magnitude of a farmer's financial exposure under this liability scheme; however, a couple of examples will serve to illustrate the potential problems if this bill becomes law.

A farmer, transporting pesticides in a farm truck, could be involved in an accident totally beyond his control. If the pesticide containers ruptured and the chemical spilled, the farmer would become liable for clean-up costs, any real or personal property loss, any loss or destruction of natural resources, and so on.

If a farmer stores chemicals on his farm prior to field use, in a manner prescribed by EPA, and a trespasser enters the property causing injury to himself, others, or the environment, the farmer would be liable.

If a farmer loads his tractor mounted spray tanks and must across a country road to reach his field, and is struck by an automobile, the farmer would be liable for any chemical-caused damages.

Recently, farmers in the midwest used a pesticide registered by EPA to protect corn from soil borne insects. Soybeans were planted in the fields the following year. Residuals of the pesticides were absorbed by the soybeans and eventually found their way into poultry feed, resulting in the condemnation of several million chickens ruled unsafe for consumption. The pesticide had been registered by the Federal EPA as safe for use on corn. The growers followed EPA use directions. No one anticipated the problem, nor can the blame for the subsequent problem be ascribed to an individual or company. The pesticide, of course, was disallowed. However, if this bill had been law, virtually every corn/soybean farmer involved in the production of that poultry feed would have been liable.

The committee bill provides a narrow exemption for the field application of pesticides. We do not believe a narrow exemption from a bad provision makes the provision any better. We urge deletion of the joint and several strict liability scheme from this bill.

The bill envisions three principal sources of funding. The fund would initially be built from a tax on industry and from appropriated funds. However, the fund would be replenished with additional monies recovered from parties, sued by the U.S. Justice Department, after initial payment for damages by the fund. This latter provision was intended to pit the Justice Department against major companies. The practical application of the provision, however, would subject any business—big or small—and individual farmers, to the force of virtually uncontestable litigation, should an accident occur.

Further, the industry tax will not be paid by big business, as envisioned by the bill, but instead be passed through as a cost of production to the consumer of the product—the farmer buying the pesticide.

We encourage this committee to amend S. 1480 in order to make it a responsible bill that addresses the legitimate problem of abandoned hazardous waste disposal sites and clarifies federal authority to respond to hazardous materials spills. The remainder of the bill should be deleted.

Sincerely,

VERNIE R. GLASSON,
Director, National Affairs Division.

CRUM & FORSTER INSURANCE COS.,
Washington, D.C., September 10, 1980.

Re S. 1480, The Environmental Emergency Response Act.

Hon. HOWARD W. CANNON,
Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Crum & Forster Insurance Companies, the Nation's 14th-ranked group of property-casualty insurers, are major writers of the kind of liability insurance that S. 1480 would virtually compel owners and operators of many hazardous substances disposal facilities or sites to buy in order to establish evidence of financial responsibility.

As eager as we are to make a market for those subject to the bill's requirements, we do not believe that the liability scheme established by S. 1480 is insurable. We are concerned that enactment of the bill in its current form will impose on many owners and operators an obligation they will be unable to fulfill through the purchase of insurance.

To be insurable, an event must be reasonably predictable both as to the frequency with which it occurs and as to the severity of losses it produces. S. 1480, in our view, makes the prediction of loss frequency and severity nearly impossible. Many of the legal rules it establishes, the categories of loss it makes compensable, and the classes of claimants it makes eligible for recovery, are entirely new, rendering past experience meaningless for purposes of estimating future costs (and, hence, premiums).

Unless major changes are made in S. 1480, we would strongly recommend that it not be enacted. As much as we appreciate the desirability of compensating the victims of hazardous substance releases into the environment, we believe there must be a better balance between this objective and the interests of owners and operators (and their insurers) than S. 1480 now strikes.

First, with respect to the legal framework in which losses are to be compensated, S. 1480 abandons all current and time-tested rules of liability in favor of an untried concept of joint, several and strict liability (section 4(a)) whose unfamiliarity is compounded by its retroactive applicability.

"Owner or operator" is defined in section 2(b)(15)(A) to "include the person who owned or operated or otherwise controlled activities at such facility or site *immediately prior to (its) abandonment or at the time of any discharge . . .*" (emphasis supplied). Section 4(a) subjects such owners and operators and "any person who *at the time of disposal of any hazardous substance* owned or operated any facility" to joint, several and strict liability for the universe of damages resulting from a discharge. The exceptions to this retroactivity in subsections 4(n)(1)–(3) are cold comfort, since they apply only to damages and releases occurring "wholly" before a specified date.

Thus, S. 1480 would apply entirely new statutory liabilities to actions taken and contracts made years, even decades, ago under traditional common law standards. We and other insurers would become subject, under contracts long since terminated, to liability exposures we never agreed to assume and could not possibly have foreseen, and the extent of our liability would be determined not according to the legal rules and the state of the waste disposal art at the time we entered into our contracts, but under an untried formula that would strip us and our former insureds of virtually all defenses.

We know it would be unfair, and we believe it would be unconstitutional, for the Congress to change the rules for hazardous substances liability retroactively as well as prospectively. We would not hesitate to challenge such a law if, pursuant to it, we were to be ordered to pay millions of dollars on behalf of former insureds for legal liability that did not exist when the actions involved were taken, and for which we collected no premium.

The strict liability dragnet in S. 1480 is so broad as to sweep within it any person who at any time had even the remotest connection with a facility or site, and to require that person to pay the entire damages from a discharge before he can seek either limitation or apportionment of his liability from the parties actually responsible for the damages (see section 4(f)(3)). From an insurer's perspective, this provision alone creates a contingent liability so enormous as to defy calculation, and would likely make it extremely difficult for persons utilizing disposal sites to obtain insurance protection.

The scope of the definition of "facility" in section 2(b)(9) of S. 1480 is so broad as to include farmers' tiny ponds and drainage ditches as well as massive commercial chemical dumps. No attempt is made to discriminate among "facilities" on the basis of their capacity, loss history or risk potential.

Thus, a farmer would be subject to the same one year's imprisonment or $10,000 fine that would be levied against a chemical dump operator for his failure to notify EPA of "the existence of (his) facility or site" and "the amount and type of any hazardous substances to be found there," and subject to the same *absolute* and *unlimited* liability for damages resulting from any subsequent discharge or lease (see section 3(a)(4)(A)).

We must ask if it is truly the desire of Congress to impose on a farmer who may have a pesticide residue in his pond or drainage ditches the draconian requirements set out in S. 1480. If not, surely some distinction should be drawn between those facilities which pose relatively little risk of environmental harm and those which pose a greater risk. Absent such distinctions, the owners of farms, motor vehicles and other onshore facilities will face a Hobson's choice: they will either be unable to obtain insurance protection against liability arising under S. 1480; or they will be able to obtain it only at prices reflecting the huge exposure the bill creates for even the smallest facility.

Ironically, the bill places no limit on the liability of any person subject to it, but permits any insurer acting as a guarantor of such a person under the bill's financial responsibility requirements (section 7) to escape liability by excluding, through restrictive endorsement, coverage for subrogation

claims by the Hazardous Substance Response Fund (see section 6(b)(3)(E)). If a guarantor were to deny direct liability, forcing claimants to proceed against the Fund, and also excluded subsequent subrogation claims, the entire burden of the subrogated claim would rest on the insured. We doubt seriously that any reputable insurer would enter into such a contract, but point out that the bill contemplates the use of insurance policies as evidence of financial responsibility while permitting insurers to exclude liability by restrictive endorsement.

Second, the categories of loss that S. 1480 makes compensable are in many instances either entirely new or so broadly defined as to defy quantification. We do not believe that insurers will be able to accurately price coverage for unfamiliar or unquantifiable kinds of losses. Unless the elements of compensable loss are more precisely defined and limited, we believe they will further discourage insurer participation in the market for risks subject to S. 1480.

"Damages" are specified in section 2(b)(8) to include both "economic loss" and damages for "personal injury." The latter presumably would include such non-economic losses as pain and suffering, loss of consortium, etc., which are extremely difficult to estimate in advance. Non-economic losses typically constitute 60 per cent of automobile liability insurance payments, and, if permitted under S. 1480, would substantially increase the costs imposed by the bill. For example, would "psychic trauma" induced by disclosure of an orphan dump site next door to an established residential neighborhood constitute the sort of "personal injury" compensable under the bill?

"Remedial action" could, subject solely to Presidential discretion, impose on a discharger pursuant to section 4(a)(1)(A) such potentially staggering costs as "permanent relocation of residences, businesses and community facilities" and "the provision of permanent alternative drinking water supplies" (see section 2(b)(1)). Determination as to whether such costs are reasonable or necessary is entirely out of the hands either of the discharger or his insurer, but his liability for them is virtually absolute.

There is no requirement in section 4(a)(2)(B) that "loss of use of real or personal property" result from damage to the property itself, as is currently required under insurance contracts. Does this mean that a family is entitled to recover damages for loss of use of an island retreat if the bridge to the island is closed after a truck carrying a hazardous substance has overturned?

Similarly, there is no requirement in either sections 4(a)(2)(D) (loss of use of natural resources) or 4(a)(2)(E) (loss of income or earning capacity) that the claimant derive any income from either the natural resources or the property damaged. Does this mean that a weekend fisherman denied his sport on a contaminated local lake is eligible for recovery of damages? Does it mean that a gas station owner whose traffic to and from the same lake declines is entitled to seek compensation? If so, there is no end to the theoretical universe of damages that can be conjured up (bait suppliers to the fishermen, auto parts dealers with the gas stations, etc.).

We would also like to point out that S. 1480, in defining "release" (section 2(b)(16)), repeals the Price-Anderson Act's $560 million limitation on public liability arising out of a nuclear incident by providing that a "release" does not include "nuclear material . . . to the extent such release is covered by financial protection required" under the Price-Anderson Act. Thus, once the Price-Anderson limits have been reached, unlimited recovery would be permitted under S. 1480. We do not think it is sound public policy to bury an implied repeal of a major statute in the definitions section of an apparently unrelated 91-page bill.

Third, the classes of claimants that S. 1480 makes eligible for recovery of damages are nowhere, except with respect to loss of tax and other revenues and of natural resources by governments, limited. The impossibility of measuring the numbers of claims that might result from a given incident increases the likelihood that insurers will avoid exposures created by S. 1480.

Much of the imprecision in the classes of claimants eligible for recovery derives from similar imprecision (noted above) in the bill's description of compensable losses. We believe that a new section, specifying which classes of persons are eligible for recovery of which category of damages, would greatly improve this bill.

For example, recovery for "loss of use of real or personal property" (section 4(a)(2)) should be limited to those whose property is actually damaged by a release, discharge, or disposal.

Similarly, only those who derive a major portion of their livelihood from natural resources should be eligible to recover for loss of use thereof, and only those whose income-producing property is damaged should be able to seek damages for loss of income or profits or impairment of earning capacity (see sections 4(a)(2)(D) and (E)).

We would be pleased to work with your Committee and its staff in an effort to create an Environmental Emergency Response Act that better balances the interests of those victimized by hazardous substances discharges with those of potential dischargers and their insurers. We do not want to surrender yet another market to the taxing power of the Federal Government without working to make S. 1480 an insurable venture for ourselves and our competitors.

Sincerely yours,

LESLIE CHEEK III,
Vice President, Federal Affairs.

AMERICAN INSURANCE ASSOCIATION,
Washington, D.C., September 17, 1980.

Re S. 1480, the Environmental Emergency Response Act.

Hon. HOWARD W. CANNON,
Committee on Commerce, Science, and Transportation, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR CANNON: The American Insurance Association (AIA) is a trade association of 152 stock, property and casualty insurance companies. If S. 1480 is enacted, the member companies of AIA will be the principal domestic source of liability insurance for onshore facilities to service the liability system established in the bill.

S. 1480 currently provides for a five year period following enactment of the bill during which financial responsibility (FR) requirements are not obligatory. FR requirements will then be phased-in over a period of 3 to 6 years. Without the provision of insurance, owner/operators who cannot self-insure will not be able to meet the financial responsibility certification requirement mandated by the bill.

The American Insurance Association opposes enactment of S. 1480 in its current form. The liability system created by S. 1480 presents an enormous liability exposure and for many insurers would represent an uninsurable risk.

The establishment of levels and categories of insurance coverage by federal legislative mandate is a serious problem for the insurance industry. The demand for insurance coverage to service federal liability systems may exceed the industry's capacity to provide protection. Legislation which imposes levels of financial responsibility on owner/operators as a prerequisite for doing business transforms insurance from a consumer product to a societal necessity. The supply of insurance to service a liability system which responds to toxic discharges and hazardous waste disposal is not perfectly elastic. It is largely a function of and limited by the general condition of the United States and foreign primary insurance and reinsurance markets, the competing demands for capacity from a variety of other insurance risks, and the specific economics of the risk of catastrophic loss associated with S. 1480.

The current limitations on pollution liability insurance are a result of public policy, rapidly developing common law liability theory, potential magnitude of loss associated with toxic waste and hazardous discharges, and the inevitable legal ambiguities of casual relationship and multiple causation associated with disease-related injuries.

The independent development of federal tort law concepts which would nationally codify the most advanced common law theories and add presumptions which are common to compensation systems but *not* liability systems will further impede the development of an insurance market for pollution liability.

"Superfund" legislation introduces broad new categories of claimants and compensable damages which will make risk assessment extremely difficult until a data base is generated through claims experience under the liability system. During this initial period insurers would be in the uncomfortable position of basing their rates more on conjecture than on responsible judgment supported by hard data.

Elements of concern which could preclude the development of an insurance market are as follows:

UNMEASURABLE CATEGORIES OF COMPENSABLE

The definition of "damages" and the ambiguity in sections 4(a)(2) A–D result in a lack of clarity with respect to whether "damages for . . . personal injury" includes non-economic loss such as pain and suffering. With respect to the latter subsection, it is not clear whether the specification of what is included in "all damages" implies that elements not listed (*e.g.*, pain and suffering) are therefore not included. The phrasing "economic loss or loss due to personal injury" would suggest that non-economic loss is included, although the ensuing list does not specify any non-economic losses.

The element of non-economic loss is the most unpredictable and the most easily manipulated portion of damages. If the bill intends to permit recovery for non-economic loss, it should clearly specify it. If recovery for such loss is permitted, it would further discourage insurer participation.

CLAIMANT STANDING

We are concerned with section 4(a)(1)(A)(2)(E) because the phrase "loss of income or profits or impairment of earning capacity" is totally unqualified as to the percentage of income a claimant must derive from damaged property or resources in order to be eligible for an award.

Neither does it qualify the time period over which such damages may be claimed. Without such qualifications, the subsection has the potential for allowing youthful claimants to seek lifetime income replacement awards, regardless of how little of their income was derived from the damaged property or resources and regardless of their ability to obtain other employment.

PRESUMPTIONS

Section 6(e)(2) and (3) provides for a rebuttable presumption in favor of "any determination or assessment of damages for . . . natural resources" and further directs that assessment should be made by the Administration's environmental agencies. The presumption would give extraordinary evidentiary weight to damage assessment concepts and assumptions which have not been fully developed or recognized by the courts or legal academicians. The presumption will

make the burden of defending natural resources claims and reducing assessments nearly impossible.

CLAIMS SETTLEMENT PERIOD

S. 1480 currently provides for a period of 15 days for settlement of claims between claimants and owner/operators (and their guarantors).

Proper assessment of damages in speculative areas of liability such as loss of use of natural resources or loss of income cannot be made in a period of less than 120 days. Many cases which could be settled would be referred to the court or the Fund, not because the fact are contested, but because proper damage appraisal is impossible.

A period of 120 days also may be needed to designate the proper defendant. Locating the source of the discharge in situations involving vessels and offshore facilities will normally be easy due to the spiller's location. However, in situations involving onshore facilities, facilities may be grouped together or evidence of damage may device over a long period of time, making designation of defendant more difficult.

RETROSPECTIVE APPLICATION OF LIABILITY

"Owner or operator" is defined in section 2(b)(15)(A) to "include the person who owned or operated or otherwise controlled activities at such facility or site immediately prior to (its) abandonment or at the time of any discharge. . . ." Section 4(a) subjects such owners and operators and "any person who at the time of disposal of any hazardous substance owned or operated any facility" to joint, several and strict liability for the universe of damages resulting from a discharge. The exceptions to this retroactivity in subsection 4(n)(1)–(3) are inadequate because they apply only to damages and releases occurring "wholly" before a specified date.

S. 1480 would apply the most advanced common law theories of liability coupled with rebuttable presumptions in the areas of natural resources assessment and medical injuries to fact situations which took place and insurance contracts which were made years ago. Premiums collected for insurance contracts for pollution liability terminated years in the past were based on common law theories of liability such as negligence, trespass, nuisance and riparian rights. If the occurrence which results in alleged liability is continual, insurers which provided pollution liability coverage years ago may be subjected to the liability concepts in S. 1480.

MODIFICATIONS TO THE PRICE-ANDERSON ACT

S. 1480's definition of release appears to remove the $560 million limitation on owner/operator liability arising out of a nuclear incident. Section 2(b)(16) provides that a "release" does not include "nuclear material . . . *to the extent* (emphasis added) such release is covered by financial protection required by" the Price-Anderson Act. The above language could also be interpreted in a fashion which would apply the liability concepts of S. 1480 to nuclear incidents.

JOINT AND SEVERAL LIABILITY

In adopting a joint and several, strict liability theory, S. 1480 would permit a claimant to collect the entire award for damages from one defendant before that particular defendant can seek contribution from the remaining defendants. This approach creates a potential unforeseen liability for owner/operators and makes the process of underwriting and pricing a risk extremely difficult. A risk's individual potential for pollution liability becomes meaningless when he can be sued for an entire loss although he was only one of a number of participants.

FINANCIAL RESPONSIBILITY REQUIREMENT FOR ROLLING STOCK

Section 7(b)(2) provides for FR requirements for rolling stock of $300 per gross ton, or $5 million, whichever is greater. This FR requirement would be "in addition to those in existing law". The recently enacted "Motor Carrier Act of 1980" mandates FR requirements of $5 million for transportation of extremely hazardous materials and $1 million for transportation of other hazardous materials. The S. 1480 requirement for rolling stock would be in addition to the FR requirements in the Motor Carrier Act, thereby creating an intolerable burden on commercial automobile insurers.

In reviewing the basic criteria for determining insurability of losses as delineated by Commercial Liability Risk Management and Insurance, the difficulty in underwriting pollution insurance for hazardous discharges becomes evident.*

LOSSES MUST BE DEFINITE IN TIME, PLACE, AND AMOUNT

Many pollution losses cannot be pinpointed as to time and place, nor to any one source. They are attributable to prolonged misuses or exposures by many sources. For example, it would be almost impossible to determine whether, and to what extent, illnesses or property damages are solely attributable to an insured. Another difficulty would be to prove that the actual cause of some diseases—emphysema for example—is the air pollution. Such diseases can be caused by other factors, such as smoking, or working in a hazardous industry. Multiple causes of loss could pose causation problems, even when a pollution incident is sudden and accidental.

LOSSES MUST BE ACCIDENTAL IN NATURE

Without question, some of the pollution that culminates in damage is willful or done with flagrant disregard to its possible effects. Also, some acts are intentional, but the results are unforeseen. A typical example is the dumping of mercury into streams and rivers, an occurrence that went on for a number of years. It was thought that mercury would sink and do no harm. However, it was subsequently discovered that mercury so disposed of would produce another harmful substance.

LOSSES SHOULD NOT HAVE AN UNMANAGEABLE CATASTROPHE POTENTIAL

Pollutants and contaminants are obviously capable of producing catastrophic results. Whether the catastrophe potential of pollution liability can be managed now or in the future is not yet clear but the severe consequences of an error in making this judgment justify some caution on the part of insurers.

THERE SHOULD BE A LARGE NUMBER OF HOMOGENEOUS EXPOSURE UNITS

In order that losses may be predicted accurately, there should be a large number of homogeneous exposure units—i.e., similar type businesses or organizations in order to permit satisfactory predictions of the losses that will be incurred by firms that are actually insured. There also should be a substantial volume of credible loss experience and an acceptable means of forecasting significant increases in future losses. It would seem that there are ample numbers of similar firms interested in purchasing pollution liability insurance if the price is reasonable. Nonetheless, it is still a difficult task to predict the frequency and severity of insurable pollution liability losses for those who would constitute the insured group.

LOSSES SHOULD BE MEASURABLE IN TERMS OF MONEY

Measuring the dollar costs of property damage, bodily injury, sickness, death, loss of earning power, and loss of consortium and other such intangibles is sometimes difficult, though it is not impossible in the context of most types of legal liability. However, in some pollution cases, as mentioned earlier, it may well be impossible to determine the proper portion of a total dollar loss that was caused by a particular insured. There may be many causes involved, as well as many different polluters. Moreover, additional problems will surely arise if insurers are required to pay damages for such things as the aesthetic and/or enjoyment value of recreational areas or lakes.

INSURANCE MUST BE ECONOMICALLY FEASIBLE

If the statutory goals of curbing water, air, noise, and thermal pollution are met in the future, and if anti-pollution control devices and other effective techniques are implemented on a widespread basis, perhaps pollution liability insurance will become more readily available at economically feasible premiums. At present, however, these are not the realities. Pollution costs are enormously high and appropriate insurance is difficult to obtain, especially for premiums prospective buyers would pay.

In discussing the priority of importance insurers attach to the bill's "defects", it must be emphasized that it is difficult and perhaps misleading to establish such a priority because it fails to recognize that the concepts in S. 1480 interrelate with and thereby exacerbate each other. Enactment of S. 1480 in its current form will create an immediate availability and/or affordability of insurance problem as owner/operators attempt to obtain insurance protection from the risks presented in the bill's liability system. The availability problem will be acutely felt when FR requirements for onshore facilities become a prerequisite of doing business. Although insurers can avoid prospective liability by refusing to service S. 1480's liability system, insurers may not be able to avoid retrospective application of the liability system to existing claims. Accordingly, the American Insurance Association opposes passage of S. 1480.

Respectfully submitted,

JAMES L. KIMBLE, *Counsel.*

DEPARTMENT OF STATE,
Washington, D.C., September 15, 1980.

Hon. HOWARD W. CANNON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR CANNON: I understand that the Senate Commerce Committee recently held hearings in regard to S. 1480, the Environmental Emergency Response Act. Since the Department of State was not called as a witness at those hearings, I wish to take this opportunity to express our serious concern regarding this legislation.

The Administration and the Department of State have for several years supported the concept of a comprehensive system of liability and compensation for oil spill damage and removal. We further believe in the desirability of similar legislation for damage occasioned by hazardous substance spills. Due to a number of policy and legal questions it has been an extremely difficult task to establish a unified scheme of liability and compensation for pollution caused both by oil and hazardous substances. We are, therefore, pleased to note that H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act, as reported by the House Committee on Public Works and Transportation adds to the original bill dealing only with oil spills a similar system for hazardous substances and merges these two systems into a single piece of legislation.

In particular, the Department is gratified to note that the jurisdictional and liability regimes established under H.R. 85, as amended, are consistent both with the prevailing international jurisdictional regime (particularly the port-state jurisdictional concept as applied by the United States) and with U.S. treaty obligations. Specifically, the imposition on the ship owner or operator of primary liability for damage up to a maximum of $30,000,000 and secondary liability up to the limitations of the fund on the refinery owner or owner of any terminal is consistent with international norms. As the jurisdictional bases established in the proposed legislation parallel those in Section 311 of the Federal Water Pollution Control Act (33 USC 134), as amended, the Department envisages no problems in this regard.

S. 1480, the Environmental Emergency Response Act, is intended to establish a similar system to that envisaged in HR 85 for hazardous substances. However, for many reasons, S. 1480 causes the Department considerable concern. In particular the jurisdiction asserted in the bill is overly broad, and is inconsistent with both existing and emerging principles of international law and specific U.S. treaty obligations. The absence of a finite definition of the term "environment," as that term is used, e.g., in the definition of "release" in Section 2(b)(16) (A) and (B), could very well be interpreted as meaning the "global environment," thereby extending the reach of S. 1480 beyond any legitimate nexus to the United States.

Such a broad jurisdictional grant, particularly insofar as it concerns foreign flag vessels not otherwise subject to the jurisdiction of the United States, would extend virtually worldwide U.S. jurisdiction and a consequent assertion of right by U.S. authorities to take enforcement action under the provisions of S. 1480. The Department recommends that for jurisdictional purposes beyond the territorial sea the bill be made to conform to the terms and definitions in Section 311 of the Federal Water Pollution Control Act, as amended. This approach, which was taken in H.R. 85, would obviate many of the difficulties now found in S. 1480. Alternatively, a disclaimer could be included in Section 2(b) to the effect that nothing in S. 1480 may be construed so as to assert jurisdiction over foreign flags or nationals not otherwise subject to the jurisdiction of the United States in accordance with general principles of international law and our treaty obligations.

In addition to its reservations respecting the jurisdictional elements of S. 1480, the Department has a number of comments relating to the relationship of S. 1480 to the Federal Water Pollution Control Act, with which S. 1480 overlaps at numerous points. We would welcome the opportunity to present our concerns before your Committee and to provide suggestions which may remedy the problems we perceive in S. 1480.

Sincerely yours,

J. BRIAN ATWOOD,
Assistant Secretary
for Congressional Relations.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., September 12, 1980.

Hon. HOWARD W. CANNON
Chairman, Senate Commerce, Science, and Transportation Committee, Washington, D.C.

DEAR CHAIRMAN CANNON: Speaking for the across-the-board transportation interests within our Association. I should like to express TAA's appreciation of the decision to hold hearings before your Committee on S. 1480, the so-called Superfund Bill. While TAA to date has not expressed its views on this legislation, primarily because initial bills did not seriously impact on the transportation industry as a whole, we are greatly concerned about the very wide scope and heavy liability features of S. 1480 in its expanded form. Also, in line with the following TAA policy statement, as formally adopted by the Association's 115-member Board of Directors, we believe that transportation interests should be given the opportunity to express their views on legislation that can have such an adverse impact on them:

"Full opportunity for hearings on matters which affect transportation should be given to interested parties by committees of the Congress."

TAA certainly has no quarrel with the basic objectives of S. 1480, which is to protect the general public from spills and other releases of hazardous substances. However, we believe the sweeping approach taken by the bill as now written could very seriously harm the nation's transportation industry and discourage the movement of many products essential to the economy and its welfare. We particularly have in mind the "joint, several and strict liability" provisions in the bill, along with virtually unlimited liability burdens that could be imposed, which would create serious problems for publicly regulated common carriers because of their obligation to provide service to all who seek it.

In the event this bill becomes law, both self-insured and other carriers would find it very difficult, if not impossible, to buy the high-risk supplemental insurance that would be required if they are to transport products included in the hazardous substances covered by S. 1480. These carriers, we understand, also could find it very difficult to bear the burden of proof imposed on them by the bill for both past and future movements of such hazardous materials. Finally, as interstate carriers, they could face possible multiple liability suits because of their being regulated, from a safety standpoint, by both state and federal agencies.

TAA believes that S. 1480, as now written, is an example—particularly from the transportation industry's point of view—of a regulation that cannot be justified on a cost/benefit basis, as referred to in the following TAA policy:

"TAA supports the concept that an economic cost/benefit analysis must be determined by legislative bodies and regulatory agencies prior to the enactment of laws or the promulgation of regulations pertaining but not limited to the movement of persons and things; and that, prior to the enactment of such laws or the promulgation of such regulations and the implementation thereof, cost/benefit considerations (including productivity and inflation factors) must be taken into account."

We understand that a number of transport groups are presenting views to your Committee and making a specific proposal on ways to remove the undesirable features of S. 1480. Hopefully, your Committee will give such proposals careful consideration so that any final legislation will not adversely affect our nation's transportation industry and those shippers who must rely on it.

Sincerely,

PAUL J. TIERNEY.

ASSOCIATION OF
AMERICAN RAILROADS,
Washington, D.C., August 21, 1980.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR CANNON: I am writing to you as the Chairman of the Senate Committee on Commerce, Science, and Transportation to voice the serious concerns of the railroad industry with S. 1480, the Environmental Emergency Response Act, recently reported by the Committee on Environment and Public Works. This bill would, if enacted, have a major impact on the railroads in terms of both increased liability exposure and increased Federal and state involvement in railroad activities. We believe that the transportation issues raised by the bill have heretofore not been addressed and that no further action should be taken until they are thoroughly considered. Specific provisions of the bill which raise issues of concern to the railroad industry are discussed below.

Section 2(a)(16) of S. 1480 defines the term "release" for purposes of the bill, but the definition specifically excludes emissions from the exhaust of a motor vehicle. Consequently, motor carriers are relieved of liability exposure on account of their exhaust emissions whereas railroads remain subject to that exposure. We believe that such disparate treatment of competing transportation modes is unwarranted and inequitable.

Section 3(a)(4)(A) of the bill provides that "any person who owns or operates . . . a facility . . . at which hazardous substances are stored . . . shall notify the Administrator of the Environmental Protection Agency of the existence of such facility . . . specifying the amount and type of any hazardous substances to be found there, and any known, suspected, or likely discharges or releases of such substances from such facility . . ." A "facility" is previously defined in the bill to include railroad rolling stock. No definition of the term "stored," however, is contained in the bill. It is certainly arguable that a tank car sitting in a yard awaiting further movement or delivery, or a tank car delayed on a siding because of inclement weather could be considered a storage facility under this section of the bill. Under that interpretation, the railroads would be subject to an overwhelming and unreasonable reporting requirement. The bill should be changed to define a "storage facility" to exclude railroad rolling stock.

Section 3(d) of the bill states:

(d) Notwithstanding any other provision of law, upon receipt of information that the . . . transportation . . . of any hazardous substance may present a danger to public health or welfare or the environment, the Administrator of the Environmental Protection Agency or the State . . . may require any person causing or contributing to such danger to take such actions as may be necessary to ascertain the nature and extent of such danger, or may bring suit in the appropriate district court of the United States to require any such person to take such actions.

The Secretary of Transportation is already empowered to conduct whatever investigations are necessary to ascertain the nature and extent of the danger arising from the transportation of a hazardous material. Moreover, the Secretary can compel the cooperation and assistance of the railroads in any investigation. Section 3(d) only serves to confer duplicate authority on the EPA Administrator and on the States. Because a single railroad will operate in and through many States, the potential for multiple, duplicate investigations by State authorities promises to be particularly burdensome. In light of the existing authority of the Secretary of Transportation, there is no justification for conferring duplicate investigatory authority on any other governmental body.

Section 4 of S. 1480 imposes joint, several, and strict liability for all damages resulting from release of a hazardous substance. The damages recoverable under this provision go far beyond those traditionally recoverable at law. The potential liability under Section 4 is huge, probably beyond the ability of any railroad to absorb. The railroads could not adequately protect themselves from the potential liability imposed by the bill. As com-

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*Requisites for insurability were excerpted from Commercial Liability Risk Management and Insurance, Volume II, ch. 11 "Special Liability Exposures and Their Treatment."

mon carriers, they cannot refuse to carry these hazardous substances, and because their economic affairs are so closely regulated, the railroads cannot freely raise their rates, exact the compensation they deem necessary to cover their liability exposure.

At the same time, the public safety is best served when hazardous substances are shipped by rail. Most authorities agree that the risk of shipping hazardous substances by rail is lower than the risk of shipping them by any other mode (excluding pipelines) and that hazardous substances shippers should be encouraged to use railroads. In recognition of the railroads' common carrier obligations and the desirability of encouraging shipment by rail, we believe that the rail industry should be accorded some avenue of relief from the potentially huge and ruinous liability imposed by Section 4.

The railroad industry appreciates the attention which your Committee has given and continues to give to the important transportation issues raised by S. 1480. We look forward to the opportunity to assist you in resolving them.

Sincerely,

RICHARD E. BRIGGS.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., August 26, 1980.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing on behalf of the motor carrier industry to express concern over several provisions of S. 1480, "Environmental Emergency Response Act," which appear to be inappropriate for truck operations, and to recommend changes in the bill which the trucking industry believes will improve the practicality of the legislation.

At the outset, I wish to assure you that the trucking industry is fully aware of the need for legislation to protect the population and the environment from indiscriminate discharging of hazardous substances and from the effects of accidental spills and releases of such substances. The motor carrier industry strongly believes that legislation and any resulting regulations must differentiate between legal truck operations and the patently illegal activities of "midnight dumpers," and to provide different standards of liability for them. We are also concerned about the need for coordination of efforts by various federal agencies and the need for uniformity of regulations for the transportation of hazardous materials, hazardous substances and hazardous wastes.

Our primary concern with S. 1480 is that, in addition to the provisions of strict liability, the legislation establishes transporter liability that extends far beyond the immediate transportation activity. Section 4(a)(iv) provides that a transporter is jointly, severally and strictly liable for releases from a disposal or treatment facility to which it has transported any hazardous substances. This provision establishes a long-term liability that is unjustified. We believe that the transporter should be liable only for releases that occur during the transportation of hazardous substances or which are a result of cricumstances within the transporter's control. To that end, we ask for revision of Section 4(a)(iv) and for inclusion of a limitation of liability provision for transporters similar to that in Section 2(b)(15)(B)(ii) which limits the liability of generators of hazardous substances. Through such an amendment the transporter of hazardous substances "shall not be considered to have caused or contributed to any discharge or release" following such transportation "which resulted solely from circumstances or conditions beyond its control."

At your convenience, my staff is available to provide more details about our concerns and our views on the matter of transporter liability.

Our second major concern is that S. 1480 provides for regulatory controls but there is no provision to require cooperation and coordination by the various federal agencies which currently have authority to establish regulatory requirements for trucks transporting hazardous materials, hazardous wastes and hazardous substances. At the present time the Secretary of Transportation has an extensive list of hazardous materials, hazardous substances and hazardous wastes which is used to identify materials that the truck transporter must be aware of and for which regulatory requirements must be complied with. Section 3(b)(13)(G) of S. 1480 has the potential for identifying an infinite number and variety of substances that are not currently included in the Secretary's list and yet there is no provision for incorporation of such substances in the Secretary's list so that truck operators will have only one list with which to work. Section 3(a)(3)(A) of S. 1480, which requires notification of spill or discharge to the "appropriate government agency," establishes the potential for requirements which duplicate those of the Secretary of Transportation, acting under authority granted by Public Law 93-633 (Transportation Safety Act of 1974, Title I—Hazardous Materials). The trucking industry considers it essential that all notifications of spill or other emergencies be to a central reporting number representing a central response system.

Some sections of S. 1480, such as sections 3(b) and 3(d) gives specific authority to the Administrator of the Environmental Protection Agency that could lead to exercise of controls over packaging and vehicles. These are areas that have been under the jurisdiction of the Department of Transportation for many years and as a result the Secretary has hundreds of regulatory requirements with which EPA controls could be in conflict, unless there is a specific mandate from Congress for cooperation and coordination by the federal agencies.

Given the extensive experience of the Department of Transportation in governing the transportation of hazardous materials and substances, and given the need for uniformity of regulations governing shipping documents, packaging, identification of hazards, control of vehicle movements and emergency response requirements, it is our firm belief that the Secretary should be granted "lead agency" authority to carry out those provisions of S. 1480 that are applicable to the truck transportation of hazardous substances. At a minimum, there should be a provision of S. 1480 which assures cooperation by the agencies and coordination of regulations developed under this law with existing regulations of the Secretary of Transportation governing the transportation of hazardous shipments.

Section 30 of the recently enacted "Motor Carrier Act of 1980" contains provisions for "Minimum Financial Responsibility for Motor Carriers." We believe that these provisions are more appropriate for motor carriers than those in Sec. 7 of S. 1480 because they are directed at truck operations rather than at vessels and facilities, and because they establish the authority of the Secretary of Transportation to develop regulations for minimum levels of motor carrier financial responsibility. We urge that the provisions of the Motor Carrier Act relative to financial responsibility of motor carriers be substituted for the provisions of Section 7 of S. 1480 so that the requirements of the two Acts will be uniform and so that there will be a single agency with authority to establish motor carrier financial responsibility requirements.

Mr. Chairman, this letter has dealt only with the major and most immediate concerns of the trucking industry relative to the provisions of S. 1480. I hope that you will give these matters your attention and that you will provide an opportunity for my staff to present additional details on these and other provisions of S. 1480 about which the trucking industry is concerned.

We would be pleased to provide amendatory language to alleviate the concerns expressed in this letter. While it is our earnest desire that S. 1480 be amended, we take no position as to whether the changes we recommend are adopted on the floor of the Senate or by action of a Senate committee.

Yours very truly,

BENNETT C. WHITLOCK, Jr.

AMERICAN INSTITUTE OF MERCHANT SHIPPING,
Washington, D.C., September 2, 1980.

Re S. 1480—The Environmental Emergency Response Act.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The American Institute of Merchant Shipping (AIMS), representing over ten million deadweight tons of American-flag tankers owner/operators, is deeply concerned that S. 1480 as presently drafted would be uninsurable and, consequently, cause serious competitive disadvantage to the U.S. Merchant Marine. We urge you to interject the Commerce, Science and Transportation Committee into further deliberations on this legislation.

Liability in excess of insurable amounts would fall unfairly on domestic companies because their foreign competitors have greater ability to shield assets from U.S. courts. An accidental spill due to human error or mechanical failure could, under an unfortunate set of circumstances, cause catastrophic damage. Without a limit on liability to provide a means for allocating available funds among claimants, a U.S. company involved in accidental pollution damage could be forced into bankruptcy through no fault of its own. Its foreign competitor, on the other hand, would risk only the ship that comes within U.S. waters. While an American company may set up a one-ship corporation in an attempt to shield assets, this mechanism is unlikely to be as effective as locating assets outside U.S. jurisdiction. In this way, S. 1480 would be detrimental to U.S. merchant shipping, an industry whose promotional laws fall under the jurisdiction of your Committee.

A requirement for evidence of financial responsibility is presently the means by which American and foreign flag companies are held equally accountable under federal water pollution laws. However, such evidence or financial responsibility cannot be required to cover an uninsurable liability.

While some companies may be able to buy some insurance to cover part of the liability imposed by S. 1480, the rapidly evolving concept of environmental damage has already created enough uncertainty under present law to cause an insurance availability/affordability problem. This problem would be seriously compounded by the vagueness, redundancy and confusion in the liability provisions of S. 1480. If partial insurance becomes available, American companies would still face competitive disadvantages because their greater exposure to U.S. jurisdiction could be expected to increase their claims experience, with increased insurance costs directly resulting.

A responsible company must know the extent of its liability so that it can self-insure or buy adequate commercial insurance. Reasonable liability limits geared to credible damage-causing potential can significantly improve insurability by increasing certainty. Unless commercial insurance is reasonably available and affordable, smaller and medium size companies must expose themselves to bankruptcy to remain in the market-place with American companies large enough to self-insure or foreign companies able to shield assets. Bankruptcy may be an acceptable alternative in some areas of the private sector, but public policy considerations militate against it for essential transportation services.

In addition to posing competitive problems, S. 1480 would invite a large bureaucracy to settle claims with Government-administered funds. Under a more balanced, reasonable liability system, insurance would be available and claims could be settled fairly and promptly in the private sector.

We respectfully urge you to use your position as Chairman of the Commerce, Science and Transportation Committee to make improvements in S. 1480 so as to eliminate the problems we see causing detriment to the American Merchant Marine.

Yours truly,

W. M. BENNETT,
President.

AMERICAN NUCLEAR ENERGY COUNCIL,
Washington, D.C., September 10, 1980.

Hon. HOWARD W. CANNON,
Chairman, Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR CANNON: I would like to bring to your attention certain problems inherent in S. 1480 which I believe are of interest to the Senate Commerce Committee.

As reported by the Committee on Environment and Public Works, the term "release" exempts any release covered by Price-Anderson—whether it is an "extraordinary nuclear occurrence" to which "strict" liability would attach, or simply a "nuclear occurrence" not subject to strict liability.

Nuclear is still in S. 1480 to the extent that an unpermitted release occurs at a site not covered by Price-Anderson, e.g. a mill site, off-site mill tailings, certain transportation situations, away-from-reactor spent fuel storage facilities, waste disposal sites, etc.

Therefore, we find ourselves at this point with a logical inconsistency on our hands. on the one hand, a nuclear incident (not an ENO) at a Price-Anderson covered facility such as Three Mile Island is, under Price-Anderson, subject only to ordinary tort law remedies, but a similar, or even lesser incident at a non-Price-Anderson site would under S. 1480 be subject to strict liability.

For example, releases from mill tailings would be subject to strict liability—a release such as Three Mile Island would not. A release (not an ENO) due to a transportation accident between two Price-Anderson covered facilities would be subject only to tort law remedies—but between other facilities would be subject under S. 1480 to strict liability. The bill also raises questions as to the liability regime which would apply to nuclear materials diverted by saboteurs.

The result is a random application of strict and ordinary tort liability depending on the happenstance of the complicated Price-Anderson law—and not on the magnitude of the danger to the public health and safety. It is, as earlier stated, logically inconsistent and bad public policy.

We believe this raises important issues involving particularly the application of liability and insurance issue to the transportation of nuclear fuel. Since this is a matter within the jurisdiction of your Committee we would urge that you press for referral of the bill to examine the issue in detail.

Sincerely,

GEORGE L. GLEASON,
Executive Vice President.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The Senate continued with the consideration of the bill.

Mr. TSONGAS. Mr. President, if I may inquire of the chairman, I have an amendment to the HUD appropriations bill, as the chairman knows, which relates to the CDBG program. Does the Senator have any preference as to when he would like to have that raised?

Mr. PROXMIRE. I shoud be happy to have that called up any time. I think it is a very, very important and far-reaching amendment. As I understand it, it would provide for $200 million to be added to the community development block grant program. I hope it can be called up when we have as many Senators here as possible. For that reason, I think if we called it up tonight and tried to act on it, it would be unfortunate, because Senators would miss the opportunity to vote on it, so I hope it can be called up tomorrow.

Mr. TSONGAS. Could there be some assurance that I may be allowed to take it up early, since I am scheduled to leave here at 2 p.m. tomorrow?

Mr. PROXMIRE. As far as I am concerned, there could. Of course, it is a matter of getting the floor, but I know of no other requests to get action here tomorrow. As I understand it, we shall be on this by 10 a.m., so any time after that will be fine.

Mr. BRADLEY. Will the Senator yield for a question?

Mr. PROXMIRE. Yes, indeed.

Mr. BRADLEY. When does the Senator expect amendments on this bill to be taken up? Immediately this evening?

Mr. PROXMIRE. They can be taken up any time. I think if we are going to have a rollcall, it might inconvenience a number of Senators. But, of course, we are here to do business and if the Senator wants to call up an amendment and ask for a rollcall, it is up to the leader to determine when we go out.

Mr. BRADLEY. I think that I prefer to take it up tomorrow.

Mr. PROXMIRE. We would greatly appreciate it if we could have amendments which do not require a rollcall, do as much of that as possible.

Mr. TSONGAS. Mr. President, I am prepared to submit mine if the chairman will agree to it and we can avoid a rollcall.

Mr. PROXMIRE. I am afraid that would require a rollcall.

Mr. ROBERT C. BYRD. Mr. President, would the Senator lay down an amendment tonight? If the Senator has an amendment on which he desires a rollcall, could he at least lay it down tonight; then, tomorrow morning, the Senate could begin on that amendment. That amendment could be temporarily laid aside by unanimous consent if it is agreeable with the distinguished chairman.

Mr. TSONGAS. I would be pleased to do it. I do not have the amendment with me, though it is in the RECORD. It was put in yesterday.

AMENDMENT NO. 2335

(Purpose: To increase the appropriation for community development grants)

Mr. TSONGAS. Mr. President, I call up my amendment No. 2335 and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. TSONGAS), for himself, Mr. WILLIAMS, (Mr. SASSER, Mr. JAVITS, Mr. RIEGLE, Mr. LEVIN, Mr. SARBANES, Mr. CRANSTON, Mr. STEWART, and Mr. MOYNIHAN, proposes amendment numbered 2335:

On page 9, line 1, strike out "$3,750,000,000" and insert in lieu thereof "$3,950,000,000".

Mr. TSONGAS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEVIN. Mr. President, I rise in support of the amendment offered by my distinguished colleague from Massachusetts (Mr. TSONGAS). The restoration of the $200 million to the community development block grant program to bring the appropriation up to authorized levels is a critical need for our Nation's communities.

Under the CDBG program, communities' revenue fund must, by statute, be directed for the benefit of low- and moderate-income persons. These funds are used to assist property owners rehabilitate housing units; to repair streets and sewerlines; to provide recreation opportunities for city residents, and a host of other activities. By law and regulation, these funds must be targeted in areas in which the majority of residents are of low and moderate income.

The administration's request for this program in fiscal year 1981—and the amount authorized by this body in S. 2719, the Housing and Community Development Act of 1980—is $3.95 billion. This represents only a $150 million or 4-percent increase over the fiscal year 1980 level. I want to stress this level to my colleagues, because there should be no misunderstanding about the level of assistance being offered under the authorization. A 4-percent increase during a year when inflation has risen 13 percent or better amounts to a cut of almost 10 percent in local spending. And yet the Appropriations Committee says that we should cut this back further.

The Appropriations Committee believes this cut is justified. In their re-

port, it is stated that unobligated balances in the program—that is, funds left over from previous appropriations—argue persuasively against further program increases. Let them spend the old money, the committee suggests.

Yet, I would point out to the Senate that no program like CDBG can help but have unobligated balances of funds at the end of every year. CDBG funds primarily physical development. That is the acquisition, clearance, and reconstruction of land and real estate. Over 16 percent of the funds nationally are targeted for housing rehabilitation assistance. These types of activities necessarily involve delay between the designation of a project and expenditure of money to finance it. In the case of public works, public bid procedures must be followed. Contracts must be negotiated. Construction delays sometimes follow, not because of local government actions, but often in spite of them. Yet the Appropriations Committee would penalize local governments for going about such work in a deliberate and careful fashion.

It is true that some jurisdictions have lagged in their ability to spend this money, and that this has been due to no other fault than their own. But I would ask my colleagues whether they think by cutting back on the overall program levels they will do anything to hasten the rate of spending in those communities. The CDBG program is based on formula entitlements. The kind of cut the Appropriations Committee has proposed—untargeted, across the board—will do nothing to spur greater efficiency on the part of those grantees. Instead, it will penalize those communities which have been high performers. Those with high drawdown rates and little backed up money will have to postpone, slow down, or cancel worthy projects for which they anticipated funding. This is scarcely a responsible way to save money in this program.

Mr. President, if there are serious problems facing CDBG recipients in being unable to draw down their funds, then hearings should be called to explore the problem fully. This is the appropriate oversight function of the Congress.

This amendment is modest. It makes sense and I hope it will enjoy majority support.

Mr. PROXMIRE. Mr. President, I ask unanimous request that two members of the Senate Banking Committee Staff—Al Eisenberg and Frank Shafroth—be given the privilege of the floor during the consideration of the HUD-Independent Agencies Bill, H.R. 7631.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished chairman allow me to announce, if he is in agreement with that, that there will be no more rollcall votes today?

Mr. PROXMIRE. Yes.

Mr. ROBERT C. BYRD. Mr. President, I make that announcement.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Tsongas amendment be temporarily laid aside to consider another amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1620

Mr. PROXMIRE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposes an unprinted amendment numbered 1620:

On page 35, following line 25, insert the following paragraph: "For settlement of a contractor's claim involving the Veterans Administration Medical Center, Boston, Massachusetts, from existing balances, $1,150,000.

Mr. PROXMIRE. Mr. President, on September 4, when the bill before us today was being marked up in full committee, we received an amendment from the Office of Management and Budget which would allow the Veterans' Administration to use $1,150,000 from its current construction budget to pay a contractor's claim involving the Boston, Mass., VA Medical Center. This bill language is essential if the claim is to be paid because of a legislative restriction requiring the Congress to specifically provide funds to pay construction settlements in excess of $1 million.

Although the restriction arose because of a prior claim settlement that was reached in an arbitrary matter and did not seem to be based on sound audit principles of reasonableness and appropriateness, the settlement at issue today was agreed to by the Corps of Engineers pursuant to an order of the court of claims, and was audited as to reasonableness and appropriateness by the Defense Contract Audit Agency. Since the claim settlement seems to meet the standards set by the legislative restriction and since the language I am proposing does not add to the budget but simply allows funds to be shifted, I ask unanimous consent that the amendment be approved.

The PRESIDING OFFICER. Is there objection?

Mr. MATHIAS. Mr. President, reserving the right to object, I only comment that when the Senator from Wisconsin, with his well-known high degree of skepticism about any Government expenditure, approves this claim, I think it is likely to be justified and I think the Senate can, in fact, accept it in good conscience. So I do not object.

Mr. PROXMIRE. Mr. President, I thank my good friend from Maryland. I point out that this is not an additional expenditure. It does not add one nickel—not one penny—to the budget. It simply shifts money out of one account which is already there to pay a bill.

Mr. MATHIAS. Paying a bill which has been justly and honestly incurred by the United States of America.

Mr. PROXMIRE. The Senator from Maryland is absolutely correct.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1620) was agreed to.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who seeks recognition?

Mr. JOHNSTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the HUD appropriation measure.

Mr. PROXMIRE. Mr. President, it is my understanding that the pending amendment is the amendment of the Senator from Massachusetts.

The PRESIDING OFFICER. That is correct.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that be laid aside temporarily so that an amendment can be offered by the Senator from Louisiana.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UP AMENDMENT NO. 1621

(Purpose: To require public comment on sections of a regulation promulgated by the Federal Emergency Management Agency which establishes a veto power over actions by the Flood Insurance Administration)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) proposes an unprinted amendment numbered 1621.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, line 16, immediately prior to the period, insert the following: *Provided*, That no funds appropriated by this Act may be used to implement 44 CFR 9.9(e)(6) and 44 CFR 9.11(e)(4) pending publication in the Federal Register, receipt of public comment, and a determination by the Director of the Federal Emergency Management Agency, and in no event shall any funds provided in this Act be used to implement these sections prior to January 31, 1981.

Mr. JOHNSTON. Mr. President, this amendment states very simply that no funds appropriated by this act may be used to implement a certain new regulation pending publication in the Federal Register, receipt of public comment, and a determination by the Director of the

Federal Emergency Management Agency, and in no event shall any funds provided by this act be used to implement these sections prior to January 31.

What we have, Mr. President, is some new regulations that have been promulgated with respect to flood insurance by FEMA. FEMA, in my view, should not be the agency to promulgate regulations with respect to eligibility for flood insurance in the floodplain. That should be done by the Flood Insurance Administration.

In any event, FEMA has just proposed very complicated rules, which I will not attempt to fully explain here because they are some dozen pages in length. But the effect of this is to give to FEMA the right to deny flood insurance under certain very complicated situations as described in that rule to people who live in the flood plain.

The practical effect is that they would then have two sets of rules, those promulgated by the Flood Insurance Administration and those promulgated by FEMA, and the people living there and seeking to rely upon flood insurance would then have two agencies to speak to.

There may be justification for these rules. They may be perfectly legitimate. They may be good rules. But they have been promulgated without public comment and without receiving the kind of due process consideration that I believe they should receive.

Hence, this amendment simply says that they shall not be made effective until there has been publication in the Federal Register and public comment, and in no event shall they be implemented prior to January 31, 1981.

Mr. President, the amendment simply delays the implementation of two sections of a final regulation promulgated by the Federal Emergency Management Agency relating to Floodplain Management and Protection of Wetlands. My amendment prevents the Federal Emergency Management Agency from denying the availability of flood insurance to owners of buildings in communities participating in the national flood insurance program until the public has had an opportunity to review the manner and merits of such limitations.

As provided in this amendment, no funds appropriated to FEMA may be used to implement these sections until January 31, 1981. My staff has cleared this language with FEMA and with the staff of the distinguished floor manager and I have been informed that this compromise language is acceptable. Although I would have preferred legislative language which would have immediately precluded these sections from having current effect, I am confident that the agencies involved will exhibit good faith by immediately promulgating a revision of these sections to eliminate them from the existing regulation.

Mr. President, this amendment is necessary because the Federal Emergency Management Agency, in good faith but without public comment, amended its December 27, 1979 published interim regulations to include two sections prohibiting the Flood Insurance Administration from providing a new or renewed contract of flood insurance on a structure. Under these two sections, the regional directors of FEMA are empowered to veto actions undertaken by the Flood Insurance Administration pursuant to its statutory and regulatory responsibilities. Although I have some reservations about the substance of these prohibitions, I am offering this amendment particularly to address the procedures followed by FEMA in imposing such restrictions on the Flood Insurance Administration.

There is no doubt, Mr. President, that these restrictions were not subject to public comment in advance of their final promulgation. There is no doubt that these two sections are subject to disagreements as to their effect even within FEMA. There is also no doubt that the two sections can cause confusion as to the authoritative source for the policies and administration of the flood insurance program. Consequently, Mr. President, I am pleased that the Federal Emergency Management Agency has agreed to subject these sections authorizing its veto power over the Flood Insurance Administration to public comment and scrutiny.

Mr. PROXMIRE. Mr. President, I have discussed this amendment with the distinguished Senator from Louisiana.

This amendment, as he said, has been cleared with the Federal Emergency Management Agency. They have no objection to the amendment. It is an amendment that costs nothing. It is an amendment which does serve a very useful purpose.

I am happy to support the amendment.

Mr. MATHIAS. Mr. President, I have discussed this amendment with Mr. Macy at FEMA. I agree with the distinguished Senator from Wisconsin that it is an amendment the Senate should accept at this time.

Mr. JOHNSTON. I thank my colleagues.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment (UP No. 1621) was agreed to.

HUD—HOUSING COSTS

Mr. MATHIAS. Mr. President, on Monday, the Washington Post ran a story entitled "Area Income Housing Bite Passes Traditional 25 Percent." In that article, Patricia Camp makes the following points:

There are an estimated 110,000 families in the Washington metropolitan area who pay more than 35 percent of their income for housing—a steep increase from the traditional pattern in which housing costs normally consumed one-quarter of a household's income.

Their growing ranks make up more than one out of every five tenant households in the area.

Some are poor and pay disproportionate amounts of their incomes for housing simply because they have no choice. Government-subsidized housing, which could lower their housing costs based on income, is limited.

Last year, more than half—51.2 percent—of the area's home buyers who bought their homes through savings and loans associations paid more than a quarter of their household income for housing. In 1977, only about 36 percent had done so.

I ask unanimous consent the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AREA INCOME HOUSING BITE PASSES TRADITIONAL 25 PERCENT

(By Patricia Camp)

For Madeline Vines, a Silver Spring receptionist with two teen-aged children, the rent bill looms large each month, monstrous necessity consuming two dollars out of every five that she and her husband earn.

"We're constantly robbing Peter to pay Paul," Vines said. "We really can't afford to vacation or to see a nice play. But occasionally we do it anyway, and then it throws us behind. We just can't make ends meet. It's causing family problems, family pressures. I don't know what to do. I need help so we can breathe."

The Vineses are among an estimated 110,000 families in the Washington metropolitan area who pay more than 35 percent of their income for housing—a steep increase from the traditional pattern in which housing costs normally consumed one-quarter of a household's income.

Their growing ranks make up more than one out of every five tenant households in the area. They include working people, young singles, the elderly, the unemployed, and those on fixed incomes. Some are poor and pay disproportionate amounts of their incomes for housing simply because they have no choice. Government-subsidized housing, which could lower their housing costs based on income, is limited.

Others who have more money willingly pay the high costs to live in a neighborhood they like.

The trend toward higher housing costs includes not only tenants but homeowners as well.

In a national study of home buyers, the U.S. League of Savings Associations found that more than 45 percent of the people who bought homes last year paid more than 25 percent of their household income for housing expenses, which included the mortgage payment, real estate taxes, utilities, and hazard insurance. In 1977, only 38.1 percent were in that situation.

Locally, the numbers were even more dramatic. Last year, more than half—51.2 percent—of the area's home buyers who bought their homes through savings and loans associations paid more than a quarter of their household income for housing. In 1977, only about 36 percent had done so.

As housing costs have risen, so has the willingness of the homebuying population to pay larger and larger portions of their income for housing. For many of these people, the traditional American dream of owning their own home has outweighed all other considerations. Their optimism remains strong that their salaries will rise steadily and eventually ease the burden of high monthly mortgage payments.

For years, the rule of thumb was that housing costs shouldn't exceed one-fourth of household income. Although it was a rule that often was broken depending on individual situations, it governed many decisions by both homeowners and lending institutions about how high a price people could pay for housing. But in recent years,

that tradition has been abandoned by more and more people as rental housing has become scarce and homeownership has become more costly.

One Springfield couple pays about 35 percent of their gross income—and nearly half their take-home pay—to rent a house for $400 a month.

The expense means the couple, who have four children, are on a "very strict budget," said the wife, who asked not to be identified.

"You don't go to the doctor every time you have an ache or a pain. You go only when that ache is so bad you can't stand it," she said. "We do without quite a bit. I guess I must know about 8,000 ways to cook a potato."

The family gets about $90 a month in food stamps. Their entertainment is an occasional cookout in the backyard. The last movie they saw was "Star Wars" two years ago. They have little money to pay for gasoline, and the wife said she goes to the hairdresser maybe once a year.

Some months, utility costs add as much as several hundred dollars to the couple's already steep housing costs.

So why do they sacrifice, instead of renting a cheaper apartment or house? Because when she lived in a ramshackle apartment complex in Alexandria years ago, she dreamed of having her own rambler in Springfield, the woman said. Even though her house is rented, she considers it her own and doesn't want to give up its advantages.

"It's our first house, and the first yard for our children," she said. "Im not about to go backward now."

Some tenants who are better off find Washington apartments a bargain, a rent-controlled bonus that enables them to pay low portions of their income for housing. For others, the situation is often bleak.

In one Northwest Washington apartment building where the Metropolitan Washington Planning and Housing Association is helping tenants buy the project and convert it to cooperatives, half of the 26 tenants who filled out forms said they pay more than 30 percent of their income for rent. In a Southeast Washington building, about 40 percent of the 96 tenants said they pay more than 30 percent, according to Larry Weston, director of cooperative housing services for the organization.

"The numbers tell me how serious it is out there," Weston said . . . "Sometimes I get the feeling that half the people in the city are paying more than 30 percent of their income for housing."

A payroll clerk who lives in Silver Spring estimated that 46 percent of her gross income goes for rent. She asked that her name not be published because she fears eviction if her landlord discovers that she doesn't earn her monthly rent on one week's salary—the standard that many landlords use to determine if a tenant is qualified.

"We're broke most of the time," the woman said. "Every dime has to count. The rent comes first. Then we sit down and decide on the rest." Her three children got no new school clothes this year.

The rent on Cathy Osborne's two-bedroom Falls Church apartment was $240 a month when she moved in last August. It is now $300—only $45 less than her monthly income.

"I'm roughing it," Osborne said. "I'm looking for a babysitting job now. I haven't gotten anywhere this summer." Osborne said she gets $112 a month in food stamps, and bought her children school clothes from her savings. She is separated from her husband.

Osborne is optimistic about her future, nevertheless. The Fairfax County housing authority is trying to buy the Falls Church apartment complex where she lives. If it does, Osborne said she has been told the rent she pays may be decreased to about $89 a month with the assistance of government subsidies.

Until the mid-1970s, there was no reason for homeowners to stretch their income much more than the traditional one-quarter rule for housing, according to Thomas J. Parliment, an economist with the U.S. League of Savings Associations.

"But by 1979, 25 percent was no longer the rule," he said. "It was overruled by the marketplace."

Parliment noted that the character of the home buying market has changed. More people can afford higher housing costs now because they have little debt and few family expenses—more singles, young married couples without children, two-income couples, unmarried couples.

"There are really good reasons why people stretch," Parliment said. "There are the investment aspects of buying. It's a hedge against inflation, it's a tax subsidy, and there are capital gains. Those represent pretty heavy reasons.

"We have been asked if it's wise to allow people to stretch their budgets. You have to look at allowing a person to make a short-run sacrifice in their long-run interests."

James Caron, 32, stretched to buy his Capitol Hill row house last year. Caron went from sharing a house whose rent cost him about 10 to 15 percent of his monthly income to owning a home with a mortgage payment and property taxes eating up more than 35 percent of his salary—and that doesn't include utilities.

Last year, he took a vacation to South America. This year, he couldn't afford to go anywhere.

"It's tough," said Caron, an economist. "I'm buying furniture very slowly. Many of the things I did before, I don't do now. My house is liveable, but it needs extensive renovation—maybe $30,000 worth of work. But I'm willing to make the sacrifice."

Caron expects a salary increase later this month, which should drop his housing cost to about 30 percent of his income.

James Harris, president of Washington Federal Savings and Loan Association and of the Metropolitan Washington Savings and Loan League, said that many people buy homes with big mortgages because they expect salary increases.

"I always thought the 25 percent ratio was a little low, personally," Harris said. "It depends on the individual situation."

W. Bradley Griggs, senior vice president of National Permanent Federal Savings and Loan, noted that as interest rates climb—and they're now at about 13½ percent in the Washington area—monthly payments in turn increase.

"More and more people are spending more than 25 percent for housing," Griggs said. "It's more like 30 percent now."

One reason for increasing lender flexibility is that the two congressionally-chartered companies which buy mortgage loans from lenders have relaxed their loan underwriting standards in recent years.

Lenders have been notified that the old policy of a home buyer spending no more than 25 percent of monthly income to get a mortgage is only a benchmark, not a regulation cast in concrete.

Officials of a Federal Home Loan Mortgage Corp. said in a press release last year that the ratio is better stated "as a 25 to 28 percent range, and properly applied only as a general guideline."

Mr. MATHIAS. Mr. President, on Monday, when we began this debate on the appropriations for HUD and independent agencies, I thanked the distinguished chairman of the subcommittee, the Senator from Wisconsin (Mr. PROXMIRE) for his stewardship of the subcommittee, for his leadership in shaping this appropriation bill, and bringing it to the floor. However, today I should like to go beyond that and take a moment, before we close this evening, to thank the committee staff for their work.

In particular, I thank Mr. Tom van der Voort, Mr. Bobby Mills, Mrs. Barbara Kennedy, of the majority staff. I cannot really thank too much the minority staff, Mr. Wallace Berger and Miss Kathy O'Connor, who have done much to help prepare me to meet the responsibilities of helping to manage this bill as it is presented to the Senate.

The entire staff has acted with a great deal of knowledge and experience, and I believe they have contributed in a major way to the work of the Senate in making it possible for the Senate to have a clear and consistent and comprehensible document with which to work.

So we are very grateful to the staff on both sides of the aisle.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. MATHIAS. I yield.

Mr. PROXMIRE. Mr. President, I am delighted to add my praise to the staff. I am very proud of Tom van der Voort. As I have said a number of times, there is no better staff man in the Senate. He has done a great job for years; and his work on this enormously complicated bill—it is about the most complicated appropriation bill we have—has been outstanding. Bob Mills has ably assisted him, as has Barbara Kennedy.

Also, Wally Berger is a person not only of diligence and intelligence but also of real understanding, and he has helped us greatly to come together on issues on which the distinguished Senator from Maryland and I have been a part. Of course, Kathy O'Connor has been very helpful, too.

So I am very grateful to the Senator from Maryland for bringing to the attention of the Senate the fine work of what I believe is a great staff.

Mr. MATHIAS. I thank the chairman.

Mr. MAGNUSON. During the full committee markup of the HUD-independent agencies appropriations bill, H.R. 7631, I offered an amendment to add $12 million to the NASA R. & D. account to fund a new start for the solar electric propulsion system (SEPS) in fiscal year 1981. The committee, subsequently, adopted my amendment, I have noted, however, in reading the committee report accompanying H.R. 7631, that the addition of funds to initiate development of SEPS was inadvertently placed under the wrong R. & D. program, the space science program. SEPS should have been included in NASA's space transportation programs.

This is not a significant error inasmuch as the $12 million is correctly incorporated into the total appropriations for NASA R. & D. I, nevertheless, raise the issue so as to avoid any uncertainty as to the intent of my amendment.

Mr. PROXMIRE. I appreciate your calling my attention to this oversight.

The intent of the committee action is clear; it is that the development of the solar electric propulsion system should go forward in fiscal year 1981.

Mr. DANFORTH. Mr. President, during consideration of the HUD-independent agencies appropriations bill I plan to offer two amendments. In order that my colleagues may be apprised of the nature of these amendments I ask that a "Dear Colleague" letter distributed today be printed at this point in the RECORD.

The letter follows:

U.S. SENATE, COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C., September 18, 1980.

DEAR COLLEAGUE: During consideration of the H.U.D.-Independent Agencies appropriations bill I intend to offer two amendments.

The first amendment would prohibit the Office of Consumer Affairs from intervening in agency regulatory or adjudicatory proceedings.

The Office of Consumer Affairs, directed by Esther Peterson, is not an independent agency. Created by Executive Order, not by Congress, it has no statutory authorization to intervene in regulatory or adjudicatory proceedings. Nonetheless, in FY '79 the Office intervened as a full party in a case before the Federal Energy Regulatory Commission and subsequently intervened in two additional proceedings before the Federal Communications Commission. In its budget submission for FY '81, the Office announced its intention "to allocate more staff to its interventions program," and for this purpose requested $118,069 including $30,000 for the "assistance of experts in intervention."

For more than twenty years, Congress has debated the merits of creating a Consumer Protection Agency to intervene in agency regulatory and adjudicatory proceedings on behalf of consumer interests. This debate has been among the most divisive issues that have faced the Congress. In the 92nd Congress and again in the 93rd Congress, filibusters blocked passage of Consumer Protection Agency bills in the Senate, and in 1978, despite vigorous lobbying by the current Director of the Office of Consumer Affairs, the House of Representatives defeated the most recent effort to establish an independent consumer agency. Mrs. Peterson has made no secret of her "disappointment" in that vote, nor her plans to make a Consumer Protection Agency, as best she can, out of her Office of Consumer Affairs.

Mrs. Peterson's zeal to represent consumer interests in agency proceedings is understandable, since she has long been at the forefront of the consumer movement. But her efforts to use her office to that end are without statutory authorization, a repudiation of the vote in the House of Representatives, and an affront to the Congress, which has spent two decades attempting to define the appropriate limits of such authority. In 1977, in reporting the Consumer Protection Act, the Senate Governmental Affairs Committee went to great lengths to define carefully the authority of the consumer advocate, including limitations on interventions in FCC license renewal proceedings, labor-management matters before the NLRB, matters affecting small businesses and family farming interests, and proceedings pertaining to the manufacture, sale, transportation or possession of firearms or ammunition. Of course, no such constraints bind Mrs. Peterson.

Given these considerations, further interventions by the Office of Consumer Affairs should be prohibited until Congress—by statute—authorizes such activities.

My second amendment would restore the House-passed prohibition on the use of appropriated funds "to pay the expenses of, or otherwise compensate, non-federal parties intervening in regulatory or adjudicatory proceedings," what is commonly known as public participation funding.

During consideration of this bill the Appropriations Committee retained the House provision, but adopted an amendment allowing the Consumer Product Safety Commission, the Office of Consumer Affairs, and the Environmental Protection Agency to reimburse intervenors for "travel, per diem and the costs of preparing materials for the public record." One might reasonably wonder what other expenses could possibly be associated with intervention. My amendment would strike these exemptions.

The wisdom of providing public funds to special interest intervenors in agency proceedings is a subject which has been debated by the Congress almost as long as the debate over the Consumer Protection Agency. Of the agencies affected by this bill, only the Environmental Protection Agency has statutory authority to fund intervenors and that authority is limited to proceedings under the Toxic Substances Control Act. It has been used once in the history of the EPA. Further activities have been curtailed in the past, awaiting Congressional guidance.

The sorry experience of the Federal Trade Commission with public participation funding illustrates the importance of providing strict statutory guidance for any such program. The few lines in the Appropriations Committee report which purport to guide the administration of these funding programs pale by comparison with the effort devoted to this issue by the Governmental Affairs Committee in drafting S. 262, the Regulatory Reform Act. No less than nine pages of that bill are taken to discuss the grant of authority to agencies to fund intervenors—and the limits on that authority. Even then the decision to authorize any funding program at all was reached by a 9–8 vote of the committee, and still remains one of the unresolved issues in the debate over regulatory reform.

Until Congress acts to authorize intervenor funding by the CPSC, EPA, or the Office of Consumer Affairs it is inappropriate for these executive branch agencies to provide funds to intervenors.

It is important to recognize, however, that the issue presented by these amendments is not whether intervenor funding is a good idea, nor whether the Office of Consumer Affairs should intervene in agency proceedings. At issue is whether executive branch agencies should be free to engage in such activities absent statutory authority, and in face of clear indications that Congress is neither ready nor willing to authorize such activities.

I urge you to support these amendments. If you wish to join as a cosponsor or if you have any questions please get in touch with me or have a member of your staff get in touch with Chris Brewster of my staff at 224-6154.

Sincerely,

JOHN C. DANFORTH.

SMALL VESSEL INSPECTION AND MANNING—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I submit a report of the committee of conference on H.R. 5164 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5164) to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 17, 1980.)

The PRESIDING OFFICER. Without objection, the conference report is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ICE AGE NATIONAL SCENIC TRAIL

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House on H.R. 7825.

The PRESIDING OFFICER laid before the Senate H.R. 7825, an act to establish the Ice Age National Scenic Trail, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask that the bill be considered as having been read the first and second times and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The bill was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981.

The Senate continued with the considertion of the bill (H.R. 7631.)

UP AMENDMENT NO. 2335

Mr. BELLMON. Mr. President, the Tsongas amendment proposes to increase funding for the community development block grant program by $200 million above the level recommended by the Appropriations Committee.

The Senate simply must resist such add-ons to the fiscal year 1981 appropriation measures. In the 2-month period between the time we adopted our first budget resolution for fiscal year 1981 and the time the Senate Budget Committee marked up the second budget resolution, a balanced budget which we originally had planned for and which we had programed has disappeared and in its place we now have a deficit of somewhere between $18 billion and $50 billion for fiscal year 1981, depending upon what we

do about a tax reduction. This, in itself, is to me terribly alarming. But the situation will only worsen if we do not constrain spending in these appropriation measures along the lines which we earlier contemplated in our first budget resolution.

So far, when considering later funding requirements, only one appropriation bill reported to the Senate so far this year has been within the allocation to it that would fit the first budget resolution. The Mathias amendment has taken this bill down close to its mark, but adding on these additional funds by adopting this or any other increase, without some offsetting reduction, will cause the bill to exceed its spending limits.

Mr. President, between fiscal year 1976 and fiscal year 1979, funding for the community development block grant program increased by more than 100 percent. In those 4 years, this program more than doubled. In the interest of constraining spending, it appears reasonable to hold this multibillion dollar program at the 1980 funding level. The fiscal year 1981 level recommended for this program represents only a 5-percent reduction in the administration's budget request. This is certainly not a Draconian reduction.

I urge my colleagues to join in opposing further add-ons to this bill by opposing this and other amendments which would increase program funding levels.

Mr. President, I also have a statement pertaining to an amendment which I had planned to offer tomorrow which I believe the manager of the bill will take regarding the outlay schedule which would cause the outlays in this bill to occur in an orderly manner. I may not be present tomorrow to offer that amendment. I am not sure what time the action on this bill will be concluded.

But I ask unanimous consent that my statement be in the RECORD at this time in anticipation of offering that amendment tomorrow if I am on the floor and if I am not, I hope I could convince the manager of the bill to offer the amendment in my behalf.

Mr. PROXMIRE. Mr. President, in response to the Senator from Oklahoma I will be delighted to offer it in his behalf.

I am happy to support the amendment. I am not sure about whether or not we could have the amendment taken tonight. If it is, I do not know how other Senators would feel about it. Is it an amendment about some controversial item to which other Senators will object?

Mr. BELLMON. It is an amendment adopted by a vote of 63 to 17 on the transportation bill. There is a controversy about the amendment but having won by what to me is a sort of overwhelming vote I am not sure how much opposition there would be on this bill, provided the managers saw fit to accept it.

But if there is no objection, let me simply put my statement in at this time and we will talk about the amendment later.

Mr. PROXMIRE. I will be happy to accommodate the Senator from Oklahoma any way he wishes, and I do enthusiastically support the amendment.

The PRESIDING OFFICER. Is the floor manager suggesting setting aside temporarily the Tsongas amendment to take up the amendment?

Mr. PROXMIRE. No.

It is my understanding that the distinguished Senator from Oklahoma was not going to offer the amendment now but have it offered in his behalf tomorrow.

Mr. BELLMON. I would offer the amendment now, but I doubt it is in order since the Tsongas amendment is pending.

Mr. PROXMIRE. No. We could have the Tsongas amendment set aside by unanimous consent if the distinguished Senator wishes to do so. We have done that two or three times already.

Mr. BELLMON. Excuse me.

Mr. PROXMIRE. We have set aside the Tsongas amendment temporarily two or three times before.

Mr. BELLMON. Mr. President, it might require 5 minutes for me to be ready, but I could do it at that time, 5 minutes from now.

Mr. PROXMIRE. Fine.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BELLMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1622

(Purpose: To establish a system for scheduling and reporting outlays)

Mr. BELLMON. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator ask unanimous consent to temporarily lay aside the Tsongas amendment?

Mr. BELLMON. I make such request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) for himself, Mr. DOMENICI, Mr. PERCY, and Mr. BOSCHWITZ proposes an unprinted amendment numbered 1622.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and I will explain it.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert the following language at the appropriate place in the bill:

OUTLAY SCHEDULES AND REPORTS

Departments and independent agencies receiving appropriations in excess of $50 million under this act shall, within 30 days following enactment, submit to the Committees on Appropriations of the two Houses of Congress a schedule of anticipated outlays for each month of the Fiscal Year beginning October 1, 1980. These departments and agencies shall also submit to the Appropriations Committees, within 30 days after the end of each calendar quarter, reports showing actual Outlays for the preceding quarter and any necessary changes in the schedule of Outlays originally submitted. In the event a Department or agency determines that its total Outlays during the Fiscal Year will vary by more than 1% from the total projected in its original schedule, it shall immediately submit to the Committee on Appropriations of the two Houses a revised schedule. Unless disapproved by both of the Appropriations Committees within 15 legislative days after submission, the Department or agency may implement the revised Outlay schedule.

Departments and independent agencies shall submit copies of the Outlay schedules and reports required herein to the Congressional Budget Office concurrently with their submission to the House and Senate Committees on Appropriations. The Congressional Budget Office shall analyze these schedules and reports and assess their implications for Congressional budget and appropriations policies and submit the results of its analyses on a timely basis to the Committees on Appropriations and Budgets of the two Houses of Congress.

Mr. BELLMON. Mr. President, this is identical with the amendment the Senate approved earlier today by a vote of 63 to 17 when we were considering the Department of Transportation bill.

To explain it—and I will take only a moment, because I believe the floor manager of the bill fully understands the situation.

Mr. President, as we all know, it is not an easy task to restrain budget growth in an environment of increasing costs and pressing needs. The HUD appropriations bill before us today is certainly subject to all of these pressures.

I congratulate the appropriations subcommittee, its chairman, Senator PROXMIRE, and its ranking member, Senator MATHIAS, for their efforts to hold spending under this bill within budget targets. With an amendment to be offered by Senator MATHIAS, as I understand it, the HUD appropriations bill will be within the budget authority allocation given to it by the full Appropriations Committee and, therefore, consistent with the first budget resolution. This would be so, even after accounting for probable later requirements to which the subcommittee will need to respond.

This bill, as reported, appropriates $70.1 billion of budget authority. Appropriation of another $6.4 billion is anticipated later in the fiscal year—primarily for general revenue sharing and cost-of-living increases in the veterans compensation program. This would put the HUD subcommittee about $900 million over its $75.6 billion allocation were it not for the Mathias amendment. This amendment will reduce BA by about $1 billion thus providing about $100 million room between the bill and the BA allocated to the subcommittee by the full committee. I understand that this margin is likely to be used by another floor amendment.

Mr. President, I do regret that even with the Mathias amendment the bill will produce outlays well above the outlay target which was allocated to the subcommittee by the full Appropriations Committee—about $1.6 billion above the subcommittees allocation after taking account of probable later supplemental requirements. Half that overage is due to the fact that the full Appropriations Committee allocated $800 million less in outlay "room" to the subcommittee than the first budget resolution assumed would be necessary. The additional $800 million overage results from higher program levels and faster spendout than assumed in the first resolution. About $300 million of these outlays could not have been foreseen at the time of the first resolution.

Mr. President, the entire Senate should understand the budget implications of what is happening in the appropriations process. In my view, we are seriously eroding the budget discipline to which the Senate committed itself last spring. If we continue on our present track, 1981 spending will be $20 to $30 billion higher than the $613 billion target set last June without a tax increase. Even the higher ceilings recommended by the Senate Budget Committee in late August but not yet approved by the whole Senate are being exceeded by most of the appropriation bills which have been acted on thus far.

Mr. President, I ask unanimous consent that there be printed in the RECORD a table comparing budget authority and outlays under the appropriation bills which have been worked on thus far with the first budget resolution and the proposed second resolution.

Mr. President, the Senate should understand that this bill is over the outlays total ascribed to it at the time the first concurrent budget resolution was passed. Moreover, the full Appropriations Committee allocated $800 million to the subcommittee less than was anticipated in the first budget resolution. Unless the outlays under this bill are reduced either here on the floor or in conference with the House. To live within the guidelines that the Senate has imposed upon itself, future appropriation bills will have to constrain outlay totals below those envisioned in the budget and below the outlay totals allocated by the Appropriations Committee to its subcommittees. In other words, the $1.6 billion outlay overage under this bill must be absorbed somewhere else. Otherwise, we are in reality increasing the budget deficit by $1.6 billion when we approve this bill.

As we all know, it is budget authority which determines the overall level of program activity—and it is budget authority that we must ultimately control to bring the Federal Budget within acceptable levels. Nearly $13.9 billion of outlays in the HUD and independent agencies appropriations bill result from budget authority granted in previous years and nearly $38.3 billion of the $70.1 billion budget authority granted in this fiscal year will spend out in future fiscal years. But, it is outlays which most significantly impact fiscal policy, outlays which determine the borrowing needs of the U.S. Treasury and outlays which determine the impact that this year's budget will have upon inflation and interest rates. By solving the budget authority problem of this appropriation without addressing the outlay problem, we are attacking a long-term problem, which is commendable, but are ignoring the problem that confronts us right now—fiscal year 1981 outlays.

Mr. President, when the budget process was in its initial years, it was a difficult task for each of us to understand the significance of the budget authority concept. We have now learned too well that the concept represents total new obligations, commitments, or programs entered into by the Federal Government. Some budget-conscious individuals have maintained that controlling budget authority is all that is required to eventually control Federal spending. But I would maintain, Mr. President, that the control of outlays is equally important for it is our only means of regulating the rate at which budget authority is utilized. Outlays do not merely happen once budget authority is granted, their spendout rates in many instances are conscious and crucial policy decisions. Because of unanticipated increases in the rate of outlays, the fiscal year 1980 budget has shifted from a relatively restrictive 8-percent growth to an unintended but much more stimulative 17.5-percent growth, severely retarding the Congress battle against inflation.

Mr. President, to me that is a terribly important development that the Congress was not aware of and has had no control over. The outlays we expected to grow by 8 percent, but because of the increase in the rate that the executive branch is, in effect, pushing the money out the door, outlays are going to grow by almost twice that amount in fiscal year 1980 compared to what we were earlier anticipating.

This has severely retarded Congress battle against inflation. Moreover, Mr. President, I am of the view that the faster government spends, the more it will spend in the long run. To enable Congress to more adequately track and regulate outlay patterns I am proposing amendments to the various appropriation bills to require submission to the Appropriations Committee and CBO of monthly and quarterly outlay schedules in fiscal year 1981 by each Federal department and agency and advance notification of significant deviations from their schedules and that is what this amendment does.

Without the amendment Congress will continue to be seriously handicapped in these efforts to control fiscal policy, to limit the size of our deficit, and to take pressure off of the monetary authorities.

Remember, it is outlays that cause the size of the deficit to go up, and I feel strongly we need this control.

Mr. President, in conclusion I would like to congratulate the committee and its chairman and ranking member for restraining its budget authority totals. But I want to remind my colleagues of the future hard choices that will result from the outlay overage of this bill.

I ask unanimous consent, Mr. President, that a table showing a comparison of spending under appropriation bills be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

COMPARISON OF SPENDING UNDER APPROPRIATION BILLS (PLUS LATER REQUIREMENTS) WITH FISCAL 1981 FIRST BUDGET RESOLUTION AND PROPOSED SECOND RESOLUTION

Bill (status)	Over/under first budget resolution targets		Over/under proposed second budget resolution ceilings	
	Budget authority	Outlays	Budget authority	Outlays
Energy/water (passed by Senate)	+0.2	+0.1	+0.4	+0.4
Military construction (passed by Senate)	−.1	−.1	−.1	.....
HUD, independent agencies (present consideration)	+.9	+1.6	+.5	+.5
State, Justice, Commerce (reported)	+1.9	+1.9	+2.1	+2.0
Treasury, Postal Service (reported)	+.3	+.2	+.2	+.2
Transportation (reported)	+.3	+.6	+1.9	+.8
Effects of reconciliation	+.6	+.6	.....	.....
Total overage	+4.1	+4.9	5.0	3.9

Mr. PROXMIRE. Mr. President, I congratulate the distinguished Senator from Oklahoma on this amendment.

As he pointed out, it was overwhelmingly adopted, a very similar amendment, on the preceding appropriation measure that was before us today on the Department of Transportation bill, and I think it will help to inform the Congress, the country, and the press on the spending by these agencies, and begin to give us the kind of control which is necessary if we are going to do an effective job of holding down spending.

I think the Senate has spoken clearly on this principle a little earlier so, of course, I am happy to accept the amendment and I hope the Senate will adopt it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

Mr. BELLMON's amendment (UP No. 1622) was agreed to.

Mr. BELLMON. Mr. President, I move to reconsider vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR RECESS TO 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:29 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) to improve and expand the Federal crop insurance programs, and for other purposes.

The message also announced that the House has agreed to the amendments of the Senate to the amendment of the House to the bill (H.R. 2443) to authorize the Department of Energy to carry out a high level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.

The message also announced that the House has agreed to the amendment of the Senate to the text of the bill (H.R. 7511) to amend title 38, United States Code, to provide a cost-of-living increase in the rates of disability compensation for disabled veterans and in the rates of dependency and indemnity compensation for survivors of disabled veterans, and for other purposes, in which it requests the concurrence of the Senate; and that the House has agreed to the amendment of the Senate to the title of the bill, with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the bill (S. 1615) for the relief of James R. Thornwell, with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has disagreed to the amendments of the Senate to the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. BEVILL, Mr. BOLAND, Mrs. BOGGS, Mr. CHAPPELL, Mr. JENRETTE, Mr. FAZIO, Mr. HEFNER, Mr. WHITTEN, Mr. MYERS of Indiana, Mr. BURGENER, Mrs. SMITH of Nebraska, and Mr. CONTE were appointed managers of the conference on the part of the House.

The message further announced that the Speaker has appointed Mr. THOMPSON as a manager on the part of the House on the conference on the disagreeing votes of the two Houses to the bill (H.R. 7664) to amend the National School Lunch Act and the Child Nutrition Act of 1966 to extend the authorizations of appropriations contained in such acts, and for other purposes, vice Mr. MYERS of Pennsylvania, resigned.

The message also announced that the House has disagreed to the amendment of the Senate to the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. GIAIMO, Mr. ASHLEY, Mr. BRODHEAD, Mr. PANETTA, Mr. LATTA, and Mr. FRENZEL were appointed as managers of the conference on the part of the House; that Mr. PRICE, Mr. NICHOLS, Mr. MOLLOHAN, Mr. ASPIN, Mr. CHARLES H. WILSON of California, and Mr. MITCHELL were appointed as managers of the conference for the consideration of title II of the Senate amendment; that Mr. PERKINS, Mr. FORD of Michigan, Mr. ANDREWS of North Carolina, Mr. MILLER of California, Mr. ASHBROOK, and Mr. GOODLING were appointed as managers of the conference for consideration of title II, subtitle A of the bill and title I of the Senate amendment; that Mr. PERKINS, Mr. BEARD of Rhode Island, Mr. PHILLIP BURTON, Mr. MILLER of California, Mr. ASHBROOK, and Mr. ERLENBORN were appointed as managers of the conference for the consideration of title II, subtitle B of the bill and title VII of the Senate amendment; that Mr. PERKINS, Mr. FORD of Michigan, Mr. BRADEMAS, Mr. BIAGGI, Mr. ASHBROOK, and Mr. BUCHANAN were appointed as managers of the conference for the consideration of title II, subtitle C of the bill and title VII of the Senate amendment; that Mr. STAGGERS, Mr. WAXMAN, Mr. SATTERFIELD, Mr. PREYER, Mr. BROYHILL, and Mr. CARTER were appointed as managers of the conference for the consideration of title III, subtitle A and title VIII, subtitle A of the bill and title V, part F of the Senate amendment; that Mr. STAGGERS, Mr. SANTINI, Mr. FLORIO, Ms. MIKULSKI, Mr. BROYHILL, and Mr. MADIGAN were appointed as managers of the conference for the consideration of title III, subtitles B and C of the bill and title III, section 303 of the Senate amendment; that Mr. HANLEY, Mr. FORD of Michigan, Mr. CLAY, Mrs. SPELLMAN, Mr. DERWINSKI, and Mr. TAYLOR were appointed as managers of the conference for the consideration of title IV of the bill and title VI of the Senate amendment; that Mr. JOHNSON of California, Mr. ANDERSON of California, Mr. HOWARD, Mr. ROBERTS, Mr. SHUSTER, and Mr. SNYDER were appointed as managers of the conference for the consideration of title V, subtitles A and B of the bill and title III, sections 301, 302, and 304 and title IV, section 401 of the Senate amendment; that Mr. ROBERTS, Mr. SATTERFIELD, Mr. MONTGOMERY, Mr. HEFNER, Mr. HAMMERSCHMIDT, and Mrs. HECKLER were appointed as managers of the conference for the consideration of title VII of the bill and title VIII of the Senate amendment; and that Mr. ULLMAN, Mr. ROSTENKOWSKI, Mr. VANIK, Mr. CORMAN, Mr. GIBBONS, Mr. PICKLE, Mr. RANGEL, Mr. COTTER, Mr. CONABLE, Mr. DUNCAN of Tennessee, Mr. ARCHER, and Mr. VANDER JAGT were appointed as managers of the conference for the consideration of title III, subtitles A and B; title VIII, subtitles A, B, C, and D and title IX of the bill; and title V, parts A, B, C, D, E, F, and G and title IX of the Senate amendment.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 935. An act for the relief of Jesse Kuo Tang and Sharon Kuo Tang;

H.R. 936. An act for the relief of Kit Tung;

H.R. 1316. An act for the relief of Kuo-Yao Cheung;

H.R. 3096. An act for the relief of Raymond M. Gee;

H.R. 3869. An act for the relief of Eileen Angelia Crosdale;

H.R. 4033. An act for the relief of the Jefferson County Mental Health Center, Incorporated, and of certain current and former employees thereof;

H.R. 4139. An act for the relief of Feeronaih Abbosh;

H.R. 4522. An act for the relief of Annette Jutta Wohrle;

H.R. 4778. An act for the relief of Sada Kim;

H.R. 5157. An act for the relief of Lilia Ester Cantu;

H.R. 5379. An act for the relief of Jaramporn Sermsri and Akharata Sermsri;

H.R. 5745. An act for the relief of Michael Chinwe Ke;

H.R. 6030. An act for the relief of Elena Patricia Mattos;

H.R. 6538. An act to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955;

H.R. 6739. An act to confer United States citizenship posthumously upon Lopoldine Marie Schmid;

H.R. 7825. An act to establish the Ice Age National Scenic Trail, and for other purposes; and

H.R. 8105. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 215. An act for the relief of Renuka Pavla;

S. 670. An act to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes;

S. 2223. An act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendents, and other Indian persons;

H.R. 3210. An act to terminate the authority to make grants to the Las Vegas Valley Water District under the Act of August 27, 1954; and

H.R. 6511. An act to designate the building known as the Federal Building in Morgantown, West Virginia, as the "Harley O. Staggers Federal Building".

The enrolled bills were subsequently signed by the President pro tempore (Mr. MAGNUSON).

ENROLLED BILLS SIGNED

At 6 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1125. An act to improve and expand the Federal crop insurance program, and for other purposes;

S. 2443. An act to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York;

H.R. 3292. An act to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes; and

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 16, 1980, as "Constantino Brumidi Day".

The enrolled bills and joint resolution were subsequently signed by the President pro tempore (Mr. MAGNUSON).

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 935. An act for the relief of Jesse Kuo Tang and Sharon Kuo Tang; to the Committee on the Judiciary.

H.R. 936. An act for the relief of Kit Tung; to the Committee on the Judiciary.

H.R. 1316. An act for the relief of Kuo-Yao Cheung; to the Committee on the Judiciary.

H.R. 3096. An act for the relief of Raymond M. Gee; to the Committee on the Judiciary.

H.R. 3869. An act for the relief of Eileen Angela Crosdale; to the Committee on the Judiciary.

H.R. 4033. An act for the relief of the Jefferson County Mental Health Center, Incorporated, and of certain current and former employees thereof; to the Committee on Finance.

H.R. 4139. An act for the relief of Feeronaih Abbosh; to the Committee on the Judiciary.

H.R. 4522. An act for the relief of Annette Jutta Wohrle; to the Committee on the Judiciary.

H.R. 4778. An act for the relief of Sada Kim; to the Committee on the Judiciary.

H.R. 5157. An act for the relief of Lilia Ester Cantu; to the Committee on the Judiciary.

H.R. 5379. An act for the relief of Jaramporn Sermsri and Akharata Sermsri; to the Committee on the Judiciary.

H.R. 5745. An act for the relief of Michael Chinwe Ke; to the Committee on the Judiciary.

H.R. 6030. An act for the relief of Elena Patricia Mattos; to the Committee on the Judiciary.

H.R. 6739. An act to confer United States citizenship posthumously upon Leopoldine Marie Schmid; to the Committee on the Judiciary.

H.R. 8105. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes; to the Committee on Appropriations.

H.R. 6538. An act to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955;

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 18, 1980, he had presented to the President of the United States the following enrolled bills:

S. 215. An act for the relief of Renuka Pavla.

S. 670. An act to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Dvelopment Act of 1972, and for other purposes.

S. 2223. An act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4642. A communication from the President of the United States, transmitting a proposed amendment of the fiscal year 1981 in the amount of $1,500,000 for the Commission on Wartime Relocation and Internment of Civilians; to the Committee on Appropriations.

EC-4643. A communication from the Assistant Secretary of Defense, reporting, pursuant to law, on the value of property, supplies, and commodities provided by the Berlin Magistrate, and under German Offset Agreement for the quarter April 1, 1980 through June 30, 1980; to the Committee on Appropriations.

EC-4644. A communication from the Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the protective coating function at Chanute Air Force Base, Illinois, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4645. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, concerning 4 construction projects to be undertaken by the Air National Guard; to the Committee on Armed Services.

EC-4646. A communication from the Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the family housing maintenance function at Maxwell Air Force Base, Alabama, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4647. A communication from the Assistant Secretary of the Treasury (Legislative Affairs), transmitting, pursuant to law, project performance reports prepared by the International Bank for Reconstruction and Development (IBRD) and the Asian Development Bank (ADB); to the Committee on Foreign Relations.

HOUSE BILL HELD AT THE DESK

The following bill was held at the desk by previous order:

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SARBANES, from the Committee on Banking, Housing, and Urban Affairs, with an amendment and an amendment to the title:

S. 2990. A bill to amend Federal securities laws to facilitate the mobilization of capital for new small and medium sized companies by encouraging venture capital activities and promoting public investment (Rept. No. 96-958).

By Mr. HATFIELD, from the Committee on Energy and Natural Resources, without amendment:

S. 2318. A bill to revise the boundary of Crater Lake National Park in the State of Oregon, and for other purposes (Rept. No. 96-959).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, without amendment:

H.R. 7411. An act authorizing the Secretary of the Interior to accept the conveyance of the United First Parish Church in Quincy, Massachusetts, and authorizing the Secretary to administer the United First Parish Church as a national historic site, and for other purposes.

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment:

S. 2373. A bill for the relief of Sandra Reyes Pellecer (Rept. No. 96-960);

S. Res. 291. A resolution to refer the bill S. 2052 entitled "A bill for the relief of the Merchants National Bank of Mobile" To The Court of Claims (Rept. No. 96-961).

S. 2226. A bill to grant the consent of the United States to the Caddo Lake Compact between the States of Louisiana and Texas (Rept. 96-962);

S.J. Res. 176. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning October 5, 1980, as "National Port Week", and for other purposes;

H.J. Res. 551. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning October 5, 1980, as "National Port Week", and for other purposes;

S.J. Res. 195. Joint resolution to designate September 1980, as "National Rehabilitation Month".

S. 2961. A bill for the relief of Viktor Ivanovich Belenko (Rept. No. 96-963); and

S. 2227. A bill to grant the consent of the United States to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas (Rept. No. 96-964).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 6395. An act to amend the Consumer Product Safety Act to modify certain post-employment restrictions applicable to officers and employees of the Consumer Product Safety Commission (Rept. No. 96-965).

By Mr. MELCHER, from the Select Committee on Indian Affairs, without amendment:

S. Res. 522. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2829. Referred to the Committee on the Budget.

By Mr. STEVENS, from the Committee on Energy and Natural Resources, with amendments:

S. 1784. A bill to improve the electric generating efficiency of joint Federal-civilian pooling practices in Alaska, and for other purposes (Rept. No. 96-966).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

The following-named persons, to be members of the Board of Regents of the Uniformed Services University of the Health Sciences:

Robert Higgins Ebert, of New York;
Eugene M. Farber, of California;
Lauro F. Cavazos, of Texas;
Carlos Elise Luhrs, of the District of Columbia; and
William R. Roy, of Kansas.

Mr. NUNN. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the following nominations: Maj. Gen. James Mason Thompson, Army of the United States (brigadier general, U.S. Army) to be lieutenant general, and Maj. Gen. William Joseph Hilsman, Army of the United States (brigadier general, U.S. Army) to be lieutenant general. I ask that these names be placed on the executive calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, in addition, in the Regular Army, there are 144 appointments/reappointments to the grade of colonel and below (list beginning with Louis J. Zelesnikar), in the Army of the United States, there are 625 promotions to the grade of colonel (list beginning with James L. Abrahamson); in the U.S. Navy, there are 1,354 temporary promotions to the grade of lieutenant (junior grade) (list beginning with Jeffrey J. Ahern), in the U.S. Navy and Reserve of the U.S. Navy, there are 9 temporary/permanent appointments to the grade of captain and below (list beginning with Dennis D. Guy); in the Marine Corps, there is one permanent appointment to the grade of lieutenant colonel (Robert P. Doyle); in the Regular Air Force, there are 2,000 appointments to the grade of captain and below (list beginning with Daniel J. Abshire); in the Reserve of the Air Force, there are 568 promotions to the grade of lieutenant colonel (list begining with Lewis Aaronson); and, in the Reserve of the Air Force, there are 59 Air National Guard officers for promotion to the grade of lieutenant colonel (list beginning with James H. Addy). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of September 3, 4, and 9, 1980, at the end of the Senate proceedings.)

By Mr. WILLIAMS, from the Committee on Labor and Human Resources:

The following-named persons to be members of the Board of Directors of the Legal Services Corporation:

Steven L. Engelberg, of Maryland;
Cecilia Denogean Esquer, of Arizona;
Hillary Diane Rodham, of Arkansas;
Richard Allan Trudell, of California; and
Josephine Marie Worthy, of Massachusetts.

Mr. James E. Jones, Jr., of Wisconsin, to be Chairman of the Special Panel on Appeals.

Ethel Bent Walsh, of the District of Columbia, to be a member of the Equal Employment Opportunity Commission.

John Brooks Slaughter, of Washington, to be Director of the National Science Foundation.

The following-named persons to be members of the National Science Board, National Science Foundation:

Mary Lowe Good, of Louisiana;
Peter T. Flawn, of Texas;
Peter David Lax, of New York;
Homer A. Neal, of Indiana;
Mary Jane Osborn, of Connecticut;
Donald B. Rice, of California; and
Stewart A. Rice, of Illinois.

The following-named persons to be members of the National Council on the Humanities:

Marcus Cohn, of Maryland;
Samuel DuBois Cook, of Louisiana;
Roland Paul Dille, of Minnesota;
A. Bartlett Giamatti, of Connecticut;
George Alexander Kennedy, of North Carolina;
Louise Ano Nuevo Kerr, of Illinois;
Frances Dodson Rhome, of Indiana;
Philip Aaron Schaefer, of California; and
Anita Silvers, of California.

The following-named persons to be members of the National Commission on Libraries and Information Science:

Charles William Benton, of Illinois;
Gordon M. Ambach, of New York; and
Paulette H. Hollhan, of Louisiana.

The following-named persons to be Members of the National Council on the Arts:

Kurt Herbert Adler, of California;
Margo Albert, of California;
Robert Joffrey, of New York;
Toni Morrison, of New York;
Ieoh Ming Pei, of New York;
Lida Rogers, of Mississippi; and
Erich Leinsdorf, of Massachusetts.

(The above nominations from the Committee on Labor and Human Resources were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 3125. A bill to authorize the Secretary of the Interior to assist in the preservation of historic Camden in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LEVIN (for himself, Mr. NELSON, Mr. STEWART, Mr. METZENBAUM, Mr. BUMPERS, Mr. RIEGLE, and Mr. HUDDLESTON):

S. 3126. A bill to authorize grants for the administrative expenses of regulatory negotiation commissions; to the Committee on Governmental Affairs.

By Mr. DOLE:

S. 3127. A bill to amend the "Presidential Election Campaign Fund Act" regarding a presidential candidate refusing to debate; to the Committee on Finance.

By Mr. BELLMON (for himself and Mr. BOREN):

S. 3128. A bill to remove certain lands from the Wichita Mountains Wildlife Refuge, Oklahoma; to the Committee on Environment and Public Works.

By Mr. BOSCHWITZ:

S. 3129. A bill for the relief of Mrs. Zahura Can; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 3125. A bill to authorize the Secretary of the Interior to assist in the preservation of historic Camden in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

CAMDEN, S.C.

● Mr. HOLLINGS. Mr. President, I am today introducing a bill to authorize the Secretary of Interior to take the necessary steps to assist in the preservation of the nationally significant resources associated with the town of Camden, S.C.

The 18th century town of Camden occupies an important place in the development of South Carolina and the military operations in the South during the American Revolution. Historic Camden's location along major transportation routes and its relation to other settlements made it a trade center of considerable economic and commercial importance in 18th century southern colonial development. The townsite was laid out by 1774 on a rectangular grid pattern by Joseph Kershaw, the major contributor to the founding and growth of Camden. The settlement consisted of small frame structures with the notable exception of Kershaw's house, which was apparently patterned after a large Charleston house.

The British occupied Camden in 1780–1781 during the Revolution. They constructed five redoubts, fortified the powder magazine and jail, and palisaded the community and the Kershaw house. The most intense military activity included the nearby battles of Camden and Hobkirk's Hill and the related battles at 96, Cowpens, and Kings Mountain. The colonial Generals Horatio Gates, Nathaniel Greene, Baron Johann DeKalb, and the British Charles Lord Cornwallis are among the primary military leaders associated with the town.

The British retreated in May 1781, burning the palisaded town in an effort to minimize the site's strategic value. The fall of Camden as a British stronghold was pivotal to the eventual defeat of the British.

Few vestiges of the once active town remained after the British departure, and the town was rebuilt to the north after the Revolution. Today, the main features of the historic Camden area include the site of the 1780–1781 revolutionary war community and several reconstructions—two redoubts (small earthen forts), a powder magazine, wooden palisades, and the Kershaw house (Cornwallis house). The combination of palisades and redoubts is notable as a unique defense system surrounding the frontier community during the revolution.

I hope that my colleagues will support this legislation and that it will be enacted at an early date.●

● Mr. THURMOND. Mr. President, I am pleased today to join with my distinguished colleague from South Carolina in sponsoring this bill to authorize the Secretary of the Interior to assist in the preservation of historic Camden, S.C.

The town of Camden has played a significant role in the history of our great country. During the Revolutionary War, Camden was the site of an important battle which helped turn the tide of the war in the Southern Colonies. After initially occupying the town, the British were forced to retreat in 1781, burning the town as they withdrew. The fall of Camden was a significant defeat for the British, and was a pivotal event in the American effort to regain control in the South. Among the military leaders associated with the town are Horatio Gates and Nathaniel Greene of the Colonial Army, and Lord Cornwallis of Great Britain.

Contemporary America reflects a pride and heritage which is the result of our Forefathers' noble struggle for freedom in the American Revolution. Historic sites relevant to that struggle must be preserved so that present and future generations of Americans will be able to observe these areas and reflect on the accomplishments and sacrifices of our ancestors. Historic Camden is such an area. I am pleased to join with the junior Senator from South Carolina in cosponsoring this bill.●

By Mr. LEVIN (for himself, Mr. NELSON, Mr. STEWART, Mr. METZENBAUM, Mr. BUMPERS, Mr. RIEGLE, and Mr. HUDDLESTON):

S. 3126. A bill to authorize grants for the administrative expenses of regulatory negotiation commissions; to the Committee on Governmental Affairs.

REGULATORY NEGOTIATIONS COMMISSIONS

● Mr. LEVIN. Mr. President, I am pleased to introduce, along with my colleagues, Senators NELSON, STEWART, METZENBAUM, BUMPERS, RIEGLE, and HUDDLESTON, a bill which encourages the utilization of a process called "regulatory negotiation."

Regulatory negotiation operates on the belief that industry and interested groups can sit down together and with the assistance of a "facilitator" attempt to fashion consensus agreements on regulatory policy issues affecting health, safety and the environment. This approach can be a more creative alternative to the adversarial process typically utilized in disputes over regulation where each side tends to put forth extreme positions.

The need for such an approach is apparent. Regulations often create a great deal of anxiety among all parties who have a stake in their promulgation and implementation. Businesses often see regulations as limiting their profits and infringing on their freedom to function as they would want. Other interested groups believe that the public welfare will be sacrificed in the regulatory process and that they will not be heard. The regulators themselves are often required to attempt to interpret a broad statute and apply it to very specific circumstances with the result being that they are often unable to please any of the parties involved. Legislators, who thought the problem was solved when they adopted legislation are faced with a continuing battle during the rulemaking and enforcement process.

Regulatory negotiation has been successfully demonstrated in several areas. The most well-known use of the approach has been the national coal policy project.

The national coal policy project was an outgrowth of the recognition that it was important for the United States to shift from oil and natural gas to coal. In order to accomplish this, there had to be a reconciliation of environmental and industrial interests.

At a July 1976, meeting, industrialists and environmentalists endorsed the regulatory negotiation concept and agreed to pursue important coal related environmental and energy policy issues. Initially, neither group was enthusiastic over the potential of such an approach, but were desirous of something better. Those who took part did so as individuals—not as company representatives.

The participants used the following principles—called the rule of reason—to resolve differences and to develop workable solutions:

1. Data should not be held from the other side;
2. Delaying tactics should not be used;
3. Tactics should not be used to mislead;
4. Motives should not be impugned lightly;
5. Dogmatism should be avoided;
6. Extremism should be countered forcefully . . . but not in kind;
7. Integrity should be given first priority.

The Georgetown University Center for Stragetic and International Studies (CSIS) served as the neutral meeting place for project participants. It also raised funds and provided administrative support for the project. The project itself was financed by grants and contributions from foundations, Government agencies, and industry. Expenses of participants representing environmental concerns were paid from foundation and governmental contributions.

Five task forces were established to cover coal policy issues: Mining; transportation; air pollution; fuel utilization and conservation; and energy pricing. Each side was equally represented. Each task force was assigned the reponsibility for developing recommendations on its issues.

The selection of task force participants and chairpersons was accomplished by each caucus—industry and environmental. These individuals were to be selected based on expertise in the task force's issues, intent to follow Rule of Reason, and respect of their peers.

The governing body for the project was called the plenary group which consisted of task force cochairmen and vice cochairmen, the national coal policy project (NCPP) cochairmen and the plenary chairman. The duties of the plenary group were: To define the nature and scope; to provide guidance; to review and finally approve task force recommendations, and to resolve task force disputes.

All of the 200 task force recommendations were not unanimously achieved. However 90 percent were: The really hard issues were debated until consensus was reached, while in a few cases, there was none.

The NCPP report found that the project was very successful in dispelling stereotypes:

> Quite apart from the substance of the recommendations, the project has been valuable in dispelling stereotypes. Those environmentalists who had previously regarded the position of industry on environmental and energy issues as being monolithic and intransigent were rather quickly disabused of that notion. This was largely because of the differing perspectives of the industry members. For example, producers of fuel, regulated utilities, and industrial users of large quantities of energy each tended to have different interests and views on questions of energy pricing.
>
> In a samilar fashion, those industrialists who expected the environmentalists to be opposed to economic growth and to the introduction of new technology, and in favor of governmental rather than marketplace decisions on the allocation of resources, were pleasantly surprised to find that their suppositions were incorrect. The environmentalists opposed a pattern of growth that produced a wasteful use of natural resources and an environmental impact which they felt was unacceptable; they did not oppose economic growth in itself. They welcomed new technology that would serve to increase efficiency and reduce adverse environmental impacts and demands on natural resources. The preferred marketplace decisions to economic regulation by government when markets were workably competitive; when this was not the case, or when important (external) environmental and social impacts were not properly valued in the market, the environmentalists were eager to explore methods of influencing the market (as with emission charges) so that the desired goals would be achieved while retaining the advantages of keeping detailed decisions in the private sector.

The report further states:

> We are not proposing that the process of discussion and negotiation in which we have participated should replace the adversary process. Indeed many of the policy recommendations on which we have agreed would have to be implemented through the traditional adversary system; that is, they require action by legislative and judicial bodies . . . there are others that simply do not lend themselves to negotiated agreements . . ."
>
> We believe, however, that exclusive reliance on adversarial processes is likely to produce decisions that are less desirable (from the point of view of either of the parties) than those in which a common position serving both interests could have been agreed to in a non-adversarial context.

The coal policy project's recommendations have received agency support by the Office of Surface Mining and the

Federal Energy Regulatory Commission. The first has adopted word-for-word project recommendations with respect to bonding concerns and operations. FERC has adopted the coal generation and small power recommendations.

Also, two bills were introduced in May 1980: H.R. 7464 and H.R. 7465, which adopted recommendations that called for the use of incentives to develop pollution control technology and the development of plant siting procedures.

Regulatory negotiation has been tried in the toxic substances area as well. The Conservation Foundation was involved in this approach during the implementation of the Toxic Substances Control Act.

Specifically, 12 to 14 business persons and environmentalists met to discuss the training of toxicologists; the testing of new chemicals and the prioritizing of what chemicals should be tested, and determining the nature and scope of agency followup on the chemical after it reaches the market.

With respect to the testing of new chemicals, the Conservation Foundation's committee made four recommendations:

First: That a conceptual framework for a testing program be developed to test chemicals using a tier system;

Second: That all relevant aspects of the potential impacts on human and animal health be tested, starting with inexpensive tests and ending with more complex tests;

Third: That the tests within each tier be required on a selective and necessary basis;

Fourth: That tier 0 (the first tier) should be viewed as a minimal test—therefore, all substances should be tested under the first two tiers at a minimum.

EPA is now developing guidelines (regulations) to effectuate the first recommendation.

In the area of labor relations, regulatory negotiations have emerged as well. For example, the Joint Labor Management Committee for the Retail Food Industry utilized the process to reach an agreement on an OSHA regulation for protective equipment for employees in the meat department of supermarkets. This consensus took several months of hard work but once labor and management agreed, the two groups were able to reach agreement with OSHA to everyone's satisfaction.

On July 29 and 30, 1980, the Subcommittee on Oversight of Government Management of which I am chairman, and the Select Committee on Small Business (of which I am a member) held hearings on the regulatory negotiation approach. We received testimony from representatives of both the private and public sectors who have had specific experiences in regulatory negotiations, including the National Coal Policy, the Conservation Foundation, and EPA. These witnesses supported regulatory negotiation as a valuable aid to achieving more flexible and workable regulatory policy and suggested ways to strengthen the process.

The bill reflects many of these suggestions.

Essentially, it creates a pilot project to encourage the voluntary formation of regulatory negotiation commissions. These commissions are to be composed of balanced interests representing industry and nonindustry groups, labor, State and local officials or others with a vital interest in the area being reviewed. These commissions are to develop recommendations representing a consensus of the commission participants.

The bill gives the chairman of the Administrative Conference the responsibility for administering the pilot project. A $1.4 million fund with a maximum of $250,000 per commission is established by the Conference over a 2-year period to fund regulatory negotiation commissions. Specifically, the chairman must announce the availability of grants in the Federal Register. Grants are available for projects in the areas of health, safety, and the environment—when a major law has been enacted but proposed rules and regulations have not been issued; when final rules and regulations have been issued, but are likely to be significantly revised; or when basic statutory changes are contemplated. It is my belief that regulatory negotiations will be most productive at these stages of the regulatory process—that is, before the affected parties have staked out seemingly irreversible positions.

Individuals with an identifiable interest in a regulatory area selected by the chairman can make application for a grant according to the conditions stated in the act. The chairman may approve such application only if there is a reasonable likelihood that negotiation will expand the existing areas of consensus among the affected parties, increase cooperation and develop regulatory policy alternatives.

The chairman also must determine whether a commission has properly balanced representation. If it is determined that a commission is not properly balanced, the chairman may include additional members.

The bill also indicates the manner in which grants may be used as well as the reporting responsibilities of each commission at the completion of its negotiations.

Agency participation is limited to observer status. Observers provide information, but are nonvoting and nonnegotiating participants.

Upon receipt of commission reports, the agency must comment on the report within 60 days.

The coal policy project and toxic substances activities show that vital progress can result from regulatory negotiations. This bill is the mechanism for encouraging that process.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD, together with an article from the Providence Journal Bulletin, urging that this bill be adopted by the Senate.

There being no objection, the bill and article were ordered to be printed in the RECORD, as follows:

S. 3136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Negotiation Act of 1980".

TITLE I—GENERAL PROVISIONS

FINDINGS

SEC. 101. The Congress finds and declares that—

(1) Government regulation of the economy has increased rapidly in recent years due to an increased awareness of the environmental, social, and health effects of a variety of economic practices;

(2) although such increased regulation has commendable purposes, it has frequently resulted in contradictory, inefficient, unjustifiably expensive, and often counterproductive regulatory requirements;

(3) unnecessary regulation has reached a level where it is having a significant adverse effect on the economy;

(4) ineffective regulation has prevented the attainment of important national goals in the areas of the environment, , and safety;

(5) some of the problems in Government regulation are attributable to the adversarial process of setting regulatory policy, a process in which the best solutions to problems are often ignored by all parties to a dispute in order to maintain their bargaining positions; and

(6) an adversarial regulatory process frequently ignores the expertise and understanding of people working in the affected areas.

PURPOSE

SEC. 102. The purpose of this Act is to establish a pilot program to encourage the voluntary formation of regulatory negotiation commissions as an alternative to the adversarial process of establishing regulatory policy. Commissions receiving assistance under this Act shall be composed of a balanced representation of industry, public interest groups, labor, State and local officials, or other participants with a vital interest in the areas under consideration by the commission, and shall meet to negotiate recommendations on regulatory policy which represent a consensus of the viewpoints of the participants in the commission.

DEFINITIONS

SEC. 103. For purposes of this Act—

(1) the term "regulatory negotiation commission" means a group formed on a voluntary basis by private individuals and organizations to study one or more regulatory policies which (A) contains representatives of all or most or the major positions on the issues under consideration by the commission, and (B) attempts, through negotiation, to reach recommendations on regulatory policy which represent a consensus of the viewpoints of the participants in the commission;

(2) the term "Conference" means the Administrative Conference of the United States;

(3) the term "Chairman" means the Chairman of the Conference; and

(4) the term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

TITLE II—GRANTS FOR REGULATORY NEGOTIATION COMMISSIONS

PILOT PROJECT AUTHORIZED

SEC. 201. (a) In order to carry out the purposes of this Act, the Chairman of the Conference shall establish a pilot program to make grants to five regulatory negotiation commission projects during each of the fiscal years 1981 and 1982. Grants made under this Act shall be for the payment of administrative expenses of regulatory negotiation commissions, shall be in an amount not in excess of $250,000 for each commission, shall remain available without fiscal year limitation, and may be augmented by funds from non-Federal sources.

(b)(1) By April 1, 1981, the Chairman shall announce, through publication in the Federal Register and through notices to appropriate journals, newsletters, and other media, the availability of grants under this Act, and shall take whatever other reasonable steps are necessary to provide notice to the public of such grants. The announcement required by the preceding sentence shall specify the areas of regulatory policy for which applications for grants for regulatory negotiation commission projects will be accepted. The Chairman shall only make grants for such projects for matters pertaining to regulatory policy in the areas of health, safety, and the environment, and for which—

(A) a major law has been enacted, but proposed rules and regulations have not been issued;

(B) final rules and regulations have been issued, but are likely to undergo major revision; or

(C) basic statutory changes are contemplated.

(2) The selection of areas of regulatory policy for regulatory negotiation commission projects under this Act shall be at the discretion of the Chairman and shall not be subject to judicial review.

(c) Individuals and organizations with an identifiable interest in any regulatory area selected by the Chairman under subsection (b) may make an application to the Chairman for a grant under this Act. Each such application shall—

(1) be signed by all proposed members of a regulatory negotiation commission applying for a grant;

(2) include a description of the regulatory area to be discussed, the need for a regulatory negotiation commission in such area, a proposed membership list for the commission and justification for that list, proposed rules for the operation of the commission, a statement of purpose for the commission, a proposed time period for the completion of the work of the commission, and an organization plan and an agenda for the commission;

(3) contain a written commitment signed by all proposed members of the commission to negotiate the issues under consideration in good faith, and to produce a report on the negotiations within a time period appropriate to the regulatory area under consideration; and

(4) include such other matters as the Chairman may by rule require.

(d)(1) The Chairman shall only approve an application under this Act if the Chairman determines that there is a reasonable likelihood that the regulatory negotiation commission applying for a grant under this Act—

(A) is able to produce a report that will significantly expand the existing areas of consensus among major affected parties in a regulatory area;

(B) is able to significantly increase cooperation between such parties;

(C) will include a balanced representation of the major affected interests in an area, including business and public interest organizations, in accordance with subsection (e)(1); and

(D) can recommend policy alternatives that will provide significant improvements over existing policy.

(2) A determination of the Chairman under this Act with respect to an application shall be at the discretion of the Chairman and shall not be subject to judicial review.

(e)(1) In determining whether a proposed commission meets the requirements of subsection (d)(1)(C), the Chairman shall consider whether the regulatory negotiation commission applying for a grant under this Act contains sufficient representation of the major positions of interest in the area of regulatory policy to be considered by the commission in order that each such interest is able to effectively express its views during the deliberations of the commission. The Chairman may not approve an application for a grant under this Act—

(A) in the case of a regulatory negotiation commission which will consider regulatory policy in the area of the environment, unless at least one-third of the members of the commission are representatives of business and at least one-third of such members are representatives of environmental organizations;

(B) in the case of any regulatory negotiation commission which will consider issues relating to the health and safety of workers, unless at least one-third of the members of the commission are representatives of workers; and

(C) the Chairman is satisfied that major interests other than the interests specified in subparagraphs (A) and (B), including, labor, consumer organizations, and State and local officials who have a significant contribution to make to the commission are provided with an adequate opportunity to make such contribution.

(2) In order to achieve a balanced representation of interests in a regulatory negotiation commission, the Chairman may suggest to an applicant for a grant under this Act additional members for inclusion in the regulatory negotiation commission to be supported by such grant. An applicant is not required to include members suggested by the Chairman in the commission and the Chairman may not deny an application under this Act for failure to include any such suggested member unless the Chairman determines that excluding such additional member will substantially impair the ability of the applicant to meet the requirements of subsection (d)(1)(C) and paragraph (1) of this subsection.

(f) Grants made under this Act may be used—

(1) to employ an administrative director for a regulatory negotiation commission, who—

(A) shall be responsible for the administrative operation of the commission and such other mediative or facilitative duties as the commission finds appropriate;

(B) shall not represent any member of the commission with respect to a particular viewpoint in a regulatory area;

(C) shall be compensated at a rate which is not in excess of $45,000 per year; and

(D) shall not be considered an employee of the Federal Government;

(2) to pay travel expenses for members of a commission and per diem expenses for such members at a rate which is not in excess of $200 per day and $10,000 per year; or

(3) to pay other administrative expenses of the commission, including expenses for printing of commission documents.

(g) Each commission receiving a grant under this Act shall issue a report at the conclusion of its negotiations outlining areas of consensus, areas of disagreement, and recommendations, and containing any background material the commission may consider appropriate.

(h) Any regulatory negotiation commission receiving a grant under this Act may change its membership, rules, or agenda at its discretion if the commission submits each such change to the Chairman for review. If the Chairman determines that any such change will substantially impair the ability of the commission to carry out the puposes of this Act, the Chairman may (1) suggest additional changes to assure consistency with the purposes of this Act, or (2) require the commission to repay the Government any funds provided by this Act which have not been obligated or expended. The Chairman may not require a commission to make repayment under this subsection unless the Chairman determines that efforts to assure consistency with the purposes of this Act have failed.

(i) Any meeting of a regulatory negotiation commission receiving a grant under this Act shall be open to the public unless a majority of the commission members vote to close the meeting. All open meetings shall be announced at least 15 days prior to their occurrence in the Fedeal Register and a record shall be prepared of such meetings.

(j) By April 1, 1981, the Chairman shall issue rules and regulations to carry out the provisions of this section.

GOVERNMENT PARTICIPATION IN COMMISSION NEGOTIATIONS

SEC. 202. An agency shall send an observer to any regulatory negotiation commission requesting an observer. An agency observer shall report to the agency concerning commission activities, shall provide information to the commission, and may make suggestions to the commission. An agency observer may not negotiate regulatory policy positions on behalf of his agency, and the view of the agency observer shall not be considered to represent the formal position of his agency. An agency observer may not be present at a closed meeting of a regulatory negotiation commission.

GOVERNMENT COMMENTS ON COMMISSION REPORTS

SEC. 203. (a) An agency shall comment on the report of a regulatory negotiation commission receiving a grant under this section within 60 days after the receipt of such report, except that in any case in which proposed regulations are pending with respect to an issue considered by a commission, any agency shall make such comments within 30 days after the issuance of final regulations with respect to such issue.

(b) Agency comments on commission reports shall be transmitted to all appropriate committees of Congress for potential review and action.

(c) All Federal agencies engaged in the areas of health, safety, and environmental regulation shall assure that the recommendations and reports of any regulatory negotiation commission which is voluntarily established by private parties and is not receiving a grant under this Act are seriously reviewed by the appropriate agencies.

TITLE III—MISCELLANEOUS

EXEMPTIONS

SEC. 301. (a) The provisions of any law or rule relating to prosecution for ex parte communications shall not apply to any communications between an agency of the Federal Government and any regulatory negotiation commission.

(b) Except as may be provided by rule promulgated by the Chairman, the provisions of sections 553 through 559 of title 5, United States Code, and the Federal Advisory Committee Act do not apply to any regulatory negotiation commission receiving a grant under this Act or the report of any such commission, the participation of agency observers in any such commission, the response of agencies to the recommendations of any regulatory negotiation commission, and any other function to carry out this Act or regulations promulgated pursuant to this Act.

CONFORMING AMENDMENT

SEC. 302. Section 575 (c) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (14), by striking out the period at the end of para-

graph (15) and inserting in lieu thereof a semicolon and "and", and by inserting after paragraph (15) the following new paragraph:

"(16) make grants under the Regulatory Negotiation Act of 1980.".

REPORT TO CONGRESS

SEC. 303. By January 1, 1983, and at such other times as he finds appropriate, the Chairman shall report to the Congress on the pilot program established pursuant to this Act, including an analysis of the activities of regulatory negotiation commissions supported pursuant to this Act and such recommendations the Chairman finds appropriate for further action to expand the use of such commissions.

AUTHORIZATION OF APPROPRIATIONS

SEC. 304. To carry out the purposes of this Act, there are authorized to be appropriated to the Administrative Conference of the United States not in excess of $1,400,000 for each of the fiscal years 1981 and 1982.

CONGRESS MULLS A SOUND REFORM TO THE REGULATORY PROCESS

While Congress has been struggling for the past several years with the idea of deregulation, some members are beginning to question the whole regulatory process. Testimony before congressional committees has shown how an agency, created as a watchdog to stop foxes from stealing chickens, can evolve into a fatcat with its own appetite for chickens.

All of this got some congressmen to thinking that someone ought to be watching the watchdog. Out of this line of reasoning has sprung a new bit of jargon—"reg-neg," standing for regulatory negotiation—and a bill, currently being written by three senators, that could evolve into a governmental reform along the order of sunset legislation and congressional budgetary review.

The senators hope their idea would help prevent the confrontations caused by regulations hatched in bureaucratic cloisters, and laid on industry as a fait accompli. The examples are familiar and legion: The EPA sets new standards of environmental purity. The CAB adopts a new fare schedule, or the FAA adopts a new air safety code. The FDA determines that a chemical substance is carcinogenic, bans it, then changes its mind after industry has spent huge sums developing alternative substances.

Arbitrary changes in regulations and masses of paper work create a pervasive negative attitude within the business community toward government. Billions of dollars are lost to the national economy every year from arbitrary decisions imposed on industries, sometimes justifiably and sometimes not. Millions of man-hours are lost fighting cases through boards of appeal and the courts. And many a firm has had its name irrevocably stigmatized by charges from government agencies which later proved unfounded.

The group of senators hope their new bill will transform the regulatory process from an adversary procedure to a cooperative one. They seek to set up a pilot program of panels in several regulatory agencies. The panels, made up of business, labor and public-sector representatives would have a say in policy direction, checking out proposed new regulations for potential trouble spots and trying to work the problems out before they happen.

The aim is to ensure that regulations are based on objective data rather than on bias or incorrect assumptions, to keep costly paperwork to a minimum, and to work out in advance potential direct conflicts between public policy and private practice so as to eliminate time-wasting and costly litigation later on.

Is this approach practical? A similar system has worked in Japan—admittedly a dissimilar society—and supporters cite a precedent in this country, the National Coal Policy Project.

"Reg-neg" would take deregulation one step forward. Useful as that effort has been, its results are limited because it attempts to dismantle structures already in place. As anyone who has tried to change bureaucratic ways has learned—including every president in recent memory—bureaucracies are enormously resistant to change. If "reg-neg" can minimize the perceived threat, and therefore the resistance, by working within and as part of the bureaucratic structure, a major cause of the distrust and disillusionment that has grown between the private sector and government might be removed.

It's certainly worth a try. The Senate should pick this one up and run with it.●

● Mr. NELSON. Mr. President, today, along with several of my colleagues, I am introducing a bill on the subject of regulatory negotiation. The bill calls on the Administrative Conference of the United States to establish procedures to encourage the voluntary formation of regulatory negotiation commissions in the areas of health, safety, and the environment. These commissions would be composed of business, labor and public interest representatives and would be designed to provide an opportunity for all interested parties to discuss ways in which regulatory policy can best serve all their interests.

The basic notion of regulatory negotiation is that if responsible people sit down together and make a commitment to find areas of agreement, regulations can be designed that are more appropriate, effective, and consistent than is now possible. Moreover, costly and lengthy litigation should be reduced as adversarial parties open up better lines of communication and understanding.

The use of negotiation between affected parties to address public policy issues has grown significantly in the last few years. Although still the exception rather than the rule, the approach shows considerable promise. The failure to develop it more broadly stems from many factors, but certainly our traditional reliance on adversarial proceedings, both before the courts and Congress, creates an atmosphere of distrust, parochialism, and even hostility—an atmosphere in which negotiation is very difficult. Nonetheless, the regulatory policy crisis has become so severe that negotiation may be the only rational alternative in many areas. No one stands to gain from the astronomical costs of endless litigation; no one will benefit from overlapping, inconsistent, unnecessary, and ineffective regualtions.

While the atmosphere may be better, however, getting this idea off the ground will require some encouragement from the regulators. Private parties need to know that the costs of negotiations will be paid for, since many vital interests could not otherwise afford to participate, that the government will take the process seriously, and that the negotiations will be fairly and impartially structured so that all points of view can be effectively represented. This is exactly what this bill would address.

Under the bill, the Administrative Conference would establish a $1.4 million fund for each of the next 2 years for the payment of administrative costs of the commissions. It would advertise the existence of the fund as widely as possible and establish a procedure for reviewing applications. Funds would be used to pay for a mediator to be selected by the applicants, to pay for travel and per diem costs up to $200/day (but not more than $10,00 per year/person), and to pay other administrative expenses.

Applications for the funds would be accepted on behalf of representatives of business, labor and public interest firms and organizations. In order to be approved, the Chairman of the Administrative Conference would have to determine that the applicants had achieved a balanced representation of parties affected in a particular area and that they had a reasonable prospect of achieving a significant consensus on important regulatory issues. The Chairman could suggest additional members, if appropriate, to assure balance. Applicants would also be required to select an administrative director and establish rules for the functioning of the commission. The affected agency would participate in the process as an observer and nonvoting member, providing information and making suggestions, but not negotiating on behalf of the agency, nor voting on any matters. The reason for this latter restriction is that an agency representative could not reasonably be empowered to bargain away positions developed by his or her agency pursuant to laws passed by the Congress.

The reports of the commissions would be made widely available, and agencies would be required to comment on them within 60 days. Congress, of course, could exercise its oversight responsibilities with respect to the reports, and given the impetus the consensus is likely to provide, it seems probable that if commission recommendations were ignored, Congress would investigate the matter.

This process would not work in many areas—there must be an incentive to negotiate. If regulatory policy is fairly settled in an area, if the major issues are already in court or before Congress, or if all sides are reasonably satisfied, for instance, there is little reason to believe that negotiations would occur. On the other hand, if important regulatory changes are being contemplated by an agency, but no proposals have been made or if a regulatory area is in clear need of policy redirection, but Congress has not seriously taken the issue on, then there would be considerable incentive to negotiate.

In the automobile industry, for instance, consideration is being given to changing emission and safety standards, but only the commitment to change exists—not the commitment to any particular changes. Both the industry and public interest groups have every incentive to try to sit down and find areas of agreement. In this way, it is entirely possible that new, innovative approaches could be found; that areas of disagreement could be limited; that costly litigation could be avoided.

The regulatory negotiation approach has been tried in several areas. Its broadest use has been at the local level, where issues such as facility siting have

frequently been worked out through negotiations between industry and citizens' groups. At the national level, experience has been limited primarily to toxic substances and coal, but the results have been very encouraging.

In the toxic substances area an environmental organization, the conservation foundation, has devoted a great deal of its resources to encouraging people to get together to discuss very specific control issues. Reports on a number of issues have been made and the recommendations have frequently paralleled eventual change in regulatory policy. Of course, the conservation foundation does not claim that the process has directly caused the policy changes, since many factors are always involved in such decisions, but it is clear that industry and environmental representatives have been able to agree on a range of issues that neither side would have otherwise considered possible.

The most well-known experiment with regulatory negotiation was the coal project. The brainchild of Larry Moss, the former president of the Sierra Club and Gerald Decker, of Dow Chemical, the project was run with foundation support under the auspices of the Georgetown Center for Strategic and International Studies.

The project began in July of 1976 and completed its work a little over 2 years later. Participants included roughly 70 representatives from the environmental movement and the coal industry, and the subject matter covered virtually every area of coal policy except surface mining regulation, since that issue was the subject of legislation being simultaneously considered. Since most participants had taken public and firm positions on that issue, it was agreed that this area was not ripe for negotiation.

The participants all agreed to follow "a rule of reason" in their negotiations. The rules included agreements not to:

First, withhold data. Second, use delaying tactics. Third, use tactics designed to mislead. Fourth, impugn the motives of the other side lightly. Fifth, be dogmatic. Sixth, tolerate extremism.

The group broke down into several caucuses, each having several meetings to hammer out basic agreements to be approved by the full group. A summary of the consensus agreements will be attached to this statement, but a quick perusal will show some rather surprising areas of agreement. The project agreed, for instance, that facilities should be sited near the area where their power would be used, rather than in remote areas where pollution was not a significant problem. In this way, project beneficiaries would have to deal with the pollution, rather than allowing it to concentrate in areas receiving few project benefits. The participants also agreed that energy should be priced at its marginal cost in order to encourage conservation and alternative fuels; that the EPA should make exceptions to its standards to encourage the development of innovative technologies, allowing a utility to burn coal less cleanly and pay a fee for the difference until the new technology could take hold; that an emission charge and rebate plan should be tested; and that coal conversion orders should exempt small units. Several other areas were agreed on as well, but this list gives a fair impression of the remarkable work the project did.

These agreements, however, are not as important as the new lines of communication opened by the project.

As the cochairman of the project stated in their preface to the summary report:

> Many of our recommendations are matters of great controversy, so we expect our proposals and alternatives to them to be subject to further scrutiny and debate in adversarial processes. In this context the project's contribution, we think, is in better informing those engaged in the adversarial processes and broadening the constituency for energy policy initiatives which address long-festering problems in a way that we believe to be reasonable and in the national interest. The participants, as individuals, will work toward the implementation of these measures. Whether or not the recommendations gain wide acceptance, it is undeniable that the work of the NCPP stands in sharp contrast to the polarization and acrimony that has characterized much of the national debate over energy and environmental policy.

That, in itself, is a critical change in the way we have done regulatory business in this country, and if the Commissions this bill envisages only succeed in bettering understanding and communication, they will have been well worth the effort.

The idea of cooperation between Government, labor, business, and public interest groups, of course, has been implemented in many other areas besides regulation, especially in recent years. The steel tripartite commission and the recent efforts in the automobile industry are obvious examples. The retail food industry has used joint labor management committees to negotiate regulatory policy with OSHA, a process that resulted in the implementation of a worker safety regulations for meatcutters that OSHA, the industry, and the meatcutters all found acceptable. In Japan, most regulatory issues are handled in this way, so much so that the Government frequently simply accepts the recommendations of the negotiations.

I would not suggest we go as far as Japan. Our culture and our needs are different. Nonetheless, we have gone too far in attempting to solve everything through adversarial processes. Each side tends to stake out a position that it believes will maximize its bargaining power. This position may or may not have any relationship to the most reasonable approach to a problem. Neither side trusts the other, and a great deal of useful information is lost in the process. Government regulators are brought in to develop detailed rules to govern broad areas of public policy, seeking comments from those affected by the policy only after proposed regulations have been issued. After all the work involved in issuing proposed regulations, however, agencies are understandably reluctant to make major changes. More useful information is lost.

Government, being what it is, also tends to encourage the proliferation of rules and regulations by several agencies, as each responds to its own constituency, acting to protect and promote its own special interests. The resulting morass of regulation frequently ends up in court, where judges trained in law, not in advanced technologies or environmental science, are forced to make complex decisions. Important regulations are often delayed and everyone's legal costs soar. Business becomes frustrated by the impossibility of dealing with so many regulations and, as the New York Times recently reported, becomes increasingly defensive, while environmentalist harden their positions out of their frustrations with our inability to make progress against major ecological problems.

This whole process has been carried to such an extreme that it is simply no longer rational for any of its participants, except, perhaps, the lawyers. Regulatory negotiation could be a way to ease the problem.

To provide more information on this subject, I ask unanimous consent that a summary of the coal project be printed here in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY

HISTORY

The idea of the National Coal Policy Project (NCPP) originated with Gerald L. Decker, Corporate Energy Manager of The Dow Chemical Company, and certain of his colleagues in industry. They believed, in part as a result of their participation in studies performed under the auspices of the Department of Commerce's Technical Advisory Board (CTAB), that it was important for the United States to shift from the use of oil and natural gas to coal. It appeared to them, however, that this would not occur without a reconciliation of environmental and industrial interests.

In connection with Decker's service on the Federal Energy Administration's Environmental Advisory Committee, he met Laurence I. Moss, former Sierra Club president and chairman of that committee. Decker, with the support and encouragement of key executives of several major companies, approached Moss and other environmentalists in January, 1976, to enlist their support for the project.

The environmentalists were not enthusiastic. Some had met with representatives from industry on previous occasions and found the discussions unproductive. The environmentalists felt they could not afford to set aside the considerable time required for the proposed project unless there was a reasonable likelihood that it would be productive. On the other hand, many of them were not fully satisfied with existing mechanisms for resolving disputes, and were receptive to exploring new approaches. From the environmental point of view, there was a growing feeling that industry had business to transact with the environmental movement (as it does with shareholders, labor unions, customers, and regulatory authorities). The lack of a non-adversarial forum to conduct such business was impeding progress on issues upon which agreement might be possible.

A test meeting

It was agreed, accordingly, to test the concept with a single two-day meeting on a limited agenda. This meeting, held in July, 1976, was judged productive by the partici-

pants.* Industrialists and environmentalists, meeting in separate caucuses, endorsed continuing and expanding the project to address important coal-related environmental and energy policy issues. Decker and Moss were elected Co-Chairmen by their respective caucuses.

Role of CSIS

Before the test meeting, Georgetown University's Center for Strategic and International Studies (CSIS) had agreed to provide a neutral institutional setting for that meeting as well as for any effort that might ensue. CSIS selected Harvard professor and former Secretary of Labor John Dunlop to chair the test meeting, and Francis X. Quinn, S.J., Special Assistant to the Dean of the Business School of Temple University, to chair the meetings of the project leadership body called the Plenary group.

CSIS provided administrative support and fundraising for the project. By design, they did not involve themselves in the substance of project discussions and recommendations. The National Coal Policy Project was financed by grants and contributions from foundations, government agencies, and industrial corporations. The contributors are listed in Appendix C. To avoid conflicts of interest, all environmental expenses were paid solely from funds contributed by foundations and government agencies.

The "rule of reason"

Finding solutions to difficult industry-environmental problems may, in some cases, require that certain conflicting energy, environmental, economic, and social priorities be weighed. Traditionally this task has been accomplished through the adversary process, whereby opposing groups meet at legislative hearings or in the courts to assert their positions. Advocates are forced by the nature of this process to present their case in the starkest terms in order to "win" a favorable decision. This precludes the search for a mutually agreeable outcome. Further, it can lead to additional delays and costs that are in no one's best interest.

The National Coal Policy Project emphasized reaching agreement, where possible, rather than seeking victories. To facilitate this effort, the project adopted a set of negotiating principles known as the "Rule of Reason." These principles, which were articulated in a book written by attorney Milton Wessel,[1] include the following:

Data should not be withheld from the other side.

Delaying tactics should not be used.

Tactics should not be used to mislead.

Motives should not be impugned lightly.

Dogmatism should be avoided.

Extremism should be countered forcefully . . . but not in kind.

Integrity should be given first priority.

Agreement to use these principles helped convince participants that the project could resolve some of their differences constructively, and as it turned out, conducting project meetings in the spirit of the Rule of Reason did facilitate the search for workable solutions to the difficult issues being addressed.

Task forces

Five Task Forces were organized to cover the spectrum of coal-related energy and environmental policy issues. They were: Mining; Transportation; Air Pollution; Fuel Utilization and Conservation; and Energy Pricing. Later an *ad hoc* task force, Emission Charges, was organized, drawing from members of the Air Pollution and Energy Pricing Task Forces. Each side was represented equally on each Task Force.

Selection of participants

Each Caucus was responsible for the selection of its Task Force participants and Chairmen. Individuals were sought who had expertise or displayed leadership on the issues of concern, expressed a willingness to abide by the Rule of Reason, and had the respect of their peers and constituents.

The industrialists established a formal selection process. Members of the Industry Caucus selected their Task Force Co-Chairmen, who in turn submitted nominations for membership on their Task Forces to the Industry Caucus for approval. These nominees were drawn from a broad range of coal-producing and coal-consuming industries throughout the U.S.

The procedure used by the environmentalists was less formal. The Environmental Caucus Chairman sought first nominations and then evaluations of prospective participants from many people in the environmental movement who were active on the issues to be discussed. A consensus on who should be selected to lead the Task Forces was reached. Subsequently, those individuals who had been designated as the Environmental Co-Chairmen and Vice Co-Chairmen of each Task Force selected, with the approval of the Environmental Caucus, the balance of the environmental membership of their task forces.

Most (though not all) who were asked to participate accepted the opportunity as unique and significant.

Plenary group

The Task Force Co-Chairmen and Vice Co-Chairmen were formal members of the Plenary group, the governing body for the project. Other members were the NCPP Co-Chairmen, Decker and Moss; and Quinn, the Plenary Chairman.

The Plenary group defined the scope of the Task Forces' activities, provided guidance and redirection, and reviewed and approved their recommendations. The Plenary was responsible for resolving disagreements between Task Forces.

The fact that the Plenary group approved the final Task Force reports does not mean that every member of the Plenary is in full agreement with the more than 200 recommendations contained therein. Most Task Force recommendations were accepted by the Plenary without dissent. The more controversial recommendations were discussed until a consensus of the Plenary group emerged, but, in a few cases, agreement was not unanimous. Those dissenting have been provided the opportunity to submit for the record their minority views (see Appendix B).

Individuals, not representatives

The participants in the project took part as individuals. Although they were selected in part because of their leadership roles in environmental and industrial organizations, they do not purport to speak either for their organizations or for the environmental and industrial communities at large. The issues are too complex and controversial for either side to speak with a single voice.

Dispelling stereotypes

Quite apart from the substance of the recommendations, the project has been valuable in dispelling stereotypes. Those environmentalists who had previously regarded the position of industry on environmental and energy issues as being monolithic and intransigent were rather quickly disabused of that notion. This was largely because of the differing perspectives of the industry members. For example, producers of fuel, regulated utilities, and industrial users of large quantities of energy each tended to have different interests and views on questions of energy pricing.

In a similar fashion, those industrialists who expected the environmentalists to be opposed to economic growth and to the introduction of new technology, and in favor of governmental rather than marketplace decisions on the allocation of resources, were pleasantly surprised to find that their suppositions were incorrect. The environmentalists opposed a *pattern* of growth that produced a wasteful use of natural resources and an environmental impact which they felt was unacceptable; they did not oppose economic growth in itself. They welcomed new technology that would serve to increase efficiency and reduce adverse environmental impacts and demands on natural resources. They preferred marketplace decisions to economic regulation by government when markets were workably competitive; when this was not the case, or when important (external) environmental and social impacts were not properly valued in the market, the environmentalists were eager to explore methods of influencing the market (as with emission charges) so that the desired goals would be achieved while retaining the advantages of keeping detailed decisions in the private sector.

The welcome variety of opinions and interests on both sides contributed substantially to the success of the project.

SCOPE

The question of the amount of coal to be used

Most reports dealing with national energy policy begin with a projection of "needs" or "requirements" for energy and various fuels in 1985, 2000, or some other year. For various reasons, we chose to do otherwise.

First, many of the participants believe that it is a conceptual error to refer to an average per capita use of energy at least several times the level necessary for subsistence—for food, clothing, and shelter—as a "requirement." It is more correct to speak of an economic "demand" for energy as for any other commodity, good, or service, with the demand being affected by such factors as national income and relative price.

The relative price of energy declined for many decades, thereby encouraging the substitution of energy for capital and labor. Beginning about five years ago, the long-term price trends reversed; this new trend is likely to continue for some time. Although the full measure of the higher cost of replacement supplies of energy has not yet been effectively communicated in the U.S. economy (because of price controls and the regulation of energy prices at average rather than marginal costs), and though the most significant potential savings of energy involve a long process of replacing energy-inefficient capital stock, changes in the relationship of energy to economic output are already occurring.

It is possible to estimate the effects of changing relative prices (as well as other factors) on future energy use, although until very recently most policy studies in which projections were made did not attempt this. We decided to leave the task of making projections to others. Perhaps our knowledge of the rapidity with which previous projections have been significantly revised gave us an appropriate degree of humility.

This decision, we think, greatly aided us in focusing on policy issues. We sought to establish the criteria under which coal would be produced and used in an environmentally and economically acceptable manner. Once these criteria have been set, other factors such as the marketplace can determine how much coal will be used.

Our recommendations, though they do not address and answer all relevant questions, go a long way toward this end. And we would make these same recommendations whether we expected coal use in 1985 to be 0.6 or 1.3 billion tons, or any level in between.

*Funding for this meeting was provided by the Ford Foundation and The Dow Chemical Company, United States Steel, PPG Industries, and The Detroit Edison Company.

[1] *The Rule of Reason: A New Approach to Corporate Litigation*, Milton R. Wessel (Addison-Wesley, 1976).

Comments on other limits

The project also did not address coal-related questions in the areas of labor relations and occupational health and safety. This is not to imply that such issues are not important; they simply lie beyond the scope of the project.

It is important to understand that the project did not set out to develop a comprehensive national policy addressing all issues related to coal. We did seek to study, debate, and where possible resolve those issues which involve the use of coal and its impact on the environment, that is, issues which are at the forefront of the industry/environmental conflict.

What we hope to achieve

We do not expect everyone to agree with all the recommendations in this report, nor do we believe that what we have written is necessarily the final word. Our goals are more modest: By indicating where, and why, knowledgeable individuals from both sides agree (and in a few cases, where and why they must continue to disagree), the discussion of policy options can proceed in a more informed manner. Moreover, if others agree that our recommendations are reasonable, the prospects for their implementation will be enhanced. Thus the interests of environmentalists and industrialists—and the public—will be served.

We are not proposing that the process of discussion and negotiation in which we have participated should replace the adversary process. Indeed, many of the policy recommendations on which we have agreed would have to be implemented through the traditional adversary system; that is, they require action by legislative and judicial bodies. Furthermore, even if it were possible to bypass the adversary system on some issues, there are others that simply do not lend themselves to negotiated agreements, sometimes because they involve principles so deeply held by the different sides that there is no hope for negotiation, and sometimes because they involve the legal rights and obligations of the parties. In such cases, it is to be expected that each side will seek resolution in the duly-constituted adversarial forums.

We believe, however, that exclusive reliance on adversarial processes is likely to produce decisions that are less desirable (from the point of view of either of the parties) than those in which a common position serving both interests could have been agreed to in a nonadversarial context. In light of our experience with the National Coal Policy Project, we believe that the use of the Rule of Reason and similar nonadversarial methods can often supplement traditional adversarial processes by developing the facts and reducing the area of disagreement in such a way as to produce better reasoned and more effective policy decisions for all concerned.

SYNTHESIS OF POLICY RECOMMENDATIONS

Where We Agree, the report of the National Coal Policy Project, contains over 200 recommendations agreed upon by the project participants. Each recommendation is significant in its own right, though some are obviously more far-reaching than others. The presentation of individual recommendations, however, does not capture the feeling held by the participants that the whole is greater than the sum of its parts. At the end of the project's first phase we realized that the recommendations taken together represent a dramatic change in the formulation and implementation of national energy and environmental policy. Perhaps the point can best be made by showing how decisions would be made if our recommendations were implemented.

Mining should be encouraged in areas where ways to avoid significant environmental problems have been demonstrated and discouraged in areas where this has not been done. This is consistent with renewed emphasis on deep mining in the Illinois Basin and Appalachia (especially Southern Appalachia, where fewer acid drainage problems exist). Much of the nation's future coal can come from those regions. Fewer new and unsolved environmental problems exist there than in the arid regions of the West. These conclusions are reinforced by considerations of the total heat content of coals in various regions and at different depths, and by the probable impact of recent amendments to the Clean Air Act.

The goals of reclamation should be different in different regions. In Appalachia, reclamation should include restoration of a successional native forest ecosystem unless some better use can be demonstrated and approved; in the Midwest, return of mined land to at least its previous level of agricultural productivity; and in the arid regions of the West, establishment of a viable, progressive, self-regenerating ecosystem able to withstand periodic droughts. In all areas it means not damaging the quality and quantity of ground and surface waters. The ability to meet these goals has not been demonstrated in highly productive agricultural lands in the Midwest and in many areas of the West such as Ponderosa pine forest lands, actively subirrigated alluvial valley floors, areas with many springs, and areas with low precipitation and high rates of evapotranspiration. Until the long-term viability of reclamation techniques has been demonstrated, mining in these environmentally sensitive areas should be conducted only on a limited, experimental basis.

Certain important gaps in present policy should be filled. A policy should be adopted to prevent any significant increase in congestion, over that which existed in 1975, arising from railroad transport of coal. Construction and operation of a coal slurry pipeline should be approved only if it does not cause net depletion of ground or surface waters in the arid regions of the West. The builders of coal slurry pipelines should be granted the right of eminent domain contingent upon authorization for railroads to enter into long-term contracts for the hauling of coal, so that both modes can compete on a more equal basis.

Surface mining permits should be issued on a watershed basis and should be phased so as to control watershed impacts. Prior levels of productivity should be restored on all farmlands in the Midwest and not just those classified as prime farmlands. Minimum federal standards should be set for the control and mitigation of environmental impacts arising from underground mining of coal.

Policies that require the beneficiary to pay the full cost of using "public goods" should be encouraged. Public goods are those that are accessible to all and for which no private property right can be nor has been created. Navigable waterways, public highways, and the atmosphere are examples. When little or no charge is made for the use of such goods, as is now true in many cases, the use of public goods instead of private goods which must be paid for will naturally be favored. Thus, it is in the economic interest of shippers to use "free" waterways and "low-cost" highways instead of railroads. Similarly, it is in the economic interest of many to use the "free" atmosphere as a disposal medium for pollutants instead of paying for pollution abatement. It must be recognized that the use of public goods imposes costs on others, such as higher taxes needed for the construction and maintenance of waterways and roads, and medical and other costs incurred as a consequence of air pollution.

In the last few years much progress has been made in identifying certain social costs and prescribing minimum standards of conduct in the form of regulations concerning the use of public goods. The cost of compliance with the regulations then becomes the price of using the public goods. The existing system is working, but not as well as we believe would be in the best interest of society. Our approach would make use of economic incentives and disincentives to make private interest more consistent with the public interest. User charges should be set to cover the full development and maintenance costs of waterways and public highways. Specifically, commercial users of waterways should be required to pay charges covering their fair share of the full costs of the waterway segment being used. An innovative emission charge and rebate plan has been developed that should be tried in one or more areas in which the air quality standards are not now being met.

The government's role in the economic regulation of energy markets should be reduced by placing greater reliance on free-market mechanisms. Much of present government economic (price and market entry) regulation, in areas where natural monopolies are not evident, is both unnecessary and undesirable. It can lead to uneconomical investments in certain activities and the blocking of economically justifiable investments in others. This is particularly true in the transportation sector, where it is recommended that most such regulation be ended. If this is done, whatever coal transportation services are demanded by the market will be provided.

Policies should encourage the implementation of new technology. The Environmental Protection Agency should be allowed to issue variances for a limited number of first-of-a-kind plants using innovative combustion and pollution abatement technology. In the event performance fell short of design specifications, these variances would allow the continued operation of such plants, even though emissions were somewhat greater than would be permitted for a new plant using conventional technology. EPA would specify the maximum allowable excess as well as monetary charges proportional to the excess emissions. These charges would not exceed the cost advantage of the new technology.

Further, mandatory coal conversion orders and schedules should not foreclose the option of cleaner and/or more efficient coal-using technology, such as low-Btu gasification, fluidized bed combustion, and cogeneration of electricity along with heat and steam.

Finally, an emission charge and rebate plan which would reward those emitting less than an average level in relation to production and penalize those emitting more would provide a strong economic incentive to invest in more efficient and effective combustion and pollution abatement technology. This plan should be tested in one or more nonattainment areas. Present policy in such areas results in "the bad driving out the good," since existing emitters are in a strong position to deny trade-offs (reductions) in emissions to make room for new producers. The emission charge and rebate plan could well reverse this situation, since those emitters willing and able to use improved abatement technology would receive more under the rebate plan than they would pay into it. This would put economic pressure on those who were emitting more than the industry average to improve in order to avoid subsidizing their competitors.

Dollars spent on pollution abatement should be directed to achieve the maximum reduction in pollution. The national approach to pollution abatement should include careful and thoroughgoing cost/benefit analyses, with full consideration of the difficulties and uncertainties in quantifying and making commensurable many important factors involved. In considering how much

money should be spent on pollution abatement, old power plants (20 years and older) should be required to spend as much but not more per kilowatt-hour for the control of emissions than would be required for new plants. The environmental participants in the project favor requiring this expenditure for all existing plants, in order to produce decreases in area-wide total emissions. The industrial participants do not agree that this principle should be extended in this way and applied to all existing plants. The agreed-upon proposal imposes certain limits on both emissions and ambient concentrations of pollutants. It is intended to produce the most pollution abatement for each dollar spent. This may necessitate some shifting of investments from one plant to another, when more abatement can be achieved at the latter. The emission charge and rebate proposal previously described would encourage a similar result.

Major coal-burning power plants should be located, to the extent practicable, in the general areas where the energy is to be distributed. There is an urgent need to implement more effective and efficient pollution abatement technology for coal-burning plants. To the extent that damage results from pollution, it is equitable for those who benefit from the activity to bear these costs. A remote siting policy tends to run counter to these objectives.

Means should be established to expedite decisions regarding utility plant siting, with safeguards to insure that appropriate alternatives are considered and that all concerned parties are effectively represented. To this end, we propose a consolidated hearing process at the state level, early notification and discussion of possible alternatives, and public funding for responsible citizen groups so they can employ expert assistance and participate more effectively in the expedited process.

All parties stand to gain if these steps are taken. Reasonable alternatives (including nonconstruction alternatives) will be identified, sites with the greatest problems will be rejected before the proponents have invested enormous amounts of time and money in them, and the most acceptable sites will be more expeditiously approved.

This recommendation does not include the creation of a "superagency" with sole licensing authority. Such an action would raise more problems than it would solve.

Public policy should discourage the uneconomical use of energy. Users of energy have choices to make. How much energy they use depends on the cost of alternative ways of providing desired goods and services, the perceived value of those goods and services, and the price of energy. If energy prices truly reflected total market and nonmarket costs, the consumer would have more accurate information to guide his decision.

Today several forms of energy, most notably electricity, "old" oil, and natural gas, are priced on the basis of "rolled-in" average costs, which are derived from historical costs. In contrast to the general situation before 1970, these costs are at present much lower than the capital and operating costs (the incremental costs) incurred when the energy supply is expanded, since construction and other costs have risen so sharply during recent years.

Often the user of energy has a choice in considering how best to provide himself with a desired good or service. Perhaps it can be done with improved or alternative end-use technology—such as with heat pumps, heat storage systems, solar collectors, cogeneration of electricity along with the production of heat or steam, etc.—which would require the user to make an investment at incremental cost; or it can be done with purchased energy priced at average cost. Since average cost is frequently lower, the decision is usually to purchase energy. That decision requires the utility to expand capacity at incremental cost, which may be higher than the cost of using improved end-use technology. This results in more of the nation's limited resources being used to provide energy than is economically efficient. This inefficiency will lead to inflation and excessive reliance on imported fuels and may also have an adverse social and environmental impact.

Marginal cost analyses and principles should be used in the design of electric utility rate structures. We recommend that they be applied in a way that neither increases the total amount of revenue that would be permissible under current practice nor results in subsidy of one customer class by another. Each class of users would still pay a total amount based on historical or "embedded" costs, but most would pay a price close to incremental cost for at least the last units of their consumption and units consumed during times of peak demand on the system. This would provide a powerful incentive to make investment decisions that are more economically justified.

A strong government role in the funding of energy research, development, and demonstration is recommended. However, government should not subsidize (through grants, loan guarantees, and extra tax credits, etc.) the so-called "commercialization" of large centralized energy supply facilities. Such subsidies disguise the true cost of energy and lead to its uneconomical use. The unregulated private sector will produce the investment capital necessary for such facilities, when they are justified by market demand, if energy prices are allowed through appropriate federal policy to reach levels which permit returns on invested capital competitive with other undertakings of similar risk.

Energy policy and social policy should be addressed separately. A rational energy policy cannot also undertake the burden of solving all of the nation's social problems, including problems arising from the uneven distribution of wealth and income. It should not be required nor designed to do so.

While in general the idea of subsidies should be discouraged, exceptions should be made for cost-effective measures to improve the energy efficiency of the capital equipment (such as dwelling units, heating equipment, and appliances) used by low-income consumers. Income transfers might also be considered. On the other hand, policies which artificially depress energy prices cause distortions of market and investment decisions, lead to higher rates of inflation, and eventually produce an even greater adverse impact on those of low income.●

● Mr. STEWART. Mr. President, in the face of uncommon challenge, this Nation looks to innovative and creative solutions. Given the economic condition of this country, it is clear that the challenge is indeed uncommon. We face continuing inflation, rising unemployment, increasing foreign competition. It is time for innovation, to look at our problems anew, to break away from wornout procedures and methods.

Today, I am pleased to introduce, with my colleagues, what I feel to be an innovative response to the regulatory morass in America. This bill establishes the option of regulatory negotiation, a procedure which brings people together to work out sensible regulatory policy.

This bill encourages the formation of regulatory negotiating commissions which would be composed of all interested parties—business, labor, public interest groups—to formulate consensus agreements on what regulatory policy should be for a specific area of mutual interest. The Government's role would be restricted to that of facilitator. Agency representatives would act as observers. They may make suggestions, provide information, but they may not be voting members of the commission.

The measure we are offering today instructs the Administrative Conference of the United States to establish procedures to encourage the voluntary formation of these regulatory negotiation commissions. A special limited fund would be created to cover the costs of bringing the interested parties together and for a mediator that would be selected by the applicants.

Membership in the commission will operate essentially on the basis of self-selection. Individuals and organizations with an identifiable interest in a specific regulatory area can request to form a regulatory negotiating commission. Applications will be approved by the chairman of the Administrative Conference if there is a reasonable likelihood that the applicants can produce a document that will significantly expand the existing areas of consensus for the particular regulatory area involved, and can create a more cooperative environment between major affected parties for the formation of future regulatory policy.

Mr. President, the assumption underlying the formation of these regulatory commissions is that this country will be better off when we can transform the traditional adversary relationship between the various sectors in our economy to cooperative efforts.

This is a theme that I found repeatedly emphasized in the Small Business Committee hearings on economic growth which I chaired. During these hearings, thoughtful observers from all economic sectors suggested that the time is ripe for innovation in labor/management/Government relations. In order to get this country through current economic difficulties, it is time for labor, management, public interest groups, and the Government to work together in a new partnership for the economic growth of America.

I believe the regulatory area is a good place to begin. Our present system of adversary relationships puts business against Government with labor and the public caught in the middle. This adversary relationship often leads to court with the resulting delays and legal costs which we all have to pay for. Each side is forced into taking extreme positions for the purpose of these lawsuits, trust between parties evaporates, the public interest is not served.

It is time, I believe, to break away from these damaging traditions and begin to try new approaches emphasizing the areas of cooperative agreement between parties. In my discussions with leaders from the business, labor and public interest community, I have been impressed with the interest in this new approach of regulatory negotiation. Such experiments have been tried in other areas. The retail food industry has had success with a joint labor management committee, a similar committee has been effective for the men's tailored clothing

industry. The steel industry has set up a tripartite advisory committee, and the construction industry has been working with national and regional coordinating committees.

Mr. President, I asked the Congressional Research Service to review the work of these various tripartite cooperative endeavors and I ask unanimous consent that this report be printed in the RECORD at this time.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

TRIPARTITE COOPERATIVE ENDEAVORS IN LABOR RELATIONS IN THE UNITED STATES

SUMMARY ANALYSIS

Over the past decade, new approaches to deal with complex problems which transcend the traditional collective bargaining system have been developing. These new approaches, however, are complementary and supplementary to collective bargaining. The problems dealt with have an influence on the environment and subject matter of collective bargaining.

Institutionally, the new approaches take the form of a tripartite relationship. With some variations, these tripartite relationships may take the form of either a joint labor-management committee with a neutral chairman, or a committee composed of business, labor and government representatives. The tripartite committees may operate on a regional basis, an industrywide basis or a national basis. Such committees now exist in the retail food industry, the steel industry, the construction industry and the men's tailored clothing industry as well as in several communities on an area-wide basis. Also, within the recent past there had existed a tripartite committee on a national basis in the form of the President's Labor-Management Committee. Tripartite committees for the auto industry and the coal industry are under consideration.

These formal trilateral arrangements involve cooperation among labor, management and the government on a broad range of issues such as regulation (OSHA, EEOC, EPA), training and manpower, foreign competition and trade (impact of imports), productivity, research and development, wage and price restraints, technological change, legislation, and labor-management relations. Through these tripartite mechanisms, the parties deal with long-range problems, the coordination of government regulation, and the development of economic policies. The tripartite groups explore problems of mutual concern, attempt to reach accommodations and arrive at a consensus on possible solutions to problems. In a nutshell, the underlying basis of the new institutional approaches is trilateral problem solving. Consensus is an essential ingredient in the operations of these groups.

None of the existing trilateral endeavors are legislatively mandated. However, the concept of cooperation beyond that of the traditional collective bargaining system has been incorporated in at least two recently enacted laws. Section 6 of Public Law 95-524, Comprehensive Employment and Training Amendments of 1978, encourages the formation of joint labor management committees to work on problems outside the scope of the collective bargaining process and to jointly seek more effective ways of utilizing human resources. Public Law 95-523, the Full Employment and Balanced Growth Act of 1978, directs the Federal government to seek cooperation of businesses, labor and State and local governments to coordinate and utilize all their plans, functions and resources for the purpose of creating and maintaining conditions which promote full employment and production.

An analysis of the history of the present cooperative endeavors reveals that the parties recognized the need for cooperation because of an adverse economic environment (mutual survival); that the parties were agreeable to participating in a cooperative experiment; and that a majority had some previous experience with joint cooperation. In the retail food industry and the construction industry the parties had experience on tripartite committees during the 1971-1974 Economic Stabilization Program.

An analysis of the operations of the committees indicates that the continued viability of the committees depends, in part, on some form of permanent independent staffing or a neutral third party chairman. The staff coordinator or neutral chairman needs to have credibility with both labor and management and a commitment to the concept that cooperation can resolve many of the problems in the industry. Generally, it is believed that, for the continuance of a committee, it is necessary to have strong full time guidance from a chairman who can maintain frequent communication with the committee members and provide long range guidance on the committee's programs and agenda.

Characteristically, the committees generally began their work by collecting data and information from the many and varied sources. One of the first steps in the committees' operations is gaining consensus on the facts. In several instances, the committees have jointly developed research projects to be conducted by independent organizations to provide necessary information for dealing with an issue. For the committees to operate effectively the representatives must have trust in and respect for each other in order to openly discuss sensitive issues. There must be a mutual desire to solve problems. Indications exist that the committees could become perfunctory ceremonial social gatherings unless there is a commitment from all the parties to follow through on the group consensus.

Some feel that to get frank and open discussions they should be off-the-record. It is believed that the absence of a verbatim transcript makes it easier for members to speak freely and to compromise or change positions as a result of discussion. A reason given for the absence of more Federal sponsored tripartite discussions at the national level is legislation (the Federal Advisory Committee Act of 1972) that requires advisory committees to conduct their discussions in public, open to the press and media. The parties demonstrate an apparent reluctance to engage in free open dialogue in a "goldfish bowl".

Generally, the committees have been successful in achieving positive results. However, even on clearly circumscribed problems of immediate concern such as OSHA or EPA regulations, it may take up to a year or longer to gather and agree on the facts, explore alternatives and arrive at a consensus on the resolution. For instance, it took at least nine months of negotiations between the Joint Labor Management Committee of the Retail Food Industry and OSHA to achieve consensus on an acceptable regulation dealing with personal protective equipment in meat departments. But, most importantly, the end result was one the three parties could live with.

A danger which could undermine any efforts to encourage cooperation in resolving economic or labor problems within any sector would be the continuation of concerted anti-union activities or of attempts to erode unions' influence as worker representatives by management. Most labor representatives feel that the broadside attacks on organized labor in recent years works against the prospect of holding worthwhile discussions, much less reach a consensus on problems and solutions. Therefore, for labor and management to join in a mutual quest to help resolve critical economic issues would require a reassessment on the part of industry regarding the campaign directed against unions. Labor representatives withdrew from the National Collective Bargaining Committee in Construction and the President's Labor Management Committee because of the assault directed at labor unions. Of course, businesses have their own undermining fears, namely, that through increased cooperative ventures with labor and Government they lose control, eroding management prerogatives.

JOINT LABOR MANAGEMENT COMMITTEE OF THE RETAIL FOOD INDUSTRY

Factors leading to formation. The parties had served on the Food Industry Wage and Salary Committee during Phase III of the 1971-1974 Economic Stabilization Program.

The parties feared government intervention in the form of new wage controls programs if nothing was done to deal with the problems in the industry

The parties recognized that they had to face accumulated collective bargaining problems in the industry

The parties felt the need to have a forum for continuing dialogue and relationship outside the normal collective bargaining process.

Date formed, April 1974.

Structure: Chairman: Neutral third party; Appointed by consensus of labor and management; serves full time, calls and presides over meetings, prepares agenda with input from the parties, keeps dialogue going in a constructive direction.

Policy level. Executive Committee: Presidents of unions; Chief executive officers of 11 major food chains; meets quarterly; approve work of subgroups; adopts policy statements.

Operational level: Steering Committee: 26 members includes chairman; Chief industrial relations officers of the 12 largest supermarket chains; Top international officers and/or district directors from each union; meets monthly; deals with day-to-day issues.

Subcommittees—on health, safety, equal employment, collective bargaining, technology; to deal with special problems on assignment; to recommend action to full Steering committee; to investigate special overall industry problems.

A FMCS national representative sits as a regular member of the committee and works closely with the committee and chairman on all disputes or threatened disputes in the industry.

Staffing: A small staff along with full time chairman.

Financial support: From the parties individually represented on the committee; and from 2 major trade associations: the National Association of Food Chains and the Super Market Institute.

Participants: Labor representatives: Retail Clerks International Union; Amalgamated Meat Cutters and Butcher Workmen (these two unions merged in 1979 to form the United Food and Commercial Workers); International Brotherhood of Teamsters.

Management representatives: American Stores Company, Acme Markets, Food Fair Stores, Giant Food Stores, Grand Union Stores, Great Atlantic and Pacific Tea Company, Jewel Food Stores, Lucky Stores, Patchmark Division of Supermarket General, Safeway Stores, Stop and Shop Company, and Super Valu Stores.

Goals and functions:

To improve collective bargaining in the industry; to promote long-range stability in the industry; to deal with the complex economic and technological developments in the industry; to encourage open and high level communication on a variety of issues and

problems that face the industry in an increasingly complex economic environment.

The Joint Labor Management Committee for the Retail Food Industry (JLMC) has been viewed by labor relations experts as having some success in reducing the number and length of strikes in the industry. The JLMC has given particular attention to key negotiations in the industry providing assistance to help avoid strikes. The JLMC has also developed criteria for evaluating the reasonableness of collective bargaining settlements.

The JLMC faced a serious problem involving potential litigation over OSHA regulation requirements concerning the use of personal protective equipment in the retail meat departments of supermarkets. Neither the industry nor the unions had been consulted in the formulation of these regulations. Consequently, there was disagreement as to when and how this equipment should be used. Furthermore, OSHA had brought suit to enforce its interpretations. Through the JLMC both labor and management agreed on a common understanding of how the regulation should be applied. With this agreed upon position, the JLMC then negotiated with OSHA on a "clarification" of the regulation. After a nine month period of meetings, inspection trips, and consultations, an acceptable regulation was worked out. The JLMC efforts brought about the withdrawal of the possible costly, time consuming litigation. As a result, the JLMC feels it is in a position where it can in future cases with OSHA, and perhaps with other Federal regulatory agencies, either influence the formation of regulations or work out the appropriate language for the regulations as they are applied.

Another example of JLMC efforts deals with a health issue concerning reports linking employee respiratory problems to conditions and materials present in retail meat departments, specifically the thermal decomposition byproducts from hot wire cutting of polyvinyl chloride (PVC) meat wrapping film. A subcommittee on Health and Safety was established to study the use of PVC soft wrap film in the retail food industry and to develop recommendations for appropriate action, if required. After reviewing the available research on the subject, the joint committee concluded a more thorough scientific study would be helpful. In 1976, with financial support from the Society of the Plastics Industry, the joint committee contracted to have a study done by the Harvard University School of Public Health. The representatives elected to pursue the joint research approach because they recognized that, although a voluntary approach to joint independent research may take a little longer to develop in the short run, it was preferable to legislation and/or legal confrontations which would take years going through the courts. Labor and management representatives decided that jointly developing a plan to provide for the adequate research of an occupational health question under the auspices of a jointly retained university and through a procedure that provides for input by all effected parties was preferable to a case-by-case resolution of an industry-wide issue being decided on an ad hoc basis without the benefit of sufficient factual evidence.

The JLMC also has a subcommittee exploring health and welfare costs. The JLMC approved a study to be carried out in cooperation with the Martin-Segal Company on ways health and welfare costs may be controlled.

JOINT JOB TRAINING AND RESEARCH, INC.

(Men's tailored clothing industry)

Factors leading to formation:

In 1976, the Amalgamated Clothing and Textile Workers Union requested a study of the men's tailored clothing industry be conducted by the Harvard Business School. The study was undertaken with the full cooperation of the Clothing Manufacturers Association.

On the basis of the study, it became apparent to both parties that if the industry were to survive it would take a concerted effort by union and management to make the industry more competitive.

Date formed: 1978.

Structure:

Board of Directors; 3 union representatives; 3 management representatives; administers 2 basic programs:

1. National Training Program.
2. Research and Development.

Participants:

Amalgamated Clothing and Textile Workers Union.

Clothing Manufacturers Association.

Financial support:

For the Research and Development Program—Office of Technical Assistance, Economic Development Administration, Department of Commerce.

Goals and functions:

The National Training Program: to focus on labor productivity, to collect data on the selection, training, and retention of new hires; to have an independent academic evaluation of the data collected; to provide the industry with guidance on how to hire better people, on effective means of training sewing machine operators and on factors important for retaining skilled workers.

The Research and Development Program: to develop techniques and strategies for revitalizing the industry.

The Joint Job Training and Research, Inc., is a nonprofit corporation established by the Amalgamated Clothing and Textile Workers Union and the Clothing Manufacturers Association. The corporation was formed to provide a coordinating mechanism for the several research projects. The major focus is on improving productivity and instituting innovations in the production process. Efforts to reduce the high turnover among the workforce in the industry are expected to improve productivity. The parties have drawn on the resources available from the Department of Labor and the Department of Commerce.

STEEL INDUSTRY TRIPARTITE ADVISORY COMMITTEE

Factors leading to formation:

The 1977 report of the Federal government's Interagency Steel Task Force (the Solomon Report) called for a tripartite study of the steel industry problems.

The Steel Industry Tripartite Committee was set up to carry forward the study of the industry's problems as recommended by the Solomon Report.

Date formed, early 1979.

Structure policy level:

Steel Tripartite Committee:

Secretary of Labor, co-chairman.

Secretary of Commerce, co-chairman.

Secretary of Treasury.

Steel industry representatives (American Iron and Steel Institute).

United Steelworkers Union representatives.

To assess the current state of U.S. steel industry.

To advise Secretaries of Labor and Commerce on issues affecting the industry.

To focus on long term problem solving.

Operational level:

Five tripartite working groups:

1. International Trade.
2. Technology Research and Development.
3. Modernization and Capital Formation.
4. Environmental Protection.
5. Community and Labor Adjustment Assistance.

To develop a clear tripartite picture of the industry's status in these five areas.

To report their conclusions on areas needing action.

To present courses of action which might be considered in addressing the problems identified.

Functions of working group on modernization and capital formation:

Formation: To review the progress and problems of the U.S. steel industry in raising capital for modernization and investment; to evaluate existing or proposed research on capital formation and modernization; to provide policy input on the modernization and capital formation aspects of the proposed assessment of U.S. steel industry and labor.

On environmental protection: To provide a forum for discussing environmental policy issues as they affect the steel industry and the steel unions; to determine the areas of flexibility in regulatory policy affecting the iron and steel industry; to resolve the industry's long-term concerns about environmental protections efforts and their consequences; to improve industry's, labor's and EPA's understanding of mutual problems.

On technological research and development: To conduct a study of the role of R&D and technological innovation in promoting a strong domestic steel industry; to examine the adequacy of Federal R&D funding in the steel industry with specific reference to funding of research on conservation and pollution abatement technology; to evaluate the steel industry R&D venture proposals.

On community and labor adjustment assistance: To monitor and review the impact of policy decisions on steel workers and steel communities; to evaluate existing or proposed research on steel labor and community adjustment assistance problems; to provide policy input on the labor and community adjustment aspects of the Steel Tripartite Advisory Committee's proposed assessment of the U.S. steel industry and labor; to define where the industry stands in terms of labor and community adjustment assistance; to identify with some specificity the problems confronting the industry and labor in this area.

Since its formation in early 1979, the Steel Industry Tripartite Advisory Committee has met three times and deals with national policies. The basic work of the Tripartite Committee is done through tripartite working groups. While the Tripartite Committee is strictly advisory, the Federal representatives will follow up on suggestions accepted by the group. The two cabinet secretaries (co-chairmen) present the concurred upon suggestions from the committee to the President's Economic Policy Group for consideration.

The Working Groups work directly with the agency most involved in the issues under study. For instance, the Deputy Assistant Secretary of Commerce for Productivity, Technology and Innovation participates on the Working Group on Technological Research and Development; the Assistant Secretary of Treasury for Domestic Finance participates on the Working Group on Modernization and Capital Formation; the Assistant Secretary of Commerce for Economic Development and the Deputy Under Secretary of Labor for International Affairs participates on the Working Group on Community and Labor Adjustment Assistance; and the General Counsel of the Environmental Protection Agency participates on the Working Group on Environmental Protection.

While a few initial recommendations have been made to the Tripartite Committee, the Working Groups have spent most of the time to date in pulling together data and reaching agreement on the facts. These groups, however, have identified some specific problem areas and issues for future study. A few concrete results have been achieved.

The Working Group on Community and Labor Adjustment Assistance gave its attention to ways of responding to steel plant closings announced in September 1979. The Working Group recommended that an action-oriented special steel task force coordinate and expedite the adjustment process under the Commerce-Labor Adjustment Action Committee (CLAAC), an existing interagency mechanism designed to deal with labor and community adjustment assistance problems. The reported accomplishments of the special steel task force were: improved flow of information to the field regarding services under unemployment insurance, employment services, CETA programs and trade adjustment assistance (TAA) benefits; speeded up the applications for benefits under the TAA program; encouraged the resolution of short term bottlenecks in the payment of overdue TAA benefits and pressured for revamping the entire Illinois TRA system of payments; helped to draw CETA prime sponsors into the effort to provide training and other services; and led an effort to station four full-time Federal representatives in four of the most seriously affected communities (Departments of Commerce and Labor each paying half the costs).

These Federal officials began work in May 1980 and will serve 3 to 6 months. They are responsible for implementing available assistance programs as quickly as possible. These officials are to act as catalysts to coordinate with the respective governor's office, local elected officials, state and local chambers of commerce, central labor councils, the company and union as well as other appropriate public and private organizations in designating suitable economic adjustments assistance to remedy local adverse conditions. In addition, these officials will assist in bringing together labor, management, local community leaders, the state employment security agency, ETA prime sponsors and others to collaborate in providing job and training opportunities.

The Working Group developed guidelines and plans for use by a special action-oriented task force in addressing any subsequent plant closings. The Working Group intends to analyze fully the success of this experimental undertaking and report its conclusion at a future time. However, the Working Group feels that this concept has the potential to alleviate previously unmet needs thwarting community and labor adjustment.

The Working Group on Environmental Protection devoted most of their time discussing the replacement-in-kind issue. This involved an examination of the merits of exempting replacement-in-kind facilities (a new facility replacing an existing facility of the same type with no increase in capacity or emissions) from EPA's new source requirements such as lowest achievable emission rate and statewide compliance. As a result of these discussions, EPA developed an understanding of industry's case to an extent that it had not previously been able to. Consequently, EPA is seriously reconsidering its replacement-in-kind policy.

The Environmental Protection group has also initiated discussions on such topics as options available to marginal facilities; the effluent limitation guidelines for water pollution control in the iron and steel industry; the bubble concept, which is a policy designed to increase the flexibility that steel companies have to control emissions; and the criteria document for particulate standards, which represents the first step toward revising these standards.

COMMUNITY AREA-WIDE LABOR-MANAGEMENT COMMITTEES

Factors leading to formation:

The area was suffering economic problems resulting from a long-term trend of declining industry, plant closures, high unemployment and history of labor strife.

Committee formation was often triggered by a crisis.

In at least four instances the mayor of the city was the prime mover in getting the committee started.

Date formed:

There are about two dozen area-wide joint committees. A few examples are:

1946—Louisville, Ky.
1972—Jamestown, N.Y.
1975—Evansville, Ind.
1975—Cumberland, Md.
1975—Buffalo-Erie County, N.Y.
1976—Chemung County, N.Y.
1976—Springfield City, Ohio
1976—Clinton County, Ohio

Structure:

Full Committee:

Chairman—alternates between the parties.

Equal number of labor and management representatives selected by their own respective groups.

Agenda developed jointly.

Executive Board—determines the priorities and activities of the committee; may have public and/or government representatives; may establish working subgroups or study groups.

Staff:

Coordinators/directors; employed full or part-time.

Financial support: Partial Federal funding from such agencies as CETA, Appalachian Regional Commission, Economic Development Administration.

Goals and functions:

To work jointly to solve mutual problems; to open channels of communication between labor and management; to improve labor-management relations; to dispel a "poor labor image" of the area; to improve labor relations climate and human resources management; to establish plant level labor-management committees to improve cooperation and productivity; to stimulate industrial growth and development; to reduce the level or degree to which industry was leaving the area; to establish an environment conducive to industrial retention, economic development and increased employment opportunities; to coordinate efforts in manpower training and placement of unemployed workers.

Although community area labor-management committees date back to 1946, it has only been within the past five or six years that they have gained momentum. In 1978, the directors of 15 area labor-management committees formed the National Association of Area Labor-Management Committees. The purpose of the national association is to provide direct assistance to communities interested in organizing an area labor-management committee and to be a resource center for the exchange of information among existing committees.

Existing communitywide labor-management committees share the characteristic of being concerned primarily with relations between companies and unionized employees.

Most committees, especially those established in recent years, attempt to work closely with local governments while at the same time maintaining their independent identity. It is felt that some degree of separation from local government makes the committee less vulnerable to political changes in the community. According to participants, it ensures that the committee will be seen as a community effort by labor and management rather than as a program developed and dominated by local government. There are, however, exceptions. For instance, the Louisville committee is a formal part of the city government.

Evaluations of these areawide committees generally indicate that they are demonstrating a degree of success in achieving their goals. For example, the Buffalo-Erie County Labor-Management Council claims that it has significantly contributed to reversing the depressed economic situation in that area. Since its formation in 1976, the acclaimed accomplishments include increasing employment by 10 percent, reducing the area's unemployment rate to its lowest level in a decade, decreasing each year the working time lost due to strikes, and establishing a unified coordinated approach to the area's economic development. The Council suggested to the city and the county an organizational structure which would place all economic development agencies under one umbrella. Over an 18 month period, the recommendation went through a negotiations process which involved all the agencies concerned, all local political leaders and the state legislature. The end result was a broad based Erie County Industrial Development Agency with the co-chairmen of the Labor-Management Council serving as chairman and vice-president.

The Cumberland Area Labor-Management Committee has effectively lobbied against heavy-handed enforcement of environmental regulations impacting on local industry. In 1978, the EPA pressed to enforce a new standard it had recently developed on a local paper company. The EPA took this action without talking to anyone prior to enforcement and without giving cognizance to the fact that the company had been working with the state agency. The management and the union of the company requested help from the Cumberland Area Committee who, in turn, contacted their congressional representatives. Because the request for assistance in the situation came jointly from labor and management it received prompt attention and subsequently obtained satisfactory results.

NATIONAL COLLECTIVE BARGAINING COMMITTEE IN CONSTRUCTION

Factors leading to formation:

There was need to deal with an unstable collective bargaining situation in the construction industry.

There had been previous tripartite committees in construction: the Construction Industry Bargaining Committee established in 1969 by E.O. 11482 and its replacement, the Construction Industry Stabilization Committee established in 1971 by E.O. 11588 which was abolished at the end of the wage and price control program in 1974.

Through this experience, the national labor organizations and national contractor associations were prepared to participate and work on the industry's problems.

The general industry feeling that a federally established construction bargaining unit was necessary because of the large wage settlements and strike activity since the wage controls ended in 1974.

Date formed:

November 1974: Interim committee established by the Secretary of Labor.

April 1975: Formally established by Presidential Executive Order 11849.

Terminated:

January 1976: Became inoperative when labor leaders resigned over presidential veto of common situs picketing bill.

Structure:

Secretary of Labor, chairman; Director, Federal Mediation and Conciliation Service; 10 labor members; 10 management members.

To make recommendation to the Economic Policy Group and the President; to make periodic reports to the President; meet at least twice a month: technically a unit of the President's Labor-Management Committee created by E.O. 11809 (see p. 26); appointments made by the President.

Participants:

National union presidents of the:

Building and Construction Trades Dept., AFL-CIO.

Sheet Metal Workers.

International Brotherhood of Teamsters.

Laborer's International Union.

Bridge, Structural and Ornamental Iron Workers.

International Brotherhood of Electrical Workers.

Painters and Allied Trades.

United Brotherhood of Carpenters.

Plumbers and Pipe Fitters.

International Union of Operating Engineers.

Management Representatives from:

Contractors Mutual Association.

National Electrical Contractors Association Inc.

Mechanical Contractors Association of America.

Mason Contractors Association of America.

National Constructors Association.

National Associations of Home Builders.

Bechtel Corporation, San Francisco, Calif.

Associated General Contractors of America, Inc.

Council of Construction Employers, Inc.

The Volpe Construction Co., Inc., Malden, Mass.

Goals and functions:

To facilitate the collective bargaining process at local and area levels; to assist in providing a data bank on wage and benefit information; to encourage peaceful negotiation of responsible local and area agreements; to facilitate local coordinated bargaining and larger area bargaining wherever appropriate; to seek to resolve particular disputes that cannot otherwise be reasonably resolved; to review and analyze construction manpower including regional requirements and availability of skills, effectiveness of training programs, and to maintain a central data bank; to consider measures to reduce the instability of demand for construction labor; to consider measures to increase productivity in the industry; to consider problems arising from the activities of separate Federal government agencies as they affect the construction industry; to encourage the establishment of joint regional or local area committees; to consider long term developments in the industry and to develop appropriate policies in the national interest.

Since the late 1960s, there has been joint participation of management and labor in the construction industry on various national tripartite committees. The National Collective Bargaining Committee in Construction developed principles and procedures designed to resolve collective bargaining disputes in the industry. By unanimous endorsement, they were incorporated in the Construction Collective Act of 1975, Title II of the construction industry bill vetoed by the President because it was linked with the easing of common situs picketing restrictions. This veto led the union members to walk off the committee.

This committee believed that a coordinating committee of Federal government agencies was necessary to facilitate relations with the Federal government on many matters, to coordinate diverse activities, and to simplify communication and discussion of policy issues. In 1979 the Department of Labor established an office of construction.

Although the national committee is defunct, labor and management in the industry continue to work cooperatively in many areas. For example, in 1978, representatives of the contractors associations and the building trade unions formed a Joint Construction Industry Safety Committee to push for the creation of a single safety standard for the construction industry.

REGIONAL CONSTRUCTION COORDINATING COMMITTEES

Factors leading:

The idea of regional construction coordinating committees emanated from the Subcommittee on Seasonality of the Construction Industry Collective Bargaining Commission in 1971.

A mechanism was needed to explore ways of countering seasonal unemployment in construction and improving productivity.

Date formed:

1973—Chicago.

1978—Kansas City.

1978—San Francisco.

1979—Boston.

1980—Denver.

Structure:

25–35 members officially appointed by the Secretary of Labor—organized labor; management—contractors, architects, and engineers; government—Federal, State, and local; subcommittees may be given special assignments; monthly meetings; meetings are open to the public with as many as 100 persons from business, labor, banking, various associations and the press attending.

National coordination:

In February 1979, the Office of Construction Industry Services, Labor Management Services Administration (LMSA), Department of Labor, was established.

Staff:

A director is employed for each regional committee.

To provide supportive services.

To act as a facilitator.

To prepare reports related to the construction industry with the assistance from members.

Financial support:

Since 1976, LMSA has provided the financial support.

Five different Federal agencies have provided the source of funds for the Chicago committee.

Goals and functions:

To reduce seasonal unemployment and the need for unemployment insurance; to encourage inter- and intra-agency coordination in planning construction; to modify government practices that raise the cost of public construction; to explore ways to promote industry and government regulations which could enhance industry productivity; to encourage more efficient use of capital; to reduce inflationary seasonal demand for labor and materials; to stimulate use of cold weather building technology and nontraditional materials; to relate job training to industry requirements.

An evaluation of the Chicago Construction Coordinating Committee (CCCC) was done by a private research firm.[1] One of the study's major findings was that the CCCC greatly improved the interaction among the various groups involved in construction. The CCCC brought together representatives of different Federal agencies involved in construction. Previously, there was no mechanism for coordinating construction activities among Federal agencies. According to the study the interaction between government agencies and industry representatives resulted in improved coordination, application and enforcement of government regulations.

Also, according to the study, the CCCC has contributed to "a new, and evidently more efficient, system or framework for problem solving and conflict resolution," CCCC meetings have created a network of personal contacts which provides significant opportunities for members to deal with problems in a non-adversary, cooperative manner. The CCCC meetings also served a vital communication function whereby different viewpoints can be aired publicly among representatives from different segments of the construction industry.

The regular attendance at meetings by prominent individuals at decision-making levels had the dual effect of setting an example for other participants and establishing a reputation for the CCCC operations.

The Committee has been used as a "unified voice" to communicate industry concerns to national policy makers.

Members interviewed for the study indicated that (1) representatives of both industry and government were much better informed as a result of their participation in the CCCC; (2) all groups had a better understanding of the different perspectives and positions of labor, management and government, and (3) CCCC participants became integrated into the Committee's extensive system of personal contacts. In sum, it was felt that these factors have enabled the individuals to perform their own jobs more efficiently.

Factors contributing to the success of the committee, according to the study, included: (1) the staff was responsive to the needs of the members and receptive to suggestions; (2) the meetings were efficiently run and beneficial to all members; and (3) the issues discussed were relevant and timely. It was claimed that the impact of the committee, while not directly verifiable, included reducing the level of construction wage increases in Chicago (during the past four years has been lower than the national average); and keeping the level of increase in construction material prices lower in Chicago than in the nation as a whole.

PRESIDENT'S LABOR-MANAGEMENT COMMITTEE

Factors leading to formation:

This committee was established as follow up action flowing from the President Ford's "summit" Conference on Inflation held in September 1974.

Date formed:

September 1974, by Executive Order 11809.

Terminated:

August 1978, by resignation of labor members because of business's posture on labor law reform along with other anti-union activities by employers.

Structure:

A neutral coordinator; 8 labor leaders; 8 chief executive officers from management appointment by the President.

Participants:

Union presidents selected from:

AFL–CIO, Amalgamated Clothing and Textile Workers, International Brotherhood of Teamsters, Seafarers International Union, United Steelworkers, Plumbing and Pipe Fitting, United Autoworkers, United Mine Workers, and secretary-treasurer, AFL–CIO.

Company chairmen selected from:

Bechtel Corp., General Electric Corp., General Motors Corp., Jewel Companies, Inc., E.I. duPont de Nemours & Co., U.S. Steel Corp., Mobil Oil Corp., First National City Bank, Sears, Roebuck & Co., Aluminum Corp. of America, and Citicorp.

Goals and functions:

To study, to advise, and to make recommendations with respect to policies that may be followed by labor, management, or the public which will promote free and responsible collective bargaining, industrial peace, sound wage and price policies, higher standards of living, increased productivity, and related manpower policies, and such other matters which could contribute to the longer-run economic well-being of the Nation.

To encourage the establishment of labor-management committees, bipartite or tripartite, in particular sectors or industries as may be appropriate.

The President's Labor-Management Committee was formally a part of the White House hierarchy. Its coordinator was John T. Dunlop, former Secretary of Labor, who played a crucial role in setting the committee agenda and in directing research for its various initiatives. Both parties viewed his services to the committee as "indispensable." When Dunlop resigned from the Cabinet in February 1976, the committee became temporarily dormant. After a brief interim, some of the committee members conferred and agreed to continue the committee on a private basis reconstituting as the Labor-Management Group, again with Dunlop as coordinator. The group declined to become a

[1] CSR, Inc., Evaluation of the Chicago Coordinating Committee Project, Executive summary, March 1979, p. 25–26.

Presidential committee because they were concerned, among other considerations, about pressures from Ralph Nader to force them to conduct their meetings publicly. The informal private Labor-Management Group, chaired by the President of the AFL–CIO and the chairman of the General Electric Corp., expressed a willingness, however, to cooperate in a voluntary, non-official manner with the President on a broad range of economic policy issues. The Group met frequently with members of the Cabinet and Presidential advisors at the Group's meeting place.

In the Spring of 1978, the sessions with the administration officials were terminated because of the Nader-sponsored threat to force the meeting to be held in public. The Group continued to perform until August 1978 when the labor members withdrew because of the business executives posture on labor law reform.

Although organized labor terminated its participation in this high level labor-management group, its work and functions had been viewed favorably by both parties. The committee's recommendations were claimed to have had a significant impact in policy discussions and their principles generally accepted. President Ford sat in on the discussions. These discussions were claimed to constitute the most realistic briefing the President received on the economy. Some believe the President's participation in the meetings to be the most important factor in the committee's effectiveness. Some maintain that the committee's influence depended to a great extent on its ability to get the regular attention of the President and on its maintenance of a low profile. The committee members felt they could serve the President most frankly and freely in a sort of private forum.

There was a degree of follow up on the committee's recommendations which had been a serious deficiency in previous Presidential committees. Extremely touchy issues on the part of either side generally were laid aside rather than allowed to become a stumbling block to discussion of other important issues.

According to some observers, the committee's discussions benefited from the absence of a panel of public members in that the free-flow of exchange was facilitated by not having public members commanding equal time.

In general, labor and management members showed respect for each others ability and know-how. Both parties gained a deeper understanding of their respective problems.

Mr. STEWART. Mr. President, I urge my colleagues to review this material and to support this new, cooperative approach to regulatory policymaking. I believe the commission concept has exciting potential as part of the revitalization of our economic system. Certainly, in times of challenge, we can and must be open to new ideas and procedures. The regulatory negotiation commissions may provide just the innovative alternative to redirect our energies along more positive and constructive lines.●

By Mr. DOLE:

S. 3127. A bill to amend the "Presidential Election Campaign Fund Act" regarding a Presidential candidate refusing to debate; to the Committee on Finance.

PRESIDENTIAL DEBATE: FAIR ACCESS AND INFORMATION AMENDMENT

● Mr. DOLE. Mr. President, the Federal Election Campaign Act of 1974 is predicated upon maximizing the public nature of elections. It is this underlying reality which some have used to justify the payment of public funds to private citizens and public officials alike who choose to run for elective Federal office.

This year the price tag for federally controlled elections will be $29.4 million to each of the major party candidates, and it has been announced by the FEC that Independent candidate JOHN ANDERSON may be eligible to receive an as yet undetermined amount based upon his showing in the November election.

The public character of the elective process is equally evident in the regulations and statutes which control the political use of the so-called electronic media. It is the essence of the political process which dictates our use of both financial and media reports.

Mr. President, the bedrock of these considerations is the public's right to fair participation in and fair access to the information necessary to form judgments on whom to support and vote for in an election. The usual complaint by candidates is that the Federal Election Campaign Act of 1974 and the FCC controls regarding equal time are too restrictive. Candidates always want more money and more air time.

Today, however, we are faced with a different situation. The various major Presidential candidates have been presented with the opportunity to openly state their views before a nationwide audience in a debate format. It is to the credit of the League of Women Voters that they have provided this forum which has become almost an institutionalized part of our electoral process.

Despite the fact that his accession to the Presidency was materially assisted by the existence of FECA funds, Mr. Carter now wishes to change the rules and the basic philosophical thrust of the purposes of the FECA and FCC laws. His refusal to debate both Governor Reagan and Congressman Anderson is defrauding to the taxpayer who funds the FECA on the assumption he is going to be informed by the candidates.

Up until now, all the legislative and regulatory concern has been on equalizing the candidates' access to those benefits, rather than on what the public receives for its financial contribution to the electoral process. Neither the legislator nor the regulator has considered the case of the hide-away candidate. One might think that as President there is no need to fund his access to the voter. However, there are two problems with this: First, the law contemplates giving identical sums to both challenger and incumbent alike; and second, nobody ever contemplated that the Presidential portion of FEC funds would be a rose garden fund to keep the President from public view.

Perhaps because of challenges within his own party, or perhaps because of what the last 3½ years have produced in this country, the President has begun to disappear from public view. When Jimmy Carter took office as President he promised to hold bimonthly press conferences. As evidenced by the numbers, President Carter's promise was not kept. To date Mr. Carter has held 58 press conferences but, more importantly, he has held only 5 since January 1, 1980.

THE ROSE GARDEN FUND

The candidate is given the taxpayers' money in order to provide him a fair chance to tell the electorate who he is and for what he stands. Neither this Senator nor any of his colleagues ever conceived that a Presidential candidate could use 29.4 million taxpayer dollars to hide himself from those very voters he wishes to serve.

If, in fact, we are committed to the idea that information is the life blood of the political process, then we must amend the Federal Election Campaign Act of 1974 to guarantee that candidates for the office of President must utilize the public funds provided to them to inform the electorate or suffer an appropriate penalty. It is in this context that I have proposed that a candidate refusing debate under controlled circumstances should lose his claim on the money of those whom he refuses to inform.

There is certainly no wrong done to a person who takes millions of taxpayers' dollars to send his message to his constituents in taking away his money if it is not used for the purpose given. Our political evolution must be toward sunshine in politics, not back to the political game and secret operations of a bygone day.

When the President takes millions from the taxpayer to finance his own voting activities, he necessarily undertakes a trust to be sure that that money is well spent. We in the Senate are charged with the responsibility of insuring that that trust not be compromised, either willingly or unwillingly. Public funds are not well spent by a candidate who fails to take his opportunity to let everyone know where he stands on issues of the day, regardless of the impact he personally feels such a public airing may have on his own political future.●

By Mr. BELLMON (for himself and Mr. BOREN):

S. 3128. A bill to remove certain lands from the Wichita Mountains Wildlife Refuge, Okla.; to the Committee on Environment and Public Works.

WICHITA MOUNTAINS WILDLIFE REFUGE

● Mr. BELLMON. Mr. President, I am today introducing a bill coauthored by my colleague, Senator BOREN, which is intended to solve a potentially difficult situation which has developed in connection with a portion of the lands of the Wichita Mountain Wildlife Refuge near Lawton, Okla. An identical bill is being introduced by members of the Oklahoma Congressional Delegation on the House side.

Mr. President, the problem is that 45 years ago improvements which have come to be known as the "Holy City" were constructed by the WPA under the administration of President Franklin D. Roosevelt for use in an Easter pageant. This pageant has continued over this lengthy span of time and now draws 15,000 or more persons each year for the sunrise ceremonies which are conducted

on Easter morning. In recent weeks an organization has announced plans to file a legal action challenging the constitutionality of using Federal lands for a religious activity. The Secretary of Interior has made a determination that as long as a property is open to the public the existing structures may remain but this decision is also under challenge. If the challenge succeeds the Government may be required to destroy these structures.

I believe and I feel my colleague, Senator BOREN, agrees, that the conveyance of this tract of land to the Wichita Mountain Association, a legal nonprofit organization, is the best solution to this problem. The legislation which I am introducing would transfer the title to this organization with the caveat that ownership would return to the Federal Government at any time the lands are no longer used for public purposes.

Mr. President, the transfer of this 90-acre tract will not seriously or even appreciably damage the value of the Wichita Mountain Wildlife Refuge. The refuge consists of 59,019 acres and the tract being transferred is so situated that its transfer out of the refuge will not interfere with access to the refuge, its management or use by the public.

I strongly urge prompt affirmative action on this legislation as the best solution to a difficult problem.●

● Mr. BOREN. Mr. President, I am pleased today to cosponsor legislation offered by my distinguished colleague from Oklahoma, Senator Bellmon, which directs the Secretary of the Interior to convey 90 acres of land—part of the Wichita Mountains Wildlife Refuge near Lawton, Okla.—to the Wichita Mountains Easter Sunrise Service Association.

This land may be held as long as it continues to be used for public recreational and cultural activities. In the event that lands are no longer used for these purposes, title will revert back to the U.S. Government to be administered as part of the National Wildlife Refuge System.

This land has been used for almost 50 years as the site of a nationally-known Easter sunrise service. This service is part of a rich historical and cultural heritage which is cherished by Oklahomans and the tens of thousands of out-of-State visitors who travel to the Lawton, Okla., area each year to view the pageant.

This legislation is necessary to assure that the site is maintained as the location of this famous Easter spectacle.

The Wichita Mountains Easter sunrise service was started by the Reverend Anthony Mark Wallock in 1926 at a different site in the Wichita Mountains. The site was moved in 1933 because the over 20,000 persons who attended could not be accommodated at the smaller location.

From its inception, the pageant has operated by the policy that the service would always be nonsectarian and open to all persons.

When it became necessary to move the site, citizens of Lawton and nearby communities joined with the local Chamber of Commerce and officials in State government to secure Federal assistance. First, authority was granted by the U.S. Department of Agriculture for use of about 160 acres of land which was then part of the Wichita National Forest. Later, in 1936, the Bureau of Biological Survey of USDA took over control of the land which included "the Holy City," as it was referred to in WPA files.

At still a later date, the entire area of land became known as the Wichita Mountains Wildlife Refuge and was operated by the Bureau of Sport Fisheries and Wildlife, part of the Fish and Wildlife Service of the U.S. Department of the Interior.

A Federal grant of $13,000 was provided to make the site ready and to move props to the new location. Then, U.S. Senator Elmer Thomas and U.S. Representative Jed Johnson went to President Franklin D. Roosevelt with correspondence and resolutions from all of Oklahoma's major cities in an attempt to convince him that the pageant constituted a rich historical event for Oklahomans and all Americans.

A grant of $94,000 from Federal funds was unconditionally set aside for the pageant. It was handled through the Lawton Chamber of Commerce since no organization representing the service had been incorporated up to that time.

The WPA completed buildings on the grounds of the "Holy City." A ceremony to celebrate their completion and to dedicate the facilities was held on March 31, 1935.

By this time, the Wichita Mountains Easter Sunrise Association had been incorporated. On December 15, 1936, the association accepted the release of the buildings and improvements from the WPA, accepting full responsibility for maintenance and operation of these facilities.

Several important changes were made in 1938, the year in which over 180,000 people attended and heard Senator Thomas read a personal message from President Franklin D. Roosevelt. Because of the early arrival of so many worshippers, the performance was changed into an all-night service.

Audiences continued to grow. Special buses and trains brought spectators from all directions. In 1939, 30 large buses were used to take visitors out to the "Holy City."

The entire 1939 service, as well as the one in 1940, was broadcast by CBS.

The Reverend Wallock died in 1948, and the pageant was turned over to codirectors who continued the tradition.

Directors have included George Hutchins, Jimmy Hysaw, The Reverend Lambert Orton, Jack Batten, J. O. Smith, Craig Pierson, Dave Sandstrom, Col. Jack Rhodes, Millard Coody, Wes Miller and L. A. Ellis.

It was Reverend Wallock's lifelong dream that a statue of Christ be erected as part of the Holy City site. Children of the area were asked to donate pennies toward a fund for this purpose.

In 1970, the association began a new drive to secure funds for the statue. The fund was started with the money which had been saved from children's pennies. Dedication of the statue was held on November 9, 1975.

All funds used to operate the pageant are donated by private sources.

Mr. President, this Easter sunrise service means a great deal to all Oklahomans and to visitors who attend every year. For many years, the pageant has operated on a use permit granted by the U.S. Department of the Interior. This legislation would provide the association with the assurance that lands on which the Holy City is located could be retained. It offers a degree of certainty to pageant supporters which they have not had up until this time.

I urge my colleagues to join me in supporting this bill.●

ADDITIONAL COSPONSORS

S. 1638

At the request of Mr. ROTH, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 1638, a bill to amend the Internal Revenue Code of 1954 to provide for the amortization of start-up expenditures paid or incurred in starting a new trade or business.

S. 2392

At the request of Mr. LUGAR, the Senator from Alabama (Mr. STEWART) was added as a cosponsor of S. 2392, a bill to repeal the Federal requirement of incremental pricing under the Natural Gas Policy Act of 1978.

S. 2581

At the request of Mr. CHURCH, the Senator from New Hampshire (Mr. DURKIN), and the Senator from Arkansas (Mr. BUMPERS) were added as cosponsors of S. 2581, a bill to amend title 5 of the United States Code and the Internal Revenue Code of 1954 to provide certain benefits to individuals held hostage in Iran and to similarly situated individuals.

S. 3012

At the request of Mr. WILLIAMS, the Senator from Vermont (Mr. LEAHY), and the Senator from New Hampshire (Mr. DURKIN) were added as cosponsors of S. 3012, a bill to amend the Internal Revenue Code of 1954 to eliminate the requirement that the States reduce the amount of unemployment compensation payable for any week by the amount of certain retirement benefits, and for other purposes.

SENATE JOINT RESOLUTION 121

At the request of Mr. ROTH, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of Senate Joint Resolution 121, a joint resolution calling for a constitutional amendment allowing voluntary prayer in public schools.

SENATE JOINT RESOLUTION 176

At the request of Mr. INOUYE, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of Senate Joint Resolution 176, a joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week," and for other purposes.

SENATE JOINT RESOLUTION 197

At the request of Mr. MOYNIHAN, the Senator from Washington (Mr. JACKSON), the Senator from New Jersey (Mr. BRADLEY), the Senator from Mississippi (Mr. COCHRAN), the Senator from Tennessee (Mr. BAKER), the Senator from South Carolina (Mr. THURMOND), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Vermont (Mr. LEAHY), the Senator from Illinois (Mr. STEVENSON), the Senator from Indiana (Mr. LUGAR), the Senator from Maryland (Mr. MATHIAS), and the Senator from New York (Mr. JAVITS) were added as cosponsors of Senate Joint Resolution 197, a joint resolution to authorise and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day."

SENATE RESOLUTION 522—ORIGINAL RESOLUTION REPORTED TO WAIVE BUDGET ACT

Mr. MELCHER, from the Select Committee on Indian Affairs reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 522

Resolved, That Section 402(a) of the Congressional Budget Act of 1974, is waived with respect to S. 2829. Such waiver is necessary because S. 2829 authorizes the enactment of new authority which would first become available in fiscal year 1981, and such was not reported on or before May 15, 1980 as required by section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

Compliance with section 402(a) of the Congressional Budget Act of 1974 was not possible in this instance because S. 2829 embodies a negotiated settlement and negotiations were not initially concluded until March 14, 1980. A companion piece of legislation, the Maine Implementing Act, then had to be enacted by the Maine State Legislature. Finally, negotiations were not concluded on the S. 2829 until shortly before it was presented to the Senate Select Committee on Indian Affairs to be reported on September 16, 1980.

The effect of defeating consideration of this authorization would be to endanger the entire settlement by substantially increasing the possibility that option contracts on lands to be purchased to fulfill the purposes of S. 2829 and which are due to expire at the end of 1980 or by June of 1981, will expire. It will also complicate the ability of the Department of the Interior to acquire lands necessary to effect the terms of S. 2829 by the January 1, 1983 deadline contained in the Maine Implementing Act.

SENATE RESOLUTION 523—RESOLUTION SUBMITTED TO DESIGNATE "NATIONAL PRODUCTIVITY IMPROVEMENT WEEK"

Mr. NUNN (for himself, Mr. BENTSEN, Mr. CHILES, Mr. TOWER, Mr. HEFLIN, Mr. GRAVEL, Mr. PERCY, Mr. HATFIELD, Mr. FORD, Mr. DURENBERGER, Mr. THURMOND, Mr. GOLDWATER, Mr. RANDOLPH, Mr. SCHMITT, Mr. TALMADGE, Mr. HUDDLESTON, Mr. MORGAN, Mr. JEPSEN, Mr. ZORINSKY, Mr. RIBICOFF, Mr. JAVITS, Mr. NELSON, Mr. HELMS, Mr. STEWART, Mr. LEVIN, Mr. PELL, Mr. CRANSTON, Mr. BAUCUS, and Mr. HOLLINGS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 523

Whereas inflation continues to present a serious threat to the economic fabric of the United States of America;

Whereas the deterioration of the economic well-being of the United States brings with it a lessening of the standard of living and quality of life for all American citizens, and endangers the national security;

Whereas increases in the rate of productivity in industry, business and government have been shown to have a significant influence in reducing inflation; and

Whereas the United States continues to experience an alarming slowdown in productivity growth: now, therefore, be it

Resolved that it is the sense of the Senate that the President of the United States by proclamation designate the week of October 6 through October 12, 1980, to be "National Productivity Improvement Week," for the purpose of providing for a better understanding of the debilitating effects of stagnating productivity on the economic well-being of the United States, for an increased public awareness of the potential for significantly reduced inflation offered by productivity growth, and for encouraging the development of methods to improve individual and collective productivity in the public and private sectors.

● Mr. NUNN. Mr. President, last year we passed Senate Resolution 248, designating the week of October 1 through October 7, 1979, as "National Productivity Improvement Week." The importance of providing a better understanding of the debilitating effects of stagnating productivity on the economic well-being of the United States is, if possible, even more important this year in light of our continuing inflationary crisis. For this reason, I am pleased to submit this resolution designating the week of October 6 through October 12 as "National Productivity Improvement Week for 1980."

Our Nation's dramatic decline in productivity growth has continued throughout 1980. During the second quarter of this year, productivity in the private business sector declined at an annual rate of 1.9 percent. Of the last nine quarters, this is the sixth in which a decline has been reported. While alarming, this decline is even more extreme for the manufacturing sector, where, for the second quarter of 1980, the annual rate was a shocking 4.5 percent.

As you may know, without labor productivity gains, increases in hourly wages must inflate unit labor costs. During the second quarter of the current year, unit labor costs in manufacturing rose at an annual rate of 20.7 percent. If productivity had been improving rather than declining in this sector, this increase could have been significantly less.

Simply put, productivity growth can reduce inflation. Not only can it help to wind down the wage-price spiral, but it can also serve to improve the security of American jobs. At a time when unemployment is on the rise, and efforts are being made to stimulate jobs creation, the retention of existing jobs must also be encouraged. Unfortunately, over the past 10 years, declining U.S. competitiveness has cost an estimated $125 billion in lost production and more than 2 million industrial jobs. This is directly related to the fact that, while American productivity growth has declined since 1967, our foreign competitors, such as Germany and Japan, have consistently attained average productivity gains at least three or four times that of the United States.

There are numerous ways in which productivity growth may be encouraged, such as increased rates of capital investment, reduced energy costs, and improved research and development efforts. Any successful solution to our productivity crisis, however, will require a clear appreciation of both the serious effects of declining productivity, as well as the potential that a reversal of this trend holds for significantly reducing the double-digit inflation that currently grips our economy.

Mr. President, I am therefore pleased to note that once again the American Institute of Industrial Engineers, whose members are actively engaged in management of plant design and engineering, systems engineering, production and quality, energy conservation, performance and operations standards, and material flow system and operation research, has launched a public information campaign to promote a better understanding of the critical aspects of productivity improvement. Efforts such as these are to be commended and encouraged, and I am pleased to join in the cosponsorship of this resolution designating October 6 through 12, 1980, as "National Productivity Improvement Week." I am hopeful that the Senate will act expeditiously on this resolution.●

AMENDMENTS SUBMITTED FOR PRINTING

PRIVACY ACT AMENDMENTS OF 1980—S. 503 SEC AUTHORIZATIONS—S. 2465

AMENDMENT NO. 2343

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted an amendment intended to be proposed by him to S. 503, a bill to amend the Privacy Act of 1974 to provide for the confidentiality of medical records, and for other purposes.

AMENDMENT NO. 2344

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted an amendment intended to be proposed by him to S. 2465, a bill to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1981 through 1983.

● Mr. WEICKER. Mr. President, I intend to offer, at the appropriate time, an amendment which would give businesses that are the subject of commercial credit reports the same basic rights presently enjoyed by individuals. This amendment will incorporate the provisions of S. 2359, the Fair Commercial Reporting Practices Act of 1980, which I introduced on February 28, 1980.

Louis D. Brandeis, as early as 1890, recognized the need to protect and preserve the right to privacy. He noted that:

Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery . . . Even gossip apparently harmless, when widely and persistently circulated, is potent for evil. It both belittles and perverts.

These words, in a free society such as ours, ring as true today as they did in 1890.

The right to privacy, which has been recognized as an inalienable right by the courts and buttressed by Congress through legislation, is not forfeited once a person goes into business. Unauthorized intrusions into the financial affairs of businesses by either Government or private enterprise are not only morally repugnant but also place businesses—particularly small businesses—at a disadvantage, in dealing with competitors, suppliers, and customers.

In 1977, the Privacy Protection Study Commission, after devoting 2 years to examining individual privacy rights and recordkeeping practices in many environments concluded that "the impact of commercial credit decisions on individuals is particularly acute when the business seeking credit is a partnership, sole proprietorship, or closely held corporation". The Commission recommended that since commercial reporting practices have a significant impact on business entities with which individuals are associated, further investigation and study in this area should be conducted.

Accordingly, the Select Committee on Small Business held 2 days of hearings earlier this Congress to review the impact of commercial reporting practices on small businesses. All witnesses, except for the commercial reporting agencies, testified that legislation is essential to protect the rights of businesses which, unlike individuals, have no statutory protection when victimized by inaccurate credit reports.

Complaints elicited during the hearings concerned the inaccuracy of credit reports, the use of outdated and obsolete information, the delay and unresponsiveness of reporting agencies in resolving complaints and the inability of businesses to discover and confront the sources of erroneous information. It was also learned that a business may be penalized for refusing to cooperate with the commercial reporting agency simply because the business has chosen not to provide information to the agency for indiscriminate dissemination.

The abuses depicted by witnesses during the hearings leave no doubt that legislation is needed to insure that commercial reporting agencies exercise their responsibilities with fairness, accuracy and a respect for a business' right to privacy. This will insure that commercial reporting agencies minimize the extent to which information about a business is a source of error or unfairness in any credit decision based on that information.

The amendment that I intend to offer would define fundamental obligations concerning the uses that can be made of information about a business or its representatives. It would require commercial reporting agencies to adopt "reasonable procedures" to insure the confidentiality, accuracy, and proper utilization of the information it reports.

The FTC will have no role to play in administering the provisions of the amendment. No new bureaucracy will be necessary to insure that the interest of small businesses are properly protected.

My amendment would provide that:

First: When a business is denied credit because of information in a commercial credit report, the user of the report must notify the subject of the report in writing that credit has been denied based on the report, provide the name, address, and telephone number of the commercial reporting agency supplying the report and notify the business of its right to obtain a copy of and correct the report.

Second: Upon request and proper identification, the commercial reporting agency must:

Clearly and accurately disclose to the business all information in its files on the business at the time of the request;

Permit the business to examine and copy any such information;

Clearly and accurately disclose to the business the sources of the information; and

Disclose to the business the names of all recipients of the commercial report which the agency has furnished for any purpose within the 6 month period proceeding the request.

Third: When the completeness or accuracy of any item of information in a business' file is questioned, the commercial reporting agency must reinvestigate the accuracy of the information within a reasonable time and if the reinvestigation does not resolve the dispute, the business is entitled to file a brief statement of disagreement.

Fourth: If inaccurate information has been deleted, or, when a brief statement of disagreement has been filed, the business may require that a corrected copy of the report be furnished to any person who received a copy of the erroneous report within the preceding 6 months.

Fifth: Each commercial reporting agency must maintain reasonable procedures to insure the maximum possible accuracy of the information it reports, and further, no commercial reporting agency shall:

Obtain information by implying that failure to do so will result in adverse consequences;

Furnish negative information or recommend that credit not be extended because of a business' failure or refusal to cooperate with the reporting agency; or

Lower a business' credit rating unless a business is notified in writing within 30 days of such action, accompanied by a statement of reasons for such action.

Mr. President, it is clear that under present commercial reporting practices an acceptable level of accuracy is commercial credit reports is not assured. The amendment I intend to offer will protect the interests of not only small businesses, but all businesses. It will insure that the same basic legal rights enjoyed by consumers are enjoyed by businesses and that commercial reporting agencies exercise their responsibilities with fairness, accuracy, and respect for the business' right to privacy. I urge my colleagues to support this measure.●

FAIR HOUSING AMENDMENTS—S. 506

AMENDMENTS NOS. 2346 THROUGH 2362

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted 18 amendments intended to be proposed by him to the bill (S. 506) to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes.

NOTICES OF HEARINGS

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Commerce, Science, and Transportation will hold 2 days of hearings on S. 3003, a bill to establish a program in the Department of Commerce to promote U.S. service industries, enhance their competitiveness, and for other purposes, and on the issue of "The Competitiveness of U.S. Service Industries in the Global Economy". The hearings are scheduled for Wednesday, September 24, and Thursday, September 25, 1980.

The first day of hearings will begin at 10:30, in room 235, Russell Senate Office Building, and will be devoted to Government witnesses. The second day of hearings will begin at 10 a.m., in room 235, Russell Senate Office Building, and will be devoted to private sector witnesses. I shall preside on both days and make available a list of witnesses in the near future.

The Committee on Commerce, Science, and Transportation has jurisdiction over many of the industries involved, for example, merchant marine, travel and tourism, aviation, surface transportation, telecommunications, advertising, consulting, and others. I might also note that the distinguished chairman of our committee, Senator HOWARD CANNON, was the first Congressman last year during the International Trade Reorganization to suggest the need for the creation of an Assistant Secretary of Commerce for Service.

As in so many areas of public policy, the time has come for the Government to modify its adversarial relationship toward business. It is American business which carries the burden of earning profits to support our standard of living and they should be encouraged to do an even better job for the country.

Services and investments are becoming an increasingly crucial part of our international current accounts and make up for our dreadful performance in the export of manufactured goods. In fact, receipts from services and investments should bring our current account into rough balance this year.

Nevertheless, before the Department of the Treasury, which has hailed this development as proof of the health of our international accounts, celebrates this possible current accounts balance, we should be aware of several facts. First, we should and could be doing much better in the sale of our manufactured goods if we did not impose disincentives and other burdens on our own manufacturers.

Second, much of our service/investment income derives from old direct investments and not from new direct investments or rapidly rising service exports. We shall soon be facing foreign competition not only abroad but also at home in more than the banking sector.

As the March issue of the Survey of Current Business dryly noted, "Much of the increase in service income was in petroleum, and was due to higher operating rates, profit margins, and prices on final products." These facts hardly substantiate the optimism of many Treasury bureaucrats who choose to ignore our foreign counterparts' eagerness to compete with American businesses.

The hearings which the Commerce Committee will hold on September 24 and 25 will, I hope, be the first among many to examine the rising foreign competition to domestic firms in the United States, the nature of U.S. policy toward domestic and exported services, the prospects for the multilateral negotiations on services and investments, the observations of the private sector on U.S. Government organization toward service industries, and the steps which the government can take to promote and maximize the profits of U.S. service trades. These hearings will continue in the next Congress.

For more information, call staff counsel Eric Lee at (202) 224-6742.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. COHEN. Mr. President, the Committee on Governmental Affairs next week will hold public hearings on S. 2606, a measure introduced by Senator GARN of Utah, which would establish an independent Office of Strategic Trade. The hearings will be held in room 3302 Dirksen Senate Office Building, beginning at 10 a.m., on Wednesday and Thursday, September 24 and 25.

Our colleague Senator JACKSON will chair the hearings, which will focus on the affect S. 2606 in the context of current U.S. policies governing the export of strategic technology to Soviet bloc nations. Testimony will be received from administration and knowledgeable persons from the private sector.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. MELCHER. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of an open business meeting before the Select Committee on Indian Affairs.

An open business meeting is scheduled for September 16, 1980, beginning at 1 p.m., in room 4200 of the Dirksen Senate Office Building. The following is to be considered for markup: S. 2829, a bill to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

For further information regarding the business meeting, you may wish to contact Timothy Woodcock of the committee staff on 224-2251.

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND FEDERAL SERVICES

Mr. GLENN. Mr. President, I wish to announce a hearing which will be held by the Subcommittee on Energy, Nuclear Proliferation, and Federal Services of the Committee on Governmental Affairs. Next Wednesday, September 24, 1980, at 10 a.m. the subcommittee will hold a hearing on the undercount in the 1980 census in room 1224 of the Dirksen Senate Office Building.

If you have any questions regarding this hearing please contact Martha Volner of the subcommittee staff at 224-2627.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CANNON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold an oversight hearing on the growing importance of coal in international trade.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold a hearing on the nomination of John C. Sawhill to be chairman of the Board of Directors of the U.S. Synthetic Fuels Corp.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

POLAND

● Mr. KENNEDY. Mr. President, no friend of freedom can fail to be stirred by the achievement of Polish workers in behalf of economic, political and religious rights in their country. I admire their courage and the power of their conviction. I congratulate them on achieving the right to strike and form independent trade unions. I welcome their success in lifting censorship, releasing arrested dissidents, increasing religious freedom, and reinstating dismissed workers and students.

I commend both the workers and the Polish Government for the restraint and persistence they displayed during the 17-day-long strike. The diligent efforts on both sides allowed a peaceful settlement to be reached—without violence and without outside interference.

All of Poland's friends should now support the full implementation of the agreements that were reached. I welcome the statement of the new Communist Party leader, Stanislaw Kania, who has declared that "we shall take care that all these agreements be implemented."

It is appropriate to recognize that the Polish people face serious economic problems, and they must count upon their friends and supporters for large-scale economic assistance. I believe that Western financial assistance to Poland can and should help create a positive climate for economic progress, further reforms, and the liberalization of societies throughout Eastern Europe. As the Polish Government carries out its part of the agreement, Americans and others should certainly be prepared to provide assistance that will benefit the people of Poland. I therefore welcome and support the administration's recent decision to grant $670 million in commodity credits to Poland. And I join with the Polish-American Congress and the American trade union movement in advocating expanded assistance over the critical months ahead.

Mr. President, the historic Gdansk agreements are a victory not only for the Polish people, but for the cause of freedom everywhere. At a time of increased confrontation in other parts of the world, their achievement without outside interference is of profound importance for peace and cooperation between East and West. These agreements will, in turn, strengthen the effort to implement fully the Helsinki accords at the upcoming Madrid review conference. Gdansk should represent, above all, fresh hope not only for Poland, but for all of Europe and the world.●

TAX REFORM

● Mr. DURENBERGER. Mr. President, last month, the Committee on Finance took a giant step into the 1980's by approving a landmark tax reform bill.

This legislation moves us closer to creating the tax system we must have to meet the challenges of the new decade. On one end, the Committee on Finance restructured individual tax rates. By doing so, the committee members took the first step toward indexing inflation out of the tax rates.

At the other end, the committee's bill moves us a bit closer to becoming a savings society instead of a consuming society. The committee's incentives for savings and investments are long overdue. Also, a significant point that many people have overlooked is the much needed assistance the bill will provide small businesses, especially in the form of accelerated depreciation.

The committee's tax reform legislation will set Congress on the course of spending every dollar more wisely. The committee members have taken recognition of the fact that our present system penalizes the investor and feeds Government's insatiable appetite at the expense of the wage earner who has no control over inflation.

The Committee on Finance took two more significant steps September 16. First, it voted to include the Packwood-Moynihan Charitable Deductions Act. By doing so, it sent a signal to the private, nonprofit sector that we are ready to provide incentives for financing the delivery of public services through the volunteer sector.

The second vote on September 16 made it clear that we will not succumb to election-year gimmickry by loading the bill with everyone's wish-list. This leg-

islation is a landmark effort to reform the tax system, not an attempt to win votes.

Because of these actions, I voted for the bill in committee. The work in the committee gave me the opportunity to state my case for overhauling the tax system. However, this bill represents only half of the reform that is needed this year.

Unless the committee's legislation is accompanied by federal spending cuts, I will be forced to vote against the tax reform bill when it reaches the full Senate. We need to cut Government spending as well as taxes if we are to revive the economy. The inflation tax, fueled by Government spending, is a much greater burden on the American worker than the income tax.

That is the message the American public is sending us, and we will fail in our duty if we ignore the plea. Too often, politicians look upon the citizens of this country as being greedy; workers are expected to selfishly take any tax cut Congress might throw their way. Some politicians blame the public for the country's "malaise."

Yet, if we listen to what people are saying instead of relying on outdated perceptions, we will know that the message is clear: The American public wants Congress to cut spending first, then reform the tax system.

That message was reaffirmed in a questionnaire I sent to 40,000 Minnesotans in mid-August. Eighty-three percent of the respondents favored tax reform. But tied into their call for tax reform, an overwhelming majority of people took the time to write on the questionnaire, "Don't give me a tax cut without first cutting Government spending." That statement was made time and again on almost every returned questionnaire.

That is the message that I am delivering to Congress today. Do not offer half a solution and think we have solved the problem. Let us today commit to cutting spending and only then provide tax relief.

That is the same message my distinguished colleague from Oregon, BOB PACKWOOD, delivered by way of his vote in the Committee on Finance. Senator PACKWOOD cast the lone dissenting vote on the tax reform bill because, like me, he believes that Government spending must be cut before we reduce taxes. Senator PACKWOOD's vote was a significant warning to this Congress. He is a person uniquely sensitive to the people he represents. He has recognized that even landmark tax reform, without spending reform, can be election-year gimmickry.

Senator PACKWOOD and I have chosen different ways to express our feelings, but our message is the same.

Mr. President, I submit for printing in the RECORD the results of my questionnaire to my constituents and a series of editorials on Senator PACKWOOD's vote in the Committee on Finance.

The material follows:

QUESTIONNAIRE

A questionnaire was sent to 40,000 Minnesotans in mid-August. The results are based on a tabulation of 1,500 of the returned questionnaires selected at random.

1. Should there be a general tax cut to take effect in Fiscal Year 81? Yes, 83 percent; No, 17 percent.

2. If taxes are reduced, what kind of a tax cut should be implemented? (Respondents were allowed to select more than one answer.)

Permanently indexing inflation out of individual tax rates: 66 percent.

Providing incentives for savings and investment: 60 percent.

Accelerated depreciation: 39 percent.

Increasing personal deductions: 30 percent.

Reducing corporate taxes: 27 percent.

Providing an offset for the social security increase: 27 percent.

One-time restructuring of individual tax brackets: 12 percent.

[From the Eugene, (Oreg.) Register-Guard, Aug. 25, 1980]

TAX-CUT FEVER OUGHT TO COOL DOWN

Economics and politics are being turned upside down in Washington these days. It's hard to tell which team is on which side.

Late last week the Senate Finance Committee approved a $39 billion tax cut to go into effect Jan. 1. This happened on a vote of 19 to 1. The lone dissenter was Oregon's Sen. Bob Packwood.

Packwood is a Republican. Republicans are supposed to favor reducing taxes. Ronald Reagan has suggested an across-the-board 10 percent tax cut next year.

Packwood disagrees. He says it's time Congress got serious about balancing the federal budget. A big tax cut without compensating reductions in federal spending would be inflationary, he contends.

Some time back, Congress did approve a balanced budget plan for fiscal 1981, which begins Oct. 1, 1980. But the current recession knocked that plan off the track. According to the administration's latest projection, without countering governmental action the 1981 budget will wind up $30 billion in the red.

Many nationally prominent economists feel that some kind of 1981 tax cut would be desirable. Their main disagreement is over whether Congress should try to hurry through a bill in the remaining days of this session or wait until next year to do a more deliberate job. The Carter administration and the House Ways and Means Committee under Chairman Al Ullman of Oregon prefer the latter course, defying the tradition of "ins" throwing the electorate a tax-cut bone before a big election.

There are good economic arguments for a tax cut; it's not just politics. There is a need to provide incentives for more business investment, which would reduce unemployment. And in the area of personal income there is a need to ease what Walter Heller calls "the steadily growing tax overburden."

Personal income taxes have gone from 21 percent of personal income in 1978 to 22 percent this year, heading for 23 percent in 1981. Most of this is caused by the extra bite progressive rates take out of inflated salaries and wages.

Scheduled increases in both rates and the wage base will boost Social Security taxes by $18 billion next year. That, along with the "bracket creep" gain in regular personal income taxes, will produce a $35 billion increase in federal revenue.

So a tax cut in the neighborhood of $30 to $40 billion actually would only offset tax increases that are already going to occur. The $39 billion bill the Senate Finance Committee approved includes about $22 billion in personal income tax cuts and $17 billion in business reductions.

We can see that some tax cut is probably desirable in the coming fiscal year. At the same time, we admire Packwood for sticking to his budget-balancing guns in the face of a congressional tax-cut tide that is motivated more by election-year fever than serious economic concern.

On balance, we believe Congress should wait until its next session to consider a tax-cut plan. Waiting would eliminate the distorting influence of an election. It would bring into the deliberations the new members of Congress who are going to be chosen in that election and eliminate those who are going to be fired. And it would give everyone a few more months to watch the economy to decide whether a tax cut is appropriate medicine, and to determine which formula is best.

[From the Portland (Oreg.) Journal, Aug. 27, 1980]

ELECTIONS SPARK TAX CUT TALK

Every elected official in Washington, D.C., wants a tax cut. But everyone else should beware because most of what is happening is bogus rhetoric.

The main reason is that every tax cut proposal being floated would be effective Jan. 1, 1981. Nobody is talking about a tax cut for the 1980 calendar year. The reason for all the talk is because the importance of 1980 is that it's an election year.

The reason the topic is being debated is because Ronald Reagan, in June, unveiled a tax cut package calling for a 10 percent, across-the-board tax cut for individuals plus faster depreciation schedules for businesses.

Now this may sound like step one of the Kemp-Roth 30 percent-over-three-years tax cut. Yet suggesting a one-year tax cut of 10 percent for individuals implies support while not committing Reagan to a 30 percent cut over three years. So while Kemp-Roth, or Roth-Kemp, is being criticized as extremely inflationary, Reagan can step away from the 30 percent proposal without acknowledging it. This is good politics on Reagan's part.

Last week the Senate Finance Committee buckled and sent out a $39 billion tax cut, effective in 1981. It's a typical Christmas tree of tax cuts, reducing both individual and business taxes.

The only dissenting vote on the package came from Sen. Bob Packwood, R-Ore., who should be congratulated for showing political courage and good mental processes when his colleagues are afflicted with "tax cut fever."

The Senate-inspired tax cut proposal isn't expected to travel far. Sen. Ernest F. Hollings, D-S.C. and chairman of the Senate Budget Committee, is resisting the bill. So is Rep. Al Ullman, D-Ore., who favors a tax cut but doesn't want one passed in the heat of the election campaign.

The Carter administration is expected to ask for a 10 percent tax credit for Social Security taxes as part of his economic program. This—or Reagan's tax proposals, should he be elected—can be considered early next year. So far Ullman and Packwood have taken an honorable position, trying to hold off campaign year tax cutting in hopes of curbing inflation.

[From the Portland (Oreg.) Oregonian, Aug. 24, 1980]

SENATE TAX PLAN LEAVES STICKY TASTE

Members of the Senate Finance Committee, with the exception of Sen. Bob Packwood, R-Ore., behaved last week as if they were running from a range fire. In fact, they may be stumbling toward one.

In just four days and in the face of wildly fluctuating national economic estimates, the committee spat out ("fashioned" or "crafted" would be inaccurate) a $39 billion tax cut plan for 1981, just in time for Chairman Russell B. Long to head back to Louisiana for a Sept. 13 primary election battle.

Packwood, also seeking re-election, was the only senator who voted against this inflation-bomb camouflaged as a tax treat.

The committee was aware that the Congressional Budget Office last January predicted 9.9 percent inflation for 1981 and that Chase Econometrics and Data Resources projected 9.3 percent. By July, the budget office was forecasting 9.3 percent and Data Resources 9.2 percent. Chase, however, which assumed a trifling $26 billion tax cut the others did not anticipate, levered its prediction to the 10.5 percent level—a striking clue as to what even a smaller tax cut than that of the Finance Committee would do to inflation.

While Packwood's committee colleagues traipsed through Wonderland, Senate Budget Committee members also suffered a seizure of election-year mania. They disregarded budget office data, as well as Carter administration fears of a $30 billion deficit. Apparently using nothing as authoritative, the committee arbitrarily reduced the projected budget deficit by $13.5 billion (with no provision for a tax cut) in what amounted to an exercise in economic fiction writing.

In the real world, the committees could be 1 percent to 2 percent off on their inflation predictions, and the budget-deficit estimates could miss the mark by as much as $50 billion.

And a guaranteed $40 billion tax cut on top of that? Bah!

Fortunately, although Packwood could not halt the Senate's misdirected gallop, another Oregon lawmaker, House Ways and Means Committee Chairman Al Ullman, can.

By relying on the constitutional directive that revenue bills must originate in the House of Representatives, after which the Senate can propose or concur in amendments, Ullman can rein in the Senate stampede. The Senate may try to tack its tax bill, as an amendment, to an unrelated revenue bill that originated in the House, but if a committee chairmanship has any clout left, Ullman should block that end run.

The two lawmakers from Oregon accurately sense that the public would rather forego a tax treat than gain one whose benefits would be dissolved by inflation as quickly as cotton candy melts in a child's mouth. Timely, targeted tax cuts that can cool inflation would be welcome. But an election-year bribe that leaves the nation in worse shape than before? No thanks.

[From the Salem (Oreg.) Statesman/Journal, Aug. 21, 1980]

SENATOR PACKWOOD STANDS FIRM

Sen. Bob Packwood, R-Oreg., acted both wisely and courageously Monday in being the only "no" vote among the members present of the Senate Finance Committee. He voted against seeking enactment this year of a $25 billion to $30 billion tax cut.

Unlike his brethren, Packwood knows that any tax cut would only fuel the nation's already distressingly high inflation rate. His vote was courageous because Packwood faces a stiff challenge for re-election this year, and his proxy "no" is bound to alienate some of his Oregon supporters.

Whether an election-year tax cut emerges from Congress remains to be seen. The House Ways and Means Committee, which writes tax legislation in that chamber, is hearing testimony all this week on a tax cut but has not begun work on a specific bill. It is presided over by another Oregon politician, Rep. Al Ullman, who also understands the stakes.

The proper course for Congress, we believe, is to hold firm. Tax cuts only increase deficits, and deficits increase inflation.

Packwood correctly recognizes that curbing inflation must be the primary task of government. It is one thing to recognize that, quite another to act on it before God and the voters, as Packwood did Monday. It took guts. Oregon voters should remember that when they go to the polls Nov. 4.

[From the Klamath Falls (Oreg.) Herald & News, Aug. 12, 1980]

PACKWOOD ON TARGET ABOUT FUTURE TAX CUTS

Sen. Bob Packwood was on target last week when he spoke in Klamath Falls opposing an immediate tax cut.

Republicans and Democrats alike have been falling all over themselves to outpromise each other. President Carter isn't against a tax cut, exactly, but isn't really in favor of one, either. A lot of Democrats, however, seeing their reelection chances going up in smoke are trying to regain the tax cut initiative from the Republicans who struck first.

Ronald Reagan's call for a major tax cut was a shrewd political move, but a doubtful economic one.

The only thing we see coming from a major tax cut now is more money pumped into an overheated economy, making inflation even worse.

Packwood said he felt the public will sway the minds of congressmen during the current recess to oppose any major tax cuts.

We hope he's right and there have been indications he is.

A recent nationwide poll showed public opinion is opposed to a tax cut if it might increase inflation.

This could be a case where the public has a better sense of priorities than many members of Congress. Sound economics should not lose out to election-year politics.

[From the La Grande (Oreg.) Observer] Sept. 4, 1980]

TOUGH THIS YEAR

Senate tax writers, with a single dissent, recently approved a bill which would reduce income taxes paid by American individuals and businesses by $39–40 billion next year.

The single dissent came from Oregon's Sen. Bob Packwood, who was on the lonely end of a 19–1 count as members from both parties, anxious to make a record in an election year, voted the cut. And, Packwood was right and the other 19 members of the committee were wrong.

Packwood is not one of your crusaders for higher taxes. Unlike Sen. Ted Kennedy he doesn't assume the government is entitled to every penny you receive, that you're allowed to spend only what the government leaves you.

But Packwood is worried about inflation, inflation in the past 10 years or so and what may be inflation as bad or worse in the future. Any tax cut above about $20 billion would, he is convinced, be very inflationary.

He's not alone in his opinion. The three experts used by Congress to project income and inflation figures all agree with Packwood.

A $39–40 billion tax cut, accompanied by a continuation of the present business downturn, could result in a federal deficit next year of as much as $90 billion. That would be the worst in history, higher even than in the hey-day of World War II.

This is an election year, as the vote of the vast majority of the committee demonstrated.

Packwood knows that; he's running for reelection this November. He is expected to win, but votes like this one are likely to cut somewhat into his expected margin of victory. He was willing to take that chance, and he's right.

[From the East Oregonian, Sept. 2, 1980]

LET'S MOVE AGAINST INFLATION

In view of election-year pressures, the Carter package of tax cuts and economic stimulants for 1981 looks fairly responsible. But last week's proposals unfortunately contained nothing to fight the root cause of U.S. economic problems—inflation.

The President has been receiving much urging from members of his own Democratic Party to propose big tax cuts in this recession and election year. And Ronald Reagan's massive tax-cut scheme—30 percent of income taxes over three years—also puts pressure on Carter.

It's to Carter's credit that he has opposed the idea of a quickie tax cut before the election. Sen. Russell Long, chairman of the Senate Finance Committee, and many other members of Congress have panicked and pushed for tax cuts this year.

When members of the Finance Committee voted the other day on a $39 billion tax-cut proposal for 1981, it passed by 19 to 1. Oregon Sen. Bob Packwood was the only senator to show sound judgment and vote no.

Carter Administration officials estimate that next year's federal budget deficit will be at least $30 billion. To vote in a huge tax cut risks widening that deficit even more.

Any such tax cut is a gamble.

Some backers argue that tax cuts will encourage individuals and businesses to spend more, which would stimulate the economy which would in turn generate more tax revenue. A big catch in that theory in this era of inflation is that taxpayers are wary and conservative with their money. Because prices rise so fast, most people tend to save rather than spend.

The Carter tax proposal—$27.6 billion—also runs that risk. But some other parts of his package make sense.

One of the most encouraging is a request to Congress for $975 million for weatherization of homes, federal buildings, public housing, schools and hospitals. That would create jobs and save energy, and thus combat inflation.

Another move that might pay off is a proposal for an economic revitalization board of labor, business and government figures to recommend how to perk up industry and trade. The co-chairmen would be Irving Shapiro, of DuPont, and President Lane Kirkland of the AFL–CIO. We don't know about Shapiro, but Kirkland is smart and gutsy.

The most disappointing aspect of the Carter proposal is its lack of measures to fight basic inflation, the chief cause of American economic ills. High petroleum costs are one of the main causes of inflation. That is a subject on which members of Congress and presidents have yet to act decisively, but they must do so.

[From the Medford (Oreg.) Mail Tribune, Sept. 3, 1980]

COURAGE AND REALISM

Sen. Bob Packwood is being widely acclaimed for his "courage" in casting the single vote in the Senate Finance Committee against a massive tax cut proposal.

Courage may be the proper word, all right, for voting against a tax cut in an election year may not be the most popular of all possible actions.

But courage or not, Packwood was right, for the tax measure proposed by the committee's majority would certainly heighten the fires of inflation, and John Q. Citizen would wind up with more money in his pocket that would buy less. And we think John Q. Citizen realizes that fact.

Fortunately there are other level heads in Congress, in addition to Packwood. Al Ullman, for one, chairman of the Ways and Means Committee of the House, is against such a massive and widespread cut, coming on top of a predicted deficit. The Senate Budget Committee is also opposed.

A selective tax cut, targeted to protect savings, encourage investments and stimulate productivity, may very well be in order. But a cut of $39 or $40 billion, spread so widely that no one would greatly benefit, would be like throwing gasoline on a raging fire.

And we suspect that, in their heart of hearts, Packwood's colleagues know it. It is disconcerting to know they did not act on that knowledge.—E.A.●

ROBERT S. SMALL SELECTED TEXTILE MAN OF THE YEAR

● Mr. HOLLINGS. Mr. President, the New York Board of Trade has just recently announced its selection as recipient of the 1980 "Textile Man of the Year" award. He is Robert S. Small, chairman of the board and chief executive officer of Dan River, Inc. Mr. Small will receive the award in New York City on December 1.

Robert Small is a native of Charleston, S.C. He took his higher education at the College of Charleston, graduating from that fine institution in 1936. From 1936 to 1947, he worked for the South Carolina National Bank in Greenville, S.C., in a number of capacities. He was soon involved in the textile business, with Ottaray Textiles, Haynesworth Mill, and Woodside Mills, the latter eventually acquired by Dan River.

An executive with vision as well as sound practical judgment, Robert Small is one of the most dynamic businessmen in the history of our textile industry, or indeed of any industry. When he entered the textile business, it had fallen on hard times, and the hard times were getting harder every day. With an industrial plant that was generally outmoded, and with inadequate capital investment, the textile future looked bleak. Now, in 1980, the industry is updated, retooled, competitive not only in the American market but in the world market, and the credit for that goes to a new generation of textile leaders, with Robert Small in the vanguard. Our industry still has problems to contend with in unfair trade and other burdens, but its 2.3 million workers face the future with more hope—and more reason for high hope—than ever before. Textiles—written off for years by so many economists and pundits—has rebuilt and its future is bright.

Robert Small has been a textile leader through all this change. He has served as president of the American Textile Manufacturers Institute, president of the South Carolina Textile Manufacturers Association, and director of Textile Hall Corporation. He is as active today as he was 35 years ago, and the industry is much the better for it.

Mr. Small has been not only a dynamic force within his industry, but also in his community, State, and Nation. Education has been one field fortunate to have Robert Small's dedication and driving energy. He is a trustee of the College of Charleston, and a member of the Furman University Advisory Board. Additionally, he has involved himself generously with a large number of charitable and civic causes. As a result, he is known far and wide as one of South Carolina's leading citizens—a reputation earned by commitment, vision, and hard work.

So it is a pleasure for me to bring this prestigious award to the attention of the Senate, and to single out its recipient to my colleagues. Many of them know Bob Small personally, and I know that they all join me in sending special congratulations to this public-spirited citizen whom many of us know also as a friend.●

BINARY NERVE GAS PRODUCTION

● Mr. BAYH. Mr. President, in 1969, the Nixon administration decided to maintain existing U.S. stockpiles of lethal chemical weapons at existing levels. At those levels, and even despite whatever degradation may have occurred since that time in the containers where these poisonous gases are stored, it is estimated that we have sufficient quantities on hand to sustain the battlefield requirements of 50 divisions for 100 days. In Europe, itself, we have stocks to permit retaliation against Soviet chemical attack for up to 2 weeks. The question, therefore, becomes, what do we gain by proceeding with construction of facilities to produce a new generation of lethal chemical weapons short of a requirement in law that the President certify such production is in the national security interests?

Mr. President, I opposed efforts here in the Senate during the past 2 days to begin construction of a nerve gas production facility at Pine Bluff, Ark. I did so in the belief that such a commitment adds little if anything to our national security and in fact may disrupt ongoing negotiations to formalize in a verifiable agreement the tacit United States-Soviet understanding not to produce nerve gas agents which has been in effect over the past several years.

The amendment which I supported on Tuesday offered by Senator HART of Colorado presented a much better way of dealing with the situation which finds Congress attempting to force the administration into an unwise decision prior to sufficient analysis involved in such a production decision. Such a decision threatens to complicate the agreements which we have reached with our European allies to permit the deployment on their territory of modern American theatre nuclear forces. Nor is there any assurance that the Europeans who actually saw in their own homelands the horrors of gas warfare during World War I would permit increased levels of modernized chemical warfare stocks on their home territories.

But in addition to these considerations of foreign policy, we must question the military utility of binary nerve gas and the circumstances under which it would be employable without causing widespread friendly civilian casualties in a conflict between NATO and the Warsaw Pact. While the inherent advantage of binary nerve gas is that it is safer to store and handle since it is made up of two nontoxic substances which are mixed after a weapon is dropped or fired, the key to successfully withstanding a chemical weapons assault is not so much possessing a similar offensive capability, but in the quality of protective clothing and other defensive and decontamination equipment available in the battle area.

But we do now possess a degree of offensive capability in chemical warfare. And it is very difficult to understand how any outbreak of military conflict between NATO and the Warsaw Pact could remain confined to an exchange of lethal chemical agents. Any serious analyst knows that chemical warfare is intended to support conventional weapons operations and for that reason has limited military value. To insist otherwise proposes that we prepare U.S. forces for a "first-use" of chemical agents directly contrary to our international obligations. And to commit us prior to Presidential certification required by law that production of binaries are in our national security interests is at best premature and at worst dangerous in terms of diminishing the chances of securing some verifiable agreement which could include onsite inspection to ban the production of binary nerve gas by both the United States and the Soviet Union.

But more fundamentally, it simply does not add to our conventional force capabilities in a meaningful way. If some projections of $2 billion to $4 billion are correct in terms of developing completely new arsenals of binary nerve gas weapons we will actually be diverting resources away from the kinds of conventional weapons programs which will contribute to our defense.

To the cold reasons of diplomacy and military strategy must be added the moral reservation against embarking upon a new gas warfare program. This must be a factor as well in considering whether to take a tentative first step in beginning to prepare to produce a new brand of nerve gas. For these reasons, I voted for the Hart amendment on Tuesday and in support of prudence and commonsense in trying to avert another weapons competition and in support of policy thinking which indiscriminately confuses greater numbers of weapons and greater tonnages of poison gas with greater national security.●

RETIREMENT OF MAJ. GEN. WALTER D. REED

● Mr. MORGAN. Mr. President, on September 1, 1980, Maj. Gen. Walter D. Reed culminated an outstanding and distinguished career in the U.S. Air Force when he retired. General Reed was the sixth Judge Advocate General of the Air Force, serving in that position for the last 3 years.

I have been a longtime friend and professional acquaintance of General Reed from the days when I served as a Reserve judge advocate here in Washington. Based on that long association with him and the Judge Advocate General's Department, I can fairly say that he accomplished much for the Department. The list of his acomplishments is long.

A major theme of his term was "Counsel for Commanders." He emphasized to both judge advocates and commanders throughout the Air Force that he wanted to give increased authority and discretion to the local unit level. Two of the most significant initiatives in this area gave increased authority to field commanders. The first authorized general court-martial convening authorities to approve plea negotiations in trials by

courts-martial. The second gave to field commanders the authority to make the decision in individual cases as to the collateral effects of nonjudicial punishment under article 15 of the Uniform Code of Military Justice, including the decision as to how long the punishment file would remain in the individual's personnel records. Authority in both of these areas had always before been retained at the Pentagon level. But General Reed was willing to trust the field commanders and they have been vocal in their appreciation.

A number of other initiations by General Reed in the military justice area deserve mention.

First: He initiated an enhanced prosecution program in which 15 additional full-time prosecutors were assigned. This has provided an effective balance to the existing area defense counsel program. The result has been better representation for the Government, better records of trial, and better advocacy training for young judge advocates.

Second: He established a centralized funding program for witnesses who must travel between Air Force commands to testify. This has eliminated budgetary problems at the local level due to unprogramed travel and has removed witness requests from being a defense device for seeking concessions from the Government. Military justice is now not seen as being in monetary competition with local operational needs.

Third: To improve the quality of court-martial judges, General Reed replaced the old selection process of relying only on personnel records with one in which the chief trial judge, the Director of Judiciary and General Reed himself personally interviewed all trial judge candidates. In addition, in order to keep the independent and impartial trial judges in contact with the Air Force community, he initiated a program of sending judges to the commander's seminars held at Air University and of encouraging judges to seek out and talk with commanders at each base they visit, when they have completed a case. The result has been a higher quality trial judiciary and one which remains aware of the perspective of the military community in which they function.

General Reed has been a manager and leader without peer. His improvements in the organization, management and training of the Judge Advocate General's Department demonstrate the tremendous value he has been to the Air Force. I would like to list a sampling of those accomplishments.

First: The total claims oversight function of the Air Force has been consolidated at the Pentagon. This has saved numerous manpower spaces and many dollars while standardizing claims activities and speeding up claims processing times to the point where they would put any commercial insurance claims adjusting system to shame. To further improve claims administration at the local base level, he has initiated a 4-week claims and tort litigation course at the Judge Advocate General's School at Maxwell Air Force Base, Ala., for officers, airmen and civilians who perform claims functions.

Second: In the area of labor law, General Reed exhibited great foresight. He established a Central Labor Law Office at Randolph Air Force Base, Tex., staffed by six judge advocates who have advanced degrees in labor law. This specialty office assists all Air Force installations on the issues which arise frequently in this increasingly complex area. This office is a model in the Federal Government, a concept which many agencies envy. It is a superb example of the remarkable foresight of General Reed.

Third: Because of the increasingly complex problems faced by Air Force judge advocates in areas outside of the traditional military problems—environmental law, equal employment opportunity, et cetera—General Reed expanded the training course for new judge advocates to 7 weeks. As a result, new Air Force lawyers are better prepared when they arrive at their first permanent duty assignment.

Fourth: General Reed initiated a worldwide program of upgrading legal facilities to provide a suitable professional environment in which the Air Force community could receive its legal services. This is a long-term program, but the payoffs have begun. I know that judge advocates appreciate this kind of professional concern.

General Reed appears to have mastered that great stumbling block to so many Washington arrivals—the bureaucracy. For 12 years the Judge Advocate General's office had been located in the Washington area but outside the Pentagon, most recently in that very exotic location—Buzzard Point. This meant that the legal advisor to the Air Force Chief of Staff and to the Air Staff was physically separated from the client he serves. By quiet persuasiveness and incredible persistence, General Reed accomplished what his predecessors had been unable to do, when his office returned to the Pentagon last year. This has resulted in significantly more timely, and therefore better, legal advice. Immediate availability to all Deputy Chiefs of Staff and special staff heads has again made the Judge Advocate General a full partner on the Air Force team. Professional relationships with the Air Force General Counsel, the principal legal advisor to the Secretary of the Air Force, have never been better. They, too, work as a team.

No Judge Advocate General has ever done more for Reserve judge advocates. In 1978, General Reed established the "Survey of Law," a weekend refresher course presented by Reserve judge advocates for Reserve judge advocates at five locations in the United States. The program is designed to improve their readiness posture, with attendance required every 2 years. This is in addition to the 2-week refresher course at Maxwell Air Force Base required every 6 years. Another initiative has been to have Air National Guard and Reserve judge advocates participate in the Staff Judge Advocate Course at Maxwell AFB. Reserve judge advocates are an integral part of the JAG Department and have never been more ready to serve than they are today.

When the President signed H.R. 5168 on September 8, this completed another of General Reed's efforts to improve the JAG Department. Included in that bill was an amendment I sponsored which would create the statutory position of Deputy Judge Advocate General in the Air Force. This alines the Air Force with the Army and Navy who have long had such statutory positions. This change in the law clarifies the legal status of actions taken by the Deputy in the absence of the Judge Advocate General and, more importantly, insures the independence of the Deputy Judge Advocate General so that his decisions and advice are not subject to improper outside influences. Again, General Reed accomplished what none of his predecessors had done.

General Reed is a truly remarkable officer and lawyer who will be greatly missed by the Air Force. I am certain that he would be the first to tell you that the support of his lovely wife, Dorothy, contributed immeasurably to his distinguished career. Together they served the Air Force. As you will see from his assignments, his tour as Judge Advocate General culminated a long career during which he became one of the foremost international lawyers not only in the Pentagon but throughout the Federal Government.

His career began when he enlisted in the U.S. Army Air Corps at Camp Dodge, Iowa, in August 1943, during World War II, and was accepted in the aviation cadet program in October 1943. He completed advanced navigation training at Hondo, Tex., and was commissioned a second lieutenant in December 1944. General Reed completed radar training in March 1945 at Boca Raton, Fla., and was assigned to a B-29 bombardment group at Salina, Kans. In February 1946 he was released from active duty at Denver, Colo., and entered Drake University.

General Reed was recalled to active duty in February 1951 and after attending a radar refresher course was assigned in February 1952 as Assistant Staff Judge Advocate at Holloman Air Force Base, N. Mex. In November 1952 he was transferred to Korea for 1 year as Staff Judge Advocate of the 18th Fighter-Bomber Wing.

From November 1953 to August 1958, General Reed served at the Air Force Missile Test Center at Patrick Air Force Base, Fla., first as Assistant Staff Judge Advocate in the Military Justice Division and later as Legal Staff Officer, Military and Civilian Affairs Division, Office of the Staff Judge Advocate. During this period he assisted in the formulation of implementing procedures to the international agreement establishing the Long Range Proving Ground.

He served the next 4 years with Headquarters U.S. Air Forces in Europe (USAFE) in the Directorate of International Law. In this position, he acted as legal advisor to the Ballistic Missile Committee which negotiated implementing arrangements for the establishment

of certain NATO bases in Italy and Turkey. He also acted as legal advisor on the USAFE team which was responsible for negotiating technical arrangements regarding special ammunition.

General Reed entered McGill University, Canada, in September 1962 to study international air and space law. In May 1963 he became a member of the International Law Division, Office of The Judge Advocate General, Headquarters U.S. Air Force. From August 1967 to August 1969, he was assigned to the American Embassy in Bangkok where he served as the legal advisor to the U.S. Ambassador to Thailand with responsibility for the handling of status of U.S. forces problems with the Thai Government.

General Reed next was Assistant Staff Judge Advocate at Headquarters Air Force Systems Command, Andrews Air Force Base, Md. In April 1970 he was assigned as Chief of the International Law Division, Office of the Judge Advocate General, Headquarters U.S. Air Force, Washington, D.C. He was responsible for advising the Air Force on international legal implications of military operations and the applicability of international law and foreign law to the operation and status of U.S. forces and their personnel in foreign countries.

In May 1973 General Reed was reassigned within the Office of the Judge Advocate General as Director of Civil Law, with responsibility for administering civil legal matters affecting the U.S. Air Force, including international law, claims, activities relating to litigation, legislation, patents, and legal aid.

General Reed assumed duties as Assistant Judge Advocate General, Headquarters U.S. Air Force, in October 1973. He served as a member of the U.S. delegation to the Diplomatic Conference on the Law Applicable in Armed Conflict which convened in February 1974 and as vice chairman of the delegation for the final session ending in June 1977.

General Reed was appointed the Judge Advocate General, U.S. Air Force and promoted to the grade major general on October 1, 1977, with date of rank July 1, 1974.

I want to conclude by expressing my thanks and that of my colleagues in the Senate to a distinguished officer who has been a public servant in the finest sense of that term. As he leaves to become dean of the University of South Dakota Law School, we wish him well and Godspeed.●

FINANCE COMMITTEE AMENDMENT TO THE TAX CUT BILL RELATING TO THE DEDUCTION FOR CHARITABLE CONTRIBUTIONS

● Mr. LONG. Mr. President, on September 16, the Committee on Finance agreed to modify the tax cut bill we previously reported as an amendment to H.R. 5829. The modification would add a provision permitting an individual to take a deduction for charitable contributions whether or not he itemizes deductions. I submit for the RECORD a description of the provision and the text of the modification of the committee amendment.

The material follows:

MODIFICATION OF FINANCE COMMITTEE AMENDMENT TO H.R. 5289: DEDUCTION FOR CHARITABLE CONTRIBUTIONS FOR INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS

PRESENT LAW

Charitable deduction.—Under present law, a deduction for charitable contributions may be claimed by individual taxpayers as an itemized deduction from adjusted gross income in determining taxable income for the year in which the contributions are made. The amount of the deduction is subject to limitations depending on the nature of the contribution, type of donee, and the value of the contribution in relation to the taxpayer's adjusted gross income (without regard to net operating loss carrybacks).

Withholding exemptions. — Individuals whose wages are subject to withholding may be entitled to a number of exemptions. Each exemption is worth $1,000 and is claimed when filing a Form W-4. Among the withholding exemptions which taxpayers are entitled to claim are withholding allowances for tax credits and excess itemized deductions (including charitable contribution deductions to the extent reflected in excess itemized deductions). Each such additional allowance exempts $1,000 of annual wages from withholding.

REASONS FOR CHANGE

The committee is concerned that many individuals who make charitable contributions do not receive a full tax benefit from those contributions under present law. Under present law, for an individual to receive a tax benefit from charitable giving, the individual must be able to itemize deductions. This means that the amount of charitable contributions, along with other itemized deductions, must exceed the individual's zero bracket amount ($3,600, under the committee bill, for joint returns) before any tax benefit from the contributions is realized. The amount of tax benefit then realized depends upon the individual's marginal tax rate. (For example, if an itemizer in the 50-percent marginal tax bracket made a contribution of $1,000, his or her tax liability generally would be reduced by $500 as a result of the contribution.) Individuals who cannot itemize their deductions, because they do not have deductions in excess of their zero bracket amount, realize no tax benefit from charitable contributions.

The committee is concerned that increasing the zero bracket amount may have an adverse effect on charitable giving. For example, some current itemizers may not be able to itemize because of the increase in the zero bracket amount under the committee bill and may reduce their charitable contributions.

The committee believes that the provision will stimulate charitable giving, thereby providing more revenue for worthwhile organizations, many of which provide services that otherwise would have to be provided by the Federal government.

EXPLANATION OF PROVISION

The amendment, when fully phased-in, allows all individual taxpayers to deduct the full amount of their charitable contributions, whether or not they itemize their deductions. When the amendment is fully effective, individuals would deduct the full amount of their charitable contributions from their adjusted gross income.

The separate deduction for charitable contributions created by the amendment is phased-in incrementally over a four-year period. For 1981, an individual would be able to deduct 25 percent of his or her charitable contributions from adjusted gross income. The balance of the individual's contributions could be added to all other itemized deductions. This sum would be deductible to the extent that it exceeds the individual's zero bracket amount, as under present law. For 1982, an individual would be able to deduct 50 percent of his or her charitable contributions from adjusted gross income; and in 1983, the percentage of charitable contributions deductible from adjusted gross income would increase to 75 percent. For 1984 and subsequent years, the total amount of an individual's charitable contributions would be deductible from adjusted gross income.

The amendment also allows individuals to take their charitable contributions into account in determining their withholding exemptions. Thus, individuals who make substantial charitable contributions could have the reduction in their Federal income tax liability reflected currently in reduced wage withholding during the year.

The amendment also contains technical and conforming changes.

EFFECTIVE DATE

The changes made by the amendment apply for taxable years beginning after December 31, 1980, with respect to contributions made and remuneration paid after that date.

REVENUE EFFECT

On a fiscal year basis, the amendment would result in revenue losses of $114 million in 1981, $983 million in 1982, $2,064 million in 1983, $3,343 million in 1984, and $4.631 million in 1985.

On a calendar year basis, the amendment would result in revenue losses of $841 million in 1981, $1,895 million in 1982, $3,144 million in 1983, $4.621 million in 1984, and $5,069 million in 1985.

MODIFICATION

At the end of title I, insert the following new subtitle:

Subtitle D—Charitable Contribution Deductions

SEC. 131. DEDUCTION FOR CHARITABLE CONTRIBUTIONS TO BE ALLOWED FOR INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (i) as subsection (j), and by inserting after subsection (h) the following new subsection:

"(i) Transitional Rule for Nonitemization of Deduction.—

"(1) IN GENERAL.—In the case of an individual, the applicable percentage of the deduction allowed by subsection (a) for the taxable year shall not be treated as an itemized deduction.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined under the following table:

"For taxable years beginning in—	The applicable percentage is—
1981	25 percent
1982	50 percent
1983	75 percent
1984 or thereafter	100 percent.".

(b) Conforming Amendments.—

(1) Paragraph (1) of section 57(b) (relating to adjusted itemized deductions) is amended by inserting "without regard to paragraph (3) thereof" after "section 63 (f)".

(2) Paragraph (1) of section 63(b) (relating to individuals) is amended—

(A) by striking out "and" at the end of subparagraph (A), and

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C) the deduction for charitable, etc., contributions and gifts provided by section 170, to the extent that such deduction is not treated as an itemized deduction under section 170 (i), and".

(3) Subsection (f) of section 63 (relating to itemized deductions) is amended—

(A) by striking out "and" at the end of paragraph (1),

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a comma and the word "and", and

(C) by adding at the end thereof the following new paragraph:

"(3) the deduction for charitable, etc., contributions and gifts provided by section 170, to the extent that such deduction is not treated as an itemized deduction under section 170 (i).".

(C) Withholding.—

(1) The first sentence of section 3402 (m) (1) (relating to withholding allowances based on itemized deductions), as amended by sections 101 and 102, is amended to read as follows: "An employee shall be entitled to withholding allowances under this subsection with respect to a payment of wages in number equal to the number determined by dividing by $1,100 the sum of—

"(A) the excess of—

"(i) his estimated itemized deductions, over

"(ii) an amount equal to $3,600 ($2,400 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2(a))), plus

"(B) that portion of the deduction allowed by section 170 for the taxable year which is not treated as an itemized deduction under section 170 (i).".

(2) Paragraph (2) of section 3402 (m) is amended by inserting ", the deduction referred to in paragraph (1) (B)," after "section 151".

(3) The caption for section 3402 (m) is amended by inserting "or charitable" before "deductions".

(d) Effective Dates.—

(1) The amendments made by subsections (a) and (b) shall apply with respect to taxable years beginning after December 31, 1980, and with respect to contributions payment of which is made after such date.

(2) The amendment made by subsection (c) shall apply with respect to remuneration paid after December 31, 1980.

In the table of contents immediately before the item relating to title II insert the following new item:

Subtitle D—Charitable Contribution Deductions

SEC. 131. DEDUCTION FOR CHARITABLE CONTRIBUTIONS TO BE ALLOWED FOR INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.●

STILL TIME FOR SUNSET

● Mr. SASSER. Mr. President, I shall submit for the RECORD a letter to me dated September 8, 1980, from Stuart Eizenstat, assistant to the President for Domestic Affairs and Policy.

I ask that the letter be printed because it responds to a very important question which I asked Mr. Eizenstat: Does President Carter still support a strong sunset bill? Mr. Eisenstadt's response was an enthusiastic "yes."

The President knows what the Senate Governmental Affairs Committee discovered in its deliberations on S. 2, "The Sunset Act of 1980"—that only a strong sunset bill, one which would force the Congress and the executive branch to review Federal programs on a regular schedule and will lead us to the vital work of revamping or eliminating outmoded programs.

Perhaps this point was best stated in a recent editorial of the Christian Science Monitor, in which the newspaper observed:

> Failure to mandate specific schedules for automatic review and termination of existing programs has made some . . . sunset laws largely ineffectual. Left to their own discretion and timing, lawmakers are virtually invited to choose the "easier" or less controversial programs for review and leave pet projects untouched.

Mr. President, the Governmental Affairs Committee version of S. 2 is the only sunset bill that addresses this concern. It is the only one which offers us the opportunity to begin the reevaluation of the many Federal programs we have created over the years. It is the only Sunset bill which offers a concrete basis for bringing about genuine change in the oversight responsibilities of the Congress. It is the only sunset bill which does not offer false hope to a public weary of runaway Government and empty congressional promises to pull in the reins on runaway spending. The Governmental Affairs version of S. 2 is the only bill which can legitimately wear the label: "Sunset."

The time is ripe for Senate action on S. 2. Win, lose, or draw, I believe that the Senate should be allowed to express its judgment on sunset. Too much effort has gone into S. 2 to let it wither on the vine.

The letter follows:

THE WHITE HOUSE,
Washington, D.C., September 8, 1980.

Hon. JAMES R. SASSER,
U.S. Senate,
Washington, D.C.

DEAR JIM: In response to your recent note, I want to reaffirm the President's support for strong sunset legislation. The bill recently reported by the Governmental Affairs Committee would make a dramatic contribution to sound management of the Federal Government. By forcing Congress and the Executive to review Federal programs on a regular schedule, it would promote the vital work of revamping or eliminating outmoded programs. Because the schedule groups related programs toegther, Sunset would make the existing reauthorization process more orderly and thorough, and it would extend periodic review to many of the programs that are now on permanent authorization.

I congratulate you for your leadership on this legislation, and I want you to know the Administration will continue to support your efforts as the bill moves forward.

Sincerely,

STUART E. EIZENSTAT,
Assistant to the President for Domestic Affairs and Policy.●

THE INTELLIGENCE OVERSIGHT ACT OF 1980

● Mr. HUDDLESTON. Mr. President, on June 3 of this year, the Senate passed S. 2284, the Intelligence Oversight Act of 1980, by a vote of 89 to 1. On June 28, an amendment whose provisions are identical to S. 2284 was attached to S. 2597, the Intelligence Authorization Act of 1980, in order to assure that the bill would receive consideration in the House of Representatives.

When the Senate passed this bill, both the bill and its report language were supported by the executive branch. After passage, however, the executive branch expressed concern about a section of the colloquy that Senator JAVITS and I had had on the floor of the Senate on June 3. The Intelligence Committee and the executive branch have negotiated agreed language concerning the colloquy. This language is contained in a letter I have sent to the Attorney General explaining the point at issue in the colloquy between Senator JAVITS and myself. I submit for the RECORD both that letter and the Attorney General's reply as part of the legislative history of S. 2284.

SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C., September 15, 1980.

Hon. BENJAMIN R. CIVILETTI,
The Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: It has come to my attention that concern has been expressed by some in the Executive branch regarding one statement in the legislative history of S. 2284, the Intelligence Oversight Act of 1980, as passed by the Senate on June 3 of this year. In floor debate on that bill, I engaged in a series of colloquies with Senator Javits which, to the extent that they might be inconsistent with the language of the report, would supersede such language. In response to questions relating to section 501(b), I noted that a "claim of constitutional authority is the sole ground that may be asserted for withholding prior notice of a covert operation."

This colloquy was not intended to be, and I do not regard it as being, inconsistent with the language of the star print of the Committee report in the second sentence of paragraph 6 on page 6 which states:

> . . . It is recognized that in extremely rare circumstances a need to preserve essential secrecy may result in a decision not to impart certain sensitive aspects of operations or collection programs to the oversight committees in order to protect extremely sensitive intelligence sources and methods.

This explanation of the intent of the second preambular clause in section 501(a) was not superseded by the colloquy which, as Senator Javits stated, was related to section 501(b). The construction of the second preambular clause was not intended to be affected by the statement made with regard to section 501(b).

In a recent court decision [*United States v. American Telephone & Telegraph Co.*, 567 F.2d 121 (D.C. Cir., 1977)], the court articulated an approach that the committee believes is a sound way to deal with any differences that might arise regarding the implementation of these provisions. This case raised many issues similar to those encountered in providing for the authorities of both branches for the governance of the intelligence activities of the United States. Two passages from the opinion in that case are of particular pertinence:

> The framers, rather than attempting to define and allocate all governmental power in minute detail, relied, we believe, on the expectation that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in

authority arises. Rather, each branch should take cognisance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. This aspect of our constitutional scheme avoids the mischief of polarization of disputes.

The course of negotiations reflects something of greater moment than the mere degree to which ordinary parties are willing to compromise. Given our perception that it was a deliberate feature of the constitutional scheme to leave the allocation of powers unclear in certain situations, the resolution of conflict between the coordinate branches in these situations must be regarded as an opportunity for a constructive modus vivendi, which positively promotes the functioning of our system. The Constitution contemplates such accommodation. Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme.

I hope this explanation of the legislative history of S. 2284 will help resolve the concerns expressed to you by some in the Executive branch. Should it appear necessary, I am confident that there would be no dimculty in making this clarification of the intent of the Senate a formal part of the legislative history.

Sincerely,

WALTER D. HUDDLESTON,
Chairman, Subcommittee on Characters and Guidelines.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 18, 1980.

Hon. WALTER D. HUDDLESTON,
Chairman, Subcommittee on Charters and Guidelines, Select Committee on Intelligence, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter regarding the legislative history of S. 2284, the Intelligence Oversight Act of 1980, explains that the construction of the second preambular clause of section 501(a) was not intended to be affected by the statement made in your colloquy with Senator Javits relating to section 501(b). Thus, the second preambular clause may be interpreted without regard to the statement regarding section 501(b).

The Executive branch agrees with this explanation of the legislative history, and any differences that might arise should be resolved as you suggest. Therefore, it would seem appropriate to make this clarification a formal part of the legislative history.

Sincerely,

BENJAMIN R. CIVILETTI,
Attorney General.●

TAXES, TRADEOFFS, AND TIMING

Mr. TSONGAS. Mr. President, I believe the Senate should resist the temptation to rush through major tax cut legislation in the last days of this session. It is true that economists from Walter Heller to Alan Greenspan are calling for a cut. Each of the Presidential candidates brandishes a tax cut plan as the cornerstone of his "reindustrialization" package.

Nevertheless, given the vast myriad of legitimate needs reflected in both the public and private sectors of the economy today, we need desperately to get the most bang out of any enacted tax expenditure. To imagine that the Congress could perform so exacting a task during these final weeks of the session is surely the triumph of hope over reason.

Tax cuts, after all, are not free. True, cuts can be expected to generate both additional investment and increased output. But only the extremist "Laffer Curve" enthusiasts suggest that output will be increased so greatly as to increase government revenues. Prof. Walter Heller is right to call them the "mirage school."

To accommodate tax revenue losses, the Government's options are limited. Taxes can be cut, prudent monetary policy sustained and the revenue losses financed either through the sale of Government bonds, or through an equivalent reduction in Government expenditures. Or, taxes can be cut and money printed to finance the cut. Under each of these options, a significant portion of our population must endure economic loss.

Chairman Volcker, in his testimony of a week ago, assured the Congress of his commitment to a continuation of prudent monetary policies. If such a policy is to continue, any Federal deficit will need to be financed through the sale of Government bonds. Thus, a large tax cut, without associated cuts in outlays, will require capital markets to accommodate massive public offerings. The prime rate already is returning to an upward trend. Once we are in the midst of economic recovery, certain industries, auto and housing in particular, would have to decline due to exhorbitantly high interest rates.

Added to a big tax cut, massive reductions in Federal programs complete the Republican couplet. And although the Republicans claim to have an eye for waste, I believe Governor Reagan, if elected, soon enough will discover the limited ability to separate the wheat from the chaff. Given the Republican perception of the current defense budget as anemic, this means that drastic reductions will occur in social services. Head Start, Meals on Wheels, vocational training, food stamps, and other programs that serve basic human needs will be on the Republican chopping block.

Then again, there is always the printing press. No one would advocate such a policy, but it is not hard to imagine how it might result. A large tax cut is enacted. Somehow, the constituencies of social programs stave off drastic budget reductions. Therefore, the Treasury is forced to meet its revenue shortfall through a large sale of bonds. Interest rates begin to climb, and so do auto and housing industry lobbyists into Capitol Hill office windows. Soon the flow of new dollars becomes a flood. Numerous econometric models demonstrate that a large tax cut financed by easy money will yield few, if any, benefits. Accelerated inflation—a virtual certainty if we print money unwisely—will most probably erase any positive aspects that a tax cut might have had on our Nation's productivity.

Again, a tax cut is not unjustified, but it's not free either. Lagging productivity compels us to cut taxes for business. Moreover, the projected personal taxation levels justify some relief. But our critically tight budgetary situation and the constant threat of inflation compel us to craft a cut that provides the maximum amount of the desired effect from each dollar of lost Federal revenue.

I am convinced that our Nation needs tax reform to motivate production, investment and savings. The state of our economy compels us, however, to craft a cut able to restore our Nation's productive capability in a fair, effective and lasting manner. As elected officials, we stand the best chance of structuring such a cut without the extreme pressures of election month politics and with a clear indication of the future budgetary priorities of both the legislative and executive branch. Our economy, though in need of a tax cut, will fare far better if the cut is designed after January 1.●

WHAT MAKES AMERICA GREAT

● Mr. CRANSTON. Each week, I receive thousands of letters and hundreds of telephone calls from my constituents. Californians, like all Americans, are deeply concerned about the challenges before us: Inflation, jobs, the economy, defense, taxes, refugees, senior citizens, energy, abortion, and Iran.

The list goes on. The challenges are monumental and the victories slow. The differences among us seem to outweigh our similarities, particularly when we seem unable to work together to find solutions. But Americans generally look on the bright side in even the darkest of times. Optimism is a hallmark of our Nation and our people.

The tougher the problems, the stronger our commitment to finding the solutions. The more diverse our views, the harder we work to compromise our differences.

For in our occupation with the tasks before us, we have not lost sight of what has made America great. And what has made us a great Nation can best be discerned from a quote from the Little Prince by Antoine De Saint-Exupery: "It is only with the heart that one can see right; what is essential is invisible to the eye."

Our essence is our diversity, our freedoms and our exercise of those freedoms. America is great because we cherish challenge, we speak out, we care, because we share a common hope for the future.

America is great because of young people like Kenneth Lin, 12, of San Jose, and Robert Benson, 13, of Santa Clara, Calif. These young men have written outstanding, prize-winning essays on "What makes America Great." By pointing out the intellectual, emotional, economic, political, and ethnic diversities in us, Kenneth and Robert have captured our spirit and our strength. They deserve to be proud of their accomplishment.

I wish to thank KNBR Radio 68 and the San Jose Mercury News for their interest in and encouragement of the youth of California.

Mr. President, I ask that the essays be printed in their entirety in this place in the RECORD:

The essays follow:

WHAT MAKES AMERICA GREAT

(By Kenneth Lin)

America is great because it is made of many different races. While other countries have their own culture and traditions that are peculiar to their land, America is a country which comprises not one, but multiple cultures and traditions that its people brought here when they immigrated into this land in the years past. That is why in America one can see all kinds of food, clothes, religions as well as life-styles.

Because of its multiple ethnic backgrounds, America has learned not only to tolerate, but also to accept different customs, thoughts and philosophies. When other countries think that they are right and refuse to change their way of thinking and behavior, America is willing to listen to and take advice from other nations, and at the same time learn from its mistakes. And because America is willing to learn from others, it is able to adapt itself to the changes of the times and make progress accordingly.

America is a great pot-pourri—a giant melting pot in which many different flowers of all sizes, colors and fragrances, often bloom together, sometimes as if in rivalry, but always in harmony, because we are a nation of different, but undivided people who accept and enjoy the contributions of our neighbors.

America is great, not because it is big in size, but because it is big in heart, not because it can beat other countries in war and contests, but because it can forgive and help friends and enemies alike.

WHAT MAKES AMERICA GREAT?

(By Robert Benson)

Look at our flag! In the upper left-hand corner there is a blue field sprinkled with fifty white stars. Each star has five points, one for each of the five basic freedoms which we have as citizens of the United States of America.

The point at the top of each star represents the freedom of religion. While religion is being persecuted on a large scale in many countries, we, as Americans, have the right to believe in whatever faith we choose. Not only this, but we also have the freedom to practice our beliefs and openly declare our faith.

The second and third points of each star represent the freedom of speech and the freedom of the press. In this country, we have the right to say what we believe, in public or in private. We can also publicise our opinions and ideas through newspapers, magazines, radio, and television.

The fourth point of each star represents political freedom. As American citizens, we have the right to vote, elect our own officials, and even run for an office ourselves.

The fifth point of each star represents economic freedom. In the United States, we can choose our own jobs and careers. We also have the freedom to save our money and invest it in a way we feel is best.

Now, for the support of our unique freedom, let us also pledge to each other, "our Lives, our Fortunes, and our sacred Honor."

Freedom. This is what makes America great!

EVENTS IN SOUTH KOREA

● Mr. TSONGAS. Mr. President, this past Tuesday, the leading member of the South Korean political opposition, Kim Dae Jung, was sentenced to death by a military tribunal. Unless there is a reversal of this sentence and concrete steps taken toward democratic rule, I believe the time has come to reexamine our relations with South Korea.

Kim Dae Jung is the most dynamic of the leaders of South Korea's New Democratic Party. As that party's candidate for President in 1971, Kim received an impressive 46 percent of the popular vote against then President Park Chung Hee. After Park declared martial law and established what was essentially one-man rule, Kim exiled himself to Japan where he continued his call for a free press, academic freedom, and human rights in his native land. In 1973, Kim was kidnapped from a Tokyo hotel by the KCIA and brought back to South Korea where he faced years of political imprisonment. As soon as he won his freedom at the end of 1978, Kim, who is a devout Roman Catholic and self-professed Jeffersonian democrat, once again spoke out against the suppression of democracy. In February of this year, interim President Choi restored full civil rights to Kim.

Yet, only 3 months later, he was arrested on charges of sedition and other violations when General Chun declared martial law as part of a military takeover that dissolved the National Assembly, imposed press censorship and closed the universities. The day after Kim's arrest, a rebellion broke out in his home city of Kwangju. Over 50,0000 citizens poured out into the streets and drove the armed forces out of the city. When the military finally recaptured Kwangju 10 days later, the reprisals were grim.

Before his trial, the man who was almost elected President of South Korea was kept in an underground cell, often stripped of his clothing, interrogated 15 hours a day for 60 days. He told his court-martial that "what I suffered mentally is beyond description." He was not allowed until the trial to see a lawyer of his own choosing or the members of his family. At the trial itself, Amnesty International and the International Commission of Justice were denied observer status. Kim admitted violations of the foreign currency control law and the martial law decree—charges that our own Government publicly stated "hardly amount to anything more than the charge that Kim Dae Jung was campaigning to be president." He vigorously denied that he violated the sedition and national security laws—charges that the State Department labeled "pretty far-fetched." Yet these are the charges for which Kim has been sentenced to death.

Although I have long followed events in South Korea, this is the first time that I have voiced my concerns about these events on the floor of the Senate. The sentencing of Kim Dae Jung has brought home to me the need to question publicly the future direction of our special relationship with South Korea. And it has awakened in many Americans new and serious doubts about the extent of our military and economic commitment to that country. We learned only a short time ago in another part of Asia that stability and security must rest on more than military authoritarianism. They depend as well on the support of the people. And we learned painfully in Iran that good will toward America can be rapidly dissipated when our professed ideals and actual practices diverge. The danger for us is that the people of South Korea will increasingly come to identify America, for whom they have long felt bonds of gratitude, trust, and affection with the military junta that has turned back the clock again on democratic reform.

For Kim's trial and sentencing symbolizes a broader tragedy in South Korea. After President Park's assassination last October, there was much promise of a gradual institution of democratic processes. Even after Chun Doo Hwan assumed control of the army in a coup de main in December, the transition government of that country seemed to be taking important if faltering steps toward a greater level of citizen participation. The fulfillment of those steps and the realization of those hopes could have led to the flowering of a democratic system in which the people felt not just an economic stake but a political stake as well. In the long run political vitality could have provided greater long-range security against the north. Then the contrast between the political systems on either side of the 38th parallel could not have been clearer to the Korean people and to the world.

But then came the martial law decree of May 17 and the virtual takeover of the government by General Chun. Since that time, Chun has closed down the popularly elected National Assembly, purged thousands of civil servants, ousted over 1,800 executives of state-run banks and corporations, and required the firing of more than 300 journalists critical of the government. The licenses of 172 periodicals have been canceled. The universities have been closed and their faculties purged. Leading politicians of all political parties have been arrested. All political dissent has been stifled. The news media has been placed under tight military censorship. Official American statements of disapproval of Chun's actions have been deliberately distorted and twisted into apparent endorsements, thereby contributing to rising anti-American feeling.

Even President Carter's letter calling for an acceleration of steps toward democracy was doctored so that it appears in the South Korean press as a ringing endorsement of General Chun. Against this background, the trial of Kim Dae Jung is just one more travesty.

Some will argue that we should stay out of South Korea's internal affairs. One could argue that if thousands of American soldiers had not lost their lives to preserve democratic freedoms in the southern half of the Korean peninsula. One could argue that if 38,000 American troops were not stationed in South Korea today. One could argue that if the Armed Forces of Korea were not under the joint command of an American four-star general. One could argue that if the Eximbank did not have an exposure of $3.1 billion in loans to South Korea, the highest to any nation. One could argue that, in short, if our economic and military investment in South Korea were not so overriding as to justify our interest in making good on those investments by insuring stability, security, and democratization.

There are others who will argue that South Korea is not ready for democracy. If that is true, why have so many South Koreans turned out for national elections? Why, when the military permitted it, did a two-party system flourish during the sixties and early seventies? In 1978, when there were relatively free elections for the National Assembly, the New Democratic Party outpolled Presi-

dent Park's party in a true demonstration of democracy. And if the people are not ready for democracy, why the demonstrations in Seoul and other South Korean cities before the May declaration of martial law? And what about the rebellion in Kwanju that followed it? Clearly the people of South Korea believe they are ready for democratic rule.

I have raised these questions because for me and many of our countrymen they cannot be wished away. I do not want to see another Iran in an area of the world as delicate and critical to us as the Korean peninsula. I am not yet prepared to suggest the particular course we should adopt in dealing with the new South Korean Government. But we must make clear that we will be watching very closely. We must make clear that for us, respect for human rights and the commitment to democratic political processes must be cornerstones of those principles on which we base alliance, friendship and favor in the conduct for our affairs with other nations.

I submit, for printing in the RECORD, an article in connection with this matter.

The article follows:

KIM MUST BE SPARED

(By Jerome Alan Cohen)

CAMBRIDGE, MASS.—The sentence of death that a military court in Seoul dealt yesterday to Kim Dae Jung, the opposition leader, demonstrates the bankruptcy of United States policy toward South Korea.

Four years ago, Jimmy Carter warned the dictator Park Chung Hee that continuing repression was undermining American support for his Government. Now, in Mr. Carter's re-election campaign, he will likely portray it as a victory for his statesmanship if American pressure manages to save Mr. Kim, South Korea's most dynamic democratic leader, from death, even if Mr. Kim is left unjustly to rot in prison for life while Koreans suffer under the even more repressive regime that seized power after Mr. Park's assassination.

We could savor the ironies were the situation not so tragic. Gen. Chun Doo Hwan literally shoots his way to power, violating the United Nations Command structure by his illegitimate use of troops. He then jails Mr. Kim to prevent him from taking part in a widely demanded popular Presidential election. When protests break out in Mr. Kim's native province, the savage reaction of General Chun's troops leads to an uprising in the provincial capital of Kwangju that results in a bloodbath that shatters the painstakingly nurtured modus vivendi between the army and civilian society. Mr. Kim then is accused of sedition for supposedly having fomented all this. To discredit the popular Mr. Kim, whose real "crime" is that in 1971 he almost unseated Mr. Park in South Korea's last relatively free election and is a persuasive proponent of the human rights that General Chun detests, the general fabricates charges that Mr. Kim is a Communist. This is doubly ironic: Mr. Kim is a Jeffersonian democrat and devout Roman Catholic who has kept his faith in the possibility of representative government despite all manner of intimidation including an auto "accident," kidnaping, house arrest, and repeated imprisonment.

General Chun, now President, has perfected the "big lie" technique, so well developed in North Korea. Mr. Park's Government was notorious for censorship that sanitized reality, but General Chun's goes beyond that, falsely telling the people that at his trial Mr. Kim admitted key charges of an indictment that sought to make up in length what is lacked in strength. Mr. Kim has admitted violations of the martial-law decree and the foreign-currency-control law, but has vigorously denied that he violated the sedition and national-security laws, under which the death penalty has been imposed.

Actually, the military judges, under command influence, had to rely on the "confession" extracted from Mr. Kim in long weeks of interrogation, 15 hours per day, in an underground cell where he was often stripped nude. Mr. Kim, like his 23 codefendants, repudiated his coerced confession. Still, in a trial that travestied justice, they were all convicted—the 23 got prison terms—despite the prosecution's failure to prove what our State Department has called the "farfetched" charges. The Korean authorities' view was summed up by the chief prosecutor who, echoing General Chun's public statements, told the court: "Such an opportunist, agitator politician must be eliminated from this land for good."

Kim Dae Jung's life must be spared, and General Chun may well be prepared to spare it—at least for now—in return for the American support he so desperately needs for legitimacy. But for Washington to barter its support so cheaply would be tragic. The sedition and national-security charges should be dropped and Mr. Kim and the other defendants released, together with all political prisoners. More fundamentally, the country should be permitted to resume the quest for an open political system that it was embarked upon when General Chun shot his way to power.

President Carter recently stated that "the Koreans are not ready for [democracy] according to their own judgment." How could anyone possibly know that about a people who now greet each other by asking, "Did you pass the night safely?" Moreover, Mr. Carter is misguided if he believes that the only instrument of American pressure capable of loosening the totalitarian Chun grip is a threat to withdraw our forces from the peninsula, which might hurt our security interest in northeastern Asia. Many lesser, yet potent, pressures are available, such as ceasing military sales and discussions on providing F-16 jets, suspending negotiations for Export-Import Bank loans and other trade advantages, and using Korean-language broadcasts on the United States Armed Forces Network to correct General Chun's distortions of Washington's position. A failure to apply such pressures, in the name of preserving South Korean "stability," will leave us with a policy of mere tokenism and will convince many despairing democrats there that change can come only by revolution.●

BAN AGAINST RAIDS

Mr. HUDDLESTON. Mr. President, the September 17, 1980, Washington Post carried an article by Donnel Nunes about the decision of the Attorney General to ban the Immigration and Naturalization Service raids designed to ferret out illegal aliens. The article points out that the INS is angered by the ban and the possibility that the Attorney General will extend it even though there is no demonstrated need to do so. While this misguided concern about the rights of illegal aliens may come as a surprise to some people, it is just another example of an illogical and counterproductive policy on illegal aliens.

For reasons which are known only to those within the Department of Justice, there has been a longstanding policy which is designed to reduce the enforcement of our immigration laws against illegal aliens. Within the last 2 or 3 years, the number of internal investigative officers at INS was reduced by about one-third. These are the officers who apprehend illegal aliens once they are across our borders. This shortsightedness was made very clear when the President ordered the review of the status of all Iranians in this country. In order to make this determination, border patrol officers had to be taken off of our already under-patrolled borders to help in this internal investigation. Now, this decreased number of INS officers is being denied the most effective tool they have for enforcing our immigration laws against illegal aliens. In essence, the Attorney General has adopted a policy for illegal aliens which says that if they can get past our very thin line of border patrol officers, the Federal Government will not make a serious effort to enforce our immigration laws against them.

In other words, the U.S. Attorney General, who is responsible for enforcing all of our Federal laws, has devised an enforcement policy which gives sanctuary to a special class of individuals who knowingly and willingly violate our laws. If there were only a few of these individuals and their impact on this country was minimal, the policies of the Attorney General might be understandable. However, the magnitude of the problem only compounds the seriousness of this "special interest" policy.

Whether by accident or design, the article in the Washington Post directly above the story on Mr. Civiletti's illegal alien policy carried the headline that "15,000 Apply for 70 Federal jobs in Baltimore." At a time when millions of Americans are out of work and are fighting for the few new jobs that are available, the chief law enforcement officer of the United States is pursuing a policy which makes it easier for mill'ons of illegal aliens to take and keep jobs in this country. One of the few things experts in the area of illegal aliens agree on is that illegal aliens come to the United States primarily for one reason—jobs. Yet, where is the concern for the unemployed American at the Department of Justice? It apparently does not exist. Before taking any further steps to curtail the enforcement of immigration against illegal aliens, I recommend that Mr. Civiletti educate himself a little more about the unemployment problem in this country. It might impress upon him more his responsibility to protect the rights of legal residents and citizens. In fact, the Attorney General should take time to read the reports of his own investigators in INS which show that illegal aliens in many cases are earning above $7.50 per hour in every type of industry in this country.

The article states that "Civiletti has been especially concerned with the Nation's Hispanic community, which is particularly sensitive to the illegal alien issue." While I agree that the Attorney General should be concerned about the rights of every minority group in this country, he should not let this blind him to the responsibility which he owes to all Americans, particularly those unemployed.

In order to demonstrate his concern about the Hispanic interest, the Attorney

General has created a special advisory committee and a position for a special assistant. Perhaps Mr. Civiletti should demonstrate as much concern for the vast majority of Americans who want something done about the illegal alien problem. I am certain that he could find more than enough citizens to serve on such an advisory committee from the 91 percent who now say that they want an all-out effort made to control the illegal alien problem. Or, he could help our unemployed problem by creating a position for special adviser on unemployed Americans.

The Attorney General's moratorium on the enforcement of our immigration laws was originally instituted in order to assist the Bureau of the Census in its efforts to count the millions of illegal aliens in the 1980 census. However, there has never been a valid explanation for the extension of this order on his own initiative after the census was taken. In fact, the Census Bureau made no official request for this extension. Why did the Attorney General extend an order which had only one possible purpose—to protect illegal aliens from detection and deportation?

The answer to this question is as unfathomable as his decision to go into Federal court and defend the right of illegal aliens to be represented in the U.S. House of Representatives. When the U.S. Bureau of the Census decided that the millions of illegal aliens should be counted in the 1980 census and included in the reapportionment base, the Department of Justice immediately came forward without hesitation to defend this demunition of political representation of U.S. citizens. Since the number of representatives is fixed, the net effect of this decision is to shift more political clout to those areas that have large concentrations of illegal aliens. Those areas that do not have these large numbers are of course the losers.

However, the Department of Justice was not content to argue that illegal aliens should be included in the reapportionment figures. Instead they went further than the issue at hand and argued that illegal aliens also could be given the right to vote. I cannot imagine anything so unreasonable than to argue that a person who has no legal right to be in this country has a right to vote. Yet, this is the position taken by the Department of Justice.

Mr. President, at a time when the American people are demanding stronger immigration laws and an all-out effort to control illegal aliens, the U.S. Department of Justice is doing everything in its power to keep from enforcing the immigration laws we already have on the books.

In essence, the chief law enforcement agency of the United States is standing idly by while illegal aliens pour across our borders to take jobs and political representation from our citizens. If the Department of Justice cannot be relied upon to protect citizens from this invasion, I think that it is time that some of the policymakers at the Department take a closer look at the growing unemployment lines in this country.

Mr. President, I ask unanimous consent to have printed in the RECORD the articles to which I have made reference.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 17, 1980]

INS IS ANGERED AT 6-MONTH BAN AGAINST RAIDS

(By Donnel Nunes)

Six months ago, in order to encourage the estimated 3.5 million foreigners here illegally to participate in the 1980 census, the Justice Department imposed a ban on immigration service raids designed to ferret them out. U.S. census takers finished their field work weeks ago, but Attorney General Benjamin R. Civiletti has refused to lift the ban.

Immigration investigators contend that the restrictions severely cripple their ability to locate and deport illegal aliens, that a continuation of the moratorium would amount to a de facto amnesty for the undocumented workers and that the ban is politically motivated because it is intended to placate the vast numbers of Hispanic voters who would oppose the deportation of friends or relatives.

"The attorney general hasn't formulated what his policy is going to be," said Justice spokesman John Russell yesterday in explaining why the moratorium has not been ended. He said Civiletti is studying the moratorium and one of the options under consideration is making the ban permanent. The spokesman denied that any political considerations were involved, but did say that Civiletti may discuss his decision with the White House before implementing it.

Civiletti has been especially concerned with the nation's Hispanic community, which is particularly sensitive to the illegal alien issue. Many undocumented workers are Hispanics, and several Hispanic leaders opposed his nomination as attorney general last year.

Those community leaders testified during the hearings that they felt he had not pushed hard enough to prosecute police brutality cases in the Southwest when he was head of the Justice Department's criminal division.

Since becoming attorney general, Civiletti has created a Hispanic advisory committee and named a special assistant for Hispanic affairs to work with Hispanic groups around the country. He has also made a concerted effort to find a Hispanic to fill the now vacant directorship of the Immigration and Naturalization Service.

The restrictions prohibit immigration service sweeps of worksites in search of illegal aliens unless investigators have documented proof or a witness willing to testify that undocumented workers are there.

The moratorium was ordered in an effort to create "an atmosphere conducive to [obtaining] complete participation and disclosure of information" by those in this country illegally, according to the order transmitted to INS offices around the country on March 31.

Despite repeated assurances by the Census Bureau that the information it collects is not disseminated to other federal agencies, federal officials had feared that, without the moratorium, the millions of illegal aliens in the United States might otherwise refuse to cooperate with census takers.

As an example of the possibilities for abuse, one official cited an incident that occurred just before the beginning of the census in which an INS agent in Texas visited the home of a Hispanic and identified himself as a census taker in an effort to gain entry.

The moratorium was initially slated to end June 30 but was extended through the end of July to allow census workers to complete their canvassing of neighborhoods.

On July 31, the INS central headquarters sent out a telegram authorizing its investigators to resume normal search operations in which they are allowed to conduct sweeps in businesses with the permission of the employer or, as in the case of construction sites, to lay in wait to question workers as they arrive for work.

But the next day, investigators were informed that Civiletti, who was attending a conference in Hawaii at the time, had ordered a continuation of the moratorium and had set no date for its end.

"Morale is already bad," said one investigator yesterday. "Now we have to consider the possibility that this thing will go on indefinitely."

One critic of the Carter administration's immigration policy, Roger Conner, director of the Federation for American Immigration Reform, charged yesterday that any extension of the moratorium is illegal.

"Congress passed a law that says that the attorney general 'shall' enforce the law. [A decision to extend it indefinitely] would be the kind of decision that breeds cynicism in the American people," he said.

A Census Bureau spokesman said yesterday that, "since our [census] counts are pretty well completed . . . the need to make use of that moratorium no longer exists. We feel that we've counted everyone we're going to count. The moratorium is moot."

15,000 APPLY FOR 70 FEDERAL JOBS IN BALTIMORE

(By Dale Russakoff)

BALTIMORE, September 16.—Beatrice West a housewife, heard something in her Southwest Baltimore neighborhood that sounded too good to be true: the federal government had 70 job openings for unskilled workers. She rushed to tell her daughter, who told a friend, Wayne Fields.

Fields jumped in his car yesterday and headed downtown to apply. On the way, he saw his brother and a friend, both of them jobless, hanging out on a corner. He told them. They decided to come along.

About 15,000 people had the same idea. Almost all of them are black, most are unemployed, many are on welfare. All day yesterday and early today, they lined up for blocks and waited for hours to pick up applications for the 70 clerical and manual labor jobs coming open in January at the Social Security Administration here.

Local officials and welfare rights leaders called it an "astounding" and "unprecedented" demonstration of the severity of unemployment here, particularly at the lowest level of the economic ladder.

About 40,500 people in Baltimore are unemployed, according to the Department of Labor. That represents 9.9 percent of the work force, 2 percent above the national unemployment rate. The jobs being offered here are at the lowest level of the federal pay scale, paying from $7,210 to $11,555 per year. They are classified as worker trainee jobs, meaning that those who are hired will not become permanent federal employes in less than three years.

Despite the low pay and the potential job security problem many Baltimoreans standing in the lines to apply for the jobs said they knew of no better opportunities.

Serena White, 45, an unemployed mother of two who is now on welfare, took a bus downtown and hobbled on a crutch for the two blocks between the bus stop and the Garmatz Federal Office Building, one of the job application sites.

She was injured in a bus accident, she explained, pointing to broken toes on both feet and her mouth, which was missing several teeth.

"Whatever job there would be I would take," she said. "They say there are jobs in

this city. I've called all the want ads. I've visited all the offices. There aren't even jobs that I don't want, much less jobs that I want.

"I might as well become a criminal. They do more for convicts and ex-convicts than they do for the people who are trying to walk a halfway straight line."

Social Security officials said they intentionally avoided publicizing the openings except to notify the state unemployment office and the federal jobs information center. "We knew we'd get a lot more people than we had hoped to use. You always do with entry-level jobs," one official said.

The speed with which the information spread, mainly by word of mouth, shows the desperation of Baltimore's poor to enter the work force, said Robert Cheeks, executive director of the city's Welfare Rights Organization.

Ministers announced the openings in church services over the weekend, and current Social Security Administration employes told their neighbors and friends. Serena White said she read about the openings in a Democratic women's club flyer.

"Everyone seems to be trying to do something to help people get jobs, but what it does is heighten the frustration," Cheek said. "Every time one person hears about a job, 25 or 50 people hear about it."

Cheek said his own organization recently had 1,100 applicants for 400 jobs in a work incentive program, "and that was before we could even advertise."

Wayne Fields said he could have picked up "a busload" of jobless people to bring to the application site yesterday instead of bringing only his brother and a friend. They call their southwest Baltimore neighborhood "The Valley," because so many people are out of work. He and his brother, Marvin, 20, and their friend Wayne Webster, 21, said they were discouraged to find that so many others had applied for the jobs.

"It's just danged hard," Wayne Fields said. Marvin Fields and Webster chimed in in a sort of chorus: "This place is tight," Marvin added. "There's no opportunity," said Webster.

Social Security officials said it will take three months to process the applications. They said they expect to fill 68 to 75 jobs in the Baltimore Social Security offices, and place the names of all other eligible applicants on federal job registers.

The lines at the Garmatz building Monday were the longest that formed at any of the three application sites. An estimated 5,500 people picked up applications Monday at the federal building, which stands about a block from Baltimore's glistening new harbor front developments. Cheek called the juxtaposition of the nationally renowned harbor and the job application lines ironic.

Marvin Fields put it this way: "They's putting up warehouses and buildings and all kinds of stuff, but there still ain't no work."

THE STEWARDSHIP OF ALFRED KAHN

Mr. PROXMIRE. Mr. President. Mr. Alfred E. Kahn, Chairman of the Council on Wage and Price Stability, probably has the toughest job in Washington. He is Chairman of the Council at a time of rampaging and unprecedented peacetime inflation. It is an inflation which he neither caused nor had the power to defeat. He has had little or almost no authority to control prices, wages, and inflation. He did not control either budget policy, monetary policy, nor the prices which the OPEC cartel charged for gas and oil. His was and is a thankless job.

Throughout it all he has been a man who exhibited extraordinary public buoyancy. He called it as he saw it. He did not pull his punches. He told the truth, or committed truth when it got him into trouble. He still went ahead.

Who can forget when the administration sat on him for calling the recession, a recession Kahn bounced up, saying that henceforth he would call the recession a "banana", and he did, and of course it became a pretty big banana.

Mr. President, before he headed COWPS he directed the CAB as Chairman. He led the fight for airline deregulation which has now come to pass with such great benefits for both the public and the industry, that has become the most successful single achievement of this administration.

Now Alfred Kahn is leaving to go back to teaching at Cornell. Hobart Rowen wrote a warm, sympathetic and honest article about him which appeared in Thursday's Washington Post. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

KAHN: NOT GOING AWAY MAD, JUST GOING AWAY

Alfred E. Kahn, President Carter's "inflation czar," is leaving the administration immediately after the election whether the president wins or loses. He's not mad at anybody, but he's had one of the more thankless jobs in Washington and he wants out.

So with the president's assent—and Kahn's Capitol Hill house now sold—Kahn will return to his teaching post at Cornell University. There, he says, "I can be my own boss."

In his office the other day—shoes off, and relaxed in his cane-backed rocking chair—Kahn admitted that it's been frustrating "being an adviser without clear institutional responsibilities."

It was painfully evident from the start of Kahn's promotion to being chief inflation fighter that he had been Peter-principled out of his more comfortable role as chairman of the Civil Aeronautics Board, where he gave impetus to the deregulation of the airlines.

Although he was supposed to be in charge of Carter's anti-inflation program, Kahn's chief problem was that there was no program to be in charge of.

It was no secret that Kahn was not one of the inside group of Carter's economic policy-makers, including Economic Council Chairman Charles L. Schultze, White House aide Stuart Eizenstat and the secretary of the Treasury—at different stages, W. Michael Blumenthal and, currently, G. William Miller.

Kahn says he "never has been much good at jostling. I'm not the kind of guy who says: 'Let me into the huddle.' "

Thus, Kahn had little real effect on crucial policy questions. When the Chrysler Corporation appealed for government help, Kahn argued that the White House should not give its blessing to an inflationary wage increase for the United Auto Workers. But he was batted down by others in the Carter entourage who did not want to risk losing UAW support during the election.

When Miller, Schultze and other top Carter aides were forswearing a tax cut last spring (until, somehow, the budget was to get balanced), Kahn was saying plainly that tax reductions would be needed. His position is now official administration policy.

Despite his defeats, Kahn is a firm supporter of President Carter and is spending as much time as he can picking holes in the Ronald Reagan economic program for any reporter who will take the time to listen.

Kahn sees a number of "surprisingly optimistic signs" of economic recovery. But he isn't ready to endorse the rather amazing declaration by Commerce Department economist Courtenay Slater that the recession is already over and the upsurge has begun.

More realistically, Kahn admits that "everybody is troubled by the [recent] rise in interest rates." His own judgment is that with wage settlements in the 9.5 to 10 percent range, "there is no reason to see a decline in the basic inflation rate from about the 10 percent level." He acknowledges that any 1981 recovery will be painfully slow.

Like many academics (and he freely admits that he thinks more like a professor than a politician or a bureaucrat), Kahn says that the government must eventually use its taxing power to encourage wage and price restraint.

He favors a "TIP" system—TIP is an acronym for "tax-related incomes policy." There are many variants of the system, but the idea is to give a tax concession to companies and workers that hold down prices and wages. There are many practical complications to TIP, but it is short of formal wage-price controls.

Privately, the Carter team discussed the possibility of including a pro-TIP declaration in the recently announced "economic renewal" program. But they decided that there is not yet the necessary political consensus for it.

Nonetheless, in a recent interview, Eizenstat told me that "when there are income-tax cuts during the 1980s, we think they should be structured in such a way as to help with inflation, rather than hurt, and that might mean tying it to wage and price restraint." There are other possible ways, relating to offsets against local sales taxes, or food tax rebates.

It may be understandable that President Carter was gun-shy, constrained not only by election-year caution but by the absence of meaningful labor or business support for an incomes policy.

But given the continuing dangers of inflation, internal and external, no industrial policy is worthy of the name without such an approach.

As he leaves town, Kahn says that holding back increases in money wages and prices constitutes society's most important challenge. He is realistic enough to know that as "inflation czar" he didn't contribute much to the cause. But it was hardly his fault, and he leaves with his integrity intact.

THE REALITY OF SACRIFICE

Mr. PROXMIRE. Mr. President, the reality of sacrifice is that individuals often are not called upon to sacrifice equally. This surely is evident from the spirit of the recent program honoring the 1980 U.S. Olympic team. These young men and women were called upon to sacrifice their chance to realize a long-held dream. They made a more personal sacrifice to the principle for which this country boycotted the 1980 Olympics. While the world may note that it is the United States which boycotted the Olympics, our country recognizes that it is these individual athletes who made the greatest sacrifice for that end.

During the second World War, a single group of people also sacrificed more

painfully and personally than any other. The Jewish people were the target of Nazi whim and cruelty. Their numbers were decimated. Their culture was threatened. Certainly none could forget the sacrifices of millions of Allied soldiers and volunteers. But none should presume to compare the sacrifices of these individuals to the sacrifices of the Jewish people. Many men and women gave their lives in opposition to the Nazis. But no other group suffered such a loss of property, life, and hope as did these targets of the harshest Nazi policies.

Mr. President, this Nation has honored the personal sacrifices of its 1980 Olympic team. This Nation has honored its veterans and volunteers who sacrificed their lives in World War II. The honor we have bestowed on these citizens can be a source of pride for this Nation and this body. For honor is sufficient when little other compensation can be granted.

The sympathy we have expressed for the Jewish victims of World War II is not a satisfactory symbol of our national concern. For we have the opportunity to ratify a convention which would make genocide an international crime. In the face of this opportunity, our expressions of sympathy and respect for the Jewish victims of Nazism are insufficient. Our only consistent course of action would be the immediate ratification of the Genocide Convention.

Mr. President, I urge my colleagues to add substance to this Nation's remorse over the sacrifice of millions of Jews during World War II, the Jews who were destroyed by Hitler with his hideous genocide. I urge my colleagues to add substance to this Nation's devotion to human rights. We must ratify the Genocide Convention.

HOW FEDERAL DRIVE TO CURB BILLBOARDS RAN OFF THE ROAD

Mr. CHAFEE. Mr. President, the current issue of U.S. News & World Report contains a very interesting article on the sad state of the Federal highway beautification program. The article demonstrates clearly, I believe, the validity of the position that has been taken by the senior Senator from Vermont (Mr. STAFFORD). Senator STAFFORD is convinced that the program can only work—and save the taxpayers a possible bill exceeding $1 billion—if control is returned to the States. His bill S. 344 and subsequent amendment on this issue may come to a vote before the conclusion of the 96th Congress.

Mr. President, I ask unanimous consent that the U.S. News article be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HOW FEDERAL DRIVE TO CURB BILLBOARDS RAN OFF THE ROAD

Millions have been spent to remove unsightly signs from U.S. highways. Yet in many areas they still clutter the landscape. What went wrong?

It was heralded as a major environmental breakthrough when it was enacted in 1965. Today, the Highway Beautification Act is viewed as a dismal failure.

Critics claim that instead of helping to rid federal roadways of unsightly billboards and junkyards, the law has been transformed into scarcely more than a high-priced subsidy for the outdoor-advertising industry.

Taxpayers have little to show for the hundreds of millions of public dollars spent so far on sign removal, environmentalists charge. Still standing are more than 14 billboards for every 10 miles of highway—signs that critics contend will never come down under existing law.

As a result, environmental groups, who once supported the law, now want it repealed, while sign owners, who originally opposed the law, are battling to keep it.

Senator Robert T. Stafford (R-Vt.) charges that the law's aims were never fully realized because "a steady stream of crippling amendments has thwarted the noble purposes of the Highway Beautification Act."

Billboard owners admit they sought and won changes in the statute but claim their purpose was only to clarify Congress's original intent. A measure of the program's success, they argue, is that it has kept 500,000 new signs from sprouting along highways. Yet the law's shortcomings are evident—

Despite 232 million dollars spent to take down offensive signs, the number of billboards along federal highways has actually increased in some states, such as Florida and Georgia.

Of some 839,000 signs originally targeted for removal, several hundred thousand are still standing.

Removal of the remaining signs would cost up to $40,000 each and take more than 100 years at present funding levels set by Congress.

Even if all the targeted billboards came down, motorists probably would not notice an improvement, because the law allows the erection of new signs and exempts many others from removal, a congressional study shows.

Efforts to spruce up roadside junkyards also have proved unsuccessful. Nearly 3 out of 4 of the 17,400 junkyards originally earmarked for relocation or screening still mar the scenery.

Ross Barrett, senior vice president of Metromedia, Inc., which owns a billboard-advertising subsidiary, contends the 1965 act was never intended to eliminate all signs. "Businesses like hotels and restaurants that depend on travelers are devastated without signs," Barrett adds. "Besides, studies show that the traveling public likes to have the information and misses it when it's gone."

What especially concerns Senator Stafford and other critics of the highway-beautification law is a 1978 amendment requiring the government to pay sign owners for every billboard taken down. Because Congress is unwilling—or unable—to appropriate sufficient money to undertake the enormous task, the amendment virtually guarantees the preservation of hundreds of thousands of signs.

Prior to 1978, some 420,000 signs were removed, at no cost to taxpayers through local zoning laws or amortization, a process that required signs to come down only after the owners had recouped their costs.

Expectations of the program have dropped so low that President Carter asked Congress—unsuccessfully—to suspend funding in 1980 pending a review by an outside advisory committee on better ways to curb billboards.

"We don't have much to show for 15 years," asserts Harry S. Kinter of the Federal Highway Administration, which oversees the program. Kinter concedes that most of the signs taken down were no longer wanted by the industry because they were dilapidated or located on bypassed routes.

Even while old signs were coming down, billboard operators were finding ways to erect more and bigger new signs. In some cases, local governments helped to thwart the law's intent by zoning lengthy stretches of interstate highway in rural areas for industrial use, specifically to allow signboards to go up. The law permits signs in commercial and industrial zones.

One Nevada county, for example, rezoned a 600-foot-wide swath of rural land along 137 miles of highway leading into Las Vegas.

NO FURTHER

Complains Marion Fuller Brown, a member of the Garden Club of America: "In my home state of Maine, we've removed over 2,000 billboards at a cost of 1 million dollars but we're no further down the road, because more signs have gone up."

Another unforeseen byproduct of the beautification program is the "jumbo" sign—the huge, usually lighted, billboard erected more than 660 feet from the road, the minimum permissible distance under the original law.

A prime task of the billboard advisory panel named by Transportation Secretary Neil Goldschmidt is to consider whether, in the light of its past failures, the highway-beautification program should be sharply curtailed. One proposal: Limit the law's coverage only to signs along scenic routes.

Meanwhile, Senator Stafford has introduced legislation to overturn the Highway Beautification Act by making state participation voluntary. But, with such formidable opposition as the billboard lobby, no one is optimistic about the bill's chances.

THE KANSAS CITY STAR CENTENNIAL: 100 YEARS OF DISTINCTIVE JOURNALISM

Mr. DOLE. Mr. President, today marks the centennial anniversary of one of this country's finest newspapers, the Kansas City Star. Founded on September 18, 1880, the Star has served its readers in my State of Kansas and the State of Missouri with distinction these past 100 years.

Ours is a Nation that cherishes the right of freedom of the press. With good reason, the Founding Fathers established it as one of our basic principles in the bill of rights. Throughout the history of this country, newspapers have covered the world events on a day-to-day basis and have crusaded for causes great and small. We cannot forget the invaluable role of newspapers in many reform movements dating back to colonial America, when the local tabloids in New England and Virginia aroused the populace against the mother country. Indeed, "the press," as it is so often referred to today, became an established and respected institution which protects our most basic freedoms. The Kansas City Star has carried on these traditions as one of the shining beacons and leaders of journalism in the Midwest.

The Star's founder, William Rockhill Nelson, wrote in the Star's inaugural issue that the paper would "spare no labor or expense to take and keep a place in the front rank of afternoon journalism." The Star has continued to live up to Nelson's pledge.

Nelson gave Kansas City a civic pride through his relentless crusades—movements which were in the best tradition of the newspaper business. He fought for inexpensive and efficient public transportation, bringing cable cars to the city's

hills. He battled against corrupt politicians and gamblers. He campaigned for years to establish Kansas City's famous parks and boulevards, then himself built model homes along those boulevards and saw that residents planted trees and flowers. The Star helped to inaugurate the commission form of government in the city, and by its espousal of progressive reform of government, spread the doctrine throughout its circulation area in the Missouri Valley.

By 1890, the Star had spread its domain throughout Kansas City and well into Kansas, and before Nelson's death the Star's circulation hit 170,000, a quantum jump from its modest initial figure of 3,000. The subscription price was 10 cents a week at the start, but even after a Sunday edition had been added and the Morning Times had sold out to Nelson in 1901, the price for morning, evening, and Sunday editions remained a dime. The price formula, plus the Star's intensive coverage of its area and its human interest and literary qualities, made the paper invulnerable to the attacks of competitors who tried to win readers by using the sensational techniques which Nelson shunned.

Over the years, the Star has shaped a wealth of journalistic talent: The great William Allen White, who later earned fame as editor of the Emporia Gazette, spent part of his youth at the Star. There was Frank L. Martin, who became dean at the University of Missouri School of Journalism; and in later years, editor Wesley Stout of the Saturday Evening Post, columnist Raymond Clapper, and writer Russel Crouse.

Ernest Hemingway worked briefly at the Star before serving in World War I. Later he said his experience at the Star had vitally influenced his writing style.

Roy Roberts, president and publisher of the Star from 1938 to 1956, was a particularly noteworthy addition to the paper. A native Kansan, Roberts was the Star's resident political authority for two decades. In addition to his role as sage political columnist, he played a crucial part in the Republican nomination campaigns of both Alf Landon and Dwight Eisenhower. A man widely recognized for "cleaning up" Kansas City following the Pendergast regime, Roberts raised the Star's activity in strongly promoting good government to a new high.

From William Rockhill Nelson's time on, the Star has prided itself on being a vigorous proponent of change and growth, with a keen eye toward preserving the traditions which mark Kansas City as one of the most livable cities in the country. Capital Cities Communications, Inc., the Star's latest owner, is keeping the paper within that fine tradition.

Today the circulation is 273,758 for the Star, 314,007 for the Times, and 406,467 for the Sunday Star. As it embarks on its second century, the Star continues to build upon the quality which William Rockhill Nelson envisioned for it in 1880.

The Senator from Kansas extends best wishes to the staff and owners of the Kansas City Star on this centennial anniversary and expresses hope for continued success in the years to come.

KANSAS CITY STAR CELEBRATES 100TH ANNIVERSARY

Mr. DANFORTH. Mr. President, William Rockhill Nelson established the Kansas City Evening Star in 1880. On September 18, 1980, Kansas Citians and visiting dignitaries will pay tribute to the Kansas City Star as it celebrates its 100th year of service to the community and the Nation.

The publishers set forth in the first edition of the Kansas City Evening Star the news and editorial policies of the paper:

> The Kansas City Evening Star is offered to the people of the Missouri Valley, in order to meet a demand, which evidently exists, for a cheap afternoon newspaper, of the highest class, absolutely independent in politics, entirely disconnected from rings and cliques of all description, and wholly free to labor for the interests of the people and to wage warfare upon corrupt and extravagant tax eaters of all parties . . . The Evening Star will devote its best energies to aiding the work of building up the material and moral interests of Kansas City, and developing the great Missouri Valley, of which this is the metropolis.

The newspaper has kept faith with this concept over its long and illustrious history. Under the able leadership of Roy A. Roberts, Richard B. Fowler, Paul V. Miner, and William W. Baker, the Star has established its fine record and reputation.

Started as an evening paper, the Star absorbed the Kansas City Times in 1901 and since that time has printed both an evening and morning paper with a Sunday edition of the Star.

The Kansas City Star enters its second century under the ownership of Capital Cities Communications, Inc., and the direction of President and Publisher James H. Hale; editor Michael J. Davies; and editor, editorial page, James W. Scott.

I am honored today to ask my colleagues in the U.S. Senate to join with me in extending congratulations to the people of the Kansas City Star as they celebrate 100 years of service to Kansas City.

FAIR HOUSING AMENDMENTS ACT OF 1980

Mr. MOYNIHAN. Mr. President, I rise today in support of S. 506, the Fair Housing Amendments Act of 1980, to which I have added my name as a cosponsor. It is an honor to be associated with this bill, a milestone in the annals of civil rights legislation, and our first major initiative in this area in 12 years, and I would urge its early consideration by this body.

One would like to think that fair housing legislation is a redundancy; no precept seems clearer than that anyone who can afford a home may buy or rent it. Currency, not race, sex, religion, or health, should be the consideration. But alas it is not always so.

After more than 100 years of Government initiatives, housing markets are still plagued by discrimination. In 1866, the first Reconstruction Congress passed a law guaranteeing to

> all citizens of the United States . . . the same right in every state and territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease [and] sell . . . real . . . property.

For 100 years this law has reflected an ideal favoring equality of housing opportunity. Not until 1962, however—96 years later—did the Federal Government attempt to realize this ideal. In Executive Order 11063, issued in November 1962, President Kennedy prohibited housing discrimination where Federal Housing Administration (FHA) and Veterans' Administration (VA) insurance programs were involved. But that order, and all amendments that could validly be added to it, were restricted to those elements of the housing problem under direct executive authority.

As a result of his dissatisfaction with this limitation, President Johnson introduced a Fair Housing Law in 1966, declaring resoundingly that—

> Discrimination in housing and all it breeds are a denial of justice and a threat to the development of our growing urban areas.

The Mondale-Brooke Act, as the President's legislation was later known, did just that. Passed as title VIII of the Civil Rights Act of 1968, it prohibits housing discrimination based on race, religion, sex, or national origin. It allows individuals, "testors," and the Department of Housing and Urban Development to bring civil suits in U.S. district courts if they are victims of housing discrimination or if they discern a pattern of discrimination. If their complaint is upheld, the court may assess actual and punitive damages at equity—usually a return to the status quo ante. Moreover, as an indication of the Federal Government's concern for fair housing, the Act created the position of Assistant Secretary of Fair Housing and Equal Opportunity within the Department of Housing and Urban Development.

But this bill, however laudable its intent, was not enough. In a prescient editorial, the New York Times noted at the time:

> A weakness of the Administration's program lies in its proposed methods. Enforcement of the housing . . . provisions would depend upon court suits by individuals and upon suits by the Justice Department where a pattern of discrimination is found to exist.

S. 506 responds directly to this flaw. As reported by the Senate Judiciary Committee, this bill would strengthen the 1968 act's enforcement provision. S. 506 would allow HUD to attempt to conciliate the dispute, or to refer it to a state housing agency, the Justice Department, or to the Fair Housing Review Commission—an administrative board established by this act and empowered to appoint administrative law judges. In addition to the legal enforcement procedures, the act also contains an economic incentive for equal treatment; those guilty of violating S. 506 can be fined up to $10,000.

The bill includes the handicapped among groups against whom discrimination is illegal. Surely it is time to recognize that the physically disabled need, and should have as a matter of right

equal opportunities. Landlords and owners would not be burdened with the cost of alterations to accommodate the disabled, but they could not refuse to rent or sell a home solely because the prospective tenant is handicapped. In a superb editorial of last August 8, the New York Times highlighted the bill's merits and underscored the pressing need for its enactment; and just today this concern was reiterated in another editorial. I ask unanimous consent that both of these be printed in full at the conclusion of my remarks.

This is an equitable and effective fair housing bill; we must—in the name of justice—enact it. President Johnson spoke of his 1966 civil rights package as "the end of the beginning." By 1980, we have not progressed beyond that early point. We can enumerate rights, but we cannot insure them. The 1965 Civil Rights Conference was titled, "To Fulfill These Rights"; 15 years later it is time to make good on our promises.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 17, 1980]

PUTTING TEETH INTO FAIR HOUSING

What with Washington clamping down on social welfare spending, civil rights groups have had little to cheer about this year. Still a long-sought legislative victory finally seems imminent: forceful fair housing law, replacing a toothless predecessor. The House approved the measure in June and the Senate Judiciary Committee has sent a similar version on to the full Senate. When Congress returns, the bill deserves prompt approval.

The original fair housing law was regarded as one of the powerful civil rights enactments of the 60's. In truth, the legislation was defanged before its enactment and Federal enforcement has largely been a bust. The Department of Housing and Urban Development was empowered to conciliate complaints, but precluded from suing on behalf of complainants. The Justice Department could not sue when it uncovered individual instances of racial bias in the sale or rental of housing, only when patterns of such conduct could be proved.

The pending bill would create a system of administrative law judges to adjudicate complaints. This method promises speedier and cheaper resolution of housing cases than the alternative, defeated in both the Senate committee and the House, of relying on Federal magistrates who already have their hands full with more significant cases.

The two versions differ in one respect that could become an obstacle to enactment. The House would place the administrative judges in Justice; the Senate committee prefers a new Fair Housing Review Commission. The latter approach would please civil rights purists, but we question the desirability of creating a whole new bureaucratic entity.

Still, either location would do. What's most important is enactment of a tough fair housing bill. Its prospects ought not be jeopardized by a squabble over which agency the administrative judges eventually call home.

[The New York Times, Sept. 17, 1980]

THE FLEETING TIME FOR FAIRNESS

There is, however, still time for Congress to complete a serious effort to strengthen the nation's law against discrimination in housing. A promising and fair law has passed the House, but the adjournment clock now threatens it in the Senate.

Under present law, the Department of Housing and Urban Development can act only as a conciliator, while the Justice Department may go to court only when it uncovers large patterns of discrimination in housing rentals or sales. A decade's experience has shown that most individual victims of discrimination, therefore, are left without a remedy.

The pending legislation would empower administrative judges to hear complaints and, where warranted, to issue cease-and-desist orders. The main remaining difference between the House and the Senate's Judiciary Committee concerns the bureaucratic home of the judges. The House prefers the Justice Department to escape the pressures in Housing and Urban Development; the Senate committee would create a new Fair Housing Review Commission. Either arrangement is vastly preferable to the plan of some senators to have such complaints sent to Federal court magistrates. Most disputes between landlords and tenants or sellers and buyers are not important enough for the courts.

Some senators want to avoid any election-year vote on the issue. Still others oppose the measure because it could be invoked when a discriminatory effect, rather than intent, has been proved. But a discriminatory effect has satisfied the appellate courts in housing cases; intent is much too easy to disguise.

Concern that the new administrative judges could override local zoning laws has been met in the pending bill. Some zoning regulations have been challenged as motivated by racial bias. But these cases, along with others that raise complex issues, would bypass the administrative judges and, if deemed worthy by the Attorney General, move directly to Federal court—where they have always been heard. There are, in sum, no longer any good reasons to avoid this measure.

THE DEATH OF EDITH R. STERN

Mr. LONG. Mr. President, it is my sad and painful duty to inform this Senate of the loss of Mrs. Edith R. Stern—a truly great lady. Mrs. Stern, known best for her lifetime of generosity, died on September 11, 1980, in New Orleans.

Mrs. Stern will be greatly missed because she spent most of her 85 years caring about persons less fortunate than she. She was loved because of her caring, she was admired for crusades in politics and education.

In remembrance of this outstanding philanthropist, I ask unanimous consent to have printed in the RECORD the article on Mrs. Stern which appeared last Friday in the New Orleans Times Picayune/States-Item.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STERN WEALTH AN "INVESTMENT IN HUMANITY"

(By John Pope)

"Money is wasted on many people," said Edith R. Stern, who was born into one affluent family and married into another. "Our families always regarded wealth as a trust to be invested judiciously in humanity."

These "investments" touched nearly every major charity in New Orleans and, through the Stern Fund, many others that were headed by people she never saw.

In New Orleans, she founded the Newcomb Nursery School and the Metairie Park Country Day School; was a member of the boards that ran Dillard University and the New Orleans Museum of Art; supported reform candidates for public office, often providing substantial financial help; and established the Voters Registration League Inc.—later Voters Service Inc.—to weed out illegally registered persons and to encourage others to exercise their right to register and vote.

She and her husband, the late Edgar B. Stern Sr., set up the Stern Fund with his money and the fortune she had inherited from her father, Julius Rosenwald, a president of Sears, Roebuck and Co. More than $10 million has been given by the foundation to advance such diverse enterprises as Ralph Nader's campaign for a federal "sunshine" law and the Freedom of Information Act, the work of biologist Barry Commoner, studies into the side-effects of nuclear energy, and the establishment of the Fund for Investigative Journalism, which helped pay the expenses Seymour Hersh incurred while researching his Pulitzer Prize-winning story of the My Lai massacre.

Yet Mrs. Stern also was a mother, grandmother and great-grandmother who delighted in receiving letters from younger members of her large family. She gave Sears stock to the staff at her massive house on Garden Lane, and she helped some of her employees through their financial difficulties. And when she felt pride in a friend's accomplishments, she used to say, "I put on my 'mama' face when I think about what you've done."

She spent most of her life in New Orleans, but she was born in Chicago to parents she adored. She grew up with money, but, she said in a 1974 States-Item interview, "We were reared in the traditions of good works, culture and public service. If any of us indulged in personal extravagances, we had a guilt complex."

Her father was a model for the philanthropy she later practiced. Julius Rosenwald, who was Sears' president from 1910 through 1924, once remarked that it was easier to make $1 million honestly than to give it away wisely. He gave away more than $63 million.

He established Chicago's Museum of Science and Industry and contributed to Jewish charities and a wide array of educational, scientific and community causes and organizations. Through the Julius Rosenwald Fund, he helped finance the building of more than 5,000 schools for blacks, the establishment of clinics to treat their illnesses, and the development of grants to aid black artists, writers and musicians.

When she was growing up, Edith Rosenwald "went to a progressive education school in Chicago, one of those schools where you learn nothing," she recalled in the 1974 interview. "Then I went to high school but never graduated."

She also attended a finishing school in Germany, where she studied German and learned the language's guttural sounds because her teacher pressed her hand against her vocal cords as she spoke.

"I developed a basso profundo speaking voice," she said. "That was a blessing because Edgar told me later he could never have married a girl with a Chicago voice."

But before she met Edgar Stern, she was married at 18 to a man she later refused to name. The union did not last, and after a divorce, she went to live in New York City, where she met Stern, a Harvard student.

The two became engaged, but Edith Rosenwald's father summoned her back to Chicago, and she obeyed. She and Stern were eager to be married, but as an Illinois resident once more, she faced a legal problem: State law required a person to wait one year after his divorce decree became final before he could get a license for a second marriage.

By the time the couple learned of this hitch, they had already booked passage on a ship to Europe for their honeymoon. So they started looking for a state with more lenient laws, and they found Indiana.

"I had a brainstorm," she said. "Why not get a private railroad car, hitch it to the train going from Illinois to Indiana, get married on the train in Indiana and return home to Chicago for the reception?

"My parents agreed. The family decorated the car with so many flowers it looked like a gangster's funeral. About 30 guests, including family, crowded the car. The rabbi performed the ceremony as soon as we drew into Indiana. Then we got back to Ravinia, our family estate. We had a big reception—champagne, wedding cake, music—then off to New York to sail for Europe the next day."

The date was June 29, 1921. In the 1974 interview, she referred to it as "my finest hour."

The couple moved here, and, Mrs. Stern said, "I had three babies (two sons and a daughter) in less than four years, and I thought I was a much-put-upon young woman."

In 1926, when the Sterns' oldest child, Edgar B. Stern Jr., was 2, Mrs. Stern wanted to enroll him in nursery school like those she had seen in the East. No such school existed here, so she and a group of parents started one: the New Orleans Nursery School, which became the Newcomb Nursery School.

She went through a similar process when her children reached elementary-school age because, she said, she wanted them to attend a progressive coeducational school in a rural atmosphere. The result was Metairie Park Country Day School.

In adult education, Edgar B. Stern was a leader in negotiations that led to the formation of Dillard University in 1930 from two black colleges, New Orleans University and Straight College. He was the first president of Dillard's board of trustees, and Mrs. Stern succeeded him as a board member after his death in 1959.

On the Dillard campus, one building is named after her husband, and another is named after her father.

Mrs. Stern also was active in Democratic Party politics and attended several national party conventions. During the 1945–46 mayoral campaign of deLesseps S. "Chep" Morrison, the reform candidate, Mrs. Stern led a group of women marching with brooms across their shoulders from Lee Circle to Jerusalem Temple to dramatize Morrison's intention to sweep out the practices associated with his predecessor.

After Morrison's election, Mrs. Stern was appointed to the city Parkway and Park Commission. She also was executive secretary of the New Orleans housing projects, and in 1951, she was named Louisiana's representative to serve on a 48-woman commission—one member per state—to advise the Defense Department on matters relating to women in the armed forces. A decade later, President Kennedy appointed her to the National Cultural Center Advisory Committee on the Arts.

But her principal political activity was the organization of the Voters Registration League Inc., which fought with local and state officials to have the city's rolls purged of voters improperly registered as disabled and illiterate.

Through this crusade, the number of persons so registered dropped from nearly 10,000 in 1961 to 4,075 the next year, and the method of registering such persons was changed to require voters needing help at the polls to fill out colored cards.

Mrs. Stern also set up a filing system to give complete information on each voter and to ease the task of spotting improperly registered persons.

The organization mailed letters to voters urging them to correct or revise their registration forms to keep from being eliminated from the rolls and, to keep elections as honest as possible, worked to retain voting machines throughout the state.

"The vote is something so precious," Mrs. Stern said in a 1956 speech. "It should not be tampered with. The privilege of voting is one of the most priceless things we have in America today."

The organization was nonpartisan and nonprofit, but it had to raise money to meet its annual operating expenses of about $20,000. One fundraising method that candidates found invaluable was the sale—at $5 per precinct—of complete lists of voters for the entire city. These names were printed on gummed labels, ready to be stuck onto campaign literature to be mailed.

The Sterns lived on an estate on Garden Lane, a private path off Metairie Road near the New Orleans Country Club golf course. Among the scores of guests who stayed there were artists, musicians, Eleanor Roosevelt and Adlai Stevenson.

There, in 1940, Ellen Biddle Shipman, a landscape architect, laid out the large formal garden that become Longue Vue—a spot that took its name from the Hudson River estate where the Sterns became engaged.

In 1968, Mrs. Stern opened Longue Vue Gardens to the public. When she heard that admission fees would be charged to help pay for the site's upkeep, she quipped, "Can't you see me there with my tin cup?"

When she announced that she wanted to donate her house and surrounding land to the New Orleans Museum of Art to be operated as a museum, her neighbors were furious, fearing invasions of unwanted automobiles and tourist buses on their private street.

Several of them filed suit two years ago, but the matter was settled before it got to court. Instead of using Garden Lane as an approach for cars and buses, another road was built to provide public access to the house and Longue Vue Gardens.

The estate has been converted into a center of decorative arts, said E. John Bullard, director of the New Orleans Museum of Art. To underwrite the work, Mrs. Stern provided a $5 million endowment.

"It's going to be a center where people can come and be involved and be excited and not just be awed by a big house that somebody with a lot of money lived in," said Bullard while the conversion was in progress.

While her home was her most conspicuous gift to the museum, it was not her only donation. Among the art she gave were "Coup Ou Fruit," a sculpture by Jean Arp; "Ballatrix C," by Victor Vasarely; "Suspended-Construction in Space," by Naum Gabo; and a sketch Wassily Kandinsky made for his painting "Several Circles."

She was instrumental in helping the museum develop its Arts of the Americas collection and in acquiring its trove of Peruvian art, which Bullard described as the most important such collection in the United States.

Mrs. Stern also paid for the construction of the museum's Stern Auditorium.

In The States-Item's centennial issue in June 1977, the Sterns were named the city's outstanding philanthropists during the newspaper's first century of existence.

NEED FOR INCREASED PLUTONIUM PRODUCTION

Mr. THURMOND. Mr. President, the critical need for increased weapons grade nuclear materials production was the subject of an article which appeared today on the editorial page of the New York Times newspaper.

The Senate Armed Services Committee increased the Carter administration fiscal year 1981 authorization budget by about $150 million to meet this problem.

Unfortunately the Senate Appropriations Committee did not follow our lead and I believe their failure to do so was a serious mistake and detrimental to our national security.

Mr. President, I ask unanimous consent to have printed in the RECORD this editorial entitled "The Plutonium Shortfall" by William Safire.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE PLUTONIUM SHORTFALL

(By William Safire)

SAN FRANCISCO, September 17.—In national defense, all matters of missilery and budgetry pale into insignificance when this question arises: Are we producing enough weapons-grade nuclear material to make our warheads work?

The Senate Armed Services Committee, in a little-noticed report from Henry Jackson made public last month, says no: "The projected shortages of Special Nuclear Materials are of such potentially serious concern to our national security interests that the Administration's hesitation in taking corrective measures cannot be understood."

Let us try to understand how the Carter Administration has been playing fast and loose with the most important single element in our national survival. Unclassified portions of correspondence among the Secretary of Defense, the Joint Chiefs and the National Security Adviser are instructive: Sensitive, restricted data were properly blocked out—reporters do not seek nor do whistle-blowers reveal atomic energy secrets—but the remainder illustrates the way the Carter men treat national weaknesses by trying to deceive Congress and the public.

On Dec. 17, 1979, Secretary of Defense Harold Brown protested to the Office of Management and Budget that its cut of funds for a plutonium-uranium extraction plant would lessen our ability to defend ourselves. Despite that plea to "reconsider your decision," the O.M.B.—under political budget-balancing orders from the White House—turned down Defense.

President Carter's Defense Secretary then went before the Congress and misled it by attesting to the adequacy of nuclear materials production. But in an April 11, 1980, letter to the Energy Secretary, Mr. Brown confessed: "While I have concurred in the report to Congress concerning the adequacy . . . I remain concerned that over the next several years . . . resources may not be sufficient to meet requirements for the delivery of nuclear weapons to the stockpile . . ." In plain words, Good Team Player Brown was telling his Cabinet colleague that his Congressional testimony reflected the opposite of his personal convictions and professional judgment.

All this was too much for the Joint Chiefs. In late June, they complained to Brown that his internal papering of the file did not show the urgency of the situation, and recommended that he write to the National Security Adviser that further delays of funding would harm the national defense.

At that point, Secretary Brown—who was about to leak the plans for an invisible aircraft to show voters how well the nation was being defended—passed the Joint Chiefs' pressure on to Zbigniew Brzezinski. On July 24, a policy review committee meeting was held. Its summary of conclusions was sent to President Carter, urging him to move ahead on plutonium production. However, the President—according to an Aug. 7 memo from Brzezinski—"deferred" making a decision. (Why, on a matter on such urgency? I think the State Department was fretting about the effect on other nations of our producing more plutonium; also, environmentalists with "No Nukes" stickers on their made-in-Japan bumpers might defect to candidate John Anderson.)

The National Security Adviser, in the unclassified portion of his memo, then directed the Cabinet and Joint Chiefs to mislead the press: "All responses to press inquiries about Special Nuclear Materials should be low-key, and limited to the following points: (1) Our Special Nuclear Materials production is adequate for the near term [arguably false], (2) Long-term requirements are under review but are difficult to predict [palpably false: Defense Department predictions of shortfalls have been made for almost a year]. (3) If we determine that increased materials production is necessary, appropriate programs will be requested of the Congress." [False] that determination has already been made, but the Administration does not want to upset budgeteers or environmentalists until after Election Day.]

The distressing point about the deceptive, politics-as-usual approach is that we are not discussing a dam or a pet project about which defense analysts can differ. "Special Nuclear Materials" is the stuff that goes into our atomic warheads. If we do not produce more soon, all the boo-hah about MX missiles and invisible bombers will be meaningless.

It grieves me to knock a fellow alumnus of the Bronx High School of Science, but Harold Brown has turned out to be the most political, short-sighted Secretary of Defense since Louis Johnson. No man in that job can or should subscribe to all the budget requests that military men make, but on the truly important matters, the SecDef is expected to be more than a loyal member of a political team. He is expected to have the courage of his concerns and to obtain at least the minimum for national defense—or get out.

In 1960, the "missile gap" turned out to be a false issue. Today, even the politico-technocrats who make our military decisions agree internally that a serious shortfall will exist in our plutonium production—but President Carter "defers" his decision on this urgent matter through an election year.

The plutonium shortfall is a real issue—and no directives from the National Security Adviser on how to cover it up will make the issue go away.

THE AUTHORITY OF THE FEDERAL COURTS AND THEIR CONTINUING EXPANSION

Mr. THURMOND. Mr. President, Alexander Hamilton, one of this Nation's Founders and principal architects of our National Government, wrote in the Federalist Papers that the Supreme Court of the United States would possess—under the proposed Constitution of the United States—"neither force nor will but merely judgment." The implication was clear, as was the intent of the framers: the people would govern, according to their preferences as expressed at the ballot box, through their elected representatives in Congress and through an elected President. Essentially, Mr. Hamilton was reassuring the people in his day that they need have no fear that the national judiciary would threaten the idea of popular sovereignty—the proposition that the people shall rule.

Mr. President, we have come a long way since the ratification of the Constitution. The wisdom and foresight of the Founders have been evidenced time and time again in the resolution of problems and the averting of crises, in the decision of national policies and in the conduct of international diplomacy. In one important respect, however, I believe that we have allowed ourselves to stray from the plan of government envisioned by the Founders and which, in other respects, has served us so well.

I refer, Mr. President, to the imbalance in our structure of national government created by the occasional reckless and dogmatic jurisprudence practiced in our Federal courts, the effect of which has been to negate the will of the people as expressed at the ballot box and the authority vested in elected officials at the national and State levels.

Mr. President, an article appeared on this subject in the Washington Star on September 17, 1980. It was written by Mr. Csaba Vedlik, Jr., a former congressional aide. Mr. Vedlik contends, quite accurately, that we have allowed the U.S. Supreme Court to function essentially as a continuous constitutional convention, eroding, in the process, the powers of the other branches of our National Government and the prerogatives of the people of the various States.

Mr. Vedlik points out how the decisions of the Supreme Court and subordinate Federal courts often have been at odds with a reasonable reading of the Constitution and the intent of the framers, as well as the States which ratified that document. The question he poses is of continuing concern to me: "Who is to be master, the Federal courts or the people?" I would contend, as did Thomas Jefferson, that it is the people. Mr. Vedlik, however, gives us good reason to believe that it is otherwise.

Mr. President, I wish to share Mr. Vedlik's point of view with my colleagues. I therefore ask unanimous consent to have his article printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LOOKING-GLASS COURTS

One cannot help but wonder whether members of the federal judiciary do not have, ready at hand, a copy of Through the Looking-Glass. For in that memorable work we find the following rather ominous colloquy between Alice and Humpty Dumpty:

"When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master—that's all."

In similar fashion, the Constitution alledgedly means whatever the federal judges decide it should mean because they perceive themselves to be master. Thus we had Chief Justice Charles Evans Hughes arrogantly asserting that "the Constitution is what the Supreme Court says it is"—never mind the intent, of the framers or the requirements of Article V for ratification by the states.

Put simply, the Supreme Court perceives itself as a continuous constitutional convention. The Constitution in the hands of the federal judiciary becomes, in Jefferson's words, "a mere thing of wax which they may twist and shape into any form they please."

Recently a three-judge federal court in Philadelphia ruled that drafting men only is unconstitutional because it violates the equal protection provided by the Fifth Amendment. But, search as diligently as you may, you will find no equal protection clause in the Fifth Amendment. It has been manufactured out of whole cloth for result-oriented purposes (reading the ERA amendment into the Constitution before it has been ratified).

Another example: Federal courts have asserted since 1947 that the Bill of Rights has been incorporated into the due process clause of the 14th Amendment and thus applies to the states (rendering nugatory the Ninth and 10th Amendments). But the debates of the First Congress unequivocally show that the Bill of Rights was meant to apply solely to the federal government.

States were fearful of vesting power with a distant and potentially tyrannous federal government. Hence the federal government was to be one of delegated, enumerated and limited powers with all other powers reserved to the states or to the people. But since 1947, in accord with looking-glass logic, the Supreme Court and the lower federal courts have seen fit to hold otherwise, thus amending the Constitution without bothering about ratification by the states.

Similarly, since the 1890s, the federal courts have dogmatically asserted that the due process and equal protection clauses of the 14th Amendment apply to substantive legislation, initially to protect economic rights and later expanded to include civil liberties. But as Professor Raoul Berger of Harvard has demonstrated in his Government By Judiciary, due process for the Framers was a term of fixed historical meaning and precise technical import. It referred solely to proceedings of the courts (e.g., an impartial fair trial), never to an act of the legislature.

OF CHURCH AND STATE

One final illustration. The Supreme Court has interpreted the First Amendment establishment of religion clause to mean a seperation of religion and state. But the debates in the First Congress show that the framers wished to prevent the establishment of a particular sect of Christianity. Religion was not to be excluded from the affairs of state as George Washington himself noted in his Farewell Address.

To return to our original colloquy between Alice and Humpty Dumpty, the fundamental question facing this Republic vis-a-vis the Constitution is: who is to be master, the federal courts or the people? As Thomas Jefferson wrote in 1820:

"You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine, indeed, and one which would place us under the despotism of an oligarchy. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruption of time and party, its members would become despots. . . . I know no safe depository of the ultimate powers of society but the people themselves."

THE INTELLIGENCE REFORM ACT OF 1980

Mr. THURMOND. Mr. President, more frequently than not when a first amendment issue arises with regard to legislation before Congress, the press and media react automatically and instinctively on the side of the first amendment. This would seem to be the case recently with the Senate's action on S. 2216, the

"Intelligence Identities Protection Act of 1980." Most of the testimony by press groups before the Senate Judiciary Committee has found "serious constitutional concerns" with this legislation. Fortunately, even the press has its voices of reason who take the time to carefully study a matter before crying "wolf" in the form of charges that "it violates the first amendment."

The Washington Star offered on editorial in its pages on Friday, September 5, 1980, which explores carefully and thoughtfully the impact of this legislation on the practice of naming the names of American intelligence agents simply for the sake of disarming our intelligence gathering capacity. As the editorial suggests, when the security of our Nation and certain constitutional principles are seemingly at odds, there must be boundaries to free speech or we will have no free speech at all.

Mr. President, I ask unanimous consent to have this editorial from the Washington Star printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE BOUNDARIES OF FREE SPEECH

Those who are resisting the current effort in Congress to protect U.S. intelligence agents against the marauding of Philip Agee and Louis Wolf offer two disclaimers. They are, they claim, as outraged as the rest of us by the disclosures of Mr. Agee and his freelance protege, Mr. Wolf, who make it their business to identify covert agents and expose them to injury or death. They also protest that they do not consider First Amendment rights absolute, and ask only that the legislation not "chill" legitimate reportorial inquiry.

These disclaimers must be taken at face value and Congress would indeed waste its time if it passed a bill that would be easy prey for the first court to take formal notice of it.

Nonetheless, we may be sure that if the cavils of the ultra-libertarians are heeded, Congress will leave itself small leeway for effective legislation. If the handiwork of the Wolfs of this world is to be curbed, we must face the risk that legislation strong enough to curb it could tempt adventurous prosecutors to interfere with legitimate reporting.

But while the danger to be dealt with is real and present, the worries about a "chilling effect" on the press are, as we shall suggest below, dim and hypothetical. Moreover, the libertarians may have met their forensic match this time. There is no more zealous advocate of strong protective legislation for U.S. covert intelligence agents than Sen. John Chafee of Rhode Island, whose uncle, the late Zechariah Chafee of Harvard Law School, was in his day a pre-eminent authority on free speech. With those credentials, Senator Chafee is not easily depicted as an enemy of the First Amendment. In defense of the Senate bill he is co-sponsoring, he cites his uncle's dictum that "the boundary line of free speech . . . is fixed close to the point where words will give rise to unlawful acts."

If that is the proper boundary line, as we in fact believe, there is no doubt that the Agee and Wolf disclosures have crossed it. The 1975 assassination of Richard Welch, then the CIA's station chief in Athens, followed within a month the disclosure of his covert function in the Greek press; and that information came directly from Agee's *Counterspy magazine*. "Public identification of Richard Welch," as was said at the time, "was tantamount to an open invitation to kill him."

More recently, Wolf's bizarre public identification of 15 CIA agents serving in Jamaica (complete with details) was immediately followed by a nocturnal attack on the residence of one with submachine guns and explosives. No life was lost, but several U.S. agents and their families had to be evacuated.

Those who make it their ghoulish business to furnish the enemies of the U.S. with information that invites and facilitates violence against its public servants obviously do not approve of what those servants are doing. It is their right to disapprove; it is their right to agitate against the authority and policy that authorizes their activities.

But the issue before Congress is more basic; it has nothing at all to do with the free play of opinion or dissent and everything to do, rather, with outrageous disclosures that place the authorized intelligence operatives of the U.S. in physical peril and thereby tend to confound and thwart a function that Congress has seen fit to sanction. In the present state of the law, the Agees and Wolfs are apparently free to make these disclosures under cover of the First Amendment.

The absolutism of the First Amendment, so interpreted, lies in the impractical refusal of its interpreters to recognize the boundary line that commended itself years ago to Zechariah Chafee ("where words . . . give rise to unlawful acts") and still commends itself to most of us. Or indeed any other boundary line, for that matter.

The debating trick by which this absolutism is argued by critics of remedial legislation is familiar. It consists in raising endless hypothetical possibilities, all objectionable, which might eventuate if the law were misused. That way lies not free speech and press but constitutional paralysis.

The ultra-libertarians, dwelling upon their unsavory side-effects, in effect mount the disabling argument that we are powerless to defend the cover of U.S. intelligence agents abroad for fear of "chilling" legitimate inquiry and publication. Yet, interestingly, their objections, hypothetical as they are, have been heeded and reasonably answered, by Senator Chafee and others.

Consider one example. In a memorandum of August 4, the American Civil Liberties Union cites, among the conceivable "situations" that might arise from passage of the pending bills, the following: "An investigative reporter seeks to determine if the Watergate burglars have CIA connections. She discovers that several of them do and that one is a CIA agent. She prints that fact, naming the person."

Obviously, no such reporting should be thwarted. Would the bills now before Congress do so? The Senate bill supported by Senator Chafee and others—and more carefully drawn, as we see it, than the bill approved this week by the House Judiciary Committee—lays down a number of conditions designed to distinguish between malicious disclosure and mere reporting.

If the name of an agent, not previously acknowledged, were disclosed the disclosure would be unlawful only if it were within "a pattern of activities intended to identify and expose covert agents . . . with reason to believe that such activities would impair or impede the foreign intelligence activities of the U.S." In view of these provisos, the Senate intelligence committee's report of August 13 specifically rejects the ACLU's contention. "A journalist," it declares, "writing stories about the CIA would not be engaged in the requisite 'pattern of activities' even if the stories . . . included the names of one or more agents, unless the government proved that there was intent to identify and expose agents . . . with reason to believe it would impair or impede foreign intelligence activities." To meet the bill's standard of prosecution, the Senate report says, "a discloser must be engaged in . . . the business of 'naming names.'"

Probably no legislation can be both effective and foolproof; and there are fools about. But effective government is often a matter of choices, sometimes distressing and imperfect choices. The present no-holds-barred license for disclosure that covers everyone, while permitting the Agees and Wolfs to pursue their seditious business, is of debatable usefulness to free speech and press legitimately understood. But its perils and costs are not debatable. It tends to disarm and cripple U.S. intelligence capacity and to jeopardize the lives and limbs of U.S. agents serving in dangerous and sensitive missions.

No other free government on earth—to say nothing of others unfree—remotely begins to tolerate the casual (and sometimes malicious) interference with its intelligence services that Americans have come to countenance in the name of protective "exposure," by those who may or may not have the nation's interest at heart. We think Congress should do whatever is necessary, taking due but not paralyzing heed of constitutional scruples, to protect our covert intelligence and counterintelligence agents. Otherwise, it would be well to admit that we are too paralyzed by constitutional scruples to conduct an effective foreign intelligence system in this dangerous world, and stop asking our people to risk their lives in its service.

We can't have it both ways.

SENATOR JOHN GLENN

Mr. ROBERT C. BYRD. Mr. President, the 96th Congress has faced a wide array of difficult national security questions. On such issues, as on many other matters, the Senate has been fortunate to have the knowledge and counsel of my friend the senior Senator from Ohio (Mr. GLENN).

We know JOHN GLENN in the Senate as a man of vision and compassion, and a dedicated worker who does his homework. Time after time JOHN GLENN comes before this body and shares his unique grasp of complex and challenging issues. On the subject of strategic arms limitation, or Soviet military buildup, or detente, JOHN GLENN's analyses and careful thought have won deep respect among his colleagues.

Senator GLENN is a defender of freedom in the United States and abroad. He has repeatedly warned of the threat posed by Soviet expansionism in the Middle East, Africa, and Asia. In the wake of increased Soviet military expenditures—exoenditures he has characterized as leading to the "greatest peacetime military buildup since Hitler's Germany"—JOHN GLENN has advocated increases in our own military budget to keep America's defense capabilities second to none. Among other remedial measures, he has presented a very persuasive case for building a new, multirole, manned bomber.

Senator GLENN's national stature and reputation in national security affairs have grown commensurately with his successful role in solving problems facing Ohio.

As chairman of the Energy, Nonproliferation and Federal Services Subcommittee of the Governmental Affairs Committee, JOHN GLENN has advocated specific short- and long-term measures to free us from dangerous dependence on imported oil. He has been in the vanguard calling for rapid and safe development of alternative energy sources.

He was an early and strong supporter of synthetic fuels projects such as coal gasification and liquefaction. As a fellow member of the Coal Caucus seeking to effect a reasonable balance between our energy and environmental needs, Senator GLENN has brought us closer to the day when we can meet our Nation's energy requirements through domestic resources. In addition, he helped bring about expansion of the nuclear enrichment facility near Portsmouth, Ohio. During the harsh winter of 1977, it was JOHN GLENN who sponsored the legislation which mandated emergency distribution of natural gas to States such as Ohio which were dangerously short of supplies.

It was the Senator from Ohio who reminded us that improved electrical energy storage could dramatically enhance our long-term supply picture by making feasible such diverse energy sources as solar, wind, geothermal, and biomass conversion.

Energy is also part of the problem facing the U.S. automobile industry. Ohio has been especially hard hit by competition of imported cars. Almost 20 percent of Ohio's autoworkers have been laid off off during the past year, pushing the State unemployment rate to nearly 10 percent.

In June 1979, JOHN GLENN organized a meeting with President Carter to discuss the auto industry's problems and to provide specific remedies. His efforts and those of several of our colleagues have been instrumental in eliciting the administration's recent actions in support of the industry. Senator GLENN continues to press for negotiation with the Japanese to set a voluntary restraint agreement to limit auto exports to the United States.

Another area of JOHN GLENN's concern has been the steel industry. He has been deeply involved in steel issues, which are of vital concern to Ohio, and especially the Mahoning Valley. As a founding member of the Senate Steel Caucus, he worked with a Presidential task force on development of the trigger price mechanism. He has consistently supported increases in trade adjustment assistance for workers who have lost their jobs because of imported products.

JOHN GLENN has correctly perceived that the problems confronting the U.S. auto and steel industries are manifestations of deeper problems facing all of America's mature industries. Senator GLENN has advocated a "new industrial policy" for the United States—a policy to revitalize American industrial strength. Like many Democrats, he advocates a partnership among industry, labor, and Government which will produce a concerted move toward national economic goals. He has also supported revision of our tax laws to encourage increased industrial productivity, regulatory reform to remove unnecessary regulations, and expanded industrial research and development to enhance the innovation our Nation needs to remain competitive.

He recognizes that increasing U.S. exports is a priority for our economy. Nationally Ohio ranks first in jobs related to exports, and Senator GLENN has missed no opportunity to facilitate U.S. sales to other countries. One specific project has been inviting Taiwanese missions to buy Ohio products. Since the first invitation 3 years ago, Ohio has exported more than $300 million worth of goods to Taiwan.

The List of JOHN GLENN's concerns and accomplishments is extensive. He has been an effective force in keeping Federal expenditures under close scrutiny. He has demonstrated his compassionate concern for the poor and the elderly, and cosponsored the Housing and Community Development Act of 1977 and 1980 which target Federal money to older industrial cities suffering from population decline. JOHN GLENN has always focused on the foundation of the American economy—our working men and women. He has supported increases in minimum wage and social security benefits, and he has opposed attempts to weaken job safety and health requirements. He has consistently stood with organized labor, in its fight to preserve its hard-won gains.

From his high distinction in the U.S. military to the orbital flight which made him a national hero, to his hard and effective work in the Senate on behalf of Ohio, JOHN GLENN has served his State and his Nation with dedication. The people of Ohio could have no better friend in Washington than Senator GLENN.

AIRLINE DEREGULATION ACT OF 1978

Mr. MITCHELL. Mr. President, I express my deep concern over the effect on rural areas of the Airline Deregulation Act of 1978. Although this legislation has increased the competition between major carriers to service our large population centers, it has achieved this competition at the expense of service to rural areas. In a State like Maine which only has the benefit of one major carrier, Delta Airlines, the effects of airline deregulation have been very negative.

For example, in 1978, before the Airline Deregulation Act went into effect, Delta Airlines had 23 flights to and between three cities in Maine—Presque Isle, Bangor, and Portland. Today, Delta has only 16 flights to and in Maine. Moreover, Delta Airlines no longer serves all three cities. In 1977, Delta Airlines assured the Maine congressional delegation that service to Maine would not be reduced if airline deregulation passed. However, it withdrew its service to Presque Isle in 1979. Delta Airlines did not withdraw its service to Presque Isle because it was unprofitable. Rather, Delta eliminated its service to Presque Isle in order to compete for a more profitable line within the United States.

The withdrawal of air service by a major carrier to Presque Isle has caused that community tremendous economic harm. The citizens of Presque Isle had voted in favor of a bond issue for money to increase the length of the runway at the airport in order to accommodate Delta Airlines. These local funds were matched by a substantial State and Federal contribution. The net effect is that we now have an airport in northern Maine, built at taxpayer expense, which is not fully utilized by the present carrier.

Second, airline deregulation caused a tremendous increase in prices between cities that are serviced by only one major carrier.

For example, today a roundtrip flight from Washington, D.C. to Bangor costs $274. Before airline deregulation, the same flight cost $150. The simple fact of the matter is that one can now fly roundtrip from Washington, D.C. to Los Angeles cheaper than one can fly roundtrip from Washington, D.C. to Bangor, Maine.

Moreover, Delta Airlines has now begun to reduce its service in another airport in Maine. In Bangor, they have recently dropped one of their flights. I am watching these actions very carefully, and I am very concerned that airline deregulation, which may have benefits for other areas of the country, does not further harm Maine. These benefits—and they are real ones—are today being achieved by a substantial reduction in service and a tremendous increase in prices to the rural areas of our country. I do not believe that outcome was intended. Nor do I feel it should be condoned.

RECESS TO 9:30 A.M. TOMORROW

Mr. PROXMIRE. Mr. President, in accordance with the previous order, I move that the Senate stand in recess until 9:30 a.m. tomorrow morning.

The motion was agreed to; and at 6:50 p.m., the Senate recessed until tomorrow, Friday, September 19, 1980, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 18, 1980:

U.S. RAILWAY ASSOCIATION

The following-named persons to be Members of the Board of Directors of the U.S. Railway Association for terms expiring July 6, 1986:

Stanton P. Sender, of the District of Columbia (reappointment).

Franklin D. Raines, of Washington, vice Samuel B. Payne, term expired.

DEPARTMENT OF STATE

Harry E. T. Thayer, of the District of Columbia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Singapore.

Robert Alan Frosch, of Virginia, Administrator of the National Aeronautics and Space Administration, for the rank of Ambassador during his tenure of service as head of the U.S. delegation to both the preparatory meetings and the subsequent United Nations Outer Space Conference as well as to related meetings of the United Nations Committee on the Peaceful Uses of Outer Space and its two subcommittees.

BOARD FOR INTERNATIONAL BROADCASTING

John A. Gronouski, of Texas, to be a Member of the Board for International Broadcasting for a term expiring April 28, 1983 (reappointment).

IN THE MARINE CORPS

The following-named male officers of the Marine Corps Reserve for temporary appointment to the grade of lieutenant colonel under the provisions of title 10, United States Code, section 5902:

Robert L. Adams
James A. Aiken
Ronald J. Appel
David A. Ballentine
Clarke C. Barnes
James V. Barrios
Donald J. Beary
Robert L. Beavis
Richard F. Beirne IV
Robert H. Belknap
Ben H. Bell
Rodney E. Bell
Stanley L. Benson
William W. Benson
Cedric C. Bevis
Otto Biangardi
Kenneth M. Billingsley
Patrick J. Blessing
Richard N. Bloomberg
John R. Booth
Duncan E. Bossle
Roger A. Bourgery
George F. Braun
Terrence M. Breen
Dale L. Buchanan
Eugene G. Buglewicz
George E. Cadman III
Marshall M. Calef II
Charles P. Campbell, Jr.
James M. Campbell
William S. Campbell
William E. Capehart
Michael G. Carberry
Albert E. Carpenter, Jr.
John J. Cassidy, Jr.
David P. Connelly, Jr.
Richard A. Connor
John R. Connors, Jr.
James G. Custar
Benjamin R. Dadd, Jr.
Kevin R. Danehy
Robert R. Davis, Jr.
Terry L. Delong
Alexander C. Dickerson
Joseph P. Dyer, Jr.
John R. Elkins
Randall L. Erickson
Thomas D. Ewton
Jerry J. Farro
Michael S. Ferneau
James E. Flanagan
James J. Funcheon
Kenneth R. Furr
Donald S. Gallaspy, Jr.
Robert S. Gardner
John P. Gill
Marc H. Glasgow
James T. Gleason
Walter H. Goedeke
James G. Goodwin
Joseph E. Gott
David W. Gould
Paul R. Gregus
Gary U. Gretter
John S. Gruggel, Jr.
Donald J. Hager
Edward M. Hall
Donald D. Hamilton
Leonard D. Hanford
Francis T. Hankins
Lowell W. Hanson
John J. Hargrove
William J. Heller
James S. Herak
Dewey L. Herring
Robert L. Higginbotham
William W. Hobbs, Jr.
Russell E. Hohman
Bobby G. Hollingsworth
Robert P. Horne, Jr.
William E. Torio
Anthony A. Johnson
James L. Johnson
Karl Johnson
Garland L. Jones
John L. Jones
George A. Jonic, Jr.
Francis J. Kaveney
Raymond W. Kelly
Robert M. Kestler
Alexander Kirk
Stephen A. Kirkpatrick
Matthew T. Kissane
Robert G. Kissling, Jr
William S. Knight
Larry M. Krilla
Edward Kufeldt
Harry E. Lake, Jr.
Frank J. Lamura
Malcolm V. Lane, Jr.
Elton R. Lanier
Paul J. Laveroni
Gavin D. Lee
Vincent M. Levitsky
James L. Lindemood
John K. Lower
Thomas J. Luciano
Walter M. Luy
Clifford H. Manning
David M. Marchand
Kenneth E. Martin
Raymond W. Martin
Robert A. McClellan, Jr.
Alexander McClinchie
Michael G. McCollum
Ronald D. McDaniel
Leland B. McDonough
Thomas H. Meeker
Quinten R. Meland
Leonard E. Miller
Peter M. Molloy
Leon H. Moore
James E. Morley, Jr.
Richard A. Muench
John J. Nelson, Jr.
Thomas F. Newman
Laurance S. Nowak
George J. O'Connell, Jr.
James T. O'Kelley, Jr.
George S. Olivas
William D. Palmer
Bill D. Parker
Robert E. Parnell, Jr.
Stanley J. Pasieka, Jr.
Robert E. Pearce
Stanley J. Pechalonis
Jeffrey C. Pickett
Darvin D. Pierce
Charles A. Pinney III
William A. Platt
William N. Price
Don E. Prichard
Charles L. Pritchard
Charles J. Quilter, Jr.
Gary L. Randall
Thomas C. Rauwald
Ronald D. Ray
Herbert D. Raymond III
Norbert V. Reardon
Anthony S. M. Reyna
Wayne A. Rich, Jr.
James D. Richards
Douglas S. Rider
Robert O. Riggs
Tomas M. Rodriguez, Jr.
Paul R. Rollins
David K. Rumsey
Earl R. Rutledge
Michael E. Sandlin
Gary A. Sargent
Michael J. Severson
Thomas M. Shea
Robert C. Shearer
Denis L. Shortal
William R. Singer
Kenneth P. Sirmon
Carl H. Siaski
Douglas L. Smith
Frederick J. Smith III
Norman W. Smith, Jr.
Neil A. Snider
John T. Somerville
Edward G. Southworth
Billy L. Speed
Michael R. Stanton
David M. Stout
Luther P. Stroud, Jr.
Bruce W. Sumner
Ronald J. Suter
Jack E. Swallows
Robert M. Talent
Albert G. Tase, Jr.
Arthur W. Tifford
Donald R. Treichler
Charles C. Turner
Charles S. Tutt
Richard A. Vansickle
Frederick J. Vogel
Richard E. Vosepka
David F. Wall
Paul F. Wendler, Jr.
Don E. Wheeler
Richard T. White, Jr.
John G. Wilhelm
James T. Williams
Russell L. Williamson
Richard O. Willich
Hugh A. Wilson III
Steven C. Wilson
John T. Winkler
Walter J. Wise, Jr.
Joseph C. Wolfe, Jr.
Howell F. Wright
Jack B. Zimmerman

The following-named woman officer of the Marine Corps Reserve for permanent appointment to the grade of lieutenant colonel under the provisions of title 10, U.S. Code, section 5802:

Sara J. Harper

HOUSE OF REPRESENTATIVES—*Thursday, September 18, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We rejoice and give thanks, O Lord, for the goodness of Your creation and the bounty that You have provided for the welfare of Your people. Remind us to be stewards of Your gifts to us, wisely using the resources committed to our care. As You have blessed our Nation with the riches of the Earth, so bless us with renewed understanding of our responsibility to nurture our land, not only in ourselves and those about us, but for the generations who come after us. May we be reminded that all the harvest of our Earth brings forth is a testimony of Your love for us, and may we respond with grateful hearts in praise and with eager hands in service. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day."

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 5625. An act authorizing the President of the United States to present a gold medal to the A. Phillip Randolph Institute; and

H.R. 6816. An act to provide for the exchange of certain Federal coal leases in the State of New Mexico for other Federal coal leases in that State.

DO NOT DELAY DEPRECIATION REFORM

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, every tax proposal before the Congress at this point includes in some form or another a depreciation reform measure greatly shortening the length of time over which a capital asset may be written off against income. This is entirely appropriate.

The simplest is the 10-5-3 proposal. The Senate finance proposal is somewhat more complicated. The President's is much more complex.

The President is urging that we put off a tax cut until next year. The unfortunate effect of doing that with respect to depreciation reform is that in cases where the manufacturer buying the machine or the person or company constructing the building has any control over the timing, it will delay the investment until the depreciation rules are known. These depreciation changes are prospective in each case, and, therefore, no person investing in a capital asset will want to do so, if he can avoid it, until he knows what the depreciation rules are so he can take advantage of the speedup. If we do not enact the reform until next July, we will discourage capital investment until that time. We can expect a capital goods recession to the extent tax policy has any effect at all, the longer we wait.

Mr. Speaker, this is an unfortunate side effect of delay of the tax cut, and I hope it will be seriously considered by this body.

LEGISLATIVE PRIORITIES SHOULD BE MET BEFORE RECESS

The SPEAKER. Does the minority leader seek time?

Mr. RHODES. I do, Mr. Speaker. I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Without objection, the gentleman is recognized.

There was no objection.

Mr. RHODES. Mr. Speaker, on behalf of the House Republican leadership, I have today invited the Speaker and the Democratic leadership to join with us to comply with existing law and complete the business of this Congress in a timely fashion.

The Congressional Budget Act requires that a second concurrent budget resolution be adopted prior to September 15. We already are in violation of that law, and we will be in worse violation if the House recesses before the election without adopting such a resolution.

Therefore, the House Republican leadership insists that at least three legislative objectives must be achieved before we would support a motion to recess or adjourn sine die.

They are: First, House approval of the second concurrent resolution on the fiscal 1981 budget; second, completion of all appropriations bills for fiscal 1981; and third, an up or down vote in the House on any tax cut bill passed by the Senate.

With these priorities established, the Speaker and the Democratic leadership can be assured of strong bipartisan cooperation in completing the people's business before the election. Otherwise——

The SPEAKER. Has the gentleman completed his remarks?

Mr. RHODES. I have, Mr. Speaker. I yield back the balance of my time.

APPROPRIATION AND BUDGET PROCESS IN A SHAMBLES

The SPEAKER. Does the minority whip of the House seek recognition?

Mr. MICHEL. I do, Mr. Speaker. I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Without objection, the gentleman is recognized.

There was no objection.

Mr. MICHEL. Mr. Speaker, I would like to simply piggyback on the remarks of our distinguished minority leader by saying that in all my 24 years in this House I have never seen the appropriation and budget process in such a shambles as this.

Here we are about to recess before the election, if the majority prevails, without enacting finally and sending to the President one appropriation bill. Now, it can be argued that we in the House have completed most of our work and adopted all but the foreign aid appropriation bill, but it seems to me that, with both bodies being controlled by the Democratic Party as they are, by such overwhelming majorities, there ought to be better coordination.

It may be because in the other body, there are over 20 Members of the majority party up for reelection and only 10 from our side, that has caused the majority to decide that we do not want to face the music before the election.

In my judgment, the American people ought to be told the truth as to what a sad state of affairs the appropriation and budget process is in before the election, rather than shoving everything aside and waiting until we can have the electorate go to the polls and then limping back here with a lameduck Congress to finish our work.

Mr. Speaker, I think it is unconscionable. We ought to stand up for our rights here and insist, as the minority leader says, that we finish our business before we go home.

CARTER SHOULD APOLOGIZE TO AMERICA

The SPEAKER. Does the gentleman from Maryland (Mr. BAUMAN) seek recognition?

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Mr. BAUMAN. I do, Mr. Speaker. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Without objection, the gentleman is recognized.

There was no objection.

Mr. BAUMAN. Mr. Speaker, good morning to you. I am happy to find you in such a good mood this morning, and I hope my remarks do not change your mood.

Mr. Speaker, since I first became active in politics as a teenager I have watched and heard a great many candidates campaign for election for office at all levels. I have to say that rarely if ever have I seen a more blatant campaign of smear and innuendo than that now being mounted against Ronald Reagan by President Carter and his political associates including some Members of this body.

Ronald Reagan is not a purveyor of hatred nor a racist, and even those character assassins who are uttering these lies know that to be so.

But those who are dragging this Presidential campaign down into the gutter led by the White House and its current occupant are doing a grave disservice to the office of the Presidency and to this Nation.

It is time to call a halt to this rotten mudslinging and address the true issues facing America. And the sooner the better.

Mr. Carter owes an apology to Governor Reagan, but more importantly, he should apologize to the people of America for his despicable conduct.

Mr. Speaker, I will include elsewhere in today's RECORD an editorial from the Washington Post on this subject.

AN INQUIRY BY ILLINOIS BUSINESSMEN ABOUT UPCOMING TAX RULES

(Mr. O'BRIEN asked and was given permission to address the House for 1 minute.)

Mr. O'BRIEN. Mr. Speaker, yesterday afternoon I received a telephone call from Robert K. Anderson, a long-time friend and chief executive officer of a prominant financial institution in my district.

Mr. Anderson asked me what our congressional tax policy was and what we were going to do. He also pointed out that he had in the last 2 days met with three businessmen who were interested in doing something to their plant that might involve additional equipment and additional jobs, and that if we could pass, or promise to pass a bill that would be retroactive to October 1 or October 15, he knew that it would be a morale stimulant to business in the 17th District of Illinois.

I regretted to have to tell him that I did not know what the congressional policy was and I did not think anyone else did, and that I thought if the administration continued to take the position that nothing was going to be done until the middle of next year, we would be plunged deeper in a recession that everyone really wants to avoid, thanks to the current occupant of the White House.

□ 1010

PRESIDENT ANASTASIO SOMOZA'S ASSASSINATION

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, I would like to rise in support of the remarks made by the distinguished minority leader, the minority whip, and the gentleman from Maryland, and to relate a sense of shame at learning of the assassination of the former President of Nicaragua, Anastasio Somoza, in Asuncion, Paraguay. yesterday, for it was the repudiation of President Somoza and his elected government by the Carter administration which set into motion the events leading to his resignation as Nicaragua's head of state, and his exile from his homeland, now ruled by a pro-Communist unelected regime.

President Somoza was a great friend and supporter of the United States in Central America.

He was educated at West Point, and spent much of his life in our country.

The timing of President Somoza's murder—only days after President Carter gave final approval to a $75 million U.S. aid package for the pro-Communist forces which overthrew him—is cause for grave concern.

VETERANS' DISABILITY COMPENSATION AND SURVIVORS' BENEFITS AMENDMENTS OF 1980

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 7511) to amend title 38, United States Code, to provide a cost-of-living increase in the rates of disability compensation for disabled veterans and in the rates of dependency and indemnity compensation for survivors of disabled veterans, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments with amendments.

The SPEAKER. The Clerk will report the Senate amendments and the proposed House amendments.

The Clerk read the Senate amendments and the House amendments to the Senate amendments, as follows:

SENATE AMENDMENTS

Senate amendments: Strike out all after the enacting clause and insert:

That (a) this Act may be cited as the "Veterans' Disability Compensation and Housing Benefits Amendments of 1980".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS' DISABILITY COMPENSATION BENEFITS

RATES OF DISABILITY COMPENSATION

SEC. 101. (a) Section 314 is amended by—

(1) striking out "$48" in subsection (a) and inserting in lieu thereof "$55";

(2) striking out "$88" in subsection (b) and inserting in lieu thereof "$101";

(3) striking out "$133" in subsection (c) and inserting in lieu thereof "$152";

(4) striking out "$162" in subsection (d) and inserting in lieu thereof "$208";

(5) striking out "$255" in subsection (e) and inserting in lieu thereof "$291";

(6) striking out "$321" in subsection (f) and inserting in lieu thereof "$367";

(7) striking out "$380" in subsection (g) and inserting in lieu thereof "$434";

(8) striking out "$440" in subsection (h) and inserting in lieu thereof "$503";

(9) striking out "$495" in subsection (i) and inserting in lieu thereof "$566";

(10) striking out "$889" in subsection (j) and inserting in lieu thereof "$1,016";

(11) striking out "$1,104" and "$1,547" in subsection (k) and inserting in lieu thereof "$1,262" and "$1,768", respectively;

(12) striking out "$1,104" in subsection (l) and inserting in lieu thereof "$1,262";

(13) striking out "$1,217" in subsection (m) and inserting in lieu thereof "$1,391";

(14) striking out "$1,383" in subsection (n) and inserting in lieu thereof "$1,581";

(15) striking out "$1,547" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$1,768";

(16) striking out "$664" and "$989" in subsection (r) and inserting in lieu thereof "$759" and "$1,130", respectively;

(17) striking out "$995" in subsection (s) and inserting in lieu thereof "$1,137"; and

(18) striking out "$192" in subsection (t) and inserting in lieu thereof "$219".

(b) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

RATES OF ADDITIONAL COMPENSATION FOR DEPENDENTS

SEC. 102. Section 315(1) is amended by—

(1) striking out "$54" in clause (A) and inserting in lieu thereof "$62";

(2) striking out "$91" in clause (B) and inserting in lieu thereof "$104";

(3) striking out "$121" in clause (C) and inserting in lieu thereof "$138";

(4) striking out "$151'" and "$30" in clause (D) and inserting in lieu thereof "$173" and "$34", respectively;

(5) striking out "$37" in clause (E) and inserting in lieu thereof "$42";

(6) striking out "$67" in clause (F) and inserting in lieu thereof "$77";

(7) striking out "$97" and "$30" in clause (G) and inserting in lieu thereof "$111" and "$34", respectively;

(8) striking out "$44" in clause (H) and inserting in lieu thereof "$50".

(9) striking out "$98" in clause (I) and inserting in lieu thereof "$112"; and

(10) striking out "$82" in clause (J) and inserting in lieu thereof "$94".

CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS

SEC. 103. Section 362 is amended by striking out "$240" and inserting in lieu thereof "$274".

TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES

SEC. 201. Section 411 is amended by—

(1) amending subsection (a) to read as follows:

"(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

"Pay grade	Monthly rate
E-1	$373
E-2	385
E-3	394
E-4	419
E-5	431
E-6	441
E-7	462
E-8	487
E-9	[1] 510
W-1	472
W-2	491
W-3	505
W-4	535
O-1	472
O-2	487
O-3	522
O-4	551
O-5	608
O-6	684
O-7	741
O-8	813
O-9	872
O-10	[2] 954

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $549.

"[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,023.";

(2) striking out "$38" in subsection (b) and inserting in lieu thereof "$43";

(3) striking out "$98" in subsection (c) and inserting in lieu thereof "$112"; and

(4) striking out "$49" in subsection (d) and inserting in lieu thereof "$56".

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 202. Section 413 is amended by—

(1) striking out "$165" in clause (1) and inserting in lieu thereof "$189";

(2) striking out "$237" in clause (2) and inserting in lieu thereof "$271";

(3) striking out "$306" in clause (3) and inserting in lieu there of "$350"; and

(4) striking out "$306" and "$62" in clause (4) and inserting in lieu there of "$350" and "$71", respectively.

RATES OF SUPPLEMENTAL DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 203. Section 414 is amended by—

(1) striking out "$98" in subsection (a) and inserting in lieu thereof "$112";

(2) striking out "$165" in subsection (b) and inserting in lieu thereof "$189"; and

(3) striking out "$84" in subsection (c) and inserting in lieu thereof "$96".

TITLE III—SPECIAL HOME ADAPTATION GRANTS FOR CERTAIN SEVERELY DISABLED VETERANS

SEC. 301. (a) Section 801 is amended by inserting "(a)" before "The Administrator" at the beginning and adding at the end the following new subsection:

"(b) The Administrator shall, under regulations which the Administrator shall prescribe, assist any veteran (other than a veteran who is eligible for assistance under subsection (a) of this section) who is entitled to compensation under chapter 11 of this title for permanent and total service-connected disability—

"(1) due to blindness in both eyes, with 5/200 visual acuity or less, or

"(2)(A) due to the loss of both upper extremities at or above the wrist;

"(B) due to the loss of use of both upper extremities if such loss of use results in a degree of impairment that is not less than the degree of impairment such veteran would have suffered from the anatomical loss of both upper extremities at or above the wrist; or

"(C) due to the loss of one upper extremity at or above the wrist and the loss of use of the other upper extremity if such loss of use results in a degree of impairment that is not less than the degree of impairment such veteran would have suffered from the anatomical loss of such extremity at or above the wrist.

to acquire such adaptations to such veteran's residence as are determined by the Administrator to be reasonably necessary because of such disability, if the Administrator determines that such veteran is residing in (or, if such residence is to be constructed or purchased, will be residing in) and reasonably intends to continue residing in a home owned by such veteran or by a member of such veteran's family.".

(b) Section 802 is amended by—

(1) inserting "(a)" before "The" at the beginning;

(2) inserting "(a)" after "section 801"; and

(3) adding at the end the following new subsection:

"(b) Except as provided in section 804(b)(2) of this title, the assistance authorized by section 801(b) of this title shall be limited to the lesser of—

"(1) the actual cost of the adaptations determined by the Administrator under such section 801(b) to be reasonably necessary, or

"(2) $5,000.".

(c) Section 804 is amended by—

(1) inserting "(a)" before "Any veteran" at the beginning;

(2) striking out "the assistance authorized by this chapter" and inserting in lieu thereof "except as provided in subsection (b) of this section, the assistance authorized by section 801 of this title"; and

(3) adding at the end the following new subsection:

"(b) A veteran eligible for benefits under section 801(b) of this title shall not by reason of such eligibility be denied—

"(1) benefits for which such veteran becomes eligible under section 801(a) of this title; or

"(2) benefits relating to home health services under section 612(a) of this title,

but no particular type of adaptation, improvement, or structural alteration shall be provided to any such veteran more than once.".

(d) Section 805 is amended by striking out "unit, or necessary land therefor," and inserting in lieu thereof "unit, or necessary land therefor, or adaptation".

TITLE IV—VETERANS' ADMINISTRATION HOME-LOAN PROGRAM AMENDMENTS

CONVENTIONAL AND CONDOMINIUM HOME-LOAN PROVISIONS

SEC. 401. (a) Section 1803(c)(3)(A) is amended by inserting "or (b)(2) or section 1819(a)(4) of this title" after "section 1810(a)(5)".

(b) Section 1810 is amended by—

(1) amending subsection (b) by—

(A) inserting "(1)" before "No "at the beginning;

(B) redesignating clauses (1) through (6) as clause (A) through (F), respectively;

(C) striking out in the second sentence "paragraph (5)" and inserting in lieu thereof "clause (E)"; and

(D) inserting at the end the following new paragraphs:

"(2) Notwithstanding subsection (a) of this section and paragraph (1) of this subsection, a loan to a veteran-obligor under a previous loan guaranteed, insured, or made under this chapter for which such veteran's entitlement was used (or, if such veteran is deceased and if such veteran's surviving spouse was a co-obligor under such previous loan, a loan to such veteran's surviving spouse who shall, only for the purposes of a refinancing loan under this paragraph, be considered to be a veteran eligible for benefits under this chapter) may be guaranteed under this chapter if—

"(A) the purpose of such loan is to refinance such previous loan and the interest rate of such refinancing loan is less than the interest rate of such previous loan;

"(B) such refinancing loan is secured by the same dwelling or farm residence as was such previous loan and such dwelling or residence is owned and occupied by the veteran concerned (or such veteran's surviving spouse) as such veteran's (or surviving spouse's home;

"(C) the principal balance of such refinancing loan does not exceed an amount equal to the total of the outstanding unpaid balance of such previous loan and such closing costs (including any discount permitted pursuant to section 1803(c)(3)(A) of this title) as may be authorized by the Administrator under regulations which the Administrator shall prescribe; and

"(D) the term of such refinancing loan does not exceed the term of such previous loan.

"(3) Notwithstanding any other provision of this chapter, the amount of guaranty entitlement used by a veteran for one or more of the purposes specified in subsection (a) of this section who applies, pursuant to paragraph (2) of this subsection, for a guaranty for a refinancing loan to be secured by the same property as the loan for which such veteran used such entitlement shall be deemed to be available to such veteran for such refinancing loan, and such veteran's entitlement shall not, as a result of any guaranty provided under paragraph (2) of this subsection, be further charged."; and

(2) amending subsection (c) by striking out "$25,000" and inserting in lieu thereof "$30,000".

(c) Section 1811 is amended by—

(1) amending subsection (b) by inserting "(but not including the refinancing of a loan under section 1810(b)(2) or 1819(a)(4))" after "section 1810(a) or 1819";

(2) amending subsection (d)(2)(A) by striking out "$25,000" both places it appears and inserting in lieu thereof "$30,000"; and

(3) amending subsection (d)(2)(B) by striking out "$17,500" both places it appears and inserting in lieu thereof "$20,000".

MOBILE HOME-LOAN PROVISIONS

(d) Section 1819 is amended by—

(1) amending subsection (a) by inserting at the end the following new paragraphs:

"(4) Notwithstanding any other provision of this section, a loan to a veteran-obligor under a previous loan guaranteed, insured, or made under this chapter for which such veteran's entitlement was used (or, if such veteran is deceased and if such veteran's surviving spouse was a co-obligor under such previous loan, a loan to such veteran's surviving spouse who shall, only for the purposes of a refinancing loan under this paragraph, be considered to be a veteran eligible for benefits under this chapter) may be guaranteed under this section if—

"(A) the purpose of such loan is to refinance a previous loan guaranteed under this section at an interest rate that is less than the interest rate of such previous loan;

"(B) such refinancing loan is secured by the same mobile home or mobile-home lot, or both, as was such previous loan and such mobile home (or a mobile home on such lot) is owned and occupied by the veteran concerned (or such veteran's surviving spouse) as such veteran's (or surviving spouse's) home;

"(C) the principal balance of such refinancing loan does not exceed an amount equal to the total of the outstanding unpaid balance of such previous loan and such

closing costs (including any discount) as may be authorized by the Administrator under regulations which the Administrator shall prescribe; and

"(D) the term of such refinancing loan does not exceed the term of such previous loan.

"(5) Notwithstanding any other provision of this section, the amount of guaranty entitlement used by a veteran for one or more of the purposes specified in paragraph (1) of this subsection who applies, pursuant to paragraph (4) of this subsection, for a guaranty for a refinancing loan to be secured by the same property as the loan for which such veteran used such entitlement shall be deemed to be available to such veteran for such refinancing loan, and such veteran's entitlement shall not, as a result of any guaranty provided under paragraph (4) of this subsection, be further charged."; and

(2) amending subsection (c) by striking out "$17,500" each place it appears and inserting in lieu thereof "$20,000".

HOME-LOAN PROGRAM DISCLOSURES AUTHORITY

SEC. 402. Section 3301 is amended by—

(1) amending subsection (c) by inserting "(1)" after "(c)" at the beginning and adding at the end the following new paragraph:

"(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Veterans' Administration in connection with any loan program authorized under chapter 37 of this title shall be made available to any person who applies for such report or certificate.";

(2) redesignating subsection (g) as subsection (h) and inserting after subsection (f) the following new subsection (g):

"(g)(1) The Administrator may, pursuant to regulations which the Administrator shall prescribe and which shall not become effective until 30 days following publication in the Federal Register, release the name, address, and other information relating to the identity of an individual, to any person in a category of persons that is described in such regulations and specified as a category of persons to whom such information may be released, if the release of such information is necessary for the purpose of—

"(A) determining the credit worthiness, credit capacity, income, or financial resources of an individual who has (i) applied for any benefit under chapter 37 of this title, or (ii) submitted an offer to the Administrator for the purchase of property acquired by the Administrator under section 1820(a)(5) of this title;

"(B) verifying, either before or after the Administrator has approved an individual's application for assistance in the form of a loan guaranty or loan insurance under chapter 37 of this title, information submitted by a lender to the Administrator regarding the credit worthiness, credit capacity, income, or financial resources of such individual;

"(C) offering for sale or other disposition by the Administrator, pursuant to section 1820 of this title, any loan or installation sale contract owned or held by the Administrator; or

"(D) to the extent not otherwise authorized by this paragraph, providing assistance to any applicant for benefits under chapter 37 of this title or administering such benefits if the Administrator promptly records the fact of such release in appropriate records pertaining to the person concerning whom such release was made.

"(2) No contract entered into for any of the purposes of this subsection, and no action taken pursuant to any such contract or this subsection, shall result in the application of section 552a of title 5 to any consumer reporting agency or employee thereof.

"(3) For the purposes of this subsection, the term 'consumer reporting agency' (A) shall have the meaning provided in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and (B) shall also mean any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (i) obtaining credit information or other information on consumers from consumer reporting agencies (as defined in subsection (f) of section 603 of such Act) for the purpose of furnishing such information to third parties, or (ii) serving as a marketing agent under arrangements enabling third parties to obtain such information from such agencies."; and

(3) amending subsection (h), as redesignated by clause (2) of this section, by striking out "Any" and inserting in lieu thereof "Except as provided in subsection (g)(2) of this section, any".

TITLE V—MISCELLANEOUS AMENDMENTS

CONFIDENTIALITY OF MEDICAL QUALITY ASSURANCE DOCUMENTS

SEC. 501. (a) Subchapter I of chapter 57 is amended by adding at the end the following new section:

"§ 3305. Confidentiality of medical quality assurance documents

"(a) All records and documents which are created by the Veterans' Administration as part of a systematic Veterans' Administration medical quality assurance program shall be confidential and privileged and shall not be disclosed to any person except as provided in subsection (b) of this section.

"(b) A record or document described in subsection (a) of this section shall be disclosed in the following circumstances pursuant to regulations which the Administrator shall prescribe, except that name of and other identifying information regarding an individual Veterans' Administration patient or employee, or other individual associated with the Veterans' Administration for purposes of the quality assurance program, contained in such record or document shall be deleted if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy:

"(1) To a committee of either House of Congress, or any joint committee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

"(2) To a Federal agency or private organization as needed by such agency or organization to perform licensing or accreditation functions related to, or statutorily mandated monitoring of, Veterans' Administration health-care facilities.

"(3) To a Federal executive agency or a provider of health-care services as required for participation in health-care programs with such agency or provider.

"(4) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such records and documents be provided for a purpose authorized by law.

"(5) To medical personnel to the extent necessary to meet a medical emergency affecting the health or safety of any individual. No person to whom a record or document has been disclosed under this subsection shall make further disclosure of such record or document except for a purpose provided herein.

"(c) For the purposes of this section, the term 'medical quality assurance program' means all Veterans' Administration systematic health care review activities designated pursuant to regulations which the Administrator shall prescribe and carried out by or for the Veterans' Administration for the purpose of improving the quality of medical care or the utilization of health-care resources in Veterans' Administration health-care facilities.

"(d) Any person who knowingly and willfully discloses any record or document described in subsection (a) of this section for any purpose other than those prescribed in subsection (b) of this section shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.".

(b) The table of sections at the beginning of chapter 57 is amended by adding after the item relating to section 3304 the following:

"3305. Confidentiality of medical quality assurance documents.".

LAND TRANSFER

SEC. 502. Public Law 89-345 (79 Stat. 1304) is amended by—

(1) amending section 2 by inserting "the first section of" after "pursuant to this"; and

(2) adding at the end the following new section:

"SEC. 3. (a)(1) A tract consisting of four acres, more or less, of the tract of land previously conveyed (pursuant to the first two sections of this Act) by the Administrator of Veterans' Affairs to the city of Cheyenne, Wyoming, by quitclaim deed dated November 1, 1966, may be used by city of Cheyenne, Wyoming, for roadway purposes in connection with the expansion and improvement of a roadway known as Converse Avenue and in a manner that will not, in the judgment of the Administrator of Veterans' Affairs, or his designee, interfere in any manner with the care and treatment of patients in the Veterans' Administration Center, Cheyenne, Wyoming.

"(2) The exact location and legal description of such tract of four acres, more or less shall be determined by the Administrator of Veterans' Affairs, and, if a survey is required in order to make such determination, such city shall bear the expense of such survey.

"(3) The Administrator of Veterans' Affairs is authorized to convey, without monetary consideration, to such city such tract of four acres, more or less, free and clear from the park and recreational use restrictions established by the first two sections of this Act and the deed of conveyance executed pursuant to section 2 of this Act.

"(b) Any deed of conveyance made pursuant to this section shall—

"(1) provide that the land so conveyed shall be used solely for roadway purposes and in a manner that will not, in the judgment of the Administrator of Veterans' Affairs, or his designee, interfere in any manner with the care and treatment of patients in the Veterans' Administration Center, Cheyenne, Wyoming;

"(2) contain such additional terms, conditions, reservations, easements, and restrictions as may be determined by the Administrator of Veterans' Affairs to be necessary to protect the interest of the United States;

"(3) provide that if the city of Cheyenne, Wyoming, violates any provision of such deed of conveyance or alienates or attempts to alienate all or any part of the land so conveyed, title thereto shall revert to the United States;

"(4) provide that a determination by the Administrator of Veterans' Affairs, or his designee, or any such violation or alienation or attempted alienation shall be final and conclusive; and

"(5) provide that, in the event of such reversion, all improvements made by such city on the land so conveyed during such city's occupancy thereof shall vest in the United States without payment of compensation therefor.".

POST-VIETNAM VETERANS' EDUCATIONAL ASSISTANCE PROGRAM (VEAP) PROVISIONS

SEC. 503. Section 1622 is amended by—

(1) amending subsection (a) by—

(A) striking out in the first sentence "Each" and inserting in lieu thereof "Except as provided in subsections (c) and (d) of this section, each"; and

(B) striking out in the second sentence "$50" and "$75" and inserting in lieu thereof "$25" and "$100", respectively;

(2) inserting after "Forces" in subsection (c) a comma and "including contributions in lieu of, or to reduce the amount of, monthly deductions under subsection (a) of this section"; and

(3) adding at the end the following new subsection:

"(d) Subject to the maximum contribution prescribed by subsection (a) of this section, a participant shall be permitted, while serving on active duty, to make a lump-sum contribution to the fund. A lump-sum contribution to the fund by any participant shall be in addition to or in lieu of monthly deductions made from such participant's military pay and shall be considered, for the purposes of paragraph (2) of section 1631(a), to have been made by monthly deductions from such participant's military pay in the amount of $75 per month or in such lesser amount as may be specified by such participant pursuant to regulations issued jointly by the Secretary and the Administrator.".

MODIFICATION OF CHAPTER 34 TERMINATION DATE

SEC. 504. Section 1662 is amended by—

(1) amending subsection (a) by—

(A) inserting after "1955" in paragraph (1) a comma and "and before January 1, 1980"; and

(B) adding at the end the following new paragraph:

"(3) An eligible veteran whose last discharge or release from active duty occurs after December 31, 1979, shall not be entitled to educational assistance under this chapter after (A) the expiration of the five-year period following the date on which such veteran first begins to pursue a program of education under this chapter after such discharge or release if such date occurs no later than two years after such discharge or release from active duty or (B) December 31, 1989, whichever is the later."; and

(2) striking out subsection (e) in its entirety.

ASSIGNMENTS BY VA INSURANCE BENEFICIARIES

SEC. 505. (a) Section 718 is amended by adding at the end the following new subsection:

"(c) Except as to insurance granted under section 722(b) of this title, in any case involving a dispute between two or more persons, each of whom is claiming proceeds of a policy maturing on or after the date of the enactment of this subsection, an assignment of all or any portion of the proceeds to a person other than a person specified in subsection (b) of this section is authorized to resolve such dispute if the proposed assignee claims such proceeds on the ground that—

"(1) the insured during such insured's lifetime designated such proposed assignee as the beneficiary;

"(2) the insured contracted during such insured's lifetime with such proposed assignee to designate such proposed assignee as the beneficiary; or

"(3) such proposed assignee was named, during such insured's lifetime, in a judicial order or decree as a person whom the insured was ordered to designate as the beneficiary or to retain as the designated beneficiary.

Except in cases in which the insurance proceeds are payable in a lump sum, the designated contingent beneficiary, if any, must join in any such assignment by a person upon whose death or disqualification such contingent beneficiary's claim to the proceeds would be predicated.".

(b) Section 753 is amended by inserting "(a)" before "Any" at the beginning and adding at the end the following new subsection:

"(b) In any case involving a dispute between two or more persons, each of whom is claiming proceeds of a policy maturing on and after the date of enactment of this subsection, an assignment of all or any portion of the proceeds to persons other than a person specified in subsection (a) of this section is authorized to resolve such dispute if the proposed assignee claims such proceeds on the ground that—

"(1) the insured during such insured's lifetime designated such proposed assignee as the beneficiary;

"(2) the insured contracted during such insured's lifetime with such proposed assignee to designate such proposed assignee as the beneficiary; or

"(3) such proposed assignee was named, during such insured's lifetime, in a judicial order or decree as a person whom the insured was ordered to designate as the beneficiary or to retain as the designated beneficiary.

Except in cases in which the insurance proceeds are payable in a lump sum, the designated contingent beneficiary, if any, must join in any such assignment by a person upon whose death or disqualification such contingent beneficiary's claim to the proceeds would be predicated.".

REVOLVING SUPPLY FUND PROVISIONS

SEC. 506. Section 5021 is amended by—

(1) inserting after "direct" in clause (2) of subsection (a) "cost (which may be based on the cost of recent significant purchases of the equipment or supply item involved)"; and

(2) striking out the last sentence in subsection (a) and inserting in lieu thereof the following:

"At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Administrator determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund.".

TITLE VI—EFFECTIVE DATES

SEC. 601. (a) Except as provided in subsections (b) and (c) of this section, the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) The provisions of titles I, II, and III and section 401 (b)(2), (c)(2) and (3), and (d)(2) shall take effect on October 1, 1980.

(c) The amendments made by section 506 shall be effective retroactively to October 1, 1979.

Amend the title so as to read: "An Act to amend title 38, United States Code, to provide for a cost-of-living increase in the rates of service-connected disability compensation for veterans and dependency and indemnity compensation for surviving spouses and children of veterans, to provide for limited specially adapted housing grants for certain severely disabled veterans, to authorize Veterans' Administration loan guaranties for certain refinancing loans made to veterans, to increase the maximum loan guaranties for home loans made to veterans, and to provide for the confidentiality of certain Veterans' Administration medical-care quality assurance records; and for other purposes.".

HOUSE AMENDMENTS

House amendments to Senate amendments: In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill insert the following:

That (a) this Act may be cited as the "Veterans' Disability Compensation and Housing Benefits Amendments of 1980".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS' DISABILITY COMPENSATION BENEFITS

RATES OF DISABILITY COMPENSATION

SEC. 101. (a) Section 314 is amended—

(1) by striking out "$48" in subsection (a) and inserting in lieu thereof "$54";

(2) by striking out "$88" in subsection (b) and inserting in lieu thereof "$99";

(3) by striking out "$133" in subsection (c) and inserting in lieu thereof "$150";

(4) by striking out "$182" in subsection (d) and inserting in lieu thereof "$206";

(5) by striking out "$255" in subsection (e) and inserting in lieu thereof "$291";

(6) by striking out "$331" in subsection (f) and inserting in lieu thereof "$367";

(7) by striking out "$380" in subsection (g) and inserting in lieu thereof "$434";

(8) by striking out "$440" in subsection (h) and inserting in lieu thereof "$503";

(9) by striking out "$495" in subsection (i) and inserting in lieu thereof "$566";

(10) by striking out "$889" in subsection (j) and inserting in lieu thereof "$1,016";

(11) by striking out "$1,104" and "$1,547" in subsection (k) and inserting in lieu thereof "$1,262" and "$1,768", respectively;

(12) by striking out "$1,104" in subsection (l) and inserting in lieu thereof "$1,262";

(13) by striking out "$1,217" in subsection (m) and inserting in lieu thereof "$1,391";

(14) by striking out "$1,383" in subsection (n) and inserting in lieu thereof "$1,581";

(15) by striking out "$1,547" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$1,768";

(16) by striking out "$664" and "$989" in subsection (r) and inserting in lieu thereof "$759" and "$1,130", respectively;

(17) by striking out "$995" in subsection (s) and inserting in lieu thereof "$1,137"; and

(18) by striking out "$192" in subsection (t) and inserting in lieu thereof "$219".

(b) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

RATES OF ADDITIONAL COMPENSATION FOR DEPENDENTS

SEC. 102. Section 315(1) is amended—

(1) by striking out "$54" in clause (A) and inserting in lieu thereof "$62";

(2) by striking out "$91" in clause (B) and inserting in lieu thereof "$104";

(3) by striking out "$121" in clause (C) and inserting in lieu thereof "$138";

(4) by striking out "$151" and "$30" in clause (D) and inserting in lieu thereof "$173" and "$34", respectively;

(5) by striking out "$37" in clause (E) and inserting in lieu thereof "$42";

(6) by striking out "$67" in clause (F) and inserting in lieu thereof "$77";

(7) by striking out "$97" and "$30" in clause (G) and inserting in lieu thereof "$111" and "$34", respectively;

(8) by striking out "$44" in clause (H) and inserting in lieu thereof "$50";

(9) by striking out "$98" in clause (I) and inserting in lieu thereof "$112"; and

(10) by striking out "$82" in clause (J) and inserting in lieu thereof "$94".

CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS

SEC. 103. Section 362 is amended by striking out "$240" and inserting in lieu thereof "$274".

TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES

SEC. 201. (a) Subsection (a) of section 411 is amended to read as follows:

"(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

"Pay grade:	Monthly rate
E-1	$373
E-2	385
E-3	394
E-4	419
E-5	431
E-6	441
E-7	462
E-8	487
E-9	[1] 510
W-1	472
W-2	491
W-3	505
W-4	535
O-1	472
O-2	487
O-3	522
O-4	551
O-5	608
O-6	684
O-7	741
O-8	812
O-9	872
O-10	[2] 954

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $549.

"[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,023.".

(b) Subsection (b) of such section is amended by striking out "$38" and inserting in lieu thereof "$43".

(c) Subsection (c) of such section is amended by striking out "$98" and inserting in lieu thereof "$112".

(d) Subsection (d) of such section is amended by striking out "$49" and inserting in lieu thereof "$56".

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 202. Section 413 is amended—

(1) by striking out "$165" in clause (1) and inserting in lieu thereof "$189";

(2) by striking out "$237" in clause (2) and inserting in lieu thereof "$271";

(3) by striking out "$306" in clause (3) and inserting in lieu thereof "$350"; and

(4) by striking out "$306" and "$62" in clause (4) and inserting in lieu thereof "$350" and "$71", respectively.

RATES OF SUPPLEMENTAL DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 203. Section 414 is amended—

(1) by striking out "$98" in subsection (a) and inserting in lieu thereof "$112";

(2) by striking out "$165" in subsection (b) and inserting in lieu thereof "$189"; and

(3) by striking out "$84" in subsection (c) and inserting in lieu thereof "$96".

TITLE III—SPECIAL HOME ADAPTATION GRANTS FOR CERTAIN SEVERELY DISABLED VETERANS

EXTENSION OF SPECIALLY-ADAPTED HOUSING GRANT PROGRAM

SEC. 301. (a) Section 801 is amended by inserting "(a)" before "The Administrator" and by adding at the end the following new subsection:

"(b)(1) Subject to paragraph (2) of this subsection, the Administrator, under regulations which the Administrator shall prescribe, shall assist any veteran (other than a veteran who is eligible for assistance under subsection (a) of this section) who is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability which—

"(A) is due to blindness in both eyes with 5/200 visual acuity or less, or

"(B) includes the anatomical loss or loss of use of both hands,

in acquiring such adaptations to such veteran's residence as are determined by the Administrator to be reasonably necessary because of such disability.

"(2) Assistance under paragraph (1) of this subsection may be provided only to a veteran who the Administrator determines is residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family or, if the veteran's residence is to be constructed or purchased, will be residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family.".

(b) Section 802 is amended—

(1) by inserting "(a)" before "The assistance";

(2) by striking out "section 801" and inserting in lieu thereof "section 801(a)"; and

(3) by adding at the end the following new subsection:

"(b) Except as provided in section 804(b)(2) of this title, the assistance authorized by section 801(b) of this title shall be limited to the lesser of—

"(1) the actual cost of the adaptations determined by the Administrator under such section 801(b) to be reasonably necessary, or

"(2) $5,000.".

(c) Section 804 is amended—

(1) by inserting "(a)" before "Any veteran";

(2) by striking out "the assistance authorized by this chapter" and inserting in lieu thereof "except as provided in subsection (b) of this section, the assistance authorized by section 801 of this title"; and

(3) by adding at the end the following new subsection:

"(b) A veteran eligible for assistance under section 801(b) of this title shall not by reason of such eligibility be denied benefits for which such veteran becomes eligible under section 801(a) of this title or benefits relating to home health services under section 612(a) of this title. However, no particular type of adaptation, improvement, or structural alteration provided to a veteran under section 612(a) of this title may be provided to such veteran under section 801(b) of this title.".

(d) Section 805 is amended by striking out "unit, or necessary land therefor," and inserting in lieu thereof "unit, or necessary land therefor, or adaptation".

TITLE IV—VETERANS' ADMINISTRATION HOME-LOAN PROGRAM AMENDMENTS

REFINANCING OF VETERANS' ADMINISTRATION HOME LOANS

SEC. 401. (a) Section 1810 is amended—

(1) by inserting after clause (7) of subsection (a) the following new clause:

"(8) To refinance in accordance with subsection (e) of this section an existing loan guaranteed, insured, or made under this chapter."; and

(2) by adding at the end the following new subsection:

"(e)(1) For a loan to be guaranteed for the purpose specified in subsection (a)(8) of this section—

"(A) the interest rate of the loan must be less than the interest rate of the loan being refinanced;

"(B) the loan must be secured by the same dwelling or farm residence as was the loan being refinanced and such dwelling or residence must be owned and occupied by the veteran as such veteran's home;

"(C) the amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount permitted pursuant to section 1803(c)(3)(A) of this title) as may be authorized by the Administrator, under regulations which the Administrator shall prescribe, to be included in such loan;

"(D) the amount of the guaranty of the loan may not exceed the original guaranty amount of the loan being refinanced; and

"(E) the term of the loan may not exceed the original term of the loan being refinanced.

"(2) A loan to a veteran may be guaranteed by the Veterans' Administration under this chapter for the purpose specified in clause (8) of subsection (a) of this section without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such purpose. For purposes of section 1802(b) of this title, such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

"(3) If a veteran is deceased and if such veteran's surviving spouse was a co-obligor under an existing loan guaranteed, insured, or made under this chapter, such surviving spouse shall, only for the purpose specified in subsection (a)(8) of this section, be deemed to be a veteran eligible for benefits under this chapter.".

(b) Section 1819(a) is amended—

(1) by adding at the end of paragraph (1) the following new clause:

"(F) To refinance in accordance with paragraph (4) of this subsection an existing loan guaranteed, insured, or made under this section."; and

(2) by adding at the end the following new paragraph:

"(4)(A) For a loan to be guaranteed for the purpose specified in clause (F) of paragraph (1) of this subsection—

"(i) the interest rate of the loan must be less than the interest rate of the loan being refinanced;

"(ii) the loan must be secured by the same mobile home or mobile-home lot, or mobile home and mobile-home lot, as was the loan being refinanced and such mobile home (or a mobile home on such lot) must be owned and occupied by the veteran as such veteran's home;

"(iii) the amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount permitted pursuant to section 1803(c)(3)(A) of this title) as may be authorized by the Administrator, under regulations which the Administrator shall prescribe, to be included in such loan;

"(iv) the amount of the guaranty of the loan may not exceed the original guaranty amount of the loan being refinanced; and

"(v) the term of the loan may not exceed the original term of the loan being refinanced.

"(B) A loan to a veteran may be guaranteed by the Veterans' Administration under this chapter for the purpose specified in clause (F) of paragraph (1) of this subsection without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such purpose. For purposes of section 1802(b) of this title, such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

"(C) If a veteran is deceased and if such veteran's surviving spouse was a co-obligor under an existing loan previously guaranteed, insured, or made under this section, such surviving spouse shall, only for the purpose specified in clause (F) of paragraph (1) of this subsection, be deemed to be a veteran eligible for benefits under this chapter.".

(c)(1) Section 1803(c)(3)(A) is amended by striking out "section 1810(a)(5)" and inserting in lieu thereof "clause (5) or (8) of section 1810(a) of this title or section 1819(a)(1)(F) of this title".

(2) The second sentence of section 1811(b) is amended by inserting "(other than the refinancing of a loan under section 1810(a)(8) or 1819(a)(1)(F))" after "section 1810(a) or 1819 of this title".

INCREASES IN MAXIMUM AMOUNTS OF VETERANS' HOME-LOAN GUARANTIES

SEC. 402. (a) Section 1810(c) is amended by striking out "$25,000" and inserting in lieu thereof "$27,500".

(b) Section 1811(d)(2) is amended—

(1) by striking out "$25,000" both places it appears in subparagraph (A) and inserting in lieu thereof "$27,500"; and

(2) by striking out "$17,500" both places it appears in subparagraph (B) and inserting in lieu thereof "$20,000".

(c) Section 1819(c) is amended by striking out "$17,500" each place it appears and inserting in lieu thereof "$20,000".

TITLE V—MISCELLANEOUS PROVISIONS

EXTENSION OF AUTHORITY FOR VETERANS' ADMINISTRATION OFFICE IN THE REPUBLIC OF THE PHILIPPINES

SEC. 501. Section 230(b) is amended by striking out "1981" and inserting in lieu thereof "1985".

HEADSTONES AND MARKERS IN CERTAIN CASES

SEC. 502. Section 906(a) is amended by adding at the end of such section the following new paragraph:

"(4) Any individual described in section 1002(5) of this title who is buried in a veterans' cemetery owned by a State.".

PAYMENT OF PENSION IN CERTAIN CASES

SEC. 503. (a) Section 3104(a) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end of such subsection the following new paragraph:

"(2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 3105 of this title, pension under section 521 or 541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 3105 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.".

(b) Section 3203(a)(1)(C) is amended by striking out "of not less than two full calendar months" and inserting in lieu thereof "in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph".

LIMITATION ON PAYMENT OF COMPENSATION FOR SERVICE-CONNECTED DISABILITIES OR DEATH AND OF DEPENDENCY AND INDEMNITY COMPENSATION FOR INCARCERATION FOR FELONY CONVICTION

SEC. 504. (a) Chapter 53 is amended by adding at the end the following new section:

"§ 3113. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony

"(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, or local penal institution for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

"(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 314(a) of this title; or

"(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 314(a) of this title.

"(2) The provisions of paragraph (1) of this section shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

"(b)(1) All or any part of the compensation not paid to a veteran by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 3107 of this title.

"(2) All or any part of the dependency and indemnity compensation not paid to a surviving spouse or child by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned as follows:

"(A) In the case of dependency and indemnity compensation not paid to a surviving spouse, any apportionment shall be to the surviving child or children.

"(B) In the case of dependency and indemnity compensation not paid to a surviving child, any apportionment shall be to the surviving spouse or other surviving children, as applicable.

"(3) No apportionment may be made under this subsection to or on behalf of any person who is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

"(c) The Administrator shall not assign to any veteran a rating of total disability based on the individual unemployability of the veteran resulting from a service-connected disability during any period during which the veteran is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

"(d) The provisions of subsection (a) of this section shall apply (1) with respect to any period of incarceration of a person for conviction of a felony committed after the date of the enactment of this section, and (2) with respect to any period of incarceration on or after October 1, 1980, for conviction of a felony of a person who on October 1, 1980, is incarcerated for conviction of such felony and with respect to whom the action granting an award of compensation or dependency and indemnity compensation is taken on or after such date.

"(e) For purposes of this section—

"(1) The term 'compensation' includes disability compensation payable under section 351 of this title.

"(2) The term 'dependency and indemnity compensation' means death compensation payable under section 321 or 341 of this title, death compensation and dependency and indemnity compensation payable under section 351 of this title, and any benefit payable under chapter 13 of this title.".

(b) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3113. Limitation on payment of compensation to persons incarcerated for conviction of a felony.".

CONFIDENTIALITY OF MEDICAL QUALITY-ASSURANCE RECORDS

SEC. 505. (a) Subchapter I of chapter 57 is amended by adding at the end the following new section:

"§ 5305. Confidentiality of medical quality-assurance records

"(a) Records and documents created by the Veterans' Administration as part of a medical quality-assurance program are confidential and privileged and may not be disclosed to any person or entity except as provided in subsection (b) of this section.

"(b)(1) Subject to paragraph (2) of this subsection, a record or document described in subsection (a) of this section shall, upon request, be disclosed as follows:

"(A) To a Federal agency or private organization, if such record or document is needed by such agency or organization to perform licensing or accreditation functions related to Veterans' Administration health-care facilities or to perform monitoring, required by statute, of Veterans' Administration health-care facilities.

"(B) To a Federal executive agency or provider of health-care services, if such record or document is required by such agency or provider for participation by the Veterans' Administration in a health-care program with such agency or provider.

"(C) To a criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or document be provided for a purpose authorized by law.

"(D) To health-care personnel, to the extent necessary to meet a medical emergency affecting the health or safety of any individual.

"(2) The name of and other identifying information regarding any individual Veterans' Administration patient or employee, or any other individual associated with the Veterans' Administration for purposes of a medical quality-assurance program, contained in a record or document described in subsection (a) of this section shall be deleted from any record or document before any disclosure made under this subsection if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

"(3) No person or entity to whom a record or document has been disclosed under this subsection shall make further disclosure of such record or document except for a purpose provided in this subsection.

"(4) Nothing in this section shall be construed as authority to withhold any record or document from a committee of either House of Congress or any joint committee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

"(5) Nothing in this section shall be construed as limiting the use of records and documents described in subsection (a) of this section within the Veterans' Administration (including contractors and consultants of the Veterans' Administration).

"(c) For the purpose of this section, the term 'medical quality-assurance program' means—

"(1) with respect to any activity carried out before the date of the enactment of this section, a Veterans' Administration systematic health-care review activity carried out by or for the Veterans' Administration for the purpose of improving the quality of medical care or improving the utilization of health-care resources in Veterans' Administration health-care facilities; and

"(2) with respect to any activity carried out on or after the date of the enactment of this section, a Veterans' Administration systematic health-care review activity designated by the Administrator to be carried out by or for the Veterans' Administration for either such purpose.

"(d)(1) Not later than 180 days after the date of the enactment of this section, the Administrator shall prescribe regulations to carry out this section. In prescribing such regulations, the Administrator shall specify those activities carried out before such enactment date which the Administrator determines meet the definition of medical quality-assurance program in subsection (c)(1) of this section and those activities which the Administrator has designated under subsection (c)(2) of this section. The Administrator shall, to the extent appropriate, incorporate into such regulations the provisions of the existing administrative guidelines and procedures governing such programs.

"(2) After the date on which such regulations are first prescribed, no activity shall be considered as having been designated as a medical quality-assurance program for the purposes of subsection (c)(2) of this section unless the designation has been specified in such regulations.

"(e) Any person who, knowing that a document or record is a document or record described in subsection (a) of this section, willfully discloses such record or document except as provided for in subsection (b) of this section shall be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.".

(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3304 the following new item:

"3305. Confidentiality of medical quality-assurance records.".

MINIMUM NUMBER OF EMPLOYEES OF AMERICAN BATTLE MONUMENTS COMMISSION

SEC. 506. The third paragraph of the first section of the Act entitled "An Act for the creation of an American Battle Monuments Commission to erect suitable memorials commemorating the services of the American soldier in Europe, and for other purposes", approved March 4, 1923 (36 U.S.C. 121), is amended by inserting after the second sentence thereof the following new sentence: "To ensure adequate care and maintenance of the cemeteries, monuments, and memorials under the jurisdiction of the Commission, the Commission, subject to the availability of appropriations, shall employ (1) not less than 50 personnel in the competitive service (as defined in section 2102 of title 5, United States Code), of whom not less than 43 shall be assigned to duty in foreign countries in which such cemeteries, monuments, and memorials are located, and (2) not less than 348 individuals who are citizens of the countries in which such cemeteries, monuments, and memorials are located, who shall be hired for local employment relating to the care and maintenance of such cemeteries, monuments, and memorials.".

LAND TRANSFER, CHEYENNE, WYOMING

SEC. 507. (a) Subject to subsection (b), the Administrator of Veterans' Affairs is authorized to execute such instruments as may be necessary to permit the city of Cheyenne, Wyoming, to use for public roadway purposes a tract of land consisting of four acres, more or less, which is a portion of a larger tract of land previously conveyed by the United States to such city under the authority of the Act entitled "An Act authorizing the Administrator of Veterans' Affairs to convey certain property to the city of Cheyenne, Wyoming", approved November 8, 1965 (Public Law 89-345; 79 Stat. 1304), for use by such city for park and recreational purposes only.

(b) Any instrument executed by the Administrator of Veterans' Affairs under this section shall—

(1) provide that the four-acre tract of land referred to in subsection (a) may be used only for park and recreational purposes or for public roadway purposes, or both, and only in a manner that will not, in the judgment of the Administrator of Veterans' Affairs, interfere in any manner with the care and treatment of patients in the Veterans' Administration Center, Cheyenne, Wyoming;

(2) contain such additional terms, conditions, and restrictions as may be determined by the Administrator of Veterans' Affairs to be necessary to protect the interest of the United States; and

(3) provide that, if the Administrator of Veterans' Affairs determines that the city of Cheyenne has violated any provision of any such instrument, title to the tract of land conveyed under the authority of such Act shall revert to the United States as provided in the deed of conveyance executed pursuant to such Act.

(c) The legal description of the four-acre tract of land referred to in subsection (a) shall be determined by the Administrator of Veterans' Affairs. If a survey is required in order to make such determination, the city of Cheyenne shall bear the expenses of the survey.

TECHNICAL AMENDMENTS TO PUBLIC LAW 96-330

SEC. 508. (a) Section 4107(c)(3) is amended by striking out "section 4507" and inserting in lieu thereof "sections 4507 and 5384".

(b) Section 4109(b) is amended—

(1) by inserting "after August 25, 1930," after "any period of service"; and

(2) by inserting "after such date" after "such service".

TITLE VI—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 601. (a) The amendments made by titles I and II shall apply only to payments for months beginning after September 30, 1980.

(b) The amendments made by title III and by sections 402, 501, 503, and 506 shall take effect on October 1, 1980.

(c) The amendments made by section 502 shall apply only with respect to individuals who die after September 30, 1980.

(d) The amendments made by sections 401, 504, 505, and 507 shall take effect on the date of the enactment of this Act.

(e) The amendments made by section 508 shall take effect as of August 26, 1980.

In lieu of the amendment of the Senate to the title of the bill, amend the title so as read: "An Act to amend title 38, United States Code, to provide cost-of-living increases in the rates of compensation for veterans with service-connected disabilities and in the rates of dependency and indemnity compensation for surviving spouses and children of veterans, to provide for limited grants for special home adaptations for certain severely disabled veterans, to provide for Veterans' Administration guaranties for loans to refinance certain existing veterans' home loans and to increase the maximum loan guaranties for home loans made to veterans, and to provide for the confidentiality of certain Veterans' Administration medical quality assurance records; and for other purposes.".

The SPEAKER. Is there objection to the request of the gentleman from Mississippi (Mr. MONTGOMERY)?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object—and I do not plan to object—this is a substantial bill, and I would yield to the distinguished chairman of the subcommittee to explain the amendments and the compromise that has been made with the Senate.

Mr. MONTGOMERY. I thank the gentleman for yielding.

Mr. Speaker, on July 21, on the 50th anniversary of the Veterans' Administration, the House by a vote of 383 to 1 passed H.R. 7511, a bill that would have provided a 13-percent cost-of-living increase in disability compensation paid to service-connected veterans and in the dependency and indemnity compensation paid to eligible survivors of veterans who died of service-connected causes.

On August 6, the Senate amended our bill. One of its new provisions was to provide a 14.3-percent increase in these service-connected benefits.

At the time the House passed the 13-percent increase, I told you about the budget situation, that the 13-percent cost-of-living increase would be in line with the projected Consumer Price Index and about the fact that we were mandated to save $400 million by limiting current benefits and services for veterans, or in some cases, to terminate programs. This $400 million target was established by the budget resolution adopted by the Congress.

Mr. Speaker, as you know, our No. 1 priority is to this most deserving class of veterans and their dependents—these veterans who have suffered disease or injury in line of duty as well as the survivors of veterans who have died of service-incurred causes.

It would now appear as we are further down the road that our budget constraints will permit a more substantial increase. As I stated previously, our original provision called for 13 percent across the board in all of the categories of disability compensation, in the clothing allowance and in all of the rates for widows and children payable as a result of the service-connected death of the veteran.

The amendments I bring before you today provide for a 13-percent increase for those disabilities evaluated at 10, 20, 30, and 40 percent, with an increase of 14.3 percent recommended for disabilities evaluated 50 percent and higher, including special statutory disability payments, the clothing allowance, and dependency and indemnity compensation. Such a measure would benefit 2,272,793 veterans and 341,207 widows and children.

The Congressional Budget Office has advised us that they anticipate the increase in the Consumer Price Index from October 1, 1979, to October 1, 1980, will

be 12.8 percent. If such projection holds true, the 13-percent increase provided for those with 10 to 40 percent evaluations of disability should keep up with the inflation rate and possibly exceed it slightly. For those with disabilities more profoundly affecting their employment opportunities, an increase of 14.3 percent is provided. This amount, while exceeding that which would be warranted by consideration solely of the increase in the Consumer Price Index, is not excessive particularly in view of the fact that last year's measure anticipated a lower cost of living than actual experience warranted.

Nor is it without ample precedent that we have elected to provide increases in a lower range for those suffering the lesser degrees of disability. Since July 1, 1952, there have been 14 cost-of-living increases provided by the Congress in service-connected benefits. Out of these, eight provided for a graduation in one form or another in the amounts provided for different evaluations. Not only is there precedence for this but the principle upon which this is based is the logical result of an attempt by the Congress to provide moneys proportionate to the reduction in the abilities of the individuals to engage in productive employment.

It is important to note that compensation for service-connected disability developed at a point in history in the Nation when there were no other broadly based programs for replacement of a loss in earning capacity due to disability. When the compensation program was first created, it was the basic means by which veterans could receive disability benefits if they had served less than 20 years in the military service. The rates of compensation were structured so as to recognize the average earning impairment caused by service-incurred conditions.

The Congress has historically provided compensation to replace that lost or diminished employment capability. These amendments provide a monthly compensation rate of $1,016 for a totally disabled veteran.

In addition to providing for this substantial cost-of-living increase, the proposed amendments contain certain housing provisions which would benefit service-connected veterans and veterans in general.

The first of these liberalizes the special home adaptation grant for certain severely disabled veterans. This basically would benefit veterans who, though permanently and severely handicapped, are not now entitled to the specially adapted housing grant.

Currently a $30,000 maximum specially adapted housing grant is provided to assist veterans whose severe disabilities make movement impossible without the aid of a wheelchair or prosthetic device and is intended to assist such veterans in acquiring specially adapted homes with major adaptations such as wheelchair ramps and extra-wide hallways to provide for the veteran's health and safety. Thus, the maximum specially adapted housing grant under current law is not appropriate in the case of totally blinded veterans or veterans suffering the loss or loss of use of both upper extremities above the wrist who do not have serious mobility problems.

This amendment provides a modification of the specially adapted housing benefit in an amount not to exceed $5,000 to blinded veterans who would need, for example, railings, sliding doors, various braille devices on appliances, the elimination of protruding cabinet fixtures and, in the case of certain blinded veterans, special lighting in order to assist them achieve maximum independence.

This benefit would also be extended to the veteran who has suffered the anatomical loss or loss of use of both upper extremities above the hands inasmuch as these veterans experience serious difficulties in coping with ordinary demands of living in a home environment. For such veterans, simple tasks like manipulating doornobs, opening and closing windows and operating appliances are extremely arduous and their need for special adaptations such as special bathroom and kitchen fixtures and other devices is readily apparent.

The proposed amendments also contain a provision which would enable certain veterans who have used their VA loan guaranty entitlement in obtaining a loan for the purchase of a conventional home, condominium apartment, or mobile home to refinance such loan at a lower interest rate with a VA loan guaranty for the refinancing rate.

Mr. Speaker, as we are all well aware, during the last 9 months, housing market interest rates fluctuated to an all-time high. These rates have now come down and those veterans who purchased homes during this period of time, will suffer the penalty of a substantial interest burden which will continue throughout their lives unlike the relief afforded someone who financed conventionally and may refinance.

At the time when VA interest rates were at their highest, more than 36,500 veterans purchased conventional homes with VA-guaranteed financing and more than 2,000 veterans purchased mobile homes. Many of these veterans needed their homes immediately for family reasons or feared that any delay in purchasing a home would be accompanied by a further substantial rise in housing prices. Thus, they could not await an eventual decline in interest rates.

Mr. Speaker, as you know, on July 28, the House overwhelmingly passed without opposition H.R. 7458,, a bill which would accomplish this purpose. It is quite obvious that my colleagues concur that a provision allowing for the refinancing of VA loans is not only necessary but urgent.

The last provision dealing with home loans looks at the feasibility of increasing the maximum guarantee amounts.

Mr. Speaker, there is no doubt that inflation has taken a heavy toll on the housing market. There is a definite need to increase the mobile home guarantee from $17,500 to $20,000. With the present housing crunch, more and more veterans have been turning to the mobile home. We see an even heavier demand for this type of housing from veterans buying their first homes or retirement homes. This alternative form of housing bears close watching inasmuch as it seems to be setting a trend for the future.

The maximum loan guarantee for conventional homes has also been considered and is being increased from $25,000 to $27,500.

Mr. Speaker, though the need to do this has not been as urgently demonstrated as in that for mobile homes, we must keep in mind that housing market trends keep fluctuating; and though we did plan to look at this issue closely during the next Congress, we feel that the market may have changed drastically by then and the veteran thus unduly, adversely affected by our inaction.

Mr. Speaker, this proposal also contains several miscellaneous provisions. Among other things, the bill would extend the authority of the Administrator of Veterans Affairs to operate and maintain a regional office in the Republic of the Philippines. Current authority will expire September 30, 1981. This proposal would extend the authority through September 30, 1985. There is a significant advantage in maintaining a regional office in Manila where the local employees' understanding of the Filipino culture and language greatly facilitates the processing of claims. This proposed extension would enable the Veterans' Administration to more effectively meet the needs of its 48,000 Filipino beneficiaries.

Another provision would provide headstones and markers for certain close relatives of veterans who are buried in a State veterans' cemetery. Under existing law, the Veterans' Administration provides grave markers for veterans and next of kin buried in national cemeteries; however, they are not provided for next-of-kin buried in State cemeteries. This provision would authorize the VA to furnish a headstone or marker for the grave of the spouse or other eligible dependent of a veteran if that individual were buried in a State veterans' cemetery rather than a national cemetery, and irrespective of whether the veteran died before or after such dependent.

Mr. Speaker, as you are aware, there is a shortage of space in national cemeteries and certain States are trying to meet that need by developing their own veterans' cemeteries. Maryland is one of these. While State cemeteries are expected to be patterned after the national cemetery system, total uniformity in the marking of graves can be achieved only at the expense of the State or the next of kin. This proposed change in current law supports the effort being made by these States to carry out the policy of uniformity in the markings of graves in State cemeteries.

The proposed amendments would provide full pension entitlement to military retirees after reducing pension by the amount of retired pay. The law has long precluded the concurrent payment of VA benefits and military retired pay

inasmuch as each of these benefits is derived directly as the result of a veteran's military service.

Mr. Speaker, as you will recall, Public Law 95-588, the Veterans' and Survivors Pension Improvement Act of 1978, which became effective January 1, 1979, completely restructured the pension program. Not only did the act correct many inequities which had crept into the pension program under prior laws, but it did provide a substantially higher standard of living for needy disabled veterans who served during wartime. The basic principle upon which this new pension program is based calls for assuring an annual support level substantially above payments of other needs based programs.

The way the pension program works today assures that those veterans and dependents who are most in need receive the most pension. This is achieved by reducing the annual pension support level by the amount of income from other sources without favoring income from any particular source.

Mr. Speaker, we have been watching the operation of this new law with much interest and we are well pleased with the initial results. However, when any program needs fine tuning, efforts should be made to provide corrections.

This provision makes such a correction. As I stated previously, we have long believed that dual benefits based on the same period of service should not be made. To that end, no award of compensation or pension has been permitted when it duplicated a payment made under the military retired program unless retired pay equal to the VA benefit were waived.

This has worked well. However, the effect for the new pension law results in a reduction in pension equal to the amount of military retired pay after the retired pay has been totally waived.

Mr. Speaker, this provision would correct the situation by providing that for determining pension payments, their military retirement income be treated exactly as any other income—that is, the income from the outside source be used to offset maximum pension otherwise payable and that total income from all sources then be allowed to equal the annual support level. This will result in no duplication of benefits but will permit these few individuals to be treated precisely as retirees under any other program.

Mr. Speaker, the proposed amendments would add a new section to title 38 that would limit the payment of compensation or DIC, to certain individuals otherwise eligible, during confinement in a penal institution 61 days after imprisonment following conviction of a felony.

Mr. Speaker, the purpose of compensation is to replace the lost earning capability of a disabled veteran where the impairment is caused by a service-connected condition. I do not consider it unreasonable to recognize that individuals who are confined by our judicial system for commission of a serious offense against society are no longer available to the labor market. An economic detriment caused by a disability is not felt by such individuals during long periods of confinement.

As you know, if a member of the Armed Forces commits a violent act so severe as to require a dishonorable discharge, such individual is precluded from receiving any veterans' benefits at all for the rest of his life. To me it is not unreasonable to expect a similar standard of conduct to be applied to veterans. I have great difficulty, as do many members of the committee, in providing a full range of Federal benefits to individuals serving long sentences for the commission of felonies.

I do not see the wisdom of providing hundreds and thousands of dollars of tax free benefits to such individuals when at the same time the taxpayers of this country are spending additional thousands of dollars to maintain these same individuals in penal institutions. However, I do wish to point out that the amount of such benefits to which the recipient would be entitled if he or she were not incarcerated may, under our proposal, be apportioned and paid, at the administrator's discretion, to dependents on the basis of their need.

Mr. Speaker, our proposal would not affect those persons who were receiving benefits and were incarcerated on the effective date of the amendments. It would affect those individuals who commit a felony after the date of enactment as well as those who were in prison on the date of enactment and who only later begin to receive payments, regardless of when the felony was committed. It is felt that the limitation should reach those persons who are already in prison but who have not yet had an economic reliance on the benefits.

I would also point out that such individuals would be eligible for resumption of payment as of the date of their release from confinement. In other words, this limitation is intended to apply to prisoners as of the 61st day of their confinement and continue only during the balance of their incarceration. It is not a permanent or conclusive bar to future entitlement.

Mr. Speaker, the proposed amendments would also assure that the American Battle Monuments Commission continue to effectively carry out its mission in operating and maintaining overseas cemeteries and monuments within its jurisdiction by providing for a guaranteed minimum number of employees.

Budget cuts have resulted in a 20-percent loss in labor force while work requirements have increased due to structure aging demanding more maintenance and planting maturation requiring more care.

Mr. Speaker, currently the American Battle Monuments Commission administers and maintains 22 permanent American military cemeteries, memorials and 11 separate monuments in 9 foreign countries as well as other memorials in the United States. Interred in these overseas cemeteries are our war dead of World War I, World War II, and the Mexican War.

More than 6 million persons visit these shrines which commemorate the achievements and sacrifices of our Armed Forces every year. Therefore, it is important we continue to honor these war dead by providing for this much needed care and maintenance for our overseas cemeteries and memorials.

Mr. Speaker, another important provision of the amendments I propose would make records and documents created by the Veterans' Administration as part of the agency's medical quality assurance program privileged and confidential and would bar disclosure of such records and documents except to specified recipients in specified circumstances.

Section 505 makes all documents created as part of the VA's Health Services Review Organization programs confidential and privileged. The programs are medical quality assurance programs designed to improve the quality of medical care and treatment rendered in VA health care facilities. At the heart of the quality assurance programs are professional peer review activities where physicians review and evaluate the performance of their colleagues in an effort to identify and correct problems. Confidentiality is an essential ingredient in obtaining the frankness necessary to the success of these activities.

Although these excellent programs have existed at least since 1974, their continued viability is now seriously threatened by requests for disclosure of documents under the Freedom of Information Act. In at least one VA medical center, physicians actually refused to participate in the programs after a request for the documents was received. By making the candid views of VA physicians confidential and privileged, the full and complete cooperation of these doctors will be more easily obtained. Section 506 will prevent all disclosures of these valuable documents, whenever the documents were created, except in limited circumstances provided for in the bill.

The medical quality assurance program was created to determine if there are deficiencies in VA hospitals as well as to provide a means for taking corrective action. In its oversight capacity, documents are produced which contain information identifying individual VA patients, employees, or others involved with such review efforts, citing and describing the medical practices as well as any deficiencies discovered in the provision of health care.

It is imperative that these documents be kept confidential. Unless the individuals participating in the program can be assured that their remarks and evaluations will be kept confidential, the necessary level of candor will be lost.

Not only would this seriously undermine the value of the program, but it would ultimately adversely affect the quality of care being provided veterans in VA health-care facilities.

The last provision authorizes the VA to convey to the city of Cheyenne, Wyo., free and clear of existing restrictions, certain land needed for the expansion and improvement of a roadway. This tract of land is approximately 4 acres of a larger tract previously deeded to the city with restrictions limiting use to a park. It in no way would interfere with

the care and treatment of patients in the VA center. This provision would simply eliminate certain restrictions imposed by Public Law 89-349 in 1966.

The Wyoming delegations in both Houses support this measure unanimously.

Mr. Speaker, there follows an explanation of the House-passed bill, the Senate amendments, and the proposed amendments:

H.R. 7511, "VETERANS' DISABILITY COMPENSATION AND HOUSING BENEFITS AMENDMENTS OF 1980"—EXPLANATORY STATEMENT OF HOUSE BILL, SENATE AMENDMENT, AND COMPROMISE AGREEMENT.

TITLE I—VETERANS' DISABILITY COMPENSATION BENEFITS

Rate increases

Sections 101, 102, and 103. The House bill and the Senate amendment would amend chapter 11 of title 38, United States Code, effective October 1, 1980, to increase the basic rates of service-connected disability compensation for veterans, the rates payable for certain severe disabilities, the annual clothing allowance for certain severely disabled veterans, and the dependents' allowances payable to veterans rated 30-percent or more disabled. The House bill would increase those rates by 13 percent; the Senate amendment, by 14.3 percent.

The compromise agreement provides increases, effective October 1, 1980, of 14.3 percent in the rates for veterans rated 50-percent or more disabled and for veterans more severely disabled, the annual clothing allowance, and dependents' allowances and of 13 percent in the rates for veterans rated from 10- through 40-percent disabled.

TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS

Rate increases

Sections 201, 202, and 203. The House bill and the Senate amendment would amend chapter 13 of title 38, United States Code, to provide, effective October 1, 1980, an increase of 13 percent and 14.3 percent, respectively, in the rates of dependency and indemnity compensation (DIC) payable to the surviving spouses and children of veterans whose deaths were service connected.

The compromise agreement provides a 14.3-percent increase in DIC rates effective October 1, 1980.

TITLE III—SPECIAL HOME ADAPTATION GRANTS FOR CERTAIN SEVERELY DISABLED VETERANS

Section 301. The Senate amendment would amend chapter 21 of title 38, United States Code, to provide, effective October 1, 1980, for limited specially adapted housing grants, up to a maximum of $5,000, to veterans who, as a result of service-connected disability, are totally blind or have lost or lost the use of both upper extremities to a specified extent. The House bill does not contain a comparable provision.

The House recedes with amendments clarifying that veterans who have lost or lost the use of both hands would be eligible and modifying a limitation provided for under the Senate amendment. This limitation would have precluded the VA from providing to any veteran who is eligible for home health services—which may include home improvements and structural alterations—under section 612(a) of title 38, United States Code, and also eligible under the new limited specially adapted housing grant program, any particular type of adaptation, improvement, or structural alteration more than once. This limitation would be modified under the compromise agreement to clarify that the VA may not furnish to a veteran under the new program a particular type of adaptation, improvement, or structural alteration that has been provided to the veteran under section 612(a) and to avoid any implication that the limitation applies to assistance under section 612(a). The Committees note that veterans eligible for grants under the new program would be eligible—as are veterans now eligible for specially adapted housing grants under chapter 21—for mortgage protection life insurance under section 706 of title 38 and direct home loans under section 1810(i) of such title. As in the Senate amendment, this section would become effective October 1, 1980.

TITLE IV—VETERANS' ADMINISTRATION HOME-LOAN PROGRAM AMENDMENTS

Refinancing loans

Section 401 (a), (b)(1), and (d)(1). The Senate amendment and H.R. 7458, passed by the House on July 28, 1980, would amend chapter 37 of title 38, United States Code, to authorize the VA to guarantee a refinancing loan made to a veteran who has previously used his or her loan-guaranty or direct-loan entitlement to purchase a conventional home or condominium. Under the Senate amendment, but not H.R. 7458, a refinancing loan guaranty could be provided only in the case of a refinancing loan with an interest rate that is lower than the interest rate on the previous loan; such a guaranty would be available for a loan to refinance a previous VA-guaranteed loan used to purchase a mobile home or mobile home lot (or both); and, in cases where the veteran is deceased the veteran's surviving spouse was a co-obligor under the loan to be refinanced, the surviving spouse would be able to obtain a VA loan guaranty for a refinancing loan with a lower interest rate. Under H.R. 7458, but not the Senate amendment, the amount of guaranty on the refinancing loan would be limited to the amount of guaranty on the loan to be refinanced; and the use of a direct loan for refinancing purposes would be permitted.

The House would recede with technical and clarifying amendments and an amendment that would limit the amount of guaranty of the refinancing loan to the amount of guaranty on the loan to be refinanced. As in H.R. 7458 and the Senate amendment to H.R. 7511, this provision would be effective upon the enactment of the compromise agreement.

Increases in loan guaranty maximums

Section 402. The Senate amendment would amend chapter 37 to increase, effective October 1, 1980, the maximum amounts of VA loan guaranty entitlement provided to veterans—from $25,000 to $30,000 for conventional homes, condominiums, and home improvements, and from $17,500 to $20,000, for mobile homes and lots. The House bill does not contain a comparable provision.

The House recedes with an amendment, effective October 1, 1980, providing a $2,500 increase in both maximum loan guaranty amounts.

TITLE V—MISCELLANEOUS PROVISIONS

Extension of Authority for Veterans' Administration Office in the Republic of the Philippines

Section 501. The House bill would amend section 230(b) of title 38, United States Code, to extend from September 30, 1981, to September 30, 1985, the VA's authority to maintain a regional office in the Republic of the Philippines. The Senate amendment does not contain a comparable provision.

The Senate recedes.

Headstones and markers in certain cases

Section 502. The House bill would amend section 906(a) of title 38 to provide that an appropriate headstone or marker may be furnished, upon request, for the grave of a veteran's spouse, surviving spouse, minor child, or, in the Administrator's discretion, unmarried adult child, if such person is buried in a State veterans' cemetery and the veteran is or was eligible, under chapter 24 of title 38, for interment in a National Cemetery. The Senate amendment does not contain a comparable provision.

The Senate recedes with a technical amendment. As in the House bill, this section would become effective with respect to persons who die after September 30, 1980.

Payment of pension in certain cases

Section 503 (a). The House bill would amend section 3104(a) of title 38 to remove, effective October 1, 1980, the prohibition on the concurrent receipt of military retired pay and VA need-based pension benefits under section 521 or 541 of title 38. This would enable the VA to pay pension to persons who receive military retired pay in the same way that pension may be paid to persons who receive income from the Social Security program or any other source. The Senate amendment does not contain a comparable provision.

The Senate recedes with a clarifying amendment. This subsection would become effective, as in the House bill, on October 1, 1980.

Section 503 (b). The House bill would amend section 3203(a)(1)(C) of title 38 to provide, effective October 1, 1980, that the reduction of pension required when a veteran without dependents is readmitted for care in a VA domiciliary, hospital, or nursing home facility within 6 months of a previous period of care will not be made unless a reduction was made under section 3203(a)(1)(A) or (B) in connection with the previous period of care. The Senate amendment does not contain a comparable provision.

The Senate recedes with a clarifying amendment. This subsection would become effective, as in the House bill, on October 1, 1980.

Limitation of compensation and DIC for incarcerated persons

Section 504. The House bill would amend chapter 55 of title 38, United States Code, to provied that, during a service-connected disabled veteran's confinement in a Federal, State, or local penal institution as the result of the veteran's conviction of a felony or misdemeanor, the veteran's compensation may not exceed $60 per month after the first 60 days. Under this provision, the reduction after 60 days of incarceration would apply only to veterans rated 20-percent or more disabled, as long as the 10-percent rate is less than $60 per month. Amounts not paid to the veteran could be apportioned to the veteran's dependents. A similar limitation would apply to incarcerated recipients of D G and death compensation payments. This provision would be effective with regard to payments for months after September 30, 1980. The Senate amendment does not contain a comparable provision.

The compromise agreement provides for a limitation along the lines of the House bill with the following provisions:

(1) The limitation would apply only to persons incarcerated for a felony conviction.

(2) The limitation would apply only to those whose offense is committed after the date of the enactment of this section and to those who are incarcerated on October 1, 1980, and awarded compensation or DIC after that date.

(3) The limitation would not apply to a person while he or she is participating in a work-release program or residing in a halfway house.

(4) Apportionments to dependents of veterans would be provided for under the same terms and conditions as are apportionments made pursuant to section 3107 of title 38, which governs apportionments in the cases of non-incarcerated compensation beneficiaries. Apportionments of D"C would be provided for in a similar manner. However, no apportionment of the compensation, DIC, or death compensation of a person to whom the limitation applies could be made to a dependent who is incarcerated for conviction of a felony.

(5) With respect to veterans, the com-

promise agreement would limit the monthly amount of compensation payable to veterans rated 20-percent or more disabled to the 10-percent rate ($54 under the compromise agreement) and, to veterans rated zero or 10 percent disabled, to half of the 10-percent rate ($27). The limitation would thus apply to all veterans rated as 10-percent or more disabled and to those whose rating is zero percent but who receive the rate provided under section 314(k) of title 38. With respect to DIC and death compensation recipients, the monthly amount payable would be limited to half of the 10-percent rate.

(6) No adjudications of total disability based on individual unemployability would be permissible during the period of the veteran's incarceration.

Under the compromise agreement, this section would be effective on the date of enactment.

The Committees note that it is their intention that the limitations provided for under the compromise agreement apply to persons convicted of felonies and sentenced to imprisonment while they are institutionalized in a hospital facility on transfer from (but not on parole from) a penal institution. In cases of prison-to-hospital transfer, the Committees consider that the hospital is serving as an agent of the penal institution. As has been noted, the limitation would not apply during a period during which the individual is participating in a work-release program even though, under such program, he or she returns to confinement during evenings or weekends. Restoration to the full rate would occur upon the person's release from incarceration, including release on parole. At such times, of course, any amount apportioned to dependents would be appropriately adjusted.

The Committees intend that, at the time action is taken to reduce an incarcerated veteran's or survivor's benefits under this section, the VA provide such veteran or survivor and those to whom apportionments may be made with notice of these apportionment provisions.

Confidentiality of medical quality-assurance documents

Section 505. The Senate amendment would amend chapter 57 of title 38, United States Code, to provide for the confidentiality of Veterans' Administration medical quality-assurance documents. The House bill does not contain a comparable provision.

The House recedes with technical amendments. The provision would be effective to protect the confidentiality of medical quality-assurance documents created before or after the date of enactment.

Minimum number of employees of American Battle Monuments Commission

Section 506. The House bill would amend the Act creating the American Battle Monuments Commission (ABMC), which was approved March 4, 1923 (36 U.S.C. 121), to provide that, subject to the availability of appropriations, the ABMC shall employ at least (1) 50 Federal civil-service employees, of whom not fewer than 43 shall be assigned to duty in countries where cemeteries, monuments, and memorials under ABMC jurisdiction are located, and (2) 348 citizens of such countries to maintain and care for such cemeteries, monuments, and memorials. The Senate amendment does not contain a comparable provision.

The Senate recedes. As in the House bill, this provision would be effective October 1, 1980.

Land transfer

Section 507. The Senate amendment would amend Public Law 89-345 (79 Stat. 1304)—which authorized the conveyance, subject to certain restrictions, of a tract of land adjoining the VA Center located in Cheyenne, Wyoming, from the VA to the city of Cheyenne—in order to remove the restriction relating to park and recreational use with regard to a certain 4-acre tract of the land so conveyed in order to permit the city to use the 4-acre tract to expand and improve a certain roadway. The park-and-recreational-use restriction would be removed by a second deed that would be authorized by the Senate amendment and would be required to impose a new restriction limiting the use of the 4-acre tract to public roadway purposes. The House bill does not contain a comparable provision.

The House recedes with technical amendments authorizing the VA to execute appropriate instruments to permit the 4-acre tract to be used for public roadway purposes and requiring that any such instrument provide that the 4-acre tract may be used only for park and recreational purposes or for public roadway purposes, or both.

As in the Senate amendment, this section would be effective on the date of enactment.

Technical amendments

Section 508 (a) and (b). The compromise agreement contains two technical amendments relating to Public Law 96-330, enacted on September 4, 1980, that are not contained in either the House bill or the Senate amendment. The first provision, contained in section 612 of S. 1188, the proposed "Disabled Veterans' Rehabilitation Act of 1980", passed by the Senate on September 4, 1980, would amend paragraph (3) of section 4107(c) of title 38, as added by Public Law 96-330, which allows VA non-physician hospital directors to be considered for bonuses as part of the Senior Executive Service (SES), in order to add a cross-reference, inadvertently not included in the text of Public Law 96-330, to a title 5 SES bonus provision (section 5384). Second, the compromise agreement would amend subsection (b) of section 4109, as added by Public Law 96-330, to correct a drafting error and thus clarify that that subsection, which changes the way in which retirement credit is awarded for the part-time service of certain VA health-care personnel, applies only to part-time-employment periods served after the enactment of that law.

Both provisions would take effect as of August 25, 1980, the date of the enactment of Public Law 96-330.

Costs

The following table shows the budget authority costs for fiscal year 1981 (as estimated by the Congressional Budget Office) of H.R. 7511 as passed by the House (plus H.R. 7458 as indicated below), as amended by the Senate, and as included in the compromise agreement:

[In millions]

Provisions of compromise agreement	As passed by House	Senate amendment	Compromise agreement
Titles I and II	$979.8	$1,087.5	$1,056.1
Title III		1.0	1.0
Title IV:			
Sec. 401	*(1)	(1)	(1)
Sec. 402		(1)	(1)
Title V:			
Sec. 501	(1)		(1)
Sec. 502	(1)		(1)
Sec. 503	1.0		1.0
Sec. 504	−3.0		(1)
Sec. 505		(1)	(1)
Sec. 506	(1)		(1)
Sec. 507		(1)	(1)
Sec. 508			(1)
Total	[2] 977.8	1,088.5	1,058.1

[1] Less than $500,000.
[2] Provisions in the House bill not included in the compromise agreement would reduce this amount to $894,300,000.
*H.R. 7458.

The following tables reflect how veterans, their dependents and survivors will be benefited by the cost-of-living increase:

	Increase (monthly rate) From—	To—
Percentage of disability or subsection under which payment is authorized:		
(a) 10 percent	$48	$54
(b) 20 percent	88	99
(c) 30 percent	133	150
(d) 40 percent	182	206
(e) 50 percent	255	291
(f) 60 percent	321	367
(g) 70 percent	380	434
(h) 80 percent	440	503
(i) 90 percent	495	566
(j) 100 percent	889	1,016
Higher statutory awards for certain multiple disabilities:		
(k) (1) Additional monthly payment for anatomical loss, or loss of use of, any of these organs: 1 foot, 1 hand, blindness in 1-eye (having light perception only), 1 or more creative organs, both buttocks, organic aphonia (with constant inability to communicate by speech), deafness of both ears (having absence of air and bone conduction)—for each loss	62	62
(2) Limit for veterans receiving payments under (a) to (j) above	1,104	1,262
(3) Limit for veterans receiving benefits under (l) to (n) below	1,547	1,768
(l) Anatomical loss or loss of use of both hands, both feet, 1 foot and 1 hand, blindness in both eyes (5/200 visual acuity or less), permanently bedridden or so helpless as to require regular aid and attendance	1,104	1,262
(m) Anatomical loss or loss of use of 2 extremities so as to prevent natural elbow or knee action with prosthesis in place, blind in both eyes, either with light perception only or rendering veteran so helpless as to require regular aid and attendance	1,217	1,391
(n) Anatomical loss of both eyes or anatomical loss of 2 extremities so near shoulder or hip as to prevent use of prosthesis	1,383	1,581
(o) Disability under conditions entitling veteran to 2 or more of the rates provided in (l) through (n), no condition being considered twice in the determination, or deafness rated at 60 percent or more (impairment of either or both ears service-connected) in combination with total blindness (5/200 visual acuity or less)	1,547	1,768
(p) (1) If disabilities exceed requirements of any rates prescribed; Administrator of VA may allow next higher rate or an intermediate rate, but in no case may compensation exceed	1,547	1,768
(2) Blindness in both eyes (with 5/200 visual acuity or less) together with (a) bilateral deafness rated at 40 percent or more disabling (impairment of either or both ears service-connected) next higher rate is payable, or (b) service-connected total deafness of 1 ear next intermediate rate is payable, but in no event may compensation exceed	1,547	1,768
(3) Anatomical loss or loss of use of 3 extremities, the next higher rate in paragraphs (l) to (n) but in no event in excess of	1,547	1,768
(q) (This subsection repealed by Public Law 96-493.)		
(r) (1) If veteran entitled to compensation under (o) or to the maximum rate under (p); or (effective Oct. 1, 1979) at the rate between subsections (n) and (o) and under subsection (k), and is in need of regular aid and attendance, he shall receive a special allowance of the amount indicated at right for aid and attendance in addition to such rates	664	759
(2) If the veteran, in addition to need for regular aid and attendance, is in need of a higher level of care, a special allowance of the amount indicated at right is payable in addition to (o) or (p) rate	989	1,130
(s) Disability rated as total, plus additional disability independently ratable at 60 percent or over, or permanently housebound	995	1,137
(t) Additional monthly allowance for a veteran in receipt of compensation for a disability not evaluated more than 90 percent disabling who has suffered a service-connected loss or loss of use of an extremity evaluated not less than 40 percent and has suffered a nonservice connected loss or loss of use of the impaired extremity evaluated at not less than 40 percent	192	219

In addition to basic compensation rates and/or statutory awards to which the veteran may be entitled, dependency allowances are payable to veterans who are rated at not less than 30 percent disabled. The rates which follow are those payable to veterans while rated totally disabled. If the veteran is rated 30, 40, 50, 60, 70, 80, or 90 percent disabled, dependency allowances are payable in an amount bearing the same ratio to the amount specified below as the degree of disability bears to total disability. For example, a veteran who is 50 percent disabled receives 50 percent of the amounts which appear below.

	Increase (monthly rate) From—	To—
If and while veteran is rated totally disabled and—		
(A) Has a spouse but no child living	$54	$62
(B) Has a spouse and 1 child living	91	104
(C) Has a spouse and 2 children living	121	138
(D) Has a spouse and 3 or more children living	151	173
(plus for each living child in excess of 3)	30	34
(F) Has no spouse but 1 child living	37	42
(F) Has no spouse but 2 children living	67	77
(G) Has no spouse but 3 or more children living	97	111
(plus for each living child in excess of 3)	30	34
(H) Has a mother or father, either or both dependent upon him for support for each parent so dependent	44	50
(I) For a spouse who is a patient in a nursing home or who is so helpless as to require regular aid and attendance	98	112
(J) For each child who has attained age 18 and who is pursuing a course of instruction at an approved educational institution	82	94

The proposed amendments would increase the annual clothing allowance from $240 to $274 for veterans whose service-connected disabilities require the wearing or use of a prosthetic or orthopedic appliance which tends to wear or tear the clothing.

The following chart depicts the 14.3 percent rate increase provided for surviving spouses of deceased veterans whose deaths are service-connected and who are receiving dependency and indemnity compensation (DIC) payments:

Pay grade	From—	To—
E-1	$326	$373
E-2	337	385
E-3	345	394
E-4	367	419
E-5	377	431
E-6	386	441
E-7	404	462
E-8	426	487
E-9	[1] 446	[1] 510
W-1	413	472
W-2	430	491
W-3	442	505
W-4	468	535
O-1	413	472
O-2	426	487
O-3	457	522
O-4	482	551
O-5	532	608
O-6	598	684
O-7	648	741
O-8	710	812
O-9	763	872
O-10	[2] 835	[2] 954

[1] If the veteran served as sergeant major of the Army, senior enlisted adviser of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps or master chief petty officer of the Coast Guard, the surviving spouse's rate is increased from $460 to $549.
[2] If the veteran served as Chairman of the Joint Chiefs of Staff; Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, the rate for the surviving spouse is increased from $895 to $1,023.

Increases by 14.3 percent from $38 to $43 monthly the additional DIC rate payable to surviving spouses for each child of the veteran under age 18.

Increases by 14.3 percent from $98 to $112 monthly the spouse's aid and attendance rate.

Increases by 14.3 percent from $49 to $56 monthly the spouses' housebound rate.

When there is no surviving spouse receiving dependency and indemnity compensation, payment is made in equal shares to the deceased veteran. These rates are increased as follows:

	From—	To—
1 child	$165	$189
2 children	237	271
3 children	308	352
Each additional child	62	71

(1) Increases from $98 to $112 the additional rate payable to a child who has attained the age of 18 but who became permanently incapable of self-support while under such age.

(2) Increases from $165 to $189 the rate payable concurrently with DIC payment to a widow with a child who has attained the age of 18 but who became permanently incapable of self-support while under such age.

(3) Increases from $84 to $96 the rate payable to a child who has attained the age of 18 but is no more than 23 and pursuing a course of instruction at an approved educational institution concurrently with DIC payment to surviving spouse.

In summary, Mr. Speaker, the proposed amendments, in my opinion, reflect much-needed benefits which will enhance the lives of our service-connected veterans and many other veterans who have served our country.

I have no reason to believe that the proposed amendments will be unacceptable in the other body. We have worked closely with the majority and minority of the Senate Veterans' Affairs Committee in reaching agreement on all these issues.

Mr. Speaker, the proposed effective date for the increase in compensation is October 1. By approving the amended proposal, the Senate will have an opportunity to express their desires on the amendments. An early passage by both bodies this week, together with approval by the President, will permit the Veterans' Administration to make the necessary adjustments so that the regular October compensation checks which are due the first of November will include this much deserved cost-of-living increase.

I urge that this measure be adopted.

Mr. HAMMERSCHMIDT. Mr. Speaker, further reserving the right to object, I want to concur in the remarks of the distinguished gentleman from Mississippi (Mr. MONTGOMERY), and I rise in support of the amendment to the Senate amendment to the already House-passed H.R. 7511, a bill to increase the rates of compensation payable to veterans with service-connected disabilities.

This measure passed the House initially on July 21 by a vote of 383 to 1. In its original form, the measure authorized a 13-percent increase in monthly payments to disabled veterans and to the survivors of those who died in service or as the result of service-connected disabilities.

The other body, Mr. Speaker, amended the measure, and authorized a 14.3-percent increase. As the result of informal communications, we have reconciled differences in the House-passed bill and the Senate version approved on August 6.

The amendment offered by the distinguished chairman of the subcommittee, Mr. MONTGOMERY, contains the negotiated compromise.

Among other things, Mr. Speaker, the amendment authorizes the 14.3-percent increase in payments for those veterans whose service-connected disabilities are rated at 50 percent or more and for those widows and children who are in receipt of dependency and indemnity compensation payments. Veterans who are rated at 10- to 40-percent disabled will receive a 13-percent increase in monthly payments.

The compromise, Mr. Speaker, provides a well-deserved cost-of-living adjustment in the payments to service-connected disabled veterans and the survivors of those who died of service-related causes.

During the subcommittee markup of this bill, I was pleased to offer an amendment that would have authorized an across-the-board 14.3-percent increase in compensation rates and DIC payments. Unfortunately, budgetary restraints prevented the approval of the amendment at that time. I am pleased that revisions in the budget now permit the higher rate to be paid to the most seriously disabled. The service-connected disabled veteran and the survivors of our war dead are deserving of our highest priority consideration. This measure, Mr. Speaker, subject only to the limitations of the Nation's pocketbook, continues that philosophy.

The principal features of the original House-passed bill have been retained in this compromise, Mr. Speaker. Additionally, a number of meritorious provisions of the Senate-passed bill have been embraced.

These include a specially adapted housing grant for service-connected blinded veterans and double arm amputees and a $2,500 increase in the maximum loan guaranty amounts.

The amendment will also permit the refinancing of housing loans that have been closed at substantially higher interest rates than presently exist.

Mr. Speaker, this measure as revised, is a good bill and one that will be appreciated by those who were disabled in the defense of our Nation. The effective date of October 1 makes it necessary that both Houses act promptly if the increased payment are to be timely received.

I urge that it be approved.

Mr. MONTGOMERY. If the gentleman will yield further, I might say that this will be the last time this year that we will be handling a compensation bill and also the last time we will have with us our great chairman of the Veterans' Affairs Committee, the gentleman from Texas (Mr. ROBERTS).

Mr. HAMMERSCHMIDT. Further reserving the right to object, Mr. Speaker, I would be delighted to yield to the distinguished chairman, the gentleman from Texas (Mr. ROBERTS).

Mr. ROBERTS. I thank the gentleman for yielding.

Mr. Speaker, I want to thank both the chairman of the subcommittee and the ranking minority member of the full committee for the job they have done on this piece of legislation, and for what they have done in past years in support of my chairmanship. I am very grateful to them. I support this legislation. It has been a difficult job, and they have worked it out in such away that I think everybody is going to be pleased.

Mr. Speaker, the distinguished chairman of the Subcommittee on Compensation, Pension, Insurance and Memorial Affairs has explained the proposed amendments in great detail and I strongly support them.

The proposed amendments reflect a reasonable compromise on the rate issue. This measure would provide for a 13-percent increase for those veterans with disabilities rated 10 through 40 percent and an increase of 14.3 percent for the more seriously disabled veterans rated 50 percent or more.

In addition to providing for this substantial cost-of-living increase, the proposed amendments contain certain other provisions which would benefit our Nation's veterans in general.

The proposed amendments would:

First. Provide specially adapted housing for blinded veterans and certain other seriously disabled service-connected veterans.

Second. Increase the VA maximum home loan guaranty from $25,000 to $27,500.

Third. Increase the VA maximum loan guaranty for mobile homes from $17,500 to $20,000.

Fourth. Allow for the refinancing of VA home loans.

Fifth. Provide headstones for family members buried in State cemeteries.

Sixth. Assure confidentiality of VA peer review medical records.

The proposed amendments will provide much needed increases in benefits for our service-connected veterans and many other veterans who have served our country so well in the past.

I have every reason to believe that the proposed amendments will be acceptable by the other body and it is my hope we will have a bill to the President for his signature by the end of the week.

The administration supports the proposed compensation rate increase. It should be noted, Mr. Speaker, that the administration recommended a 14.3-percent increase in compensation and DIC benefits for fiscal year 1981. The President has strongly supported benefits for service-connected veterans. It should be clearly established that the 14.3-percent increase recommended by the President was not accepted by the House Committee on the Budget and we were therefore precluded from accepting the President's across-the-board recommendation.

Mr. Speaker, I have differed with the President on several matters pertaining to veterans and I want to applaud him on his strong commitment to our service-connected veterans. There is no doubt about his support of the proposed amendments, and we are grateful for his efforts in their behalf.

I urge my colleagues to adopt the amendments proposed by my distinguished colleagues from Mississippi.

● Mr. WYLIE. Mr. Speaker, the gentleman from Mississippi, chairman of the Veterans' Affairs Committee's Subcommittee on Compensation, Pension, Insurance and Memorial Affairs, has done an excellent job of explaining the legislation before us. I want to compliment him on the hard work he and other members of the subcommittee have put into the original bill and these amendments. I was one of those Members who conferred with Members of the other body to except this component. It has my full support.

Mr. Speaker, we are all aware of the budgetary restraints which the Veterans' Administration has been under this year. I am pleased that we have been able in this legislation to give a full 14.3-percent cost-of-living increase to those most severely disabled veterans rated 40 percent and above, and to still keep the Veterans' Affairs Committee portion of the overall budget within reason. Those disabled at a percentage of 40 percent and less receive 13-percent cost-of-living increase passed by the full House earlier this session. While it is not as much as we would have hoped, I am sure that those deserving individuals will be able to put such an increase to good use in their daily lives.

I would like to draw the attention of our colleagues to the amendment that would limit the amount of compensation paid to incarcerated felons, to take effect on the 61st day of their confinement. I fully appreciate that compensation benefits have always been awarded by a grateful nation for disabilities suffered in the line of duty, and without regard to later economic status, and I have no philosohical difficulties with that concept. But, Mr. Speaker, the cast of an individual imprisoned for a felony—a serious, intentional crime against the very people who are being asked to reach into their pockets and pay taxes to pay such compensation—is an entirely different matter.

Even the military treats this situation differently. If a serviceman is injured on active duty and commits a felony prior to being discharged, he may well receive a bad conduct or dishonorable discharge. If so, he will receive no benefits whatsoever for the remainder of his life. Contrarily, under present law if the same individual is discharged and then commits the same felony, such payments are unaffected. In the case of imprisonment, when a prisoner is being fully supported by tax dollars that fund the penal institution, it becomes ludicrous to continue payment of benefits designed to help him maintain a standard of living. Thus, I believe the reduced stipend of $60 a month is reasonable and, indeed, generous. Personally, I would stop all compensation during incarceration for a felony. But, this is a good compromise.

The amendment will not affect those who were receiving compensation benefits before the enactment of this bill. It was pointed out that an undue hardship might conceivably be imposed on the family of some who are incarcerated but whose family have come to rely on their veterans' benefits. Further, upon a finding of need by the Administrator of Veterans' Affairs, the dependents of incarcerated veterans may be paid some or all of the compensation benefits. The veteran will be eligible for the resumption of his payments upon the date of his release from confinement.

Please permit me to emphasize, Mr. Speaker, this provision is in no way a permanent bar to veterans' benefits entitlement. It is my opinion it is a fair and equitable provision to those individuals affected and to the American taxpayer.

Thank you.●

● Mr. ABDNOR. Mr. Speaker, I strongly support the proposed amendments to H.R. 7511, as amended by the Senate. But first I would like to commend the distinguished chairman of the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs, Mr. MONTGOMERY, the distinguished ranking minority member of the Subcommittee, Mr. WYLIE, and the chairman of the Subcommittee of Housing, Mr. BRINKLEY—with whom I have had the pleasure to serve on veterans' housing legislation during this Congress—for their excellent work in bringing about these amendments.

H.R. 7511, as it passed this body on July 21 by a vote of 383 to 1, embodies sound legislation for veterans. The bill as proposed to be amended today, carefully addresses more of the vital needs of our veterans, their surviving spouses and dependents.

I am especially gratified that the provision relating to a cost-of-living increase for veterans with service-connected disabilities moves the House more in line with the 14.3-percent automatic increase that went into effect on June 1 for social security beneficiaries and nonservice-connected pensioners. Certainly, there can be no other group of veterans to whom we are more indebted than those who suffered injury on account of their service to our country during periods of war and hostility.

There are other important provisions in the proposed amendments which have been well detailed by my colleagues, and which therefore do not require my further elaboration.

As to the provisions related to housing for veterans, I fully endorse them and urge your support as well. The bill as amended would not only permit refinancing of GI home loans on a footing available to other homeowners, but would also include direct VA home loans and loans on mobile homes, with or without lots. Most importantly, it would increase the VA guaranty from $25,000 to $27,500 on conventional homes and condominiums and from $17,500 to $20,000 on mobile homes. These increases in guaranty are most needed as the cost of homes—unfortunately—continues to escalate in this present day economy.

Mr. Speaker, I commend these amendments to my colleagues and urge their support of this legislation.●

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi (Mr. MONTGOMERY)?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 7765, OMNIBUS RECONCILIATION ACT OF 1980

Mr. GIAIMO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981, with the Senate amendment thereto, disagree to the Senate amendment, and agree to a conference thereon.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

MOTION OFFERED BY MRS. SPELLMAN

Mrs. SPELLMAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mrs. SPELLMAN moves that the conferees on the part of the House on the disagreeing votes of the two Houses on the bill H.R. 7765, be instructed to insist on disagreement with sections 201 and 601 of the Senate amendment thereto, relating to semiannual cost-of-living adjustment for Federal civilian and military retirees.

● Mr. DICKS. Mr. Speaker, I rise in wholehearted support of the motion by the gentlelady from Maryland to instruct conferees to insist on the provisions contained in the Bauman-Fisher amendment adopted by the House.

The retention of twice a year cost of living adjustments is a commitment made by the Congress to Federal and military retirees. The overwhelming 309 to 72 vote of the House indicates a strong belief that the commitment we made should be kept. The debate on the floor highlighted the many reasons why reduction in these inflation adjustments would be extremely unfair and unwise. It was made clear that Federal retirees face the same types of pressures that other retirees do with inflation and pointed out the many differences between Federal retirement systems and social security that make a direct comparison impossible.

The bill as passed by the House retains major reductions which will impact Federal employees. It is only fair that some portion of the burden be borne by them. But the proposed COLA cutback would not be a fair burden. It would require a single group to pay a disproportionate amount of our effort toward fiscal restraint.

The conference on this measure will require give and take. But I firmly believe we need to put the House on record as firmly as possible that the COLA question should not be part of that give and take, and thus strongly urge the House to instruct its conferees to stand by the Bauman-Fisher amendment.●

● Mr. HARRIS. Mr. Speaker, on September 5, by a vote of 309 to 72, the House overwhelmingly voted to retain the twice a year COLA for Federal retirees. For months I have been fighting attempts to reduce the earned benefits of our Federal and military retirees and I was pleased that a majority of the Members of this body stood up for the commitment they made in previous years to Government employees, and finally realized the devastating effect this sudden change would have on thousands of elderly Americans who have loyally served their country.

The House is today appointing conferees to reconcile the differences between the House and Senate versions of the budget reconciliation bill. Myself and three other congressional supporters of the twice-a-year COLA are offering a motion to instruct conferees to insist on the House position. Conference members must stand by the overwhelming House vote to retain the two COLA's. To divert from this position in any way would be a travesty against the Members of this body, and would be but another sad example to all Americans in the string of broken promises between the Government and its citizens.

The American people have expressed their views on this issue to their elected Representatives in Congress and we have voted accordingly. A few select Members must not change this basic treatise of democracy.●

● Mr. FAZIO. Mr. Speaker, I would like to lend my support to the motion offered by the gentlewoman from Maryland (Mrs. SPELLMAN), urging the House conferees on the Budget Reconciliation Act to hold firm in their opposition to the proposal to annualize the twice-a-year cost-of-living adjustment (COLA) for military and civilian retirees. The House mandate on September 4 for the twice-a-year COLA was both clear and overwhelming, indicating that this issue must not be conceded to the Senate.

Although I have consistently supported the entire reconciliation process, I must speak out for the more than 50,000 retired civilian and military employees living within my district, who have dedicated their lives in service to our Nation and have earned the benefits that the Senate now wishes to take away.

As you might expect, many of my constituents see the efforts to annualize the COLA as a direct attack on what is rightfully theirs. Moreover, they resent any congressional consideration of annualizing the COLA since that would be a reversal of the firm commitment they received from this body in 1976. At the time Congress stipulated that we would withdraw the 1-percent "kicker" and as a partial compensation, provide a twice-a-year COLA. The millions of Federal retirees across this great Nation trusted us and took our commitment seriously; but this will not be the case again if we fail to keep our word, adding to the deterioration of congressional credibility.

Also of great importance to me is the impact that such a reversal in congressional commitment would have on our ever-increasing problems of recruiting and retaining qualified and dedicated civilian and military personnel. As you are all aware, this problem is especially acute in the armed services where equipment goes unserviced, ships steam understaffed, and planes fly fewer hours, primarily due to an insufficient number of qualified personnel.

Like many of my colleagues, I have endorsed a number of proposals to address one of the major causes of low retention and recruitment: inadequate compensation. As a beginning, both Houses have agreed to, and the President has signed into law, the so-called Nunn-Warner amendments. My fear, however, is that the progress that we are making in these areas will be wholly negated, by any congressional action to reduce payments to our retirees. Members of the services will see Congress as the master accountant shifting items around, while the balance stays the same. In other words, you might get more now, but look out when you retire. Therefore, any hopes of improving retention and recruitment would be banished.

If we were to adopt the Senate plan, the average retiree would lose $380 per year. This might not sound like a substantial amount, but more than half of the retirees and dependents now receive monthly payments of $700 or less, making this loss significant.

I do not advocate that Federal workers should be exempt from the sacrifices necessary to reduce spending. But we cannot have a reconciliation bill which is placed on the backs of those who can least bear the burden. The Congress can do better than that and I am hopeful that our conferees will be successful in convincing our colleagues in the Senate of that fact.●

● Mr. FISHER. Mr. Speaker, the issue of semiannual cost-of-living adjustments for retired military and civilian personnel has generated much controversy. When the House considered the budget reconciliation bill on September 4, it voted 309 to 72 to retain the present law requiring two adjustments a year. This was the amendment I had originally presented.

Today in the vote on a motion to instruct the conferees on the budget bill to hold fast to the House position, the House once again voted overwhelming to keep the COLA as it is. I applaud the action of my colleagues in these votes and was happy to vote with the majority. It is only fair and just to keep faith with the military and civilian retirees who have served this country.●

The SPEAKER. The question is on the motion offered by the gentlewoman from Maryland (Mrs. SPELLMAN).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mrs. SPELLMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 300, nays 73, present 2, not voting 57, as follows:

[Roll No. 559]

YEAS—300

Abdnor
Addabbo
Akaka
Alboeta
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Applegate
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Boner
Bonior
Bonker
Bouquard
Bowen
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, Phillip
Byron
Campbell
Carney
Cavanaugh
Chappell
Cheney
Clausen
Clinger
Coelho
Coleman
Collins, Ill.
Conte
Conyers
Coughlin
Courter
D'Amours
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
Deckard
Derwinski
Dicks
Dingell
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Fish
Fisher
Fithian
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Gaydos
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ireland
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kasen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
Lagomarsino
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lent
Levitas
Lewis
Lloyd
Loeffler
Long, La.
Long, Md.
Lowry
Lujan
Luken
Lundine
Lungren
McCormack
McDade
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nelson
Nichols
Nowak
Oakar
Oberstar
Ottinger
Patten
Patterson
Paul
Perkins
Petri
Peyser
Porter
Prever
Price
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Roberts
Rodino
Roe
Rose
Rosenthal
Roth
Roybal
Royer
Russo
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stewart
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Traxler
Trible
Udall
Van Deerlin
Vento
Volkmer
Walker
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, C. H.
Wilson, Tex.
Winn
Wolff
Wolpe
Wright
Wyatt
Wydler
Yates
Yatron
Young, Fla.
Zablocki
Zeferetti

NAYS—73

Anderson, Ill.
Anthony
Archer
Ashbrook
Aspin
Badham
Bellenson
Butler
Carr
Carter
Cleveland
Collins, Tex.
Conable
Corcoran
Crane, Daniel
Crane, Philip
Daniel, Dan
Dannemeyer
Derrick
Devine
Dickinson
Duncan, Oreg.
Fenwick
Findley
Frenzel
Giaimo
Gibbons
Gradison
Gramm
Hagedorn
Hutchinson
Jacobs
Jeffords
Jenkins
Jones, Okla.
Kelly
LaFalce
Latta
McCloskey
McDonald
McEwen
McKinney
Marsoli
Michel
Miller, Ohio
Motti
Neal
O'Brien
Obey
Panetta
Pease
Pickle
Pritchard
Regula
Rhodes
Ritter
Robinson
Rostenkowski
Rousselot
Rudd
Sabo
Seiberling
Sharp
Simon
Snowe
Stanton
Stenholm
Stockman
Stratton
Thomas
Walgren
Wirth
Wylie

ANSWERED "PRESENT"—2

Moorhead, Pa.
Vanik

NOT VOTING—57

Alexander
Ambro
Ashley
Bedell
Bolling
Brademas
Brown, Ohio
Burton, John
Chisholm
Clay
Corman
Cotter
Davis, S.C.
de la Garza
Dellums
Dodd
Dorman
Erlenborn
Flippo
Garcia
Gephardt
Gingrich
Gray
Harkin
Hollenbeck
Holtzman
Howard
Ichord
Jenrette
Leach, La.
Lederer
Livingston
Lott
McClory
Mattox
Moffett
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nolan
Pashayan
Pepper
Santini
Satterfield
Shannon
St Germain
Stark
Steed
Stokes
Symms
Ullman
Vander Jagt
Waxman
Wilson, Bob
Young, Alaska
Young, Mo.

□ 1030

The Clerk announced the following pairs:

Mr. Ambro with Mr. Brown of Ohio.
Mr. Howard with Mr. Erlenborn.
Mr. Cotter with Mr. Gingrich.
Mr. Corman with Mr. Hollenbeck.
Mr. Brademas with Mr. Livingston.
Mr. de la Garza with Mr. Lott.
Mr. Dodd with Mr. McClory.
Mr. Flippo with Mr. Pashayan.
Mr. Stokes with Mr. Symms.
Mr. Lederer with Mr. Vander Jagt.
Mr. Murphy of New York with Mr. Bob Wilson.
Mr. Jenrette with Mr. Ashley.
Mr. Santini with Mr. Alexander.
Mr. Pepper with Mr. Bedell.
Mr. St Germain with Mr. Clay.
Mr. Stark with Mrs. Chisholm.
Mr. Moffett with Mr. Gray.
Mr. Murphy of Illinois with Mr. Gephardt.
Mr. Waxman with Mr. Garcia.
Mr. Steed with Mr. Young of Missouri.
Mr. Satterfield with Mr. Shannon.
Mr. Harkin with Mr. Nolan.
Mr. Nedzi with Mr. Ullman.
Mr. Myers of Pennsylvania with Ms. Holtzman.
Mr. John L. Burton with Mr. Ichord.
Mr. Davis of South Carolina with Mr. Dellums.
Mr. Mattox with Mr. Leach of Louisiana.

Messrs. THOMAS, CARTER, and McKINNEY changed their votes from "yea" to "nay."

Mr. YATES and Mr. HANSEN changed their votes from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. ROBERTS). Without objection, the Chair appoints the following conferees:

For consideration of the entire bill and Senate amendment: Messrs GIAIMO, ASHLEY, BROOMFIELD, PANETTA, LATTA, and FRENZEL.

Solely for consideration of title II of the Senate amendment: Messrs. PRICE, NICHOLS, MOLLOHAN, ASPIN, CHARLES H. WILSON of California, and MITCHELL of New York.

Solely for consideration of title II, subtitle A of the bill and title I of the Senate amendment: Messrs. PERKINS, FORD of Michigan, ANDREWS of North Carolina, MILLER of California, ASHBROOK, and GOODLING.

Solely for consideration of title II, subtitle B of the bill and title VII of the Senate amendment: Messrs. PERKINS, BEARD of Rhode Island, PHILLIP BURTON, MILLER of California, ASHBROOK, and ERLENBORN.

Solely for consideration of title II, subtitle C of the bill and title VII of the Senate amendment: Messrs. PERKINS, FORD of Michigan, BRADEMAS, BIAGGI, ASHBROOK, and BUCHANAN.

Solely for consideration of title III, subtitle A and title VIII, subtitle A of the bill and title V, part F of the Senate amendment: Messrs. STAGGERS, WAXMAN, SATTERFIELD, PREYER, BROYHILL, and CARTER.

Solely for consideration of title III, subtitles B and C of the bill and title III, section 303 of the Senate amendment: Messrs. STAGGERS, SANTINI, and FLORIO, Ms. MIKULSKI, Mr. BROYHILL, and Mr. MADIGAN.

Solely for consideration of title IV of the bill and title VI of the Senate amendment: Messrs. HANLEY, FORD of Michigan, and CLAY, Mrs. SPELLMAN, Mr. DERWINSKI, and Mr. TAYLOR.

Solely for consideration of title V, subtitles A and B of the bill and title III, sections 301, 302 and 304 and title IV, section 401 of the Senate amendment: Messrs. JOHNSON of California, ANDERSON of California, HOWARD, ROBERTS, SHUSTER, and SNYDER.

Solely for consideration of title VII of the bill and title VIII of the Senate amendment: Messrs. ROBERTS, SATTERFIELD, MONTGOMERY, HEFNER, HAMMERSCHMIDT, and Mrs. HECKLER.

Solely for consideration of title III, subtitles A and B; title VIII, subtitles A, B, C, and D and title IX of the bill; and title V, parts A, B, C, D, E, F, and G and title IX of the Senate amendment: Messrs. ULLMAN, ROSTENKOWSKI, VANIK, CORMAN, GIBBONS, PICKLE, RANGEL, COTTER, CONABLE, DUNCAN of Tennessee, ARCHER, and VANDER JAGT.

There was no objection.

□ 1040

GENERAL LEAVE

Mrs. SPELLMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks with reference to the measure just voted upon.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

DISAPPROVING THE PROPOSED EXPORT OF NUCLEAR FUEL TO INDIA PURSUANT TO EXPORT LICENSE APPLICATION XSNM-1569

Mr. BINGHAM. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 367) disapproving the proposed export to Indian of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM-1569; and, pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 3 hours, the time to be equally divided and controlled by the gentleman from Washington (Mr. MCCORMACK), the gentleman from Michigan (Mr. BROOMFIELD), and myself.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. BINGHAM).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 367) with Mr. DINGELL in the chair.

The Clerk read the title of the concurrent resolution.

The CHAIRMAN. Pursuant to the provisions of section 308 of Public Law 95-242 and the unanimous-consent agreement, the time will be shared equally among the gentleman from New York (Mr. BINGHAM), the gentleman from Michigan (Mr. BROOMFIELD), and the gentleman from Washington (Mr. MCCORMACK). Each of the three gentlemen will be recognized for 1 hour.

The Chair now recognizes the gentleman from New York (Mr. BINGHAM).

Mr. BINGHAM. Mr. Chairman, I yield myself such time as I may require.

Mr. Chairman, there are, in effect, two resolutions before the House, House Concurrent Resolution 367, and House Concurrent Resolution 368. Under the procedure we can only consider one at a time and we will debate and vote on 367 first and then, following that, I will ask unanimous consent that 368 be taken up immediately.

These resolutions were introduced by myself and 24 other members of the Foreign Affairs Committee, including the chairman, shortly after the President sent to the Congress an Executive order authorizing 7 Indian nuclear export license applications, 2 for fuel and 5 for safety related reactor components.

The Nuclear Regulatory Commission had earlier voted unanimously against issuing all of the licenses, having determined under the Nuclear Nonproliferation Act that certain nonproliferation criteria could not be met. Pursuant to his authority under the same act, the President chose, I may say against the advice of many of us here today, to override the NRC on broader foreign policy and nonproliferation grounds.

Both Houses now have until September 27 to override the President's decision by concurrent resolutions.

Before I explain the committee's action let me back up a little and describe how we got here. In 1974 India misused Canadian and United States materials to explode a nuclear device, thus becoming the first nation ever to violate peaceful use contracts. For nearly 20 years before that event the United States had faithfully supplied India with nuclear reactors, on very, very favorable terms, I might say, and nuclear fuel, and had provided training for over 1,000 people in the peaceful uses of atomic energy.

After the 1974 Indian explosion Canada attempted to tighten its own safeguard arrangements with India. When this failed Canada quickly terminated its nuclear assistance to India.

The United States, by contrast, decided to forego or postpone the application of sanctions in the hope that through diplomacy and uninterrupted nuclear supplies a way could be found to persuade India to accept comprehensive safeguards and to pursue a more responsible nuclear posture.

Four years later, even though no apparent progress had been made, the Congress agreed in passing the Nuclear Nonproliferation Act to allow a 2-year export grace period so that the safeguard talks could continue.

□ 1050

Later that same year the Nuclear Regulatory Commission deadlocked 2 to 2 on a proposed export of more enriched uranium for India as new doubts arose as to the quality and continuity of U.S. safeguards over material that we had already supplied. That export license came before us, and, as you know, at that time we voted to let it go through.

I may say that I managed that resolution also and urged that we allow the shipments. The resolution was opposed by colleagues and good friends who argued that at that time we should turn it down. But we, the Congress, decided to give India and the administration more time to seek to improve the situation through negotiations. So the Congress demonstrated its forbearance and hope by allowing the fuel to go forward and the safeguard negotiations to run their course.

Now, 2 years after that and 6 years after the 1974 explosion, the United States is still empty-handed notwithstanding vigorous and commendable efforts by the Carter administration. We have not only made no progress, we have moved backward, because 2 years ago we had statements from Prime Minister Desai that India would not engage in any further nuclear explosions. Today we do not have those assurances. Prime Minister Gandhi has refused to renew those assurances which were, indeed, an important factor in the House's decision in 1978.

In light of these repeated executive branch and congressional efforts of flexibility, the committee believes that it is now necessary to draw the line. I would note, however, that even with the disapproval of the pending export licenses, the Indian reactors at Tarapur will be able to operate without interruption at least through 1982. Furthermore, we are not recommending disapproval of the five licenses providing for safety and other replacement parts for the reactors, although the NRC had recommended against those licenses.

The committee hopes that between now and 1982, and with some additional imagination and perseverance, a way might yet be found to resolve the difficult nuclear questions that divide our two governments.

Of primary concern to the committee are the very broad U.S. nonproliferation and, hence, national security interests at stake with these two licenses. For the Congress to back away now from the NNPA's most fundamental requirement, and to do so for India, the world's first nuclear violator, would critically undermine the credibility of the U.S. position in so many other nonproliferation negotiations now under way. These include efforts to upgrade dozens of deficient bilateral and multilateral nuclear cooperation agreements, to persuade allies like Italy and Switzerland not to transfer weapons-related technology to countries like Pakistan and Iraq, and to negotiate controls on future plutonium use.

A U.S. reversal would also come at the very moment other nuclear suppliers, at our persistent urging, are on the verge of considering full-scope safeguards requirements of their own. How can we expect Canada, which took the brave step in 1974 of cutting off nuclear trade with India, and which has maintained an unswerving commitment to full-scope safeguards, not to feel sorely undercut?

Finally, the United States risks sending the signal that countries may violate agreements and acquire nuclear arms without incurring any costly penalties. Such a precedent will surely not go unnoticed by those countries—Argentina, Iraq, Korea, and other danger areas down the road, that at some point themselves may calculate whether abrogating an agreement is worth it. The threat of sanctions in the nuclear nonproliferation area, as in every other aspect of our foreign and security policy, must be credible to have any deterrent effect.

You will hear arguments today that

the two nuclear fuel shipments must go forward in the name of promoting U.S. security interests in that region of the world and of assuring a continued nonproliferation dialog. For a number of obvious reasons, looking at events in India in recent months, these arguments seemed particularly hollow to the committee, especially when contrasted with the risks of failing to act.

More serious is the charge that the United States will be in violation of its 1963 agreement with India to supply nuclear fuel for the Tarapur reactors until 1993 and, hence, will lose its limited nonproliferation controls in India if the pending shipments do not go forward. The administration makes this case in connection with its claim that the two shipments in question do fall within the grace period under the NNPA.

First of all, this position ignores the fundamental fact that after the 1974 Indian explosion, the United States could have no confidence that India would comply with supply contracts and, indeed, that India remained committed to the peaceful uses of atomic energy, the basis under which all cooperation had been negotiated. That NNPA was a direct effort to guarantee that commitment through the requirement for comprehensive international safeguards.

Moreover, the NNPA is entirely consistent with the 1971 amendment to the United States-Indian contract of sale which obligates India to comply with all present and prospective U.S. licensing requirements and laws. And the NNPA certainly is such a law. I would add that the Congressional Research Service has prepared a legal analysis which clearly concludes that congressional disapproval would not constitute a breach of the 1963 agreement and its implementing contract.

Second, I would point out that the United States is under no legal obligation whatsoever to provide India with what would amount to a 3-year stockpile of fuel, in addition to the 2-year supply already in India.

Third, and more importantly in my mind, I would like to ask those who rest their case on the legalism of the 1963 contract, what if India were to explode another nuclear bomb today using other than U.S. materials; would they then not insist on termination of nuclear trade with India? Are they prepared to pursue their argument to its logical conclusion and continue to approve every Indian fuel liecnse application through 1993? Whether the present licenses fall within the grace period is really immaterial because the arguments made in favor of sending these shipments forward apply just as much to all shipments that would be made before 1993, and where a waiver of the full-scope safeguards provisions would necessarily be called for.

I would point out also that the administration's emphasis on the sanctity of the 1963 contract and the importance of our carrying it out contrasts with the administration's own efforts to persuade France and Italy and other countries to modify contracts that they have made with other countries in an earlier day before we realized the danger of proliferation. So I urge your support for these two resolutions.

I now yield 3 minutes to the chairman of the Subcommittee on Asian and Pacific Affairs, the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. Mr. Chairman, as chairman of the House Subcommittee on Asian and Pacific Affairs and a cosponsor of House Concurrent Resolution 367 and House Concurrent Resolution 368, I rise to urge passage of these two resolutions terminating the supply of nuclear fuel for the Tarapur reactor which passed our subcommittee unanimously. At the same time—and I think that it is important at this point to mention—I wish to emphasize that our actions today, and in response to this resolution, are not based on any ill will or prejudice toward the people of India. To the contrary, we seek to improve Indo-United States relations. Rather, they are based upon the principles and provisions of the Nuclear Nonproliferation Act of 1978. In the last request I voted against the resolution of disapproval to give time for negotiations.

Mr. Chairman, either the principles of nonproliferation prevail or we junk this provision altogether.

□ 1100

Either those principles and provisions apply to all or they apply to none at all. Either the laws of this land are observed or they should be stricken. We have just found no way scientifically or otherwise to be half pregnant.

For the past 2½ years, the administration has been engaged in negotiations with the Government of India to secure compliance with the full-scope safeguards provisions of a Nonproliferation Act. Thus far, successive governments of India have maintained their opposition in principle to the Nuclear Nonproliferation Treaty and to the full-scope safeguards.

Mr. Chairman, if India is to stand on principle, so too must the United States.

At a time when a number of nations may be approaching the nuclear weapons threshold, we dare not encourage their disregard of the principles of nonproliferation by our disregard of those very same principles. Indeed, the dangers posed by unabated and uncontrolled nuclear proliferation are a threat to the peace and security of not only India, of not only the subcontinent, but of the existing international order.

Moreover, to exempt India from the provisions of the Nonproliferation Act and to allow the continuing shipment of enriched uranium to the Tarapur reactor will not advance the cause of nonproliferation but will only serve to encourage international disregard of it.

To allow for exemptions in the case at hand will only pave the way for other exemptions in other yet unforeseen cases. And a policy now of universal application will shortly become a policy universal in its irrelevance.

I speak as well to the question of Pakistan at this point. We as a Congress and we as a nation have applied the Symington and Glenn amendments to cut off all sales, we have cut off all of our aid to Pakistan based upon the principle that Pakistan is engaged in the production of nuclear weapons.

Now, Mr. Chairman, if we do that at a time when Pakistan is threatened by the Soviet Union through Afghanistan, then we must apply the same principles exactly here to India and to do any less would be to exercise a policy of discrimination against the government of Pakistan as well, which we, I am sure as a Congress, do not wish to observe.

Only by reaffirming by word and deed our commitment to the principles and provisions of the Nonproliferation Act can we hope to check the spread of nuclear proliferation throughout the world. There are different circumstances here. We have not called into play the Symington or Glenn amendments and, therefore, my colleagues, I ask for the support for the resolution of this approval.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan (Mr. BROOMFIELD).

Mr. BROOMFIELD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, recently the House Foreign Affairs Committee, correctly—and overwhelming—rejected the President's proposed sale of enriched uranium to India by supporting resolutions introduced by my colleague, Mr. BINGHAM, who should be congratulated on his perseverance in resisting administration pressure.

Just a few years ago, the President called the spread of nuclear weapons "one of mankind's most pressing challenges" and pledged to make nuclear nonproliferation a top priority of his administration.

Nothing has happened to lessen the danger of nuclear war in the years since the President made that pledge.

In fact more than a dozen nations are now believed capable of building nuclear devices and another half dozen are thought to be on the verge of perfecting the techniques.

Yet, today, the administration is lobbying hard for the sale of enriched uranium to India—one of the nations most adamant in its refusal to sign the Nuclear Nonproliferation Treaty.

As in so many other areas, our policy has come full circle and the administration is preparing to sacrifice its own principles for the sake of an expedient which is still unclear to me.

If we permit this sale, we will cast another long shadow on the credibility of American foreign policy—a policy already obscured by inconsistency and indecisiveness.

We will risk further destabilizing South Asia at a time when the Soviet troops are already fighting in nearby Afghanistan.

But most important, we will in a very real way be encouraging the spread of nuclear weapons and the prospects of nuclear war.

Even the most optimistic experts now concede that possibility grows more likely every year and the prospect is

that it could be touched off by a Third World nation.

India has left no doubt about its intentions since 1974 when it detonated a nuclear device constructed from plutonium produced in a Canadian reactor and sold to India for peaceful purposes.

Since then, India has been contemptuous of our efforts to encourage nuclear nonproliferation and of our foreign policy initiatives generally.

It has steadfastly refused to sign the Nuclear Nonproliferation Treaty or to place its nuclear equipment and material under safeguard and will make no promises about building bombs.

Moreover, India has negotiated a trade agreement with Iran which undermines U.S. trade sanctions, viewed the Soviet invasion of Afghanistan as "understandable," and recognized the Palestine Liberation Orangization, while recently announcing a $1.6 billion weapons deal with the Soviet Union, a country with which India has enjoyed a close relationship. Overall, it is not that the United States has been an unreliable supplier, but that the nation of India has been an unreliable recipient.

A decision to approve the shipment of uranium to India would increasinbly destabilize what is already a deteriorating political and military situation in South Asia. Such a decision would establish a dangerous precedent for any future U.S. nonproliferation efforts with other countries.

The development of Indian nuclear weapons can only further exacerbate tensions with Pakistan, which, despite warnings, is taking steps to explode a nuclear device, and the People's Republic of China, which successfully completed its first major international ballistic missile test. India is spending billions of dollars on an independent space program which experts believe will provide that country with an intercontinental nuclear missile capability in this decade.

On July 18, India became only the sixth nation to launch a successful Earth satellite and as result its potential missile capability must be taken into account in any future assesment of the political and military balance in that region of the world.

The approval of the sale of uranium to India will also have an adverse impact upon the future of our nonproliferation policy. In short, administration and congressional responses to the Indian problem will be closely watched by other countries as a vital test case of the seriousness with which we are trying to prevent the spread of nuclear weapons technology around the world. Nuclear nonproliferation should be a key aspect of our foreign policy, and if we cave in to contemptible pressures from India, it will be difficult to justify our seriousness of purpose. At a time when the world is already dangerous and when substantive terms of the Nonproliferation Act should be taking effect, American efforts to induce other nations to abide by nonproliferation safeguards will be seriously undermined if the Congress decides to approve the shipment of nuclear fuel to India.

Given these persuasive conditions against the sale, I urge my colleagues to disapprove the shipment of uranium to India. In doing this, it is my belief that our national and international security interests can best be served by a policy more consistently adhered to, and a policy whereby America finally takes a stand.

□ 1110

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I will be happy to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I thank my colleague for yielding. I would like to congratulate my colleague on such a fine, sober, and comprehensive statement. I think we very rarely hear such a clear and responsible outline of an issue in the House, although we have this morning heard some equally serious and important dissertations. The effect on other nations, and our relations with those nations, of sending more uranium to Ind'a have been clearly explained. And, above all, we know what this would do to the whole horrible problem of proliferation.

Mr. BROOMFIELD. I thank the gentlewoman.

Mr. PURSELL. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I yield to the gentleman from Michigan.

Mr. PURSELL. Mr. Chairman, I want to associate myself with those of the Congressman from Michigan, who has given an outstanding presentation on behalf of this concurrent resolution (H. Con. Res. 367).

I fully support these House resolutions to disapprove President Carter's decision to ship nuclear fuel and components to India.

It must be pointed out that India exploded an atomic bomb in 1974 using plutonium derived in part from U.S.-supplied heavy water, despite formal U.S. communications in 1970 that such use was prohibited. Furthermore, it must be noted that India has also sought repeatedly to weaken International Atomic Energy Agency inspection policies.

On other foreign policy issues, despite billions in U.S. aid over the last 20 years, India recently signed a $1.6 billion arms deal with the U.S.S.R. and did not support the U.N. resolution on the Soviet invasion of Afghanistan. In addition, India negotiated a trade pact with the Ayatollah Khomeini that renders the U.S. trade boycott of Iran ineffective. In view of India's disregard of American foreign policy goals and that country's defiance of international agreements and standards on the use of nuclear energy, Congress must step in to prevent this shipment of nuclear fuel and components to India.

Unfortunately, this whole episode dramatizes the hypocrisy of the Carter administration foreign policy. This is seen by the posturing of the administration on the question of Argentina and Brazilian nuclear developments, which is in great contrast to the attitude toward India.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, I would just like to pose a question to the gentleman from Michigan or to the chairman of the subcommittee. Of course, it has been alluded to, the point has been made concerning the fact that India has signed a nonproliferation treaty, and the implication is, as a result of that, we are not sending them the material.

Is the gentleman suggesting, or is the chairman of the subcommittee suggesting, that if they sign a nonproliferation treaty that we would send them the material?

Mr. BROOMFIELD. I would be happy to yield to the gentleman from New York.

Mr. BINGHAM. So far as I know, there is no consideration being given to the possibility that they will sign the NPT.

Mr. WYDLER. But I am asking the gentleman what if they did. The point I am trying to get at is simply this, their unwillingness to sign the NPT is really not what is keeping us from selling the material to India. We are using the Nuclear Nonproliferation Act passed by this Congress as the reason to deny the license. That was the reason the license was denied. Yet, we continually hear this discussion about the Nonproliferation Treaty, as if their refusal to sign was the reason we are not sending them the material.

But what I am trying to find out is, even if they were to sign a treaty tomorrow, would not we still refuse to ship them the material because they would not meet the requirements of the Nuclear Nonproliferation Act.

Mr. BINGHAM. If they were to sign the Nuclear Nonproliferation Treaty, they would be under that obligation, which would satisfy the requirements of the Nonproliferation Act.

Mr. WYDLER. Of course, I do not agree with that conclusion at all. Many countries that signed the Nonproliferation Treaty (NPT) still would have additional obligations under the way the NNPA is being interpreted by the people in the administration and the sponsors of this resolution. Under the NNPA we impose additional obligations on countries that want to deal with the United States. That is why we are denying ourselves nuclear markets all over the world today. Other countries supplying nuclear material, such as the West Germans, do sell nuclear material to Argentina, but we are not doing it.

How can that be if what the gentleman says about the NPT is the case? How can we be going ahead and dealing with those countries in this manner if we simply required signing of the NPT to fulfill the NNPA requirements?

So, there must be a difference between the law we are imposing on the nations of the world and the rule which the rest of the world accepts for nuclear sales.

Mr. MYERS of Indiana. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Chairman, following up the discussion we have had with the gentleman from New York (Mr. WYDLER) can we assume that if these resolutions pass today, that India will not receive any fuel? Is that a safe assumption? Will some other country not sell them the fuel?

Mr. WYDLER. If the gentleman will yield further, I think it is obvious that if India becomes convinced that we are not going to sell them the fuel, they are going to get it somewhere else. There are many countries that will be glad to sell it. The problem will be that we no longer will be the supplier, and they will rely on those countries that will supply them with materials.

Some people speculate that that will be the Soviet Union. It may or may not be, but it will be one of the other countries, and there are plenty of them in the world, and the number of countries with enriched uranium is growing all the time.

Mr. MYERS of Indiana. What concerns me is that if we should pass this resolution—and it appears that probably the sentiment of the House is that we will pass these resolutions—we are not denying India the fuel, or other countries of the world. It has happened all over the world. We are not the only supplier of enriched fuel, and then we lose control. As long as there is some hope that we might sometime in the future get some type of agreement with India or any other country, it seems to me to be ill-advised for us to take this stance because there are other suppliers just waiting to sell uranium material to any country whatsoever. The gentleman cited Argentina, Brazil, and other countries where this has happend.

Mr. BINGHAM. Mr. Chairman, I yield 10 minutes to a member of the committee, the gentleman from Indiana (Mr. HAMILTON).

Mr. HAMILTON. Mr. Chairman, I oppose the resolutions of disapproval to two export licenses for the export to India of low-enriched uranium fuel, and I urge Members to vote no and approve the sales.

I do that with some reluctance. I certainly am reluctant to oppose the gentleman from New York, whose voice on nonproliferation has certainly been eloquent and articulate in this Chamber. But, my own view is that if we, approve the sale of these materials we will further our goals of nonproliferation.

The essential issue at stake here is not the principle of nonproliferation, but how best to maintain it. It is a close question.

On balance, I believe that proceeding with the shipments better serves the goal of nonproliferation. The key question, as Ambassador Smith said, is whether it is better to tolerate the present situation where the Tarapur Facility in India is under safeguards, or to terminate an agreement, undermine our relations, and leave India free to dispose of the one or more tons of plutonium as it sees fit.

My own conclusion is that by rejecting the sale, we increase the risk of nuclear proliferation. We renege on a written agreement to supply that promised fuel, and we threaten U.S. national interests in Southwest Asia.

Now, let me elaborate on those, if I may. First, a cutoff of India's nuclear energy supply will, in the longer run, more likely increase rather than reduce the spread of nuclear weapons capability. If we approve these shipments, the Indians will no longer feel that they are bound by the 1963 agreement, and important safeguards will be lost. Under that circumstance, India would be free to reprocess the U.S.-origin fuel in India, and use the plutonium in the Tarapur reactors. That is contrary to a major aim of U.S. policy, which is to discourage the thermal recycling of plutonium.

India would be free, if we broke the 1963 agreement, to withdraw the U.S.-supplied nuclear fuel from safeguards. India would be free to decide to disregard our veto over any other use of the material already supplied beyond its use as fuel at Tarapur, and India would be free to end the present U.S. veto over any retransfer to another country.

There would be other adverse consequences that would also flow from a disapproval of these shipments. If we do not supply the Tarapur reactor, the Indians can go elsewhere. They can always turn to the Soviets, as has previously been mentioned. Our dialog with India would be cut off.

□ 1120

We are able through the Tarapur agreement to continue talking to India on nuclear issues. If India cannot obtain low enriched uranium fuel for Tarapur from us, it calls into serious question the U.S. credibility as a dependable nuclear supplier. Our failure to meet the terms of our agreement with India would encourage nations to acquire complete final nuclear capabilities to protect their sovereignty and their national energy programs. That development would severely injure our long-term nonproliferation efforts.

So the point is that the best way we can advance the policy of nonproliferation is to continue the supply relationship.

Mr. Chairman, the second point is this: That the U.S. overall interests in Southeast Asia require that we strengthen our relations with India. If we disapprove these sales, our efforts to protect the U.S. interests in the region will be impaired.

India is the most important country in South Asia. It is the world's largest democracy. Its government, like ours, rests on the principle of the consent of the governed.

The crises in Iran and Afghanistan have profoundly affected U.S. security interests in South and Southwest Asia, and it is vitally important for the United States today to support stability and to systematically bolster our bilateral relationships with the states in this region.

United States-Indian relations have not always been smooth. They are not smooth today. We have good reasons to be unhappy with Indian policy on several matters. Our policy perceptions and our interests do not always coincide. But the best way to influence India to adopt policies beneficial to U.S. interests is to try to build a more reliable, steady, mutual bilateral relationship.

Tarapur has become a crucial indicator to the Indians of the seriousness with which we view our relationship with them, and a positive decision on Tarapur can help allay apprehensions about U.S. constancy and U.S. policies on issues sensitive to India.

The next point is this: Approval of these sales cannot be viewed as a precedent which weakens our important nuclear nonproliferation policies. The supporters of the cutoff of the fuel argue, as I understand it, that if we continue to supply India, the credibility of U.S. efforts to prevent proliferation elsewhere in the world will suffer and the world will think that we have abandoned the nonproliferation goal.

There are several responses to that point of view. First, approval of these exports is fully consistent with the Nuclear Nonproliferation Act. Since these exports fall within the grace period provided in that law, they are not subject to the full-scope safeguards requirement. Favorable action on them, therefore, does not set a precedent for future cases which are subject to this requirement, and it does not weaken the U.S. position on the importance of safeguards in our nonproliferation policy.

In any event, the law permits the President to authorize the exports if he determines, as he has, that withholding them seriously prejudices U.S. nonproliferation interests.

A second point is that if the Indian-United States agreement is terminated, India can take action which damages our nonproliferation goals. I have already indicated that. For example, the safeguards would be removed.

The third point in response to the argument that the world will think we have abandoned nonproliferation goals is to point out the experiences of the U.S. delegation, which has just returned from the Nonproliferation Treaty Review Conference in Geneva. The Indian situation did not come up. The U.S. delegation, without exception, said that the concern of other delegations concerning Tarapur was about the United States keeping its commitments in the nuclear field, not about the implications of these sales on nonproliferation. All of our allies in Western Europe—the United Kingdom, the Germans, and the French—support this sale.

Finally, in response to the argument that the world will think that we have abandoned the nonproliferation goal and the argument of proponents of the cutoff that other countries will refuse to accept full-scope safeguards if we supply India, I point out that over 100 nations are treaty-bound to accept safeguards under the Nonproliferation Treaty. A very few other countries interested in nuclear cooperation with the United States already have their nuclear installations under safeguards.

So the danger that shipments to India now would signal a general breakdown of U.S. nonproliferation policy is illusory.

Mr. BINGHAM. Mr. Chairman, will the gentleman yield to me for a question or two?

Mr. HAMILTON. Yes, I yield to the gentleman from New York.

Mr. BINGHAM. Mr. Chairman, I thank the gentleman for yielding.

I would just like to ask the gentleman whether he would take the same position with regard to the sanctity of the 1963 contract and our obligation to carry it out if the Indians were to carry out a new nuclear explosion using non-U.S. materials?

The CHAIRMAN. The time of the gentleman from Indiana (Mr. HAMILTON) has expired.

Mr. BINGHAM. Mr. Chairman, I yield 2 additional minutes to the gentleman from Indiana (Mr. HAMILTON).

Mr. HAMILTON. Mr. Chairman, in answer to the gentleman, if there was an explosion in India of another nuclear device, one thing we would do, it seems to me, is to cut off further shipments in accordance with the Nuclear Nonproliferation Act.

Mr. BINGHAM. Would that not be a violation of the contract, just as this would be?

Mr. HAMILTON. No, I do not think the agreement covers that point.

Let me say, with regard to this argument about violation of the agreement, that my view is that a failure to supply the fuel does violate the agreement, but, as the gentleman pointed out in his remarks, that may be a close legal question. There is some confusion about it. It may not be clear-cut, but it does seem to me that the important point is that India has physical possession of the spent fuel from Tarapur regardless of the legalities and regardless of whether the agreement has been maintained or not.

If the Indians decide that we have breached the agreement, which they likely will, then they can unilaterally start taking the steps to reprocess the spent fuel, and that will work against our nonproliferation goals. So it is not so much the legal question as it is the practical result of the cutoff.

Mr. BINGHAM. Mr. Chairman, if the gentleman will yield briefly further, would those same arguments not apply if the Indians conducted a new nuclear explosion?

Mr. HAMILTON. The important point is, it seems to me, that we want to protect our nonproliferation goals. By not supplying the fuel, we give the Indians a reason to break the agreement.

It is the Indian perception that is important, not our perception, and the Indians will move ahead to use the fuel to defeat our goals.

Mr. BROOMFIELD. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, the President's decision to ship nuclear fuel to India, against the recommendation of the Nuclear Regulatory Commission, clearly contradicts his widely publicized policy of nuclear nonproliferation.

As a candidate 4 years ago, Mr. Carter said that—

> The State Department has become the country's chief advocate and apologist, even though India, not a Nonproliferation Treaty party, used our past aid to explode a nuclear device and even though there are no safeguards to prevent this from happening again.

In April 1977 he told Congress that—

> The need to halt nuclear proliferation is one of mankind's most pressing challenges.

His nuclear policy this season is a prime example of his administration's penchant for inconsistency.

The administration, by its machinations in the nuclear fuel to India matter, has also demonstrated the hypocrisy which has so marked its foreign policy decisions. It has postured on the question of nuclear developments in countries traditionally allied to the United States. On the other hand, it has attempted to gain India's favor despite the latter's defiance of international nuclear standards and its frequent foreign policy moves contrary to U.S. interests.

We must have a strong, consistent foreign policy, one which will restore the worldwide respect we must have to lead the free world. Long-term U.S. interests generally are much better served by well thought out policies, consistently adhered to. Obsequiously currying favor for perceived short-term gains, particularly when such actions lead to scorn, repudiation, and loss of respect, is clearly unproductive.

I urge favorable votes on these resolutions of disapproval.

Mr. Chairman, I think the exchange we heard between the gentleman from Indiana (Mr. HAMILTON) and the gentleman from New York (Mr. BINGHAM) really dramatizes the issue before us. The gentleman from Indiana, I thought, very effectively enunciated the State Department's tortured logic for the sale of nuclear material to India.

I reject the argument that was made that we need this shipment of nuclear material to keep strong United States-Indian bilateral relations, or because of the presumed Indian importance to the problems in Iran and Afghanistan. We already have sufficient evidence to show that the actions of the Government of India, by its foreign policy moves, are contrary to U.S. interests in both those countries.

I do not think we are going to gain any short-term benefit from currying the favor of the Indian Government at this time.

I urge approval of these resolutions of disapproval. I believe that to do so we are insisting that the long-term U.S. policy be maintained, and that is the issue before us. We want a long-term, consistent, strong U.S. policy in the field of nonproliferation. To guarantee that, in my judgment, requires action by the House this morning in support of these resolutions.

□ 1130

Again, I urge adoption of both resolutions.

Mr. BROOMFIELD. Mr. Chairman, I yield 3 minutes to the gentleman from Washington (Mr. PRITCHARD).

Mr. PRITCHARD. Mr. Chairman, I rise to speak against these resolutions before us. I wish to associate myself with the remarks of the gentleman from Indiana (Mr. HAMILTON), who has stated, I think, a thorough explanation of why it is not a good idea for this country to refuse to provide the nuclear material in question.

The issue, as I see it, is not as complicated as some of our argumentation might suggest. It is simple. The United States entered into an international agreement with the Government of India in 1963 under which we agreed to provide enriched uranium for a specific powerplant, at Tarapur, which would be fueled only with United States—provided uranium. Spent fuel from those reactors at Tarapur would be under safeguard, as would the facility itself.

Nothing in that agreement made it necessary for the Indians to obtain American approval with regard to materials or practices derived from other Indian nuclear facilities.

Now, as a consequence of internal American legislation, the United States would deny continued supplies of fuel for the Tarapur reactors under considerations introduced by the Antiproliferation Act of 1978.

The Indians have told us that failure to live up to the 1963 agreement will free them of any safeguards agreed to in 1963.

We can refuse to send the fuel, and thus in effect terminate the 1963 agreement. These resolution would, it seems to me, accomplish just that. We are dealing with a sovereign state, which is committed to development of nuclear energy as an alternative to fossil fuels. That is their business. What is our business, is making our original arrangement with the Indians continue to work as much as possible.

In short, we made a deal, the Indians have lived up to their part of it, and we are changing our rules so as to back out of our end of it. What will we do? If nonproliferation is our aim, then we have only one way to obtain the sort of result we want, and that is to go with the original 1963 agreement.

I might note that in a world where nuclear technology is no longer an American monopoly, we can not simply legislate for other nations. Where we attempt to impose unilateral restraints on even those countries which might be dependent on us, it is entirely likely that they will by hook or crook set out to obtain independently the technology necessary to develop nuclear power. And when that happens the United States has little or no influence.

I encourage my colleagues to join in defeating these resolutions.

Mr. McCORMACK. Mr. Chairman, in a moment I am going to yield to the gentleman from New York (Mr. WYDLER), the ranking minority member on the Committee on Science and Technology; but pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

□ 1150

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

Mr. McCORMACK. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. WYDLER), the ranking minority member on the Committee on Science and Technology.

Mr. WYDLER. Mr. Chairman, I am going to revise and extend my remarks to a great extent on this debate and I will confine my statement to a few main points that I think bear on this decision that we are making today. I hope to do it in a commonsense way that will appeal to some Members of the House by trying to add up the pluses and the minuses that exist for our country in this decision.

I hope that you will come to the conclusion that I have come to, that commonsense really dictates that we disapprove this resolution today and allow the sale of the material to India to proceed.

Now, no matter what I have seen considered in many a year here in Congress lends itself more to the expression that "the road to Hell is paved with good intentions." The people that have put forth this resolution including the chairman of the subcommittee, the Members that are supporting it, have the noblest intentions in their minds. I recognize that and I pay respect to them for that.

Their intention is to try to stop nuclear proliferation in the world. I am suggesting to the Members of this House that no course we follow as a nation could be more damaging to that objective than what we are doing with this resolution, not only in the case of the Indian sale, but of our entire so-called nonproliferation policy in the world. Exactly the opposite result of what we intend to bring about will be achieved by this. We are, as a country which is determined to try to get a hold on the proliferation of nuclear materials, allowing our influence as a nation to be dissipated and allowing other countries in the world that do not have the kind of interest we have in this matter to seize control of the world's supply of nuclear materials. In the long run, that can only hurt the cause that the sponsors are espousing.

I only hope that this Congress will awake to that fact soon enough to change the course we are following, because with every passing day we are losing the influence we now have in the world to change other nations nuclear policies and to see that the course of nonproliferation is advanced.

Our present policy is based on an assumption and that assumption is incorrect and wrong and is growing more incorrect and wrong all the time. The assumption is that the United States has a monopoly on nuclear material and technology and so can control the supply of this material and technology to other countries in the world. At one time that may have been true or close to being true. It is no longer true and with each passing year it is becoming less true. Therefore, for the United States to maintain its position in the world on this issue, it is going to have to maintain good relations and close relations with those countries in the world that desire nuclear material and technology.

Now, the issue involved here unfortunately concerns India. I understand that is not a very popular country in this Congress and probably throughout our Nation. The leadership of that country certainly is not the most popular in the world, either; but I would point out to this House that we may have to wrestle with this same kind of an issue with respect to other countries that are very friendly to the United States, very close to the United States; countries, for example, such as Israel.

Now, Israel at the present time does not have a nuclear plant, but Israel wants a nuclear plant, wants one desperately and intends to get it. They are going to look around the world for somebody to supply them with nuclear materials and components for that plant, both in constructing it and for fueling it throughout its operation. One of the countries they would obviously look toward normally would be our country; but under the circumstances that we have put our country in, it is very likely our country will not be one of the suppliers for Israel's nuclear plant. They will have to go, as India would have to go under these circumstances, to other countries in the world to get those supplies. India will do that and Israel will do that, because the day will come when they will have to get this material, components, and assistance to build their nuclear plant.

Now, we suggest that one possibility for India is to turn to the Soviet Union and, indeed, it is. We have found out, I have found out in my travels, that when the Soviet Union supplies enriched uranium to a country, it does so under an agreement where the material must be sent back to the Soviet Union to be reprocessed. So the Soviet Union, in effect, gets a source of supply for plutonium by dealing with that country. They do that with the Finnish Government at the present time. They take the spent fuel back from the powerplant at Loimaa reprocess it, and they retain the plutonium. That, material, of course, is a source for making nuclear weapons in the Soviet Union.

We could be driving the Indians into this same sort of arrangement with the Soviet Union. Some people discount that. They say, well, the Soviets will not deal with India. Well, maybe they will not. Then the Indians will buy it from some other country in the world. They will probably buy it from the French. We find ourselves in a similar ridiculous position today in South America where the two nuclear nations, that is Brazil and Argentina, cannot buy nuclear material from the United States because of our special rules, regulations, and restrictions.

Does that mean they do not have any? Not a bit; they simply turn and they buy it from Switzerland, they buy it from West Germany and Canada and, they buy it from the Soviet Union. We lose the business, but the important thing is that we have not done anything to stop proliferation. That is still going on. It just means that we have no influence in those countries any longer. We no longer have any real influence in the nuclear field in those countries. We have achieved nothing toward trying to bring about the goals that we seek in our nonproliferation policy.

It is a losing policy that we are following at the present time and in each country that you go to you can see the effects of this policy, which is a policy that is an abject failure and we are clearly not attaining our objectives.

At some point we have to look at the effects of the policy and say that it is time to change it.

Now, I am suggesting what has happened to President Carter's policy. The point has been made here that he made all these statements about nonproliferation and its importance. I know that he believed it when he said it and I believe he believes it today. However, what has happened to him is that he has looked at the situation and he realizes that we can best serve our goals of nonproliferation in India, as we could in other countries in the world, by keeping involved with those countries, keeping our influence in those countries, rather than leaving a vacuum for some other country to fill that is much less concerned with these noble causes than ourselves.

□ 1200

So I do not think President Carter puts it that way, but I think there is a growing realization on his part and on the part of the administration itself that the present policy needs changes and corrections if it is to achieve the goals we all want. I think that is what my colleagues are seeing in the President's request today.

I obviously have no political points to make for President Carter. I am not of his party and, in general, I find many of his policies which I cannot support. But in this case I think his decision is in the best interests of the United States, and I say that also as a member of the other party which has taken a position in its platform against this very fuel shipment.

Of course, that platform position is based on a reaction to Indian policies, international policies, and on the nuclear issue. I understand that they feel that the Nation of India, and these points have been made here, has not cooperated with the United States, has been very friendly with the Soviet Union and, therefore, we should show them how unhappy we are with them. I could buy that viewpoint to some extent, since it is a matter of international policy.

The trouble with that approach is that if we wanted to be consistent we should be consistent, and that is, cut off our food sales to India. That would also show them our displeasure, or we could carry out other steps that would restrict our trade with them which would show our displeasure if that was what we really were intending to do.

But I think that policy loses sight of the importance of our keeping our foothold in the Indian nuclear business which is going to go on whether we are a part of it or not. We can get ourselves totally out of it, as we are trying to do here today. That will be the result of what we are doing. We will find that the United States will remove itself from supplying the Tarapur plant, all of the spent fuel at the Tarapur plant will become India's to do with what it wants, including maybe, although we never have discussed this one, sending it to the Soviet Union to be reprocessed. They might decide to do that. They could choose this course once our agreement with them was broken.

So I do not see, as I try to look at the matter, what we really gain in the cause of nonproliferation, what we gain by denying this sale to India if we go through with this resolution in the face of our existing agreement with India.

Let us talk about the U.S.-Indian agreement for a minute, and let us talk about it as a commonsense proposition. I know the legal arguments have been made and I am not going to repeat them. The State Department argues that the agreement's legality requires the United States to ship this material, and there are some other groups that say they have decided it is not so because the law was made subject to later rules adopted by the United States.

I ask my colleagues to use their common sense. Would they, would our country, would anybody in the world really enter an agreement which, in fact, said this agreement can be changed by the other party at any time in any way it wants? Is that an agreement? I submit that is not the agreement. That is a meaningless agreement if that is what the Indians agreed to, and I do not think that is what India agreed to. Would they consent to allowing the United States to rewrite the agreement any time it wanted, any way it wanted, and call that an agreement?

That is not an agreement and I do not think the Indians would ever accept that. I do not think we would agree to that type of arrangement and I do not think any Member of this House would agree to that. I do not think it is a sensible thought to put forth here that the agreement was subject to the whim of the United States so that we could do anything we wanted with the agreement at any time and India was bound by that. I do not think that is a commonsense, fair, rational way to expect to have an agreement written and how it was meant to be carried out.

The other point that has been raised here today, and I thought it was a good point, was raised by the gentleman from New York. That was what would we do, as a nation if, suddenly, tomorrow morning, India exploded another nuclear device? That is a good question. But it is a question that really goes far beyond the issue of what we would do with this sale or any other sale of nuclear materials to India.

That is a question of international importance. We might decide as a result of such an explosion to abrogate all of our agreements with India. That might be called for. I do not know. Maybe we would decide then we would have no more commerce or trade with India. We might decide that the issue would be of that magnitude as we size it up as to its international importance.

But I do not think that issue is limited to the relationship we have with India on the sale for the Tarapur plant.

India has lived up, and I have not heard that disputed by anybody here, to all of the agreements they made with the United States of America on the handling of the fuel at the Tarapur plant. I think they have in good faith lived up to those agreements and I think in good faith, and again I put it to my fellow Members here in the House, in the committee, we should live up to our part of that agreement.

Now we come to the question which we have this new set of rules which we have set and this particular sale now at this point in history would be apparently in contravention of those rules. The material was asked for quite some time ago by India and it seems to me, the fact of the matter is, it was delay on the part of the U.S. Government to supply the material that has put it beyond the pale or beyond the limitations of the grace period.

So now, because of basically the delay of our own country in handling the request, we have forced them into a position where they now do not technically meet the requirements of our present law. That seems again to me to be a fault, in a commonsense way, of the U.S. Government and not the fault of the Indian Government.

Gentlemen, I am suggesting today that the best course of action for our country now is to allow this sale to go forward. I think by this we gain more for our Nation in the nonproliferation field. I think also that it is a time for this Congress to think about the present act which we are trying to operate under in the world in nuclear matters. It is an act which, in my judgment, and I have seen its effects in many countries in the world, has been nonproductive and, in fact, counterproductive.

I have seen the counterproductive results of this act and of this policy in Argentina. Down in Argentina we have basically killed the "good neighbor policy" of F. D. R.

I have seen it in Sweden where we treated a nation that has unblemished nonproliferation credentials as if it were a high risk nuclear threat to the world.

In both of those cases we have driven those nations, which are friendly to us and should be very close to us in nuclear matters, we have driven Sweden and Argentina to obtain nuclear technology and material from the Soviet Union. As a result of these counterproductive results I believe that the President has decided to see the present contract for the Tarapur reactor fulfilled.

I ask my colleagues in closing these questions, which I asked previously in a letter I wrote to each Member. I hope each one will think about it and try to come to a conclusion about what we should do in meeting our responsibility to see that we follow a reasonable course for the United States of America in the nonproliferation field in the years ahead.

The questions are: What has the implementation of our present policy gained for the United States of America?

How were the real objectives of nonproliferation advanced by the approach we have taken to date?

What justifies the loss of all of the nuclear business and future influence in nuclear matters by the United States in India and other countries in the world?

When, if ever, will this country learn that our past policy has been an abject failure and that is why we should support the President in this case where he has shown some degree of flexibility in nonproliferation matters.

I thank my colleagues for their attention.

Mr. McCORMACK. Mr. Chairman, I yield myself such time as I may require.

□ 1210

Mr. Chairman, I rise in strong opposition to House Concurrent Resolution 367, and House Concurrent Resolution 368. I urge a "no" vote on these resolutions. I have requested additional time for this debate today to try to help the Members, whether they are present in this room or in their offices watching their television sets, to understand some of the basic facts that are so important for treating this matter and so important for us all to understand before we vote. For that reason I am making myself available for questions that anyone on the committee may have when I have finished my presentation, and I hope you will feel free to aks me any questions, no matter how complex or confusing they may sound.

This is a subject on which there is a colossal amount of confusion overlaid with all too much emotionalism, and it is most unfortunate that we are voting now on a motion of such great importance to this Nation and to the free world. We are doing this in an atmosphere of confusion and emotionalism, based on a blizzard of misinformation.

The basic fact, the bottom line of this issue today, has nothing whatsoever to do with nuclear energy, nuclear weapons or nuclear proliferation. We are not going to deter India in any way from doing what it is doing if we do not ship this fuel to them. The question is only how much we, the House of Representatives,

are going to critically damage our country if we vote to pass this resolution to cut off the shipment of fuel to India.

The gentleman from Michigan (Mr. BROOMFIELD) said India has been contemptuous of the United States. Why not? Here we are, treating India as a second-class people, a second-class citizen of the world whom we are trying to blackmail, and for whom we assume we can dictate their domestic policies. The entire world knows that this is a ludicrous farce. We are the ones who are looking silly by trying to discipline India and by doing so selectively.

The gentleman mentioned that India is not a signatory to the Nonproliferation Treaty. That is true. Neither are some 31 other nations including France, China, Cuba, South Africa, Argentina, Israel, Brazil, Spain, or Pakistan. Are we undertaking any punitive action against them?

We know perfectly well that the Israelis are making nuclear weapons, and so are the South Africans. Their weapons are not peaceful nuclear explosives, as the Indians exploded 6 years ago following a similar test by us.

These are the countries that are today making nuclear weapons, and we know it perfectly well, yet we go right on in our commerce with them as if nothing matters at all. We are picking on India. Why? Why should they not be contemptuous of us?

I have a "Dear Colleague" letter here from the gentleman from New York (Mr. OTTINGER) that says:

> We will soon decide whether the United States should ship 38 tons of nuclear fuel to India, enough to set off hundreds of atomic weapons as powerful as those used to destroy Hiroshima and Nagasaki.

The fact is that it is physically impossible to use this fuel for weapons. You can no more use this fuel for weapons than you can run an automobile on water. It is absolutely impossible to directly use this fuel for weapons. India has no equipment to do so. Before this fuel could be converted to weapons-grade material, it would have to be enriched from the present 3-percent level up to at least 50 percent. In making weapons, the United States takes nuclear fuel to above 90-percent enrichment. I think it is critically important to understand that.

The gentleman from New York (Mr. BINGHAM) responded to a question in an interview in U.S. News & World Report, and I will read the question and answer. The question was:

> Some proponents of the sale insist that it is not feasible to use enriched uranium from a power plant for arms development. If that is true, why all the concern?

Mr. BINGHAM responded:

> I am, frankly, amazed that anyone would make that statement. Administration officials have themselves acknowledged that in the sixties a nuclear test explosion was carried out using reactor-grade fuel.

With all deference and respect for the gentleman from New York (Mr. BINGHAM), he does not understand the subject. He is talking about plutonium extracted from a processing plant, extracted from spent fuel used in a nuclear powerplant, not the nuclear fuel that goes into a plant. There is no way to use the raw fuel; it cannot be done.

Second, India not only has no facilities for enriching fuel to convert it to weapons-grade material, but it also has no facilities designed for reprocessing spent powerplant fuel elements, to extract plutonium. The reactor grade plutonium is not any good for an explosive anyway.

I think what the gentleman from New York was referring to was that in the 1960's, the Atomic Energy Commission took some of this reactor-grade plutonium, made an explosive, and conducted an underground explosion. It worked as they expected. It was a very poor weapon of very low quality, but it worked, and it is possible for a nation with high expertise and technology to take a lot of this plutonium and make a very, very poor explosive of it. But no nation in the world has ever made a nuclear weapon from reactor-grade plutonium. Every weapon that has ever been made, including the one in India, was made from special facilities built and operated for that one purpose—to make weapons.

The United States had hundreds of nuclear weapons before it had any nuclear powerplants. Russia too, had hundreds of nuclear weapons before it had any nuclear powerplants. England and France had at least dozens of nuclear weapons before they had any nuclear powerplants. There is not a single weapon that has ever been made anywhere in the world from nuclear powerplant plutonium. We had one explosive device tested in the United States which proved exactly what the theoreticians knew—that it would make extremely poor explosive material.

But here we are saying to the Indians that unless you let us dictate to you, unless you let us control you, we are going to unilaterally abrogate an operating contract which we both signed. Here we are, the United States and Great Britain and Russia, all going on making weapons just as fast as we can. By what arrogance? By what hypocrisy is it that we try to stop India's nuclear energy program, which has nothing to do with weapons, because we do not like the fact that they are reserving their right to their own independence from our dictates? By what hypocrisy and arrogance is it that we are trying to stop their nuclear energy program because we do not like the fact that they are reserving the right to do what we have been doing pell-mell every week for the last 35 years—making nuclear weapons as fast as we can?

So the gentleman from Michigan's statement is probably correct when he says they have been contemptuous of us, because we are trying to set a double standard and force them to live by it. I think this is important.

The basic question is, why should we break our contract? That is what the committee is trying to do. They are saying we should override the President and break our contract with the Indians. The President, supporting a recommendation of the Department of State, has ordered that we honor our commitment to India and continue to ship this nuclear fuel for its two Tarapur plants. The Nuclear Regulatory Commission found it could not approve the licenses for export of this fuel. The Commission did not disapprove the licenses; it found the issue to be a highly complex legal one and referred the decision to the President.

The State Department said, for heaven's sake, go ahead and ship the fuel. Yet here we are proposing to terminate the contract. Such an impetuous and unthinking act by us today would serve no constructive purpose. It would be disastrously self-defeating for us. It is imperative that responsible Members of the House and Senate support the position of the President and uphold the continued shipment of fuel to India.

□ 1220

There are good reasons to do so, and one of the best is that this is the best way to reduce the potential for nuclear weapons proliferation anywhere in the world.

There are some other reasons. Let us remember that we have had an existing contract with India to supply this fuel for the two Tarapur plants, two of its three operational plants ever since 1963.

There are four more powerplants under construction in India and the Indians do not even try to buy fuel from the United States for them. They have long since learned we are not a reliable exporter of fuel, ever since we passed our Nuclear Nonproliferation Act.

Let us take a look at what has really happened here. Our contract with India came into existence in 1963 when we insisted that we be the sole supplier of fuel for India's Tarapur plants. India was obligated under this contract to store the spent fuel under International Atomic Energy Agency safeguards, return the fuel to us if requested to do so, and obtain our approval to transfer the fuel to any other nation. These were our conditions for selling the plants to India. They wanted the plants. We said, "We will sell you the plants if you will meet these conditions," and they have lived up to every minute detail of the contract. They have not violated it in any way at any time.

If we now violate this contract, only we will lose and the Indians will be free to do whatever they wish with the spent fuel they have on hand. They now have more than 200 tons of spent Tarapur fuel stored in India, including about 400 kilograms of plutonium. If we breach the contract, then they can do anything they want to with it.

However, I do not think they would use it for weapons because reactor grade plutonium is so unsuited for that use.

The next thing to remember is that the nuclear explosion by India did not involve the use of any commercial nuclear fuel which, as I say, is not good for weapons anyway. The explosive material came from a simple, small research reactor with a good potential for producing weapons grade plutonium. This plutonium was then separated and purified in simple, cheap equipment designed specifically for that purpose. You could not operate a

weapons program by reprocessing fuel elements from nuclear powerplants in that equipment.

The Indians in short did exactly what the United States did, what Russia did, what Great Britain did and what France did before them. What they did had nothing to do with the Tarapur powerplants or with fuel we shipped to them.

I think it is important for us to understand as Dr. Glenn Seaborg, the discoverer of plutonium, has pointed out, that today there are three dozen nations in the world that could produce nuclear weapons without any nuclear powerplants at all, without any help from the United States, for 5 to 10 percent of the cost of one single commercial nuclear powerplant—that is, $50 million to $100 million for the whole system—and do so in half the time required just to build the powerplant.

The next point is in the near future we are going to have to decide about selling enriched fuel to the Euratom Supply Agency, which represents the Common Market nations of Europe. Similar issues will be cited for not shipping that fuel that are now cited for not shipping fuel to India. These same views will come up with Euratom. France is not a signatory to the Nuclear Nonproliferation Treaty. It is making weapons and does not allow inspection.

Mr. Chairman, we can be building a very dangerous trap for ourselves if we break our contract now with India.

Many of us felt at the time that the passage of the Nuclear Nonproliferation Act of 1978 was a serious mistake, and our fears have now become realities. That was based on the admirable objective of limiting the proliferation of weapons, one which I wholly support. However, the provisions of the act are dictatorial and unrealistic in attempting to achieve that goal, and they are being disregarded and circumvented by nations around the world by developing indigenous nuclear programs which are not subject to U.S. control.

Now, zealous attempts to use this ill-conceived law to arbitrarily, unilaterally and arrogantly impose our unrealistic requirements on other nations have brought international ridicule on our heads. It is serving to alienate us from the rest of the world. This is the most serious issue that most of these nations have with us; our arrogant attempt to impose our nuclear energy standards on them when they are trying to solve their energy crisis.

Such totally unreasonable and uncalled for conduct on our part increases rather than reduces the potential for nuclear weapons proliferation. Many nations have decided to establish their own nuclear facilities rather than subject themselves to the humiliation of United States dictates and the unreliability of the United States as a nuclear supplier.

If any of us here are wondering about where we can find a country saying, "Three cheers for the United States" today, if they find one, I hope they will let me know which it is.

Congressional acceptance of this ill-advised resolution of disapproval, along with our unilateral and unsuccessful attempts to prevent nuclear indusrial development in other nations, has precipitated this crisis for us, not for the Indians.

Recent congressional hearings have revealed the foregoing, how our reputation has fallen and the fact that there is not a willingness among other nations to trust us.

In his comments on the proposed fuel shipments, NRC Commissioner Kennedy pointed out that we must act to avoid action which would adversely affect those whose cooperation is essential to our ultimate nonproliferation objective. This proposed action to prevent the fuel shipments to India is totally contrary to our objective of trying to minimize nuclear weapons proliferation. The time has come for us to recognize this fact and support the President and the State Department on this issue.

The thoughts of Mr. McGeorge Bundy on the matter of shipping this fuel to India for the Tarapur plants is equally cogent and is terribly important. Mr. Bundy knows that the likely alternate supplier of fuel for the Tarapur plants will be the Soviet Union.

Unfortunately, U.S. policies have produced the same results related to the supply of enriched fuel for our Western European trading partners. People in the business and in the State Department estimate that by 1985, the Soviet Union, which already provides a significant fraction of the enrichment requirements for Western Europe's nuclear powerplants, will be providing an even more significant portion in terms of total enrichment requirements.

Now, just about 5 years ago this was an exclusive U.S. market. We have thrown it all away because of our own ill-conceived notion that we could control the world. Situations such as this promote international instability and severely constrain our foreign policy options.

This Congress must no longer countenance the continued deterioration of our international credibility and our time honored reputation for integrity and leadership. The decision of the President in ordering that we proceed with the Tarapur shipment makes good sense. The Congress must now insure the shipment proceeds and that all nations know that the United States can be trusted, that we will be a reliable supplier under the conditions of existing agreements and existing contracts, until they are changed under mutually acceptable conditions. Until then, they will be binding on this Nation.

Mr. Chairman, I urge a no vote, in the interest of the United States, against these resolutions.

Mr. BINGHAM. Mr. Chairman, will the gentleman yield?

Mr. McCORMACK. I will be glad to yield to the gentleman from New York.

Mr. BINGHAM. Mr. Chairman, the gentleman makes a very eloquent statement but it seems to me in large parts it amounts to an eloquent attack on the Nuclear Nonproliferation Act. I wonder how the gentleman would explain the fact that he voted for that Act.

Mr. McCORMACK. It is one of the votes that I most regret in my 10 years in Congress. I think it was a serious mistake for me to acquiesce. I acquiesced based on the word of the gentleman from New York that we were going to work out all the details with regard to quick response in monitoring reprocessing plants and other issues of concern to me. At the time, I had no idea that the act would be used in such a strict and arbitrary way and that our international nuclear policies would be so damaging to the goals of the act; that is, the furtherance of nonproliferation objectives.

If the gentleman will remember, the gentleman told me that the conference had worked out these problems.

Mr. BINGHAM. Mr. Chairman, I am talking about the gentleman's vote in the House of Representatives on a bill that was very similar to what was passed by the Senate and I do not recall any commitment that I might have made along the lines the gentleman is talking about.

□ 1230

Mr. McCORMACK. The gentleman may not remember, and I am not going to try to hold him to anything; but, the fact is, the way the bill is written and the way it is being applied today is slightly destructive to this country.

Ms. OAKAR. Mr. Chairman, will the gentleman yield?

Mr. McCORMACK. I yield to the gentlewoman from Ohio.

Ms. OAKAR. Mr. Chairman, I want the gentleman to know that I intend to vote for the resolution, but I also want him to know that I think he does this Congress a great service by clarifying for what indeed the plutonium is going to be used. I think that is very, very important.

The other point I want to make is, I think he also does us a great service by pointing out that many of our allies to whom we have given billions of dollars of foreign aid have refused to sign the Nuclear Nonproliferation Treaty, so there is a subtle form of hypocrisy here. I think we ought to insist that they sign that in the interest of world peace.

So, I think that while I am going to support the gentleman in his request for defeating the resolution, I do want him to know that his statement is very important in terms of identifying and pointing out the kind of hypocrisy in which we sometimes engage in this congressional body.

Mr. McCORMACK. I thank the gentlewoman. I would like to add, lest anyone mistake my position, that I am totally opposed to nuclear weapons, anyplace. I would like to see international agreements with adequate safeguards and universal inspection by which we could move forward toward an elimination of all nuclear weapons. I think they are a horribly damaging part of our existence today. I do not want anyone to mistake my position here.

The gentlewoman made one reference that I would like to elaborate upon. I would like to have everyone understand that the plutonium that is produced in nuclear powerplants, any kind of nuclear powerplants, is essentially useless as weapons materials. An expert nation

with a huge amount of technical competence can make it explode, but it is useless as weapons material.

Plutonium is one of the most valuable substances in the entire world because of its fantastic energy potential. Our policies of self-denial and international blackmail to prevent its use by others will naturally lead to independent efforts to utilize this energy potential.

If we are to solve the nuclear nonproliferation problems of this world, we should move forward with a positive program which will permit the use of plutonium for power production and in that way provide some control over its use. We should initiate a program for regional reprocessing centers through which all fuel elements pass, and through which the plutonium and uranium that is in these spent fuel elements is recycled without ever being made into any form that can be used in an explosive. This is what we must do to control proliferation, and the action we have been talking about today in the passage of these resolutions is countercurrent to that concept.

Mr. WYDLER. Mr. Chairman, will the gentleman yield?

Mr. McCORMACK. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Chairman, first I would like to comment, if I could, on the question asked by the gentleman from New York (Mr. BINGHAM) of the gentleman from Washington regarding his vote on the Nonproliferation Act. I too voted for the Nonproliferation Act. I do not think we made a mistake in the sense that he is trying to imply we did. Nearly everybody in the House and in the Senate voted for the Nonproliferation Act.

Mr. McCORMACK. That was a unanimous vote simply because there was not any debate.

Mr. WYDLER. Let us fully understand what the action was at that time, and where we are now. Most of us know that the world changes, and you have to change with it or you get left behind. That is the situation we are in. At the time the act was presented to us, it had a noble cause. The purpose of the act was nonproliferation. Everybody is for that. The act set up a system of trying to bring that about, and it imposed over a period of time new rules which were, at the time, exclusively U.S. rules on how the sale of nuclear material would take place in the world.

The hope was that the rest of the world would go along and do likewise. The facts are, the rest of the world did not go along and did not do likewise. We now have an act that we are trying to operate under which makes us unique in all the world. We find ourselves as a result refusing to sell nuclear material to countries that any of the other countries in the world that have signed nonproliferation treaties will sell to. We find ourselves a majority of one in the world. Now, I think that we have to look at where we are and analyze whether this act, which we passed in good faith and with high hopes, has really achieved anything for our country or for the world.

If we honestly can say that it has not, and we would be better off now trying to get back into the act in the world, make our country a real player in the world in the area of nuclear trade, because that would be good for the cause of nuclear nonproliferation; that would be a sensible policy for our country to follow in 1980. That is the point I think we should come away with here today. We have to deal with the situation that exists now, not the other way we hoped was going to exist many years ago.

If I could ask the gentleman a question, the thing that strikes me as odd—and I want his comment—is the fact that we are at the present time in our country building several new facilities, spending hundreds of millions of dollars for these facilities to enrich uranium.

One tremendous plant is going up in the State of Ohio which is going to be a tremendous processor of enriched uranium, and I cannot help wondering, as I traveled around the world to 13 major countries that use nuclear power and would be customers, and I find out that in nearly every case they are noncustomers or are ready to drop the United States as a supplier because either they do not trust us to supply as we have agreed to supply, or we will come up with new rules and regulations that they would be unwilling to agree to, and that they are turning to other sources for their enriched uranium and trying to get out from under U.S. supply agreements.

What are we going to do with all this enriched uranium? Who are we going to sell it to? Who is going to be pure enough to meet all our requirements? How are we going to compete in the world market?

I cannot understand it. I see our world market shrinking, and yet we are building vast new facilities to produce enriched uranium. What are we going to do with it? I am at a loss. Sometimes, as I sit in the committee and listen to the testimony on these vast new facilities we are building, where is it going to go? Who is going to use it?

Mr. McCORMACK. I thank the gentleman for his question, which is pretty much of a rhetorical question, of course. His point is exceptionally well taken. The fact is that our markets are dwindling rapidly. As I mentioned, between the mid-1970's and 1985, we will have lost a significant fraction of the European market to the Russians and to the French. This is a major export and a major contributor to the trade balance that we will be losing and throwing away, as well as a significant reduction in our influence in foreign nuclear programs.

The gentleman is completely correct, we are almost completely isolating ourselves from the rest of the nations in the world. The United States stands almost alone, as for instance in the studies under the international nuclear fuel cycle evaluation, known as INFCE, where the United States stood virtually alone against some 66 nations in defending its policies. We are isolating ourselves with this sort of thing. We may very well wind up with big, expensive white elephants with those enrichment plants and nobody to sell fuel to.

Mr. WYDLER. If the gentleman would yield further, I would just like to comment and have the gentleman comment on another point raised here today, that the perception of the world would be, if we ship this material to India, that we do not care about nonproliferation; we have lost our interest in it or are undermining our own policy. I traveled to all these nuclear-using countries in the world, and I have never heard anyone of them indicate that fear about that whatsoever. The one thing they do all talk about, every single one, is the reliability of the United States of America as a supplier.

Now, it is one thing for us to say, well, we do not like the Indians, they do not have a supportive policy for the U.S. Government and, therefore, you know, let it go. But, every other country in the world is following very carefully what we do here, and maybe some of those countries we do care about. They are friends and allies, and we would like to continue to do business with them, not only because it is good for our country and its economy, but because it keeps us in the forefront of nuclear matters around the world, which is a position that we operate from today, but which is slipping away. Every one of these countries watches very carefully how the United State reneges on its deals and changes the rules in midstream.

I have seen countries like Spain, which used to buy exclusively U.S. plants, enriched uranium, and they told me to my face, "We are through dealing with the United States. We are going to buy our plants elsewhere."

□ 1240

They are buying them from West Germany. That really increases our influence in Spain. We can see 10 years from today what influence we will have there in the nuclear field. They are going to get their enriched uranium elsewhere, and they are talking to the Soviet Union, too.

What kind of a policy is this that we are pursuing? We have to look at the results of the policy, not the hope of the policy.

Mr. Chairman, I can only assure the gentleman, I will say to my colleagues here today, that the rest of the world is looking at this in a different way than is being suggested here today. They are looking at this and asking, "Is the United States going to live up to its agreements? Is the United States going to be a reliable supplier of nuclear material or is it not?

I only hope that this House will give them an answer that will reassure them, and that we will continue to keep the friendship of our country growing with the world, particularly in the nuclear area.

Mr. Chairman, I would ask the gentleman from Washington (Mr. McCORMACK) if he would like to comment on that.

Mr. McCORMACK. Mr. Chairman, I thank the gentleman from New York (Mr. WYDLER) very much, and I think his points are very well taken. I have had

similar experiences with a number of nations, Western European nations, Far Eastern nations, and South American nations. All of them have expressed great concern over what seems to be the blindness of this aspect of our foreign policy. They are literally sick with apprehension that we will so damage ourselves by passing this resolution.

I just want to say that the gentleman talked about our interest in nonproliferation, and there is one point in that regard I think we should make. The Committee on Science and Technology has taken a positive step toward attempting to reduce the potential of proliferation in the world, and that is by directing the Department of Energy to negotiate to buy the Barnwell, S.C., reprocessing plant. That is a plant which is built and has not been licensed to operate. We can establish it as a multinational fuel cycle center where fuel from many countries which really are too small to have reprocessing facilities could be shipped in. They could ship their fuel there for reprocessing and new fuel fabrication. We could supply them with fuel elements on condition that we will then have the reprocessing done here and have the material made into new fuel under IAEA supervision.

That would be a lucrative business for the United States, and it would also be beneficial to these small nations which have a hard time financing the massive expenditures involved in reprocessing. But if we cut them off, regardless of what they think about it, if we try to punish nations and have them do what we think is in their own best interests, we are not, of course, going to have any cooperation, and these nations are going to go on their own with their own nuclear technologies.

Mr. Chairman, I yield such time as she may consume to the gentlewoman from Tennessee (Mrs. BOUQUARD).

Mrs. BOUQUARD. Mr. Chairman, I thank my subcommittee chairman for yielding this time to me.

Mr. Chairman, I rise in support of the shipment of enriched uranium to India. I will vote no on this resolution because I feel that the outcome is much more far reaching than this issue alone in isolation.

This Congress has debated the pros and the cons of the administration's nonproliferation policy in connection with a number of legislative proposals. The goal of stemming the flow of nuclear weapons is clearly desirable, but our ability to achieve this goal through unilateral proclamation is what is in doubt.

The United States of America is not the sole supplier of either nuclear technology or nuclear fuel. We must accept this reality. By that I mean we must recognize that by removing ourselves as a source of this material, we do not make nuclear fuel unattainable. We simply drive our prospective customers, and in so many cases our potential allies, into the willing arms of the Soviet Union.

My good friend and my subcommittee chairman, the gentleman from Washington (Mr. McCORMACK), and I have argued vehemently on the floor of this Chamber that the most effective method of controlling the flow of nuclear technology is to use our position as a reliable supplier to help develop international safeguards, and that this will bring meaningful cooperation into our nonproliferation efforts.

I would say to my colleagues here that we only have to look at the situation that has developed in Pakistan as a result of a shortsighted, inflexible nonproliferation policy, and the strategic importance of that nation today exceeds anything that we could have anticipated 20 years ago.

So let us not make the same mistake with respect to India. We simply cannot afford to drive this nation further into the Soviet's sphere of influence.

There has been much criticism of India's nuclear weapons program, but I would remind the Members again that the weapons that were developed by India did not come from a violation of the nonproliferation agreement between the United States and India. Furthermore, the fuel under discussion consists of uranium enriched to a level sufficient to sustain the operation of a powerplant. In general, this level is in the 3- to 5-percent range. In contrast, weapons grade uranium must be enriched to a minimum level of 90 percent. Diversion of powerplant fuel into a weapons program is the single most expensive, most inefficient and most time consuming method to achieve a nuclear weapons capability. If we wish to maintain a realistic base for effective development of nonproliferation criteria, we must exhibit a willingness to live up to the agreements that indeed we have ourselves made.

Our vote today is going to be a crucial indication to the Indians of the seriousness with which the United States views its relationships with them. It is also our opportunity as a Congress to emphatically relate to the world the reliability of our word, signifying that we do not view our international agreements as a scrap of paper. This resolution in no way punishes India. They have a number of alternative sources of supply. A vote for this resolution harms only the United States and our strategic interests.

The CHAIRMAN pro tempore (Mr. FISHER). Let the Chair state to the Members that the time remaining in general debate is as follows:

The gentleman from New York (Mr. BINGHAM) has 32 minutes remaining, the gentleman from Michigan (Mr. BROOMFIELD) has 42 minutes remaining, and the gentleman from Washington (Mr. McCORMACK) has 7 minutes remaining.

Mr. BROOMFIELD. Mr. Chairman, I yield 6 minutes to the distinguished gentleman from Illinois (Mr. FINDLEY).

Mr. FINDLEY. Mr. Chairman, the past year has been a very difficult one worldwide. Tumult, crisis, and conflict in all parts of the world have come in quick succession, and much of this has been directed at the United States.

But now, let us just imagine for a moment what the situation might have been this past year had each of the states involved in turmoil and conflict been armed with nuclear weapons. That in a nutshell is what we are talking about here today—nuclear nonproliferation.

We all recognize the difficulty that a nation or state, even one as large and influential as the United States, working in concert with many other nations, has in establishing a nuclear nonproliferation policy. But there can be no doubt that nuclear nonproliferation is clearly in the interests of the United States. We must do the best we can to advance that policy, and what we decide here today is whether we just want to talk about nuclear nonproliferation or whether we actually want to get something done.

We have the opportunity here today to do something about it and to take a stand. The question is: Will we do so?

In my view, the vote today is a historic event; it is a watershed vote. It is perhaps the single most important development in the effort of the United States to establish the nonproliferation of nuclear weapons. We can vote to block the fuel shipments and thus demonstrate our insistence upon an effective nonproliferation policy and adherence to the nuclear nonproliferation law that this body passed unanimously 2 years ago, or Congress can let the policy slide and allow the licenses for the fuel to go forward.

Mr. Chairman, I urge my colleagues to demonstrate the seriousness of the U.S. nuclear nonproliferation efforts and to vote yes on Concurrent Resolutions 367 and 368. I say that for several reasons. First of all, we must demonstrate our seriousness to the state of India. Since the fifties the United States has provided reactors and fuel for the Tarapur station in Bombay.

□ 1250

We provided the reactors in fact on very generous concessional terms, a $72 million loan at 1-percent interest. Of the $72 million, India has repaid $11 million.

The United States has supplied heavy water to India when our own capacity to produce heavy water was lagging; but, nevertheless, we came through for India. We trained more than 800 Indian nuclear scientists over the years.

In response to this very extraordinary level of cooperation, India detonated a nuclear bomb in 1974. And to set off this bomb, India diverted U.S. heavy water, in violation of U.S. peaceful-use guarantees and despite repeated warnings against this step by the United States. Still, even when Canada terminated its nuclear relations with India subsequent to that explosion, the the United States did not terminate its relations with India.

During this past 6 years, and especially during this past 2 years, the United States, while continuing its nuclear relationship with India, has attempted quietly and diplomatically to convince India to accept safeguards on all of its nuclear facilities and to renounce exploding any more nuclear bombs. India has refused to do so. Indeed, Mrs.

Gandhi stated categorically on the floor of the Parliament, in direct response to President Carter only this past spring, that India would explode nuclear devices whenever it saw fit.

Given this Indian position and its contention that it will explode nuclear bombs whenever it sees fit, the United States cannot ship this nuclear fuel and still assert that it means business on nuclear nonproliferation. Sending this fuel to India will rob our policy of all credibility, not only on our relationship with India, but with Pakistan, South Korea, Taiwan, Brazil, Argentina, West Germany, France, Italy, and all of the other countries who are watching us today.

If we ship this fuel, we will be throwing in the towel and signaling to the world that we do not mean business. We will not, thereby, be defending U.S. interests.

Now, if we do refuse to ship fuel, a very substantial U.S. relationship with India will continue, and I think it should. I would like to point out that this body has authorized $287 million in foreign economic aid for India for fiscal year 1981. This is up from fiscal year 1980, which was at the level of $200 million. The United States is sending TOW missiles to India, as well as nearly $200 million in howitzers. President Carter has sent Clark Clifford on a special mission to India to reassure the Indians after the Soviets invaded Afghanistan.

We have repeatedly, in nuclear and nonnuclear matters, tried to help India assure its interests, and I am sure we will continue to do that. But now, at this stage, I urge my colleagues to help the United States assure its own interests and to adhere to a nuclear nonproliferation policy designed to help this country meet those interests.

Therefore, I urge a "yes" vote on both of these resolutions.

Mr. BINGHAM. Mr. Chairman, I yield 7 minutes to the distinguished gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, the question before us today is whether or not the United States has a policy of nonproliferation. We are witnessing an attempt to collapse the Nuclear Nonproliferation Act of 1978 and replace it with a policy of "selective proliferation" by the State Department.

Humanity has made many mistakes in the past and has been able to survive. However, the spread of nuclear weapons has given us an unprecedented power to harm ourselves and, indeed, to destroy all life on this planet. India is a crucial test case which will determine whether we can control the awesome technology of nuclear power and nuclear weapons which we have created.

Other countries, including Brazil, Argentina, Pakistan, South Africa, Israel, and Iraq are watching these congressional deliberations with the closest attention. The mood of Congress is clear—the long term national security interests of our nonproliferation policy must take priority over the elusive short term goals of better relations with India envisioned by the State Department.

To make an exception for India, Mr. Chairman, will effectively "gut" our efforts to curb the spread of nuclear weapons. Other countries of the world will realize that the United States was never really serious about nonproliferation. They will realize that if they stonewall long enough, as India is doing, then the United States will eventually capitulate and grant them shipments of nuclear fuel and hardware even if they use part of our expertise or materials to develop nuclear bombs. They will simply call their nuclear bombs "peaceful" as India is doing and escape U.S. sanctions. We will be kidding no one, Mr. Chairman, if we approve the shipment of fuel to India. There will be no credibility, no integrity, no respect for U.S. efforts in this area.

Mr. Chairman, for the United States this is not simply a question of legality, equity, or interpretation of a vague 1963 agreement. This is a question of sanity. The national security of our generation and future generations will be severely weakened if we do not take a tough stand with India and protect a nonproliferation policy which I need not remind this House passed the Congress in 1978 with only 3 dissenting votes.

The question is whether we should acquiesce to a country which adamantly refuses international safeguards and controls and persistently asserts its right, as recently as 2 months ago, to future atomic tests. India is the only known country to have exploded a nuclear device using plutonium derived from a civilian nuclear program supplied by Canada and the United States. After the 1974 explosion, Canada halted all nuclear cooperation with India. The United States did not, but it should have drawn the line then.

Since 1974, India has refused U.S. efforts to gain assurances that U.S. supplied materials would not be used for nuclear bomb tests—"peaceful" or otherwise. India has stubbornly rejected during the last 6 years any concessions to apply greater controls and safeguard to its nuclear facilities. Is it any wonder that Pakistan, India's neighbor to the north, complains of a "double standard" when the United States asks for its agreement to nonproliferation requirements? The question is not whether the United States is a reliable supplier, but whether India is a reliable customer.

A July 22, 1980, opinion from the American Law Division of the Congressional Research Service argues that India's refusal to submit to full-scope safeguards is not in conformance with its 1971 undertaking to comply with all applicable U.S. laws and therefore India, not the United States, may be in actual or potential breach of the original agreement to supply fuel.

The United States is left with the choice of standing by its principles and defending its nonproliferation policy, or submitting to Indian pressure and supplying fuel, fully aware that India may develop nuclear bombs from this fuel and certainly will continue to reject international safeguards designed for the protection of all humankind.

It is my strong contention that the United States should not cave in to the demands of India, that we should stand firm and signal clearly to other countries of the world that there is substance to our nonproliferation policy.

I have reviewed the arguments of the Carter administration in favor of shipping fuel to India. They range from vague speculations about the need to placate India in light of the invasion of Afghanistan to unpersuasive legal arguments that India is exempt under the 1978 Nonproliferation Act, to an extraordinary argument that nonproliferation interests are actually advanced by shipping fuel to India. The one characteristic of all the State Department and Carter administration arguments is that they can be repeated again and again whenever a country wishes to be exempted from our nonproliferation requirements.

We are witnessing a backpedaling of President Carter's once strong belief in nuclear nonproliferation. It is the responsibility of the Congress to firmly draw the line with India and say "No" to nuclear cooperation with countries that do not agree to international safeguards and do not agree to renounce nuclear explosion programs. The State Department claims that the next time India detonates a nuclear bomb made with U.S. assistance, then we will stop cooperation. Does anyone really believe them?

And let us not forget that India may resolve this crisis by agreeing to modest international safeguards designed to protect all humanity. Until it does, our nuclear commerce with them should grind to a halt.

□ 1300

Mr. BINGHAM. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. I thank the gentleman for yielding and congratulate him for reporting out this resolution and for his superb leadership in promoting nonproliferation of nuclear weapons.

Mr. Chairman, I rise in strong support of the resolution.

Two years ago I led the fight in the House to deny nuclear shipments to India, and the gentleman from New York at that time, and the committee, felt we ought to give more time to negotiate with the Indians to try to persuade the Indians to adopt nuclear safeguards.

That effort has met with no success. Indeed, India has continued to refuse to subject its nuclear facilities to international safeguards or to sign the Nuclear Nonproliferation Treaty, or even to forswear use of these nuclear materials for further weapons explosions; Prime Minister Ghandi has said it will explode nuclear devices whenever it wishes.

It seems clear at this juncture if our nonproliferation efforts are to have any meaning whatsoever, if the credibility of the United States in a major foreign policy endeavor, perhaps the most important, the survival of the world, is to have any credibility, we simply must deny these shipments.

I think that is the real question, the credibility of our nonproliferation policies, and there is no question of

credibility, as the opponents to this resolution assert, with respects to the United States being a reliable supplier of nuclear materials.

We have no obligation to be a reliable supplier to a nation that violated its agreements with the United States when it diverted heavy water to the making of a nuclear device.

We have no obligation to honor any agreement to supply nuclear fuel to a country that flouts international laws and refuses to subject itself to internationally agreed upon safeguards.

It is India that violated her agreements with us, not we who are violating any agreement by refusing to make these shipments.

Two years ago, when we considered this, the Nuclear Regulatory Commission was divided on this question. I believe only two members of the Nuclear Regulatory Commission had voted against the sale. This time we have a unanimous vote by the Nuclear Regulatory Commission that this sale ought not to proceed. At this time also we have a vote by both the House and the Senate committees that this sale should not proceed.

If our nonproliferation efforts are to mean anything, we simply have to deny this sale.

The arguments that are made on the other side by the administration are that we have to maintain our good relationship with India, but there is no indication whatsoever that India has been responsive to U.S. efforts to cooperate either in this field or any other.

India would not help us when the Russians invaded Afghanistan. They would not help us with the Iranian hostages. And India has shown no interest in negotiating with respect to nonproliferation of weapons. I think the administration's arguments about persuading India are just plain spurious. It is time that in our international negotiations that the United States showed a little guts and gumption and stood behind the principles we feel important. Otherwise we will never be believed.

I urge adoption of the resolution.

Mr. BROOMFIELD. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New York (Mr. GILMAN).

Mr. GILMAN. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support for House Concurrent Resolutions 367 and 368, disapproving the administration's proposed shipment of 38 tons of nuclear fuel to India and commend the gentleman from New York (Mr. BINGHAM) for bringing this issue to the floor of the House.

India exploded a nuclear device in 1974, reportedly from nuclear material supplied by the United States in a research reactor supplied by Canada, in violation of our agreement governing peaceful uses of transfers of heavy water nuclear material. Thereafter, Canada promptly terminated its nuclear cooperation with India. The United States sought to maintain its relationship in order to influence Indian adoption of a nuclear policy disavowing use of nuclear explosives.

When we adopted the Nuclear Nonproliferation Act of 1978 to control the spread of nuclear weapons, the Congress called for comprehensive international safeguards to regulate the use of nuclear fuel for energy production and research purposes. That act provided a 2-year grace period for nuclear supply agreements as a conciliatory step to encourage other nations, principally India, to adopt such safeguards. During that 2-year period, despite our patient diplomacy and congressional restraint, India failed to extend international safeguards to all its facilities and went so far as to renounce a pledge by former Prime Minister Desai not to conduct further nuclear explosive tests.

The issue before us is not the reliability of the United States, but India's willingness to rely upon and to abide by our Nuclear Nonproliferation Act of 1978.

Without assurances from India that it will renounce nuclear explosive testing in the future or submit all of its nuclear facilities to international safeguards, it is not proper, in my view, to approve any further shipments of low-enriched uranium for India's Tarapur Atomic Power Station and the export of replacement parts for this station.

If our commitment to curbing the spread of nuclear weapons is to have any credence in other nations of the world, we must not yield to the administration's pressure to make an exception for India. If such an exception were granted, it would certainly encourage other nations to seek special treatment, thereby further weakening the Nonproliferation Act.

As a member of the Committee on Foreign Affairs and a cosponsor of the resolutions of disapproval now before the House, I urge my colleagues to vote in favor of House Concurrent Resolutions 367 and 368 and, by so doing, to reaffirm America's commitment to prevent the proliferation of nuclear weapons.

Mr. BROOMFIELD. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. MCCLOSKEY).

Mr. MCCLOSKEY. Mr. Chairman, I have listened to the debates. I have examined this issue over the past several weeks, as it has been pending, and I am impressed that this is an extremely close question. We have had distinguished Members on both sides speak for and against this resolution.

I would like to offer one addition to the debate. In close questions of foreign policy, it seems to me that the House should look to the basic constitutional principle that we have charged the President of the United States with conducting foreign policy, that foreign policy is not a matter which is susceptible to day-to-day congressional participation in changes in foreign policy because we may be concerned with the direction that that policy is taking.

Now it is, of course, true that in 1964 when we abandoned to the President the constitutional power of this body to declare war when we passed the Gulf of Tonkin resolution, that a President of the United States may have abused his trust in conducting a war which was not constitutionally declared, and we may have abdicated our own responsibility in continuing to fund that war through the successive appropriations bills that came before us.

But it seems to me that because of the Vietnam war under Lyndon Johnson and Richard Nixon, Watergate, and the demonstrated weaknesses of this past administration, that sometimes Congress has become too quick to enter into the conduct of foreign affairs. That is what makes this close question susceptible to examination. If it is a close question, and if we have a division in this body between respected, serious and experienced Members, should not this be a case where we leave the conduct of foreign affairs to the President and change that conduct in the election when we elect the President to conduct foreign policy as only he can conduct it from day to day.

Now, the closeness of the question, in my judgment, comes down to the arguments we have heard from previous Members as to whether the issue should be the reliability of the United States or whether some other principle is paramount.

I would not speak on this issue except that in February of this year I was privileged to go with five other Members to India and to Pakistan. This was the delegation headed by the gentleman from Wisconsin (Mr. OBEY). It included the gentleman from Texas (Mr. HIGHTOWER), the gentleman from New York (Mr. MCHUGH), the gentleman from Washington (Mr. PRITCHARD), and the gentleman from Maine (Mr. EMERY).

We visited both Pakistan and India, if the Members will recall, in the wake of a U.S. mission sent by our administration, the Under Secretary of State Warren Christopher and Mr. Brzezinski, where Mr. Brzezinski went to the Khyber Pass and pointed a rifle in the direction of Pakistan and announced we were offering $400 million in military assistance to Pakistan. It is no wonder that may have caused some concern in India. India has fought three wars with the Pakistanis in the last 30 years, and they have fought one war with the Chinese. I am not so sure we should want to punish India for trying to develop weapons to use against the Pakistanis when, if the Members will recall, the Pakistanis are also attempting to develop atomic weapons and will not give assurances adequate to us that they are not developing atomic weapons.

When we visited Pakistan, for example, in February, after the Afghanistan invasion, we found that the 17 divisions in the Pakistan Army were lined up in the following order of battle: 16 of them were facing the Indians, and 1 was facing their long border with the Soviets.

□ 1310

We became, I think, unanimously convinced in that congressional delegation that any military assistance to Pakistan

would not necessarily be used against the Soviets or in assistance to the Afghan rebels, but would be used against India, where that lingering, festering sore still remains of that northern province of India, which is Islamic and which probably would like to go with Pakistan and which the Pakistanis would like to acquire and which, of course, is the potential source of a fourth war between the Indians and the Pakistanis.

Under those circumstances, it is not unreasonable for India to wish to have the kind of weaponry that can deter a Pakistani invasion, nor is it unreasonable, situated as they are between China and Pakistan, for the Indians to negotiate and deal with the Soviets in the acquisition of weapons.

The concept that somehow we should punish India under these circumstances seems to be somewhat of an extension of the concept that we in the United States are still the most powerful nation in the world and that we have the right to impose our rules, even though adopted only recently, on countries with whom we entered into contracts 17 years ago.

It seems to me that this borders on arrogance on the part of the United States. If we cannot effectively stop the flow of materials into India anyway; if the Indians are going to get these materials elsewhere and deal with others, then this arrogance may not be worthy of what we do here today.

I would suggest a vote against the resolution.

The CHAIRMAN pro tempore (Mr. FISHER). The time of the gentleman from California (Mr. MCCLOSKEY) has expired.

Mr. MCCORMACK. Mr. Chairman, I yield 2 additional minutes to the gentleman from California.

Mr. MCCLOSKEY. Mr. Chairman, I yield to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, I think the point that the gentleman is raising about the normal deference of this body to the President to conduct the ordinary international affairs of the country is probably correct policy; but as we know, in 1978, we passed the Nuclear Nonproliferation Act to specifically do away with the problem that we had been confronted with over the years—that the United States had used the sale of nuclear materials, nuclear expertise, as a carrot to other countries to advance short-term diplomatic bilateral relations with other countries; so we were trying to substitute an overall international policy that would not be able to be gutted by short-term political objectives.

Mr. MCCLOSKEY. If the gentleman will let me reclaim my time, and then I will yield back, I quite agree with the validity of that position; but I only point out this, that when we entered into a contract in 1963 for a 30-year supply of materials and then 15 years later we pass a new law in the Congress and we give a grace period to a nation which exceeds us in population, may exceed us, certainly exceeds us in importance on the Asian continent with whom we are dealing, and then we say to that country, "We give you 2 years. Either you abide by our new law or we refute the contract we entered into with you 14 years ago today," it seems to me that that is a little arrogant. I understand the gentleman's position and the policy behind the 1978 act.

Mr. MARKEY. Mr. Chairman, will the gentleman yield further?

Mr. MCCLOSKEY. I would be glad to yield to the gentleman from Massachusetts.

Mr. MARKEY. What we did at the time we passed the Nuclear Nonproliferation Act was to establish a 2-year grace period that would give the State Department a period to enact agreements with countries such as India, so that they would be able to make it through the transition period.

At the time that the original contract was signed it was also stated that India would be subject to all applicable American law.

I think it is reasonable to assume that they could have anticipated that further sanctions would be placed upon these transactions in the future by the American Government. We did so; and in 1978 we gave the State Department a 2-year period to go through a transition period. The Indians have refused full scope safeguards, have refused to sign the Nuclear Nonproliferation Treaty and have specifically reserved the right to continue to experiment with the explosion of nuclear bombs.

The CHAIRMAN pro tempore. The time of the gentleman from California has again expired.

Mr. MCCORMACK. Mr. Chairman, I yield 1 additional minute to the gentleman from California (Mr. MCCLOSKEY), if the gentleman will share it with me.

Mr. MCCLOSKEY. Yes. The gentleman from Massachusetts has made his point. It is precisely what the gentleman has stated.

The point that I challenge is whether or not a country like the United States should impose on a country like India the 2-year extension. That is the delicate, close question here. Should we give them perhaps 4 years under the current circumstances, rather than take this kind of action because they have not acted witin 2 years?

Now let me yield to the gentleman from Washington.

Mr. MCCORMACK. I appreciate the gentleman's remarks. They are certainly quite wise.

I think the point we must understand is that we do have an existing treaty with the Indians. For us to point a gun at their heads and say, "Comply with our wishes or else, but now we will be nice to you, and give you 2 years to comply with our blackmail. To say to a sovereign nation, "We hereby demand that you yield to our wishes," is what the resolution is trying to do.

I appriciate the gentleman's point of view.

Mr. MCCLOSKEY. If I may just add a single point, that India's lack of cooperation with us mav be very much be due to the very administration we criticize here today, that Carter's zig-zagging policy of going over to Pakistan and threatening the Indians with aid to Pakistan could very well be the primary cause for India's recalcitrance.

Mr. BINGHAM. Mr. Chairman, I yield such time as he may require to the distinguished chairman of the Committee on Foreign Affairs, the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of House Concurrent Resolutions 367 and 368. My decision in supporting this resolution is primarily based on India's past record.

In 1974, India misused U.S. materials and a Canadian research reactor in order to build and explode a nuclear device. Never before had a nuclear cooperating partner of this country defied its contractual pledge to use U.S. nuclear material solely for peaceful purposes.

The ramifications of that event were widespread. It shattered the prospect for greater regional tranquility. It stimulated a destabilizing nuclear arms race on the subcontinent. And it profoundly marred a nearly 20-year history of faithful, and up to that point nearly unquestioning, U.S. nuclear assistance. In short, U.S. supply to India was as "reliable" as any supply could possibly be until India herself, by exploding a nuclear device, called into question the fundamental premises upon which that supply had always been believed to be based

Rather than immediately curtailing nuclear cooperation in response to this unprecedented event, the United States sought to continue supply in order to further a dialog aimed specifically at gaining India's acceptance for comprehensive safeguards. This effort, though worthy in concept, proved unproductive in practice, despite the unstinting, dedicated, and imaginative efforts of the Carter administration and of those officials charged with the implementation of the U.S. nonproliferation policy.

Now, Mr. Chairman, some have suggested that the effort to disapprove Indian nuclear fuel shipments is based on a misguided and inherently inflexible approach to nonproliferation. This is just not the case. Throughout the course of its dealings on the Indian issue and on a broad variety of other proliferation matters, the Congress and the Committee on Foreign Affairs have exhibited patience and flexibility.

For example, we have permitted important retransfers of U.S. nuclear material to go forward in the hope of building better cooperation among supplier and recipient states. We have lifted nuclear fuel ceilings to enable countries to plan their uranium needs with greater confidence. We have allowed EURATOM an extension of time in order to renegotiate its agreement with the United States without undue pressure.

□ 1320

Finally we fought hard to win approval for the earlier contested Indian export as a demonstration of good faith.

There comes a point, however, at which further accommodation is perceived as a sign of weakness rather than strength; when the requirements of security and principle outdistance those of reliable supply; and when painful action must be taken, not out of spite—we are not punishing India; I believe India punished itself—but we must take this action to avert larger and more dangerous consequences on down the road. It is a necessary issue that we must meet head-on. We are at such a point today.

The plain and simple facts of the matter are these: If the Congress, which has been in the forefront of the proliferation effort, were to give way to India others would question when, if ever, we are prepared to draw the line. If India, the only country ever to misuse U.S. nuclear material, were to go completely unchallenged, other countries would conclude that the international cost of proliferating was not merely low but virtually nonexistent. If other important countries see that the United States will not enforce its comprehensive safeguards law in the case of India, they may wonder why they should not seek a similar form of special treatment for themselves. If other supplier states see we are unprepared to put security and safeguards ahead of supply in our dealings with India, they may ask why the United States expects them to do just that very thing in their dealings with countries with whom we are concerned.

This, then, is why the signal we send today is of such importance. I personally think we are helping the administration in this effort because the administration can point out to India that under our system there is the executive branch and the legislative branch, and the legislative branch is firm in this decision and that India should therefore recognize that there is a limit to our patience and flexibility.

Mr. Chairman, speaking for myself, at least, I would have preferred to see the Congress and the executive branch reach agreement on a compromise that would have upheld the safeguard principles while allowing both branches to speak as one on this sensitive issue. A compromise indeed was proposed by the gentleman from Wisconsin to the executive branch. But for a variety of reasons, and particularly because of the complexity of the issues, this did not prove possible.

In saying this I do not fault the administration, whose task in this matter is, indeed, a most thankless and difficult one, and least of all do I fault the President, whose commitment to nonproliferation set an example for all of us to follow.

Lacking a compromise, therefore, at this point I submit we have no alternative but to disapprove the sale of nuclear fuels and, therefore. I urge an aye vote on the pending resolution.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I am happy to yield to the gentleman from New York.

Mr. OTTINGER. I thank the gentleman for yielding and would like to congratulate him for an excellent statement.

I just recalled that there was a very parallel situation about 2 or 3 years ago in which we had a contract with India for then the supply of Rhesus monkeys for our research. There was a clause in that contract that said if we used these monkeys for development of weaponry that the contract would be canceled. The Indians discovered that, in fact, we were using some of these monkeys for weaponry development and they immediately cut off our supply of monkeys.

So I would like to suggest that the monkey is on the other back at this point and they can hardly complain in a much more important situation if we take parallel steps in this case.

Mr. ZABLOCKI. I thank the gentleman for his observation. It may be a similar situation as far as keeping a contract with a supplier, but I would not compare the example of the monkeys to the more far reaching question of protecting the security of U.S. nuclear exports.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I am glad to yield to the gentleman from New York.

Mr. WOLFF. I thank the gentleman for yielding. I am somewhat disturbed that this whole debate is taking the turn of coming down upon India per se. I do not think that we should be doing that. This is not directed at India, as I indicated in my earlier remarks. This is directed at the question of whether or not we have an overall nuclear nonproliferation policy.

I think it is unfortunate that criticism has been leveled specifically at India because there are many other countries that we are concerned about today and concerned with their policies for the future.

This is to insure that this policy of nuclear nonproliferation continues. I think that we as Members of this body are responsible enough to make that assertion and to see to it that it is not misunderstood in India. We have just concluded agreement and several other agreements are in the negotiating process with India to keep our relationships on a high plain, as I think they should be.

Mr. ZABLOCKI. I agree with the gentleman, that this action is aimed at any country that would choose not to comply with the safeguards requirement of U.S. law and, therefore, could not expect continuation of a supply of nuclear fuel from the United States.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I am glad to yield to the gentleman.

Mr. MARKEY. I think it is important to keep in mind that we are trying to keep, in fact, an overall, comprehensive nonproliferation policy. But I think at the same time it is also important to realize why we are here.

The reason for the talks upon which the Nonproliferation Act of 1978 were based were generated from the explosion of the Indian device in 1974. It was because they, the only country to date that has diverted nuclear materials for civilian purposes into military nuclear purposes that we had to pass this act and gave us the reason for doing it.

It is interesting to note although our relationships with Pakistan are strained again because of their efforts to gain a nuclear capacity, it is interesting to note in the immediate aftermath of that May 18, 1974, explosion in India that Prime Minister Bhutto of Pakistan announced that if India was going to build a nuclear arsenal then "We will eat leaves and grass, even go hungry, but we will get one of our own."

Their quest for nuclear weapons began in the immediate aftermath with the attempt of the purchase of reprocessing capacity from France, even though Pakistan had no use for that particular facility. I think it is important for us to understand that India is setting the example for the rest of the world, that not just Pakistan but all other countries seeking to gain the same kind of nuclear capacity are going to be pointing out if we make the exception in this case. I thank the gentleman for yielding.

Mr. ZABLOCKI. I thank the gentleman for his observation. He has identified a specific development which I referred to generally when speaking of the ramifications of the Indian explosion—ramifications that, indeed, contributed to the destabilization of the region. Immediately after the Indian explosion, Pakistan announced it would attempt to develop a nuclear bomb.

Mr. MCCORMACK. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I am delighted to yield to the gentleman from Washington (Mr. MCCORMACK) with whom I rarely disagree, but on this issue we have a difference of opinion.

Mr. MCCORMACK. I thank the chairman for yielding. I want to express my great respect for him and his position.

However, there are a couple of points that I should like to discuss briefly with him. The gentleman has said never before has a nation violated an agreement with the United States regarding the use of nuclear materials. In view of the fact that France is not a signer of the Nuclear Nonproliferation Treaty and is making nuclear weapons and carrying out a vast panoply of secret nuclear research and that there is every likelihood that Israel, in its secret research facilities, nuclear facilities where they do not allow IEA inspection, and they are not being signatories to the nonproliferation treaty; and in South Africa where there is great suspicion they have already detonated a nuclear weapon, along with Pakistan's project now to build a reprocessing plant, along with Brazil and Argentina's plans to build reprocessing plants, would the gentleman say it is true India is the only nation that has violated this relationship?

□ 1330

Mr. ZABLOCKI. I still stand by my statement. India is the only case where we have firm evidence that U.S. material was used to make a nuclear explosive. In other cases, like South Africa, we are not now supplying nuclear fuel.

Mr. MCCORMACK. I beg the gentleman's pardon?

Mr. ZABLOCKI. We are not now supplying the nuclear fuel.

Mr. McCORMACK. All right, we have supplied a vast array of nuclear materials to every one of these nations.

Mr. ZABLOCKI. But France, for example, is recognized as a weapons state by other signatories to the treaty. In other cases, we insist on an agreement that nuclear supplies be used for peaceful purposes.

Mr. McCORMACK. Precisely.

Mr. ZABLOCKI. We have no confirmed evidence, that in the countries the gentleman has enumerated, that U.S. nuclear equipment or materials were used for military purposes.

Mr. BINGHAM. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from New York.

Mr. BINGHAM. I thank the gentleman for yielding. Just to add to what the chairman has said, of course, at the present time we have no nuclear cooperative relationship with Israel or South Africa. We do not supply them with any nuclear materials. With regard to France, France has always been in a special category because France was a nuclear power from the beginning. At the time the Nuclear Nonproliferation Treaty was passed, France was a nuclear power, and there was no question of proliferation as far as France was concerned. Each country is in a different category, but the chairman's statement still stands that this is the only case of a major violation of an agreement with the United States.

Mr. McCORMACK. Will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from Washington.

Mr. McCORMACK. I thank the gentleman for yielding. I would like to point out to the chairman that in the 1960's the United States advocated the peaceful use of nuclear explosives. It is written up in the international nonproliferation treaty that any nation may proceed with peaceful atomic explosives, and the United States itself detonated publicly nuclear explosives in Nevada and invited the whole world to come and witness this public demonstration of the peaceful use of a nuclear explosive. A short time later India did the same thing. India claimed exactly as the United States claimed that this was for peaceful purposes, and everyone knows that the explosive they used could not be used as a weapon. It was a complicated explosive. It was not weapons deliverable.

Mr. ZABLOCKI. Does the gentleman from Washington (Mr. McCORMACK) really believe that India exploded a peaceful bomb?

Mr. McCORMACK. It was exactly the same.

Mr. ZABLOCKI. The gentleman is an expert in this field. I defer to his judgment. But I do not think it is accurate to say that the bomb exploded in India was for peaceful purposes.

Mr. McCORMACK. I could not see inside the minds of the people of the Government of India at that time any more than the gentleman in the well. Maybe he can see better than I. But I was greatly disturbed when this explosion was made.

Mr. ZABLOCKI. What has changed the gentleman's concern?

Mr. McCORMACK. I am still concerned that anybody is detonating nuclear explosives anywhere in the world. But I want to point out to the gentleman that the actions by the Indians were totally in accordance with the Nuclear Nonproliferation Treaty which allowed the peaceful use of nuclear explosives, and that we had advocated this. We may not like the fact that India did it because we thought this was disturbing on an international level, but it seems strange to me that we come here now all these years later and say to India that we are going to cut off your nuclear energy program because you are imitating us.

Mr. ZABLOCKI. The U.S. explosion to which the gentleman refers was announced in advance, and was observed by other nations. The Indian explosion was done secretly. They invited nobody. They did not announce that they planned any kind of an explosion let alone "a peaceful explosion." So one does not have to understand what was in their mind; our concern is with the consequences of their action.

Mr. BINGHAM. Will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from New York.

Mr. BINGHAM. I thank the gentleman for yielding. There was also the fact that before the explosion we had a suspicion of what was going on. We warned the Indians that we did not share their interpretation that this would be a peaceful nuclear explosion.

Mr. ZABLOCKI. And India did not invite any other nation to observe the explosion.

Mr. BINGHAM. That is right.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from New York.

Mr. WOLFF. I thank the gentleman for yielding. This discussion reminds me of past arguments—that we have to destroy a town to save it. We come back to the question, what is a peaceful nuclear explosion? I would like to take this time to ask the gentleman whether or not he believes we should repeal the Glenn amendment and the Symington amendment at this point.

Mr. ZABLOCKI. I yield to the gentleman from Washington (Mr. McCORMACK) to respond to the gentleman from New York.

Mr. McCORMACK. I am not quite up to speed on terminology. Would the gentleman be more specific?

Mr. WOLFF. The Glenn/Symington amendment to the Foreign Assistance Act prohibits providing economic or military assistance, military training or credits to countries which do not comply with the Nonproliferation Treaty's requirements: Specifically that nuclear materials, equipment, et cetera be under international auspices; and the safeguard system of the International Atomic Energy Agency (IAEA) be utilized.

Rather we are calling a halt to continued resupply to the Government of India as a result of nonconformance. The fact is that we are not in any manner, shape, or form cutting off India's ability to produce nuclear energy in any way at all. We are not. They have many more plants in addition to Tarapur. They are getting supplies from the Soviet Union and other places. We are not the sole supplier to the Indian Government today. What we are saying is that we do not want to continue to exacerbate a situation which is against our policy of nonproliferation.

Mr. McCORMACK. If the gentleman will yield, I will answer the question the gentleman asked me.

Mr. BINGHAM. I must reclaim my time because my time has just about expired, and I wish to explain the procedure that will follow the vote.

Mr. ZABLOCKI. If I could just take 30 seconds to conclude, I think we have but one decision here, as I said before. We have no other alternative. Either we should repeal the Nuclear Nonproliferation Act or show that we mean it and deny the sale of nuclear fuel to India at this time.

Mr. BINGHAM. I thank the Chairman for his comments.

The CHAIRMAN. The time of the gentleman has expired.

The Chair announces that the gentleman from New York (Mr. BINGHAM) has 30 seconds remaining; the gentleman from Michigan (Mr. BROOMFIELD) has 29 minutes; the gentleman from Washington (Mr. McCORMACK) has 5 minutes.

Does the gentleman from New York desire recognition?

Mr. BINGHAM. May I reserve my seconds until later?

The CHAIRMAN. The Chair recognizes the gentleman from Michigan (Mr. BROOMFIELD).

Mr. BROOMFIELD. Mr. Chairman, I yield 4 minutes to the gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. I thank my colleague for yielding. We have heard a great deal of most interesting and informative and serious and responsible talk, but I think somehow we seem to be missing something much more serious. India is a great and sovereign nation, and nobody pretends that what we do today is in the spirit of punishing such a nation, the greatest democracy in the world. That is not the point at all. It is fortunate that we are involved here with such a great and powerful nation, so that there is no mistake about what we are doing. We are not picking on some small country that has little standing in the family of nations. We are trying to cling to a principle which should fall, like mercy, on the just and unjust alike, on the large and the small, the powerful and the not so powerful. The principle is that this world, this planet, cannot afford the proliferation of nuclear explosions. That is what we are trying to say. We are trying to say that when we passed a law in this country against it that we meant it, that we were not playing games, that we were not going to bow every time we became involved with a great and powerful nation, but that we were going to apply it wherever it fell.

□ 1340

That, it seems to me, is the crux of what we are doing. We are trying to say, "Yes, we really mean it; yes, we think nuclear explosions and nuclear war are a danger to us all and we are going to try to spare the world from the effect of these things." That is what we are trying to say and it is fortunate we are involved, as I say, with such a country as India.

What are the other less large and less powerful nations going to think? That we have bowed because we think that India is too big to apply principles to? Justice has to be done. Nations have to stick to what they consider to be their duty and responsibility to the world.

Mr. MARKEY. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman.

Mr. MARKEY. Mr. Chairman, I wish to compliment the gentlewoman on her statement. I think the gentlewoman has hit the main issue here. I think it is unfortunate the track some of this debate has taken. It would appear to be punishment of India. That is certainly not the intent. I am sure I speak for many of the sponsors of this resolution. The basic thing is the principle involved and how that is going to be perceived by other nations throughout the world. That is what we are talking about today. It is the question of whether we are going to stand for principle as far as the Nuclear Nonproliferation Act is concerned. I thank the gentlewoman for a fine statement.

Mrs. FENWICK. Mr. Chairman, I would like to add one last word. I think the people of th's country are tired of games, of people making great high blown promises and statements that they never intend to live up to. I think the people of the world are tired of that, also.

Mr. MARKEY. If the gentlewoman will yield for one brief moment, I believe the gentlewoman has really made the critical point which brings us back to what we are talking about and that is the limitation on this threat of nuclear armaments around the world.

As we sit here and debate the question, I think we really see the lunacy which underlines our debate here. We debate whether bombs are peaceful or military as they are exploding around the world. George Orwell somewhere is smiling as he listens to this debate as to whether we should allow countries to have peaceful bombs or not. We saw the effect it had on Pakistan. If we blow another hole into the act in addition to other exceptions to rules that are established, then I think we will relinquish forever our ability to really control the spread of nuclear weapons.

In the early 1970's, we passed the War Powers Act to limit the President's ability to commit us to war. In 1978, we passed the Nuclear Nonproliferation Act, because we understood the long-term consequences that the spread of nuclear bombs had on world security.

Mr. Chairman, I compliment the gentlewoman upon her statement. I think it is the most eloquent one made today.

Mrs. FENWICK. Mr. Chairman, I thank my colleague.

Mr. BROOMFIELD. Mr. Chairman, I yield 1 minute to the gentleman from Indiana (Mr. QUAYLE).

Mr. QUAYLE. Mr. Chairman, I rise in support of the resolutions of disapproval against the shipment of uranium fuel to India. If the United States went ahead with the shipment it would be violating the spirit, if not the law, of the Nonproliferation Treaty which we signed in 1968 and the Nonproliferation Act which this Congress passed 10 years later.

Shipment of the fuel would indicate that the United States chooses to undermine its own announced policy of defusing nuclear proliferation—to subordinate a long-term goal for temporary diplomatic and geopolitical concerns. India still refuses to sign the Nonproliferation Treaty which the United States holds as the base for its own nonproliferation policy.

Furthermore, if India is exempted and receives this American shipment of uranium fuel, then other nations—nations that are on the brink of developing weapons-grade capabilities like Argentina, Brazil, and South Korea—are bound to ask justifiably for equal treatment under U.S. nuclear exporting policies.

Thus, I urge my colleagues to support the overwhelming decision made by the Foreign Affairs Committee to disapprove the administration's decision to proceed with the shipment of 38 tons of nuclear fuel to India.

Mr. BROOMFIELD. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. GOLDWATER).

Mr. McCORMACK. Mr. Chairman, I also will yield to the gentleman from California 1 minute.

The CHAIRMAN. The gentleman from California is recognized for a total of 3 minutes.

Mr. GOLDWATER. Mr. Chairman, I rise and urge a no vote on this resolution. I think the question here is one of credibility, credibility of the United States, credibility on whether we are going to honor contracts we made with nations around the world. That is the question here.

The other question of credibility is one dealing strictly with nuclear energy, and I would suggest to you that with the bringing on of the Nuclear Nonproliferation Act and this current administration, that we no longer have any credibility in the area of nuclear energy or nuclear power or nuclear technology.

Back in the fifties under the atoms for peace program, we promoted and exported our technology and we gave the world assurance that we would be a supplier, that we would be a partner in the development of nuclear energy.

Along comes the current administration and we do a 180 degree turn and, as a result, assurance and dependability is replaced with uncertainty and lack of confidence. In our efforts to curb nuclear power and the nuclear bomb, we, in essence, have driven other nations to develop their own nuclear technology and that is precisely what India is trying to do.

We will further drive India and other nations along if we do not abide by and live up to the contract that was signed and negotiated in 1963.

In my opinion, India has not violated the agreements of 1963, but I concede it is questionable. Lawyers and diplomats will debate whether, in fact, they violated the intent or the purpose of their agreements with the United States. The point that has to be made here is that the credibility of the United States is on the line. The United States has interests in contracts of all types. If it is going to live up to its contracts, it should not change its point of view, terms or conditions in the middle of the stream.

A breach of contract, in my opinion, will further erode our reputation as a great nation and, our clout and ability to influence the proliferation of nuclear energy or nuclear weapons. If we eject ourselves from the system by denying and cancelling contracts, we are saying to the rest of the world, "Go on your own, develop your own technology, we will no longer give you any kind of assistance." In essence, what we are saying to the rest of the world is that we will no longer have any control or any influence by cancelling this particular contract. In my opinion, failure will certainly undermine the Nonproliferation Treaty.

Mr. McCORMACK. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, as I said in my first sentence when we started this debate, this is a subject on which there is a colossal amount of confusion, overlaid with all too much emotionalism. The arguments we have heard here today confirm this assessment. A prime example of this is the statement in justification of the resolution of disapproval, that we should cut off India's energy program in 1980 because India demonstrated a nuclear explosive in 1974, notwithstanding that India was imitating the U.S. peaceful nuclear explosion, the Sedan program of July 6, 1962, and that India was in full compliance with international law.

Now, I think it is important for us to remember exactly what the issue is before us. The issue is whether the United States should unilaterally and arrogantly break its contract with India, by overruling the President's decision to ship low enriched uranium for India's Tarapur nuclear powerplants.

The reasons why we should or should not break the contract should logically be based upon our decision as to whether it will further our nonproliferation goals, or whether it will endanger them. The President and the State Department believe that breaching our contract will do great harm to our nonproliferation goals and have, therefore, decided to approve the shipment. If one examines the issue without emotionalism, I firmly believe that one can reach no other decision but to agree with the President.

The Tarapur reactor and the nuclear fuel that we send to India will be under International Atomic Energy Agency

safeguards control. The Indians cannot do anything with the spent fuel without our permission, unless we now breach the agreement. If we decide to do so, then India may remove international safeguards control and may utilize the 200 tons of spent fuel that they have accumulated for any purpose that they desire. Additionally, it must be remembered that any decision not to live up to our contract and not send the uranium to India will not mean that India will do without. It simply means that India will turn to a number of other possible suppliers who have fewer strings associated with their supply agreements, including the Soviet Union.

It has been said that the resolution of disapproval is not directed at India, per se, but is consistent with our foreign policy approach. This is nonsense. If consistency is our rationale, then we should also enact the same sort of restrictions against a half dozen or a dozen other countries in the world. This is directed at India, partially because India is politically associated with the U.S.S.R., partially because it is good propaganda here in the United States. However, it should be remembered that we are not going to harm India if we pass this resolution. As the gentleman from New York (Mr. WOLFF) said, they will get their fuel. Except for Tarapur, their nuclear powerplants utilize natural uranium for fuel, and that is being provided from indigenous resources. However, they will have to rely on enriched fuel sources for Tarapur.

□ 1350

They will get their fuel for the Tarapur plants, and they will draw closer to the Russians, because it is almost certain that they will get it from the Russians. We will be critically damaging ourselves and our reputation by these circumstances.

I was particularly distressed over the Indian explosion of 1974 and I would like to prevent any further explosions. That is why we must not cut our agreement with India on the basis of an unclear legal position with respect to the Nonproliferation Act.

If the United States wishes to retain its leadership in preventing the further spread of nuclear weapons during the 1980's and beyond, it will have to do so largely by influence and not by unilateral dictate. The era is gone, if indeed it ever was, when the United States could tell other countries what they could and could not do with nuclear energy, what fuels they might or might not use, and what facilities they were permitted by Washington to build. What Congress does about the pending exports to India can greatly affect that influence, by showing whether the United States will be seen as reasonable and patient in its determined pursuit of its nonproliferation goals, or whether it will be seen as petty and legalistic in its decisions, preoccupied more with the procedures rather than the substance of its policies.

The pending exports mark the first test of U.S. nonproliferation policy since the conclusion of the U.S.-inspired international nuclear fuel cycle evaluation last February. In responding to that test, I propose that Congress turn this case to the advantage of U.S. nonproliferation goals by permitting the shipments to go to India coupled with a clear understanding with the administration that during the interim, until India's next fuel exports come before the NRC, it will try some new, positive approaches to get India to move closer toward the goal of full-scope safeguards, which is the element of U.S. policy that has brought these exports before Congress, and to prepare for orderly termination of our cooperation if that becomes necessary.

As I said before, all of our friends across the world are cringing in apprehension that we will take this foolish step, and all of our adversaries are anxiously hoping that we will. Only the United States will lose. It is the silliest thing in the world to pretend that we are punishing India. It is like sticking our hand into a meat grinder and saying, "See?" That is just exactly what it amounts to.

If we continue to isolate ourselves, make ourselves look foolish, make ourselves look untrustworthy, if we want to do that, just go ahead and vote for this resolution.

I have been asked, would I repeal the Glenn amendment and the Symington amendment? I did not get a chance to answer that before, but my answer would have been that I would not repeal them. We are living in a totally different world now from when the United States was advocating the peaceful use of nuclear explosives. We have changed our position on this, and so has the rest of the world.

Now, it is preposterous for us to go back into history and pretend that we can read the minds of the Government leaders of India several governments ago, and know exactly what they really did intend. What arrogance it is for us to pretend that we know what they were thinking so long ago, and then try to punish today's Government of India. What hypocrisy.

Now, it is important for us to remember that we are not talking about weapons proliferation here at all. This debate has absolutely nothing to do with weapons proliferation. There are three dozen nations in this world that can make nuclear weapons today, and the facilities required would be cheaper than building one single nuclear plant. It can be done in half the time and at 5 to 10 percent of the cost without any help from us, without any information from us, without any permission from us.

Mr. Chairman, I urge a "no" vote on these resolutions for the sake of the people of the United States.

Mr. BROOMFIELD. Mr. Chairman, I would yield 5 minutes to the gentleman from California (Mr. LAGOMARSINO).

Mr. LAGOMARSINO. Mr. Chairman, I rise in support of resolutions 367 and 368. The President's decision to go ahead with the sale of nuclear material to India in spite of the unanimous action of the NRC (Nuclear Regulatory Commission) contradicts his own earlier position against nuclear proliferation. It also is in sharp contrast to his criticism of the previous administration during the 1976 campaign.

In one speech he made in San Diego during that campaign, Carter described the Ford administration policy as simply a diplomatic tool for selling atomic fuels. He charged, "When we look for evidence of our purported policy of support for nonproliferation objectives, we find only the faint footprints of secret diplomacy and official acquiescence to the nuclear industry, we have failed miserably, and that before the Nonproliferation Act of 1978.

Now, this same individual, having been elected with supposed strongly nonproliferation credentials, is trying to fuel the fires of atomic explosions by a country that has refused to renounce development of nuclear explosives, and that after the 1978 act.

On two recent occasions, Prime Minister Indira Gandhi has reaffirmed her nation's commitment to developing atomic energy and that those developments do not preclude nuclear explosions which would be carried on in the national interest. Mrs. Gandhi at least is honest enough to say so.

Moreover, India threatens to remove existing safeguards from nuclear energy facilities if the United States fails to deliver the 38 tons of nuclear fuel it has ordered. If India is so ready to blackmail the United States into submission now, there is plenty of reason to believe that India would be just as willing to try to blackmail the United States in 1993, when the current nuclear fuel supply agreement ends. At that time, if India were to threaten to divert spent nuclear fuel to nuclear explosives, that nation would have a great deal more spent fuel to use to blackmail us with.

Some say we should not resort to foreign policy considerations in support of our efforts to block the sale. That might be OK, but it is a foreign policy issue and, also, the administration and State Department strongly uses foreign policy arguments in support of the sale.

I find unconvincing those arguments based on foreign policy objectives as reasons for going ahead with the sale. Not only has India completed a multibillion dollar arms sale with the Soviet Union, it also has reportedly reached agreement with Iran to circumvent our economic embargo on that country. It seems to me we have little influence left to lose with India, and, even more important, a great deal more to gain in the eyes of the other nations of the world regarding our commitment to nuclear nonproliferation.

Since India has shown little interest in adopting full-scope safeguards for all its nuclear facilities, it seems unlikely that by allowing the sale of this nuclear fuel to go forward there will be any advantage gained to get greater Indian cooperation for such safeguards. By blocking the sale, the United States may very well improve its positon in seeking adherence to full-scope safeguards by those nations who do not already apply them.

Blocking the sale would also serve to discourage other nations from seeking exceptions to our nuclear nonproliferation policy and should prevent complaints that the United States offers discriminatory treatment in favor of countries that have not ratified the Nuclear Nonproliferation Treaty.

The United States is engaged in a series of negotiations with some 20 countries on bilateral nuclear cooperation. If we are to have any success in promoting the objectives of nuclear nonproliferation, then we must present a consistent, coherent policy. Approving the sale of nuclear fuel to India makes no sense when you consider the importance of America's overall objective of preventing the development and spread of nuclear explosives.

I urge my colleagues to support these resolutions and provide a clear message of America's commitment to nuclear nonproliferation.

Mr. Chairman, I include at this point three editorials from the Los Angeles Times on this subject:

[From the Los Angeles Times, May 1980]

FOR CARTER, A NUCLEAR HEADACHE

The U.S. Nuclear Regulatory Commission, by voting unanimously against granting two licenses for export of nuclear fuel to India, has created a king-sized headache for President Carter—and an opportunity for Congress.

The Nuclear Nonproliferation Act of 1978 bars the shipment of nuclear materials to any country refusing to accept the application of international safeguards to prevent the covert development or manufacture of atomic weapons.

India consistently refuses to make such a commitment. Prime Minister Indira Gandhi also won't promise that her government will not set off more "peaceful" nuclear explosions—the term that was used to describe the 1974 test blast that is widely regarded as having been military in purpose.

The State Department nonetheless urged the commission to approve the nuclear-fuel shipments, and warned that the President would use his authority to override any contrary decision.

Since then, however, Edmund S. Muskie has taken over as secretary of state, and has decided to involve himself personally in the issue. It's conceivable, therefore, that the Administration will change its mind and accept the NRC decision. But, in the end, Carter, who has become persuaded that the United States cannot risk a serious quarrel with India in the wake of the Soviet drive into Afghanistan, probably will use his authority to go ahead with the transaction.

Under terms of the 1978 law, his decision in that event will be final unless Congress votes within 60 days to overturn it. Normally Congress would be disposed to accept the President's judgment in such a case. However, Senate Democratic leader Byrd has made it plain that the Indian transaction will receive unusually close scrutiny. Certainly it should.

The proposed sale to India is a perfect example of what the 1978 antiproliferation law was designed to prevent. If the United States chooses to look the other way in the case of India—which has already tested a nuclear device and refuses to accept international safeguards—how can it enforce the nonproliferation act against anybody else?

It's probably true that enforcing the law against India might have adverse effects on U.S.-Indian relations, and on the American position in South Asia. But the virtual destruction of the U.S. nonproliferation program should not be taken lightly, either.

As Commissioner Victor Gilinsky said in his written opinion, a decision to exempt India from the central provision of the Nuclear Nonproliferation Act should not be made "without a full understanding of the price we may be forced to pay."

That price could be a world in which every confrontation of regional powers carries the danger of nuclear catastrophe for everybody.

Congress owes it to the American people—and to future generations everywhere—to make sure that the dangers that would be posed by withholding the nuclear fuel from India are really greater than the dangers of neutering the nonproliferation act.

[From the Los Angeles Times, June 22, 1980]

A COLLAPSE OF NUCLEAR WILL

President Carter's decision to go ahead with a controversial sale of nuclear reactor fuel to India was a mistake. Congress should now rectify that mistake by voting to override the President.

The facts of the case are clear.

Under terms of the 1978 Nuclear Nonproliferation Act, which is intended to prevent the diversion of "peaceful" nuclear materials into the development or manufacture of atomic bombs, countries that refuse to accept international inspection of all their nuclear facilities are ineligible to buy reactor fuel from the United States.

India, although willing to allow international inspection of the Tarapur reactor that actually uses the U.S.-supplied fuel, has flatly refused to accept full safeguards. The New Delhi government, which exploded a nuclear device in 1974, will not even make a formal pledge not to conduct similar "experiments" in the future.

The U.S. Nuclear Regulatory Commission, in light of the record and the law, unanimously refused in May to approve export licenses for the proposed new shipment of 38 tons of reactor fuel for the Tarapur reactor.

The President, using his authority under the 1978 law, proposes to go ahead with the sale anyway. But that decision can be overturned by a simple majority vote of both houses within 60 days, and that vote would not be subject to presidential veto.

The Administration, in proposing to go through with the shipment, offered several reasons—none persuasive.

The first is a legalistic argument, already rejected by the nuclear commission, that the 1978 law does not cover the sale to India because the order was placed before expiration of a statutory grace period.

The Administration also is concerned that, if the shipment were blocked, India might carry out threats to go ahead with the reprocessing of spent reactor fuel already in its possession to separate up to 1,000 kilograms of plutonium.

Although the Indians don't say so, the plutonium could be used to make nuclear weapons.

The United States, as a self-respecting country, obviously should not submit to crude blackmail of that sort.

The White House worries that the Indians, if denied a resupply of American fuel for the Tarapur reactor, might turn to the Soviet Union.

As Prof. Henry Rowen of Stanford University testified last week, the U.S. government should not be intimidated by that prospect, either. The Russians, after all, have a very strong nonproliferation program of their own; they require, for example, the return of spent fuel from their customers.

The President's main rationale, however, is that, in view of the delicate situation in South Asia created by the Soviet invasion of Afghanistan, this is not the time to provoke trouble with India.

One answer is that past deliveries of nuclear fuel have not made India a very helpful partner—especially during times when India has been under the leadership of Prime Minister Indira Gandhi—and there is no reason to believe that a new shipment will have any more effect.

By approving the nuclear sale to India, in fact, Washington seems to be rewarding a government that has been very half-hearted in its criticism of the Soviet invasion of Afghanistan.

The most serious objection of all to Carter's decision, however, is the grave damage that it would do to the whole U.S. attempt to prevent or discourage the spread of nuclear weapons around the world.

If the United States cannot enforce the nonproliferation law against India—which is in flat, unambiguous violation—how can it credibly exert pressure on Pakistan or any other country not to go ahead with suspect nuclear programs of its own?

Carter, despite his claims to the contrary, is proposing to sacrifice the credibility of this country's whole antiproliferation program for the sake of dubious, relatively short-term political considerations.

That is a potentially tragic mistake. Granted, the antiproliferation program has suffered some setbacks, anyway. But the effective abandonment of efforts to restrain the spread of nuclear weapons poses a far greater danger to world peace than does Gandhi's hurt feelings.

[From the Los Angeles Times, Sept. 12, 1980]

REWARDING INDIA FOR NONCOOPERATION

The Carter Administration, stunned by House and Senate committee decisions to block a proposed sale of nuclear fuel to India, is lobbying vigorously to have the committee actions reversed on the floor of one house or the other. This is a fight that we hope the Administration loses.

The White House proposes to ship 38 tons of enriched uranium fuel to India for use in Tarapur atomic power station. The transaction was disapproved by the Nuclear Regulatory Commission for the very good reason that it would violate the clear intent of the Nuclear Nonproliferation Act of 1978.

That law prohibits the transfer of nuclear materials to nations that not do accept international inspection of all their atomic facilities to prevent a diversion into nuclear bomb-making.

India exploded a nuclear device in 1974, using American and Canadian materials in violation of supply agreements with both nations. To this day, the government of Indira Gandhi refuses either to accept international inspection or to promise that more nuclear devices won't be exploded. India is also among the holdouts that have never signed the multinational Nonproliferation Treaty of 1970, aimed at preventing the spread of nuclear weapons.

President Carter used the authority provided by the 1978 antiproliferation law to override the regulatory commission's finding. But his decision in turn can be overridden by a vote of both houses. The deadline for such a congressional veto is Sept. 27.

The State Department argues that, especially in the wake of the Soviet invasion of Afghanistan, the United States shouldn't be in the business of irritating India and possibly nudging that country into an even chummier relationship with the Soviet Union.

This is an appealing argument as far as it goes. But it overlooks the fact that rewarding India for its flat refusal to accept international safeguards could have even worse consequences.

Such action might, to begin with, virtually eliminate any prospect of dissuading Pakistan from pursuing its own nuclear bomb-making program. Even more important, it would deal a heavy blow to the credibility of the Administration's entire antiproliferation effort.

If the United States is prepared to overlook

India's calculated noncooperation with the nonproliferation effort, other countries are justified in assuming that they can get away with the same sort of behavior without suffering any serious consequences.

We urge the House and Senate to back their committees and pass resolutions disapproving of the nuclear fuel deliveries.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from Illinois.

Mr. PORTER. Mr. Chairman, the Nuclear Nonproliferation Act of 1977, adopted by the 95th Congress, established definitive guidelines regarding U.S. nuclear export policy. President Carter pushed this legislation and signed it into law and, in fact, had made nonproliferation a key issue in his 1976 election campaign.

Yet here we are, Mr. Chairman, with this same President intending to proceed with the sale of 38 tons of enriched uranium to India, despite a unanimous rejection of this transaction by the Nuclear Regulatory Commission on May 16, 1980.

President Carter has defended his position by declaring:

> These exports will help us maintain a dialogue with India in which we try to narrow our differences on these issues.

But this "buying time" argument holds little weight since Prime Minister Indira Gandhi has already declared her intention to pursue an independent nuclear policy. Moreover, other diplomatic avenues exist upon which the United States can seek to improve our relations. Nuclear fuel sales should not be one of these channels.

Another common argument, voiced by the State Department, is that the United States can no longer prevent other countries from acquiring nuclear capabilities. It is true that for 30 years the United States, without a clear export policy, distributed atomic materials worldwide. This is no reason we should continue this insane policy. Past blunders must be corrected. The gravity of the situation warrants a full-fledged effort to stop further nuclear proliferation. We in the Congress must force President Carter to take a tough stand, beginning with India. As the sixth nuclear power member, India is the only one of the six to have used plutonium from a civilian program. She clearly disregarded the Nuclear Nonproliferation Act in using U.S.-supplied heavy water to manufacture her first nuclear bomb. In essence, this proposed sale condones India's actions and makes a mockery of our nonproliferation policy.

We must not allow such a dangerous precedent to be set. Now is the time to draw the line, Mr. Chairman. Without that line, the arms race will only accelerate faster. Pakistan, Argentina, South Korea, Turkey, and Spain have all announced expanded civilian programs similar to India's. Should this sale to India go forward, can anyone doubt that these countries, too, will seek a waiver from the act's provisions? The sale of fuel to India now will render it difficult, if not impossible, to persuade other countries elsewhere in the world which have nuclear know-how not to proceed to develop their own weapons capability.

Mr. Chairman, we must realize the tension in the world caused by nuclear rivalry among the smaller nations as well as the larger ones. Even our allies cannot help but feel intimidated by the danger inherent in falling behind in the nuclear arms race. France's outrageous intent to supply Iraq with an advanced nuclear reactor and enriched, weapons-grade uranium has triggered vehement protests by Israel and Britain, both concerned about the possibility of a bomb getting into not only Iraqi, but also Pakistani, Libyan, or even PLO hands, a development that could only bring the entire world closer to nuclear war.

Two other developments also portend ill for the cause of peace. Last September, a U.S. intelligence satellite detected a burst of light that resembled a nuclear blast. The Carter administration refuses to accept the conclusions of two or three U.S. investigation reports that it was probably a small nuclear device, possibly exploded by South Africa, which that country denies. In addition, President Carter has acquiesced in the Swiss-German nuclear reactor and heavy-water plant sale to Argentina, despite Argentina's blatant intentions to develop nuclear capabilities.

It is my belief, Mr. Chairman, that these worldwide trends cannot be ignored, or worse yet, encouraged by the United States. Canada, our good neighbor to the north, is acting far more responsibly. Six years ago, Canada terminated nuclear cooperation with India because the 1974 Indian bomb was manufactured with diverted Canadian materials. In addition, Canada has refused the contract with Argentina because of the lack of full safeguards.

It is evident that U.S. negotiations with India have failed. The time has come to reevaluate this administration's policy. India should be required to dismantle her atomic testing program before the United States provides further assistance, and the same criterion must be applied to all other nations.

It is an uphill struggle that we face, without doubt; but this is no reason to abandon our commitment to preventing the spread of nuclear weapons. The security of the world and the prospects for peace for ourselves and our children compel a firm U.S. policy. The United States must take its leadership position in the world by setting this example. Stopping the Indian uranium sale is the first place that Congress and the United States can exercise that leadership.

Mr. BROOMFIELD. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, we are moving toward a vote on this issue, and before we do I wish to pay my compliments to the gentleman from New York (Mr. BINGHAM) who was the principal sponsor of these resolutions. I would like to point out to the House that 25 members of our committee were cosponsors of this resolution, and that only 2 that I know of on our committee opposed the resolutions as they were presented.

Our committee held extensive hearings. It has gone over this matter very carefully. I believe that this is probably one of the most important foreign policy issues that we will be voting on, at least in the closing weeks of this session, and I would urge that every Member vote in favor of this resolution.

I think that a basic principle is involved here, as was so ably outlined by the gentleman from California, with regard to our nuclear policy. I think it is important that we send a very clear signal to other countries that we are going to stand by this basic principle.

At this time, Mr. Chairman, I yield 1 minute to the member of the committee handling this resolution, the gentleman from New York (Mr. BINGHAM).

Mr. BINGHAM. Mr. Chairman, I thank the ranking minority member for his kind remarks. We have had a full debate. I do not intend to try to summarize it. I would simply like to say that following the vote on this resolution there will be an immediate vote on the second resolution; and following that, I will ask unanimous consent to take up a concurrent resolution putting the House action in the form in which it has been submitted in the Senate, that is, combining the two licenses. This will make sure that we are not out of sync with what the Senate does.

● Mr. WAXMAN. Mr. Chairman, we face today a momentous decision on whether we will remain faithful to our policy of preventing the spread of nuclear weapons. Other nations on the brink of becoming nuclear powers are watching closely what we do here. We face the solemn choice between the responsible sharing of nuclear power from one nation to another and helping to unleash an unholy reign of nuclear terror. I urge my colleagues to reject these proposed nuclear transactions.

Two years ago, President Carter helped Congress to build a strong and courageous policy to prevent the spread of nuclear weapons. Today, with his proposal to sell India uranium without any assurance it will not be diverted to make nuclear bombs, the President is on the verge of destroying our nuclear nonproliferation program.

We passed the Nuclear Nonproliferation Act in direct response to India's nuclear policies. In 1974, that country illegally manufactured and exploded a nuclear bomb. Since then, India has resisted every effort to obtain its agreement to the international system of nuclear safeguards and inspections. Last January, Prime Minister Gandhi reiterated her determination to continue to develop nuclear weapons—and to defy our nonproliferation laws.

If this sale is permitted to occur, we would be rewarding India for its consistent violations of international nuclear safeguards. And if India can act with such impunity—with our very encouragement—then no other nation will have any reason to accept the goals of nuclear nonproliferation.

Our entire policy will be in shambles.

The real motivation behind President Carter's decision is to entice India to act with us to oppose the Soviet invasion of Afghanistan. This is linkage in its worst possible form. Soviet aggression and supplying India with nuclear fuel have nothing to do with each other. And India itself has proven the point. On May 29, India and the Soviet Union concluded a 17-year, $1.6 billion arms package—the largest India has ever reached with anyone. It had been under negotiation for months, demonstrating that the promise of American nuclear fuel has no bearing on India's relations with the Soviets, or her response to Afghanistan.

This transaction with India is the first real test of whether the Nuclear Nonproliferation Act will work. India has no intention of complying with our law. If this sale is completed, we will no longer have any credibility with any other nation to obtain their support for nonproliferation.

For President Carter to throw this entire policy away in a shortsighted and wholly ineffective response to the Soviet invasion of Afghanistan is to sacrifice a very great deal for less than nothing in return.

It is up to Congress to veto this terribly mistaken decision by the President.

All of us owe a debt of gratitude to Representative JACK BINGHAM and Representative ED MARKEY for their tireless leadership on this issue. It is my hope the House will ratify their effort by voting overwhelmingly in support of these resolutions of disapproval.●

● Mr. DODD. Mr. Chairman when the House votes on House Concurrent Resolutions 367 and 368, I would urge my colleagues to vote in favor of these resolutions disapproving the sale of enriched uranium to India.

More than 2 years ago I introduced a similar resolution of disapproval on a previous nuclear fuel shipment because I felt that the chances India would agree to the requirements of the Nuclear Nonproliferation Act of 1978 and accept full-scope safeguards on their nuclear facilities were very slim. As events turned out, I was right. Absolutely no progress has been made during the 2-year grace period on convincing India to accept full-scope International Atomic Energy Agency safeguards. In fact, we have lost ground as India has now explicitly retained the option of conducting further nuclear explosive tests.

Considering the fact that India is the only nation which has exploded a nuclear device using materials covertly diverted from civilian reactors programs—including materials supplied by Canada and we believe by the United States—continuing to supply India with nuclear fuel would make a mockery of our nuclear nonproliferation policy.

This year, I also introduced a resolution of disapproval on these two proposed sales. I am very gratified that the Committee on Foreign Affairs saw fit to favorably report Mr. BINGHAM's resolutions which we are considering today.

I would urge my colleagues to support this reaffirmation of our nuclear nonproliferation policy by voting in favor of these resolutions.●

□ 1400

The CHAIRMAN. The time of the gentleman from New York (Mr. BINGHAM) has expired.

Are there further requests for time?

If not, the Chair announces that pursuant to section 303, Public Law 95-242, no amendments to the concurrent resolution are in order.

The Clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 367

Resolved by the House of Representatives (the Senate concurring), That the Congress does not favor the proposed export of low-enriched uranium to India pursuant to export license application XSNM-1569 which would be authorized by the Executive order transmitted to the Congress by the President on June 19, 1980.

Mr. BINGHAM. Mr. Chairman, I move that the Committee do now rise and report the concurrent resolution back to the House with the recommendation that the concurrent resolution be agreed to.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. DINGELL, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the concurrent resolution (H. Con. Res. 367) disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM-1569, had directed him to report the concurrent resolution back to the House with the recommendation that the concurrent resolution be agreed to.

The Clerk reported the concurrent resolution.

The SPEAKER pro tempore. Under the statute, the previous question is ordered.

The question is on the concurrent resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. BROOMFIELD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 298, nays 98, not voting 36, as follows:

[Roll No. 560]

YEAS—298

Addabbo
Albosta
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.Dak.
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Baldus
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Bingham
Blanchard
Boggs
Boland
Bonker
Bonior
Bonker
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carr
Carter
Chappell
Cheney
Chisholm
Clausen
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conte
Conyers
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, R. W.
Daschle
Davis, Mich.
Deckard
Dellums
Derwinski
Devine
Donnelly
Dornan
Dougherty
Downey
Drinan
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Evans, Del.
Evans, Ind.
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Garcia
Gilman
Glickman
Goodling
Gore
Gray
Green
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hammer-schmidt
Hanley
Harkin
Harris
Hawkins
Heckler
Hefner
Hillis
Hinson
Holland
Hollenbeck
Holt
Holtzman
Hopkins
Horton
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McDade
McDonald
McHugh
McKinney
Maguire
Markey
Marlenee
Marriott
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Motti
Murphy, N.Y.
Murphy, Pa.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Ottinger
Panetta
Patterson
Paul
Pease
Perkins
Pevser
Porter
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Ritter
Robinson
Rodino
Roe
Rose
Rosenthal
Rousselot
Roybal
Royer
Rudd
Russo
Sebo
Scheuer
Schroeder
Schulze
Seiberling
Sharp
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stanceland
Stanton
Stark
Stockman
Stratton
Studds
Synar
Tauke
Taustin
Taylor
Thomas
Thompson
Trexler
Trible
Udall
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Waxman
Weaver
Weiss
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wylie
Yates
Yatron
Young, Fla.
Zablocki
Zeferetti

NAYS—98

Akaka
Alexander
Andrews, N.C.
Annunzio
Anthony
Badham
Bailey
Barnard
Biaggi
Bouquard
Bowen
Brooks
Butler
Carney
Cleveland
Conable
Corcoran
Daniel, Dan
Danielson
Dannemeyer
Derrick
Dickinson
Dicks
Dingell
Dixon
Duncan, Oreg.
Duncan, Tenn.
Ertel
Evans, Ga.
Fary
Flippo
Florio
Foley
Fuqua
Gaydos
Gibbons
Ginn
Goldwater
Gonzalez
Gradison
Gramm
Grisham
Hall, Tex.
Hamilton
Hance
Hansen
Harsha
Hertel
Hightower
Hubbard
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Leath, Tex.
Lent
Lloyd
McCloskey
McCormack
McEwen
McKay
Madigan
Mathis
Miller, Ohio
Mollohan
Moorhead, Pa.
Murphy, Ill.
Murtha
Musto
Myers, Ind.
Obey
Patten
Petri

Pickle	Santini	Stump
Preyer	Sawyer	Swift
Price	Sebelius	Watkins
Pritchard	Sensenbrenner	White
Railsback	Shelby	Whitehurst
Rinaldo	Skelton	Wyatt
Roberts	Steed	Young, Alaska
Rostenkowski	Stenholm	Young, Mo.
Roth	Stewart	

NOT VOTING—96

Abdnor	Gephardt	Myers, Pa.
Bolling	Giaimo	Nedzi
Brown, Ohio	Gingrich	Pashayan
Cavanaugh	Grassley	Pepper
Clay	Howard	Satterfield
Corman	Ireland	Shannon
Cotter	Jenrette	Stokes
Davis, S.C.	Leach, La.	Symms
de la Garza	Lederer	Ullman
Dodd	McClory	Wilson, Bob
Erlenborn	Marks	Wilson, C. H.
Ford, Tenn.	Mattox	Wydler

□ 1420

The Clerk announced the following pairs:

Mr. Howard with Mr. Abdnor.
Mr. Corman with Mr. Grassley.
Mr. Cotter with Mr. Pashayan.
Mr. Dodd with Mr. Symms.
Mr. Pepper with Mr. McClory.
Mr. Stokes with Mr. Erlenborn.
Mr. Ullman with Mr. Brown of Ohio.
Mr. Lederer with Mr. Gingrich.
Mr. Ford of Tennessee with Mr. Wydler.
Mr. de la Garza with Mr. Bob Wilson.
Mr. Cavanaugh with Mr. Leach of Louisiana.
Mr. Jenrette with Mr. Davis of South Carolina.
Mr. Ireland with Mr. Gephardt.
Mr. Clay with Mr. Marks.
Mr. Giaimo with Mr. Mattox.
Mr. Myers of Pennsylvania with Mr. Nedzi.
Mr. Shannon with Mr. Satterfield.

Messrs. CONABLE, SKELTON, DICKINSON, and STEWART changed their votes from "yea" to "nay."

Messrs. DANIEL B. CRANE, LOTT, and HEFNER changed their votes from "nay" to "yea."

So the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

DISAPPROVING THE PROPOSED EXPORT OF NUCLEAR FUEL TO INDIA PURSUANT TO EXPORT LICENSE APPLICATION XSNM-1379

Mr. BINGHAM. Mr. Speaker, I ask unanimous consent for the immediate consideration in the House of the concurrent resolution (H. Con. Res. 368) disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Staion pursuant to export license application XSNM-1379.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 368

Resolved by the House of Representatives (the Senate concurring), That the Congress does not favor the proposed export of low-enriched uranium to India pursuant to export license application XSNM-1379 which would be authorized by the Executive order transmitted to the Congress by the President on June 19, 1980.

The SPEAKER pro tempore. The question is on the concurrent resolution.

The concurrent resolution was agreed to.

DISAPPROVING THE PROPOSED EXPORT OF NUCLEAR FUEL TO INDIA PURSUANT TO EXPORT LICENSE APPLICATION XSNM-1379 AND XSNM-1569

Mr. BINGHAM. Mr. Speaker, I send to the desk a concurrent resolution (H. Con. Res. 432) disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569, and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. BROOMFIELD. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 432

Resolved by the House of Representatives (the Senate concurring), That the Congress does not favor the proposed export of low-enriched uranium to India pursuant to export license applications XSNM-1379 and XSNM-1569 which would be authorized by the Executive order transmitted to the Congress by the President on June 19, 1980.

The SPEAKER pro tempore. The question is on the concurrent resolution.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BINGHAM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the concurrent resolutions just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

CONFERENCE REPORT ON H.R. 3904, MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980

Mr. THOMPSON submitted the following conference report and statement on the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 96-1343)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

Amendments numbered 2 and 3: That the Senate recede from its amendments numbered 2 and 3 to the House amendment to the Senate amendment.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1 to the House amendment to the Senate amendment and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 414. TREATMENT OF CERTAIN RETIREMENT BENEFITS.

(a) GENERAL RULE.—Paragraph (15) of section 3304(a) of the Internal Revenue Code of 1954 (relating to requirements for approval of State laws) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof the following: "except that—

"(A) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

"(i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

"(ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

"(B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certifications of States for 1981 and subsequent years.

And the Senate agree to the same.

For Senate amendment No. 1:

AL ULLMAN,
JAMES C. CORMAN,
CHARLES RANGEL,
WILLIAM M. BROOMFIELD,
BARBER B. CONABLE,
BILL FRENZEL,

For Senate amendments Nos. 2 and 3:

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN BRADEMAS,
WILLIAM CLAY,
JOHN ASHBROOK,
JOHN N. ERLENBORN,

Managers on the Part of the House.

HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
HOWARD M. METZENBAUM,
DICK SCHWEIKER,
JACOB K. JAVITS,
RUSSELL B. LONG,
SPARK M. MATSUNAGA,
DAVID L. BOREN,
ROBERT DOLE,
JOHN H. CHAFEE,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TREATMENT OF CERTAIN RETIREMENT BENEFITS

The House amendment to the Senate amendment to the bill provides that the pension offset requirement of existing unemployment law would only apply to a pension which is paid under a plan maintained or contributed to by a base period employer and which is increased by reason of services performed after the beginning of the base period. The House amendment also provides that the pension offset requirement would not apply in the case of social security benefits and railroad retirement benefits. The House amendment also authorizes the State to make limitations in the amount of the pension offset to take into account contributions made by the individual for the retirement benefit.

The Senate amendment numbered 1 to the House amendment to the Senate amendment to the bill provides that the pension offset requirement of existing law would only apply to pensions paid under plans maintained or contributed to by base period or chargeable employers. The Senate amendment also allows States to make limitations to take into account employee contributions identical to that contained in the House amendment.

The conference agreement generally follows the Senate amendment.

PREEMPTION

The House amendment to the Senate amendment to the bill provides no exemption from the preemption provision of section 514 of the Employee Retirement Income Security Act of 1974 ("ERISA").

The Senate amendments numbered 2 and 3 to the House amendment to the Senate amendment to the bill provide an exemption from section 514(a) of ERISA for the Hawaii Prepaid Health Care Law as in effect on January 1, 1979, and require a study by the Secretary of Labor on the feasibility of extending the exemption to other State health care laws. The Secretary of Labor is to report to the Congress on the study within two years after the date of enactment.

The Senate recedes to the House position. In adopting the House position, the Conferees do not imply a position as to the effect of section 514 of ERISA on the Hawaii Prepaid Health Care Law or other similar State laws, or as to correctness of any court decisions in this area.

For Senate amendment No. 1:

AL ULLMAN,
JAMES C. CORMAN,
CHARLES RANGEL,
WILLIAM M. BROOMFIELD,
BARBER B. CONABLE,
BILL FRENZEL,

For Senate amendments Nos. 2 and 3:

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN BRADEMAS,
WILLIAM CLAY,
JOHN ASHBROOK,
JOHN N. ERLENBORN,

Managers of the Part of the House.

HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
HOWARD M. METZENBAUM,
DICK SCHWEIKER,
JACOB K. JAVITS,
RUSSELL B. LONG,
SPARK M. MATSUNAGA,
DAVID L. BOREN,
ROBERT DOLE,
JOHN H. CHAFEE,

Managers on the Part of the Senate.

□ 1430

CONTINUING APPROPRIATIONS, 1981

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 789 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 789

Resolved, That upon the adoption of this resolution it shall be in order to consider, clause 2(l)(6) of rule XI to the contrary notwithstanding, the joint resolution (H.J. Res. 610) making continuing appropriations for the fiscal year 1981, and for other purposes, in the House. Debate on said joint resolution shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations, and the previous question shall be considered as ordered on the amendment recommended by the Committee on Appropriations now printed in the joint resolution and on the joint resolution to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. LONG) is recognized for 1 hour.

Mr. LONG of Louisiana. Mr. Speaker, I yield the usual 30 minutes for the minority to the gentleman from Tennessee (Mr. QUILLEN) for purposes of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 789 provides for the consideration in the House of continuing appropriations for fiscal year 1980, House Joint Resolution 610. The rule provides for 1 hour of debate, which will be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The necessity for this legislation is urgent as we approach the end of the fiscal year and no appropriations bills have yet been enacted for the new fiscal year. Thus the rule waives clause 2(l)(6) of rule XI, which requires a 3-day layover of committee reports.

Mr. Speaker, House Joint Resolution 610 provides for funding at existing levels to avoid the shutdown of agency operations should Congress fail to enact the necessary appropriations by the beginning of the new fiscal year on October 1. Under a decision by the Attorney General on April 25, the expiration of appropriations authority shall result in the closing of affected agencies.

The House has passed 12 of the 13 regular annual appropriation bills, but the Senate has passed only 2 as of yesterday. Conference outlook for the appropriations bills is uncertain, according to the chairman of the Commitee on Appropriations. The continuing resolution therefore provides funding for most current activities of the Federal Government as follows:

Where the House and Senate have both passed a general appropriations measure by October 1 and the amounts or authority made available by the bills differ, the continuing resolution funds the project or activity under the lower amount or the more restrictive authority.

Where only the House has passed an appropriations measure, the continuing resolution provides funding at the rate allowed by the House.

The resolution provides appropriations at the current rate for a number of programs not carried in 1981 appropriations bills for lack of authorizing legislation. It precludes appropriations for projects and activities not funded in fiscal year 1980.

In the case of programs funded by the foreign assistance appropriation, which has not yet been taken up by the House, the funding provided by that appropriation bill, H.R. 7854, which was reported on July 29, applies to projects and activities conducted in fiscal year 1980, at a rate of operations not to exceed the current rate or the rate provided in budget estimates, whichever is lower, and under the more restrictive authority.

The projects and activities of the legislative branch will be carried out under the provisions of H.R. 7593, the legislative appropriations bill passed by the House on July 21, 1980.

The continuing resolution includes certain restrictions from the House-passed Labor-HHS-Education appropriations bill. Section 109 repeats the language providing that no funds shall be available to prevent voluntary school prayer. Section 110 provides that no funds shall be available to perform abortions ex-

cept where the life of the mother would be endangered if the fetus were carried to term, and spells out that the States may exercise discretion in refusing to fund abortions. Section 111 prohibits the expenditure of funds pursuant to any Federal court order or injunction compelling use of funds for a purpose specifically prohibited by the House passed Labor-HHS-Education appropriations bill.

Mr. Speaker, the continuing resolution provides funding for the period from October 1, 1980, until enactment of the pertinent appropriations bill or December 15, 1980, whichever occurs first. Under the terms of the rule, House Joint Resolution 610 is not amendable, except by the committee amendment. Because the House has had the opportunity to perfect almost all the appropriations bills, the Committee on Appropriations did not recommend opening the continuing resolution to a redundant amendment procedure. The rule provides for the usual motion to recommit.

The minority did seek to shorten the time period covered by the resolution, by changing the date from December 15, 1980 to October 18, 1980. However, the Committee on Rules rejected this amendment since there is no way to assure that the other body would complete action on all appropriations bills within this abbreviated timeframe. There is no reason to get ourselves into an unnecessary bind for time.

I urge the adoption of H.R. 789 so that we may proceed to consider the continuing appropriations.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may use.

Mr. MICHEL. Mr. Speaker, will the gentleman yield?

Mr. QUILLEN. I yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Speaker, I thank the gentleman for yielding.

Might I inquire of the distinguished gentleman from Louisiana if the gentleman said in his remarks that the resolution provided for the lower of the figure of the House-passed bill or this year's level of expenditure, because if he did, he was in error. It is the higher figure.

I was not sure if I misunderstood the gentleman on that point, because one of the differences in this resolution, as distinguished from previous continuing resolution, is that in the past we have settled for the lower figure, but this resolution calls for the higher figures.

Part of my concern and many on this side, and maybe even on the gentleman's side, would be that the resolution calls for the higher of the two figures.

Mr. LONG of Louisiana. If the gentleman will yield, the gentleman is correct.

Mr. QUILLEN. Mr. Speaker, when this resolution was before the Rules Committee yesterday, I offered an amendment to be made in order to make the date October 18, instead of December 15. December 15 certainly brings us back for a lameduck session and there is no question about it.

The Congress could go forward and wind up its business by October 18 and no lameduck session would be necessary.

I urge the Members of the House to vote down the previous question for a basic reason, not for the date of October 18, that will come in a motion to recommit; but to make in order the Senate Concurrent Resolution 119, the second concurrent resolution on the budget, because I think the House must face up to the situation and pass a second concurrent resolution before we adjourn. Under the law that we passed, this House passed, a second concurrent resolution on the budget must be passed by September 15. Already we are 3 days behind the law which says that it must be done.

We are operating now, not under the law passed by the Congress of the United States, we are violating the law. We are skirting it. We are lawbreakers. Why not face up to it? Why not vote down the previous question, make this in order?

Although it is nongermane, there is nothing wrong with this House making an amendment in order, and it will be rightly so and it would correct us from breaking the law and put us in the right order.

So, Mr. Speaker, the fact is today, and I ask everybody to join us, we do not want to be lawbreakers. We want to be lawmakers and abide by the law. So I would ask everybody to vote down the previous question so we can offer another rule to accomplish this.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. QUILLEN. I would be happy to yield to the gentleman from Indiana.

Mr. MYERS of Indiana. What would be the time consequences if we should vote down the previous question? How soon would the second concurrent resolution be before the body and when could we come back with similar legislation that we have today?

□ 1440

Mr. QUILLEN. The second concurrent resolution, if the rule I would offer is passed, would be before the House. Of course, I would assume it would be before the House immediately.

Mr. MYERS of Indiana. It would come up today, would it not?

Mr. QUILLEN. Immediately. I assume there would be some parliamentary maneuvers, but I believe we could survive that and it would be before us immediately.

Mr. MYERS of Indiana. I am sure the argument is going to come up in order not to face the last-minute, 12th-hour circumstance that we so often have in this body, that we need to pass it today, but it could be passed today anyway with the gentleman defeating the previous question and it would come right back on a motion and we would accomplish it?

Mr. QUILLEN. That is right, and I think we must do this because it is obvious that Members of the House do not want to face the music back before the voters. They want to come back after the election on November 4 in a lameduck session so they can vote then to pass it. I say today we should face the music. I say today we should pass it. We should let the American people know exactly where we stand and how we feel.

Mr. MYERS of Indiana. If the gentleman will yield further, the important thing is defeating the previous question does not slow the process down nor does it defeat the legislation?

Mr. QUILLEN. Absolutely not.

Mr. LONG of Louisiana. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. LEVITAS) for purposes of debate only.

Mr. LEVITAS. Mr. Speaker, I rise to support the proposal by the gentleman from Tennessee (Mr. QUILLEN) that the previous question be defeated. I do so with a great deal of reluctance but I do so because I am concerned that many of the restrictions and limitations which this House has written into the appropriations process on a great number of matters, some of which I supported, some of which I opposed, will not have the opportunity of being made part of this continuing resolution that will fund programs contrary to the will of this House for a long time into the future.

If there were some assurance that these restrictions, some of which I have opposed, some of which I have supported, could be made part of the process during the period of continuation, then I would not take this position. But I am terribly concerned about some things that have been said during the last few weeks by the administration.

For example, without exception, this House adopted a restriction on funding any regulation that had been disapproved by action of Congress so that where a regulation would be otherwise put into effect, even though it had been vetoed by Congress, it would not be funded. The administration, through the Attorney General, has said that they will ignore the vetoes enacted by Congress and go forward and implement those rejected actions nevertheless.

This morning I participated in a hearing before the House Education and Labor Committee where the Assistant Attorney General, on behalf of the administration, testified that it is their policy not to follow congressional vetoes even though they have been made part of the law for many years and signed into law by the President.

There were four regulations which were vetoed out of the House Education and Labor Committee which the administration has said publicly they intend to go forward with. We have just finished passing a concurrent resolution rejecting the sale of nuclear material to India and the gentleman from New York, who managed that resolution, when I asked him does he have any assurances that the administration will follow that in light of their public positions, the gentleman said no.

Now, either we want to make our actions stick or we want to say that we are working out a charade. The only way to do that is to defeat the previous

question so that an amendment can be offered which will restrict in the future, and I hope the gentleman from Mississippi would accept that.

Mr. LONG of Louisiana. Mr. Speaker, I would like to yield 3 minutes to the gentleman from Mississippi (Mr. WHITTEN), chairman of the Appropriations Committee, to discuss the matter.

Mr. WHITTEN. Mr. Speaker, as one who is in agreement with the intentions of the gentleman from Georgia (Mr. LEVITAS) as to the purpose of his amendment, I would like to point out that we should go ahead and favorably vote the previous question, because in my judgment by recommitting this bill he would delay the implementation of the provision he offered on the regular appropriation bills.

At present the situation is that the other body has passed only two bills. It is in the process of handling others. This continuing resolution continues necessary funding until December 15.

There have been over 160 amendments to the 12 regular appropriation bills that have passed the House, the gentleman is of course interested in his amendments, there are 159 others. If we were to open the resolution for this one in fairness we would have to open it for others. If this were to occur then we just as well say goodbye to any effort to keep the Government in business after October 1.

I am rather proud of what we have done here. We are doing the best we can, and I think the best is not bad. We have handled all of the bills but one, the foreign aid bill, and that is protected under a provision of the continuing resolution, by providing funding at the current rate of expenditures, so it is not being ignored. The Appropriations Committee has reported the bill but it has not passed the House. The other 12 bills that have passed the House have been delayed in the Senate, what we are doing with these bills is to put them all in a package and send them to the Senate and give them time to act now on the bills that we have heretofore passed in the House.

I might point out to my colleagues my understanding of the opinion of the Attorney General that when October 1 comes, if we have not passed this continuing resolution, or if they are not enacted into law then they will have to lock the door of every Federal building, and every Federal activity, so I do not think we can play around with this situation. There will be a lot of talk a little bit later about changing the date, but let me tell you, if you have to come back, you will have to come back because we cannot run away from the Attorney General's opinion about the Government.

So I say if you believe in good government then the thing to do is to vote the previous question and get this measure on over to the Senate so they can get busy on the regular bills, the appropriate place to contain the provisions which the gentleman talks about. It is hoped that the other body will act within a week or 10 days, but I say it would be optimistic for me to say I thought they would. But they could.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to our distinguished minority leader, the gentleman from Arizona (Mr. RHODES).

Mr. RHODES. Mr. Speaker, I just want to know what is the hurry. Why are we now in such a big hurry that we have to recess this House on or about the 4th of October and get out of here? It actually is not very late in the year.

I just happened to look up the dates in election years when this House has adjourned and I find that very seldom have we adjourned by October 4. Actually the median date seems to be somewhere around October 15.

It will be our purpose to propose in the motion to recommit, to be offered by the gentleman from Massachusetts (Mr. CONTE) that this continuing resolution be amended so as to expire on October 18 instead of the date which is in the resolution. I think it is perfectly proper that we do that. We can get the work of the House done by October 18. That is a month from today.

When we look at the bills which could be classified as really "must" legislation, there are not really very many. As a matter of fact, as I stated earlier in the day, the Republican leadership wrote the Speaker and the Democratic leadership today and said that we would not, under any circumstances, support an adjournment or a recess until three things at least had been adopted. Those three things are: First, the second concurrent budget resolution; second, every appropriation bill; and third, if the other body sees fit to pass a tax bill, the House will have had a chance to vote on that tax cut bill.

□ 1450

That is a very bare-bones program but a very important program. It is not only important to the people of the House of Representatives and the Senate, it is important to the people of the country. Also, the people in the executive department need to know what they can count on for the next fiscal year. We changed the fiscal year to October 1 so we would not have this problem which we had had for so many years of not appropriating funds before the end of the fiscal year. Here we are, doing it again and losing much of the benefit we got from the new budget system.

Yes, here we are with the largest continuing resolution I remember in my career in the House. It is absolutely unnecessary.

Mr. Speaker, the institution of the House has suffered. The people in this country do not have the confidence in the House and the Senate that they should have. If we want to restore that confidence, we are going to have to act responsibly. Quitting almost 2 weeks before the time when we usually adjourn, with work undone, is no way, I submit, to restore the confidence of the people in this body, one of the three coequal branches of Government. We are fooling around with the reputation of an institution which our forefathers put forward to be the representative of the people of this country. It is not right; it is not smart; it is not proper for us to do this.

I do not know what the motivation is. I would like not to think it is political, but until somebody shows me a more logical motivation, I have got to assume that maybe the only reason we are leaving so soon is to keep Democrat Members from casting some very difficult votes, which their constituents might not like, before the election.

What we are actually doing is telling our own constituents we are not going to tell you how we feel about these important issues until after the election. I call that arrogance, and I do not think it will help this House's standing in the country.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. LONG of Louisiana. Mr. Speaker, I yield 8 minutes to the distinguished majority leader, the gentleman from Texas (Mr. WRIGHT) for purposes of debate.

Mr. WRIGHT. Mr. Speaker, I cannot let go unanswered some of the things that have been said by my distinguished friend, the minority leader. He speaks of motivation and attributes to the majority the evil motive of not wishing to vote on legislation. I think it would be wise if the gentleman from Arizona were to follow that dictum which says it is best not to speak of rope in the house of a man who has been hanged. The gentleman full well knows that those on his side of the aisle are practicing here in the House Chamber the same kind of tactic that Abbie Hoffman and Rap Brown practiced in the streets of America in the 1960's—the politics of disruption. They are deliberately trying to create a situation in which the Government would come unglued a few days before the election. Fortunately, the Congress will not fall for that obvious trap.

Forever, as long as I have served in the Congress at least, it has been the prerogative of the majority to determine when we will recess. It has been known for months that we intend to recess on October 4. That was announced early this year. And now if there are Members on the Republican side who for their own reasons do not wish to go home and face their constituents and answer questions, they do not have to go. But this House is going to recess on or before October 4.

In that context let us examine the patent fraudulency of this motion to recommit and just what it is that the other side proposes. They would suggest that this resolution continue appropriations only until the 18th of October, when they know the Congress will be in recess. They would like to arrange it for all appropriations to expire on that date, quite obviously so that the Government would fall on its face, stall out, be unable to operate, within days before the national election. Now is that not patently obvious? Is that not fraudulent?

With mock sincerity the gentlemen of the minority party come before us with a letter today proclaiming that they will forever and eternally oppose any recess of this House until three things are accomplished. Let us judge the depth of

their sincerity and the saltiness of their crocodile tears by how well they have performed on each of these three qualifications which they so somberly set out for the House to achieve.

The first is that they feel the House should not recess until the House has approved—they speak of House approval—of a second concurrent resolution on the budget. During the years that we have had the budget process, there have been 24 votes on final passage of budget resolutions in this House and conference committee reports that permitted budget resolution to become law. Twenty-four times my colleagues of the Republican persuasion have had the opportunity to achieve House approval of a concurrent budget resolution. How many of those times do you suppose a majority of our Republican Members have voted to approve? Not one single time. Not 1 out of 24. Not 1 time out of 24 has a majority of the Republican membership voted to approve a concurrent budget resolution.

For years they have prated piously about the importance of balancing the budget, a goal I share with them, and this year they have been talking so earnestly about the need to increase military expenditures. Well, in June and July we presented a balanced budget resolution and one that increased military expenditures by a sum greater than any increase in any single year since World War II. And how did our Republican colleagues vote? Of course, they voted no. They voted "no."

On July 12 these very same people, who come now with long faces and sham tears and mock sincerity saying, Oh, we must not permit this House to recess until we have approved a budget resolution, had the opportunity to vote to approve the conference report for the spring budget resolution. And how did the Republican Members vote? One hundred and forty against and only ten in favor. Fourteen to one against it. So it seems to me that in the case of their asking us not to adjourn or recess until we have passed this important budget resolution, they are in the position of the young man who slew both of his parents and then threw himself on the mercy of the court on the ground that he was an orphan.

In the second of their conditions, they say quite piously that we should not be permitted to recess until the completion—the completion—of all appropriations bills. My colleagues of the Republican persuasion have said that we should not under any circumstances recess until the completion of all appropriations bills. Yet they fully know that we in the House cannot control what the Senate does.

They know full well that we in the House have passed all but one of those appropriations bills. We have passed 12 of the 13. If they have confidence in the majority of the House, if they want the House to work its will and for that will to prevail, then they should be overjoyed to vote for this resolution without any change, because this resolution adopts until December 15 the spending levels that this House has approved.

□ 1500

What better deal could there be for the Members of the House than that?

If they find it unconscionable that we have not yet completed all of these appropriations bills, I would simply call their attention to the fact that the House has kept pretty well on schedule. There have been 163 amendments offered to those appropriations bills this year, and three-fifths of those amendments that consumed the time that has been consumed were offered by Members of the Republican side. Of course, it was their privilege to do so and I am not criticizing them for doing so. I am simply saying that it comes in very bad grace for them to appear to criticize the majority for the fact that these bills were not more expeditiously passed.

Then the final suggestion they make is probably the most obvious of all, that we should not be permitted to recess until there is an up and down vote in the House—now get this—on any—any—Senate-passed tax cut bill.

Well, they would just love to vote on any kind of a tax cut bill. Those are their words. They insist that we wait and see if the Senate will pass "any" tax cut bill and vote on that, whatever it may be.

Now, they surely must know the responsible thing to do is not to try to rush into a tax cut bill in the supercharged atmosphere of an election year campaign. I think the American public appreciates the fact that we are not trying to out promise the Republican side. We are not trying to enter into a situation where each side will be vying with the other, trying to out promise and out bid the other on tax cuts just before election time.

Is it not a lot more responsible to do the right thing, to try to balance the budget, not to try to promise a tax cut when we know quite well that we cannot have a 30-percent tax cut and a $30 billion increase in defense expenditures and a balanced budget all at the same time? The American public appreciates a responsible attitude. The people do not want us to rush into a big promising tax cut just before the election. For one thing, all the continued and repeated, almost daily speculation of a tax cut is in itself inflationary. This talk contributes to a rise in interest rates, I am told.

So we will wait. Then, in the calm, deliberative atmosphere after the election is over, we will sit down and address ourselves in a responsible way to what kind of tax cut, if any, the economy may warrant at that time.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. LATTA).

Mr. LATTA. Mr. Speaker, I love to listen to my good friend from Texas even though I do not agree with him. He is very entertaining as he skirts the issue. You know he did not once mention anything about the law, but he wants to violate section 310 of the Budget Act which provides—let me read it to him—

> Not later than September 15th of each year the Congress shall complete action on the concurrent resolution on the budget referred to in subsection . . .

Not once did the gentleman mention that and never once did the gentleman mention that we are just dragging our feet in the Committee on the Budget. The gentleman is a member of this committee notwithstanding the fact that he only shows up once or twice during the year. We welcome his attendance, however, when he does show up.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Speaker, I listened to the entire dissertation. The gentleman kept mentioning the majority. I wonder what majority the gentleman was talking about. He talked about the prerogatives of the majority but the majority cannot pass the budget. They evidently do not have a responsible majority if they cannot pass the budget. The gentleman tended to blame the minority party though he keeps talking about the prerogatives of this party which cannot pass a budget.

Mr. SIMON. Mr. Speaker, will the gentleman yield?

Mr. LATTA. Can the gentleman get me more time?

Mr. SIMON. I do not have the time to yield but I will try and get some more.

Mr. LATTA. The gentleman has it in his pocket right next to him.

I will be happy to yield to the gentleman. If you want me to yield, get me some more time.

Mr. LONG of Louisiana. Mr. Speaker, I will be happy to yield 3 minutes to the gentleman from Illinois.

Mr. SIMON. The gentleman from Ohio will recall very vividly——

The SPEAKER pro tempore. The gentleman from Ohio has the floor. Does the gentleman from Ohio yield the floor?

Mr. LATTA. No.

I yield briefly but not for 3 minutes.

Mr. SIMON. Just very briefly, did the gentleman object last year when we did not pass the budget resolution until November 28?

Mr. LATTA. November 28?

Mr. SIMON. November 28, last year.

Mr. LATTA. Surely I was objecting all along to the resolution.

Mr. SIMON. I do not recall it but I will take the gentleman's word for it.

Mr. LATTA. Let me say, taking up where I left off with my friend from Texas—I do not even see the gentleman on the floor any more—the gentleman talked about rope, and talked about Abbe Hoffman. What in the name of sense have they go to do with this question before us? He talked about a balanced budget. We welcomed even the thought of a balanced budget from their side of the aisle but that came and went almost within the month of March of this year.

We have been talking about balanced budgets on our side for a long time and attempting to do something about them but check the record. You know, when the appropriations bills and all of these authorizations come along for more spending and more spending, who passes

them? Who votes for them? Who has caused $200 billion of additional debt to be put in the backs of the American people just since Jimmy Carter became President? Who is responsible for the increased spending of this Government by over $200 billion in a year just since Jimmy Carter became President? We have seen spending leap from $400 billion to over $600 billion a year within this 3½-year period. They do not want to talk about this. They wish to talk about Abbe Hoffman and rope? Well, let us give them more rope.

We know where the big spenders are in this Congress, and so do the American people. They are going to become familiar with the spending records of the Members during this campaign. Maybe we ought to get out early and go out and make them aware of the record of some of these people who all of a sudden, all of a sudden at campaign time, say they are conservative and fiscally responsible? They should have to run on their records.

I would like to go into some of these districts and take the CONGRESSIONAL RECORD along and point out to the people how their Members have been voting all during this term and show how just before election, they become fiscal conservatives. The American people are too smart for this and they are starting to check the record for themselves.

The law says that we ought to pass this second concurrent budget resolution by the 15th of September.

Right here is the resolution the committee in the Senate Budget Committee has recommended. It is ready for floor debate over there. We have not even had a single markup session. Other than having the four administration spokesmen before the committee, nothing has been accomplished on the second budget resolution on our side.

The SPEAKER. The time of the gentleman has expired.

Mr. LATTA. May I have 1 additional minute?

Mr. LONG of Louisiana. I yield the gentleman 1 minute.

Mr. LATTA. Mr. Speaker, I thank the gentleman for his generosity.

We have not had a single outside witness on the second concurrent resolution. We have had MacIntyre, Schulze, Miller, and Volcker from the administration. We are not even meeting on our side. All we are saying on the Republican side is that we ought to get on with our work. The beginning of the fiscal year is upon us. We ought to be doing something about it instead of marking time in the Committee on the Budget.

What is wrong with this procedure. If we cannot do it in the Committee on the Budget what is wrong with taking the concurrent budget resolution that the Senate has recommended and bring it before this House so that we can mark it up and get on with our work the law says we should complete by the 15th of September. That is all we are asking.

I think it is proper for this House to obey the law and if you do not want to obey the law, change it. If you cannot get around to it by September 15, change the law but do not violate it. I think the American people want law abiders—not law violators—in this Congress.

The SPEAKER pro tempore. The gentleman from Tennessee has 17 minutes remaining; the gentleman from Louisiana has 10 minutes remaining.

Mr. LONG of Louisiana. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, let me just remind the Members of a few simple realities. Last year—and we did not hear a lot of campaign speeches about it last year—because of some complications, we were not able to pass that second budget resolution until November 28. By November 28 of this year we will pass the second budget resolution despite all the campaign oratory that you hear in the election year.

There is a very fundamental reason why we have not passed it this year and that is that reconciliation is tied up in conference. We have the biggest conference in the history of the House going on right now with reconciliation.

□ 1510

We cannot know how to put these figures together until we know about this $9 billion item. And, until reconciliation is passed by the House and Senate, we cannot very well proceed. Once that is there, then we can put the figures together. We will start work immediately.

I would remind my distinguished friend from Ohio (Mr. LATTA) that when it comes to some of these tough issues, preelection tough issues like cost of living twice a year for Federal retirees, I did not see very many votes, I regret to say, on either side of the aisle voting that tough way—and I believe I am correct that my colleague from Ohio (Mr. LATTA) did vote that way.

It is tough—it is tough before an election to do that, but these are the kinds of tough things that we have to do, but we have been unwilling to do.

Finally, let me get one more matter in, and I will be glad to yield to my colleague from New Jersey. Finally, I would point out that regardless of party, and forgetting the second budget resolution temporarily, our colleague from Illinois (Mr. MICHEL) said something very significant during debate on the first budget resolution. He said we have to work toward a balanced budget in a solid, responsible way; and if we come in with these huge changes we are not fooling ourselves and we are not fooling the American people. That is a reality we all have to face.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. SIMON. I will be glad to yield to my colleague from New Jersey.

Mrs. FENWICK. Mr. Speaker, I thank my colleague for yielding. There is a commonsense observation I would like to make. We have a great deal of work to do, and I do not know how the public is going to understand that we are going to adjourn without doing it.

Mr. QUILLEN. Mr. Speaker, I yield 10 minutes to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, House Joint Resolution 610, the continuing appropriations for fiscal year 1981, is historic legislation. Under other circumstances, it would be good legislation. But we are making history here today for the wrong reasons, and it is time for some plain talk about where we are and how we got here.

The majority party controls the White House. It has a majority here in the House of 275 to 159. It has control of the Senate; it has 59 Democrats to 41 Republicans. And, with 9 working days left before the beginning of the fiscal year, the majority party has been unable to enact one single appropriation bill.

We are in a quagmire here to the Congress of the United States. I looked up in Webster's the definition of "quagmire." He says:

> Soft, wet, miry land that shakes or yields under the foot; a complex or precarious position where disengagement is difficult.

A disengagement is difficult here. We are almost mesmerized. We cannot get one bill—one bill—through the Congress of the United States.

This is the most disgraceful legislative record of any Congress in my memory.

Never has Congress been so far behind so close to the start of the fiscal year. And never has Congress considered a continuing resolution which would cover all of our regular annual appropriation bills, and may continue all Federal activities that are funded through annual appropriations.

The magnitude of this joint resolution is staggering.

If the status of appropriation bills, and the estimates for mandatory payments, are the same on October 1 as they are today, then the total of continuing appropriations available under this joint resolution would be $408 billion. Or to look at it another way, the majority leadership is ready to adjourn, and abandon $408 billion worth of the public's business.

That is why I will offer a motion to recommit to change the expiration date of the joint resolution from December 15 to October 18. This amendment would provide the Congress with the opportunity to complete the essential legislative business of this session.

At this point, I would like to outline the essential features of the joint resolution.

For 10 of the appropriation bills for fiscal 1981, the level of continuing appropriations will depend on the status of the bill as of October 1: Agriculture, Defense, D.C., HUD, Interior, Labor-HEW, military construction, State-Justice-Commerce-Judiciary, Transportation, Treasury-Postal Service.

Where 1 of these 10 bills has passed the House and not the Senate as of October 1, the level of continuing appropriations will be the level of the House-passed bill, to be expended under the authority and conditions in effect in fiscal 1980.

Where 1 of these 10 bills has passed the House and the Senate as of October 1, the level of continuing appropriations will be the House or Senate

amounts, whichever is less, to be expended under the more restrictive authority.

Where an item is included in only one version of a bill that has passed both Houses as of October 1, the level of continuing appropriations is the current rate or the amount provided by the one House, whichever is lower, to be expended under the authority and conditions in effect in fiscal 1980.

Special provision is made for three bills:

Continuing appropriations for the legislative branch are provided at the rate and under the conditions of the bill as passed the House.

Continuing appropriations for energy and water development are provided at the current rate.

Continuing appropriations for foreign assistance are provided at the current rate or the budget estimate, whichever is lower, and under the more restrictive authority.

No general limitation or general provision passed by the House in any of these 10 bills will apply to fiscal 1981 unless the provision was in effect in fiscal 1980, or has been passed by the Senate in identical form as of October 1.

The joint resolution also makes specific provision for several individual issues and programs.

The school prayer language that passed the House on the Labor-HEW bill applies to activities covered by that bill.

The abortion language that passed the House on the Labor-HEW bill is applied to activities covered by that bill.

The abortion language from 1980 for the Defense, District of Columbia bills, and the 1980 foreign assistance continuing resolution, will apply to fiscal 1981 unless the Senate has passed the bill in question by October 1. In that case, revised abortion language will apply to 1981 only if passed in a form identical to the abortion language that passed the House for 1981. The abortion language on the Treasury bill will apply to 1981 only if passed in identical form by the Senate.

Continuing appropriations are provided at the current level for several activities that were not included in the House-passed bills, in most cases for lack of authorization.

The Council on Wage and Price Stability;

The Economic Development Administration;

The Regional Action Planning Commissions;

Annual contributions for assisted housing;

NASA research and development;

The National Health Service Corps;

Nursing research;

Health professions capitation grants and student financial assistance;

Nurse training;

Community mental health centers and rape research; and

Youth programs and the private section initiatives program under CETA.

The joint resolution also continues appropriations in indefinite amounts to provide mandatory payments and assistance under several specified programs:

Medicaid, grants to States for social and child welfare services, SSI, and AFDC under the Social Security Act;

The student loan insurance fund under the Higher Education Act;

Federal unemployment benefits, and advances to the unemployment trust fund;

Black lung benefits; and

Veterans' compensation, pensions, and readjustment benefits.

If any of you are considering voting against the joint resolution on final passage, I hope you have listened to this list of programs.

I also hope you know that there is a special urgency to our consideration of this continuing resolution, with an October 18 date, because of the Attorney General's opinion, and the implementing OMB Bulletin, that once appropriations have lapsed, obligations cannot be legally incurred except for the orderly termination of Government programs, and where otherwise authorized by law.

In the past, continuing resolutions have included language validating obligations incurred in anticipation of their passage. However, this joint resolution contains language validating only obligations incurred, in anticipation of its passage, to protect life and property, and for the orderly termination of programs and activities where appropriations have lapsed.

With these exceptions, and except where balances remain available until expended, and where OMB has provided funds through reallocations and reallotments, all other Government activities funded from current appropriations that have not been enacted by October 1 will stop.

This joint resolution must be enacted by October 1, with an expiration date of October 18, 1980.

□ 1520

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. COUGHLIN).

Mr. COUGHLIN. Mr. Speaker, here we go, being asked to participate in the biggest congressional cop-out in history. We are being asked to enact a continuing resolution until December 15, 1980.

Now, this is not just a little teeny continuing resolution like we usually enact to continue maybe a couple of departments or agencies. This is going to continue virtually the entire Federal Government.

This is not just to insure continuing the operation of Government and the payment of benefits after September 30, 1980. It is going to continue it until December 15 so this Congress can slip away out of town before election without fulfilling its duties to the American people and insure a lameduck session.

In the full Committee on Appropriations I offered an amendment to terminate this resolution before the election so we would continue to do the business of this Congress. That was rejected.

In the Committee on Rules the distinguished minority leader and I tried to get a rule that would permit amending this resolution to terminate it on October 18, but that was refused, too.

Let us be very clear. The skids are being greased. They are being greased to let us slide home for elections without passing a budget, without acting on a tax bill, and without passing or completing action on 12 of 13 appropriation bills.

The skids are being greased to take the focus away from a Congress that has failed to face up to the tough issues. They are being greased to take attention away from a Congress that has failed to govern effectively. They are being greased to focus attention away from a majority party that is unable to govern.

That is what this continuing resolution is about. That is what we are being asked to participate in. We are being asked to participate in a cop-out—a cop-out on the American people by a Democratic Party that has been unable to govern.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Mr. Speaker, I rise to urge the defeat of the previous question so that we might make in order the Senate budget resolution.

Now, it should be emphasized, it seems to me, that all we want to do here is bring to this floor a budget resolution which has already been reported by the Senate Budget Committee, and the reason we want to do this is not because we are enamored with the content of that resolution but, rather, because we think the law of the land should be upheld.

Previous speakers have already quoted from the Budget Act and from the law which says that we must have a budget resolution passed by September 15. Now, that law does not say, "except in an election year when the majority does not want to face up to tough votes." That law does not say, "except when the majority would rather go home and campaign for reelection than do the job that they were elected to do."

There is a very, very fundamental issue here, and it is the issue of facing up to doing the job we were elected to do and simply complying with the law. What is so wrong about complying with the law? And what can be right with violating the law or with the majority giving the back of their hand to the American people and saying, "We are going to ignore the law of the land; we are not going to face up to a budget resolution"?

Indeed the lameduck session which we are having foisted upon us is becoming the symbol of 25 years of Democratic leadership. It is absolutely mind-boggling that the Democrats, with a majority in both Houses and the Presidency, are unable to pass a single appropriations bill and unable or unwilling to conform with the law of the land and pass a budget resolution.

Indeed power corrupts, but power not only corrupts, power corrodes, and it obviously is corroding the vitality of the majority party so that they cannot do the job they were elected to do. Or, even worse, perhaps they do not want to do the job which they were elected to do. Or even worse, still, perhaps they are saying, "We are afraid to cast the votes which under the law we should be casting."

Instead, they are saying, "We want to go home and get reelected and duck the essential votes on appropriations to run this Government and duck the essential votes requiring a budget resolution."

So, Mr. Speaker, I urge my colleagues to vote against the previous question. And let us remember that the distinguished gentleman from Georgia (Mr. LEVITAS) rose in this well to oppose the previous question, so this is not purely a Republican stand; there is bipartisan support. Let us defeat the previous question.

Mr. LONG of Louisiana. Mr. Speaker, I yield 2 minutes for the purposes of debate, to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. Mr. Speaker, I am supporting this resolution. I am particularly pleased with the fact that the Committee on Appropriations was willing to allow the House-passed levels to be the level of funding for appropriations until the regular appropriations bills are passed.

I rise because I am particularly concerned about the appropriations for national defense which have been increased more than any other aspect of the Federal budget between fiscal year 1980 and fiscal year 1981.

The total recommended in this year's House bill is $18.9 billion more than last year's. There is a strong consensus in both the House and the Senate to do more on national defense.

The continuing resolution at the fiscal year 1980 level would preclude proceeding with the product of this real growth for as much as one-quarter of the next fiscal year.

We could not proceed with new starts such as items relating to the rapid deployment force. We would be unable to take action on items added by the House, including funds for additional spare parts, more cost-effective aircraft procurement rates, or aggressive research into a new manned strategic bomber.

One example quickly identified by the Navy would be a delay in the contract for LAMPS Mark III antisubmarine helicopters, with a consequent delay in its initial operating capability.

Critically important operations and maintenance accounts would be particularly hard hit.

The disruptive impact on previous plans would result in cost increases and program delays.

□ 1530

Failure to provide needed funds will be a poor signal to send our allies who have also made commitments to increase the real defense spending. The bottom line for the American people would be that the Congress was unwilling to change traditional procedures once in order to meet our vital national defense needs.

I did not believe that this was the signal we wanted to send the American people and, therefore, I am delighted that the committee went ahead and accepted the higher level of funding for national defense.

I want to include in the RECORD a position paper on the consequences of not accepting the higher fiscal year 1981 levels for national defense:

CONTINUING RESOLUTION AUTHORITY FOR FISCAL YEAR 1981

If the Department of Defense has to function under a continuing resolution for the first four or five months of FY 1981, all actions will be taken in consonance with currently approved programs of the Department of Defense and no action will be taken to accelerate or increase the scope of programs beyond those approved for presentation to Congress. No action will be initiated calling for the obligation of funds beyond the amount contained in the FY 1981 appropriations for military functions, military construction, and cemeterial expenses currently approved by either the House or Senate.

Military Personnel: The CRA will cause no legal problems but execution of certain new initiatives approved in the Authorization Bill could pose problems.

Operation and Maintenance: A potential problem facing O&M funded programs, under a protracted CRA in FY 1981, could be obtaining adequate Treasury Warrants to execute the baseline O&M program. High inflation rates and fuel cost increases combine to make FY 1980 O&M obligations through January 1980 significantly less than the obligation requirement for the same time frame in FY 1981. Readily apparent is the increase required for inflation including the immediate known cost increases associated with civilian personnel and stock/industrial fund purchases. A further increase in obligational authority over the FY 1980 level is essential because of the near doubling of fuel prices on February 1, 1980, and the related large increases in DOD transportation rates on March 1, 1980. Both of these increases will roll forward into FY 1981 costs and neither are reflected in FY 1980 first quarter obligations.

A protracted CRA will also create program funding uncertainties which could have a disruptive effect on program execution but which would be manageable. The effect on new program starts does not appear to be a serious problem to O&M.

Procurement: Under a CRA, the following FY 1981 programs will not be initiated:

Army: GUARDRAIL Aircraft, Advanced Attack Helicopters, HELLFIRE Missiles, DIVAD Guns, New Model Trucks.

Navy: SH-60 ASW Helicopters, HARM missiles, CV-59 & CV-60 Service Life Extensions, LSD-41 Ships, Maritime Prepositioning Ship, RO/RO Conversion Program, ARS Rescue Salvage Ship, CG-47 AEGIS Cruiser, AN/TPQ-27 Radars.

Air Force: GLCM

The most serious situation of the above programs being delayed involves the Shipbuilding and Conversion appropriation. The CV SLEP schedule is critical to the manning levels at Philadelphia Navy Shipyard and could lead to a wasteful and embarrassing predicament for DoD and Congress if delayed.

RDT&E: There will be no significant impact on RDT&E programs. There will be instances where Congressional action to date has altered proposed line item plans but these can be dealt with as needed to insure implementation of Congressional intent and to avoid program discontinuity or costly administrative hiatus.

Military Construction: No serious problems are expected; however, execution of the FY 1981 construction program will be delayed day-for-day with the delay in receipt of the Appropriations Act. Each construction project is a new start and new programs wouldn't be undertaken under CRA.

The inability to proceed with orderly execution of the FY 1981 construction program will result in increased costs and higher year end unobligated and unexpended balances.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Colorado (Mr. KRAMER).

Mr. KRAMER. Mr. Speaker, Abraham Lincoln once said:

You can fool some of the people all of the time, all of the people some of the time, but not all of the people all of the time.

However, that is what the Democratic leadership is trying to do. After repeatedly promising the American people a balanced budget to relieve them from the problems of inflation, we are now confronted with a continuing resolution which is going to try and not allow the American people the opportunity to examine the majority party's blueprint before the election, to come to grips with the problems of inflation, of unemployment, of high interest rates.

It is becoming increasingly apparent that the party which has controlled this Congress without cessation for 26 consecutive years is now running scared. They perceive their job not as being one to stay here and finish that job but to go home so that they can get reelected.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas (Mr. BETHUNE).

Mr. BETHUNE. Mr. Speaker, 3 weeks ago the Republican freshmen had a meeting down the hall wherein we predicted that there would be a lameduck session. We focused on the evils of a lameduck session and handed out a lot of material, but we did not get much reaction. We certainly did not get much reaction from the Democrat majority. But, you know, I think today, with the world watching and seeing the reality of this thing, we are getting a reaction.

We have hit a real nerve on that side, and I think that is the occasion for the majority leader taking the floor and coming forth with a plethora of excuses which will not wash. They just will not sell because the reality is that the Democrats have a two-third majority in this House. They have had the majority now for 25 consecutive years on that side of the aisle, and the simple fact is that with a two-thirds majority they cannot govern and they do not want to govern because they do not want to bite the bullet after having promised a balanced budget all spring long.

The great mystery has been whether or not we are going to have a lameduck session. Yes, we are going to have a lameduck session. However, there is an outstanding chance that it will turn into a dead-duck session when we will come back and piddle around for about 2 days.

Mr. QUILLEN. Mr. Speaker, I would suggest that unless we face up to our responsibilities under the Constitution and under the Budget Act and complete our action prior to election, there are going to be a lot of limping birds around the Chamber come a lameduck session.

I urge defeat of the previous question so we can get down to the business.

Mr. Speaker, I yield such time as he may consume to the gentleman from Delaware (Mr. EVANS).

Mr. EVANS of Delaware. Mr. Speaker, I rise in opposition to this lameduck resolution. If ever the American people needed a good reason to hold Congress in low regard, this bill before us today will certainly do the trick.

Instead of dealing with the basic problems facing the country, we are by this resolution saying, "Let's shove all our difficult problems under the rug, so the people of this Nation won't know how each Member of Congress really feels until the election is safely behind us."

In fact, this resolution ought to be called the "Incumbent's Reelection Act of 1980" because it tosses aside our responsibilities to the country so all those worried about their jobs in this House can hurry home to save them. Given the miserable record of this Congress, it is no wonder that the leadership of this body wants to clear out of town as fast as possible.

But I must remind my colleagues as they place one foot out the door with this resolution that we have a responsibility to act on the issues of deep concern to our constituents.

How many times have Members of Congress told the American people that they had to uphold the law, whether they like it or not. But here the Congress itself is violating the Budget Act of 1974 which requires us supposedly to complete the budget process by September 15. If the Congress itself does not have the discipline to make their own self-imposed deadline, how in the world can we ask the American people to have any confidence whatsoever in any actions of this body?

The American people are frustrated over high taxes, wasteful spending, and above all, over a Congress which does nothing about those problems. The time for politics as usual is over—the time for action is now. I urge the defeat of the continuing resolution, and ask that this Congress finally get down to work and begin doing the job we are supposed to be doing.

Mr. QUILLEN. I thank the gentleman for his contribution.

Mr. Speaker, I urge the defeat of the previous question.

The SPEAKER pro tempore. The time of the gentleman from Tennessee (Mr. QUILLEN) has expired.

Mr. LONG of Louisiana. Mr. Speaker, would the chair inform me how much time I have remaining?

The SPEAKER pro tempore. The gentleman from Louisiana has 5 minutes remaining.

Mr. LONG of Louisiana. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Wisconsin (Mr. OBEY), for the purpose of debate.

Mr. OBEY. Mr. Speaker, Abraham Lincoln has been quoted here today. I would like to suggest that Lincoln said something else which is appropriate to the occasion. At Gettysburg he said:

People will little note nor long remember what we say here.

And I would suggest that the content of this debate today indicates that Lincoln's observation applies to us on this occasion as well.

I think that the real problem we are facing here is simply the fact that House rules are built in such a way that they guarantee almost in the extreme the rights of the individual on this floor. That is as it must be in a democracy. But as a consequence of the structure of those House rules, the House is really at the mercy of any organized minority which really wants to filibuster by amendment. And that is what has happened, in very large part, on almost all of the appropriation bills which we have dealt with this year.

I think we have only one legitimate question before us today. That is whether we want to, in a responsible manner, assure that the orderly processes of Government will continue until all of the appropriations bills can be conferenced out and passed or whether we do not. If you think that the Government ought to continue in an orderly way until we can finish our work, you vote for this resolution; and if you do not think the Government ought to continue and if you think we ought to run the risk of stopping social security checks and stopping veterans' checks and all the rest, which will happen, in light of the new Attorney General's opinion, then you vote against the resolution.

We really have one choice in the majority, I believe. We can go home on October 4 and listen to the real concerns of the people we represent or we can decide that we ought to stay here and listen to the political baby talk which we are going to run into on this floor between now and the election.

I would say that the content of this debate today illustrates more clearly than any other I can think of why it is wise for us to go home rather than continue the babbling which has been going on on this bill and others over the past 3 weeks.

Mr. LONG of Louisiana. Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. QUILLEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 237, nays 150, not voting 45, as follows:

[Roll No. 561]

YEAS—237

Addabbo
Akaka
Albosta
Ambro
Andrews, N.C.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Burlison
Burton, John
Burton, Phillip
Byron
Carr
Chappell
Chisholm
Coelho
Collins, Ill.
Conyers
D'Amours
Daniel, Dan
Danielson
Dellums
Derrick
Dicks
Dingell
Donnelly
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Calif.
English
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Glickman
Gonzalez
Gore
Gramm
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hance
Hanley
Harkin
Harris
Hawkins
Hefner
Heftel
Hightower
Holland
Holtzman
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Ichord
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kildee
Kogovsek
Kostmayer
LaFalce
Leath, Tex.
Lehman
Leland
Lloyd
Long, La.
Long, Md.
Lowry
Luken
Lundine
McCormack
McHugh
McKay
Maguire
Markey
Mathis
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Natcher
Neal
Nelson
Nichols
Nolan

NAYS—150

Anderson, Calif.
Andrews, N.Dak.
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bereuter
Bethune
Broomfield
Broyhill
Buchanan
Burgener
Butler
Campbell
Carney
Carter
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, R. W.
Dannemeyer
Davis, Mich.
Deckard
Derwinski
Devine
Dornan
Dougherty
Duncan, Tenn.

Edwards, Okla.
Emery
Erdahl
Evans, Del.
Fenwick
Findley
Fish
Forsythe
Frenzel
Gilman
Goldwater
Goodling
Gradison
Green
Grisham
Guyer
Hagedorn
Hamilton
Hammer-schmidt
Hansen
Harsha
Heckler
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Hyde
Jacobs
Jeffords
Jeffries
Johnson, Colo.
Kelly
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leach, Iowa
Lee
Lent
Levitas
Livingston
Loeffler
Lott
Lujan
Lungren
McClosky
McDade
McDonald
McEwen
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Michel
Miller, Ohio
Mitchell, N.Y.
Moore
Moorhead, Calif.
Myers, Ind.
O'Brien
Paul
Petri
Porter
Pritchard
Pursell
Quayle
Quillen
Railsback
Regula
Rhodes
Rinaldo
Ritter
Robinson
Roth
Rousselot
Royer
Rudd
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Spence
Stangeland
Stanton
Stockman
Tauke
Taylor
Thomas
Trible
Vander Jagt
Walker
Wampler
Whitehurst
Whittaker
Williams, Ohio
Winn
Wylie
Young, Alaska
Young, Fla.

NOT VOTING—45

Abdnor
Alexander
Anderson, Ill.
Bolling
Bonior
Brown, Calif.
Brown, Ohio
Cavanaugh
Clay
Corman
Cotter
Daschle
Davis, S.C.
de la Garza
Dickinson
Dixon
Dodd
Edwards, Ala.
Erlenborn
Ferraro
Ford, Tenn.
Gingrich
Grassley
Gray
Howard
Ireland
Jenrette
Leach, La.
Lederer
Lewis
McClory
Mattox
Murphy, N.Y.
Myers, Pa.
Nedzi
Pashayan
Pepper
Rose
Solomon
Stokes
Symms
Ullman
Wilson, Bob
Wilson, C. H.
Wydler

□ 1550

The Clerk announced the following pairs:

On this vote:

Mr. Murphy of New York for, with Mr. Brown of Ohio against.

Mr. Lederer for, with Mr. Erlenborn against.

Mr. Clay for, with Mr. McClory against.

Mr. Cavanaugh for, with Mr. Pashayan against.

Mr. Stokes for, with Mr. Bob Wilson against.

Mr. Jenrette for, with Mr. Wydler against.

Mr. Dixon for, with Mr. Lewis against.

Mr. Ford of Tennessee for, with Mr. Symms against.

Mr. Bonior of Michigan for, with Mr. Abdnor, against.

Mr. Corman for, with Mr. Dickinson against.

Mr. Howard for, with Mr. Edwards of Alabama against.

Ms. Ferraro for, with Mr. Gingrich against.

Mr. Cotter for, with Mr. Grassley against.

Mr. Dodd for, with Mr. Solomon against.

Until further notice:

Mr. Brown of California with Mr. Daschle.

Mr. Davis of South Carolina with Mr. de la Garza.

Mr. Gray with Mr. Ireland.

Mr. Pepper with Mr. Leach of Louisiana.

Mr. Ullman with Mr. Charles H. Wilson of California.

Mr. Rose with Mr. Mattox.

Mr. Myers of Pennsylvania with Mr. Nedzi.

Mr. LUJAN changed his vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. WHITTEN. Mr. Speaker, pursuant to the rule just adopted, I call up the joint resolution (H.J. Res. 610) making continuing appropriations for the fiscal year 1981, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The Clerk read the joint resolution, as follows:

H.J. RES. 610

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1981, and for other purposes, namely:

SEC. 101. (a)(1) Such amounts as may be necessary for projects or activities (not otherwise specifically provided for in this joint resolution) for which appropriations, funds, or other authority would be available in the following appropriation Acts:

Agriculture, Rural Development, and Related Agencies Appropriation Act, 1981;

Department of Defense Appropriation Act, 1981;

District of Columbia Appropriation Act, 1981;

Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1981;

Department of the Interior and Related Agencies Appropriation Act, 1981;

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1981;

Military Construction Appropriation Act, 1981;

Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1981;

Department of Transportation and Related Agencies Appropriation Act, 1981; and

Treasury, Postal Service, and General Government Appropriation Act 1981.

(2) Appropriations made by this subsection shall be available to the extent and in the manner which would be provided by the pertinent appropriation Act.

(3) Whenever the amount which would be made available or the authority which would be granted under an Act listed in this subsection as passed by the House as of October 1, 1980, is different from that which would be available or granted under such Act as passed by the Senate as of October 1, 1980, the pertinent project or activity shall be continued under the lesser amount or the more restrictive authority: *Provided*, That where an item is included in only one version of an Act as passed by both Houses as of October 1, 1980, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in applicable appropriation Acts for the fiscal year 1980.

(4) Whenever an Act listed in this subsection has been passed by only the House as of October 1, 1980, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the House, at a rate for operations not exceeding the rate permitted by the action of the House, and under the authority and conditions provided in applicable appropriation Acts for the fiscal year 1980.

(5) No provision which is included in an appropriation Act enumerated in this subsection but which was not included in the applicable appropriation Act of 1980, and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in the joint resolution unless such provision shall have been included in identical form in such bill as enacted by both the House and the Senate.

(b) Notwithstanding section 10 of Public Law 91-672, and section 15(a) of the Act entitled, "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, as amended, such amounts as may be necessary for continuing projects or activities which were conducted in fiscal year 1980 and would be provided for in H.R. 7854, the Foreign Assistance and Related Programs Appropriation Act, 1981, as reported July 29, 1980, at a rate of operations not in excess of the current rate or the rate provided in the budget estimates, whichever is lower, and under the more restrictive authority.

(c) Such amounts as may be necessary for continuing projects and activities under all the conditions and to the extent and in the manner as provided in H.R. 7593, entitled the Legislative Branch Appropriation Act, 1981, as passed the House of Representatives, July 21, 1980.

(d) Such amounts as may be necessary for continuing the following activities not otherwise provided for, which were conducted in fiscal year 1980, but at a rate for operations not in excess of the current rate:

activities of the Council on Wage and Price Stability;

activities of the Economic Development Administration including salaries and expenses;

activities of the regional Action Planning Commissions;

activities of the Judiciary under the heading "Pretrial Services Agencies";

activities for which provision is made in the Energy and Water Development Appropriation Act, 1981, as passed the House of Representatives on June 25, 1980: *Provided*, That appropriations and funds made available to the Appalachian Regional Commission, including the Appalachian Regional Development Programs, by this or any other Act shall be used by the Commission in accordance with the provisions of the applicable appropriation Act and pursuant to the Appalachian Regional Development Act of 1956, as amended, notwithstanding the provisions of section 405 of said Act;

activities of the Department of Housing and Urban Development under the heading "Annual contributions for assisted housing";

activities of the National Aeronautics and Space Administration under the heading "Research and development";

activities for which disbursements are made by the Secretary of the Senate, and the Senate items under the Architect of the Capitol;

activities of the Water Resources Council;

activities of the National Health Service Corps under section 338(a) of the Public Health Service Act;

activities for support of nursing research under section 301 of the Public Health Service Act;

activities for support of health professions education and nurse training under titles

VII and VIII of the Public Health Service Act;

activities under the Community Mental Health Centers Act; and

activities under title IV, part A, subparts 2 and 3, and title VII of the Comprehensive Employment and Training Act.

(e) Such amounts as may be necessary to permit payments and assistance mandated by law for the following activities under the terms, conditions and limitations included in the applicable appropriation Act for 1980:

activities under title IV of the Federal Mine Health and Safety Act of 1977;

activities under the Social Security Act;

retirement pay and medical benefits for commissioned officers of the Public Health Service;

activities under title IV, part B, of the Higher Education Act;

notwithstanding any other provision of this joint resolution except section 102, activities of the Department of Labor, Employment and Training Administration for "Federal unemployment benefits and allowances" and "Advances to the unemployment trust fund and other funds";

activities of the Department of Labor, Employment Standards Administration for "Special benefits" and "Black Lung Disability Trust Fund";

Veterans Administration "Compensation and pensions"; and

Veterans Administration "Readjustment benefits".

(f) Such amounts as may be necessary for fiscal year 1981 for Department of Energy, Operating Expenses, Energy Supply, Research and Development Activities, to carry out the breeder reactor demonstration project or project alternative approved by Congress in authorizing legislation, and for no other purpose, at the current rate of operations notwithstanding the provisions of section 102 of this joint resolution.

(g) Notwithstanding section 15(a) of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, as amended, and section 10 of Public Law 91-672, activities of the Department of State to process, maintain, return or resettle Cuban and Haitian entrants shall be funded at not to exceed an annual rate provided in the budget estimate.

(h) Notwithstanding section 101(a) of this joint resolution, such amounts as may be necessary to continue the low income energy assistance program under the terms, conditions, and State allocations provided for in H.R. 7998 as passed the House of Representatives August 27, 1980, and in House Report 96-1244.

SEC. 103. Appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1980, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriation Act by both Houses without any provision for such project or activity, or (c) December 15, 1980, whichever first occurs.

SEC. 103. Appropriations and funds made available or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 665(d)(2) of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 104. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such projects or activity are available under this joint resolution.

SEC. 105. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 106. Any appropriation for the fiscal year 1981 required to be apportioned pursuant to section 665 of title 31, United States Code, may be apportioned on a basis indicating the need (to the extent any such increases cannot be absorbed within available appropriations) for a supplemental or deficiency estimate of appropriation to the extent necessary to permit payment of such pay increases as may be granted pursuant to law to civilian officers and employees and to active and retired military personnel. Each such appropriation shall otherwise be subject to the requirements of section 665 of title 31, United States Code.

SEC. 107. All obligations incurred in anticipation of the appropriations and authority provided in this joint resolution for the purposes of maintaining the minimum level of essential activities necessary to protect life and property and bringing about orderly termination of other functions are hereby ratified and confirmed if otherwise in accordance with the provisions of this joint resolution.

SEC. 108. No provision in any appropriation Act for the fiscal year 1981 that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 102(c) of this joint resolution.

SEC. 109. Notwithstanding any other provision of this joint resolution except section 102, none of the funds made available by this joint resolution for programs and activities for which appropriations would be available in H.R. 7998, entitled the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1981, as passed the House of Representatives on August 27, 1980, shall be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

SEC. 110. Notwithstanding any other provision of this joint resolution except section 102, none of the funds made available by this joint resolution for programs and activities for which appropriations would be available in H.R. 7998, entitled the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1981, as passed the House of Representatives on August 27, 1980, shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term: *Provided however*, That the several States are and shall remain free not to fund abortions to the extent that they in their sole discretion deem appropriate.

SEC. 111. Notwithstanding any other provision of this joint resolution except section 102, none of the funds made available by this joint resolution for programs and activities for which appropriations would be available in H.R. 7998, entitled the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1981, as passed the House of Representatives on August 27, 1980, shall be expended pursuant to any order or injunction of any court of the United States which would compel the expenditure of such funds for a purpose for which such expenditure is specifically prohibited by such Act.

COMMITTEE AMENDMENT

The SPEAKER. The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: Page 5, line 6, after the colon insert: "*Provided*, That no appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or authority were not available during fiscal year 1980:".

The SPEAKER. The gentleman from Mississippi (Mr. WHITTEN) will be recognized for 30 minutes, and the gentleman from Massachusetts (Mr. CONTE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. WHITTEN).

GENERAL LEAVE

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution (H.J. Res. 610) and that I may include extraneous material.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. WHITTEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are dealing with an unusual situation here today. Personally, it has been quite interesting to see the byplay between my friends on the left and my friends on the right, between the Democrats and the Republicans.

There is one advantage of being in the minority party of Congress. You can claim all the good things and on the bad things you can always claim you are in the minority.

I have always said there are two ways of serving in Congress. One is to record your views and the other is to do something about them.

I hope my colleagues will listen to what goes on here. The House has done its job. In this continuing resolution we have provided the amounts of money that were in the House passed appropriations bills and were sent to the Senate. There are several reasons we must pass this continuing resolution today.

The House has passed 12 of the 13 regular appropriation bills for 1981 and the remaining bill was reported back in July. But as of this date, no appropriation bills have been signed into law. Without this critical funding mechanism the entire Government faces program shutdowns at midnight, September 30. The Government will be confronted with payless paydays. Veterans' benefits, food stamp funding, black lung benefits, student loans, SBA disaster loans, disaster relief, highway and road construction, flood control projects, and revenue sharing would all be disrupted. The defense efforts would be adversely affected.

URGENT NEED FOR CONTINUING RESOLUTION

I would like to call attention to a recent opinion of the Attorney General and to circulars of the Office of Management and Budget concerning the shutdown of the Government. The Attorney General's opinion states in pertinent part as follows:

"During periods of "lapsed appropriations," no funds may be expended except as necessary to bring about the orderly termination of an agency's functions, and that the obligation or expenditure of funds for any purpose not otherwise authorized by law would be a violation of the Antideficiency Act.

This removes what flexibility there was in previous years to carry on Government activities for a short period beyond the last day of the fiscal year. This year we just must pass a continuing resolution by October 1 to maintain necessary Government activities of defense, health, safety, and welfare.

RECORD OF THE APPROPRIATIONS COMMITTEE

As you know, under section 301(a) of the Budget Act, the committee is prohibited from reporting any appropriations measure until both Houses have completed action on the first budget resolution. This occurred June 12, 4 weeks past the statutory deadline of May 15. There were delays in the legislative process, some associated with the balanced budget effort despite the fact that the Budget Committee, in recognition of the problems confronting the Congress, accelerated their schedule and indeed reported the budget resolution early. But numerous difficulties persisted and final agreement was not reached until June 12.

Although this delay cost precious time, the Appropriations Committee acted swiftly, reporting out 7 of its 13 appropriations bills within 1 week in June. In fact, the Treasury, Postal Service bill and the State-Justice bill were reported on the day following adoption of the budget resolution. Seven bills were reported in June, three in July, two in August, and the final bill last week.

At this time 12 of the 13 appropriations bills have passed the House, most of them in June and July. Only the foreign assistance appropriations bill is pending floor consideration. We reported this bill on July 29 and have appeared before the Rules Committee seeking a rule.

The problem is that the Senate has passed only two bills as of this hour. Not a single bill has been signed into law. As my colleagues can see, the necessity for a continuing resolution is unquestioned.

PHILOSOPHY OF CONTINUING

The basic philosophy of this continuing resolution is simple, it is designed to carry forward activities of the Government into the fiscal year that begins on October 1. The resolution is effective only until December 15 and its applicability to programs and activities ceases as the regular bills become law.

The resolution is somewhat different than continuing resolutions of prior years in that it provides the House passed rate for those bills which have passed just the House by midnight September 30. In prior years, bills in that position at the close of the fiscal year were continued at the House rate or the current rate whichever was lower.

This year's continuing resolution changes only those rates. The mechanics of section 101(a) applicable to the terms and conditions of operations are the same as in other years. Only the dollar levels are different.

□ 1600

All the debate you have heard here today centers on the theory that we can make the other body do what the House would like. In the years I have been here I have never found a way to do that and I do not think you will find one now.

I am not going to find fault with the other body because they doubtless have their reasons for their actions. The fact remains that we must deal with the other body in order to complete our business and this continuing resolution must be adopted before October 1 to prevent the essential operations of the Federal Government from coming to a halt.

If the other body wished, they could take this resolution up immediately and we could have a conference and clear the measure before October 1.

The resolution before you has a cut off date of December 15. There is a whole lot of work to be done in connection with completing the appropriations and other business of Congress.

While the Senate could complete their business and we could complete action on our bills prior to October 1 under ideal circumstances, it is not likely.

In case we do not, we have given ourselves some elbow room with which to deal with the various subjects. Any shorter period of time would not allow the completion of the legislative business. There were 160 amendments offered on the House side to the various appropriations bills and a good many were adopted.

These amendments dealt with matters in the regular bills, and they will be taken up in conference with the other body once the other body passes them. Doubtless, judging by the past, they are likely to change those amendments and they will have additional amendments of their own.

The termination date for the continuing resolution of December 15 will allow the other body to take up the bills in regular order and we will have time to work them out, bill by bill. But in case they do not, we have provided a vehicle which carries the Government programs, in effect, at the dollar amount we have in the various bills which we have passed by the House. So today you are voting for the appropriations bills in one package which you have already voted for previously.

Now, I envy my friends on the left because they can claim, when things are unpopular, that they are in the minority party of Congress and had nothing to do with the issue. On the other hand, it is often good to be on the majority side so you have a chance to do something about the issues. I am proud of the record our Committee on Appropriations has made this year because, exclusive of national defense, these appropriation bills as passed by the House are $3.4 billion under the budget. Now, when you add in defense it makes a little different story. But both parties, all political candidates for President, the press and the people are more and more for increased defense.

I think the thing to do is to get on with our work and pass this resolution.

Mr. CONTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I strongly supported the gentleman from Mississippi in full committee, and also in the Rules Committee, with one exception. I think this is a good continuing resolution, but I feel the date should be cut back from December 15 to October 18.

If we do not change that date and we go over to the other body, the other body is going to put a date in of January or February, because the other body does not want to come back. Here we are, late in September, and they have only passed two bills out of the other body. We have not gone to conference on one bill yet.

Are we ready to go home on a continuing resolution in the amount of $408 billion? We were elected by the people of the United States to come here and do our job, but we are not going to do it, we are going to wrap it all up in a continuing resolution and put it over until near Christmas.

Mr. GIAIMO. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I am happy to yield to my good friend from Connecticut.

Mr. GIAIMO. I want to commend the gentleman for what I think is one of the most important statements that is being made in this Chamber today. Think of it, putting $400 billion on a continuing resolution because we have not completed the action on our appropriations and because, in fact, we will still have to come back and do that.

My colleagues should know that there are very heavy pressures being put upon the Congress in both Houses by some Members of the House and the other body to not come back in November after the election for a postelection session when, hopefully, we can conclude the work that should have been done. A necessary session to complete the careful analysis which should be done on these appropriations by the other body and then jointly, in the conference committees.

In addition thereto, as my colleagues know, we still have not adopted the second budget resolution which we will now have to do in November, which must be done before we complete work for the year. The main reason for that delay, as my colleagues know, has been the reconciliation process wherein we started the conference today and which hopefully will be completed next week. Then we can hopefully begin the markup of the Second Budget Resolution next week.

But to me, if the gentleman will yield further, it is unconscionable that we, the people's representatives, after being here all year, now find ourselves not having had the ability to adopt a budget and to adopt the spending bills of this Nation. I submit to my colleagues, I submit that we must come back here, we must come back and do this work, either continue to do the work now, and I know that is unrealistic because of the necessity of running for reelection, but certainly after the election recess we must come back here and complete the work on the spending bills and the budget. I say, therefore, that this continuing resolution is necessary, and I think quite properly at the House numbers.

I would have much preferred that it be at the House numbers or the budget amount, whichever was lesser, because I know what is involved in having the

higher dollar amount, but certainly the termination date on the continuing resolution should be as brief as possible. One of the key items and areas of disagreement in conference will be whether or not to keep a December 15 termination date on the continuing resolution, which will compel Members to come back before December 15 to provide appropriations; or whether, in fact, the conference on the continuing resolution might well cave in to a suggestion which might come from the other body, suggesting a termination date not of December 15, but of sometime in January or February. This would then eliminate the need to come back for a postelection session. We would then be running the Government's spending programs, $400 billion worth of them, on a continuing resolution rather than appropriations which have been scrutinized by both bodies and worked out in conference.

□ 1610

Mr. WHITTEN. Will my colleague yield to me?

Mr. CONTE. Could the gentleman give me an extra minute?

Mr. WHITTEN. I certainly will.

Mr. CONTE. I will take a minute of the gentleman's time.

Mr. WHITTEN. I rise at this point so that the record might be corrected now. The impression was left that we as a House of Representatives had not done our job. Let me say that having to do with appropriations we have done our job. We have sent every bill to the other body. We have sent them individually. They have been in their hands and in their control. They are now. We realize that unless the two bodies get together, everything will come to a standstill the first of October. In view of that, we have brought this resolution here to continue the Government in business. I want to repeat again that the words used by my colleague who preceded me, and my friend, had to do with the Congress as a whole and does not apply to the House of Representatives.

Mr. YOUNG of Florida. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield very briefly to the gentleman.

Mr. YOUNG of Florida. I thank the gentleman for yielding. Let me correct our distinguished chairman. The House has not sent every appropriations bill to the other body. Somewhere along the line the foreign aid appropriations bill got lost and is not going to come to this House before the election. I just want the record to be straight. We have not sent all appropriations bills to the Senate.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the gentleman for yielding. The gentleman from Connecticut (Mr. GIAIMO) has raised the specter of a change in this continuing resolution to a date in January or February. This fits in with a rumor I have heard for several weeks around here—rumors do become substance in this body—that people with junkets planned in the middle of November, have been told informally by the leadership, or someone on that side, "Do not worry. Get your bags packed. The planes will be leaving. We will not be around here in November." If that is the design, only to soothe the junketeers that they will not miss their trips, no one seems to be worrying about the American people. Apparently to some people the junkets are the important thing, not our duty to stay here and work. I believe we should stay here and finish our work.

Mr. CONTE. I want to compliment the gentleman from Connecticut (Mr. GIAIMO). He is going to leave a tremendous void in the House of Representatives as he departs here and goes back into the business world. He is absolutely right. He has always been a hard working, responsible public servant. I wish everyone—I wish this House were packed here today—would heed the gentleman's words. He did not say it outright, but you know what he is saying. Goodbye to the Budget Committee and the budget process. That is what he is saying exactly, because if you go home on October 1, 3, or 4, and then the Senate changes that resolution to January or February, you are not going to act on a second budget resolution. It is all over with, and you can say goodbye to budget restraint.

The gentleman is absolutely right, and he is right on target. Do not let anyone on the majority side here be intimidated that there is going to be a payless day if they adopt my amendment, that the veterans are not going to get their pensions, or the social security recipients are not going to get their checks. You adopt my amendment and on October 18 you clean up the work of the Budget Committee. You clean up the work of the Committee on Appropriations, and it is all over with.

Mr. Speaker, many times we have come in with another continuing resolution for another week or another 2 weeks. So there is no problem and do not let anyone—anyone—draw this red herring over the issue. The issue here is whether you want to go back to your people on October 3 and tell them that you have not lived up to your responsibility, that you advocated $408 billion wrapped up in one piece of paper in a continuing resolution. I say no.

Mr. EDGAR. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to my friend, the gentleman from Pennsylvania.

Mr. EDGAR. I thank the gentleman for yielding. I would like to associate myself with the gentleman's remarks. I think he is right on target. I think we ought to focus on the kind of issues the gentleman suggests. I think if we left here on October 18 as opposed to December, we would put more pressure on the Senate, and I think we would focus the issues on the appropriations process and the budget process. I am concerned, as the gentleman is, that otherwise we will throw the budget process out the window.

I would like to commend the gentleman.

Mr. CONTE. I thank the gentleman from Pennsylvania (Mr. EDGAR). Before I yield back time, my good friend, the gentleman from Wisconsin (Mr. OBEY), quoted Lincoln, but he did not go to the next line where Lincoln said:

> People will never forget what we do here, and they will never forget what we do here today.

Mr. BETHUNE. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

I just want to get the nomenclature straight. If we leave on October 3 and come back after the election when we will have some lameduck Members that would be referred to as a lameduck session—but if we adjourn and do not come back until January 15, as the distinguished gentleman from Connecticut (Mr. GIAIMO) mentioned, it seem to me we ought to start referring to that as a dead-duck session, because that is what it would be. We would be leaving October 3 and not come back at all. So I just want to straighten that out. Is my understanding right? Is there some possibility we might be leaving October 3 and not come back at all?

Mr. CONTE. There is a very strong possibility. I have a feeling that is what the Senate is going to do with this continuing resolution. Then you have a new Congress, and you have just violated the budget process by not passing the second concurrent resolution on the budget. Then you have a new Congress acting again upon appropriations that have been worked on by the previous Congress.

Mr. WHITTEN. Mr. Speaker, I yield myself 1 minute. I wish to repeat again to my colleagues that when they use the word "we" in referring to the carrying out the legislative duties, I want to repeat again the House of Representatives has done its duty. This is the second time we have sent the appropriation bills to the other body. I do not want the impression left that the House of Representatives has not done its duty regarding the appropriations business, especially the Committee on Appropriations. As I said, the committee has reported all the appropriation bills and the House has passed all these bills except one. If you exclude the defense bill, the appropriation bills are $3.4 billion below the budget. We are sending the Senate a second package which includes all those bills. So when you say the word "we," let us add the Congress as a whole, because in the House of Representatives we have done our job twice. I just want to make the record clear on that.

I yield 5 minutes to the gentleman from Missouri (Mr. BURLISON).

Mr. BURLISON. I appreciate the distinguished chairman's yielding to me.

Mr. Speaker, the State of Missouri as well as the State of Iowa and others, has experienced severe agricultural losses due to the drought situation. Missouri has been declared a disaster State by the

Small Business Administration. I am very concerned, Mr. Speaker, that adequate moneys be available for the disaster programs when the Small Business Administration begins approval of applications for qualifying farmers, particularly. The State-Justice-Commerce appropriations bill following House action contained $287 million for the disaster programs. A budget amendment for disaster funds has been submitted by the President in the amount of $1.3 billion. It was submitted, however, too late for the House to consider it in the budget resolution or the State-Justice-Commerce appropriations bill for fiscal year 1981.

Mr. Speaker, because of my strong concern that 10th District of Missouri farmers have readily available the needed funds, I would like to enter into a colloquy with the very distinguished chairman of the Subcommittee on State, Justice, Commerce, and Judiciary, the gentleman from Iowa (Mr. SMITH).

Will the gentleman advise the House as to what sources of disaster moneys we have available at this time as included in the House authorization and appropriations bills to this point.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. BURLISON. I will be delighted to yield to the gentleman from Iowa.

Mr. SMITH of Iowa. I thank the gentleman for yielding. As I understand it, as of today there will be, it is estimated, between $500 and $600 million left over in the disaster loan fund at the end of the fiscal year. The payout in the next 3 or 4 months for disaster loans is expected to be at the rate of about $300 million per month. Applications for such loans are on a regional basis. Applications come into the SBA regional offices, and they notify the Washington office. The Washington office gives the regions authority to issue the checks. The checks are issued on the basis of the applications, and the dates they come in.

The SBA disaster loan program, of course, covers all kinds of disasters including tornadoes, hurricanes, as well as drought disasters. As I stated earlier, $600 million will be in the disaster loan fund at the end of the current fiscal year. Two hundred and eighty-seven million dollars is in the House bill for fiscal year 1981, and some of those funds will be available under the continuing resolution. So it would appear that more than 2 months', and perhaps 3 months' supply of money is available without the passage of the 1981 fiscal year appropriations bill.

□ 1620

In addition to that, as far as drought assistance, for crop loss is concerned, applicants can also apply to the Farmers Home Administration for emergency loans and those loans now are being made on the same basis as SBA. So as far as crop loans are concerned, there will be money available.

I believe that as of today, there is enough money to get us by until December 15 and there certainly is enough money to get us by until November 15 when it is expected the Congress will be back in session.

Mr. BURLISON. Finally, Mr. Speaker, would the gentleman from Iowa advise as to what action he would except to be taken if and when the funds we are discussing are exhausted.

Mr. SMITH of Iowa. I would say we are continuing to watch this situation closely. By the time that the continuing resolution gets to the Senate in the next few days, if any amendments are needed, we certainly will be in favor of them.

Mr. BURLISON. I thank the gentleman for his contribution. I thank the gentleman from Mississppi for yielding me the time.

Mr. CONTE. Mr. Speaker, I yield 6 minutes to the gentleman from Illinois (Mr. MICHEL).

Mr. MICHEL. Mr. Speaker, I do not believe that free elections are really free if the electorate must vote in ignorance.

They will be voting in ignorance this November if we persist in the course of action that we laid out in this resolution. This resolution calls upon us to relinquish our authority to a bureaucracy the people do not elect. This resolution calls upon us to abrogate the responsibilities those people entrusted to every single one of us 2 years ago. This resolution, in effect, disenfranchises the voters. What do they have left, if they have no record upon which to base their decision at the polls?

It is on our record that we are supposed to stand for reelection. This resolution essentially says the record of this House will not be written until after the elections but before the results of those elections take effect.

The majority in this House and in the other body have the votes to act. Yet we have not one single appropriation bill to send to the President and we have no formal budget to begin the fiscal year, beginning October 1. Federal programs are in limbo, the Federal Government is adrift in a sea of indecision. The power of the purse is being dropped in the lap of the bureaucracy, which has carte blanche authority under section 101(e) of this resolution.

Mr. Speaker, the only constraint on them is a sheepish, impish statement admonishing the agencies to "operate as cautiously as possible until the regular appropriations are enacted." Now, what rubbish is that?

In the eyes of those agencies, this Congress must appear to be an aging, decrepit old lion with rotting teeth and no claws.

Grover Cleveland once said that—

> Public officers are the servants and agents of the people, to execute the laws which the people have made.

On behalf of the people we have legislated. We have adopted the Grassley-Byrd amendment mandating a balanced budget and we enacted the Budget Act, mandating a second budget resolution by the 15th day of this month. We ought to honor those laws, not exploit them for the sake of political expediency.

The only other choice is to stand idly by while the Budget Act crumbles before our very eyes, as was eloquently expressed by the gentleman from Massachusetts (Mr. CONTE).

The reason we are in this predicament here today is very simple. The will of the people and the will of the leadership in this Congress are at odds. The leadership cannot do what it would like to do without alienating the people who will be going to the polls just 7 weeks from now.

The whole budget process would not be in jeopardy today had the leadership not blocked a host of measures designed to shore it up.

Time and time again, we sought votes on legislation to tie spending to the gross national product; to balance the budget; to initiate a budget "two step" that would establish macro figures prior to functional categories; to put some controls on entitlements; to set in place the outlays in the second budget resolution as a firm statutory ceiling and give the President impoundment powers; to enact a budget calendar which would highlight violations of the Budget Act; to provide for tax relief that, in concept, the administration, the House and the Senate have all conceded is necessary. The list is endless.

All of these proposals would have given the budget process the stability and the discipline it needs. They would have given the budget process some perspective and given the Nation some kind of economic policy, other than that dictated by public opinion polls.

Yet, in the House and in the other body, these measures have been ignored.

What do we have left? We have a continuing resolution larger than any in history. We have a resolution that allows unlimited expenditures for entitlements, that contains only a few of the limitations we added to various appropriation bills, and that allows the Government to operate at the House-passed levels in every circumstance. It is unheard of.

It seems to me we demean our system of representative government by deferring these important decisions embodied in this resolution until sometime after we are well into the next fiscal year. We are simply turning our backs on our obligation to budget and appropriate the public's money wisely. If we turn over that responsibility to the bureaucracy, and then walk out of here on October 2, this Congress must be judged, in my opinion, as a failure from start to finish.

I will concede, as the chairman has pointed out, that the House has passed all but one appropriation bill. However, the other body could act on these measures in the next couple of weeks and if we were to agree on an October 18 date as called for in the motion to recommit, we could have many of the necessary conferences. I concede the fact that perhaps one or two measures would not be enacted, and then a continuing resolution in that limited frame of reference makes some sense.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. CONTE. Mr. Speaker, I yield 1 minute to the gentleman from Illinois.

Mr. MICHEL. The truth is there is a complete lack of coordination between

the two bodies that once did exist and the majority in control in both Houses has to share the responsibility for that lack of coordination.

One final point I might add: As I understand the Budget Control Act, we are not going to be able to adjourn until a second budget resolution is finalized. So, we have got to come back sometime in the life of this Congress to finalize a second budget resolution or again be in violation of what we set down as the law of the land. How can we in good conscience go back to the people out there and admonish them for violating a law, whether it is local, State or Federal jurisdiction, when right there in our own House we are violating our own law as of September 15, and every succeeding day. We ought to be very conscious of what we are doing here today.

Mr. Speaker, obviously I am opposed to the resolution.

Mr. CONTE. Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana (Mr. HILLIS).

Mr. HILLIS. Mr. Speaker, I rise in the strongest possible opposition to the resolution. This bill clearly represents an attempt to avoid congressional accountability for the huge deficit which the Federal Government will produce during fiscal year 1981. It is incredible to me that the leadership of this Congress is—by design—denying the American people the opportunity to judge each of us based on the record of this Congress.

Early this year there was much fanfare within this House about a balanced budget. It made good reading in the morning newspaper. However, now that Congress has proven its inability to meet the changes presented by a balanced budget, an now that the entire budget process is in a shambles, the leadership of this House has determined that it is in their best interest that the public not know the facts. This decision was obviously made with little regard for the public's best interest.

The fact that the resolution is even being brought up for consideration indicates that the decisionmakers in Congress feel Members are here to get reelected and not to legislate and oversee the operation of the Federal Government. Such overtly political motives are a disgrace and bring dishonor to this great institution. I would hope that the Members of the House could return home without having to be embarrassed about the lack of responsibility demonstrated by our actions today.

Mr. Speaker, it is not my desire to take the floor for partisan reasons. However, when the public's rights are placed second to political considerations, I am obligated to let my constituents know why.

If this resolution passes, the newspaper headlines from earlier this year will be replaced by allegations that Members of the House acted irresponsibly in order to protect their reelection prospects. This politically motivated attempt to hide the facts must be exposed and prevented. The American people must demand accountability. Those Members who are predisposed to ignore congressional responsibilities and support this continuing resolution must know that their actions will not go unnoticed.

We are honor bound to oppose this resolution and stay in Washington until our work is finished. Only then do we have the right to seek reelection.

Mr. WHITTEN. Mr. Speaker, I reserve the balance of my time.

Mr. CONTE. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Mr. Speaker, I was thrilled to hear some of the speakers on the other side of the aisle in this debate and the previous related debate give so much credit to the minority. Here we are, a little band about one-third of the House. Yet the distinguished majority leader said that we are practicing the politics of disruption, as if our little one-third minority could somehow control the actions of this House.

The gentleman referred to the minority's votes on measures in the past, to pass a budget resolution, again as if we somehow control the House.

Another Member of the majority said, "The House is at the mercy of an organized minority."

Well, Mr. Speaker, if we have that kind of awesome power and we are only a little band of one-third minority, just think what a good job we could do managing this House and this Congress if we had a majority.

□ 1630

No, Mr. Speaker, all the oil in Texas will not wash away the fact that the Democrats control this House; the Democrats contol the Senate; the Democrats control the Presidency. The Democrats have the votes to do anything they want to do, so the only conclusion must be that they do not want to face up to doing the job. They do not want to do the job. They do not want to pass appropriation bills. They do not want to comply with the law of the land.

If we pass this resolution today, we made it easy not to do the job. But, if we support the motion to recommit and adopt the October 18 date, we are saying to the American people that we want to stay here. We want to stay here for 2 more weeks and try to do the people's work. The American people have a right to know who supports wanting to stay here and do their work, and who wants to go home and campaign.

The record is clear. Starting 3 weeks ago with the Republican freshmen, it was the Republican Party and the Republicans in this Congress who focused on this issue. It is the Republicans who want to stay here and do their work; and it is the Democrats, apparently, who are refusing to do the job. So, if the Democrats do not want to govern, it is time to give somebody else a chance.

Mr. CONTE. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. COUGHLIN).

Mr. COUGHLIN. Mr. Speaker, I want to call particular attention to the motion to recommit that will be offered by the distinguished ranking minority member of the committee, Mr. CONTE, to change the termination date of this concurrent resolution to October 18. You know, that is the date that historically, in an election year, this House has adjourned. It is the date that the distinguished ranking minority member and the distinguished minority leader proposed in the Rules Committee that we put into this bill. It is a date that would allow us to at least complete some more of the work of this Congress on these appropriation bills, and a date that is realistic.

Let me just pose what happens for just 1 minute. Assuming that the Senate, the other body, extends the time of the continuing resolution until some date next year, do you know what that means we will have to do? That means that next year we will have to take the rest of this year's appropriations bills, reintroduce them, retake them through subcommittee and then through full committee, pass them again by the House; we will have to do two full cycles next year in addition to the fact that we have destroyed the budget process in the process. Is that the kind of scenario you want? Is that the kind of way you want this Congress to appear? We will look like idiots in the mind of the public, and next year we will be in a worse situation than we are this year.

I urge support of the gentleman from Massachusetts when he offers a motion to recommit, changing the date to October 18. If we cannot meet that date, we can always have another continuing resolution, but let us not get into that kind of morass.

Mr. CONTE. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. MYERS).

Mr. MYERS of Indiana. Mr. Speaker, there has been much said this afternoon criticizing the budget process, and I think we might spend the afternoon criticizing the budget process which obviously has not worked, but really, the budget process has not put us in this position we are in today. It would be wrong to leave the impression that the membership of that Budget Committee, on both sides of the aisle, has not done its job and tried to do everything possible to overcome the obstacles placed before them.

The gentleman from Connecticut (Mr. GIAIMO), who has been an outstanding chairman and who will be missed by this body, it certainly is not his fault that we are in this position today, or any member of his committee.

Also, I am proud to be a member of the Appropriations Committee, because, as has been said frequently here this afternoon, our committee, the appropriations subcommittees and the full committee, with one exception has done its job; and even the one exception, the Foreign Assistance Act, we have reported it out of the full committee. I understand there is even one session before the Rules Committee, and to suggest that it is lost is wrong. It is not lost. If we would hang around for the next couple of weeks, I am sure someone could find that bill and bring it to the floor.

But, it also is wrong to suggest—and

here is where I must take exception with my chairman, for whom I have great admiration and with whom I agree on just about everything, but the walls of the Government will not tumble on October 1 if this is changed to October 18, nor will they crumble on October 18 if we should—and I think we should—recommit this bill with the October 18 date.

Because, let us look at what is happening right now. The other body has passed two appropriations bills. The one, energy and water bill, we have already appointed conferees. We have had a preconference meeting between the chairman of this body and the chairman of the other body, and the ranking members of those committees. We have come to many agreements. We could well go to conference tomorrow or the next day, and probably on Monday or Tuesday of next week, be back on the floor by Wednesday with that conference.

The other bill is the military construction bill. It has already passed the other body. I have just been advised that the other body will probably pass their Department of Defense appropriation bill within the hour.

That means that 3 of the 13 major bills have already passed the other body and this body, and are ready to go to conference. So, we are well on the way. If we should decide to take that October 18 date, we have 11 working days left between now and the October 4 date that was announced earlier this year for sine die—11 days. A lot can be done in 11 days, but if we go on to the October 18 date, as has been suggested by the ranking minority member, Mr. CONTE of Massachusetts, that would give us 11 or 12 more days on top of that. At the minimum, we would have 22 additional working days and, my friends, most of us have been through several elections around here.

The SPEAKER pro tempore. The time of the gentleman from Indiana has expired.

Mr. CONTE. Mr. Speaker, I yield 2 additional minutes to the gentleman from Indiana.

Mr. MYERS of Indiana. We have been through elections. If we have done our jobs at all, we do not have to rush home and have a crash program. I am sure our constituents know the kind of job we are doing. However, I think that if they were asked, they would rather see us complete our work than come back in a session, whatever you want to call it, after the election.

I am quite confident that most of the membership would rather stay and get their work done. I am sure the American taxpayer would rather see us complete our work. It might not take until October 18. Possibly, we could work 1 week beyond October 4, maybe on the 10th or 11th, and complete our work, but then we would not necessitate going through the anguish. I think it is altogether a good possibility that the other body would sign in on this, and I just a moment ago tried to ascertain what kind of thoughts they have.

The majority leader of the other body is silent. He is contemplating whether to ask for a lameduck session or go over to January. As Mr. COUGHLIN of Pennsylvania said, if we should adopt a resolution for January 15 or February 15, the whole process has to start over, and we are already behind.

So, I urge our membership on both sides of the aisle, this is not a partisan issue; it certainly is not the fault of the House of Representatives, and I assure the Members that it is not our committee's fault, but we are in this position. I think it would be well for us to recommit the bill with this October 18 date. It is reasonable. I think it is altogether possible that we can complete our work much earlier than that, because the other body is working now and we will be ready to go to conference on this budget and complete our work. Let us recommit and get our work done.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, I yield 2 additional minutes to the gentleman from Indiana.

Mr. Speaker, may I say that there is no Member of Congress with whom I enjoy working more or for whom I have more respect, both for his record and his ability.

My colleague has stated that everything will not fall apart, but we cannot afford to let it. So, if October 18 is put in there, I agree with the gentleman that something will be done. I will tell you what it looks like to me, our problem is on the other end of the Capitol. There is nothing we can say or do that will make them change their minds on whatever they intend to do. We must be both prudent and realistic or we will have to have another continuing resolution.

I hope the gentleman will agree with me. I want to repeat again that we have attended to our duty on the Appropriations Committee. We have sent the bills over there once, and now we are sending them back again all together. If there were any way to control the other body and make them do it by October 1, I would do it. We are trying to do that here. But, the 18th would not change it. The 18th would be just like the situation is today, as the gentleman knows.

□ 1640

Mr. MYERS of Indiana. Mr. Speaker, let me state frankly to the committee chairman that I do not agree with him. October 18 might be a more realistic figure or date than December 15.

Would the gentleman deny that there is a real good chance that the other body will not want to come back in a lameduck session? Tney may want an extension, and they might extend that date to February 15 or February 1, and then we would have our backs to the wall. The other body is moving on these bills. They are pushing those bills over there. Housing and Urban Development has been under consideration every day this week, and they will have completed the job tomorrow. That will be four of the bills they have considered, and they are well down the road. They are moving. If we have to start them over again, then I would say, yes, they are slow starters.

Mr. WHITTEN. Mr. Speaker, it may be that the gentleman is more optimistic about what the other body has time to do than I am.

Mr. MYERS of Indiana. I am not optimistic, but I know that if we would come back in a lameduck session, they are going to be very slow. They are going to be much slower than they are today. October 18 is a realistic date, and I am not sure but I feel that they can complete it by October 1 or October 15.

The SPEAKER pro tempore (Mr. BENNETT). The time of the gentleman from Indiana (Mr. MYERS) has expired.

Mr. CONTE. Mr. Speaker, I reserve the balance of my time.

Mr. WHITTEN. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. PANETTA).

Mr. PANETTA. Mr. Speaker, a great deal has been said here regarding both the budget process and the appropriation process, and also the dates that have been set for adjournment.

There are really two questions that I think Members have to face on this whole issue. One is obviously the question of the process, both the appropriations process and the budget process. But also I think we have to consider the orderly operation of the House and the commitments that have been made to Members with regard to the October 4 adjournment date.

That commitment has clearly been made for a long period of time. If we think a lameduck session is going to be bad, let us imagine a session while Members are struggling in their campaigns, meeting with their constituencies and trying to campaign, and face the pressure of coming back on periodic votes and House sessions as well. That would be as disorderly as any other approach that could be imagined.

As far as the budget process is concerned, clearly this has been an unusual year for the budget process. We are now in a reconciliation conference involving over 100 conferees on both the Senate and House side and dealing with almost $10 billion in legislative savings. That process has to be completed before we can legitimately proceed with the second budget resolution.

When the reconciliation process is completed—and we hope it will be completed within a week—the Budget Committee chairman has made the commitment that we will proceed with the markup of the second budget resolution.

In regard to the October 4 date, the Speaker has made a commitment to the House that we will be back for a lameduck session. We must rely on his commitment. Yes, there are probably forces that would like to extend that date in order to gut the budget process, in order to get beyond the period between the election and Christmas. But the fact is

that we will then face a vote before October 4 if in fact the Senate does that. If they change the date, they will come back here, and then the House will face a vote on whether we want to postpone the session until February and indeed gut the budget process.

Mr. Speaker, that will be the vote that will determine where Members stand on the appropriation and budget process. I urge that the House go along with the date proposed in the continuing resolution.

Mr. DICKS. Mr. Speaker, will the gentleman yield?

Mr. PANETTA. I am pleased to yield to the gentleman from Washington.

Mr. DICKS. Mr. Speaker, I want to associate myself with the remarks of the gentleman from California (Mr. PANETTA).

There has been so much political rhetoric today that it is pleasing, at least to this Member, that somebody finally got up and stated the case as well as anyone can on this issue.

We will have a chance to vote on this question of a date of December 15, January 15, or whatever it is. I think the gentleman from California (Mr. PANETTA), who has done such an exceptional job on the Budget Committee, is to be commended for explaining the situation in which we find ourselves, particularly as it relates to the reconciliation process.

Mr. PANETTA. Mr. Speaker, I thank the gentleman from Washington (Mr. DICKS).

Mr. CONTE. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I think the gentleman from California (Mr. PANETTA) has made the strongest case as to why this date should be changed from December 15 to October 18. He has made the strongest case for that—and I hope he reads his RECORD tomorrow—when he says that they are going to settle this reconciliation in a week.

If they are going to do that, then we ought to take up the second budget resolution, and we ought to take up the 13 appropriation bills and pass them before we go home.

Yes, the Speaker, made a commitment to let us out of here on October 4, but that was an adjournment date. Now it is a recess date for a lameduck session.

Can we imagine, Mr. Speaker, the situation faced by the Members of this House if we do not act on these appropriation bills this year and come back here with a new Congress? All of those bills, all 13 bills, will have to be acted upon by the House of Representatives, first by the subcommittee and the full Committee on Appropriations, then by the House, and we would start all over again.

All of those bills would have to be acted upon all over again. We would have to have hearings, and markups, and the whole process would have to be gone through in the House of Representatives, and we would have a Senate conference.

Then what is going to happen to the fiscal 1982 bills? One bill will be bumping up against the other. I do not think that is a healthy way to legislate.

Mr. Speaker, I hope the Members will adopt my motion to recommit.

Mr. WHITTEN. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I do not know any Member of the Congress today who can make a better presentation or make a better speech than my colleague and cohort, the gentleman from Massachusetts (Mr. CONTE), with whom I have worked so well this year. But I am sure that he does not know of a single Member who would think about agreeing to let this resolution go over until the next calendar year.

Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. PEYSER).

Mr. PEYSER. Mr. Speaker, first of all, I want to congratulate the chairman of the Committee on Appropriations and the entire committee for the way they have handled this. They have handled this matter in a very positive fashion and have really done something constructive to help our Government in this particular situation rather than something that might be destructive.

I have been listening for some time to this debate on this side of the aisle, on the Republican side of the aisle, and I am very concerned. One of the key factors in the whole democratic process in this country is the time that Members can take before an election to get back in front of their constituencies and let their constituencies know what has been happening and answer their questions.

May I say also that my friend, the gentleman from Indiana (Mr. MYERS) was speaking of October 18, and so was my friend, the gentleman from Massachusetts (Mr. CONTE). While he does not have a problem of a real opponent, there are probably many opponents out there of all of us who would welcome the opportunity to debate these issues during the next month before election, all of whom would be denied that opportunity if we followed the Republicans plan.

It is very easy, frankly, for Members of Congress to sit here. I can remember when Members on this side were criticizing a President for hiding in a rose garden and not being willing to debate a candidate. What we are talking about is taking away one of the rights of the American people, the right to have their Representatives out there at least a month or a month and a half before an election to hear them, to argue with them, and to hear what their opponents say. But it is wonderful if we want to hide in this Congress and not give the American people a crack at us.

Not only does this happen to be the right move in acting today on this legislation but it is the democratic move in terms of our democracy to get ourselves out of here as soon as possible and get in front of people. Then let us see who does come back here,

Mr. Speaker, I am not afraid to face that possibility.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Speaker, I thank my colleague for yielding.

I do not think anybody is afraid, that is not the point. The point is that the people did not elect us to campaign. They do not pay our salaries to campaign.

Mr. PEYSER. Mr. Speaker, I beg the gentlewoman's pardon. I will say to the gentlewoman, if she will let me continue, that I think once every 2 years part of our job is going back to our districts, at least a month before an election, and giving the public a chance to speak. In this way we can be hiding down here until November 3, and I do not think that is the democratic process.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield further?

Mr. PEYSER. I am glad to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Speaker, I say to the gentleman that for the 2 weeks during the Republican Convention I was in my district. I was out there every morning, noon, and night.

Mr. PEYSER. Mr. Speaker, may I ask the gentlewoman, was her opponent out there debating her? Were organizations setting up debates?

In my area I have a whole string of debates set up from October on to give my opponent an opportunity to argue his case. I think that is what this is all about.

Mrs. FENWICK. Mr. Speaker, my opponent is all over my district every day.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Speaker, I thank the gentleman for yielding, and I join with my colleague, the gentlewoman from New Jersey (Mrs. FENWICK).

Our responsibility is not going back to our districts and running for reelection. Our responsibility is to do our job here.

The SPEAKER pro tempore. The time of the gentleman from New York (Mr. PEYSER) has expired.

Mr. WHITTEN. Mr. Speaker, I yield 1 additional minute to the gentleman from New York (Mr. PEYSER).

□ 1650

Mr. PATTEN. Mr. Speaker, will the gentleman yield?

Mr. PEYSER. I yield to the gentleman from New Jersey.

Mr. PATTEN. Mr. Speaker, in the 18 years I have been here, the best 4 days were when we got 4 feet of snow and none of the employees could come in. The State Department was no threat, no international incident took place, the taxes came in. It was the 4 best days for America.

The talk I hear is a lot of hogwash. If we go home, this country would be better off, the stock market would go up, and the American people would feel some peace. The best days are the days that the Congress leaves here and the country runs better.

Mr. PEYSER. I thank the gentleman for his remarks.

Mr. Speaker, I think we ought to be out of here on October 4, and pass this measure this afternoon.

Mr. CONTE. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. LUNGREN).

Mr. LUNGREN. Mr. Speaker, it seems to me that, in talking about a lameduck session, we have forgotten what it is we are talking about. There are 40 Members who will not return here. Estimates are that perhaps 100 will not be coming back here. If you go back and you look at the consideration on the floor of this House when we adopted the 20th amendment to the Constitution, the prime reason we did it was to get rid of lameduck sessions. Let me just quote from the debate that took place on this floor at that time from Congressman Dickenson from Missouri. He said:

> In the lameduck Congress, Members defeated for re-election in November continue to legislate and are more liable to listen to the influence of special interests who wish to defeat legislation desired by the people and to Executive influence rather than the expressed will of their constituents. . . . The rule of the people is the safety of the Republic. Representative government must be preserved.

What we are talking about is going on the record on important issues before we have to face the voters, not putting it off until afterward. Otherwise we are denying the rights of our constituents to be heard here.

And that was the subject of the debate on the floor of this House in 1932 when we tried to rid ourselves of the process of lameduck sessions which was the regular practice in this institution at that time.

Mr. CONTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from New York (Mr. PEYSER) says he wants to go back home and debate. I wish he could convey that message to his President. But he says he wants to debate. What does he want to debate? He is going to tell his opponent, "Hey, look, four of the biggest issues facing this country today are the economy, unemployment, inflation, a balanced budget." Is he going to tell his opponent "I ducked the issues, I wrapped it up in a continuing resolution"?

Then he wants a lot of time to campaign. He says the Congress has to go home.

In 1978, the Congress went home on October 15, in an election year. In 1974, an election year, Congress went home on October 17. In 1972, an election year, Congress went home on October 18. In 1970, an election year, Congress went home on October 14.

While they stayed here, they were responsible Congressmen, they did their business, and then they went home and debated.

Mr. WHITTEN. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. HEFNER).

Mr. HEFNER. Mr. Speaker, in listening to the debate, there is an awful lot of rhetoric. I did a little research this morning. People talk about going home and campaigning. I have a campaign, and maybe some debates, I do not know. But we have had 80 more votes this year, up until September 18, than we had last year. If you break that down, it takes at least 30 minutes for every vote, and we have voted on some very important things in those 80 votes, like going into Committee, quorum calls, very important quorum calls.

We have wasted at least one 40-hour week here in frivolous votes, going into the Committee, and calls of the House, that meant absolutely nothing. So if you want to complain about the time we have not had, if we had not engaged in these dilatory tactics we would have had another week to do our business.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. HEFNER. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Speaker, the gentleman is indicating that this body has not done its work. It has been time and time said this afternoon that the House has completed 12 of the 13 appropriation bills, and the 13th is ready. All that has to be done is for it to be scheduled for the floor. So it is the other body. We have to be here so they can finish their work, bring them back, and then we can finish our work.

It is not the criticism that we have not done our job here. But we have to stay here a few more days to complete after the Senate has finished.

Mr. HEFNER. I just got the impression that there was some criticism from the gentleman from Massachusetts (Mr. CONTE). I must have misunderstood. If I did, I apologize to that side of the aisle.

Mr. WHITTEN. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, may I say again that what we have here with regard to the dates is a practical sort of judgment. I agree with my friend, the gentleman from Indiana, that they could on the Senate side, complete everything by the 18th of October. It is also my opinion that if they saw fit, they could do the whole thing between now and October 1. But having followed their announcement about what their plans are, and having absolutely no control over the other body, I, as chairman of the House committee, had to exercise the best judgment I had, trying to meet what they had announced they were going to do and what is best for the whole Government.

I want to pledge to the Members now—which I do not do often—that never will they have my name on anything that carries this resolution over to the next calendar year. And I do not think they will have the signature of a single Republican or Democrat on carrying it over to another Congress. I want to say that.

Taking into consideration the past announcement that had been made, it seemed to me that December 15 was the earliest possible date that we could hope to get those matters settled. In my judgment, it is realistic. So if you wanted to stay until October 18, we could all stay to continue the necessary work of Government. I am always ready to serve the people, to represent them in Congress, and be wherever my responsibilities call. But I just want to say that as I read all of the commitments that have been made, and using my best judgment, put this date in there, and may I say I hope the Senate will get busy and do their job by October 1.

Mr. GIAIMO. Mr. Speaker, will the gentleman yield?

Mr. WHITTEN. I yield to the gentleman from Connecticut.

Mr. GIAIMO. I just wanted to make sure if I understood what the gentleman from Mississippi said. Did the gentleman say he would not go along with any extension?

Mr. WHITTEN. Into the next calendar year. And I meant every word of it. It would be highly improper to have a new Congress write the bills.

Mr. GIAIMO. In other words, in a conference commitee meeting?

Mr. WHITTEN. Anywhere.

Mr. GIAIMO. I thank the gentleman, and think that is a very generous contribution and a necessary one.

● Mr. DASCHLE. Mr. Speaker, I rise in very reluctant support of the continuing resolution before us today. I strongly believe that it is the responsibility of this body to move the appropriations bills as quickly as possible. It would be the height of irresponsibility to delay any consideration of any appropriations legislation for pure political purposes. Time is of the utmost importance in acting quickly and deliberately on each of the appropriations bills still pending in the Congress.

As the chairman of the Appropriations Committee has indicated, the House has passed all but one of the bills already. The bulk of the work which remains is to be done in the Senate. Their expeditious consideration of each of these bills is absolutely essential.

The continuing resolution is necessary if we are to expect any continuity in the payments to be made to literally millions of people throughout the country. Without it, there would be little the Congress can do to prevent loss of paychecks to Government and military employees, to social security recipients, and to our veterans.

In voting for this resolution, we must demand that the other body act quickly and responsibly to insure that full consideration of each of the appropriations bills yet to be passed is made whether or not that consideration falls before the November election.●

The SPEAKER pro tempore. Under the rule, the previous question is ordered on the joint resolution.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONTE

Mr. CONTE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the

gentleman opposed to the joint resolution?

Mr. CONTE. In its present form, I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONTE moves to recommit the joint resolution, House Joint Resolution 610, to the Committee on Appropriations, with instructions to that committee to report the joint resolution back to the House forthwith, with an amendment as follows: On page 9, in line 5, strike out "December 15, 1980" and insert in lieu thereof "October 18, 1980".

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. CONTE) is recognized for 5 minutes in support of his motion.

Mr. CONTE. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore. The Chair will advise the gentleman that that is not in order at this point.

Mr. CONTE. Mr. Speaker, I move a call of the House.

The SPEAKER pro tempore. The Chair does not entertain that motion.

Mr. CONTE. Mr. Speaker, this amendment would provide the Congress with the opportunity to complete the essential legislative business of this session.

While there is no magic to the date of October 18, there is, it seems to me, a lot of commonsense.

It would allow us an additional 2 weeks beyond the currently scheduled adjournment date to complete the public's business.

It would allow us 2 weeks before the election to explain to the voters how responsible we have been in conducting the public's business.

And it is just about the average adjournment date during an election year.

I would like to remind my friends on the majority side of a few facts of political life.

Your party controls the White House, and has a majority of 275 to 159 in the House, and 59 to 41 in the other body.

With 9 working days left before the beginning of the fiscal year, your party and your leadership have been unable to enact a single appropriation bill.

This is the worst legislative record of any Congress in my memory.

Never has Congress been so far behind so close to the start of the fiscal year. And never has Congress considered a continuing resolution which would cover all of our regular annual appropriation bills, and may continue all Federal activities that are funded through annual appropriations.

The magnitude of this joint resolution is staggering.

If the status of appropriation bills, and the estimates for mandatory payments, are the same on October 1 as they are today, then the total of continuing appropriations available under this joint resolution would be $408 billion.

Or to look at it another way, your leadership is ready to adjourn, and abandon $408 billion worth of the public's business.

That is why I offer a motion to recommit to change the expiration date of the joint resolution from December 15 to October 18. The choice is clear.

Vote for this amendment, and give yourself an additional 2 weeks to complete the essential legislative business of this Congress, as well as 2 weeks before the election to tell your contituents how long and hard you worked.

Vote against this amendment, and you will adjourn this Congress with most of its important business unfinished, and you will have 4 weeks before the election to explain your record.

□ 1700

The SPEAKER pro tempore. The gentleman from Mississippi (Mr. WHITTEN) is recognized for 5 minutes.

Mr. WHITTEN. Mr. Speaker, may I say that it is a great pleasure to serve with my colleague from Massachusetts. He can make a wonderful, rafter-ringing speech and without a moment's notice.

The gentleman asked how I was going to answer these questions that he raised. I am going to say that we sent the bills to the Senate once and now in this resolution twice.

I want to say once and for all to my friends who in their excitement, have used the word "we," that "We did our share," and that, "It was not our fault. We sent the appropriation bills over there." Remember the House did its job.

What we are doing, is to send over there all the bills, we are putting them in one package and saying please act by October 1.

Let us vote down this motion and give the Senate enough time where they can act responsibly on the House passed bills.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken and the Speaker pro tempore announced that the noes appeared to have it.

Mr. CONTE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of passage. Members will record their presence by electronic device.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 153, nays 228, not voting 51, as follows:

[Roll No. 562]

YEAS—153

Anderson, Calif.
Anderson, Ill.
Andrews, N.Dak.
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bereuter
Bethune
Broomfield
Broyhill
Buchanan
Burgener
Butler
Campbell
Carney
Carter
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, R. W.
Dannemeyer
Davis, Mich.
Deckard
Derwinski
Devine
Dickinson
Dornan
Dougherty
Duncan, Tenn.
Edwar
Edwards, Okla.
Emery
Erdahl
Evans, Del.
Fenwick
Findley
Fish
Forsythe
Frenzel
Gilman
Goldwater
Goodling
Gradison
Green
Grisham
Guyer
Hagedorn
Hamilton
Hammer-schmidt
Hansen
Harsha
Heckler
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Hyde
Jeffords
Jeffries
Kelly
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leach, Iowa
Lee
Lent
Livingston
Loeffler
Lott
Lujan
Lungren
McCloskey
McDade
McDonald
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Michel
Miller, Ohio
Mitchell, N.Y.
Moore
Moorhead, Calif.
Mottl
Myers, Ind.
O'Brien
Ottinger
Paul
Petri
Porter
Pritchard
Quayle
Quillen
Railsback
Regula
Rhodes
Rinaldo
Ritter
Robinson
Roth
Rousselot
Royer
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Spence
Stangeland
Stanton
Stockman
Studds
Tauke
Taylor
Thomas
Trible
Vander Jagt
Walker
Wampler
Weaver
Whitehurst
Whittaker
Williams, Ohio
Winn
Wylie
Yatron
Young, Alaska
Young, Fla.

NAYS—228

Addabbo
Akaka
Alboeta
Ambro
Andrews, N.C.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Brown, Calif.
Burlison
Burton, John
Burton, Phillip
Byron
Carr
Chappell
Chisholm
Coelho
Collins, Ill.
Conyers
Corman
D'Amours
Daniel, Dan
Danielson
Daschle
Dellums
Derrick
Dicks
Dingell
Donnelly
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
English
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Glickman
Gonzalez
Gore
Gramm
Gray
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hance
Hanley
Harkin
Harris
Hawkins
Hefner
Hightower
Holland
Holtzman
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Ichord
Jacobs
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kasen
Kildee
Kogovsek
Kostmayer
LaFalce
Leath, Tex.
Lehman
Leland
Levitas
Lloyd
Long, La.
Long, Md.
Lowry
Lundine
McCormack
McHugh
McKay
Maguire
Markey
Mathis
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Pa.
Murphy, Pa.
Murtha
Musto
Nathcer
Neal
Nelson
Nichols
Nolan
Nowak
Oakar
Oberstar
Obey
Panetta
Patten
Patterson
Pease
Perkins
Peyser
Pickle
Price
Rahall
Rangel
Ratchford
Reuss
Richmond
Roberts
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Scheuer
Schroeder
Seiberling
Shannon
Shelby
Simon
Skelton
Smith, Iowa
Solarz
Spellman
St Germain
Stack
Staggers
Stark
Steed
Stenholm
Stewart
Stratton
Stump
Swift
Synar
Tauzin
Thompson
Traxler
Udall
Van Deerlin
Vanik
Volkmer
Walgren
Watkins
Waxman
White
Whitley
Whitten
Williams, Mont.
Wilson, Tex.
Wirth
Wolff
Wolpe
Wright
Wyatt
Yates
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—51

Abdnor
Alexander
Bolling
Bonior
Brown, Ohio
Cavanaugh
Clay
Cotter
Davis, S.C.
de la Garza
Dixon
Dodd
Edwards, Ala.
Edwards, Calif.
Erlenborn
Ferraro
Ford, Tenn.
Gingrich
Grassley
Heftel
Howard
Ireland
Jenrette
Johnson, Colo.
Leach, La.
Lederer
Lewis
Luken
McClory
McEwen
Mattox
Miller, Calif.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Pashayan
Pepper
Preyer
Rose
Rudd
Santini
Solomon
Stokes
Symms
Ullman
Vento
Weiss
Wilson, Bob
Wilson, C. H.
Wydler

□ 1720

The Clerk announced the following pairs:

On this vote:

Mr. Bob Wilson for, with Ms. Ferraro against.

Mr. Erlenborn for, with Mr. Vento against.

Mr. Grassley for, with Mr. Jenrette against.

Mr. McClory for, with Mr. Stokes against.

Mr. Rudd for, with Mr. Lederer against.

Mr. McEwen for, with Mr. Murphy of New York against.

Mr. Solomon for, with Mr. Clay against.

Mr. Wydler for, with Mr. Pepper against.

Mr. Brown of Ohio for, with Mr. Bonior of Michigan against.

Mr. Johnson of Colorado for, with Mr. Ford of Tennessee against.

Mr. Lewis for, with Mr. Santini against.

Mr. Pashayan for, with Mr. Cavanaugh against.

Mr. Symms for, with Mr. Miller of California against.

Mr. Gingrich for, with Mr. Preyer against.

Mr. Edwards of Alabama for, with Mr. Howard against.

Mr. Abdnor for, with Mr. Murphy of Illinois against.

Until further notice:

Mr. Cotter with Mr. Rose.

Mr. Weiss with Mr. Nedzi.

Mr. Alexander with Mr. Heftel.

Mr. Davis of South Carolina with Mr. Ireland.

Mr. de la Garza with Mr. Dodd.

Mr. Edwards of California with Mr. Leach of Louisiana.

Mr. Ullman with Mr. Mattox.

Mr. Myers of Pennsylvania with Mr. Luken.

Mr. Charles H. Wilson of California with Mr. Dixon.

Messrs. PHILLIP BURTON, MARKEY, CARR, and WAXMAN changed their votes from "yea" to "nay."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WEAVER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 223, nays 153, not voting 56, as follows:

[Roll No. 563]

YEAS—223

Addabbo
Akaka
Alboeta
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Brown, Calif.
Burlison
Burton, John
Burton, Phillip
Byron
Carr
Chappell
Chisholm
Clausen
Coelho
Collins, Ill.
Conyers
Corman
D'Amours
Danielson
Daschle
Dellums
Derrick
Dicks
Dingell
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
English
Ertel
Evans, Ga.
Fary
Fascell
Fazio
Fisher
Flippo
Florio
Foley
Ford, Mich.
Fountain
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gonzalez
Gore
Gray
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hance
Hanley
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Hightower
Holland
Hollenbeck
Holtzman
Hubbard
Huckaby
Hutchinson
Hutto
Hyde
Ichord
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kasen
Kildee
Kogovsek
Kostmayer
LaFalce
Leath, Tex.
Lehman
Leland
Levitas
Lloyd
Long, La.
Lowry
McCormack
McHugh
McKay
Maguire
Markey
Matsui
Mavroules
Mica
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Pa.
Murphy, Pa.
Murtha
Musto
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Patten
Patterson
Pease
Perkins
Peyser
Price
Rahall
Rangel
Ratchford
Reuss
Rhodes
Richmond
Rinaldo
Roberts
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Scheuer
Schroeder
Seiberling
Shannon
Shelby
Simon
Skelton
Smith, Iowa
Solarz
Spellman
St Germain
Stack
Staggers
Stark
Steed
Stewart
Stratton
Studds
Swift
Synar
Tauzin
Thompson
Traxler
Udall
Van Deerlin
Vanik
Volkmer
Walgren
Watkins
Waxman
White
Whitehurst
Whitley
Whitten
Williams, Mont.
Wilson, Tex.
Wirth
Wolff
Wolpe
Wyatt
Yates
Young, Mo.
Zablocki
Zeferetti

NAYS—153

Andrews, N.Dak.
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bereuter
Bethune
Broomfield
Broyhill
Buchanan
Burgener
Butler
Campbell
Carney
Carter
Cheney
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, Mich.
Deckard
Derwinski
Devine
Dickinson
Dornan
Duncan, Tenn.
Edgar
Edwards, Okla.
Emery
Erdahl
Evans, Del.
Evans, Ind.
Fenwick
Findley
Fish
Fithian
Forsythe
Frenzel
Glickman
Goldwater
Goodling
Gradison
Gramm
Green
Grisham
Guyer
Hagedorn
Hamilton
Hammer-schmidt
Hansen
Hillis
Hinson
Holt
Hopkins
Horton
Hughes
Jacobs
Jeffords
Jeffries
Kelly
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leach, Iowa
Lee
Lent
Livingston
Loeffler
Long, Md.
Lott
Lujan
Lundine
Lungren
McCloskey
McDade
McDonald
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Mazzoli
Michel
Miller, Ohio
Mottl
Myers, Ind.
O'Brien
Panetta
Paul
Petri
Pickle
Porter
Pritchard
Quayle
Quillen
Railsback
Regula
Ritter
Robinson
Roth
Rousselot
Royer
Satterfield
Sawyer
Schulze
Sebelius
Sensenbrenner
Sharp
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Spence
Stangeland
Stanton
Stenholm
Stockman
Stump
Tauke
Taylor
Thomas
Vander Jagt
Walker
Weaver
Whittaker
Williams, Ohio
Winn
Wylie
Yatron
Young, Alaska
Young, Fla.

NOT VOTING—56

Abdnor
Alexander
AuCoin
Bailey
Bolling
Bonior
Brown, Ohio
Cavanaugh
Clay
Cotter
Davis, S.C.
de la Garza
Dixon
Dodd
Edwards, Ala.
Edwards, Calif.
Erlenborn
Ferraro
Ford, Tenn.
Fowler
Gingrich
Grassley
Heftel
Howard
Ireland
Jenrette
Johnson, Colo.
Leach, La.
Lederer
Luken
McClory
McEwen
Mattox
Mikulski
Miller, Calif.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Pashayan
Pepper
Preyer
Pursell
Rose
Rudd
Santini
Solomon
Stokes
Symms
Ullman
Vento
Weiss
Wilson, Bob
Wilson, C. H.
Wright
Wydler

□ 1730

The Clerk announced the following pairs:

On this vote:

Ms. Ferraro for, with Mr. Brown of Ohio against.

Mr. Vento for, with Mr. Wydler against.

Mr. Preyer for, with Mr. Symms against.

Mr. Miller of California for, with Mr. McClory against.

Mr. Murphy of New York for, with Mr. Pashayan against.

Mr. Howard for, with Mr. Pursell against.

Mr. Stokes for, with Mr. Rudd against.

Mr. Lederer for, with Mr. Solomon against.

Mr. Santini for, with Mr. Erlenborn against.

Mr. Bonior of Michigan for, with Mr. Grassley against.

Mr. Murphy of Illinois for, with Mr. Abdnor against.

Until further notice:

Mr. Nedzi with Mr. Gingrich.
Mr. Pepper with Mr. Johnson of Colorado.
Mr. AuCoin with Mr. McEwen.
Mr. Cavanaugh with Mr. Dixon.
Mr. Clay with Mr. Fowler.
Mr. Cotter with Mr. Edwards of Alabama.
Mr. Ford of Tennessee with Mr. Heftel.
Mr. Edwards of California with Mr. Jeanette.
Ms. Mikulski with Mr. Rose.
Mr. Myers of Pennsylvania with Mr. Charles H. Wilson of California.
Mr. Wright with Mr. Mattox.
Mr. Ullman with Mr. Leach of Louisiana.
Mr. Luken with Mr. Ireland.
Mr. Weiss with Mr. Davis of South Carolina.
Mr. Bailey with Mr. Alexander.
Mr. de la Garza with Mr. Dodd.

Messrs. CONYERS and WAMPLER changed their votes from "nay" to "yea."

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. AuCOIN. Mr. Speaker, I was called off the House floor and missed the 5-minute recorded vote (rollcall No. 563) on the final passage of House Joint Resolution 610 continuing appropriations for fiscal year 1981. Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Mr. FOWLER. Mr. Speaker, I missed rollcall No. 563 today because of a meeting with some constituents. Had I been present, I would have voted in the affirmative.

CONFERENCE REPORT ON H.R. 5192, EDUCATION AMENDMENTS OF 1980

Mr. FORD of Michigan. Mr. Speaker, I call up the conference report on the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the statement.

Mr. FORD of Michigan (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the statement and that it be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

(For conference report and statement, see proceedings of the House of September 17, 1980.)

The SPEAKER pro tempore. The gentleman from Michigan (Mr. FORD) will be recognized for 30 minutes, and the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, this is the second conference report on the reauthorization of the Higher Education Act, H.R. 5192. The previous conference report was brought before the House on August 28 and adopted by a vote of 373 to 16. The other body subsequently rejected the conference report by a vote of 43 to 45. We held a further conference with the Senate and reached a new agreement. This conference report is virtually identical to the first one except for several changes to achieve cost reductions and savings.

Mr. Speaker, I would like to briefly outline the differences between this conference report and the previous one.

First, with respect to funding the national direct student loan program, through the borrowing alternative, the Secretary is required to borrow if the Congress appropriates money to support borrowing. Further, the campus-based collections from previous direct loans will revert to the Treasury in each year in which the Secretary borrows at least $1 billion to support the program. This change achieves a savings for purposes of reconciliation of $378 million because of the recapture of the NDSL collections and their reversion to the Treasury.

Second, the option for parents under the parent loan program to begin repayment later than 60 days after taking out the loan is eliminated. All parents will be required to begin repayment within 60 days.

Third, the interest rate in the guaranteed student loan program for both students and parents is increased from 7 to 9 percent rather than to 8 percent as was agreed to in the previous conference. The 9-percent interest rate will decrease to 8 percent if the annualized rate of 91-day Treasury bills reach 9 percent or less.

Fourth, through the elimination of 2 new programs, two changes in the student aid programs and reductions in the authorizations for 10 programs, the total cost of the bill was reduced by an additional $1.4 billion below the previous conference report. This bill will cost $12.2 billion less than the version which the House passed last November, a reduction of more than $2 billion for each year authorized.

H.R. 5192 authorizes balanced increases in grant assistance to help needy and middle-income students meet the increased costs of college at all types of institutions—private and public, 2-year and 4-year, small colleges and research universities. It extends eligibility to unserved part-time students, and establishes fellowship opportunities for graduate and professional school. It makes important reforms in the loan programs aimed at reducing default rates. While extending the availability of need-based loans, the bill establishes a loan program for parents who are hard pressed in assisting their child to attend college. It strengthens authorities for support of such priorities as continuing education, developing institutions, libraries, international studies and urban universities.

Mr. Speaker, as we are today considering the conference report on higher education, I think it particularly fitting that our colleague from Indiana, the distinguished majority whip, the Honorable JOHN BRADEMAS, should have only this morning been awarded the honorary degree of doctor of humane letters by the American University here in Washington because of his leadership in education generally and in higher education in particular.

JOHN BRADEMAS has served on the subcommittee handling higher education legislation for nearly 22 years and has been one of the most effective leaders in the country in helping shape policy to support higher education.

Mr. Speaker, at this point in the RECORD, I insert the text of the citation accompanying the award by the American University of the degree of honorary doctor of humane letters to Mr. BRADEMAS. The award was presented by Richard Earl Berendzen, who was today invested as 11th president of the university.

JOHN BRADEMAS

As diligent scholar and eminent statesman, you, John Brademas, have succeeded in effecting a delicate, yet vital, balance between dreaming and doing. As idealist, you have understood the important role education can play in the growth and development of individuals, communities, and nations. As pragmatist, you have used your leadership in the House of Representatives to ensure that all who seek that growth should find it.

We honor you as a distinguished member of Congress, as a loyal friend of scholarship, and as a major architect of the nation's support of education. Without your vision and action, many of the students here today would not be students. For them, for all of us, we honor you, John Brademas.

By the authority of the Congress of the United States of America vested in the Board of Trustees of The American University, and by the Board of Trustees delegated to me, I confer upon you the degree of Honorary Doctor of Humane Letters and invest you with the hood appropriate to this degree.

AGREEMENT TO RESOLVE CONFERENCE DIFFERENCES BY PROVIDING FOR COST REDUCTIONS IN H.R. 5192

I. MODIFICATION OF THE NDSL ALTERNATIVE FINANCING MECHANISM

The NDSL program could be funded either as it exists under current law or through borrowing by the Secretary. The borrowing authority of the Secretary would be modified from the previous conference agreement. If appropriations are made to support borrowing, the Secretary would be required to borrow to support the program. If the Secretary in any year borrows $1 billion, then the NDSL collections available that year for loans on the campuses would revert to the Treasury.

The previous conference agreement required that the Secretary borrow the amount needed for full funding of the program—$3.4 billion—before the NDSL collections would revert to the Treasury. In other words, in fiscal year 1979 for example, there is $760 million available for the NDSL program, which is composed of a capital contribution appropriation of $286 million and $474 million in collections and interest from previously made loans. If the Secretary borrowed $1 billion under this proposal, there would be $1 billion available for loans at the campus level and the $474 million would revert to the Treasury.

The Secretary would have to borrow at least $1 billion in each subsequent year for future NDSL collections to revert to the Treasury. If the Congress chose not to appropriate funds to support borrowing, the program would continue as it currently exists. If the program is funded through borrowing, each campus would be held harmless at its 1979 level of available loan funds.

This proposal achieves a savings for purposes of reconciliation of $378 million because of the recapture of the NDSL collections and their reversion to the Treasury.

II. MODIFICATION OF THE PARENT LOAN PROGRAM

Eliminate all options for parents to begin repayment of a parent loan more than 60 days after taking out the loan. Increase the interest rate from 8 percent in the previous conference agreement to 9 percent. Thus, all parents desiring a parent loan would have to begin repayment within 60 days at 9 percent interest. CBO assumes that there will be very little volume in the parent loan program since they believe that families will have their children borrow the maximum available at 8 percent with the in-school interest subsidy under GSL before the parents borrow.

Under this assumption this change produces a GSL entitlement savings of $1 million in fiscal year 1981 and a savings of $5 million over the life of the bill. Others, including the administration, believe that there will be a substantial loan volume in the parent loan program and that the savings would be considerably higher, on the order of $50 million over the life of the bill. This proposal also counters the objection of those who erroneously interpreted the period of repayment deferment at 11 percent as a period during which parents would have "free money."

III. REDUCTIONS IN AUTHORIZATIONS AND OTHER PROGRAM CHANGES

First. Reduce the authorizations for title I, part B, Education outreach programs to: $20 million fiscal year 1981 in lieu of $20 million fiscal year 1981; $30 million fiscal year 1982 in lieu of $40 million fiscal year 1982; $40 million fiscal year 1983 in lieu of $60 million fiscal year 1983; $50 million fiscal year 1984 in lieu of $80 million fiscal year 1984; and $60 million fiscal year 1985 in lieu of $100 million fiscal year 1985.

This achieves a savings of $100 million.

Second. Reduce the authorization for the basic title III program to: $160 million fiscal year 1981; $175 million fiscal year 1982 in lieu of $185 million fiscal year 1982; $185 million fiscal year 1983 in lieu of $210 million fiscal year 1983; $200 million fiscal year 1984 in lieu of $245 million fiscal year 1984; and $220 million fiscal year 1985 in lieu of $280 million fiscal year 1985.

This achieves a saving of $300 million. At the request of the administration the effective date is delayed until fiscal year 1982. Therefore, the fiscal year 1981 authorization is dropped. The authorizations for the challenge grant program would remain unchanged.

Third. Reduce the authorization for initial year supplemental education opportunity grants to $350 million per year from $400 million per year. This achieves a saving of $250 million.

Fourth. Reduce the NDSL grace period before repayment begins to 6 months rather than 9 months. This would conform the grace period for NDSL to the new GSL grace period and facilitate loan consolidation. This achieves a saving of $70 million over the life of the bill.

Fifth. Establish the minimum room and board allowance for dependent students commuting from home at $1,100 rather than $1,150 as previously agreed to in the conference. This achieves a saving of $80 million over the life of the bill.

Sixth. Reduce the authorizations for title V, part A, Teacher Corps to: $45 million fiscal year 1981 in lieu of $45 million fiscal year 1981; $50 million fiscal year 1982 in lieu of $70 million fiscal year 1982; $60 million fiscal year 1983 in lieu of $75 million fiscal year 1983; $70 million fiscal year 1984 in lieu of $80 million fiscal year 1984; and $80 million fiscal year 1985 in lieu of $85 million fiscal year 1985.

This achieves a savings of $50 million.

Seventh. Reduce the authorizations for title VI, part A to: $45 million fiscal year 1981 in lieu of $45 million fiscal year 1981; $50 million fiscal year 1982 in lieu of $55 million fiscal year 1982; $60 million fiscal year 1983 in lieu of $70 million fiscal year 1983; $70 million fiscal year 1984 in lieu of $80 million fiscal year 1984; and $80 million fiscal year 1985 in lieu of $85 million fiscal year 1985.

This achieves a savings of $30 million.

Eighth. Reduce the authorization for title VII, part A to: $100 million fiscal year 1981 in lieu of $140 million fiscal year 1981; $100 million fiscal year 1982 in lieu of $140 million fiscal year 1982; $100 million fiscal year 1983 in lieu of $145 million fiscal year 1983; $100 million fiscal year 1984 in lieu of $150 million fiscal year 1984; and $100 million fiscal year 1985 in lieu of $155 million fiscal year 1985.

This achieves a savings of $230 million.

Ninth. Reduce the authorizations for title VII, part C, to $80 million for each fiscal year rather than $110 million for each year as is contained in the current conference agreement.

This achieves a savings of $150 million.

Tenth. Reduce the authorizations for title X, fund for the improvement of postsecondary education, to: $20 million fiscal year 1981 in lieu of $20 million fiscal year 1981; $30 million fiscal year 1982 in lieu of $30 million fiscal year 1982; $40 million fiscal year 1983 in lieu of $40 million fiscal year 1983; $45 million fiscal year 1984 in lieu of $50 million fiscal year 1984; and $50 million fiscal year 1985 in lieu of $50 million fiscal year 1985.

This achieves a savings of $5 million.

Eleventh. Reduce the authorizations for title XI, urban grant university program, to: $15 million fiscal year 1981 in lieu of $15 million fiscal year 1981; $25 million fiscal year 1982 in lieu of $25 million fiscal year 1982; $35 million fiscal year 1983 in lieu of $40 million fiscal year 1983; $45 million fiscal year 1984 in lieu of $50 million fiscal year 1984; and $55 million fiscal year 1985 in lieu of $65 million fiscal year 1985.

This achieves a savings of $20 million.

Twelfth. Drop title XIII of the conference report, women's worksite development demonstration program, which is duplicative of the authority contained in title I, part B, education outreach programs; that is, the Senate would recede on note 17 of the titles I, II, and III comparative print, page 97. This achieves a saving of $38 million.

Thirteenth. Eliminate entirely the administrative simplification study; that is, the Senate would recede on note 15 of the miscellaneous provisions comparative print, page 27, rather than the House receding with an amendment. This achieves a saving of $1 million.

Fourteenth. Reduce the authorizations for NIE to: $120 million fiscal year 1981 in lieu of $125 million fiscal year 1981; $130 million fiscal year 1982 in lieu of $145 million fiscal year 1982; $145 million fiscal year 1983 in lieu of $165 million fiscal year 1983; $160 million fiscal year 1984 in lieu of $190 million fiscal year 1984; and $175 million fiscal year 1985 in lieu of $215 million fiscal year 1985.

This achieves a savings of $110 million.

Items 1–14 above, achieve savings of $1.4 billion. With the adoption of this package, the total cost of the bill would be $48.389 billion, which would be $12.2 billion less than the House-passed version of H.R. 5192 and $12.1 billion more than the Senate-passed version. The original conference agreement was $11 billion less than the House-passed version and $13.5 billion more than the Senate-passed version.

IV

Increase the interest rate in the guaranteed student loan program from 7 to 9 percent rather than 8 percent as agreed to in the previous conference. The 9-percent interest rate in both the guaranteed student loan program as it applies to students and as it applies to parents will decrease to 8 percent if the annualized rate of 90-day Treasury bills decreases to 9 percent or below. All interest rate changes apply only to new borrowers.

Mr. Speaker, I would like to describe in more detail the provisions of the conference agreement.

Part A of title I establishes a new Commission on National Development in Postsecondary Education. The function of the Commission shall be to review national, State, and institutional policies to examine the effectiveness of Federal financial assistance to students and institutions in conjunction with State and institutional aid policies; to consider the research capacity of institutions and the public and private sector in promoting research; and to examine the resources of institutions and the effect of demographic changes which will impact on their ability to meet social and economic needs. At the initiative of Mr. BIAGGI of New York, the Commission will also conduct a study of the special needs of nontraditional and adult students in postsecondary education.

Part B of title I is renamed "Education Outreach Programs." It combines the authorization for comprehensive State planning from section 1203, the authority for education information centers from title IV, the current title I, community

service and continuing education, and some essential elements of title VI, financial assistance for the improvement of undergraduate instruction, and title X, establishment and expansion of community colleges.

The planning, information services, and continuing education, including rural community education, activities are all focused on outreach to adults who have not been adequately served by postsecondary education.

Ninety percent of the funds are allocated to the States on an equal per State basis and on the basis of their adult population. The bill establishes a general allocation of the funds among the types of State activities authorized while leaving substantial flexibility for each State to set its own priorities. Each State is guaranteed a minimum of $187,500.

Ten percent of the funds are reserved for the Secretary to support projects and activities to expand access to education, particularly for underserved adults.

The following authorization levels are established:

[In millions]

Fiscal year 1981	$20
Fiscal year 1982	30
Fiscal year 1983	40
Fiscal year 1984	50
Fiscal year 1985	60

Title I substantially embodies and is built on H.R. 4531, the Lifelong Learning Act of 1979, introduced by Mr. RATCHFORD with 14 cosponsors. Title I also incorporates the longstanding interest of Mr. BIAGGI of New York in student data banks as embodied in H.R. 3513. A significant contribution to the title, particularly with respect to State planning, was drawn from H.R. 5051 which was introduced by Mr. JEFFORDS of Vermont with the cosponsorship of Mr. RATCHFORD.

Title II, college and research library assistance and library training and research, has been reorganized, by eliminating the supplemental grant, which has never been funded, and by transferring the special purpose grant program from part A into a more comprehensive part B. Assistance under part A will come in the form of resource development grants up to a maximum of $10,000, increased from the current $5,000, to institutions of higher education, combinations of institutions, branch campuses or public and private nonprofit library institutions serving higher education.

The maintenance of effort provisions have been strengthened, permitting only very unusual circumstances to qualify institutions for waivers.

The funding for an expanded part B, library training research and development, would be divided between three functions on a one-third, one-third, one-third basis, reflecting the addition of special purpose grants to part B from part A.

No major changes have been made in the substance of part C, strengthening research library resources, except the addition of a provision prohibiting recipients of part C grants from receiving grants under either parts A or B.

The conference substitute authorizes the following amounts:

Part A

[In millions]

Fiscal year 1981	$10
Fiscal year 1982	30
Fiscal year 1983	30
Fiscal year 1984	30
Fiscal year 1985	35

Part B

[In millions]

Fiscal year 1981	$10
Fiscal year 1982	30
Fiscal year 1983	30
Fiscal year 1984	30
Fiscal year 1985	35

Part C

[In millions]

Fiscal year 1981	$10
Fiscal year 1982	15
Fiscal year 1983	15
Fiscal year 1984	15
Fiscal year 1985	15

An important change in the college library programs in title II is the addition of a new part D, a study of the feasibility and advisability of establishing a National Periodicals System. The authorization for this study is $750,000 for fiscal years 1981 and 1982 and such sums for fiscal years 1983 through 1985, to be funded only in parts A, B, and C are funded at the fiscal 1979 appropriations level.

The conference substitute creates a title III program which contains three parts. Part A, strengthening institutions, is derived from the provisions of the House bill. Part B, aid to institutions with special needs, contains provisions that were in part A of the Senate amendment. Fifty percent of the appropriation will go to each of these parts. Under both parts, the purposes of the program are clarified to focus on strengthening institutions which enroll large numbers of disadvantaged students, lack resources and are taking steps to improve their chances for survival.

Under part B of the conference substitute, the institutions that historically have served substantial numbers of black students shall be assured that their sector will receive not less than 50 percent of the amount that the sector received in fiscal year 1979 under the current title III program. Community colleges are guaranteed a floor of 24 percent of the assistance under part A and 30 percent of the assistance under part B.

The conference substitute incorporates the provisions of the House bill pertaining to challenge grants to institutions eligible for assistance under part A or part B. An institution receiving a challenge grant will match Federal funds on a 50–50 basis. The institutional match must be new money and can be raised from alumni giving, foundation grants, increased State appropriations, et cetera.

The conference substitute modifies the provisions of the House bill establishing an application review process and a committee on review to provide only for an application review process.

The conference substitute authorizes the following amounts for parts A and B:

[In millions]

Fiscal year 1982	$175
Fiscal year 1983	185
Fiscal year 1984	200
Fiscal year 1985	220

The substitute provides the following authorizations for the challenge grant program:

[In millions]

Fiscal year 1982	$35
Fiscal year 1983	35
Fiscal year 1984	45
Fiscal year 1985	50

TITLE IV. STUDENT ASSISTANCE

BASIC GRANTS

The basic grant is renamed the Pell grant in recognition of the contribution of the chairman of the Senate Subcommittee on Education, Arts and Humanities, and the maximum award is increased. In addition, the limitation in the program that a student's basic grant may not exceed 50 percent of their cost of attendance is modified. The maximum grant amount is increased in steps from the current level of $1,800 to $2,600 in fiscal year 1985 and the percentage of cost limitation is also increased from the current level of 50 to 70 percent when the maximum grant reaches $2,600.

In the case of less-than-full funding, students whose eligibility for a basic grant is within $200 of the maximum grant will be paid the full amount of their grant first, then grants will be reduced according to a statutory schedule which gives the most protection to the lowest income students. The minimum basic grant award at less than full funding is increased from $50 to $200.

Students will be eligible for a grant during the period required to complete their first baccalaureate course of study. Current law provides for 4 years of full-time support.

The thresholds in current law requiring funding for the college work study, supplemental educational opportunity grant, and national direct student loan programs are retained. The level of the college work study threshold is revised from $500 million to $550 million, and the SEOG threshold increases from $370 million to $480 million in step with increases in the maximum grant and percentage of cost limitation. A new threshold is established for the State student incentive grant program at $76.75 million—the current appropriation.

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT

The definition of student eligibility is simplified so that the program serves students with "need." The requirement that SEOG awards be matched at the campus with other forms of assistance is eliminated. Students are provided with the same eligibility as basic grants toward completion of their undergraduate studies.

The maximum yearly award is increased from $1,500 to $2,000. The $4,000 cumulative maximum in current law is repealed.

The conference substitute authorizes initial year appropriations of $350 million for fiscal years 1981 through 1985 and authorizes appropriations of such sums as may be necessary for continuing year SEOG awards for fiscal years 1981 through 1985.

The formula for the allocation of SEOG funds among the States is modified to be based on "undergraduates" rather than "persons" since the program only serves undergraduates and not graduate students who are included in the term "persons."

The conference substitute determines institutional need for supplemental grant funds by subtracting from 75 percent of the total student expenses the sum of family and student contributions, Pell grants, SSIG assistance and 25 percent of grants and awards made by the institution from its own resources. The substitute further provides a declining institutional hold-harmless related to increased availability of appropriations for the program.

For the purposes of determining each institution's need for SEOG funds, I believe that the conferees intend that SSIG funds be counted in each institution's SEOG application in a manner that reflects total State grants, the Federal SSIG contribution plus total State matching contribution, received for students at that institution. I have been advised that certain States, such as Missouri, maintain separate accounting procedures for distribution of Federal SSIG funds and State SSIG funds. Where this procedure is used, and given the manner in which the SEOG formula determines institutional need, certain institutions could be unfairly penalized.

Thus, I think it important to emphasize that for the purpose of determining SEOG need, SSIG funds allotted to a State and the State contribution shall be considered proportionately utilized in each State student grant.

Institutions will be permitted to use up to 10 percent of their SEOG funds to make awards to less-than-half-time students.

With respect to the relationship between the Basic educational opportunity grant, the supplemental educational opportunity grant and the State student incentive grant, a Federal policy objective is set of meeting 75 percent of a student's cost of education through a combination of family contribution and grant aid.

In sum, the SEOG program is simplified to make it a flexible source of campus-based grant assistance available to meet the diverse needs of students.

STATE STUDENT INCENTIVE GRANT PROGRAM

The distinction between authorizations for initial year and continuing year awards is removed and authorizations are provided as follows:

[In millions]

Fiscal year 1981	$100
Fiscal year 1982	100
Fiscal year 1983	150
Fiscal year 1984	200
Fiscal year 1985	250

The maximum award to a student is increased from $1,500 to $2,000. Current law is clarified to permit State grant programs which serve less-than-half-time students or graduate students to qualify. The requirement that eligible State programs serve students in all nonprofit institutions is modified to exempt State statutory restrictions enacted prior to October 1, 1978. The bonus allotment for States with State guarantee agencies is repealed.

TRIO PROGRAMS

The authorization is increased to $400 million in fiscal year 1982 and a such sums authorization is provided for subsequent years. The staff development authority is clarified to provide for greater involvement by professionals in the field. The unfunded service learning center authority is repealed. The Secretary is required to consider the prior experience of applicants in making TRIO awards.

The talent search program is focused as a community-based program serving youth. The services to be provided to clients are enumerated and include tutorial services. Two-thirds of those served must be both low-income, 150 percent of poverty, and first generation in college, neither parent completed a baccalaureate degree.

The Upward Bound program is focused on junior and senior high school youth and the services to be provided are enumerated. Two-thirds of those served must be low-income and first generation in college, and one-third can be either low-income or first generation.

The special services for disadvantaged students program is focused on those enrolled in postsecondary education and the services to be provided are enumerated. Two-thirds of those served must be low-income and first generation in college, or handicapped, and one-third of those served can be either low-income, first generation, or handicapped.

The educational opportunity centers are focused as a community-based program serving adults. Two-thirds of those served must be low-income and first-generation. The services to be provided are specified and language is included to prevent duplication between talent search and educational opportunity centers.

Statutory authority is provided for the special programs for students whose families are engaged in migrant and seasonal farm work. The authorization for this program is $9.6 million in fiscal year 1981, $12 million in fiscal year 1982, $14 million in fiscal year 1983, $16 million in fiscal year 1984 and $18 million in fiscal year 1985.

ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION

Current law is retained unchanged.

VETERANS COST OF INSTRUCTION PROGRAM

The program is modified to provide greater encouragement for institutions to serve handicapped and disabled veterans. Consortia arrangements among institutions serving veterans and coordination among programs serving veterans are also further encouraged.

GUARANTEED STUDENT LOANS

Seven days of hearings by the subcommittee were devoted to this program. These deliberations identified five major areas of concern: The need to enhance the ability of parents to obtain the liquidity to pay their reasonable share of the costs of educating their children, the lack of capital availability in some areas of the Nation, the need to provide a mechanism for the consolidation of multiple student loans, the need to provide for extended and income sensitive repayment terms for borrowers with a large student loan debt and the problem of further curbing loan defaults. These concerns and suggested solutions were brought before the subcommittee by Mr. SMITH of Iowa. Mr. MAGUIRE of New Jersey, and Mrs. PENWICK of New Jersey among others.

The first of these concerns is addressed by the creation of a parent loan program. Under the parent loan program, parents could borrow up to $3,000 per year and $15,000 total for any one student.

Parents begin repaying on an installment basis within 60 days at 9-percent interest.

In all other respects, the parent loan would be identical to the current guaranteed student loan program.

The Student Loan Marketing Association—Sallie Mae—is given the authority to make loans directly to students and parents in areas where there is a severe shortage of student loan capital. In addition, State guarantee agencies may act as lenders of last resort using funds borrowed from Sallie Mae.

If a student or parent borrower has loans from more than one lender or under NDSL, GSL, or another Federal student loan program the aggregate amount of which exceeds $5,000, Sallie Mae could make a single consolidation loan to the borrower. If the total indebtedness of a student or a parent exceeds $7,500, Sallie Mae could make a new loan to the borrower with graduated or income-sensitive repayment terms of up to 20 years length. Sallie Mae is mandated to disseminate information on its consolidation and extended repayment loan options.

Incentives are also provided for State guarantee agencies to provide lender referral services to borrowers.

With respect to curbing defaults; making loans available to parents, providing for loan consolidation and providing for extended and income-sensitive repayment should effectively prevent defaults. In addition, a system is established for the Secretary to share information on defaulted loans with credit bureaus. Provision is also made for student borrowers to request lenders to report to credit bureaus their positive record of student loan repayment. The Department of Education is instructed to share information on student names and addresses with State guarantee agencies to facilitate the collection of defaulted loans. Lenders under the program are also required to provide thorough and accurate loan information to student borrowers.

Sallie Mae's dependency on Federal capital is reduced by prohibiting the Secretary of the Treasury from requiring that Sallie Mae raise funds through the Federal Financing Bank and by removing the guarantee of the full faith and credit of the United States in 1984. To complement these changes, Sallie Mae's ability to raise private capital is enhanced by permitting it to deal in debt obligations comparable to those offered by other secondary markets, to raise funds through the sale of nonvoting common stock and by removing the

specification in the law of the par value of Sallie Mae's stock.

Finally, Sallie Mae's ability to effectively perform as a secondary market for student loans is enhanced by permitting Sallie Mae to advance to a lender up to 100 percent of the face value of a student loan in warehousing and in broadening the types of securities that Sallie Mae can accept in providing warehousing advances. Under current law, Sallie Mae can deal with lenders with assets of less than $50 million even if the lenders discriminate against borrowers on the basis of their banking relationship with the lender. This $50 million limit is increased to $75 million.

The annual loan limit for independent undergraduate students is increased from $2,500 to $3,000. The aggregate loan maximums for students are modified as follows:

	Current law	H.R. 5192
Dependent undergraduate	$7,500	$12,500
Independent undergraduate	7,500	15,000
Graduate student	15,000	25,000

The Secretary is given the authority to waive the aggregate maximum for graduate students enrolled in unusually expensive programs of professional studies.

The interest rate for new borrowers is increased from 7 to 9 percent, and the grace period before repayment begins is shortened from 9 to 12 months to 6 months for new borrowers. With respect to both students and parents, the interest rate decreases to 8 percent if the annualized rate of 91-day Treasury bills is 9 percent or less.

Limitations are placed on the payment of the special allowance for loan funds raised through the issuance of tax-exempt bonds to prevent abuses in this practice.

The allocation of administrative allowances among specified purposes by State guarantee agencies is removed and the definition of allowable administrative expenses is clarified.

COLLEGE WORK STUDY

Authorization for the program is provided as follows:

[In millions]

Fiscal year 1981	$670
Fiscal year 1982	720
Fiscal year 1983	760
Fiscal year 1984	800
Fiscal year 1985	830

Students employed under this program are required to be paid the minimum wage. Institutions are permitted to carry forward and carry backward up to 10 percent of their college work-study funds. The job location and development program is expanded by permitting institutions to use up to $25,000 for this purpose rather than $15,000 in current law.

Institutions are permitted to use up to 10 percent of their work-study funds for less-than-half-time students and are encouraged, at the suggestion of Mr. WEISS, of New York, to provide employment that complements the educational program of a student. Institutions are also permitted to use part of their administrative allowance to establish community service learning programs.

NATIONAL DIRECT STUDENT LOAN PROGRAM

Authorization for new capital contributions is provided as follows:

[In millions]

Fiscal year 1981	$400
Fiscal year 1982	400
Fiscal year 1983	475
Fiscal year 1984	550
Fiscal year 1985	625

The aggregate loan limits are modified as follows:

	Current law	H.R. 5192
First 2 years as an undergraduate	$2,500	$3,000
Undergraduate total	5,000	6,000
Undergraduate and graduate total	10,000	12,000

The interest rate for new loans is increased from 3 percent to 4 percent.

For both the national direct student loan program and the guaranteed student loan program four new circumstances under which borrowers can defer repayment of their loans are defined: First, periods of up to 3 years for temporary total disability—at the suggestion of Mr. BINGHAM, of New York; second, service in the Commissioned Corps of the Public Health Service—at the suggestion of Mr. STAGGERS, of West Virgina; third, service as a full-time volunteer with a nonprofit agency that engages in activities like the Peace Corps or VISTA; and, fourth, internships required to begin professional practice.

Efforts to curb defaults will be enhanced by a system for the exchange of information on defaulted loans between the Secretary and credit bureaus and by providing for the sharing of names and addresses of defaulters with lenders.

The conference substitute also requires the Secretary to attempt to collect defaulted loans for 4 years after they are assigned and requires institutions to provide thorough and accurate loan information to students.

The grace period prior to the beginning of repayment is reduced from 9 months to 6 months.

The definition of handicapped students for purposes of teacher loan cancellation is conformed to the definition used in the Education of the Handicapped Act, at the initiative of Mr. BAUMAN, of Maryland. The law is clarified with regard to the treatment of loan cancellations as income.

The conference substitute also provides an alternative financing mechanism through borrowing by the Secretary to meet the student loan capital needs of institutions of higher education through a procedure by which existing campus revolving funds revert to the Federal Treasury.

GENERAL PROVISIONS—TITLE IV

INSTITUTIONAL ELIGIBILITY

Institutions are required to provide students and prospective students with information on their academic programs, costs, student financial aid programs, tuition refund policy, special services for the handicapped, accreditation status and standards of satisfactory progress.

NEEDS ANALYSIS

The development of a single system of needs analysis for eligibility for student assistance is mandated. Participation by the higher education community in the development of an annual schedule of expected family contributions is required, and congressional review of the schedule is provided for.

An assessment rate of 14 percent on discretionary income is specified for adjusted gross family incomes less than $25,000.

The criteria to be used in formulating the expected family contribution schedule are specified for all of title IV rather than just for the basic grant program. The criteria in current law applicable to the basic grant program are retained with the following exceptions and modifications:

Reasonable child care expenses are included in the student's budget;

All individuals are provided with an asset reserve of not less than $10,000. All equity in the family's principle place of residence is excluded from consideration as an asset at the initiative of Mr. DRINAN of Massachusetts. An additional asset reserve of not less than $50,000 is provided to those with farm or business assets;

The assessment rate on the income of independent students with dependents will be the same as the rate for the families of dependent students;

In calculating student cost of attendance separate commuter budgets are provided for students who live with their parents and those who do not;

Simplified data requirements from institutions by eliminating the requirement that "actual" cost of attendance be provided for every student;

Permits the calculation of student budgets on the basis of the costs of study abroad where such study is included in a formal program at the institution;

Requires that a married student will be considered independent and be permitted to use current year income information; and

Expenses for the special services or equipment needed by handicapped students are included in the student's budget.

SINGLE FORM

Requires that student eligibility for title IV programs be established through a single form without cost to the student or the student's family. Also requires that the processing of such application bed ecentralized to the maximum extent practicable. The Secretary is also authorized to develop a system of pre-eligibility assistance to provide students with early notice of their potential eligibility for financial aid.

ADMINISTRATIVE ALLOWANCE

Provides institutions with an administrative allowance of $10 per each basic grant recipient and $10 per each holder of a guaranteed student loan. In addition, provides that from the campus-based programs each institution shall receive an administrative allowance equal to 5 percent of the amount of campus-based funds up to $2.75 million, 4 percent of the amount of campus-based funds greater than $2.75 million but less than $5.5 million, and 3 percent of the amount of campus-based funds in excess of $5.5 million. The ceiling on the amount of administrative allowance an institution can receive is removed, and institutions are required to use their administrative allowance solely for the purpose of administering the student financial aid programs.

CRIMINAL AND CIVIL PENALTIES

The criminal penalties for fraud which in current law apply only to the guaranteed student loan program are applied to all of the title IV programs. Institutions may be suspended or terminated from the program or civil penalties levied for substantial misrepresentation of educational programs, financial changes or the employability of graduates.

STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

The program is modified to provide for training services through contracts with the Secretary for those involved in student financial assistance programs.

A National Commission on Student Assistance is established to undertake a 2½-year study of issues such as more effective means to curb defaults, capital availability, the most appropriate mix of gift aid and self-help, the status of financial aid for graduate students, the appropriate level of public subsidy of student loans and the impact of student assistance on student career choices and educational prices. In addition, special 1-year studies of the following topics will be made: Insurance premiums charged to students, the method of determining the special allowance, the academic progress standards required for student eligibility for financial assistance, and the recapture of interest subsidies paid on behalf of student borrowers by the Federal Government.

The President, the Speaker, and the President pro tempore of the Senate each appoint one-third of the 12 members. It was evident in the hearings that a great many questions concerning student loans in particular and student assistance generally cannot be answered and that radical changes in the current student loan programs cannot therefore be justified at this time. The Commission is created to provide answers to these questions so that Congress and the President will be better informed in future deliberations on these programs. An authorization of $10 million is provided.

TITLE V, TEACHER TRAINING PROGRAMS

The limitation on the salaries for teacher interns in the teacher corps programs is deleted. Cooperation between local educational agencies and institutions of higher education in the teacher center program is encouraged.

More emphasis is placed on updating teachers in the use of technology, telecommunications, and testing. The pool of eligible grantees for teacher centers is expanded with the inclusion of educational service agencies.

Direction is given to the Secretary to make at least one grant award for teacher centers in each State.

Grants to schools of education for upgrading their faculty and curriculum to meet current needs are authorized.

The conference substitute establishes an Office of Education Professional Development in the Department of Education to review professional development operations and to coordinate their activities among the various Federal education programs.

The conference substitute authorizes the following amounts for the Teacher Corps program:

[In millions]

Fiscal year 1981	$45
Fiscal year 1982	50
Fiscal year 1983	60
Fiscal year 1984	70
Fiscal year 1985	80

The conference substitute provides for the following authorizations for teacher training programs:

[In millions]

Fiscal year 1981	$20
Fiscal year 1982	30
Fiscal year 1983	40
Fiscal year 1984	50
Fiscal year 1985	55

The conference substitute authorizes a new program of training for elementary and secondary schoolteachers to teach handicapped children in areas where there is a shortage of such teachers. This training program is in the nature of fellowships to individual teachers who must within 5 years after completion of training teach for at least 2 years in a special education program or repay the stipend awarded to the individual.

The authorization levels for this new program are:

[In millions]

Fiscal year 1981	$2
Fiscal year 1982	3
Fiscal year 1983-85	5

Title VI of the current law is replaced by a new title VI, foreign studies and language development. The new title VI incorporates title VI of the National Defense Education Act, language and area studies, some provisions from the International Education Act as well as the recommendations of the President's Commission on Foreign Language and International Studies. Mr. SIMON of Illinois, who served as a member of the President's Commission, provided the leadership for the development of this title.

The conference substitute provides the following authorizations:

[In millions]

Fiscal year 1981	$45
Fiscal year 1982	50
Fiscal year 1983	60
Fiscal year 1984	70
Fiscal year 1985	80

The conference substitute authorizes a new part B of title VI, business and international education programs. This new part establishes a dollar for dollar matching grant program to postsecondary institutions which have entered into agreements with business enterprises, trade organizations or consortia of such organizations to establish or expand curricula to serve the international needs of the American business community.

There is authorized an annual appropriation of $7,500,000 for fiscal year 1981 through 1985 for the purposes of this new part.

TITLE VII, CONSTRUCTION, RECONSTRUCTION AND RENOVATION OF ACADEMIC FACILITIES

The title is simplified but retains the current State allocation formula. New authority to support improvement of research facilities including libraries and for compliance with section 504 is provided. Assistance for facilities in areas experiencing unusual increases in enrollments or requiring the detection or removal of asbestos hazards is also authorized. Part D, assistance in major disaster areas, is repealed. The interest rate for academic facilities loans is increased from 3 to 4 percent.

The conference substitute provides the following authorizations for part A, State grant program for the construction, reconstruction and renovation of academic facilities:

[In millions]

Fiscal year 1981	$100
Fiscal year 1982	100
Fiscal year 1983	100
Fiscal year 1984	100
Fiscal year 1985	100

The substitute provides an authorization of $80 million per year for part B, institutional grants for construction, reconstruction and renovation of graduate academic facilities.

The substitute authorizes $80 million per year for part C, loans for construction, reconstruction and renovation of academic facilities.

TITLE VIII, COOPERATIVE EDUCATION

The conference substitute authorizes $30 million for fiscal years 1981 through 1985 for the basic program. The maximum grant to a single institution is increased from $175,000 to $325,000, and the maximum grant to each member of a consortia is increased from $120,000 to $250,000. Different approaches to cooperative education are encouraged by permitting programs to include alternate or "parallel" periods of work and study.

An authorization of $5 million for each of the fiscal years 1981 through 1985 is provided for grants and contracts for training and research.

TITLE IX, GRADUATE PROGRAMS

The title is updated by striking references to the "expansion" of graduate programs. Part A, grants to institutions of higher education, is extended through fiscal year 1985 at its current authorization level of $50 million.

Parts B, C, and D of current law are revised by the conference substitute to provide a program of campus-based grant awards to graduate and professional students based on financial need. The maximum award to a student is $4,500 per year for 3 years. The substitute also provides for the maintenance of the level of awards, including institutional allowances, for the public service, mining and graduate and professional opportunity fellowship programs. The substitute authorizes $60 million for fiscal year 1981 and for fiscal year 1982 and such sums as may be necessary for fiscal years 1983 through 1985 for this new part B.

The conference substitute also provides

a new part C, national graduate fellowships. This part would provide 450 portable competitive fellowships each year in the arts, humanities, and social sciences. Selection of these fellowships would be based on merit, with the stipend awarded being related to the recipient's financial need. The National Graduate Fellows Program Fellowship Board would be created to select the areas in which the fellowships are to be awarded and to appoint panels for the selection of recipients.

The conference substitute extends the programs of assistance for training in the legal profession as a new part D of title IX with the following authorizations:

[In millions]

Fiscal year 1981	$5.0
Fiscal year 1982	5.0
Fiscal year 1983	7.5
Fiscal year 1984	7.5
Fiscal year 1985	10.0

The conference substitute continues the authority for the law school clinical experience program as part E in title IX, deleting such authority from title XI.

The following authorizations are provided:

[In millions]

Fiscal year 1981	$5
Fiscal year 1982	8
Fiscal year 1983	8
Fiscal year 1984	9
Fiscal year 1985	10

TITLE X

The vacated parts of this title are replaced by transferring the authority for the fund for the improvement of postsecondary education from the General Education Provisions Act. The board of the fund is given a statutory base. The following authorizations are provided:

[In millions]

Fiscal year 1981	$20
Fiscal year 1982	30
Fiscal year 1983	40
Fiscal year 1984	45
Fiscal year 1985	50

Part C of title X creating the bureau of occupational and adult education and the community college unit is retained in current law.

NEW TITLE XI, THE URBAN GRANT UNIVERSITY PROGRAM

This title is designed to provide assistance to urban educational institutions in developing, in conjunction with local officials, responses to needs and problems of the urban area. It builds on the idea that the urban university and the urban area in which it is located have a natural affiliation and that the institution can provide research and services to help address urban problems.

Under this program, grants will be awarded on a competitive basis to institution to provide applied research and service projects for their cities. The applications must indicate the degree to which the local government is involved with planning and is committed to a financial contribution to the project. The Federal share is limited to 90 percent of the project cost.

As defined in this title, an urban area is a SMSA with a 500,000 or more population—the State may designate an area in States where there is no such SMSA. An urban university is one which is located in an urban area, draws a substantial portion of its students from said area; has the capacity to provide the services authorized, and offers a sufficient range of graduate or professional programs to sustain its offerings of services. A consortium can qualify for this program as long as one member meets all the qualifications.

I would like to stress one point all the supporters of title XI have made at one time or another, and which I believe the Department of Education must take very much to heart. Title XI is a simple concept, and one which requires a bare minimum of Federal intervention. Under the terms of title XI, the cities are to decide what their problems are, and the universities are to decide how they can contribute to meeting those problems. The Secretary of Education has broad discretion in deciding whether or not a given city-university linkage is well developed enough to justify approval of an application under title XI, but those of us who have worked on urban grant for over 3 years now do not look upon the provisions of the act as providing the Secretary with a lot of blank spaces crying out to be filled with detailed regulatory prescription.

The conference report authorizes the appropriation of up to $15 million for fiscal year 1981 under this title. This is not a large amount, but it is enough to get the program under way and to fund some projects, perhaps of a demonstration nature, during the initial program year.

There are, Mr. Speaker, some urban universities which have already developed the kind of ties with their cities and counties which title XI calls for. I hope the distinguished members of the Appropriations Committee will give careful consideration to the appropriation of some funds for title XI so that a few, carefully chosen projects can get underway in fiscal year 1981. The regulation writing and application process should be completed very soon, and there is no good reason why, given some funding for fiscal year 1981, we cannot embark on the implementation of the Urban Grant Act in the immediate future. Urban grant, it seems to me, is in close harmony with the times. It does not call for massive expenditures; it does not involve major Federal intervention in local decisionmaking, and it is intended to bring the resources of the city and the resources of the urban university together in order to make the most effective and economical use of both.

The authorization levels are:

[In millions]

Fiscal year 1981	$15
Fiscal year 1982	25
Fiscal year 1983	35
Fiscal year 1984	45
Fiscal year 1985	55

I introduced this legislation in the last Congress with 57 cosponsors. Five days of hearings were held on the bill in 1978. The legislation was reintroduced in this as H.R. 3181, which simplified and clarified it on the basis of what was learned through the hearings. H.R. 3181 has 72 cosponsors.

TITLE XII, GENERAL PROVISIONS

The provision for State agreements are modified to simplify the mechanism through which States provide assurances to the Federal Government for their participation in programs authorized under the Higher Education Act.

The States are given more flexibility in establishing a structure through which to perform federally required planning under the Higher Education Act, but broad participation continues to be assured.

The conference substitute authorizes the Secretary to make such modifications of any program under the act as she deems necessary in order to adapt such programs to the needs of the territories, and requires the Secretary within 18 months after the time of enactment to conduct an analysis of the unique educational needs of the territories.

The conference substitute also authorizes $2 million for each fiscal year through 1985 to support the cost of postsecondary education programs in Guam for nonresident students from other Pacific Territories.

The conference substitute establishes a National Advisory Committee on Accreditation and Institutional Eligibility to advise the Secretary.

TITLE XIII, MISCELLANEOUS PROVISIONS

The conference substitute amends the contingent extension provision of the General Election Provisions Act to authorize the contingent extension of any forward-funded program for 2 fiscal years.

The conference substitute amends the General Education Provisions Act to authorize the Congress to disapprove Department of Education regulations in whole or in part.

The conference substitute authorizes appropriations to the Secretary of Education for fiscal year 1981 of $2.5 million for the college science teacher program, and $5 million for the minority institution science program.

The conference substitute extends the life of the Commission on the review of the Federal impact aid program until September 30, 1981.

The conference substitute amends the General Education Provisions Act to provide that no regulation affecting any institution of higher education in the United States shall become effective unless the agency promulgating such regulation publishes in the Federal Register an educational impact assessment statement which shall identify what information specified by the regulation is available from another authority of the United States.

The conference substitute adds, as a priority for research by the National Institute of Education, special problems of the nontraditional student. The authorization for the institute is extended at the following levels:

[In millions]

Fiscal year 1981	$120
Fiscal year 1982	130
Fiscal year 1983	145
Fiscal year 1984	160
Fiscal year 1985	175

The conference substitute establishes an advisory council to evaluate the needs of Native Hawaiians and the effectiveness of existing State and federally assisted educational programs in meeting such needs. A total of $500,000 is authorized for the period of fiscal years 1981 through 1983.

The conference substitute authorizes a 1-year provision amending the impact aid laws to provide special assistance to local school districts facing influxes of Cuban, Haitian, and Indo-Chinese refugee children.

The conference substitute extends the authorization of appropriations for construction at Navajo Community College for 1 year and changes the authorization to an amount based on the actual cost of operation and maintenance of the institution.

The conference substitute makes the College of Micronesia a land grant college.

The conference substitute authorizes an appropriation of $750,000 per year to be matched by funds from private sources for the Robert A. Taft Institute.

The conference substitute authorizes $6 million for fiscal year 1981 for a grant to establish the Gen. Daniel James Memorial Health Education Center to be located in the Tuskegee Institute in Tuskegee, Ala.

The conference substitute authorizes $750,000 for fiscal year 1981 to establish the William Levi Dawson Chair of Public Affairs at Fisk University at Nashville, Tenn.

Mr. Speaker, I urge my colleagues to adopt this conference report.

Mr. McHUGH. Mr. Speaker, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from New York.

Mr. McHUGH. I thank the gentleman for yielding. I would like to address a question to my colleague, the distinguished gentleman from Michigan (Mr. WILLIAM D. FORD) who has done an excellent job in his capacity as subcommittee chairman in guiding this complex and important legislation through the Congress and the conference committee.

I wish to draw the chairman's attention to section 422 of the conference report amending section 430(a) of the Higher Education Act. This provision calls for prompt action by the Federal Government in determining whether a lending institution has exercised due diligence in the processing of student loans.

I am particularly interested in this provision because it is my understanding that it will finally end the severe hardship which lending institutions have experienced at the hands of the Federal Government under the Federal insured student loan program. As you know, these lending institutions have participated in the student loan program at the behest of the Government and have made it possible for hundreds of thousands of students to obtain a postsecondary education. Under this program, lenders are insured by the Federal Government against default by student borrowers. In many cases, however, the Federal Government has withheld millions of dollars in insurance payments for several years without any finding of wrongdoing or lack of due diligence on the part of the lenders.

One lending institution in my own district has had nearly $2 million withheld by the Federal Government for more than 2 years pending an investigation of the school which was attended by the student borrowers. This lender has not been charged with any wrongdoing or lack of due diligence by the Federal Government and there is nothing, to my knowledge, in the present law which authorizes the Department of Education to continue to withhold funds which rightfully belong to this lending institution. Yet, this lender is without the use of a very substantial amount of money to which it is entitled under the Higher Education Act.

Mr. Speaker, it is my understanding that section 422 of the conference report will remove any doubts as to whether the Department of Education can continue to withhold these funds without first making a determination that a lending institution has failed to exercise due diligence. In the absence of such a finding, it is my understanding that it is our intent in enacting section 422 to require the Department of Education to make these payments promptly to lending institutions such as the one in my district. I would ask the chairman to confirm that my understanding is correct.

Mr. FORD of Michigan. Yes, the understanding of the gentleman from New York is correct. The law requires prompt insurance payments to lending institutions. This amendment merely clarifies present law which does not authorize the withholding of insurance payments by the Federal Government as in the situation which you have described.

Mr. McHUGH. I thank the gentleman for his comments and for yielding.

Mr. FORD of Michigan. Mr. Speaker, I have no further requests for time and reserve the balance of my time.

Mr. BUCHANAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report accompanying H.R. 5192, the Higher Education Act reauthorization. Regrettably this body is being asked to consider this conference report a second time because of an unfortunate relationship which exists between the authorizing committee and the Budget Committee in the other body.

On August 28, 1978, the House accepted the first conference report by a vote of 373 to 16. This overwhelming show of support was not unprecedented. For on November 7, 1979, the House accepted its own version of the reauthorization of the Higher Education Act by a vote of 385 to 16.

Throughout the entire reauthorization of the Higher Education Act—a period of time which extends back to the first day of hearings when then-Secretary Joseph Califano testified on March 20, 1979—Members of this body have shown strong support for the reauthorization and extension of the Higher Education Act. I can personally think of no other piece of legislation which is more critical to the future well-being of this country than this education reauthorization bill. As I have said repeatedly on the floor of this body, and I reaffirm again, our young people are this country's most important resource. To leave that resource undeveloped erodes the foundational premise upon which all other growth in this Nation depends—whether it is economic, political or social growth.

As I lifted my pen to sign the second conference report on the Higher Education Act I was reminded again of the cause necessitating a second conference on H.R. 5192. It is regrettable that the overwhelming support for this act which has been voiced by constituents of every Member of this body was not more accurately reflected in the vote of their representatives in the other body. With the precision of the surgeon's knife, the House was meticulous and careful in the original House-passed bill to keep the what was essential to preserve equality of opportunity and access in education and to trim the bare excesses of cost.

The conference report, which the other body considered on September 4, 1980, represented cost-cutting measures which went even further than the well-reasoned House-passed bill. In a startling defeat, the conference report was rejected by the other body and sent back to conference. The underlying cause of that defeat was the very evident misunderstanding between that body's authorizing and budget committees concerning the cost of this bill.

Never before in my 16 years as a Member of the House of Representatives, have I ever seen the power play that occurred in the other body with the consideration of the conference report on H.R. 5192. One might say it was almost as if the authorizing committee had to ask permission of the Budget Committee to set education policy.

We are all experiencing the difficulties in trimming and cutting costs to comply with the reconciliation requests. This is a fact of life. But I am pleased that the process of reconciliation in this body has shown a charitable and spirited understanding between the authorizing and Budget Committees. Simply put, there is a measured respect in this body for the authority of the authorizing committee to make policy within fiscal constraints, and the responsibility of the Budget Committee to insure the fiscal responsibility of those decisions.

The voice of the American people is afforded the constitutional protection of being heard in a representative fashion through 535 Members of Congress. In effect, the other body attempted to narrow the representation of the people of this country with regard to the vote on the conference report for the Higher Education Act to the thoughts and ideas of 20 members of the Senate Budget Committee.

When the authorizing committees had reached agreement a second time—netting savings of $1.4 billion in levels of authorization over the 5-year life of the bill, and $426 million in entitlement savings in fiscal year 1981—we were informed that the Senate Budget Committee was still unsatisfied. At that point we were forced to increase the interest rate on the guaranteed student loan pro-

gram from the 8 percent originally agreed upon—up from current 7 percent—to 9 percent.

This second conference report on H.R. 5192, goes well beyond meeting the cost-cutting requirements imposed by the reconciliation measure in both the House and the Senate. The other body has further argued that the conference report does not have sufficient out-year savings. A reminder to the Senate Budget Committee that the reconciliation bill applies only to fiscal year 1981 is perhaps the strongest message this body can send back.

So it is with some measure of regret that, pen in hand, I was forced to sign again a conference report that on its merits is sound fiscal and educational policy for the present investment in the youth of this country. I regret only that our process of representative government must bear the caveat that we represent our people conditioned upon the blessing of the Senate Budget Committee. Notwithstanding, I urge the good will of this body, and in the "spirit of reconciliation" ask my colleagues to join me for 1 second—and hopefully final—time in adopting the conference report to H.R. 5192.

Mr. Speaker, I yield such time as he may consume to the distinguished ranking minority member of our committee, the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. I thank my colleague for yielding.

Mr. Speaker, I rise in support of the conference report to accompany H.R. 5192 presented to the House today. This is the third time I have come before the House recommending adoption of a bill to authorize the Higher Education Act of 1965, as amended.

On November 7, 1979, the House passed H.R. 5192 by a vote of 385 to 15. This bill was estimated to cost approximately $59 billion over its 5-year reauthorization period. Major concessions concerning cost-cutting amendments had been made in committee and were made by amendment on the floor to insure that the bill as presented to the House last November was cost conscious.

The dynamics of the budgetary process became more critical as we entered the second session of the 96th Congress, and the Senate reported bill was somewhat less costly than the House-passed bill. In all good faith and with the full intent of insuring that there was not a lot of waste in the conference agreement, we brought a conference report to the House floor on August 25 which was approximately $11 billion less than the House-passed version. Again, this body resoundingly passed the conference report by a vote of 373 to 16. Unfortunately, the Senate, at the urging of the Senate Budget Committee, narrowly rejected the same conference report several days later.

House and Senate conferees went back to the conference table earlier this week, and we come today with a conference report that is approximately $1.4 billion less expensive than the conference report considered by the House less than a month ago. Before detailing the changes made to the most recent conference report, I would like to try to clarify some of the misconceptions I believe that were presented to the Senate when they considered the first conference report. I believe that these misconceptions significantly affected the outcome of the vote in the Senate and, had the facts been more clearly presented and more widely understood, I believe that there would not have been a need to reconvene the conferees to further reduce the higher education programs. In fact, as one who considers himself fiscally conservative, I believe we may have gone too far with this latter conference report in trying to pare down the programs. It is my hope that we have not done injury to the program or caused injustice for the students who are the primary recipients of the programs.

During the Senate debate of the first conference report on September 4, 1980, the chairman of the Senate Budget Committee stated that the conference agreement on H.R. 5192 "would cost the taxpayers $51 billion over the next 5 years; $37 billion of this is virtually uncontrollable, including $11 billion in entitlement spending." It should be noted that the only cost that Congress must fund would be the estimated $11 billion in entitlements for the guaranteed student loan program. Most of the $51 billion cost comes from authorization levels, not from required entitlements. The $37 billion referred to as "virtually uncontrollable" comes from including with the $11 billion in GSL entitlement, another $19.6 billion for estimated BEOG costs over 5 years, and an additional $6.7 billion for the impact of the campus-based program triggers over the same 5-year period.

Two important points should be made about the budgetary impact of the first conference report. The funding level for the BEOG program can be adjusted by the appropriations process. There is no guarantee that the full funding estimates of the Congressional Budget Office would be realized. As a result, the increased campus-based program trigger for the SEOG program, dependent upon increased funding for BEOG's, may also not be realized.

Another point that was perhaps not clear to Members of the Senate when they voted on the first conference report was that the cost estimates asserted by the Senate Budget Committee were based on assumptions that the Congressional Budget Office did not accept. A first estimate of the conference report was made in a memo of August 27, 1980. A September 2 memo included a new estimate of the conference agreement based on a scenario outlined by the Senate Budget Committee. This estimate is totally a Senate Budget Committee assumption and the CBO stated that they stood behind their August 27 memo as "the official estimate of costs," not the September 2 memo which the Budget Committee referred to as a valid reflection of the true costs of this bill.

The conference report which you must consider today contains further savings of approximately $1.4 billion. The major portion of these savings result from a modification of the NDSL alternative financing mechanism. Under the previous conference report, the Secretary of Education was given the authority to borrow its loan capital to make NDSL's. The Secretary would have to had borrowed the amount needed for full funding of the program—$3.4 billion—before the NDSL collections would revert to the Treasury. Under the new conference agreement, the Secretary must borrow in order to provide the NDSL loan capital. If the Secretary in any year borrows $1 billion, then the NDSL collections available that year for loans on the campuses would revert to Treasury and an estimated savings of $378 million for the purposes of reconciliation would occur.

If the program is funded through borrowing, each campus would be held harmless at its fiscal year 1979 level of available loan funds. If in any year the Secretary did not borrow at least $1 billion, the NDSL program would remain as it is under current law and Congress would have to appropriate funds directly for loan capital.

It should be noted that in the new conference agreement, although the Secretary must borrow, the Congress still has the ability to appropriate funds or not appropriate funds to pay for the interest and default/disability/death claims on the borrowing for that year. In essence, Congress still would control the NDSL program.

Another significant modification in this new conference agreement would modify the parent loan program. All options would be eliminated for parents to begin repayment of the parent loan more than 60 days after taking out the loan, and the interest rate would increase from the 8-percent rate in the previous conference agreement to 9 percent. The guaranteed student loan interest rate for student borrowers would also be increased from 8 percent to 9 percent. In both the parent and student loan program, if the average Treasury bill rate for the prior year equaled or was less than 9 percent, the interest rate charged to new borrowers would be reduced to 8 percent.

Should the Treasury bill rate then increase in future years, it would take an affirmative legislative act of Congress to increase the rate once again to 9 percent. All borrowers must continue to pay the interest rate that they paid on the first loan they took out, but they would be able to consolidate these loans at an interest rate equal to the prevailing rate. Obviously, this prevailing rate could be less than the rate they have been paying on their loans.

The grace period in the NDSL program would be reduced to 6 months rather than the 9 months under current law. This would conform the NDSL grace period to the new GSL grace period and facilitate loan consolidation. It is estimated that this will result in a savings of $70 million over the life of the bill.

The new minimum room and board allowance for dependent students commuting from home would be set at $1,100 rather than $1,150 as previously agreed to in the conference. This achieves a savings of $80 million over the life of the bill.

Title XIII of the conference report, women's work site development demonstration program, would be eliminated as a separate authorization. In many ways it is duplicative of the authority already contained in title I, part B, of this bill. It is estimated that the elimination of title XIII results in savings of $38 million.

The new conference report reduced the authorization in the following programs: title I, part B, Education Outreach programs; title III, strengthening institutions programs; supplemental educational opportunity grant program; title V, part A, Teacher Corps; title V, part B, teacher training; title VI, part A, international and foreign language studies; title VII, part A, grants for the construction, reconstruction, and renovation of undergraduate academic facilities; title VIII, part C, loans for construction, reconstruction, and renovation of academic facilities; title X, fund for the improvement of postsecondary education; and title XI, urban grant university program. The combined savings for reducing authorizations in these programs would be $1.21 billion.

There are two major changes which were considered by the conferees, but were not adopted. There was a great deal of pressure from the press to include home equity as an asset from which a parent can find the funds to meet the expected family contribution for their son or daughter's education. In the original conference agreement, the consideration of home equity was eliminated in determining financial need for two excellent reasons. First, equity in a home is an illiquid asset and is an unfeasible source for paying for a college education. Second, there is no way that an applicant can adequately determine the equity in their home, nor can the student aid officer or the Department of Education verify that what the applicant has placed on the form is correct. It is ridiculous to assume, as do many members of the press, that the upper income family with an expensive house will be able to receive a basic grant if home equity is not considered when determining need. There are very few instances in which their income would not already disqualify them under the income portion of the financial needs test.

The Senate Budget Committee strongly urged that the conferees adopt some form of the Metzenbaum amendment to require, under most circumstances, deferral and eventual repayment of the GSL in-school interest subsidy now paid by the Government. For many reasons the conferees were correct in deciding to ignore the Metzenbaum amendment. Some entity must be responsible for determining who is eligible for the in-school subsidy and then for determining on each individual note for each individual student how much in-school subsidy had been paid so that it may be repaid to the Federal Government. Because the Government does not have this capability, it is most likely that the lenders would be given the responsibility. This additional administrative burden would predictably result in lender withdrawal from the program. At a minimum, the Student Loan Marketing Association estimates that every dollar collected would cost the Government approximately 65 cents to collect.

Of perhaps more significance is that the adoption of the Metzenbaum amendment would save only approximately $65 million in the first year and not $3 billion suggested by the author of the amendment. Additionally, 75 percent of this savings would result from reduced loan volume. In the State of Ohio, the Ohio Student Loan Commission estimates that if the Metzenbaum amendment was adopted, the projected loan volume figures for fiscal year 1981 through fiscal year 1983 would be reduced by about 40 percent. These "savings" would result in decreased benefits for the students which the guaranteed student loan program was intended to serve—the middle-income student who is not eligible for a grant, work study, or a more highly subsidized loan.

Congress must pass this conference report immediately, so that the changes proposed and benefits anticipated for students will go into effect as soon as possible. I urge unanimous support for this cost effective and highly responsible conference report.

□ 1740

Mr. BUCHANAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. Mr. Speaker, I rise in support of the second conference report on the Higher Education Amendments of 1980, H.R. 5192, but feel that a point of information must be made. One of the changes to which the House reluctantly agreed was to raise interest rates for the guaranteed student loan program and the parent loan program from 8 to 9 percent. We were able though, to get agreement to lower this rate to 8 percent should the interest on Treasury notes drop below 9 percent. The option also remains to consolidate loans made under differing interest rates to the lowest rate of any of the loans made.

The efforts made by the conferees to meet the reconciliation requirements imposed by the Senate Budget Committee may appear to be merely paper shuffling or of little consequence, but I believe that the increase of these interest rates will have a significant financial impact on the parents of students and the students themselves. This impact is compounded by the recognition that even with reconciliation, the budget will not be balanced, but instead show at least a $30 billion deficit. We may have created an unnecessary burden in the name of reconciliation and a balanced budget that will not be achieved.

● Mr. PURSELL. Mr. Speaker, I rise to speak in favor of the conference report for the reauthorization of the Higher Education Act.

I stand before you as the representative with the largest and perhaps most diverse student population in the country today. The institutions of higher learning in my district contribute not only to the surrounding communities but to the entire State, the Nation, and indeed the world. They range in size and scope from Madonna College to Washtenaw Community College to the University of Michigan. Consequently, I am well aware of the present problems and challenges of higher education in our Nation.

In addition, as a member of the Labor-HEW Subcommittee on Appropriations, I have gained a specialized budgetary knowledge of the use and limits of Federal funds in the higher education field. In the past, the distinguished chairman of my subcommittee, Mr. NATCHER, and I have specifically acted to meet student needs as well as give a great deal of attention to education programs in general along with my other very able fellow subcommittee members.

The bill before us is a major piece of legislation with many months if not years of careful thought to maintaining and increasing the quality and the opportunities that all colleges and universities will have to offer their students.

A significant portion of the bill addresses student financial assistance. This portion is critical because it is the basic consideration for everyone deserving of and willing to go after a college education.

The measure before us responds to both that consideration and our responsibility to control Federal spending.

The provision that requires the Department of Education to borrow from the Federal financing bank, if we appropriate funds to support borrowing, coupled with a $1 billion loan collection figure will enable us to meet the reconciliation requirement of $378 million in fiscal year 1981.

The guaranteed student loan program was made to be responsive to the Nation's economy, while not creating an undue sacrifice on the part of the students and their families. It is true that the interest rate will now be 9 percent, but that rate will revert to 8 percent if the average Treasury bill rate becomes 9 percent or lower. For that loan interest rate to again rise from an 8-percent level. Congress must give its approval, meaning that we, as a body, will respond directly to our constituents as well as the prevailing economic conditions.

My good friend and colleague, BILL FORD, and his fellow conferees have labored with unmatched diligence and perseverance to arrive at a compromise bill that answers the concerns of both Houses. This legislation is a substitute for the original conference agreement which was defeated by the Senate. While the original legislation was better—this was the best we could get from the Senate.●

● Mr. PERKINS. Mr. Speaker, I rise in support of the conference report on H.R. 5192. On August 28, the House approved the first conference report on this bill by an overwhelming vote of 373 to 16. I believe that that first conference report represented a reasonable compromise between the House and the Senate.

Unfortunately, the Senate rejected that conference report by a vote of 45 to 43. The conference report before us today results from a new conference which was convened after the Senate's rejection of the first conference report.

This second conference report makes three basic changes from the original report of 2 weeks ago.

First, the national direct student loan program is amended to require the Secretary of Education to issue bonds in order to raise revenues to support the program, if the Congress appropriates funds

to pay for the cost of this revenue-raising activity. The Secretary is also required to recover the revolving funds from local institutions of higher education if she is able to provide $1 billion of loan capital on college campuses.

If the Congress does not appropriate funds for the Secretary to raise revenues in this procedure, then the national direct student loan program would be continued as it is presently, with the revolving funds remaining on campus and with the Congress providing for new capital contributions through the appropriations process. And, I wish to emphasize this point, even if funds are appropriated for this new revenue-raising procedure, the Secretary can only recapture the revolving funds if this full $1 billion for loans is made available on college campuses.

Second, the new conference report reduces authorizations and various entitlements throughout the bill by $1.4 billion. Several of the programs affected are the following: strengthening developing institutions initial year supplemental opportunity grants; teacher training programs; and construction of graduate and undergraduate academic facilities.

Third, the revised conference report increases the interest rates in two programs. Students who are new borrowers in the guaranteed student loan program will now have to pay a 9-percent interest rate instead of the current 7 percent. The earlier version of this conference report had provided for an increase from the current level of 7 to 8 percent.

The interest rates are also modified in the new parental loan program. The previous conference report had provided that parents could pay 8 percent if they immediately began repayment on their loans, and they would have to pay 11 percent if they delayed payment until after completion of their child's education. The revised conference report provides that all parents must begin payments immediately, and that this repayment would be at the interest rate of 9 percent.

Mr. Speaker, I opposed all these revisions in the conference committee, and I believe that their adoption will make it more difficult for the citizens of our country to obtain an adequate education.

However, the Senate conferees were absolutely adamant in their position that they had to have these three modifications in order to return to the Senate floor with a conference report which would be adopted.

The House conferees were bitterly reluctant to agree to these demands, but to save the bill, we had to give in to the Senate in the face of their unbending position. All of the House conferees recognized that we could not jeopardize all of the Federal higher education programs by allowing this bill to die this year.

If we do not enact a bill this year, Federal student aid programs will not have authority next year to secure funding, nor will a score of other Federal aid programs be funded. The House conferees therefore had no viable alternative, but to go along with the Senate in these further modifications.

Mr. Speaker, I urge the House to approve this conference report—not because it is a good compromise, which I no longer feel it is—but because the legislation must be extended, the programs have to be reauthorized. It is my firm conviction that we are being pennywise and pound foolish. It is true that we will save a few dollars this year by adopting these restrictive amendments, but I am convinced that we will pay for these changes dearly in the years ahead, by having more made difficult the attainment of a postsecondary education by many of our citizens.●

● Mr. BIAGGI. Mr. Speaker, I rise in full and enthusiastic support of this conference report before us on H.R. 5192, the Education Amendments of 1980. As an original cosponsor of the bill, as well as a member of the conference committee which considered it, I believe that we have submitted to this body a better version of this legislation. I feel this way because we managed to substantially reduce both the short- and long-term costs in this bill without altering the structure of the programs.

This report provides us with an additional savings of $1.4 billion in authorizations above the previous conference report approved overwhelmingly by this body last month. The total cost of this bill is estimated at $43.389 billion which is $12.2 billion less than the original bill passed by this House. This is not to say that we were not cost conscious in the first report which we agreed upon. The report was $11 billion less than the original House-passed version of this bill. These savings are a commitment to reduce the long-term costs of this bill which are largely centered in the guaranteed student loan program.

We have retained our commitment to providing a fair and balanced approach to programs in both the public and private educational sector. We have held down the costs to students and have most importantly, maintained our firm commitment to the middle income families of this Nation by assuring that both parents and students will still be able to receive loans regardless of their family income.

The chairman of our full committee, Mr. PERKINS, deserves support for his continuing commitment to assuring that the neediest of our students will continue to receive grant and loan aid. Our subcommittee chairman, Mr. FORD, deserves the gratitude of this body for talent and his energies which brought us to this agreement today. The educational community has no greater friend than this man who has devoted himself to preserving the right of all students to pursue postsecondary educational opportunities.

This report deserves the full and unqualified support of this House and I urge its adoption.●

Mr. BUCHANAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report now pending.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. FORD of Michigan. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table.

INTERNATIONAL MONETARY FUND QUOTA INCREASE

Mr. NEAL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7244) to amend the Bretton Woods Agreements Act to authorize consent to an increase in the United States quota in the International Monetary Fund, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. NEAL).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7244, with Mr. BEILENSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, September 17, 1980, the bill had been read for amendment.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. HANCE

Mr. HANCE. Mr. Chairman, I offer an amendment.

Mr. LEACH of Iowa. Mr. Chairman, I reserve a point of order on the amendment.

The Clerk read as follows:

Amendment offered by Mr. HANCE: Page 9, line 23, strike out "SEC. 6." and insert in lieu thereof "SEC. 7.".

Page 9, after line 21, insert the following new section:

ASSISTANCE TO THE PRIVATE SECTOR OF EL SALVADOR AND OTHER NATIONS

SEC. 6. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. It is the sense of the Congress that in providing assistance through loans or other means to any nation, in particular El Salvador, the Fund and the Bank should encourage programs which assist the private sector, and which provide funds to the private sector, to create an environment which will stabilize the economy of the nation. The United States representatives to the Fund and the Bank shall promote the use of assistance by the Fund and the Bank to encourage such programs.".

Mr. HANCE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. HANCE. Mr. Chairman, this amendment would state that it is the sense of Congress that in providing assistance through loans or other means to any nation, in particular El Salvador, that the fund and the bank should encourage programs which assist the private sector, which provide funds for the private sector, to create an environment to help stabilize the economy.

The reason I present this amendment in particular that mentions El Salvador is for that country to survive and have some stability. The junta in that country has been operating on a very uneven keel and has had many problems but for there to be survival, the private sector has to play a very important part in stabilizing the economy.

One group in particular, the Productive Alliance, has worked very hard in trying to work with the Government. They have been attacked from the left and from the right and I think it is very important that the private sector and particularly the Productive Alliance be involved in helping stabilize the economy and the country.

I offered this amendment today to point out the importance of American involvement in Central American countries, El Salvador in particular. I think it is extremely important for us to send a signal to the ruling junta in El Salvador—and also to the other countries who seek our aid.

The violence and destruction that is now occurring in El Salvador underscores the importance of the private sector in that country. Not only does the private sector hold the key for that nation's economic recovery, but it also represents the single remaining hope to check the growing polarization of the political forces.

The ruling junta in El Salvador desperately needs the support and technical advice of the private sector to insure that its recent reforms can succeed economically. In addition, the government needs to broaden its political base to preserve some degree of pluralism. Without the help of the private sector it will be impossible to create an atmosphere needed to provide the economic and political stability.

Any policy of the United States which calls for financial support of El Salvador, or any Central American country, should be centered around the idea that the private sector must play an important role in the government of that country.

I have had some very important discussions in recent weeks with a group of businessmen from El Salvador. These businessmen have formed the Productive Alliance and are trying to work with the ruling junta. These are very brave men who are dedicated to their country and are literally fighting to keep the free enterprise system—and democracy—alive in Central America. Because of their strong stand in favor of a free country, many of them have received death threats—but they continue their cause because they know they are right. I feel we should support them and show the world that America indeed supports free countries.

In my talks with these businessmen they have told me that their relations with the junta were based on a growing recognition by the junta members that the serious economic and political problems in El Salvador cannot be solved without a vigorous and healthy private sector.

We do see some good signs for optimism because of the efforts of the private sector in El Salvador. Just recently a majority of the junta in El Salvador went on record that it was against Marxism. We now have a chance and an "open door" to help them give the free enterprise system an opportunity to work—and the El Salvador businessmen are ready to work and become involved in the system.

It is up to us to send a clear signal that the United States is in favor of a free enterprise system. We do not need to stutter, but we must let our voice be clear that we want the private sector to play an important role.

Two other subjects also need to be addressed regarding our support of free enterprise in El Salvador.

First, regarding the reforms in El Salvador: One of the main so-called reforms in El Salvador included the confiscation of vast amounts of land. This was land which was productive and its confiscation considerably dropped the productivity of the country. There have been a few vague announcements by the Government saying that the landowners would be compensated, but we have seen no real action in this regard.

One of the major causes of economic chaos is to strip the country of its productive sector and of its management talent. Many of these Salvadoreans who had their property confiscated have left the country, but would be willing to return if some concrete steps were taken to compensate them for their holdings.

I would hope that the State Department, which has such an important role in this matter, would pressure the junta and let them know that if our aid is to continue then we expect the Government there to take steps to compensate the private landowners so that they can once again become productive. So far, however, this has not been done and without this assurance I feel we should take a second look at sending them aid.

Second. The second subject of major importance is the evidence that the private sector is dedicated to helping return El Salvador to a stable country. Recently the FDR, the Revolutionary Front, came to Washington and put up a false face that it was the true democratic sector of El Salvador. In truth the Frente has close ties with terrorists' organizations which advocate and carry out sabotage and violence against innocent people.

Recently the FDR called for a workers' strike in El Salvaoor. I think it is very important that we note here today that this leftist and terrorist strike was a total failure. The reason it was unsuccessful is that the Private Productive Alliance cooperated with the Government and urged its workers to stay on the job. As a result more than 90 percent of the work force turned out to work in spite of terrorists' threats. The call for a massive strike to cripple the Government did not work specifically because the private sector prevented it. When the terrorists saw the strike would be unsuccessful, they began large scale sabotage on the utility system of the country. This indicates to what ends the FDR will go when peaceful democratic solutions do not go like they want.

The overall failure of the strike indicates that the people and the private business sector do not support the left, and they do not support the terror. The people support the private sector and proved it.

In spite of its support for the junta, the private sector has not received the recognition it deserves from government authorities. This is why I feel it is incumbent on Congress and the administration to make it clear that we want support and aid to go out to the private sector.

The true middle class of El Salvador is represented by the Productive Alliance—this group of private businessmen. The Productive Alliance has impressed me, and many of my colleagues, with its sincerity, its willingness to work with the junta, and with its courage and dedication to stay in El Salvador and make the economy work.

It is the private sector that we should recognize and insure that free enterprise has the proper and important role in the political and economic life in El Salvador.

Thank you, Mr. Chairman.

Mr. GILMAN. Will the gentleman yield?

Mr. HANCE. I do yield to the gentleman from New York.

Mr. GILMAN. I commend the gentleman for offering this amendment.

I rise in support of the amendment offered by the gentleman from Texas (Mr. HANCE)

It is my strong belief that the private sector in the developing world and developed world alike holds the key to a nation's economic and political future. Particularly in those nations that are struggling to protect democracy, pluralism, and individual freedom, the private sector provided the necessary support and technical advice to insure economic and political stability.

The recent events in Nicaragua have underlined the importance of the private sector in a nation faced with radical influences and revolutionary change. Not only did the private sector play the key role in insuring the success of the revolution, its economic power has provided it with the only hope of offsetting those radical forces to protect the last remains of pluralism.

Likewise in El Salvador, where the radical left seeks to create unrest and instability by undermining the economy, the moderate democratic forces of the private sector have played a major role in helping the current Government maintain peace and order. The private sector through such organizations as the Productive Alliance have rallied to the call of their nation and have thrown their support to the forces of progressive, peaceful reform and not to those reactionary or radical proponents of violence.

The Hance amendment represents a step forward in support of those very concepts of free enterprise and pluralism that have over the years proved so suc-

cessful. Not only have they been the basis in making this country what it is today, but they have provided the foundation for success in the most productive and stable developing nations in the world.

We must avoid the temptation to respond to the new challnges now facing our friends and allies in the developing world by adopting radical solutions. It is not necessary to throw out the baby with the bath water. Let us instead help those nations meet the needs of their people by supporting stability, pluralism, democracy, and individual liberty through a strong and independent private sector.

Accordingly, I urge my colleagues to join in support of this amendment.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield to me?

Mr. HANCE. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I wish to join in support of the amendment from the gentleman from Texas (Mr. HANCE), and commend him for his leadership in this important area.

I share with him a strong commitment to capitalism and the free enterprise system which is the foundation of our political and economic system. Perhaps the best assistance we can give to those countries in the developing world is to instill in them an understanding and respect for the role of the private sector in their development. It is this very political-economic structure led by a strong independent and responsible private sector which has produced the world's highest standard of living and protected our pluralistic form of government.

The all too vivid reminders of the Nicaraguan revolution clearly indicate the importance of the private sector. In that conflict it was the private sector who finally brought down the Somoza government through its collective actions. It is also that very same private sector which remains as the only hope in that nation of maintaining any semblance of pluralism and democracy.

Out of a growing concern over the threat to this important element in nations throughout Central America and particularly in El Salvador, Congressman HANCE and I sent a letter to Secretary of State Muskie stressing these very points. In that letter we pointed out that the ruling junta in El Salvador needs the support and technical advice of the private sector if its recent reforms are to succeed. At the same time the support of the private sector will enhance the much needed efforts of the Government to broaden its political base.

Perhaps the largest of the private sector organizations in El Salvador is the Productive Alliance. This moderate broadly based association of businessman's groups and professionals is typical of important kind skills and know-how that is so desperately needed to provide economic and political stability. Their goal as stated in the organization's charter "is the defense and consolidation of the democratic system through respect for the freedoms of individuals, ideologies, expressions, enterprise, religion and most importantly the freedom that every country has to choose its government."

I am happy to say that the State Department's response to our concerns was one of at least some understanding and better agreement. Concerning the Government of El Salvador's efforts to bring about meaningful reform and a more democratic process, the Department of State stated that "within this process the vitality and leadership of the private sector will be decisive."

Congressman HANCE's amendment is fully consistent with this thinking in restating congressional support for the private sector, and therefore calling upon our representatives in the Fund and the Bank to promote private sector participation as the foundation upon which to build stability, democracy, and individual liberty.

I urge my colleagues to join with me in support of the Hance amendment.

At this point, I would like to insert the entire text of our letter to Secretary Muskie and the Department's response.

HOUSE OF REPRESENTATIVES,
Washington, D.C., July 22, 1980.

Hon. EDMUND MUSKIE,
Secretary of State, State Department, Washington, D.C.

DEAR MR. SECRETARY: The violence and destruction that is now occurring in El Salvador underscores the importance of the private sector in that country. Not only does the private sector hold the key for that nation's economic recovery, but it also represents the single remaining hope to check the growing polarization of the political forces.

The ruling junta desperately needs the support and technical advice of the private sector to ensure that its recent reforms can succeed economically. In addition, the government needs to broaden its political base to preserve some degree of pluralism. Without the participation of the private sector it will be impossible in the long run to create the atmosphere needed to provide economic and political stability.

During a recent visit to Washington the Productive Alliance of El Salvador, perhaps the largest private sector group in the country, expressed these very thoughts. Their goal as stated in the organization's charter "is the defense and consolidation of the democratic system through respect for the freedoms of individuals, ideologies, expression, enterprise, religion and most importantly, the freedom that every country has to choose its government." As a moderate broadly based association of businessman's groups and professionals, they possess the very skills and knowhow that is so desperately needed at this time to ensure the success of these important reforms.

Given the importance of the private sector to the ultimate success of the Government of El Salvador and its reform programs, we urge you to support the Productive Alliance and other enlightened members of the private sector in El Salvador. In turn, we urge you to use your influence with the ruling junta in encouraging them to utilize this valuable resource and talent.

Sincerely,

ROBERT J. LAGOMARSINO,
KENT HANCE,
Members of Congress.

DEPARTMENT OF STATE,
Washington, D.C., August 11, 1980.

Hon. ROBERT J. LAGOMARSINO,
House of Representatives.

DEAR MR. LAGOMARSINO: I am responding to your letter of July 22 to Secretary Muskie concerning the newly-formed Production Alliance of El Salvador.

United States policy toward El Salvador is designed to sustain the strength and effectiveness of all the forces of moderation. We believe that the current civilian-military Junta, which is committed to meaningful reforms and a more democratic process, offers the best hope for a non-extremist solution to that country's very difficult problems. Within this process the vitality and leadership of the private sector will be decisive.

Ambassador White and his staff are in almost daily contact with members of the Productive Alliance. As the most prominent private sector group supporting the government, the Alliance will be of critical importance both in assisting the government to carry out its reforms effectively and in helping to foster a transition to democracy in El Salvador.

Sincerely.

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.

Mr. NEAL. Mr. Chairman, will the gentleman yield to me?

Mr. HANCE. I do yield to the gentleman from North Carolina.

Mr. NEAL. I would just like to say that I appreciate what the gentleman is trying to accomplish here.

The major role of the IMF is to help free economies remain free. In almost every instance it is the goal of the IMF to encourage market economies and to do essentially what the gentleman is trying to accomplish by this amendment.

Mr. HANCE. Then if I have the assurance of the gentleman that the IMF would encourage those countries to participate with the private sector in developing and helping stabilize that economy then I would withdraw my amendment.

Mr. NEAL. Absolutely. In almost every instance I want to say in every instance, because the officials of the IMF are certainly market-oriented. They encourage economies to follow market principles. That is the policy of the IMF.

Mr. HANCE. Mr. Chairman, with that explanation, I ask unanimous consent to be allowed to withdraw the amendment.

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Does the gentleman from North Carolina (Mr. NEAL) withdraw his point of order?

Mr. NEAL. Mr. Chairman, I do not insist on the point of order but I have a substitute for the amendment.

The CHAIRMAN. The gentleman from North Carolina withdraws his point of order.

AMENDMENT OFFERED BY MR. NEAL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. HANCE

Mr. NEAL. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. NEAL as a substitute for the amendment offered by Mr. HANCE: Page 9, line 23, strike out "SEC. 6." and insert in lieu thereof "SEC. 7."

Page 9, after line 21, insert the following new section:

ASSISTANCE TO THE PRIVATE SECTOR OF EL SALVADOR AND OTHER NATIONS

SEC. 6. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. It is the sense of the Congress that in providing assistance through loans or other means to any nation, in particular El Salvador, the Fund and the Bank should encourage programs which assist the private sector to create an environment which will stabilize the economy of the nation; and that the United States representatives to the Fund and the Bank shall promote the use of assistance by the Fund and the Bank to encourage such program.".

Mr. NEAL. Mr. Chairman, we have had some discussion of this concept. This is not a major change. We have just conformed it to the articles of agreement of the IMF. It embodies the intent of the gentleman. I would urge adoption of the amendment to the amendment.

Mr. STANTON. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I will be happy to yield to the gentleman from Ohio.

Mr. STANTON. Does the gentleman's amendment encompass all of the countries involved rather than referring just to El Salvador?

Mr. NEAL. It does and it is a sense-of-the-Congress resolution.

□ 1750

AMENDMENT OFFERED BY MR. BAUMAN TO THE AMENDMENT OFFERED BY MR. NEAL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. HANCE

Mr. BAUMAN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. BAUMAN to the amendment offered by Mr. NEAL as a substitute for the amendment offered by Mr. HANCE: In the 5th line of the amendment after the words "El Salvador" strike the comma and insert the words "and Nicaragua,".

Mr. BAUMAN. Mr. Chairman, I want to say that I am sorry that I had to object to the proposal of the gentleman from Texas (Mr. HANCE) to withdraw his amendment. We all know how sometimes we make points with amendments and underscore our concerns about certain things that are pending. But, I think the gentleman's amendment was a good one, and I do not think it should have been withdrawn.

While the gentleman from North Carolina (Mr. NEAL) has sought to remove one phrase that apparently offends some of the international bureaucrats at IMF, and the sensibilities of the lawyers who advise him, I think the amendment could have stayed as the gentleman from Texas offered it. However, his purpose in offering the amendment, as I understood it, was to spotlight El Salvador as a country in Central America which needs the assistance of the private sector through the IMF or any other means. If that is true in El Salvador, where in fact the entire nation is under siege by extremists of both camps, and in particular under siege by Communist internationals coming from both Cuba and Nicaragua, the same is true of Nicaragua, which is now under control of a Communist government.

When you passed a bill aiding Nicaragua, specifically Congress wrote into the legislation the express intention that the $75 million of aid from U.S. taxpayers would be channeled into the private sector. With my amendment to the substitute, I am simply adding and expressing the concern of this Member and, I hope, the majority of the Congress that in both El Salvador and Nicaragua the IMF will direct its attention to aiding the private sector instead of promoting governments which might be contrary to the private sector.

Mr. HANCE. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Texas.

Mr. HANCE. Mr. Chairman, I agree with the gentleman. I think it is very important that the private sector be involved not only in El Salvador, but also in Nicaragua. I associate myself with the gentleman's remarks.

Mr. BAUMAN. I thank the gentleman.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I thank the gentleman for yielding. I think the gentleman's amendment is a worthy one. As he stated, there are dangers on the Nicaraguan aid, but we simply wrote into that legislation a requirement, which was generally agreed to by the State Department and the White House, that 60 percent of the funds would go to the private sector. In every statement that is made about the situation in Nicaragua, the White House and the State Department emphasize the importance of a pluralistic society and the importance of a private business sector. So, I do not see how anyone could really be in opposition to the gentleman's amendment, and I hope it is adopted.

Mr. BAUMAN. I thank the gentleman.

Mr. NEAL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I certainly have no objection to this amendment. In fact, I would have accepted it if we had added every country in the world. So, I would urge adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. BAUMAN) to the amendment offered by the gentleman from North Carolina (Mr. NEAL) as a substitute for the amendment offered by the gentleman from Texas (Mr. HANCE).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment, as amended, offered by the gentleman from North Carolina (Mr. NEAL), as a substitute for the amendment offered by the gentleman from Texas (Mr. HANCE).

The amendment, as amended, offered as a substitute for the amendment, was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. HANCE), as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HYDE: On page 9, after line 21, insert the following new section 6 and redesignate accordingly:

"SEC. 6. The United States Executive Director to the Fund shall seek to insure (a) that Fund salaries do not exceed those levels endorsed by the Fund Bank Joint Committee on Staff Compensation Issues; and (b) that travel costs are minimized by limiting first class and supersonic travel to instances where no reasonable alternative exists."

Mr. HYDE. Mr. Chairman, the amendment calls upon the U.S. representative to the IMF to monitor salary levels of IMF staff employees to insure that they do not exceed levels established by the Joint Committee on Salaries of the Bank and Fund.

Primarily as a result of congressional pressure resulting from an amendment offered to the IMF Witteveen Facility legislation (Public Law 95-435) the Fund and the Bank began a 2-year review of their salary policy. In the amendment originally offered by Mr. HYDE, the Fund and the Bank were instructed to keep their salaries to a level comparable to what civil servants and private industry employees are paid.

The Fund and Bank Committee adopted a new salary structure which accomplishes the intent of the original Hyde amendment. According to the newly adopted plan, salaries at the Fund and Bank may not exceed the levels paid to U.S. civil servants and private industry employees in similar jobs plus a 10-percent-cost-of-living adjustment for employment in Washington.

The purpose of this amendment is to insure compliance with the new salary policy at the IMF.

In part (b) of the amendment, the U.S. representative is called upon to insure that travel by Fund staff in first class or supersonic transportation is limited to the absolute minimum. The World Bank recently adopted such a restriction, and it is now time for the IMF to follow suit.

This amendment has far more than symbolic importance. It is very important that we insure that administrative expenses in the international institutions are kept to an absolute minimum. While it is crucial that the Fund and Bank continue to hire a first-rate staff, we—as the legislature that provides the bulk of the funds—want to insure that most of the money ends up assisting member countries.

Mr. STANTON. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Ohio.

Mr. STANTON. Mr. Chairman, I appreciate the gentleman yielding.

First of all, I want to compliment the gentleman on his amendment. The gentleman, as far as I can see, with his interest in the International Monetary Fund, is continuing what he has done to some of the multilateral development banks with regard to excessive salaries that have existed for years. It is primarily due to the result of congressional pressure resulting from his amendment to the Witteveen Facility. We are now following through, and the gentleman is to be congratulated, and certainly it is in the best interest of the taxpayers.

Mr. HYDE. I thank my friend for his generous comments.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I will be happy to yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, I would also like to commend the gentleman for his effort. He is continuing the effort that he began in 1978 by getting an amendment added to legislation on the IMF Witteveen Facility. His 1978 amendment is now being implemented. I would like to commend him and urge adoption of this amendment.

Mr. HYDE. I thank the gentleman.

AMENDMENT OFFERED BY MR. JACOBS AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. HYDE

Mr. JACOBS. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. JACOBS as a substitute for the amendment offered by Mr. HYDE: Page 9, immediately after line 21, insert the following new section 6 and redesignate accordingly:

SALARIES AND TRAVEL EXPENSES OF FUND EMPLOYEES

SEC. 6. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. Notwithstanding section 32 of this Act, the United States Governor of the Fund may not consent to the increase in the United States quota in the Fund which is described in that section unless—

"(1) the United States Governor is satisfied that the Fund has established, and will maintain, a requirement that employees of the Fund (including the Managing Director, Executive Directors, Alternate Executive Directors, and the staff of the Fund) may not be paid at a rate in excess of the rate payable for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and

"(2) the United States Governor is satisfied that the Fund has established, and will maintain and strictly enforce, a requirement that employees of the Fund (including the Managing Director, Executive Directors, Alternate Executive Directors, and the staff of the Fund) may not, when on Fund business, fly first class or on supersonic aircraft unless there is no reasonable alternative available and that employees of the Fund otherwise arrange their air travel so that the costs to the Fund of such travel are kept to a minimum.".

□ 1800

Mr. JACOBS. Mr. Chairman, this is in substance or in objective the same as the amendment in chief. The only difference is that this substitute in essence says that we mean it.

In the case of the proffered amendment to the bill, I stand corrected; I am mistaken, because it is my understanding that if we say we will simply work toward that end and ask our representative at the IMF to try to persuade the folks to take smaller salaries, I predict massive failure in that effort to persuade.

The substitute, on the other hand, puts teeth into the amendment and says that we should not vote to increase the quota by 5½ billions of American dollars unless the salary schedules are held within reason to what I believe is called level IV in our own Government. That is about $53,000, a genteel sufficiency, I should think. And unless the employees and officials of the IMF are content to fly at the economy rates as they dart about the Earth, that is it. That in essence is it.

Mr. Chairman, this simply puts teeth into the amendment offered by the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I thank my friend for yielding.

I would just point out that we are but one of 130 countries that are members of the IMF, and it is just not appropriate that we dictate to the IMF matters like this.

All new employees are under the new salary schedule. The older employees are being phased down and out by attrition.

The gentleman's substitute amendment, if I may say so, is Draconian in that it stops our participation if the other 129 countries do not knuckle under to the position the gentleman is suggesting. I think it is too Draconian, and I think it could very much impair the operation of the IMF.

In addition, I do honestly take polite umbrage at the gentleman's statement that his amendment means that "we mean it" and our amendment means that we do not mean it. Actually the amendment says, "The * * * Executive Director to the Fund shall seek to insure * * *" and I think they are following the law. The information I have is that they are.

Mr. Chairman, I respectfully hope that the gentleman's substitute is defeated because I think it is decapitating for a case of dandruff.

Mr. JACOBS. Mr. Chairman, I meant no offense, of course, to the gentleman by suggesting that this puts teeth in it and says we mean it. But it certainly indicates that we mean it a tad more when we say, "You ain't going to get the money from the United States. You aren't going to get $5.5 billion in return for the 20-percent vote we have in the IMF unless you comply with the goals" the gentleman has indicated.

There is a big difference between that on the one hand and saying on the other hand that we shall seek to influence or achieve that goal. We have sought to achieve that goal on numerous occasions in the past without success.

Now, as far as dictating to the rest of the world how the IMF will be conducted or whether they will pay this, let me say this: What is it that some of them get? Is it $175,000? No; it is $103,000, as I read it here. That is the highest salary that is paid at present, $103,000.

We are not dictating to them. They can go right ahead and pay those salaries, yes, if we continue to pay this $5.5 billion.

I might add to that that this feature of my substitute is nothing more than our saying that we will not participate in an extravagant and lavish system like that.

As far as its being Draconian is concerned, I remind the gentleman that there was a guy named Count Dracula, and there is a lot of blood being sucked out of the United States, more than any other country on Earth.

Mr. HYDE. Mr. Chairman, will the gentleman yield further?

Mr. JACOBS. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, $103,000, depending on one's perspective, is an awful lot of money, but when we consider basketball players are signed up for $1 million—there was one just yesterday—and when we consider that the IMF is the most important international financing facility, with responsibilities that command the duties of someone of supreme executive ability, I do not think that is out of line at all.

The CHAIRMAN. The time of the gentleman from Indiana (Mr. JACOBS) has expired.

(By unanimous consent, Mr. JACOBS was allowed to proceed for 3 additional minutes.)

Mr. JACOBS. Mr. Chairman, let me just respond to that by saying that that was a nice shot from center court, but as far as saying who is more responsible or who means it, let me comment. As for some public officials who have responsibility for the growing budget around here, I would defer to the gentleman from Illinois and his colleagues who in my opinion—and I do not mean to put it this way, but I simply think that the $60,000 salary for Members of Congress is out of line on the outside.

The gentleman is saying that almost twice as much is reasonable for some fellows who have never been elected by anybody to anything. We hand a fraction of that budget to Members of the Congress, too, and if they can make shots from the center court and if the gentleman can demonstrate to me that they are as good as a basketball player, I might follow the gentleman's argument.

Mr. HYDE. Mr. Chairman, I would suggest that the gentleman's use of our analogy suggests that perhaps we might change the name of this facility to "the International Mediocrity Fund."

Mr. JACOBS. Mr. Chairman, I think if the gentleman would check with his constituents, he would find that a $103,000 salary is a far, far altitudinous cry from mediocrity. I think this $53,000 just might be considered a genteel sufficiency by most Americans who are called upon to put up whatever money we can agree it is going to cost the U.S. Treasury to make these subinterest rate subsidies to other nations.

So for that reason I hope the committee would either adopt my substitute or reject the whole amendment, because in my opinion, this is necessary since we have asked them before and said, "Hey, fellows, won't you take less salary?" And they have said, "Well, we will think about it. Give us some time, and let us know next month."

Let us put the horse back where it belongs. This is $5.5 million, and let us get the cart behind the horse and see if the horse performs all right.

Mr. Chairman, I suppose we will pass the bill, but at least with this amendment, we say we mean it. Let us accept the substitute.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, let me just say that we cannot dictate to the Fund.

Mr. JACOBS. That is quite true.

Mr. NEAL. The gentleman understands that and agrees with that. If the gentleman's amendment were adopted, it would kill our participation in this quota increase.

Mr. JACOBS. Mr. Chairman, is the gentleman saying that this $103,000 fellow is going to have a temper tantrum, or is he patriotic enough to say, "All right, I will take $53,000 a year if we can increase the quota and save man- and womankind

Mr. NEAL. Mr. Chairman, that is not the issue. We cannot dictate to the Fund.

The Fund has some 140 members, all of whom have a voice in the Fund's operation. The way the gentleman's amendment is drawn, it says that we cannot consent to the increase of the U.S. quota in the Fund unless we dictate to the Fund.

Mr. JACOBS. No, no, not dictate. They can go right ahead and do anything they want to with the funds available to them. We are simply saying that we are not going to contribute more. We will contribute as much as we have to, to meet the quota we have now, but we are not going to increase that quota or vote to increase that quota.

The CHAIRMAN. The time of the gentleman from Indiana (Mr. JACOBS) has again expired.

(By unanimous consent, Mr. JACOBS was allowed to proceed for 3 additional minutes.)

Mr. JACOBS. Mr. Chairman, to continue, as I was saying we would say that we are not going to increase that quota when some of it is going to go into the pocket of a guy who is getting $103,000 a year and tripping around on the Concorde.

Mr. NEAL. Mr. Chairman, this amendment must be seen for what it is—its real aim is to defeat the main purposes of the legislation, by an attack on administrative expenses and unreasonable restraints on U.S. participation in the IMF. The motive is not to assure administrative efficiency, but to prevent the United States from participating in the quota increase. And if the United States is prevented from participating, it is the United States that will be the loser.

The United States cannot unilaterally set salaries in the IMF, nor unilaterally establish administrative policies on travel and other matters. We are one of 140 members of the IMF. Chaos would result if each of the 140 tried to assert its will over all the others in these administrative matters. We cannot do it and we should not try.

The job of running this major international financial institution, the job of Managing Director of the IMF, is not equivalent to a position of executive level IV. But even if we thought it were, these officials are not U.S. Government employees and we should not try to treat them as though they were.

Mr. Chairman, the IMF's Charter requires that it seek a broad geographical distribution of employees. Three-fourths or more of the staff is non-American, persons who must be attracted away from their native lands—including some countries where salary levels are higher than in the United States—to spend a lifetime as expatriates, persons whose competence must be of high quality, whose work requires a high degree of training in economics and other fields, and special language and other skills. IMF salary levels must reflect the special needs of that institution, recognizing that 75–80 percent of the staff is expatriate, not the salary levels the U.S. Government applies to meet its own particular needs.

Mr. Chairman, the United States has worked long and hard to assure that IMF salaries and administrative expenses are held to reasonable levels, and we shall continue to do so. The Witteveen Facility legislation enacted 2 years ago calls on the U.S. representatives to try to insure that IMF remuneration is similar to that paid in comparable positions in the U.S. public and private sectors. Subsequent to that legislation, U.S. representatives participated in a committee (the Kafka Committee) established to develop a system for determining IMF–IBRD salaries. Our representatives helped to get approval of a new system which keeps IMF–IBRD staff compensation basically to that paid for comparable jobs in the U.S. public and private sectors. The new system is now being implemented, and we have strong hopes that it will prove to be sensible and economical, providing a reasonable salary comparator, while taking account of the special needs of the IMF for staff of high competence, most of whom must be attracted from other countries. We regard this approach as the appropriate way to deal with this matter, rather than the approach in this amendment.

On air travel, again it is inappropriate and inconsistent with the concept of an international organization for each of 140 members to try to dictate its own policies over administrative expenses, be it transportation or stationery. The Managing Director must be allowed some discretion, under the general guidance of the Executive Board. On the Board our representatives have used their influence to the full to assure that the institution is run with maximum efficiency and budget costs held to a minimum, and they will continue to do so. But we should not limit our own participation in the Fund, to our own disadvantage and that of the world community, to coerce others to accept one particular view on an administrative matter such as air travel.

Mr. JACOBS. Mr. Chairman, may I ask the gentleman if his conclusion is based on the assumption that these fellows who are drawing these huge salaries would not come down or agree to come down to $53,000 a year to save the Earth?

Mr. NEAL. Mr. Chairman, if the gentleman will yield, I would say that it is doubtful we could get the kind of talented people we need in this most important of all of the international organizations.

Mr. JACOBS. Why, Mr. Chairman, I say to the gentleman, "Mr. Chairman, we got you for a lot less."

Mr. NEAL. I would just observe that by this amendment the gentleman wants to dictate to the Fund.

Mr. JACOBS. We got the gentleman from North Carolina for about half of that salary, and I cannot believe that any of those people are as talented as the gentleman from North Carolina. And I do not say that facetiously. I happen to have profound respect for the gentleman from North Carolina, and I do not happen to agree that these people are worth more, and the gentleman is tripping around on about half their salary.

Mr. LEACH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. I would like to briefly provide some background on this. During a previous Congress the gentleman from Illinois offered a very powerful amendment which caused the Fund to restrict salary advances. What the gentleman from Indiana is doing in a very popular sense is trying to "out-Hyde" Mr. HYDE. I think all of us in this body know that that is a very difficult thing to do.

Mr. JACOBS. I say to the gentleman that I have nothing to "Hyde."

□ 1810

Mr. LEACH of Iowa. I would add that the analogy of the gentleman from Indiana about "teeth" is an appropriate one. We are all concerned about cutting waste. The trouble with this amendment is that the teeth involved will cut an umbilical cord between the United States and the IMF. It is the height of arrogance. I hope that the teeth would be those presented by the gentleman from Illinois, which prudentially cut waste without severing our ties with this very important international organization.

Mr. JACOBS. May I say to the gentleman that if the past efforts of the gentleman from Illinois were so successful, is this $103,000 salary all a bad dream? Is the transportation by Concorde and first class all a bad dream? Does the gentleman realize that most of our State Department people travel as many miles or board as much on airplanes? I think the figure is something like 85 percent of the time they fly economy class. Is that Draconian? I really do not think so.

Mr. STANTON. Mr. Chairman, I move to strike the requisite number of words.

Quickly, Mr. Chairman, I rise in opposition to the substitute amendment, and I am in agreement with the Hyde amendment.

All we can do, Mr. Chairman, is to point out that the gentleman from Illinois has offered an amendment as a followup to one that he has done for years, and I specifically read it. It

"endorses the Fund Banks Joint Committee on Staff Compensation Issues."

What does this do? This requires that the Bank, after their own study, and as a result of their own study, would adopt a new plan, and a plan has been adopted, in part, that the salaries of the Fund and the Bank may not exceed the levels paid to U.S. civil servants and public employees.

This is something we could do, Mr. Chairman. It is very important. It certainly is not a meaningless amendment because it is an extremely important amendment expressing the sense of Congress in what we think. The other just completely kills the bill.

Mr. NEAL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to urge the defeat of the Jacobs amendment. It would severely weaken our participation in the International Monetary Fund.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. JACOBS) as a substitute for the amendment offered by the gentleman from Illinois (Mr. HYDE).

The question was taken; and on a division (demanded by Mr. JACOBS) there were—ayes 5; noes 17.

Mr. JACOBS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

□ 1830

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The pending business is the demand of the gentleman from Indiana (Mr. JACOBS) for a recorded vote.

A recorded vote was refused.

So the amendment offered as a substitute for the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. HYDE).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred four Members are present, a quorum.

A recorded vote was refused.

So the amendment was agreed to.

Mr. MITCHELL of Maryland. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will not take the 5 minutes, because I know the hour is late; but I take this time to again express some concern over the actions of the IMF in the nation of Jamaica.

Jamaica has a socialist form of government. It has broken with the IMF. It is facing enormous critical economic problems. That part I can understand, but according to the Wall Street Journal today, and I quote from the Journal:

> The opposition Jamaica Labor Party candidate for Prime Minister, Edward Seaga, says he is already negotiating with the IMF in anticipation of his winning.

Now if that is true, that violates every principle of law associated with the IMF. That is the kind of thing that is going to undermine this institution. That is the kind of thing that gives credibility to all the accusations that are raised that the IMF works in concert with the CIA and a half a dozen other agencies in order to control the internal politics of a sovereign state.

Mr. Chairman, I would urge that the chairman of the subcommittee go on record with the IMF, deploring this kind of involvement in the internal political affairs of any nation, because it is a violative of the law.

I would further state that I still intend to vote for this legislation, because I think it is important for our Nation and for many of the LCD's, but we cannot continue to let an agency, such as the IMF, act in a lawless fashion and demand lawful performance from other nations and other entities around the world.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. MITCHELL of Maryland. I yield to the chairman of the subcommittee.

Mr. NEAL. I would like to say to the distinguished gentleman that I quite agree that the IMF has no business interfering in the political affairs of any nation.

We will ask the Treasury Department to look into the Jamaica question. I would not necessarily believe every word of this press report. The IMF attempts to deal with macro-economic policies of countries. The gentleman is quite correct, though in observing that the IMF has no business interfering in the politics of member countries.

□ 1840

Mr. MITCHELL of Maryland. I would indicate to the subcommittee chairman I do not take every press report with a great deal of validity. There was a press report on me recently that caused me some concern.

But I do say that if there is the slightest bit of evidence to demonstrate that this kind of involvement is taking place it ought to be stopped and stopped immediately. I will depend on the power and good will of the subcommittee chairman to see that is done.

I yield back the balance of my time.

AMENDMENT OFFERED BY MR. PAUL

Mr. PAUL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. PAUL: Page 9, after line 21, insert the following new section 6 and redesignate accordingly:
>
> ROLE OF GOLD IN INTERNATIONAL MONETARY SYSTEMS
>
> SEC. 6. (a) The Secretary of the Treasury shall establish and chair a commission consisting of—
>
> (1) three members of the Board of Governors of the Federal Reserve System and two members of the Council of Economic Advisors, all of whom shall be designated by the Secretary of the Treasury;
>
> (2) one majority and one minority member each from (A) the Joint Economic Committee of the Congress, (B) the Committee on Banking, Housing, and Urban Affairs of the Senate, and (C) the Committee on Banking, Finance and Urban Affairs of the House of Representatives, who shall be designated by the Speaker of the House of Representatives and the President of the Senate, respectively, upon the recommendations of the majority and minority leaders of the respective Houses; and
>
> (3) four distinguished private citizens with business, finance, or academic backgrounds who shall be designated by the Secretary.
>
> (b) The commission shall conduct a study to assess and make recommendations with regard to the policy of the United States Government concerning the role of gold in domestic and international monetary systems, and shall transmit to the Congress a report containing its findings and recommendations not later than one year after the date of enactment of this Act.
>
> (c) Sums appropriated pursuant to section 5 of Public Law 95-612 shall be available to the commission to carry out its functions.

Mr. PAUL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. PAUL. Mr. Chairman, this amendment merely sets up a commission to study the U.S. policy concerning the role of gold.

Yesterday I had an amendment which tried to designate what we should do on the long term with the gold in the IMF. I am sure that was premature because the committee was certainly not ready to respond to it.

I think this commission, if we can set it up, would certainly go in the direction of making some of the decisions regarding gold in a more deliberate fashion. The same amendment has been passed by the other body unanimously and I think it would be appropriate if we do this, as well.

It would merely set up a commission of 15 individuals, some from the Federal Reserve Board, some from the Council of Economic Advisers, as well as from the Congress itself and also 4 distinguished private citizens would be part of this commission. The main purpose is to study and to assess and make recommendations regarding the posible policy of the United States concerning the role of gold in the

domestic and international monetary systems. It is then to report back to the Congress 1 year after the legislation is passed.

It will not cost us anything because the funding for the commission will come out of the Treasury Department funds, from the international account.

As you know, in 1976 the official role of gold changed. At that time the IMF had 150 million ounces of gold on hand. Since that time it has been reduced to 100. Twenty-five million ounces of gold were sold on the open market, as well as 25 million being returned to the nations that had contributed.

It is the official policy of the U.S. Government as well as the IMF to demonitize gold and yet there is obviously recognition, even among the committee members here, that the gold that the IMF holds has some real value and that we have to deal with that in a very definitive manner.

Since 1971 when the gold window was closed and we have not honored our commitment with any sort of redeemability, our money supply has doubled. Some people claim that the price of gold is too high and this is due to speculators and hoarders, but there are others who claim that this is due to the fact that we are depreciating our currency by printing too much. All these issues I do believe should be discussed fully and reported back to this Congress.

I would like to suggest, too, that in this commission they take into consideration that there are different economic views that respond differently to the ideas of gold. We have had the Keynesian views, and we have lived with that for a good many years. We have heard a lot in recent years about Monetarist views on monetary policy.

I would suggest and hope that the commission will take into consideration the viewpoint of the neoclassical economists better known as Austrian school economists. I would suggest their views be investigated and expressed in this commission report as well.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. PAUL. I yield to the gentleman from North Carolina.

Mr. NEAL. I thank the gentleman for yielding. It appears that this is the same amendment that was adopted by the other body in its IMF bill.

Mr. PAUL. It is the same amendment.

Mr. NEAL. It calls for a study of the role of gold in the domestic and international monetary systems. We have examined the amendment on this side and are prepared to accept it.

I would like to say, however, that I hope we would study this issue carefully. At $600 an ounce, this country has about $159 billion worth of gold. Foreign claims against that gold, amount to almost that much.

The Soviet Union and the South Africans produce most of the world's gold. I think we should look very carefully at any proposal that might subject our economy to the whims of these other governments.

But, in any case, we are certainly prepared to accept the amendment. I commend the gentleman from Texas for offering it.

Mr. PAUL. I thank the gentleman for his support and yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. PAUL).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. JACOBS

Mr. JACOBS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. JACOBS: Page 9, immediately after line 21, insert the following new section 6 and redesignate accordingly:
>
> VIETNAM, AFGHANISTAN, AND IRAN
>
> SEC. 6. (a) The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:
>
> "SEC. 37. The United States representatives to the Fund shall work actively against and oppose any credit trance purchases from the Fund by Vietnam, Afghanistan, or (until such time as all of the citizens and resident aliens of the United States who were taken hostage in Iran during November 1979 have been released) Iran.".
>
> (b) The Special Drawing Rights Act (22 U.S.C. 286n–286r) is amended by adding at the end thereof the following new section:
>
> "SEC. 8. United States participation in the Special Drawing Rights Department of the Fund shall not require the United States to accept, pursuant to a designation by the Fund under section 5(a) of article XIX of the Articles of Agreement of the Fund, any Special Drawing Rights from Vietnam, Afghanistan, or (until such time as all of the citizens and resident aliens of the United States who were taken hostage in Iran during November 1979 have been released) Iran.".

Mr. JACOBS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. JACOBS. Mr. Chairman, I think it would be helpful to go over just what these special drawing rights are and how they work. Periodically, I think annually perhaps, the International Monetary Fund allocates special drawing rights among the various member nations. The special drawing right, in a sense, is simply the creation of money.

When Vietnam, for example, receives special drawing rights, it, as well as any other country, is obligated to pay what is known as a charge or a fee to the International Monetary Fund but the Fund, in turn, pays a like amount in what they call interest to Vietnam or whatever country might be involved.

When any one of the member nations exercises its rights, its special drawing rights, it can draw currency from whatever nation is designated by the International Monetary Fund. How much a nation such as Iran or Afghanistan or Vietnam draws in U.S. currency is not a matter of general knowledge. It is not something that is generally made public. I believe it is known to officials in our Treasury, but beyond that it is obscure information.

Put the case of the country of Iran drawing down its special drawing rights and the IMF designating the United States, that is to say dollars, to redeem those special drawing rights. The United States surrenders, let us say, $100 million, or let us say $50 million to the country of Iran in response to that exchange. What happens with Iran is that it begins to pay not a washed transaction with the IMF but pays an interest charged to the IMF.

Now, where is the catch? The catch is that the United States, in order to come up with the $50 million, obviously since we are in a deficit posture, must go into the market here and borrow the money. Where is the subsidy, then, from the United States to Iran? The subsidy becomes the difference between the interest that the U.S. Government pays on the borrowed money and the amount of interest that Iran pays to the IMF.

□ 1850

So it is a subsidy in that sense to whatever country is involved. It may be argued that this amendment would be in violation of an agreement reached in which the United States participated in 1970 with other nations, that refusal to honor special drawing rights would deny a member nation further participation in those drawing rights. But let me point out that exceptions can be made to that agreement. The agreement contains language that allows the IMF to make exceptions.

Now let me say a word or two about international agreements. How do you feel about Vietnam's attitude toward international agreements? The United Nations clearly prohibits aggression. I was among those who believed that there was no aggression in Vietnam when North and South Vietnam were going at it. I was one of those who believed that we were just picking between two dictators in a civil war. But there can be no question that there is aggression on the part of Vietnam in Cambodia.

What about international agreements to protect the integrity of the Diplomatic Corps? Since the dawn of civilization these agreements have been honored. I know a country that is not honoring that kind of an agreement, and it is almost unique, Communist, non-Communist, Fascist, or otherwise, in that violation of an international agreement.

So far as Afghanistan is concerned, the evidence, it seems to me, is that Afghanistan at the moment is not Afghanistan but is an occupied land. For those reasons I believe that the United States should refrain from honoring calls by those three nations for U.S. dollars, which involve not only the exchange of U.S. dollars but also subsidies from the American taxpayers.

Mr. LEACH of Iowa. Mr. Chairman, I rise in opposition to the amendment. This is a very mischievous amendment because on the one hand it is simply meaningless in effect on the countries that the gentleman from Indiana wishes

to hamstring. I stress this because it would not have the intended effect. There is nothing that would stop these countries from converting their SDR's to other foreign currencies and having done that, nothing could stop them from going into the open market and converting those other foreign currencies to dollars.

But the much bigger problem is that while the effect is meaningless on Vietnam, Iran, and Afghanistan, it is very meaningful in its effect on the United States. This is a very clear case of cutting off our nose to spite our face. The amendment requires that the United States violate the articles of agreement of the Fund. Such action on the part of the United States would result under the IMF Charter in the immediate freezing of all U.S. assets in the Fund.

In this regard I would like to cite article 23, section 2(a) of the Fund which states:

If the Fund finds that a participant has failed to fulfill its obligations under Article XIX, Section 4, the right of the participant to use its special drawing rights shall be suspended.

In other words, the United States would find our SRD's frozen, about $4 billion in our Fund account would be worthless to the United States, although they would be meaningful to other foreign countries. It should be stressed that this is not simply "funny money." Two years ago we withdrew almost $2 billion of other countries' currencies within the Fund to defend the value of the dollar and, therefore, to restrain inflation in this country.

Finally, I think it should be stressed that under the Fund's charter, politics is to play no role whatsoever, and even such traditional adversaries as Greece and Turkey, Israel and Syria have never combatted each other within the Fund.

Unfortunately, the effect of the amendment of the gentleman from Indiana (Mr. JACOBS) will be for the first time to politicize the IMF, and this would be very, very damaging to a body that has sustained itself largely above politics for its entire history. While this amendment may be very popular, I believe it is ill considered, and I would hope this body would reject it resoundingly.

Mr. STANTON. Mr. Chairman, will the gentleman yield?

Mr. LEACH of Iowa. I yield to the gentleman from Ohio.

Mr. STANTON. I appreciate the gentleman's yielding because I want to find out if I am wrong. I cannot believe what I have just finished reading here. If the intent of the author is to somehow or other stop us from contributing to Afghanistan, Iran, and ignore Vietnam, or something, in no way will this amendment ever stop any funding of the IMF to these countries; is that correct?

Mr. LEACH of Iowa. The gentleman is correct.

Mr. STANTON. The amendment will not accomplish this job in that regard; is that correct?

Mr. LEACH of Iowa. That is correct.

Mr. STANTON. But this is an anti-United States of America amendment because it will freeze over $4 billion of our assets in the IMF; is that correct?

Mr. LEACH of Iowa. The gentleman's understanding is correct.

Mr. STANTON. I would ask the gentleman from Indiana (Mr. JACOBS) if he would think for a minute and perhaps in retrospect maybe withdraw this amendment.

Mr. JACOBS. I would answer the gentleman, if the gentleman from Iowa will yield.

Mr. LEACH of Iowa. Yes, of course I yield to the gentleman from Indiana.

Mr. JACOBS. I thank the gentleman for yielding. First of all, the agreement signed in 1970 does have an exception, as I mentioned before. The IMF can make an exception, and I think it is very likely that an exception in the case of the United States, particularly with our troubles with Iran, would be made. If they do not do that much for us, I do not know why we are increasing it.

Mr. LEACH of Iowa. Does the gentleman have any statement from any official of the IMF that they are willing to make this type of exception? As I read the IMF Charter, there is no exception for this provision whatsoever. Can the gentleman tell us, has the IMF Executive Director indicated to him that an exception of this nature is appropriate?

Mr. JACOBS. I would say that now that he has his salary back, he would probably be a little more friendly to our problems.

Mr. STANTON. If the gentleman from Iowa will yield, I do not think we should waste any more time on this. I really and truly do not. I strongly urge rejection of this amendment.

Mr. JACOBS. Will the gentleman yield?

Mr. LEACH of Iowa. I would yield in all fairness.

Mr. JACOBS. On the other point, I ask the gentleman, does the gentleman not agree that the 1970 agreement does have an exception?

Mr. LEACH of Iowa. But no exception of this nature.

Mr. JACOBS. Wait a minute, that it is not a "shall suspend" the drawing rights. It is a "may suspend" the drawing rights, that the IMF can choose not to suspend the drawing rights of the United States under this amendment.

Mr. LEACH of Iowa. I would like to read to the gentleman from the IMF article itself.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. JACOBS, and by unanimous consent, Mr. LEACH of Iowa was allowed to proceed for 3 additional minutes.)

Mr. LEACH of Iowa. I would appreciate if the gentleman would listen carefully to the use of the verbs. Article 23, section 2(a), states:

If the Fund finds that a participant has failed to fulfill its obligations under Article XIX, Section 4, the right of the participant to use its special drawing rights shall be suspended.

Mr. JACOBS. Would the gentleman read further the "unless"?

Mr. LEACH of Iowa. Excuse me?

Mr. JACOBS. Would the gentleman read further, "unless"?

Mr. LEACH of Iowa. Oh, surely.

Unless the Fund otherwise decides.

Mr. JACOBS. All right. That is all I said. If the gentleman will yield further just on the point of going around this amendment and whether this amendment is effective or not, let me point out to the committee that if Vietnam or Iran should choose to follow the course the gentleman has suggested and get other currency and then go into the market with U.S. dollars, there is one important difference. Through that difference, they would not get an interest subsidy from the U.S. taxpayers. Will the gentleman agree with that?

Mr. LEACH of Iowa. That is a very modest difference. I would concur, but it is of slight consequence compared to the fact that our assets would be frozen, and unless the gentleman can provide this body with a commitment in advance that the Fund would respond positively to an exception, I cannot believe that this is a responsible amendment. It truly is cutting our nose to spite ourselves.

Mr. JACOBS. I think the Fund would agree to it, particularly if we had not given the $5.5 billion as of yet.

Mr. NEAL. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I would like to reemphasize many of the things the gentleman from Iowa (Mr. LEACH) said.

Mr. Chairman, this amendment would require the United States to vote in the IMF on a purely political basis, reversing our longstanding effort to keep the IMF apolitical and functioning in an efficient, economic manner. It would fly directly in the face of all of the fine statements made yesterday deploring the PLO effort to "politicize" the IMF by observing the annual meeting. Moreover, it would do it in a much more important and damaging way: The observer states issue really has no effect on IMF operations; this amendment would directly politicize IMF operations.

Mr. Chairman, the IMF—as the institutional underpinning of the system—cannot operate on the basis of political roles. The need to maintian monetary stability and free and open world markets does not depend on whether country "A" happens today to have good or bad, political relations with country "B." It is a universal need—and the United States has the largest stake in a strong and open world economy.

This need is recognized throughout the IMF membership, despite the many political—even military—conflicts that inevitably crop up between members. The amendment would thus have the United States take the lead in destroying the IMF as a functioning institution. Countries have rights and obligations in

the IMF. They will not meet their obligations—including their obligations to provide financing—if we try to subvert their rights. An important right is to have their financing requests voted on economic and not artificial grounds.

Mr. Chairman, in practical terms, the amendment could have no impact on the targeted countries. They would get their financing anyway, because others would reject this initial effort by the United States. But it would clearly do several things directly harmful to the United States:

Create resentment among our allies for acting improperly in the institutions;

Weaken our position of leadership in guiding the IMF in directions supportive of U.S. interests; and

Start a process that would inevitably spread, undermining the IMF's legal principles and ability to function.

Mr. Chairman, this amendment would have no practical effect on the targeted countries. They would sell their SDR's to other countries. But it would effectively freeze, in one swift stroke, nearly $4 billion of U.S. international monetary reserves that otherwise would be available to the United States to obtain foreign currencies when needed to stabilize the U.S. dollar in exchange markets.

The amendment would prohibit the United States from meeting its legal obligations in the IMF as a participant in the SDR system to provide dollars for SDR's whenever designated by the IMF. The IMF articles of agreement prescribe a penalty for reneging on that obligation—the member in violation can no longer use its own SDR holdings. Moreover, a member that persists in failing to meet its IMF obligations can be expelled from the fund.

Mr. Chairman, not only would this amendment harm U.S. interests clearly and directly in this way, but failure of the United States to participate in the SDR system according to the rules would destroy that system—and so would destroy any hopes of evolution of the SDR as the principal reserve asset in the international monetary system. This would be directly contrary to the objectives expressed by the Congress in 1976, in accepting the fundamental amendments to the IMF's charter, and to the Banking Committee amendment to H.R. 7244 on a dollar-SDR substitution account.

Mr. Chairman, not only is the amendment contrary to these basic U.S. policy interests, but the rationale upon which it appears to be based is unfounded. There is no reason to expect that over time dollars provided by the United States to other IMF members in exchange for SDR will result in any financial "cost" to the United States or any "subsidy" to the other members. U.S. financing costs may turn out to be higher or lower than the SDR interest rate, which is based on interest rates paid on comparable United States, United Kingdom, French, German, and Japanese government securities. In addition to interest rate differentials, exchange gains or losses on the shift from dollar to SDR holdings need to be taken into account in assessing cost. Thus there is no legitimate way to predict whether a cost or subsidy of any kind would be involved in these SDR/dollar transactions.

Mr. Chairman, in sum, it is impossible to predict whether U.S. borrowing costs will be above or below the rate of interest earned on SDR, and thus whether there would be any so-called subsidy. The amendment would have no effect on the target countries—they would sell their SDR's elsewhere. What is easy to predict is that the amendment would:

First, put the United States directly in violation of its obligations under the SDR system in the IMF;

Second, eradicate nearly $4 billion of U.S. international monetary reserves, critically needed to maintain the strength and stability of the dollar in the foreign exchange markets; and

Third, seriously undermine the SDR system, which has been supported and strengthened repeatedly by the Congress and which offers a major hope for orderly development of the international monetary system as a whole.

□ 1900

I wish the gentleman would rethink his position on this. There is nothing to be gained from this amendment. This will have no impact whatever on Iran or Afghanistan or Vietnam. The gentleman is not accomplishing anything by the amendment, but the cost to our own country and to the world economic order will be great.

Mr. LEACH of Iowa. I would like to stress one point the gentleman from North Carolina made and that is when you politicize the Fund you not only jeopardize the U.S. position, but you also particularly jeopardize all politically unpopular states in the world and it will be Israel which will suffer, it will be Taiwan which will suffer, it will be South Africa which will suffer—all the international pariahs. I would just hope that in international finance we will try to keep politics out to as great a degree as possible.

Mr. JACOBS. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I do yield to the gentleman.

Mr. JACOBS. Let us just take up that question about the politicization of the IMF. I will say for the record that in 1945 during the hearings on the Bretton Woods Agreements. W. Randolph Burgess, president of the American Bankers Association and Senators Milliken and Fulbright discussed the possibilities that a Germany or an Italy might have been able to borrow from the IMF in the 1930's. They all agreed that the IMF should be political enough to prevent such lending.

As Herbert Feis, a State Department economist, was quoted in these hearings, "Shall we take political questions into account when making loans? It seems plain that we must. Our economic prospects, our safety, the chance that decency will prevail in this world"—you can just see this is someone from the State Department—"all these will be affected by the use that foreign countries will make of the economic strength for which we will provide the nourishment."

I am not going to rethink it. The people who began the IMF would have to rethink it in order to reject politicization of the IMF.

Mr. NEAL. I would observe that we have successfully avoided politicizing the fund for a great many years. It has been strictly a financial institution. That has enabled it to be effective.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. JACOBS).

The amendment was rejected.

Mr. PORTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the authorization for the International Monetary Fund.

The interdependence of the economic systems of the nations of the world, resulting from the ever-increasing level of world trade, is today undeniable. No one believes that we Americans are any longer insulated from what happens economically—as well as politically and militarily—anywhere else in the world. The monetary instability and economic difficulties of other nations concern us almost as much as our own. We are affected by their problems and they are affected by ours. Truly, in the world today, not only is no man an island, but no island is any longer an island.

In these circumstances, a fund of currencies of the trading nations of the world was needed, was bound to develop and did develop. And for 36 years the International Monetary Fund has facilitated international trade and promoted world economic stability, both to the substantial advantage of the United States, which has supported it strongly under administrations of both parties.

Now there is a need to make a recommitment to the viability of the IMF. The Fund's resources have for years been declining as a percentage of world trade, dropping from a level of about 12 percent 20 years ago to only 4 percent today. To remedy this deficiency the quota for all nations must be increased by 50 percent to insure that the IMF is able to continue its role of augmenting foreign exchange resources to facilitate trade and providing advice and financing to emerging nations desiring to enter world markets.

Just in case anyone should think that the IMF serves only the so-called developing nations, the United States itself has a record of drawing more heavily on IMF resources for our own purposes than any nation but one during the last 17 years, with 24 drawings for a total of $7.5 billion. These drawings have obviously had an important influence in shoring the American dollar and providing us with foreign currencies when needed for exchange market operations.

And lest anyone think that the United States is the only nation concerned with a viable IMF, it should be noted that the shares of the quota and voting rights of the United States in the Fund have been dropping for years. Originally our quota share was 34.72 percent; it is now projected at 21.01 percent. Our

voting share was 30.67 percent at the IMF's inception and is now to be 19.88 percent. These are desirable trends and indicate the willingness of other countries to take some of the responsibility for world economic health. Because an 85-percent vote is necessary for modifications of quotas and other IMF business, the United States still holds a veto over any changes in the IMF and the international monetary system. Obviously, this veto power will be maintained only if this legislation is adopted and the United States meets its continuing responsibilities.

I am not unaware of the strong temptation evidence yesterday, for many Members (some of whom seem to be stirred this way only in the fall of the even-numbered years) to view this measure as an easy opportunity to show their proclivities for economy in Government. But, in this case, these opportunities simply are not present. The IMF is not easy to understand and is often confused with foreign aid. It should rather be thought of as a savings account, one incidentally, on which interest is earned, one that now needs to be increased. Although new budget authority is needed for this purpose, this involves no new outlays of U.S. funds. To say that there is no risk that sometime in the future outlays may be required would, of course, be nonsense. But the risk of not continuing our commitment to the IMF—the risk in undermining worldwide economic stability—is far greater.

Almost all of the non-Soviet nations of the world are members of the Fund and are undertaking the same responsibility for increasing their commitments to its continuing success. I urge my colleagues to take our responsibility to keep our country strong and respected in the free world community and to support this authorization.

AMENDMENT OFFERED BY MR. LONG OF MARYLAND

Mr. LONG of Maryland. Mr. Chairman, I offer a technical amendment.

The Clerk read as follows:

Amendment offered by Mr. LONG of Maryland: Page 9, after line 21, insert the following new section 6 and redesignate accordingly:

"FULL APPROPRIATIONS REQUIRED"

SEC. 6. Section 32 of the Bretton Woods Agreements Act, as added by section 1 of this Act, is amended by striking "to such extent or in such amounts as are provided in appropriations Acts" and inserting in lieu thereof "limited to such amounts as are appropriated in advance in appropriation Acts."

Mr. LONG of Maryland. Mr. Chairman, this amendment as I said is essentially technical and procedural. It would improve the fiscal procedures of the authorization bill, enable the Congress to exercise fiscal control over the funds which are authorized in the bill before us. The language is identical to that contained in the Senate bill, and I know of no opposition to the amendment. I urge the adoption of the amendment.

Mr. NEAL. Mr. Chairman, we have examined the amendment and we are totally prepared to accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. LONG).

The amendment was agreed to.

● Mr. NEAL. Mr. Chairman, I would like to clarify the meaning of section 5 of this legislation. This section relating to the relationship of Taiwan to the Fund was added last May during subcommittee consideration. At that time, the Taiwan-Fund relationship was in a state of flux. Since that time the Taiwanese and the Fund have resolved all the issues between them to their mutual satisfaction. We expect that in the future Taiwanese will have whatever appropriate relationship they and the Fund agree upon. Therefore, I wish to make clear that the intent of section 5 is to state that it is the policy of the United States that "appropriate membership" shall be that form of participation that is mutually satisfactory to the Taiwanese and the Fund.

Mr. Chairman, the International Monetary Fund is the free world's major instrument for helping to keep free economies free. It, more than any other institution, helps balance and bring order to the world's economy.

Mr. Chairman, we have a big stake in a stable world economic order. One in seven manufacturing jobs in this country produce for export. One in three acres of agricultural production is for export. One in five dollars in profit is earned from international operations. Twelve percent of our GNP is derived from export trade.

Mr. Chairman, the resources of the IMF, the institution most capable of helping keep world trade open and free, have significantly declined. In 1960 it had between 10 and 12 percent of world imports in assets. Today that figure is 4 percent.

We need to strengthen the IMF and can do so by passing the bill before us.

Mr. Chairman, I would like to briefly respond to a few misconceptions about the IMF.

In the first place, it is not foreign aid. We make no gift to the IMF. We exchange one asset for another. There is no net budget outlay. Our participation does not increase budget deficits.

There is no cost to taxpayers. In fact, we made over $200 million in capital gains on our investment in the IMF over the last 10 years. All the while enjoying the great benefits of world trade.

The IMF is not a bank bail-out. IMF loans are, in every case, too small to help any country pay any significant amount of its bank debt. Historically bank lending increases after countries come to agreement with the IMF.

Mr. Chairman, the IMF is the free world's major instrument for keeping free economies free. We need to strengthen it. I urge a strong vote in favor of this bill.●

The CHAIRMAN. Are there further amendments to the bill? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. BEILENSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7244) to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund, and for other purposes, pursuant to House Resolution 726, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment adopted by the Committee of the Whole? If not, the Chair will put them en gros.

The amendments were agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PAUL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 199, nays 151, not voting 82, as follows:

[Roll No. 564]

YEAS—199

Addabbo
Akaka
Albosta
Ambro
Anderson, Ill.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Beilenson
Bereuter
Biaggi
Bingham
Blanchard
Boggs
Boland
Bonker
Bowen
Brademas
Breaux
Brodhead
Brooks
Broomfield
Brown, Calif.
Buchanan
Burgener
Burton, Phillip
Carr
Chisholm
Clinger
Coelho
Conable
Conte
Corman
D'Amours
Danielson
Davis, Mich.
Deckard
Dellums
Derrick
Dicks
Dingell
Dougherty
Downey
Drinan
Duncan, Oreg.
Edgar
Erdahl
Ertel
Evans, Del.
Fary
Fascell
Fazio
Fenwick
Fisher
Fithian
Florio
Foley
Ford, Mich.
Forsythe
Frenzel
Frost
Gephardt
Gibbons
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Green
Guarini
Hamilton
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hightower
Holland
Hollenbeck
Holtzman
Horton
Hughes
Hutchinson
Hyde
Jeffords
Johnson, Calif.
Kastenmeier
Kazen
Kildee
Kogovsek
Kostmayer
LaFalce
Leach, Iowa
Lehman
Leland
Lloyd
Long, La.
Long, Md.
Lowry
Lundine
McCloskey
McCormack
McDade
McHugh
McKinney
Maguire
Markey
Matsui
Mavroules
Mazzoli
Mikulski
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moffett
Mollohan
Murtha
Musto
Neal
Nelson
Nolan
Nowak
Oakar
Obey
Panetta
Patten
Patterson
Pease
Petri
Peyser
Porter
Price
Pritchard
Pursell
Rahall
Railsback
Ranvel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rosenthal
Rostenkowski
Royer
Sabo
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Shannon
Shumway
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Spellman
St Germain
Stack
Stanton
Stark
Steed
Stewart
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Thompson
Udall
Van Deerlin
Vander Jagt
Vanik
Walgren
Waxman
Williams, Mont.
Williams, Ohio
Winn
Wirth
Wolff
Wylie
Young, Mo.
Zablocki
Zeferetti

NAYS—151

Anderson, Calif.
Applegate
Archer
Ashbrook
Atkinson
Badham
Bafalis
Bauman
Benjamin
Bennett
Bethune
Bevill
Boner
Bouquard
Brinkley
Brovhill
Burlison
Burton, John
Butler
Byron
Campbell
Carney
Carter
Cheney
Clausen
Coleman
Collins, Tex.
Conyers
Corcoran
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Devine
Dickinson
Donnelly
Dornan
Duncan, Tenn.
Early
Edwards, Okla.
Emery
English
Evans, Ga.
Evans, Ind.
Findley
Flippo
Fountain
Fowler
Fuqua
Gaydos
Gilman
Goldwater
Gramm
Grisham
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hammer-schmidt
Hansen
Harsha
Hefner
Hillis
Hopkins
Hubbard
Huckaby
Hutto
Ichord
Jacobs
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kelly
Kindness
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Loeffler
Lott
Lungren
McDonald
McKay
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Mica
Miller, Calif.
Miller, Ohio
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Myers, Ind.
Natcher
Nichols
O'Brien
Oberstar
Paul
Perkins
Pickle
Quillen
Ritter
Roberts
Robinson
Roth
Rousselot
Satterfield
Sensenbrenner
Sharp
Shelby
Shuster
Skelton
Snyder
Spence
Stangeland
Stenholm
Stockman
Stump
Taylor
Traxler
Trible
Volkmer
Walker
Wampler
Watkins
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Wilson, Tex.
Wolpe
Wyatt
Yatron
Young, Alaska
Young, Fla.

NOT VOTING—82

Abdnor
Alexander
Andrews, N.C.
Beard, Tenn.
Bolling
Bonior
Brown, Ohio
Cavanaugh
Chappell
Clay
Cleveland
Collins, Ill.
Cotter
Coughlin
Daschle
Davis, S.C.
de la Garza
Derwinski
Dixon
Dodd
Eckhardt
Edwards, Ala.
Edwards, Calif.
Erlenborn
Ferraro
Fish
Ford, Tenn.
Garcia
Glaimo
Gingrich
Grassley
Gray
Heftel
Hinson
Holt
Howard
Ireland
Jenrette
Johnson, Colo.
Kemp
Leach, La.
Lederer
Lent
Lujan
Luken
McClory
McEwen
Mattox
Michel
Moakley
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Neal
Ottinger
Pashayan
Pepper
Preyer
Quayle
Rinaldo
Rodino
Roe
Rose
Roybal
Rudd
Russo
Santini
Schulze
Solomon
Staggers
Stokes
Symms
Thomas
Ullman
Vento
Weiss
Wilson, Bob
Wilson, C. H.
Wright
Wydler
Yates

□ 1920

The Clerk announced the following pairs:

Ms. Ferraro with Mr. Abdnor.
Mr. Santini with Mr. Gingrich.
Mr. Preyer with Mr. Quayle.
Mr. Howard with Mr. Hinson.
Mr. Alexander with Mr. Beard of Tennessee.
Mr. Chappell with Mr. Brown of Ohio.

Mr. Cotter with Mrs. Holt.
Mr. Edwards of California with Mr. Kemp.
Mr. Jenrette with Mr. Lent.
Mr. Glaimo with Mr. Lujan.
Mr. Lederer with Mr. Schulze.
Mr. Moakley with Mr. Symms.
Mr. Murphy of New York with Mr. Thomas.
Mr. Nedzi with Mr. Bob Wilson.
Mr. Rodino with Mr. Wydler.
Mr. Rose with Mr. Michel.
Mr. Pepper with Mr. McEwen.
Mr. Roybal with Mr. Fish.
Mr. Russo with Mr. Erlenborn.
Mr. Staggers with Mr. Coughlin.
Mr. Stokes with Mr. Cleveland.
Mr. Vento with Mr. Andrews of North Carolina.
Mr. Weiss with Mr. Grassley.
Mr. Wright with Mr. Gray.
Mr. Myers of Pennsylvania with Mr. Rinaldo.
Mr. Murphy of Illinois with Mr. Pashayan.
Mr. Dodd with Mr. Rudd.
Mr. de la Garza with Mr. Solomon.
Mr. Clay with Mr. McClory.
Mr. Cavanaugh with Mr. Garcia.
Mr. Bonior of Michigan with Mr. Edwards of Alabama.
Mr. Moorhead of Pennsylvania with Mr. Eckhardt.
Mr. Ullman with Mr. Derwinski.
Mr. Ottinger with Mr. Davis of South Carolina.
Mr. Yates with Mr. Luken.
Mr. Heftel with Mr. Mattox.
Mr. Breaux with Mr. Charles H. Wilson of California.
Mr. Ford of Tennessee with Mr. Leach of Louisiana.
Mrs. Collins of Illinois with Mr. Ireland.
Mr. Daschle with Mr. Dixon.

Mr. APPLEGATE and Mr. WALKER changed their votes from "yea" to "nay."

Mr. LLOYD changes his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. NEAL. Mr. Speaker, pursuant to the provisions of House Resolution 726, I call up from the Speaker's table the Senate bill (S. 2271) to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. NEAL

Mr. NEAL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. NEAL moves to strike out all after the enacting clause of the Senate bill, S. 2271, and to insert in lieu thereof the provisions of H.R. 7244, as passed, as follows:

INCREASE IN UNITED STATES QUOTA

SECTION 1. The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 32. The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 4,202.5 million Special Drawing Rights, to such extent or in such amounts as are provided in appropriation Acts.".

BASIC HUMAN NEEDS

SEC. 2. (a) The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 33. (a) The President shall instruct the Secretary of the Treasury, the Secretary of State, and other appropriate Federal officials to use all appropriate means to encourage countries, in formulating economic adjustment programs to deal with their balance of payments difficulties, to design those programs so as to safeguard, to the maximum feasible extent, jobs, investment, real per capita income, policies to reduce the gap in wealth between rich and poor, and social programs such as health, housing, and education.

"(b) To ensure the effectiveness of economic adjustment programs supported by Fund resources and the reinforcement of those programs by longer term efforts to promote sustained growth and improved living conditions—

"(1) United States representatives to the Fund shall recommend and shall work for changes in Fund guidelines, policies, and decisions that would—

"(A) permit stand-by arrangements to be extended beyond three years, as necessary to enable Fund members to implement their economic adjustment programs successfully;

"(B) provide that in approving any economic adjustment program the Fund shall take into account the effect such program will have on jobs, investment, real per capita income, the gap in wealth between the rich and poor, and social programs such as health, housing, and education, in order to seek to minimize the adverse impact of those adjustment programs on basic human needs; and

"(C) provide that letters of intent submitted to the Fund in support of an economic adjustment program reflect that the member country has taken into account the effect such program will have on the factors listed in subparagraph (B);

"(2)(A) before voting on the approval of any standby arrangement with respect to any economic adjustment program, the United States Executive Director shall review—

"(i) any analysis of factors prepared by the Fund or the member country in accordance with subparagraphs (B) and (C) of paragraph (1), or

"(ii) if no such analysis is prepared and available for such review, an analysis which shall be prepared by the United States Governor of the Fund which examines the effect of the program on the factors listed in subparagraph (B) of paragraph (1); and

"(B) the United States Executive Director of the Fund shall take into account the analysis reviewed pursuant to subparagraph (A) of this paragraph in voting on approval of that standby arrangement;

"(3) United States representatives to the Fund, to the Bank, and to other appropriate institutions shall work toward improving coordination among these institutions and, in particular, shall work toward formulation of programs in association with economic adjustment programs supported by Fund resources which (A) will, among other things, promote employment, investment, real income per capita, improvements in income distribution, and the objectives of social programs such as health, housing, and education, and (B) will, to the maximum extent feasible and consistent with the borrowing country's need to improve its balance of payments position within a reasonable period, ameliorate any adverse effects of economic adjustment programs on the poor;

"(4) United States representatives to the Fund and the Bank shall seek amendments to decisions on policies on the use of Fund and Bank resources to provide that, where countries are seeking Extended Fund Facility or upper credit tranche drawings from the Fund and are eligible to receive financing from the Bank, the Fund and Bank will coordinate their financing activities in order—

"(A) to take into account the effects of

economic adjustment programs on the areas listed in clause (A) of paragraph (3),

"(B) to provide, to the extent feasible, Bank project loans designed to safeguard and further basic human needs in countries adopting economic adjustment programs supported by Fund resources, and

"(C) to provide, as appropriate, Bank financing for programs of structural adjustment that will facilitate development of a productive economic base and greater attainment of basic human needs objectives over the longer term; and

"(5) United States representatives to the Fund and the Bank shall request the Fund and the Bank to provide periodic analyses of the effects of economic adjustment programs supported by Fund or Bank financing on jobs, investment, real income per capita, income distribution, and social programs such as health, housing, and education.

"(c) The National Advisory Council on International Monetary and Financial Policies shall include in each of its annual reports to the Congress a statement detailing the actions and progress made in carrying out the requirements of subsections (a) and (b) of this section.".

(b) Section 30 of the Bretton Woods Agreements Act (22 U.S.C. 286e-9) is amended—

(1) in subsection (a) by striking out "entered into pursuant to loans from the Supplementary Financing Facility";

(2) in the first sentence of subsection (b) by striking out "entered into pursuant to loans from the Supplementary Financing Facility"; and

(3) in the second sentence of subsection (b) by striking out "by the Supplementary Financing Facility".

SEC. 3. Strike section 7 of P.L. 95-435, the Bretton Woods Agreements Act Amendments of 1978, which reads: "Beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.", and insert in lieu thereof: "The Congress reaffirms its commitment that beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts".

RECYCLING BALANCE-OF-PAYMENTS SURPLUSES

SEC. 4. (a) It is the sense of the Congress that (1) the interests of the United States and those of other member countries require an effective International Monetary Fund equipped with resources adequate to facilitate orderly balance-of-payments adjustments; (2) persistent balance-of-payments surpluses in oil exporting countries have placed, and will continue to place, severe stains on the resources of oil importing countries and on the liquidity of the Fund; (3) these strains can only be relieved if the oil exporting countries assume a greater burden for financing balance-of-payments deficits through direct methods of recycling their surpluses and through proportionally greater contributions to the Fund and to the international lending institutions; and (4) the Fund must explore innovative proposals to encourage more direct recycling of oil surpluses and to increase its own liquidity.

(b) The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new sections:

"SEC. 34. The Secretary of the Treasury, in consultation with the United States Executive Director of the Fund, shall study and, following consultations with member countries, shall report to the Congress prior to May 15, 1981, with respect to—

(1) the current adequacy of Fund resources, together with projected needs of the Fund over the next five years;

"(2) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow directly from the governments of oil exporting countries;

"(3) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow in private capital markets through the issuance of securities backed by Fund resources;

"(4) the feasibility of an offer by the Fund of incentives to oil exporting countries, including financial guarantees by the Fund for government-to-government loans to countries with blance-of-payments deficits, in order to promote more direct recycling of oil surpluses; and

"(5) methods to enhance cooperation between commercial banks and the Fund to promote the availability of adequate resources for balance-of-payments financing.

"SEC. 35. It is the sense of the Congress that the Secretary of the Treasury and the United States Executive Director of the Fund shall encourage member countries of the Fund to negotiate a dollar-Special Drawing Rights substitution account in which equitable burden sharing would exist among participants in the account, and shall report to the Congress prior to May 15, 1981, with respect to progress toward achieving this goal.".

DEBT RESCHEDULING COMPARABILITY

SEC. 5. Section 29 of the Bretton Woods Agreements Act is amended by striking out "on the use of the facility".

TAIWAN

SEC. 6. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 36. It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China) shall be granted appropriate membership in the Fund and that the United States Executive Director of the Fund shall so notify the Fund.".

PALESTINE LIBERATION ORGANIZATION

SEC. 7. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. It is the policy of the United States that the Palestine Liberation Organization should not be given membership in the Fund or be given observer status or any other official status at any meeting sponsored by or associated with the Fund. The United States Executive Director of the Fund shall promptly notify the Fund of such policy.

"In the event that the Fund provides either membership, observer status, or any other official status to the Palestine Liberation Organization, such action would result in a serious diminution of U.S. support. Upon review of such action, the President would be required to report his recommendations to the Congress with regard to any further U.S. participation in the Fund."

ASSISTANCE TO THE PRIVATE SECTOR OF EL SALVADOR AND OTHER NATIONS

SEC. 8. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. It is the sense of the Congress that in providing assistance through loans or other means to any nation, in particular El Salvador and Nicaragua, the Fund and the Bank should encourage programs which assist the private sector to create an environment which will stabilize the economy of the nation; and that the United States representatives to the Fund and the Bank shall promote the use of assistance by the Fund and the Bank to encourage such programs.".

SEC. 9. The United States Executive Director to the Fund shall seek to insure (a) that Fund salaries do not exceed those levels endorsed by the Fund Bank Joint Committee on Staff Compensation Issues; and (b) that travel costs are minimized by limiting first class and supersonic travel to instances where no reasonable alternative exists.

ROLE OF GOLD IN INTERNATIONAL MONETARY SYSTEMS

SEC. 10. (a) The Secretary of the Treasury shall establish and chair a commission consisting of—

(1) three members of the Board of Governors of the Federal Reserve System and two members of the Council of Economic Advisors, all of whom shall be designated by the Secretary of the Treasury;

(2) one majority and one minority member each from (A) the Joint Economic Committee of the Congress, (B) the Committee on Banking, Housing, and Urban Affairs of the Senate, and (C) the Committee on Banking, Finance and Urban Affairs of the House of Representatives, who shall be designated by the Speaker of the House of Representatives and the President of the Senate, respectively, upon the recommendations of the majority and minority leaders of the respective Houses; and

(3) four distinguished private citizens with business, finance, or academic backgrounds who shall be designated by the Secretary.

(b) The Commission shall conduct a study to assess and make recommendations with regard to the policy of the United States Government concerning the role of gold in domestic and international monetary systems, and shall transmit to the Congress a report containing its findings and recommendations not later than one year after the date of enactment of this Act.

(c) Sums appropriated pursuant to section 5 of Public Law 95-612 shall be available to the commission to carry out its functions.

FULL APPROPRIATIONS REQUIRED

SEC. 11. Section 32 of the Bretton Woods Agreements Act, as added by section 1 of this Act, is amended by striking "to such extent or in such amounts as are provided in appropriations Acts" and inserting in lieu thereof "limited to such amounts as are appropriated in advance in appropriation Acts."

EFFECTIVE DATE

SEC. 12. This Act shall take effect on its date of enactment, except that funds may not be appropriated under any authorization contained in this Act for any period prior to October 1, 1980.

The SPEAKER pro tempore (Mr. BRADEMAS). The question is on the motion offered by the gentleman from North Carolina (Mr. NEAL).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. MOORE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. The Chair will count.

Two hundred and twenty Members are present, a quorum.

□ 1930

On a division (demanded by Mr. MOORE) there were—ayes 118; noes 45.

RECORDED VOTE

Mr. MOORE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 184, noes 129, not voting 119, as follows:

[Roll No. 565]

AYES—184

Addabbo
Akaka
Albosta
Ambro
Anderson, Ill.
Annunzio
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnes
Beard, R.I.
Bedell
Bellenson
Bereuter
Bevill
Biaggi
Bingham
Boggs
Bonker
Bowen
Brademas
Breaux
Brodhead
Brooks
Buchanan
Burgener
Burton, John
Carr
Chisholm
Clinger
Coelho
Conable
Conte
D'Amours
Danielson
Deckard
Dellums
Derwinski
Dicks
Donnelly
Dougherty
Downey
Drinan
Early
Edgar
Erdahl
Evans, Del.
Evans, Ga.
Fary
Fascell
Fazio
Fenwick
Fisher
Fithian
Florio
Foley
Ford, Mich.
Forsythe
Fowler
Frenzel
Frost
Fuqua
Gephardt
Gibbons
Ginn
Glickman
Gonzalez
Gore
Gradison
Green
Guarini
Gudger
Hamilton
Hance
Harkin
Harris
Hawkins
Heckler
Hefner
Hightower
Hollenbeck
Horton
Huckaby
Hughes
Hutchinson
Hyde
Jeffords
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kildee
Kostmayer
LaFalce
Leach, Iowa
Lehman
Leland
Lloyd
Long, La.
Long, Md.
Lowry
McCloskey
McCormack
McDade
McHugh
McKinney
Maguire
Markey
Matsui
Mavroules
Mazzoli
Mikulski
Mineta
Minish
Mitchell, Md.
Moffett
Mollohan
Murtha
Musto
Neal
Nelson
Nolan
Nowak
Oakar
Obey
Panetta
Patterson
Pease
Petri
Peyser
Porter
Price
Pritchard
Pursell
Rahall
Rallsback
Rangel
Regula
Reuss
Rhodes
Rostenkowski
Royer
Sabo
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Shannon
Shumway
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Solars
Spellman
St Germain
Stanton
Stark
Steed
Stewart
Stockman
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Traxler
Walgren
Waxman
Whitley
Williams, Ohio
Winn
Wolff
Wright
Wyatt
Wylie
Young, Mo.
Zablocki
Zeferetti

NOES—129

Anderson, Calif.
Applegate
Archer
Ashbrook
Atkinson
Badham
Bafalis
Bauman
Beard, Tenn.
Benjamin
Bennett
Bethune
Boner
Bouquard
Brinkley
Broyhill
Burlison
Butler
Byron
Campbell
Carney
Carter
Clausen
Coleman
Collins, Tex.
Conyers
Corcoran
Courter
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Devine
Dickinson
Dornan
Duncan, Tenn.
Edwards, Okla.
Emery
English
Evans, Ind.
Findley
Flippo
Fountain
Gaydos
Gilman
Goldwater
Gramm
Grisham
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hammer-schmidt
Hansen
Hillis
Holt
Hopkins
Hubbard
Ichord
Jacobs
Jeffries
Jenkins
Jones, Okla.
Kelly
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Loeffler
Lott
Lungren
McDonald
McKay
Madigan
Marks
Marlenee
Marriott
Martin
Mica
Michel
Miller, Ohio
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Myers, Ind.
Natcher
Nichols
O'Brien
Oberstar
Paul
Perkins
Pickle
Ritter
Roberts
Robinson
Rousselot
Satterfield
Sensenbrenner
Sharp
Shelby
Shuster
Snyder
Spence
Stangeland
Stenholm
Stump
Taylor
Thomas
Trible
Volkmer
Walker
Wampler
Watkins
Weaver
White
Whitehurst
Whittaker
Whitten
Wilson, Tex.
Wolpe
Yatron
Young, Alaska
Young, Fla.

NOT VOTING—119

Abdnor
Alexander
Andrews, N.C.
Andrews, N.Dak.
Anthony
Barnard
Blanchard
Boland
Bolling
Bonior
Broomfield
Brown, Calif.
Brown, Ohio
Burton, Phillip
Cavanaugh
Chappell
Cheney
Clay
Cleveland
Collins, Ill.
Corman
Cotter
Coughlin
Crane, Daniel
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Derrick
Dingell
Dixon
Dodd
Duncan, Oreg.
Eckhardt
Edwards, Ala.
Edwards, Calif.
Erlenborn
Ertel
Ferraro
Fish
Ford, Tenn.
Garcia
Giaimo
Gingrich
Goodling
Grassley
Gray
Hanley
Harsha
Heftel
Hinson
Holland
Holtzman
Howard
Hutto
Ireland
Jenrette
Johnson, Colo.
Kemp
Kindness
Kogovsek
Leach, La.
Lederer
Lent
Lujan
Luken
Lundine
McClory
McEwen
Mathis
Mattox
Miller, Calif.
Mitchell, N.Y.
Moakley
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Ottinger
Pashayan
Patten
Pepper
Preyer
Quayle
Quillen
Ratchford
Richmond
Rinaldo
Rodino
Roe
Rose
Rosenthal
Roth
Roybal
Rudd
Russo
Santini
Schulze
Simon
Solomon
Stack
Staggers
Stokes
Symms
Thompson
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Weiss
Williams, Mont.
Wilson, Bob
Wilson, C. H.
Wirth
Wydler
Yates

□ 1940

Messrs. FLIPPO, HAGEDORN, and CLAUSEN changed their votes from "aye" to "no."

So the motion was agreed to.

The result of the vote was announced as above recorded.

□ 1950

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 7244) was laid on the table.

LEGISLATIVE PROGRAM

(Mr. RHODES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I take this time to inquire of the distinguished majority leader as to the program for the balance of the evening.

Mr. WRIGHT. Would the distinguished minority leader yield?

Mr. RHODES. I yield.

Mr. WRIGHT. I believe there has been somewhat general, if in some cases reluctant agreement, to a schedule of action which will let us make progress on the two bill which involve oil spills and chemical wastes, H.R. 85 and H.R. 7020. The plan would be to adopt both rules tonight and to conclude the general debate only on H.R. 85 tonight; to begin tomorrow with the general debate on H.R. 7020, stopping at that point and returning to the consideration of H.R. 85 under the 5-minute rule and hoping to conclude that bill by 3 o'clock tomorrow, arising in any event at 3 o'clock tomorrow. That is the present plan.

It has been discussed with Members on both sides and spokesmen for the various committees involved. I believe it is the best arrangement we can come to for the day.

Mr. RHODES. It is my understanding that H.R. 7020 would not be read for amendment under any circumstances until possibly some time next week.

Mr. WRIGHT. That is correct; it would not be read for amendment tomorrow nor this evening.

Mr. RHODES. General debate on H.R. 7020 would not start tonight?

Mr. WRIGHT. General debate on H.R. 7020 would not begin tonight. We would hope to adopt both rules and keep them somewhat in tandem, with H.R. 85 moving first, trying to complete general debate on H.R. 85 tonight, not getting into any 5-minute rule tonight, and then doing general debate first tomorrow on H.R. 7020, then returning to H.R. 85 attempting to conclude all action on H.R. 85 under the 5-minute rule and final passage of that bill tomorrow, if that can be done prior to the 3 o'clock adjournment time tomorrow. It would not be the plan to move into the 5-minute rule on H.R. 7020 this week.

Mr. RHODES. I thank the gentleman.

The SPEAKER pro tempore. Without objection, the Chair recognizes the gentleman from Texas (Mr. WRIGHT).

There was no objection.

Mr. LONG of Maryland. Mr. Speaker, would the gentleman yield?

Mr. WRIGHT. I yield to the gentleman from Maryland.

Mr. LONG of Maryland. Mr. Speaker, I thank the gentleman for yielding.

Could I ask what the plans are for the International Monetary Fund appropriation, which had been scheduled for tonight, but had been taken off the calendar?

Mr. WRIGHT. We hope to reach that Tuesday.

Mr. LONG of Maryland. Not until Tuesday?

Mr. WRIGHT. Well, the agreement is that there will not be any votes on Monday. We are going to go through the suspensions Monday and try to conclude any debates that can be concluded without incurring substantive votes, putting off any substantive votes that would be required from action taken Monday until Tuesday.

Mr. LONG of Maryland. Could the majority leader tell us what time on Tuesday it would come; would it come the first thing or later on in the day?

Mr. WRIGHT. I guess I had better not

try to answer that question at this time, because there are so many clamorous demands from so many deserving sources, each in some ways more deserving than all others.

Mr. LONG of Maryland. I get the message.

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. WRIGHT. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Speaker, I would respectfully suggest that since we will have completed general debate on H.R. 7020, a logical progression might be on Tuesday for the first bill to be H.R. 7020, to go forward under the 5-minute rule.

Mr. WRIGHT. It might be.

Mr. FLORIO. I thank the gentleman.

GENERAL LEAVE

Mr. NEAL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill, H.R. 7244, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

AUTHORIZING CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF HOUSE AMENDMENT TO TEXT OF S. 2271, INTERNATIONAL MONETARY FUND

Mr. NEAL. Mr. Speaker, I ask unanimous consent that in the engrossment of the House amendments to the text of the Senate bill, S. 2271, the Clerk be authorized to correct section numbers, punctuation, and cross references, to reflect the actions of the House in amending the bill, H.R. 7244.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 4(e) of rule XI, the Chair announces that he will postpone further proceedings today on each resolution or on the previous question thereon, on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

After all debate has been concluded on each resolution, and after each question to be determined by a "nonrecord" vote has been disposed of, the Chair will then put the question on each resolution or on the previous question thereon, on which further proceedings were postponed.

PROVIDING FOR CONSIDERATION OF H.R. 85, COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 772 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 772

Resolved, That upon the adoption of this resolution it shall be in order to move, sections 401(a) and 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and to the amendments made in order by this resolution and shall continue not to exceed three hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. In lieu of the amendments recommended by the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute printed in the Congressional Record of August 27, 1980, by Representative Breaux of Louisiana as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered for amendment by titles instead of by section and each title shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI and clause 5, rule XXI are hereby waived. No amendment to title V of said substitute shall be in order except pro forma amendments for the purpose of debate and amendments recommended by the Committee on Ways and Means which shall not be amendable except by pro forma amendments. After the consideration of title V of the substitute made in order as original text by this resolution, and any amendments thereto, no further amendment to the bill shall be in order. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 2000

The SPEAKER pro tempore. The gentleman from Louisiana, (Mr. LONG) is recognized for 1 hour.

Mr. LONG of Louisiana. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Mississippi (Mr. LOTT), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 772 provides for the consideration of the bill H.R. 85, to provide a comprehensive system of liability and compensation for oilspill damage and removal costs and for other purposes. This rule is an effort to achieve orderly consideration and amendment of a very complicated legislative package over which three committees of the House have exercised jurisdiction.

The rule provides for 3 hours of general debate with the time equally divided and controlled by the chairmen and ranking minority members of the Committees on Merchant Marine and Fisheries, Public Works and Transportation and Ways and Means.

The rule makes in order as original text for the purposes of amendment a compromise amendment in the nature of a substitute printed in the CONGRESSIONAL RECORD of August 27, 1980, by my colleague from Louisiana (Mr. BREAUX).

Mr. Speaker, this legislation would establish two funds to clean up oil and chemical spills into navigable waters and to compensate the victims of such spills. The bill establishes levels of strict liability for vessels and facilities up to a maximum which is intended not to exceed the amount of insurance the owner can obtain. The Public Works Committee added the second fund to the bill reported by the Committee on Merchant Marine in order to provide compensation for damage resulting from the pollution of navigable waters with hazardous chemicals. This title is not to be confused with legislation reported by the Committees on Interstate and Foreign Commerce and Ways and Means, also known as a superfund bill, but which would provide for the cleanup of abandoned and inactive hazardous waste sites.

Ways and Means reported a substitute, now incorporated into the Breaux substitute, which establishes two trust funds: one for the cleanup and compensation of victims of oilspills and the other for the cleanup and compensation of victims of spills of hazardous substances. The Ways and Means substitute, title V of the bill, imposes an excise tax of 1.3 cents per barrel of domestic crude oil and on imported crude oil and petroleum products for fiscal years 1981 through 1985. It imposes, for the same 5-year period, an excise tax of $1.18 per ton on the manufacturer, producer, or importer of specified petrochemical feedstocks, and an excise tax of 31 cents per ton on specified inorganic substances. Petroleum feedstocks used as fuel are exempt from the chemical tax.

The Ways and Means substitute allows claims for economic losses resulting from property or natural resource damage during the 2 years following a spill incident as long as the claimant derives at least 25 percent of his income from activities which utilize the damaged property or destroyed resource.

Mr. Speaker, this rule provides an orderly process for floor procedure. The first reading of the bill will be dispensed with. The first four titles of the bill will be open to amendment. Title V, reported by Ways and Means will be subject to amendment only by pro forma amendments for the purposes of debate and by Ways and Means Committee amendments which are not amendable except by pro forma amendments for debate. After consideration of title V and any amendments thereto, no further amendments to the bill will be in order. The Breaux substitute will be read for amendment by titles, and each title will be considered as having been read for amendment. The rule provides for one motion to recommit with or without instructions.

This rule includes several waivers of points or order. Clause 7 of rule XVI, the germaneness rule, is waived against the Breaux substitute, which includes the tax provisions reported by Ways and Means, which were not a part of the original bill. The provisions of clause 5, rule XXI, are also waived against the Breaux substitute since the trust funds, transfer of general revenue funds to the trust funds, and payment therefrom are not subject to appropriations acts.

The rule also grants two waivers of the Congressional Budget Act against consideration of the bill. Section 401(a) bars the consideration of a bill providing new contract authority unless it is limited to the extent or amounts provided in advance through appropriations acts. Section 402(a) requires that new budget authority for a fiscal year must be reported on or before May 15 preceding the fiscal year in which the budget authority becomes effective. The Breaux substitute cures the violation.

Mr. Speaker, this is extremely important and complex legislation which has been in the works for more than 6 years. It should be enacted without further delay so that we can protect our fragile environment from large-scale spills of oil and hazardous substances. The rule presented by House Resolution 772 provides a fair and orderly method whereby the House may work its will on this timely legislation. I urge the adoption of this rule.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am sure that we are all aware of the considerable amount of time that has gone into consideration of the "superfund" legislation. The bill is finally before this body, after extensive deliberation by three House committees and, in fact, after deletion of "superfund" provisions from the budget reconciliation legislation. Those provisions were stricken from the reconciliation bill, you will recall, to give the House an opportunity to consider H.R. 85 on its own merits and to avoid prejudging what might take place when the bill did finally reach the House.

Consideration of the measure could have been made very difficult, since the individual committees did report separate versions of the bill and since there are areas of conflict. However, a substitute version of H.R. 85 incorporates Ways and Means Committee changes into the bill reported by the Merchant Marine and Public Works Committees. The rule before us takes into account the agreement reached by the committee members.

House Resolution 772, a modified closed rule, has been adequately explained already. There are two waivers of the Budget Act. Section 401(a) and section 402(a) are waived against consideration of the bill. The debate time is to be divided among the three committees having jurisdiction over the bill.

However, instead of the amendments recommended individually by the three committees, the Breaux substitute is made in order as an original bill for amendment. It is to be read by titles instead of sections, with each title to be considered as having been read.

House Resolution 772 next waives clause 7 of rule 16 (the germaneness rule) and clause 5 of rule 21 (dealing with appropriations in a legislative measure) against the substitute.

Title 5 of the bill is the Ways and Means title of the bill. No amendments are made in order to this title except pro forma amendments and Ways and Means Committee amendments. These are not amendable except by pro forma amendments for the purpose of debate.

After consideration of title 5 and amendments to it, no further amendments of the bill are in order.

Lastly, the rule provides one motion to recommit with or without instructions.

I would like my colleagues to know that, under the circumstances of such complex legislation, I feel that this is about the best rule we could have. And, in fact, I supported it when it was reported from the Rules Committee on August 27.

The legislation itself is another matter.

As a Member from a coastal district, I am very familiar with the problems of oil spills into navigable waters and I am keenly aware of the necessity of cleaning up these contaminated waters quickly.

I do, however, have some reservations about the specific funds which are created by the bill. For example, the inclusion of the hazardous substances fund would be more appropriately considered separately and on its own merits, without jeopardizing the rest of this legislation.

Further, determining liability limits for hazardous waste pollution is extremely complex and is an issue which deserves special treatment which would be responsive to this particular problem.

It is likely that a number of amendments will be offered to H.R. 85. The pending rule allows such amendments and I have no objection to the rule itself.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. LONG of Louisiana. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 773 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 773

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and each section of said substitute shall be considered as having been read. It shall be in order to consider the amendment to said substitute recommended by the Committee on Ways and Means now printed in the bill in boldface roman, and all points of order against said amendment for failure to comply with the provisions of clause 7, rule XVI and clause 5, rule XXI are hereby waived. No amendment to said amendment shall be in order except pro forma amendments for the purpose of debate and the following amendments which shall not be amendable except by pro forma amendments: (1) the amendments recommended by the Committee on Ways and Means; (2) the amendment printed on page H7926 in the Congressional Record of August 25, 1980, by Representative Ullman of Oregon; and (3) the amendment to be printed in the Congressional Record of September 5, 1980, by and if offered by, Representative Florio of New Jersey. Upon the adoption of the amendment recommended by the Committee on Ways and Means to the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce made in order as an original text by this resolution, no further amendment to the bill shall be in order. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute made in order as an original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

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The SPEAKER pro tempore. The gentleman from Louisiana (Mr. LONG) is recognized for 1 hour.

Mr. LONG of Louisiana. Mr. Speaker,

I yield the usual 30 minutes to the gentleman from Maryland (Mr. BAUMAN) pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 773 provides for the consideration of the bill H.R. 7020, a part of the vital superfund legislation to clean up our environment. The bill amends the solid waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment. The bill establishes a hazardous waste response fund to be financed through the joint participation of industry fees and general revenues. It also sets forth prohibitions and requirements concerning inactive hazardous waste sites and provides for liability of persons responsible for releases of hazardous waste at such sites.

Mr. Speaker, H.R. 7020 is legislation of urgent importance. On September 11, a report from the Surgeon General of the United States warned us that toxic chemicals seeping into the environment pose a "major and growing public health problem" that will plague our Nation for years. The extent of this problem is just now becoming evident and will take years to fully assess. It is believed that toxic chemicals are adding significantly to disease in the United States. A research study by the Library of Congress finds that many hazardous chemicals and pesticides "are so long-lasting and so pervasive in the environment that virtually the entire human population of the world" is affected. The findings have been characterized as the tip of an iceberg: We do not yet know what lies behind this frightful evidence which is just now coming into view.

House Resolution 773 dispenses with the first reading of the bill, and provides for 2 hours of general debate. One hour shall be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, and 1 hour shall be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The rule makes in order for purposes of amendment, the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce. The Commerce substitute is now printed in the bill, and each section shall be considered as having been read for amendment. All germane amendments to the Commerce substitute shall be in order during the consideration of this portion of the legislation. The rule waives points of order under section 402 (a) of the Budget Act against the bill. This section of the Budget Act requires new budget authority to be reported by May 15 of the preceding fiscal year for which it is effective. The Commerce substitute cures this technical violation of the Budget Act.

As reported by the Committee on Interstate and Foreign Commerce, the bill directly addresses the cleanup of inactive and abandoned hazardous waste sites. It provides for a systematic inventory of all hazardous waste sites. It establishes priorities among the sites based on the relative danger. It authorizes the Government to respond appropriately to protect the public health and the environment from the dangers posed by such sites. The Commerce Committee version of the bill establishes a $600 million fund, comprised equally of general revenues and industry fees to finance actions taken by the Administrator of the Environmental Protection Agency in providing emergency assistance and containment. The legislation also establishes a Federal cause of action in strict liability to enable the EPA Administrator to pursue rapid recovery of the costs incurred from cleanup from those who are liable.

There is little controversy about the need for legislation to facilitate the cleanup and containment of abandoned hazardous waste sites. There is, however, a difference of opinion about the way to finance the cleanup. The Ways and Means Committee reported a different version of the legislation; a substitute, which is now printed in the bill in boldface roman type. Ways and Means recommended a fund of $1.2 billion, twice the amount of the Commerce recommendation, composed three-fourths from industry excise taxes and one-fourth from general revenues. Because of the great disparity between the versions reported by the two committees, the Committee on Rules is recommending that Mr. FLORIO, on behalf of Commerce, have an opportunity to offer an amendment to the Ways and Means version in addition to the amendments requested by Ways and Means. Mr. FLORIO's amendment appears on page 24416 of the CONGRESSIONAL RECORD of September 5.

His amendment gives the House a third alternative and represents a compromise between the two positions. The Florio amendment proposes a fund of $1 billion composed of two-thirds industry fees and one-third general revenues.

This rule grants a waiver of the germaneness rule (clause 7, rule XVI) against the Ways and Means substitute. In addition to pro forma amendments for the purposes of debate only, the following are the only amendments in order to the Ways and Means substitute, and these amendments are not amendable (except by pro forma amendments): First, amendments recommended by the Committee on Ways and Means; second, an amendment printed on page 23068 in the CONGRESSIONAL RECORD of August 25 which exempts hazardous substances used as fuel from the excise tax; and, third, the Florio amendment as previously described.

Once the Ways and Means version of these amendments have been considered, no further amendments are in order.

The rule provides for one motion to recommit with or without instructions.

Mr. Speaker, I think this is a fair rule. I urge the adoption of House Resolution 773 so that the House may proceed to the consideration of this crucial environmental legislation, H.R. 7020.

Mr. BAUMAN. Mr. Speaker, I yield myself 30 minutes.

Mr. Speaker, I would say that the gentleman from Louisiana has adequately explained this rule at great length, perhaps greater than needed. I would also comment that the rule from the parliamentary point of view is a mongrelization. It is the usual waiving of the Budget Act, waiving of the germaneness rule, and waiving of the preparing of appropriate legislation. It is a closed rule on a bill dealing with Ways and Means. In other words, it is the way we usually run the railroad here in the House of Representatives.

Mr. Speaker, this rule provides for the consideration of H.R. 7020, the Hazardous Waste Containment Act, more commonly known as "superfund."

The rule contains waivers of points of order and restrictions on amendments.

First, there is a waiver of the Budget Act requirement that authorization bills be reported by May 15 before the beginning of the fiscal year the authorization takes effect. The waiver is required because the introduced version of the bill includes authorization for a study which would take effect this fiscal year. Since the bill was not reported by May 15, 1979, the waiver is included. The Commerce Committee has advised that they have a committee amendment making any authorizations in the bill effective on October 1, 1980, and this, if adopted, will cure the Budget Act violation.

The Commerce Committee substitute is in order as an original bill for the purpose of amendment, and the rule provides that a Ways and Means amendment to the substitute will also be in order. Points of order against the Ways and Means amendment are waived because of failure to comply with the germaneness rule and the rule prohibiting appropriations on legislation.

The germaneness waiver is necessary because the Ways and Means amendment changes the tax code, while the Commerce substitute does not.

The waiver for an appropriation on legislation is necessary because the bill appropriates certain tax receipts to this trust fund.

In addition, the rule provides that no amendments to the Ways and Means amendment will be in order except pro forma amendments for the purpose of debate, and three specified amendments which will not be amendable except by pro forma amendments.

The three amendments are:

First: Ways and Means Committee amendments;

Second: An Ullman amendment, printed in the RECORD, and;

Third: A Florio amendment printed in the RECORD.

Mr. Speaker, the purpose of the bill made in order by this rule is to provide for a national inventory of inactive hazardous waste sites and to establish a program for response action to protect public health and the environment.

The bill would provide authority to take emergency containment actions with respect to hazardous waste sites and to establish a hazardous waste response fund.

Mr. BROYHILL. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from North Carolina.

Mr. BROYHILL. I appreciate the gentleman's yielding. I ask for this time to get clarification of this rule and the rights for amendment. As I understand this rule, title II has been added to H.R. 7020 by the Committee on Ways and Means, and that is found on page 55 of the bill and is in roman type. The language under title II, that part of the bill, it is my understanding is not subject to the amendment except a substitute that may be offered by the gentleman from New Jersey (Mr. FLORIO). My question is, is there the right to amend any other parts of the bill? There are nine sections which precede title II, and I assume, or my interpretation of the rule is, that amendments to any parts of those sections would be in order under the normal rule of the House; is that correct?

Mr. BAUMAN. Under the normal rules of the House, and under this rule the remainder of the bill, particularly the Commerce Committee section, is in fact amended.

Mr. BROYHILL. I thank the gentleman.

Mr. LONG of Louisiana. Mr. Speaker, I yield 5 minutes to the gentleman from Connecticut (Mr. MOFFETT).

Mr. MOFFETT. Mr. Speaker, I know the hour is late, and I will not take my 5 minutes, but I want to voice and reflect some sadness over the fact that we are not going farther with this bill this week. There is no doubt that it is controversial. There is no doubt that there are some who would like to kill this bill. It is a very sad thing, because I do not think there is anyone in this House who would wish upon communities the kind of problems associated with hazardous waste. The interesting thing is politically there is no Republican or Democratic position on this in the sense of how it affected all of us.

I know, having conducted hearings on the subcommittee I am privileged to chair, I have had as many people on this side of the aisle as I have had on my own side of the aisle, as many people from the South as from the North, come and say "I have got this problem in my very district," so we have an interest in getting this bill through.

On the heels of the debate on the continuing resolution, where so many of our friends on this side said we should finish the work of the House, and we should stay here and do business, and so forth—and they made some very persuasive points—I hope they will assist us in getting this bill up as soon as possible next week under the 5-minute rule so we can complete consideration of it and get together with the Senate on it.

Mr. Speaker, there is one thing we can all agree on, I think. If the energy shortage of the 1970's was important and critical, the hazardous waste problem of the 1980's and 1990's is going to be just as dramatic. I congratulate the Committee on Rules for this rule. It combines fairness with an expeditious kind of consideration of this matter. There are 30,000 to 50,000 waste sites scattered throughout this country, and as we sit here at this late hour, I hope we will remember that there are people in those communities begging and pleading with us to try and deal with this matter.

I know there is a lot of money involved in this bill. Some of my colleagues are very concerned about that. I think we all are, but the fact is 10 years from now when we really begin to see the magnitude of this, unfortunately there are going to be so many people come back and say that was chicken feed compared to what the problem really needs. I hate to say that, but I think many Members on both sides know that is a fact. It is chicken feed compared to what is really going to be needed to address this problem. It could be $50 billion by all estimates, and we are fighting here over who pays, and that is important debate to have. But let us not lose sight of the real problem and that is addressing this in the most expeditious fashion.

I thank the gentleman for yielding this time to me.

Mr. LONG of Louisiana. I thank the gentleman for his remarks. I yield 5 minutes to the gentleman from Tennessee (Mr. GORE).

Mr. GORE. Mr. Speaker, I will be very brief. I would like to first ask my colleagues to support this rule. It is a good rule.

Second, this legislation is good legislation. The Oversight and Investigations Subcommittee has held 18 hearings on this problem, both in this Congress and in the last. It is an enormous problem, and the solution embodied in this bill is well targeted on the problem.

Third, however, my colleagues on both sides of the aisle ought to be aware, particularly in light of the development this evening, that there is a determined effort to kill this legislation in both Houses of Congress.

I would hope that those of you who have constituents who are concerned about this program will resist the entreaties that will come your way during this weekend. I hope that you will resist the efforts to contribute to delay in the coming week.

This bill represents a bipartisan effort. Indeed, the minority members on the Commerce Subcommittee that has handled this legislation have contributed in a positive way to the legislation.

Many of my colleagues on this side of the aisle have helped out in investigating the problem and in coming up with the solution. So, I do not want it to be said at the end of this Congress that there is no clearer example of the difference between Democrats and Republicans than in the way this legislation has been approached. I have heard it said in the past that when a problem comes up and on one side of the problem is a narrow special interest and on the other side of the problem is the public interest, then it is the Democratic Party that identifies itself with the public interest and it is the Republican Party that takes it upon itself to speak up for the narrow special interest and say, "Wait, wait, we want a delay. We cannot move quite this fast. There are problems. It is going to take time to solve these problems. The public interest will have to be given a back seat. We will put it on the back burner. If there is not enough time here, then maybe in the next Congress we will take it up."

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I hope that does not happen, but if that is the result in this Congress then I will identify myself with those who say, yes: Look at this bill, look at this legislation, look at the way the two major parties in this country have approached the problem. Look at the way the Democrats have come up with a constructive solution for the problem, have worked on it until even responsible members of the industry now support this bill. And then look what happened when some of the irresponsible parties in the industry sent out telegrams and called up long distance to say, "Wait a minute. Do what you can to delay it. Hold it up. We do not want to tackle the problem of hazardous waste this year. The public is going to have to wait because we may not have time to work out all of these long difficulties."

I sincerely hope that it will not come to that, my colleagues, and I do not believe it will. I am convinced that a strong majority of the Republicans in this House are in support of this legislation and I am convinced that they will join with the majority in resisting efforts to delay it. I encourage everyone to support this rule and then join with us to beat back the effort to try to kill this bill by delaying it to death this year.

Mr. BAUMAN. Mr. Speaker, I yield myself 1 minute.

I would say, Mr. Speaker, I do not know what turned the gentleman from Tennessee on at this hour but now that he has denounced the entire party, I hope, too, there might be somebody over here who might agree with the gentleman. I have problems with hazardous waste in my district and other hazardous wastes like recent speeches by the President about Governor Reagan, but we will debate all those next week and I hope we reach some conclusion that will be fairminded. Our party is noted for that, especially the gentleman from Maryland.

Mr. Speaker, I yield 1 minute to the gentleman from Delaware (Mr. EVANS).

Mr. EVANS of Delaware. Mr. Speaker, I would like to respond briefly to the gentleman from Tennessee. First of all, I have certainly enjoyed working with all those members of the Committee on Merchant Marine and Fisheries, particularly the gentleman from New York (Mr. BIAGGI). As a Republican, I was an original cosponsor of the Oil Spill Liability and Compensation Act. We do

have potential oil spill problems in the State of Delaware. Oil spills hurt everyone and they certainly do not distinguish between Republicans and Democrats. I am very sorry that anyone from Tennessee—since I was born in Tennessee—or Delaware or anywhere else would unfairly introduce the question of partisanship. I just think that we need to reduce some of the invectives in the Presidential campaign, the congressional campaigns and in this House of Representatives. We need to proceed with business, and I do believe very sincerely that there is a bipartisan effort as far as H.R. 85 is concerned and as far as H.R. 7020 is concerned. I am very pleased to join in bipartisan support of H.R. 85 and H.R. 7020.

Mr. BAUMAN. Mr. Speaker, I knew this would happen.

I yield 5 minutes to the gentleman from Louisiana (Mr. MOORE).

Mr. MOORE. Mr. Speaker, I thank the gentleman for yielding.

I was in my office preparing to watch the debate and do other work. I heard the two preceding speakers, the gentleman from Tennessee and the gentleman from Connecticut. They brought up points I thought had to be answered.

I come from the State of Louisiana which has chemical plants, a great number in my district. We also have some tremendous chemical storage sites which have to be cleaned up in my State and one in my district. These bills came before my committee. I supported them then and I intend to support them on the House floor.

Mr. Speaker, the reason I objected to H.R. 7020 being debated tonight is because by the time we got to it, it was going to be at 10 o'clock or 11 o'clock. I think every Member knows, with no votes being able to be cast or called at that point there would be nobody here to hear the debate, an important debate on an important bill. The things that concern me are this matter of funding and who is going to control that funding and who is going to determine which sites have to be cleaned up. Those are things that demand a responsible debate and those are things to which a substitute will be offered.

I do not think 10 o'clock at night with nobody here is the time to debate that, and second, I do not think a Friday afternoon when everybody is trying to get on the planes is the time to listen to that debate and vote responsibly on it.

I assure the two gentlemen whom I mentioned a moment ago, I am very much in favor of early consideration next week and I intend to vote for both of those bills, but I think it is not right to cast those sort of aspersions. There is no plot, it is a matter of concern for reasonable consideration of two important bills, especially H.R. 7020.

I thank the gentleman for yielding.

Mr. BAUMAN. Mr. Speaker, the honor of the minority being admirably upheld, I yield back the balance of my time.

Mr. LONG of Louisiana. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the resolution.

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. BIAGGI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. BIAGGI).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 85, with Mr. NATCHER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from New York (Mr. BIAGGI) will be recognized for 30 minutes, the gentleman from Kentucky (Mr. SNYDER) will be recognized for 30 minutes, the gentleman from Texas (Mr. ROBERTS) will be recognized for 30 minutes, the gentleman from Kentucky (Mr. SNYDER) will be recognized for an additional 30 minutes, the gentleman from Illinois (Mr. ROSTENKOWSKI) will be recognized for 30 minutes, and the gentleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Chairman, H.R. 85 deals with an extremely important environmental problem—damage to natural resources and property and loss of income which results when oil and hazardous substances spill into navigable waters. All too frequently, the press reports the destruction which oil and chemical spills can cause to natural resources and to property, the disruption which they can cause to individuals' livelihoods, and the enormous costs which are necessary to remove these pollutants and to clean up the damage. Current programs are inadequate to deal with this problem. A reliable and available source of funds is urgently needed to assure prompt response to discharges of oil and hazardous substances. Title V of this bill, which was added by the Ways and Means Committee, provides these necessary funds.

Title V establishes trust funds whose balances are immediately available to pay removal costs and specified damages resulting from spills of oil and hazardous substances. Under procedures provided in other titles of this bill, individuals may be reimbursed directly by the funds for these costs and damages, thus sparing them from a costly and lengthy course of litigation. In turn, the funds, in most cases, will recover these costs from responsible parties under the strict liability provisions established elsewhere in the bill. However, in some cases, the funds will not be able to recover claims payments. This will occur, for example, if the spiller cannot be identified, or, in spite of the bill's stringent financial responsibility requirements, the spiller is unable to bear the financial burden of these claims. Thus, amounts must be available to pay claims which have not yet been recovered and which may never be recovered.

The new excise taxes in title V of the bill provide the necessary amounts for the trust funds. They reflect the judgment that the most appropriate way to raise funds to respond to discharges of oil and hazardous substances is through a tax on oil, and on the petrochemical feed stocks and inorganic substances used to produce hazardous substances. These new taxes will raise approximately $150 million per year for 5 years.

EXCISE TAXES

Title V of the bill imposes two new excise taxes—a tax on crude oil and petroleum products, and a tax on petrochemical feed stocks and specified inorganic chemicals.

The oil tax is $1.3 cents per barrel of domestic or imported crude oil or imported petroleum products. This tax will be collected at the refinery or at the point of import or export. The tax will generate approximately $75 million per year and will terminate after September 30, 1985.

The chemical tax consists of two parts—a tax of $1.18 on each ton of 13 specified feed stocks, and a tax of 31 cents on each ton of 23 specified inorganic substances. The tax is imposed on the producer or importer of the feed stock. For any petrochemical feed stock a principal use of which is as a fuel, the tax will not apply to fuel use; thus, for example, fuel use of methane will be exempt from the tax. The tax will not be imposed more than once on the same substance. The tax will generate approximately $75 million per year ($50 million from petrochemical feed stocks and $25 million from inorganic substances) and will terminate after September 30, 1985.

TRUST FUNDS

Title V of the bill establishes two trust funds—the comprehensive oil pollution trust fund and the hazardous substance pollution liability trust fund. These trust funds receive the revenues of the oil and chemical taxes, respectively, and are used for damages and removal costs resulting from oil spills and hazardous substances, respectively. Penalties and recoveries from responsible parties also are deposited in the funds. In general, other provisions governing the operation of the trust funds apply uniformly to the two funds.

The trust funds may be used for paying claims for compensable damages, as defined in title V. Compensable damages include:

First: Removal costs.

Second: Injury to, or destruction of, real or personal property.

Third: Injury to, or destruction of, natural resources; and

Fourth: Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, for a 2-year period after a loss is first suffered, by individuals who derive more than 25 percent of gross income from activities which utilize the property or natural resources.

It should be noted that the Ways and Means Committee devoted considerable time to the definition of which damages are compensable from the funds; the committee balanced the need for quick compensation to affected parties against the difficulty of measuring certain damages and, thus, of estimating potential claims against the funds. The trust funds may be used only for the above damages as they were generally defined in the bill as reported by the Merchant Marine and Public Works Committees since this was the context in which the Ways and Means Committee made its decision. For example, since the Ways and Means Committee specifically rejected use of the trust funds to compensate for loss of use of real property, loss of use of natural resources, or loss of tax revenue, these uses may not be read into the definitions of other compensable damages under title V.

The bill also provides various limitations on claim payments. The only amounts available for claims payments are amounts in the trust funds, and, to insure that amounts are always available for emergency response, claims may not be paid for any amounts other than removal costs to the extent that such payments would reduce the balance in a fund below $30 million. The two funds may borrow from each other as needed, subject to the $30 million minimum balance restriction. In addition, each fund may borrow from the Treasury, before September 30, 1981, up to $75 million in order to be sure that sufficient amounts are available during the first year of operation.

In conclusion, title V raises revenues and provides for their use in a balanced, responsible manner. This legislation will provide a valuable tool in dealing with the disruptions and threats to public welfare caused by spills of oil and hazardous substances.

□ 2030

Mr. Chairman, I have no further requests for time on behalf of the Ways and Means Committee on this side, and I yield back the balance of my time.

Mr. BIAGGI. Mr. Chairman, I yield as much time as he may consume to the distinguished majority leader, the gentleman from Texas (Mr. WRIGHT).

Mr. WRIGHT. Mr. Chairman, throughout the 1960's and early 1970's we in the Congress worked long and hard to find answers to our Nation's water problems. Finally in 1972, over the veto of President Nixon, we enacted the most comprehensive environmental program in our Nation's history. Its purpose was to restore and maintain the chemical, physical and biological integrity of the Nation's waters.

That program dealt principally with surface waters, with rivers, lakes and streams, and it provided $18 billion in grants to the States for construction of waste treatment plants. After many delays that program has progressed apace.

Unfortunately, threats to the quality of the Nation's water supply still exist. As the two bills before the House today recognize, the purity of our water supply is threatened not only from oil and chemical spills into surface waters, including coastal bays, but also from the improper disposal of hazardous wastes throughout our environment.

What we are discovering is that nature's processes, which have filtered biological wastes since the beginning of time, cannot be depended upon to filter out and neutralize many of the new compounds we have created in the laboratory.

Valuable as many of these chemical compounds are, they pose a threat to our environment unless proper measures are taken to prevent their drainage into surface waters or seepage into our underground aquifers.

Perhaps the greatest threat we face today is in the number of water wells that are being contaminated by chemicals. Granted, half of our drinking supply comes from surface waters. But that means that the other half comes from ground water.

Nature protects us from biological impurities by percolating rain water through soil and porous rock to vast underground aquifers. In some cases it may take a century to penetrate to that depth.

But it seems that nature has no way of removing many chemical substances from these waters. And now we are finding that many petrochemicals thought to have been harmlessly disposed of long ago are showing up in wells on which we depend for our water supplies.

The legislation we will consider later today or tomorrow, H.R. 7020, will provide a trust fund to clean up the many dangerous chemical dumps we have in this country.

At the same time the bill now before us, H.R. 85, attacks another part of the problem, oil and chemical pollution of navigable waters. And this bill defines navigable waters, and wetlands, in a far more sensible way than the interpretations which have come to be placed upon Public Law 92-500, the Water Pollution Amendments of 1972, which for the first time set water quality standards for surface waters of the Nation and provided $18 billion in Federal grants to the States for the construction of waste treatment plants to clean up those waters.

That bill also directed the Administrator of the Environmental Protection Agency to study the special pollution problems arising from oil spills, marine sewage equipment, pesticides, waste oil, and other such causes.

What has been learned since then confirms the need for a program that will insure rapid cleanup of both oil and chemical spills and provide adequate compensation for damages. Time is of the essence in these incidents. There is always ample time later to determine who are the responsible parties and to assess damages from them. What this bill does is set up a mechanism to take care of both needs—timely response to an oil or chemical spill, and appropriate assignment of damages.

An example is the devastating blowout of Campeche Bay, Mexico, last year. While this spill occurred off the coast of Mexico, the oil spread to the coastline of Texas and did considerable short-term damage and as yet undetermined long-term damage to the ecology of the barrier islands and coastal environment of Texas. If any such spill should occur in the future, there would be a mechanism in place to pay for the cleanup whether or not responsibility could be fixed for the incident.

It is a source of considerable satisfaction to me that these two bills have been developed simultaneously. They speak well for the dedication of the committees involved.

I particularly want to commend the committees for going beyond the original proposal to establish an oil spill fund by proposing a hazardous substance fund as well. This was not an easy thing to do, for it amounted to breaking new ground. And yet a bill devoted to the cleanup of pollution that failed to provide for hazardous substances would leave the people of this country unprotected in the case of serious chemical spill.

The House today is responding to a number of very serious problems facing our people. In one sense it might be easier to put them off to another day, for there are people who do not want to see the Federal Government playing any more of a role than it is already. But decisive action is needed if we are to avoid future catastrophes.

Clean, safe water is basic to all life. We cannot, we must not take chances that might endanger our Nation's water supply. I urge the passage of both H.R. 85 and H.R. 7020.

Mr. BIAGGI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 85 contains five titles. Title I covers liability and compensation for oil pollution. Title III relates to liability and compensation for spills of hazardous substances. Title V establishes trust funds to deal with both oil and hazardous substances cleanup and compensation. Titles II and IV contain conforming amendments and supplementary provisions.

My remarks today will concern those portions of H.R. 85 that relate to oil spill liability and compensation.

For several years, the Congress has been dealing with the problem of oil pollution in our navigable waters and off our coasts. During those years, we have made significant strides in pre-

venting oil spills and the accidents that cause them.

We have enacted legislation that has raised the standards for construction and operation of oil tankers.

We have given the Coast Guard broad powers to regulate vessels carrying petroleum products.

We have authorized the Coast Guard to establish and operate vessel traffic services in our ports.

We have raised the standards for personnel on board tankers.

We have prescribed meaningful penalties for violations of the laws or regulations affecting oil transporters.

And, we have provided the Coast Guard increased funds and personnel to inspect oil-carrying vessels and facilities.

In short, the Congress and the executive agencies have taken strong and effective action to prevent oil spills.

In the bill before us today, we recognize that, despite all our efforts, oil spills will continue to occur. Because of the massive amounts of oil that are transported and produced in the United States, and because human beings are involved, some accidents are inevitable. We will continue our efforts to prevent oil spills, but I think we must admit that it is impossible to eliminate them. That being the case, we need a mechanism to deal with the consequences of oil spills when they do occcur. H.R. 85 provides that mechanism.

In brief, the purpose of H.R. 85 is to insure that oil spills are promptly cleaned up and that persons who are damaged by oil spills are promptly compensated. To achieve these purposes, the bill follows the legislative pattern of, and incorporates, the Outer Continental Shelf Lands Act Amendments of 1978 and the Trans-Alaska Pipeline Authorization Act. Its enactment will result in a single comprehensive oil pollution liability and compensation scheme.

I think all Members should understand that the compensation for oil spill cleanup or damage proposed in this bill will not come from the Federal Treasury. The bill will not result in increased Federal expenditures. Instead, the bill provides that moneys for cleanup and compensation will come from the one who spills the oil. If the one who spills the oil cannot be identified, or refuses to pay for cleanup or for damage, then the compensation will come from a trust fund supported by a tax on oil. In brief, the bill will have no significant effect on the Federal budget.

During the past several weeks, as this bill has been considered by the Rules Committee and the Ways and Means Committee, most of the discussion has centered on the trust fund that is created by the bill to cleanup oil spills and to compensate those damaged by such spills. I think this emphasis on the fund provisions of the bill is unfortunate. While the fund is an important part of the bill, it is only one of the mechanisms that the bill utilizes to achieve its purposes.

It is important to remember that the fund is designed to be a "backup" fund. That is, it is there to be used only if the spiller of oil, for one reason or another, does not clean up the spill or compensate those injured by the spill. The bill places front-line responsibility on the spiller of oil to clean it up and to compensate its victims. It makes the spiller strictly liable for the consequences of oil spills—it removes many of his common law defenses—and, in effect, the bill gives the victim a Federal cause of action against the spiller.

Under the bill, we expect that, in the great majority of the cases, the spiller will clean up the spill and pay any claims resulting from it. The bill has incentives in it for him to do just that. Therefore, the Fund will only be called upon in those cases where the spiller is not known or where the spiller denies responsibility and refuses to pay. In the latter case, the Fund will pay the claims, and for cleanup, and then act to recover from the person who spilled the oil.

Thus, the chief emphasis in the bill is on the entity that spills the oil. That entity is made strictly liable for the consequences of the spill—is required to report it—is required to clean it up—and is required to compensate those damaged by it.

The bill also contains a requirement that transporters and producers of oil demonstrate financial responsibility to pay for the consequences of an oilspill. They must either qualify as a self-insurer or obtain insurance up to their limit of liability. Demonstration of this financial responsibility is a condition for use of our navigable waters by any vessel transporting oil, foreign or domestic. These provisions are designed to eliminate the possibility that oil will be carried by transporters who are financially insecure.

The financial responsibility provisions are also designed to eliminate claims against the Fund based on inability of the spiller to pay for cleanup and compensation. The Fund would only be called on where the costs of the spill exceed the limits of liability of the spiller, since, even if the spiller were unable to pay, his insuror would. Based on the past history of oilspills, cases where the costs of the spill exceed the limits of liability should be rare.

The bill requires that, with only limited exceptions, all claims must be first presented to the spiller. The spiller has 60 days in which to pay the claim or to deny his liability. If he denies the claim, the claimant can sue in Federal court or present his claim to the Fund. The Fund also has 60 days in which to act on the claim. If the Fund denies the claim, the claimant may appeal to the Secretary of Transportation or sue the Fund in Federal court.

The net effect of these provisions is to create a system for the rapid compensation of persons damaged by oil spills. These provisions also constitute an incentive for the spiller to settle claims, since, if he does not, he runs the risk of facing the Federal Government in court rather than an individual claimant. Thus, the spiller has nothing to gain, and quite a bit to lose, by failing to pay legitimate claims.

An important feature of this bill is the provision that makes a ship or facility owner and operator jointly, severally, and strictly liable for all damages from an oil spill from that ship or facility. This relieves a claimant from the necessity of proving negligence on the part of the vessel or facility.

On the other hand, the bill provides limits of liability for the various types of vessels and facilities. These limits are set sufficiently high that they are expected to cover all but the most extreme spills, but at a level that is insurable in today's insurance markets. The liability limits are not available to a spiller of oil if he is guilty of willful misconduct or gross negligence or of a violation of a Federal safety standard or regulation.

The bill contains extensive procedural and administrative provisions that are designed to facilitate cleanup of oil spills and payment of claims. It also contains a section that vests jurisdiction for oil spill claims in Federal court and prevents a State from creating a fund to accomplish the same purposes for which the fund in this bill is designed. The effect is to provide a uniform law to replace the multitude of varying State statutes on liability and compensation for damage from oil spills. Such uniformity is especially important in the case of vessels. The bill, however, leaves the States free to enforce State environmental laws—or to establish funds for the acquisition of pollution abatement equipment or for monitoring or research programs.

Mr. Chairman, this bill has been carefully developed over a period of several years. It has had the benefit of extensive hearings, numerous witnesses, and close scrutiny by the oil and insurance industries—environmental groups—the executive branch—the States—ship owners—drillers—and others. In its present form, it is generally acceptable to all interested and affected parties. I urge its enactment.

Before concluding my remarks, Mr. Chairman, I would like to note that—during the last few weeks—a great deal of concern has surfaced from several States as to the effect of this bill on existing State laws and State funds. Several States are concerned that H.R. 85 may restrict use of their existing funds or subject them to lawsuits if they expend those funds for oil pollution cleanup or compensation after the effective date of this bill.

Let me state categorically that there is nothing in this bill that affects the uses to which a State may put an existing oil spill fund. H.R. 85 is silent on that subject. Thus, a State may, after enactment of this bill, continue to spend its existing funds for any purpose that is lawful under the State law. If, after enactment of H.R. 85, a State continued to pay oil pollution damage claims from its State fund, that would not be contrary to any provision of H.R. 85.

What H.R. 85 does is to prohibit a State from requiring any person to contribute to any fund if the purpose of that fund is to compensate for an oil spill damage claim as defined in title 5 of the bill. Thus, the State cannot impose a fee or a tax on oil if that fee or tax is to go

into a fund and the fund is for the purpose of paying oilspill damage claims.

Putting it simply, it is a prohibition against double taxation of the same purposes. It is not a prohibition on the uses that a State may make of its money. Nor does it prohibit a State from imposing fees or taxes for other purposes connected with oil pollution—such as the purchase of pollution abatement equipment or the hiring or training of personnel for pollution prevention programs.

In sum, this preemption provision is narrow in scope and limited to the particular purpose of preventing double taxation. I would be happy to discuss the effects of the preemption provisions of H.R. 85 further if any member needs additional clarification.

□ 2040

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the State of New Jersey has been and remains a strong proponent of the superfund legislation pending in the House and the Senate. We have been grappling with the serious environmental and health problems stemming from discharges and illegal and improper disposal of hazardous wastes and oil for several years. In 1977, the New Jersey Legislature enacted a comprehensive statute covering discharges of oil and chemicals into surface and groundwaters and onto land. The statute was amended in 1980 to expand coverage to include abandoned hazardous waste disposal sites and certain other "ancient" source discharges. The major source of revenues for the New Jersey Spill Compensation Fund is a tax applied to transfers of petroleum and a tax on nonpetroleum hazardous substances.

New Jersey and several of the other States with successful State spill funds (including Michigan, Florida, California, Maryland, and New York) have on repeated occasions expressed grave concerns that the preemption language contained in H.R. 85 (and the Breaux substitute) may work to slow down governmental response to spills of oils and hazardous wastes by creating questions as to the availability of State and or Federal funds to provide operating, up front dollars to finance emergency cleanup and containment actions. I understand the concern debated over the years in conjunction with superfund that industry not be forced to suffer a double tax for the same functions carried out by different levels of government. I also understand that it is not the intent of the sponsors of H.R. 85 to make prompt, effective and thorough response to such discharges more cumbersome.

Mr. Chairman, in order to clarify the remaining questions concerning allowable State activity under H.R. 85's preemption language, I wonder if the gentleman from New York would consent to respond to a few questions on this issue.

Am I correct in understanding that it is the purpose of section 110 to prohibit States from requiring any person to contribute to a fund for the purpose of reimbursing claims as described in title 5?

Mr. BIAGGI. Yes, that is the clear intent. The purpose is to prohibit States from creating duplicate funds to pay damage compensable under H.R. 85.

Mr. FLORIO. However, there is no such preemption of a State's ability to collect such taxes or fees for other costs associated with spills and discharges of oils and hazardous substances that are not compensable damages as defined in this legislation or that do not occur in or threaten the navigable waters of the United States.

Mr. BIAGGI. The gentleman is correct.

Mr. FLORIO. There is nothing in the language or intent of H.R. 85, section 110 or elsewhere in the bill which would prohibit a State from responding to a spill or discharge either under agreement with the Secretary, at the direction of the Federal on-scene coordinator or in the absence of timely response by any other party. In fact, the Federal Government's cleanup and containment capability is viewed as something of an appeal of last resort in the absence of any other adequate and timely response, if my understanding is correct.

Mr. BIAGGI. Yes, the gentleman understands the intent of the bill correctly.

Mr. FLORIO. In the event I have described, where a State or a contractor of the State is the respondent to the spill or discharge and incurs economic loss normally compensable under the provisions of H.R. 85, does this legislation intend that a State that has continued to collect taxes or fees to finance a State fund designed to cover expenses and economic loss not covered under the provisions of H.R. 85 have the right to use those State fund moneys to provide intermediate, up front capital to pay for these activities and seek reimbursement from the Fund established under H.R. 85.

Mr. BIAGGI. Nothing in the language or intent of H.R. 85 would prohibit a State from using its fund for the purposes you have inquired about. The purpose of section 110 is simply to preempt double taxation of the substances enumerated in the bill for the purposes of compensation of the covered damage. The situation described in your inquiry is a question of bookkeeping rather than a subject of preemption. The expenditures by a State from its fund are temporary in nature and would be reimbursed and therefore ultimately paid from the Fund established in this legislation. Any damage not reimbursed by the H.R. 85 Fund may similarly be the proper subject of a State fund if a State so chooses to construct its fund. Finally, H.R. 85 is not retroactive in its preemption. The preemption provision will take effect 180 days after the enactment of this bill. Any funds collected or generated by a State fund prior to this date may be spent under the provisions and coverage of the appropriate State guidelines without conflict with H.R. 85.

Mr. FLORIO. Mr. Chairman, I thank the gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. Mr. Chairman, let me state categorically that there is nothing in this bill that affects the uses to which a State may put the existing oilspill fund. H.R. 85 is silent on that subject. Thus a State may, after enactment of this bill, continue to spend its existing funds for any purpose that is lawful under the State law.

If, after enactment of H.R. 85, a State continued to pay oil pollution damage claims from a State fund, that would not be contrary to any provision of H.R. 85. What H.R. 85 does is to prohibit a State from requiring any person to contribute to any fund if the purpose of that fund is to compensate for an oilspill damage claim as defined in title V of the bill. Thus the State cannot receive a fee or a tax on oil if that fee or tax is to go into a fund and the fund is for the purpose of paying oilspill damage claims.

Putting it simply, this is a prohibition against double taxation for the same purposes. It is not a prohibition on the uses that a State may make of its money, nor does it prohibit a State from imposing fees or taxes for other purposes connected with oilspills, such as the purchase of pollution abatement equipment or the hiring or training of personnel for pollution prevention programs.

In summary, Mr. Chairman, this preemption provision is narrow in scope and limited to the particular purpose of preventing double taxation.

Mr. Chairman, I urge enactment of the bill.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, in connection with the colloquy which the gentleman had with the gentleman from New Jersey (Mr. FLORIO), could we carry his question one step further? Let me ask the gentleman this question for clarification:

In the case of revenues already in an existing State fund, will it be possible to use the revenues in that State on an ad hoc or temporary basis to make expenditures for purposes covered by H.R. 85 on a revolving basis, with the State fund being reimbursed from the Federal fund?

Mr. BIAGGI. Mr. Chairman, if I understand the question correctly, the notion is to use the present funds for the purpose of H.R. 85?

Mr. SNYDER. Just for clean-up and on a temporary, ad hoc basis.

Mr. BIAGGI. Yes, that is perfectly permissible, and the State or the trustees of that fund can then come against the fund in H.R. 85.

Mr. SNYDER. Mr. Chairman, I have a number of direct questions for the gentleman from New York with respect to the Federal preemption of certain activities now undertaken or contemplated by the States. My purpose is to get a precise definition of the boundaries of preemption from the standpoint of a State like New Hampshire, which now has an industry-financed revolving fund

for response to oilspills and which is likely to establish a similar mechanism for toxic and hazardous substances.

As I understand it, the purpose of the bill's preemption provision is to prevent the States and the Federal Government from imposing a double burden on industry by levying taxes or fees to support funds that finance essentially the same types of activities.

Now, as I mentioned, New Hampshire has an emergency response capability in the case of oilspills financed by a tax on petroleum. And I understand that, once H.R. 85 is enacted, it will no longer be permissible to generate revenue for that fund if those revenues are to be expended for purposes which are compensable under H.R. 85.

My first question is this: In the case of revenues already in this existing State fund, will it be possible to use the revenues in that fund, on an ad hoc or temporary basis, to make expenditures for purposes covered by H.R. 85 on a revolving fund basis—with the State fund reimbursed by the Federal fund? It would appear to me that there would be no duplication there as long as no further levies for such purposes occur after the enactment of H.R. 85.

Mr. BIAGGI. The gentleman is correct. The preemption in this bill applies only to the financing of funds and the purposes for which their revenues are raised subsequent to the enactment of H.R. 85. Existing State funds may continue to be used for any purpose authorized by State law. H.R. 85 does not restrict the manner in which a State may expend any of its funds. It only restricts the raising of funds by a State.

I would only add that we can conceive of many instances in which States will incur costs for activities compensable under this act, use State funds for these purposes, and obtain reimbursement from the fund created by this act. The only effect of the preemption provision in this instance is to prohibit the raising of a State fund created by a tax or fee on oil and operated for the same purposes as H.R. 85 subsequent to enactment of H.R. 85.

Mr. SNYDER. Further with respect to the existing State fund, will it be permissible for the State of New Hampshire to maintain that fund and continue raising revenues for that fund and any purposes other than those covered by H.R. 85? Specifically, I refer to maintenance of a State staff as well as the purpose of prepositioning of equipment and materials for cleanup.

Mr. BIAGGI. The preemption provision in H.R. 85 would not prohibit the maintenance and operation of such a fund as the gentleman mentions for the purposes he cites.

Mr. SNYDER. In fact, cannot the State fund and the revenue system supporting it be maintained and used for any purposes, including compensation of damages, and cleanup for which the fund created by H.R. 85 is not available?

Mr. BIAGGI. Again, I would say to the gentleman that it is not the intent of H.R. 85 to preempt the States from financing by whatever means they choose those activities which are not compensable under H.R. 85.

Mr. BREAUX. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I am delighted to yield to the gentleman from Louisiana.

Mr. BREAUX. Mr. Chairman, I rise in support of the bill. This legislation in various forms has been before the Congress for a number of years. Finally, in this Congress, we have been able to work out a compromise which not only addresses the problems of oilspills and hazardous substance spills in a rational way, but also fairly incorporates the views of the three committees involved.

H.R. 85 was orginally reported by the Committee on Merchant Marine and Fisheries. That committee's version of the bill dealt only with oilspills. Our committee on Public Works and Transportation, to which the bill was jointly referred, added a new title III dealing with spills of hazardous substances. The committee's rationale for doing this was that it was both logical and proper to treat hazardous substances the same as oil in this bill, since the two are treated the same in section 311 of the Federal Water Pollution Control Act which provides for the cleanup of, and liability for, spills.

Titles I and III provided for the collection of fees on petroleum and organic and inorganic feedstocks. These fees were to be deposited in funds which would be available for the cleanup of spills and for the payment of claims for certain economic damages suffered as a result of these spills.

The bill was then sequentially referred to the Committee on Ways and Means because of its revenue raising aspects. This committee provided for the imposition of excise taxes on petroleum and organic and inorganic feed stocks in lieu of fees. It also established two trust funds in the Treasury which are available to pay claims for specified economic damages, including removal costs and other costs associated with the evaluation claims.

The recoverable damages in the Ways and Means' version were not as extensive as in the other two committees' versions. The Ways and Means Committee deleted damages due to the loss of use of real or personal property or natural resources, loss of tax revenues, and loss of profits not associated with the harvesting of marine life. That committee subsequently met a second time and restored damages relating to loss of profits due to injury or destruction of real or personal property or natural resources.

The other two committees agreed with this revised version of the Ways and Means Committee as an acceptable compromise. We then developed the "Breaux substitute" which represents a combination of the three committees' versions of the bill. All three committees have agreed to this and the Rules Committee provided that this substitute would be considered as the original bill for purposes of floor action.

Mr. Chairman, this bill represents a sound approach to the serious problems associated with the cleanup of spills of oil and hazardous substances, the compensation of victims who suffer damages from these spills, and the imposition of liability on those who cause them. The owners and operators of vessels and onshore and offshore facilities are made jointly, severally, and strictly liable for discharges of oil or hazardous substances. They are required to maintain evidence of financial responsibility to cover their liability. Two trust funds are established—one for oil spills and one for hazardous substance spills—which are available to pay cleanup costs and claims for damages. The funds can then recover these costs where the spiller is known and liability can be established.

Legislation such as H.R. 85 has long been needed. It will provide a just mechanism for liability and compensation as well as encouraging the use of greater care in the manufacturing, handling, and transportation of oil and hazardous substances. I strongly urge passage of the bill.

Mr. STUDDS. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Massachusetts (Mr. STUDDS), a member of the committee.

Mr. STUDDS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of H.R. 85, most particularly the oilspill components thereof.

I just want to take one moment, if I may, to extend my appreciation to the gentleman from New York (Mr. BIAGGI).

It is with some disbelief that I find this oilspill legislation once again before us, with the third consecutive Congress considering this legislation. The Committee on Merchant Marine and Fisheries reported legislation in the 94th Congress, and as the gentleman well knows, not only this House but the other body passed this legislation in the 95th Congress. And we are still here again in a third consecutive Congress attempting finally to get it into law.

It has now been 4 years since the *Argo Merchant* went aground off the shores of Nantucket, and one would have supposed that even this institution would have been able to respond somewhat more expeditiously than we have.

It has been almost 2 years since the *Amoco Cadiz* tragedy decimated the coast of Brittany in northwestern France. The time has long since come for this Congress to act both to provide, as the gentleman has said, an incentive to those who carry oil through the waters to take all such precautions as are humanly possible to avoid those spills and a means that is prompt and equitable to pay those who may be damaged by spills.

I suspect the owners of the *Argo Merchant*, whoever they may be—or whoever owns the owners of the owners, if we can find an answer to that puzzle—

would not have had that ship there in those conditions on the high seas had this bill been law, because had the owner of that vessel known that in the event of catastrophe he faced a very high order of liability, I suspect he would not have had that captain and he would not have had that crew on that ship. He would probably have had a functional gyroscope, and he would have had the right charts in the wheelhouse.

Mr. Chairman, those are the types of precautions one takes when one knows that he faces substantial liability. So it seems to me that this legislation is not only critical but long overdue, and I commend the gentleman from New York (Mr. BIAGGI) for the leadership he has shown.

Mr. Chairman, I rise in strong support of H.R. 85, a bill which I consider to be a landmark in environmental legislation and one which would provide us with some significant new protections against the dangers of an oilspill.

This bill, on which those of us on the Merchant Marine and Fisheries Committee have worked for the past 6 years—and which the Members of this body have enacted twice before—is designed to place the financial responsibility for oilspill incidents where it belongs—on the spiller. By establishing high standards of oil pollution liability, H.R. 85 would create a strong incentive for those transporting, producing, or storing oil to do so in the safest manner possible.

It would also provide those suffering economic damage as a result of an oilspill with a prompt and equitable means of obtaining compensation—a matter of particular importance to commercial fishermen and to persons employed in those tourist-related industries which are most vulnerable to the threat of massive economic damage from an oilspill. Past experience has demonstrated the need to improve the procedures by which these people can be compensated.

Most oilspill damage cases in the past have been settled out of court, apparently due to the reluctance of damaged parties to take on the major oil companies in court. They have instead elected to settle for partial payments of their claims, at a loss of many thousands of dollars.

H.R. 85 would provide oilspill damage claimants an alternative. While preserving the former options, a damaged party could also seek to recover his claim from a specifically created Government fund financed by a small fee on imported and offshore oil. If the claimant's request were judged valid and his claim was paid, the fund would then move against the spiller to recover an equal amount.

At present, international, Federal, and State oilspill liability laws constitute a maze of duplicative and contradictory statutes. However, since H.R. 85 would apply to all the potential sources of oilspills into navigable waters, its enactment would enable us to reduce the scope of an already small oilspill fund set up under the Federal Water Pollution Control Act, allow us to completely eliminate separate similar funds authorized by the Deepwater Port and Trans-Alaska Pipeline Acts, and eliminate the need for a fund to handle spills from offshore oil drilling activities under the Outer Continental Shelf Lands Act amendments.

It would, quite clearly, streamline the bureaucracy which has mushroomed as a result of these less coordinated and often overlapping attempts to deal with oil pollution.

The need for a strong oilspill liability bill is very clear—particularly to those of us from the coastal regions of this country whose memories of incidents like the *Argo Merchant* oilspill off New England 4 years ago are still quite vivid. As you know, Mr. Speaker, we in the House have gone on record on two previous occasions in support of legislation very similar to the one we are now considering. Unfortunately, because of stubborn opposition on the part of some—but by no means all—of the oil industry, and because of jurisdictional difficulties among the congressional committees involved—particularly those on the other side of the Hill—the last two Congresses have failed to enact this measure into law.

Our failure to do so despite the stern warnings provided by incidents like the *Argo Merchant* is inexcusable and has constituted one of the most frustrating experiences of my career.

As a result, we have had to bear the responsibility for continuing the current legal framework for oilspill liability, a framework full of conflicts and loopholes large enough to steer a Liberian tanker through; for allowing second-rate oil carrying vessels to continue to escape full legal responsibility for the damages they cause; for forcing communities and individual citizens injured by oil pollution to resort to difficult, expensive court fights against some of the largest corporations in the world; and for failing to provide damaged parties, particularly fishermen and those dependent on the tourist industry—like the residents of Brittany following the wreck of the *Amoco Cadiz*—with any fair and prompt legal recourse.

Let us correct this situation, Mr. Speaker, and protect the American people against the threat of devastating oilspills. I urge my colleagues to cast their vote in support of H.R. 85.

Mr. BIAGGI. Mr. Chairman, I thank the gentleman from Massachusetts (Mr. STUDDS).

Mr. Chairman, I would like to take this opportunity to acknowledge the contribution of all the members of the Subcommittee on the Coast Guard who labored long and hard over the years to bring this product to us for consideration on the House floor.

I might also add that this has been a total bipartisan effort. At no time were there any partisan considerations. The objective was sighted, and we pursued it.

I cannot thank the members of that subcommittee sufficiently for their patience and for their generous contributions. I give special thanks to the gentleman from Massachusetts (Mr. STUDDS), the gentleman from Kentucky (Mr. SNYDER), the gentleman from Louisiana (Mr. BREAUX), and the gentleman from California (Mr. MCCLOSKEY), along with a host of other Members, as the record will reveal.

The important point I wish to make is that this has been and is a total bipartisan effort, and I regret some of the comments that were made early on this evening.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Chair now recognizes the gentleman from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Chairman, I am pleased to rise in strong support of H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act. This legislation—which many refer to as one of the "superfund" bills—is part of what I believe history will consider the most significant environmental legislation developed by this 96th Congress, and, possibly, by any recent Congress.

As many of you know, the road has been a tortuous one. In the past 18 months, four House committees—Merchant Marine and Fisheries, Public Works and Transportation, Ways and Means, and Rules—have considered this bill and debated its thorny issues. A fifth committee—Interstate and Foreign Commerce—has also dealt with many of the same issues in H.R. 7020, the superfund bill which follows this one and which deals with dumpsites discharging hazardous substances, except into navigable waters. There have been differences, both within and among all five committees, concerning the best way to address these issues. All of the committees have prevailed on some matters and given way on others.

But most importantly, Mr. Chairman, I believe that all five committees are to be congratulated on the thorough and cooperative actions all have taken thus far to bring this legislation before us today. In our Public Works Committee, Chairman BIZE JOHNSON and our ranking member, BILL HARSHA, as well as Chairman RAY ROBERTS of the Subcommittee on Water Resources, have once again provided the kind of encouragement and superb leadership that is essential with respect to major legislation such as this.

Special recognition should also go to the gentleman from Kentucky (Mr. SNYDER) and the gentleman from Louisiana (Mr. BREAUX), both of whom serve on Public Works and Merchant Marine Committees which have been working on this legislation for three consecutive Congresses and both of whom were especially instrumental in shaping this legislation and shepherding its way to the floor.

Mr. Chairman, we have come a long way since the first session of the 94th Congress when the then-President Gerald R. Ford requested submission of H.R. 9242, the Comprehensive Oil Pol-

lution Liability and Compensation Act of 1975. Numerous days of hearings, debate, and markup have been held. In the 95th Congress, H.R. 6803—a successor bill to H.R. 9242 and a predecessor to the legislation before us today—was passed by the House on two separate occasions, the first, a recorded vote of 332 to 59.

On that occasion, almost exactly 3 years ago, I stood before you and urged enactment of what then was a bill dealing only with oil pollution. I stated that this bill "has the effect of replacing or coordinating a number of existing State laws, increasing overall the individual liability of parties responsible for oil spills, broadening the legal grounds for claiming damage, and extending the principle that oil-handling companies which create the danger of spills bear the responsibility for (resultant) damages."

The same statement still applies to H.R. 85, but the bill now also covers what many believe is a far more insidious problem—discharges into our Nation's water supplies of hazardous substances.

We bring the bill to the House floor in its present form—with hazardous substance incidents included—after long and thorough deliberation on this issue. In the 95th Congress, disagreement over inclusion of hazardous substances was one of the two key problems which could not be resolved between the House and Senate, causing the demise of that session's superfund legislation. The House position was that hazardous substances should not be included in the legislation and, at the same time, I believe that was the most reasonable and responsible position to take. Final regulations covering hazardous substances under section 311 of the Federal Water Pollution Control Act were not published until May 1978 and most of those were made nonimplementable by an industry lawsuit. No mandatory spill reporting requirements for hazardous substances were in effect. Very little data existed to justify including hazardous substances discharges in the bill's coverage.

However, since that time, there have been a number of occurrences that have persuaded the committees which have reported H.R. 85 to include hazardous substances.

The problem of Love Canal, of course, is well known to all of you, and I do not have to go into the details of how unfortunate that situation is. There is one aspect about it, however, that is positive. Publicity surrounding that incident has increasingly made us aware that Love Canal is not only a problem in its own right but it foreshadows other major problems to come. Whether there are as many as 2,000 potential "Love Canals," as a study commissioned by the Environmental Protection Agency concluded last year, or closer to 400, as the Chemical Manufacturers Association has stated, the real problem is a most serious one that cannot be permitted to go unaddressed any longer.

A second significant development was the publication in final form a little more than a year ago of section 311's hazardous substances reporting regulations. Prior to this, there were no mandatory regulations under the Clean Water Act requirements that discharges of hazardous substances be reported. Data on hazardous discharges were available only because some had been reported voluntarily, either to the Department of Transportation or to EPA. Now, however, we have almost a year's worth of data generated under mandatory reporting regulations and, as a result, we have a much better picture of how serious the problem of hazardous substance discharges is.

A third major factor arose out of the first round of hearings on H.R. 85 that our Subcommittee on Water Resources held last September. In those hearings EPA testified that their analysis of voluntary reported data indicated that there are about 3,500 significant chemical spills annually, about half of which reach navigable waters.

The Chemical Manufacturers Association, on the other hand, testified that CMA's examination of EPA's records showed that during calendar year 1978 only 60 hazardous chemical spills were reported to EPA. After the hearing, presumably at least partly because of the differences in testimony, EPA, using contract personnel, conducted a survey of all hazardous material incidents reported voluntarily to EPA during fiscal years 1978 and 1979. In addition, EPA subsequently again surveyed its regional offices and developed comparable data for the first 6 months of fiscal year 1980. The results of the two survey's appear to conclusively refute CMA's earlier statement about EPA's lack of data.

During the 2½ years from October 1978 to April 1980, 4,257 discharges of substances other than oil were reported to EPA. Of those, 2,225 are believed to involve substances now designated as hazardous under section 311. In 1978, 554 spills of designated hazardous substances were reported; in 1979, the figure was 855; and for the first 6 months of 1980, it was 811, which would indicate a full-year total of 1,622. As you can see, analysis of the data on an annual basis demonstrates a strong upward trend.

To further indicate the seriousness of the societal problem posed by discharges of hazardous substances, Administrator Doug Costle called our attention to the fact that a similar pattern had been noted in the past with respect to oil spills. Following promulgation of the reporting requirements for oilspills in 1970, by 1973 there had been more than a threefold increase in the number of spills reported. If a similar increase occurs for hazardous substances, as many as 5,000 to 6,000 reports of hazardous substances spills can be expected annually by 1983.

Mr. Chairman, I would like to insert in the record at this point a copy of a letter I received from Swep Davis, EPA's Associate Assistant Administrator for the Office of Water and Waste Management.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C.

Hon. DON H. CLAUSEN,
House of Representatives,
Washington, D.C.

DEAR MR. CLAUSEN: In response to the requests you made during and subsequent to EPA Administrator Douglas M. Costle's April 17 testimony before the Water Resources Subcommittee, we would like to provide for the record additional materials relating to hazardous substance spills.

The point we wish to make, using the Hazardous Materials Incidents Report and other documentation, is that spills of hazardous substances occur with alarming frequency and consequences. While one may quarrel with the exact numbers, and the specific characterizations of the spill reports collected by our Regions, the fact that releases or threats of releases of hazardous substances into navigable waters do occur in substantial numbers, risking human health and the environment, is adequate justification for expanding H.R. 85 at this time to include hazardous substance spills into navigable waters.

To put the Report itself into proper perspective, it is essential to realize that the spills and threats of spills it documents occurred before the mandatory reporting requirement went into effect in September 1979. These spills were reported to us voluntarily. Thus, the Report does not have the kind of hard, standardised data which will be forthcoming now that the reporting system is in effect.

However, even if, as the Chemical Manufacturers Association asserts, only 29 percent of these spills were "potentially serious" (948 of the 3,076 spills reported), this number is cause for concern and prompt action by Congress. This is particularly so because 1) the spills voluntarily reported to EPA are by no means all those which occurred during the 2-year period covered by the Report; 2) based on experience with oil, we expect reporting hazardous substances to increase threefold during the 1980–1983 period; and 3) only 1 percent of oilspills are classified by the Coast Guard as "major" (over 10,000 gallons in inland waters, over 100,000 gallons in coastal waters) as contrasted to the 29 percent under CMA's own analysis for hazardous substances.

Examples of the kind of incident we consider serious, and for which expanded funding is necessary, include Love Canal, Valley of the Drums, Pittston, and Hagerstown, which have been described to you in our various statements.

Additionally, we received 811 reports between October 1979 and April 1, 1980. During this period the Section 311(k) fund was used in 20 cases: EPA went on scene to observe or supervise response in approximately 121 additional situations involving designated substances, which the Agency also considers serious. This does not include those cases where the Coast Guard responded.

Attached are further materials documenting actions EPA has taken under Sec. 311, and other cases we would classify as "serious." We are in the process of polling the Regions now to further document recent 311 actions, and will provide this information as it becomes available.

We believe therefore that Congress is justified in expanding available resources to provide for emergency response, clean-up and third party compensation for such releases. The 311(k) fund which is activated only where the responsible party is unwilling or unable to take appropriate action will be exhausted within a matter of weeks. The depletion of this fund is clear indication that the need for an adequate and assured funding source is here now, and that there is not adequate response and clean-up by responsible parties.

We respectfully request the Committee to focus your attention on the major incidents as justification for expanding upon the ongoing Sec. 311 program for Hazardous substances, as you would for oil spills under H.R. 85.

Sincerely,

SWEP T. DAVIS,
Associate Assistant Administrator,
Office of Water and Waste Management.

A fourth factor is related to the third. In addition to the Environmental Protection Agency, the Coast Guard also receives reports of hazardous substances spills into navigable waters. We have been told that, in the past, very little of the discharge data reported to EPA has also been reported to the Coast Guard, and vice verse.

Thus, if this is true—and we have seen nothing to indicate that it is not—most of the spills of hazardous substances that are reflected in Coast Guard data should be added to EPA's data in order to get a more complete picture of the extent of the hazardous spill problem.

Two years ago, there was not as much Coast Guard data available as there is today on hazardous spills. Today we know that there were 347 actual or potential spills of section 331 hazardous substances reported to the Coast Guard in 1977 and 308 in 1978. The total volume of materials involved in those reports was more than 12½ million gallons of liquid substances and more than 3 million pounds of dry bulk designated hazardous substances. When this data was combined with EPA's discharge data, it became even more evident that H.R. 85 should address hazardous substances incidents and not just be limited to oilspills.

Mr. Chairman, I could go on. I could discuss the "Report of the Interagency Task Force on Compensation and Liability for Releases of Hazardous Substances," which was published in June of 1979 under the auspices of the Department of Justice.

We could review the conclusions of the report, "Compensation for Victims of Water Pollution," which was prepared last year for the Committee on Public Works and Transportation by the Congressional Research Service.

We could go into the details surrounding incidents like the Maria Costa pesticide incident in Norfolk; the derailment near Point Pleasant, W. Va., of a train carrying epichlorohydrin; the chlorine gas incident near Youngstown, Fla., that killed 8 people, seriously injured 45 and hospitalized 200; the Chem Control explosion and fire along the banks of the Elizabeth River in Elizabeth, N.J.; the Pollution Abatement Services incident in Oswego, N.Y., requiring the expenditure of $2 million in State and Federal funds so far: 23 other uncontrolled waste site incidents costing the Federal Government more than $5 million in section 311 moneys as of August 26 of this year; the 12 Clean Water Act lawsuits filed in the Federal District Courts as part of the administration's Hazardous Waste Enforcement Task Force efforts; and, just a few weeks ago, the pentachlorophenol (PCP) spill near New Orleans.

The list of other incidents, and other reports, and other studies—all of which have occurred in the past 2 years—could probably consume what little time remains to debate this bill. Suffice it to say that, when we in the Public Works Committee decided to add hazardous substances to H.R. 85, we did it after a great deal of thought and consideration of the facts as we knew them. We acted in the face of substantial chemical industry pressure not to add hazardous substances.

And I am convinced, Mr. Chairman, that we acted wisely and well when we took the action we did. I also predict that before too long the more moderate and reasonable voices in industry, that up until now have been kept in the background, will succeed in convincing their more strident brethren that this legislation is ultimately in their own best interests as well as in the best interests of the general public.

I would like to go on to discuss some of the specifics of H.R. 85's provisions, what it hopes to accomplish, and how; but I know others have spoken on these matters and still others plan to discuss them further, so I will defer to them in the interests of time. Let me just conclude with one thought that, perhaps more than any other, expresses why enactment of H.R. 85 is so important and should be supported.

Mr. Chairman, one of my favorite quotations is—

We do not inherit the Earth from our fathers, we borrow it from our children.

When we are trying to make the tough choices that face us on this and other legislation, I believe we would all do well to keep this thought in mind. And with that, Mr. Chairman, I am proud to be able to urge all of our colleagues here today to join me in passing this major environmental legislation.

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Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. CLAUSEN. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

Mr. Chairman, I would like to take this opportunity to acknowledge the cooperation we have received from the subcommittee chairman of the Public Works Committee, the gentleman from Texas (Mr. ROBERTS). He has exemplified the best of legislative characteristics. He knew the problems. He was most cooperative and dealt practically with the problems, did not engage in any esoteric undertakings. He knew exactly what the objective was and recognized all of the obstacles and met them head on.

The cooperation we have received between the Public Works Subcommittee and our committee has been just a wonderful relationship. Even in this closing congressional session, where the Ways and Means Committee came into the picture, I believe, after considerable debate and tugging and pulling, they recognized what had to be done, and the chairman, the gentleman from Oregon (Mr. ULLMAN), is to be commended and we are thankful for the contribution of their staffs and the members involved.

Mr. CLAUSEN. I thoroughly concur in the gentleman's statement, and I thank him for his addition.

Mr. SNYDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. LIVINGSTON. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Louisiana.

Mr. LIVINGSTON. Mr. Chairman, I rise in strong support of H.R. 85, the superfund bill which addresses the problem of actual or threatened discharges of oil and designated hazardous substances.

At the outset, I would like to join in the remarks of previous speakers who acknowledged the outstanding leadership that has been demonstrated in connection with this legislation by the senior members of the Merchant Marine, Public Works, and Ways and Means Committees. From my perspective, this sense of direction and willingness to tackle really tough issues in the face of great pressure to act otherwise has been especially evident in the Public Works Committee.

Without the leadership of the chairman of the committee (Mr. JOHNSON) and its ranking member (Mr. HARSHA), the chairman of the Water Resources Subcommittee (Mr. ROBERTS) and its ranking member (Mr. CLAUSEN), and the fine bipartisan efforts of my colleague from Louisiana (Mr. BREAUX), and the gentleman from Kentucky (Mr. SNYDER), this legislation would probably not be before us today. A great deal of recognition and thanks belong to these outstanding public servants, and I would just like to add my voice to the others that have been raised this morning in appreciation of their efforts.

Mr. Chairman, a number of thoughts have been offered thus far in explanation of H.R. 85 and, as one who has dealt with this legislation for two consecutive Congresses and who has participated in numerous days of related hearings and markup sessions, I would just like to add a few more remarks. I will try to focus on why the members of the committees which have dealt with this legislation believe it is so important and also on a brief discussion of some of the bill's more significant provisions.

The problem of oil spills is well known to this body, and I will not dwell on it. Suffice it to say that, during the past 5 years, there has been an average of about 11,000 oil spills per year from all sources in the United States, with an average of 17 million gallons being spilled per year. And, in many respects, the problem seems to be getting worse, not better. More oil was spilled in 1978 from tankers, for instance, than had ever been the case in prior years. It took only 7 months in 1979 for that record to be exceeded, according to the Tanker Advisory Center in New York. The superfund legislation before us today in H.R. 85 will provide a much-needed mechanism to allocate the risks of damages resulting from most of these kinds of spills between potential spillers and others who benefit from the transportation and handling of this oil.

With respect to hazardous substances, our ranking minority member of the Water Resources Subcommittee (Mr. CLAUSEN), who has been so instrumental in advancing this legislation, has already

discussed a number of factors that persuaded committee members to include hazardous substances discharges in H.R. 85's coverage. Let me just expand on his remarks a little.

The use of chemicals in the 20th century has become so widespread that it can be said that their presence is ubiquitous. For all the advantages that chemicals have given society—and these advantages have been overwhelming—there have also been disadvantages which have proven striking. In fact, we are only recently beginning to realize how extensive these disadvantages are and how much industrialized societies like ours need to develop remedial measures to respond to the more serious problems chemicals pose to the environment and public health.

Mr. Chairman, I must point out that I speak with as much experience in this area as anyone in this House; since on July 22 of this year, my district suffered one of the most potentially dangerous chemical spills in history.

I will elaborate on the details of this bill later on, for I have offered an amendment to this bill, which will call for a detailed discussion of this matter at the proper time.

Suffice it to say that through no fault of their own, hundreds of fishermen, as well as wholesalers and retailers in the fishing industry, and many people in the Louisiana maritime industry were adversely impacted when this spill occurred. Under existing law, they have virtually no viable recourse, but had this very same bill, which passed the Public Works Committee in May, been signed into law at that time of the spill, they would have had some redress for their injuries.

Ours is not the only Nation faced with this enormous task. Unintended adverse impacts associated with the use of chemicals and hazardous substance are faced by virtually every industrialized nation in the world. As these nations move to implement their respective national programs, I believe they should attempt to address the same two major goals that we on the Public Works Committee attempted to incorporate in adding title III to H.R. 85: First, protection of public health and the environment; and second, recognition that economic impacts associated with hazardous substances legislation should not unduly impede or create unnecessary economic barriers to technological innovation and substitution of hazardous substances with materials that are less ecologically threatening.

Since the Public Works Committee added hazardous substances discharges to the bill in May of this year, a number of encouraging and, I believe, ratifying developments have taken place.

In June the National Advisory Committee on Oceans and Atmosphere, in its ninth annual report, strongly urged Congress to enact H.R. 85, as reported by the Public Works and Transportation Committee, with both oil and hazardous substances regimes included.

Also in June, a Harris Survey poll indicated that Americans clearly want remedial action taken with respect to toxic contamination. The poll concluded, among other things, that an 86 to 11 percent majority nationwide favors "giving this problem of toxic chemical dumps and spills a very high priority for Federal action." More recently, the National Governors' Association, August 5, approved a new policy endorsing enactment of legislation to provide broad coverage for responding to hazardous substances spills as well as releases from abandoned hazardous waste disposal sites.

Mr. Chairman, as each day passes, more and more people are coming to appreciate the wisdom of Public Works' action in adding hazardous substances spills to H.R. 85, and I am proud to have been a part of that process.

Let me now briefly address some of the more significant provisions of the bill. As has already been described, H.R. 85 establishes two funds for cleaning up and compensating certain victims of discharges of oil and designated hazardous substances. The funds will be financed through excise taxes of 1.3 cents per barrel on crude oil and petroleum products received at U.S. ports or refineries, in the case of the oil fund, and of $1.18 per ton on petrochemical feedstocks and 31 cents per ton on various inorganic chemicals, in the case of the hazardous substances fund.

The fundamental purposes underlying creation of both funds are twofold: to insure that sufficient financial resources are available for the Government to be able to move immediately to contain and clean up oil or designated hazardous substance discharges and, second, to provide greater assurance that those suffering defined economic damages resulting from such discharges will be adequately compensated for those damages.

With respect to the first purpose, I would like to focus just for a minute on the concept of immediate response. There is no question that this bill anticipates and, in fact, attempts to encourage, those responsible for actual or threatened discharges of oil and hazardous substances to act in the first instance to immediately clean up those discharges.

At the same time it is also intended that the Federal Government, most probably in the person of the Environmental Protection Agency and the Coast Guard, have immediate access to both funds' resources to respond where necessary without delay to incidents covered by the bill. Thus, section 102(b) of the Breaux substitute provides that—

> In addition to the processing and settlement of claims under section 107, the (oil) fund is immediately available to pay those removal costs defined in section 101(bb)(1) arising out of or directly resulting from an oil pollution incident.

The same result is intended with respect to hazardous substances incidents under title III and is accomplished through language already in effect in section 311(c)(1) of the Federal Water Pollution Control Act and which is consciously left unchanged by H.R. 85.

That language provides that—

> Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge . . . the President is authorized to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

While it could be argued that because title I's section 102(b) language specifically speaks in terms of immediate fund availability and title III contains no such language, and because both oil and hazardous substances are covered under FWPCA's section 311(c)(1) unchanged language, the words "at any time" are somehow meant to exclude immediate response authority with respect to hazardous substances incidents. Such an argument would clearly be erroneous as it is and always has been the intention that both funds are to be immediately accessible to Federal response efforts where such immediate response efforts are deemed to be in the public interest.

Mr. Chairman, I would also like to briefly explain the preemption provisions of the bill. As others have mentioned before me, H.R. 85 preempts in both titles I and III State laws and funds that are duplicative of what is provided under H.R. 85. Both sections 110 and 302 of H.R. 85 contain the following identical preemption language:

> Except as provided in this title—no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss . . . , a claim for which may be asserted under this title . . .

The basic tenet underlying these provisions is that duplicative and conflicting statutory schemes are inefficient and burdensome and that transporters, especially, may be particularly disadvantaged by a proliferating variety of State and Federal requirements. Thus, we have provided that damages for the types of losses defined as compensable damages in the bill are the only types of damages for which claims can be asserted under this bill. Recoveries for such damages can only be recovered, either from H.R. 85's fund or in Federal court, under this bill. This is not to say that all other possibly related State laws are being preempted. Such is not the case. Damages for other types of losses may be sought through means outside this bill, including through State courts.

For instance, if a State wishes to continue or create a cause of action, either statutorily or pursuant to common law, providing damages for personal injuries resulting from oil or hazadous substances pollution, it would be free to do so. If a State wishes to do the same with respect to the three categories of claims that were in the bill as reported by the Public Works Committee but are not in the Breaux substitute before us now, it would be free to do so.

With respect to hazardous substances, if a State wishes to continue or create a cause of action for damages caused by hazardous substances other than those designated as such pursuant to the Federal Water Pollution Control Act, it would not be precluded from doing so by this bill, even where the damages compensable under the State law were the same four categories of damages included in H.R. 85.

If a State wishes to create or continue a cause of action for discharges of any oil or any hazardous substance, even designated hazardous substances, which discharge is unconnected to navigable waters, it again is not prevented from doing so by the language of H.R. 85's preemption provisions.

Concerning the creation of State funds, Mr. Chairman, H.R. 85 takes a similar approach. Both section 110, with respect to oil, and section 302, with respect to designated hazardous substances, provide that "no person may be required to contribute to any fund, the purpose of which is to compensate for a loss, which is compensable under title V * * * to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss."

Under both titles I and III, then, the purpose of each of the funds established by H.R. 85 is to compensate those who incur one or more of the bill's defined compensable damages and who have not otherwise been fully compensated. No one may be required to contribute to any other fund which has that same purpose and such duplicative funds are preempted by the above quoted language of sections 110 and 302.

However, other funds are not preempted and this bill does not preclude States from requiring persons to contribute to such funds. If for example a State desires to establish a fund to cover any or all of the causes of action or damages which I just described are not preempted by H.R. 85 and if that State desires to require certain persons to contribute to that fund's financing nothing in this bill—in its "Breaux substitute" form—prevents a State from so acting. This bill does not totally preempt the field; it only preempts State and local enactment which would duplicate the purpose of the funds established in H.R. 85.

Mr. Chairman, there is only one other item that I would like to call to the attention of our colleagues here on the House floor. The State of Florida requires a water quality certificate to be obtained before maintenance dredging could be performed on inland waterways. Earlier this year, the Corps of Engineers applied for a water quality certificate to maintain water dredging in the gulf waterways. The State review extended beyond the period in which the corps could perform dredging to maintain standard project depths. Realizing this problem, the corps issued a navigation notice on February 8, warning that four locations on the GIWW, Gulf Intercoastal Waterway, were below standard project depths and that same day, February 8, the grounding and subsequent oilspill occurred at one of the shallow points.

I have a concern that accidents like that which occurred in Florida will occur continually if Government does not feel constrained to approve actions within a reasonable time that insures safe inland waterways.

Under H.R. 85, an owner or operator, unless he is guilty of gross negligence or willful misconduct on safety regulations, is not liable for damages caused by a spill to the extent that discharge or spill is caused by the actions of a third party.

In this instance, such as took place earlier in Florida, the discharge might not be deemed the fault of the individual carrier and the State of Florida could be found to be at blame and, to that extent, the discharger would not be held liable.

Mr. Chairman, I have consumed more than my share of time. Allow me, if you will, to close by quoting some language contained in the recently released work, "The Global 2000 Report to the President," which speaks to the issue of toxic pollution of the world's water supplies.

> Global society is currently in a reactionary mode in its dealings with the marine environment: Problems develop, and society reacts—after a time. Considering the magnitude of the short- and long-term problems to be faced, a determined shift to a more anticipatory mode is now appropriate. Although dead or dying global oceans will not be in evidence by the year 2000, what happens over the next two decades will be a major determinant of the health and productivity of the marine environment in the 21st century.

I cannot think of a better reason why we should act today to pass H.R. 85 than the need to get out of this "reactionary mode" and I am proud to urge all of my colleagues here today to join me in supporting H.R. 85.

Mr. SNYDER. Mr. Chairman, I came down to the well for my remarks. I hope the gentleman from Tennessee is still here. I wanted him to see the partisanship that exists in this. It just does not. There was no justification whatsoever for the unjustified tirade that he unleashed. It is the first evidence of partisanship that has been shown about this legislation by the Merchant Marine and Fisheries Committee or the Public Works Committee or the Ways and Means Committee, by either side, one way or the other.

I want to thank the gentleman from New York (Mr. BIAGGI) for making that so very eminently clear, and I hope the gentleman from Tennessee is around here or watching the monitor, because he needs to be straightened out on this. That is the first evidence of partisanship that has been shown about this bill.

Mr. Chairman, I rise in support of H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act. This bill represents over 6 years of effort to address an increasingly serious and complex environmental problem. The dependence of our society on imported oil and the remarkable advances in the quality of life attributable to the chemical revolution have created problems which necessitate a new approach to cleaning up of oil and hazardous substances pollution of our Nation's waters and assuring that the victims of these events are compensated. H.R. 85 embodies this needed change.

Mr. Chairman, I have the honor to represent today the minority members of both the Committees on Public Works and Transportation and Merchant Marine and Fisheries. These two committees have joint jurisdiction over titles I and II, which deal with oil pollution legislation, and Public Works has exclusive jurisdiction over title III which address hazardous substances issues and also added title IV, congressional review of agency regulations to the bill. Title V, which establishes trust funds for the oil and hazardous substances programs established by titles I and II, is the exclusive jurisdiction of the Committee on Ways and Means. My statement on titles I and II addresses the intent of both committees, from the perspective of the minority.

The fact that these committees have been able to reach agreement on this important legislative initiative, as incorporated in the Breaux substitute, indicates the bipartisan nature of this legislation. I would like to compliment the leadership of these committees for their ability to bring this bill to the floor without any jurisdictional conflict.

Mr. Chairman, if H.R. 85, as amended by the Breaux substitute, is passed today this will be the second Congress in which the House has approved a comprehensive approach to oil pollution liability and compensation. In the 95th Congress we passed a similiar bill, H.R. 6803, but final enactment was not possible. Since that time we have been apprised of a growing and serious problem. Virtually every evening we see chronicled by the media some hazardous pollution issue in such areas as Love Canal, N.Y.; Valley of the Drums, Ky.; Pittston, Pennsylvania; et cetera. The bill before you today will help address these issues.

H.R. 85 was reported from the Committee on Merchant Marine and Fisheries on May 15, 1979, as an oil only superfund. Following that action, the administration forwarded to Congress in June 1979 a proposal to establish a $1.6 billion program for cleanup and compensation for pollution events resulting from spills of oil or hazardous substances, and threats posed by chemical dump sites. Members of the Committee on Public Works and Transportation visited the Love Canal, N.Y., dump site and conducted hearings in Washington last fall and this spring and field hearings in Alma, Mich. As a result, the bill has been amended by the Committee on Public Works and Transportation to add a comprehensive hazardous substance pollution liability and compensation program and two funds, now financed by taxes as the result of Ways and Means Committee action on oil (1.3 cents per barrel) and specified petrochemical feedstocks ($1.18 per ton) and specified inorganic substances (31 cents a ton) to implement the legislation. The Committees on Interstate and Foreign Commerce and Ways and Means developed legislation to address other hazardous waste containment problems and that legislation will be before the House immediately following consideration of H.R. 85.

H.R. 85 represents a reasoned approach to the problems of oil and chemical pollution of our environment. I find it interesting that when I read of opposition to either of these initiatives, that opposition is usually based not upon what is contained in these bills, but rather, what the Senate proposes and the fear that the Senate view will prevail. While I recognize the legitimacy of some of

these concerns, I must say to my colleagues that the legislation before them today is reasonable and can be supported in good conscience by all Members and it is my belief that the final product sent to the President will be a legislative initiative which reflects commonsense as well as sound environmental protection.

Mr. Chairman, H.R. 85 is a very necessary bill. Existing law—State and Federal—has proven inadequate to handle claims arising from oil spills. Recovery under common law, usually under rules of negligence has proved extremely difficult. Claimants have had to identify a spiller and have the burden of proving that the spiller failed to exercise reasonable care to prevent that spill. Second, under certain circumstances a vessel owner has been able to limit his liability to the value of a vessel and its cargo after the incident. This value may often be little or nothing in a case where a vessel is destroyed and the cargo lost. Numerous initiatives such as the Federal Water Pollution Control Act, the Trans-Alaska Pipeline Authorization Act, Deepwater Port Act, and the Outer Continental Shelf Lands Act attempt to address this problem but are limited in scope and have resulted in a mish-mash with some provisions in conflict with others.

Also, they do not cover all situations necessary to provide for liability and compensation. Comprehensive oilspill liability legislation has been considered a necessity since the 94th Congress. Incidents involving the breakup of the *Argo Merchant*, and the grounding of the *Amoco Cadiz* and the Campeche oil well blowout highlight and underscore the pressing need for this legislation. These incidents demonstrate the potential for extensive damage to real property, personal property, and natural resources. In the 95th Congress we enacted the Port and Tanker Safety Act of 1978, which took steps to prevent oilspills. Now this legislation, H.R. 85, takes an additional step to facilitate cleanup and provide for the damaged party who may have been innocently victimized by oil or hazardous substances pollution.

H.R. 85 consolidates these various provisions into a uniform scheme of liability and compensation and I would like to discuss some of these provisions for the benefit of the Members.

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

The bill makes the owners or operators of the sources of oil discharges strictly liable for cleanup costs and damages. However, the bill recognizes that limitation of liability should be provided to owners or operators who are in effect "innocent of any personal faults."

Basically, the amounts to which an owner or operator may limit his liability depends on whether the source is an offshore facility, with a limitation of removal costs plus $50 million; an onshore facility with a limitation of $50 million or such lesser limit as is established by the Secretary of Transportation; a ship, with a limitation of $250,000 or $300 per gross ton—up to a maximum of $30 million—whichever is greater; a vessel which has a limitation of $150 per gross ton; or an inland oil barge which has a limitation of $150 per gross ton, up to a maximum of $150,000.

I would point out that H.R. 85 makes a distinction between a "ship," a "vessel" and an "inland oil barge." Section 101(e) defines the term vessel as follows:

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; . . .

Similarly, section 101(g) defines the term ship as follows:

"Ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue: (1) a self propelled vessel, or (2) a non-self propelled vessel other than an inland oil barge; . . .

Section 101(h) defines inland oil barge as follows:

"Inland oil barge" means a non-self propelled vessel carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters; . . .

These distinctions are intended to recognize that these vessels, ships or inland oil barges pose a different degree of threat of pollution to the navigable waters of the United States.

The bill provides that the owner or operator will incur no liability to the extent that the incident is caused by an act of war or insurrection; a natural phenomenon of an exceptional, inevitable, and irrestible character, which could not have been prevented or avoided by the exercise of due care or foresight; to the extent that the incident is caused by an act or omission of a person other than—the claimant, the owner or operator, an employee or agent of the claimant, the owner, or the operator, or one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator; or the gross negligence or willful misconduct of the claimant.

To insure compensation by the spiller, the bill requires owners or operators to establish and maintain evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which they would be exposed in a case where they would be entitled to claim a limitation of liability.

Evidence of financial responsibility may be established by evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. In cases where an owner or an operator owns, operates, or charters more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

The bill allows compensation for damages arising from a spill. The damages for which a claim may be presented to the fund include the following:

First: Removal costs which are defined by section 101(bb);

Second: Injury to or destruction of real or personal property which includes expenditure for repair, replacement or restoration of damaged property;

Third: Injury to, or destruction of, natural resources as defined by section 101(aa);

Fourth: Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

A procedure is established for processing claims. Basically, the primary response to a claim should be from the owner or operator of the source of the spill. If the spiller fails to provide prompt settlement, the claimant may either proceed against the spiller in court or file his claim with the fund, however, the decision is irrevocable. Where the fund fails to settle the claim promptly, the claimant may submit his dispute to the Secretary of Transportation for adjudication, or, in certain cases may proceed directly in court against the fund.

The bill contains a preemption section to prevent duplicate sources of compensation for damages covered by the bill. It provides that no action may be brought in a State or local court for damages covered by the bill. Also, no one can be required: First, to contribute to a State fund to pay compensation for losses covered in the bill; or, second, to maintain evidence of financial responsibility relating to the satisfaction of a claim for such losses. The bill does not, however, preclude a State from creating a fund to purchase pollution abatement equipment or hire a professional and support staff, or a fund for the prevention, detection, or observation of oil pollution such as environmental monitoring or research programs. A State may compel payment of a tax or fee to finance such a fund.

Mr. Chairman, at the appropriate time the gentleman from New York (Mr. BIAGGI) will offer an amendment on behalf of the committees to address issues which have arisen since H.R. 85 was considered. These provisions clarify that a guarantor's liability is limited to that for which he certifies financial responsibility, as long as he acts in good faith; the amendment also deletes the reference to the Canal Zone since the implementation of the Panama Canal Treaty vacates the application of this statute to the Canal Zone; and the final provision allows a leasehold owner to indemnify an owner or operator of a facility, such as a drilling rig, which is operating on the leasehold. The amendment also enables the owner of a leasehold to satisfy the financial responsibility requirements of the act for all facilities on the leasehold by filing one certificate of responsibility for the leasehold as opposed filing one for each facility on the leasehold.

TITLE II—CONFORMING AMENDMENTS

Title II sets forth the effective dates for implementing the provisions of the act, the integration of other Federal statutes dealing with oilspill liability and compensation, and certain conforming amendments. The variety of Federal liability and compensation schemes and procedures which are now in existence in various statutes would be replaced by this legislation, providing for a comprehensive approach to oilspill liability and compensation.

At the appropriate time, an amendment will be offered to title II to clarify the procedure for disposing of funds remaining in the fund established by the Trans-Alaska Pipeline Authorization Act to assure that the excess funds will be returned to those which paid into the fund. I support the amendment and urge my colleagues to do likewise.

TITLE III—HAZARDOUS SUBSTANCES POLLUTION LIABILITY AND COMPENSATION

Mr. Chairman, title III of H.R. 85 establishes a comprehensive hazardous substance liability and compensation program under section 311 of the Federal Water Pollution Control Act. This provision was added by the Public Works Committee following extensive hearings. Virtually every witness that came before the Public Works Committee recommended this approach, with the clear exception of the chemical manufacturer's association. However, by letter dated September 17, 1980, the chemical manufacturer's association indicate they now support this title, subject to approval of the "harmful quantities" amendment to be offered by the Committee on Public Works and Transportation. I and the committee did not accept the proposition that the existing law is adequate to respond to any potential problem that might arise. I think an objective reading of the record and a thorough analysis of the issue indicates that existing law is inadequate. Certain points underscore this sentiment and I would like to review them for the benefit of my colleagues. From the period of October 1, 1979, to April 1, 1980, EPA has been involved in the following actions. (This is the first 6-month period since the regulations went into effect.)

Section 311, Hazardous substances:

Received 811 notifications of discharges,

Directed 20 on-scene responses,

Monitored 121 discharges on-scene where owner/operator assumed responsibility, and

Activated the 311(k) response fund 20 times.

Environmental emergencies other than section 311 using authority of section 104 of the Clean Water Act:

Received 37 notifications of discharges,

Directed nine on-scene responses,

Monitored 305 discharges other than on-scene, and

Used section 104 nine times to fund on-scene responses.

These statistics do not include discharges reported and responded to in coastal areas and U.S. Coast Guard jurisdiction.

The committee reported this amendment on a voice vote with only one objection. Subsequently, the Ways and Means Committee successfully asserted jurisdiction and changed the financial mechanism for the hazardous substance compensation fund. I personally feel that the committee adopted an unfortunate mechanism to finance the fund by ignoring the opportunity to impose a tax based upon the threat to the environment posed by a particular substance rather than by adopting the administration's approach of imposing the tax upon certain petrochemical feedstocks because it is alleged to be more administratively feasible.

I believe that a toxicity-based fee approach can be made to work, that it is administratively feasible, and that it is even more equitable than the compromise which I have agreed to. That is not to say that I do not support the Ways and Means amendment because exactly the opposite is the case. I do support it.

But what I would like to say is this: I do not feel that I can ask my colleagues to agree with my personal solution to this important issue just because I feel that the toxicity-based approach may be the best way to go. You deserve—and in fact are entitled to—more than that. We should all have hard data supporting the toxicity-based concept before we are willing to commit to it.

This has never been a secret. When I originally offered my toxicity-based amendment in subcommittee, it was with the clear understanding that it was meant to be a first step toward setting up a hazardous fee scheme that was more equitable than a flat fee on feedstock. It was also clearly understood that more supporting data was needed in order to justify maintaining this approach in any legislation.

Unfortunately I cannot develop at this time the data demonstrating that this approach is administratively feasible. But if EPA can administer the Toxic Substances Control Act, which covers more than 43,000 existing chemicals and requires the Agency to screen all known data on the health and environmental effects of approximately 1,000 new chemicals each year; if EPA can propose the Resource Conservation Recovery Act regulations that take a cradle-to-grave approach to regulating hazardous wastes and, as part of that approach, specifically identify some 416 hazardous substances and 118 extremely hazardous substances—the very same concept that I used in my toxicity-based fee; if EPA can spend some 5 years collecting and evaluating and analyzing the data supporting its section 311 regulations, somehow, I suspect that the Agency is capable of figuring out how to make a toxicity-based approach for 297 substances administratively feasible.

Unfortunately, this position will not prevail and I will not offer an amendment to change the decisions already reached. However, I note that the Senate Committee on Environment and Public Works has adopted a similar concept in that they propose to redirect the assessment of their fee when sufficient data is available to indicate what substances are involved in those incidents for which the fund is called upon to respond. I hope that in conference the concept can be retained so that we will have legislation requiring those posing the problem to pay.

Mr. Chairman, one issue which I think needs to be addressed is that of the coverage of the 311 program with respect to abandoned or inactive hazardous waste sites. Under current law, and I believe that point needs to be underscored, under current law the Federal Government is responding to events where a discharge or a threat of a discharge of a designated hazardous substance, in quantities that may be harmful, EPA is currently involved in the following locations in cleaning up and mitigating threats caused by hazardous substances:

ONGOING AND COMPLETED 311 ACTIONS AT UNCONTROLLED SITES, AUGUST 26, 1980

Region, site name and location, and 311(k) expenditures and status*:

I

Western Sand & Gravel, Burrillville, R.I., $300,000—Ongoing.

Picillo Site, Coventry, R.I., $10,000—Ongoing.

Motollo Site, Raymond, N.H., $3,000—Ongoing.

Gilson Road Site, Nashua, N.H., $2,000—Ongoing.

Chem Waste, New Brunswick, Maine, $10,000—Completed.

II

Chem Control, Elizabeth, N.J., $700,000—Completed.

Lipari Landfill, Pitman, N.J., $100,000—Ongoing.

Kin-Buc Landfill, Edison, N.J., $135,000—Ongoing.

PAS, Oswego, N.Y., $2,000,000—Ongoing.

Black Creek, Niagara Falls, N.Y., $400,000,—Ongoing.

III

Grigco Facility, Sharptown, Md., $630,000—Completed.

National Wood Preservers, Haverford, Pa., $200,000—Ongoing.

Butler Tunnel, Pittston, Pa., $1,800,000—Ongoing.

Dracup Warehouse, Youngsville, Pa., $15,000—Ongoing.

IV

Farm Site, New Rockton, Ala., $5,000—Completed.

Sapp Battery Salvage, Alford, Fla., $18,000—Completed.

Ferguson Site, Rock Hill, S.C., $120,000—Completed.

Spires Property, Wellford, S.C., $60,000—Ongoing.

North Hollywood Site, Memphis, Tenn., $51,000—Completed.

V

Seymour Recycling, Seymour, Ind., $900,000—Ongoing.

VI

Gurley Pit, West Memphis, Ark., $70,000—Ongoing.

French Limited, Barrett, Tex., $70,000—Ongoing.

Motco, Lamarque, Tex., $120,000—Completed.

VII

Farm Site 1, Verona, Mo., $50,000—Completed.

VIII

None.

IX

Stringfellow, Riverside, Calif., $560,000—Ongoing.

X

None.

TOTAL (As of 8/26/80):

311(k) Expenditures at uncontrolled sites—$8,329,000.

*Section 311 is used only to provide emergency assistance and containment to halt a discharge or the threat of a discharge into navigable waters of the United States. Any "completed" actions may still require EPA and/or State agency involvement at a site, but 311(k) funds are no longer being utilized at this time.

Number of 311 Actions at Uncontrolled Sites—35.

The committee currently intends these activities to be continued under the program established by H.R. 85. The reasons are simple. There must be a response to the discharge or threat of discharge of a designated hazardous substance into the navigable waters. Victims of these events must be compensated. H.R. 7020, the Hazardous Waste Containment Act, will clean up 100 to 200 sites and covers releases into air, land, or groundwater—but specifically excludes releases into navigable waters. Thus, the only long-term response effort for discharges into navigable waters is section 311, as amended by H.R. 85.

Section 311 addresses all discharges, a defined term at section 311(a)(2) which states:

Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

As you can see, section 311 is intended to include far more than just spills. And note, if you will, the absence in the definition of any requirement for a discharge to be episodic before the definition applies. Exactly the opposite is the case. Discharge means any—and I underscore any—"spilling, leaking, pumping, pouring, emitting, emptying or dumping."

Thus, section 311 already includes coverage of dump sites when they discharge impermissibly to a navigable water or groundwater threatening navigable waters. I would note that to exclude dump sites from H.R. 85 would be to retard, not advance, existing law and the need to find a solution to the problem of hazardous substances pollution. In fact, it would be a pulling back by the Congress from existing law. Currently, 25 communities, as I already stated, are receiving assistance under the Clean Water Act to mitigate and clean up the threats to public health and welfare arising from hazardous waste sites. However, the current effort is limited to clean up and removal costs and this is usually further restricted by EPA to efforts to prevent or mitigate the immediate threat versus pursuit of a long-term solution—that has been left to non-Federal interests due to limitations of Federal funds for the program. H.R. 85 will remedy this problem to provide the financial resources to allow a complete cleanup effort. Also, no Federal cause of action for compensat'on for damages is available under current Federal law—those aggrieved must seek relief from the responsible party under State or common law—and in these cases, there usually is no adequate resolution of the problem and so the victims are uncompensated.

With the changes to section 311 that are proposed in title III of H.R. 85 there will be a comprehensive hazardous substances liability and compensation scheme—just as we will have for oil pollution. I urge my colleagues to approve this important legislation.

Mr. Chairman, when title III is considered, the gentleman from Louisiana (Mr. BREAUX) will offer an amendment on behalf of the Merchant Marine and Fisheries and Public Works and Transportation Committees. The first two parts of this amendment will be virtually identical to those of title I. That is, it limits the guarantors liability to that which he certifies financial responsibility and the deletion of the Canal Zone from coverage under this act. The amendment also adds a new definition to section 311 to define the term "ship" which is not currently a defined term for the purposes of this section. This definition is identical to that contained in title I.

The final part of the amendment, Mr. Chairman, will be a provision to clarify that, in the case where a hazardous substance designated under section 311 is not being discharged in a quantity that may be harmful, EPA will continue to have authority to respond to remove the pollution threat and that funds for the removal cost will come from the fund established by title V. The amendment further clarifies that when a discharge of a designated hazardous substance occurs in a quantity that is less than that which may be harmful, recovery is not permitted under section 311 from a responsible party.

Mr. Chairman, I will support these amendments when offered by the gentleman from Louisiana.

□ 2100

Mr. Chairman, I yield back the balance of my Merchant Marine time.

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. ROBERTS).

Mr. ROBERTS. Mr. Chairman, H.R. 85 is a comprehensive approach to the problems posed by and the damages associated with spills into the Nation's waters of oil and hazardous substances.

This bill represents years of effort on the part of our committee and the committee on merchant marine and fisheries. In addition, the Committee on Ways and Means has given the legislation its very thorough consideration.

H.R. 85, as originally reported by the Merchant Marine and Fisheries Committee, dealt with oilspills. It established a system of liability for spillers and a mechanism for the recovery of economic losses caused by spills. Our committee added title III, dealing with spills of hazardous substances into the navigable waters. Then the Committee on Ways and Means, to which the bill was sequentially referred, added title V, which imposes excise taxes on oil and petrochemical and inorganic feedstocks and establishes trust funds to pay for the cleanup of spills and compensate victims of spills for economic losses.

This bill is on the floor today because of the efforts of the three committees involved in its consideration. A compromise has been reached which embodies the views and recommendations of these committees. This is represented by the "Breaux substitute" which is, under the rule, to be considered as the original bill.

I wish to commend the members of all three committees for their efforts in enabling this important legislation to come to the floor. Our committee's part in this legislation was assisted by the usual fine leadership of our chairman, the gentleman from California (Mr. JOHNSON), as well as by the significant support provided by the ranking minority member of the full committee, the gentleman from Ohio (Mr. HARSHA) and the ranking minority member of the Subcommittee on Water Resources, the gentleman from California (Mr. DON H. CLAUSEN) and the gentleman from Kentucky (Mr. SNYDER) and the gentleman from Louisiana (Mr. BREAUX).

These gentlemen, together with all the members of the three committees and the chairmen and ranking minority members, share the credit for enabling the House to consider one of the most significant pieces of legislation before it in the 96th Congress.

H.R. 85 addresses the very serious problems associated with spills of oil and hazardous substances into our waters, liability for these spills, and compensation of persons who suffer economic damages as a result of the spills.

Title I of the bill, which deals with oil spills, and title III, which deals with spills of hazardous substances, each establish a comprehensive system of liability and compensation. The owner and operator of a vessel or an offshore or onshore facility are jointly, severally, and strictly liable for cleanup costs and specified damages which result from a spill of oil or hazardous substances.

If the pollution incident is caused primarily by willful misconduct or gross negligence or by a violation of applicable Federal safety construction or operating standards, there is no limitation on liability. In other instances the following limitations on liability apply:

First: A vessel other than a ship or inland oil barge, $150 per gross ton;

Second: For an inland oil barge $150,000 or $150 per gross ton, whichever is greater;

Third: For a ship $250.000 or $300 per gross ton up to a maximum of $30 million, whichever is greater;

Fourth: For a deepwater port, $50 million;

Fifth: For an offshore facility under the authority of the Outer Continental Shelf Lands Act, removal costs plus $50 million;

Sixth: For other facilities such as onshore, $50 million or such lesser amount as established by regulation.

The bill also requires that the owner or operator of a vessel or offshore facility establish and maintain evidence of financial responsibility equal to these limits of financial responsibility.

H.R. 85 also provides a means whereby claims for damages for economic loss arising from spills may be asserted. The damages for which claims may be made are:

First: Removal costs;

Second: Injury to, or destruction of, real or personal property;

Third: Injury to, or destruction of, natural resources (claim may be asserted by President or by a State);

Fourth: Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period after the loss is first suffered.

Claims are first presented to the owner, operator, or guarantor except where the source of the discharge cannot be designated or the designation is denied. If the claim is denied or not settled within 60 days, the claimant may present the claim to the fund. Also, where the claim exceeds a limit of liability or the owner, operator, and guarantor are financially incapable of paying the claim in full, a claim for the uncompensated damages may be presented to the fund. If the fund denies liability or does not settle the claim within 60 days, the claimant may submit the dispute to the Secretary of Transportation for decision or may commence an action in court against the fund. Final orders of the Secretary under the disputes procedure are reviewable in the district courts of the United States.

The bill also preempts certain State actions in order to insure that duplicate funds and taxes are not established.

No action may be brought in any court of the United States, or any State or political subdivision thereof, for damages for which a claim may be asserted under the act. No one may be required to contribute to a fund, the purpose of which is to compensate for damages recoverable under the act, a State may, however, impose a tax or fee in order to finance the purchase and prepositioning of pollution cleanup and removal equipment.

Title V of the bill, which will be discussed in detail by the Committee on Ways and Means, imposes taxes and establishes the funds which are available to cover cleanup costs and payment of eligible claims.

Mr. Chairman, H.R. 85 addresses the problem of spills of oil and hazardous substances in a manner which is reasonable, fair and responsible. It is a good bill, which has been refined by years of effort and by three committees. It deserves to become law this year, and I urge my fellow Members to support it.

● Mr. JOHNSON of California. Mr. Chairman, I rise in support of the bill. I wish to commend the chairman of the Subcommittee on Water Resources, the gentleman from Texas (Mr. ROBERTS) for the fine job he has done in bringing this bill to the floor. I wish also to cite the usual fine cooperation and distinguished leadership of the ranking minority member of the full committee, the gentleman from Ohio (Mr. HARSHA) and the ranking minority member of the Subcommittee on Water Resources, the gentleman from California, (Mr. DON H. CLAUSEN.) I wish also to acknowledge the invaluable support of the gentleman from Louisiana (Mr. BREAUX) and the gentleman from Kentucky (Mr. SNYDER).

The Breaux substitute, which we are considering today, represents the work of three committees—our Committee on Public Works and Transportation, the Committee on Merchant Marine and Fisheries, and the Committee on Ways and Means. It is the result of years of effort and a fine example of what can be achieved through the dedicated cooperation of three committees of Congress.

H.R. 85 is a landmark bill. It establishes a comprehensive scheme of liability for damages caused by spills of oil and hazardous substances, provides for the cleanup of these spills, and provides a mechanism for recovery by injured parties for damages suffered as a result of spills. This is one of the most important pieces of environmental legislation to be considered by this Congress.

Title I of the bill relates to oilspills and title III relates to spills of hazardous substances. Each title provides that the owner and operator of a vessel or an onshore or offshore facility are jointly, severally, and strictly liable for cleanup costs and specified economic damages which result from a spill.

Except where the pollution incident is caused primarily by willful misconduct or gross negligence or by a violation of applicable Federal safety or operating standards, limitations on liability are provided. These are detailed in the statement of our chairman of the Water Resources Subcommittee. Owners and operators are also required to establish and maintain financial responsibility. These provisions insure that where claims are involved against the spiller, the spiller will be able to pay.

Individuals who suffer economic damages, as specified in the bill, may file claims to recover such damages. These claims are first filed against the spiller and then against the trust fund established in title V if the spiller does not settle within 60 days. There are two funds established in title V—one for oilspills and one for spills of hazardous substances. The proceeds in the funds are derived from excise taxes on oil and on organic and inorganic feedstocks.

Mr. Chairman, this bill represents an innovative and responsible approach to the problems posed by spills of oil and hazardous substances into the navigable waters. It provides for a uniform system of liability and for a means of compensating victims of spills. Moreover, it does not involve expenditures from the general Treasury but rather from trust funds derived from taxes on the substances which are involved in the spills. The bill is necessary, and the need for its early passage is urgent.●

□ 2110

The CHAIRMAN. The Chair now recognizes the gentleman from New York (Mr. CONABLE) for 30 minutes.

Mr. CONABLE. Mr. Chairman. I support the Ways and Means Committee amendment to H.R. 85. The Ways and Means Committee approved title V, called the "Environmental Revenue Act of 1980."

Title V establishes an excise tax on crude oil and specified chemical feedstocks. It imposes an excise tax of 1.3 cents per barrel on crude oil which will be deposited into a new "Comprehensive Oil Pollution Liability Trust Fund." The crude oil excise tax is projected to raise $75 million in revenues annually. An excise tax also is imposed on specified petroleum feedstocks and inorganic chemicals which will be deposited into a "Hazardous Substance Pollution Liability Trust Fund." The excise tax on petroleum feedstocks is projected to raise $50 million in revenue annually and the excise tax on inorganic chemicals will raise $25 million annually. The excise taxes will sunset after September 30, 1985.

Both trust funds contain similar terms governing the type of claims which may be paid out of the funds. The claims eligible to be paid by the funds are: First, the costs for cleanup or removal of spilled substances; second, property damage; third, damage to public natural resources; and fourth, the loss of profits or earning capacity due to property or natural resource damage suffered by a person who derives at least 25 percent of his earnings from the utilization of the damaged property or natural resource. The last category of eligible claims may not compensate for more than 2 years of lost profits.

During the first year of the trust funds' operations they may borrow up to $75 million from the Treasury if it is necessary to carry out the purposes of the legislation. This will enable the funds to respond to any emergency claims filed before the excise tax deposits have an opportunity to build up.

After the first year the funds may not borrow from the Treasury. Furthermore, a claim against the trust funds does not constitute an entitlement from the United States.

Title V specifies that each fund will maintain a $30 million reserve for cleanup activities. The payment of economic damage claims will be deferred until the fund deposits exceed the $30 million cleanup reserve. This will assure that funds for the cleanup and removal of spills will not be depleted by the payment of economic damages suffered by persons in earlier spills.

Mr. Chairman, title V provides the revenue foundation on which to build a responsible program to clean up hazardous spills and to provide a source of compensation for a limited category of property and economic damage claims.

Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina (Mr. MARTIN).

Mr. MARTIN. Mr. Chairman, it is a tribute to a lot of work by so many committees that this bill H.R. 85 has been brought before the House this evening. Although there were many complexities

to be resolved, I was pleased that the Committee on Ways and Means cleared its responsibilities with dispatch.

I support H.R. 85 and its objective of cleaning up and dealing with oil and chemical spills. The fund establishes the capability for cleaning up and repairing the damages resulting from oil and chemical spills in the oceans and harbors and navigable waters. It goes beyond that, to compensate innocent victims whose property is damaged or whose livelihood is impaired as a result of such oil or chemical spills. My amendments agreed to in Ways and Means thereby incorporate the administration's view on these questions.

It is intended thereby to reimburse anyone whose property is damaged for the cost of repairing and cleaning that property and restoring it to use. Further, those businesses, like commercial fishing or harvesting of other marine resources, like public accommodations, and like related food processing enterprises, that suffer loss of income and business due to such spills will be compensated for a reasonable period of time, 2 years, until the lost business can be restored or replaced.

Our committee also addressed the need to protect the Federal Government from claims other than as provided by this fund for accidental or negligent spills and damages. Similarly, a time limit for claims is provided in the interest of producing timely reporting by injured parties and to avoid each episode having open-ended expenses.

It is our hope, Mr. Chairman, that this legislation will create a greater commitment to marine safety both in our harbors and on the high seas for these precious but potentially hazardous cargoes.

Mr. Chairman, I want to express my personal respects to the distinguished gentleman from New York (Mr. BIAGGI), for his personal dedication, as well as that of Mr. SNYDER and Mr. BREAUX, to working fairly with Members of both parties and all committees and all points of view, even when they differed from their own approach, to the end that a bill is before us now of which we can all be proud and confident. The gentlemen were ever respectful of different opinions on aspects of this legislation, and that greatly helped us to expedite action on H.R. 85.

● Mr. ASHLEY. Mr. Chairman, the bill before the House, H.R. 85, is complex legislation that has been developed in this Congress through careful and searching consideration by three committees of the House. I believe that a brief history of the bill will be helpful to Members as we enter debate on its merits and consider possible amendments.

The Committee on Merchant Marine and Fisheries reported H.R. 85 on May 15, 1979. As reported by this committee, the bill had two titles: Title I to establish the comprehensive system for oilspills and title II containing effective dates, a savings provision, and conforming amendments.

On May 16, 1980, the Committee on Public Works and Transportation to which H.R. 85 had been jointly referred, reported the bill, making minor amendments to title I and II and adding two titles. Title III would establish a system for hazardous substance spills similar to that in title I for oil. Title IV would provide for congressional review of regulations promulgated by responsible agencies pursuant to the act.

Thereafter, the Committee on Ways and Means requested and received sequential referral of the bill. That committee amended the bill by adding a new title. Title V restructured the funding mechanisms established by title I and III and also altered, to some degree, the scope of compensable damages set out by the earlier titles.

Subsequently, after discussions among the three committees involved, a substitute was developed, incorporating title V as adopted by the Ways and Means Committee on August 21 and conforming titles I, II, and III to title V. This amendment, in the form of a substitute, was offered by Mr. BREAUX on August 27, and appears in the RECORD of that date. In accordance with the rule, that substitute is before us today as an original bill. We, therefore, now consider a bill that is an integrated and internally consistent product of the work of three com-

I will limit the balance of my remarks to titles I and II which together constitute comprehensive liability and compensation legislation for oil pollution.

In brief, titles I and II would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damage in the United States. This legislation imposes strict liability for oil pollution damage and provides strong economic incentives to prevent oil spills. It requires the spiller of oil to clean up the spill and to compensate anyone suffering an economic loss as a result of the spill. To insure compensation for victims of oilspills, the bill provides a backup fund supported by a tax on imported and domestically produced oil.

This legislation closes a gap in the quest for a comprehensive system for preventing oilspills and for dealing with their consequences. It is consistent with international treaties on the subject and mittees.

takes account of experience under existing law, notably the Trans-Alaska Pipeline Act, the Outer Continental Shelf Lands Act, and the Deepwater Port Act, each of which establishes oilspill pollution funds.

The Superfund bill for oilspills was initially developed by a task force consisting of representatives from several cognizant Executive branch agencies. It has been thoroughly considered in three Congresses. It has been examined in great detail by representatives of industry, environmental and consumer groups, State governments, and the various interested executive agencies. It represents a consensus that has the general support of almost all those interested in the subject of oilspill cleanup and compensation. Predecessor bills were tested in the legislative process: for example, H.R. 6803, a bill virtually identical to H.R. 85 as reported by this committee, passed the House of Representatives in the 95th Congress. The result of all this extensive preparatory work is sound legislation. The provisions of which are intermeshed and interdependent. The system of compensation and liability for oilspills to be established is comprehensive and internally consistent. Accordingly, I urge that this legislation receive the full support of my colleagues.

I yield now to the distinguished chairman of the Coast Guard and Navigation Subcommittee, Mr. BIAGGI, who early in this Congress introduced H.R. 85 and who has worked so diligently and effectively in its behalf.●

● Mr. RATCHFORD. Mr. Chairman, I rise in support of the superfund legislation, H.R. 85 and H.R. 7020. These two pieces of legislation have been created in response to the enormous problem of chemical wastes and their effect on the health and environment of our Nation.

There is an urgent need for a comprehensive solution to the problem of hazardous waste contamination. The House of Representatives must pass legislation which addresses the problem and provides for adequate contributions from the industries who created these chemical nightmares.

One of the most publicised cases of contamination is in the Love Canal area, near Buffalo, N.Y., where chemical wastes from a buried, abandoned dump seeped into yards and basements. Higher incidences of cancer, birth defects, and other illnesses have been noted in the area.

I am concerned about this, because I too have had incidences of hazardous wastes and contaminated water supplies in my district. In Beacon Falls, Conn., hazardous waste sites have been found and private wells have been shut down. In Prospect, a municipal well was closed due to chemical contamination. Danbury, Derby, Cheshire, and perhaps Wilton, Conn., have all experienced similar problems. The lists continue to grow as more communities discover contamination of their resources and illegal dumping and improperly handled dump sites.

The Environmental Protection Agency estimates that there are between 30,000 and 50,000 hazardous waste sites in the United States. Between 1,200 and 2,000 of them pose serious environmental and health risks. A report released by the Surgeon General described chemical dump sites as one of the most serious threats to public health facing our Nation. Until these sites are examined thoroughly, it is impossible to predict where the next Love Canal will be. It could be anywhere—in my district or in one of my colleagues.

For this reason, it is essential that we address this problem as quickly as possible. The mechanisms must be in place for dealing with already-found hazardous waste sites, and for cleaning up the sites which have not yet been discovered.

I support H.R. 85—the Oil and Chemical Pollution Liability and Compensation Act—as introduced by Representative JOHN BREAUX. I also support H.R. 7020 and the Committee on Ways and

Means' amendments which would strengthen the cleanup fund and industry's contributions to it.

I urge passage of these pieces of legislation as they represent comprehensive treatments of a serious and growing problem for the health and the security of the people of our Nation.●

● Mr. CORRADA. Mr. Chairman, I rise in strong support of H.R. 85, the Oil and Hazardous Substance Pollution and Liability Compensation Act. This legislation, together with H.R. 7020, the Hazardous Waste Containment Act, represents a major achievement in our efforts to provide solutions to the problem arising from the contamination of our waters and lands by oilspills and hazardous wastes disposal.

In the past few years we have experienced accidents which have focused attention on these problems. It seems as though oilspills have become an accepted risk we must endure because of our dependence on oil for energy. However, to those persons directly affected by the spills that kill fish, pollute the beaches, and generally endanger our health, it is small comfort to be told that, eventually, nature will dissipate the oil and that all will be well again.

This legislation is urgently needed. It provides for complete and speedy compensation to the victims of oil and chemical spills while simplifying the vast number of present liability laws. The bill provides for the creation of two funds, one for oil spills and the other for hazardous substance spills. These two funds will insure that the cost of cleanup and damage compensation will be borne by those who cause the pollution and not by the taxpayer.

I urge all my colleagues to support the amendments that will be offered that will strengthen the provisions of H.R. 85. We need a very forceful and comprehensive legislation on record to be able to provide protection to the unfortunate victims of oil and hazardous substances spills.●

● Mr. YOUNG of Alaska. Mr. Chairman, today we consider H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act. I rise in support, in particular, of the amendment to H.R. 85 offered by Mr. Breaux. In addition, I support the committee amendments which are to be offered to make technical and clarifying changes in the Breaux substitute to carry out the intended purpose of the legislation.

This legislation establishes a comprehensive system of liability and compensation for damages caused by oil and hazardous substances pollution. It establishes strict liability, with specific limits, for owners, operators, and leaseholders of sources of discharges and creates a backup compensation fund to respond to damage claims which are not satisfied by the party responsible for the discharge and damage claims where the responsible party cannot be identified. The Breaux substitute amendment is the integration of the various reported versions of H.R. 85 from the Committees on Merchant Marine and Fisheries, Public Works, and Transportation, and Ways and Means. Title I addresses oil pollution liability and compensation. Title II also addresses oil pollution and sets the effective dates for regulation, and makes certain conforming amendments which eliminate the various oil pollution compensation schemes contained in other Federal statutes.

The oilspill liability and compensation provision of the Trans-Alaska Pipeline Authorization Act, the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, and the Outer Continental Shelf Lands Act of 1978 are subsumed into H.R. 85. Thus, this title insures a comprehensive and unified approach to oilspill liability and compensation. Title III addresses hazardous substance liability and compensation and title IV provides for a review of regulations issued under the authority of titles I through IV. Title V establishes a trust fund in the Treasury of the United States derived from taxes on petroleum and certain chemicals and sets forth the fiscal mechanics for the operation of the fund.

Mr. Chairman, the need for a uniform law to provide a comprehensive system of liability and compensation for damage caused by pollution is well recognized. The dramatic incidents of the *Torrey Canyon*, Santa Barbara platform blowout, *Argo Merchant*, and *Amoco Cadiz* demonstrates the potential for extensive damage to the property and natural resources, particularly along the coastline of our Nation. We have already taken steps to prevent pollution damage of our coastal and marine environment through the Port and Tanker Safety Act of 1978. This legislation today is the logical complement to the preventative legislation so that cleanup is facilitated and innocently victimized and damaged parties are compensated.

In the process of the consideration of this bill by the various committees with jurisdiction, the categories for damages for economic loss which may be assertive under this bill have been condensed into four categories. These categories are: First, removal costs; second, loss of property; third, loss of natural resources; and fourth, loss of profits or earning capacity in certain justified instances.

In particular, I am pleased to note that the second item has been retained in the original form as reported by both the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation, including the claimant provision. Through this provision, therefore, those persons who are commercial and subsistence users of fish, wildlife, and other natural resources may be compensated.

Mr. Chairman, I urge adoption of the Breaux substitute of H.R. 85.●

● Mr. CLEVELAND. Mr. Chairman, I support the passage of H.R. 85 for what it is intended to do despite serious reservations as to whether it will in fact do it.

There is no question that there is merit in trying to come up with a unified program of liability, cleanup and compensation for damages in the case of discharges of oil and hazardous substances.

And there is merit in the bill's provisions for cleanup of toxic dump sites where contamination of groundwater poses a threat to surface waters.

But my years as ranking minority member of the Public Works Oversight Subcommittee lead me to question whether the Environmental Protection Agency can do its piece of the job.

Years ago, for example, when EPA had far fewer programs to administer than it does today, it made a hash of the construction grants program under the Clean Water Act. Fortunately, we in the Congress were able to undo some of the damage by making it possible for States to run much more of the program.

Today, on the basis of our subcommittee's recent hearings on the monitoring and control of toxic chemical discharges, we again have found cause for dissatisfaction. And again, I for one, am moved to wonder whether the States should not be given a larger role in that program.

I am not alone in my concern, Mr. Chairman.

In our recent toxic hearings, former EPA Deputy Administrator John Quarles testified that, and I quote:

> Regulatory requirements have become excessively complex and are overwhelming the capacity of both the government agencies and private industry to come anywhere near carrying out the totality of their respective obligations.

Focusing on EPA, he cited remaining problems with the Clean Water Act, the Clean Air Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Noise Control Act, the Toxic Substances Control Act, and the Resource Conservation and Recovery Act.

At the same hearings, EPA Administrator Costle said:

> We are getting closer to getting a reasonable handle on the question of toxics through the Clean Water Act than through virtually any other statute that we are dealing with.

Mr. Chairman, as I said, the environmental regulatory program I know best is the Clean Water Act. So when Doug Costle starts talking like that, I really start worrying.

So as I ponder this legislation, I again find myself asking whether there is not a larger role for the States. And to their credit, the water pollution control people in New Hampshire are also wondering the same thing.

Instead, at this point, H.R. 85 contains a preemption provision precluding the operation of State funds based on taxes or fees levied on oil and chemicals, if the revenues are to be used for purposes compensable under this bill.

I can certainly understand that there is a case for national uniformity in liability and compensation, and a need to avoid imposing on industry the burden of paying into a Federal fund and a proliferating number of State funds to support similar activities.

At the same time, I am concerned lest the funds created by H.R. 85 constrict the functioning of a fund created by the State of New Hampshire to support an

emergency response capability in the case of oilspills. I also am concerned about its impact on a pending proposal for the State to create a similar fund dealing with hazardous substances.

I am willing to support this legislation, in fact, only on the understanding that H.R. 85 does not preempt any State fund or activity or form of compensation not explicitly provided in the Federal legislation. In other words, we are not making the mistake of saying, in effect, if the Feds do not do it, nobody else can.

Despite such reservations, I favor passage of this bill. It should expand the funds available for cleanup of eligible sites in New Hampshire, including Nashua and perhaps other communities. Such an expansion of funds also should remove any excuse for EPA not to move in when ground water is contaminated and surface waters are threatened, instead of waiting until toxics actually are found in the surface waters.

And I support the bill, finally, in the hope that the way it is carried out is subjected to vigorous oversight and a disposition to modify it to give the States a larger role as warranted.●

● Mr. MURPHY of New York. Mr. Chairman, I rise in support of H.R. 85 in the form of the substitute before us today.

H.R. 85 was introduced early in the 96th Congress and was referred jointly to the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation. The bill was patterned closely after H.R. 6803, which passed the House in the 95th Congress. The bill's provisions parallel existing law, specifically title III of the Outer Continental Shelf Lands Act, as amended in 1978. Title III contains all the ingredients of a comprehensive liability and compensation system for oil pollution but, of course, is limited in its application to Outer Continental Shelf activities. The statute is in place, however; necessary regulations have been promulgated and the system is working.

Two other statutes have established compensation and liability systems for oil pollution: The Trans-Alaska Pipeline Act and the Deepwater Ports Act. In each case, a claim for oil pollution damage is referred first to the polluter and then, if the polluter cannot or will not pay or if the polluter is unidentified, the claim is filed against a backup fund, established by fees assessed on oil. H.R. 85, therefore, is a logical and evolutionary development of existing law.

The events of the summer of 1979 underscored the urgency of problems associated with oil pollution, particularly the need to provide a means of relief to those who suffer damage.

On June 30, 1979, the container ship *Sea Speed Arabia* ran aground off Staten Island, resulting in the discharge of 100,000 gallons of diesel oil that virtually surrounded Staten Island and polluted the waters of upper and lower New York Bay. Beaches and parks were closed and marine life was damaged many miles from the origin of the spill.

On July 19, 1979, the supertankers *Aegean Captain* and *Atlantic Empress* collided off the coasts of the Island nation, Trinidad and Tobago. Both ships were holed, creating a gigantic oilspill that only chance took out to sea instead of onto the resort beaches so vital to the economy of the islands. The *Atlantic Empress* sank several days after the collision, taking with her to the bottom the oil trapped in intact cargo tanks She was the largest ship in history to sink.

In the first week of August last year, oil from the Mexican oil well Ixtoc I, which suffered a blowout on June 3, reached the waters and beaches of south Texas. The well discharge oil variously estimated as 10,000 to 50,000 barrels per day until it was finally capped in March 1980. This was the largest oilspill in history. Its true dimensions have yet to be determined. Its ultimate impact upon Texas, upon other States littoral to the Gulf of Mexico, and on the resources of the gulf itself, remains to be measured.

On November 1, 1979, the freighter *Mimosa* collided with the tanker *Burmah Agate* at the mouth of the Houston Ship Channel. *Burmah Agate* burned for 2 months, discharging oil all the while, resulting in pollution that impacted the nearby Texas beaches and the adjacent rich fishing grounds.

More recently, in May of this year, the 640-foot tanker *Esso Portland* was flooding in position 65 miles off the North Carolina coast with a cargo of 300,000 barrels of heavy fuel oil. Only the prompt assistance of commercial divers and the Coast Guard pollution strike team prevented the ship from sinking. Had this rescue effort not succeeded, yet another major oilspill would have occurred in a sensitive coastal area of the United States.

These concrete examples are cited to underscore the need for prompt enactment of H.R. 85. I concentrate on the provisions of the bill that pertain to oil because those are the provisions on which the Committee on Merchant Marine and Fisheries has so long labored.

The concept behind title I of H.R. 85 is simple and straightforward. The title would establish a comprehensive compensation and liability regime for oil pollution damage. It would streamline claim procedures, claims to be made first against the polluter and second against a backup fund where the polluter refuses or is unable to pay or cannot be identified. It would facilitate cleanup of oil pollution by creating incentives for the polluter to act promptly and by providing a ready source of federally administered funds, less limited than now exists, for use by Federal and State agencies in cases where the polluter does not institute proper cleanup measures. All the features of the title mesh to form sound, workable, and internally consistent legislation.

A superfund bill should provide a means to assure compensation where only inadequate and fractional means now exist. While superfund legislation can have some indirect effect in preventing pollution from vessels and facilities, that should not be viewed as its principal purpose. Environmental protection is best achieved by a direct attack on the root sources of pollution.

Such an approach is exemplified by measures such as the Port and Tanker Safety Act of 1978, the International Tanker Safety and Pollution Prevention Protocols of 1978, and the Coast Guard regulations already published, which implement the act and the protocols. These measures establish new high standards for oil tankers, together with a strict enforcement regime. In contrast, H.R. 85 is designed to facilitate cleanup and to provide a ready remedy for those injured by oil pollution when it does occur, despite strict preventive measures in force.

What we seek is legislation that will provide adequate and timely relief for those affected by oil pollution. This includes individuals harmed by oil pollution from any source. It includes the Federal Government, which uses its resources to clean up the oil and restore the environment to its prespill condition. And it means State and local governments that assist in cleanup and act in the capacity of trustees for natural resources.

In this light of what the bill is and what it is not, major features of H.R. 85 fall into perspective. These features, including Federal preemption provisions, limits of liability, and claims procedures, are the result of long and careful consideration. Each feature is an essential part of a carefully designed whole. H.R. 85 deserves wide support, and I urge my colleagues to vote in favor of its passage today.●

● Mr. HARSHA. Mr. Chairman, I rise in support of H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act. To understand why this bill is necessary, I think it is important to review the bidding on Federal legislation. The first initiative of modern day importance is generally regarded to be section 11 of the 1970 Water Quality Improvement Act which established a comprehensive oil pollution cleanup and liability program and authorized the implementation of a national contingency plan. In 1972, Congress expanded this program to add designated hazardous substances—the first time oil and hazardous substances were linked under one program.

However, EPA was unable to promulgate regulations to implement the hazardous substances program authorized by the 1972 amendments until 1978. When they did the American Waterways Operators and the Chemical Manufacturers Associations' predecessor organization successfully challenged the regulations in court. It took legislation to resolve the problem—and I might add that effort was a cooperative undertaking between EPA, CMA, AWO, and the Congress—all supported the final product which demonstrates what can be accomlished. The regulations were finally promulgated in August 1979 (a date that would become important in later legislative considerations) and for the first time the complete program was in place to address pollution of the navigable waters by spills of oil and hazardous substances.

The use of petroleum in the United States has played a major role in the tremendous growth of our national industrial complex. The continued need for oil for the foreseeable future is unquestioned. Currently, the United States imports about 45 percent of its oil requirements and it is estimated that this dependence will continue to increase. This need to import large volumes of oil presents a serious threat of oil pollution to our waters.

The 1970 act resulted in part from events such as the grounding of the tanker *Torrey Canyon* off the southeast coast of England in 1967, and the blowout of the production platform off Santa Barbara, Calif., in 1969; recently the grounding of the *Amoco Cadez* and sinking of the *Argo Merchant* and the Campeche spill in the Gulf of Mexico have again focused public attention on the problem of oil pollution. Existing law has proven inadequate to handle the claims arising from oilspills. First, recovery under common law theories of negligence proved difficult. In order to recover, claimants had to identify the spiller and had the burden of proving that the spiller failed to exercise reasonable care to prevent the spill. Second, statutory law allows a vessel owner under certain circumstances to limit his liability to the value of the vessel and its cargo after the incident. In the case of collisions, groundings, or other circumstances which result in extensive oilspills, this value may often be little or nothing since the vessel is destroyed and the cargo list.

In response to these problems, Congress has enacted several statutes which contain provisions governing oilspill liability. These include: The Federal Water Pollution Control Act which I have discussed; the Trans-Alaska Pipeline Authorization Act; the Deepwater Port Act; and the Outer Continental Shelf Lands Act. In addition, many of the States have enacted legislation concerning liability for oilspills. This patchwork of laws contained sometimes conflicting provisions relating to oil pollution liability and compensation. In 1974, Congress began work on a comprehensive oil pollution liability and compensation bill to consolidate the provisions of these many acts with regard to damages caused by oil pollution.

A bill finally passed the House in 1976—H.R. 6803, which was virtually identical to title I of H.R. 85 and dealt with oil pollution liability and compensation. The bill died, however, because the Senate would not accept preemption of State programs which duplicated the Federal law and, and this was important, because the bill did not address hazardous substances pollution issues.

In this Congress a House bill was introduced which was virtually identical to the ill-fated H.R. 6803—H.R. 85. The bill was approved by the Merchant Marine and Fisheries Committee on May 15, 1979, but had to also receive approval by Public Works and Transportation, which shared jurisdiction over the bill. In June of 1979 the administration announced its comprehensive superfund bill dealing not only with oil pollution of navigable waters but also hazardous substances pollution and cleanup of dump sites.

This initiative was in response to growing perception of a major environmental concern which was brought to public attention by Love Canal, N.Y.; Valley of the Drums, Ky.; Pittston, Pa., and a number of other incidents.

The Public Works Committee held hearings in the fall of 1979 and the spring of 1980 on the legislation. Additionally, members of the Subcommittee on Water Resources visited the Love Canal, and a separate hearing on PCB contamination was conducted at Alma, Mich. The outcome of these investigations was to add to H.R. 85 a new title, and a separate fund, to address hazardous substances pollution in the same manner as oil pollution. While the Ways and Means Committee changed the bill slightly, including converting the fees imposed to a tax and establishment of dedicated trust funds, the key point is that the bill has moved to the point of floor consideration without substantial change and with widespread support in Congress. Why?

A review of some points made at the hearings is helpful—Mr. Douglas Costle, Administrator of the Environmental Protection Agency testified in April that:

The historical treatment of oil and hazardous substances under a single regime would be jeopardized if oil was treated differently than hazardous substances;

The problem of hazardous spills is acute and more threatening than oil;

Between October 1978 and April 1980, 4,257 discharges of substances other than oil were voluntarily reported to EPA, of which 2,225 involved designated hazardous substances under the 311 program;

EPA forecasts that by 1983, 5,000 to 6,000 hazardous substances spills may be reported annually;

As more response to hazardous pollution is required the Federal fund has been repeatedly drawn down and more demands are placed on the Treasury for taxpayer dollars;

H.R. 85 would solve the financial problem for oil pollution response but not for hazardous pollution; creating operational problems and inequities; thus, there would no longer be a unified scheme.

Opponents of the legislation stressed these themes for the committee:

Oilspills should be handled separately from chemical spills; their different nature justifies separate consideration;

Chemical spills should be handled separately from waste disposal incidents. I would note parenthetically that existing law authorizes cleanup at dump sites when they pose a threat to navigable waters and 24 areas are currently receiving assistance for emergency cleanup.

Common law and statutory law in various States provide a flexible and responsive system for compensating individuals for personal injury and property damage that may occur from spills of hazardous substances;

Legislation to clean up old dump sites should be adopted for emergency assistance and containment when there is an imminent threat and no other party is taking responsible action, financed by Federal appropriations, recovery from dumpers and matching State money.

The committee did not concur with the position of the opponents. In its report it noted that:

> The Committee on Public Works and Transportation agrees with the need for a comprehensive scheme to provide for recovery of damages caused by oil spills, recovery of cleanup costs, and establishment of liability and requirements for financial responsibility. The Committee believes there is a similar need with regard to certain hazardous substances which are discharged into navigable waters, and accordingly added a new Title III to H.R. 85 which addresses this need in essentially the same fashion as oil spills are addressed in Title I. The Committee notes that the response effort with respect to spills of oil and hazardous substances has been carried out under a single Federal statutory authority since 1972 when section 311 of the Federal Water Pollution Control Act Amendments was enacted. Under section 311, a Federal cause of action with respect to removal costs of certain discharges of hazardous substances was created and the National Contingency Plan, originally established by section 11 of the Water Quality Improvement Act, was expanded to include hazardous substances. In light of this history, the committee believes that it is appropriate to address the liability, cleanup and economic damage recovery issues associated with spills of designated hazardous substances in the same manner as Title I or H.R. 85 addresses for spills of oil.

This decision was based upon the premise that there is a bona fide problem; that existing law does not provide adequate resources to address the problem; that the victims do not receive adequate compensation and thus a backup mechanism is necessary; that the problem is likely to increase, not decrease, in the future; that the taxpayers generally should not be forced to pay the tab through Federal appropriations—rather, those that pose the problem (and ultimately the consumers of these goods) should pay—just as they do for airport and airway services and highway improvement programs.

If legislation fails to be enacted by this Congress the problem is not going to go away. This is the third Congress for oil superfund legislation. If the Senate bill were a little more reasonable with respect to cost and especially liability issues, I feel we would enact legislation this year. When Members are contacted by opponents of H.R. 85 the usual basis for opposition is generally not founded upon the purpose of the bill, but rather that H.R. 85 could provide the impetus to enact S. 1480, the Senate measure. To those concerned with the sweeping nature of the Senate initiative I would say to them that this posture is consistent with the Senate's past actions. In 1971 and 1972, the Senate passed legislation amending the Federal Water Pollution Control Act that, if adopted, might have shut down the economy.

Yet, the House version of the legislation was a reasonable initiative which struck a balance between environmental and economic concerns—and that position prevailed in the final bill. Again in 1977 the Senate adopted overly strict controls but the House view again prevailed and the 1977 Clean Water Act has been hailed as a reasoned environmental initiative. Now in 1980 we again have

concern over the pending Senate bill. I would say to my colleagues that I will not support unreasonable legislation. H.R. 85 is a reasoned, well-thought-out measure. When the House Members of the conference return to the membership of this distinguished body it will be with a balanced bill—just as we have every time in the past.

Mr. Chairman, I would like to discuss two provisions for the purpose of establishing legislative history. The first is the definition of "owner" contained in title I of H.R. 85. During consideration of this measure by the Public Works Committee I offered an amendment to clarify the definition, as reported by the Committee on Merchant Marine and Fisheries. This change was necessary because the original definition inadvertently subjected those who hold title to a vessel or facility, but do not participate in the management or operation and are not otherwise affiliated with the person leasing or operating the vessel or facility, to the liability provisions of the bill.

While the Merchant Marine Committee report indicates this situation was not intended the statutory language is unclear. Therefore, I offered clarifying language to truly exempt those who hold title but do not participate in the operation or management activities. My amendment also requires that those that hold title cannot be affiliated in any way with those who lease or charter the vessel or facility. This was done to prevent the establishment of "dummy" corporations, with few assets, which would be the responsible party for the purpose of the act.

Mr. Chairman, I also offered an amendment to require that tank motor carriers have a maximum minimum liability and establish and maintain evidence of financial responsibility for that minimum. Under H.R. 85 as reported by Merchant Marine and Fisheries, onshore facilities were subject to a maximum liability of $50 million, but the Secretary, by regulation, could reduce that liability—theoretically to zero. Also, there was no requirement to establish and maintain evidence of financial responsibility to meet this liability.

My amendment establishes a lower limit of liability below which the Secretary cannot establish a tank motor vehicle's liability. My amendment establishes, for carriers of oil with a capacity of 3,500 gallons or greater, a minimum liability of $2 million; for carriers of hazardous substances the minimum is $5 million. Carriers with a capacity of less than 3,500 gallons are exempt from these requirements. These levels are insurable and at reasonable cost. With this amendment a loophole has been stopped, which could have potentially exempted certain carriers from meaningful liability and financial responsibility requirements. This is an important consideration when considered in the context of the problem of "midnight dumpers." Without the amendment there would be no requirement to maintain evidence of financial responsibility.

Thus, a dumper might not be in violation of H.R. 85 until the actual discharge and there would be no assurance that he would have the resources to pay the compensation for damages. My amendment assures that those resources will be available and that the midnight dumper will be in violation of the law when he transports hazardous substances without evidence of financial responsibility.

Mr. Chairman, I would note that the recently passed Motor Carrier Act of 1980 establishes certain requirements relative to minimum financial responsibility for transporters of oil and hazardous substances, section 30. I would expect that the Secretary will exercise maximum flexibility in implementing the requirements of the Motor Carrier Act of 1980 and the requirements of H.R. 85. One approach would be to treat the amendments made by H.R. 85 as applicable to a special class of carrier. This would allow the regulations implementing the Motor Carrier Act to also address the requirements of H.R. 85.

Mr. Chairman, I believe that the bill before you is a reasoned approach to the problems of oil and hazardous substances pollution of navigable waters. It builds upon existing programs and makes them better. It addresses the needs of the American public in a cost-effective manner. It is supported by the administration, environmentalists, and now by industry. I urge my colleagues to support its passage.●

● Mr. LENT. Mr. Chairman, I rise in support of H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act. I do so with a sense of deja vu for this is the third Congress in which we have tried to enact a comprehensive system of liability and compensation for damage caused by oil pollution.

This legislation is designed to deal with oil and chemical spills in the U.S. navigable waters and their adjacent shores. The potential for oil spills and consequent environmental damage is increasing as a result of the very large volume of petroleum and petroleum products moving within our Nation. We are importing about 8 million barrels of crude oil per day—or more than one-fourth of the total crude oil moving in worldwide trade. Our domestic oil and resources from the Outer Continental Shelf add approximately another 11 million barrels of crude oil moving each day; with exploratory drilling underway in the Baltimore Canyon area of the Atlantic Ocean, there is no reason to believe that those figures will decrease in the foreseeable future. In all likelihood they will increase. With more and more petroleum products being transported, the likelihood of spills is, unfortunately increasing.

My Fourth Congressional District is located on Long Island, one of the areas in the Nation most vulnerable to oil pollution damage. The hundreds of miles of Long Island coastline contain some of the finest beaches, harbors, estuaries, fishing grounds, and wildlife refuges to be found anywhere in the Nation. We on Long Island have fought for many years for adequate protection for these fragile areas, and the equally fragile ecosystems they support. The Comprehensive Oil Pollution and Liability Act offers much needed additional protection for Long Island's fragile coastline and surrounding waters.

It is also absolutely necessary that we establish appropriate procedures to facilitate cleanup and provide compensation for parties adversely affected by oilspills. H.R. 85 is designed to meet that need by guaranteeing a prompt and adequate response.

H.R. 85 establishes two funds, one for oilspills and one for hazardous substance spills, which would be used to pay for a cleanup and compensation if the spiller were unknown or did not pay the costs voluntarily. The oil pollution liability and compensation trust fund, which could recover its costs from responsible parties, would be financed through a 1.3-cent-per-barrel excise tax on all crude oil received at U.S. refineries and imported petroleum products. Fund revenues would be supplemented by assets of funds it supersedes—for example, it will acquire the assets and liabilities of the trans-Alaska pipeline liability fund; fines, including penalties for oilspills under the Clean Water Act; and compensation payments recovered through subrogation from parties liable for oil pollution under the bill.

This financing structure assures that those who cause pollution pay for it, rather than the taxpayers as is usually the case under the existing patchwork of Federal, State, common, and admiralty law governing liability, cleanup, and compensation for oilspills.

As well, the bill provides that owners and operators of the polluting vessels or facilities would be liable for damages, and would be required to carry insurance or otherwise establish financial responsibility for spill incidents.

I focus on the oil pollution aspects of this legislation because I believe they essentially are without controversy and our experience over the past 9 years convincingly demonstrates the need for corrective legislative action.

Oilspills are serious. Blackened dying birds and fish, oil slicks, and beaches fouled by tar are only the most obvious signs of environmental pollution resulting from oilspills. However, oil can also be toxic to a range of marine organisms. Fish can become disoriented and lose their ability to migrate, reproduce, or secure food. Fishing grounds can be severely damaged and shellfish made unfit for human consumption. Thus, the environmental and economic effects of oil pollution are both serious and widerranging.

Since 1971, Federal cleanup costs for oilspills have been compiled. The figures are in and they are high. For example, the Coast Guard reports that in 1977, 10,620 spills—none of them labeled catastrophic—released 17.6 million gallons of oil, at a Federal cleanup cost amounting to nearly $9 million. If one large spill had occurred, the figure would be far higher; consider the 1967 *Torrey Canyon* wreck which released 29 million gallons of crude oil, costing some $15 million to cleanup and $25 million in damages were claimed. More recently, the 1978 grounding of the *Amoco Cadiz* off the coast of France released 67 million gallons of crude and damage claims totaled more than $1 billion.

Clearly the time has come for prompt and favorable action on this needed legislation to insure rapid cleanup of spills and adequate compensation for damages. H.R. 85 can assure that and I urge my colleagues to join in voting for the proposed Oil Pollution Liability and Compensation Act.●

● Mr. BOWEN. Mr. Chairman, I rise in support of H.R. 85 and wish to commend the Committee on Public Works and Transportation and its distinguished chairman, the gentleman from California, for adding to this bill a new section which addresses some very legitimate concerns about the direction of Federal regulatory policies as they pertain to water pollution control. Clarifying language contained in title II of this bill restores the original intent of Congress by specifying that the Secretary of the Army alone shall make any determinations under section 404 of the 1972 Federal Water Pollution Control Act.

As a result of executive action and judicial review, Federal agencies—such as the Environmental Protection Agency and the U.S. Fish and Wildlife Service—have become involved in the section 404 process in a way never intended by the Congress. The section 404 process, unfortunately, has evolved from one of regulating water pollutant activities to one of preventing incursions into wetlands regardless of costs. It also has created a duplication of effort, and, too often, allows specific interest agencies and groups to impede development.

This kind of agency involvement has placed tremendous financial, as well as timing burdens on a number of important State public works projects. For example, in my own State, I can cite at least four vital highway projects the cost of which have skyrocketed and the time schedules for which have been significantly delayed because of objections raised by these agencies. In one particular instance involving U.S. Highway 78 in Itawamba County, the direct cost of the project was increased by some $5,000,000 as a result of EPA and U.S. Fish and Wildlife Service participation in the process. In addition to the direct costs indicated above, it is estimated that inflation costs associated with the delay will add still another 10 to 20 percent to overall project costs.

The adoption of this legislation including this new subsection will be a great step forward in saving tax dollars, in expediting badly needed public works projects throughout the entire Nation, and in doing away with unnecessary bureaucratic redtape by returning the administration of the section 404 process to the Secretary of the Army where it belongs.

Mr. Chairman, for all these reasons, I strongly urge the adoption of this bill and again I applaud the Committee on Public Works and Transportation for its outstanding work on this important legislation.●

Mr. SNYDER. Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

Mr. ROBERTS. Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

Mr. BIAGGI. Mr. Chairman, I have no further request for time.

Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BENNETT) having assumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes had come to no resolution thereon.

GENERAL LEAVE

Mr. SNYDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 85, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

ABOLISHING FOMC MEANS WHITE HOUSE WOULD CONDUCT NATION'S MONETARY POLICY

(Mr. STANTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STANTON. Mr. Speaker, last week the Domestic Monetary Policy Subcommittee of the House Banking Committee voted to abolish the Federal Open Market Committee or FOMC as it is known in financial circles. For those Members who are not familiar with this committee, the FOMC is responsible, by law, for conducting the Federal Reserve's open market operations which are the principal instrument used to implement our Nation's monetary policy.

The subcommittee action of a 4-to-2 vote was strictly along partisan political lines. Democratic members of the subcommittee voted for the bill reluctantly, only after being told that it would be reviewed more carefully by the full committee. In its present form the bill abolishes the FOMC for all intent and purposes, and transfers the total responsibility for the conduct of our Nation's monetary policy with the Federal Reserve Board here in Washington.

The significance of the subcommittee's action is that for the first time the White House would be squarely in the seat of calling the shots regarding the conduct of our country's monetary policy, a responsibility that is clearly left to the Congress under the articles of the U.S. Constitution. Until now, monetary policy always has been within the realm of the Federal Reserve. I can only surmise that the White House is behind this legislation for the following reason.

Ever since my friend and colleague on the Banking Committee, HENRY REUSS, became chairman of the committee he has consulted me before proceeding on every major piece of banking legislation. That he did not do so in this instance leads me to believe that the administration is behind this move and would like to see the legislation pushed rapidly through this Congress. The political motivations behind such a move should be readily apparent to all of my colleagues in this election year.

Mr. Speaker, this kind of change in the conduct of our monetary policy would jeopardize the independence and integrity of the Federal Reserve. By removing this power from the FOMC, which is comprised of the Fed's Board of Governors plus 5 of the 12 independently elected Reserve Bank presidents, and granting it solely to the Board of Governors, all of whom are appointed by the President, the White House would be that much closer to the day-to-day operations of the Fed. Furthermore, removal of the Reserve Bank presidents from the FOMC would make it clearly less responsive to the regional needs of commerce, industry and agriculture. Chairman Paul Volcker of the Federal Reserve says it best in a letter to all subcommittee members dated September 8:

> It [the subcommittee's bill] would also make it more likely that a single President could appoint a clear majority to the monetary policy making body; in that sense the bill would impinge upon the independence of the Federal Reserve.

Finally, Mr. Speaker, I believe that all Republican Members of the Banking Committee and in the Congress unanimously will be opposed to this blatant attack by the administration on the independence of the Federal Reserve. I hope that the President immediately would disavow his support for such a drastic move. The administration should respect the independence of the Federal Reserve and do everything that it can to aid the Fed in its task of fighting inflation by maintaining its current and necessary policy of monetary restraint. The American people are entitled to know where the President stands on this important issue before the election.

□ 2120

VICIOUSNESS OF THE CARTER CAMPAIGN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Carolina (Mr. CAMPBELL) is recognized for 30 minutes.

Mr. CAMPBELL. Mr. Speaker, a couple of weeks ago I took the floor to wonder aloud how low Jimmy Carter is willing to stoop in his frantic fight to keep the Presidency.

This week, the answer is clear. There is no limit to the personal invective, mud-slinging and fear tactics Mr. Carter will employ to reach his goal—regardless of the divisiveness; regardless of the distortion; regardless of the good of the country.

Mr. Speaker, no matter what happens in November, this country has been ill-

served by the viciousness of the Carter campaign and the mean spirit exhibited by the President.

No one has ever accused American politics of being an easy business, and candidates traditionally attack each other on their records and their views. Mr. Carter; however, ignores the record and concentrates on ugly, empty attacks on the very character of his political opponents.

This is nothing new; Jimmy Carter has consistently ducked accountability in favor of name-calling since his 1970 compaign for the Georgia statehouse.

But it is a particularly disgusting personality trait in a sitting President. It is a particularly disgusting personality trait in a man who, 4 years ago, told us piously that—

> If I ever lie to you . . . of if I ever mislead you . . . please don't vote for me.

If Carter is suggesting that Governor Reagan is today a racist because of expressed reservations about the Civil Rights Act made 16 years ago has any relevance to this year's campaign, which it does not, I wonder why no one has bothered to look at the Carter record for the same period of time.

In fact, according to an article in the St. Louis Post-Dispatch, May 23, 1976, titled "Carter, As State Senator, Opposed Integration, Open Accommodations."

> Democratic Presidential candidate Jimmy Carter, as a member of the Georgia Senate in 1964, voted for a state constitutional amendment aimed at preventing school integration, official state records show; and
>
> Carter voted also for a constitutional amendment that would have prevented the enactment of open-accommodation and fair-employment laws by counties in Georgia, according to the records.

Mr. Speaker, 1964 was the year Congress passed the landmark Civil Rights Act. At that very time, Mr. Carter was busily working for legislation which was designed by its sponsor, says the Post-Dispatch article, to accomplish in State law what the two U.S. Senators from Georgia were then trying to do in Federal law—and that is defeat the Federal Civil Rights Act.

I certainly do not consider Jimmy Carter a racist in 1980, Mr. Speaker, but in 1964—in a very different atmosphere—Jimmy Carter's stand on racial equality, according to his Georgia Senate voting record, was questionable.

Jimmy Carter obviously does not expect the American people to know or care about his record in 1964, although he flaunts Governor Reagan's as gospel truth. As this morning's Washington Post editorial put it, Carter "displays a certain contempt for the evidence of our own eyes, asserting these things that run counter to what we can see and already know, as if he believed it didn't matter, that people would believe anything they were told."

Mr. Speaker, unlike some, I am not here to call names or to document the many instances in Mr. Carter's political career where his stance on racial equality is suspect, because his position today is well known—as is Governor Reagan's.

I am here today to lament—yes, lament—Mr. Carter's bent to, as Germond and Witcover put it in yesterday's Washington Star, "lash out at political opponent when under stress."

As is documented in the article, "Jimmy Carter's Pathetic Lies," (Harpers magazine, March 1976, by Steven Brill), personal attacks on his opponent were a "Carter trademark" as early as his 1970 gubernatorial race.

Governor Carl Sanders, running against Carter then, must have never known what hit him! According to Brill:

> Beginning in June, Carter repeatedly claimed that he had a "list" of occasions on which Sanders, as governor, had used his office for personal financial gain. Finally, on August 26, he gave reporters the "Carter proof packet" of charges against Sanders. The list, it turned out, consisted of an allegation that Sanders had interceded on behalf of a friend with the Federal Communications Commission. That allegation was never substantiated, nor in fact was there any charge of illegality or personal gain.
>
> Perhaps the lowest blow was dealt by an anonymous leaflet which showed Sanders . . . being given a champagne shampoo by two of the (Atlanta Hawks basketball) team's black players during a victory celebration. The leaflet was mailed statewide to white Baptist ministers and white barbershops. Carter denies any knowledge of the leaflet, saying, "The campaign was not involved in any way." However, Ray Abernathy, an Atlanta public-relations man who worked for Carter's media director, Rafshoon, in 1970 says, "We distributed that leaflet. It was prepared by Bill Pope, who was then Carter's press secretary. It was part of an operation we called 'the stink tank'."

The stink tank, indeed, Mr. Speaker. What kind of a president do we have?

Carter continued his mud-slinging in the 1976 Presidential race, which he reportedly started running for in 1972.

According again to Germond and Witcover,

> Four years ago . . . he reacted to his defeat in the Massachusetts primary by rushing to Florida and accusing the man who defeated him, Sen. Henry M. Jackson, of using racist tactics.

Sound familiar?

And, to quote Eric Sevarled in 1976:

> What has been going on . . . is a daily calculated effort by Jimmy Carter to discredit Mr. Ford, not just as a constitutional leader, but as a man.

But as a man, Mr. Speaker, it is nothing less than a disgrace for a sitting president to attempt in this, very frankly, nasty way to discredit the character, the very integrity of any person who has the temerity to oppose him in a political campaign. For Mr. Carter to malign the nominee for the Presidency—the highest office in the land—of a major political party, the choice of a large percentage of Americans, is irresponsible to say the least.

As Richard Reeves said several weeks ago:

> The Carter campaign is as mean-spirited as any you'll see in American politics.

No wonder the country is in the dispirited state it is in.

Mr. EVANS of Delaware. Mr. Speaker, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Delaware.

Mr. EVANS of Delaware. I would like to associate myself with the remarks of the gentleman from South Carolina (Mr. CAMPBELL). I think it is sad indeed when invectives are spewed forth from anyone's mouth in an unfair manner.

We have a wonderful system of government in the United States of America, a constitutional system of government that needs to be preserved and enhanced. I am very concerned about the erosion of confidence in our system of government, and I think that unfair remarks, whether they be made on the floor of the House of Representatives or whether they be made in a congressional campaign, or whether they be made in a Presidential campaign, do erode the confidence that the American people have in our constitutional system of government.

I am deeply saddened at some of the remarks that have been made in the Presidential campaign.

Mr. COLLINS of Texas. Mr. Speaker, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Speaker, I want to commend the gentleman from South Carolina for bringing this matter up, because today where we need to build sound race relations, when we need to have America stand solidly together, it disturbed me the other day to hear the President of the United States, Mr. Carter, talk when he has done so much to set the minorities of this country back. I know today that among young people who want a job, minorities today have the worst unemployment that they have ever had. It is his responsibility down there in the White House, and this smokescreen cannot conceal the true facts.

I commend the gentleman for bringing this subject up on the floor because it is something all America is concerned with.

Mr. CAMPBELL. I thank the gentleman from Texas. I would like to say further that I think the record is very clear again as far as Mr. Carter and Mr. Reagan are both concerned. Neither men are racist. Both are promoting, I hope, sound furtherance of racial understanding and opportunity for all people. That is the way it should be.

But the hypocrisy that does exist and the effort to divide for political gain is something that cannot go unnoticed. It is something that cannot be left to lie by the side of the road. It is something that must be called to the forefront so that if identified it can be stamped out.

I hope that by taking this special order today and pointing out the facts and the record of those who would be so pious and those who would try to inject this type of issue into a campaign, it will help to eliminate that type of injection in the future.

I yield back the remainder of my time, Mr. Speaker.

BUILD BUSINESS TO BUILD AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. COLLINS) is recognized for 15 minutes.

Mr. COLLINS of Texas. Mr. Speaker, jobs are a primary concern of America. With Congress overinvolvement in excessive legislative programs, we miss the key incentives and developments that we should provide to create jobs.

Last night I read some interesting charts in U.S. News & World Report. Let us look at the comparisons of our country with Japan between 1967 and this year. The productivity in Japan which shows the output per worker hour in manufacturing is up from 100 to 231. Whereas in the United States, productivity is only up from 100 to 129. Even Great Britain is 133 and progressive Germany is 184 while France tops this at 190. When you see American productivity is only up 29 percent per worker while wages have more than doubled in this period, you see a heavy inflation impact.

Why has America fallen behind? Some of it is due to the fact that industry did 25 percent more R. & D. back in 1967 than we do today. But the major factor is the lack of capital formation. A liberal Congress has been harassing and limiting business with excessive taxation. During the 1970's, we have seen that Japan, relating to output, has invested 60 percent more in plant and equipment than we have in the United States. Today this 60 percent of better equipment and more modern machinery reflects the present automobile crisis where Japan is outproducing us with lower costs and better quality in automobiles.

But look at the broad picture. Back in 1967 America was getting 33 percent more of our share of world exports and manufactured goods than we are today. Our manufactured goods simply cannot compete with foreign companies that have more modern machinery.

If you will look at the balance of merchandise, trade, you will see how progressively this is moving downward in recent years. In 1975, we had a $9 billion surplus. But the United States can anticipate this year a $38 billion deficit in merchandise trade.

Many in Congress seem to feel that being against business and for the little man is representing Main Street. Do they realize that the little man is very much concerned with business doing well. Business prosperity means he has a better job. When we build business in America we are building America.

In Texas we believe in encouraging the growth and development of business. Congress must take constructive measures of encouragement. This could best be done through taking the excessive taxation load off the back of business. Here are some positive suggestions. Accelerate depreciation, so that plants would be charged off in 10 years and equipment in 5 years. Reduce the capital gains tax.

Provide a large tax credit for corporation sales of goods produced in the United States and sold abroad. Reduce corporate tax to 25 percent on the first $50 million of profit each year. Eliminate bureaucratic regulations that are not required by foreign companies competition and are not essential to Americans' health and environmental needs.

America today has more Government than we need. We have more regulations than we want. And we have more taxes than we can afford to pay.

Let us always bear in mind that when we are building business we are building America.

AN OUTRAGE TO ALL OF HUMANKIND

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. PHILLIP BURTON) is recognized for 5 minutes.

● Mr. PHILLIP BURTON. Mr. Speaker, the following editorial in the New York Times of September 18, 1980 and the accompanying article expresses the outrage of the American people and the overwhelming majority of our colleagues in the U.S. Congress.

This infamous act—if not reversed—will decisively poison United States-South Korean relations for a long time to come.

KIM MUST BE SPARED

(By Jerome Alan Cohen)

CAMBRIDGE, MASS.—The sentence of death that a military court in Seoul dealt yesterday to Kim Dae Jung, the opposition leader, demonstrates the bankruptcy of United States policy toward South Korea.

Four years ago, Jimmy Carter warned the dictator Park Chung Hee that continuing repression was undermining American support for his Government. Now, in Mr. Carter's re-election campaign, he will likely portray it as a victory for his statesmanship if American pressure manages to save Mr. Kim, South Korea's most dynamic democratic leader, from death, even if Mr. Kim is left unjustly to rot in prison for life while Koreans suffer under the even more repressive regime that seized power after Mr. Park's assassination.

We could savor the ironies were the situation not so tragic. Gen. Chun Doo Hwan literally shoots his way to power, violating the United Nations Command structure by his illegitimate use of troops. He then jails Mr. Kim to prevent him from taking part in a widely demanded popular Presidential election. When protests break out in Mr. Kim's native province, the savage reaction of General Chun's troops leads to an uprising in the provincial capital of Kwangju that results in a bloodbath that shatters the painstakingly nurtured modus vivendi between the army and civilian society.

Mr. Kim then is accused of sedition for supposedly having fomented all this. To discredit the popular Mr. Kim, whose real "crime" is that in 1971 he almost unseated Mr. Park in South Korea's last relatively free election and is a persuasive proponent of the human rights that General Chun detests, the general fabricates charges that Mr. Kim is a Communist. This is doubly ironic: Mr. Kim is a Jeffersonian democrat and devout Roman Catholic who has kept his faith in the possibility of representative government despite all manner of intimidation including an auto "accident," kidnaping, house arrest, and repeated imprisonment.

General Chun, now President, has perfected the "big lie" technique, so well developed in North Korea. Mr. Park's Government was notorious for censorship that sanitized reality, but General Chun's goes beyond that, falsely telling the people that at his trial Mr. Kim admitted key charges of an indictment that sought to make up in length what it lacked in strength. Mr. Kim has admitted violations of the martial-law decree and the foreign-currency-control law, but has vigorously denied that he violated the sedition and national-security laws, under which the death penalty has been imposed. Actually, the military judges, under command influence, had to rely on the "confession" extracted from Mr. Kim in long weeks of interrogation, 15 hours per day, in an underground cell where he was often stripped nude. Mr. Kim, like his 23 codefendants, repudiated his coerced confession. Still, in a trial that travestied justice, they were all convicted—the 23 got prison terms—despite the prosecution's failure to prove what our State Department has called the "far-fetched" charges. The Korean authorities' view was summed up by the chief prosecutor who, echoing General Chun's public statements, told the court: "Such an opportunist, agitator politician must be eliminated from this land for good."

Kim Dae Jung's life must be spared, and General Chun may well be prepared to spare it—at least for now—in return for the American support he so desperately needs for legitimacy. But for Washington to barter its support so cheaply would be tragic. The sedition and national-security charges should be dropped and Mr. Kim and the other defendants released, together with all political prisoners. More fundamentally, the country should be permitted to resume the quest for an open political system that it was embarked upon when General Chun shot his way to power.

President Carter recently stated that "the Koreans are not ready for [democracy] according to their own judgment." How could anyone possibly know that about a people who now greet each other by asking, "Did you pass the night safely" Moreover, Mr. Carter is misguided if he believes that the only instrument of American pressure capable of loosening the totalitarian Chun grip is a threat to withdraw our forces from the peninsula, which might hurt our security interest in northeastern Asia. Many lesser, yet potent, pressures are available, such as ceasing military sales and discussions on providing F-16 jets, suspending negotiations for Export-Import Bank loans and other trade advantages, and using Korean-language broadcasts on the United States Armed Forces Network to correct General Chun's distortions of Washington's position. A failure to apply such pressures, in the name of preserving South Korean "stability," will leave us with a policy of mere tokenism and will convince many despairing democrats there that change can come only by revolution.

SAMURAI JUSTICE IN KOREA

Millions of people watching television this week need no further instruction in samurai justice. The loser's penalty in early 17th-century Japan was predictable and brutal—a quick thwack of the sword, a suddenly headless neck. In "Shogun," the NBC miniseries based on James Clavell's novel, the feudal savagery is rooted in Asian history which viewers may assume is mercifully past. It isn't. Samurai swords are still flashing in ostensibly civilized South Korea.

Last November, the old shogun, President Park Chung Hee, was assassinated by a trusted lieutenant. Now there is a new military overlord, Gen. Chun Doo Hwan. He may bear the more modern title of President. But he seems intent on governing in the feudal manner.

He had scores to settle, especially after a humiliating student uprising in Kwangju. That uprising was blamed on the seditious intrigues of South Korea's foremost democratic leader, Kim Dae Jung. But the evidence was tenuous; Mr. Kim and his codefendants were already in jail when the Kwangju riots occurred. So Government prosecutors duly came up with another charge, that Mr. Kim was plotting subversion during a trip to Japan in 1973. But the evidence was tainted, since Mr. Kim had

been kidnapped from Tokyo by Korean agents. The abduction outraged the Japanese, who obtained a promise that no evidence developed in Japan would be used against him. The promise was broken.

Yesterday, as expected, Mr. Kim was found guilty of sedition by a military tribunal after a semi-secret trial marred by charges of fraud and crude Government pressure. And, as feared, the sentence is death by hanging. Under President Chun's samurai code, there is seemingly no mercy for losers.

The comparison with feudal Japan may be offensive to Koreans; they are a proud people with bitter memories of their past as an imperial colony of the Japanese. Defenders of General Chun insist that Korea's judiciary is independent, and that appeals or executive clemency are still possible. They assert that a new constitution is being shaped that will give Koreans a more or less democratic system.

American policy-makers have been indulgent to a fault in accepting these assurances. While the Chun shogunate was assuming power, President Carter saw fit to remark that "the Koreans are not ready for democracy . . . according to their own judgment." Washington's tolerance has now been repaid with the Kim death sentence. Official pragmatism notwithstanding, that verdict is an affront to civilized opinion everywhere. A human rights policy that winks at samurai justice can hardly "ready" South Korea for democracy.●

AMENDMENT TO H.R. 6331

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. LEVITAS) is recognized for 5 minutes.

● Mr. LEVITAS. Mr. Speaker, when the House considers H.R. 6331 I will offer on behalf of the House Committee on Public Works and Transportation Committee, an amendment to H.R. 6331, as reported on April 24, 1980, which will be offered during consideration of the bill on the Suspension Calendar on September 22, 1980, as follows:

On page 16, line 10, after the words "owned property contained in" insert the following: "lot 49 in square 582; lot 70 in square 640 and".

On page 17, line 1, strike "$3,500,000" and insert "$11,500,000." ●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky (Mr. MAZZOLI) is recognized for 5 minutes.

● Mr. MAZZOLI. Mr. Speaker, I was unavoidably absent on Thursday, September 4, and Friday, September 5, 1980. Had I been present, I would have voted:

THURSDAY, SEPTEMBER 4, 1980

"Aye" on rollcall No. 516, on ordering the previous question on the rule providing for the consideration of H.R. 7765, the omnibus budget reconciliation bill;

"Aye" on rollcall No. 517, on the rule providing for the consideration of H.R. 7765, the omnibus budget reconciliation bill;

"Nay" on rollcall No. 518, an amendment to H.R. 7765 to strike that part of the bill which provides a once-only delay in one of the two cost-of-living adjustments which Federal civilian and military retirees are to receive in fiscal year 1981 under current law;

"Aye" on rollcall No. 519, passage of H.R. 7765, the omnibus reconciliation bill; and

"Aye" on rollcall No. 520, passage of H.R. 7115, fiscal year 1981 National Science Foundation authorization bill.

FRIDAY, SEPTEMBER 5, 1980

"Aye" on rollcall No. 521, that the House resolve itself into the Committee of the Whole for the consideration of H.R. 7235, the Rail Act of 1980.●

AGENCY FOR INTERNATIONAL DEVELOPMENT RECEIVES HELEN KELLER INTERNATIONAL AWARD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BRADEMAS) is recognized for 5 minutes.

● Mr. BRADEMAS. Mr. Speaker, nations and their governments can aspire to no higher goal than the relief of human misery, and no more urgent battle can be fought in pursuit of that goal than the battle against blindness. In the world today, more than 42 million people are blind and, sadly, 80 percent of those afflicted need not have suffered. They lacked basic medical care.

It is with that regrettable statistic in mind that I commend the tireless efforts of the Agency for International Development in the battle against blindness, efforts which recently gained worldwide recognition through AID's receipt of the 1980 Helen Keller International Award for contributions in the field of blindness. This marks only the second time that an organization, rather than an individual, has received the award, the only such international award in existence.

On every continent AID sponsors or contributes to programs to relieve the misery of those who suffer from blindness and prevent the spread of blindness to others, especially children. The award is a tribute to the Agency, and to its able Administrator, Douglas J. Bennet, Jr.

At this point, Mr. Speaker, I insert in the RECORD the remarks of Mr. John Crowley, the president of Helen Keller International, at the Award ceremony this past September 15:

HELEN KELLER AWARD PRESENTED TO A.I.D.

(Remarks by John Crowley, President, Helen Keller International, Blair House, September 15, 1980)

Mr. Bennet, Distinguished Guests, Friends:

As we gather today in this historic and beautiful house, it is my special privilege to cite the contributions that a distinguished American organization, the Agency for International Development, has made to alleviate one of the most devastating problems in the developing world—blindness.

Unfortunately, many people are little aware of the extent to which blindness not only leads to human suffering, but also takes a heavy social and economic toll, particularly in nations with limited capacity to curb it, or to aid its victims.

A few figures tell much of the story. There are more than 42 million blind people in the world today, the vast majority the poorer citizens of the poorest countries of the world . . . and their numbers are expected to double by the year 2000 unless strong action is taken . . . a quarter of a million young children in Asia alone going blind each year because of lack of vitamin A . . . some 500 million people suffering from trachoma, a viral disease that can lead to blindness . . . three and one half million people in India blind because of cataracts that have not been treated . . . 20 million Africans afflicted by river blindness caused by the bite of a small black fly . . .

Four-fifths—eighty percent—of all this blindness is preventable, and A.I.D. is in the forefront of global efforts to see that it is prevented.

Since 1974, A.I.D. has been participating in the international struggle to avert the blindness in preschool children caused by vitamin A deficiency. It has sponsored an organization of experts in the field—the International Vitamin A Consultative Group—designed to share scientific findings and develop new methods of treating the disease, while promoting prevention efforts.

Because of A.I.D.'s interest and support of work by government and private voluntary organizations, hundreds of thousands of children in Africa, Asia, and Latin America can look forward to lifetimes of vision.

A.I.D. is supporting a cooperative program to control and reduce river blindness in seven West African countries, where visitors to rural areas can still find villages where all the adults are being led around by children, so high is the rate of blindness.

In more than 30 countries, A.I.D. has supported the voluntary sector in its provision of eye care service. Programs in many places emphasize the prevention of eye disease and training of physicians and other health workers to combat blindness. With A.I.D.'s help, corneas have been supplied for sight-saving transplants in 62 countries.

During the past 20 years, A.I.D. has assisted American institutions overseas in attempts to demonstrate the best of U.S. achievements in education and medicine. Many of these U.S. hospitals and medical centers have ophthalmological programs, particularly in the field of trachoma and river blindness.

Assistance to the victims of blindness—so many of whose sight could have been saved if help had arrived in time—is another important aspect of A.I.D. involvement. The first blind children in Indonesia are going to school along with sighted peers because of an A.I.D.-supported program that has already reached 15,000 people and will ultimately reach every blind child in Indonesia. A new A.I.D. grant will extend this opportunity to blind children in Fiji, and provide rehabilitation services as well.

A full-scale nationwide project to enable blind adults to live independent and self-supporting lives is underway in the Philippines, with the help of A.I.D. funds. The aim is to reach all 600,000 blind persons in that area.

Mr. Bennet, it is because of these, and many more, contributions that the Agency for International Development has made to the worldwide fight against blindness, that the Board of Trustees of Helen Keller International takes pleasure in presenting the Helen Keller International Award in this, Helen Keller's centennial year, to the agency that you lead so effectively.

We can only say, with deep respect and gratitude, that the Agency for International Development has made outstanding efforts to help prevent blindness and eye disease, and to create better lives for those who have lost their sight, in the developing world. Because of A.I.D.'s assistance, millions of people can see today, and hundreds of thousands of blind persons are leading purposeful lives.●

RUNNING MEAN

(Mr. BAUMAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BAUMAN. Mr. Speaker, in connection with my 1-minute speech before the House today entitled "Carter Should Apologize to America," I wish to insert at this point an editorial that appeared in the Washington Post on today, September 18, 1980, as follows:

RUNNING MEAN

It is a staple of this year's cynical political wisdom that running for office is what Jimmy Carter does best. We have a different view. We think it may be what he does worst. Mr. Carter, as a candidate, tends to convey a mean and frantic nature. This has been demonstrated in many ways over the past several weeks—and months.

First, the president seems determined to discredit, rather than to prevail over, his opposition. It's as if he doesn't quite believe they are entitled to run against him, and so he won't actually fight them, but rather will only provide an endless series of complaints about their candidacies and their character. You don't have to be a John Anderson fan to be made uncomfortable by the way in which Mr. Carter has sought to paint the Anderson effort as somehow illegitimate, not entitled to a hearing. And you don't have to be a Reagan fan to have noticed that Mr. Carter has abandoned all dignity in his round-the-clock attack on Mr. Reagan's character and standing, jumping him (in a most sanctimonious tone of voice) for "offenses" similar to many Mr. Carter himself has committed, and, most recently, concluding from all this that Mr. Reagan is a "racist" and a purveyor of "hatred." This description doesn't fit Mr. Reagan. What it fits, or more precisely, fits into is Jimmy Carter's miserable record of personally savaging political opponents (Hubert Humphrey, Edward Kennedy) whenever the going got rough.

Ronald Reagan is not a hater and he is not a racist; there are real reasons to challenge his claim to the presidency, but these are not those reasons. Mr. Carter's "evidence" for his charges is so weak as to be pitiable and also puts one in mind of a series of comparable failures and defaults of his own over the years, from "ethnic purity" in 1976 to silence on the civil rights bill in 1964 that could as easily have been distorted by an opponent. In a way, the most disturbing feature of the Carter campaign technique is that he displays a certain contempt for the evidence of our own eyes, asserting these things that run counter to what we can see and already know, as if he believed it didn't matter, that people would believe anything they were told. Only the day before his racism-and-hatred remarks, for instance, Mr. Carter—the man who has managed to keep out of debates with his competitors for a year now, and who has reduced his press conferences to the merest trickle—was telling the public, in his most outraged-for-democracy fashion that it was a terrible thing that Mr. Reagan was refusing to be "cross-examined" as anyone who aspired to the presidency should be.

So the president calls names, and he baldly recreates his own record (for the better) and that of everyone else (for the worse) and he displays and alarming absence of magnanimity, generosity and size when he is campaigning. No, of course, the other candidates are not just going around tossing basketfuls of May flowers to each other either, and yes, their campaigns are full of borderline fouls and blurrings of the record. But Jimmy Carter, as before, seems to have few limits beyond which he will not go in the abuse of opponents and reconstruction of history.

The purpose of a campaign is to get elected. But a campaign can win at too great a cost. A campaign can be conducted in a way that casts doubt on the purposes and policies of an incumbent's own government and record. And a campaign can offend and turn off the very people the candidate expects to win, people who want to and normally would support him, if he is ruthless and reckless in seeking their vote. There must be a better case for his reelection than the one the president is now making.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. CAVANAUGH (at the request of Mr. WRIGHT), for September 17 through 26, on account of attending the meeting of the Inter-American Development Bank.

To Mr. CLAY (at the request of Mr. WRIGHT), for today, on account of a necessary absence.

To Mr. CORMAN (at the request of Mr. WRIGHT), after 10:10 a.m. today, on account of official business.

To Mr. DERWINSKI (at the request of Mr. RHODES), for the week of September 22, on account of official business.

To Mr. MCCLORY (at the request of Mr. RHODES), for the week of September 15, on account of official business.

To Mr. STOKES (at the request of Mr. WRIGHT), for today, on account of a necessary absence.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. EVANS of Delaware) to revise and extend their remarks and include extraneous material:)

Mr. CAMPBELL, for 30 minutes, today.

Mr. COLLINS of Texas, for 15 minutes, today.

(The following Members (at the request of Mr. BIAGGI) to revise and extend their remarks and include extraneous material:)

Mr. GONZALEZ, for 15 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. PHILLIP BURTON, for 5 minutes today.

Mr. LEVITAS, for 5 minutes, today.

Mr. MAZZOLI, for 5 minutes, today.

Mr. BRADEMAS, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. WYLIE, and to include extraneous matter immediately following remarks of the gentleman from Mississippi on H.R. 7511.

Mr. CLAUSEN to insert extraneous material on remarks made during debate on H.R. 85.

Mr. JOHNSON of California to revise and extend his remarks and insert in the RECORD immediately before remarks of Mr. ROBERTS.

(The following Members (at the request of Mr. EVANS of Delaware) and to include extraneous matter:)

Mr. WINN.

Mr. DERWINSKI in two instances.

Mr. MOORHEAD of California.

Mr. ROUSSELOT.

Mr. PORTER in two instances.

Mr. LAGOMARSINO in three instances.

Mr. RINALDO.

Mr. SEBELIUS.

Mr. ERDAHL.

Mr. O'BRIEN.

Mr. BROYHILL.

Mr. PETRI.

Mr. RITTER.

Mr. DORNAN.

Mr. BERKLEY in two instances.

Mr. HILLIS.

Mr. DANNEMEYER.

Mr. REGULA.

(The following Members (at the request of Mr. BIAGGI), and to include extraneous matter:)

Mr. OTTINGER.

Mr. FORD of Tennessee.

Ms. FERRARO.

Mr. GAYDOS.

Mr. SIMON in two instances.

Mr. PREYER.

Mr. FAUNTROY.

Mr. DODD.

Mr. OBERSTAR.

Mr. MAZZOLI in three instances.

Mr. MCDONALD in two instances.

Mr. LEVITAS.

Mr. ROSENTHAL.

Mr. FAZIO.

Mr. MCHUGH.

Mr. STARK.

Mr. BALDUS.

Mr. SANTINI.

Mr. LONG of Louisiana.

Mr. DUNCAN of Oregon.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 670. An act to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes;

S. 1125. An act to improve and expand the Federal crop insurance program, and for other purposes; and

S. 2443. An act to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3292. An act to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes; and

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day".

BILLS AND JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on September 16, 1980 present to the President, for his approval, bills and a joint resolution of the House of the following titles:

H.R. 5766. An act to authorize additional Reserve Officers' Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes;

H.R. 6940. An act to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that act to assure the safety and nutrition of infant formulas, and for other purposes, and

H.J. Res. 607. An act making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

ADJOURNMENT

Mr. BIAGGI. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 35 minutes p.m.), the House adjourned until tomorrow, Friday, September 19, 1980, at 10 a.m.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports of various House committees, and delegations traveling under an authorization from the Speaker, concerning the foreign currencies and U.S. dollars utilized by them during the second quarter of calendar year 1980 in connection with foreign travel pursuant to Public Law 95–384 are as follows:

AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON AGRICULTURE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1980

Name of Member or employee	Date: Arrival	Date: Departure	Country	Per diem [1]: Foreign currency	Per diem [1]: U.S. dollar equivalent or U.S. currency [2]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency [2]	Other purposes: Foreign currency	Other purposes: U.S. dollar equivalent or U.S. currency [2]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency [2]
Hon. James Johnson	4/3	4/5	France		188.00						
	4/5	4/8	Egypt		225.00						
	4/8	4/12	Israel		320.00						
	4/12	4/14	Tunisia		246.00						
	4/14	4/15	Spain		96.00						
Total transportation via military aircraft							3,228.00				
Total per diem					(1,075.00)						
Committee total					1,075.00		3,228.00				

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

THOMAS S. FOLEY, Chairman.

Sept. 3, 1980.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO COSTA RICA AND NICARAGUA, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JUNE 6 AND 10, 1980

Name of Member or employee	Date: Arrival	Date: Departure	Country	Per diem [1]: Foreign currency	Per diem [1]: U.S. dollar equivalent or U.S. currency [2]	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency [2]	Other purposes: Foreign currency	Other purposes: U.S. dollar equivalent or U.S. currency [2]	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency
Jim Wright	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Bill Alexander	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Stephen L. Neal	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,070	207.00			1,708.80	170.88	3,778.80	377.88
Military air transportation							839.82				839.82
Kent Hance	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Katherine Mitchell	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Wilson Morris	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Kirk O'Donnell	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Elizabeth Daoust	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
George M. Ingram	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
J. Edward Fox	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Hal Lacy	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Edward A. Lee	6/6	6/7	Costa Rica	640.50	75.00			644.86	75.51	1,285.36	150.51
	6/7	6/10	Nicaragua	2,250	225.00			1,708.80	170.88	3,958.80	395.88
Military air transportation							839.82				839.82
Committee total					3,582.00		10,077.84		2,956.68		16,616.52

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JIM WRIGHT, Chairman.

Sept. 10, 1980.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5332. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report that no gifts of more than minimal value purchased with appropriated or unappropriated funds were given to foreign individuals by the U.S. Government during fiscal year 1979, pursuant to section 515(b)(2) of Public Law 95–105; to the Committee on Foreign Affairs.

5333. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report that no gifts of more than minimal value purchased with appropriated or unappropriated funds were given to foreign individuals by the U.S. Government during fiscal year 1980, pursuant to section 515(b)(2) of Public Law 95–105; to the Committee on Foreign Affairs.

5334. A letter from the Director, Federal Emergency Management Agency, transmitting a draft of proposed legislation to authorize the Director of the Federal Emergency Management Agency to provide transportation for certain persons engaged in activities at the Federal Emergency Management Agency Special Facility; to the Committee on Government Operations.

5335. A letter from the Chairman, U.S. Commission on Civil Rights, transmitting a report on civil rights issues in immigration, pursuant to section 104(c) of Public Law 85–315, as amended; to the Committee on the Judiciary.

5336. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend title 14, United States Code, to provide for selective preappointment travel to the Coast Guard Academy for cadet applicants; to the Committee on Merchant Marine and Fisheries.

5337. A letter from the Comptroller General of the United States, transmitting a report on equal opportunity in referrals of the U.S. Employment Service (HRD–80–95, Sept. 17, 1980); jointly, to the Committees on Government Operations and Education and Labor.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMPSON: Committee of conference. Conference report on H.R. 3904 (Rept. No. 96–1343). Ordered to be printed.

Mr. ULLMAN: Committee on Ways and Means. House Concurrent Resolution 376. Concurrent resolution relative to Japan-United States trade; with amendment (Rept. No. 96–1345). Referred to the House Calendar.

Mr. ULLMAN: Committee on Ways and Means. H.R. 7942. A bill to approve and implement the protocol to the trade agreement relating to customs valuation, and for other purposes (Rept. No. 96–1346). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 8081. A bill to establish the United States Holocaust Memorial Council; with amendment (Rept. No. 96–1347, pt. 1). Ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HARRIS: Committee on the Judiciary. H.R. 3459. A bill to waive the statute of limitations with regard to the claim of Eazor Express, Inc., of Pittsburgh, Pa., against the United States; with amendments (Rept. No. 96–1344). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. PERKINS (for himself, Mr. FORD of Michigan, Mr. GOODLING, and Mr. ASHBROOK):

H.R. 8145. A bill to dismiss certain cases pending before the Education Appeal Board; to the Committee on Education and Labor.

By Mr. CORMAN (for himself, Mr. RANGEL, Mr. BRODHEAD, and Mr. DOWNEY):

H.R. 8146. A bill to provide a program of Federal supplemental unemployment compensation; to the Committee on Ways and Means.

By Mr. CLAUSEN:

H.R. 8147. A bill to provide a comprehensive system of liability and compensation for damage and removal costs resulting from spills of oil and hazardous substances, and for other purposes; jointly, to the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means.

By Mr. CORMAN:

H.R. 8148. A bill to allow an income tax deduction for certain motor carrier operating authorities to offset the impact of the Motor Carrier Reform Act of 1980; to the Committee on Ways and Means.

By Mr. DERWINSKI:

H.R. 8149. A bill to extend duty-free treatment to prayer shawls, bags for the keeping of prayer shawls, and certain headware used in religious observances; to the Committee on Ways and Means.

By Mr. DUNCAN of Oregon (for himself and Mr. ULLMAN):

H.R. 8150. A bill to amend the Internal Revenue Code of 1954 to exempt from the Federal motor fuels excise taxes fuel used in aircraft while engaged in certain activities related to planting, caring for, and harvesting of trees; to the Committee on Ways and Means.

By Mr. DORNAN:

H.R. 8151. A bill to amend title 18 of the United States Code to make rape a Federal crime if committed after travel in interstate commerce with the intent to commit rape, and to provide for the establishment within the Federal Bureau of Investigation a rape prevention information center; to the Committee on the Judiciary.

By Mr. FISHER:

H.R. 8152. A bill to amend the Internal Revenue Code of 1954 to encourage foreign pension plans to invest in the United States; to the Committee on Ways and Means.

By Mr. JENKINS (for himself, Mr. SMITH of Iowa, and Mr. FRENZEL):

H.R. 8153. A bill to amend the Internal Revenue Code of 1954 to clarify the tax-exempt status of agricultural and horticultural organizations operated for the purpose of bargaining collectively for the sale of members' products; to the Committee on Ways and Means.

By Mr. JENKINS (for himself, Mr. HEFTEL, and Mr. HOLLAND):

H.R. 8154. A bill to provide that Revenue Ruling 80–60 shall not require a change in the taxpayer's method of accounting for taxable years beginning before 1980; to the Committee on Ways and Means.

By Mr. ROUSSELOT:

H.R. 8155. A bill to amend the Internal Revenue Code of 1954 to cut in half the capital gains tax on the sale of certain stocks and bonds of qualified small corporations; to the Committee on Ways and Means.

By Mr. ULLMAN:

H. R. 8156. A bill to extend for an additional 3 years certain provisions relating to controversies involving whether individuals are employees for purposes of the employment taxes; to the Committee on Ways and Means.

By Mr. SWIFT (for himself, Mr. STAGGERS, Mr. UDALL, Mr. DINGELL, Mr. BROWN of Ohio, Mr. CLAUSEN, Mr. KAZEN, Mr. LUJAN, Mr. SHARP, Mr. SYMMS, Mr. ULLMAN, Mr. FOLEY, Mr. PRITCHARD, Mr. MCCORMACK, Mr. DUNCAN of Oregon, Mr. BONKER, and Mr. DICKS):

H.R. 8157. A bill to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River power system to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes; jointly, to the Committees on Interior and Insular Affairs and Interstate and Foreign Commerce.

By Mr. AUCOIN:

H.R. 8158. A bill to amend the Agricultural Adjustment Act to authorize marketing research and promotion projects, including paid advertising for filberts; to the Committee on Agriculture.

By Mr. DOWNEY:

H.R. 8159. A bill to provide for the same standard mileage rate to be used in determining the amount of income tax deductions for charitable and medical uses of automobiles as is used in determining the amount of income tax deductions for business uses of automobiles; to the Committee on Ways and Means.

By Mr. FISHER:

H.R. 8160. A bill to amend the Safe Drinking Water Act to permit small communities to comply with certain notice provisions by an appropriate means other than through publication in a newspaper of general circulation; to the Committee on Interstate and Foreign Commerce.

By Mr. GAYDOS:

H.R. 8161. A bill to designate the U.S. Federal Building in Pittsburgh, Pa., as the "William S. Moorhead Building"; to the Committee on Public Works and Transportation.

By Mr. HOLLAND:

H.R. 8162. A bill to authorize the Secretary of the Interior to assist in the preservation of historic Camden in the State of South Carolina, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. MCKINNEY (for himself, Mr. STARK, Mr. HARRIS, Mr. FISHER, and Mr. FAUNTROY):

H.R. 8163. A bill to amend the National Capital Transportation Act of 1969 to authorize additional Federal contributions for the designing, construction, and equipping of a rail rapid transit line to the Dulles International Airport; jointly, to the Committees on District of Columbia and Public Works and Transportation.

By Mr. SEIBERLING:

H.R. 8164. A bill to amend the trade adjustment assistance provisions of the Trade Act of 1974 in order to include periods of authorized sick leave or absence from work due to work-related injury within the computation of weeks of employment for purposes of establishing worker eligibility for such assistance, and for other purposes; to the Committee on Ways and Means.

By Mr. CORMAN:

H.J. Res. 613. Joint resolution authorizing the President to proclaim May 13 of each year as "National Indian Day"; to the Committee on Post Office and Civil Service.

By Mr. GUARINI:

H. Con. Res. 433. Concurrent resolution expressing the sense of the Congress that the U.S. Postal Service and the Postal Rate Commission should take such action as may be necessary to establish a special "citizen's rate" for domestic first-class mail that affords individual nonbusiness mail users a reduced domestic first-class mail rate; to the Committee on Post Office and Civil Service.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

529. By the SPEAKER: Memorial of the Legislature of the State of California, relative to energy conservation financing; to the Committee on Interstate and Foreign Commerce.

530. Also, memorial of the Legislature of the State of California, relative to funding the Olympic games; jointly, to the Committees on Ways and Means and the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DEVINE:

H.R. 8165. A bill for the relief of (present and former) employees of the (Defense Supply Agency) at the Defense Construction Supply Center in Columbus, Ohio; to the Committee on the Judiciary.

By Mr. PRICE:

H.R. 8166. A bill for the relief of Phyllis Steiner; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 312: Mr. LONG of Maryland.

H.R. 389: Mr. MURPHY of New York.

H.R. 654: Mr. DOWNEY.

H.R. 2552: Mr. SPENCE.

H.R. 3609: Mr. NOWAK, Mr. ROTH, and Mr. DOUGHERTY.

H.R. 5330: Mr. ULLMAN.

H.R. 6664: Mr. ANTHONY, Mr. DICKINSON, Mr. ULLMAN, Mr. BOWEN, Mr. FITHIAN, Mrs. FENWICK, Mr. GRAMM, Mr. STUDDS, Mr. APPLEGATE, Mr. CONTE, Mr. SEBELIUS, Mr. SYNAR, Mr. LUNDINE, and Mr. MARLENEE.

H.R. 6709: Mr. FISH.

H.R. 7006: Mr. GINGRICH.

H.R. 7348: Mr. HUBBARD, Mr. HIGHTOWER, Mr. STENHOLM, and Mr. STUMP.

H.R. 7716: Mr. HANCE, Mr. ROSE, Mr. LEACH of Louisiana, Mr. BARNARD, Mr. FISH, Mr. LOEFFLER, Mr. LEHMAN, Mr. HIGHTOWER, Mr. YOUNG of Missouri, and Mr. NICHOLS.

H.R. 7773: Mr. BREAUX and Mr. MOORE.

H.R. 7983: Mr. FORSYTHE, Mr. MOORE, Mr. MARRIOTT, Mr. GUARINI, Mr. PORTER, Mr. HOLLENBECK, Mr. HORTON, Mr. MARKS, Mr. ALBOSTA, Mr. GOLDWATER, Mr. WHITEHURST, Mr. GRISHAM, Mr. JEFFORDS, Mr. KRAMER, Mr. LEWIS, Mr. LOTT, Mr. STANGELAND, and Mr. LLOYD.

H.R. 8019: Mr. WEAVER.

H.R. 8081: Mr. JOHN L. BURTON, Mr. ASHLEY, Mr. COTTER, Mr. HORTON, and Mr. SANTINI.

H.R. 8117: Mr. CORCORAN, Mr. HYDE, Mr. MARLENEE, Ms. MIKULSKI, and Mr. DERWINSKI.

H.J. Res. 596: Mr. FAZIO, Mr. FRENZEL, Mr. LUNDINE, Mr. BEDELL, Mr. SANTINI, Ms. FERRARO, Mr. GOLDWATER, Mr. DOWNEY, Mr. DICKS, Mr. EDGAR, Mr. JENRETTE, Mrs. FENWICK, Mr. DONNELLY, Mr. FOWLER, Mr. GINN, Mr. FORD of Tennessee, Mr. FOUNTAIN, Mr. FLIPPO, Mr. HOWARD, Mr. LELAND, Mr. MATHIS, Mr. MOORE, Mr. MURPHY of Pennsylvania, Mr. MOFFETT, Mr. HEFTEL, Mr. WOLPE, Mr. HEFNER, Mr. MARTIN, Mr. O'BRIEN, Mr. PASHAYAN, Mr. NATCHER, and Mr. NOLAN.

H. Con. Res. 134: Mr. HYDE and Mr. CLINGER.

H. Con. Res. 171: Mr. LEHMAN.

H. Con. Res. 293: Mr. CHAPPELL.

H. Con. Res. 395: Mrs. HECKLER.

H. Con. Res. 422: Mr. SEBELIUS.

H. Res. 760: Mr. SPENCE, Mr. BERKLEY, Mr. MARRIOTT, Mr. COLLINS of Texas, Mr. WINN, Mr. CORCORAN, Mr. KRAMER, Mr. MICHEL, Mr. LENT, Mr. SHUMWAY, Mr. WHITTAKER, Mr. LUNGREN, Mr. FORSYTHE, Mr. GILMAN, and Mr. RUDD.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. WYATT:

—Page 37, after line 14, insert the following:

IXTOC I OILSPILL

SEC. 114. (a) Claims may be asserted by any United States claimant against the Oil Pollution Trust Fund established in section 521 of this Act for any compensable damage (within the meaning of section 531 of this Act) incurred by such claimant and arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979; *Provided, however*, That the obligations of the Oil Pollution Trust Fund to carry out this subsection shall not exceed $75 million. If compensable damages exceed $75 million, they shall be reduced proportionally as determined by the Secretary.

(b) The provisions of this title, other than those provisions determined by the Secretary to be inconsistent with this section, shall apply to claims under subsection (a).

(c)(1) Except as provided in paragraphs (2) and (3) of this subsection, no United States claimant shall be eligible to receive compensation under subsection (a) of this section for any damage referred to in such subsection for which such claimant has not been compensated if such claimant has presented a claim for compensation for such damage under any other Federal or State law.

(2) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is not reduced to judgment before the date of enactment of this Act may be eligible to receive compensation under such subsection. Presentation by such claimant of a claim for compensation under subsection (a) of this section shall be irrevocable, shall constitute the exclusive relief which may be granted with respect to the damage for which such claim is presented, and shall constitute a waiver by such claimant of any right to relief to which such claimant may be entitled under such other Federal or State law with respect to such damage.

(3) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is reduced to judgment before the date of the enactment of this Act may be eligible to receive compensation under such subsection. Such claimant may present such judgment to the Secretary. If the Secretary determines that such claimant is entitled to receive compensation under either such subsection, then the Secretary shall offer to pay such compensation, not to exceed the amount of any award made in such judgment, in satisfaction of such judgment. Acceptance of such offer by such claimant shall constitute full satisfaction of such judgment with respect to each claim for any damage which is referred to in subsection (a) of this section and which is merged in such judgment.

By Mr. YOUNG of Alaska:

(Amendment to the amendment offered by Mr. BREAUX.)

—Page 40, after line 4, insert the following:

"(4) The amount of any TAP fund surplus not used as an advance payment under section 541(d) shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel."

H.R. 4370

By Mr. FLORIO:

(Amendment to the amendment in the nature of a substitute.)

—Page 7, line 11, strike out "and".

Page 7, line 15, strike out the period and substitute "; and".

Page 7, after line 15, insert:

(6) the Interagency Task Force established under subsection (i) has reviewed the application for issuance of such certificate in the manner required under such subsection and that the Commission has taken into account any terms and conditions recommended by the Task Force.

Page 11, after line 25, insert:

(i)(1) The Secretaries of the Interior, Transportation, and Energy and the Administrator of the Environmental Protection Agency shall jointly establish an Interagency Task Force for purposes of carrying out the review and making recommendations to the Commission under this subsection. Such departments and agency shall make available to the Task Force such personnel of the department and agency as the Task Force deems necessary to carry out its functions under this subsection.

(2) Whenever application is made to the Commission for a certificate of public convenience and necessity under this section, the Commission shall promptly transmit a copy of such application to the Interagency Task Force established pursuant to paragraph (1). Upon receipt thereof, the Task Force shall review—

(A) the effects of the proposed pipeline and related facilities on water quality at the point of discharge;

(B) the extent to which solid waste (within the meaning of the Solid Waste Disposal Act) will be disposed of in connection with the operations of the pipeline and the hazards associated with such waste disposal; and

(C) any other effects which such pipeline may have on public health and the environment.

For purposes of such review, the Task Force may, in addition to any other information available to it, utilize information developed pursuant to the requirements of subsection (f) of this section.

(3) Following its review under paragraph (2) with respect to any application for a certificate of public convenience and necessity, the Interagency Task Force shall report to the Commission on its findings under (i)(2)(A)(B)(C) and shall make recommendations to the Commission, for inclusion in the certificate, the terms and conditions necessary to ensure that the proposed pipeline will not—

(A) create undue adverse effects on water quality at the point of discharge;

(B) result in solid waste disposal which presents an unreasonable risk to public health or the environment; and

(C) present an unreasonable likelihood of releases of any material from the pipeline or related facilities which may endanger public health or the environment.

Page 20, beginning in line 1, strike out "air and water quality standards" and substitute "standards and requirements relating to air quality, water quality, and solid waste."

—Page 40, line 12, strike out "and".

Page 40, line 16, strike out the period and substitute "; and".

Page 40, after line 16, insert:

(6) the Interagency Task Force established under subsection (k) has reviewed the application for issuance of such certificate in the manner required under such subsection and that the Commission has taken into account any terms and conditions recommended by the Task Force.

Page 46, after line 16, insert:

(k)(1) The Secretaries of the Interior, Transportation, and Energy and the Administrator of the Environmental Protection Agency shall jointly establish an Interagency Task Force for purposes of carrying out the review and making recommendations to the Commission under this subsection. Such departments and agency shall make available to the Task Force such personnel of the departments and agency as the Task Force deems necessary to carry out its functions under this subsection.

(2) Whenever application is made to the Commission for a certificate of public convenience and necessity under this section, the Commission shall promptly transmit a copy of such application to the Interagency Task Force established pursuant to paragraph (1). Upon receipt thereof, the Task Force shall review—

(A) the effects of the proposed pipeline and related facilities on water quality at the point of discharge;

(B) the extent to which solid waste (within the meaning of the Solid Waste Disposal Act) will be disposed of in connection with the operations of the pipeline and the hazards associated with such waste disposal; and

(C) any other effects which such pipeline may have on public health and the environment.

For purposes of such review, the Task Force may, in addition to any other information available to it, utilize information developed pursuant to the requirements of subsection (f) of this section.

(3) Following its review under paragraph (2) with respect to any application for a certificate of public convenience and necessity, the Interagency Task Force shall report to the Commission on its findings under (k)(2)(A)(B)(C) and shall make recommendations to the Commission, for inclusion in the certificate, the terms and conditions necessary to insure that the proposed pipeline will not—

(A) create undue adverse effects on water quality at the point of discharge;

(B) result in solid waste disposal which presents an unreasonable risk to public health or the environment; and

(C) present an unreasonable likelihood of releases of any material from the pipeline or related facilities which may endanger public health or the environment.

Page 56, line 4, strike out "air and water quality standards" and substitute "standards and requirements relating to air quality, water quality, and solid waste."

H.R. 6386

By Mr. HUCKABY:

—Page 2, after line 12, add the following new sections:

SEC. 2. Section 1004(f) of the Legal Services Corporation Act of 1974 (42 U.S.C. 2996c(f)) is amended—

(1) by striking out "advisory" each place it appears in the subsection; and

(2) by adding at the end the following new sentence: "The council shall have the power to approve or disapprove the making of each grant and the entering into of each contract under this title which affects such State, as determined by the president of the Corporation.".

SEC. 3. Section 1007 of the Legal Services Corporation Act of 1974 (42 U.S.C. 2996f) is amended—

(1) by striking out "and" at the end of paragraph (9) of subsection (a);

(2) by striking out the period at the end of paragraph (10) of subsection (a) and inserting in lieu thereof "; and" and the following new paragraph:

"(11) insure that the councils established pursuant to section 1004(f) have the opportunity to approve or disapprove the making of grants and the entering into of contracts under this title."; and

(3) by adding at the end of subsection (e) the following new sentence: "No grant may be made and no contract entered into under this title unless the council, established pursuant to section 1004(f), of the State most directly affected by such action, as determined by the president of the Corporation, approves such action.".

—Page 2, after line 12, add the following new section:

SEC. 2. Section 1003(b) of the Legal Services Corporation Act of 1974 (42 U.S.C. 2996b(b)) is amended—

(1) by striking out "principal" in the first sentence; and

(2) by adding at the end the following new sentence: "The Corporation may not maintain any office at any location except in the District of Columbia.".

—Page 2, after line 12, add the following new section:

SEC. 3. Section 1006(f) of the Legal Services Corporation Act of 1974 (42 U.S.C. 2996e(f)) is amended by striking out "for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process" and inserting in lieu thereof "vexatiously or in bad faith".

—Page 2, after line 12, add the following new section:

SEC. 2. Section 1007 of the Legal Services Corporation Act of 1974 (42 U.S.C. 2996f) is amended—

(1) by inserting at the end of subsection (e) the following new sentences: "No grant may be made and no contract entered into under this title if the governing body of any of the political subdivisions of a State directly affected by such action, as determined by the president of the Corporation with the advice and consent of the council established pursuant to section 1004(f) of such State, disapprove such action not later than 60 days after the affected political subdivision receives notification of the action pursuant to subsection (f). Any disapproval under this subsection shall include a specification of changes proposed in the method of making the grant or entering into the contract."; and

(2) by inserting in the first sentence of subsection (f) "each political subdivision of a State directly affected by such action (as determined pursuant to subsection (e) by the president of the Corporation with the advice and consent of the council of such State)," after "the Governor,".

By Mr. LUNGREN:

—Page 2, line 11, strike out "$380,000,000", and insert in lieu thereof "$343,791,000".

—Page 2, line 12, strike out "$450,000,000", and insert in lieu thereof "$367,856,000".

H.R. 7020

By Mr. MILLER of California:

—Page 35, after line 7 insert:

"WORKER SAFETY

"SEC. 3044. (a) As promptly as practicable after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Secretary of Labor shall promulgate occupational safety and health standards under the Occupational Safety and Health Act of 1970 to assure safe working conditions for employees involved in relocation, containment, clean-up or other remedial actions undertaken with respect to hazardous waste sites. Such standards shall contain procedures requiring employers to notify their employees of the specific dangers associated with exposure to the hazardous substances located at any hazardous waste site at which such employee is employed. The rules promulgated as provided in this subsection shall not contain an exemption from the requirements of such rules for any employer on the basis of the number of employees employed by the employer or on any other basis.

"(b) No funds appropriated pursuant to this or any other Act may be used in the relocation, containment, cleanup, or other remedial action with respect to any hazardous waste site unless the Administrator determines that such action will be carried out in a manner consistent with the rules promulgated under subsection (a) of this section.

"(c) The provisions of the Occupational Safety and Health Act of 1970 shall apply for purposes of the standard required to be promulgated as provided in this section, and the terms 'employee' and 'employer' shall, for purposes of this section, have the same meanings as when such terms are used in the Occupational Safety and Health Act of 1970.".

Page 51, before line 1, after the item relating to section 3043 insert:

"Sec. 3044. Worker safety."

H.R. 7112

By Mr. WALGREN:

—Page 3, after line 21 insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ADDITIONAL ALLOCATIONS TO LOCAL GOVERNMENTS.—There are authorized to be appropriated to the Trust Fund to make additional allocations to local governments under section 107 for such entitlement period—

"(1) $500,000,000 for the entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(2) $1,000,000,000 for the entitlement period beginning October 1, 1982, and ending September 30, 1983.

Page 6, line 3, strike out the close quotation marks and the following period and insert after such line the following:

"SEC. 107. ADDITIONAL AND ALTERNATIVE ALLOCATIONS TO LOCAL GOVERNMENTS.

"(a) IN GENERAL.—Except as provided in subsection (b), from any amount appropriated pursuant to section 105(c) for any entitlement period beginning on or after October 1, 1981, there shall be allocated to each unit of local government an amount which bears the same ratio to the amount so appropriated for that period as the entitlement of that unit under section 108 bears to the sum of the entitlements of all units of local government under such section.

"(b) ALTERNATIVE ALLOCATION.—If the amount appropriated pursuant to section 105(c)—

"(1) for the entitlement period beginning October 1, 1981, and ending September 30, 1982, equals or exceeds $460,000,000; or

"(2) for the entitlement period beginning October 1, 1982, and ending September 30, 1983, equal or exceeds $920,000,000,

then the sum of the amount appropriated under sections 105(b) and 105(c) shall be allocated among the States in accordance with section 106, and the amount so allocated to each State shall be allocated among the units of local government of such State in accordance with subsections (c), (d), (e) and (f) of this section and shall not be allocated under section 108.

"(c) ALLOCATION AMONG UNITS OF LOCAL GOVERNMENT.—

"(1) IN GENERAL.—The amount allocated for any entitlement period (for which this subsection applies) to a State under section 106 shall be allocated among the units of local government within such State in accordance with this subsection and subsections (d), (e), and (f), except that, for the entitlement period beginning October 1, 1981, and ending September 30, 1982, the amount allocated to any State for such entitlement

period shall be allocated among the units of local government within such State by—

"(A) determining the amount which would be allocated to each such unit from such amount if such amount were allocated in accordance with section 106,

"(B) adding the amount to the amount which would be allocated to each such unit from such amount if such amount were allocated in accordance with this subsection and subsections (d), (e), and (f), and

"(C) dividing that sum by two.

"(2) ALLOCATION TO UNITS OF LOCAL GOVERNMENT.—Except as otherwise provided in this section, the amount allocated to a State under section 106 shall be allocated among the units of local government (other than Indian tribes and Alaskan native villages) located in that State so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

"(A) the population of that unit of local government, multiplied by the general tax effort factor of that unit of local government, multiplied by the relative income factor of that unit of local government, bears to

"(B) the sum of the products determined under subparagraph (A) for all such units.

"(3) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a State there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying paragraph (2) there shall be allocated to such tribe or village a portion of the amount allocated to the State for the entitlement period which equals the product resulting from multiplying—

"(A) the population of that tribe or village within that State, by

"(B) an amount equal to 110 percent of the amount allocated to such State as determined under section 106, divided by the population of that State.

"(d) ENTITLEMENT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under section (c).

"(2) MAXIMUM AND MINIMUM PER CAPITA ENTITLEMENT.—Subject to the provisions of paragraphs (3) and (4), the per capita amount allocated to any unit of local government within a State under this section for any entitlement period shall not be less than 20 percent nor more than 145 percent of the amount allocated to the State under section 106, divided by the population of that State.

"(3) LIMITATION.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of—

"(A) such government's adjusted taxes (as determined without regard to subsection 109(d)(3)); and

"(B) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

"(4) ENTITLEMENT LESS THAN $200, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this paragraph) the entitlement of any unit of local government—

"(A) would be less than $200 for any entitlement period, or

"(B) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be distributed to other units of local government in the State in accordance with regulations prescribed by the Secretary.

"(e) ADJUSTMENT OF ENTITLEMENT.—In adjusting the allocation of any unit of local government, the Secretary shall make any adjustment required under subsection (d)(2) first, any adjustment required under subsection (d)(3) next, and any adjustment required under subsection (d)(4) last.

"(f) DEFINITIONS.—The definitions and related rules contained in section 108(d) shall apply for purposes of this section.".

By Mr. WYDLER:

—Page 3, line 22, redesignate subsection (c) as subsection (d) and after line 21 insert the following new subsection:

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ALLOCATIONS TO STATE GOVERNMENTS.—

"(1) IN GENERAL.—In the case of each entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $2,300,000,000 for such entitlement period to make allocations to State governments in accordance with section 107.

"(2) ENTITLEMENT PERIODS.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983.

Page 6, line 3, strike out the close quotation marks and the following period and insert after such line the following:

"SEC. 107. ALLOCATION TO STATE GOVERNMENTS.

"From any amount appropriated pursuant to section 105(c)(1) for any entitlement period described in section 105(c)(2), there shall be allocated to each State government an amount which bears the same ratio to the amount so appropriated for that period as the amount allocable to that State under section 106(b) bears to the sum of the amounts allocable to all States under section 106(b).".

Page 6, strike out lines 5 through 20 and insert in lieu thereof the following:

(1) PAYMENTS.—Section 102(a)(1) of the Act is amended by striking out "the entitlement" and inserting in lieu thereof "the allocation, if any,".

Page 7, line 3, insert "and" after the semicolon; strike out lines 4 through 24; and, on page 8, line 1, redesignate the succeeding subparagraph accordingly.

H.R. 7385

By Mr. GAYDOS:

—Page 1, line 3, strike all after the enacting clause and insert the following:

"(4) ENTITLEMENT LESS THAN $200, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this paragraph) the entitlement of any unit of local government—

"(A) would be less than $200 for any entitlement period, or

"(B) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be distributed to other units of local government in the State in accordance with regulations prescribed by the Secretary.

"(e) ADJUSTMENT OF ENTITLEMENT.—In adjusting the allocation of any unit of local government, the Secretary shall make any adjustment required under subsection (d)(2) first, any adjustment required under subsection (d)(3) next, and any adjustment required under subsection (d)(4) last.

"(f) DEFINITIONS.—The definitions and related rules contained in section 108(d) shall apply for purposes of this section.".

By Mr. WYDLER:

—Page 3, line 22, redesignate subsection (c) as subsection (d) and after line 21 insert the following new subsection:

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ALLOCATIONS TO STATE GOVERNMENTS.—

"(1) IN GENERAL.—In the case of each entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $2,300,000,000 for such entitlement period to make allocations to State governments in accordance with section 107.

"(2) ENTITLEMENT PERIODS.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983.

Page 6, line 3, strike out the close quotation marks and the following period and insert after such line the following:

"SEC. 107. ALLOCATION TO STATE GOVERNMENTS.

"From any amount appropriated pursuant to section 105(c)(1) for any entitlement period described in section 105(c)(2), there shall be allocated to each State government an amount which bears the same ratio to the amount so appropriated for that period as the amount allocable to that State under section 106(b) bears to the sum of the amounts allocable to all States under section 106(b).".

Page 6, strike out lines 5 through 20 and insert in lieu thereof the following:

(1) PAYMENTS.—Section 102(a)(1) of the Act is amended by striking out "the entitlement" and inserting in lieu thereof "the allocation, if any,".

Page 7, line 3, insert "and" after the semicolon; strike out lines 4 through 24; and, on page 8, line 1, redesignate the succeeding subparagraph accordingly.

H.R. 7385

By Mr. GAYDOS:

—Page 1, line 3, strike all after the enacting clause and insert the following:

—That (a)(1) the Secretary of the Interior is authorized to enter into a contract with Carnegie-Mellon University, whereby the United States agrees to convey, and Carnegie-Mellon University agrees to accept, all right, title, and interest of the United States in and to the property described in subsection (b) hereof. The contract shall provide, inter alia, that Carnegie-Mellon University, at the time of the conveyance of title to said property, shall pay to the United States the amount which the Secretary of the Interior determines to be the fair market value of the property conveyed, or $5,400,000, whichever is greater. Should the cost of the engineering, design, and construction of the facility and related improvements authorized by section 2 of this Act and the fair market value each amount to less than $5,400,000, Canegie-Mellon University shall pay the higher of the two amounts.

(2) The conveyance shall not be effective until (i) the facility authorized pursuant to section 2 of this Act is completed and ready for occupancy; and (ii) Carnegie-Mellon University enters into a long-term agreement with the Secretary of Labor on behalf of the Mine Safety and Health Administration to lease to the Mine Safety and Health Administration all of that portion of the property designated as Building A (Main Building) and Building B (Service Building) and adjacent parking areas until such time as the Secretary of Labor determines that the property is no longer needed for occupancy and use by the Mine Safety and Health Administration.

The property referred to in subsection (a) includes land and improvements thereon owned by the United States and used for the Pittsburgh facility of the Bureau of Mines, such land being situated in the Oakland area of Pittsburgh, Pennsylvania, and known as 4800 Forbes Avenue.

(c) The Secretary of Labor, on behalf of the Mine Safety and Health Administration, is authorized to enter into a lease agreement with Carnegie-Mellon University and take such other actions as are necessary to occupy and use the space referred to in clause (ii) of subsection (a)(2) at a fair and reasonable price and under terms to be determined by the Secretary of Labor.

SEC. 2. (a) After a duly authorized representative of Carnegie-Mellon University has executed the contract referred to in paragraph (1) of subsection (a) of section 1 of this Act, the Secretary of the Interior may, with funds appropriated for such purposes, enlarge, equip, and improve the research facility of the Bureau of Mines near Bruceton, Pennsylvania, and may transfer such operations as he deems appropriate to such facility from the facility at Pittsburgh, Pennsylvania.

(b) In order to carry out this section, there is hereby authorized to be appropriated not more than $5,400,000 for the engineering, design, and construction of facilities and related improvements at the research facility of the Bureau of Mines near Bruceton, Pennsylvania.

EXTENSIONS OF REMARKS

THE CAPTAIN MINE

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. SIMON. Mr. Speaker, in the July 1980 magazine, Coal Mining & Processing, there is a feature story about the Captain Mine operated by the Southwestern Illinois Coal Corp. in my district.

I had the opportunity to visit that remarkable mine a few weeks ago and saw what can only be described as an automated surface mine. About 20 feet of soil is dug at one point, conveyed around the belt, and then returned after the coal is removed.

The only somewhat sour note in my visit was to learn that most of the high-priced equipment that this mine requires is manufactured in Germany and Japan. I say that with no disrespect to our good friends, but to suggest that we ought to be doing more of that kind of thing in our country.

I think my colleagues will be interested in the story.

CAPTAIN MINE: A NATIONAL SHOWCASE FOR SURFACE MINING AND RECLAMATION

(By Wes Blakely)

When it comes to setting superlative reclamation standards from coal mining operations, Southwestern Illinois Coal Corp. may be one of the hardest acts to follow in the nation. The company started its ambitious reclamation program in 1936 by planting several varieties of pines and hardwoods. That's some 30 years before the umbrella of environmentalism was to become the popular politically "safe harbor" that it is today for so many bureaucrats and elected office-holders alike.

Now a division of Arch Mineral Corp. out of St. Louis, Southwestern's efforts have resulted in hundreds of acres of reforested woodlands, beautiful recreational areas, productive farmlands and scenic lakes all stocked with game fish. Today, over 15% of Southwestern's mined property is comprised of successfully reforested timberland, while wildlife, such as squirrel, rabbit, deer, fox, and possum abound on their lands.

From 1935, when he helped found Southwestern Illinois Coal Corporation, until his retirement as president in 1973, William E. "Bill" Mullins was the driving force behind Southwestern's endeavors in this field. His foresight and imagination were instrumental in helping the company become an industry leader in returning spoiled land to productive usefulness. Under his direction, Southwestern began Galum Creek Farms, now Arch Farms, as a management subsidiary in 1961. The farm feeds and raises some 2,800 head of cattle which roam free on the "range" all year long. Most of the pasture is actually previously mined land. Reclamation work began almost simultaneously with the first mining activity at the company's Streamline Mine in 1936.

Don McCaw, a forty-year veteran with Southwestern and now beltline superintendent at the Captain Mine, recalls that the company planted some 40,000 trees in 1937 and then planted up to 150,000 each year through 1947 when it went to pasture land reclamation. The Captain Mine was opened in 1964 and is one of the nation's largest surface mining operations. The overall mine site comprises about 30,000 acres in southwestern Illinois near Percy, 60 miles southeast of St. Louis, Mo.

One of the most popular, if not scenic, attractions constructed by Southwestern on reclaimed land is the Bill Mullins Recreation Area, known to most people in the region as Southwestern Lakes. This outstanding recreational retreat—largely the result of filling the final cut with water on the completion of the mining cycle—has more than 350 acres of lakes and ponds, stocked in abundance with channel cat, bluegill, small and large mouth bass, crappie and pike. Over 1500 families hold fishing permits. An especially popular feature of this area is the Southwestern Lakes Golf Course, one of the longest, and best maintained 9-hole courses in southern Illinois. Approximately 250 families hold memberships in the club.

Thousands of people annually take advantage of the good reclamation fruit yielded from Southwestern's expertise in restoring mined lands, a tribute to the company's farsightedness in relation to this important aspect of their operations.

CAPTAIN MINE OPERATIONS

From a production standpoint, Southwestern is no slouch either.

The Captain Mine produces 400,000 tons a month from the Illinois Nos. 5 and 6 seams, working 24 hours a day, 7 days a week. Its total production is committed to the midwestern and southern steam markets.

Two pits are operated at Captain with one of the world's largest shovels in one, a Marion 6360 180-cu-yd production machine, and a Bucyrus-Erie 2570 100 cu-yd machine works the other. The two huge shovels work towards each other from boundaries of the property with the pit lengths ranging from 4000 ft on the 2570 operation to 6000 ft with the Marion.

Ratio of overburden, consisting of limestone, shales, clay and unconsolidated material is 8 and one-half to one at the 2570 pit and 9 and one-half to one at the 6360 pit. The two coal seams are separated by 25 ft of overburden. The upper or No. 6 seam runs 5.7 ft in thickness while the lower No. 5 runs up to 3.7 ft.

One of the more interesting aspects at Captain is the "new kid on the block," so to speak, in mining-reclamation equipment—the new Mitsubishi spreader. The first spreader has been in operation since January in helping the company to meet superstringent reclamation stipulations of the new surface mine laws and is the first of its kind to be employed at a surface mine in the United States. Since that time, Southwestern has purchased another similar unit.

Each machine is so well balanced that it exerts only a 4.5-psi ground pressure, while weighing in at 230 short tons. Described as the key units in the Captain Mines's reclamation activities, the spreaders are fully integrated into a land recovery system designed to accommodate the restructuring of the topmost soil horizons in accordance with the law, reclaiming to a minimum of one-foot as required. Other components of the system include an O & K bucket wheel excavator and belt wagon and a Weserhutte 54-inch wide conveyor belt system, with steel cord belt, that delivers the material to the spreaders.

The new reclamation system was installed after a previous prototype system was installed and operated, according to Ken Kraus, chief engineer at Captain. "The other equipment combination we had installed first, allowed us to develop certain design features which are being used in the new equipment," says Kraus. The Commonwealth of Illinois classifies two general horizons in Perry County: the "A" horizon involves up to 18 in. of topsoil, while the "B" horizon constitutes the clays which average up to 3-ft. thick. "The spreaders," reports Don McCaw "do remarkably well traveling the clays, and even in soft conditions they still advance."

"In large pit operations such as Captain," says Kraus, "where the upper third of the overburden is more or less soft materials, the system we now have allows for longer life of the conventional equipment. Prestripping the upper third of the material with such a system is particularly important as the mining ratios creep upward, too."

"We looked at applications and operations all over the world," he adds, "before purchasing the system we have now. In fact, when we asked for bids on the spreader that called for a 4.5 psi ground pressure, Mitsubishi Heavy Industries, Ltd. of Japan was the only manufacturer who responded." Kraus points out that Southwestern absolutely needed that kind of low ground pressure in order to obtain satisfactory crop yields on the reclaimed portions.

Different areas of the high Captain Mine are permitted for either row crops, timberland or pasture while Southwestern maintains its own 100-acre soils test plot at Captain where it experiments with various combinations of trees, shrubs, grasses and crops. Perry County has a good amount of pasture with the chief crops being corn, soybeans, and winter wheat.

"The alternative to the system now in use," says Kraus, "would have been a sizeable investment in scrapers and tractors, which in turn would have meant long cycle times and low productivity due to the heavier compaction of the top soils."

DRAINAGE CONTROL

"To succeed with this kind of conveyor-spreader system", McCaw says, "you simply have to control the drainage—that's absolute in the spreading area in order to minimize mucky conditions.

"Our goal is to get between a 500 to 600-ft wide bench ahead of the stripping equipment. This creates a large surface area that's below drainage and now that this area is increased we are designing a water collection system to pump and drain the water off. We also control digging the grades and elevations with a laser beam."

"In addition," McCaw adds, "we create our own topography to near original contour as the law says and design the slopes not in excess of 5%. This assures a good drainage but also allows the farm machinery to traverse it later on."

In the winter time when the material in the reclamation area is frozen the company uses a dozer to break it up. The Mitsubishi spreaders are reclaiming an area of 200 to 220-ft wide on each pass. This is compatible with the bucket wheel excavator and represents the maximum reach of the spreader.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

"Of course," McCaw says, "our operators with the system are improving each day as they get more comfortable in handling the equipment. As the operators gain experience, we'll see an improvement, I'm sure, in our moving times, too. This is as critical to us as the time involved underground with moving a longwall mining system."

At the same time, even Southwestern's nearly 45 years of experience in reclaiming mined lands is being put to the severest of tests today as a result of the stringent new laws—as is all of the nation's surface coal mine operations for that matter. This means the environmentally vital role of the spreader in restoring soils for eventual grading and planting will undoubtedly grow in importance. As Ken Kraus puts it, "I can see where these machines can be an integral part of surface mine operations not only in the midwest but in such areas as the Texas lignite fields, too."●

A DEDICATED GROUP

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. RITTER. Mr. Speaker, volunteer firemen are dedicated people, serving their communities with deep pride. They are available at a moment's notice—day or night—whenever an alarm sounds. Risk and danger do not enter their minds as they come to the aid of their fellow man.

Typical of this group is the Fountain Hill Hose Company, which will mark the 75th anniversary of its founding at a public celebration on October 10.

This volunteer fire company has played a vital role in its community of 4,000 residents in Lehigh County. It has not been an easy road. There were many struggles, especially in the early years, which predated the company's official founding.

Thirteen men signed up on the night of July 30, 1894, when the borough fathers organized a fire department. Within a year, the volunteers had doubled. A barn was rented for $3 a month to store hose and a hose cart.

The evolution was slow. Fire plugs were installed when the borough's water system came into being in 1894. Four push-button alarm boxes were added in 1901. Application was made in October 1905 for a charter. A new firehouse was completed in 1911, the alarm system updated and a rebuilt steam engine purchased for $2,300. In 1920, a fund drive raised $12,000 to purchase a triple combination truck. Several used trucks were purchased through the years and used until 1977 when a fund drive raised $60,000 toward the purchase of a new Mack pumper.

Today, Chief James Bobal heads a group of 20 firefighters. In addition, there are 450 social members and a ladies auxiliary which assists in various fundraising efforts.

The entire Fountain Hill community owes much to this dedicated group of volunteers. As their Congressman, I salute them for making their community a better, safer community in which to live and grow.●

BLOOD ALLEY

HON. W. J. (BILLY) TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. TAUZIN. Mr. Speaker, I am introducing legislation to help resolve one of the most serious situations in highway safety in our country. A 30-mile section of U.S. Highway 90, stretching between Morgan City, La., and Gray, La., has become infamously known as Blood Alley, claiming 50 lives and causing 1,263 injuries between 1974-78. Planning for a new, more direct, and safer route between Morgan City and the intersection of Louisiana Highway 311 began in 1972, but due to bureaucratic delays, the project remains incomplete. At this time, no Federal funds are involved in the project and the environmental questions have long since been answered.

Originally planned by the FHWA in 1972 using Federal funds, the project was abandoned before construction began. No further action was taken until August 4, 1977, when a bridge permit application was submitted by the State to the 8th Coast Guard District to construct the highway using State funds. The initial draft EIS was completed by the Coast Guard and filed with EPA on May 26, 1978. After review of the DEIS, strong objections were voiced by the EPA, U.S. Fish and Wildlife Service, and the Corps of Engineers to the proposed highway alinement because of its adverse impact on the existing wetlands. As a result, alternative routings were examined for over 1 year. In the interim, other specialized studies had to be conducted because of new laws and regulations or because of the realinement or both. In November 1979, the EPA, U.S. Fish and Wildlife Service, and the State agreed upon a new routing alinement that satisfied previous objections. A rewrite of the DEIS was required by the U.S. Coast Guard, for which the State has hired a contractor to complete.

With no major objections to the proposed project by any agency involved, only bureaucratic delays stand in the way of mitigating this hazardous, urgent situation.

I urge the House to take action on this critical matter at the earliest possible date.●

REAGAN IS RIGHT ON THE HOSTAGES

HON. LARRY WINN, JR.

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. WINN. Mr. Speaker, Governor Reagan has shown great decisiveness, sensitivity, and competence in his comments on the Ayatollah Khomeini's latest statement on the American hostages.

The Republican Presidential candidate has stated simply and forthrightly that the United States should agree to cancel American claims against Iran, release Iran's frozen assets, and promise not to intervene in its internal affairs in exchange for the release of the hostages. The ayatollah's fourth demand—the return of the shah's property—is not, as Governor Reagan stated, in U.S. Government hands.

The Washington Post, in its lead editorial of September 15, recognized the importance of Ronald Reagan's statement. I recommend it to my colleagues:

GOVERNOR REAGAN ON THE HOSTAGES

Governor Reagan said the right thing about the hostages. Responding to Ayatollah Khomeini's latest set of demands, themselves seemingly pared down from an earlier and longer list, the Republican presidential candidate said the United States should simply agree to most of them. It should cancel American claims against Iran, release Iran's frozen assets and promise not to intervene in its internal affairs. The only Khomeini demand Mr. Reagan set aside was one for return of the former shah's property; that, he explained, is not in the U.S. government's hands. He recommended agreeing to do all of this, moreover, right off: not to engage in a long negotiation about it but just to agree to the three Khomeini demands and then to insist that the 52 American hostages be returned at once. Be done with it.

It is possible that Mr. Reagan will now be charged at home with barging in and yielding too much too soon. The answer, it seems to us, is that he is not negotiating in the first instance with Tehran; Jimmy Carter is. Gov. Reagan is in the first instance addressing Jimmy Carter. He is freeing the administration of the anxieties it has felt that Mr. Reagan would hover on the right, threatening to undercut any Carter effort to negotiate the hostages' return. Mr. Reagan would now seem to have left the president plenty of room over the next few months to continue his policy of cautiously but energetically exploring Iran's terms.

This is not to say the Reagan initiative has no political dimension. It will probably strike many Americans as an example of fair-minded, no-nonsense, presidential decisiveness—a quality that Mr. Carter has had full opportunity to show in the White House. But the Reagan response does more than that. A large part of Mr. Carter's reelection strategy has been to suggest that, on foreign policy in particular, Gov. Reagan is an unlettered, ineducable primitive, capable for political cause of savaging necessarily sensitive diplomatic affairs. On the Iran issue at least, that particular campaign strategy now may be frustrated.

As to whether the Reagan approach would work if it were to become official policy, only a test could tell. There is a real question whether the new Khomeini demands represent either his final formulation or that of the Iranian parliament or of the particular terrorists holding the Americans. A case can be made, however, that there is a point beyond which it is self-defeating to wait until everything shakes down on the Iranian side. That could take forever. The Americans have already been captive nearly a year. It is at least conceivable that a clear, clean American position, forthrightly stated, could make its own contribution to untying the political knots that bind the hostages still.

Notably lacking from the ayatollah's latest set of conditions on the release of the hostages and from Governor Reagan's statements is any hint of any U.S. apology to Iran over past American misdeeds in that country.

This contrasts sharply with recent statements by the Department of State spokesman regarding the possibility of a U.S. apology to Iran.

In a September 10, 1980, briefing to the press, the State Department spokesman refused to rule out a U.S. apology to Iran. Furthermore, when asked if the Department were prepared to discuss the question of apologies, he stated:

I think we're prepared to discuss anything and everything. I wouldn't want to give you to think that we would end up agreeing to do so; but I think we're ready to discuss, as the Secretary's letter says, anything that the Iranians want to discuss.

Our prime objective is to get the hostages safely released; and, in the context of that, there are a lot of things that can be discussed and that can be done. I think we've enunciated some of those before.

I am shocked by this statement and am opposed to any U.S. apology to Iran or willingness to discuss Iranian grievances against the United States.

Indeed, I trust that the following passage from Secretary of State Edmund Muskie's August 20 letter to the Iranian Prime Minister Rajai does not suggest a U.S. apology to Iran:

We also recognize that in Iran, as in the United States, there are deep feelings as a result of grievances perceived in the past. There are many difficult issues between the United States and Iran. For our part, we are willing to proceed fairly and to approach each of these issues on a basis of mutual respect and equality.

Secretary of State Muskie's letter was supplied to the Subcommittee on Europe and the Middle East. It has, of course, subsequently been released to the press.

As one of the 187 Members of Congress who sent a letter on July 2, 1980, to the Speaker of the newly formed Iranian Parliament urging him to give the hostage issue "your highest and earliest priority," I would support a dialog between the United States and Iran. However, this dialog must be on an honorable basis. Its objective must not be the humiliation of the United States through demands for apologies or incantations of grievances against this country.●

SOUTH KOREAN REGIME PASSING POINT OF NO RETURN

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. PORTER. Mr. Speaker, yesterday a South Korean military court sentenced Kim Dae Jung to death. His crime? Leading the opposition to the present military regime and allegedly plotting to overthrow by violence a regime itself founded upon the violent overthrow of its predecessor.

For 35 years the United States has supported South Korea, not only with our national treasure but with the lives of over 30,000 American GI's. Our intent was not altruistic but to establish a nation to show the people in that part of the world that our system of democrary can make a better life for all. Yet in those 35 years scant evidences of democracy in South Korea have been observed.

Clearly, with North Korea bellicosely breathing down its neck, the South Korean situation is difficult. Clearly, the liberties we want assured would all be lost if the Communist North gains control.

But clearly, too, if the South has become the North in its failure to observe the basic tenets of due process and justice under law for all its people, our support has been misplaced and our American lives lost in vain.

This sham trial and the continued trampling of the democratic processes and basic rights by the military regime in South Korea is intolerable and has placed further support for that country by ours in extreme jeopardy.

Kim's execution would pass the point of no return.●

SNITCHING ON CIA

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. DERWINSKI. Mr. Speaker, the House of Representatives is scheduled to take up the Intelligence Identities Protection Act in a few days. The bill was reported out of the House Permanent Select Committee on Intelligence unanimously, and the Committee on the Judiciary with a wide margin. I have received press comment on the bill from widely separated areas of the country. Here is a favorable editorial in the Indianapolis Star of June 1, 1980, written before the July 4 attack on the home of the CIA station chief in Jamaica:

SNITCHING ON CIA

What some call snitching and some call ratting is making life tough for American spies in assignments that are dangerous enough without such treachery.

Too many American agents overseas have been assassinated. Marking them—disclosing their names—smacks of treason.

Anyone caught doing this kind of thing in a communist country would be punished with death.

In the United States a group is doing it and getting away with it.

An outfit that calls its periodical the Covert Action Information Bulletin published, on Wednesday, the names and some biographical details on what it described as 40 Central Intelligence Agency officers and agents operating in 31 countries.

The list purportedly named 13 chiefs of station, eight deputy chiefs and 19 senior "case officers," officers who supervise local agents. One of the deputy chiefs working in a foreign assignment was identified as a woman.

Among those named were CIA personnel said to be operating in such potentially dangerous posts as Algeria, Guatemala, Jerusalem, Libya and Zaire.

The periodical remarked that legislation is pending in Congress to make a criminal offense of the unauthorized identification of intelligence personnel.

It stated that it would continue to do so even if the practice were outlawed.

"We do not believe that it can be constitutionally suppressed by the government," it stated. "If any of the proposed laws designed to censor this column out of existence are passed we can assure our readers that we will fight them in the courts."

Perhaps in some courts this twisted and degraded conspiracy will find sympathy. Much of the United States anti-espionage apparatus was dismantled by ill-conceived and misguided court decisions during the late 1950s.

Considering the peril and difficulties faced constantly by many U.S. intelligence agents overseas, disclosing their identities and posts is comparable to giving an enemy defense and troop movement secrets in wartime. It is treacherous and potentially deadly. Those guilty of such misdeeds should be punished.

The authors of the bulletin state their object to be the destruction of American intelligence agencies. It is a purpose which coincides with those of the KGB, GRU and other hostile and dangerous espionage and assassination forces.

If those responsible for the bulletin meant to wage a campaign in behalf of the friends of freedom instead of the enemies of freedom, they would disclose the identities of totalitarian secret agents operating in the United States.●

AVIATION FUEL TAX AMENDMENT

HON. ROBERT DUNCAN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. DUNCAN of Oregon. Mr. Speaker, the bill my distinguished colleague, the chairman of the Ways and Means Committee, Al Ullman, and I introduce today corrects a gross injustice in the aviation fuel excise tax, the revenues of which currently flow into the Airport and Airway Trust Fund (49 U.S.C. 1742, et seq.).

Congress established the Airport and Airway Trust Fund in 1970 to meet the financial obligations of the Federal Aviation Administration and the Department of Transportation in their statutorily required activities of planning, research and development,

construction, or operation and maintenance of: (i) air traffic control, (ii) air navigation, (iii) communications, [and] (iv) supporting services, and for the administrative expenses connected with these activities (49 U.S.C. 1742 (f)(1)(A)-(C)).

In creating the trust fund, Congress gave statutory form to a very simple precept: that those who use our airports and airways systems and facilities ought to bear a fair share in the expenses incurred in their operation. To this end, we levied an excise tax on aviation fuel used in noncommercial aviation (26 U.S.C. 4041 (c) and (d)). For aircraft using the airports and airways and enjoying the air traffic control and support services of the FAA and DOT, this makes plain commonsense. In fact, in 1970 when we enacted the legislation, specific report language provided that:

> * * * there will be a direct relationship between the use of the system and the money generated to meet the needs required by the users. It is fitting that the primary financial burden will be assumed by the direct users * * *. H. Rept. 91-601, 91st Congress, 2d session (1970).

Early on, however, it became clear that certain types of noncommercial aviation—agricultural aviation in particular—did not utilize the benefits of the airports and airways and, in all fairness, should be exempted from the excise tax (26 U.S.C. 4041(f)).

The bill we introduce today creates an analogous exemption from the excise tax for those aircraft used in timber cultivation and harvesting, and the prevention and fighting of forest fires.

Like agricultural aviation, aerial logging and timber cultivation require no use of this country's airport and airway system. They do, however, provide an economical and necessary means of timber production and add immeasurably to the health of the economy of the country, and particularly to the Pacific Northwest. They also allow the timber industry and environmentalists with a means of striking a balance acceptable to both. If we are to provide adequate housing and woods products for our citizens and future generations, it is imperative that we increase the allowable cut. Simultaneously, environmentalists exert heavy pressure to restrict the harvesting of timber so as not to damage our forests and drainage systems.

Aerial logging offers an opportunity, already tried, tested and proven practical, to satisfy both of these national objectives. With proven economic feasibility, the harvesting of timber and forest products by aircraft eliminates the erosion problem caused by road construction and by the scarifying of the soil by dragging logs to the yard. The only damage done is when the tree itself is felled. In mixed species, the understory is not destroyed and as much as a 15-year headstart on the next cutting cycle can be obtained. Visits to aerial logging operations by environmental groups have, without exception, resulted in enthusiatic praise for the results.

In addition, most of the businesses engaged in aerial logging, harvesting and cultivation are small and lack the resources of major lumber companies. For this reason, they operate on much smaller budgets, and unnecessary expenses damage the businesses themselves and their future expansion and development, and the refinement of this type of timber harvesting. The excise taxes paid annually into the trust fund for the upkeep of airports and airway systems that these businesses do not use, represent just such an expense and should be eliminated if we are to encourage the most judicious use of our national timber resources. Whenever these aircraft use the airports and airways facilities they should, and under this amendment would, pay the tax.

But because of our national interest in increasing the allowable cut without impairing the environmental quality of the land; because in this activity, aerial loggers are not users of the airports or airways facilities; and because of the economic importance of this small business enterprise to the employment picture of the Northwest and the Nation, this amendment to the aviation fuel excise tax that we propose today is fair, equitable and wholly in keeping with the intent of Congress in allocating the financial burden of operating airports and airways to those who use them.●

TRIBUTE TO CONGRESSMAN WILLIAM S. MOORHEAD OF PENNSYLVANIA

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FASCELL. Mr. Speaker, I am very grateful to our colleagues from Pennsylvania, Mr. GAYDOS and Mr. MCDADE, for this opportunity to thank BILL MOORHEAD formally for his effective service in the House and to wish him well as he returns to private life. We have been extremely fortunate, both as a Congress and as a nation, to have a man of BILL's ability as a legislator for these past 22 years. It is his turn, now, to enjoy his family and pursue his many interests, and our sincere good wishes go with him as he retires.

It has been a pleasure for me to serve on the Committee on Government Operations with BILL. We share a great interest in the issues that come before the committee and I have tremendous admiration for all that BILL has accomplished in promoting accountable, responsible government.

His efforts to stabilize the economy and to promote the production of synthetic fuels have been outstanding. The legislation which he has authored and guided through the House will have a lasting, positive effect on countless thousands of Americans. BILL MOORHEAD is a gentleman, in the truest and finest sense of the word, a man of conscience, conviction and action. He should look back at his work here with a great sense of pride.

I am proud to serve with BILL and proud to know him. As he prepares to leave the House, I want to say thank you for his leadership, his friendship and for the job he has done. May his retirement be a happy and fulfilling one.●

IN RECOGNITION OF EDWARD P BAKER

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. FLORIO. Mr. Speaker, I would ask my colleagues to join with me today in recognizing the service and achievements of a distinguished constituent of mine, Mr. Edward P. Baker. Tomorrow evening the Semper Fidelis Detachment of the Marine Corps League will present Ed Baker with the Marine Corps League Certificate of Appreciation and the League's Bronze Distinguished Citizen's Medal.

Ed Baker has a long and colorful history of service to his country in the Army of the United States. As a young member of the Texas National Guard, Ed Baker was called upon to serve with General Pershing as an interpreter during the general's forays against the Mexican revolutionary Pancho Villa. At the onset of World War I, he volunteered for service with the French Army as an ambulance driver. Upon the entry of the United States into the war, he once again served with General Pershing as a member of the U.S. Expeditionary Force. He received numerous Purple Hearts for wounds received and was honored by the French Government with the Croix de Guerre.

Ed Baker has been a fixture in the leadership ranks of a variety of veterans organizations. He has, at various times, served as department chaplain of the Veterans of Foreign Wars of New Jersey, county commander of the American Legion, commander of Barracks 1740 of World War I Veterans, and has been honored as a life member of the American Legion, VFW, and the Disabled American Veterans.

In addition to his service to the veterans of Gloucester County, Ed Baker has also given unselfishly of his time to the community at large. He has served as civil defense director of Gloucester County for the past 21 years. He has also served as chaplain to the Board of Chosen Freeholders for the past 18 years. As supervisor of veterans interment, Ed has for the last 12 years been responsible for maintaining the final resting places for the veterans of Gloucester County.

I would like to add my congratulations, as well as those of my colleagues, to those he will receive tomorrow evening. It is small compensation for the years of service to his community and country.●

MCPL NUCLEAR ALERT XII

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday September 18, 1980

● Mr. SIMON. Mr. Speaker, as chairman of Members of Congress for Peace Through Law, I have had the opportunity to become heavily involved with matters dealing with the United States nuclear strategy. This involvement has led me to the chilling conclusion that we are moving ahead with a poorly defined policy in this critical area that is determined more by events and weapons development than through sober, reflective, and rational discussion and debate. We are being unnecessarily stampeded into decisions about our nuclear strategy as embodied in PD-59, about our weapons systems as in the case of the MX, and about arms control as we cannot rise above events of the present in order to assure a safer world.

In a recent Op-Ed piece in the Washington Post, Jeremy Stone notes that we are now faced with a number of critical decisions that will affect our nuclear strategy for decades to come. I would urge my colleagues to consider these arguments carefully and to answer for themselves Mr. Stone's question: "Would it not be wise to stop and think?"

[From the Washington Post, Sept. 16, 1980]

TWO PATHS IN NUCLEAR STRATEGY

(By Jeremy Stone)

The United States and the Soviet Union continue to move steadily into strategic postures and toward the adoption of related doctrines that interact with each other in such a way as to encourage rapid escalation rather than deliberate response. Presidential Directive 59 appears to be more than just another milestone in this evolution, incorporating, among other things, an important, previously unannounced and highly inflammatory threat to attack the Soviet command and control. But the root issue lies deeper than PD59, in a fundamental choice for U.S. (and Soviet) strategic planning: whether to move forward or back in maintaining land-based missiles.

At bottom, there are two general paths open to the U.S. Defense Department in response to the growing vulnerability of our 1,000 land-based Minuteman missiles. In the first course, we would redouble our effort to resist technological trends, in a strategy worthy of King Canute, in order to match Soviet maintenance of land-based missiles and Soviet threats against our missiles. Here the vulnerabilities of our land-based force are resolved by purchasing a new (MX) land-based missile force, but one whose improved security rests unreliably on deception in a deployment shell game.

If the new land-based missile force were suddenly to be deemed, like the old, vulnerable to Soviet attack, more and more MX holes (and MX missiles) would be constructed—an expensive proposition in which good money is thrown after bad.

When and if this failed, an anti-ballistic missile system would be built to protect the MX missiles. (This would require amending the ABM treaty, thereby risking the destruction of an agreement that has saved both the United States and the Soviet Union untold tens of billions of dollars in useless expenditures.)

And if this ABM solution were to seem infeasible, the missiles would be prepared to "launch on warning" (i.e., to launch on the 20-minute warning of enemy attack); this is a cheap but absurdly dangerous fix, as recent computer failures have shown. (Nevertheless, it is already part of U.S. doctrine that we might fire on warning.)

There is another path that accepts the inevitability of land-based missile vulnerability but "finesses" the Soviet attack. This strategy would put less—rather than more—emphasis on land-based missiles. We could keep Minuteman missiles (which are only about 25 percent of our strategic force) as a waning asset, or phase them down. We would make whatever compensating adjustments might be desired in our bomber and sea-based forces. The finessing path tends to move a major part of America's deterrent, and hence America itself, out of the line of fire of limited war.

This choice between the two paths has important implications for firing doctrines and hence for the overall likelihood of war. If one side has vulnerable missile forces, it has a defensive motivation to fire them more quickly ("use them or lose them"). And to the extent that the other side possesses vulnerable land-based missiles, one has also an offensive motivation ("time-urgent targets"). Worst of all, if both sides find themselves with vulnerable missile forces, both would have both motivations, and a cycle of reciprocating expectations ("better first than second") would increase the likelihood of preemptive escalation. Some catalytic outbreak of violence in Europe or wherever might then bring down the roof.

The finessing path would leave the Soviet land-based missiles (which are 70 percent of their force) vulnerable, in time, to our sea-based force. But since the reverse would not be true, the corresponding cycle of expectations would not exist. Thus, in fact, the path of finessing the Soviet threat leaves the Soviets trumped. More important, it depresses the likelihood of wars nobody wants by diminishing first-strike incentives.

The Defense Department fears that the path of finessing, and outmoding, the Soviet missile threat—by removing U.S. land-based missile targets—would seem a kind of acquiescence in coercion, even if compensating steps were taken with our other strategic forces, such as new kinds of sea-based forces. It argues also that some as-yet-unforeseeable future vulnerability of our sea-based deterrent in the 1990s might be importantly backstopped by land-based forces. But land-based force vulnerabilities (including those of MX) are already all too foreseeable to make this very plausible. Really, the choice appears to be one between inertia and agility.

The issues obviously go deeper than space here permits; unfortunately, no suitable forum really exists to decide issues of this magnitude. The situation cries out for a high-level commission, as proposed by Sen. Kennedy (and endorsed by both hawks and doves), that would consider U.S. Strategic posture in the next two decades in the light of Afghanistan, SALT II, PD59, the very possible congressional defeat of the MX basing scheme, the growth of Soviet forces and all the rest.

With weapon systems taking 10 years to build and designed to function for 20 years beyond that, America can no longer afford to examine its defense posture only in the annual snapshots of congressional review. Now, while we are still at the fork in the road, would it not be wise to stop and think?●

RECENT WESTCHESTER ASSOCIATION OF RETARDED CITIZENS ACTIVITIES

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. OTTINGER. Mr. Speaker, I would like to take this opportunity to let my colleagues know about recent activities that have been sponsored by the Association of Retarded Citizens.

Earlier this year, the New York Association of Retarded Citizens sponsored a statewide poster contest. Winners chosen by the Westchester Association for Retarded Citizens were: Daniel Levine, Ossining High School; Sybil Walsh, School of the Holy Child, Rye; Randi Rosh, Ossining High School; and Brett Lawrence, Woodlands High School.

In April, the following represented Westchester Association for Retarded Citizens at "A Very Special Arts Festival" which was held at the State University of New York at Purchase. They are: Mike Connor, Robert Dawkins, Martin Dimond, Sam Flagg, Ralph Greco, Carolyn Holokak, Meyer Isaacs, Sonjia Joseph, Laurie Lecker, Bruce Legler, Patricia Levine, Joan Novotny, Maxine Paul, Martin Wasserman, and Debbie Williams.●

NEW SOVIET SALT VIOLATION IGNORED BY CARTER ADMINISTRATION

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. KEMP. Mr. Speaker, for more than 2 years I have been a member of the congressional delegation to the Strategic Arms Limitation Talks, and as a consequence have taken an interest in the Strategic Arms Limitation Talks since the accords were signed in June 1979. During the long course of the negotiations, one of the most controversial elements of the Soviet-American dialog was the question of the Backfire bomber. During the course of the negotiations, the American delegation took the position that the Backfire was a strategic bomber capable of intercontinental missions, and therefore should be counted as such. In its efforts to obtain an agree-

ment prior to the 1980 elections, President Carter capitulated to the Soviets on this point, but with the proviso contained in an exchange between Presidents Carter and Brezhnev that the Backfire not be modified for performing intercontinental missions. Such modifications could be done in a number of ways such as by replacing the existing engines with more fuel-efficient ones to increase the range of the aircraft, or by providing it with in-flight refueling to enable it to carry out intercontinental missions. The Soviets have chosen refueling.

Recently, a Saab SH-37 Viggen maritime reconnaissance aircraft of the Swedish Air Force intercepted the current model of the Backfire bomber in a flight over the Baltic Sea—deployed with the Soviet Navy—equipped with a refueling probe. A Swedish Air Force photograph of the Backfire equipped with a refueling probe was published in the August 1980 edition of the British journal, Air International (p. 55). The article stated that the Backfire "appears to have its in-flight refueling probe reinstated, this item of equipment having been removed during the SALT negotiations." The refueling probe on the Backfire is a SALT violation.

The failure of the administration to take vigorous action in the face of such an obvious violation of the SALT II agreement—and the subsequent understanding that both sides would abide by its terms pending Senate action—illustrates its casual attitude toward Soviet compliance with SALT. I strongly urge the administration to provide the Congress with a full accounting on an unclassified basis of all Soviet SALT violations that have occurred since 1972. In view of the serious jeopardy the administration acknowledges that our own strategic nuclear forces face, the public has a right to know the extent to which Soviet SALT violations have enabled them to gain unilateral military advantage over the United States.●

TRIBUTE TO DR. H. RALPH JACKSON

HON. HAROLD E. FORD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. FORD of Tennessee. Mr. Speaker, there is nothing more certain in all the world than the fact that our lives are brief and transient. Given the short period of time we are here, it is most important that we make a contribution to our fellow man and to our society. Unfortunately, some of us are not able to leave our mark in history. Today, I pay tribute to an outstanding citizen of the Eighth District of Tennessee, who indeed left his impression on our Nation, the great State of Tennessee, and the city of Memphis. The late Dr. H. Ralph Jackson was an unselfish public servant who gave tirelessly and endlessly of his energies for the betterment of humanity. I would like to share with my colleagues a resolution given by the Department of Minimum Salary Division of the A.M.E. Church which characterized his life:

As we stand before your throne,
Dressed in beauty not our own,
As we gaze at Christ in glory,
Looking on life's finished story,
Now, omnipotence, we know—
Not till now—how much we owe.

Dr. H. Ralph Jackson, ambassador extraordinarie, soldier with impeccable credentials, master pulpit technician, champion for human rights, and one of God's chosen troubadours!

The announcement of his death was premature. He did not really die—he was transferred. His transfer was an open one, for God is not through with him yet.

In the spendor of the land to which he has embarked there remains a task yet to be completed. Dr. Jackson would not dare touch that task until all of God's children are gathered. We will then "crown him Lord of all"!

Whereas our Heavenly Father for a reason bathed in mystery and wrapped in divine providence, saw fit to summon home His faithful creation, Dr. H. Ralph Jackson, and

Whereas "Ralph" as he was affectionately known had written his name high upon the pages of history in religious, civic, political and social concerns, and

Whereas his name is eternally etched in African Methodist lore as Founder of the Brotherhood, originator, author, instigator, and creator of the Department of Minimum Salary, writer, champion and facilitator of the General Budget and many other innovative movements, and

Whereas Dr. Jackson's contribution to the African Methodist Episcopal Church and its ongoing is without parallel in history's time span, and

Whereas his consuming love for the ministry and young ministers endeared him to all he touched and legions of future theologians delighted to follow his leadership, and

Whereas Dr. Jackson had a deep and abiding affection for human beings in general and young people in particular, and

Whereas his whole life was a symphony of concern for the poor, the rejected, the downtrodden, and the outcast: Be it

Resolved, That the Department of Minimum Salary which was his first A.M.E. love do enshrine his memory in the archives of our most sacred and secret thoughts reserved for those things which time's ravage does not tarnish; and be it further

Resolved, That we still our troubled hearts over our loss and join in the celebration of his home going; and be it finally

Resolved, That a copy of this resolution be directed to our Department of the Historiographer so that it shall be forever hereafter a part of our legacy; a copy be offered the family for its cherished memories; and a copy be reserved for the Department's use in its next Annual Report to our General Board and retained in its protected files "ad infinitum."●

DR. CHESTER McKINNEY—DISTINGUISHED SCIENTIST

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. PICKLE. Mr. Speaker, the U.S. Navy recently presented its Distinguished Public Service Award to Dr. Chester M. McKinney, the retiring director of the applied research laboratories at the University of Texas at Austin. This award is the Navy's highest civilian honor.

I would like to join the Navy in paying tribute to Dr. McKinney, who for 15 years as director has developed the applied research laboratories (ARL) at the university into one of the Nation's best known university-operated labs in underwater acoustics. Dr. McKinney has put these facilities on the map, so to speak, during his 27 years at the facility.

The ARL is well regarded by the Department of Defense for its quality research, as evidenced by the $14 million worth of defense research and development. But the facility has also become the training ground as well for many researchers and a practical learning experience for dozens of students. The center has over 500 employees conducting sophisticated research.

The Distinguished Public Service Navy Award cites Dr. McKinney for his innovation, guidance, and leadership that significantly aided the U.S. Navy in meeting its challenges and in developing a strong undersea warfare capability. As a specialist in underwater acoustics, Dr. McKinney has been a pioneer in developing the latest sonar techniques and knowledge about the acoustic properties of sediments.

Under Dr. McKinney's tenure, the ARL has become a sophisticated research facility, contributing to the defense of our country and contributing to the excellence of higher education at the University of Texas. We wish Dr. McKinney the best during his retirement and salute him for his dedication and hard work.●

SEEDS OF NEGLECT, HARVEST OF DEVASTATION

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. GAYDOS. Mr. Speaker, recently three of our colleagues returned from a trip to Japan and reported on the gross discrepancy in trade between the United States and that nation. They described the deficits compiled by our country, which totals $47 billion over the past decade including $4 billion in the first 5 months of this year, as devastating. America, they said has become "Japan's plantation

• • • haulers of wood and growers of crops in exchange for high technology • • •."

This report serves to confirm what I, and others, have expounded for years; that is, the trade policies of this Nation, entwined with international foreign relations, have converted the Nation which once was the world's greatest exporter of goods into one that has become the greatest buyer. Virtually every nation in the world has unlimited access to our domestic markets. We, as a nation, have become an international garage sale. America supplies the garage; other countries supply the goods for sale.

We have found it easier, and perhaps more profitable, to hawk the wares of others while ignoring our own industrial crops. Our home markets have become fertile fields for foreign industrialists. The seeds of our neglect have reaped a harvest of devastation.

One such industry whose domestic market is threatened to be reduced to stubble is the auto industry. Another is steel. As a representative in this House from a heavily industrialized area, the 20th District of Pennsylvania, I would like to trace for my colleagues what has been wrought within the domestic steel industry over the past 20 years and what must be done to revitalize this most basic of all industries if it is to survive in the face of growing worldwide competition.

Let us examine the upheaval in domestic steel in the brief span of two decades. The U.S. share of world steel production has declined from 50 percent after World War II to just 18 percent today. Imports have increased from 5 to 20 percent of domestic demand.

The industry's percent return on net worth declined by one-third and, except for 1974, was at or near the bottom of all manufacturing industries. Net income as a percent of sales has declined from approximately 5.4 to just 1.5.

Approximately 100,000 steelworkers have lost their jobs permanently. Hundreds of thousands more faced economic strain and uncertainty in the wake of sporadic disruptions in production.

What caused these disruptions? There were many reasons, many factors. Industry has been accused of being too greedy, too anxious to reap profits while allowing their production facilities to grow old and incapable of meeting the challenge of international competition from developing nations. Labor also has been accused of being too greedy, seeking too much too fast and thereby draining off capital which might have been used to modernize equipment and renovate plants.

But industry and labor both agree—and with considerable justification—that the primary cause of the decline of the domestic steel industry has been the actions—or the inaction—on the part of the Federal Government. There can be no denying the truth of that charge. I, for one, and our former colleague, John Dent, for another, for more than a decade have repeatedly warned of the impending disaster our steel industry would encounter unless the Federal Government took firm steps to reverse the situation. Unfortunately, our warnings, for the most part, were ignored.

The Federal Government continued to duck the enforcement of existing trade laws as relating to the dumping of steel on domestic markets and other unfair trade practices by foreign competitors. Instead, it continued to impose restraints upon the domestic industry. During periods when market conditions would have permitted higher returns, the Government held down the industry's revenues and earnings. They used jawboning from 1960 to 1970, mandatory controls from 1971 to 1974, and more recently the informal controls mandated by the Council on Wage and Price Stability.

Tax law provisions for the recovery of capital, which would have allowed a remodernization of the industry, were—and are—inadequate in that they do not provide for the impact of inflation upon the replacement cost of plants and equipment. In fact, it is said present tax laws provide for payment of taxes on "phantom profits" because the full cost of doing business in the industry is understated.

Government regulations and paperwork requirements have had a severe negative impact on the industry. Of primary concern is the requirement to invest billions in environmental control facilities and concomitant millions in annual operating costs without balancing costs and benefits.

No one will argue that a cleanup of air and water in industrial areas was long overdue. The Pittsburgh area stands as a landmark of what can be done if proper steps are taken to rid the environment of pollutants. Every citizen, every worker in an industrial area is entitled to decent air and water, in and out of the plant. We, in the Pittsburgh area, now enjoy both. And, yes, the Federal Government, along with State and county levels of government, can pride themselves on the role they played in bringing this situation about.

But, there can come a point where stringent enforcement of rigid and unreasonable regulations becomes oppressive and counterproductive. The steel industry reached that point this summer.

It was under intensive assault on several fronts. Inflation was taking its toll. So were foreign imports. The Federal Government, unwilling to enforce old trade laws to defend the industry against the predatory trade practices of foreign competitors, now challenged industry's right to seek redress under the new multinational trade law. Pressure was being exerted to force the industry to spend money it did not have on expensive environmental projects that would return little in the way of benefits to the industry or to the employee. Those same "phantom funds" also were needed for major capital improvement projects to modernize plants and equipment if the industry hoped to remain competitive on a worldwide basis.

The industry's reaction to all this sent shockwaves through the Nation. It severely cut back production. Plants were closed. Some permanently. Hundreds of thousands of steelworkers were furloughed. Many with the knowledge they would never go back to work. Steel's retrenchment was felt in related industries. More closings occurred. More layoffs took place. The Nation's unemployment rate soared.

That economic disaster brought home the realization a revitalization of the steel industry is of paramount importance to provide for national security needs and steel's contribution in other areas; that is, the exploration, production and distribution of almost all types of energy.

As a result, a segment of the industry has proposed a 10-year program which it feels should be initiated immediately with governmental support. The proposal includes:

(A) Quantitative restraints upon imports of all steel products to be established through negotiation of government-to-government voluntary agreements. Such agreements should reflect a maximum of 13 percent import penetration of the domestic market for carbon steel products and the quantitative levels of specialty steel restraints so effective during the 1976–79 period.

(B) Because of the present recession and the shortfall of capital for near-term investment in required air and water control facilities, the deadlines for compliance should be set back 3 years: to December 31, 1985, under the Clean Air Act and to July 1, 1987, under the Water Pollution Control Act. This deferment, of course, would require action by Congress.

Furthermore, the Environmental Protection Agency should be directed to adopt:

(1) A viable bubble policy—the existing policy permits use of this concept only in attainment areas and is of little use to most steel companies.

(2) Best available technology (BAT) effluent guidelines for the steel industry (Clean Water Act Amendments of 1977) equal to the best practical control technology (BPT) guidelines similar to the treatment afforded the rubber industry.

(3) Regulations stating replacement of facilities in kind with no increase of rated capacity of allowable emissions should not be classed as new sources.

(4) A special regulatory approach to limited life facilities subjecting such facilities to limited environmental regulations for a specified period of time.

Congress should review and amend existing environmental laws to achieve a balance between environmental control and economic reality. Requirements based on secondary air quality standards that are related to welfare (not health) should be eliminated or at least subject to rigorous cost-benefit analyses and local options.

The mandatory requirement of the Clean Water Act that all streams must be fishable and swimmable and the unrealistic goal of zero discharge of pollutants must be amended to practical requirements for the protection of human health.

(C) The Capital Cost Recovery Act of 1979, permitting accelerated depreciation in simplified fashion should be enacted into law immediately. In view of the fact that approximately 5 years will be required for the depreciation benefits to flow to the industry and the current recession is providing critical cash flow problems, Congress should provide for the refundability of investment tax credits for a 10-year period—5 years back and 5 forward.

(D) Pending completion of government-to-government voluntary steel trade agreements, an improved trigger price mechanism (TPM) should be instituted. Improvements should include:

(1) Adjustment to the TPM cost calculation formula to reflect the higher average costs of non-Japanese suppliers to the United States.

(2) Provision for monitoring home market prices of foreign suppliers.

(3) Provision of more accurate statement of Japanese costs by requiring the methodology and definition of costs should be fully transparent and concurred in by the domestic industry.

(4) Preclusion of foreign producer sales anywhere in the United States at a lower price than the trigger price prevailing at the U.S. port of entry closest to the foreign producer's mill.

(5) Expansion of the TPM to include specialty steel products and all other steel products produced domestically.

Mr. Speaker, it would be unrealistic to think that all of this particular proposal would meet with the approval of all Members in this House. However, I strongly believe that, in light of past warnings and present problems it would behoove my colleagues to give the proposal their closest attention.

Over the past two decades this Nation has lost its lead. Indeed, it has lost its domestic markets to industries such as television product, leather, textiles, glass, and so forth. Congress in the past has sat by and watched it happen. In the past decade this Nation has seen what can happen to its most basic industry—steel. Until now, little has been done to heed the warnings.

We know what has happened. We know what can happen. I urge my colleagues to remember that an industrial nation which loses the ability to produce for itself stands in grave danger of losing the capability to survive.●

PERSONAL EXPLANATION

HON. GEORGE M. O'BRIEN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. O'BRIEN. Mr. Speaker, on Tuesday, September 16, I was in Chicago fulfilling a longstanding commitment to address the Professional Standards Review Organizations of Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin. As a result, I was absent for several recorded votes that took place in the House.

If present, I would have voted aye on final passage of the defense appropriations bill for fiscal year 1981, which passed by a vote of 351 to 42.

On the amendment which increased appropriations for Armed Forces personnel, and operation and maintenance for recruitment purposes by $100 million, I would have voted aye. The vote was 390 to 13.

I would have opposed an amendment to strike language that prohibits the use of funds to make price differential payments on contracts to relieve economic dislocations. This amendment was accepted by a vote of 220 to 179.

On the amendment that sought to prohibit the use of funds for the production of binary weapons, I would have voted no. The amendment was rejected 125 to 276.

Had I been present, I would have voted against an amendment that sought to prohibit the use of funds for a basing mode for the MX missile until April 1, 1981. The amendment was rejected 141 to 256.●

SURFACE TRANSPORTATION ACT OF 1980

HON. ARLEN ERDAHL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. ERDAHL. Mr. Speaker, the city of Rochester, Minn., has developed an excellent transportation system for handicapped citizens. Eligible handicapped persons can "dial-a-ride" and have a vehicle which accommodates wheelchairs come to the person's home for a reasonable fee and be taken directly to his or her destination.

Under the committee language in H.R. 6417, such services could be continued, but if the city of Rochester had to provide accessible mass transit on the established routes, it is unlikely that both forms of transportation for the handicapped would be economically feasible. Consequently, the mayor has written to me in behalf of the proposal in H.R. 6417.

I submit the text of the mayor's letter to me on this issue to be printed in the CONGRESSIONAL RECORD at this point for the information of my colleagues:

ROCHESTER, MINN.,
September 4, 1980.

Hon. ARLEN ERDAHL,
U.S. House of Representatives, 1017 Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN ERDAHL: It is my understanding that within the next few days the House will be considering passage of the H.R. 6417 "Mass Transit Section 504 Handicapped Rules." On behalf of the City of Rochester and its citizens, I urge your support of this bill.

H.R. 6417, in comparison to existing U.S.D.O.T. regulations and the recently proposed changes by the Senate (S. 2720), provides the needed flexibility to ensure the availability of usable public transportation services for the handicapped and disabled community.

The current regulations which requires that all buses purchased after July 2, 1979 be specially equipped for handicapped accessibility and placed on regular fixed route transit, is an expensive nationwide experiment. The regulations provide few answers or assurances concerning the obvious technical and operating problems that will be cause for concern to this country's mass transit systems.

Our support for H.R. 6417 is not based upon the opposition to accessible mass transit. It is to encourage a responsible and practical approach to providing mass transit services to all our citizens. On the local level we see two very distinct groups within the handicapped population. One group supporting the mandate for accessible buses on fixed route but not convinced among themselves that the best technology is available. The other group views this mandate as a threat to existing special services such as dial-a-ride in the Rochester area.

Our existing regular route fleet averages twenty years of age. We are now in the process of purchasing new buses which, under current regulations, will be equipped with wheelchair lifts. Both the U.S.D.O.T. and handicapped organizations have admitted that lifts are not the most preferable technology. The Urban Mass Transportation Administration considers 12 to 15 years as the useful life of a bus. If improvements in accessibility technology are made within the next five years, will the Urban Mass Transportation Administration provide the necessary funds to replace or retrofit buses being purchased now?

Some of the comments we have heard on the local include:

"What happens if all wheelchair positions are full when the bus gets to your stop and the temperature is below freezing?"

"How will some of the less mobile handicapped get to the bus stop?"

"Will sidewalks and bus stops be shoveled out immediately after a snowfall?"

Considering the above testimony, I urge your support of H.R. 6417.

Thank you.

Sincerely,

CHUCK HAZAMA, *Mayor.*●

CHILE, UNITAS, AND THE FREE WORLD

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. McDONALD. Mr. Speaker, our Department of State, in its continuing efforts to alienate free world nations, decided that Chile should not participate in the annual inter-American naval exercise UNITAS this year. The reason expressed was pique over the failure of the Chilean Supreme Court to rule in favor of the U.S. request for extradition of some persons associated with the Letelier case. Since the Chilean side of this matter has not been presented to the American people, I am hereby inserting in the CONGRESSIONAL RECORD the statement of the Chilean Ministry for Foreign Relations on this subject:

STATEMENT OF THE CHILEAN MINISTRY FOR FOREIGN RELATIONS

The Ministry for Foreign Relations has learned that, in spite of the considered opinion of the Navy and congressional circles of the United States, this year the Department of State appears to have imposed, exclusively for political reasons, its decision to exclude Chile from the UNITAS exercises, the joint maneuvers of the United States Navy with one or various Latin American countries which take place annually in accordance with their work program.

This United States' decision does not damage Chile but, rather, the entire defense system of the hemispheric alliance.

The Government of Chile is certain that these arbitrary measures will not impair the efficiency of its Navy. They will, however, introduce new elements which, brought up by a political decision of a discriminatory nature, go against the principle of sovereign equality of the States. The Chilean Government categorically rejects them.●

MIDDLE-INCOME TAXPAYERS' TAX BURDEN INCREASES

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. BROYHILL. Mr. Speaker, the Internal Revenue Service has recently completed a study of the 1979 tax returns which the Service processed during the first 7 months of this year. The results of the Service's study spell bad news for middle-income taxpayers, and the forecast for years ahead is even gloomier, if present trends continue.

The figures contained in the IRS survey of 1979 tax returns indicate that individuals in the $15,000 to $50,000 income range bear the greatest portion of our Federal income tax burden. According to the Internal Revenue Service, taxpayers in this income range paid 60.1 percent of all income taxes paid for 1979. This statistic is even more disturbing when it is compared with an earlier figure indicating the past tax burden of this particular income group. In 1977, taxpayers in the $15,000 to $50,000 income range paid just barely 60 percent of all income taxes paid for that year. In 1979, individuals whose income was under $10,000 paid 4.4 percent of the total income tax liability, compared with 5.6 percent 2 years before. Those whose income fell in the $10,000 to $15,000 range paid 8 percent of all 1979 income taxes, compared with 10.7 percent of all 1977 income taxes.

The figures contained in the IRS study indicate an alarming shift of the Federal income tax burden toward the middle income class, concentrating an ever-increasing portion of all Federal income taxes on these taxpayers.

A number of studies have forecast future tax burdens on various income groups, based upon current trends, and these have borne out the prediction that middle-income taxpayers will be paying a greater and greater portion of all Federal income taxes in the future. One such recent study was conducted by the Tax Foundation, Inc., and was based upon the earnings of a typical worker earning the national median income of $20,000 and supporting a spouse and two children. Based upon present tax laws, the foundation predicted that the tax burden for such a worker will increase from 1979 to 1980 by over one-half percentage point. Last year, the foundation said, a median income worker earned $20,000 and paid $4,814 in direct and indirect Federal taxes, or 26.7 percent of his earnings. This year, his taxes will eat up $5,451 from his paycheck, or 27.3 percent of his earnings. For a worker earning $20,000 a year and supporting a family, a tax increase of $600 in 1 year will take a substantial bite out of his paycheck, particularly as inflation continues to eat away at the value of each dollar he takes home.

According to the Internal Revenue Service, Federal income taxes took 13.78 percent of all gross income in 1977, but this figure grew to 14.79 percent in 1979. Unless this trend is reversed in the very near future, the middle-income worker, upon whose labors our Nation's economy has always depended, is no longer going to be able to afford to work and pay taxes. The recent study conducted by the Internal Revenue Service serves to emphasize the urgent need for legislation to reduce income taxes and to index income tax rates to the rate of inflation. I hope my colleagues will agree with me that such legislation is long overdue, and will act now to reform our crippling tax laws.●

T. GRADY GREEN, JR., INVOCATION

HON. ELLIOTT H. LEVITAS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. LEVITAS. Mr. Speaker, I recently had the pleasure of speaking to the DeKalb County Grand Jurors Association in Decatur, Ga. I was deeply moved by the invocation given that evening by T. Grady Green, Jr., chaplain of the association. He is a longtime active citizen of the community, also serving as chaplain of the Decatur Lions Club. I wanted to share the message of his invocation with the other Members of the House.

Our Heavenly Father, we are thankful for our country, a land of beauty and wonder; a land of freedom; a land of opportunity and equality. Because of our greed and carelessness we sometime fall short of our standards; we have poverty and unemployment and we do not have equality. For this we ask Thy forgiveness. Help us to know that great is a nation where You are Lord. Happy are those who dwell in that land. Strong is the country that follows Your will, and freedom and liberty abound within its borders. Help us to see America through the eyes of love. Be with our speaker in his important work; give him the courage and strength needed. We commend to You our sick, be with them and care for them. Be with those who have recently lost loved ones, comfort them. . . .

Mr. Speaker, this message is truly one of conviction and inspiration.●

SUPERFUND

HON. JIM JEFFRIES

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. JEFFRIES. Mr. Speaker, I would like to call the attention of the House to the issues surrounding the proposed environmental superfund. The consequences of this legislation, should it be passed, require a careful examination by all Members of Congress. Recently, an insightful look at "Superfund" was provided in a nationally distributed newspaper article by Louis J. Cordia, environmental policy analyst for the Heritage Foundation. Mr. Cordia's piece is as follows:

EPA FRAUD: SELLING CONGRESS ON AN ENVIRONMENTAL "SUPERFUND"

The continuing saga of New York's "Love Canal" has focused needed public and government attention on problems associated with the hazardous wastes which are a by-product of modern industrialized society.

We obviously need to know more about the safe transportation, storage and disposal of chemical, biological and military wastes. We also need to move ahead with efforts to clean up waste disposal sites that have been abandoned and now appear to pose environmental or health hazards. More hazardous than hazardous wastes, however, is how the Carter administration exploits them.

Even though the Environmental Protection Agency (EPA), in particular, lacks scientific and medical evidence to support their claims, EPA is determined to convince the American people that everyone is endangered by toxic wastes. This propaganda campaign gives rise to a new health hazard each morning; it would appear that the objective is to seduce Congress into more readily granting the countless billions of dollars that the environmental bureaucrats say they need for "our" protection. Crises are created to justify the existences of most regulatory programs. However, surpassing even this pursuit, EPA is attempting to exploit the public's fear of serious illness in launching its 1980s campaign against hazardous wastes. It's a cynical and deceitful effort.

The main thrust of the campaign is to coax Congress into creating an environmental "superfund." The several major pieces of "superfund" legislation would create a fund of anywhere from $100 million to $4.1 billion, financed totally or in part by industry and government (federal and state), to pay for clean-up of any or all hazardous waste disposal sites, chemical spills and oil spills, and in some cases for compensation of victims allegedly injured by these substances. (The costs, of course, would really be borne by consumers, either in higher taxes or higher prices.)

Yet, it has not been shown that such a fund is even needed.

Usually, some understanding can be made, some compromise struck, or some guidelines offered before a legislative proposal reaches the floors of the House and Senate. Not this time.

Who would pay, how much, and for what, are questions that the full House and Senate will have to deal with from scratch.

Each proposal has gymnastically undergone complete reversals as it has moved from subcommittee to full committee and, by sequential referral, to other committees. No one has found a reasonable answer.

On the House and Senate floors, the three key issues of liability, funding and scope undoubtedly will not be decided on their merits. There just will not be enough time for full consideration. Instead and unfortunately, instilled public apprehension about hazardous wastes will cause Congress to act, to do something, especially in light of this campaign year.

Although Love Canal fuels EPA's campaign before Congress, the government's attack against hazardous wastes is not limited to "superfund." At the request of EPA, the Department of Justice has filed the largest environmental lawsuit ever, seeking $124 million from Hooker's parent company in connection with Love Canal. On top of this sum, about 1,000 claims for personal and property damages seek more than $2 billion, and New York is suing for $635 million.

In addition to Love Canal, the Justice Department also has investigated other possible violations by Hooker. Though Hooker is the prime target, more than 100 other cases also are under investigation.

To bolster the government's case against Hooker. EPA collected in its administrative capacity what turned out to be more legal, than scientifically valid, evidence. The agency sparked near-hysteria when it announced in a special press conference that its study suggested chromosome damage in the families living near the Love Canal site. With a preselected sample of people, it found evidence "so alarming"—11 residents out of 36 showed signs of chromosome breakdown—that many residents responded with near panic, taking two federal officials hostage; even President Carter joined in the excitement by declaring an evacuation of 710 families. The total number of relocated families now nears 1,000. Belatedly, a scientific panel reviewed the EPA preliminary study and found an "inadequate basis for any scientific or medical inferences from the data (even of a preliminary nature)".

Still, "superfund" appears to be the prime candidate in this campaign. Introduced in June 1979, the expensive, punitive proposal attracted little support—at first. To provoke a response, it took another EPA-funded study by F. Hart and Associates, claiming that there were 32,000 to 50,000 disposal sites scattered throughout this country, of which 1,200 to 2,000 may be extremely dangerous.

The study was misleading—and its use as a propaganda vehicle by EPA was equally dishonest. Last year, for example, the House Commerce Subcommittee on Oversight and Investigation found drastically fewer dumpsites than did Hart and Associates. It identified 3,383 sites; which compares to the preliminary results this year from a Chemical Manufacturers Association study, showing 4,196 sites.

The total number of dumpsites, identification of those that are dangerous and the parties responsible for them, the cost for clean-up, and compensation for purported victims of hazardous wastes, are all important environmental concerns. EPA should address these unknowns; but it should do so honestly and dispassionately, employing sound science, medicine and technology.

The expansive "superfund" proposal is deficient on all counts—and the way it is being promoted is closer to being superfraud than sound public policy.●

ITALIAN AMERICAN HERITAGE WEEK

HON. LEO C. ZEFERETTI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. ZEFERETTI. Mr. Speaker, I want to take this opportunity to indicate my wholehearted support for the enactment of a resolution designating the week of October 12 through October 19 as Italian American Heritage Week. The measure, which I joined in cosponsoring, was approved by the House of Representatives earlier this week.

As a descendant of Italian immigrants myself, I was made well aware of the invaluable contributions made by Italian Americans at an early age. The influx of millions of Italians into the American melting pot contributed greatly to the building and growth of our great Nation. Though they were often faced with ethnic discrimination and the language barrier, the native Italians overcame these obstacles and established themselves as perhaps the most vibrant and productive ethnic group to set foot on our shores.

While having become assimilated into the mainstream of American life over the years, Italian Americans have preserved the rich heritage of our homeland, a culture unique in its character and unsurpassed as a monument to the advancement of civilization.

I am particularly proud of the achievements of Italian Americans in the growth of New York City and, in particular, my hometown of Brooklyn. Contemporary Brooklyn is a community of ethnic neighborhoods, each maintaining its own cultural identity while working as a whole for the revitalization of the metropolitan area. The Italian American community there has been in the forefront in achieving progress in every field of endeavor: Business, government, education, and the arts.

We are proud of our heritage, and the designation of the days surrounding Columbus Day is a fitting testimony to the culture and contributions made to American society by the sons and daughters of Italia.●

CONNECTICUT FARMS CHURCH 250TH ANNIVERSARY

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. RINALDO. Mr. Speaker, one of America's oldest churches, whose roots were planted in the New World before the American Revolution, is celebrating its 250th anniversary of service to God, man, and country. It has a distinguished history that I wish to bring to the attention of my colleagues in Congress.

In the summer of 1667, a group of families in Connecticut decided to move to a new settlement. After traveling for weeks under the most adverse conditions, the Rev. Abraham Pierson and his followers settled down to build a new community in the gentle hills and rich farmland of Union, N.J. Perhaps to feel more at home, they called the site Connecticut Farms.

For a long time, the people of Connecticut Farms traveled 4 and 5 miles to worship at the First Presbyterian Church in Elizabeth. When the worshippers could not get to Elizabeth, they held informal church prayer meetings and worship services in one of the farmhouses scattered through the fields and woods.

About 1730, they decided to build their own church.

With the same spirit that brought their forefathers to this land, the farmers went about the business of organizing and building a church. The original structure was erected on the rise of a hill, along the main road. At the foot of the hill was the town peat bog.

The church was chartered in the year 1730 and belonged to the Presbytery of Philadelphia. The first presbyteries had already been established in 1716 and were those of Long Island, Philadelphia, New Castle, and Sun Hill.

In its early history, Connecticut Farms Church men and women helped to forge the American Revolution. The farmers left behind their plows and fought in the American Revolution. Indeed, the parson, Rev. James Caldwell, was named the "fighting parson."

On June 7, 1780, Rev. Caldwell's wife Hannah, was shot by a Redcoat through the window of the parsonage, killing her instantly.

This incident incited great indignation and determination among the townspeople that the Revolution must succeed.

On June 23, 1780, the people of Connecticut Farms rallied to the defense of Gen. Nathaniel Greene and the American troops in Connecticut Farms. They fought enemy soldiers under the command of Gen. Baron Wilhelm von Knyphousen.

The fighting was fierce and the village was destroyed but the enemy troops were halted and driven back to Elizabethtown.

The church survived and has remained an important institution in Union and the surrounding area. From 1928 to 1963, it was under the pastorate of Rev. Fred W. Druckenmiller, and from 1979 to the present, the church has been led by Rev. R. Sidney Pinch. It has undergone extensive renovations, but retains the style and spiritual force of the original church. It was the first church in New Jersey to be listed on the National Register of Historic Places.

Through 250 years, Connecticut Farms Church has served as a spiritual home and beacon for thousands of families seeking spiritual comfort, education for their children, and a means of serving God by helping their fellow man.

I want to commend the parishioners and pastor of Connecticut Farms Church on its 250th anniversary. In honor of all the men, women, and children who have been part of the history of this church, I have had a flag flown over the Capitol for presentation to Connecticut Farms Church on this important milestone in its history.

I am proud to present the flag to the church in recognition of the courage and sacrifice of all those parish members who have contributed so much to our great country.●

THE NEED FOR A CHANGE IN THE TRADE ACT OF 1974

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. SEIBERLING. Mr. Speaker, I am today introducing legislation to amend the Trade Act of 1974 in order to rectify what I believe is an unfortunate inequity in the current law.

The bill I am introducing would amend paragraph 2 of section 231 of the Trade Act by adding the following sentence: "In determining weeks of employment, any period of authorized sick leave or absence from work due to work-related injury shall be treated as a period of employment." This addition would permit the counting of authorized sick leave or absence from work due to work-related injury toward the requirement that employees have worked at least 26 of the 52 weeks immediately preceding their layoff in order to qualify for trade adjustment assistance. Current law does not permit sick leave to be counted toward the 26-week requirement. My bill would also require the Secretary of Labor to apply this provision retroactively to any worker who has been denied trade adjustment assistance because they were absent from work on authorized sick leave or due to a work-related injury, and did not, therefore, meet the 26-week work requirement. Workers who have been denied trade adjustment assistance under these circumstances would have to refile for certification.

I believe that the need for this legislation is compelling. One worker in my congressional district, for example, worked for 22 years for a tire company. Because he worked only 19 of the 52 weeks immediately preceding his layoff due to a work-related injury, he was not eligible for trade adjustment assistance, thus negating his 21 prior years of work. At the same time, an employee who had worked only 3 years for the same company was declared eligible for trade adjustment assistance. I have heard of similar cases in other parts of Ohio, and perhaps other Members of the House have also heard from constituents in similar straits. I am convinced that my bill will help to right this injustice.●

ON INTRODUCTION OF THE "AMERICAN INNOVATION TAX INCENTIVE ACT OF 1980"

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. ROUSSELOT. Mr. Speaker, today I am introducing the "American Innovation Tax Incentive Act of 1980." This bill is unique because it simultaneously solves two important problems that stand in the way of the creation of innovative new companies. First, it would help provide the risk capital that is necessary to finance new ventures. Second, it would provide a way for new companies to hire the talent they need away from the big, established corporations.

The bill accomplishes these objectives by cutting the long-term capital gains tax in half for firms that are small, and that are in part owned by their employees.

Under current law, 40 percent of long-term gain is taxable as ordinary income. But under this bill, the deduction for individuals would be increased to 80 percent, leaving 20 percent to be taxed as ordinary income. For corporations, the alternative tax would be reduced from 28 percent to 14 percent. To qualify for this special capital gains tax treatment, the investment would have to be in a small company that has diversified share ownership among its employees.

To be considered "small," a company must have at least two of the following characteristics: total gross revenues of not more than $30 million; net worth of not more than $15 million; no more than 1,000 employees.

To qualify under the employee ownership criterion, 25 percent or more of a company's employees must own at least 15 percent of the total outstanding shares of the company. The bill defines nonmanagement personnel as all employees other than officers and member of the board of directors of the company. This provision insures that lower level managerial and support staff as well as hourly employees can own shares.

Under this bill, employee ownership can be achieved in a number of ways. An employee stock ownership trust is an obvious method; but stock could also be distributed by giving shares as bonuses, selling stock to employees at concessional prices, or granting it through employee stock options.

Mr. Speaker, this bill has several important attributes. First, the net effect on Federal revenues will be positive. Second, it encourages employee stock ownership, and thus stimulates employee productivity at a key point in a new firm's existence. Third, it encourages the investors in a company—rather than the Government—to finance the distribution of stock to the employee.

Let me briefly explain these three points. First, the bill would result in a net positive flow to the Treasury because of the inevitable sequence of the revenue flow of a new company. When an investor or group of investors first invests in a company, they typically do so with the expectaton that they will not be able to sell a portion of their shares in the company for 3 or 4 years. During this period, of course, the company has hired personnel, has invested in plant, equipment and R. & D., and these activities have created tax revenues. This economic activity must take place before any of the investors can sell their shares at a profit and thus realize capital gain. In the real world, the investors will not be able to sell their shares, realize a capital gain, and take advantage of the special tax treatment until the company has become profitable. In the interim, a whole chain of economic activity has occured which inevitably must contribute to tax revenues. In effect, it is very difficult to see how this bill could ever result in a net loss to the Treasury.

Second, the bill addresses the problems of productivity and employee stock ownership in a new way. The most critical phase of a new company's existence is its first several years. It is at that time that a company needs all the dedication and creativity its employees and management can provide. Productivity and innovation are the result of a team effort—employees and management working together to make the company successful. Employee stock ownership is key to creating such motivation at this stage in a company's existence. Yet it is at this stage that a new company is least likely to use employee stock ownership plans (ESOP's). That is because ESOP's are legally rigorous to structure and legal fees can be high, and because there is no incentive for a new company which has no profit and thus no tax liability to take advantage of the tax breaks available to ESOP's.

So this bill helps fill a void. It creates a strong new incentive for management to diversify ownership among employees at the point when motivating employees to greater creativity and productivity is most critical to the company's success. This is also the period during which a company's stock can achieve the most appreciation. Employees will benefit most if they are able to acquire stock, at the outset of their company's existence, then sell it later after the company has become successful. The result of such sales is that the individual employee can take out a significant pool of capital which he can even use as seed money to start his own business.

Third, the bill approaches the goal of employee stock ownership from a

new angle. Previous efforts to bias the tax code so as to bring about employee stock ownership have focused on ESOP's. This bill provides an incentive for investors and management to choose voluntarily to diversify share ownership in any number of ways—most likely through share stock options. It creates such favorable tax treatment for ultimate capital gain that investors have a strong incentive to dilute their ownership by setting aside a block of shares for disposal to nonmanagement employees. Thus, in effect, the investors finance employee ownership of shares, the Government does not.

The bill by no means precludes the use of ESOP's. ESOP's are one of a number of means that can be used to achieve employee ownership under the bill. But it encourages investors to assume the burden of financing employee ownership.

It might be useful to give an example of the effect of the bill in practice.

Let's say that young Tom Edison has invented a terrific new device called a phonograph and wants to produce it. He has no record of business experience and cannot obtain conventional loans and so he goes to a group of investors and asks them to invest. They do so, normally in exchange for about 75 to 80 percent of the shares in the company. They typically will permit the investor 15-percent ownership and will, because of the provisions of this bill, further dilute their ownership by setting aside another 15 percent for employees. This 15 percent is set aside and when the company has hired employees the shares will be offered to the employees through options or as a bonus.

Having now obtained his investment capital, Edison proceeds to hire employees, invest in plant and equipment, and manufacture and market his product. By the third year of business, he has made a profit, and has even paid Federal income taxes and the Federal payroll taxes. At this point, several of the investors decide to sell some of their shares, so that they can reinvest in other new startup ventures.

They do so, and at that time, are eligible for an 80-percent deduction from their captial gain. They are taxed on only 20 percent of the gain. To be eligible for this treatment, they need only show that, at the time of their investment, the company was a qualifying small business, and that it had distributed its pool of employee shares so that at least 25 percent of the employees owned at least 15 percent of the shares. Should employees who own shares wish to sell them, they do not get the benefit of the special capital gains tax treatment. They have already benefited by having obtained the shares in the first place—at the expense of the dilution of the investors' ownership of the company. The special capital gains treatment is reserved for the investors who took the risk that young Tom's phonograph would sell.

In short, Mr. Speaker, I believe the bill would accomplish a number of highly important objectives.

It would make it easier for individuals who have innovative ideas to obtain investment capital;

It would in general increase the availability of venture capital for investment in new enterprise;

It would give more working men and women an ownership stake in American business, making each of them capitalists with their own claim to the company for which they work, and

It would stimulate productivity because it would provide an incentive for employees at all levels of the enterprise to propose innovative, cost-saving ideas.

Mr. Speaker, this is a bill to stimulate American innovation. It says to the men and women with new ideas that our Government wants them to try out their ideas in the marketplace.

In testifying before the Ways and Means Committee on August 19 of this year, Mr. Nolan Bushnell, chairman of the Alliance for American Innovation and a highly creative and successful inventor in his own right, said: "The central problem for a truly innovative new business is finding adequate investment capital. The availability of such risk capital is at the very heart of the problem of the innovativeness, productivity and competitiveness of the American economy."

This bill goes to the root of these problems, Mr. Speaker, and I commend it to the attention and cosponsorship of my colleagues.

The text of the American Innovation Tax Incentive Act of 1980 follows.

H.R. 8155

A bill to amend the Internal Revenue Code of 1954 to cut in half the capital gains tax on the sale of certain stocks and bonds of qualified small corporations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Innovation Tax Incentive Act of 1980".

SEC. 2. CAPITAL GAINS TAX CUT IN HALF WITH RESPECT TO SALES OF CERTAIN STOCKS AND BONDS OF QUALIFIED SMALL CORPORATIONS.

(a) REDUCTION IN AMOUNT OF NET CAPITAL GAIN INCLUDED IN INCOME OF INDIVIDUALS.—Subsection (a) of section 1202 of the Internal Revenue Code of 1954 (relating to deduction for capital gains) is amended to read as follows:

"(a) IN GENERAL.—If for any taxable year a taxpayer other than a corporation has a net capital gain, there shall be allowed as a deduction from gross income an amount equal to the sum of—

"(1) 80 percent of the portion of such gain equal to the qualified small corporation net capital gain, plus

"(2) 60 percent of the excess (if any) of the net capital gain over the portion to which paragraph (1) applies."

(b) REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX RATE FOR CORPORATIONS.—Subsection (a) of section 1201 of such Code (relating to alternative tax for corporations) is amended—

(1) by striking out "plus" at the end of paragraph (1), and

(2) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) a tax of 14 percent of the portion of the net capital gain equal to the qualified small corporation net capital gain, plus

"(3) a tax of 28 percent of the excess (if any) of the net capital gain over the portion of which paragraph (2) applies."

(c) DEFINITIONS AND SPECIAL RULES.—

(1) IN GENERAL.—Part I of subchapter P of chapter 1 of such Code (relating to treatment of capital gains) is amended by adding at the end thereof the following new section:

"SEC. 1203. DEFINITIONS AND SPECIAL RULES RELATING TO QUALIFIED SMALL CORPORATION NET CAPITAL GAIN.

"(a) QUALIFIED SMALL CORPORATION NET CAPITAL GAIN.—For purposes of this part, the term 'qualified small corporation net capital gain' means the net capital gain of the taxpayer for the taxable year resulting from a sale or exchange of qualified securities of qualified small corporations.

"(b) QUALIFIED SECURITIES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified securities' means any stock or other security acquired by the taxpayer from the corporation solely in exchange for property transferred by the taxpayer to the corporation following in a transaction which did not result in the deferral of gain.

"(2) EXCEPTIONS.—The term 'qualified securities' does not include any stock or other security—

"(A) issued for services, or

"(B) if, as part of the consideration for the exchange, the corporation assumes a liability of any person or acquires property subject to a liability.

"(c) QUALIFIED SMALL CORPORATION DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified small corporation' means any domestic corporation if—

"(A) it is reasonable to believe that the corporation will meet the requirements of paragraphs (2) and (3) for the taxable year in which the taxpayer has acquired qualified securities, and

"(B) the corporation meets the requirements of paragraphs (2) and (3) for each of the 2 taxable years (if any) preceding that taxable year.

"(2) REQUIREMENTS RELATING TO SIZE.—A corporation meets the requirements of this paragraph for a taxable year if the corporation satisfies the requirements of any 2 of the following subparagraphs for such year:

"(A) A corporation meets the requirements of this subparagraph if the gross income of the corporation does not exceed $30,000,000 for such year.

"(B) A corporation meets the requirements of this subparagraph if the net worth of such corporation does not exceed $15,000,000 at any time during such year.

"(C) A corporation meets the requirements of this subparagraph if the number of employee-years of service of such corporation does not exceed 1,000 for such year.

"(3) REQUIREMENTS RELATING TO EMPLOYEE OWNERSHIP.—A corporation meets the requirements of this paragraph for a taxable year if—

"(A) not less than 15 percent of the total value of shares of all classes of stock of such corporation is owned by qualified employees of the corporation, and

"(B) the employees so owning such stock constitute at least 25 percent of the total employees of such corporation.

"(d) OTHER DEFINITIONS.—

"(1) EMPLOYEE-YEAR OF SERVICE.—For purposes of subsection (c)(2)(B), the term 'employee-year of service' means 2,000 hours of service.

"(2) QUALIFIED EMPLOYEE.—For purposes of subsection (c)(3)(A), the term 'qualified employee' means an employee of the corporation who is not an officer of the corporation.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) TIME FOR DETERMINING WHETHER CORPORATION IS QUALIFIED SMALL CORPORATION.—The time for determining whether a corporation is a qualified small corporation with respect to the acquisition by the taxpayer of qualified securities shall be made at the time of such acquisition, except that a corporation shall be deemed to have satisfied the requirements related to employee ownership in paragraph (3) of subsection (c) if said corporation meets such requirements within 18 months following the acquisition of qualified securities by the taxpayer.

"(2) CONTROLLED GROUPS.—

"(A) IN GENERAL.—In the case of a corporation which is a member of a controlled group, all persons which are component members of such group at any time during the calendar year shall be treated as one corporation for such year.

"(B) CONTROLLED GROUP DEFINED.—Persons shall be treated as members of a controlled group if such persons would be treated as a single employer under the regulations prescribed under section 52(b).

"(3) STOCK ATTRIBUTION RULES.—The rules of section 318 shall apply for purposes of determining employee ownership of stock under subsection (c)(3)."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 of such Code is amended by inserting after the item relating to section 1202 the following new item:

"Sec. 1203. Definitions and special rules relating to qualified small corporation net capital gain."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to stock and other securities acquired after the date of the enactment of this Act in taxable years ending after such date.●

TOBACCO EXPORTS

HON. RICHARDSON PREYER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. PREYER. Mr. Speaker, as we become more aware of the need to increase U.S. exports in order to maintain a high level of economic prosperity, the importance of the tobacco industry to the American economy strikes us with renewed force. Tobacco and tobacco products are natural U.S. exports. According to Fortune magazine, 3 tobacco companies—Philip Morris, R. J. Reynolds Industries, and Universal Leaf Tobacco—were among the top 30 U.S. corporations in export sales in 1979. These three corporations alone had export revenues of over $1.3 billion last year. There can be no question that tobacco is already one of our major export industries, and that there is potential for even greater sales of tobacco and tobacco products abroad. We must do all we can to encourage development of this potential.

U.S. governmental action is, of course, particularly appropriate when foreign governments unfairly restrict access to their markets, and this has clearly been the case in Japan's treatment of U.S. exports of tobacco products. Cigarette retail prices are set by the Japanese Government, and imported brands, subject to a 90-percent import duty, are now priced over 60 percent higher than domestic ones. Yet American manufacturers are forced by the Government monopoly to sell at prices below their worldwide export prices. In addition, even under tentative agreements now being worked out, imported cigarettes could be sold at only 8 percent of the retail cigarette outlets in Japan. Finally, imported cigarette brands face severe restrictions with regard to advertising and a mandatory test-market period for new brands.

Imported cigarettes now hold 1.2 percent of the Japanese market. Industry sources estimate that if the present trade barriers were eliminated, imported cigarettes could be expected to account for 10 percent of that market. This increase could improve our balance of trade position with Japan by nearly one-half billion dollars a year, according to an industry figure, and would mean that U.S. manufacturers would be purchasing an additional 45 million pounds of leaf tobacco from American farmers.

Progress has been made in negotiations with the Japanese regarding American exports of tobacco products, but we must continue to work until all the unfair trade barriers now imposed by Japan are eliminated. The U.S. Congress must make its position clear—that we expect Japan to deal fairly with our export industries, just as we have done with theirs.●

BEHIND THE BATTLE OVER JERUSALEM

HON. BENJAMIN S. ROSENTHAL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. ROSENTHAL. Mr. Speaker, the question of the future status of Jerusalem, in particular who shall have sovereignty over the city, though more visible today than it has been previously, has loomed large in the Arab-Israel, conflict since 1948.

Last week in the New York Times, Arnold Forster, general counsel of the Anti-Defamation League Foundation of B'nai B'rith, offered a cogent and helpful essay on the recent diplomacy concerning Jerusalem. I commend Mr. Forster's analysis to my colleagues and present it here today:

BEHIND THE BATTLE OVER JERUSALEM

To the Editor:

Now that the Egyptian-Israeli peace talks are once again resuming, it is worthwhile to examine what caused the most recent interruption.

Prime Minister Begin sometimes takes actions regarded as unnecessary, controversial and irritating. It was upsetting to many people and counterproductive for him to allow a bill to reach the floor of Israel's Parliament that declares that all Jerusalem, is, as a matter of law, the capital of Israel; it has been so in fact since 1967. And for Mr. Begin now to announce the long-planned removal of his offices from West to East Jerusalem seems to be thumbing his nose at the world.

The world reacted in the expected fashion—angry, critical, vengeful. But who is to blame for the present conflict over Jerusalem?

For a very long time, the Arabs have waged an intensive international campaign challenging Israeli sovereignty over Jerusalem. An array of U.N. resolutions have been spread on the record, thanks to the pro-Arab clique that controls the U.N., admonishing Israel for trespassing on what Israel regards as its own most sacred city.

Typically, last March the Security Council adopted a resolution requiring the dismantling of Israeli settlements, including Jerusalem. And the Arab League met just before the present donnybrook and threatened to crush Israel unless it surrendered the Holy City and the West Bank. Unfortunately, our own Government long ago joined this Arab effort with respect to Jerusalem.

At Camp David two years ago, President Carter told Mr. Begin that the U.S. did not recognize Israel's claim to East Jerusalem. A month later, then Assistant Secretary of State Harold Saunders violated Camp David accords in assuring East Jerusalem residents of participation in the proposed West Bank autonomy plan. This was followed by countless U.S. announcements and symbolic actions to show again and again its rejection of Israel's 13-year de facto governance of the eastern side of its Eternal City.

When, as a result, Israel defiantly proclaimed all Jerusalem its capital, the Security Council immediately adopted a resolution ordering embassies out of the city. Secretary of State Muskie bitterly condemned the resolution—but refused to vote against it.

Crown Prince Fahd followed with an invitation to all Arab nations to join Saudi Arabia in a holy war to sweep Israel out of Jerusalem. President Sadat was compelled to go along with all this in his effort to break Egypt out of its isolation. And the world took up the cry, blaming Mr. Begin for again throwing roadblocks in the path of peace.

The simple truth is that Mr. Begin's "provocations" are Arab masks for their never-changing, basic purpose: the elimination of Israel.

During the 18 years that Jordan occupied East Jerusalem and the West Bank, the Arabs nevertheless wanted the Jewish state driven into the sea. In the 32 years before the Knesset declared all Jerusalem de jure its capital, the Arabs refused to recognize Israel's right to any part of the city.

Long before Mr. Begin's announced removal of his office to East Jerusalem, the Arabs demanded all of Israel, including Jerusalem, for themselves.

Obviously, then, the so-called obstructionist tactics of the Israeli Prime Minister are only Arab excuses, not the real reasons, for continuing the Jihad against Israel. Yet it is true that when Mr. Begin reacts to Arab actions deliberately designed to challenge his Government's positions, he creates the desired grist for Arab propaganda mills.

In short, Mr. Begin can be faulted for providing Israel's enemies with spurious pretexts for their unending struggle against his

country. But he cannot be blamed for their basic attitude toward the Jewish state or their efforts to destroy it. Let us recognize the difference.

ARNOLD FORSTER,
General Counsel,
Anti-Defamation League Foundation.●

GLENDALE FEDERAL SAVINGS & LOAN ASSOCIATION

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. MOORHEAD of California. Mr. Speaker, if it can be said that an institution has an avocation, it can be said that the avocation of Glendale Federal Savings & Loan Association is the enrichment of the later years for thousands of California residents.

Glendale Federal's primary reason for being is, of course, the operation and maintenance of a trustworthy and efficient financial organization, which seeks to serve everyone.

As a special part of this operation, Glendale Federal sponsors an advertising campaign which touts, "the second half can be the better half."

In keeping with this theme, but apart from its commercial aspects, the institution has directed significant amounts of time, muscle, and resources toward meeting the social, cultural, and health needs of senior citizens.

For example, during the nationally acclaimed Senior Citizen Month of May, this financial institution provided free estate planning clinics, blood pressure clinics, and senior citizen survival kits, which are digests of valued, seniors-related information.

Glendale Federal has demonstrated over and over again through its senior sports programs, that enthusiasm for game playing and physical exercise does not disappear with youth. It sponsors and promotes statewide golf and bowling events, and it has the Great Second Halfers softball team. The capstone of this unique athletic program is the highly successful senior olympics.

The institution has and makes available what is probably the finest collection of California art in the world. It was the founder and remains a firm and committed patron of the Glendale Symphony Orchestra, a superb community organization in which we all take pride and pleasure.

Mr. Speaker, I want to take this opportunity to express my appreciation to Glendale Federal Savings & Loan Association for its long-term dedication to the senior citizens of the State of California.●

DEDICATION OF THE TEMPLE

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. MAZZOLI. Mr. Speaker, on Sunday, August 24, 1980, along with other dignitaries, I had the privilege to speak at the dedication of the temple, a beautiful new structure built to serve the merged congregations of Adath Israel and Brith Sholom.

The spirit of unity which I experienced at this dedication evidenced by the attendance of community and church leaders of all denominations, made all of us in Louisville, aware that the temple will make enormous contributions to the community in the future just as its predecessors made in the past.

I am thankful to the members of the congregation of the temple for their hard work and dedication. And, I wish Rabbi Emeritus Herbert S. Waller and co-Rabbis Leonard H. Devine and Chester B. Diamond all health, happiness and success in the years ahead.●

RUNNING MEAN

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. LAGOMARSINO. Mr. Speaker, it would be an understatement to say I don't always agree with the editorial positions of the Washington Post. However, with regard to the following editorial "Running Mean," I say "Amen."

It is a staple of this year's cynical political wisdom that running for office is what Jimmy Carter does best. We have a different view. We think it may be what he does worst. Mr. Carter, as a candidate, tends to convey a mean and frantic nature. This has been demonstrated in many ways over the past several weeks—and months.

First, the president seems determined to discredit, rather than to prevail over, his opposition. It's as if he doesn't quite believe they are entitled to run against him, and so he won't actually fight them, but rather will only provide an endless series of complaints about their candidacies and their character. You don't have to be a John Anderson fan to be made uncomfortable by the way in which Mr. Carter has sought to paint the Anderson effort as somehow illegitimate, not entitled to a hearing. And you don't have to be a Reagan fan to have noticed that Mr. Carter has abandoned all dignity in his round-the-clock attack on Mr. Reagan's character and standing, jumping him (in a most sanctimonious tone of voice) for "offenses" similar to many Mr. Carter himself has committed, and, most recently, concluding from all this that Mr. Reagan is a "racist" and a purveyor of "hatred." This description doesn't fit Mr. Reagan. What it fits, or more precisely, fits into is Jimmy Carter's miserable record of personally savaging political opponents (Hubert Humphrey, Edward Kennedy) whenever the going got rough.

Ronald Reagan is not a hater and he is not a racist; there are real reasons to challenge his claim to the presidency, but these are not those reasons. Mr. Carter's "evidence" for his charges is so weak as to be pitiable and also puts one in mind of a series of comparable failures and defaults of his own over the years from "ethnic purity" in 1976 to silence on the civil rights bill in 1964 that could as easily have been distorted by an opponent. In a way, the most disturbing feature of the Carter campaign technique is that he displays a certain contempt for the evidence of our own eyes, asserting these things that run counter to what we can see and already know, as if he believed it didn't matter, that people would believe anything they were told. Only the day before his racism and hatred remarks, for instance, Mr. Carter—the man who has managed to keep out of debates with his competitors for a year now, and who has reduced his press conferences to the merest trickle—was telling the public, in his most outraged-for-democracy fashion that it was a terrible thing that Mr. Reagan was refusing to be "cross-examined" as anyone who aspired to the presidency should be.

So the president calls names, and he badly recreates his own record (for the better) and that of everyone else (for the worse) and he displays an alarming absence of magnanimity, generosity and size when he is campaigning. No, of course, the other candidates are not just going around tossing baskets of May flowers to each other either, and yes their campaigns are full of borderline fouls and blurrings of the record. But Jimmy Carter, as before seems to have few limits beyond which he will not go in the abuse of opponents and reconstruction of history.

The purpose of a campaign is to get elected. But a campaign can win at too great a cost. A campaign can be conducted in a way that casts doubt on the purposes and policies of an incumbent's own government and record. And a campaign can offend and turn off the very people the candidate expects to win, people who want to and normally would support him, if he is ruthless and reckless in seeking the vote. There must be a better case for his reelection than the one the president is now making.●

GASOHOL TAX REPEAL ACT

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. PETRI. Mr. Speaker, on September 10, I introduced legislation entitled the "Gasohol Tax Repeal Act," H.R. 8100.

Much has been done in this country to encourage the production of alternative fuels such as gasohol. However, a tax that costs more to administer than it generates in revenue impedes this effort.

This outdated Federal law requires a yearly tax of $55 for manufacturing gasohol plants, and a tax of $22 on each still and condenser manufactured for a gasohol plant. Most of these taxes are passed on to people who buy gasohol plants for their own energy needs, such as farmers who purchase gasohol plants for on-farm use.

The Gasohol Tax Repeal Act would repeal these taxes and thereby further encourage the development of gasohol.

These taxes were established many years ago to help Internal Revenue agents keep track of alcohol stills. This need for the tax no longer exists, for today the Service has other administrative ways of keeping track of stills.

The IRS reports that these taxes generate only about $6,000 a year in revenue. Accordingly, Treasury officials say the cost involved in administering them is much higher than the actual revenues these taxes bring in. By eliminating administrative expenses needed to keep these taxes on the books, repeal would result in a net saving to the Government. In addition it would cut out useless paperwork for private businesses.

Whether it is a major energy research program, or a repeal of an outdated tax, everything that can be done must be done to lessen America's energy crisis. These needless and restraining taxes should be repealed.●

TRIBUTE TO GEORGE STAFFORD

HON. KEITH G. SEBELIUS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. SEBELIUS. Mr. Speaker, today I would like to pay tribute to George Stafford, former Commissioner, Vice Chairman, and first permanent Chairman of the Interstate Commerce Commission. George announced his retirement from the Commission 2 weeks ago.

Following George's announcement, a story appeared in the Wichita Eagle that sums up George's contributions to his State and Nation, and I would like to commend it to my colleagues.

I have had the privilege of representing rural and small town America for the past 12 years in Congress. My tenure in this body roughly coincides with the 14 years George championed rural interest on the ICC. He will be sorely missed.

In the Eagle article there is a quote, "In George Stafford's view, government in general and the ICC in particular should serve people and by God, protect the little guy." I cannot think of a finer tribute to George than that statement. He has been protecting the little guy during his entire public service career.

I know I speak for the many people who know George, his wife, Lena, and their family and call them friends in saying well done and best wishes.

The article follows:

[From the Wichita Eagle, Sept. 2, 1980]

LAST OF THE OLD-TIME REGULATORS LEAVES ICC

(By Dave Bartel)

WASHINGTON.—Above George Stafford's sprawling desk at the Interstate Commerce Commission hangs a watercolor painting of a Kansas grain elevator surrounded by fields of golden wheat ripe for harvest.

The painting, at the focal point of the spacious, pale yellow office, is the tip-off to where Stafford's heart has always been in nearly 14 years of helping manage the nation's transportation network.

"My philosophy has always been simple," said the silver-haired Stafford. "We must maintain adequate service at reasonable rates for consumers."

The statement is government shorthand for traditional regulation of railroads, trucks, barges and everything that moves freight.

It is a statement now out of fashion in Washington, where the new catch-word for the transportation industry is "deregulation."

Stafford, the last of the old-time regulators at the ICC, is out of fashion, too. In bittersweet acknowledgement of that fact, he has retired effective Aug. 31, ending an ICC career that began in 1967 and included a seven-year stint as the commission's first permanent chairman.

The bantam-sized Stafford, who vaguely resembles Harry Truman, isn't pleased by what he has seen happening around him. He is bowing out, defeated but undaunted.

"All we talk about any more is competition," he said, feet propped on the credenza beneath the watercolor. "Nobody talks about service anymore. To me, that's the bottom line."

He doesn't point to the painting and the hundreds of small grain elevators across the Great Plains that it symbolizes. He doesn't mention the thousands of farmers whose livelihoods depend on ripened wheat and railcars to move the grain to market.

He doesn't have to. The painting and all it represents are firmly embedded in Stafford's mind. He recalls vividly the grain elevators, the dust-streaked farmers and the small farm towns of his boyhood in Valley Falls, Kan.

"People who have been there—and there aren't many here, it appears to me, who have been there—realize the all-consuming passion of the whole harvesting scene with its hits," Stafford said. "Wheat is the all-consuming passion. And the need for railcars to move the grain is absolute."

That keen awareness guided Stafford through his career at the ICC, an agency that can decide who prospers and who fails on the rolling plains of the nation's grain belt.

Railroads and trucks are the vital link between farm and market, and Stafford has made clear in thousands of pages of opinions how he thinks the ICC should supervise that link.

In Stafford's view, government in general and the ICC in particular should serve people and, by God, protect the little guy.

To do that, Stafford wouldn't trust railroads to move grain cars into harvest areas at a reasonable price for farmers. He would order them to do it.

Stafford wouldn't trust trucking companies to fan out over the countryside to serve little towns and villages. He would order them to in plain government-backed black and white.

"Sure you have to maintain a healthy carrier in the process," Stafford said, "but he's got to deliver the service. I don't see that concern around here now."

Indeed, the tide of opinion at the ICC, the White House and in Congress has been running against Stafford-style regulation for years. Lately, the deregulators have succeeded in starting an overhaul of the ICC's 93-year-old traditions.

Legislation to reduce trucking regulations sharply was approved earlier this year by Congress. It makes it easier for small truck companies to get started, but it also gives established firms more freedom to abandon unprofitable areas.

Similar legislation to let railroads have more control over their rates and services is stalled in Congress, but could still become law by year's end.

To Stafford, the trend is clear and the future for rural areas is plain.

"Big shippers in the big cities are able to command service, but when you get to the smaller towns and the smaller businessmen, it appears to me that before we're through they're going to have to pay a premium to get any service," he said.

Service in rural areas also will deteriorate or halt completely, Stafford predicts. If proposed mergers between major railroads are approved, as expected, the change could be brutal, he adds.

For example, a proposed merger of the Union Pacific and Missouri Pacific railroads could badly hurt smaller railroads in Kansas and neighboring grain states, Stafford says.

"I think the Denver and Rio Grande (Railroad) will lose maybe 40 percent of its business from that merger and the Katy (Missouri-Kansas-Texas Railroad) also would be materially harmed," he said. "But the new philosophy is not to provide any protection for smaller railroads the way we always did in the past.

"If the present approach continues," he added, leaning forward, "small railroads will die."

Then he leaned back in his big chair and spread his arms in surrender with the comment: "These are things that will have to be taken care of in the next year or two."

In the past, Stafford would have fought the tide, as he did in President Ford's administration by lining up farm-state senators to sink another rail deregulation scheme.

But now he is retiring from the regulatory wars. He insists the philosophical change at the ICC, where he is the only member from a rural Midwestern state, did not force the decision.

"My term is up at the end of the year and I did not want to be considered in any way for reappointment," Stafford said. "I just decided finally that this was a good time to quit."

Stafford said he has no definite plans about what he will do in retirement, but he will talk with some friends about joining a Washington consulting firm.

Before that, however, he must box the Kansas watercolor, hundreds of awards and thousands of speeches and other documents.

With his departure, an era of sorts ends at the ICC.

"The theory of deregulation has won out," he said with a wry, Truman-like smile. "Now we'll just see what happens."●

TRIBUTE TO JACK NORTHROP

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. DORNAN. Mr. Speaker, John K. "Jack" Northrop is truly a living legend. On Tuesday night, September 23, at 8 p.m., the aerospace community will gather at the Beverly Hilton Hotel to honor one of a handful of living pioneers who created history unique to the story of mankind—the conquest of flight and now space itself. I sincerely regret that our duties here, as

this session winds to a close, will prevent me from attending Jack Northrop's dinner, one of the most significant commemorative events ever held by the aerospace industry. However, I wanted to take this opportunity to pay my own special tribute.

Mr. Speaker, I am sure that everyone in this room has benefited in some way as a result of Mr. Northrop's work in aviation design and technology. Most of the significant aviation breakthroughs since the 1920's have in some way employed design or technical innovations which originated with Jack.

He began his career in aviation on the ground floor as a draftsman for the Loughead Bros.—as Lockheed was then known—who were building a twin engine flying boat in 1916. Before World War I, he designed the wings for that craft, which was then one of the world's largest flying boats.

Jack served in the Army in World War I in the Army Signal Corps, which had jurisdiction on all aircraft matters for the armed services.

After the war, he went back to work for the Loughead Bros. Co. until they went out of business in 1920.

After trying the construction business for a while as an employee of his father's firm, Jack joined the Douglas Aircraft Co. in 1923. While on the job, Jack designed the fuel tanks for the Army Air Services' "Round the World" cruisers, which made aviation history.

In 1927, Jack joined with Allan Lockheed and two others in forming the company we now know as the Lockheed Aircraft Corp. In the early years of Lockheed, Jack firmly established his reputation as an aviation wizard by designing the superadvanced Lockheed Vega, a high wing, full cantilever, monocoque airplane that was far in advance of any aircraft ever produced at that time. The Vega was used by such flight pioneers as Wiley Post and Amelia Earhart to set world records for speed and endurance.

Jack left Lockheed in 1928 to form the Avion Corp., in order to further research on all-wind and all-metal aircraft. While he was with Avion, he designed the Northrop Alpha, Beta, Gamma, and Delta aircraft. The Alpha, you may be interested to know, can be seen by anyone who visits the National Air and Space Museum just down the Mall.

In 1930, Avion was purchased by the United Aircraft and Transport Corp. because of William Boeing's interest in Jack's all metal Alpha model. While Jack was working with United Aircraft, the first Northrop Aircraft Corp. was formed as a division of United Aircraft.

During the depression, Jack left United Aircraft and formed a new Northrop Corp. in partnership with Douglas Aircraft. This venture later evolved into the Douglas El Segundo division. While with this organization, Jack directed the design and production of the Army A-17 attack aircraft, the Navy B-1 dive bombers, and military attack aircraft used by many other foreign air forces during World War II. Together with the Douglas Co.'s renowned engineering group, Jack participated in the development of the famous Douglas commercial aircraft series, the DC-1, DC-2, and DC-3.

In 1939, Jack left Douglas to form yet another Northrop enterprise, Northrop Aircraft, Inc. At Northrop Aircraft, Jack finally was able to devote enough time to bring to pass his dream of creating an operational flying wing aircraft. The concept of Northrop's flying wing was years ahead of its time. Even now it serves as an example to NASA and others interested in transport aircraft as an illustration of using a greater part of the aircraft's surface for lift, which provides increased fuel efficiency, together with greater range and load carrying capacity.

While Jack is one of the giants of the aerospace industry, his name ranking with those of Boeing, Lockheed, Douglas, and McDonnell, all of whom Jack worked with in essentially creating today's aerospace technology world. Jack has also contributed much in the field of industrial relations.

Jack has been a model employer, one whose door was always open to any employee wishing to discuss his ideas or seeking solutions to job-related or personal problems. Jack held frequent meetings to which every employee was invited, where the firm's goals and projects were discussed. Jack wanted his employees to feel that they were working together in a team effort. He also orginated the Christmas holiday shutdown, a practice now nearly universal in the industry, because he felt that the holidays were a time that families should spend together.

Jack has also done much to alleviate the suffering of paraplegics, in contributing to the design of lightweight, precision prosthetic devices.

Inspired by his work with World War II veterans and wounded, Jack made it possible for those with missing limbs to continue productive work. His own company made significant use of wounded vets during World War II, paying them comparable wages to his other employees. As a result, the morale of these wounded vets was significantly improved.

Jack is a legend in his own time—a member of both the Aviation and Aerospace Halls of Fame. He has contributed more to the growth and development of aviation and aerospace technology than any other individual alive today. I can best describe his contribution by quoting Donald Douglas Sr., who once said "every major airplane in the skies today has some Jack Northrop in it."

As a pilot who has flown many kinds of military and civilian aircraft, I admire Jack's thorough grasp of the problems of manned flight. And as a Representative of the people of the United States who have reaped the benefits of a 64-year career, one of the most inspirational of our time, I say thanks to Jack Northrop, a patriot who walks among America's greatest citizens of all time.●

TRIBUTE TO CONGRESSMAN WILLIAM S. MOORHEAD

HON. JIM WRIGHT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. WRIGHT. Mr. Speaker, a number of my colleagues have spoken of the leadership shown by BILL MOORHEAD in the area of synthetic fuels. There is no one in the House who is more acquainted with his contribution to that cause than I am, and I can tell you that it was considerable.

For years there have been attempts in the Congress to enact legislation that would stimulate the development of a synthetic fuels industry. The need has been apparent for years, but support was lacking until last year.

What made it possible for us to move ahead was an innovative approach developed by Congressman MOORHEAD. As chairman of the Subcommittee on Economic Stabilization of the Committee on Banking, Finance and Urban Affairs, Mr. MOORHEAD saw an opportunity to amend an old law, the Defense Production Act, to utilize the fuel purchases of the Department of Defense as a way to stimulate creation of a synthetic fuels industry.

By the time the final bill went to the President last June there were a great many Members of both bodies who had been involved in this effort. But it was BILL MOORHEAD in the solitude of contemplation 2 years ago who first conceived of a way to get the job done.

That to which he gave birth ultimately grew into a comprehensive program with many facets. It has already begun, and it will continue for another dozen years until this Nation is no longer at the mercy of foreign oil producers.

When the day comes that America achieves energy independence, it will be a direct result of the contributions of our great and distinguished colleague, BILL MOORHEAD.

It saddens me to know that BILL is retiring this year. He and I have worked together on many occasions. His conscientious attention to detail, his powers of persuasion, his devotion to what is best for the country, are qualities I shall always remember.

He is a leader who knew how to lead. Through all those long months of the conference on the Energy Security Act BILL MOORHEAD never lost sight of the goal, nor did he ever abandon hope when, indeed, some of the problems seemed insurmountable.

The same strong hand was evident in everything he handled. With BILL MOORHEAD in the Chair even the impossible did not take very long.

Mr. Speaker, I would like to conclude with a personal message. To BILL MOORHEAD and his lovely wife Lucy I would say this: No matter what achievements you have made, and no matter how many joys you have known, I hope that the best and happiest days of your lives are yet to come.●

BALLARD'S 100TH ANNIVERSARY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I am pleased to announce to my colleagues that Ballard, Calif., marks its 100th anniversary in the Santa Ynez Valley this month. Paul Halme, a Solvang attorney, was in charge of organizing the Ballard Labor Day centennial celebration.

The town of Ballard was founded by George Lewis. He named the town after William N. Ballard, superintendent of the stagecoach line that ran through Ballard between San Francisco and Yuma, Ariz.

The guests of honor include the Stewart Norris family who are descendants of George Lewis, Ballard's founder. The Norrises dedicated a plaque to be placed on Lewis' grave in Oak Hill Cemetery identifying him as Ballard's founding father.

Another honored guest is Jeannette Lyons, 93, a native of Ballard. Miss Lyons is one of the oldest living descendants of a Ballard family to participate in centennial festivities.●

TWENTY-FIRST OBSERVANCE OF CAPTIVE NATIONS WEEK

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. DERWINSKI. Mr. Speaker, the week of July 13-19 marked the 21st observance of Captive Nations Week. The commemoration of this week is a salute to those nations held captive under Soviet Russian domination.

Throughout our Nation, freedom-loving Americans voiced their support for national rights of the peoples held captive. In Massachusetts, a rally was scheduled and speeches were given by Edward F. King and Orest Szczudluk, chairman of the Massachusetts Captive Nations Week Committee. I wish to insert Governor Edward J. King's proclamation Edward F. King's speech, along with the remarks by Mr. Szczudluk. The program and the press release announcing the captive nations commemorative rally proceed these statements:

1980 CAPTIVE NATIONS WEEK OBSERVANCE, 21ST ANNIVERSARY

PROGRAM OF THE CAPTIVE NATIONS WEEK COMMEMORATIVE RALLY

Wednesday, July 16, 1980, Between 12 and 1 o'clock, Massachusetts State House, Beacon Street, Boston

Opening welcome: Orest Szczudluk, chairman, Captive Nations Week Committee, who will also serve as chairman of the commemorative rally.

Invocation: Very Rev. Peter Ohirko, pastor of Christ The King Ukrainian Catholic Church in Boston.

Governor's welcome: His Excellency Edward J. King, Governor of the Commonwealth of Massachusetts.

List of Captive Nations: Mrs. Maria Walzer (Ukrainian).

President Carter's Proclamation: Miss Dana Austras (Lithuanian).

Governor King's Proclamation: Mr. Aivars Oga (Latvian).

Principal speaker: Edward F. King, a well known civic and political leader in Massachusetts.

Patrick Henry's Advice For the Free World: Miss Isabel Rivero-Arguelles (Cuban).

Downfall of the Soviet Russian empire: Skit performed by children representing following captive countries: Ukraine, Latvia, Lithuania, Estonia, Hungary, Cuba, Afghanistan.

Statement: Narrator: Don Meier.

Benediction: Arijs Kuceris, minister of the Latvian Trinity Mission Church.

God Bless America: Led by Mrs. Carmen Sanchez (Cuban).

PRESS RELEASE FROM: CAPTIVE NATIONS WEEK COMMITTEE, JAMAICA PLAIN, MASS.

BOSTON.—"Freedom and independence" will be the theme of the Captive Nations Week Commemorative Rally scheduled for Wednesday, July 16, 12:00 noon, in front of the Massachusetts State House on Beacon Hill. The event will salute all captive nations under Russian communist domination.

The principal address will be delivered by Edward F. King, chairman of the Boston Finance Commission and well known political and civic leader. Governor Edward J. King will extend greetings.

A feature attraction of this event will be the presentation of a skit, which portrays the occupation and oppression of the captive nations, followed by the overthrow of Russian communist tyranny by the captive nations and the re-establishment of freedom and independence in these counties.

The public is cordially invited to attend the rally and express their strong support for the freedom and national independence of all captive nations.

The Captive Nations Week Resolution of 1959 listed 22 original captive nations: Ukraine, Lithuania, Latvia, Estonia, Armenia, Azerbaijan, Georgia, Byelorussia, Idel-Ural, Cossackia, Turkestan, Poland, Hungary, Czecho-Slovakia, Rumania, Bulgaria, Albania, East Germany, Mainland China, North Vietnam, North Korea, Tibet. Added were: Serbia, Croatia, Slovenia, Cuba, Cambodia, South Vietnam, Laos; and in 1979—Afghanistan.

The 21st anniversary of the CNW presents a timely opportunity for all Americans to voice their support for the national rights and independence of all captive nations in the Soviet Russian colonial empire and under Soviet Russian domination; to demand the withdrawal of Soviet forces from Afghanistan and all occupied countries; and to support all sanctions against the Soviet Union which condemn Soviet Russian imperialism.

A PROCLAMATION, 1980

Whereas the week of July 13-19, 1980, is observed nationally as "Captive Nations Week" dedicated to nations under Communist domination; and

Whereas the imperialistic policies of Russian Communists have led to the enslavement of the peoples of Ukraine, Armenia, Poland, Byelorussia, Cossackia, Georgia, Idel-Ural, North Caucasia, Turkestan, Estonia, Latvia, Lithuania, Azerbaijan, Albania, Romania, Czecho-Slovakia, Bulgaria, North Korea, Hungary, East Germany, Tibet, North Vietnam, Cuba, Cambodia, South Vietnam, Laos, and Afghanistan; and

Whereas the establishment of national and independent States by all captive nations and the decolonization of the Soviet Union Empire would contribute significantly to a just and lasting peace in the world and the freedom of all nations; and

Whereas the 1980 "Captive Nations Week" serves as an appropriate forum to manifest public support for freedom and independence of all captive peoples everywhere: Now, therefore, I, Edward J. King, Governor of the Commonwealth of Massachusetts, do hereby proclaim the week of July 13-19, 1980, as Captive Nations Week and urge all citizens of the Commonwealth to take cognizance of this event and to participate fittingly in its observance.

Given at the Executive Chamber in Boston, this second day of July, in the year of our Lord, one thousand nine hundred and eighty, and of the Independence of the United States of America, the two hundred and fourth.

EDWARD J. KING.

SPEECH OF EDWARD F. KING

I sincerely wish that it were not necessary for us to be here today. I wish that I could tell you that we will never again have to meet and rally. I wish that men and women of good will held all of the highest governmental offices in every country on this earth. And, finally, I wish that all Americans could understand and appreciate the freedoms that we enjoy and that are systematically being denied to our brothers and sisters in communist lands. But these are idle dreams. Because the facts are harsh. The momentum of international power politics in 1980 is all too clear.

Even as we meet here today, the Red Army is rampaging through Afghanistan and solidifying its grip on a new Captive Nation. And, even as that oppression takes place, the once-proud United States is dismantling its vital base at the Panama Canal and is standing helplessly by while over 50 of our countrymen are held hostage in a foreign nation. And so we meet in troubled times. We meet when our morale is low and we meet in the midst of retreat. But there are some signs of hope, and it is to these signs that we must cling.

Our boycott of the Moscow Olympics is a symbol of a new awakening. We can be intensely proud that no real American could participate in games and sports in a host country that is systematically slaughtering thousands of innocent people and subjugating another nation. Our flag never flew higher or with more glory than it does by its absence from the guilt-ridden city of Moscow.

The partial trade embargo and the wheat boycott, overwhelmingly supported by the American people, are certain signs that this great country and its citizens, can and do place certain values above the pursuits of profit and gain.

But these are only small steps, there is much to be done, and the hour is late. We must act—all of us must do our part. This country—the United States of America—must resolve to accept what we are—the leader of the free world and the last and only hope of millions of people who yearn only to breathe free air, who ache only to worship God in their own way, and who would cherish and covet the rights that we take for granted. There are some of us who scoff at you and at what I say, they call you relics of the past—"Cold War Warriors"—they say that we are unrealistic. Some even say that we lie and distort—that conditions are not so bad in communist countries. There are those in America who have praise for Fidel Castro, for Ho Chi Minh, for Mao Tse Tsung. Indeed, we even had American citizens like Jane Fonda who acted as apologists for North Viet Nam in the midst of that country's invasion and takeover of a neighboring land. But I have some questions for Jane Fonda and her friends. How come, everytime the door is opened, even a crack, why is it that thousands, even millions of people risk life and limb to escape and they always come in this direction? How many people climb over the Berlin wall from west to east? How many American ballet dancers or athletes defect to Moscow or Peking or Havana? No, Jane, there aren't any. All of these refugees—all of these defectors—all of the boat people—by the thousands—are pouring out of Cuba, out of Cambodia, out of Viet Nam and they will continue to come as long as their native lands are ruled by red thugs who masquerade as responsible governments.

This is the twenty-first year that we have observed Captive Nations Week in the United States. And the prospects are that we will have to observe many more before the flag of freedom is hoisted again in those unhappy lands for which we pray. But we must do more than pray. We must urge our own government to expand its concern for human rights to include national rights. For the two are inseparable. Our country, its leaders, and its diplomats, should insist on self-determination and full national independence for all nations. There can be no compromise, no retreat, and no acceptable alternative to that demand.

We cannot trade with, or encourage in any way, a nation that does not respect that basic principle. We should challenge the Soviet Union, and the Russian leaders in Moscow to free all of their political prisoners—from concentration camps, from jails and from so-called insanity wards. Russian Jews should be allowed to emigrate at will; those who were exiled to Gorki and other parts of Siberia should be released. We must keep the world spotlight on these atrocities at all times. And we must remember that an atrocity, an outrage, does not become less of an atrocity, or less of an outrage, with the passage of time. Time may heal all wounds—but time will not release the people of Ukraine—or Poland—or Hungary or Cuba, only firm and decisive action by the free world can do that.

But how long? Lord, how long will it take? We don't know. But as long as there is a United States—as long as there is a Captive Nation's Week—as long as we care—the hope will exist. And someday that spark of hope will ignite the action that will consume the Captive Nations and free the oppressed. Those of us who were born here in this country must never take it for granted.

We are proud of you and lend our support to this just cause, but we must be ever mindful that, if America is not here in strength and in freedom, no nation will remain to observe a Captive Nations Week for us. And a new dark ages, more terrible than ever, will encircle our globe.

And so our cause is one. And like Moses, we will cry, "Let our people go." And like Moses, we will repeat again and again—"Let our people go." And we will pray that someday in our lifetime, or beyond, the flags of sovereignty, of justice and of freedom, will be raised over all the nations of this earth.

May God bless you for your suffering and your courage and may He reward you for your patience. You have honored me beyond words by inviting me to be among you on this day and I thank you from the bottom of my heart.

CAPTIVE NATIONS WEEK OBSERVED IN BOSTON

(By Orest Szczudluk)

BOSTON, MASS.—"'Captive Nations Week' gives us a chance to recognize the courage and persistence of those people who today still search and fight for their own freedom. As our proclamation declares, 'The establishment of national and independent states by all captive nations and the decolonization of the Soviet empire would contribute significantly to a just and lasting peace in the world,'" stated Massachusetts Governor Edward J. King in his welcoming address as the Captive Nations Week commemorative rally in front of the Massachusetts State House on July 16.

The noon rally was opened by Orest Szczudluk, chairman of the Captive Nations Week Committee and vice president of the Boston Chapter of the Ukrainian Congress Committee of America, who said: "Today, Americans of all walks of life salute all captive nations and restate their support for the freedom and national independence of all captive nations under Russian communist domination." Very Rev. Peter Ohirko, pastor of the Christ the King Ukrainian Catholic Church, delivered the invocation. Present were also Rev. Anthony Baltrashunas, a Lithuanian Catholic priest and Arijs Kuceris, a Latvian Lutheran minister.

The principal address was delivered by Edward F. King, 1978 Republican candidate for governor, present chairman of the Boston Finance Commission and well known political and civic leader in Massachusetts. He stated: "Our boycott of the Moscow Olympics is a symbol of a new awakening. We can be intensely proud that no real American could participate in games and sports in a host country that is systematically slaughtering thousands of innocent people and subjugating other nations. Our flag never flew higher or with more glory than it does by its absence from the guilt-ridden city of Moscow . . . We must urge our own Government to expand its concern for human rights to include national rights. For the two are inseparable. Our country, its leaders, and its diplomats, should insist on self-determination and full national independence for all nations. There can be no compromise, no retreat, and no acceptable alternative to that demand. We cannot trade with, or encourage in any way, a nation that does not respect that basic principle . . . We should challenge the Soviet Union, and the Russian leaders in Moscow to free all of their political prisoners—from concentration camps, from jails, and from so-called insanity wards. And we must remember that atrocity, an outrage, does not become less of an atrocity, or less of an outrage, with the passage of time. Time may heal all wounds, but time will not release the people of Ukraine, or Poland, or Hungary, or Cuba. Only firm and decisive action by the free world can do that."

Mrs. Maria Walzer, Ukrainian, read the list of captive Nations. Miss Dana Austras, Lithuanian, read President Carter's proclamation; Aivars Oga, Latvian, delivered Governor King's proclamation. Mrs. Isabel Rivero-Arguelles (Cuban) recited a passage from Patrick Henry's speech.

The feature attraction was the presentation of a skit by children, representing Ukraine, Latvia, Lithuania, Estonia, Hungary, Cuba and Afghanistan. The skit displayed the occupation and oppression of the captive nations, followed by the overthrow of Russian communist tyranny by the captive nations and re-establishment of freedom and independence in these countries.

The rally was concluded by benediction, offered by Arijs Kuceris, minister of the Latvian Trinity Mission Church, and by "God Bless America," sung by Mrs. Carmen Sanchez (Cuban) and all the present. Over 200 people attended the rally, braving the 90 degrees temperature. Many came in their national costumes. Among the present was a group of Ukrainian students from the summer school at Harvard University Ukrainian Studies Center, who brought with them and displayed many posters.

NEWS MEDIA INFORMED

All news media in Boston received a special press release about the CNW rally and CNW objectives. The Boston Globe reported on the rally in its July 17 morning edition. The Pilot, the official organ of the Boston Catholic Archdiocese, carried an editorial in its July 13th edition: "A third group of non-Russians including Lithuanians, Ukrainians and Georgians wish to exercise their rights to preserve their culture and their language and to govern themselves. The Captive Nations desire a restoration of their human rights, be they personal, civil or even natural. It remains our duty to insist on their rights." Jamaica Plain Citizen, Hyde Park Tribune, Dorchester Argus and Mattapan Tribune of July 17, 1980, carried Orest Szczudluk's letter, "Captive Nations Week." Edward F. King, who was the principal speaker at the rally and who is also a syndicated columnist, reported on the CNW observance in his column, "Our flag flew higher by its absence," which appeared in West Roxbury Transcript and Parkway Transcript of July 30. The Citizens' Forum, a monthly, carried an excellent editorial and several articles on Captive Nations Week in its July-August edition.

PRAYERS IN CHURCHES

On Sunday, July 13, priests of the Catholic Archdiocese of Boston, offered prayers for all captive nations and for those suffering persecution in Russian communist jails. Prayers were requested by Humberto Cardinal Medeiros, Archbishop of Boston. Prayers were also offered in Ukrainian Catholic, Very Rev. Peter Ohirko—pastor, and Ukrainian Orthodox, Very Rev. Mykola Newmerzyckyj—pastor, Churches.

CAPTIVE NATIONS WEEK COMMITTEE

This year's observance of the CNW was sponsored by the Captive Nations Week Committee, which consisted of the following organizations: American National Latvian League of Boston, Facts About Cuba, Free Afghanistan Alliance, Lithuanian American Council of Boston, Lithuanian Community and Boston Chapter of the Ukrainian Congress Committee of America. It was chaired by Orest Szczudluk, vice president for public relations, Boston UCCA.●

DULLES AIRPORT

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. FISHER. Mr. Speaker, Dulles International Airport, which should one day be the major airport in the Washington area, needs promotional and developmental assistance. It is an excellent facility, but for a variety of reasons it is taking the brunt of the recession in the air travel industry in the Washington area. Improved ground transportation would be a step toward helping the airport attract business. One form of ground transportation to the airport would be a Metro rail line.

I have cosponsored legislation to authorize funds for the construction of a Metro rail line to Dulles. This bill will help to draw attention to this important issue. It is a complement to other legislation that I have also cosponsored for a comprehensive study of the feasibility of the Dulles line as well as several others around the region. Various studies, projections, and plans will have to be prepared before commitments to construction can be made. The important factor in the bill to authorize funds for the Dulles line is to exhibit congressional interest in moving forward; it shows confidence in the future status and growth of Dulles Airport.

Another component of ground transportation to Dulles is highway access. The 13-mile Dulles Access Road now terminates at the I-495 Beltway. Nearby I-66 is under construction. When I-66 is completed from the Beltway to the Potomac, it should be connected to the Dulles Access Road to provide convenient limited access transportation from the District of Columbia all the way to the airport. The FAA has long planned to build a total of 4 miles of road to provide the connection with I-66. The plans are in the final stage and, with the early completion of the environmental impact process, will be ready for construction bids.

It is vital for this project that the necessary funds be included in the Transportation Appropriations legislation for fiscal year 1981. I will be working to make certain that the final version of the bill contains the funds.

I am pleased to see congressional interest in the vitality of Dulles Airport and in the provision of ground transportation to it.●

WE MUST HEED THE LESSONS OF HISTORY IN THIS YEAR'S ELECTION

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I am bringing the following letter from my constitutent, Mr. Claude C. Coffman, to the attention of my colleagues because it points up the basic fallacy in the Carter administration's campaign of fear against Ronald Reagan.

Democrats are not the insurers of peace that Mr. Carter's campaign rhetoric would have us believe, and Ronald Reagan is not the trigger-happy hawk they have painted him to be. Reasonable thinking people know this to be true and, as outlined below, history bears them out:

SEPTEMBER 14, 1980.

HON. ROBERT J. LAGOMARSINO: I remember when President Wilson was re-elected after he promised to keep the U.S. out of World War I. The United States was at war within a month of when he began his second term after being re-elected.

When President Roosevelt was re-elected, in 1940, after promising to keep us out of World War II, he asked and got the right to send the anti-German allies war supplies under the "Lend-Lease" act. In order to help get these supplies through Roosevelt had U.S. destroyers escorting convoys of allied ships part way across the Atlantic and pinpoint German submarines, which the allied warships attacked. When a German submarine fired a torpedo at the American destroyer Greer, Roosevelt who had not told the people what he was doing feigned surprise and outrage and ordered U.S. warships to shoot on sight at hostile German ships. The destroyer Greer was torpedoed in September 1941, before the U.S. was at a declared war. Roosevelt got us into World War II by his actions. President Truman pulled our troops out of South Korea and North Korea invaded South Korea. President Johnson got us into war in South Vietnam after claiming Goldwater, if elected President would get us involved in a war in South Vietnam! Now Carter is claiming Reagan is a war monger! What's new?

Sincerely,

CLAUDE C. COFFMAN.●

HOUSE JOINT RESOLUTION 610

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. BEREUTER. Mr. Speaker, earlier I voted against House Joint Resolution 610, the continuing appropriations measure. This bill would provide funding for existing Federal activities until December 15, 1980, or until Congress completes all of its appropriations measures. An earlier motion to recommit, which I supported, was defeated; it would have extended the continuing resolution until only October 18, 1980—before the election.

On the surface, a continuing resolution is a routine procedural matter—a process that permits funding for various governmental activities until Congress can complete the regular appropriations process. That is not the case this time.

This resolution was presented to us today for one reason, and one reason only, to "get the majority party off the hook"—to insure that they do not have to vote on the key spending proposals until after the November election.

Those who control Congress want a lameduck session and have so stated their intention. They do not want to stand on their record when the people go to the polls on November 4. Indeed, they are afraid to even compile a record.

The only hitch in their plans is that the Government needs money to keep running regardless of whether we complete action on all of the necessary appropriations measures before we adjourn. This continuing resolution, with its December 15 date, gives them the break they need. By approving this resolution, Congress can recess before the election, without a guilty conscience, knowing that the Government will continue. Once the pressures of facing the electorate are removed, they expect to return to Washington and deal with the tough spending decisions they could not—or would not—face before the election.

The decisions left remaining are indeed difficult ones, particularly for an administration and majority party that began the year with promises of a balanced budget. They can not deliver—and know it. Now, they do not want to prove it by having to vote before November 4.

I reject that philosophy. We should not let those who control Congress off the hook. The problems are of their own creation. They have stymied any reasonable effort to solve our budgetary problems. They control the committee structure of Congress, the flow of legislation to the floor—indeed, the entire scheduling process. To say we can not get the job done is an indictment of their leadership—both substantively and procedurally.

Mr. Speaker, I oppose this resolution. I am prepared to work around the clock if need be, but I think we have an obligation to complete the work of this Congress by November 4. And, then, it is up to the people to judge the merits of that record.●

KIM DAE JUNG

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. OBERSTAR. Mr. Speaker, the people of this country in the post-war period have shown their deep commitment to the goal of an independent and democratic South Korea. Unfortunately, the leaders of that country have shown a flagrant disregard for democratic processes and for the rights of its own citizens.

I want to see the United States enjoy good relations with South Korea. Our Government, and even the most enthusiastic supporters of the Korean regime, however, must recognize that the death sentence imposed on Kim Dae Jung stands as a most se-

rious threat to United States-Korean relations. The Korean Government must recognize the reaction of our people and of all free people to a government which deals with opposition and dissent by executing the principal leader of that opposition. I join with my colleagues in making an appeal to the Government of South Korea: Do not execute Kim Dae Jung. Such an act can only serve to unleash even more desperate opposition to the Chun regime.

As the leader of the free world, the United States cannot condone or ignore the fate of Kim Dae Jung.

It is my firm conviction that the Government of South Korea can most effectively fight communism by protecting the rights of its citizens and by allowing free and peaceful expression of dissent.●

NATIONAL BOY OF THE YEAR

HON. RALPH S. REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. REGULA. Mr. Speaker, it is with considerable pleasure that I call my colleagues' attention to the accomplishment of still another champion from the city of champions, Massillon, Ohio.

Jace Smith, a senior at Washington High School, which has produced many Ohio champion football teams, was selected Wednesday as the Boys' Clubs of America's 1980-81 National Boy of the Year.

We are very proud of Jace in the 16th District of Ohio. He has been an outstanding young man in the Massillon Boys' Club program and well deserves the honor bestowed upon him.

A member of the Massillon club 11 years, he overcame a severe case of bronchial asthma to become one of the club's most active members. Following his graduation from high school, he plans to attend Ohio State University where he will study to become a surgeon.

Jace, who currently is president of his school's Keystone Club, served as cochairman of the 1980 National Keystone Club Conference. In 1979, he was the Boys' Clubs of America's alternate representative to the International Year of the Child Commission.

He has coached his club's Quiz Bowl teams, served as club librarian, and conducted "Reading Is Fundamental" programs. He frequently speaks on behalf of his club.

His father died when Jace was 7 and since then Jace has been the man of the house. He works part time to meet his personal needs and help with household expenses.

Jace is active in church and community activities and at school he was a member of the student council, a gym leader, manager of the Tigers' football and basketball teams, and a staff member of the school newspaper.

Jace has been the recipient of many honors since being named Boy of the Year, including a meeting with President Jimmy Carter in the Oval Office. He will be a spokesman in the coming months for the nationwide boys' club program which has benefited thousands of youths through the years in all sections of the Nation.

Our communities, in turn, have benefited from the activities and from the graduates of the boys' clubs.

I am especially pleased that one of our 16th District clubs has produced a national Boy of the Year. I congratulate Jace Smith, his director, Joe Hibbard, and the staff of the Boys' Clubs of Massillon for bringing this honor to the city of Massillon and the 16th District.●

PLEASE STICK TO THE ISSUES, MR. PRESIDENT

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. MAZZOLI. Mr. Speaker, the President has been getting—and following, it now appears—some very bad campaign advice.

He should have rejected out of hand advice that he charge his Republican opponent with practicing the politics of racism and hatred.

The President should remain positive and constructive in this campaign. He should discourse on the issues and not be caught up in a mud-slinging match.●

SAMURAI JUSTICE IN KOREA

HON. MATTHEW F. McHUGH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. McHUGH. Mr. Speaker, yesterday, as expected, a Korean military tribunal reached a preordained conclusion that Kim Dae Jung was guilty of a variety of charges that our own State Department has characterized as "farfetched," and sentenced Mr. Kim to death.

Having now concluded one charade, we are about to see another unfold. We have been told that there is every reason to believe that the military rules of South Korea will now step in to commute this sentence of death if sufficient concern is expressed by the international community. I certainly hope that such concern will be expressed and that the death sentence will not be carried out.

At the same time, however, such a demonstration of humanity by the South Korean Government will no doubt be lost on Mr. Kim, who will undoubtedly be consigned to life in prison in order to prevent him from participating in the political life of South Korea. That message will not be lost on other Koreans who share Mr. Kim's vision of a truly democratic Korea.

Mr. Speaker, as the New York Times pointed out in an editorial this morning the verdict that was reached yesterday is a fraud. It was based upon trumped up charges, tainted evidence, and a coerced confession that Mr. Kim later repudiated.

The only crime of which Mr. Kim is guilty is that of almost defeating the former ruler of Korea, Gen. Park Chung Hee, in the 1971 Presidential election, and of continuing to speak out in favor of a restoration of democracy and respect for humam rights.

Mr. Speaker, I would find it extremely difficult to support providing continued U.S. assistance to a regime capable of executing Kim Dae Jung. Thus, I hope that the present leaders of South Korea will reverse course and order Mr. Kim and his fellow codefendants released.

For the benefit of those Members who may not have seen the Times editorial, I am inserting a copy into the RECORD at this point.

[From the New York Times, Sept. 18, 1980]

SAMURAI JUSTICE IN KOREA

Millions of people watching television this week need no further instruction in samurai justice. The loser's penalty in early 17th-century Japan was predictable and brutal—a quick thwack of the sword, a suddenly headless neck. In "Shogun," the NBC mini-series based on James Clavell's novel, the feudal savagery is rooted in Asian history which viewers may assume is mercifully past. It isn't. Samurai swords are still flashing in ostensibly civilized South Korea.

Last November, the old shogun, President Park Chung Hee, was assassinated by a trusted lieutenant. Now there is a new military overlord, Gen. Chun Doo Hwan. He may bear the more modern title of President. But he seems intent on governing in the feudal manner.

He had scores to settle, especially after a humiliating student uprising in Kwangju. That uprising was blamed on the seditious intrigues of South Korea's foremost democratic leader, Kim Dae Jung. But the evidence was tenuous; Mr. Kim and his co-defendants were already in jail when the Kwangju riots occurred. So Government prosecutors duly came up with another charge, that Mr. Kim was plotting subversion during a trip to Japan in 1973. But the evidence was tainted, since Mr. Kim had been kidnapped from Tokyo by Korean agents. The abduction outraged the Japanese, who obtained a promise that no evidence developed in Japan would be used against him. The promise was broken.

Yesterday, as expected, Mr. Kim was found guilty of sedition by a military tribunal after a semi-secret trial marred by charges of fraud and crude Government pressure. And, as feared, the sentence is death by hanging. Under President Chun's samurai code, there is seemingly no mercy for losers.

The comparison with feudal Japan may be offensive to Koreans; they are a proud people with bitter memories of their past as an imperial colony of the Japanese. Defenders of General Chun insist that Korea's judiciary is independent, and that appeals or executive clemency are still possible. They assert that a new constitution is being shaped that will give Koreans a more or less democratic system.

American policy-makers have been indulgent to a fault in accepting these assurances. While the Chun shogunate was assuming power, President Carter saw fit to remark that "the Koreans are not ready for democracy . . . according to their own judgment." Washington's tolerance has now been repaid with the Kim death sentence. Official pragmatism notwithstanding, that verdict is an affront to civilized opinion everywhere. A human rights policy that winks at samurai justice can hardly "ready" South Korea for democracy.●

KIM DAE JUNG: KOREAN PATRIOT CONDEMNED TO DEATH

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. STARK. Mr. Speaker, I join in the worldwide outcry protesting the death sentence handed down by the South Korean general court-martial in the case of Kim Dae Jung. Once before the South Korean Government maneuvered to snuff out the life of Mr. Kim, South Korea's best known and most impressive democratic politician. The U.S. Government played a decisive role in saving Kim Dae Jung's life once before and it is my strong belief and hope that the United States will again play that role. Mr. Kim must live and serve the South Korean people. Those now ruling that country must be brought to see the error of their ways.

At this point, I would like to place in the RECORD a statement concerning the trial of Mr. Kim originated by the United Movement for Democracy in Korea and the Korean Congress for Democracy and Unification.

A STATEMENT ON KIM DAE JUNG

The Court-Martial in South Korea is about to mete out death-sentence to Kim Dae Jung and other opposition leaders for alleged conspiracy to overthrow the government.

The court procedures that this military tribunal used in this case can hardly be called a "trial" in any civilized society. The sedition charges under which these democratic leaders were brought to penal process suffer more than lack of specificity of facts; they are, indeed, downright lies intended for public deception and political vengeance. Thus, the Court-Martial, controlled by newly-emerged dictator Chun Doo Whan, did not even bother with the ceremonial "burden of proof" or legal syllogism in its deliberations on the case. Not a single element of civility guaranteed in due process of law, such as the right to counsel and other judicial equities, has been observed in the entire process.

What General Chun Doo Whan laid bare throughout this incident is his intention to physically eliminate the opponents who may challenge his dictatorship in the future. The strength of his determination is derived from his understanding that the governments of the United States and Japan will support whatever extreme measures he may employ in silencing the opposition, as long as he keeps South Korea subservient to respective interests of these countries.

We are confident, however, that the South Korean people will not remain passive while the scope of injustice is widening both at domestic and international levels. We call it straightforwardly to the attention of the leaders in Washington and Tokyo that, unless Chun is stopped right here and now, a political upheaval of serious consequences will erupt in Korea. Chun may kill a few thousand more Koreans; but their aspirations for democracy, the tenacity of which we witnessed in Kwangju, shall never die in Korea.

SUGARMAN AGAINST FTC SUGGESTS NEED FOR EQUAL ACCESS TO JUSTICE ACT

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. PORTER. Mr. Speaker, It is an exaggeration, perhaps, to say that each day we hear another horror story of Goverment regulation gone wild. But there can be little doubt that in every agency, some, likely, far more than others, examples of regulatory excesses can be found. These excesses not only sap the lifeblood of our economy and undermine the productivity of the business enterprises so essential to providing jobs for our citizens and revenue for the Federal Treasury, they also undermine the very agencies which pursue them. For when yet another story is heard, the credibility of the agency involved and its ability, therefore, to carry out its mission is tarnished.

Normally, Mr. Speaker, I would not bring one of these matters to the attention of the Members. They have heard so many so often before. But the story that is related below by a businessman from my district illustrates so clearly the absolute necessity for legislation to require an agency which wrongly prosecutes or persecutes a business to reimburse that business for its costs and attorneys fees to defend itself, that the opportunity cannot be allowed to pass. This legislation, of course, is the Equal Access to Justice Act, which has passed out of the Small Business Committee and is awaiting action in the Judiciary Committee. I am a cosponsor of the bill, H.R. 6429.

The narrative which follows is provided by Joseph Sugarman, president of the J.S. & A. Group, Inc. of Northbrook, Ill. I realize, of course, that this is only one side of the story and do not wish in any way to prejudge the outcome. But if Mr. Sugarman is right, surely he should not have to bear the cost of his defense against the massive power of the Federal bureaucracy and surely he should be the recipient not only of our admiration for his courage and strength but also of our commitment to change the law so that others like him in the business community cannot be similarly set upon. His story follows:

I'm pretty lucky. When I started my business in my basement eight years ago, I had little more than an idea and a product.

The product was the pocket calculator. The idea was to sell it through advertisements in national magazines and newspapers.

Those first years in the basement weren't easy. But, we worked hard and through imaginative advertising and a dedicated staff, JS&A grew rapidly to become well recognized as an innovator in electronics and marketing.

THREE BLIZZARDS

In January of 1979, three major blizzards struck the Chicago area. The heaviest snowfall hit Northbrook, our village just 20 miles north of Chicago.

Many of our employees were stranded unable to get to our office where huge drifts made travel impossible. Not only were we unable to reach our office but our computer totally broke down leaving us in even deeper trouble.

But we fought back. Our staff worked around the clock and on weekends. First, we processed orders manually. We also hired a group of computer specialists, rented outside computer time, employed a computer service bureau, and hired temporary help to feed this new computer network. We never gave up. Our totally dedicated staff and the patience of many of our customers helped us through the worst few months in our history. Although there were many customers who had to wait over 30 days for their parcels, every package was eventually shipped.

WE OPENED OUR DOORS

During this period, some of our customers called the FTC (Federal Trade Commission) to complain. We couldn't blame them. Despite our efforts to manually notify our customers of our delays, our computer was not functioning making the task extremely difficult.

The FTC advised JS&A of these complaints. To assure the FTC that we were a responsible company, we invited them to visit us. During their visit we showed them our computerized microfilm system which we use to back up every transaction. We showed them our new dual computer system (our main system and a backup system in case our main system ever failed again). And we demonstrated how we were able to locate and trace every order. We were very cooperative allowing them to look at every document they requested.

The FTC left. About one week later, they called and told us that they wanted us to pay a $100,000 penalty for not shipping our products within their 30-day rule. (The FTC rule states that anyone paying by check is entitled to have their purchase shipped within 30 days or they must be notified and given the option to cancel.)

NOT BY CONGRESS

The FTC rule is not a law nor a statute passed by Congress but rather a rule created by the FTC to strengthen their enforcement powers. I always felt that the rule was intended to be used against companies that purposely took advantage of the consumer. Instead it appears that the real violators, who often are too difficult to prosecute get away while JS&A a visible and highly respected company that pays taxes and has contributed to our free enterprise system is singled out. I don't think that was the intent of the rule.

And when the FTC goes to court, they have the full resources of the U.S. Government. Small, legitimate businesses haven't got a chance.

We're not perfect. We do make mistakes. But if we do make a mistake, we admit it, accept the responsibility, and then take whatever measures necessary to correct it. That's how we've built our reputation.

BLOW YOUR KNEECAPS OFF

Our attorneys advised us to settle. As one attorney said. "It's like a bully pulling out a gun and saying. 'If you don't give me a nickel, I'll blow your knee caps off.'" They advised us that the government will subpoena thousands of documents to harass us and cause us great inconvenience. They warned us that even if we went to court and won, we would end up spending more in legal fees than if we settled. He said the fight wasn't worth it.

But I refused. Although I admitted that we did ship some products late, all products were shipped and not one consumer lost a penny. I also accused the FTC of applying their rules to legitimate companies while leaving the real rip-off artists alone.

At first we tried to settle. We met with two young FTC attorneys and agreed in principle to pay consumers for any damages caused them. But there were practically no damages, just a temporary computer problem, some late shipments, and some bad weather. The FTC then issued a massive subpoena requesting documents that will take us months to gather and which we feel was designed to harass or force us to accept their original $100,000 settlement request.

Remember, the FTC publicizes their actions. And the higher the line, the more the publicity and the more stature these two attorneys will have at the FTC.

If this all sounds like blackmail—that's just what it appeared to be to us.

We did ship our products late—something we've admitted to them and which we publicly admit here, but we refuse to be blackmailed into paying a huge fine at the expense of our company's reputation—something we've worked hard eight years to build.

It is now over a year since the start of the FTC investigation of our company, and the FTC has still been unable to prove a case against us. Our massive advertising campaign not only made our case public, but would have certainly generated an outpouring of complaints against us, if indeed there were any.

Even more serious however, was a discovery we made while trying to convince the FTC to get off our backs. I was in the office of the FTC's head of the Bureau of Consumer Protection in Washington. I asked him why he did not go after companies that do defraud the consumer, when my company, a highly respected firm, did not defraud anybody.

He said, "We're not set up to deal with real fraud." This supported what I always suspected, but I never expected the head of the Bureau of Consumer Protection to admit it so openly. Incidentally, this statement was later confirmed by a high-ranking FTC official. Yes, the FTC is not set up to go after companies that purposely defraud the consumer.

SERIOUS FLAWS

This leaves me with serious concerns for our free enterprise system. If an agency responsible for the protection of the consumer is ineffectual against the real frauds, yet goes after the legitimate companies, then they are deceiving Congress and the public.

Ironically, they point to statistics which show a rise in mail order complaints as a good reason for their stiff rules, yet their rules are totally ineffective against the companies that cause most of those complaints anyway.

I WON'T GIVE UP

I am an American small businessman—an entrepreneur who started my company in my basement eight years ago, and through a lot of hard work built it into one of America's most respected electronics marketing companies.

I refuse to let my reputation be slandered and discredited by a few publicity-seeking bureaucrats whose efforts attack legitimate companies, thus undermining our free enterprise system, while leaving the crooks free to rip-off the unprotected American consumer. And it is the consumer footing the bureaucratic waste, who thinks the FTC is doing a good job and needs to be strengthened. I am running this campaign to help a sick agency so that Americans can get the protection they think they are getting while allowing the free enterprise system to function without bureaucratic harassment.

ALL AMERICANS AFFECTED

Federal regulation and the whims of a few career-building bureaucrats is costing taxpayers millions, destroying our free enterprise system, affecting our productivity as a nation and as a result is lowering everybody's standard of living.

America was built on the free enterprise system. Today, the FTC is undermining this system. Freedom is not something that can be taken for granted and you often must fight for what you believe. I'm prepared to lead that fight.●

TRIBUTE TO VASHTI McKENZIE

HON. WALTER E. FAUNTROY

OF DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. FAUNTROY. Mr. Speaker, I am priviledged to bring to the attention of this House, the special recognition being given Mrs. Vashti McKenzie. Mrs. McKenzie by profession is program director of WYCB radio station here in the District of Columbia. The station, under her leadership and direction, has grown to become one of the foremost religious broadcasters in the National Capital area.

Mrs. McKenzie is being honored, not because of her achievements in broadcasting—though they are outstanding—but rather for her contributions and commitment to toiling on behalf of the poor.

Mrs. McKenzie is the founder and president of Love and Peace, Inc., a group of Christian volunteers contributing their time and skills freely to help the least among us. She has consistently answered the call—without hesitation or reservation—to aid the Shaw community food project which provides free food to hundreds of District residents at Thanksgiving.

When I think of Mrs. McKenzie's service, I recall a prayer of the former chaplain of the House of Representatives, Rev. Edward G. Latch:

. . . above the multitude of many voices clamoring for our attention may we hear Thy voice summoning us to walk in Thy ways and to live in Thy love that we may worship Thee in Spirit and in truth and in work through this day with dedicated, devotion and disciplined diligence.

Mrs. McKenzie in the clamouring, glamorous, exciting world of broadcasting has listened and heard and answered the call of those desparately in need of a helping hand.

For her courage and faith and Christian love, I am proud to join the Mayor of the District of Columbia in saluting Vashti McKenzie for Christian stewardship.●

A FEDERAL PROCUREMENT NIGHTMARE

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. McDONALD. Mr. Speaker, in the last Congress another bureaucratic nightmare was unleashed on society. Public Law 95-507 is its official designation. It mandates that prime contractors must have a plan to see that their subcontracts go to an acceptable percentage of small women owned, small disadvantaged owned, small minority owned businesses. As is so often the case, well-intended projects pursued with blind emotional attachment produce wholly unworkable ends. In fact, they often turn out hurting those they were most meant to help. The following editorial by C. W. Borklund from Government Executive, September 1980, details the futility of the above cited public law. I commend it to the attention of my colleagues:

PUBLIC LAW 95-507: A SOCIALIST NIGHTMARE

In a recent Government Purchasing Outlook newsletter, GAO (General Accounting Office) Assistant Director Robert Hall charged, "The leverage of Federal procurement has been increasingly applied over the past half century to pursue social and economic ends, e.g. small and minority business set-asides, fair employment practices, safe and healthful working conditions, rehabilitation of the handicapped and cleaning up the environment."

The pile heaped on the procurement process, especially in the past half-dozen years, has now grown so mountainous and monstrous, "they threaten breakdown of the Federal procurement process. Some would say that process is already collapsing." It's considerably more than "some," Mr. Hall. The full count has been masked by the simple, almost traditional notion that dedicated, experienced civil servants and military-contracts experts will do their valiant best to deliver, uncomplaining (except to each other) what the politicians ask—even when they know in their gut it's a stupid request.

Current case-in-point is Public Law 95-507. Enacted a year ago, its implementing instructions are just beginning to flow out of OFPP (Office of Federal Procurement Policy), GSA (General Services Administration), and "in draft" at the headquarters of other major Federal buying Agencies such as Defense, NASA and Department of Energy.

It mandates that prime contractors must have, and must see that their subcontractors (on construction jobs over $1 million and on other contracts in excess of $500,000) have, a plan and an auditable, enforceable program to see that an "acceptable"—the definition of that, theoretically, being in the eyes of the Small Business Administration (SBA)—percentage of that work go to small minority-owned, small women-owned, small disadvantaged-owned, etc., etc. businesses.

Robert McDermott of the SBA told a National Contract Management Association seminar last February that, in effect, even through it looked unworkable and a dire threat to the presumed otherwise impartial integrity of the Federal procurement process, SBA was going to do its best to make this exercise in futility work. And an industry group which includes, among others, former Pentagon contracting expert Dale Babione is urging OFPP to re-write its implementing "Policy Letter 80-02" so that both Federal contract auditors and industry suppliers have some small prayer of keeping the reporting requirements relevant to the real world of Federal contracts management.

P.L. 95-507, and the implementing abscesses spewing out of it, are fraudulent because they purport to advance a high moral judgment when, in fact, they are doing the opposite. As one angry aerospace industrialist has summarized.

Appears to be unconstitutional because of its discriminatory provisions, i.e. de facto discrimination against large business;

Diminishes the national defense effort by forcing the diversion of literally billions in Defense and Defense-contractor dollars into a non-productive paperwork factory;

Dilutes Defense efforts to improve productivity, reliability and reduce costs;

Flies in the face of a White House Memorandum of February, 1977, placing "a high priority" on reducing the reporting burden the Federal Government places on the Public;

Contributes to restraint of trade and diminution of the free enterprise system;

Creates an environment for labor disputes when union workers are laid-off to achieve subcontracting goals.

Dale Church, Deputy Undersecretary of Defense for acquisition Policy, estimates implementing 95-507 will cost the Pentagon, alone, $1.2 billion. Defense Director of Contracts and Systems Acquisition, Bob Trimble, told OFPP Administrator Karen Hastie Williams recently, "I believe we have reached that point" where 95-507-type exercises "are adversely affecting our primary mission" of "providing for the country's defense needs."

More succinctly, a member of the National Audio-Visual Association told Hall (after reading the *Government Purchasing Outlook* item) in part, "I concur with your views and NAVA would be pleased to serve on the Executive/Congressional/industry task force you propose. We currently are trying to discourage the GSA from proceeding with a lengthy contract—replete with all the socio-economic goals you mentioned—because it means imposing all of these goals on companies that stand to receive $1-3,000 worth of Federal business per year if they agree to the contract.

"Most companies in our industry refused to bid on the contract because they thought it was a farce—the sales generated would not even pay for the time it took to read and understand the contract. So you are right * * * the breakdown (in the procurement process) is already underway."

One, just one, of the Pentagon's top 50 contractors, a large Midwestern avionics firm, estimates—based on projections of what they've spent already—that the people and paperwork cost of compliance to (a) issue new policies and practices to subs; (b) issue new contract terms and conditions; (c) send out new purchase-order attachments; (d) develop new subcontracting plans and percentage goals; (e) revise and update their supplier directories; (f) update their procurement-commitment system in their 24 different buying centers; (g) keypunch subcontractor data; (h) prepare and file monthly and quarterly reports; (i) pass-through the program to subcontractors; (j) do analysis and provide data on how all this is going to impact their other contract-incurred obligations, e.g. labor-surplus, environmental protection certificates, veterans preference, etc., will cost them just under $14 million annually.

And that's just one company. P.L. 95-507 passed Congress overwhelmingly when it slid through that "august" body and was praised by the White House when they signed it. Which just goes to show you can, indeed, fool some of the people all of the time. Noted Dr. Walter E. Williams (an economics professor at Temple University), in a speech to Hillsdale College, in part: "Most of the problems that poor people face in the U.S. are a direct result of coercion and the absence of free markets * * * this cause has gone virtually unnoticed by policy makers, researchers and many other groups who express a concern for the socioeconomic welfare of the poor. * * * All too often the problems that minorities face are viewed in terms of collective conspiracies, societal preferences, or good and evil. * * * Such an approach will at best suggest policies that are relatively ineffectual and at worst harmful to the intended beneficiaries."

Williams is a black American, incidentally, so the socialist minority-bigots among us can hardly justify calling his frank, honest, unemotional analysis "racist"—which is their favorite retort when they can't win an argument on merit.●

RESUME GESMO

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. BEREUTER. Mr. Speaker, today, I wrote the editor of the Washington Post in response to a recent editorial regarding GESMO—generic environmental statement on mixed oxide fuel. In that editorial, the Post failed to present the full story behind this matter. The record on this issue must be set straight. For that reason, I request that my response to the Post be printed in the RECORD in order that Members of this body may determine for themselves the proper position to take on a key energy issue which shortly will come before the House.

The letter follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C., September 18, 1980.

EDITOR,
The Washington Post,
Washington, D.C.

DEAR SIR: On Sunday, September 7, 1980, the Washington Post presented a convoluted presentation of the "facts" surrounding Congressional efforts to revive the GESMO rulemaking proceeding. The unquestioning editorial support for a Carter Administration policy which has been universally rebuffed by the international community runs contrary to the journalistic tradition of the Post. This matter deserves a second look.

In October, 1977, the Carter Administration pressured the Nuclear Regulatory Commission (NRC), an independent regulatory agency established by Congress, into terminating a public proceeding convened pursuant to the National Environmental Policy Act (NEPA). The purpose of this proceeding was to determine the health, safety, and environmental impacts associated with reprocessing and recycling of plutonium—a nuclear fuel. The Administration argued that continuation of the proceeding would interfere with Administration efforts to study alternative fuel cycles not involving direct access to plutonium.

In February of this year, the International Fuel Cycle Evaluation (INFCE) completed its two-year effort to study the risks of nuclear energy. Sixty-six countries and five international organizations participated in some form of the INFCE study. The principal conclusion of the INFCE study was that no fuel cycle is proliferation free and that "reprocessing in itself is important because it is an essential preliminary to many of the possible fuel cycles."

Since NRC's termination order specifically provided for reconsideration of the matter after such studies had been completed, the NRC now has asked for public comment on whether the NRC should resume the GESMO proceedings. The Administration was quick to respond negatively to the resumption, again principally citing proliferation concerns.

The GESMO issue transcends any arguments between the technical pundits on economics, waste disposal, or safeguard considerations. What is at stake is the public's right to know. The Administration is intent on interrupting a process designed to answer fundamental questions of concern to the Congress and the public. By terminating the process, the Administration is suppressing both the study and its conclusions.

In short, the Administration seems to be saying, "Don't give us the facts. We might not like those facts; those facts may be inconsistent with the Administration's policies." Rather than take the intelligent, responsible approach to the problem it apparently chooses to bury its head in the sands of ignorance.

The Administration's position on this matter puzzles me. Why should the Administration be so concerned about the proceeding since, after all, there is no guarantee that GESMO will culminate with a favorable finding with respect to reprocessing and recycling? The situation is analogous to terminating a trial and declaring the defendant guilty before the jury has announced its verdict.

Contrary to the Administration's point of view, I believe that GESMO should go forward in order that Congress may obtain the benefit of a fair and open hearing on this most important matter.

Sincerely,

DOUGLAS BEREUTER.●

A CONGRESSMAN ADJOURNS

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. HILLIS. Mr. Speaker, our colleague from Kentucky, Dr. TIM LEE CARTER, is retiring at the end of this session and thus, as one headline

writer has put it, will be making "a final house call in Congress."

The Rural Kentuckian magazine, published by the Kentucky Association of Electric Cooperatives, this month carries an excellent article describing the varied career of Dr. CARTER.

I offer this article for inclusion in the RECORD at this time:

[From the Rural Kentuckian, September 1980]

A CONGRESSMAN ADJOURNS

(By Gary Luhr)

When voters go to the polls in Kentucky's 5th Congressional District this year, a familiar name will be missing from the ballot. For the first time since 1964, Dr. Tim Lee Carter won't be the Republican candidate from one of the country's most Republican districts.

When a new Congress convenes in January, Carter, who turned 70 this month, will be home at his farm near Tompkinsville preparing to resume the medical practice he never completely abandoned.

"There have been so many times I've landed in Louisville after working hard all week in Washington and driven the 133 miles from the airport home. I've got 29 counties in my district. I go home almost every weekend, and traveling hundreds of miles is pretty hard. I thought I would enjoy being at home," he said in explaining why he chose not to run for a ninth term that he surely would have won.

"I've enjoyed every bit of it. I enjoy meeting people," he said. "And really, when 80 percent of the people vote for you, you've got to be nice to all of them."

The 5th Congressional District stretches from Monroe, Metcalfe and Green Counties on the west to Leslie and Harlan Counties on the east, and from Jessamine, Madison and Estill Counties on the north to the Tennessee border. Within it are coal, timber and good farmland, but many poor areas as well. At one time, the median income of its residents was the lowest of any congressional district.

"They might have been poor in worldly goods but never in spirit," Carter said.

Many of the improvements that have occurred in the district over the past 16 years were due largely to Carter's success in funneling federal dollars to the area.

GOVERNMENT HAS A ROLE

"Since I was first elected to Congress, we've seen many hospitals built; we've seen vocational schools built in nearly every county; we've seen pure water systems and sewage disposal systems built," he said.

"I'm a conservative in many ways in that I believe in fiscal responsibility. But you might consider me progressive in health issues and economic development," he said, adding that he believes government has a legitimate role to play in both.

His natural support of health measures not only won him recognition—the American Medical Association presented him its highest award in 1978—but also helped him achieve a better record than otherwise might have been possible for a Republican in a Democratic Congress.

"Health involves people in all areas of the country," Carter said. "When you support measures to improve research for cancer, for example, then you get the support of both sides of the aisle." (Carter's only son died of a form of cancer in 1977 at age 22.)

A fellow physician was partly responsible for Carter's decision to run in 1964, for the seat being vacated by former Congressman Eugene Siler. "Dr. C. C. Howard of Glasgow, a food friend of mine, encouraged me to run. He said, 'More and more, the federal government is going to be legislating in health matters, and we need someone up there to represent us,'" Carter said.

The son of James Clark and Idru Tucker Carter was born in Tompkinsville on September 2, 1910. After attending public schools in Tompkinsville and Lindsey Wilson College, he became a teacher in a one-room school at age 17. He coached basketball at Tompkinsville from 1932 through 1934 and, at age 21, was the youngest coach ever to take a team to the boy's State High School Tournament.

Carter graduated from Western Kentucky University in 1934 and the University of Tennessee Medical School in 1937. He practiced medicine in Tompkinsville until he enlisted in the U.S. Army in 1942. He was a captain in the 38th Infantry Division for 42 months during World War II, receiving a Bronze Star and Combat Medical Badge as a medic in the Pacific Theater.

DELIVERING THE VOTERS

Carter spent his internship in 1937 and 1938 at the U.S. Marine Hospital in the Chicago Maternity Center. It has been said one reason he had so little trouble winning elections years later was that he delivered so many of his constituents.

"I shouldn't be surprised if I didn't deliver about half of them in Monroe County," he said. "I delivered some in Cumberland and Metcalfe; some in Barren, Allen and Clay Counties; some even from Macon (a nearby county in Tennessee). Some of those counties are not even in my district."

Looking at some of the changes that have taken place in Congress during his tenure, Carter said member turnover and an increase in the number of congressional subcommittees had hurt the legislative process. Still, he wouldn't discourage someone from running for the office today.

"Particularly if he was a well-balanced young man or woman and seemed to have plenty of horse sense," Carter said. "I think it takes a pretty well-rounded man to be an effective member. He should be knowledgeable about how people make their way in life.

"One of the first things I would tell him would be to get the feeling of the people he represents. I had public meetings every year in each county seat. I'd advise him to do that and to let the people express themselves to him.

"Of course, there is a matter of conscience too. If a man opposes legislation which a majority of people are for, or if he has information which they might not know about, then I think he should vote his conscience."

A MATTER OF CONSCIENCE

It was a matter of conscience that made Carter one of the first representatives in Congress to oppose this country's involvement in the Vietnam war. In a speech to the House of Representatives in August 1967, Carter said the United States was not so threatened that it should send men to that part of the world.

"Actually I opposed the war in 1964 when I was a candidate," he said. "I knew that Cuba was 90 miles off our shore. If we were going to fight communism, we didn't have to go that far to fight it.

"I visited Vietnam in 1965. We went there at our own expense and saw firsthand what was going on. In our country, the poor boys were being drafted. The fellows who were in college or who went into the reserves or the national guard didn't have to go. There were five men in my county who were killed. Four of them had no more than a high school education, if that much. One man had one year of college. It was a tragic thing.

"I was a member of the House Speaker's committee that went to Vietnam again in 1966. At that time I could see we were not winning. When we reported to the President, I was the only one who told him, 'No, Mr. President, we're not winning the war.' He spoke for about 30 minutes and gave me the same old rigamarole that we'd heard for a long time, but he didn't become vindictive or angry. Lyndon Johnson was very nice to me even though I differed with him."

Carter is less charitable in his view toward certain members of the news media.

PRESS DESTROYED NIXON

"Some of our reporters, I regret to say, like nothing better than to write something that is embarrassing to a member of Congress."

He believes Watergate showed how much damage the press can do.

"Richard Nixon was the brightest president we've had, particularly in foreign affairs, but even in economic affairs. I'm not defending his character, (but) revenue sharing came into being under him, détente with Russia, peaceful relations with the People's Republic of China. The European press and European officials recognize this.

"The press is like the power to tax, it has the power to destroy. They never liked Nixon, and they got him."

Carter also criticized the country's failure to move faster in developing new energy sources.

"I think we should start immediately to use gasohol, which can be made from grain or any other substance that will ferment, even garbage. (Gasohol is a mixture of 90 percent gasoline and 10 percent alcohol that can be used in place of gasoline.) I introduced legislation to do this is 1973. We found out in 1970 we were going to have an oil shortage. But the liberals in Congress thought the money might go to the oil companies, and the conservatives thought it was too much."

Carter would also like to see coal gasification and liquefaction plants built in the minefields of southeastern Kentucky.

Periodically, throughout his career in Congress, Carter's name was mentioned for other elective offices in Kentucky including governor. He seriously considered running for the U.S. Senate seat vacated in 1972, by Republican Senator John Sherman Cooper. Doubts by family members about his chances of getting the party's nomination finally made him decide against it.

"I wanted to run, but my wife went into a tizzy, and my other brother, Jimmy, it scared him half to death," Carter recalled.

At age 70, Carter has no future political plans, though he expects to remain interested in government "as long as I live." He acknowledged that he might accept a position in a Republican administration should one be offered.

For now, however, he looks forward to practicing a little medicine in Monroe County and to raising some cattle, tobacco, corn and soybeans. And he leaves Washington with this thought: "My hope for Kentucky and my prayers for our country are that we elect people who are deeply dedicated, highly intelligent and impeccably honest." ●

DEPARTMENT OF DEFENSE APPROPRIATION BILL

HON. ALVIN BALDUS

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1980

● Mr. BALDUS. Mr. Speaker, I wish to make a few remarks on the Department of Defense appropriations bill, which was recently approved by this Chamber.

I know that there is not one Member of this House who does not regard the Nation's military security as his first personal concern and first legislative priority. In good conscience, however, I could not voice my approval nor cast my vote for the Department of Defense appropriations bill as it was presented for floor consideration.

I do support the higher levels of spending contained in the bill; my recorded votes on the budget resolution and the reconciliation measure attest to that. I strongly support the substantial increases in procurement and in operation and maintenance; I strongly support substantial increases in military pay and benefits to insure the retention of highly trained and qualified personnel in our Armed Forces. However, on two points—critical points in my judgment—the final Defense Department appropriations bill was unacceptable: funding for the MX missile and funding for the construction of a binary chemical munitions plant.

As the RECORD of Tuesday, the 16th of September, will show, I recorded my positive votes on the two amendments that would have deleted funding for these two programs. Those amendments failed, however, and funding for the two programs was left intact in the bill. Without these two programs, I would have voted for the bill; with them, I could not. Mr. Speaker, I support a stronger defense. However, I can not in good conscience support what I view as a reckless defense.●

SENATE—*Friday, September 19, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. EDWARD ZORINSKY, a Senator from the State of Nebraska.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O God in whom we live and move and have our being, we thank Thee for this moment when we lift our hearts to Thee.

When the burdens are heavy, give us strength to carry them. When the pressures are great, grant us inner peace. When the days are long and duties irksome, give us a poise and power to think clearly and act wisely for the Nation's welfare.

O Father, give us grace to bear the wounds of criticism, the hurt of misunderstanding, the pain of misjudged motives, and the monotony of daily toil.

In the turbulent days in which we live, grant to us a steadfast faith, an enduring hope, and the will to seek the Kingdom of God and His righteousness, in the sure knowledge all else will be in order. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. Magnuson).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 19, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EDWARD ZORINSKY, a Senator from the State of Nebraska, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. ZORINSKY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, I have no need for my time. I will be glad to yield it to the distinguished Republican leader.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I thank the majority leader for his offer. As it turns out, I have no need for my time as well. I yield back my time under the standing order.

Mr. ROBERT C. BYRD. Mr. President, I do the same.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 30 minutes, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

VESSELS DOCUMENTATION

Mr. ROBERT C. BYRD. Mr. President, this has been cleared on the other side of the aisle.

Mr. President, on behalf of Mr. CANNON, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1442.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1442) entitled "An Act to authorize the documentation of the vessel, Sara, as a vessel of the United States with coastwise privileges", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That, notwithstanding the provisions of title 46 of the United States Code, particularly but not limited to section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. 883), or any other provision of law, the Secretary of the department in which the Coast Guard is operating, shall cause the vessels Sara (vessel numbered 530082), Aurelia Four, Alice (vessel numbered 289731), Albatross (vessel numbered 299537), Hillbilly I, and Kailua (registration numbered AK-7716-B) to be documented as vessels of the United States, with the privileges of engaging in coastwise trade so long as each such vessel being so documented is owned by a citizen of the United States.

SEC. 2. The vessel Sara which was constructed in a country other than the United States, is, pursuant to section 1, granted the privilege of engaging in coastwise trade only so long as the vessel is owned by a citizen of the United States and is operated for a nonprofit purpose.

SEC. 3. Section 502 of the Merchant Marine Act, 1936, is amended by adding at the end of subsection (g) thereof two new subsections to read as follows:

"(h) The Secretary of Commerce is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Commerce is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 11(a) of the Merchant Ship Sales Act of 1946, (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936, (3) which serves as security for the guarantee of an obligation by the Secretary of Commerce under title XI of this Act, or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Commerce to install or remove such national defense features. Title to such national defense features which the Secretary of Commerce determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this title V.

"(i) The Secretary of Commerce shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Commerce.".

SEC. 4. Section 209(b) of the Merchant Marine Act, 1936, is amended by (a) deleting from clause (2) the words "and cost of national defense features"; (b) inserting after clause (2) the following new clause: "(3) cost of national defense features;"; and, (c) renumbering the remaining clauses accordingly.

SEC. 5. Notwithstanding any other provisions of law, any vessel engaged in the coastwise transportation of coal produced in the United States, from a port in the United States to another port in the United States, shall until June 30, 1987, have the priority to berth at any such ports ahead of any waiting vessels engaged in the export trade of coal produced in the United States: *Provided*, That the Secretary of Commerce may, if he determines that it is in the national interest, eliminate priority berthing, as provided herein, at any such port or ports, and to report such action to the Congress within 30 days.

Amend the title so as to read: "An Act to authorize the documentation of certain vessels as vessels of the United States, and for other purposes.".

UP AMENDMENT NO. 1623

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I send to the desk an amendment to the House amendment.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. CANNON, proposes an unprinted amendment numbered 1623.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the end of the House amendments, insert the following new section:

SEC. 6. Notwithstanding section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883), or any other provision of law to the contrary, the vessel known as the Scuba King, official numbered 532376, owned by Bernard Despins, shall be entitled to be documented to enage in the fisheries and the coastwise trade upon compliance with the usual requirements, so long as such vessel is, from the date of enactment of this section, continuously owned by a citizen of the United States. For the purposes of this section, the term "citizen of the United States" includes corporations, partnerships, and associations, but only those which are citizens of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802).

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (UP No. 1623) was agreed to.

UP AMENDMENT NO. 1624

(Purpose: Technical perfecting amendment to House amendment)

Mr. WARNER. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Virginia (Mr. WARNER) proposes an unprinted amendment numbered 1624.

Mr. WARNER. I ask unanimous consent that further reading be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In Section 5 of the House Amendment, strike the word "berth" and insert in lieu thereof the word "load", and strike the word "berthing" and insert in lieu thereof the word "loading".

Mr. WARNER. Mr. President, I wish to make just a few brief comments on my technical amendment to section 5. Specifically, my amendment would change the words "to berth" and "berthing" in the House-passed amendment to "to load" and "loading".

My amendment is intended to reflect more accurately the intent of the House when it adopted the amendment relating to the priority berthing for vessels transporting U.S.-produced coal in the coastwise trades.

Under the amendment as passed by the House, vessels would be allowed to tie up to a pier for the purposes of loading coal whether or not that coal was currently present and available for loading. If the coal were immediately available, the ship could be quickly loaded and speeded on its way—thus avoiding costly delays and incurring as little expense as possible for domestic users of our Nation's coal. This was the result which the House intended by its amendment.

However, under the House language, another result is possible. If the coal designated for the priority-berthed vessel were not immediately available at the terminal for loading, the coal pier at which the vessel was berthed could potentially be kept idle for long periods until the coal designated for that vessel arrived and was actually loaded onto it. This kind of delay is not what the proponents of this provision had in mind.

The technical amendment I propose, which will substitute the words "to load" and "loading" for "to berth" and "berthing" will allow a vessel the right to receive priority treatment—that is, the right to tie up and to load—at a coal pier when the coal designated for that vessel is present at the terminal and available to be loaded onto that vessel.

Mr. President, this amendment has been cleared on both sides of the aisle and I urge its immediate adoption.

Mr. ROBERT C. BYRD. Mr. President, this amendment has been cleared with the chairman, Mr. CANNON. There is no objection on this side.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (UP No. 1624) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate concur in the House amendments with the amendments previously agreed to by the Senate.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS FOR 15 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

The motion was agreed to and at 9:45 a.m., the Senate recessed for 15 minutes; whereupon, the Senate reassembled when called to order by the Acting President pro tempore (Mr. ZORINSKY).

QUORUM CALL

The ACTING PRESIDENT pro tempore. The Chair, in his capacity as a Senator from the State of Nebraska, suggests the absence of a quorum.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AN AWAKENED CONSCIENCE

Mr. PROXMIRE. Mr. President, a single incident is able to change an individual's life. In late 1942 such an incident forever changed the life of Jan Mosdorf.

A Polish lawyer and politician, Jan Mosdorf was a prominent man before the begining of World War II. He was the leader of a vehemently anti-Jewish organization called the Camp of Radical Nationalists. Through this organization, Jan staged anti-Jewish demonstrations and riots. But with the beginning of Nazi racism, Jan's activities were forced underground. He continued to practice anti-Semitism independently of Nazi edicts. Soon Jan was tracked down and arrested. Then this confirmed anti-Semite was deported along with hundreds of Jews to the death centers at Auschwitz.

He was cast amid the company of those who had long been the subject of his hatred. He was forced to confront the Jews at Auschwitz as fellow victims of nazism. Hunger, despair, and death became the common lot of Jan and the Jews at Auschwitz. The Nazis became their common enemy.

His Christianity entitled Jan to privileges unknown by the Jewish prisoners. Jan was allowed to receive parcels from outside the camp. Jan was allowed to work in the camp office. His kinship with the Jews for awhile escaped Nazi notice. Jan distributed among the Jews the food and clothing he received from the outside. He risked his life to carry letters between the camp prisoners and their families.

We know the details of Jan Mosdorf's activities inside Auschwitz not because he survived to tell them. He was shot by the Germans. We know the details of his activities inside Auschwitz only because they made such deep impressions on those few who survived to tell them.

I hope his activities will make a similar deep impression on this body. I hope the example of Jan's awakened conscience will prompt this body to question the state of its own conscience. Have we become isolated from the true horror of genocidal policies? Do we like Jan need a personal encounter with inhumanity before we aspire to humane ways?

Mr. President, I remind my colleagues that we need not await an encounter with inhumanity. I remind my colleagues that the Genocide Convention is intended to prevent such inhumanity. We have the example of one's man conversion of conscience. I urge my colleagues to display their own awakened sensitivity by the immediate ratification of the Genocide Convention.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order the Sen-

ate will now resume consideration of H.R. 7631, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The ACTING PRESIDENT pro tempore. The pending question is on amendment No. 2335, by the Senator from Massachusetts (Mr. TSONGAS).

Mr. ROBERT C. BYRD. Mr. President, I believe the yeas and nays have been ordered on the amendment. Am I correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

CALL OF THE ROLL

Mr. ROBERT C. BYRD. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk called the roll and the following Senators answered to their names:

[Quorum No. 32 Leg.]

Burdick	Levin	Tsongas
Byrd, Robert C.	Proxmire	Zorinsky
	Riegle	

The ACTING PRESIDENT pro tempore. A quorum is not present.

Mr. ROBERT C. BYRD. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia (Mr. ROBERT C. BYRD) to instruct the Sergeant at Arms to request the attendance of absent Senators. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Georgia (Mr. NUNN), the Senator from Arkansas (Mr. PRYOR), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), the Senator from Georgia (Mr. TALMADGE), and the Senator from Alabama (Mr. HEFLIN) are necessarily absent.

I also announce that the Senator from Montana (Mr. MELCHER) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Oklahoma (Mr. BELLMON), the Senator from Mississippi (Mr. COCHRAN), the Senator from Maine (Mr. COHEN), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BOREN). Are there any Senators in the Chamber desiring to vote?

The result was announced—yeas 65, nays 2, as follows:

[Rollcall Vote No. 426 Leg.]

YEAS—65

Baker	Exon	Pell
Baucus	Ford	Percy
Bentsen	Garn	Proxmire
Biden	Glenn	Randolph
Boren	Hart	Riegle
Boschwitz	Hatch	Roth
Bradley	Heinz	Sarbanes
Burdick	Helms	Sasser
Byrd, Harry F., Jr.	Hudd eston	Schmitt
Byrd, Robert C.	Humphrey	Schweiker
Cannon	Jackson	Simpson
Chafee	Kassebaum	Stennis
Chiles	Laxalt	Stevens
Church	Leahy	Stevenson
Cranston	Levin	Stone
Culver	Lugar	Thurmond
Danforth	Magnuson	Tower
Dole	Mathias	Tsongas
Durenberger	Metzenbaum	Warner
Durkin	Mitchell	Williams
Eagleton	Moynihan	Young
	Nelson	Zorinsky

NAYS—2

Hayakawa	Weicker

NOT VOTING—33

Armstrong	Heflin	Melcher
Bayh	Hollings	Morgan
Bellmon	Inouye	Nunn
Bumpers	Javits	Packwood
Cochran	Jepsen	Pressler
Cohen	Johnston	Pryor
DeConcini	Kennedy	Ribicoff
Domenici	Long	Stafford
Goldwater	Matsunaga	Stewart
Gravel	McClure	Talmadge
Hatfield	McGovern	Wallop

So the motion was agreed to.

The PRESIDING OFFICER. With the additional Senators voting who did not answer the quorum call, a quorum is now present.

AMENDMENT NO. 2335

Mr. TSONGAS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Massachusetts, amendment No. 2335.

Mr. TSONGAS. Mr. President, the community development block grant program, in the judgment of those people who are mayors and city managers involved with the whole issue of urban revitalization, is probably the best program to come out of Washington, with the possible exception in some cases of the UDAG program that was enacted 3 years ago.

What my amendment does is to bring the CDBG program back up to where it was when it came out of the President's recommendations. It is $200 million and, in fact, if you take account of inflation, it is actually a decrease from where we were last year.

My understanding is that given the small number of Members who are here today, there is some interest in having this put off until Monday.

There are also discussions taking place to try to resolve the amendment in some sort of compromise. We will know that shortly. For that reason, I will not go into a discussion of the amendment in detail, but hold that either until Monday or if, indeed, there is a settlement of the issue, simply insert it into the RECORD. I would just like to inform my colleagues as to what is happening at this point.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1625

(Purpose: To provide an additional $113,800,000 for public housing operating subsidies to cover increased utility costs)

Mr. MATHIAS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. There is a pending amendment. Does the Senator ask unanimous consent that the pending amendment be temporarily laid aside?

Mr. MATHIAS. I ask unanimous consent that the pending amendment may be laid aside.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MATHIAS. I ask that my amendment be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an unprinted amendment numbered 1625:

On page 4, line 25, strike "$862,000,000" and insert $975,800,000.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, utility rate increases that have taken place during the past year are very familiar to every American household whether we are talking about the electric bill or the gas bill or the coal bill, whatever it is. Utility increases are a bad dream for all of us.

The cost of fuel oil, as well as some

of the other utilities, exceeds the increases anticipated in developing the estimates for public housing operating subsidies for fiscal year 1980, so that the same bad experience that every private household in the country has had is haunting public housing.

The original estimate for public housing operating subsidies assumed a 12-percent increase in utilities. The anticipated increase is now expected to be somewhere in the range of 25 to 28 percent. So as we are hurting at home we are hurting in public housing. Consequently, the operating subsidy requirements for this year will be below the amounts contained in the original budget estimate by a total sum of $113.8 million, and the Department of HUD has, therefore, submitted a budget amendment for this amount.

This determination was made after operating subsidy payments for public housing agencies (PHA's) with fiscal years beginning in the first and second quarter of 1980 were obligated in full pursuant to regulatory provisions. To avoid an overrun of the appropriation, it was, therefore, necessary for the Department to absorb the total amount of the shortfall by reducing the operating subsidies to be obligated for PHA's with fiscal years beginning in the third and fourth quarters—approximately 1,400 out of 2,800 PHA's. If this had been done entirely through a proportionate reduction of all operating subsidy obligations, the affected PHA's would have received approximately 65 percent of the amounts for which they are eligible.

To equalize the impact of the shortfall between the affected PHA's, the Department determined that operating reserve levels would be taken into consideration in the distribution of the remaining funding. By doing so, it was determined that, in the approval of the operating budgets of the affected PHA's, expenditure levels that could be supported by supplemental funding equivalent to 84 percent of the full PFS subsidy could be authorized. This was accomplished by requiring utilization of the operating reserves of all affected PHA's—where such reserves exist.

It should be noted that a recent departmental evaluation of the operating subsidy funding system indicates that, even with full PFS funding, some PHA's were unable to maintain their properties and provide a reasonable level of services.

EFFECTS OF THE REDUCTION

First. While the cause of the shortfall in the appropriation was utility rate increases, the impact of the reduction will necessarily be felt almost entirely in the nonutility areas of PHA operations, notably management and maintenance; these are the expenses over which a PHA can exercise some measure of control. A 16-percent reduction in total subsidy payments would cause a reduction of more than 13 percent in these accounts. PHA's could not absorb a reduction of this magnitude. It would have the following consequences:

An increase in vacancies;

Deterioration of rent collection efficiency;

A reduction in operating services—janitorial and exterminating;

A reduction of maintenance services—plumbing repairs, et cetera;

Accelerated deterioration of public housing properties;

Probable elimination of tenant and protective services;

Deterioration in accounting and other administrative activities; and

Reduction or elimination of payments in lieu of taxes to local governing bodies.

Second. The financial situation of many of the affected PHA's will be seriously impaired. This will be the result of the operating reserve reduction which was required in order to mitigate the impact of the shortfall on current operations. The most serious problems will arise in the smaller PHA's where deferred charges—prepaid insurance, et cetera—constitute a substantial proportion of a PHA's operating reserve. The reserve reduction in some cases may be such as to impair the cash position of the PHA to an extent that it will be unable to pay its bills on a timely basis. The effects of the reserve reduction will be compounded by the fact that it will result in a loss of interest income to PHA's. The required reduction, particularly if it is not restored, would also compromise the incentive for PHA's to operate economically and efficiently.

Third. Payment of the amounts derived from the subsidy formula computation are a firm obligation of the Federal Government. A failure to pay, at the very least, would have serious public relations repercussions.

Fourth. If PHA's fail to make reductions in operating expenditures in accordance with the reduced funding levels, their financial position will deteriorate very rapidly to the point where intensive Federal intervention, some kind of intervention, and I would hestitate at this moment to predict what might be required, would be necessary to maintain essential services to residents; that is, some PHA's may then attempt to abandon their public housing operations.

Fifth. Delays in the payment of operating subsidies—even if they are ultimately paid—have a serious impact upon PHA operations because they impair the PHA's cash position, require deferral of necessary work, and really make a shambles of the budgetary and operational planning process.

Last year, the National Low Income Housing Coalition pointed out in testimony on HUD appropriations that the administration's request for public housing operating subsidies was inadequate. Not only were fuel costs underestimated, but the "performance funding" formula used for many years to calculate operating subsidy needs and allocate assistance to housing authorities is seriously deficient. Lack of funds for maintenance and prompt repairs has been a major contributing factor to deterioration of the physical plant and quality of life in too many public housing projects. Nor have housing authorities had the resources to undertake badly needed weatherization and retrofitting for energy conservation.

Local public housing agencies have been informed that, unless additional funds are provided, they can expect no more than 84 percent of the operating funds which they should receive under the current, faulty subsidy formula. There is no margin of reserves, management savings, or increased income to fund this shortfall.

Mr. President, I want to pay tribute to the work that was done in this body for years by our former colleague, the former Senator from Massachusetts, Mr. Brooke, whose influence in this whole area has been so strong, and I have used the memorandum that he has submitted in formulating the remarks which I have delivered to the Senate.

Mr. PROXMIRE. Mr. President, I realize the distinguished Senator from Maryland has the votes on this matter. I have agreed to have this decided on a voice vote. I must personally resist this amendment, however, as worthy as this amendment clearly is—and it is a worthy amendment. After all you have to recognize the grim fact that utility costs are rising very, very sharply, more sharply than any other element for many people and the income of people who live in public housing is extremely limited. It seems that it is virtually impossible for them to meet these high utility costs.

But, Mr. President, this is $113.8 million, and there is no corresponding reduction elsewhere. This amendment was submitted by the administration on August 28, well after the Appropriations Committee had made allocations to the subcommittee under the first budget resolution. No provision was made for this expense in the allocation. So it will be very difficult to live within the ceiling imposed by the first concurrent resolution on the budget if we accept this amendment without offsetting reductions in other accounts.

Under the circumstances, I must oppose the amendment. I recognize the Senator from Maryland has wide support for the amendment, so I presume that it will be accepted by the Senate on a voice vote.

Mr. WILLIAMS. Mr. President, I want to applaud the distinguished ranking member of the HUD Appropriations Subcommittee for his amendment to provide $113 million to help meet unavoidable and unanticipated public housing operating costs.

The Nation has, at present, a $19 billion investment in public housing projects, involving 1.2 million units in communities large and small. This investment represents a portion of our commitment to insure safe, decent, and sanitary housing for low-income persons. But for hundreds of thousands of low-income Americans, it represents a home.

Each of us in the Senate recognizes the importance of maintaining our homes and the costs that can result if

we allow them to deteriorate. It is the same with our public housing stock. The need for concern is especially pressing today, for many public housing units are threatened by alarming, unforeseen increases in operating costs that just cannot be covered by rents or by the operating assistance the Federal Government has already agreed to provide.

Over the last decade, rental income for public housing authorities has increased only 49 percent, while operating costs have gone up 13 percent. In the last year alone, fuel oil costs were 67 percent higher than they were at the time the 1980 budget was submitted. The inadequate funding level in the bill to meet operating costs will force public housing authorities to reduce services, defer maintenance, and dip into dwindling reserves to meet daily operating and utility expenses.

I know from testimony before my own committee about the gravity of th's problem. I know that when an authority only has sufficient funding for 84 percent of its operating costs, it is the beginning of the end. The boiler that needs replacing is patched up. The pipe that leaks is left alone. The essential maintenance is deferred. The units begin to decay, and it is not long until they are beyond salvage. According to a recent report issued by HUD as many as 180,000 public housing units are in deep physical and financial trouble with many thousands more suffering varying degrees of problems.

Mr. President, I am fearful that rejection of this amendment will ultimately mean enormous cost for the Federal Government. Failure to meet public housing operating costs, as we have promised to do, will reap a harvest of abandoned, vandalized units, on which the Federal Government will still be obligated to pay amortization costs for many years into the future. The loss of these units will mean a waste of the billions of dollars we have put into these projects, and will mean the expenditure of still more billions if they are replaced.

We know that deteriorated public housing projects are closely related to increased crime rates, to neighborhood disinvestment, and to a growing lack of public confidence in the Government's ability to develop practical, effective solutions to serious national problems. And of course, the loss of public housing stock exacts an incalculable toll on the families who must be displaced as their units are shut down because they are no longer habitable.

Today, any unnecessary loss of housing is a cause for grave concern. The Nation is in the midst of a housing crisis, especially with respect to rental housing. Production has fallen off to the point that we are actually losing more units every year than are being built. In some areas of the country vacancy rates have reached dangerously low levels. Because the demand for housing is exceeding the supply, heavy pressures are placed on housing costs. The preservation of the public housing stock must be a part of any overall strategy to ease this shortage.

Finally, Mr. President, I should speak about our commitment. When the Federal Government agreed to underwrite the development costs of public housing, it also took on the obligation of helping to finance the operating costs of these projects. A performance funding system was set up to allocate operating subsidies, based on a profile of a well-run public authority.

Unfortunately, the distribution formula is anything but perfect, and the allocations often do not match individual housing authority needs. When unusual costs increases such as those that have occurred for utilities arise, then the system's shortcomings become even more apparent and all public housing authorities suffer.

The imperfections of the performance funding system, however, do not erase the Federal Government's obligation to help public housing authorities keep their projects properly maintained and in good order. When deficiencies occur, we must make up for them. This does not mean that we must reward inefficiency or mismanagement to the extent this occurs. But the solution is clearly not the wholesale denial of badly needed funds to all.

The administration, to its credit, has acknowledged that we have fallen short, and has requested $113 million in additional operating subsidies for this year. This is not new money for a new program. It is the fulfillment of an agreement we have made with each and every housing authority, and we cannot abandon that responsibility.

Mr. President, the issue here is a matter of basic principle, commitment, and fiscal prudence. Again, I commend the distinguished Senator from Maryland for his sincere and capable leadership on this amendment, which I earnestly hope my colleagues will support.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland (Mr. MATHIAS).

The amendment (UP No. 1625) was agreed to.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BRADLEY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. Does the Senator from New Jersey ask that the Tsongas amendment be further laid aside as the pending business?

Mr. BRADLEY. Mr. President, I do ask that the Tsongas amendment be laid aside temporarily to consider the amendment of the Senator from New Jersey.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1626

Mr. BRADLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey (Mr. BRADLEY) proposes an unprinted amendment numbered 1626.

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 31, following line 1, add:

PAYMENTS TO STATE AND LOCAL GOVERNMENT FISCAL ASSISTANCE TRUST FUND

For payments to the State and local government fiscal assistance trust fund, as authorized by the State and local fiscal assistance act of 1977, as amended (31 U.S.C. 1221-1263), $4,569,949,000.

Mr. BRADLEY. Mr. President, this amendment concerns provisions of the bill that relate to general revenue sharing local shares. This appropriations bill contains no funds for the general revenue sharing program in 1981.

The House had approved an appropriation of $4.6 billion to provide full funding for the local share of general revenue sharing, but the Senate Appropriations Committee "deferred" action pending markup of the authorization bill in the Finance Committee.

Yesterday, Mr. President, the Finance Committee marked up the legislation authorizing the general revenue sharing program for fiscal year 1981 and beyond at a level of $4.6 billion for almost 39,000 local governments across this country. The bill should be reported by Monday.

Therefore, Mr. President, I am offering this amendment to restore to the appropriations bill the $4.6 billion approved by the House to fund the local share of general revenue sharing. In this, I am joined by a number of my colleagues. Senator DANFORTH, Senator LONG, Senator DOLE, Senator DURKIN, Senator DURENBERGER, Senator SASSER, Senator KASSEBAUM, Senator MOYNIHAN, Senator CHAFEE, Senator LEVIN, and Senator PERCY, all signed the "Dear Colleague" letter in support if this amendment. Since then, Senators GARN and HATCH have formally joined in.

The consequence of failing to restore these funds now will be to disrupt the payment schedule for revenue sharing funds. For the funding would have to await a supplemental appropriations bill whose arrival cannot be expected before spring. Yet the first payment to local governments under the newly authorized GRS program is due in the early days of January.

I would only remind my colleagues of the critical importance of these funds to recipient governments, both large and small, in maintaining essential public services. We should not, in a time of considerable economic uncertainty and fiscal strain, add unnecessarily to the planning and budgeting problems confronting so many of our communities across the country.

General revenue sharing is one of very few Federal programs that has not created a massive Washington bureaucracy. It is an efficient intergovernmental

program which helps communities provide essential services as they see fit. The predictability of regular GRS payments and the flexibility inherent in the GRS program are both very important to local governments, especially as they adjust their budget plans to the new realities of decreased Federal funding in many Federal categorical grant programs.

We all recognize the need to hold down the budget deficit, and for that reason the reauthorization provisions approved yesterday by the Finance Committee would continue the GRS program at the same funding level for local governments as they have enjoyed since 1976. These dollars are unadjusted for inflation, and they have been unadjusted since 1976, nor will they be adjusted before 1985. In real terms, today's $4.6 billion represents a decline in buying power for recipient governments. If the inflation rate of the last 5 years continues for the next 5 of this authorization, the value of these moneys will be halved. Seen in this light, the reauthorization of general revenue sharing at its current funding level—and this amendment to restore $4.6 billion, the current dollar figure for local governments—is a fiscally responsible act.

Mr. President, I see no reason to put local governments in jeopardy by disrupting the GRS payments schedule. I, therefore, would hope that my colleagues would accept this amendment, and that the chairman would see fit to accept it and not push it to a rollcall vote. I think that this amendment reflects clearly the sentiment of the Senate. I urge the manager of the bill to accept the amendment.

Mr. SASSER. Mr. President, I rise today in support of the amendment offered by Senator BRADLEY, Senator DANFORTH, and many of my colleagues on the Governmental Affairs Committee to restore $4.6 billion in local revenue sharing funds to the HUD-independent agencies appropriations bill.

I support this amendment for two basic reasons.

First, the general revenue sharing program for local governments has worked well. In the nearly 8 years of operation, local governments nationwide have received $36 billion in general revenue sharing funds. In my own State of Tennessee, cities and counties have received $674 million during this same time. This unconditional aid program has been well-received in Tennessee because the general revenue sharing money received under this program permit local governments to provide essential local services and still help keep local property and sales taxes down.

Failing to appropriate funds for general revenue sharing at this time would have very negative effects on local governments.

For example, Mayor Richard Fulton of Nashville, who is the past president of the Tennessee Municipal League testified before the Intergovernmental Relations Subcommittee last year about the need for local revenue sharing. He cited the case of the city of Columbia, Tenn., population 22,000, where the cessation of general revenue sharing funds would result in a $350 tax increase in just 1 year for a family living in a $50,000 home. Property tax hikes or service cutbacks will be commonplace if we failed to appropriate this $4.6 billion now. And in Tennessee where revenue-sharing is the only Federal aid that a considerable number of our smaller local cities and towns receive, the loss of local revenue-sharing funds would be catastrophic.

To create uncertainty in this appropriations bill over the fate of local revenue sharing would be a disservice to local governments in Tennessee and elsewhere in the country.

Second, we should pass this amendment because there really is no doubt that local revenue sharing will be reauthorized. The House Government Operations Committee has reported out a 3-year extension of the program, and just this morning the Senate Finance Committee started its markup to extend the program. Since local revenue sharing will be reality before this Congress adjourns, it makes little sense not to appropriate the funds on a contingency basis for this essential program now.

I urge my colleagues to support this important amendment to reinstate local revenue-sharing funds.

Mr. PROXMIRE. Mr. President, I realize my good friend from New Jersey has support on this amendment and that it would undoubtedly pass if there was a rollcall, and pass, probably, by a big margin.

Nevertheless, I must state the reasons why I, as one individual, would oppose it, although, as the Senator correctly stated, we have agreed to a voice vote on it, and I am sure it will be accepted by the Senate.

Mr. President, I am reluctant to accept this amendment for a whole series of reasons. For one thing, I think it is a gross mistake on our part to appropriate funds without having an authorization. That is the whole purpose of an authorization.

The Senator from New Jersey says the authorization will be forthcoming Monday. Maybe; maybe not. We do not know.

It seems to me the monkey should not be on the back of the Appropriations Committee, if they do what we have always done and should do as a matter of policy, and that is wait until we get an authorization before we act. This is a very, very big program. It is a program that provides, if the State funding is included, $6.5 billion a year for probably 5 years. That is a colossal commitment of Federal money.

I am very much opposed to it, because I have studied the revenue sharing program for a long, long time. And, Mr. President, I think all of us recognize that if there is one thing the Federal Government does not have, it is revenue to share.

I can recall when Walter Heller came before the Joint Economic Committee back in the 1960's. He said:

Gentlemen, you are going to have a very difficult problem over the next few years, because the Federal Government is going to run such colossal surpluses that we are going to push ourselves to a recession and a depression. Therefore, you have to get rid of the extra money.

The best way to get rid of the extra money is to hand it over to local governments to spend. This money is given to the local governments without any strings attached, without any directions, without any priorities. It is money that some people said that you leave it on the stump and run.

There is no accounting for it.

The League of Women Voters made a 2-year study of revenue sharing. They found that Governors, State legislators, and even reporters covering the State legislatures, in many cases had no idea where the money went. It is not money for which there is any effective accountability.

Nevertheless, as the Senator has pointed out, this is a program which now has a very, very powerful constituency. Not only the Governors but the mayors, the city council members, and many others want this money more than any other money the Federal Government provides, and for obvious reasons.

Can you think of an easier way to spend money in your community than one in which you do not have an accountability to your local taxpayers? If the mayor would like a golf course built near his home, if he wants a limousine, if he wants extra firetrucks that he cannot justify, he says, "Well, we are taking that out of revenue sharing."

It is an unfortunate program, in my judgment, but I must admit that I am apparently a member of a small minority in that respect, or at least a minority. I must say that this policy of having us appropriate money which has not been authorized, for which we do not have guidelines, where we do not have the authorizing committee go through the process of indicating how much is necessary, where there is a very strong possibility we may or may not have State revenue sharing, I think it is a serious mistake. Nevertheless, I recognize that the Senate is going to take this. We will not have a rollcall vote. It will be passed on a voice vote.

Let me just say to summarize, neither House has passed legislation reauthorizing the revenue-sharing program. To appropriate funds under such circumstances, without knowing how the funds are to be spent, would be a serious mistake. It would be like signing a blank check, with the authorizing committees deciding how the money is to be spent.

For that reason, I oppose the amendment, although I recognize the amendment is going to be accepted, as I say.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER (Mr. CANNON). The Senator from Maryland.

Mr. MATHIAS. Mr. President, I have great respect for the views of my colleague, the Senator from Wisconsin, but I take a little more positive view of this amendment than he does. Mr. President, you just have to consider the impact on an enormous number of communities across this country, 39,000 communities across the length and breadth of the United States who will be adversely affected by the sudden cessation of what has come to be viewed as an entitlement program. The fiscal shock would be very great.

I know one of the arguments that the opponents of revenue sharing use is that it is the States which have surpluses. But that is an argument that does not bear too close inspection because it is very few States. Some mineral rich and oil rich States have surpluses, but most of the States are having a tough time, and many of the communities in this country are having a tough time. I, for one, am happy to lend my support to the adoption of this amendment.

I join with the Senator from Wisconsin in saying I think we should take it on a voice vote.

Mr. BAKER. Mr. President, I am delighted to see the Senate today moving, in the housing and urban development independent agencies appropriations bill, toward the restoration of what I believe to be one of the most worthy programs this Congress has enacted in the last five decades.

As I have stated on so many occasions on this floor and elsewhere, Federal revenue sharing is the one program in existence which has reversed the otherwise inexorable flow of revenues and power to the central Government and away from the States and local governments which best know what needs to be done and how to do it.

The inclusion in this legislation before us today of the full, $4.6 billion revenue sharing allocation to local governments for fiscal 1981 will surely be welcome news to the thousands of city and county officials who based their budgets for the year on the availability of those funds.

And equally as important as fulfilling and renewing our pledge to local governments, we have today restated our faith in the concept of revenue sharing and, more importantly, the concept of disbursing the vast powers and resources of the Federal Government to levels of government more responsive to the public needs.

I commend the distinguished Senator from New Jersey (Mr. BRADLEY) for his amendment.

My only regret, Mr. President, is that we will not have, in fiscal 1981, revenue sharing with our States. That program is as worthy of merit and continuation as the local governments' revenue sharing.

And while I am dismayed at the lack of a States' share program this year, I am encouraged by the knowledge that the full revenue sharing program, for both States and local governments, which I was proud to sponsor with our late colleague Hubert Humphrey in 1972, will be restored in full for fiscal years 1982–85.

It is unfortunate we have interrupted the program for the coming year. But our action today in behalf of local governments signals what I hope and believe is the concurrence of the Senate that this most worthy program will not again be unnecessarily tampered with.

Mr. MOYNIHAN. Mr. President, the Senator from Wisconsin, having been generous enough to indicate he will accept the amendment the Senator from New Jersey and I have proposed, and our friend from Maryland having, in effect, joined in that proposal, I will be brief, but I wish to be understood as not sharing the same view that the chairman of the Banking Committee has of this matter.

The issue involved here is far larger than the amount of money involved. There is an issue of how we conceive the Federal system.

I happened to have been involved in the early discussions in the executive branch in revenue sharing, an idea which originated among economists who noted that there was an effect upon the nature of government in this country that arose unintentionally but inexorably from the nature of the progressive income tax.

In the early 1960's it began to be seen that for each increase in 1 percent, you might say, in the gross national product, the revenues to the Federal Government would increase by approximately 1.5 percent, the revenues of State and local governments by no more and, occasionally, less than 1 percent, such that there was an inexorable movement up in the system of available resources to the Federal Government, and with the consequence that the functions that it assumed increased regularly. Rodent control, police functions, and social welfare services, for example, which had been traditionally local in nature, began to find themselves on the Federal agenda because of the availability of Federal funds.

That began to distort the whole operation of the National Government.

No one has been more eloquent in pointing out the absurdities of the details in which the Federal Government has gotten itself involved in government than the Senator from Wisconsin himself. His Golden Fleece award is practically a compendium of the absurdities that arise from the Federal Government assuming functions which are properly those of local or the State governments.

If we are not to continue such absurdities and not, indeed, to compound them, we have to see that the resources in this Federal system for carrying out local functions are available at the level of local government.

This is not an issue of golf courses. This is not an issue of swimming pools.

This is an issue of the capacity of local governments in a national economy where the largest sources of revenue have been monopolized by the Federal Government having, at the local level, the capacity to perform functions which properly are local.

The Golden Fleece awards are brilliant testimony to the absurdity of having to try to carry out and monitor these functions at the Federal level. They are best done locally. They clog this national system.

Here we are in mid-September, the work of the Congress uncompleted, and it will not be finished. Why will it not be finished? Why are we in session year-round? Because we are trying to do things which are inappropriate to our national status. Revenue sharing is fundamental to a restoration of this imbalance.

In any event, I would like to thank the chairman of the Banking Committee for his generosity in this matter.

Mr. President, it fell to me on March 1, 1979, to introduce the first bill of this Congress extending the existing general revenue sharing program. Under the leadership of my friend and colleague from New Jersey, whose subcommittee has jurisdiction over this matter, the Finance Committee has agreed to report out this bill. I ask unanimous consent to place in the RECORD the statement I made on March 1 which elaborates the arguments that I have made in brief this morning.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR MOYNIHAN

Mr. MOYNIHAN. Mr. President, I am today introducing a bill to extend the State and Local Fiscal Assistance Act of 1972 in its present form and at its present levels for two years beyond its current expiration date of September 30, 1980. This program, commonly known as General Revenue Sharing, represents one of the most creative accomplishments of American federalism in the past decade. It is based on a simple but fundamental fact: the progressive nature of federal taxation is such that as the economy grows the revenues of the Federal government grow faster than do the revenues of state and local governments.

In order to preserve a balanced federal system, it is of central importance that we preserve the ability of state and local government to respond to their distinctive circumstances in their own ways. In that spirit, the idea began to be developed in the Kennedy and Johnson administrations that the Federal government ought to direct a portion of its growing revenues to states and localities without the restrictions and specifications required in categorical programs. This was a large idea. It was developed and advanced by such distinguished political economists as Walter Heller and Joseph Pechman. In time, it was proposed to Congress by President Nixon and adopted in its present form in 1972.

In recent weeks, we have begun to see in many quarters a willingness to revise some of our most fundamental governmental arrangements and to undo some of our hardest won achievements so as to accommodate the politics and economics of the next 18 to 36 months. It is not necessary here even to speak of those who would amend the Constitution of the United States for that purpose. It is not necessary to speak of those who say we should sharply reduce federal spending but who are unwilling or unable to say which forms of spending should be reduced. I have the utmost respect for those who are courageous enough to specify a particular program and suggest that it be reduced or eliminated. That is a responsible act performed by responsible public officials. It is the proper subject for public debate and political decisionmaking.

In the case of General Revenue Sharing, it is my view that the program is important and should be continued. The conception of federalism which underlies it, and the durable economic trends on which it is based, seemed valid to me. It may be the case that some states and localities are experiencing surpluses in their current budgets and it is indisputably the case that the Federal government is experiencing a deficit. But these surpluses are mostly cyclical. Some reflect different accounting practices more than they represent true differences in fiscal condition.

We must not overlook the long-term trends. Even with revenue sharing, state and local taxes as a percentage of personal income more than tripled between 1961 and 1977. The federal income tax has remained almost constant in this respect. Notwithstanding the rapid increases in their taxes, many of which are burdensome and regressive in impact, states and localities have grown more dependent on revenues from Washington. Had the Federal government kept its aid at the levels experienced before enactment of revenue sharing. State taxes would have risen still further, or services would have diminished or—more likely—the Federal government would have stepped in with yet more detailed and complicated categorical efforts to replace state effort and thereby inevitably to reduce the ability of the states to manage their affairs.

This ought not to happen. At least it ought not to happen casually. If it is to happen, it must be the result of as sustained and serious an examination of the proper workings of a federal system as that which produced revenue sharing. In that spirit I propose that we agree now to continue the present arrangement for an additional two years, and I seek the support of my colleagues for that proposition.

Mr. DANFORTH. Mr. President, I believe it is clear that appropriations for general revenue sharing will be included in this bill. It was a matter of great concern to many of us when the committee did not provide it. I think it is clear from the votes on revenue sharing that there is very strong support for the concept of this program in the Congress.

I do not think there is any doubt, Mr. President, that the Federal Government is committed to providing economic resources for State and local governments.

This has been the case for a long number of years and there is no doubt that it will be the case in the future as well.

Really, Mr. President, the issue that is presented by revenue sharing is the form in which such support should come. The problem with some categorical grant programs is that the decisions which previously had been made at the local level or at the State and local levels of government are transferred to the Federal Government simply because of the leverage power of the Federal dollar. It is well known to those of us who have been officials at the State level that, so often, the State government becomes little more than the administrator of a Federal program. The same is true at the local level: decisions which should be made at the local level in a pluralistic society become preempted by Washington simply because the dollars are here and the strings attached to Federal dollars are notorious.

The value of revenue sharing is that it is a means of providing financial assistance to State and local governments, which assistance will be provided in any event, but it is a means of allowing the decisions on how those dollars are to be spent to be made locally. Therefore, Mr. President, I am delighted that the managers of the bill will accept this amendment. I commend Senator BRADLEY for his outstanding leadership in this matter, both on the floor of the Senate and in the Finance Committee. The battle of general revenue sharing moves on from month to month in Congress. I am confident that, not only in this short term but in the long term as well, the battle will be won.

Mr. BRADLEY. Mr. President, I am pleased to yield to the Senator from Minnesota, who, I think, wants to make a statement.

Mr. DURENBERGER. I thank the Senator.

Mr. President, I speak today with some feeling on behalf of the amendment offered by the Senator from New Jersey and supported by my eminent colleagues on the Committee on Finance and other committees on which I serve. I, too, am very pleased that the managers of this bill have agreed to accept the amendment.

Mr. President, it has been a great frustration to me, as one who has been close to revenue sharing for the 6 years of its existence and many years before that, to watch what has happened to it during the 1½ years I have served in the U.S. Senate.

The amendment offered by the Senator from New Jersey would restore $4.6 billion to the appropriations bill to fund the local governments' share of the revenue sharing program.

The Finance Committee reported a revenue sharing reauthorization bill yesterday, and in light of this action, the appropriations bill should be amended; the funding for local governments should be restored.

A great number of the States of this Nation, and their local governments, are facing serious financial problems. A recent survey conducted by the National Governors' Association found that 34 States are facing severe financial problems because of the recession. The recession is being felt in all parts of the country, but the Northeast, Midwest, and Northwest are bearing the brunt of the economic slump.

What has that to do with local governments? Mr. President, faced with revenue shortfalls and mounting welfare costs, a number of States have reduced their aid to local governments; others have maintained the aid at current levels, but their cities and counties had been promised increases.

The NGA study is consistent with recent projections by Data Resources, Inc. (DRI), which expects the State-local sector to incur average deficits of $11.7 billion in 1980, $14.9 billion in 1981, and $13.3 billion in 1982. In the last recession, the State-local deficit added up to a mere $6 billion. DPI further indicated that due to cutbacks in Federal aid, and changes in State tax structures, State and local governments will not be able to counter this recession with higher spending, as they have in the past. I ask unanimous consent that the NGA study be printed in the RECORD immediately following my remarks. Most of my colleagues will find their States mentioned in the report.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DURENBERGER. Mr. President, we cannot deal the local governments of this country another blow by cutting their revenue sharing funds. They have already been handed a severe recession near record unemployment, and unconscionable inflation rate, record high interest rates, and withdrawal of Federal and State aid. The obvious impact of all this is clear. This Congress—in its economic failures—has increased the cost of public service delivery by local government while reducing the income and excise tax base from which these services can be locally funded.

At the same time—and as a consequence of the same failure—we have so inflated the Federal Government's income tax take from the working people that they are left with little or no financial resources with which to respond to local—or State—tax increases.

When we cut aid to local governments, we are taking money away from the governments that give direct service to the people. The Federal Government is primarily a transfer agent, taking money in—money raised through a highly inflationary income tax, I might add—and then redistributing it. By contrast, local governments must deliver the goods. Ninety-six percent of all local expenditures are directly related to providing those services—services that are necessary to the quality of life and health of the people of this country.

As I mentioned earlier, many States have been forced to cut back on their aid to local governments. States obtain about 86 percent of their tax revenues from income and sales taxes. These sources are highly sensitive to recessions. It is clear that when people are unemployed, they do not pay income taxes and they do not buy consumer goods. To make their problems more difficult, most States have taken on the responsibility to finance the recession-sensitive services—to pay the bills such as AFDC payments and medicaid—that go up during financially difficult times, just when State revenues are going down. Clearly, if the State is to continue meeting its obligations to the poor and needy, it will have to cut back in another place. And now, that place seems to be the budgets of local governments.

The budgets of local governments have few, if any, financial cushions. If we do not restore the $4.6 billion for the fiscal year 1981 revenue-sharing payments, the funds they are counting on in January and April will not be sent. In fact, assuming the Congress enacts a revenue sharing program—and I believe it will because it must—if the appropriation is not included in this bill, the local governments will have to wait until a supplemental appropriation is made to receive their money. That would bring chaos to many of our 39,000 units of local government, and the millions of Americans who rely on them for services.

Our local governments need these revenue-sharing funds. Let's not eliminate the appropriation for the one Federal assistance program that works.

Mr. President, my compliments to the author of the bill and to the managers of this appropriations bill.

EXHIBIT 1

RECESSION'S BITE FELT IN ALL REGIONS AS STATES COPE WITH REVENUE SHORTFALLS

A National Governor's Association survey of 34 states finds the recession causing fiscal difficulties in all regions of the nation but particularly severe problems in the Northeast, industrial Midwest, and Northwest. Hard-hit states include Michigan, Ohio, Illinois, and Pennsylvania but also Vermont, Minnesota, Oregon, and Utah. South Carolina and Alabama are among southern states experiencing fiscal pressures. Faced with revenue shortfalls and mounting welfare costs, a number of states have been forced to reduce local aid but others have maintained or increased it. The survey's findings are consistent with recent projections by economic forecasters such as Data Resources Inc. (DRI), which expects the state-local sector of the economy to incur average annual deficits of $11.7 billion in 1980, $14.9 billion in 1981, and $13.3 billion in 1982. (Analyses of previous deficits, such as the $6 billion incurred in the last recession, have shown state governments bearing most of the burden.) DRI analysts indicate that federal aid cutbacks and more prevalent tax and expenditure limitations have prevented state and local governments from countering the recession, as they have in the past, with higher spending. Reports from the states follow:

NORTHEAST

Vermont reported a $7.2 million deficit at the end of fiscal year 1980, or about 2.5 percent of its operating budget. The governor has directed agencies to reduce expenditures by 3 percent and has instituted hiring and travel freezes.

New Hampshire revenues for 1980 are expected to be $4 million to $6 million below estimates, with program cuts of $9.5 million, resulting partly from a loss of general revenue sharing funds, projected for 1981. State agencies are under a mandated, 2 percent across-the-board cut, with aid to local government exempted from the reductions.

Maine and Connecticut revenues were slightly above projections in 1980 but both states are projecting 1981 general fund balances of only $300,000, less than one-tenth of one percent, and both budgets assume full funding of general revenue sharing.

In New York, revenues were slightly above projections for fiscal 1980 (ending March 31) but the state's projection of a balanced 1981 budget depends on a 13.6 percent growth in revenues. The 1981 budget reflects cuts in local aid and continuation of a hiring freeze.

Pennsylvania experienced a $2.3 million revenue shortfall in 1980, projects slower growth in 1981; more than 3,000 salaried positions have been eliminated since January 1979, and the state reports that special education funding may be curtailed if the full amount of revenue sharing is not received. Pennsylvania's unemployment compensation fund is in debt to the federal government by $1.44 billion with the debt growing by $1 million a day. The state has raised unemployment compensation taxes and reduced benefits.

New Jersey's revenues for fiscal 1980 were 2.5 percent above estimates, but the state is projecting growth of only 3 percent for fiscal 1981, despite an increase in the corporate net income tax from 7.5 to 9 percent. The state has increased aid to school districts and local governments.

Delaware and Maryland report revenues on target for 1980 with slower growth projected for 1981. Maryland expects to borrow from the federal government to meet unemployment compensation costs.

MIDWEST

In Michigan, where 600,000 persons are unemployed, the state's 1981 budget will be below the 1980 budget in actual dollars. Revenues from withholding tax collections are down 6 percent.

FEDERAL TAXES RISE, GRANTS DECLINE AT WRONG TIME FOR STATES

	Federal receipts as percent of GNP	Federal aid to State-local governments as percent of GNP
1972	18.8	3.1
1975	19.3	3.4
1978	20.1	3.8
1981	22.2	3.2

In September, the governor ordered the 19 major state departments to turn back $60 million to the treasury; in April, he issued an executive order cutting $97.5 million from the budget for across-the-board reductions. He also has ordered all agencies to prepare plans for 20 percent reductions in fiscal 1981 (beginning October 1) and to implement as many of the cuts as feasible effective immediately. Virtually every state program has been reduced, and aid to local governments will be cut in fiscal 1980 and 1981.

Illinois revenues were slightly below projections in 1980, and the state has postponed planned tax relief and spending measures. The unemployment compensation fund will be bankrupt in November, and the highway trust fund is at the lowest level in nine years.

Minnesota revenues were $91.4 million below estimates in 1980, expecting more severe problems in 1981. Department heads have been told to develop plans to control expenditures by August 1; agency administrative costs, use of consultants, and travel will be curtailed. The gas tax was increased by two cents, enough for road maintenance but not new construction. Ohio revenues were $188 million below estimates in 1980, and the state has imposed a 3 percent across-the-board spending reduction.

Indiana revenues were slightly above estimates, but the state is projecting its general fund balance to drop from $216 million in 1980 to $93 million in 1981. The state is in the process of imposing a hiring freeze and reports motor fuel tax revenues are lagging.

Revenues were slightly above projections for 1980 in the farm states of North Dakota, South Dakota, Kansas and Nebraska, but reduced farm income is expected to lead to slower revenue growth in fiscal 1981, and difficulties were reported in meeting highway needs.

SOUTH

South Carolina, which is projecting no 1981 balance beyond the constitutionally mandated reserve fund, has given state agencies no inflation adjustment in 1981 beyond employee pay raises, has postponed education aid increases and has delayed $14 million in new capital expenditures.

Alabama is projecting revenue shortfalls in fiscal 1980 (ending September 30) and in 1981; the governor will call a special session of the legislature to alleviate budget problems in the fall.

Georgia revenues were slightly above estimates in 1980, expected to increase by 6.3 percent in 1981. The state's 1980 balance was $80 million, or 3 percent of expenditures, and the 1981 budget includes $25 million in revenues that must be replaced with state funds if general revenues sharing is cut back further.

Louisiana revenues were $390 million above projections, are estimated to increase by $750 million in 1981, due largely to decontrol of oil prices.

Mississippi reports revenues slightly above estimates in 1980, but projects slower growth in 1981, a drop in the general fund balance from $63.3 million (6.6 percent of expenditures) in 1980 to $14.6 million in 1981 and a $9.6 million decline in capital improvements.

Virginia reports revenues slightly above projections in 1980, but slower growth in 1981. The state reports major increases in local aid, a 2-cent increase in the gasoline tax, and signs of trouble in the unemployment compensation fund.

Tennessee revenues were $50 million, or 2.5 percent, below estimates in 1980, and another $25 million shortfall is expected in 1981. The state has reduced employment by 3,000 positions, cut $6 million from medicaid funding, and imposed freezes on hiring and equipment purchases. The highway fund shortfall was $20 million.

Kentucky reports a revenue shortfall in the general fund and highway fund in 1980 and has revised its 1981 revenue estimate downward. The state terminated 2,800 employees, reduced education and human services funding, froze capital expenditures and mandated cutbacks in consultant services and travel.

The Virgin Islands report a revenue shortfall of 9.5 percent in 1980, 8.7 percent in 1981; public works maintenance programs are being curtailed, and an increase in the unemployment compensation tax is under consideration.

WEST

California projects slower revenue growth in 1981, a drop in the general fund balance from $1.8 billion in 1980 to $12 million (less than one percent of expenditures) in 1981. Local aid increases following enactment of Proposition 13 have been made permanent.

Oregon revenues were $53 million below estimates in 1980, are projected to be down $151 million, excluding the loss of $13.6 million in general revenue sharing, in fiscal 1981. The $204 million shortfall represents 12.5 percent of the 1979–81 biennial budget. A special session of the legislature has been called for August 4 to consider proposed cuts in higher education, human resources, and other state programs, and a $21.5 million saving in deferred capital construction.

Colorado projects revenue growth will slow from 22 percent in 1979 and 17 percent in 1980 to 12 percent in fiscal 1981.

New Mexico is projecting 15 percent growth in its general fund for 1981 but lagging revenues, aggravated by federal cuts, in its highway fund.

Utah is projecting a $44.7 million shortfall in its 1981 budget; the governor has ordered a 4 percent across-the-board cutback in state programs and local aid, and a hiring freeze is in effect.

Montana revenues are expected to increase slightly in 1981; the state reports a rapid decline in its highway fund balance.

Idaho reports revenues $11 million below estimates in 1980, projects little or no growth in 1981. The state underfunded its departments in 1980, forcing unspecified reductions, but increased school aid by 27.4 percent.

Washington state revenue receipts are approximately $40 million, 2 percent, below projections of last November. Projections for fiscal 1981 have been lowered by $48 million as a result of lower economic projections. Welfare payments have been reduced by $43 million by executive order of the governor.

● Mr. DOLE. Mr. President, I am pleased to cosponsor the amendment proposed by Senator BRADLEY to the HUD appropriations bill. This is not the first time that we have had to deal with general revenue sharing in an appropriations bill, but I hope it is the last. These recurring attempts to attack the revenue-sharing program through the appropriations process take up valuable time that could be better spent on other matters. In fact, these efforts do nothing more than cause uncertainty in the plans of financial managers of State and local governments.

The issue is clear—local governments should not be left hanging, uncertain whether their next allocation of revenue-sharing funds will be forthcoming. The Appropriations Committee argues that it cannot include revenue sharing in the fiscal 1981 appropriation at this time because action has not been completed on authorizing legislation to renew the revenue-sharing program. I would just point out that the House is expected to approve such legislation in the next few weeks. The Senate Finance Committee acted to report such legislation Thursday. Everyone expects revenue sharing for all local governments to be renewed. There is no justification for jamming up the works in the appropriations process.

Revenue sharing has become an important tranfusion of funds to cities, counties and townships across our country. Its effectiveness is well documented and its importance is undeniable. It provides over $40 million to my State of Kansas and is critical to large and small cities alike. The $39,000 that Colby receives and the $176,000 that Great Bend receives are just as necessary to those communities as the $1.5 million going to Topeka and the $3.3 million Kansas City, Kans., relies on each year. The counties cannot afford to have their revenue-sharing moneys pulled out from under them either. My State's three largest counties—Johnson, Sedgwick, and Wyandotte—receive over $3.5 million annually from revenue sharing. I am simply trying to emphasize the breadth of revenue sharing in concrete terms. The need is even greater in more populous States. If this funding is withheld, the entire range of basic services will be underminded.

It is regrettable that revenue sharing—one of the most effective and cost-efficient Federal programs—should be the subject of continued attacks, when there is so much waste and inefficiency elsewhere in the Federal budget. Strenuous efforts to eliminate the States from the program have already undermined it. We are concerned about controlling the budget—that is why I introduced legislation to let the States participate if they accept a reduction in categorical grant funding. But, the arbitrary invocation of a technicality in the appropriations process does nothing to aid the budget situation. It merely opens Congress up to charges of inconsistency, indecision, and poor planning.

Mr. President, we do want to cooperate with the Appropriations Committee when it is in the interest of fiscal restraint to do so. But, the whole notion of an entitlement is to insure that funding will not be subject to an annual battle in the authorization process and the appropriations process. It is true that we are now at the point in the cycle when the revenue-sharing program must be renewed. But, that is no reason for the Appropriations Committee to jump in, before action to renew the program has been completed, and attempt to short-circuit the funding mechanism for revenue sharing. Clearly the program will be renewed. If it were not renewed, the appropriation would be meaningless.

Mr. President, I am an enthusiastic cosponsor of this amendment, and I urge my colleagues to join us.●

Mr. BRADLEY. Mr. President, I want to reassure the chairman of the Appropriations Subcommittee that the Finance Committee will report this revenue-sharing legislation and he should not worry that that will not happen. I have, on many occasions, listed my disagreement with the Senator on this issue and I shall not go into them at any length.

Mr. President, I am prepared now to move. I ask unanimous consent to withdraw my amendment and then to vitiate the Appropriations Committee action on page 31, lines 2 through 7.

The amendment (UP No. 1626) was withdrawn.

The PRESIDING OFFICER. The question is on agreeing to the request to vitiate the agreement to the committee amendment on lines 2 through 7 on page 31.

Mr. PROXMIRE. Before we act on that, Mr. President, let me say that Senator BRADLEY is accomplishing precisely what he wanted to do before. The Bradley motion will do what he has indicated, that is restore the $4.569 billion for local revenue sharing. I think it should be made clear that it is on the Bradley initiative that this was done in the Senate.

Mr. BRADLEY. Mr. President, this is a request to vitiate action on the Appropriations Committee amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the committee amendment.

The Chair is uncertain.

Mr. PROXMIRE. Mr. President, will the Chair state the question again?

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was rejected.

Mr. MOYNIHAN. I move to reconsider the vote by which the committee amendment was rejected.

Mr. BRADLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1627

(Purpose: Relating to reduction in funds for advertising and public relations activities)

Mr. BAUCUS. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator request that the Tsongas amendment be laid aside?

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Tsongas amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the amendment.

The second assistant legislative clerk read as follows:

The Senator from Montana (Mr. BAUCUS) proposes an unprinted amendment numbered 1627:

At the appropriate place in the bill, insert the following new section:

SEC. . Notwithstanding any other provision of this Act, any amount appropriated by this Act for the fiscal year ending September 30, 1981, for any department, agency, or instrumentality of the United States Government, which is available to pay for or conduct advertising or public relations activities is reduced by 10 percent.

Mr. BAUCUS. Mr. President, this amendment I am offering is very similar to the amendment I offered to the transportation appropriations bill. Essentially, it proposes to cut the advertising budget of the agencies included in this bill by 10 percent. I think all of us, not only Members of the Senate, but all of us as Americans, have an intuitive sense or feeling that the Government is spending too much money on advertising generally. I know that it is my view often, watching television, when I see a Government-sponsored advertisement. Frankly, it rankles me a little bit and I wonder what Uncle Sam is doing spending this money on advertising. I decided to conduct a little investigation to try to determine whether we are spending too much on advertising and whether it is effective.

Mr. President, I first discovered that we do not know how much Uncle Sam is spending for advertising. The reason is, very simply, that in all the budgets submitted to Congress, there is no line item for advertising or public relations expense. All the advertising that money presently is spent for these days is built in, it is sandwiched in, it is padded within the various line items in one place or another. We just do not know where it is.

Second, different agencies have different ideas of what constitutes public relations and advertising and so forth. So we really do not know how much is spent on advertising.

As a result, I asked the GAO to do a little investigating.

Mr. PROXMIRE. Mr. President, will the Senator yield long enough to get the yeas and nays?

Mr. BAUCUS. Yes, I yield.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. Mr. President, GAO reported a couple of years ago to me that they, too, do not know how much we are spending on advertising, for the same reasons: it is not a line item, not specifically stated in the budget. GAO, too, had some interesting observations.

GAO has observed that, as far as GAO was able to determine—and this was a couple of years ago—we do not know whether this advertising is effective. There have been only three studies done by the Federal Government, so far as I am able to determine, to try to deter-

mine the effectiveness of Uncle Sam's advertising.

Mr. President, the interesting point is that although these studies are inconclusive, they show that probably all the advertising that we are spending money on as part of the Federal budget has little effect. That even includes advertising to try to encourage young Americans to enter the Volunteer Army. The Department of Defense study itself shows that that advertising is probably inconclusive.

Mr. President, I decided that, since GAO said we do not know, and since the budgets do not indicate how much is being spent, I would try to investigate this as well as I could. So I asked my office to go down to just one agency this morning, the Department of Housing and Urban Development. I had one person go down and we conducted a little raid. We just walked into the office and asked for one copy each of reports, of periodicals, of printed materials that HUD distributes. And I stress, we looked only at printed material. We did not even begin to look at radio, TV, and other electronic media advertising.

Mr. President, as we can see, I have on my desk a cardboard box. It is chock-full. It weighs about 40 pounds. It is filled up with one item of each of the various different periodicals, different publications, that HUD distributes.

I will just read or indicate what a couple of them say. Here is one little brochure entitled "Interoffice Safety Memo to the Entire Staff." It notes 12 steps to office safety.

First is this little number: "Walk, Don't Run, and Watch Out at Corners."

Second, "Pick up pencils, clips. Papers on the floor are fall traps."

Third, "Get aid fast, even if it is just a scratch."

Fourth, "Close file drawers. They are a trip hazard when open."

Here is another: "On stairs, don't run, walk."

It says, "Use the handrails."

Here is another: "Use ashtrays, never drop ashes in wastebaskets."

Another: "Use the stepstool. Don't climb on chairs or shelves."

Another: "Learn to lift right. Lift with your legs, not your back."

Well, Mr. President, I do not want to belabor the point. I favor any productive measure making working conditions safe. But I cannot believe the money invested in this brochure really contributes very much to that end.

Here is another, Mr. President. This is called International Bulletin. This is kind of interesting, this big article that HUD distributed somewhere. I do not know where it goes.

"How to Get an Apartment in Poland."

I must say, HUD is probably fairly impressed with recent developments in Poland because this is printed in July of this year.

It says:

> According to reports, housing in Poland is a subject which is endlessly discussed, written about, and worried over.

I did not know we were all worried about that, but, apparently, HUD thinks so. The article continues:

> While not as volatile a public concern such as the availability of meat, housing is just as basic and pervasive. Though newspapers, magazines and television report progress being made, the extent to which the Polish government is fulfilling—or failing to fulfill—a basic societal need is causing considerable debate.

I will not read the rest of this. But, again, it is just another example.

Here is another, a big glossy print. It is a kind of glossy report one would expect to receive as a shareholder of General Motors.

This is from NASA, a nice picture of a tiger from NASA. A big glossy print.

This is expensive. We do not grind this out on a mimeograph machine.

There is another picture of a zebra here. A nice office building. A lot of stuff here does not say anything.

My office thought we should try to get some NASA publications. We called and the man said, "I am sorry, but you would have to get an 18-wheeler to carry away one copy of all the publications NASA puts out."

Mr. President, that is a big truck that would have to be filled up to get one copy of each of the publications NASA puts out annually, according to a NASA official this morning.

Mr. PROXMIRE. If the Senator will yield, that is astonishing.

I think the Senator from Montana is doing a marvelous job because the difficulty with so much of this is that we do not really get down to the specific kind of waste or expenditure, and that is exactly what he is doing here.

This example, that NASA puts out so many publications that it would take an 18-wheel truck to take one copy of each publication to your office is shocking. He has an example of a glossy print NASA publication. I know. I used to be in the printing business, and I know how much they cost. The cost of the paper, the reproduction, and the color is very high.

I am sure what NASA does is very good. It is a fine agency, and one of the most efficient. But I think there is no question that they can save 10 percent of their public relations and advertising budget.

So I commend the distinguished Senator from Montana. I think this is a very helpful demonstration, particularly the way he brought it to the attention of the Senate, not by some general statement that they are wasting money, but giving us the specific documentation.

I could not resist mentioning that 18-wheel truck needed to haul one single copy of each publication.

Mr. BAUCUS. That is correct.

I thank the Senator from Wisconsin. I am very honored to have him speak in favor of this amendment, particularly because the Senator is known nationwide, and probably in other parts of the world, for his Golden Fleece Awards every month in honor of the most glaring examples of waste in Government.

Mr. President, I think the problem is obvious. I have two or three other very quick points in my proposal, which is simply to cut the advertising budgets by 10 percent.

I, frankly, think it is too little and probably could be cut 50 percent very easily, and does a world of good, but I am willing to take the 10 percent and see what happens.

In the meantime, I intend to look at this very closely, conduct hearings in the subcommittee I chair to try to find what we are wasting in this area in advertising.

There are various problems. One is the problem of definition. If we simply cut advertising 10 percent here, various agencies will define it different ways, and probably as narrowly as they can, to cut their budgets as little as possible.

This is a problem we will have to take up next year.

Mr. President, I also bring to the attention of the Senate a statute enacted in 1913 directly on point, but which has not been enforced at all.

Very simply, it is one sentence in the United States Code. It has existed 67 years. Next month is the 67th anniversary of the statute:

> Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.

There is a statute in the law which is on this point. There are no line items in the budget we received from the administration. I think this statute is very clear. The intent of the specific statute is that money spent for publicity experts must be line items.

I think the Committee on Governmental Affairs in this next year could look at some way to require budgets to include a line item for advertising. It certainly could require departments and agencies to abide by the law.

Mr. President, the real question here is manifold. One is waste. We all want to stop waste. But there is another basic question. That is, should the Government be involved in advertising?

Sure, I think various companies, like Colgate, should be able to put on TV ads, like Colgate toothpaste is better than Gleem, and Gleem should be able to say why they think Gleem is better than Colgate. Product differentiation, that is the free enterprise system.

But should the Government be involved in advertising? What is it they are trying to sell?

I have an idea that these agencies are trying to sell themselves to their own constituencies, and they are pretty good at it. They know they can mail out these tons of materials to their constituencies, that the constituents will write us and make it much more difficult for us to cut their budgets.

It is a vicious circle. They send out all this junk, send out all this stuff in the public domain, and then those people think they have to support their agencies because they get all this junk.

That is, I think, the basic problem.

Mr. PROXMIRE. If the Senator will yield. Of course, the irony is that the taxpayer is having the money spent to lobby against his interests because what happens with much of this is that it promotes the agency.

The poor old taxpayer has to pay the bill. I am sure that if we had any kind

of poll of the American people, they would say that one of their top priorities is to hold down the cost of Government. Obviously, it is against their interests to have the Government promote increasing in size, increasing its burden, and then have the taxpayer pay for it.

So I believe that what the Senator is trying to reach here is of the greatest importance. I do believe that there are some information functions that the Government should perform which are very helpful and vital. Certainly, the Government has the duty to try to help us live a safer life and a healthier life, and so forth, and it can accomplish a great deal through information. However, as the Senator has pointed out, a great deal of this is simply to build up the image of the administration.

I am glad the Senator has started on this tack. I noticed that he did this the other day on the transportation bill, successfully. I hope he will continue to do this and that we can develop the kind of data in the future so that we will not have the agencies simply coming in and asking for 10 percent more, figuring that the Baucus amendment is going to cut them down. I believe this amendment is most constructive.

Mr. BAUCUS. I thank the Senator.

Mr. President, that concludes my statement. I ask unanimous consent to have printed in the RECORD a table displaying the advertising and public relations expenses of those departments and agencies covered by this particular appropriations bill.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

	In-house	Outside	Total
FISCAL YEAR 1978			
Department of Housing and Urban Development	$1,425,988	$141,171.00	$1,567,159
Independent Agencies			
American Battle Monuments Commission	0	0	0
Consumer Product Safety Commission	0	25,844.28	25,844.28
Environmental Protection Agency	840,300	362,600	1,202,900
U.S. Regulatory Council (did not exist in 1978).			
Federal Emergency Management Agency (did not exist prior to April 1979).			
General Services Administration	86,604	767,555	854,159
National Aeronautics and Space Administration	0	1,649,000	1,649,000
National Credit Union Administration	0	0	0
National Science Foundation	422,318	256,000	678,318
Neighborhood Reinvestment Corporation	0	0	0
Selective Service System	0	0	0
Veterans' Administration	921,479	110,760	1,032,239
FISCAL YEAR 1979			
Department of housing and Urban Development	2,435,819	59,840	2,495,659
Independent Agencies			
American Battle Monuments Commission	0	0	0
Consumer Product Safety Commission	245,145	366,236	611,381
Environmental Protection Agency	933,600	289,800	1,223,400
U.S. Regulatory Council	55,000	0	55,000
Federal Emergency Management Agency	6,200	11,400	17,600
General Services Administration	$76,608	$299,208	$375,816
National Aeronautics and Space Administration	0	1,856,742	1,856,742
National Credit Union Administration	0	0	0
National Science Foundation	464,200	350,000	814,200
Neighborhood Reinvestment Corporation	0	0	0
Selective Service System	0	0	0
Veterans' Administration	1,013,876	133,675	1,153,551
Grand total	5,230,448	3,373,901	8,603,349
FISCAL YEAR 1980 (TO DATE)			
Department of Housing and Urban Development	852,111	75,378	927,489
Independent Agencies			
American Battle Monuments Commission	0	0	0
Consumer Product Safety Commission	0	0	0
Environmental Protection Agency	1,013,200	219,900	1,233,100
U.S. Regulatory Council	55,000	0	55,000
Federal Emergency Management Agency	185,800	265,600	451,400
General Services Administration	84,961	251,129	336,090
National Aeronautics and Space Administration	0	861,034	861,034
National Credit Union Administration	0	0	0
National Science Foundation	308,090	219,000	527,090
Neighborhood Reinvestment Corporation	0	0	0
Selective Service System	0	0	0
Veterans' Administration	740,033	96,118	836,151
Grand total	3,239,195	1,988,159	5,227,354

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Georgia (Mr. NUNN), the Senator from Arkansas (Mr. PRYOR), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I also announce that the Senator from Montana (Mr. MELCHER) is absent because of illness.

Mr. GARN. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Maine (Mr. COHEN), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), the Senator from South Dakota (Mr. PRESSLER), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), the Senator from Wyoming (Mr. WALLOP), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 66, nays 0, as follows:

[Rollcall Vote No. 427 Leg.]

YEAS—66

Baucus	Ford	Nelson
Bentsen	Garn	Pell
Biden	Glenn	Percy
Boren	Gravel	Proxmire
Boschwitz	Hart	Randolph
Bradley	Hatch	Riegle
Burdick	Hayakawa	Roth
Byrd, Harry F., Jr.	Hefiin	Sarbanes
Byrd, Robert C.	Heins	Sasser
Cannon	Helms	Schmitt
Chafee	Huddleston	Schweiker
Chiles	Humphrey	Simpson
Church	Jackson	Stennis
Cochran	Kassebaum	Stevenson
Cranston	Laxalt	Stone
Culver	Leahy	Thurmond
Danforth	Lugar	Tsongas
Dole	Magnuson	Warner
Durenberger	Mathias	Weicker
Durkin	Matsunaga	Williams
Eagleton	Metzenbaum	Zorinsky
Exon	Mitchell	
	Moynihan	

NOT VOTING—34

Armstrong	Javits	Pressler
Baker	Jepsen	Pryor
Bayh	Johnston	Ribicoff
Bellmon	Kennedy	Stafford
Bumpers	Levin	Stevens
Cohen	Long	Stewart
DeConcini	McClure	Talmadge
Domenici	McGovern	Tower
Goldwater	Melcher	Wallop
Hatfield	Morgan	Young
Hollings	Nunn	
Inouye	Packwood	

So Mr. BAUCUS' amendment (UP No. 1627) was agreed to.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER (Mr. PELL). The Senator from Nebraska.

Mr. EXON. Mr. President, if I could have the attention of the floor manager of the bill, I would like to pose a question to him. How much additional money have we added to this program so far in our consideration of this bill on the floor of the Senate?

Mr. PROXMIRE. As the Senator knows, the big addition was revenue sharing which the House had in it. The administration requested it. The budget request allowed for it. We did not put it in because it was not authorized. We added $4.6 billion for that, and then we added $113.8 million for public housing operating subsidies, adding up to well over $4.7 billion.

Mr. EXON. Have we saved any money at all so far in our consideration of this bill?

Mr. PROXMIRE. Well, this morning—we saved some. I hardly know how much, maybe $30 million, $40 million in the Baucus amendment.

Mr. EXON. Would it be safe to assume that we have overall increased expenditures rather than reduced them?

Mr. PROXMIRE. No question, the increase in spending is, as I say, at least $4.7 billion.

Mr. EXON. I thank my friend from Wisconsin.

Mr. MATHIAS. May I suggest, Mr. President, at the point at which the bill reached the Senate floor under the able guidance and leadership of the Senator from Wisconsin, we had already saved $4,335,237,000 under the President's request, so there has been a very stringent effort in economy made even before we reached the floor.

Of course, the unanimous vote of the Senate on the last amendment was an economy vote.

Mr. PROXMIRE. The Senator from Nebraska is absolutely correct. Furthermore, to stay within the first budget resolution, and we barely stayed within it as the bill came to the floor, we had to accept an across-the-board reduction in the Appropriations Committee. So now with this addition we would be very grateful for any kind of an amendment that would reduce spending in the bill. At least I would be as manager of the bill.

Mr. EXON. Mr. President, in keeping with the request, the statements just made by the distinguished floor manager, I am about to offer an amendment that will give the Senate an opportunity to show some fiscal restraint, if not caution, in this particular area.

Mr. President, I take the floor to offer a simple amendment which will somewhat restrain the growth of the section 8 assisted housing program. The purpose of my amendment which I am about to introduce is to allow the addition of 240,000 total assisted housing units in fiscal 1981, the same number which the Congress approved for fiscal year 1980.

Mr. President, you will note that the amendment I am about to offer does not propose to cut funding for section 8 assisted housing. Last year, this body agreed to the addition of 240,000 housing units to the assisted housing programs already in operation. The only "cut" I am proposing is a reduction from the Appropriations Committee's recommendation for approximately 280,000 additional units.

In view of the committee report on H.R. 7631, I can hardly believe that the committee has recommended such a significant increase in the number of additional units compared to 1980. The committee is recommending an increase of over 16 percent in the number of additional units, and an increase in budget authority of over 11 percent. These figures are hardly compatible with language on page 9 of the committee report, which states:

> Last year . . . the Committee recommended that HUD include in subsequent budget justification documents estimates of the long-term costs of new section 8 assistance agreements. . . . At that time, the Committee was particularly concerned that HUD's long-range estimates, on the basis of which budget authority is appropriated, did not adequately take into account likely future inflation in rent levels. . . . However, the Committee remains concerned about the long-term budget consequences of the section 8 program and directs the Department to continue its efforts to refine its cost projections.

Indeed, it is the long-term costs that give this Senator a great deal of concern about section 8 programs. Even if no additional units were added from here on out, the liability of the Federal Government for current assisted housing units is in the hundreds of billions of dollars. If rents in the future increase faster than income, which is not an unlikely prospect, this liability is going to continue to grow by leaps and bounds until the section 8 liability will begin to rival the size of the national debt itself.

Mr. President and fellow Senators, many aspects of the section 8 program disturb me. For example, the program is not as well targeted as it should be.

Families with incomes of over $20,000 per year are eligible for section 8 assistance while only 1 out of every 13 households with income below $6,000 per year is currently receiving benefits under housing subsidy programs. Families are able to receive subsidies of over $6,000 per year, which is much more than is typically provided by other income security programs. Furthermore, many of our welfare programs are designed to be temporary means of assistance to those who will soon be able to support themselves. This is not so with section 8 subsidies. I quote from the GAO report:

> We found very little in the way of incentives in the Section 8 Program for the beneficiaries to ever give up the substantial benefits they receive. The cost of much of the housing the program provides is equal to or exceeds the income of many of the families being served. For a family receiving housing assistance equal to its income, a quadrupling of income would be required before that family could pay its rent with no more than 25 percent of its income. We are concerned about this captivating effect of this program.

In other words, Mr. President, most of our country's other large income security programs, such as food stamps, aid to families with dependent children, and other costly programs, are based on the premise that some people need a helping hand from time to time. Not so with section 8, for we are creating a permanent dependency with this program as it now operates.

During the Senate Budget Committee markup of the second concurrent budget resolution, I offered a motion to reduce the assisted housing mission by approximately $5.6 billion. That motion would have assumed that section 8 renters pay 30 percent of their income toward rent, and that the new construction to existing housing ratio be modified to provide the same number of additional units at a lower cost per unit. These suggestions are not new, and have been made by GAO, CBO, or other responsible groups as a means to get section 8 costs under better control. My motion in the Senate Budget Committee failed by one vote.

I am not offering at this time the same amendment I did in the Budget Committee deliberations. I am merely saving at this point, at a maximum, we should accept the 1980 authorized level in view of the need for fiscal restraint and the uncertainty about where section 8 is actually leading us.

Mr. President, the Senate has tried to act fiscally responsible on many occasions during the current session. At times we have achieved some successes. In our budget and appropriations decisions, we have limited many programs to no increases, and have made several tough decisions actually to cut and eliminate certain Federal spending. Although the record, unfortunately, is spotty, let us not blemish it further with approval of an unwarranted 16-percent increase in assisted housing units above our current year's level. With every day that passes, it becomes more and more clear that inflation—not recession—is our country's greatest domestic problem.

Mr. President, at this point I ask unanimous consent that the portion of the GAO report on positive and negative aspects of the section 8 program be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHAPTER 2: POSITIVE AND NEGATIVE ASPECTS OF THE SECTION 8 PROGRAM

Following the January 1973 suspension of most federally subsidized housing programs, the Section 8 Program emerged in August 1974 as the alternative to several past programs. It was announced as a program which would take the Federal and local governments out of the housing production subsidy business by providing direct subsidies to consumers. A key objective was mixed income housing. It was designed to correct some of the problems of the past programs. While it does, in fact, have certain advantages over some of the earlier programs and while it provides significant aid to those families given the opportunity to participate in it, it too has cost, equity, and incentive problems similar to those of the earlier programs.

POSITIVE ASPECTS OF SECTION 8

The Section 8 Program has advantages over its predecessor programs in that it:

Provides recipients a greater freedom of choice of where and in what they live.

Allows the use of newly constructed, rehabilitated, and existing units, according to each community's particular needs.

Promotes deconcentration of lower income families needing housing assistance, thus encouraging racial and income integration.

Provides a subsidy which keeps up with increases in operating costs. Recipient families never experience rent hikes unless their incomes have likewise risen. Owner and developers are insulated from default, since the Federal subsidy rises with increases in operating costs and rental levels.

Eliminates the income gap problem prevalent in other subsidy programs since section 8 can aid the full range of lower income families.

The existing housing segment of the overall program has additionally been cited by HUD as a program which has proven to be very effective and which offers the advantages of

"• • • rapid delivery of housing assistance at relatively low cost, freedom of housing choice by families, dispersion of lower-income families, maintenance and improvement of the existing housing stock, neighborhood preservation and avoidance of displacement in areas undergoing revitalization activities, and involvement of owners which have not previously participated in federally subsidized housing programs."

NEGATIVE ASPECTS OF SECTION 8

Notwithstanding the various positive aspects of the Section 8 Program, the program

has not overcome some of the problems of the past. In certain instances, its problems may even be more severe and of more consequence than those of yesteryear.

For example, budget and cost considerations were among the major reasons earlier programs were suspended and terminated. The fact that some families were receiving annual subsidies of as much as $1,850 caused alarm. So did the fact that the principal subsidy programs were relying too much on new construction as its higher unit costs per assisted family.

Today, costs under the Section 8 Program appear to be much higher. HUD estimated for fiscal year 1979 average annual unit costs of $2,670 for existing units, about $4,300 for newly constructed units, and about $4,700 for substantially rehabilitated units. Some families are receiving annual subsidies at much greater rates than even these estimates which do not consider the amount tenant families pay toward their rent. We found numerous examples of families receiving annual subsidies in the $5,000 to $7,000 range with some going even higher.

As of September 30, 1979, approximately 77 percent of the occupied section 8 units were in the existing housing segment of the program. Due, in part, to a shrinking supply of rental housing in recent years, there has been increased emphasis placed on new construction and substantial rehabilitation. For example, in the HUD budget for fiscal year 1980, almost 60 percent of the 250,000 section 8 unit reservations estimated for the year are to come from the new construction and substantial rehabilitation segments of the program—segments which are nearly twice as costly as the existing housing segment.

Long-term cost implications of the Section 8 Program are interesting to observe. For example, the Congressional Budget Office (CBO) in a March 1979 budget issue paper entitled "The Long-Term Costs of Lower-Income Housing Assistance Programs," projected the long-term direct subsidy costs for one unit of section 8 new construction/substantial rehabilitation under 30 year commitments to range from $161,200 to $343,400, depending upon the rate of inflation. Under 40 year commitments, the costs are estimated to range from $242,600 to $710,300. With almost one million units now being assisted under section 8, it is easy to see that the long-term costs of the program have reached large proportions. In a June 5, 1978, "Business Week" article it was estimated that if the program was terminated on September 30 of that year, ongoing costs could amount to $83 billion; if the program continued a year beyond that, costs would rise to $107 billion. The article indicated that if annual cost increases were more than 6 percent, the long-term cost estimates would be even greater.

A long-term cost estimate being considered by the House Committee on Appropriations in June 1979 was higher. Relative to the HUD-Independent Agencies Appropriation Bill, 1980 (H.R. 4394), the committee report stated that

"When the Section 8 low-income housing assistance program was first proposed, the Committee raised a number of questions concerning its ultimate cost and workability. Those concerns were well founded. The following points illustrate the magnitude of subsidized housing costs in the United States today:

"An appropriation of $5,529,000,000 is required in fiscal year 1980 to liquidate obligations previously made on various subsidized housing programs. If not a single housing unit is supported beyond 1980, the appropriation requirement will continue to climb—reaching $9,494,000,000 by fiscal year 1990.

"Without a single additional housing unit added beyond 1980, the Federal government is committed to pay out approximately $231,000,000,000 for subsidized housing assistance over the next 40 years."

Earlier subsidized programs were criticized for being inequitable because they served only a small fraction of the poor. This is another major reason why the programs were suspended. Is the Section 8 Program's track record in terms of equity any better? The information we gathered during our review indicated that section 8 serves only a fraction of the poor and that, additionally, there are significant disparities in the types of housing and level of benefits provided program participants.

Approximately 40 percent, or 30 million, of the Nation's 76 million households are eligible for assistance under section 8 and other housing assistance programs. CBO has estimated that of the households income—eligible for assisted housing (the case of section 8, this means those households making • • • percent or less of median income), 12.9 million pay more than 25 percent of their incomes for rent, and 5.4 million live in housing that is substandard.

The Congressional Research Service (CRS) recently estimated in a report prepared for the Subcommittee on Housing and Urban Affairs, Senate Committee on Banking, Housing, and Urban Affairs, that a total of 12.4 million new, substantially and moderately rehabilitated units over a 10-year period are required to meet the housing needs of the country's low-income residents. In its report, CRS stated that much of the need has occurred because of the number of inadequate (5.7 million) or over-crowded (3.4 million) units, and growing numbers of units which are lost through conversion and obsolescence.

Concerning housing assistance needs, the Office of Management and Budget (OMB) estimated in a paper supporting welfare reform that, of the households eligible for assistance, only 8 percent were then receiving housing subsidies. Further, OMB stated that of the households earning less than $6,000, only 1 out of every 13 was receiving benefits under a housing subsidy program.

The above estimates indicate that, today, there continues to exist in this country a tremendous need for housing assistance. Inequities in our housing programs continue to prevail. An official of HUD wrote in an article entitled "American Housing Policy: Perverse Programs By Prudent People" that—

"• • • after much toil and trouble, the program (section 8) pulled out of the federal legislative cauldron retained the faulty features of the previous programs. In fact, the criticisms made of the old programs in 1973 by the Nixon Administration apply with full force to the new:

"Our present approach is highly inequitable. Rather than treating those in equal circumstances equally, it arbitrarily selects only a few low-income families to live in federally supported housing, while ignoring others. Moreover, the few often get a new home, while many other families—including those who pay the taxes to support these programs—must make do with inferior older housing. . . The present approach is also very wasteful, for it concentrates on the most expensive means of housing for the poor, new buildings."

One final point needs to be made at this juncture. The Section 8 Program, as was typical with its predecessors, lacks certain incentives which would help to hold down program costs and offers little incentive or inducement for the participating family to want to move from section 8 into unsubsidized housing. Much of the housing being produced by the program is of high cost and quality. Much of the new and substantially rehabilitated housing we observed was of high standard, very attractive and had rental values in excess of what many families would be willing and able to pay on an unsubsidized basis. Many section 8 families, particularly the elderly, are not upwardly mobile. The Section 8 Program may be likened somewhat to a lottery in which only a few strike it big. For those families fortunate enough to get into the program many can be expected to stay in it for a long time in the future.

CONCLUSIONS

The Section 8 Program is the most recent in a series of Federal programs aimed at solving the problem of providing housing assistance to the poor. While the program offers advantages over and corrects certain weaknesses of the earlier programs, it too is plagued by high costs and an inability to serve no more than a small fraction of the households defined to be in need. There are disparities in the type of housing and level of benefits provided to program participants. Additionally, there is a lack of certain incentives which would help control costs and encourage participating families to work themselves up and out of the program.

These problems are interrelated in many ways. The problems, and some of their causes, are discussed more fully in the remaining chapters of this report. The chapters also contain recommendations to HUD which will help to (1) reduce program and individual unit costs, (2) improve program equity, and (3) create a more acceptable program image.

AGENCY COMMENTS AND OUR EVALUATION

HUD commented that while there may have been savings expected initially from the Section 8 Program, these savings were predicated on the extensive use of existing rather than newly constructed housing. HUD stated that these initial expectations were thrwarted by (1) the Congress' insistence that HUD comply with the proportions of new, rehabilitated, and existing housing, as expressed in local housing assistance plans, (2) a shrinking supply of rental housing in the later 1970s, and (3) the general increase in construction, financing, and operating costs.

HUD stated that any disparities in the type of housing and level of benefits being provided program participants is basically due to the fact that occupants of new units generally have nicer units at higher rents than those who occupy older, existing units. Regarding our statement that, collectively, Federal housing programs serve only a small fraction of eligible households, HUD stated that Federal housing programs can be viewed as serving a small fraction of the needy only if they are viewed separately and if the need is substantially overstated. Finally, HUD stated that there is no basis for our suggesting that there are insufficient incentives to encourage families to work out of the program.

Our estimates of the number of households in need of housing assistance were obtained from HUD and CBO. They show that between one-tenth and one-fifth of the eligible households get housing aid.

We found very little in the way of incentives in the Section 8 Program for the beneficiaries to ever give up the substantial benefits they receive. The cost of much of the housing the program provides is equal to or exceeds the income of many of the families being served. For a family receiving housing assistance equal to its income, a quadrupling of income would be required before that family could pay its rent with no more than 25 percent of its income. We are concerned about this captivating effect of the program. (See pp. 106 to 111 for HUD's comments and our response.)

Mr. EXON. Mr. President, at this time, I call up my unprinted amendment to accomplish what I have just suggested.

Mr. MATHIAS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is the amendment of

the Senator from Massachusetts. For another amendment to be offered, unanimous consent would be required. The Senator from Nebraska needs unanimous consent. Does the Senator from Nebraska ask for unanimous consent?

Mr. EXON. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. MATHIAS. Mr. President, reserving the right to object, I would hope that at any time on any subject that is within my personal discretion, I would yield to any request that the distinguished Senator would make.

On this matter, however, I do not have discretion. I have been placed under some constraint by colleagues who wish to participate in the debate on the subject matter of the amendment which the Senator has just so eloquently described to us. Therefore, I really do not have the option of agreeing to the unanimous-consent request which has just been propounded.

And so, with great personal reluctance, I discharge my official responsibilities by objecting.

The PRESIDING OFFICER. The objection is heard.

Mr. EXON. Mr. President, I thank my colleague from Maryland for his explanation. I reserve the right to bring this up when the Senate gets back on course and when the Senate decides to take up the matters that are properly before it.

I would say at this time, Mr. President, that during my short stay here I have never been able to understand why we bring up amendments and then lay them over for consideration at a later date. It is not without some personal sacrifice, Mr. President, that the junior Senator from Nebraska is here on the floor today rather than being elsewhere.

If the Senate is in session, I think it would be wise if we moved ahead in a more expeditious manner than to have delays of legitimate Senate business, as the Senator from Nebraska has just proposed.

But I recognize the rules under which the Senate operates. I will live by those rules. I advise the Chair that I will bring this up at an appropriate time when and if the Senate gets back on course.

The PRESIDING OFFICER. The Senator has that right.

Mr. MATHIAS. Mr. President, I would like to assure the Senator from Nebraska that, as far as I am concerned, I am ready to debate it now, I will debate it with him tomorrow, I will debate it with him Monday. Whenever he brings it up, I am ready.

I share his sense of frustration that we cannot go forward and complete this business expeditiously.

Mr. HUDDLESTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

UP AMENDMENT NO. 1628

(Purpose: To increase certain sums to be appropriated for the Environmental Protection Agency to deal with improper disposal of hazardous wastes)

Mr. HUDDLESTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. It would take unanimous consent.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the pending amendment be set aside and it be in order that I offer an amendment at this time.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Kentucky? Hearing no objection, it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON), for himself and Mr. BAKER, proposes an unprinted amendment numbered 1628.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SECTION 1. In Title II, following "Environmental Protection Agency":

(a) On p. 16, line 15, strike "$541,647,000" and insert in lieu thereof, "$547,558,000";

(b) On p. 16, line 22, strike "$251,276,000" adn insert in lieu thereof, "$253,520,000"; and

(c) On p. 16, line 25, strike "$543,338,000" and insert in lieu thereof, "$551,183,000".

Mr. HUDDLESTON. Mr. President, this amendment is cosponsored by the distinguished minority leader, the Senator from Tennessee (Mr. BAKER). Our amendment is a pared-down version of an administration budget request that was not received in time to gain the attention of the Appropriations Committee. The original budget request was $27 million; however, we have had the Agency take a close look at the figures, and now we are requesting a $16 million increase for EPA. This increase will be utilized by the Agency to enhance development of an already in place emergency uncontrolled hazardous waste and oil and hazardous spills program. Also, the timely appropriation of these funds will enable EPA to properly prepare for the transition to the operation of the so-called superfund legislation should that program be approved by the Congress.

As a representative of the citizens of the State in which one of the worst illegal dumping grounds in the Nation is located, the infamous "Valley of the Drums," I am well aware of the serious situation created by the improper disposal of hazardous waste. However, that incident was not unique. It was merely the largest and most perilous dumping of uncontrolled hazardous waste on Kentucky's countryside. Kentucky has been used as a dumping ground not only for its own waste but for the poisonous by products of other States' industries. Over a million tons of hazardous waste are dumped in Kentucky every year, much of it illegally and irresponsibly. Inevitably, such poisons find their way into streams and groundwater, the sources of drinking water for almost half the Nation. There must be a cleanup.

The Federal Government must play a large role, both in making it possible to clean up dangerous situations created in the past and in preventing new ones. We have made substantial progress in preventing future "Valleys of the Drums." Companies responsible for producing hazardous waste are now responsible for these wastes from generation to final disposal. However, the Environmental Protection Agency now faces the substantial challenge of responding to environmental emergencies caused by an increasing number of hazardous substance spills and intense public pressure to solve the complex problems created by abandoned waste sites.

Media coverage of exploding waste storage facilities, train derailments pouring highly toxic fumes into the air, and the suffering of residents living in proximity to abandoned waste sites have focused the Nation's attention on the dangers of the situation. Such incidents are increasing EPA's workload substantially and straining the Agency's limited resources to deal with the problem.

EPA has already compiled a list of 7,000 potential waste sites requiring some type of followup action. It is receiving reports of new sites at the rate of 400 per month. The uncontrolled hazardous waste problem is quickly becoming the Agency's No. 1 priority. We must provide the Agency with the additional resources needed to solve this new and dangerous problem. It is not a problem confined to Kentucky, the South or any one area in particular. It is a national problem, requiring a national solution.

This amendment provides resources for the Agency to intensify its efforts to respond to the problem of uncontrolled hazardous waste sites and spills of oil and hazardous substances. This stepped up effort includes the development of a national inventory of prioritized sites and an accelerated program of site assessments. These assessments will involve taking samples, developing supporting laboratory analysis protocols, processing and analysis of samples and operation of a quality assurance program to insure accuracy of final reports and tests.

Resources are also provided to develop prototype site engineering studies as models for enforcement compliance actions and use in future long-term remedies. Also included are resources to support a thorough review of the current uncontrolled sites and spills program to assure maximum coordination, elimination of duplication and inefficiency and the distribution of data, knowledge and experiences among involved programs within the Agency and throughout the entire Federal Government. Additionally, the Agency will build its understanding of the most efficient interrelationships among its regional efforts, State governments and private sector services and capabilities.

Funds will be used to assess the current environmental condition and evaluate the already applied containment measures at Love Canal in New York. The results of these investigations will serve to expand the Agency's understanding of potential problems the country faces at known waste sites.

Resources are also provided to increase management and administrative support for an accelerated effort. The Agency will take steps to insure field personnel are adequately trained and provided with appropriate safety equipment and medical examinations.

The Agency will begin developing a comprehensive system to insure proper accountability and management by expanding activities under financial management, contracts management and procurement, legal services, personnel management and the Office of the Inspector General.

In conclusion, this is an important and critical expansion of the Agency's current hazardous response program to insure that the Federal Government has the capability to respond to emergency incidents threatening the health and well-being of our citizens and the potential destruction of our environment. We must make this investment now. I urge my colleagues to support this amendment.

Mr. BAKER. Mr. President, I am glad to join my colleague from Kentucky in sponsoring this amendment. I feel that it is imperative that the Federal Government be financially capable of quickly responding to and investigating potential hazardous waste problems. The money contained in this amendment will help provide the Environmental Protection Agency with such a capability in fiscal year 1981.

A few months ago, as part of the supplemental appropriations process for fiscal year 1980. I proposed and the Congress accepted an amendment that would assure an adequate source of funding to this agency for investigation in the Memphis/Shelby County region of my home State of Tennessee. I view today's amendment as a follow-up effort to assure adequote resources for EPA to meet its responsibilities not only in Memphis/Shelby County, but also in other areas which have hazardous waste problems or suspected problems in Tennessee and around the Nation.

Experience in Memphis and Toone, Tenn., has taught us that we must immediately begin to expand and strengthen the Agency's capability to identify and respond to emergencies at uncontrolled hazardous waste sites using current authority. Efficient and safe response to dangerous sites requires careful planning and in many instances a lengthy lead time. Many if not most of the problems in dealing with a hazardous waste problem are complex and almost always expensive to address. The Congress should, in my opinion, begin now to invest in order to achieve effective implementation of the necessary programs at the earliest possible time. Today's amendment will assure that this agency will be able to make necessary commitments early in fiscal year 1981 to meet this goal.

While the amendment will enhance EPA's capability in a number of ways, a few aspects will be of particular importance to existing concerns in Tennessee. One element of the amendment will allow the agency to initiate engineering studies at 5–10 selected sites to determine least cost, practical remedies. I believe that information developed in these studies could be of imminent value to residents of Toone in Hardeman County, Tenn. This is a situation where already completed investigations have revealed that a site containing approximately 300,000 55-gallon drums of pesticide production residues is posing a serious health risk to residents in the area. Some method of eliminating or containing the risks from this site must be determined and put into place. I hope that the engineering studies in this amendment will be enlightening in this regard.

Another part of the moneys in the amendment will be used to accelerate the current program of site assessment, investigation and case development. The acceleration of this EPA program will be of particular interest to citizens in the Memphis/Shelby County region of my State who are extremely anxious to learn about the total number of and potential seriousness of sites located near their homes.

Finally, certain moneys in this provision for which we seek approval today will be used to improve coordination among the various Federal agencies with responsibilities at hazardous waste sites and spills. It has become apparent from the Agency effort being made in Memphis that a greater degree of coordination will be necessary. Questions have been raised about which of the Federal agencies should be responsible for certain elements of an overall response effort, particularly health surveys and studies. I would hope that EPA will use the authority in this amendment to address this question and thereby assure in the future a smooth, efficient, and understandable process is in place to address all aspects of the problems that can arise at abandoned sites and spills containing hazardous wastes. I intend to monitor Agency progress in this regard and make sure that all Federal agencies involved in these efforts have the necessary capability to meet their responsibilities in fiscal year 1981 and beyond.

Mr. President, 50 years of uncontrolled hazardous waste disposal has left us with a grim legacy which we must immediately begin to address. Our EPA task force has already identified close to 7,000 sites which could require some form of remedial action. This list is growing at a rate of almost 400 per month. It is for this reason and because of recent experiences in Tennessee that I support through this amendment the enhancement of EPA's capability and I urge the committee and my colleagues in the Senate to do the same.

Mr. HUDDLESTON. Mr. President, I believe this amendment has been cleared on both sides of the aisle and, as far as I know, there is no objection.

Mr. PROXMIRE. Mr. President, I have Kentucky. It is a necessary amendment. with the distinguished Senator from Kentucky. It is a necesary amendment. I am very reluctant to accept an amendment which costs $16 million, but under the circumstances I just do not see any alternative. We do have this problem that has to be met, hazardous waste. I think all of us know how tragic that problem can become if it is not dealt with appropriately. So, reluctantly, I am willing to accept the amendment.

Mr. MATHIAS. Mr. President, the Environmental Protection Agency faces a very grave challenge in its efforts to respond to the increasing number of hazardous substance spills, and, in fact, has compiled a list of some 7,000 potential wastes that require some kind of action, some sort of follow up. It is receiving reports of new trouble spots around the country involving hazardous materials at the rate of about 400 a month. So the amendment that the Senator from Kentucky has brought to the attention of the Senate is one which is very pertinent and very current. I think we owe him a debt of thanks for bringing this matter to the attention of the Senate.

I not only support it and urge the Senate to adopt it, but I would say this further: There is talk in the air these days of a continuing resolution. Of course, a continuing resolution would not contemplate the problem embodied in this amendment. I would suggest, in fact, that he contemplate the preparation of an amendment to the continuing resolution which would accomplish the purpose of the amendment of the Senator from Kentucky.

Mr. HUDDLESTON. I thank the distinguished Senator from Maryland for his comments and suggestion.

Mr. CHAFEE. Mr. President, I ask unanimous consent that I be added as a cosponsor to the amendment dealing with the increased funding of the EPA hazardous waste program.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I am pleased to join my distinguished colleagues, Senator BAKER and Senator HUDDLESTON in offering this amendment. I know from my conversation with them that many people in Tennessee and Kentucky, like my own State of Rhode Island, are facing grave consequences from the improper disposal of hazardous wastes. Indeed, EPA has listed the sites in Toone, Tenn., and the "Valley of the Drums" in Kentucky among the worst hazardous waste sites in the country.

Until we can pass a superfund bill, EPA will continue to have a limited capacity to respond to emergencies at uncontrolled hazardous waste sites and hazardous waste spills.

This amendment will give EPA additional resources to intensify its inventory of hazardous waste sites around the Nation and identify those sites which pose the greatest threat to the public health. It will also enable EPA to determine the best technology for collecting and analyzing hazardous waste samples from sites. Funds will also be provided for prototype engineering studies at a select group of sites. When a superfund bill is passed, these studies will provide EPA with a tested model program to help them move quickly on enforcement compliance actions and future site containments.

Mr. President, I urge adoption of this amendment because the scope of our hazardous waste problem becomes clearer and more serious each day. It has been estimated that the total number of hazardous waste sites range between 32,000 and 50,000 and new sites are turning up at a rate of 200 a month.

The number of significant problem sites is estimated between 1,200 and 2,000. In addition, over 3,000 spills of hazardous substances were voluntarily reported to EPA during fiscal year 1978–79.

My own State of Rhode Island—the smallest State in the Union—has had more than its share of incidents involving hazardous wastes. The EPA hazardous waste enforcement task force has reported 11 potential waste sites identified in Rhode Island. Six of these sites have been assessed at a medium to high seriousness rating and two are tentatively identified as requiring remedial work.

Some of these sites, located in Smithfield, North Smithfield, Coventry, Bristol and Cumberland are located on aquifers or are adjacent to marshland and streams. Wastes from several of these sites have contaminated wells and surface waters. Just last week the Farmers Home Administration announced that it will temporarily ban loans for construction of homes in two of these towns if they are built within half a mile of two hazardous waste sites—Western Sand and Gravel in Burrillville and Landfill Resource and Recovery, Inc., in North Smithfield. The Farmers Home Administration said the new policy will apply where there is a risk that water supplies have been polluted by chemical waste dumping.

Mr. President, earlier this year the Senate passed the EPA research and development bill, S. 2726, that authorized EPA to conduct testing and demonstration cleanup technologies at sites in Coventry, Burrillville, North Smithfield, and Smithfield, R.I. If this amendment is adopted I hope these additional funds will be used in the effort to clean up these sites.

EPA has provided some assistance in the effort of monitoring and cleaning-up some sites in Rhode Island. But only the surface of this enormous task—not only in Rhode Island but across the country—has been scratched. Until EPA is given the resources and authority under a superfund bill to tackle the serious problems posed by hazardous waste dumps, it is important that we give the agency adequate funding to address these problems.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment (UP No. 1628) was agreed to.

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MATHIAS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOREN. Mr. President, I ask unanimous consent that the pending matter be set aside temporarily, and that I may be allowed to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE STATE OF OUR NATIONAL DEFENSE

Mr. BOREN. Mr. President, earlier this year, I spoke on the Senate floor of my concerns about the state of our national defense. I said at that time that I would continue to speak out about both over-all defense policy as well as its various components—from strategic nuclear weapons, the exotic and most publicized aspect of national defense—to the less publicized, but equally critical aspect like operations and maintenance and conventional warfare preparedness.

As I have mentioned, Mr. President, the spotlight seems continually trained on the question of the strategic nuclear balance between the United States and the Soviets. The debate swings from superiority to essential equivalence—and from counterforce to countervalues—from warheads and throw weight to deterrents and launch on warning.

Given the doomsday effect such weaponry harbors, it is not surprising that fear and fascination center on the silos sunk into the wind-swept landscapes of Montana and North Dakota or into the hills of Arkansas where tragedy struck at a missile site only this morning.

Like moths to a flame, public attention is drawn to the B–52's of the Strategic Air Command and the submarine pens that shroud our lethal fleet of SLBM's.

It is no wonder that this branch of our national defense is poked and prodded more than any other. In a very real sense, it is the one place where a mistake or miscalculation can obviate all else.

So as not to be misunderstood, let me emphasize, as I have since becoming a Member of this body, my commitment to the absolute necessity of adequate U.S. strategic capability. I support the MX missile. I support the need for a new manned-penetrating bomber. I favor deferring action on the SALT II treaty, the present version of which is unfairly weighted against U.S. interests, and I firmly believe the maintenance of the Triad is essential.

But, Mr. President, while the possibility of an all-out nuclear exchange must be recognized and dealt with equal consideration must also be given to the more likely possibility of conventional combat, full-scale or regional—long-term, or short, with quick displays of ability and will.

It is generally accepted, in these Halls and, indeed, across the Nation, that America's military might is no longer accorded the respect it once enjoyed. That lack of respect is most often blamed on the failure of the United States to keep the Soviets from closing the strategic nuclear gap that once existed between our two countries.

Certainly another important element in the lack of respect for our military capability is the perception that we have not maintained sufficient conventional capability. The nuclear balance must be maintained but the perception of conventional capacity is a very important part of the world's geopolitical posture.

The Soviets know, that given our ethical and moral standards, we would resort to the use of nuclear weapons under only the most extreme circumstances. This means that they will seek to move in geographical areas where they believe that we lack a capability to check their advances with conventional forces. The move into Afghanistan might well have been deterred if the United States had been perceived as having the capability to rapidly deploy conventional forces in the area.

The dangers in the Middle East will be greatly lessened when the United States develops forward supply bases in the area and a rapid deployment force to protect our vital interests in an emergency. The level of increased Soviet aggressive behavior around the world parallels the perceived decline of America's military capability.

The fact is that in conventional terms, we are not prepared—we know it. The Soviets know it. The Cubans know it, and so do our other friends and enemies around the world.

It is very possible that what has sometimes appeared as a lack of will to act on the part of our own leaders is at least, in reality, a reflection of the knowledge of those in power of how little there is to deploy.

In this connection, Mr. President, I recommend to the Senate the reading of three articles by reporter Jack Taylor which appeared in the Daily Oklahoman on Sunday, August 31, Sunday, September 7, and the following Sunday, September 14. I ask unanimous consent that the articles and the charts they contain be printed in the RECORD immediately following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. BOREN. Mr. President, the headlines of the three articles tell the story. On August 31—"Shortages Cripple U.S. Military Readiness" and on September 7—"U.S. Forces Not Ready for Prolonged War." and on September 14—"Military Suffers Manpower Crisis." The essential facts and figures contained in these articles are very close to those I have gathered in my own ongoing look into U.S. defense capacity.

As a measure, let me refer to a chart contained in the first article which shows that of the 10 Army combat divisions stationed in this country, all of which were rated as combat ready in December, 1977—all had deteriorated to the point that by December, 1979, none of them were rated combat ready; 7 of the 10 divisions had gone from a rating of C–1 (combat ready) through C–2 (substantially combat ready) through C–3 (marginally combat ready) to C–4, which is the designation for not combat ready.

The truth of these contentions appeared in the September 10 edition of the Washington Post.

The first paragraph reads:

> The Pentagon acknowledged yesterday that 6 of 10 army combat divisions stationed in the United States are not fully ready to fight, but insisted that that is common in peacetime.

I must add parenthetically, Mr. President, that two of the three divisions that are to become part of the rapid deployment force are among those that are not now combat ready.

Let me touch on some other highlights contained in these articles:

> All services are critically short of war reserve materiel and equipment, ammunition and supplies prepositioned in Europe for use in the event of war there. America's North Atlantic Treaty Organization allies are in the same shape.

This next quote is from a secret report by Gen. David Jones, Chairman of the Joint Chiefs of State, and printed in the Oklahoman articles:

> Reinforcing units from the United States may experience selected equipment shortages ranging from 30–50 percent just so some equipment can be prepositioned reducing the Army's ability to train and diminishing the ability of those troops to respond to non-NATO emergencies, Jones said.
>
> Shortages of ordinance and fuel also are hurting everyday readiness. The Navy has current fuel shortage capacity in Europe for only 71 percent of needed aviation fuel and 66 percent of necessary surface ship fuel.
>
> All services are short of ammunition prepositioned in Europe, ranging from 34 percent for the Air Force to about 50 percent for the Army and Navy, according to Jones' secret report.
>
> General Frederick J. Kroesen, the Army's Commander in Europe, says by the end of this year his troops will have only 27 days of supplies of a minimum 30–60 day requirement, and the Army's ability to keep from losing will depend, simply put, on reinforcement and resupply from the United States.
>
> Prepositioned war reserve materiel for the II Marine Amphibious Force, 52 thousand men headquartered in North Carolina, and committed to reinforce NATO, was found sorely lacking, according to a secret GAO report issued last year, which the Marines recently declassified.
>
> Operational readiness of fighters in the Air Forces' Tactical Air Command was dropped to less than 55 percent overall, when it should be at least 70 percent.
>
> During the past two years, it was found that fewer than 65 percent of all navy and marine corps aircraft were fully combat operational on any given day, a study by the Congressional Research Service noted last June. There have been continuing reports of significant numbers of aircraft unprepared for combat, sometimes ranging as high as half of every squadron on some bases."
>
> One Capitol Hill source said a recent Air Force briefing disclosed that when a squadron of F–111's was tested last Spring, it was able to achieve only 50 percent operational readiness—and that by constantly cannibalizing parts from planes that just landed in order to get more in the air.

That is in order to get into the air the 50 percent that they were able to fly.

> When the GAO checked the II MAF, investigators found that the unit's 457 fixed wing and helicopter aircraft were operationally ready only 58 percent of the time due to supply shortages and maintenance problems. For readiness reporting purposes, aircraft the Marines think they can have flying within 72 hours are counted as ready.

In other words, we reached only 58 percent, and that by counting as ready those that would be ready for flight in 72 hours.

And finally, Mr. President:

> The backlog in maintenance and repair to real property—ranging from cracked runways to leaky barracks roofs—has grown to a staggering 2 billion dollars plus because of budget constraints and inflation. In the Army in Europe alone, the backlog is more than 800 million dollars and is expected to increase to 900 million by the end of 1981.

The problems are pervasive, Mr. President, they cut deeply into all services and, tragically, they are only one part of the preparedness issue. If all the equipment worked and was maintained, with spare parts in abundance, there remains the question of who would use it.

A spare engine is a spare engine, unless there is a skilled person to make it useable. Without someone to aim and shoot, a gun is only a potential weapon, and a perfectly operating aircraft remains grounded unless a qualified crew climbs aboard.

Modernization and development of sophisticated equipment is useles unless we have capable people to utilize it. Yet, while equipment becomes more complex, the capability of new recruits, according to test scores, is declining. Test scores indicate that in 1979, 46 percent of the Army recruits were in the lower 30 percent of the population on intelligence tests.

We need qualified people, Mr. President, people who must be fed, housed, and paid if they are to be—the most important thing of all—retained.

People with families, Mr. President, who must be willing to be moved and separated—not once in a while, but often.

In the Armed Forces, as anywhere else, retention is the basic element of gaining and benefiting from experience. If we do not pay attention to the amount of a serviceman's paycheck, or the roof over his or her head—if we do not look forward with them to retirement or understand what it means when a base commander's mission depends on food stamps—then the confidence of experience will continue to fade away.

A qualified pilot can fly a B–52 to its target by the book. But a pilot with 1,500 hours in a B–52 can reach his target, even under extremely adverse circumstances, with tricks not in the book. That is experience and that is the pilot, Mr. President, I want defending the United States when the chips are down.

The statistics regarding retention are extremely alarming. Retention of Navy pilots, for example, has dropped from 62 percent in 1977 to 31 percent last year and is projected to be 28 percent this year. The dropout rate in the Army is running close to 40 percent. A failure to adequately fund a personnel program for the military is obviously a large part of the problem.

No real increases in compensation for military personnel are projected during the next 5 years. In fact, there have been no such increases since 1972. Pay caps already placed on all Government employees have resulted in the pay of active duty personnel declining by 15 percent in real terms over the last 7 years.

On the matter of housing: Over the next 5 years, expenditures for family housing will grow by about 31 percent, which is about the projected rate of inflation. This level of funding will not permit the Department of Defense to make a significant dent in the current shortage of military family housing. As is noted in a recent American Enterprise Institute report, "since Government housing is available to only 20 percent of the members of the armed services, and since the cost of housing in the civilian economy is well beyond the housing allowance paid to most military personnel, this comparatively low level of funding for family housing could have a significant impact upon the ability of the Department of Defense to maintain a viable All-volunteer Force."

As to retention, Mr. President, it has become a particularly serious problem among second and third term personnel. Between fiscal year 1975 and fiscal year 1979, the over-all career reinlistment rate dropped 13 percentage points in just 4 years. That means the Armed Forces have a shortage of 70,000 noncommissioned or petty officers.

The answer to both the hardware and personnel problems, Mr. President, is not the recognition that they exist—we all know that they exist; the answer is the determination to allocate the resources necessary to correct the problem.

Can we afford it? We cannot afford not to. Let me give you one small example involving both equipment and personnel.

The Department of Defense is currently short 4,000 pilots. Correspondingly, accident rates climbed in 1979. Last year, 74 Navy personnel were killed in 127 crashes, the majority of which were caused by lack of proficiency or poor maintenance of aircraft.

The problems are diverse, costly and pressing.

We are dealing with unprecedented complexity, as seen in the fact that the Pentagon has 109 different weapons systems at various stages of production, and another 27 in research and development. Today, the Department of Defense is spending $25 billion on the procurement of 27 separate aircraft programs, 33 different missile programs, 13 distinct types of ships, 11 separate combat vehicles, and 25 different miscellaneous programs as diverse as torpedoes and satellite communications systems. All of that money and all of that work will be wasted without a proper maintenance program.

The cost of replacing obsolete weapons systems is high. And it is going to come all at once. From the mid-1960's to the mid-1970's, many of our general purpose weapons systems for conventional warfare were not replaced because funds were diverted from new procurement of conventional weapons—initially to pay for the war in Vietnam and lately to absorb personnel costs. There is thus a need to replace a great many conventional weapons at once.

The XM–1 tank will cost three times more than the M–60; the MX will cost seven times more than Minuteman III; the F–14 is eight times more expensive than the F–4.

There, in the briefest of terms, are the dimensions of the problem, Mr. President, and why it is true, in the words of Gen. Edward Meyer, the Army's Chief of Staff, that America has a hollow army.

Will the answer be cheap? No. Will the

answer be quick? No. Will it be done? Mr. President, it must be.

I believe that the American people have the will and the determination to make whatever sacrifices are necessary to keep our Nation strong. Recently I mailed approximately 500,000 questionnaires to citizens in my home State. To date, over 150,000, almost one third have responded. The level of response indicates a deep level of concern about the decisions confronting us, 94 percent of those responding said they felt that our Nation was not strong enough militarily. In an even more telling point, 90 percent responded that they would be willing to make whatever cuts were needed in the rest of the budget to improve our military strength.

The people know that for two many years decisionmakers in Washington, in both political parties, and in both the executive and legislative branches, have turned our budgetary priorities upside down.

The Federal Government was established to provide for the common defense. The States were primarily responsible for domestic programs. The Federal Government was formed for the purpose of protecting our Nation's security through the conduct of foreign affairs and the maintenance of adequate defense.

Clearly the national defense responsibility should be met first.

Just the opposite has happened durthe past decade. There has been a vast expansion of social programs while the vital area of national defense has been forced to take what was left. As a result the Soviets have outspent us on military items in real terms by as much as 30 percent according to some experts.

As a result we face a grave threat to our Nation. Norman Podhoretz in his recent book, "The Present Danger," speaks directly to the point. He notes that in 1947 George Kennar called Soviet expansionism an "implacable challenge" to the United States and free institutions of the western world. Podhoretz points out that if the challenge presented a great threat in 1947 when the West had a nuclear monopoly, it is as, he says, a far greater danger and an even more implacable challenge in this time in which we have lost our proponderance of power.

Alexander Solzhenitsyn issued a chilling warning to us when he wrote:

> All warnings to the West about the pitiless and insatiable nature of Communist regimes have proved to be in vain because the acceptance of such a view would be too terrifying. Most amazing is that the Communists themselves have for decades loudly proclaimed their goal of destroying the bourgeiosie world which the West merely smiled at what seemed to be an extravagant joke.

Mr. President, too many Americans have been looking at the world as we desire it to be, not as it really is. We do not want war and so we chose to believe that others will avoid it at all costs. We feel that nuclear war is unthinkable and so we close our eyes to published Soviet doctrine that clearly shows that they believe that a nuclear war is both thinkable and winable.

How far we will go to explan away Soviet aggressiveness is demonstrated by the way in which some commentators have tried to explain away Soviet aggression in Afghanistan. They explained that the move was a sign of Soviet weakness because the Soviets were concerned about having a base of Moslem militants on their borders who might stir up minorities within the U.S.S.R. This hypothesis was advanced in spite of a total lack of evidence of any increase of action by minorities within the Soviet Union.

It shows, Mr. President, how far we will go to avoid facing the real world. Our own Presdent confessed that he was shocked by the Soviet invasion of Afghanistan.

None of us should have been surprised. The Soviets have struck before when they felt that the balance of power favored them and that they could obtain what they wanted for an acceptable price. They will strike again when the right conditions prevail again. Hopefully we will have become realistic enough not to be shocked again.

Earlier this year when I spoke on the Senate floor on this same subject, I quoted a column by George Will. On it, he spoke of the wishful thinking of those who hoped that the threat by Hitler would somehow go away. The leaders of the day shrank from the need to draw lines and contain the threat.

He said:

> After Hitler's first great gamble, the remilitarization of the Rhineland in 1936, there was a growing sense of the need to confront Hitler. But there were always those who said not here, not now. Not about the Rhineland, or the Sudetenland, or the rest of Czechoslovakia and, why die for Dansig?

He quotes Eric Sevareid speaking of the collapse of France in 1946 as saying:

> Their last experience (in World War I) had taught them that there is no such thing as true victory for civilized men who have no desire to conquer others. Their tragedy was that they had reached a point of human progress too soon; they were living before their time. They were the last people on Earth who should have had Germany for a neighbor.

Will goes on to point out that while war, because of its terrible suffering, may never bring true victory, still there are lesser victories worth winning, such as avoiding the fate of France in 1940.

As the column points out, we must not allow our genuine hatred of war and our love of peace to blind us to the need to have a military capacity necessary to resist "barbarians." In the real world there are often "barbarians at the gates" who do not share our values and our revulsion at war.

George Will aptly concludes his column by saying:

> Barbarians are a fact of life, as is the fact that nations cannot choose their neighbors. And because if its military capacity and ideological appetite for a global reach. Russia is everybody's neighbor.

This is the real world, to the Soviets, the bottom line is power. If we want to keep the peace, we must begin by convincing the Soviets that we mean business about repairing America's strength and positioning it where it can be effectively used if the situation merits it.

Mr. President, the times are fraught with danger. The Soviets not only perceive that the balance of power now favors them, they also believe that we may be waking up and might take steps to repair the balance. In other words, the Soviets perceive that their advantage may be temporary.

If a perception of an advantage leads a nation to be aggressive, the perception of a temporary advantage may well be an even more dangerous encouragement for aggression in the short run.

We do not have time to wait. We must act immediately to close this perceived Soviet window of opportunity.

Mr. President, we are clearly unprepared as a nation to adequately resist Soviet aggression. While it appears that Congress will make some small amount of progress this year because of the tireless efforts of several of our colleagues like Senator SAM NUNN of Georgia who have tried to alert us all. Nevertheless, we will still be a long way from achieving a level of preparedness necessary to protect our Nation's security. We are behind in strategic weapons. We do not have conventional military supplies and equipment to face either a short-term or long-term struggle. Perhaps, most alarming of all, even if we had the equipment and supplies with which to defend ourselves, we do not have the trained people to use them and maintain them.

Mr. President, the parallels with earlier periods in our history are all to clear. Podhoretz in "The Present Danger" points to them with great clarity. He says:

> Walter Laqueur divides the British response into four distinct stages. In stage one, it was claimed that the reports of German rearmament were grossly exaggerated; in stage two, the reports were acknowledged as true, but it was alleged that Germany was so far behind that it would never catch up; in stage three, it was admited that Germany had achieved parity with or even surpassed Britain, but it was also said that this did not constitute a military threat since the Germans had to defend themselves against potential enemies in the East as well as in the West; and in stage four, when the full extent of German superiority was finally faced, it was said that survival now had to be the overriding consideration, and the counsels of appeasement prevailed.

Compare this to the description by Harvard's Richard Pipes (who also headed a team of nongovernmental experts appointed during the Ford administration to review the CIA's estimate of Soviet military capability) of the American response to the Soviet military build-up of the past few years: "The frenetic pace of the Soviet nuclear build-up was explained first on the ground that the Russians had a lot of catching up to do, then that they had to consider the Chinese threat, and finally on the grounds that they are inherently a very insecure people and should be allowed an edge in deterrent capability."

Churchill, thinking of the ancient adage *si vis pacem para bellum* ("If you want peace, prepare for war"), later called World War II "the unnecessary war." It could, he thought, have been prevented if the democracies had rearmed earlier instead of allowing the military balance to tip in Hitler's favor.

Mr. President, as I have on an earlier occasion, I want to quote the words of Gen. Douglas MacArthur in the hope that we will not be condemned to repeat the mistakes of the past.

In the late 1930's from the Philippines, General MacArthur wrote to William Allen White:

> The history of failure in war can be summed up in two words . . . "too late." Too late in comprehending the deadly purpose of a potential enemy; too late in realizing the mortal danger; too late in preparedness; too late in uniting all possible forces for resistence; too late in standing with one's friends.

Mr. President, we do not have the luxury of having time to waste. If we are to avoid war and keep the peace, we must not be too late.

EXHIBIT 1

[From the Sunday Oklahoman, Aug. 31, 1980]

SHORTAGES CRIPPLE U.S. MILITARY'S READINESS

(By Jack Taylor)

The combat readiness of America's armed forces has been so crippled by shortages in manpower, equipment, supplies, fuel, ammunition and money that the U.S. military no longer has the punch to back up commitments the public is told it can support.

Combat units have been cannibalized for men and flyable planes for parts. Proficiency has dropped because of slashes in training and cuts in flying hours. War Reserve Stocks (WRS) have been reduced to critical levels.

Maintenance has declined and the backlog of repairs is in the billions of dollars. Morale has sagged. Critically needed, skilled combat officers and enlisted men are abandoning service careers in record numbers.

Objectives have been lowered in manpower, recruiting, training, maintenance and equipment readiness—giving a deceptive picture and false sense of security.

Some members of Congress have accused military leaders of being less than candid, even deliberately deceptive, about readiness. There is evidence to support those charges.

Based on interviews with military officials in Washington, commanders in the field, defense specialists and top secret documents obtained by The Oklahoman, the condition of America's armed forces is far worse than suggested by even the generally bleak public perception that now prevails.

Seven of the Army's 10 continental U.S.-based divisions dropped from fully combat ready to not combat ready status in just two years. The Army in Europe, where an emphasis has led to cutbacks damaging the readiness of reinforcements at home, is suffering its own cutbacks and shortages, reducing readiness and hurting morale.

A fourth of the Army's divisions lack one brigade each, and others are missing one or more maneuver battalions. There are weaknesses in recruiting and retaining enough men, getting and maintaining enough equipment and in the ability to mobilize in an emergency.

It is truly, in the words of Gen. Edward C. Meyer, the Army's chief of staff, a "hollow Army."

The readiness ratings, a management tool for crisis managers in the Pentagon, were compiled in December. Military analysts on Capitol Hill say little has changed since then because there simply aren't enough men and money to fill the gaping holes.

Yet during testimony last February before the House Appropriations Committee's defense subcommittee, Army Secretary Clifford L. Alexander Jr. claimed the Army is "adequately ready" and that strengths are "combat ready."

Pentagon officials at Army headquarters and those at the U.S. Army Forces Command headquarters at Fort McPherson, Ga., flatly refuse to reveal authorized and assigned strengths of the Army's combat divisions, though that information has always been readily available and today still is not classified.

Spokesmen for several divisions provided strength figures, however, that show only the 82nd Airborne Division and the 24th Infantry Division (Mechanized) have enough manpower to be rated fully combat ready. Seven others are so short they can be rated no higher than substantially combat ready with minor deficiencies in the manpower area.

The III Corps Artillery at Fort Sill, which would reinforce units in Europe in the event of war, is worse off, rated only marginally combat ready in the personnel category.

The Navy has been sailing ships and deploying aircraft rated not combat ready for the first time, crippled by shortages of skilled petty officers and depleted fuel supplies. It is stretched thinner, as Adm. Thomas Hayward, chief of naval operations, says, than at any time since the late 1940s, trying to meet a three-ocean commitment with an 1½-ocean Navy.

In the fleets, 24 percent of all ships—currently only 20 in the 6th Fleet, 32 in the 7th Fleet and 18 in the Indian Ocean task force—are less than fully ready because of skilled personnel shortages. The Navy has been shuffling sailors to make up only minimum crews, and at least two captains have refused to sail because of what they considered unsafe operating conditions caused by crew shortages.

Naval aircraft mission capability ratings have declined, repairs have been postponed and even shipboard materiel readiness has dropped.

The Air Force, crippled by a pilot exodus, suffers from lack of spare parts and reduced flying hours because of the high cost of fuel. Many planes are not considered mission capable. Some critical squadrons are only half ready to fight. Even the high-priority Strategic Air Command has cut back, with only 30 percent of its bombers now on daily alert.

Even the Marine Corps, smallest and most elite of the armed forces, rates all three of its divisions and air wings as only substantially, not fully combat ready. The corps is hurt by old and poorly maintained equipment, shortages in critical jobs and a critically inadequate air and sealift capability.

Reserve components, which provide half the nation's combat power and two-thirds of its support capabilities, struggle to stay alive on one-twentieth of the defense dollar. The reserves and National Guard are even harder hit.

"Our concern now is that we don't have the reinforcement capability back here in the states, either in our guard or reserve or active components," Gen. Meyer said during a commanders' conference at Fort Hood, Texas, in July.

The cumulative effect on the state of American military readiness can be expressed in a single word: Unprepared.

There is a critical decline in the readiness needed to meet commitments and support the nation's strategy of maintaining enough military power to fight a major war in Europe and simultaneously engage in a mini-conflict elsewhere—the so-called 1½ War Strategy."

That raises a serious question about effectiveness of the new, highly touted Rapid Deployment Joint Task Force of soldiers, airmen and Marines organized on President Carter's orders in the wake of the Soviet invasion of Afghanistan. It is designed as a reaction force for potential flare-ups in such hot spots as the Persian Gulf.

But two of the three Army divisions committed to the force are among the seven not combat ready. The 101st Airborne Division (air assault) has combat ready helicopters, but not enough pilots. Moreover, there isn't enough air and sealift power to get them anywhere in the time needed or to provide supplies.

In a speech last May, W. Graham Claytor Jr., deputy secretary of defense, contended "our programmed airlift assets are possibly adequate to meet the requirements of a NATO-Warsaw Pact conflict in Europe alone."

A top-secret Pentagon report states, however, that "studies indicate the current capability is less than 20 percent of U.S. cargo requirements for the first 20 days of a NATO conflict," even when 373 long-range passenger aircraft committed by civilian airlines to the Civil Reserve Air Fleet are thrown in.

"That," says a defense specialist on Capitol Hill, "is a long way from adequate."

Many generals and admirals have spoken openly, if guardedly, about the crisis and the urgency to find more money, men, weapons, equipment and supplies to improve American combat readiness.

But the public, and in some cases even Congress, has not been told just how bad things really are. The services are keeping their overall readiness ratings closely guarded, even from Congressional inquiries.

As one Army general staff member said, they don't want anyone to know how "embarrassingly low" our readiness levels really are.

"The size, readiness and sustainability of U.S. conventional forces cannot ensure the success of the strategy they are required to support," Gen. David C. Jones, chairman of the Joint Chiefs of Staff, bluntly warns in a still top-secret assessment of the military's capabilities.

"The mismatch between the declaratory strategy and the level of forces available to sustain it has been apparent for several years and has grown more acute as the Soviet Union and its allies have increased and improved their forces at a pace unmatched by the United States and its allies.

"One means of redressing the strategy-force mismatch is to lower objectives, that is to reduce the range and depth of U.S. commitments. This step, however, cannot be taken without degrading the strategic position of the United States."

American strategic deterrence, however, also is suffering.

The military's stated objectives are to prevent the outbreak of war in Europe and, if deterrence fails, contain an attack without losing significant ground. Then, the objective is to bleed Soviet armies so they will be forced to negotiate and withdraw. Short of that, the U.S. and its allies will have to hold off until full mobilization can provide needed reinforcements.

But a recent Congressional Budget Office study noted: "It should be clear that the first objective—deterrence—depends very much on having what the Soviets perceive as a reasonable capability to attain the second and third objectives, containing and holding the Warsaw Pact armies. Deterrence also depends upon the perceived capability of U.S. strategic nuclear and tactical nuclear forces and the chance they might be used."

Gen. Richard H. Ellis, commander-in-chief of the Strategic Air Command's bomber and intercontinental ballistic missile forces, told Defense Secretary Harold Brown in a secret letter as long ago as April 1979 tht strategic nuclear forces no longer have the capability to support U.S. policy, short of initiating a first strike or launching while under attack—strategies the United States has consistently rejected.

Yet last week, Brown enunciated the very policy Ellis rejected—the so-called "countervailing strategy" of aiming at selected military and political targets in the Soviet Union instead of relying on so-called mutual assured destruction (MAD), the strategy of annihilating the entire civilian population.

"It is apparent that the principle of maintaining a countervailing strategy cannot be supported in the 1979–86 time period short of an LUA (launch under attack) or initiative attack (first strike)," Ellis warned.

The Army has the equivalent of more than five divisions stationed in Europe for defense of NATO, with another division in Korea. The remaining 11 divisions are committed as NATO reinforcements. Three of them also are committed to the Rapid Deployment Force.

According to Gen. Jones' secret evaluation, written this spring, four divisions are available for contingencies in the Pacific, Persian Gulf and elsewhere, but only "in the absence of a NATO/Warsaw Pact confrontation."

That clearly suggests the Rapid Deployment Force would be fighting in Europe, in the event of a war there, leaving nothing to react to a so-called "half-war" elsewhere.

The Navy's long-time advantage over the Soviet fleet is being lost in several critical areas. Current and planned capabilities to wield significant tactical nuclear clout "are inadequate to deny the Soviet Union a significant advantage if a war at sea escalated above the conventional level," Jones' assessment states.

The Navy's nuclear anti-surface ship capability provided by the A–6 and A–7 carrier-based, attack aircraft is limited by too few planes and "inadequate countermeasures against increasingly sophisticated Soviet air defense and continuing Soviet emphasis on anti-carrier-forces," Jones said.

There is no current U.S. nuclear anti-ship program in progress, and there are no nuclear-powered surface ships in the Navy's current five-year defense plans.

The Navy's mine-clearing capability also is inadequate. It amounts to 25 aging ocean minesweepers—22 of them reserve—and 21 RH–53D Sea Stallion helicopters—seven of them lost in last April's aborted attempt to rescue American hostages in Iran.

The Pentagon has stated publicly that minesweeping is an "area of serious concern." But Gen. Jones' secret report leaves no doubt that program is bleak, and the consequent threat to both surface ships and submarines is substantial.

The Navy can clear only moored, magnetic and acoustic mines, Jones said, but it cannot clear buried or pressure-activated mines. And, the forces are "inadequate for operations in deep water or in areas distant from their bases."

Americans air defense is virtually non-existent. Warning systems are inadequate and vulnerable.

"Present U.S. surveillance systems can provide warning of aircraft attacking at high or medium altitudes through the polar region," Jones has stated publicly. But in his secret assessment, he adds: "But they have virtually no capability to provide warning or attack characteristics from any other threat axis."

The ability to provide a logistics pipeline to support combat also is inadequate.

Jones said in his secret report that only the support system is adequate "and it is marginal." And, he added, "The WRM is dangerously inadequate to support a strong initial defense capability. Current U.S. government and privately-owned industrial bases lacks the capability to compensate appreciably for WRM deficiencies or influence defense production during the early months of a major conflict."

Unstable world-wide petroleum supplies have caused wholesale military petroleum inventories to drop 14 percent in the last year, "requiring the use of WRS to provide continued support of daily readiness and training," Jones said.

Even basic ammunition to provide a fighting chance is critically short, with some estimates of the dollar value of the shortage as high as $20 billion.

According to secret Pentagon figures on the level of only the ammunition pre-positioned as war reserve stocks as of last December, the Army was short 50 percent of what it needs in Europe and 30 percent in the Pacific. The Navy was short 49 percent in Europe and 36 percent in the Pacific, and the Air Force was short 34 percent in Europe and 10 percent in the Pacific.

Those stocks are supposed to support deployed forces until the supply pipeline has been established and is fully supported by the U.S. industrial base. But the industrial base cannot influence the first six months of a NATO war, even if a national emergency were declared, according to Jones, because of the time it would take to gear up and the fact that the facilities are undersized.

Why has military readiness dropped to "embarrassingly low" levels?

The big reasons are money, desire and priorities.

The U.S military now has only a fourth of the bases it had in the 1960s and only a third of the overseas troops it had in 1968.

"Since 1960, the Soviet Union has fielded 60 new systems—tanks, surface-to-air and antitank missiles, attack and troop carrying helicopters and sophisticated electronic warfare equipment. There is no indication that the impetus of this effort is slowing," Army Secretary Alexander and Chief of Staff Meyer said in their joint posture statement on the Army for 1980.

"For our part during that period, we applied incremental improvements to those systems already in the field and in the early 1970s began investing heavily in research and development of new systems.

"Today, we are on the threshold of the largest peacetime modernization in the Army's history. The fruits of our research and development programs are ready to buy—and they are desperately needed."

The trouble is that many of the new weapons systems and improved equipment—for the Air Force and the Navy as well as the Army—are months, sometimes years away from actual use.

There is clear evidence that readiness has suffered so that more money could be spent for new hardware for the future.

Dr. Percy A. Pierre, assistant secretary of the Army for research, development and acquisition, and his military counterpart, Lt. Gen. Donald R. Keith, explained in a joint statement called "Equipping the Army of the '80s."

"Our presently fielded systems are now largely inferior in quality to their Soviet counterparts," they said. "They are obsolescing rapidly as the Soviet modernization drive continues. We cannot, therefore, mortgage the future of the Army by building readiness and sustain ability at the expense of modernization."

During the last decade, the Soviet Union spent $104 billion more on defense than the United States. That, as calculated by the authoritative "Aviation Week & Space Technology," is "enough money to have paid for the entire U.S. Air Force B–1 bomber program, the MX advanced intercontinental ballistic missile program with missiles and shelters, Trident submarines and ballistic missiles for them, for 7,000 Army XM–1 battle tanks and the same number of infantry fighting vehicles, 300 of the cancelled advanced medium short takeoff and landing transport (AMST) and all the tactical aircraft needs of the Air Force and Navy."

As Army Maj. Gen. Dewitt C. Smith, commandant of the Army War College, said in an address to the graduating class shortly before he retired in June, "Our total defense is inadequate to face the threats and challenges of today, let alone those which may exist tomorrow. . The greatest technological society on earth has been caught by the Soviet Union in terms of quality of military equipment. . . Our strategic stockpiles are inadequate . . . In weaponry, except for strategic nuclear forces, we are not even close to the requirement."

Retired Gen. Maxwell Taylor, former chiarman of the joint chiefs of staff, wrote in a recent letter to editors of The Washington Post that "our armed forces in the aggregate are dangerously deficient in their capability to deter conflict, conduct sustained combat overseas even on a limited scale or to provide the military backing necessary to support our foreign policy, present or projected."

The decline has been most pronounced during the years since President Carter took office and successively curtailed or cancelled programs the military has repeatedly warned it needs.

As long as two years ago, Adm. Elmo Zumwalt, former chief of naval operations, said in a speech in Oklahoma City that because of "naivete" of the Carter administration, U.S. military capabilities have become so ineffective that if involved in a nuclear war with the Soviet Union, more than half the American population would be annihilated.

Sen. John Tower, ranking Republican on the Senate Armed Services Committee, placed the blame squarely on President Carter in a scathing speech on the Senate floor last May.

"During my 19 years in the Senate, spanning the administrations of five presidents, I have always tried to work with the chief executive as the symbol of our nation's power and prestige in the world. But the time has come for us in the Senate to realize that this president is not protecting our vital interests," Tower said.

"The perfidy and deception Jimmy Carter has used to mislead the American people and our allies on defense spending has resulted in a fundamental shift in the strategic nuclear balance. The dangerous international environment which has been kinded by the president's weakness and vacillation hold grave risks for our economic well-being and our security and cannot be allowed to continue.

"For more than three years, while hiding behind a smoke screen of tough rhetoric, Jimmy Carter has presided over the most ominous shift in the balance of power in modern history."

[From the Sunday Oklahoman, Sept. 7, 1980]

U.S. FORCES NOT READY FOR PROLONGED WAR

(By Jack Taylor)

Severe shortages in weapons, ammunition, equipment and supplies and critical shortcomings in maintaining what is available, have so stymied American armed forces that they would have trouble winning a prolonged major war without resorting to nuclear weapons.

War reserve stocks and pre-positioned material are inadequate to support even a short war. Equipment readiness has deteriorated because of sloppy maintenance and a shortage of spare parts.

Reinforcing equipment and supplies have been depleted and existing supply lines cannot fill the void in time of war.

Combat proficiency has declined. Overall readiness of the Army, Navy, Air Force and Marine Corps can be summed up in a word: unprepared.

Based on interviews with Pentagon officials, field commanders, military specialists and on top secret documents obtained by The Oklahoman, there is for the first time in 40 years a serious question about America's ability to fight.

Equipment shortages are so severe and maintenance has so deteriorated in the Army that many soldiers now rank the problem above such traditional grievances as low pay.

Late last year, the Army surveyed 45,000 soldiers in every major command about their likes and dislikes. The startling results showed every category—from first-term enlisted men to officers—ranked dissatisfaction with their equipment high on the list. It was the No. 1 grievance in most categories and No. 3 among first-termers.

Col. Lanny Standridge, who heads the Army's so-called Quality of Life Program at the Pentagon, minimizes the significance of the survey results by saying they haven't been fully analysed.

And, Maj. Larry Candeleria, who works for Standridge, says bluntly he's not sure the survey "necessarily gave us the results we were looking for."

William D. Clark, principal assistant secretary of the Army for manpower and reserve affairs, told the House Armed Services Committee earlier this year that the Quality of Life Program "has a direct impact on the ability to man the force on the near-term readiness of those forces."

All services are critically short of war reserve materiel and equipment, ammunition and supplies prepositioned in Europe for use in the event of war there. America's North Atlantic Treaty Organization allies are in the same shape.

By contrast, the Soviet Union and its War saw Pact allies have nearly twice as much stored materiel in some crucial categories, such as aviation fuel. In a showdown, that could be disastrous for NATO.

Warsaw Pact nations will rely on superior numbers to quickly overwhelm NATO troops, which must rely on reinforcements and resupply from the United States, where air and sealift capabilities are inadequate.

In major, computerized mobilization and deployment war games called Nifty Nugget/Rex-78, conducted by U.S. military and civilian authorities in November 1978, it was concluded American forces would have lost the war. One of the critical weaknesses was in materiel stockpiles—shortages of everything from weapons and armored personnel carriers to spare parts and uniforms.

Just before those exercises, the Army reported its prestocked supply shortages amounted to $1.7 billion, with major shortages involving $991 million in clothing, $415 million in high-priority equipment and $157 million in aviation spares and repair parts.

"The deficiency, if valid, would appear to leave the Army unprepared for an armed conflict," the General Accounting Office noted at the time.

The GAO found inconsistencies in planning such stocks, an even found the Defense Logistics Agency had $654 million worth of high-priority Army equipment somewhere in a lower priority war reserve inventory.

Last year, a few months after Nifty Nugget, the GAO reported that Air Force units in Europe were not fully combat ready and aircraft were not fully mission capable because they needed maintenance or supplies. There were critical shortages in war reserve spare parts and ammunition.

"U.S. air forces in Europe would have varying degrees of difficulty transitioning to a wartime posture, particularly in a surprise attack," the GAO said. Investigators added that the Air Force was seriously short of missiles and "no quick solutions are in sight."

"Although shortages of pre-positioned stocks were well known by military planners prior to Nifty Nugget/Rex-78, the exercises demonstrated those shortfalls for senior military and civilian officials in a simulated crisis situation," the Defense Department said in a highly censored evaluation report released this June.

"The result was heightened concern about the shortfalls and, until those stocks had reached their objective levels, (about) steps to include them in the transportation plans," the report said.

Translating that concern into action is difficult, particularly when there isn't enough money to buy all the equipment and supplies needed, and especially when that, in turn, forces repeated use of those stored materials just to maintain daily operations.

Consequently, shortages remain critical.

In a top-secret assessment of the American military by Gen. David C. Jones, chairman of the Joint Chiefs of Staff, a much more pessimistic picture than is generally known emerges.

War reserve materiel "is dangerously inadequate to support a strong initial defense capability," Jones warned. Petroleum, ammunition and crucial weapons systems stockpiles are critically short, with the fuel pinch so severe that war reserves have been constantly depleted "to provide continued support of daily readiness operations and training."

Reinforcing units from the United States may experience selected equipment shortages ranging from 30 to 50 percent just so some equipment can be pre-positioned, reducing the Army's ability to train and diminishing the ability of those troops to respond to non-NATO emergencies, Jones said.

Shortages of ordnance and fuel also are hurting everyday readiness. The Navy has current fuel storage capacity in Europe for only 71 percent of needed aviation fuel and 66 percent of necessary surface ship fuel.

All services are short of ammunition pre-positioned in Europe, ranging from 34 percent for the Air Force to about 50 percent for the Army and Navy, according to Jones' secret report.

Even NATO's Long-Term Defense Program, approved at a summit meeting in Washington in May 1978 to structure the alliance's defenses for the 1980s and beyond, "lags far behind" in storing ammunition for a European war—what Jones called a "general failure of nations to meet war reserve stock levels for ammunition to support a minimum of 30 days of combat."

The Warsaw Pact is much better prepared.

"Soviet doctrine emphasizes that pre-positioned war reserve stocks should be sufficient for a minimum of 20 to 25 days of intense combat within each front," Jones said in his secret assessment. "Petroleum, oils and lubricants (POL) stocks exceed anticipated ground forces requirements in all theaters.

"Ground force ammunition stocks in the German Democratic Republic, Poland Czechoslovakia and the three western military districts of the Soviet Union are sufficient to support five fronts in a series of successive operations against NATO's central region. These stocks would support sustained operations for 50 to 75 days.

"In conventional operations, Warsaw Pact stocks of aviation POL could support about 55 days of flying. Aviation ordnance stock levels would support operations for about 35 days."

In shocking contrast, the U.S. Army's European stockpile was still critically short of some of the most essential weapons and equipment even a year after Nifty Nugget, according to Jones' report.

There was only 13 percent of the minimum, 60-day requirement for 3,673 tanks; none of the 540 needed 155mm and 8-inch howitzers; none of the necessary 2,005 armored personnel carriers, and one-tenth of 1 percent of the needed 2,665 trucks.

That, Jones said, is of "great concern" to the Army, because its troops "are dependent upon these stocks for sustaining combat operations in Europe until a resupply pipeline across the Atlantic has been established."

Maintenance capabilities of U.S. forces are deficient "even for a short war," Jones said. The Army is so short of maintenance units it cannot meet even minimum requirements for the early stages of a major conflict. Air Force and Navy aircraft have only enough spare parts for 30 days or less.

"Maintenance," as Dr. Martin Reuss, an Army Corps of Engineers historian, noted in a recent issue of Army Logistician magazine, "critically influences the other functional areas of logistics and affects the ability of any force to accomplish its mission."

Last year, the Army's backlog of maintenance repairs swelled to more than $340 million worth of equipment, with the Army continuing to emphasize buying new hardware—most of which is not yet in the hands of the troops while repairable equipment simply piled up in rear-echelon depots.

Gen. Frederick J. Kroesen, the Army's commander in Europe, says by the end of this year his troops will have only 27 days of supplies of a minimum 30 to 60-day requirement, and the Army's ability to keep from losing will depend, simply put, on reinforcements and resupply from the United States.

The present state of the military's equipment and supplies raises serious questions about how candid Pentagon officials have been with the public and even with the Congress.

In a report issued shortly after Nifty Nugget, the GAO concluded that the Army had made considerable progress in managing its pre-positioned equipment stocks and in equipment maintenance, and had eliminated a large maintenance backlog.

Ammunition has become so expensive that some Air Force and Navy pilots seldom get to fire live missiles in training, and Army missilemen launch the real thing only once every two or three years. The Air Force now provides simulators for make-believe flying. The Army uses similar devices for make-believe firing by tank and anti-tank gunners.

Lt. Col. Larry R. Tinberg, who commands a Pershing missile battalion at Fort Sill, which has a NATO-reinforcing commitment, says, "It would obviously be better if we could fire more missiles. It's always good if a soldier sees that that thing really does work."

Partly because of rising costs for all types of ammunition, the Army's field artillery center at Fort Sill is using less than one-third the amount of ammunition each year to train new cannoneers than during the peak Vietnam War year of 1968.

Last year, the Army fired only 208,609 rounds of all types of artillery ammunition at Fort Sill—32 percent of what was used in 1968 and down 5 percent from what was used in 1978.

The Army also is critically short of some ammunition. Some that is stockpiled is so old and has been so poorly maintained it is considered unusuable.

The Marines contend they are short less than one-half of 1 percent of their ammunition requirements, though trucks and engineering equipment are critically short in all three Marine divisions.

Pre-positioned war reserve materiel for the II Marine Amphibious Force, 52,000 men headquartered in North Carolina and committed to reinforce NATO, was found sorely lacking, according to a secret GAO report issued last year which the Marines recently declassified.

That report noted that the II MAF was so short of its amphibious assault vehicles that more than 6,700 Marines would not have the required armored protection and mechanized mobility in any amphibious assault. Spare parts shortages were so severe that one

crucial part, for example, would take more than two years to obtain.

Of all the weapons systems and equipment, aircraft in the Air Force, Navy, Army and Marine Corps are particularly hard hit by readiness problems because of their complexity and sophistication, and by critical space parts shortages.

Nothing is more perplexing, Adm. Thomas Hayward, chief of naval operations, said in a recent speech, "than the problem of highly sophisticated, extremely capable, and therefore very complex equipment, which is down more than it's up simply because we have failed to design the kind of reliability and maintainability into it that the best talent in American industry is capable of producing."

Operational readiness of fighters in the Air Force's Tactical Air Command has dropped to less than 55 percent overall, when it should be at least 70 percent.

The Strategic Air Command's B-52 bomber force has reduced readiness, which is somewhat disguised by cutting the number of planes on daily alert from 40 percent to 30 percent. The Navy, which has crashed more planes than it has bought in the last two years, has disguised readiness ratings by cutting back on the number of aircraft composing squadrons of the A-6 Intruder, the all-weather, carrier-based attack plane considered one of the best aircraft in the U.S. arsenal.

During the past two years, it was found that fewer than 65 percent of all Navy and Marine Corps aircraft were fully combat operational on any given day, a study by the Congressional Research Service noted last June. There have been continuing reports of significant numbers of aircraft unprepared for combat, sometimes ranging as high as half of every squadron on some bases.

The Navy's F-14 is the "best plane in the skies today," Adm. Hayward says, "but it requires over three times as many maintenance man-hours as an A-4M and has twice the down time for parts and maintenance."

In testimony before a House Armed Services subcommittee this year, Lt. Gen. William J. White, deputy chief of staff for Marine aviation, said because of shortages in money and planes, the Marine Corps has been forced to cut its A-6E attack force by 11 aircraft, or 17 percent.

"My concern," he said, "remains that adequate close air support in periods of darkness and during inclement weather will not be available to our young Marines on the ground."

Air Force Secretary Hans M. Mark and Gen. Lew Allen Jr., his chief of staff, told the House Appropriations Committee in their prepared posture statement this year that materiel readiness deficiencies are of "grave concern," and added: "Our maintenance activities continue to be complicated by inadequate inventories of support equipment and spare parts and munitions, seriously detracting from our ability to sustain combat."

Tactical air forces in Europe would run out of spare parts in "30 days or less," according to Gen. Jones' secret report.

Because the highly praised F-15 fighters have been grounded for lack of engine spare parts, Congress added $75 million to the new budget for just that item.

Flying hours on virtually every aircraft have been cut because of the high cost of aviation fuel. That hurts pilot training and proficiency and affects confidence and morale—all of which reduces readiness.

"It's less than what our goals are," Maj. Gen. John T. Chain Jr., director of Air Force operations and readiness at the Pentagon, told The Oklahoman. "We only have so many dollars in our budget and they just don't spread that thin. And money is short in every conceivable area to include things to get the airplanes that exist today flying at the rates that we want them to fly."

One Capitol Hill source says a recent Air Force briefing disclosed that when a squadron of F-111s was tested last spring, it was able to achieve only 50 percent operational readiness—and that by constantly cannibalizing parts from planes that just landed in order to get more in the air.

Because of fuel and funding constraints, the Navy has had to cut flying time for both carrier aircraft and non-deployed planes ashore "to less than 70 percent of the hours required to attain primary mission readiness status," Gen. Jones said in his top-secret assessment.

When the GAO checked the II MAF, investigators found that the unit's 457 fixed wing and helicopter aircraft were operationally ready only 58 percent of the time due to supply shortages and maintenance problems. For readiness reporting purposes, aircraft the Marines think they can have flying within 72 hours are counted as ready.

However, the GAO reported that the Marines could have serious problems getting some of the deadlined planes into the skies on short notice because of significant parts problems. "A number of critical repair parts and components, which were deadlining aircraft at the time of our review," the GAO noted, "were not available in the entire Navy supply system."

Although the Defense Department spends $20 billion each year to maintain readiness of its weapons systems and equipment valued at hundreds of millions of dollars, no one in the Pentagon knows how much readiness a dollar will buy or can determine how much readiness is really needed, the GAO reported following an investigation last year.

That investigation was prompted by the Senate Armed Services Committee's dissatisfaction with the Pentagon's first materiel readiness report. A source familiar with the committee's action said some senators believed the Pentagon "deliberately obfuscated" its report and avoided detail that would have given an accurate measure of equipment readiness.

The second report, submitted in February and kept secret by the Pentagon, provided more detail and showed an overall "downward trend" in equipment readiness, the source said. Although readiness ratings of some weapons were high, others were extremely low, particularly for more complex weapons systems like aircraft.

In another GAO report last year, the Pentagon was said to be experiencing "increasing difficulty" simply managing its "burgeoning maintenance manuals," considered indispensible to maintaining equipment.

Auditors found in checks of 131,000 aviation manuals containing 13 million pages that some were too complex for even trained mechanics to read, some were out of date and others were inaccurate. All of that, the GAO noted, adversely affects equipment readiness.

The Air Force estimates it could save $108 million of its annual $3.6 billion maintenance tab if it could simply improve its manuals so mechanics could read them.

The Defense Department initiated a reorganization study to correct the manuals problems, the GAO noted in its report. But when asked about that recently, Samuel P. Miller, acting director of the Defense Materiel Specifications and Standards Office, said he could not even locate such a study.

He did say a number of actions have been taken by the Pentagon since September 1979, mostly involving studies and evaluations on what to do about the problem.

In a report earlier this year about the Pentagon's readiness reporting to Congress, the GAO noted that military officials had not used the time they were given to develop a better report.

"In the last two years, the GAO added, "the Readiness Management Steering Group has failed to take the necessary action to carry out the secretary of defense's directive to establish a long-range plan for relating resources to readiness."

The Navy spends more than $3 billion a year to maintain its ships, the GAO said in a 1978 report, though Navy brass have never really related readiness requirements to maintenance costs, or even developed a system for measuring readiness.

Navy ships cost an average of $2 million a year to maintain, compared with only $400,000 annually for similar commercial vessels, even though Navy ships are at sea about 30 percent of the time compared with 40 to 70 percent for commercial ships.

Part of that disparity, the GAO noted, is the weapons systems and larger crews peculiar to naval vessels. But part also is caused by the Navy's policy of regularly overhauling ships and equipment without a comprehensive ship maintenance plan which considers equipment damage and failure rates and their effects on ship missions and readiness levels, the GAO said.

Adm. Hayward says the average cost of ship overhauls has tripled since 1973, partly because of inflation but also because ships are more complex and the Navy is trying to modify them to improve reliability and maintainability.

Last year, the GAO found that damage caused by the high incidence of fires on Navy ships was greater because of poorly maintained firefighting equipment and improperly trained sailors. Since 1969, fires have caused $26 million in damage to aircraft carriers and $135 million to other ships.

Yet when the Navy tested firefighting equipment on aircraft carriers during a two-year period, four of 13 types of equipment failed more than 28 percent of the time. "According to Navy inspection records," the GAO noted, "the reduced system readiness was a direct result of improper or incomplete maintenance."

In another GAO report earlier this year, auditors said the Navy has never figured into its mobilization plans exactly what it would need to repair electronic and electrical equipment—now costing about $275 million annually—during wartime. "As a result," the GAO said, "it has no basis for measuring if existing capacity is too much, too little or the right kind."

Although the Army's highest priority is to support troops that can perform their combat mission effectively, the GAO found some units had difficulty maintaining equipment because problems were undetected and unreported, soldiers lacked motivation, maintenance was improperly done and repair parts weren't always available or correctly ordered.

In checking just five combat units, GAO auditors found nearly 800 problems that needed immediate correction—and half had not even been recognized or reported. "Even when equipment deficiencies were recognized, they were not always reported," the GAO said.

"Because of this, daily equipment condition reports provided unit commanders with invalid information that was of little use in effectively planning maintenance workloads and setting unit priorities."

In another report last year, the GAO found the Army unnecessarily spends millions of dollars to repair parts when there are more than enough of the same serviceable parts already available. The same problem had been pinpointed by the Army Audit Agency in 1972 and Army brass supposedly had taken corrective action. But when the GAO checked in 1979, auditors found the Army had done nothing.

In February 1979, the Army did initiate a new "maintenance management improvement program" in an effort to encourage better maintenance in the field, improve training, streamline maintenance procedures and improve equipment readiness.

But the principal result of the new program so far has been distribution of a handy, pocket-sized "Maintenance Guide for Leaders" showing how to appraise maintenance operations.

Still, problems persist.

The Army recently found its artillery men were experiencing frequent breakdowns of their 155mm and 8-inch self-propelled howitzers, the key support weapons for infantry divisions. Hundreds of incidents were analyzed from a 1½-year period.

Theorists at the Army's artillery center at Fort Sill decided most of the breakdowns were caused by carelessness and neglect of crewmen and mechanics. Their solution: better supervision.

Part of that problem, however, may stem from field commanders' misuse of their own soldiers, another study at Fort Sill indicated. Commanders were constantly complaining they didn't have enough artillery mechanics. Fort Sill checked early this year and found that in 18 commands, only 62 percent of authorized mechanics were even assigned.

But when the units themselves were checked, the shortage looked even worse: Only 34 percent were actually assigned to mechanics jobs, partly because artillery mechanics were being used to fill other critical job shortages.

GAO investigators also found serious problems with poorly maintained, combat-essential equipment, complicated by critical spare parts shortages, within the II MAF.

"A significant amount of II MAF's equipment is not combat ready," the GAO reported in the secret study released by the Marine Corps after a request by The Oklahoman. "As a result, mobilization of this force could be delayed while repairs and maintenance are performed to get the equipment into combat shape, or these units could be deployed in a degraded readiness condition."

GAO investigators checked over 500 pieces of combat-essential equipment, such as howitzers, emphibious tractors, missile launchers, mortars and recoilless rifles. They found the Marines had reported 17 percent not combat ready because of serious maintenance or spare parts problems.

But the severity was much greater with some crucial pieces of equipment, ranging as high as 50 percent not ready for 8-inch howitzers. Worse, GAO investigators checked the Marines' reporting and found it wanting. They concluded, based on a comparison of reporting on 58 items of the same equipment, that actually 38 percent was not combat ready.

In short, the Marines were not ready to fight.

One reason for the deterioration of readiness is the traditional lower priority given to mundane operations and maintenance (O&M) budget requests. Those are handled through congressional appropriations committees and have neither the push nor the high visibility of research and development and military procurement requests handled by the Armed Services committees.

Currently, there is an estimated $40 billion shortage in O&M, not counting ammunition supplies, which could add another $20 billion and take years to reverse.

This year, Defense Secretary Harold Brown contended he has tried to avoid the tendency to shortchange O&M and sought a 25 percent increase in funds to buy spare parts.

Overall, however, the O&M budget increased just over 5 percent—less than inflation—and cutbacks, particularly in flying hours to save fuel costs, are expected to continue into 1981 for many types of aircraft.

An example of the effects of funding shortages in those mundane areas is illustrated by how it has forced cutbacks even in the Strategic Air Command, where B-52 bombers and intercontinental ballistic missiles command the highest priority of any part of American defense.

"The austerity of O&M funding in the current and prior fiscal years also continues to be a matter of concern," Gen. Richard H. Ellis, SAC's commander, wrote in a secret letter to Brown last year. "In striving to live with the SAC FY 79 shortfall of $67 million in O&M funding, we must once again limit essential tasking and aircrew training and reduce or defer important mission support programs to future years.

"The cumulative effects of these O&M shortfalls have deferred security requirements to succeeding years, minimized fuel inventories, deferred facility maintenance, inhibited our quality of life improvement, reduced our civilian work force, and curtailed equipment purchases. More and more tradeoffs are being made that will inevitably impact on SAC readiness."

The backlog in maintenance and repair to real property—ranging from cracked runways to leaky barracks roofs—has grown to a staggering $2 billion-plus because of budget constraints and inflation. In the Army in Europe alone, the backlog is more than $800 million and is expected to increase to $900 million by the end of 1981.

That, Gen. Kroesen told Congress, is a source of dissatisfaction among soldiers since the "rundown condition of barracks, offices, motor pools and maintenance and recreation facilities" leads them to the "conclusion they are working for a second class organization."

"That perception," Kroesen added, "has a direct though unmeasurable impact on readiness because it drives some number of soldiers out of the service."

[From the Sunday Oklahoman, Sept. 14, 1980]

MILITARY SUFFERS MANPOWER CRISIS

(By Jack Taylor)

Seven years after military conscription was scrapped in the wake of the Vietnam war, American armed forces are suffering a manpower crisis. The concept of an all-volunteer force is on the verge of failure.

Recruiting and retaining enough competent men and women to operate and support the sophisticated weapons of today's 2-million man Army, Navy and Air Force have become such enormous problems that a critical deterioration of combat readiness has resulted.

Re-enlistments of skilled career enlisted men and officers are at all-time lows. Recruiting has sagged despite lowered goals and expectations. Morale, motivation, discipline and confidence are all down, especially in Europe.

Based on interviews with Pentagon officials, field commanders, defense specialists and on classified military documents obtained by The Oklahoman, the crisis in manpower, aggravated by equipment shortages, suggests the American military is unprepared.

"Without adequate manpower, training is difficult and modernization begins to lose its point," Gen. Edward C. Meyer, the Army's chief of staff, has said. "If we are to continue the volunteer force as a viable concept to meet today's needs, the full dimensions of the cost to fully meet requirements need to be made clear."

But even Gen. Meyer's abrupt departure last week from his policy of maintaining key combat units in Europe and Korea are above authorized strength levels may be only a token gesture, considering the eroded strengths of Army divisions at home.

Meyer said he plans to shift 7,000 noncommissioned officers from Europe and Korea to beef up his sagging U.S.-based divisions, improve training and enhance readiness.

He added he is considering several other measures, including authorizing berets for every soldier, prompting one critic on Capitol Hill to remark: "You're not going to solve readiness problems by letting people wear a beret."

The same defense specialist said Meyer's decision to simply shuffle his troops is "stupid" and won't solve the crisis.

Confidential Army documents reflecting the anthorized and assigned strengths of every major combat unit overseas and at home show that 7,000 men is far short of what is required.

Major combat units in the United States and the Panama Canal Zone are more than 17,200 men short—more than a full division.

Overall, combat units in Europe are only 2,267 men over authorized strengths. And the 2nd Infantry Division in Korea is 2,643 men short, manned at only 83 percent of authorized strength.

Even considering the beefed up divisions and brigades in Europe, the Army's combat capability is more than 17,600 men short.

The shortages of experienced, supervisory enlisted men—from infantry sergeants in the Army to aviation petty officers in the Navy—are so critical that combat readiness has declined in all services.

In some cases, the drop has been so sharp that entire Army divisions and some ships, including a nuclear-powered aircraft carrier, have been rated not combat-ready.

The Army concedes it is short of skilled NCOs, particularly in the combat specialties of infantry, armor and artillery. But it claims overall it has the necessary manpower—just not in the right ranks or in the right places.

"We've got plenty of privates," one officer said. "We just don't have enough sergeants."

The severity is illustrated by the shortages of NCOs in the 1st Cavalry Division and the 2nd Armored Division, both at Fort Hood, Texas. Overall, the 1st Cavalry is manned at 85 percent of its authorized strength, and the 2nd Armored at 93 percent of its strength.

But when viewed in the context of key NCOs, the shortages are so critical they impair those divisions' ability to fight.

The 1st Cavalry is short 37 percent and the 2nd Armored 35 percent of the required NCOs. And both divisions are short 44 percent of NCOs in combat jobs.

Throughout the Army, the shortage is so critical that Forces Command headquarters at Fort McPherson, Ga., is using 1,000 volunteer retirees who have returned to active duty to fill critical jobs at four Army posts.

The program is designed to test the validity of drawing on a potential pool of 280,000 retirees in the event of mobilization.

The Navy is short more than 18,700 experienced, supervisory petty officers—about 9 percent of the 209,800 key sailors needed to insure that ships can sail and fight. The shortages are particularly severe in radar, sonar and aviation ratings, which affect the readiness of the Navy's 13 aircraft carriers.

When the carrier Eisenhower sailed for the Indian Ocean to replace the Nimitz in April, it was short 579 sailors and airmen, mostly in key supervisory jobs. That amounts to more than 10 percent of the giant carrier's 5,634-man crew.

The carrier Constellation a month later was similarly operating 533 men short, or about 10 percent of its 4,929-man crew.

Last month, when the carrier Kennedy sailed for the Mediterranean to replace the

Saratoga, it had to borrow 50 sailors from other ships to fill critical engine room and aircraft maintenance jobs. Manpower shortages still classified it, the cruiser Daniels and the destroyer Coontz as not combat-ready.

Earlier this year, Adm. Thomas B. Hayward, chief of naval operations, told the Senate Armed Services Committee that manpower shortages have caused combat readiness to decline throughout the Navy.

The Air Force also has been hardhit by manpower shortfalls, particularly among pilots, navigators, doctors, engineers, air traffic controllers, computer technicians, electronics and communications specialists.

The Marine Corps is short of critically needed air traffic controllers, enlisted flight crews and signal intelligence and communications maintenance specialists.

The shortage of critically skilled enlisted men has become so acute in the Air Force that the Carswell Sentinel, the newspaper for the Strategic Air Command's 7th Bomb Wing at Fort Worth, commented recently: "The Air Force has not grounded any squadron because there were not enough mechanics and avionics personnel to maintain the aircraft. But you would be kidding yourself if you think it couldn't happen."

Last year, for the first time since the military began relying entirely on volunteers, every service failed to meet recruiting goals. The decline, which began in 1976, was especially sharp in 1979, when the armed forces enlisted only 92.8 percent of the number of men and women needed.

The drop was most severe in the Army, which achieved only 88.5 percent of its goal and wound up 17,800 recruits short—more than enough to fill a heavy division.

The Navy, which recruited 94 percent of the new sailors it needed last year, wound up 4,500 short—enough to man an aircraft carrier and its air wing.

The recruiting decline "has had a pronounced effect on overall force readiness," Gen. David C. Jones, chairman of the Joint Chiefs of Staff, said in an assessment of the military. "Not only do the active forces have fewer people, but the United States must increasingly rely on reserve components to meet wartime requirements."

The reserves, however, are even worse off, particularly because of manpower shortages in National Guard combat units.

Recruiting shortfalls have occurred despite such inducements as special enlistment bonuses, training preferences, educational benefits, guaranteed job assignments and enlistment options designed to make the military more attractive.

And they have occurred despite earmarking nearly 20 percent of all military personnel and $7 billion a year to recruit and train the recruits.

The Army alone spent $326.4 million on recruiting last year. In just one program, the Army spent $1.7 million to send 87 special teams straight from combat divisions to help recruiters in 30 cities.

The result was a dismal 259 more recruits—at a cost of more than $6,744 each.

The Navy, which spent $70.3 million last year to recruit 88,345 new sailors, has been able to meet its recruiting goals only 10 percent of the time in the last four years. It was forced to reduce its standards and goals to accomplish that meager return.

Pressures on Army recruiters have been immense. In effect, they must recruit a number of men and women every year that would be the rough equivalent of the entire Marine Corps.

Despite lowered objectives, the pressures have led to fraudulent enlistments and irregular recruiting practices.

In turn, recruiting malpractice has led to widespread investigations, disciplinary actions and even an unprecedented action earlier this year, when 87 Army recruiting sergeants sued the secretary of the Army in an effort to prove the omcer corps knew aoout and condoned improper practices.

The same pressures have led to Navy malpractices and even some courts-martial and reassignments—including the Navy's recruiter of the year for 1978.

Gen. Lew Allen Jr., Air Force chief of staff, could have been speaking for all the services when he emphasized the manpower problem in testimony before Congress.

"My single greatest concern lies not with hardware, nor maintenance, nor training—it is with people," he said. "In the history of the U.S. Air Force, our manpower situation has never been more critical than it is today, nor have there been forecasts of difficulties more serious than those we face as we enter the decade of the 1980s."

The outlook is indeed bleak.

The pool of available manpower is shrinking. Fewer high school graduates—the services' most coveted and most difficult recruiting target—are willing to enlist. Youth unemployment rates have steadily declined in the last five years, meaning fewer are forced to turn to the military for jobs.

The military is becoming less attractive because of declining pay benefits, compared with civilian jobs; an elimination of the GI Bill of Rights in 1977; unfavorable publicity about armed services' living conditions, particularly overseas; and a generally negative image of military life.

Some of those factors have led to an exodus of active military officers and enlisted personnel, particularly in the highly trained technical skills, where civilian jobs sometimes offer five times more pay.

"The downward trend in the retention of our more experienced service members causes me serious concern and may well have a more important impact on the readiness of our military forces than any recruiting shortfall," said Robert B. Pirie, the Defense Department's manpower chief.

Career re-enlistment rates have declined from a high of 81 percent in 1974 to slightly more than 68 percent last year. During the first six months of this year, the decline was even sharper, to 54 percent with all services hit equally hard.

The crisis has reached the stage where some combat units may simply have to be disbanded because there are not enough skilled people to fight.

Retention of Navy pilots, for example, has dropped from 62 percent in 1977 to 31 percent last year. It is projected to drop even more, to 28 percent, this year.

"If we do not stop this loss of talent, which has already depressed the readiness of many of our air squadrons," the Navy says in an official statement, "it will impose severe limitations on what we can do with the Navy.

"We are approaching the point where we may have no realistic alternative but to stand down some aviation units."

Even the elite nuclear submarine force is suffering, and the impact is even more critical there because it forms a key leg of America's stategic triad of nuclear deterrent forces.

Retention of experienced nuclear officers is significantly below what is required and is expected to drop even more this year and next. Because of that, today's sea-to-shore rotation is projected to deteriorate for the next three years with an even worse effect on morale and retention.

One former first class petty officer, who quit after nine years on nuclear submarines, told The Oklahoman he simply got fed up with 15-hour workdays caused by manpower shortages and equipment breakdowns.

Adm. Hayward put it bluntly in a recent speech to the Navy League: "Some of these sailors have been at sea for over 90 continuous days without touching foot on solid land—without so much as a cold can of beer. You can't buy that kind of dedication, that kind of skill, that kind of talent.

"The regrettable truth is we not only can't buy that kind of talent, but the country isn't doing enough to hang onto it. The hemorrhage of talent represented by the loss of mid-grade petty officers and officers today is a matter of concern to all of us, and is an issue that sooner or later will become a national one."

The retention problem is so critical that the Army is offering re-enlistment bonuses up to $12,000 and wants to go as high as $20,000, and the Marine Corps is allowing key NCOs to stay three years past mandatory retirement.

Regular Army officers also are getting out sooner and in greater numbers than ever before. Many lieutenants are serving in command positions normally reserved for captains. Many captains are assigned key headquarters jobs normally filled by majors and lieutenant colonels.

The Army is 28 percent short of its needed lieutenants and captains, and it is trying to reduce that to a 14 percent shortage by recalling reservists and promoting lieutenants faster.

Even women are now failing to complete their first enlistments in greater numbers than their male first-term counterparts.

The Army has estimated the dropout rate for women will be nearly 48 percent this year—13.5 percent greater than men.

"If scoring well and a high school diploma equates to a "quality" service person, a person with high potential for training," one recruiter asked, "then why is the dropout rate of this elite group the highest in the Army?"

The erosion of skilled manpower is expected to worsen, especially in the Army, which has recently protested to Defense Secretary Harold Brown that additional reductions in recruiting goals and training funds anticipated in 1981—proposed on the assumption that retention will improve—will seriously jeopardize the Army's ability to main its units.

The crisis in military manpower and the failure of all services to meet recruiting quotas has led to lowered goals and standards. More recruits than ever have been enlisted from the lowest acceptable mental category. Intelligence test scores for those so-called low ability Category IV recruits put them in the lower 30 percent of the population as a whole.

They are more difficult to train, are less likely to stay in the service and are more likely to have disciplinary problems.

Although the Army was threatened earlier this year with an overall cut of 25,000 men authorized by Congress as an inducement to recruit more high school graduates, reports so far this year indicate that fewer graduates are enlisting.

Critics complain that filling the lower enlisted ranks with such recruits has created an "Army of dummies" and a "Navy of zeroes." Pentagon officials, particularly Army brass, argue that how a recruit scores on his entrance test is not a measure of how he will perform in the unit.

"It is critically important to bear in mind that what we are discussing here is a problem in the meaning and utilization of our test scores—not a problem with the ability of our active forces," Pirie said in a May speech in Florida.

"This country is served—and served well—by a dedicated group of highly skilled and professional men and women. Insults to their competence do a disservice to them and to the nation."

A few weeks after that speech, Pirie reported to Congress that armed forces entrance examination test scores had been inflated since 1976 and the military actually had taken in six times as many lower mentality recruits than previously reported.

In 1979 alone, the Army took in 46 percent Category IV recruits instead of the 9 percent it had reported. The Navy and Marine Corps had enlisted 18 and 26 percent, respectively, instead of the 4 percent each had reported.

And the Air Force, which had claimed it had enlisted none from Category IV, actually had taken in 9 percent, the Defense Department report disclosed.

"It's not an Army problem. It's a nationwide problem," one Army recruiter said. "The Army isn't taking in dummies. The high schools of the nation are turning out dummies. Some high school graduates can't even fill in their job applications."

Army Secretary Clifford L. Alexander Jr., stung by criticism from Congress, asserted that test scores do not provide a valid indication of a recruit's intelligence or performance.

Alexander's first action was to order the removal of such test scores from the military personnel records maintained in the field for every soldier in the Army. That has the effect of denying commanders information many feel crucial to determining suitability for a variety of assignments.

There has been a tendency to misuse the tests and categorize or label soldiers, the Army said, with the result that "many dedicated, effective soldiers have been improperly demeaned, either unknowingly or maliciously."

Whatever misuse there may have been, one of the Army's own important, internal studies concluded that the test scores are helpful in measuring soliders' abilities to perform.

"There is evidence that these indicators do in fact measure potential for military performance (not precisely, but not trivially either) and it would be imprudent to ignore them in the absence of other measures," the study by the Army's human resources development directorate at the Pentagon concluded last year.

Three of every four commanders in the field view the influx of such "low ability" soldiers as problems in their units, the same study noted. Most commanders think the problem is becoming more severe.

Training and discipline problems involving such recruits are increasing.

Although the Army is rewriting its training manuals to the 7th-grade reading level, nearly one of every three recruits still has trouble reading them.

The Army concedes that 4 percent of its recruits are functionally illiterate—with reading and arithmetic skills at or below the 5th-grade level. Another 2 percent speak foreign languages and require special instruction in English before they can be trained.

In a survey of more than 3,000 officers last year, more than 84 percent considered junior NCO leadership to be the No. 1 problem. Another 83 percent thought low ability personnel also was a serious problem.

The Pentagon is quietly planning to replace the current series of recruit entrance tests with new exams, effective Oct. 1, which are designed to cut back on the number of low mentality recruits taken into the armed forces. But they may also make recruiting goals even harder to achieve.

"It's going to be a disaster. Forty percent of our market will go up in smoke," one discouraged recruiter said. "There are areas where we might as well close the station. There's some areas where you're doing good to find one Category IV out of 10 prospects."

The perceptions reflected in the Army's recent surveys are based on soldiers' current performance in the field, not on how they scored on recruit exams. Although the Army's leaders have downplayed the value of the recruit tests, they are having more difficulty defending similarly low scores on current job proficiency tests which have been no less controversial.

Those tests, called Skill Qualification Tests, have been given to thousands of soldiers since 1977. The results in many job categories indicate many soldiers don't know their jobs—from driving trucks to rigging parachutes—which may be a direct outgrowth of the influx of low mentality recruits.

This summer, Sen. Sam Nunn, D-Ga., and four colleagues from the Senate Armed Services Committee, accused the Army's civilian leaders of covering up a "significant deterioration" in the quality of the Army by scrapping as invalid some SQT scores because of high failure rates.

Nunn was so incensed that he told fellow committee members during a closed meeting on Aug. 21 that he is considering blocking Army general officer promotions until the Army stops "lying at all levels" about readiness and manpower.

Army Secretary Alexander was as defensive about that criticism as he was over the recruit scores.

"Any fair reading of Skill Qualification Test scores demonstrates beyond a shadow of a doubt that more and more soldiers each year are better able to perform their military missions," he said. "This is why SQTs were put into place; so that we could know where our training deficiencies were and seek to correct them.

"The evidence shows, as greater numbers pass these tests each year, that our soldiers are learning their jobs."

What he didn't say was that the Army has changed the concept of its testing, from emphasis on written exams to actual field performance, which has influenced the passing rate. But even that has not always helped.

An analysis of the results of every job proficiency test administered by the Army since testing began shows only 42 percent of 1,600 Hawk missile crewmen passed SQTs when first tested in 1977. Another 1,300 were tested in 1979, and the passing rate improved to 65 percent.

Test results from 1980 show 100 percent passing. But only eight missilemen were tested.

In 1977, the Army tested more than 45,000 infantrymen—one of the most basic, yet most critical Army jobs—and 70 percent passed. Yet in 1978, nearly 52,000 were tested and only 69 percent passed. The following year, another 31,000 were tested, and still only 70 percent passed.

Artillerymen have scored even lower. In 1979, only 57 percent of nearly 26,000 cannon crewmen passed their job tests. This year, another 3,900 were tested, and only 15 percent passed.

In one of the few jobs where significant numbers were tested every year—military policeman—the results have shown an overall decline, from 74 percent in 1977 to 55 percent this year.

Many military policemen are used today more as security guards than police, one retired Army sergeant said. "Most of these guys don't ever see anything but a hunk of barbed wire fence or an ammo bunker," he said. "They're no more than night watchmen. How are you going to learn military police work as a night watchman?"

The cumulative effect of enlisting soldiers who can't master today's sophisticated technology well enough to do their jobs is not only declining proficiency, morale and discipline, but also diminished confidence in an ability to fight.

An internal Army study found last year that soldiers' own perceptions about unit readiness and an ability to fight has declined during the last four years. The study also suggested the all volunteer force, which Army leaders have consistently said is working, may no longer be working at all.

"Most available indicators imply that unit climate (generally improving during the first all-volunteer force years) has been gradually worsening during the past two years," the report concluded. "This trend is consistent with declining motivation, morale and discipline, and has been accompanied by enlisted (junior and NCO) perceptions of decreasing unit readiness."

In a broad sense, the increasing frequency of such pessimistic reports raise questions about how the military, and especially the Army, manages its manpower and trains its troops.●

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. BOREN. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I believe that the Senator from Oklahoma had delivered a most significant speech this afternoon, and I congratulate him on doing so.

I can agree with a great deal of what he has said, but I should like to ask him about some other elements of it.

The Senator from Oklahoma is right in talking about Soviet intentions. There is no question in my mind that the Soviets do believe in world revolution by force and violence. They say so. Just as Hitler, in "Mein Kampf," indicated what he was going to do, they have indicated what they would like to do, if they had the power to do it.

It would be most naive and foolish of us not to recognize that if we permit them to get any substantial advantage in power which they could use, they will take advantage of it. There is no question about that. I am delighted that the Senator from Oklahoma has made that clear.

At the same time, I believe it does not necessarily mean that those of us who have resisted weapons systems such as the MX, the neutron bomb, nerve gas, the B-1, and so forth, are being naive about the Soviet Union. We just think those are wasteful, ineffective, and counterproductive investments, that they are highly inflationary at a time when our economic strength is important to our military strength, and that they will not do the job they are supposed to do. The cruise missile is an effective system. On the other hand, the B-1 bomber makes no sense.

With respect to pay, we certainly have to spend more in order to get people who are competent to come into and stay in the military service. I agree with that wholeheartedly.

What this Senator has done over the last 10 years is to have a hearing every year before the Joint Economic Committee, of which I am chairman. We have the CIA and the Defense Intelligence Agency testify on the military and economic strength of the Soviet Union and China compared to the economic and military strength of the United States. They are coming in again next week. It will be an executive session. We have it off the record because much of what they say is classified. They have said consistently that we are ahead of the Soviet Union in almost every technological respect.

I challenge the Senator from Oklahoma or anybody else to say where their technology is better than ours. It is not.

Furthermore, the best evidence I have

now is that the attempt to compare their military spending with ours, by saying that if we try to reproduce the Russian military with American dollars, it would cost 50 percent more than we spend on our military, is wholly irrelevant, because they have 4.2 million people in the military. If we paid them American pay, it would cost a great deal more. By that standard, the Chinese military would be more powerful than the Russian and the American combined. So that comparison does not stand up.

What I am trying to say to my good friend from Oklahoma is that he has made a significant statement, a very good statement, and I agree that the Soviet Union will take advantage of us if they can. However, those of us who resist some of these weapons systems are not being naive. We just do not think they work.

Technologically, we are ahead. We are not behind. The Senator argues that we are behind in strategic weapons. We have more warheads than they have. We have a submarine program with not as many submarines as they have, but our missiles are more accurate and more reliable and are far more ready.

It is hard to argue that the Soviet Union is ahead of us strategically and in conventional forces and that, therefore, we have to have a huge military buildup in order to stand up to their obvious intention, if they can do so, to achieve world revolution.

Mr. BOREN. Mr. President, I have not said that they are clearly ahead of us in all these areas. I have said that I do not believe we have been progressing at the rate at which we should, both in the strategic and conventional areas.

I believe it is clear that if we allowed the present trend lines to continue, they very well could surpass us. In fact, in certain geographical areas of the world—Afghanistan and the East, for example—where, by reason of their geographic location, they are given some advantage, we have the need to improve our position, particularly in terms of conventional strength and our presence in those areas, with supply bases and with rapid deployment forces and others.

I hope the Senator from Wisconsin does not take what I have said in any personal manner, because I believe there is room in this area, as there is in the nondefense area, for careful scrutiny of every expenditure, and there should be.

The Senator from Wisconsin knows that I support strongly his efforts to scrutinize all expenditures in the military and nonmilitary areas.

Mr. PROXMIRE. I say to the Senator that I welcome that very much, because, as the Senator pointed out, there is an overwhelming public sentiment in favor of strengthening our military force. However, there is no question that there is substantial waste in the military, as there is in every other Federal program; and we should not hesitate to make judgments as to whether an enormously expensive system is wasteful.

Mr. BOREN. The Senator and I agree in some areas and disagree in others—for example, on the question of binary gas, where I felt that before we start to produce more, we should develop our own defensive capabilities toward it. So there have been occasions when we have agreed and when we have disagreed.

However, we have to put proper emphasis on our conventional strength, and that is one of the thrusts of what I have said today, as well as looking at a strategic balance. It will do us no good to continue to develop complex weaponry, the strategic systems, even new pieces of conventional equipment, if we do not have the personnel to use it and to maintain it. We saw this very clearly in terms of Iranian capability during the upheaval there. It will do little good unless we have the people with the knowledge to use this equipment.

So there are areas in which we disagree and there are areas in which we agree with respect to placing priorities and getting the most out of every dollar in defense and nondefense areas.

Mr. President, I have taken the time today, from the schedule of the Senate, to make these remarks because I am sincerely concerned.

The articles written by Mr. Taylor and published during the last 3 weeks point out that six of our combat divisions in this country are not ready. When our rapid deployment forces show shortages in critical areas of supply and equipment, I believe there is reason for every Member of this body to be concerned and reason for us to renew our dedication to trying to remedy the weakness we clearly have in critical areas so far as our military capability is concerned.

Mr. President, I thank my colleagues for allowing me this time to present these views.

Mr. MATHIAS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. RIEGLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. EXON. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The reservation is heard.

Mr. EXON. May I inquire from the Senator from Tennessee——

The PRESIDING OFFICER. If the Senator will suspend, the Chair has been advised that a Member cannot reserve the right to object in terms of a call to suspend the quorum and must either object or not object.

Mr. EXON. I object to the suspension of the quorum call.

The PRESIDING OFFICER. Objection is heard.

Mr. SASSER. Mr. President, I might say to the Senator from Nebraska——

The PRESIDING OFFICER. The Chair would advise that a quorum call is in progress and, therefore, debate is not in order and the clerk will continue calling the roll.

The legislative clerk continued the call of the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. MATHIAS. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the call of the roll.

The legislative clerk continued the call of the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

TVA IS BUILDING EXCESS GENERATING CAPACITY

Mr. SASSER. Mr. President, accelerating TVA electric rates are taking a toll on the economy of the Tennessee Valley region.

Recent figures indicate that the valley's economy is growing at a much slower rate than the rest of the Nation and many people believe that the escalating cost of TVA electricity is a contributing factor to that slower growth.

Let me cite some of these examples.

During the period of 1973 to 1979 industrial electric prices in the valley grew at a rate of 13.4 percent, using 1972 dollars and price levels as a base. During this same period the national industrial electricity prices were increasing only 7.6 percent. In other words, the cost of electricity to industry in the valley increased at a rate almost twice as fast as the national average.

At the same time the valley economy grew at a much slower rate. While the gross national product of the country increased 2.5 percent during this 7-year period, the valley regional product increased only 2 percent.

In terms of jobs, employment increased in the Nation by 3.4 percent. Jobs increased in the Southeast at a 3.2-percent rate. But in the valley, jobs grew at only a 1.9 percent rate.

I ask unanimous consent that three tables outlining these trends be included in the RECORD, immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SASSER. Mr. President, this trend cannot continue. The people of the valley are suffering from the oppressive weight of high electric bills.

Certainly the cost of operations is going up, but the people of the valley have a right to wonder why TVA rate increases are outstripping the rest of the Nation. This brings to mind legitimate questions regarding the efficiency of TVA's power program.

I have been working closely with the General Accounting Office for the past several years, in an effort to monitor TVA's power program. Although this program is self-supporting and does not come before the Congress for funding, I believe that a Senator from the valley has a special obligation to closely follow TVA issues and developments, and make

recommendations and observations where appropriate.

Today I would like to update the Senate on the status of two ongoing GAO investigations of TVA.

Following numerous reports of problems at TVA to the nationwide fraud hotline which I established at the General Accounting Office almost 2 years ago, the GAO set up a permanent office in Knoxville.

In November the GAO will issue a letter report outlining problems which exist with materials management at TVA construction sites. I believe GAO will have several recommendations to the TVA regarding methods of tightening up what appears to be rather lax security procedures at TVA facilities.

Next year, in late February, the GAO should have completed the first comprehensive study of TVA's coal procurement activities. Since the cost of coal represents more than half of TVA's total direct operating expenses, it is important that the fossil fuel procurement program be as efficient as possible. Therefore, I believe this particular GAO report will be a very valuable tool in the oversight of TVA coal buying and usage. Should the GAO report reveal substantial recommendations, I plan to hold public hearings on TVA's coal policies.

Today, however, I would like to concentrate on one aspect of TVA's cost of operations—its massive nuclear powerplant construction program. Next year, TVA's interest costs will reach the $1 billion mark—primarily debt service on the bonds issued to finance powerplant construction. According to TVA figures the increase in interest costs accounted for a third of the most recent rate increase.

Because of the enormous costs of these nuclear generating facilities, there should be clear and convincing proof that these powerplants are needed for future generating requirements before construction is undertaken. Otherwise they are an unnecessary drain on the ratepayers and artificially increase the rates.

On February 15, 1979, during hearings of the Senate Budget Committee which I chaired in Knoxville, I closely questioned TVA officials regarding GAO's allegations that TVA might be overbuilding its nuclear generating capacity, and that the agency's load forecasts were 17 to 40 percent too high.

TVA vigorously objected to the GAO report and my conclusions. Yet several months later, the agency announced it was deferring four of its nuclear units, an action which indicated that TVA had revised its load predictions and had realized it was indeed overbuilding its capacity.

Earlier this year, during hearings of the Senate Subcommittee on Energy and Water Development Appropriations, I again raised questions regarding TVA's demand forecasting. TVA testified that it was implementing a comprehensive corporate planning system which should improve the process.

However, despite these improvements, it appears TVA is still building more powerplants than it needs to serve its customers.

Even with the deferral of the four units, TVA still may have an excess capacity of 40 percent and some predictions indicate that it could reach 45 to 50 percent by the mid-1980's. I am asking GAO to look into these figures to see if the excess capacity is, indeed, that great. If it is true, this is a very serious situation for the average TVA ratepayer. It means that ratepayers are paying for powerplants today that may not be needed tomorrow. It means that at least some of the rate increases may have been unnecessary.

Officials at TVA have been hoping for a 24-percent reserve margin—which is roughly in line with other utilities. But inaccurate demand forecasts have misled TVA into overbuilding at the ratepayers expense.

I am today announcing a renewed investigation into TVA's demand forecasting and related nuclear construction program. I would anticipate this investigation will lead to hearings on the subject during November. I feel the public should be made aware of this situation. The officials of TVA should answer in public session why the 1978 GAO report recommendations have not been fully implemented and why the unnecessary construction program has been undertaken.

Because TVA has failed to respond promptly to the recommendations of myself and GAO, the people of the valley may have to pay the price for years to come.

What can now be done to improve the situation?

Will TVA be forced to cancel some of its projects?

Should TVA export power to utilities outside the service area?

Should TVA consider phasing out some of its older coal-fired plants in an effort to reduce capacity?

These are not easy questions, but my hearings will fully explore them with TVA officials and the public.

Many suspect that TVA has made some serious misjudgments. This excess capacity could cost the ratepayers perhaps billions of dollars unnecessarily.

I hope that my investigation and hearings will shed some light on this matter and result in a more realistic approach of the TVA to its electric power demand forecasts.

EXHIBIT 1

COMPARISON OF GROWTH—ELECTRICITY CONSUMPTION AND INDUSTRIAL ELECTRICITY PRICES, TVA VERSUS UNITED STATES

Period	TVA growth rates (percent)			U.S. growth rates (percent)	
	Consumption		Industrial price, 1972 dollars	Consumption	Industrial price, 1972 dollars
	Less DOE	Total		total	
1960–70	8.2	4.1	0.6	7.4	−3.0
1970–73	5.2	5.6	3.8	7.0	2.2
1973–79	2.1	1.6	13.4	3.4	7.6
1980–90	1.9	2.6	2.3	[1] 2.3	[2] 4.1
1990–2000	2.2	1.4	1.6	[1] 2.6	[2] .9

[1] Wharton.
[2] DRI.

GROSS NATIONAL PRODUCT AND GROSS REGIONAL PRODUCT

	Gross national product (constant dollars)				Gross regional product (constant dollars)			
	1981 forecast		1980 forecast		1981 forecast		1980 forecast	
	Billions (1972 dollars)	Growth rate (percent)	Billions (1972 dollars)	Growth rate (percent)	Millions (1972 dollars)	Growth rate (percent)	Millions (1972 dollars)	Growth rate (percent)
1970	1,075.3		1,075.3		23,085.3		23,085.3	
1975	1,202.3	2.3	1,202.3	2.3	27,344.1	3.4	27,344.1	3.4
1980	1,414.7	−1.2	1,431.5	.5	31,902.6	−.1	31,566.6	.4
1981	1,426.2	.8	1,473.0	2.9	32,009.0	.3	32,721.1	3.7
1985	1,611.4	3.1	1,651.5	2.9	36,400.4	3.3	37,548.2	3.5
1990	1,859.0	2.9	1,910.8	3.0	41,009.5	2.4	44,504.0	3.5
1995	2,134.3	2.8	2,204.4	2.9	47,035.2	2.8	52,116.1	3.2
2000	2,450.6	2.8	2,558.0	3.0	54,350.9	2.9	61,079.0	3.2
1970–80		2.8		2.9		3.3		3.2
1973–79		2.5		2.4		2.0		1.8
1980–90		2.8		2.9		2.5		3.5
1990–2000		2.8		3.0		2.9		3.2
1980–2000		2.8		2.9		2.7		3.4

COMPARISON OF EMPLOYMENT GROWTH—TVA VERSUS SOUTHEAST VERSUS NATION

Period	Manufacturing employment growth rate (percent)		
	TVA region	Southeast[1] less TVA	Nation
1960–70	4.4	3.2	1.4
1970–73	4.8	3.4	1.3
1973–79	.4	1.0	.7
1980–90	1.2		.5
1990–2000	.3		.1
	Total employment growth rate (percent)		
1960–70	3.6	3.8	2.7
1970–73	4.7	5.4	2.7
1973–79	1.9	3.2	3.4
1980–90	1.4		1.4
1990–2000	1.2		1.1

[1] The southeast includes the States of West Virginia, Virginia, Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Tennessee.

Mr. SASSER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. MATHIAS. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the call of the roll.

The bill clerk continued with the call of the roll.

(Mr. HART assumed the chair.)

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the following staff members from the Senate Intelligence Committee staff be granted floor privileges during consideration of the conference report on S. 2597:

William G. Miller, Dennis P. Sharon, Danny Childs, Ted Ralston, Edward Levine, John Elliff, Keith Raffel, Thomas Crowley, James Roche, and Spencer Davis.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTELLIGENCE AUTHORIZATION ACT—CONFERENCE REPORT

Mr. HUDDLESTON. Mr. President, I submit a report of the committee of conference on S. 2597, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2597) to authorize appropriations for fiscal year 1981 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the proceedings of the House of Representatives.)

Mr. HUDDLESTON. Mr. President, included in the intelligence authorization bill is an amendment containing the complete text of S. 2284, the Intelligence Oversight Act of 1980. The Senate passed S. 2284 as a separate measure by a vote of 89 to 1 on June 3 of this year. The mechanism envisioned by the bill and the amendment will insure proper congressional oversight of intelligence activities. The heads of the intelligence agencies are to keep the two Intelligence Committees fully and currently informed, provide full access to information, and report significant activities before their initiation. Of course, the intelligence committees are explicitly given the duty of keeping other committees in the two Houses of Congress informed on intelligence activities that fall within their jurisdiction.

The amendment also alters the requirements of the Hughes-Ryan amendment on prior notice of covert operations. Rather than reporting CIA operations abroad to seven "appropriate" committees in a timely fashion, under the amendment in this bill the President will give prior notice of such operations only to the two intelligence committees.

It is not my intention to discuss in detail the various provisions of this amendment. The Intelligence Committee report on S. 2284, and the floor debate on June 3, including the colloquy between Senator JAVITS and myself, all of which should be regarded as part of the legislative history of this amendment, have dealt with its meaning in detail. The amendment envisions a partnership between the two branches of Government in exercising responsibility for intelligence activities. Specific responsibilities are placed on both branches. The executive branch has the duty to provide information to the two Intelligence Committees. At the same time, the Intelligence Committees have a duty—which they share with the executive branch—to protect sources and methods from unauthorized disclosure. An amendment offered by the House in conference makes clear that the committees are not to be denied information by the executive branch on the grounds that giving them information would be unauthorized disclosure.

Without doubt, passing a statutory framework for congressional oversight into law is a historic step. It is the result of a long process encompassing countless negotiating sessions.

In working out the delicate compromise which sets forth the duties and authority of both branches in the area of intelligence activities, the executive branch should be commended. I know that this issue has had the personal attention of both the President and Vice President. This bill has evolved under the guidance of the two chairmen of the Senate Intelligence Committee, my colleague from Hawaii, DANIEL K. INOUYE, and my colleague from Indiana, BIRCH BAYH, without whose judgment and political skill this plan for statutory congressional oversight would never have been brought to a successful conclusion.

Other Senators, including my friend from Arizona (Senator GOLDWATER), from Utah (Senator GARN), from Delaware (Senator BIDEN), from New York (Senator MOYNIHAN), from Vermont (Senator LEAHY), from Indiana (Senator LUGAR), and my esteemed colleague from Maryland, CHARLES McC. MATHIAS, the vice chairman of the Subcommittee on Charters and Guidelines, have had a major role in shaping this legislation. Our colleagues from the other side of Capitol Hill, including Mr. ZABLOCKI, the chairman of the Foreign Affairs Committee, Mr. BOLAND, the chairman of the House Intelligence Committee and Mr. ROBINSON, the ranking member of the House Intelligence Committee, also deserve no small part of the credit for passage of this bill.

Mr. MATHIAS. Mr. President, the oversight provisions contained in the bill before the Senate mark the culmination of a remarkable effort to restore constitutional balance to our system of Government. In the aftermath of the Second World War, the United States assumed world leadership and had to act in ways and in areas of governmental activity that our Founding Fathers had never contemplated. That created strains on the constitutional system of Government that were unique in our history. What has been achieved today marks a restoration of constitutional checks and balances in the area of secret Government activities. What the Senate approves today is, in essence, a consensus between the legislative and executive branch of how the secret activities of the United States are to be governed.

What we have constructed are understandings and procedures which respect the constitutional authorities, duties, and prerogatives of both branches. The provisions we have written provide a framework of shared responsibilities for the intelligence activities of the United States based upon a recognition that only with full information can these vital instruments of power be governed. But we have done so in such a way that respects duties and authorities of both branches.

A heavy burden has been placed on the oversight committees to insure that

secret activities are governed in accordance with the Constitution and the law. Equally important, the provisions we enact today give the power necessary to do the task effectively. The combination of fully empowered oversight committees, and carefully drawn internal guidelines can serve as an appropriate constitutional means of Government. In coming years, it may be necessary to enact a charter or statutory framework for the activities of the intelligence agencies. It may be that consensus on charters will not be arrived at for some time, but there is no question that what has been established today has given the Nation the capacity to have an effective intelligence system within the Constitution and the law.

This has been a very difficult, complicated process, but it has had the support of the Carter administration and the predecessor Ford administration. The leadership of the Senate has supported this activity in the best spirit of bipartisanship. The President, the Vice President and their chief advisers have worked closely with the Senate Select Committee on Intelligence to achieve this restoration of checks and balances and shared responsibility. Without that desire to arrive at a consensus of shared responsibility, this bill would not have been possible. We owe special thanks to the chairman of the Subcommittee on Charters and Guidelines, of which I have the honor to be the vice chairman. Senator HUDDLESTON, with patience and diligence has spent untold hours to bring this bill to its successful conclusion. The country owes him its gratitude.

I want also to commend my two chairmen who have guided the way, Senator INOUYE, our first chairman, and the present chairman, Senator BAYH. I also want to thank Senator BARRY GOLDWATER, the vice chairman who has encouraged this effort.

Mr. HUDDLESTON. Mr. President, I thank the distinguished Senator from Maryland.

● Mr. BAYH. Mr. President, today's vote on the conference report to S. 2597 marks the end of an effort begun 5 years ago when the Senate received a recommendation in the final report from the Church committee that a fully empowered oversight committee be created. The recommendation made 5 years ago was that effective oversight would require full access to information, effective monitoring of all the activities of the intelligence agencies, vigorous annual authorization procedures, and the formulation of a competent, professional, nonpartisan staff to assist the committee. With the passage of this bill today, and particularly the provisions which contain the procedures for Senate oversight previously passed by the Senate on June 3, 1980, in S. 2284, all of these objectives have been achieved.

This is the fourth annual authorization bill for the intelligence activities of the United States. The committee, through this action, has sought to strengthen all areas of intelligence activities through the allocation of funds and general policy guidance for the use of these funds. It is our view that the work of the committee in this area has, in fact, strengthened the intelligence capabilities of the United States.

I wish to commend Senator DANIEL K. INOUYE, the first chairman of the full committee and presently the chairman of the Budget Subcommittee, for the leadership and wisdom he has given to his colleagues. The procedures he established over the past 4 years have proven to be an effective guide for those who follow.

The oversight provisions of the authorization bill are of great significance. They are based on 4 years of difficult negotiation with the intelligence agencies, the House of Representatives, and the President, Vice President and his chief advisers. We have agreed upon a formula which we believe serves the duties of both branches, and fully respects the constitutional authorities and duties of both branches. The procedures contained in the oversight provisions are based on the practical experience of the past 4 years. They are predicated on the guidelines set forth in Senate Resolution 400, which have been in force since 1976, and Executive Order 12036.

Access to information and the power of the purse are the bedrock of an effective oversight system. The underlying intention of these provisions is that all the information that the oversight committee requires will be provided when the committees require it and in the detail that the particular occasion demands. There is, however, a recognition of the authorities and duties of both the Congress and the executive branch, including the constitutional authorities of each branch. There is further a duty on the part of both branches to insure that intelligence information is handled with care and discretion so that the interests of the United States are protected.

The process by which these oversight provisions have been developed is, in my view, the only way that such a consensus could have been reached. The President, the Vice President and their chief advisers, the intelligence agencies and the legislature all recognized the necessity to work together, to respect each other's duties, authorities and prerogatives in developing agreed upon procedures. Neither branch was asked to give up any powers. Rather, the guiding principle was to establish procedures by which both branches could carry out their separate and joint responsibilities.

The procedures of the oversight provisions concern four ways by which the oversight committees will receive and use information. The first is an obligation on the executive branch to keep the select committees on intelligence fully and currently informed of all intelligence acivities. This places upon the intelligence agencies the obligation to tell the intelligence committees those things which in their judgment are of importance, current interest, and useful to policymakers and to bring this information to the attention of the committees in a reasonably timely fashion.

Second, the intelligence agencies are required to provide advance information on significant anticipated activities such as covert operations and other intelligence activities specified by the intelligence committees in consultation with the executive branch. Third, in order to carry out inquiries which arise from time to time, the intelligence agencies are to furnish any information or material concerning intelligence activities that are requested by the oversight committees. Finally, they are to provide timely reports on any illegal activities or significant intelligence failures. What is embodied in these provisions is the essence of the practices and procedures that we have developed over the past 4 years.

There has been concern that a full charter has not been enacted this year. Until a comprehensive charter is enacted, these oversight procedures must serve as the principal means of governing the intelligence activities of the United States in combination with guidelines provided by the Attorney General, the Director of Central Intelligence, and the intelligence agency heads. Effective oversight that will assure that the intelligence activities of the United States serve both the foreign policy and defense needs of the country and do so within the limits of the law is now a major burden of the intelligence oversight committees. The committees now have the full means to carry out this task.

Senator DEE HUDDLESTON deserves the special thanks of the committee, the Senate and the country for his devoted leadership in bringing the oversight provisions to enactment. He and his subcommittee vice chairman, Senator CHARLES McC. MATHIAS, have worked since 1975 as members of the Church committee and as the chairman and vice chairman of the Subcommittee on Charters and Guidelines to write oversight provisions that would have a broad consensus in the legislative and executive branches. They deserve our gratitude for achieving success in this very difficult task. They have spent hundreds of hours in negotiations. They have led us in dozens of discussions with the President, Vice President and other officials in the executive branch repeatedly over the past 4 years and have done so with patience and determination.

And finally, I want to take this occasion to express my gratitude to the vice chairman of the Select Committee on Intelligence, my good friend, Senator BARRY GOLDWATER. I have been very fortunate to have been able to work with Senator GOLDWATER over the 4 years that the Select Committee on Intelligence has been in existence. For the past 2 years we have shared the burden of the leadership of the committee's activities. I want to say that his advice and counsel have served the committee and the Senate well. With his help we have been able to conduct the committee's work in a spirit of nonpartisanship. The important work of the committee requires no less. Senator GOLDWATER's commitment to making the Select Committee on Intelligence an effective instrument of oversight of the Nation's intelligence activities has been a major reason why the committee has been successful thus far in carrying out its mandate.

His long experience in the Government of the United States has been an invaluable help. His unfailing good humor has lightened many occasions that were very difficult indeed. I know all the members of the committee would agree with me that we have been very fortunate to have BARRY as vice chairman. Speaking personally, our friendship has deepened even though we may approach some issues from very different perspectives. In these overriding matters of vital importance to the security of our country, I could ask for no firmer colleague.●

● Mr. INOUYE. Mr. President, the Intelligence Oversight Act of 1980, which has been approved in conference as an amendment to the intelligence authorization bill, will, I am sure, become known as "the Huddleston amendment," in recognition of Senator DEE HUDDLESTON's tireless and effective leadership since 1976 in guiding this landmark legislation through Congress. Along with the rest of the Select Committee on Intelligence, I salute DEE HUDDLESTON for his unflagging efforts and congratulate him on this important accomplishment.

The Huddleston amendment will make the intelligence community function more efficiently and securely by repealing Hughes-Ryan and reducing reporting of intelligence activities to two committees instead of eight. In addition, this legislation continues the significant consultative role of the intelligence oversight committees of Congress by requiring advance notice of significant intelligence activities and access to all information.

The Huddleston amendment also provides for a more "limited prior notice" in those cases in which the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting the vital interests of the United States. For these cases, the President shall limit prior notice to the chairmen and ranking minority members of the House Permanent Select Committee and the Senate Select Committee on Intelligence, the Speaker and the minority leader of the House of Representatives, and the majority and minority leaders of the Senate.

The purpose of this limited prior notice in extraordinary circumstances is to preserve the secrecy necessary for very sensitive cases while providing the President with advance consultation with the leaders in Congress and the chairman and ranking minority members who have special expertise and responsibility in intelligence matters. Such consultation will insure strong oversight, and at the same time share the President's burden on difficult decisions concerning significant activities. Because the limited prior notice provision preserves the secrecy necessary for very sensitive cases, I am of the firm belief that the only time the President has the constitutional authority to withhold prior notice to the intelligence committees would be in matters of extreme exigency. In my experience as chairman of the Intelligence Committee and as a continuing member of that committee, and after 4 years of reviewing the covert operations of our intelligence system, I cannot conceive of any circumstance which would require the withholding of prior notice except where the Nation is under attack and the President has no time to consult with Congress before responding to save the country.●

Mr. HUDDLESTON. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. MATHIAS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The Senate continued with the consideration of the bill (H.R. 7631).

Mr. CRANSTON. Mr. President, I ask unanimous consent that I may send to the desk for consideration an amendment relating to veterans' matters.

The PRESIDING OFFICER. Is there objection?

Mr. MATHIAS. Reserving the right to object, Mr. President, the Senator from California wishes to lay aside the Tsongas amendment temporarily?

Mr. CRANSTON. Yes, I would.

Mr. MATHIAS. The Tsongas amendment would then become the immediately pending business upon the completion of the Cranston amendment.

Mr. CRANSTON. Actually, I have two amendments, both relating to veterans' matters, and then we would return to the Tsongas amendment.

Mr. MATHIAS. The unanimous-consent request is that the Tsongas amendment be temporarily laid aside until both Cranston amendments are completed. Would it then be the intention of the Senator from California to put in a quorum call at that point?

Mr. CRANSTON. Yes.

Mr. MATHIAS. Under those conditions, Mr. President, I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1629

(Purpose: To increase by $31.7 million the Veterans' Administration medical care account to provide funding for 1,000 additional direct health-care personnel and for 500,000 additional outpatient visits)

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) for himself, Mr. SIMPSON, Mr. TALMADGE, Mr. RANDOLPH, Mr. STONE, Mr. DURKIN, Mr. MATSUNAGA, Mr. THURMOND, Mr. STAFFORD, Mr. HUMPHREY, Mr. TOWER, Mr. WILLIAMS, Mr. HATFIELD, and Mr. LAXALT proposes an unprinted amendment numbered 1629.

Mr. CRANSTON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 34, line 5, strike out "$5,953,268,000" and insert in lieu thereof "$5,984,968,000".

Mr. CRANSTON. Mr. President I have called up this amendment on behalf of myself and all of the other members of the Committee on Veterans' Affairs, Senator SIMPSON, Senator TALMADGE, Senator RANDOLPH, Senator THURMOND, Senator STAFFORD, Senator STONE, Senator DURKIN, Senator MATSUNAGA, and Senator HUMPHREY—as well as Senators TOWER, WILLIAMS, HATFIELD, and LAXALT.

As chairman of the Committee on Veterans' Affairs, I urge my colleagues to support this amendment to provide an increase of $31.7 million in fiscal year 1981 appropriations for the Veterans' Administration medical care account. This additional funding which can be provided without exceeding the targets in the first concurrent resolution on the fiscal year 1981 budget for function 700—veterans' benefits and services—would provide $21.1 million for an additional 1,000 badly needed direct patient-care, full-time employee equivalents and $10.6 million to restore funding for 500,000 outpatient visits that was cut on the assumption that non-service-connected disabled military retirees would be excluded from VA outpatient health-care services during fiscal year 1981.

Mr. President this amendment is supported by the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, and the Paralyzed Veterans of America. I ask unanimous consent that the letters I received from those organizations in support of this amendment be printed at this point in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE AMERICAN LEGION,
Washington, D.C. September 11, 1980.

DEAR SENATOR: This is to advise you of The American Legion's support for two amendments to H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act. These proposals are the product of deliberations within the Senate Committee on Veterans Affairs and they have been unanimously endorsed by the membership of that Committee.

The first of these amendments would delete from H.R. 7631 a rider prohibiting the expenditure of FY 1981 funds for GI Bill flight training benefits. We feel strongly that these benefits should be continued for those veterans who seriously pursue flight careers. In fact, the Senate registered its support for the concept of this program earlier in the year by approving language in H.R. 5288 designed to eliminate a recurrence of past abuses.

The second amendment would increase the VA medical care account by $31.7 million for the purpose of providing additional direct patient care personnel and restoring funds for some 500,000 out patient visits. The amount of funding requested by this amendment is not excessive. It simply seeks to restore a minimum of personnel necessary to improve the quality of health care in areas of the VA hospital system where staff levels are at the critical point. We request your support for this amendment as an expression of your commitment to the quality of VA health care.

Both of these proposals can be adopted without damaging the budget process or exceeding those targets already established by you and your colleagues. They deserve your support.

Sincerely,

MYLIO S. KRAJA, *Director,*
National Legislative Commission.

VETERANS OF FOREIGN WARS,
OF THE UNITED STATES,
Washington, D.C, September 12, 1980.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am advised that when H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act, is considered by the Senate, you will offer two amendments thereto on behalf of the entire membership of the Veterans' Affairs Committee.

The first amendment will delete a rider from the bill that would prohibit the expenditure of funds for flight training benefits under the GI Bill effective October 1, 1980. As we have stated in testimony before your Committee, the Veterans of Foreign Wars is opposed to the elimination or deduction of any earned veterans' benefit and our position in this regard is reiterated in Resolution No. 697 passed by the voting delegates to our 81st National Convention held in Chicago, Illinois last month and a copy thereof is enclosed.

The second amendment would increase the medical care account of the Veterans Administration by $31.7 million to restore funding for 500,000 outpatient visits by veteran Armed Forces retirees and increase funding for health-care personnel. Although we support this increase of $31.7 million and, for the record, we sincerely believe that to adequately provide needed health-care for those so entitled, the House-passed add-on of $85.4 million is the minimum amount that should be agreed to if the Veterans Administration is to properly and timely carry out the mandates of Congress. Our current Resolution No. 609, also enclosed, stipulates in part, ". . . that we continue our unabated efforts for an adequate budget that will insure that the health-care needs of our nation's veterans are met . . ."

With best wishes and kind regards, I am

Sincerely,

T. C. SELMAN,
Commander-in-Chief.

[Resolution No. 609]

VETERANS ADMINISTRATION BUDGET

Whereas, the Veterans Administration budget has been cut in proportion to the federal budget every year since 1975 when it was 5.1 percent to a programmed 3.4 percent in outlays in the Fiscal Year 1981 budget; and

Whereas, as a result, 7,000 hospital beds have been cut under the present Administration and 8,000 health-care personnel were eliminated or scheduled to be eliminated until through our efforts, Congress mandated the restoration of 3,800 of these positions; and

Whereas, veterans in need of hospitalization and medical care to which entitled by the laws are denied such by the VA and referred to community resources which in many instances means lining up with welfare recipients; and

Whereas, compensation increases for those with service-connected disabilities and DIC for their survivors has not kept abreast with inflation; and

Whereas, only in this election year has the President recommended a meager 10 percent increase for Vietnam veterans availing themselves of educational benefits under the GI Bill notwithstanding that the Congressional Budget Office opined they need a 20 percent increase in October, 1979 to catch-up and by October, 1980, would probably need a 30 percent increase; and

Whereas, medical programs passed by Congress and signed into law have been underfunded and under-staffed; and

Whereas, even though the F.Y. 1981 budget submitted by the President was approximately $750 million short of funding needed to meet the demand for health-care for our veteran population and adequately fund the benefit programs, the President and his Office of Management and Budget cut an additional $321.7 million; now, therefore

Be it resolved, by the 81st National Convention of the Veterans of Foreign Wars of the United States, that we continue our unabated efforts for an adequate budget that will insure that the health-care needs of our nation's veterans are met and that all other benefit programs are kept abreast with the cost-of-living.

[Resolution No. 697]

OPPOSE CURTAILMENT OR ELIMINATION OF EARNED VETERAN BENEFITS AND PRIVILEGES

Whereas, there is a growing trend toward reduction of the earned benefits and entitlements of veterans, their spouses, dependents and survivors which were explicitly promised or provided by law or regulation in recognition of the hardships and dangers of service life; and

Whereas, the erosion of the earned benefits and entitlements are detrimental to the morale of veterans, active, reserve and retired; and

Whereas, the continued erosion and reduction of earned benefits and entitlements will adversely affect maintaining an effective and efficient military force needed for the security of the United States; now, therefore

Be it Resolved, by the 81st National Convention of the Veterans of Foreign Wars of the United States, that we oppose all efforts by any individual, group, organization, government office, bureau or agency, or the United States Congress, to discriminate against a veteran, discharged under honorable conditions, or to eliminate or curtail in any manner their earned benefits or privileges.

DISABLED AMERICAN VETERANS,
Washington, D.C., September 12, 1980.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CRANSTON: On Monday, September 15, 1980 H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act, is scheduled for Senate consideration.

A matter of serious concern to the more than 630,000 members of the Disabled American Veterans is the quality of health care services that would be provided to veterans under the funding levels now contained in the measure. We find them to be inadequate.

The members of the Senate Veterans' Affairs Committee share this belief and they intend to propose a modest amendment that will, among other things provide $21.1 million for an additional 1,000 badly-needed direct patient-care personnel and $10.6 million to restore funding for 500,000 outpatient visits.

Serious concern over quality health care for veterans and recent information from the Veterans Administration revealing system-wide shortages of more than 750 physicians and nearly 3700 nurses has convinced the Senate Veterans' Affairs Committee members of the necessity for additional medical care funds.

Restoration of the $10.6 million for the 500,000 outpatient visits is related to the Senate Veterans' Affairs Committee's rejection of a proposal to divert military retirees to the Department of Defense CHAMPUS Program when it became evident that the cost to DOD would be greater than the dollars saved by the Veterans Administration.

I strongly urge, on behalf of this nation's wartime service-connected disabled veterans, that you support the amendments offered by the entire membership of the Senate Committee on Veterans' Affairs.

Sincerely yours,

STAN PEALER,
National Commander.

PARALYZED VETERANS OF AMERICA,
September 15, 1980.

Hon. ALAN CRANSTON,
Chairman, Senate Committee on Veterans' Affairs, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR CRANSTON: On behalf of the 11,000 members of Paralyzed Veterans of America, I would like to strongly support your efforts to amend H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act. These very beneficial amendments are critical if the Veterans Administration is to provide adequate, quality health care for America's veterans.

The increase of $31.7 million to the VA care needs of veterans are to be met. This medical care account is essential if the health additional funding would provide for badly needed direct patient-care personnel and restore moneys for out-patient visits. As the veteran population increase in age and places greater demands on a VA health care system, which has already been weakened by personnel shortages and reduced funding, it is extremely important that these weaknesses be corrected.

The improved out-patient services and increased staffing provided for by these amendments will allow the VA to provide quality health care services to all eligible veterans in a timely and thorough manner.

Again, on behalf of the members of Paralyzed Veterans of America, and all veterans, I strongly support your actions to increase funding for the Veterans Administration by amending H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations bill.

Sincerely yours,

GEORGE A. CONN,
National Legislative Director.

Mr. CRANSTON. Mr. President, with respect to the restoration of funding—$10.6 million—for the 500,000 outpatient visits, the committee has considered and rejected the administration's proposal to exclude from eligibility for VA outpatient health-care services those non-service-connected disabled veterans who are military retirees. During the markup on our fiscal year 1981 budget views and estimates report to the Budget Committee in March, the committee specifically rejected as unfair and unwise this exclusion of veterans who have served 20 years or longer in our Armed Forces.

If this assumption were to become VA policy, one can easily imagine a situation in which a non-service-connected disabled veteran with 30 years of service is turned away from a VA outpatient clinic while a non-service-connected disabled veteran with equivalent financial means and the identical medical condition but

only 2 years of service is accepted and provided with treatment. I fail to see the justice in this situation.

Moreover, Mr. President, the military retiree who is turned away from a VA outpatient clinic can be expected to turn to the Defense Department's CHAMPUS program for needed health-care services. Under CHAMPUS, the non-service-connected disabled military retiree will be required to pay for approximately 25 percent of the total bill for such services because CHAMPUS will not only pay 75 percent of the charges, whereas his non-service-connected 2-year-service counterpart would get his health-care services free of charge.

Mr. President, I believe I have demonstrated that this proposal makes no policy sense. Neither does it make any budgetary sense. The transfer of the military-retiree workload to DOD's CHAMPUS program would require the Defense Department to pick up the tab for approximately $15 million in increased CHAMPUS costs associated with the outpatient visits in fiscal year 1981, plus an additional $7 per claim for processing, which would necessitate either a supplemental appropriation or the diverting of funds from other high priority defense programs.

Thus, Mr. President, this cut that our amendment would restore is unfair to veterans of career service and would produce an unwise diversion of funds intended to strengthen the Nation's military posture.

Mr. President, with respect to the funding—$21.1 million—for 1,000 additional direct patient-care staff, the Committee on Veterans' Affairs continues to be very concerned about the adequacy of staffing levels—particularly with respect to health-care professionals who directly provide care in the VA medical system.

Since fiscal year 1978, when the VA was required to fund much of the October pay raise out of funds provided by the Congress for additional staff, we on the committee have been deeply involved in efforts to assure that the VA has sufficient resources to carry out its vitally important health-care mission. On October 25, 1979, a special joint hearing of the House and Senate Committees on Veterans' Affairs was held in order to investigate reports we had received that administration-imposed budgetary restraints were affecting adversely the VA's ability to provide necessary health-care services to eligible veterans. The testimony indicated that, throughout the 172-hospital system, the VA was seriously understaffed in critical direct patient-care categories. Personnel in shortest supply were reported to be physicians and nursing staff—certainly important individuals in any scheme of health-care delivery.

Since the time of that hearing, some positive steps have been taken that have helped to improve staffing in these categories and stabilize management of VA medical centers—specifically the allocation of the 3,800 FTEE's provided by Public Law 96-103 and the exemption of certain VA direct patient-care personnel from the executive branch hiring freeze. However, grim reports on health-care staffing inadequacies continue to come to the committee. VA medical centers in such diverse States as New York, Louisiana, Florida, Washington, Minnesota, the District of Columbia, and California indicate that badly needed nursing personnel could be recruited if only the money and personnel ceiling were available. In addition, a recent survey of the entire VA health-care system revealed shortages of 759 physicians and 3,665 nurses.

I also note that during my August 7, 1980, unannounced visit to the Long Beach, Calif., VA Medical Center, it was clear to me that that facility was definitely thinly staffed with regard to nursing personnel. Thus, I am convinced that the additional staff that our amendment would provide for are clearly needed and would be well utilized in the provision of care to sick and disabled veterans.

Mr. President, the $31.7 million that would be provided by this amendment would help to insure that veterans receiving health care from the VA during fiscal year 1981 are provided with quality services. Our Nation's veterans deserve nothing less.

Let me stress to my colleagues that this amendment, while exceeding the President's revised appropriations request for the VA medical care account, will leave the VA fully $281 million below the President's revised appropriations request for total appropriations for VA programs—and $117.4 million below the budget request for total VA medical programs. Moreover, Mr. President, our committee concurred in a $298 million cut by the President from his January budget for the VA—$252.2 million of that cut in health care programs.

Let me say again that this amount—$31.7 million—can be added without exceeding the targets for function 700—veterans' benefits and services—under the first congressional budget resolution for fiscal year 1981.

Finally, even with this add-on, the VA medical care account would be $59 million below the House-passed amount and $60 million below the House level in total VA medical programs.

Thus, Mr. President, this is not a budget-busting amendment. Rather, we propose a modest, though badly needed, additional amount for veterans' health care programs.

I urge my colleagues to support this amendment.

Mr. PROXMIRE. Mr. President, I recognize that my good friend from California has the votes on this amendment, so I am not going to ask for a rollcall on it. Nevertheless, I want to make my personal position clear on it.

I reluctantly oppose the amendment for two reasons, Mr. President. First, the amendment is not supported by the administration. It busts the medical care budget submitted by the administration earlier this year.

Second, it is clear that the $31.7 million that the Senator from California wishes to add to this bill to provide important medical services to veterans will be provided in conference in any event.

The bill as passed by the House contains $90,745,000 more for medical care costs than the legislation we are considering today. If we split the difference in conference, which I can assure my colleagues is the least we will do, then we will come back with a conference report that adds more than $45 million to the administration's budget request—$14 million more than is being proposed by the distinguished senior Senator from California.

On the other hand, if we pass the proposed amendment and then split the difference between the House and Senate bills, we will emerge from conference with a bill that contains about $63 million more than the President asked for in his medical care budget request—twice as much as my colleague proposes to add here today and clearly more than is needed to meet the most essential needs of the VA medical care system. At a time when we are concerned about inflation in general and soaring medical care costs in particular, this clearly is the wrong place to add nonessential resources to the President's budget.

Mr. THURMOND. Mr. President, I rise in support of the unprinted amendment offered by my colleague (Mr. CRANSTON) to the pending HUD-Independent Agencies Appropriations Act, H.R. 7631.

Mr. President, this amendment will provide an additional $31.7 million to the medical care account of the Veterans' Administration. I am pleased to cosponsor this legislation with the entire Committee on Veterans' Affairs. These additional funds will be used for basically two purposes.

First, $21.1 million will be used to employ approximately 1,000 badly needed hospital personnel. These would be nurses, doctors, and other health-care professionals that render direct care to our Nation's hospitalized veterans. A recent survey of the VA health-care system revealed shortages of 759 physicians and 3,665 nurses.

Second, $10.6 million of the proposed $31.7 million will be used to restore funding for 500,000 outpatient visits at VA hospitals. This will provide funds for outpatient treatment for non-service-connected military retirees. There was a proposal by the administration in its fiscal year 1981 budget request that recommended the termination of treatment for these veterans.

The Committee on Veterans' Affairs considered this proposal and rejected it during the committee budget markup. It is my opinion that it is unfair and unwise to eliminate care at VA hospitals to certain military retirees. The purpose of the VA is to serve veterans, and who is more a veteran than a person who has given 20 or 30 years to the military? Moreover, these veterans would not go untreated. They simply would obtain the needed health care at a Department of Defense hospital or clinic, or they would be treated under CHAMPUS—all at the Federal Government's expense. Therefore, the argument by the administration that termination of treatment for these retirees would save money is unfounded.

Mr. President, it can be argued that this amendment for $31.7 million would exceed the President's request of $5,958,582 billion in the fiscal year 1981

VA medical care account. However, this argument only emphasizes the current administration's callous and uninformed attitude toward veterans issues—especially health related issues.

I believe the current administration's grasp of VA health care issues and our Nation's veterans was clearly demonstrated by the President's recent veto of H.R. 7102. This legislation would provide authority to the Administrator of the VA to grant salary increases to much-needed VA physicians and other health care personnel. These increases would assist in stopping the attrition rate of VA physicians and assist in the recruitment of additional physicians. This veto was overridden in the House 401 to 5 and 85 to 0 in the Senate.

Mr. President, in the past 4 years the administration's requested VA budgets have dwindled in proportion to the Federal budget. In 1975, the VA's share of the Federal budget was 5.1 percent and this year, 3.7 percent. As a result of these repeated inadequate budgets, the VA has already reduced the operation of approximately 10,000 hospital beds. In 1976, the VA had 94,075 hospital beds in operation; now, there are 84,527—a reduction of 9,548 beds.

Mr. President, these actions by the administration concerning veterans health care have been done when our veterans population is the largest in history—30 million. Of this number, World War II veterans total 12.5 million and their average age is 59. As these veterans grow older, the demand on the VA health care system will surely increase and the system must be prepared to treat these wartime veterans. Now is not the time to arbitrarily cut spending in this area; rather, we must equip these hospitals with the needed personnel to treat those who served our Nation.

Mr. President, although this amendment exceeds the President's medical care account request for fiscal year 1981, it does not exceed the ceiling set by the first concurrent budget resolution; in fact, even with the adoption of this amendment to increase this account, the total VA budget would be $281 million below the President's fiscal year 1981 budget request for the VA.

Mr. President, I have letters of support for this amendment from the American Legion, Veterans of Foreign Wars and the Disabled American Veterans. For the benefit of my colleagues, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE AMERICAN LEGION,
Washington, D.C., September 11, 1980.

DEAR SENATOR: This is to advise you of The American Legion's support for two amendments to H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act. These proposals are the product of deliberations within the Senate Committee on Veterans Affairs and they have been unanimously endorsed by the membership of that Committee.

The first of these amendments would delete from H.R. 7631 a rider prohibiting the expenditure of FY 1981 funds for GI Bill flight training benefits. We feel strongly that these benefits should be continued for those veterans who seriously pursue flight careers. In fact, the Senate registered its support for the concept of this program earlier in the year by approving language in H.R. 5288 designed to eliminate a recurrence of past abuses.

The second amendment would increase the VA medical care account by $31.7 million for the purpose of providing additional direct patient care personnel and restoring funds for some 500,000 outpatient visits. The amount of funding requested by this amendment is not excessive. It simply seeks to restore a minimum of personnel necessary to improve the quality of health care in areas of the VA hospital system where staff levels are at the critical point. We request your support for this amendment as an expression of your commitment to the quality of VA health care.

Both of these proposals can be adopted without damaging the budget process or exceeding those targets already established by you and your colleagues. They deserve your support.

Sincerely,

MYLIC S. KRAJA,
Director, National Legislative Commission.

VETERANS OF FOREIGN WARS,
Washington, D.C., September 12, 1980.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, Washington, D.C.

DEAR MR. CHAIRMAN: I am advised that when H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act, is considered by the Senate, you will offer two amendments thereto on behalf of the entire membership of the Veterans' Affairs Committee.

The first amendment will delete a rider from the bill that would prohibit the expenditure of funds for flight training benefits under the GI Bill effective October 1, 1980. As we have stated in testimony before your Committee, the Veterans of Foreign Wars is opposed to the elimination or reduction of any earned veterans' benefit and our position in this regard is reiterated in Resolution No. 697 passed by the voting delegates to our 81st National Convention held in Chicago, Illinois last month and a copy thereof is enclosed.

The second amendment would increase the medical care account of the Veterans Administration by $31.7 million to restore funding for 500,000 outpatient visits by veteran Armed Forces retirees and increase funding for health-care personnel. Although we support this increase of $31.7 million and, for the record, we sincerely believe that to adequately provide needed health-care for those so entitled, the House-passed add-on of $85.4 million is the minimum amount that should be agreed to if the Veterans Administration is to properly and timely carry out the mandates of Congress. Our current Resolution No. 609, also enclosed, stipulates in part, ". . . that we continue our unabated efforts for an adequate budget that will insure that the health-care needs of our nation's veterans are met . . ."

With best wishes and kind regards, I am

Sincerely,

T. C. SELMAN,
Commander-in-Chief.

[Resolution No. 609]

VETERANS ADMINISTRATION BUDGET

Whereas, the Veterans Administration budget has been cut in proportion to the federal budget every year since 1975 when it was 5.1 percent to a programmed 3.4 percent in outlays in the Fiscal Year 1981 budget; and

Whereas, as a result, 7,000 hospital beds have been cut under the present Administration and 8,000 health-care personnel were eliminated or scheduled to be eliminated until through our efforts, Congress mandated the restoration of 3,800 of these positions; and

Whereas, veterans in need of hospitalization and medical care to which entitled by the law are denied such by the VA and referred to community resources which in many instances means lining up with welfare recipients; and

Whereas, compensation increases for those with service-connected disabilities and DIC for their survivors has not kept abreast with inflation; and

Whereas, only in this election year has the President recommended a meager 10 percent increase for Vietnam veterans availing themselves of educational benefits under the GI Bill notwithstanding that the Congressional Budget Office opined they needed a 20 percent increase in October, 1979 to catch-up and by October, 1980, would probably need a 30 percent increase; and

Whereas, medical programs passed by Congress and signed into law have been underfunded and under-staffed; and

Whereas, even though the FY 1981 budget submitted by the President was approximately $750 million short of funding needed to meet the demand for health-care for our veteran population and adequately fund the benefit programs, the President and his office of Management and Budget cut an additional $321.7 million; now, therefore

Be it resolved, by the 81st National Convention of the Veterans of Foreign Wars of the United States, that we continue our unabated efforts for an adequate budget that will insure that the health-care needs of our nation's veterans are met and that all other benefit programs are kept abreast with the cost-of-living.

[Resolution No. 697]

OPPOSE CURTAILMENT OR ELIMINATION OF EARNED VETERAN BENEFITS AND PRIVILEGES

Whereas, there is a growing trend toward reduction of the earned benefits and entitlements of veterans, their spouses, dependents and survivors which were explicitly promised or provided by law or regulation in recognition of the hardships and dangers of service life; and

Whereas, the erosion of the earned benefits and entitlements are detrimental to the morale of veterans, active, reserve and retired; and

Whereas, the continued erosion and reduction of earned benefits and entitlements will adversely affect maintaining an effective and efficient military force needed for the security of the United States; now, therefore

Be it resolved, by the 81st National Convention of the Veterans of Foreign Wars of the United States, that we oppose all efforts by any individual, group, organization, government office, bureau or agency, or the United States Congress to discriminate against a veteran, discharged under honorable conditions, or to eliminate or curtail in any manner their earned benefits or privileges.

DISABLED AMERICAN VETERANS,
Washington, D.C., September 12, 1980.

Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: On Monday, September 15, 1980 H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act, is scheduled for Senate consideration.

A matter of serious concern to the more than 630,000 members of the Disabled American Veterans is the quality of health care services that would be provided to veterans under the funding levels now contained in the measure. We find them to be inadequate.

The members of the Senate Veteran's Affairs Committee share this belief and they

intend to propose a modest amendment that will, among other things provide $21.1 million for an additional 1,000 badly-needed direct patient-care personnel and $10.6 million to restore funding for 500,000 outpatient visits.

Serious concern over quality health care for veterans and recent information from the Veterans Administration revealing systemwide shortages of more than 750 physicians and nearly 3700 nurses has convinced the Senate Veterans' Affairs Committee members of the necessity for additional medical care funds.

Restoration of the $10.6 million for the 500,000 outpatient visits is related to the Senate Veterans' Affairs Committee's rejection of a proposal to divert military retirees to the Department of Defense CHAMPUS Program when it became evident that the cost to DOD would be greater than the dollars saved by the Veterans Administration.

I strongly urge, on behalf of this nation's wartime service-connected disabled veterans, that you support the amendments offered by the entire membership of the Senate Committee on Veterans' Affairs.

Sincerely yours,

STAN PEALER,
National Commander.

Mr. MATHIAS. Mr. President, the amendment of the Senator from California does involve an extra expenditure. It is an expenditure that has been carefully weighed in the other body and is included in the House bill. I think the justification for it is clear. I think the need for it is clear. Unhappily, medical costs have risen. Therefore, I believe the Senator from California, the distinguished chairman of the Committee on Veterans' Affairs, is entirely justified in making this proposal and I intend to support it.

Mr. CRANSTON. I thank the Senator very much.

Mr. President, I move the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REPORTS ON END-OF-YEAR SPENDING

Mr. CRANSTON. Mr. President, I note with interest that section 414 of the pending measure, which is of special interest to the distinguished chairman of the Committee on Appropriations (Mr. MAGNUSON) includes provisions that would require the agencies involved and OMB to submit certain reports to the Committees on Appropriations relating to certain agency expenditures in an effort to avoid excessive and often wasteful end-of-year spending.

In my view, such reports would be of equivalent value to the authorizing committees with jurisdiction over the agencies involved. As chairman of the Committee on Veterans' Affairs, I know that such reports on the VA's end-of-year spending would be of great interest to that committee.

Was it the committee's intention to assure that copies of the reports required by this section would be provided to the appropriate authorizing committees as well?

Mr. MAGNUSON. Mr. President, that indeed was the committee's intention, for we believe that the authorizing committees should be equally aware of any excessive last-quarter spending by agencies they oversee.

Our committee report makes clear that all agencies covered by this bill would be required to comply strictly with this provision and implement the necessary management practices to carry it out. The Appropriations Committees will monitor agency performance in this regard, and I think it would be helpful if the authorizing committees were kept fully informed as to the performance of the agencies as well.

Thus, I believe it is entirely appropriate that the authorizing committees be provided copies of the reports that would be required pursuant to section 414 of the bill. I thank the chairman of the Committee on Veterans' Affairs (Mr. CRANSTON) for raising this point.

VA READJUSTMENT COUNSELING

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs and also on behalf of the Senator from Wyoming (Mr. SIMPSON), the ranking minority member of the Committee on Veterans' Affairs, I would like to discuss with the distinguished floor managers the Appropriations Committee's action to add $6 million for the VA's readjustment counseling program as described on page 97 of the committee's report on H.R. 7631—Senate Report No. 96-926—without the need for additional VA medical care appropriations.

We are very grateful to the committee and especially the Senator from Vermont (Mr. LEAHY) for carrying out this recommendation of the Veterans' Affairs Committee on behalf of this very important and long-overdue program to help Vietnam-era veterans who continue to have difficulty in making successful transitions to civilian life. We made this recommendation in our March budget reviews and estimates report and this was communicated to the floor manager in my August 15 letter and to the full Committee on Appropriations in my August 29 letter, and I ask unanimous consent that these letters be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C., August 15, 1980.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on HUD-Independent Agencies, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR BILL: This letter contains my recommendations with respect to fiscal year 1981 appropriations for the Veterans' Administration. These recommendations reflect my very strongly held view that it is extremely important to the goal of fighting inflation that every reasonable effort be made to limit Federal spending, but that we must resist any plan to deny veterans a fair and rightful share in Federal expenditures. I believe that you share this view and am deeply appreciative of your continuing cooperation in serving the needs of our veterans.

As Chairman of the Committee on Veterans' Affairs, I have worked hard to keep this Committee's budget recommendations and legislative agenda for fiscal year 1981 in line with the efforts of Congress to fight inflation by reducing Federal spending. At the same time, however, the Committee acted with great care to assure that veterans' programs would be maintained in the manner intended by the Congress—as indicated, in part, by the amounts appropriated for veterans' programs in recent years—and in a manner that is fair to those Americans who have served in our Armed Forces, particularly those who became disabled as a result of that service.

As you know, the Committee met on June 25 and, pursuant to section 3(a)(20) of the first concurrent resolution on the budget for fiscal year 1981, reported a resolution—a copy of which, along with a copy of the Committee's report that accompanied the resolution, was provided to your Subcommittee staff—that contained our recommendations for legislation to reduce fiscal year 1981 spending by $441.5 million in budget authority and $447.5 million in outlays. On June 30, the Senate passed, in title VIII of S. 2885, our recommendations to achieve these reductions by, for the most part,

(1) reducing and delaying a much-needed cost-of-living increase in G.I. Bill benefits—a recommendation made by the Committee with great reluctance;

(2) modifying—in ways designed to eliminate program abuse—flight and correspondence training programs under the G.I. Bill; and

(3) Vastly improving the VA's ability to collect delinquent debts owed to it by persons participating in VA benefit programs.

Against this background and in order to provide adequate and fair funding for veterans' programs in fiscal year 1981, I strongly urge your favorable consideration of the following recommendations:

1. Medical Care: In our Committee's deliberations to reduce spending in the area of veterans' benefits and services, we have held four principles paramount. In terms of VA medical programs, those principles are as follows:

First, the Committee believes that the reductions it has recommended from levels in the Administration's January request, including the deferred acquisition of equipment and supplies, must not be made in isolation. Such a belt-tightening effort is well advised and appropriate only if it is part of a Government-wide effort in all executive branch agencies to reduce spending in these areas.

Second, the Committee is convinced that the VA healthcare system must be protected from any reduction in personnel levels and any arbitrary restrictions on hiring. The VA health-care system has suffered severe dislocations in the past 2 years, and it cannot afford further reductions in personnel ceilings.

Third, the Committee is dedicated to assuring that there be no closing of VA health-care facilities and no reduction in the level of health-care services to which veterans are entitled.

Fourth, the Committee believes that the selective improvement and enhancement of VA health-care programs by means of new, high-priority legislative initiatives must not be abandoned.

With respect to appropriations for the medical care account, I recommend that, at a minimum, your Subcommittee provide an increase of $31.669 million. This amount can and should be provided for the medical care account without increasing the total fiscal year 1981 appropriation requested by the President for the VA and without making arbitrary reductions in other high priority areas, such as the VA construction program, as a result of a comparable amount that I recommend be saved in the readjustment benefits account, which I will describe in more detail below.

a. Increased staffing: The larger portion of this $31.7 million increment I am recommending—$21.069 million for 1,000 additional direct patient care FTEE's—is included in the House-passed bill. I strongly support this increase.

As you know, this Committee has long been concerned about the adequacy of staffing levels in the VA health-care system. Thus, on October 25, 1979, a special joint hearing of the House and Senate Committees on Veterans' Affairs was held to give both Committees an opportunity to investigate carefully reports we had received that Administration-imposed budgetary restraints were having profound adverse affects on the VA health-care system. With respect to the adequacy of personnel levels in VA medical facilities, the testimony we received painted a grim picture of a seriously under-staffed system.

However, since that hearing, some positive steps have been taken—specifically the allocation of the 3,800 FTEE's provided by Public Law 96-103 and the exemption of certain VA direct patient care personnel from the executive branch hiring freeze—that have helped to improve staffing and stabilize the management of most VA medical centers. Too many VA hospitals, however, still report severe shortages in some areas of direct patient care personnel, most notably nursing personnel.

In fact, on August 7, 1980, during an unannounced visit I made to the Long Beach VA Medical Center, it was my opinion that that hospital seemed to be thinly staffed with regard to nursing personnel. Regrettably, this situation exists throughout the VA health-care system. As I pointed out on August 1 during Senate consideration of the Veterans' Administration Health-Care Amendments of 1980 (H.R. 7102), ". . . a recent survey of the VA health-care system found . . . 3,665 full- and part-time nursing vacancies where funding and ceiling were not available but the VA facility directors concerned felt they needed nurses."

That bill, which represents another step toward improving the situation with respect to VA health-care staffing by enhancing the VA's ability to recruit and retain health-care professionals, including nurses, currently is at the White House awaiting the President's action. I believe a staffing increase is badly needed and urge that an additional $21.069 million be specifically appropriated in the medical care account for 1,000 additional direct patient care FTEE's.

b. Increased outpatient visits: The rest of the increase I am recommending—$10.6 million to restore funding for 500,000 outpatient visits that was cut in the President's revised budget—is also included in the House-passed bill.

I strongly believe that the restoration of this funding is necessary. The reduction was based on an assumed decrease in VA outpatient workload that might result if non-service-connected disabled military retirees were no longer eligible for treatment at VA facilities. I believe there is serious question about the VA's current statutory authority to make such a categorical exclusion without taking into account other factors such as the urgency of the need for health care, and I have requested the VA's General Counsel to provide a legal opinion in support of the authority to implement this budget proposal administratively.

However, even if such a change were made, I do not believe the savings the VA could realize would come close to the amount assumed by the Administration. Our Committee expressly rejected this recommendation in preparing our budget views and estimates submitted to the Budget Committee in March. Thus, if not restored, this cut will adversely affect outpatient services for veterans who are entitled under law to, and need and use, VA health care including service-connected disabled veterans, veterans 65 years of age or older, and other eligible veterans who are unable to defray the cost of private health care.

In addition, the VA health-care system has been providing, since September 1978, medical examinations to Vietnam veterans who are concerned about the possible adverse long-term health effects of exposure to Agent Orange in Vietnam. The concern of Vietnam veterans, the public, and the Congress about Agent Orange and its possible long-term health effects is great. We must do all we can to address these concerns. Vietnam veterans deserve nothing less.

I believe a very important part of ultimately resolving the Agent Orange issue is the VA's effort, which should be a high priority at every VA medical center, to provide these exams, gather and analyze data from them, and assure necessary follow-up treatment. As increasing numbers of Vietnam veterans request Agent Orange exams, particularly in areas with large Vietnam veteran populations, the VA should have the flexibility to provide Agent Orange exams without turning away other eligible veterans.

A cut in funding for outpatient visits would jeopardize this situation. To date approximately 27,000 such exams have been provided nationwide—6,811 in May and June alone. With the anticipated intensification of VA efforts to advise Vietnam veterans of the availability of these exams, it can reasonably be anticipated that demand will continue throughout fiscal year 1981.

c. Readjustment counseling program expansion: Another high-priority area in which I would urge that additional medical care funding be provided is for the VA's new readjustment counseling program for Vietnam-era veterans. I worked for 8 years to provide the statutory authority—under Public Law 96-22, which went into effect on October 1, 1979—for this very important and long-overdue program to help those Vietnam-era veterans who continue to have difficulties in making successful transitions to civilian life. During a May 21, 1980, oversight hearing which I chaired on the readjustment counseling program, I heard testimony from the Administrator, members of Vet Center counseling teams, veterans' organizations, and others in strong support of the expansion of this program.

I am very pleased with the enthusiastic and, in many areas, overwhelming response to existing centers—currently 83 are in operation and 8 more will be opened in the very near future—by Vietnam-era veterans and the communities where the centers are located. However, there are several areas of the country with large numbers of Vietnam-era veterans warranting establishment of a center—more than 20,000 Vietnam-era veterans in the appropriate catchment area—that will not be served directly on the basis of the present Vet Center sites.

In addition, our Committee strongly believes that the top leadership of the program has been stretched far too thin in terms of being able to administer the program adequately. All these points were made and documented at our May 21 oversight hearing.

This program represents a major, positive effort on the part of the Federal Government to deal responsibly and effectively with the difficulties that some Vietnam-era veterans are continuing to experience as a result of their war-time service. Our Committee believes that the establishment of the readjustment counseling program and its success in areas where Vet Centers are in operation have done much to raise the expectations of Vietnam-era veterans with respect to our National commitment to bear fully our responsibilities, as part of providing for the cost of war, as those responsibilities relate to the important readjustment needs that this program meets.

Restraining this program, from expanding to its full potential—and, thus, failing to reach thousands of Vietnam veterans who might benefit from this program—would mean adding disappointed expectations to the frustrations that have already been impeding the successful transition to civilian life for too many of these veterans.

Thus, I urge that additional resources be appropriated for the readjustment counseling program to increase the number of sites, the staffing at existing sites where warranted, and the Central Office and field administrative staff. For fiscal year 1981, the Administration has requested a total of $17,933 million and an additional 30 FTEE's for the Vet Centers. I strongly urge that an additional $6 million be provided for up to 44 additional Vet Centers, increased staffing at existing centers, and improved administrative support.

However, I do not recommend an increase in the President's request for this account for this purpose. Rather, I believe that this modest funding increase can be achieved, without increasing the overall total in this account, by reducing funds for supplies and equipment and urge that this reduction and concomitant increase be made and explicitly stated in the Committee report; also, the necessary personnel resources could be provided for this program without any overall FTEE ceiling (other than the 1,000 FTEE's I've already recommended and the House has approved) in the President's request.

2. Medical and Prosthetic Research: With respect to the research account, I strongly support the VA's request for $5.314 million—urgently needed to provide adequate support for several high-priority areas of research, such as schizophrenia, alcoholism, aging, spinal cord injury, and delayed stress—above the Administration's formal March amended request. The House did not provide this increase.

The President's January request included $134.8 million for VA research programs; however, only $129.5 million was requested for this account in the March amended budget. Prior to the submission of the budget amendments, I was assured by the Administration that it did not intend to cut the VA's research program—which the Committee views as a program that contributes greatly to high-quality patient care directly and through enhanced academic affiliations and is of substantial value to the VA's efforts to recruit and retain qualified physicians.

Thus, because I was concerned that the haste with which the VA prepared its recommendations for reductions in spending may have resulted in an unintended oversight with regard to the VA research program, I asked the Administrator, during our May 21 Committee hearing, what the Administration's position is with respect to funding the medical and prosthetic research account for fiscal year 1981. The Administrator responded, and has subsequently notified you in a June 27, 1980, letter, that OMB is agreeable to increasing this account by means of reducing the medical care account by a like amount, which the VA would accomplish by reducing the supplies and equipment object account in the medical care account by $5.314 million. I strongly urge that this increase in VA research be made in this fashion.

I would add that Public Law 96-151 requires the VA to design and conduct an epidemiological study of the long-term health effects in Vietnam veterans of exposure to Agent Orange in Vietnam. As I noted above, assuring Vietnam veterans and the public that the Federal Government is doing all it can to find answers to the questions that have been raised about Agent Orange is a matter of very high priority to our Committee.

Thus, this study must proceed as expeditiously as possible. Public Law 96-151 authorizes the appropriation of "such sums as

may be necessary" for the conduct of the study, which is estimated to require at least $5 million and three years to complete; resources for the design of the protocol for the study will be provided out of previously appropriated VA research funds.

I anticipate that a supplemental appropriation for fiscal year 1981 will be required for the conduct of this very important study and will keep you fully informed about this matter so that the necessary funds can be made available in a timely manner.

3. Medical Administration and Miscellaneous Operating Expenses: I recommend that the full amount requested by the Administration for this account be appropriated. In this connection, I would note that the House Appropriations Committee made a proposal—which the full House rejected—to reduce the Administration's request by the $4.894 million and 10 FTEE's that the Administration requested for development of health-care information systems. I am very pleased that this amount was restored by the full House and strongly urge you to retain this amount in the bill that your Subcommittee reports, thereby helping to assure that no delays will occur in the developing, and long overdue, utilization by the VA health-care system of modern computer technology.

The Congressionally-mandated 1977 study by the National Academy of Sciences, entitled "Health Care for American Veterans", included a very strong recommendation that the VA's Department of Medicine and Surgery (DM&S) develop and implement a management information system "that would meet the program planning, accounting, and management needs both of the hospitals and the DM&S Central Office" (recommendation No. 37, page 288).

Thus, because it is clear that a well-integrated information system is essential for the effective management of the VA health-care system, the VA began development of the Health Care Information System (HCIS) soon after the NAS report was submitted in 1977. At present, the Administration's support for the development of HCIS, as evidenced by the appropriations request, cannot be questioned. I cannot emphasize enough the general inadequacy of the existing information system in DM&S, a situation that add to the perpetuation of poor management practices and inefficient use of Federal funds at VA medical centers.

With respect to the small reductions proposed by the House in this account, I would note that a $240,000 (6 FTEE's) reduction is proposed in conjunction with the particular reductions that the House Appropriations Committee recommended in the VA's medical-facility construction program. Since, as I will describe in more detail below, I do not believe that the House-proposed construction program reductions are warranted in light of the need for and status of VA construction projects, I urge the restoration of the MAMOE cut proposed by the House—a cut that would hamper the VA's efforts to keep its construction program on schedule and, given the current rate of inflation, would very likely contribute to additional funding requirements in the VA construction program in future years.

4. Major Construction: Based on a thorough examination of the Administrations request for this account and my knowledge of the VA health-care system. I recommend that an appropriation of $406.814 million be made for VA major construction projects. This amount is $112.754 million less than requested.

My recommendation takes into account that six projects, each requiring more than $2 million, for which the Administration requested a total of $15.32 million and which both Committees on Veterans' Affairs now have approved, are, pursuant to our agreement this spring which you expressed in your April 14 letter, to be considered major construction projects for the purposes of Senate consideration.

The House and Senate Committees on Veterans' Affairs have approved, pursuant to section 5004(a) of title 38, United States Code, 30 of the 31 major construction projects requested by the Administration, the sole exception being the expansion of a general warehouse and supply depot at Hines, Illinois, which the Senate Committee's resolutions do not include (the House Committee approved it) because section 5004 relates only to medical-facility construction projects.

The approval of these major construction projects represents our shared judgment that, based on the best available information, these projects should go forward as presently planned by the Administration. For your ready reference, I am enclosing a copy of the Senate Committee on Veterans' Affairs' June 25 resolution and an explanatory memorandum (previously sent to you) which describes our June 25 resolution and also describes our May 1 resolution approving the Administration's request for $15 million for design and site preparation of the replacement hospital at Minneapolis, Minnesota.

You will note that this Committee's approval of the Minneapolis project does not include a recommendation as to the number of beds to be included in the new facility. Our Committee's view is that that judgment should be deferred until more information about the proposed hospital construction project at the affiliated medical school, the University of Minnesota School of Medicine, can be reviewed—particularly with respect to plans for specialized medical services in that new hospital—later this year following action by the Metropolitan Health Board, the local Health Systems Agency, in September.

Also, four of the requested construction projects—those at New Orleans, Louisiana; Temple, Texas; Tucson, Arizona; and Palo Alto, California—have been approved by this Committee only to the extent that design and site preparation funding will be required in fiscal year 1981. The Committee's action in this regard reflects its total agreement that, following careful study of the VA's needs for the proposed scope of each of these projects, all three projects are badly needed and should proceed without any delay. I would emphasize that this action in no way indicates that the Committee on Veterans' Affairs is adopting a policy of approving phased funding of VA major construction projects.

Rather, the Committee believes that it is clear that these projects will not require, for expenditure or obligation, in fiscal year 1981 the total amount of the funding requested. On that basis, the Committee approved only the design and site preparation portions of these projects, thereby reducing by $109.55 million the requirements for appropriations in fiscal year 1981—an important goal of the Congress which this Committee fully supports. Knowing of your concern—which I certainly share—about escalations in the cost of construction projects, I would suggest that perhaps an acceptable and appropriate way of assuring that the cost of these critical projects does not ultimately exceed the amount requested by the Administration in its fiscal year 1981 appropriations request would be for your Subcommittee to include specific report language stating that no additional funds above the amount requested in fiscal year 1981 for each of these projects will be appropriated for future construction requirements unless economic conditions clearly justify increases for inflation—much in the same spirit as funding limitations have been placed on the construction of the new VA Medical Center at Camden, New Jersey, and the replacement hospital at Portland, Oregon.

In addition, I would strongly urge that appropriations be made for several other major construction projects for which the VA would not receive appropriations for fiscal year 1981 under the House-passed bill. These projects include:

The clinical addition at Denver, Colorado ($42 million);

The outpatient addition, renovation, and spinal cord injury unit relocation at Miami, Florida ($26.65 million);

The research and education building at Long Beach, California ($12.171 million);

The supply depot expansion at Hines, Illinois ($8.8 million);

The 60-bed nursing home care unit and underground drainage culvert at Wichita, Kansas ($6.8 million);

The relocation and expansion of processing and distribution at Danville, Illinois ($5.6 million);

The elimination of fire and safety deficiencies at Sepulveda, California ($3.686 million); and

The warehouse and engineering building at Atlanta, Georgia ($1.54 million).

With respect to three of the projects listed—Denver, Miami, and Sepulveda—the House Appropriations Committee, on page 49 of its report on H.R. 7631 (H. Rept. No. 96-1114), stated that no funds will be required in fiscal year 1981. However, the VA has advised me to the contrary stating that it currently plans to obligate funds for each of these projects during the coming fiscal year.

The next award planned in connection with the Denver project—$2.5 million—is scheduled to be made in December 1980, at Miami the next award—$1.765 million—is scheduled for November 1980, and at Sepulveda the award of construction funding—the entire $3.686 million requested—is scheduled for June 1981. In addition, funding to initiate the Denver and Sepulveda projects was appropriated in prior fiscal years; in my view it would be highly unwise for these approved, ongoing projects to be subjected to unnecessary, inflationary delays as a result of Congressional funding actions.

I would also note that the House-passed bill would not provide appropriations for four projects—Long Beach, Danville, Hines, and Atlanta—identified by the House Appropriations Committee as being low-priority projects at the lower end of the Administration-proposed priorities. The deletion of projects on that basis, of course, does not reflect a reasoned judgment or analysis regarding the need for or value of each of the projects involved, and I strongly object to so arbitrary an approach to funding VA medical projects.

I strongly urge you to consider favorably the Administration's request for $12.171 million for the urgently-needed research and education building at the Long Beach VA Medical Center. This is a matter of immediate, personal concern on my part. As you know, $429,000 was available for the design of this project in fiscal year 1980. In my recommendations to you regarding VA appropriations for fiscal years 1978 and 1979, I stressed that the research program at the Long Beach VA Medical Center is a very major part of a meaningful affiliation relationship with the College of Medicine at the University of California at Irvine (U.C.I.)—a relationship which has grown, intensified, and greatly benefited patient care.

Indeed, as a result of my urging, your Committee specifically directed, in your report accompanying the 1978 appropriation bill for HUD and the independent agencies (S. Rept. No. 95-280, p. 69), that funding be provided for this "badly needed" research and education building. I am very pleased that funds were appropriated last year for the design of this long-planned and much-needed project and strongly urge that there be no delay in providing funds for the construction portion of the project.

It is extremely important for the VA to be able to offer potential staff members at affiliated VA medical centers with an academic environment that generates the highest quality of treatment capacity. As you know, the structural deficiencies of the present research buildings at Long Beach make a carefully controlled research environment almost impossible to maintain. This situation has had a serious adverse effect on the VA's ability to recruit and retain qualified physicians at the Long Beach VA Medical Center and has jeopardized that medical center's affiliation relationship with the U.C.I. College of Medicine.

In fact, I am advised that many first-rate professionals currently on the staff at Long Beach who hold faculty positions at the College of Medicine very likely will leave the VA if their expectation that construction of the new research and education building is moving without delay is frustrated. I strongly disagree with the House Appropriations Committee's view that this is a low-priority project and urge that the $12.171 million requested be fully appropriated for this project now.

Regarding the actual merits of the other projects involved, the storage capacity at the Hines supply depot—which serves 76 VA medical centers and 150 other governmental facilities—is approaching 100-percent utilization. Without sufficient storage space, the Government will be precluded, to a great extent, from buying certain items in bulk at discount, thereby reducing potential savings with respect to certain necessary purchases. Thus, the project is needed for the effective, economical operation of the supply system that the depot serves.

The projects in Danville and Atlanta were scrutinized carefully by this Committee as to the need for and the scope of the requested construction projects, and each was approved and included in our June 25 resolution. The Danville project would include relocating the processing and distribution service, but also would permit needed expansion of the surgery service, provide space for a 9-bed intensive care unit, and renovate the vacated intensive care area for surgical nursing bed space. The surgery and processing and distribution services at Danville now are operating in space that is only 35 percent of acceptable criteria.

The Atlanta project will bring warehouse space at that facility up to accepted criteria—space in that warehouse is currently 30 percent below such criteria—and will provide a connecting corridor between the hospital and the nursing home care unit so that patients will no longer have to move between the hospital and the nursing home care unit through a congested parking lot. I believe that the need for these projects is great and urge that the funds requested be appropriated.

In addition, the House-passed bill would reduce by $3 million the Administration's request for appropriations for the VA's advanced planning fund. However, no justification for this reduction is offered by the House. If, as both the House and Senate Appropriations Committees have directed, the VA is to improve its management of its construction program and its ability to accurately estimate funding requirements, then adequate advanced planning funds must be provided for proper development of plans for construction projects.

5. Minor Construction: I recommend that $125.134 million be appropriated for this account. This amount—which is $15.32 million less than that requested by the Administration—reflects our two Committee's agreement that the cut-off between major and minor VA medical construction projects will be $2 million. Thus, as noted above, six projects, each requiring appropriations of more than $2 million, requested as minor construction projects by the Administration are included in my recommendation for the VA's major construction account.

Beyond making that shift, I would urge that no further reduction be made from the Administration's request for appropriations for the VA's minor construction account. Any such reduction would be seriously detrimental to the VA's efforts to eliminate long-existing safety hazards, more vigorously pursue energy conservation measures, make several needed clinical improvements, and correct patient-privacy deficiencies. I am greatly concerned that delays encountered in making these kinds of modifications also have an adverse impact on the VA's efforts to maintain a level of high-quality patient care throughout the VA health-care system, thus shortchanging our Nation's sick and disabled veterans.

6. Grants for Construction of State Extended-Care Facilities: I strongly urge that $20 million—an increase of $5 million over the Administration's request—be appropriated to support the efforts of the States to provide cost-effective alternatives to VA-operated extended-care facilities.

For fiscal year 1981, the Administration requested $15 million for matching fund grants to assist the States to construct, remodel, or renovate State veterans' home domiciliary, nursing home, and hospital facilities. This is equal to the amount authorized for this program for fiscal year 1980 by Public Law 96-151 (which extended the authorization for annual appropriations for this program until September 30, 1982), although only $7.5 million actually was appropriated for fiscal year 1980.

With respect to fiscal years 1981 and 1982, Public Law 96-151 extended the authorizations of annual appropriations for "such sums as may be necessary". In light of the fact that VA-operated extended-care facilities generally are filled to capacity and that veterans' needs for extended-care services are and will be increasing rapidly, I urge you to appropriate the $20 million in order to provide more cost-effective alternatives to VA long-term care facilities. I would also note that the VA reports that it has in hand more than 20 unfunded, approvable grant applications for construction, renovation, and remodeling projects in 16 States—more than enough to make effective, economical use of the $20 million that I am recommending.

7. General Operating Expenses: With respect to appropriations for this account, I recommend an increase of $11.98 million (for 411 FTEE's) over the House-passed amount.

The major portion of the additional amount that I am recommending—$10.88 million (including 396 FTEE's)—is necessary for the administrative costs of collecting delinquent debts that the VA will incur in fiscal year 1981 in the likely event that our Committee's reconciliation resolution, passed by the Senate on June 30 in title VIII of S. 2885, the proposed "Reconciliation Act of 1980", is enacted into law. As you know, section 5 of our Committee's reconciliation resolution, in response to your strong recommendation, and a series of reports by the General Accounting Office urging Congressional action to improve Federal agency debt-collection procedures, would greatly enhance the VA's authority to collect debts owed to it by persons participating in VA benefit programs. These provisions would:

(1) require such debts to be offset from future VA benefit payments;

(2) clarify that the 6-year statute of limitations under 28 U.S.C. 2415, which pertains to collection actions by the Federal Government, does not apply to VA administrative debt-collection efforts;

(3) require the VA to charge interest and reasonable collection costs on certain delinquent amounts;

(4) require the Administrator to take steps to authorize VA attorneys to bring debt-collection suits under the supervision of the Attorney General; and

(5) authorize the Administrator, in connection with VA debt-collection efforts, to release certain information about persons determined to be indebted to the United States to consumer reporting agencies;

With the exception of the provision regarding the use of VA attorneys to bring collection suits (item (4)), similar provisions are included in the House Veterans' Affairs Committee's reconciliation recommendations and, in addition, have already passed the House in H.R. 7394, the proposed "Veterans' Rehabilitation and Education Amendments of 1980". Based on discussions with House Committee members, I am confident that all of the above-described provisions will be enacted this year.

Several departments in the VA will require additional resources—$10.43 million (including 381 FTEE's)—in order more rapidly to implement these expected new debt-collection authorities, which, according to a June 25 CBO estimate, would result in collections of $155 million in fiscal year 1981. The Office of the General Counsel will require an increase of $3.744 million (including 120 FTEE's); the Office of Data Management and Telecommunications will require an increase of $2.65 million—of which $1 million is a non-recurring hardware cost—(including 45 FTEE's); the Department of Veterans' Benefits will require an increase of $3.81 million (including 205 FTEE's); and the Controller's staff will need to be expanded by 8 FTEE's at a cost of $226,000.

In addition, $450,000 (for 15 FTEE's) is urgently required by the General Counsel's office to restore the staff resources for the currently authorized pilot project which you and I have so strongly supported—in which the VA is using its own attorneys to pursue collection actions against individuals whose debts are less than $600—that were reduced by half in the Administration's revised March budget.

8. Readjustment Benefits: With respect to the readjustment benefits account, I very much regret that the House-passed bill includes language to eliminate flight and correspondence training under the G.I. Bill. I strongly urge that this language be deleted from the bill the Committee reports. The Committee on Veterans' Affairs has considered carefully the effectiveness of these programs and has recommended, and the Senate has twice approved, that the programs be modified to limit the use of G.I. Bill benefits for such training for genuine vocational purposes and, thus, to eliminate abuses in these areas without precluding appropriate, legitimate use of these benefits. Our recommendations are included in H.R. 5288 as passed by the Senate on January 24, 1980 (S. Rept. No. 96-314, pages 55-59), and section 2 of our Committee's reconciliation resolution, which was passed by the Senate as section 802 of S. 2885.

On June 25, 1980, the Congressional Budget Office estimated that these provisions would produce cost savings of $35.4 million in fiscal year 1981. However, a somewhat modified version of this provision—which is estimated to produce a cost savings in fiscal year 1981 of $31.9 million—very likely will be enacted as part of the compromise now being developed between our Committee and the House Veterans' Affairs Committee on the pending G.I. Bill legislation.

Thus, I urge that you follow the Senate's repeated action in this area and delete the rider in the House passed bill that would totally eliminate flight and correspondence training under the G.I. Bill. Instead, I recommend that you reduce the Administration's budget request in this account by $31.9 million.

9. Compensation and Pension: Finally, I would appreciate your Subcommittee's favorable action on the Administration's pro-

posal of making a division of the compensation and pension account into three separate accounts: compensation, pension, and burial benefits and miscellaneous assistance. This division would greatly facilitate the tracking of expected reductions in pension workload, and, thus would provide a clearer view of the resource requirements of the VA's pension program as the effects of the implementation of the new pension program established by Public Law 95-588 are realized in the years ahead.

Bill, I deeply appreciate your consideration of my recommendations for veterans' programs for fiscal year 1981. Your dedication to the maintenance of appropriate levels of funding for veterans' programs is well known and greatly appreciated. I am pleased with the continued cooperation between your Subcommittee and this Committee and look forward to working closely with you toward our common goal of better serving our Nation's veterans. If I or the Committee staff can be of further assistance to you, I hope you will not hesitate to let me know.

With warmest regards,

Cordially,

ALAN CRANSTON,
Chairman.

SENATE COMMITTEE ON VETERANS' AFFAIRS EXPLANATION OF THE MAY 1, 1980, AND JUNE 25, 1980, COMMITTEE RESOLUTIONS APPROVING CERTAIN V.A. MEDICAL CONSTRUCTION PROJECTS

Pursuant to section 5004(a) of title 38, United States Code, the Committees on Veterans' Affairs must adopt resolutions approving medical construction projects involving a total expenditure of more than $2 million before appropriations may be made for them. The Administration has proposed 31 such projects for fiscal year 1981.

On May 1, 1980, the Committee approved the design and site preparation portion for the construction of a replacement facility for the Veterans' Administration Medical Center at Minneapolis, Minnesota. In this regard, the Committee notes that the Administration had requested fiscal year 1981 appropriations, in the amount of $15 million, for only that portion of the Minneapolis project. The total estimated cost of the Minneapolis project—design, site preparation, and construction—is $221.4 million.

The Committee deferred the decision on the actual construction portion of that project because, although the Committee believes there is a need for a replacement VA facility at Minneapolis, the Committee did not believe that it had received all the information it required to make a final decision on the size of the project, and, therefore, wanted to assure that the full amount for the project would not be appropriated. In this regard, the University of Minnesota Medical School, with which the Minneapolis VA Medical Center is affiliated, is also proposing a large construction project, at an estimated cost of $220 to $250 million, to replace approximately two-thirds of its inpatient facilities and specialized services. Some sharing of specialized services may be possible to reduce the cost and size of these construction projects. The local health systems agency, the Metropolitan Health Board, made the recommendation that the VA construction project for Minneapolis be significantly reduced in size. The University of Minnesota currently plans to submit its proposal for comments to the Metropolitan Health Board in September. The Committee intends to review the HSA's comments on the proposals, as well as the VA's response to the HSA's recommendations of specialized services prior to the final Committee approval of the entire amount of the project.

Based on additional information received from and discussions with the VA on the remaining 30 projects, the Committee adopted a June 25, 1980, resolution for 29 of the remaining 30 projects.

The resolution includes the approval of 25 of the medical construction projects listed therein at the total cost estimated by the VA.

One of the other projects included in the VA submission for fiscal year 1981—the expansion of a warehouse and supply depot for general VA and other federal-agency use at Hines, Illinois—is not a medical facility construction project. The Committee-approval process contained in section 5004(a) of title 38 relates only to medical facility construction. Therefore, this project does not require Committee approval.

The June 25 Committee resolution—as with respect to the Minneapolis project—includes the approval of only the design and site preparation portion of the remaining projects—those at New Orleans, Louisiana: Palo Alto, California; Temple, Texas; and Tucson, Arizona. These projects will clearly not require in fiscal year 1981 the construction portion of the funding requested, for all but Palo Alto, by the Administration. Thus, given present budgetary constraints, the Committee does not believe there is a need to appropriate unnecessary for them at this time. By approving only the design and site preparation portion for these projects for fiscal year 1981, the Committee would reduce by $109.55 million the requirements for budget authority in fiscal year 1981.

This approval of only the design and site preparation portion of these 5 projects requiring Committee approval in fiscal year 1981 does not indicate that the Committee on Veterans' Affairs is adopting the policy of approving phased funding for construction projects, a policy which has been disfavored by both the House and Senate Appropriations Committees in recent years on the basis that it leads to increased spending due to inflation in construction costs and interruptions in the construction process. Rather, this action is in response to the tight budgetary constraints under which the Congress is working this year, and the Committee believed it necessary to determine which of the larger projects would most clearly not require for expenditure or obligation in fiscal year 1981 the total amount of funds required for fiscal year 1981. On that basis, the Committee has approved only the design and site preparation portions of these five projects.

RESOLUTION OF THE COMMITTEE ON VETERANS' AFFAIRS

Resolved by the Committee on Veterans' Affairs of the United States Senate that, pursuant to section 5004(a) of title 38, United States Code:

(1) The following medical construction projects are approved at the following total estimated costs shown:

Veterans' Administration Medical Center, project, and estimated cost:

Altoona, Pennsylvania, ambulatory care addition, $10,400,000.

Amarillo, Texas, central air conditioning, patient privacy, and elimination of fire and safety deficiencies, $6,139,000.

Bath, New York, ambulatory care addition, $4,400,000.

Biloxi, Mississippi, clinical addition, $20,750,000.

Boston, Massachusetts, secondary generator and updating of interior wiring, $2,550,000.

Bronx, New York, 120-bed nursing home care unit, $11,700,000.

Castle Point, New York, relocation and replacement of boiler plant $2,800,000.

Chillicothe, Ohio, modernization, $13,700,000.

Coatesville, Pennsylvania, 120-bed nursing home care unit, $8,500,000.

Dallas, Texas, 120-bed nursing home care unit, $7,850,000.

Danville, Illinois, relocation and expansion of processing and distribution $5,600,000.

Fayetteville, Arkansas, clinical addition, $4,500,000.

Hampton, Virginia, relocation and expansion of spinal cord injury unit, $5,150,000.

Iowa City, Iowa, elimination of fire and safety deficiencies, $2,700,000.

Kerrville, Texas, 120-bed nursing home care unit, $7,750,000.

Long Beach, California, addition and renovation for expansion and supply processing and distribution, $2,550,000.

Martinez, California, education building, $2,300,000.

Memphis, Tennessee, ambulatory care addition, $9,250,000.

Miami, Florida, outpatient addition renovation, and spinal cord injury relocation, $26,650,000.

Palo Alto, California, Elimination of fire and safety deficiencies, $4,000,000.

Pittsburgh, Pennsylvania, Elimination of fire and safety deficiencies, $8,400,000.

Reno, Nevada, 60-bed nursing home care unit, $5,100,000.

Reno, Nevada, Laundry, $2,420,000.

Togus, Maine, Renovation of bed building, $5,100,000.

Wichita, Kansas, 60-bed nursing home care unit and underground drainage culvert, $6,800,000.

(2) The development of the design and the site preparation for the following medical construction projects are approved, effective with respect to appropriations in an amount not to exceed the estimated costs shown:

Veterans' Administration Medical Center, project, and estimated cost:

New Orleans, Louisiana, Expansion of clinical, outpatient, research, and education space, $4,485,000.

Palo Alto, California, Correction of seismic deficiencies, $2,000,000.

Temple, Texas, Clinical expansion, $1,830,000.

Tucson, Arizona, Clinical expansion, $1,250,000.

ALAN CRANSTON,
Chairman

ALAN K. SIMPSON,
Ranking Minority Member

COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C., August 29, 1980

Hon. WARREN G. MAGNUSON,
Chairman,
Committee on Appropriations,
Washington, D.C.

DEAR MR. CHAIRMAN, as you know, on August 21, the Subcommittee on HUD-Independent Agencies completed its markup on H.R. 7631, the bill to make fiscal year 1981 appropriations for HUD and various independent agencies, including the Veterans' Administration. As Chairman of the Committee on Veterans' Affairs, I am very concerned that veterans' programs be adequately funded in fiscal year 1981 in order to assure that the Nation can meet its commitment to those who have served in our Armed Forces, particularly those with service-connected disabilities.

In connection with the full Appropriations Committee's upcoming markup of H.R. 7631, I would like to raise several VA-related matters that are of great importance to me some of which I emphasized in the recommendations I made in this regard in my August 15 letter to Subcommittee Chairman Proxmire (copy enclosed).

With respect to the VA readjustment benefits account, I strongly urge the full Committee to delete from the bill the rider—passed by the House on July 28 and modified by the HUD-Independent Agencies Subcommittee on August 21—that would terminate flight training benefits under the GI Bill as of October 1, 1980. For the following reasons, the rider is unnecessary,

inconsistent with the Senate's recently adopted policy in this area, and a matter more appropriately dealt with in the authorization process.

As I pointed out on pages 13 and 14 of my August 15 letter, the Committee on Veterans' Affairs has carefully considered the effectiveness of flight and correspondence training programs and the Senate has *twice* passed our Committee's recommendation to eliminate abuses in these programs and limit the use of GI Bill benefits for such training for genuine vocational purposes and, thus, not preclude appropriate, legitimate use of these benefits.

I also stressed in that letter that a somewhat modified version of the Senate-passed flight and correspondence training provisions—recently reestimated by CBO to save $25.3 million in fiscal year 1981—will very likely be enacted as part of a compromise now being negotiated between our Committee and the House Committee on Veterans' Affairs on the pending GI Bill legislation (H.R. 7394).

In this regard, I would note that the fiscal year 1981 savings associated with the termination of flight training benefits included in H.R. 7631 as reported by the Subcommittee, along with the maintenance of correspondence training benefits, would be approximately $24.5 million. Therefore, assuming your Committee agrees to maintain the previously twice-established Senate position in this area, there would be no reason to change the amount of fiscal year 1981 savings assumed by the Subcommittee on HUD-Independence Agencies in connection with flight and correspondence training programs.

However, I am concerned that the bill as reported by the Subcommittee would not provide adequate funding for the VA in either the medical care account of the medical administration and miscellaneous operating expense (MAMOE) account. I strongly urge your favorable consideration of the recommendation I made in my August 15 letter to provide an additional $31.7 million in the medical care account, including $21.1 million to provide 1,000 badly-needed direct patient care personnel and $10.6 million to restore funding for 500,000 outpatient visits (which was cut based on the assumption that non-service-connected disabled military retirees would no longer be provided VA outpatient health-care services—a notion rejected by our Committee in March in connection with our budget views and estimates report for fiscal year 1981).

In addition, as I explained on page 4 and 5 of my August 15 letter, I believe that an expansion of the VA's new readjustment counseling program for Vietnam-era veterans—$6 million for up to 44 additional Vet Centers or expansions of the capacities of existing Centers—should be accorded very high priority in fiscal year 1981. This long overdue program to help Vietnam-era veterans who continue to have difficulties in making successful transitions to civilian life has generated a very large demand for assistance, and, for the reasons outlined in the enclosed letter, is definitely in need of expansion. My recommendation to provide for this expansion does not, however, entail the need for additional medical care appropriations.*

With respect to the MAMOE account, I believe that the full amount requested by the Administration for this account should be appropriated. I am especially concerned that the $4.894 million and 10 FTEE's that the Administration requested for development of health-care information systems (HCIS) be provided. My concern in this regard is discussed fully on pages 6 and 7 of my August 15 letter. In addition, I recently received a copy of the August 21 letter from the Administrator of Veterans' Affairs to Senator Proxmire (copy enclosed) which responds to the concerns raised during the Subcommittee markup with respect to the VA's initial conceptual planning of HCIS. In my view, development of system-wide modern computer technology in the VA is extremely important to the provision of quality health-care services to veterans and should not be further delayed.

Finally, in connection with our Committee's June 25 authorization of appropriations for only the design and site preparation portions of the major construction projects at VA medical centers in New Orleans, Louisiana; Temple, Texas; and Tucson, Arizona, I would note that our Committee provided this limited authorization for these three projects because we believed it was necessary to reduce the overall VA fiscal year 1981 budget authority requirement in order to help ensure adequate funding for the medical care account.

However, because of the additional budget authority that would now be available under the Subcommittee reported bill as a result of the sizable reductions in the readjustment benefits account ($155 million of which is for anticipated savings from vigorous VA implementation of new debt collection authorities—passed by the Senate in title VIII of S. 2885, the proposed "Reconciliation Act of 1980", provisions which will very likely be enacted in the pending GI Bill legislation, H.R. 7394), our Committee determined that it was no longer desirable to withhold approval of the construction portion of those three projects for FY 1981 appropriations, and, on August 26, our Committee authorized the construction portion of these three projects ($108.435 million in budget authority). I sent you a copy of the resolution on that date (copy enclosed).

I greatly appreciate your consideration of the recommendations I have made in this letter.

With warm regards,

Cordially,

ALAN CRANSTON,
Chairman.

VETERANS ADMINISTRATION,
Washington, D.C., August 21, 1980.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on HUD-Independent Agencies, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to take this opportunity to provide you with information on the current status of certain priority initiatives concerning the Veterans Administration's Automatic Data Processing (ADP) activities. Of particular importance is our investment in health care activities, and the establishment of certain controls we have placed over the acquisition of all ADP hardware and software.

In the area of health care, initiatives are being pursued through a systems approach. This approach to a VA Health Care Information System (HCIS) is a planning process approved by the Office of Management and Budget which encompasses both a long term phased solution to needs for ADP services in all VA facilities and interim, or short term, solutions to give us the capability to provide critical ADP support for current and pressing health care delivery system needs.

In this HCIS initiative, we have worked very closely with the Office of Management and Budget (OMB) to assure that our strategy is in compliance with the requirements of OMB Circular A-109. In this regard, we have entered Phase II of the A-109 process with the completion of the first phase of a study of computer-based health care information systems in the private sector, and the first phase of a management plan and strategy for Health Care Information Systems acquisition. I have enclosed a copy of the acquisition strategy and plan (Enclosure No. 1). All of these studies are available if required.

In addition, and also in accordance with OMB guidance, we have assured user involvement in the formulation of requirements and user accountability with respect to the accuracy of those requirements. Five user committees have formulated functional requirements for specific systems, and a sixth user group has insured completeness of system interrelationships. We are enclosing copies of each user generated functional requirement document (Enclosure No. 2). The VA is also exchanging information and ideas with the Department of Defense and the Department of Health and Human Services, through the established channels of the Federal Health Resources Sharing Committee.

The $4.9 million provided by the House action on the 1981 Medical Administration and Miscellaneous Operating Expenses appropriation request is proposed for two uses. $3.6 million will be used to complete the OMB directed consultant studies and to support 10 employees for development of the Health Care Information System. The purpose of one of these studies is to obtain specific information about computer systems, in the private sector, which might be implemented in VA Medical Centers. Another will provide technical assistance for additional Functional Requirements Documents, including radiology and dietetics. A third will provide continuing assistance to the Program Manager in meeting the A-109 requirements. A fourth will complete the information systems study in specific VA Medical Centers. A final study will provide us with a costing methodology for the HCIS planning process.

The remainder, $1.3 million, is proposed for related pharmacy systems. This would require these funds to be provided in the Medical Care appropriation. Our interim solution to ADP support for health care includes extension of the VA-based pharmacy system now operating in District No. 26. This extension is required to support unit dose systems at VAMCs. As was expressed in testimony earlier this year, the pharmacy losses are high and cannot be controlled without a pharmacy computer system.

To complement this system the VA has requested $900,000 and (10 employees) from the allowance provided by the House for the General Operating Expenses appropriation to partially restore funding and employment to provide technical support for the Health Care Information System effort. This would provide for the development of a management plan, a mission need statement, Request for Proposals, and technical support for the studies.

The House action on the 1981 General Operating Expenses appropriation request added $900 thousand and 43 employees to implement functional medical (non-HCIS) computer systems. We have requested that $700,000 and 33 employees be allowed to permit the VA to pursue a prudent and systematic approach to interim health care delivery support pending development of the long-range Health Care Information System program. As noted previously, $900,000 and 10 employees are proposed for the Health Care Information effort.

The effective control of ADP resources, in an agency as complex in scope and size as the VA, requires that management at the highest level participate in the planning and decision-making process. In recognition of this fundamental requirement I have established a new management policy for VA automated data processing. I have provided this for your information in Enclosure No. 3. In summary, this policy provides for the following:

I am chairing the ADP Review Group and the Deputy Administrator is serving as vice chairman.

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*On page 5 of my August 15 letter, I proposed that this point be explicitly stated in the Committee report.

Department and Staff Office Heads serve as principal members of the ADP Review Group.

The ADP Review Group provides guidance and establishes priorities through a formal planning process which will allow for orderly and comprehensive procedures for future procurement actions on a competitive basis. Because users are represented in the review group, responsiveness to their need is insured early in the process.

The ADP Review Group has the responsibility to review and approve requests from the users for new systems and modifications to existing systems when the dollar value exceeds prescribed limitations.

The ADP Review Group is meeting at least once a month to discuss and consider appropriate emerging issues. The review group also insures that approvals of systems, acquisitions and modifications are made at a high level and are based on adequate project definitions and cost benefit analysis.

All Senior Executive Service personnel where appropriate, will be required to include specific goals and objectives regarding ADP in their areas of responsibility as part of their SES performance evaluation.

The Office of Planning and Program Evaluation will monitor system acquisitions, including those covered by OMB Circular A-109, and ensure, where possible, that the VA will have the capacity to make maximum use of interrelationships (interdependence) among systems. The Office of Planning and Program Evaluation will also provide support to the ADP Review Group through appropriate studies and recommendations concerning the cost effectiveness of ADP projects and management.

The Office of Data Management and Telecommunications has been strengthened and will closely monitor the progress of all ADP work to ensure the timely completion of the projects, the quality of work, and that the cost is within the amount planned.

This policy, together with newly published Interim Issues which provide specific details on policy and procedures for the entire life cycle of an ADP system, will provide the necessary controls for improved ADP management. The VA has been criticized in the past for the lack of such controls. I have also enclosed a copy of these Issues for your information (Enclosures No. 4 and No. 5).

In summary, I believe the VA has both a very realistic plan for health care ADP related activities, and has also implemented the proper controls over all ADP projects and computer equipment acquisitions. We would be happy to provide you and/or your staff with any additional supportive documentation or provide a detailed briefing at your convenience.

Sincerely,

MAX CLELAND,
Administrator.

RESOLUTION OF THE COMMITTEE ON VETERANS' AFFAIRS

Resolved by the Committee on Veterans' Affairs of the United States Senate that, pursuant to section 5004(a) of title 38, United States Code, the following medical construction projects are approved at the following total estimated costs shown:

Veterans' Administration Medical Center projects, and estimated cost:

New Orleans, Louisiana, expansion of clinical, outpatient, research and education space, $67.65 million.

Temple, Texas, clinical expansion, $27.60 million.

Tucson, Arizona, clinical expansion, $16.00 million.

This resolution supersedes the portion of the June 25, 1980, Committee resolution relating to these projects.

ALAN CRANSTON,
Chairman.
ALAN K. SIMPSON,
Ranking Minority Member.

Mr. CRANSTON. However, Mr. President, I note that, although the report language on page 97 pertaining to this increase makes clear that the additional funds may be used for additional administrative support and up to 44 new centers, it does not explicity state that those funds may be used to enhance the capacities of the existing 91 Vet Centers—as was intended in our recommendation and, as I understand it, by the Senator from Vermont (Mr. LEAHY). The option to expand staffing at the existing centers to meet the very large demand for assistance the centers are encountering is very important. The numbers of Vietnam-era veterans going to Vet Centers for help have increased steadily over the past six months.

During the month of May, a total of 3,699 new clients came to the Vet Centers; in June the number of new clients was 3,910; in July, the number of new clients was 4,364; and in August, 5,476. According to the most recent survey of the actual workload of the program, conducted on August 28, 1980, a total of 64,528 in-person contacts have been made by Vet Center teams and a total of 72,767 telephone contacts have been made, 51,275 of which were made by family members or friends on behalf of Vietnam-era veterans.

Many Vet Centers experiencing very high levels of demand have had their staffs augmented by temporary part-time staff members who are scheduled to be withdrawn by the start of fiscal year 1981. If not corrected, this situation will directly reduce the ability of these Vet Centers to provide the needed counseling and other services.

Our March budget recommendation was to provide $6 million for 187 FTEE's, to enhance or expand existing vet centers, as well as to initiate up to 44 new ones. As I stated before, I believe it was the intention of the Senator from Vermont (Mr. LEAHY) that the $6 million he was successful in including for this program would provide the additional staff and be available for the VA to expend in the manner intended by our committee.

Mr. PROXMIRE. Mr. President, the Senator from Vermont (Mr. LEAHY) has informed me that, in fact, that was his intention in making his motion during the August 28 markup, and that is thus the intended purpose of the committee action regarding the $6 million.

Mr. CRANSTON. With respect to the 187 FTEE's, I note that section 5010 (a)(4)(A) of title 38, United States Code, requires OMB to provide to the VA the personnel ceiling for VA health-care staffing, in this instance the 187 FTEE's, for which appropriations are made. In addition, in order to insure that the VA actually receives the personnel ceiling for the health-care staff for which funds are appropriated, OMB must certify to Congress, within a specified time period, that the funded personnel ceilings have been provided to the VA.

Thus, I strongly urge the Senate conferees to do all possible to see to it that the joint explanatory statement in accompanying the conference report makes clear that the VA's readjustment counseling program is to be provided, in fiscal year 1981, an additional $6 million for 187 FTEE's—to be allocated pursuant to 38 USC 5010(a)(4)(A)—and that the additional funds and FTEE's may be used for up to 44 additional vet centers and for expansions of the capacities of existing centers, and for improved administrative support.

Mr. PROXMIRE. I agree that this is a very important program and that the VA ought to use the $6 million add-on and the 187 FTEE's to supplement staff at the existing vet centers, where warranted by demand, in order to provide the services for which they were established, as well as to staff new centers.

I also state that I will do all I can to insure that the report language outlined by the chairman of the Committee on Veterans' Affairs is included in the joint explanatory statement.

Mr. MATHIAS. Mr. President. I was pleased to support the amendment offered by the Senator from Vermont (Mr. LEAHY) in committee. We are all keenly aware of the problems we have had with OMB relative to VA positions and I certainly would agree that an explicit statement in the conference report on this issue would be helpful.

UP AMENDMENT NO. 1630

(Purpose: To delete the provision terminating the GI Bill flight training program)

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON), for himself and Mr. SIMPSON, Mr. TALMADGE, Mr. RANDOLPH, Mr. STONE, Mr. DURKIN, Mr. MATSUNAGA, Mr. THURMOND, Mr. STAFFORD, Mr. HUMPHREY, Mr. TOWER, Mr. BAUCUS, Mr. GRAVEL, Mr. WILLIAMS, Mr. HATFIELD, Mr. LAXALT, and Mr. GARN, proposes an unprinted amendment numbered 1630.

Mr. CRANSTON. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, line 24, strike out the semicolon and all that follows through "October 1, 1980." on page 33, line 3, and insert in lieu thereof a period.

Mr. CRANSTON. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CRANSTON. Mr. President, this amendment, in which I am joined by all the members of the Veterans' Affairs Committee—as well as Senators TOWER, BAUCUS, GRAVEL, WILLIAMS, HATFIELD, LAXALT, and GARN—would add no money to the pending bill. Rather it would simply delete from H.R. 7631, as reported, the fiscal year 1981 HUD-Independent Agencies Appropriations Act, a rider that would prohibit the expenditure of funds for GI bill flight training benefits as of October 1, 1980.

The reason I am asking for a rollcall is to make plain the position of the Senate, since there is a provision similar to the one we are proposing to strike out of the Senate version in the House-passed bill. We want to establish a clear record on the Senate's position on this matter for the conference.

Mr. President, as Senators may know, the complete termination of GI bill benefits for flight training has been recommended by two administrations on four occasions on the grounds that this type of training does not lead to jobs for the majority of trainees and that the courses tend to serve avocational, recreational, and personal enrichment rather than basic employment objectives. On three of those occasions, adequate justification to substantiate this assertion was not submitted to the authorizing committee—the Veterans' Affairs Committee—or to the Congress.

Indeed, the evidence we did have at those times tended to suggest exactly the opposite of that assertion. As our committee noted in submitting its recommendations to the Budget Committee in March 1979, a report that we had received from the VA on vocational objective courses indicated that the rate of employment of flight training graduates was 90.3 percent in flight-related courses—as computed by the VA itself for the purposes of approval of vocational objective courses by determining compliance with what is known as the VA's "50-percent employment rule."

Last year, Mr. President, the Veterans' Affairs Committee, in order to evaluate more fully the administration's proposals—for which an adequate factual basis had still not been provided—and to obtain more definitive data, I requested the General Accounting Office to conduct a survey to assess the accuracy of the VA's assertion as compared to its statistical data. That GAO report, published on August 24, 1979, while substantiating many of the VA's assertions with respect to this type of training, still did not—in the committee's view—present sufficient justification to terminate completely GI bill benefits for flight training.

Mr. President, I believe it would be neither justifiable nor fair to terminate these benfiets totally. It is undeniable that, for some veterans, flight training serves a legitimate vocational purpose. Indeed, flight training with GI bill benefits facilitates a more direct and successful transition from a military occupational specialty to a civilian occupation than is the case with respect to most any other occupation. Terminating benefits for flight training thus represents an unfair, meat-ax approach to reducing abuse of GI bill benefits. It would be a complete denial of a specific benefit to some veterans who we know would make appropriate constructive use of it.

Mr. President, the Veterans' Affairs Committee is convinced that the problems and failures cited by both the VA and the GAO can be curbed by provisions to modify the benefit and tighten certain aspects of the administration of the program. Such provisions were painstakingly crafted by our committee following hearings on the subject and our review of the GAO report and have been passed by the Senate twice—on January 29, 1980, in H.R. 5288, the proposed "GI Bill Amendments Act of 1980," and on June 30, in S. 2885, the proposed "Reconciliation Act of 1980."

We believe that these provisions are fully responsive to the concerns expressed by the VA, GAO, and the Appropriations Committee that some veterans have used their GI bill benefits in flight training courses for nonvocational purposes.

First, in order to carry out congressional intent regarding GI bill benefits and to help assure that the vocational-objective training programs for which GI bill benefits are used to lead to jobs for veterans, these Senate-passed provisions would strengthen the rules by which vocational-objective courses—which include flight training courses—are approved. Thus, under these bills, in order to be approved for GI bill benefits, vocational objective courses would have to demonstrate that 50 percent of those who enroll in a course complete it, and that 50 percent of those who complete it subsequently obtain their primary employment in the field for which trained.

Second, H.R. 5288 and S. 2885 would reduce from 90 percent to 60 percent the VA's share of the cost of the course and make the veteran eligible for a VA education loan which could be canceled if the veteran later becomes employed in a flight-related occupation. The measures would thus require the veteran to have a very substantial financial stake in obtaining a flight-related job and discourage use of benefits for this type of training for recreational purposes.

I would also point out that the provisions of H.R. 5288 and S. 2885 allow for considerable savings while being responsive to both the needs of veterans and the need to assure responsible expenditure of tax dollars for GI bill programs. The Appropriations Committee assumes that $24.5 million in fiscal year 1981 savings would result from the provision to terminate flight training benefits. The proposal which has twice passed the Senate for modifying the VA's flight training program is estimated by CBO to save $21.9 million in fiscal year 1981.

When incorporated into a total anticipated compromise agreement on H.R. 5288 and the comparable house measure dealing with GI bill benefits, the $24.5 million reduction is a realistic reduction in the readjustment benefits account, taking into account other savings in the administration of the GI bill that are not assumed by the appropriations committee. Our amendment would not involve any increase in appropriations for the account involved. Thus, as my colleagues can see, the rider is both unnecessary and inconsistent with the Senate's recently adopted policy with regard to VA flight training benefits.

In closing, Mr. President, we strongly believe that the substantive, programmatic, and legislative issue of terminating or modifying a VA entitlement program is more appropriately dealt with in the authorization process than in the appropriation process, and it has been dealt with responsibly and conscientiously in this instance in the authorization process.

Mr. President, for those reasons, I urge my colleagues to support this amendment.

Mr. THURMOND. I rise in support of the unprinted amendment offered by my colleague (Mr. CRANSTON) to the pending HUD-Independent Agencies Appropriations Act, H.R. 7631.

Mr. President, this amendment would delete the rider which would discontinue funding of GI bill flight training benefits for veterans not enrolled in a flight training course on October 1, 1980.

Mr. President, the current administration has requested the termination of flight training benefits for veterans for each of the past 4 years. The Senate Committee on Veterans' Affairs held hearings on this issue on June 6, 1979. The testimony indicated that termination of these benefits would be unwise and totally unwarranted. Therefore, the committee proposed legislation that would tighten certain administrative provisions and increase the veteran's share of his monetary participation in this program. This legislation has passed the Senate twice this year as part of two different legislative initiatives—H.R. 5288 on January 24, and S. 2885 on June 30. I am hopeful that a compromise on this issue and others will be reached soon by the House and Senate Committees.

Mr. President, the amendment before us to delete this rider from H.R. 7631 would not change the dollar amount that currently exists in the appropriation bill for the VA readjustment account. It only eliminates language that would prohibit the payment of flight training benefits after October 1, 1980. The Appropriations Committee has appropriated the necessary funds and the Veterans Committee has authorized the program. For these reasons, I urge my colleagues to support this amendment.

Mr. President, I have received letters of support for this amendment from the American Legion and the Veterans of Foreign Wars. For the benefit of my colleagues, I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE AMERICAN LEGION,
Washington, D.C., September 11, 1980.

DEAR SENATOR: This is to advise you of The American Legion's support for two amendments to H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act. These proposals are the product of deliberations within the Senate Committee on Veterans Affairs and they have been unanimously endorsed by the membership of that Committee.

The first of these amendments would delete from H.R. 7631 a rider prohibiting the expenditure of FY 1981 funds for GI Bill flight training benefits. We feel strongly that these benefits should be continued for those veterans who seriously pursue flight careers. In fact, the Senate registered its support for the concept of this program earlier in the year by approving language in H.R. 5288 designed to eliminate a recurrence of past abuses.

The second amendment would increase the VA medical care account by $31.7 million for the purpose of providing additional direct patient care personnel and restoring funds for some 500,000 out-patient visits. The amount of funding requested by this amendment is not excessive. It simply seeks to restore a minimum of personnel necessary to improve the quality of health care in areas of the VA hospital system where staff levels are at the critical point. We request your support for this amendment as an expression of your commitment to the quality of VA health care.

Both of these proposals can be adopted without damaging the budget process or exceeding those targets already established by you and your colleagues. They deserve your support.

Sincerely,

MYLIO S. KRAJA,
Director, National Legislative Commission.

VETERANS OF FOREIGN WARS,
Washington, D.C., September 12, 1980.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am advised that when H.R. 7631, the FY 1981 HUD-Independent Agencies Appropriations Act, is considered by the Senate, you will offer two amendments thereto on behalf of the entire membership of the Veterans' Affairs Committee.

The first amendment will delete a rider from the bill that would prohibit the expenditure of funds for flight training benefits under the GI Bill effective October 1, 1980. As we have stated in testimony before your Committee, the Veterans of Foreign Wars is opposed to the elimination or reduction of any earned veterans' benefits and our position in this regard is reiterated in Resolution No. 697 passed by the voting delegates to our 81st National Convention held in Chicago, Illinois last month and a copy thereof is enclosed.

The second amendment would increase the medical care account of the Veterans Administration by $31.7 million to restore funding for 500,000 outpatient visits by veteran Armed Forces retirees and increase funding for health-care personnel. Although we support this increase of $31.7 million and, for the record, we sincerely believe that to adequately provide needed health-care for those so entitled, the House-passed add-on of $85.4 million is the minimum amount that should be agreed to if the Veterans Administration is to properly and timely carry out the mandates of Congress. Our current Resolution No. 609, also enclosed, stipulates in part, ". . . that we continue our unabated efforts for an adequate budget that will insure that the health-care needs of our nation's veterans are met . . ."

With best wishes and kind regards, I am

Sincerely,

T. C. SELMAN,
Commander-in-Chief.

[Resolution No. 697]

OPPOSE CURTAILMENT OR ELIMINATION OF EARNED VETERAN BENEFITS AND PRIVILEGES

Whereas, there is a growing trend toward reduction of the earned benefits and entitlements of veterans, their spouses, dependents and survivors which were explicitly promised or provided by law or regulation in recognition of the hardships and dangers of service life; and

Whereas, the erosion of the earned benefits and entitlements are detrimental to the morale of veterans, active, reserve and retired; and

Whereas, the continued erosion and reduction of earned benefits and entitlements will adversely affect maintaining an effective and efficient military force needed for the security of the United States; now, therefore

Be it resolved, by the 81st National Convention of the Veterans of Foreign Wars of the United States, that we oppose all efforts by any individual, group, organization, government office, bureau or agency, or the United States Congress, to discriminate against a veteran, discharged under honorable conditions, or to eliminate or curtail in any manner their earned benefits or privileges.

Mr. PROXMIRE. Mr. President, I am happy to support the amendment by the Senator from California.

As he said, this is not an amendment that adds any money to or takes any money away from the readjustment benefits appropriation. It has no effect on the money part of the section. It simply strikes language.

In the past, the authorizing committees have not taken final action to curtail flight training benefits. Today the chairman of the Veterans' Affairs Committee (Mr. CRANSTON) assures us they will shortly take final action.

For that reason, I am happy to concur in his recommendation that we take the language out of the bill.

Mr. MATHIAS. Mr. President, as a matter of fact, the amendment of the Senator from California is precisely the same amendment I offered in subcommittee which, as the Senator from Wisconsin said, was not acted on at that time because of lack of authorization.

So, it is one I support very fully. I am glad he has brought it up at this time, with the authority of his position as chairman of the Veterans' Affairs Committee, which makes it possible for us to properly act at this moment.

Mr. CRANSTON. I thank both Senators very much.

Mr. MAGNUSON. Call the roll.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California. The yeas and nays have been ordered and the clerk will call the roll, as the President pro tempore requests.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Georgia (Mr. NUNN), the Senator from Arkansas (Mr. PRYOR), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), the Senator from Georgia (Mr. TALMADGE), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

I also announce that the Senator from Montana (Mr. MELCHER) is absent because of illness.

I further announce that, if present and voting, the Senator from Michigan (Mr. LEVIN) and the Senator from North Carolina (Mr. MORGAN) would each vote "yea."

Mr. PACKWOOD. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Mississippi (Mr. COCHRAN), the Senator from Maine (Mr. COHEN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Idaho (Mr. MCCLURE), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 66, nays 2, as follows:

[Rollcall Vote No. 428 Leg.]

YEAS—66

Armstrong	Garn	Pell
Baucus	Glenn	Percy
Bentsen	Gravel	Pressler
Biden	Hart	Proxmire
Boren	Hayakawa	Randolph
Boschwitz	Heflin	Riegle
Bradley	Heinz	Roth
Burdick	Helms	Sarbanes
Byrd, Harry F., Jr.	Huddleston	Sasser
Byrd, Robert C.	Humphrey	Schmitt
Cannon	Jackson	Schweiker
Chafee	Kassebaum	Simpson
Chiles	Laxalt	Stennis
Cranston	Leahy	Stevenson
Danforth	Lugar	Stone
Dole	Magnuson	Thurmond
Domenici	Mathias	Warner
Durenberger	Matsunaga	Weicker
Durkin	Metzenbaum	Williams
Eagleton	Mitchell	Young
Exon	Moynihan	Zorinsky
Ford	Nelson	
	Packwood	

NAYS—2

Bellmon	Long

NOT VOTING—32

Baker	Hollings	Nunn
Bayh	Inouye	Pryor
Bumpers	Javits	Ribicoff
Church	Jepsen	Stafford
Cochran	Johnston	Stevens
Cohen	Kennedy	Stewart
Culver	Levin	Talmadge
DeConcini	McClure	Tower
Goldwater	McGovern	Tsongas
Hatch	Melcher	Wallop
Hatfield	Morgan	

So Mr. CRANSTON's amendment (UP No. 1630) was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MATHIAS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILLIAMS. Mr. President, I will be supporting final passage of the Housing and Urban Development-Independent Agencies appropriations bill, but I do so only because it represents the best bill that can be achieved at this time.

Among the important provisions of this bill is funding adequate to support 280,000 additional units of section 8 and public housing. Although this level is insufficient to meet low income and elderly housing needs, it does assist a substantial number of American families and individuals who are unable to afford decent, safe, and sanitary housing.

I should advise my colleagues that this provision has been made in the face of strong criticisms of both section 8 and public housing. Unfortunately, much of this criticism has been negative, and few have offered solutions which would be innovative in terms of providing housing for low income and elderly Americans. Rather, these criticisms have sought to cut back our assisted housing programs, because they are not perfect.

However, I would like to commend the manager of this bill, the distinguished chairman of the Banking Committee. This year, he proposed a new multifamily housing initiative program to increase production and to expand decent housing opportunities for low income people. Although this body did not ultimately support that effort, my colleague from Wisconsin made a positive contribution in responding to concerns about existing housing assistance programs.

At the same time, I feel equal recognition should be given to my colleague from Utah, the distinguished ranking minority member of the Banking Committee. Although Senator GARN successfully opposed our new initiative, he has fully recognized that there are a great number of Americans who are not adequately housed, that the number is growing, and that many of these citizens will not attain shelter without our help.

The committee is to be commended for its inclusion of funding to provide for an aggregate total of 20,440 unit reservations under the section 202 program of housing for the elderly and handicapped. Assistance under this program includes health, continuing education, welfare, recreation, counseling, referral, and transportation. As the number of elderly persons without sufficient resources increases in our society, it is critical that we assure them that they will not become isolated and forced to live their remaining years in miserable circumstances.

However, I must express deep concern about the manner in which this level was achieved, because I believe that it represents a net loss for the elderly and handicapped. As I understand the committee's action, $50 million in budget authority was shifted from the section 8 rental assistance program to the section 202 program for use as loans. By making this shift, there was necessarily a reduction in the number of section 8 units that could be assisted. I think this is particularly unfortunate because the committee's action gives the appearance of giving more to the elderly and handicapped when its effect is precisely the opposite.

I am especially pleased that this bill includes funding for the third year of the congregate housing services program. This program was authorized to promote and encourage handicapped elderly and nonelderly to be able to maintain maximum independence within a home environment. It is my hope that the level in the bill will make assistance available for up to 5,200 individuals. This is a program with which I have been closely involved for many years, and one which I regard as critical to the respect and dignity of handicapped persons.

The bill, as proposed does not provide sufficient levels for the operation and maintenance of public housing authorities, nor is it nearly adequate for the troubled projects operating subsidies. I intend to support efforts to provide reasonable levels for these programs, because I believe it is critical that we not permit previous investments in this housing to be lost due to an inability to maintain them. We already suffer from wasteful levels of abandonment due to deterioration and high utility bills. A moderate investment now would avoid prohibitive replacement costs in the future.

This bill also appropriates the first funding ever for the Solar Energy and Energy Conservation Bank with which to provide grants to financial institutions for low interest solar loans and for energy conservation improvements in commercial and residential buildings. This marks an important step in our efforts for energy independence and for assisting low and moderate income persons to decelerate increasing utility costs.

In the area of community planning and development, the bill provides full funding for the comprehensive planning program and the urban development action grant program. At the same time, the bill as reported by the committee, makes a substantial cut in funding for the community development block grant program. The level is considerably less in real dollars than what the Congress authorized for the program for fiscal year 1980, and it would mean a reduction in real terms for more than 13 percent from last year's appropriation. At a time of high inflation and unemployment, city and community resources are already stretched thin. By the committee's reduction in the program, its usefulness would be diminished, and I shall support efforts to increase it.

In sum, Mr. President, and with reservations, I will vote for the bill. It is a must for on-going programs for housing and community development. It provides funding for newly authorized programs. Despite intense budgetary pressures, the bill speaks to human needs and concerns, and takes cognizance of the importance of the health of our neighborhoods and of our shelter.

VETERANS' DISABILITY COMPENSATION AND HOUSING BENEFITS AMENDMENTS OF 1980—H.R. 7511

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House of Representatives on H.R. 7511.

Mr. MATHIAS. Mr. President, reserving the right to object, I am reluctant to object, but I believe this has not been cleared with the leadership on this side of the aisle, and until I can get that clearance, I am wondering if the majority whip will hold his unanimous-consent request?

Mr. CRANSTON. May I speak one moment during the course of this objection, and I may be willing to withhold, but I would like to state, first, that this matter relates——

Mr. MATHIAS. We never oppose the veterans.

Mr. CRANSTON. Then the Senator will not oppose this.

This measure embodies a compromise agreement between the Committees on Veterans' Affairs of the two Houses. It is, I believe, a fair and reasonable compromise that was worked out after extensive discussions and negotiations. It would provide for a much-needed cost-of-living increase in the rates of compensation for service-connected disabled veterans, and dependency and indemnity compensation for survivors of veterans who have died from service-connected causes.

This has had the full approval of the Veterans' Affairs Committees of both Houses and, in effect, the approval of both bodies.

We are now simply trying to work out final passage of a measure that embodies this compromise. If this measure is not acted upon today or Monday some 2,300,000 checks containing this cost-of-living increase will not go out, and there will be a lot of innocent veterans and their survivors who will be deprived of money they need at this time. So I hope there will not be any prolonged objection to this measure at this time.

Mr. MATHIAS. I am equally hopeful there will not be any delay. It will go through the normal procedure of clearance and can be acted on promptly. But I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. CRANSTON. I would like to point out that I will bring this veterans' compensation bill up when I can. When unanimous consent is not required to bring it up, H.R. 7511 will be brought up.

Mr. MATHIAS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BAUCUS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OH, FOR MENCKEN

Mr. MATHIAS. Mr. President, the city of Baltimore recently celebrated the centennial of the birth of H. L. Mencken with a round of festivities and intellectual feasts that brought visitors to Maryland from all over the country.

H. L. Mencken, as I am sure every Member of the Senate knows, was a celebrated Baltimore journalist. For many years his columns appeared in the Baltimore Sun and delighted the readers of that great Maryland newspaper.

He also was the editor of several magazines, and was known around the world for his wit and for his political insight.

H. L. Mencken is one of the most quotable of American authors. In fact, I have frequently had occasion to quote that

line of his which says that for every problem there is a solution which is simple and easy and wrong.

H. L. Mencken's colleagues on the Baltimore Sun have obviously missed him. On Friday, September 12, they wrote an editorial entitled, "Oh, For Mencken!"

I ask unanimous consent that this editorial which appeared in the Sun on that date appear in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

OH, FOR MENCKEN!

"The Nineteenth century was the era of the novelist," James Reston of the New York Times once said. "The Twentieth is the era of the journalist." If that is true, certainly the Baltimorean whose centennial is today is largely responsible. H. L. Mencken was the most influential American journalist during his active career as a Baltimore newspaperman (1899–1948) and as magazine editor and writer. The Times described Mencken in the 1920s as "the most powerful private citizen in the United States." Walter Lippmann, perhaps the century's second most influential journalist, said Mencken had become "the most powerful personal influence on this whole generation of educated people."

Not all of that influence was due to his newspaper work. As professor William H. Nolte has pointed out, Mencken as literary critic and magazine editor probably "almost single handedly created a sophisticated reading public and did more than anyone else in paving the way for the literature that came into being in the 1920s. . . ." Then there was his scholarly "The American Language." Mencken did as much as anyone to make Americans aware that their brand of English was its own language.

We are proud that Mencken chose to live and work in Baltimore all his life and from 1906 through 1948 on The Sunpapers. Most of his Sunpapers writing was about politics (more on that in a moment) and for The Evening Sun. He wrote an almost daily column for that paper's editorial page 1911–1915 and his famous Monday Articles for the same page 1920–1938. But he also wrote regularly for The Sun, editorials, reporting and commentary. Much of this was not the wonderfully outrageous criticism of individuals, institutions and ideas for which he became internationally famous, but rather it was benign: obituary editorials of local luminaries, lengthy histories of the University of Maryland and of Johns Hopkins Hospital, etc.

That writing today attracts only historians and Baltimore buffs. His literary and cultural criticism is of interest to a limited audience. Also his work on the language. But not his political commentary. Forty years before that Reston quote was uttered, Mencken said, "We live, not in a literary age, but in a fiercely political age." He particularly enjoyed presidential politics. Mencken could lambaste a politician in a manner so fierce and stylish that people not born in the '20s today relish a Mencken attack on Warren G. Harding. Mencken lives in anthologies and is quoted in the press almost daily.

Mencken did not say, as is supposed, "There is but one way for a newspaperman to look at a politician, and that is down." That was Frank H. Simonds, but Mencken immortalized that wisdom in his "New Dictionary of Quotations." What Mencken said was, "A good politician is as unthinkable as an honest burglar." And "the average democratic politician, of whatever party, is a scoundrel and a swine." And . . . but there is too much. That style! That attitude! How we have yearned for them lately—the style while dipping into the new, dull biography of the above-mentioned great Lippmann; and the attitude while watching famous journalist Theodore White obsequiously interviewing Richard Nixon on the Today Show.

Can you imagine what H. L. Mencken would have done with a Nixon? Or a Carter? Or a Reagan? Or an Anderson? . . .

Mr. PROXMIRE. Mr. President, I am delighted the Senator from Maryland has spoken about his distinguished favorite son.

This editorial is a fascinating tribute to him.

Incidentally, I take great pride in being a politician. I have been in the Senate now for 23 years and I think those people who have said they are not politicians but who run for public office are either hypocrites or self-deluded.

For that reason, I have mixed feelings about H. L. Mencken, a marvelous man with a terrific intellect.

This editorial points out one of the difficulties I have.

He says:

Mencken did not say, as is supposed, "There is but one way for a newspaperman to look at a politician, and that is down." That was Frank H. Simonds, but Mencken immortalized that wisdom in his "New Dictionary of Quotations." What Mencken said was, "A good politician is as unthinkable as an honest burglar." And "the average democratic . . .

With a small "d," not meaning a member of the Democratic Party but a democratic politician.

Politician, of whatever party, is a scoundrel and swine." And . . . but there is too much. That style! That attitude! How we have yearned for them lately—the style while dipping into . . .

Well, I do not yearn for that kind of categorization. I must say it is good to get people who oppose the usual kind of meaningless praise of people without much distinction, but I think that Mencken went a little too far the other way, often. While I certainly honor his great intellect and his delightful wit, I must say that I was somewhat concerned with what seemed to be an attitude toward all politicians as being all bad.

When I look at my good friend from Maryland, and the distinguished Senator from Montana who is occupying the chair, I know that there are some very good politicians.

Mr. MATHIAS. Mr. President, the Senator from Wisconsin has, of course, noted H. L. Mencken's propensity to get the impact on his reader through a form of exaggeration. He applied that technique with uniformity across the human race. There were very few categories or groups of men who escaped that treatment. Not least did he apply it to his fellow journalists. He was as savage in describing his own colleagues in the field of journalism as he was in describing politicians.

Franklin D. Roosevelt, who had been feeling the barbs and stings of outrageous press treatment, took great pleasure in quoting Mencken to a press dinner. Of course, it was very stinging criticism which the President could lay upon the shoulders of a journalist and could utter the words without having to shoulder the full responsibility for them himself. If they were bad enough for Franklin Roosevelt to apply to his critics in the press, you can well imagine they were very bad.

I am told that Mr. Mencken did not particularly relish having the President of the United States usurp his words. But he was a colorful figure. He expressed the feelings of America in a colorful age, and he helped to make the Baltimore Sun the influential journal that it was throughout the generation in which he was writing.

It was for that reason, Mr. President, that the Mencken Festival was organized in the City of Baltimore. It was for that reason that Alistair Cooke came down to preside over some of those events and, I think, for that reason that Members of the Senate will enjoy reading the editorial which I have placed in the RECORD.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 3:49 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes.

The message also announced that the House has agreed to the report of the committee of further conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill

(H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes.

The message further announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 560. Joint resolution to proclaim March 19, 1981 as "National Agriculture Day"; and

H.J. Res. 568. Joint resolution to proclaim and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week".

HOUSE MEASURES REFERRED

The following joint resolutions were read twice by their titles, and referred as indicated:

H.J. Res. 560. Joint resolution to proclaim March 19, 1981 as "National Agriculture Day"; to the Committee on the Judiciary.

H.J. Res. 568. Joint resolution to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week"; to the Committee on the Judiciary.

ENROLLED BILLS PRESENTED

The Secretary reported that today he had presented to the President of the United States the following enrolled bills:

S. 1125. An act to improve and extend the Federal Crop insurance program, and for other purposes; and

S. 2443. An act to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute):

S. 1440. A bill to enable the Secretary of Energy to utilize revenues from power marketing, to carry out his responsibilities related to Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration, and for other purposes (with additional views) (Rept. No. 96–967).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 5048. An act to amend the Act entitled "An Act to preserve within Manassas National Battlefield Park, Virginia, the most important historic properties relating to the battle of Manassas, and for other purposes", approved April 17, 1954 (68 Stat. 56; 16 U.S.C. 429b). (Rept. No. 96–968.)

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

S. Con. Res. 62. Concurrent resolution urging the Soviet Union to allow Irina Astakhova McClellan to emigrate to the United States, and for other purposes.

By Mr. LEAHY, from the Committee on Appropriations, with amendments:

H.R. 8061. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 96–969).

By Mr. STEVENS, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute):

S. 1715. A bill for the relief of Jerry L. Crow (Rept. No. 96–970).

By Mr. GLENN, from the Committee on Governmental Affairs, with amendments and an amendment to the title:

S. 1814. A bill to provide for a National Afro-American History and Culture Commission, which shall establish the National Center of Afro-American History and Culture, and for other purposes (Rept. No. 96–971).

By Mr. SASSER, from the Committee on Governmental Affairs, with an amendment (in the nature of a substitute) and an amendment to the title:

S. 878. A bill to streamline and simplify the generally applicable requirements attached to Federal assistance programs and their implementation; to facilitate the consolidation of assistance programs; to provide for multiyear funding of certain grant programs; to expedite the processing of applications for Federal assistance involving more than one grant; to extend and amend the law relating to intergovernmental cooperation; and for other purposes (Rept. No. 96–972).

By Mr. MORGAN, from the Select Committee on Small Business, with an amendment (in the nature of a substitute) and an amendment to the title:

H.R. 6626. An Act to provide the Small Business Administration with additional authority to assist small business concerns in obtaining financing and for other purposes (Rept. No. 96–973).

By Mr. MORGAN, from the Select Committee on Small Business, with an amendment (in the nature of a substitute) and an amendment to the title:

H.R. 5612. An act to amend section 8(a) of the Small Business Act (with additional views) (Rept. No. 96–974).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, and on behalf of Mr. RANDOLPH, from the Committee on Environment and Public Works, jointly; with amendments:

S. 2686. A bill to direct the Secretary of the Interior to provide for the protection of the Barrier Islanders, and for other purposes (with additional views) (Rept. No. 96–975).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Wayman D. Palmer, of Ohio, to be Director of the Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

(The above nomination from the Committee on Banking, Housing, and Urban Affairs was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PROXMIRE. Mr. President, I send a nomination to the desk from the Banking Committee for Mr. Wayman D. Palmer, to be Director of the Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

This nomination has been approved by the Banking Committee and I hope we can act on it before we go out.

By Mr. WILLIAMS, from the Committee on Labor and Human Resources:

Odessa Komer, of Michigan, to be a Member of the National Council on the Handicapped.

Marian B. Javits, of New York, to be a Member of the National Council on the Humanities.

John C. Truesdale, of Maryland, to be a Member of the National Labor Relations Board.

(The above nominations from the Committee on Labor and Human Resources were reported with the recommendation that they be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

ADDITIONAL SPONSORS

S. 2910

At the request of Mr. NELSON, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of S. 2910, a bill to provide for the payment of interest by the Federal Government on any amount due for more than 30 days to any person under the terms of a contract entered into by the Federal Government and such person.

S. 2958

At the request of Mr. PERCY, the Senator from Minnesota (Mr. DURENBERGER) was added as a cosponsor of S. 2958, a bill to insure the development and implementation of policies and procedures to encourage the Veterans' Administration and the Department of Defense to cooperate in the efficient and effective use of Federal medical resources, and for other purposes.

S. 2967

At the request of Mr. NELSON, the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 2967, a bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes.

S. 2970

At the request of Mr. TOWER, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2970, a bill to amend section 404 of the Federal Water Pollution Control Act to restrict the jurisdiction of the United States over the discharge of dredged or fill material to discharges into waters which are navigable and for other purposes.

S. 2979

At the request of Mr. METZENBAUM, the Senator from New York (Mr. JAVITS) was added as a cosponsor of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficent resources to pay current and future benefits and to extend certain cost-of-living increases.

AMENDMENTS SUBMITTED FOR PRINTING

TREASURY, POST OFFICE, EXECUTIVE OFFICE OF THE PRESIDENT, AND INDEPENDENT AGENCIES APPROPRIATIONS H.R. 7583

AMENDMENTS NOS. 2363 THROUGH 2365

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted three amendments intended to be proposed by him to the bill (H.R. 7583) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1981, and for other purposes.

HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS, H.R. 7631

AMENDMENT NO. 2366

Mr. WILLIAMS (for himself, Mr. CRANSTON, and Mr. STEWART) submitted an amendment intended to be proposed by them to the bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

AMENDMENT NO. 2367

(Ordered to be printed and to lie on the table.)

Mr. EXON submitted an amendment intended to be proposed by him to the bill H.R. 7631, supra.

COLLECTION OF DEFAULTED STUDENT LOANS

AMENDMENT NO. 2368

(Ordered to be printed and to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed by him to the bill (H.R. 4155) to amend the Internal Revenue Code of 1954 to allow the Internal Revenue Service to disclose the mailing address of individuals who have defaulted on certain student loans solely for the purposes of collecting such loans.

Mr. CRANSTON. Mr. President, I am today submitting for printing and appropriate reference an amendment to H.R. 4155, a bill passed by the House on June 17, 1980, to amend the Internal Revenue Code of 1954 to allow the Internal Revenue Service—IRS—to disclose to the Secretary of Education the mailing addresses of taxpayers who have defaulted on certain student loans administered by the Department of Education. This House-passed measure, which is now pending in the Committee on Finance, would permit the Secretary to redisclose IRS-provided addresses to lenders or State or nonprofit guarantee agencies participating in the guaranteed student loan program and to educational institutions participating in the national direct student loan program for use by officers, employees, or agents of those institutions for purposes of locating defaulters in order to collect defaulted loans.

Mr. President, this amendment would further amend the Internal Revenue Code to provide a comparable authority with respect to indebtedness to the Veterans' Administration. Specifically, it would authorize the Administrator to redisclose an address, obtained from IRS under section 6103(m)(2) of the Internal Revenue Code, which authorizes the IRS to disclose the mailing address of a taxpayer to officers and employees of Federal agencies for their use in administrative and judicial proceedings pertaining to the collection or compromise of a claim under the Federal Claims Collection Act of 1966, 31 U.S.C. 951–53, to contractors of the VA and consumer reporting agencies—CRA's—for certain specified debt-collection purposes.

Mr. President, the basic purpose of the amendment is to facilitate VA debt-collection efforts. The dollar amount of accounts receivable due the VA—active accounts with respect to which collection efforts have not been terminated—is enormous and is increasing. The total accounts receivable increased from $577 million as of March 31, 1979, to $620.4 million as of March 31, 1980. Educational assistance overpayments represent the largest portion of the accounts receivable due the VA—$405.8 million. Also, as of March 31, 1980, the VA was owed $23 million as a result of education loan defaults. Despite certain administrative actions, the VA education loan default rate remains alarmingly high—78 percent as of June 30, 1980.

Mr. President, the Senate Committee on Veterans' Affairs has been working diligently this year in attacking this problem. On January 23, the committee favorably reported S. 1518, a bill to improve current VA debt-collection procedures, including provisions to authorize the VA to disclose to CRA's certain information regarding an individual who has been determined to be indebted to the VA in order to obtain current address information or consumer reports which the VA would then use to pursue collection efforts and, in appropriate cases under carefully prescribed procedures, to affect a debtor's credit rating. On January 24, the Senate passed the provisions of S. 1518 in H.R. 5288, the proposed GI Bill Amendments Act of 1980.

Subsequently, on June 25, the committee recommended, in section 5 of its reconciliation resolution (Committee Print No. 28), provisions substantively identical to the debt-collection provisions of S. 1518, together with provisions to remove any time bars which might prevent the VA from taking administrative action to offset debts against future benefits payments; to authorize the VA to charge interest and administrative costs on delinquent debts; and to authorize the VA to use its own attorneys, under the direction and supervision of the Department of Justice, to pursue collection actions in court. These committee-recommended provisions were passed by the Senate both in title VIII of S. 2885, the proposed reconciliation Act of 1980, on June 26, and again on September 4 as an amendment to S. 1188, the proposed Disabled Veterans Rehabilitation Act of 1980. The House has passed comparable provisions to the S. 1518 provisions, and I expect agreement with the House and enactment of these provisions in the context of an education bill very shortly.

However, if these provisions are to be as effective as possible in facilitating the VA's ability to collect outstanding debts, it is essential that the VA have better and more economical access to current address information.

At an August 2, 1979, hearing of the Senate Committee on Veterans' Affairs on VA debt-collection efforts, the VA testified that one of the greatest obstacles to the effectiveness of VA debt-collection efforts is its inability to locate the debtor. At that hearing, the VA indicated that it did not have current addresses for at least 180,000 of those from whom it was attemtping to collect debts and that a high percentage of an additional 653,000 inactive accounts were lacking current addresses.

Mr. President, our amendment is intended to provide the VA with a quick and inexpensive way of locating individuals who are indebted to the VA. The cost to the VA of obtaining mailing addresses from the IRS is $0.11 per name. Although provisions passed by the Senate in H.R. 5288, as well as in S. 2885 and S. 1188, would permit the VA to disclose information in VA files to CRA's in order to obtain current address information, the costs to the VA of obtaining such information from CRA's is much more expensive—$1.80 to $2.50 per name. Moreover, there will doubtless be many cases in which either the CRA's will not be able to provide an address that IRS would have for particular individuals or the CRA address will not be as current as the one in the IRS files. Thus, the amendment could give the VA a way of substantially reducing administrative costs in collecting delinquent debts and obtaining current addresses not otherwise available to it for debt-collection purposes.

Although the VA is presently authorized to obtain current address information from Internal Revenue Service files at this $0.11 per individual rate, under section 6103(m)(2) of the Internal Revenue Code, the VA's use of IRS-provided addresses is, under the IRS interpretation of that provision, very limited. The address may be disclosed only to VA employees engaged in debt-collection efforts, and disclosures to non-Federal agencies are not permitted even solely for debt-collection purposes. For example, the VA is unable to provide an IRS-provided address to a VA contractor for the purposes of obtaining asset and income information or to a CRA for the purposes of obtaining a consumer report to help evaluate the individual's ability to repay the debt.

Yet, under current regulations (4 C.F.R. 105.3) issued pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 951–53), the VA must, in referring a debt to the Department of Justice for collection action, provide evidence of the debtor's ability to repay. Furthermore, it will be necessary for the VA to obtain such information—when the Senate-passed provisions in S. 2885 and S. 1188, which would authorize the VA to use its own attorneys to pursue collection actions in court, are enacted into law—to make its own assessments of ability to repay in deciding whether to bring suit. Thus, this amendment would authorize the VA to disclose IRS-provided information to a contractor or CRA in order to obtain information that is necessary for the VA to refer a debt to the Justice Department or to make its

own decisions whether to initiate court action.

In addition, where an IRS-provided address is not current, this amendment would allow the VA to provide the address to a VA contractor to use—but not disclose—in tracing the debtor through the use of that address.

Our amendment also would authorize the VA to disclose IRS-provided addresses to CRA's to the same extent authorized in section 3301 of title 38 for the purposes of giving notice of delinquent debts. The provisions of H.R. 5288 as passed by both the House and Senate and S. 2885 as passed by the Senate that I described earlier would amend section 3301 to authorize the VA to disclose to CRA's the name and address of an individual who has been determined to have failed to respond to reasonable VA debt-collection efforts for the purpose of giving notice of the indebtedness. In our committee's view, the possibility of such disclosures, which would affect the individual's credit reputation, would serve to encourage repayment. I would note, however, that, under the proposed Internal Revenue Code amendment, CRA's would not be authorized to make any further disclosure of IRS-provided addresses disclosed to them by the VA. To comply with this restriction, it would be necessary for the VA and the CRA to establish special arrangements to insure that any IRS-provided addresses are specially flagged as such and are not included in any documents or computerized records that the CRA would disclose to third parties.

Mr. President, the Federal Claims Collection Act of 1966—FCCA—requires Federal agencies to refer claims of more than $20,000 to the Department of Justice for collection action. In addition, regulations issued pursuant to that act (4 C.F.R. 105.1–7) provide for Federal agencies to refer certain claims to the General Accounting Office or the Department of Justice for collection. However, section 6103(m)(2) of the Internal Revenue Code does not expressly authorize a Federal employee or officer who has received an IRS-provided address to disclose the address to employees of other Federal agencies—including employees engaged in debt-collection activities. Thus, this amendment would make clear that the VA may disclose IRS-provided addresses to employees of Federal agencies to which the VA refers a claim for collection action for those employees to use in preparation for any administrative or judicial proceeding pertaining to the collection or compromise of a claim under the FCCA.

Similarly, although section 6103(m)(2) permits the IRS to disclose the mailing addresses of taxpayers for use by officers and employees of a Federal agency for use "in preparation for" any administrative or judicial proceeding pertaining to the collection or compromise of a claim, it does not expressly authorize the disclosure of such addresses "in" a judicial proceeding pertaining to such a claim. Thus, our amendment would make clear that the VA—or other Federal agencies to which the claim has been referred—may disclose an IRS-provided address in a collection or compromise of a claim under the FCCA.

Mr. President, this amendment would also authorize the IRS to disclose to the VA the mailing address of a taxpayer for purposes of conducting evaluations or studies authorized by section 219 of title 38 or required by other Federal law, and would permit the VA to redisclose the IRS-provided address to a contractor hired by the agency for the specific purpose of carrying out such evaluations or studies. The section 219 studies generally involve contacting veterans to determine what VA benefits they have or have not utilized, and why they have not utilized some or any benefits, and to elicit information bearing on whether VA programs are accomplishing their intended goals. These studies are generally carried out by agency contractors.

Prior to the Tax Reform Act of 1976 (Public Law 94–455), the VA had been using IRS taxpayer address information to locate veterans in connection with these studies. However, section 6103(m)(2) of the Internal Revenue Code currently limits IRS disclosures of addresses to the VA to those VA employees engaged in debt-collection efforts and prohibits redisclosures to others or the use of the information for non-debt-collection purposes. As a consequence, the VA now has a backlog of studies which it testified on August 2, 1979, it cannot complete without being able to locate large numbers of veterans for whom it does not have current addresses. For example, the VA testified that it is unable to carry out the program evaluation study mandated by section 304(b) of the GI Bill Improvement Act of 1977, Public Law 95–202, which requires the VA to conduct an independent study of the extent to which eligible veterans have utilized VA benefits and have readjusted successfully to civilian life.

Mr. President, although the Senate- and House-passed provisions I've described would permit the VA to disclose names and addresses from its files in order to obtain current addresses from CRA's for purposes of conducting these studies, the same issue arises with respect to the high cost to the VA of obtaining addresses from CRA's—$1.80 to $2.50 per individual—rather than from the IRS—approximately $0.11 per name.

In addition, under current credit reporting industry practice, a VA inquiry for current address information on an individual would be noted in the CRA's files. Although such a notation would, under industrywide practices, generally be made in the CRA's files in such a way as to indicate that it does not reflect adversely on the individual concerned, it is conceivable that some persons unfamiliar with credit reporting industry practices might interpret such a notation as possibly indicating the existence of an indebtedness or as being otherwise adverse.

It is for this reason that the Senate-passed provisions of S. 2885 and S. 1188 would require that before the VA may disclose information to a CRA for the purposes of locating an individual in connection with carrying out section 219 and other studies, the Administrator must determine, first, that the individual's inclusion in the study—in light of other alternatives reasonably available to develop information for the study and the comparative costs of the alternatives and the possible consequences for the individual resulting from disclosure—warrants the disclosure, and, second, that neither the release of the information nor the fact of the inquiry would create any substantial possibility that the individual's credit rating would be adversely affected. However, it would be highly preferable to enact the amendment in order to authorize the VA to obtain address information from the IRS for purposes of conducting these studies rather than taking any chance, however slight it might be, of harming the individual's credit standing or reputation as a result of a CRA notation of a VA inquiry in the individual's files.

I would also note, Mr. President, that, consistent with both the existing provisions of the Internal Revenue Code and of H.R. 4155 as passed by the House, the amendment would make the unauthorized disclosure of IRS-provided addresses by VA employees or by contractors, including CRA's, to whom the VA has disclosed such addresses a felony punishable to a fine of not more than $5,000 or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

Thus, Mr. President, I believe that this amendment represents a cost-effective, prudent approach that would both be protective of the legitimate privacy interest of the individuals involved and helpful in enabling the Federal Government to collect the moneys owed to it.

Mr. President, provisions contained in the conference report on H.R. 5192, the Education Amendments of 1980, would mandate the Department of Education to use the services of CRA's for debt collection purposes. However, under current law and under the amendments to section 6103(m)(4) proposed in H.R. 4155, the Department of Education is not and would not be authorized to disclose IRS-provided information to CRA's. The Department of Education, however, has indicated that it believes that such disclosures may be made if, before disclosing taxpayer address information received from the IRS, the Department of Education verifies the IRS address—for example by sending out a collection letter to which the defaulter responds—and that such an address would no longer be considered an IRS-provided address.

The General Counsel of the Veterans' Administration disagrees with the Department of Education in this regard on the basis that such a practice would conflict with the purposes of the IRS confidentiality provisions contained in section 6103(m) of the Internal Revenue Code. Thus, our amendment is intended to provide express authority for the VA to disclose IRS address information to agency contractors for carefully delineated purposes of collecting debts and carrying out certain studies mandated by Federal law.

Mr. President, I ask unanimous consent that the amendment be printed in the RECORD at this point.

There being no objection, the amendment ordered to be printed in the RECORD, as follows:

AMENDMENT No. 2368

On page 3, between lines 7 and 8, insert the following new subsection (b):

(b) Section 6103(m) of such Code is amended by adding at the end the following new paragraphs:

"(5) Individuals who are indebted as a result of participation in Veterans' Administration programs.

"Any mailing address disclosed under paragraph (2) of this subsection to an officer or employee of the Veteran's Administration may be further disclosed by the Administrator of Veterans' Affairs—

"(A) in a judicial proceeding pertaining to the collection or compromise of a claim under the Federal Claims Collection Act of 1966 (31 U.S.C. 951–53) and regulations prescribed thereunder;

"(B) to employees of Federal agencies to which a claim has been referred by the Administrator of Veterans' Affairs under such Act for their use in or in preparation for any administrative or judicial proceeding pertaining to the collection or compromise of a claim under such Act and such regulations;

"(C) to a contractor of the Veterans' Administration for the purpose of obtaining from such contractor information that (i) pertains to the location of a debtor, or (ii) is necessary for collection or compromise of a claim under such Act and such regulations; or

"(D) to a consumer reporting agency for either such purpose and to the extent that the Administrator is authorized under the provisions of section 3301 of title 38, United States Code, to disclose to such agencies the names and addresses of the individual concerned for the purposes of giving notice of certain debts owed to the United States.

"(6) Veterans' Administration evaluations and studies.

"(A) Upon written request by the Administrator of Veterans' Affairs, the Secretary may disclose to the Administrator the mailing address of any taxpayer for use by officers and employees of the Veterans' Administration for the purposes of conducting evaluations or studies provided for by section 219 of title 38, United States Code, or required by any other provision of law pertaining to the evaluation of veterans' benefits programs.

"(B) Any mailing address disclosed under subparagraph (A) of this paragraph may be further disclosed by the Administrator of Veterans' Affairs to a contractor of the Veterans' Administration for the purposes of conducting an evaluation or study described in subparagraph (A) of this paragraph.".

On page 3, line 8, strike out "(b)" and insert in lieu thereof "(c)".

On page 3, line 15, insert a comma and "(5), or (6)" after "(4)".

NOTICES OF HEARINGS

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr. President, the Select Committee on Small Business will hold a hearing on the investment of pension funds in farmland.

The hearing will begin at 10 a.m., on Wednesday, October 8, 1980, in room 424 RSOB.

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. HARRY F. BYRD, JR. Mr. President, I wish to announce that the Subcommittee on Taxation and Debt Management of the Finance Committee will hold a hearing on Monday, September 29, 1980, on S. 3006, the Industrial Energy Efficiency and Fuel Conservation Tax Incentive Act of 1980, introduced by Senator WALLOP.

The hearing will begin at 10 a.m. in room 6226 of the Dirksen Senate Office Building.

S. 3006 is of general application and is directed toward energy conservation through an increase in the energy investment tax credit to 20 percent and the addition of another category of investment eligible for the expanded credit. Investments in this category must result in the utilization of less energy per unit of output and not increase the amount of oil or gas consumed. Revenue estimates will be available at the time of the hearing.

Witnesses who desire to testify at the hearing must submit a written request, including a mailing address and phone number, to Michael Stern, staff director, Committee on Finance, room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by no later than the close of business on September 24, 1980.

CONSOLIDATED TESTIMONY

The committee urges all witnesses who have a common position or the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the committee. This procedure will enable the committee to receive a wider expression of views than it might otherwise obtain.

WRITTEN STATEMENTS

Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five copies to Michael Stern, staff director, Committee on Finance, room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than October 27, 1980.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, September 22, 1980, to consider pending committee nominations and various resolutions including Senate Concurrent Resolution 60, the treatment of Christians by the Soviet Union, and Senate Concurrent Resolution 73, International Year of Disabled Persons.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PERMANENT INVESTIGATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Permanent Investigations Subcommittee of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, September 23, 1980, to hold an executive session in order to take testimony in connection with the oversight inquiry of the Labor Department's investigation of the Teamsters Union Central States Pension Fund.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE AND THE SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Science, Technology, and Space Subcommittee of the Committee on Commerce, Science, and Transportation and the Energy Research and Development Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, September 23, 1980, to hold a joint hearing on methane transportation research and development.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold an oversight hearing on the growing importance of coal in international trade.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PERMANENT INVESTIGATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Permanent Investigations Subcommittee of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Monday, September 22, 1980, to hold a hearing on the role of the Department of Energy in the U.S. energy emergency preparedness.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS 1981

● Mr. MAGNUSON. Mr. President, it has been brought to my attention that a statement of mine from a colloquy which Senator BAYH and I had on the 1980 transportation appropriations bill has been construed in differing ways recently. I feel it appropriate that the followup correspondence I had with the Federal Railroad Administration clarifying this colloquy be printed in the RECORD in order to minimize any ambiguity that there may have been in the colloquy's intent.

Mr. President, I ask that my letter of February 29 to Mr. John Sullivan of the FRA and his response be printed in the RECORD at this point.

The letters follow:

FEBRUARY 29, 1980.

Mr. JOHN M. SULLIVAN,
Administrator, Federal Railroad Administration, Department of Transportation, Washington, D.C.

DEAR MR. SULLIVAN: In connection with the passage of the FY 1980 Department of Transportation Appropriations Bill, Senator Bayh and I had a colloquy on the floor of the Senate on November 1, 1979, in which we discussed the funding for redeemable preference shares and loan guarantee financing under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976. At that time, I expressed my concern over the need to assure that adequate funds were available to assist in the rehabilitation and improvement of existing properties of marginal railroads such as the Milwaukee and the Rock Island. As you know, I am still a strong supporter of rehabilitating the Milwaukee, which will help assure competitive rail service and increased ability to transport coal and other commodities. It is my understanding that your Department now believes it has sufficient funds available to assist in any rehabilitation efforts in connection with the rights of way of these troubled carriers. If I can be of assistance in helping to provide additional funding, please do not hesitate to let me know.

Since enactment of the 1980 Appropriations Bill, it has been brought to my attention that applications for Section 511 assistance for construction of new lines into coal producing areas in the West might be hampered by the colloquy Senator Bayh and I engaged in. That was not our intent, and it is my belief that the Federal Railroad Administration should actively consider applications for assistance to both existing railroads and new railroad companies to construct new lines into coal producing areas in order to help meet the increasing need to transport coal as part of our national energy program. This is entirely consistent with my desire to see a continued and improved Milwaukee to help serve these areas. In any case, given the wording of Section 511, it would appear to me that the FRA is explicitly authorized to consider applications for construction of new lines.

I hope this letter clarifies any uncertainty that may exist.

Sincerely yours,

WARREN G. MAGNUSON, U.S.S.

FEDERAL RAILROAD ADMINISTRATION,
Washington, D.C., March 26, 1980.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of February 29, 1980, regarding the availability of Federal financial assistance under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 for the construction of new rail lines into coal producing areas.

I appreciate having the benefit of your clarification of the colloquy between Senator Bayh and yourself with respect to this matter. I wish to assure you that FRA will continue to fully consider section 511 financial assistance for all such projects, consistent with the statutory and regulatory requirements.

Sincerely,

JOHN M. SULLIVAN,
Administrator.●

A COLLUSIVE LAW SUIT

● Mr. LAXALT. Mr. President, the Legal Services Administration brought a class action against the Community Services Administration some time ago alleging that CSA had not disbursed some $18 million of a $200 million appropriation made by Congress in 1979 to assist the poor to cope with high energy costs. The case was recently settled, in a most disturbing way, and an order entered by the Federal court in the District of Columbia ordering disbursement of the money.

The nine named plaintiffs, all poor people, got a total of $2,000. The other $17,998,000 was distributed among various Government agencies, public community action groups, and public interest lawyers. I think it is an understatement to say that such a division of the funds is not exactly what Congress had in mind when it appropriated the money.

This appears to be a collusive law suit between Government agencies of the worst kind, which is not only contrary to our adversary system of justice and law, but which allows administrative agencies, with a concurrence of the Federal courts, to contravene the intent of Congress.

I have written a letter to the Community Services Administration asking for an accounting of the funds disbursed so far, and asking CSA to hold the disbursement of any additional funds until I have had a chance to look into the matter more closely.

The Wall Street Journal carried an extensive story of the case in its August 20, 1980 issue, and I would ask that both the Journal article and a copy of my letter be included, in full, in the RECORD.

The material follows:

U.S. SENATE,
Washington, D.C., September 16, 1980.

Mr. RICHARD RIOS,
Community Services Administration, Washington, D.C.

DEAR MR. RIOS: The matter of *Simer et al. v. Olivarez et al.*, has recently come to my attention, and I am disturbed by reports that our adversary system of justice may have been compromised by the settlement in the case. I have asked my staff to look into the matter more carefully.

It is my understanding that some of the monies authorized in the settlement have already been disbursed, but that others are still under the control of the Community Services Administration. I request that your office prepare and deliver to me an accounting showing funds which have been disbursed, to whom, and the authority stemming from the Court's order of April 25, 1980 for such disbursement. Also, please advise of funds still under your control, indicating plans to disburse them.

Until such time as the aforementioned accounting has been delivered to me, and I have had a chance to review it, I request that no additional funds be disbursed by the Community Services Administration.

Sincerely,

PAUL LAXALT,
U.S. Senator.●

AIRLINE DEREGULATION

● Mr. CANNON. Mr. President, I submit for the RECORD an editorial which appeared in the Boston Globe issue of August 24, 1980, into the RECORD. It speaks clearly to the point that far from exacerbating the current economic problems of the airline industry, deregulation has kept the situation from being far worse.

The editorial follows:

THE BATTLE OF THE AIRWAYS

The latest financial reports show that most of the major American airlines have taken a dive in the first half of 1980. Pan Am; United and American Airlines each lost over $100 million. For Braniff, things were so bad it was forced to withdraw a stock sale in December 1979 and to sell 15 of its Boeing 727s to meet payments on a bank loan last month.

It's a wild and woolly story that may yet have a happy ending for passengers if not for all of the airlines.

There are those who would like to blame the crash on the 1978 Airline Deregulation Act. Freed from the fare and route regulations of the Civil Aeronautics Board, the major air carriers rushed to drop unprofitable routes and add new ones. Northwest Orient began flying to Scandinavia. Braniff sent planes to 18 U.S. cities and eight foreign countries. The competition hurt Pan Am, which dropped some overseas service and sought access to domestic routes through the acquisition of National Airlines.

But the pilots of the board rooms had not forecast the recession, which cut passenger traffic by 4 percent in June, nor had they planned on the Iranian oil crisis, which more than doubled the cost of fuel. Their response, in the tradition of free enterprise, was a fare war, which has not helped anyone's balance sheet.

Only Delta kept its flaps down, refusing to get into the fray and turning a half-year profit of $73.9 million. Meanwhile, the vacuum caused by the departure of big carriers from over 100 cities is being filled by regional airlines and commuter services that, in a couple of cases, can offer a round-trip ticket at half the price charged by the majors.

By the time the smoke clears, we would bet that deregulation, far from being a villain, will be vindicated.●

SENATOR JOHN HEINZ' VFW SPEECH

● Mr. TOWER. Mr. President, in recent weeks the Senate has approved the first concurrent budget resolution and the Department of Defense Authorization Act both of which make significant increases in the allocation of funds for military and defense activities. By these actions, the Senate has recognized that serious deficiencies currently exist in our Nation's defense capabilities.

The signs of our inadequate military record over the last 3½ years are numerous. In the area of strategic nuclear deterrence our forces are entering a period of vulnerability, while at the same time our conventional military capabilities continue to deteriorate. The Navy has found it increasingly more difficult to stretch its dwindling numbers to all corners of the globe, and still have the ability to project a meaningful presence in crisis areas. Similarly, our Air Force has become outmoded and frequently susceptible to breakdowns. The Army, meanwhile, cannot retain or attract the top quality personnel needed to meet the demands of a technologically oriented military.

Mr. President, above all else, we need new and creative leadership which can forge a foreign policy based on defined national goals and which takes into account historical trends and current geopolitical realities. The deficiencies in our current defense posture must be addressed by providing the necessary funds for personnel and equipment. However, it is equally important that a new national emphasis on our defense needs be directed by strong leadership with a sound vision on the role our country will play in world affairs.

Mr. President, I recently had the opportunity to review a speech given by Senator HEINZ which clearly defines the crisis of leadership imperiling our Na-

tion's global defense posture. I recommend this speech to my Senate colleagues and submit the text of Senator HEINZ' remarks before the Veterans of Foreign Wars in Philadelphia be printed in the RECORD.

The speech follows:

SPEECH BY SENATOR JOHN HEINZ

Mr. Chairman, Ladies and gentlemen, I would like to start my talk this morning with a few quotes from the Joint Chiefs of Staff on the current state of our defenses: General E. C. Meyer, Army Chief of Staff: "Right now we have a hollow Army."

Admiral James D. Watkins: "President Carter's defense budget . . . falls short of Navy requirements."

General Lew Allen, Jr., Air Force Chief of Staff: "Increased defense spending is required to meet the increased danger of growing world wide Soviet aggression."

And the most telling statement of all, from Marine Corps Commandant General Robert Barrow. When asked if President Carter's Defense Budget was adequate, Barrow said: "In a word—no."

Ladies and gentleman, the said truth is that our military record for the past three and a half years has been almost completely inadequate. . . . and the outlook is equally bleak.

We are rapidly approaching a period of strategic vulnerability— possibly within the next two years—when an enemies first strike could wipe out most of our land-based missile system.

In several areas, the Soviet Union already has conventional military superiority and will for the foreseeable future. World leaders can add and subtract and when they see that the Soviets have 164 divisions and we have only 17, their response is obvious.

Our Naval force cannot carry out its missions in the Persian Gulf without dangerously weakening its capabilities elsewhere and without subjecting its personnel to extremely prolonged periods of sea duty. . . . The Soviet Navy is rapidly becoming a "blue water navy" capable of going anywhere in the world . . . and who knows where they'll want to go next.

We have an Air Force that has been losing more planes through accidents than it has been getting through supply lines and a procurement level for new planes that is so low that the Soviets give away more planes each year than we produce.

And we have an Army that is understrength and cannot attract or retain the top quality personnel who are fundamental to carrying out the mission of technologically-oriented military machine.

There is only one real explanation for the sorry state of our defenses . . . we have in Washington. an administration which doesn't seem to understand what a defense policy is.

Let me give you a few examples, some of which are probably familiar to you. . . .

The administration has cancelled the Minute Man III production.

The administration has failed to provide adequately for a new generation of aircraft to replace the B-52.

The administration has failed to obtain a quid pro quo from the Soviets for its decision not to deploy the neutron bomb.

The administration has supported "stretching out" the production time on several vital programs including the MX missile, the SSN-688 attack submarine program, the Tomahawk cruise missile and the F-15 fighter. This "stretching out" has delayed considerable the time table for completion of these programs.

The administration has advocated a naval program that would give the Navy less than half the number of ships President Ford planned to supply it with.

And finally, the administration has blindly advocated American arms sales reductions at a time when the Soviets have greatly stepped up arms transfers.

My friends . . . why are we in this mess?

Well, first of all, this administration has been incredibly naive—and I'm being very kind here—about the realities of world politics.

Mr. Carter came into office pledging to reduce defense spending by up to $7 billion per year. If we're bad off now just imagine where we would be if the Congress had allowed that to happen?

Mr. Carter came into office pledging to reduce substantially U.S. arms sales around the world . . . and I applaud the good intentions behind that pledge.

But unfortunately, Mr. Carter forgot to check with our enemies—or even some of our close allies—who have continued and even increased the pace of their sales.

Just recently, the Senate Foreign Relations Committee concluded that the administration's policies have been a failure . . . and even the administration has finally had to admit it.

Mr. Carter came into office believing that good will and rational discussions would make the tensions between the Soviets and ourselves disappear . . . once again, Mr. Carter forgot to check with the Soviet Union.

It took the brutal invasion of Afghanistan to convince him that they are in the deadly serious business of exploitation and military intervention . . . anytime the opportunity arises.

But above all, Mr. Carter and his associates came into office without any intelligent understanding of where they wanted to get . . . they had—and still have—no long range foreign policy goals.

They have been inexcusably inconsistent in their conduct. . . .

First we say that Soviet troops in Cuba are unacceptable—a few weeks later we accept them. . . . First we say that the Shah of Iran is our friend—then we quietly conspire with his opponents. . . . First we condemn the invasion of Afghanistan—and then we refuse to give the freedom fighting rebels the kind of weapons aid that would enable them to be truly effective.

Ladies and gentlemen, the President of the United States has been playing an amateur's game for too long.

Today's national leadership has consistently downplayed the need for more defenses spending.

Even now, the President refuses to give full and consistent support to policies he has belatedly admitted were correct. Believe it or not, this administration has actually lobbied against the defense spending level agreed to by members of the House and Senate Budget Committees.

These are my main criticisms of the Carter administration's defense and foreign policies . . . to my mind, this is the easy part.

It is more difficult to present new policies that will truly help this Nation once again become respected and admired by both friend and foe . . . . but I do have a few ideas I would like to share with you this morning.

I believe we must have national leadership that has a sense of geopolitics and a sense of history. For the past three and one half years we have approached each problem as though it existed in a historical vacuum . . . . the current administration does not—or cannot—see the inter-relationship between the different international problems.

In the coming decade, we cannot afford to go for the quick fix—the instant solution . . . . we must have the kind of leadership that will spell out precisely what this country's long-range foreign policy goals are to be . . . . and a leadership that will reaffirm our strategic western alliances, broadening and strengthening them to meet Soviet expansionism.

Beyond this, we must have political leadership that has a realistic understanding of the Soviet Union—who can face up to the unpleasant realities of the world and not hide behind the illusions of detente.

Because, whether impelled by ideology or imperialism, or merely by opportunism, the Soviet Union today is clearly an aggressively expansionist power . . . . they have a realistic view of the world . . . and they have a sense of history: their recent incursion into the Persian Gulf is the fulfillment of an ambition the Kremlin has had since the time of the Czars.

We must make certain—and we will fight to make certain—that we have real increases in our defense budget.

There are many forces at work that undermine our defense preparedness. Let me give you one example. In a few months, the carrier U.S.S. *Saratoga* will pull into the Philadelphia Naval Shipyard as part of the Navy's efforts to maintain and modernize our fleet to counter the Soviet naval expansion.

This is vital for our overall defense posture and . . . vital for the economic growth and well-being of our tri-State area. There are some in the Congress who will seek to derail or halt this vital program, or who will seek, a great cost and delay, to divert it elsewhere.

That is why I have joined with other Senators from the Delaware valley to fight the narrow special interests who would interrupt the service life extension program almost before it has a chance to begin . . . and we're going to do everything we can to bring the U.S.S. *Forrestal* to Philadelphia where it belongs.

We must therefore, as we prepare to increase our defense budget, be alert to those who, by subterfuge, seek to block our effort to regain our lost defense posture. We must attend to our manpower needs, and part of that is that we must make certain that all our veterans—whatever conflict they served in—receive equal benefits. . . . And we must make certain that pay scales are improved so we can attract and keep the trained personnel that this country must have to defend itself.

To help make certain that all our veterans receive the kind of services they need. . . . I helped introduce last fall the Vietnam Veterans Act, the most comprehensive veterans assistance legislation since the GI bill which when passed will assist them with jobs, health problems—particularly agent orange contamination, education and housing.

We need leadership that recognizes the pressing need for our own economic recovery—for a comprehensive plan to rebuild our research and industrial base so we can assure once again our world economic leadership—a position we have abrogated in the last few years to Western Europe and Japan—nations we helped into that position with the Marshall Plan.

But beyond all these specifics, we must have leaders who have a vision of this country . . . a vision beyond politics . . . beyond narrow special interests . . . a vision for all Americans.

This is where you and I come in . . . the final and most important recondition for a stronger America is a united and self-confident people.

We must rededicate ourselves to the task of rebuilding our economy—for without a strong economic base, a strong foreign policy cannot be sustained.

We must rededicate ourselves to equal opportunity and justice for all Americans—because only those who feel a part of our society will want to protect it.

And we must rededicate ourselves to the proposition that our veterans are owed a debt for their sense of responsibility and dedication to duty. . . . For if we cannot honor those who have already served, how can we expect anyone to serve in the trying times ahead.

Thank you.●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications which have been received. The classified annexes referred to in several of the covering letters are available to Senators in the office of the Foreign Relations Committee, room S-116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 9, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-101, concerning the Department of the Army's proposed Letter of Offer to Australia for defense articles and services estimated to cost $19.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-101]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Australia.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$16.0
Other	3.0
Total	19.0

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Thirty-six M198 155mm towed howitzers.

(iv) Military Department: Army (YTA).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defensive Services Proposed to be Sold: None.

(vii) Section 28 Report: Included in report for quarter ending 31 March 1980.

(viii) Date Report Delivered to Congress:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 10, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-99, concerning the Department of the Air Force's proposed Letter of Offer to the Federal Republic of Germany for defense articles and services estimated to cost $31.3 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-99]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: The Federal Republic of Germany.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$0.0
Other	31.3
Total	31.3

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Cooperative logistics supply support (FMSO II) for follow-on spares and supplies in support of F-4 aircraft and other systems/subsystems of U.S. origin.

(iv) Military Department: Air Force (KBS).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: Sept. 10, 1980.

DEFENSE STUDY ASSISTANCE AGENCY,
Washington, D.C., September 10, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-100, and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter of Offer to Australia for defense articles and services estimated to cost $36.7 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-100]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTON 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Australia.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$33.8
Other	2.9
Total	36.7

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Ten PAVE TACK Pods (AN/AVQ-26), including government furnished aeronautical equipment, support equipment, and spares.

(iv) Military Department: Air Force (YAS).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Reported Delivered to Congress: September 10, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 10, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-102 and under separate cover the classified annex thereto. This Transmittal concerns the Deparment of the Navy's proposed Letter of Offer to Belgium for defense articles and services estimated to cost $24.9 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-102]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Belgium.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$22.9
Other	2.0
Total	24.9

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Two hundred AIM-9 series missiles with logistics support.

(iv) Military Department: Navy (ACG).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See annex under separate cover.

(vii) Section 28 Report: Included in report for quarter ending June 30, 1980.

(viii) Date Report Delivered to Congress: September 10, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 10, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-104 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter of Offer to Canada for defense articles and services estimated to cost $22.6 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-104]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Canada.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$15.7
Other	6.9
Total	22.6

*Included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: One hundred eighty-two AIM-9 series missiles with spares and support.

(iv) Military Department: Navy (AGZ).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Section 28 Report: Included in report for quarter ending June 30, 1980.

(viii) Date Report Delivered to Congress: September 10, 1980.●

THE DOMESTIC VIOLENCE BILL

● Mr. HUMPHREY. Mr. President, recently my staff assistant for health matters, Dr. Ron Preston, drafted for me a reply to a constituent who wrote asking me to support the domestic violence bill. Dr. Preston's reply constitutes a brilliant analysis of the dilemma which faces us in the Senate as we are asked on almost a daily basis to fund yet another new program of one kind or another.

Dr. Preston's letter, which obviously, reflects my own thinking and philosophy, is so incisive, I thought I would share it with my colleagues, and I submit it for the RECORD.

The letter follows:

U.S. SENATE,
Washington, D.C., September 18, 1980.

DEAR MRS. JONES: It greatly pleased me to know that there is a grass-roots effort to combat domestic violence in New Hampshire. Organizations, such as the New Hampshire Coalition Against Family Violence are just what our state needs to address any number of special problems. The 78,490 hours that you and your associates devoted last year to your cause is a credit to you and our state. We as a nation have long been known for the vigor and effectiveness of our voluntary associations, and it is gratifying to know that this tradition still lives. I would place my trust any day in association of dedicated local citizens over the most high powered bureaucracy in Washington.

That you should want financial assistance from the federal government is entirely understandable. You want to do the best job that you can, and for that you need resources. An annual allocation from the federal government would allow you to expand projects, and this money would be had without the rigors of private fund-raising.

Raising money is always difficult. One must confront indifference and sometimes hostility on the part of one's neighbors, and endeavor to win them over. At a time of crushing inflation and lean family budgets, fund-raising now would be particularly difficult.

Years ago great works were done entirely through private contributions. Many of our hospitals stand as memorials to these earlier efforts. In our country that is far wealthier now than at the turn of the century, it would seem that far greater private resources would be available for far greater deeds. But, this is not the case. The federal government has taken these private resources unto itself. Its ever swelling share of the national economy is squeezing the private sector that produces the material wealth that sustains us all. The private economy is stifled, and individual families bear the burden of soaring inflation and dropping real income. The duties the federal government has taken upon itself are in many cases important or even necessary, but the federal government is bureaucratic and inefficient. What is more, it is central source of political power, stifling freedom of action for local citizens.

I shall continue to oppose the Domestic Violence Prevention Act, and I suspect this will not please you. If I should win, you would be deprived of an additional source of federal funding. The bottom line is that you would have less for your projects, and this in your eyes cannot be seen as good. Therefore, I, in your eyes, must be seen as uncaring, at least as far as domestic violence is concerned, whatever I might say.

But, you must realize that I, as a United States Senator, have a responsibility to all of the citizens of New Hampshire, to all of the citizens of our country. Therefore, I must think first of the general welfare, which is comprised of innumerable important concerns, household tranquility being one of these, but only one of these. For me, my opposition to the domestic violence bill is not an isolated action, for this bill is but another straw on the camel's back, that is, it is just one more example of the federal government's arrogation of private resources and assumption of local responsibilities. I oppose this trend, and therefore I oppose all legislation that would further this trend.

In the greater scheme of things, in terms of the massive federal budget and bureaucracy, the forestalling of this domestic violence bill would not amount to much in terms of savings to the taxpayer and liberty for the individual or the community. Society would not seem to benefit much; whereas the domestic violence projects would seem to lose a great deal. But, one can only oppose the federal government's dominance of our society an item at a time. Bills deal only with specific subjects, and must be considered individually. If the domestic violence bill were joined in its demise by other like-minded bills, and if our swollen federal government were to shrink to more reasonable proportions, monies that the Federal government now expropriates, through taxes—inflation would be retained in the pockets of the people. As wealthier and more secure, citizenry would be better able to fulfill community obligations. In this way, domestic violence projects would ultimately benefit.

Domestic Violence programs would benefit because community resources would be greater. They would benefit because they would be subject to the scrutiny of communities that have financial stakes in them. Social service projects are inherently labor intensive, and therefore potentially very expansive. Communities would pay only for what they really want, then they would see to it they got value for their money. This is rarely the case with the federal government which funds every interest group that can field a few lobbyists, and cares little for efficiency, since it spends not its own money, but the taxpayers'.

I frequently hear the lamentation from the proponents of various causes that federal money is absolutely essential because the people of New Hampshire will not support these projects. These advocates always seem to feel that their projects are mandated by God, and must be furthered, whatever their neighbors think. In some cases, I agree that the projects are worthy; in others, I do not. However, worthy or not, the neighbors should be convinced before their money is spent. Running to the federal government, has become a form of stealing. If the neighbors won't contribute, they'll be made to pay in tax dollars. This is hardly what I call liberty. It has been my experience that the people of New Hampshire are practical and tough-minded, but also compassionate. Convincing the people of New Hampshire of a proposal's merit before the money is transferred is not only an imperative of a free society, it is also excellent discipline.

The difference between you and me is that you are endeavoring to advance a worthy cause by the standard methods of the day, while I am endeavoring to alter these methods. Of necessity, your goals are more immediate than mine. In a short time, domestic violence projects can be set up and operating, whereas years may be required to turn this government around. I must stick to this longer goal because of its vast importance to ourselves and to our children, but your work is important too, and I wish you well with it.

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senate.●

WESTERN JUDGES IN THE 1980'S

● Mr. HART. Mr. President, I would like to call my colleagues' attention to a recent speech to the Annual Judicial Conference of the 10th Circuit Court of Appeals in Denver this summer by William H. Hornby. Mr. Hornby is the editor of the Denver Post, and the immediate past president of the American Society of Newspaper Editors.

Mr. Hornby has perceptively described the situation we face in the West as our resources are developed, our land is targeted for the new MX missile system, and our population booms overnight. He calls the West "the new Arabia, a Persian Gulf without water," and outlines the very complicated issues facing our Western States as we begin to cope with the realities of the many national goals our part of the Nation is being asked to fill. His focus is on the challenges to our judicial system, but I believe Mr. Hornby has many important messages for Congress, too, as we consider far-reaching legislation which will affect the West.

I commend this speech highly, and ask that it be printed in the RECORD.

The speech follows:

WESTERN JUDGES IN THE 1980s

When Judge Seth extended your very kind invitation to appear here in the lion's den, there was a caveat. Would I kindly stay away from First Amendment topics and rhetoric about the role of a free press in an open society. I think he was quite right in the implication that I may have worn down my welcome in legal quarters on that topic after these past few years of evangelical service for the national editors society.

But this kind suggestion posed quite a problem for an editor lately partly obsessed with the vision of judges closing trials or extracting the identity of sources from reluctant reporters. How to regain a more balanced view of the judiciary—how to take off the gloves and calm down?

Fortunately two soothing events occurred. The Supreme Court handed down the Richmond Newspapers decision which eloquently reminds us that, for all the problems, the federal judiciary is still the best friend the First Amendment has. And on top of that, Chief Justice Burger sent out a copy of the 1976 Pound Conference report on "Perspectives on Justice in the Future," which I take to be a reasonably current summary of ideas the legal fraternity is applying and pondering to improve the administration of justice.

One common theme of both the Richmond decision and the Pound Conference was that justice unperceived is justice undone. In the words of the majority opinion, "the means used to achieve justice must have the support derived from public acceptance of both the process and its results . . . people in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."

This thought—that if we cannot deliver infallibility as the leaders of society's institutions, we should at least deliver openness and candor—this thought is not a bad formula for both judges and editors to reconsider as we enter a new decade. And particularly so here in our West. I don't think it is overly paranoid for us to agree that our region faces staggering problems in the 80s, proolems that so far our governmental institutions, including the press as a quasi-public institution, have not managed to address in adequate fashion.

The other day one regional governor was in my office lamenting in extremely candid fashion that he felt his state's institutions were running out of control, that the scope of the problems being heaped on his desk were beyond the capacities of the executive powers he had been given, and beyond the legislative strength or wisdom being currently exhibited. He ticked off the proposed MX missile defense system being projected by one set of crisis enthusiasts from Washington—the largest public works project yet envisioned from Washington—the largest public works project yet envisioned by man anywhere on the planet. He noted the Exxon sketch of a massive synthetic fuels/oil shale development which might require water transportation from North Dakota to Colorado, and which Exxon was saying might demand some new regional administrative authority, presumably bypassing the state government system.

He spoke of slurry pipelines competing for groundwater which has yet to be judicially allocated as between farmers and speculators. He spoke of prospective coal trains splitting communities in half, of federal boards being proffered powers to bypass state regulation, and of course he spoke of the ever-present fact that all of these potential developments compete for a western water supply which by no stretch of the imagination can be developed to slake the thirst of all. This was just one governor agonized by the massive problems stemming from the energy crisis. The scare is bottom-lined by the "inside" advice this governor gets that Saudi Arabia is sure to fall—then the crunch will really be on.

As an example of the change in scope these crisis scenarios foretell, Exxon suggested that a 15-million-barrel daily synthetic fuel production could be in place in the West by 2010, 15 million barrels a day. Our total national consumption now is 17 million barrels daily. So you can see that in this big thinking being laid on the West, we are tapped to supply almost the total national requirement.

Of that 15-million barrels, 8 would come from our Colorado shale, and 7 from the coal in the Powder River basin of eastern Wyoming, Montana, and the Dakotas. Our West is seen as the new Arabia, a Persian Gulf without water.

The cost? $800 billion in today's dollars. The social impact? An industry of some 870,000 persons. Just to produce 8-million barrels a day in the Colorado shale fields would require, 150 processing plants and a growth of population from the low thousands to better than a million in that sparise corner of our state.

The projected impacts of one national goal—the development of a Western synthetic fuels industry to eliminate dependence on oil imports—are so staggering that you forget we are hearing about this in one instant and the MX missile system and slurry pipelines in another. The wars over the waterholes, the impact on state financing—the number of potential legal conflicts facing our West should stagger even the most judicial of imaginations. And we haven't even mentioned conflicts between the states and the federal government as to jurisdictions, or the questions of allocating water resources such as underlay the groundwater controversy, or the conflicting pressures on resources embodied in the wilderness movement. Or the growing problems of ethnic pluralism as the composition of the Western population changes—such matters as controversy over bilingual education, or classroom integration, or equable school financing. Or the impact of urbanization—crime and penitentiaries.

In sucking in our wind and speculating about this West of the 1980s, let's ask ourselves which West we are talking about. The historian of early exploration, William Goetzman, in a recent think-tank session at Sun Valley underscored the fact that each of us really has two Wests in his mind.

"There is a dichotomy," Goetzman said, "between the West as action and the West as myth. A romantic myth has persisted through Western history and has, in many ways, obscured the realities of the action taking place in the West. When one thinks of the West one thinks about Thomas Moran's beautiful landscapes, William H. Jackson's romantic photographs, and especially Frederic Remington's troopers and cowboys, all of which preserve the myth or myths of the West. (As a Montanan, I wish he'd stick Charlie Russell in there.)

But "the real action that took place was rather brutal action if one looks at it with a cold eye," Goetzman goes on. "The early pioneers and settlers here were 'hard cases' with their obliteration of the buffalo, their annihilation of the Indian, their casual violation of the lands, their careless mining practices. One only has to go to Virginia City (Montana) to see miles and miles of mine tailings littering the landscape (early versions of the strip mines further to the east in Montana and Wyoming) to realize that the 'hard case' in the West is no new phenomenon, but he also will not go away. While we are in a strange technological turning point, in many ways the mentality remains the same."

We do see the problems of two Wests before us today. The nostalgia for the family farm and the independent yeoman versus the agribusinessman as victim of corporate business cycles and international trade disruptions. The great portion of romantic myth in the wilderness movement with its romanticists facing the "hard case" actions of the needs for water and other resource development on sequestered land. Each of us does have a somewhat mythic and mental West in which we want to live, and we shut out as much as we can of the reality of technological and urban intrusion.

Yet I do not think we need to abandon either of the two Wests—we just need to realize their nature and seek balance between their imperatives. And there, in the seeking of the balance, like it or not, is where you Western judges come in. If the executive and legislative branches of our governments, particularly our Western state governments, had not lost their capacity to reach balanced decisions, then your thin black-robed line of the bench would not be all that stands between the Westerner of the 1980s and the massacre of the regional dream. But the legislatures and executives do not seem able to strike the balance, or at least we can say their capacity to strike balance in the face of the new scope of the problems is in real doubt.

But when we contemplate the growth of the judiciary as the sole balancing force, we face other problems, or so it seems to a layman.

How has the judiciary been moved by a variety of historic forces from the resolving of disputes where there are legal rights and wrongs to the ever more common solving of social problems where there is probably no totally ascertainable right or wrong, no pure winner or loser?

As Simon H. Rifkind of the New York bar told the Pound Conference, "The adversary process is well-honed for us in the resolving of disputes. The burden of proof stands as to one side or the other of a relatively well-defined issue bearing directly on, and only on, the parties to the dispute. Though, of course, the precedent of the decision slowly but surely enters the mosaic of the law for application to resolving future disputes." "But," Rifkind says, "each new decision is thus a small tile in a great mosaic, the design of which changes subtly and gradually and thus avoids the disasters which frequently overtake those who drive principles to the extreme ends of their logical conclusions."

But he goes on, "Problem solving (as opposed to dispute resolving) is a different enterprise. There one finds little refuge in the burden of proof. The edict is not confined to the parties before the bar. The consequences are by no means 'tile-sized'. The Judge," Rifkind says, "frequently administers 'avulsive changes,' requiring in a democracy not only wisdom and inventiveness but a keen perception of political implications."

He goes on to pay tribute to the number of excellent judges who have had the rewarding and exhilirating experience of turning their courts into mini-legislatures, but questions whether the court system is capable of digesting by sole reliance on the adversary system the great problem-solving burdens ahead.

But I doubt if it does us much good to question the wisdom of putting all these issues before the courts. Your courts are where most of the Western problems I've mentioned are already lodged, or will certainly be lodged by the decade's end. And you are the ones to whom a litigating, interest-group society is bound to turn. Our legal tradition has always placed a good deal of reliance on judicial discretion—on the ability of the judge to temper the general rule to individual facts and even to invent new rules. And with the great growth of complex government in the 20th Century, the tendency of legislators to set judges to watching administrators has made judicial law-making commonplace.

As one expert has put it, judges can only brand administrative conduct illegal by substituting their own version of the law for that proclaimed by the administrators. For a period, as administrative law was mushrooming, it was the dominant thought that judges should restrain their intervention against the administrators who knew a complex field best. But latterly, as faith in government administrators has waned, there has been a new growth of judicial intervention, the emergence of what one commentator sees as the "judge as post-industrial hero."

As Martin Shapiro, professor of law at Berkeley and author of "Law and Politics in the Supreme Court" puts it,

"This resurgence of judicial presumption is, of course, part and parcel of the very currents of opinion that have led to constant talk of 'the greening of America,' 'appropriate technology,' 'ecology,' 'the limits of growth,' 'the new property,' 'small is beautiful,' 'humanistic values,' and the 'post-industrial' society. We are in the midst of a revolt of the intellectuals against the establishment technocracy and the methods and goals it has traditionally espoused. At the heart of this revolt are a number of key premises. One is that the lay consumer of technology, not the technician, must be the ultimate decision maker about how and where technology will be applied. Another is that division of labor among technologists has gone

so far, and the self-interest of the technologists has been so enlisted in the technical programs they operate, that they cannot be trusted to present or evaluate their own technologies impartially and with an eye toward the general good.

"Now that the technologists have allegedly failed us," Shapiro goes on, "it follows that we need new champions of the public good and the higher human values. Such champions must be uncorrupted by technology, unattached to the bureaucracy, and independent of the 'special interests' with whom the technocrats have become allied.

"Enter the judge: by constitution separated from the technological bureaucracy and the special-interest-dominated legislature; by education and experience devoid of technical expertise; by popular mythology armed with impartiality; and by his service to 'the law,' 'the constitution,' and 'justice' pledged to the highest and most universal human values. In a society in revolt against expertise, the judge emerges as the prophet armed—armed in his ignorance of every one of the technologies that make the society run. The judge is transformed, in his own eyes as well as those of others, from the industrial idiot to the post-industrial hero and wise man."

So, for better or worse our society of the 1980s sees the judge as the problem solver, as the balancer between great and competing social interests, the law-maker. The judge has become the superintendent of schools, the warden of the penitentiaries, the allocator of water, the ranger at the gate of our scenic attractions—you name it. And nowhere is this tendency stronger than in the West.

Here in the early West the circuit judge was often the only law a remote community knew—far more familiar than the legislator or the far away state official. So in this region you already wear the historic and sentimental mantle of the governor of last resort, and find the people accepting your role as law-maker, if they can see you make it.

The question in the real West of today is whether you can innovate in your procedures to reach the kinds of balancing decisions required in managing these regional social and economic problems. The role is yours. We can't expect the political system to be reformed in time for the problems to end up in any other forum but the courts.

You judges, more than any other body of government officials, are going to decide the shape of the West in the 1980s. We laymen can only hope your collective value system places a high priority on finding a balance that will allow both Wests to survive—the West of the romanticist who thinks that indeed this region is different and deserves to have some of that quality preserved, and the West of the action "hard cases" who motivated by presumed national needs are the engine of impacts that may well dry up the waterhole and block the pass.

It seems to a lay editor that there are two great problems with the ability of the judiciary to play this balancing role.

The first is that courts too often speak in the language of rights, and sometimes quite narrow interest groups seem ever more adept at asking the judge to rule that their interest is their "right." Courts that habitually rule that a particular interest be given priority as an absolute right, rather than as an interest to be balanced with others—these are the courts that must ask themselves if their techniques for balancing interests are sufficient to the problems of the modern West.

And, in addition to problems with balancing interests, as opposed to declaring rights, courts must also weigh the costs of unilateral policy making. One analyst has said, "Policymaking through the vehicle of litigation means that the judge enters highly complex ongoing situations just far enough and just long enough to pull out a crucial brick and then scampers away, leaving it to the rest of the political system to somehow make sure that the wall does not fall down."

A second problem is that many of us would reflect that we want to better understand your decisions, and the humanity of your processes. We recognize that in the era when the greater body of your work was the resolution of disputes, the role of the judge was somewhat above the battle. The tradition of the antiseptic judiciary grew up. Judges don't run for office. Many are nominated by secretive and elitist commissions. The processes of the courts are kept as remote as possible, and so on.

In my mind this antiseptic tradition is symbolized by the absurd custom in many jurisdictions of not allowing modern, unobtrusive photography of court proceedings. Hence the image of the judge on the TV screen—crayola judges where Your Honor looks like a monster from Star Wars as drawn by remote artists. And where the entire depiction brings to a whole new generation of Americans the idea of a judge as something inhuman delivering inexplicable rules. Is a crayola judiciary really serving a people facing the need to empathize with your decisions on vast social and economic problems?

I don't argue that judges should return to all-out politics, though this was a humanizing process, and an accountable one. I do argue that in an era when judges are also stuck with the role of administrators and legislators, they need more than before to place a higher premium on the accurate public perception of their humanity and their burden.

Judges need to more clearly explain their roles and the process by which they reach their decisions. The public seeks to know, and should be told, that in weighing all the factors leading to a decision, the judges did indeed consider the various issues about which they were concerned and resolved them in a certain way. If the decision process is more clearly explained—in language the layman can understand—and then if that process is more adequately communicated to the press and the public, some additional understanding can be gained. While judges seek rightfully to maintain their independence, that may not mean maintaining a distance from the public so great that understanding is lost. Independence and distance are not the same thing.

The chore of the media in bringing the perception of the courts and the administration of justices to the public is more important in the 1980s and beyond than it ever has been before. If the judiciary is to see to it that justice is perceived as being done, in practical terms this means that it must help the media perceive that it is being done.

Obviously judicial processes that are closed, courts that hamper print and broadcast coverage of their proceedings, judicial nomination and selection processes that are behind the screens—we can all recite a litany of practices of the past that have prevented a closer working relationship between the media and the judiciary. The side issue which has unconsciously distracted us from the central problem of proper communication is that of the relationship of press coverage to fair trial. I don't propose to warm over that old turkey today. Surely we can see, and the Supreme Court has several times ruled, that the judiciary has ample power to shape trial processes to protect the rights of a defendant. And surely we can further see that in the 1980s both of these parts of our governmental process—the judiciary and the media—must turn their attention to another great area equally as important as the right of fair trial. That is the right of the people to truly understand the judicial process, and to truly perceive your expertise in ruling over increasing portions of their lives.

The federal judiciary can't be above this battle. This isn't just a matter of quarrels in lower courts. The communication rules the federal judiciary adopts have a compelling effect on the whole system. The lifetime tenure granted federal judges properly insulates you from the ruckus of the moment. This not only preserves your necessary independence, but also enables you to take the longer-range view of the philosopher about where our judicial system is heading.

The problems of the 1980s mandate a reconsideration about the judiciary's communicating its own processes to the public. You can't go on being crayola judges. You are post-industrial heroes and true philosophers of government. Perhaps, thus titled, you will be more in the mood, at least here in the West, to take a new look at this problem of public perception as the 1980s dawn.

None of us can envy the role of the Western judiciary as these staggering years loom. You are the only balancers left in the world of the real West, and you are the cavalry riding to the rescue of those of our mythic regional qualities as may feasibly and justifiably be preserved.

All we can hope is that the judicial machinery can be used to not only separate legal right from legal wrong in specific disputes, but also to deliver balanced and perceived justice to a region sorely beset by great social and economic problems, and by trends and thrusts from those who do not see our regional needs, or dreams, as having a very high priority. None of us can envy you your task, and you surely deserve our support in its execution.●

OFFICE OF EXPORT ADMINISTRATION

● Mr. GARN. Mr. President, I would like to take this opportunity to announce that hearings will take place on September 24 and 25 on S. 2606—legislation to remove the Office of Export Administration from the Commerce Department, to be replaced by an independent Office of Strategic Trade. More and more interest is being focused on the bill, both in the media and in the Congress. Therefore, I would like to announce that Senator WARNER, who has shown great interest in the issue of strategic trade has become a cosponsor of this important legislation.●

TECHNOLOGY TRANSFER AND NATIONAL SECURITY

Mr. WARNER. Mr. President, I have been concerned for some time now about the considerable amount of strategic technology that has been flowing to the Soviet Union through the poorly administered export policies of the Commerce Department. For too long the United States has been supplying the Russians with the equipment and technical know-how critical to the development of their military. I along with Senators HARRY BYRD and WILLIAM COHEN have advocated much tougher trade policies at hearings held by the Senate Armed Services and Commerce Committees.

At the same time Senator GARN, as ranking minority member on the Senate Banking Committee, which has jurisdiction over the U.S. Export Administration

Act, has been a leading advocate of more stringent controls on East-West trade, as means of protecting what little technological advantage this country has left over our main adversary—the Soviet Union. Consequently, Senator GARN recently introduced legislation—S. 2606, to remove the Office of Export Administration from the Commerce Department, and to make it the core of a new independent Office of Strategic Trade—free from the extreme export promotion bias of the Commerce Department.

I am proud to join the growing amount of supporters of this much needed legislation, and would like to bring to this body's attention a fine editorial, entitled "Selling Away Security" that recently appeared in the Richmond Times-Dispatch. It is a very accurate reflection of the concern by the American people of this very serious problem. I strongly urge my colleagues to read and give close attention to this editorial, and ask that it be printed in the RECORD.

The editorial follows:

SELLING AWAY SECURITY

One would not expect to find in a technical publication for those who make their living developing and selling the latest in electronic equipment and other highly sophisticated devices a well documented argument for restricting the market for their wares. Such an argument is presented, however, in the July 1980 issue of Dun & Bradstreet's Industrial Research & Development in an admirable article entitled "The Dark Side of Technology Exports."

The editors of Industrial Research & Development warn that the United States may carry the ignominious distinction of having become the "arsenal of communism" unless lax policies and enforcement practices against export of strategically valuable technology are strengthened. The publication reports, as has been noted here in several editorials this year, that the federal government's "export control" apparatus is fundamentally flawed in that any decision by strategic trade analysts to deny a proposed export for national security reasons can be overridden by an official concerned primarily with promotion of exports: the secretary of commerce. Military experts believe that the Soviets would not have the strategic advantage they now enjoy if American administrations during the past decade had not allowed the export of certain high-technology devices.

Perhaps the most interesting argument that the editors of Industrial Research & Development present is that the export of strategic technology to the Soviets benefits the Soviets much but rewards American industry very little. American enterprise, the magazine says, has profited "only on a very small scale" from exporting technology to the Soviets. This is so because "the Russians 'skim off' the fruits of hard-earned U.S. technology by purchasing only what is essential; then through 'reverse engineering' they attempt to duplicate the commodity. This not only has saved them millions of dollars in (research and development), it also has fostered a steady erosion of the U.S. lead in technical expertise which, trade experts say, will cause the eventual loss of Kremlin-controlled markets anyway."

Control of strategic exports could be made much more effective if an Office of Strategic Trade, divorced from the promotion-conscious Commerce Department, were established under the direct authority of the president. Sen. Jake Garn, R-Utah, has a bill to accomplish just that, as was described here in a June 24 editorial.

The more sensible organization of an export control office as proposed by Sen. Garn cannot be effective, however, without a president determined to enforce trade controls strictly. Jimmy Carter has an ignominious record in this matter. In January, soon after the Soviet invasion of Afghanistan, when Mr. Carter was seeking to gain as much attention as possible for his purportedly "hard-line" decision to suspend the granting of licenses for export of certain technological devices to the Soviet Union, the president promised Virginia's Sen. Harry F. Byrd Jr. and South Carolina's Sen. Strom Thurmond that the ban would be applied to the Soviets' East European satellite countries as well. That promise was never kept and was repudiated publicly by Carter aide Rex Granum in February. Two months later, the largely ineffective ban against Soviet technology trade was lifted, returning America to "business as usual" with the invaders of Afghanistan.

The Carter administration's profligacy in allowing the transfer of critical technology to communist tyrannies was shown again last week when it was announced that more than 400 export licenses had been approved for the sale of electronic gear and other sophisticated equipment to communist China. The sale has profound strategic significance, since most of the material to be sold may be used for military purposes. The wisdom of Mr. Carter's decision to allow the sale is highly debatable, and indeed the whole matter of strategic trade and Mr. Carter's record on it ought to be a topic of discussion during the presidential campaign.●

PD-59 TESTIMONY

● Mr. CHURCH. Mr. President, on Tuesday, September 16, Secretary of State Muskie and Secretary of Defense Brown appeared before the Foreign Relations Committee, in executive session, to discuss the recently issued Presidential directive on nuclear war strategy, known as PD-59. The committee's purpose in holding this hearing was to insure that it fully understands the strategic rationale, as well as the foreign policy and arms control implications, of PD-59.

The committee's session with Secretaries Muskie and Brown proved to be extremely useful. It layed to rest many of the more exaggerated interpretations of this new directive and gave the committee an opportunity to examine its implications in detail. I should mention, in this regard, that the two Secretaries emphasized to the committee that neither they, nor President Carter, believe it likely that a nuclear war, once begun, can stay limited. Nor do they believe that there is such a thing as a "winnable" nuclear exchange between the superpowers.

Mr. President, I submit for the RECORD at this point the prepared statements of Secretaries Muskie and Brown for the Committee's session on PD-59. I believe both of these statements will be helpful to Members in their examination of the issues which surround this important new Presidential directive.

The statements follow:

STATEMENT BY EDMUND S. MUSKIE

Mr. Chairman and members of the Committee, I am pleased to have this opportunity to join Harold Brown to discuss our nuclear targeting strategy with you. When I was a member of this Committee, I strongly believed we had a responsibility to concern ourselves with issues of strategic nuclear policy. Over the years, I probed a series of Administration officials and outside experts on how changes in our nuclear doctrine, forces, and strategy affected our security and international stability.

I did not leave those concerns behind when I became Secretary of State. Indeed, it is a central part of my responsibilities to ensure that foreign policy considerations—in the broadest sense—are taken into account in decisions about defense programs and doctrine.

As Secretary of State, I am particularly concerned with the ways in which our strategic doctrine bears on our overall foreign policy toward our allies and adversaries. To support our basic foreign policy and national security objectives, our nuclear strategy should satisfy the following conditions:

It should ensure that potential adversaries are fully convinced of our determination to resist nuclear aggression on any scale, at all times and in all circumstances.

It should avoid stimulating a cycle of superpower misperception and miscalculation that could undermine strategic stability.

It should be fully consistent with our arms control objectives, so that we preserve the opportunities to strengthen security and stability by means of equitable and verifiable arms control agreements.

It should encourage and justify the willingness of our friends and allies to link their security with our own.

I believe the countervailing strategy meets these tests.

The countervailing strategy underscores and unmistakably communicates to the Soviets two fundamental truths. First, they could derive no conceivable benefit from initiating the use of nuclear weapons, no matter how limited or extensive the attack and no matter at what stage in a conflict they might be launched. Second, nuclear conflict cannot be an instrument for achieving national policy goals, either for us or the Soviet Union; there surely will be no victor in a nuclear war.

Our strategy, and our capability to inflict massive destruction in retaliation, provide the bases for convincing the Soviets of both propositions. The countervailing strategy builds on and complements this traditional doctrine. It enhances our ability to launch selective as well as massive retaliatory attacks, and to cover the full range of targets the Soviet value. It makes clear our capacity to respond to any Soviet nuclear attack—whatever its magnitude and form—at an appropriate scale, intensity and focus. We have moved in this direction in order to ensure that the Soviets—whatever their notions about nuclear war or the utility of nuclear weapons—do not mistakenly conclude they could achieve some advantage by initiating the use of nuclear weapons or by launching limited strikes.

As such, the countervailing strategy is not a radical departure from previous policy. It is rather the result of a gradual evolution of our doctrine over a period of years in response to changing conditions and new knowledge. The credible capacity to devastate the Soviet Union under any circumstances remains its cornerstone. Thus, we will continue to include the full spectrum of political and military, as well as urban-industrial, targets in our planning. PD-59 does not signify a shift to a warfighting strategy nor to a first-strike doctrine.

It does underscore—and I believe strengthen—the credibility of our capability to retaliate against any nuclear attack under any circumstances, be it a massive strike against the U.S., or a more limited one against our forces or our allies.

The public reaction of the Soviets is what one would expect. They claim the countervailing strategy is a warfighting strategy, and

a U.S. effort to achieve a first strike capability that would undermine strategic stability. They also charge that PD-59 is the real explanation for NATO's decision on TNF modernization and reflects a U.S. intent to confine any nuclear war to Europe while the U.S. remains immune from attack. These claims are neither surprising nor true.

But we should expect the Soviets to try to use PD-59 to split us from our Allies and deprive us of European support for our post-Afghanistan efforts. We can expect the Soviets to focus their energies on undermining the NATO consensus in favor of TNF modernization.

These Soviet accusations, in fact, ring hollow in view of their own doctrine, their attention to nuclear warfighting, and the size and character of their strategic nuclear forces. Moreover, they have never been particularly comfortable with what they regard as our "city-killing" philosophy of nuclear deterrence. I do not believe they genuinely regard this evolution in our nuclear strategy as a move to a first-strike, warfighting doctrine. The central purpose of our deterrence policy is to underscore the consequences for the Soviets if they should ever initiate the use of nuclear weapons.

We want to make sure the Soviets get that message. But we also want to ensure that they get the message right. We need to remain fully alert to the risks of misperceptions and miscalculation, to the danger that the Soviets may see provocation where we intend none. I do not want anyone to wrongly conclude that we suddenly have become confident about our ability to orchestrate nuclear exchanges and control escalation, or that we have become complacent about the use of nuclear weapons.

We will continue to emphasize to the Soviets that our intentions are peaceful and that we pose no threat to their legitimate security interests. At the same time, we will continue to insist that they respect the interests and rights of others and remind them of the consequences if they resort to nuclear weapons.

In this connection, I need hardly add that we do not regard the countervailing strategy as in any way a substitute for arms control or as a symptom of disenchantment with the arms control process. On the contrary, the countervailing strategy is fully consistent with the SALT II Treaty and our longer term arms control objectives. Nothing in the countervailing strategy changes or challenges our belief that nuclear arms control can make a significant contribution to our security and to international stability. Nothing in the evolution of our nuclear doctrine has led us to reassess the benefits of equitable and verifiable arms control agreements with our chief adversary. In particular, I continue to believe strongly that SALT II would make a crucial contribution to our national security. We will ask the Senate to act on ratification at the earliest feasible time.

The Allies share our concern about the need to deter the full range of Soviet nuclear threats, as well as our continued commitment to arms control and to the maintenance of strategic stability. By reinforcing Allied confidence in the credibility of our nuclear guarantee, the countervailing strategy will strengthen alliance cohesion and solidarity as well as directly reduce the likelihood of conflict. The countervailing strategy reflects and supports the NATO strategy of flexible response by underscoring the availability of a full spectrum of nuclear responses.

We have discussed the evolution of our nuclear strategy and its relationship to flexible response in the normal course of consultations with our Allies. The detailed discussion of the countervailing strategy in Secretary Brown's annual report to the Congress last January provided an excellent basis for our dialogue this year. Secretary Brown also gave an extensive briefing to the NATO Nuclear Planning Group this past June.

In the course of these consultations and in the aftermath of press reports about PD-59, the Allies have indicated they understand the countervailing strategy and appreciate the ways in which it strengthens the U.S. strategic linkage to their security. I do not want to leave the impression that we take their support for granted: it has to be earned and then protected in the face of Soviet efforts to undermine Alliance solidarity. I do want to emphasize, however, that the Allied leaders appreciate the rationale behind the countervailing strategy. I am confident that, in the course of our continuing consultations, their support will be sustained.

Nuclear strategy and doctrine are properly sober subjects. This should not, however, obscure the important positive contribution that the countervailing strategy makes to our most basic foreign policy objectives.

I am confident that the countervailing strategy not only strengths deterrence, but also establishes a firmer basis for our diplomacy with the Soviets. It underlines our determination to respond to any challenges to our vital interests, at the same time it confirms that we pose no threat to the legitimate interests of other states. As such, it leaves the Soviets no room for doubt about our will or our peaceful intentions.

The countervailing strategy, of course, will not transform the basically adversarial relationship we have with the Soviets. But it reduces the chances for superpower miscalculation and increases Soviet incentives to cooperate on managing and containing the competition between us. It therefore contributes to the prospects for reaching arms control agreements that limit the dangers of war.

For like reasons, the countervailing strategy reaffirms to our Allies and friends that the United States is committed—in equal measure—to protecting our mutual security interests and to international stability. I expect it will serve to solidify our relationship with them and to strengthen our role as leader of the Western Alliance.

Let me conclude my opening statement by briefly addressing the question of the involvement of the State Department and the Secretary of State in the formulation of the countervailing strategy. I have carefully reviewed the record. I have concluded that Secretary Vance and the State Department were involved as the major concepts of the policy were being developed and were in a position to make their views known.

The development of the main lines of the strategy was substantially completed well before I took office, and it had already been outlined in public statements, especially in Secretary Brown's January 1980 Report to the Congress. Given my Senate responsibilities, I was of course aware of the direction of the Administration's strategic thinking. In fact, I had addressed some of the same concerns and concepts in a speech I delivered last year.

That said, the preparation and issuance of a Presidential Directive that codifies our nuclear strategy is itself an important action that has a significant foreign policy dimension. It therefore is clear that I, as Secretary of State, and the State Department should have been appropriately involved in the action.

I consider the situation that developed here to be an unintended exception to this Administration's record of substantially increased State Department involvement in national security issues. I have discussed this episode with the President as well as with Secretary Brown and Dr. Brzezinski. The President has assured me that I and others at the Department as needed will be fully consulted on the foreign policy implications of such major national security policy decisions.

STATEMENT BY THE HONORABLE HAROLD BROWN

Mr. Chairman, I welcome this opportunity to join Secretary Muskie in testifying before the Committee. In the past in this room, I found him to be a formidable questioner, determined in seeking the facts and dedicated to reaching correct judgments on policy. I am very glad to be together with him today on this side of the table.

Our subject this morning is strategic nuclear policy. As this Committee well knows, the principal objective of our strategic nuclear forces is to deter nuclear war. Deterrence requires stability, and to achieve strategic nuclear stability, three requirements must be met:

First, we must have strategic nuclear forces that can absorb a Soviet first strike and still retaliate with devastating effects.

Second, we must meet our security requirements and maintain an overall strategic balance at the lowest and most stable levels made possible by our own force planning and by arms control agreements.

Third, we must have a doctrine and plans for the use of our forces (if they are needed) that make clear to the Soviets the hard reality that, by any course leading to nuclear war and in any course a nuclear war might take, they could never gain an advantage that would outweigh the unacceptable price they would have to pay.

I have testified extensively before this Committee on our strategic forces themselves and on arms control—most particularly during the thorough and searching hearings you conducted on the SALT II treaty last year. My conviction that SALT II serves and advances our national security interests remains intact, and its ratification at the earliest feasible time is still very important.

Today, we are here to examine the third of the three requirements for strategic nuclear stability—our strategy itself. Our doctrine must:

Set forth the requirements that must be met to maintain deterrence;

Guide our procurement strategy for the acquisition of strategic nuclear forces and the corresponding command, control, and communications systems; and

Shape our operational planning for the use of our forces in war, if necessary.

I need not review for the members of this Committee the entire historical evolution of American nuclear strategy. Let me begin with a few basic points, and then concentrate on the most recent developments.

The United States has never had a doctrine based simply and solely on reflexive, massive attacks on Soviet cities and population. We have always planned both more selectively (options limiting urban-industrial damage) and more comprehensively (a range of military targets). Previous administrations, going back almost two decades, recognized the inadequacy of a strategic doctrine that would give us too narrow a range of options. As former Secretary of State Kissinger testified before this Committee as recently as July of 1979, "the side that can defend its interests only by threatening to initiate the mutual mass extermination of civilians will gradually slide towards strategic, and therefore eventually geopolitical, paralysis."

The fundamental premises of our countervailing strategy today are a natural evolution of the conceptual foundations built over a generation by men like Robert McNamara and James Schlesinger.

Because of our strategic doctrine, like our strategic forces, is designed to deter the Soviets, it must both take into account Soviet perspectives and be made clear to the Soviets, so as to deter them. Not only must we have the forces and the will to retaliate, we must also, if we are to deter them, convince the Soviets that we do. Thus, while the operational details of our nuclear weapons and plans must remain secret, their existence and

certain essential information about them must be made public and made clear, so that deterrence will be effected.

With that as backdrop, let me discuss the analytic and operational steps taken by this Administration to maintain effective deterrence, as well as some of the key issues raised in the context of our countervailing strategy. I have already submitted detailed answers to the written questions you have raised. We can explore those further, if you wish. But, in my brief remarks here, I will try not to duplicate too much of what I have submitted in writing.

In the summer of 1977, President Carter ordered a fundamental review of our targeting policy. Over the course of the next 18 months, that study was conducted and reviewed by military and civilian experts in the various appropriate agencies, taking into account our forces, plans, problems, and capabilities, as well as Soviet perspectives, strengths, and vulnerabilities.

Since my report to the President on that analysis, we have been moving deliberately to implement its basic principles. I outlined the major precepts of this countervailing strategy in my defense report in early 1979, and in more detail in January of this year. In general terms, I discussed it during the SALT hearings last year.

In June of this year, at a meeting of the NATO Nuclear Planning Group in Bodo, Norway, I briefed our Allies on the conclusions we reached and the actions we are taking. They fully support the need for the United States to have a wide range of strategic nuclear options. Our countervailing strategy is fully consistent with NATO's flexible response, and it indicates our determination to carry out that Alliance strategy. Indeed, I have received separate communications from some of my NATO counterparts indicating their concurrence in that view.

On July 25, 1980, President Carter signed an implementing directive—Presidential Directive No. 59—codifying our restated doctrine, and giving guidance for further evolution in our planning and systems acquisition.

In the public discussion about PD-59 over the last month or so, a number of misconceptions have appeared. One useful result of today's hearing would be to lay these misconceptions to rest.

PD-59 is not a new strategic doctrine; it is not a radical departure from U.S. strategic policy over the past decade or so. It is, more precisely, a refinement, a recodification of previous statements of our strategic policy. PD-59 takes the same essential strategic doctrine, and restates it more clearly, more cogently, in the light of current and prospective conditions and capabilities—Soviet and U.S.

PD-59 does not assume that we can "win" a limited nuclear war, nor does it intend or pretend to enable us to do so. It does seek both to prevent the Soviets from being able to win such a war and to convince them that they could not. I do not believe that either side could "win" a limited nuclear war; I want to ensure as best we can that the Soviets do not believe so either.

PD-59 does not assume that nuclear war will necessarily be protracted over a period of many weeks or even months, because we are not at all convinced that it would be, or even could be. PD-59 does take into account Soviet literature which considers such a scenario to be a real possibility. As recently as last year, Marshall Ogarkov (who is the counterpart of our Chairman of the Joint Chiefs of Staff) wrote in the Soviet Military Encyclopedia:

". . . the possibility cannot be excluded that the war could also be protracted. Soviet military strategy proceeds from the fact that if a nuclear war is foisted upon the Soviet Union, then the Soviet people and their armed forces must be ready for the most severe and prolonged trials. In this case, the Soviet Union and the fraternal Socialist states . . . [have] objective possibilities for achieving victory." We must convince them—and PD-59 is a key part of that effort—that such beliefs are unfounded and dangerous.

PD-59 also does not assume that a nuclear exchange could remain limited, and I, for one, have very serious doubts that one could. PD-59 does, however, reconfirm and refine our ability to be able to respond to a limited Soviet nuclear strike—should one occur—other than by a single, massive, all-out retaliation against Soviet cities, population, and industry.

PD-59 does not substitute primarily military for primarily civilian targets. It does increase the number and the variety of options available to the President in the event of Soviet attack, at any level. As in the past, these options cover a wide range of kinds of targets. We will retain the option of a general attack on the entire target system including the industrial capacity of the USSR.

PD-59 is not a first strike strategy. It is a strategy of deterrence, which deals with what we could and (depending on the nature of a Soviet attack) would do in response to a Soviet attack. Nothing in PD-59 contemplates that nuclear war can be a deliberate instrument of achieving our national security goals, because it cannot be. But we cannot afford the risk that the Soviet leadership might entertain the illusion that nuclear war could be an option—or its threat a means of coercion—for them to use to their advantage.

In summary, Mr. Chairman, Presidential Directive 59 is the latest formal expression of U.S. strategic doctrine as it has been evolving for more than a decade. It is a sound and sensible expression, reflecting a sound and sensible doctrine.

Thank you.●

CONSULTATION ON U.S. REFUGEE PROGRAMS FOR 1981

○ Mr. KENNEDY. Mr. President, this morning the Judiciary Committee conducted a hearing on the President's proposed admission of refugees to the United States for fiscal year 1981 under the terms of The Refugee Act of 1980, Public Law 96-212.

At the hearing the President's representatives, Attorney General Benjamin Civiletti and Ambassador Victor Palmieri, U.S. Coordinator for Refugee Affairs, submitted the report on United States refugee programs required by section 207(e) of the act.

In fulfillment of the statutory obligation that the committee act to have the results of the hearing be printed in the RECORD, I am submitting today the summary of the President's report to Congress, the Attorney-General's prepared statement, and my opening statement.

I ask that they be printed at this point in the RECORD.

The material follows:

SENATOR KENNEDY'S OPENING STATEMENT AT JUDICIARY HEARING ON U.S. REFUGEE PROGRAMS FOR 1981

Below is the text of Senator Edward M. Kennedy's opening statement at the Judiciary Committee's hearing on United States refugee programs for fiscal year 1981:

We meet today in the shadow of a refugee crisis that is global in its scope and staggering in its dimension of human misery. Over 13 million men, women and children are refugees in the world today—homeless and helpless, destitute, totally dependent on others for the assistance essential to preserve life itself.

There are more refugees today than at any other time in modern history. In the past three years, the world total has grown by more than 2,000 new refugees each day. In the past five months, more than 2 million new refugees have fled war, famine or persecution. Time and again, the mounting tide of refugees has overwhelmed the planet's ability to respond.

America can be proud of its humanitarian heritage. More than any other nation, this country has responded nobly to the call for help from refugees in every corner of the world.

Now, in this difficult period in our effort to deal with the current crisis, a new law—The Refugee Act of 1980, approved by Congress and signed into law by President Carter earlier this year—is providing important new tools to accomplish our goals. In part, the purpose of this hearing is to explore what action the United States will take to help refugees under this far-reaching legislation.

But the task is not ours alone. If real progress is to be made, America's voice is not the only voice that must be heard. The refugee crisis is an international tragedy requiring international action. If massive human suffering is to be prevented, other nations in the world community must also work, and work together, to meet the need.

Last year, this Committee issued a Library of Congress report calling for an international conference on refugees as the most effective possible step toward the goal of concerted action by the world community. Today, I renew that call for an international conference—to help strengthen the mandate and authority of such crucial agencies as the United Nations High Commissioner for Refugees. I urge our government and others to examine the recommendations in the Committee's report for additional significant steps essential to improve the coordination of our global effort in behalf of refugees.

Today's witnesses will add to our understanding of the complex aspects of the issue.

Among the issues facing us are a number of pressing questions. We need to know what more can be done to cope with the continuing tragic flow of refugees in Indochina, and what more our diplomacy can do to improve conditions, especially in Cambodia.

We need to know why Jewish refugees are suddenly encountering new difficulties in leaving the Soviet Union.

We need to know what we can do to alleviate the plight of Afghanistan refugees in Pakistan, and to respond to the desperate pleas for food and relief in Somalia, Sudan, Uganda and elsewhere in Africa.

These well-known issues are only the beginning of our concern. In many other regions of the globe, there are refugees living in fear and desperation. Their plight demands action from us all. Their faces are pressed against our windows, and they are waiting for our answers.

STATEMENT OF BENJAMIN R. CIVILETTI

I am pleased to have this opportunity to consult with you, in accordance with the Refugee Act of 1980, regarding the plans of the Administration for refugee admissions and resettlement for FY 1981. With me this morning are Ambassador Victor Palmieri, U.S. Coordinator for Refugee Affairs, and representatives of the other agencies with refugee responsibilities.

The Refugee Act of 1980 represents a major step toward establishing a uniform, coherent, and manageable policy necessary for handling refugee admissions to this country. However, as both the Congress and the Administration recognized at the time of passage and in our first consultation in April

of this year, the Act also signals the beginning of the long and difficult task of formulating a more rational and equitable basis for our refugee programs. Our FY 81 proposals and the progress we have made in implementation of the Act since last spring are steps in that direction.

Today I would like to review briefly the increasingly serious refugee problems we have experienced in recent years and expect to see persist in the near future, as well as the specific details of our proposed FY 81 refugee admissions and resettlement programs.

In accordance with the requirements of the Act, you have received a comprehensive set of background materials to support our program recommendations. As you know, the worldwide refugee problem remains serious, widespread, long-term and growing. Several situations with refugee dimensions were resolved during the year, permitting voluntary refugee repatriation in Zimbabwe and Nicaragua. But developments in Southeast Asia, the Horn of Africa, Afghanistan, and the Caribbean have continued to generate large numbers of refugees. Our overall approach remains the pursuit of active diplomacy, economic and security assistance programs, and practical support for progress in human rights, as a means of ameliorating the underlying conditions that give rise to large numbers of refugees. At the same time, it speaks well of our national character and is in our national interest to respond generously to mounting refugee problems.

Since April, the United States has found itself in the position of serving as a first asylum nation. We have come to understand firsthand the enormous burden which fal's on first asylum countries. We must bear our own burden with compassion, even though we would hope others would recognise the need to share it—just as we have consistently aided other countries of first asylum.

Accordingly, the first objective of our refugee policy continues to be joining in international efforts to provide relief to refugees wherever they are and to facilitate voluntary repatriation wherever possible.

Where resettlement of refugees is a practical necessity, we are willing to continue responding generously, in an effort to relieve human suffering and encourage other countries to do their share in providing resettlement opportunities.

The guiding principles which have shaped the FY 1981 admission levels and groups include the following:

We continue to give priority to refugees with close ties to the United States through relatives in this country or past employment with the U.S. government.

Where the United States has stood uniquely as a symbol of freedom from oppression for particular groups, we seek to respond to their aspirations for safe haven.

We are mindful that refugee resettlement efforts can advance broader foreign policy objectives, in particular to promote stability in friendly, democratic countries of first asylum.

We have also taken into consideration the opportunities for resettlement in other countries and the practical limits on United States resources.

For fiscal year 1981, we propose to admit to the United States 217,000 refugees. This figure is 14,700 less than of fiscal year 1980 admissions. The proposed 217,000 includes 168,000 from Indo-China, 33,000 from the Soviet Union, 4,500 from Eastern Europe, 4,500 from the Near East, 4,000 from Latin America, and 3,000 from Africa.

With regard to the Indochinese program, our proposals calls for continuing the 14,000 monthly level President Carter pledged to establish in June, 1979. The situation in Southeast Asia continues to be fraught with uncertainty and hardship, and there are approximately 235,000 Indochinese refugees in first asylum countries, some of whom have been waiting for resettlement offers for more than five years. In addition to the very real and pressing humanitarian concerns, the political problems in the region and the need to maintain stability and support the ASEAN group are in the forefront of our concerns.

In addition, we propose to admit 37,500 refugees from areas that have long been of concern to the United States, the U.S.S.R. and Eastern Europe. Emigration from the Soviet Union has unfortunately been subject to more stringent controls than usual in the past year, but we expect that the departure rates will rise again this coming year.

Our proposal for the Near East is set at 4,500. Numbers will be allocated to various groups depending on the emergence of special conditions or needs, Afghans, Iraqi-Assyrians and Iraqi-Kurds have applied for admission as refugees from this area of the world. In addition, large numbers of people are still fleeing the chaotic conditions in Iran, and while there is not yet a clear pattern of persecution, there may well be need for a refugee resettlement program for Iranian religious minorities.

The recommendation for Latin America is for 4,000 refugee admissions. These numbers would be used for 2,500 Cuban refugees, approximately one-half of whom would come from Madrid before we terminate that program. The remainder would be Cubans who have already been processed and who were ready to travel to the United States prior to the mass exodus from Mariel. Our first priority for the Latin American program will be given to political prisoners and their families and to former political prisoners.

The Latin American figure represents the biggest reduction of any of the groups for fiscal year 1981. The fiscal year 1980 proposal was for 20,500, of which 19,500 was to be for Cubans. The reduction reflects the massive influx of Cubans to the United States in contravention of both U.S. law and our guiding principle of refugee admissions—orderly processing and departure to the United States from abroad.

The proposal calls for admission of 3,000 African refugees, a number double the fiscal year 1980 level. This represents our best estimate of the number of eligible refugees who may wish to apply for admission to the U.S. The largest proportion is likely to continue to be Ethiopians but Africans from other regions of the continent are also expected to seek resettlement.

In addition to the refugee groups and numbers I have outlined, the Act authorized adjustment to permanent resident status of up to 5,000 persons in the United States who have been granted political asylum in previous years. The adjustment of these 5,000 brings to 222,000 the total number of admissions and adjustment to permanent resident of refugees for fiscal year 1981. Although large regional disparities in the number of proposed admissions remain, we have attempted to modify those disparities in this proposal in an evaluation fashion. We are committed to a system which permits refugees in all parts of the world to apply freely for admission to the United States, and we believe we are taking reasonable steps toward that objective.

The cost to the Federal Government of processing, transporting and initially resettling refugees for FY 1981 will be approximately $690 million. The Department of Health and Human Services administers the bulk of federal assistance to refugees and is the lead federal agency in domestic resettlement in consultation with the U.S. Coroditnator for Refugee Affairs.

As you know, the private sector, particularly voluntary agencies, contributes enormously to our refugee efforts, particularly with regard to resettlement. The federal/private agency relationship is the centerpiece of our efforts and its role cannot be overemphasized in the success of our program to date.

Refugee problems are inherently unpredictable, since their causes are usually beyond our control. The Cuban-Haitian crisis of recent months has presented a new and even more difficult challenge than ever. It has strained the compassion and generosity of the American people and the resources and capacity of government at all levels. We remain committed, however, to upholding faithfully our humanitarian tradition to help those uprooted persons around the world who face persecution. We recognize that this task is made considerably more difficult by circumstances in which our hospitality and values are abused. I am confident we can meet this challenge and continue to contribute in important ways in relieving the misery and suffering of people around the world, some of whom will begin new, productive lives in this country.

Thank you.

SUMMARY OF REPORT TO THE CONGRESS ON PROPOSED REFUGEE ADMISSIONS AND ALLOCATIONS FOR FISCAL YEAR 1981

SUMMARY

This is a summary of extensive background materials submitted in "Report to the Congress: Proposed Refugee Admissions and Allocations for Fiscal Year 1981" prepared in compliance with the Refugee Act of 1980. The Act requires that the Committees on the Judiciary of the House and the Senate be provided with information on six areas of concern, a summary of which follows.

(1) Nature of the Refugee Situation:

The world-wide refugee problem is serious, wide-spread, long-term and growing. Although several refugee-generating situations which were resolved during the year resulted in voluntary refugee repatriation to countries including Zimbabwe and Nicaragua, developments in Southeast Asia, the Horn of Africa, Afghanistan and the Caribbean continue to generate large numbers of refugees.

In Asia, the number of Indochinese refugees in first-asylum countries hovers around 235,000. Refugees departing for third country resettlement are almost as rapidly replaced by new refugee arrivals who add to the economic, political and social strains on ASEAN countries. In the Soviet Union, the changed character of relations between the United States and the Soviet Union has made departures for Soviet Jews particularly difficult this year. Reports of increased harassment emphasize the need for freedom of movement. In the Near East, over 1,000,000 Afghan refugees, some with special ties to the United States, have fled their country. A growing number of Afghans and other refugees from the region are seeking resettlement outside the region. In Africa, Somalia is providing a haven for over 1.3 million refugees from Ethiopia while additional refugees from Ethiopia and other parts of Africa search for resettlement opportunities outside the region. In Latin America, the movement of people from the Caribbean has provided critical new dimensions to the worldwide refugee problem.

(2) Proposed Number and Allocations of Refugee Admissions:

Within the framework of the Refugee Act of 1980 and in response to humanitarian needs and foreign policy concerns, the Administration proposes the admission of 217,000 refugees to the United States during Fiscal Year 1981 and the adjustment of status of up to 5,000 persons previously granted asylum in the United States, pursuant to Title II Section 209(b) of the Refugee Act of 1980.[1]

The proposed 217,000 includes 168,000 from Indochina, 33,000 from the Soviet Union,

[1] See Table I.

4,500 from Eastern Europe, 4,500 from the Near East, 4,000 from Latin America and 3,000 from Africa.

Indochinese refugees

The proposal calls for a continuation of the 14,000 monthly level of Indochinese to be admitted to the United States in Fiscal Year 1981. The Indochinese refugee situation continues to present problems of serious dimensions. Not counting the Khmer in holding centers, there are approximately 235,000 boat and overland refugees in first asylum countries awaiting resettlement. A continuum of the current U.S. level of commitment provides leverage in encouraging third countries to continue their share of the resettlement burden.[2] The situation in the region is unstable. There is no assurance that the Vietnamese moratorium on organized boat departures will hold.

U.S.S.R. and Eastern Europe

The proposal calls for the admission of 33,000 refugees from the Soviet Union. While the vast majority of Soviet refugees are Jewish, there are Armenians and members of other Christian groups admitted under the Soviet program. A clear distinction is made between the members projected for admissions and the strong U.S. commitment to the principles of freedom of emigration.[3]

Romanian refugees are the largest group admitted to the United States under the Eastern European program. As a result of the Most Favored Nations treatment grants to Romania under the Jackson-Vanik amendment, increasing levels of Romanians have been permitted to emigrate. Other Eastern Europeans who have been traditionally admitted and continue to be considered for admission under this program are refugees in Warsaw Pact countries.

Near East

The proposal calls for the admission of 4,500 refugees from this region during Fiscal Year 1981. A single numerical level has been set for all refugees from the Near East. Numbers will be allocated to various groups depending on the emergence of special conditions or needs of refugees of special humanitarian concern for our country. Afghans, Iraqi Assyrians and Iraqi Kurds, many claiming persecution and with relatives in the United States, have applied for admission as refugees.

The continuing chaotic conditions in Iran are stimulating an increasing number of Iranians who have fled their country and have arrived in Europe to seek permanent resettlement elsewhere, including the United States. Atlhough a clear general pattern of persecution facing Iranians of various political and religious persuasions has not emerged definitively, there are many instances of persecution and proven danger to individuals. While at the present time we do not have a program for admitting persons from Iran as refugees, we remain ready to consider at a later date the admission on a case-by-case basis of those Iranians who can demonstrate compelling humanitarian reasons to come to the United States in family reunification cases and who can demonstrate that they fulfill all of the requirements of the Refugee Act. These admissions would be part of the 4,500 admissions allocation level for refugees from the Near East.

Latin America

The proposal calls for the admission of 4,000 refugees from Latin America during Fiscal Year 1981.

These numbers will be used for 2,500 Cuban refugees. Approximately one-half will come from Madrid as we terminate that program. Cubans who have already been processed and were ready to travel to the United States prior to the recent mass exodus from Mariel will be considered for admission.

In addition to Cuban refugees, the proposal calls for the admission of 1,500 refugees from other Latin American countries including the Caribbean region.

First priority will be given to political prisoners and their families including former political prisoners. Second priority will be given to those under UNHCR protection. Third priority will be given to family reunification cases.

Africa

The proposal calls for the admission of 3,000 African refugees in Fiscal Year 1981. It is our best estimate of the number who qualify for refugee status and may wish to apply.

Although the largest number of Africans seeking admission to the United States is expected to continue to be Ethiopians, Africans from other regions of the continent who have suffered persecution are also seeking resettlement.

(3) Proposed Plans and Cost of Their Movement and Resettlement:[4]

Most refugees will be processed at Immigration and Naturalization Service (INS) posts which have traditionally prepared refugees for movement to the United States. Additional refugees will be processed by other designated U.S. Government officials. Regardless of where refugees are processed, INS retains the ultimate statutory authority to determine refugee admissibility under the Refugee Act of 1980.

The new grant agreements with resettlement agencies define the basic minimum services which these agencies are expected to make available to refugees. This includes pre-arrival services, reception, counseling referral, consultation with public agencies and assistance to unaccompanied minors. When sponsorship assurance is received, the Intergovernmental Commission for European Migration (ICEM) provides support in out-processing and transportation. Health screening is provided abroad and a visual inspection and medical records review takes place at U.S. ports of entry by Center for Disease Control (CDC) quarantine officers. Refugees arriving at resettlement locations are met by representatives of voluntary agencies responsible for reception placement and initial resettlement assistance. The voluntary agencies will continue to play an important role in the resettlement process, which starts overseas while the refugee is awaiting permission to enter the United States and includes ongoing follow-up services to assure the refugee's successful adaptation, integration and progress.

The lead Federal agency in domestic resettlement is the Department of Health and Human Services (HHS) which administers the bulk of Federal assistance to refugees in the United States, in consultation with the U.S. Coordinator for Refugee Affairs. Refugee related programs of Department of Agriculture, Department of Education and Department of Labor are described in the report.

(4) Anticipated Social, Economic, and Demographic Impact of Their Admission to the United States:

The admission rate of 217,000 refugees will increase the population of the United States by less than one-tenth of one percent (0.1%). Because the United States gives high priority for admission to family reunification cases, it is expected that areas of current resettlement will continue to grow. The economic impact of refugees, while on occasion producing temporary local difficulties, is expected to be positive overall. However, the process of adjusting to a new country is not always as rapid as might be desired by either a host country or the refugees themselves. Refugees admitted to the United States in Fiscal Year 1981 should have no significantly different impact on this country than has been witnessed in the past.[5]

(5) Resettlement Efforts of Other Countries:

During the first ten months of the fiscal year, of the 235,682 Indochinese resettled, 141,166 were admitted to the United States and 94,516 were resettled in third countries. Only informed speculation can be made now as to future third country resettlement programs. Of almost 800,000 Indochinese who have been resettled to date, nearly 390,000 have been resettled in the United States. Australia has indicated that it will resettle 1,100-1,200 monthly. The traditional initial response from third countries to UNHCR and U.S. demarches over the years has been noncommittal. Canada, second only to the United States in acceptance of Indochinese refugees, is expected to continue as a major country of resettlement. France will probably continue its resettlement program at an average of 1,100 a month.[6]

The resettlement pattern of Soviet Jews leaving the U.S.S.R. is roughly comparable to that of the past several years. Approximately one-third go to Israel and some 10 percent of the remaining two-thirds go to countries other than the United States.

Spain and Italy have resettled large numbers of refugees from Latin America and France and Germany and have resettled large numbers of Ethiopian refugees.

(6) Foreign Policy Implications:

The U.S. refugee resettlement program has strengthened our leadership role in the international community and is of critical importance in furthering our humanitarian as well as political objectives. To the ASEAN countries, it is one of the most vital elements in the U.S. commitment to that region's stability and progress.

TABLE I.—PROPOSED REFUGEE ADMISSIONS, FISCAL YEAR 1981

Area of origin	Admissions fiscal year 1980	Proposed admissions fiscal year 1981	Percentage change
Indochina	168,000	168,000	Same.
Asia	1,200	0	Eliminated.
Soviet Union	33,000	33,000	Same.
Eastern Europe	5,000	4,500	9 percent lower.
Near East	2,500	4,500	92 percent higher.
Latin America	[1] 19,500	----------	
	1,000	4,000	400 percent higher.
Africa	1,500	3,000	100 percent higher.
Total	231,700	217,000	6.3 percent lower.
Asylum status adjustments	5,000	5,000	Same.

[1] Cubans.

TABLE II.—UNITED STATES AND 3D COUNTRY RESETTLEMENTS OF INDOCHINESE REFUGEES FROM OCTOBER 1979 THROUGH JULY 1980

	United States	3d countries	Total
October 1979	12,873	12,807	25,680
November	14,373	11,604	25,977
December	14,013	9,573	23,586
January 1980	14,512	12,648	27,160
February	14,437	11,209	25,646
March	14,057	6,158	20,215
April	13,902	7,801	21,703
May	14,385	8,633	23,018
June	13,599	7,622	21,181
July	15,055	6,461	21,516
Total	141,166	94,516	235,682

[2] See Table II.

[3] See Table III.

[4] See Table IV.

[5] See Table V for Geographic Distribution of Indochinese Refugees in the United States.

[6] See Table VI.

TABLE III.—REFUGEE FLOWS FROM THE SOVIET UNION, FISCAL YEAR 1980

	Soviet Jews [1]	Non-Jews (principally Armenians) [2]	Monthly total
October	4,867	169	5,036
November	3,616	464	4,080
December	3,300	512	3,812
January	3,272	423	3,695
February	2,868	441	3,309
March	2,563	497	3,060
April	2,012	470	2,482
May	2,131	719	2,850
June	1,489	1,229	2,718
July	680	200	880
August (projected)	1,000	150	1,150
September (projected)	1,000	250	1,250
Total	28,798	5,524	
Grand total	34,322		

[1] Source: Department of State. Note: Figures for August and September are considered conservative estimates.
[2] Source: U.S. Mission Geneva. Note: Figure for August is incomplete, and September figure is an estimate.

TABLE IV.—ANALYSIS OF THE COST IN FISCAL YEAR 1981 OF THE PROPOSED FISCAL YEAR 1981 REFUGEE ADMISSIONS [1]

[In millions of dollars]

Agency/program	Estimated fiscal year 1981 cost
Department of State:	
Care and maintenance of refugees abroad [2]	169.00
Admissions processing	14.75
Transportation to the United States	132.40
Initial reception and placement grants	105.45
Administrative and operational expenses	5.00
Subtotal	426.60
Department of Health and Human Services:	
Office of Refugee Resettlement:	
Cash assistance	56.2
Supplemental security income	3.7
Medical assistance	29.5
Social services	70.0
State administrative costs	12.5
Aid to unaccompanied minors	2.0
Aid to non-Cuban, non-Indochinese refugees	20.0
Administrative budget for ORR	6.5
Public Health Service:	
Center for Disease Control	3.0
Health Services Administration	4.8
Subtotal	208.2
Department of Agriculture: Food stamps program	29.4
Department of Education: Refugee educational assistance [3]	17.8
Grand total	682.00

[1] The 1981 appropriations now pending before the Congress provide funding for the admission of 210,000 refugees to the United States. The administration will attempt to meet any additional costs associated with the revised projected admissions for fiscal year 1981 by reprograming. If necessary, the administration may have to seek supplemental appropriations.
[2] This figure may overstate the cost of care and maintenance for refugees resettled in the United States in fiscal year 1981, since it represents U.S. contributions to international and private organizations whose caseloads also include refugees not destined for the United States. However, in some areas such as Southeast Asia, the majority of the refugees resettled leave for the United States, yet third-country contributions account for 70 percent of the UNHCR budget.
[3] These funds are appropriated to the Department of Health and Human Services but are administered by the Department of Education.

TABLE V.—INDOCHINESE REFUGEES IN THE UNITED STATES

[Partially adjusted for secondary migration]

	July 31, 1980	Aug. 15, 1980
1. Alabama	1,995	2,008
2. Alaska	292	298
3. Arizona	2,799	2,843
4. Arkansas	2,774	2,806
5. California	123,971	126,348
6. Colorado	7,636	7,758
7. Connecticut	3,565	3,609
8. Delaware	220	220
9. District of Columbia	4,827	5,001
10. Florida	7,866	7,974
11. Georgia	3,926	4,046
12. Hawaii	5,706	5,767
13. Idaho	701	706
14. Illinois	14,105	14,299
15. Indiana	3,575	3,582
16. Iowa	6,285	6,335
17. Kansas	4,914	4,993
18. Kentucky	1,869	1,884
19. Louisiana	10,296	10,369
20. Maine	596	605
21. Maryland	3,744	3,787
22. Massachusetts	5,391	5,508
23. Michigan	6,870	7,003
24. Minnesota	12,419	12,622
25. Mississippi	1,169	1,184
26. Missouri	3,644	3,673
27. Montana	1,093	1,042
28. Nebraska	2,152	2,170
29. Nevada	1,963	2,007
30. New Hampshire	271	271
31. New Jersey	3,344	3,444
32. New Mexico	2,001	2,090
33. New York	11,332	11,545
34. North Carolina	3,470	3,518
35. North Dakota	667	673
36. Ohio	5,390	5,467
37. Oklahoma	5,839	5,919
38. Oregon	11,885	12,101
39. Pennsylvania	15,669	15,970
40. Rhode Island	2,329	2,351
41. South Carolina	1,315	1,317
42. South Dakota	729	762
43. Tennessee	3,867	3,921
44. Texas	34,944	35,450
45. Utah	5,052	5,203
46. Vermont	182	186
47. Virginia	10,159	10,256
48. Washington	15,816	16,138
49. West Virginia	391	391
50. Wisconsin	5,293	5,386
51. Wyoming	273	273
52. Virgin Islands	11	11
53. Guam	385	386
54. Puerto Rico	28	28
Unknown	1,475	1,475
Total	388,432	394,979

Source: Prepared by HHS.

TABLE VI.—INDOCHINESE REFUGEES CUMULATIVE 3D COUNTRY RESETTLEMENT—LAND AND BOAT REFUGEES, APRIL 1975 TO JULY 1980

	Cumulative resettlement
Resettlement country:	
Argentina	1,281
Australia	39,464
Austria	1,136
Belgium	3,282
Brazil	68
Canada	60,625
China	265,554
Denmark	1,570
Finland	115
France	66,245
Germany, Federal Republic of	14,297
Greece	95
Hong Kong	9,368
Iceland	34
Ireland	212
Israel	366
Italy	2,486
Japan	557
Luxembourg	70
Malaysia	2,142
Netherlands	3,022
New Zealand	2,825
Norway	1,931
Paraguay	31
Philippines	13
Spain	508
Sweden	1,727
Switzerland	7,192
United Kingdom	10,721
Other	794
Total	497,731
United States	388,802
Grand total	[1] 886,533

[1] Based on UNHCR reports through May 1980 and Department of State reports for June and July 1980.●

AIRLINE TAX BILL

● Mr. CANNON. Mr. President, I was most disappointed by the action of the Finance Committee yesterday in their decision to continue the excessive taxation of our Nation's airline passengers. Rather than accepting a well-constructed compromise put together by Senator PACKWOOD, the Finance Committee reported a bill which simply extends the existing tax level. It is that same existing tax level to which we owe thanks for a $3.7 billion surplus in the aviation trust fund. Every day that these taxes are collected the surplus continues to grow; continues to sit in Washington and cannot be spent for any purpose; and continues to embarrass those of us who get asked why we should collect billions more than we need for this program. To be exact, a continuation of the Finance Committee's suggested tax level through fiscal year 1985 will result in a surplus of $11.4 billion.

I, of course, will continue my complete opposition to this tax extension. If the Congress takes no action at all, the airline ticket tax will fall from 8 to 5 percent on October 1, 1980. That 5 percent tax will begin to feed the General Treasury where the money can be put to some use while we try to decide next year how to continue this trust fund, or perhaps more appropriately whether to continue this trust fund at all. This user fund was based upon a good concept in my opinion, but the Federal Government seems unable to find the will to match the users' revenues with expenditures from this fund.

Therefore, I believe that we should rethink our starting points for next year on how we might reconstruct this program. First, we should examine the possibility of abandoning the trust fund concept. Second, since the expenditure program will lapse along with the taxes on October 1, we can consider how many airports should be put into a new program, rather than the decision of the Senate this year to take only 72 airports out of an existing program. I believe we should examine many more of the Nation's air carrier, hub airports to see if they can justify the need for Federal aid. I believe such a total reexamination of the program would be healthy and useful considering our apparent inability to balance this trust fund.

Mr. President, at the beginning of this year, I had high hopes we could continue this trust fund program without interruption and return it to a fiscally prudent balance by fiscal year 1985. Unfortunately, we appear unable to continue this program without gouging airline passengers for money we do not need and will not spend. So I see no ready alternative to the October 1 sunset of ADAP. Regrettably, some of the Nation's 3,000 smaller public airports will be hurt by this lack of funds, because they really do need Federal assistance.

The largest airports which were to be defederalized anyway will, indeed, be able to survive without Federal aid despite their claims that they are afraid of negotiating with their tennants to collect the cost of services provided. It is time these monopoly landlords learned how to run their multimillion dollar business without help from Washington.

But, even I must admit that immediate defederalization of all our Nation's public airports—both large and small—is a much larger step than any new legislation would have logically taken us with this program. Yet that is exactly what we are getting 1 week from next Wednesday.

Clearly, we must start anew next year and develop a sensible program which only provides assistance to those airports which must receive Federal aid, and which properly balances the airline passenger's taxes and benefits.●

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following Calendar Orders Nos. 1021, 1058, and 1059.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

HEALTH PROFESSIONS EDUCATION AND DISTRIBUTION ACT OF 1980

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2375) to amend the Public Service Act to revise and extend the programs of assistance under titles VII and VIII for training health professionals and to extend the National Health Service Corps program.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike all after the enacting and inserting the following:

SECTION 1. This Act may be cited as the "Health Professions Education and Distribution Act of 1980".

SEC. 2. (a) The Congress makes the following findings:

(1) The goals of the health care system in the United States are to provide all Americans with access to high quality health care at a reasonable cost, to promote good health and prevent disease, to return individuals who are acutely ill to good health, and to improve the quality of life for individuals who are chronically ill or disabled.

(2) The attainment of these goals in the 1980's is dependent, in part, on the training of well qualified health professionals in sufficient numbers, and encouraging health professionals to practice among populations and in locations presently lacking adequate health services, and in types of practice for which there is an urgent need for additional practitioners.

(3) The Nation's ability to utilize fully its human resources to meet its health care needs is now in jeopardy because many low- and middle-income Americans cannot, from existing sources, meet the price of education in the health professions.

(4) The representation of minorities within most health professions remains far below their representation in the population.

(5) Women are underrepresented within certain health professions, including many medical specialties.

(6) The capacity of the Nation's health professions schools, established over the last two decades, is, in general, sufficient to meet the Nation's needs for health professionals. However—

(A) there is a continuing need for health professionals trained in primary care, mental health care, prevention and rehabilitation, among other areas of care;

(B) there exists a wide disparity in the availability of physicians and other health professionals, including podiatrists, in many urban and rural areas;

(C) there remains, in many of our Nation's communities, a critical inability to obtain and retain nurses; and

(D) there is a continuing need for increased utilization of physician assistants, nurse practitioners, and expanded function dental auxiliaries in the provision of health care services.

(7) Because of the rising demand for mental health services and wide disparities in the distribution of psychiatrists, clinical psychologists, psychiatric nurses, and psychiatric social workers, psychiatry is a medical shortage specialty and there are distinct needs for other health professionals.

(8) Special programs designed to meet the needs of the underserved continue to be necessary.

(b) Therefore, the Congress declares that the Federal Government's partnership with the Nation's health professions schools and students is reaffirmed so that, with Federal assistance—

(1) all Americans can be assured equal opportunities to enter a health career;

(2) all Americans can be assured access to qualified health professionals; and

(3) the health professions schools can assist in accomplishing these objectives.

SEC. 3. (a) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

(b) For purposes of this Act, the term "Secretary" means the Secretary of Health and Human Services.

SEC. 4. The amendments made by this Act shall take effect October 1, 1981, unless otherwise specified.

TITLE I—EDUCATION OF HEALTH PERSONNEL

SEC. 101. (a) The title of title VII is amended to read as follows:

"TITLE VII—EDUCATION OF HEALTH PERSONNEL".

(b) Section 700 is amended to read as follows:

"GENERAL DUTIES OF SECRETARY

"SEC. 700. The Secretary shall, after consultation with appropriate public and private entities, conduct and support activities under titles VII and VIII designed to—

"(1) train sufficient numbers of health professionals to meet the health care needs of the United States;

"(2) distribute health professionals, by geographic area and specialty practice, to meet the health care needs of the United States;

"(3) provide career opportunities in health care to individuals without regard to income background;

"(4) assure the maintenance of high-quality health professions education; and

"(5) maximize the cost effectiveness of health professions education.".

SEC. 102. (a)(1) Section 701(2) is amended to read as follows:

"(2) The term 'nonprofit' refers to the status of an entity owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.".

(2) Section 701(3) is repealed, and paragraph (4) of section 701 is redesignated as paragraph (3) of such section.

(3) Section 701(3) (as redesignated by paragraph (2) of this subsection) is amended—

(A) by inserting "'school of chiropractic','" after "'school of veterinary medicine',";

(B) by inserting "a degree of doctor of chiropractic," after "a degree of doctor of veterinary medicine or an equivalent degree,";

(C) by striking out "a school which" and inserting in lieu thereof "an accredited public or nonprofit private school in a State that"; and

(D) by adding at the end thereof "The term 'graduate program in health administration' means an accredited graduate program in a public or nonprofit private institution in a State that provides training leading to a graduate degree in health administration or an equivalent degree. The term 'graduate program in clinical psychology' means an accredited graduate program in a public or nonprofit private institution in a State that provides training leading to a doctoral degree in clinical psychology or an equivalent degree. For purposes of determining eligible institutions under parts C and F of this title, the term 'school of medicine' includes any public school in a State that offers an accelerated integrated program of study combining undergraduate premedical education and medical education leading to advanced entry, by contractual agreement, into an accredited four year school of medicine which provides the remaining training leading to a degree of doctor of medicine.".

(4) Section 701 is amended by inserting the following new paragraph after paragraph (3) (as redesignated by paragraph (2) of this subsection):

"(4) The term 'accredited' when applied to a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, chiropractic, pharmacy or public health, or a graduate program in health administration or clinical psychology, means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that, by reason of an insufficient period of operation, is not, at the time of application for a grant or contract under this title, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this title, if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school or program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of the first entering class in such school or program. For purposes of parts C and F of this title, whenever a school of medicine may be eligible for a grant or contract if such school is accredited, the requirement that such school be accredited shall not preclude from eligibility for such grants or contracts any public school in a State that offers an accelerated, integrated program of study combining undergraduate premedical education and medical education leading to advanced entry, by contractual agreement, into an accredited four year school of medicine which provides the remaining training leading to a degree of doctor of medicine.".

(5) Paragraphs (9) and (10) of section 701 are redesignated as paragraphs (11) and (12), respectively.

(6) Section 701 is amended by inserting the following new paragraphs after paragraph (8) thereof:

"(9) The term 'allied health personnel' means individuals trained at the associate, baccalaureate, master's, or doctoral degree level in a health care related science, with responsibility for the delivery of health care or health care related services (including services related to the identification, evaluation and prevention of diseases and disorders, dietary and nutrition services, health promotion, rehabilitation, and health systems management), but who, for the purposes of this title, are not graduates of schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, chiropractic, pharmacy, public health, or nursing, or a grad-

uate program in health administration or clinical psychology.

"(10) The term 'school of allied health' means a public or nonprofit private junior college, college, or university—

"(A) which provides, or can provide, programs of education in a discipline of allied health leading to a baccalaureate or associate degree (or an equivalent degree of either) or to a more advanced degree;

"(B) which provides training for not less than a total of twenty persons in the allied health curricula;

"(C) which includes or is affiliated with a teaching hospital; and

"(D) which is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education, or there is satisfactory assurance afforded by such accredited agency to the Secretary that reasonable progress is being made toward accreditation.".

(7) Section 701(11) (as redesignated by paragraph (5)) is amended by adding "the Commonwealth of" before "the Northern Mariana Islands,".

(8) Section 701(12) (as redesignated by paragraph (5)) is amended by striking out "Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Health and Human Services".

(b)(1) The heading of section 702 is amended to read as follows:

"NATIONAL ADVISORY COUNCIL ON HEALTH PERSONNEL"

(2) Section 702(a) is amended—

(A) by striking out "Professions Education" after "National Advisory Council on Health" and inserting in lieu thereof "Personnel";

(B) by striking out "(or his delegate)" and inserting in lieu thereof "(or the delegate of the Secretary)";

(C) by striking out "twenty" after "who shall be Chairman of the Council, and" and inserting in lieu thereof "twenty-four";

(D) by inserting "among" before "persons who because of their education";

(E) by striking out "parts B, C, D, E, F and G of";

(F) by striking out clause (1) and inserting in lieu thereof "(1) fifteen shall be representatives of the schools and graduate programs assisted under this title, including at least one representative from each of the types of schools and programs defined in sections 701(3) and 701(10).";

(G) by striking out "two" and inserting in lieu thereof "three"; and

(H) by inserting "or interns or residents," after "health professions schools,".

(3) Section 702 is amended—

(A) by striking out "(other than subpart II of part G thereof)" each place it appears; and

(B) by striking out "he" in subsection (c) and inserting in lieu thereof "the Secretary".

(c) Section 703 is amended—

(1) by striking out "(a)" after "SEC. 703."; and

(2) by striking out subsection (b).

(d) Section 705 is amended—

(1) by striking out "shall" after "Such records" in subsection (a) and inserting in lieu thereof "may"; and

(2) by striking out "he" after "at such time and in such manner as" and inserting in lieu thereof "the Secretary".

(e) Section 707 is amended by striking out "Professions Education" after "National Advisory Council on Health" and inserting in lieu thereof "Personnel".

(f) Section 708 is amended to read as follows:

"HEALTH PERSONNEL DATA

"SEC. 708. (a) The Secretary shall undertake or support a program to collect, compile, and analyze data at least biennially, regarding health personnel in the States including physicians, nurses, dentists, pharmacists, optometrists, podiatrists, chiropractors, veterinarians, public health personnel, health administrators, health planners, physician assistants, expanded function dental auxiliaries, clinical psychologists, allied health personnel, and any other health personnel in the States designated by the Secretary to be included in the program. Such data shall include data respecting the training, licensure status (including permanent, temporary, partial, limited, or institutional licensure status), location or locations of practice, professional specialty, practice characteristics; place and date of birth, sex, and socioeconomic background of health personnel, the impact of titles VII and VIII on the training and distribution of health personnel, and such other information regarding health personnel.

"(b) In carrying out subsection (a), the Secretary shall collect available information from public or private entities. The Secretary may make grants to and enter into contracts with public and private entities for the collection of information not otherwise available.

"(c) The Secretary, in cooperation with appropriate public and private entities, shall—

"(1) analyze or provide for the analysis of health personnel data collected under this section;

"(2) conduct or provide for the conduct of—

"(A) analytic and descriptive studies of health personnel information including the need for, and supply of, health personnel; and

"(B) projections relating to such need and supply in the future, compiled according to type of personnel, practice specialty, and geographic location; and

"(3) conduct or provide for the conduct of analytic and descriptive studies of information on health students, interns, residents, and practitioners who are participating in health professions education, and on health personnel education programs and institutions, including institutional resources, student financial requirements and indebtedness, student characteristics such as age, sex, race, ethnicity and socioeconomic background, and apparent career choices such as practice specialty and geographic location.

"(d) Any school, program, or training center receiving funds under this title or title VIII shall submit an annual report to the Secretary. Such report shall contain such information as is necessary to assist the Secretary in carrying out this section. The Secretary shall not require the collection or transmittal of any information under this subsection that is not readily available to such school, program, or training center. Information provided pursuant to this subsection shall be collected or transmitted only to the extent permitted under subsection (f).

"(e) The Secretary shall submit to Congress the following reports:

"(1) a comprehensive report regarding the status of health personnel according to profession, including a report regarding the analytic and descriptive studies conducted under this section. Such report shall be submitted on October 1, 1982, and biennially thereafter;

"(2) a comprehensive report regarding applicants to, and students enrolled in, programs and institutions for the training of health personnel, including in such report descriptions and analyses of student indebtedness, student need for financial assistance, financial resources to meet the needs of students, student career choices such as practice specialty and geographic location and the relationship, if any, between student indebtedness and career choices. Such report shall be submitted on March 31, 1982, and biennially thereafter;

"(3) a report on the status of health personnel teaching facilities, including an analysis of the need for new facilities and the replacement and renovation of existing facilities, estimated aggregate construction, renovation and replacement costs, and available and appropriate sources for meeting such costs in order to meet national needs for health personnel. Such report shall be submitted on May 15, 1983; and

"(4) a report on the status of underrepresented groups among health personnel and students. Such report shall be submitted on October 1, 1982, and biennially thereafter.

"(f)(1) The Secretary and each program entity shall in securing and maintaining any record of individually identifiable personal data (hereinafter in this subsection referred to as 'personal data') for purposes of this section—

"(A) inform any individual who is asked to supply personal data whether the individual is legally required, or may refuse, to supply such data and inform the individual of any specific consequences, known to the Secretary or program entity, as the case may be, of providing or not providing such data;

"(B) upon request, inform any individual if the individual is the subject of personal data secured or maintained by the Secretary or program entity, as the case may be, and make the data available to the individual in a comprehensible form;

"(C) assure that no use is made of personal data which use is not within the purposes of this section unless an informed consent has been obtained from the individual who is the subject of such data; and

"(D) upon request, inform any individual of the use being made of personal data respecting such individual and of the identity of the individuals and entities which will use the data and their relationship to the programs under this section.

"(2) Any entity which maintains a record of personal data and which receives a request from the Secretary or a program entity for such data for purposes of this section shall not transfer any such data to the Secretary or to a program entity unless the individual whose personal data is to be so transferred gives an informed consent for such transfer.

"(3)(A) Notwithstanding any other provision of law, personal data collected by the Secretary or any program entity under this section may not be made available or disclosed by the Secretary or any program entity to any person other than the individual who is the subject of such data unless (i) such person requires such data for purposes of this section, or (ii) in response to a demand for such data made by means of compulsory legal process. Any individual who is the subject of personal data made available or disclosed under clause (ii) shall be notified of the demand for such data.

"(B) Subject to all applicable laws regarding confidentiality, only the data collected by the Secretary under this section which is not personnel data shall be made available to bona fide researchers and policy analysts (including the Congress) for the purposes of assisting in the conduct of studies respecting health professions personnel.

"(4) For purposes of this subsection, the term 'program entity' means any public or private entity which collects, compiles, or analyzes health professions data under a grant, contract, or other arrangement with the Secretary under this section.

"(g) In carrying out this section, the Secretary shall not be subject to the provisions of chapter 35 of title 44, United States Code.

"(h) There is authorized to be appropriated to carry out this section $3,000,000 for the fiscal year ending September 30, 1982, $3,000,000 for the fiscal year ending September 30, 1983, and $3,000,000 for the fiscal year ending September 30, 1984.".

(g) Section 709 is amended—

(1) by amending subsection (a)(1) to read as follows:

"(1) maintain any approved residency training program for physicians; and";

(2) by striking out subsection (b) thereof and redesignating subsection (c) as subsection (b); and

(3) by striking out "two-thirds but not more than three-fourths" in subsection (b) thereof (as designated by paragraph (2)) and inserting in lieu thereof "one-half".

(h) Section 710 is amended to read as follows:

"APPLICATIONS, PAYMENTS AND ASSURANCES UNDER GRANTS

"SEC. 710. (a) Grants made under this title may be paid (1) except for grants under section 770, in advance or by way of reimbursement, (2) at such intervals and on such conditions as the Secretary may find necessary, and (3) with appropriate adjustments on account of overpayments or underpayments previously made.

"(b) No grant may be made or contract entered into under this title unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(c) Whenever in this title an applicant is required to provide assurances to the Secretary, or an application is required to contain assurances or be supported by assurances, the Secretary shall determine before approving the application that the assurances provided are made in good faith.

"(d) The Secretary may provide technical assistance for the purpose of carrying out any program or purpose under this title.".

(i) Section 711 is amended to read as follows:

"DIFFERENTIAL TUITION AND FEES

"SEC. 711. The Secretary may not enter into a contract with, or make a grant, loan guarantee, or interest subsidy payment under this title or title VIII to or for the benefit of, any school, program, or training center if the tuition levels or educational fees at such school, program, or training center are higher for certain students on the basis that such students are the recipients of scholarships, traineeships, loans, loan guarantees, service scholarships, or interest subsidies from the Federal Government.".

SEC. 103. (a) Section 720(a)(1) is amended—

(1) by striking out "construction of" and inserting in lieu thereof "renovation or modernization of, or the conversion of existing facilities to,"; and

(2) by striking out "and" and inserting in lieu thereof "or".

(b) Section 720(a)(2)(A) is amended by striking out "and dentists" and inserting in lieu thereof ", dentists, pharmacists, optometrists, podiatrists, veterinarians or professional public health personnel".

(c)(1) The first sentence of section 720(a)(2)(B) is amended to read as follows: "For purposes of this section the term 'ambulatory, primary care teaching facilities' means facilities or areas dedicated for the training of students in the diagnosis and treatment of ambulatory patients.".

(2) The second sentence of section 720(a)(2)(B) is amended by striking out "of physicians and dentists in such specialties".

(d)(1) Section 720(b) is amended to read as follows:

"(b) In the case of a project for renovation modernization or conversion of facilities which are primarily (as determined by the Secretary) for teaching purposes and for which a grant may be made under section 720(a)(1), but which also are for research purposes or research and related purposes, in the sciences related to health or for medical library purposes (within the meaning of part J of title III), the project shall, insofar as all such purposes are involved, be regarded as a project for facilities with respect to which a grant may be made under this part.".

(2) Section 720 is amended by adding the following new subsection at the end thereof:

"(c) For payments under grants under this part there is authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1982, $1,000,000 for the fiscal year ending September 30, 1983, and $1,000,000 for the fiscal year ending September 30, 1984.".

(e) Section 721(b) is amended to read as follows:

"(b)(1) To be eligible to apply for a grant under section 720, the applicant must be a public or other nonprofit school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or public health, or any combination of such schools.

"(2) An application for a grant under section 720 or loan guarantee or interest subsidy under section 726, which would involve the construction, conversion, renovation, or modernization of all or part of an ambulatory, primary care teaching facility which is affiliated with but not owned by a school eligible for such grant under section 720 or loan guarantee or interest subsidy under section 726, shall be submitted jointly by the eligible school and the affiliated facility.

"(3) In the case of a joint application submitted under paragraph (2), assistance under section 720 or a loan guarantee or interest subsidy under section 726, shall be provided only for that portion of the proposed construction, conversion, renovation, or modernization which the Secretary determines to be reasonably attributable to the needs of such school for teaching or research purposes.".

(f) Section 721(c) is amended to read as follows:

"(c) A grant under section 720 may be made only if the application therefor is approved by the Secretary upon a determination that—

"(1) the applicant meets the eligibility conditions set forth in subsection (b);

"(2) the application contains or is supported by reasonable assurances that (A) the facility is intended to be used for the purposes for which the application has been made, (B) sufficient funds will be available to meet the non-Federal share of the cost, and (C) sufficient funds will be available for effective use of the facility when completed;

"(3) the plans and specifications are in accordance with regulations relating to minimum standards of construction and equipment;

"(4) in the case of an application for a project for the construction of a facility intended, at least in part, for the provision of health services, the applicant and the Secretary have complied with the appropriate provisions of title XV; and

"(5) the application contains or is supported by adequate assurance that any laborer or mechanic employed by a contractor or subcontractors in the performance of work on the construction of the facility will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a–276a–5, known as the Davis-Bacon Act).

The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (5), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c). Before approving or disapproving an application under this part, the Secretary shall secure the advice of the National Advisory Council on Health Personnel established by section 702 (hereinafter in this part referred to as the 'Council').".

(g)(1) Subsections (d), (e), (f), and (g) of section 721 are repealed.

(2) Section 721 is amended by adding at the end thereof the following new subsection:

"(d) In considering applications for grants under section 720 for the fiscal years ending September 30, 1982, and September 30, 1983, the Secretary shall give special consideration to applications submitted by medical schools for the expansion of a two-year program to a degree granting program.".

(h)(1) Section 722(a) is amended—

(A) by striking out "(1)" each place it appears;

(B) by striking out "60" and inserting in lieu thereof "70"; and

(C) by striking out paragraph (2).

(2) Section 722(b) is amended—

(A) by striking out "The Secretary's reservation of any amount under this section may be amended by him, either" and inserting in lieu thereof "The reservation of any amount under this section may be amended by the Secretary,"; and

(B) by striking out "or upon revision of the estimated cost of construction of the facility".

(3) Subsection (d) of section 722 is repealed.

(i) Section 723 is amended—

(1) by striking out subsection (a);

(2) by striking out "he" in subsection (b)(2) and inserting in lieu thereof "the Secretary";

(3) by striking out "b"; and

(4) by striking out "720(a)(2)" and inserting in lieu thereof "720".

(j) Section 724(b) is amended by striking out "he finds" after "such other regulations as" and inserting in lieu thereof "are".

(k)(1) Section 725 is amended to read as follows:

"ENROLLMENT COMMITMENTS

"SEC. 725. The Secretary shall unilaterally release all recipients of grants, loan guarantees, and interest subsidies under sections 720(a) and 726 (as such sections existed prior to October 1, 1980) from any contractual obligation to fulfill enrollment increases incurred pursuant to such sections or under regulations published to implement such sections.".

(2) The provisions of section 725 of the Public Health Service Act shall be effective on the date of the enactment of this Act.

(l) Section 726(a) is amended by striking out "September 30, 1980" after "and ending with the close of" and inserting in lieu thereof "September 30, 1984".

(m) Section 726(b) is amended—

(1) by striking out "September 30, 1980" after "with the close of" and inserting in lieu thereof "September 30, 1984"; and

(2) by inserting before the period at the end thereof "and for loan guarantees and interest subsidies first made after September 30, 1981, such amounts as are sufficient to reduce the net effective interest rate otherwise payable on such loan—

"(1) by 6 percent per annum; or

"(2) to 7 percent per annum;

whichever is less".

(n) Section 726(d)(2) is amended by striking out "he determines it to be" after "by the Secretary to the extend" and inserting in lieu thereof "it is".

(o) Section 726(e) is amended—

(1) by striking out "him to discharge his responsibilities" in clause (1) and inserting in lieu thereof "the discharge of responsibilities";

(2) by striking out "by him" in clause (1);

(3) by striking out the second sentence and inserting in lieu thereof "There is authorized to be appropriated to the fund $5,000,000 for the fiscal year ending September 30, 1982,

$5,500,000 for the fiscal year ending September 30, 1983, and $6,100,000 for the fiscal year ending September 30, 1984.";

(4) by striking out "by him from his operations" after "property or other assets derived" and inserting in lieu thereof "from operations";

(5) by striking out "his" after "enable the Secretary to discharge" and inserting in lieu thereof "the";

(6) by striking out "by him" after "guarantees issued";

(7) by striking out "he" after "authorized by this section," and inserting in lieu thereof "the Secretary";

(8) by striking out "he" after "for that purpose" and inserting in lieu thereof "the Secretary of the Treasury"; and

(9) by striking out "him" after "other obligations acquired by" and inserting in lieu thereof "the Secretary of the Treasury".

(p) Section 726(f)(2) is amended to read as follows:

"(2) In any fiscal year no loan guarantee may be made under subsection (a) and no agreement to make interest subsidy payments may be entered into under subsection (b) if the making of such guarantee or the entering into of such agreement would cause the total of—

"(A) the principal of the loans first guaranteed under subsection (a) in such fiscal year, and

"(B) the principal of the loans for which no guarantee has been made under subsection (a) and with respect to which an agreement to make interest subsidy payments is first entered into under subsection (b) in such fiscal year,

to exceed $10,000,000 in such fiscal year.".

SEC. 104. (a)(1) Section 728(a) is amended—

(A) by striking out "and" after "September 30, 1979;";

(B) by inserting ", $100,000,000 for the fiscal year ending September 30, 1982, $120,000,000 for the fiscal year ending September 30, 1983, and $140,000,000 for the fiscal year ending September 30, 1984" after "the fiscal year ending September 30, 1980"; and

(C) by striking out "1982" in the last sentence thereof and inserting in lieu thereof "1987".

(2) Section 728(c) is amended by inserting "consolidate," after "sell,".

(b) Section 729(a) is amended to read as follows:

"(a) The total of the loans made to a student in any academic years or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this subpart may not exceed $20,000 in the case of a student enrolled in a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or chiropractic, and $12,500 in the case of a student enrolled in a school of pharmacy or public health, a graduate program in health administration or clinical psychology, an advanced training program in a collegiate school of nursing, a program for the training of physician assistants, or a program for the training of expanded function dental auxiliaries. The aggregate insured unpaid principal amount for all such insured loans made to any borrower shall not at any time exceed $80,000 in the case of a borrower who is or was a student enrolled in a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or chiropractic, and $50,000 in the case of a borrower who is or was a student enrolled in a school of pharmacy or public health, a graduate program in health administration or clinical psychology, an advanced training program in a collegiate school of nursing, a program for the training of physician assistants, or a program for the training of expanded function dental auxiliaries. The annual insurable limit per student shall not be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.".

(c) Section 731(a)(1)(A) is amended—

(1) by striking out subdivisions (iii) and (v) thereof and redesignating subdivisions (iv) and (vi) as subdivisions (iii) and (iv); and

(2) by amending subdivision (iii) thereof (as redesignated by paragraph (1)) to read as follows:

"(iii) has agreed that all funds received under such loan shall be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses incurred by such student;".

(d) Section 731(a)(2) is amended—

(1) by striking out "by him" in subclause (A);

(2) by striking out "he was" before "not a participant in such a program" in subclause (B);

(3) by inserting "and interest" after "periodic installments of principal" in subclause (C);

(4) by striking out "and be paid" after "accrue" in subclause (C);

(5) by striking out "three" in subdivision (ii) of subclausee (C) and inserting in lieu thereof "five";

(6) by striking out "three" each place it appears in subdivisions (iii), (iv), (v), and (vi) of subclause (C) and inserting in lieu thereof "four"; and

(7) by inserting "for the purposes of calculating a repayment schedule" after "added to the principal" in subclause (D).

(e) Section 731(a)(2) is amended by redesignating subclauses (E) and (F) as subclauses (G) and (H), and by inserting the following new subclauses after subclause (D):

"(E) offers the borrower a graduated repayment option with larger payments due later in the repayment period, pursuant to criteria set by the Secretary;

"(F) provides for variable interest rates offered at the option of the lender at the time the loan is made, to be accepted at the option of the borrower, not to exceed a rate based on the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter, plus 2.5 percent, such variable interest to be determined quarterly;".

(f) Section 731(b) is amended by striking out "12 percent" after "may exceed" and inserting in lieu thereof "the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 2.5 percent".

(g) Section 731(c) is amended by inserting, ", except as provided in section 731(a)(2)(C)" after "the annual interest on the outstanding principal".

(h) Section 732 is amended by adding the following new subsection at the end thereof:

"(f) Nothing in this section shall be construed to preclude the lender and the borrower, by mutual agreement, from consolidating all of the borrower's debts into a single instrument, except that the portion of such debt that is insured under this subpart shall not be consolidated on terms less favorable to the borrower than if no consolidation had occurred.".

(i)(1) Section 733(d) is amended—

(A) by striking out "he" after "Federal loan insurance premiums," and inserting in lieu thereof "the Secretary"; and

(B) by striking out "he is" after "pursuant to this subpart until".

(2) Section 733(g) is amended to read as follows:

"(g) A debt which is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted—

"(1) after the expiration of the five-year period beginning on the first date, as specified in section 731(a)(2)(B) and (C), when repayment of such loan is required;

"(2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and

"(3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) to the borrower and the discharged debt.".

(j) Section 734 is amended—

(1) by striking out "by him" after "insured" in subsection (a);

(2) by striking out "his" each place it appears in subsection (a) and inserting in lieu thereof "the";

(3) by striking out "he" after "hereunder and for that purpose" in subsection (b); and

(4) by striking out "by him" after "or other obligations acquired" in subsection (b).

(k) Section 735(a) is amended—

(1) by striking out "him" after "and duties vested in" and inserting in lieu thereof "the Secretary";

(2) by striking out "his" after "Secretary or property under" and inserting in lieu thereof "the Secretary's";

(3) by striking out "his" after "and payment of interest, relating to" and inserting in lieu thereof "the Secretary's";

(4) by striking out "he determines" after "may be modified by the Secretary if" and inserting in lieu thereof "it is determined"; and

(5) by striking out "by him" after "evidencing a loan which has been insured".

(l) Section 735(c) is repealed.

(m)(1) Section 737 (1) and (2) are amended to read as follows:

"(1) The term 'eligible institution' means, with respect to a fiscal year, a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, chiropractic, pharmacy, or public health, a graduate program in health administration or clinical psychology, a program for the training of physician assistants, a program for the training of expanded function dental auxiliaries, or a collegiate school of nursing providing an advanced training program.

"(2) The term 'collegiate school of nursing' means a school of nursing as defined in section 853(3).".

(2) Subpart I is amended by adding the following new section after section 737:

"SEC. 737A. For purposes of determining eligible students under this part, in the case of a public school in a State that offers an accelerated, integrated program of study combining undergraduate premedical education and medical education leading to advanced entry, by contractual agreement, into an accredited four-year school of medicine which provides the remaining training leading to a degree of doctor of medicine, whenever in this part a provision refers to a student at a school of medicine, such reference shall include only a student enrolled in any of the last four years of such accelerated, integrated program of study.".

(n)(1) Section 739(a) is amended—

(A) by striking out clause (1) thereof and redesignating clauses (2) and (3) thereof as clauses (1) and (2), respectively;

(B) by striking out "and" at the end of clause (1) thereof (as redesignated by subparagraph (A));

(C) by striking out the period at the end of clause (2) thereof (as redesignated by subparagraph (A)) and inserting in lieu thereof "; and";

(D) by striking out "whether" in clause (2) thereof (as redesignated by subparagraph (A)) and inserting in lieu thereof "whenever"; and

(E) by inserting the following at the end thereof:

"(3) collection of information from the borrower, lender, or eligible institution to assure compliance with the provisions of section 731.".

(2) Section 739(b) is amended to read as follows:

"(b) The Secretary shall require an eligible institution to record, and make available to the lender and to the Secretary upon request, the name, address, postgraduate destination, and other reasonable identifying information for each student of such institution who has a loan insured under this subpart.".

SEC. 105. (a)(1) Section 740(a) is amended by striking out "which is located in a State and is accredited as provided in section 721(b)(1)(B)".

(2) Section 741(f)(3) is amended by striking out "him" after "to entitle" and inserting in lieu thereof "the borrower".

(b) Section 741(f)(5)(B) is amended—

(1) by striking out "he terminates" after "such loan cancellation until"; and

(2) by inserting before the period at the end thereof "is terminated".

(c) Section 741(k) is amended by striking out "to him" after "all the outstanding loans made".

(d) Section 741(l) is amended to read as follows:

"(l) A school may make loans for the fiscal year ending September 30, 1982, out of the loan fund established under section 740 to students enrolled in the last year of a full-time course of study at such school and who have previously received a loan out of the fund.".

(e) The second sentence of section 742(a) is amended by striking out "and each of the two succeeding fiscal years,".

(f) Section 743(a) is amended by striking out "1983" each place it appears and inserting in lieu thereof "1982".

(g) Section 743(b) is amended—

(1) by striking out "1983" each place it appears and inserting in lieu thereof "1982"; and

(2) by inserting the following at the end thereof: "Of the sums received by the Secretary each fiscal year pursuant to this subsection, the Secretary shall have available, depending upon need, up to $5,000,000 to make loan forgiveness payments under section 760(c), and deposit any remaining sums in the fund provided for in section 749E.".

SEC. 106. (a) Section 797 is repealed and sections 749 and 748 are redesignated as sections 797 and 799, respectively.

(b) The heading of subpart III of part C of title VII is repealed.

(c) Part C of title VII is amended by inserting the following new subpart after subpart II:

"Subpart III—Service Contingent Loan Program

"LOAN PROGRAM

"SEC. 745. The Secretary shall enter into an agreement at the request of any school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or public health, school of nursing, graduate program in health administration, program for the training of physician assistants, program for the training of expanded function dental auxiliaries, or program for the training of nurse anesthetists, to establish and operate at such institution a service contingent student loan program in accordance with this subpart.

"AGREEMENTS WITH INSTITUTIONS

"SEC. 746. Each agreement between the Secretary and the requesting school entered into under section 745 shall—

"(1) provide for the submission of a request for funds by an institution for the subsequent academic year for loans to students, the amount of the request to consist of the sum of the aggregate amount needed by the students of such institution for loans under this subpart and no more than 5 percent of such aggregate amount to be set aside as a reserve for unexpected student needs as provided under section 749H;

"(2) provide that such funds shall be used only for loans to eligible students as described in section 747 in accordance with the terms and conditions described in section 748 and section 749;

"(3) provide that the school enter into an agreement with each student receiving a loan under this subpart as provided in section 749;

"(4) provide that the institution may collect from the borrower a reasonable loan origination fee or reasonable collection fees, as determined by the Secretary;

"(5) provide that upon the beginning of the repayment period, the note or evidence of obligation may, at the option of the school, be assigned to the Secretary or, with the approval of the Secretary, to any other entity for collection;

"(6) provided that the institution notify students that they must enter into an agreement with the Secretary under section 749C as a condition of receipt of a loan under this subpart; and

"(7) include such other provisions as may be necessary to protect the financial interest of the United States and further the purposes of this subpart.

"ELIGIBLE STUDENTS

"SEC. 747. (a) In order to receive a loan under this subpart an individual shall—

"(1)(A) be a full-time student at a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy;

"(B) be not less than a half-time student at a school of nursing;

"(C) be not less than a half-time student in a graduate degree program in a school of public health, a graduate program in health administration, an advanced training program in a collegiate school of nursing, or a program for the training of nurse anesthetists; or

"(D) be a full-time student in a program for the training of physician assistants or expanded function dental auxiliaries; and

"(2)(A) be in need of the amount of the loan (as determined by such individual's school) to pursue a course of study;

"(B) be capable, in the opinion of the institution, of maintaining good standing in such course of study;

"(C) be accepted for enrollment in the institution, or, in the case of a student already in attendance at such institution, a student in good standing; and

"(D) enter into an agreement with the Secretary under section 749C prior to receipt of such loan.

In any case in which a student fails to maintain good standing at the institution, the eligibility of such student shall be suspended, and further payments to, or on behalf of, such student shall not be made until such student regains good standing.

"(b) No student may receive a loan under this subpart for an academic year in which such student receives a scholarship under the National Health Service Corps Scholarship Program or the Indian Health Service Scholarship Program, the program authorized in subpart V, or the Armed Forces Health Professions Scholarship Program under chapter 105 of title 10, United States Code.

"AMOUNT OF LOAN

"SEC. 748. (a) The amount of a loan to a student by an institution shall not exceed—

"(1) in the case of a student at a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, or podiatry, $20,000 in any one fiscal year, and $80,000 in all fiscal years; and

"(2) in the case of a student at a school of pharmacy, public health, or nursing, a graduate program in health administration, or a program for the training of physician assistants, expanded function dental auxiliaries, or nurse anesthetists, $12,500 in any one fiscal year, and $50,000 in all fiscal years.

"(b) In determining the amount of the loan under subsection (a), the school shall take into consideration—

"(1) the amount necessary for the student to attend such school, including any special needs of the student; and

"(2) the financial resources available to the student.

"TERMS OF LOAN AGREEMENT

"SEC. 749. An institution shall enter into an agreement with a student for a loan under this subpart. Such agreement shall—

"(1) be evidenced by note or other written instrument which provides for repayment of the principal amount of the loan, together with interest thereon, over a period beginning 12 months (except as provided in section 749A) after the date on which the student is awarded the degree or diploma in the course of study for which such student received such loan, and ending at a date not more than 15 years (except as provided in section 749A) after such date, in installments which shall not be less frequent than quarterly;

"(2) provide for acceleration of the whole, or any part, of such loan (without penalty) at the option of the borrower;

"(3) provide that, except as provided in section 749B, the loan shall bear interest, on the unpaid balance of the loan, at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, plus 1.5 percent at the time such agreement is entered into, in the case of a loan to a student borrower attending a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, and at the rate of one-half of the rate determined under this clause with respect to a school of medicine, or 7 percent per annum, whichever is less, in the case of a loan to a student borrower attending a school of nursing or public health, a program in health administration, or a program for the training of physician assistants, expanded function dental auxiliaries, or nurse anesthetists;

"(4) unless the borrower is a minor and the note or other evidence of obligation executed by the borrower would not, under applicable law, create a binding obligation, provide that the loan shall be made without security and without endorsement;

"(5) provide that the liability to repay the loan shall be discharged upon the death of the borrower, or if the borrower becomes permanently and totally disabled as determined by the Secretary;

"(6) provide that any deferral of payment under section 749A or reduction of interest under section 749B may be permitted only upon the request of the borrower; and

"(7) contain such other terms and conditions that the Secretary deems necessary to protect the financial interests of the United States and further the purposes of this subpart.

"DEFERRAL OF REPAYMENT

"SEC. 749A. (a) At the request of the student borrower, no repayment of principal of, or interest on, any loan under this subpart shall be required but interest shall accrue and be compounded during any period in which such student—

"(1) is serving in a national priority position under section 749C(c);

"(2) is in the first 4 years of service in the National Health Service Corps or the Indian Health Service;

"(3) is in the first 4 years of service as a member of the Armed Forces of the United States;

"(4) is in the first 4 years of service as a volunteer under the Peace Corps Act;

"(5) is in the first 5 years in an approved internship or residency, if such student borrower has completed a course of study at a school of medicine or osteopathy;

"(6) is in the first 3 years in an approved internship or residency, if such student borrower has completed a course of study at a school of dentistry, veterinary medicine, or podiatry;

"(7) is in the first 2 years in an approved internship or residency if such student borrower has completed a course of study at a school of optometry or pharmacy; or

"(8) is in the first 3 years, or such additional period as determined by the Secretary, not to exceed 5 years, of advanced research training or in a doctoral or postdoctoral program leading to a career in biomedical research or clinical investigation, or an academic career in a health profession.

"(b) Any period during which repayment is deferred under subsection (a) shall not be included in computing the 15-year maximum repayment period provided in paragraph (1) of section 749.

"(c)(1) A repayment period may be interrupted without penalty for any period during which a borrower who has completed a course of study, enters school again as a student meeting the criteria of section 747(a).

"(2) After the repayment period has begun, the repayment of principal or interest by a student borrower may be deferred for no more than 9 months, if the collecting entity determines, in accordance with criteria of the Secretary, that absent such deferral, the student borrower would default on such loan due to inability to pay.

"(3) A loan repayment installment is overdue if such payment is not received within 120 days after the date such installment is due, or, in the case of a quarterly repayment installment, if such payment is not received within 180 days after the date such installment is due.

"(d) Notwithstanding other provisions of this subpart, the total period of the loan may not exceed 30 years from the date of execution of the note or written agreement evidencing such loan to final repayment.

"INTEREST RATE REDUCTIONS

"SEC. 749B. The rate of interest for a loan under this subpart shall be reduced, at the request of the borrower, as follows:

"(1) The rate of interest shall be reduced to 3 percent per annum during any period that the borrower is attending a school of nursing as an eligible student described in section 747(a).

"(2) The rate of interest shall be reduced to one-half of the rate determined under section 749(3) with respect to a school of medicine, or 7 percent per annum, whichever is less, during any period that—

"(A) the borrower is attending a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, as an eligible student described in section 747(a);

"(B) the borrower, having completed the course of study at a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, is participating in the first year of graduate training;

"(C) the borrower, having completed the course of study at a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, is—

"(i) serving in a health manpower shortage area designated pursuant to section 332;

"(ii) serving in the Armed Forces;

"(iii) providing health care services for a Federal, State, or local government entity;

"(iv) performing full-time teaching at a higher education institution;

"(v) performing research on a greater than half-time basis as part of a full-time position on the faculty or staff of a health professions school, nonprofit biomedical research institute, or Federal biomedical research institute; or

"(vi) receiving training in public health, or engaging full-time as a public health professional;

"(D) the borrower, having completed the course of study at a school of medicine or osteopathy, is participating in an internship or residency in, or engaging full-time in the practice of general or family practice, general internal medicine, general pediatrics, preventive medicine, psychiatry, or rehabilitative medicine;

"(E) the borrower, having completed the course of study at a school of dentistry, is participating in an internship or residency in, or engaging in the full-time practice of, general dentistry or pediodontics;

"(F) the borrower, having completed the course of study at a school of veterinary medicine, is participating in an internship or residency, or engaging in a full-time practice, relating to food or fibre producing animals, toxicology, laboratory animal medicine, or pathology;

"(G) the borrower, having completed the course of study at a school of pharmacy, is participating in an internship or residency in, or engaging in a full-time practice of, clinical pharmacy; and

"(H) the borrower is participating in the first three years, or such additional period as determined by the Secretary, not to exceed 5 years, of advanced research training or in a doctoral or postdoctoral program leading to a career in biomedical research or clinical investigation, or an academic career in a health profession.

"AGREEMENT WITH SECRETARY FOR SERVICE

"SEC. 749C. (a) As a condition for entering into a loan agreement with an institution under section 749, the student borrower shall, at the same time, enter into a contingent service agreement with the Secretary. Such agreement shall—

"(1) provide that the borrower shall be required, at the option of the Secretary, to provide 1 year of service in a national priority position (as defined in subsection (e)) for each year such student receives a loan under this subpart (not to be less than 2 years), except that a student shall provide 1 year of service for any two years for which such student received loans to complete only one year of such student's course of study;

"(2) provide that if the borrower fulfills the entire period of service required by the Secretary under paragraph (1), the Secretary shall discharge such student's total loan obligation under this subpart, and such student's loan obligation for any education loan financed or insured by the Federal Government for any year in which such student also received a loan under this subpart which is discharged due to the fulfillment of such period of service;

"(3) provide that if the borrower fails to provide any required service (for any reason not specified under subsection (b) or (c)), the United States shall be entitled to recover from the borrower, to discharge the borrower's obligations under all agreements entered into pursuant to this subpart, an amount determined in accordance with the formula:

$$A = 3 * \frac{(t-s)}{t}$$

in which 'A' is the amount the United States is entitled to recover; 's' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid such loans were bearing interest at the applicable rate provided under section 749(3), as determined by the Secretary of the Treasury; 't' is the total number of months in the individual's period of obligation service; and 's' is the number of months of such period served by such student. Any amount of damages the United States is entitled to recover under this subsection shall, within the 1-year period beginning on the date of the breach of the written contract, be paid to the United States;

"(4) contain a fair summary of the rights and liabilities of an individual, including a clear explanation of the damages to which the United States is entitled under this section in the case of the individual's breach of such agreement;

"(5) contain such other information, written in a manner calculated to be understood by the average individual applying to participate in the loan program under this subpart, as may be necessary for the individual to understand the individual's prospective service participation;

"(6) evidence the written consent of the student to participate in service as required under subsection (d);

"(7) require the borrower to keep the Secretary informed on a regular basis of the borrower's education and employment plans so that the Secretary can prepare the list required by subsection (d); and

"(8) contain such other terms and conditions that the Secretary determines necessary to further the purposes of this subpart.

"(b)(1) The Secretary may, after notice and opportunity for a hearing, cause to be reduced Federal reimbursements or payments for health services under any Federal law to borrowers who are practicing their professions and have defaulted on their loans insured under this subpart in amounts up to the remaining balance of such loans.

"(2) A debt which is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted—

"(A) after the expiration of the five-year period beginning on the first date, as specified in sections 749 and 749A, when repayment of such loan is required;

"(B) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and

"(C) upon the condition that the Secretary shall not have waived the Secretary's rights to apply paragraph (1) to the borrower and the discharged debt.

"(3) Any obligation of an individual under any agreement made under this subpart for service or payment shall be canceled upon the death or permanent disability of the individual.

"(c) The Secretary shall provide to a student borrower a waiver or deferral of any service obligation or monetary damages under an agreement entered into under this section whenever—

"(1) fulfillment of a service obligation would be impossible, involve extreme hardship, or be unconscionable; or

"(2) such student fails to maintain an acceptable level of academic standing in the educational institution in which the student is enrolled (such level determined by the educational institution), such student is dismissed from such educational institution for disciplinary reasons, or such student voluntarily terminates the training in such an educational institution for which the individual is provided a loan under such contract, before the completion of such training.

"(d)(1) The Secretary shall prepare an ongoing list of students receiving loans under this subpart and such students' education and employment plans. A student shall be eligible to be called to service only in the year for which the student would first be required to make repayment for a loan under this subpart.

"(2) In any fiscal year for which funds are appropriated by Congress to the Loan Discharge Fund established under section 749F, the Secretary shall utilize the following procedures to determine which student borrowers shall be called to service:

"(A) On October 1 of each year, the Secretary shall compile, after consultation with appropriate public and private entities, a list of national priority positions (as defined in subsection (e)) that need to be filled by July 1 of the next year.

"(B) On October 1 of each year, the Secretary shall notify the student borrowers that the Secretary determines are eligible to provide service under paragraph (1) that they could be called to service beginning on July 1 of the next year and shall provide such student borrowers with a copy of the list compiled under subparagraph (A).

"(C) Student borrowers eligible to provide service may volunteer to fill such positions by December 31 of each year.

"(D) By January 31 of the next year, the Secretary, by lottery, shall select student borrowers to fill the unfilled positions from among the remaining eligible student borrowers.

"(e)(1) In listing national priority positions under subsection (d)(2)(A), the Secretary shall take into consideration the civilian personnel needs of the National Health Service Corps, the Indian Health Service, federally supported health service programs, Federal health care facilities, including such facilities of the Veterans' Administration the need for professionals in health manpower shortage areas designated under section 332 or nurse shortage areas designated under section 836(h)(1), the needs of States that meet the requirement of paragraph (2) for health personnel positions, and other factors as determined by the Secretary.

"(2) The Secretary shall only include in such listing a State's health personnel positions if such State has made a commitment to the Secretary to pay 75 percent of the loan repayment on behalf of each individual filling any of such State's positions.

"(f) No scholarships may be awarded under subpart IV or V in any fiscal year in which the Secretary does not offer loans under this subpart.

"ISSUANCE OF OBLIGATIONS

"SEC. 749D. Upon receipt of the requests submitted by institutions that have entered into agreements with the Secretary under section 746, the Secretary shall determine the aggregate amount needed by each institution for the academic year beginning in the fiscal year in which such determination is made. To enable the Secretary to discharge the responsibilities of this subpart, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, subject to such terms and conditions, and subject to limitations as may be provided in appropriation Acts, as may be prescribed by the Secretary of the Treasury, except that such obligations shall not exceed $150,000,000 in the fiscal year ending September 30, 1982, $250,000,000 in the fiscal year ending September 30, 1983, and $350,000,000 in the fiscal year ending September 30, 1984. In each fiscal year there shall be available if needed, for loans to students in schools of nursing, not less than 25 percent of such amounts issued to the Secretary of the Treasury in obligations. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations shall be treated as public debt transactions of the United States. Sums borrowed under this section shall be deposited in the Service Contingent Loan Fund established under section 749E and redemption of such notes and obligations shall be made by the Secretary from such Fund.

"SERVICE CONTINGENT LOAN FUND

"SEC. 749E. (a) There is established in the Treasury of the United States a Service Contingent Loan Fund (hereinafter in this section referred to as the 'Fund'), which shall be available to the Secretary without fiscal year limitation, consisting of—

"(1) moneys borrowed from the Secretary of the Treasury pursuant to section 749D;

"(2) all notes, obligations, or other property delivered or assigned to the Secretary pursuant to agreements made under section 746;

"(3) all collections of principal and interest received from loans made under section 748;

"(4) capital and interest distributions made to the Secretary pursuant to section 743 and section 839;

"(5) damages for failure to serve;

"(6) all appropriations by the Congress to discharge loan obligations under subsection (c), to meet interest insufficiencies, or administrative expenses; and

"(7) transfers from the Loan Discharge Fund established under section 749F to discharge loan obligations and interest expenses.

All sums received in the Fund, except sums received from notes and obligations issued under section 749D, shall be set aside in the Fund for payments to the Treasury on such notes and obligations, and shall be available to the Secretary only for purposes of making such payments. Any sums not so set aside may be available to the Secretary for appropriate investments.

"(b)(1) The notes of the Secretary to the Secretary of the Treasury to obtain funds for loans under this subpart, and all other liabilities against the appropriations or assets in the Fund in connection with loan program operations shall be liabilities of the Fund.

"(2) The assets of the Fund shall be available for—

"(A) payments for loans made by institutions having an agreement with the Secretary under section 746;

"(B) payments in connection with the discharge of loans upon the death of a student borrower, or if a student borrower becomes permanently and totally disabled as determined by the Secretary;

"(C) payments of costs and expenses incurred by the Secretary in connection with the administration of the Fund; and

"(D) payments to the Treasury on notes and obligations incurred under section 749D.

"(c) There are authorized to be appropriated to the Fund $13,000,000 in the fiscal year ending September 30, 1982, $20,000,000 in the fiscal year ending September 30, 1983, and $40,000,000 in the fiscal year ending September 30, 1984, and thereafter such sums as the Secretary may request from time to time, to meet the insufficiencies of the Fund to make payments of interest on account of the outstanding obligations issued by the Secretary to the Secretary of the Treasury under this subpart, to discharge loans under this subpart upon the death or disability of a borrower, and to meet costs of the Secretary in connection with the administration of the Fund.

"LOAN DISCHARGE FUND

"SEC. 749F. The Secretary shall establish a Loan Discharge Fund (hereinafter in this section referred to as the 'Fund') to be used in connection with the discharge of loans to borrowers who are serving in national priority positions pursuant to section 749C. Congress may appropriate funds to such Fund, from time to time, at the request of the Secretary. The number of student borrowers whom the Secretary first requests to provide service in lieu of repayment in any fiscal year shall be limited by the amounts in such Fund available to discharge such students' loan obligations (less any portion of such obligations to be paid by a State as described in section 749C(e(2)). The Fund may not contain moneys from any source other than appropriations made by Congress directly to the Fund or State payments made pursuant to section 749(e)(2). The Secretary shall transfer from such Fund, to the Service Contingent Loan Fund, moneys sufficient to discharge the principal and interest obligations on behalf of borrowers who have entered a national priority position under this subpart.

"PRO RATA REDUCTION OF FUNDS

"SEC. 749G. If the aggregate amount of funds determined to be needed by institutions exceeds the limit on the amount of obligations the Secretary may issue to the Secretary of the Treasury under section 749D, the maximum amount of funds to be received by each institution requesting funds shall be ratably reduced.

"SET ASIDE

"SEC. 749H. No more than 5 percent of the funds received by a school under this subpart may be set aside as a reserve to be used for unexpected student needs during the academic year. If such reserve is not expended within such fiscal year, the request for allocated funds in the following fiscal year shall be reduced by the amount remaining. Unexpended funds in such reserve shall be invested in Treasury approved market securities bearing the highest rate of interest and the proceeds of the investment shall be placed in the reserve.".

SEC. 107. (a)(1) Section 751(a) is amended by inserting "clinical psychologists" after "(as defined in section 822),".

(2) Section 751(d) is amended by striking out clauses (1) and (2) thereof and inserting in lieu thereof the following:

"(1) first, to applications made (and contracts submitted) by individuals who have previously received scholarships under the Scholarship Program;

"(2) second, to applications made (and contracts submitted) by individuals who have previously received scholarships under section 759; and

"(3) third, to applications made (and contracts submitted) by all other individuals eligible to apply.

To the extent necessary to meet the needs of the Indian Health Service, the Secretary shall give priority within each category enumerated above to individuals who will make a commitment to provide medical or dental services to Indians through the Indian Health Service.".

(b) Section 751(e)(1) is amended by inserting the following at the end thereof: "The Secretary shall approve or disapprove the individual's application submitted under subsection (b)(3), and contracts submitted under subsection (b)(4) no later than July 1 of each year.".

(c) Section 751(e)(2) is amended by inserting the following at the end thereof:

"The Secretary shall promptly notify the educational institution at which the individual is accepted for enrollment or is enrolled under subsection (b)(1) when such individual applies to participate in the Scholarship Program, and when the contract submitted by such individual is approved by the Secretary.".

(d) Section 751(f)(1)(A)(i) is amended by striking out "(not to exceed four school years)".

(e) Section 751(g)(1) is amended—

(1) by striking out "or under section 758 (relating to scholarships for first-year students of exceptional financial need)," after "under the Scholarship Program"; and

(2) by striking out "(except as provided in section 711)" in clause(A) thereof.

(f)(1) Section 752(b)(1) is amended by striking out "his" after "the full-time clinical practice of" and inserting in lieu thereof "the individual's".

(2) Section 752(b)(4) is amended by striking out "his" after "the full-time clinical practice of" and inserting in lieu thereof "the individual's".

(3) Section 752(b)(5)(B) is amended by striking out "his" after "the individual completes".

(4) Section 752(d) is amended by striking out "his" after "such individual to serve" and inserting in lieu thereof "the".

(5) Section 752(e) is amended by striking out "his" after "such individual to perform" and inserting in lieu thereof "the".

(g)(1) The heading of section 753 is amended to read as follows:

"INDEPENDENT PRACTICE"

(2) Section 753(a) is amended—

(A) by striking out "shall" in the first sentence and inserting in lieu thereof "may, to the extent permitted by, and consistent with, the requirements of applicable State law,";

(B) by striking out "his" before "service obligation" each place it appears and inserting in lieu thereof "the";

(C) by striking out "his" before "health profession" and inserting in lieu thereof "the individual's";

(D) by inserting after "section 752(a)" the following: "or under section 225 as in effect prior to October 1, 1977";

(E) by striking out "private clinical practice" and inserting in lieu thereof "independent practice";

(F) by striking out "(A)" after "designated under section 332) which" in paragraph (2);

(G) by striking out ", and" after "under section 333(c)" and inserting in lieu thereof a period in paragraph (2);

(H) by striking out clause (B) in paragraph (2); and

(I) by striking out the last sentence thereof.

(h) Section 753(b) is amended—

(1) by striking out "private practice" in paragraph (1) and inserting in lieu thereof "independent practice";

(2) by adding at the end of paragraph (1) the following new subparagraph:

"(C) The individual, in providing health care services covered by part A or part B of title XVIII of the Social Security Act, shall agree to accept assignment and to accept the reasonable charge as payment in full, and;" and

(3) by redesignating paragraph (2) as paragraph (3) and inserting the following new paragraph after paragraph (1):

"(2) provide for the submission of periodic reports as required by the Secretary;".

(i) Section 753 is amended by adding at the end thereof the following new subsections:

"(c) The Secretary shall provide to each individual released from service obligations under this section technical assistance to assist such individual in fulfilling his or her agreement under this section.

"(d) Failure to meet the terms of the agreements under subsection (b) shall be considered a breach of the scholarship contract as provided in section 754.

"(e) The Secretary shall, out of appropriations authorized under section 338, pay to individuals participating in independent practice under this section the cost of such individual's malpractice insurance and the lesser of—

"(1)(A) $10,000 in the first year of obligated service;

"(B) $7,500 in the second year of obligated service;

"(C) $5,000 in the third year of obligated service; and

"(D) $2,500 in the fourth year of obligated service; or

"(2) an amount determined by subtracting such individual's net income before taxes from the income the individual would have received as a member of the Corps for each such year of obligated service.".

(j) Subsection (a) of section 754 is repealed and subsections (b), (c), and (d) of such section are redesignated as subsections (a), (b), and (c) thereof.

(k) Section 754(a) (as redesignated in subsection (j)) is amended—

(1) by striking out "he" after "the educational institution in which" and inserting in lieu thereof "the student";

(2) by striking out "or" at the end of clause (2) thereof;

(3) by striking out "he" after "in such an educational institution for which" in clause (3) and inserting in lieu thereof "the individual";

(4) by inserting "or" at the end of clause (3) thereof;

(5) by inserting the following new clause after clause (3) thereof:

"(4) fails to accept payment, or instructs the educational institution in which the individual is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,"; and

(6) by striking out "to him, or on his behalf," after "for the amount which has been paid" and inserting in lieu thereof "to or on behalf of, the individual".

(l) Section 754(b) (as redesignated in subsection (j)) is amended—

(1) by striking out "his" after "an individual breaches" and inserting in lieu thereof "the"

(2) by inserting "not specified in subsection (a)" after "for any reason" and

(3) by striking out "him" after "such period served by" and inserting in lieu thereof "the individual".

(m) Section 755(a) is amended—

(1) by striking out "(other than an individual who has entered into an agreement under section 753)"

(2) by striking out "his" in clause (1) thereof and inserting in lieu thereof "the";

(3) by striking out clause (2)(A) and inserting in lieu thereof the following:

"(A) to engage in the private full-time clinical practice of the individual's profession in a health manpower shortage area (designed under section 332) for a period (beginning not later than one year after the date the individual completed the period of obligated service in the Corps) of not less than one year;"; and

(4) by inserting before the period at the end thereof "or as a direct subsidy of such individual's net income or of such individual's employer".

(n) Section 755(d) is amended—

(1) by striking out "he" after "subsection (a)," and inserting in lieu thereof "the Secretary";

(2) by striking out "his" after "is not practicing" and inserting in lieu thereof "the individual's";

(3) by striking out "he" after "Secretary that" and inserting in lieu thereof "the individual";

(4) by striking out "his profession" after "to practice"; and

(5) by striking out "his profession" after "individual practices".

(o) Section 756 is amended—

(1) by striking out "and" after "September 30, 1979,";

(2) by inserting ", $55,000,000 for the fiscal year ending September 30, 1982, $48,000,000 for the fiscal year ending September 30 1983, and $48,000,000 for the fiscal year ending September 30, 1984" after "September 30, 1980";

(3) by striking out "1981" in the second sentence thereof and inserting in lieu thereof "1985"; and

(4) by striking out "1980" in the second sentence thereof and inserting in lieu thereof "1984".

SEC. 108. (a) Subpart V is redesignated as subpart VI.

(b) Section 759 is repealed.

(c) Section 758 is redesignated as section 759.

(d) Part C of title VII is amended by inserting the following new subpart after subpart IV thereof:

"Subpart V—Grants to States for Service Scholarships

"GENERAL

"SEC. 758. (a) For the purposes of assisting States in meeting the health care delivery needs of health manpower shortage areas, the Secretary shall make grants to States in accordance with this subpart to assist in the establishment or expansion of State service scholarship programs.

"(b) Grants under this subpart shall be made solely to fund the cost of service scholarships provided by a State service scholarship program.

"(c) The Secretary shall report to Congress on March 1 of each year regarding—

"(1) the allocation of funds for service scholarships to each State;

"(2) the number of service scholarship awards made by each State; and

"(3) the distribution of such service scholarships by each State among the health professions;

in the previous fiscal year.

"STATE SERVICE SCHOLARSHIP PROGRAMS

"SEC. 758A. (a) To be eligible to receive a grant under this subpart, a State shall establish or have established a State service scholarship program (hereinafter referred to in this subpart as 'State program') that at a minimum meets the following requirements:

"(1) The State provides assurances that funds received under the grant will be used to fund contractual agreements between the State and individuals who are needed to meet State requirements and who are students in schools of medicine, osteopathy, dentistry, nursing, veterinary medicine, optometry, pharmacy, podiatry, public health, or allied health, graduate programs in health administration, or programs for the training of physicians assistants, expanded function dental auxiliaries, clinical psychologists or nurse practitioners.

"(2) As part of such contractual agreements, the State will pay all or part of the educational expenses of the individual, but not to exceed tuition, reasonable educational expenses, and a monthly stipend of the same amount and adjusted in the same manner as the amount provided under section 751 of this Act.

"(3) The State provides assurances that it will—

"(A) assign such individual to provide service in a health manpower shortage area for one year for each year such individual received scholarship funds (but not less than two years), and shall assure such individual, either by direct employment or salary guarantee, a salary, during such period of obligated service, not less than the comparable entry-level salary provided by the State to employees who possess a similar educational background;

"(B) permit such individuals, to the extent permitted by State law, upon application, to enter independent clinical practice in a health manpower shortage area in lieu of providing services pursuant to an assignment by the State provided that such practice option is subject to terms and conditions no less stringent than terms and conditions provided under section 753; and

"(C) enforce the agreement with such individuals on the same basis as provided in section 754.

"(4) The State, in entering into agreements with individuals, provides—

"(A) adequate notice to the individual of the rights and liabilities of such individual under such agreement; and

"(B) that the individual shall—

"(i) maintain enrollment in a course of study described in this section until the individual completes the course of study;

"(ii) maintain an acceptable level of academic standing (as determined by the educational institution offering such course of study); and

"(iii) agree to serve for a period of time equal to one year in a health manpower shortage area for each school year for which the individual was provided a scholarship under the State program (the total not to be less than 2 years), such health manpower shortage area (as designated pursuant to section 332) to be selected by the State, or as otherwise provided in this subpart.

"(b) No State or school may require a student to accept such a contractual agreement as a condition of admission into a school or program.

"(c) Individuals who have previously received a National Health Service Corps scholarship under subpart IV of this part may not receive a scholarship under this subpart.

"(d) Any State that has a total of three or more schools of medicine, osteopathy, or dentistry, shall not allocate more than 50 percent of available service scholarships under this subpart to students at any one health professions school.

"(e) No State may receive a grant under this subpart unless such State provides assurances to the Secretary that in the fiscal year for which the grant is made such State shall expend for the scholarship program from non-Federal sources an amount of funds which is at least as great as the amount of funds expended by such State for such program from non-Federal sources in the previous fiscal year.

"ALLOCATION OF FUNDS

"SEC. 758B. (a) The Secretary shall make matching grants to the States that commit one dollar for service scholarships under the State program for every $6 made available through a matching grant to such State.

"(b) Funds shall be allocated to the States in accordance with the formula:

$$A=\frac{B(1/C+D/E)}{2}$$

in which 'A' is the amount a State shall be allocated; 'B' is the total of funds available for matching grants; 'C' is the number of States participating in the matching grant program; 'D' is the population of a participating State; and 'E' is the population of all States participating in the matching grant program except that no State shall receive more than 10 percent of the funds appropriated under section 758B(c) in any fiscal year.

"(c)(1) To carry out the purposes of this section there are authorized to be appropriated $6,000,000 in the fiscal year ending September 30, 1982, $13,500,000 in the fiscal year ending September 30, 1983, $15,000,000 in the fiscal year ending September 30, 1984.

"(2) Funds appropriated under this subsection but not expended shall be available to the Secretary for scholarships under subpart IV of this part.".

(e)(1) Section 759(a) (as redesignated by subsection (c)) is amended by striking out "which is accredited as provided in section 721(b)(1)(B)".

(2) Section 759(b)(2) (as redesignated by subsection (c)) is amended by striking out "the scholarship described in section 751(g)" and inserting in lieu thereof "in an amount equal to the lesser of (A) tuition and fees plus $2,500, or (B) $5,000".

(3) Section 759(c) (as redesignated by subsection (c)) is amended to read as follows:

"(c) The Secretary shall distribute grants under this section to each eligible school for two scholarships. In addition, the Secretary shall further distribute grants for scholarships to schools of medicine, osteopathy, and dentistry based upon the proportionate enrollment of students at such schools who are of exceptional financial need and who are in their first year of study at such school.".

(4) Section 759(d) (as redesignated by subsection (c)) is amended to read as follows:

"(d) For the purposes of making grants under this section, there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1982, $16,000,000 for the fiscal year ending September 30, 1983, and $17,000,000 for the fiscal year ending September 30, 1984.".

(f) Part C of title VII is amended by adding the following new subpart at the end thereof:

"SUBPART VII—REPAYMENT

"SEC. 760. (a)(1) In the case of any individual—

"(A) who is a graduate of a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, a graduate program in public health, health administration, or clinical psychology, a school of nursing, or a program for the training of physician assistants or expanded function dental auxiliaries;

"(B) who (i) obtained one or more loans under this part, or (ii) obtained, under a written loan agreement, any other educational loan for the costs of attending a school or program described in clause (A); and

"(C) who enters into an agreement with the Secretary to practice such individual's profession (as a member of the National Health Service Corps or otherwise) for a period of at least 2 years in a health manpower shortage area designated under section 332 or a nurse shortage area designated under section 836(h)(1) in a State;

the Secretary shall make payments in accordance with paragraph (2), for and on behalf of such individual, on the principal and interest on any loan described in clause (B) which is outstanding on the date the borrower begins the practice specified in the agreement described in clause (C) of this paragraph.

"(2) The payments described in paragraph (1) shall be made by the Secretary as follows:

"(A) Upon completion by the individual for whom the payments are to be made of the first or second year of the practice specified in the agreement entered into with the Secretary under paragraph (1), the Secretary shall pay 10 percent, or $6,000, whichever is greater, of the principal of, and the interest on, each loan of such individual described in paragraph (f)(B) which is outstanding on the date the borrower began such practice.

"(B) Upon completion by the individual of the third or fourth year of such practice, the Secretary shall pay 15 percent, or $9,000, whichever is greater, of the principal of, and the interest on each such loan in each year. Not more than 50 percent of the principal of any such loan shall be paid pursuant to this paragraph. No payment may be made under this paragraph with respect to a loan described in paragraph (1)(B)(ii) unless the person on whose behalf the payment is to be made has submitted to the Secretary a certified copy of the agreement under which such loan was made.

"(3) Notwithstanding the requirement of completion of practice specified in paragraph (2), the Secretary shall, on or before the due date thereof, pay any loan or loan installment which may fall due within the period of practice for which the borrower may receive payments under this paragraph, upon the declaration of such borrower, at such times and in such manner as the Secretary may prescribe (and supported by such other evidence as the Secretary may reasonably require), that the borrower is then engaged as described by paragraph (1), and that the borrower will continue to be so engaged for the period required (in the absence of this subsection) to entitle the borrower to have made the payments provided by this subsection for such period.

"(4) A borrower who fails to fulfill an agreement with the Secretary entered into under paragraph (1) shall be liable to reimburse the Secretary for any payments made pursuant to paragraph (2) or (3) in consideration of such agreement.

"(5) In the case of an individual who received a loan under this part or under title VIII prior to October 1, 1981, for which the Secretary may make payments for or on behalf of such individual pursuant to a provision other than this subsection, such student may select the repayment provision that provides the terms for payment by the Secretary most favorable to the student.

"(6) In carrying out the repayment program under this subsection, the Secretary shall give priority to borrowers who remain eligible for cancellation of all or part of a loan under section 741(f)(5).

"(b) There is authorized to be appropriated to carry out subsection (a) $5,000,000 for the fiscal year ending September 30, 1982, $7,000,000 for the fiscal year ending September 30, 1983, and $9,000,000 for the fiscal year ending September 30, 1984.

"(c)(1) The Secretary shall make loan forgiveness payments to forgive education loans financed or insured by the Federal Government under this title, title VIII, title IV of the Higher Education Act of 1965, or title II of the National Defense Education Act of 1958, for and on behalf of a student—

"(A) from a family with an income less than the greater of twice the amount of the tuition charged such student in the last year such student was enrolled or twice the Federal poverty level for a family of four as defined by the Office of Management and Budget; and

"(B) who, after October 1, 1981, completed the first year exams at a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, or podiatry but failed to be advanced to the second year at such school and upon any subsequent attempt to retake the first year courses or exams was unsuccessful in achieving such advancement.

"(2) Loan forgiveness payments under this subsection shall be made on behalf of a student described in paragraph (1) for loans made for the first year of study to meet the cost of attending such school. No loan forgiveness payments made under this subsection shall exceed the amount of nonreimbursable tuition and fees charged the student by the school for such first year.

"(3) Loan forgiveness payments under this subsection may cover any loans made to an individual to enable such individual to retake the first year courses, if, as a result, the individual does not succeed in advancing to the second year.

"(4) The Secretary may commit loan forgiveness payments but shall not expend such payments for any individual under this subsection unless and until the school at which such individual was enrolled provides assurances that such individual cannot reasonably be expected to resume studies at such institution within two years following the date upon which such individual terminated such studies.

"(5) If at any time within two years following the date upon which any individual terminated studies in an institution and was provided loan forgiveness payments under the terms of this subsection, such individual rematriculates in such institution or an institution providing a comparable degree, and such individual subsequently advances to the second year, the Secretary shall reinstate the original loan obligation.".

(g) The provisions of section 760(c) of the Public Health Service Act shall become effective on October 1, 1982.

SEC. 109. Part E of title VII is amended to read as follows:

"PART E—GRANTS TO SCHOOLS OF MEDICINE, OSTEOPATHY, DENTISTRY, VETERINARY MEDICINE, OPTOMETRY, PHARMACY, PODIATRY, AND PUBLIC HEALTH TO MEET NATIONAL NEEDS

"NATIONAL PRIORITY INCENTIVE GRANTS

"SEC. 771. The Secretary shall make annual grants to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, and public health to support the educational programs of such schools and projects and activities that are in the national interest.

"AMOUNT OF GRANTS

"SEC. 772. (a) The amount of any grant in any fiscal year under section 771 shall be the amount as provided in this section for full-time student enrolled in such school multiplied by the number of full-time students enrolled (or in the case of schools of public health, the number of full-time and full-time equivalents of part-time students).

"(b) Notwithstanding subsection (a), if the aggregate of the amounts of the grants to be made in accordance with such subsection for any fiscal year to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or public health with approved applications exceeds the total of the amounts appropriated for such category of schools under the appropriate provision of section 774 for such grants, the amount of a school's grant with respect to which such excess exists shall for such fiscal year be an amount which bears the same ratio to the amount determined for the school under subsection (a) as the appropriate provision of section 774 for grants to schools of the same category bears to the amount required to make grants in accordance with subsection (a) to each of the schools of such category with approved applications.

"(c) Each school of medicine shall receive $250 for each full-time student enrolled at the school in the fiscal year ending September 30, 1982, $250 for each such student in the fiscal year ending September 30, 1983, and $250 for each such student in the fiscal year ending September 30, 1984 for each of the following objectives that are met by the school in the year in which a grant application is made:

"(1) The school conducts, or will conduct within twelve months, 10 percent or more of its undergraduate clinical education in areas in which medically underserved populations reside or in ambulatory, primary care settings geographically remote from the main site of the teaching facilities of the school.

"(2) All fourth-year students have had, or will have had before graduation, a significant educational experience in at least two of the following areas: nutrition, geriatrics, rehabilitation, occupational and environmental health, or health care economics and health policy, with emphasis on the application of such areas to direct patient care.

"(3)(A) Of the school's filled first-year positions in direct or affiliated approved residency training programs, at least 65 percent of such positions are in general internal medicine, general pediatrics, or family practice; or

"(B) Twenty percent or more of the school's graduating students enter approved family practice residencies.

"(4) The school, in cooperation with other appropriate entities, conducts or provides substantial evidence that it will conduct within twelve months, a substantial community program of preventive health services (including health promotion and health information) designed to reduce the risk factors of the leading causes of death or morbidity in the community (including the risk factors among special population groups such as prisoners or institutionalized children), and ensure appropriate health care followup, and in which students of the school receive substantial education in preventive and community medicine.

"(5) Twenty percent or more of the students graduating from the school have had a substantial educational experience in clinical investigation and research.

"(6) Twelve percent or more of the first-year fulltime students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(d) Each school of osteopathy shall receive $250 for each full-time student enrolled at the school in the fiscal year ending September 30, 1982, $250 for each full-time student in the fiscal year ending September 30, 1983, and $250 for each full-time student in the fiscal year ending September 30, 1984, for each of the following objectives that are met by the school in the year in which a grant application is made:

"(1) The school conducts, or will conduct within twelve months, 10 percent or more of its undergraduate clinical education in areas in which medically underserved populations reside or in ambulatory, primary care settings geographically remote from the main site of the teaching facilities of the school.

"(2) All fourth-year students have had, or will have had before graduation, significant educational experience in at least two of the following areas: nutrition, geriatrics, rehabilitation, occupational and environmental health, or health care economics and health policy, with emphasis on the application of such areas to direct patient care.

"(3) The school has a program, or will have a program within 12 months, for the training of full-time or part-time faculty for primary care education, in which at least ten individuals, who otherwise would not be prepared to assume a faculty role, will, during the year, obtain such preparation.

"(4) The school, in cooperation with other appropriate entities, conducts or provides substantial evidence that it will conduct within 12 months, a substantial community program of preventive health services (including health promotion and health information) designed to reduce the risk factors of the leading causes of death or morbidity in the community (including the risk factors among special population groups such as prisoners or institutionalized children), and ensure appropriate health care followup, and in which students of the school receive substantial education in preventive and community medicine.

"(5) Twenty percent or more of the students graduating from the school have had a substantial educational experience in clinical investigation and research.

"(6) Twelve percent or more of the first-year full-time students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(e) Each school of dentistry shall receive $250 for each full-time student enrolled at the school in the fiscal year ending September 30, 1982, $250 for each such student in the fiscal year ending September 30, 1983, and $250 for each such student in the fiscal year ending September 30, 1984, for each of the following objectives that are met by the school in the year in which a grant application is made:

"(1) The school provides, or will provide within 12 months, either itself or in cooperation with other appropriate entities, a substantial program of comprehensive dental care to underserved populations, such as prisoners, public nursing home residents, and mental health institution residents, in which each student, before graduation, participates.

"(2) All fourth-year students have had, or will have had before graduation a significant educational experience in at least two of the following areas: nutrition, use of expanded function dental auxiliaries, or health care economics and health policy.

"(3) The school, in cooperation with other appropriate entities, conducts or provides substantial evidence that it will conduct within 12 months, a substantial community program of preventive dental services (including dental health promotion and health information) designed to reduce the risk factors of the leading causes of dental disease in the community (including risk factors among special population groups such as the handicapped, elderly, indigent, prisoners, or institutionalized children) and ensure appropriate dental care followup for preventable and controllable dental diseases and conditions, and in which students of the school receive substantial education in preventive and community dental medicine.

"(4) Seventy percent of the new first-year positions in dental specialty programs established at the school after September 30, 1979, are in general practice or pedodontics, provided that at least six new first-year positions in such programs have been established since September 30, 1979.

"(5) Fifteen percent or more of the first-year students at the school are from States in which there is no school of dentistry.

"(6) Twelve percent or more of the first-year full-time students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(f) Each school of veterinary medicine shall receive $150 for each full-time student enrolled at the school in the fiscal year ending September 30, 1982, $150 for each such student in the fiscal year ending September 30, 1983, and $150 for each such student in the fiscal year ending September 30, 1984, for each of the following objectives which are met by the school in the year in which a grant application is made:

"(1) The predominant emphasis of the school's clinical training is on care for food-producing animals, or fiber-producing animals, or both.

"(2) At least 25 percent of full-time, first-year students of the school are residents of States in which there are no schools of veterinary medicine.

"(3) All fourth-year students have had, or will have had before graduation, a significant educational experience in at least two of the following areas: toxicology, laboratory animal medicine, or animal and human nutrition.

"(4) The school expands, or will expand within twelve months, the total number of filled positions in postdoctoral education at the school by at least 25 percent or six positions, whichever is greater, over the total number of filled positions in the preceding year, in toxicology, pathology, and laboratory animal medicine.

"(5)(A) The school increases its first-year enrollment of full-time students from underrepresented minority groups by 25 percent or 10 students, whichever is greater, over the number of such students enrolled on September 30, 1979, or

"(B) Twelve percent or more of the first-year full-time students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(g) Each school of optometry shall receive $75 for each full-time student enrolled at the school in the fiscal year ending September 30, 1982; $75 for each such student in the fiscal year ending September 30, 1983; $75 for each such student in the fiscal year ending September 30, 1984, for each of the following objectives which are met by the school in the year in which a grant application is made:

"(1) All fourth-year students have had, or will have had before graduation, a significant educational experience in at least two of the following areas: rehabilitative optometry, geriatrics, or health care economics and health policy.

"(2) At least 25 percent of full-time first-year students of the school (or 50 percent if the applicant is a nonprofit private school) are residents of States in which there are no schools of optometry.

"(3) All fourth-year students have had, or will have had before graduation, a significant clinical education experience in geographic areas in which underserved populations reside or in ambulatory eye care settings geographically remote from the main site of the teaching facilities of the school.

"(4) The school, either itself, or in cooperation with other appropriate entities, provides, or will provide within twelve months, a comprehensive program of eye care (including preventive eye care) to an underserved population, such as local prisoners, public nursing home residents, or other individuals whose institutionalization reduces access to eye care, and in which each student, before graduation, will participate.

"(5)(A) The school increases its first-year enrollment of full-time students from underrepresented minority groups by 25 percent or 10 students, whichever is greater, over the number of such students enrolled on September 30, 1979, or

"(B) Twelve percent or more of the first-year full-time students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(h) Each school of podiatry shall receive $100 for each full-time student enrolled at the school in the fiscal year ending September 30, 1982; $100 for each such student in the fiscal year ending September 30, 1983; and $100 for each such student in the fiscal year ending September 30, 1984, for each of the following objectives which are met by the school in the year in which a grant application is made:

"(1) All fourth-year students have had, or will have had before graduation, a significant educational experience in at least two of the following areas: health care economics and health policy, rehabilitative procedures, or geriatrics.

"(2) At least 40 percent of full-time first-year students of the school are residents of States in which there are no schools of podiatry.

"(3) The school conducts a program to recruit students who reside in areas having a shortage of podiatric manpower (as determined by the Secretary), and the school provides opportunities to such students to receive the equivalent of at least eighteen months of clinical training at a site located in such an area.

"(4) The school, either itself, or in cooperation with other appropriate entities, provides, or will provide within twelve months, a comprehensive program of foot care (including preventive care) to underserved populations in which each student, before graduation, will participate.

"(5)(A) The school increases its first-year enrollment of full-time students from underrepresented minority groups by 25 percent or 10 students, whichever is greater, over the number of such students enrolled on September 30, 1979, or

"(B) Twelve percent or more of the first-year full-time students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(i) Each school of pharmacy shall receive $70 for each full-time student enrolled at the school in the fiscal year ending September 30, 1982, $70 for each such student in the fiscal year ending September 30, 1983, and $70 for each such student in the fiscal year ending September 30, 1984, for each of the following objectives that are met by the school in the year in which a grant application is made:

"(1) Each student who is enrolled in the school participates in a training program in clinical pharmacy which, at a minimum, includes—

"(A) an inpatient and outpatient clerkship experience in a hospital, extended care facility, or other clinical setting;

"(B) interaction with physicians and other health professionals;

"(C) training in the counseling of patients with regard to reactions to, and the appropriate use of, drugs; and

"(D) training in drug information retrieval and analysis in the context of actual patient problems.

"(2) All fourth-year students have had, or will have had before graduation, a significant educational experience in at least two of the following areas: nutrition, geriatrics, drug abuse or misuse, or health care economics and health policy.

"(3) Each student will have before graduation, a substantial clinical training experience in geographic areas in which underserved populations reside, or in ambulatory, primary care settings in areas geographically remote from the main site of the teaching facilities of the school.

"(4) The school expands, or will expand within twelve months, the total number of filled positions in postdegree education at the school by at least 25 percent or 6 positions (whichever is greater) over the total number of filled positions in the preceding year in clinical pharmacy.

"(5)(A) The school increases its first-year enrollment of full-time students from underrepresented minority groups by 25 percent or 10 students, whichever is greater, over the number of such students enrolled on September 30, 1979, or

"(B) Twelve percent or more of the first-year full-time students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(j) Each school of public health shall receive $250 for each full-time and full-time-equivalent student enrolled at the school in the fiscal year ending September 30, 1982, $250 for each such student in the fiscal year ending September 30, 1983, and $250 for each such student in the fiscal year ending September 30, 1984, for each of the following objectives that are met by the school in the year in which a grant application is made:

"(1)(A) Seventy percent or more of the full-time and full-time-equivalent students are pursuing a course of study in epidemiology, biostatistics, health administration, nutrition, women's health and child health, occupational health, or environmental health; or

"(B) the percent of such students in (i) epidemiology and biostatistics, (ii) health administration, or (iii) occupational or environmental health, exceed 20 percent, 30 percent, or 20 percent, respectively.

"(2) Fifty percent or more of the students receiving graduate degrees will enter public service or will utilize the skills obtained in areas designated by the Secretary as needing such personnel.

"(3) The school provides, or will provide within twelve months, a range of courses during evening and weekend hours to enable students to matriculate on a part-time basis and receive a degree while working.

"(4) The school provides, or will provide within twelve months, a comprehensive program of continuing education for health professionals who are involved, full-time or part-time, in public health or health administration and for graduates of a school of public health or graduate program in health administration.

"(5) Twelve percent or more of the first-year full-time students of the school are from underrepresented minority groups, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(k) For the purposes of this part, a reference to a year is a reference to an academic year unless otherwise specifically identified.

"ENROLLMENT DETERMINATIONS

"SEC. 773. (a) For purposes of this part, regulations of the Secretary shall include provisions relating to the determination of the number of students enrolled in a school or in a particular year-class in a school on the basis of estimates of the number of students who in an earlier year were enrolled in a school or in a particular year-class, or on such other basis as the Secretary deems appropriate for making such determination, and shall include methods of making such determination when a school or a year-class was not in existence in an earlier year at a school.

"(b)(1) For purposes of this part, the term 'full-time student' (whether such term is used by itself or in connection with a particular year-class) means a student pursuing a full-time course of study leading to a degree of doctor of medicine, doctor of osteopathy, doctor of dentistry or an equivalent degree, doctor of veterinary medicine or an equivalent degree, doctor of optometry or an equivalent degree, doctor of podiatry or an equivalent degree, bachelor or master of science in pharmacy or an equivalent degree, or to a graduate degree in public health or equivalent degree.

"(2) In the case of a training program of

a school designed to permit the students enrolled in such program to complete, within 6 years after completing secondary school, the requirements for a degree of doctor of medicine, doctor of osteopathy, or doctor of dentistry or an equivalent degree, the term 'full-time student' shall only include a student enrolled on a full-time basis in the last 4 years of such program, and a student enrolled in the first of the last 4 years of such program shall be considered a first-year student, and a student enrolled in the last of the last 4 years of such program shall be considered a fourth-year student.

"(3) For purposes of this part, the term 'full-time student' when applied to a student in a school of pharmacy, shall only include a student enrolled on a full-time basis in the last 4 years of such program. A student enrolled in the first of the last 4 years of such program shall be considered a first-year student, and a student enrolled in the last of the last 4 years shall be considered a fourth-year student.

"(c) For purposes of this part, the number of full-time equivalents of part-time students for a school of public health for any school year is a number equal to—

"(1) the total number of credit hours of instruction in such year for which part-time students of such school, who are pursuing a course of study leading to a graduate degree in public health or an equivalent degree, have enrolled, divided by

"(2) the greater of—

"(A) the number of credit hours of instruction that a full-time student of such school was required to take in such year, or

"(B) 9;

rounded to the next highest whole number.

"(d) For purposes of computing the amount of any grant under section 772, the number of full-time students or full-time-equivalents of part-time students, as the case may be, who are from underrepresented minority groups, shall be doubled.

"(e) For purposes of administering the requirements of section 772, a reference to a year-class of students is a reference to students enrolled in such class for the first time.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 774. (a) There are authorized to be appropriated $37,000,000 in the fiscal year ending September 30, 1982, $40,700,000 in the fiscal year ending September 30, 1983, and $44,500,000 in the fiscal year ending September 30, 1984, for payments under grants under section 771 to schools of medicine.

"(b) There are authorized to be appropriated $3,100,000 for the fiscal year ending September 30, 1982, $3,410,000 for the fiscal year ending September 30, 1983, and $3,650,000 for the fiscal year ending September 30, 1984, for payments under grants under section 771 for schools of osteopathy.

"(c) There are authorized to be appropriated $12,900,000 for the fiscal year ending September 30, 1982, $14,190,000 for the fiscal year ending September 30, 1983, and $15,400,000 for the fiscal year ending September 30, 1984, for payments under grants under section 771 for schools of dentistry.

"(d) There are authorized to be appropriated $2,900,000 for the fiscal year ending September 30, 1982, $3,190,000 for the fiscal year ending September 30, 1983, and $3,500,000 for the fiscal year ending September 30, 1984, for payments under grants under section 771 to schools of veterinary medicine.

"(e) There are authorized to be appropriated $1,100,000 for the fiscal year ending September 30, 1982, $1,210,000 for the fiscal year ending September 30, 1983, and $1,320,000 for the fiscal year ending September 30, 1984, for payments under grants under section 771 to schools of optometry.

"(f) There are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1982, $1,100,000 for the fiscal year ending September 30, 1983, and $1,210,000 for the fiscal year ending September 30, 1984, for payments under grants under section 771 to schools of podiatry.

"(g) There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1982, $5,500,000 for the fiscal year ending September 30, 1983, and $6,050,000 for the fiscal year ending September 30, 1984, for payments under grants under section 771 to schools of pharmacy.

"(h) There are authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1982, $7,700,000 for the fiscal year ending September 30, 1983, and $8,370,000 for the fiscal year ending September 30, 1984, for payments under grants under section 771 to schools of public health.

"APPLICATIONS FOR GRANTS

"SEC. 775. (a) The Secretary may from time to time set dates (not earlier than in the fiscal year preceding the year for which a grant is sought) by which applications for grants under this part for any fiscal year shall be filed.

"(b) To be eligible for a grant under section 771, the applicant shall be a public or other nonprofit school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or public health.

"(c) The Secretary shall not approve or disapprove any application for a grant under this part except after consultation with the National Advisory Council on Health Personnel.

"(d) A grant under this part may be made only if the application therefor—

"(1) is approved by the Secretary;

"(2) contains such additional information as the Secretary may require to make the dedeterminations under the section authorizing the grant for which the application is made; and

"(3) provides for such fiscal control and accounting procedures and reports, including the use of standard procedures for the recording and reporting of financial information, as the Secretary may prescribe and access to the records of the applicant, as the Secretary may require to ensure proper disbursement of, and accounting for, funds paid to the applicant under such grant.

"STARTUP ASSISTANCE GRANTS

"SEC. 776. (a)(1) For the purpose of meeting national or regional needs for veterinarians, optometrists, podiatrists, or public health personnel, the Secretary may make a grant to a new school of veterinary medicine, optometry, podiatry or public health which begins instructions after July 1, 1980. No school may receive a grant under this subsection unless the number of full-time students enrolled in its first school year of operation will exceed 23.

"(2) The amount of any grant under this subsection may not exceed the following:

"(A) In the year preceding the first year in which such school has students enrolled, an amount equal to the product of $10,000 and the number of full-time and full-time equivalent students the Secretary estimates will enroll in such school in such first year.

"(B) In the first year in which such school has students enrolled, an amount equal to the product of $10,000 and the number of full-time and full-time equivalent students enrolled in such school in such year.

"(C) In the second year in which such school has students enrolled, an amount equal to the product of $5,000 and the number of full-time and full-time equivalent students enrolled in such school in such year.

Estimates of the number of full-time and full-time equivalent students enrolled in a school may be made on the basis of assurances provided by the school.

"(3) The Secretary shall give priority in the award of grants under this subsection to applicants for whom the receipt of such grant would facilitate the acceleration of the date upon which instruction would begin or increase the number of students enrolled in the entering class. The Secretary shall also give priority to applicants who will, by virtue of an affiliation with one or more existing health professions institutions, be able to make use of existing facilities and resources, including in the case of a new school of podiatry the use of the basic sciences faculty of a school of medicine or osteopathy.

"(4) The Secretary shall give special consideration to any application submitted by a school for a grant under this subsection if—

"(A) such school will be located in a health manpower shortage area (designated under section 332); or

"(B) such school will be located in a State that has no other such school.

"(5) For purposes of this subsection, any school of veterinary medicine, optometry, podiatry, or public health shall be considered a new school for any year if such year is—

"(A) the year preceding the first year in which such school has students enrolled;

"(B) the first year such school has students enrolled; and

"(C) the year following the first year such school has students enrolled.

"(6) Any school that first received a startup assistance grant under the authority of section 788(a) (as it existed prior to October 1, 1980) and would have reasonably expected to have received subsequent grants under such authority in fiscal year 1982, or 1983, shall be eligible to receive such grants under this subsection on the same terms and conditions as were contained in section 788(a) (as it existed prior to October 1, 1980).

"(b) For the purpose of making grants to carry out this section, there are authorized to be appropriated $1,700,000 in the fiscal year ending September 30, 1982, and in each of the succeeding two fiscal years.

"CONVERSION GRANTS

"SEC. 777. (a)(1) The Secretary shall make a single grant to any private 2-year school of medicine (or any school accredited as such a 2-year school) to assist such school in converting to a school accredited to grant the degree of doctor of medicine. The amount of such grant shall be equal to the product of $50,000 and the number of third-year students that will be initially enrolled in such school.

"(2) Upon request of a school, a grant received under this section may be used in the year preceding the initial enrollment of third-year students in such school.

"(b) No grant may be made under this subsection unless—

"(1) an application therefor has been submitted to the Secretary no later than September 30, 1982;

"(2) the school enrolls third-year students not later than the school year beginning in the fiscal year ending September 30, 1984; and

"(3) the Secretary receives satisfactory assurances that the school will be affiliated with an accredited hospital in the fiscal year for which such grant is made.

"(c) For the purpose of making grants to carry out this section, there is authorized to be appropriated $2,700,000 for the fiscal year ending September 30, 1982. Funds provided under this subsection shall remain available until expended without regard to any fiscal year limitation.

"FINANCIAL DISTRESS GRANTS

"SEC. 778. (a) The Secretary may make grants to, and enter into contracts with, a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, or nursing that is in serious financial distress for the purposes of assisting such school to—

"(1) meet the costs of operation if such school's financial status threatens its continued operation;

"(2) meet applicable accreditation requirements if such school has a special need to be assisted in meeting such requirements; or

"(3) carry out appropriate operational, managerial, and financial reforms.

"(b) Any grant or contract under this section may be made upon such terms and conditions as the Secretary determines to be reasonable and necessary, including requirements that the school agree to—

"(1) disclose any financial information or data necessary to determine the sources or causes of such school's financial distress;

"(2) conduct a comprehensive cost analysis study in cooperation with the Secretary; and

"(3) carry out appropriate operational, managerial, and financial reforms including the securing of increased financial support from non-Federal sources.

"(c) No school may receive a grant under this section if such school has previously received support for three or more years under this section or under section 788(b) (as it existed prior to October 1, 1981).

"(d) For the purpose of making grants and entering into contracts to carry out this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1982, and for each of the two succeeding fiscal years.

"ADVANCED GRANTS FOR INSTITUTIONS WITH SPECIAL NEEDS

"SEC. 779. (a) The Secretary may enter into a multiyear contract or cooperative agreement with a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health or nursing, to provide financial assistance to such institution to meet incurred or prospective costs of operation, payment of such costs having been determined by the Secretary to be essential to remove the institution from serious and long-standing financial instability. To be eligible for a contract or cooperative agreement under this section, a school must have previously received financial support under section 778 or under section 789 (b) (as it existed prior to October 1, 1981) for a period of not less than 3 years.

"(b) No school may enter into a contract or cooperative agreement under this section unless—

"(1) the school has submitted to the Secretary a plan providing for the school to achieve financial solvency within five years and has agreed to carry out such plan;

"(2) such plan includes securing increased financial support from non-Federal sources;

"(3) such plan has been reviewed by a panel selected by the Secretary and consisting of three experts in the field of financial management who are not directly affiliated with the school or the Federal Government; and

"(4) the Secretary determines, after consultation with such panel, that such plan has a reasonable likelihood of achieving success.

"(c) The panel described in subsection (b)(3) shall be appointed by the Secretary within thirty days after the date of receipt of the school's plan and shall be dissolved no later than forty-five days after the panel's recommendation has been transmitted to the Secretary. Members of the panel shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they perform duties.

"(d) Any contract or cooperative agreement under this section may be entered into upon such terms and conditions as the Secretary determines to be reasonable and necessary, including requirements that the school agree to—

"(1) disclose any financial information or data necessary to determine the sources or causes of such school's financial distress;

"(2) conduct a comprehensive cost analysis study in cooperation with the Secretary; and

"(3) carry out appropriate operational, managerial, and financial reforms including the security of increased financial support from non-Federal sources.

"(e) Pursuant to the approved plan in subsection (b), funds received under this section may be used to pay short-term or long-term debts of such schools, meet accreditation requirements, or meet other costs, payment of which is essential to the continued operation of the institution or to permit such institution to achieve financial solvency within the period of the contract or cooperative agreement.

"(f) No school may receive support under this section for more than five years. No contract or cooperative agreement may be entered into under this section, or continued, in a fiscal year in which the school receives support under section 778.

"(g) An application for a contract or cooperative agreement under this section shall contain or be supported by assurances that the applicant will, in carrying out its function as a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health or nursing, as the case may be, expend during the fiscal year for which such contract or cooperative agreement is sought, an amount of funds from non-Federal sources (other than funds for construction and any contract or cooperative agreement under this section) at least as great as the average annual amount of funds from non-Federal sources expended by such applicant in the preceding two years.

"(h) For the purpose of entering into contracts or cooperative agreements to carry out this section, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1982, and for each of the succeeding four fiscal years. Funds provided under this section shall remain available until expended without regard to any fiscal year limitation.".

SEC. 110. Part F of title VII is amended by inserting the following after the heading "Part F—Grants and Contracts for Programs and Projects":

"Subpart I—Special Programs".

SEC. 111. Section 780 is amended—

(1) by striking out "meet" in subsection (a) thereof and inserting in lieu thereof "assist in meeting";

(2) by striking out "and" after "to establish" in subsection (a) thereof and inserting in lieu thereof a comma;

(3) by inserting ", and improve" after "maintain" in subsection (a) thereof;

(4) by striking out "clinical" in subsection (a) thereof;

(5) by striking out "satisfactory to the Secretary" in subsection (b)(1) thereof;

(6) by inserting "generally" before "comparable" each place it appears in subsection (b)(1) thereof;

(7) by inserting ", or a close affiliation with," after "having control over" in subsection (b)(1)(D) thereof;

(8) by striking out "and" after "1979," in subsection (c) thereof; and

(9) by inserting "$9,000,000 for the fiscal year ending September 30, 1982, $10,000,000 for the fiscal year ending September 30, 1983, and $11,000,000 for the fiscal year ending September 30, 1984," after "1980," in subsection (c) thereof.

SEC. 112. (a) Subpart I of part F of title VII is amended by adding the following new section after section 780:

"PREVENTIVE MEDICINE OR DENTISTRY, OCCUPATIONAL HEALTH, AND ENVIRONMENTAL HEALTH

"SEC. 780A. (a) The Secretary may make grants to or enter into contracts with schools of medicine, osteopathy, or dentistry, or other appropriate public or nonprofit private entities, to assist in meeting the costs of projects to—

"(1) plan, develop, and operate, or maintain training programs in preventive or community medicine or dentistry for medical, osteopathic, or dental students;

"(2) plan, develop, and operate, or maintain academic administrative units (including departments, divisions, or other units) in the field of preventive or community medicine or dentistry;

"(3) plan, develop, and operate, or maintain joint programs between faculties in the field of preventive or community medicine or dentistry and other clinical faculties for the purpose of improving the knowledge and skills of students, interns, residents, practicing physicians or dentists who specialize or plan to specialize in other clinical fields, particularly the fields of primary care and psychiatry;

"(4) plan, develop, and operate, or maintain continuing education programs in preventive or community medicine or dentistry; or

"(5) plan, develop, and operate, or maintain programs to train faculty in the fields of preventive or community medicine or dentistry.

"(b) The Secretary may make grants to schools of medicine, osteopathy, or public health, or other public or nonprofit private entities to—

"(1) develop curricula in such schools relating to occupational health for instruction of medical or osteopathic students;

"(2) provide occupational health clerkships for medical or osteopathic students;

"(3) plan, develop, and operate graduate degree public health programs for medical or osteopathic students or graduate degree public health students relating to occupational health;

"(4) design, develop, and operate innovative programs relating to the assessment of occupational hazards and the delivery of occupational health services with regard to small business;

"(5) support continuing education programs in occupational medicine for physicians in the field of occupational medicine; or

"(6) support training institutes in occupational medicine for practicing physicians.

"(c) The Secretary may make grants to schools of medicine, osteopathy, public health or other public or nonprofit entities to plan, develop, and operate, or maintain training programs (including continuing education programs) in environmental health with special emphasis on chemically induced illnesses and diseases for medical or osteopathic students, interns, residents, or practicing physicians.

"(d) There are authorized to be appropriated to carry out this section $3,000,000 for the fiscal year ending September 30, 1982, $3,200,000 for the fiscal year ending September 30, 1983, and $3,400,000 for the fiscal year ending September 30, 1984.".

(b) Section 781(d)(2) is amended—

(1) by inserting "(in coordination with the activities of the local health systems agency or agencies relating to such health manpower needs of the area)" after "the center" in subclause (B) thereof; and

(2) by striking out "serving" in subclause (E) thereof and inserting in lieu thereof "and professionals serving under comparable State programs".

(c) Section 781(g) is amended—

(1) by striking out "and" after "September 30, 1979,"; and

(2) by inserting ", $21,000,000 for the fiscal year ending September 30, 1982, $23,000,000 for the fiscal year ending September 30, 1983, and $24,000,000 for the fiscal year ending September 30, 1984" after "September 30, 1980".

(d) The heading of section 783 is amended by striking out "DENTAL TEAM PRACTICE" and inserting in lieu thereof "INTERDISCIPLINARY TRAINING".

(e) Section 783 is amended—

(1) by inserting "(1)" after "(a)" in subsection (a) thereof;

(2) by redesignating clauses (1), (2), and (3) of subsection (a) as clauses (A), (B), and (C), respectively;

(3) by striking out subsection (c);

(4) by redesignating subsections (b) and (d) as paragraphs (2) and (3), respectively;

(5) by redesignating subsection (e) thereof as subsection (c);

(6) by striking out "under subsection (a)" in paragraph (2) thereof (as redesignated by this subsection) and inserting in lieu thereof "under paragraph (1)";

(7) by striking out "section" in paragraph (3) thereof (as redesignated by this subsection) and inserting in lieu thereof "subsection";

(8) by inserting the following new subsection after subsection (a) thereof:

"(b) The Secretary may make grants to any public or nonprofit educational institution for the development of programs for cooperative interdisciplinary training among schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, chiropractic, nursing, public health, or allied health, graduate programs in health administration, or other appropriate public or nonprofit private entities. Such programs shall emphasize—

"(1) the use of the interdisciplinary team approach to the delivery of health services, including the training of individuals from two or more of the health professions disciplines identified in this subsection with respect to the organization, management, and effective integration of the skills of other appropriate practitioners, assistants, and auxiliaries to encourage the coordinated delivery of health services; or

"(2) the training of physician assistants and nurse practitioners with physicians, the training of expanded function dental auxiliaries with dentists or the training of other auxiliaries with other health professionals.";

(9) by striking out "and" after "1979," in subsection (c) thereof (as redesignated by this paragraph); and

(10) by inserting ", $16,100,000 for the fiscal year ending September 30, 1982, $18,000,000 for the fiscal year ending September 30, 1983, and $19,000,000 for the fiscal year ending September 30, 1984" after "1980" in subsection (c) thereof (as redesignated by this paragraph).

(f) Section 784 is amended to read as follows:

"REMOTE SITE TRAINING AND SUPPORT SERVICES IN UNDERSERVED AREAS

"SEC. 784. (a)(1) The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, or other appropriate public or nonprofit private entities, to assist such schools or entities in meeting the costs of projects to provide clinical training to students of such schools in areas that are geographically remote from the main site of the teaching facilities of the school and that are in areas in which medically underserved populations reside.

"(2) No grants or contracts under this section shall be made to carry out a project in an area health education center that is receiving funding under section 781. In carrying out this subsection, the Secretary shall give special consideration to projects at schools which have not received support under section 781.

"(b)(1) The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or other appropriate entities to assist in meeting the costs of planning, establishing, and operating projects to provide support services to health professionals practicing in health manpower shortage areas (designated under section 332). Such support services may include continuing education, relief services, specialist referral services, and placement of students in a preceptorial relationship with the practitioner.

"(2) No grant may be made to or contract entered into with an entity under paragraph (1)—

"(A) unless the entity agrees to provide support services to any physician, dentist, veterinarian, optometrist, podiatrist, or pharmacist (as appropriate to the category of health professionals proposed to be served by the grant or contract) who requests such services within the health manpower shortage area proposed to be served, including any member of the National Health Service Corps or any member of a service program of health professionals who received a scholarship from funds appropriated under section 758B(c); or

"(B) to carry out activities required to be carried out under section 781.

"(3) Not more than 20 percent of the funds available to carry out this subsection may be used by the Secretary to fund eligible recipients to carry out research relating to the support needs of practitioners in health manpower shortage areas, nor shall more than 40 percent of such funds be used to provide continuing education.

"(c) There are authorized to be appropriated to carry out the provisions of this section $4,000,000 for the fiscal year ending September 30, 1982, $4,600,000 for the fiscal year ending September 30, 1983, and $4,900,000 for the fiscal year ending September 30, 1984.".

(g) Section 785 is amended to read as follows:

"EDUCATIONAL PROGRAM DEVELOPMENT

SEC. 785. (a)(1) For the purposes of improving and strengthening the curriculum of health professions schools, the Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, chiropractic, or pharmacy, graduate programs in clinical psychology, or other appropriate public or nonprofit private entities, to assist in meeting the costs of projects to plan, develop, and establish courses, or expand or strengthen instruction, in the following areas:

"(A) geriatrics;

"(B) nutrition;

"(C) disease prevention and health promotion;

"(D) physical medicine and rehabilitation;

"(E) toxicology; or

"(F) social and behavioral sciences, the biopsychosocial aspects of patient care, and humanities and human values, as applied to direct patient care.

"(2) The Secretary may set aside not more than 20 percent of any amounts available to carry out this subsection to make grants to assist schools to plan, develop, and implement innovative curriculum programs in health areas not specified in paragraph (1).

"(b) The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, chiropractic, pharmacy, or allied health to assist in meeting the costs of projects to—

"(1) develop innovative approaches to teaching students at such schools about health policy and health care economics; or

"(2) develop, establish, improve, or expand the curriculum and clinical training of such schools with regard to health policy and health care economics.

"(c)(1) For the purposes of improving and strengthening the clinical training provided to students in schools of veterinary medicine, optometry, podiatry, chiropractic, or pharmacy, the Secretary may make grants to or enter into contracts with such schools to assist in meeting the costs of projects to—

"(A) establish new affiliations and expand existing affiliations with hospitals, ambulatory care centers, and practitioners, in order to provide students with clinical training; or

"(B) develop, establish, strengthen, or expand programs that provide students with clinical training.

"(2) The Secretary shall give special consideration under paragraph (1) to applications for a grant or contract under this subsection for projects that emphasize clinical training in ambulatory settings.

"(3) In the case of a school of veterinary medicine, the Secretary shall not make a grant under paragraph (1) unless such school provides assurances that the grant will not be used to establish, expand, or improve a clinical program which emphasizes care to companion animals.

"(d)(1) The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, chiropractic, pharmacy, allied health, or public health, or graduate programs in health administration or clinical psychology, or other appropriate public or nonprofit private entities, to assist in meeting the costs of projects to—

"(A) evaluate the effectiveness of current efforts to assure the continuing competency of health personnel through continuing education;

"(B) enhance the evaluation and self-evaluation of the competency of health personnel, including the establishment of new or improved methods for awarding credentials to health professionals;

"(C) assess future needs in the areas of continuing education;

"(D) develop innovative approaches to providing continuing education; or

"(E) provide continuing education programs for health professionals and allied health personnel who are in medically underserved areas or who do not have adequate access to such programs.

"(2) No grant or contract may be made under paragraph (1)(E) to carry out any activities which are funded, directly or indirectly, by funds provided pursuant to section 781 or section 784.

"(3) The Secretary shall give special consideration under this subsection to applications which emphasize the continuing education needs of health professionals who are involved in delivery of primary care.

"(e) The Secretary may make grants to and enter into contracts with appropriate public or nonprofit private entities (determined by the Secretary to be capable of carrying out grants and contracts under this section) to develop and conduct management training programs for physicians, nurses, other providers of health care, managers and administrators in health care facilities and institutions, or in State and local health agencies.

"(f) There are authorized to be appropriated to carry out the provisions of this section $5,500,000 for the fiscal year ending September 30, 1982, $6,000,000 for the fiscal year ending September 30, 1983, and $6,500,000 for the fiscal year ending September 30, 1984."

"(h) Section 786 is amended to read as follows:

"EDUCATIONAL COST

"SEC. 786. (a) The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, allied health, or public health, or graduate programs in health administration or clinical psychology, or other appropriate public or nonprofit private entities, to assist in meeting the costs of projects to plan, develop, and demonstrate methods of reducing the total cost of education in such schools and such graduate programs without impairing the quality of such education.

"(b) There are authorized to be appropriated to carry out the provisions of this section $300,000 for the fiscal year ending September 30, 1983, $500,000 for the fiscal year ending September 30, 1983, and $500,000 for the fiscal year ending September 30, 1984.".

(i) Section 787 is amended to read as follows:

"EDUCATIONAL ASSISTANCE TO INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

"SEC. 787. (a) For the purpose of assisting individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary), to undertake education to enter a health profession, the Secretary may make grants to or enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, or allied health, graduate programs in health administration or clinical psychology, or other public or nonprofit private health or educational entities, to assist in meeting the costs of—

"(1) establishing secondary education programs designed to increase the number of students from disadvantaged backgrounds who pursue careers in the health professions;

"(2) establishing joint programs between baccalaureate degree institutions and health professions schools, or other appropriate entities designed to increase the number of students from disadvantaged backgrounds in health professions schools;

"(3) providing, for a period prior to the entry of such individuals into the regular course of education of health professions schools, preliminary education designed to assist such individuals in successfully completing such regular course of education at such schools, or referring such individuals to institutions providing such preliminary education;

"(4) identifying, recruiting, and selecting individuals from disadvantaged backgrounds, for education and training in a health profession;

"(5) facilitating the entry of such individuals into health professions schools;

"(6) providing counseling or other services designed to assist such individuals to complete successfully their education at such schools and to plan for appropriate graduate education and career selection; or

"(7) publicizing existing sources of financial aid available to students in the education program of such school or who are undertaking training necessary to qualify to enroll in such program.

"(b)(1) There are authorized to be appropriated for grants and contracts under this section, $22,000,000 for the fiscal year ending September 30, 1982, $24,000,000 for the fiscal year ending September 30, 1983, and $26,000,000 for the fiscal year ending September 30, 1984. No less than 80 percent of funds appropriated in each fiscal year shall be for grants or contracts to institutions of higher education.

"(2) Funds provided under grants and contracts under this section may be used to provide stipends to students in programs under subsection (a)(3) if such students would not otherwise be able to participate.".

(j) Subpart I of part F of title VII is amended by inserting the following new section after section 787:

"PROJECTS FOR WOMEN IN HEALTH

"SEC. 787A. (a) The Secretary may make grants to or enter into contracts with schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or chiropractic, or appropriate public or nonprofit private entities, to meet the costs of projects to increase the participation of women in health careers and to encourage the advancement of women by—

"(1) assisting counselors and advisers in pre-professional schools and in postgraduate programs to provide information to women about courses of study and access to professional careers in health;

"(2) providing information to women about sources of student financial assistance;

"(3) recruiting women for education and training in a health profession;

"(4) providing counseling designed to assist such women to complete successfully their education at such schools and plan for appropriate graduate education and career selection;

"(5) providing courses or programs designed to assist women health professionals, who have interrupted their practice, to reenter the active practice of their professions.

"(b) There are authorized to be appropriated for grants and contracts under this section $2,000,000 for the fiscal year ending September 30, 1982, $2,200,000 for the fiscal year ending September 30, 1983, and $2,400,000 for the fiscal year ending September 30, 1984.".

(k) Section 788 is amended to read as follows:

"PROJECTS AND ADVANCED TRAINEESHIPS FOR ALLIED HEALTH PROFESSIONALS

"SEC. 788. (a) The Secretary may make grants to and enter into contracts with schools of allied health or other public or nonprofit private entities to assist in meeting the costs of planning, developing, demonstrating, operating, and evaluating projects relating to the following:

"(1) The establishment of regional resources centers for the coordination and management of data and research on the training of allied health personnel in educational institutions and clinical settings.

"(2) The development and implementation of programs to—

"(A) improve the clinical training of allied health personnel;

"(B) demonstrate the utilization of allied health personnel in containing health care costs; or

"(C) develop multiple competency allied health personnel.

"(3) The establishment of new or improved methods of qualifying allied health personnel and awarding credentials, including techniques for appropriate recognition (through equivalency and proficiency testing or otherwise) of previously acquired training or experience, developed in coordination with the Secretary's program under section 1123 of the Social Security Act.

"(4) The development and implementation of new or improved curriculum offerings in health promotion and disease prevention, environmental health, geriatrics, nutrition, rehabilitation, public health, management, or health policy.

"(5) The establishment or improvement of programs of recruitment, training, and retraining of allied health personnel, including such programs which emphasize the needs of medically underserved areas.

"(6) The demonstration of methods of meeting new health services needs without creating new allied health occupations or specialties.

"(7) Establishment or improvement of programs to increase clinical competency in special areas, subjects, or functions, particularly long-term care, hospice care, disease prevention, health promotion, and the application of new technologies.

"(8) Development, improvement, or expansion of allied health programs for the training of students, including students with industrial experience, in occupational safety and health.

"(b)(1) The Secretary may make grants to schools of allied health to provide traineeships for allied health personnel for advanced training to enable such personnel to teach other allied health personnel or to serve in administrative or supervisory positions.

"(2) Grants shall be limited to such amounts as the Secretary finds necessary to cover the cost of tuition, fees, stipends, and allowances (including travel and subsistence expenses and dependency allowances) for the trainees.

"(c) There are authorized to be appropriated to carry out the provisions of this section $8,000,000 for the fiscal year ending September 30, 1982, $9,000,000 for the fiscal year ending September 30, 1983, and $10,000,000 for the fiscal year ending September 30, 1984.".

SEC. 113. (a) Sections 790 and 791 are redesignated as sections 799B and 795, respectively.

(b) Sections 792 and 793 are repealed.

(c) Subpart II of part G is repealed.

(d) Part F of title VII is amended by adding the following new subpart after subpart I:

"SUBPART II—GRADUATE EDUCATION

"FAMILY MEDICINE

"SEC. 790. (a) The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, school of medicine or osteopathy, or public or private nonprofit entity (which the Secretary has determined is capable of carrying out such grant or contract)—

"(1) to plan, develop, and operate, or participate in, an approved professional training program (including an approved residency or internship program) in the field of family medicine for medical or osteopathic students, interns (including interns in internships in osteopathic medicine), or residents;

"(2) to provide financial assistance (in the form of traineeships and fellowships) to medical or osteopathic students, interns (including interns in internships in osteopathic medicine), or residents, who are in need thereof and who are participants in any such program;

"(3) to plan, develop, and operate a program for the training of physicians who plan to teach in family medicine training programs; or

"(4) to provide financial assistance (in the form of traineeships and fellowships) to physicians who are participants in any such program and who plan to teach in a family medicine training program.

"(b) Not less than 10 percent of the amount appropriated in each fiscal year to make grants under this section shall be made available for grants under paragraphs (3) and (4) of subsection (a).

"(c) There are authorized to be appropriated to make grants under this section $32,000,000 for the fiscal year ending September 30, 1982, $36,500,000 for the fiscal year ending September 30, 1983, and $37,-

500,000 for the fiscal year ending September 30, 1984.

"GRANTS FOR TRAINING, TRAINEESHIPS, AND FELLOWSHIPS IN PRIMARY CARE INTERNAL MEDICINE AND PRIMARY CARE PEDIATRICS

"SEC. 791. (a) The Secretary may make grants to or enter into contracts with schools of medicine or osteopathy, or appropriate public or nonprofit private entities, including hospitals to assist in meeting the costs of projects to—

"(1) plan, develop, and operate, or maintain approved residency training programs in internal medicine or pediatrics, that emphasize the training of residents for the practice of primary care internal medicine or primary care pediatrics;

"(2) plan, develop, and opearte, or maintain program for the training of physicians who plan to teach in primary care internal medicine or primary care pediatrics;

"(3) provide financial assistance to residents who are participants in a residency program described in paragraph (1), and who plan to specialize or work in the practice of primary care internal medicine or primary care pediatrics; or

"(4) provide financial assistance for physicians who are participants in a program described in paragraph (2) and who plan to teach primary care internal medicine or pediatrics.

"(b) There are authorized to be appropriated to carry out the provisions of this section $17,000,000 for the fiscal year ending September 30, 1982, $18,500,000 for the fiscal year ending September 30, 1983, and $19,000,000 for the fiscal year ending September 30, 1984.

"GRANTS OR TRAINING IN PREVENTIVE MEDICINE AND DENTISTRY

"SEC. 792. (a) The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, dentistry, or public health, or other appropriate public or nonprofit private entities, to assist in meeting the costs of such schools or entities of providing projects to—

"(1) plan, develop, and operate or maintain an approved residency training program in preventive medicine (including environmental medicine and occupational medicine) or advanced postgraduate training in preventive dentistry; or

"(2) provide financial assistance (in the form of traineeships and fellowships) to residents in any such program in need of financial assistance and who plan to specialize or work in preventive medicine (or public health or environmental medicine or occupational medicine) or dentistry.

"(b) There are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1982, $2,200,000 for the fiscal year ending September 30, 1983, and $2,400,000 for the fiscal year ending September 30, 1984.

"GRANTS FOR TRAINING IN PHYSICAL MEDICINE AND REHABILITATION

SEC. 793. (a) The Secretary may make grants to and enter into contracts with schools of medicine or osteopathy or other appropriate public or nonprofit entities to assist in meeting the costs of such schools or entities of providing projects to—

"(1) plan, develop, and operate or maintain a physician residency training program in physical medicine and rehabilitation; or

"(2) provide financial assistance (in the form of traineeships and fellowships) to residents in any such program in need of financial assistance and who plan to specialise or work in physical medicine and rehabilitation.

"(b) There are authorized to be appropriated to carry out the provisions of this section $1,000,000 for the fiscal year ending September 30, 1982, $1,100,000 for the fiscal year ending September 30, 1983, and $1,200,000 for the fiscal year ending September 30, 1984.

"GRANTS FOR TRAINING IN GENERAL PRACTICE OF DENTISTRY

"SEC. 794. (a) The Secretary may make grants to, and enter into contracts with, schools of dentistry or other public or nonprofit private entities to assist in meeting the costs of such schools or entities of providing projects to—

"(1) plan, develop, and operate or maintain an approved residency program in the general practice of dentistry; or

"(2) provide financial assistance (in the form of traineeships and fellowships) to residents in such program in need of financial assistance and who plan to specialize in the practice of general dentistry.

"(b) There are authorized to be appropriated to carry out the provisions of this section $3,500,000 for the fiscal year ending September 30, 1982, $3,900,000 for the fiscal year ending September 30, 1983, and $4,300,000 for the fiscal year ending September 30, 1984.

"SPECIAL PROJECTS FOR PHYSICIAN GRADUATE

"SEC. 794A. (a) The Secretary may make grants to schools of medicine or osteopathy, hospitals with approved residency training programs in internal medicine, pediatrics, family practice, psychiatry, or obstetrics and gynecology, or to other appropriate health care entities affiliated with such schools or hospitals, to meet the costs of innovative educational projects for physicians in such residency programs designed to encourage physicians to locate their practice in health manpower shortage areas designated under section 332 or in appropriate ambulatory care settings.

"(b) The Secretary may make grants to schools of medicine or osteopathy, hospitals, and other appropriate entities to meet the educational costs of innovative projects for residents in approved residency training programs. Such projects shall—

"(1) develop, implement, and evaluate educational activities for physician residents in the social and behavioral sciences, biopsychosocial aspects of patient care, humanities and human values (including medical ethics), principles of cost containment, organization of health services, and epidemiology, as such programs apply to direct patient care in inpatient and outpatient health care settings; or

"(2) prepare residents for teaching medical students and other hospital staff by providing for training in techniques of teaching, supervision, and consultation, and evaluation methods suited to the clinical setting.

"(c) Grants under this section may not be used solely for the training of residents receiving support under any other section of this part.

"(d) There are authorized to be appropriated for grants under this section $2,000,000 for the fiscal year ending September 30, 1982, $2,200,000 for the fiscal year ending September 30, 1983, and $2,400,000 for the fiscal year ending September 30, 1984.".

SEC. 114. (a) The heading of part G of title VII is amended by striking out "ALLIED HEALTH" and inserting in lieu thereof "PUBLIC HEALTH".

(b) The heading of subpart I of part G of title VII is amended to read as follows:

"Subpart I—Health Administration Personnel"

(c)(1) Section 795 (c)(2)(A)(i)(II) (as redesignated by section 113(a)) is amended by striking out "$100,000" and inserting in lieu thereof "$150,000".

(2) Section 795(c)(2)(A)(ii) (as redesignated by section 113(a)) is amended—

(A) by striking out "1978" and inserting in lieu thereof "1982"; and

(B) by striking out "1976" and inserting in lieu thereof "1980".

(3) Section 795(c)(2)(A) (as redesignated by section 113(a)) is amended—

(A) by striking out "and" at the end of subclause (ii)(II); and

(B) by redesignating subclause (iii) as subclause (vi) and by inserting the following new subclauses after subclause (ii):

"(iii) contains assurances that the program for which such application was submitted shall provide, or plans to provide within 12 months, either directly or through agreement with an appropriate entity, at least three courses, or a comparable amount of instruction in other courses, in any of the following disciplines:

"(I) finance (particularly is applied to health care),

"(II) marketing (particularly as applied to health care),

"(III) economics (including macroeconomics and microeconomics, and with special emphasis on health economics),

"(IV) epidemiology for administration and planning,

"(V) health planning,

"(VI) health policy, law, and regulation, and

"(VII) information systems;

"(iv) contains assurances that the program for which such application was submitted shall provide a concentration or special emphasis on one or more of the following:

"(I) health planning,

"(II) health policy,

"(III) ambulatory care services,

"(IV) long-term care,

"(V) home health care,

"(VI) multi-unit care systems,

"(VII) comprehensive prepaid service systems,

"(VIII) mental health administration, and

"(IX) any other health care delivery system determined by the Secretary to require special emphasis;

"(v)(I) the program provides, or plans to provide within 12 months, a range of courses during evening and weekend hours to enable students to matriculate on a part-time basis and receive a degree, or

"(II) the program provides, or plans to provide within 12 months, a program of continuing education for health professionals who are involved full-time or part-time in health administration and for graduates of a graduate program in health administration; and".

(4) Section 795(d) (as redesignated by section 113(a)) is amended—

(A) by striking out "and" after "1979,"; and

(B) inserting ", $3,000,000 for the fiscal year ending September 30, 1982, $3,300,000 for the fiscal year ending September 30, 1983, and $3,600,000 for the fiscal year ending September 30, 1984" after "1980".

(d) Part G of title VII is amended by inserting the following new section after section 795 (as redesignated by section 113(a)):

"SPECIAL PROJECTS FOR GRADUATE PROGRAMS IN HEALTH ADMINISTRATION

"SEC. 796. (a) The Secretary may make grants to assist education institutions with accredited graduate programs in health administration to meet the costs of developing curricula designed to improve training in health care management. Such curricula may include—

"(1) finance (particularly as applied to health care);

"(2) marketing (particularly as applied to health care);

"(3) economics (including macroeconomics and microeconomics, and with special emphasis on health economics);

"(4) epidemiology and health planning;

"(5) health policy, law, and regulation;

"(6) quality assurance and assessment;

"(7) information systems;

"(8) health services organization and management for students in health disciplines other than health administration; and

"(9) management of ambulatory care services.

"(b)(1) The Secretary may make grants to assist accredited schools of public health and other education institutions with accredited graduate programs in health administration to meet the costs of establishing and operating faculty development programs that—

"(A) train individuals in management or other disciplines that are, in the judgment of the Secretary, underrepresented in programs of health administration and necessary to improve training in health care management; and

"(B) train individuals experienced in such management disciplines with respect to health care issues relating to the teaching of health administration.

"(2) The Secretary may not approve an application for a grant under this subsection unless such application contains assurances that at least three individuals shall complete the program in each year for which an application is made.

"(3) Grant funds awarded under this section shall be used to provide fellowships for 12 months to individuals who—

"(A) have received a doctoral degree or equivalent terminal professional recognition in a discipline determined by the Secretary to be underrepresented in programs of health administration and necessary to improve training in health care management; and

"(B) agree to serve as a faculty member for a period of not less than two years in an accredited school of public health or other educational program with accredited programs in health administration.

"(c) There are authorized to be appropriated for grants under this section, $3,000,000 for the fiscal year ending September 30, 1982, $4,000,000 for the fiscal year ending September 30, 1983, and $4,500,000 for the fiscal year ending September 30, 1984.".

(e)(1) Section 797(a) (as redesignated by section 106(a)) is amended by inserting "who are citizens of the United States, or lawfully admitted to the United States, or permanent residence as defined in section 101(a)(20) of the Immigration and Nationality Act, or citizens of the Northern Mariana Islands, American Samoa, or the Trust Territory of the Pacific Islands" after "train students".

(2) Section 797(b)(2) (as redesignated by section 106(a)) is amended by inserting ", based upon the need of students attending such program" after "as the Secretary may deem necessary".

(3) Section 797(b)(3) (as redesignated by section 106(a)) is amended to read as follows:

"(3) In awarding traineeships under this section, each applicant shall provide assurances to the Secretary that the funds received under this section shall be awarded for traineeships to individuals who have received a baccalaureate degree.".

(4) Section 797(c) (as redesignated by section 106(a)) is amended—

(A) by striking out "and" after "September 30, 1979;"; and

(B) by inserting ", $2,000,000 for the fiscal year ending September 30, 1982, $2,500,000 for the fiscal year ending September 30, 1983, and $3,000,000 for the fiscal year ending September 30, 1984" after "September 30, 1980".

SEC. 115. (a) The Secretary shall enter into a contract with an appropriate public or private entity or entities to conduct an evaluation of health care management and submit a report, including recommendations, to the Secretary. Prior to submission of such report, the Secretary shall make such report available to interested parties and affected Federal agencies for comment. The Secretary shall submit such report in original form, accompanied by comments provided by the Secretary, any interested parties, and any Federal agencies, to the Committees on Labor and Human Resources and Finance of the Senate, and the Committees on Interstate and Foreign Commerce and Ways and Means of the House of Representatives, within 24 months after the date of the enactment of this Act.

(b) The report submitted pursuant to this section shall contain—

(1) an analysis of current and future requirements for management in health care and a comparison of health care management and management in other major industries;

(2) an identification and evaluation of management skills utilized in major industries and underutilized in health care with respect to the application of such skills to health care management;

(3) an assessment of the educational needs of individuals in or entering health care management positions;

(4) an evaluation of Federal policy with regard to reimbursement of health care services, the application of the antitrust laws, consumer representation and participation, the imposition of limitations on administrative costs, and any other Federal policies that, in the judgment of the Secretary, have an impact on the management of health care facilities or institutions;

(5) a comparison of incentives to individuals to encourage the pursuit of management careers in health care and management careers in other major industries, and an evaluation of incentives to individuals to encourage careers in various types of facilities;

(6) an evaluation of the interaction between the health care industry and other industries with regard to management; and

(7) any other issue specified by the Secretary.

SEC. 116. (a) Part G of title VII is amended by adding the following new subpart after section 797 (as redesignated by section 106(a)).

"Supart II—Public Health Personnel

"SPECIAL PROJECTS FOR SCHOOLS OF PUBLIC HEALTH

"SEC. 798. (a) The Secretary may make grants to or enter into contracts with schools of public health to meet the cost of special projects to develop new programs or to improve or expand existing programs (including continuing education or part-time programs for advanced training of practicing professionals in need of new knowledge or skills) in—

"(1) disease prevention or health promotion;

"(2) biostatistics or epidemiology;

"(3) health administration, health planning, health policy analysis and planning, or cost-containment;

"(4) environmental or occupational health;

"(5) dietetics or nutrition;

"(6) women's health or child health; or

"(7) geriatrics.

"(b) The Secretary shall give special consideration under subsection (a) to midcareer leadership programs.

"(c) There are authorized to be appropriated for grants and contracts under this section $4,000,000 for the fiscal year ending September 30, 1982, $5,000,000 for the fiscal year ending September 30 1983, and $5,500,000 for the fiscal year ending September 30, 1984.".

(b)(1) Section 799(a)(2) (as redesignated by section 106(a)) is amended by striking out "section 749" and inserting in lieu thereof "Section 797".

(2) Section 799(b)(1) (as redesignated by section 113(c)) is amended by inserting "with paragraph (3) and" after "shall be awarded in accordance".

(3) Section 799(b)(2) (as redesignated by section 106(a)) is amended by inserting "based on the need of individuals eligible for such traineeships under paragraph (3)" at the end of the sentence.

(4) Section 799(b)(3) (as redesignated by section 106(a)) is amended to read as follows:

"(3) Traineeships awarded under grants made under subsection (a) shall be awarded to individuals who—

"(A) are citizens of the United States, or lawfully admitted to the United States for permanent residence as defined in section 101(a)(20) of the Immigration and Nationality Act, or citizens of the Northern Mariana Islands, American Samoa or the Trust Territory of the Pacific Islands, and

"(B) have previously received a baccalaureate degree.".

(5) Section 799(b)(4) (as redesignated by section 106(a)) is repealed.

(6) Section 799(c) (as redesignated by section 106(a)) is amended—

(A) by striking out "and" after "September 30, 1979;"; and

(B) by inserting ": $7,000,000 for the fiscal year ending September 30, 1982, $8,000,000 for the fiscal year ending September 30, 1983, and $9,000,000 for the fiscal year ending September 30, 1984" after "September 30, 1980".

(c) Subpart II of part G of title VII is amended by adding the following new section at the end thereof:

"OTHER PUBLIC HEALTH PROJECTS

SEC. 799A. (a) The Secretary may make grants to assist educational institutions not eligible for support under section 795, 796, or 798 in meeting the costs of special projects in—

"(1) biostatistics or epidemiology;

"(2) health administration, health planning, or health policy analysis and planning;

"(3) environmental or occupational health; or

"(4) dietetics or nutrition.

"(b) There are authorized to be appropriated to carry out this section $500,000 for the fiscal year ending September 30, 1982, $600,000 for the fiscal year ending September 30, 1983, and $700,000 for the fiscal year ending September 30, 1984.".

(d) Section 799B (as redesignated by section 113(a)) is amended—

(1) by striking out "this part" each place it appears and inserting in lieu thereof "part F, or G";

(2) by striking out "Professions Education" in paragraph (1) and inserting in lieu thereof "Personnel".

TITLE II—NURSE EDUCATION AMENDMENTS

SEC. 201. This title may be cited as the "Nurse Education Amendments of 1980".

SEC. 202. (a)(1) The heading of title VIII is amended to read as follows:

"TITLE VIII—EDUCATION OF NURSES".

(2) The heading of part A of title VIII is amended to read as follows:

"PART A—ASSISTANCE FOR NURSE EDUCATION".

(b) Section 801 is amended—

(1) by striking out "and" after "fiscal year 1978,"; and

(2) by inserting ", $500,000 for the fiscal year ending September 30, 1982, $500,000 for the fiscal year ending September 30, 1983, and $500,000 for the fiscal year ending September 30, 1984" after "September 30, 1980".

(c) Section 802(b) is amended by striking out "his determination" after "approved

by the Secretary upon" and inserting in lieu thereof "determining".

(d) The second sentence of section 803 (b) is amended—

(1) by striking out "Secretary's"; and

(2) by striking out "by him" and inserting in lieu thereof "by the Secretary".

(e) Section 805 is amended—

(1) by striking out "1980" each place it appears in subsections (a) and (b) thereof and inserting in lieu thereof "1984";

(2) by striking out "by not to exceed 3 per centum" in subsection (b);

(3) by inserting "by the lesser of 6 percent per annum or such percentage per annum necessary to reduce such net effective interest rate to 7 percent for loan guarantees and interest subsidies first made after October 1, 1981" after "otherwise payable on such loan" at the end of subsection (b);

(4) by striking out "he" each place it appears in subsections (c) and (d) and inserting in lieu thereof "the Secretary";

(5) by striking out "to enable him to discharge his responsibilities' 'in subsection (e) and inserting in lieu thereof "to enable the discharge of the Secretary's responsibilities";

(6) by striking out "by him" in subsection (e);

(7) by striking out the second sentence of subsection (e) and inserting in lieu thereof the following: "There is authorized to be appropriated to the fund $300,000 for the fiscal year ending September 30, 1982, $600,000 for the fiscal year ending September 30, 1983, and $900,000 for the fiscal year ending September 30, 1984.";

(8) by striking out "derived by him from his operations" in subsection (e) thereof and inserting in lieu thereof "derived from the operations";

(9) by striking out "the Secretary to discharge his responsibilities" in subsection (e) thereof and inserting in lieu thereof "the discharge of the Secretary's responsibilities";

(10) by striking out "by him" in the fourth sentence of subsection (e) thereof;

(11) by striking out "he" in the fourth sentence of subsection (e) thereof and inserting in lieu thereof "the Secretary";

(12) by striking out "he" in the sixth sentence of subsection (e) thereof;

(13) by striking out "him" in the seventh sentence of subsection (e) thereof and inserting in lieu thereof "the Secretary of the Treasury";

(14) by striking out "cumulative" after "would cause the" in subsection (f)(2) thereof;

(15) by inserting "first" after "loans" in subsection (f)(2)(A) thereof;

(16) by inserting "first" after "subsidy payments is" in subsection (f)(2)(B) thereof;

(17) by striking out the period at the end of clause (B) of subsection (f)(2) thereof and inserting in lieu thereof a semicolon;

(18) by striking out "the amount of grant funds obligated under this subpart in such fiscal year for construction grants; except that this paragraph shall not apply if the amount of grant funds so obligated in such fiscal year equals the sum appropriated for such fiscal year under section 801." and inserting in lieu thereof "$5,000,000 for such fiscal year."; and

(19) by striking out subsection (g) thereof.

SEC. 203. Subpart II of part A of title VIII is amended to read as follows:

"Subpart II—Startup Assistance

"STARTUP ASSISTANCE

"SEC. 810. (a) For the purposes of meeting national and regional needs for nurses, the Secretary may make a grant to a new school of nursing which begins instruction after July 1, 1980. No school may receive a grant under this section unless the number of full-time students enrolled in its first school year of operation will exceed twenty-three.

"(b) The amount of any grant under this section may not exceed the following:

"(1) In the year preceding the first year in which such school has students enrolled, an amount equal to the product of $5,000 and the number of full-time students the Secretary estimates will enroll in such school in such first year.

"(2) In the first year in which such school has students enrolled, an amount equal to the product of $5,000 and the number of full-time students enrolled in such school in such year.

"(3) In the second year in which such school has students enrolled, an amount equal to the product of $2,500 and the number of full-time students enrolled in such school in such year.

Estimates of the number of full-time students enrolled in a school may be made on the basis of assurances provided by the school.

"(c) The Secretary shall give priority in the award of grants under this section to applicants for whom the receipt of such grant would facilitate the acceleration of the date upon which instruction would begin or increase the number of students to be enrolled in the entering class. The Secretary shall also give priority to applicants who will, by virtue of an affiliation with one or more existing health professions institutions, be able to make use of existing facilities and resources.

"(d) The Secretary shall give special consideration to any application submitted by a school for a grant under this section if such school will be located in a nurse shortage area (designated under section 836(h)).

"(e) For purposes of this section, any school of nursing shall be considered a new school for any year if such year is—

"(1) the year preceding the first year in which such school has students enrolled;

"(2) the first year such school has students enrolled; and

"(3) the year following the first year such school has students enrolled.

"(f) For the purpose of making grants to carry out this section, there are authorized to be appropriated $500,000 in the fiscal year ending September 30, 1982, and in such of the succeeding two fiscal years.".

SEC. 204. (a) Subpart III of part A of title VIII is repealed.

(b) Subpart IV of part A of title VIII is redesignated as subpart III.

(c) Section 820 is amended to read as follows:

"SPECIAL PROJECT GRANTS AND CONTRACTS

"SEC. 820. (a) For the purposes of encouraging schools of nursing to provide support for practicing nurses and nursing aides, the Secretary may make grants to, and enter into contracts with, schools of nursing and other public or nonprofit private entities to assist in meeting the cost of projects to provide—

"(1) appropriate retraining opportunities for nurses who (after periods of professional inactivity) desire to engage actively in the nursing profession;

"(2) continuing education for nurses;

"(3) programs, including continuing education, to provide professional support for nurses, including nurse practitioners practicing in health manpower shortage areas;

"(4) training and education to upgrade the skills of licensed vocational or practical nurses and nursing assistants, especially with regard to providing nursing services to special populations such as geriatric patients in nursing homes; or

"(5) programs to assist graduates of diploma and associate degree schools of nursing to enhance their educational credentials.

"(b) For the purposes of improving the availability of nursing personnel and the utilization of nurses, the Secretary may make grants to and enter into contracts with schools of nursing and other public or nonprofit private entities, to assist in meeting the cost of projects to—

"(1) help to increase the supply or improve the distribution of adequately trained nursing personnel (including nursing personnel who are bilingual) by geographic area or by specialty group;

"(2) plan, develop, establish, or maintain programs of research in nursing education; or

"(3) demonstrate and evaluate new or improved patterns of nursing care that will promote the full utilization of nurses or assist in the retention or reentry of nurses in active nursing practice.

"(c) For the purposes of improving and strengthening the curriculum of schools of nursing, the Secretary may make grants to and enter into contracts with schools of nursing to assist in meeting the costs of projects to plan, develop, and establish courses or expand or strengthen instruction in the following areas:

"(1) health policy and health care economics;

"(2) women's health or child health, including pediatrics;

"(3) geriatrics;

"(4) diet or nutrition;

"(5) public health or community health education;

"(6) occupational health;

"(7) social and behavorial sciences or humanities and human values, as applied to direct patient care; or

"(8) innovative curriculum programs in other appropriate health areas.

"(d) For the purpose of strengthening clinical education, the Secretary may make grants to or enter into contracts with schools of nursing, or other appropriate public or nonprofit entities, to—

"(1) maintain, improve, increase, or extend the clinical education of students in schools of nursing, including providing for the establishment of new training opportunities relating to primary nursing care; or

"(2) assist in the establishment of arrangements between programs at schools of nursing and nursing practice settings in order to facilitate the clinical education of nursing students, or assist in demonstrating and evaluating new or improved arrangements.

"(e) Contracts may be entered into under this subsection without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(f) The Secretary may, with the advice of the National Advisory Council on Nurse Training, provide assistance to the heads of other departments and agencies of the Government to encourage and assist in the utilization of medical facilities under their jurisdiction for nurse training programs.

"(g) No grant or contract may be made under this section unless an application therefor has been submitted to and approved by the Secretary. The Secretary may not approve or disapprove such an application except after consultation with the National Advisory Council on Nurse Training. Such an application shall provide for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(h) For payments under grants and contracts under this section there are authorized to be appropriated $13,000,000 for the fiscal year ending September 30, 1982, $15,000,000 for the fiscal year ending September 30, 1983, and $17,000,000 for the fiscal year ending September 30, 1984.".

(d) Section 821 is amended to read as follows:

"ADVANCED NURSE TRAINING PROGRAMS

"SEC. 821. (a) The Secretary may make grants to and enter into contracts with collegiate schools of nursing to meet the costs of projects to—

"(1) plan, develop, and operate programs;

"(2) significantly expand programs; or

"(3) maintain existing programs;

for the advanced training of professional nurses to teach in the various fields of nurse training, to serve in administrative or supervisory capacities, or to serve in various fields of advanced clinical practice.

"(b) The Secretary shall give special consideration under subsection (a) to applications—

"(1) which would provide a program for advanced training in geographic areas lacking such a program; or

"(2) which provide for opportunities for advanced training on a part-time basis.

"(c) For payments under grants and contracts under this section there are authorized to be appropriated $12,000,000 for the fiscal year ending September 30, 1982, $13,000,000 for the fiscal year ending September 30, 1983, and $14,000,000 for the fiscal year ending September 30, 1984.".

(e) Section 822 is amended—

(1) by striking out "who are residents of a health manpower shortage area (designated under section 332)" in subsection (b)(1);

(2) by striking out "and" after "1978," in subsection (e); and

(3) by inserting ", $13,000,000 for the fiscal year ending September 30, 1982, $14,000,000 for the fiscal year ending September 30, 1983, and $15,000,000 for the fiscal year ending September 30, 1984" after "1980" in subsection (e).

(f) Subpart III of part A of title VIII is amended by adding the following new section after section 822:

"EDUCATIONAL ASSISTANCE TO INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

"SEC. 823. (a)(1) For the purpose of increasing nursing education opportunities for individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary), the Secretary may make grants to and enter into contracts with schools of nursing and other public or private nonprofit health or educational entities to assist in meeting the costs described in paragraph (2).

"(2) A grant or contract under paragraph (1) may be used by such school or other entity to meet the costs of—

"(A) identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in nursing;

"(B) facilitating the entry of such individuals into schools of nursing;

"(C) providing counseling or other services designed to assist such individuals to enter and successfully complete their education at such a school;

"(D) providing, prior to the entry of such individuals into the regular course of education of such school, preliminary education designed to assist such individuals in successfully completing such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; or

"(E) publicizing existing sources of financial aid available to students in the education program of such a school and to students who are undertaking training necessary to qualify them to enroll in such a program, with particular emphasis on individuals—

"(i) who are in high school; or

"(ii) who are practical nurses or nursing assistants who want to enhance their educational credentials.

"(b) Not more than 20 percent of the funds appropriated under this section may be used for grants or contracts to entities that are not schools of nursing.

"(c) Funds provided under grants and contracts under this section may be used to provide stipends to students in programs under subsection (a)(2)(D) if such student would not otherwise be able to participate.

"(d) There are authorized to be appropriated to carry out the provisions of this section $4,000,000 for the fiscal year ending September 30, 1982, $4,500,000 for the fiscal year ending September 30, 1983, and $5,000,000 for the fiscal year ending September 30, 1984.".

(g) Part A of title VIII is amended by adding the following new subpart after subpart III:

"Subpart IV—Incentive Grants

"NATIONAL PRIORITY INCENTIVE GRANTS

"SEC. 824. (a) The Secretary shall make annual grants to schools of nursing to support the education programs of such schools and other projects and activities that are in national interest.

"(b)(1) For purposes of this part, regulations of the Secretary shall include provisions relating to determination of the number of students enrolled in a school, or in a particular year-class in a school, or the number of graduates, on the basis of estimates or on the basis of the number of students who were enrolled in a school, or in a particular year-class in a school, or on such basis as the Secretary deems appropriate for making such determination, and shall include methods of making such determination when a school or a year-class was not in existence in an earlier year at a school.

"(2) For purposes of this part, the term 'full-term students' (whether such term is used by itself or in connection with a particular year-class) means students pursuing a full-time course of study in an accredited program in a school of nursing.

"(c) For purposes of computing grants under this subpart the enrollment of a school shall be—

"(1) in the case of a collegiate school of nursing, the number of full-time and full-time equivalent of part-time undergraduate students of such school enrolled in the last two years in a fiscal year;

"(2) in the case of an associate degree school of nursing, the number of full-time and full-time equivalent of part-time students of such school in the first year divided by 2, and the number of full-time and full-time equivalent of part-time students of such school in the last year in a fiscal year; and

"(3) in the case of a diploma school of nursing, the number of full-time and full-time equivalent of part-time students of such school in a fiscal year.

"(d) If the total of the grants to be made under this section for any fiscal year to schools with approved applications exceeds the amount appropriated under subsection (i) for such grants, the amount of the grant for such fiscal year to each such school shall be ratably reduced.

"(e) The amount of a grant to a school under this section shall be the amount as provided in subsection (f) multiplied by the enrollment of such school (as determined under subsection (c)).

"(f)(1) In determining the amount of a grant in a fiscal year to a school under subsection (e), the Secretary shall multiply the amount specified in paragraph (2) by the number of objectives under paragraph (3) met by such school.

"(2)(A) A collegiate school of nursing shall receive $75 in the fiscal year ending September 30, 1982, for each enrolled student as determined under subsection (c)(1), $75 in the fiscal year ending September 30, 1983, for each such enrolled student and $75 in the fiscal year ending September 30, 1984, for each such enrolled student.

"(B) An associate degree school of nursing shall receive $50 in the fiscal year ending September 30, 1982, for each enrolled student as determined under subsection (c)(2), $50 in the fiscal year ending September 30, 1983, for each such enrolled student, and $50 in the fiscal year ending September 30, 1984, for each such enrolled student.

"(C) A diploma school of nursing shall receive $50 in the fiscal year ending September 30, 1982, for each enrolled student as determined under subsection (c)(3), $50 in the fiscal year ending September 30, 1983, for each such enrolled student, and $50 in the fiscal year ending September 30, 1984, for each such enrolled student.

"(3) For purposes of making the determination under paragraph (1), the Secretary shall determine the number of the following objectives that the school meets in the fiscal year in which an application is made:

"(A)(i) The school's first year student enrollment is the same or greater than the first year student enrollment in the previous school year; or

"(ii) the school's final year student enrollment is the same or greater than the final year student enrollment in the previous school year.

"(B)(i) The school enrolls, or will enroll within twelve months, a number of students such that 15 percent or more (or 10 students, which ever is greater) of the school's entering class are individuals who are licensed practical or vocational nurses; or

"(ii) the school enrolls, or will enroll within twelve months, a number of part-time students such that at least 15 percent of all students enrolled for the first time (regardless of full-time or part-time status and regardless of year class) are part-time students.

"(C) A collegiate school of nursing enrolls, or will enroll within twelve months, a number of full-time or part-time students who have successfully completed training in an associate degree or diploma school of nursing such that such students comprise at least 15 percent of all students enrolled in the school for the first time (regardless of full-time or part-time status and regardless of year class).

"(D) The school provides, or will provide within twelve months, a comprehensive program of continuing education for practicing nurses and nurses reentering nursing practice after their careers have been interrupted.

"(E) All students, before graduation, have had, or will have had within twelve months, a significant educational experience in at least two of the following areas: nutrition, geriatrics, occupational or environmental health, rehabilitation, or health care economics and health policy, with emphasis on application to direct patient care.

"(F) The school enrolls a number of students such that no less than 12 percent of its entering class are students from underrepresented minority groups, and the school has a program designed to recruit, retain, and graduate such students, except that such percent shall be 15 percent or more for grants made in the fiscal year ending September 30, 1983, and 18 percent or more for grants made in the fiscal year ending September 30, 1984.

"(g) For purposes of this section, a reference to a year is a reference to a school year unless otherwise stated.

"(h) There are authorized to be appropriated for grants under this section $20,000,000 for the fiscal year ending September 30, 1982, $22,000,000 for the fiscal year ending September 30, 1983, and $24,000,000 for the fiscal year ending September 30, 1984.

"APPLICATION FOR GRANTS

"SEC. 825. (a) The Secretary may from time to time set dates (not earlier than in the fiscal year preceding the year for which a grant is sought) by which applications under this subpart for any fiscal year must be filed.

"(b) The Secretary shall not approve or disapprove any application for a grant under this subpart except after consultation with the National Advisory Council on Nurse Training.

"(c) A grant under this subpart may be made only if the application therefor—

"(1) is from a public or nonprofit private school of nursing;

"(2) contains such additional information as the Secretary may require to make the determinations required under this subpart and such assurances as the Secretary may find necessary to carry out the purposes of this subpart; and

"(3) provides for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this subpart.".

SEC. 205. (a) Section 830(a) is amended—

(1) by striking out clause (D) of paragraph (1) thereof and inserting in lieu thereof the following:

"(D) to serve in various fields of advanced clinical practice.";

(2) by striking out paragraph (2) thereof and redesignating paragraph (3) as paragraph (2);

(3) by inserting before the period in paraph (2) thereof (as redesignated by this subsection) ", whether full-time or part-time".

(b) Section 830(b) is amended—

(1) by striking out "and" after "1978"; and

(2) by inserting the following before the period at the end thereof: ", $13,000,000 for the fiscal year ending September 30, 1982, $14,000,000 for the fiscal year ending September 30, 1983, and $15,000,000 for the fiscal year ending September 30, 1984".

(c) Section 831(b) is amended by inserting the following after "1980": ", $1,000,000 for the fiscal year ending September 30, 1982, $1,000,000 for the fiscal year ending September 30, 1983, and $1,000,000 for the fiscal year ending September 30, 1984".

SEC. 206. (a) Section 835(b)(4) is amended by striking out ", and that while the agreement remains in effect no such student who has attended such school before October 1, 1980, shall receive a loan from a loan fund established under section 204 of the National Defense Education Act of 1958".

(b) Section 836 is amended—

(1) by striking out "he" in subsection (b)(4) thereof and inserting in lieu thereof "the borrower";

(2) by striking out "him" each place it appears and inserting in lieu thereof "the borrower";

(3) by striking out "his" in subsection (d) and inserting in lieu thereof "the borrower's";

(4) by striking out "he" in subsection (i) and inserting in lieu thereof "the borrower"; and

(5) by striking out "his determination" in subsection (j) thereof and inserting in lieu thereof "determining".

(c)(1) The second sentence of section 837 is amended by striking out "and for each of the next two succeeding fiscal years".

Section 837 is amended by adding the following new sentence at the end thereof: "A school may make loans for the fiscal year ending September 30, 1982, out of the loan fund established under section 835(b) to students enrolled in the last year of study at such school and who have previously received a loan out of the fund.".

(d) Section 838 is amended—

(1) by striking out "to him" in subsection (a) and inserting in lieu thereof "to the Secretary";

(2) by striking out "he" and inserting in lieu thereof "the Secretary"; and

(3) by striking out "to him" in subsection (b)(2).

(e) Section 839 is amended—

(1) by striking out "1983" each place it appears and inserting in lieu thereof "1982";

(2) by adding the following at the end of subsection (b) thereof: "The Secretary shall deposit amounts received pursuant to this section in the service contingent loan fund established under section 749E.".

(f) Section 841 is repealed.

SEC. 207. (a)(1) Section 845(b) is amended to read as follows:

"(b) The amount of the grant under subsection (a) for the fiscal year ending September 30, 1982, and for each of the next 2 fiscal years to each such school shall be equal to $3,000 multiplied by one-tenth of the number of full-time students of such school. For the fiscal year ending September 30, 1985, and for each of the two succeeding fiscal years, the grant under subsection (a) shall be such amount as may be necessary to enable such school to continue making payments under scholarship awards to students who initially received such awards out of grants made to the school for fiscal year ending before October 1, 1984.".

(2) Section 845(c)(1) is amended—

(A) by striking out "June 30, 1976,", in clause (A) thereof and inserting in lieu thereof "September 30, 1982,";

(B) by striking out "four" in clause (A) thereof and inserting in lieu thereof "two"; and

(C) by striking out "1980," and "1981," in clause (B) thereof and inserting in lieu thereof "1984," and "1985,", respectively.

(3) The first sentence of section 845(c)(2) is amended by striking out "who need" and inserting in lieu thereof "who have applied for and received the maximum payment available under basic educational opportunity grants under subpart 1 of part A of title IV of the Higher Education Act of 1965, and who still need".

(4) Section 845 is amended by adding the following new subsection at the end thereof:

"(f) There are authorized to be appropriated to carry out this section, $7,000,000 for the fiscal year ending September 30, 1982, $8,000,000 for the fiscal year ending September 30, 1983, and $9,000,000 for the fiscal year ending September 30, 1984.".

(b) Section 846 is repealed.

SEC. 208. (a)(1) Section 851(a) is amended—

(A) by striking out "his" and inserting in lieu thereof "the Secretary's"; and

(B) by striking out "and the Commissioner of Education, both of whom shall be ex officio members,".

(2) Section 851(b) is amended by striking out "his" and inserting in lieu thereof "the Secretary's".

(b)(1) Section 853(1) is amended by inserting "the Commonwealth of the Northern Mariana Islands," after "the Virgin Islnds,".

(2) Section 853(2) is amended by inserting "in a State" before the period.

(3) Section 853(6) is amended by striking out "Commissioner of Education" each place it appears and inserting in lieu thereof "Secretary of Education".

(c) Section 856 is amended by striking "Health, Education, and Welfre" and inserting in lieu thereof "Health and Human Services".

TITLE III—NATIONAL HEALTH SERVICE CORPS PROGRAM

SEC. 301. (a) Section 331 is amended by redesignating subsections (c), (d), (e), (f), (g), and (h) as subsection (e), (f), (g), (h), (i), and (j), respectively.

(b) Section 331 is amended by inserting after subsection (b) the following new subsections:

"(c) The Secretary shall conduct or support (through grant or contract) at schools of medicine, osteopthy, dentistry, and as appropriate, nursing and other schools of the health professions and at other appropriate entities, service preparatory programs for recipients of Corps scholarships. Such programs shall include—

"(1) course work and clinical education in primary care in health manpower shortage areas as defined in section 332(a), including the establishment of preceptorships at existing Corps sites;

"(2) exposure to the unique problems of medically underserved populations; and

"(3) information dissemination and career counseling on practice and residency training opportunities in such manpower shortage areas.

"(d) The Secretary may enter into cooperative agreements with one or more schools or entities described in subsection (c) to accomplish the purposes set forth in subsections (b) and (c).".

(c) Section 331(f)(1)(B) (as redesignated by subsection (a)) is amended by striking out "his" and "he" each place it appears.

(d) Section 331(j) (as redesignated by subsection (a)) is amended by—

(1) striking out "Health, Education, and Welfare" in paragraph (a) and inserting in lieu thereof "Health and Human Services", and

(2) inserting "the Commonwealth of" before "the Northern Mariana Islands".

SEC. 302. Section 332 is amended by adding the following subsection at the end thereof:

"(i)(1) In addition to any other provision relating to the assignment of a Corps member to a hospital under this Act, a Corps member may be assigned under section 333 to a public or private nonprofit hospital if—

"(A) such hospital serves a medically underserved population as defined in section 330(b)(3);

"(B) such hospital provides one or more accredited programs for graduate medical education or training;

"(C) one or more aliens have been permitted to enter the United States pursuant to the exemption under section 212(j)(2)(A) of the Immigration and Nationality Act in order to participate in any such program at such hospital at any time prior to December 31, 1980; and

"(D) such assignment shall assist such hospital in reducing the number of such aliens described in subparagraph (C) participating in any such program.

"(2) Hospitals described in paragraph (1) shall be considered among the areas and facilities with the geratest health manpower shortage for purposes of assigning Corps personnel.

"(3) A Corps member may not be assigned pursuant to this subsection unless—

"(A) such hospital provides assurance to the Secretary that such assignment will result in a reduction in the number of aliens for whom an exemption will be requested under section 212(j)(2)(A) of the Immigration and Nationality Act for participation in a program of graduate medical education or training at such hospital; and

"(B) such hospital provides the Secretary with a description of actions being taken by such hospital to reduce the number of such aliens in such programs.

"(4) The provisions of this subsection shall expire December 31, 1985.".

SEC. 303. (a) Section 333(d) is amended by adding at the end thereof the following new sentence: "Prior to making any assignment in any health manpower shortage area other than to a medical facility as defined in section 332(a)(2), the Secretary shall first

seek to find service obligated scholarship recipients who wish to enter practice in such area pursuant to section 753.".

(b) Section 333(e) is amended by adding before the period at the end thereof the following: ": *Provided*, That the Secretary shall first seek to assign to such area a Corps member who has such characteristics and who has completed training, an internship, or a residency in the State where such area is located".

SEC. 304. (a) Section 334(a)(3)(B) is amended by striking out "the number of days in his period" and inserting in lieu thereof "the number of days in the period".

(b) Section 334(b)(1) is amended by striking out "he" each place it appears and inserting in lieu thereof "the Secretary".

(c) Section 334(b) is amended by inserting the following after paragraph (3):

"(4)(A) In the case of one or more Corps members assigned to a hospital described in section 332(1), the Secretary shall waive the application of subsection (a)(3) to the extent provided in subparagraph (B). In order for the application of subsection (a)(3) to be waived, the hospital shall demonstrate to the satisfaction of the Secretary that the position available for the Corps member or members is attributable to the termination of one or more positions filled by an alien graduate of a foreign medical school in a residency training program within the previous twelve months who entered the United States pursuant to section 212(j) of the Immigration and Nationality Act by virtue of a waiver granted under section 212(j)(2) of such Act.

"(B) If the Secretary determines that the hospital has demonstrated satisfactorily that the position filled by such Corps member or members is attributable to the termination of a position filled by an alien graduate of a foreign medical school as provided in subparagraph (A), the Secretary shall reduce the sum paid to the United States under subsection (a)(3) to the extent that such sum exceeds the sum paid by the hospital to such alien.".

SEC. 305. (a) Section 335 is amended by striking out "he" each place it appears and inserting in lieu thereof "the Secretary".

(b) Section 336(3) is amended by inserting "and individuals released under section 753 from their service obligation" after "the number and types of Corps members".

SEC. 306. The provisions of this title shall become effective on October 1, 1980.

TITLE IV—MISCELLANEOUS

SEC. 401. (a)(1) Section 212(j)(1)(D) of the Immigration and Nationality Act is amended to read as follows:

"(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the lesser of seven years or the time typically required to complete such program as determined by the Director of the International Communication Agency, or the Director's delegate, at the time of the alien's entry into the United States, based on criteria established by the Secretary of Health and Human Services, however, the alien may, with the approval of the Director, or the Director's delegate, change the designated program of graduate medical education or training, but such change may not be made more than once or later than two years after the alien enters the United States as an exchange visitor or acquires exchange visitor status, provided that the commitment and written assurances under subparagraph (C) of this paragraph have been filed and approved with respect to the alien's new program.".

(2) Section 212(j)(1)(D) of the Immigration and Nationality Act, as amended by this subsection, shall be applicable to any alien entering the United States as an exchange visitor on or after January 10, 1978, or acquiring exchange visitor status on or after such date, for a program under which the alien will receive graduate medical education or training.

(b) Section 212(j)(2) of the Immigration and Nationality Act is amended to read as follows:

"(2)(A) Except as provided in subparagraph (B), the requirements of subparagraph (A) and (B) of paragraph (1) shall not apply between January 10, 1978, and December 31, 1985, to any alien who seeks to come to the United States to participate in an accredited program of graduate medical education or training if—

"(i) there would be a substantial disruption in the health services provided in such program because such alien was not permitted, because of such alien's failure to meet such requirements, to enter the United States to participate in such program;

"(ii) the number of aliens permitted to enter the United States to participate in such program has not exceeded the applicable limitations provided in subparagraph (B); and

"(iii) a plan that includes such program has been developed and approved in accordance with subparagraph (C).

"(B) An alien seeking to come to the United States to participate in an accredited program of graduate medical education or training shall not be permitted to enter the United States pursuant to the exemption provided by subparagraph (A) if—

"(i) with respect to the calendar years 1981 and 1982, the entry of such alien would result in the total number of aliens entering the United States in either year under such exemption to participate in such program exceeding the total number of such aliens that entered the United States under such exemption to participate in such program in the calendar year 1980;

"(ii) with respect to the calendar year 1983, the entry of such alien would result in the total number of aliens entering the United States in such year under such exemption to participate in such program exceeding 75 percent of the total number of aliens who entered the United States under such exemption to participate in such program in the calendar year 1980;

"(iii) with respect to the calendar year 1984, the entry of such alien would result in the total number of aliens entering the United States in such year under such exemption to participate in such program exceeding 50 percent of the total number of aliens who entered the United States under such exemption to participate in such program in the calendar year 1980; or

"(iv) with respect to the calendar year 1985, the entry of such alien would result in the total number of aliens entering the United States in such year under such exemption to participate in such program exceeding 25 percent of the total number of aliens who entered the United States under such exemption to participate in such program in the calendar year 1980.

"(C) An alien seeking to come to the United States to participate in an accredited program of graduate medical education or training shall not be permitted to enter the United States pursuant to the exemption provided by subparagraph (A) unless such program is included in a plan developed by the sponsoring hospital, and the appropriate State and local government health authorities, to provide for the reduction to zero by January 1, 1986, of the number of such aliens entering the United States pursuant to such exemption to participate in such program. Such plan shall provide an explanation of the manner in which such reduction shall be implemented, including the State, local, and private resources to be utilized. Each plan shall be submitted to the Secretary of Health and Human Services for consideration. The Secretary of Health and Human Services shall approve the plans determined to have a reasonable likelihood of success. The Secretary of Health and Human Services shall require each hospital for which a plan has been approved to submit annual reports regarding the implementation of the plan.

"(D) In the administration of this subsection, the Secretary of Health and Human Services shall provide the Attorney General with current information regarding the number of aliens who, pursuant to an exemption under subparagraph (A), are participating in a program providing graduate medical education or training in the United States. The Attorney General shall take such action as may be necessary to enforce the numerical limitations provided in this paragraph, and to insure that the total number of aliens participating (at any time) in all such programs does not, due to the exemption provided in subparagraph (A), exceed the total number of aliens participating in such programs on January 10, 1978.".

SEC. 402. (a) The Secretary shall conduct controlled clinical trials to assess the safety and efficacy of chiropractic care, through spinal adjustments, for the relief of certain neuromuskuloskeletal disorders and certain visceral or organic disorders. Such clinical trials shall include human subjects suffering from a broad range of such disorders, and shall be conducted for a time period necessary to collect conclusive data with regard to chiropractic care, not to be less than five years.

(b)(1) The Secretary shall establish within ninety days after the effective date of this title, a peer review board (hereinafter referred to in this section as the 'board') to review, advise, consult with, and make recommendations to, the Secretary regarding the conduct of controlled clinical trials under subsection (a).

(2) The board shall be composed of eight members appointed by the Secretary. One member shall be an individual who represents the medical specialty of physical medicine and rehabilitation, one member shall be an individual who represents the medical specialty of neurology, one member shall be an individual who represents the medical specialty of orthopedic surgery, one member shall be an individual who represents osteopathic medicine, and four members shall be individuals who represent chiropractic. Each member of the board shall, by training and experience, be exceptionally qualified to carry out the functions of the board.

(c) On the date one year after the date of the establishment of the board under subsection (b), and annually thereafter, the Secretary shall submit, after consultation with the board, a report to Congress and the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives regarding the controlled clinical trials conducted under this section. Such report shall include—

(1) a complete summary of the controlled clinical trials conducted in the preceding twelve months;

(2) any findings of the Secretary regarding the safety and efficacy of chiropractic care as determined as a result of such controlled clinical trials; and

(3) the plans of the Secretary for the subsequent twelve months regarding the conduct of controlled clinical trials.

SEC. 403. The provisions of this title shall become effective on October 1, 1980.

TITLE V—RADIATION HEALTH AND SAFETY

SEC. 501. This title may be cited as the "Jennings Randolph Consumer-Patient Radiation Health and Safety Act of 1980".

SEC. 502. Congress finds that—

(1) it is in the interest of public health

and safety to minimize unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures;

(2) it is in the interest of public health and safety to have a continuing supply of adequately educated persons with appropriate credentials to administer radiologic procedures pursuant to accreditation and certification programs administered by State governments;

(3) the protection of the public health and safety from unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures and the assurance of efficacious procedures are the responsibility of State and Federal governments;

(4) persons who administer radiologic procedures, including procedures at Federal facilities, should be required to demonstrate competence by reason of education, training, and experience; and

(5) the administration of radiologic procedures and the effect on individuals of such procedures have a substantial and direct effect upon United States interstate commerce.

SEC. 503. It is the purpose of this title to—

(1) provide for the establishment of minimum standards by the Federal Government for accreditation of educational programs for persons who administer radiologic procedures and certification of such persons; and

(2) insure that medical and dental radiologic procedures are consistent with vigorous safety precautions and standards.

SEC. 504. Unless otherwise expressly provided, for purposes of this title, the term—

(1) "radiation" means ionizing and nonionizing radiation, in amounts beyond normal background levels, from such sources as medical and dental radiologic procedures;

(2) "radiologic procedure" means any procedure or article intended for use in—

(A) the diagnosis of disease or other medical or dental conditions in humans (including diagnostic X-rays); or

(B) the cure, mitigation, treatment, or prevention of disease in humans;

that achieves its intended purpose through the emission of radiation;

(3) "radiologic equipment" means any radiation-emitting electronic product used or intended for use to—

(A) diagnose disease or other medical or dental conditions (including diagnostic X-ray equipment); or

(B) cure, mitigate, treat, or prevent disease in humans;

if such product achieves its intended purpose through the emission of radiation;

(4) "practitioner" means any licensable doctor of medicine, osteopathy, dentistry, podiatry, or chiropractic, who prescribes radiologic procedures for other persons;

(5) "persons who administer radiologic procedures" means any person, other than a practitioner, who intentionally administers radiation to other persons for medical purposes and includes medical radiologic technologists (including radiographers), dental auxiliaries (including dental hygienists and assistants), radiation therapy technologists, and nuclear medicine technologists;

(6) "Secretary" means the Secretary of Health and Human Services; and

(7) "State" includes in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

SEC. 505. (a) No later than the date twelve months after the effective date of this title, the Secretary, in consultation with the Radiation Policy Council, the Administrator of Veterans' Affairs, the Administrator of the Environmental Protection Agency, appropriate professional organizations shall by regulation promulgate minimum standards for the accreditation of educational programs to train individuals to perform radiologic procedures. Such standards shall distinguish between programs for the education of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, and (4) nuclear medicine technologists. Such standards shall include minimum accreditation criteria for such programs determined by the Secretary to be necessary to educate and train individuals to perform radiologic procedures. Such standards shall not be applicable to educational programs for practitioners.

(b) No later than the date twelve months after the effective date of this title, the Secretary, in consultation with the Radiation Policy Council, the Administrator of Veterans' Affairs, the Administrator of the Environmental Protection Agency, interested agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the certification of persons who administer radiologic procedures. Such standards shall distinguish between certification of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists (including radiographers), and (4) nuclear medicine technologists. Such standards shall include minimum certification criteria for individuals with regard to accredited education, practical experience, successful passage of required examinations, and such other criteria as the Secretary shall deem necessary for the adequate qualification of individuals to administer radiologic procedures. Such standards shall not apply to practitioners.

SEC. 506. In order to encourage the administration of accreditation and certification programs by the State, the Secretary shall provide a model law for radiologic procedure safety to the States. Such model law shall provide that—

(1) it shall be unlawful in the State for individuals to perform radiologic procedures unless such individuals are certified by the State to perform such procedures; and

(2) any educational requirements for certification of individuals to perform radiologic procedures shall be limited to educational programs accredited by the State.

SEC. 507. (a) If a State continues to permit nonpractitioners to perform radiologic procedures without having provided an accreditation and certification program consistent with the minimum Federal standards promulgated under this title within three years after the effective date of this title, the Secretary shall, until such programs are in effect, take the following action:

(1) during the first twelve months after the expiration of such period of time, the Secretary shall reduce by 5 percent the amount of each allotment, grant, loan, and loan guarantee made to, and each contract entered into with, such State during such period under the Public Health Service Act; and

(2) after the expiration of such twelve-month period, the Secretary shall reduce by 10 percent the amount of each such allotment, grant, loan, loan guarantee, and contract.

(b) A State may utilize an accreditation or certification program administered by a private entity if—

(1) such State delegates the administration of the State accreditation or certification program to such private entity;

(2) such program is approved by the State; and

(3) such program is consistent with the minimum Federal standards promulgated under this title for such program.

(c) The Secretary may by regulation exempt any specific grant, loan, contract, or other form of financial assistance from the requirements of this section if the Secretary determines such exemption is in the public interest and would not present an unreasonable risk to any person or to the public health and safety.

(d)(1) The Secretary shall be responsible for continued monitoring of States in order to determine which States are in compliance with this section. The Governor of each State shall be responsible for notifying the Secretary of changes in approved accreditation and certification programs. If a State fails to comply with the provisions of this section, after notice and a hearing on the record, the Secretary shall reduce by 10 percent the amount of each allotment, grant, loan, and loan guarantee made to, and each contract entered into with, such State during such period of noncompliance under the Public Health Service Act.

(2) Upon the application of a Governor of a State, the Secretary may extend the effective date of subsection (a) for not more than 2 years from the date of such application if the Secretary determines that good faith efforts to comply with this section have been made by the State, and reasonable assurance is provided that an effective certification and accreditation program will be provided by the State within the subsequent 2 years.

(e) Notwithstanding any other provision of this section, in the case of a State which has, prior to the effective date of standards and guidelines promulgated pursuant to this title, established standards for the accreditation of educational programs and certification of radiologic technologists, such State shall be deemed to be in compliance with the conditions of this section unless the Secretary determines, after notice and hearing, that such State standards do not meet the minimum standards prescribed by the Secretary or are inconsistent with the purposes of this title.

SEC. 508. The Secretary shall, in consultation with the Radiation Policy Council, the Administrator of Veterans' Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, promulgate Federal radiation guidelines with respect to radiologic procedures. Such guidelines shall—

(1) determine unnecessary radiation exposure due to radiologic procedures and the techniques, procedures, and provide methods to minimize such exposure;

(2) provide for the elimination of the need for retakes of diagnostic radiologic procedures;

(3) provide for the elimination of unproductive screening programs;

(4) provide for the optimum diagnostic information with minimum radiologic exposure; and

(5) include the therapeutic application of radiation to individuals in the treatment of disease, including nuclear medicine applications.

SEC. 509. (a) Except as provided in subsection (b), standards promulgated pursuant to this title shall apply to each department, agency, and instrumentality of the executive branch of the Federal Government.

(b)(1) The Administrator of Veterans' Affairs, through the Chief Medical Director of the Veterans' Administration, shall, to the maximum extent feasible consistent with the responsibilities of such Administrator and Chief Medical Director under title 38, United States Code, prescribe regulations making the standards promulgated pursuant to this title applicable to the provision of radiologic procedures in facilities over which the Administrator has jurisdiction. In prescribing and implementing regulations pursuant to this subsection, the Administrator shall, from time to time, consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which the Secretary and the Administrator prescribe under this title.

(2) Not later than 180 days after standards are promulgated by the Secretary pursuant to this title, the Administrator shall submit to the appropriate committees of Congress a full report with respect to the regulations (including guidelines, policies, and procedures thereunder) prescribed pursuant to paragraph (1) of this subsection. Such report shall include (A) an explanation of any inconsistency between standards made applicable by such regulations and the standards promulgated by the Secretary pursuant to this title; (B) an account of the extent, substance, and results of consultations with the Secretary respecting the prescribing and implementation of the Administrator's regulations; and (C) such recommendations for legislation and administrative actions as the Administrator determines are necessary and desirable. The Administrator shall timely publish such report in the Federal Register.

SEC. 510. The provisions of this title shall become effective on October 1, 1980.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I ask unanimous consent that the reported committee amendment be adopted and that it be considered as original text for the purpose of further amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

UP AMENDMENT NO. 1631

(Purpose: Technical amendments to comply with Budget Act)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I send a technical amendment to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. KENNEDY, proposes an unprinted amendment numbered 1631.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 281, line 4, insert ", only to such extent and in such amounts as are provided in advance in appropriation acts," after "entities".

On page 309, line 12, insert a new subsection as follows:

"(g) If the sum of the grants under subsection (b) exceeds the funds appropriated under subsection (f) in any fiscal year, each grant awarded under subsection (a) shall be ratably reduced.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I ask unanimous consent that a statement by Mr. KENNEDY be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR KENNEDY

I am pleased to lay before the Senate for its consideration S. 2375, "the Health Professions Education and Distribution Act of 1980." This bill is a comprehensive revision of title VII of the Public Health Service Act, concerning the education of health personnel and title VIII concerning nurse education.

When S. 2375 was first introduced, I noted that over the last two decades, we have established a partnership with the Nation's health professions schools and students in order to meet our needs for qualified health professionals. Significantly, we have doubled the Nation's capacity to train health professionals, we have encouraged a renewed interest in primary care, and we have established the National Health Service Corps which now employs over 2,000 health professionals who are meeting the needs of the underserved. However, I also noted that although we have come a long way to solving problems that were first identified years ago, much remains to be done. I noted our continuing problems of geographic and specialty distribution, a problem which is not new to Congress. I noted how vital our Nation's nurses are to our ability to provide health services but that in every region of the country, there appears to be a shortage. I noted how our abilities as a Nation to utilize fully our human resources to meet our health care needs is being jeopardized because many low and middle income Americans can no longer afford the price of education in our health professions schools. And I noted that despite our deep and abiding concern for equal opportunity, minorities and women continue to be underrepresented among the health professions.

The Committee on Labor and Human Resources has given these concerns careful deliberation. Senator Schweiker, the ranking Minority Member on the Committee, offered his proposal to address these problems in S. 2144. Senator Javits, in S. 2378, offered substantial amendments concerning health administration, graduate physician education, and the entrance of alien foreign medical graduates. The committee bill and its accompanying report, sets forth a strategy for the '80s, building on all three proposals. Furthermore, the committee has held two days of hearings, received testimony from over sixty organizations, and has consulted with literally hundreds of concerned people.

The bill before us offers a comprehensive approach to increasing the availability of professionals where they are most needed and in the fields in which they are most needed, to assuring that students will not be denied an education because they do not have sufficient financial resources, to improving the availability of nurses across the country, and to providing increased educational opportunities to underrepresented groups.

First, the bill increases the amount of money available to students to pursue their education. While maintaining scholarship programs for the exceptionally needy students, it offers three choices to students by which they may finance their education—service connected scholarships, through the national health service corps scholarship program or state service scholarships financed in part by the federal government; a program of private, federally insured, market rate loans; and a new program with substantial interest subsidies in which the obligation to repay the loan could be discharged through national service. This new loan program would meet the objectives of providing students access to loan money that does not impose excessive interest expenses, and of overcoming high debt loads which will discourage students from meeting the needs of underserved populations. But the program also provides a way for the country to meet its more pressing needs for health professionals that are not being met through other programs.

The bill ends the current capitation grant program. It authorizes a new and entirely different program to provide significant incentives for the health professions schools to meet national objectives. The level of support to each school would be increased if objectives are met related to improved geographic and speciality distribution, to curriculum development in such fields as nutrition and geriatrics, to improved education in prevention, and to increase opportunities to students from minority groups. Rather than capitation grants which provided the same amount to each eligible school, proportionate to enrollment, this incentive program rewards performance in areas that are tailored to unique contributions that each type of professional school offers. Furthermore, the bill strengthens our ability to assist institutions such as Meharry Medical College, Tuskeegee Institute School of Veterinary Medicine, and Xavier School of Pharmacy to achieve fiscal solvency and restore their hope in the future.

Special programs to meet targeted needs are also included. Several porgrams that the committee has found to be extremely effective have been continued, including support for training in family medicine, primary care internal medicine and pediatrics, the establishment of area health education centers, training of physician's assistants and expanded function dental auxiliaries, the training of professionals in public health and health administration, education for allied health professionals, and special programs to increase the recruitment and retention of students from underrepresented minority groups and from disadvantaged backgrounds. Several authorities have been added to support the training of health professionals in remote sites where underserved populations reside; programs to support educational development in nutrition, geriatrics, health policy and economics, environmental and occupational health, among others; demonstration projects to control the cost of education in health professions schools, and new initiatives in prevention and rehabilitation.

A separate title in the Public Health Service Act for nurse education is maintained and strengthened. Everyone of us is concerned about the nation's capacity to meet its needs for nurses. The reason for our current problems may be complex. But the fact remains that the increasing intensity of health services as a result of improved health care technology and the extremely low unemployment rate for nurses, has made recruitment and retention of nurses a matter of national concern. While some estimate that 100,000 to 150,000 nursing positions remain unfilled today, the enrollment in our nation's nursing schools is declining. The committee recognizes that not all the problems that led to the current situation can be addressed in this legislation.

However, the bill significantly strengthens our ability to address some of them. A new incentive grant program is authorized to stabilize enrollments and increase the opportunity for students to enter part time training programs or become RNs after being employed as vocational or practical nurses. It provides new opportunities for RNs to complete degree programs and enter advanced training.

It provides special support to overcome the imbalance in the distribution of nurses, to improve the curriculum of nursing schools, to increase the enrollment of disadvantaged students in nursing schools, and to support the clinical education of nurses in all nursing settings.

This bill clearly identifies the problems we must address during the 1980s and charts the course for their solution. We must now reaffirm our partnership with our Nation's health professions schools so that with Federal assistance all Americans can be assured equal opportunity to enter a health career and so that all Americans can be assured access to qualified health professionals.

I believe we can make this affirmation and be fiscally responsible at the same time. Current authorizations for title VII and title VIII of the Public Health Service Act total $912 million. The bill before us authorizes $441.6 million in fiscal year 1982, $486.1 million in fiscal year 1983, and $539.0 million in fiscal year 1984.

I commend this bill to my colleagues and ask their prompt and favorable consideration.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1631) was agreed to.

● Mr. SCHWEIKER. Mr. President, I support S. 2375, the Health Professions Training and Distribution Act of 1980, and urge the Senate to adopt this measure today. This bill constitutes a comprehensive revision of titles VII and VIII of the Public Health Service Act, affecting the training of health personnel and nurses.

Health professions education legislation has existed since 1963 and has been renewed several times since then, most recently in 1976. On December 27, 1979, I became the first to introduce legislation to comprehensively reauthorize these two titles. The goal of my bill, S. 2144, was to maximize Federal impact on the health professions and nursing without extravagant spending or regulation and while meeting the legitimate needs of both students and schools.

Subsequently, Senator KENNEDY introduced S. 2375, a somewhat different proposal for revising titles VII and VIII, and Senator JAVITS introduced a bill, S. 2378, dealing with support for health administration programs and foreign medical graduates. A compromise set of programs, combining elements of all three bills, was adopted by the Subcommittee on Health and Scientific Research on May 24 and by the full committee on June 27.

When I introduced S. 2144, I noted that I was particularly proud of this bill because I believe it met three important tests by which legislation should be judged. First, it would accomplish national goals in a direct and positive manner. Second, it represented a fiscally sound approach, blending needed budgetary restraint with adequate funding for programs that met serious educational and health care problems. Third, the bill carefully avoided the imposition of further regulatory schemes upon our citizens.

I noted my conviction that with encouragement from us, many health professionals would do voluntarily what we could not ask them to do otherwise. My bill provided considerable encouragement for individuals to practice their health profession in underserved areas and to provide primary care, and for health professional schools to each more about health promotion and disease prevention, health care policy and economics, and nutrition. The principles of my bill—achievement of national goals, fiscal restraint, and use of inducements rather than regulations—are well represented in the final version of S. 2375, as well as many programs and concepts from my bill.

The key elements of S. 2375 as amended are:

STUDENT ASSISTANCE

An existing market rate loan program (HEAL) is continued. A new partially subsidized loan program is created for individuals willing to enter into a contingent service agreement with the Federal Government under which the individual's loans would be repaid in exchange for service in a medically underserved area if Congress specifically appropriates money for this purpose. Scholarship programs for needy students are continued with modifications.

SERVICE PROGRAMS

A new State service scholarship program is created. National Health Service Corps (NHSC) scholarships are continued but at a reduced rate. The service component of the NHSC program will be considered in 1981 along with other service delivery programs.

INSTITUTIONAL SUPPORT

The current capitation program is discontinued. A new national priority incentive grant program is proposed, starting in fiscal year 1982. Under this program, schools which undertake one or more priority initiatives would receive grants equal to: the number of initiatives completed, times a fixed amount of money—$250 for medical schools—times the number of students at the school.

SPECIAL PROJECTS

A number of current special projects are continued, such as area health education centers (AHECS) and primary care residency training. A number of new areas are added, such as support services for health professionals in underserved areas and curriculum development.

I am particularly pleased that this bill continues institutional support for health professions schools, although on a completely different basis than before and one more responsive to national needs.

At our Labor and Human Resources Committee markup, I was delighted to learn, via letter, that my colleague and chairman of the Appropriations Committee, Senator MAGNUSON, has agreed to work for full funding of this program. This bill also contains another important and vitally necessary program I have fought very hard and long to achieve: an equitable, partially-subsidized loan program for health professions students which provides genuine inducements for them to enter private practice in underserved areas and in specialty fields that are in short supply.

This is a worthy bill and I hope my Senate colleagues will support it.●

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be discharged from further consideration of H.R. 7203, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 7203) to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps, and so forth, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause of H.R. 7203 be stricken and that the language of S. 2375, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 7203) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate bill, Calendar Order 1021, S. 2375, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL PORT WEEK

The joint resolution (H.J. Res. 551) authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week," and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was passed.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order 1057, which is the companion measure, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL REHABILITATION MONTH

The joint resolution (S.J. Res. 195) to designate September 1980 as "National Rehabilitation Month" was considered, ordered to be engrossed for a third reading, read the third time, and passed.

S.J. RES. 195

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of September 1980 is designated as "National Rehabilitation Month", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local government agencies, and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, is there any order for the recognition of a Senator on Monday?

The PRESIDING OFFICER. At present, there are no orders for the recognition of Senators on Monday.

ORDER FOR RECESS UNTIL 10 A.M., ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, has the meeting hour been agreed to for Monday?

The PRESIDING OFFICER. The hour has been established as 12 noon.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will come in at 10 o'clock on Monday morning.

After the two leaders or their designees have been recognized under the standing order, the Senate will resume consideration of the HUD appropriation bill, on which there will be rollcall votes throughout the day.

Upon the disposition of the HUD appropriation bill, the Senate will proceed to the consideration of the State-Justice-Commerce and related agencies appropriation bill, upon the disposition of which the Senate will proceed to the consideration of the Interior appropriation bill, with the proviso that on Tuesday, when the Senate comes in at 9 and the leaders have been recognized under the standing order, the Senate will proceed to the consideration of the disapproval resolution with respect to the sale of nuclear fuel to India. That measure is under a built-in time agreement by law, and as much as 10 hours may be utilized for debate thereon.

That is about it with respect to the next four subject measures to be considered by the Senate, including the pending one on HUD appropriations.

There will be rollcall votes on Monday and, of course, daily for the remainder of next week.

RECESS UNTIL 10 A.M. MONDAY, SEPTEMBER 22, 1980

Mr. ROBERT C. BYRD, Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 10 a.m. on Monday next.

The motion was agreed to; and at 3:52 p.m. the Senate recessed until Monday, September 22, 1980, at 10 a.m.

NOMINATIONS

Executive nominations recorded by the Senate September 19, 1980:

IAEA CONFERENCE REPRESENTATIVES

The following-named persons to be the Representative and an Alternate Representative of the United States of America to the 24th session of the General Conference of the International Atomic Energy Agency:

Representative:

Gerald C. Smith, of the District of Columbia.

Alternate Representative:

Joseph Mallam Hendrie, of New York.

INTERNATIONAL COMMUNICATION AGENCY

John William Shirley, of Illinois, to be an Associate Director of the International Communication Agency, vice Harold F. Schneidman, resigned.

U.S. SYNTHETIC FUELS CORPORATION

The following-named persons to be Members of the Board of Directors of the U.S. Synthetic Fuels Corporation for the terms indicated (new positions):

John D. DeButts, of Virginia, for a term of 1 year.

Catherine Blanchard Cleary, of Wisconsin, for a term of 2 years.

Frank Savage, of New York, for a term of 3 years.

Cecil D. Andrus, of Idaho, for a term of 4 years.

Joseph Lane Kirkland, of the District of Columbia, for a term of 5 years.

Frank T. Cary, of Connecticut, for a term of 6 years.

WITHDRAWALS

Executive nominations withdrawn from the Senate September 19, 1980:

The following-named persons to be the Representative and an Alternate Representative of the United States of America to the 24th session of the General Conference of the International Atomic Energy Agency which were sent to the Senate on August 26, 1980:

Representative:

John C. Sawhill, of the District of Columbia.

Alternate Representative:

Gerard C. Smith, of the District of Columbia.

HOUSE OF REPRESENTATIVES—*Friday, September 19, 1980*

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. BRADEMAS).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 18, 1980.

I hereby designate the Honorable JOHN BRADEMAS to act as Speaker pro tempore on September 19, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We know, O God, that You are creator of all the peoples of this Earth and that Your providence is over everyone, no matter what the background or circumstances of life might be. We admit that we are limited by our experience of Your presence and by the traditions we have known, but we celebrate this day that Your love and forgiveness and guiding spirit are available freely to all. We confess that we often do not see the wholeness of Your creation and the heritage of our common humanity. Give us wisdom, O God, to reflect the glory of our oneness in You.

That together all people may live and work in harmony and in peace. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3904) entitled "An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes."

The message also announced that the Senate agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5164) entitled "An act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes."

The message also announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 7825. An act to establish the Ice Age National Scenic Trail, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 6790. An act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes; and

H.R. 7301. An act to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

The message also announced that the Senate insist upon its amendment to the bill (H.R. 7301) entitled "An act to authorize certain construction at military installations for fiscal year 1981, and for other purposes," request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and appoint Mr. HART, Mr. STENNIS, Mr. JACKSON, Mr. CANNON, Mr. HARRY F. BYRD, JR., Mr. NUNN, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, and Mr. COHEN conferees on the part of the Senate.

DELAY IN HOUSE CONSIDERATION OF AIRPORT AND AIRWAY IMPROVEMENT ACT

(Mr. ANDERSON of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ANDERSON of California. Mr. Speaker, I must express my very serious concern and frustration over the scheduling of the Airport and Airway Improvement Act for floor consideration. This important legislation was first placed on the schedule for September 4 or 5—4 months after the bill was reported from the Committee on Public Works and Transportation. The bill was unable to be debated and voted upon that week due to Congressional preoccupation with the Rail Act of 1980. Since that first postponement, we have been told for 3 consecutive weeks that the bill will be scheduled for consideration "next week," only to find that on the schedule for each week the bill was mysteriously absent.

The primary reason for this delay I am told, is that the leadership is concerned that the bill, which contains revenue-raising measures in title II, will be used as a vehicle in the Senate for an amendment to substantially cut income taxes. I believe that it is absolutely unfair to hold needed aviation safety funds hostage, funds which are generated by users of the aviation system, based on mere speculation that the Senate may amend the legislation in a manner that is not to the liking of the House leadership. Around here, we used to believe in "letting the Congress work its will." Besides this so-called Republican tax cut proposal cannot possibly be adopted in the Senate without support from a significant number of Democrats.

Allowing an important 10-year-old program to lapse is a serious matter. If the Airport and Airway Improvement Act of 1980 is not enacted by September 30, there will be no Federal funds for airport development, noise compatibility programs, research and development, or facilities and equipment funds to purchase vitally needed air safety navigational aids. A construction season will be lost for a minimum of 20 States. Airport sponsors and States will lose $30 million in carryover apportionments from fiscal years 1979 and 1980.

Specific airports will suffer cash flow problems because their construction projects will be stopped in midstream. For example, Brainard Airport in Minnesota may lose air service if its runway extension is not completed without a work stoppage, and the new airport in Fort Myers, Fla., will be delayed because of cash flow problems if fiscal year 1981 airport development funds are not approved this year.

The National Association of State Aviation Officials has just completed a study to determine which airport runways are more than 15 years old—normal design life is 10 to 12 years, and to determine those airport runways which have deteriorated to the point that, without replacement or reconstruction, could face closure within the next 18 to 24 months. This survey found that preservation needs—not expansion or improvement needs—total $144,543,142 for 27 States, and that needs for air carrier, commuter, and reliever airports alone total $70,165,000 in these 27 States. Some details and statistics from this study are worth noting. Scottsdale, Ariz.'s Municipal Airport, a reliever airport, requires $3.5 million to preserve a critically deficient runway. The air carrier airport in Merced, Calif., requires $485,000 to preserve its cracking runway. The air carrier airport in Nantucket, Mass., which is over 25 years old and in poor condition, needs $780,000 to preserve its runway. Statewide needs in the State of Florida to preserve existing runways at commercial airports total $10,426,000. The total for Illinois is $19,450,000. For Minnesota, $8,750,000.

For general aviation airports, statewide needs in Arizona total $6,329,700 to preserve safe runway operations for this important sector of aviation. Similar needs in Arkansas total $3,565,000. The needs in California total $8,809,219. For Florida, $23,458,630. For Illinois, $25,520,000. For Minnesota, $14,957,050. For North Carolina, $8,700,000.

Mr. Speaker, I ask the leadership of this House to seriously review the decisions to delay this vital legislation. We in the Public Works Committee worked diligently to report this legislation by the May 15 budgetary deadline—a deadline which is now regarded by most of us as a joke—only to watch the bill and the committee report collect dust in the Rules Committee and at the Speaker's desk. We have a trust with the users of the aviation system—they provide the funds in the form of special taxes, in return for which the Federal Government assures them that it will maintain a safe and efficient airport and airway system. We must not allow this program to lapse due to congressional inaction and lethargy.

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

THE TITAN II'S: WE NEED HONEST ANSWERS AND CORRECTIVE ACTION

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. GLICKMAN. Mr. Speaker, those Members who have been watching the news have noted there has been a major accident involving Titan II missiles in the State of Arkansas that injured 10 people. Last year I requested and was successful in putting an amendment on the 1980 defense authorization bill which required the Air Force to do a study of these old liquid fuel missiles to see if they were safe.

The report of the Air Force that came back to Congress generally indicated these missiles were safe. I am now beginning to doubt what the Air Force has been telling us. I might go so far as to say that the report could have been a whitewash, although I hope it is not.

Mr. Speaker, today I call upon the Armed Services Committees of both the House and the Senate to hold an onsite series of investigative hearings at the sites in Arkansas, Kansas, and Arizona to determine if these large liquid fuel missiles are safe, are strategically important, and are necessary for the defense of the United States. My constituents who live around these missiles have reason to worry. Accident after accident, leak after leak. We wonder whether these missiles are safe. We hope these hearings can be held.

PERSONAL EXPLANATION

Mr. FITHIAN. Mr. Speaker, on September 9, 1980, we had the rail deregulation bill on the floor. At one point in the proceedings the Staggers-Rahall amendment compromise was offered. I was on the floor, I remember distinctly voting; however, I am recorded as not voting. I would like to have the record show that, had my vote been properly recorded. I was in favor of the Staggers-Rahall compromise.

NO U.S. DIPLOMATS IN AFGHANISTAN SPEAK RUSSIAN

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PANETTA. Mr. Speaker, I was distressed to read in Wednesday's Washington Post that there are no U.S. diplomats in our Embassy in the Afghan capital of Kabul who can speak Russian. After the tragic murder of our Ambassador to Afghanistan last year, the State Department should have learned a painful lesson about the importance of having personnel in our embassies who speak the local language. And clearly, knowledge of Russian in today's Afghanistan must be considered essential for the effective functioning of our Embassy in that beleaguered country.

The Russian soldier who defected and sought asylum in our Kabul Embassy had to resort to sign language to convey the idea that he was a defector and sought asylum. The U.S. Embassy then had to request permission of the Afghan authorities to send in a Russian-speaking diplomat to communicate with the Russian soldier.

When will the United States learn its lesson with regard to foreign language competence? Nearly a year after the report of the President's Commission on Foreign Language and International Studies called attention to our scandalous incompetence in foreign languages, an incompetence which affects our intelligence capability, our diplomacy, our foreign trade, and our ability as a nation to understand and to cope with a world in change, we still do not have Russian-speaking diplomats in Afghanistan, the scene of a Soviet invasion which has so profoundly affected our relations with the Soviet Union and world stability. I think it is long past time for the State Department and the Congress to recognize the need to staff our embassies with language-competent personnel.

DEPENDENT CARE AMENDMENTS OF 1981

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, last Monday, I introduced a bill to expand the income tax credit for work-related dependent care expenses, resolve some minor problems in the existing credit, and make it easier for nonprofit organizations providing work-related dependent care services to qualify for tax exempt status.

There has been a revolution in this country. Families now rely on two paychecks, and many children are raised by only one parent. Day care is no longer a negligible issue of concern to only unconventional or unfortunate families. It is a fact of life for the typical family, and one which Federal policies must take into account.

The goal of my bill, accordingly, is to assure an adequate supply of good quality, affordable dependent care and to enable parents to obtain dependent care suited to their and their children's needs.

I hope anyone interested in this issue will look over the description of this bill in last Monday's Extension of Remarks and pass on to me any suggestions to strengthen the proposal. I plan to reintroduce this bill early in the next Congress. I hope that legislative action will follow shortly thereafter.

CARTER PUNISHES AIDE FOR GRAND JURY TESTIMONY

(Mr. SHUSTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHUSTER. Mr. Speaker, it was astonishing to read in this morning's Washington Post that President Carter personally made the decision to bar Evan Dobelle, deputy chairman of the Democratic Party from the Presidential plans after Dobelle testified to a grand jury that Carter aide Tim Kraft used cocaine and specifically "because of strong feelings from top aides over the role Dobelle played as an accuser against Kraft." I truly hope this story is in error because if it is accurate, we have Jimmy Carter who piously proclaims how good he is at every opportunity sending a clear message to those around him. "Don't cooperate with a Federal grand jury investigation of people around me. For if you do you will incur the wrath of the President." Some performance from the man who asked "Why not the best?"

EXPLOSION AT TITAN MISSILE SITE

(Mr. BETHUNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BETHUNE. Mr. Speaker, today the Nation is rocked with the news of the accident at the Titan missile site in Demascus, Ark. Most of these missile sites in the State of Arkansas happen to be in my district. I would like to remind the Congress that during the last year we have been somewhat responsive to this problem that does exist with Titan missiles and that we ordered the Air Force study and the Senate just this last week passed a measure which would call for warning devices.

However, the Air Force report contained a number of soothing assurances. Now, in the aftermath of this accident, I would caution we guard against hysteria until we get the facts in, but once we get the facts in, I think we are going to see a need for the Air Force to reconcile the events of early this morning, with the soothing assurances in the report. In that respect I think the gentleman from Kansas is on track when he suggests we perhaps should have an onsite investigation as soon as possible to inquire into this matter.

□ 1010

CARTER CAMPAIGN TACTICS POISON OUR ELECTORAL SYSTEM

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, yesterday, during his press conference, President Carter indicated that he does not really believe that Ronald Reagan is a racist, and he is sort of sorry that these things crept into the campaign. Yet, he failed to really respond to a question as to whether he has instructed the people in his campaign to stop utilizing this tactic.

Unfortunately, today in the Washington Post there is a story with a headline saying, "Mondale Echoes Carter Attack on Reagan."

In other words, now that President Carter during his press conference has done his mea culpa before the American people that somehow he really did not want to insert these issues into the campaign, it becomes perfectly obvious that it is part and parcel of the entire campaign.

I call upon President Carter to instruct those people within his campaign, including his Vice President, that his campaign has little use for these types of innuendo, these types of assertions. All they do is poison the system at a time when we already know that many American people are turned off about the political system and the way we elect our people.

PRESIDENT'S HISPANIC POLITICS IS PAR FOR THE COURSE

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. ASHBROOK. Mr. Speaker, yesterday President Carter told the Hispanic Caucus that he strongly opposes the Ashbrook amendment on bilingual education.

Typically—and sadly—he was putting politics above good sense. The President clearly misrepresented our amendment—I say our because we passed it. The Ashbrook amendment does not prevent any school from offering bilingual instruction. Rather, it prevents Federal bureaucrats from going beyond the law and intimidating local school officials to require bilingual education for children who most need intensive English-language instruction. It permits schools to use their best judgment as to how they can most effectively help children who are not yet fluent in English. Educators all across the country have indicated strong support for the Ashbrook amendment.

Earlier in the day President Carter deplored the use of "code words" in the Presidential campaign. But he knows very well that "bilingual education" has become a code term—not for bilingual instruction where it truly is helpful, but for Spanish-language maintenance programs in the public schools. There is convincing evidence that such programs—far from helping students who speak Spanish—actually have the effect of retarding educational progress and of handicapping children linguistically. These maintenance programs likely will result in hundreds of thousands of Hispanic young people leaving school without sufficiently good English to get a decent job or go on to college.

Thus Mr. Carter, who professes to be concerned with equal education and employment opportunities, rashly pursues a contrary course calculated to woo the Hispanic vote. It will not work. Most Americans of Hispanic origin will not be so easily misled and other Americans will be offended by his crass politics. This most political of presidents again demonstrates why his is a failed Presidency; and why the American people should reject Carter on November 4.

NEA IS WRONG, TEACHERS ARE RIGHT

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. MICHEL. Mr. Speaker, the other day I saw a report which said the National Education Association got some surprising news from its membership.

The union polled its members and found the membership did not think much of the political plum they got from Jimmy Carter, the new Department of Education. In fact, 55 percent of those polled believed the Department would have little or no impact on public education.

The NEA responded in typical big lobby fashion. They said the teachers do not know what they are talking about when it comes to politics. The teachers are not political animals, as NEA put it.

I submit that the teachers do know what they are talking about. They are talking about quality education, the freedom to teach, and an educational system free of the manipulation and regulation of a big bureaucracy.

The NEA on the other hand, is preoccupied with political power, patronage, influence peddling and clout. That is the way they perceive education. The NEA is wrong. Dead wrong. Political power corrupts education. I hope the Nation's teachers never become political animals, not the kind the NEA is trying to breed. The NEA apparently wants a bunch of trained animals they can keep caged up and bring them out only when they need to boast about how many votes they can deliver. What they do not want are professional educators capable of independent thought.

WHAT IS WRONG WITH STATE DEPARTMENT'S PERSONNEL ALLOCATION FOR AFGHANISTAN?

(Mr. DERWINSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Speaker, when the news broke that a Soviet soldier had defected to the U.S. Embassy in Kabul, subsequent reports centered on the fact that none of the U.S. Embassy personnel were able to communicate with him in Russian. This is a truly amazing omission in the Department of State's personnel allocation for Afghanistan. I believe this should not only be corrected immediately, but I am asking for an investigation of this inexcusable lack of proper personnel assignment.

Soviet involvement in Afghanistan was a highly visible and important phenomenon even before last December's large-scale invasion of that country. There were numerous Soviet advisers in high Afghan Government posts, including Soviet security officers attached to the Afghan police. Then in late 1979, Soviets by the tens of thousands entered the country, swept away the leaders of one government and replaced them with others. Soviet officials are now assigned to almost all levels of the Afghan administration.

Simply speaking, our Embassy is the eyes and ears of our Government in Afghanistan. Soviet, largely Russian, involvement in the country is massive and has been growing over the years.

It is shocking that our Department of State has not assigned a Russian-speaking diplomat to our Embassy in Kabul.

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. FLORIO).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 307, nays 1, answered "present" 1, not voting 123, as follows:

[Roll No. 566]

YEAS—307

Akaka
Albosta
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broyhill
Burgener
Burlison
Burton, Phillip
Butler
Campbell
Carney
Carr
Carter
Cheney
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Forsythe
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Hawkins
Heckler
Hefner
Hightower
Hollenbeck
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hyde
Ichord
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach, Iowa
Leath, Tex.
Lee
Lehman
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
Lungren
McCormack
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Rahall
Railsback
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Stagers
Stangeland
Stanton
Steed
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Trible
Udall
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yatron
Young, Fla.
Young, Mo.

NAYE—1

Holt

ANSWERED "PRESENT"—1

Ottinger

NOT VOTING—123

Abdnor
Addabbo
Alexander
Ambro
Anderson, Ill.
Anthony
Applegate
Atkinson
Barnard
Beard, Tenn.
Bethune
Bonior
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Byron
Cavanaugh
Chappell
Chisholm
Clausen
Cleveland
Conyers
Corman
Cotter
Crane, Philip
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dixon
Dodd
Donnelly
Edwards, Ala.
Edwards, Calif.
Erlenborn
Ford, Mich.
Ford, Tenn.
Fountain
Gephardt
Glaimo
Gibbons
Gingrich
Glickman
Grassley
Gray
Hanley
Hansen
Harsha
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Hutto
Ireland
Jacobs
Jenrette
Johnson, Colo.
Kelly
Latta
Leach, La.
Lederer
Leland
Lent
Lloyd
Luken
McClory
McCloskey
McDade
McDonald
McEwen
McKinney
Mathis
Mattox
Mavroules
Mazzoli
Mica
Mitchell, Md.
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Pashayan
Pepper
Pritchard
Quillen
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Satterfield
Simon
Skelton
Stark
Stockman
Symms
Thomas
Traxler
Ullman
Van Deerlin
Vento
Waxman
Weaver
Williams, Ohio
Wilson, Bob
Wright
Wydler
Yates
Young, Alaska
Zablocki
Zeferetti

□ 1030

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7020, with Mr. NATCHER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from New Jersey (Mr. FLORIO) will be recognized for 30 minutes; the gentleman from Illinois (Mr. MADIGAN) will be recognized for 20 minutes; the gentleman from Illinois (Mr. ROSTENKOWSKI) will be recognized for 30 minutes; and the gentleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. FLORIO).

Mr. FLORIO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, improper hazardous waste management is the most serious environmental problem facing our Nation today. The bill we are about to consider—H.R. 7020—will, upon enactment, make significant strides in correcting this problem.

For over a year now, the Subcommittee on Transportation and Commerce, which I chair, has been considering the problem of hazardous waste disposal sites which are releasing dangerous substances into the environment and seriously endangering the public health.

Our committee held extensive hearings on this subject. We do not believe it is an exaggeration to say it is the number one environmental challenge facing us in this decade.

Hundreds, possibly thousands, of neglected, leaking disposal sites presently dot the country—threatening to release their lethal contents, despoiling water supplies and menacing public health. Preventive measures are needed immediately to stop further releases. Remedial action is urgently needed at those sites which are presently causing serious problems.

The Environmental Protection Agency is currently investigating over 7,000 disposal sites as suspected or known hazards to public health or the environment. And these are but a fraction of the total number of sites, of the 7,000-plus sites under investigation, most have not yet been fully characterized. However, EPA has already identified 397 sites as needing remedial actions to protect public health and the environment.

Hazardous waste releases from inactive and abandoned disposal sites include highly toxic organic chemicals, pesticides, heavy metals, acids, radioactive substances, explosives, and flammable materials. These wastes are capable of producing the full range of toxic effects in humans. In addition to acute poisoning, such chronic responses as cancer, mutations, and promotion of miscarriages and birth defects are also produced. Death and personal injury from fires or explosions are another threat.

A recently released Surgeon General's report on the health effects of toxic pollution finds that exposure to toxic chemicals is a major health concern. The report concludes that the control of the future introduction of chemicals will not in itself be sufficient to address this major health problem. Serious efforts will have to be made to provide for the identification and cleanup of existing sources of chemical contamination.

It was only a little over 2 years ago that the dangers posed by chemical dump sites began to arouse the national consciousness. The Nation awoke to the abandoned dump site problem with the tragedy of Love Canal. Unfortunately we learned that Love Canal was not a unique event. Other hazardous waste incidents came to light.

In Toone, Tenn., Grey, Maine, and Jackson Township, N.J., people drank water poisoned by releases of hazardous waste from inactive chemical dump sites. A "Valley of the Drums" was created in Kentucky by the indiscriminate dumping of 17,000 industrial waste drums, representing the ultimate obscenity in desecrating land and endangering public safety. Water supplies of 300,000 people in eastern Iowa are currently threatened by leaking arsenic, benzene, chloroform, and other hazardous wastes from a single inactive dump site.

Just last April, fire raged through the chemical control site in Elizabeth, N.J. The fire burned 15,000–20,000 improperly stored barrels of hazardous waste, spewing black smoke over a 15-mile radius of the New York Metropolitan Area. Schools on Staten Island and Elizabeth were closed and residents advised to stay indoors.

A major catastrophe was only averted because weather conditions were favorable for dispersal of the fumes and the high energy content of the drums resulted in relatively complete combustion. Otherwise millions of people could have been exposed to the extremely toxic fumes of a black cloud hovering over New York City.

□ 1040

Documentation of the serious and far-reaching nature of the problem goes well beyond the few most publicized incidents. Using only existing data, EPA has documented damages at 250 known hazardous chemical dumpsites. These include 27 sites at which injuries to the health of surrounding residents have been found. Leakage from 32 of these sites has caused the closing of 452 drinking water wells which supplied water to hundreds of thousands of people. Chemical contamination of groundwater has been found at 130 of these sites.

I am including at this point in the RECORD a full range of horror stories from sites around the Nation.

[Dollar amounts in millions]

Site and location: Problem	Case filed [1]	Estimated cost [2]
La Marque, Tex.: Chemical dump in floodplain (abandoned).	No	$2–$4.0
Kin Buc, Inc., Edison, N.J.: Dumped chemical wastes.	Yes	[3] 25.0
Woodland Park, Mich.: Train derailment chemical contamination.	No	3–5.0
Grattot Co. landfill, Michigan: PBB contamination.	No	4–8.5
Montague, Mich.: Barrels dumped	No	15.0
Jacksonville, Ark.: Pesticides dumped, buried.	No	[4] 4.0
Occidental site, Lathrop, Calif.: DBCP contamination.	No	15.0
Gary, Ind., site: Wastes stored in open fields.	No	5.0
Subtotal (19 sites) (using low estimate).		314.5

[1] Federal hazardous waste enforcement case.
[2] Of clean up, or where case filed, amount requested either for bond or in damages.
[3] Requested.
[4] Plus.

SITES NOT INCLUDED IN SUBTOTAL (ESTIMATES VARY TOO GREATLY)

[Dollar amounts in millions]

Site: Problem	Suit filed	Estimated cost
St. Louis Park, Minn.: Creosote	No	$20–$200
Velsicol Hardeman, Tenn.: Dump site	No	6–165
Saltville, Va.: Mercury	No	4–32
Neville Island, Pittsburgh, Pa.: Dump site.	No	7–24
Globe, Ark.: Asbestos	No	1–5
Hudson River, N.Y.: PCB in sediments	No	25–204

In addition, the Library of Congress compiled a catalog of toxic chemical damages. The catalog was based on a search of existing literature conducted on relatively short notice. It cannot be considered a complete inventory by any measure, but it is a factual catalog of some damages. It turned up 1,363 well closings as a result of chemical contamination. Of these 242 were from organic chemicals, 619 were from poisonous heavy metals, and 185 from industrial waste disposal of unknown origin.

In my own State of New Jersey, State officials have already closed 500 individual domestic wells and 13 wells operated by municipalities and water supply companies.

The price tag to secure public health and environmental threats from inactive sites, clean up leaking hazardous wastes, and prevent future releases will be large. EPA estimates the average expected remedial action costs to be about $3 million per site. And, at the more serious sites, the average may be closer to $10 million. Although costs will vary significantly from site to site, one principle will operate at all sites—the sooner action is taken, the lower the costs will be. Early containment simply means less to clean up.

An example is illustrative. At Love Canal, the Government has spent on the order of $30 million for response measures. In addition, damage suits amount to billions of dollars in claims. By contrast, the site could have been secured properly at the time of disposal for an estimated $3 million.

Existing statutes are inadequate to cope with the inactive waste site problem. Both funds and emergency response authority to clean up problem chemical dumps are lacking under current law.

The inescapable conclusion of all this—even to the casual observer—is that there is a serious, widespread problem and no existing authority to solve the problem.

The bill we are considering now—H.R. 7020—is designed to provide the solution to the problem of dangerous, chemical dump sites. The goals of the legislation are to eliminate unsafe inactive hazardous waste sites and to remove hazardous waste threats to public health and the environment in a cost effective manner.

The bill has four basic elements to achieve its goals. First, it establishes an information gathering and analysis system. This system will enable Federal and State governments to characterize inactive site problems more accurately and develop priorities for investigation and response.

Owners of inactive sites would notify States of the presence of sites and the nature of the wastes buried there. States would develop inactive site inventories and priority lists using the notification data. From State priority lists, the Federal Government would be able to develop a national priority list for action.

Second, the bill establishes Federal authority to respond to hazardous waste emergencies and clean up leaking inactive dump sites. Federal response actions are limited to cases where the responsible party either cannot be found or does not take the proper actions. In cases where States wished to conduct response actions and had the capability to do so, resources from the fund would be required to be directed to them.

Third, the bill creates a response fund to pay for inactive site cleanup. Under the version of the bill reported by the Commerce Committee, a $600 million fund would be established over a 4-year period. The fund would be financed equally from two sources. Half would come from general revenues; half would come from an industry fee placed on oil, petrochemical feedstocks and toxic inorganic chemicals.

The Ways and Means Committee amendment to H.R. 7020, which I will support, would double the size of the fund to $1.2 billion and increase the industry share to 75 percent. As I mentioned earlier, EPA has currently cataloged 397 sites which require remedial actions. At an estimated $3 million per site, there are already enough sites which need cleanup to justify the authorization of a $1.2 billion fund.

It is wholly appropriate and equitable for the industries which have benefited most directly from cheap, inadequate disposal practices, and which have generated the wastes which imposed the risks on society to contribute a substantial portion of the response costs. Both the Commerce Committee and Ways and Means Committee agree on this principle.

Fourth, the bill makes those persons who cause or contribute to hazardous waste releases at inactive sites strictly liable for cleanup costs. Such persons would also be jointly and severally liable unless they could show that they were responsible for only a portion of the cleanup costs.

The liability provision accomplishes three objectives. It assures that the costs of chemical poison releases are borne by those responsible for the releases. It creates a strong incentive both for prevention of releases and voluntary cleanup of releases by responsible parties. Finally, it replenishes the fund so that additional emergencies may be responsed to and additional sites cleaned up, if necessary.

The path this legislation has traveled has been a long and tortuous one, one marked by controversies at every turn. In particular, the funding components of the bill have been especially controversial. As a result, these provisions have received the closest scrutiny. The industry fee or tax system has been very carefully crafted. It achieves a balance between equity to those paying the fee or tax, administrative simplicity, an effort to minimize economic impacts. Therefore, I can tell you with confidence that the imposition of these costs on industry will not have adverse impacts.

The economic impact of the bill reported by the Commerce Committee is minimal. Resulting price increases would not produce production deadlines or employment impacts, and would have a negligible effect on chemical sales.

If the Ways and Means amendment is adopted, the conclusions reached about the economic impacts of these price rises are not substantial differences. Throughout the development of this legislation, industry has not presented evidence that this industry fee or tax would cause any significant economic dislocation.

I am pleased to report that H.R. 7020 enjoys a wide range of support from many sectors of our society. Key industry groups support the bill as reported by the Commerce Committee. These include the chemical industry, as well as mining, paper, textile, and steel interests. Especially important to note is that the chemical industry, which would be responsible for the lion's share of the industry contribution, is even willing to support this legislation.

The bill is also supported by State and local governments, organized labor, and the environmental community, additionally, I am inserting in the RECORD a list of the Members who have expressed their support for the bill. In fact, it is difficult to think of a constituency which does not support the bill.

The list follows:

Mr. Harold C. Hollenbeck (N.J.).
Mr. Norman E. D'Amours (N.H.).
Mr. Edwin B. Forsythe (N.J.).
Mr. Joe Moakley (MASS.).
Mr. Michael D. Barnes (MD.).
Mr. Fortney H. Stark (CA.).
Mr. Henry J. Nowak (N.Y.).
Mr. John J. LaFalce (N.Y.).
Mr. Paul Findley (ILL.).
Mr. Anthony C. Beilenson (CA.).
Mr. Thomas J. Downey (N.Y.).
Mr. Edward J. Markey (MASS.).
Mr. William J. Hughes (N.J.).
Mr. Bruce F. Vento (MINN.).
Mr. Richard L. Ottinger (N.Y.).
Mr. Brian J. Donnelly (MASS.).
Mr. Parren J. Mitchell (MD.).
Mr. Phillip Burton (CA.).
Mr. Vic Fazio (CA.).
Mr. Bob Edgar (PA.).
Mr. Gus Yatron (PA.).
Mr. Mike Lowry (WASH.).
Mr. Lester L. Wolff (N.Y.).
Mr. Peter W. Rodino, Jr. (N.J.).
Ms. Millicent Fenwick (N.J.).

Mr. Robert A. Roe (N.J.).
Mr. Andrew Maguire (N.J.).
Mr. Doug Walgren (PA.).
Mr. Lionel Van Deerlin (CA.).
Mr. Matthew F. McHugh (N.Y.).
Mr. Edward P. Boland (MASS.).
Mr. Robert Garcia (N.Y.).
Mr. James M. Jeffords (VT.).
Mr. Austin J. Murphy (PA.).
Mr. David E. Bonior (MICH.).
Mr. Henry A. Waxman (CA.).
Mr. Frank J. Guarini (N.J.).
Mr. William H. Gray, III (PA.).
Mr. Louis Stokes (OHIO).
Mr. Claude Pepper (FLA.).
Mr. John D. Dingell (MICH.)
Mr. Fernand J. St Germain (R.I.).
Mr. Edward P. Beard (R.I.).
Mr. Harold L. Volkmer (MO.)
Mr. James A. Courter (N.J.).
Mr. William F. Clinger, Jr. (PA.).

Therefore, I urge your support for this bill. We have two tasks before us then. The first is resisting any weakening amendments to the bill. There simply is no reason for them. The second is enacting the legislation in a timely manner. The health and well-being of the American people cannot afford anything else.

● Mr. STAGGERS. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. This legislation addresses a genuine environmental crisis unfolding around our Nation today—the serious adverse health and environmental consequences of past improper and unsafe hazardous waste disposal practices. As we are only too well aware, the consequences of these practices are of growing magnitude and concern in our society.

The tragic human health effects and environmental contamination, particularly of groundwaters, resulting from indifferent, negligent and reckless chemical waste disposal practices have become all too evident in many areas of our country. The glare of national publicity has been focused on the disaster at Love Canal. Scores of other toxic waste disposal incidents and hazards have alarmed the public and elevated the awareness of public officials to the national proportions of the problem.

The Environmental Protection Agency estimates that in 1980 some 57 million metric tons of hazardous waste will be generated and as much as 90 percent of this may be disposed of in an environmentally unsound fashion.

Nationwide, although estimates vary widely, as many as 50,000 abandoned and inactive sites are believed to contain toxic chemical wastes, of which up to 2,000 may pose serious health hazards.

One particularly disturbing threat posed by some sites is to groundwater. EPA data on surface impoundments of chemical wastes indicate that many of these sites are inadequate to prevent wastes from leaking into the ground where they may contaminate subsurface waters. In a number of instances, chemical contamination of groundwater has rendered it unfit for human consumption as drinking water.

Fortunately, prospects for improvement of our ability to handle toxic wastes safely are on the horizon. Existing law addressing hazardous waste problems, the Resource Conservation and Recovery Act of 1976, established a cradle-to-grave regulatory regime to govern prospectively the handling and disposal of chemical waste generated as a byproduct of industrial and commercial processes. Final regulations under that act have not yet been fully promulgated by EPA.

However, EPA has promulgated regulations implementing the manifest system required under the law, which would track, for the first time, the movement of hazardous wastes through final disposal. Final standards for disposal facilities should be promulgated by the end of this year. Enforcement of the manifest system and facility standards will represent a giant step toward preventing and assuring safe handling of hazardous waste and recurrence of unsafe and past disposal practices that have resulted in environmental disasters.

Presently, however, there are inadequate statutory authorities to cope with these unfortunate legacies of the past. Although existing law does provide authority and some funding for Federal cleanup of oil and chemical spills into navigable waters, no parallel authority exists for cleanup of leaking chemical dump sites creating land-based and groundwater hazards. Existing law authorizes the EPA Administrator to go to court to restrain activities which are contributing to the hazard, but does not authorize cleanup action or provide for an assured source of funding for such action if persons responsible for the hazard cannot be located, are insolvent, or refuse to take remedial action.

There is a clear and compelling need for comprehensive legislation to fill these gaps in existing law. H.R. 7020 represents such an approach. It was overwhelmingly approved by the Committee on Interstate and Foreign Commerce and deserves the support of every Member of this body.

H.R. 7020 contains a number of essential elements. First the bill provides for a systematic national inventory of inactive sites to be undertaken by the EPA Administrator with strong input from the States. The inventory will provide the basis for the establishment of cleanup priorities among the sites on the basis of the seriousness of hazards posed to human health and the environment.

Second, the bill requires present and, in some cases, past owners of sites which pose a health or environmental hazard to monitor the sites for releases of hazardous waste into the environment. If a dangerous release occurs, the owner is required to notify EPA and appropriate State and local authorities. Appropriate remedial actions would then be pursued depending on the nature and extent of the hazard and in accordance with the standards governing the new environmental response authorities created by the bill.

Third, the bill provides the Administrator of the Environmental Protection Agency with necessary environmental response authorities to provide emergency assistance, contaminant, and cleanup action when an inactive hazardous waste site poses a health or environmental hazard and persons responsible for creating that hazard or permitting it to continue to exist cannot be located, are insolvent, or refuse to take appropriate remedial action.

These new response authorities fill a gap in existing law. Response actions taken by the Administrator and financed out of a newly created hazardous waste response fund are circumscribed by cost-effectiveness considerations and State cost-sharing requirements. Ultimately, response actions will have to conform to a new national hazardous waste response plan, similar to the national contingency plan in effect under the Clean Water Act.

Fourth, H.R. 7020 establishes a hazardous waste response fund to finance environmental response action by the Administrator. This fund is to be drawn from both Federal appropriations and industry-based fees. Shared responsibility for financing of the fund recognizes that many segments of our industrial society, and particularly the chemical industry, have benefited from cheap, and all too often, unsafe hazardous waste disposal practices and should make a major contribution toward dealing with the consequences of these practices. It also represents an acknowledgment that while certain members of these industries have been negligent and even reckless in disposing of their wastes, not all companies have acted in an irresponsible fashion; that we as a society have benefited by the scientific and technological advances that have occurred in these high-growth industries; and that to a degree the problem is societal in nature and calls for a commitment from the Federal Government as well as from the industrial sector.

Finally, the bill establishes a liability regime that will enable the EPA Administrator to pursue recovery of moneys expended for emergency assistance, containment and cleanup from persons responsible for the problems requiring the Administrator to incur these costs. H.R. 7020 provides a Federal cause of action for the Administrator against such persons. The issues of liability were perhaps the most difficult confronting the committee in fashioning this legislation. In many instances, it will be difficult to determine precisely what the responsibilities of a generator or transporter of hazardous waste or the owner or operator of the hazardous waste disposal site should have been and what a particular defendant's portion of cleanup costs should be.

The committee bill provides that defendants who caused or contributed to hazardous waste situations necessitating response action by the Administrator shall be strictly, jointly and severally liable for the costs of such action. Certain defenses and exceptions to this general rule of strict, joint and several liability, which take into account the uniqueness of the factual circumstances and of questions of causation frequently surrounding these situations, are provided for defendants who can prove that they took all reasonable precautions in their activities with respect to hazardous waste and that only a portion of total costs of cleanup were attributable to their activities. The liability provisions will enable the Administrator to rapidly recover moneys expended for cleanup and serve as an incentive to potentially liable persons to ferret out and address

hazardous waste problems with which they may be associated.

Mr. Chairman, H.R. 7020 represents the product of considerable time and effort by the Committee on Interstate and Foreign Commerce over two Congresses. The Ways and Means Committee has also contributed to the development of this legislation. Both committees have overwhelmingly recommended favorable action by the House. This legislation deserves the support of every Member of this body, and I urge adoption of the bill.●

Mr. CARTER. Mr. Chairman, as we begin debate on H.R. 7020, the Hazardous Waste Containment Act of 1980, I urge my colleagues, in considering a complicated response to a complicated problem, not to miss that forest for the trees.

The "superfund" proposal, as it is popularly known, addresses the serious consequences resulting from the indiscriminate dumping of lethal chemical and industrial wastes; a problem we are only now discovering may have been with us since the dawn of the industrial age.

The waste disposal problem has been brought to our attention on several occasions: Valley of the Drums, in Kentucky; Love Canal, in New York; and Chemical Control Corp., in New Jersey. I have long believed that the problem of the dumping sites, as shown by these dramatic illustrations, poses a tremendous threat to the people of our country.

Smaller scale attempts have been made before to ease some of the effects of the improper disposal of hazardous waste. During consideration of the Safe Drinking Water amendments of 1977, I included an authorization of $8 million with the intention of cleaning up the Valley of the Drums site in Kentucky. Unfortunately, this sum was never appropriated.

H.R. 7020 presents a balanced and comprehensive approach to cleaning up the hundreds of existing dangerous dumping sites in cases where the culprit is known, as well as instances where the persons or entities responsible for the dumping cannot be found.

Much has been made, in the creation of this bill, of the issues it raises. Many have spoken of liability and the various concepts of law that determine it. Others have spoken of expenses, and the cost of preserving the health of our citizens.

The issue, however, is greater than a fine point of law, or a bottom line dollar amount. It is the issue of responsibility.

The Hazardous Waste Containment Act of 1980 encourages those who create this polluting waste, whether an individual, a corporation, or an entire industry, to take the responsibility to insure that waste generated will be disposed of in a safe, secure, and lasting manner. I commend this bill and endorse it heartily.

□ 1050

Mr. MADIGAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 7020 and I would like to say at the outset and in response to some remarks that I understand were made on the floor of the House last night that H.R. 7020 is not a majority party proposal. The bill that is before us now is a compromise that was drafted by the gentleman from New Jersey (Mr. FLORIO) and myself in the Commerce Committee when the majority party proposal failed to receive enough support so as to be able to move ahead.

This compromise essentially represented in H.R. 7020 was reported from the Commerce Committee, my recollection is by a vote of 21 to 3, with substantial support from the minority party.

So I want to express my regrets that anyone would represent the minority party in debate on the floor of the House as being opposed to doing something about this problem.

I would like at this moment to yield to the gentleman from New Jersey (Mr. FLORIO) and ask the gentleman if I have correctly represented the minority involvement in this issue thus far.

Mr. FLORIO. Mr. Chairman, I thank the gentleman for yielding and would just say that the support on the one hand and the opposition on the other hand has been presented in a very bipartisan way, the opposition much to my regret and embarrassment on occasion; but the gentleman is correct. He has been helpful and he and many of the Members of the minority on the Commerce Committee have been extremely helpful. That is not universally the case.

Mr. GORE. Mr. Chairman, will the gentleman yield to me on that point?

Mr. MADIGAN. Yes. I will be happy to yield.

Mr. GORE. I had a feeling that the gentleman might have been making reference to some remarks I made last night. Since the gentleman was not here, I wanted to have them clarified exactly.

I said in my remarks last night, and I repeat today, that the minority members of the Subcommittee on Commerce that has handled this bill have contributed in a productive way to reaching a responsible solution for this problem. I said that last night and I am happy to repeat it here again today and also to repeat my belief that a strong majority of Members on both sides of the aisle in this House support this legislation and want to see it enacted.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for his comments.

Mr. Chairman, I rise in support of H.R. 7020.

Mr. Chairman, I am sure that many Members have found, as I have found during my service in Congress, that it is extremely difficult to develop legislation dealing with environmental concerns. It is unfortunate that we are often hampered by the attitude of those interest groups that are most actively involved in the development of this legislation. It is also unfortunate that the process often takes a "good guy" versus "bad guy" tone and that those who profess great concerns about the state of our environment tend to take an all-or-nothing approach to legislation.

During the 1970's, when the Congress was considering and creating environmental legislation, we all became increasingly aware of the dangers posed by the movement of hazardous waste in our society. The Congress provided through the Resource Conservation and Recovery Act a regulatory mechanism to insure the proper disposal of hazardous waste and to end the negligent practices of the past.

However, as many of us on the Commerce Committee recognized early on, there was definitely a gap in existing law in dealing with abandoned or "orphan" dump sites.

I want to take this opportunity to point out that the minority members of the Commerce Committee were willing early last year to support legislation dealing with this gap in existing law. We wanted to see legislation passed on so that we would not have wasted an entire year before providing a means to address this problem of abandoned hazardous waste sites. The minority of the Commerce Committee was ready last year to support the creation of a fund of $600 million that would have been funded by fees raised by the oil and chemical industry. It is unfortunate that in the closing hours of this session of Congress we still have not been able to establish a framework for legislation to deal with the cleaning up of these abandoned toxic waste sites.

I am sure that the Members are aware that this session of Congress was inundated by many proposals for "superfunds," "ultrafunds," and other assorted funds to address various environmental problems. Many of these proposals were extremely broad and attempted to create new concepts of environmental law and toxic tort law. I have been concerned from the beginning that many proponents of this environmental legislation would bog the Congress down by insisting on new "zero release" environmental concepts and punitive and unreasonable liability provisions. The guiding philosophy behind these various legislative proposals was summed up by one of its principal architects at the Department of Justice who said, "Government is perfectly prepared to punish the innocent for the sins of the guilty." With so little time remaining in this session, it is essential that we avoid these unnecessary controversies.

Mr. Chairman, with little over two weeks remaining in this session, the Senate has not yet completed committee action on similar legislation and the House will not complete floor action until next week. I would hope that the Senators who know the need for legislation this year, and those in the administration who want legislation this year, would recognize that in order to get a bill, we should be satisfied with establishing a framework to deal with the problem this year and in future years we can fine tune this important effort.

The issue, Mr. Chairman, of the fee has not been the stumbling block to developing a responsible bill. The stumbling block has been the punitive approach that many proponents insist that this legislation follow. Advocates of this legislation have at times been more concerned with creating new Federal tort law standards, without regard to the already crowded Federal courts than they have about the problem of the waste sites themselves. They seem to forget that our principal concern ought to be the problem of cleaning up hazardous waste sites that have been abandoned.

Mr. Chairman, it is important that in considering this bill the House take into consideration the attitudes expressed not only by the administration and various House Members, but also recognize what is being proposed in the Senate. I am concerned that many people who have urged Members of Congress to support these various superfund proposals have not been aware of many of the new concepts that these proposals advocate. People in the Senate have made it quite clear that they intend to push the "zero release" concept. That "zero release" concept would serve as a regulatory tool against anything that escapes the four walls of a plant.

This outrageous concept undercuts existing environmental regulations, and, if enacted and enforced, could possibly bring most industrial activity to a complete stop. Many proponents of superfund legislation are insisting that any organization having contributed in any degree to a hazardous waste release be held responsible for the entire amount of the cleanup and damages. These punitive attitudes have created an environment that has not been conducive to the development of a good legislative product. These attitudes are why we are going into the final days of this session without having passed legislation to deal with the cleanup of hazardous waste sites.

Mr. Chairman, H.R. 7020 is a reasonable and balanced bill. As I am sure the Members know, this bill was sequentially referred to the House Ways and Means Committee. The Ways and Means Committee doubled the amount of funding to a total of $1.2 billion, imposing a new tax of $900 million. While I do not quarrel with the Ways and Means jurisdiction on this portion of the bill, I can say that this bill would not have been reported by the Commerce Committee if it had contained this $900 million tax. In fact, the full Commerce Committee rejected efforts to increase the funding for this program by a more than 2-to-1 vote. I am hopeful that my colleague from New Jersey will properly represent the Commerce Committee position to this House, but I want the Members to know that compromise and agreements were essential in developing this balanced bill, and those agreements were essential for this bill having been reported for consideration by the full House today.

Of particular concern to me and a number of my colleagues on the Commerce Committee were the liability issues of this legislation. Especially difficult were the ramifications of retroactive application of statutory liability provisions to past activities of potential defendants. As the committee report succinctly points out, the committee rejected any notion of absolute liability in this regard. While this may be somewhat of a hybrid liability provision, it provides fundamental fairness.

Mr. Chairman, although I have not been very encouraged by the legislative process surrounding this issue, I have been encouraged by much of the activity being promoted by other State and local government entities. States are moving forward in their efforts to inventory all hazardous waste sites. In Illinois, for example, the State has imposed its own plan to help control the movement and disposal of hazardous wastes within the State. In addition, States are moving forward to have money available to clean up hazardous waste sites.

Industry recognizes the need for legislation this year. Various "superfund" proposals have generated vigorous opposition from segments of industry, but industry has been willing to compromise, and this bill, as the gentleman from New Jersey has indicated, has wide support from the Chamber of Commerce, the National Association of Manufacturers, the oil industry, and the chemical industry.

I would like to insert in the record the testimony of Dr. Louis Fernandez, vice chairman of the Monsanto Chemical Co., which was given in the Senate on behalf of the Chemical Manufacturers Association supporting H.R. 7020.

We need the cooperation of industry in our efforts to clean up abandoned waste sites and we need industry's continued cooperation with the cleanup effort, because this country needs its technical expertise and resources if we are going to do this job promptly.

Mr. Chairman, H.R. 7020 is an important legislative proposal. I would urge the Members of the House to support this bill, but also to support efforts to see that this bill is not distorted or expanded in such a way that would result in its failure to pass this year.

TESTIMONY ON BEHALF OF THE CHEMICAL MANUFACTURERS ASSOCIATION GIVEN BY DR. LOUIS FERNANDEZ, VICE CHAIRMAN OF MONSANTO CO., BEFORE THE SENATE FINANCE COMMITTEE ON SEPTEMBER 11, 1980

First, Mr. Chairman, I want it known clearly and without any doubt that the CMA and its member companies strongly support new legislation to solve the problem of abandoned hazardous waste sites. Our industry does support a federal response fund which could take action when there is danger to public health or the environment or when no other party is taking responsible action. For more than a year, we've been trying to work with the Congress to achieve sound dumpsite legislation. And finally, Mr. Chairman, although our industry opposes fees in principle, we are prepared to contribute a fair share to help pay for cleanup.

Let me summarize our views. The chemical industry supports H.R. 7020 as it was reported by the House Interstate and Foreign Commerce Committee. We oppose S. 1480 which is a legislative disaster. It's too broad. It tries to punish the chemical industry. It sets up a revolutionary federal toxic tort liability scheme for past actions which were perfectly legal at the time. And its funding levels are far, far in excess of what is needed.

As to the funding mechanism of 1480, we believe the bill goes at it the wrong way. If Congress wants to draw any relationship between problem and solution, then the fee should be placed on waste—not on the purchase of feedstock raw materials.

This committee—and the Senate itself—owes a responsibility to society to look at the problem and the solution as dispassionately as possible. The enormity of the fund proposed in 1480—together with the broadened liability exposure—will clearly have a negative effect on the domestic chemical industry and would be inflationary. The more than $4 billion proposed by this bill won't just slip between the cracks; it will have a very large impact.

S. 1480 is a revenue measure. It levies a substantial fee or tax on our industry to pay the lion's share of Superfund. And it is certain to affect our ability to export. I've supplied some figures for the record, but let me just remind the committee that our industry is one of the few which is still very competitive around the world. We are making positive contributions to the balance of trade in the amount of about $10 billion annually.

So that is why, Mr. Chairman, the chemical industry and other concerned industry groups oppose S. 1480 in its present form and support instead H.R. 7020. We urge you to look very closely at H.R. 7020. It's a tough, effective bill that will work to solve the abandoned hazardous waste site problem.

What we are asking this committee to do is the following:

1. Reduce the funding.—The chemical industry has documented that orphan dump sites can be cleaned up at a cost of about $400 million, or about $1 million per site.

2. Adopt a waste end fee.—A waste fee would create a broad tax base without taking a bite out of any specific industrial category. After all, some 17 industry groups—not just the chemical industry—contribute to the generation and disposal of hazardous waste. A feedstock fee falls heavily on just 15 major petrochemical-based companies. And that's simply unfair.

Moreover, there's no incentive in a feedstock fee to reduce waste. But a waste-end fee would encourage manufacturers to further reduce their generation of hazardous waste end fee. Regulations recently promulgated under the Resource Conservation and Recovery Act (RCRA) set up the necessary record-keeping and reporting requirements for industry. We disagree strongly with the EPA on this point. Our analysis indicates that it would be a relatively simple matter to set up a tax payment form.

In my prepared remarks, I have submitted background information on what we consider one of the most dangerous and precedent-shattering parts of S. 1480—the liability section. I'd like to give you an example of our concern. Let's envision, for a moment, that an orphan dumpsite has been discovered. It is known that at least 50 disposers have used the site. But the Justice Department decides that just one of those companies—likely to be one with sales exceeding several billion dollars per year—should be singled out for attack. Under 1480, it would be entirely possible that one company might have to bear the entire cost of the cleanup, while at the same time it has been making fee payments into the cleanup fund. This is what is meant by joint and several liability. I might just add that the Justice Department—in testimony by Assistant Attorney General James W. Moorman—clearly looks to the liability provisions as a further revenue raising system. The entire thrust of his testimony was not whether joint and several liability is fair or necessary or proper . . . but rather that it is needed to help "replenish" the Superfund. This aspect of the proposed legislation is one that should be directly addressed by members of this committee.

There are other points in my prepared remarks. But to sum up, I'd like to reflect on my own experience with Monsanto and with the American chemical industry. There is no doubt that many disposal practices of the past do not meet today's high standards. That's understandable. We know more today than we did 35 years ago. My company and others are investing hundreds of millions of dollars in new and improved environmental safeguards of all types, especially the handling of hazardous waste. I am concerned though, Mr. Chairman, about a thread which weaves its way throughout S. 1480. And it is that the chemical industry is evil, that it needs to be punished for the sins of the past,

that it does not care about its workers or the citizens of this country, and that it has enormous "profits" which can be tapped indefinitely to solve societal ills. I am here today to state flatly that this is a false assumption on the part of some Superfund advocates. We've all heard a lot about midnight dumpers. There will always be some bad apples in the barrel—midnight dumping must be rooted out and prosecuted wherever it occurs. The American chemical industry is prepared to work cooperatively and positively with federal, state and local governments to solve this problem so we can get on to the job of creating new jobs, new products and making new discoveries which service all of mankind.

Thank you, Mr. Chairman, I will be glad to respond to any questions.

Mr. FLORIO. Mr. Chairman, I yield 6 minutes to the gentleman from Tennessee (Mr. GORE).

Mr. GORE. Mr. Chairman, I would like to begin by paying my respects to the chairman of this subcommittee, the gentleman from New Jersey (Mr. FLORIO) and the ranking minority member, the gentleman from Illinois (Mr. MADIGAN) for bringing this legislation out of the Commerce Committee and to the floor in order to address this most serious environmental problem facing the United States of America.

I would also like to compliment the gentleman from New York (Mr. DOWNEY) for the work done in the Ways and Means Committee to improve the bill and encourage my colleagues to support the Ways and Means substitute.

I would also like to thank the gentleman from New Jersey (Mr. GUARINI) for his excellent work on the liability sections in the debate during the Ways and Means Committee markup.

□ 1100

The Oversight and Investigation Subcommittee of the Committee on Interstate and Foreign Commerce is not a legislative committee. But in pursuit of our responsibilities to conduct oversight of the areas within the jurisdiction of the Committee on Interstate and Foreign Commerce we began in the last Congress a series of 18 hearings which have lasted up through this year into the problems associated with hazardous chemical waste disposal. First of all, we have found that the magnitude of this problem is incredibly large.

One hundred billion pounds of hazardous chemical waste is dumped in this country every single year, 100 billion pounds, 90 percent of it improperly. And that figure grows by a rate of 6 or 7 percent each year.

There are abandoned hazardous waste sites in virtually every part of this country. They are threatening the groundwater of this country upon which 50 percent of Americans rely for their water supplies.

It could well be that before the end of this century tens of millions of Americans will find that the water supplies on which they have relied for centuries are now poisoned and polluted. So we must address this problem.

There are two major aspects to the problem: First, the prospective dumping, that is, dumping that will occur in the future. Second, dumping that has already occurred in the past.

As the gentleman from New Jersey pointed out, the prospective dumping will be addressed in a regulatory program to take effect later this fall pursuant to the mandate of the Resource Conservation and Recovery Act.

What we are addressing in this legislation is the dumping that occurred in the past. There is, of course, a connection between the two because the same industry that is principally responsible for dumping now and in the future has also been principally responsible for the dumping that has occurred in the past.

As my colleagues look at this second subdivision of the problem, the one we are focusing on with this legislation, past dumping practices, again we have two parts to that problem. First, abandoned dump sites where the party or parties responsible can be identified. Second, abandoned dump sites where the party or parties responsible are either unknown or insolvent or have covered their tracks sufficiently so that they cannot be assigned responsibility for the problem.

With regard to that first part of the problem where the party or parties responsible are known, this bill addresses the liability faced by those companies. I will be offering amendments to the liability portions of this bill in order to clarify the effect of the law where we know the parties responsible.

I think we can agree on the general principle that where we know the party responsible we ought to affix responsibility for the problem upon that party.

The bill, as it currently stands, has some difficulty with regard to affixing responsibility. I anticipate broad support for the amendments that I will offer in order to eliminate that difficulty. A great deal of work has been done in an effort to reach some compromise and I am highly optimistic about the outcome.

With regard to the second part of the problem, those abandoned dump sites where the party or parties responsible are unknown or insolvent, this bill addresses that problem in a responsible way by creating a fund that can be used to clean up the problems that were created in the past. It puts a tax on the chemical feedstocks that go into the manufacture of chemical compounds.

When this was first proposed I frankly had some questions about the approach being taken. However, upon examination of the approach taken I became thoroughly convinced that it is an ingenious approach and, indeed, by far the most effective approach that we could take.

I would ask my colleagues to support in the strongest possible way the Committee on Ways and Means' substitute to title II so that the industry primarily responsible for this problem will bear the lion's share of the burden for solving this problem.

I would also ask my colleagues to support the liability amendments that I will offer.

I would like to close by again thanking those who have worked so hard to craft this legislation.

Mr. MADIGAN. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. LEE).

Mr. LEE. Mr. Chairman, I rise in support of H.R. 7020, as passed by the Interstate and Foreign Commerce Committee on which I serve, and urge my colleagues to quickly endorse this much-needed legislation.

It is vitally important that we insure, in this 11th hour of the 96th Congress, that positive action is taken to protect present and future generations of Americans from contamination by chemicals from abandoned toxic waste sites.

Last year, both Congressman MADIGAN and I designed and supported legislation to solve this serious problem, but unfortunately that measure failed in committee. The risk is too great, and the dangers too real, Mr. Chairman, to delay action on this proposal any further.

Collectively or individually the estimated thousands of chemical and industrial waste dumping sites represent serious threats to this Nation's communities. Fortunately, they all are not of the same severity of Love Canal in my home State of New York. Yet no one—in Government, in industry, or in the communities themselves—can honestly determine the extent of the threat these waste materials represent, or even where all the dumps are located.

I would like to highly commend my colleagues Congressmen MADIGAN and FLORIO for the leadership they have provided in shaping this legislation in the full Commerce Committee. I am pleased to be associated with these gentlemen in their outstanding leadership to cleanup the Nation's poisonous waste sites, before they do additional damage to our people and environment.

Because the precise number of potentially hazardous waste sites is in question, our first step is to establish as its highest priority a State-by-State inventory of the number of inactive sites, and their relative danger to the public. Once completed, each inventory will be forwarded to the Administrator of the U.S. Environmental Protection Agency. Cleanup operations will be placed in a priority order, according to their immediacy of need. This process is designed to insure the most potentially dangerous sites are addressed first.

I am encouraged by the partnership the commerce bill forges between Government and the chemical industry that will develop a fund to provide the monetary resources required to address the serious problem. I am hopeful this partnership will continue and grow, and that chemical manufacturers across the Nation will do all they can to encourage the speedy discovery and cleanup of abandoned hazardous waste sites.

□ 1110

Mr. MADIGAN. Mr. Chairman, I yield such time as he may consume to the distinguished ranking minority member of the Committee on Interstate and Foreign Commerce, the gentleman from North Carolina (Mr. BROYHILL).

Mr. BROYHILL. I thank the gentleman for yielding.

Mr. Chairman, as minority members have pointed out in supplementary views on H.R. 7020, we do support legislation to deal with this problem of cleaning up abandoned and inactive hazardous waste sites. Also I would point out that minority members in their views before, in a

report issued by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, wrote that "we believe that the issue of hazardous waste disposal should be one of the first priorities of this Nation."

However, we do continue to express concerns about parts of these bills, and we do not like to hear, because we do question certain sections, that we are opposed to the bill or trying to block the legislation. I would point out that I note that the other body has not gotten as far as we have with respect to this legislation. I have listened very carefully to the gentleman from Massachusetts (Mr. MARKEY) who just preceded me in the well and certainly recognize the problems that he has outlined in his statement.

Certainly we recognize that there are gaps in existing law. We are dealing with the establishment of programs to contain these orphan sites or sites over which there is no control. I believe that we should have a program where the people responsible for these particular problems are made to pay.

I think there are problems with the fees contained in this bill because what we are doing in this program is bringing in and punishing the innocent along with the guilty.

I would outline for the benefit of my colleagues an editorial in the Washington Post which pinpointed one of the major problems with the fee that is contained in the bill, and I quote from that editorial:

> The trouble (with the fee) is that this approach makes no distinction between companies that are careful with their waste and those that are careless or even grossly negligent. Consequently, it removes most of the incentive to improve. If you have already paid once (into the fund), it is hardly good business to pay twice by, for example, redesigning your process so it generates less waste. Thus, Superfund violates the tenet that regulation should be designed to encourage a higher standard of care: to prevent damage, not punish.

Perhaps maybe we could have discussed—we discussed it only briefly earlier this year—a program where we might have had a fee attached to the disposal of waste. Perhaps that would have provided far more incentive for people to clean up and to be more careful in the disposal of potentially hazardous waste. So I do hope that as we go along we would pay careful attention to some of the concerns that some of us have with various parts of the bill in the hope that we can arrive at a program that is workable and will offer some hope to clean up these orphan sites.

I might point out that in the subcommittee consideration the gentleman from Illinois (Mr. MADIGAN) and I offered a substitute when this bill was considered there in subcommittee, and this proposal would have established a hazardous waste site program along these lines:

First, it established an inventory program in conjunction with the States in order to identify each and every hazardous waste site in the Nation;

Second, it required any owners or operators of hazardous waste sites to notify EPA;

Third, it provided EPA with an emergency response authority to respond to dangerous releases from hazardous waste sites;

Fourth, it put into position a national hazardous waste response plan;

Fifth, it provided for cost-sharing with the States, requiring that States pay 10 percent of the containment and cleanup costs for those sites where there is no responsible organization able to pay the full cost;

Sixth, it established a plan for the siting of facilities which encourages State cooperation on a regional basis in order to identify and locate for the storage or relocation of hazardous waste;

Seventh, it established the hazardous waste containment fund, providing $100 million for each of the years 1981, 1982, and 1983; and

Eighth, the substitute imposed strict liability, requiring the owner or operator of the site which is the source or potential source of a release to be responsible for those costs associated with the containment or relocation or cleanup of that site.

I did want to point out for the record another alternative that had been offered at an earlier time.

□ 1120

Mr. GORE. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Tennessee.

Mr. GORE. First, the gentleman talked about the alternative of putting a fee on the disposer. This was one of several alternatives that was considered early in the formation of this legislation. I would like to briefly point out, the real problem with taking that approach is that you encourage the use of the so-called midnight dumper. Part of this trouble is that irresponsible disposing companies who seek to evade the currently existing regulations, where there are some in some States, so if you put the fee on the disposers, you might really make that aspect of the problem worse.

Second, the gentleman talks about lumping the innocent with the guilty. I have two things in response to that. First, this has been an industrywide practice by and large and the prospective dumping incentives are addressed in the RCRA legislation.

Second, this legislation really does help those who are trying to be responsible by removing the unfair advantage that irresponsible companies have taken by dumping their waste in an unacceptable fashion.

Mr. BROYHILL. That last point the gentleman makes I do not understand. What you are doing is taxing people who are perhaps operating in a responsible way and you are not taxing the people who are dumping in an irresponsible way.

Mr. GORE. Well, the industry as a whole is being asked to accept a substantial part of this burden along with the taxpayer, largely because it has been an industrywide practice in the past.

Mr. BROYHILL. Perhaps the irresponsible dumper has not ever paid the tax because he is not manufacturing the feedstocks that would be taxed under this bill.

Mr. GORE. And this illustrates the wisdom of the feedstock approach because it is then passed on to all dumpers.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from New Jersey.

Mr. FLORIO. This is a very interesting conversation. I would just suggest we probably have gone beyond the point of discussing these points because there has been a consensus that all parties to the discussion have signed off with regard to appropriate allocations.

I would like to commend the gentleman and say that he has been perhaps a bit too modest because the substitute to which the gentleman referred—it was not accepted by the subcommittee—did have in it some of the key provisions of this bill which are subsequently adopted. That is the siting question which is a very important question; the inventory provisions and many of the other key provisions, were offered by the gentleman from North Carolina (Mr. BROYHILL) and the gentleman from Illinois (Mr. MADIGAN) in the subcommittee, and the merits of those provisions were seen and perceived by the rest of the committee as being very important and the merits were determined to justify their inclusion into this bill. I think in many respects the two gentlemen particularly as well as all of the minority members may feel a kinship with the final product. That is commendable and I appreciate the contribution.

Mr. BROYHILL. It was not my point to make the fee the center part of this debate. I did want to point out that other alternatives had been presented in the past, other ideas for dealing with this particular problem.

Mr. FLORIO. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey (Mr. MAGUIRE).

Mr. MAGUIRE. Mr. Chairman, I thank the gentleman for yielding. I think there is a broad consensus in this body that this is one of the most important bills that we are dealing with in this session. Indeed, it may be the most important. I do not think there is anything Americans are more fearful about than the possibility that their families or their children or their children's children will be exposed to cancer, nerve disorders, birth defects, from substances that may not have been dealt with as carefully as they ought to have been, substances that may be found in drinking water, in consumer products, in play areas where children may amuse themselves. A kind of silent, unseeable threat which is all the more fearful because it cannot be adequately measured or understood.

There have been the spectacular incidents: Love Canal in New York, "Valley of the Drums" in Kentucky, the Chemical Control Corp. in New Jersey, but there are also hundreds and hundreds of communities around this country who are beginning to find things like trichloroethylene in their drinking water supply. This is true in Mahwah and Fair Lawn in my district. In Jackson Township, N.J., thousands of people have had

their water supply shut down because of contamination. In Wood-Ridge in my own district in Bergen County we have the largest mercury dump ever discovered anywhere in the world.

The problem is people in the past have walked away from their responsibilities to dispose carefully of the material which has the hazardous effects.

Earlier on in our history we used to do pretty well. Once we discovered something we would act on it. If we had a problem with typhoid, diphtheria, smallpox, or polio, people went to work to figure out what to do about it and determine how people could be protected, how they could be cured, how they could be afforded preventive measures. We acted on that information as soon as the scientists came up with it.

I would suggest that perhaps we were so good at doing that because nobody was harmed. Now when we have man-made hazards and threats which are more difficult to measure but are no less lethal, we find we are falling way behind what we ought to be doing to protect people.

Mr. Chairman, may I suggest it may be that we were so good earlier because there were no well-paid lobbyists in favor of the typhoid bacillus, there were no law firms representing polio.

Mr. Chairman, today we have a problem of very specific economic interests. Some of the same folks who walked away from this problem earlier would like to do the minimum now. I would suggest we cannot afford to do just the minimum, that we need the strongest possible bill that will enable us to deal with hundreds, indeed thousands of toxic dump sites across the country.

I want to congratulate my colleague, the gentleman from New York (Mr. DOWNEY) and the gentleman from Tennessee (Mr. GORE) for the excellent work they have done on this legislation in the two committees concerned. I think the public interest requires that we act in this session and that we have the strongest possible bill.

I yield back the balance of my time.

Mr. MADIGAN. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. PAUL).

Mr. PAUL. Mr. Chairman, I thank the gentleman for yielding.

So far today we have heard the many good reasons why we have to introduce and pass this bold new legislation. Some days I get very discouraged here in Washington. There are other days I am encouraged because I do hear talk of balanced budgets and other good things mainly because the American people are anxious to hear about it. In action we do not generally follow through. Today we all express great concern for the people who may be suffering the consequences of pollution from toxic waste sites and I, too, am concerned.

Mr. Chairman, I am also concerned with this legislation today because in contrast to what has been said, I feel this legislation is very unfair. I cannot conceive of it working because I think it will work just like any other Government program and I believe sincerely it will do a great deal of harm as well.

□ 1130

Yes, there is always danger in a free society. There is always danger everywhere, but the egalitarians insist that we have perfect safety, perfect remuneration, and perfect redistribution of wealth. This is the ultimate goal of the egalitarians. Yes, it is an accepted fact that for the past 50 years we have assumed that it is a proper function of Government to spread the fruits of labor by acts of the Government and at the discretion of the politicians. But must we go to the next step and assume that we will share the penalties as well? I believe sincerely that we should hold individuals responsible for all their acts.

Recently one of our colleagues was convicted of a felony and sentenced to prison.

If anyone had suggested that we, his colleagues, collectively share his guilt and share his punishment by each serving part of his sentence, he would have rightfully been laughed off the floor.

If a murder is committed in your hometown, how would you react if someone proposed that everyone in town assume the guilt and share a part of the sentence? I am sure you would be outraged and rightfully so, and yet that is exactly the principle we are following here today by creating a superfund.

The real issue we are dealing with in this legislation is whether or not we as individuals are responsible for our acts. Passage of this bill would clearly indicate that we as a legislative body do not accept the notion of self-responsibility, and that innocent people should pay a penalty for the negligence of others.

In the past several decades, the concept of personal and corporate liability has been systematically undermined. This legislation will continue this process, as well as further damaging the right to private property ownership.

Certainly the concept of individual rights, as compared to collective rights, and individual responsibilities needs attention for it is legislation of this sort that fritters away this ideal that took so long to develop. The question we must all ask is this: Are rights collective or individual? Can guilt be passed on to society in general or can laws based on individual responsibility and liability satisfactorily compensate injured parties in a free society?

No one can deny that danger exists with toxic waste just as it exists with thousands of other things we deal with daily in modern America.

It is obvious that life and life's activities are never without danger. The goal, no matter how well intended, of perfect protection from all potential danger is an illusion. It is doomed to frustrate the egalitarians even more than the utopian goal of equitable distribution of wealth—by force of the state—they also eagerly seek.

Although one would get the impression from the debates on the House floor that only one type of solution is available to us in solving problems such as toxic wastes, we do have another option.

I do not accept the contention that intervention by the Federal Government is necessary when it is said that "responsible owners no longer exist"—for responsible owners always exist in a free society. The contention that a modest Federal program with financial assistance to the States can handle these problems is going in the wrong direction for even a limited program.

Tragically, for the past 50 years our solutions to similar problems generally have been based on the notion that rights are collective and guilt and responsibility are not individual matters. By claiming society is an entity in itself and the Government must always act in the best interests of society, those in charge failed to note that some person in power had to make a value judgment as to just what in particular is in the best interest of particular individuals. Society becomes just what they say it is.

The goals sought by legislation become the biases of special interests, of lobbyists and politicians representing the special welfare or benefit of a few, while the general welfare of all the rest is being abused. With the absence of a clear understanding of individual rights and responsibilities our society and political process will drift into chaos, because the power of lobbyists and bureaucrats will eventually rule competely.

We see in this legislation bold new emergency powers being granted to the EPA. It essentially cancels State tort laws and mandates that settlements be taken out of the court and put into the bureaucracy without access to due process law and trial by peers. All this on top of the outrageous expense that this bill will entail.

The absence of a clear understanding of individual responsibility is apparent in our judicial system as well today. Our sociological judges are "soft" on criminals, giving minimal sentence to vicious criminals because they have been "victims of an unfair society" and are not responsible for their acts. Since society hurt them, society must pay. Yet we must remember someone in particular will decide who society is, who in particular benefits, and who in particular pays. In the meantime individual rights and freedom will be further diminished for all Americans. Legislation like the superfund will mandate that the injured be compensated by the innocent. The discussion concerning the specifics of personal liabilities has been confused and will continue to be confused if we insist on Federal programs that mandate our financing an outrageous system of so-called justice that ignores property rights and supersedes the traditional legitimate court system.

It has been argued that the present judicial system is too slow and complex to handle the problems that may arise from hazardous waste suits. That is not the case at all. Were our courts allowed to function under the common, tort law, any suits that might arise could be settled equitably and quickly. It is not the judicial system, but the regulatory system that has been imposed by both State and Federal governments, that is slow and complex. Were this system abolished, the judicial system could function properly. Bypassing our judicial system and leaving the regulatory system intact is the precise opposite of what should be done.

The Love Canal episode demonstrates so well how government—the City of Niagara Falls and the Niagara Falls Board of Education—creates a problem and then how that problem is compounded by the hysteria of an EPA pseudo-scientist. Government is the problem, not the solution, and the sooner we learn this the better off the country will be.

The same ethical standards which insist that the fruits of one's labor be shared forcefully and arbitrarily at the command of the State accept, quite consistently, the notion of "spreading the pain" of paying for personal injury or property damage to everyone "equally." Some will claim that this legislation will make the responsible companies pay. Yet if past experience is of any value, we can be sure it will not work that way. So far the only companies that have lobbied for this bill have been those involved with waste disposal. The taxpayer one way or another, will eventually get stuck with this bill, through higher costs for production or higher taxes or more inflation. We can be certain also from past experience not to expect any help whatsoever in solving the problem of handling toxic wastes. It is most likely that the problem will get worse, not better.

Ignoring individual rights and individual liberty is unfair, immoral and is doomed to failure. That is the message the economic mess we are facing today is trying to tell us. Even though the funds we vote on today are huge, they will prove miniscule when this principle of collective guilt for all injury becomes accepted throughout our economic system.

There is an alternative to the economic egalitarian notions that have driven us to the point of economic stagnation, social upheaval and potential war. That alternative is easily applied, moral, just, and workable. It is sad that we rarely describe and discuss the alternative to the ancient tradition of collectivism. That alternative is embodied in the concept of individual rights, the recognition that we have a right to our own lives and to the fruit of our labor, but no right to anybody else's. All association under these conditions must be voluntary and contracts must be held inviolate.

Private ownership virtually precludes any injury to another, and if there is injury or damage to property, the responsible person is 100 percent liable. Tort law should not be tampered with. It may not be a perfect solution to all our personal injury problems, but it is the best. Increasing the power of an EPA bureaucrat and establishing a superfund certainly cannot even be classified as a solution. They are problems in themselves.

Malpractice in medicine is a good example of how voluntarism and the marketplace solves personal injury problems. Doctors now run malpractice insurance companies, and these are a godsend to both the patients and the medical doctor. The chemical companies would do the same if we would just get out of the way and define their liabilities based on rules of private property ownership and individual responsibility.

Mr. FLORIO. Mr. Chairman, I yield myself so much time as I may consume.

As we start to wrap up this debate as far as the Commerce Committee portion is concerned, I think it is important to know what the bill does, and perhaps respond to the comments of the previous gentleman who spoke. This is a bill that is designed to deal with a real problem, now. All too frequently, were we to rely on the traditional approach, such as litigation, prosecution, or more studies, we go forward at a very slow pace. This problem cannot tolerate the slow pace that has been the traditional response, when there has even been a response.

Provisions in this bill provide the authority for immediate cleanup and containment response authority; provide for the funding for that cleanup and containment; and provide the authority to then go and determine who it is that is responsible. So, no one should have then thought that we are letting those who have done inappropriate and irresponsible things walk away. That is not the thrust behind the bill.

I would just ask that we go forward and consider this legislation in an expeditious fashion. There may very well be philosophical differences, and I am convinced that during the course of our deliberations in the next week, hopefully, we will resolve those problems and we will go forward in order to induce the other body to enact legislation this year. The American people are demanding that we have a legislative response to this problem. For this Congress to go home without superfund legislation would be very unfortunate to the people's perception of whether we have a legislative body that is responsive to the people's needs.

There will be amendments that will be offered to provide more studies. We do not need more studies. There will be amendments offered to provide for State grants, to let the States start to formulate programs. The States are looking to us. We have had testimony from State associations, from the Governors' associations, saying that they do not have uniformity or expertise or resources; they need guidelines. That is, in essence, what this is. This is not a new bureaucracy which is being created. In essence, what we are saying is there must be a Federal capacity to respond to these problems, but EPA is charged with the responsibility of deferring to those who are onsite, who have the capacity and inclination to clean up and contain. They are charged with the responsibility of dealing with the States when the States indicate that they do desire to go forward. EPA has a mandatory requirement imposed upon them to enter into agreements with the States to let the States and the onsite people deal with cleanup and containment.

So, this should not be construed as a large new bureaucratic program that is being created. I would just ask that we go forward with this legislation, deal with it so that we can have a response formulated for the benefit of the people.

Mr. MADIGAN. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Chairman, the name of William Grigsby does not ring a bell with most Americans, but to the few hundred citizens of Sharptown, Md., on the banks of the Nanticoke River, he is a very real person. Mr. Grigsby, a citizen of Delaware has already been convicted in the courts of Wicomico County, Md., for responsibility for abandoning a number of tanks full of toxic chemicals including PCB's and waste oil 50 feet from the banks of one of the most fertile rivers that flows into the Chesapeake Bay, a spawning ground for fish, crabs, and oysters.

A year and a half ago, the gentleman from Maryland and officials of the State of Maryland became aware of Mr. Grigsby and his activities because Sharptown's mayor, Ralph Corddrey, alerted us to the fact that toxic chemicals were leaking from those tanks. In the ensuing hours spent by my staff and myself seeking a solution to this problem we sank into one of the worst legal quagmires I have ever seen. The answer that we finally reached was that no one seemed to be responsible—not Mr. Grigsby, not the State of Maryland, not the Coast Guard, not the EPA or any other Agency.

It was only through the good offices of the gentleman from New York (Mr. MURPHY), the gentleman from New York (Mr. BIAGGI) and others who worked with us to solve the problem that the U.S. Coast Guard finally accepted the responsibility under a very liberal interpretation of the statute under which they now act as one of the agencies charged with cleaning up chemical spills.

The Sharptown situation convinced me that there is in fact not only a national and interstate responsibility for dealing with this, but that the Congress had to act. I am not sure that this legislation before us today is in its most acceptable form. I am not sure the Congress has the collective capacity to write a bill that would solve all the problems of all the Sharptowns in our country. I look forward to the perfecting amendments that may be offered, but I do know, as one who has a major concern about Federal intrusion and the irresponsible acts of Federal agencies, that someone must act to prevent future occurrences such as happened in my State and are happening all over this country.

I also think the responsibility for these toxic chemicals has to be placed individually, as the gentleman from Texas (Mr. PAUL) suggests, but also collectively to some degree. I would hope that all Members would approach this legislation with the thought in mind that this is a growing and serious national problem which must be addressed and soon.

Mr. MADIGAN. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana (Mr. MOORE).

Mr. MOORE. Mr. Chairman, I appreciate the gentleman yielding to me. I think the last several speakers, including the chairman of the subcommittee, touched on something that I would like to comment on very briefly; that is, the role the States play in this.

Louisiana has passed legislation in this area. Louisiana has a great, complex

chemical industry, and unfortunately the storage sites. The problem in Louisiana has not been not knowing how to handle it or needing guidelines, but needing money.

I think that is the key, the State and local governments are looking toward the Federal Government to provide the money. I would agree with the gentleman from Maryland that there is a collective responsibility of this Nation as a whole to clean up these sites that have long since been abandoned, where we cannot find the responsible companies, or they are no longer in business.

But, the real key is the lack of money rather than technical ability or the lack of administrative know-how.

Mr. MADIGAN. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina (Mr. MARTIN), an active participant in the development of this bill thus far.

Mr. MARTIN. Mr. Chairman, I thank my colleague from Illinois for his work on this legislation, as well as the gentleman from New Jersey (Mr. FLORIO) who has provided excellent leadership in bringing us to the point where we are today.

Mr. Chairman, I agree with the gentleman from New Jersey (Mr. FLORIO) in his remarks in debate here on the need to go forward with this legislation. I would express my personal hope that we can air our differences on how best to go forward, but do so in a timely fashion. There are some who want to put the burden for delay on those who oppose what they regard as extreme amendments.

□ 1140

But it would seem to me that burden must at least be shared by those who insist on overloading this bill.

So I say, let us move forward to adopt legislation now to start the effort needed to clean up these abandoned, hazardous chemical dumpsites and avoid overloading the bill with amendments that could risk dragging our feet until it is too late.

It is my hope, Mr. Chairman, that we can continue to debate this issue and resolve it without, in one direction, accusing one another of evil motives when we are all trying to deal with a very difficult problem and trying to do it in a timely fashion. Secondly, I hope that in continuing to do this, we can resist the impulse to try to create a general phobia about chemicals.

The chemical industry is an industry which has produced many products which have added to our quality of life, to our life expectancies, and to our ability to produce food in this country and around the world. As we move to clean up these hazardous dumpsites that have festered about the country as an offshoot from this industry, let us be very careful that we do not engage in trying generally to create a phobia and a general fear among the public about this industry and about the important chemical products which are of such great value to us.

Mr. Chairman, I thank the gentleman for yielding me this time.

The CHAIRMAN. The gentleman from Illinois (Mr. MADIGAN) has 1 minute remaining.

Mr. MADIGAN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Chairman, I yield myself such time as I may consume.

Mr. ROSTENKOWSKI. Mr. Chairman, the Ways and Means Committee amendment to H.R. 7020, the Hazardous Waste Containment Act of 1980, adds a new title II which will raise the minimum revenues necessary to fund the program for cleanup of inactive chemical waste sites created by title I of the bill. The committee believes a reliable and available source of funds is needed to respond to the growing threats to the public health and environment which arise from inactive hazardous waste sites such as the Love Canal in New York, the Valley of the Drums in Tennessee and numerous others. To assure that the tax revenues collected from the chemical industry for this vital cleanup program will be available for that use, the committee has established a trust fund.

THE EXCISE TAX

The committee amendment provides for $900 million in revenues over a 5-year period. This revenue will be raised by two new taxes, one on crude oil and imported petroleum products, the other on petrochemical feedstocks and certain inorganic chemicals. The substances subject to the tax are the basic raw materials out of which most hazardous substances are created.

The tax on oil and imported petroleum products is .6 cent per barrel. This tax will be collected at the refinery or at the point of import or export. If crude oil is used without passing through a refinery, the tax will be imposed on the user unless the oil is used at the point of production to fuel further production.

The tax on petrochemical feedstocks is $2.54 a ton and is imposed on the producer or importer of feedstocks. The tax on specified inorganic chemical is $2.33 a ton. This tax is also imposed on the producer or importer. The feedstock and chemical tax will be imposed only once on the same substance. Title II as reported by the Ways and Means Committee would provide only one exemption from the tax; that is, an exemption for feedstocks and chemicals used to produce fertilizers. A further committee amendment will also require the Treasury to provide an exemption for the fuel use of any feedstock, a principal use of which is use as a fuel. The effect of this amendment will be to exempt from the tax the fuel use of methane, for example.

The tax on crude oil and imported petroleum products is expected to raise $35 million a year. The tax on petrochemical feedstocks will raise $108 million a year and the tax on inorganic chemicals will raise $36 million a year. These taxes will expire after September 30, 1985. Thus, over the life of the taxes, $900 million will be generated for use in the cleanup of inactive hazardous waste sites. This amount, supplemented by $300 million in appropriations authorized over the same period, is the absolute minimum necessary to begin a responsible effort to solve the Nation's hazardous waste problem. It is estimated that this amount will finance cleanup of only the 250 most critical sites.

THE TRUST FUND

The taxes raised by title II will be placed in a hazardous waste response trust fund together with appropriated amounts and certain recoveries from persons responsible for the waste sites.

The fund will be available, subject to appropriations, for purposes of emergency response, removal, containment, cleanup, or other action taken under title I of the bill. The trust fund may not be used for purposes other than those specified in title I nor to pay for costs incurred at sites owned or operated by the U.S. Government. This is consistent with the provisions reported by the Committee on Interstate and Foreign Commerce. If in the future a proposal is made to expand the scope of this hazardous waste response program, the Committee on Ways and Means would expect to look at that proposed change, after the authorizing committee has made its recommendations, to see if the change is consistent with the general purposes of the fund and further whether sufficient revenues are available or if a tax increase is necessary to pay for the proposed changes. This is only natural because in this bill we are enacting a specific level of taxation to address specific problems.

In this regard, the hazardous waste response program is totally consistent with other trust fund arrangements which have worked smoothly over the years. Such funds include the airport and airway trust fund, the black lung disability trust fund, and inland waterways trust fund, and the highway trust fund. In the past, when the authorizing committees have sought to amend the programs supported by these trust funds, we have worked successfully with those committees.

To assure adequate oversight and governmental participation in the fund, total spending from the trust fund may not exceed 10 times the amount actually appropriated to the fund. In addition, the trust fund may not borrow from the U.S. Government.

Spending from the trust fund will not be permitted after September 30, 1985 unless the fund is extended by the Congress.

The CHAIRMAN. The gentleman from Illinois (Mr. ROSTENKOWSKI) has consumed 6 minutes.

The Chair now recognizes the gentleman from New York (Mr. CONABLE).

Mr. CONABLE. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, without going into the bill as a whole, I would like to say that I

support the Ways and Means Committee amendment to H.R. 7020 which is contained in title II, the Hazardous Waste Revenue Act of 1980, as it is called.

Title II, as my friend, the gentleman from Illinois, has already described, would impose excise taxes on crude oil, specified petrochemical feedstocks, and specified inorganic substances. The revenues from these excise taxes are to be deposited into a "hazardous waste response trust fund." The fund will be available to finance the containment or cleanup of inactive hazardous waste sites which are causing or threatening to cause harm to the public health and environment.

The tax on crude oil is expected to raise $35 million in revenue annually. There is $108 million annually coming from petrochemical feedstocks and $35 million annually coming from inorganic chemicals. The excise taxes will "sunset" the provisions of the law after September 30, 1985.

The trust fund will receive moneys both from excise tax deposits and transfers from general revenues. This has been a matter of some contention in the development of the bill.

Excise tax receipts are intended to make up 75 percent of the fund's total assets, following the Downey amendment in the Committee on Ways and Means, whereas transfers from general revenue will make up 25 percent of the fund's total assets. There was a 50–50 division as it came from the other committee earlier.

As a further safeguard to assure that the general revenue transfers will occur, the bill limits expenditures from the fund to 10 times the amount of general revenues actually appropriated to the fund. That insures, of course, that there will be some public involvement in the creation of this fund, if we are to have any use of it.

□ 1150

The excise taxes in title II will produce the revenue to support a responsible program to clean up abandoned, hazardous waste sites. The authority to pay for removal and cleanup costs is defined by the provisions currently in subpart C of part 2 of subtitle C of the Solid Waste Disposal Act. This provides a fixed reference point by which to measure the legitimacy of payments from the fund. This is an essential safeguard.

Mr. Chairman, I am not sure exactly what is going to happen to the Florio amendment which was printed in the RECORD. I hope if it is offered that some accommodation will be made to the section which would in effect open up the purposes for which the trust fund may be spent, make it subject to the sole control of the other committee. The Ways and Means Committee is not terribly enthusiastic about creating trust funds for which the purposes will be defined by someone else, without any review by the Ways and Means Committee. I personally have some resistance to trust funds generally because they impinge on the discretion of the Congress to expend money raised by the Congress according to its unfettered discretion; and clearly, to set up a trust fund which then could be expended in any way which one of the legislative committees saw fit would be to discourage the creation of further trust funds. We should avoid such a precedent.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Of course, I can understand the gentleman's concern about the possibility of this scenario occurring which he described. Likewise, as the authorizing committee, we are very much concerned about the Ways and Means Committee perhaps making substantive changes in the provisions of the legislation which relate to programs authorized by the Commerce Committee.

I have been talking with the gentleman from Oregon (Mr. ULLMAN). We think we have reached an accommodation which perhaps can be read into the RECORD at the appropriate time, and we are planning on doing tnat. I think that will resolve the gentleman's apprehensions as well as mine.

Mr. CONABLE. Yes. I call the gentleman's attention to the fact that every trust fund we have set up has the kind of language in it which the gentleman's amendment suggested striking. In other words, whether you are talking about airways safety or the Highway Trust Fund, in general we retain the right to review the purposes for which the money we are asked to raise is spent. And I hope that we will not change that practice, so that the Ways and Means Committee will be expected to raise money generally for whatever purpose the fertile mind of any committee can devise at some time in the future.

The purpose of a trust fund is to have a fairly limited use of the money raised rather than to have it purely discretionary.

Mr. FLORIO. If the gentleman will yield, I am very optimistic that we will be able to work out the difficulties and have it read into the RECORD.

Mr. CONABLE. That is fine. If we are not going to do that, we ought to go the appropriations route, I think, and have it subject to the safeguards that are usually involved in that practice.

Mr. Chairman, I believe title II contains a responsible and workable approach to financing the cleaning up of abandoned hazardous waste sites. There have been arguments made that we should not put a tax on petrochemical feedstocks, but I think they have been resolved to the satisfaction of everybody concerned.

The CHAIRMAN. The Chair now recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. WEISS).

Mr. WEISS. Mr. Chairman, I rise in support of the two bills before us today commonly known as the superfund, H.R. 7020, and H.R. 85.

Since the close of World War II, the chemical and petrochemical industries have enjoyed uncomparable growth. Unfortunately, there has not been a parallel development of preventive safeguards against oil and chemical spillages and sites where potentially hazardous wastes are located. Within the last few years almost daily reports of leaking chemical dump sites, oilspills, and other hazardous substance spills appear in the news. The Coast Guard reports that 10,620 spills released a total of 17.6 million gallons of oil in 1977, a year which saw no catastrophic single spill. EPA estimate there are 3,500 spills a year.

In my own State, the department of conservation has listed 680 sites which are known or thought to have received industrial wastes. The most notorious, of course, is the Love Canal site. A total of 157 of these sites are classified as "high priority", that is, posing the most danger to the public's health and the environment.

The Surgeon General has stated:

> It is clear that it is a major and growing health problem. We believe that toxic chemicals are adding to the disease burden of the United States in a significant way.

A report issued just last month by the Library of Congress entitled "A Brief Review of Selective Environmental Contamination" concluded that enough toxic pollutants have been released to have affected every citizen in the Nation. It is apparent that we are practically drowning in our own toxic wastes.

Existing environmental, common, compensatory, and liability laws are not adequate to meet the dangers of existing and potential accidents. The variety of laws and regulations provide little or no relief for cleanup and compensation, limit liability, and provide insufficient funds. EPA Administrator Douglas Costle testified before the Senate Finance Committee that—

> Confronted by these problems we were forced to realize that existing legal authorities are inadequate to deal with them in many ways.

The legislation we consider today, H.R. 85, the Comprehensive Liability and Compensation Act, and H.R. 7020, The Hazardous Waste Sites Act would replace this maze of current laws and regulations. Both bills provide for cleanup of oil and many hazardous substances spills, and hazardous wastes sites, and determine conditions for liability and compensation. The bills establish funds made up of excise taxes on the oil and chemical industries and some Federal moneys. The problem of toxic chemical sites and spills and oilspills will not disappear with the passage of this legislation. But it will be a first step toward the solution of a problem which endangers the health of every person and the environment in which we live.

Though I support this important first step, these House bills do not adequately address the real danger of chemical wastes and oilspills. I am hopeful that the other body which is currently conducting hearings on more comprehensive, stronger legislation, will report their bill, S. 1840, intact. S. 1840 includes stronger liability provisions, coverage of toxic releases not only into a navigable body of water, but to land and air as

well, provisions for health damages to victims, and a fund of $4 billion.

The critical importance of this legislation cannot be overemphasized. As the Surgeon General's report states—

> The public health risk associated with toxic chemicals will continue to increase . . . until we are successful in controlling the introduction of these chemicals into our environment.

I urge my colleagues to join me in support of this legislation.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. Mr. Chairman, I rise to express my support for immediate passage of H.R. 7020, the Hazardous Waste Containment Act of 1980. Let me state from the outset that my preference as to the best possible legislation would be H.R. 7020 with the Ways and Means amendments attached.

This is the second part of the so-called "superfund" package proposed by the administration. I am the author of the first legislative component of this measure, H.R. 85, the Comprehensive Oil Spill Liability and Compensation Act. This bill is expected to come before the House later today.

The bill H.R. 7020 addresses itself to the proliferating national problem of toxic chemical dumping and release of hazardous wastes from inactive and abandoned sites. The U.S. Surgeon General, Julius Richmond, in what Time magazine this week calls "the most authoritative warning yet," declared that throughout the 1980's, this Nation will confront "a series of environmental emergencies" posed by toxic chemicals that "are adding to the disease burden in a significant, although as yet, not precisely defined way."

This legislation goes after the problem in two sound ways—it proposes a procedure to both identify and take steps to remove poisonous materials from sites, and second, it insure that compensation is available for costs incurred by this action.

Let me emphasize this point from the very outset—this issue which we are debating today is a major social and environmental issue. But above all, it is a profoundly human issue. The presence of hazardous chemicals, literally in the backyards of thousands, if not millions of American homes, has evoked a growing national fear for the well-being of our families.

Perhaps the catalyst for this growing sense of uneasiness is the ongoing tragedy of Love Canal. Contaminants from an old landfill loaded with dangerous chemicals at and below surface levels, had seeped into a residential area where some 1,200 homes and a school are located. For an inordinate period of time, the complaints of the residents of the area went unheeded by the Federal Government until it finally called for detailed tests of each individual in the area. New York State was finally compensated by the Federal Government earlier this month for costs incurred in relocating the families from the Love Canal area. Estimates indicate that the State of New York has already expended some $35 million on Love Canal and clearly needed help from the Federal Government.

In earlier research I had done on the Love Canal issue, based on materials submitted by the Hooker Chemical Co. which owned the landfill, records indicated that as far back as the late fifties, problems related to the chemical landfill were being reported. In this particular case, the assistant technical supervisor of the school system in the Love Canal area reported the serious burning of four children by materials in the grounds of a school playground which had been deeded to the school. Prior to its use as a playground, the area had stored chemicals which proved to be the source of the children's burns.

Love Canal, N.Y., Elizabeth, N.J., Montague, Mich., Seymour, Ind.—these are all places where the presence of dangerous chemicals pose a serious threat to the health and safety of local residents.

Let us examine the scope of this problem. Based on a 1979 Environmental Protection Agency survey—there are between 30,000 and 50,000 inactive and uncontrolled hazardous waste sites in the United States. Of these, as many as 2,000 present a serious risk to public health. In my home State of New York, there may be as many as 157 high-risk sites posing serious health threats to residents.

H.R. 7020 provides that the owners and operators of chemical dump sites that are not being used, to file reports with appropriate State and local officials detailing the types of chemicals which are stored, the method of waste treatment and storage, and other germane activities.

Further, States would be required to compile an inventory of chemical dump sites and transmit this information to the EPA. If they fail to do so, the EPA would step in and do the job.

Within 15 months of enactment of this legislation, States must establish priorities among inactive sites in their State using EPA guidelines. Within 6 months of enactment, EPA must establish a national priority list of sites which present a substantial threat of releasing hazardous substances.

After this, EPA may take emergency action if a dump site presents an unreasonable risk to public health or the environment. If the site is among the top 100 in ranking, EPA could relocate, contain or clean up the materials or take other remedial action to eliminate the hazard.

These are all-important steps which are common to both bills. The issue of who pays—how the fund will be financed—and liability and enforcement issues—I will discuss during the debate on the Ways and Means Committee substitute.

It is essential that both H.R. 85 and H.R. 7020 pass this year. The problem is too severe to overlook—the potential for greater problems in the future is highly possible. It is currently estimated that only 10 percent of some 77 billion pounds of hazardous wastes produced each year are disposed of in an environmentally safe fashion. The unsafe methods range from slipshod to downright dangerous. This bill will protect present and future homeowners by identifying the location of sites which pose a threat to health and safety.

What is most important about this legislation is its offering of first-time protection of the public from the damages and hazards caused by unknown polluters, bankrupt companies, or those who successfully avoid liability. Where are the victims to turn in this case? Are they supposed to simply accept property damage or worse—damage to their health?

The issues appear to be very clear. This Nation has a relatively new, but decidedly dangerous problem on its hands with the presence of chemicals and other hazardous substances in our lands. H.R. 7020 presents the first real legislative remedy to this national problem. It is not a complete answer but an important start. I urge adoption of the strongest version of H.R. 7020 which will demonstrate to the American people that we are committed to promoting a safe and healthy environment for all.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 6 minutes to the gentleman from New York (Mr. DOWNEY).

Mr. DOWNEY. Mr. Chairman, I would like to begin by congratulating both the gentleman from New Jersey and the gentleman from Tennessee for the work that they have done. I want to single out the work of the gentleman from Tennessee, who has a remarkable grasp of this issue. It is my privilege to count him as a friend and to have learned from him on this subject.

Mr. Chairman, I want to explain very briefly what we did in the Ways and Means Committee, because I think we have improved on the good work of the Commerce Committee. Commerce came to us, basically, with a $600 million proposal that was divided equally between Government revenue and the industry. The Ways and Means Committee understood, along with other members of the Commerce Committee, the magnitude of the toxic waste problem.

At a minimum, there are 300 sites that need immediate attention. The cost of providing that attention will range anywhere between $3 million and $4 million, and probably a lot more, and will eat up the entire $1.2 billion. The $1.2 billion is a start. It is not adequate, but I think it represents a reasonable beginning.

So we needed to, right away, increase the size of the fund, and that is what the Ways and Means Committee did.

We next addressed the question of who should pay, and that, of course, centers around who is responsible. And this is a matter of some controversy. Clearly, in those situations where the generator of the waste is clearly identifiable, they should pick up the tab for cleanup. But in those hundreds and possibly thousands of instances where no one can be identified, we have to provide a mechanism for a quick reaction and also for a long-term solution.

The Commerce Committee held 18 hearings, and I think it is fair to say that the large and small chemical companies are responsible for the problem.

Let me just quickly thank the chemical industry for the bounty they have provided us: Polyester, clothing, a whole range of synthetic fibers, chemicals, pharmaceutical changes in our lives that have made our lives more attractive and certainly more comfortable. But with that creativity and that productivity also comes the need to save money; and the industry found, unfortunately, that this is a big country and that it is very cheap to find an abandoned farm and dump these chemicals or have somebody come up with a flatbed truck and for 75 cents a barrel dispose of the chemicals. And that is what happened. It is clear, from the Commerce Committee's work, that the Fortune 500 companies are as responsible and probably more responsible than the small ones.

So what the Ways and Means Committee said was, "We will take 75 percent of the revenue from the industry and 25 percent will come from the taxpayers of this country."

Now, something needs to be said with respect to the apportionment between private and public money, because when we say 75–25, that does not take into consideration the fact that this tax, along with all other taxes, is deductible. And if you figure for a large corporation a 40-percent marginal rate, that means that, out of every $75 of tax, about $30 of it is going to be coming back to the various companies, or $30 in addition to the $25 will be picked up by the Federal Government. So it is not a 75–25 split after taxes; it is closer to a 55–45, 55 public, 45 private. I think that is very equitable.

One of the other things that concerns me and concerned the committee is what impact this tax would have on the consumers of chemicals and on the competitive position of the chemical industry abroad.

Now, the Environmental Protection Agency, through one of their studies, did an econometric model that found out that this was such a small tax and it was diffused so carefully and thoroughly through the production chain that it would have no impact on the chemical companies, domestic chemical companies' competitiveness in this country versus foreign companies, and that the cost to the end user, the consumer, would be also negligible. This was something that concerns me.

I asked each of the witnesses who came before the committee to address the question of foreign competition.

□ 1200

Not one of them said that this would be onerous. Not one of them could point to any competitive disadvantage that this fee would provide. It is minuscule. But this minuscule fee spread out over the various feedstocks will generate the $1.2 billion along with public money that we need to begin this process.

From my community of Long Island, we have had 36 private wells shut down. We, like much of the rest of this country, get our water from glacier actifers underneath the ground. Two million people on Long Island are potentially at risk because of the hazardous dumping that has gone on over the last 20 years.

So from my community, this is a parochial interest, but for the thousands of others of the sites throughout this country, it becomes not only a parochial, but a national interest.

The Committee on Ways and Means has changed this bill beneficially. I hope that the Members can support it.

Mr. CONABLE. Mr. Chairman, I yield 9 minutes to the distinguished gentleman from Louisiana (Mr. MOORE).

Mr. MOORE. Mr. Chairman, I thank the gentleman for yielding.

I come from Louisiana, which is one of the biggest producers of chemicals and have a number of chemical plants in my district and also a number of storage chemical sites in my district. I would like to think I have some indication and some awareness of both sides of the issue.

As a matter of fact, I recently went to a meeting with constituents in my district who were suffering from one of these sites and the problems being caused by it.

From my vantage point, I think there are two conclusions I have reached and we have all reached. First, abandoned toxic chemical storage sites are indeed a serious problem, and they do indeed demand the attention of the Congress.

Second, it appears necessary that this is truly an example of where the Federal Government must be involved. I accept that.

There is a third point that is clear to me, that has yet gone unnoticed in this debate that I would like to touch upon. That is the point of the method of payment of moneys into this fund and what I think its eventual impact may be on international trade.

I am concerned about the arguments that were raised during the debate by members of the Committee on Interstate and Foreign Commerce that this bill essentially causes good chemical companies to pay for mistakes of the bad chemical companies, and the bad chemical companies are riding the backs of the good ones who have tried to obey the law and tried to properly dispose of these toxic chemicals

While that concerns me as an equitable matter, the real thing I am concerned about, that we have not touched upon, is that of trade.

I am privileged to serve on the Subcommittee on Trade of the Committee on Ways and Means, and I am very concerned that we do not adversely impact our competitive edge in the export of chemicals. I think we should all be aware of the result of excessive taxation and our corresponding industrial inability to compete with foreign producers. We have already seen this as is now painfully evident with shoes, automobiles, television sets, steel and many other items.

Meanwhile, the chemical industry has enjoyed a substantial trade surplus of some $5 billion annually, and without the help of this industry, which is one of the few manufacturing exporters we still have left, our trade deficits would be far worse than they are. Whether one calls it a fee, as the Committee on Interstate and Foreign Commerce bill does, or a tax, as the Committee on Ways and Means amendments properly do, it does not really matter, because in each instance it increases the cost of production with no increased productivity.

The gentleman from New York just mentioned that nobody has complained this is going to be an onerous burden. That is not entirely true, but largely so. But when one considers this new burden with other existing ones and other factors, somewhere in the future it is going to be a problem.

Already the clouds of economic decline are beginning to appear for the chemical industry. Even if H.R. 7020 is not enacted, and even if this fund is not changed as to how it is paid, this industry is going in the future to be squeezed, and squeezed hard, in foreign competition for two reasons.

The first is that crude oil is the basic feedstock of the chemical industry, in particular, the petrochemical industry. It is clear that when crude oil prices are completely decontrolled, the abilities of the chemical companies to market their products in the world market are going to be significantly endangered. Crude oil feedstock costs constitute 20 percent of the cost of the chemical companies' overall operational costs.

Over the last few years the U.S. companies have enjoyed a substantial cost advantage in the world market solely because of the cheaper feedstock costs in this country as compared to European or Japanese chemical companies.

Just as we have seen in the decontrol of oil causing gasoline and heating prices to go up, this is true in the oil feedstock costs as well.

As we phase out the artificial price control program for oil, which I support, we are increasing the cost of doing business of the chemical companies. Foreign chemical companies have had to operate on the world market price of oil for many years now. The Japanese and European companies have not paid an artificially low price for oil like they have in the United States. They have paid the world price. That has largely been the reason we have been able to compete and export chemicals.

The second reason why we are going to have problems in the future in international trade of chemicals is that this industry worldwide is already suffering from overcapacity and undertilization. The U.S. trade advantage in chemicals has been primarily due to our inherent price advantage due to crude oil prices being regulated rather than our superior technology or a world shortage of chemical industry capacity.

Both European countries and Japan, our major industrial trading partners, are welcoming the day when U.S. chemical companies will have to pay the same prices they now have to pay for oil and further, the OPEC countries are beginning to forge ahead to construct additional petrochemical production capac-

ities or expanding the ones that they have in order to be able to take advantage of the United States lessening ability to compete.

Both the underutilized worldwide capacity and the additional planned capacity of the OPEC countries will most certainly weaken our competitive advantage. With the structure of the fund as it is in this bill, we are now adding a third reason, this new tax or fee on this industry that is already going to face these two other factors in the very near future.

Let me give the Members a specific example of what I fear is going to happen. Metallic nickel and metallic cobalt are covered by this bill. They are not in themselves generally considered to be toxic or hazardous. In fact, as the Members know, we use pure nickel in most of our coins. Any intermediate products produced by a process that purifies nickel ores and cobalt ores are already being regulated in Louisiana and most States under subchapter C, of the Resource Recovery and Conservation Act.

It just so happens that the only pure nickel and cobalt produced in the United States is produced in the State of Louisiana at the Port Nickel facility. This plant supplies 10 percent of the U.S. needs of pure nickel. All of the remaining nickel, the other 90 percent, and cobalt metal is imported from unreliable sources across the world.

With the imposition of this fee or this tax, it is likely that this plant will close and we will then get 100 percent of this material from overseas.

This plant is already in a marginal economic situation mainly from foreign competitive measures, and the parent company is already considering closing this domestic plant and building one overseas. If this plant in Louisiana is closed, we lose 700 jobs. We also lose something we will have to import more of thereby further weakening our trade balance and economy. I figure this will not happen just with this plant, but at some point in the future with additional chemical companies and plants.

Unfortunately, this situation was not learned by me until after this bill was considered by my committee and after a rule was granted by the Committee on Rules which prevents me from offering an amendment when this bill is considered under the 5-minute rule to remove the nickel and cobalt provision from this bill's coverage and the resulting requirement of the payment of the tax.

□ 1210

Therefore, I feel this bill should be amended to have this adverse trade impact for the future and the present removed, and yet preserve the fund.

I understand the Stockman substitute, which I will support, will accomplish this end.

I will support this bill, even without the passage of this needed amendment, just as I did in committee; but this debate would be neither responsible nor complete without consideration being given to the connection between increased taxes and decreased ability to compete in international trade. We have ignored this point so many times in the past and our economy is today suffering for that reason. We must not do it again.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MOORE. I yield to the gentleman from Texas.

Mr. ECKHARDT. I am rather surprised at the gentleman's statement that the chemical industry is not sufficiently efficient to compete unless it has an advantage price-wise.

I would have thought that if, in the gentleman's State, as in mine, that the chemical industry was able to compete when foreign oil sold during the sixties to European chemical plants at only $2.90, whereas domestic oil was being sold to U.S. plants at about $3.40, the chemical industry could compete when the cost to them and to their European competitors are the same.

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

Mr. CONABLE. Mr. Chairman, I yield 1 additional minute to the gentleman from Louisiana (Mr. MOORE).

Mr. MOORE. In the 1 additional minute, let me attempt to respond to the gentleman's question, which is a good one and a fair one.

Times have changed since the prices then. Most chemical plants in my State were built back before that time. There are newer ones that have been built that are really more efficient in other parts of the world. Today we can compete. Tomorrow, next year, 5 years from now, when oil is totally decontrolled, we may still be able to compete, but will enjoy less of an advantage than we have now. It is only commonsense as the cost of raw materials goes up, so does the cost of the finished product. We are not going to be able to compete or as well as now considering increased capacity overseas, coupled with this burden that we are going to place by virtue of this new fee or tax, and coupled with the increased technologies of foreign countries. We are going to have difficulty in the future.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. MOORE. If I have time, I will certainly yield.

Mr. ECKHARDT. But it was true at the time I am referring to that foreign plants had an absolute advantage in price over American plants the European plants buying oil at around $2.90 per barrel. At that time American plants were paying around $3.40. Certainly our chemical industry should be able to compete when the cost is equal.

The CHAIRMAN. The time of the gentleman from Louisiana has again expired.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 4 minutes to the gentleman from Connecticut (Mr. MOFFETT).

Mr. MOFFETT. Mr. Chairman, occasionally in this debate we have tried to look at some of the human dimensions that are part of the toxic waste problem. I would like to point out, and I think the gentleman from Louisiana (Mr. MOORE) and the gentleman from Michigan (Mr. STOCKMAN) must be aware of this, the tremendous and volatile nature of this issue with regard to the population.

There was a 20-minute segment, as I understand it, on a television show called "Speak Up America," last Friday, 1 week ago tonight. It was about this very issue. Perhaps some of my colleagues saw it. Some of us were mentioned on that program. I was one because I had chaired hearings on this matter, and the gentleman from Tennessee (Mr. GORE) because he has been so involved in it, and some others. Just from that one program, that one 20-minute segment, came 130 letters from 28 States.

I see the gentleman from Minnesota (Mr. STANGELAND) here. He is a member of our subcommittee. I think he knows from the testimony we have had from around the country that citizens from all geographic regions are deeply concerned about this problem. Here is just one from Tampa, Fla. This is a young mother. She says:

> I am the wife of a hardworking man with a low income.
>
> I know we'll never be rich enough to buy our own home, or land, and we work hard just to maintain a house and feed our two children.
>
> But it breaks my heart and scares my children when we see on T.V. the dumpings of chemical waste that kills the land, rivers and lakes.
>
> Now we're only 24 years old and my husband and I can't afford to buy even one acre of land, but the rich businessmen of this country are killing the land.
>
> We can't afford to go to football games, or take the kids rollerskating. The only form of family entertainment that we have is camping. We take a tent, some hot-dogs and the kids to a lake about 30 miles from home. There's no charge for the camp site. All we have to pay for is the gas to get there.
>
> The four of us love going to the lake. We swim and take walks in the woods.
>
> Please don't let someone kill our lakes and land. Inflation has taken everything we used to enjoy.

Now, that kind of message is very, very common in this group of letters. I do not need to belabor the point because we are all getting this kind of mail. I think that is why we will not have more than 20 or 25 votes against this bill on final passage.

But I think there is another message in these letters. People are begging us not to weaken this bill. If anything, strengthening it with the Gore amendments, strengthen it with the amendment of the gentleman from Texas (Mr. ECKHARDT) to provide minimal funding for the study of health effects, something we are not even doing now; but by all means, let us pass the legislation intact, the Ways and Means version with regard to industry contribution.

There is one final point that emerges from these letters. People are willing to pay even more to see that we do not totally destroy this planet.

Mr. CONABLE. Mr. Chairman, I yield 3 minutes to the gentleman from Minnesota (Mr. STANGELAND).

Mr. STANGELAND. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the serious problem of abandoned and inactive hazardous chemical dump sites throughout the country has been well-documented and requires immediate corrective action by Congress in order to avoid irreparable harm to the environment and public health. National estimates indicate that up to 2,000 dumps may pose grave health hazards to a significant number of our citizens. In my home State of Minnesota, there are seven identified high-risk dumps which ranks Minnesota fifth among all States regarding the number of such high-risk hazardous dumps. A specific example of the pervasiveness of this problem can be found in Perham, Minn., located in my congressional district where 11 people were affected by arsenic poisoning from a small well in the early seventies. Other examples of groundwater contamination and pollution caused by improperly disposed chemicals and hazardous wastes may be found in almost every congressional district in America.

Such incidents graphically demonstrate the need for urgent action by the Congress to pass a strong bill to deal with one of the most serious environmental problems facing America during the 1980's. For these reasons, I rise to express my wholehearted support for the Hazardous Waste Containment Act, as amended by the Ways and Means Committee to increase the size of the cleanup fund to $1.2 billion and call for a 75-percent contribution by industry, with the remaining 25-percent portion coming from the Federal Government. In addition to provisions concerning the cleanup fund, this legislation will also provide standards for assessing liability, establish an inventory of hazardous waste sites, require monitoring of these sites and set up a priority list of the most dangerous dumps that require immediate attention.

By passing strong "superfund" legislation, Congress has the opportunity to belatedly address the problems of oil and chemical spills and toxic waste disposal. The people of this Nation rightfully demand action now. As elected representatives of the people, we cannot afford to delay implementing a national toxic waste policy any longer. I reiterate my support for the Ways and Means Committee amendment to double the size of the hazardous waste trust fund and increase industry's share to 75 percent. This is desperately needed and is certainly an appropriate area for Federal expenditures.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from Missouri (Mr. VOLKMER).

Mr. VOLKMER. Mr. Chairman, I, too, rise in support of H.R. 7020 and commend the Committee on Ways and Means, the Commerce Committee, and especially the gentleman from New Jersey (Mr. FLORIO) for their activities.

Controlling hazardous wastes is one of the most pressing problems currently facing our Nation. The amount of such waste that is generated every day is enormous and the danger it presents to society is great indeed. For too long we have ignored the problem of disposal of hazardous wastes and we are now paying the price for that inattention. Almost daily another clandestine chemical dump is discovered and another threat to our health and the environment is known.

I firmly believe, as do most Americans, that strong Federal action in this area is necessary. A recent survey showed that almost 93 percent of the American public thought that coping with hazardous wastes was a proper role for the Federal Government. The cost of cleanup is enormous, far beyond the capabilities of the average individual and even dwarf the capabilities of most States. In Missouri alone it is estimated that cleanup of known sites could cost up to $100 million. Federal assistance in this area, therefore, is necessary if we are to make our Earth safe again.

I, for one, think that at some point in the future the Federal Government is going to have to take action to prevent placing any more hazardous wastes in the ground. Incineration, recycling and chemical treatment technologies are developing so as to make the goal of isolating hazardous wastes from our environment a reality. We must do whatever we can to expedite the development and utilization of such technologies.

While this legislation does not directly prevent the improper dumping of wastes, I believe that it too is of critical importance. Creation of a superfund will lead to the prompt cleanup of hazardous dumps once discovered and thus will lessen the risk of harm to human beings. Once a dump site is discovered, nothing is more important than protecting the people around that site from its dangers. All too often, however, disputes over fault and liability preclude such rapid cleanup. Creation of the fund will allow prompt cleanup, with resolution of liability questions at a later date.

Because of the enormity of the problem that hazardous wastes present a large fund will be needed to cope with cleanup. Even a $1.2 billion fund will cover only the tip of the iceberg as far as complete cleanup of all waste sites is concerned. Furthermore, while I understand the claims of the chemical industry that society has benefited from their products and should pay the cost of cleaning up the wastes, I believe that the burden of cleanup must be placed on that industry. Placing the cost of cleanup on waste generating industries will prevent the externalization of costs for products developed by such industries and thus will make it clear to society what the true costs of such products are. Only if such a path is followed will the generation of hazardous wastes be controlled in the future.

Lastly, while this bill is primarily a cleanup mechanism, the inclusion of a strong liability section is a step forward. In my mind, imposition of strict standards regarding releases from hazardous waste sites will be a strong deterrent to improper storage of such wastes. The threat of protracted litigation and large financial liability will force waste disposers to implement more stringent safeguards for disposal in the future.

I applaud the efforts of the gentleman from New Jersey for the fine work he has done on this bill. This is much needed legislation and the country will be better off if it passes.

□ 1220

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. AMBRO).

Mr. AMBRO. Mr. Chairman, I rise in support of H.R. 7020, as reported by the Ways and Means Committee.

Throughout the United States, groundwater is being grossly contaminated by careless, uncontrolled dumping of hazardous wastes produced by a large number of industries. Yet, this same groundwater is the only source of drinking water for many millions of Americans. Residents of my district on Long Island are among those, being totally dependent on aquifers designated as "sole-source" by the U.S. Government in 1978. Sadly, these aquifers are already contaminated in some places and face further serious and long-term contamination by enormous amounts of hazardous chemicals which have been dumped for decades by uncaring industries in so-called sanitary landfills and in recently discovered dumpsites on industrial properties owned by these industries.

The dimensions of this threat have been delineated by a recent comprehensive report painstakingly compiled by the Toxic Chemicals Project of the New York Public Interest Research Group, Inc. released July 1980, entitled "Toxics on Tap," which is included, and I support this legislation. This report documents an alarming array of cases of hazardous waste dumping in disposal sites located mostly on the morainal spine of the island, which is the primary recharge zone of the aquifer system. Notable among the cases documented is long-term, continuous dumping of industrial wastes by the infamous Hooker Chemicals & Plastics Corp. In 1978 alone, Hooker dumped more than 1,600,000 pounds of industrial wastes in the Old Bethpage landfill in Nassau County. Despite Hooker's knowledge that these wastes were largely hazardous and constitute a threat to human health as they leach into the groundwater supply, there was no surveillance by the corporation of the site.

Although the worst offender on Long Island and throughout the Nation, Hooker is by no means alone. With few exceptions, the chemical industry as a whole has been guilty of a callous disregard for the health and very lives of citizens into whose ground water supplies they have dumped all manner of noxious substances.

Until recently, these same industrial polluters were asking this body to vote down a measure which will require them to assume a part of the fiscal burden of cleaning up the heritage of their blatant disregard for the health and safety of the citizens of this Nation. For us in this House to heed the erstwhile pleas of these magnates of pollution and vote against this bill which properly places

part of the burden on those who created this problem in the first place, would be to display an arrogant disregard for the lives of our constituents at least as callous as the actions and attitudes of the polluters themselves.

Mr. Chairman, I urge passage of the bill, H.R. 7020, and urgently request that my colleagues support the comprehensive approach offered us by the Committee on Ways and Means.

The report follows:

NASSAU COUNT ON-SITE LANDFILLS

The Cerro Wire and Cable Company located in Syosset, N.W. has three dumps on the ground of its Robbins Lane plan. None has been investigated thoroughly. Nevertheless, they are a major potential source of contamination, particularly heavy metal pollution. Cerro has been known to landfill highly toxic industrial sludges containing iron, nickel, chromium, copper, cadmium, lead, and zinc at the Syosset municipal landfill adjacent to its property. It is possible that similar wastes are buried on-site. For a description of the manufacturing processes used at this plant and a discussion of the kinds of hazardous waste they generate, refer to the State Pollutant Discharge Elimination System permit program section of this report. Refer also to the profile of the Syosset municipal landfill.

Grumman Aerospace Corporation in Bethpage, New York has operated an on-site dump since 1945. There has been no study investigating the problem of toxics leaching from this landfill. Nevertheless, the potential for intense groundwater contamination exists. The manufacture of aircraft equipment typically utilizes a wide variety of toxic compounds and generates many toxic wastes. Moreover, this plant's wastewater has been designated as a principal toxic discharge both for heavy metals and organic compounds.

The Hooker Chemical and Plastics Corporation operated at least four dumps at its New South road plant site in Hicksville, New York. Three were used between 1955 and 1974; the other dump's period of activity is unknown. These dumps, and the plant site in general, hold massive amounts of extremely toxic and carcinogenic materials. Consequently, they are a major source of groundwater pollution. Because of Hooker's involvement with investigations and lawsuits, specific information is available detailing the types and quantities of compounds landfilled on-site at its Long Island facility.

The Hooker Chemical and Plastics Corporation/Ruco Division's plant in Hicksville is a manufacturing operation characterized by Standard Industrial Classification (SIC) codes: 282 (plastics, materials and synthetic resins, synthetic rubber, synthetic and other manmade fibers, except glass), and 286 (industrial organic chemicals). From the data presented in appendix A, there is no doubt that these SIC industries generate many toxic and persistent wastes. The plant produces or has produced: polyesters, polyvinyl chloride (PVC) compounds, plasticisers, and polyurethanes through the industrial processes of esterification, polymerization, dry blending, pelletizing, and emulsification. Raw materials required for these processes include, but may not be limited to: organic dibasic acids, aliphatic alcohols, polyvinyl chloride resins, resin stabilisers and lubricants, diisocyanates, pigments, fatty acids, antioxidants, aromatic solvents, catalysts and water. The industrial wastes generated by the plant include, but again, may not be limited to: solvent flushes, latex flushes, filter cake, aqueous organics, resin dusts, boiler room runoff, tar heels, chemical packaging, a variety of laboratory chemicals, strip glycols waste, sludges and waste lube oil. Much of the hazardous wastes were landfilled in local dumps. The details of that disposal method are discussed in the profiles of individual sites. However, a great deal of hazardous waste was also buried or discharged on-site.

Any large industrial plant handling raw chemicals in bulk inevitably has spills, accidental releases, and leaks. Over a long period of time significant problems can develop. During the years 1951–1978, when the Ester plant was in operation, its truck loading areas became heavily contaminated with several toxic chemicals. Finished plasticizer and raw material alcohol leaked from blown-out truck lines and plant-bulk lines; these compounds included styrenebutadiene latex. Occasional tank overflows in this area have also been documented. Because for many years the area was not diked, rainfall caused direct leaching of the compounds. Also they were washed into the nearby backsump. The same kind of plasticizer contamination occurred at the East Rear Plant 1 trucking area.

There is also documented evidence of periodic spills of PCBs (polychlorinated biphenyls) at the plant. The Hicksville Pilot Plant therminol system originally used PCB therminol. Occasionally the system would malfunction, resulting in the discharge of PCB's from a relief pipe onto the ground. PCB's are extremely toxic and potentially carcinogenic chemicals. They are also among the most stable compounds known, with a half-life of more than 50 years. Released into the groundwater system, PCB's could eventually cause widspread contamination.

Before hundreds of drums of aqueous organic waste and filter cake were removed from the plant site, they were stored outdoors for long periods of time. This took place in two major holding areas north and south of Plant 2. Exposure to the elements, combined with the corrosive qualities of some of the drummed wastes, perforated many of the containers. Wastes which were released included: 2-ethyl-hexanol, perchloroethylene, waste plasticizer, solution urethane, dimethylformamide, methylethylketone, toluene and isopropyl alcohol.

These leaking drums of highly toxic compounds are a major source of air pollution and groundwater contamination. For example, perchloroethylene was shown to be carcinogenic in a 1977 National Cancer Institute study. Moreover, when perchloroethylene reacts with other pollutants in air, it can break down to form the World War I chemical warfare agent, phosgene. Phosgene exceeds the toxicity of chlorine gas ten-fold. Other documented waste releases were also hazardous. Dimethylformamide is exceptionally toxic; it is also specifically fetal toxic. It must also be noted that mixing together many kinds of toxic chemicals is capable of producing other compounds of unknown toxicity.

The plant's tower water system and main boiler are both sources of toxic pollution. Industrial cooling systems are frequently purged during operation. The effluents that result from "blow downs" are contaminated with a variety of treatment chemicals, such as algicides and anti-corrosion compounds. Hooker's first cooling tower was installed in 1956; four years later a second system went on-line. For the first twelve years of operation an extremely toxic anti-algae additive, potassium dichromate, was used. By 1968 regulatory pressure forced Hooker to switch to other treatment chemicals.

On the average over 10,000 gallons of "blow downs" per day and 3,600,000 gallons per year have flowed to the Pilot Plant sump. This discharge is known to have contained the following toxic additives: silicate, sodium hydroxide, hexametaphosphate, sodium salt of nitrilotriacetic acid, sodium lignosulfate, polyacrilate, phosphonate, zinc sulfate, Derma Brown G dye, diethylaminoethanol, hydrazine, sodium sulfite, disodium alginate, and minimal sodium salt of pentachlorophenol. The recharge or leaching of these compounds into the groundwater system is a significant pollution problem.

A variety of bulk toxic compounds have been buried on the plant site. They are major potential sources of pollution. In 1974, for example, three latex storage tanks containing solidified latex were filled with sand and buried between the plant's parking lot and the railroad right-of-way. Around 1962, a trailer truck with heavy encrustrations of solid styrene-butadiene latex was buried between the Plant 2 solvent tank farm and the polyvinyl chloride catalyst cold room. Neither site has been monitored for contamination problems.

Beginning in 1951 vast volumes of wastewater contaminated with carcinogenic and otherwise highly toxic materials were discharged into sand sumps on the plant's property. This direct recharge of pollution could potentially cause heavy deterioration of groundwater quality below the plant site.

Starting in 1951 four ester reactors were put into operation. These produced a wide variety of compounds, including: trimellitate, phthalate, and adipate plasticisers, maleate esters, fumarate esters, polyesters, caprylates, and pelargonates. These industrial processes generated huge volumes of highly polluted wastewater which typically contained 1 percent to 10 percent of mixed alcohols and glycols such as: 2-ethylhexanol, diethylene glycol, and ethylene glycol. It also contained significant quantities of organic acids, such as isophthalic, phthalic, trimellitic, and adipic, as well as methanol and perchloroethylene.[18] All of these compounds have toxic pollution potential.

Between 1951 and 1978 ester production increased from five million pounds per year to 26 million pounds per year. A conservative estimate of the pollution loads generated equals 50,000 pounds of organic wastes annually in the early years and 250,000 pounds annually towards the end. Until 1974 all these wastes were dumped directly into the Ester Plant sand sump. Recharge and leaching of wastes has not been monitored.

The toxicities of the various compounds used, produced and discharged by the Ester Plant are, in general, extremely hazardous. Trimellitate plasticizers, for example, were produced by reacting trimellitic anhydride with alcohols, such as 2-ethylhexanol. Trimellitic anhydride has been designated as an extremely toxic agent in the workplace by the National Institute of Occupational Safety and Health. Exposure to the compound can result in irritation of the pulmonary tract, noncardiac pulmonary edema, and immunological sensitization. Maleic anhydride is another highly toxic raw material whose vapors are extremely irritating. As has been described previously, perchloroethylene is potentially carcinogenic. The overall toxicity of these compounds and others that may have been formed inadvertently by the commined dumping practice is unknown.

Wastewater discharges from other production lines were also fed directly into groundwater sumps. Between 1956 and 1975 a polyvinyl chloride resin facility manufactured approximately ten million pounds per year of vinyl chloride homopolymer and vinyl chloride/vinyl acetate copolymer. The wastewater from this process contained approximately 0.1 per cent polyvinyl chloride resin solids, 600–1200 mg/l vinyl chloride, methocel, gelatin, cadium and barium soaps in mineral spirits, trichloroethylene and high levels of vinyl acetate. The average annual discharge volume per year totalled 2,000,000 gallons; all of it was dumped into sand sumps. For the 19 year term of operation this equals nearly 38,000,000 gallons of heavily polluted wastewater discharged directly into the aquifier system below the plant site.

This massive release of toxic pollution is

potentially devastating. A conservative estimate of the vinyl chloride fed into the sand sumps totals approximately 380,000 pounds. This compound is an extremely potent carcinogen, known to cause liver cancer in humans. It also causes Acroosteolysis, a degenerative disease of fingertip and hand bones. The other compounds are also highly toxic. Yet no regular surveillance of these sumps has been made. In all likelihood this is a major source of past and present groundwater pollution.

For 15 years between 1956 and 1975, one and sometimes two reactors produced styrene-butadiene latex. Their wastewaters contained styrene condensate, butadiene and rosin acid soaps. The entire discharge was disposed of on-site in sand sumps, generating another obvious source of groundwater pollution.

In short, the toxic manufacturing wastes that were landfilled and discharged on this site have created a massive potential contamination problem. Some of the deadliest and most non-biodegradable compounds known to science have been discharged directly into the aquifer system. Unquestionably, the potential for long-term leaching of toxic compounds also exists. The full magnitude of the problem is uncertain, however. Much data concerning the precise amounts and toxic qualities of on-site wastes is unavailable to the public. Before a precise determination of the area's hazard can be made, this information must be reviewed.

Eleven other industries in Nassau and Suffolk are known to be operating or to have operated on-site landfills. To date, a comprehensive study of the potential groundwater problems at each site has not been made. Nevertheless, there is presumptive evidence that most of the industries generate toxic compounds.

Liberty Industrial Finishing, located at Motor Avenue in Farmingdale, New York, operates a factory engaged in electroplating, plating, polishing, anodizing, and coloring, according to its 3471 Standard Industrial Classification code. This kind of manufacturing process is certain to generate toxic heavy metal sludges and organic chemical wastes. Its State Pollutant Discharge Elimination System permit designates it as a principal toxic discharge of heavy metals and organics.

Mergenthaler Linotype, located on Mergenthaler Drive in Plainview, New York operates a diversified machinery factory that is likely to generate a variety of toxic wastes, according to its 3553, 3573, and 3861 Standard Industrial Classification codes. Refer to Appendix A for a description of typical pollutants in 3861 Classified industrial wastewaters. The plant makes woodworking machinery, electronic computing equipment and photographic equipment and supplies. The wastewater discharge from this facility is regulated by the State Pollutant Discharge Elimination System permit program for toxic heavy metals and organic chemicals.

Servo Corporation of America, located at 111 New South Road in Hicksville, New York, operates an optical instruments and lens manufacturing business. According to its 3832 Standard Industrial Classification code, this plant is likely to generate a variety of hazardous wastes. Its wastewater discharge is regulated by the State Pollutant Discharge Elimination System permit program for toxic heavy metals.

Two other industries in Nassau County operate on-site dumps for which there is little information: Mattiace Chemical, located in Glenwood Landing and Photocircuits, located on Sea Cliff Avenue in Glen Cove. Both are potential sources of organic chemical wastes or heavy metal sludges.

SUFFOLK COUNTY ON-SITE LANDFILLS

At least six industries in Suffolk County are known to operate or to have operated on-site hazardous waste landfills. No comprehensive pollution study has been made of any of these sites. Nevertheless, there is reason to believe that they all are potential sources of groundwater contamination.

Dayton T. Brown, Inc., located on Church St. in Bohemia, New York, operates two dumps on its property. According to its 3444 Standard Industrial Classification number, this sheet metal plant is certain to generate toxic wastes. Its State Pollutant Discharge Elimination System permit characterizes it as a principal discharger of toxic heavy metals and organic chemicals.

Deutsch Relays, Inc., located at 65 Daly in East Northport, New York, has an on-site dump. According to its 3679 Standard Industrial Classification number, this plant generates toxic wastes. Appendix A details the pollutants that probably are in the wastewater discharge of this facility. Its State Pollutant Discharge Elimination System permit characterizes it as a principal discharger of toxic heavy metals and organic chemicals.

Fairchild Republic Aircraft Company, located at Broad Hollow Road in Farmingdale, New York, has a dump on its plant property. As a large manufacturer of aircraft engines and engine parts, according to its 3724 Standard Industrial Classification number, this plant is certain to generate toxic wastes. Its State Pollutant Discharge Elimination System permit characterizes the factory as a principal discharger of toxic heavy metals.

Jameco Industries, Inc., located at 248 Wyandach Ave. in Wyandach, New York, has two dumps on its property. This plant manufactures a wide range of electrical and metal products. According to the following Standard Industrial Classification numbers, the facility produces: 3599-machinery and parts, except electrical, not elsewhere classified; 3432-plumbing fixture fittings and trim (brass goods); 3629-electrical industrial apparatus, not elsewhere classified. All these industrial processes generate toxic wastes. The facility's State Pollutant Discharge Elimination System permit characterizes the plant as a principal wastewater discharger of toxic heavy metals and organic chemicals.

Two other Suffolk County industries have on-site dumps. Haseltine Corporation on Cuba Hill Road in Greenlawn, New York, has a single landfill. Edwin B. Stimpson, located at 900 Sylvan Avenue in Bayport, New York, has two landfills. The pollution potential of these sites is unknown.

NASSAU COUNTY NON-INDUSTRIAL LANDFILLS

Table I outlines non-industrial landfills in Nassau County. Three landfills in Nassau County have received combined industrial, municipal, and hazardous wastes. They are Old Bethpage, North Hempstead, and Syosset municipal landfills.

The Town of North Hempstead landfill, at Denton Avenue in New Hyde Park received primarily incinerator residues while it was active from 1951 to 1974. This site has not been comprehensively studied as a source of groundwater contamination.

The Old Bethpage Landfill, located at Winding Road and Sweet Hollow Road in Old Bethpage, New York, has been in operation since 1957. For ten years, this dump was the primary landfill used by the Hooker Chemicals and Plastics Corporation/RUCO Division plant in Hicksville. During that time, it became one of the greatest hazards to environmental and groundwater quality on Long Island.

According to an internal Hooker memo prepared in the days immediately following the Love Canal emergency, the Bethpage Municipal Landfill was described as follows:

Used by Hooker plant since 1968 for disposal of our liquid and solid wastes including: drums of waste filter cake (mixture of celite, decolorizing carbon spent toluene solfonic acid catalyst, bicarbonate, trimellitate plasticiser, traces of free 2-ethylhexanol); drums of solution urethane wastes (urethane polymer, solvents such as toluene, DMF, MEK isopropyl alcohol); waste alcohol and glycol "strips" (mixture of 2-ethylhexanol and other similar alcohols, glycols such as ethylene glycol, perchloroethylene). Also some PCB therminol wastes, urethane latex waste water. Also solid waste such as emptied TMA bags, emptied adipic bags, emptied phthalic bags, thousands of wound cartridge filter elements filled with polyester. Also pallets, PVC floor sweeps, pallets, cardboard boxes, vinyl compound floor sweepings, PVC sump scrapings (containing PVC, vinyl chloride, vinyl acetate, trichloroethylene, barium and cadmium soap stabilisers), drums, urethane latex coagulum, TPU waste, waste organic heels in drums including polyester, solution urethane, monoester. Also spent lube oils (300 gallons/year).

Time of use 1968–1978. At maximum use (1978) we are putting out an estimated 1-600,000 lbs. per year mixed wastes, solid plus liquid, into the Bethpage municipal landfill.

No segregation at this municipal dump. No surveillance by Hooker.

TABLE 1.—NASSAU COUNTY LANDFILLS AND COMPOSTING SITES

Town: Nassau County Health Department I.D.	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
Hempstead:					
108	30S02	Garden City (landfill and compost), Cherry Valley Rd.—Incinerator residue	X		12.0
114		Hempstead Village, Coes Neck Rd., Baldwin—Incinerator residue		X	100.0
120		Lynbrook, Ocean Ave.—All	X	(Old dump) compost	3.0
123	30S11	Warren Bros. (private), Coes Neck Rd., Baldwin—Rubble		X (1976)	32.0
131	30S06	Oceanside, Long Beach Rd.—Mixed municipal	X		192.0
132	30S05	Merrick, Merrick Rd.—Mixed municipal	X		168.0
140		Valley Stream State Park, Brush and trash	X		
141	30S03	Hempstead Lake State Park, Brush and trash	X		2.0
142	30S04	Jones Beach State Park, Brush and trash	X		4.0
143	30S18	Roosevelt Raceway, Trash and agricultural	X		.5
144		Lawrence		(Old dump) X (1950) compost	
145		Sanitary District No. 1, Bay Blvd., Inwood—Incinerator residue	X	Transfer station	5.0
146		Freeport, Albany Ave., Freeport—Incinerator residue	X	Transfer station (1955)	50.0
		Valley Stream No. 1, 200 Arlington Ave		X (1949)	
		Valley Stream No. 2, Hungry Harbor Rd		X (1962)	

Town: Nassau County Health Department I.D.	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
North Hempstead:					
310		Denton Ave. (New Hyde Park), Denton Ave.—Incinerator residue		Transfer station (1974)	37.0
315	30S09	Mineola, Westbury Ave. and 2d St.—Rubbish/demolition	X		21.0
316	30S08	Nassau County DPW, West Shore Rd.—Grass and leaves			25.0
321		Great Neck Estates		X Compost	
333		Roslyn L-1, West Shore Rd.—Incinerator residue		X (1974)	23.0
334		Roslyn L-2, West Shore Rd.—Incinerator residue		X (1972)	8.0
335		Roslyn L-3, West Shore Rd.—Incinerator residue		X (1972)	7.0
336		TNH L-4 (lined with PVC), West Shore Rd.—Mixed municipal	X		51.0
	30S10	Port Washington, Port Washington	X		
Oyster Bay:					
211		Glen Cove		Transfer station	
217	30S14	NYS Planting Fields, Brookville—Agricultural	X		1.0
222	30S12	AGO (Private), West John St., Hicksville—Rubble	X		10.0
224	30S13	Garvies Point, Glen Cove—Sewage grit		X (1976)	1.0
225	30S15	Old Bethpage, Winding Rd.—Mixed municipal	X		50.0
226		Plainview		Proposed	65.0
227	30S01	Duffy Ave., Wantagh Pkwy, and Country Rd.—Agricultural			5.0
228	30S19	Beechwood, Old Tappan Rd.—Agricultural			3.0
229		Bethpage State Park—Agricultural	X		2.0
230		Syosset, Miller Place—Industrial wastes, mixed municipal		X (1975) compost	50.0

Source: New York State Department of Environmental Conservation, Region I Resource Conservation and Recovery Act Inventory, Nassau-Suffolk Regional Planning Board 208-K Study.

According to 1978 calculations over 800,000 pounds per year of industrial waste was dumped by Hooker at this site. Approximately 60 percent of that material are the following chemicals:

	Pounds year
Trimellitic anhydride	10,000
Adipic acid	27,000
Phthalic anhydride	300
Isophthalic anhydride	1,000
Maleic anhydride	1,000
PVC	400
Kane Ace	7,000
26TM and other plasticizers	240,000
Polyester	7,600
Speedi-Dri mixed organics	16,000
PVC Compounds (90 percent PVC by content)	165,000
Spent Lub Oil	3,000
Total	478,300

A description of the individual processes used to generate these wastes and the toxic effects of the individual compounds is found in the Hooker Hicksville plant profile in the hazardous waste section of this report.

The landfill is not designed in any way to prevent the recharge or leaching of toxic pollutants. Consequently, this landfill represents a severe environmental hazard. Toxic chemical groundwater contamination is not monitored at the site. Other industries may also have discharged toxic wastes at this dump.

The Syosset municipal landfill was operated by the Town of Oyster Bay between 1936 and 1975.[2] During that time, vast amounts of toxic and hazardous waste were landfilled there. In fact, the site holds such huge volumes of deadly chemicals that it must be considered at this time as one of the most potentially devastating sources of toxic pollution on Long Island.

The landfill occupies approximately 40 acres of land on a site immediately north of the Long Island Expressway. It is bounded on the south by Miller Place, by Cerro Wire and Cable Corporation to the southwest, by the Long Island Railroad to the west, and by a large residential neighborhood to the north and east. An abandoned incinerator and an unused sludge processing unit are located on-site. Over 4,000 people live in 1,200 suburban homes located within 1.25 mile radius of the dump. Within 100 feet of its eastern border there are two schools. Furthermore, in excess of 300,000 people per day are calculated to be potentially affected by the dump as they pass within 150 feet of it on the Long Island Expressway. Beneath the landfill at a depth of 70 feet, lies the groundwater table and 5,000 feet away are drinking water supply wells for the adjacent town of Syosset where over 40,000 people reside.

A staggering volume of wastes was dumped into this landfill. Hundreds of millions of pounds of domestically-generated waste, septic tank sludges, and hazardous wastes are buried in this site. Septic tank sludges, for example, were disposed of in the landfill for twenty eight years at a rate of approximately 18,270,000 gallons per year. These wastes were dumped into an open pit. In 1967, this practice was finally halted when a sludge processing unit went into use. The analysis data presented in Table II indicate processed sludge contained high levels of lead, chloride, phenols, iron, zinc, copper, and chromium. All of these toxic compounds have significant pollution potential.

TABLE II.—TOWN OF OYSTER BAY SCAVENGER WASTE TREATMENT PLANT EFFLUENT ANALYSIS,[1] NASSAU COUNTY HEALTH DEPARTMENT

Constituent	Plant effluent Mar. 5, 1974	Plant effluent June 26, 1974	Filtrate Mar. 5, [2] 1974
pH	11.2	9.6	
Manganese	.10	<.05	0.468
Iron	1.46	.62	49.2
Chloride	260.0		
Total dissolved solids		2,082	
Chromium (total)	.04	2.34	3.18
Chromium (hexavalent)	<.01	2.17	
Silver	<.05		.6
Copper	.18	1.10	22.8
Zinc	.37	3.20	18.0
Lead	.13	.04	.288
Cadmium	<.005	<.005	.6
Phenols	.296	.2	
Sulfate	50		
Cyanide	.003	<.007	
Nickel	.24	.29	2.8
Mercury		<.0005	.0012

[1] This shows the metal constituents in the plant and filtrate effluent. Significant are the pH, TDS, chromium (total and hexavalent), copper, zinc, and phenols.
[2] Analyses performed by New York State Department of Health

Sometime during the late 1940's or early 1950's, the Cerro Wire and Cable Corporation began disposing of highly toxic and concentrated sludges at the dump, at a rate of approximately 670,000 pounds per year. This practice has never been studied in detail, but there is reason to conclude that these industrial wastes are a major pollution hazard. Table III indicates that extremely high concentrations of toxic heavy metals were found in the sludges Cerro Wire and Cable Corporation dumped. These wastes are capable of migrating within groundwater systems and causing widespread pollution problems. Refer to the profiles on Cerro Wire and Cable Corporation in the hazardous waste dump section of this chapter and the State Pollutant Discharge Elimination System direct discharger chapter for a description of the plant's industrial processes and the toxic effects of pollutants they are known to, or are likely to, discharge.

TABLE III.—*Cerro Wire and Cable Corp. industrial sludge analysis*[1]

(By Nassau County Health Department—Date of analysis: Oct. 8, 1974)

Constituent:	Value[2]
Solids (in percent)	20.3
Moisture (in percent)	79.7
Volatiles (in percent)	17.9
Iron (total)	45,000.0
Copper	32,000.0
Zinc	95,000.0
Lead	1,800.0
Cadmium	5.8
Chromium (total)	212.5
Nickel	35.0

[1] These analyses indicate the significant amount of metals present in the sludge from Cerro Wire and Cable Corporation.
[2] All values are expressed as mg/kg unless otherwise noted.

Columbia Corrugated Container Corporation is also known to have discharged hazardous wastes at this site. Table IV indicates that its sludge was also highly contaminated with heavy metals, though the levels are uniformly below the levels of pollutants in Cerro Wire and Cable Corporation's wastes. An estimated 108,000 gallons per day were dumped. These contaminated sludges are a major source of potential groundwater pollution. For a discusion of the industrial processes used at this plant, refer to its profile in the State Pollutant Discharge Elimination System direct discharger chapter.

TABLE IV.—COLUMBIA CORRUGATED CONTAINER CORP., INDUSTRIAL SLUDGE ANALYSIS,[1] NASSAU COUNTY HEALTH DEPARTMENT

Constituent	Date of analysis: Dec. 5, 1974 Dried sample	Dec. 5, 1974 Liquid sample	Jan. 13, 1975, dried sample[2]
Chromium (total)	22.0	3.1	42.1
Copper	126.0	1.77	59.4
Cadmium	2.5	.07	.58
Nickel	9.5	.17	2.3
Zinc	58.0	3.2	88.8
Lead	300.0	15.2	277.0
Iron	336.0	16.6	265.0
Titanium			115.0
Manganese			1.15
Magnesium			19.6

[1] This represents the relative contribution of slude from Columbia on the Syosset site. Concentrations are much lower than those from Cerro.
[2] Analyses performed by consultant for Columbia.

Note: Dried samples expressed as mg/kg. Liquid sample expressed as mg/l.

The largest quantity of hazardous wastes discharged in the Syosset Municipal landfill came from the Hooker Chemicals and Plastics/RUCO Division plant in Hicksville, New York. This landfill was used exclusively by Hooker for hazardous wastes disposal during the period 1946–1968. The same internal Hooker memo that characterized the Old Bethpage site described the Syosset landfill in this way:

Over the period 1946–1968, Hicksville Plant sent any and all solid and liquid waste in drum quantities to this facility. Also tank trucks of Ester Plant wastes from our concrete pits (alcohols, glycols, perchloroethylene, latex waste material and SBR).

Drummed waste would include alcohol/water/perchlor, purified latex, coagulated latex, alum, filter cake, PVC sludge, PVC floor scrapings, and reactor scrapings, vinyl chloride recovery still bottoms, spent lube oils, about 300 gallons/year, and waste PCB therminol waste. Also drums of waste alcohol and glycol "strips" (mixture of 2-ethylhexanol and other similar alcohols, glycols such as ethylene glycol, perchloroethylene). Also some PCB therminol wastes. Solid wastes including 55 gallon drums, 5 gallon pails, pallets, 50 lb. bags, gaylords, cardboard drums, cheesecloth with latex coagulum, emptied PVC bags, emptied TMA bags, emptied adipic bags, emptied phthalic bags, emptied maleic bags. Also drums of waste filter cake (mixture of celite, decolorizing carbon, spent toluene solfonic acid catalyst, bicarbonate, and trimellitate plasticizer). Also pallets, cardboard boxes, vinyl compound floor sweepings. Also PVC sump scrapings (combined PVC, vinyl chloride, vinyl acetate, trichloroethylene, barium and cadmium soap stabilizers). Also organic heels in drums.

Time of use of this municipal dump facility 1946–1968. Use was lower until 1952–1955 and then heavier thereafter. At maximum output we disposed of in estimated 800,000 lbs./year of total solid and liquid waste. This includes 10,000 gallons/year liquid waste (in bulk) from our annual pump-out of our concrete pits. Solids were trucked away by our own licensed dump truck. Liquid wastes (10,000 gallons per year) were hauled away by McGuinnigle. We discontinued using the Syosset dump in 1968. We use no surveillance or testing on the dump.

We had several complaints from the municipal operations' personnel regarding our materials: messiness from broken SBR latex drums; acidic odors from acetic acid wastes.

There was no segregation at the Syosset landfill of Hooker wastes from other wastes. The landfill personnel did segregate liquid from solid wastes in two general areas of the dump.

Refer to the Hicksville plant's hazardous waste profile for a description of the manufacturing processes that generated these wastes and a summary of the toxic effects some of them are capable of producing.

The Syosset Municipal Landfill is a huge source of potential environmental contamination. There is no doubt that massive amounts of extremely carcinogenic and otherwise toxic pollutants have been disposed of unsafely in this dump. Table V indicates extremely high levels of toxic heavy metals are present in the landfill. These pollutants are capable of migrating through the groundwater system. There is evidence that groundwater contamination has already developed from the leaching of some of these toxic compounds. Whether widespread pollution is taking place is uncertain, due to the total absence of adequate monitoring at the site. Consequently, the full range of problems this dump poses to public health and the environment remains a mystery.

TABLE V.—SYOSSET LANDFILL, TOWN OF OYSTER BAY INDUSTRIAL SLUDGE ANALYSIS,[1] NASSAU COUNTY HEALTH DEPARTMENT, AUG. 14, 1974

Constituent	Values[2] Sample 2	Sample 3	Sample 4	Sample 5
Moisture (percent)	23.9	51.0	68.0	32.3
Volatiles (percent)	26.9	27.0	26.4	33.1
Solids (percent)	76.1	49.0	32.0	67.7
Iron	41,000	69,000	73,700	71,500
Copper	45,750	17,600	44,500	27,400
Zinc	90,000	130,000	105,000	105,000
Lead	3,190	3,885	3,830	7,260
Cadmium	6.40	6.35	10.75	8.05
Chromium	335	225	225	295
Nickel	45.5	46.0	51.0	52.0

[1] Sludge samples collected at 4 locations on the Syosset site indicate significantly high conce trations of iron, copper, zinc, lead, cadmium, chromium, and nickel. The sampling locations are in the area primarily used by Cerro Wire & Cable Corp.
[2] All values are expressed as mg/kg unless otherwise noted.

Only three critical facts are not in doubt: 1) The dump is located precisely in the deep recharge zone of the Long Island aquifer system. Consequently pollution discharged from the landfill would cause a maximum amount of irreparable damage to the water supply. 2) While the dump is known to hold massive amounts of some of the deadliest substances known to exist, a comprehensive study of its environmental impact has never been made. 3) Unless the landfill is made secure, environmental contamination will increase in the future. The health of hundreds of thousands of people could be affected. In conclusion, the securing of this dump must immediately become a top environmental priority for the Long Island community.

SUFFOLK COUNTY NON-INDUSTRIAL LANDFILLS

Table VI outlines the non-industrial landfills in Suffolk County. Many landfills in Suffolk County are also sources of potential toxic chemical groundwater contamination. Unfortunately, data detailing the types and quantities of industrial and hazardous wastes landfilled in Suffolk County dumps is presently unavailable. However, grandwater contamination caused by two landfills in Suffolk County has been studied jointly by the United States Geological Survey and the Suffolk County Department of Environmental Control. The Babylon landfill, in operation since 1947, is the primary refuse disposal site for approximately 200,000 people. The landfill covered 125 acres and contained an estimated 2.3 million cubic yards of refuse as of 1973. Combustible waste has been incinerated at this site since it began operation. From 1968 to 1972, this amounted to an average of 368 tons per day. Non-combustible solid waste is dumped directly into the landfill. Scavenger waste from pumped out septic tanks has also been disposed of in vast amounts at this site since 1966. Though an accurate assessment of the total amount discharged into the dump has not been made, in 1972, an average of 40,000 gallons per day were handled. Scavenger waste has also been dumped directly on top of the huge rubbish piles.

The plume of leachate extending from the dump has been traced in the Upper Glacial aquifer. From a point at the earliest pile of rubbish, located in the northwest corner of the site, a tongue-shaped plume flows southward over 10,000 feet. It is approximately 2,000 feet wide at the landfill and tapers toward its southern tip. The plume is 70 feet deep and occupies the full thickness of the Upper Glacial aquifer. It contains an estimated 2 billion gallons of contaminated water.

The second landfill that was studied is the Town of Islip dump, located in Sayville. This landfill is one of three sites used to dispose of solid waste generated by a local population of 290,000 people. It holds an estimated 0.8 million cubic yards of material. The site was originally a sand and gravel pit. Refuse presently extends from the bottom of the pit, located 30 feet below the land surface, to an approximate height of 16 feet above land. In 1973, refuse covered 17 acres. This dump is known to contain several thousand gallons of perchloroethylene.

The Islip dump contains roughly one half the amount of solid waste found in the Babylon landfill. Combustible materials have been incinerated at the site since it began operation. Between 1970 and 1972, an average of 151 tons of refuse was incinerated per day. Scavenger wastes were also disposed of at this site, but this practice was discontinued. A total assessment of the amount and kinds of wastes buried in this landfill has not been made.

The leachate plume extending from this dump is smaller and not as uniformly shaped as the Babylon landfill's plume. It is approximately 5,000 feet long. At a width of 1200 feet thick it is 170 feet thick and at a wide of 660 feet it is 100 feet thick. The entire plume is estimated to contain approximately 1,000,000,000 gallons of contaminated water, approximately one half the amount calculated to be in the Babylon dump's plume.

TABLE VI.—SUFFOLK COUNTY LANDFILLS AND COMPOSTING SITES

Town	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
Babylon		West Babylon, Glean St. and Hall St.—Mixed municipal	X		63
	52S01	Babylon, Babylon			
Bay Shore	52S19	Hubbard Sand and Gravel, Bay Shore			
Brentwood	52S23	Pilgrim State, Brentwood			
Brookhaven		Holtsville, Blue Point Rd		X	75
		Brookhaven (lined with PVC), Horseblock Rd.—Mixed municipal	X		200
		Center Moriches			
		Manorville	X	Compost	
		Pine Rd., Pine Rd			
	52S20	Brookhaven Lab			
East Hampton		Acabonack Rd., between Acabonack and Spring—Mixed municipal	X		40
		Acabonack Rd. (new), Acabonack Rd.—Brush	X		18
		Bull Path Rd., Bull Path Rd.—Agricultural and demolition	X		4
		Hither Hills, Mountauk Route 27—Mixed municipal	X		30
Hauppauge	52S07	Blydenburgh Rd., Hauppauge			
	52S25	East Hampton, East Hampton			
	52S04	Montauk, East Hampton			
	52S04	Fire Place Rd., East Hampton			

Town	N.Y.S. Department of Environmental Conservation facility No.	Name and location—Type of refuse	Open	Closed	Size (acres)
Huntington		East Northport, Town Line East—Mixed municipal	X		65
	52S04	Huntington, Huntington			
Islip		Sayville, Lincoln Ave.—Incinerator residue	X		20
		Hauppauge, Blydenburg Rd.—Mixed municipal	X		65
		Sonia, Sonia Rd., Brentwood—Brush and leaves	X	Transfer station	45
		Saltaire			
		Point-o-Woods			
Riverhead		Riverhead, Youngs Ave.—Mixed municipal	X		100
Shelter Island		Shelter Island, Bowditch and Montauk Rds.—Mixed municipal	X		20
Smithtown		Kings Park, Old Northport and Indian Head Rds.—Mixed municipal	X		90
		Middle Country Rd., Middle Country Rd. and Southern Blvd		X	22
	52S21	Smithtown, Kings Park			
	52S24	Star Sand & Gravel, Kings Park			
South Hampton		North Sea, Major Paths and Great Hill Rd.—Mixed municipal	X		125
		West Hampton Beach at Quogue, N.Y. 27 and Old Country Rd.—Mixed municipal	X		15
		Sag Harbor, Bridgehampton Turnpike and Laurel Lane—Brush and cardboard		Transfer station	10
		Hampton Baus, Jackson Ave. and Old Riverhead Rd.—Brush and bulky	X	Transfer station	25
		Quogue, Old Country Rd. and Riverhead Rd		X	12
		Eastport, Northway Lane and Old Country Rd	X	Transfer station	10
		East Quogue	X		
Southold		Southold, North Rd. between Cox and Depot Lanes	X		
Fishers I		Fishers Island	X		35

Source: New York State Department of Environmental Conservation, Region I Resource Conservation and Recovery Act Inventory, Nassau-Suffolk Regional Planning Board 208-K Study.

Both of these dumps are known sources of groundwater contamination. Both are also known to contain vast amounts of potentially toxic waste. Moreover, although they are already causing groundwater contamination, future pollution could increase dramatically as massive volumes of contaminated leachate continue to disperse into broad areas of the aquifer system. The data from the investigation of the dispersal of the leachate plumes suggests the amount of waste at landfill sites is more closely related to the length and volume of the plume than the age of the dump. As larger amounts of waste are landfilled, the potential for pollution increases commensurately. Thus, there is clear scientific evidence that pollution releases to Long Island's sensitive groundwater system will increase dramatically in the future.

CONCLUSION

The landfills outlined in Tables I and VI are potential sources of toxic groundwater contamination to the Long Island aquifer system. Even dumps that are generally believed to contain only non-hazardous refuse discharge some toxic chemicals and there is also good reason to presume that most, if not all, landfills on Long Island also hold extremely toxic industrial and hazardous wastes.

Hundreds of industries on Long Island generate highly toxic wastes. The New York State Department of Environmental Conservation conducted a statewide survey in 1979 that ranked Suffolk and Nassau Counties eleventh and fourteenth, respectively, among the state's leading hazardous waste generating counties. A total of 155 waste streams in Suffolk County were shown to generate 22,575 tons of hazardous waste; 5,388,472 gallons of liquid waste; and 132 tons of solid waste. A total of 123 waste streams in Nassau County were shown to generate 18,264 tons of hazardous waste; 3,206,870 gallons of liquid waste; and 4,932 tons of solid waste during the same period. The individual breakdown of the wastes of 160 industries is presented in Table VII.

TABLE VII.—HAZARDOUS WASTE GENERATION BY COUNTY BY TYPE

	Type and description	Quantity Gallons	Quantity Tons
Nassau:			
101	Acid solutions—Heavy metals	112,000	0
103	Acid solutions—Other metals	122,320	0
105	Other acid solutions	191,370	0
106	Spent etchant	14,400	0
112	Alkali solution—Heavy metals	0	25
117	Spent etchant	268,220	0
121	Nonsolvent inorganic liquid	400	0
301	Halogen solvent—Heavy metals	2,160	0
303	Other halogenated solvents	5,100	0
304	Nonhalogenated solvents	59,000	0
310	Mixture of solvents	83,635	0
314	Other organic liquids	16,000	0
504	Drag-out sludge	11,800	0
506	Filter press sludge or solid	0	95
508	Heavy metal sludge	335,530	1,312
509	Ink solids and sludges	8,580	0
511	Metal finishing sludge	1,200	1
513	Paint solids and sludges	4,875	0
522	Wastewater treatment sludre	409,450	0
602	Dust collector waste	0	53
609	Contaminated containers	0	1,300
612	Nonemulsified waste oil	23,980	0
613	Emulsified oil	1,835	0
615	Epoxy waste	60	0
619	Halogenated still bottoms	13,200	0
620	Halogenated tank residue	700	0
628	Lab chemicals	1,530	0
630	Nonhalogenated tank residue	208,900	0
633	Off-spec pharmaceuticals	0	5
636	Photographic chemical waste	99,040	420
650	Rinse water and wastewaters	1,105,000	0
651	Mixed oils	36,200	0
653	Other mixed waste	70,385	960
655	Lab animals and human blood	0	4
657	Obsolete or rejected goods	0	609
661	Aluminum or tin dross	0	150
	Total county	3,206,870	4,933
Suffolk:			
101	Acid solutions—Heavy metals	71,600	0
103	Acid solutions—other metals	743	0
105	Other acid solutions	13,787	0
106	Spent etchant	4,800	0
112	Alkali solution—Heavy metals	28,400	0
114	Alkali solution—Other metals	9,600	0
116	Other alkaline solutions	24,575	0
117	Spent etchant	20,480	0
121	Nonsolvent inorganic liquid	220	0
122	Inorganic liquid—Heavy metal	2,600	0
302	Halogen solvent—Other metals	2,000	0
303	Other halogenated solvents	5,069	0
304	Nonhalogenated solvents	15,790	0
310	Mixture of solvents	104,530	0
314	Other organic liquids	660	0
317	Halogenated organic solids	65	0
502	Degreasing sludge	8,500	0
508	Heavy metal sludge	235,136	0
509	Ink solids and sludges	12,000	0
513	Paint solids and sludges	750	0
522	Wastewater treatment sludge	635	0
602	Dust collector waste	0	12
612	Nonemulsified waste oil	45,900	0
613	Emulsified oil	139,500	0
617	Fly ash	0	2
619	Halogenated still bottoms	65	0
628	Lab chemicals	660	0
630	Nonhalogenated tank residue	28,000	0
633	Off-spec pharmaceuticals	0	1
635	Mineral oil	660	0
636	Photographic chemical waste	4,875	90
636	Scrap batteries	0	27
641	Solder flux or wave oil	110	0
650	Rinse water and wastewaters	4,522,310	0
653	Other mixed waste	61,812	0
657	Obsolete or rejected goods	22,640	0
	Total county	5,388,472	132

Source: New York State Department of Environmental Conservation (1979). "An inventory of Industrial Hazardous Waste Generation in New York State."

Moreover, there is a great deal more evidence indicating manufacturers on Long Island use and generate toxic chemicals. The industrial chemical survey discussed previously in this report shows that vast amounts of toxic raw materials are used annually. The Standard Industrial Classification codes of many Long Island industries also prove that a wide range of industrial processes are in operation that are certain to generate hazardous wastes. Therefore, the only critical unanswered question is where all the toxic chemical wastes generated over the years on Long Island have gone.

One fact is certain. There are no secure hazardous waste landfills anywhere on Long Island. Consequently, it is known that industries in Nassau and Suffolk Counties did not dump their manufacturing wastes into a single site. Some wastes were buried at sea, but hazardous residues landfilled over the course of decades probably lie buried at locations scattered all over both Nassau and Suffolk Counties and are leaching into groundwater. This is known to be the case to Old Bethpage and Syosset landfills where industrial discharge data has documented dumping. Little information exists regarding dumping at other sites, but there is no evidence indicating that they are not similarly contaminated.

It is a possibility that without a rigorous hazardous waste control program in effect, industries may have dumped indiscriminantly into many of Long Island's landfills. For example, a dumpsite investigation team from the Environmental Protection Agency interviewed the Superintendent of Environmental

Control for the Town of Oyster Bay during a study of the Syosset municipal dump. According to the EPA's report, the superintendent stated that "he knew nothing about alleged dumping of their (Hooker Chemical Company) wastes at the Syosset site." He was also reported to say "that landfill personnel did not question the source of incoming waste . . ." Later, it was learned that Hooker Chemical Company dumped its Wastes at the site for 22 years. Their rate of dumping ultimately reached an estimated total of 562.9 metric tons/year. In the past, many of Long Island's dumps have been loosely run, in a similar haphazard fashion.

Landfills on Long Island probably contain hazardous industrial waste, but they are also known to hold other kinds of toxic wastes. For example, over 20 million gallons of septic tanks sludges are incinerated or landfilled annually in Nassau and Suffolk Counties. These sludges are typically contaminated with a host of chemical residues. Perhaps the most toxic are the chemicals found in cesspool cleaning products. These solutions are known to contain high concentrations of benzene, methylene chloride, and other chemicals of toxic concern. Their application to septic systems results in widespread groundwater pollution and eventual contamination of septic tank sludges. Hundreds of thousands of gallons of these products are estimated to be used annually on Long Island. Landfilled in dumps, these chemicals could be a major cause of groundwater pollution.

In short, toxic solid wastes have not been managed well on Long Island. Large areas of land have been turned into dumps. Piles of waste, hundreds of feet tall, are located in the island's most environmentally sensitive areas. None of them are constructed to contain toxic wastes securely over the long run, despite the necessity of total security. Already dump problems exist. Some sites have been identified as sources of toxic chemical groundwater contamination. Other dumps are potential Love Canals; several sites containing thousands of tons of toxic and hazardous waste are situated in the vicinity of homes. An overall study of the island-wide solid waste disposal problem desperately needs to be made, for without such a study sound groundwater quality management will be difficult or impossible to accomplish.

There is no doubt that groundwater quality in areas of Nassau and Suffolk counties is jeopardized by intense contamination emanating from numerous landfills. For decades, domestic, industrial and hazardous wastes have been disposed of indiscriminately, without adequate concern for strict environmental safeguards. These wastes contain some of the deadliest toxic compounds known to exist. Nearly all of the landfills are incapable of holding these wastes securely in the short run, much less for the centuries ahead. Consequently, water quality deterioration is guaranteed to increase. Extremely toxic and persistent chemicals are already known to be flowing through sandy soils that optimize groundwater dispersal. That problem will only be worse in the future. Theoretical estimates predict that a typical 100-acre landfill located in characteristic Long Island soil conditions could generate 40 million gallons of contaminated leachate per year. In all, there are hundreds of acres of landfills on Long Island.

At present, environmental institutions are wholly incapable of adequately managing the landfill problems on Long Island. A comprehensive study of the threats these dumps pose to public health and the environment has never been made. Until such a study is completed, it will be virtually impossible to protect drinking water supplies and public health properly. Meanwhile, the deterioration of Long Island's sole source of drinking water will continue.

Mr. CONABLE. Mr Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. MARTIN).

Mr. MARTIN. Mr. Chairman, I thank the gentleman for yielding.

There are, of course, many chemical substances and processes which are known from scientific evidence to present a toxic hazard to humans exposed to them. For some, the actual hazard is very low because the potency and the exposure is very low and controlled.

With carcinogens, those substances the exposure to which might increase the risk of cancer, there is a greater concern because in some instances a small exposure may be harmful.

The International Agency for Research on Cancer has published a number of monographs evaluating the evidence of carcinogenicity. Because during the debate today there have been several references to compounds about which there is some question that they may or may not be carcinogenic, I thought it would be helpful to submit for the RECORD, as I will do when we return to the full House of Representatives the latest evaluation of this question. I will report on the September 1979 monograph on the evaluation of the carcinogenic risks of chemicals to humans prepared by the International Agency for Research on Cancer.

Mr. Chairman, in the excerpts which I will submit for the RECORD there will be a summary of the method that they use for evaluation of the various papers which have been published in the scientific literature and which have been subjected to peer review and for which there is general agreement on the validity of those studies; and a table and a summary of their findings with regard to a list of substances, some of which they show have only evidence which is based on animal testing, others which they will show there is evidence based on both animal testing and on human epidemiology and others for which they find no substantive evidence of carcinogenicity.

I thought it would be helpful to members of the committee and the House to have that summary at their disposal.

I yield back my time.

Mr. ROSTENKOWSKI. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. CONABLE. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Illinois (Mr. FINDLEY).

Mr. FINDLEY. Mr. Chairman, I rise in support and urge passage of H.R. 7020, the Hazardous Waste Containment Act of 1980.

After having listened to accounts of the tragic and senseless disposal of hundreds of thousands of pounds of hazardous chemical wastes in poorly designed and ill-conceived waste dumps, it is now time for Congress to act with decisiveness to deal with this problem.

Through technology and man's ingenuity, we create over 1,000 new chemical compounds a year. At last count, 50,000 different chemical compounds were on the market to be used for producing everything from fertilizer to makeup. Yet the U.S. Environmental Protection Agency has classified almost 35,000 of these chemicals as being either definitely or potentially hazardous to human health. Although cause-and-effect relationships are difficult to prove, evidence is beginning to mount that some of these chemicals may cause cancer. What is truly alarming is that these wastes have been disposed of in giant landfill dumps with little thought given to long-term health effects and the potentially disastrous impact these chemical wastes might have on our Nation's underground drinking water supply.

Over half of the people in this country depend on wells for their drinking supply. Water that may have fallen to Earth as long as a century ago has percolated slowly down through soil and porous rock to collect in vast underground aquifers that were virtually void of chemical impurities. Now substances, mostly petrochemicals thought to have been harmlessly disposed of years ago, are beginning to show up even in the deeper U.S. wells. This contamination will grow as those forgotten chemicals of the past steadily reach more of the underground reservoirs from which Americans will drink in the future.

The residents of Wilsonville, Ill., a small community of 800 in my district, are acutely aware of the threat of contamination of their water supply by buried chemicals and their water supply.

In 1977, a hazardous waste disposal dump was constructed within the city limits of Wilsonville. When the residents discovered that the company, Earthline, Inc., was burying large amounts of PCB's, dirt contaminated with mercury, cyanides, mercuric sulfide, dioxin, and other highly lethal chemical compounds within their city limits, they chose to go to court and try to force the dump to shut down. In August of 1978 Illinois District Court Judge John Russell ordered Earthline to halt all processing, storing, burying, and disposing of hazardous waste at Wilsonville and to disassemble and remove completely their waste disposal facility located there.

Judge Russell justified his sweeping order on two important grounds. At no time did Earthline officials make known to residents of Wilsonville what was to be buried at the site prior to the granting of construction permits. The judge noted that in a letter written by Earthline officials to the village president and board of trustees:

> There is no mention or indication that hazardous toxic waste substances that are dangerous to human beings and other living things are to be buried at the site.

Second, Wilsonville depends, to a large degree, on underground water for drinking. Although Earthline proclaimed that the dump poses no harm to the water supply, the Illinois attorney general argued, and the court agreed, that it was impossible to predict that chemicals leaching from the dump would not reach this underground water and thus poison the town's water supply.

As a result of the problems encountered by Wilsonville, last year I introduced H.R. 5617, the Hazardous Waste Disposal

Act. My bill was designed to—require that new chemical disposal sites be located away from populated areas—require the U.S. EPA to conduct an extensive inventory of active and abandoned waste dumps—establish a trust fund to clean up and contain spills of hazardous waste from abandoned sites and to provide compensation to victims who are exposed to these wastes—and require that public hearings be held prior to the granting of permits and that full disclosure be made of all hazardous wastes to be buried there. Only then could a permit be issued. If this provision had been law, Earthline would have been required to tell the residents of Wilsonville precisely what dangerous chemicals would be stored in their community.

I am very pleased that H.R. 7020 contains many of the provisions included in my bill. For example, both bills would:

First, require U.S. EPA to conduct an inventory of sites and create a list of those sites which need immediate attention;

Second, create a "superfund" made up of Government and industry contributions to pay for cleaning up of hazardous wastes from abandoned waste sites; and

Third, establish strict lines of liability for those who engage in the waste disposal business.

EPA estimates that 57 million metric tons of hazardous waste are produced annually. Eighty to 90 percent of these wastes are disposed of in what EPA calls an environmentally unsound manner. There are more than 50,000 inactive hazardous waste disposal sites in the United States and of these, nearly 2,000 may pose an immediate threat to the environment and public health. I am convinced, as I know a number of my colleagues are, that passage of H.R. 7020 would be an important step forward in helping to prevent future catastrophies such as occurred at Love Canal, the Valley of the Drums, and Wilsonville.

● Mr. RODINO. Mr. Chairman, I strongly support H.R. 7020, the Hazardous Waste Containment Act, with the Ways and Means Committee's amendment to authorize increased funding and a change in formula for financing the hazardous waste response trust fund.

Americans throughout the country are becoming increasingly concerned and alarmed by the pervasiveness of chemicals and other toxic substances in our environment. Despite considerable improvements and benefits from such strong environmental protection legislation as the Clean Air Act, the Water Pollution Control Act, and the Resource Conservation and Recovery Act enacted in 1976, we have come to recognize the urgent need for further action to meet the emerging problem of hazardous wastes.

In 1979 the Environmental Protection Agency estimated that there are between 30,000 and 50,000 inactive and uncontrolled hazardous waste sites in the United States, of which between 1,200 and 2,000 are considered as serious risks to public health. The horrors of Love Canal and the more recent incident at Chemical Control in Elizabeth N.J., have demonstrated the need for passage of H.R. 7020.

The Resource Conservation and Recovery Act is highly inadequate, for it does not authorize action if a financially responsible owner of a hazardous dump site cannot be identified; nor does it authorize the Federal Government to subpena documents or persons in investigating hazardous waste disposal; nor does it require companies to reveal the existence of chemical dumps and to monitor inactive dumps for possible pollution; nor does it provide sufficient funds for State hazardous waste control.

I believe our experience in New Jersey clearly shows the desperate need for enactment of H.R. 7020.

Because our State has many industries and businesses using and manufacturing chemicals and toxic substances, the New Jersey Department of Environmenal Protection has moved with energy and effectiveness to deal with the hazardous waste problem.

The State is currently submitting proposed rules and standards for assuming management of the hazardous waste disposal program from the Environmental Protection Agency. In addition, New Jersey has moved ahead to establish a strong State management program which serves as a national model. It includes a spill compensation and cleanup fund financed by a tax or fee on petroleum substances and other hazardous materials which has been in effect since April of 1977. It has also established a criminal strike force to apprehend and prosecute illegal dumpers, a manifest system to track the movement of hazardous wastes and a program to site, license, and operate new environmentally sound disposal facilities.

However, the scope of the problem is beyond any individual State's capabilities to resolve alone. New Jersey has identified over 200 sites which are now targeted for priority cleanup at a cost which is estimated now at over $45 million. Department of environmental protection recovery teams have cleaned up 18 sites throughout the State, removing between 3 and 4 million gallons of liquid chemicals and 43 pounds of hazardous solids. Based on this work, the Department estimates that hazardous dump sites will cost between $5 and $10 million to clean up. Yet the Chemical Control site at Elizabeth alone has already cost over $11 million for cleanup. The $3 million per year authorized by the legislature from the spill compensation and cleanup fund for remedial work or cleanup of abandoned hazardous waste disposal sites has already been committed for fiscal year 1981.

Mr. Chairman, I urge approval of H.R. 7020 to deal with this urgent national problem.

● Mr. MURPHY of New York. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. As a member of the Interstate and Foreign Commerce Committee, I am pleased that this proposed legislation has made such significant progress in this session of the Congress.

The need for legislation to clean up hazardous wastes sites is clear and compelling. The combination of this bill and the oil pollution liability measure (H.R. 85), provides a direct and definitive congressional response to the problems of oil and chemical spills and the cleanup of hazardous waste sites. Together these pieces of legislation constitute a most impressive "superfund" proposal to deal with the growing problem of the impact of hazardous substances on public health and the environment.

From the *Amoco Cadiz* to Love Canal to the PCB contamination of the Hudson River, our modern age has shown that, with technological and scientific advances, also come substantial risks. These bills, which we are considering today and with which I have had a long involvement, will provide the necessary controls and money for addressing a wide range of human health and marine ecosystem problems coming from hazardous substances.

The funding established in this legislation is essential for Government at all levels to address the serious problems of the release of toxic substances into the environment from abandoned chemical dump sites. In my State of New York we have serious problems in this regard. Industry in the State generates approximately 1.36 million tons of hazardous waste each year. These generators are concentrated in southeastern New York, Niagara and Erie counties, the Syracuse area, and the capitol district.

Although New York's hazardous waste problem is most graphically demonstrated in the Love Canal case, the State's dumpstite impacts go far beyond that area at Niagara Falls. For example, at the Chelsea Positive Chemical Corp. site on Staten Island and at College Point in Queens County, serious chemical problems have been discovered and immediate cleanup is necessary. Also, ground water contamination on Long Island is presently being monitored at a price tag of over a half million dollars.

Clearly, remedial action is necessary not only to establish clear governmental response mechanisms but also a fund to finance such cleanup so that the limited resources of State and local governments will not be drained.

In 1979, the New York State Department of Environmental Conservation inventoried 520 abandoned hazardous waste sites. More recent research indicates that the number of sites may range from 800 to 1,000 within the State. Clearly, the need for this legislation was never more evident. We must vigorously address the environmental emergencies that form almost daily headlines in our newspapers.

The bill before us today, in addition to providing the necessary financial resources for the Federal and State governments, also requires a nationwide inventory and prioritization of hazardous waste sites to give the Government more solid information on the existence and the extent of the problem. The sites will be given priority according to the relative danger they present to the public health and environment. This will permit a more systematic approach to cleanup and containment.

H.R. 7020 authorizes the Government to respond to releases of hazardous waste sites. In those States capable of carrying out responsive actions, the Environmental Protection Agency can enter into cooperative agreements with States in order to allow them to take action with financial assistance from the fund.

There are some major differences between the House version of superfund—composed of H.R. 85 and H.R. 7020—and the legislation being considered by the Senate. Given the short time we have left before our recess, it is imperative that the House move expeditiously on this bill so that a conference committee can be called quickly and a suitable response to the problem of oil pollution and hazardous substance cleanup can be enhanced.●

● Mr. BROWN of California. Mr. Chairman, the ability to respond to emergencies such as the much publicized Love Canal incident, and to prevent such occurrences from being repeated in the future is provided for in the "superfund" legislation (H.R 7020) which we are considering today. As one who has a major abandoned hazardous waste dump in my district, I have closely followed this legislation. I am pleased that both the leadership in the House as well as the leadership in the Senate have made it clear that we need to act on this legislation in this Congress. I hope that the other body will move forward on their bill in time to pass legislation this year.

As a member of the Science and Technology Committee and the Technology Assessment Board, I have long been involved with the interface of science, technology, and society. It is clear that we have neglected, in our scientific and technological approaches to many industrial processes, the deleterious effects of products and byproducts of industry. The impacts have been widespread, and while sometimes discovered late, nevertheless these problems are critically in need of attention. This legislation fills a gap in existing law to allow for cleanup of identified sites. I will be supporting the most comprehensive bill possible, and urge my colleagues in the House to do the same.

Mr. Chairman, in all candor, I should note that I have other reasons for supporting this legislation beyond those of the general welfare and the national interest. One of those reasons is somewhat embarrassing; I was closely involved with the 1976 amendments to the Resource Conservation and Recovery Act (RCRA) as chairman of the Subcommittee on Environment and the Atmosphere of the Committee on Science and Technology.

While the parts of that legislation which I handled related solely to research, development, and demonstration, I believed, as did many other Members of Congress, that the 1976 amendments closed the gap in the law as it existed then. Under those amendments to RCRA, which predated the Love Canal incident, we attempted to draft legislation which would regulate the dumping of hazardous wastes. Our significant mistake in 1976 was to underestimate the national scope of this problem, and the extent of hazardous wastes already dumped throughout our land. Some of the information which has lead to the legislation before us came out of the 1976 amendments, but too little has been done by industry, government at all levels, and the Congress for any of us to be proud of our record.

My second exceptional reason to support this legislation, and the strengthening amendments to it has already been mentioned; I have, within my congressional district, one of the major abandoned hazardous waste dumps in the Western United States. The now-closed Stringfellow Class I disposal site in western Riverside County, Calif., has been known to me and my staff as a serious problem since before my election from this area in 1972. Like Love Canal and other sites, the severity of the problem varies with the climatic conditions and has yet to be fully assessed. Like Love Canal, this site will take many millions of dollars to clean up. Unlike Love Canal, the harm to individuals has not yet become a serious problem, and with effective action and some luck, no health damage will develop.

As I have worked with local citizens, State and local government, the regional office of the Environmental Protection Agency and other interested parties, I have come to truly appreciate the complexity of the issue of old chemical dumps and all of the ramifications of programs aimed to cleaning them up. The legislation before us is a constructive step, and together with several strengthening amendments, I believe H.R. 7020 will truly fill the gap I had hoped the Congress was filling several years ago.

The need for this comprehensive legislation is clear. A study done for the Environmental Protection Agency estimates that there are between 1,200 and 2,000 hazardous waste sites which could pose serious health risks and environmental damage. The bill fills a critical gap in current law by providing EPA with the authority and resources to clean up inactive hazardous waste sites. There is no other authority under which EPA can act at this time. Neither the Resource Conservation and Recovery Act nor the Clean Water Act provide adequate authority; and H.R. 85 only covers chemical and oilspills in navigable waterways. EPA has a major inventory program underway of the hazardous waste sites in the country. Funding is crucial at this time if work is to begin on the already identified sites.

Mr. Chairman, I understand that the chemical industry has reluctantly agreed to the $1.2 billion fund called for in the Ways and Means version of the bill. This would allow for the cleanup of approximately 250 sites. This by no means would cover nearly the number of sites that need work, but would allow work to begin on the most urgent cases. EPA's task, far from one of coming up with a list of sites in need of attention, is one of prioritizing them.

The chemical industry understandably has placed great pressure on the Members of Congress to keep the size of the fund as well as the industry contribution to a minimum. But the truth is, there is no equitable reason why the cost of the cleanup of hazardous waste sites should be the burden of the taxpayers. Industry points out correctly that the cost will be passed on to the consumer; this simply means that the true cost of a product in its broad sense will include the hidden costs which were previously omitted. This seems to me to be the only reasonable solution to a problem brought on by past improper waste disposal practices. I support, as a minimum, a 75-percent industry contribution and urge my colleagues to do the same.

It is critical that the liability provisions of the bill be amended to conform with prevailing State common law and the purposes of this act. This is why I urge my colleagues to support Mr. GORE's amendments. State common law generally holds that abnormally hazardous activity justifies the imposition of strict liability. In my own State of California, strict liability is already imposed in cases involving spills of hazardous substances involving surface waters. A bill just passed this year implements strict liability now for spills involving possible contamination of ground water as well. This means that a defendant is held liable even if he or she demonstrates due care in the prevention of harm. H.R. 7020 specifically counters strict liability provisions by relieving the defendant of liability if the defendant can show that the injury involved "an act or omission of a third party." This is inconsistent with strict liability as it is understood and practiced in my State and I believe in many other States.

In California, a defendant must prove nonnegligence—the burden of proof is on the defendant—and third party defenses are only acceptable if the defendant can prove that the act of the third party causing the harm was intentional and could not have been prevented by due care or foresight. Mr. GORE's amendment, which would limit third party defense to instances which the defendant did not have a contractual relationship with the third party, is an acceptable compromise. The amendment should clarify defense by a third party as defined in the bill.

A second matter of concern regarding liability provisions of H.R. 7020 involves the joint and several liability question. The bill as it is now drafted would require a court to apportion liability among defendants if they cannot demonstrate what their percentage of the damages should be. Mr. GORE's second amendment would simply allow the court the option of apportioning liability and not require the court to do so as the bill now provides. In California, a party that is held jointly liable is generally also held fully liable and there is no mandatory apportionment. Mandatory apportionment undermines the concept of joint and several liability to definition.

Finally, in light of the often controversial and not thoroughly understood correlation between exposure to hazardous material and specific health effects, I urge your support of Mr. ECKHARDT's amendment that would set aside $10

million of the fund to finance a major health effects research effort. Adequately funded studies would alleviate anxiety resulting from poorly conducted and inconclusive studies as well as providing valuable information regarding the targeting of funds for specific sites and adding to the pool of much needed information on the effect of chemicals on health.

Labor, industry, and Government leaders all agree that this legislation is needed. I trust that we will see the benefit of a strong and comprehensive bill.●

● Mr. RAILSBACK. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. I feel the potential danger faced by people living near inactive, hazardous waste sites is too great to allow these sites to remain unmonitored and, in many cases, unknown.

No comprehensive list of inactive, hazardous waste sites exists. Last October, the Interstate and Foreign Commerce Subcommittee on Oversight and Investigations published a survey of sites used by the 53 largest domestic chemical companies which, according to the subcommittee report, represents about 14 percent of operating chemical facilities in the country. The percentage is not large and does not include sites used by small industries whose disposal practices may not be as modern.

So, legislation requiring an inventory of inactive, hazardous waste sites; the development of a national hazardous waste response plan; and monitoring of sites by owners as well as setting up a fund for cleanup of especially dangerous sites is absolutely necessary. I would like to add that I feel industries which contributed to the problem should bear most of the responsibility for cleanup costs. The Ways and Means Committee amendment to increase industry's share of the fund to 75 percent and to provide a $1.2 billion fund.. I do not feel taxpayers should bear an equal share of cleanup costs, especially since the industry's fee is tax deductible from income taxes.

The fund, itself, must be large due to the magnitude of the problem. The Environmental Protection Agency (EPA) estimates that $44 billion is needed to clean up hazardous waste sites. I understand that the contractor conducting the study for EPA has been criticized, since it estimated that 32,254 to 50,664 abandoned hazardous waste sites exist while the Subcommittee on Oversight and Investigations estimates that only 891 sites must be cleaned up. However, even 891 sites will be expensive, and the $1.2 billion authorized by the Ways and Means Committee's amendment does not seem unreasonable.

I am personally concerned because the subcommittee's waste disposal site survey indicated that Illinois has 50 closed disposal sites and an additional 20 are possibly closed. Only six other States have more inactive sites than Illinois. My concern also stems from the fact that I feel responsible disposal practices must be encouraged now. The chemical and nuclear waste facilities located near Sheffield border on Illinois' 19th Congressional District, which I represent. People in the area are constantly indicating to me that they are worried about how the waste will affect them, their children, their livestock, and their land. I think a bill such as the Hazardous Waste Disposal Act will force chemical companies to look closely at the effects of poor disposal methods and help encourage better practices in the future. Therefore, because Illinois has so many inactive, waste disposal sites—reported by only the 53 largest chemical companies—and because many of my constituents live near a hazardous waste site, I support the legislation with the Ways and Means amendment to increase private industry's share of the hazardous waste response trust fund.●

● Mr. DANNEMEYER. Mr. Chairman, the key question in the debate over H.R. 7020 is not whether abandoned waste sites should be cleaned up but who can do the job best, and quickest. I think most Members would agree, and certainly this one does, that if a site has been abandoned, or if the current owner cannot afford the cleanup, and the site is dangerous, then Government has an obligation to step in. But what level of Government? A little Government can go a long way; too much Government and bureaucratic inertia sets in, slowing things down rather than speeding them up as the people close to these sites understandably want.

As for the money, whether it is $600 million or $1.2 billion, I think most Members would agree, and this one does, that it should be spent wisely, not just thrown at the problem willy-nilly so we can claim we have done something about it. But this bill would have us spend all that money, whichever the amount is, before we have found out how many of these sites there are, what the best means are of disposing of them, how much money is really needed, and what procedure should be followed in case of a hazardous waste emergency. Somewhat ironically, and unfortunately, the bill provides for studies to obtain this information, but does not wait for the results before giving the EPA administrator both the money and authority to act.

Understandably, there are those who say we cannot wait for studies; that we study things to death, that what is needed is action now—and I agree with much of what they say. Sure, problems can and have been studied to death; that is one reason I am reluctant to see EPA play a lead role in the cleanup. And yes, 24 months is too long for proper studies to take; they can and should be done in 18, as will be provided for in the amendment I will be offering. But, there is a distinction that has to be made between obtaining necessary information and studying just for the sake of studying. In this case, one thing that surely needs to be looked into, and the studies called for in the Commerce Committee's version of the bill will look into it, is the extent to which private enterprise might be willing to undertake hazardous waste cleanup on a "no-cost, or low-cost, to the taxpayer" basis. Farfetched, you say. Well, down in Texas—Harris County, Tex.—they do not think so. Just last spring the Gulf Coast Waste Disposal Authority in Harris County requested bids on the construction of a comprehensive waste disposal facility featuring three high-temperature incinerators. Would you believe that 22 of the 28 firms contacted actually submitted bids, 11 of the bids met all the criteria and now 2 firms have been selected to build and operate the facility without any subsidy from the Harris County taxpayers. In exchange for the use of a site, those firms will finance the building of the facility and will pay a "percentage of revenue" fee to the Gulf Coast Authority.

How could that solve the problem of inactive sites you ask? Well, if private enterprise is as eager to get into hazardous waste cleanup on a profitmaking basis as the Texas example would indicate, what is to prevent other units of government which might choose to go this route, from specifying in their criteria and in the final contract, that the successful bidder will be required to clean up inactive sites—either in exchange for a particular site or a reduction of the fees the firm will pay, or whatever. Not only would such an approach be cheaper but, given the track record of EPA, it is likely to be both quicker and more respective of the wants and needs of the people in the areas affected. And if anyone has any doubts about how slow EPA can be in the area of hazardous waste, check how long it has taken them to get RCRA regulations in place.

Granted, the aforementioned approach may seem novel to some, but it is technologically feasible and it has the advantage of getting rid of the wastes once and for all instead of moving them to another landfill. Just because it is new, is there any reason that it should not be explored before we leave ourselves, and all the people who have a personal interest in cleanup, to the tender mercies of EPA. After all, it may just turn out that private enterprise can solve the problem more quickly and cheaply than EPA, and that superfund and superbureaucracy is not really all that necessary. Certainly we ought to find out; for even if it turns out EPA is the only agency that can handle the problem, the time spent in completing the studies will result in better use of the funds that will subsequently be spent. In short, either way, the American people win by checking out the alternatives and I urge this body to give consideration to that sort of an approach. ●

● Mr. LENT. Mr. Chairman, there is an urgent need for this body to adopt a "superfund" measure to deal with the cleanup of abandoned and inactive hazardous waste sites. Unfortunately, because of a gap in the Resource Conservation and Recovery Act, no legal authority currently exists which can adequately cope with this growing national dilemma. Therefore, it is incumbent on us to enact legislation to fill the gap.

During the past year and a half, the Oversight and Investigations Subcommittee, of which I am ranking minority member, held over 13 days of hearings on the issue of hazardous waste disposal, including one in my district of Long Island. The results were disquieting indeed. The subcommittee found that negligent dumping practices over the years have made many disposal sites extremely hazardous and in need of immediate cleanup. Our findings were documented in two reports, one of which contained a list of the waste disposal sites used by 53 major U.S. chemical companies since 1950 and the wastes disposed of in those sites. The other report cataloged much of the current knowledge about the hazardous waste disposal situation in this country, and including numerous legislative and regulatory recommendations for helping to solve existing problems. In my opinion, these two reports standing alone provide ample documentation of the need for a superfund bill.

Mr. Chairman, I have been a staunch supporter of the superfund legislation from the start. I worked closely with the key Commerce Committee sponsors of this measure in developing a carefully honed bipartisan compromise which was reported out of committee by a 21 to 3 vote. That compromise, while unsatisfactory to some, did provide the essential first step toward passage of this vital legislation.

However, I believe there are ways in which the Commerce Committee's bill can be improved. I think that the amendment offered by the gentleman from Texas, Mr. ECKHARDT, which would earmark $10 million of the fund for health studies, is one way.

In essence, that amendment will assist in devising a better system for conducting health studies of residents living near possibly dangerous hazardous waste sites. The recent debacle involving EPA's attempts to come up with reliable health studies of Love Canal residents is ample evidence of the need for a better system.

Mr. Chairman, in closing I reiterate my support for a superfund bill. This country needs a system for coping with the dangers of abandoned and inactive hazardous waste sites. Any further delay in enacting that system will increase the risk to the lives and health of the citizens of this country. I believe it is our responsibility to minimize that risk by passing a superfund bill today.●

● Mr. RINALDO. Mr. Chairman, I am pleased to rise in support of H.R. 7020.

This bill would close a gap in existing Federal environmental laws by providing Federal authority and funding for the cleanup of abandoned hazardous waste sites. The extent of the present dangers and the future hazards posed by the existence of abandoned hazardous waste sites throughout the Nation is staggering. It is a problem which originated many years ago as American industry began to use more and more chemical substances and to generate increased amounts of toxic waste. Such tragedies as Love Canal and Chemical Control Corp. are the result of improper and often negligent disposal of hazardous wastes in the past.

As a member of the Commerce Committee's Oversight and Investigations Subcommittee, I participated actively in the extensive study of hazardous waste disposal which was conducted in 1979. The subcommittee compiled an extensive record documenting the massive health and environmental problems caused by toxic waste sites throughout the Nation. Many of the subcommittee's recommendations are contained in the bill before us today.

I am personally well acquainted with the monumental problems which can arise from the presence of abandoned hazardous waste sites in our communities. Last April, a very serious accident involving extremely toxic chemicals occurred in Elizabeth, N.J., in my congressional district. The Chemical Control Corp., the site of thousands of drums of chemical waste which had been accumulated and stored there illegally, caught fire. Thousands of drums of chemicals, many of the contents of which were unknown, exploded and burned at very high temperatures.

The potential damage was great—the fire could have sent clouds of extremely toxic fumes over my entire congressional district, Staten Island, and lower Manhattan. Fortunately, because of favorable weather conditions, the cloud of smoke did not linger over residential areas.

Less than 3 months later, a major fire occurred in the chemical waste storage area of a paint manufacturing company and spread toxic fumes over the city of Carlstadt, N.J. And within a few days of this incident, storage drums at a chemical disposal plant in Perth Amboy, N.J., exploded and caught fire, causing the complete destruction of 7 buildings and 16 businesses in an industrial park, and forcing evacuation of nearby residences.

But New Jersey is certainly not the only State which is plagued by the dangers of hazardous waste sites. The contamination of drinking water supplies on Long Island, the Valley of the Drums in Kentucky, and the ground and water contamination by toxic chemicals in Montague, Mich., indicate that this problem is indeed nationwide. The cover story in Time magazine last week on "The Poisoning of America" presents a compelling picture of the situation our country is facing in dealing with toxic waste dump sites, and I commend it as very educational reading for all Members of this House.

This bill provides much-needed Federal authority for the Environmental Protection Agency to take charge of abandoned hazardous waste sites which pose dangers to public health and the environment. It also establishes a Government-operated fund which is financed by an excise tax on oil, petrochemical feedstocks, and inorganic materials, and by Federal appropriations.

An important feature of this bill is the inventory of inactive hazardous waste sites which would be compiled by the States. States would also be required to compile priority lists of inactive sites, from which EPA would compile a national priority list based on the threat to public health and the environment. I feel it is most important, faced with the gigantic task of cleaning up thousands of waste sites, to establish priorities so the most dangerous sites can receive attention first.

As I have indicated, I know from personal experience the very great dangers posed by the existence of abandoned hazardous waste sites. I urge the passage of this legislation so that we can begin the long process of cleaning up these blights on the American landscape.●

Mr. CONABLE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FLORIO. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BRADEMAS) having assumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7020), to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a Hazardous Waste Response Fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, had come to no resolution thereon.

CONFERENCE REPORT ON H.R. 3904, MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

Mr. THOMPSON. Mr. Speaker, I call up the conference report on the bill (H.R. 3904), "An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployers plans, and for other purposes," and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 18, 1980.)

Mr. THOMPSON (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. THOMPSON) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. ASHBROOK) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. THOMPSON).

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the House has twice before passed the substance of this bill as

it concerns multiemployer pension plans by an overwhelming vote. The first time on May 22 by a vote of 374 to 0, the second time on August 25 by a vote of 363 to 0.

On August 26 we requested a conference on two amendments made by the Senate which did not change in any respect the substance of the bill as it affects multiemployer plans. On the first item, the special exemption from ERISA preemption for the Hawaii Health Care Act, the Senate receded to the House deleting the exemptions; on the second item, the unemployment compensation offset, the House conferees were limited to members of the Ways and Means Committee and I will be happy to yield in a few seconds to a gentleman from that committee to explain the compromise that was worked out.

Mr. Speaker, the House has before it today the very same provisions affecting multiemployer pension plans which the House approved by the vote of 363 to 0 on August 25. I only wish to note once again that this bill is a product of 3 years of work by the administrative agencies involved, the majority and minority members of four committees in the House and Senate, and concerned labor, management, and retirees groups. I would add also that much work remains to be done in this area to insure better coverage under retirement income programs for all American workers. This is only the beginning.

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks.

Mr. Speaker, before yielding time, I would like to express my appreciation to the members of the ERISA task force on both sides and, in particular, the gentleman from Illinois (Mr. ERLENBORN), who cannot be with us today, and the gentleman from Ohio (Mr. ASHBROOK) who is with us today, as well as the members of the Committee on Ways and Means (Mr. CONABLE) the chairman, the gentleman from Oregon, Representative ULLMAN, and others.

I also want to say this is a terribly complex issue which has been reduced, I think rather beautifully, into a bill which can and will work and has really amazing support in terms of the business community, the labor community, and other groups.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. ASHBROOK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today with the consideration of the conference report on H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1980, we will have written the next to the last chapter on the checkered history of this most complex of legislative measures. I will not recount the history at this time, but suffice it to say that today's action by this body culminates 6 years of intensive study and effort by the Pension Benefit Guaranty Corporation (PBGC), business and labor pension groups too numerous to mention, and the Congress in formulating a workable program of insolvency insurance for multiemployer pension plans.

The struggle for enactment has left its mark, not the least of which is the unique coalition of business and labor groups who joined forces in order to insure passage of the legislation. The need for a change in the present ERISA law applicable to multiemployer plans has been demonstrated even in the last few days. When on July 31, 1980, and again on August 1, I asked for unanimous consent to delay the effective date for mandatory coverage of multiemployer plans, I warned the Congress that the provisions of current law could encourage unstable multiemployer plans to trigger plan terminations.

Unfortunately my warning went unheeded and objection was heard to my request. Now we learn that Local 50 Candy and Confectioners Union and Industry Pension Fund in New York has submitted a termination notice to the PBGC. The President's signature on H.R. 3904 should stem any further flow of terminations which might otherwise be triggered by this first notice.

Only time will tell whether the provisions of H.R. 3904 will be adequate to contain the costs of the multiemployer program at a level at which employers and unions are willing to pay without assistance from general revenues. Vigorous congressional oversight will be needed to quickly identify any major defects in the law and corrections will have to follow if the integrity of the self-financing aspects of the program are to be maintained.

The bill is penultimately complex, although I doubt if a more simplified version had been fashioned it would have received the necessary support for passage. Given the intricate and, in many cases, the esoteric nature of H.R. 3904, I offer the following clarification of several of the provisions added by the House in its consideration of the bill on August 25, 1980.

First, a provision amending section 4022A(g) restored the rule passed by the House on May 22, 1980, requiring plans to have a 15-to-1 ratio of plan assets to annual benefit payments before they are eligible for the supplemental benefit guarantee program; the PBGC may modify this requirement but only in the extreme case where a soundly funded plan is likely to achieve a 15-to-1 ratio at a later date, or where the 15-to-1 ratio is not indicative of sound funding or a small probability of termination or insolvency.

Second, an actuarial concept, that of "unfunded vested benefits," needs clarification as it relates to the determination of employer withdrawal liability and the minimum contribution requirement. In H.R. 3904, "unfunded vested benefits" is defined as the excess of the value of nonforfeitable benefits under a plan, as defined under title IV, over the value of the assets of the plan.

Generally it is expected that the actuarial assumptions and methods employed in the calculation of the value of nonforfeitable benefits will follow the practice illustrated in interpretation 1 of recommendation A(6) found on pages 369–371 of the 1979 Yearbook of the American Academy of Actuaries. It is also expected that such values will be included on schedule B of the ERISA annual report form 5500 (relating to the items, present value of vested benefits).

Third, the intent of the amendment to section 4219(c)(1)(D)(ii), relating to mass employer withdrawals, is as follows. The provision was included in order that the total unfunded vested benefits of a plan be allocated to contributing emloyers and payable as employer withdrawal liability in the event of a mass withdrawal. There was no intent that employers who had completely withdrawn from a plan prior to the April 29, 1980, effective date have withdrawal liability under this provision.

In addition, it was intended that the PBGC prescribe regulations under this provision to take into consideration the limitation on the amount of unfunded vested benefits allocated to certain employers under section 4217 and to reallocate the unfunded vested benefits arising from such limitation to other employers, in order that the total unfunded vested benefits be allocated to all employers and made payable as withdrawal liability.

Another matter that needs clarification relates to the operation of the "presumptive" method of computing the amount of unfunded vested benefits allocable to an employer under section 4211(b). In connection with the broad authority to write regulations which is extended to the Pension Benefit Guaranty Corporation under H.R. 3904, it is expected that the regulations promulgated by the PBGC under section 4211(b) will provide for the allocation of unfunded vested benefits to employers in such a manner that a plan's unfunded vested benefits are completely allocated in a manner consistent with the purposes of the act.

□ 1230

Mr. Speaker, I rise in support of this conference report. I think the long, tortuous process has brought us to a point where we can be reasonably proud of what has been accomplished. We have made many changes that are necessary, and as I indicated earlier to my friend, the chairman, my colleague from New Jersey, undoubtedly further oversight will bring forth further corrective legislation, and I would say not necessarily because we have been inept in this body. We have charted a new course that is very difficult, very difficult to understand, so there are going to be technicalities which I am sure will be necessary to address ourselves to in the near future.

Mr. Speaker, I have several requests for time, but I would reserve them at this point.

Mr. THOMPSON. Mr. Speaker, I yield such time as he may consume to my distinguished colleague and friend, the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. I thank the chairman.

Mr. Speaker, I rise to confirm with my distinguished colleague, the gentleman from New Jersey (Mr. THOMPSON), the withdrawal liability provisions. I am concerned with whether withdrawal liability provisions do not apply retroactively to events such as, for example, a closing of a facility which occurred prior to April 29, 1980, the effective date of the withdrawal liability provisions.

Specifically, I would like to confirm my understanding of section 4217. My understanding is that neither contributions nor base units attributable to facilities closed before April 29, 1980, will be taken into account in any of the following determinations: First, whether or not a partial withdrawal, as defined in section 4205, has occurred; second, the amount of unfunded vested benefits allocable to a withdrawing employer pursuant to section 4211; third, the partial withdrawal adjustment set forth in section 4206; and fourth, the determination of annual liability payments pursuant to section 4219(c).

Is that understanding correct, Mr. Chairman?

Mr. THOMPSON. If the gentleman will yield, yes, I will say to the gentleman from Illinois; that is correct.

Mr. ROSTENKOWSKI. I would also like to review with my distinguished colleague from New Jersey the purpose of a technical amendment he sponsored to section 4219(c)(1)(D)(ii). I am particularly interested in the intended effect of the phrase "notwithstanding any other provision of this part," which was added at the beginning of section 4219(c)(1)(D)(ii).

My understanding is that the purpose of the amendment was to assure that no part of a plan's unfunded vested benefits remains unallocated and payable as withdrawal liability after there has been a mass withdrawal. Is that understanding correct, Mr. Chairman?

Mr. THOMPSON. It is correct, yes.

Mr. ROSTENKOWSKI. Is it also payable as withdrawal liability?

Mr. THOMPSON. That is correct. This amendment was a technical amendment.

□ 1240

I would also, Mr. Speaker, like to confirm that the amendment does not permit either plans or the PBGC to disregard the substantive protections set forth in section 4217(a) and section 4225.

Mr. THOMPSON. That is correct. The amendment was a technical amendment intended to correct potential technical problems. It was not intended to affect section 4217(a) and section 4225, since those provisions do not interfere with the full allocation of all unfunded vested benefits so that they are payable as withdrawal liability.

Mr. ROSTENKOWSKI. Mr. Speaker, I thank the gentleman from New Jersey.

Mr. ASHBROOK. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Speaker, I want to compliment all the members of the conference committee. I believe the report is a reasonable one. The compromises achieved are about the best one could expect from such a conference. I think this report, the ERISA amendment, is one which is desperately and immediately needed.

I know this is going to be approved forthwith. The country needs it to preserve the multiemployer pension funds and to preserve the benefits of those employees who are included therein.

My principal interest in this conference is related to unemployment compensation. It is specifically related to the so-called pension offsets, which are really the offset of unemployment compensation benefits because of pension earnings.

Under the current law, that offset is universal. Under the version that now appears in this bill we have restricted the offsets and allowed most benefits to be paid without offset.

Mr. Speaker, I would at this time ask my distinguished colleague from Michigan (Mr. BRODHEAD) a question about the language.

In Section 414(a)(a)(2), there appears some language that I as a conferee have seen only in separate sections, and I am not really certain what it means. As I recall our intent in this instance was to provide that military personnel who had earned pensions and then went to work in other areas of Government would not have an offset against unemployment compensation based on the pension they had earned in military service. Is that the understanding of the gentleman of that section?

Mr. BRODHEAD. If the gentleman would yield, yes, that is the purpose the conferees had in mind.

Mr. FRENZEL. Is it also true that the offset then pretty much boils down to BARE and social security recipients who may have 50 percent of their benefits offset at State option?

Mr. BRODHEAD. The rule with respect to social security is that the States are required to offset one-half of any social security benefits.

Mr. FRENZEL. They are required to offset 50 percent, but they may offset the whole thing, is that correct?

Mr. BRODHEAD. The gentleman is correct.

Mr. FRENZEL. Mr. Speaker, I thank the gentleman for explaining that.

Mr. Speaker, I think that, overall, we have weakened the offset provision and caused moneys to be spent for unemployment compensation that will not go to the worthiest of beneficiaries. I believe that, if such funds are available, they are needed for beneficiaries who are more worthy.

On the other hand, as I said before, this conference report is needed now. The compromise was the best that could be achieved under the circumstances. Therefore I hope the bill is promptly passed.

Mr. THOMPSON. Mr. Speaker, I yield such time as he may consume to our colleague from Michigan (Mr. BRODHEAD).

Mr. BRODHEAD. Mr. Speaker, I thank the gentleman for yielding. I have a statement on behalf of the gentleman from California (Mr. CORMAN) who is unable to be with us today.

As of April 1, 1980, Federal law requires all States to reduce a person's unemployment compensation benefits dollar for dollar by the amount of any governmental or private pension or retirement pay received by the individual. This pension offset requirement applies to all pensions or retirement pay based on the previous work of the unemployment compensation claimant including social security pensions.

The conference agreement on H.R. 3904 generally limits this offset requirement to cases in which the pension or retirement pay in question is based in whole or in part upon work performed by the individual during the period just prior to unemployment, which period will be counted in determining his or her eligibility for unemployment benefits.

The agreement further allows States to reduce the amount of the required offset by an amount consistent with any contribution the employee made toward the pension. For example, this would allow a State to limit the offset to one-half of the amount of the social security pension received by an individual who qualifies for unemployment benefits.

Mr. THOMPSON. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Mr. ASHBROOK. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 324, nays 1, not voting 107, as follows:

[Roll No. 567]

YEAS—324

Albosta	Blanchard	Conable
Ambro	Boggs	Conte
Anderson, Calif.	Boland	Conyers
	Boling	Corcoran
Anderson, Ill.	Boner	Courter
Andrews, N.C.	Bonior	D'Amours
Andrews, N.Dak.	Bouquard	Daniel, Dan
	Bowen	Crane, Daniel
Annunzio	Brademas	Daniel, R. W.
Archer	Breaux	Danielson
Ashbrook	Brinkley	Dannemeyer
Ashley	Brodhead	Deckard
Aspin	Broomfield	Dellums
Atkinson	Brown, Calif.	Derrick
AuCoin	Buchanan	Derwinski
Badham	Burgener	Devine
Bafalis	Burlison	Dickinson
Bailey	Burton, John	Dicks
Baldus	Burton, Phillip	Dingell
Barnes	Butler	Donnelly
Bauman	Byron	Dornan
Beard, R.I.	Campbell	Dougherty
Bedell	Carney	Downey
Beilenson	Carr	Drinan
Benjamin	Clausen	Duncan, Oreg.
Bennett	Clay	Duncan, Tenn.
Bereuter	Clinger	Eckhardt
Bevill	Coelho	Edgar
Biaggi	Coleman	Edwards, Okla.
Bingham	Collins, Tex.	Emery

English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Pascell
Fazio
Fenwick
Ferraro
Fish
Fisher
Fithian
Flippo
Florio
Foley
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Gramm
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Harkin
Harris
Hightower
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
Lungren
McCloskey
McCormack
McDonald
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mo lohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Rahall
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Steed
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Traxler
Trible
Udall
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, Tex.
Winn
Wirth
Wolf
Wolpe
Wyatt
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki

NAYS—1

Akaka

NOT VOTING—107

Abdnor
Addabbo
Alexander
Anthony
Applegate
Barnard
Beard, Tenn.
Bethune
Bonker
Brooks
Brown, Ohio
Broyhill
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Cleveland
Collins, Ill.
Corman
Cotter
Coughlin
Crane, Philip
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Dixon
Dodd
Early
Edwards, Ala.
Edwards, Calif.
Erlenborn
Findley
Ford, Mich.
Ford, Tenn.
Ginrich
Goodling
Grassley
Gray
Hanley
Hansen
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Hutto
Ire'and
Jenrette
Johnson, Colo.
Jones, N.C.
Kindness
Leach, La.
Ledesar
Lent
Lloyd
Luken
McClory
McDade
McEwen
Mathis
Mattox
Mavroules
Mazzoli
Mica
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nichols
Nolan
Nowak
Pashayan
Pepper
Quillen
Railsback
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Stark
Stockman
Symms
Thomas
Ullman
Van Deerlin
Vento
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wright
Wydler
Yates
Zeferetti

□ 1300

The Clerk announced the following pairs:

Mr. Vento with Mr. Abdnor.
Mr. Rodino with Mr. Gingrich.
Mr. Richmond with Mr. Pashayan.
Mr. Applegate with Mr. Beard of Tennessee.
Mr. Addabbo with Mr. Goodling.
Mr. Zeferetti with Mr. Quillen.
Mr. Jenrette with Mr. Bethune.
Mr. Murphy of New York with Mr. Grassley.
Mr. Moorhead of Pennsylvania with Mr. Railsback.
Mr. Edwards of California with Mr. Brown of Ohio.
Mr. Howard with Mr. Harsha.
Mr. Hawkins with Mr. Rinaldo.
Mr. Hanley with Mr. Broyhill.
Mr. Barnard with Mrs. Heckler.
Mr. Chappell with Mr. Rousselot.
Mr. Cotter with Mr. Cheney.
Mr. Corman with Mr. Carter.
Mr. Davis of South Carolina with Mr. Hillis.
Mr. de la Garza with Mr. Hinson.
Mr. Mazzoli with Mr. Rudd.
Mr. Mavroules with Mr. Stockman.
Mr. Van Deerlin with Mr. Symms.
Mr. Yates with Mr. Johnson of Colorado.
Mr. Ullman with Mr. Kindness.
Mr. Santini with Mr. Coughlin.
Mr. Russo with Mr. Cleveland.
Mr. Roe with Mr. Lent.
Mr. Nichols with Mr. McClory.
Mr. Murphy of Illinois with Mr. Thomas.
Mr. Pepper with Mr. Williams of Ohio.
Mr. Cavanaugh with Mr. Philip M. Crane.
Mrs. Chisholm with Mr. Edwards of Alabama.
Mr. Dodd with Mr. McDade.
Mr. Ford of Michigan with Mr. McEwen.
Mr. Mathis with Mr. Bob Wilson.
Mr. Mica with Mr. Wydler.
Mr. Nedzi with Mr. Davis of Michigan.
Mr. Gray with Mr. Erlenborn.
Mr. Alexander with Mr. Findley.
Mr. Anthony with Mr. Hansen.
Mr. Bonkers with Mr. Regula.
Mr. Brooks with Mrs. Collins of Illinois.
Mr. Daschle with Mr. Dixon.
Mr. Early with Mr. Ford of Tennessee.
Mr. Hefner with Mr. Heftel.
Mr. Hutto with Mr. Holland.
Mr. Ireland with Ms. Holtzman.
Mr. Jones of North Carolina with Mr. Leach of Louisiana.
Mr. Lederer with Mr. Lloyd.
Mr. Luken with Mr. Mattox.
Mr. Nolan with Mr. Nowak.
Mr. Stark with Mr. Myers of Pennsylvania.
Mr. Wright with Mr. Ratchford.

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 2597, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1981

Mr. BOLAND submitted the following conference report and statement on the Senate bill (S. 2597) to authorize appropriations for fiscal year 1981 for intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

CONFERENCE REPORT (H. REPT. No. 96-1350)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2597) to authorize appropriations for fiscal year 1981 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1981".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1981 for the conduct of the intelligence and intelligence-related activities of the following agencies of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1981, for the conduct of the intelligence and intelligence-related activities of the agencies listed in such section, are those specified in the classified Schedule of Authorizations prepared by the committee of conference to accompany S. 2597 of the 96th Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

CONGRESSIONAL NOTIFICATION OF EXPENDITURES IN EXCESS OF PROGRAM AUTHORIZATIONS

SEC. 103. During fiscal year 1981, funds may not be obligated or expended for any program for which funds are authorized to be appropriated by section 101 in an amount in excess of the amount specified for that program in the classified Schedule of Authorizations described in section 102 unless the Director of Central Intelligence or the Secretary of Defense notifies the appropriate committees of Congress of the intent to make such obligation or expenditure not less than fifteen days before such obligation or expenditure is made.

RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 104. Nothing contained in this Act shall be deemed to constitute authority for the conduct of any intelligence activity

which is not otherwise authorized by the Constitution or laws of the United States.

AUTHORIZATION OF APPROPRIATIONS FOR COUNTERTERRORISM ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION

SEC. 105. In addition to the amounts authorized to be appropriated under section 101(9), there is authorized to be appropriated for fiscal year 1981 the sum of $11,400,000 for the conduct of the activities of the Federal Bureau of Investigation to counter terrorism in the United States.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1981 the sum of $17,824,000.

AUTHORIZATION OF PERSONNEL END-STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred and forty-five full-time personnel as of September 30, 1981. Such personnel may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1981, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1981, any officer or employee of the United States or member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1981, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1981 the sum of $55,300,000.

TITLE IV—GENERAL PROVISIONS

FUNDS TRANSFERS BY THE SECRETARY OF DEFENSE

SEC. 401. (a) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 140a. Secretary of Defense: Funds transfers for foreign cryptologic support

"The Secretary of Defense may use funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support. Payments under this section may be made without regard to section 3651 of the Revised Statutes of the United States (31 U.S.C. 543).".

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"140a. Secretary of Defense: Funds transfers for foreign cryptologic support.".

ADMINISTRATIVE PROVISIONS RELATING TO THE NATIONAL SECURITY AGENCY

SEC. 402. (a)(1) The Act entitled "An Act to provide certain administrative authorities for the National Security Agency, and for other purposes" approved May 29, 1959 (50 U.S.C. 402 note), is amended by adding at the end thereof the following new sections:

"SEC. 9. (a) Notwithstanding section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), section 5536 of title 5, United States Code, and section 2675 of title 10, United States Code, the Director of the National Security Agency, on behalf of the Secretary of Defense, may lease real property outside the United States, for periods not exceeding ten years, for the use of the National Security Agency for special cryptologic activities and for housing for personnel assigned to such activities.

"(b) The Director of the National Security Agency, on behalf of the Secretary of Defense, may provide to certain civilian and military personnel of the Department of Defense who are assigned to special cryptologic activities outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection—

"(1) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraph (1), (2), (7), (9), (10), and (11) of section 911, and under sections 912, 914, 933, 941, 942, and 945, of the Foreign Service Act of 1946 (22 U.S.C. 1136(1), (2), (7), (9), (10), (11), 1137, 1138a, 1148, 1156, 1157, 1160); and

"(2) housing (including heat, light, and household equipment) without cost to such personnel, if the Director of the National Security Agency, on behalf of the Secretary of Defense determines that it would be in the public interest to provide such housing.

"(c) The authority of the Director of the National Security Agency, on behalf of the Secretary of Defense, to make payments under subsections (a) and (b), and under contracts for leases entered into under subsection (a), is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

"SEC. 10. The Director of the National Security Agency, on behalf of the Secretary of Defense, may, without regard to section 4109 (a)(2)(B) of title 5, United States Code, pay travel, transportation, storage, and subsistence expenses under chapter 57 of such title to civilian and military personnel of the Department of Defense who are assigned to duty outside the United States for a period of one year or longer which involves cryptologic training, language training, or related disciplines.

"SEC. 11. The Administrator of General Services, upon the application of the Director of the National Security Agency, may provide for the protection in accordance with section 3 of the Act of June 1, 1948 (40 U.S.C. 318b), of certain facilities (as designated by the Director of such Agency) which are under the administration and control of, or are used by, the National Security Agency in the same manner as if such facilities were property of the United States over which the United States has acquired exclusive or concurrent criminal jurisdiction.".

(2) Such Act is further amended by inserting after the enacting clause the following: "That this Act may be cited as the 'National Security Agency Act of 1959'".

(b) Any individual who is liable to the United States for any overpayment which was made to or on behalf of such individual before October 1, 1980, under chapter 57 of title 5, United States Code, while such individual was an employee of or assigned to duty with the National Security Agency and which was subsequently determined to be subject to the limitations contained in section 4109(a)(2)(B) of such title is hereby relieved of liability to the United States for such overpayment.

AUTHORITY TO PAY DEATH GRATUITIES

SEC. 403. (a) The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j) is amended by adding at the end thereof the following new section:

"AUTHORITY TO PAY DEATH GRATUITIES

"SEC. 11. (a)(1) The Director may pay a gratuity to the surviving dependents of any officer or employee of the Agency who dies as a result of injuries (other than from disease) sustained outside the United States and whose death—

"(A) resulted from hostile or terrorist activities; or

"(B) occurred in connection with an intelligence activity having a substantial element of risk.

"(2) The provisions of this subsection shall apply with respect to deaths occurring after June 30, 1974.

"(b) Any payment under subsection (a)—

"(1) shall be in an amount equal to the amount of the annual salary of the officer or employee concerned at the time of death;

"(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by any other Federal law; and

"(3) shall be made under the same conditions as apply to payments authorized by section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a).".

(b)(1) Chapter 75 of title 10, United States Code, relating to death benefits, is amended by adding at the end thereof the following new section:

"§ 1489. Death gratuity: Members and employees dying outside the United States while assigned to intelligence duties

"(a) The Secretary of Defense may pay a gratuity to the surviving dependents of any member of the Armed Forces or of any employee of the Department of Defense—

"(1) who—

"(A) is assigned to duty with an intelligence component of the Department of Defense and whose identity as such a member or employee is disguised or concealed; or

"(B) is within a category of individuals determined by the Secretary of Defense to be engaged in clandestine intelligence activities; and

"(2) who after the date of the enactment of this section dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

"(A) resulted from hostile or terrorist activities; or

"(B) occurred in connection with an intelligence activity having a substantial element of risk.

"(b) Any payment under subsection (a)—

"(1) shall be in an amount equal to the amount of the annual basic pay or salary of the member or employee concerned at the time of death;

"(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by this chapter or any other Federal law; and

"(3) shall be made under the same conditions as apply to payments authorized by section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"Sec. 1489. Death gratuity: Members and employees dying outside the United States while assigned to intelligence duties.".

SPECIAL PROVISIONS RELATING TO THE WELFARE OF PERSONNEL OF THE CENTRAL INTELLIGENCE AGENCY

SEC. 404. The Central Intelligence Agency Act of 1949 is amended by adding after section 11 (as added by section 403(a)) the following new section:

"AUTHORITY TO ACCEPT GIFTS, DEVISES, AND BEQUESTS

"SEC. 12. (a) Subject to the provisions of this section, the Director may accept, hold, administer, and use gifts of money, securities, or other property whenever the Director determines it would be in the interest of the United States to do so. Any gift accepted under this section (and any income produced by any such gift) may be used only for artistic display or for purposes relating to the general welfare, education, or recreation of employees or dependents of employees of the Agency or for similar purposes, and under no circumstances may such a gift (or any income produced by any such gift) be used for operational purposes. The Director may not accept any gift under this section which is expressly conditioned upon any expenditure not to be met from the gift itself or from income produced by the gift unless such expenditure has been authorized by law.

"(b) Unless otherwise restricted by the terms of the gift, the Director may sell or exchange, or invest or reinvest, any property which is accepted under this section, but any such investment may only be in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

"(c) There is hereby created on the books of the Treasury of the United States a fund into which gifts of money, securities, and other intangible property accepted under the authority of this section, and the earnings and proceeds thereof, shall be deposited. The assets of such fund shall be disbursed upon the order of the Director for the purposes specified in subsection (a) or (b).

"(d) For purposes of Federal income, estate, and gift taxes, gifts accepted by the Director under this section shall be considered to be to or for the use of the United States.

"(e) For the purposes of this section, the term 'gift' includes a bequest or devise.".

AUTHORITY TO REMEDY UNJUSTIFIED PERSONNEL ACTIONS

SEC. 405. (a) Whenever the Director of Central Intelligence finds during fiscal year 1981 that an employee or former employee of the Central Intelligence Agency has unfairly had his career with the Agency adversely affected as a result of allegations concerning the loyalty to the United States of such employee or former employee, the Director may grant such employee or former employee such monetary or other relief (including reinstatement and promotion) as the Director considers appropriate in the interest of fairness.

(b) Any action of the Director under this section is not reviewable in any other forum or in any court.

(c) The authority of the Director to make payments under subsection (a) is effective only to the extent that appropriated funds are available for that purpose.

GRANTING OF ADVANCED DEGREE AT DEFENSE INTELLIGENCE SCHOOL

SEC. 406. (a) Part III of subtitle A of title 10, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 108—GRANTING OF ADVANCED DEGREES AT DEPARTMENT OF DEFENSE SCHOOLS

"§ 2161. Defense Intelligence School: Master of science of strategic intelligence

"Under regulations prescribed by the Secretary of Defense, the Commandant of the Defense Intelligence School may, upon recommendation by the faculty of such school, confer the degree of master of science of strategic intelligence upon graduates of the school who have fulfilled the requirements for that degree.".

(b) The table of chapters at the beginning of subtitle A of title 10, United States Code, and the table of chapters at the beginning of part III of such subtitle are each amended by inserting after the item relating to chapter 107 the following new item:

"108. Granting of Advanced Degrees at Department of Defense Schools...2161".

CONGRESSIONAL OVERSIGHT OF INTELLIGENCE ACTIVITIES

SEC. 407. (a) Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is amended—

(1) by striking out "(a)" before "No funds";

(2) by striking out "and reports, in a timely fashion" and all that follows in subsection (a) and inserting in lieu thereof a period and the following: "Each such operation shall be considered a significant anticipated intelligence activity for the purpose of section 501 of the National Security Act of 1947."; and

(3) by striking out subsection (b).

(b) (1) The National Security Act of 1947 (50 U.S.C. 401 et. seq.) is amended by adding at the end thereof the following new title:

"TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

"CONGRESSIONAL OVERSIGHT

"SEC. 501. (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

"(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the 'intelligence committees') fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the intelligence committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

"(2) furnish any information or material concerning intelligence activities which is in the possession, custody, or control of any department, agency, or entity of the United States and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities; and

"(3) report in a timely fashion to the intelligence committees any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure.

"(b) The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice.

"(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of subsections (a) and (b).

"(d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of the Congress under this section. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

"(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.".

(2) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

"Sec. 501. Congressional oversight.".

INCREASES IN EMPLOYEE BENEFITS AUTHORIZED BY LAW

SEC. 408. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

EDWARD P. BOLAND,
BILL D. BURLISON,
CLEMENT J. ZABLOCKI,
NORMAN Y. MINETA,
J. K. ROBINSON,
G. WILLIAM WHITEHURST,

For consideration of matters within the jurisdiction of the Armed Services Committee under clause 1(c) of Rule X:

MELVIN PRICE,
RICHARD H. ICHORD,
BOB WILSON,

Solely for consideration of such provisions of sections 408 and 409 and modifications thereof as fall within the jurisdiction of the Foreign Affairs Committee under clause 1(h) of Rule X:

DANTE B. FASCELL,
WM. BROOMFIELD,
EDWARD J. DERWINSKI,

Managers on the Part of the House.

BIRCH BAYH,
ADLAI STEVENSON,
WALTER D. HUDDLESTON,
DANIEL K. INOUYE,
HENRY M. JACKSON,
DANIEL MOYNIHAN,
JOSEPH BIDEN,
BARRY GOLDWATER,
CHARLES MCC. MATHIAS,
JOHN H. CHAFEE,
MALCOLM WALLOP,
DAVID DURENBERGER,
RICHARD G. LUGAR,

For consideration of matters of interest to the Armed Services Committee:

SAM NUNN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2597) to authorize appropriations for fiscal year 1981 for intelligence activities of the United States Government, the Intelligence Community Staff and the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The difference between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—INTELLIGENCE ACTIVITIES

Due to the classified nature of intelligence and intelligence-related activities, a classified annex to this joint explanatory statement serves as a guide to the classified Schedule of Authorizations by providing a detailed description of program and budget authority contained therein as reported by the Committee of Conference.

The actions of the conferees on all matters at difference between the two Houses as stated in such classified annexes and supplement are shown below or in the classified annex to this joint statement.

In view of the differences in committee jurisdiction between the two Houses over intelligence-related activities (IRA), the differences in IRA programs between the House and Senate were resolved by a special conference group. This group consisted of members of the House and Senate Committees on Armed Services and the House Permanent Select Committee on Intellivence.

The amounts listed for IRA represent the funding levels jointly agreed to by the IRA conferees and the House and Senate conferees for the Department of Defense Authorization Act, 1981, for those programs subject to annual authorization and contained in the Department of Defense Authorization bill. In addition, the IRA conferees have agreed on the authorization level, as listed in the classified Schedule of Authorizations, the joint statement and its classified annex for IRA programs which fall into the appropriation categories of Military Pay, Operations and Maintenance, Other Procurement, and Military Construction.

Section 103 of the House amendment provided that each individual ceiling established specifically in the Schedule of Authorizations will be a limitation on obligation and expenditure except by notification of the appropriate committees of Congress. The Senate bill contained no similar provision.

The Senate agreed to the House provision.

Section 105 of the House amendment authorized appropriations of $11,400,000 for the counterterrorism activities of the Federal Bureau of Investigation. The Senate bill contained no such specific provision.

The Senate agreed to the House provision.

TITLE II.—INTELLIGENCE COMMUNITY STAFF: CONFERENCE ACTIONS, FISCAL YEAR 1981 (SEC. 201)

[In millions of dollars]

Project	Fiscal year 1981 budget request [1]	House action	Senate action	Conference authorization
External contracts	2.6	−0.7		1.9
Not subject to conference	15.9			15.9
Total, IC staff funding	18.5	−.7		17.8

[1] As amended Apr. 14, 1980.

The Senate agreed to the House position which provides for a reduction of $700,000 for Intelligence Community Staff external contracts.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

There was no conference difference to be resolved on title III. Both the House and the Senate authorized $55,300,000, the amount requested.

Fund transfers by the Secretary of Defense (sec. 401)

The Senate bill contained a provision (Sec. 403) amending Chapter 4, Title 10, United States Code, authorizing the Department of Defense to use funds authorized and appropriated to the Department to pay expenses of arrangements with foreign countries for cryptologic support. The House amendment (Sec. 402) provided for similar authority during fiscal year 1981 only.

TITLE IV—GENERAL PROVISIONS

The conferees agreed to the Senate language with minor drafting changes.

Administrative provisions relating to the National Security Agency (sec. 402)

The Senate bill contained a provision (Sec. 404) amending the Act of May 29, 1959 (50 U.S.C. 402 note) providing certain administrative authorities for the National Security Agency (NSA). The Senate amendments would enable the Director of the NSA to lease or rent facilities overseas for special cryptologic activities and for housing for personnel assigned to such activities, to provide benefits comparable to those of State Department and Central Intelligence Agency to certain employees in special assignments overseas, and to provide certain allowances to cryptologic personnel assigned overseas for long term training. This section of the Senate bill also contained an authorization to waive any claims by the United States for overpayments made to cryptologic personnel previously assigned overseas for long term training and relieves those employees of liability for any claim based on such overpayment.

The House amendment (Sec. 403 and Sec. 404) provided for similar authority to the Director of the NSA during fiscal year 1981.

The conferees agreed to revised language incorporating similar authorities contained in both the House and Senate versions.

The Senate bill (Sec. 405) and House amendment (Sec. 404) also contained a provision authorizing the Administrator of the General Services Administration (GSA) to provide police protection for certain NSA installations in the same manner as Federal Protective Service police protect federal buildings under the control of GSA. The House amendment limited this authority to fiscal year 1981. The conferees agreed to the House language without the single fiscal year limitation. The conference report appends all the above mentioned provisions to, and provides a new title for, the Act of May 29, 1959 (50 U.S.C. 402).

Authority to pay death gratuities (sec. 403)

Section 406 of the Senate bill authorized payment of a death gratuity to dependents of employees of the Central Intelligence Agency and the National Security Agency who die as a result of injuries sustained outside the United States when it has been determined that death resulted from hostile or terrorist action, or occurred in connection with an intelligence activity having a substantial element of risk.

The House amendment (Sec. 403) contained similar authority for fiscal year 1981, but included in addition to survivors of Central Intelligence Agency employees, survivors of all Department of Defense officers or employees or members of the Armed Forces assigned to and serving undercover in an intelligence component of the Department of Defense, or engaged in clandestine intelligence activities involving a substantial element of risk.

The conferees agreed to the House language without the single fiscal year limitation, amended the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a–403j) and Chapter 75 of Title 10, United States Code, to provide death gratuity payment authority for Central Intelligence Agency and Department of Defense personnel, respectively.

The conferees wished to reemphasize that death gratuities of the type authorized by the conference report are intended to be in addition to any other pension, health insurance or other death related payments made by the Federal Government, but are not meant to be in addition to other lump-sum death gratuities unrelated to the above type payments. The intent of new section 11(b)(2) of the Central Intelligence Agency Act and new section 1489(b)(2) of title 10, United States Code, is to make clear that when an individual's surviving dependents would, but for the language of these provisions, be eligible for two such lump-sum payments from the Federal Government, that the payment authorized by sections 11(a) or 1489(a) respectively would supersede the other payment if the payment under section 11(a) or 1489(a) is larger, and that it would be the exclusive payment of a lump-sum death gratuity unrelated to Federal retirement, health insurance or other survivor benefits.

Special provisions relating to the welfare of personnel of the Central Intelligence Agency (sec. 404)

The Senate bill (Sec. 402) contained a provision authorizing the Director of Central Intelligence to accept gifts, bequests, and property on behalf of the Agency whenever he determines that it is in the interest of the United States to do so. The House amendment contained no similar provision.

The conferees agreed to the Senate provision with minor changes. The conferees agreed further to request periodic reports to the intelligence committees concerning the operation of this section.

Authority to remedy unjustified personnel actions (sec. 405)

The Senate bill (Sec. 403) contained a provision authorizing the Director of Central Intelligence to grant monetary or other relief to employees or former employees of the Central Intelligence Agency whenever the Director determined that an employee's, or former employee's, career had suffered due to unjustified personnel or administrative action. The House amendment contained no similar provision.

The conferees agreed to the Senate provision with minor changes except that the Director's authority to make findings concerning unjustified personnel actions can be exercised only during fiscal year 1981 and is limited to those cases resulting from allegations concerning the employee's, or former employee's, loyalty to the United States. The conferees wish to emphasize that the enactment of a provision to remedy unjustified personnel actions is not intended to eliminate any cause of action an employee or former employee may have. Appropriate

settlements entered into by such employees or former employees in connection with remedial actions taken pursuant to this provision may resolve such causes of action.

Granting of advanced degrees at Department of Defense schools (sec. 406)

The Senate bill (Sec. 407) contained a provision amending Title 10, United States Code, to authorize the granting of a degree of Master of Science in Strategic Intelligence by the Defense Intelligence School. The House amendment contained no similar provision.

The House agreed to the Senate provision.

Presidential findings and congressional oversight for intelligence activities (sec. 407)

The Senate bill contained provisions (Sec. 408 and Sec. 409) providing for comprehensive oversight of all intelligence activities by the intelligence committees of the House and Senate, including a revision of the so-called Hughes-Ryan amendment to the Foreign Assistance Act (22 U.S.C. 2224) which requires reporting to Congress of certain CIA activities conducted abroad.

The House bill contained no comparable provisions.

The congressional oversight provisions of the Senate bill establish a permanent statutory basis for the oversight procedures that have been developed by the select committees and the executive branch over the past four years. They are predicated on two general principles. The first is respect for the authorities and duties of both the Congress and the executive branch, including the constitutional authorities of each branch. The second is the duty of both branches through mutual consultation to ensure that sensitive information is securely handled so that the interests of the United States are protected.

Both of these principles are to be taken into account as limitations on the obligations imposed by the statute. For example, the statute would not preclude an executive branch assertion of constitutional authority to take actions to defend the nation, nor does the statute limit the congressional power of inquiry under the Constitution. Moreover, since both branches agree upon their duty to protect intelligence sources and methods, the select committees have worked out procedures and practices under which by agreement certain information is usually not sought by the committees. Examples of such information may include the identities of agents or other sources of intelligence collection.

It is agreed by both the committees and the executive branch that the protection of intelligence sources and methods is not to be used as a device to place one branch in a position of advantage. By agreement both branches recognize that particular circumstances will require the exercise of unusual care and discretion. The protection of sources and methods is a means to protect the vital interests of the U.S. and is not an end in itself. Consequently, over the past four years the intelligence oversight committees have consulted with the executive branch to determine those areas where, on the basis of past experience and a reasonable sense of future needs, there might be good and sufficient reason to withhold information when some compelling reasons arise from extraordinary circumstances where the vital interests of the U.S. are involved.

The clear intent of these two principles is to ensure that the legitimate concerns of both branches and the interests of the nation as a whole are respected. Neither the executive branch nor the legislative branch is giving up any powers, authorities or rights it may have; rather, both branches recognize the powers, rights, authorities and duties of the other. Through this legislation there are established procedures by which both branches may carry out their separate and joint responsibilities and duties to protect the nation through the use of intelligence information.

Four duties are imposed upon executive branch officials. First, they are to keep the select committees "fully and currently informed" of intelligence activities.* Second, they are to provide advance information to the select committees regarding "significant anticipated intelligence activities," such as covert operations and certain other intelligence activities specified in consultation with the executive branch. Third, they are to furnish any information or material concerning intelligence activities requested by the select committees in order to carry out the select committees' authorized responsibilities. Fourth, they are to provide timely reports on illegal intelligence activities and significant intelligence failures.

Provision is also made for procedures to be followed in those rare, extraordinary and compelling circumstances when advance information might be withheld from the select committees. If the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital national interests, such prior notice is to be given to eight congressional leaders. If prior notice of a covert operation is not given, the President must fully inform the select committees in a timely fashion and provide a statement of the reasons for not giving prior notice.

The statute authorizes the President and the select committees to establish the procedures necessary for carrying out these requirements. In addition, each House is to establish procedures for protecting sensitive information furnished under the statute from unauthori ed disclosure, and for notifying each House and other appropriate committees of matters requiring their attention.

Concern was expressed by the House conferees that the provisions for the protection of information from "unauthorized disclosure" might be construed as authority to withhold information from the select committees on the grounds that providing the information to the select committees would constitute unauthorized disclosure of classified information or information relating to intelligence sources and methods. Therefore, a final provision is included to make clear that nothing in the statute may be construed in such a manner.

As stated in the report to accompany S. 2284, a separate Senate-passed bill the provisions of which are identical to the Senate oversight provisions (S. Rept. 96-730), the select committees "are authorized to receive such information." The authority of the select committees to receive highly sensitive information is reflected in other contexts as well. For example, the recently reported House and Senate versions of the Intelligence Identities Protection Act, which provides criminal penalties for disclosing identities of covert agents to any individual not authorized to receive classified information, defines the term "authorized" to include "having authority, right, or permission pursuant to the provisions of . . . any rule of the House of Representatives or re olution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities." The conferees expect that mutual agreement on the need to protect vital intelligence sources and methods may result in decisions that certain information, such as the identities of covert agents, need not be furnished to the select committees in particular circumstances. Although differences have occasionally arisen under the current procedures, and may arise on future occasions after the enactment of this statute, it is the view of the conferees that, as in the past, such differences must be resolved on the basis of comity and mutual understanding. Moreover, both branches agree that the select committees continue to have the right to obtain information they require by subpoena. As stated in the Senate report accompanying S. 2284, the statute does not provide a statutory right to withhold information from Congress when subpoenaed by Congress.

The House agreed to the Senate provision with an amendment.

TITLE OF THE BILL

The conferees agreed to the title of the House bill which reads: An Act to authorize appropriations for fiscal year 1981 for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, and for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

EDWARD P. BOLAND,
BILL D. BURLISON,
CLEMENT J. ZABLOCKI,
NORMAN Y. MINETA,
J. K. ROBINSON,
G. WILLIAM WHITEHURST,

For consideration of matters within the jurisdiction of the Armed Services Committee under clause 1(c) of Rule X:

MELVIN PRICE,
RICHARD H. ICHORD,
BOB WILSON,

Solely for consideration of such provisions of sections 408 and 409 and modifications thereof as fall within the jurisdiction of the Foreign Affairs Committee under clause 1(h) of Rule X:

DANTE B. FASCELL,
WM. BROOMFIELD,
EDWARD J. DERWINSKI,

Managers on the Part of the House.

BIRCH BAYH,
ADLAI STEVENSON,
WALTER D. HUDDLESTON,
DANIEL K. INOUYE,
HENRY M. JACKSON,
DANIEL MOYNIHAN,
JOSEPH BIDEN,
BARRY GOLDWATER,
CHARLES MCC. MATHIAS,
JOHN H. CHAFEE,
MALCOLM WALLOP,
DAVID DURENBERGER,
RICHARD G. LUGAR,

For consideration of matters of interest to the Armed Services Committee:

SAM NUNN,

Managers on the Part of the Senate.

* The conferees agree that the term "intelligence activities" is intended to encompass the full range of intelligence and intelligence-related activities within the jurisdiction of the two select committees.

ANNOUNCEMENT BY CHAIRMAN OF PERMANENT SELECT COMMITTEE ON INTELLIGENCE

Mr. BOLAND. Mr. Speaker, I wish to announce at this time that the classified annex to accompany the conference report on the Senate bill (S. 2597) to authorize appropriations for fiscal year 1981 for intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes is available to Members of the House in the rooms of the Permanent Select Committee on Intelligence, room H-405 of the Capitol, from 9 a.m. until 5 p.m., Monday through Friday, until consideration of the conference report in the House.

PERMISSION FOR COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO FILE SUNDRY REPORTS

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs may have until midnight tonight to file sundry reports.

The SPEAKER pro tempore (Mr. BENNETT). Is there objection to the request of the gentleman from Ohio?

There was no objection.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. BIAGGI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oil-spill damage and removal costs, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. BIAGGI).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOTTL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 302, nays 5, answered "present" 1, not voting 124, as follows:

[Roll No. 568]

YEAS—302

Akaka
Alboeta
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Bonior
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Butler
Byron
Campbell
Carney
Carr
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Daniel, R. W.
Danielson
Dannemeyer
Deckard
Dellums
Derrick
Derwinski
Devine
Dicks
Dingell
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Fish
Fisher
Fithian
Flippo
Florio
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Gramm
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Harris
Hightower
Hollenbeck
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hyde
Ichord
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lungren
McCloskey
McCormack
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Patten
Patterson
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Nebr.
Snowe
Snyder
Solars
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Traxler
Trible
Udall
Vander Jagt
Vanik
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki

NAYS—5

Dickinson
Holt
McDonald
Mitchell, Md.
Paul

ANSWERED "PRESENT"—1

Ottinger

NOT VOTING—124

Abdnor
Addabbo
Alexander
Anthony
Applegate
Barnard
Beard, Tenn.
Bereuter
Bethune
Boner
Bonker
Brooks
Brown, Ohio
Burton, Phillip
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Cleveland
Collins, Ill.
Corman
Cotter
Crane, Philip
D'Amours
Daniel, Dan
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Dixon
Dodd
Early
Edwards, Ala.
Edwards, Calif.
Erlenborn
Evans, Ga.
Findley
Foley
Ford, Mich.
Ford, Tenn.
Garcia
Gingrich
Goodling
Grassley
Gray
Hammer-schmidt
Hanley
Hansen
Harkin
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Hutto
Ireland
Jacobs
Jenrette
Johnson, Colo.
Jones, N.C.
Kelly
Kindness
Leach, La.
Lederer
Lent
Lloyd
Luken
Lundine
McClory
McDade
McEwen
McKinney
Marienee
Mathis
Mattox
Mavroules
Mazzoli
Mica
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nichols
Nolan
Pashayan
Pepper
Quillen
Rahall
Railsback
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Smith, Iowa
Stanton
Stark
Steed
Stockman
Symms
Thomas
Ullman
Van Deerlin
Vento
Volkmer
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wright
Wydler
Yates
Zeferetti

□ 1320

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 85, with Mr. NATCHER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Thursday, September 18, 1980, all time for general debate on the bill had expired.

Pursuant to the rule, an amendment in the nature of a substitute printed in the CONGRESSIONAL RECORD of August 27, 1980, by the gentleman from Louisiana (Mr. BREAUX) shall be considered by titles as an original bill for the purpose of amendment under the 5-minute rule, in lieu of the amendments recommended by the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means, now printed in the bill, and each title shall be considered as having been read.

No amendment to title V of said substitute shall be in order except pro forma amendments for the purpose of debate and amendments recommended by the Committee on Ways and Means which shall not be amendable except by pro forma amendments.

After the consideration of title V of the substitute and any amendments thereto, no further amendment to the bill shall be in order.

The Clerk will designate section 1.

Section 1 reads as follows:

That this Act may be cited as the "Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act".

The CHAIRMAN. Are there amendments to section 1? If not, the Clerk will designate Title I.

Title I reads as follows:

TITLE I—OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by title V of this Act;

(c) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned or chartered by demise, and operated by (A) the United States, (B) a State or political subdivision thereof, or (C) a foreign government, and

(2) is not engaged in commercial service;

(g) "ship" means either of the following types of vessels carrying oil in bulk as cargo or in residue;

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel other than an inland oil barge;

(h) "inland oil barge" means a non-self-

propelled vessel, carrying oil in bulk as cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(i) "facility" means a structure, or group of structures (including a mobile drilling rig when in the drilling mode), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(j) "onshore facility" means any facility, (including, but not limited to, any motor vehicle or rolling stock) located in, on, or under any land within the United States;

(k) "offshore facility" means any facility located in, on, or under the navigable waters or, if the facility is subject to the jurisdiction of the United States, the high seas;

(l) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by an agency of the Federal Government, which receives oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.);

(m) "refinery" means a terminal that receives crude oil for the purpose of refinement;

(n) "oil pollution" means—

(1) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(A) in or on the navigable waters or on land within the United States immediately adjacent thereto; or

(B) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(A) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.);

(B) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of the United States; or

(C) when discharged from a ship that received oil at the terminal facilities of the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from that ship prior to being brought ashore in such a port; or

(3) the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under section 103(b)(5) of this title;

(o) "navigable waters" means the waters of the United States, including the territorial seas;

(p) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(q) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(r) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(s) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(t) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(u) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(v) "claim" means a demand in writing for a sum certain;

(w) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(x) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(y) "affiliated" means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person;

(z) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(aa) "natural resources" includes fish, wildlife, biota, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(bb) "removal costs" means—

(1) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, as amended, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974 as amended; and

(2) cleanup costs, other than the costs described in clause (1);

(cc) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(dd) "internal waters of the United States" means those waters of the United States lying inside the base line from which the territorial sea is measured and those waters outside that base line which are a part of the Gulf Intracoastal Waterway.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is in the Treasury of the United States a fund known as the Comprehensive Oil Pollution Liability Trust Fund established in title V of this Act.

(b) In addition to the processing and settlement of claims under section 107, the fund is immediately available to pay those removal costs defined in section 101(bb)(1) arising out of or directly resulting from an oil pollution incident. The Secretary may issue regulations designating the person or persons who may obligate available money in the fund for those purposes.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) injury to, or destruction of, natural resources; and

(4) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any claimant; *Provided*, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(c)(1) or 104(c)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under item 2 by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 3, by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

(4) under item 4, by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

(5) under items 2 through 4, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred (1) in the navigable waters or (2) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided, however*, That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port; and

(6) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

(c) If the Attorney General fails to act under clause (6) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover

damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

LIABILITY

SEC. 104. (a) Subject to the provisions of subsections (b), (c), (d), and (e), the owner and operator of a vessel other than a public vessel, or of a facility, that is the source of oil pollution, or poses a threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 101(bb)(1) of this title, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the incident or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

(1) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

(2) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

(3) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

(4) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

(5) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

(6) in the case of a facility other than one described in clause (4) or (5), $50,000,000 or such lesser limit as is established under subsection (d).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this subsection.

(c) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (5) of subsection (b), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (4) and (5) of subsection (b). These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (3) of subsection (b), taking into account the relative potential threat of oil pollution, but in no case shall such a limitation be less than $2,000,000 for any tank motor vehicle operated on highways and transporting oil in bulk with a water capacity of more than 3,500 gallons.

(e) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused—

(A) by an act of war, hostilities, civil war, or insurrection; or

(B) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

(2) to the extent that the incident is caused by an act or omission of a person other than—

(A) the claimant,

(B) the owner or operator,

(C) an employee or agent of the claimant, the owner, or the operator, or

(D) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(3) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(4) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(f)(1) Except as provided in title V the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of this Act, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(bb), there shall be no liability under paragraph (1) hereof—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104, the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (a), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnify for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

(i) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(j) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry oil, as that term is defined in section 311(a)(1) of the Federal Water Pollution Control Act, as amended, or hazardous substances), over three hundred gross tons that uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability under this Act to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title and subsection (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel, subject to this subsection, that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) The owner or operator of each offshore facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed in a case where he would be entitled to limit his liability in accordance with section 104 of this title, or $50,000,000, whichever is less. These regulations shall take into account the size, type, location, arrangement and degree of consolidation of the structure, platform, well, or pipeline. The regulations shall also take into account the various groupings of multiple offshore facilities owned or operated by the same person or persons or under joint venture. In cases where the owner or operator owns, operates or leases more than one facility subject to this subsection, evidence of financial responsibility need be

established only to meet the maximum liability applicable to the largest of such facilities.

(2) Where an offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(3) The owner or operator of each tank motor vehicle operated on highways and transporting oil in bulk, with a water capacity of more than 3,500 gallons shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility in such amounts as the Secretary, by regulation, shall establish, but in no event less than $2,000,000.

(c) Any claim authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. He may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but he may not invoke any other defense that he might have been entitled to invoke in proceedings brought by the owner or operator against him.

DESIGNATION AND ADVERTISEMENT

SEC. 106(a)(1) When the Secretary receives information of an incident that involves oil pollution, he shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) Claims for compensable damages under title V of this Act shall be presented to the fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 106(b), or

(2) where the owner or operator may recover under section 103(b)(1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 106(a)(2),

whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of claims for compensable damages under title V, to present the claim to the fund; that election to be irrevocable and exclusive.

(d) In the case of a claim for compensable damages under title V presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104 or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, under subsection (a), and which is being presented to the fund, under subsection (c) or (d), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, under subsections (b), (c), and (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced under section 106(b), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this paragraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made under this subsection. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary under subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

(i)(1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under subsection (h).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

(j)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by section 104 of this title is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who compensates any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, under subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) under section 107(b)(1), or (where there has been a denial of liability) under section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon when the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorney's fees; and

(2) for a claim presented to the fund under section 107(c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), for the period specified in clause (1) of this subsection; and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: Provided, That if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under section 106, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, under clause (1) and subclause (A) of clause (2) of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss which is a compensable damage under title V, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment.

(c) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.

PENALTIES

SEC. 111. (a) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 105, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the President in connection with section 105(a)(1) and by the Secretary in connection with all other sections, by written notice. In determining the amount of such penalty, the appropriate Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) The Secretaries may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(c) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretaries may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

APPROPRIATIONS

SEC. 112. There are authorized to be appropriated for those fiscal years which begin on or after October 1, 1980, such sums as may be necessary to carry out the provisions of this title.

ANNUAL REPORT

SEC. 113. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the administration of this title during that fiscal year, and his recommendations for any legislative changes he finds necessary or appropriate to improve the management of, and the administration of the liability provisions of, this title.

AMENDMENT OFFERED BY MR. BIAGGI

Mr. BIAGGI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BIAGGI: On page 1, line 10, strike "title V" and substitute "section 521".

On page 6, lines 3 and 4, strike "the Canal Zone,".

On page 7, line 7, strike "facility;" and substitute "facility, and in the case of an offshore facility, the term includes the operating holder of a leasehold interest or permit for the exploration of oil;".

On page 11, lines 23 and 24, strike "claimants: *Provided, however*, That condition (C) shall not apply" and substitute "claimants, except that".

On page 12, line 7, strike "port; and" and substitute "port only condition (B) of this paragraph shall be applicable to that claim; and".

On page 21, line 9, add "In the case of an owner who is the holder of a leasehold in-

terest or permit for the exploration of oil offshore, evidence of financial responsibility established for the leasehold to meet the maximum liability applicable under paragraph (1) of this subsection shall cover the liability of that owner for all facilities located on the leasehold.".

On page 22, after line 2, add a new subsection:

"(d) The total liability under this title of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility under this title, except that nothing in this subsection shall be construed to limit the liability of a guarantor for negotiating, or failing to negotiate, in bad faith a settlement of any claim.".

Mr. BIAGGI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BIAGGI. Mr. Chairman, the amendments I am offering have been worked out jointly by the Merchant Marine Committee and the Public Works Committee. They do not amend title V of the bill or in any way affect its provisions.

I would like to briefly explain those amendments that are not merely technical and conforming:

On page 7 of the bill, the amendment would, in the case of an offshore facility on a leasehold where the facility owner and leaseholder are different entities, make both liable for damages resulting from oil pollution. Under the present form of the bill, only the facility owner—usually the drilling contractor—is liable. The proposed amendment would also make the leaseholder liable. He is the one who hires the drilling contractor, controls his operations, and receives the benefits of the leasehold. He is also generally better able to show financial responsibility. The amendment should provide an additional incentive to leaseholders to select competent drillers and supervise them carefully. The amendment is consistent with present industry practices.

Another aspect of the problem of leaseholds is found in the amendment to page 21 of the bill. This allows a leaseholder to make one showing of financial responsibility to cover all facilities on the leasehold. This provision will simplify administration of the bill and reduce paperwork requirements. It is consistent with the comparable provision applicable to vessel fleet owners, and should result in a showing of financial responsibility by the entity best able to afford it and with the most interest in the drilling enterprise.

The amendment to page 22 of the bill provides that a guarantor who provides a certificate of financial responsibility will not be liable for claims or removal costs in excess of the amount stated in that certificate. This amendment is necessary in order to assure that insurors will provide insurance under the bill. They are reluctant to do so because of certain language in the bill that they believe could be construed to make them liable for claims in excess of the certificate limits. They have not, in fact, provided insurance coverage under similar language enacted in 1978 when the outer continental shelf oil spill pollution fund was established. The amendment would express specifically what has always been the intent of the bill—that the guarantor's liability under the legislation is limited to the amount stated in the certificate of financial responsibility he supplies.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Texas.

Mr. ROBERTS. I thank the gentleman for yielding.

I agree with the gentleman's amendment. I think it clears up an area here that was in doubt.

I support the amendment.

Mr. BREAUX. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Louisiana.

Mr. BREAUX. I thank the gentleman for yielding.

Mr. Chairman, I have a question for Mr. BIAGGI in connection with the effect of his amendment regarding the filing for certificates of financial responsibility. Historic and industry practice in offshore drilling operations has placed the financial responsibility for oil spill pollution damage on the leaseholder. The reason the oil company leaseholder is willing to assume that burden is because the service companies who are the owners of the mobile offshore drilling units are:

First, unable to secure sufficient insurance coverage for risk;

Second, the operations of the rig are under the direction, control and supervision of the oil company leaseholder for whom they work; and

Third, there are numerous other service contractors aboard the mobile rig from time to time conducting operations and using their own equipment under the direction, control and supervision of the oil company leaseholder.

If I understand correctly, the proposed definition of owner of a facility and the expanded concept that a facility includes a leasehold or permit right, allows the requirements of the law regarding the filing for a certificate of financial responsibility to be met completely for all the service contractors owning equipment, include mobile drilling rigs, when the leaseholder files for the certificate.

If this is so, I heartily endorse this provision which would eliminate the potential need for duplicate filings by each and every service company contractor working for a leaseholder.

The liability of the parties can then be determined individually based upon their own contractual relationship with the oil company leaseholder who hired them and directed their activities. Is this, indeed, a correct interpretation of the gentleman's amendment?

□ 1330

The CHAIRMAN. The time of the gentleman from New York (Mr. BIAGGI) has expired.

(At the request of Mr. BREAUX, and by unanimous consent, Mr. BIAGGI was allowed to proceed for 2 additional minutes).

Mr. BIAGGI. The gentleman is, indeed, correct in his observation. This problem developed as a result of title III of the 1978 Outer Continental Shelf Lands Act Amendments. Our effort here today is to insure that the same problems do not exist in this legislation.

Very clearly, the insurer should be limited in liability to the amount of money that is expressed in the certificate. There is no question that his liability ceases at that point.

Mr. BREAUX. I thank the gentleman for the clarification.

Mr. LIVINGSTON. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I would be delighted to yield to the gentleman from Louisiana (Mr. LIVINGSTON).

Mr. LIVINGSTON. Mr. Chairman, I rise to seek clarification on a technical amendment that has been offered by my colleague from the State of New York (Mr. BIAGGI) and has been supported by the gentleman from Kentucky (Mr. SNYDER). As I understand it, the amendment seeks to clarify or set the aggregate liability of any guarantor at that amount which the guarantor has provided as evidence of financial responsibility. It does not change the rights of any claimant to recover for damages for economic loss limits under the liability scheme established, and is meant to secure and solidify the provision of financial responsibility from the insurance market.

However, due to the construction of the exception clause to the amendment, insurers have advised me that they remain unwilling to provide the evidence of financial responsibility, since the provision can be construed to expose them beyond the limits set forth in their certification of financial responsibility. I would like to clarify my understanding that the purpose of this exception clause is merely to preserve the rights and obligations of any owner or operator for whom evidence of financial responsibility is provided, arising under common law, or out of the contract with his guarantor.

It is not to be viewed as a means for undermining the absolute certainty that insurers will require concerning their liabilities as guarantors by allowing outside parties to raise rights inherent in the guarantee contract. Without this certainty, insurers and other guarantors will be reluctant to provide the required evidence of financial responsibility.

Does the gentleman concur in my understanding?

Mr. BIAGGI. The gentleman from Louisiana is correct in his understanding of the amendment. The purpose of this amendment is to clarify that there is no intention to impose liability on guarantors under the direct action provisions of this statute in excess of the amount provided as evidence of financial responsibility by the guarantor.

The exception clause is to make certain that nothing in the amendment shall be construed to change or limit the common law or contractual liability of any guarantor to the owner or operator for whom evidence of financial responsibility is provided. That clause does not affect the liability of a guarantor to those not party to the contract between the guarantor and the owner or operator.

Mr. LIVINGSTON. I thank the gentleman for his clarification.

Mr. SNYDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the committee amendments being offered on title I of H.R. 85 dealing with oil pollution liability and compensation. The Committees on Merchant Marine and Fisheries and Public Works and Transportation have worked together to prepare these amendments. They are technical or clarifying in nature to carry out the intent of H.R. 85 as reported out by these two committees. In addition, they are totally consistent with the funding provision of title V.

These amendments include the following provisions:

The modification of the definition of "owner" to include the operating holder of a leasehold interest or permit in the case of an offshore facility to make not only owners and operators of facilities liable for damages from oil pollution, but also the leaseholder who receives the benefit of offshore exploration and exploitation.

The clarification that Canadian claimants have the same rights as existed under the trans-Alaska pipeline legislation.

A simplification of the establishment of financial responsibility on a leasehold, allowing an umbrella certificate of financial responsibility for all facilities on one leasehold similar to the provision regarding vessels.

A limitation of the liability of a guarantor in a direct action suit to the amount of the certificate of financial responsibility provided by the guarantor.

I want to make a particular note about the amendment addressing the limitation of the liability of a guarantor to the amount of the certificate of financial responsibility. This amendment is made to insure certainty of liability which will facilitate the ability of insurers to provide certificates of financial responsibility for owners, operators, and leaseholders offshore. This provision does not excuse an insurer from the responsibilities and obligations to an insured which exists independent of the statute That is, this insurance or guarantor provision applies only to the direct action suit situation under section 105 and does not alter the relationship between an owner, operator, or leaseholder and the guarantor.

Thus, an insurer would not be able to use this provision to deny compensation under the insurance provided to an owner, operator, or leaseholder. In this regard, the remedies available at common law and other statutes would still be available.

In particular, this provision limits the liability of a guarantor in a direct action suit to the face amount of the certificate of financial responsibility the guarantor provides in accordance with section 105 of this bill. Thus, in this situation, once a guarantor has paid a cumulative or aggregate amount of claims for one incident in an amount that equals the face amount of this certificate of financial responsibility, the guarantor would no longer be liable for damages to a party bringing suit under the direct action provision. In the event that liability should exceed the face amount of the certificate of financial responsibility, the direct action claimant would still have a cause of action against the spiller under section 103.

In this instance, the spiller may be found liable in excess of the amount of the certificate of financial responsibility. It would be at this point that the insurance or other guarantee, provided to the spiller in addition to a certificate of financial responsibility, would be generally available to compensate a claimant. However, the availability of this additional compensation would be a function of the relationship between the owner, operator or leaseholder and the guarantor.

Mr. Chairman, I urge the adoption of the committee amendments to H.R. 85.

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Chairman, I rise in support of the committee amendments developed by the Committees on Merchant Marine and Fisheries and Public Works and Transportation.

Particularly, I would like to underscore one of the committee amendments. That amendment is one which includes the provision setting forth the disposition of funds remaining in TAPS, once the claims certified by the Secretary of the Interior have been adjudicated. This restores a provision in H.R. 85 which was inadvertently omitted by the Breaux amendment in the nature of a substitute. This provision was also incorporated in the bills that passed the House and Senate in the 95th Congress. This concerns the relationship between the TAPS fund and the fund established through H.R. 85. The bill provides that at the time of transfer of the TAPS funds into the H.R. 85 fund, the Secretary of the Interior must certify the amount of outstanding claims. If the assets of the TAPS fund are greater than the certified claims by the Secretary of the Interior, the excess will be transferred to the H.R. 85 fund.

The provision offered by this amendment addresses those funds which remain in the TAPS fund to satisfy the certified claims. If the amount of claims actually settled is less than the amount certified, the difference shall be returned to the pipeline operator for rebate to the owners of the oil on a pro rata basis.

The disposition of funds which may remain in the TAPS fund after the disposition of certified claims is not addressed or contemplated in any other title of H.R 85. Therefore, not only does this amendment restore the provision in the Breaux amendment to H.R. 85, it also serves to provide for the administrative disposition of any money remaining in the TAPS fund in an equitable manner to those who made payments into that fund. Furthermore, since this provision deals with funds remaining in the TAPS fund, it would not be inconsistent with the funding provisions of title V.

Mr. Chairman, I urge adoption of the proposed committee amendments.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. BIAGGI).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SNYDER

Mr. SNYDER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SNYDER: Page 15, line 4, strike out "$2,000,000" and insert in lieu thereof "$1,000,000".

Page 21, line 16, strike out "$2,000,000" and insert in lieu thereof "$1,000,000".

Mr. SNYDER. Mr. Chairman, my amendment would simply reduce the minimum level of financial responsibility for owners of tank trucks transporting oil from $2,000,000 to $1,000,000.

This amendment is needed in order to bring the requirements of H.R. 85 in line with the insurance requirements recently enacted by the Congress in the Motor Carrier Act of 1980, Public Law 96-296.

The Motor Carrier Act of 1980 establishes a comprehensive scheme of financial responsibility for motor carriers. All trucks of 10,000 pounds or more carrying oil or hazardous materials are required to have at least $1,000,000 insurance covering public liability, property damage, and environmental restoration. This would include tank trucks of 3,500 gallons or more carrying oil.

Under H.R. 85, which was reported by our committee prior to enactment of the Motor Carrier Act, tank trucks of 3,500 gallons or more carrying oil would be required to carry at least $2,000,000 in insurance. This is twice the minimum level established in the Motor Carrier Act. Rather than having two different requirements apply to these trucks, my amendment would make the provisions consistent by reducing the level in H.R. 85 to the same $1,000,000 level as is in the Motor Carrier Act.

I want to assure the Members that this action in no way compromises any of the protections embodied in H.R. 85. The $1,000,000 is the minimum level that the Secretary of Transportation can set. He or she will have the discretion to set higher levels, including $2,000,000, if the public interest so requires. I also want to emphasize that the amended provisions in H.R. 85 would in no way abrogate any of the insurance requirements in the Motor Carrier Act. All of the requirements of Public Law 96-296 would remain intact.

I urge the adoption of my amendment.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, I have no objection to the amendment. I will accept it, and as the gentleman from Kentucky stated, it is consistent with the newly passed legislation, the Trucking Deregulation Act of 1980.

Mr. DONNELLY. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman.

Mr. DONNELLY. Mr. Chairman, I rise in support of the amendment. I would

like to associate myself with the remarks of the gentleman from Kentucky

Mr. Chairman, I rise in support of the amendment of my colleague from Kentucky. Unless this legislation is amended, the small- and medium-sized oil dealers in New England would be faced with a situation threatening their very existence. Under the Motor Carrier Act of 1980, these companies are required to uphold a financial responsibility of $1 million. The provision we are trying to amend would increase that financial responsibility to $2 million. This would have a disastrous effect on small operators.

Currently, New England, New Jersey, New York, and Pennsylvania consume well over 50 percent of our Nation's home heating oil. Under passage of this legislation the cost of insurance for the companies would surely rise and would be forced to be passed on to the consumers. The average dealer in New England operates 2.6 trucks. We cannot continue to pass legislation which will overregulate our country's small businessmen. The sum suggested, $2 million, is certainly not commensurate with a spill from trucks of such small capacities. Instead, the $1 million figure which is already in the existing law will cover the financial responsibility adequately.

I ask the support of my colleagues for this amendment. Unless this amendment is acted on favorably, we would be compelling thousands of small businessmen to take on a tremendous and unnecessary financial burden. We have the great opportunity in this vote to cast our support for both small business and the consumers, I urge my colleagues to support this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky (Mr. SNYDER).

The amendment was agreed to.

The CHAIRMAN. Are there additional amendments to title I?

AMENDMENT OFFERED BY MR. WYATT

Mr. WYATT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WYATT: Page 37, after line 14, insert the following:

IXTOC I OILSPILL

Sec. 114. (a) Claims may be asserted by any United States claimant against the Oil Pollution Trust Fund established in section 521 of this Act for any compensable damage (within the meaning of section 531 of this Act) incurred by such claimant and arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with a blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979: *Provided, however,* that the obligations of the Oil Pollution Trust Fund to carry out this subsection shall not exceed $75 million. If compensable damages exceed $75 million, they shall be reduced proportionally as determined by the Secretary.

(b) The provisions of this title, other than those provisions determined by the Secretary to be inconsistent with this section, shall apply to claims under subsection (a).

(c)(1) Except as provided in paragraphs (2) and (3) of this subsection, no United States claimant shall be eligible to receive compensation under subsection (a) of this section for any damage referred to in such subsection for which such claimant has not been compensated if such claimant has presented a claim for compensation for such damage under any other Federal or State law.

(2) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is not reduced to judgment before the date of enactment of this Act may be eligible to receive compensation under such subsection. Presentation by such claimant of a claim for compensation under subsection (a) of this section shall be irrevocable, shall constitute the exclusive relief which may be granted with respect to the damage for which such claim is presented, and shall constitute a waiver by such claimant of any right to relief to which such claimant may be entitled under such other Federal or State law with respect to such damage.

(3) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is reduced to judgment before the date of the enactment of this Act may be eligible to receive compensation under such subsection. Such claimant may present such judgment to the Secretary. If the Secretary determines that such claimant is entitled to receive compensation under either such subsection, then the Secretary shall offer to pay such compensation, not to exceed the amount of any award made in such judgment, in satisfaction of such judgment. Acceptance of such offer by such claimant shall constitute full satisfaction of such judgment with respect to each claim for any damage which is referred to in subsection (a) of this section and which is merged in such judgment.

Mr. WYATT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. WYATT. Mr. Chairman, on June 3, 1979, Ixtoc I, an oil well in the Bay of Campeche, Mexico, blew out and began what has become the largest oil spill in history. Estimates of the amount of oil spilled ranged from 120 to 350 million gallons in the 9 months the well flowed uncontrolled.

It took only 2 months for the oil to travel the 500 miles on Gulf of Mexico waters between the well and the U.S. coastline where the well caused economic losses to many businesses, most associated with tourism, and shrimpers who had to leave their normal fishing grounds and ports of call.

The United States has spent almost $8 million cleaning up the oil and that does not include the assessment or the extent of damages. Although $355 million in claims have been made in the numerous lawsuits filed, the remaining uncompensated damages are, in my estimate, no more than $20 million, and probably around $10 million.

The House has already expressed its will in this matter. Chairman JOHN MURPHY and RAY ROBERTS set hearings in Corpus Christi, Tex., last September. These hearings were cochaired by Chairmen ROBERTS and JOHN BREAUX, and attended by Messrs. STUDDS, LIVINGSTON, MCCLOSKEY, and GONZALEZ. I again thank you for sacrificing a weekend to hear testimony with Mr. DE LA GARZA and me. As a result of those hearings, 17 Members, including myself and Mr. DE LA GARZA, have sponsored or cosponsored one or more Ixtoc relief bills. I would like to take this opportunity to again thank those Members.

In hearings before committees of the House, the administration has repeatedly stated it favored a comprehensive compensation and liability scheme which would cover incidents such as Ixtoc I oil pollution. Had this spill occurred after the date of enactment of such a scheme as is contained in this bill, compensation would be available for provable losses as this amendment provides.

H.R. 5338 by Mr. ROBERTS, Mr. BREAUX, Mr. DE LA GARZA, and myself was passed by the House this June with both Chairman BIRK JOHNSON and Mr. CLAUSEN speaking in its behalf. Thus far, the Senate has not acted. Fellow Members, we need this amendment to insure that Ixtoc relief will be a subject of conference on H.R. 85.

Briefly stated, this amendment allows Ixtoc damages to be paid from the fund not to exceed $75 million—in which case compensable damages would be reduced proportionally—and provides that compensation is available to litigants even after a judgement is rendered to allow all claims to be consolidated with the fund.

I will not take any more time repeating the arguments for Ixtoc relief as the House has already determined it is necessary. In fact, the House-passed relief measure provides compensation for a broader range of damages.

Mr. Chairman, I feel this amendment is both reasonable and necessary and I move its adoption.

Mr. BIAGGI. Mr. Chairman, I rise in opposition to the amendment. I do so most reluctantly, because the gentleman from Texas (Mr. WYATT) is a valuable member of the Committee on Merchant Marine and Fisheries and he has supported the total concept of H.R. 85. We appreciate deeply his contribution. The fact is, as he has stated, the House has acted previously. They passed a bill that would provide some $80 million. Such sums would come from appropriations, however. It would seem in the light of that, that there should not be any opposition to this amendment at this time, except that the situation is somewhat different.

The moneys from the original bill would come out of general revenues. These moneys—the amendment is limited to $75 million—would go directly against the fund that has not yet been created. The moneys that would go to that fund would be from two sources initially and that is from the Trans-Alaska Pipeline Act and from the Outer Continental Shelf. Those moneys will amount to some $75 million.

It is conceivabe that if the gentleman's amendment was to be enacted the claims against the fund from the Ixtoc spill would wipe out the fund. Moreover, what makes it even more difficult to accept the amendment is that the fund would then be required to go against the spiller, which is in the normal course of events. Under ordinary circumstances we would expect to recover. However, in this case the spiller is the Mexican Government, or at least that is the contention.

I can see, and I am sure the gentlemen understands, that could be litigation that could be endless and in the end fruitless.

Then there is the question of retroactivity.

Mr. WYATT. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I am delighted to yield.

Mr. WYATT. In regard to the last point, is it not also true that if compensation is not provided that the Mexican Government could also become involved and, in fact, litigation currently is pending before the Federal courts in Houston that the Mexican Government is becoming very reluctantly involved in, and suits have been filed by Citco and Citco has asked that Pemex, which is the Mexican oil company, be involved in the suits. They are going to have to pay off these damages under the law that we live under and also under the law that Mexico lives under.

Mr. BIAGGI. They are in court. That is the best that I will concede, they are in court. The contention is the Mexican Government is involved. I think the operative word is that the Mexican Government is becoming "reluctantly" involved. That may even be a modification of their original position, which was most vehement in its denial to its responsibility.

Let us deal with the question of retroactivity. If we open the door for retroactive spills, my colleagues can envision a number of other requests. I know there is at least one other amendment being prepared to submit if this amendment carries. If this amendment carries that amendment will be offered and it will be difficult then to deny that amendment.

If that occurs I am sure a number of Members would also have similar amendments to deal with some local spills. If I understand correctly, the gentleman from Massachusetts (Mr. STUDDS) in a discussion I had with him, was thinking of offering an amendment that would include the spill of the *Argo Merchant*, and then the thing becomes one beyond reasonable acceptance.

I know the point the gentleman might argue, that it only happened a year ago. Some argue it happened 3 months ago. I would like to offer the gentleman an analogy. We had a survivors' benefit bill enacted in this Congress, and a proper one, that would provide for the survivors of policemen and firemen who were killed in the line of duty. It passed and has done great good in its implementation.

However, I have received a number of requests from the survivors' widows who came tearfully to my office and said that their husbands died in the line of duty 1 day, 2 days, 3 days before the line of demarcation, before the enactment of the legislation. It is pitiful. It is sad. But a line of demarcation had to be made.

To apply this retroactively or to make the fund liable retroactively is to jeopardize the fund.

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent Mr. BIAGGI was allowed to proceed for 2 additional minutes.)

Mr. BIAGGI. Assume even further that this bill, or the claims the gentleman from Texas would like to have the superfund respond to were successful, we would now be looking at a fund that has absolutely no money in it.

I would suggest very strongly that this amendment be defeated. I repeat: I feel bad about taking the position I take, but we are talking about a concept that we have labored with in this Congress and in this committee for almost 6 years, a concept that finally appears to be coming to fruition, a concept and legislation that should not be diminished or threatened. I suggest very strongly that the acceptance of this amendment would threaten the existence, or at least the possibility of enacting this legislation. If it were to be accepted, it would threaten the practical application of the provisions of H.R. 85.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. WYATT).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. WYATT. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Twenty-two Members are present, an insufficient number. A quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The Chair announces this is a regular quorum call followed by a 5-minute vote.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 569]

Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.Dak.
Annunzio
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carr
Chisholm
Clausen
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Deckard
Dellums
Derrick
Derwinski
Devine
Dicks
Dingell
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Fish
Fisher
Flippo
Florio
Forsythe
Fountain
Fowler
Frenzel
Frost
Gaydos
Gephardt
Giaimo
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Green
Grisham
Guarini
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hawkins
Hightower
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
Lungren
McCormack
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nelson
Nolan
Nowak
O'Brien
Oakar
Oberstar
Ottinger
Panetta
Patten
Patterson
Paul
Pease
Perkins
Peiri
Peyser
Pickle
Porter
Price
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roybal
Royer
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spence
Stack
Staggers
Stangeland
Stark
Stenholm
Stewart
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thompson
Traxler
Trible
Vander Jagt
Vanik
Walgren
Walker
Watkins
Weaver
Weiss
White
Whitehurst
Whittaker
Whitten
Williams, Mont.
Wilson, Tex.
Winn
Wirth
Wolff
Wyatt
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki

□ 1400

The CHAIRMAN. Two hundred eighty-eight Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Texas (Mr. WYATT) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 43, noes 264, not voting 125, as follows:

[Roll No. 570]

AYES—43

Archer
Bailey
Boggs
Breaux
Brinkley
Byron
Collins, Tex.
Deckard
Donnelly
Dougherty
Eckhardt
Fazio
Frost
Gonzalez
Gramm
Hall, Ohio
Hance
Hightower
Jones, Okla.
Kazen
LaFalce
Leath, Tex.
Leland
Livingston
Loeffler
Long, La.
Long, Md.
Lowry
Maguire
Murtha
Musto
Paul
Pickle
Sensenbrenner
Stenholm
Stump
Swift
Tauzin
Watkins
White
Wilson, Tex.
Wirth
Wyatt

NOES—264

Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.Dak.
Annunzio
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Baldus
Barnes
Bauman

Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Bolling
Bonker
Bouquard
Bowen
Brademas
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Campbell
Carney
Carr
Chisholm
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Dellums
Derrick
Derwinski
Devine
Dicks
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ind.
Fary
Fenwick
Ferraro
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Gaydos
Gephardt
Giaimo
Gilman
Ginn
Glickman
Goldwater
Gore
Gradison
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Harris
Hawkins
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Tenn.
Kastenmeier
Kelly
Kildee
Kogovsek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Lee
Lehman
Levitas
Lewis
Lott
Lujan
Lundine
Lungren
McCloskey
McCormack
McDonald
McHugh
McKay
McKinney
Madigan
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Myers, Ind.
Natcher
Neal
Nelson
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Perkins
Petri
Peyser
Porter
Preyer
Price
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stark
Stewart
Stokes
Stratton
Studds
Synar
Tauke
Taylor
Thompson
Traxler
Trible
Udall
Vander Jagt
Vanik
Walgren
Walker
Waxman
Weaver
Weiss
Whitehurst
Whittaker
Williams, Mont.
Winn
Wolff
Wolpe
Wylie
Yatron
Young, Alaska
Young, Fla.
Zablocki

NOT VOTING—125

Abdnor
Addabbo
Alexander
Anderson, Ill.
Andrews, N.C.
Anthony
Applegate
Barnard
Beard, Tenn.
Bethune
Boland
Boner
Bonior
Brooks
Brown, Ohio
Carter
Cavanaugh
Chappell
Cheney
Cleveland
Corman
Cotter
Crane, Philip
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Dickinson
Dingell
Dixon
Dodd
Early
Edwards, Ala.
Edwards, Calif.
Erlenborn
Evans, Ga.
Fascell
Findley
Ford, Tenn.
Fuqua
Garcia
Gibbons
Gingrich
Goodling
Grassley
Gray
Hanley
Hansen
Harkin
Harsha
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Huckaby
Hutto
Ireland
Jenrette
Johnson, Colo.
Jones, N.C.
Kemp
Kindness
Leach, La.
Lederer
Lent
Lloyd
Luken
McClory
McDade
McEwen
Mathis
Mattox
Mavroules
Mazzoli
Mica
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nichols
Pashayan
Pepper
Pritchard
Quillen
Rahall
Railsback
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Skelton
Snowe
St Germain
Stanton
Steed
Stockman
Symms
Thomas
Ullman
Van Deerlin
Vento
Volkmer
Wampler
Whitley
Whitten
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wright
Wydler
Yates
Young, Mo.
Zeferetti

□ 1410

Mr. TAUZIN changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. SNYDER. Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The remainder of the bill reads as follows:

TITLE II—EFFECTIVE DATES; SAVINGS PROVISION; CONFORMING AMENDMENTS

SEC. 201. (a) This section, section 101, section 112, section 203, and each provision of title I that authorizes the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of title I, the regulations issued thereunder, and section 202 shall be effective on the one hundred and eightieth day after the date of enactment of this Act: *Provided*, That the penalty prescribed by section 111 for failure to comply with the requirements of section 105 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this Act, whichever is earlier.

(c) Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 202 of this title, and in effect on the day immediately preceding the effective date of section 202 of this title shall remain in force until superseded by regulations issued under title I of this Act.

SEC. 202. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 State. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(n) of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

(b)(1) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The Trans-Alaska Pipeline Liability Fund is abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of those officers or trustees for gross negligence or willful misconduct.

(2) The Secretary of the Interior shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (1) is made.

(3) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment of taxes under section 541(d)(1)(A) of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska.

(c) Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act is available to the Secretary for actions and activities, relating to oil pollution (as defined in section 101 of that Act), taken under section 5 of this Act. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act, as amended, is available for actions and activities, relating to other pollution, taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) is further amended as follows:

(1) Subsection (a) is amended by replacing the period at the end of clause (17) with a semicolon and adding a new clause (18) to read as follows:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence, by inserting after the word "person", the words "or his employer".

(3) Clause A of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Clause B of paragraph (6) of subsection (b) is amended in the first and second sentences by striking the phrase "or person in charge" each time it appears and inserting in lieu thereof "person in charge, or employer of such person in charge.".

(5) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as appropriate.".

(6) Subsection (d) is amended by striking the last sentence and inserting in lieu thereof "Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the Convention as defined in section 2(3) thereof) shall be reimbursed from the fund established under subsection (k) of this section or the fund established

under title V of the Comprehensive Oil and Hardous Substances Pollution Liability and Compensation Act, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with this section.".

(7) Subsection (1) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances.". Such subsection (1) is further amended by striking out "subsections (c) and (1)" and inserting in lieu thereof "subsection (c)".

(8) Subsection (p)(1) is amended by inserting after "oil" each place it appears the following: "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(9) Subsection (q) is repealed, and subsection (r) is redesignated as subsection (q).

(e) Section 404 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(u) Notwithstanding any other provision of this section, the Secretary shall make any determination with respect to those navigable waters to which the provisions of this section shall apply."

(f) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(1) of this Act;" and insert in lieu thereof "section 105 of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act;".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(g) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the fund established by title V of this Act. The Comprehensive Oil Pollution Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 203. No part of any moneys in the Comprehensive Oil Pollution Liability Trust Fund established by title V of this Act shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

SEC. 204. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

TITLE III—HAZARDOUS SUBSTANCE LIABILITY, COMPENSATION, AND FUND

HAZARDOUS SUBSTANCE LIABILITY

SEC. 301. (a)(1) Subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"(19) 'supplier' means, with respect to subsection (k) of this section, any person who produces, manufactures, or imports any substance identified in paragraphs (2), (3), (4), or (5) of subsection (k) of this section at a place or for removal to a place other than the site of production, manufacture, or importation, or a site that adjoins, or uses those feedstocks or elements and compounds himself at a place other than the site of production, manufacture, or importation or a site that adjoins the site of production, manufacture, or importation.

"(20) 'United States claimant' means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

"(21) 'foreign claimant' means any person residing in a foreign country, a government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

"(22) 'guarantor' means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

"(23) 'removal costs' means—

"(A) costs incurred under subsection (c), (d), or (l) of this section; and

"(B) cleanup costs, other than those described in clause (A);

"(24) 'cleanup costs' means costs of reasonable measures taken, after a discharge has occurred, to prevent, minimize, or mitigate pollution from that discharge;

"(25) 'affiliated' means a relationship in which a person owns (in whole or in part), is owned by (in whole or in part), or is under common control with, another person.".

(2) Paragraph (6) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(6)(A) 'owner' means any person owning title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either directly or through a trust or singly or in combination with others) holds title to or any indicia of ownership of a vessel or facility and without participating in the management or operation of such vessel or facility, leases or charters to any other person (with whom such person is not otherwise affiliated), or holds indicia of ownership primarily to protect his security interest in the vessel or facility;

"(B) 'operator' means (i) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualling, and supplying of the vessel or (ii) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;".

(b) Subsections (f), (g), (h), and (l) of section 311 of the Federal Water Pollution Control Act are amended to read as follows:

"(f)(1) Claims for damages for economic loss, incurred on or after the effective date of title III of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act and arising out of or directly resulting from the discharge of oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substances, may be asserted for—

"(A) removal costs;

"(B) injury to, or destruction of, real or personal property;

"(C) injury to, or destruction of, natural resources; and

"(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

"(2) A claim authorized by paragraph (1) may be asserted—

"(A) under item (A) of paragraph (1), by any claimant: *Provided*, That the owner or operator of a vessel or facility involved in a discharge may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (g)(5)(A) or (g)(5)(B) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (g): *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, the claim may be asserted only as to the removal costs incurred in excess of that limitation;

"(B) under item (B) of paragraph (1), by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

"(C) under item (C) of paragraph (1), by the President, as trustee for natural resources over which the United States Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State: *Provided*, That compensation paid under this item may be used only for restoration of the damaged resources or for acquisition of equivalent resources;

"(D) under item (D) of paragraph (1), by any United States claimant if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource;

"(E) under items (B) through (D) of paragraph (1), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

"(i) the discharge occurred (I) in the navigable waters, or (II) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

"(ii) the claimant is not otherwise compensated for his loss;

"(iii) the discharge was from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331, et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, et seq.); and

"(iv) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and

"(F) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection.

"(3) If the Attorney General fails to act under clause (F) of paragraph (2) within sixty days of the date on which the Secretary designates a source of discharge, any member of a group may, in accordance with rule 23 of the Federal Rules of Civil Procedure, maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

"(g)(1) Subject to the provisions of paragraphs (2), (3), (4), and (5), the owner and operator of a vessel other than a public vessel, or a facility, that is the source of a discharge of oil (other than petroleum,

crude oil, or any fraction or residue therefrom) or a hazardous substance, or poses a threat of such a discharge in circumstances that justify the incurrence of removal costs, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under subsection (f).

"(2) Except when the discharge or threat of discharge is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator; or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or except when the owner or operator fails or refuses to report the discharge or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total of the liability under paragraph (1) and any removal costs incurred by, or on behalf of, the owner or operator shall be limited to—

"(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross ton;

"(B) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater;

"(C) in the case of a ship, $250,000 or $300 per gross ton (up to a maximum of $30,000,000), whichever is greater;

"(D) in the case of a deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the owner or operator of such deepwater port for a discharge from a ship moored at such port), $50,000,000;

"(E) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, as amended, the total of removal costs plus $50,000,000; or

"(F) in the case of a facility other than one described in clause (D) or (E) $50,000,000 or such lesser limit as is established under paragraph (4).

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations of liability specified in this paragraph.

"(3) The Secretary may, by regulation, reduce the limitation of liability for facilities subject to clause (E) of paragraph (2), to the total of all removal costs plus an amount not less than $35,000,000, if he determines that the limitation will have either a significant adverse impact on small business enterprises or a significant anticompetitive impact.

"(4) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities other than those described in clauses (D) and (E) of paragraph (2). These regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of discharges involving those classes. These limits shall, to the extent practicable, be comparable to the limits established under clause (C) of paragraph (2), taking into account the relative potential threat of pollution, but in no case shall such a limitation be less than $5,000,000 for any tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity of more than 3,500 gallons.

"(5) There shall be no liability under paragraph (1)—

"(A) to the extent that the discharge is caused—

"(i) by an act of war, hostilities, civil war, or insurrection; or

"(ii) by a natural phenomenon of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight;

"(B) to the extent that the discharge or threat of discharge is caused by an act or omission of a person other than—

"(i) the claimant,

"(ii) the owner or operator,

"(iii) an employee or agent of the claimant, the owner, or the operator, or

"(iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

"(C) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

"(D) as to a particular claimant, to the extent that the discharge or economic loss is caused by the negligence of that claimant.

"(h)(1) Except as provided in title V the fund shall be liable, without any limitation, for all damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to the extent that the loss is not otherwise compensated.

"(2) Except for removal costs (other than cleanup costs), there shall be no liability under paragraph (1) hereof—

"(A) where the discharge or threat of discharge is caused primarily by an act of war, hostilities, civil war, or insurrection;

"(B) as to a particular claimant, where the discharge or threat of discharge or economic loss is caused, in whole or in part, by the gross negligence or willfull misconduct of that claimant; or

"(C) as to a particular claimant, to the extent that the discharge or threat of discharge or economic loss is caused by the negligence of that claimant.

"(3) In addition to the damages for which claims may be asserted under subsection (f), and without regard to the limitation of liability provided in subsection (g), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which a source of discharge is designated, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

"(4) The interest provided in paragraph (3) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

"(i)(1) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, to any other person, the liability imposed under subsection (g), other than as specified in this title: *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest or permit for the exploration of oil agrees to indemnity for, or hold harmless from, such liability, the owner or operator of a vessel or facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest or permit.

"(2) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (g), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

"(3) To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, subsections (g), (h), and (i) supersede such other law, including section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).".

(c) Subsection (k) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(k) There is in the Treasury of the United States a fund known as the Hazardous Substance Pollution Liability Trust Fund established under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act.".

SEC. 302. (a) Subsection (o) of section 311 of the Federal Water Pollution Control Act is amended to read as follows:

"(o)(1) Except as provided in this title—

"(A) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss described in subsection (f)(1), a claim for which may be asserted under this title, and

"(B) no person may be required to contribute to any fund, the purpose of which is to compensate for a loss, which is a compensable damage under title V of the Comprehensive Oil and Hazardous Substances, Pollution Liability and Compensation Act, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

"(2) Nothing in paragraph (1) shall preclude any State from imposing a tax or fee upon any person or any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance in order to finance the purchase and prepositioning of any oil (other than petroleum, crude oil, or any fraction or residue therefrom), or hazardous substance, pollution cleanup and removal equipment.

"(3) Nothing in paragraph (1) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid under this title.".

(b) Section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(r)(1) When the Administrator receives information of a discharge in violation of this section, he shall, where possible, designate the source or sources of the discharge and shall immediately notify the owner and operator of the source, and the guarantor, of that designation.

"(2) When a source designated is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Administrator, within five days after receiving notification of the designation, or his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Administrator, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Administrator shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

"(3) In a case where—

"(A) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of this subsection,

"(B) the source of the discharge was a public vessel, or

"(C) the Administrator is unable to designate the source or sources of the discharge under paragraph (1) of this subsection,

the Administrator shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

"(4) Advertisement under this subsection shall commence no later than fifteen days from the date of the designation made hereunder and continue for a period of no less than thirty days.

"(s)(1) Except as provided in paragraph (2), all claims shall be presented to the owner, operator, or guarantor.

"(2) Claims for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act shall be presented to the fund under subsection (k)—

"(A) where the Administrator has advertised or otherwise notified claimants in accordance with subsection (r), or

"(B) where the owner or operator may recover under subsection (f)(2)(A).

"(3) In the case of a claim presented in accordance with paragraph (1), and in which—

"(A) the person to whom the claim is presented denies all liability for the claim, for any reason, or

"(B) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (r)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or, in the case of damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, to present the claim to the fund under subsection (k); that election to be irrevocable and exclusive.

"(4) In the case of a claim for damages which are compensable damages under title V of the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act presented in accordance with paragraph (1), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (g) or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund under subsection (k).

"(5) In the case of a claim which has been presented to any person, under paragraph (1), and which is being presented to the fund under subsection (k), under paragraph (3) or (4), such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Administrator may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

"(6) In the case of a claim presented to the fund under subsection (k), under paragraphs (2), (3), and (4), and in which the fund—

"(A) denies all liability for the claim, for any reason, or

"(B) does not settle the claim by payment to the claimant within sixty days of the date upon which (i) the claim was presented to the fund or (ii) advertising was commenced under subsection (r)(3), whichever is later,

the claimant may submit the dispute to the Administrator for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the fund under paragraph (2) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

"(7)(A) The Administrator shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund under subsection (k).

"(B) Except as provided in subparagraph (C), the Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract for those facilities and services. Any contract made under this subparagraph may be made without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Administrator that advertisting is not reasonably practicable. The Administrator may make advance payments to a contractor for services and facilities, and the Administrator may advance to the contractor funds to be used for the payment of claims. The Administrator may review and audit claim payments made under this paragraph. A payment in excess of $100,000 to a single claimant, or one aggregating in excess of $200,000 to multiple claimants shall be first approved by the Administrator. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Administrator.

"(C) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Administrator may use Federal personnel to process claims against the fund.

"(8) Without regard to subsection (b) of section 556 of title 5, United States Code, the Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Administrator under paragraph (6). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from private life.

"(9)(A) Upon receipt of a request for decision from a claimant, properly made, the Administrator shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code, or a panel appointed under paragraph (8).

"(B) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

"(C) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding under this paragraph, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Administrator. If a person fails or refuses to obey a subpena, the Administrator may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

"(D) A hearing conducted under this paragraph shall be conducted in the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, in the nearest district.

"(E) The decision of the administrative law judge or panel under this paragraph shall be the final order of the Administrator, except that the Administrator, in his discretion and in accordance with rules which he may issue, may review the decision upon his own initiative or upon exception of the claimant or the fund under subsection (k).

"(F) Final orders of the Administrator made under this paragraph shall be reviewable under section 702 of title 5, United States Code, in the district courts of the United States.

"(10)(A) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

"(B) The fund may intervene in the action as a matter of right.

"(C) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

"(D) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

"(E) If neither the plaintiff nor the defendant gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (g) of this section is not available to the defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

"(11) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund.

"(12) No claim may be presented, nor may an action be commenced for damages recovered under this section, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund under subsection (k), as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (f) of this section, or within six years of the date of the discharge which resulted in that loss, whichever is earlier.

"(t)(1) Any person or governmental entity, including the fund under subsection (k), who compensates any claimant for an economic loss, compensable under subsection (f), shall be subrogated to all rights, claims, and causes of action which that claimant has under this section.

"(2) Upon request of the Administrator, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant under this section. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, under any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

"(3) In all claims or actions by the fund against any owner, operator, or guarantor,

under paragraphs (1) and (2), the fund shall recover—

"(A) for a claim presented to the fund (where there has been a denial of source designation) under subsection (s)(2)(A), or (where there has been a denial of liability) under subsection (s)(3)(A)—

"(i) subject only to the limitation of liability to which the defendant is entitled under subsection (g), the amount the fund has paid to the claimant, without reduction;

"(ii) interest on that amount, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive; and

"(iii) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

"(B) for a claim presented to the fund under subsection (s)(3)(B)—

"(i) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), for the period specified in clause (A) of this paragraph; and

"(III) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

"(ii) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

"(I) the amount the fund has paid to the claimant, without reduction;

"(II) interest, at the rate calculated in accordance with subsection (h)(4), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this clause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this clause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced under subsection (r), the defendant shall not be liable for interest for that period; and

"(III) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

"(4) The fund under subsection (k) shall pay over to the claimant that portion of any interest the fund shall recover, under subparagraph (A) and clause (i) of subparagraph (B) of paragraph (3), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

"(5) The fund under subsection (k) is entitled to recover for all interest and costs specified in paragraph (3) without regard to any limitation of liability to which the defendant may otherwise be entitled.

"(u) No part of any moneys in the fund shall be obligated or otherwise expended for any of the administrative expenses of the Environmental Protection Agency.

"(v) The owner or operator of a tank motor vehicle operated on highways transporting oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance, in bulk, with a water capacity in excess of 3,500 gallons shall establish and maintain in accordance with regulations issued by the President evidence of financial responsibility in such amounts as the President determines necessary but not less than $5,000,000.".

SEC. 303. Nothing in this Act or the amendments made by this Act shall be construed to authorize any officer or employee of the United States or any department, agency, or instrumentality of the United States to prohibit, control, or otherwise regulate the use of any groundwaters.

SEC. 304. This title and the amendments made by this title shall take effect one hundred and eighty days after the date of enactment of this Act.

TITLE IV

SEC. 401. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of titles I through IV of this Act or of any amendment made by titles I through IV of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TITLE V—ENVIRONMENTAL REVENUE ACT OF 1980

SEC. 501. SHORT TITLE: AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Environmental Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SUBTITLE A—IMPOSITION OF TAXES

SEC. 511. IMPOSITION OF TAXES.

GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. TAX on petroleum.
"SUBCHAPTER B. TAX on certain chemicals.

"Subpart A—TAX on Petroleum

"SEC. 4601. Imposition of tax.
"SEC. 4602. Definitions and special rules.

"SEC. 4601. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 1.3 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 1.3 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4602. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4601 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY ONE TAX WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed under section 4601 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.

"Sec. 4651. Imposition of tax.
"Sec. 4652. Definitions and special rules.

"SEC. 4651. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $1.18 a ton in the case of specified petrochemical feedstocks, or

"(2) 31 cents a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4652. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—The term 'taxable chemical' means any substance—

"(A) which is specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—

"(A) IN GENERAL.—The term 'specified petrochemical feedstock' means any of the following substances: ethylene; propylene, butylene; butadiene; butane; propane; benzene; toluene; xylene; napthalene; methane; carbon black; ethane.

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which is a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4651(a), the person so using it shall be treated as the manufacturer thereof).

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic, cadmium, chromium, lead, mercury, and the equivalent weight of the foregoing elements in arsenic trioxide, chromite, chromic acid, sodium dichromate, potassium dichromate, and lead oxide;

"(B) chlorine, hydrochloric acid, hydrofluoric acid, and the equivalent weight of bromine in methyl bromide and ethylene dibromide;

"(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide; and

"(D) ammonia and the equivalent weight of ammonia in ammonium nitrate.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4602(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4651 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4651 in the same manner as if such chemical were sold by him.

"(c) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4651 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. The amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced."

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. ENVIRONMENTAL TAXES.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Funds

PART I—ESTABLISHMENT OF TRUST FUNDS

SEC. 521. ESTABLISHMENT OF COMPREHENSIVE OIL POLLUTION LIABILITY TRUST FUNDS.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Comprehensive Oil Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Oil Pollution Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO OIL POLLUTION TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Oil Pollution Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(1) the amounts received in the Treasury under section 4601 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of the Oil Pollution Trust Fund under title I of this Act, and

(3) any penalties imposed under title I of this Act or under section 311 of the Federal Water Pollution Control Act (insofar as it relates to petroleum oils).

(c) EXPENDITURES FROM OIL POLLUTION TRUST FUND.—

(1) IN GENERAL.—Amounts in the Oil Pollution Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under title I of this Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Oil Pollution Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

SEC. 522. ESTABLISHMENT OF HAZARDOUS SUBSTANCE POLLUTION LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Pollution Liability Trust Fund" (hereinafter in this subtitle referred to as the "Hazardous Substance Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or as may be transferred to such Trust Fund under this Act.

(b) TRANSFER TO HAZARDOUS SUBSTANCE TRUST FUND OF CERTAIN AMOUNTS.—There are hereby appropriated to the Hazardous Substance Trust Fund amounts determined by the Secretary to be equivalent to—

(1) the amounts received in the Treasury under section 4611 of the Internal Revenue Code of 1954,

(2) the amounts recovered or collected on behalf of such Trust Fund under section 311 of the Federal Water Pollution Control Act and

(3) any penalties imposed under section 311 of such Act (insofar as it relates to substances other than petroleum oils).

(c) EXPENDITURES FROM HAZARDOUS SUBSTANCE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Hazardous Substance Trust Fund shall be available only for purposes of paying claims for compensable damages which are recognizable under section 311 of the Federal Water Pollution Control Act (as in effect on the date of the enactment of this Act).

(2) CLAIMS INCLUDE CERTAIN EXPENSES.—For purposes of paragraph (1), the amounts payable out of the Hazardous Substance Trust Fund shall include the costs incurred by the United States by reason of any claim referred to in paragraph (1) (including processing costs, investigating costs, court costs, and attorney fees).

PART II—GENERAL PROVISIONS APPLICABLE TO TRUST FUNDS

SEC. 531. PURPOSES FOR WHICH TRUST FUNDS ARE AVAILABLE.

(a) DEFINITION OF COMPENSABLE DAMAGES.—

(1) IN GENERAL.—For purposes of this subtitle, the term "compensable damages" means damages asserted for—

(A) removal costs,

(B) injury to, or destruction of, real or personal property,

(C) injury to, or destruction of, natural resources, and

(D) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, but—

(i) only if the person asserting the claim meets the income requirements of paragraph (2), and

(ii) only to the extent that the damages were sustained during the 2-year period beginning on the date the claimant first suffered such loss.

(2) INCOME REQUIREMENTS.—For purposes of paragraph (1), a person meets the income requirements of this paragraph if—

(A) for the taxable year which includes the day on which such person first suffered the loss described in paragraph (1)(D), or for the preceding taxable year, such person's gross income from activities which utilize the property or natural resources referred to in paragraph (1)(D), exceeds; and

(B) 25 percent of his total gross income from all sources for the taxable year (or preceding taxable year, as the case may be).

(b) RESTRICTION ON INTEREST PAYABLE OUT OF TRUST FUNDS.—No amount in any Trust Fund established by this subtitle may be used to pay interest on any claim for any period before the 46th day after the day on which such claim is finally determined.

(c) CERTAIN INTERFUND LOANS PERMITTED.—

(1) IN GENERAL.—Amounts in any Trust Fund established by this subtitle (hereinafter in this subsection referred to as the "lending fund") may be loaned to the other Trust Fund established by this subtitle if—

(A) the Secretary (after consultation with the appropriate Federal official) reasonably expects that the amount to be loaned will not be needed by the lending fund for the period of such loan,

(B) interest is payable on such loan at a rate comparable to the investment yield (as of the date of the loan) on interest-bearing obligations of the United States having maturities similar to that of such loan, and

(C) immediately after the making of such loan, the amount in the lending fund equals or exceeds $30,000,000.

(2) APPROPRIATE FEDERAL OFFICIAL.—For purposes of paragraph (1), the appropriate Federal official is—

(A) the Secretary of Transportation in the case of the Oil Pollution Trust Fund, and

(B) the Administrator of the Environmental Protection Agency in the case of the Hazardous Substance Trust Fund.

(3) AMOUNT IN TRUST FUND.—For purposes of this subsection and section 532(a), the amount in any Trust Fund shall be the sum of any cash in such Trust Fund and any public debt securities held by such Trust Fund.

SEC. 532. LIMITATION ON PAYMENT OF CLAIMS BY FUND

(a) GENERAL RULE.—No amount in any Trust Fund established by this subtitle shall be used to pay any claim (other than a claim for removal costs) to the extent that the payment of such claim would reduce the amount in such Fund to an amount less than $30,000,000.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time any Trust Fund established by this subtitle is unable (by reason of subsection (a)) to pay all of the claims (other than for removal costs) payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

SEC. 533. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim for damages filed against any Trust Fund established by this subtitle may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount for damages with respect to any such claim out of any source other than a Trust Fund established by this subtitle.

(b) BORROWING FROM GENERAL FUND OF TREASURY.—

(1) PROHIBITION.—Except as provided in paragraph (2), nothing in this Act (or in any amendment made by this Act) shall be construed to authorize any Trust Fund established by this subtitle to borrow any money from the general fund of the Treasury.

(2) FIRST YEAR AUTHORITY.—

(A) IN GENERAL.—There are authorized to be appropriated to each Trust Fund established by this subtitle, as repayable advances, such sums as may be necessary to carry out the purpose of such Fund.

(B) LIMITATIONS.—

(i) The maximum aggregate amount which may be appropriated pursuant to subparagraph (A) to any Trust Fund may not exceed $75,000,000.

(ii) No advance may be made under this paragraph after September 30, 1981.

(C) REPAYMENT OF ADVANCES.—Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in section 534(b)

(2) and shall be compounded annually.

SEC. 534. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 521(b) or 522(b) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUNDS.—

(1) REPORT.—The Secretary shall be the trustee of each Trust Fund established by this subtitle, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of each Trust Fund established by this subtitle as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 541. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of any Trust Fund created by this title,

(3) the levy or collection of any fee, or

(4) the imposition of any requirement with respect to the procedure applicable to rules and regulations prescribed under this title (or under any amendment made by this title).

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title—

(1) any reference in titles I and II of this Act (or in any amendment made by either of such titles) to a fund shall be deemed to be a reference to the Comprehensive Oil Pollution Liability Trust Fund established by this title, and

(2) any reference in title III of this Act (or in any amendment made by such title) to a fund shall be deemed to be a reference to the Hazardous Substance Pollution Liability Trust Fund established by this title.

(c) CERTAIN LIABILITIES ARISING BEFORE OCTOBER 1, 1980.—If any provision of this Act provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to any Trust Fund established by this title (hereinafter in this subsection referred to as "transferee fund"), any claim which arises before October 1, 1980 (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the transferee fund notwithstanding any of the limitations imposed by subtitle B of this title.

(d) ADJUSTMENT IN TAX FOR BALANCE IN TRANS-ALASKA PIPELINE LIABILITY FUND.—

(1) IN GENERAL.—If the Secretary of the Treasury (or his delegate) determines—

(A) that there is a TAP fund surplus, the amount of such surplus shall be treated as an advance payment of the tax imposed by section 4601 of the Internal Revenue Code of 1954 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination, or

(B) that there is a TAP fund deficit, the tax imposed by section 4601 on crude oil first transported through the Trans-Alaska Pipeline after the date of such determination shall be increased by 2 cents per barrel until such time as the total amount of such increased tax equals such deficit.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) TAP FUND SURPLUS.—The term "TAP fund surplus" means the excess (if any) of—

(i) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over.

(ii) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time of such transfer.

(B) TAP FUN DEFICIT.—The term "TAP fund deficit" means the excess (if any) of—

(i) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the assets of such fund are transferred to the Comprehensive Oil Pollution Liability Trust Fund established by this title, over

(ii) the total amount of the assets transferred from the Trans-Alaska Pipeline Liability Fund to the Comprehensive Oil Pollution Liability Trust Fund established by this title.

Subtitle D—Study

SEC. 551. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study—

(1) on the feasibility of—

(A) taxes which are based on the frequency of hazardous substances pollution and the degree of harm to the environment which results from such pollution, and

(B) adjustments in the amount of taxes on different modes of transportation to reflect different risks of pollution.

(2) an exemption from the taxes imposed by section 4651 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) on the impact of the taxes imposed by sections 4601 and 4651 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than January 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

Mr. SNYDER. Mr. Chairman, I ask unanimous consent that all debate on the bill and all amendments thereto conclude at 2:40 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The CHAIRMAN. Members standing at the time the unanimous-consent request was agreed to will be recognized for 1 minute each.

The Chair recognizes the gentleman from New York (Mr. BIAGGI).

AMENDMENT OFFERED BY MR. BIAGGI

Mr. BIAGGI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BIAGGI: On page 39, line 15, add "In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.".

On page 40, line 1, strike "fees waived." and substitute "the advance tax payment credited under title V of this Act.".

On page 40, strike line 12 and substitute "The fund referred to in section 311(k) of the".

On page 41, line 4, strike "Clause A" and substitute "Subparagraph (A)".

On page 41, line 13, strike "Clause B" and substitute "Subparagraph (B)".

On page 41, line 18, strike "Clause" and substitute "Subparagraph".

On page 42, line 2, strike "established under" and substitute "referred to in".

On page 42, line 7, strike "established under" and substitute "referred to in".

Mr. BIAGGI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BIAGGI. Mr. Chairman, these amendments are technical and conforming. They correct errors and omissions in title II of the bill. The amendment to page 39 of the bill merely returns to the bill language that was erroneously removed in the process of drafting the Breaux substitute. It is language that was in the bill as reported by the Merchant Marine and Public Works Committees.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, these are the amendments the committee and the staffs have been over, and we are in agreement with them in all committees, so far as I know.

Mr. BIAGGI. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. BIAGGI).

The amendment was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Alaska (Mr. YOUNG).

AMENDMENT OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Alaska: Page 40, after line 4, insert the following:

"(4) The amount of any TAP fund surplus not used as an advance payment under section 541(d) shall be rebated by the Secretary directly to the operator of the Trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel."

Mr. YOUNG of Alaska (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. YOUNG of Alaska. This amendment addresses the equitable disposition of money transferred to the H.R. 85 trust fund from the trans-Alaska pollution liability fund if the 1985 sunset provision regarding taxes takes effect. As provided in the Breaux substitute, the TAPS fund surplus transferred to the oil pollution liability trust fund under section 202(b) is to be treated as an advance payment of the tax on oil imposed by H.R. 85.

The TAPS fund is a corporation created by act of Congress and administered by the holders of the trans-Alaska pipeline right-of-way, subject to the regulations promulgated by the Secretary of the Interior. Thus, unlike other funds, the TAPS fund is not part of the U.S. Treasury. Therefore, if the balance of the TAPS fund is transferred to the oil pollution liability trust fund, this would not merely be the transfer of money within the Treasury but rather the taking of property of a privately funded corporation and placing that property in the Treasury of the United States. The granting of credit for an advanced payment may offset this situation. Nevertheless, it would be inequitable to require the owners of oil shipped through the trans-Alaska pipeline to contribute disproportionately to the oil pollution liability trust fund.

However, this is exactly what may happen should the 1985 sunset provision regarding taxes come into effect. The amount of funds available from the TAPS fund to be transferred to the H.R. 85 fund could approximate nearly $70 million. However, the amount of taxes paid by owners of oil shipped through the trans-Alaska pipeline may not equal that amount by 1985. Therefore, if the sunset provision goes into effect, the owners of oil shipped through the trans-Alaska pipeline would not be able to receive the benefit of an advance payment credit of the taxes on oil as contemplated by H.R. 85. This amendment would return that portion of the TAPS fund surplus not used as an advance payment directly to the owners of the oil shipped through the trans-Alaska pipeline on a pro rata basis. This then would afford these owners equitable treatment under H.R. 85.

Mr. Chairman, I note that if the sunset provision is extended beyond 1985, then the provision in this amendment would not go into effect because it is based on the termination of the ability to use the TAPS fund surplus as an advance payment. Once the owners of oil shipped through the trans-Alaska pipeline have received the full amount of the advance payment credit afforded by this legislation, then this provision would no longer apply.

Mr. Chairman, I urge adoption of this amendment.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, as I understand it, the purpose of the amendment is to direct the Secretary to rebate any Trans-Alaska Pipeline Authorization Act surplus not used as an advanced payment under section 541(d) directly to the operator of the Trans-Alaska Oil Pipeline, for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel. We have no objection.

Mr. YOUNG of Alaska. I thank the gentleman.

Mr. BIAGGI. Mr. Chairman, if the gentleman will yield, we have no objection to the amendment.

Mr. YOUNG of Alaska. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alaska (Mr. YOUNG).

The amendment was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana (Mr. BREAUX).

AMENDMENTS OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Chairman, I offer a series of amendments, which consist of technical and conforming changes to title III of the bill. I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The Clerk read as follows:

Page 72, after line 8, insert the following:

Amendments offered by Mr. BREAUX:

(c) Paragraph (3) of subsection (p) of section 311 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new sentence: "The total liability under this section of any guarantor shall be limited to the aggregate amount which such guarantor has provided as evidence of financial responsibility under this section, except that nothing in this sentence shall be construed to limit the liability of a guarantor for negotiating, or failing to negotiate, in bad faith a settlement of any claim.".

Page 47, after line 16, insert the following:

(3) Paragraph (5) of subsection (a) of section 311 of the Federal Water Pollution Control Act is amended by striking out "the Canal Zone,".

Page 45, strike out lines 8 through 19 inclusive and insert in lieu thereof the following:

"(19) 'ship' means either of the following types of vessels carrying oil (other than petroleum, crude oil, or any fraction or residue therefrom) or a hazardous substance in bulk as cargo or in residue:

"(A) a self-propelled vessel, or

"(B) a non-self-propelled vessel other than an inland oil barge;

Page 48, line 1, after "substances" insert "in violation of subsection (b)(3) of this section".

Page 48, line 13, insert the following:

In any case where the discharge of a hazardous substance is not in violation of (b)(3) of this section all removal costs for such discharge shall be paid from the fund referred to in subsection (k) of this section and no other person shall be liable for any part of such costs, notwithstanding any other provision of this section to the contrary.

Mr. BREAUX (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. BREAUX. Mr. Chairman, the first amendment makes it clear that the total liability under the bill of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility. This is to insure that an insurance company, for example, would not be held liable for more than the face amount of the policy it has issued in accordance with title III. The amendment provides, however, that it shall not be construed to limit the liability of a guarantor when he negotiates, or fails to negotiate, in bad faith the settlement of any claim. This preserves existing law in regard to bad faith negotiations.

The second amendment is a purely technical one. It deletes the reference to the Canal Zone since we no longer exercise jurisdiction over that area.

The third amendment, also technical, includes a definition of "ship" which was inadvertently left out of the bill in title III. It also deletes the definition of "supplier" because the term "supplier" no longer appears in title III.

The fourth amendment retains the existing framework of section 311 of the Federal Water Pollution Control Act.

Under existing law, discharges of oil or hazardous substances are prohibited only if they are "in such quantities as may be harmful." The Environmental Protection Agency must establish a "harmful quantity" level for each of the hazardous substances. Below that level, there is no duty to notify of a discharge, no civil penalty, and no liability for cleanup costs. EPA or the Coast Guard may still act to clean up a discharge of less than a harmful quantity of a hazardous substance, but the costs they incur in doing so may not be recovered from the discharger.

This amendment is designed to conform H.R. 85 to exactly the same scheme. It provides that none of the claims for damages can be asserted for discharges in less than harmful quantities. As under existing law, Federal agencies can act to clean up spills of any magnitude, but if a spill is of less than a harmful quantity, the costs of the cleanup cannot be recovered from the discharger under this law. This is precisely the same arrangement contained in existing law.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, we have no objection to these conforming amendments.

Mr. BREAUX. I thank the gentleman.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, we have been over the amendments and helped in their preparation, and are satisfied with them.

The first two parts of this amendment are virtually identical to those which were offered to title I. That is, they: First, limit a guarantors liability to that which he certifies financial responsibility; and second, delete the Canal Zone from coverage under this act. The amendment clarifies the amount of liability imposed on guarantors under the direct action provisions of H.R. 85, section 105(c). Without the amendment the current liability provisions may preclude insurers and other guarantors from providing the evidence of financial responsibility required by the bill for offshore facilities.

Some feel that there is nothing in the bill that would clearly limit a guarantor's liability to a specific sum; that is, that provided as evidence of financial responsibility. Under section 105(c) of H.R. 85 any claim authorized by section 103(a) may be asserted directly against any guarantor providing the evidence of financial responsibility required. In defending such a claim the statute allows a guarantor only those defenses of the owner and operator for whom the guarantee is provided, and that of his willful negligence, but it specifically excludes defenses and limitation under the terms of a policy or contractual agreement between them.

Since the liabilities of the offshore facility owner or operator for whom the guarantee is provided are $50 million plus removal costs, the committee has been informed that this is considered the practical equivalent of unlimited liability by potential guarantors. Insurers and other guarantors are precluded by law and prudence from insuring unlimited liability.

While it appears that this unlimited liability for guarantors is inadvertent (the bill seems to contemplate limits to the amounts of financial responsibility required to be evidenced by the owner and operator), the language does not clarify any limits of liability for guarantors. The proposed amendment would solve the problem for guarantors by fixing the limits of the guarantor's aggregate liability at amount of evidence of financial responsibility furnished. It creates no other obligations for guarantors, nor does it avoid any obligations of the guarantor to negotiate in good faith. I would note that the issue of good faith can only be raised by the insuree and not by a third party.

The amendment also adds a new definition to section 311 to define the term "ship" which is not currently a defined term for the purposes of this section. This definition is identical to that contained in title I, and is necessary due to the fact that with the enactment of title III, section 311 will make important distinctions between a vessel, a ship, and an inland oil barge, and "ship" is the only term not currently defined in section 311.

The final part of the amendment, Mr. Chairman, is a provision which clarifies that, in the case where a hazardous substance designated under section 311 is not being discharged in a quantity that may be harmful, EPA will continue to have authority to respond to remove the pollution threat and that funds for the removal effort will come from the fund established by title V. The amendment further clarifies that when a discharge of a designated hazardous substance occurs in a quantity that is less than that which may be harmful, as established by the section 311 regulations, recovery is not permitted under section 311 from a responsible party.

Mr. Chairman, I support these amendments offered by the gentleman from Louisiana and urge my colleagues to do likewise.

Mr. BREAUX. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Louisiana (Mr. BREAUX).

The amendments were agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. PEYSER).

AMENDMENT OFFERED BY MR. PEYSER

Mr. PEYSER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PEYSER: Page 56, after line 15, insert the following:

"(5) In addition to the processing and settling of claims under subsection (e) of this section, the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $10,000,000 shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph.

Mr. PEYSER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

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Mr. PEYSER. Mr. Chairman, first of all, I want to thank the gentlewoman from New York (Ms. FERRARO), a member of the Committee on Public Works and Transportation, for her work on this amendment, and as well my thanks go to the subcommittee chairman and the ranking minority member on both sides who have helped.

My amendment provides funding for the first time for cleanup of "in place" toxic pollutants deposited in our navigable waterways. As most of you are aware, the superfund bill as it is now structured only allows for cleanup of hazardous substance spills and discharges occurring in the future. My amendment would allow the fund to also be used for cleanup of those toxic pollutants which have already been discharged and are now imbedded in the sediments of our harbors and waterways.

This sedimentary pollution is an extremely serious and chronic problem which has plagued our Nation's waterways for many years and one which superfund should address if it is to be a comprehensive and effective bill. To site a few examples: there are numerous waterways and harbors in the Great Lakes region which are infested with high levels of PCB's and other toxic chemicals.

In my own State of New York, there are a number of highly concentrated PCB deposits called hot spots on the Hudson River which leach out and flow downstream polluting the New York Harbor and upper Hudson River. Because of this pollution, EPA recently threatened to stop all dredging activities in and near the harbor and upstream and thus to ultimately close the harbor. Many businesses in my own district, not to mention the entire New York Port area, are threatened by such actions. This situation is crying out for a solution and needs to be addressed as quickly as possible. There are many other examples, including Waukegan Harbor and other areas in the Great Lakes region, the Tennessee River in Alabama, the Baltimore Harbor, the James River in Virginia, and the Housatonic River in Connecticut. These all need to be dealt with, and unless my amendment is approved, they may never be addressed.

I would like to point out to my colleagues that my amendment has the support of the major environmental groups including the National Wildlife Federation, the Sierra Club, Natural Resource Defense Council, and the Environmental Defense fund. It also has the support of the American Association of Port Authorities whose members are so adversely affected by the problem of sedimentary pollution. This amendment is crucial to the survival of our ports and waterways and I urge my colleagues to support it.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I am glad to yield to the gentleman from Texas.

Mr. ROBERTS. Mr. Chairman, as far as the Committee on Public Works and Transportation is concerned, this was in the original bill, and the gentlewoman from New York (Ms. FERRARO) was one of the authors. This amendment is perfectly in order, and I have no objection to it.

Ms. FERRARO. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I yield to the gentlewoman from New York.

Ms. FERRARO. Mr. Chairman, this amendment has the effect of restoring to the bill language covering a kind of pollution that was included in the Public Works Committee version of the bill. By doing so, it helps complete the consolidation of Federal hazardous waste cleanup efforts in one piece of legislation.

As currently written, the Federal Water Pollution Control Act contains several different sections which address the problem of cleaning up hazardous substances in our Nation's waterways. Section 311 establishes a revolving fund to be used for three purposes: removal costs of hazardous substances; injury to, to destruction of, either real or personal property or natural resources; or the loss of profits due to destruction of property. Section 115 provides specifically for the cleanup of in-place toxicants.

The problem is that Congress never clarified exactly what types of situations the revolving fund in section 311 could be used to clean up. EPA interpreted the act to mean that section 311 could only be used to clean up pollutants discharged after the date of enactment of the Clean Water Act and held that a separate appropriation under section 115 would be needed for the cleanup of in place of toxicants.

One of the reasons EPA sought to maintain this distinction was the potentially staggering cost of cleaning up all the in-place toxicants in our Nation's navigable waterways. While nobody has hard information on the exact extent of this problem, it is generally believed to be massive.

The amendment before us meets this objection by placing limitation of $10 million on the amount of money that can be used out of the "superfund" for the removal of in-place toxicants. In addition, any cleanup of in-place toxicants must be approved in advance by the EPA Administrator. So there are ample safeguards against any possible depletion of the fund.

The argument that the section 311 revolving fund is not intended to cover removal of in-place toxicants goes straight to the heart of the purpose of superfund. What superfund is all about is bringing all Federal hazardous substance cleanup efforts under one roof. A truly comprehensive program to clean up hazardous substances from our Nation's waterways must provide for removal of in-place pollutants as well as pollutants discharged in the future.

There are numerous examples, all over the country, of major waterways that are infested with dangerous levels of hazardous substances. While the original discharge of these substances may have occurred in the past, the damage to the environment and the threat to human health continue. Many parts of the Great Lakes are infested with PCB's and other toxic pollutants. The James River in Virginia contains dangerous levels of Kepone. A tributary of the Tennessee River near Huntsville, Ala., has been polluted by the discharge of 1,000 tons of DDT.

The case with which I am most familiar is the pollution of the Hudson River with PCB's. New York State's Department of Environmental Conservation estimates that there are some 630,000 pounds of PCB's in the bottom sediments of the Hudson River over a 190-mile stretch of the river north of New York City. As a result of these deposits, all fishing has been banned in the upper Hudson, and more than 60 percent of commercial fisheries in the lower Hudson have been closed.

In addition, some 5,000 pounds of PCB's are washed down the Hudson into New York Harbor each year. The resulting pollution has created problems for the Port of New York in dredging the harbor to keep it deep enough to accommodate the passenger and container ships that berth at the harbor. Earlier this year, last-minute negotiations were needed between EPA and the Port Authority of New York and New Jersey to avoid the cancellation of the scheduled berthing of the *Queen Elizabeth II* in early April. By cleaning up the "hotspots" in the upper Hudson, we can reduce the cost of the cleanup, the extent of the environmental damage, and the problem of disposing of the dredged materials. Under the existing system, the solution for New York Harbor was to dump the dredged materials in the ocean, which simply amounts to transferring the poison.

As I have said, the purpose of superfund is to consolidate Federal efforts to clean up hazardous wastes. The kinds of situations covered by this amendment are a critical part of that effort. I urge all my colleagues to join me in supporting this amendment.

● Mr. YATES. Mr. Chairman, I rise in strong support of the amendment offered by my colleague from New York (Mr. PEYSER) and I commend the gentleman for his initiative.

The Peyser amendment would allow for cleanup of toxic pollutants which are already "in place" in navigable waterways. A host of contaminants—PCB's, kepone, mercury, and other very hazardous substances—already pose a clear and present range in waterways throughout the Nation. Just north of Chicago, for example, Waukegan Harbor contains the largest concentration of PCB's ever found, and the dangers of PCB's are well-documented. These substances must be removed as quickly as possible. Indeed, it is the knowledge of these hazards that contributes to the sense of urgency which has helped build the consensus behind the need for a "superfund." It would be illogical and imprudent to exclude these known hazards from the proposed remedy.

I might add, Mr. Speaker, that, if the Peyser amendment does not pass, we are simply delaying the problem. These hazards—the kepone, the mercury, the PCB's—must be cleaned up. If we do not act now to insure that we address these problems in an orderly, comprehensive fashion, we are insuring that we will confront them later—most probably, in the same chaotic, inadequate, ad hoc manner with which we have tried to deal with them in the past. Now is the time to put in place a workable, feasible, rational plan for cleaning up toxic pollutants in our navigable waterways. H.R. 85 does that—and the Peyser amendment helps I urge its passage.●

● Mr. FISH. Mr. Chairman, I rise in strong support of the Peyser amendment to H.R. 85.

The purpose of the Comprehensive Oil Pollution Liability and Compensation Act, as ably expressed by my colleagues in their debate, is to provide an industry-financed cleanup fund for oil and hazardous substance spills in navigable waterways throughout the United States. The funds will replace all other Federal

funds for similar purposes. This is vital legislation, and as one concerned with the state of our environment for many years, I wholeheartedly support H.R. 85.

The bill as approved by both the Public Works and Merchant Marine Committees provided funds for future spills of oil and hazardous substances, as well as money for toxic pollutants presently found in our waterways. Unfortunately, the Ways and Means Committee version, as embodied in the Breaux substitute, effectively removes the authority to clean up in-place pollutants.

The problems of kepone, mercury, and PCB's in our Nation's waters have long been well documented. Efforts have been made to clean up these substances, but there is much that remains to be done. The James River in Virginia still contains harmful amounts of kepone. The Great Lakes have deposits of hazardous sediments that must be removed. The Chesapeake Bay, recently the subject of articles in the Washington Post regarding its lost beauty, still suffers from kepone pollution. And the Hudson River, supplying water to much of central New York State and New York City, continues to pose serious health hazards due to PCB pollution.

Unless we restore the measure approved by two of the three committees which considered H.R. 85, we may never remove these in-place toxic substances and restore these vital national and natural resources to their former grandeur or, more importantly, to safe and healthy levels.

The Peyser amendment is very direct in accomplishing its important purpose. The amendment applies only to waterways containing toxic pollutants as of the date of enactment of H.R. 85. It does not increase liability. Use of funds up to $10 million per year is solely at the discretion of the EPA Administrator.

I am happy to report that the Peyser amendment, which will help the Nation resolve many chronic pollution problems, was included in the final-passage version of H.R. 85.●

Mr. BREAUX. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I yield to the gentleman from Louisiana.

Mr. BREAUX. Mr. Chairman, I would like to ask the gentleman a few questions about this, because this is a rather substantive amendment.

The CHAIRMAN. The time of the gentleman from New York (Mr. PEYSER) has expired.

AMENDMENT OFFERED BY MR. SOLOMON TO THE AMENDMENT OFFERED BY MR. PEYSER

Mr. SOLOMON. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLOMON to the amendment offered by Mr. PEYSER: At the end of the matter proposed to be inserted, add the following: "No pollutants removed pursuant to this paragraph shall be placed in any landfill unless the Administrator first determines that disposal of the pollutants in such landfill would provide a higher standard of protection of the public health, safety, and welfare than disposal of such pollutants by any other method including, but not limited to, incineration or a chemical destruction process.".

Mr. SOLOMON. Mr. Chairman, my colleague from New York's amendment will enable the cleanup of PCB's from approximately 30 miles of the Hudson River adjoining my congressional district. However, I am concerned that EPA in carrying out this amendment will not use the best disposal method available. Nothing in the gentleman's amendment, nor any other provision of the bill, requires that EPA either incinerate or use a new technology which strips the chlorine molecules from the PCB's—turning them into harmless salt and other residual products. This technology has recently been advanced by the Goodyear Corp. and Sun Oil, respectively.

Therefore, Mr. Chairman, my amendment requires EPA to exhaust these options before they select a landfill option. The reason for my amendment is simple. Encapsulating these PCB materials does not necessarily mean that the problem will be solved. We may find instead that down the road the landfill presents a threat to human health or welfare for one reason or another. I think I need only to point to a recent "60 Minutes" show on the cleanup of the nuclear waste in the Pacific (Enewetak and Bikini Islands) wherein the U.S. Army went in and collected all the nuclear contaminated material and deposited it in a deep concrete disposal facility. Yet, less than 2 years later we find that facility is leaking. This clearly demonstrates that we cannot say with certainty that encapsulation provides the environmental solution to a problem. That is why I offer my amendment and I hope my colleagues can support it.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I yield to the ranking minority member.

Mr. SNYDER. Mr. Chairman, on behalf of the minority I am prepared to accept the amendment. As I understand it, a new process has been developed for destroying the PCB's, or at least reducing these highly toxic substances to environmentally safe compounds. This certainly seems preferable to disposing these materials in landfills.

I think the gentleman's amendment improves the legislation and assures that the public interest will be protected—by a Republican amendment. I hope our colleague, who felt that only his party was interested in the public interest, is listening.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. SOLOMON) to the amendment offered by the gentleman from New York (Mr. PEYSER).

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. PEYSER), as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. LIVINGSTON

Mr. LIVINGSTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LIVINGSTON: Page 72, after line 16, insert the following:

SEC. 305. Notwithstanding section 311(f)(1) of the Federal Water Pollution Control Act, this title and the amendments made by this title shall be applicable to claims for removal costs and economic loss incurred as a result of the discharge of pentachlorophenol into the Mississippi River Gulf outlet on July 22, 1980, in the same manner and to the same extent as this title and the amendments made by this title apply to claims to removal costs and claims for economic loss incurred after the effective date of this title.

Mr. LIVINGSTON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. LIVINGSTON. Mr. Chairman, title III, as members are now aware, addresses the release of hazardous substances into navigable waterways. The Public Works Committee which has jurisdiction reported its version of H.R. 85 to the House on May 16, 1980, over 4 months ago.

Since that time a terrible chemical spill has occurred in southern Louisiana when two vessels, a West German container ship and a Panamanian freighter, collided on July 22 in the Mississippi River Gulf Outlet. The accident released over 12 tons of the highly toxic herbicide pentachlorophenol into the waterway and surrounding bays and estuaries.

The Mississippi River Gulf Outlet was immediately closed to all transportation, virtually paralyzing a major section of the Port of New Orleans by closing its second busiest vessel route. Furthermore, seven days later, at the height of the brown shrimp season, health authorities closed over 400 square miles of water to all fishing.

For four weeks the port was helpless as vessels destined for New Orleans through the Mississippi River Gulf Outlet were rerouted to Houston and Mobile, causing a trade loss of $1.6 million. Similarly, fisherman unable to use the productive fisheries in the closed area lost an estimated $2.4 million.

The PCP spill was a classic example of environmental pollution from the release of a hazardous chemical in a navigable waterway, the very type of case intended to be addressed by the provisions of title III. My amendment, therefore, actually is a technical matter making the provisions of title III applicable to claims for removal costs and economic loss as a result of the spill.

Approval of my amendment merely makes PCP claims eligible under the provisions of the bill, allowing businesses and persons tragically harmed by PCP the opportunity for compensation. Had this bill been passed 3 months ago, this incident would have been covered under this bill.

However, I understand that this is basically the same situation as that which transpired before this body a few minutes ago when the Campeche spill was discussed.

At this time I would offer my amendment, but I would also ask the chairman of the Subcommittee on Water Resources this question: Is this not basically the same kind of incident which was intended to be covered by this particular bill?

Mr. ROBERTS. Mr. Chairman, if the gentleman will yield, the gentleman is correct. It is retroactive and accomplishes the same thing. It should be the subject of a separate bill and should receive special consideration.

Mr. LIVINGSTON. Mr. Chairman, would the gentleman entertain the possibility of hearings at a later date on this important matter so it might be covered in a separate bill sometime down the line?

Mr. ROBERTS. Mr. Chairman, in the short period I am going to be here, I cannot guarantee the gentleman that I will have time to do it, but it will be done. I am sure that will be done later.

Mrs. BOGGS. Mr. Chairman, will the gentleman yield?

Mr. LIVINGSTON. I am delighted to yield to the gentlewoman from Louisiana.

Mrs. BOGGS. Mr. Chairman, I would like to associate my remarks with those of my colleague, the gentleman from Louisiana (Mr. LIVINGSTON).

I am very pleased that the gentleman has entered into a colloquy with the subcommittee chairman, and certainly I will be supportive of his efforts to have a separate bill on this if we are unable to have this matter covered today. This is a problem that has brought us much difficulty.

Mr. LIVINGSTON. I thank the gentlelady from Louisiana (Mrs. BOGGS).

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana (Mr. LIVINGSTON).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. SNYDER. Mr. Chairman, on that I ask for a division.

The CHAIRMAN. Does the Chair understand that the gentleman asks for a division?

Mr. SNYDER. Mr. Chairman, I understood the gentleman was going to withdraw the amendment, and he did not.

The CHAIRMAN. Does the gentleman from Kentucky (Mr. SNYDER) insist on a division?

PARLIAMENTARY INQUIRY

Mr. SNYDER. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. SNYDER. Mr. Chairman, was the amendment withdrawn?

The CHAIRMAN. The amendment was not withdrawn.

Mr. SNYDER. Mr. Chairman, did the Chair announce that the amendment carried?

The CHAIRMAN. The Chair announced that by voice vote the amendment was agreed to.

Mr. SNYDER. Then, Mr. Chairman, I demand a division.

On a division (demanded by Mr. SNYDER) there were—ayes 4, noes 30.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BREAUX: Page 72, after line 18, insert the following new section:

SEC. 304. Nothing in this title and nothing in the amendments made by this title, other than the application of these provisions to removal costs, shall be applicable to the use or the supervision of use of any pesticide (including one classified for restricted use) by any person who is a private applicator within the meaning of section 2(e)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. Except in the case of removal costs, the use of pesticides by any such person shall be subject to section 311 of the Federal Water Pollution Control Act as in effect prior to the effective date of this title. Any person having a claim for damages for economic loss incurred on or after the effective date of this title as the result of the use or supervision of use of a pesticide by such a private applicator shall assert such claim in accordance with the provisions of this title and the amendments made by this title except that the Hazardous Substance Pollution Liability Trust Fund shall be the sole source liable for the payment of such claim.

Renumber the succeeding section accordingly.

Mr. BREAUX (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. BREAUX. Mr. Chairman, this amendment was brought to our attention by the chairman of the Committee on Agriculture, the gentleman from Washington, (Mr. FOLEY).

The amendment merely provides that farmers who apply chemicals on their own property would come under existing laws as far as damage claims against the farmer are concerned, but the fund could be used to pay for removal costs.

Commercial applicators under this amendment would be totally subject to the provisions of this legislation, however, and claims by persons against farmers could be made. They could bring their claim against the farmer personally but not against the fund.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, as I understand this amendment, it is meant to produce the following consequences:

When a farmer uses pesticides on his crops:

First. Anyone suffering any of the four categories of compensable damages covered under the bill can be compensated by the trust fund;

Second. The trust fund may go against the farmer to recover only removal costs;

Third. The trust fund cannot go against the farmer for any other types of compensable damages;

Fourth. In evaluating the farmer's liability for removal costs, H.R. 85 provides the standard to be used; and

Fifth. Where State, local, or other Federal causes of actions exist for types of damages not compensable under this bill, those causes of action are not preempted and claims for them may be brought in the appropriate State, or other, courts.

Mr. BREAUX. Mr. Chairman, the gentleman is correct in what he has stated.

Mr. SNYDER. It is with this understanding that I support the amendment.

The CHAIRMAN. The time of the gentleman from Louisiana (Mr. BREAUX) has expired.

The Chair will inquire, does the gentleman from Kentucky (Mr. SNYDER) desire to use his time at this time?

Mr. SNYDER. No, I do not, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana (Mr. BREAUX).

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 25, noes 3.

So the amendment was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Massachusetts (Mr. STUDDS).

Mr. STUDDS. Mr. Chairman, because of the lateness of the time and the complexity of the statute before us, I will not offer the amendments which I had planned to introduce.

I would like to take this moment, if I may, to remind the Members that the statutory complexity of this measure notwithstanding, its intent and its thrust are simple. It both provides a method by which those damaged by spills can be promptly and equitably compensated, and it provides an incentive for those who carry oil to take the minimal amount of precaution necessary to avoid a spill.

Our current laws are full of loopholes large enough to sail a Liberian tanker through, and this problem at long last will be solved by this bill.

Mr. Chairman, I urge the Members to support the bill strongly and unanimously.

The CHAIRMAN. The Chair recognizes the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Chairman, as a member of the Committee on Merchant Marine and Fisheries and a cosponsor of the bill, I rise in support of this legislation.

Mr. Chairman, as we come to the close of the consideration of H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act, I would like to commend the members of the Committee on Merchant Marine and Fisheries, including Mr. BREAUX, Mr. STUDDS, and Mr. BIAGGI, who have worked so hard to bring this legislation to fruition. As a cosponsor of this and similar bills over the last several years it has been a continuing frustration to me to see this important legislation delayed.

As one who has the honor to represent the Eastern Shore of Maryland and a large part of the western shore of the Chesapeake Bay, as well as the Potomac River, I am acutely aware of the continuing problem presented by oil and chemical spills in the waters of Maryland and Virginia.

The State of Maryland has on its statutes a comprehensive oilspill law which I understand will be protected by this new legislation in many respects. One of my concerns was that a Federal

law would preempt our State statute, making it impossible for the State to act on its own. This problem has been addressed in the bill.

Mr. Chairman, H.R. 85 will present a comprehensive system of liability and compensation for oilspill damage and removal and will also act as a strong incentive for shippers and oil handlers to take the necessary steps to avoid the accidents that pollute our waters.

For the watermen, boaters, shoreline residents, and others in Maryland, this should serve as both a protection and means of preserving our bay and rivers which is so important to us.

I urge passage of the bill.

Mr. EVANS of Delaware. Mr. Chairman, I rise in strong support of H.R. 85, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act, as modified by the Breaux substitute.

As a member of the Subcommittee on Coast Guard and Navigation, my primary interest in H.R. 85 has concerned oil spills. In this Congress I was one of the original cosponsors of H.R. 85, as an oil spill bill, just as I was a cosponsor of the oil spill bill the House passed in the 95th Congress.

As a representative of a coastal State, I have been greatly distressed that the House has twice passed an oil spill bill, only to have the Senate fail to respond with passage of a similar measure. Each new incident, such as the 1979 blowout of the Mexican-owned exploratory well in the Bay of Campeche, reminds us of the urgency of getting a liability and compensation system in place.

Catastrophic oil spills always happen somewhere else, if you are lucky, but never at home. But believe me, the people of Delaware are acutely aware that it can happen at home. Some 70 percent of the crude oil delivered to the east coast travels up the Delaware Bay and River to refineries in Delaware, Pennsylvania, and New Jersey. Delawareans, as well as the millions of others who flock to enjoy our clean beaches, sit on the shore and watch these tankers enter the bay and anchor off Big Stone Beach where lightering operations transfer the crude oil to barges for transport farther upriver.

In spite of the best efforts of the oil companies, the shipping lines, and others, these behemoths are accidents waiting to happen on some icy, foggy winter day. I hope and pray that day never comes in Delaware Bay, but if and when it does, I hope this bill is law, because the people of Delaware who rely on our precious coast for their livelihoods must have something to fall back on. It is only fair that they clearly know who to turn to for help, who is responsible for the damages, and how long it will take to recover their lost income. This bill will go a long way toward taking care of these problems.

When I cosponsored H.R. 85 in 1979, it addressed only the problem of oilspills. Now, because of the contribution of the Committee on Public Works and transportation, it also addresses the matter of spills of hazardous chemicals in navigable waters and adjacent areas. I think this is most appropriate, and I fully support the contribution of the Public Works Committee as it is now embodied in the Breaux substitute.

At this time last year we had an incident at Sharptown, Md., near the Delaware-Maryland line on the Nanticoke River, which dramatically underscored in my mind the need for legislation addressing spills of hazardous chemicals. At Sharptown, located within 25 feet of the Nanticoke River and within a few blocks of hundreds of people, they suddenly discovered that what were thought to be empty storage tanks actually contained tens of thousands of gallons of hazardous chemicals, including some 9,000 gallons of cancer-causing PCB's. What followed this discovery were weeks of misinformation, confusion, charges, and countercharges while different Federal and State agencies were trying to decide who was going to do and pay for what. While all the agencies bickered, the townspeople quivered in their sleep, hoping that the tanks did not spill their guts into the town and river.

Ultimately, the Coast Guard decided that there was an "imminent threat" to navigable waters and the hazardous substances were removed to a safer storage area at a reported cost of half a million dollars to the Government. What would have happened if the tanks had not held until the Government could get its act together? Who would have protected the citizens and the river? Who would have paid the cleanup costs and compensated the innocent victims of Sharptown, Md., especially in the event that a financially responsible owner could not be located? The answer is that the people from Sharptown would still be reeling from that incident, with no end of their problems in sight.

Critics of H.R. 85 contend that it is not needed because existing laws such as section 311 of the Clean Water Act give the Federal Government adequate authority to respond to spills of oil and hazardous chemicals. But the fact of the matter is that the law pertaining to oil or chemical spills is severely fragmented among the Clean Water Act, the Outer Continental Shelf Lands Act, the Deepwater Ports Act, and other Federal laws, to say nothing of State, common, and maritime laws. One of the major shortcomings of existing law, and specifically section 311 of the Clean Water Act, is that the $35,000,000 revolving fund can only be used to clean up oil and chemical spills in navigable waters and adjacent areas. It cannot be used to compensate the innocent victims of these spills.

Compensation of the innocent victims of chemical or oil spills is absolutely crucial. That person who derives a livelihood from fishing or operating a beachside motel is likely to go broke waiting to be compensated if he has to go through a long, expensive court fight. And if no financially responsible spiller can be located, it is just like a thief who disappears into thin air with your life savings. There is nothing that can be done about it.

Under H.R. 85, liabilities and responsibilities are clearly delineated. Separate oil and chemical funds are established out of which cleanup expenses can come, and if an innocent victim of a spill is not rapidly compensated by a spiller, compensation can be claimed from the fund. I think it is a fair and equitable approach, and it is one which recognizes that the cost of doing business in the oil and chemical industries must cover the inevitability of accidental spills. No matter how careful and responsible the industry is—and most of the industry is careful and responsible—spills have and will occur. We can best prepare for those incidents by establishing a comprehensive liability and compensation system in advance of the next catastrophe.

Mr. Chairman, in the last decade the Congress has approved a long list of landmark measures to protect the environment and public health and we are starting to reap the benefits of those actions. Legislation concerning the problems of oil and chemical spills, and the problem of abandoned waste disposal sites which will be considered in H.R. 7020, are yet unfinished on our agenda. I am convinced that these problems are some of the most serious we will face on the domestic front in the 1980's, and we can start today by passage of a comprehensive liability and compensation system. We owe it to ourselves and to all the victims—past and future—of oil and chemical spills.

● Mr. GILMAN. Mr. Chairman, I rise in support of the amendment to H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act of 1980, being offered by my distinguished colleague from New York (Mr. PEYSER).

The amendment being offered by my colleague would provide $10 million from the title III chemical spill fund for the cleaning up of PCB deposits in our Nation's rivers.

Mr. Chairman, the Hudson River is in danger. The entire river has probably one of the worst problems of PCB deposits along its banks and the longer one delays in its cleanup, the more complicated and expensive it becomes—simply because the deposits break up and filter into the entire body of water. The means to extract the deposits from the river are readily available. It is now merely a matter of the Congress showing its concern and recognition of the true extent of the damage. The $10 million fund proposed is not too much funding for something so imperative. Indeed, it is still far short of what is actually needed to complete the job.

Accordingly, I support this amendment and urge my colleagues on both sides of the aisle to vote in favor of this amendment which is a first and important step toward cleaning up our Nation's rivers.●

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I just want to take my minute to say that I appreciate so very much the cooperation of the House this afternoon in helping us dispose of this rather complicated bill. It is complicated, and we did move fairly fast.

I want to assure the Members that both sides of the aisle have worked for about 6 years on most of this bill, and I feel that now we have a good bill.

□ 1430

There has been bipartisan cooperation. Certainly the minority has been allowed

to participate to the fullest extent and we support this bill as a result. I want to give the best tribute I can to the chairman of the Coast Guard Subcommittee, the gentleman from New York (Mr. BIAGGI), and the Water Resources Subcommittee, the gentleman from Texas (Mr. ROBERTS), for the fine cooperation they have given, and I hope that the House will give a substantial vote of confidence this afternoon, and I thank those gentlemen for the cooperation and for the participation that we have all been allowed to have in what we believe is a good bill.

Mr. BIAGGI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we are coming to the close of debate and consideration of all amendments on this legislation. It has been a long pull. It has been some 6 years since we embarked on this undertaking. It is fortunate that we seem to be doing this in tandem with H.R. 7020. It is Congress response to the Nation's needs so far as pollution is concerned. Both of them are most comprehensive, dealing with critical matters. H.R. 85, the predecessor legislation by some 5 years, has suffered its ups and downs, and the Members who have been involved with it during that arduous period have had the patience and fortitude to persist, and we are delighted that we have come to this point.

I would be remiss if I did not recognize the contribution and the invaluable assistance that we received from the gentleman from Texas (Mr. ROBERTS), who is serving his last term and will not be with us in the next Congress. Of his own volition, he seeks to retire. But it is most appropriate that he affixes his name and label to this landmark legislation. We have had an extraordinary relationship. We have never invloved ourselves with the esoteric arguments. The question was practical application, how can we implement this notion, how can we transform it into reality. And, notwithstanding all of the obstacles—and I can assure you that there were many from many quarters—we reconciled the differences and overcame the obstacles.

From all of the elements involved, all of the component people involved and their representatives, even they participated. They were hostile at the outset. With some reconciliation, with some thought and persuasion, they are in a unified position in support of this legislation.

A special thanks goes to my colleague, the gentleman from Massachusets (Mr. STUDDS), who, like myself, worked tirelessly; and, of course, the gentleman from Kentucky (Mr. SNYDER), the members of the committee and the staff. Without the heroic work of the staffs of all of the members of the various committees, we could not have reached this point today.

I also wish to mention the gentleman from Louisiana (Mr. BREAUX), whose contribution was essential.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BENNETT) having resumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 85) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes, pursuant to House Resolution 772, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Mr. SNYDER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 288, nays 11, not voting 133, as follows:

[Roll No. 571]

YEAS—288

Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.Dak.
Annunzio
Archer
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Bolling
Boner
Bonior
Bonker
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Chisholm
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Convers
Corcoran
Coughlin
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Deckard
Dellums
Derwinski
Devine
Dickinson
Dicks
Dingell
Donnelly
Dornan
Doucherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fasio
Fenwick
Ferraro
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Garcia
Gaydos
Gephardt
Giaimo
Gilman
Ginn
Glickman
Goldwater
Gonzales
Gore
Gradison
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Harkin
Harris
Hightower
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kildee
Kostmayer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lundine
Lungren
McCloskey
McCormack
McHugh
McKay
McKinney
Madigan
Markey
Marks
Marlenee
Marriott
Martin
Michel
Mikulski
Miller, Ohio
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Moore
Moorhead, Calif.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Rangel
Reuss
Rhodes
Ritter
Roberts
Robinson
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Sabo
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snyder
Solars
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stark
Stewart
Stokes
Stratton
Studds
Swift
Tauke
Tauzin
Taylor
Traxler
Trible
Udall
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whittaker
Whitten
Williams, Mont.
Wilson, Tex.
Winn
Wolf
Wolpe
Wylie
Yatron
Young, Alaska
Young, Fla.
Zablocki

NAYS—11

Ashbrook
Collins, Tex.
Crane, Daniel
Gramm
Kelly
McDonald
Paul
Stenholm
Stump
Synar
Wyatt

NOT VOTING—133

Abdnor
Addabbo
Alexander
Anderson, Ill.
Andrews, N.C.
Anthony
Applegate
Barnard
Beard, Tenn.
Bethune
Boland
Bouquard
Brooks
Brown, Ohio
Cavanaugh
Chappell
Cheney
Cleveland
Corman
Cotter
Courter
Crane, Philip
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Derrick
Dixon
Dodd
Early
Edwards, Ala.
Edwards, Calif.
Erlenborn
Evans, Ga.
Findley
Ford, Tenn.
Fuqua
Gibbons
Gingrich
Goodling
Grassley
Gray
Hammer-schmidt
Hanley
Hansen
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Holtzman
Howard
Huckaby
Hutto
Ireland
Jenrette
Johnson, Colo.
Jones, N.C.
Kazen
Kemp
Kindness
Kogovsek
Kramer
Leach, La.
Lederer
Lent
Lloyd
Luken
McClory
McDade
McEwen
Maguire
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Miller, Calif.
Mineta
Mitchell, N.Y.
Montgomery
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nelson
Nichols
Pashayan
Pepper
Pritchard
Quillen
Rahall
Railsback
Ratchford
Regula
Richmond
Rinaldo
Rodino
Roe
Rousselot
Rudd
Russo
Santini
Satterfield
Skelton
Snowe
St Germain
Stanton
Steed
Stockman
Symms
Thomas
Thompson
Ullman
Van Deerlin
Vento
Wampler
Whitley
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wirth
Wright
Wydler
Yates
Young, Mo.
Zeferetti

□ 1450

The Clerk announced the following pairs:

Mr. Addabbo with Mr. McClory.
Mr. Zeferetti with Mr. Stanton.
Mr. Richmond with Mr. Rousselot.
Mr. Bodino with Mr. Railsback.
Mr. Alexander with Mr. Quillen.
Mr. Hawkins with Mr. McEwen.
Mr. Pepper with Mr. Edwards of Alabama.
Mr. Montgomery with Mr. Brown of Ohio.
Mr. Murphy of Illinois with Mr. Abdnor.
Mr. Nedzi with Mr. Beard of Tennessee.
Mr. Mineta with Mr. Hammerschmidt.
Mr. Mica with Mr. Harsha.
Mr. Mazzoli with Mrs. Heckler.
Mr. Nichols with Mr. Kemp.
Mr. Russo with Mr. Findley.
Mr. Santini with Mr. Bob Wilson.
Mr. Skelton with Mr. Davis of Michigan.
Mr. St Germain with Mr. Cleveland.
Mr. Steed with Mr. Kindness.
Mr. Lloyd with Mr. Hinson.
Mr. Kazen with Mr. Lent.
Mr. Jones of North Carolina with Mr. Wydler.
Mr. Jenrette with Mr. Williams of Ohio.
Mr. Howard with Mr. Symms.
Mr. Huckaby with Mr. Thomas.
Mr. Ireland with Mr. Rudd.
Mr. Puqua with Mr. Regula.
Mr. Hanley with Mr. Rinaldo.
Mr. Edwards of California with Mr. Pritchard.
Mr. Early with Mr. Mitchell of New York.
Mr. Dixon with Mr. Pashayan.
Mr. de la Garza with Mr. Hillis.
Mr. Anthony with Mr. Grassley.
Mr. Applegate with Mr. Bethune.
Mr. Boland with Mr. Cheney.
Mr. Barnard with Mr. Courter.
Mr. Cotter with Mr. Philip M. Crane.
Mr. Corman with Mr. Gingrich.
Mr. Chappell with Mr. Goodling.
Mr. Brooks with Mr. Kramer.
Mrs. Bouquard with Mr. McDade.
Mr. Dodd with Mr. Johnson of Colorado.
Mr. Derrick with Mr. Hansen.
Mr. Ratchford with Mrs. Snowe.
Mr. Roe with Mr. Stockman.
Mr. Wirth with Mr. Wampler.
Mr. Whitley with Mr. Erlenborn.
Mr. Vento with Mr. Maguire.
Mr. Van Deerlin with Mr. Luken.
Mr. Satterfield with Mr. Nelson.
Mr. Matsui with Mr. Mattox.
Mr. Mavroules with Mr. Motti.
Mr. Murphy of New York with Mr. Myers of Pennsylvania.
Mr. Yates with Mr. Charles H. Wilson of California.
Mr. Thompson with Mr. Ullman.
Mr. Lederer with Mr. Holland.
Mr. Kogovsek with Ms. Holtzman.
Mr. Cavanaugh with Mr. Andrews of North Carolina.
Mr. Daschle with Mr. Davis of South Carolina.
Mr. Mathis with Mr. Moorhead of Pennsylvania.
Mr. Miller of California with Mr. Rahall.
Mr. Wright with Mr. Gray.
Mr. Ford of Tennessee with Mr. Evans of Georgia.
Mr. Young of Missouri with Mr. Leach of Louisiana.
Mr. Hutto with Mr. Gibbons.
Mr. Hefner with Mr. Heftel.

Mr. CHARLES WILSON of Texas changed his vote from "nay" to "yes."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I have asked for this time for the purpose of inquiring of the acting majority leader the program for next week.

Mr. FOLEY. Mr. Speaker, will the distinguished minority whip yield?

Mr. MICHEL. I am happy to yield.

Mr. FOLEY. Mr. Speaker, this will conclude the business for the week.

The House will meet at noon on Monday. All recorded votes will be postponed until Tuesday, September 23, 1980. There will be no votes on Monday.

There will be 22 bills on Suspension, as follows:

H.R. 5340, extend authorizations for water resources research;

H.R. 5898, Rattlesnake Wilderness, Montana;

S. 1464, Indian lands for Mille Lacs Band of Minnesota Chippewas;

H.R. 8081, Holocaust Memorial Act;

H.R. 8087, Omnibus National Trails Act;

H.R. 8096, Wild and Scenic Rivers Act;

H.R. 7919, Maine Indians settlement bill;

H.R. 7385, transfer of land for the Bureau of Mines;

H.R. 6331, Capitol buildings and grounds;

H.R. 7878, transfer of certain naval vessels;

S. 91, United States Code title X amendments, survivor benefits;

H.R. 7540, Customs Court;

S. 658, Bankruptcy Act;

H.R. 8117, safe drinking water amendments;

H.R. 7104, Federal Railroad Safety Authorization Act of 1980;

H.R. 7554, Small Business Investment Incentive Act of 1980;

H.R. 7939, Securities Investor Protection Act amendments;

H.R. 6959, salmon and steelhead resources conservation;

H.R. 7039, American Fish Promotion Act;

H.R. 3486, Documentary Materials Privacy Protection Act;

H.R. 7085, relating to the hostages in Iran; and

H.R. 4736, Classified Information Criminal Trial Procedure Act.

Now, Mr. Speaker, on Tuesday, there will be one Suspension, that is H.R. 6228, Communications Cross Ownership Act of 1980.

Recorded votes ordered on Monday and debated on Monday will be taken up on Tuesday.

Then in addition to that we will consider House Joint Resolution 601, International Monetary Fund appropriations, fiscal year 1981.

We will then consider the following bills: H.R. 7020, Hazardous Waste Containment Act of 1980, completing consideration.

H.R. 6806, public utility treatment under Internal Revenue Code, under a modified rule, with 1 hour of debate.

H.R. 6979, Coastal Zone Management Improvement Act, under an open rule, with 1 hour of debate.

On Wednesday, the House will meet at 10 a.m. to consider the following bills:

H.R. 7112, State and local fiscal assistance amendments, under an open rule, with 2 hours of general debate.

There is an unnumbered H.R. bill, Federal Supplemental Unemployment Compensation Act of 1980, subject to a rule being granted.

S. 885, Pacific Northwest Electric Power Planning and Conservation Act, subject to a rule being granted.

H.R. 4370, Coal Pipeline Act of 1980, under an open rule, with 2 hours of general debate.

H.R. 6777, Council on Wage and Price Stability authorization extension, under an open rule, with 1 hour of general debate.

H.R. 7265, Department of Energy authorizations of defense programs, under an open rule, with 1 hour of general debate. The rule has already been adopted.

On Thursday, September 25, the House will meet at 10 a.m. This is Special District Day, with two bills. The first is H.R. 7782, Secret Service pay adjustment; and the second is H.R. 7658, authorization to study extending Metro Subway to Dulles.

We will then consider the following bills:

H.R. 5615, Intelligence Identities Protection Act, under an open rule, with 1 hour of general debate.

H.R. 6704, Juvenile Justice and Delinquency Prevention Act, under an open rule, with 1 hour of general debate.

H.R. 6667, Water Pollution Control Act, under an open rule, with 1 hour of general debate.

H.R. 7548, Farm Credit Act Amendments of 1980, subject to a rule being granted.

The House will not be in session on Friday.

The House will adjourn next week at an hour that Members should expect might be rather late on each evening, subject to the requirements of the schedule.

Mr. MICHEL. Might I inquire, on those two District bills, will there have to be a unanimous-consent request to take them up on Thursday?

Mr. FOLEY. Yes, and I will make the appropriate unanimous-consent request.

Mr. MICHEL. And then are we planning on coming in early on Tuesday?

Mr. FOLEY. We are planning a noon meeting on Tuesday. There is no present plan to come in prior to noon.

Mr. MICHEL. I just was wondering in view of the numerous votes that might very well be carried over from Monday whether or not it might be appropriate to come in early.

Mr. FOLEY. We would be glad to ask unanimous consent that when the House meets on Tuesday next, it meet at 11 a.m.

The SPEAKER pro tempore. Is the gentleman making that request now?

Mr. FOLEY. I will at this time make that request.

Mr. MICHEL. I would certainly have no objection.

HOUR OF MEETING ON TUESDAY, SEPTEMBER 23, 1980

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House meets on Tuesday next, it meet at 11 a.m.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to my friend, the gentleman from Georgia.

Mr. LEVITAS. Mr. Speaker, I thank the gentleman for yielding.

I have two questions that I would like to ask. The first question is relating to the gentleman's announcement that there would be no votes on Monday. A similar announcement was made last week and, in fact, there was a vote on Monday.

Mr. FOLEY. Mr. Speaker, will the gentleman from Illinois yield?

Mr. MICHEL. I am happy to yield.

Mr. FOLEY. Well, it is never possible for the leadership to assure Members that votes will not occur on procedural matters. There is an understanding between the leadership on both sides that there will be no planned requests for votes, but in certain procedural matters any Member of the House is at liberty to take action which might bring about a procedural vote. We know of no such intention and I hope none occurs.

Mr. LEVITAS. Mr. Speaker, I thank the gentleman.

Mr. Speaker, would the gentleman from Illinois yield further?

Mr. MICHEL. Yes.

Mr. LEVITAS. My next question relates to the Regulation Reform Act. As the acting majority leader knows, we have tried for a number of weeks now to have this bill reported out of the Committee on the Judiciary. The Committee on the Judiciary did, in fact, this week report out the Regulation Reform Act.

It is also a matter of record that the chairman and the chairman of the subcommittee of the Committee on the Judiciary have indicated they will seek an open rule. I am told that a formal written request for hearings before the Committee on Rules has been presented. Since this piece of legislation is a centerpiece—the centerpiece of the administration's regulatory reform effort, I would like to inquire whether or not the acting majority leader can assure the Members of the House that the Committee on Rules intends to respect the request of the committee and have hearings on a rule for the Regulation Reform Act next week.

□ 1500

Mr. FOLEY. Much as I would like to accommodate the gentleman from Georgia, if the gentleman from Illinois will continue to yield, I cannot at this time make any assurances on behalf of the Rules Committee or the distinguished chairman. To my knowledge, the gentleman just informed me, I was not aware that a formal request had yet reached the Rules Committee. The report on the bill in question has not yet been filed and is expected to be filed on Monday.

As the gentleman knows, under normal circumstances the Rules Committee does not grant a hearing until a report is available to the committee 24 hours prior to the hearing. So I think the answer to the gentleman's question would probably have to wait both the filing of the report and an opportunity for the chairman of the Committee on Rules to respond. But if the appropriate requests have been made, I have no knowledge that there will not be a hearing. I just cannot assure the gentleman there is any decision.

Mr. LEVITAS. If the gentleman will yield further, I thank the acting majority leader for his response. I would simply like to emphasize that this is very important legislation to the administration as well as to the Members of the House. I would hope that the leadership of this House will diligently, persistently, and consistently do everything that can be done to assure that an appropriate rule, open rule, will be obtained as soon as it is procedurally possible for this to occur. The gentleman from Georgia will do all he can to assist in this process as one Member of this House.

I thank the gentleman from Illinois.

Mr. MICHEL. If I might inquire of the acting majority leader possibly one further question, in a conversation I recall having with the Speaker, maybe better than a week ago, relative to the previously announced recess date of October 4, the Speaker responded to me in private saying he doubted very much whether we would want to be around here on Saturday and I concurred. As a matter of fact, there was some discussion of possibly winding up for sure on the 2d rather than having a Friday session of that week. Does the gentleman have any intelligence in that regard that he could nail down more specifically?

Mr. FOLEY. I would say to the gentleman the only information I can impart to him is it is still the plan to meet the week after next and that it is the target to adjourn by the 4th of October. I believe that target is firm as the ultimate date on which the House will meet in order to complete its work.

Whether it will be possible to conclude at a slightly earlier date such as the 2d is not, I think, a matter that can be determined yet but I can assure the gentleman that the target date beyond which we will not go is the 4th, and perhaps somewhat earlier than that. There was definitely a plan to work that week.

Mr. MICHEL. I thank the gentleman for his response and yield back the balance of my time.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule shall be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

ADJOURNMENT TO MONDAY, SEPTEMBER 22, 1980

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 12 noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

MAKING IN ORDER DISTRICT OF COLUMBIA BUSINESS ON THURSDAY, SEPTEMBER 25, 1980

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that District of Columbia business in order on Monday, September 22, 1980, be in order on Thursday, September 25, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

EVALUATION OF THE CARCINOGENIC RISK OF CHEMICALS TO HUMANS

(Mr. MARTIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. MARTIN. Mr. Speaker, the debate on H.R. 7020 today I promised to submit for the RECORD a useful excerpt from a monograph of the International Agency for Research on Cancer, entitled "Evaluation of the Carcinogenic Risk of Chemicals to Humans." I am pleased to present this at this point.

Several colleagues have asserted that various chemicals have been shown to be carcinogenic; that is, posing an increased risk of cancer. Others have cited cases which they believe not to be carcinogenic. It will be useful, I think, to assist in such suppositions by sharing with our colleagues the conclusions of this highly respected international authority on oncology, established by the World Health Organizaion.

This monograph was published in September of 1979. It is, therefore, subject to amendment when conflicting evidence has been evaluated by appropriate review. However, I would caution Members against using rumors, claims, or other representations that seek to create a general chemophobia amongst the public. We are daily deluged with claims, such as against saccharin and nitrite which upon examination turn out to be of little significance.

MONOGRAPH ON THE EVALUATION OF THE CARCINOGENIC RISK OF CHEMICALS TO HUMANS

(International Agency for Research on Cancer, September 1979)

(World Health Organization)

METHODS

The data on each chemical were reviewed in detail before the meeting by two members of the group; the animal studies by an experimentalist and the human studies by an epidemiologist. Data that had become available since the publication of the relevant monograph were included in this review.

Separate assessments of the human and animal evidence of carcinogenicity were debated and adopted by the Working Group. An overall evaluation of carcinogenicity for humans was made based on the combined evidence. Brief descriptions of the data used to support the assessments and the evaluations appear in the Appendix. The reader is encouraged to consult these notes together with the summary Table 3. For each chemical the appropriate volume in the *Monographs* series is given and also, where applicable,

papers that have been published subsequently.

Assessment of evidence of carcinogenicity from experimental animal studies

These assessments were classified in five groups:

i. Sufficient evidence of carcinogenicity indicates that there is an increased incidence of malignant tumors: (a) in multiple species or strains, or (b) in multiple experiments (preferably with different routes of administration or using different dose levels), or (c) to an unusual degree with regard to incidence, site or type of tumor, or age at onset. Additional evidence may be provided by data concerning dose-response effects, as well as information on mutagenicity or chemical structure.

ii. Limited evidence of carcinogenicity means that the data suggest a carcinogenic effect but are limited because: (a) the studies involve a single species, strain, or experiment; or (b) the experiments are restricted by inadequate dosage levels, inadequate duration of exposure to the agent, inadequate period of follow-up, poor survival, too few animals, or inadequate reporting; or (c) the neoplasms produced often occur spontaneously or are difficult to classify as malignant by histological criteria alone (e.g., lung and liver tumors in mice).

iii. Inadequate evidence indicates that because of major qualitative or quantitative limitations, the studies cannot be interpreted as showing either the presence or absence of a carcinogenic effect.

iv. Negative evidence means that within the limits of the tests used, the chemical is not carcinogenic. The number of negative studies is small, since in general, studies that show no effect are less likely to be published than those suggesting carcinogenicity.

v. No data indicates that data were not available to the Working Group.

The categories sufficient evidence and limited evidence refer only to the strength of the experimental evidence that these chemicals are (or are not) carcinogenic and not to the extent of their carcinogenic activity. The classification for any chemical may change as new information becomes available.

Assessment of evidence for carcinogenicity from human studies

Evidence of carcinogenicity from human studies comes from three main sources:

1. Case reports of individual cancer patients who were exposed to the chemical or process.

2. Descriptive epidemiological studies in which the incidence of cancer in human populations was found to vary spatially or temporally with exposure to the agents.

3. Analytical epidemiological (case-control and cohort) studies in which individual exposure to the chemical or group of chemicals was found to be associated with an increased risk of cancer.

Three criteria must be met for a causal association to be inferred between exposure and human cancer (3):

1. There is no identified bias which could explain the association.

2. The possibility of confounding has been considered and ruled out as explaining the association.

3. The association is unlikely to be due to chance.

In general, although a single study may be indicative of a cause-effect relationship, confidence in inferring a causal association is increased when several independent studies are concordant in showing the association, when the association is strong, when there is a dose-response relationship, or when a reduction in exposure is followed by a reduction in the incidence of cancer.

The degrees of evidence for carcinogenicity in human studies were categorized as:

i. Sufficient evidence of carcinogenicity indicates a casual association between exposure and human cancer.

ii. Limited evidence of carcinogenicity indicates a possible carcinogenic effect in humans, although the data are not sufficient to demonstrate a causal association.

iii. Inadequate evidence of carcinogenicity indicates that the data are qualitatively or quantitatively insufficient to allow any conclusion regarding carcinogenicity for humans.

Dividing lines were by no means firmly drawn between sufficient evidence and limited evidence from animal studies and between inadequate evidence and limited evidence from both human and animal studies. When differences of opinion occurred among the members of the Working Group, the classification was made by majority vote.

Evaluation of the carcinogenic risk to humans

Presently, no objective criteria exist to interpret the animal data directly in terms of human risk. Thus, in the absence of sufficient evidence from human studies, evaluation of the carcinogenic risk to humans was based on consideration of both the epidemiological and experimental evidence. Furthermore, the breadth of the categories for human and animal evidence defined above allows substantial variation within each, and the decisions reached by the group regarding overall risk incorporated these differences, even though they could not always be adequately reflected in the placement of a chemical into a particular category in the Table 3. The evidence in support of these decisions is summarized in the notes for each chemical in the Appendix.

The chemical, group of chemicals, or industrial process is carcinogenic for humans. three groups:

Group 1

The chemicals, groups of chemicals, or industrial processes were placed into one of This category was used only when there was sufficient evidence to support a causal association between the exposure and cancer.

Group 2

The chemical or group of chemicals is probably carcinogenic for humans. This category includes chemicals for which the evidence of human carcinogenicity is almost 'sufficient' as well as chemicals for which it is only suggestive. To reflect this range this category has been divided into higher (group A) or lower (group B) degrees of evidence. The data from experimental animal studies played an important role in assigning chemicals to category 2, and particularly to those in group B.

Group 3

The chemical or group of chemicals cannot be classified as to its carcinogenicity for humans.

RESULTS AND CONCLUSIONS

The separate evaluations of animal and human evidence are presented in Table 3.

The Working Group concluded that the following 18 chemicals, groups of chemicals, and industrial processes are carcinogenic for humans (Group 1):

4—Aminobiphenyl.
Arsenic and certain arsenic compounds.
Asbestos.
Manufacture of auramine.[1]
Benzene.
Benzidine.
N,N-bis(2-chloroethyl)-2-naphthylamine (chlornaphazine).
Bis(chloromethyl)ether and technical grade chloromethyl methyl ether.
Chromium and certain chromium compounds.[1]
Diethylstilboestrol.
Underground haematite mining.[1]
Manufacture of isopropyl alcohol by the strong acid process.[1]
Melphalan.
Mustard gas.
2-Naphthylamine.
Nickel refining.[1]
Soots, tars and mineral oils.[1]
Vinyl chloride.

The following 18 chemicals and groups of chemicals are probably carcinogenic for humans (Group 2).

Group A (six chemicals)

Aflatoxins.
Cadmium and certain cadmium compounds.[1]
Chlorambucil.
Cyclophosphamide.
Nickel and certain nickel compounds.[1]
Tris(1-aziridinyl) phosphine sulphide (thiotepa).

Group B (12 chemicals)

Acrylonitrile.
Amitrole (aminotriazole).
Auramine.
Beryllium and certain beryllium compounds.[1]
Carbon tetrachloride.
Dimethylcarbamoyl chloride.
Dimethylsulphate.
Ethylene oxide.
Iron dextran.
Oxymetholone.
Phenacetin.
Polychlorinated biphenyls.

The following 18 chemicals and groups of chemicals could not be classified as to their carcinogenicity for humans (Group 3):

Chloramphenicol.
Chlordane/heptachlor.
Chloroprene.
Dichlorodiphenyltrichloroethane (DDT).
Dieldrin.
Epichlorohydrin.
Haematite.
Hexachlorocyclohexane (technical grade HCH/lindane).
Isoniazid.
Isopropyl oils.
Lead and certain lead compounds.[1]
Phenobarbitone.
N-Phenyl-2-naphthylamine.
Phenytoin.
Reserpine.
Styrene.
Trichloroethylene.
Tris (aziridinyl)-para-benzoquinone (triaziquone).

Mining and manufacturing processes

For some of the chemicals, part or all of the evidence indicating a carcinogenic effect for humans comes from an increased incidence of cancer in individuals involved in the mining or manufacture of these chemicals. There is sufficient evidence that the manufacture of auramine, the underground mining of haematite, the manufacture of isopropyl alcohol by the strong acid process, and the refining of nickel are carcinogenic to humans, at least in the situations in which they have been studied. Because these occupations include exposure to other factors in addition to the chemical under consideration, the responsible carcinogen(s) cannot be specified precisely; therefore, the results cannot be generalized to all situations involving these processes. Nonetheless, these processes should be assumed to carry a carcinogenic risk to humans unless proven otherwise.

[1] The specific compound(s) which may be responsible for a carcinogenic effect in humans cannot be specified precisely.

THE NEED TO STRENGTHEN THE LOCAL CAPABILITY TO CARRY OUT SOIL AND WATER CONSERVATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont (Mr. JEFFORDS) is recognized for 5 minutes.

● Mr. JEFFORDS. Mr. Speaker, this country is facing an agricultural crisis—a crisis caused by the loss of topsoil from this Nation's agricultural land.

Soil erosion is by far the most significant and widespread threat to the continued productivity of the Nation's resource base. In the short 300 years or so that our U.S. society has existed, compared to other cultures thousands of years old, we have seen our topsoil depth depleted from an average of 3 feet to 6 inches. We have lost over one-third of the topsoil on the cropland in use today.

Soil erosion is not a newly discovered problem. Over $15 billion has been spent on soil conservation since 1930, and yet after billions of dollars in expenditures the soil erosion problem is still very much with us. Total voluntarism has not produced the desired conservation performance. If soil erosion continues at its present rate, it could limit the ability of this country to feed its own population and that of other nations. We know, for example, that we must produce more food by the turn of the century than has been produced since the dawning of time.

The Global 2000 Report to the President raises some disturbing points. It concludes:

> Arable land (worldwide) will increase only 4 percent by the year 2000, so that most of the increased output of food that will be needed will have to come from higher yields on the remaining land.

Thus, this remaining land will be used more intensively, increasing the likelihood that soil erosion will continue to be a serious problem unless we develop and implement some fresh strategies.

I stress that soil and water conservation programs established over the past four decades have helped considerably to insure that the Nation's natural resources are sustained. We must not abolish these programs. We only need to develop new strategies to help these programs be more effective in limiting future environmental damage and thus minimize future Federal expenditures.

Because of my longstanding concern for protecting agriculture, the natural environment, and the American economy, I am today introducing a soil and water conservation bill which will:

First, provide matching grants to those conservation districts which have developed and are implementing effective programs for furthering the conservation of soil and water resources. Conservation districts are local units of government created by State enabling legislation. These districts have been very responsive to local and national needs, responsive to resource and people needs. Yet they too often lack the financial resources necessary to carry out their programs. Thus, the legislation which I am introducing provides assistance to those districts which are truly active in soil and water conservation. It is these districts and local agricultural stabilization and conservation committees which are closest to local farmers and the community. They know the local needs.

Let me reemphasize that if we act now to limit future environmental damage through a sustained soil and water conservation program, we can limit the future need for spending Federal money to prevent environmental hazards.

Second, increase the conservation of soil and water resources in those instances where a local conservation district finds, and certifies to the Secretary, that annual soil loss on a unit of land is more than twice the "T" value as expressed in the universal soil loss equation, or where the conservation district or the State soil conservation agency finds that the public health, safety, and welfare are being seriously harmed by land or water management practices. As a way of increasing participation in soil and water conservation programs, the landowner or operator would be required to implement a conservation plan as a condition of eligibility to receive any grant, payment, loan, loan guarantee, or other benefit under any program of the Department of Agriculture. Under my approach, the farmer or operator would be expected to cost-share 50 percent of the cost of his conservation needs. The Federal Government would contribute the remainder because of the benefit to society of preventing environmental problems.

We should, I emphasize, provide every opportunity for a landowner or operator to participate in voluntary programs to conserve our—and his—soil and water resources. However, we should never force every landowner to participate neither should we continue to provide financial support, without question or criterion, to those who are seriously harming soil and water resources.

The text of the bill follows:

H.R. 8171

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Soil and Water Resources Conservation Act of 1980."

FINDINGS

SEC. 2. The Congress finds and declares that—

(1) There is a growing demand on the soil, water and related resources of the Nation to meet present and future needs.

(2) Soil and water conservation programs established over the past four decades have helped considerably to insure that the Nation's natural resources are sustained; but severe resource problems still remain that require accelerated attention and fresh strategies in order to limit future environmental damage and minimize future Federal expenditures.

(3) Studies by the Department of Agriculture have shown that four billion tons of soil are lost annually from non-Federal lands in the United States, with approximately two billion tons lost from cropland. Nearly one-half of America's cropland acreage in 1977 was comprised of soils with an unacceptably high risk of damage by sheet and rill erosion. Over the next fifty years, the loss of cropland productivity because of soil erosion may be equivalent to the loss of twenty-five to sixty-two million acres.

(4) It is in the public interest to help landowners and operators with soil erosion and other related natural resource problems in order to protect agricultural productivity, improve water quality, facilitate energy conservation and production, and promote economic growth while protecting the environment and assuring sustained use of natural resources to meet the needs of people.

(5) Natural resource conservation programs must be tailored to address the unique and varying local conditions that exist. National goals and policies should as much as possible blend with, rather than override, the concerns of the local community.

(6) Conservation districts have proven to be extremely capable local units of State government in dealing with a wide range of natural resource management questions within their boundaries, in channeling State and Federal information and assistance to people who need it, and in helping set priorities for conservation assistance programs.

(7) The Congress, the Department of Agriculture, cooperative extension services, and others should adequately provide for assistance to meet needs and problems identified by conservation districts in cooperation with other local, State, and Federal agencies and organizations.

(8) It is in the public interest to provide significantly greater support to conservation districts to strengthen their capability in formulating and leading the implementation of long-range conservation programs requiring staff, space and equipment, and other specialized needs.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Secretary" means the Secretary of Agriculture;

(2) "Department of Agriculture" means the U.S. Department of Agriculture;

(3) "conservation district" means that unit of government organized under a State enabling act to be responsible for soil and water conservation within its boundaries, and which may be known as a conservation district, soil conservation district, soil and water conservation district, natural resource conservation district, natural resource district, the other terms as defined by the State;

(4) "State soil conservation agency" means that unit of State government charged by State law with assisting conservation districts within the State and guiding and coordinating their programs. It may be known as an agency, board, commission, committee, or council;

(5) "ASC committee" means the county committee elected pursuant to Section 8(b) of the Soil Conservation and Domestic Allotment Act (49 Stat. 1149, as amended; 16 U.S.C. 590h(b));

(6) "long-range program" means a natural resource conservation and improvement plan which is developed by a conservation district through an orderly process; which is designed to meet the district's multi-year objectives for both study and action as well as contributing toward objectives of State and national agencies, and which is updated every five years;

(7) "annual work plan" means a plan developed or updated annually by a conservation district based on its long-range program and designed to set priorities for studies and activities by the conservation district and cooperating public agencies, landowners, and operators during a calendar or fiscal year;

(8) "Universal Soil Loss Equation" means the formula for predicting long-term soil loss under varying conditions on cropland which was developed and modified by the Department of Agriculture;

(9) "United States" includes all of the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands of the United States.

GRANTS TO CONSERVATION DISTRICTS

SEC. 4. (a) The Secretary shall formulate and implement a program for furthering the conservation of soil, water, and related resources through annual grants to conservation districts located in the United States for the purpose of carrying out locally developed soil, water and related resources conservation objectives, including establishing or increasing public services and activities; educational programs; staff assistance; or related purposes.

(b) A conservation district shall be eligible for a grant under subsection (a) only if it:

(1) has in effect a current long-range program which is developed and approved as specified in subsection (e) of this section;

(2) has in effect a current annual work plan which is developed as specified in subsection (e) of this section and which the Secretary determines is adequate to carry out the long-range program; and

(3) certifies to the Secretary that it has arranged for equal matching funds or in-kind services to the conservation district from regional, State, local, or private sources (except as provided in subsection (d)).

(c) Whenever a federal agency, including any agency of the Department of Agriculture, and a conservation district have signed a memorandum of understanding or other agreement based on mutual priorities or targets for study or action, any financial assistance provided by that agency to the district shall be considered as part of the State, local and other matching funds required in subsection (a)(3) of this section.

(d) Whenever the Secretary determines that a component of the long-range program or annual work plan of a conservation district involves a national, as opposed to a local or State, objective, the State or local matching funds required for the national component of the long-range program or annual work plan shall not exceed 25 per centum of the total funds required to accomplish the national objective. The Secretary, by regulation, shall define those objectives which are national in scope.

(e) In developing and revising long-range programs and annual work plans, conservation districts shall seek the input and cooperation of the ASC committee and such other local and State agencies as the conservation district may deem appropriate, and shall consult with the State soil conservation agency and the Secretary. Adequate provision for participation by the public residing in the district shall be made. In reviewing programs and work plans, the State soil conservation agency and the Secretary may recommend additions or changes in order to meet urgent State, multi-state, and national conservation needs or priorities as developed through the Soil and Water Resources Conservation Act of 1977 or similar process. The programs and plans shall, to the extent feasible, provide for meeting multiple objectives. Long-range programs and revisions thereof must be approved by the State soil conservation agency and by the Secretary. Such approval shall be granted if it is determined that the program adequately will carry out the objectives of this Act.

(f)(1) Long-range programs and annual work plans shall include one or more of the following soil, water, and related resources conservation objectives: (A) soil erosion prevention and control; (B) cropland, forest, woodland, pasture or rangeland improvement; (C) water conservation, development and management and water quality improvement; (D) agricultural land retention or preservation, and (E) demonstration projects to test and publicize the effectiveness of natural resource management system adapted to local conditions.

(2) Long-range programs and annual work plans may also include one or more of the following objectives: (A) fish and wildlife habitat improvement; (B) animal waste management; (C) watershed protection and flood prevention; (D) sediment control and stormwater management in urbanizing areas; (E) energy conservation and production; (F) leadership in natural resources aspects of rural community planning and development; and (G) any other purpose authorized or required by the State enabling act for conservation districts.

(g) Where a priority or objective has been identified which will require more than one year to complete or reach, the Secretary may enter into a long-term agreement of not more than 10 years with the conservation district to provide funding assistance for the term of the agreement. Such assistance shall be contingent upon the amount of funding provided pursuant to Sec. 6 of this Act.

(h) Each conservation district receiving assistance under this section shall keep such records as the Secretary shall, by regulation, prescribe, including records which fully disclose the amount and disposition by such district of the proceeds of such grants, the total cost of the projects or undertakings in connection with which such funds are given or used, and the amount of that portion of the costs of the projects or undertakings supplied by other sources, and such other records as will facilitate an effective audit. The Secretary and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the conservation districts that are pertinent to the grants received under this section.

INCREASING PARTICIPATION

SEC. 5. (a) Notwithstanding any other provision of law, in areas where—

(1) the conservation district finds, and certifies to the Secretary, that annual soil loss on any unit of land is more than twice the "T" value as expressed in the Universal Soil Loss Equation, or

(2) the conservation district or the State soil conservation agency finds, and certifies to the Secretary, that the public health, safety, and welfare are being seriously harmed by land or water management practices on any unit of land,

the Secretary shall (except as provided in subsection (d) of this section) require that a landowner or operator develop and implement (or make reasonable and satisfactory progress toward implementing) a soil and water conservation plan which is approved by the conservation district as a condition of eligibility to receive any grant, payment, loan, loan guarantee, or other benefit under any program of the Department of Agriculture except programs designed to provide food or food assistance to needy individuals.

(b) Before the Secretary denies any person any grant, payment, loan, loan guarantee or other benefit under a Department of Agriculture program because of failure to develop and implement (or make reasonable and satisfactory progress toward implementing) a conservation plan as required by subsection (a) of this section, the Secretary shall afford such person an opportunity to be heard on the matter.

(c) When a conservation plan is called for under subsection (a), the Secretary shall assure the landowner or operator through a written agreement that cost-sharing or loan assistance, or both, will be provided under one or more existing programs of the Department to help defray at least 50 per centum of the costs of installing and maintaining the conservation practices or systems called for in the plan.

(d) When the Secretary cannot make the assurance under subsection (c) because sufficient authority or funds are not available, the requirement under subsection (a) shall be suspended until sufficient authority and funds are available.

FUNDS AND REGULATIONS

SEC. 6. (a) Effective October 1, 1981, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, not to exceed $50 million annually, such sums to remain available until expended.

(b) No funds shall be appropriated to carry out this Act for the fiscal year beginning October 1, 1991, and subsequent fiscal years, except as authorized by law enacted after the effective date of this Act.

(c) The Secretary is authorized to prescribe such regulations as are determined to be necessary to carry out the provisions of this Act. Interim regulations shall be promulgated within six months after enactment of this Act. Final regulations shall be promulgated within 18 months after enactment of this Act.

REPORTING

SEC. 7. The Secretary shall report biennially to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry on the progress of the programs authorized by this Act. The first such report shall be submitted upon completion of the first two years of operation of the programs and shall include an evaluation of the program and the Secretary's recommendations for strengthening them.●

AMERICA'S URBAN POLICY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 30 minutes.

● Mr. KEMP. Mr. Speaker, when BOB GARCIA and I introduced H.R. 7563, the Urban Jobs and Enterprise Zone Act, we emphasized that we wanted above all to reopen the debate over America's urban policy. Just 3 months later I believe we can claim significant progress toward this goal. On September 16 and 17 the Subcommittee on the City of the House Committee on Banking, Housing, and Urban Affairs held hearings on urban revitalization and industrial policy. Several of the witnesses discussed a new approach to generating jobs and economic growth in the city: The enterprise jobs zone. BOB GARCIA, who serves on this subcommittee, and I also had an opportunity to discuss our bill to establish these zones in the poorest areas of our Nation. I would like to submit my own testimony for the RECORD:

TESTIMONY OF HON. JACK KEMP

Mr. Chairman, I appreciate this chance to testify before the Subcommittee on the City about a new strategy for restoring jobs, growth, and hope to America's inner cities.

I would like to begin by quoting Jane Jacobs, a well-known commentator on the economic development of cities.

"The overwhelming fact about cities is that if they do not maintain self-generating economies, they will ultimately stagnate and decline. . . . Cities, individually, must generate their own economic bases, and cities taken collectively, must generate the innovations that make developing economies possible."

When Jane Jacobs wrote this, over ten years ago, she admitted she was swimming against the tide of public policy. Even as she suggested that the war on urban poverty couldn't be won by invasion, urban experts were everywhere devising new ways for the government to impose growth on America's recalcitrant cities. If urban renewal had already been exposed as a destructive failure, well, model cities and new towns, development loans and public works employment still held out hope for saving the cities.

Yet two years ago, when President Carter stood on Charlotte Street and promised to rebuild the South Bronx "brick by brick and block by block," he was greeted with skepticism and even despair. His heralded new urban program was, after all, just more of the same. Not even the urban development professionals could get excited about a new round of government grants, loans, and public employment schemes. Congress would have almost none of it.

It's little wonder. By 1979 the Federal government was spending close to one-fourth its non-defense budget in central cities. Yet, as a recent study by Brookings economist Richard Nathan shows, most cities which were declining in the 1960s are even worse off today. My own city of Buffalo has now achieved the dubious distinction of ranking number one on Brookings' Urban (Bad) Conditions Index. Likewise, though social welfare expenditures have more than quadrupled since 1965, there are more poor people—both absolutely and relatively—in America's central cities today than there were two decades ago. Their unemployment rate is well over twice the national average, while for minority youths in the inner city the unemployment rate is nearing 50 percent.

This doesn't mean the situation is hopeless. Even in areas as devastated as the South Bronx I have seen small self-help groups create islands of enterprise and progress. It is they, and not the Federal government, as Bob Garcia has pointed out, who quite literally are rebuilding the South Bronx brick by brick and block by block. There are hardy small businessmen as well, who individually are battling economic decline by offering jobs and services to their communities.

I believe that Jane Jacobs was right. Economic growth must be generated from within. This doesn't mean there is no role for government, or that we should blithely abandon cities and their people. It does suggest that we should reexamine our strategy for combating urban poverty and decay.

Recent studies by the Program on Neighborhood and Regional Change, at the Massachusetts Institute of Technology, have supported Jane Jacobs' conclusions about the process of economic change in cities. They also point the way to a new approach. After examining over 5 million American firms, the M.I.T. researchers concluded that cities and suburbs, Frostbelt and Sunbelt lost jobs at pretty much the same—rapid—rate. The trouble with cities isn't so much that they are losing jobs to the suburbs as that they aren't generating new jobs themselves.

Where will these jobs come from? The M.I.T. study showed that two-thirds of all new jobs are created by small businesses employing 20 or fewer persons. In the Northeast, 100 percent of all net new jobs came from these small businesses. Yet these were the very businesses that development grants, loan guarantees, and job training programs will fail to reach. As M.I.T. economist David Birch has observed, "the very spirit that gives them their vitality is the same spirit that makes them unpromising partners for the development administrator."

Economic change in the cities has always come from entrepreneurial individuals. Professor Peter Hall, a distinguished British specialist in urban affairs, has described the process this way:

"Some entrepreneurs succeeded and grew large. As they did, they (often) took their business out of the city in search of larger scale, rationalized production processes. Others stagnated or even died; but there were always others to take their place, and again some would succeed. Now we have succeeded in killing off an abnormal proportion, and too little innovation is happening to fill the gap."

As my good friend and colleague Bob Garcia has pointed out, "the history of urban development is the history of opportunity development." These waves of entrepreneurship and innovation brought more than just business expansion to America's cities. The small, struggling businesses that started up there also opened a new life, new possibilities for the people who were living there. The people of America's cities had come from across the sea, from farms and small towns, all seeking in the city an opportunity to better their own lives and the lives of their children. Many of them would move on, too, but a group of hopeful newcomers would always move in to replace them.

Today our cities are filled with people who also came to the cities full of hope—and have seen it die. As innovation and economic growth have dried up in the cities, so has the opportunity to get on that crucial bottom rung of this nation's ladder of opportunity. And now the growth and expansion which generations of Americans rode to better lives has given way to poverty and despair.

But this new generation of city residents isn't handicapped only by the economic decline and high unemployment of their inner city communities. They face a welfare trap as well.

Do not mistake my meaning. I support a strong safety net of basic social services. But I also believe we have too often attacked only the symptoms of urban poverty, and trapped the people we mean to help into dependence.

Black columnist William Raspberry recently commented that:

"A lot of us are beginning to question the assumption, implicit in many of our social welfare programs, that poor people are essentially beyond salvation and that the only humane thing to do is to take care of them. We are learning, at last, that the better care we take of people, the more helpless they become. And we are starting to think less about how best to take care of people and more about ways to move them toward self-sufficiency."

I sometimes get the feeling that just because people are poor, policymakers think they are economically illiterate. Our inner city poor may, in fact, understand more about economic disincentives and price theory than many of our most learned members of the Council of Economic Advisors. Below income levels of about $10,000 a year, someone who wants to take a taxpaying job must give up welfare and unemployment benefits which pay nearly as much as—and in some cases more than—after-tax take home pay. For every extra dollar they could earn by working all year, they would lose 70, 80, 100 cents or more in benefits and taxes and work-related expenses. The resulting marginal tax rates of 70 percent, 80 percent, 100 percent or more are higher than the government charges any millionaire.

I believe that the poor are motivated by exactly the same things as everyone else. They want to be productive, and to be self-sufficient in providing for their own families. They respond to incentives. They become discouraged when their efforts are not met with reward. In other words, when it comes to personal welfare, the poor, just like the rest of us, are entrepreneurs. They make calculations about the costs of available choices. And they will take a chance on even a low-paying job if they see a real chance for moving up the ladder of opportunity.

In the same way, the experienced entrepreneurs who have left the city, and the potential entrepreneurs who are discouraged from taking risks, are also making economic calculations. Yet without them innovation and enterprise dry up, along with the jobs they would otherwise create.

Only individuals can restore economic growth to our inner cities. Government will not—cannot—create enough jobs for city residents. Nor, experience has shown, should it even try to pick out the job creators or specify the paths economic growth should take. What government can do, however, is help change the economic calculus facing would-be workers, and would-be entrepreneurs, in the inner city. Above all, government can help restore, in the words of Milton Stewart, Chief Counsel of the Small Business Administration, "an entrepreneurial environment far more favorable to innovation and risk-taking." This is the aim of the Kemp-Garcia Urban Jobs and Enterprise Zone Act.

The Urban Jobs and Enterprise Zone Act is designed to "greenline" the inner city by decreasing the costs, and increasing the rewards, for economic activities in the poorest areas of the nation. The bill introduces a new concept—the Enterprise Jobs Zone. These Zones would be established voluntarily in areas with very high levels of unemployment and poverty where the local or state government agrees to reduce effective property tax rates. Within the Zones the Federal government would provide major tax incentives for employment and economic growth.

To encourage job creation in the inner city, particularly for the young, the bill would reduce Social Security payroll taxes on employers and employees by 90 percent for workers under 21, 50 percent for workers 21 and older.

To encourage small enterprise investment and job creation, the bill would reduce the capital gains tax rate on investment in the Zones by 50 percent.

To encourage business expansion and to retain existing enterprises, the bill would reduce the business tax rates 15% across the Board for any business located in and employing at least half its employees in one or more Zones.

To increase small business incentives the bill would allow three-year, straight-line depreciation for the first $500,000 of assets purchased each year, and (b) would allow the use of cash or accural accounting for firms with gross sales below $1.5 million, and (c) would extend the loss carryforward to 10 years.

In order to receive these incentives a business would have to employ at least 50% of its employees from within the Zone itself. Safety, environmental, and other regulations are not affected by the bill.

Unlike so many of our past urban programs, the Enterprise Zones would not be costly. Government loses not a dime, after all, by dramatically lowering the tax rate on the unemployed black or Hispanic teenager. He or she is producing no taxable income for the government to lose. Nor does it lose by lowering small business tax rates in burned out areas of the city. Almost all small enterprises have already left these areas. Unless we devise new strategies these areas will continue to consume far more in taxes than they contribute.

So far, the Enterprise Zone idea has met with a wide and favorable reception. Cosponsors of the Kemp-Garcia bill include a number of Democrats and members of the Congressional Black Caucus. Newspapers across the country have endorsed the idea—including the Detroit Free Press and Detroit News, the Washington Star, the Wall Street Journal, the Cincinnati Enquirer, and the Columbus Dispatch. The Urban League, the National League of Cities, and the NAACP have all expressed an interest in working with us in developing the concept of Enterprise Zones.

Of course, our supporters recognize that there is no single answer to the problems of urban poverty and decay. They acknowledge—as Bob Garcia and I have—that the bill, which is attempting something completely untried, could be further refined. Already we are exploring ways to make the property tax requirement more flexible, and the targeting and administration more manageable. Yet, as the letters which I am inserting for the record will indicate, even individuals and groups that have criticized particular elements of the bill remain enthusiastic about its general approach.

When Bob Garcia and I introduced the Urban Jobs and Enterprise Zone Act we emphasized that our purpose, above all else, was to reopen the debate over how we could restore jobs, growth, and hope to our inner city communities. This I believe we are already accomplishing. Even more important, to my mind, is that we have generated—and in many cases exposed—widespread agreement on two crucial points. The first, made over a decade ago by Jane Jacobs, is that growth, change, and even hope are

created from within cities by individuals. Governments can, indeed must, give them a fighting chance to produce new opportunities. But the opportunities come from people themselves. The second point is that we cannot attack urban poverty only by relieving its symptoms. The poor need more than care; they need opportunity as well. And I believe that, given half a chance, they will seize it.●

ABSOLUTE ZERO RISK GOAL UNOBTAINABLE FOR CHEMICAL HAZARDS

The SPEAKER. pro tempore. Under a previous order of the House the gentleman from North Carolina (Mr. MARTIN) is recognized for 10 minutes.

Mr. MARTIN. Mr. Speaker, earlier today I commented on the tendency that some activate have of going beyond the question before us of cleaning up hazards to life and property from oil and chemical spills and abandoned chemical dumpsites. Not settling for that, they seek to stir up a general fear of chemicals, when in fact there is nothing else in the material world. They hope that a phobia of chemicals will scare people into closing down not only hazardous sites, but the chemical industry in general.

Their thinking has guided the Occupational Safety and Health Administration in its proposed rules regarding occupational exposures to carcinogens, those substances the exposure to which poses an increased risk of cancer. Fortunately, more reasonable attitudes in the Environmental Protection Agency and the Consumer Product Safety Commission have persuaded the President's Regulatory Agency Review Group that an absolute zero risk goal is not obtainable, nor practical. By an ensuing Executive order, the President has directed these agencies to base related regulations on a concept of relative risk assessment instead of the absolute safety illusion.

The most respected institution in this field is the International Agency for Research on Cancer, established in Lyon, France, by the World Health Organization. Its earlier report, showing that 85 to 90 percent of human cancer is attributable to environmental facts, as orposed to purely genetic factors or unknown causes has led many to mistakenly translate that into a burden of occupational exposure to industrial chemicals. The IARC annual report for 1979, on pages 16 through 23, summarizes clearly its conclusion that most of that environmental contribution to cancer is due to lifestyle, dietary, tobacco, alcohol, and sunlight factors.

Contrary to the spurious but highly publicized claim of former HEW Secretary Califano, the IARC concludes that in industrialized countries occupational factors (including but not limited to chemical exposures) amount to 6 percent among males and 2 percent among females of all cancer incidence. Secretary Califano essentially took World War II data on exposure to asbestos and added another 15 percent risk factor, which is not justified today when asbestos exposure are greatly reduced from the wartime shipbuilding situation.

INTERNATIONAL AGENCY FOR RESEARCH ON CANCER, ANNUAL REPORT 1979

(World Health Organization)

GENERAL DEVELOPMENTS IN THE FIELD OF ENVIRONMENTAL CARCINOGENESIS

That most cancers are associated to some degree with the environment is now widely accepted. Unfortunately, this is often misinterpreted as implying that a large proportion of cancers are preventable now, through simple regulatory control directed predominantly at man-made chemicals. Nonetheless, as early as 1950, leading workers in epidemiology and experimental carcinogenesis were stressing that while geographical variations in cancer incidence in man were largely related to the environment, this should be considered not only in terms of discrete carcinogens, but also in relation to such factors as diet and behavioural habits.[1] This view was soon reinforced by the demonstration of the causal role of cigarette smoking for cancers at several sites. While the etiological factors of a considerable proportion of human cancers have been established with some certainty—e.g., cigarettes and lung cancer, alcoholic beverages and cancer of the oesophagus, betel chewing and oral cancer, sunlight and skin cancer, occupational exposures to antioxidants and bladder cancer—there remains a large group of cancers in which the environment appears to be important but the nature of the environmental factors involved are poorly understood and are only now beginning to be extensively studied. This group includes cancers of the breast, uterus, prostate and gastro-intestinal tract, and comprises approximately 60 percent of female cancers, and 40 percent of male, in many countries. Specific attention has centered either on exposures to multiple carcinogens at low doses or on lifestyle factors.

Nature of "carcinogenic" stimuli in man

Many human cancers are considered to have a multifactorial origin. While the concept of a defined carcinogenic stimulus is widely understood, irrespective of its mode of action, there are a number of factors associated with an increased cancer risk which cannot readily be defined as carcinogens in the usual sense. These include "absence of fibre", "excess dietary fat", "obesity" and such behavioural patterns as "age at first pregnancy". In practice "carcinogenic risk index" is a convenient descriptive term for such factors, without implying understanding of the biological mechanisms involved.

Berenblum[2] has suggestd that initiation, due to either extrinsic or intrinsic factors, may be frequent but often incomplete and thus control or intervention in the promotional phase of carcinogenesis may offer a more effective approach to the prevention of some human cancers through, for example, chemoprevention. Furthermore, identification, evaluation and control of the vast number of potential carcinogens present in low levels in the general environment (as distinct from high levels in a limited environment) may prove exceedingly difficult. Metabolic processes prior to or after initiation may be of major importance in cancers associated with discrete chemical carcinogens, as well as providing a biochemical background to certain 'carcinogenic risk indices'. Many carcinogenic risk factors in man, such as lack of dietary fibre and excess of dietary fat are also theoretically explicable in terms of multistage carcinogenesis. Some of these problems and their implications for cancer control are discussed below.

Cancer in industrialized societies

The effects of high level or point-source occupational exposures are usually relatively easy to investigate but evaluation of the effects of numerous chemical carcinogens which may be diffusely distributed in the environment is more difficult. It is often assumed that industrial and urban environments are more heavily contaminated by chemical carcinogens, mutagens, promoters, etc., and that comparison with non-industrial areas should provide a measure of their effect. However, such comparisons are complicated by many other variables including diet and behaviour.

Significance of time trends

Contamination of the environment by such carcinogens as polycyclic aromatic hydrocarbons is long-standing but it is only since 1950 that cancer morbidity statistics have become reasonably reliable in a number of countries. Nonetheless, sufficient data are available to permit some comment on cancer patterns in Europe and North America in the early part of the century. With the major exceptions of cancer of the lung and stomach, these would appear not too dissimilar from those seen today[3]. It would seem that, if cancers related to alcohol or tobacco consumption are excluded, despite long-standing industrialization, and an increasing awareness of occupational hazards, cancer rates have been relatively stationary or have even fallen in most countries, with the notable exception of those for black males in the United States[4]. The increased rates observed in this group are largely attributable to cancers of the prostate and esophagus, two cancers for which it appears unlikely that industrial contamination could play any major part.

Significance of residence

Many attempts have been made to correlate cancer patterns with place of residence, population density and urban/rural environments[4,6]. No consistent patterns have emerged from such studies especially where the confounding variables are taken into consideration. Where population groups with homogeneous lifestyles are examined, for example, the Mormons[7], urban/rural differences largely disappear. An association between chemical and allied industries with bladder cancer has been demonstrated in the United States, but not in Japan. In the United States prostatic cancer is twice as frequent in blacks than in whites, resident in the same area, but in both groups it is much higher than in industrialized areas of the United Kingdom and many times more frequent than in Japan.[6]. Cadmium, the only industrial chemical so far associated with this cancer, is present in higher concentration in the tissues of Japanese than in North Americans or Europeans, yet it is only when they migrate to the United States, that the frequency of prostatic cancers increase in the Japanese.

Occupational cancer and confidentiality

The identification of occupational groups at high risk for a given cancer has proved to be an effective method of identifying exposures to specific chemical carcinogens in the past. However, exposures at the individual level are often difficult to quantify but such data are becoming available for a variety of industries, e.g. man-made mineral fibres and petroleum. Unfortunately it is frequently not possible to trace those exposed—not necessarily due to opposition from industry,—but as a result of the confidentiality attaching in some countries to the certification of an individual's cause of death. It is well known that epidemiological studies never publish names, only grouped data, yet research workers in epidemiology are still unable to have access to nominal data.

Data processing techniques today are such that names can be encoded in a virtually unbreakable format. Whilst respecting individual rights to privacy, the social importance of facilitating this type of research is obvious, and it is hoped that the authorities concerned will ensure that epidemiologists have access to such death certificate information for studies of possible carcinogenic risk.

Footnotes at end of article.

"Job-associated" cancer

Not all differences in occupational cancer frequency necessarily reflect chemical exposures. For example, in the United Kingdom, although certain occupations are associated with a greater or lesser cancer risk than the population average, nearly 90% of such variations are eliminated if comparison is made between individuals of similar habits and social class[8]. Such findings indicate that the problems of occupational cancers are not limited to chemical exposures, but also include the many other factors implied in the "lifestyle" of the population from which the work force is recruited. Cancers may be "job-associated", without being due to specific occupational exposure.

The general pattern of cancer observed in North American and European studies shows higher frequencies of cancer of the lung, large intestine, breast and uterus than are seen in Africa and Asia, and this may suggest some common environmental factors. However, it is not easy simply to link the geographical and secular changes observed in Europe and North America for cancers of several sites—breast, colon, uterus, ovary, pancreas, prostate—with changes over the last few decades in the nature of food additives or contaminants, or in ambient environmental pollution from industrialisation. Other explanations would appear more plausible, at least for the variations in breast, ovary and uterus, which can be related partly to changes in reproductive patterns.

'Lifestyle' and co-carcinogenesis

Aspects of 'lifestyle,' quite apart from the defined habits of smoking and alcohol consumption, may significantly influence the development of tumours of the gastro-intestinal tract, breast, uterus, prostate and of these, diet, cultural and behavioural patterns are probably the most important.

Diet: In the evaluation of the effect of diet not only must known food additives be considered, but also such variables as (i) exogenous carcinogens like aflatoxin; (ii) carcinogenic precursors like nitrite or secondary amines; (iii) the type and relative proportion of different nutrients, especially fat and protein; (iv) non-nutrients, whether relatively inert like fibrous matter or biologically active; and (v) even total calorie intake. Because of this the role of dietary factors has been difficult to determine and many such studies show inconsistencies, as, for example, those related to the role of fat in breast cancer. This only emphasizes the importance of repeating this type of study in differing cultural and dietary environments.

Behavioural patterns: Behavioural patterns dependent on the cultural background may significantly influence incidence of tumours in the endocrine-dependent systems. 'Age at first intercourse or marriage', 'number of children', 'celibacy', are all culturally-determined and are recognized risk factors, which may in fact reflect subtle changes in hormonal status some of which are also related to diet—changes that still remain difficult to measure. Thus, diet is important in determining height, weight, and age at menarche, all of which are also considered to be risk factors for cancer of the breast and endometrium. The importance of developing appropriate studies in man in terms of a multistage theory including promotion, offers a possible approach to the study of intestinal and endocrine-dependent tumours.

Proportion of cancers related to various aspects of the environment

It is not possible to determine, with any precision, an upper limit to the sum of all attributable risks in relation to the total cancer burden in a community which may exceed 100 percent. However, the upper limit to which a predominant factor may contribute to the total cancer incidence may be estimated in the sense that in the absence of that factor, a defined number of cancers would not occur.

One approach to such calculations is to examine cancer risk site by site for a given population and to calculate the proportion or excess number at each site due to known or suspected predominant causes. The remainder would then be assumed to be due to as yet unidentified stimuli or represent background incidence.[35]

This approach is illustrated by the following histograms based on three populations in England, India and Africa (Figs 2a-c) and that methodology for these estimates is further summarized elsewhere.

Assigning a specific cancer to a particular cause does not mean that other factors are not involved but only that the factor listed is probably the predominant cause in the sense that in its absence a certain proportion of the cancers would not occur.

Risk factors

Tobacco: Most studies in countries where cigarette smoking has been of long duration, indicate that 80–85% of lung cancers are due to cigarettes. Smoking has also been implicated in cancers of the mouth, larynx, oesophagus, pharynx, cardiac end of the stomach, bladder and pancreas. In Bombay the proportion due to cigarettes is lower since tobacco seems to have a greater impact in the oral cavity, pharynx and upper oesophagus through use of betel quid and bidis.

Tobacco/alcohol: Heavy drinkers are nearly always heavy smokers, and the combined habits have been associated with cancers of the mouth and oesophagus. There is, however, some evidence that alcohol consumption may be responsible *per se* for tumours of the liver and oesophagus.

Sunlight: Sunlight is regarded as the major cause of skin cancer, especially in Caucasian populations living in tropical and near-tropical zones. Where exposure is associated with leisure activities, it may be possible to limit its effect, but where exposure is occupational, as for the farmer or outdoor manual worker, it is far less easy to reduce the risk.

Occupation: The role of occupation in human cancer should be considered from the viewpoint of high risk, point-source chemical exposures at the workplace. Case-control studies indicate that lung, bladder and hemopoietic system are the major sites most affected by occupational hazards. In only a small number of cancers at other sites, such as nasal or skin cancers, have occupational factors been identified or been suggested as important. 'Job-associated' cancers, such as oesophageal cancer in barmen, are assigned to the alcohol/tobacco group.

'Lifestyle' factors: The majority of tumours of the gastro-intestinal tract and endocrine-dependent organs have been attributed to the effects of 'lifestyle'. The risk factors so far identified are, however, ill-defined and often insufficient to explain the large geographical and temporal variations between, say, Birmingham and Bombay, nor have the reasons for the low incidence of cancer of the prostate and the breast in Japanese been explained. That the percentage given here is not unreasonable, however, is suggested by the lower frequency of non-alcohol and non-tobacco cancers found in Mormons and Seventh Day Adventists. It would appear premature at the present time to attribute precise proportions to diet, cultural or behavioural patterns, apart from tobacco or alcohol.

In conclusion, these estimates are population averages and the pattern for groups within these large areas could be quite different.

CONCLUSIONS

These comments indicate that although fashions in environmental carcinogenesis have changed over the last decades, the major direction for research efforts was apparent nearly 30 years ago.

Much of the present knowledge on the comparative importance of the environmental factors in human cancer has come from geographical pathology studies which have permitted evaluation of cancer patterns in different communities. Unfortunately, although the cause of nearly 50% of cancers in males has been identified, there remains a large body of cancers of environmental origin, especially in females, for which no satisfactory hypothesis as to causation and prevention is yet possible. However, a number of risk factors have been identified for breast, cervix, uterus and large intestine. The mechanisms of action of such risk factors have been difficult to explain in objective biochemical terms, and are not readily studied in any experimental model. Nor do they offer obvious practical possibilities for prevention. Nonetheless, the importance of intensifying research on these cancers was recognized early by the Scientific Council of the Agency but effective field programmes were hindered by lack of suitable hypothesis for testing and adequate technology for associated biochemical studies, as well as by limited resources.

With increased understanding of carcinogenic mechanisms and renewed interest in the possible role of co-carcinogenesis, including promotion, a number of hypotheses suitable for testing in field studies suggest themselves. For example, the role of dietary fat and fibre in large bowel cancer is now being studied systematically. Furthermore, recent epidemiological evidence has tended to emphasize the importance of general 'lifestyle' factors. These views if further confirmed will have significant implications in determining the future direction of the Agency's programme in environmental research.

Firstly the present programme directed to identifying and evaluating discrete carcinogens within the environment should be intensified. Such a programme is not only essential for identifying hazards already present, but also in giving early warning of potential new hazards.

Within this programme there are a number of questions which require study,—the reversibility of lesions produced by carcinogens at low doses; whether no-effect exposure levels exist in man; and what is the impact of long-term but very low exposures to a multiplicity of chemical carcinogens on the overall cancer burden.

Secondly, the role of multistate mechanisms in human cancer must be studied, especially related to tumours of the liver, the endocrine-dependent systems and the gastro-intestinal tract. Certain studies, for example, would suggest that maternal infection with hepatitis B virus may be an important and perhaps essential co-factor for aflatoxin carcinogenesis in liver cancer, and studies of breast and large bowel cancer may also reveal the importance of co-carcinogenic factors.

The Agency is intending in the first instance to explore these different possibilities through appropriate workshops. Further, in view of its ability to organize and execute geographical pathology studies on an international scale, the Agency may be able to test appropriate hypotheses through comparative studies in different populations.

These comments, overall, would indicate that cancer as a disease should be considered as part of a total approach to environmental health and not treated in isolation, in view of the fact that a number of other diseases are today clearly linked to social and 'lifestyle' factors, for which public health authorities have been unable as yet to make effective suggestions for prevention.

FOOTNOTES

[1] Clemmesen. J., ed. Symposium on Geographical Pathology and Demography of Cancer, Oxford, England, 1950, Paris, Council for International Organizations of Medical Sciences, 1950.

[2] Berenblum, I. (1979) In *Carcinogens: Identification and Mechanisms of Action* (Clark Griffin, A. & Shaw, C.R., eds). Theoret-

ical and practical aspects of the two-stage mechanism of carcinogenesis. New York, Raven Press, pp. 25–26.

[8] Higgins, J. (1970) In: Griffin, A. C. & Shaw, C. R., eds, *Carcinogens: Identification and Mechanisms of Action*, New York, Raven Press, pp. 187–208.

[9] Devesa, S. S. & Silverman, D. T. (1978) Cancer Incidence and mortality trends in the United States: 1935–1974. *J. natl Cancer Inst.*, 60, 545–571.

[10] Haenszel, W., Loveland, D. B., Sirkin, M. G. (1962) Lung cancer mortality as related to residence and smoking histories. I. White males, *J. natl. Cancer Inst.*, 28, 947–1001.

[11] Haenszel, W., Taeuber, K. E., (1964) Lung-cancer mortality as related to residence and smoking histories. II. White females, *J. natl. Cancer Inst.*, 32, 803–838.

[12] Lyon, J. L., Klauber, M. R. Gardner, J. W. & Smart, C. R. (1976) Cancer incidence in Mormons and non-Mormons in Utah, 1966–1970. *New Engl. J. Med.*, 294, 129–133.

[13] Waterhouse, J. Muir C. S. Correa P. & Powell J. eds (1976) *Cancer Incidence in Five Continents*, Vol. III. Lyon, International Agency for Research on Cancer (*IARC Scientific Publications No. 15*).

[14] Fox, A. J. & Adelstein, A. M. (1978) Occupational mortality: Work or way of life? *J. Evidemiol, Community Health*, 32, 73–78.

[15] Higginson, J. & Muir, C. S. (1979) Environmental Carcinogenesis, Misconceptions and limitations to cancer control. *J. natl. Cancer Inst.* (in press).

□ 1510

OLD BUREAUCRACIES NEVER DIE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado (Mr. WIRTH) is recognized for 5 minutes.

● Mr. WIRTH. Mr. Speaker, over the past several months it has become clear that the Department of Energy is about to demonstrate yet again one of the oldest truisms in Government: Old bureaucracies never die—they do not even fade away.

Last year the House took one of the most important steps toward laying a rational foundation for a bold national energy policy for the 1980's. By an overwhelming margin last October, the House rejected attempts to extend the Federal Government's 7-year-old price control program for domestically produced oil—a program which not only seriously restrained domestic oil production, but also, by artificially restraining oil prices, has seriously retarded the development and commercialization of alternative energy sources like solar energy and other renewables. It was not a politically popular measure, but one whose benefits are already apparent: Decontrol has contributed to the 8-percent drop in U.S. oil consumption during 1980, and has spurred strong growth in oil exploration and production—there are more drilling rigs in operation today than at any time since 1956.

As chairman of the majority leader's task force on decontrol, I worked with my colleagues to bring an end to this program, and I believe that these developments confirm the House's decision last fall that decontrol will make a substantial contribution to relieving our Nation's increasingly dangerous dependence on foreign oil.

The debate over decontrol involved strongly held feelings on both sides of the issue, and I am aware that a number of my colleagues continue to have reservations about the wisdom of the deregulatory policy we have adopted. However, the decision has been made, and I think that even those who disagree with it will share the belief that if we are to pursue the policy, we should take an additional step which was among our intentions in our vote last fall.

The 1973 Emergency Petroleum Allocation Act, which created the price control system and the associated entitlements program for domestic refiners, still expire on September 30, 1981. It is administered by a huge Department of Energy bureaucracy which now numbers approximately 1,400—1,400 regulators, attorneys, economists, clerks, typists, and associated support staff.

On October 1 of next year, there will be nothing for these people to do—nothing for them to administer, nothing for them to oversee.

Unless, of course, the Department finds something—which is precisely what the administration is trying to do.

With the customary centrifugal force of bureacracy, the Department is searching high and low for a meaningful task for this army of regulators to perform. The proposals are endless—and predictable. We are told, for example:

There are innumerable pricing cases which have risen under the EPAA—situations in which oil companies have overpriced their products. We must return those funds to consumers, and the court cases against major oil companies cannot be completely resolved before the program expires. We must maintain an adequate staff to accomplish that goal.

Fine. The attorneys who are working on these cases should be retained until they are completed—no one would object to that. But let us not argue that they need the entire Economic Regulatory Administration as a support staff.

We have new responsibilities—the alcohol fuels program, for example. And we have virtually no staff to handle these responsibilities. We only want to reassign these Department employees to take on these new responsibilities.

How many times has this body heard that argument? It is the oldest excuse in the world for maintaining bloated staffs. It is the excuse that keeps Federal bureaucracies growing. It is the excuse that they feed upon. But I cannot take seriously the argument that these price regulators can be transformed overnight into experts in alcohol fuels production.

Mr. Speaker, it is time for us to make clear what I believe Congress intended as part of our vote to end the price control program.

We do not just want the policy to go—we want the bureaucracy to go with it.

I have today introduced a simple, two-sentence bill telling the Department in plain English what should have been quite clear from our decision to end price controls. I invite my colleagues to join me in sponsoring it.

The bill, H.R. 8174, spells out to DOE the message we sent a year ago: First, when the price control program goes, so do the administrators whose functions are being terminated, 1,000 of them, and second, in the remaining 12½ months during which controls will be phased out, the Secretary shall establish a progressive timetable for phasing out these 1,000 positions, beginning immediately. The positions will terminate, once and for all, on October 1, 1981.

There are those who bear a grudge against the Federal employees who have administered the price control program and its offshoots—who believe that these Federal employees are bunglers, meddlers, and incompetents. I am not one of them. The responsibility lies here, with the Congress, and we cannot evade it by blaming bureaucracy for poor policy. In establishing the price control and entitlements programs, we set a contradictory, confusing policy. We cannot expect such a policy to suddenly become rational when it is administered by anyone. Terminating these positions is not, and should not be construed as, some sort of retribution for Federal employees.

It is commonsense. If the Members of the House are serious in their often-repeated belief that we must reduce the size of Government, then we must take the responsibility not only for cutting back on regulation but also for following through to eliminate positions whose functions have been terminated.

One version of the legislation I have introduced today as H.R. 8174 has been adopted by the Senate, in the form of an amendment to the 1981 Department of Energy authorization legislation. When the House version of that bill is considered, I will offer H.R. 8174 as an amendment to assure that these provisions emerge from conference.

I strongly urge my colleagues to join with me now in cosponsoring this bill, sending a clear message to DOE that Congress will not close its eyes to empire building.●

PRODUCTION OF NUCLEAR MATERIAL FOR WEAPONS

(Mr. PRICE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. PRICE. Mr. Speaker, there is an urgent need to produce special nuclear material—tritium and plutonium—for our nuclear weapons stockpile. This need is recognized and addressed in both the House and Senate versions of the Department of Energy's fiscal year 1981 authorization bills for national security activities which are awaiting our action.

Recent articles in the media recognize this urgent need also. For example, an article in the August 27 Washington Post which I reviewed and placed in the RECORD of August 28 on pages 23716–23717 provided an excellent insight to a public understanding of the problem of special nuclear material production. One of the latest articles on this matter, written by William Safire, was published in the New York Times of Thursday, September 18, on page A31. In this article Mr. Safire in his usual succinct and forceful way sets down the facts concerning this critical national security need and cites politically motivated foot-

dragging in carrying out the solutions to our production problem. I am including Mr. Safire's article at the close of my remarks since I believe the matters he discusses should be considered when we take action on the legislation I referred to previously.

I am also including at the close of my remarks a very informative article on the matter by Richard Burt which was published in the September 16 issue of the New York Times.

Action on the Department of Energy authorization bill, H.R. 7265, is becoming more and more urgent. This bill was reported by the Armed Services Committee on May 13, 1980. It has been listed on the House program for over 6 weeks but other business has precluded its consideration. In my view we must give higher priority to this piece of legislation since its provisions are so important to our national security.

The articles follow:

[From the New York Times, Sept. 18, 1980]

THE PLUTONIUM SHORTFALL

(By William Safire)

SAN FRANCISCO, September 17.—In national defense, all matters of missilery and budgetary pale into insignificance when this question arises: Are we producing enough weapons-grade nuclear material to make our warheads work?

The Senate Armed Services Committee, in a little-noticed report from Henry Jackson made public last month, says no: "The projected shortages of Special Nuclear Materials are of such potentially serious concern to our national security interests that the Administration's hesitation in taking corrective measures cannot be understood."

Let us try to understand how the Carter Administration has been playing fast and loose with the most important single element in our national survival. Unclassified portions of correspondence among the Secretary of Defense, the Joint Chiefs and the National Security Adviser are instructive: Sensitive, restricted data were properly blocked out—reporters do not seek nor do whistle-blowers reveal atomic energy secrets—but the remainder illustrates the way the Carter men treat national weaknesses by trying to deceive Congress and the public.

On Dec. 17, 1979, Secretary of Defense Harold Brown protested to the Office of Management and Budget that its cut of funds for a plutonium-uranium extraction plant would lessen our ability to defend ourselves. Despite that plea to "reconsider your decision," the O.M.B.—under political budget-balancing orders from the White House—turned down Defense.

President Carter's Defense Secretary then went before the Congress and misled it by attesting to the adequacy of nuclear materials production. But in an April 11, 1980, letter to the Energy Secretary, Mr. Brown confessed: "While I have concurred in the report to Congress concerning the adequacy . . . I remain concerned that over the next several years . . . resources may not be sufficient to meet requirements for the delivery of nuclear weapons to the stockpile . . ." In plain words, Good Team Player Brown was telling his Cabinet colleague that his Congressional testimony reflected the opposite of his personal convictions and professional judgment.

All this was too much for the Joint Chiefs. In late June, they complained to Brown that his Internal papering of the file did not show the urgency of the situation, and recommended that he write to the National Security Adviser that further delays of funding would harm the national defense.

At that point, Secretary Brown—who was about to leak the plans for an invisible aircraft to show voters how well the nation was being defended—passed the Joint Chiefs' pressure on to Zbigniew Brzezinski. On July 24, a policy review committee meeting was held. Its summary of conclusions was sent to President Carter, urging him to move ahead on plutonium production. However, the President—according to an Aug. 7 memo from Brzezinski—"deferred" making a decision. (Why, on a matter of such urgency? I think the State Department was fretting about the effect on other nations of our producing more plutonium; also, environmentalists with "No Nukes" stickers on their made-in-Japan bumpers might defect to candidate John Anderson.)

The National Security Adviser, in the unclassified portion of his memo, then directed the Cabinet and Joint Chiefs to mislead the press: "All responses to press inquiries about Special Nuclear Materials should be low-key, and limited to the following points: (1) Our Special Nuclear Materials production is adequate for the near term [arguably false]. (2) Long-term requirements are under review but are difficult to predict [palpably false: Defense Department predictions of shortfalls have been made for almost a year]. (3) If we determine that increased materials production is necessary, appropriate programs will be requested of the Congess." [False: that determination has already been made, but the Administration does not want to upset budgeteers or environmentalists until after Election Day.]

The distressing point about the deceptive, politics-as-usual approach is that we are not discussing a dam or a pet project about which defense analysts can differ. "Special Nuclear Materials" is the stuff that goes into our atomic warheads. If we do not produce more soon, all the hoo-hah about MX missiles and invisible bombers will be meaningless.

It grieves me to knock a fellow alumnus of the Bronx High School of Science, but Harold Brown has turned out to be the most political, short-sighted Secretary of Defense since Louis Johnson. No man in that job can or should subscribe to all the budget requests that military men make, but on the truly important matters, the SecDef is expected to be more than a loyal member of a political team. He is expected to have the courage of his concerns and to obtain at least the minimum for national defense—or get out.

In 1960, the "missile gap" turned out to be a false issue. Today, even the politico-technocrats who make our military decisions agree internally that a serious shortfall will exist in our plutonium production—but President Carter "defers" his decison on this urgent matter through an election year.

The plutonium shortfall is a real issue—and no directives from the National Security Adviser on how to cover it up will make the issue go away.

[From The New York Times, Sept. 16, 1980]

LACK OF PLUTONIUM FOR WARHEADS STIRS DEBATE ON INCREASING OUTPUT

(By Richard Burt)

WASHINGTON, September 15.—The Carter Administration is facing the sensitive question of whether to increase production of bomb-grade plutonium at the very time the United States is discouraging foreign governments from acquiring stockpiles of such materials.

According to Government officials, the Defense and Energy Departments have concluded that the United States is not producing enough plutonium and other bomb-grade substances to create a new generation of nuclear weapons over the next decade. In documents obtained by The New York Times, top Administration officials, including Secretary of Defense Harold Brown, have reported that existing stockpiles of bomb-grade materials are so low that delays have already occurred in some nuclear weapons programs.

The growing shortage in plutonium and another nuclear-weapons material, tritium, is said to have put heavy pressure on President Carter to approve a plan for expanding American production of bomb-grade substances for the first time in more than 15 years.

Mr. Brown and the Joint Chiefs of Staff, in internal discussions, are said to have supported that course. But in recent interviews some State Department and arms-control agency aides have asserted that such a step would severely undercut the Administration's policy of curbing the spread of nuclear weapons to other countries.

The United States has produced only small amounts of plutonium and tritium since 1964, when President Johnson closed several Government-operated nuclear reactors, in part to persuade other nations to give up bomb-related activities. Since 1977, President Carter has pressed a number of countries to forgo the production of plutonium and the construction of so-called nuclear reprocessing plants, which can be used to extract bomb-grade substances from fuel burned in civilian power reactors.

But at the same time Mr. Carter has approved several new nuclear weapons for deployment in the 1980's, including the MX mobile missile and the Trident submarine-launched rocket, as well as air- and sea-launched cruise missiles. Pentagon officials and military specialists on Capitol Hill say it is highly unlikely that the warheads for those systems could be made without starting up old reactors at Barnwell, S.C., and a reprocessing plant in Hanford, Wash.

The plutonium issue has aroused a lively debate within the Administration, with State Department and arms control aides maintaining that any decision to increase production would be viewed abroad as hypocritical. The question has also stimulated Congressional concern. The House and Senate Armed Forces Committees have inserted funds in the Administration's budget request for the fiscal year 1981 to increase plutonium production.

In the last five years, the Soviet Union has deployed a larger number of nuclear weapons than the United States and is not believed to be experiencing any shortage in nuclear materials.

At a meeting in the White House last month, senior Administration aides decided to defer a decision on expanding production until after the conclusion of the review conference of the 1968 Nuclear Nonproliferation Treaty in Geneva. The confernce ended two weeks ago and officials said that Mr. Carter was likely to * * * near future. At the review conference, both the United States and the Soviet Union were strongly criticised by many countries for continuing to expand their nuclear arsenals.

Several officials said that the dilemma over plutonium production formed part of a wider debate over the future of the Government's nuclear weapons complex. Most of the factories, laboratories and testing facilities used to develop and build nuclear weapons were built in the 1950's. In the early 1960's, the Government was operating 13 nuclear reactors around the nation, producing more than a thousand warheads each year.

American warhead production, officials said, was cut back substantially in the late 1980's after President Johnson's decision to shut down several nuclear plants and the beginning of arms control negotiations with the Soviet Union.

Pentagon and Energy Department officials said that over the last decade, the Govern-

ment's facilities for producing bomb-grade materials and fabricating warheads had deteriorated. They said that existing facilities could be relied on to build a few hundred new weapons each year, the rate maintained in the 1970s, but that they could not meet the requirements for warheads laid down by Mr. Carter for the coming decade.

For instance, a confidential report on the state of the nuclear weapons complex, prepared last year for Congress by the Energy Department, concluded that "serious deterioration of equipment and utilities had occurred over the past several years which could seriously impair our ability to meet the nuclear weapons forecast for the 1980's."

At a minimum, officials said, the United States, under existing plans, must build about 2,000 new warheads for the MX; some 5,000 warheads for the sea-launched Trident; 1,500 warheads for air- and ground-launched cruise missiles and another 1,000 bombs for aircraft.

BROWN EXPLAINS PROBLEM

Although Administration officials indicated in testimony on Capitol Hill early this year that the Government could meet the higher warhead requirements, Secretary Brown suggested otherwise in a letter last April to Secretary of Energy Charles W. Duncan Jr. "Our projected nuclear weapons programs will result in the deployment of virtually a new or improved nuclear capable system in each year through the 1980's," Mr. Brown wrote. He went on to express concern that in the next few years available resources of the Energy Department "may not be sufficient to meet requirements for the delivery of nuclear weapons to the stockpile as approved by the President."

Mr. Brown also wrote that "technical problems" and the "increasing production workload" had already resulted in delays in building new warheads. The letter was made available by political opponents of Mr. Carter in an apparent effort to cast doubt on the adequacy of the Administration's nuclear programs.

Officials said that one option under consideration for increasing plutonium supplies was to resume operation of the so-called "L" and "R" reactors at the nuclear plant at Barnwell, S.C. Currently, all of the plutonium used in the nation's warheads is produced by three other reactors at the South Carolina complex.

SECOND OPTION IS PROPOSED

Another alternative, they said, was to convert the "N" reactor in Hanford for weapons-grade plutonium production. That step would require a reprocessing plant at Hanford to resume operation, they said.

The proposal for restarting the reprocessing plant is particularly controversial because the Administration has pressed Britain, France, Japan and other countries to renounce that technique as a means of holding down worldwide plutonium stockpiles.

Experts at the State Department and the arms control agency contended that it was too early to tell whether the United States would encounter a shortfall in plutonium in years ahead. One specialist also said that it might be possible to avoid increased plutonium production by retiring large numbers of older nuclear bombs and using the plutonium in them in new warheads.

Pentagon aides said that plans had been made to extract plutonium from older weapons, but they contended that this would not make up for the expected gap in bomb-grade materials and warhead requirements in coming years.●

WHY CORPORATIONS CLOSE PROFITABLE PLANTS

(Mr. DELLUMS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. DELLUMS. Mr. Speaker, "Who would milk a healthy factory, mismanage it, fail to modernize it, and then shut the place down in the name of efficiency? Only the Fortune 500."

Mr. Bluestone and Mr. Harrison find that many local factories owned by absentee conglomerates often are needlessly shut down. This article gives vivid examples of this kind of management by major companies in this country. I urge my colleagues to continue reading:

WHY CORPORATIONS CLOSE PROFITABLE PLANTS

(By Barry Bluestone and Bennett Harrison)

Plant closings are becoming a grimly familiar story. The parent conglomerate, usually from a remote home office, announces one day that a well-established local factory is no longer competitive. Typically, the handwriting has been on the wall for years. The machinery is outmoded; the company's more modern factories are using newer equipment—and nothing foreshadows a shutdown like failure to reinvest. The workers have been told to hold down wages, or the plant will have to move; the town has been warned that property taxes must be abated or they will lose the plant altogether. Often these demands have been met.

But the dread day arrives anyway. Hundreds of jobs will be lost; the tax base will be devastated. The town elders wring their hands. Workers with seniority (those with roots in the community) are invited to pull up stakes and take lower wage jobs in company plants out of state.

A last ditch effort by workers to buy the plant fails: they can't raise the necessary capital. Although the factory is obsolete, oddly enough it is worth a king's ransom. Anyway, it must be a real lemon, or why would the company shut it down?

Why indeed?

The editorial pages of the Wall Street Journal suggest the reasons for plant relocation are obvious. Don't credit the sunbelt's climate, says the Journal. The real cause of the sunbelt's economic growth is its superior attitude toward business. Labor costs (translation: wages) are lower; tax burdens (translation: public services) are lower. Plants must relocate, therefore, because in the high-cost Northeast and Midwest workers have greedily demanded decent wages, and communities have insisted on adequate school, police, fire, and sanitation services.

And anyway, plant closings, despite their human toll, mean that the system is performing the way it should. Capital mobility is an essential ingredient in our free-market economy. The profit-maximizing entrepreneur must be free to invest capital where it will return the highest possible yield. Otherwise, we are sanctioning inefficiency: letting the economy as a whole operate below its optimum potential means allowing lower productivity and falling wages. And we surely don't want that.

Again and again, trade unions and state legislatures grappling with plant closings listen to business executives insist that plants close because they've ceased to be profitable: "If it could make money, do you really think we would shut it down?"

The contention seems plausible at first but, like so much in textbook economics, is simply fails to describe real life. Large modern corporations—and conglomerates in particular—will and frequently do close profitable branch plants or previously acquired businesses. They may do so for a variety of reasons that flow from the way conglomerates are organized. Centralized management and control produces pressure to meet corporate growth objectives and minimum annual profit targets; it also siphons off subsidiaries' profits to meet other corporate needs. Sometimes management by "remote control" actually creates the unprofitability of the subsidiary that eventually leads to shutdown—as when the home office is far removed from the production site or unfamiliar with the industry in which a subsidiary competes. Again, the textbook model of competition among entrepreneur-owned and -managed businesses utterly fails to explain why plants relocate.

Modern industrial theory says large corporations are under constant pressure to grow, to expand their market share. Stability is often seen as a sign of decline, no matter how well run and steadily productive the plant. In a letter to an executive of the K-Mart discount department chain, Paul McCracken, former head of the President's Council of Economic Advisors, wrote: "History suggests that companies which decide to 'take their ease' are apt to be on the route to decay."

This pressure is reinforced by the corporation's need to offer growth stock in order to attract equity capital. Investors in growth stocks make their money from capital gains realized when they sell their stock rather than from steady dividends paid out by the firm. The purchase price of the stock is thus high in relation to the dividends it earns. However, only by growing can a company keep the price-to-earnings ratio high, and continue to attract investors to its stocks. In many situations it is easier for a corporation to boost its price-earnings ratio by acquiring efficient and profitable businesses—often in unrelated markets—than by developing new ventures or expanding existing operations. This option was particularly attractive during the mid-1960s and the late 1970s when the stock market tended to undervalue real assets. Then a corporation or conglomerate seeking to expand could acquire those assets at "bargain" prices.

Plants must also meet target rates of return. Many companies that are divisions or subsidiaries of parent corporations or conglomerates are now routinely required to meet minimum annual profit targets as a condition for receiving finance or executive "perks" from the home office. Many are ultimately shut down because they cannot achieve what the managers describe as the parent corporation's current "hurdle rate."

At Cornell University, studies of conglomerate destruction of viable businesses have found many cases in which conglomerates abandoned going concerns that did not meet the specified target rates of return. For example.

"The Herkimer [New York] plant, producing library furniture, had been acquired by Sperry Rand in 1955. The plant had made a profit every year except one through the next two decades, and yet Sperry Rand decided to close the plant and sell the equipment [in part because it] was not yielding a 22 percent profit on invested capital. That was the standard used by this conglomerate/management in determining an acceptable rate of return on its investments."

Another example is the experience of the Bates Manufacturing Company, a leading Maine textile operation. After several changes of ownership after World War II, all the mills except the one at Lewiston were sold to textile conglomerates. The Lewiston facility, along with a coal and energy business Bates had acquired, was then sold to two New York investors. At the time, Bates offered a steady but low return of 5 to 7 percent. The energy business, however, promised a 15 to 20 percent return. As one long-time manager at Bates put it, "These boys were not textile men; they were money men." And sure enough, they decided to close the textile plant in 1977, in order to put all their money into the energy business.

Again, in the lower Pioneer Valley of central Massachusetts, the Chicopee Manufacturing Company was generating an estimated 12 percent rate of return on its apparel products. The parent firm, Johnson & Johnson (whose principal line is pharmaceuticals), was dissatisfied with anything short of a 16 percent minimum, and announced that Chicopee would be shut down.

As times change, the hurdle rate may rise. In textiles and apparel, for example, Royal Little, the founder of Textron, told a Congressional investigative committee in 1948 that his conglomerate generally insisted that each of its subsidiaries earn 10 percent on total invested capital before taxes or risk being shut down. By the late 1970s, according to its own corporate reports, another clothing conglomerate, Genesco, was imposing a 25 percent hurdle rate on its various companies.

Whatever the target rate in a particular company at a particular time, the existence of the corporate hurdle rate means that in the era of monopoly capital, viable businesses can be closed even though they are making a profit—because it is not enough of a profit. Perhaps the most dramatic example of this phenomenon involved Uniroyal's closing of its eighty-seven-year-old inner tube factory in Indianapolis in 1978. The Wall Street Journal reported the story in the following way:

"The factory has long been the country's leading producer of inner tubes. It operates profitably. Its $7 million to $8 million annual payroll sustains the families of nearly 600 employees.

"The company, in a formal statement, cited 'high labor costs' and 'steadily declining demand.' Union and management officials who worked at the plant tell another story. They say that Uniroyal could have kept the plant operating profitably if it wanted to but that under pressure from the securities markets management decided to concentrate its energy on higher-growth chemical lines. Interviews with securities analysts support this theory. Richard Haydon, an analyst at Goldman, Sachs and Co., says: 'You have one very large entity looking at a very small entity, but the small entity being very large to those people that work there. I think it's a truism that many companies have grown too big to look at small market.'"

One consultant advises his corporate clients that, when the wage bill as a percent of sales rises, or when the rate of return on investment falls below some standard—he proposes the current money market interest rate—it is time to think about shutting down. "If capital does not work for you effectively, it should be invested elsewhere."

The case histories of Bates, Chicopee, and Uniroyal all have happy endings of one kind or another. Jobs at Bates were saved when the mill workers and some of the former managers chose to buy it. They were able to do so through an Employee Stock Ownership Plan arrangement, and in the first year after it was bought Bates earned a 17 percent after-tax profit. (See "Employee Ownership: How Well Is It Working?" by Daniel Zwerdling in Working Papers May/June 1979.) To keep Chicopee from closing, twenty-one savings banks in the Pioneer Valley created a fund for high-risk business development. This enabled Chicopee's management to buy the company. And Uniroyal factory workers saved their jobs with the help of the presidents of the Indianapolis City Council and the Rubber Workers Union. They persuaded local financiers to put up the capital to purchase the plant from Uniroyal. The profit forecast for the first year of operation predicts that $500,000 will be distributed among the workers, and another $500,000 invested in new machinery. At the moment, all three plants are operating in the black, reconfirming that the corporations had been about to shut down basically profitable enterprises.

Subsidiaries' profits are prey to corporate appropriation. Not only do many parent companies deny their branches and conglomerate subsidiaries the power to establish their own performance criteria, but the profits they do earn are generally repatriated to the parent firm, to be reallocated according to the latter's priorities. For example, in one subsidiary of a Fortune 500 corporation, the profits from its local specialty paper products operation are taken by the parent, which returns only enough capital to the mill to meet Environmental Protection Agency and basic maintenance requirements. "In fact, only 5 percent of capital expenditures over the past five years have gone for growth. In that period net assets have declined 26 percent and employment has declined 9 percent . . ."

A healthy subsidiary that generates excess capital is sometimes termed a "cash-cow." An example of this would be a regional industry that has run out of opportunities for local growth: the New England market for department store sales is thought by industry leaders to be more or less saturated. Therefore, "the local [New England] units of national holding companies and department store chains are made to serve as cash-cows for [stores in other] areas of the country."

The appropriation of a subsidiary's or a branch's surplus by the parent corporation introduces potentially severe structural imbalance into a plant's operations. During years when sales are good, the profits accrue to the parent. When times go bad, the operating company has been stripped of its revenues, and may be forced to go into the local capital markets for a loan. However, lack of control over its own future profit stream makes the servicing of this loan uncertain, and local banks or other lenders will deal with this uncertainty by charging a higher interest rate—and of course the parent firm may not even permit the branch or subsidiary to borrow on its own.

Thus, by becoming the banker to its various constituent plants or companies, the centralized corporation is able to enforce its own growth goals. At best, the subsidiaries are forced to compete directly with one another for access to their own profits. But in fact, conglomerates (and, since 1976, more and more large single-product corporations) have tended to place the capital so obtained into other, often totally unrelated, acquisitions instead of reinvesting in the sector—let alone the specific company—from which the surplus was redistributed.

The managers of K-Mart, for example, believe that their continuing operations will be throwing off far more cash than the department store business has traditionally been able profitably to absorb. As a result, industry sources estimate that by 1981 fully one-quarter of K-Mart's available cash will have no place to go. One executive told *Fortune* magazine: "Time is running out and we are aware of it. K-Mart must search out new directions."

Yet at the same time—just to show the chaos and irrationality of the economic era in which we now live—Mobil Oil Corporation used a substantial part of its post-1973 inflated international oil profits not to expand domestic petroleum production, but to purchase Montgomery Ward, an established department store chain!

The diversification in the steel industry that led to the famous shutdown in 1977 of the Campbell plant of the Youngstown Sheet and Tube Company in Ohio began early in the decade. Between 1970 and 1976 the steel industry as a whole paid out 43 percent of after-tax profits in dividends. This rate was above average for all industry, yet the steel industry was simultaneously complaining that required pollution-control expenditures prevented them from upgrading their old plants and equipment. Some Wall Street analysts have seen the high dividend rate as a strategy for holding on to investors while developing a plan for diversifying into new fields. In the late 1970s the industry has done just that—it has shifted capital into cement, petrochemicals, coal, natural gas, nuclear power plant components, containers and packaging, and real estate.

According to U.S. Steel's annual reports, for example, the share of that corporation's annual plant and equipment investment going into actual production of steel fell from 69 percent in 1976 to just over half in 1979. For every dollar of old plant and equipment written off, only $1.40 in new investment was undertaken (in fact, the ratio of new capital spending to depreciation in the steel operations fell by 100 percent, from 2.9 to 1.4). But for every dollar of capital depreciation in its nonsteel operations, U.S. Steel spent nearly three dollars in new capital investment. By 1978, 44 percent of U.S. Steel's total worldwide assets were in nonsteel operations.

Youngstown Sheet and Tube Company was not owned by U.S. Steel, but by a New Orleans-based conglomerate, the Lykes Corporation. Lykes purchased it in 1969, when Sheet and Tube was the nation's eighth largest steel-making firm. The acquisition was financed mainly by a major loan package, which Lykes promised to pay off out of Sheet and Tube's very substantial cash flow. During the next eight years, Lykes used Sheet and Tube's cash to amortize that debt and to expand its nonsteel operations. Figure 1 shows pre- and post-merger annual capital investment in Youngstown. Before the merger, investment in plant and equipment averaged almost $10 million a year. After the acquisition by Lykes, the average fell to about $3 million per year, and would have had a zero trend if not for a few investment projects that were quickly abandoned during the 1975–76 recession. Clearly, Lykes was pursuing a pattern of planned disinvestment in its recent acquisition. This has led most financial analysts to agree that "Lykes must bear responsibility for a good deal of the failure at Youngstown Sheet and Tube." As Business Week put it in its October 3, 1977, issue: "The conglomerators' steel acquisitions were seen as cash boxes for corporate growth in other areas." In a rather absurd postscript to the closing—which cost 4,100 Ohio workers their jobs—Lykes merged in 1978 with the owners of the nation's next largest steelmaker, the conglomerate Ling-Temco-Vought. The argument used in court by Lykes and LTV to overcome antitrust objections to the merger was that their steel business was "failing", and could only be rescued by achieving financial scale economies through merger! The merger now makes Lykes-LTV the nation's third largest producer of steel. Thus does corporate profit appropriation encourage economic concentration.

This concentration in turn makes it possible for management to impose other costs by "remote control." Centralized control by a home office can impair the profitability of a newly acquired branch or subsidiary, and can even make the business actually unprofitable.

Sometimes the home office requires its new acquisition to carry additional management staff from headquarters, staff the subsidiary did without before and that are probably redundant. For example, in a recent issue of a New England trade magazine, a small manufacturer with 40 percent of the domestic hypodermic needle market was offered for sale by its conglomerate parent. The market analyst notes that "the parent corporation, a Fortune 500 company, . . . has imposed an excess of staff and other requirements which add nonproductive costs to the operation. A *pro forma* [simulated balance sheet] eliminating this overlay of corporate expenses shows a much

better picture." Recently freed from its former parent (the Esmark conglomerate), the Peabody tannery in Massachusetts projects a reduction in overhead and administrative support services of almost $500,000 during its first year.

In 1978, the New England Provision Company (NEPCO) of Dorchester, a Boston neighborhood, had its meatpacking operations shut down by the same LTV conglomerate that recently merged with the Lykes Corporation. The firm had been consistently profitable prior to its acquisition by LTV in the late 1960s. One factor turning profits into losses seems to have been LTV's insistence that NEPCO pay a fee to the parent for management services. This practice was also found to be present in the case of the Colonial Press in Clinton, Massachusetts, acquired in 1974 by Sheller-Globe, primarily a maker of auto parts, school buses, and ambulances, and closed three years later, in 1977. Colonial was charged an average of $900,000 a year in corporate overhead charges. Some months it was charged $200,000.

There was little justification for these charges. The Press was being forced to pay the costs of larger corporate activities from which it did not benefit. For example, Sheller-Globe maintained an entire department that was solely responsible for security. Given the conditions in the automotive industry there was some justification for these costs. However, Sheller-Globe's corporate policies meant that the security department applied the same systems to all divisions. The corporation built a link fence around three sides of the Colonial Press plant and hired twenty-two security guards. Upon exiting the plant, employees would often be searched for stolen goods. The level of theft at the Press could not possibly justify the cost of the fences and guards, yet Colonial Press was forced to bear part of these costs.

Sometimes the parent firm forces the subsidiary to purchase from particular distant providers, even if the subsidiary's managers could cut costs by purchasing locally. In the NEPCO case "the firm was required to buy the meat it processed and packaged from [another LTV subsidiary, Wilson Foods and Sporting Goods] at inflated prices; and an inept marketing company was hired . . ., the result of a "sweetheart" contract arranged for the benefit of a former LTV executive vice-president. . . ."

Lykes imposed the same burden on Youngstown Sheet and Tube. According to the Senate hearings, YST ended up paying more for raw materials (coal and iron ore) from Lykes' mines after the merger than it would have paid on the open market. After the merger, YST began purchasing parts and equipment, which had previously been supplied locally, from a Lykes subsidiary at higher rates. This arrangement cost YST $60 million a year.

To tax the subsidiary in order to subsidize the operations of the headquarters (or its friends) is bad enough. But perhaps most serious of all are the cases where home office policy actually creates the unprofitability of the (previously profitable) subsidiary, through clumsy interference with the local managers who know the situation best. William F. Whyte's case study of the Library Bureau, a furniture plant in Herkimer, N.Y., revealed just such a problem.

"The plant had always had its own sales force and was not dependent upon Sperry Rand for its market. In fact, being part of the conglomerate imposed serious barriers in marketing. For example, it was a rule of Sperry Rand that the Library Bureau salesmen could not call on any customers served by Sperry Rand. While this left the Library Bureau its main markets with public and educational institution libraries, the rule barred the plant from selling to a large number of industrial and business firms that used library equipment. The [subsidiary] could only enter these markets through Sperry Rand salesmen who were unfamiliar with Library Bureau products and had more important things to sell. The handicaps were similar in the export field. . . . [According to the former] head of sales for the Library Bureau . . . "We were not officially barred from exporting, but to sell anything outside of the country, we had to send our proposal to the international division, and it would just die there. We would never hear anything back."

Similarly, after its acquisition of the Colonial Press, Sheller-Globe immediately brought in outside management that, except for the newly installed president, had no experience in the publishing industry. Yet this outside group was given control over the most important decisions. In particular, Sheller-Globe wanted to change Colonial's orientation from sales to manufacturing. It wanted to emphasize producing books more efficiently rather than satisfying more clients. This decision impaired long-standing relations with the publishing companies that were Colonial's clients (these included Reader's Digest and Random House), since Sheller-Globe believed there was not a great deal of difference between "producing a steering wheel and producing a book."

Flexibility to accommodate customers' publication schedules was reduced. Colonial was no longer allowed to offer free warehouse space to publishers. The customer service and order departments were merged, resulting in misplaced orders and deteriorated customer relations. An expensive computerized management information system was installed, which so fouled up operations that "books were lost and there was often general confusion about what materials there were and where they were located." Publishers were no longer given itemized cost estimates, and in general, the management under Sheller-Globe mistreated its customers. As a result of all this, "the publishing industry became alienated and sales declined. . . . Decisions which were appropriate to the automotive industry proved disastrous in the book-printing industry."

This disaster has been somewhat mitigated by the reopening of the Press in 1979, as the Colonial Cooperative Press. With the help of the Massachusetts Community Development Finance Corporation and the Industrial Cooperative Association, the press was sold to the workers as a full-scale cooperative. However, it is a much smaller enterprise and it isn't clear whether or not it will succeed. The Colonial Press had over 1,000 workers. Colonial Cooperative Press has 75. Furthermore, in the two years it took to reorganize the plant, the Press lost many of its customers.

Whether or not it survives, this worker-purchase is another example of an ad hoc solution pulled together by the workers and their community as the conglomerate-owner abandoned them. There is no institution in the U.S. economy to which viable businesses can turn when they are sold out by a parent-corporation. Each plant must find its own solution within its particular local economy. Unlike the Chrysler Corporation they cannot turn to the federal government. But, also unlike the Chrysler Corporation, many of these conglomerate subsidiaries do not need to be bailed out, for they were not actually losing money to begin with. What they need is assistance in setting up autonomous, decentralized, locally owned operations.

The conventional wisdom about highly centralized management is that it makes possible a higher degree of efficiency in information and personnel management than ever before. But the evidence suggests that the managers of the giant corporations and conglomerates frequently "overmanage" their subsidiaries, milk them of their profits, subject them to strenuous or impossible performance standards, interfere with local decisions, and are quick to close them down when other, more profitable, opportunities appear. In 1975–76 Gulf and Western almost dumped the Brown Paper Company of Holyoke, Massachusetts, a leading producer of quality papers, and actually did sell off its most profitable product line to a Wisconsin competitor. By 1977 the plant's sales were up again to over $450 million.

Highly centralized organizations like Gulf and Western and Textron have positioned themselves so as to be able to make a profit either from a subsidiary's success or from failure that requires divestiture (since it can be treated as a tax loss and used to offset profits earned in other operations). From the point of view of capital asset management this may be the pinnacle of capitalist institutional creativity. But from the perspective of economic stability for working people and their communities, these clever capitalist giants are a disaster. The much-discussed trade-off between efficiency and equity turns out to mean capital management efficiency, but tremendous inefficiency at the level of actual production, to go along with the inequities imposed on workers and communities.

In short, modern monopoly capitalists will sell off or shut down profitable businesses if they think they can make even more money somewhere else. This strategy is not a recent one, nor have its harmful effects ever been unforeseeable. Here is Emil Rieve, president of the Textile Workers Union of America before a Congressional committee thirty years ago:

"Mr. Little is a capitalist, but in the field of finance rather than the field of production . . .

"I say this in the same sense that Hitler and Stalin are in the tradition of Napoleon and Alexander the Great. We have changed our attitude toward financial conquerors, just as we have changed our attitude toward military conquerors. Success is not the only yardstick.

"I do not know whether Mr. Little has broken any laws. But if he has not, our laws ought to be changed."

"Mr. Little" is Royal Little, founder of Textron, the Rhode Island conglomerate that first developed many of the strategies now in use. Textron was initially a textile company. This year the Securities and Exchange Commission has charged it with paying over $5 million in bribes to officials in eleven foreign countries in order to "stimulate" sales of its Bell Helicopters. Its chairman at the time was G. William Miller, the current Secretary of the Treasury.

Just as the law in other areas has gradually evolved over the years to recognize that property rights, though dominant, are not absolute, the law must be changed to temper arbitrary plant relocation. Fifty years ago, tenants had no rights arising from their occupancy of a building. Today, the law stipulates that a landlord must keep the building habitable, that he must provide heat and hot water, and that tenants may not be arbitrarily evicted. Some communities have authorized rent control and even rent strikes when the property is not kept in good repair.

Family law has undergone a similar evolution. A wife is no longer her husband's property, and a couple's tangible property is no longer assumed to be the fruits of the husband's labor. Even banking law has been amended to deny banks the right to shut down when the community would be denied essential banking services.

But laws dealing with plant relocation are back in the eighteenth century. Profitability is considered an absolute right, not a relative one; and the right of a plant to relocate in the name of greater profitability is still sacrosanct, even where management's judgment or motive is specious.

As Emil Rieve observed thirty years ago, laws that sanction promiscuous relocations must be changed. A handful of states are considering requiring a year's notice before companies may shut down plants. Legislation is also under discussion to require severance pay, as well as compensation to the community. Companies could be required to pay back all tax abatements; labor contracts could also demand that the parent company not shift the production to other plants; tax write-offs for shut-downs could be prohibited. The proposed legislation to require federal chartering of the largest corporations could also include a range of sanctions against arbitrary relocations.

Far from interfering with industry's "right" to use capital optimally, these sanctions could force parent companies that acquire independent firms to operate them efficiently. As things stand now, conglomerates are being rewarded for running their subsidiaries into the ground—and the employees along with them.●

WEST BERKELEY HEALTH CENTER'S 10TH ANNIVERSARY

(Mr. DELLUMS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. DELLUMS. Mr. Speaker, on September 27, 1980, the West Berkeley Health Center will commemorate its 10th anniversary. I am inserting into the RECORD a brief history and description of the center because I believe its commitments to the community it serves and its articulated goals will serve as a model to other communities throughout this country. It is with great respect that I pay tribute to 10 years of dedicated and effective service by the West Berkeley Health Center.

WEST BERKELEY HEALTH CENTER'S 10TH ANNIVERSARY

The West Berkeley Health Center is a nonprofit tax exempt organization that was incorporated in 1970 for the purpose of providing health care services to indigent persons of South and West Berkeley.

The Center, located in a designated medically underserved area of Berkeley, was developed by residents who had organized as the West Berkeley Neighborhood Association around their concerns for improving the neighborhood in areas of recreation, housing, employment and health. Energies were expended to improve living conditions of residents to find ways on increasing their access to needed care. As an outgrowth of the West Berkeley Neighborhood Association, the West Berkeley Health Center was incorporated with its own policy making board, after two years of dedicated community effort.

The West Berkeley area is typical of any poverty area. There is a high degree of unemployment, underemployment, substandard housing, welfare recipients and all of the problems these conditions tend to encompass. Additionally, there are inadequate health and social services, with preventive health services being almost non-existant. There is an increased number of former mental patients who have been released from state and county institutions with services and facilities totally inadequate to meet these needs.

This area can be characterized as a rather stable community with a substantial number of elderly persons in residence. It is common knowledge that the elderly suffer more than the younger segment of a poverty area, because of lack of mobility and a host of other factors. Nutritional problems are indicative of poverty areas—South and West Berkeley are no exceptions.

The Center opened its doors in 1970 with two staff members in quarters donated by the City Health Department and renovated by community volunteers using donated materials and equipment.

The Center represents a unique, mutual endeavor by consumers and traditional health providers who work together to improve health and health related conditions in the community. The policy making board is composed of ten consumers and/or community representatives and seven representatives of community agencies that provide health related or medical services: Alta Bates Hospital, Children's Hospital Medical Center, Herrick Memorial Hospital, Berkeley Unified School District, Adelante, Asians for Job Opportunities in Berkeley and La Raza Coalition. Leadership is in the hands of the Chairperson, who is a community member of the board. The board is totally committed to the welfare of the community.

West Berkeley Health Center since its inception, has promoted the philosophy of attempting to address the total needs of an individual. The need for basic medical services is often indicative of other related problems of unemployment, housing, nutritional needs, etc. The Center therefore, attempts to provide the highest degree of comprehensive support services that funding levels will allow. By taking this approach, the Center is constantly expanding services and redefining goals and objectives in an attempt to meet the ever changing need as expressed by those for whom the services are designed, and for those patients utilizing the services.

Due to the receipt of federal funds for an Urban Health Initiative Grant, the Center is now in a transition period. The Center is charged with development of a patient care management program to assure and document that patients receive proper care, follow-up services, and referral resources.

Although services are directed to the immediate community, the Center, because of its location, serves Albany, Oakland and transients as well as the Berkeley community. Because of the dedication of the Center to the community needs, it has kept the trust and involvement of the community upon which it began. The Center is indeed a vital part of the community. West Berkeley Health Center's ability to plan and effectuate meaningful health and medical services for the community it serves is attested by the fact that the Center has received increased financial support from the City of Berkeley and County of Alameda.

West Berkeley Health Center is designed to supplement other sources of health care which exist in the community. Efforts are maintained to avoid duplications of services. In this regard the Center has developed liaisons with other health services.

The Center provides medical services, health education, information and referrals to low income patients without regard to age, ethnicity, sex or handicap. The area has the largest minority population in Berkeley, including Spanish-speaking. The Center therefore, has maintained Spanish bilingual staff and board representation. Services are provided Monday through Friday except on holidays. Limited dental services are provided for children between the ages of three and twenty. Patients are billed on a sliding scale based on ability to pay. However, no one is turned away who has need of services.

CURRENT SERVICES

Medical clinic.—The medical clinic provides medical services by general practice, internal medical or family practice physicians. Examination and treatment are provided for acute and chronic illness. Referrals are made for patients who need speciality care.

Pediatric clinic.—The pediatric clinic serves infants to age 18. This clinic provides routine physical examinations, immunizations, and counseling on well-child care. Sick children are seen on a drop-in basis as well as by appointment. School and sports physicals are provided for those who have no other resources.

Gynecological clinic.—Diagnosis, treatment, consultation and advice are provided for a variety of GYN problems.

Dental services.—The dental clinic provides preventive dental care such as screening, dental health education, cleaning and application of topical fluoride. Minor restorative work is also provided.

Podiatric services.—Podiatric services are offered with the availability of a podiatrist. A variety of foot problems are seen and special counseling given for patients with diabetes and obesity.

Outreach and advocacy services.—Assistance is provided in a number of ways through referrals and actually assisting in the process of clients getting through various health and social agencies. Requests for transportation, food, clothing, medical or social help are handled through this activity. Community Health Workers disseminate information door to door and meet with groups using flyers, films and discussion to provide community education.

Follow-up.—Follow up is provided for all patients who need this service as a reminder or as an aide to follow through on treatment, directions or referrals.

Health education services.—Health Education is an integral part of all programs and services. The Center provides education and information that serves to reduce barriers to existing health services, helping to maximize their use. The Center serves to facilitate community participation and involvement in health issues and activities. Health education group sessions are designed around chronic diseases such as hypertension and diabetes. Healthful living and health issues are also addressed including nutrition.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. ANTHONY (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. CHAPPELL (at the request of Mr. BENNETT), on account of business in the District.

Mr. CORMAN (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. MURPHY of New York (at the request of Mr. WRIGHT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LUNGREN) to revise and extend their remarks and include extraneous matter:)

Mr. JEFFORDS, for 5 minutes, today.

Mr. KEMP, for 30 minutes, today.

Mr. MARTIN, for 10 minutes, today.

(The following Members (at the request of Mr. GUDGER) to revise and extend their remarks and include extraneous material:)

Mr. WIRTH, for 5 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 15 minutes, today.
Mr. ULLMAN, for 60 minutes, on September 25.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DELLUMS, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,179.

Mr. CARTER, following the remarks of Mr. FLORIO during general debate on H.R. 7020 in the Committee of the Whole today.

Mr. EVANS of Delaware, to revise and extend his remarks before the vote on H.R. 85.

(The following Members (at the request of Mr. LUNGREN) and to include extraneous matter:)

Mr. MCKINNEY.
Mr. DANNEMEYER.
Mr. FISH.
Mr. CARTER in three instances.
Mr. SCHULZE.
Mr. EVANS of Delaware in two instances.
Mr. MARTIN in two instances.
Mr. FINDLEY.
Mr. WILLIAMS of Ohio.
Mr. MARRIOTT.
Mr. DERWINSKI in two instances.
Mr. MICHEL.

(The following Members (at the request of Mr. GUDGER) and to include extraneous matter:)

Mr. MATSUI.
Mr. MINETA in two instances.
Mr. DAN DANIEL.
Mr. NOLAN.
Mr. BLANCHARD.
Mr. DRINAN.
Mr. CONYERS.
Mr. SOLARZ.
Mr. VENTO.
Mr. THOMPSON.
Mr. FORD of Michigan.
Mr. OTTINGER.
Mr. DONNELLY.
Mr. ZEFERETTI.
Mr. WEISS in two instances.
Mr. WALGREN.

BILLS AND JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on September 17, 1980, present to the President, for his approval, bills and a joint resolution of the House of the following title:

H.R. 3210. An act to terminate the authority to make grants to the Las Vegas Valley Water District under the act of August 27, 1954;

H.R. 6511. An act to designate the building known as the Federal Building in Morgantown, W. Va., as the "Harley O. Staggers Federal Building"; and

H.J. Res. 594. Joint Resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day."

ADJOURNMENT

Mr. GUDGER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 13 minutes p.m.), under its previous order, the House adjourned until Monday, September 22, 1980, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5338. A letter from the Assistant Secretary of Defense (Comptroller), transmitting a report on the value of property, supplies, and commodities provided by the Berlin Magistrate, and under the German Offset Agreement for the quarter ended June 30, 1980, pursuant to section 720 of Public Law 96-154; to the Committee on Appropriations.

5339. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting notice of the location, nature, and estimated cost of various construction projects proposed to be undertaken by the Air National Guard, pursuant to 10 U.S.C. 2233a(1); to the Committee on Armed Services.

5340. A letter from the Acting Assistant Secretary of the Air Force (Research Development, and Logistics), transmitting notice that a decision has been made to convert the clothing alterations function at Lackland Air Force Base, Tex., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5341. A letter from the Principal Deputy Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice that a decision has been made to convert the commissary shelf-stocking and custodial service functions at Mather Air Force Base, Calif., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5342. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report on loan, guarantee and insurance transactions supported by Eximbank during July 1980 to Communist Countries; to the Committee on Banking, Finance and Urban Affairs.

5343. A letter from the Chairman, Architectural and Transportation Barriers Compliance Board, transmitting a draft of proposed legislation to increase the Board's authorization of appropriations; to the Committee on Education and Labor.

5344. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Francis J. Meehan, Ambassador-designate to Poland, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5345. A letter from the Assistant Secretary of the Treasury for Legislative Affairs, transmitting project performance audit reports prepared by the International Bank for Reconstruction and Development and by the Asian Development Bank, pursuant to section 301(e)(3) of the Foreign Assistance Act of 1961, as amended; to the Committee on Foreign Affairs.

5346. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense services to Germany (Transmittal No. 80-106), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5347. A letter from the Assistant Secretary of Housing and Urban Development for Administration, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5348. A letter from the Comptroller General of the United States, transmitting a report on Government use of electronic funds transfer (FGMSD-80-80, Sept. 19, 1980); to the Committee on Government Operations.

5349. A letter from the Comptroller General of the United States, transmitting a report on the management of recruiting in the armed services (FPCD-80-64, Sept. 18, 1980); jointly, to the Committees on Government Operations and Armed Services.

5350. A letter from the Comptroller General of the United States, transmitting a report on the impact on rising hospital costs of prospective ratesetting programs (HRD-80-72, Sept. 19, 1980); jointly, to the Committees on Government Operations, Interstate and Foreign Commerce, and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 6959. A bill to provide for the conservation and enhancement of the salmon and steelhead resources of Washington State, assistance to the treaty and nontreaty harvesters of those resources, and for other purposes; with amendments (Rept. No. 96-1243, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. WAXMAN: Committee on Interstate and Foreign Commerce. H.R. 8117. A bill to amend the Safe Drinking Water Act, and for other purposes; with amendments (Rept. No. 96-1348). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANLEY: Committee on Post Office and Civil Service. H.R. 7085. A bill to amend title 5 of the United States Code and the Internal Revenue Code of 1954 to provide certain benefits to individuals held hostage in Iran and to similarly situated individuals; with amendments (Rept. No. 96-1349, pt. 1). Ordered to be printed.

Mr. FASCELL: Committee on Foreign Affairs. H.R. 7085. A bill to amend title 5 of the United States Code and the Internal Revenue Code of 1954 to provide certain benefits to individuals held hostage in Iran and to similarly situated individuals; with amendments (Rept. No. 96-1349, pt. 2). Ordered to be printed.

Mr. ULLMAN: Committee on Ways and Means. H.R. 7085. A bill to amend title 5 of the United States Code and the Internal Revenue Code of 1954 to provide certain benefits to individuals held hostage in Iran and to similarly situated individuals; with amendments (Rept. No. 96-1349, pt. 3). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLAND: Committee of Conference. Conference report on S. 2597 (Rept. No. 96-1350). Ordered to be printed.

Mr. JOHNSON of California: Committee on Public Works and Transportation. H.R. 7770. A bill to name the Environmental Research Center in Cincinnati, Ohio, the "Andrew W. Breidenbach Environmental Research Center" (Rept. No. 96-1351). Referred to the House Calendar.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 6228. A bill to amend the Communications Act of 1934 to provide that the Federal Communications Commission, in considering applications for the renewal of broadcasting station licenses, shall not take into account any ownership interests of the applicant in other broadcasting stations or in other communications media, and for other purposes; with amendments (Rept. No. 96-1352). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 7919. A bill to provide for the settlement of land claims of Indians, Indian nations, and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes; with amendment (Rept. No. 96-1353). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 2398. A bill to extend the provisions of the General Exchange Act, as amended, to certain lands in order that they may become parts of the Umatilla and Wallowa National Forests, and for other purposes (Rept. No. 96-1354). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 6309. A bill to provide for the conveyance of any right, title, or interest which the United States may have in certain real property in the State of Utah to the owners of the adjacent properties; with amendment (Rept. No. 96-1355). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 341. A bill to authorize the Three Affiliated Tribes of the Fort Berthold Reservation to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the U.S. Constitution, and for other purposes (Rept. No. 96-1356). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL. Committee on Interior and Insular Affairs. S. 1795. A bill to authorize the Blackfeet and Gros Ventre Tribes to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the U.S. Constitution, and for other purposes (Rept. No. 96-1357). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 1796. A bill to authorize the Assiniboine Tribe to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the U.S. Constitution, and for other purposes; with amendment (Rept. No. 96-1358). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL. Committee on Interior and Insular Affairs. H.R. 8096. A bill to amend the Wild and Scenic Rivers Act to provide for the study of certain river segments for potential inclusion in the National Wild and Scenic Rivers System and to designate certain river segments for inclusion in such system, and for other purposes; with amendment (Rept. No. 96-1359). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ASHBROOK:

H.R. 8167. A bill to provide that the Congress shall have authority under section 431 (d) of the General Education Provisions Act to disapprove any final regulations promulgated by the Department of Education for the proposed rules on nondiscrimination under programs receiving Federal financial assistance through such Department, as published in the Federal Register on August 5, 1980; to the Committee on Education and Labor.

By Mr. BREAUX:

H.R. 8168. A bill to reform the Powerplant and Industrial Fuel Use Act of 1978 to encourage a reduction of air pollution and oil consumption by existing electric powerplants; to the Committee on Interstate and Foreign Commerce.

By Mr. COURTER:

H.R. 8169. A bill to amend title II of the Social Security Act to increase to $24,000 in 1981 (with automatic adjustments thereafter) the amount of outside earnings which a beneficiary age 65 or over may have in any taxable year without suffering reductions in the amount of his benefits; to the Committee on Ways and Means.

By Mr. FLORIO (by request):

H.R. 8170. A bill to authorize a flexible environmental program of integrated financial assistance to States and local governments to plan, manage, and implement abatement and control strategies in a more efficient and effective manner; to the Committee on Interstate and Foreign Commerce.

By Mr. JEFFORDS:

H.R. 8171. A bill to further local and State efforts to conserve, protect, and enhance the Nation's soil, water, and related resources for sustained uses, and for other purposes; to the Committee on Agriculture.

By Mr. MCKAY:

H.R. 8172. A bill to amend the Clean Air Act to provide that coal-fired stationary sources may meet emission requirements through the use of coal having low pollution characteristics, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. PICKLE:

H.R. 8173. A bill to provide for distribution in the United States of certain International Communication Agency films relating to Lyndon Baines Johnson; to the Committee on Foreign Affairs.

By Mr. WIRTH:

H.R. 8174. A bill to eliminate 1,000 of the positions within the Department of Energy associated with the administration of the Emergency Allocation Act of 1973, effective at the expiration of that act; to the Committee on Interstate and Foreign Commerce.

By WEISS (for himself, Mr. DODD, Ms. HOLTZMAN, Mr. BONKER, Mr. DERWINSKI, Mr. BEDELL, Mr. BOWEN, Mr. FITHIAN, Mr. HALL of Ohio, Mr. BINGHAM, Mr. WOLFF, Mr. ROSENTHAL, Mr. PRITCHARD, Mr. GILMAN, Mr. BARNES, Mr. WOLPE, and Mr. GRAY):

H. Con Res. 434. Concurrent resolution to honor Raoul Wallenberg, and to express the sense of Congress that the U.S. delegation to the Madrid Conference on Security and Cooperation in Europe urge consideration of the case of Raoul Wallenberg at that meeting, and to request that the Department of State take all possible action to obtain information concerning his present status and secure his release; to the Committee on Foreign Affairs.

By Mr. ZABLOCKI (for himself, Mr. WRIGHT, Mr. BRADEMAS, Mr. FOUNTAIN, Mr. FASCELL, Mr. ROSENTHAL, Mr. BINGHAM, Mr. YATRON, Mr. SOLARZ, Mr. BONKER, Mr. PEASE, Mr. BARNES, Mr. HALL of Ohio, Mr. WOLPE, Mr. BOWEN, Mr. FITHIAN, Mr. BEDELL, Mr. BROOMFIELD, Mr. DERWINSKI, Mr. BUCHANAN, Mr. WINN, Mr. GILMAN, Mr. LAGOMARSINO, Mr. GUYER, Mr. GOODLING, Mr. PRITCHARD, Mrs. FENWICK, Mr. QUAYLE, Mr. FOLEY, Mr. BAILEY, Mr. ANNUNZIO, Mr. FARY, Ms. MIKULSKI, Mr. KEMP, Mr. BEILENSON, Mr. NOWAK, Mr. MURPHY of Pennsylvania, Mr. MINISH, Mr. YATES, Mr. BOLAND, Mr. CAVANAUGH, Mr. BROOKS, Ms. OAKAR, Mr. NEDZI, Mr. GIBBONS, Mr. MURTHA, Mr. RITTER, Mr. ROUSSELOT, and Mr. VANIK):

H. Con. Res. 435. Concurrent resolution relating to the situation in Poland; to the Committee on Foreign Affairs.

By Mr. STARK:

H. Res. 790. Resolution requesting the President to furnish certain information to the House of Representatives concerning U.S. involvement in Iran; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII,

531. The SPEAKER presented a memorial of the Legislature of the State of California, relative to National Port Week, which was referred jointly, to the Committees on Post Office and Civil Service and Public Works and Transportation.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. LOWRY presented a bill (H.R. 8175) to authorize the documentation of the vessel, *Pacific Pride*, as a vessel of the United States with coastwise privileges, which was referred to the Committee on Merchant Marine and Fisheries.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 7129: Mr. SYMMS.

H.R. 7704: Mr. BOWEN, Mr. EVANS of Delaware, Mr. JEFFRIES, and Mr. QUILLEN.

H.R. 7773: Mr. HINSON.

H.R. 7814: Mr. FORSYTHE.

H.R. 7822: Mr. FORSYTHE, Mr. STARK, Mr. FLORIO, Mr. BONIOR of Michigan, Mr. SEIBERLING, Mr. EDWARDS of California, Mr. WOLPE, Mr. MINETA, and Mr. SIMON.

H.R. 8063: Mr. ROSENTHAL, Mr. NOWAK, and Mr. GREEN.

H.J. Res. 511: Mr. OTTINGER, Mr. ROTH, Mr. ROUSSELOT, and Mr. CHARLES H. WILSON of California.

H.J. Res. 516: Mr. BEILENSON, Mr. FLORIO, Mr. FORSYTHE, Mr. LEVITAS, Mr. MCCORMACK, Mr. MARTIN, Mr. PORTER, and Mr. WAXMAN.

H.J. Res. 579: Mr. DAVIS of Michigan, Mr. DIXON, Mr. DOUGHERTY, Mr. HOWARD, Mr. ICHORD, Mr. TAUKE, Mr. ERDAHL, Mr. FORSYTHE, and Mr. MCCLORY.

H. Con. Res. 106: Mr. JENRETTE, Mr. PATTERSON, Mr. DUNCAN of Tennessee, Mr. D'AMOURS, Mr. ANTHONY, Mr. KINDNESS, Mr. PEPPER, Mr. ROBERT W. DANIEL, JR., and Mr. SCHEUER.

H. Con. Res. 122: Mr. FORSYTHE.

H. Con. Res. 363: Mr. BROOMFIELD, Mr. GUYER, Mr. WOLPE, Mr. BONIOR of Michigan, Mr. DINGELL, Mr. FORD of Michigan, Mr. TRAXLER, Mr. MCDADE, Mr. MARKS, Mr. STOCKMAN, Mr. SAWYER, Mr. HILLIS, Mr. MICHEL, and Mr. WYLIE.

H. Con. Res. 422: Mr. SKELETON, Mr. ST GERMAIN, and Mr. JACOBS.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 6386

By Mr. FISH:

—On page 2, after line 12, add the following new section:

SEC. . That section 1007(a)(10) of the Legal Services Corporation Act, 42 U.S.C.

2996f(a)(10) is amended by adding the following new language:

"In order to prevent the persistent incitement of litigation and to encourage the resolution of controversies through compromise and settlement rather than through litigation, the Corporation shall require recipients to inform potential defendants in writing of their clients' grievances and attemp to negotiate a settlement of those grievances before filing suit. Nothing in this section, however, shall preclude attorneys from immediately filing suit where the circumstances of the case as determined by the local program director require immediate action to protect the interests of the client.'

H.R. 7020

By Mr. SOLOMON:

—Page 36, line 21, after "for" insert "(1)".

Page 36, line 24, before the period insert: ", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

Page 50, after line 11, insert the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

"ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned or State permitted facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulations shall provide for the annual allocation of grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.".

Page 50, after line 15, insert:

"Sec. 3012. Assistance for State or regional facilities.".

Page 67, line 23, after "for" insert "(1)".

Page 68, line 6, before the period insert: ", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

EXTENSIONS OF REMARKS

MUSHROOM DAY COMMEMORATED

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. SCHULZE. Mr. Speaker, earlier this week, we commemorated here on Capitol Hill the third annual "Mushroom Day."

As chairman of the bipartisan Mushroom Caucus, I had the pleasure to serve as master of ceremonies for this event and to share with my colleagues what I believe was one of the finest lunches ever served.

While many things may have changed since our initial luncheon 3 years ago, regrettably, I must report that the domestic mushroom industry continues to suffer adversely because of ongoing tidal waves of foreign canned mushroom imports.

While it is encouraging that the International Trade Commission has, for the third time in the last 5 years, unanimously recommended that import relief be provided to the U.S. mushroom industry, the final decision on this matter now rests with the President.

It is my sincere hope that the President will grant meaningful trade relief to this important domestic industry and will allow these hard-working Americans to continue to do what they do best—mushroom farming and canning.

At this point, I would like to have included in the RECORD two excellent statements which were presented during our Mushroom Day activities. The first statement was given by Mr. Thomas DiCecco, Jr., a constituent of mine who is the president of the Oxford Corp. and who is one of the foremost experts in the American mushroom canning industry.

The second statement was delivered by Mr. Lewe B. Martin, who is the special trade counsel for the American Mushroom Institute. Both of these statements, I believe, accurately reflect the industry's long battle to obtain the relief and justice they are entitled.

I urge my colleagues to closely read these fine statements.

REMARKS OF THOMAS DICECCO, JR., PRESIDENT, OXFORD CORPORATION, MUSHROOM DAY, SEPTEMBER 16, 1980

On behalf of the American Mushroom Institute, I welcome you to the Annual National Mushroom Day Celebration. We wish to express our deepest appreciation for your past efforts in allowing a voice from our industry to be heard in Washington.

The serious injury caused by increased imports of Taiwan, Korea, Hong Kong, and most recently, Mainland China, has reached such a level that in the past seven years, one-third of the U.S. mushroom canners had to close down. For the past several months, the return to mushroom growers for their crops have been about 25 to 50 percent under their costs. Imported canned mushrooms have reached 56 percent of the total U.S. consumption. Unemployment and operating losses are rapidly increasing.

The AMI, on June 9, 1980, appeared before the International Trade Commission and requested relief from the market disruption caused by the Far Eastern imports. The ITC unanimously decided that imports had caused serious injury to our industry and recommended various methods of relief to provide an adjustment period for us. The ITC recommendations of a 5-year or 3-year quota are outlined in the brochure you have received today.

Those recommendations now rest before the Trade Policy Staff Committee who shall soon forward its advice to the President.

We ask your assistance to request the TPSC recommend to President Carter that the ITC finding of injury be accepted and the remedy of a quota be proclaimed.

We ask that you join our appeal to the White House by endorsing Congressman Schulze's letter to President Carter to approve this quota to provide the mushroom industry with the adjustment period we so direly need.

Now, we have not sat idly by during this time of devastation by imports. There have been significant improvements in productivity in both mushroom growing and canning. In ten years time there has been a 25 percent in yield per square foot achieved by growers and a 45 percent increase in output per cannery worker. Further improvements have been provided by continuous research and development which we cannot afford to implement without import relief.

The ITC has monitored the mushroom industry for years. They have determined that the injury is serious; they have determined that a quota would permit our adjustment to imports. We believe that given a period of restrained imports we can adjust; we can become competitive through consolidation of small operations and better marketing techniques. The Congress in passing the Trade Act specifically provided industries be given such an opportunity. Our request is that you urge the President that it is in the national interest to proclaim the quota limitations recommended by the ITC.

REMARKS OF LEWE B. MARTIN, SPECIAL TRADE COUNSEL FOR AMERICAN MUSHROOM INSTITUTE, MUSHROOM DAY, SEPTEMBER 16, 1980

May I briefly describe the effects the operation of our trade agreements program has had upon the U.S. mushroom industry.

The President, using his delegated authority under the Trade Agreements Acts entered into negotiations with France in 1948, 1951 and 1962 to reduce the duty on canned mushrooms. The duties on canned mushrooms imported into the three major world markets today are 13.1 percent in the U.S.; 20 percent in Canada and 23 percent in West Germany.

Instead of these duty reductions benefitting France they stimulated the creation of mushroom exports industries in the Far Eastern countries of Taiwan and Korea. As to Taiwan, the International Trade Commission (ITC) reported to the President in 1965 that "The U.S. Agency for International Development provided assistance to the Taiwanese mushroom industry in the early 1960's in the form of grants and loans. These funds were used to develop mushroom growing and canning procedures. AID was in the process of giving such assistance to develop a mushroom industry in Korea but stopped when Senators Scott and Schweiker called to their attention the fact that increasing imports from Taiwan were already injuring the U.S. industry.

In this regard, the U.S. industry has petitioned the ITC three times for relief under the escape clause of the Trade Act. In 1977 and 1980 the Commission found that increased imports had caused serious injury to the domestic industry and recommended that the President proclaim tariff relief. The most recent recommendation is for quantitative limitations.

Domestic industry over the years has urged Congress to include a provision in the Trade Acts that such recommendations of relief be mandatory on the President. Congress in its wisdom has not only continued to give the President discretion in such matters but has included seven new criteria to be considered by the President in making his determination as to whether to provide import relief:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States' market is a focal point for exports of such articles by reason of restraints on exports of such articles to, or on imports of such articles into, third world country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were not provided.

The President has delegated the responsibility for investigating these criteria to Committees in the Office of the U.S. Trade Representative specifically the Trade Policy Staff Committee and the Trade Policy Review Group.

As to the extent to which the United States is the focal point of exports because of restrictions in other markets—the EEC has restricted imports of canned mushrooms since 1975 by a combination of a 23 percent ad val tariff and import licensing systems. These EEC quota limitations start as soon as third country shipments come close to the 30 percent mark of total imports. China has been the main beneficiary of this program for in 1979 that country was given licenses for 30 percent and Taiwan and Korea were excluded. Mushroom indus-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

tries in France and the Netherlands supplied the other 70 percent.

Not only are Taiwanese and Korean mushrooms programmed for sale in the EEC being diverted to the U.S. but large quantities have been exported from China to the U.S. following granting of lower duties to that country in February 1980 under the Most Favored Nation provision of our trade laws.

As a result, imports in the year July 1, 1979 to June 30, 1980 were 114 million pounds which impacted 56 percent on U.S. consumption.

U.S. escape clause legislation was modeled after Article XIX of GATT, the General Agreement on Tariffs and Trade which provides for member countries imposing import restrictions when increased imports injure a domestic industry. That language stated that the remedy could be in force to the extent and for such time as may be necessary to prevent or remedy such injury. Please note that the Safeguards Code proposed during the Tokyo Round negotiations was not accepted by the negotiating parties, so the international accord on this matter is still Article XIX of GATT. Congress in enacting the Trade Act of 1974 provided that any import relief proclaimed under our escape clause, Section 201, shall terminate in five years and that the relief be phased down during that period. Thus, the United States in restricting the time limits of its escape clause relief, is the only major GATT member country which does not exercise its rights under Article XIX of GATT for relief for such time as may be necessary to remedy the injury.

As to the probable effectiveness of the import relief recommended by the ITC both programs (five years vs. three years) would restore a substantial percentage of the market to domestic mushroom canners. The five year recommendation of Commissioner Moore, however, would have the greatest chance of promoting adjustment. Particularly significant is Commissioner Moore's statement, "that a quota set at this level (78 million pounds per marketing year) must be in effect for at least two years in order for the industry to begin to adjust to the injury it has already experienced.

The message to us is clear that we must go forward from this Mushroom Day and convince the President that he should agree with the statement of three International Trade Commission members, "Thus we have determined that the domestic industry producing canned mushrooms is entitled to relief."●

IN SUPPORT OF H.R. 85 AND H.R. 7020

HON. ED BETHUNE

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. BETHUNE. Mr. Speaker, I will be brief, but I would like to take a moment to express my strong support for the concepts within H.R. 85, the oil and hazardous substance spill bill, and H.R. 7020, the abandoned hazardous waste sites bill.

These bills result from 2 years of careful study, drafting, and compromise. During that time, the need for a responsible policy for dealing with the estimated 34.4 million metric tons of hazardous industrial waste became very evident. We are all familiar with the Love Canal and the "Valley of the Drums." These are only two instances among many that have attracted national attention. I guess one really doesn't understand the depth of a problem until it happens close to home. My awareness of the chemical waste problem grew when water contaminated with deadly dioxins—which some chemical experts have claimed is one of the most deadly chemical compounds ever produced—were discovered at a hazardous substance site near Jacksonville, Ark., at the Vertac Corp. plant.

I am very pleased by the responsiveness of this Congress and the many groups who have cooperated closely with us, to put together this sorely needed legislation.

I had hoped to deliver these remarks during today's debate, but I had to leave the floor to return to my district because of the unfortunate explosion of a Titan II installation. Had I been in attendance, I would have participated in the debate and argued for the legislation. I would have voted "aye" on H.R. 85 and it is my intention to support H.R. 7020 next week.●

PENINSULA ORAL SCHOOL

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. MINETA. Mr. Speaker, it gives me great pleasure to rise today to honor one of the San Francisco Bay Area's and Santa Clara County's leading research and education establishments for deaf children, the Peninsula Oral School for the Deaf.

This year, Peninsula Oral School celebrates its 10th year of research and education of deaf children. In recognition of this milestone and the continued need for community support, Anastasia's Athletic Club in Los Gatos is conducting a fundraising event on behalf of the school on September 27, 1980.

Through the efforts of Peninsula Oral School, many deaf children have benefited greatly from formal class training, private tutorial sessions, and improved methods of education and amplification. In addition, Peninsula Oral School's techniques of cognitive development and residual hearing have resulted in the Program of the Year Award from the Alexander Graham Bell Association. The school's materials are requested by other schools from all over the world.

I would like to take this opportunity to ask my colleagues in the House of Representatives to join me in commending Peninsula Oral School for the Deaf and its director, Ms. Leahea Grammatico, for their achievements and wish them continued success in the future.●

JAPANESE AUTO IMPORTS

HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. BLANCHARD. Mr. Speaker, the number of Japanese auto imports in this country continues to grow while some 300,000 U.S. autoworkers and thousands more workers in related industries are on indefinite layoff. Although there are several reasons for the problems of the American auto industry, certainly one factor is the uncontrolled growth of auto exports from Japan to the United States.

Recently, I had the opportunity to testify before the House Subcommittee on Asian and Pacific Affairs on a bill I am cosponsoring, House Concurrent Resolution 363. The bill calls upon the President to begin negotiating an agreement with the Japanese to temporarily restrain the amount of cars that they are exporting to the United States. The following is the text of my testimony:

STATEMENT OF CONGRESSMAN JAMES J. BLANCHARD

Mr. Chairman, I appreciate the opportunity to testify on the issue of U.S. Japanese trade relations, specifically, on House Concurrent Resolution 363 of which I am a cosponsor. I believe that the various issues involving U.S.-Japanese economic relations have crucial long term as well as short term significance.

Japanese auto imports and their effect on the American auto industry have become a controversial and much discussed topic. As is frequently the case when a particular segment of American society is directly affected by a problem, issues become cast in simplistic "us versus them" terms. So it is said that the Japanese are responsible for the economic downturn in our domestic auto industry, or conversely, that the U.S. auto industry can only blame itself and its own poor management for the current slump in auto sales. Unfortunately, the issue is not that simple, and I am concerned that both the important questions and the need for action are being buried by a barrage of slogans that have polarized, politicized, and regionalized this issue.

The fact is, trade relations with the Japanese and the health of the American auto industry are matters of national importance. There is no question about the vital role that the American automobile industry plays in our national security. It drives and sustains our basic industries such as aluminum, rubber, steel, etc. There is no question about the impact that the auto industry has on the number of available jobs in this country. Various estimates calculate that one out of six jobs directly and indirectly are related to the auto industry. And there is no question about the need to maintain a close and cooperative relationship with our Japanese allies. They are our most important ally in the North Pacific.

That is why I think that House Concurrent Resolution 363, or something similar to it, represents the most workable and effective course of action that we can take to solve the Japanese trade problem. It merely calls upon the President to begin negotiating a temporary restraint in the exportation of automobiles to the United States. Needless to say, this is far preferable to legislatively mandated quotas or restrictions.

The problem, as you know, is that American companies are not yet equipped to produce enough fuel efficient cars to compete fully with the Japanese. The major reason is the radical shift in the allocation and pricing of oil from a loose market to a strict cartel and the eventual decision in this country to begin decontrolling the price of oil. The U.S. auto companies are reaping windfall losses for the same reason that the U.S. oil companies are reaping windfall profits. While there is plenty of blame for the current situation to go around, it is now clear that U.S. auto companies are investing many billions of dollars and moving as quickly as possible to retool plants for the production of new fuel efficient cars. But most industry analysts believe that there will be at least a two to three year period of transition before our industry is geared up to effectively take on the Japanese.

Increasingly, the perception, if not the reality, is that the Japanese are trying to take advantage of this transition period in the American industry by producing more cars than ever before for export to the United States. Japan has pursued a conscious government policy to cultivate and develop their own auto industry over a period of years, with substantial government assistance and cooperation. In just two years the Japanese share of the U.S. market has increased from 12 to 20 percent, and indications are that the Japanese are planning to further expand their production over the course of the next few years, with the U.S. market serving as their exclusive target. The Japanese have encountered trade restrictions in virtually every other country in the world where they currently send auto exports, and they have been willing to work out agreements with those countries on trade restrictions. They have now turned to the massive and especially vulnerable American market during this time of rebuilding by our domestic manufacture to step up their export sales. Japanese workers are now working overtime to produce greater numbers of cars for export to the U.S. while, as you know, one third of U.S. auto workers are on lay off.

In addition to the obvious short term problems facing our domestic auto industry, the impact of the current Japanese auto trade problem could become more far-reaching in terms of both economic and foreign policy in the long run.

Allowing the Japanese free reign during our industry's current transition period could inflict permanent, or at least long lasting damage on the American auto industry, and in turn, on the American economy. Of course, we all know that the purchase of a car is the second largest investment that most people make in their lives. In many cases the purchase of a particular company's product becomes traditionalized by people or by whole families. I am sure you are familiar with the common phenomenon of the family who over generations has preferred one particular car manufacturer over another. Historically that has always been a major factor that influences the choice of what kind of car a person buys—and what his sons and daughters will buy as well. This is something which is important to remember when considering the long term impact of allowing the Japanese to gain the foothold they are after in our market. Certainly our companies will be able to more effectively compete in three years, if they can stay alive that long in some cases. But even then, Japan's head start will leave our companies at a marked disadvantage, if not in a permanently weakened condition.

This will weaken our national security. This will weaken our job market. And this will substantially increase joblessness and the cost of welfare.

It is also important to realize that growing resentment for Japanese trade policies could become a threat to overall relations with Japan if people continue to perceive that the Japanese have some responsibility for the level of unemployment in the U.S. auto industry. This will not only weaken American attitudes toward alliances with other countries, but also toward assistance to our friends around the world. Some may argue, in the short run, there could be some energy savings with more Japanese cars on our highways, and that intense Japanese competition will help keep prices lower. But I do not believe that people are willing to trade off the long term benefits of a viable healthy domestic auto industry, employing directly or indirectly one out of every six people in this country, for short term energy savings that might result from more Japanese cars in the American market. And while the Japanese have been helpful to us on the international front, their efforts will ring hollow in the minds of thousands of Americans who believe that they have permanently lost their jobs as a result of the Japanese taking unfair advantage of the U.S. market.

We cannot allow short term, short-sighted considerations, however valid, to result in: permanent damage being done to a vital American industry, the possible loss of thousands of American jobs, and the possibility of damaged future relations with an important American ally in the Western Pacific.

It is my understanding that the President could act now to seek a resolution of this problem through a negotiated agreement with the Japanese. We have received some mixed signals from the Administration regarding the possibility of seeking a temporary restraint of exports agreement with the Japanese.

First the Administration indicated that any such negotiations with the Japanese would result in infractions of U.S. antitrust laws. Then, when legislation was introduced in Congress to change those laws to make it possible for such action to take place, that legislation was referred to by the Administration to substantiate their argument that there was in fact a problem with antitrust laws.

The purpose of House Concurrent Resolution 363 is to encourage the President to take action now through administrative means rather than seeking to change long established antitrust laws that have questionable relevance to his ability to address this problem. Besides, we need to act now, not in a few months or a few years. Failure to act will not only cause greater economic harm in the short run but could result in far more disastrous long term consequences. The strength of economic recovery in the domestic auto industry may well depend on some limitation of Japanese imports into the United States. Just as importantly, however, the long term alliance between the United States and Japan will weaken if not be undermined by a failure to amiably resolve this important problem.●

TRIBUTE TO HON. CLAUDE PEPPER

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. PANETTA. Mr. Speaker, it is a great pleasure to be able to pay tribute to CLAUDE PEPPER on the occasion of his 80th birthday.

CLAUDE, in his long career in both the House and Senate, has always fought to maintain the Federal Government as a strong, compassionate force in our society. Through victory and defeat, he has steadfastly worked to improve services for people, and his influence has been immense.

In addition, he has provided this body with a warmth and humor that are too often lacking in our deliberations. For this alone, he has been invaluable.

Mr. Speaker, I am sure my colleagues will unanimously agree with me in my hope that CLAUDE PEPPER is in this Chamber 10 years from now so that we can celebrate his 90th birthday. Surely he will continue to be as important to us then as he is now.●

PERSONAL EXPLANATION

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. FISH. Mr. Speaker, I was unable to be present for rollcall votes Nos. 530, 531, 532, and 534 on Tuesday, September 9, 1980, as I had left for New York late in the afternoon to vote in the Republican primary. The following is an explanation of how I would have voted on those measures.

Rollcall No. 530, the Eckhardt substitute to the Staggers amendment to H.R. 7235, the Staggers Rail Act of 1980. The measure failed by a vote of 83-296. Had I been present, I would have voted against the measure.

Rollcall No. 531, the Staggers amendment to H.R. 7235. The measure passed by a vote of 369-6. Had I been present, I would have voted in favor of the measure.

Rollcall No. 533, the Albosta amendment to H.R. 7235. The measure failed by a vote of 45-310. Had I been present, I would have voted against the measure.

Rollcall No. 534, final passage of H.R. 7235. The measure passed by a vote of 337-20. Had I been present, I would have voted for the measure.

Mr. Speaker, I was also unavoidably absent on Tuesday, September 16 due to illness. There were nine rollcall votes on Tuesday. The following is an explanation of how I would have voted on those measures.

Rollcall No. 541, passage of H.R. 7825, Ice Age National Scenic Trail.

The measure passed by a vote of 397-3. Had I been present, I would have voted for the measure.

Rollcall No. 542, passage of H.R. 7084, Pre-Trial Services Act. The measure was not passed under suspension of the rules, receiving a favorable vote of 243-155. Had I been present, I would have voted for the measure.

Rollcall No. 543, passage under suspension of the rules of H.R. 2514, Treasury International Affairs Authorization. The measure was not passed under suspension, receiving a favorable vote of 238-164. Had I been present, I would have voted for the measure.

Rollcall No. 544, the Addabbo substitute amendment to the White amendment to H.R. 8105, Defense Appropriations, to increase Army personnel and operations for recruitment by $51 million. The measure failed by a vote of 66-329. Had I been present, I would have voted against the measure.

Rollcall No. 545, the White amendment to H.R. 8105 to increase Army maintenance, operations, and personnel for recruitment by $100 million. The measure passed by a vote of 390-13. Had I been present, I would have voted for the measure.

Rollcall No. 546, the Moffett amendment to H.R. 8105 to prohibit the use of funds for production of binary weapons. The amendment failed by a vote of 125-276. Had I been present, I would have voted against the measure.

Rollcall No. 547, the Simon amendment to H.R. 8105 to prohibit use of funds for a basing mode for the MX missile until April 1981. The measure failed by a vote of 141-256. Had I been present, I would have voted against the measure.

Rollcall No. 548, the Addabbo amendment to H.R. 8105 to strike the Maybank amendment provisions of the legislation. The measure passed by a vote of 220-179. Had I been present, I would have voted for the measure.

Rollcall No. 549, final passage of H.R. 8105, Defense Appropriations for 1981. The measure passed by a vote of 351-42. Had I been present, I would have voted for the measure.●

GESMO: DEBATE THE ISSUE

HON. DAN MARRIOTT

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. MARRIOTT. Mr. Speaker, on September 7, 1980, the Washington Post characterized the congressional efforts to require NRC to revive GESMO—generic environmental statement on mixed oxide fuel. The Post editorial does not do justice to the issue or to the intent of the Congress in this matter.

During the Interior Committee consideration of the Nuclear Regulatory Commission authorization last April, I introduced an amendment that would have required the NRC to resume and complete the GESMO proceedings. The amendment was hotly debated and in the end was not accepted in our committee. The bipartisan support that was evidenced in both the voting and debate is expressed in the supplemental views filed with the committee report. I commend my colleagues in the Commerce Committee for continuing the debate on this important issue.

The supplemental views filed in our committee report provide a useful and factual base for consideration of the GESMO issue. I urge my colleagues to read it.●

DETROIT'S JOB CORPS: A TRAINING SUCCESS

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. CONYERS. Mr. Speaker, one of the effective job training programs during the past decade and more has been the Job Corps, which was created in 1964 to provide vocational training and new opportunities to disadvantaged youths. Tens of thousands of young people, school dropouts, and troubled youth, have participated over the years, and the record shows a remarkable accomplishment as measured by the minimal attrition rate and high degree of success in placing graduates in jobs.

It is to President Carter's credit that the administration has vigorously supported the Job Corps program and its expansion.

It is a particular source of pride that the Job Corps program in the city of Detroit has evolved into one of the most successful programs in the Nation. This could not have taken place without the strong commitment of Mayor Coleman Young's administration and the fine leadership of Cato Howard, the Detroit center's director during the past 3 years. A new innovation—to create a support organization for the center among the more than 1,500 Job Corps veterans in the Detroit area—will render Detroit's Job Corps program even stronger in the future.

My colleagues may not be aware of the fact that of all the urban areas in the country, Detroit is the hardest hit by unemployment and economic decline as a result of the current recession. While its overall jobless rate was 18.3 percent in August, a third of the city's black labor force was unemployed and close to two-thirds of black teenagers were out of work. The tragedy of this situation calls for the most intensive efforts possible to find and create the most effective programs for the job training and placement of disadvantaged youth. The Job Corps is a model for this effort, and as one Member of Congress my hope is that it will be greatly expanded in the coming years.

Robert Emmers, a staff writer with the Detroit Free Press, wrote an excellent article on the success of Detroit's Job Corps program that appeared in Free Press on September 10. I recommend that my colleagues read the following article and consider the conditions that have made the Detroit program so highly successful:

REBORN JOB CORPS TAPS ALUMNI

(By Robert H. Emmers)

Horace Jackson leans back so that the Golden Gloves T-shirt stretches tight across his chest. He did a little boxing once. He also, he will tell you smiling, was raised around Twelfth Street, (now Rosa Parks Blvd.) "one of the worst sections in Detroit."

That was eight, nine years ago. Now he is 24. Back then he hung around, ran around, tried to go to school.

"And I tried to do good in school," he says, waving his huge hands, nodding his head, "but there always seemed to be a gap between the teachers and the students. The teachers just didn't seem to make that strong an effort."

He shakes his head. Well, whatever the reason, he dropped out of school and went to work. Then something happened. It might have been boredom, it might have been lack of money, it might have been . . .

Jackson shakes his head again. "I just somehow found myself at a point where I wanted to do something," he says.

What Jackson did was join the federal government's Job Corps. "It was a place to live," he says slowly, as if the thought is just preceding the word. "And it was a place to learn, to learn. You just can't beat that."

He pauses, then says, "It was a second opportunity that you only get once and I took it. I took it and I'm proud and I can't think of anything I'd rather have done."

The Job Corps, the last intact remnant of Lyndon Johnson's Great Society, is alive and recently returned to good health, its budget swollen, new training centers opening up.

Now, buoyed by its resurrection, the Job Corps hopes to take advantage of people like Jackson and hopes to get an even bigger return on its investment.

By the end of the year, officials plan to have established Job Corps alumni groups in 10 urban centers across the country, including Detroit. The idea, officials say, is to tap the so-far untapped resources of the thousands of men and women who have graduated from the Job Corps since the agency was established in 1964 to provide vocational training for underprivileged youths.

"We want the people who made it through to get involved with the kids now in the program and show them what can be done with their lives," Richard Jaffe, director of the agency, said from Washington, D.C. "We want them to lend a hand and we want to give them a sense of camaraderie as well."

In practical terms, said Ron Abernathy, director of the national alumni organization, local chapters will provide speakers to schools and churches to reach potential Job Corps recruits and help organize recreation and other activities at the centers. The volunteers, who will raise their own operating funds, also will provide an information network on job leads and employment services for members, he added.

The Detroit chapter is to be chartered at a dinner Wednesday and hopes to draw on what officials estimate is a pool of about 1,500 former corps members in the area.

Local chapter activities haven't been set yet, said Cynthia Ferguson-Reid, placement supervisor at the Detroit center who is helping organize the local chapter. But they will probably include establishing a job bank and holding seminars on leadership and job hunting.

Not incidentally, corps officials also hope the alumni association will prove to be a public relations boon to the agency. "One thing we want to show is that it's been worth it," Jaffe said.

There have been times when the Job Corps has needed such help.

As established by Johnson, the corps had a budget of more than $300 million, supporting 123 centers across the country. But President Nixon frustrated by Congress in his attempts to dismantle the program, cut the agency's budget about in half. By 1976, the Job Corps had a budget of only $175 million. That supported 60 centers but, because of inflation and spiraling fuel costs, allowed no expansion and only minimal replacement of equipment and staff.

President Carter, however, decided to resuscitate the program and bring it back to its original size. Now, the corps' budget of $600 million supports 90 centers (with 110 planned for next year) and the training of nearly 40,000 members.

Controversy has dogged the Job Corps along with budget problems. In the early years some centers were plagued with discipline problems and sporadic outbreaks of violence. In addition, the cost to train each corps member was at one time as high as $10,000 a year. Critics, among them the federal General Accounting Office, often cited that figure along with a high dropout rate and uneven record of finding jobs for graduates.

The critics also pointed out that while corps members were overwhelmingly black, the staffs of many centers were mostly white.

Now, however, the Job Corps seems to have overcome many of its problems. And those that it hasn't eliminated it has at least learned to live with.

The Detroit center provides a case in point. Operated by the Singer Corp. under a contract with the Labor Department, it has an average of 305 students enrolled, some in a residential program. The center budget is $2.6-million a year.

Discipline problems have almost disappeared and, according to center officials, the dropout rate is only 19 percent compared to a figure as high as 30 percent in the program's early years, while the rate of placing graduates is 90 percent. Said Cato Howard, who has been center director three years: "The change is due to the ability of the staff to better run the programs because they are now veterans," Howard said. "Also the students don't give us unacceptable behaviour because they understand we won't put up with it."

Still, Howard said, the student population of the center remains 98 percent black. "But the staff is 80 percent black. Besides more black kids are unemployed and out of school here than any other group. You also have to consider our location; it's a black area.

"I might like to change that preponderance of blacks to prevent us from operating in a vacuum, but I don't see a realistic way of doing that. So we do the best we can. And we remember that it's the students who are important."

"It's the Corps members who have to be No. 1," Horace Jackson says. "They're here to try to make it and you've got to show them you think they can."

Jackson is standing in the lobby of the Job Corps Center, a former YMCA on E. Jefferson Avenue. He is a resident advisor at the center. "My job is to make sure the corps members stay cool," he says.

There are bars across the windows all around the building. The main door is locked against non-students who might come in and cause trouble, and a visitor must buzz for entrance. In the lobby a security guard keeps watch. (But there are few real problems, Jackson says. "I'd say 85 percent of the students are cool. Sometimes you got to have a little fight but nobody's cutting each other. They'd be losing too much if they fought. They know they got too much to lose.")

Beyond the appearance of security in the lobby, however, the center where Jackson works seems a school like any other. It offers vocational courses in auto mechanics, building maintenance, welding, nursing aides and clerical work. A special class introduces students to the realities of the job world. Academic courses are available for students who want to complete a high school diploma, and some college work is offered. To be admitted to the center for a two-year program, students must be between 16 and 21 and not in school. They also must meet income requirements (a maximum income of $6,200 a year for a family of four). Students are paid a living allowance that can be as much as $100 a month.

Discipline is tight. There is a curfew. No drugs or fights are allowed. Students can be fined for minor infractions; for serious rule-breaking they can be kicked out of the program. Still, says Jackson, the rules are mostly for the "bad heads" who are few. And, he adds, in no way is discipline so tight as when he first entered Job Corps. At that time many centers were at military installations and many staff members were former military men.

"It has been changing," Jackson says. "Staff people seem to be looser, seem to have a better grip on what they're doing; that comes from experience."

He looks forward to the alumni association for that reason, as a way to return even more practical experience where it can be most useful, in the training centers.

Jackson looks out over the lobby, crowded with students heading for their next class. "Still," he adds, "some things don't change, the students and why they're here."

In the welding shop students are waiting for the oxygen to arrive so they can get to work. Kevin Arnold, who is 17, who "skipped school and just really messed up and then dropped out," stands there looking at the mobile hanging from the ceiling, a sculpture welded from bits of discarded metal.

He wants to get his diploma and go to college. "But," he says, looking at the sculpture, "I like welding, too. I like making things."

He likes going to school here, Arnold says, because he gets that living allowance check.

Then his face grows serious. "But I had messed up and, when I realized what I needed to do in school, it was too late. Here you can work at your own pace, and the teachers take time to work with you."

He adds: "It was a second opportunity that maybe wouldn't come around again. You realize that this is your last chance for real.

"A last chance and I'm glad I took it."●

UNIVERSITY OF DELAWARE SOLAR BREAKTHROUGH

HON. THOMAS B. EVANS, JR.

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. EVANS of Delaware. Mr. Speaker, as one of the earliest supporters of the Solar and Energy Conservation Bank established under the terms of the historic Energy Security Act of 1980, I am pleased to announce that a major advance in thin-film solar cell technology has been achieved by the University of Delaware. Solar cells are solid state devices that convert sunlight directly into electricity. By developing a solar cell with a conversion efficiency of 10.2 percent in actual sunlight testing, the Institute of Energy Conversion at the University of Delaware has surpassed a key goal of the national photovoltaic program in the U.S. Department of Energy. A 10-percent conversion efficiency has long been considered the minimum requirement for thin-film solar cells to become economically feasible. This important breakthrough significantly increases the possibilities for harnessing the light of the Sun to produce electricity and move the United States toward greater energy self-sufficiency.●

HAZARDOUS WASTE LEGISLATION

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. VENTO. Mr. Speaker, I would like to take this opportunity to comment on the superfund legislation before us today, H.R. 7020 and H.R. 85. I am in full support of legislation designed to attack this major environmental problem. It is my belief that these bills offer important contributions in the long battle ahead to clean up our environment due to past, present, and future oil spills and hazardous waste disposal sites.

There are nearly 50,000 different chemicals on the market to date and 35,000 of those used have been classified by the Environmental Protection Agency as definitely or potentially hazardous to human health. Recently in the Surgeon General's report to the Senate, he stated that "The public health risk associated with toxic chemicals is increasing, and will continue to do so until we are successful in identifying chemicals which are highly toxic and controlling the introduction of these chemicals into our environment." It has been estimated by the EPA that more than 77 billion pounds of hazardous chemical wastes are generated a year by the United States and only 10 percent of these wastes are being properly disposed of in a safe manner.

It is impossible to find out exactly how many of the toxic waste dumps really exist. Thus far, we have had to rely upon the detection of some of these sites through explosions, floods that uncover rusting, leaking drums, or complaints of strange, unidentifiable odors in specific areas. The EPA estimates that there are at least 50,000 hazardous wastes sites where toxic wastes have been dumped.

Our ground water supplies are becoming more contaminated, and with approximately 50 percent of Americans relying on ground water rather than surface water for their drinking supply we must act as quickly as possible to rectify this dangerous situation.

The widely publicized Love Canal incident and several New Jersey incidents are not the only evidence of hazardous waste contamination. In Minnesota alone, there are 10 known hazardous waste sites, including one in St. Paul, several potential hazardous waste sites, and who knows how many unknown, unidentified illegal sites that will remain undetected until it is too late to undo the damage. An additional threat in my district is the coal tar residues that have drained into an aquifer under the metropolitan area of Minneapolis and St. Paul, thus threatening the water supply for the Twin Cities area residents.

This legislation is extremely necessary and should go into effect as soon as possible. We have many definite problems before us. Our environment is being threatened by unknown and uncontrolled chemicals; our waterways, drinking water supplies, the air we breathe, all are being contaminated more and more each day. These problems need immediate action. It is a tough burden to bear but must be shared by the Federal and State Government and private industry together. The battle to save our environment, our health and our lives is just beginning.

I urge my colleagues to join me in supporting this necessary legislation to combat the long-term problems before us.●

H.R. 7112

HON. LEO C. ZEFERETTI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. ZEFERETTI. Mr. Speaker, scheduled for action on the House floor next week will be H.R. 7112, State and Local Assistance Act Amendments of 1980. This is a major piece of legislation and one of great importance to many of my fellow colleagues.

Since I expect a lively debate—and I understand that several Members have expressed a desire to improve this measure through the amendment process—I felt I should remind these Members of the rule adopted by the House Rules Committee earlier this week.

The rule states that no amendment to the bill or to the substitute will be in order except those printed in the CONGRESSIONAL RECORD. There is no time constraint on when amendments need appear in the RECORD, only that they appear prior to consideration of the bill.

I hope you find this information useful.●

REPRESENTATIVE PEYSER PRAISES GRAIN EMBARGO IN CHRISTIAN SCIENCE MONITOR

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. DRINAN. Mr. Speaker, the value of the grain embargo against the Soviet Union has been hotly contested in the Congress in recent months. Some have questioned the embargo's true impact on Soviet grain supplies. Others have criticized its effect on American farmers.

In a recent commentary in the Christian Science Monitor, our colleague from New York, PETER PEYSER, has eloquently and convincingly outlined the reasons for continuing the boycott. Bucking criticism from both parties for his forthright stand, Representative PEYSER has described the hardships that the embargo has inflicted on Soviet food supplies.

Citing the recent rebellion in Poland over rising food prices and other economic difficulties, Representative PEYSER suggests that someday similar demands could be made by Soviet workers.

I commend the article, which appeared in the Wednesday, September 17, 1980, edition of the Christian Science Monitor, to my colleagues.

The article follows:

LET'S KEEP THE GRAIN EMBARGO

(By PETER A. PEYSER)

During the past month there have been attempts in Congress to lift the grain embargo imposed against the Soviet Union. The embargo was originally imposed to register United States concern and disgust with the Soviets over their invasion of Afghanistan.

I firmly believe that one of the reasons that the Soviets did not move in with force against the strikers in Poland was because we stood by our guns on the embargo and other measures we had taken against the Soviets.

The claim has been made by members of the agriculture bloc, both Republicans and Democrats, that the embargo is of little value and that we really should lift it so that American farmers can continue to reap substantial profits from the sale of wheat.

Prominent members of each party, including Ronald Reagan on the Republican side and Sen. George McGovern on the Democratic, have espoused this view.

It should be exposed for the sheer hypocrisy it is.

Is it not hypocrisy to impose a grain embargo, halt the sale of technical equipment, take away fishing rights, and boycott the Olympics, only to say a few months later: "Well, listen, things are getting pretty tough on the farm and we need a little more money, so we are going to waive the biggest weapon we have—the grain embargo?"

Let's make no mistake about it; the grain embargo has caused the Russians severe hardship. They can no longer merely place their order for 17 million tons of American grain and buy it at a low price. Now they must buy whatever they can from many different sources at higher prices.

The Soviets have a long-standing problem with food shortage. They can't get enough grain and other foodstuffs to feed their people, much less their animals.

As a result, Soviet cattle production has been cut back because of lack of feed. Consequently, meat prices have gone up drastically. We have seen in recent developments in Poland the social effects of rising food prices. The strike of 100,000 workers there has been attributed largely to the rise in meat prices in the country.

The communist-ruled Poles finally stood up and shouted.

It might someday happen in the Soviet Union. But not if Congress doesn't have the courage to maintain our clear message to the Soviets that aggression will be met with retribution. If we remove this embargo now, at the whim of the farm bloc, we will forfeit our credibility among our allies.

There is another factor to be considered here. The House of Representatives a few months ago voted in favor of registration for the draft, a move that will involve millions of young men and could potentially lead to the necessity of them going into the service and having to fight to defend our country against the Soviet Union.

As I put it to my colleagues in the House of Representatives during debate on lifting the embargo, how can we call on our young men to make this kind of sacrifice, and then, out of the other side of our mouths, say it is really business as usual with the communists?

As I stood outside the chamber of the House a month ago preparing to vote on this issue, two young men, who evidently had been listening to the debate, came over to me and said, "You know, we both registered yesterday, and we want to know if you people are kidding with what you are talking about and doing on the floor"?

The hypocrisy of lifting the grain embargo is self-evident. The President has shown courage in not giving in to political pressures from the farm belt in an election year. A slim majority of us in the Congress have managed to defeat these pressures up to now and it is my hope that the American public will urge the Congress and the President not to give in on this issue.

It would be a tragic day when we would be willing to equate young American lives with the economics of a special-interest group.●

COMMUNICATIONS WORKERS INCLUDE NORTHERN IRELAND IN ANNUAL FOREIGN POLICY STATEMENT

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. BIAGGI. Mr. Speaker, as chairman of the ad hoc Congressional Committee for Irish Affairs, which now enjoys the membership of 133 Members of Congress, I am always glad to

learn of the activities of concerned citizens on behalf of peace and justice in Northern Ireland. Their work is always an important component to our own.

The 42d Annual Convention of the Communications Workers of America, AFL-CIO, was held in Los Angeles. At that convention, attended by 2,500 delegates, a resolution was passed and included in the foreign policy statement of the convention which states that the United States has a vital role to play in helping to bring peace to Ulster. This statement is consistent with the work of the ad hoc committee, which seeks to bring about a just solution to the people of Northern Ireland.

The Communications Workers is one of the Nation's largest unions, representing more than 625,000 men and women who work for both public and private employers, with 900 locals in 10,000 communities. The president of CWA Local 1116, Mr. Jim Devine, is to be commended for his work in bringing this issue to national attention by having it included in the foreign policy section of the union platform.

At this point, I insert the text of the Northern Ireland plank for the benefit of my colleagues. I hope that it will serve as encouragement for other labor organizations to focus attention on this issue as well:

NORTHERN IRELAND

Although we have addressed this subject in several previous conventions, the problem still exists and the incidents of violence continue to occur daily, affecting all segments of their society and especially the poor in this beautiful but ravaged land. Evidence of human rights violations in the detention centers has come from several reliable sources.

It is our feeling that the United States government can no longer neglect the cause of peace in Northern Ireland merely because the numbers of people involved is small or because their struggle has become embarrassing to the British, a nation which has been our ally in wars and our desired friend in peacetime.

We urge the Administration to make a genuine effort for a peaceful resolution of the difficult problems and to encourage the British government to conscientiously plan and act decisively in order to bring about peace in that troubled land.●

SOUTH KOREAN MILITARY GOVERNMENT ATTEMPTS TO CRUSH OPPOSITION

HON. RICHARD NOLAN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. NOLAN. Mr. Speaker, I am disturbed by the recent news that the military government of South Korea has condemned Kim Dae Jung to death. Kim Dae Jung, leader of South Korea's opposition political party and its nearly successful Presidential candidate in a previous election, opposed the military takeover of his country's government.

The trial and sentencing of Kim Dae Jung make a mockery of the South Korean military government's assertion that it is committed to the ideals of a liberal democracy. Many U.S. citizens, including Bishop Jesse Dewitt, president of the General Board of Global Ministries of the United Methodist Church, are calling upon President Carter to exercise the power of his office to influence the South Korean Government to release Kim Dae Jung and to restore civil liberties.

I wish to share Bishop Dewitt's telegram to President Carter with my colleagues and to add my voice to those expressing concern.

The telegram follows:

[Telegram]

SEPTEMBER 16, 1980.

President JIMMY CARTER,
The White House,
Washington, D.C.

DEAR PRESIDENT CARTER: In my capacity, as president of the General Board of Global Ministries of the United Methodist Church, I have been authorized to convey to you the grave concern of its members for the situation developing in South Korea related to the martial law trial of Kim Dae Jung and 23 others. It is our understanding from press reports and direct word from contacts in Seoul that the prosecution in its final argument demanded the death penalty for Mr. Kim and life imprisonment for the other defendants.

We have also been informed of related developments which are equally disturbing. For example we have heard that the prisoners testified that they had been subjected to weeks of severe beatings while under questioning, suffering broken bones, internal bleeding, and other agonies. They also reported that they had been forced to stand naked for hours while under questioning. They have also been denied adequate legal counsel.

In light of our national involvements in South Korea we strongly urge you to do all within the power of your office to intervene in this situation. A failure to do so will drastically alter the future of United States-Korea relationships and will have a negative effect upon freedom of religion. This has been demonstrated already in the present action of the Korean Government to interfere in the affairs of the churches. For example it has been reported to us that the Korean Government has prevented Chan Kook Kim, elected general secretary of Korean National Council of Churches, from assuming his responsibilities. Your immediate attention to this denial of human rights is prayerfully sought.

Respectfully,

Bishop JESSE DEWITT.●

THE SOFT BUT TREACHEROUS ENERGY PATH

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. WYDLER. Mr. Speaker, we have had a number of claims about the advantages of adopting "the soft energy path" during the past several years of heated debate on energy policy. More recently, there have been an increasing number of objective analyses and serious criticisms of these naive scenarios. One of the more interesting articles about these approaches, which particularly focuses on the philosophy of soft energy proponents, appeared in the Futurist, June 1980 issue. I am including a series of excerpts from the article, "The Soft Energy Path—Where Does It Lead?" by A. David Rossin, which I recommend to my colleagues for a keener appreciation of this energy issue.

THE SOFT ENERGY PATH—WHERE DOES IT LEAD?

DECENTRALIZED ENERGY

One of the greatest threats posed by our energy problems is that they will lead to greater concentrations of political power and more centralized control over people's lives. Hence the concept of decentralized energy is very exciting.

Unfortunately, the proponents of decentralized energy production (the "soft" path) offer a road map that would most likely lead to what they abhor—a society of centralized control. Their road map calls for commitments to phase out conventional methods of supplying electric energy to homes, factories, offices, and farms. The soft path offers instead an array of alternative energy sources, such as solar and wind power, that are said to be benign, environmentally desirable, close to the people, and well-suited to local control by individuals or communities. Some of these alternatives may prove viable, but, according to many of the most vocal proponents of the "soft" path, a crucial part of the strategy is the decreased reliance on transmission lines and power plants, particularly nuclear power plants.

The part of the soft path that is seldom discussed is what might happen if the capability to supply electricity begins to fall short of what people need. If there is not enough to go around, somebody will have to set priorities; and in this event, priorities would not be set by individuals, but by governments—big, centralized government. The real question is whether it is desirable to pursue the decentralization of sources of energy as an absolute goal or to permit the diversity we have now in which anyone who wishes to can use decentralized alternatives. Without sufficient, reliable, centralized electricity, the individual no longer has that choice: the one we take for granted today.

EXAMINING THE SOFT PATH

The problem is that the soft path just might not lead where its proponents claim. There is a serious lack of data on the cost and performance of solar, wind, wood-burning, and other soft-path options, especially on a broad enough scale to show how following this path might affect the need for more electric power plants. Indeed decentralized energy systems are generally discussed in the abstract. Alternatives, almost by definition, are said to be better than what works today. Yet we know little about just how decentralized solar or wind systems would work in cities, large towns, or other locations where they might be called upon to serve large numbers of people. We do not know the environmental impacts, the costs, or the resources required.

DECENTRALIZATION AS A PHILOSOPHY

The other part of Lovins's strategy, seldom examined by the public, is revealed in the following quotation from Soft Energy Paths: "Many who work on energy policy and in other fields have come to believe that in this time of change, energy—perva-

sive, symbolic, strategically central to our way of life—offers the best integrating principle for the wider shifts of policy and perception that we are groping toward." The soft energy path, it seems, involves more than merely changing the way in which energy is produced. It entails, Lovins suggests, "wider shifts of policy and perception"—in short, new concepts not only of energy use, but of society, something like a whole new philosophy for society.

If the debate is about the philosophy (indeed, the ideology) of individual self-sufficiency, rather than costs, risks, and benefits, it is appropriate to explore the concepts of decentralization and self-sufficiency themselves. Like other general approaches, decentralization and self-sufficiency are not universally beneficial. How many Americans, for example, would desire to return to a decentralized system for providing their drinking water? What about sewage treatment? Although few Americans remember it, as recently as 100 years ago some major American cities were without centralized water and sewage systems. The massive effort necessary to create these systems has resulted in incalculable benefits to society, wiping out some of America's most common and deadly diseases. One can hardly conceive of public health authorities, let alone the average person, taking even the slightest chance of a resurgence of typhoid, cholera, and dysentery in order to satisty a philosophical objective.

Furthermore, the promoters of the soft path admit that it would take time to move from a centralized system for producing energy to a decentralized energy society. In the transition period, which is generally conceded to be several decades, the centralized system must be kept around. Almost every residence would require central electricity to back up the solar systems or windmills, and to supply electricity when the sun isn't shining or the wind isn't blowing or when the motors, pumps, or seals need repair and the neighborhood fix-it person can't come. There would still be electric motors, electronic equipment, and electric lights for which no alternate source is available. In New York, Chicago, and other cities where people live in apartments and large commercial buildings are common, the central system would still have to carry most of the load. Moreover, central electric supply would also be essential to supply the tremendous energy needs of the huge industry that would have to be brought into being to manufacture the solar devices and other equipment necessary to make the transition to a soft energy society.

AN ENVIRONMENTAL IMPACT STATEMENT

Before they undertake major construction projects or other large programs, many industries, including those that build conventional power plants and nuclear reactors, must prepare an environmental impact statement. Such a statement must examine the project itself, its effects on the environment, the alternatives, and even the alternative of not proceeding with the project at all. But no such examination has been offered for the soft path, and the people of the U.S. need such an examination if they are seriously to consider soft path policies. No one seems to have answered any of the hard questions yet.

What would happen, for example, if a societal decision were made that no more new, large electric generating plants would be built in the U.S.—either nuclear or coal? Voluntary conservation becomes the national byword, but meanwhile a growing population and the aspirations of people who still hope for a better future for themselves and their children mean growing demands for energy. Whether or not the government has subsidized local solar and wind generators, in a few years there will be gaps in various parts of the nation between the capability of the centralized energy system to supply energy and what is needed to meet the legitimate expectations of individuals, households, communities, and industries. In that event, one traditional political response might well be for the government to take over the generation of electricity and ration it. Then, facing the same realities utilities face now, government would have to build the central generating plants that the various individual utilities were stopped from building because they were "philosophically undesirable."

The cost to every individual would likely be higher because of the delays that forced the crisis. Catch-up building would be necessary instead of prudent and logical planning. Philosophically, the problem is that energy would be supplied by an even bigger and more centralized system, that is, the government, as opposed to local or regional utilities. There might be no time or money for community or neighborhood sources.

IMPACT ON THE FUTURE

If energy supply falls short of demand during the promised transition to the soft energy era, on occasion there would be brownouts or blackouts, and the emergency curtailment of electric supply to avoid lengthy breakdowns. Short-term emergencies are costly, as any New Yorker knows. But the more serious impacts are long-term—and more subtle. Before blackouts and brownouts become widespread, the fact that possible shortages of electricity are coming would be common knowledge among utility experts, urban planners, and many businessmen. And this knowledge would be crucial to new businesses looking for attractive locations to set up shop.

Businesses don't just appear. Any company considering the construction of a new manufacturing plant that would employ a substantial number of people, or a large office building, shopping center, hospital, or housing development, asks some basic questions early. They go to the utility company that serves the area in which they are considering building and ask if they can be assured that electricity will be available at the site both during construction and afterwards to meet their power needs when their plant or shopping center goes into operation. They also want to know if telephone service will be available. They ask the municipality for assurance that water and sewage services will be installed on schedule and at a reasonable cost. They have to know if roads will be built and maintained, and by whom. If they get unsatisfactory answers to one or more of these questions, they will begin looking for a site somewhere else. With it will go the jobs and the benefits that the project was designed to bring.

If they get a lot of negative answers in a lot of different places, they will be receiving a warning that perhaps the market they expected to serve will not be able to buy their products, pay for their services, or get a mortgage for their housing units. Instead of raising more capital and taking more risks, they may decide to stay on the sidelines.

If the time comes when more and more people who would have been the builders and the doers remain on the sidelines because of energy shortages, growth will stagnate and we could enter into what some people remember as a depression. That is a dangerous risk for society to take.

REAL RISKS

There are some people who claim that energy growth and economic growth must be stopped in order to halt ever-increasing environmental problems. The theory is that by halting growth, conservation will become essential, everybody will take only his fair share, and everyone will live happily ever after.

History shows us that things don't work that way. If there is not enough electricity to go around, some decisions will have to be made about who gets priority for the limited amounts that are available. If more than one group wants to build, priorities will have to be established. Who makes these decisions? Decisions could no longer be made on a decentralized, individual basis. They would have to be made centrally. By whom? By big government.

Is that really what the proponents of the soft path have in mind? Is that really what people who are impressed by the promises of decentralized energy supply understand as the potential consequence of taking the soft path? Because if necessary commitments to keep up the centralized energy supply system are foreclosed, and the extravagant promises of decentralized energy are not achieved, these potential consequences become inevitable.

Here is the basic reality: Today we have centralized electric energy supply produced by large utilities. The individual can still make his own decisions about whether or not he wants to buy a new appliance, build a new home that will have electricity in it, or start up his own business and assume that, if he wants to sell something that has to be plugged in, people will be permitted to buy it and use it. He can build his own windmill, his own solar panels, or even buy his own diesel generator and generate his own electricity, if he can afford the fuel for it.

Utilities do not decide who gets electricity and who does not. The state gives them a charter that requires them to provide reliable service to all customers. If this is to be changed, the decision to do so should be made by the elected representatives of the people (the State Legislature), who could order the State Utility Commission to do the allocating. Certainly utility managers should not be the ones making decisions about which users are more deserving than others. But if there is not enough capacity to provide electricity to all those who ask for it, someone will have to make exactly that kind of decision.

TOWARD ENERGY POLICY

When the concept of energy decentralization is discussed, what is it we should really be concerned about? What are the risks if the promises fail? Certainly, some kind of energy rationing, and the centralized government control that rationing implies, would become real possibilities. Under such a system, the threat or reality of acute energy shortages around the country would discourage the individual entrepreneur and curtail individual freedom of choice.

In addition, the restriction of energy supplies could well result in a serious risk of loss of economic growth. Growth has environmental impacts—these are fairly well known—but lack of growth also has impacts on the environment. The risks that accompany both need to be studied carefully and discussed openly, along with the risks that a particular energy policy might push things one way or the other. The environmental impact statement for the soft energy path should be published widely. Then the public will be able to rationally evaluate the risks of a failure to have enough power plants.

Which risk is to be most feared: the network of transmission lines and centralized electric power plants that are commonplace today, or the possibility of centralized control of how each corporation, group, and person uses electricity? A policy or a philosophy that promises to solve energy problems by curtailing centralized power generating systems turns out to be bankrupt on close examination.

Proponents of the soft energy path envision not only an energy system, but a way of life in which large power plants—especially nuclear plants—have no place; and perhaps the fact that the soft energy path is as much a philosophy as a platform of policies helps explain the intense polarization that currently marks the nuclear debate. What the advocates of the soft energy path neglect to point out is that without centralized power plants, including nuclear power plants, the threat of energy allocation grows. And the allocation of energy may well mean not decentralization, but infringement on individual freedom and the ultimate in centralized control of people's lives.●

NATIONAL AGRICULTURE DAY

HON. THOMAS S. FOLEY

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. FOLEY. Mr. Speaker, House approval of House Joint Resolution 560, which proclaims March 19, 1981, as "National Agriculture Day," is a step forward toward an era of better understanding between rural and urban people. This is important for all Americans, because it is only when we appreciate each other's problems and needs that we can deal effectively with those problems and needs.

Every American is affected by agriculture. Obviously we depend on farmers for the food and fiber we must have to support life, but in these times when most people take an adequate food supply for granted, it is useful to remember that the economic health of American agriculture also goes a long way toward determining the quality of life for the rest of the country.

When farmers can earn a fair living in return for their labor and investment, they can continue the strides toward greater efficiency which give Americans the world's best diet at what is—in real terms—a very low cost. If farmers are driven out of business because of cycles of low prices, on the other hand, consumers could be faced with cycles of reduced supplies and dramatically high food costs.

Many Americans, I believe, already understand that our whole Nation benefits when individual segments of our economy, like agriculture, are able to earn decent and stable returns. But we need to do more to encourage this understanding in a society in which most people do not live on farms and have little direct contact with the producing segment of agriculture. We need to do more to promote both direct people-to-people contact and broader knowledge of the facts of economic life about our domestic food and fiber industries and our vital role as a supplier to much of the rest of the world.

These are some of the reasons why I introduced House Joint Resolution 560, and why I am glad to see it approved in the House with unanimous bipartisan support.

The resolution not only proclaims next March 19 as National Agriculture Day for 1981, it calls on the President to issue a proclamation calling on the people of the Nation to observe the day with appropriate ceremonies.

National Agriculture Day has been celebrated under the leadership of farmers and others in agriculture since 1972. Next year, however, our resolution would—for the first time—provide the added emphasis of official Government recognition of the observance. I hope and believe this will spur increased efforts by the farm, commodity, agribusiness, and other leaders who will be working together on a wide range of activities during the 1981 observance.●

A TRIBUTE TO RAOUL WALLENBERG

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. WEISS. Mr. Speaker, Congressman DODD and I are joined today by several distinguished members of the House Foreign Affairs Committee and other colleagues in resubmitting a concurrent resolution on Raoul Wallenberg.

The new concurrent resolution represents a melding of the two measures which Mr. DODD and I sponsored in the House earlier. A copy of the resolution with the list of cosponsors is printed below.

This version was unanimously approved on September 16 by the Subcommittee on International Organizations under the leadership of Subcommittee Chairman DON BONKER and EDWARD DERWINSKI, the ranking minority member.

The resolution honors Raoul Wallenberg for his outstanding contribution in saving 90,000 Jewish lives from the Nazi death camps. The resolution expresses the sense of Congress that the U.S. delegation to the Madrid Conference on Security and Cooperation in Europe in its November 11 meeting later this year urge consideration of the case of Raoul Wallenberg at that meeting. In addition, the resolution requests the State Department to take all possible action to obtain information concerning the present status of Wallenberg and to secure his release if he is still alive.

The text of the resolution follows:

H. CON. RES. 434

A concurrent resolution to honor Raoul Wallenberg, and to express the sense of Congress that the U.S. delegation to the Madrid Conference on Security and Cooperation in Europe urge consideration of the case of Raoul Wallenberg at that meeting, and to request that the Department of State take all possible action to obtain information concerning his present status and secure his release

Whereas in January 1944 the War Refugee Board was established by the United States to organize rescue operations to free persons being persecuted during World War II; and

Whereas the War Refugee Board requested Sweden to send a representative to Hungary; and

Whereas the Swedish representative, Raoul Wallenberg, is considered responsible for having saved the lives of twenty thousand Jewish citizens in Hungary through the issuance of protective Swedish passports beginning in July 1944; and

Whereas Raoul Wallenberg is recognized as saving indirectly the lives of an additional seventy thousand Jewish citizens in Hungary through collaborative efforts in the latter half of 1944 with neutralist representatives in Budapest and the Jewish Community in Hungary; and

Whereas Raoul Wallenberg was taken into Soviet "protective custody" on January 13, 1945, in violation of international standards of diplomatic immunity; and

Whereas Soviet officials originally denied having custody of Wallenberg, but subsequently stated that a prisoner named "Wallenberg" died in a Soviet prison on July 17, 1947; and

Whereas in 1949 he was nominated by Albert Einstein for the Nobel Peace Prize; and

Whereas reports from the Soviet Union, as recent as May 1, 1978, suggest that Raoul Wallenberg is alive; and

Whereas the continued internment of Wallenberg, if indeed he is still alive, is in direct contravention of the Final Act of the Helsinki Conference on Security and Cooperation in Europe which requires signatories to "fulfill in good faith their obligations under international law"; and

Whereas the Madrid Conference on Security and Cooperation in Europe, to be held on November 11, 1980, provides an occasion to discuss the status of Raoul Wallenberg with the Soviet government as part of the review of the Helsinki Final Act; and

Whereas document released by the Swedish Foreign Ministry in January 1980 indicate diplomatic efforts by the Swedish Government have not fully clarified the status of Raoul Wallenberg: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress honors Raoul Wallenberg for his outstanding work on behalf of those persecuted in Hungary during World War II, and it is the sense of Congress that the United States delegation to the review meeting of the Conference on Security and Cooperation in Europe which will be held in Madrid in November 1980 should urge that the case of Raoul Wallenberg be considered at that meeting by the signatory countries to the Final Act of the Helsinki Conference on Security and Cooperation in Europe; and it is further

Resolved, That the Congress requests the Department of State to take all possible steps to discern from the Soviet Union the whereabouts of Raoul Wallenberg and, if he is alive, to secure his return to his native country.●

RETIREMENT OF CARLYLE REED

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. MATSUI. Mr. Speaker, September 30, 1980, marks a "final run" in the journalistic history of the Sacramento Valley. On this date, Carlyle Reed, professor emeritus and columnist for the Sacramento Union, will retire from a distinguished career in the newspaper publishing business which has spanned more than 40 years.

Following in the footsteps of his father, Henry C. Reed, a pioneer newspaper editor and publisher, Carlyle Reed began his career as the publisher of the Ed Cajon Valley News. He then went on to the San Diego Union & Evening Tribune where he rose to the position of assistant to the publisher. One of his principal responsibilities was to cover the California Legislature. It was during this tenure that Carlyle came to love Sacramento.

In 1966 Carlyle was afforded the opportunity to trade the sandy golden shores of San Diego for the rolling hills of the gold country. With the spirit of a 49'er, he served as the publisher of the Sacramento Union. Carlyle transformed the Union into one of the best dailies in the West. His journalistic expertise joined with the dynamism of Sacramento truly made the perfect "union."

Carlyle's reputation soon spread beyond the Sacramento Valley. Attesting to his fame was his recognition in 1973 as the "Publisher of the Year" by the California Press Association. His peers furthermore elected him the 1977 president of the California Newspaper Publishers Association.

His community of interest was not, however, reserved exclusively to publishing. He has devoted his energy, his time, and his tenacious spirit to the entire community of Sacramento. He is a member of the Board of Directors of the Sacramento Symphony Association, and a member of both the Advisory Board of the California State University at Sacramento, and Empire Council, Boy Scouts of America. His service to Sacramento includes his tenure on the Board of Governors of Mercy Hospital's Foundation, a commodore of the Port of Sacramento, and a director of the Sacramento Chapter of the Navy League.

Carlyle Reed is a man whose commitment, dedication, and spirit matches the majestic mountains which tower over the Sacramento Valley.●

FUTURES EXCHANGES FOR THE MARKETPLACE

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. FINDLEY. Mr. Speaker, the following is an abbreviation of a presentation which Leo Melamed, special counsel to the Chicago Mercantile Exchange Board of Governors, made to the Commodity Futures Trading Commission a few weeks ago when the CFTC was contemplating actions that jeopardized free competition.

The Commission, whose authorizing legislation comes from the Agriculture Committee, on which I serve, challenged the ability of the Chicago Mercantile Exchange and Chicago Board of Trade to compete openly and fairly for the markets in financial instruments those exchanges have painstakingly nurtured.

I commend Mr. Melamed's presentation to my colleagues for insights into the financial futures markets as expressed by one of the leading pioneers in those markets.

TESTIMONY OF LEO MELAMED

Not many in this room can identify with the era when the idea of financial futures was first conceived. Indeed, of the four present Commissioners, I believe only two were in office back in 1975, and I doubt whether even they have any real recollection of the conception—birth—and after-birth ordeals of T-Bill futures. Certainly, very few of C.F.T.C. current staff nor any of today's senior officials were present in those days.

But you couldn't have been expected to have any real inkling or understanding of the magnitude of the undertaking launched by the International Monetary Market Division of the Chicago Mercantile Exchange. Because to have any real conception of the magnificent new concept officially initiated in January of 1976, you would have had to have first lived through the previous year and a half process of deliberations, discussions, analysis, examination, argumentation and testing. You would have had to have begun by sitting with us and debating the very first crucial issue as to which interest-bearing instrument to utilize in this venture.

Then you would have had to have participated in the months of deliberations relating to the exact specifications which might best work, knowing that each decision might be the difference between success and failure.

It would also be necessary for you to have partaken in the process of justifying to your Board of Directors and membership that such a project was worth the anticipated cost of millions of dollars—even though you had to admit that its chances of success were slim.

You would have had to have taken part in the unending effort of convincing the most respected financial series of that day that T-Bill futures was a good idea, a necessary business tool, not harmful to the national economy or debt management, and that such a market would prove successful once launched or at least was worthy of a try.

And yes, you would have had to have been on our side of the fence to convince the then-Commissioners and staff of the C.F.T.C. that there was sufficient economic justification and that license ought to be granted for this startling off-the-wall idea.

Had you taken part in this process—which lasted approximately four years and which today is impossible to describe—then and only then could you fully appreciate and understand the recent decision of the Board of Governors of the Chicago Mercantile Exchange and conclude, as they did, that their decision was not only justified but mandatory lest they be guilty of treason to all of the labors of the past.

Mr. Chairman, I am prompted to ask you if during the C.F.T.C. deliberations which culminated in this hearing, did anyone speak out to suggest that just maybe the Merc was justified in its actions? Did anyone consider that the Chicago Merc was not an institution with a record of irresponsible actions and that just maybe their record justified an honest appraisal of their decision? Did anyone bother to note that the C.M.E. was, more often than not, considered even by the C.F.T.C. itself the best example of the most responsible contract market in the U.S. today and that such a record at least deserved a fair and careful review of the pros and cons before one jumped to the conclusion that this Exchange would willy-nilly act irresponsibly or violate some rule of the C.F.T.C.?

I dare say I doubt it. For any just appraisal of this issue would have never led to this action against our Exchange. To conclude that the C.M.E. violated Section 5a(12) can only be achieved by the use of contrived and twisted logic with a predestined bias of where you want to land.

When we were granted the license for T-Bills, there was never a proscription of which trading months to use. Indeed, we, ourselves, debated this issue for months—finally choosing the December cycle as a test with the full knowledge that if we were wrong or if different or additional months were needed, we could and would list them at our discretion.

And at no time since inception, did we promise or convey to anyone the guarantee that we would voluntarily preclude ourselves from a broader spectrum. Indeed, it is sheer nonsense for anyone, especially a Federal agency, to ask the inventor to limit the marketing of his product to a given period of the year.

The listing of contract months has since time immemorial been the province of the directors of contract markets. For it to be otherwise would be contrary to every dictate of logic or practicability. Contract months in futures are chosen on the basis of numerous and often diverse principles and considerations. The directors must take into account such things as production, consumption and storage cycles, the practices of the trade, supply and demand, conformity with commercial use and needs, future market liquidity, competition from other markets, availability of brokers and traders, floor trading space, priority based on chances of success, and many other factors that affect the use of commodity futures by both the commercial and the speculative worlds. Often, the contract markets will experiment and add or subtract months in a constant attempt to keep the market viable and in conformance with use and demand. Such decisions can only be made by someone in constant and daily touch with trading activities, whose expertise, knowledge and experience is professionally acquired, and whose motivation, as well as point of view, stems from market participation.

I, therefore, cannot assume that the C.F.T.C. intends now to change this practice and assume responsibility for contract month designation. The only reasonable explanation for the present C.F.T.C. view has

to be based on the assumption by the agency that contract month designation in Treasury Bill futures is an exception to the otherwise all inclusive general principle. While we would seriously argue such a contention, we admit that the agency's view is probably based on the fact that the U.S. Federal Reserve has advanced a concern about deliverable supply and, therefore, might have objections about the same contract month being listed at more than one contract market.

Although this view is arguable as well since there are many other methods to prevent any problems and alleviate Federal concern other than a blanket prohibition, this problem is technically not the issue at this time. When the C.M.E. listed for trading the January cycle, no other contract market had this cycle open for trading nor was any other contract market yet designated for those months. Indeed, the Federal Reserve several weeks ago issued a statement which stated that it did not foresee any deliverable supply problems with the January cycle to be listed for futures trade.

Thus, the only concern the C.F.T.C. can legitimately have as a result of the C.M.E. action must be based on the fact that such action might prevent it from approving a new contract market for the same monthly cycle. The following questions, therefore, come to mind. Has the C.F.T.C. or any of its officials made a private commitment to or a secret agreement with a new contract market that the January cycle in T-Bills would be saved for it? If so, by what right or authority did it do so? More importantly, why should it do so? Or was it merely the private intention of the C.F.T.C. to reserve the January cycle for a new contract market? If so, the same question comes to mind—why?

Isn't it a fact that the C.M.E./I.M.M. was the inventor, developer and successful implementor of Treasury Bill futures? Isn't it a fact that its T-Bill futures market has demonstrated viability and growth which confirms that the business world has overwhelmingly accepted this market as an important business tool which they can trust and feel confident in using? Isn't it a fact that the C.M.E./I.M.M. has an exemplary record in maintaining free and open market liquidity in its futures contracts? Isn't it a fact that the C.M.E./I.M.M. has a record of strong rule enforcement especially as it relates to potential market manipulation?

Are those reasons for the C.F.T.C. to preclude our institution from expanding our T-Bill futures market? Was it the intention of the C.F.T.C. to exclude our market from the January cycle because we have a fine history of new market development as well as efficient market implementation? Is such a prohibition some sort of reward for past exemplary performance? Because we had the foresight and fortitude to develop this new market, are we now forever to be excluded from additional months of trading? Is it equitable to limit our Exchange's participation in this market to no more than equal partnership with new exchanges who are just now beginning to enter the futures arena?

It would seem to me that either the C.F.T.C.'s analysis of the situation was totally without logic or it did not think about it at all. In either case, to prohibit the Chicago Mercantile Exchange from expanding its successful market invention is without precedence in the business world and would be completely inequitable. If the C.F.T.C. or its staff must now suffer embarrassment as a result of its faulty intentions, or institution cannot be blamed for this result nor can we be faulted for doing what it was our every right to do.

Is there some other special unknown motivation on the part of the Federal regulator to come to the aid of a competitor? That is not as farfetched a possibility as it may seem. Back in Chicago, we wonder why the C.F.T.C. has not been able in the course of 16 months to institute Section 8a(7) proceedings against a competitor of ours in a rule dispute where the C.F.T.C. has admitted that the I.M.M. rule is better. Indeed, the C.F.T.C. inaction in the gold settlement dispute has forced our Exchange to go to court in an attempt to have the C.F.T.C. act in this matter. And yet—in the case at hand—the C.F.T.C. is able to institute Section 8a(7) proceedings against our Exchange in less than seven days.

We also wonder whether the uncharacteristic speed of the C.F.T.C. action in this matter is directly related to the gravity of the C.M.E.'s action. Was such ruthless dispatch warranted—even at the expense of the C.F.T.C.'s own procedural requirements—because our Board of Governors failed to act in some emergency situation? Did we fail to prevent some impending market manipulation? Was there reason to believe that our Exchange was on the brink of a vast number of defaults or some impending financial collapse of one of our firms?

From the deliberate speed of these proceedings, it must be assumed that our offense was much graver than any of those mentioned. Obviously, our listing of additional months, in an approved contract, allegedly without sufficient advance notice to the C.F.T.C., must have more serious consequences for futures markets than any previous futures market problem. In fact, if one considers alacrity of Federal action or intensity of Federal criticism as a measure of the gravity of the crime, then one must conclude that the C.M.E.'s alleged improper procedural etiquette has much graver implications for our industry than, say a potato default, or even a silver fiasco.

Not only are we forced to come here to defend our totally legal action to expand our T-Bill contract use, we are advised that our irresponsible action has irreparably damaged the C.F.T.C.'s exclusive jurisdiction issue.

I submit that that kind of reasoning is really hard to take. With all due respect, if the exclusive jurisdiction of the C.F.T.C. is in jeopardy—and we sincerely hope it is not—it will be for a myriad of causes over a period of many years, none of which can be laid at the doorstep of our Exchange.

Then we are told that our action is fraught with an attempt to monopolize T-Bill futures. That accusation borders on the ridiculous. It is like telling General Motors not to produce a better automobile or not to market it during part of the year because it will put Toyota out of business.

Mr. Chairman, in all due fairness, we must point out that we did not come to the C.F.T.C. and ask for a protective patent on our invention, as could have been granted in other areas of business. We did not suggest to any of the other exchanges that they could not lift our invention and list it for trading at their place of business. We did not scream foul when we saw our competitors attempt to capitalize on our labors, on our educational efforts, on our marketing success and on our millions of dollars of expenditure. Nor did we suggest to our competitors that perhaps they should try to develop their own and different futures vehicles rather than attempt to reproduce our proven success. Nor did we go to the C.F.T.C. and suggest that there was little need for another T-Bill or foreign currency futures market, while there was perhaps good reason to believe that other financial instruments could use a futures contract.

We did not do any of those things—because that would have been contrary to our philosophy of free competition. We were more than willing to do battle with our competitors fairly and squarely by allowing the marketplace to determine where the business should flow. Why does the C.F.T.C. feel compelled to enter this competitive fray—or take sides in a purely business decision between two potential competitors?

What we did do was list additional contract months for trade—as was our legal right—as we have done countless times in many other competitive situations and for many other good reasons, and as was our very obligation if we were worthy of our office as directors of our institution.

For that sin we are here today. I submit, Mr. Chairman, Commissioners of the C.F.T.C., it was no sin. I implore you to reconsider your action.●

REAUTHORIZATION OF THE HIGHER EDUCATION ACT: H.R. 5192

HON. FRANK THOMPSON, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. THOMPSON. Mr. Speaker, yesterday the House adopted the conference report on H.R. 5192, which reauthorizes the Higher Education Act for 5 additional years. I am proud to have participated in the development of this legislation during the past 2 years. This legislation reflects the finest spirit of hard work, accommodation, conciliation, and bipartisan cooperation among the members of the Education and Labor Committee. I would like to particularly commend the gentleman from Michigan (Mr. FORD), chairman of the Subcommittee on Postsecondary Education, for his leadership and dedication in bringing this legislation to fruition. It is a tribute to the legislative skill of the gentleman from Michigan (Mr. FORD) that this legislation reflects a consensus which enjoys the support of the entire higher education community, students, parents, college presidents, and faculty members.

The bill authorizes increases in student grant assistance to help poor and middle-income students meet the increased cost of college at all levels. It maintains the promise and the spirit of Middle Income Student Assistance Act, which we enacted in 1978, that makes some form of Federal student assistance available to every American student. It extends program eligibility to unserved part-time students, recognizing that these students too would like to pursue the dream of a college education. It makes important reforms in the loan programs aimed at reducing default rates and improving the administration of the loan programs. While the bill extends the availability of need-based loans, it also establishes a loan program for parents who are hard pressed in finding ways to finance their children's college educa-

tion. And the legislation strengthens authorities for support of such national priorities as continuing education, developing institutions, libraries, international studies, research programs, and urban universities.

Mr. Speaker, I would like to call particular attention to important improvements that the bill makes in the title IX graduate programs.

Parts B, C, and D of current law are revised by the conference substitute to provide a program of grant awards based on financial need. The maximum award to a student is $4,500 per year for 3 years. The substitute also provides for the maintenance of the level of awards—including institutional allowances—for the public service, mining, and graduate and professional opportunity fellowship programs. The substitute authorizes $60 million for fiscal year 1981 and for fiscal year 1982 and such sums as may be necessary for fiscal year 1983 through 1986 for this new part B.

The conference substitute also provides a new part C, national graduate fellowships. This part would provide 450 portable competitive fellowships each year in the arts, humanities, and social sciences. Selection of these fellowships would be based on merit, with the stipend awarded being related to the recipient's financial need. A National Graduate Fellows Program Fellowship Board will be created to select the areas in which the fellowships are to be awarded and to appoint panels for the selection of recipients.

I believe that it is particularly important to establish a broad-based program to provide assistance to graduate and professional students on the basis of financial need. The future of our Nation, particularly its economic productivity, is closely tied to developing to the fullest extent possible our human capital through graduate education.●

AN ALTERNATE TRANSPORTATION PLAN FOR THE HANDICAPPED

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. McKINNEY. Mr. Speaker, in conjunction with my remarks of September 17, 1980, concerning the Cleveland amendment to the Surface Transportation Act of 1980—H.R. 6417—I am inserting in the RECORD a letter written to the New York Times by the Mobility Advisory Group of the Westport Transit District. Westport's alternative transportation service for the handicapped has been a tremendous success. It may serve as an inspiration and example of what can be achieved in other communities, in their efforts to most efficiently and reliably serve the handicapped.

The letter follows:

MINNYBUS,
WESTPORT TRANSIT DISTRICT,
Westport, Conn., June 17, 1980.

THE NEW YORK TIMES CO.
(Attention: Editor)

To the EDITOR: We have been following the debate in the editorial pages of your newspaper on accessible transportation for the handicapped. Because we are knowledgeable about the needs of the handicapped community and because accessible public transportation is provided here in Westport in a unique manner, we have some valuable contributions to make to the debate.

Two previous letters on this issue have expressed opinions which seemed to be in opposition. Hugh Gallagher's letter of May 9th protested "the expenditure of several billions of dollars of public funds to make existent mass-transit systems accessible to severely handicapped people mobile only by wheelchair." John Gerity's letter of May 2nd, urged us to "stop delaying and get to work implementing a truly integrated, accessible transportation system."

The Handicapped Mobility Advisory Group of the Westport, Conn. Transit District was organized in October, 1979 to assess the accessibility of the public transportation system in Westport and make recommendations for future handicapped service in the community. Our membership includes representatives from a broad range of Westport organizations as well as members of the handicapped community. Two of our members are confined to wheelchairs. We suggest that other communities look to Westport as an example of effective service integration which mainstreams the disabled into service available to the general public while sensitively serving the individual needs of the handicapped population. The Westport system addresses both Mr. Gallagher's concern that the public should not bear the burden of paying for expensive, seldom used lifts on fixed route buses as well as Mr. Gerity's demand for accessible, affordable integrated transportation.

Westport's hilly terrain, lack of sidewalks on winding narrow roads, and capricious New England weather prevent the wheelchair-bound from getting to a bus route. Recognizing this the Westport Transit District has developed an innovative, integrated transportation system comprised of both fixed-route fixed-schedule "Minnybuses" and the shared-ride, demand-responsive paratransit service called "Maxytaxy." Accessible transportation to any area of Westport is comparable or better in every way to service to the able-bodied:

Any handicapped person (we are all not confined to wheelchairs) is eligible to utilize the fixed-route Minnybus for a 25 cent fare, one-half the regular cash fare.

Any handicapped person whose physical limitations or impairments prevent access to the Minnybus is eligible to use the demand-responsive, shared-ride Maxytaxy for door-to-door service at the same 25 cent fare.

The advance time required to use the Maxytaxy for the handicapped is about 30-40 minutes, the same time required for general population using Maxytaxy. In comparison, the Minnybus operates every 35 minutes on its routes.

The important difference between the Westport approach to handicapped mobility and most other communities is that Maxytaxy is not a separate or specialized service used solely for the handicapped. By serving the general population as well, trips may be grouped to efficiently manage transportation resources. This brings the cost per trip (including the handicapped) to $4.00. According to a report by the Congressional Budget Office regarding the costs of providing accessible public transportation, other communities have experienced a cost per trip ranging between $7.00 and $40.00.

We believe we have in Westport the "multi-modal approach" to which Mr. Gerity referred. We have fixed route accessible service to all but those whose physical limitations prevent them from getting to a bus route. However, their individual transportation needs are met sensitively and in a cost-effective manner with mainstreamed Maxytaxy services at fares, wait-time, service area and operating hours which are truly comparable or better to that offered on the fixed route service.

We agree with Mr. Gerity that everyone in a community served by accessible transportation benefits. We do not agree with him, however, that the only effective way to provide accessibility is to require fixed route buses to be lift-equipped as stated in federal regulations. In Westport, for instance, a hydraulic lift for a bus (not the bus, only the lift) ranges in price from $8,000 to $20,000. The estimated cost of a lift-equipped Maxytaxy van (the complete vehicle) is $15,000 to $20,000. In a political climate in which bus purchase funds are severely constrained, the federal requirement to lift-equip Westport's fixed route buses would severely reduce or eliminate the funds available for purchasing replacement Maxytaxy vans. It seems to use that in the particular instance of Westport Mr. Gerity's suggestion which is intended to enhance or improve our accessibility would in effect eliminate our accessibility. We believe that the federal requirement is not only contradictory in its intent as it applies to Westport but also capricious and arbitrary in its representation that the only way to achieve accessibility for us is through lift equipping fixed-route buses.

The complimentary Maxytaxy service has proven to be more cost effective and certainly more accessible given Westport's topography than accessible fixed-route bus service. Furthermore, Maxytaxy is comparable or better in service characteristics to any accessible fixed-route bus system. If Maxytaxy were lost in order to adhere to the federal mandate to purchase accessible fixed-route buses, the mobility options and the expanded opportunities to access all parts of the Westport community would be lost not only by us, the Westport handicapped community, but also the general Westport community.

We have passed a unanimous resolution requesting the Secretary of Transportation to grant Westport a waiver of the federal regulations requiring that all new buses be lift-equipped. The waiver would enable Westport to continue to operate the integrated, accessible Minnybus-Maxytaxy system so well suited to the particular needs of the handicapped in this community. We are also urging our representatives in Congress to support the Cleveland amendment to the Surface Transportation Act of 1980 which offers communities the local option to provide mandated accessibliility in the manner which best serves the handicapped community rather than requiring only accessible fixed route bus service.

We are proud of Westport's excellent, accessible integrated public transportation system. We invite Mr. Gallager, Mr. Gerity and any other advocates of truly accessible public transportation to visit us and view the integrated Minnybus and Maxytaxy system. We might not have the only answer, but we believe we're on the right track!

—HANDICAPPED MOBILITY
ADVISORY GROUP.

Any questions or inquiries can be directed to: Westport Transit District, Gordon Aoyagi, Executive Director.●

OCCUPATIONAL THERAPISTS

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. WALGREN. Mr. Speaker, the Medicare Amendments of 1980—H.R. 3990—were recently reported by the Ways and Means Committee and the Committee on Interstate and Foreign Commerce. Several provisions contained in the bill recognize the cost-saving role that occupational therapists—OT's—can assume in the delivery of health services.

I am very impressed with the therapeutic and restorative work done by these professionals. In my home district of Pittsburgh, I have become personally aware of the fine efforts of one of my constitutents, Emilie Staisey, in providing OT services through the Easter Seal Society. Because of her dedication and that of other OT's, I would like my colleagues to have some background on the occupational therapy profession—its purposes, activities, and importance in the health care arena.

Occupational therapy is a health care service whose purpose is to assist individuals whose lives have been threatened or impaired by physical, psychological, or developmental problems. The therapist aims toward maximal independent functioning of the patient. OT is based on the belief that occupation, engaging in purposeful activity, is effective in preventing or reducing disability and promoting independence.

OT's work with people of all ages in a variety of settings. Among these settings are acute care hospitals, rehabilitation centers, community mental health centers, well baby clinics, day care centers, home health agencies, centers for the mentally handicapped, nursing homes, schools, industry, and private practice. OT's perform such services as assisting a stroke patient to regain use of the affected limb, train patients in essential activities of daily living, such as feeding, dressing, and personal hygiene, and helping mental patients with work therapy.

Occupational therapists perform a valuable service while concurrently making every effort to insure quality care to the health consumer. I applaud the very fine efforts of this profession and hope they will continue to provide excellence of care in the health care arena.●

POSSIBLE HIDDEN FLAW IN HOUSE-PASSED BILL

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. MICHEL. Mr. Speaker, in the September 1980 issue of the Government Executive there is an intriguing, and I must say disturbing, article that makes rather serious allegations about an act passed by this body on March 24, 1980. The core allegation is that there is a "hidden agenda" in the "Paperwork Reduction Act of 1980," H.R. 6410. Indeed, I have reviewed the RECORD for that date and find no substantive discussion of provisions of the act that would radically expand the General Services Administration's authorities with respect to acquisition and use of automated data processing equipment and telecommunications equipment by all Federal agencies. The article persuasively argues that the bill potentially creates very real and debilitating difficulties for our intelligence and defense establishments. While it is, and has been, most difficult to argue against the stated purpose of the act—reduction of paperwork to ease burdens imposed upon the public—I do question the hidden agenda provisions of this bill if the article is on target. Because I have these reservations, I would hope to see the bill returned by the Senate substantially stripped of any offending language. I commend this article to my colleagues to prepare us for when we reconsider the bill should it be returned by the Senate.

THE PAPERWORK BOMB—THE HIDDEN FLAW IN THE STATUTORY ATTEMPT TO CUT DOWN GOVERNMENT'S REDTAPE

The official title of the bill is "The Paperwork Reduction Act of 1980." But H.R. 6410 is misnamed.

The bill's title alone brings cheers from almost every element of our society. Who could possibly be against paperwork reduction? It strangles the public sector and cripples the Federal bureaucracy. The bill empowers the Office of Management and Budget to set up a formidable organization to insure data requested from the public by the Federal Government are needed, sensible, and not duplicative. Executive Order 12174, issued on November 30, 1979, by President Carter, requires OMB to establish such an office and to develop a Federal Information Locator System (FILS) which will list all information collected by Federal agencies. Before an agency collects information it will check this system to see if another agency already has the data—which makes one wonder why legislation is needed since the Executive Branch has a fix on the problem in place.

To be sure, legislation requires the "choke point" to remain in place regardless of a change in administration, and gives the Congress a hammer if the objectives of the law are not fulfilled. Further, by specifically authorizing funds to operate the program, Congress gains direct control of the system.

But there is a hidden agenda to H.R. 6410.

Paper is used to record data and data is only one element of an information system. Information is fed to devices, stored, and manipulated by computers and transmitted by telecommunication systems. So by some very imaginative logic, H.R. 6410 established controls over the requirement, acquisition and use of the span of technologies involved in collecting, processing, and displaying information—ostensibly to reduce the paperwork burden placed on the public. It does not appear to matter that the use of this technology rarely relates to imposing a reports burden on the public. Systems such as those involved in collecting foreign intelligence, controlling energy use in a federal building, paying employees or developing strategic procedures to knock out Russian warheads are all controlled by the processes established by the Paperwork Reduction Act of 1980 (H.R. 6410).

Now, add the classic Peter Principle to this imaginative logic by assigning the General Services Administration authoritative and supportive roles in controlling the requirement determination, acquisition and usage of the technical elements of a system an agency critically needs to accomplish an assigned mission.

Since 1965 with the passage of P.L. 89-306, referred to as the "Brooks Bill" after the Chairman of the House Government Operations Committee (HGOC), Mr. Jack Brooks (D-TX), GSA has been responsible for procurement of computer resources for the Federal government. According to using Federal agencies, GAO, the President's Reorganization Program, and reports of the HGOC itself, GSA has not performed well at all in obtaining more effective and efficient ADP systems for its customers.

With passage of H.R. 6410 as presently written, GSA will retain procurement authority, which for 15 years has not been executed well and will pick up additional authority and responsibilities for reviewing agency requirements and determining if the need is valid and evaluating the use of the technology by those agencies. In addition, GSA will be a party to auditing its own reviews of such agency systems; and influencing, through OMB, the budget of an agency in these areas.

H.R. 6410 states in section 3504(g), The automatic data processing and telecommunications functions of the Director shall include—(1) establishing policies, principles, standards, and guidelines for automatic data processing and telecommunications functions and activities, and overseeing the establishment of standards under section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)). . . . (3) providing in coordination with the Administrator of General Services, advice and guidance on the acquisition and use of automatic data processing and telecommunications equipment, and coordinating through the review of budget proposals and otherwise, agency proposals for acquisition of such equipment and . . .

In case the legislation itself is not clear, House Report No. 96-835, March 19, 1980 accompanying H.R. 6410 and providing the legislative history states "GSA, in its reviews of requests for authority to acquire information technology, is to review the need for the technology and whether it will improve the agencies operation". Further on the report states ". . . providing advice and guidance in accordance with the Administrator of General Services on the acquisition and use of information technology including, but not limited to, computer technology, communications technology and related information handling, storage, and retrieval technology".

CONGRESSIONAL CONTRADICTION

Hence, while H.R. 6410 does not directly amend Public Law 89-306 which would

cause that Act to be reviewed; the Brooks Bill is, in reality, essentially and cleverly amended. H.R. 6410 and the accompanying report language explicitly permit GSA to review agency requirements and needs as well as the use an agency subscribes to the information technologies acquired. These functions are expressly prohibited by the present Brooks Bill section 111(g) which states Authority so conferred upon the Administrator shall not be so construed as to impair or interfere with the determination by agencies of their individual automatic data processing equipment requirements. . . . The Administrator shall not interfere with, or attempt to control in any way, the use made of automatic data processing equipment or components thereof by any agency.

GSA is, in fact, not equipped with the resources or personnel to determine whether an agency has a valid need for such systems as electronic fund transfer for social security payments or to validate the means used to interpret intelligence data or to evaluate the methods to process sensor data on incoming hostile forces. That GSA is at the improper organizational level in the Federal Bureaucracy to influence any need determination appears to be of no consequence to the authors of H.R. 6410. Further, the fact that the Administrator of GSA, Admiral Rowland Freeman, has stated in a recent speech to the Interagency Committee for ADP that GSA has enough problems to solve and does not need to interfere with an agencies requirement determination is again of no consequence. How did this bill get off track? From a laudable effort to reduce the paperwork burden on the public, H.R. 6410 is of questionable usefulness by imposing unnecessary controls and bureaucratic layering on tools needed by Federal agencies to conduct government business effectively.

The original author of the bill, Representative Frank Horton (D-NY) was determined to respond to constituent complaints that the paperwork burden placed on the public by the Federal bureaucracy was reaching untenable proportions. His experience on the Commission on Federal Paperwork further convinced him that action was required. Congressman Horton authored legislation in 1979 addressing the problem. Simultaneously, Senator Lawton Chiles (D-FL), did the same. Two bills, one sponsored by the House and one by the Senate, were almost identical; but neither addressed controls to be placed on ADP and telecommunications. Then mysteriously, in the fall of 1979, the original House version of the Paperwork Reduction Act was expanded to address ADP and telecommunications and identified as H.R. 6410. It now carries Jack Brook's name as well as Frank Horton's. The dressedup bill passed the House with lightning speed after perfunctory hearings on the ADP and telecommunications aspects of it. Senator Chiles was not aware of the magnitude of the changes; and S-1411 the Senate counterpart to H.R. 6410 remained in the original form—solely addressing reduction of paper reports. As late as July 1980, a good six months after the House version of the Paperwork Reduction Act had been expanded, the Senate Bill included none of the elements covering control of information technology. Since the President is pushing for a bill this session to alleviate the expense the public presently incurs in dealing with the Federal government, Senator Chiles appears obligated to include the House additions to his bill or there may be no bill at all. Chairman Brooks as the principal individual supporting the ADP and telecommunication additions to the House bill, will probably not allow a bill through conference which does not satisfy his desires.

PROBLEM RECOGNITION

Recently, the Department of Defense attempted to have Senator Chiles delete the ADP and telecommunications sections of S. 1411. The Joint Chiefs of Staff are on record to the Secretary of Defense stating ". . . the ADP and telecommunications aspects of the bill (sic H.R. 6410) introduce unnecessary and unwarranted complexities in the management of these resources that will cause delay in satisfying critical operational requirements. The bill fails to recognize that these resources have unique applications in weapon and C³I systems that are totally unrelated to their information management objectives."

DOD has reasonable cause for alarm. Many military systems have undergone mitigated procurements and delays imposed by interpretations of the present Brooks Bill Public Law 89-306. Public Law 89-306 essentially covers off-the-shelf commercially available ADP only. In this limited area the Army, Navy, Air Force and even the Marine Corps have had to adjust or delay procurements for ADP that were not sanctioned by the GSA—in reality, the staff of the House Government Operations Committee exerts more than considerable influence on whether an agency may procure ADP resources. GSA, by authority vested in it by the Brooks Bill, must procure the ADP or delegate the procurement to an agency. An agency submits an agency procurement request (APR) to GSA when the ADP requirement is known.

If the procurement is over $500,000 competitive or $50,000 sole source, a summary of the APR is prepared by GSA and sent to the HGOC. More often than not, GSA waits for a nod from the Committee before issuing the delegation and frequently imposes constraints which the agency must accept or essentially go back to square one. For example, numerous delegations for sole source, upgrades were granted with a dictate that the total system would be competitively upgraded at an arbitrary point in time; whether the total upgrade made mission or economic sense was hardly addressed. But the agency would commit to the dictate in order to achieve the ADP relief it needed.

The interpreters of the Brooks Bill appear to believe that maximum competition must be pursued at any cost. By some convoluted logic three vendors competing against each other for a government procurement for an equivalent architecture is considered a sole source procurement. Further an agency may have tens of millions of dollars invested in software with a need to expand the system at a fraction of the sunk cost. To avoid delays, criticism and intimidation, the agency is wise to discard the software investment for a "fully competitive" upgrade, thereby disregarding the initial software investment and introducing considerable risk in the sytem by forcing a software conversion to occur. As more of our defense systems use off-the-shelf commercially available equipment the GSA and HGOC will have more systems to influence. It is no wonder the JCS have taken a stand against giving away more authority in this area. Other Federal agencies must have similar concerns but have yet to formally protest.

To appreciate Federal agency concerns understand that the exploitation of computer and telecommunication technologies are critical to the ability of the Federal Government to function. We are irreversibly tied to this technology and as the technology takes rapid and giant steps in the state of the art it becomes more pervasive. What was impossible ten years ago is routinely performed today. A recent GAO publication shows Federal employment as a percentage of per capita income dropping more than 25 percent since 1960 with over 40 percent more of the population receiving benefits during the same period. This impressive increase in productivity is tied to an increase in computers from 900 in 1960 to 15,800 in 1980. Any future progress will be directly proportional to the government's ability to collect, store, process and transmit data faster, cheaper and more accurately. The fast growth of this technology and its rapid employment by all agencies at all levels has led the hand wringers in the Federal bureaucracy to over-control and slow the exploitation of this marvelous capability.

BLOCKING THE POTENTIAL

Elmer B. Staats, Comptroller General said it clearly in the GAO pamphlet "Computers in Government," "Concerns are often voiced about complicated subjects when people do not fully understand them or know something about them".

Although computers have proven beneficial, though not perfect, in assisting government, the future looks dim. The President's Reorganization Study on ADP reveals that over 50 percent of the computers in the Federal Government are obsolete. The acquisition of commercially available systems takes two years and quite frequently longer.

Therefore, legislation is sorely needed to solve these problems and to recognize that the existing environment is not conducive to fully realizing the capabilities the information revolution has dropped at our doorstep. The Brooks Bill should be taken out, dusted off, and modernized in recognition of the vast changes that have occurred since 1965. The Paperwork Reduction Act should be cleared of incumberances that have little to do with reducing the public's paperwork burden and stand or fail on the merits of that premise. H.R. 6410 in its present form is in jeopardy. It now appears that the public will not get a paperwork reduction act unless the controls on ADP and telecommunications ride with it.

Legislation needed to reduce the burden paperwork is placing on the public will become law only by unnecessarily complicating the acquisition, use, and control of information technologies. Why not call it what it really is: "The Information Reduction Act of 1980."●

JOHN SHERMAN COOPER

HON. TIM LEE CARTER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. CARTER. Mr. Speaker, John Sherman Cooper is truly one of Kentucky's and this Nation's most distinguished citizens. He also, I am proud to state, is my lifelong friend and my preceptor.

Together we have traveled from Fountain Run to Kingdom Come, from Clay's Ferry to Jellico, from the Bluegrass to the coalfields, to the farming lands of central Kentucky. It has been an honor to be with him and to study at his feet as Saul of Tarsus did at the feet of Gamaliel, the tentmaker.

John Sherman Cooper is Kentucky's famous former U.S. Senator, Ambassador to India and Minister Plenipotentiary to Nepal, and Ambassador to the German Democratic Republic. To the long list of his honors and accomplishments he can now add a special humanitarian award presented to him yesterday by the Kentucky-southern Indiana region of the National Conference of Christians and Jews.

I include for the RECORD a news account from today's Courier-Journal about that award and an editorial about this exceptional Kentuckian and great American.

JOHN COOPER HONORED AS HUMANITARIAN

(By Michael Days)

One of Kentucky's most distinguished citizens, John Sherman Cooper, was honored by more than 1,000 people Wednesday night during an awards banquet at the Galt House in Louisville.

The accolades poured forth for Cooper, a U.S. senator for more than 20 years and ambassador to India, Nepal and East Germany. He is now with the law firm of Covington and Burling, based in Washington, D.C.

Cooper, a native of Somerset, seemed almost embarrassed by the special humanitarian award given by the Kentucky-Southern Indiana region of the National Conference of Christians and Jews for his "outstanding leadership and human service."

He told the audience that he wished he had his life to start again to make himself worthy of the honor.

Cooper, who was a stalwart initiator and supporter of civil-rights legislation in Congress, spoke briefly about the civil-rights gains that have been made. And he said that America is in the midst of difficult times that can awaken in Americans a greater sensitivity to one another.

Also honored by the group Wednesday night were Evelyn Waldrop, director of Louisville's Department of Sanitation, and James Rosenblum, chairman of the board of Fulton Seafood Industries. Both received the conference's brotherhood awards.

The humanitarian and brotherhood awards are given to people who best exemplify the ideals and objectives of the conference.

Gov. John Y. Brown Jr. gave the main address at the banquet.

The National Conference of Christians and Jews is a human-relations organization that strives to build better relationships among people regardless of religion, race or nationality.

MR. COOPER'S WARNING IS ALWAYS TIMELY

It was typical of John Sherman Cooper to say this week that he felt undeserving of the special humanitarian award given him by the Kentucky-Southern Indiana region of the National Conference of Christians and Jews. But it also was typical that he then spoke out once more, as so often in the past, against bigotry and discrimination.

The former ambassador and Kentucky senator, now 79 and a lawyer in Washington, never has been one to blow his own horn—which is one reason he kept getting re-elected so easily. But he always was a congressional leader in the civil rights movement of the 1950s and '60s. And he always has deplored the intolerance and hatred—as he reminded his Louisville audience this week—that he saw at its cruelest at Buchenwald concentration camp in the waning days of World War II.

If we're lucky, the world will never again witness such horrors as the Holocaust, in which Hitler tried to exterminate the Jews. But bigotry has a way of sneaking up on people: one minute it just seems to be the sick frothing of a few on the lunatic fringe: the next minute it's a bitterly divisive wedge through the middle of society.

Economic slumps, social dislocation and large influxes of immigrants tend to fan this racist hatred, which doubtless helps to explain why membership in the Ku Klux Klan is estimated to have grown from about 4,000 to 10,000 over the past decade. The tendency of many people to blame bad news on an undefined, conspiratorial "them," whether it's at city hall or in Washington or New York, is fertile ground for those—like Hitler but also like Joe McCarthy and an endless string of lesser demagogues—who are all too ready to precisely identify "them."

As Mr. Cooper observed in accepting the special award for "outstanding leadership and human service," America has made great strides toward full justice, equal opportunity and the protection of civil liberties. But he, more than most who aren't members of minorities and thus especially alert to discrimination, knows the importance of eternal vigilance. Like Louisville's aldermen, who last month denounced the Klan, he recognizes the seeds of potential trouble. We wish there were more like him in positions of leadership these days.●

PERSONAL EXPLANATION

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. OTTINGER. Mr. Speaker, yesterday, because of an unannounced change in the House schedule, I missed votes on rollcall Nos. 564 and 565, final passage of the International Monetary Fund authorization, H.R. 7244, and then the pro forma vote on substitution of the Senate bill, S. 2271. Had I been present I would have voted "aye" on both votes.●

REAUTHORIZATION OF THE HIGHER EDUCATION ACT: H.R. 5192

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. FORD of Michigan. Mr. Speaker, yesterday the House by voice vote overwhelmingly approved the second conference report on H.R. 5192. I would like to take this occasion to acknowledge and express my appreciation to the members and staff of the Subcommittee on Postsecondary Education for their contribution to this legislation.

I would like particularly to express my appreciation to the gentleman from Alabama (Mr. BUCHANAN), the ranking minority member on our subcommittee, for his very hard work and for the amount of time that he has spent working with me, as chairman, in close and full partnership in the development of this legislation, as well as in shepherding it through the committee, the House, and the conference committee.

Also, Mr. Speaker, I would like to extend a special thanks to the chairman of our full Committee on Education and Labor, Mr. CARL PERKINS, of Kentucky, who once again lived up to his reputation as one of the greatest friends to education in the history of this House. I do not think that anyone who has had the opportunity, as I have had for the past 16 years, to observe the efforts of CARL PERKINS would doubt for 1 minute the validity of the suggestion that no person has given as many years and as much of his life to developing education legislation than CARL PERKINS. No person in the history of this body has a record that parallels that of CARL PERKINS, and we on the committee were very cognizant of his presence throughout the entire development of the legislation and the value of his prestige in moving legislation of this importance.

The gentleman from Ohio (Mr. ASHBROOK), the ranking minority member on the full Committee on Education and Labor, was also a very constructive and active participant in the development of this legislation. We are particularly grateful on the majority side for his constant cooperation.

Mr. Speaker, this bill reflects in many ways extraordinary individual effort by members of the committee who had a special concern and for that reason developed a special expertise and made special contributions.

The gentleman from Connecticut (Mr. RATCHFORD) is clearly that person most responsible, among all of us, for the development of the new title I of this legislation, which expands upon a number of ideas that have been around for some time, to make these programs more efficient and more effective in serving nontraditional students.

The gentleman from New York (Mr. BIAGGI), who has made a study of nontraditional students and the student data bank and has championed the supplemental education opportunity grant program for a long time, was primarily responsible for the improvements made in this part of the legislation.

The gentleman from Ohio (Mr. ASHBROOK) asked us to go to Ohio for hearings where we discovered the special problem of married students and the way in which they were treated for the purposes of receiving grants. This hearing provided an important perspective on the special needs of students at private liberal arts colleges.

The gentleman from Iowa (Mr. TAUKE) is responsible in large part for the changes we have made in the administration of title III program and for the development of the supplemental educational opportunity grant trigger.

The gentleman from Illinois (Mr. SIMON), who is an expert, I might say, on the subject of international education and has succeeded our colleagues, the gentleman from Indiana (Mr. BRADEMAS) in responsibility for keeping

the National Institute of Education alive and kicking in Washington, contributed a great deal more than all of the rest of us in the field of international education.

Mr. THOMPSON, of New Jersey, and Mr. BRADEMAS, of Indiana, are the two most senior members of the Subcommittee on Postsecondary Education and two of the most expert Members of the House on education legislation. Despite their demanding schedules and responsibilities, they made a continuous and valuable contribution to the development and enactment of this legislation at every stage. The entire bill reflects their wisdom, experience, knowledge, and commitment to higher education.

The gentleman from New York (Mr. WEISS) worked very hard on improvement of programs for schools of education and particularly with the idea of linking work study with educational goals.

The gentleman from New York (Mr. PEYSER) made great contributions with respect to title III administration, and it should be noted that one of the areas that we think is most important in the adoption of this legislation is the correction of problems that have been brought to our attention through a great deal of publicity in recent years with respect to administration of title III. We think that this legislation will put problems behind us.

The gentleman from Vermont (Mr. JEFFORDS) collaborated in the title I drafting and gave a perspective to the bill that might not otherwise be there, in that the gentleman from Vermont had us go to Vermont for hearings and demonstrated the need for changes to put emphasis on outreach to rural citizens of America.

He worked with the gentleman from Connecticut (Mr. RATCHFORD) in developing title I so that it reflected the interests of those States with large urban areas, while preserving and enhancing the activities that are directed toward rural populations.

The gentleman from Wisconsin (Mr. PETRI), a new member of the committee, has been particularly helpful in streamlining and modernizing the loan programs.

Mr. Speaker, during the consideration of this legislation, we lost an old and dear friend to all of us who participated in fashioning it as the chief staff member of the full committee. Bill Gaul, who worked on higher education longer than anyone else on our staff, was taken by death during the time that we were in conference with this bill. The Members will see the unusual, but certainly fitting tribute to Mr. Gaul entered by the chairman of the committee, the gentleman from Kentucky (Mr. PERKINS) in the statement of the managers accompanying this conference report.

Mr. Speaker, all of us are deeply grateful to the staff, both majority and minority, and note that development of this legislation is an outstanding example of staff people who are not only competent, but capable of working past partisan considerations to develop legislation that ultimately had the approval of all of the majority and minority members on the committee. The staff, particularly Tom Wolanin, Pat Rissler, Bill Clohan, and Jenny Vance, are very largely responsible for it.●

MENSA TO CELEBRATE 20TH ANNIVERSARY

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. SOLARZ. Mr. Speaker, I would like to take this opportunity to congratulate the members of American Mensa, Ltd., on their 20th anniversary, which will be celebrated at their annual convention next year. This nonprofit organization has its headquarters in my district in Brooklyn, N.Y.

This very worthwhile group has three main activities as an organization: to conduct research in psychology and social science, to identify and foster human intelligence, and to provide for social contact among its members. They have established a foundation to carry out education and research projects and also manage a scholarship program for gifted students.

Mr. Speaker, I would like to share with my colleagues a short text from Mensa which explains the workings of their group in greater detail. I would also like to once again offer my best wishes as we approach the 20th anniversary of Mensa.

The text follows:

MENSA—AN ORGANIZATION OF EXCEPTIONAL MINDS

Mensa members seem to be a series of contradictions. They claim to be non-joiners and skeptical of any organization. Yet, they have banded together.

They say they are "just like everyone else," but are more intelligent than 98 per cent of the population.

These inconsistencies may confuse the average mind, but the minds of Mensa members are far from average. M's as members call themselves—score in the top two percent of the population on IQ tests, and that is their sole requirement for membership. Members must score between 130 and 133 on most standard IQ tests, and at least 136 on the Army General Classification Test or 68 on the Navy General Classification Test to join.

M's represent an incredibly wide variety of professions, age groups and interests. Corporate executives mix easily with firemen at many of the Mensa-sponsored parties. Housewives, college professors and high school students gather at monthly meetings.

Mensa, the Latin word for table (signifying a roundtable of equals), was founded in 1945 by two English barristers. Conceived to provide contact between highy intelligent people, Mensa has become an international organization with more than 50,000 members in 14 countries.

American Mensa was founded in New York as a non-profit organization in 1961. Membership has grown to 42,000 in 120 local groups across the country. Local groups elect their own officers, and are responsible for arranging activities in their particular region. American Mensa also has national officers and international representatives.

Sander Rubin, former chairman of American Mensa, says, "Officially, we have three activities as an organization: to conduct research in psychology and social science, to identify and foster human intelligence, and to provide for social contact among our members. Mensa has no overall political, religious or social dogma."

Mensa has established the Mensa Education and research foundation (MERF) which carries out educational and research projects. MERF also manages the Mensa scholarship program for post-secondary-education students; grants are awarded on the basis of ability and there are no restrictions as to sex, race, age, creed, financial status or even Mensa membership. Mensa also has several groups of members working with prisoners, hopes to foster the recognition of gifted children, and holds seminars and lectures on a wide variety of subjects. But mostly it is a social organization.

"Many marriages have been made in Mensa," claims Lya Korda, a Hungarian artist and textile designer. She joined Mensa when she moved to New York and eventually married an M.

Within the intentionally-loose structure of Mensa, there are several smaller groups, called special interest groups, in which M's pursue a common interest or hobby, such as bridge, horseback riding, Chinese Go, and gourmet dining. Special interest groups are organized within local groups, and frequently have their own social activities in addition to those sponsored by the local group.

"The social aspects of Mensa are the biggest attraction for most new members," says Rubin. "The U.S. group has grown from 700 in 1964 to 42,000 today."

Anyone curious too know if he qualifies for Mensa can arrange to take an at-home IQ test by sending $6.00 in check or money order to Mensa, Dept. PK—2, 1701 West 3rd Street, Brooklyn, NY 11223.●

LETTER BY GEN. SAMUEL V. WILSON

HON. DAN DANIEL

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. DAN DANIEL. Mr. Speaker, Gen. Samuel V. Wilson, U.S. Army, retired, who lives in the district I represent, served as a member of the Special Operations Review Group established to investigate the hostage rescue mission in Iran.

Perhaps I am somewhat biased, since I am privileged to call General Wilson my friend, that the Joint Chiefs showed such good judgment in selecting him for this group.

The letter he has written to the editor of the Richmond Times-Dispatch might well have been sent to most of the editors in this country. Since I am not aware this was done, I enter his letter in the RECORD at this point:

GENERAL VIEWS IRANIAN EXPEDITION

To the EDITOR:

As a member of the Special Operations Review Group set up by the Joint Chiefs of Staff to find out what went wrong and why with our hostage rescue mission in Iran, I was both impressed and gratified with the tone and thrust of your editorial on the same subject Aug. 27.

From the outset of its investigation, the Review Group was faced with the difficult and sensitive chore of steering between the Scylla and Charybdis of "whitewashing" on the one hand and "scapegoating" on the other. Our efforts were sharply focused on getting at the simple truth so that the same mistakes might not be made the next time around, if there is to be a next time—in Iran or elsewhere.

In our approach to this task—after all the interviews had been completed and all the pertinent documents reviewed—we put together a first draft of our findings and explained how we arrived at them. Then we systematically went back over the draft and purged it of adjectives and modifiers that might hinder the final report from being anything but factual, low-key and unemotional. We wanted to deal only with hard facts and our best professional analysis of them. I think we succeeded. Your editorial comment regarding our sparing use of adjectives implies that you perceived what we tried to do.

I am disappointed, however, that neither you nor any other commentators, as far as I am aware, appear to have discerned a significant fundamental regarding the Iranian mission and its follow-up critique.

We can take some pride in the fact that the United States is the only nation in the world with the technological capacity even to contemplate an operation of such mind-boggling complexity. Time/space tactical and logistical factors stretched men and machines to the absolute limits of human performance and engineering design. But that is not all.

Of far greater meaning to our country in the final analysis is to recognize that the Chairman of the Joint Chiefs of Staff and his senior colleagues in the aftermath of a failed mission seized the moral high ground and commissioned an independent group of experts to carry out a critically objective, comprehensive review and analysis of the operation in its entirety. Then, when the report was completed, its findings were openly presented to the American public, however pointed and painful these findings may have been to the architects of the operation.

In an era of political cover-ups and sleight of hand, obfuscations, ABSCAM and double-speak, we should pause to mark this example of basic integrity on the part of our nation's top military leadership.

Diogenes would have been proud. I know I am.

SAMUEL V. WILSON,
Lieutenant General, U.S. Army (Retired).●

SOVIET DEFECTOR AWAITS TRIAL IN UNITED STATES

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. DONNELLY. Mr. Speaker, I recently introduced House Concurrent Resolution 430, expressing the Congress belief that the U.S. Government should treat in an impartial manner all persons who violate the laws of our Nation.

Simas Kudirka is an American citizen who embodies the deep yearning for freedom from tyranny of all mankind. Simas Kudirka is one of the Lithuanian Americans who was arrested after a peaceful demonstration outside the gates of the Soviet Embassy in Washington on July 18 of this year. While 192 pro-Khomeini zealots were granted what amounts to a blanket amnesty following a violent clash with District and U.S. Park Police on July 27, the Lithuanian Americans, all citizens of the United States, are being prosecuted by the U.S. Attorney's Office in October.

I insert a Washington Post article of this Monday at this point in the RECORD which traces Simas Kudirka's moving commitment to our system of democracy and justice.

A NEW COUNTRY AND A NEW COURTROOM

(By Benjamin Weiser)

Ten years ago, on a chilly November day in the swells off Martha's Vineyard, seaman Simas Kudirka, seeking political asylum, leaped from a Soviet fishing vessel and onto the U.S. Coast Guard cutter *Vigilant*.

After the United States rejected his pleas for freedom, Kudirka was returned to the Soviet Union, where he was sentenced to 10 years in desolate prison camps.

Now, a decade later, the 41-year-old Lithuanian whose forcible return to Soviet jurisdiction caused a national furor is about to go on trial again—this time in a D.C. Superior Courtroom thousands of miles from home, on charges that he violated a federal law prohibiting political demonstrations within 500 feet of a foreign embassy. In this case, it was the Soviet Embassy on 16th Street NW.

Compared to the notorious Vladimir prison near Moscow, the crumbling Vilnius jail in Lithuania or the special "reeducation center" hidden in the Ural Mountains at Perm, the prospect of spending time at the D.C. jail after his arrest in July seemed relatively sanguine. Yet the intrepid, dark-haired Kudirka was left shaken.

"At least in the Soviet Union," he said afterward, "the prisoners were political like myself. Here, there was a woman who actually had stabbed somebody!"

The trial that led Kudirka from the company of Soviet political prisoners to that of Washington cellmates began with his fateful leap into prominence 10 years ago. Kudirka, a radio operator aboard the fishing trawler Sovietskaya Litva hated the Russians, who occupied his native Lithuania when he was an infant. When the opportunity arose, he threw himself onto the deck of the Vigilant, moored several feet away, begging for asylum.

Fearing that Kudirka's defection would endanger U.S.-Soviet fishing treaty talks, the Vigilant's captain, acting on instructions radioed from his superiors, allowed four Soviet seamen to board and drag the kicking, screaming Kudirka back to their vessel. He was eventually tried before a high Soviet Court and sentenced to a prison camp.

After Kudirka had served nearly half of his sentence, some American sympathizers discovered that Kudirka was in fact entitled to American citizenship because his mother had been born in Brooklyn. He was subsequently released.

American officials called the Kudirka episode—which set off a national furor—a "tragic mistake" caused by a bureaucratic bungle. After a government investigation, three senior Coast Guard officers were suspended, and President Nixon issued new guidelines on treatment of persons seeking asylum.

That did little for Kudirka. Figuring all was lost when he was taken before a Soviet court in 1971, Kudirka made a strong political statement against the Soviet Union. When he was offered the services of a court-appointed attorney, he refused.

"Who needs two prosecutors?" he recalls saying. "One is quite sufficient. The prosecutor, the attorney, the judge—they are all stones on your grave."

Kudirka's first prison cell in Vilnius was a dank, smoke-filled chamber, where KGB officials interrogated him for hours.

"The Americans don't want you," he quoted one official as saying. "You have no secrets. You have no money. You are not an inventor. You are as valuable to the Americans as last year's snow. You would clean toilets there."

"I'll clean toilets in America," Kudirka said he responded. "I saw the facilities on the Vigilant and they didn't smell as bad as the office of the KGB."

Kudirka's journey through Soviet prison camps from 1970 to 1974 brought him in contact with other political prisoners, some not so political as he.

While he was imprisoned in Vilnius, Kudirka shared a cell with a man named Zubavicius, a fellow Lithuanian who had been jailed virtually his entire life for petty offenses, then finally imprisoned for a crime Zubavicius said he did not commit. Kudirka said he convinced his cellmate that he, too, was a political prisoner.

Zubavicius drew an unflattering cartoon of Soviet leader Leonid Brezhnev. He tattooed the words "Death to the Judge" on his own cheeks, and wrote "I am a slave of the Soviet Union" on his forehead, Kudirka said.

A Soviet prison doctor cut the tatoos from his flesh without using anesthesia, and Zubavicius was put on trial for his insolence. When during that trial Zubavicius railed against the Soviet justice system, a Soviet psychiatrist stood up on the spot and declared: "This man is insane."

Zubavicius was subsequently transported to the Serbsky Psychiatric Institute in Moscow. He sent Kudirka a note saying: "Thank you for the soap, the little piece of meat and the orange. Now I've had my feast and I'm going to the hospital."

He never heard from Zubavicius again.

In another prison camp—a special "reeducation" and work camp at Perm for the most resistant political prisoners—Kudirka and many of the other inmates worked in a prison factory producing heating elements for electric irons.

One day, Kudirka said, the guards beat a prisoner for a minor infraction, and he led 25 inmates on a protest strike. The Soviets demanded to know the names of the strike leaders. "Tell us, and we will talk with them," the prison officials said, according to Kudirka. Realizing that leading a Soviet prison strike was a capital offense, Kudirka and all the others had the same response: "We are all the leaders," they said.

At a prison camp south of Moscow in 1972, Kudirka said, he and his fellow prisoners learned that Nixon was visiting the Soviet Union. He secretly made a cloth replica of the United Nations flag. Before dawn on the day Nixon arrived, Kudirka scaled a flagpole on the prison grounds and attached the flag to a wire at the top. The flag remained up for two hours before enraged prison authorities tore it down.

Kudirka was released by the Soviets after a baptismal certificate belonging to his mother was discovered in a Brooklyn church. He went to live in New York City.

where he now works for a pro-Lithuanian rights organization. Last July he participated in an anti-Soviet demonstration in Washington protesting the opening of the Moscow Olympics.

Kudirka and 17 fellow Lithuanian-Americans swooped down on the Soviet Embassy, stopped traffic and attempted to handcuff themselves to the embassy gates.

D.C. police reacted quickly. They approached the crowd, asking the demonstrators innocently: "Who are your leaders? Tell us who your leaders are so we can talk to them." Kudirka recalled. Like his colleagues in the Russian prison camp, the demonstrators replied, "We are all the leaders."

All 18 were arrested. Kudirka waited anxiously for the police paddy wagon, recalling distinctly that in the Soviet Union, the paddy wagons were black and known as "juodoji varna" for the black crows that haunt Soviet cemeteries and carry premonitions of bad events. But instead, a white police wagon arrived, and the relieved demonstrators sang Lithuanian folk hymns on their way to the police station.

Kudirka spent one day in D.C. jail before his release on bond.

"The jail was not so bad," Kudirka said. "I expected a little brutality from the police—a little kicking, for example—but it never happened."

Instead, jail guards recognized his name and offered cigarettes and congratulations. He obliged them with stories, but there was a more immediate concern—the jail's intense heat.

"It was a hot summer day we picked. It was not Siberia."

In several weeks, Kudirka will appear before a D.C. Superior Court judge on a charge that could result in 60 days in jail and a $100 fine. Kudirka says he won't make excuses. He was demonstrating for something he believes in, and he is willing, he says, to take his chances with the District of Columbia courts. "In the Soviet Union, you just assume the judge is the executioner. Here there are no army people behind him."

Kudirka suspects his erstwhile Soviet captors would gloat at the scene of him in an American courtroom. "They are rubbing their hands and they are saying, 'Is good, is good. We told him not to trust the capitalists.'"●

WINNING IS NOT EVERYTHING

HON. THOMAS B. EVANS, JR.

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. EVANS of Delaware. Mr. Speaker, winning is not everything, whether it be in sports, in politics, or in life.

How you play the game is the most important thing. The standards of conduct one applies to life are fundamentally more important than winning a game, a political race, or rising to the top of a company or union.

Along these lines, the recent remarks made by President Carter in a desperate effort to win an election saddens me greatly.

Unfair criticism of an opponent that is designed to polarize our Nation will ultimately hurt Jimmy Carter and from my vantage point I am not going to shed crocodile tears over that.

However, those remarks also hurt our country by setting such a horrible example—especially for young Americans.

They further erode confidence in our constitutional system of government.●

CIVIL RIGHTS IN SOUTH KOREA

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. MINETA. Mr. Speaker, the steadily deteriorating situation in South Korea prompts me to bring my colleagues' attention to the lack of civil rights in that country, as underscored by the recent imprisonment and sentencing to death of Kim Dae Jung. Mr. Kim is charged with responsibility for the Kwangju student uprising though he was already in prison at the time of the riots. This is a clear case of political harassment, and if the death penalty is carried out, a clear case of government sanctioned murder by the Korean military leaders. It is my belief that we, as representatives of the American people, should do everything in our power to express our dismay and regret at the recent turn of events in South Korea, and to put General Chon and the other South Korean military authorities on notice that the suppression of democracy and human rights in any part of the world is a matter of utmost concern to the United States.●

H.R. 7020

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1980

● Mr. DANNEMEYER. Mr. Speaker, as a member of one of the committees which had jurisdiction over H.R. 7020, I can certainly appreciate the concern that has prompted the reporting of this legislation. Moreover, it is impossible not to sympathize with people who have bought homes in good faith, as they did at Love Canal in New York, only to find themselves exposed to noxious odors and health hazards through no fault of their own. The choice before us, is therefore, not between acting and not acting; rather it is a matter of how best to solve what everyone agrees is a serious problem.

Were all these inactive waste sites identified, the best means of cleanup known, and an emergency response plan formulated, then the next step might logically be to decide whether $600 million, or $1.2 billion, or whatever should be spent on the cleanup itself. But all this information is not known; in fact, collecting it is one of the major purposes of this bill. Moreover, and this is most important, the case for Federal preemption in the field of hazardous waste cleanup has yet to be made; instead, growing evidence that private enterprise could handle the cleanup better and quicker suggests that we should await the results of the studies before letting the Federal Government spend a lot of money and throw its weight around.

In that regard, I should note that the siting study portion of H.R. 7020 not only provides for private participation in the preparation of the study but it calls on the EPA Administrator to solicit and analyse proposals from private enterprise to build and operate hazardous waste management facilities on a profitmaking basis. Lest one think such an idea preposterous, let me point out that, just last May, the Gulf Coast Authority, down in the Houston area, solicited bids from 28 firms worldwide to build and operate a waste disposal facility capable of handling 520,000 tons of waste per year, or 20 to 25 percent of the wastes produced each year in Harris County. No less than 22 of the firms submitted bids, 11 of which met all the established criteria. Finally, one firm—I.T. Corporation of California—was selected to build and operate three high-temperature incinerators that will burn organic wastes while another—Stablex, Inc.—was selected to deal with the inorganic wastes. Both firms will build and operate these facilities using their own capital; the Gulf Coast Authority—GCA—will provide the land and, in exchange, will receive a percentage of the revenues the facilities generate. Not a dime of taxpayers money will be involved.

But how does this affect, or even relate to, the cleanup of inactive sites you ask? Well, let me answer that several ways. First of all, these incinerators operate most efficiently and profitably when dealing with a maximum volume of waste so, if the volume of current waste slacks off, there is some benefit to be derived from feeding in waste from inactive sites. Moreover, some of the steam generated by the incineration process can be converted to power and sold so, to the extent the burning of abandoned wastes adds to the steam produced, the cost of picking up those wastes is further offset. Of course, these two factors may not be enough to compensate for the cost of moving hazardous wastes from an abandoned site to the incinerators entirely, and the difference may have to be made up by the taxpayers, but surely paying the difference is a whole lot cheaper than footing the bill for both shipping and disposal of these wastes as H.R. 7020 will have us do. Also, there is absolutely no reason why some other jurisdiction, any jurisdiction, that wanted to set up a similar operation could not require, as part of the bid criteria or the contract itself, the successful bidder to arrange for cleanup of neighboring abandoned sites as partial payment for the leasehold privileges which he is to enjoy.

All of which brings us down to the bottom line, which is—if private enterprise is willing to dispose of over one-half million tons a year at no cost to the taxpayer, the Harris County, Tex., because it thinks it can make money, then it should be interested in doing the same thing for hazardous wastes elsewhere. And if private enterprise is, in fact, so inclined then why do we need an expensive new Federal bureaucracy that will cost millions, if not billions each year? As history will show, bureacrats have a vested interest in managing a problem, not solving it. Take PCB's, for example. For years, EPA has been trying to get them cleaned up with marginal success; now Goodyear Tire & Rubber and Sunohio Corp., both private firms, think they have found ways to convert them to common table salt.

By now, I am sure you are thinking, if it is so easy, why have these privately operated high-temperature—2500°F—incinerators not been used before, or why have I not heard of them before this? Those are good questions, but the fact of the matter is at least three of these incinerators are already in operation here in the United States and more are operating in Europe. As for the lack of publicity, it has only been in the last few years that enough has become known about the dangers posed by hazardous waste sites to make them newsworthy. But, now all that is changing; in fact, last year, the Oversight Subcommittee of the Commerce Committee held a series of hearings focused on both the dangers and the options for cleanup. During one of those hearings, one witness, the secretary of Kentucky's Department of Natural Resources and Environmental Protection, went as far as to suggest that private firms, using high temperature incinerators, could dispose of hydrocarbon based wastes at inactive sites without receipt of tax dollars. As it happens, the witness could have been articulating a phase one blueprint for what is now being tried in Harris County, Tex.

Of course, there will be some problems with the private enterprise approach. For one thing, there will always be those who want such a facility anywhere but near them. For another, there is the problem of obtaining a sufficient volume of waste to keep such a facility running at optimum efficiency and profitability. For a third, incineration will only take care of 70 to 80 percent of the wastes at these abandoned sites; other means will have to be found to deal with the remainder. But these are all problems that can be overcome and, to a large degree, they would have to be dealt with anyway if EPA were to call the shots. So, what it really boils down to is this—do we want superfund and superbureaucracy at the Federal level, or do we want to see if private enterprise, working with local officials, can do the job in a less taxing manner?

When H.R. 7020 comes to the floor, I plan to offer an amendment in the nature of a substitute that will give life to this second option. Basically, what it does is authorize $40 million out of general revenues to complete the four studies called for in the Commerce Committee version of H.R. 7020—that is: First, the inventory of sites, second, the siting study—including the solicitation and analysis of proposals from private enterprise to operate hazardous waste management facilities on a profitmaking basis, third, the funding study—which should be influenced by the results of the siting study—and the preparation of a national response plan—in 18 months instead of 24. What it does not do is provide for the so-called superfund, and a sweeping grant of authority of the EPA Administrator that goes with it, on the grounds that a decision on these items should wait until the studies are complete and the facts necessary for sound decisionmaking, are available. In short, this a look before you leap approach and, in these times of rising popular protest against inflation and excess or unnecessary Government regulation, I urge my colleagues to give it their support.●

HOUSE OF REPRESENTATIVES—*Monday, September 22, 1980*

The House met at 12 o'clock noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O sing unto the Lord a new song, for he has done marvelous things!—Psalms 98: 1a.

In gratitude and praise, O Lord, we laud Your name for all the blessings that You have bestowed upon our Nation and our people. Help us to walk in paths of righteousness and honor that reflect the purpose for which we were created. Encourage us to bring strength and wisdom to our tasks that we may be messengers of peace and partners in reconciliation, and that Your message of love and good will among all people will be heard throughout the land and in our world. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Saunders, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On August 29, 1980:

H.J. Res. 589. Joint resolution providing additional program authority for the Export-Import Bank.

On September 4, 1980:

H.R. 507. An act to authorize Federal participation in stream rectification, Trinity River Division, Central Valley project, California, and for other purposes.

On September 8, 1980:

H.R. 5168. An act to extend certain expiring provisions of law relating to personnel management of the Armed Forces, to provide a variable housing allowance for members of the uniformed services to reflect housing costs in different areas of the United States, to improve certain special and incentive pays for members of the uniformed services, and for other purposes;

H.R. 5892. An act to provide for an accelerated program of wind energy research, development, and demonstration, to be carried out by the Department of Energy with the support of the National Aeronautics and Space Administration and other Federal agencies, and for other purposes;

H.R. 6974. An act to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, track combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes; and

H.R. 8010. An act to amend the Comprehensive Employment and Training Act to designate a Job Corps Center as the "Earle C. Clements Job Corps Center."

On September 10, 1980:

H.R. 7072. An act to amend sections 5702 and 5704 of title 5, United States Code, to increase the maximum rates for per diem and actual subsistence expenses and mileage allowances of Government employees on official travel, and for other purposes.

On September 12, 1980:

H.R. 1781. An act to amend title 5, United States Code, to provide that civilian air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes; and

H.R. 1967. An act to modify the White River National Forest in the State of Colorado.

On September 15, 1980:

H.R. 2538. An act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes; and

H.R. 4627. An act to authorize the enlistment of citizens of the Northern Mariana Islands in the Armed Forces of the United States of America.

On September 17, 1980:

H.J. Res. 607. Joint resolution making urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

On September 19, 1980:

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day."

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 551. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week," and for other purposes.

The message also announced that the Senate agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2597), entitled "An act to authorize appropriations for fiscal year 1981 for intelligence activities of the U.S. Government, the intelligence community staff, the Central Intelligence Agency retirement and disability system, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 5278. An act to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments, and for other purposes;

H.R. 7592. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes; and

H.R. 7831. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

The message also announced that the Senate insist upon its amendments to the bill (H.R. 7592) entitled "An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and appoint Mr. HUDDLESTON, Mr. JOHNSTON, Mr. INOUYE, Mr. SASSER, Mr. MAGNUSON, Mr. LAXALT, Mr. STEVENS, and Mr. YOUNG be the conferees on the part of the Senate.

The message also announced that the Senate insist upon its amendments to the bill (H.R. 7831) entitled "An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes, request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and appoint Mr. BAYH, Mr. MAGNUSON, Mr. STENNIS, Mr. ROBERT C. BYRD, Mr. EAGLETON, Mr. DURKIN, Mr. MCCLURE, Mr. MATHIAS, Mr. WEICKER, Mr. YOUNG, Mr. HATFIELD, and Mr. STEVENS be the conferees on the part of the Senate.

The message also announced that the Senate agree to the amendments of the House with amendments to a bill of the Senate of the following title:

S. 1442. An act to authorize the documentation of the vessel, *Sara*, as a vessel of the United States with coastwise privileges.

ADVERTISING DIRECTED AT CHILDREN

(Mr. KILDEE asked and was given permission to address the House for 1 minute.)

Mr. KILDEE. Mr. Speaker, there is an increasing trend in advertising for some products today which is very disturbing in the way in which some advertisers are using strong sexual themes to sell their wares to children. I wish to call to the attention of my colleagues a column in the September 20 issue of the Washington Post by Ellen Goodman in which she is sharply critical of this growing development and points out some of the more outrageous examples. The article very clearly points out how both pornographers and some advertisers can exploit our children sexually for the purpose of making money.

ELIMINATING SO-CALLED TAX ON MARRIAGE

(Mrs. FENWICK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. FENWICK. Mr. Speaker, I rise to inform my colleagues of an action which I am taking, somewhat reluctantly, this morning. Today I am introducing a discharge petition on H.R. 3609, a bill which I and 240 cosponsors have introduced to eliminate the so-called tax on marriage.

I think every Member of this House has received letters from irate constituents who are upset by this unfair tax, so I will not take very much time to explain it.

The issue is simple: When two working people decide to marry, under current law they usually pay more tax than they would if they had remained single. A policy which discourages marriage and families does not make sense. In addition, this tax has the effect of providing a disincentive for married women who want to go to work, which has led the Justice Department to call it "the major form of tax discrimination on the Tax Code."

I believe we should eliminate this tax by allowing married couples the option of paying as if they were single.

The President has called for a reduction of this "marriage tax," and the Senate Finance Committee has reported a bill which contains a similar reduction. The Ways and Means Committee has had hearings on my bill, for which I am grateful, but it does appear that the committee is not prepared to take any further action in this session. This bill is cosponsored by a majority of the House, and it is supported by the majority of Americans—83 percent, according to a recent Gallup poll.

I urge my colleagues to sign the discharge petition and to eliminate the tax on marriage.

THE EFFECT OF THE FEDERAL DEFICIT ON HOUSING STARTS

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, homebuilding in 1980 has been an unqualified disaster. The free fall in housing starts was uninterrupted for 5 full months and by May had set the annual rate to only 920,000 units equal to the slim total of the trough of the 1974–75 slump.

There is some thought today that mortgage rates may be creeping up, which will further defer the turnaround in the housing industry.

Mr. Speaker, we have it in our power in the Congress to do something constructive about this by eliminating the deficit of $60 billion. If the Federal Government would get out of the credit market to that extent, it would make that credit available in the housing market which would decrease the interest rates which all of us as consumers must pay to buy a home and put a mortgage on it.

The SPEAKER pro tempore (Mr. WRIGHT). The Chair recognizes the gentleman from Illinois (Mr. HYDE).

HOUSING UNDER JIMMY CARTER

(Mr. HYDE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, when Jimmy Carter took office in January 1977, the FHA interest rate was at 8 percent and the average sales price of a new single-family home was $51,300. The monthly payments to amortize the loan on the average new home based on a $50,000 mortgage for 30 years at 8 percent was $367.

Today, September 22, the FHA interest rate is 13 percent (down from 14 percent in April and up from 11½ percent in early August) and the latest average sales price of a new single-family home (in June) is $77,900. The monthly payments necessary to amortize the loan on the average new home, based on a $75,000 mortgage for 30 years at 13 percent, is $830.

These figures show an increase of 126 percent in the monthly payment necessary to purchase the average price new home in the approximately 3½ years since Jimmy Carter became President. These figures do not take into account the points charged to buyers and sellers in order to bring the FHA rate up to a market yield. Today's FHA interest rate is widely regarded as too low, but these figures illustrate why, under the Carter administration the great American dream of owning your own home is still a dream and not a reality.

□ 1210

MISSING LINK IN DEBATE

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, I know the city of Baltimore appreciated the national television coverage it got last night, but beyond that I see little reason to repeat the performance.

We heard two good distinct points of view from Governor Reagan and Congressman ANDERSON, but what good are they if we do not hear the third?

The reason there are two distinct points of view in this contest is the dismal record of the Carter administration. Without that record there would be no need for a debate. And unless the person responsible for that record has the courage to stand up and defend it, what is the use in continuing? As long as President Carter continues to hide away in the flower beds of the Rose Garden, we will never know how the Carter record stands up against the platforms of Reagan or Anderson. President Carter is not only hiding from the debates, he is hiding from the political system, the elective process and the American public and the media compounds the problem by giving the Carter camp free air time to react to the debates, after the fact, out of the line of fire. Jimmy has it made under those circumstances.

I do not see much sense in having debates if the reason for the debates refuses to show up. I would suggest to the League of Women Voters that they cancel the rest of the debates until someone can drag the President to them.

MEMORIAL TREE FROM CITIZENS OF WISCONSIN IN HONOR OF AMERICANS HELD HOSTAGE

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, in honor of our 52 Americans held hostage in Iran, the people of Wisconsin have donated to the United States a red oak tree to be planted on the grounds of the U.S. Capitol. In a truly patriotic endeavor Wisconsinites have joined together to bring this tree from the Nicolet National Forest to Washington, D.C. This oak tree will stand for generations to come as a constant reminder and living memorial to our courageous Americans held hostage.

Today I introduce a resolution expressing the hopes of the American people for the immediate release of the hostages in Iran and dedicating this tree to the principles of individual freedom and world peace. I would welcome my colleagues to join in cosponsoring this measure.

STATISTICAL SUBTERFUGE AND POLITICS

(Mr. BETHUNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. BETHUNE. Mr. Speaker, it is amazing how long HUD held out before it hiked the FHA/VA mortgage interest ceiling Friday, the 19th. Although that ceiling is raised historically whenever there are 5 or 6 discount points, HUD allowed the discount points to reach 10 to 12 during the last few weeks. When this is allowed to happen, sellers are often boxed in and the transaction is not consumated—setting off a chain reaction—the home buyers and home sellers are dislocated, the realtor loses the sale, and the lender loses the business.

Could preelection inflation figures be involved? The Bureau of Labor Statistics tells me that the Consumer Price Index figures that will be released right before the election are collected between August 15 and September 15. Why did they wait until after the cutoff date to make the increase? Since FHA and VA rates factor heavily into the CPI formula, the natural suspicion is that someone is playing a game of statistical subterfuge. I think the House made a wise decision when it approved the amendment to the Housing Act Amendments of 1980 to let 10 percent of the FHA-insured mortgages be set at interest rates negotiated by the buyer and the seller, rather than within the confines of HUD's interest ceiling and interests.

INCREDIBLE FARE INCREASES FOLLOW DEREGULATION OF AIRLINES

(Mr. VANIK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, during the recent year I have been more seriously concerned about the rapid and enormous

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

escalation in airline fares which followed deregulation of the airline industry.

To the present, the deregulation of airlines has resulted in incredible increases in fares and a reduction in services to all points in America.

In November of 1978, my roundtrip to Cleveland was $102. Since that time the following increases have occurred:

June 1979	$106
August 1979	120
October 1979	130
December 1979	133
September 1980	165

In 1978 air fares increased 6¼ percent. In 1979 air fares increased 38½ percent. So far this year the fare has increased to $165, or an increase of 75 percent.

This unjustifiable increase in air fares is completely unrelated to the cost of energy. Airline deregulation has resulted in less service at a higher cost to the citizens of America. The person who needs to travel today relies more and more on the family automobile—the ultimate victor over expensive air travel.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE CONFERENCE REPORT ON H.R. 7590, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a conference report on the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER pro tempore (Mr. NATCHER). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. BEVILL submitted the following conference report and statement on the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

CONFERENCE REPORT (H. REPT. No. 96–1366)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 4, 8, 9, 10, 13, 21, 25, 26, 29, 45, 46, 48, 54, 55, 56, 57, and 58.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 14, 18, 19, 24, 44, 50, and 51, and agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$378,015,000"; and the Senate agree to the same.

Amendment numbered 6: That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$2,890,623,000"; and the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$390,324,000"; and the Senate agree to the same.

Amendment numbered 16: That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert "$126,400,000"; and the Senate agree to the same.

Amendment numbered 17: That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert "$600,005,000"; and the Senate agree to the same.

Amendment numbered 20: That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert "$134,013,000"; and the Senate agree to the same.

Amendment numbered 23: That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert "$1,585,742,000"; and the Senate agree to the same.

Amendment numbered 30: That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert "$232,519,000"; and the Senate agree to the same.

Amendment numbered 32: That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$902,605,000"; and the Senate agree to the same.

Amendment numbered 37: That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$38,629,000"; and the Senate agree to the same.

Amendment numbered 38: That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$38,579,000"; and the Senate agree to the same.

Amendment numbered 47: That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "447,520,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 3, 7, 12, 15, 22, 27, 28, 31, 33, 34, 35, 36, 39, 40, 41, 42, 43, 49, 52, and 53.

TOM BEVILL,
EDWARD P. BOLAND,
LINDY (MRS. HALE) BOGGS,
BILL CHAPPELL,
VIC FAZIO,
JAMIE L. WHITTEN,
JOHN T. MYERS,
(except Dickey-Lincoln, Maine project in amendment No. 23),
CLAIR W. BURGENER,
VIRGINIA SMITH,
(except Dickey-Lincoln, Maine project in amendment No. 23),
SILVIO O. CONTE,
(except Dickey-Lincoln, Maine project in amendment No. 23),
Managers on the Part of the House.
J. BENNETT JOHNSTON,
JOHN C. STENNIS,
WARREN G. MAGNUSON,
ROBERT C. BYRD,
ERNEST F. HOLLINGS,
WALTER D. HUDDLESTON,
QUENTIN N. BURDICK,
JIM SASSER,
DENNIS DECONCINI,
MARK O. HATFIELD,
MILTON R. YOUNG,
RICHARD S. SCHWEIKER,
HENRY BELLMON,
JAMES A. MCCLURE,
JAKE GARN,
HARRISON SCHMITT,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7590) making appropriations for energy and water development for fiscal year ending September 30, 1981, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effects of the action agreed upon by the managers and recommended in the accompanying conference report.

Report language included by the House which is not changed by the report of the Senate, and Senate report language which is not changed by the conference is approved by the committee of conference. The statement of the managers, while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein.

TITLE I—DEPARTMENT OF ENERGY

OPERATING EXPENSES

Energy supply, research and development activities

Amendment No. 1: Appropriates $2,268,754,000 for Operating Expenses, Energy Supply, Research and Development Activities, as proposed by the House instead of $2,268,575,000 as proposed by the Senate.

Solar Energy

The conferees have accepted the new budget structure for solar energy programs proposed by the Department and reflected in the Senate report. The Department should include an appropriate crosswalk between the old and new structures in future justification materials for comparison purposes.

The conference allowance provides the following funding for Solar Applications for Buildings:

Active Systems:	
Systems Development	$17,750,000
Market Test and Applications	11,300,000
Market Development and Training	13,400,000
Subtotal	42,450,000
Passive Systems:	
Systems Development	13,500,000
Market Test and Applications	5,700,000
Market Development and Training	13,700,000
Subtotal	32,900,000
Photovoltaics:	
Technology Development	133,000,000
Market Test and Applications	20,200,000
Subtotal	153,200,000
Total	228,550,000

The conferees agree with the Senate report language regarding the need for identification and justification of funding for the four Regional Solar Energy Centers in future budget requests. Identification and justification of funding and programs for the Solar Energy Research Institute should be included in this information in order to permit full assessment by the Committees on

Appropriations of the effectiveness of these programs.

The conferees agree with Senate report language earmarking $2,000,000 for the Region X wood derived fuels programs.

Geothermal Energy

The conferees agree with the Senate report language directing that adequate levels of support be maintained in funding the several states to establish geothermal commercialization plans, and directing that the Appropriations Committees be notified if the Department intends to change its method of funding for this program. The conferees agree that there is no reduction in the request for the Hot Dry Rock program.

Hydropower

The conferees agree with the Senate allowance of $11,011,000 for small scale hydroelectric development, including $4,800,000 for small scale construction grants for renovation and development of hydroelectric generation facilities at the Jackson Mills and Mine Falls Dams located in Nashua, New Hampshire.

Commercial Nuclear Waste Management

The conferees note that at this point in time there are several different nuclear waste management bills under consideration in the House, including the Nuclear Waste Policy Act, S. 2189, recently passed by the Senate. Accordingly, the funding provided reflects the levels considered appropriate for the programs likely to emerge from the legislation now being considered. Specifically:

The conferees agree with the $4,000,000 added by the Senate which provides $3,500,000 for investigation, research and support studies for monitored, retrievable repositories, and preparation of a site-specific report for a monitored, retrievable repository; and $500,000 for alternate concepts, to include documentation and studies for alternative high-level waste repositories. The conferees have also agreed to the $1,500,000 added by the Senate for the support program line to provide necessary support for the state planning council on radioactive waste management and other state financial assistance approved by Congress in authorizing legislation.

The conferees are in agreement that neither the House nor Senate report language relating to disposal of spent fuel should be construed to preclude the continued investigation of the suitability of spent fuel as a waste form, including ways to incorporate spent nuclear fuel into a multi-barrier waste package, nor to preclude the use of spent fuel in the various research and development programs to determine the suitability of various geologic and other media for disposal of nuclear waste.

Interim Spent Fuel Storage

The conferees agreement regarding the resolution of House and Senate differences in the interim spent fuel storage account is discussed under the Plant and Capital Equipment appropriation for Energy Supply, Research and Development Activities.

Environment

The conferees agree with the Senate report language regarding the multi-technology marine program.

Fiscal Year 1980 Deferrals/Unobligated Balances

The funding levels in the conference allowance reflect the availability of $2,500,000 from FY 1980 deferrals and $3,171,000 from miscellaneous unobligated balances from prior year appropriations.

Data from the Department shows substantial slippage in the FY 1980 obligations for the solar and geothermal energy accounts through the first 11 months of the fiscal year, which is unlikely to be recovered in the last month without undesirable yearend "dumping." Accordingly, the conferees have applied anticipated unobligated balances of $20,200,000 for solar energy and $5,000,000 for geothermal energy against the allowances for these accounts.

Allocation of Funds

The funds are allocated as shown in the following tables:

	Fiscal year 1981	
	Budget estimate	Conference allowance
ENERGY SUPPLY RESEARCH AND DEVELOPMENT OPERATING EXPENSES		
Solar Energy		
Solar applications for buildings:		
Active systems	$42,450,000	$42,450,000
Passive systems	32,900,000	32,900,000
Photovoltaics	153,200,000	153,200,000
Subtotal	228,550,000	228,550,000
Solar applications for industry:		
Biomass	45,750,000	45,750,000
Solar thermal	129,400,000	119,950,000
Subtotal	175,150,000	165,700,000
Solar power technology:		
Wind energy conversion systems	83,700,000	83,700,000
Ocean systems	38,300,000	38,300,000
Subtotal	122,000,000	122,000,000
Alcohol fuels	20,800,000	20,800,000
Solar international	15,000,000	12,000,000
Solar information	1,400,000	1,400,000
Program direction	6,786,000	6,786,000
Total, solar energy	569,686,000	557,236,000
Geothermal		
Hydrothermal commercialization	10,000,000	8,000,000
Hydrothermal resources development	42,089,000	42,000,000
Geopressured resources development	35,800,000	35,600,000
Geothermal technology development	51,890,000	48,800,000
Program direction	1,400,000	1,400,000
Total, geothermal	141,179,000	135,800,000
Hydropower		
Small scale hydroelectric development	8,211,000	11,011,000
Feasibility studies loan program	10,000,000	10,000,000
Program direction	789,000	789,000
Total, hydropower projects	19,000,000	21,800,000
Nuclear Fission		
Converter reactors:		
Thermal reactor technology	45,000,000	39,500,000
Thermal reactor fuel cycle		21,500,000
High temperature reactors		38,000,000
Advanced reactor systems	3,000,000	1,000,000
Program direction	1,465,000	1,465,000
Total, converter reactors	49,465,000	101,465,000
Commercial nuclear waste management:		
Terminal isolation research and development	192,939,000	161,439,000
Waste treatment technology	17,450,000	14,850,000
Support programs	7,500,000	3,000,000
Program direction	1,762,000	1,762,000
Total, commercial nuclear waste management	219,651,000	181,051,000
Interim spent fuel storage:		
International spent fuel storage	4,200,000	3,000,000
Domestic spent fuel storage	14,800,000	8,000,000
Program direction	513,000	513,000
Total, interim spent fuel storage	19,513,000	11,513,000
Breeder Reactors		
Liquid metal fast breeder reactor base program	222,669,000	290,469,000
Water cooled breeder reactor	59,000,000	59,000,000
Fuel cycle research and development	11,600,000	20,600,000
Program direction	$11,181,000	$11,181,000
Total, breeder reactors	304,450,000	381,250,000
Total, nuclear fission	593,079,000	675,279,000
Space Nuclear Systems		
Space and terrestrial applications	35,400,000	35,400,000
Advanced systems evaluations	3,000,000	3,000,000
Program direction	981,000	981,000
Total, space nuclear systems	39,381,000	39,381,000
Magnetic Fusion		
Confinement systems	92,800,000	92,800,000
Development and technology	62,600,000	62,600,000
Applied plasma physics	65,800,000	65,800,000
Planning and projects	34,500,000	34,500,000
Program direction	3,117,000	3,117,000
Total, magnetic fusion	258,817,000	258,817,000
Electric Energy Systems		
Power supply and system management	19,000,000	19,000,000
Power delivery	18,500,000	18,500,000
Program direction	923,000	923,000
Total, electric energy systems	38,423,000	38,423,000
Energy Storage Systems		
Battery storage	37,800,000	37,800,000
Thermal, mechanical and other storage	31,300,000	31,300,000
Program direction	1,000,000	1,000,000
Total, energy storage systems	70,100,000	70,100,000
Environment		
Environmental research and development:		
Overview and assessment	52,470,000	50,470,000
Biological and environmental research	155,051,000	154,051,000
Subtotal, environmental R. & D.	207,521,000	204,521,000
Program direction	11,133,000	11,133,000
Total, environment	218,654,000	215,654,000
Basic Energy Research		
Basic energy sciences:		
Nuclear sciences	33,400,000	32,400,000
Material sciences	90,400,000	87,750,000
Chemical sciences	61,200,000	60,700,000
Engineering, mathematical and geosciences	26,600,000	24,100,000
Advanced energy projects	7,200,000	6,350,000
Biological energy conversion and conservation	8,300,000	7,250,000
Program direction	2,444,000	2,444,000
Total, basic energy sciences	229,544,000	220,994,000
Technical assessment projects:		
Assessment projects	3,200,000	2,500,000
Advanced technology projects	12,000,000	8,000,000
Advanced electric vehicles battery development		2,000,000
Program direction	540,000	540,000
Total, technical assessment projects	15,740,000	13,040,000
University research support	11,000,000	7,800,000
Program direction	320,000	320,000
Total, university research support	11,320,000	8,120,000
Tech program and policy analysis	1,981,000	1,981,000
Total, basic energy research	258,585,000	244,135,000
Remedial Action Programs		
Management of surplus radioactively contaminated DOE facilities	11,800,000	11,800,000
Remedial action for former DOE contractor installation MED/AEC sites	11,000,000	11,000,000
Grand Junction remedial action	2,000,000	2,000,000
Remedial action for inactive uranium mill tailing sites	13,200,000	13,200,000

	Fiscal year 1981	
	Budget estimate	Conference allowance
West Valley, N.Y.	$5,000,000	$5,000,000
Total, remedial action	43,000,000	43,000,000
Total, operating expenses	2,249,904,000	2,299,625,000
Fiscal year 1980 deferrals/unobligated balances		—30,871,000
Total, energy supply, research and development—operating expenses	2,249,904,000	2,268,754,000

OPERATING EXPENSES

Uranium supply and enrichment activities

Amendment No. 2: Appropriates $1,009,040,000 for Operating Expenses, Uranium Supply and Enrichment Activities as proposed by the Senate instead of $1,007,040,000 as proposed by the House.

Amendment No. 3: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which merges the appropriation for Operating Expenses, Uranium Supply and Enrichment Activities as well as all prior year balances with the Uranium Supply and Enrichment Activities, Plant and Capital Equipment appropriation.

Amendment No. 4: Deletes language proposed by the Senate which would have prohibited the use of funds in this or any other act to enrich feed material of foreign origin for a domestic utilization facility where the fraction of feed material of foreign origin exceeds 10 percent (except for contracts entered into prior to October 1, 1980); and to provide such sums as are necessary for the Secretary to conduct a rulemaking pursuant to 5 U.S.C. 553, 556 and 557, to establish restrictions on enrichment of foreign origin uranium for domestic use.

Advanced Isotope Separation Technology

The conferees agree with the Senate report language regarding the provision of adequate funds to assure that the industrial atomic vapor laser isotopic separation process will compete on an equal footing with existing programs during the evaluation and selection process. The Department is directed to provide the Committees on Appropriations with a report not later than December 31, 1980, describing the steps and milestones associated with the selection process, as well as the additional development activities required before the process selection can be completed.

Allocation of Funds

The funds are allocated as shown in the following tables:

	Fiscal year 1981	
	Budget estimate	Conference allowance
URANIUM SUPPLY AND ENRICHMENT ACTIVITIES, OPERATING EXPENSES		
Uranium resource assessment	$22,825,000	$24,625,000
Program direction	4,630,000	4,830,000
Total, uranium resource assessment	27,455,000	29,455,000
Advanced isotope separation technology	63,355,000	63,355,000
Program direction	944,000	944,000
Total, advanced isotope separation technology	64,299,000	64,299,000
Uranium enrichment	862,226,000	862,226,000
Contract prefinancing		50,000,000
Program direction	3,060,000	3,060,000
Total, uranium enrichment	865,286,000	915,286,000
Total, uranium supply and enrichment activities	957,040,000	1,009,040,000
Less uranium enrichment revenues applied	—929,585,000	—979,585,000
Revenues net to Treasury	(61,515,000)	
Net uranium supply and enrichment activities, operating expenses	27,455,000	29,455,000
Reclassification of Revenues		
Departmental administration		(53,000,000)
Uranium supply and enrichment activities		(8,515,000)
Revenues, net to Treasury	—61,515,000	

OPERATING EXPENSES

General science and research activities

Amendment No. 5: Appropriates $378,015,000 for Operating Expenses, General Science and Research Activities, instead of $367,515,000 as proposed by the House and $382,015,000 as proposed by the Senate. The funds are allocated as shown in the following table:

	Fiscal year 1981	
	Budget estimate	Conference allowance
GENERAL SCIENCE AND RESEARCH, OPERATING EXPENSES		
Basic Sciences		
Life sciences research and nuclear medicine applications:		
General life sciences	$25,650,000	$24,000,000
Nuclear medicine applications	20,000,000	20,000,000
Total, life sciences research	45,650,000	44,000,000
High energy physics:		
Physics research	76,500,000	76,000,000
Facility operations	114,300,000	116,800,000
High energy technology	50,580,000	50,580,000
Program direction	865,000	865,000
Total, high energy physics	242,245,000	244,245,000
Nuclear physics:		
Medium energy physics	45,555,000	46,000,000
Heavy ion physics	35,975,000	36,500,000
Nuclear theory	7,000,000	7,000,000
Program direction	270,000	270,000
Total, nuclear physics	88,800,000	89,770,000
Total, general science and research, operating expenses	376,695,000	378,015,000

OPERATING EXPENSES

Atomic energy defense activities

Amendment No. 6: Appropriates $2,890,623,000 for Operating Expenses, Atomic Energy Defense Activities, instead of $2,756,023,000 as proposed by the House and $2,890,623,500 as proposed by the Senate.

Inertial Confinement Fusion

The conference allowance of $140,500,000 for inertial confinement fusion is allocated as shown in the following table:

Glass Laser Program:	
Lead Laboratory (LLNL)	$51,725,000
National Laser Users Facility	5,400,000
Industrial Participant (KMSP)	9,300,000
Other Laboratories	2,100,000
Subtotal	68,525,000
Gas Laser Program	38,000,000
Pulse Power Fusion	15,700,000
Supporting Research:	
Heavy Ion	5,000,000
Advanced Laser/System Studies	12,000,000
Subtotal	17,000,000
Program Direction	1,275,000
Total	140,500,000

The conference allowance also provides $12,600,000 for Capital Equipment funding in order to meet the funding needs associated with the operating programs for the various participants at a reasonable level of effort.

The conferees are in agreement with the Senate report language directing the Department to specify in its budget requests the funding allocations planned for the various research centers.

Weapons Activities

The conference allowance reflects consideration of budget amendments considered by the Senate but received too late for consideration by the House.

Allocation of Funds

The funds are allocated as shown in the following tables:

	Fiscal year 1981	
	Budget estimate	Conference allowance
ATOMIC ENERGY DEFENSE ACTIVITIES OPERATING EXPENSES		
Inertial confinement fusion	$159,500,000	$140,500,000
Naval reactors development	250,350,000	250,350,000
Weapons activities:		
Research and development	501,064,000	501,064,000
Testing	241,000,000	261,000,000
Production and surveillance	980,100,000	980,100,000
Program direction	37,659,000	37,659,000
Total, weapons activities	1,759,823,000	1,779,823,000
Verification and control technology	38,591,000	38,591,000
Materials production:		
Materials production	200,907,000	200,907,000
Processing of nuclear materials	92,019,000	92,019,000
Supporting services	65,939,000	80,939,000
Flourinel processing of nonproduction fuels and related activities	26,890,000	26,890,000
Special isotopes separations research	4,815,000	9,815,000
Program direction	1,330,000	1,330,000
Total, materials production	391,900,000	411,900,000
Defense waste management:		
Interim waste operations	139,940,000	135,940,000
Long term waste management techno ogy	99,000,000	75,500,000
Terminal storage		5,000,000
Decontamination and decommissioning	6,000,000	4,000,000
Transportation R. & D.	5,000,000	5,000,000
Program direction	1,715,000	1,715,000
Total, defense waste management	251,655,000	227,155,000
Nuclear materials security and safeguards	43,304,000	43,304,000
Fiscal year 1980 deferrals		—1,000,000
Total atomic energy defense activities, operating expenses	2,895,123,000	2,890,623,000

OPERATING EXPENSES

Departmental Administration

Amendment No. 7: Reported in technical disagreement. Appropriates $4,892,000 for the Office of the Secretary instead of $4,872,000 as proposed by the House and stricken by the Senate. The managers on the part of the House will offer a motion to restore the matter stricken by the Senate, amended to read as follows:

Restore the matter stricken by said amendment, amended to read as follows:

Office of the Secretary

For salaries and expenses for the Office of the Secretary of Energy necessary for administering the Department in carrying out the purposes of the Department of Energy Organization Act (Public Law 95–91), and for official reception and representation expenses (not to exceed $35,000), $4,892,000.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 8: Restores the heading "General Administration" stricken by the Senate.

Amendment No. 9: Restores language as proposed by the House for the General Administration account.

Amendment No. 10: Deletes matter proposed by the Senate for official reception and representation expenses.

Amendment No. 11: Appropriates $390,324,000 for Operating Expenses, General Administration, instead of $388,572,000 as proposed by the House and $397,443,000 as proposed by the Senate.

Intergovernmental and Institutional Relations:

The conferees agree with the Senate allowances for the Intergovernmental and Institutional Relations account except that $500,000 is included for the Local and Tribal Government Assistance Program recommended by the House for technical assistance to local and tribal Governments.

General:

The conferees agree with the Senate report language encouraging the Department to use its authority under section 161g of the Atomic Energy Act of 1954, as amended, to sell land on the Hanford Reservation to utilities wishing to purchase such land for construction of nuclear powerplants to serve the region when such sales do not jeopardize Department activities.

Allocation of Funds:

The funds are allocated as shown in the following table:

	Fiscal year 1981	
	Budget estimate	Conference allowance
DEPARTMENTAL ADMINISTRATION, OPERATING EXPENSES		
Office of the Secretary		
Salaries and expenses:		
Office of the Secretary	$2,555,000	$2,555,000
Executive secretary	1,495,000	1,495,000
Other expenses	842,000	842,000
Total, Office of the Secretary	4,892,000	4,892,000
General Administration		
Salaries and expenses:		
General management:		
Board of Contract Appeals	203,000	203,000
Equal opportunity	1,273,000	1,273,000
Minority economic impact	459,000	459,000
Office of the Controller	9,160,000	9,160,000
Inspector General	5,275,000	5,275,000
Procurement and contracts management	7,416,000	7,416,000
Administration	16,333,000	16,333,000
General Counsel	11,503,000	11,503,000
Assistant to the Secretary for Legislative Affairs	1,620,000	1,620,000
Assistant Secretary for Policy and Evaluation	6,530,000	6,530,000
Assistant Secretary for International Affairs	4,305,000	4,305,000
Assistant to the Secretary for Public Affairs	2,966,000	2,966,000
Consumer affairs	781,000	781,000
Intergovernmental affairs	2,499,000	2,499,000
Subtotal, general management	70,323,000	70,323,000
Program administration:		
Assistant Secretary for Nuclear Energy	$489,000	$489,000
Assistant Secretary for Resources Applications	598,000	598,000
Assistant Secretary for Environment	2,620,000	2,620,000
Assistant Secretary for Defense Programs	2,007,000	2,007,000
Assistant Secretary for Conservation and Solar Energy	817,000	817,000
Office of Enery Research	876,000	876,000
Subtotal, program administration	7,407,000	7,407,000
Field offices:		
Operations offices	55,700,000	55,700,000
Regional representatives	5,681,000	5,681,000
Regional counsels	3,400,000	3,400,000
Power marketing coordination	471,000	471,000
Subtotal, field offices	65,252,000	65,252,000
Subtotal, salaries	142,982,000	142,982,000
General reduction		—6,355,000
Total, salaries	142,982,000	136,627,000
Other expenses:		
Other salary expenses	8,283,000	7,810,000
Benefits	18,830,000	15,431,000
Travel	5,903,000	5,803,000
Services	101,775,000	96,595,000
Subtotal, other expenses	134,791,000	125,639,000
Total, salaries and expenses	277,773,000	262,266,000
Program support:		
Policy analysis and systems studies	18,600,000	16,500,000
Intergovernmental and institutional relations	36,743,000	34,343,000
International cooperation in nonnuclear technologies	3,600,000	2,000,000
International policy studies	500,000	500,000
In-house energy management	3,900,000	3,900,000
Security investigations	15,012,000	15,012,000
Cost of work for others	43,803,000	43,803,000
Changes in inventories	12,000,000	12,000,000
Total, program support	134,158,000	128,058,000
Subtotal, general administration	411,931,000	390,324,000
Miscellaneous revenues	—131,267,000	—184,267,000
Total, General administration	280,664,000	206,057,000

PLANT AND CAPITAL EQUIPMENT

Energy supply, research and development activities

Amendment No. 12: Reported in technical disagreement. Appropriates $373,287,000 and, in addition, $10,000,000 for away from reactor storage capacity instead of $330,837,000 as proposed by the House and $376,337,000 and $10,000,000 for away from reactor storage capacity as proposed by the Senate. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

$373,287,000 and in addition, $10,000,000 for the construction or acquisition by the Secretary of Energy of capacity for the away from reactor storage of spent nuclear fuel from electric powerplants licensed under the Atomic Energy Act of 1954, all

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Solar Energy

Project 79–1–Q, Solar Energy Research Laboratory. Funding is provided to complete Title II design, the Test Site Infrastructure and preliminary site construction activities only. The conferees are concerned by reports that the facility as presently designed is unnecessarily expensive in relation to requirements. Therefore, no funds are provided for, nor should be used for, facility construction activities until the Committees are provided a complete report detailing the requirements for the facility, the appropriateness of the design to meet these requirements and the steps being taken to ensure that the facility construction costs are reasonable and commensurate with the minimum requirements for the facility. The Department is also directed to consider the concept of phased, modular construction such that the total cost of the project can be maintained at no more than the current estimate by deleting lower priority requirements to stay within the total estimated cort.

Project 80–ES–19, Small Communities Systems Application Experiment. The conference allowance includes $3,750,000 for the small communities systems application experiment. The initial budget justification material for this project was inadequate to support a recommendation in the reports of either of the Committees on Appropriations. However, the Department has recently submitted additional data to support inclusion of funding for this project.

The conferees remain concerned, however, by the deficiencies in the budget justification materials for solar energy projects. In future requests, the Department is directed to provide sufficient information in the request to show the need for and relationships of the various projects in meeting solar energy goals, the cost and performance of tradeoffs with competing systems for the same market, and sufficient project detail so that the committees can consider project funding requirements in relation to other priorities.

Project 76–2–B, 10 MWe Central Receiver Solar Thermal Power Plant, Barstow, California. The conferees agree that the Department may transfer to this project up to $10,000,000 from unobligated balances accruing from savings and slippages in the solar energy operating expenses account in order to continue the project as rescoped to meet repowering objectives.

Geothermal Energy

Projects 80–G–1 and 80–G–2 are funded at $10,911,000 and $8,000,000, respectively, in order that these projects can be completed expeditiously and economically.

Nuclear Commercial Waste Management

The conferees have deferred funding of any of the new terminal isolation research and development test facilities or demonstration facilities for consideration in future appropriations actions pending enactment of authorizing legislation to resolve the key elements of the terminal isolation R&D program. The Committees on Appropriations are willing to consider an appropriate method of funding for such new facilities by reprogramming, transfer of funds or in a supplemental request promptly once the program content is resolved.

General Purpose Facilities

The conference allowance for general purpose facilities includes, as a minimum, funding for the following projects:

80–ES–11	$2,000,000
81–E–308	2,000,000
81–E–309	1,000,000
81–E–310	1,000,000
81–E–311	2,500,000
81–E–312	5,300,000
81–E–317	3,300,000
81–E–321	700,000
81–E–324	3,400,000
81–E–325 (Senate No.)	[1] 1,000,000

[1] Energy Technology Laboratory, Sandia National Laboratory.

Interim Spent Fuel Storage

Domestic Spent Fuel Storage: Aquisition of AFR Capacity. The conference allowance provides $10,000,000 to initiate preliminary activities and allow negotiations for acquisition of AFR's pursuant to the Nuclear Waste Policy Act (S. 2189) as passed by the Senate on July 30, 1980, or similar legislation as it may be enacted by the Congress. A specific language provision is also recommended for inclusion in the bill to permit construction or negotiation and eventual acquisition of AFR capacity.

In making this recommendation to initiate the steps necessary to meet the urgent AFR requirements, the conferees direct that final contracts, transfer arrangements, or agreements in accordance with the provisions of S. 2189, or other legislation enacted by Congress, cannot be consummated without further, expressed congressional approval. The conferees have taken this action in compliance with the spirit and intent of recent action on DOE authorization measures.

Allocation of Funds

The funds are allocated as shown in the following table:

ENERGY SUPPLY, RESEARCH AND DEVELOPMENT, PLANT AND CAPITAL EQUIPMENT

	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
CAPITAL EQUIPMENT		
Solar Energy		
Solar applications for buildings:		
Active systems	$1,250,000	$1,250,000
Passive systems	500,000	500,000
Photovoltaics	7,000,000	7,000,000
Subtotal	8,750,000	8,750,000
Solar applications for industry:		
Biomass	750,000	750,000
Solar thermal	4,250,000	4,250,000
Subtotal	5,000,000	5,000,000
Solar power technology:		
Wind energy conversion systems	2,100,000	2,100,000
Ocean systems	700,000	700,000
Subtotal	2,800,000	2,800,000
Total, solar energy	16,550,000	16,550,000
Geothermal		
Geopressured resources	200,000	200,000
Geothermal technology development	1,110,000	1,110,000
Total, geothermal	1,310,000	1,310,000
Nuclear Fission		
Converter reactors:		
Thermal reactor technology	2,000,000	2,000,000
High temperature reactors		2,000,000
Total, converter reactors	2,000,000	4,000,000
Commercial nuclear waste management:		
Terminal isolation R. & D	9,760,000	8,000,000
Waste treatment technology	3,550,000	3,550,000
Total, commercial waste management	13,310,000	11,550,000
Spent fuel storage: Domestic spent fuel storage	1,000,000	1,000,000
Breeder reactors:		
Liquid metal fast breeder reactor base program	10,500,000	10,500,000
Water cooled breeder reactor	1,200,000	1,200,000
Fuel cycle research and development	400,000	5,400,000
Total, breeder reactors	12,100,000	17,100,000
Total, nuclear fission	28,410,000	33,650,000

	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
Space Nuclear Systems		
Space and terrestrial applications	$2,600,000	$2,600,000
Magnetic Fusion		
Confinement systems	18,100,000	17,700,000
Development and technology	8,700,000	8,400,000
Applied plasma physics	6,700,000	6,400,000
Reactor projects	4,400,000	4,400,000
Total, Magnetic fusion	37,900,000	36,900,000
Electric Energy Systems		
Power delivery	1,500,000	1,500,000
Energy Storage Systems		
Battery storage	700,000	700,000
Chemical mechanical and other storage	1,000,000	1,000,000
Total, energy storage systems	1,700,000	1,700,000
Environment		
Environmental research and development:		
Overview and assessment	2,040,000	2,040,000
Biological and environmental research	11,700,000	11,700,000
Total, environmental R. & D	13,740,000	13,740,000
Basic Energy Research		
Basic energy sciences:		
Nuclear sciences	1,300,000	1,300,000
Material sciences	7,300,000	7,100,000
Chemical sciences	4,300,000	4,000,000
Engineering, mathematical and geosciences	1,760,000	1,760,000
Advanced energy projects	300,000	300,000
Biological energy conversion and conservation	400,000	400,000
Other capital equipment	140,000	140,000
Total, basic energy sciences	15,500,000	15,000,000
Remedial Action Programs		
Management of surplus radioactively contaminated DOE facilities	550,000	550,000
Total, capital equipment	119,760,000	123,500,000

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
	CONSTRUCTION PROJECTS		
	Solar Energy		
	Alcohol fuels:		
81-T-305	Ethanol from biomass facility	$2,500,000	$2,500,000
80-B-1	Thermo chemical experimental facility	2,000,000	
	Total, alcohol fuels	4,500,000	2,500,000
	Solar applications for industry:		
81-T-306	Industrial cogeneration facility	1,900,000	
76-2-B	10MWe central receiver solar thermal power-plant, Barstow, Calif.	10,000,000	8,000,000
80-ES-2	Shenandoah large scale experiment, Shenandoah, Ga.	5,800,000	5,800,000
80-ES-19	Small communities systems application experiment No. 1.	3,750,000	3,750,000
	Total, solar applications for industry	21,450,000	17,550,000
79-1-Q	Solar Energy Research Institute: Solar energy research laboratory.	1,000,000	5,000,000

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
	Geothermal		
	Hydrothermal resources:		
80-G-1	50MWe geothermal demonstration, Valles Caldera, N. Mex.	$10,911,000	$10,911,000
80-G-2	50MWe 2d demo power plant, site undetermined.		8,000,000
	Total, geothermal	10,911,000	18,911,000
	Nuclear Fission		
	Commercial Waste Management		
	Terminal isolation R. & D.:		
81-T-301	General plant projects (fiscal year 1980—$3,300,000).	2,000,000	2,000,000
81-T-302	Salt test facility	6,800,000	
80-ES-12	Near surface test facility phase 2, Richland, Wash.	3,576,000	3,576,000
	Total, terminal isolation R. & D	12,376,000	5,576,000

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
	Spent Fuel Disposition		
	Domestic Spent Fuel Storage: Spent LWR fuel storage facilities, sites undetermined (away from reactor storage).		$10,000,000
	Breeder		
	Liquid metal fast breeder reactor:		
81-T-310	General plant projects (fiscal year 1980—$12,300,000).	$11,500,000	10,800,000
79-1-C	Security improvements, Richland, Wash	3,000,000	3,000,000
78-6-C	Safety Research Experimental Facility, Idaho National Engineering Laboratory, Idaho (A&E, long-lead procurement and limited construction only).	150,000	150,000
78-6-E	Liquid Metal Engineering Center Modifications, Santa Susana, Calif., (A&E and long-lead procurement only).		5,000,000
78-6-F	Fuels and Materials Examination Facility, Richland, Wash.	52,000,000	52,000,000
	Total, breeder	66,650,000	70,950,000
	Total, nuclear fission	79,026,000	86,526,000
	Magnetic Fusion		
	Confinement systems:		
80-MF-3	EBT—Proof of principle experiment	5,400,000	5,400,000
81-T-314	ISX-C Modifications ORNL	4,500,000	4,500,000
	Total, confinement systems	9,900,000	9,500,000
80-MF-4	Development and technology: Large coil test facility, phase I, ORNL	6,500,000	6,500,000
	Reactor projects:		
81-T-313	General plant projects (fiscal year 1980—$4,000,000).	5,400,000	4,400,000
78-3-B	Fusion materials irradiation test facility, HEDL, Wash., (A. & E. and long-lead procurement)	22,600,000	22,600,000
76-5-A	Tokamak fusion test reactor, Princeton, N.J	30,000,000	30,000,000
78-3-A	Mirror fusion test facility, Livermore, Calif	25,000,000	25,000,000
	Total, reactor projects	83,000,000	82,000,000
	Total, magnetic fusion	99,400,000	98,400,000
	Environment		
	Biological and environmental research:		
81-E-305	General plant projects (fiscal year 1980—$2,500,000).	3,000,000	3,000,000

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
81-E-306	Modifications and additions to biomedical and environmental research facilities, various locations	$3,400,000	$3,400,000
	Total, environment	6,400,000	6,400,000
	Basic Research		
	Basic energy sciences:		
81-E-301	Materials sciences: General plant projects (fiscal year 1980—$250,000)	300,000	300,000
	Chemical sciences:		
81-E-304	Acc. improvements and modifications, ORNL	200,000	200,000
80-ES-10	Chemical sciences addition, LBL, Berkeley, Calif	6,300,000	3,000,000
	Total, chemical sciences	6,500,000	3,200,000
	Total, basic energy sciences	6,800,000	3,500,000
	General purpose facilities:		
81-E-308	Energy systems research lab (ORNL)	2,000,000	
81-E-309	Rehab of gen pur plant (ANL)	4,100,000	
81-E-310	Trans & dist system upgrade (RL)	1,000,000	
81-E-311	Energy sci & tech build (BNL)	2,500,000	
81-E-312	Environment & energy tech fac. (PNL)	13,700,000	
81-E-313	Central energy conservation fac (BNL)	5,900,000	
81-E-314	Energy utilization improvements (BNL)	2,000,000	
81-E-315	Centralized cogeneration (ANL)	2,000,000	
81-E-316	Boiler No. 3 replacement (BNL)	3,000,000	
81-E-317	Roof replacement (INEL)	3,300,000	
81-E-318	Upgrade primary substation (ORNL)	3,500,000	
81-E-319	Install coal-fired afb boiler (ANL)	7,100,000	
81-E-320	Central supply facility (ANL)	1,000,000	
81-E-321	Site utilities project (LLL)	700,000	
81-E-322	Scoville substation dist sys (INEL)	1,000,000	
81-E-323	Fire safety improvements (ANL)	4,100,000	
81-E-324	Fire protection improvements (INEL)	3,400,000	
81-E-325	General purpose facilities, various locations		25,000,000
	Total, general purpose facilities	60,300,000	25,000,000
	Remedial Action Programs		
81-T-303	Remedial action: Test reactor area cleanup (INEL)		4,000,000
	Total construction	289,787,000	267,787,000
	Total capital equipment	119,760,000	123,500,000
	Fiscal year 1980 deferral		—8,000,000
	Total, energy supply, research and development—plant and capital equipment	409,547,000	383,287,000

SMALL COMMUNITY SOLAR DEMONSTRATION PROJECT

Amendment No. 13: Deletes Senate amendment which proposed language for the Small Community Solar Demonstration Project. This project has been included in the appropriate account.

PLANT AND CAPITAL EQUIPMENT

Uranium supply and enrichment activities

Amendment No. 14: Appropriates $276,760,000 for Plant and Capital Equipment, Uranium Supply and Enrichment Activities as proposed by the Senate instead of $275,760,000 as proposed by the House.

Amendment No. 15: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which merges the appropriation for Plant and Capital Equipment, Uranium Supply and Enrichment Activities as well as all prior year balances with the Uranium Supply and Enrichment Activities Operating Expenses appropriation.

Allocation of Funds

The funds are allocated as shown in the following table:

URANIUM SUPPLY AND ENRICHMENT ACTIVITIES, PLANT AND CAPITAL EQUIPMENT

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
	CAPITAL EQUIPMENT		
	Uranium resources assessment	$500,000	$500,000
	Advanced isotope separation technology	9,000,000	9,000,000
	Uranium enrichment	27,300,000	27,300,000
	Less uranium enrichment revenues	—36,300,000	—36,300,000
	Total, Capital Equipment	500,000	500,000
	CONSTRUCTION PROJECTS		
81-R-501	Uranium resource assessment: General plant projects (fiscal year 1980—$1,500,000)	800,000	800,000
	Advanced isotope separation technology:		
81-T-501	Isotope R. & D. lab, LASL, New Mexico	1,175,000	1,175,000
81-T-502	AIS lab, Livermore, Calif	6,500,000	1,800,000
81-T-504	General plant projects (fiscal year 1980—$800,000)	2,970,000	2,970,000
78-5-C	Advanced isotope pilot plant facility, Richland, Wash		1,000,000
	Total, advanced isotope separation technology	10,645,000	6,945,000

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
	Uranium Enrichment Activities		
	Gaseous diffusion operations and support:		
81-R-501	General plant projects (fiscal year 1980—$16,200,000)	$17,500,000	$17,500,000
81-R-502	UF-6 cylinders and storage yards, gaseous diffusion plants (fiscal year 1980—$7,000,000)	8,000,000	8,000,000
81-R-503	Utilities upgrading, GDP's	10,000,000	10,000,000
81-R-504	Supervisory control and data acquisition systems, Paducah, Ky., and Portsmouth, Ohio, gaseous diffusion plants	6,000,000	6,000,000
81-R-505	Instrumentation for purge cascades and withdrawal areas, gaseous diffusion plants	6,000,000	6,000,000
81-R-506	Environmental protection and safety improvements, phase I GDP's	10,000,000	
80-UE-1	Control of gaseous effluents, gaseous diffusion plants	3,500,000	3,500,000
80-UE-2	Control of water pollution, gaseous diffusion plants	9,500,000	9,500,000
80-UE-3	Plant facilities security improvements, gaseous diffusion plants	12,500,000	9,500,000

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
80-UE-4	Power recovery demonstration cells, gaseous diffusion plants	$7,000,000	$7,000,000
80-UE-5	Motor and switchgear upgrading, gaseous diffusion plants	12,000,000	12,000,000
71-1-F	Process equipment modifications, gaseous diffusion plants		25,000,000
74-1-G	Prior year projects		15,000,000
	Total, gaseous diffusion operations and support	102,000,000	129,000,000
	Gas centrifuge operations and support:		
79-2-D	Technology test facilities, various locations (A&E and long-lead procurement only) proposed deferral		4,000,000
76-8-G	Enriched uranium production facilities, Portsmouth, Ohio	$149,000,000	$284,215,000
	Total, gas centrifuge operations and support	149,000,000	288,215,000
	Revenues	−261,645,000	−238,160,000
	Fiscal year 1980 deferrals		−185,000,000
	Total, uranium enrichment activities	−10,645,000	−5,945,000
	Total, construction	800,000	1,800,000
	Total, capital equipment	500,000	500,000
	Total, uranium supply and enrichment activities, plant and capital equipment	1,300,000	2,300,000

PLANT AND CAPITAL EQUIPMENT

General science and research activities

Amendment No. 16: Appropriates $126,400,000 for Plant and Capital Equipment, General Science and Research Activities instead of $120,100,000 as proposed by the House and $132,200,000 as proposed by the Senate.

Allocation of Funds

The funds are allocated as shown in the following table:

GENERAL SCIENCE AND RESEARCH PLANT AND CAPITAL EQUIPMENT

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
	CAPITAL EQUIPMENT		
	Basic Sciences		
	Life sciences research and nuclear medicine applications: General life sciences	$2,900,000	$1,900,000
	High energy physics:		
	Facility operations	36,200,000	34,700,000
	Other capital equipment	2,800,000	2,800,000
	Total, high energy physics	39,000,000	37,500,000
	Nuclear physics:		
	Medium energy physics	8,100,000	8,100,000
	Other capital equipment	1,300,000	1,300,000
	Total, nuclear physics	9,400,000	9,400,000
	Total, capital equipment	51,300,000	48,800,000
	CONSTRUCTION PROJECTS		
	High Energy Physics		
	Facility operations:		
81-E-218	Tevatron, phase I, Fermi lab	2,000,000	2,000,000
81-E-219	Improvements and modifications, various locations (fiscal year 1980—$5,000,000)	6,000,000	6,000,000
81-E-220	General plant projects (fiscal year 1980—$4,500,000)	$5,000,000	$5,000,000
79-9-B	Energy saver, Fermi National Accelerator Laboratory, Batavia, Ill.	19,600,000	17,300,000
78-10-B	Intersecting storage accelerator (Isabelle) 400×40 Gev, Brookhaven National Laboratory, Upton, N.Y.	41,000,000	41,000,000
	Total, high energy physics	73,600,000	71,300,000
	Nuclear Physics		
	Medium energy physics:		
81-E-221	AIP various locations	1,600,000	1,600,000
81-E-222	General plant projects	2,800,000	2,800,000
	Total medium energy physics	4,400,000	4,400,000
	Heavy ion physics:		
80-GS-5	National Superconducting Laboratory, Michigan State University (A. & E. and long-lead procurement)	8,900,000	6,900,000
	Total, nuclear physics	13,300,000	11,300,000
	Total construction	86,900,000	82,600,000
	Total capital equipment	51,300,000	48,800,000
	Fiscal year 1980 deferrals		−5,000,000
	Total, general science and research—Plant and capital equipment	138,200,000	126,400,000

PLANT AND CAPITAL EQUIPMENT

Atomic energy defense activities

Amendment No. 17: Appropriates $600,005,000 for Plant and Capital Equipment, Atomic Energy Defense Activities instead of $533,205,000 as proposed by the House and $618,205,000 as proposed by the Senate.

Allocation of Funds

The funds are allocated as shown in the following table:

ATOMIC ENERGY DEFENSE ACTIVITIES, PLANT AND CAPITAL EQUIPMENT

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
	CAPITAL EQUIPMENT		
	Inertial confinement fusion	$11,000,000	$12,600,000
	Naval reactors development	39,000,000	37,000,000
	Weapons activities:		
	Research & Development	47,306,000	47,306,000
	Testing	18,930,000	18,930,000
	Production and surveillance	47,300,000	40,000,000
	Program direction	164,000	164,000
	Total weapons activities	113,700,000	106,400,000
	Verification and control technology	800,000	800,000
	Materials production:		
	Production reactor operations	13,300,000	13,300,000
	Processing of nuclear materials	9,300,000	9,300,000
	Supporting services	7,400,000	7,400,000
	Flourinel processing of nonproduction fuels and related activities	5,100,000	5,100,000
	Total, materials production	35,100,000	35,100,000
	Defense waste management:		
	Interim waste operations	$17,462,000	$12,462,000
	Long term waste management technology	5,493,000	2,993,000
	Decontamination and decommissioning	70,000	70,000
	Transportation R. & D	1,975,000	1,975,000
	Total, defense waste management	25,000,000	17,500,000
	Nuclear materials security and safeguards	3,400,000	3,400,000
	Total, capital equipment	228,000,000	212,800,000
	CONSTRUCTION PROJECTS		
	Inertial confinement fusion:		
81-D-101	Particle beam fusion accelerator—II, Sandia Laboratories, N. Mex.	5,000,000	5,000,000
80-AE-11	Target fabrication facility, Los Alamos Scientific Laboratory, N. Mex.	7,000,000	7,000,000
80-AE-12	Target fabrication facility, Lawrence Livermore Laboratory, Calif.	5,500,000	5,500,000

Project No.		Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
78-4-A	High energy laser facility (NOVA), Lawrence Livermore Laboratory, Calif.		$25,000,000
75-3-B	High energy laser facility, Los Alamos Scientific Laboratory, N. Mex.	$14,000,000	14,000,000
	Total, inertial confinement	31,500,000	56,500,000
	Naval Reactors Development		
	Submarine propulsion reactors:		
81-T-111	General plant projects (fiscal year 1980—$3,300,000).	3,300,000	3,300,000
81-T-112	Modifications and adds to prototype, various locations.	10,000,000	10,000,000
81-T-113	Fuel materials exam area upgrading, Bettis Atomic Power Lab., West Mifflin, Pa.	2,700,000	2,700,000
	Total, naval reactors development	16,000,000	16,000,000
	Weapons Activities		
	Weapons research and development:		
81-D-102	General plant projects (fiscal year 1980—$22,400,000).	24,900,000	24,900,000
81-D-106	Weaponization facilities, Lawrence Livermore Laboratory, Calif.	4,600,000	3,300,000
81-D-107	Utility system restoration, various locations	23,320,000	19,320,000
81-D-108	Reactor support facility, Sandia Laboratory		2,000,000
81-D-110	Upgrade industrial liquid waste treatment plants, LASL, N. Mex.	5,000,000	5,000,000
81-D-111	Water system upgrade, Los Alamos Scientific Laboratory, N. Mex.	2,000,000	2,000,000
81-D-133	Earthquake damage restoration, LLNL		2,000,000
81-D-134	Earthquake damage restoration, Sandia Livermore.		1,000,000
	Total, weapons research and development	59,820,000	59,520,000
	Testing:		
81-D-102	General plant projects	2,000,000	2,000,000
81-D-104	Heavy duty drill repair facility, Nevada test site, Nevada.	1,700,000	1,700,000
81-D-105	Engineer office bldg., NTS, Nevada	1,800,000	1,800,000
81-D-107	Utility system restoration, various locations	7,680,000	7,680,000
	Total, testing	13,180,000	13,180,000
	Weapons production and surveillance:		
81-D-103	Plant engineering and design	4,600,000	4,000,000
80-AE-13	Pershing II airburst warhead production facilities, various locations.	5,000,000	5,000,000
81-D-114	Exhaust plenum modifications, Rocky Flats, Colo.		
81-D-115	MX warhead production facilities, various locations.	5,000,000	5,000,000
81-D-116	Utilities and equipment restoration, replacement and upgrade, phase II, various locations.	30,500,000	25,000,000
81-D-119	Reclamation facility improvements, Savannah River Plant, S.C.	1,200,000	1,200,000
81-D-120	Control of effluents and pollutants, Y-12 Plant, Oak Ridge, Tenn.	3,000,000	3,000,000
78-17-D	Steam plant improvements, Y-12 Plant, Oak Ridge, Tenn.	5,000,000	5,000,000
79-7-P	Facilities for a new modern strategic bomb, various locations.	19,500,000	19,500,000
80-AE-5	Ground launch cruise missile, production facilities, various locations.	3,000,000	3,000,000
80-AE-6	Utilities restoration, equipment replacement upgrade, various locations.	30,300,000	25,300,000
80-AE-8	Advanced size reduction facility, Rocky Flats Plant, Golden, Colo.	5,000,000	5,000,000
79-7-N	Utilities system restoration, Y-12 Plant, Oak Ridge, Tenn.	2,500,000	2,500,000
79-7-F	Production and assembly facilities—Pantex	1,300,000	1,300,000
71-9	Fire, safety, and adequacy of operating conditions, various locations.		5,000,000
	Total, weapons production	115,900,000	109,800,000
	Total, weapons activities	188,900,000	182,500,000
	Materials Production		
	Production reactor operations:		
81-D-125	N reactor safety and environmental improvements, Richland, Wash.	$2,100,000	$2,100,000
81-D-129	Supplemental N reactor irradiated fuel storage beyond KW basin capacity, Richland, Wash.	5,000,000	
81-D-141	Hangers for N reactor, Richland, Wash		5,000,000
	Total, production reactor operations	7,100,000	7,100,000
80-AE-2	Processing of nuclear materials: Replace obsolete processing facilities, H-B line, Savannah River, S.C.	5,800,000	9,800,000
	Supporting services:		
81-D-123	General plant projects (fiscal year 1980—$15,000,000).	12,500,000	12,500,000
81-D-124	Plant engineering and design (fiscal year 1980—$2,400,000).	4,200,000	5,400,000
81-D-128	Restoration of production capabilities, various locations.	9,000,000	9,000,000
70-18-E	Environmental Safety and Security Inps. to Waste Mang. and Mat. Processing Fac., Richland, Wash.		3,000,000
79-7-1	Transmissions and Distribution Systems Upgrading, Richland, Wash.		5,000,000
	Flourinel processing of nonproduction fuels and related activities:		
81-D-123	General plant projects, Idaho fuels processing facility, Idaho.	2,100,000	2,100,000
81-E-131	Remote analytical facility upgrade and expansion, ICPP. INEL, Idaho.	5,000,000	5,000,000
80-AE-3	Steam generation facilities, Idaho Chemical Processing Plant, Idaho Falls, Idaho.	13,500,000	11,500,000
79-7-H	Utilities replacement and expansion, Idaho Chemical Processing Plant, Idaho National Engineering Laboratory, Idaho Falls, Idaho.	2,300,000	2,300,000
77-13-A	Flourinel dissolution process and fuel receiving improvement, Idaho Chemical Processing Plant, Idaho National Engineering Laboratory, Idaho.	34,000,000	34,000,000
	Total, materials production	95,500,000	106,700,000
	Defense Waste Management		
	Interim waste management:		
81-T-102	Plant engineering and design (fiscal year 1980—$2,000,000).	2,665,000	3,665,000
81-T-101	General plant projects (fiscal year 1980—$2,000,000).	8,140,000	6,140,000
81-T-103	6th set of calcined solids storage bins, ICPP, INEL, Idaho.	15,000,000	7,500,000
81-T-104	Radioactive waste facilities improvements, ORNL, Tenn.	20,000,000	5,000,000
79-7-K	Waste management facilities, Savannah River, S.C.	2,000,000	2,000,000
78-18-B	High level waste storage facilities, Savannah River, S.C.	4,000,000	4,000,000
	Total, interim waste operations	51,805,000	28,305,000
	Long term waste management technology:		
81-T-102	Plant engineering and design	7,200,000	11,200,000
81-T-101	General plant projects	1,000,000	1,000,000
	Total, long term waste management technology.	8,200,000	12,200,000
77-13-F	Terminal storage: Waste isolation pilot plant, Delaware Basin, Southeast New Mexico.		15,000,000
	Total, defense waste management	60,005,000	55,505,000
	Total construction	391,905,000	417,205,000
	Total capital equipment	228,000,000	212,800,000
	Fiscal year 1980 deferrals		−30,000,000
	Total, atomic energy defense activities, plant and capital equipment.	619,905,000	600,005,000

POWER MARKETING ADMINISTRATIONS

Operation and Maintenance, Alaska Power Administration

Amendment No. 18: Deletes language proposed by the House which would have provided for an appropriation transfer of $20,000 to the U.S. Fish and Wildlife Service. The language is no longer required.

FEDERAL ENERGY REGULATORY COMMISSION

Salaries and Expenses

Amendment No. 19: Appropriates $74,374,000 for Salaries and Expenses as proposed by the Senate instead of $72,949,000 as proposed by the House.

Allocation of Funds

The funds are allocated as shown in the following table:

FEDERAL ENERGY REGULATORY COMMISSION

	Fiscal year 1981	
	Budget estimate	Conference allowance
Salaries and benefits	$51,083,000	$49,083,000
Travel	2,925,000	2,925,000
Transportation of things	176,000	176,000
Communications, utilities and rents	7,015,000	7,015,000
Printing and reproduction	1,806,000	1,806,000
Other services	12,271,000	12,271,000
Supplies and materials	1,098,000	1,098,000
Total Federal Energy Regulatory Commission	76,374,000	74,374,000

DEPARTMENT OF ENERGY

Program costs

The following table reflects the program costs and outlay levels associated with the appropriations provided for in the bill. The Department is expected to manage its programs so as not to exceed the cost and outlay levels provided in the table.

DEPARTMENT OF ENERGY—PROGRAM COSTS
[Dollar amounts in thousands]

	Fiscal year 1981	
	Budget estimate	Conference allowance
Operating Expenses		
Energy supply, research and development:		
Solar applications / Solar technology	$518,266	$509,000
Geothermal	132,894	130,000
Hydropower projects	21,000	23,000
Fission	714,706	776,000
Fusion	281,227	281,000
Electric energy systems and storage	113,723	114,000
Environment	213,098	211,000
Basic research	253,585	243,000
Total, energy supply, R. & D.	2,248,499	2,287,000
Uranium Supply and Enrichment Activities		
Uranium resource assessment	42,945	44,945
Advanced isotope separation technology	61,044	61,044
Uranium enrichment	855,951	855,951
Less uranium enrichment revenues	−991,100	−991,100
Total, uranium supply and enrichment	−31,160	−29,160
General science and research	371,050	372,000
Atomic Energy Defense Activities		
Inertial confinement fusion	158,770	141,000
Naval reactors development	259,650	259,600
Weapons activities	1,689,209	1,689,200
Verification and control technology	37,455	37,400
Materials production	389,300	404,300
Defense waste management	257,356	239,000
Nuclear materials security and safeguards	39,704	39,700
Total, atomic energy defense activities	2,831,444	2,810,200
Departmental administration	285,256	212,000
Total, operating expenses	5,705,089	5,652,040
Capital equipment	362,378	360,000
Construction	1,103,021	1,086,000
Total, plant and capital equipment	1,465,399	1,446,000
Power marketing	99,561	99,561
Federal Energy Regulatory Commission	75,538	74,374
Special foreign currency	$75	$75
Geothermal resources development fund	1,247	1,247
Proposed fiscal year 1980 changes	+20,450	−58,800
Grand total	7,367,359	7,214,497

TITLE II—DEPARTMENT OF DEFENSE—CIVIL, DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS—CIVIL

The line referred to on the bottom of the tables as savings and slippage is savings and slippage from FY 1980 and prior years which are anticipated to be unobligated on September 30, 1980, and will be applied to the 1981 projects. This does not include savings and slippage anticipated in the 1981 projects.

GENERAL INVESTIGATIONS

Amendment No. 20: Appropriates $134,013,000 for general investigations instead of $140,238,000 as proposed by the House and $133,367,000 as proposed by the Senate.

Amendment No. 21: Deletes Senate language which would have made $200,000 available for cooperative efforts with foreign governments.

Amendment No. 22: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate, with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

": *Provided*, That none of the funds made available in this paragraph shall be obligated or expended for the study of Diversion of Lake Michigan at Chicago, if such study would result in adverse diminution of generation at hydroelectric facilities on the Niagara or St. Lawrence Rivers."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The funds appropriated are to be allocated as shown on the following table:

Type of project, general investigations—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
Alabama:		
(N) Apalachicola River below Jim Woodruff lock and dam		$50,000
(N) Mississippi River navigation system—adequate mooring facilities for watercraft	$300,000	300,000
(Spec) Tennessee-Tombigbee Waterway	1,500,000	1,500,000
(N) Warrior-Tombigbee Rivers, Alabama and Mississippi	391,000	841,000
Alaska:		
(FDP) Small hydroelectric plants	500,000	500,000
(FDP) Southcentral Railbelt area	533,000	533,000
(N) Southcentral region, deep draft navigation		180,000
American Samoa:		
(N) Harbors and rivers in American Samoa	225,000	225,000
Arizona:		
(FDP) Gila River and tributaries, Arizona and New Mexico	440,000	870,000
(FDP) Metropolitan area of Tucson	559,000	559,000
Arkansas:		
(FDP) Arkansas River in the vicinity of Fort Smith-Van Buren	310,000	310,000
(N) Arkansas River and tributaries, hydropower and other purposes	800,000	800,000
(FDP) Poxeau River, Arkansas and Oklahoma		200,000
(FDP) Ouachita River basin	1,250,000	1,250,000
(COMP) Red River below Denison Dam authority report, Arkansas, Louisiana, Oklahoma, and Texas	50,000	50,000
(COMP) White River basin authority report, Arkansas and Missouri	242,000	242,000
(FDP) White River basin reservoirs, Arkansas and Missouri	400,000	400,000
California:		
(SP) City of Alameda shoreline	55,000	55,000
(N) Coast of Northern California (light-draft harbors)		140,000
(N) Crescent City Harbor	220,000	220,000
(N) Humboldt Harbor and Bay		$375,000
(FDP) Lake Elsinore		175,000
(FDP) Los Angeles County drainage area review	$457,000	457,000
(N) Los Angeles-Long Beach Harbors (includes San Pedro Bay Model Study)	125,000	125,000
(FDP) Northern California streams		275,000
(N) Oakland Inner Harbor	200,000	200,000
(N) Redondo Beach Harbor (King Harbor)		65,000
(FDP) Sacramento River and tributaries (bank protection and erosion control)		500,000
(FDP) Sacramento-San Joaquin Delta	175,000	175,000
(FDP) San Diego County streams	300,000	300,000
(N) San Francisco Bay area (in depth)	110,000	110,000
(FDP) San Francisco Bay shoreline		350,000
(FDP) San Joaquin River Basin	1,000,000	1,300,000
(FDP) San Lorenzo silt removal		100,000
(N) San Pedro Bay ports	200,000	325,000
(FDP) Santa Ana River Basin and Orange County	350,000	350,000
(N) Sunset Harbor	100,000	100,000
(FDP) Whitewater River	230,000	230,000
Colorado:		
(FDP) Arkansas River above John Martin Dam (phase I)	200,000	200,000
Connecticut:		
(N) Bridgeport Harbor	300,000	300,000
(COMP) Connecticut River basin authority report, Connecticut, Maine, New Hampshire, and Vermont	480,000	480,000
(SPEC) Long Island Sound (dredged material containment study)	400,000	400,000
Delaware:		
(N) Delaware River estuary, salinity intrusion	120,000	120,000

Type of project, general investigations—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
District of Columbia:		
(Spec) Metropolitan Washington water supply	$600,000	$600,000
Florida:		
(FDP) Brevard County (water resources study)	405,000	405,000
(FDP) Central and Southern Florida, Canal III	150,000	150,000
(FDP) Central and Southern Florida water supply	446,000	446,000
(N) Choctawhatchee River	252,000	252,000
(SP) Flagler County		70,000
(FDP) Golden Gates Estates		150,000
(N) Jacksonville Harbor	233,000	233,000
(FDP) Kissimmee River-Lake Okeechobee	555,000	555,000
(BE) Nassau County (Amelia Island)		50,000
(N) Okeechobee Waterway (St. Lucie Canal) (EIS)		100,000
(SP) Pinellas County	44,000	44,000
(FDP) Shark River Slough area	150,000	150,000
(N) Tampa Harbor, Alafia River and Big Ben	120,000	120,000
(FDP) Withlacoochie River		100,000
Georgia:		
(FDP) Dalton Lake (phase I)		200,000
(FDP) Metropolitan Atlanta area	100,000	100,000
(FDP) Metropolitan Savannah area	325,000	325,000
(N) Savannah Harbor comprehensive study	110,000	110,000
Guam:		
(N) Harbors and Rivers in the territory of Guam	325,000	325,000
Hawaii:		
(FDP) Harbors and Rivers in Hawaii	265,000	265,000
(N) Hilo area comprehensive study	325,000	325,000
(FDP) Kihei District	160,000	160,000
Idaho:		
(FDP) Columbia River and tributaries	700,000	1,000,000
(FDP) Upper Snake River and tributaries, Idaho and Wyoming	330,000	330,000
Illinois:		
(Spec) Carlyle Lake and Lake Shelbyville	300,000	300,000
(FDP) Chicago—South end of Lake Michigan	220,000	220,000
(FDP) Chicagoland underflow plan (phase I)	2,500,000	2,500,000
(FDP) Decognia and Fountain Bluff L and DD and Grand Tower D and LD	93,000	93,000
(Spec) Diversion of Lake Michigan Water at Chicago	300,000	300,000
(FDP) Fox River and tributaries, Illinois and Wisconsin	355,000	355,000
(FDP) Illinois shore of Lake Michigan		100,000
(FDP) Mississippi River, Coon Rapids Dam to Ohio River, Illinois, Iowa, Missouri, and Wisconsin	550,000	550,000
(N) Mississippi River, year-round navigation, Illinois, Iowa, Minnesota, Missouri, and Wisconsin	400,000	400,000
(FDP) Ohio River main stem, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia	600,000	700,000
(FDP) Quad-Cities urban study	54,000	54,000
(FDP) Richland Creek	300,000	300,000
(FDP) Rock River at Rockford	70,000	70,000
Indiana:		
(FDP) Little Calumet River (phase I)	440,000	440,000
(COMP) Wabash River Basin Authority Report, Indiana and Illinois	400,000	400,000
Iowa:		
(FDP) Iowa and Cedar Rivers, Iowa and Minnesota	166,000	166,000
Kansas:		
(FDP) Arkansas River, Great Bend, Kans., to John Martin Dam, Colorado	275,000	275,000
(FDP) Arkansas River and tributaries, Great Bend, Kans., to Tulsa, Okla.	400,000	400,000
(FDP) Kansas and Osage Rivers	1,000,000	1,000,000
(FDP) Verdigris River, Kans., and Okla. (including navigation)	440,000	440,000
Kentucky:		
(FDP) Camp Ground Lake (phase I)	250,000	300,000
(FDP) Kentucky River and tributaries	300,000	300,000
(N) Lower Cumberland and Tennessee Rivers below Barkley Canal, Ky. and Tenn.	100,000	100,000
(FDP) Upper Cumberland River basin, Ky. and Tenn.	200,000	200,000
Louisiana:		
(FDP) Aloha Rigolette area		135,000
(N) Gulf IWW, La.-Tex. section, La. and Tex.	440,000	440,000
(FDP) Lake Ponchartrain, Jefferson Parish		50,000
(FDP) Louisiana coastal areas		150,000
(FDP) Mermentau, Vermilion, Calcasieu Rivers, and Bayou Teche		100,000
Maine:		
(N) Searsport Harbor	120,000	120,000
Maryland:		
(SPEC) Chesapeake Bay study, Md. and Va	2,497,000	2,497,000
(N) Chesapeake City Bridge	23,000	23,000
(N) Crisfield Harbor	50,000	50,000
(FDP) Monongahela-Youghiogheny River Basin, Md., Pa., and W. Va	450,000	450,000
(N) Smith Island	45,000	45,000
Massachusetts:		
(N) East Boat Basin, Sandwich, Mass		100,000
(FDP) Housatonic River Basin, Mass. and Conn	325,000	325,000
(N) Lynn Harbor	155,000	155,000
(COMP) Southeastern New England Authority Report, Mass., R.I., and Conn	250,000	250,000
Michigan:		
(N) Great Lakes Connecting Channel and Harbor	1,100,000	1,100,000
(FDP) Great Lakes, particularly Lakes Ontario and Erie	860,000	860,000
(SPEC) Water levels of the Great Lakes, Mich., Ill., Ind., Minn., N.Y., Ohio, Pa., and Wis	400,000	400,000
Minnesota:		
(SPEC) Great River resources management study, Minn., Ill., Iowa, and Wis	575,000	575,000
Mississippi:		
(N) Biloxi Bay, East Harrison County	35,000	35,000
(N) Mississippi Sound and adjacent areas	385,000	385,000
(N) Pascagoula Harbor		165,000
(FDP) Pascagoula River Basin	235,000	235,000
(FDP) Pearl River Basin	500,000	2,015,000
(FDP) Sowashee Creek (phase I)	148,000	148,000
Missouri:		
(FDP) Cape Giradeau-Jackson metropolitan area	$60,000	$60,000
(FDP) Prosperity Lake (phase I)	83,000	83,000
(N) St. Louis Harbor, Mo., Ill	285,000	285,000
(FDP) St. Louis metropolitan area, Mo. and Ill	350,000	550,000
(FDP) White River Basin, County Line Lake	150,000	150,000
Nebraska:		
(FPD) Nemaha and Little Nemaha Rivers		100,000
Nevada:		
(FPD) Truckee Meadows	150,000	150,000
New Hampshire:		
(N) Portsmouth Harbor and Piscataqua River, N.H. and Maine	55,000	55,000
(FDP) Southeastern New Hampshire	256,000	256,000
(FDP) Winnipesaukee River	200,000	200,000
New Jersey:		
(N) Barnegat Inlet (phase I)	50,000	50,000
(FDP) Hackensack River, N.J. and N.Y	306,000	306,000
(N) New York Harbor Claremont Terminal		50,000
(FDP) Passaic River Basin, N.J. and N.Y. (phase I)	2,700,000	2,700,000
(FDP) Raritan River Basin	560,000	560,000
(FDP) Third River	99,000	99,000
(FDP) Wallkill River (Black Dirt area), New Jersey and New York, (phase I)	155,000	155,000
New Mexico:		
(FDP) Rio Grande and tributaries Rio Puerco Rio Salado, (phase I)	447,000	447,000
(FDP) Rio Grande and tributaries, N. Mex. and Colo	450,000	450,000
New York:		
(N) Arthur Kill Channel, Howland Hook Terminal	100,000	100,000
(N) Buffalo Harbor	400,000	400,000
(FDP) Delaware River tributaries in New York State	175,000	175,000
(FPD) Irondequoit Creek	65,000	65,000
(N) Jones Inlet and Freeport, Long Island	150,000	150,000
(SP) Lake Ontario shoreline protection		400,000
(FDP) Oswego River Watershed	520,000	520,000
(N) St. Lawrence Seaway, additional locks	500,000	500,000
(COMP) Susquehanna River Basin Authority Report, New York, Pennsylvania, and Maryland	425,000	425,000
(FDP) Upper Allegheny River, Basin, N.Y. and Pa	75,000	75,000
(FDP) Wallkill River, N.Y. and N.J	86,000	86,000
North Carolina:		
(SP) Bogue banks and Bogue Inlet	48,000	48,000
(FDP) Lumber River Basin, N.C. and S.C	215,000	215,000
(FDP) Pee Dee and Little Pee Dee Rivers, N.C. and S.C		50,000
(FDP) Roanoke River (South Boston and vicinity), North Carolina and Virginia	487,000	487,000
(SP) West Onslow Beach and New River Inlet		95,000
(SP) Wrightsville Beach	69,000	69,000
North Dakota:		
(FDP) Grafton (phase I)	345,000	345,000
(FDP) Pembina River (phase I)		475,000
(FDP) Red River of the North, N. Dak. and Minn	635,000	635,000
Ohio:		
(FDP) Central Ohio Survey	300,000	300,000
(N) Cleveland Harbor (phase I)	130,000	130,000
(FDP) Grand Lake St. Marys	40,000	40,000
(Spec) Lake Erie, wastewater management, Ohio, Michigan, New York, Pennsylvania, and Indiana	800,000	800,000
(N) Lorain Harbor	340,000	340,000
(FDP) Miami River, Little Miami River and Mill Creek	350,000	350,000
(FDP) Muskingum River Basin	200,000	200,000
(FDP) Western Lake Erie shore	250,000	250,000
Oklahoma:		
(FDP) Canadian River and tributaries, Oklahoma, Texas, and New Mexico	200,000	200,000
(FDP) Tenkiller Ferry Lake	110,000	110,000
(FDP) Tulsa urban study	400,000	400,000
Oregon:		
(N) Columbia River at the mouth, Oreg. and Wash	130,000	130,000
(N) Coquille River and Bar		100,000
(FDP) Klamath River Basin, Oreg. and Calif		350,000
(N) Rogue River at Gold Beach		135,000
(COMP) Willamette River Basin		160,000
Pennsylvania:		
(FDP) Beaver River Basin	250,000	250,000
(FDP) Delaware River Basin, Pa., N.J., N.Y., and Del	400,000	400,000
(N) Delaware River dredging disposal study, Pennsylvania, New Jersey, and Delaware	250,000	250,000
(FDP) Kiskiminitas River Basin	150,000	150,000
(FDP) Lehigh River Basin	175,000	175,000
(SP) Presque Isle Peninsula (phase I)	150,000	150,000
(FDP) West Branch—Susquehanna River, Williamsport and South Williamsport		475,000
(FDP) Wyoming Valley (phase I)	205,000	205,000
Rhode Island:		
(FDP) Pawcatuck River and Narragansett Bay drain basin, Rhode Island, Maine, and Connecticut	150,000	150,000
South Carolina:		
(N) Charleston Harbor	180,000	180,000
(N) Georgetown Harbor	100,000	100,000
(FDP) Gills Creek		150,000
(FDP) Lynches River		80,000
(FDP) Waccamaw River		
South Dakota:		
(FDP) Missouri River, S. Dak., Nebr., N. Dak., and Mont	580,000	580,000
Tennessee:		
(FDP) Memphis metropolitan area	374,000	374,000
(FDP) Metropolitan region of Nashville (urban study)	425,000	425,000
Texas:		
(FDP) Brazos Natural salt pollution control (phase I)	450,000	450,000
(FDP) Brazos River and tributaries	250,000	300,000
(FDP) Buffalo Bayou and tributaries	860,000	860,000
(FDP) Colorado River and Tributaries	260,000	260,000
(FDP) Denison Dam-Lake Texoma, Texas and Okla	24,000	24,000
(N) Galveston Bay area navaigation study	610,000	610,000

Type of project, general investigations—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
(SP) Galveston County shore erosion study	$79,000	$79,000
(N) Guadalupe River, channel to Victoria	100,000	100,000
(FDP) Guadalupe and San Antonio River	100,000	100,000
(FDP) Lake Texoma water supply facilities, Texas and Okla	228,000	228,000
(FDP) Little Cypress Creek		200,000
(FDP) Palo Blanco and Cibolo Creeks	250,000	250,000
(FDP) Pine Island Bayou watershed		100,000
(FDP) Red River and tributaries above Denison Dam, Texas, Okla., and N. Mex		300,000
(N) Sabine River navigation	400,000	400,000
(FDP) San Diego Creek, Alice		120,000
(FDP) Walnut Branch in vicinity of Sequin	80,000	80,000
Utah:		
(FDP) Colorado River and Tributaries, above Lee's Ferry, Utah, Ariz., Colo., N. Mex., and Wyo	100,000	100,000
(FDP) Jordan River Basin	170,000	170,000
Virgin Islands:		
(FDP) Puerto Rico-Virgin Islands pipeline study, Virgin Islands and Puerto Rico	710,000	710,000
Virginia:		
(FDP) Chowan River, Va. and N.C	150,000	150,000
(N) Hampton Roads drift removal	100,000	100,000
(SP) Norfolk vicinity Willoughby Spit	78,000	78,000
(FDP) Roanoke River Upper Basin	262,000	262,000
(FDP) Virginia Beach (phase I)	352,000	352,000
Washington:		
(FDP) Chehalis River and tributaries	455,000	455,000
(N) Grays Harbor and Chehalis River, Hoquiam River	481,000	870,000
(Comp) Puget Sound and adjacent waters	646,000	646,000
(FDP) Puyallup River		100,000
(N) Seattle Harbor (Duwamish Waterway)		900,000
West Virginia:		
(N) Big Sandy River, W. Va., Ky., and Va	500,000	500,000
(FDP) Guyandotte River Basin, vicinity of Logan and Mullens	300,000	300,000
(Comp) Kanawha River Basin Authority Report, West Virginia, North Carolina, and Virginia	400,000	400,000
(FC) Upper Tug Fork, W. Va		300,000
Wisconsin:		
(N) Duluth-Superior Harbor		185,000

Type of project, general investigations—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
(FDP) Wisconsin River at Portage	$150,000	$150,000
Total, all States	62,258,000	75,022,000
Coordination studies with other agencies	4,380,000	4,380,000
Nationwide studies:		
(Spec) National waterways study	755,000	755,000
(Spec) National hydroelectric power resources study	1,600,000	1,600,000
Review of authorized projects:		
Restudy of deferred projects	377,000	777,000
Alamogordo, N. Mex		(50,000)
Cliff Walk Recreational Trail, R.I		(150,000)
Camelsback Dam, Gila River Basin, Ariz		(200,000)
Rockland Lake and Dam A, Texas		(50,000)
Review of completed projects (Sec. 216)	1,654,000	2,100,000
Lower Snake River enhancement plan		(200,000)
Prospect Beach, West Haven, Conn		(50,000)
Village Creek, Jackson and Woodruff Counties, Ark. (Taylor Bay siltation study)		(196,000)
Review for deauthorization	8,000	8,000
Total, review of authorized projects	2,039,000	2,885,000
Collection and study of basic data:		
Stream gaging (U.S. Geological Survey)	535,000	535,000
Precipitation studies (National Weather Service)	276,000	276,000
International water studies	100,000	100,000
Flood plain management services	8,215,000	8,215,000
Hydrologic studies	307,000	307,000
Scientific and technical information centers	228,000	228,000
Coastal data collection	1,700,000	1,700,000
Transportation systems	300,000	300,000
National program of inspection of non-Federal dams	23,200,000	23,200,000
Total, collection and study of basic data	34,861,000	34,861,000
Research and development	21,625,000	21,625,000
Reduction for anticipated savings and slippage		−7,115,000
Total, general investigations	127,510,000	134,013,000

Type of study: (N) navigation; (MP) multiple-purpose, including power; (FDP) flood damage prevention; (SP) shoreline protection; (Spec) special; (Comp) comprehensive; (Phase I) authorized for phase II stage of advance engineering and design in the Water Resources Development Act of 1974 or 1976.

CONSTRUCTION, GENERAL

Amendment No. 23: Appropriates $1,585,742,000 for construction, general instead of $1,657,095,000 as proposed by the House and $1,534,703,000 as proposed by the Senate.

The conferees concur and approve the acceptance of an advance of up to $10 million from the Brazos River Harbor Navigation District of Brazoria County, Texas to the Corps of Engineers for construction of the Freeport Harbor, Texas project, and the acceptance of an advance of approximately $1.5 million from the State of New Jersey to the Corps of Engineers for preparation and construction of the Liberty State Park Seawall and Levee, New Jersey, Project; both in accordance with 33 U.S.C. 561. It is agreed that these approvals are with the understanding that reimbursement will be made from the Federal Government only when and if construction funds are appropriated for these projects

The conferees agree that upon approval of legislation modifying the authorization for the Burlington Dam, North Dakota project, the Corps of Engineers is to provide such funding as may be necessary to carry out preconstruction activities during fiscal year 1981.

The conference agreement includes $400,000 for the St. Johns small boat basin, Oregon and $150,000 for the Sesuit Harbor, Massachusetts under Section 107, Small Navigation Projects and $500,000 for Oakland Beach, Rhode Island under Section 103, Small Beach Erosion Control Projects.

The Committee of Conference has agreed that the Corps of Engineers should finish planning for the Dickey-Lincoln School Lakes, Maine project in fiscal year 1981.

Amendment No. 24: Deletes language proposed by the House that would have made funds available from the Inland Waterways Trust Fund.

Amendments No. 25 and 26: Deletes funds and language proposed by the Senate relating to revetment repairs adjacent to Mt. Baldy at the Indiana Dunes National Lakeshore.

Amendment No. 27: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which adds language relating to the Siuslaw River and Bar, Oregon project.

Amendment No. 28: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which adds language relating to the Oceanside, San Diego County, California project.

Funds are provided for beach nourishment at Oceanside, San Diego County, California, as a temporary solution to the threat that beach erosion presents to the coast south of the Camp Pendleton Jetty. The conferees note that the erosion problem stemming from construction of the Camp Pendleton Jetty extends beyond the limits of the existing project and directs that the Corps of Engineers complete the ongoing survey investigation and proceed with the preparation of a report to the Congress on the appropriate permanent solution.

Amendment No. 29: Deletes language proposed by the Senate providing that, within available funds, $6,000,000 shall be available to carry out the purposes of section 202 of this Act. This project is included within the appropriation totals and on the report table and the amendment is no longer required.

The funds appropriated are to be allocated as shown on the following table:

Type of project, construction, general—State and project	Fiscal year 1981 budget estimates: Construction	Fiscal year 1981 budget estimates: Planning	Fiscal year 1981 conference allowance: Construction	Fiscal year 1981 conference allowance: Planning
Alabama:				
(MP) Jones Bluff lock and dam	$1,051,000		$2,060,000	
(N) Mobile Harbor (Theodore ship channel)	17,800,000		17,800,000	
(N) Montgomery to Gadsden, Coosa River channel				$4,000,000
(N) Tennessee-Tombigbee Waterway, Ala and Miss	208,070,000		212,000,000	
(MP) West Point Lake (McCosh Mill restoration)			200,000	
Alaska:				
(MP) Bradley Lake power project		$1,315,000		1,315,000
(FC) Chena River Lakes	20,550,000		20,550,000	
Arizona:				
(FC) Indian Bend Wash	3,550,000		3,550,000	
(FC) Phoenix and vicinity (stage 2 and remaining work)	10,900,000		10,900,000	
Arkansas:				
(N) McClellan-Kerr Arkansas River navigation system, locks and dams, Arkansas and Oklahoma	10,500,000		10,500,000	
(FC) McKinney Bayou, Ark. and Tex		255,000		255,000
(MP) Norfolk Lake—Highway bridge	13,350,000		13,350,000	
(MP) Norfolk Lake—Power units 3 and 4		400,000		400,000

Type of project, construction, general—State and project	Fiscal year 1981 budget estimates: Construction	Fiscal year 1981 budget estimates: Planning	Fiscal year 1981 conference allowance: Construction	Fiscal year 1981 conference allowance: Planning
(N) Ouachita and Black Rivers, Ark. and La. (1960 act)	$18,460,000		$18,460,000	
(FC) Red River levees and bank stabilization below Denison Dam, Ark., La., and Tex	3,600,000		3,600,000	
(FC) Red River Waterway, Index, Ark. to Denison Dam				$100,000
California:				
(FC) Cottonwood Creek		$1,400,000		1,400,000
(N) Crescent City Harbor	200,000		200,000	
(FC) Cucamonga Creek	19,179,000		19,179,000	
(FC) Dry Creek (Warm Springs) lake and channel	28,390,000		30,500,000	
(FC) Goleta and vicinity		400,000		400,000
(BE) Imperial Beach	1,262,000		1,262,000	
(N) Los Angeles—Long Beach Harbors	9,510,000		13,500,000	
(FC) Merced County streams		1,300,000		1,300,000
(MP) New Melones Lake	6,900,000		6,900,000	
(N) Hoyo River and Harbor		160,000		160,000
(BE) Oceanside, San Diego County			3,000,000	
(FC) Sacramento River Bank Protection Project	3,600,000		3,600,000	
(FC) Sacramento River, Chico Landing to Red Bluff			1,000,000	
(FC) Sacramento River and major and minor tributaries	200,000		200,000	
(N) San Diego River and Mission Bay	250,000		250,000	
(N) San Francisco Bay to Stockton	250,000		850,000	
(FC) San Luis Rey River		400,000		400,000
(FC) Santa Maria Valley levees	2,000,000		2,000,000	
(FC) Santa Paula Creek	250,000		250,000	
(FC) Walnut Creek	5,045,000		5,045,000	
Colorado:				
(FC) Bear Creek Lake	560,000		560,000	
(FC) Chatfield Lake	1,913,000		1,913,000	
Connecticut:				
(FC) New London	1,765,000		1,765,000	
(FC) Park River	4,865,000		4,865,000	
District of Columbia:				
(FC) Potomac Estuary Pilot Water Treatment Plant	4,100,000		4,100,000	
Florida:				
(BE) Broward County (REIMB)	750,000		750,000	
(FC) Central and southern Florida	10,540,000		10,540,000	
(FC) Dade County	5,000,000		5,000,000	
(FC) Four River Basins	4,900,000		4,900,000	
(N) Port Everglades Harbor	12,335,000		12,335,000	
(N) St. Lucie Inlet (sec. 201)	1,210,000		1,210,000	
(N) Tampa Harbor (Main channel)	23,600,000		23,600,000	
Georgia:				
(MP) Hartwell, Lake, Ga. and S.C. (fifth unit)	6,800,000		6,800,000	
(MP) Richard B. Russell Dam and Lake, Ga. and S.C	60,374,000		60,374,000	
(N) Savannah Harbor extension	4,563,000		4,563,000	
Hawaii:				
(N) Barbers Point (deep draft) harbor	10,700,000		700,000	
(FC) Kahoma Stream		200,000		200,000
(N) Kawaihae small boat harbor		50,000		50,000
Idaho:				
(MP) Dworshak Dam and Reservoir	3,984,000		3,984,000	
(MP) Dworshak additional unit		375,000		375,000
(MP) Lewiston-Clarkston Bridge, Idaho and Wash	9,200,000		9,200,000	
(FC) Placer Creek			1,000,000	
Illinois:				
(FC) East Moline	3,300,000		3,300,000	
(FC) East St. Louis and vicinity	2,400,000		2,400,000	
(FC) Eldred and Spankey drainage and levee district		300,000		300,000
(FC) Fulton	4,200,000		3,200,000	
(FC) Hartwell drainage and levee district				275,000
(FC) Hillview drainage and levee district		300,000		300,000
(N) Illinois Waterway, Dresden Island lock and dam (rehab)	3,770,000		2,500,000	
(N) Illinois Waterway, Starved Rock lock and dam (rehab)	4,620,000		3,500,000	
(FC) Kaskaskia Island drainage and levee district	3,500,000		3,500,000	
(N) Kaskaskia River navigation	5,500,000		5,500,000	
(N) Little Calumet River	100,000		100,000	
(N) Lock and dam 26, Mississippi River, Alton, Ill. and Mo	43,000,000		43,000,000	
(N) Locks and dam 52, Illinois and Kentucky (rehab)	4,500,000		4,500,000	
(N) Locks and dam 53, Illinois and Kentucky (rehab)	2,100,000		2,100,000	
(FC) McGee Creek drainage and levee district	6,000,000		6,000,000	
(FC) Meredosia, Ill., Meredosia Lake and Willow Creek D. & L.D		140,000		140,000
(FC) Meredosia, Willow Creek and Coon Run D. & L.D		250,000		250,000
(FC) Milan	1,100,000		1,100,000	
(N) Mississippi River between the Ohio and Missouri Rivers (regulating works), Illinois and Missouri	2,675,000		2,675,000	
(FC) Nutwood drainage and levee district		270,000		270,000
(FC) Rock River agricultural levees		245,000		245,000
(FC) Rockford	2,400,000		2,000,000	
(N) Smithland locks and dam, Illinois, Indiana and Kentucky	3,608,000		3,608,000	
(FC) Wood River drainage and levee district	225,000		225,000	
Indiana:				
(FC) Evansville	5,300,000		5,300,000	
(FC) Patoka Lake	2,000,000		3,300,000	
(N) Uniontown locks and dam, Indiana and Kentucky	1,100,000		1,100,000	
Iowa:				
(FC) Bettendorf	560,000		560,000	
(FC) Clinton	3,582,000		1,582,000	
(FC) Coralville Lake	1,100,000		1,100,000	
(FC) Evansdale (sec. 201)	2,400,000		2,400,000	
(FC) Missouri River levee system, Iowa, Nebraska, Kansas, and Missouri	7,329,000		7,329,000	
(N) Missouri River, Sioux City to mouth, Iowa, Kansas, Missouri, and Nebraska	4,5,000			
(FC) Red Rock Dam—Lake Red Rock			1,000,000	
(FC) Saylorville Lake	2,000,000		2,500,000	
(FC) Waterloo	4,600,000		4,600,000	
Kansas:				
(FC) Big Hill Lake	2,700,000		2,700,000	
(FC) Clinton Lake	988,000		988,000	
(FC) El Dorado Lake	4,912,000		4,912,000	
(FC) Hillsdale Lake	6,970,000		6,970,000	
Kentucky:				
(FC) Big South Fork National River and Recreation Area, Kentucky and Tennessee	21,400,000		21,400,000	
(FC) Cave Run Lake	4,095,000		4,095,000	
(FC) Dayton	4,966,000		4,966,000	
(MP) Laurel River Lake	3,664,000		3,664,000	
(FC) Paintsville Lake	2,900,000		2,900,000	
(FC) Southwestern Jefferson County	5,500,000		5,500,000	
(FC) Taylorsville Lake	29,620,000		25,000,000	

	Type of project, construction, general—State and project	Fiscal year 1981 budget estimates: Construction	Fiscal year 1981 budget estimates: Planning	Fiscal year 1981 conference allowance: Construction	Fiscal year 1981 conference allowance: Planning
(MP)	Wolf Creek Dam—Lake Cumberland (rehab)	13,000,000		13,000,000	
(FC)	Yatesville Lake			2,000,000	
	Louisiana:				
(N)	Atchafalaya River and Bayous, Chene, Boeuf and Black	3,400,000		5,800,000	
(BE)	Grand Isle and vicinity (section 201)	2,800,000		6,000,000	
(FC)	Lake Pontchartrain and vicinity (hurricane protection)	10,800,000		10,800,000	
(FC)	Larose to Golden Meadow (hurricane protection)	6,215,000		6,215,000	
(N)	Mississippi River Baton Rouge-Gulf Mexico-Southwest Pass and Bar	1,380,000		1,380,000	
(N)	Mississippi River, gulf outlet	1,200,000		1,200,000	
(FC)	New Orleans to Venice (hurricane protection)	2,250,000		2,250,000	
(N)	Overton Red River Waterway (lower 31 miles)	3,630,000		3,630,000	
(N)	Petit Anse, Tigre and Carlin Bayous		165,000		165,000
(N)	Red River emergency bank protection, Louisiana, Arkansas, Oklahoma, and Texas	5,010,000		5,010,000	
(N)	Red River Waterway, Mississippi River to Shreveport	98,100,000		98,100,000	
(FC)	Red River Waterway, Shreveport, La. to vicinity of Index, Ark		300,000		300,000
(N)	Vermilion Lock (replacement)	3,800,000		3,800,000	
(FC)	West Agurs levee		80,000		80,000
	Maine:				
(MP)	Dickey-Lincoln School Lakes		795,000		795,000
	Maryland:				
(N)	Baltimore Harbor and channels, Md. and Va. (1958 modification)	5,300,000		5,300,000	
(FC)	Bloomington Lake, Md. and W. Va	19,620,000		19,620,000	
	Massachusetts:				
(N)	Cape Cod canal highway bridges (rehab.)	7,080,000		7,080,000	
(FC)	Charles River natural valley storage areas	1,510,000		1,510,000	
(N)	Fall River Harbor			300,000	
(FC)	North Nashua River	900,000		900,000	
(FC)	Phillips Lake		150,000		150,000
(BE)	Revere Beach		200,000		200,000
	Michigan:				
(N)	Cross Village Harbor		130,000		130,000
(FC)	Red Run Drain and Lower Clinton River		700,000		700,000
(FC)	Saginaw River	1,050,000		1,050,000	
	Minnesota:				
(FC)	Bassett Creek		170,000		170,000
(FC)	Big Stone Lake—Whetstone River, Minn. and S. Dak	570,000		570,000	
(FC)	Chaska		200,000		200,000
(FC)	East Grand Forks		140,000		140,000
(FC)	Mankato and North Mankato	5,100,000		5,100,000	
(N)	Mississippi River, lock and dam 1 (rehab)	14,000,000		14,000,000	
(FC)	Rochester (phase I)		330,000		330,000
(FC)	Roseau River	500,000		500,000	
(FC)	Wild Rice River, south branch and Felton Ditch	1,900,000		1,900,000	
(FC)	Winona	5,300,000		4,800,000	
	Mississippi:				
(N)	Yazoo River, Belzoni Bridge (advance participation)	660,000		660,000	
(N)	Yazoo River		450,000		450,000
	Missouri:				
(FC)	Blue River channel, Kansas City	5,000,000		3,000,000	
(MP)	Clarence Cannon Dam and Reservoir	14,600,000		14,600,000	
(MP)	Harry S Truman Dam and Reservoir	16,870,000		17,670,000	
(FC)	Little Blue River channel	2,800,000		2,800,000	
(FC)	Little Blue River lakes	27,180,000		27,180,000	
(FC)	Mississippi River, agricultural area No. 8, Elsberry	916,000		916,000	
(FC)	Perry County drainage and levee districts 1, 2, and 3	2,684,000		2,684,000	
(FC)	Pine Ford Lake		500,000		500,000
(FC)	Smithville Lake	5,780,000		5,780,000	
	Montana:				
(FC)	Flathead River near Kalispell		300,000		300,000
(FC)	Great Falls	3,900,000		1,000,000	
(MP)	Libby additional units and reregulating dam	10,100,000		10,100,000	
(MP)	Libby Dam, Lake Koocanusa	3,093,000		3,093,000	
	Nebraska:				
(FC)	Bank Stabilization and rec. dev., Nebraska and South Dakota				100,000
(FC)	Papillion Creek and Tributaries Lakes			1,000,000	
	Nevada:				
(FC)	Humboldt River and tributaries				300,000
	New Jersey				
(FC)	Elizabeth	7,300,000		7,300,000	
(N)	Manasquan River (rehab) (north and south jetties)	3,295,000		3,295,000	
	New Mexico:				
(FC)	Los Esteros Lake	2,700,000		2,700,000	
(FC)	Rio Grande floodway, Truth or Consequences (Hot Springs) unit		150,000		150,000
(FC)	Santa Fe River and Arroyo Mascaras		190,000		140,000
	New York:				
(FC)	Ardsley		100,000		100,000
(N)	Cattaraugus Harbor	450,000		450,000	
(FC)	Dansville and vicinity		45,000		45,000
(N)	Dunkirk Harbor	150,000		150,000	
(BE)	East Rockaway Inlet—Rockaway Inlet and Jamaica Bay (part 1)	700,000		700,000	
(FC)	Ellicott Creek	660,000		160,000	
(FC)	Fire Island Inlet to Montauk Point	6,500,000		6,500,000	
(N)	Irondequoit Bay	100,000		100,000	
(N)	New York Harbor collection and removal of drift, New York and New Jersey	2,200,000		3,200,000	
(FC)	Scajaquada Creek	810,000		810,000	
(FC)	Yonkers	2,552,000		2,552,000	
	North Carolina:				
(N)	AIWW—Replacement of Federal highway bridges	1,440,000		1,440,000	
(FC)	B. Everett Jordan Dam and Lake	3,562,000		3,562,000	
(FC)	Carolina Beach and vicinity (hurricane protection)	2,300,000		2,300,000	
(FC)	Falls Lake	13,789,000		13,789,000	
(BE)	Fort Fisher and vicinity		415,000		415,000
(N)	Manteo (Shallowbag) Bay	11,900,000		11,900,000	
(FC)	Wrightsville Beach	1,100,000		1,100,000	
	North Dakota:				
(FC)	Sheyenne River		200,000		200,000
	Ohio:				
(FC)	Alum Creek Lake	1,320,000		1,320,000	
(N)	Ashtabula Harbor (rehab)	1,100,000		1,100,000	
(FC)	Caesar Creek Lake	3,491,000		3,491,000	
(FC)	Chillicothe	3,600,000		3,600,000	
(N)	Cleveland Harbor (rehab)	1,900,000		1,900,000	
(FC)	Cuyahoga River Basin	2,900,000		1,300,000	
(FC)	East Fork Lake	1,429,000		1,879,000	
(N)	Geneva-on-the-Lake (Sec. 201)		225,000		225,000
(FC)	Mill Creek	4,000,000		4,000,000	
(FC)	Muskingum River Lakes (rehab)	4,000,000		4,000,000	
(FC)	Newark	1,800,000		1,800,000	
(FC)	Point Place, Toledo	660,000		660,000	

	Type of project, construction, general—State and project	Fiscal year 1981 budget estimates: Construction	Fiscal year 1981 budget estimates: Planning	Fiscal year 1981 conference allowance: Construction	Fiscal year 1981 conference allowance: Planning
(FC)	Rano Beach—Howard Farms area		190,000		190,000
(N)	West Harbor	1800,000		1800,000	
	Oklahoma:				
(FC)	Arcadia Lake	8,000,000		8,000,000	
(FC)	Arkansas-Red River basins chloride control, Oklahoma, Kansas, and Texas		2,100,000		2,100,000
(FC)	Candy Lake	3,400,000		3,400,000	
(FC)	Clayton Lake	7,725,000		7,725,000	
(FC)	Copan Lake	4,850,000		4,850,000	
(FC)	Skiatook Lake	15,800,000		15,800,000	
(FC)	Waurika Lake	1,000,000		1,300,000	
	Oregon:				
(FC)	Applegate Lake	8,663,000		10,600,000	
(MP)	Bonneville Second Powerhouse, Oregon and Washington	72,332,000		73,932,000	
(MP)	John Day lock and dam—Lake Umatilla, Oregon and Washington			1,382,000	
(MP)	John Day lock (rehab)	2,400,000		2,400,000	
(FC)	Johnson Creek				180,000
(FC)	Lower Columbia River bank protection, Oregon and Washington	1,500,000		1,500,000	
(MP)	Mcnary lock and dam, Lake Wallula, Oregon and Washington	9,200,000		6,950,000	
(N)	Nehalem Bay (rehab)	5,200,000		5,200,000	
(N)	Siuslaw River				185,000
(FC)	Willamette River Basin bank protection	1,435,000		1,435,000	
(FC)	Wilow Creek Lake	7,591,000		8,300,000	
	Pennsylvania:				
(FC)	Chartiers Creek	1,600,000		1,600,000	
(FC)	Cowanesque Lake	3,630,000		3,630,000	
(N)	Emsworth locks and dam (rehab)	6,000,000		6,000,000	
(FC)	Francis E. Walter Reservoir (modification)				200,000
(FC)	Hay Creek, Birdsboro		50,000		50,000
(N)	Monongahela River, locks and dam 3 (rehab)	4,380,000		4,380,000	
(BE)	Presque Isle Peninsula	850,000		850,000	
(FC)	Tioga—Hammond Lakes	1,155,000		1,155,000	
	Puerto Rico:				
(FC)	Portugues and Bucana Rivers	14,600,000		14,600,000	
	Rhode Island:				
(N)	Bristol Harbor		150,000		150,000
	South Carolina:				
(N)	Cooper River, Charleston Harbor	50,072,000		50,072,000	
(N)	Little River Inlet, S.C. and N.C	4,100,000		4,100,000	
	Texas:				
(FC)	Aquilla Lake	9,675,000		9,675,000	
(FC)	Aubrey Lake			5,000,000	
(FC)	Arkansas—Red River basins chloride control, area VIII	7,400,000		7,400,000	
(FC)	Big Sandy Lake		350,000		350,000
(N)	Brazos Island Harbor	5,200,000			
(FC)	Buffalo Bayou and tributaries	200,000		200,000	
(FC)	Clear Creek		300,000		300,000
(FC)	Cooper Lake and channels			400,000	
(N)	Corpus Christi ship channel	4,200,000		4,200,000	
(FC)	El Paso	12,500,000		12,500,000	
(FC)	Freeport and vicinity (hurricane flood protection)	100,000		100,000	
(N)	GIWW—Chocolate Bayou	1,900,000		1,460,000	
(FC)	Highland Bayou	1,400,000		1,400,000	
(FC)	Lakeview Lake	31,550,000		31,550,000	
(FC)	Lavon Lake modification and East Fork channel improvement	3,300,000		3,300,000	
(FC)	Lewisville Dam (rehab)	900,000		900,000	
(FC)	Millican Lake		415,000		415,000
(N)	Mouth of Colorado River	2,600,000		2,600,000	
(N)	Neches River and tributaries salt water barrier at Beaumont		350,000		350,000
(FC)	Port Arthur and vicinity (hurricane flood protection)	2,200,000		2,200,000	
(FC)	San Antonio channel improvement	1,500,000		1,500,000	
(FC)	San Gabriel River	1,907,000		1,907,000	
(FC)	Taylors Bayou	100,000		100,000	
(FC)	Texas City and vicinity (hurricane flood protection)	4,100,000		4,100,000	
(N)	Texas City channel industrial canal	4,100,000		4,100,000	
(FC)	Three Rivers	1,100,000		1,100,000	
(MP)	Trinity River project		950,000		950,000
(FC)	Vince and Little Vince Bayous	100,000		100,000	
	Virginia:				
(FC)	Gathright Dam and Lake Moomaw	3,052,000		3,052,000	
(BE)	Virginia Beach (1962 modification) (reimb)	320,000		320,000	
(FC)	Virginia Beach streams, canal No. 2		145,000		145,000
	Washington:				
(MP)	Chief Joseph Dam additional units	4,258,000		8,258,000	
(MP)	Ice Harbor additional units	678,000		868,000	
(MP)	Little Goose additional units	1,901,000		2,401,000	
(MP)	Lower Granite lock and dam	995,000		3,459,000	
(MP)	Lower Snake River F. & W.L. compensation; Washington, Idaho, and Oregon	25,200,000		25,200,000	
(FC)	Mill Creek Lake (rehab)	6,500,000		6,500,000	
(FC)	Willapa River at Raymond		148,000		148,000
	West Virginia:				
(FC)	Beech Fork Lake	750,000		750,000	
(FC)	Burnsville Lake	2,210,000		2,210,000	
(FC)	Levisa and Tug Fork of the Big Sandy River and Cumberland River, W. Va., Va., and Ky			6,000,000	
(FC)	Oceana		300,000		300,000
(FC)	R.D. Bailey Lake	1,050,000		2,000,000	
(FC)	Stonewall Jackson Lake	15,885,000		15,885,000	
	Wisconsin:				
(FC)	Prairie du Chien	1,000,000		1,000,000	
(FC)	State road and Ebner coulees		300,000		300,000
	Miscellaneous:				
(N)	Small navigation projects (sec. 107)	8,770,000		12,090,000	
(FC)	Small projects for flood control and related purposes (sec. 205)	16,230,000		16,230,000	
(BE)	Small beach erosion control projects (sec. 103)	1,000,000		1,500,000	
	Emergency streambank and shoreline protection (sec. 14)	2,500,000		2,500,000	
	Recreation facilities at completed projects	12,200,000		13,600,000	
	Streambank erosion control evaluation and demonstration (sec. 32)	3,460,000		3,460,000	
	Shoreline erosion control demonstration (sec. 54)	1,500,000		1,500,000	
	Aquatic plant control (1965 act)	3,400,000		4,900,000	
	Employees compensation	5,051,000		5,051,000	
	Reduction for anticipated savings and slippage	−96,673,000		−65,673,000	
	Subtotal	1,503,483,000	19,243,000	1,561,209,000	24,533,000
	Total, construction, general	1,522,726,000		1,585,742,000	

Type of project:
(N) Navigation.
(FC) Flood control.
(BE) Beach erosion control.
(MP) Multiple-purpose, including power.

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES

Amendment No. 30: Appropriates $232,519,000 for flood control, Mississippi River and tributaries instead of $239,324,000 as proposed by the House and $228,970,000 as proposed by the Senate.

There is an urgent need to provide flood protection from the runoffs into the rivers and tributaries from the hill lands in the Delta Foothills Area, Mississippi. Recent floods have had a devastating impact on this area. Authority exists in the Yazoo Basin Comprehensive Study for the Corps of Engineers in cooperation with the Soil Conservation Service, the Soil Conservation Districts and the ASCS to investigate the feasibility of cooperatively storing floodwaters in the tributary basins above the foothills. Within available funds, the Corps is directed to utilize such funds as are necessary to initiate such investigation.

The Committee understands that the Corps of Engineers has studied a serious bank erosion problem on the Sunflower River at Mile 175.8 in Coahoma County, Mississippi. However, the results of this study did not take cognizance of the serious effects of disruption of traffic, difficulty in obtaining suitable routes for mail delivery and school buses, and general disruption of the longstanding social and economic makeup of the area. Accordingly, the Corps is directed to proceed with an appropriate solution for correction of the erosion problem up to the maximum amount allowed within the Section 14 Emergency Streambank program.

Amendment No. 31: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate relating to the Tensas Basin Red River Backwater Area, Louisiana project.

The funds appropriated are to be allocated as shown on the following table:

Type of project, flood control, Mississippi River and tributaries	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
GENERAL INVESTIGATIONS		
Surveys:		
General studies:		
(FDP) Boeuf-Tensas Basin, south Arkansas and north Louisiana		$785,000
(FDP) Helena and vicinity, Arkansas	$100,000	100,000
(FDP) Larto Lake—Sa line Lake area, Louisiana		200,000
(FDP) St. Francis River Basin below Wappapello Lake, Ark. and Mo	454,000	454,000
(FDP) St. Francis River, Ark. and Mo. (fish and wildlife)	175,000	175,000
(FDP) West Memphis, Ark	200,900	200,000
(FDP) Atchafalaya Basin (water and land resources), Louisiana	300,000	300,000
(FDP) Mississippi and Louisiana estuarine area		275,000
(FDP) Yazoo River Basin, Miss	781,000	781,000
(FDP) Wolf and Loosahatchie Rivers, and Noncomah Creek, Tenn. and Miss.	100,000	100,000
Phase I stage of advance engineering and design:		
(FDP) Horn Lake Creek and tributaries, including Cowpen Creek, Miss. and Tenn		200,000
(FDP) Nonconnah Creek, Miss. and Tenn		245,000
(FDP) Mississippi River, east bank, Vicksburg-Yazoo area, Mississippi	50,000	50,000
(FDP) Collection and study of basic data	155,000	155,000
Subtotal, general investigations	2,315,000	4,020,000
CONSTRUCTION AND PLANNING		
(FC) Harris Fork Creek, Tenn. and Ky		170,000
(FC) L'Anguille River Basin, Ark		150,000
(FC) Mud Lake pumping station, Tennessee	1,500,000	1,500,000
(FC) Mississippi River levees, Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi, and Tennessee	20,360,000	20,360,000
(FC) Channel improvement, Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi, and Tennessee	40,800,000	40,800,000
(FC) Bayou Cocodrie and tributaries, Louisiana	100,000	100,000
(FC) Bushley Bayou area, Louisiana	300,000	300,000
(FC) Eastern Rapides—South central Avoyelles	300,000	300,000
(FC) Old River, La	5,100,000	5,100,000
(FC) Lower Red River—South bank levees, Louisiana	1,500,000	1,500,000
(FC) Atchafalaya Basin, La	24,350,000	24,350,000
(FC) St. Francis Basin, Ark. and Mo	7,900,000	7,900,000
(FC) Teche-Vermilion Basins (additional surface water supply), Louisiana	7,500,000	7,500,000
(FC) Tensas Basin, Ark. and La.:		
Boeuf and Tensas Rivers, except Lake Chicot pumping plant	350,000	350,000
Boeuf and Tensas Rivers, Lake Chicot pumping plant	13,400,000	13,400,000
Red River backwater area, except Tensas Cocodrie pumping plant	1,150,000	1,150,000
Red River backwater area, Tensas Cocodrie pumping plant	6,700,000	6,700,000
Tensas River National Wildlife Refuge, La		200,000
(FC) West Kentucky tributaries, Kentucky	1,900,000	1,900,000
(FC) West Tennessee tributaries, Tennessee	1,900,000	1,900,000
(FC) Yazoo Basin, Miss.:		
Arkabutla Lake	$195,000	$195,000
Big Sunflower River, etc	2,984,000	2,984,000
Enid Lake	50,000	50,000
Greenwood	11,000	11,000
Grenada Lake	4,300,000	4,300,000
Main Stem	201,000	701,000
Sardis Lake	2,576,000	2,576,000
Streambank erosion control evaluation and demonstration	309,000	309,000
Tributaries:		
Except Ascalmore-Tippo and Opossum Bayous	194,000	1,894,000
Ascalmore-Tippo and Opossum Bayous	1,589,000	2,589,000
Upper Yazoo projects (formerly auxiliary channel)	4,681,000	4,681,000
Yazoo backwater	1,100,000	1,100,000
Subtotal, construction and planning	153,300,000	157,020,000
Major rehabilitation:		
(FC) Old River control structure, Louisiana (rehabilitation)	7,300,000	7,300,000
MAINTENANCE		
(FC) Boeuf and Tensas Rivers, Ark	79,000	79,000
(FC) Channel improvement, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee	39,419,000	39,419,000
(FC) White River backwater, Arkansas	373,000	373,000
(FC) Mapping, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee	259,000	259,000
(FC) Mississippi River levees, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee	6,518,000	6,518,000
(FC) North bank, Arkansas River, Ark	40,000	40,000
(FC) South bank, Arkansas River, Ark	90,000	90,000
(FC) St. Francis River Basin and tributaries, Arkansas and Missouri	2,453,000	2,453,000
(FC) Atchafalaya Basin, Louisiana	6,100,000	6,100,000
(FC) Bayou Cocodrie and tributaries, Louisiana	42,000	42,000
(FC) Bonnet Carre Spillway, Louisiana	206,000	361,000
(FC) Lower Red River, south bank levees, Louisiana	386,000	386,000
(FC) Old River Louisiana	4,829,000	4,829,000
(FC) Red River backwater area, Louisiana	88,000	88,000
(FC) Arkabutla Lake, Miss	1,286,000	2,000,000
(FC) Big Sunflower River, Miss	46,000	46,000
(FC) Enid Lake, Miss	1,938,000	3,000,000
(FC) Greenwood, Miss	219,000	219,000
(FC) Grenada Lake, Miss	2,628,000	5,500,000
(FC) Yazoo Basin, main stem, Mississippi	984,000	984,000
(FC) Sardis Lake, Miss	2,445,000	7,700,000
(FC) Yazoo Basin, tributaries, Mississippi	735,000	735,000
(FC) Whittington auxiliary channel, Mississippi	199,000	199,000
(FC) Yazoo backwater, Mississippi	117,000	117,000
(FC) Yazoo City, Miss	156,000	156,000
(FC) Wappapello Lake, Mo	1,677,000	1,677,000
(FC) Inspection of completed works	274,000	274,000
Subtotal, operation and maintenance	73,586,000	83,644,000
Reduction for anticipated savings and slippage	−12,965,000	−19,465,000
Total, flood control, Mississippi River and tributaries	223,536,000	232,519,000

Type of study or project:
(FC) Flood Control.
(FDP) Flood Damage Prevention.
(Phase I) Authorized for Phase I Stage of Advance. Engineering and Design in the Water Resources Development Act of 1974 or 1976.

OPERATION AND MAINTENANCE, GENERAL

Amendment No. 32: Appropriates $902,605,000 for operation and maintenance, general instead of $951,259,000 as proposed by the House and $900,397,000 as proposed by the Senate.

Within funds available for operation and maintenance, the conferees direct that necessary work on the clean up of the North Branch of the Chicago River, Illinois project be accomplished in FY 1981.

Pending the development of agreements with local law enforcement agencies, the Corps of Engineers shall provide for law enforcement on Corps property within available funds.

Amendment No. 33: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which provides that not to exceed $1,000,000 shall be available to reimburse non-Federal public interests for the costs of diking dredging disposal areas at Federal projects.

Amendment No. 34: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which adds language relating to the East Pass Channel, Florida project.

The funds appropriated are to be allocated as shown on the following table:

Type of project, operation and maintenance—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
Alabama:		
(N) Alabama-Coosa Rivers	$$2,044,000	$$3,053,000
(N) Bayou Coden		183,000
(N) Bayou La Batre	127,000	127,000
(N) Black Warrior and Tombigbee Rivers	6,305,000	6,305,000
(N) Bon Secour		223,000
(N) Dauphin Island Bay	80,000	80,000
(N) Dog and Fowl River	85,000	85,000
(N) Gulf Intracoastal Waterway (Mobile District)	2,048,000	2,048,000
(MP) Jones Bluff lock and dam	2,750,000	2,750,000
(MP) Millers Ferry lock and dam—William "Bill" Dannelly Reservoir	3,130,000	3,738,000
(N) Mobile Harbor	2,355,000	3,793,000
(N) Perdido Pass	122,000	122,000
(N) Removal of aquatic growth	62,000	62,000
(N) Tennessee-Tombigbee Waterway, Alabama and Mississippi	3,298,000	3,298,000
(MP) Walter F. George lock and dam	5,709,000	5,709,000
Alaska:		
(N) Anchorage Harbor	1,480,000	1,480,000
(FC) Chena River Lakes	352,000	352,000
(N) Dillingham Harbor	282,000	282,000
(N) Homer Harbor	184,000	184,000
(N) Ninilchik Harbor	217,000	217,000
(N) Nome Harbor	814,000	814,000
(N) Stikine River	23,000	23,000
Arizona:		
(FC) Alamo Lake	423,000	423,000
(FC) Painted Rock Dam	317,000	317,000
(FC) Whitlow Ranch Dam	163,000	163,000
Arkansas:		
(MP) Beaver Lake	1,624,000	1,624,000
(MP) Blakely Mountain Dam—Lake Ouachita	1,907,000	1,907,000
(FC) Blue Mountain Lake	499,000	499,000
(MP) Bull Shoals Lake	2,586,000	2,586,000
(MP) Dardanelle lock and dam	3,002,000	3,002,000
(MP) Degray Lake	1,872,000	1,872,000
(FC) Dequeen Lake	481,000	481,000
(FC) Dierks Lake	462,000	462,000
(FC) Gillham Lake	415,000	415,000
(MP) Greers Ferry Lake	3,138,000	3,452,000
(N) Helena Harbor	174,000	174,000
(N) McClellan-Kerr Arkansas River navigation system, Arkansas and Oklahoma	13,364,000	15,000,000
(FC) Millwood Lake	893,000	893,000
(MP) Narrows Dam—Lake Greeson	1,714,000	1,714,000
(FC) Nimrod Lake	555,000	555,000
(MP) Norfork Lake	1,695,000	1,695,000
(N) Osceola Harbor	244,000	244,000
(N) Ouachita and Black Rivers Arkansas and Louisiana	2,544,000	2,544,000
(MP) Ozark-Jeta Taylor lock and dam	2,080,000	2,080,000
(N) White River	1,084,000	1,084,000
California:		
(FC) Black Butte Lake	1,168,000	1,168,000
(FC) Buchanan Dam—H. V. Eastman Lake	647,000	647,000
(N) Channel Islands Harbor	235,000	235,000
(FC) Coyote Valley Dam (Lake Mendocino)	1,634,000	1,634,000
(N) Crescent City Harbor	1,632,000	1,632,000
(N) Drift removal San Francisco Bay and Harbor	1,198,000	1,198,000
(FC) Dry Creek (Warm Springs) Lake and channel	534,000	534,000
(FC) Farmington Dam	78,000	78,000
(FC) Hidden Dam—Hensley Lake	634,000	634,000
(N) Humboldt Harbor and Bay	1,505,000	1,505,000
(FC) Isabella Lake	1,465,000	1,465,000
(FC) Los Angeles County drainage area	3,353,000	3,353,000
(N) Los Angeles-Long Beach harbors	1,088,000	1,088,000
(N) Los Angeles-Long Beach Harbor model	82,000	82,000
(FC) Merced County stream group	81,000	81,000
(FC) Mojave River Dam	421,000	421,000
(N) Morro Bay Harbor	649,000	649,000
(N) Moss Landing Harbor	240,000	479,000
(FC) New Hogan Lake	813,000	813,000
(MP) New Melones Lake (downstream channel)	311,000	311,000
(N) Newport Bay Harbor	327,000	327,000
(N) Noyo River and Harbor	380,000	380,000
(N) Oakland Harbor	1,070,000	1,070,000
(N) Oceanside Harbor	650,000	650,000
(FC) Pine Flat Lake	1,047,000	1,047,000
(N) Redondo Beach Harbor (King Harbor)		250,000
(N) Redwood City Harbor	1,089,000	1,089,000
(N) Richmond Harbor	740,000	740,000
(N) Sacramento River	2,706,000	2,706,000
(N) Sacramento River and tributaries (debris control)	431,000	431,000
(N) San Diego Harbor	540,000	540,000
(N) San Francisco Harbor	1,437,000	1,437,000
(N) San Francisco Bay—Delta model structure	451,000	451,000
(N) San Joaquin River	108,000	108,000
(N) San Pablo Bay and Mare Island Strait	1,611,000	1,611,000
(FC) Santa Ana River Basin	1,704,000	1,704,000
(N) Santa Barbara Harbor	541,000	541,000
(N) Santa Cruz Harbor	353,000	675,000
(FC) Success Lake	686,000	686,000
(N) Suisun Bay channel	267,000	267,000
(N) Suisun Channel	51,000	51,000
(FC) Terminus Dam (Lake Kaweah)	689,000	689,000
(N) Ventura Marina	534,000	534,000
(N) Yuba River	27,000	27,000
Colorado:		
(FC) Bear Creek Lake	193,000	193,000
(FC) Chatfield Lake	268,000	268,000
(FC) Cherry Creek Lake	268,000	268,000
(FC) John Martin Reservoir	575,000	575,000
(FC) Trinidad Lake	288,000	288,000
Connecticut:		
(FC) Black Rock Lake	143,000	143,000
(N) Bridgeport Harbor	1,401,000	1,401,000
(FC) Colebrook River Lake	171,000	171,000
(N) Connecticut River below Hartford	678,000	678,000
(FC) Hancock Brook Lake	65,000	65,000
(FC) Hop Brook Lake	$194,000	$194,000
(FC) Mansfield Hollow Lake	148,000	148,000
(FC) Northfield Brook Lake	94,000	94,000
(N) Norwalk Harbor	1,039,000	1,039,000
(FC) Stamford hurricane barrier	100,000	100,000
(FC) Thomaston Dam	312,000	312,000
(FC) West Thompson Lake	266,000	266,000
Delaware:		
(N) IWW, Chincoteague Bay to Delaware Bay	7,000	7,000
(N) IWW, Delaware River to Chesapeake Bay, Del. and Md.	6,464,000	6,464,000
(N) IWW, Rehoboth Bay to Delaware Bay	42,000	42,000
(N) Murderkill River	108,000	108,000
(N) Wilmington Harbor	1,137,000	1,137,000
District of Columbia:		
(N) Potomac and Anacostia Rivers drift removal, District of Columbia, Maryland, and Virginia	364,000	364,000
(N) Washington Harbor	31,000	31,000
Florida:		
(N) Apalachicola Bay	26,000	26,000
(N) Apalachicola, Chattahoochee, and Flint Rivers	3,138,000	3,138,000
(N) Canaveral Harbor	1,210,000	1,210,000
(FC) Central and southern Florida	3,415,000	3,415,000
(N) Charlotte Harbor	1,831,000	1,831,000
(N) Cross-Florida Barge canal	758,000	758,000
(N) East Pass Channel	208,000	208,000
(N) Fernandina Harbor	1,841,000	1,841,000
(N) IWW, Caloosahatchee River to Anclote River	1,417,000	1,417,000
(N) IWW, Jacksonville to Miami	2,485,000	2,485,000
(N) Jacksonville Harbor	1,781,000	1,781,000
(MP) Jim Woodruff lock and dam—Lake Seminole	4,404,000	4,404,000
(N) Okeechobee Waterway	1,475,000	1,475,000
(N) Oklawaha River	37,000	37,000
(N) Palm Beach Harbor	41,000	41,000
(N) Panama City Harbor	249,000	249,000
(N) Pensacola Harbor	1,310,000	1,310,000
(N) Ponce de Leon Inlet	253,000	253,000
(N) Port St. Joe Harbor	1,328,000	1,328,000
(N) Removal of aquatic growth (Hyacinths)	2,394,000	2,846,000
(N) St. Augustine Harbor	733,000	733,000
(N) St. Johns River, Jacksonville to Lake Harney		288,000
(N) St. Lucie Inlet	352,000	352,000
(N) Tampa Harbor	1,305,000	6,461,000
Georgia:		
(MP) Allatoona Lake	4,487,000	4,487,000
(N) Atlantic Intracoastal Waterway (Savannah District)	1,112,000	1,112,000
(N) Brunswick Harbor	2,341,000	2,341,000
(MP) Buford Dam—Lake Sidney Lanier	4,951,000	4,951,000
(MP) Carters Lake	2,413,000	2,413,000
(MP) Clark Hill Lake	4,759,000	4,759,000
(MP) Hartwell Lake	4,419,000	4,419,000
(N) Savannah Harbor	6,843,000	7,843,000
(N) Savannah River below Augusta	434,000	434,000
(MP) West Point Lake, Ga. and Ala	2,779,000	2,779,000
Hawaii:		
(N) Hilo Harbor	758,000	758,000
(N) Kahului Harbor, Maui	107,000	107,000
Idaho:		
(MP) Albeni Falls Dam	1,468,000	1,468,000
(MP) Dworshak Dam and Reservoir	3,918,000	3,918,000
(FC) Lucky Peak Lake	351,000	351,000
Illinois:		
(N) Calumet Harbor and River, Ill. and Ind	227,000	227,000
(N) Calumet Harbor and River, Ill. and Ind. (diked disposal)	1,742,000	1,742,000
(FC) Carlyle Lake	2,197,000	2,197,000
(N) Chicago Harbor	445,000	445,000
(N) Chicago Harbor (diked disposal)	762,000	762,000
(N) Chicago River (diked disposal)	1,742,000	1,742,000
(FC) Farm Creek Reservoirs	103,000	103,000
(N) Illinois Waterway, Ill. and Ind	851,000	851,000
(N) Illinois Waterway, Ill. and Ind	12,990,000	12,990,000
(N) Kaskaskia River	1,048,000	1,048,000
(FC) Lake Shelbyville	2,301,000	2,301,000
(N) Mill Creek and south slough	31,000	31,000
(N) Mississippi River between Missouri River and Minneapolis, Minn., Ill., Wis., and Iowa	6,815,000	6,815,000
(N) Mississippi River between Missouri River and Minneapolis, Minn., Ill., Wis., and Iowa	27,922,000	27,922,000
(N) Mississippi River between Ohio and Missouri Rivers	8,691,000	8,691,000
(N) Ohio River locks and dams, Illinois, Pennsylvania, Indiana, Ohio, West Virginia, and Kentucky	20,920,000	20,920,000
(N) Ohio River open channel work, Illinois, Pennsylvania, Indiana, Ohio, West Virginia, and Kentucky	5,392,000	6,278,000
(FC) Rend Lake	1,486,000	1,486,000
(N) Waukegan Harbor	224,000	224,000
Indiana:		
(FC) Brookville Lake	361,000	361,000
(N) Burns Waterway Harbor	239,000	239,000
(FC) Cagles Mill Lake	285,000	285,000
(FC) Cecil M. Harden Lake	327,000	327,000
(FC) Huntington Lake	364,000	364,000
(FC) Mississinewa Lake	342,000	342,000
(FC) Monroe Lake	319,000	319,000
(FC) Patoka Lake	267,000	267,000
(FC) Salamonie Lake	324,000	324,000
Iowa:		
(FC) Coralville Lake	1,280,000	1,280,000
(FC) Missouri River, Kensiers Bend, to Sioux City, Iowa and Nebraska	77,000	77,000
(N) Missouri River, Sioux City to mouth, Iowa, Kansas, Missouri, and Nebraska	7,789,000	7,789,000
(FC) Rathbun Lake	1,046,000	1,046,000
(FC) Red Rock Dam—Lake Red Rock	2,363,000	2,363,000
(FC) Saylorville Lake	3,145,000	3,145,000
Kansas:		
(FC) Big Hill Lake	184,000	184,000
(FC) Clinton Lake	826,000	826,000
(FC) Council Grove Lake	378,000	378,000

Type of project, operation and maintenance—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
(FC) El Dorado Lake	$233,000	$233,000
(FC) Elk City Lake	353,000	353,000
(FC) Fall River Lake	576,000	576,000
(FC) John Redmond Dam and Reservoir	527,000	527,000
(FC) Kanopolis Lake	807,000	807,000
(FC) Marion Lake	384,000	384,000
(FC) Melvern Lake	908,000	908,000
(FC) Milford Lake	1,872,000	1,872,000
(FC) Perry Lake	1,592,000	1,592,000
(FC) Pomona Lake	900,000	900,000
(FC) Toronto Lake	170,000	170,000
(FC) Turtle Creek Lake	877,000	877,000
(FC) Wilson Lake	714,000	714,000
Kentucky:		
(MP) Barkley Dam—Lake Barkley	3,895,000	3,895,000
(FC) Barren River Lake	894,000	894,000
(FC) Buckhorn Lake	608,000	608,000
(FC) Carr Fork Lake	722,000	722,000
(FC) Cave Run Lake	331,000	331,000
(FC) Dewey Lake	706,000	706,000
(FC) Fishtrap Lake	722,000	722,000
(FC) Grayson Lake	476,000	476,000
(N) Green and Barren Rivers	855,000	855,000
(FC) Green River Lake	838,000	838,000
(N) Hickman Harbor	152,000	152,000
(N) Kentucky River	704,000	2,500,000
(MP) Laurel River Lake	576,000	576,000
(FC) Martins Fork Lake	407,000	407,000
(FC) Middlesboro	33,000	33,000
(FC) North Lake	965,000	965,000
(FC) Paintsville Lake	159,000	159,000
(FC) Rough River Lake	1,084,000	1,084,000
(MP) Wolf Creek Dam—Lake Cumberland	2,397,000	2,397,000
Louisiana:		
(N) Atchafalaya River, Morgan City to Gulf of Mexico	3,120,000	3,120,000
(N) Barataria Bay Waterway	833,000	833,000
(FC) Bayou Bodcau Reservoir	565,000	565,000
(FC) Bayou Pierre	21,000	21,000
(N) Bayou Teche	576,000	576,000
(N) Bayou Teche and Vermillion River	41,000	41,000
(FC) Caddo Lake	124,000	124,000
(N) Calcasieu River and Pass	7,855,000	7,855,000
(N) Freshwater Bayou	1,029,000	1,029,000
(N) Gulf Intracoastal Waterway	7,967,000	7,967,000
(N) Houma navigation channel	1,405,000	1,405,000
(N) Lake Providence Harbor	139,000	139,000
(N) Mermentau River	2,385,000	2,385,000
(N) Mississippi River, Baton Rouge to Gulf	18,319,000	23,319,000
(N) Mississippi River, Gulf outlet	6,639,000	6,639,000
(N) Mississippi River outlets at Venice	604,000	604,000
(N) Red River Waterway, Mississippi River to Shreveport	1,225,000	1,225,000
(N) Removal of aquatic growth	956,000	956,000
(FC) Wallace Lake	144,000	144,000
Maine:		
(N) Kennebec River	254,000	254,000
Maryland:		
(N) Baltimore Harbor (drift removal)	155,000	155,000
(N) Baltimore Harbor (prevention of obstructive deposits)	233,000	233,000
(N) Baltimore Harbor and channels	3,271,000	3,271,000
(FC) Bloomington Lake, Md. and Va	340,000	340,000
(N) Chester River	386,000	386,000
(FC) Cumberland, Md. and Ridgeley, W. Va	38,000	38,000
(N) Knapps Narrows	485,000	485,000
(N) Ocean City Harbor and inlet and Sinepuxent Bay	868,000	868,000
(N) Tilghman Island Harbor	217,000	217,000
(N) Wicomico River	543,000	543,000
Massachusetts:		
(FC) Barre Falls Dam	268,000	268,000
(FC) Birch Hill Dam	270,000	270,000
(FC) Buffumville Lake	221,000	221,000
(N) Cape Cod Canal	2,803,000	2,803,000
(FC) Conant Brook Dam	70,000	70,000
(FC) East Brimfield Lake	135,000	135,000
(FC) Hodges Village Dam	144,000	144,000
(FC) Knightville Dam	270,000	270,000
(FC) Littleville Lake	262,000	262,000
(FC) New Bedford, Fairhaven, and Acushnet hurricane barrier	121,000	121,000
(FC) Tully Lake	235,000	235,000
(FC) West Hill Dam	144,000	144,000
(FC) Westville Lake	172,000	172,000
Michigan:		
(N) Arcadia Harbor	94,000	94,000
(N) Big Bay Harbor	118,000	118,000
(N) Bolles Harbor	140,000	140,000
(N) Caseville Harbor		340,000
(N) Channels in Lake St. Clair	604,000	604,000
(N) Charlevoix Harbor	400,000	400,000
(N) Detroit River	6,454,000	6,454,000
(N) Detroit River (diked disposal)	11,597,000	11,597,000
(N) Frankfort Harbor	321,000	321,000
(N) Grand Haven Harbor and Grand River	1,060,000	1,060,000
(N) Harbor Beach Harbor	997,000	997,000
(N) Holland Harbor	288,000	288,000
(N) Inland route	155,000	155,000
(N) Keweenaw Waterway	166,000	166,000
(N) Little Lake Harbor	298,000	298,000
(N) Ludington Harbor	150,000	150,000
(N) Manistee Harbor	134,000	134,000
(N) Monroe Harbor	707,000	707,000
(N) Monroe Harbor (diked disposal)	2,165,000	2,165,000
(N) Muskegon Harbor	185,000	185,000
(N) Pentwater Harbor	119,000	119,000
(N) Rouge River	1,128,000	1,128,000
(N) Rouge River (diked disposal)	3,512,000	3,512,000
(N) Saginaw River	2,942,000	2,942,000
(N) Saginaw River (diked disposal)	611,000	611,000
(FC) Sebewaing River	124,000	124,000
(N) St. Clair River	725,000	725,000
(N) St. Joseph Harbor	375,000	375,000
(MP) St. Marys River	9,929,000	9,929,000
Minnesota:		
(FC) Big Stone Lake—Whetstone River, Minn. and S. Dak	93,000	93,000
(N) Duluth-Superior Harbor, Minn. and Wis	1,740,000	1,740,000
(N) Grand Marais Harbor	36,000	36,000
(FC) Lac Qui Parle Lake	181,000	181,000
(FC) Lake Traverse and Bois de Sioux, Minn. and S. Dak	187,000	187,000
(N) Minnesota River	204,000	204,000
(FC) Orwell Lake	326,000	326,000
(FC) Red Lake Reservoir	51,000	51,000
(N) Reservoirs at Headwaters of Mississippi River	1,483,000	1,483,000
(N) St. Croix River, Minn. and Wis	127,000	127,000
Mississippi:		
(N) Biloxi Harbor	391,000	391,000
(N) Cadet Bayou	201,000	201,000
(N) Gulfport Harbor	1,468,000	1,468,000
(FC) Okatibbee Lake	537,000	537,000
(N) Pascagoula Harbor	1,871,000	1,871,000
(N) Pearl River, Miss. and La	137,000	137,000
(N) Rosedale Harbor	84,000	84,000
(N) Yazoo River	44,000	44,000
Missouri:		
(N) Caruthersville Harbor	152,000	152,000
(MP) Clarence Cannon Dam and Reservoir	1,020,000	1,020,000
(FC) Clearwater Lake	1,237,000	1,237,000
(MP) Harry S. Truman Dam and Reservoir	3,621,000	3,621,000
(FC) Long Branch Lake	468,000	468,000
(FC) Meramec Park Lake	205,000	205,000
(N) New Madrid Harbor	197,000	197,000
(FC) Pomme de Terre Lake	1,471,000	1,471,000
(FC) Smithville Lake	597,000	597,000
(MP) Stockton Lake	1,833,000	1,833,000
(MP) Table Rock Lake	2,610,000	2,610,000
Montana:		
(MP) Fort Peck Lake	1,930,000	1,930,000
(MP) Libby Dam, Lake Koocanusa	2,065,000	2,065,000
Nebraska:		
(MP) Gavins Point Dam—Lewis and Clark Lake, Nebr. and S. Dak	3,428,000	3,428,000
(FC) Harlan County Lake	1,527,000	1,627,000
(FC) Papillion Creek and tributaries lakes	175,000	175,000
(FC) Salt Creek and tributaries lakes	830,000	830,000
Nevada:		
(FC) Martis Creek Lake, Nev. and Calif	210,000	210,000
(FC) Pine and Mathews Canyons Lake	54,000	54,000
New Hampshire:		
(FC) Blackwater Dam	210,000	210,000
(FC) Edward MacDowell Lake	215,000	215,000
(FC) Franklin Falls Dam	220,000	220,000
(FC) Hopkinton-Everett Lakes	374,000	374,000
(FC) Otter Brook Lake	201,000	201,000
(FC) Surry Mountain Lake	280,000	280,000
New Jersey:		
(N) Absecon Inlet	181,000	181,000
(N) Barnegat Inlet	334,000	334,000
(N) Cold Spring Inlet	176,000	176,000
(N) Delaware River, Philadelphia to Trenton	1,766,000	1,766,000
(N) Delaware River, Philadelphia to the sea	13,107,000	13,107,000
(N) New Jersey Intracoastal Waterway	794,000	794,000
(N) Newark Bay, Hackensack, and Passaic Rivers	951,000	951,000
New Mexico:		
(FC) Abiquiu Dam	484,000	484,000
(FC) Cochiti Lake	738,000	738,000
(FC) Conchas Lake	954,000	954,000
(FC) Galisteo Dam	150,000	150,000
(FC) Jemez Canyon Dam	221,000	221,000
(FC) Los Esteros Lake	258,000	258,000
(FC) Two Rivers Dam	321,000	321,000
New York:		
(FC) Almond Lake	163,000	163,000
(FC) Arkport Dam	247,000	247,000
(N) Black Rock channel and Tonawanda Harbor	939,000	939,000
(N) Buffalo Harbor	1,835,000	1,835,000
(N) East River (South Brother Island channel)		1,200,000
(N) East Rockaway Inlet	640,000	640,000
(FC) East Sidney Lake	156,000	156,000
(N) Fire Island Inlet to Jones Inlet	1,773,000	1,773,000
(N) Hudson River	1,338,000	1,338,000
(N) Jones Inlet	855,000	855,000
(FC) Mt. Morris Lake	922,000	922,000
(N) New York Harbor	1,391,000	1,800,000
(N) New York and New Jersey channels	1,592,000	1,592,000
(N) New York Harbor (prevention of obstructive deposits)	925,000	925,000
(N) New York Harbor (drift removal)	2,719,000	2,719,000
(N) Oswego Harbor	138,000	138,000
(N) Rochester Harbor	565,000	565,000
(FC) Southern New York flood control projects	314,000	314,000
(FC) Whitney Point Lake	154,000	154,000
North Carolina:		
(N) Atlantic Intracoastal Waterway (Wilmington district)	4,079,000	5,779,000
(FC) B. Everett Jordan Dam and Lake	528,000	528,000
(N) Beaufort Harbor	258,000	258,000
(N) Cape Fear River above Wilmington	346,000	346,000
(N) Channel back sound to Lookout Bight	156,000	156,000
(N) Lockwoods Folly River	501,000	501,000
(N) Manteo (Shallowbag) Bay	800,000	800,000
(N) Morehead City Harbor	2,425,000	2,425,000
(N) Ocracoke Inlet	719,000	719,000
(N) Silver Lake Harbor	378,000	378,000
(FC) W. Kerr Scott Dam and Reservoir	733,000	733,000
(N) Wilmington Harbor	3,159,000	3,159,000
North Dakota:		
(FC) Baldhill Dam—Lake Ashtabula	1,810,000	1,810,000
(FC) Bowman-Haley Lake	303,000	303,000

Type of project, operation and maintenance—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
(MP) Garrison Dam, Lake Sakakawea	$3,871,000	$3,871,000
(FC) Homme Lake	191,000	191,000
(FC) Pipestem Lake	180,000	180,000
Ohio:		
(FC) Alum Creek Lake	372,000	372,000
(N) Ashtabula Harbor	394,000	394,000
(N) Ashtabula Harbor (diked disposal)	161,000	161,000
(FC) Berlin Lake	1,386,000	1,386,000
(FC) Caesar Creek Lake	364,000	364,000
(FC) Clarence J. Brown Dam	392,000	392,000
(N) Cleveland Harbor	6,003,000	6,003,000
(N) Conneaut Harbor	213,000	213,000
(FC) Deer Creek Lake	424,000	424,000
(FC) Delaware Lake	316,000	316,000
(FC) Dillon Lake	333,000	333,000
(FC) East Fork Lake	352,000	352,000
(N) Fairport Harbor	955,000	955,000
(N) Huron Harbor	393,000	393,000
(N) Lorain Harbor	474,000	474,000
(FC) Massillon	11,000	11,000
(FC) Michael J. Kirwan Dam and Reservoir	547,000	547,000
(FC) Mosquito Creek Lake	523,000	523,000
(FC) Muskingum River reservoirs (14 reservoirs)	4,284,000	4,284,000
(FC) Newark	11,000	11,000
(FC) North branch of Kokosing River Lake	133,000	133,000
(FC) Paint Creek Lake	450,000	450,000
(FC) Roseville	11,000	11,000
(N) Sandusky Harbor	2,342,000	2,342,000
(N) Sandusky Harbor (diked disposal)	31,000	31,000
(N) Toledo Harbor	3,025,000	3,025,000
(FC) Tom Jenkins Dam	184,000	184,000
(FC) West fork Mill Creek Lake	297,000	297,000
Oklahoma:		
(FC) Arkansas-Red chloride control data stations, Oklahoma, Kansas, and Texas	318,000	318,000
(FC) Birch Lake	483,000	483,000
(MP) Broken Bow Lake	737,000	737,000
(FC) Canton Lake	973,000	973,000
(FC) Clayton Lake	117,000	117,000
(FC) Copan Lake	512,000	512,000
(MP) Denison Dam—Lake Texoma, Oklahoma and Texas	2,874,000	2,874,000
(MP) Eufaula Lake	1,886,000	1,886,000
(MP) Fort Gibson Lake	1,889,000	1,889,000
(FC) Fort Supply Lake	972,000	972,000
(FC) Great Salt Plains Lake	197,000	197,000
(FC) Heyburn Lake	822,000	822,000
(FC) Hugo Lake	692,000	692,000
(FC) Hulah Lake	380,000	380,000
(FC) Kaw Lake	1,289,000	1,289,000
(MP) Keystone Lake	1,567,000	1,567,000
(FC) Oologah Lake	814,000	814,000
(FC) Optima Lake	302,000	302,000
(FC) Pensacola Reservoir—Lake of the Cherokees	5,000	5,000
(FC) Pine Creek Lake	457,000	457,000
(MP) Robert S. Kerr lock, dam and reservoir	1,847,000	1,847,000
(MP) Tenkiller Ferry Lake	1,478,000	1,478,000
(FC) Waurika Lake	761,000	761,000
(MP) Webbers Falls lock and dam	1,567,000	1,567,000
(FC) Wister Lake	281,000	281,000
Oregon:		
(FC) Applegate Lake	198,000	198,000
(FC) Blue River Lake	99,000	99,000
(MP) Bonneville lock and dam	5,492,000	5,492,000
(N) Chetco River	376,000	376,000
(N) Columbia and Lower Willamette Rivers below Vancouver, Washington and Portland, Oregon	6,000,000	6,000,000
(N) Columbia River between Vancouver, Washington and the Dalles	425,000	425,000
(N) Columbia River at the mouth Oregon and Washington	4,451,000	4,451,000
(N) Coos and Millicoma Rivers	111,000	111,000
(N) Coos Bay	4,642,000	4,642,000
(N) Coquille River	482,000	482,000
(FC) Cottage Grove Lake	297,000	297,000
(MP) Cougar Lake	478,000	478,000
(MP) Detroit Lake	1,160,000	1,160,000
(FC) Dorena Lake	151,000	151,000
(FC) Fall Creek Lake	209,000	209,000
(FC) Fern Ridge Dam and Lake	307,000	307,000
(MP) Green Peter—Foster Lake	1,911,000	1,911,000
(MP) Hill's Creek Lake	315,000	315,000
(MP) John Day lock and dam	4,959,000	4,959,000
(MP) Lookout Point Lake	1,641,000	1,641,000
(MP) Lost Creek Lake	1,906,000	1,906,000
(MP) Monary lock and dam, Lake Wallula, Oregon and Washington	5,292,000	5,292,000
(N) Port Orford	62,000	62,000
(N) Rogue River Harbor at Gold Beach	936,000	936,000
(N) Siuslaw River	885,000	885,000
(N) Skipanon Channel	77,000	77,000
(N) Tillamook Bay and bar	189,000	189,000
(N) Umpqua River	1,050,000	1,050,000
(N) Willamette River above Portland and Yamhill River	80,000	80,000
(FC) Willamette River bank protection	113,000	113,000
(N) Willamette River and Willamette Falls	411,000	411,000
(N) Yaquina Bay and Harbor	590,000	590,000
Pennsylvania:		
(N) Allegheny River	2,735,000	2,735,000
(FC) Alvin R. Bush Dam	140,000	140,000
(FC) Aylesworth Creek Lake	94,000	94,000
(FC) Beltzville Lake	253,000	253,000
(FC) Blue Marsh Lake	389,000	389,000
(FC) Conemaugh River Lake	576,000	576,000
(FC) Cowanesque Lake	577,000	577,000
(FC) Crooked Creek Lake	$458,000	$458,000
(FC) Curwensville Lake	187,000	187,000
(FC) East branch Clarion River Lake	498,000	498,000
(N) Erie Harbor	310,000	310,000
(FC) Foster Joseph Sayers Dam and Reservoir	306,000	306,000
(FC) Francis E. Walter Dam	226,000	226,000
(FC) General Edgar Jadwin Dam and Reservoir	115,000	115,000
(FC) Johnstown	20,000	20,000
(MP) Kinzua Dam and Allegheny Reservoir	863,000	863,000
(FC) Loyalhanna Lake	630,000	630,000
(FC) Mahoning Creek Lake	411,000	411,000
(N) Monongahela River	5,130,000	5,130,000
(FC) Prompton Lake	182,000	182,000
(FC) Punxsutawney	5,000	5,000
(FC) Raystown Lake	1,169,000	1,169,000
(N) Schuylkill River	631,000	631,000
(FC) Shenango River Lake	1,334,000	1,334,000
(FC) Stillwater Lake	121,000	121,000
(FC) Tioga-Hammond Lakes	818,000	818,000
(FC) Tionesta Lake	735,000	735,000
(FC) Union City Lake	229,000	229,000
(FC) Woodcock Creek Lake	491,000	491,000
(FC) York, Indian Rock Dam	204,000	204,000
(FC) Youghiogheny River Lake	986,000	986,000
Puerto Rico:		
(N) Arecibo Harbor	289,000	289,000
(N) Mayaguez Harbor	289,000	289,000
(N) Ponce Harbor	289,000	289,000
South Carolina:		
(N) Atlantic Intracoastal Waterway (Charleston district)	2,481,000	2,481,000
(N) Charleston Harbor	4,226,000	4,226,000
(N) Folly River	181,000	181,000
(N) Georgetown Harbor	2,982,000	2,982,000
(N) Port Royal Harbor	310,000	310,000
(N) Shipyard River	382,000	382,000
(N) Town Creek	238,000	238,000
(N) Village Creek	121,000	121,000
South Dakota:		
(MP) Big Bend Dam—Lake Sharpe	3,462,000	3,462,000
(FC) Cold Brook Lake	100,000	100,000
(FC) Cottonwood Springs Lake	86,000	86,000
(MP) Ft. Randall Dam, Lake Francis Case	4,884,000	4,884,000
(MP) Oahe Dam, Lake Oahe, S. Dak. and N. Dak	4,714,000	4,714,000
Tennessee:		
(MP) Center Hill Lake	2,009,000	2,009,000
(MP) Cheatham lock and dam	2,197,000	2,197,000
(MP) Cordell Hull Dam and Reservoir	2,128,000	2,128,000
(MP) Dale Hollow Lake	2,112,000	2,112,000
(MP) J. Percy Priest Dam and Reservoir	1,686,000	1,686,000
(MP) Old Hickory lock and dam	3,170,000	3,170,000
(MP) Tennessee River	5,015,000	5,015,000
(N) Wolf River	461,000	461,000
Texas:		
(FC) Bardwell Lake	525,000	525,000
(FC) Belton Lake	632,000	632,000
(FC) Benbrook Lake	672,000	672,000
(N) Brazos Island Harbor	2,447,000	2,447,000
(FC) Buffalo Bayou and tributaries	610,000	610,000
(FC) Canyon Lake	742,000	742,000
(N) Cedar Bayou	463,000	463,000
(N) Channel to Port Bolivar	71,000	71,000
(N) Corpus Christi ship channel	5,742,000	6,742,000
(FC) Estelline Spring experimental project	36,000	36,000
(FC) Ferrells Bridge Dam—Lake O' the Pines	1,194,000	1,194,000
(N) Freeport Harbor	1,304,000	1,304,000
(N) Galveston Harbor and channel	2,363,000	5,000,000
(FC) Granger Lake	472,000	472,000
(FC) Grapevine Lake	763,000	763,000
(N) Gulf Intracoastal Waterway	12,168,000	12,168,000
(FC) Hords Creek Lake	330,000	330,000
(N) Houston ship channel	1,316,000	2,066,000
(FC) Lake Kemp	144,000	144,000
(FC) Lavon Lake modification and east fork channel improvement	777,000	777,000
(FC) Lewisville Dam	1,641,000	1,641,000
(N) Matagorda ship channel	3,168,000	3,168,000
(FC) Navarro Mills Lake	616,000	616,000
(FC) North Fork Lake	536,000	536,000
(FC) O. C. Fisher Dam and Lake	419,000	419,000
(FC) Pat Mayse Lake	504,000	504,000
(FC) Proctor Lake	557,000	557,000
(N) Sabine-Neches Waterway	5,986,000	6,993,000
(MP) Sam Rayburn Dam and Reservoir	2,242,000	2,242,000
(FC) Somerville Lake	775,000	775,000
(FC) Stillhouse Hollow Lake	796,000	796,000
(N) Texas City Channel	1,336,000	1,336,000
(MP) Town Bluff-B. A. Steinhagen Lake	402,000	402,000
(N) Trinity River and tributaries	965,000	965,000
(FC) Waco Lake	760,000	760,000
(MP) Whitney Lake	1,876,000	1,876,000
(FC) Wright Patman Dam and Lake	1,229,000	1,229,000
Vermont:		
(FC) Ball Mountain Lake	202,000	202,000
(N) Narrows of Lake Champlain	26,000	26,000
(FC) North Hartland Lake	402,000	402,000
(FC) North Springfield Lake	403,000	403,000
(FC) Townshend Lake	304,000	304,000
(FC) Union Village Dam	347,000	347,000
Virginia:		
(N) Atlantic Intracoastal Waterway	1,385,000	1,385,000
(N) Chincoteague Inlet	382,000	382,000
(FC) Gathright Dam and Lake Moomaw	984,000	984,000
(N) Hampton Creek	848,000	848,000

Type of project, operation and maintenance—State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
(N) Hampton Roads, Norfolk and Newport News Harbor, Va. (drift removal)	$175,000	$175,000
(N) James River	1,000,000	1,000,000
(MP) John H. Kerr Dam and Reservoir Va. and N.C.	3,200,000	3,200,000
(FC) John W. Flannagan Dam and Reservoir	778,000	778,000
(N) Little Wicomico River	215,000	215,000
(N) Norfolk Harbor	2,201,000	2,201,000
(N) Norfolk Harbor (prevention of obstructive deposits)	202,000	202,000
(FC) North Fork of Pound River Lake	446,000	446,000
(MP) Philpott Lake	1,350,000	1,350,000
(N) Tangier channel	530,000	530,000
(N) Thimble Shoal channel	1,170,000	1,170,000
(N) Waterway on the coast of Virginia	142,000	142,000
Washington:		
(MP) Chief Joseph Dam	4,662,000	4,662,000
(N) Columbia River at Baker Bay	678,000	678,000
(N) Columbia River between Chinook and Sand Island	201,000	201,000
(N) Cowlitz River	52,000	52,000
(N) Ediz Hook	52,000	52,000
(N) Everett Harbor and Snohomish River	507,000	507,000
(N) Grays Harbor and Chehalis River	3,061,000	3,061,000
(FC) Howard A. Hanson Reservoir	599,000	599,000
(MP) Ice Harbor Lock and Dam	2,899,000	2,899,000
(N) Lake Washington ship canal	2,588,000	2,588,000
(N) Lewis River	43,000	43,000
(MP) Little Goose Lock and Dam, Lake Bryan	2,103,000	2,103,000
(MP) Lower Granite Lock and Dam	2,578,000	2,578,000
(MP) Lower Monumental Lock and Dam	2,129,000	2,129,000
(FC) Mill Creek Lake	175,000	175,000
(FC) Mud Mountain Dam	1,198,000	1,198,000
(N) Neah Bay	436,000	436,000
(N) Puget Sound and its tributary waters	1,319,000	1,319,000
(N) Quillayute River	114,000	114,000
(N) Seattle Harbor	333,000	333,000
(N) Skamokawa Creek	39,000	39,000
(FC) Stillaguamish River	38,000	38,000
(N) Swinomish channel	326,000	326,000
(FC) Tacoma-Puyallup River	26,000	26,000
(MP) The Dalles lock and dam	4,134,000	4,134,000
(N) Willapa River and Harbor and Naselle River	52,000	52,000
(FC) Wynoochee Lake	751,000	751,000
West Virginia:		
(FC) Beech Fork Lake	$402,000	$402,000
(FC) Bluestone Lake	505,000	505,000
(FC) Burnsville Lake	533,000	533,000
(FC) East Lynn Lake	747,000	747,000
(FC) Elkins	5,000	5,000
(N) Kanawha River	3,053,000	3,053,000
(FC) R. D. Bailey Lake	440,000	440,000
(FC) Summersville Lake	1,123,000	1,123,000
(FC) Sutton Lake	888,000	888,000
(N) Tygart Lake	494,000	494,000
Wisconsin:		
(N) Ahnapee Harbor	105,000	105,000
(N) Ashland Harbor	68,000	68,000
(N) Cornucopia Harbor	48,000	48,000
(FC) Eau Galle River Lake	943,000	943,000
(N) Fox River	1,613,000	1,613,000
(N) Green Bay Harbor	1,141,000	1,141,000
(N) Kewaunee Harbor (diked disposal)	1,633,000	1,633,000
(N) Kewaunee Harbor	82,000	82,000
(N) Manitowoc Harbor	379,000	379,000
(N) Milwaukee Harbor	1,236,000	1,236,000
(N) Port Washington Harbor	171,000	171,000
(N) Saxon Harbor	51,000	51,000
(N) Sheboygan Harbor	94,000	94,000
(N) Sheboygan Harbor (diked disposal)	3,266,000	3,266,000
Miscellaneous:		
Environmental and water quality operational studies	4,900,000	4,900,000
Inspection of completed works	4,080,000	4,080,000
Scheduling flood control reservoir operations	1,488,000	1,488,000
Monitor completed coastal projects	500,000	500,000
Protection of navigation:		
Removal of sunken vessels and obstructions	2,200,000	2,200,000
Prevention of obstructive and injurious deposits	(1,360,000)	(1,360,000)
Protection, clearing, and straightening channels (sec. 3)	200,000	200,000
General regulatory functions	41,900,000	41,900,000
Project condition surveys	4,396,000	4,396,000
Surveillance of northern boundary waters	1,265,000	1,265,000
Reduction for anticipated savings and slippage		−10,000,000
Total, operations and maintenance	678,379,000	902,605,000

Type of project:
(N) Navigation.
(FC) Flood Control.
(BE) Beach Erosion Control.
(MP) Multiple-Purpose, Including Power.

REVOLVING FUND

Amendment No. 35: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which deletes $34,725,000 for design and construction of hopper dredges and appropriates $43,225,000 for the design and construction of hopper dredges and earmarks $8,500,000 for the purchase of one aircraft.

GENERAL PROVISIONS

Amendment No. 36: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which adds language relating to the Levisa and Tug Fork of the Big Sandy River and Cumberland River, West Virginia, Kentucky, and Virginia project.

TITLE III—DEPARTMENT OF THE INTERIOR, WATER AND POWER RESOURCES SERVICE, GENERAL INVESTIGATIONS

Amendment No. 37: Appropriates $38,629,000 for general investigations instead of $40,079,000 as proposed by the House and $36,946,000 as proposed by the Senate.

Amendment No. 38: Provides that $38,579,000 is to be derived from the reclamation fund instead of $40,029,000 as proposed by the House and $36,896,000 as proposed by the Senate.

The appropriations are to be allocated as shown on the following table:

GENERAL INVESTIGATIONS

General investigations, State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
ARIZONA		
Boulder Canyon, Hoover Powerplant modification	$50,000	$50,000
Colorado River Basin information base program	80,000	.....
Lower Colorado River water conservation and efficient use studies	$415,000	$415,000
Reclamation and energy resources, LMNRA wilderness designation	140,000	140,000
CALIFORNIA		
Central Valley:		
Sacramento River division, Red Bluff Diversion Dam Powerplant	5,000	5,000
Sacramento River division, West Sacramento Canal unit reformulation	130,000	130,000
Shasta division, Keswick Powerplant enlargement	25,000	25,000
Delta support studies	601,000	1,074,000
Fish and wildlife management study	371,000	371,000
Energy conservation study	50,000	.....
Geothermal resource investigations	60,000	60,000
Orland, Stony Gorge-East Park Powerplants	21,000	21,000
Palo Verde Hydropower	50,000	50,000
Solar energy opportunities study	50,000	.....
Truckee River Basin study—Boca Prosser Powerplants	5,000	5,000
Water conservation opportunities, Imperial Irrigation District	455,000	455,000
Wind-hydro opportunities study	140,000	140,000
COLORADO		
Dominguez Reservoir	70,000	70,000
Grand Mesa project reformulation	142,000	142,000
Low-head hydroelectric evaluation and inventory	470,000	470,000
Water resources planning and engineering research	5,139,000	5,139,000
IDAHO		
Boise project power and modification study	161,000	161,000
Owyhee Powerplant	108,000	108,000
Upper Snake River water management study	230,000	230,000
KANSAS		
Solomon River Basin water management study (P-SMBP)	283,000	283,000
MONTANA		
Fort Benton reformulation	$150,000	$150,000
Offstream storage, Yellowstone River	100,000	100,000
Regional wind energy study	200,000	200,000
NEBRASKA		
Farwell unit water conservation study (P-SMBP)	170,000	170,000
Little Blue unit reformulation (Blue division, P-SMBP)	255,000	255,000
Platte River study	450,000	450,000
Republican River Basin water management study (P-SMBP)	270,000	270,000
Sparks unit (P-SMBP)	99,000	.....
NEW MEXICO		
Llano Estacado Playa Lake resources study (formerly Llano Estacado total water management study)	139,000	139,000
Santa Cruz Dam and Reservoir	.....	150,000
Tularosa Basin water and energy study	250,000	250,000
NORTH DAKOTA		
Garrison diversion unit, M & I water facilities (Garrison division, P-SMBP)	75,000	75,000
OREGON		
Grande Ronde River Basin	125,000	125,000
Hermiston water conservation	150,000	150,000
Klamath project, main diversion, A-canal	.....	175,000
Lower Deschutes River Basin	110,000	110,000
Rogue River Basin, Medford division, reformulation	100,000	100,000
Rogue River Basin, Grants Pass division	190,000	190,000
Upper John Day	130,000	130,000
Umatilla Basin	110,000	110,000
SOUTH DAKOTA		
Lower Brule Indian Reservation area (P-SMBP, formerly Kaspapi unit)	125,000	125,000

General investigations, State and project	Fiscal year 1981 Budget estimate	Fiscal year 1981 Conference allowance
Lower James-Fort Randall water diversion proposal	$250,000	$250,000
Oahe Riverside irrigation study	250,000	.....
Total water management study, Missouri River upstream of Gavins Point (P-SMBP)	136,000	136,000
Web pipeline study	150,000	.....
TEXAS		
Nueces River Basin study	250,000	250,000
Texas Basin, Big Cow Creek	250,000	250,000
Texas Basin, Bon Wier	310,000	310,000
UTAH		
CRSP power peaking capacity	800,000	800,000
WASHINGTON		
Yakima project, CLE Elum and Tieton Powerplants	100,000	100,000
Yakima River Basin water enhancement study	.....	10,000
Yakima Valley water management study	130,000	130,000
WYOMING		
Wind-hydroelectric energy project	5,113,000	5,113,000
VARIOUS		
Colorado River water quality improvement	4,260,000	4,260,000
General engineering and research:		
Advanced scientific and technical applications	200,000	1,000,000
Atmospheric water resources management	7,734,000	8,234,000
Development cloud seeding techniques	(361,000)	(861,000)
General planning studies	350,000	350,000
Special investigations:		
Environmental and interagency coordination activities	2,276,000	2,276,000
Investigations of existing projects	659,000	659,000
Minor work in connection with completed project investigations	1936,000	1936,000
Print reports	35,000	35,000
Technical assistance to States	770,000	770,000
Projects not yet identified	25,000	25,000
Classified pay raise	989,000	989,000
Distributive charges for service facilities, unliquidated obligations, etc	−47,000	−47,000
General reduction due to slippage, savings, and carryover balances	−550,000	−1,175,000
Total, various	17,637,000	18,312,000
Total, general investigations	37,825,000	38,629,000

CONSTRUCTION PROGRAM

Amendment No. 39: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $570,641,000 for the construction program instead of $596,216,000 as proposed by the House and $580,741,000 as proposed by the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 40: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides that no funds shall be available for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument.

Amendment No. 41: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which adds language relating to the Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona.

Amendment No. 42: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate, with an amendment, which reads as follows:

In lieu of the matter proposed by said amendment, insert the following:

": *Provided further*, That of the amount herein appropriated not to exceed $10,000 shall be available to initiate a rehabilitation and betterment program with the Fremont-Madison Irrigation District to rehabilitate the facilities of the Marysville, Farmer's Own, Yellowstone, Squirrel Creek, and Silky Canal Companies under the act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full by the lands served and under conditions satisfactory to the Secretary of Interior"

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees agree with action of the Senate regarding transfer of $10,000 from Teton Basin Project to the Rehabilitation and Betterment Program of the Fremont-Madison Irrigation District. These funds will allow the Service to review the proposed North Fremont Gravity Pressure Irrigation Rehabilitation and Betterment Report, the environmental assessment and to begin negotiation of the necessary repayment contracts. Because of the estimated cost of the proposed work, the North Fremont irrigators are not eligible for Federal assistance under the small reclamation projects loan program. Similarly, because the districts were not constructed as Federal reclamation projects they do not qualify for assistance under the rehabilitation and betterment program. However, as has been done in the past, language has been added to the bill which provides specific eligibility for the irrigation districts to participate in the rehabilitation and betterment program.

The appropriations are to be allocated as shown on the following table:

Construction program, State and project	Fiscal year 1981 budget estimates: Construction	Fiscal year 1981 budget estimates: Planning	Fiscal year 1981 conference allowance: Construction	Fiscal year 1981 conference allowance: Planning
CALIFORNIA				
Central Valley project:				
Sacramento River division	$30,320,000	.....	$30,320,000	.....
San Luis unit	10,335,000	.....	10,335,000	.....
Auburn-Folsom South unit:				
Auburn Dam and Reservoir	771,000	.....	771,000	.....
All other Auburn-Folsom South unit facilities	10,799,000	.....	10,799,000	.....
Subtotal, Auburn-Folsom South unit	11,570,000	.....	11,570,000	.....
Miscellaneous project programs	8,150,000	.....	8,150,000	.....
San Felipe division	18,316,000	.....	27,000,000	.....
Total, Central Valley project	78,691,000	.....	87,375,000	.....
New Melones Dam	.....	.....	2,000,000	.....
COLORADO				
Fryingpan-Arkansas project	39,454,000	.....	39,454,000	.....
San Luis Valley project, Closed Basin division	2,347,000	.....	2,347,000	.....
IDAHO				
Teton Basin project, Lower Teton division	1,000,000	.....	1,000,000	.....
NEVADA				
Southern Nevada water project	23,726,000	.....	23,726,000	.....
NEW MEXICO				
Brantley project	3,300,000	.....	3,300,000	.....
OKLAHOMA				
McGee Creek project	9,785,000	.....	9,785,000	.....
TEXAS				
Nueces River project	15,040,000	.....	15,040,000	.....
WASHINGTON				
Chief Joseph Dam project, Oroville-Tonasket unit	$5,500,000	.....	$5,500,000	.....
Columbia Basin project:				
Irrigation facilities	20,850,000	.....	16,430,000	.....
3d powerplant	11,207,000	.....	11,207,000	.....
Subtotal, Columbia Basin project	32,057,000	.....	27,637,000	.....
VARIOUS				
Drainage and minor construction:				
Boise project, Payette division, Idaho	556,000	.....	556,000	.....
Chief Joseph Dam project, Manson unit, Washington	100,000	.....	100,000	.....
Chief Joseph Dam project, Whitestone Coulee unit, Washington	100,000	.....	100,000	.....
Gila project, Wellton-Mohawk irrigation and drainage district	.....	.....	1,500,000	.....
Klamath project, Oregon-California	1,006,000	.....	1,006,000	.....
Leadville Drainage Tunnel project, Colorado	20,000	.....	20,000	.....
Little Wood River project, Idaho	150,000	.....	150,000	.....
Mann Creek project, Idaho	180,000	.....	180,000	.....
Miscellaneous engineering services, Colorado	10,000	.....	10,000	.....
Mountain Park project, Oklahoma	100,000	.....	100,000	.....
Palmetto Bend, Tex	1,405,000	.....	1,405,000	.....
Recreation facilities at existing reservoirs, various States	139,000	.....	139,000	.....
San Angelo project, Texas	500,000	.....	500,000	.....
Tualatin project, Oregon	500,000	.....	500,000	.....
Washita Basin project, Oklahoma	700,000	.....	700,000	.....
Washoe project, Nevada-California	1,733,000	.....	1,733,000	.....
Total, drainage and minor construction	7,199,000	.....	8,699,000	.....

Construction program, State and project	Fiscal year 1981 budget estimates		Fiscal year 1981 conference allowance	
	Construction	Planning	Construction	Planning
Safety of dams:				
Boise project, Black Canyon Dam, Idaho	$250,000		$250,000	
Hyrum project, Hyrum Dam, Utah	5,000,000		5,000,000	
Milk River project, Lake Sherburne Dam, Mont	700,000		700,000	
Minidoka project, Island Park Dam, Idaho	2,500,000		2,500,000	
Minidoka project, Jackson Lake, Wyo	500,000		500,000	
Newlands project, Lahontan Dam, Nev	2,720,000		2,720,000	
Orland project, East Park Dam, Calif	500,000		500,000	
Orland project, Stony Gorge Dam, Calif	1,049,000		1,049,000	
Rapid Valley project, Deerfield Dam, S. Dak	600,000		600,000	
Safety of dams studies, various States	1,000,000		1,000,000	
Salt River project, Stewart Mountain Dam, Ariz	1,000,000		1,000,000	
Sun River project, Gibson Dam, Mont	430,000		430,000	
Sun River project, Willow Creek Dam, Mont	2,650,000		2,650,000	
W.C. Austin project, Altus Dam, Okla	500,000		500,000	
Total, safety of dams	19,399,000		19,399,000	
Rehabilitation and betterment:				
Carlsbad project, New Mexico	350,000		350,000	
Central Valley project, Georgetown Divide public utility district, California	1,655,000			
Huntley project, Montana	800,000		800,000	
Lower Yellowstone project, Montana	1,000,000		1,000,000	
P-SMBP, Frenchman-Cambridge division, Nebraska	700,000		700,000	
Roosevelt Water Conservation district, Arizona	700,000		700,000	
Shoshone project, Garland division, Wyoming	650,000		650,000	
Shoshone project, Willwood division, Wyoming	275,000		275,000	
Shoshone project, Frannie division, Wyoming	200,000		200,000	
Sun River, Greenfields division, Wyoming	1,000,000		1,000,000	
Yakima project, Grandview Irrigation District, Washington	100,000		100,000	
Total, rehabilitation and betterment of existing projects	7,430,000		5,775,000	
PICK-SLOAN MISSOURI BASIN PROJECT				
MONTANA				
Lower Marias unit, Tiber Dam modifications	3,400,000		3,400,000	
NEBRASKA				
North Loup division	17,491,000		17,491,000	
O'Neill unit	2,100,000		2,100,000	
SOUTH DAKOTA				
Oahe unit	100,000		100,000	
WYOMING				
Riverton unit	4,400,000		4,400,000	
VARIOUS				
Drainage and minor construction:				
Canyon Ferry unit, conservation and wildlife enhancement, Montana	300,000		300,000	
Dickinson unit, North Dakota	1,311,000		1,311,000	
East Bench unit, Montana	50,000		50,000	
Farwell, unit, Nebraska	575,000		575,000	
Frenchman Cambridge division, Nebraska	110,000		110,000	
Helena Valley unit, Montana	100,000		100,000	
Owl Creek unit, Wyoming	$70,000		$70,000	
Total, drainage and minor construction	2,516,000		2,516,000	
Total, Pick-Sloan Missouri Basin program	30,007,000		30,007,000	
Total, construction and rehabilitation	274,935,000		281,044,000	
UPPER COLORADO RIVER STORAGE PROJECT				
PARTICIPATING PROJECTS				
COLORADO				
Dallas Creek project	8,800,000		8,800,000	
Dolores project	31,719,000		31,719,000	
San Miguel project		$100,000		$100,000
West Divide project		100,000		100,000
UTAH				
Central Utah project, Bonneville unit	74,092,000		74,092,000	
Central Utah project, Jensen unit	5,808,000		5,808,000	
Central Utah project, Uintah unit		500,000		500,000
Central Utah project, Upalco unit	1,358,000		1,358,000	
VARIOUS				
Drainage and minor construction:				
Upper Colorado River storage project: Modifications and additions to completed facilities	3,076,000		3,076,000	
Participating projects: San Juan-Chama project, Colorado-New Mexico	133,000		133,000	
Subtotal, Upper Colorado River storage project	125,686,000		125,686,000	
Recreational and fish and wildlife facilities:				
Recreational facilities	11,530,000		11,530,000	
Fish and wildlife facilities	10,739,000		10,739,000	
Subtotal recreational and fish and wildlife facilities	22,269,000		22,269,000	
Total, Upper Colorado River storage project	147,955,000		147,955,000	
COLORADO RIVER BASIN SALINITY CONTROL PROJECTS (TITLE II)				
COLORADO				
Grand Valley systems improvement and management unit	6,289,000		6,289,000	
Paradox Valley unit	3,027,000		3,027,000	
VARIOUS (TITLE I)				
Measures below Imperial Dam	48,112,000		38,112,000	
Total, Colorado River Basin salinity control	57,428,000		47,428,000	
COLORADO RIVER BASIN PROJECT				
CENTRAL ARIZONA PROJECT				
ARIZONA				
Central Arizona, water development	144,080,000		144,080,000	
Total, Colorado River Basin project	144,080,000		144,080,000	
Undistributed reduction based on anticipated delays	−33,866,000		−49,866,000	
Total, construction program	590,532,000		570,641,000	

OPERATION AND MAINTENANCE

Amendment No. 43: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate, with an amendment appropriating $101,117,000 for operation and maintenance instead of $114,117,000 as proposed by the House and $111,117,000 as proposed by the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Due to the anticipated unobligated balances available on September 30, 1980, the conferees have agreed to a total reduction of $13,000,000 below the House approved amounts for operation and maintenance.

LOAN PROGRAM

Amendment No. 44: Appropriates $22,924,000 for the loan program as proposed by the Senate instead of $26,128,000 as proposed by the House.

The appropriations are to be allocated as shown on the following table:

LOAN PROGRAM

Loan program, State and project	Fiscal year 1981	
	Budget estimate	Conference allowance
ARIZONA		
Gila River Farms	$2,614,000	$2,614,000
CALIFORNIA		
Alpaugh Irrigation District	691,000	691,000
Eastern Municipal Water District	3,000,000	3,000,000
Glenn-Colusa Irrigation District	2,735,000	2,735,000
Rainbow Municipal Water District	4,310,000	4,310,000
Rainbow Municipal Water District, Annex 3	1,000,000	1,000,000
San Benito County Water District		200,000
COLORADO		
Overland Ditch and Reservoir Co	266,000	266,000
IDAHO		
Lewiston Orchards Irrigation District	1,685,000	
MONTANA		
Cooney Dam		481,000
NEBRASKA		
Central Nebraska Public Power and Irrigation District	2,200,000	2,200,000
TEXAS		
Hidalgo County Water Control and Improvement District No. 1	1,000,000	1,000,000
Hidalgo County Water Control and Improvement District No. 2	2,000,000	2,000,000
Hidalgo and Willacy Counties Water Control and Improvement District No. 1 (Willacy supplemental)	2,500,000	2,500,000
Hidalgo County Water Improvement District No. 5	439,000	439,000
WYOMING		
Garland Canal power project		1,000,000
VARIOUS		
Construction cost increases	3,000,000	
Administration of loan program	633,000	633,000
Subtotal	3,633,000	633,000
Undistributed reduction based on anticipated delays	−1,945,000	−2,145,000
Total, loan program	26,128,000	22,924,000

TITLE IV—INDEPENDENT AGENCIES

FUNDS APPROPRIATED TO THE PRESIDENT

APPALACHIAN REGIONAL DEVELOPMENT PROGRAMS

Amendment No. 47: Appropriates $447,520,000 for the Nuclear Regulatory Commission, programs as proposed by the House instead of $329,300,000 as proposed by the Senate.

Amendment No. 46: Earmarks $214,600,000 for the Appalachian development highway system as proposed by the House instead of $209,600,000 as proposed by the Senate.

NUCLEAR REGULATORY COMMISSION

Salaries and Expenses

Amendment No. 48: Appropriate $447,520,000 for the Nuclear Regulatory Commission, Salaries and Expenses, instead of $437,220,000 as proposed by the House and $452,520,000 as proposed by the Senate. The conference allowance is shown in the following tables:

	Fiscal year 1981	
	Budget estimate	Conference allowance
Nuclear reactor regulation	$69,385,000	$77,400,000
Personnel	(722)	(722)
Standards development	16,390,000	16,100,000
Personnel	(161)	(161)
Inspection and enforcement	53,889,000	52,000,000
Personnel	(947)	(947)
Nuclear materials safety and safeguards	43,680,000	38,000,000
Personnel	(335)	(331)
Research	228,228,000	215,300,000
Personnel	(178)	(164)
Program technical support	$18,861,000	$18,520,000
Personnel	(294)	(275)
Program direction and administration	38,057,000	36,700,000
Personnel	(753)	(744)
Total	468,490,000	454,020,000
Amended budget-reduction in personnel costs	−2,255,000	
Reduction in administrative support expenses		−1,500,000
Unobligated balances		−5,000,000
Total	466,235,000	447,520,000
Personnel	(3,390)	(3,344)

The conferees agree that within the funding provided, up to $180,000 and six additional positions shall be included in the Division of Safeguards for the regulatory improvement of material control and accounting safeguards, and the development of improved regulatory requirements for safeguarding the transportation of spent fuel.

The conference allowance includes $10,000,000 over the budget request for continued fast breeder reactor research and an additional $3,300,000 for advanced converter research related to fuel integrity and core physics.

Amendment No. 48: Deletes Senate amendment which proposed language which would have provided $180,000 and six positions in the Division of Safeguards.

NUCLEAR SAFETY OVERSIGHT COMMITTEE

Amendment No. 49: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $1,500,000 for the Nuclear Safety Oversight Committee.

TENNESSEE VALLEY AUTHORITY, PAYMENT TO TENNESSEE VALLEY AUTHORITY FUND

Amendment No. 50: Appropriates $269,563,000 for payment to the Tennessee Valley Authority Fund as proposed by the Senate instead of $290,563,000 as proposed by the House.

COLUMBIA DAM AND RESERVOIR

Amendment No. 51: Appropriates $18,000,000 for the Columbia Dam and Reservoir as proposed by the Senate instead of $17,000,000 as proposed by the House.

WATER RESOURCES COUNCIL

Water resources planning

Amendment No. 52: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate, with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

"WATER RESOURCES COUNCIL

Water Resources Planning

"For the Water Resources Council for expenses necessary in carrying out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a–4(5), and hire of passenger motor vehicles (42 U.S.C. 1962a–4(6)), $24,777,000 to remain available until expended, including $4,748,000 for expenses in administering the Act (42 U.S.C. 1962d(b)), $4,186,000 for preparation of assessments and plans (42 U.S.C. 1962d(c)), $3,443,000 for expenses of river basin commissions under title II of the Act (42 U.S.C. 1962d(a)), $10,000,000 for grants to States under title III of the Act (42 U.S.C. 1962c(a)), and $2,400,000 for Upper Mississippi Comprehensive Management Plan (42 U.S.C. 1962b–3)."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees direct that no funds be expended for the Independent Project Review function until enactment of authorizing legislation.

The conferees agree with the Senate comments concerning the necessity for completion of all elements of the Upper Mississippi Comprehensive Master Management Plan within the time limits specified in Public Law 95–502. The Commission, under the direction of the Chairman, is directed to take the necessary steps, including revising and rescoping the current plan of study, work agreements, etc., to insure the completion of the entire plan by January 1, 1982.

TITLE V—GENERAL PROVISIONS

Amendment No. 53: Reported in technical disagreement. Deletes language proposed by the House that would have required two percent of the appropriations to be withheld from obligation and expenditure and deletes language proposed by the Senate which would have required that no appropriations made available in this Act be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year and inserts a new Section 504 which appropriates $60,663 to the widow of Harold Runnels, late a Representative from the State of New Mexico, as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

"SEC. 504. There is appropriated, out of any money in the Treasury not otherwise appropriated, for payment to Dorothy Runnels, widow of Harold Runnels, late a Representative from the State of New Mexico, $60,663."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 54: Deletes Senate language relating to unresolved audits pending within agencies and departments.

Amendment No. 55: Deletes Senate language relating to the collection of overdue debts owed to the United States.

Amendment No. 56: Deletes Senate language relating to the procurement of consultant services.

Amendment No. 57: Deletes Senate amendment.

Amendment No. 58: Deletes Senate language limiting the salary or pay rate of individuals in the legislative, executive and judicial branches, and in the government of the District of Columbia.

The House has passed H.J. Res. 610 making continuing appropriations for fiscal year 1981 which includes the limitation on salaries of Federal employees. That Resolution applies government-wide and is the vehicle in which such a restriction should be addressed.

Conference Total—With Comparisons

The total new budget (obligational) authority for the fiscal year 1981 recommended by the Committee of Conference, with comparisons to the fiscal year 1980 amount, the 1981 budget estimates, and the House and Senate bills for 1981 follow:

New budget (obligational) authority, fiscal year 1980	$11,680,674,000
Budget estimates of new (obligational) authority, fiscal year 1981	[1] 11,968,111,000
House bill, fiscal year 1981	11,955,113,000
Senate bill, fiscal year 1981	12,064,270,163
Conference agreement	12,080,831,663

[1] Includes $136,252,000 of budget estimates not considered by the House.

Conference agreement compared with:

New budget (obligational) authority, fiscal year 1980	+400,157,663
Budget estimates of new (obligational) authority, fiscal year 1981	+92,720,663
House bill, fiscal year 1981	+125,718,663
Senate bill, fiscal year 1981	+16,561,500

TOM BEVILL,
EDWARD P. BOLAND,
LINDY (MRS. HALE) BOGGS,
BILL CHAPPELL,
VIC FAZIO,
JAMIE L. WHITTEN,
JOHN T. MYERS (except Dickey-Lincoln, Maine project in amendment No. 23),
CLAIR W. BURGENER,
VIRGINIA SMITH (except Dickey-Lincoln, Maine project in amendment No. 23),
SILVIO O. CONTE (except Dickey-Lincoln, Maine project in amendment No. 23),
Managers on the Part of the House.

J. BENNETT JOHNSTON,
JOHN C. STENNIS,
WARREN G. MAGNUSON,
ROBERT C. BYRD,
ERNEST F. HOLLINGS,
WALTER D. HUDDLESTON,
QUENTIN L. BURDICK,
JIM SASSER,
DENNIS DECONCINI,
MARK O. HATFIELD,
MILTON R. YOUNG,
RICHARD S. SCHWEIKER,
HENRY BELLMON,
JAMES A. MCCLURE,
JAKE GARN,
HARRISON SCHMITT,
Managers on the Part of the Senate.

APPOINTMENT OF CONFEREES ON H.R. 7831, DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1981

Mr. BENJAMIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7831) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana? The Chair hears none and, without objection, appoints the following conferees: Messrs. DUNCAN of Oregon, BENJAMIN, LEHMAN, SABO, STEWART, FAZIO, YATES, WHITTEN, CONTE, EDWARDS of Alabama, MILLER of Ohio, and COUGHLIN.

There was no objection.

EXECUTIVE SUMMARY OF SECOND BIENNIAL REPORT ON NATIONAL URBAN POLICY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking, Finance, and Urban Affairs:

(For message, see proceedings of the Senate of today, September 22, 1980.)

ANNUAL REPORT OF DRUG POLICY OFFICE OF DOMESTIC POLICY STAFF—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Interstate and Foreign Commerce.

(For message, see proceedings of the Senate of today, September 22, 1980.)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, September 23.

EXTENDING AUTHORIZATION FOR WATER RESOURCES RESEARCH

Mr. MILLER of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5340) to extend certain authorities of the Secretary of the Interior with respect to water resources research and development and saline water conversion research and development programs, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5340

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 401 of the Water Research and Development Act of 1978 (Public Law 95-467; 92 Stat. 1305), is amended as follows:

(1) In paragraph (a)(1), delete all after "institute, on a cost-sharing basis, for" and insert in lieu thereof "each of the fiscal years 1981 and 1982.".

(2) In paragraph (a)(2), delete all after "this Act" and insert in lieu thereof "the sum of $1,000,000 for each of the fiscal years 1981 and 1982, all to remain available until expended.".

(3) In paragraph (b), delete "for the fiscal year ending September 30, 1979, the sum of $6,000,000, and for the fiscal year ending September 30, 1980, the sum of $8,500,000," and insert in lieu thereof "the sum of $8,500,000 for each of the fiscal years 1981 and 1982,".

(4) In paragraph (c), delete "for the fiscal year ending September 30, 1979, the sum of $5,200,000, and for the fiscal year ending September 30, 1980, the sum of $8,000,000" and insert in lieu thereof "the sum of $8,000,000 for each of the fiscal years 1981 and 1982,".

(5) In paragraph (d), delete "for the fiscal year ending September 30, 1980," and insert in lieu thereof "fiscal years 1981 and 1982,".

(b) In section 402 of the Water Research and Development Act of 1978, delete "the fiscal year ending September 30, 1979, the sum of $12,000,000, and for the fiscal year ending September 30, 1980, the sum of $14,000,000," and insert in lieu thereof "each of the fiscal years 1981 and 1982, the sum of $14,000,000,".

(c) In section 403 of the Walter Research and Revelopment Act of 1978, delete "$4,464,000 for the fiscal year ending September 30, 1979, and the sum of $5,100,000 and for the fiscal year ending September 30, 1980," and insert in lieu thereof "$6,000,000 for each of the fiscal years 1981 and 1982,".

(d) In section 411 of the Water Research and Development Act of 1978, delete "rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed" and insert in lieu thereof "rules and regulations promulgated".

SEC. 2. (a) Section 2(a) of the Act of August 2, 1977 (Public Law 95-84; 91 Stat. 400) is deleted and replaced with a new section 2(a) to read as follows:

"SEC. 2. (a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): Provided, That at least two such plants shall demonstrate desalting of brackish ground water: And provided further, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be no larger than necessary to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504, et seq., the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95-244) with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.".

(b) Section 2(b) of said Act is hereby amended by inserting after "but is not limited to," the phrase, "how the plant being proposed differs from others already constructed under this section," and further, by deleting all after "ancillary facilities." and inserting the following: "Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be inkind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The Secretary shall participate in the operation and maintenance of any such demonstration for a period of four years in accordance with the operation and maintenance cost sharing provisions of this section. The Secretary is authorized to include in the proposed contract a provision for conveying as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.".

(c) Section 2(c) of said Act, is revised to read as follows: "There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plans authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs." Section 205(c) of the Act of October 17, 1978 (Public Law 95-467) is hereby repealed.

SEC. 3. Authority to enter into contracts or cooperative agreements under this Act shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

□ 1220

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 5340 is to authorize appropriations for fiscal years 1981 and 1982 for the Office of Water Research and Technology in the Department of the Interior.

The Office of Water Research and Technology was created in 1974 to combine the functions of the Office of Saline Water and the Office of Water Resources Research. The Office of Saline Water was responsible for carrying out a program begun in 1952 to attain processes and techniques for economical production of usable water supplies from saline, brackish, and other impaired water supplies. The Office of Water Resources Research was created in 1965 to carry out a series of programs designed to stimulate research and development in all aspects of water resources management and utilization under the provisions of the Water Resources Research Act of 1964.

The 95th Congress enacted Public Law 95-84 which authorized to be appropriated the sum of $40 million for the construction, in cooperation with local entities, of four desalting plants demonstrating the engineering and economic viability of membrane and phase-change desalting processes. Additional sums "as necessary" were authorized for operation and maintenance. Public Law 95-84 requires the local entity involved in each plant to provide the necessary water rights, water supplies, rights-of-way, power source interconnections and, when appropriate, brine disposal facilities for each plant, although the local entities are not required to contribute funds to help finance the cost of constructing the plants. The law was subsequently amended by Public Law 95-467 to allow the construction of one additional plant at a cost of $10 million.

Also, Public Law 95-467 was enacted which updated, extended, modernized, and clarified the organic charter for the two programs by repealing the various organic acts for the programs and reenacting them in one multititled law. Title I of the law covers the programs previously carried out under the authority of the Water Resources Research Act of 1964 and provides for a State water research and development institutes program, a matching grant program, a water research and development grant program, and a water system demonstration program. Title II of Public Law 95-467 reenacts the saline water research and development program begun in 1952 and, in summary, authorizes the Secretary of the Interior to engage in saline water conversion research and development. Title III of the law provides for a technology transfer and information dissemination program while title IV sets out the general authorities of the Secretary of the Interior and authorizes appropriations for the programs outlined above.

Mr. Speaker, enactment of H.R. 5340 is required to keep those important programs operational for the future since the appropriations authorizations contained in Public Law 95-467 were limited to fiscal years 1979 and 1980. In addition, although authorization of appropriations for the saline water demonstration program of Public Law 95-84 is not required, experience has demonstrated that certain changes in the law are necessary and desirable.

H.R. 5340 does not, Mr. Speaker, increase the authorization levels for the programs contained in Public Law 95-467. On the contrary, the bill would decrease those levels somewhat from the level of authorization for fiscal year 1980.

As amended by the Committee on Interior and Insular Affairs, H.R. 5340 removes the limitation of five saline water demonstration plants which can be constructed under existing authority. It also modifies the cost-sharing requirement in connection with such plants. Existing law does not require the local entities to provide any funding for the construction and operation and maintenance costs of the plants, but does require them to provide certain facilities and services for the plants. As amended, H.R. 5340 would require these entities to provide in cash or kind between 15 and 35 percent of the total cost of the plants, including operation and maintenance costs.

The committee amendment deletes a provision in H.R. 5340, as introduced, which prohibits local entities from utilizing the water produced from the desalting demonstration plants to substitute for or supplant conventional water supplies. This deletion will provide an inducement for local entities to participate in the demonstration plant program and reaffirms a principal purpose of the law to provide new sources of water for communities at a reasonable cost and prove to other communities that the desalinization of brackish and saline water is a viable alternative to conventional water supply projects.

Mr. Speaker, an effective water research program will enable the United States to use its existing water supplies more efficiently and to develop methods for utilizing new sources of water. Many experts agree that the next major natural resource crisis to confront us will involve water, its quantity and quality. The continuation of an effective water resources research program is vital in preparation for this crisis.

I urge the approval of H.R. 3540, as amended.

Mr. LUJAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the bill as amended by our committee and concur in the remarks of the gentleman from California (Mr. MILLER). I will only add a few observations on where we are in the desalting program today, and where we are going.

As most of the Members know, the Congress has had to hold the administration's feet to the fire for 4 years to keep this vital program alive. We have come a long way since we first authorized Federal research into the desalting of seawater and underground brackish water, and we are now very close to our objective of bringing the costs down to the reach of American communities. This is no time to stop the program.

When the program first began, back in the fifties, reverse osmosis had never been heard of, and reversible polarity ion exchange was simply a theory. Today, thanks to this program—and thanks to the far-sighted Members of

this body who have kept the program alive year after year—today both of these technologies have been perfected and the hardware for both processes is being sold around the world.

And that is the problem: We have brought the processes to the point where the hardware is economically attractive to desert countries, where water is a bargain at $3 or $4 per 1,000 gallons, but we still do not have the cost down to where it is attractive to most American communities who need it. Yet, both this administration and the previous administration have looked at the fact that overseas markets have been developed and have wanted to stop further Federal R. & D. The Congress has consistently directed the Interior Department to keep the Office of Research and Technology alive and functioning until ways are found to bring the cost into line for domestic markets. And we are very close to doing that.

In the meantime, there are some communities in the United States where the need for new water supplies is so great that the present state of the art is adaptable to meet that need at prices they are willing to pay. But no community wanted to be the first to install a desalting plant. We recognized that if the Federal Government could help demonstrate to a few communities that the systems work and can be used here at home as well as overseas, we could help develop a larger domestic demand and thus bring the costs of the component parts down through mass production.

That is why we authorized a demonstration program in the 95th Congress, offering attractive Federal cost sharing to the first four communities that agreed to sponsor a local plant to either desalt seawater or underground brackish water. We received an excellent response, as more than 20 communities have now applied for such demonstration plants. Two plants are now ready to go to final design and construction. Their success will encourage more water-short communities to take a positive look at this method of increasing their water supplies from brand new sources.

But the use of desalting hardware to make seawater and brackish water drinkable is only a part of the OWRT program. They have also been pursuing a second line of research to develop plant strains that can grow and thrive on seawater or brackish water without the need to change the salt content of the water. This line of research has led to some revolutionary developments. An OWRT-funded program at Colorado State University, for example, has developed a method of cloning plants so that salt-resistant strains can be reproduced in a matter of months instead of years. They already have developed strains of tobacco that can be grown in water with twice the salt content of seawater. With funding assistance from OWRT, other State universities are picking up that technology and applying it to other food and fiber plants.

It is impossible to overstress the importance of these two programs to the United States. We are right now in the midst of a national shortage of drinkable fresh water supplies—not just in the arid and semiarid States of the West, but in the urban centers of the East as well. As a matter of fact, one of the two demonstration plants that is ready to go to contract will be located in Virginia Beach, Va., where the water shortage has reached critical proportions.

By continuing to attack the water problem on two fronts—desalting the water itself and developing salt-resistant food and fiber plants that can thrive on heavy brine levels without the need to desalt the water—we will be adding to the Nation's water supply rather than fighting among ourselves for allocations of water presently available.

For these reasons, I urge support of the bill as amended by the committee.

□ 1230

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LUJAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Speaker, I would like to pose a couple of questions on this bill which is on suspension, and it seems to me that perhaps additional debate may be necessary.

The bill limits the 30-day congressional review period to formerly promulgated rules and regulations and to exclude guidelines, interpretations, and orders or requirements of general applicability from the congressional review process. It seems to me the limitations placed there turns the decisions on formulation of regulations by agencies on the guidelines they might make for themselves without review of that particular part by Congress.

Mr. MILLER of California. If the gentleman will yield, it is the intent of the legislation that we draw a distinction between major and minor guidelines here. In starting a research program like this, and the continuation of a research program, especially in a technologically sophisticated program such as this, every little guideline does not come before the Congress. But in terms of formal contracts or participation, those rules and regulations of participation, the guidelines by local entities, we would have that ongoing review; but not on the application of the program on an ongoing basis, because we simply do not have the time to get engaged in that.

Mr. RUDD. I thank the gentleman for that response. I have listened to part of the debate. The $50 million will simply continue what is going on now. But the strides that have been made in the production of usable water makes me wonder how much further we have to go, because we know what it takes to make brackish water potable and we know what it takes to desalinize water.

I would remind the gentleman of the very impressive success Mexico has made in desalinization and turning brackish water into potable water at little expense.

I am wondering why we need so much money for continuing experimentation, I guess, along those lines when we know what we have to do already.

Mr. MILLER of California. I think there is no question that we know there are desalinization plants around the world, in various countries, that are working. But it is also a determination to try to find that technology which fits the needs in various localities in our own country. I have only been involved in this a short time. The gentleman from New Mexico has been involved much longer. But I know this is an on-again, off-again program.

As the energy situation changed, as prices escalate, it was thought it would be too expensive; and then all of a sudden desalinization started to make sense again in this country. I think that is the reason you see those renewed commitments for these research efforts.

I would be happy to yield to the gentleman from New Mexico (Mr. LUJAN), who has a much more detailed history of this program to give us.

Mr. LUJAN. If the gentleman will yield, I might just tell the gentleman from Arizona that, as the gentleman from California says, this whole history is one that new things keep coming up. Originally, we would just desalt water by distillation. Well, that clearly does not work today because of the energy costs.

Then we moved into other areas, reverse osmosis, now ion exchange. Those types of production have come about. That is the reason for this. The real purpose of this is to really get some demonstration plants. We want four demonstration plants around the country to actually do the desalting right at the point where it is needed, and that is why we have this additional authorization.

I might also tell the gentleman from Arizona that he would be pleased to know that this entire authorization for this year is about $1 million less than the previous year, so we are making good progress without having to just throw money at the problem. We are doing it selectively.

Mr. RUDD. Is the gentleman saying, then, that last year it was $51 million?

Mr. LUJAN. Last year it was $47 million, and this year it is $46 million-something.

Mr. RUDD. There is some success in any reduction, be it only $1 million from the many millions of dollars.

I thank the gentleman from New Mexico for his response.

Mr. LUJAN. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, I rise in strong support of the bill and wish to associate myself with the remarks of my friend from California (Mr. MILLER) and those of my good friend from New Mexico, the ranking member of our Water and Power Subcommittee (Mr. LUJAN). He has hit the nail right on the head.

The desalting program, which has been the stepchild of two administrations, has proven to be one of the most valuable programs in Government. It deserves our support.

I will remind my colleagues that 6 years ago, when the Office of Water Research and Technology was on the verge of being phased out of existence, I stood here and predicted that the next time that the next big crisis in this country would be a water crisis. I urged at that time that this program be kept alive as a major tool to meet that crisis. Since that time, we have gone through several years of drought in the West, and the municipal water supplies on the eastern seaboard have reached critical shortage levels. The crisis is upon us—and we can thank the foresightedness of the Interior Committee and of the Congress for the tools we now have in place to alleviate that crisis.

We have two desalting demonstration plants ready to go to contract. That is a start, but it is a start that should have been made 4 years ago. And, thanks to the OWRT research program that operates through State universities, we have several university laboratories working on the plant cloning program mentioned by the gentleman from New Mexico. I want to expand just a bit on his remarks about that program.

The irrigation farming of the West, and particularly in California, is the envy of the world. We are producing more food at less cost for more people than any other country in the world.

But at the same time, our urban centers are growing, placing more and more demands on our limited supplies of fresh water. And now, to meet the energy shortage brought about by the higher cost of imported oil, we are faced with still more demand on our scarce water as we look toward the possible development of oil shale, coal gasification, and coal slurry pipelines.

Since agriculture is by far the largest water user in the West, the pressures are increasing to cut into irrigation's share of the water and reallocate it to other uses. That would result in higher food costs as farmers are forced to pay more for less water.

With those facts in mind, the successful plant cloning program funded by the Office of Water Research and Technology takes on a new significance.

Scientists at Colorado State University found that in virtually every plant strain there are 4 or 5 percent of genes that are strongly salt resistant. By identifying plants with a high percentage of those genes, and then by cloning those plants to produce thousands of plants identical to them, the scientists have been able to produce plants that do not need fresh water. They can thrive in brackish water or even seawater.

Through the technology-transfer portion of this program, OWRT is spreading this know-how to universities and agricultural colleges throughout the West. The results are full of tremendous promise. We may be able, in a year or two, to maintain our irrigated farming without the need of some of the fresh water we are now using. And the water made available through this program can be used to help solve our energy problems without disruption in the food marketplace.

It is a great success story and one of which we can all be proud. I strongly urge you to support this bill so we can keep this program moving.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MILLER) that the House suspend the rules and pass the bill, H.R. 5340, as amended.

The question was taken.

Mr. RUDD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

ESTABLISHING THE RATTLESNAKE NATIONAL EDUCATION AND RECREATION AREA AND WILDERNESS IN THE STATE OF MONTANA

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5898) to establish the Rattlesnake National Education and Recreation Area and Wilderness in the State of Montana, as amended.

The Clerk read as follows:

H.R. 5898

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

STATEMENT OF FINDINGS AND POLICY

SECTION 1. (a) The Congress finds that—

(1) certain lands on the Lolo National Forest in Montana have high value for watershed, water storage, wildlife habitat, primitive recreation, historical, scientific, ecological, and educational purposes. This national forest area has long been used as a wilderness by Montanans and by people throughout the Nation who value it as a source of solitude, wildlife, clean, free-flowing waters stored and used for municipal purposes for over a century, and primitive recreation, to include such activities as hiking, camping, backpacking, hunting, fishing, horse riding, and bicycling.

(2) certain other lands on the Lolo National Forest, while not predominantly of wilderness quality, have high value for municipal watershed, recreation, wildlife habitat, and ecological and educational purposes.

(b) Therefore, it is hereby declared to be the policy of Congress that, to further the purposes of the Wilderness Act of 1964 (16 U.S.C. 1131) and the National Forest Management Act of 1976 (16 U.S.C. 1600), the people of the Nation and Montana would best be served by national recreation area designation of the Rattlesnake area to include the permanent preservation of certain of these lands under established statutory designation as wilderness, and to promote the watershed, recreational, wildlife, and educational values of the remainder of these lands.

DESIGNATION AND MANAGEMENT OF RATTLESNAKE WILDERNESS AREA

SEC. 2. (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131), certain lands within the Rattlesnake National Education and Recreation Area as designated by this Act, which comprise about thirty-three thousand acres as generally depicted as the "Rattlesnake Wilderness" on a map entitled "Rattlesnake National Education and Recreation Area and Wilderness—Proposed," and dated September 1980, are hereby designated as wilderness and shall be known as the Rattlesnake Wilderness.

(b) Subject to valid existing rights, and further subject to section 4(c)(2) of this Act, the Rattlesnake Wilderness as designated by this Act shall be administered by the Secretary of Agriculture, hereafter referred to as the Secretary, in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness: *Provided*, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

DESIGNATION AND MANAGEMENT OF RATTLESNAKE NATIONAL EDUCATION AND RECREATION AREA

SEC. 3. (a) An area of land comprising approximately sixty-one thousand acres as generally depicted as the "Rattlesnake Education and Recreation Area" on a map entitled "Rattlesnake National Education and Recreation Area and Wilderness—Proposed," and dated September 1980, is hereby established as the Rattlesnake National Education and Recreation Area.

(b) The Secretary shall administer the Rattlesnake National Education and Recreation Area in accordance with the laws and regulations applicable to the national forests in such a manner as will best provide for—

(1) promotion, support, encouragement, and increase of public awareness and understanding of the significance of our wildlands as a national resource;

(2) the protection and management of water quality and supply;

(3) the preservation, enhancement, and management of wildlife and wildlife habitat values;

(4) public recreation and enjoyment; and

(5) the conservation and development of the scenic, natural, historic, and pastoral values of the area.

(c) The Secretary shall develop an overall management plan for the Rattlesnake National Education and Recreation Area. This plan shall be developed in consultation with State and local political subdivisions and other interested persons, and shall comply with the intentions of Congress as such intent is expressed in this Act.

(d) The Secretary shall permit hunting, fishing, and trapping on lands and waters under the Secretary's jurisdiction within the Rattlesnake National Education and Recreation Area in accordance with the laws of the United States and the State of Montana.

LAND ACQUISITION AND EXCHANGE

SEC. 4. (a) Within the boundaries of the Rattlesnake National Recreation Area and Rattlesnake Wilderness, the Secretary is authorized and directed to acquire with donated or appropriated funds including amounts appropriated from the Land and Water Conservation Fund, by exchange, gift, or purchase, such non-Federal lands, interests, or any other property, in conformance with the provisions of this section. Nothing in this Act shall be construed to limit or diminish the existing authority of the Secretary to acquire lands and interests therein within the Rattlesnake National Recreation Area or Rattlesnake Wilderness.

(b)(1) The Secretary of the Interior, in consultation with the Secretary of Agriculture, is authorized to consider and consummate an exchange with the owner of the pri-

vate lands or interests therein within the boundaries of the Rattlesnake National Recreation Area and Rattlesnake Wilderness, as described in sections 2 and 3 of this Act, by which the Secretary of the Interior may accept conveyance of title to these private lands for the United States and in exchange issue bidding rights that may be exercised in competitive coal lease sales, or in coal lease modifications, or both, under sections 2 and 3 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 201(a), 203). Any lands so acquired shall become national forest lands under the jurisdiction of the Secretary of Agriculture to be managed in accordance with the provisions of this Act and other laws applicable to the management of national forest lands. Nothing in this Act shall be construed to limit or diminish any existing authority of the Secretaries of the Interior and Agriculture to acquire private lands and interests therein in Rattlesnake National Education and Recreation Area and Rattlesnake Wilderness.

(2) The coal lease bidding rights to be issued may be exercised as payment of bonus or other payment required of the successful bidder for a competitive coal lease, or required of an applicant for a coal lease modification. The bidding rights shall equal the fair market value of the private lands or interests therein conveyed in exchange for their issuance. The use and exercise of the bidding rights shall be subject to the provisions of the Secretary of the Interior's regulations governing coal lease bidding rights, to the extent that they are not inconsistent with this Act, that are in effect at the time the bidding rights are issued.

(3) If for any reason, including but not limited to the failure of the Secretary of the Interior to offer for lease lands in the Montana portion of the Powder River region, or the failure of the holder of the bidding rights to submit a successful high bid for any such leases, any bidding rights issued in an exchange under this Act have not been exercised within three years from the date of enactment of this Act, the holder of the bidding rights may, at its election, use the outstanding bidding rights as a credit against any royalty, rental, or advance royalty payments owed to the United States on any Federal coal lease(s) it may then hold.

(4) It is the intent of Congress that the exchange of bidding rights for the private lands or interests therein authorized by this Act shall occur within three years of the date of enactment of this Act.

(5) In order to facilitate the exchange authorized by this Act, the Executive order captioned "Order of Withdrawal", of June 6, 1929, creating "Coal Reserve Numbered 1, Montana, Numbered 1", is hereby revoked to the extent that it constitutes a withdrawal of the lands therein from disposal under the Mineral Lands Leasing Act of 1920, as amended.

(c)(1) As non-Federal lands and interests in the Rattlesnake National Education and Recreation Area are acquired, the lands shall become part of the Rattlesnake National Education and Recreation Area. As non-Federal lands and interests in the Rattlesnake Wilderness are acquired, the lands shall become part of the Rattlesnake Wilderness. The Secretary shall publish from time to time a notice of such classifications in the Federal Register. It is the intention of Congress that acquisition of the non-Federal lands shall be completed no later than three years after the date of the enactment of this Act.

(2) Nothing in this Act shall be construed to permit the Secretary to affect or diminish any water right which is vested under either State or Federal law at the time of enactment of this Act, nor the rights of the owner of such water right to the customary and usual access, including necessary motorized use over and along existing roads and trails to any facilities used in connection therewith, and the right to operate and maintain such facilities.

ESTABLISHMENT OF AN EDUCATION AND RESEARCH CENTER

SEC. 5. The Secretary shall establish a Rattlesnake Wildland Education and Research Center at an appropriate site within the Rattlesnake National Education and Recreation Area. Such facility shall be established for the purpose of public education about the Rattlesnake Wilderness and Rattlesnake National Education and Recreation Area as well as for the promotion of education pertaining to all aspects of wildlands management.

FILING OF MAPS AND DESCRIPTIONS

SEC. 6. As soon as practicable after enactment of this Act, a map and legal description of the Rattlesnake National Education and Recreation Area and a map and legal description of the Rattlesnake Wilderness shall be filed with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, and such maps and legal descriptions shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal descriptions and maps may be made.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. Effective October 1, 1981, there is hereby authorized to be appropriated funds necessary for the acquisition of lands and interests to carry out the purposes of this Act. Such funds shall remain available until expended without fiscal year limitation. There is further authorized to be appropriated for the construction of the Rattlesnake Wildland Education and Research Center facility, as provided for in section 5, not more than $250,000 in fiscal year 1982, and not more than $275,000 annually in succeeding years for facility administrative and program costs. Amounts appropriated to carry out this Act shall be expended in accordance with the Budget Reform and Impoundment Control Act of 1974 (88 Stat. 297).

The SPEAKER pro tempore. Is a second demanded?

Mr. CLAUSEN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. SEIBERLING) will be recognized for 20 minutes, and the gentleman from California (Mr. CLAUSEN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5898, which would designate a 61,000-acre Rattlesnake National Education and Recreation Area, with an incorporated 33,000-acre wilderness area, in the Lolo National Forest, Mont. By and large, the area encompassed by this legislation comprises the urban watershed for the city of Missoula, Montana's third largest city. Since 1972, when the first waterworks were developed in the Rattlesnake Creek watershed, the area has provided Missoula with high quality and quantity water which requires minimal treatment. This water supply is virtually cost free, because the gravity flow pristine water can be utilized without the construction of major impoundments, conduits, or other expensive developments. The permanent protection of the watershed in its present largely natural and undeveloped condition is the major goal of H.R. 5898.

Due to its high watershed values, the proposed national education and recreation area (NERA) and wilderness is unsuited for livestock grazing, timber harvest, mining, or other resource development, and there is strong local support for eliminating offroad vehicle use in much of the area. As such, I believe it is fair to say that the national education and recreation area and wildernesses designations of H.R. 5898 will have minimal conflicts with other potential uses, and will not adversely impact needed resource production. Indeed, the protection afforded by the bill should enhance the local economy by insuring permanent watershed integrity and promoting educational and primitive recreational values.

In addition to its paramount watershed values, the proposed national education and recreation area also possesses outstanding wildlife habitat, opportunities for primitive recreation and scenic scientific and educational resources. Peaks in the heart of the area can be seen from downtown Missoula, and some 41 lakes lie within the area, as well as numerous streams. The lakes and streams and peaks are popular for primitive recreation such as fishing, hiking, hunting and camping and add to the area's overall appeal for those seeking a nonmotorized wilderness-type experience. According to a study by the University of Montana, approximately 85 percent of the current use of the area is nonmotorized. In recent years, this nonmotorized use of the area has grown dramatically including an 87-percent increase between 1975 and 1978.

The area encompassed by the designations of the bill also contains important habitat for 14 wilderness-associated wildlife species including resident grizzly bear, elk, the endangered Northern Rocky Mountain wolf, and bald eagle. There are plans to reintroduce mountain goats to the area.

Due to its close proximity to Missoula and the University of Montana, and I note that the southern boundary of the proposed national education area lies only 5 miles from the University of Montana, all the above mentioned values enhance the area's significance as an extremely accessible recreational, research, and educational resource. To the best of my knowledge, no other existing or potential wilderness area in the Western United States lies in such close proximity to a major educational institution. In recognition of these values, H.R. 5898 stresses the educational and research as

well as the recreational attributes of the area, and provides for the establishment of a modest education and research center within the Rattlesnake NERA. Such a facility will compliment research and educational facilities at the University of Montana, and will afford the general public of all ages an opportunity to study and experience firsthand the various aspects of wildlands management and protection. In particular, the bill's combination of a specially designated national education and recreation area and a wilderness area will provide exceptional opportunities to study comparative ecosystems under differing levels of management intensity. This should prove to be of great value in furthering understanding of the consequences of alternative land management designations and classifications.

Mr. Speaker, in light of all of the above mentioned values, I believe it is clear that H.R. 5898 is a highly meritorious proposal and one that enjoys strong support in Montana. I urge my colleagues vote in favor of the bill.

□ 1240

Mr. Speaker, I reserve the balance of my time.

Mr. CLAUSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. RUDD. Mr. Speaker, will the gentleman yield?

Mr. CLAUSEN. Mr. Speaker, I will be happy to yield to the gentleman from Arizona (Mr. RUDD) for the purpose of directing a question to the chairman.

Mr. RUDD. I thank the gentleman for yielding.

That is my purpose.

I would like to enter into a colloquy with the gentleman from Ohio, if I may.

The information that is available to me is that we are designating 61,350 acres of land as the Rattlesnake National Education and Recreation Area which includes 33,665 acres as wilderness. It seems to me we are putting millions upon millions of acres into wilderness and now this is another way to just nip away at adding additional wilderness land.

The thing I would like to ask the gentleman about is we are authorizing $250,000 for construction of the Wildland Education and Research Center with a $275,000 annual appropriation for operations of the center in all of the years that come.

I would first like to ask the distinguished chairman of the subcommittee, the gentleman from Ohio, what we are going to get for this?

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Well, we are going to get a facility which will enable an in-depth and continuing study comparing, for example, the effects of wilderness and recreational use with other types of multiple use in similar areas, developing new ways of resource protection and wildlife management and in general contributing to our knowledge and also disseminating that knowledge on this type of question.

Mr. RUDD. If we are going to put that many acres into wilderness area, that strictly, and very strictly, prohibits multiple use of the area. In fact, it prohibits any other use of the area at all, does it not?

Mr. SEIBERLING. Sixty-one thousand acres is the entire size of the recreation area, and slightly more than half of that would be in wilderness. That presents a very useful benchmark so that we can compare the effects on what the quality, for example, of the area that is non-wilderness, with that which is wilderness and compare the total recreation area with a similar tract of land in the same State that is open for logging, mining and other activities. But one of the main purposes of the wilderness designation, as I mentioned, is to protect the pristine quality of the water which is presently used and available to the city of Missoula from this particular valley without significant treatment or alteration in any way. That has, therefore, a practical multiple use purpose right there.

Mr. RUDD. That means the entire water system for the beautiful city of Missoula is going to come from within this 33,000 acres of wilderness area?

Mr. SEIBERLING. That is my information. It does at present and would continue to do so. Obviously, if the area were open to intensive use, that water quality would be jeopardized, and that is one of the objectives of this legislation, to continue the protection that we afford it.

Mr. RUDD. Does that mean all great cities should have their water supply areas in wilderness?

Mr. SEIBERLING. It would be a nice thing if they could. But this is a rather unique situation here.

Mr. RUDD. I thank the gentleman.

Mr. CLAUSEN. Mr. Speaker, the chairman of the Subcommittee on Public Lands, the gentleman from Ohio (Mr. SEIBERLING), has accurately outlined the contents of the legislation, H.R. 5898, before the House. Let me just briefly state that this bill proposes a rather unique combination of management initiatives within the proposed 61,000-acre Rattlesnake National Education and Recreation and Wilderness Area.

□ 1250

I happen to have in my hand a copy of the administration's RARE II map for the State of Montana. I note that this particular area is listed on the map under a further planning category. It was contemplated that an ultimate management decision would be made by the Forest Service.

Immediately contiguous to this area and surrounding the area there are approximately 300,000 to 400,000 acres that are, in fact, in a multiple-use category commitment.

As proposed by the bill the overall designation would create a 33,000-acre wilderness area that would be administered and managed by the Forest Service under the provisions of the Wilderness Act of 1964.

The remaining 28,000 acres are designated as a national education and recreation area. The bill contains guidelines regarding the special management provisions which are to apply to this particular area. These provisions instruct the Forest Service to develop a management plan and implement that plan to promote the use of the area as an education and research area relating to the conservation and protection of wildlife and wildlife habitat; water quality, and natural, historic and scenic values.

In addition, the management framework would provide for some public recreation. These special management provisions are to be incorporated in an overall management plan to be developed by the Forest Service in cooperation and conjunction with the State and local governments, as well as private individuals in the area.

The bill, as amended in the committee, and which was, incidentally, adopted by a voice vote, also provides a method by which the problems involving "checkerboarded" land patterns of alternating private and public lands can be resolved in this particular area. The language provides for the exchange of the privately held lands for "bidding rights" which the landowners may exercise on future competitively offered Federal coal leases. This is one method of attempting to resolve a very serious problem, not only in Montana, but other Western States, regarding the use and management of these "checkerboarded" land patterns to meet private needs, as well as to satisfy the purposes of sound Federal land management in the West.

As my colleagues know, the Interior Committee has had with increasing frequency to address some of these checkerboarded ownership patterns wherein private and public lands are intermingled, thereby causing ingress and egress problems. The overall objective is to try to set in motion a framework for an exchange arrangement in order to, the maximum extent feasible, consolidate them into a very constructive workable land management plan.

This legislation is intended to accomplish this objective.

Mr. HALL of Texas. Mr. Speaker, will the gentleman yield?

Mr. CLAUSEN. I would be happy to yield to the gentleman from Texas.

Mr. HALL of Texas. I have just read something about this bill. Do I understand the purpose of this bill is to set aside 61,000 acres for some purposes regarding rattlesnakes?

Mr. SEIBERLING. Mr. Speaker, would the gentleman yield? I can answer that.

Mr. CLAUSEN. I would be happy to yield.

Mr. SEIBERLING. No. That happens to be the name of the valley where this is located. It has nothing to do with the study of rattlesnakes.

Mr. HALL of Texas. Is that the name of it, the Rattlesnake bill?

Mr. SEIBERLING. That is the name of the area, the Rattlesnake Area.

Mr. HALL of Texas. Is this area, let

me put it this way, will this 61,000 acres be available for any oil or gas development of any nature in the event that it may become feasible in the future? Are we taking this land out of production altogether?

Mr. SEIBERLING. Well, the 61,000 acres of the recreation area, of that total only 33,000 would be in wilderness.

Now, the part that is nonwilderness is open to oil and gas development, for example, but it is my understanding that this is not an area of high potential for oil and gas or for other types of development.

Furthermore, it is surrounded by the remaining part of the Lolo National Forest. We are talking about many tens of thousands of acres beyond this small area. This is a relatively small part of the total national forest.

Mr. HALL of Texas. Well, what will the 61,000 acres be used for?

Mr. SEIBERLING. It will be used for outdoor recreation and scientific study of the water supply.

Mr. HALL of Texas. And rattlesnakes?

Mr. SEIBERLING. No, not rattlesnakes. That just happens to be the name of the area.

Mr. HALL of Texas. I thank the gentleman.

Mr. SEIBERLING. Mr. Speaker, I yield 10 minutes to the gentleman from Montana (Mr. WILLIAMS).

Mr. WILLIAMS. Mr. Speaker, I thank the distinguished chairman of the subcommittee.

Lying along the 114th meridian in the Rocky Mountains of western Montana, within the district which I represent, there is a marvelous chunk of land, which folks out our way refer to as "the Rattlesnake." It derives its name from one of the small creeks that meanders through the drainage.

The Rattlesnake area is adjacent to the city of Missoula, Mont. With approximately 60,000 people, Missoula is the most populous city in the congressional district which I represent.

This city has for a 100 years depended upon the Rattlesnake watershed for its potable water supply. Thus, this area, particularly in its upper reaches, has, with few exceptions, been carefully protected from overuse by either industry or recreationists through the years.

Of the 61,000 acres, approximately 43 percent or 26,000 acres are privately owned. The vast bulk of that 21,000 acres is held by Montana's major private electric utility. To facilitate a trade of those lands, members of the Montana congressional delegation have been negotiating for most of this year with the private owners, the Forest Service, and the Bureau of Land Management. An agreement has been reached and a public hearing about those exchanges was held in the Senate earlier this month.

The exchange, agreed to by Interior, Agriculture, and the major private holder, is a unique one, which condition should be considered to lend itself only to this particular circumstance. The private utility company owner will, under the agreement, exchange Rattlesnake lands for bidding credits on federally owned coal lands located on BLM lands in eastern Montana. The remainder of private holdings will be traded under the traditional manner for Forest Service lands.

I have delayed this bill, which was introduced a year ago, until these trades could be fully and publicly negotiated. That has now been accomplished.

The western slopes of the area are shadowed by glaciated mountains, rising 3,000 to 4,000 feet from the valley floors. Being glaciated, the Rattlesnake exhibits hanging valleys, cirque basins, and 41 alpine glacial lakes.

The area is home for much wildlife, including the bald eagle, timberwolf, elk, the cutthroat trout, the wolverine, the soon to be reintroduced mountain goat, and the grizzly bear.

Mr. Speaker, on July 4, 1806, the Lewis and Clark Journals carried this sentence:

> We crossed a small stream 15 yards wide and entered the mountains.

That is the first known reference to the Rattlesnake. Since then it has been a favorite of folks in the area.

The mountain water from its creeks has been the primary water resource for the city of Missoula for the past 106 years. In the early 1900's, homesteaders settled in a few of the Rattlesnake valleys, and always the area has been protected, most recently by its two major owners, the Forest Service and the major private utility, the Montana Power Co. Together they have for years managed this area with great care, thus continually protecting its precious watershed characteristics. That protection has included restricting and in some areas banning motorized access.

One final point: This bill is named the Rattlesnake National Education and Recreation Area and Wilderness. Of the approximately 60,000 acres, the area will be divided roughly in half with the lower area managed as recreation area and the upper half preserved as wilderness.

I envision, however, that the entire area will be utilized uniquely as an educational resource, a 61,000-acre classroom; a laboratory where we will study, explore, catalog and learn.

We will improve our understanding of wildlife, their patterns of hibernation, territoriality, migration, and nesting; learn more about the land, the water, and the seasons.

This wilderness is particularly suited as an educational resource, located as it is adjacent to the northern regional office of the U.S. Forest Service; the Montana Department of Fish, Wildlife, and Parks; the resource offices of the Bureau of Land Management, and the University of Montana School of Forestry with its nationally unique wilderness institute.

□ 1300

This legislation establishes a modest wildlands, education and research center to be constructed within the lower part of the recreation area. This center will be the focal point for the administration of the education and research effort.

Mr. Speaker, this bill represents compromise. It has been endorsed by the Missoula City Council and the mayor of Missoula. The wilderness for this area has been endorsed by the Salish Creek Nation, and also endorsed by county commissioners and the Governor of the State of Montana. After 5 years of careful preparation by Montana citizens and 1 year of legislation, the Rattlesnake is deservant of passage through this House.

Mr. SEIBERLING. Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I simply wanted to endorse this bill and to commend my colleague from Montana for putting it together. It was very difficult. It was one of these emotional situations in the local area. The gentleman from Montana (Mr. WILLIAMS) has put together a good, sound, solid bill that we can all live with, and I congratulate him for an excellent job. I hope the bill will be passed.

Mr. SEIBERLING. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. PHILLIP BURTON).

Mr. PHILLIP BURTON. Mr. Speaker, I rise in support of this legislation. I would like to further associate myself with the remarks of our distinguished colleague, our committee chairman, the gentleman from Arizona (Mr. UDALL).

I think our colleague from Montana, Mr. WILLIAMS, deserves the plaudits of one and all for being able to reconcile the many differences that initially existed with reference to this proposal. It is a great tribute to his legislative skill and I would hope this matter would be approved by the House.

Mr. SEIBERLING. Mr. Speaker, I would simply like to add that this is a very creative and imaginative approach combining a wilderness and a national recreation and education area, providing means whereby senior citizens and handicapped can get into the primitive part of the area, and providing also for an educational center to make wilderness studies. I think the gentleman from Montana (Mr. WILLIAMS) deserves all our commendation for doing this pioneer work on this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. CLAUSEN. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. RUDD) to ask a question.

Mr. RUDD. I thank the gentleman for yielding.

Mr. Speaker, I have one question for the distinguished chairman of the subcommittee, the gentleman from Ohio (Mr. SEIBERLING). This research center is going to be funded at a rate of $275,000 a year from this year on. What sort of review is that subject to?

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. RUDD. I yield to the gentleman.

Mr. SEIBERLING. The Appropriations Committee would have to appropriate the funds and so there is no guarantee that it will get anything unless there is an appropriation. That would have to be an annual appropriation each year.

Mr. RUDD. But this was the gentleman's recommendation that we have this.

Mr. SEIBERLING. That is an authorization which merely makes it possible to have an appropriation. But the gentleman from Montana (Mr. WILLIAMS) in future years would have to, or whoever is representing that area, would have to go before the Appropriations Committee each time to obtain the necessary funding. Whether they decide to give any funding or not would be up to them.

Mr. RUDD. But unless there was a specific reason for changing it, this would not really come up.

Mr. SEIBERLING. The authorization would be there but not necessarily the appropriation.

Mr. RUDD. I thank the gentleman.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. SEIBERLING) that the House suspend the rules and pass the bill, H.R. 5898, as amended.

The question was taken.

Mr. RUDD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. RUDD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may may have 5 legislative days within which to revise and extend their remarks on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 7301, MILITARY CONSTRUCTION AUTHORIZATION ACT, 1981

Mr. BRINKLEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7301), to authorize certain construction at military installations for fiscal year 1981, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia? The Chair hears none and, without objection, appoints the following conferees: Messrs. PRICE, NEDZI, CHARLES H. WILSON of California, BRINKLEY, DAVIS, and WON PAT, Mrs. BYRON, Messrs. BOB WILSON, WHITEHURST, BEARD of Tennessee, MITCHELL of New York, and DICKINSON.

There was no objection.

DIRECTING SECRETARY OF THE INTERIOR TO ACQUIRE LANDS FOR BENEFIT OF MILLE LACS BAND OF MINNESOTA CHIPPEWA INDIANS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1464), to direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians, as amended.

The Clerk read as follows:

S. 1464

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of November 2, 1978 (92 Stat. 2452; Public Law 95-571) is amended to read as follows: "That (a) the Secretary of the Interior is authorized and directed to enter into an agreement to acquire the interest of the fee title holders of the record in and to the following described land located in township 43 north, range 27 west, fourth principal meridian, Mille Lacs County, Minnesota—

(1) Government Lot 4, section 28;

(2) southwest quarter southwest quarter, section 29; and

(3) southeast quarter southeast quarter, section 29, containing 105.51 acres, more or less.

"(b) Title to such land shall be held by the United States in trust for the Mille Lacs Band of Chippewa Indians as a part of their reservation, subject to any valid existing rights-of-way or other easements.

"SEC. 2. (a) The cost of acquisition of such land shall be an amount which shall be the sum of (1) an amount not less than the value of the land as determined by an appraisal conducted for the Bureau of Indian Affairs by Douglas L. Gibson, SREA, dated January 9, 1980, and (2) the amount agreed to as representing the outstanding debts and obligations of Sherman A. Holbert, also doing business as Indian Bay 1973, Incorporated, which are directly attributable to the development of such lands, but not to exceed $240,000.

"(b) The Secretary of the Interior shall require in such agreement that all development plans and other work products relating to the development of the subject land in the possession of Sherman A. Holbert, also doing business as Indian Bay 1973, Incorporated, shall be transferred to the Mille Lacs Band of Chippewa Indians.

"SEC. 3. (a) The cost of acquisition agreed to in the agreement entered into pursuant to section 1 of this Act shall be treated as if it were a final judgment of the Court of Claims pursuant to section 2517 of title 28, United States Code.

"(b) No part of such acquisition cost shall be considered as an offset against any judgment against the United States in favor of the Mille Lacs Band of Chippewa Indians or any other component band of the Minnesota Chippewa Tribe.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes, and the gentleman from Utah (Mr. MARRIOTT) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1464 directs the Secretary of the Interior to enter into an agreement to acquire certain private lands for the benefit of the Mille Lacs Band of Chippewa Indians.

Mr. Sherman Holbert, private land developer in the State of Minnesota, acquired the fee title to a 25-acre tract of land on the shores of Mille Lacs Lake in Minnesota in 1972 for resort and recreational development purposes.

Mr. Holbert invested his own financial resources and borrowed extensively in furtherance of this project. However, in 1978, the Mille Lacs Band of Chippewa Indians and officials of the Bureau of Indian Affairs claimed that the 25-acre tract belonged to the Indians based upon an 1898 law. That law provided that the tract of land would be perpetually reserved as a burial place for the Indians.

This Federal law cast a cloud on Mr. Holbert's title and brought his development project to a complete halt. His credit sources have dried up and he faces imminent bankruptcy. Even though the Interior Department solicitor has since held that his title is good, it is impossible for him to proceed further.

While the United States has no legal obligation to Mr. Holbert, it is the direct result of a Federal law that has brought him to his current situation. Some moral responsibility is owing to the gentleman.

S. 1464, as reported by the committee provides for the acquisition of Mr. Holbert's interest in the subject lands at a price which will give him the appraised value for the lands plus an amount which will compensate him for his out-of-pocket expenses.

Mr. MARRIOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in effect the Congress reserved lands for these Indians which it did not own and, without some kind of legislative relief for Mr. Holbert, he would lose his investment, his time, and his money.

This bill would eliminate a situation in which a private citizen is being forced to bear the burdens brought about by an error of Congress some 80 years ago. It is strongly supported by Senator DURENBERGER and is supported by the Members who represent the District.

The administration is not yet on record, but I understand Vice President MONDALE would be pushing for the passage of the bill.

It is a most equitable bill, Mr. Speaker, and I would urge the Members of the House to vote in favor of it.

Mr. Speaker, at this time I yield such time as he may consume to the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, I rise in support of S. 1464 and urge its approval by the House under suspension of the rules.

This bill is intended to resolve a dispute in Mille Lacs County, Minn., that has its roots in an 1898 act of Congress that reserved land that the United States

did not own for use as an Indian tribal burial ground.

S. 1464 directs the Secretary of the Interior to acquire 105 acres of land from Mr. Sherman A. Holbert, a private businessman, for the Mille Lacs Band of Chippewa Indians.

The lands were part of the band's original reservation under an 1855 treaty, but were ceded to the United States by another treaty in 1864. In 1871, the most valuable portion of the land, known as Government lot 4, was patented to the State of Minnesota, which subsequently patented it to private parties.

Mr. Holbert acquired the land in the early 1970's and began investing considerable time and money to develop it as a resort. Five years into this effort, however, his plans were brought to a halt by the assertion of ownership to the land by the tribe under the 1898 act of congress. Assertion of ownership caused Mr. Holbert's investors to withdraw from his project and left him facing the loss of the fruits of the labor of nearly 10 years of his life and considerable financial liability.

In the 95th Congress House and Senate committees reviewed the history of the problem and concluded that Mr. Holbert was entitled to legislative relief as a matter of equity. This conclusion was based on the belief that he should not have to bear the full burden of claims that arose through no fault of his own. No one had raised a question about the 1898 resolution or about title to the subject property for 80 years.

The 95th Congress passed legislation authorizing, but not directing, the Secretary of the Interior to acquire Mr. Holbert's land at fair market value. Unfortunately, a dispute arose over the value of the land which has stymied the purchase.

S. 1464, as amended and reported by the Interior Committee, represents a second effort to purchase the land for the Mille Lacs Indians and provide relief for Mr. Holbert.

The bill provides for the acquisition of the property by the Secretary at a cost that includes the department's most recent appraisal of the property plus an amount which would retire the outstanding obligations of Mr. Holbert that are directly attributable to the development of the land. It further provides for the tribe to receive all development plans and other work products relating to the development.

The administration opposed S. 1464 as it was passed by the Senate but has not taken a position on the bill as it is now before the House. It is hoped that the committee version will be found more acceptable, and that the administration will accept it as a fair and reasonable solution to the problem at Mille Lacs.

It is simply not right for Congress to make the mistake of creating a second chain of title to a single piece of property, and then 80 years later allow a private citizen to pay for that mistake. S. 1464 would provide a long overdue remedy.

I urge the Members of the House to approve it.

Mr. MARRIOTT. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the Senate bill, S. 1464, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1310

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

OMNIBUS NATIONAL TRAILS ACT

Mr. PHILLIP BURTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8087) to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes, as amended.

The Clerk read as follows:

H.R. 8087

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Trails System Act Amendments of 1980".

TITLE I—AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT

SEC. 101. Section 2 of the National Trails System Act (82 Stat. 919; 16 U.S.C. 1241 et seq.) is amended—

(1) in subsection (b), by striking out "the purpose" and inserting in lieu thereof "The purpose"; and

(2) by adding at the end thereof the following new subsection:

"(c) The Congress recognizes the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of the Nation's trails. In recognition of these contributions, it is further the purpose of this Act to encourage and assist volunteer citizen involvement in the planning, development, and management of trails.".

SEC. 102. Section 3 of the National Trails System Act is amended—

(1) by redesignating paragraphs (a) through (d) as paragraphs (1) through (4), respectively, and by inserting "(a)" after "SEC. 3.";

(2) in paragraph (2) of subsection (a) (as so redesignated), by adding at the end thereof the following: "National scenic trails may be located so as to represent, but need not be limited to, desert, marsh, grassland, mountain, canyon, river, or forest areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.";

(3) in the fourth sentence of paragraph (3) of subsection (a) (as so redesignated), by striking out "Act, are established as initial" and inserting in lieu thereof "Act are included as";

(4) in the fifth sentence of paragraph (3) of subsection (a) (as so redesignated), by striking out "subsequently"; and

(5) by adding at the end thereof the following new subsection:

"(b) For purposes of this section, the term 'extended trails' means trails or trail segments at least one hundred miles in length, except that historic trails of less than one hundred miles may be designated as extended trails. While it is desirable that extended trails be continuous, studies of such trails may conclude that it is feasible to propose one or more trail segments which, in the aggregate, constitute at least one hundred miles in length.".

SEC. 103. Section 4 of the National Trails System Act is amended by adding at the end thereof the following:

"(c) As used in this section, the term 'reasonably accessible' means accessible by local public transportation, or accessible within three hours driving time by major portions of the population to be served by the trail.".

SEC. 104. (a) Section 5(a) of the National Trails System Act is amended by adding at the end thereof the following:

"(11) The Santa Fe National Historic Trail, a route of approximately seven hundred and eighty miles extending from Independence, Missouri, to Santa Fe, New Mexico, following the route as depicted on a map identified as 'The Santa Fe Trail (figure 2)' in 'The Santa Fe Trail', a study report prepared by the Department of the Interior and dated July 1976. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

"(12) The Chisholm, Shawnee, and Western National Historic Trails, consisting of—

"(A) the Chisholm National Historic Trail, a trail of approximately six hundred and forty-eight miles extending from San Antonio, Texas, to Abilene, Kansas;

"(B) the Shawnee National Historic Trail, a trail of approximately four hundred and sixty miles extending from Belton, Texas, to Baxter Springs, Kansas;

"(C) the Western National Historic Trail, a trail of approximately six hundred and fifty-two miles extending from San Antonio, Texas, to Dodge City, Kansas;

which trails follow routes as depicted on a map identified as 'Old Cattle Trails of the Southwest: Western-Chisholm-Shawnee (figure 1)' in the 'Old Cattle Trails of the Southwest', a report prepared by the Department of the Interior and dated April 1975. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The Secretary may also designate an additional segment of the Chisholm trail consisting of approximately one hundred miles and extending from Cuero, Texas, to San Antonio, Texas, by publication of a route description thereof in the Federal Register. The trails shall be administered by the Secretary of the Interior.

"(13) The Potomac Heritage National Scenic Trail, a corridor of approximately eight hundred and seventy-four miles, extending from the mouth of the Potomac River to its source (except for one segment extending into Pennsylvania) following the route as generally depicted on the map identified as 'National Trails System, Proposed Potomac Heritage Trail' in 'The Potomac Heritage Trail', a report prepared by the Department of the Interior and dated December 1974. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall initially consist of only those segments of the corridor located within the exterior boundaries of federally administered areas. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Potomac Heritage Trail. The Secretary of the Interior may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this Act and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of the Interior.

"(14) The Natchez Trace National Scenic Trail, a trail system of approximately six hundred and ninety-four miles extending from Nashville, Tennessee, to Natchez, Mississippi, as depicted on the map entitled 'Concept Plan, Natchez Trace Trails Study' in 'The Natchez Trace', a report prepared by the Department of the Interior and dated August 1979. The map shall be on file and available for public inspection in the office of Director of the National Park Service, Department of the Interior, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

"(15) The Florida National Scenic Trail, a route of approximately thirteen hundred miles extending through the State of Florida as generally depicted in 'The Florida Trail', a national scenic trail study draft report prepared by the Department of the Interior and dated February 1980. The report shall be on file and available for public inspection in the office of the Chief of the Forest Service, Washington, District of Columbia. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Florida Trail except with the consent of the owner thereof. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this Act and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of Agriculture.".

(b) Section 5(b) of the National Trails System Act is amended—

(1) by inserting "(1)" after "(b)";

(2) by inserting the following after the second sentence: "The feasibility of designating a trail shall be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied, and, if so, whether the development of the trail would be financially feasible.";

(3) by striking out "The studies listed" and inserting in lieu thereof "Subject to paragraph (2), the studies listed";

(4) by striking out "Such studies, when submitted" and all that follows down through the colon and inserting in lieu thereof the following:

"(2)(A) If, during the course of conducting a study under this section, the appropriate Secretary determines that it is not feasible to develop a national scenic or national historic trail along the proposed route and that there is no significant need for such a trail, he shall submit a report containing such determination to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate. Unless a resolution of disapproval of the determination is adopted by either of such committees within the period of 30 calendar days of continuous session of Congress after the date of their receipt of the report, the Secretary may terminate further study of the proposed trail by publication of notice thereof in the Federal Register.

"(B) Before submitting any report under subparagraph (A) containing a recommendation against designation of a trail, the Secretary shall examine (i) whether the route affords an opportunity to commemorate a significant event in the development of the Nation or the region or to memorialize an individual whose activities had a far-reaching effect on the development thereof, and (ii) whether any segments of the route have the potential to be developed as national recreation trails. Based on such examination, any such report containing a recommendation against designation of a trail shall indicate whether the route provides an opportunity to memorialize or commemorate such an event or individual or whether any segments of the route could potentially be developed as national recreation trails, and, if so, shall contain suggestions for appropriate methods for carrying out the memorialization or commemoration or the trail development, including an estimate of the anticipated costs for each such activity.

"(C) For the purpose of this paragraph—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

"(3) Completed studies, when submitted under paragraph (1), shall be printed as a House or Senate document, and shall include, but need not be limited to—";

(5) by redesignating paragraphs (1) through (10) as subparagraphs (A) through (J);

(6) in paragraph (3)(C) (as so redesignated), by inserting "16" before "U.S.C.";

(7) in paragraph (3)(I) (as so redesignated) by inserting "and" after the semicolon at the end of the paragraph;

(8) in paragraph (3)(J) (as so redesignated), by striking out "; and" and inserting in lieu thereof a period;

(9) by striking out "(11) to" and inserting in lieu thereof "(4) To"; and

(10) in paragraph (4) (as so redesignated) by inserting "exploration," after "commerce" in the first sentence of subparagraph (B).

(c) Section 5(c) of the National Trails System Act is amended—

(1) in paragraph (9), by striking out "Sante Fe" and inserting in lieu thereof "Santa Fe"; and

(2) by adding after paragraph (23) the following:

"(24) Goodnight and Goodnight-Loving Trails, extending from Fort Sumner, New Mexico, to Cheyenne, Wyoming, and from Concho, Texas, to Denver, Colorado, respectively.

"(25) Juan Bautista de Anza Trail, following the overland route taken by Juan Bautista de Anza in connection with his travels from the United Mexican States to San Francisco, California.

"(26) Trail of Tears, including the associated forts and historic properties, extending from the vicinity of Murphy, North Carolina, through Georgia, Alabama, Tennessee, Kentucky, Illinois, Missouri, Arkansas, to the vicinity of Tahlequah, Oklahoma.

"(27) Illinois Trail, extending from the Lewis and Clark Trail at Wood River, Illinois, to the Chicago Portage National Historic Site, generally following the Illinois River and the Illinois and Michigan Canal.

"(28) Jedediah Smith Trail, to include the routes of the explorations led by Jedediah Smith—

"(A) during the period 1826–1827, extending from South Pass, Wyoming, through the Great Salt Lake, Sevier, Virgin, and Colorado River Valleys, and the Mojave Desert, to the San Gabriel Mission, California; thence through the Tehachapi Mountains, San Joaquin and Stanislaus River Valleys, Ebbetts Pass, Walker River Valley, Bald Mount, Mount Grofton, and Great Salt Lake to Bear Lake, Utah; and

"(B) during 1828, extending from the Sacramento and Trinity River valleys along the Pacific coastline, through the Smith and Willamette River valleys to the Fort Vancouver National Historic Site, Washington, on the Columbia River.".

(d) Section 5(d) of the National Trails System Act is amended—

(1) by inserting after the first sentence the following: "If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress."; and

(2) by redesignating paragraphs (i) through (iv) as paragraphs (1) through (4), respectively, and by amending paragraph (1) (as so redesignated) to read as follows:

"(1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;".

(e) Section 5(f) of the National Trails System Act is amended—

(1) in paragraph (1), by striking out "national recreational" and inserting in lieu thereof "national historic", and by striking out "and" after the semicolon;

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(3) a protection plan for any high potential historic sites or high potential route segments; and

"(4) general and site-specific development plans, including anticipated costs.".

SEC. 105. Section 6 of the National Trails System Act is amended—

(1) in the first sentence, by inserting "by the appropriate Secretary" after "marked"; and

(2) by striking out ": Provided" and all that follows through the period and inserting in lieu thereof the following: ", or, where the Secretary deems necessary or desirable, on privately owned lands with the consent of the landowner. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the Secretary of the Interior."

SEC. 106. (a) Section 7 of the National Trails System Act is amended—

(1) by striking out "SEC. 7. (a)" and inserting in lieu thereof "(2)"; and

(2) by inserting immediately after the section heading the following new paragraph:

"SEC. 7. (a)(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 5(a) shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this Act shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

"(B) The Secretary charged with the overall administration of any trail pursuant to section 5(a) may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this Act. During any period in which management responsibilities for any trail segment are transferred under such an

agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement, except to such extent as the agreement may otherwise expressly provide."; and

(2) in the second sentence of paragraph (2) of subsection (e) (as so redesignated), by inserting before the period "consistent with the purpose of this Act".

(b) Section 7(c) of the National Trails System Act is amended by adding at the end thereof the following: "The appropriate Secretary may also provide for trail interpretation centers, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, with emphasis on that portion of the trail passing through the State in which the center is located. With respect to any such trail, only one trail interpretation center may be provided for by the Secretary in each State. Wherever possible, the centers shall be operated and maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.".

(c) Section 7(f) of the National Trails System Act is amended by inserting "(1)" after "(f)" and by adding at the end thereof the following:

"(2) When a tract of land lies partly within and partly without a national scenic or national historic trail right-of-way, the appropriate Secretary may, with the consent of the owner thereof, acquire the entire tract. Land so acquired outside the right-of-way may be exchanged for non-Federal land within such right-of-way, and any portion of the land not used for such exchanges may be disposed of in accordance with the provisions of section 5 of Public Law 90-401. The proceeds from any such disposal shall be credited to the appropriation account bearing the cost of land acquisition for the affected trail right-of-way.".

(d) Section 7(g) of the National Trails System Act is amended—

(1) by inserting immediately before the last sentence the following: "Notwithstanding any other provision of this Act or any other provision of law, the United States may not utilize condemnation proceedings or any other form of eminent domain power without the consent of the owner to acquire any lands, or interests in lands, located in Wyoming in connection with the Goodnight, Goodnight-Loving, and Jedediah Smith trails studied or designated under this Act.";

(2) in the last sentence by striking out "No" and inserting in lieu thereof "Except for designated protected components of the trail, no";

(3) in the last sentence by striking out "or" the second place it appears and inserting in lieu thereof ", "; and

(4) in the last sentence by adding at the end before the period the following: ", or the sites for trail interpretation centers described under subsection (c), as authorized under section 10 of this Act".

(e) Section 7(h) of the National Trails System Act is amended—

(1) by inserting "(1)" after "(h)";

(2) by inserting after the second sentence the following: "Such agreements may include provisions for limited financial assistance to encourage participation in the operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with the Volunteers in the Parks Act of 1969 and the Volunteers in the Forests Act of 1972) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. Such Secretary shall also initiate consultations with affected States and their political subdivisions to encourage the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and the development and implementation by such entities of provisions for land practices, compatible with the purposes of this Act, for property within or adjacent to trail rights-of-ways. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection."; and

(3) by striking out "Whenever the" in the last sentence of such subsection and inserting in lieu thereof the following:

"(2) Whenever the".

(f) Section 7(i) of the National Trails System Act is amended by adding at the end thereof the following new sentence: "The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forests, as the case may be, in carrying out his administrative responsibilities for such component.".

SEC. 107. Section 8 of the National Trails System Act is amended—

(1) by redesignating subsection (d) (and any reference thereto) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) The Secretary of Transportation, in administering the Federal aid program, together with the Chairman of the Interstate Commerce Commission and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish such trails using the provisions of such programs.".

SEC. 108. Section 10 of the National Trails System Act is amended—

(1) by inserting "(a)(1)" after "SEC. 10.";

(2) by striking out "(a) The" in the second sentence and inserting in lieu thereof "for the";

(3) by striking out "It is the express intent" and inserting in lieu thereof the following:

"(2) It is the express intent";

(4) in subsection (a)(2) (as so redesignated), by inserting "Applachian" before "Trail"; and

(5) in subsection (c)—

(A) by inserting "(1)" after "(c)";

(B) by inserting before the period at the end of paragraph (1) (as so redesignated) ", except that funds may be expended for the acquisition of lands or interests therein for the purpose of providing for one trail interpretation center, as described in section 7(c), along each such trail in each State crossed by the trail"; and

(C) by adding at the end of such subsection the following:

"(2) Effective October 1, 1981, there is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this Act relating to the trails designated by paragraphs (9) through (16) of section 5(a) of this Act. Not more than $3,000,000 may be appropriated for the purposes of acquisition of land and interests therein for the trail designated by section 5(a)(14) of this Act, and not more than $16,500,000 may be appropriated for the purposes of the development of such trail.".

SEC. 109. The National Trails System Act is amended by adding the following new sections at the end thereof:

"VOLUNTEER ACTION TRAILS DEMONSTRATION PROGRAM

"SEC. 11. (a)(1) In addition to the cooperative agreement authority contained in this Act, there is authorized to be established a volunteer action trails demonstration program (hereinafter in this section referred to as the 'program') to encourage volunteers and volunteer organizations to plan, develop, and manage trails throughout the Nation. The program shall be administered by the Secretary of the Interior (with respect to lands and programs primarily under the jurisdiction of such Secretary) and by the Secretary of Agriculture (with respect to lands and programs primarily under the jurisdiction of such Secretary).

"(2) Together with the grant authority provided under this section, the Secretaries are encouraged to utilize wherever appropriate, in furtherance of the purposes of this section, existing authorities available to them under the Volunteers in the Parks Act of 1969, the Volunteers in the Forests Act of 1972, and section 6 of the Land and Water Conservation Act of 1965 (relating to the development of Statewide Comprehensive Outdoor Recreation Plans).

"(b)(1) Under the program each Secretary may make grants of not more than $25,000 to volunteer trail groups which are committed to managing, maintaining, or developing trails, or which agree to conduct such activities. During any fiscal year, no volunteer trail group may receive under this section, in the aggregate, an amount exceeding $25,000. Grants under this section may be made available, as provided under paragraph (2), only for the purposes of—

"(A) developing or maintaining (i) trails which are components of the National Trails System, or (ii) trails which, if so developed and maintained by such groups, could qualify for designation as components of the National Trails System; or

"(B) operating programs to organize and supervise volunteer trail building efforts with respect to the trails referred to in subparagraph (A), conducting trail-related research projects, or providing education and training to volunteers on methods of trail planning, construction, and maintenance.

"(2) Financial assistance made available to volunteer trail groups under this subsection for the purposes described in subparagraphs (A) and (B) of paragraph (1) shall be used for—

"(A) providing tools to volunteers engaged in trail-related work projects organized by the group;

"(B) providing reimbursement for incidental expenses incurred by volunteers, such as transportation, lodging, and subsistence;

"(C) providing resource materials for the programs referred to in paragraph (1)(B);

"(D) assisting in defraying the incidental costs of office operations of the group (including postage, telephone expenses, duplicating, and clerical supplies), other than the costs of salaries or benefits for staff or the costs of rent, insurance, or similar charges for office space;

"(E) constructing or maintaining trail-related public use facilities, including historic features where appropriate;

"(F) providing insurance protection for the trail group and its volunteers (as determined to be adequate by the Secretary); or

"(G) any combination of the items specified under subparagraphs (A) through (F).

"(3) No grant shall be made available under this section to a volunteer trail group unless the group submits an application to the appropriate Secretary. The Secretary shall not approve any such application unless—

"(A) in the application, the group (i) agrees to provide funds, or services pertaining to trails, the value of which is equal to the amount of the grant (as determined under criteria established by the Secretary), and (ii) describes the services, if any, to be provided under clause (i);

"(B) in the application, the group agrees to abide by such procedures as the Secretary may establish under subsection (c) to ensure accountability for any funds made available to the group under this section; and

"(C) the application specifies the manner in which the funds sought by the group would be used if made available under this section.

"(c)(1) The Secretaries shall develop a uniform format for the grant applications required under this section and for any reports required to be submitted by grant recipients, and the Secretaries shall establish such uniform procedures and requirements as may be necessary to ensure that funds made available under this section are used for the purposes for which the grant was made. Each Secretary shall be responsible for establishing such criteria as may be necessary to evaluate applications submitted under this section.

"(2) To the maximum extent practicable, applications and program information shall be made available, and grants shall be administered, at appropriate agency field offices.

"(3) The program shall be carried out, to the maximum extent practicable, in consultation with interested State and Federal agencies and volunteer trail groups.

"(d)(1) There is authorized to be appropriated to the Secretary of the Interior to carry out the program not more than $400,000 for the fiscal year ending September 30, 1982, not more than $425,000 for the fiscal year ending September 30, 1983, not more than $450,000 for the fiscal year ending September 30, 1984, not more than $475,000 for the fiscal year ending September 30, 1985, and not more than $500,000 for the fiscal year ending September 30, 1986.

"(2) There is authorized to be appropriated to the Secretary of Agriculture to carry out the program not more than $400,000 for the fiscal year ending September 30, 1982, not more than $425,000 for the fiscal year ending September 30, 1983, not more than $450,000 for the fiscal year ending September 30, 1984, not more than $475,000 for the fiscal year ending September 30, 1985, and not more than $500,000 for the fiscal year ending September 30, 1986.

"(e) For purposes of this section, the term 'volunteer trail group' means any private organization—

"(1) which is devoted to providing for or fostering the development, management, maintenance, or public appreciation of hiking, horseback, bicycling, or related trails;

"(2) which has a membership composed of citizens willing to donate services in order to further the trail-related objectives of the organization;

"(3) which has a staff composed of either volunteers or paid employees; and

"(4) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"(f) No grants may be made, or contracts entered into, under this section except to such extent, or in such amounts, as may be provided in advance in appropriation Acts.

DEFINITIONS

"SEC. 12. As used in this Act:

"(1) The term 'high potential historic sites' means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

"(2) The term 'high potential route segments' means those segments of a trail which would afford high quality recreation experience in a portion of the route having higher than average scenic values or affording an opportunity to vicariously share the experience of the original users of an historic route.

"(3) The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific, the Northern Mariana Islands, and any other territory or possession of the United States.".

SEC. 110. Section 6(a) of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-6a) is amended at the end of the first paragraph by adding the following new sentences:

"Notwithstanding my other provision of law, no Federal fee shall be imposed for entrance or admission to any national recreation area, any unit of the National Wild and Scenic Rivers System, or any unit of the National Trails System. Notwithstanding any other provision of law, effective June 1, 1981, no Federal fee shall continue to be imposed for entrance or admission to any unit of the National Park System at which the receipts collected for entrance fees exceeded the cost of collection of said fees by less than $2,000 in calendar year 1979 (as determined by the National Park Service report entitled 'Report of Entrance Fee Rates, Collections and Costs to Collect CY 1979' and dated May 13, 1980): *Provided*, That, if the Secretary of the Interior, prior to April 1, 1981, makes a specific determination that fee collection will be reasonably necessary to protect park resources in an individual unit affected by this sentence, he may continue an entrance fee at that unit after providing notice of his intention to do so to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate.".

SEC. 111. Section 3(a) of the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467), is amended in the first sentence by—

(1) striking out "to include but not be limited to representatives competent in" and inserting in lieu thereof "each of whom shall possess knowledge and expertise related to the protection and management of the National Park System, including but not limited to"; and

(2) by striking out "and natural science, who" and inserting in lieu thereof "resources management and the natural sciences, who".

TITLE II—STUDY COMMITTEE

SEC. 201. The Congress finds that those portions of the Mississippi, Saint Croix, and Minnesota River corridors lying within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties in the State of Minnesota—

(1) represent a significant recreation resource which would benefit a large population in the immediate vicinity;

(2) represent a significant historical and cultural resource worthy of preservation for the enjoyment and benefit of present and future generations;

(3) contain significant natural and scientific values that enhance the diversity and aesthetic character of the metropolitan area;

(4) are important commercial resources vital to the continued economic well-being of the region and the Nation;

(5) are of national significance and constitute an area of national concern; and

(6) are in need of cooperative recreational planning and management so as to improve efforts to further the preservation, enhancement, and use of these recreational resources.

SEC. 202. (a) A study committee (hereinafter in this title referred to as the "committee") consisting of fifteen members shall be established in accordance with this section to examine methods by which Federal, State, regional, and local governments can cooperate to enhance the recreational opportunities along those portions of the Mississippi, Minnesota, and Saint Croix Rivers described in section 201 of this title. The committee shall be responsible for carrying out the study described under section 204.

(b)(1) The committee shall consist of fifteen members as follows:

(A) A Chairperson, who shall be appointed by the Secretary of the Interior from among individuals designated in a list of nominees submitted by the Governor of Minnesota.

(B) A Vice Chairperson, who shall be a member designated by the Secretary of the Interior.

(C) Four members, one of whom shall be designated by each of the following: the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Secretary of Defense.

(D) Nine members, who shall be appointed by the Secretary of the Interior from among individuals designated in a list of nominees jointly submitted by the Governor of Minnesota, the Metropolitan Council, and the Mayors of Minneapolis and Saint Paul.

Members appointed under this subsection shall include representatives of each of the interests described under section 204(e) of this title.

(2) The Governor of Minnesota, the Metropolitan Council, and the mayors of Minneapolis and Saint Paul shall submit the nominations required under this subsection within forty-five days after the date of the enactment of this Act. All appointments of members required under this subsection shall be made within sixty days after the date of the enactment of this Act.

(c) Members of the committee who are full-time officers or employees of the United States shall receive no additional pay, allowance, or benefits (except for expenses under subsection (d)) by reason of their service on the committee.

(d) All members of the committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties for the committee from funds appropriated for such purpose.

(e) The Chairperson of the Study Committee, if other than one to whom paragraph (c) applies, shall receive per diem at the maximum daily rate for a GS 11 of the general schedule when engaged in the actual performance of duties vested in the Study Committee from funds appropriated for this purpose.

(f) The committee shall terminate within two years and two months after the date of the enactment by the Congress of the law providing for the initial appropriation to carry out this title. Any funds appropriated under this title shall be available until expended.

SEC. 203. (a) If a multifunctional regional agency (hereinafter in this title referred to as the "Regional Planning Agency") authorized by State law to plan for and coordinate the development of the seven counties described in section 201 is in existence on the date of enactment of this Act, the Governor of the State of Minnesota shall, if permitted under State law, require such agency to assist in carrying out the study described under section 204 of this title.

(b)(1) To the extent that funds are appropriated for this purpose, the Regional Planning Agency shall provide the committee with financial, administrative, and other necessary support services.

(2) The Regional Planning Agency, after consultation with the committee, shall have the power to appoint and fix the pay of such additional personnel as may be necessary to carry out its duties under this title. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and

subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, from funds appropriated for such purpose.

(3) The Regional Planning Agency, after consultation with the committee, may also procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed $100 per day.

(c) To the extent of available appropriations, the Regional Planning Agency may obtain, by purchase, donation or lease, such facilities, equipment, and services as may be needed to carry out the duties of such agency under this title.

(d) To the extent feasible and practicable, the Regional Planning Agency may utilize personnel available under the authority provided in the Intergovernmental Personnel Act of 1970 to assist such agency in carrying out its duties.

(e) Within forty-five days after receiving the report required by section 204, the Regional Planning Agency shall provide the committee with written comments on that report. Upon receipt of those comments, the committee shall submit the report, together with such written comments, to the President, the Congress, and appropriate State, regional, and local government units.

SEC. 204. (a) The committee shall conduct a study on the preservation, enhancement, protection, and use of the designated recreation areas along the river corridors described in section 201 of this title. For the purpose of this title, designated areas shall be defined as those park, open space, recreation, or historical sites designated in an adopted Federal, State, regional, or local governmental plan. In carrying out the study, the committee shall review and utilize existing studies, and shall consider existing plans, programs, and policies as they affect the present and future recreational use of the river corridors described in section 201 of this title.

(b)(1) Within two years after the date of the enactment by the Congress of the law providing for the initial appropriation to carry out this title, the committee shall provide the Regional Planning Agency with a written report on the findings and conclusions of study described under subsection (a), together with recommendations for policies which should be adopted, and actions which should be taken, to optimize the recreational, fish and wildlife, historic, natural, scientific, scenic, and cultural values of the river corridor areas referred to in section 201 of this title. The study may also include recommendations for any institutional changes which the committee deems desirable and feasible to provide permanent management of the designated recreational areas along these river corridors, as well as recommendations for specific areas of local, regional, State, and Federal agency cooperation for river corridor management of the designated recreational areas.

(2) All policies and actions recommended by the committee shall be compatible with, and shall assure the integrity of, existing federally designated management programs and units on the Saint Croix and Minnesota River corridors. The committee shall recommend no policy or action which would place unreasonable restrictions on existing or compatible economic uses of these resources.

(c) The committee shall provide for public participation in the panning process in order to take into account the concerns of recreational, commercial, cultural, and environmental interests, and State, regional, and local governments.

SEC. 205. Effective October 1, 1981, there are authorized to be appropriated $300,000 to carry out this title.

The SPEAKER pro tempore. Is a second demanded?

Mr. SEBELIUS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. PHILLIP BURTON) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. SEBELIUS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. PHILLIP BURTON).

Mr. PHILLIP BURTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I bring before the House today a noncontroversial measure, H.R. 8087. H.R. 8087 was reported by the Committee on Interior and Insular Affairs without dissenting vote. It would amend the National Trails System of 1968. The original act established a framework within which Congress could encourage the development of trail opportunities. H.R. 8087 builds on the past work of the Congress by designating three new national scenic trails; the Florida Trail, the Potomac Heritage Trail and the Natchez Trace Trail.

Four new national historical trails are designated: the Santa Fe Trail, the Chisholm Trail, the Shawnee Trail and the Western Trail.

While in each case the initial trail designation will only give recognition to trail segments which currently exist on Federal lands, the bill also includes amendments to the act which will encourage cooperative activities to foster recreation opportunities on trails.

Six additional trail routes are also authorized to be studied and reports made to the Congress in accordance with the existing provisions of the act. These are: The Goodnight Trail (H.R. 4250), the Goodnight-Loving Trail (H.R. 4250), the Juan Bautista de Anza Trail (H.R. 4276 and H.R. 4587), the Trail of Tears (H.R. 5694), the Illinois Trail (H.R. 5516), and the Jedediah Smith Trail.

Mr. Speaker, I want to at this time pay tribute to the Members of this body who have worked to make this legislation possible.

Representative JIM JOHNSON is quite simply the person who is most responsible for there being a national historic trail category in the act at all.

His efforts last Congress led to the generic amendments which were adopted at that time. His continuing leadership during the current session is responsible for the designations as national historic trails of the Santa Fe, Chisholm, Shawnee, and Western Trails. He also has authored the provision directing the study of the Goodnight and Goodnight-Loving Trails.

Representatives ROBERT LAGOMARSINO and NORMAN MINETA have each authored legislation incorporated in H.R. 8087 which would provide for a study of the de Anza trail in our State of California. Congressman LAGOMARSINO has also exhibited long-term interest in the development of the National Trails System.

H.R. 8087 also contains authorization for a study of the Illinois Trail, thanks to the work of Representative TOM CORCORAN.

In addition to our members and the committee staff who have worked on this legislation, I want to recognize the dedicated work and absolutely invaluable assistance of the office of the legislative counsel in this matter. Paula Silberthau of that office has, through her individual efforts, enabled our committee to bring this legislation to the attention of the House of Representatives today.

Mr. Speaker, H.R. 8087 also establishes a limited duration program of small grants which the Secretaries of Interior and Agriculture may make to volunteer trail organizations to encourage the development of recreation trails. Other amendments to the act include direction for the Secretaries to encourage the States to adopt legislation which will assist landowners along trail areas by limiting their liability.

Other sections adopted by the committee include an amendment to the Land and Water Conservation Fund Act to prohibit the charging of entrance fees at national recreation areas, national wild and scenic rivers, and national scenic or historic trails, as well as eliminating entrance fees at a number of national park system units where collection costs either exceed revenues, or where profits are so marginal that their continuation appears to be an exercise in bureaucratic inertia rather than a thoughtful program. Of particular concern to me is the imposition of such fees of national historic sites, where we should be offering every encouragement to our citizens to learn something of their heritage.

Our language in H.R. 8087 restricting the imposition of Federal entrance fees in certain areas has been worked out in consultation with the ranking minority member of our subcommittee, Representative KEITH SEBELIUS. We have agreed on this compromise which will further restrict the number of Federal recreation areas where entrance fees can be imposed. I want to make clear that this further restriction does not in any way alter the circumstance at areas where an entrance fee is already prohibited, thanks to earlier actions taken by this Congress. No resumption of fees may occur at any area where a fee is not now collected, as prohibited in earlier legislation. Our language today does give the Secretary of the Interior the ability to continue fees in certain individual areas otherwise affected by our new restriction today, if he makes a specific determination that there is an unusual justification to continue collections. I want to serve notice to the Interior Department that this Member, for one, will not find an indiscriminate use of this exemption to be in any way acceptable. At this point in my statement I am inserting the detailed chart from the National Park Service which shows receipts from entrance fees nationwide. I have added notations showing those areas which would be affected by enactment of the language contained in H.R. 8087.

REPORT OF ENTRANCE FEE RATES, COLLECTIONS, AND COSTS TO COLLECT, CALENDAR YEAR 1979

Area	Rate	Receipts	Collection costs
Adams NHS, Mass.	0.50	$7,607.50	$1,900.00
Andrew Johnson NHS, Tenn.[1]	.50	1,377.50	0
Appomattox Courthouse NHP, Va.	.50	13,376.00	11,071.00
Arches National Park, Utah	.50	30,228.00	16,500.00
Aztec Ruins NM, N. Mex.	.50	12,521.00	6,362.00
Badlands NM, S. Dak.	.50	64,175.00	46,440.00
Bandelier NM, N. Mex.	.50	30,316.00	3,046.76
Black Canyon of the Gunnison NM, Colo.	.50	20,889.50	19,800.00
Bryce Canyon National Park, Utah	.50	151,978.00	30,875.00
Capulin Mountain NM, N. Mex.	.50	9,407.00	3,776.00
Carlsbad Caverns NP, N. Mex.	1.00	361,951.00	29,774.00
Casa Grande Ruins NM, Ariz.	.50	22,691.50	3,625.00
Castillo de San Marcos NM, Fl.	.50	227,712.50	64,400.00
Chickamauga-Chattanooga NMP, Ga.-Tenn.	.50	6,780.50	1,863.38
Chiricahua NM, Ariz.	.50	9,042.00	4,800.00
Colonial NHP, Va.	.50	212,797.00	29,400.00
Colorado NM, Colo.	.50	17,214.00	11,484.00
Crater Lake NP, Ore.	.50	114,720.00	41,173.00
Craters of the Moon NM, Idaho	.50	14,291.00	6,668.00
Devils Tower NM, Wyo.	.50	32,835.00	12,658.00
Edison NHS, N.J.	.50	8,475.60	3,000.00
El Morro NM, N. Mex.	.50	216,800.00	98,700.00
Everglades NP, Fl.	.50	8,767.00	5,400.00
Fort Davis NHS, Tex.	.50	13,414.50	13,129.00
Fort Pulaski NM, Ga.[1]	.50	239,081.00	141,533.00
Glacier NP, Mont.	.50	861,512.00	89,590.00
Grand Canyon NP, Ariz.	.50	284,507.00	91,952.00
Grand Teton NP, Wyo.	.50	29,018.25	8,910.00
Great Sand Dunes NM, Colo.	.50	83,978.00	31,700.00
Gulf Islands NS, Fla.-Miss.	.50	96,902.00	36,400.00
Home of FDR and Vanderbilt Mansion NHS, N.Y.	1.50	6,242.50	5,906.00
John F. Kennedy NHS, Mass.[1]	.50		
John Muir NHS, Calif.[1]	.50	5,438.00	4,986.00
Kings Canyon NP, Calif.	.50	(Combined with Sequoia)	
Lassen Volcanic NP, Calif.	.50	46,096.00	37,700.00
Longfellow NHS, Mass.[1]	.50	3,082.00	2,587.00
Mesa Verde NP, Colo.	.50	128,28 .50	20,000.00
Minute Man NHP, Mass.[1]	.75	2,532.00	2,000.00
Montezuma Castle NM, Ariz.	.50	68,454.00	29,405.00
Morristown NHP, N.J.	.50	12,331.00	4,600.00
Mount Rainier NP, Wash.	.50	246,243.00	79,700.00
Natural Bridges NM, Utah[2]	.50	5,120.00	5,900.00
Petrified Forest NP, Ariz.	.50	125,614.00	92,776.00
Pinnacles NM, Calif.	.50	17,846.33	10,241.00
Pipe Spring NM, Ariz.	.50	4,406.00	1,730.00
Rocky Mountain NP, Colo.	.50	763,685.00	171,866.00
Sagamore Hill NHS, N.Y.	.50	25,532.00	13,224.00
Saguaro NM, Ariz.	.50	22,494.00	16,806.00
Saint-Gaudens NHS, N.Y.[2]	.50	2,612.00	3,330.00
Scotts Bluff NM, Nebr.[2]	.50	7,346.00	10,699.00
Sequoia and Kings Canyon NP, Calif.	.50	280,962.50	172,349.00
Shenandoah NP, Va.	.50	588,487.00	202,223.00
Theodore Roosevelt SP, NHS, N.Y.[2]	.50	2,907.50	4,553.00
Theore Roosevelt NMP, N. Dak.	.50	26,317.00	11,122.00
Tonto NM, Ariz.[2]	.50	6,718.50	8,000.00
Tumacacori NM, Ariz.[2]	.50	10,596.50	12,500.00
Tuzigoot NM, Ariz.[1]	.50	12,131.00	12,000.00
Walnut Canyon NM, Ariz.[1]	.50	16,716.00	15,504.34
White Sands NM, N. Mex.	.50	69,076.00	38,999.00
Yellowstone NP, Mont.-Wyo.-Idaho	.50	686,310.50	229,653.23
Yosemite NP, Calif.	.50	1,159,746.00	303,058.00
Zion NP, Utah	.50	248,202.00	39,000.00
Total		7,806,906.58	2,429,347.71

[1] units—receipts marginally exceed expenses. [2] units—expenses exceed receipts.

Also included are an amendment to the Historic Sites Act of 1935 to require that members of the advisory board on the national park system will have certain qualifications, and the inclusion of a rewritten text to conduct a study of certain river corridors in the Minneapolis-St. Paul area, an earlier version of which was passed by the House this year in H.R. 3.

Mr. Speaker, I urge my colleagues to join me in approving H.R. 8087 at this time.

Mr. SEBELIUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill principally represents amendments to the National Trails System Act of 1968. It encompasses the following: First, additions of three designated new national scenic trails and two new national historic trails; second, provision for study of five new trail routes; third, substantive changes in and additions to various generic provisions of the act; fourth, initiation of a pilot program for a volunteer action trails demonstration program; and fifth, numerous technical changes in the existing law. The bill also contains several other provisions which are not particularly relative to the trails act.

One of the most positive new features of this bill is the inauguration of the volunteer action trails demonstration program. Some of the best work ever done in this country to benefit of our Nation's trails has come from interested citizens volunteering their efforts in trail planning and construction. This bill has a provision constituting a seed money approach to draw that effort out even more. This new program should be very productive in advancing the development of more trails. Its progress needs to be closely monitored by the administering agencies of the executive branch and by the authorizing committees of the Congress.

This bill also contains two other features to add more flexibility in the administration of the trails program by the executive agencies. If the process of studying a study trail candidate proves in its early stages to indicate no logical chance of coming out to be positive, there is a process whereby the complete study can be curtailed, to save time and money. There is a similar process whereby the setting up of designated trail advisory councils can be avoided if good faith efforts prove to be fruitless in assembling such a council. I believe all the forementioned are good positive features to be added to the trails act. Now I would like to make a comment on what is probably the very core of this bill, and that which also constitutes the very core or the trails act itself—and that is with regard to the specific trails which are designated to become part of the national system or are studied for their potential to so become.

In the preceding several years, and also in this bill, numerous new trails have been and are being added to the trails system. At the same time, the same Congress has weakened, and continues to weaken, the working provisions and tools of the trails act to the extent that the true workability of most of the trails system is greatly reduced. In the simplest words, we love to designate trails, while at the same time we seriously curtail their workability on the ground. This is principally done by prohibiting protection of the trail routes through acquisition. We are indeed deeply in the rut of creating "paper trails"—good stuff on paper, but fairly worthless on the ground where they really count. The committee does not adequately scrutinize the candidates proposed for study or for designation. The committee, by law, requires comprehensive reports to be prepared and submitted on the study trails—and then virtually overlooks them, by not seriously scrutinizing them in making further decision on them for designation to the system. Indeed, we are preoccupied with the glamor of designation and creating new stuff, but are unwilling to make the stuff work well that we create. The attitude of general noninterest and low priority attention to the trails system by all administrations since the 1968 inception of the trails system act has also constituted a significant part of the overall problem.

Mr. Speaker, I believe that henceforth, no more trails should be added for designation or study until the entire Trails Act is the subject of a comprehensive oversight scrutiny by both the administration and the authorizing committees of the Congress. I will not be here to participate, but I leave this as a strong recommendation for future participants in both branches of Government having responsibilities in this area.

Mr. Speaker, there are two other items I want to make brief comment on, both of which are near the end of the bill.

On the item of admission fee elimination for some areas—section 110 of the bill—I do not object generally to the elimination or reduction of admission fees to Federal recreation-type areas. However, I believe that in many cases there are some collateral pluses associated with the charging of fees—most of which are subtle and psychological in nature. I do not believe fees should be totally eliminated without some further attention and thought being given to this entire matter.

On the matter of adjustments in qualification criteria for service on the Secretary of the Interior's National Park System Advisory Board—section 111 of the bill—I believe it is most important to assure that all Members possess expertise of some type which is very relevant to the administration of the national park system. This language change is intended to reinforce that point, and it is also designed to urge consideration

for a strengthening of representation in natural resources and natural sciences expertise. Concern over the thrust of the observations from the May 1980 "State of the Parks" report, submitted by the National Park Service to the Congress, is a significant factor in reinforcing the advisability of this change.

Mr. Speaker, this concludes my remarks on this bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. CLAUSEN), the ranking minority member of the committee.

Mr. CLAUSEN. Mr. Speaker, I rise in support of H.R. 8087, a bill making amendments to the National Trails System Act.

Briefly, the bill adds seven new trails to the National System (Santa Fe, Chisholm, Shawnee, Western, Potomac Heritage, Natchez Trace and Florida National Trails).

It provides studies for six additional trails (Goodnight, Goodnight-Loving, Juan Bautista de Anza, Trails of Tears, Illinois and Jedediah Smith Trails).

In addition, a volunteer action trails demonstration program is established which encourages volunteer groups and individuals to plan, develop and manage trails for biking, hiking, and horseback riding throughout the Nation. A provision is also included which perfects the authorities and responsibilities of the Minnesota, Mississippi, and St. Croix Rivers Study Committee passed by the House earlier this Congress. Numerous technical and clarifying amendments are also made to the National Trails System Act.

Mr. Speaker, I know of no opposition to this bill and urge my colleagues to support H.R. 8087.

Mr. PHILLIP BURTON. Mr. Speaker, I yield such time as he may consume to the distinguished dean of the Mississippi delegation, the gentleman from Mississippi (Mr. WHITTEN).

Mr. WHITTEN. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, I rise in support of this bill. I especially appreciate the consideration of the Natchez Trace Parkway which is quite prominent in the history of this country and which will mean a lot to an area stretching all the way from New York to New Orleans.

I thank my colleague from California.

Mr. PHILLIP BURTON. Mr. Speaker, I thank the gentleman from Mississippi for his leadership, determination, and effectiveness that led to this result.

● Mr. CORCORAN. Mr. Speaker, I urge my colleagues to support the bill now under consideration, H.R. 8087, which will designate several new national scenic and historic trails. I commend the author of this bill, my colleague from California, the Honorable PHIL BURTON, for his leadership and the expeditious manner in which he moved this bill through the Interior Committee to the House floor in a matter of 2 short weeks.

Of particular importance to me is the Illinois Trail, because this omnibus legislation includes language from a bill which I introduced last year (H.R. 5516) to develop the Illinois Trail as a national scenic trail. The proposed trail extends from the Chicago Portage National Site to Wood River, Ill., generally following the Illinois River and the Illinois-Michigan Canal. Although the trail extends from northeastern Illinois to southwestern Illinois, I am primarily interested in the development of the portion in my district, the Illinois-Michigan Canal. Not only does this section include unique historical, cultural, and recreational sites, but it is also located in a region in which the demand for recreation facilities exceeds the current supply, according to a recent Illinois outdoor recreation plan.

The Illinois-Michigan Canal extends from the Chicago Portage to La Salle-Peru, a distance of about 90 miles. Most of the historical and recreational sites are clustered between Lockport and La Salle-Peru—60 miles. The canal was constructed in the mid-19th century to link the Great Lakes with the Mississippi River and was believed to be the greatest of the Midwest canals, promoting Chicago into the leading grain market and meatpacking center of the Midwest. Although the canal lost prominence as a transportation corridor by the end of the 1800's and was virtually abandoned in the 1930's, it continues to elicit much interest from public and private entities and is becoming increasingly popular as a recreation attraction in northcentral Illinois. Many farsighted individuals have continually worked to restore sections of the canal as best they could with only manual labor and little money.

In the early 1970's, the State developed a preservation plan for the canal; however, due to a lack of funds, it has not pursued this development.

Because of the growing interest in the development and preservation of this area, last year Senators PERCY and STEVENSON and I cosigned a letter to the Interior Department urging that a reconnaissance survey for the canal be conducted to determine the feasibility of further study and possible development based on the bill I had introduced. In November 1979, we were notified that such a survey was being conducted, and the results, which were favorable to further study, were published in June by the National Park Service. I am proud to report that the survey was written in an exceedingly positive manner toward increased development of the canal.

A great deal of credit for the development of legislation to study the Illinois Trail is due to the excellent research, persistent efforts and hard work of many Illinoisans, including Leonard Lock, Dr. Robert Whalen, Roy Kurkowski, Henry Koenig, Rotary Club of La Salle, Illinois-Michigan Canal Foundation, La Salle County Historical Society, Grundy County Historical Society, Will County Historical Society, Al Banton of the Illinois Park Service, Mayor Al Gunia, Mayor Jack Foley, Dr. Clement Jasiek, Open Lands, Mark Holtz and Cub Scout Pack 33, Ottawa Jaycees, Tom Greenwood, Tom Dyke, and Jim Housey. I can assure you, Mr. Speaker, that there are many more than can be listed here today, all of whom were vital to the progress we have achieved thus far.

Again, I urge my colleagues to support this fine legislation which calls for studies for the Illinois Trail and many other scenic and historical trails nationwide.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. PHILLIP BURTON) that the House suspend the rules and pass the bill, H.R. 8087, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION FOR COMMITTEE ON THE DISTRICT OF COLUMBIA TO HAVE UNTIL MIDNIGHT TONIGHT TO FILE REPORT ON H.R. 7658

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that the Committee on the District of Columbia may have until midnight tonight, Monday, September 22, 1980, to file a report on H.R. 7658.

The SPEAKER pro tempore (Mr. NATCHER). Is there objection to the request of the gentleman from Virginia?

There was no objection.

WILD AND SCENIC RIVERS ACT

Mr. PHILLIP BURTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8096) to amend the Wild and Scenic Rivers Act to provide for the study of certain river segments for potential inclusion in the National Wild and Scenic Rivers System and to designate certain river segments for inclusion in such system, and for other purposes, as amended.

The Clerk read as follows:

H.R. 8096

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 3(a)(21) of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) is amended by striking out "agencies of the Departments of Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President." and substituting "the Secretary of Agriculture. All Federal lands within the wild and scenic river corridor west of range 11 east shall hereafter be national forest lands to be administered by the Secretary of Agriculture as part of the Tahoe National Forest, the boundary of which is modified as generally depicted on a map entitled 'Tahoe National Forest inclusion of North Fork American Wild and Scenic River, September 1980'.".

SEC. 2. (a) Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) is amended by adding the following new paragraphs at the end thereof:

"(77) Myakka, Florida: The segment north of the southern boundary of the Myakka River State Park.

"(78) Saint Lucie, Florida: The South Fork.

"(79) Salmon, Connecticut: The entire main stem.

"(80) Farmington, Connecticut: The main stem and the west branch from the Charles A. Goodwin Dam downstream to its confluence with the Connecticut River.

"(81) Parker, Massachusetts: The main stem from Plum Island Sound to Interstate 95 including Plum Island River from Plum Island Sound to above Little Pine Creek.

"(82) Caney Fork, Tennessee: The main stem from Tennessee State Road 4251 to its headwaters.

"(83) Dan, North Carolina and Virginia: The segment from above the United States Highway Bridge 311 at river mile 130 to its headquarters.

"(84) Satilla River, Georgia: The main stem.

"(85) Cimarron, Kansas and Oklahoma: The main stem from the Colorado-Kansas State line in Comanche County, Kansas, including its tributaries Buff Creek and Crooked Creek.

"(86) Hoh, Washington: The segment between the boundary of the Olympic National Park, near the confluence of the Hoh River and the South Fork of the Hoh River, downstream to its confluence with the Pacific Ocean.

"(87) Dosewallips, Washington: The segment from the eastern boundary of the Olympic National Forest to the mouth.

"(88) Quillayute, Washington: The segment of the main stem and its Soleduck, Bogachiel, and Calawah tributaries outside the boundaries of the Olympic National Park, but including the segment within the Olympic National Park coastal unit.

"(89) Niobrara, Nebraska: The segment from Sparks Gaging Station to Antelope Creek.

"(90) Dismal, Nebraska: The main stem from the confluence of the North and South Forks to the confluence with the Middle Loup River.".

(b) Section 5(b)(3) of such Act is amended by adding the following at the end thereof: "The studies of the rivers named in paragraphs (77) through (84) and in paragraphs (89) and (90) of subsection (a) shall be completed not later than October 1, 1984. The studies of the rivers named in paragraphs (85) through (88) of subsection (a) shall be completed not later than October 1, 1983.".

(c) Section 5(b)(4) of such Act is amended by striking out "(76)" and substituting "(90)".

(d) The study of the river named in paragraph (80) of section 5(a) of the Wild and Scenic Rivers Act shall include an analysis of whether low-head hydroelectric generating facilities can be installed on such river at dams existing on the date of enactment of this subsection without having a direct and adverse effect upon the fish, wildlife, recreational, and esthetic values of the river. For purposes of such analysis, the Secretary of the Interior shall consult with the Secretary of Energy. Nothing in section 7, or in any other provision, of the Wild and Scenic Rivers Act shall preclude the development of any low-head hydroelectric facility at any such existing dam on such river during the study period or during the period for congressional consideration thereof referred to in section 7(b)(ii) of such Act.

(e) Section 5 of such Act is amended by adding the following new subsection at the end thereof:

"(e) The study of the rivers named in paragraphs (79), (80), and (86) through (88) of subsection (a) shall include an analysis of the various means which may be practicable and appropriate, consistent with other provisions of this Act, to maintain and enhance the fisheries resources of such rivers.".

SEC. 3. (a) Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1277) is amended by inserting the following new paragraphs at the end thereof:

"(24) NORTH UMPQUA, OREGON.—The segment from Soda Springs downstream approximately thirty-five miles to Rock Creek, and the segment of Steamboat Creek from Horseheaven Creek downstream approximately seventeen miles to its confluence with the North Umpqua River, as generally depicted on the map entitled 'Umpqua National Forest', published in 1970 by the United States Department of Agriculture. Such segments shall be administered by the Secretary of Agriculture. In carrying out subsection (b) of this section, the Secretary shall carefully consider management options which will maintain and enhance the river fisheries. For the purposes of the segments designated by this paragraph, there are authorized to be appropriated such sums as may be necessary for acquisition of interests in lands and such sums as may be necessary for development. Notwithstanding any other provision of this Act with respect to the acquisition of lands or interests in lands, in the case of the segments designated under this paragraph, the Secretary may acquire only easements.

"(25) ILLINOIS, OREGON.—The segment from the boundary of the Siskiyou National Forest downstream to its confluence with the Rogue River, as generally depicted on a map entitled 'Illinois River Study' and as described in a report entitled 'A Proposal: Illinois Wild and Scenic River'; to be administered by the Secretary of Agriculture. In carrying out subsection (b) of this section, the Secretary shall carefully consider management options which will maintain and enhance the river fisheries. For the purposes of the segment designated by this paragraph there are authorized to be appropriated not more than $2,100,000 for the acquisition of lands or interests in lands, and such sums as may be necessary for development.

"(26) DOSEWALLIPS, WASHINGTON.—The segment from the boundary of the Olympic National Park to the eastern boundary of the Olympic National Forest; to be administered by the Secretary of Agriculture. In carrying out subsection (b) of this section, the Secretary of Agriculture shall carefully consider management options which will maintain and enhance the river fisheries. For the purposes of the segment designated by this paragraph, there are authorized to be appropriated such sums as may be necessary for development.

"(27) AMERICAN, CALIFORNIA.—The segment from Nimbus Dam downstream to its confluence with the Sacramento River, as generally depicted on the map entitled 'American River Parkway Plan' and dated April 7, 1976; to be designated as a recreational river and administered by the State of California, the county of Sacramento, and the city of Sacramento, pursuant to an agreement approved by the Secretary of the Interior. Subsection (b) of this section shall not apply to the segment designated by this paragraph. The boundaries of the designated river area shall be as depicted on the map referred to in this paragraph. Nothing in this Act shall prevent, prohibit, or otherwise affect the operation and maintenance of existing flood control works, including levee and channel maintenance, associated with the segment designated by this paragraph. For purposes of the segment designated by this paragraph, there are authorized to be appropriated not more than $3,000,000 to be used for the acquisition of certain lands and interests in land which the Secretary of the Interior determines to be of critical importance to the protection and preservation of such segment. Funds appropriated pursuant to the authorization contained in the preceding sentence may be made available by the Secretary to the State, or to the city and county, for the acquisition of lands or interests in lands in any area within the river corridor designated by this paragraph only if the Secretary determines that State or local authorities, or both, have provided assurances satisfactory to the Secretary that other areas within the river corridor which are—

"(A) adjacent to, or associated with, the areas to be acquired through the use of such funds, and

"(B) necessary to the protection and preservation of the river corridor

will be adequately protected through other State and local action.".

(b) Section 3(b) of such Act is amended as follows:

(1) strike out "within one year from the date of this Act" and substitute "within one year from the date of designation of such component under subsection (a)";

(2) strike out "river); determine which" and substitute "river); and determine which";

(3) strike out "; and prepare a plan for necessary developments in connection with its administration in accordance with such classification" and substitute a period and "Within three complete fiscal years of the date of the enactment of this sentence in the case of the rivers numbered (1) through (23) in subsection (a), and within three complete fiscal years of the date of their designation in the case of the other rivers designated under subsection (a), the agency charged with the administration of each such component shall prepare a comprehensive protection and management plan to guide the agency's administration in accordance with the classification made under this subsection. Such plan shall include the identification of, and plans for implementation of, user carrying capacities for all types of public use activities within the boundaries of the river. Such plan shall be prepared after consultation with State and local governments and the interested public."; and

(4) strike out "and development plans" and substitute "and notice of completion of the plan described in this subsection".

(c) Subsection (a) of the first section of such Act is amended by inserting "National" before "Wild and Scenic".

SEC. 4. Authorization of money to be appropriated under this Act shall be effective on October 1, 1981. Notwithstanding any other provision of this Act, authority to enter into contractual agreements, and to make payments under this Act pursuant to such contractual agreements shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. SEBELIUS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. PHILLIP BURTON) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. SEBELIUS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. PHILLIP BURTON).

Mr. PHILLIP BURTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, once again I bring before the House legislation surrounding which there is no controversy, to the best of my knowledge. This matter was passed out of subcommittee and full subcommittee without dissent.

H.R. 8096 provides for 4 additions to the Wild and Scenic Rivers System and designates 14 specific rivers or segments of rivers for study as wild, scenic, or recreational. The passage of H.R. 8096 will bring the total number of river conditions to the Wild and Scenic Rivers System to 12 during the 95th and 96th Congresses and a total of 32 rivers or segments of rivers for study.

Mr. Speaker, H.R. 8096 provides for additions to the Wild and Scenic Rivers Act. The Wild and Scenic Rivers Act of 1968 provides general authority for congressional action to require study of and to designate specific rivers or segments of rivers as wild, scenic, or recreational. The rivers proposed herein include rivers for study or designation, deriving from bills introduced or requests to the committee by Members of Congress and from recommendations made by the administration.

Subsequent to hearings on these bills and recommendations before our subcommittee, I introduced H.R. 8096 as a consolidation measure to expedite consideration by our colleagues of a single bill rather than consideration of separate bills.

Mr. Speaker, the following is a brief explanation of H.R. 8096:

Section 1 amends section 3(a)(21) of the Wild and Scenic Rivers Act by placing the administration of the North Fork of the American River in California entirely within the jurisdiction of the Department of Agriculture, rather than under the joint management of the Departments of Agriculture and Interior.

Section 2(a) amends section 5(a) of the Wild and Scenic Rivers Act by adding, for purposes of study, 14 rivers or river segments in 11 States. Seven of these were contained in bills introduced by our colleagues and seven others, as recommended by the administration, were supported by the affected Members although no bills were introduced.

Section 2 (b) and (c) specifies the time periods for completion of the studies and provides funding authorization to complete the authorized studies. Section 2(d) provides that the study of the Farmington River in Connecticut shall include an analysis of whether the installation of low-head hydroelectric generating facilities at existing dams on the river would have a direct and adverse impact upon the fish, wildlife, recreational, and esthetic qualities of the river for wild and scenic river designation purposes. Section 2(e) provides that an analysis be conducted on five specific rivers, as part of the river study, as to various means of maintaining and enhancing the fisheries resources of these rivers.

The rivers entailed are the Salmon and the Farmington in Connecticut, and the Hoh, Dosewallips, the Quillayute in Washington. The protections provided for rivers designated under the Wild and Scenic Rivers Act have long been recognized as helpful and productive to river fisheries. However, even though section 1 of the act notes that outstanding fisheries values may be a reason for protection of rivers, the committee has not, until now, directed the administration to carry out studies to provide the Congress with sufficient information to act on this type of a resource problem.

Mr. Speaker, I wish to commend Mr. Howard Brown of the American Rivers Conservation Council and Ms. Eileen Barthelmy of the American League of Anglers for bringing this oversight to my attention.

Section 3(a) amends the Wild and Scenic Rivers Act to designate four river segments as new components of the wild and scenic rivers system. They are the North Umpqua and Illinois Rivers in Oregon, the Dosewallips River in Washington, and the American River in California. Section 3(b) makes a change in the Wild and Scenic Rivers Act to provide that the Secretary must consult with State and local governments and the interest public prior to his establishment of detailed boundaries for the river and his determination of the suitable classification for the river as wild, scenic and/or recreational. It also restates the time frame by which this must be accomplished. This subsection also amends section 3(b) of the Wild and Scenic Rivers Act to change "a plan for necessary developments" for the river, to "a comprehensive protection and management plan" for the river. Section 3(c) amends the title of the act by inserting the word "National", so as to now become titled the "National Wild and Scenic Rivers Act."

Section 4 contains standard language with regard to the authorization of funds for appropriation to implement the provisions of the act.

I also wish to commend the efforts of our colleagues and staffs for their help in working out the many problems that have made this bill possible. Our committee staff, Dale Crane, Judy Lemons, Clay Peters, and Chris Kennedy also are to be commended.

The Office of the Legislative Council, in particular Mr. Pope Barrow, deserves a special note of thanks from myself and our committee. Mr. Barrow's efforts on our behalf throughout this entire Congress have been outstanding.

Mr. Speaker, I note, with regret, that the Interior Committee failed to include designation of the Stanislaus River, Calif., as was proposed in H.R. 4223 by my dear friend and colleague, DON EDWARDS. Countless groups and individuals have worked for many years to achieve this goal and I wish to commend and thank them. I wish to note, in particular, Mr. Mark Dubois, Ms. Patricia Schieferly of the Friends of the River, and all of the dedicated people of the following organizations who supported this legislation:

GROUPS OF DISABLED PEOPLE

Association for Traumatic Retirees.
American Coalition for Citizens with Disability.
Berkeley Outreach Recreation Program.
California Association of the Physically Handicapped.
California Department of Rehabilitation, Director Edward Roberts, Deputy Director James Donald.
Center for Independent Living.
Community Association for Retarded, Inc.
Community Resource Independent.
Dayle Mcintosh Center for the Disabled.
De Anza College, Physically Limited Program.
Disabled and Blind Action Committee.
Disabled Law Center.
Disabled Resources Center.
Disabled Law Resources Center.
Eastern Los Angeles Center for Developmentally Handicapped.
Enabling Services Office, Santa Rosa Junior College.
Environmental Travelling Companions.
Humboldt Access Project.
Marin County Schools, Visually Impaired Program.
Miramonte High School, Disabled Students Program.
National Federation of the Blind of California.
Nor Cal Center on Deafness.
Organization for the Rights of the Disabled.
Outreach Program, Catholic Charities.
St. Benedict Center Recreation Program.
United Cerebral Palsy Association.
Westside Community for Independent Living.

EMPLOYEE ORGANIZATIONS

American Guides Association.
American Speech-Language-Hearing Association.
Association of Environmental Professionals.
Jefferson Classroom Teachers Association.
National Association of Broadcast Employees, AFL–CIO, Local 532.
Oakland Teachers, AFT, AFL–CIO Local 771.
Sacramento Nurses Registry.
Emily Whittemore, President, American Federation of Government Employees, Local 1764, AFL–CIO.

COMMUNITY GROUPS

Californians for Humane Legislation.
Community Assistance to Muncipal Publicamps, Inc.
Community Network for Appropriate Technologies.
Cross Cultural Family Center, YMCA.
Davis Community Church.
Davis Student Farm (UC–Davis).
Greenfield Association.
HERITAGE—SF Foundation of Architectural Heritage.
Independent Living Resource Center.
Isla Vista Community Council.
League of Women Voters.
Medical Coalition for the Rights of Women Network (Santa Barbara).
Options for Women Over 40.
Organization for Citizen Action.
Petaluma People Services Center.
San Francisco Women's Center.
San Francisco Open Space & Park Renovation.
Santa Rosa Indian Center, Inc.
Social Advocates for Youth, Inc.
Sonoma County Camp Foundation.
Unitarian Fellowship of Sonoma County.
Wagon Wheel Newcomers Club of Goleta.
Women's Speakers Network.
Working Alliance to Equalize Rates.
YMCA (San Francisco).

EDUCATIONAL GROUPS

American River Touring Association.
American Youth Hostels.
Associated Students of UC–Santa Barbara.
Bay Area Turtle and Tortoise Society.
Cathedral High School (San Francisco)—300 students.
Community College Centers, 21 teachers.
Continuing Education in Nursing, Mississippi University of Women.
Foresta Institute.
Holistic Life University.
Humboldt Life University.
Humboldt County Trailsbound.
Humboldt State University, Dept. of Wildlife Management.
Los Altos High School, 30 teachers.
Pittsburgh School District, Environmental Learning Project.
Sacramento City College, 62 faculty and staff.
Sacramento County Day School, faculty and staff.
Sacred Heart High School (SF)—316 students.
San Leandro High School Camera Club.
San Leandro High School Science Department.
Santa Rosa Junior College (Adaptive Physical Education).
Simi Valley United School District—Dept. of Special Education.
Redwood High School, Larkspur—351 students.
Urban High School, San Francisco—120 students.
Urban High School, faculty and staff.
Western Foundation of Vertebrate Zoology.
Yuba College (letter from Director Hecomvich).

CONSERVATION AND SPORTING GROUPS

Audubon Society.
American Cetacean Society.
American Canoe Association.
American League of Anglers.
American Rivers Conservation Council.
Back Country International, Inc.
Boot and Blister Club.
Born Free, Elsa Wild Animal Appeal.
Brooklyn Friends of the Clearwater, Brooklyn Sloop Club.
California Native Plant Society.
California Trout.
Coalition for Water Project Review.
Coastal Alliance II.
Community Environmental Council of Santa Barbara.
Committee for the Preservation of the Tule Elk.
Conservation Council, Allan Hancock College.
Defenders of Wildlife.
Ecology Center of Southern California.
Environmental Clearinghouse.
Environmental Council (Santa Cruz).
Environmental Coalition of Orange County.
Environmental Coalition of Ventura.
Environmental Defense Fund.
Environmental Policy Center.
Federation of Fly Fishermen.
Friends of the Earth.
Friends of the River.
Friends of the Ventura River.
Friends of Wildlife.
Fund for Animals.
Human/Dolphin Foundation.
Marin Wildlife Center.
Marin Conservation League.
National Parks and Conservation Association.
Natural Resources Defense Fund.
Natural Resources Defense Council, Inc.
Nevada County Environmental Council.
New England Rivers Center.
Northcoast Flyfishers.
Northern California Council of Fly Fishing Clubs.
Northstate Wilderness Committee.
Outdoors Unlimited.
Planning and Conservation League.
Redwood Alliance.
Scenic Shoreline Preservation Conference.
Sierra Club.
Siskiyou Mountains Resources Council.
Smith River Alliance.
South Bay Ski Club.
Tennessee Citizens for Wilderness Planning.
University of Idaho Outdoors Program.
Valley Canoe Club.
Wilderness Society.
Wilderness World, Inc.
Xerces Society, Inc.

Mr. SEBELIUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill amends the existing Wild and Scenic Rivers Act by designating 4 new rivers to become part of the system, and by directing that 14 river segments in 11 different States be studied for their potential for later possible addition to the system.

There is no known controversy over the actions taken on any of these rivers.

The bill also makes a number of changes in procedure in the basic part of the existing law, all designed to make the act more workable and to enhance protection of the river resources.

Mr. Speaker, I call specific attention to section 3(b) of the bill which directs the respective Secretaries to broaden the scope of the management plans developed for each river. For those rivers already in the system, the intent is that their present "development plans," as they have been referred to heretofore, will be revised and broadened as necessary to represent complete and thorough "comprehensive protection and management plans." The new plans for these existing rivers, as well as for three of the four rivers added by this act—exclusive of the American—should be in final form not later than 3 complete fiscal years after the date of enactment of this act.

This bill also identifies a most important management feature which is henceforth to become a major component of every plan for every river, including the plans for existing designated rivers. Each plan must contain the identification of user carrying capacities for lands and activities within the river corridor, and must also identify plans for the adherence to that capacity. It is critically important that use capacities be promptly identified and adhered to so that the resources of the river and the user experiences associated with the river are managed at a level for resource basic nonimpairment and high visitor experience satisfaction.

The Forest Service, particularly, has developed some excellent expertise in this field through several decades of in-house research and field application on the subject of carrying capacity. They should be well able and suited to tackle this assignment expeditiously, without any great delays and reinventions of the wheel. It will be most important, of course, that this part of the plan, as well as all other parts, be developed with appropriate public input.

Mr. Speaker, I have no further comments to make on this bill at this time.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, I rise in support of the legislation, H.R. 8096, and I will associate myself with the remarks of the chairman as well as with the remarks of the distinguished ranking member, the gentleman from Kansas (Mr. SEBELIUS).

Mr. Speaker, each Member in whose district these rivers are located has been closely consulted and has, to my knowledge either introduced separate legislation or has endorsed the action proposed by this bill itself. In several instances special management language has been included to address a Member's particular concerns or the needs of the area.

For example, section 2(a) of the bill places the administration of the North Fork of the American River in California entirely within the jurisdiction of the Department of Agriculture rather than leaving it under joint management of the Departments of Agriculture and Interior. This change will avoid duplicative and conflictive management schemes.

Section 2(d) provides that the study of the Farmington River in Connecticut will include an analysis of whether the installation of low-head hydroelectric generating facilities at existing dams on the river would be compatible with the wild and scenic river resignation proposed. This special study provision is in recognition of the growing awareness in the Northeast of the need for developing alternative energy sources.

I urge my colleagues to support the legislation.

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Mr. SEBELIUS. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. SHUMWAY).

Mr. SHUMWAY. Mr. Speaker, as many of my colleagues know, I have worked closely with members of the Committee on Interior and Insular Affairs on H.R. 8096, the omnibus wild and scenic rivers bill. I want to extend my appreciation to the committee, and its staff, for their diligence and attention to my concerns in reporting this bill.

Although I have not yet seen the committee report to accompany H.R. 8096, I understand there is language in it which relates to the American River, Calif. Since a wild and scenic rivers designation is of interest to my district, I would like to ask the distinguished chairman of the National Parks Subcommittee what impact such a designation will have on the Auburn-Folsom South Unit of the Central Valley project—79 Stat. 615?

Mr. PHILLIP BURTON. Mr. Speaker, will the gentleman yield?

Mr. SHUMWAY. I will be happy to yield.

Mr. PHILLIP BURTON. As indicated beginning on page 6 of the report, the last paragraph, is as follows:

The Committee, in designating that segment of the American River as a recreational river, was cognizant of a possible conflict with the eventual operation of the Auburn-

Folsom South Units of the Central Valley Project. It is the intent of the Committee that the inclusion of this segment of the American River is not to prevent or affect the construction, operation, or maintenance of authorized water resource projects on the American River. The Committee is expressing no position with respect to authorized projects, and does not intend to either impair or affirm such authorizations nor agreements between the Secretary of the Interior and the State of California.

Mr. SHUMWAY. I appreciate the chairman's reply. I simply ask the question because, as of this morning, the committee print was not available to us, and I wanted to be sure that was the language.

Mr. PHILLIP BURTON. The gentleman's persistence in this respect has been recognized by the committee.

Mr. SHUMWAY. I thank the gentleman.

Mr. PHILLIP BURTON. Mr. Speaker, at this time I would like to yield 2 minutes to our distinguished colleague from California (Mr. MATSUI) whose leadership in this effort has resulted in the inclusion of the American River in this legislation.

Mr. MATSUI. Mr. Speaker, first of all, I would like to commend the chairman of the subcommittee for his outstanding job in putting this bill together. I think it was a feat that we all must congratulate him for due to the lateness of the legislative season. Of course, I would also like to commend my colleague from California (Mr. CLAUSEN) for his fine work in this effort.

I wish to express my support for H.R. 8096, a bill which would recognize and protect the Lower American River. It contains a provision that would designate a 23-mile stretch of the river from Nimbus Dam to its confluence with the Sacramento River as a recreational river in the Wild and Scenic Rivers System. The provision is similar to H.R. 7711, a bill which I introduced.

The Lower American River is one of the most beautiful and accessible rivers in the State of California. Its clear, clean waters flow from the western slopes of the Sierra Nevada and join with the Sacramento River in downtown Sacramento. It passes through Sacramento County and into the heart of the city.

Despite its close proximity to a major urban center, the American River Parkway bordering the river is largely unspoiled and undeveloped. The parkway consists of about 5,000 acres of diverse vegetation and wildlife, including gray fox, deer, raccoon, coyote, and bobcat.

The river and the parkway offer convenient access to the community for a wide range of outdoor activities, including boating, rafting, swimming, fishing, biking, horseback riding, picnicking, bicycling, camping, and nature study. It fulfills the recreational needs of millions of persons each year, not only from Sacramento but from throughout California and the Nation.

The parkway also contains numerous archeological sites from the Maidu Indians, dating from the middle horizon times.

The American River is the fifth most important salmon producing stream in California. Salmon production in the American River is responsible for about 10 percent of all ocean sport and commercially caught king salmon in California's coastal waters.

The parkway is currently managed by the county and city of Sacramento. H.R. 8096 would preserve local control of the river and its parkway by designating the county and the city, along with the State of California, as administrators of the river.

H.R. 8096 authorizes the Secretary of the Interior to make a grant for the acquisition of lands if the Secretary determines those lands are needed for the protection and preservation of the river corridor. These lands would consist mostly of the few, large parcels of undeveloped land within the flood plain. Purchases and maintenance of these lands would be in accordance with the American River Parkway Plan.

Also, H.R. 8096 contains a provision to permit the continued operation and maintenance of flood control works along the lower American River. Thus, none of the numerous maintenance activities of the levees, banks, channel or floodway will be affected by the designation.

As the lower American River runs through the heart of Sacramento, so it runs through the hearts of Sacramentans. We have long placed a great importance on the beauty, history, fish, and wildlife, and recreational values of the river. As early as 1915 civic leaders studied plans to incorporate the river into a regional park system. In the 1950's, Sacramento's mushrooming population threatened the undeveloped tracts along the river, and serious preservation efforts began. Also, during this decade flood control projects eliminated the fear of spring flooding. This added further to the threat of development in the flood plain.

The late 1950's and 1960's saw a widespread grassroots movement to protect the undeveloped areas of the parkway and preserve them in their unspoiled state. Spearheading the drive was the Save the American River Association, formed in 1961. Its purpose was to assist the county and city of Sacramento to protect the beauty and recreational qualities of the river. The association successfully rallied support among civic groups and service organizations which lead to the establishment of the parkway.

The next level of protection of the river was granted in 1972 when the California State legislature designated it in the State Wild and Scenic Rivers Act. Now, designation in the National Wild and Scenic Rivers System is the next legislative step in the protection of the river.

The Sacramento community views the Lower American River as a unique natural resource that must be preserved. The day I introduced H.R. 7711, the Sacramento City Council passed a resolution supporting the bill. Later that month, the Sacramento County Board of Supervisors passed a similar resolution. The bill is also strongly supported by the State of California.

Designation in the Wild and Scenic Rivers System is the highest recognition this Nation can bestow to recognize the importance of a free-flowing river. It is also the strongest protection that can be offered to insure that future generations can continue to enjoy the same qualities of the river we now enjoy. The Lower American River is worthy of this honor, and in need of this protection.

Mr. PHILLIP BURTON. Mr. Speaker, I have no further requests for time, and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. PHILLIP BURTON) that the House suspend the rules and pass the bill, H.R. 8096, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

MAINE INDIANS SETTLEMENT BILL

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7919) to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7919

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Maine Indian Claims Setlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this Act by the Joint Tribal Council of the Passamaquoddy Tribe, is the sole successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this Act by the Houlton Band Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of landowners, citizens, and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole, will result if the aforementioned claims are not resolved promptly.

(7) This Act represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians with a fair and just settlement of their land claims. In the absence of congressional action these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, their members, and all other citizens of the State of Maine.

(8) The State of Maine, with the agreement of the Passamaquoddy Tribe and the Penobscot Nation, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, and their members, and the State of Maine.

(9) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective tribe, nation, or band, and repeatedly denied that it had jurisdiction over or responsibility for the said tribe, nation, and band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this Act—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe, and the Penobscot Nation, and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine, as provided herein.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

(a) "Houlton Band of Maliseet Indians" means the sole successor to the Maliseet Tribe of Indians as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Houlton Band of Maliseet Indians is represented, as of the date of the enactment of this Act, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(c) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under section 5(c) of this Act;

(d) "laws of the State" means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof;

(e) "Maine Implementing Act" means section 1, section 30, and section 31, of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in chapter 732 of the public laws of 1979;

(f) "Passamaquoddy Indian Reservation" means those lands as defined in the Maine Implementing Act;

(g) "Passamaquoddy Indian Territory" means those lands as defined in the Maine Implementing Act;

(h) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted in aboriginal times and all its predecessors and successors in interest. The Passamaquoddy Tribe, is represented, as the date of the enactment of this Act, by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations;

(i) "Penobscot Indian Reservation" means those lands as defined in the Maine Implementing Act;

(j) "Penobscot Indian Territory" means those lands as defined in the Maine Implementing Act;

(k) "Penobscot Nation" means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of the date of enactment of this Act, by the Penobscot Nation Governor and Council;

(l) "Secretary" means the Secretary of the Interior;

(m) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under section 5(a) of this Act; and

(n) "transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

APPROVAL OF PRIOR TRANSFERS AND EXTINQUISHMENT OF INDIAN TITLE AND CLAIMS OF THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, THE HOULTON BAND OF MALISEET INDIANS, AND ANY OTHER INDIANS, INDIAN NATION, OR BAND OF INDIANS WITHIN THE STATE OF MAINE

SEC. 4.(a)(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: *Provided, however,* That nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation, or tribe or band of Indians any claim under the laws of the State of Maine arising before the date of this Act and arising from any transfer of land or natural resources by any Indian, Indian nation, or tribe or band of Indians, located anywhere within the State of Maine, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, on the grounds that such transfer was not made in accordance with the laws of the State of Maine.

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or natural resources located anywhere within the State of Maine from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State.

(b) To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, such subsection (a)(1) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

(d) The provisions of this section shall take effect immediately upon appropriation of the funds authorized to be appropriated to implement the provisions of section 5 of this Act. The Secretary shall publish notice of such appropriation in the Federal Register when such funds are appropriated.

ESTABLISHMENT OF FUNDS

SEC. 5. (a) There is hereby established in the United States Treasury a fund to be

known as the Maine Indian Claims Settlement Fund in which $27,000,000 shall be deposited following the appropriation of sums authorized by section 14 of this Act.

(b)(1) One-half of the principal of the settlement fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the settlement fund shall be held in trust for the benefit of the Penobscot Nation. Each portion of the settlement fund shall be administered by the Secretary in accordance with reasonable terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary: *Provided*, That the Secretary may not agree to terms which provide for investment of the settlement fund in a manner not in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037), unless the respective tribe or nation first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment: *Provided, further*, That until such terms have been agreed upon, the Secretary shall fix the terms for the administration of the portion of the settlement fund as to which there is no agreement.

(2) Under no circumstances shall any part of the principal of the settlement fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either tribe or nation, Provided, however, That nothing herein shall prevent the Secretary from investing the principal of said funds in accordance with paragraph (1) of this subsection.

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in subsection 6(d)(2) and without liability to or on the part of the United States, any income received from the investment of that portion of the settlement fund allocated to the respective tribe or nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the settlement fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the tribe or nation, the United States shall have no further trust responsibility to the tribe or nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or service purchased therewith.

(c) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which $54,500,000 shall be deposited following the appropriation of sums authorized by section 14 of this Act.

(d) The principal of the land acquisition fund shall be apportioned as follows:

(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians;

(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe; and

(3) $26,800,000 to be held in trust for the Penobscot Nation.

The Secretary is authorized and directed to expend, at the request of the affected tribe, nation or band, the principal and any income accruing to the respective portions of the land acquisition fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. The first 150,000 acres of land or natural resources acquired for the Passamaquoddy Tribe and the first 150,000 acres acquired for the Penobscot Nation within the area described in the Maine Implementing Act as eligible to be included within the Passamaquoddy Indian Territory and the Penobscot Indian Territory shall be held in trust by the United States for the benefit of the respective tribe or nation. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within the aforesaid area by purchase, gift, or exchange by such tribe or nation. Land or natural resources acquired outside the boundaries of the aforesaid areas shall be held in fee by the respective tribe or nation, and the United States shall have no further trust responsibility with respect thereto. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the band: *Provided*, That no land of natural resources shall be so acquired for or on behalf of the Houlton Band of Maliseet Indians without the prior enactment of appropriate legislation by the State of Maine approving such acquisition: *Provided further*, That the Passamaquoddy Tribe and the Penobscot Nation shall each have a one-half undivided interest in the corpus of the trust, which shall consist of any such property or subsequently acquired exchange property, in the event the Houlton Band of Maliseet Indians should terminate its interest in the trust.

(4) The Secretary is authorized to, and at the request of either party shall, participate in negotiations between the State of Maine and the Houlton Band of Maliseet Indians for the purpose of assisting in securing agreement as to the land or natural resources to be acquired by the United States to be held in trust for the benefit of the Houlton Band. Such agreement shall be embodied in the legislation enacted by the State of Maine approving the acquisition of such lands as required by section 5(d)(3). The agreement and the legislation shall be limited to:

(A) provisions providing restrictions against alienation or taxation of land or natural resources held in trust for the Houlton Band no less restrictive than those provided by this Act and the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation;

(B) provisions limiting the power of the State of Maine to condemn such lands that are no less restrictive than the provisions of this Act and the Maine Implementing Act that apply to the Passamaquoddy Indian Territory and the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

(C) consistent with the trust and restricted character of the lands, provisions satisfactory to the State and the Houlton Band concerning:

(i) payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the band, except that the band shall not be deemed to own or use any property for governmental purposes under the Maine Implementing Act;

(ii) payments of other fees and taxes to the extent imposed on the Passamaquoddy Tribe and the Penobscot Nation under the Maine Implementing Act, except that the band shall not be deemed to be a governmental entity under the Maine Implementing Act or to have the powers of a municipality under the Maine Implementing Act;

(iii) securing performance of obligations of the Houlton Band arising after the effective date of agreement between the State and the band.

(D) provisions on the location of these lands.

Except as set forth in this subsection, such agreement shall not include any other provisions regarding the enforcement or application of the laws of the State of Maine. Within one year of the date of enactment of this Act, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the status of these negotiations.

(e) Notwithstanding the provisions of section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and section 1 of the Act of February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.

(f) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to the subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective tribe, nation, or band have executed appropriate documents relinquishing all claims to the extent provided by sections 4, 11, and 12 of this Act and by section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal with prejudice to their claims.

(g)(1) The provisions of section 2116 of the Revised Statutes shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsections (d)(4) and (g)(2), such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same tribe or nation, shall be void ab initio and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective tribe, nation, or band, be—

(A) leased in accordance with the Act of August 9, 1955 (69 Stat. 539), as amended;

(B) leased in accordance with the Act of May 11, 1938 (52 Stat. 347), as amended;

(C) sold in accordance with section 7 of the Act of June 25, 1910 (36 Stat. 857), as amended;

(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (62 Stat. 17);

(E) exchanged for other land or natural resources of equal value, or if they are not

equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the affected tribe, nation, or band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the tribe, nation, or band; and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

(h) Land or natural resources acquired by the Secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary in accordance with section 102 of the Indian Self-Determination and Education Assistance Act (88 Stat. 2206), or other existing law.

(i)(1) Trust or restricted land or natural resources within the Passamaquoddy Reservation or the Penobscot Indian Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land shall become a part of the reservation in accordance with the Maine Implementing Act and upon notification to the Secretary of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

(2) Trust land of the Passamaquoddy Tribe or the Penobscot Nation not within the Passamaquoddy Reservation or Penobscot Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. The proceeds from any such condemnation shall be deposited in the land acquisition fund established by section 5(c) and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective tribe or nation shall designate, with the approval of the United States, and within thirty days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective tribe or nation. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired.

(3) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies, the United States is authorized to seek judicial review of all relevant matters in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

(j) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (i)(2) of this section.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as provided in section 8(e) and section 5(d)(4), all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(b)(1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of the local share as provided by the Maine Implementing Act.

(3) Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

(4) Not later than October 30, 1982, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the Federal and State funding provided the Passamaquoddy Tribe and Penobscot Nation compared with the respective Federal and State funding in other States.

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the provisions of sections 1152, 1153, 1154, 1155, 1156, 1160, 1161, and 1165 of title 18 of the United States Code. This provision shall not be effective until sixty days after the publication of notice in the Federal Register as required by subsection 4(d) of this Act.

(d)(1) The Passamaquoddy Tribe, The Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and section 1362 of title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Implementing Act.

(2) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid final orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the settlement fund established pursuant to section 5(a) of this Act and out of such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: *Provided*, That such amendment is made with the agreement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) Except as otherwise provided in this Act, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

(i) As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be treated in the same manner as other federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective tribe, nation, or band subject to a restriction against alienation or which are held in trust for the benefit of the respective tribe, nation, or band shall be considered Federal Indian reservations for purposes of Federal taxation.

TRIBAL ORGANIZATION

SEC. 7. (a) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the tribe, nation, or band when each is

acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of its organic governing document and any amendments thereto.

(b) For purposes of benefits under this Act and the recognition extended the Houlton Band of Maliseet Indians, no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseets, except persons who, as of the date of this Act, are enrolled members on the band's existing membership roll, and direct lineal descendants of such members. Membership in the band shall be subject to such further qualifications as may be provided by the band in its organic governing document or amendments thereto subject to the approval of the Secretary.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective tribe or nation may assume such jurisdiction over Indian child custody proceedings, the respective tribe or nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by sections 108(a)–(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with sections 108(b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are "reservations" within section 4(10) of the Act.

(e) For the purposes of this section, the Houlton Band of Maliseet Indians is an "Indian tribe" within section 4(8) of the Act, provided, that nothing in this subsection shall alter or effect the jurisdiction of the State of Maine over child welfare matters as provided in subsection 6(e)(2) of this Act.

(f) Until the Passamaquoddy Tribe or Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over Indian child custody proceedings of that tribe or nation.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 9. (a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

(c) The availability of funds or distribution of funds pursuant to section 5 of this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be eligible or entitled.

DEFERRAL OF CAPITAL GAINS

SEC. 10. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the land acquisition fund whether in the name of the United States or of the respective tribe, nation or band shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

SEC. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred to the Secretary to be held in trust for the respective tribe or nation and shall be added to the principal of the settlement fund allocated to that tribe or nation. The receipt of said State funds by the Secretary shall constitute a full discharge of any claim of the respective tribe or nation, its predecessors and successors in interest, and its members may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective tribe and nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

SEC. 12. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation, or tribe or band of Indians or the United States as trustee thereof, including those actions now pending in the United States District Court for the District of Maine captioned United States of America against State of Maine (Civil Action Nos. 1966–ND and 1969–ND).

LIMITATION OF ACTIONS

SEC. 13. Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

AUTHORIZATION

SEC. 14. There is hereby authorized to be appropriated $81,500,000 for the fiscal year beginning October 1, 1980 for transfer to the funds established by section 5 of this Act.

INSEPARABILITY

SEC. 15. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.

CONSTRUCTION

SEC. 16. (a) In the event a conflict of interpretation between the provisions of the Maine Implementing Act and this Act should emerge, the provisions of this Act shall govern.

(b) The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

The SPEAKER pro tempore. Is a second demanded?

Mr. MARRIOTT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes, and the gentleman from Utah (Mr. MARRIOTT) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, H.R. 7919 is one of the most significant bills my committee has brought to the floor of this Congress.

It provides congressional ratification and implementation of a negotiated settlement of extensive land claims of three Indian tribes in the State of Maine.

The Passamaquoddy, Penobscot, and Maliseet Indians of Maine have laid claim of possession of over 12 million acres of land in the State of Maine. This is nearly two-thirds of the State and involves over 350,000 landowners. The Department of Justice and the Department of the Interior have determined that the Indians have a credible claim to nearly 5 million acres of the lands claimed.

These claims are based upon the alleged violation of the Indian Trade and Intercourse Act of 1790, as amended, by the State of Massachusetts and Maine in acquiring these lands from the Indians in the late 1700's and early 1800's. One section of that act, commonly known as the Nonintercourse Act and now codified as 25 U.S.C. 177, makes void any purchase of lands from Indian tribes without the consent of the United States.

The State guesses that they have a 60 percent chance of winning any litigation based upon these claims. The United States and the tribes, of course, feel they have the best chance. But, in human terms, it is irrelevant who might actually prevail in the courts. This litigation would take 5 to 10 years before a final judgment.

During that period of time, the State of Maine and its citizens, Indian and non-Indian, would be crushed by the economic and social chaos and disruption. The Justice Department has said that the Maine land claim case is "potentially the most complex litigation ever brought in the Federal courts with social cost and economic impacts without precedent and incredible litigation costs to all parties."

Mr. Speaker, it is clear that the United States has no legal obligation to the parties in this case except to insure, as trustee, that the interests of the Indian tribes are protected. We cannot break faith with the Indians by attempting to withdraw the protection afforded by the Federal law. But neither can we leave the innocent citizens of Maine to suffer from the impact of a long-forgotten Federal law into which the courts have breathed new life.

We have an obligation to resolve this controversy as best we can while protecting the interest of all the parties. It will not be inexpensive to do so. The cost of this bill is $81,500,000. But if this litigation proceeds and the Indian position begins to prevail, the cost of settlement will skyrocket. We must act now and I urge passage of this bill, as amended.

Mr. Speaker, I reserve the balance of my time.

Mr. MARRIOTT. Mr. Speaker, I would yield 1 minute to the gentleman from New York (Mr. LEE).

Mr. LEE. Mr. Speaker, I thank the gentleman for yielding. I rise in opposition to H.R. 7919.

Mr. Speaker, I rise in opposition to the proposal now before us. As a matter of principle and precedent, I feel to adopt this measure would directly violate not only the spirit behind the rules of this House, but also establish yet another contradictory and inconsistent element in the long and sorry history of this country's policies toward its native Americans.

Before I address my specific objections to this proposed legislation I would like to briefly state my deep concerns with the irrational and piecemeal approach our Government has taken in addressing Indian land claims. The over 9,500 alleged violations of the Non-Intercourse Act that now sit like timebombs ticking away across our Nation serve as a multibillion-dollar plague on millions of Americans who pay taxes, own land, and engage in commerce. This plague is in large part caused by the failure of the Federal Government to face the reality that procedural legal loopholes are being exploited and causing tremendously unjust enrichment for a few, while creating hardship for many.

Before again being lured into the trap of voting for a multimillion-dollar settlement package I would like to ask the Members of this body to simply reflect on the following major points that address not only the aspects of this proposal, but also the serious and incredibly ever-expanding national problem of Indian land claims.

(1) RATIFICATION OF ANCIENT TREATIES

I must take this opportunity to again remind my colleagues that it is totally within the power of Congress to remedy tribal claims by the process of ratifying the ancient tribal agreements with the States. This very procedure has been endorsed by former Attorney General Griffin Bell. Such ratification could be accompanied by payments to the tribes in appropriate amounts. I would venture a prediction that should this question be put to our Nation's citizens they would wholeheartedly endorse ratification, as they have overwhelmingly in my district. As a national policy, I suggest the Congress ratify all pending claims based on alleged noncompliance with the Non-Intercourse Acts. I regret that Members of the Congress voting for this measure will manifest a policy that indicates our Government owes a greater obligation to the Indian tribes in Maine for a 200-year-old claim based on procedural loopholes than the obligation I feel is owed our taxpaying citizens.

(2) THE $81.5 MILLION SETTLEMENT

This policy now proposed also angers me, Mr. Speaker, because I see the hard-earned money of our Nation's taxpayers distributed to the Indians, in an effort to rid the United States of its "guilt complex" regarding its policies toward its native Americans. In these days of skyrocketing inflation we have had to bite the bullet and vote against additional spending programs. Within an environment of "austerity" it is extremely inconsistent if not downright absurd that we are called here today to approve a measure that implements an $81.5 million windfall to three Indian tribes.

(3) LITIGATION VERSUS SETTLEMENT

I am fully aware of the hardships lengthy litigation will impose on landowners in the claim areas. However, the serious question must be asked whether our national policies regarding Indian affairs should be developed in an atmosphere of "litigation blackmail," where the "threat of suit" becomes the prime motivation for settlement, and the Government's negotiators are confronted with astronomical nonnegotiable demands.

By endorsing the negotiated settlement route we reaffirm the inconsistent, piecemeal approach to solving Indian land claims. We must remember that we are here today discussing this issue because the Federal Government has from its beginnings failed to develop comprehensive policies in its conduct of Indian affairs. By perpetuating the piecemeal, we bequest these same problems to future generations of Americans to resolve, and unfortunately they will pay dearly because of our failures today.

It should also be noted, Mr. Speaker, that by failing to tackle the outstanding land claims in a comprehensive manner, we invite larger, more costly settlements—a factor well-recognized by the Indians, however unfortunately, heretofore unrecognized by the Congress.

(4) QUESTIONS REGARDING H.R. 7919

Mr. Speaker, I have a number of questions regarding the bill before us today that I would like to highlight for my colleagues:

First. Why has this multimillion-dollar proposal been brought up under Suspension of the Rules, without the appropriate waiver of the Budget Act?

I feel this measure is much too costly an expenditure to be rushed through without compliance with the Rules of the House of Representatives, nor the proper scrutiny of its Members.

Second. Through what formula was this enormous monetary settlement developed?

What specific elements determined this huge pricetag?

Third. Why is the Federal Treasury the sole contributor to the settlement package, and the State of Maine exempt?

I am aware that the State of Maine's prior contributions to its Indians were included as part of the final settlement package, and I am not advocating additional taxpayers' moneys be part of the settlement.

However, limitation of Maine's contribution to moneys already spent highlights a problem I have previously discussed.

By engaging in a case-by-case piecemeal approach to this problem Congress creates serious injustices to the parties involved. For instance, in both Rhode Island and the proposed New York settlements the respective States were required to contribute to the final settlement. Why should Maine be excluded, while New York and Rhode Island are forced to contribute? This lack of consistency highlights precisely the problems created by Congress' failure to develop a comprehensive, coherent policy permanently solving these land claims in a manner that is rational and just.

Again, to highlight inconsistencies in this process Mr. Speaker, I would like to note that some of the same elements undertaken in the development of the measure now before us were denied by the Department of the Interior and House Interior Committee chairman, MORRIS UDALL, to those trying to settle the Cayuga Indian claim in the congressional district I have the honor to serve in this body. Specifically, I tried on many occasions to require the involvement of both local and State governments in developing a proposed settlement. To my extreme disappointment my plea for inclusion of these governments was denied. To my astonishment this exclusion was not the case in the Maine settlement, although the Indian claim is allegedly based on the same body of law as that in New York.

I was also interested to see both the Department of Interior and Chairman UDALL agree to allowing payments to Maine in lieu of taxes, a measure I sought for those local governments impacted in my district by the Cayuga Indian claim, and a measure that was opposed in the Cayuga case by the very same parties who allowed them in the Maine case.

In summary, Mr. Speaker, I must again state my opposition to this measure is based on my firm belief that we will not put this very serious problem to an end until we recognize the need to develop a comprehensive, rational policy toward Indian treaties—treaties entered into over 185 years ago—treaties entered into in most cases in good faith by our State governments. This policy must be above all, Mr. Speaker, fair to our Nation's taxpayers—the citizens who now today bear the burdens of the inconsistent policies of the past.

Mr. MARRIOTT. Mr. Speaker, I yield whatever time I might consume to myself.

Mr. Speaker, this is a bill, I think, that is necessary. It would remove a cloud over the title to about 12.5 million acres of land. It would avert the need for years of costly litigation, the outcome questionable. It would spare the innocent citizens of Maine the inevitability of adverse economic and social impact. It would provide three impoverished Indian tribes with a land base. It would give credit to the State of Maine for having spent more than $20 million for the welfare of the Indians of the State over and above the moneys and programs the Indians were eligible for as citizens of the State.

□ 1330

It would meet what is at least a very moral obligation on the part of the United States to bring about a settlement of this claim. Although the United States is not a defendant in the case, it was Congress that enacted the statutes barring the transfer of Indian lands except under Federal auspices, and neither Congress nor the Executive enforced the statutes with respect to Maine Indian land transfers.

This legislation is supported by the State of Maine, including the Governor, the attorney general, and the legislature. The entire Maine congressional delegation is in support of it, the three tribes support it, the landowners in the claim areas support it, the administration supports it, and the U.S. Senate is now considering passage of the bill. It is a product, Mr. Speaker, of 3½ years of negotiations by the parties, including the administration.

This is a bill that has had extensive hearings in both the House and the Senate, and everybody who is knowledgeable on this issue agrees that the bill should be passed. Its cost is $81 million, as the gentleman from Arizona (Mr. UDALL) has said. That is $2.64 per American to redeem George Washington's promises.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. Speaker, at this point I yield such time as she may consume to the gentlewoman from Maine (Mrs. SNOWE).

Mrs. SNOWE. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in order to voice strong support for H.R. 7919, the Maine Indian Claims Settlement Act of 1980. The purpose of this bill is to resolve a pending legal claim to approximately two-thirds of the State of Maine. Citing a violation of the Indian Trade and Intercourse Acts, the Penobscot, Passamaquoddy, and Maliseet Indians are seeking approximately 12.5 million acres of land in Maine as well as extensive damages.

To be more specific, the Maine Indians are claiming that this land was taken from them by the State of Massachusetts in a series of allegedly illegal agreements in 1794, 1796, and 1818. Their contention is that these transactions were invalid because they were made without the approval of Congress, a requirement of the previously mentioned Trade and Intercourse Act which was originally enacted in 1790.

The major element of the State's defense is that the Indian Trade and Intercourse Acts were never meant to apply to the eastern tribes such as the Penobscots and Passamaquoddies, but were rather to be the guiding principles of our Nation's policy towards the tribes of the Western United States.

While there are, of course, advocates for both of these legal positions, it is important to note that, regardless of the outcome of this suit, litigation of this case would undoubtedly take years. In fact, the Justice Department has characterized this suit as "potentially the most complex litigation ever brought in the Federal courts with social and economic impacts without precedent and incredible litigation costs to all parties."

It has been recognition of the disruption that this potential suit could cause that has prompted past efforts to reach a fair settlement.

Naturally, I am unable at this time to provide my colleagues with anything but a brief overview of the history of this case. As well, this is not the appropriate forum for a lengthy discussion of the legal theories involved in this case. Rather, my colleague from Maine (Mr. EMERY), and I are charged with the responsibility of informing you that we have presented this House with a bill that addresses a very real problem in the State of Maine, and that it addresses that problem in a most responsible manner.

In making our case for this legislation, it is important for you to be aware of the context in which this present settlement proposal must be placed.

The Maine land claims first arose in 1972. At that time the Passamaquoddies and Penobscots asked the Department of Interior to sue the State of Maine on behalf of the tribes. In a response that is important to this settlement proposal, the Interior Department cited the traditional lack of Federal recognition of the Penobscots and Passamaquoddies as "Tribes" and declined to file a suit.

In the key decision of Passamaquoddy against Morton, the Federal District Court for Maine decided that indeed the Federal Government had a trust responsibility to the Penobscot and Passamaquoddy Tribes. That decision was affirmed by the Circuit Court of Appeals in December 1975.

The Justice Department and the Department of the Interior then had an obligation as a result of the trust relationship defined by Passamaquoddy against Morton to evaluate the validity of the tribes' land claims. After doing so, the Department of the Interior announced in late 1976 its intention to pursue the lawsuit against Maine and against all persons occupying the land claimed by the Passamaquoddy and Penobscot Tribes. That announcement resulted in the first taste of the economic problems that could surface if this case is litigated. State and local bond issues were postponed, turmoil was created in the real estate and title bars, and as was stated so well by Attorney General Cohen in his testimony before the House Interior Committee, it was "one of the most serious legal, economic and social crises in the history of the State of Maine."

Both the Senate Select Committee on Indian Affairs and the House Interior Committee were provided with specific information about the costs that will be associated with the lengthy litigation.

The recognition of the seriousness of this issue caused the White House to initiate a series of efforts to frame an appropriate settlement of this suit. Three separate settlement proposals surfaced between the fall of 1977 and the fall of 1978. As a result of those proposed settlements the elements that are the cornerstone of the present settlement were identified. They are a trust fund of $27 million for the tribes, 300,0000 acres of land to be provided at fair market value by willing sellers, and total Federal assumption of the costs involved. The price tag of this settlement is approximately $81.5 million, which is similar to the amount that that White House work group identified in 1977 as necessary to settle this case.

It is important to note that the State will retain jurisdiction over the lands involved in this settlement. As well, my colleagues should be aware that recent court decisions favorable to the Indians on peripheral issues strengthened the tribes' bargaining position if not their legal arguments.

As the House considers the merits of this legislation we must bear in mind that cases such as the Maine land claims, the Narragansett case in Rhode Island and other cases involving east coast Indian tribes have occurred as a result of congressional policy decisions which have encouraged these suites. In fact, just this past spring Congress once again extended the statute of limitations for Indian claims such as these. I am not about to say that Congress has been wrong in stating that suits such as these should be identified and litigated, but I will say that Congress should be prepared to remedy problems that arise because of that policy. The potential economic chaos in Maine, with losses to be incurred by innocent citizens almost 200 years removed from any wrongdoing, is just such a problem. We must look to the Federal Government to follow through with its policy of fairness to our Indian citizens, but not at the expense of other innocent citizens.

The burden on the Federal Government to fund this settlement is also apparent from the history of its relationship with Maine tribes. For nearly 200 years the Federal Government has repeatedly taken the position that the Maine tribes were a State, not Federal responsibility. Despite numerous opportunities that can be documented, the U.S. Government failed to take any steps to enforce the nonintercourse provisions of the Indian Trade and Intercourse Acts. This inaction on the part of the Federal Government gave the citizens of Maine reasonable assurances that the land transactions which have marked daily life in Maine since the 1790's have been totally proper and that they have not violated the rights of the Indian tribes.

The stated Federal policy of no responsibility to the Maine Indians was also the basis for the State's provision of support to the tribes. During the time that the Federal Government was denying any responsibility to the Maine Indians, the State was stepping forward with funds to provide necessary assistance to the tribes. The attorney general of Maine informed the Interior Committee during its hearing on this bill that appropriations totaling nearly $20 million have been made since Maine became a State. At no time since the 1790's has the United States indicated that the behavior of Maine citizens, both in their support of their Indian neighbors or in their land transactions, has been inappropriate in any way.

The basic premise of this suit is that the Federal policy of protection of Indians that was enunciated during the early years of our National Government must be respected. The fact that the Federal Government failed to recognize any responsibility to the Maine Indians until forced to do so by a recent court decision, and the fact that Maine acted in good faith both in their land transactions and in their support of the tribes, makes it very clear that any costs associated with this suit must be borne by the Federal Government.

I have tried in my few minutes here to provide you with some background about this bill and to justify the basis for my belief that the resolution of this problem is a Federal responsibility. But, my most important function today is to assure you that this legislation is not a hastily drafted document produced only for the purpose of passing the buck to the Federal Government.

Rather, the proposed settlement embodied in this legislation is the result of many months of negotiations on the part of the State of Maine, the Indian tribes, and representatives of Maine's affected landowners. In addition, every detail of this legislation has been scrutinized and then endorsed by the Maine Legislature, the Department of Interior, the administration, the Senate Select Committee on Indian Affairs, and most recently the Senate itself. The review process by the Senate committee included intensive drafting sessions in which representatives of the Interior Department, the administration, the parties to the suit, and the Senate committee participated. Their finished product, passed by the Senate and now presented to you for your approval, is a carefully crafted bill.

As well, the Interior Committee's own hearing on this bill, in which Congressman EMERY and I were privileged to participate, showed that all elements of this bill including cost, jurisdictional aspects, and future relationships with the tribes can be justified by the architects of this settlement.

In closing, I must state that the problem we face is time. We may never have all the elements present that we have in this bill. The support of all the parties, involved in this case, coupled with the support of the administration, may not be duplicated if this legislation fails. The economic costs to the State of Maine could then be enormous.

The legislative process as we know it here in Congress is often criticized for its slowness. Yet we have seen time and again that we are able to move quickly on legislation when we have been able to achieve consensus on the resolution of important problems.

I believe that we have achieved the necessary consensus on this issue. The bipartisan leadership of Senators MITCHELL and COHEN in the Senate, coupled with the active support of the administration and Congressman UDALL for the bill sponsored by Mr. EMERY and myself, has shown that concern for the problems in the State of Maine crosses party lines. Even though this bill by necessity has surfaced late in our legislative session, I am proud to say that Congress has thus far been able to take all the necessary steps to assess and pass this legislation while maintaining the integrity of the legislative process.

The final point that must be mentioned is that this bill has not been finalized without considerable difficulty. The long process of negotiations and ratifications has definitely shown that this issue of Indian land claims in Maine is an emotional one, and that feelings about the merits, or lack thereof, of this case runs deep. As a person who was originally quite skeptical about the merits of this suit, I am in a position to say with certainty that the Maine congressional delegation is acting in the best interests of the State in seeking this settlement. We must realize that the economic chaos that could result from litigation, regardless of the outcome, and the potential for a legacy of bitterness between Maine's Indian and non-Indian citizens, dictate that the good faith that has marked our efforts to resolve this issue must be accepted.

□ 1340

I would also like to thank the gentleman from Utah (Mr. MARRIOTT) and the gentleman from California (Mr. CLAUSEN) for their considerable and valuable efforts on behalf of the State of Maine and the people. As I say, I was a skeptic of this entire resolution, but I feel that there would be no winners at all if this case went to court. I thank all of the Members for participating, and I thank the chairman of the committee, the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, there are some Members of the House who will recall that it is my privilege and duty every 2 or 3 years to come down into the well and ask that the statute of limitations governing Indian claims be extended. The last such memorable occasion was on March 18, of this year, 1980. I made a commitment at that time to my colleagues, a commitment I had made in earlier years, that this was to be indeed the last such request for an extension of time and I would not be back again to do it.

I would like to bring my colleagues up to date.

That effort succeeded. We did get a bill passed. The statute of limitations, which is covered by section 2415, title 28, United States Code, did become law, and it is now lifted until December 31, 1982.

Following up on that, on April 7, 1980, I did write a letter to the Honorable Cecil D. Andrus, Secretary of the Department of the Interior, asking him the status of the Indian claims, asking him to report, et cetera, and my letter reads as follows:

APRIL 7, 1980.

Hon. CECIL D. ANDRUS,
Secretary, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: As you know, on March 27, 1980, the President signed into law S. 2222 which extends the statute of limitations contained in section 2415 of title 28, United States Code, from April 1, 1980 to December 31, 1982.

Since this legislation falls within the jurisdiction of the Subcommittee on Administrative Law and Governmental Relations, which I chair, I will be interested in the progress that is made on the processing of those claims affected by this legislation. To monitor this progress, I plan to schedule periodic oversight hearings during the pendency of the extension period. Therefore, to prepare for these hearings, I would appreciate it if you would furnish me with the following information regarding these Indian claims affected by this legislation as soon as possible:

1. Describe the nature of all such claims presently identified by the Department of the Interior.

2. State the exact number of all such claims presently identified by the Department of the Interior.

3. Describe the nature of such claims that have been referred to the Department of Justice by the Department of the Interior.

4. State the exact number of these claims referred to the Department of Justice by the Department of the Interior for litigation.

a. To date how many of the claims have actually resulted in litigation?

b. To date how many of the claims have been rejected by the Department of Justice as insufficient for litigation?

5. To date, how many such claims have been settled by the Department of the Interior without a referral to the Department of Justice?

6. To date, how many of these claims have been rejected by the Department of the Interior without a referral to the Department of Justice?

7. At this time, how many such claims do you estimate remain unidentified?

I appreciate your cooperation in this matter.

Sincerely,

GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations.

Thereafter, I received a reply from Mr. Andrus, dated June 4, 1980, which reads as follows:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., June 4, 1980.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, House of Representatives, Washington, D.C.

DEAR MR. DANIELSON: Thank you for your April 7, 1980, request for information regarding Indian claims affected by S. 2222 which extends the Statute of Limitations contained in Section 2415 of Title 28, United States Code, from April 1, 1980, to December 31, 1982.

Please find below a listing which responds to your request for information regarding the nature of all claims presently identified by this Department and the exact number of such claims:

1. *Nature of claim*	2. *Number*
Old age benefits recovery	2,687
Rights of way	1,334
Title (with ancillary damage aspect)	1,298
Taxation	602
Contracts	439
Land trespass (title not in issue)	3,020
Water rights	61
Minerals	34
Hunting rights	2
Fishing rights	539
Total	10,016

3. The Department of the Interior has referred claims of the nature listed in item No. 1 to the Department of Justice.

4. The Department of the Interior has referred 4,013 claims covered by 554 litigation reports to the Department of Justice. 374 of these reports were referred to the Department in Washington, D.C., and 180 were referred to various U.S. Attorneys.

a. An estimated 50 to 100 claims have actually resulted in litigation.

b. An estimated 3,000 claims are being returned by the Department of Justice as inappropriate for litigation, or rejected for legal reasons.

5. An estimated 575 claims have been settled by the Department of Interior without referral to the Department of Justice.

6. The Department of the Interior has rejected 2,200 claims without referral to the Department of Justice.

7. An estimated 5,000 claims remain unidentified. I appreciate your concern in this matter.

Sincerely,

CECIL D. ANDRUS,
Secretary.

I want the Members to note that, in connection with that letter of June 4, 1980, he said that, as of that date, there were an estimated 5,000 claims remaining unidentified.

In the continuation of my effort to get some action on this subject, I again wrote to Secretary Andrus on September 18, 1980, and that letter reads as follows:

COMMITTEE ON THE JUDICIARY,
Washington, D.C. September 18, 1980.

Hon. CECIL D. ANDRUS,
Secretary, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of June 4, 1980 detailing the work your department has done in processing those Indian claims which are affected by the statute of limitations contained in section 2415 of title 28, United States Code.

I continue to be interested in the progress that has been made in processing these claims, and I plan to hold oversight hearings into this matter as soon as time permits. In this regard, I am requesting that you update the information provided in your previous letter. Therefore, I would appreciate it if you would supply the following information regarding these Indian claims as soon as possible:

1. Describe the nature of all such claims presently identified by the Department of the Interior.

2. State the exact number of all such claims presently identified by the Department of the Interior.

3. Describe the nature of such claims that have been referred to the Department of Justice by the Department of the Interior as of this time.

4. State the exact number of these claims referred to the Department of Justice by the Department of the Interior for litigation as of this time.

a. To date, how many of the claims have actually resulted in litigation?

b. To date how many of the claims have been rejected by the Department of Justice as insufficient for litigation?

5. To date, how many such claims have been settled by the Department of the Interior without a referral to the Department of Justice?

6. To date, how many of these claims have been rejected by the Department of the Interior without a referral to the Department of Justice?

7. At this time, how many such claims do you estimate remain unidentified?

I appreciate your cooperation in this matter.

Sincerely,

GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations.

For the information of my colleagues, and for the benefit of history, I would like to point out that the colloquy, the debate on this subject last spring, is reported in the CONGRESSIONAL RECORD of March 18, 1980, at pages 5742 through 5751 and debate on the conference report in the CONGRESSIONAL RECORD for March 24, 1980, pages 6219 through 6220.

The important thing that I am trying to establish here today is this: It was, indeed, important to extend that statute of limitations. We now have brought to a happy close the entire claim for the State of Maine. This is not just the main claim for Maine; it is the whole claim for Maine. We have one State disposed of, and we have only 49 States to go.

Therefore, I submit, Mr. Speaker, that it is wholesome to extend the statute of limitations in a wise manner from time to time so that we can dispose of these claims without unnecessary litigation and without further complicating the affairs of the American people.

Mr. UDALL. Mr. Speaker, I reserve the balance of my time.

Mr. MARRIOTT. Mr. Speaker, I yield 3½ minutes to the gentleman from Maine (Mr. EMERY).

Mr. EMERY. Mr. Speaker, this is an extremely important day for the State of Maine for, with passage of this legislation, we will have resolved one of the most difficult issues that Maine has faced in many years. As previous speakers, the gentleman from Arizona (Mr. UDALL), the gentleman from Utah (Mr. MARRIOTT), and my distinguished colleague from northern Maine (Mrs. SNOWE), have mentioned, we have resolved this issue through difficult negotiations, through compromise, through bringing together of parties who originally were very far apart in principle and in many other ways as well.

This has been an educational process for everyone. The State delegation, the Maine Legislature, the administration, and the various committees of the House and Senate have learned about the problem, not only as it affects Maine but as it affects Indian tribes in Maine. I think we are better off for having made that effort.

The important thing is that we have reached a satisfactory conclusion of an issue which promised to be one of the most difficult and acrimonious that the State has faced in many years. In so doing, we have won the support of the Office of Management and Budget, of the President of the United States, of the Interior Department. We have won the support of all four Maine congressional delegation Members, including myself, the gentlewoman from Maine (Mrs. SNOWE), and Senators COHEN and MITCHELL. We have the support of the Maine Legislature, which voted 2 to 1 in both houses in favor of the Maine portion of the implementing legislation. We have support and full cooperation of the State attorney general, the Governor's office, and many civic leaders throughout the State from many different walks of life.

In every sense, this is a true compromise. But it is not important because it solves our problem. On passage of this legislation, we will have established not only a model for resolving Indian claims but, more importantly, we will have answered all of the major problems that various parties at interest have raised in the State of Maine—successfully, amicably and completely.

The bill we have before us today, H.R. 7919, the Maine Indian Claims Settlement Act, reflects long hours of work on the part of State and Federal officials, attorneys for Maine's large landowners, and the Penobscot and Passamaquoddy Tribes, and members and staff of the House Interior Committee. Their commitment to obtaining a reasonable solution of this dispute reflects their belief that the provisions of the settlement reflected in this bill best represent the interests of Maine and its citizens, and the Federal Governmnt.

The purpose of H.R. 7919 is to provide a legislative settlement of the land claims of the Passamaquoddy, Penobscot, and Maliseet Indians of the State of Maine.

The Maine Penobscot and Passamaquoddy Indian Tribes have claimed that 12.5 million acres, roughly two-thirds of the State of Maine, were taken from them in violation of the Non-Intercourse Act of 1790. The Non-Intercourse Act stipulated that all transfers of land between Indians and State or non-Indians must be ratified by the U.S. Congress. Since land transactions between the Penobscot and Passamaquoddy Tribes and the State of Massachusetts, or which Maine was then a part, were not congressionally ratified, the tribes claim that land was taken from them illegally.

The State of Massachusetts entered into its land transaction agreement with the tribes under the assumption that the Non-Intercourse Act did not apply to east coast tribes within the boundaries of the original 13 States. Consequently, we have several instances on the east coast whereby transfers of Indian land were carried out without congressional ratification under the Non-Intercourse Act.

With respect to the State of Maine, however, questions have arisen, and now the State is faced with the prospects of protracted litigation should the tribes file suit.

In response to the threat of potential litigation, Maine's attorney general and an attorney for the State's largest landowners have negotiated a proposed settlement with the attorney for the tribes. The settlement is basically in three parts—one part which pertains to the implementation of laws that will be applicable to Indians and Indian land in Maine, the Maine Implementing Act; one part consisting of purchase options from certain landowners to the Maine tribes in which the landowners have agreed to sell at fair market value 300,000 acres of land to the tribes; and, finally, a bill, the Maine Indian Claims Settlement Act, to be enacted by Congress which would extinguish the land claims, compensate the Indians for their claim, and ratify the Maine Implementing Act.

The Maine State Legislature passed the Maine Implementing Act on April 3, 1980, 84 in favor and 47 against in the Maine House and 17 in favor and 10 against in the Maine Senate, thereby approving the various positions setting out future applicability of State and Indian laws over existing Indian land and any newly acquired land. It is now left to the Congress to consider the Maine Indian Claims Settlement Act.

The financial portion of this settlement amounts to $81.5 million to be authorized and appropriated by Congress. The historical circumstances in Maine where the State, up until 1976, assumed almost total financial responsibility for the welfare of the Maine Indians, provide the fundamental premise behind this bill that the cost of settlement is a national responsibility. Since Maine became a State, $20 million has been allocated, $15 millon of which came in the last 15 years. These figures support both the claim of necessary financial assistance and the principle expounded by this Congress that States should participate in the funding of such settlements.

This is not a bill designed to bail out the State of Maine and relieve it of its responsibilities. Even after this settlement is enacted, the State of Maine will continue to have some financial obligation to the tribes in the form of various benefits and subsidies that other citizens and municipalities receive. Therefore, this proposed settlement represents a carefully constructed balance of contributions and responsibilities as well as interests.

Hearings were held in the Senate on S. 2829, the Maine Indian Claims Settlement Act of 1980, on July 1 and 2, at which time many questions were raised regarding the application of State and Federal laws over Indian lands and the jurisdiction of the tribes over Indian lands. Land valuations were addressed with testimony received by both the Interior Department and private evaluators as to what constituted fair market value for average quality Maine timberland. The Interior Department responded to each of these issues and subsequently endorsed the concept of a negotiated settlement as well as the monetary amount suggested in the legislation. In turn, the House Interior and Insular Affairs Committee members and staff thoroughly reviewed the provisions of this bill reflecting the above issues, and following a hearing and long hours of discussion with all interested parties, the bill was favorably reported by the committee.

The settlement proposal is the result of long and often complicated negotiations among the parties involved. In this context, the proposal strikes a delicate balance of all interests concerned.

There is no question that should a lawsuit result, it has the potential to create severe economic disruption throughout the State. The most serious economic threat is to land transactions and State and municipal bond sales, both of which will be seriously disrupted, if not halted altogether, should titles to land be clouded. Given the expected time frame for litigation, estimated to be 6 to 10 years, the ramifications of a court proceeding are cause for serious concern.

Consequently, the legislation under consideration today offers Congress the opportunity to resolve our longstanding problem in Maine in a manner which is agreeable to all involved parties. I am sincerely hopeful that this body will approve this proposed settlement in a timely fashion, so that the Maine Indian land claim will be settled equitably and in the best interests for all concerned.

Time is of the essence in this matter in order to avoid a breakdown of the resolve the affected parties have shown in constructing a workable agreement. In addition, the options on the land to be transferred will run out in less than a year, in which case a second proposed settlement of this nature could cost the Government additional hundreds of thousands of dollars. Most of all, we need to enact this proposal to prevent the certain disruption protracted litigation would bring to Maine's citizens.

The Maine Indian land claims settlement is a well-founded idea whose time has come. The motivation and hard work which provide the foundation for this agreement and, indeed, make it eminently feasible need to be recognized, and I urge my colleagues to favorably act on this proposed legislation today.

I should also mention a necessary correction. The following sentence was inadvertently omitted from the committee report section-by-section analysis relating to subsection 6(d)(1) of H.R. 7919, and should be inserted at the end of the paragraph in the committee report which discusses that subsection:

The waiver provided by this subsection relates only to causes of action which arise subsequent to enactment of this bill.

This sentence is consistent with the administration's understanding of subsection 6(d)(1) as reflected in testimony submitted to the Select Committee on Indian Affairs in hearings held on July 1, 1980. The sentence is also consistent with normal rules of statutory interpretation.

Another point that I would like to make is that the waiver of immunity provided by subsection 6(d)(1) is intended to relate only to causes of action which accrue subsequent to enactment of this bill.

Mr. MARRIOTT. Mr. Speaker, I yield 1 minute to the distinguished ranking minority leader of the committee, the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, I am pleased to rise in favor of H.R. 7919 and to urge its passage under suspension of the rules. I truly want to commend our distinguished chairman for his responsiveness and sensitivity to a very complex issue in scheduling the legislation but, more importantly, to extend my congratulations to the congressional delegation from Maine, Mrs. SNOWE and DAVE EMERY, for their very constructive work in bringing about what we think is a very fair and reasonable solution to an extraordinarily complex situation.

Mr. Speaker, the purpose of this bill is to provide for the final settlement of the largest, most complex, and perhaps most controversial of the so-called Eastern Indian land claims.

H.R. 7919 ratifies and implements a settlement of the claims of the Passamaquoddy, Penobscot, and Maliseet Indians of Maine. This settlement is the product of more than 3½ years of painstaking negotiations by the tribes, the State, and private landowners, with extensive participation by representatives of the Interior and Justice Departments and the White House.

The claims which H.R. 7919 would settle are for possession of as much as 12.5 million acres of land in Maine on which more than 350,000 people now reside. These claims allege that land transfers provided for in treaties between the tribes and the States of Massachusetts and Maine were in violation of the Federal Trade and Intercourse Act of 1790. That act bars the conveyance of Indian land unless it is made and executed under the authority of the United States.

As long as these claims are unresolved, a cloud will hang over the title to all of the lands within the claims area. There is no doubt that clouds over title to land can and do cause economic and social hardships to a great number of people and to the State as a whole. They impair the State's ability to raise taxes and guarantee municipal bonds. And they make it difficult for individual citizens and businesses to buy and sell property or to finance development on any lands in the claims area.

H.R. 7919 would lift the clouds on title and preclude years of costly litigation.

While it is uncertain whether the tribes would prevail in the litigation, lawyers for the parties estimate the chances of success at between 40 and 60 percent. More importantly, they also estimate that the claims will take from 5 to 15 years to litigate to completion, including appeals. Given these prospects, all parties to the claim have come to the conclusion that a legislatively ratified, negotiated settlement is the quickest, fairest, and best alternative. H.R. 7919 is that alternative.

The bill accomplishes essentially three things:

First, it removes the cloud to title to land in the State of Maine by ratifying all previous Indian land transfers and extinguishing all Indian aboriginal claims in the State;

Second, it defines the respective relationships between and among the tribes, the State and the Federal Government. This it does in large part by incorporating the Main Implementing Act, an extensive statute passed by the Maine Legislature earlier this year.

Third, the bill authorizes the expenditure of $81.5 million for a trust fund for the tribes and for the acquisition of up to 300,000 acres of land. Appropriation of these funds and purchase of the land will give the three tribes an excellent opportunity to improve their economic and social conditions and to achieve meaningful self-determination.

I would like to stress the broad support that this bill enjoys. Interior Secretary Andrus, in stating the administration position on the settlement, called it "critical and one of the most important issues in Indian affairs facing Congress." Last week the administration demonstrated its commitment to enactment of this legislation by publicly supporting the inclusion by a Senate Appropriations Subcommittee of the full $81.5 million authorized to pay for the settlement in appropriations for fiscal year 1981.

The State Legislature of Maine has already enacted legislation to implement the settlement for its part. The Governor of the State and the entire Maine delegation stands in support of this settlement. I would like to commend in particular our colleagues from Maine, Mr. EMERY and Mrs. SNOWE, for their work with the Interior Committee members and staff to enable the House to consider this bill today. The caliber of their efforts, coupled with those of our former colleague now of the other body, Senator WILLIAM COHEN, attest to the fact that the people of Maine are truly well represented in the Congress.

I would also note that within the past few hours the Senate passed a bill virtually identical to H.R. 7919.

Mr. Speaker, I think it is quite clear that passage of this legislation is in the national interest. Only Congress has the power to settle these claims for once and for all, to remove the cloud on the title to the lands of thousands of innocent Maine citizens, and to spare them, the State, the United States, and the tribes the expense and uncertainty of years of litigation. All responsible parties who have studied this situation agree that a legislated settlement is the best solution.

I, therefore, urge the Members of the House to support this settlement by approving H.R. 7919.

□ 1350

Mr. MARRIOTT. Mr. Speaker, again I want to thank the gentleman from Arizona (Mr. UDALL) for expediting this legislation and thank the gentlewoman from Maine (Mrs. SNOWE) and the gentleman from Maine (Mr. EMERY) for their good work.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 7919, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7919, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

U.S. CAPITOL GROUNDS

Mr. LEVITAS. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 6331 to amend the act of July 31, 1946, as amended, relating to the U.S. Capitol Grounds, and for other purposes.

The Clerk read as follows:

H.R. 6331

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of July 31, 1946, as amended (40 U.S.C. 193a), is amended to include within the definition of the United States Capitol Grounds the following additional areas and portions of streets which are situated as follows:

(1) that portion of D Street Northeast from the east curb of Second Street Northeast to the east curb of First Street Northeast;

(2) that portion of Second Street Northeast and Southeast from the south curb of F Street Northeast to the south curb of C Street Southeast;

(3) that portion of Constitution Avenue Northeast from the east curb of Second Street Northeast to the east curb of First Street Northeast;

(4) that portion of Pennsylvania Avenue Northwest from the west curb of First Street Northwest to the east curb of Third Street Northwest;

(5) that portion of Maryland Avenue Southwest from the west curb of First Street Southwest to the east curb of Third Street Southwest;

(6) that portion of Constitution Avenue Northwest from the east curb of Second Street Northwest to the east curb of Third Street Northwest;

(7) that portion of Independence Avenue Southwest from the west curb of First Street Southwest to the east curb of Third Street Southwest;

(8) that portion of Maryland Avenue Northeast from the east curb of Second Street Northeast to the east curb of First Street Northeast;

(9) that portion of East Capitol Street from the east curb of Second Street Southeast to the east curb of First Street Southeast;

(10) that portion of Independence Avenue Street Southeast to the east curb of Second Street Southeast to the east curb of First Street Southeast;

(11) that portion of C Street Southeast from the east curb of Second Street Southeast to the east curb of First Street Southeast;

(12) that portion of North Capitol Street from the south curb of Massachusetts Avenue to the north curb of Louisiana Avenue;

(13) that portion of New Jersey Avenue Northwest from the north curb of D Street Northwest to the north curb of Louisiana Avenue;

(14) that portion of Second Street Southwest from the north curb of D Street to the south curb of Virginia Avenue Southwest;

(15) that portion of Virginia Avenue Southwest from the east curb of Second Street Southwest to the west curb of Third Street Southwest;

(16) that portion of Third Street Southwest from the south curb of Virginia Avenue Southwest to the north curb of D Street Southwest;

(17) that portion of D Street Southwest from the west curb of Third Street Southwest to the east curb of Second Street Southwest;

(18) that portion of Canal Street Southwest, including sidewalks and traffic islands, from the south curb of Independence Avenue Southwest to the west curb of South Capitol Street; and

(19) all that area contiguous to, and surrounding, square numbered 724 from the property line thereof to the contiguous curb;

(20) those areas contiguous to, and surrounding, the areas comprising the grounds of the United States Botanic Garden from the property line of such grounds to the contiguous curb;

(21) all that area contigous to, and surrounding, the structures comprising the United States Capitol Power Plant, from the building lines of such structures to the continguous curbs; and

(22) all that area contiguous to, and surrounding, square numbered 581 from the property line thereof to the contiguous curb.

SEC. 2. Section 1 of the Act of July 31, 1946, as amended (40 U.S.C. 193a), is amended (1) by deleting "First Street N.E. to Second Street N.W." and inserting in lieu thereof "Second Street Northeast to Third Street Northwest"; and (2) by inserting immediately before the colon preceding the proviso, a comma and the following: "Pennsylvania Avenue Northwest from First Street Northwest to Third Street Northwest, Maryland Avenue Southwest From first Street Southwest to Third Street Southwest, Second Street Northeast from F Street Northeast to C treet Southeast; C Street Southeast from Second Street Southeast to First Street Southeast; that portion of Maryland Avenue Northeast from Second Street Northeast to First Street Northeast; that portion of New Jersey Avenue Northwest from D Street Northwest to Louisiana Avenue; that portion of Second Street Southwest from the north curb of D Street to the south curb of Virginia Avenue Southwest; that portion of Virginia Avenue Southwest from the east curb of Second Street Southwest to the west curb of Third Street Southwest; that portion of Third Street Southwest from the south curb of Virginia Avenue Southwest to the north curb of D Street Southwest; that portion of D Street Southwest from the west curb of Third Street Southwest to the east curb of Second Street Southwest; that portion of Canal Street Southwest, including sidewalks and traffic islands, from the south curb of Independence Avenue Southwest to the west curb of South Capitol Street".

SEC. 3. On and after the effective date of this section, that portion of C Street Northeast from the west curb of Second Street Northeast to the east curb of First Street Northeast shall be under the exclusive jurisdiction and control of the Capitol Police Board and the Architect of the Capitol in the same manner and to the same extent as such Board or the Architect of the Capitol has over other streets comprising the United States Capitol Grounds, and the Architect of the Capitol shall be responsible for the maintenance and improvement thereof.

SEC. 4. The foregoing provisions of this Act shall take effect upon the expiration of the thirty-day period following the date of the enactment of this Act.

SEC. 5. The Capitol Police Board is authorized to detail police from the House Office, Senate Office, and Capitol Buildings for police duty on the Capitol Grounds and on the Library of Congress Grounds.

SEC. 6. (a) Notwithstanding any other provisions of this Act, with respect to those squares occupied by the United States Supreme Court and the Library of Congress, those streets or portions thereof referred to in the first section of this Act which surround such squares shall be considered a part of the Capitol Grounds only to the face of the curbs contiguous to such squares.

(b) Nothing in this Act shall be construed as repealing, or otherwise altering, modifying, affecting, or superseding those provisions of law in effect on the date immediately preceding the date of the enactment of this Act vesting authority in the United States Supreme Court Police and the Library of Congress Police to make arrests in adjacent streets.

(c) In order to provide a fair and reasonable transition period in which to permit the orderly relocation of those duly licensed vendors operating, as of the effective date hereof, on those portions of Pennsylvania Avenue Northwest, and Maryland Avenue Southwest, hereby included in the definition of United States Capitol Grounds pursuant to section 1 (4) and (5), so much of the prohibitions contained in section 4 of the law of July 31, 1946 (60 Stat. 718), as would prevent the use of those portions of Pennsylvania Avenue Northwest, and Maryland Avenue Southwest, for the offer and exposure of articles for sale, shall be suspended for a period not to exceed one year.

SEC. 7. (a) The Architect of the Capitol, under the direction of the House Office Building Commission, is hereby authorized to acquire, on behalf of the United States, by purchase, condemnation, transfer, or otherwise, for addition to the United States Capitol Grounds, all publicly or privately owned property contained in lots 1, 2, 67, 79, 80, 800, 801, 807, 814 through 822, and 834 in square 693 in the District of Columbia (including all alleys or parts of alleys and streets within the lotlines and curblines surrounding such real property): Provided, That upon the acquisition of any such real property by the Architect of the Capitol on behalf of the United States, such property shall be subject to the provisions of the Act of July 31, 1946 (60 Stat. 718), as amended in the same manner and to the same extent as all other areas comprising the United States Capitol Grounds.

(b) For the purposes of this section the properties authorized to be acquired hereunder, shall be deemed to extend to the outer face of the curbs of the squares in which they are located.

(c) There is hereby authorized to be appropriated to the Architect of the Capitol for the fiscal year ending September 30, 1981, the sum of $3,500,000 for the purpose of carrying out the provisions of this section, said appropriation to remain available until expended.

SEC. 8. The acquisition of real property under this Act shall be conducted in accordance with the Act entitled "Uniform Relocation Assistance and Land Acquisition Policies Act of 1970", Public Law 91-646, approved January 2, 1971, and any proceeding for condemnation brought in its course shall be conducted in accordance with the Act entitled "An Act to provide for the acquisition of land in the District of Columbia for the use of the United States", approved March 1, 1929 (16 D.C. Code, secs. 1351-1368).

SEC. 9. The Architect of the Capitol is authorized to enter into contracts and to make expenditures for grading and paving and such other expenditures, including expenditures for personal and other services, as may be necessary to carry out the purposes of section 7 of this Act.

SEC. 10. Any contract entered into pursuant to this Act or pursuant to any amendment made by this Act shall be effective only to such extent and in such amounts as may be provided in advance in an appropriation Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Georgia (Mr. LEVITAS) will be recognized for 20 minutes, and the gentleman from Pennsylvania (Mr. CLINGER) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 6331 amends the act of July 31, 1946, as amended, relating to the U.S. Capitol Grounds, by authorizing within the definition of the U.S. Capitol Grounds additional streets, sidewalks, and other areas which are contiguous or in close proximity to the U.S. Capitol Grounds, thereby making the exterior boundaries of the Capitol Grounds more compact. At the present time, the Capitol Police are charged with the exclusive charge and control of the regulation and movement of all vehicular and other traffic, including the parking of vehicles within the U.S. Capitol Grounds; and due to the streets listed in this legislation being contiguous to the Capitol Grounds, the Capitol Police Board has been relying on the basis of case law authority to find the necessary authority to patrol such streets. Thus, this legislation will give a legislative sanction to actions now taken by the Capitol Police.

H.R. 6331 also assigns responsibility between the Architect of the Capitol and the District of Columbia for maintenance and repair of the streets to be added to the Capitol Grounds.

The legislation further authorizes the Capitol Police Board to detail police from the Capitol Building and House and Senate Office Buildings for duty on the Capitol Grounds and the Library of Congress grounds. This is merely a technical amendment to existing law.

Lastly, the bill as reported originally by the committee on April 24, 1980, authorized the Architect of the Capitol, under the direction of the House Office Building Commission, to acquire, for addition to the U.S. Capitol Grounds all property contained in lots 1, 2, 67, 79, 80, 800, 801, 807, 814 through 822, and 834 in square 693 in the District of Columbia at a cost of $3.5 million. This property is bounded by Ivy, Canal and E Streets, and New Jersey Avenue, Southeast, and totals approximately 62,544 square feet. The owners of the property are actively proceeding with preparations to build a four-story office building on the site. Therefore, on October 11, 1979, the House Office Building Commission recommended that action be taken by the Government to acquire this property in order to protect the Capitol Grounds from commercial encroachment. During the acquisition of such property, the Architect of the Capitol is authorized to enter into contracts and to make expenditures for grading and paving and such other expenditures as may be necessary to carry out this act.

The committee amendment at the desk, which was approved by the House Committee on Public Works and Transportation on September 16, 1980, authorizes the Architect of the Capitol to acquire lot 49 in square 582 and lot 70 in square 640 at a cost of $8 million, square 582, adjacent to House Office Building Annex No. 2, and square 640, roughly south of the Rayburn underground garages, are presently being leased and utilized for parking by the House of Representatives. The House Office Building Commission voted unanimously to have these latter two parcels acquired by the Government in order to protect the Capitol from commercial encroachment at such close proximity and to reserve the property for possible further development in accordance with the master plan for Capitol Hill. The House Committee on Administration has also contacted the committee urging the inclusion of these two parcels in this legislation. These parcels are currently owned by the District of Columbia Redevelopment Land Agency and they are eager to dispose of the properties.

Mr. Speaker, every other major capital in the world has seen fit to enhance and protect the surrounding areas of its major public buildings. The original plan devised for the development of the Nation's Capital by Pierre L'Enfant contemplated this same type of protection and planning for the major governmental buildings in the Washington area. This legislation is a further step in the overall effort to continue to provide proper development not only of the Capitol grounds of the United States of America but the adjoining major historical buildings such as our Supreme Court and the Library of Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. CLINGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I concur in the comments made by the distinguished gentleman from Georgia (Mr. LEVITAS) and want to commend him for the fine work he has done in developing the legislation. Through his leadership, and

with the bipartisan support of the committee members, we have reported a well balanced bill that meets the needs of all interested parties: the future space needs of the U.S. Congress—by authorizing the purchase of three squares of land adjacent to the capitol which may be necessary for future expansion: the Capitol Police—by redefining their jurisdictional responsibilities: The vendors—who operate on portions of Pennsylvania Avenue Northwest and Maryland Avenues Southwest, by allowing them to continue operations for up to 1 year after enactment of this bill.

Mr. Speaker, the costs involved in H.R. 6331 are minimal and we feel enactment of this legislation is timely. If we wait to purchase the property proposed, the public will have to pay considerably more. The owners of square 693 plan to build a four-story office building on that site. By waiting to purchase that land, costs will escalate significantly.

The Government now leases portions of squares 582 and 640. By purchasing this land now, we are not only preventing rising costs due to inflation, but also eliminating these annual lease payments and preserving undeveloped land for future potential use by the legislative branch.

Mr. Speaker, I ask the Members of this House to support passage of H.R. 6331.

Thank you.

● Mr. JOHNSON of California. Mr. Speaker, I rise in support of H.R. 6331, and would like to compliment the fine work performed by the chairman of the Subcommittee on Public Buildings and Grounds, the honorable ELLIOTT H. LEVITAS, the ranking minority member of the subcommittee, the honorable JAMES ABDNOR, and the ranking minority member of the full committee, the honorable WILLIAM HARSHA, in bringing this legislation to the House floor today.

As the chairman of the subcommittee has noted, the legislation as originally reported by the committee provided only for the acquisition of square 693 at a cost of $3.5 million. However, as a result of a request from the House Office Building Commission and the Committee on House Administration, our committee approved an amendment which is before the House today providing for the acquisition of square 582 and square 640 at a cost of $8 million. These properties are in close proximity to the Capitol Grounds and currently leased by the Committee on House Administration from the District of Columbia Redevelopment Land Agency for parking. The Redevelopment Land Agency has advised the Congress that they are anxious to dispose of these properties. Thus, in order to protect the Capitol Grounds from commercial encroachment it is desirable to acquire such properties.

In addition, the legislation provides for the acquisition of additional sidewalks and other areas in order to square off the boundaries of the Capitol Grounds and seeks to clarify actions currently taken by the Capital Police Board regarding the enforcement of regulations for all vehicular and other traffic, including the parking of vehicles within the U.S. Capitol Grounds.

Mr. Speaker, I strongly urge enactment of H.R. 6331. This legislation provides for the preservation of the noble vistas of the Capital to be preserved and enjoyed by future generations.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Georgia (Mr. LEVITAS) that the House suspend the rules and pass the bill, H.R. 6331, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 6331, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

□ 1400

TRANSFER OF CERTAIN NAVAL VESSELS

Mr. BENNETT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7878) to authorize the transfer of certain naval vessels, as amended.

The Clerk read as follows:

H.R. 7878

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the transfer of twenty-one vessels of the United States Navy is hereby authorized as follows:

(1) The sale of two dock landing ships of the Calbido class to the Government of Brazil.

(2) The lease of two patrol combatants of the Tacoma class to the Government of Colombia.

(3) The sale of one auxiliary repair drydock of the ARD-12 class to the Government of Ecuador.

(4) The sale of two tank landing ships of the Suffolk County class and four minesweeping launches to the Government of Greece.

(5) The sale of two tank landing ships of the Suffolk County Class to the Government of Italy.

(6) The sale of one patrol combatant of the Tacoma class to the Government of the Republic of Korea.

(7) The sale of one tank landing ship of the Suffolk County class and the lease of one oceanographic research ship of the Conrad class to the Government of Mexico.

(8) The sale of one surveying ship of the Sgt. George D. Keathley class, one auxiliary repair drydock of the ARD-12 class, one fleet oiler of the Mattaponi class, and two patrol combatants of the Asheville Class to the Coordination Council for North American Affairs (the Taiwan instrumentality referred to in section 10(a) of the Taiwan Relations Act (22 U.S.C. 3309)).

SEC. 2. (a) Any sale of a vessel authorized by the first section of this Act shall be subject to such terms and conditions as the President may require and shall be for a price not less than the value in United States dollars of the vessel involved.

(b) Any lease of a vessel authorized by the first section of this Act—

(1) shall be subject to such terms and conditions as the President may require; and

(2) notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), or any other provision of law, may, as part or all of the consideration of the lease, provide for the maintenance, protection, repair, or restoration of the vessel by the lessee.

(c) Any expense of the United States in connection with the transfer of a vessel authorized by the first section of this Act shall be charged to the government receiving such vessel.

SEC. 3. The authority to transfer vessels under the first section of this Act shall expire at the end of the two-year period beginning on the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida (Mr. BENNETT) will be recognized for 20 minutes, and the gentleman from South Carolina (Mr. SPENCE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BENNETT).

Mr. BENNETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Armed Services Committee passed unanimously the bill, H.R. 7878, which transfers certain naval vessels to friendly countries. There are 21 vessels for sale or lease included in this legislation. Legislation is required by law since these vessels are either under 20 years of age or over 3,000 tons in displacement.

Five of these vessels are to be sold to the Coordination Council for North American Affairs, the body that is currently representing Taiwan. Mexico will receive two of these vessels, two will go to Italy, two to Brazil, two to Columbia, six to Greece, one to Korea, and one to Ecuador. The details of these transactions are included in the committee's report.

Over the past few years, this ship transfer program has dramatically aided our allied navies. These ships are all excess to the U.S. Navy's requirements but are sorely needed by the recipient nations. The ships are sold or leased to these recipient nations based on their fair market value at the time of sale. I might add that the U.S. Navy does not look for buyers for these vessels but is responding to request from these foreign nations for security assistance in the form of ship sales.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. SPENCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, ship transfers have been an important part of our security assistance program for nearly 30 years.

It is important to understand that these ship transfers are in response to requests made by foreign governments. Of the ships being transferred, nine have been on lease to the governments involved, nine are new sales, and three are new leases. For various reasons, all of the ships are excess to U.S. Navy needs.

These sales take on a political importance far greater than the value of the ships. In most cases these ships become the most important vessels in small navies. They have a prestige value which is at least complementary to their military or training value. I think it is fair to conclude that these ship transfers are viewed by both parties as fulfilling both military and political objectives.

These transfers are made at no cost to the U.S. Government. The proposed transfers will be effected on an "as is" and "where is" basis. Receipts to the treasury are expected to be about $5.8 million. These ship transfers have been approved by both the Department of Defense and the Department of State.

Mr. Speaker, I urge my colleagues to support this bill as a measure of goodwill to our friends and allies.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BENNETT) that the House suspend the rules and pass the bill, H.R. 7878, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

UNIFORMED SERVICES SURVIVOR BENEFITS AMENDMENTS OF 1980

Mr. BENNETT. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 91) to amend title 10, United States Code, to remove certain inequities in the Survivor Benefit Plan provided for under chapter 73 of such title, and for other purposes, as amended.

The Clerk read as follows:

S. 91

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniformed Services Survivor Benefits Amendments of 1980".

SEC. 2. Section 1447(2) of title 10, United States Code, relating to definitions, is amended—

(1) in subparagraph (C)—

(A) by inserting "but which is not less than $300" after "under the Plan"; and

(B) by striking out ", but not less than $300;" and inserting in lieu thereof a period; and

(2) by striking out "as increased from time to time under section 1401a of this title.".

SEC. 3. (a) Subsection (a) of section 1451 of title 10, United States Code, relating to the amount of annuities under the Survivor Benefit Plan, is amended to read as follows:

"(a)(1) The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—

"(A) 55 percent of the base amount, as adjusted from time to time under section 1401a of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title; or

"(B) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, as adjusted from time to time under section 1401a of this title on or after the date the person becomes entitled to retired pay under chapter 67 of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

"(2) In the case of a widow who has one dependent child, the monthly annuity shall be reduced by the lesser of (A) an amount equal to the amount of the mother's benefit, if any, to which the widow would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210 (1)(1) of such Act (42 U.S.C. 410(1)(1)) and calculated assuming that the person concerned lived to age 65, or (B) an amount equal to 40 percent of the amount of the monthly annuity as determined under paragraph (1).

"(3) When the widow or widower reaches age 62, or there is no longer a dependent child, whichever occurs later, the monthly annuity shall be reduced by the lesser of (A) an amount equal to the amount of the survivor benefit, if any, to which the widow or widower would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(1)(1) of such Act (42 U.S.C. 410(1)(1)) and calculated assuming that the person concerned lives to age 65, or (B) an amount equal to 40 percent of the amount of the monthly annuity as determined under paragraph (1). For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

"(4) In the computation of any reduction made under paragraph (2) or (3), there shall be excluded any period of service described in section 210(1)(1) of the Social Security Act (42 U.S.C. 410(1)(1)) which was performed after the effective date of the Uniformed Services Survivor Benefits Amendments of 1980 and which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1954 of the social security tax which he had paid.".

(b) Subsection (c) of such section is amended—

(1) by striking out "section, or section 1448(d) of this title, on the day before the effective day of that increase" in the first sentence and inserting in lieu thereof "section or under section 1448(d) of this title"; and

(2) by striking out "title, or" in the second sentence and inserting in lieu thereof "title or under".

(c) Subsection (d) of such section is amended by striking out "(a)(2)" and inserting in lieu thereof "(a)(1)(B)".

SEC. 4. Section 1452 of title 10, United States Code, relating to reductions in retired and retainer pay, is amended by adding at the end thereof the following new subsections:

"(g)(1) Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), any person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Veterans' Administration as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan. Any such person's participation in the Plan shall be discontinued effective on the first day of the first month following the month in which a request under this paragraph is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired or retainer pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date. Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

"(2) A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

"(3) The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

"(4) Upon the death of any person described in paragraph (1) who has discontinued participation in the Plan in accordance with this subsection, any amounts deducted from the retired or retainer pay of the deceased under section 1452 of this title shall be refunded to the widow or widower.

"(5) Any person described in paragraph (1) who has discontinued participation in the Plan may again elect to participate in the Plan if (A) at any time after having discontinued participation in the Plan the Veterans' Administration reduces such person's service-connected disability rating to less than total, and (B) such person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require. Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month in which the Secretary concerned receives the application for resumption of participation in the Plan, and the Secretary concerned shall begin making reductions in such person's retired or retainer pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on such day.

"(h) Whenever retired and retainer pay is increased under section 1401a of this title, the amount of the reduction to be made under subsection (a) or (b) in the retired or retainer pay of any person shall be increased at the same time and by the same percentage as such retired or retainer pay is increased under section 1401a of this title.".

SEC. 5. (a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

(A) died before September 21, 1972;

(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

(b)(1) The amount of retired or retainer pay to be used as the basis for the computa-

tion of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity paid to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

(d) As used in this section:

(1) The term "uniformed services" means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

(2) The term "surviving spouse" has the meaning given the terms "widow" and "widower" in section 1447 of title 10, United States Code.

(3) The term "Secretary concerned" has the meaning given such term in section 101 (8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

SEC. 6. Section 4 of the Act entitled "An Act to amend chapter 73 of title 10, United States Code to establish a Survivor Benefit Plan, and for other purposes", approved September 21, 1972 (10 U.S.C. 1448 note), is amended—

(1) by striking out "section 9(b) of the Veterans' Pension act of 1959 (73 Stat. 436)" in subsection (a)(2) and inserting in lieu thereof "section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978";

(2) by striking out "in the limitation on annual income for purposes of eligibility for benefits under section 541(b) of title 38, United States Code" in the first sentence of subsection (c) and inserting in lieu thereof "under section 3112 of title 38, United States Code, in the maximum annual rate of pension under section 541(b) of such title"; and

(3) by striking out "limitation on annual income" in the second sentence of subsection (c) and inserting in lieu thereof "the maximum annual rate of pension".

SEC. 7. The amendments made by sections 2, 3, and 4 of this Act and the provisions of section 5 of this Act shall be effective on the first day of the second calendar month following the month in which this Act is enacted and shall apply to annuities payable by virtue of such amendments and provisions for months beginning on or after such date. No benefits shall accrue to any person by virtue of the enactment of this Act for any period before the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida (Mr. BENNETT) will be recognized for 20 minutes, and the gentleman from New York (Mr. MITCHELL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BENNETT).

Mr. BENNETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring to the floor today the Senate bill, S. 91, providing for improvements in the survivor benefit plan for retired military personnel. The gentleman from Alabama (Mr. NICHOLS), the chairman of the Military Compensation Subcommittee, could not be here today and asked me to manage the bill for him.

The Members are aware that in recent years there has been some criticism of several features of the survivor benefit plan. Most complaints are directed at the social security offset and at the formula for computing the cost of participation in the plan.

During both the 94th and 95th Congresses, the House enacted bills that would have addressed those issues and, in addition, would have substantially revised and liberalized other features of the plan. These bills have been initiated primarily by our colleagues, the gentleman from New York (Mr. STRATTON) and the gentleman from California (Mr. BOB WILSON). Both have played a particularly important role in the design and improvement of this plan. Unfortunately, the Senate did not act on most of those proposed changes. With that history, the Committee on Armed Services did not, until now, attempt to push for corrective action in the House during this Congress. Now, for the first time the Senate has acted to address some of the major shortcomings in the plan by passing S. 91.

The committee, on August 26, 1980, favorably reported S. 91 with technical amendments.

S. 91 revises the formula for computing deductions from military retirees pay to conform with the civil service formula. This provision is one of the changes recommended previously by the House.

S. 91 also would limit the amount of the social security offset against the benefits payable to a spouse to 40 percent of the payment to the survivor under the plan.

In addition, S. 91 eliminates from the calculation of the social security offset against benefits under the plan, any active military service after the date of enactment of this bill that is for periods of less than 30 continuous days and for which the member receives a refund of social security taxes paid for such service.

Considering the history of our past efforts to improve and liberalize the survivor benefit plan and the lack of action by the Senate, our recommendation is to accept S. 91 as passed by the Senate. Admittedly, S. 91 is not as comprehensive as the bills previously passed by the House. However, S. 91 is a significant improvement over present law. All retirees will benefit from the change in the formula; and many survivors—particularly survivors of enlisted members—will benefit from the 40 percent limitation on the amount of the social security offset.

The survivor benefit plan for military retirees has grown out of kilter with its original intent. Although the plan is still a good deal for most service members who retired in the past, some service members retiring today can expect to contribute two to three times as much to the plan as their survivors can expect to receive in benefits from the plan. This was, obviously, never intended by the Congress; in fact, the original plan was designed to provide significant cost sharing by the Government, similar to the civil service survivor benefit plan. The changes proposed in S. 91 will simply return the plan to the status orginally envisioned by this body.

Mr. Speaker, I urge the Members to accept S. 91.

Mr. MITCHELL of New York. Mr. Speaker, I yield myself such time as I may consume.

I strongly support S. 91. I regret that the total package of changes the House passed in the 94th and 95th Congresses are not included in the Senate bill.

However, in view of the past Senate inaction on this matter—the obvious reluctance of that body to take any action on this matter—and the lateness of the session, I feel that if we want any improvement to the survivor benefit plan this session, we had better accept the Senate bill. It is the best we can do in the short time remaining.

Though we could wish for more, there are some very important improvements contained in that bill.

For example, the revision of the formula for computing the cost to the member participating in the plan is made consistent with the formula for civil service retirees. All retirees, past and future, will benefit from this change.

Second, the 40-percent ceiling on the reduction in the Department of Defense payment to the survivor will be a very significant benefit to many survivor beneficiaries, particularly the survivors of retired enlisted members, but also to survivors of many retired officers—especially in the future.

Another provision would enable a retiree to discontinue participation in the survivor benefit plan when he has been continuously rated totally disabled for 10 years or more, or has been so rated continuously for 5 years following his last release from military service.

A further provision would authorize payment of a survivor annuity to the widow of a retirement eligible member who died on active duty before September 21, 1972—the date of enactment of the survivor benefit plan. This equalizes the treatment of such widows with the treatment accorded widows of retirement eligible servicemen who died on or after that date.

The survivor benefit plant was originally referred to as the "widow's equity plan." When it was devised in the early 1970's, it lived up to its name; it was equitable. Because of liberalizing changes to the social security system and because of

unforeseen inflation, the plan will be inequitable to members who retire in the future—particularly to enlisted members. The costs involved in this legislation—$36 million in fiscal year 1981—are over and above the costs under the current system. But they are not over and above the original intent. These costs represent the cost of returning the plan to an equitable status; not improving the benefit level beyond that originally envisioned.

In summary, the bill, though not as broad in scope as many of us might wish, is a significant improvement.

Finally, Mr. Speaker, I would like to make just one observation. I know that my friend and colleague BOB WILSON has worked long and hard in this general subject area. His insight, initiative and leadership in this area will be sorely missed. I know all my colleagues will agree that when BOB WILSON departs the Congress he will leave behind the survivor benefit plan for military retirees as one of many important monuments to his long and extraordinarily distinguished service to his district, to his Nation, and to its service members.

Mr. Speaker, I urge all Members to support S. 91.

□ 1410

Mr. BENNETT. Mr. Speaker, on behalf of the whole Committee on Armed Services, we join in the fine words just said about our illustrious colleague from California (Mr. WILSON). Indeed, he has performed excellently in this U.S. Congress.

Mr. Speaker, I yield such time as she may desire to the gentlewoman from Maryland (Mrs. BYRON).

Mrs. BYRON. Mr. Speaker, I rise in strong support of S. 91.

The legislation makes needed changes to the survivor benefit plan for military retirees. It reestablishes the status originally intended by the Congress. This intent included a significant amount of cost sharing by the Government. Today, some Members are contributing several times what the plan is worth. This was not the original intent.

I might point out that the House has passed similar legislation in the 94th and 95th Congresses. In fact, in the 95th Congress, the House passed H.R. 3702 by a vote of 391 to 0; although not identical to S. 91, the provisions of that bill would have enacted similar changes.

Mr. Speaker, I urge all Members to support this bill.

● Mr. HARRIS. Mr. Speaker, I rise in strong support of S. 91, the survivor benefit plan amendments.

While I am aware that this version of the bill does not accomplish all the goals set for reform of SBP, S. 91 represents significant progress toward more fully meeting the needs of our servicemen and women who choose SBP as a means of providing for their families.

And it represents a victory for the National Association of Uniformed Services and the Retired Officer's Association, whose consistent and effective advocacy on behalf of America's military personnel was instrumental in gaining this much needed reform.

The complete elimination of the social security offset remains a priority for future SBP reform legislation. But the provision of S. 91 limiting the offset to 40 percent of the survivor benefit annuity is a welcome improvement.

Other major provisions of S. 91:

Reduce the social security offset for a widow with one child to not more than 40 percent of the SBP annuity;

Provide eligibility for SBP annuities to the so-called forgotten widows whose husbands died on active duty prior to 1972 and were retirement eligible;

Eliminate the social security offset for reservists whose active service after 1956 was for periods of less than 30 days;

Allow a waiver of SBP payments for certain 100 percent service connected disabled retirees.

In two previous Congresses, I voted for more comprehensive SBP reform. Both times the House passed substantial improvements in the survivor benefit program, but both times the House-passed legislation died in the other body.

This year, survivor benefit amendments were dislodged from the other body and the House can act quick to institute these reforms.

Much remains to be done in this field and in other areas of interest to retired service personnel. Specifically, I am hopeful that similar progress can be achieved in eliminating the "Catch-62" provision of Federal law which results in the reduction of civil service retirement annuities at age 62 for individuals with active duty military service after 1956.

I am a cosponsor of H.R. 135 which would eliminate Catch-62, and I hope hearings on this important legislation can be scheduled for early next year.

I strongly support S. 91 as an important first step, and I look forward to the continued efforts of the National Association of Uniformed Services and the Retired Officers Association in bringing about elimination of Catch-62, and further improvements in the survivor benefit plan.●

Mr. MITCHELL of New York. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BENNETT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BENNETT) that the House suspend the rules and pass the Senate bill, S. 91, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed, as well as H.R. 7878.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

CORRECTING TECHNICAL ERRORS AND MAKING MINOR SUBSTANTIVE CHANGES TO PUBLIC LAW 95-598

Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 658), to correct technical errors, clarify and make minor substantive changes to Public Law 95-598, as amended.

The Clerk read as follows:

S. 658

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE

SECTION 1. (a) Section 101(2)(D) of title 11 of the United States Code is amended by striking out "or all" immediately after "business".

(b) Section 101(8)(B) of title 11 of the United States Code is amended by striking out the colon at the end thereof and inserting a semicolon in lieu thereof.

(c) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d), 502(e)(2)," immediately after "section".

(d) Section 101(14) of title 11 of the United States Code is amended by inserting "and" immediately after "trust,".

(e) Section 101(24) of title 11 of the United States Code is amended by striking out "stock broker" and inserting "stockbroker" in lieu thereof.

(f) Section 101(26)(B) of title 11 of the United States Code is amended—

(1) in clause (i), by striking out "the kind specified in subparagraph (A)(i) of this paragraph; and" and inserting "a kind specified in subparagraph (A)(i) of this paragraph; or" in lieu thereof; and

(2) in clause (ii) by striking out "separate" each place it appears and inserting "nonpartnership" in lieu thereof and by striking out "the kind specified in subparagraph (A)(ii)" and inserting "a kind specified in subparagraph (A)(i) or (A)(ii)" in lieu thereof.

(g) Section 101 of title 11 of the United States Code is amended—

(1) by redesignating paragraphs (35), (36), (37), (38), (39), and (40) as paragraphs (36), (37), (38), (40), (41), and (42) respectively; and

(2) by adding immediately after paragraph (34) the following new paragraph:

"(35) 'securities clearing agency' means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1), or whose business is confined to the performance of functions of a clearing agency with respect to 'exempted securities', as defined in section 3(12) of such Act (15 U.S.C. 78c(12)) for the purposes of such section 17A;".

(h) Section 101(36)(A)(xii) of title 11 of the United States Code, as so redesignated, is amended by striking out "is the subject of a registration statement" and inserting "is required to be the subject of a registration statement" in lieu thereof.

(i) Section 101(36)(B)(iii) of title 11 of the United States Code, as so redesignated, is amended by striking out "commodity" the second place it appears.

(j) Section 101(36)(B)(vi) of title 11 of the United States Code, as so redesignated, is amended—

(1) by striking out "certificate specified in clause (xii) of subparagraph (A)" and inserting "certificate of a kind specified in subparagraph (A)(xii)" in lieu thereof; and

(2) by striking out "the subject of such a registration statement" and inserting "re-

quired to be the subject of a registration statement" in lieu thereof.

(k) Section 101 of title 11 of the United States Code is amended by inserting immediately after paragraph (38), as so redesignated, the following new paragraph:

"(39) 'State' includes the District of Columbia and Puerto Rico, except for the purpose of who may be a debtor under chapter 9 of this title;".

(l) Section 101(41) of title 11 of the United States Code, as so redesignated, is amended to read as follows:

"(41) 'stockbroker' means person—

"(A) with respect to which there is a customer, as defined in section 741 of this title; and

"(B) that is engaged in the business of effecting transactions in securities—

"(i) for the account of others; or

"(ii) with members of the general public, from or for such person's own account;".

(m) Section 101(42) of title 11 of the United States Code, as so redesignated, is amended by striking out the period and inserting "; and" in lieu thereof.

(n) Section 101 of title 11 of the United States Code is amended by adding at the end thereof the following new paragraph;

"(43) 'United States', when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.".

SEC. 2. Section 103(8) of title 11 of the United States Code is amended by striking out "continued" and inserting "contained" in lieu thereof.

SEC. 3. (a) Section 103(c) of title 11 of the United States Code is amended by striking out "stockholder" and inserting "stockbroker" in lieu thereof.

(b) Section 103(d) of title 11 of the United States Code is amended by striking out "except with respect to section 746(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant".

SEC. 4. (a) Subsections (a)(1), (b)(1), and (c)(1) of section 108 of title 11 of the United States Code are each amended by striking out "and" each place it appears and inserting "or" in lieu thereof.

(b) Subsections (a), (b), and (c) of section 108 of title 11 of the United States Code are each amended by inserting "nonbankruptcy" immediately after "applicable" and immediately after "entered in a".

(c) Section 108(a) of title 11 of the United States Code is amended by inserting ", or any person to whose rights the trustee succeeds," immediately after "debtor".

SEC. 5. (a) Section 109(a) of title 11 of the United States Code is amended by striking out "in the United States," the first place it appears.

(b) Section 100(c)(5)(D) of title 11 of the United States Code is amended by striking out "preference" and inserting "transfer that is avoidable under section 547 of this title" in lieu thereof.

(c) Section 109(d) of title 11 of the United States Code is amended by striking out "stockholder" and inserting "stockbroker" in lieu thereof.

SEC. 6. Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" immediately after "case".

SEC. 7. Section 303(j)(2) of title 11 of the United States Code is amended by striking out "debtors" and inserting "debtor" in lieu thereof.

SEC. 8. Section 321(b) of title 11 of the United States Code is amended by striking out "a case" and inserting "the case" in lieu thereof.

SEC. 9. Section 322(b)(1) of title 11 of the United States Code is amended by inserting "required to be" immediately after "bond".

SEC. 10. (a) Section 326(a) of title 11 of the United States Code is amended by inserting "of this title" immediately after "7 or 11".

(b) Section 326(d) of title 11 of the United States Code is amended to read as follows:

"(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title.".

SEC. 11. Section 327(a) of title 11 of the United States Code is amended by inserting "or an examiner" immediately after "trustee" the first place it appears.

SEC. 12. Section 328(a) of title 11 of the United States Code is amended by striking out "unanticipatable" and inserting "not capable of being anticipated" in lieu thereof.

SEC. 13. (a) Section 320(a) of title 11 of the United States Code is amended by striking out "and" the first place it appears and inserting "or" in lieu thereof.

(b) Section 320(b)(1) of title 11 of the United States Code is amended by striking out "trustee" and inserting "estate" in lieu thereof.

SEC. 14. Section 330(a) of title 11 of the United States Code is amended—

(1) by striking out "to any parties in interest and to the United States trustee"; and

(2) in paragraph (1), by striking out "time, the nature, the extent, and the value of such services" and inserting "nature, the extent, the value of such services, the time spent on such services" in lieu thereof.

SEC. 15. Section 341 of title 11 of the United States Code is amended to read as follows:

"§ 341. Notice

"There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title.".

SEC. 16. (a) Section 342 of title 11 of the United States Code is amended to read as follows:

"§ 342. Meetings of creditors and equity security holders

"(a) In a case under chapter 7 or 11 of this title, within a reasonable time after the order for relief in a case under this title, there shall be a meeting of creditors.

"(b) In a case under chapter 13 of this title, the court may order a meeting of creditors.

"(c) The court may order a meeting of any equity security holders.

"(d) The court may not preside at, and may not attend, any meeting under this section.".

(b) The table of sections for chapter 3 of title 11 of the United States Code is amended by striking out the items relating to sections 341 and 342 and inserting in lieu thereof the following:

"341. Notice.
"342. Meetings of creditors and equity security holders.".

SEC. 17. Section 343 of title 11 of the United States Code is amended—

(1) by striking out "341(a)" and inserting "342" in lieu thereof; and

(2) by striking out "examiner" the last place it appears and inserting "examine" in lieu thereof.

SEC. 18. Section 345 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) All entities with which such moneys are deposited or invested are authorized to deposit or invest such moneys as may be required under this section.".

SEC. 19 (a) Section 346(c)(2) of title 11 of the United States Code is amended by striking out "operation" and inserting "corporation" in lieu thereof:

(b) Section 346(g)(2) of title 11 of the United States Code is amended by striking out ", as adjusted under subsection (j)(5) of this section,".

(c) Section 346(j) of title 11 of the United States Code is amended by striking out paragraphs (3), (4), (5), (6), and (7).

SEC. 20. Section 347(a) of title 11 of the United States Code is amended by striking out "under chapter 129 of title 28" and inserting "under section 725 or title 31" in lieu thereof.

SEC. 21. Section 348(b) of title 11 of the United States Code is amended by striking out "means" and inserting "refers to" in lieu thereof.

SEC. 22. Section 349(b) of title 11 of the United States Code is amended—

(1) in paragraph (1)(B), by striking out "522(i)(2)" and inserting "522(h)(2)" in lieu thereof; and

(2) in paragraph (2), by striking out "522(i)(1)" and inserting "522(h)(2)" in lieu thereof.

SEC. 23. Section 350(b) of title 11 of the United States Code is amended by striking out "a" and inserting "A" in lieu thereof.

SEC. 24. Section 361(1) of title 11 of the United States Code is amended by inserting "a cash payment or" immediately after "make".

SEC. 25. (a) Section 362(a) of title 11 of the United States Code is amended—

(1) by inserting "and section 365 of this title" immediately after "of this section";

(2) in paragraph (1), by inserting "action or" immediately after "other"; and

(3) in paragraph (3), by inserting "or to exercise control over property of the estate" immediately after "estate" the second place it appears.

(b) Section 362(b) of title 11 of the United States Code is amended—

(1) in paragraph (3), by inserting "or to the extent that such act is accomplished within the period provided under section 547(e)(2) of this title" immediately after "title";

(2) in paragraph (6), by striking out "that are" and inserting "regarding" in lieu thereof, by striking out "commodity" immediately before the semicolon the following: ", or, under subsection (a) of this section, of the setoff of any mutual debt and claim of a commodity broker, forward contract merchant, stockbroker, or securities clearing agency against the debtor for a margin payment, as defined in section 741 or section 761 of this title, or settlement payment arising out of a commodity contract, as defined in section 761 of this title, forward contract, or securities contract, as defined in section 741 of this title, against cash, a security, or other property held by such commodity broker, forward contract merchant, stockbroker, or securities clearing agency to margin, guarantee, or secure such commodity contract, forward contract, or securities contract";

(3) in paragraph (7), by striking out "said" and inserting "the" in lieu thereof and by striking out "or" the last place it appears;

(4) in paragraph (8), by striking out the period and inserting a semicolon in lieu thereof; and

(5) by adding at the end thereof the following new paragraphs:

"(9) under subsection (a) of this section, of the filing of any continuation statement or the refiling of any notice of a Federal tax lien required by nonbankruptcy law to maintain perfection of a security interest or the filing of such tax lien, properly filed under such law before the date of the filing of the petition; or

"(10) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument.".

(c) Section 362(c)(2)(B) of title 11 of the United States Code is amended by striking out "and" and inserting "or" in lieu thereof.

(d) Section 362(d)(2) of title 11 of the United States Code is amended—

(1) by inserting "under subsection (a) of this section" immediately after "property" the first place it appears; and

(2) in subparagraph (B), by inserting "in a case under chapter 11 of this title or to an effective plan in a case under chapter 13 of this title, as the case may be" immediately after "reorganization.".

(e) Section 362(f) of title 11 of the United States Code is amended by striking out "The" and inserting "Upon request of a party in interest, the", and by inserting "with or" immediately after "court,".

SEC. 26. (a) Section 363(a) of title 11 of the United States Code is amended by inserting "whenever acquired" immediately after "equivalents" and by inserting "and includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in section 552(b) of this title whether existing before or after the commencement of a case under this title" immediately after "interest".

(b) Section 363(e) of title 11 of the United States Code is amended.

(1) by inserting ", with or without a hearing," immediately after "court"; and

(2) by striking out the last sentence.

(c) Section 363(f)(3) of title 11 of the United States Code is amended by striking out "such interest" the second place it appears and inserting "all liens on such property" in lieu thereof.

(d) Section 363(h) of title 11 of the United States Code is amended by striking out "immediately before" and inserting "at the time of" in lieu thereof.

(e) Section 363(j) of title 11 of the United States Code is amended by striking out compensation" and inserting compensation" in lieu thereof.

(f) Section 363(k) of title 11 of the United States Code is amended by striking out "if the holder" and inserting "the holder of such claim may bid at such sale, and, if such holder" in lieu thereof.

(g) Section 363(l) of title 11 of the United States Code is amended—

(1) by striking out "conditions" and inserting "condition" in lieu thereof;

(2) by striking out "a taking" and inserting "or the taking" in lieu thereof; and

(3) by striking out "interests" and inserting interest" in lieu thereof.

(h) Section 363(n) of title 11 of the United States Code is amended—

(1) by striking out "void" and inserting "avoid" in lieu thereof;

(2) by striking out "voiding" and inserting "avoiding" in lieu thereof; and

(3) by amending the last sentence to read as follows: "In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.".

(i) Section 363 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(o) In any hearing under this section—

"(1) the trustee has the burden of proof on the issue of adequate protection; and

"(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.".

SEC. 27. (a) Section 365(b)(2)(A) of title 11 of the United States Code is amended by inserting "or an insider" immediately after "the debtor".

(b) Section 365(c)(1)(A) of title 11 of the United States Code is amended—

(1) by striking out "the trustee" and inserting "an entity other than the debtor or the debtor in possession" in lieu thereof; and

(2) by inserting "by virtue of the nature of such contract or lease" immediately before ", whether".

(c) Paragraphs (1) and (2) of section 365(d) of title 11 of the United States Code are each amended by striking out "In" and inserting "Notwithstanding section 108(b) of this title, in" in lieu thereof.

(d) Section 365(d)(2) of title 11 of the United States Code is amended by inserting ", subject to the court's approval," immediately after "trustee" the first place it appears.

(e) Section 365(e) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "or lease" each place it appears and inserting ", lease, or applicable law" in lieu thereof; and

(2) in paragraph (2), by striking out "the trustee" and inserting "an entity other than the debtor or the debtor in possession" in lieu thereof.

(f) Section 365(f)(3) of title 11 of the United States Code is amended by inserting a comma immediately after "applicable law".

(g) Section 365(h)(1) of title 11 of the United States Code is amended by striking out "treat the lease" and inserting "treat such lease" in lieu thereof.

(h) Section 365(h)(2) of title 11 of the United States Code is amended by inserting "under such lease" immediately after "debtor".

(i) Section 365(i)(2)(A) of title 11 of the United States Code is amended by striking out the comma after "may" and by inserting "under such contract" immediately after "debtor".

(j) Section 365(j) of title 11 of the United States Code is amended by inserting "to or for the benefit of the debtor" immediately before the period at the end thereof.

SEC. 28. Section 366(a) of title 11 of the United States Code is amended by inserting "of the commencement of a case under this title or" immediately after "basis".

SEC. 29. Section 501(d) of title 11 of the United States Code is amended by inserting "502(e)(2)," immediately before "502(f)"

SEC. 30. (a) Section 502(a) of title 11 of the United States Code is amended by inserting "general" immediately before "partner".

(b) Section 502(b) of title 11 of the United States Code is amended—

(1) by inserting "(e)(2)," immediately after "subsections";

(2) by inserting "in lawful currency of the United States" immediately after "claim" the second place it appears;

(3) in paragraph (1), by striking out ", and unenforceable against" and inserting "and" in lieu thereof;

(4) in paragraph (2), by inserting "other than unmatured interest due to an original issue discount of less than one-half of 1 percent of the stated redemption price at maturity multiplied by the number of full years from the date of original issue to maturity" immediately after "interest";

(5) by striking out paragraph (3) and redesignating paragraphs (4), (5), (6), (7), (8), and (9) as paragraphs (3), (4), (5), (6), (7), and (8), respectively;

(6) in paragraph (3), as so redesignated, by inserting "the" immediately after "exceeds";

(7) in paragraph (5), as so redesignated, by striking out "the claim" and inserting "such claim" in lieu thereof, by striking out the comma after "petition", and by inserting "or 523(a)(6)" immediately after "523(a)(5)";

(8) by amending paragraph (6), as so redesignated, to read as follows:

"(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

"(A) without acceleration, the greater of—

"(i) the rent reserved for the rental year during which such termination occurs; or

"(ii) 15 percent of the rent reserved for the remaining term of such lease, not to exceed the rent reserved for the three years commencing with the rental year during which such termination occurs; plus

"(B) any unpaid rent due under such lease, without acceleration, on the earlier of—

"(i) the date of the filing of the petition; or

"(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property;"; and

(9) in paragraph (7), as so redesignated, by inserting "the claim of an employee" immediately before "for damages", by striking out "and" in subparagraph (A)(i) and inserting "or" in lieu thereof, by striking out "the" the first place it appears in subparagraph (B) and inserting "any" in lieu thereof, and by inserting a comma immediately after "such contract" in subparagraph (B).

(c) Section 502(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "the" before "fixing" and by striking out "closing" and inserting "administration" in lieu thereof; and

(2) in paragraph (2), by inserting "right to payment arising from a" immediately after "any" and by striking out "if such breach gives rise to a right to payment".

(d) Section 502(d) of title 11 of the United States Code is amended by striking out "section 542, 543, 550, or 553 of", by striking out "section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of", and by striking out "section 522(i), 542, 543, 550, or 553 of".

(e) Section 502(e)(1) of title 11, United States Code, is amended—

(1) by striking out "and (b)" and inserting ", (b), and (c)" in lieu thereof and by striking out the commas immediately before and immediately after "or has secured";

(2) in subparagraph (B), by inserting "or disallowance" immediately after "allowance"; and

(3) in subparagraph (C), by striking out "requests subrogation" and inserting "asserts a right of subrogation to the rights of such creditor" in lieu thereof, and by striking out "to the rights of such creditor".

(f) Section 502(h) of title 11 of the United States Code is amended by striking out "522(i)" and inserting "522" in lieu thereof.

(g) Section 502(i) of title 11 of the United States Code is amended to read as follows:

"(i) There shall be allowed a claim for any tax liability arising from payment from the estate of a claim for wages, salaries, or commissions, including vacation, severance, or sick pay, whether or not a proof of such claim is filed.".

(h) Section 502(j) of title 11 of the United States Code is amended to read as follows:

"(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.".

SEC. 31. Section 503(b) of title 11 of the United States Code is amended—

(1) by striking out the comma immediately after "be allowed";

(2) in paragraph (1)(C), by striking out the comma immediately after "credit", and by inserting "incurred by the estate" immediately after "paragraph";

(3) in paragraph (2), by inserting "(a)" immediately after "330";

(4) in paragraph (3), by inserting a comma immediately after "paragraph (4) of this subsection";

(5) in paragraph (3)(C), by striking out the comma immediately after "case";

(6) in paragraph (5), by striking out "and" immediately after the semicolon;

(7) in paragraph (6), by striking out the period and inserting "; and" in lieu thereof; and

(8) by adding at the end thereof the following new paragraph:

"(7) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (2) of this subsection, incurred by a committee appointed under section 1102 of this title.".

SEC. 32. Section 505(a) to title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out ", whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction" and inserting "or paid" in lieu thereof;

(2) in paragraph (2)(A), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out "or legality" and inserting ", legality, or liability" in lieu thereof; and

(3) in paragraph (2)(B)(i), by striking out "and" and inserting "or" in lieu thereof.

SEC. 33. (a) Section 506(a) of title 11 of the United States Code is amended to read as follows:

"(a) An allowed claim of a creditor either secured by a lien on property in which the estate has an interest or that is subject to setoff under section 553 of this title is a secured claim to the extent of the value of such lien or to the extent of the amount subject to setoff, as the case may be, and, except to the extent that such creditor does not have recourse under any agreement or applicable nonbankruptcy law against the debtor on account of such claim, is an unsecured claim to the extent that the value of such lien or the amount so subject to setoff is less than the amount of such allowed claim. For the purpose of this subsection, value shall be determined in light of the purpose of the valuation, and of any disposition proposed for such property and in conjunction with any hearing on disposition or use or on a plan affecting such creditor's interest.".

(b) Section 506(b) of title 11 of the United States Code is amended by inserting "for" immediately after "provided" and by inserting "to such extent such provision is enforceable under applicable nonbankruptcy law" immediately before the period at the end thereof.

(c) Paragraphs (1) and (2) of section 506(d) of title 11 of the United States Code are amended to read as follows:

"(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

"(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.".

SEC. 34. (a) Section 507(a) of title 11 of the United States Code is amended—

(1) in paragraph (3), by inserting a comma after "severance";

(2) in paragraph (4), by striking out "employee benefit plans" and inserting "an employee benefit plan" in lieu thereof;

(3) in paragraph (4)(B)(i), by inserting "each" immediately after "covered by";

(4) in paragraph (6), by inserting "only" immediately after "units,";

(5) in paragraph (6)(A), by amending clauses (ii) and (iii) to read as follows:

(ii) assessed within 240 days before the date of the filing of the petition; or

"(iii) not assessed before the commencement of the case but not prohibited, at the time of the commencement of the case, from being assessed under the applicable statute of limitations, other than a tax or customs duty of a kind excepted from discharge solely under section 523(a)(1)(B) or 523(a)(1)(C) of this title;"; and

(6) in paragraph (6)(D), by striking out "earned from the debtor" and inserting ", or paid" in lieu thereof and by striking out "whether or not actually paid before such date,".

(b) Section 507(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate or if the court finds that there is adequate protection of such interest by a lien on such property and if, notwithstanding such protection, the holder of such interest has a claim allowable under section 503(b)(1) of this title arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such holder's allowable claim shall have priority over every other claim of a kind specified in subsection (a)(1) of this section.".

(c) Section 507(c) of title 11 of the United States Code is amended by striking out "shall be treated the same" and inserting "has the same priority" in lieu thereof.

(d) Section 507(d) of title 11 of the United States Code is amended to read as follows:

"(d) If a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), or (a)(6) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such subsection, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder.".

SEC. 35. (a) Section 509(a) of title 11 of the United States Code is amended by striking out "subsections (b) and" and inserting "subsection (b) or" in lieu thereof, and by inserting "against the debtor" immediately after "a creditor".

(b) Section 509(b)(1) of title 11 of the United States Code is amended by striking out "of a" and inserting "of such" in lieu thereof.

(c) Section 509(c) of title 11 of the United States Code is amended by striking out "section 509 of this title" and inserting "this section" in lieu thereof.

SEC. 36. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security.".

SEC. 37. Section 521(1) of title 11 of the United States Code is amended to read as follows:

"(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;".

SEC. 38. (a) Section 522(a)(2) of title 11 of the United States Code is amended by inserting ", or with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate" immediately after "petition".

(b) Section 522(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either—

"(1) property wherever located of a kind specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2) of this subsection specifically does not so authorize; or

"(2) any property or interest of the debtor in property, as of the date of the filing of the petition, to the extent that such property or interest is exempt or not subject to process or levy under Federal law, other than subsection (d) of this section, or is exempt or not subject to levy by a creditor, of only the debtor, on a simple contract whether or not such a creditor exists, under State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place.".

(c) Section 522(c) of title 11 of the United States Code is amended to read as follows:

"(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

"(1) a debt of a kind specified in section 523(a)(1), 523(a)(5), or 523(a)(6) of this title; or

"(2) a debt secured by a lien that is—

"(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

"(ii) not void under section 506(d) of this title; or

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(2) of this title.".

(d) Section 522(d)(3) of title 11 of the United States Code is amended by striking out "that are".

(e) Section 522(e) of title 11 of the United States Code is amended—

(1) by striking out "exemptions" and inserting "an exemption" in lieu thereof;

(2) by striking out "with respect to such claim against property that" and inserting "to the extent of such claim with respect to property" in lieu thereof;

(3) by striking out "or (h) of this section to avoid a transfer, under subsection (g)" and by inserting ", (g), (h)," in lieu thereof; and

(4) by striking out "to exempt property, or under subsection (1) of this section to recover property or to preserve a transfer,".

(f) Section 522(f) of title 11 of the United States Code is amended—

(1) by striking out "exemptions" and inserting "an exemption" in lieu thereof; and

(2) in paragraph (2)(A), by inserting "jewelry, or" immediately after "crops,", and striking out ", or jewelry that are" after "musical instruments".

(g) Section 522(g) of title 11 of the United States Code is amended to read as follows:

"(g) Notwithstanding any waiver of an exemption, the debtor may avoid a transfer or recover a setoff of property of the debtor and exempt such property under subsection (1) of this section, whether or not the trustee attempts to recover such property or avoid such transfer, if—

"(1)(A) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title, or recoverable by the trustee under section 553 of this title;

"(B) such transfer was not a voluntary transfer of such property by the debtor; and

"(C) the debtor did not conceal such property; or

"(2) such transfer is in satisfaction of a lien of a kind specified in subsection (f)(2) of this section.".

(h) Section 522(h) of title 11 of the United States Code is amended to read as follows:

"(h)(1) The debtor's power to avoid a transfer or recover a setoff under subsection (f) or (g) of this section is subject to the limitations of section 550 of this title to which the trustee's power to avoid such a transfer or recover such a setoff under this title is subject.

"(2) Notwithstanding section 551 of this title, a transfer avoided or property recovered by the trustee or by the debtor may be preserved for the benefit of the debtor, if—

"(A)(i) such property otherwise would be exempt under subsection (1) of this section;

"(ii) such transfer was not a voluntary transfer of such property by the debtor; and

"(iii) the debtor did not conceal such property; or

"(B) such transfer is of a kind specified in subsection (f) of this section.".

(i) Section 522(i) of title 11 of the United States Code is amended to read as follows:

"(i) The debtor may exempt under subsection (h) of this section property disencumbered or recovered under subsection (f), (g), or (h) of this section to the extent the debtor could have exempted such property under subsection (b) of this section had such property not been encumbered, transferred, or set off.".

(j) Section 522(j) of title 11 of the United States Code is amended to read as follows:

"(j) The debtor may exempt a particular kind of property under subsection (1) of this section only to the extent that such exemption, plus the debtor's already claimed exemption of the same kind of property under subsection (b) of this section, does not exceed the limitation specified for such kind of property in subsection (b) of this section.".

(k) Section 522(k) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "(g)" and inserting "(1)" in lieu thereof; and

(2) in paragraph (2), by striking out "(h)" and inserting "(g)" in lieu thereof, and by striking out "or of recovery of property under subsection (1)(1) of this section,".

(l) Section 522(l) of title 11 of the United States Code is amended by striking out ", or may claim property as exempt from property of the estate" and by inserting after the second sentence thereof the following new sentence: "In the event of the debtor's death, a dependent of the debtor may claim property as exempt from property of the estate,".

SEC. 39. (a) Section 523(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by striking out "obtaining" each place it appears, and by striking out "refinance of credit," and inserting "refinancing of credit, to the extent obtained" in lieu thereof;

(2) in paragraph (3), by striking out "(6)" each place it appears and inserting "(7)" in lieu thereof;

(3) by amending paragraph (5) to read as follows:

"(5) to a spouse, former spouse, or child of the debtor, for support of such child, but not to the extent that such debt includes a liability designated as support unless such liability actually is in the nature of support;";

(4) by redesignating paragraphs (6), (7), (8), and (9) as paragraphs (7), (8), (9), and (10), respectively; and

(5) by inserting after paragraph (5) the following new paragraph:

"(6) to a spouse or former spouse of the debtor for alimony to, maintenance for, or support of such spouse, but not to the extent that such debt includes a liability designated as alimony, maintenance, or support, unless such liability actually is in the nature of alimony, maintenance, or support;".

(b) Section 523(b) of title 11 of the United States Code is amended by striking out "(8)" and inserting "(9)" in lieu thereof.

(c) Section 523(c) of title 11 of the United States Code is amended by inserting "of a kind" immediately after "debt" the first time it appears, and by striking out "(6)" each place it appears and inserting "(7)" in lieu thereof.

SEC. 40. (a) Section 524(a) of title 11 of the United States Code is amended—

(1) by striking out "any act" each place it appears and inserting "an act" in lieu thereof; and

(2) in paragraph (2), by inserting a comma immediately after "recover", by inserting "wherever located and by whomever held, whether directed toward the debtor or any other entity, and" immediately after "property of the debtor,", and by inserting ", except to the extent provided under section 522(c) of this title" immediately after "waived".

(b) Section 524(c)(4)(B)(ii) of title 11 of the United States Code is amended by striking out "redemption under section 722 of this title" and inserting "the terms and conditions of redemption by the debtor" in lieu thereof.

(c) Section 524(d) of title 11 of the United States Code is amended—

(1) in paragraph (1)(B)(ii), by inserting "and" immediately after the semicolon; and

(2) in paragraph (2), by striking out "subsection" the second time it appears and inserting "section" in lieu thereof.

SEC. 41. Section 525 of title 11 of the United States Code is amended by inserting "the" immediately before "Perishable".

SEC. 42. (a) Section 541(a) of title 11 of the United States Code is amended—

(1) by striking out "under" the second place it appears;

(2) by inserting "and by whomever held" immediately after "located";

(3) in paragraph (3), by inserting "329(b), 363(n)," immediately after "section";

(4) in paragraph (5), by striking out "An" and inserting "Any" in lieu thereof; and

(5) in paragraph (6), by striking out "and" and inserting "or" in lieu thereof.

(b) Section 541(c) of title 11 of the United States Code is amended—

(1) by inserting "in an agreement, transfer instrument, or applicable law" immediately after "provision"; and

(2) in paragraph (1)(B), by striking out "the taking" and inserting "taking" in lieu thereof, and by inserting "before such commencement" immediately after "custodian".

(c) Section 541(d) of title 11 of the United States Code is amended by inserting "(1)" immediately after "(a)".

(d) Section 541(e) of title 11 of the United States Code is repealed.

SEC. 43. Section 542(e) of title 11 of the United States Code is amended by inserting "to turn over or" immediately before "disclose".

SEC. 44. (a) Section 543(a) of title 11 of the United States Code is amended by inserting ", product, offspring, rents, or profits" immediately after "proceeds".

(b) Section 543(b) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "held by or" immediately after "debtor", and by inserting ", product, offspring, rents, or profits" immediately after "proceeds"; and

(2) in paragraph (2), by inserting ", product, offspring, rents, or profits" immediately after "proceeds".

(c) Section 543(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or proceeds, product, offspring, rents, or profits of such property" immediately after "property"; and

(2) in paragraph (3), by inserting "that has been" immediately before "approved".

(d) Section 543 of title 11 of the United States Code is amended by adding at the end thereof the following new subsections:

"(e) For purposes of this section, custodian shall not include an assignee under a general assignment for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, but the trustee or the court may nevertheless, and at any time, require such an assignee to file an accounting as set forth in subsection (b)(2) of this section.

"(f) For purposes of subsection (e), the term 'general assignment for the benefit of the debtor's creditors' means an assignment which is for the benefit of all of the debtor's creditors.".

SEC. 45. (a) Section 544(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "such" immediately after "obtained";

(2) in paragraph (2), by striking out "; and" and inserting "; or" in lieu thereof; and

(3) in paragraph (3), by inserting ", other than fixtures," immediately after "property", and by inserting "and has perfected such transfer" immediately after "purchaser" the second place it appears.

SEC. 46. Section 545 of title 11 of the United States Code is amended—

(1) in paragraph (1)(A), by striking out "is" immediately after "debtor";

(2) in paragraph (1)(C), by striking out "apponted" and inserting "appointed or authorized to take" in lieu thereof; and

(3) in paragraph (2), by striking out "on the date of the filing of the petition" each place it appears and inserting "at the time of the commencement of the case" in lieu thereof.

SEC. 47. (a) Section 546(a) of title 11 of the United States Code is amended in paragraph (1) by striking out "and" and inserting "or" in lieu thereof.

(b) Section 546(b) of title 11 of the United States Code is amended by striking out "the trustee under section 544, 545, or" and inserting "a trustee under sections 544, 545, and" in lieu thereof.

(c) Section 546(c) of title 11 of the United States Code is amended—

(1) by striking out "the trustee" and inserting "a trustee" in lieu thereof;

(2) by striking out "right" the first place it appears;

(3) by inserting "of goods" immediately after "seller" the first place it appears;

(4) by striking out "of goods" immediately after "business," and inserting "that has sold goods" in lieu thereof; and

(5) in paragraph (2), by inserting "the" immediately after "if", and by striking out "an administrative expense" and inserting "a claim of a kind specified in section 503(b) of this title" in lieu thereof.

(d) Section 546 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741 or 761 of this title, deposit, or settlement payment, made by or to a commodity broker, forward contract merchant, stockbroker, or securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1) of this title.".

SEC. 48. (a) Section 547(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by inserting "in-

cluding proceeds of such property," immediately after "law,"; and

(2) in paragraph (4), by striking out ", without penalty" and by inserting "without penalty" immediately after "payable".

(b) Section 547(b) of title 11 of the United States Code is amended by striking out "of property of the debtor" and inserting "of an interest of the debtor in property" in lieu thereof.

(c) Section 547(c) of title 11 of the United States Code is amended—

(1) in paragraph (2)(A), by inserting "by the debtor" immediately after "incurred";

(2) in paragraph (2)(C), by striking out "affairs of" and inserting "affairs between" in lieu thereof;

(3) in paragraph (3), by striking out "of" the first place it appears and inserting "that creates" in lieu thereof;

(4) in paragraph (3)(B), by inserting "on or" immediately after "perfected" and by striking out "such security interests attaches" and inserting "the debtor receives possession of such property" in lieu thereof; and

(5) in paragraph (5), by striking out "of" the first place it appears and inserting "that creates" in lieu thereof and by striking out "all security interests" and inserting "all such security interests" in lieu thereof.

(d) Section 547(d) of title 11 of the United States Code is amended—

(1) by striking out "A" and inserting "The" in lieu thereof;

(2) by inserting "an interest in" immediately after "transfer of";

(3) by inserting "to or for the benefit of a surety" immediately after "transferred"; and

(4) by inserting "such" immediately after "reimbursement of".

(e) Section 547(e) of title 11 of the United States Code is amended:

(1) by amending paragraph (1) to read as follows:

"(1) For the purpose of this section, a transfer of property is perfected when either a bona fide purchaser from the debtor of real property, other than fixtures, or a creditor on a single contract, against whom applicable law permits such transfer to be perfected, cannot acquire an interest in such real property or a judicial lien on personal property that is superior to the interest of the transferee."; and

(2) in paragraph (2)(C)(i), by striking out "and" and inserting "or" in lieu thereof.

(f) Section 547 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.".

SEC. 49. (a) Section 548(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "occurred" and inserting "was made" in lieu thereof; and

(2) in paragraph (2)(B)(ii), by inserting "or a transaction" immediately after "engaged in business".

(b) Section 548(b) of title 11 of the United States Code is amended by striking out "the debtor" each place its appears and inserting "such debtor" in lieu thereof.

(c) Section 548(c) of title 11 of the United States Code is amended—

(1) by inserting "or may retain" immediately after "lien on"; and

(2) by striking out ", may retain any lien transferred,".

(d) Section 548(d)(1) of title 11 of the United States Code is amended by striking out "becomes so far" and inserting "is so" in lieu thereof, by striking out "such transfer could have been" and inserting "applicable law permits such transfer to be" in lieu thereof, and by striking out "occurs" and inserting "is made" in lieu thereof.

(e) Section 548(d)(2)(B) of title 11 of the United States Code is amended by striking out "or forward contract merchant" and inserting ", forward contract merchant stockbroker, or securities clearing agency" in lieu thereof and by striking out "761(15)" and inserting "741 or 761" in lieu thereof.

SEC. 50. (a) Section 549(a) of title 11 of the United States Code is amended—

(1) by striking out "(b) and (c)" and inserting "(b) or (c)" in lieu theerof; and

(2) in paragraph (2)(A), by inserting "only" immediately after "authorized".

(b) Section 549(b) of title 11 of the United States Code is amended—

(1) by inserting "the trustee may not avoid under subsection (a) of this section" immediately after "involuntary case,";

(2) by striking out "that occurs" and inserting "made" in lieu thereof;

(3) by striking out "is valid against the trustee to the extent of" and inserting "to the extent" in lieu thereof; and

(4) by inserting "is" immediately before "given".

(c) Section 549(c) of title 11 of the United States Code is amended to read as follows:

"(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a conveyance of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.".

(d) Section 549(d)(1) of title 11 of the United States Code is amended by striking out "and" and inserting "or" in lieu thereof.

SEC. 51. (a) Section 550(a) of title 11 of the United States Code is amended—

(1) by inserting "363(n)," immediately before "544";

(2) by inserting "553(b)" immediately after "549,"; and

(3) in paragraph (2), by striking out "immediate or mediate transferee of" and inserting "subsequent transferee of" in lieu thereof.

(b) Section 550(b)(2) of title 11 of the United States Code is amended by striking out "immediate or mediate" and inserting "subsequent" in lieu thereof.

(c) Section 550(d) of title 11 of the United States Code is amended—

(1) in paragraph (1)(A), by inserting "or accruing to" immediately after "by";

(2) in paragraph (1)(B), by striking out "value" and inserting "the value of such property" in lieu thereof;

(3) in paragraph (2), by striking out subparagraphs (D) and (E) and inserting in lieu thereof the following:

"(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the estate; and"; and

(4) in paragraph (2), by redesignating subparagraph (F) as subparagraph (E).

(d) Section 550(e)(1) of title 11 of the United States Code is amended by striking out "and" and inserting "or" in lieu thereof.

SEC. 52. Section 551 of title 11 of the United States Code is amended by striking out "but only with respect to property of the estate".

SEC. 53. Section 552(b) of title 11 of the United States Code is amended—

(1) by inserting "522," immediately after "506(c),";

(2) by striking out "a secured party enter" and inserting "an entity entered" in lieu thereof; and

(3) by striking out "except to the extent" and inserting "except to any extent" in lieu thereof.

SEC. 54. (a) Section 553(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "other than under section 502(b)(3) of this title";

(2) in paragraph (2), by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraph:

"(B)(i) on or after 90 days before the date of the filing of the petition;

"(ii) while the debtor was insolvent; and

"(iii) for the purpose of obtaining a setoff against the debtor, other than in the ordinary course of business or financial affairs between the debtor and such creditor, or";

(3) in paragraph (3)(A) by inserting "on or" immediately before "after"; and

(4) in paragraph (3)(C), by inserting "other than in the ordinary course of business or financial affairs between the debtor and such creditor" immediately after "debtor".

(b) Section 553(b)(1) of title 11 of the United States Code is amended—

(1) by striking out "or 365(h)(1)" and inserting ", 365(h)(2), or 365(i)(2)" in lieu thereof;

(2) by inserting "or that occurs in the ordinary course of business or financial affairs between the creditor making such setoff and the debtor" immediately after "of this title"; and

(3) in subparagraph (A), by striking out "and" and inserting "or" in lieu thereof.

SEC. 55. (a) Subsections (a) and (b) of section 554 of title 11 of the United States Code are each amended by inserting "and benefit" immediately after "value".

(b) Section 554(c) of title 11 of the United States Code is amended to read as follows:

"(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is deemed abandoned to the debtor and deemed administered for purposes of section 350 of this title.".

(c) Section 554(d) of title 11 of the United States Code is amended by striking out "section (a) or (b) of".

SEC. 56. (a) Chapter 5 of title 11 of the United States Code is amended by adding at the end thereof the following new section:

"§ 555. Defenses of the estate

"The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.".

(b) The table of sections for chapter 5 of title 11 of the United States Code is amended by adding at the end thereof the following new item:

"555. Defenses of the estate.".

SEC. 57. The table of sections for chapter 7 of title 11 of the United States Code is amended by striking out "Successor" in the item relating to section 703 and inserting "successor" in lieu thereof.

SEC. 58. (a) Section 702(b) of title 11 of the United States Code is amended—

(1) by inserting "held" immediately after "meeting of creditors"; and

(2) by striking out "341" and inserting "342" in lieu thereof.

(b) Section 702(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "of a kind" immediately after "claims"; and

(2) in paragraph (2), by inserting "a" immediately after "for".

(c) Section 702(d) of title 11 of the United States Code is amended by striking out "subsection (c) of".

SEC. 59. Section 703(b) of title 11 of the United States Code is amended by striking out "specified in section 701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee" and inserting "and subject to the provisions of section 701 of this title" in lieu thereof.

SEC. 60. Section 704 of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "up";

(2) in paragraph (7), by striking out "with the court and"; and

(3) by amending paragraph (8) to read as follows:

"(8) file interim reports of the condition of the estate and make and file a final report and account of the administration of the estate with the court.".

SEC. 61. Section 705(a) of title 11 of the United States Code is amended by striking out "under section 341(a)" and inserting "of creditors held under section 342" in lieu thereof.

SEC. 62. Paragraphs (1) and (2) of section 707 of title 11 of the United States Code are each amended by striking out "and" inserting "or" in lieu thereof.

SEC. 63. Section 722 of title 11 of the United States Code is amended to read as follows:

"§ 722. Redemption

"(a) The debtor may redeem property under the provisions of section 524(c) of this title or subsection (b) of this section.

"(b) An individual debtor may, whether or not such debtor has waived such right, redeem from the holder of a lien that secures a dischargeable consumer debt, tangible personal property intended primarily for personal, family, or household use, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying such holder at the time of redemption before the case is closed the amount of such holder's allowed secured claim.".

SEC. 64. (a) Section 723(a) of title 11 of the United States Code is amended by striking out "title" and inserting "chapter" in lieu thereof.

(b) Section 723(c) of title 11 of the United States Code is amended—

(1) by strilkng out "such case" each place it appears and inserting "such partner's case" in lieu thereof;

(2) by striking out "be property" and inserting "by property" in lieu thereof;

(3) by striking out "726(a)" and inserting "726" in lieu thereof; and

(4) by striking out "the kind" and inserting "a kind" in lieu thereof.

SEC. 65. (a) Section 724(b) of title 11 of the United States Code is amended—

(1) by striking out "and" the first place it appears and by striking out "taxes" and inserting "a tax" in lieu thereof;

(2) in paragraph (1), by striking out "such tax lien" and inserting "the lien securing such tax claim" in lieu thereof;

(3) in paragraph (2), by striking out "claims" and inserting any holder of a claim of a kind" in lieu thereof;

(4) in paragraph (3), bv inserting "tax" immediately after "allowed" and by striking out "that is";

(5) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting immediately after paragraph (4) the following new paragraph:

"(5) Fifth, to any holder of a claim of a kind specified in sections 507(a)(1), 507(a)(2), 507(a)(3), 507(a)(4), and 507(a)(5) of this title, to the extent that such claim is not paid under paragraph (2) of this subsection;";

(6) in paragraph (6), as so redesignated, by striking out "fifth" and inserting "sixth" in lieu thereof, by inserting "tax" after "allowed", and by striking out "tax" immediately after "such" the third place it appears; and

(7) in paragraph (7), as so redesignated, by striking out "sixth" and inserting "seventh" in lieu thereof.

(b) Section 724(c) of title 11 of the United States Code is amended by striking out "creditor" and inserting "holder of a claim" in lieu thereof and by striking out "creditors" each place it appears and inserting "holders" in lieu thereof.

(c) Section 724(d) of title 11 of the United States Code is amended by striking out "whose priority" and inserting "the priority of which" in lieu thereof and by inserting "if such lien were" immediately after "the same as".

SEC. 66. Section 725 of title 11 of the United States Code is amended by inserting "of property of the estate" immediately after "distribution".

SEC. 67. (a) Section 726(a) of title 11 of the United States Code is amended—

(1) in paragraph (2)(A), by inserting ", 501(b), or 501(c)" immediately after "501(a)", and by adding "or" immediately after this semicolon;

(2) by striking out paragraph (2)(B) and redesignating paragraph (2)(C) as paragraph (2)(B);

(3) in paragraph (2)(B), as so redesignated, by inserting ", 501(b), or 501(c)" immediately after "501(a)"; and

(4) in paragraph (3), by inserting ", 501(b), or 501(c)" immediately after "501(a)", and by striking out "(C)" and inserting "(B)" in lieu thereof.

(b) Section 726(b) of title 11 of the United States Code is amended—

(1) by striking out "a particular paragraph" and inserting "each such particular paragraph" in lieu thereof; and

(2) by striking out "administrative expenses" each place it appears and inserting "a claim allowed under section 503(b) of this title" in lieu thereof, and by striking out "have" and inserting "has" in lieu thereof.

(c) Section 726(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "Administrative expenses" and inserting "Claims allowed under section 503 of this title" in lieu thereof; and

(2) in paragraph (2), by striking out "Claims other than for administrative exrenses" and inserting "Allowed claims, other than claims allowed under section 503 of this title," in lieu thereof.

SEC. 68. (a) Section 727(a) of title 11 of the United States Code is amended—

(1) in paragraph (6)(C), by striking out "property" and inserting "properly" in lieu thereof;

(2) in paragraph (7), by inserting ", under this title or under the Bankruptcy Act," immediately after "another case"; and

(3) in paragraph (8), by inserting a comma immediately after "371".

(b) Section 727(c)(1) of title 11 of the United States Code is amended by inserting "the granting of a" immediately after "to".

(c) Section 727(e)(2)(A) of title 11 of the United States Code is amended by striking out "and" and inserting "or" in lieu thereof.

SEC. 69. (a) Section 728(c) of title 11 of the United States Code is amended by striking out the comma immediately after "taxable income".

(b) Section 728(d)(2) of title 11 of the United States Code is amended by inserting "otherwise" immediately after "is", and by striking out "otherwise" immediately after "partner".

SEC. 70. Section 741 of title 11 of the United States Code is amended—

(1) in paragraph (2)(A), by striking out "holds" and inserting "has" in lieu thereof and by striking out "business as a stockbroker" and inserting "such debtor's business as a stockbroker," in lieu thereof;

(2) in paragraph (2)(B), by striking out "holds" and inserting "has" in lieu thereof;

(3) in paragraph (4), by striking out "at any time";

(4) in paragraph (4)(A)(i), by striking out "and that is" and inserting "from and that is the lawful" in lieu thereof;

(5) in paragraph (4)(A)(ii), by inserting "of a customer" immediately after "claim";

(6) by redesignating paragraphs (5) and (2) as paragraphs (6) and (5), respectively;

(7) by inserting immediately after paragraph (4) the following new paragraph:

"(5) 'margin payment' means payment or deposit of cash, a security, or other property, that is commonly known to the securities trade as original margin, initial margin, maintenance margin, or variation margin, or as a mark-to-market payment, or that secures an obligation of a participant in a securities clearing agency;";

(8) in paragraph (6), as so redesignated, by striking out "the aggregate of all of a customer's accounts that such customer holds" and inserting "all accounts of a customer that such customer has" in lieu thereof;

(9) in paragraph (6)(A)(i), as so redesignated, by inserting a comma immediately after "petition", and by inserting "any" immediately after "except";

(10) in paragraph (6)(A)(ii), as so redesignated, by inserting "in such capacity" immediately after "customer";

(11) in paragraph (6)(B), as so redesignated, by striking out "342" and inserting "341" in lieu thereof, and by inserting "in such capacity" immediately before the semicolon; and

(12) by inserting immediately after paragraph (6), as so redesignated, the following new paragraph:

"(7) 'securities contract' means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, or the guarantee of any settlement of cash or securities by a securities clearing agency; and".

SEC. 71. Section 743 of title 11 of the United States Code is amended by striking out "342(a)" and inserting "341" in lieu thereof.

SEC. 72. Section 744 of title 11 of the United States Code is amended by inserting "but" immediately after "relief,".

SEC. 72. (a) Section 745(a) of title 11 of the United States Code is amended by inserting "the debtor for" immediately after "by".

(b) Section 745(c) of title 11 of the United States Code is amended by striking out "A" and inserting "Each" in lieu thereof.

SEC. 74. (a) Section 746(a) of title 11 of the United States Code is amended—

(1) by striking out "effects with respect to cash or a security," and inserting "enters into" in lieu thereof;

(2) by striking out "with respect to such cash or security";

(3) by striking out "such date" and inserting "the date of the filing of the petition" in lieu thereof; and

(4) by striking out "effected" and inserting "entered into" in lieu thereof.

(b) Section 746(b) title 11 of the United States Code is amended—

(1) by striking out "has a claim for" and inserting "transferred to the debtor" in lieu thereof; and

(2) in paragraph (2), by striking out "is".

(c) The section heading for section 746 of title 11 of the United States Code is amended to read as follows:

"§ 746. Extent of customer claims".

SEC. 75. Section 747 of title 11 of the United States Code is amended by striking out "such claim arose" and inserting "the transaction giving rise to such claim occurred" in lieu thereof.

SEC. 76. Section 749 of title 11 of the United States Code is amended—

(1) by striking out "Any" and inserting "(a) Except as otherwise provided in this section, any" in lieu thereof;

(2) by inserting "by the debtor" immediately before "of property";

(3) by striking out "except" and inserting "but" in lieu thereof;

(4) by inserting "such property" immediately after "trustee, and";

(5) by striking out "549, or 724(a)" and inserting "or 549" in lieu thereof; and

(6) by adding at the end thereof the following new subsection:

"(b) Notwithstanding sections 544, 545, 547, 548, and 549 of this title, the trustee may not avoid a transfer made before five days after the date of the filing of the petition if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is—

"(1) a transfer of a securities contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, security, or other property margining or securing such securities contract; or

"(2) the liquidation of a securities contract entered into or carried by or through the debtor on behalf of a customer.".

SEC. 77. (a) Section 752(a) of title 11 of the United States Code is amended—

(1) by striking out "customers allowed" and inserting "customers' allowed";

(2) by inserting "of the kind" immediately after "except claims"; and

(3) by inserting "such" immediately before "customer property.".

(b) Section 752(b)(2) of title 11 of the United States Code is amended by striking out "726(a)" and inserting "726" in lieu thereof.

(c) Section 752(c) of title 11 of the United States Code is amended to read as follows:

"(c) Any cash or security remaining after the liquidation of a security interest created under a security agreement made by the debtor, excluding property excluded under section 741(4)(B) of this title, shall be apportioned between the general estate and customer property in the same proportion as the general estate of the debtor and customer property were subject to such security interest.".

SEC. 78. Section 761 of title 11 of the United States Code is amended—

(1) in paragraph (2), by inserting "made" immediately after "commodity contracts";

(2) in paragraph (4), by striking out "if the debtor is" each place it appears and inserting "with respect to" in lieu thereof.

(3) in paragraph (4)(D), by inserting ", or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by the debtor" immediately before the semicolon;

(4) in paragraph (9), by striking out "if the debtor is" each place it appears and inserting "with respect to" in lieu thereof;

(5) in paragraph (9)(A), by striking out "the debtor" each place it appears and inserting "such futures commission merchant" in lieu thereof and by striking out "the debtor's" and inserting "such futures commission merchant's" in lieu thereof;

(6) in paragraph (9)(B), by striking out "the debtor" each place it appears and inserting "such foreign futures commission merchant" in lieu thereof and by striking out "the debtor's" and inserting "such foreign futures commission merchant's" in lieu thereof;

(7) in paragraph (9)(C), by striking out "the debtor" each place it appears and inserting "such leverage transaction merchant" in lieu thereof, by striking out "the debtor's" and inserting "such leverage transaction merchant's" in lieu thereof, by inserting "or" immediately after the semicolon in clause (i), and by striking out "hold" in clause (ii) and inserting "holds" in lieu thereof;

(8) in paragraph (9)(D), by striking out "the debtor" each place it appears and inserting "such clearing organization" in lieu thereof.

(9) in paragraph (9)(E), by striking out "the debtor" each place it appears and inserting "such commodity options dealer" in lieu thereof and by striking out "the debtor's" and inserting "such commodity options dealer's" in lieu thereof;

(10) in paragraph (10), by striking out "at any time", by striking out "and that is" in subparagraph (A)(viii) and inserting "from and that is the lawful" in lieu thereof, and by striking out "based on such property" in subparagraph (B) and inserting "for which such property would be liable" in lieu thereof;

(11) in paragraph (12), by inserting a comma immediately after "property" and by striking out the comma after "credit";

(12) in paragraph (13), by striking out "217 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 15a)" and inserting "19 of the Commodity Exchange Act (7 U.S.C. 23)" in lieu thereof;

(13) in paragraph (14), by striking out "that is engaged";

(14) in paragraph (15), by striking out "or variation margin," and inserting "variation margin, or as a mark-to-market payment," immediately before "including";

(15) in paragraph (16), by striking out "at any time"; and

(16) in paragraph (17), by striking out "the aggregate of all of a customer's accounts" and inserting "all accounts of a customer" in lieu thereof, by striking out "holds" and inserting "has" in lieu thereof, by inserting "the" immediately after "(A)" in subparagraph (A), by inserting "in such capacity" immediately after "customer" in subparagraph (A)(ii), by striking out subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

SEC. 79. Section 762 of title 11 of the United States Code is amended by striking out "342" and inserting "341" in lieu thereof.

SEC. 80. Section 763(a) of title 11 of the United States Code is amended by inserting "the debtor for" immediately after "by" and by striking out "deemed to be" and inserting "treated as" in lieu thereof.

SEC. 81. (a) Section 764(a) of title 11 of the United States Code is amended—

(1) by inserting "by the debtor" immediately after "any transfer";

(2) by striking out "except" and inserting "but" in lieu thereof;

(3) by inserting "such property" immediately after "trustee, and"; and

(4) by striking out "is" each place it appears and inserting "shall be" in lieu thereof.

(b) Section 764(c) of title 11 of the United States Code is repealed.

SEC. 82. (a) Section 765(a) of title 11 of the United States Code is amended by striking out "notice under" and inserting "notice required by" in lieu thereof and by striking out "342" and inserting "351" in lieu thereof.

(b) Section 765(b) of title 11 of the United States Code is amended by striking out "commodity contract" in lieu thereof.

SEC. 83. (a) Section 766(a) of title 11 of the United States Code is amended—

(1) by striking out "of" the first place it appears and inserting "held by the debtor for" in lieu thereof; and

(2) by inserting "to such customer" immediately after "distribution".

(b) Section 766(b) of title 11 of the United States Code is amended—

(1) by amending the first sentence thereof to read as follows: "If an open commodity contract is being actively traded as of the date of the filing of the petition, the trustee shall, as required by sections 765 and 766(c) of this title, transfer such commodity contract, if feasible, or close out such commodity contract on or before the last day of trading in such contract or on the first day on which notice of intent to deliver on such commodity contract may be tendered, whichever first occurs."; and

(2) by inserting "the" immediately after "rules of".

(c) Section 766(d) of title 11 of the United States Code is amended by striking out "such amount, then the" and inserting "the amount to which the customer of the debtor is entitled under subsection (h) or (i) of this section, then such" in lieu thereof, and by inserting "then" immediately after "trustee" the second place it appears.

(d) Section 765(h) of title 11 of the United States Code is amended by inserting "and except that a customer net equity claim based on a proprietary account, as defined by Commission rule, regulation, or order, may not be paid either in whole or in part, directly or indirectly, out of customer property unless all other customer net equity claims have been paid in full" immediately after "this section".

(e) Section 766(j)(2) of title 11 of the United States Code is amended by striking out "726(a)" and inserting "726" in lieu thereof.

SEC. 84. Section 901(a) of title 11 of the United States Code is amended—

(1) by striking out "552,";

(2) by striking out "547" and inserting "547(a), 547(b), 547(c), 547(d), 547(e)(1), 547(e)(2), 547(f), 547(g)" in lieu thereof;

(3) by striking out "1109" and inserting "1109(b)" in lieu thereof; and

(4) by inserting a comma immediately after "1111(b)".

SEC. 85. Section 902(2) of title 11 of the United States Code is amended by striking out "title, legal or equitable, to real property against which has been levied a special assessment or special tax" and by inserting "legal or equitable title to real property against which a special assessment or special tax has been levied" in lieu thereof.

SEC. 86. Section 903(2) of title 11 of the United States Code is amended by striking out "to" the first place it appears.

SEC. 87. Chapter 9 of title 11 of the United States Code is amended by striking out "SUBCHAPER II" and inserting "SUBCHAPTER II" in lieu thereof.

SEC. 88. (a) Section 921(c) of title 11 of the United States Code, is amended by striking out "an" and inserting "any" in lieu thereof, and by striking out the comma after "petition" the second place it appears.

(b) Section 921 of title 11 of the United States Code is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) Section 921(d) of title 11 of the United States Code, as so redesignated, is amended by striking out "subsection (d)" and inserting "subsection (c)" in lieu thereof.

SEC. 89. (a) Section 922(a)(1) of title 11 of the United States Code is amended by inserting "a" immediately before "judicial", and by inserting "action or" immediately before "proceeding".

(b) Section 922(b) of title 11 of the United States Code is amended by striking out "and (g)" and inserting "(g), and (h)" in lieu thereof.

SEC. 90. (a) Section 927(a)(4) of title 11 of the United States Code is amended by striking out "if" and inserting "failure of" in lieu thereof, and by striking out "is not" and inserting "to be" in lieu thereof.

(b) Section 927(b) of title 11 of the United States Code is amended by inserting "of a plan under this chapter" immediately after "confirmation".

SEC. 91. Section 943(b) of title 11 of the United States Code is amended—

(1) in paragraph (4), by striking out "to be taken"; and

(2) by amending paragraph (5) to read as follows:

"(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(1) of this title will receive on account of such claim cash equal to the allowed amount of such claim; and".

SEC. 92. Section 945(a) of title 11 of the United States Code is amended by striking out "execution" and inserting "implementation" in lieu thereof.

SEC. 93. Section 1102(b)(1) of title 11 of the United States Code is amended by striking out "order for relief" and inserting "commencement of the case" in lieu thereof.

SEC. 94. Section 1103(c) of title 11 of the United States Code is amended—

(1) in paragraph (3), by striking out "recommendations" and inserting "determinations" in lieu thereof, and by inserting "or rejections" immediately after "acceptances"; and

(2) in paragraph (4), by striking out ", if a trustee or examiner, as the case may be, has not previously been appointed under this chapter in the case".

SEC. 95. Section 1105 of title 11 of the United States Code is amended by striking out "estate, and" and inserting "estate and of the" in lieu thereof.

SEC. 96. Section 1106(b) of title 11 of the United States Code is amended by inserting ", except to the extent that the court orders otherwise," immediately before "any other".

SEC. 97. Section 1107(a) of title 11 of the United States Code is amended by inserting "serving in a case" immediately after "on a trustee".

SEC. 98. Section 1108 of title 11 of the United States Code is amended by inserting ", on request of a party in interest and after notice and a hearing," immediately after "court".

SEC. 99. Section 1111(b) of title 11 of the United States Code is amended to read as follows:

"(b)(1) Except where property of the estate that secures a claim is sold subject to section 363(k) of this title, abandoned under section 554 of this title, or surrendered to the holders of such claims, or is to be sold, abandoned, or surrendered under the plan—

"(A) a claim secured by such property shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder had such recourse, unless the class of which such claim is a part elects, by at least two-thirds in amount and more than one-half in number of allowed claims of such class, to be governed by subparagraph (B) of this paragraph; and

"(B) unless the aggregate value of the interests in such property of the holders of such claims is inconsequential, the class may elect, as provided under subparagraph (A) of this paragraph, that such claims of such class, whether or not the holders of such claims had recourse against the debtor and notwithstanding section 506(a) of this title, are secured claims to the full extent that such claims are allowed.

"(2) The provisions of paragraph (1)(A) of this subsection are limited to the purposes of this chapter and such paragraph does not in any other way alter, affect, or create any right or liability of any other entity.".

SEC. 100. (a) Section 1112(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by striking out "is an involuntary case originally commenced under this chapter" and inserting "originally was commenced as an involuntary case under this chapter" in lieu thereof; and

(2) in paragraph (3), by striking out "on other than" and inserting "other than on" in lieu thereof.

(b) Section 1112(b) of title 11 of the United States Code is amended—

(1) in paragraph (5), by inserting "a request made for" immediately before "additional"; and

(2) in paragraph (8), by striking out "and" inserting "or" in lieu thereof.

SEC. 101. (a) Section 1121(c)(3) of title 11 of the United States Code is amended by striking out "the claims or interests of which are" and inserting "of claims or interests that is" in lieu thereof.

(b) Section 1121(d) of title 11 of the United States Code is amended by inserting "made within the respective periods specified in subsection (c) of this section" immediately after "interest".

SEC. 102. (a) Section 1123(a) of title 11 of the United States Code is amended—

(1) by striking out "A" and inserting "Notwithstanding any otherwise applicable nonbankruptcy law, a" in lieu thereof;

(2) in paragraph (1), by inserting a comma immediately after "classes of claims" and immediately after "507(a)(6) of this title";

(3) in paragraph (3), by striking out "shall";

(4) in paragraph (5), by striking out "execution" and inserting "implementation" in lieu thereof;

(5) in paragraph (5)(G), by inserting "of" immediately after "waiving"; and

(6) in paragraph (6), by striking out "equity securities" the first place it appears and inserting "common stock" in lieu thereof.

(b) Section 1123(b)(2) of title 11 of the United States Code is amended by striking out "or rejection" and inserting ", rejection, or assignment" in lieu thereof and by striking out "under section 365 of this title" and inserting "under such section" in lieu thereof.

SEC. 103. Section 1124 of title 11 of the United States Code is amended—

(1) by amending paragraph (2)(A) to read as follows:

"(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title;"; and

(2) in paragraph (3)(B)(i), by striking out "and" and inserting "or" in lieu thereof.

SEC. 104. (a) Section 1125(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting ", but need not include such information about any other possible or proposed plan" immediately after "plan";

(2) in paragraph (2)(B), by inserting "the" immediately after "with"; and

(3) in paragraph (2)(C), by inserting "of" immediately after "holders".

(b) Section 1125(d) of title 11 of the United States Code is amended—

(1) by inserting "required under subsection (b) of this section" immediately after "statement" the first place it appears; and

(2) by inserting ", or otherwise seek review of," immediately after "appeal from".

(c) Section 1125(e) of title 11 of the United States Code is amended by inserting "acceptance or rejection of a plan" immediately after "solicits" and by inserting "solicitation of acceptance or rejection of a plan or" immediately after "governing".

SEC. 105. (a) Section 1126(b)(2) of title 11 of the United States Code is amended by striking out "1125(a)(1)" and inserting "1125(a)" in lieu thereof.

(b) Section 1126(d) of title 11 of the United States Code is amended by inserting a comma immediately after "such interests" the first place it appears.

(c) Section 1126(f) of title 11 of the United States Code is amended—

(1) by striking out "is deemed" and inserting in lieu thereof ", and each holder of a claim or interest of such class, are deemed";

(2) by striking out "solicititation" and inserting "solicitation" in lieu thereof; and

(3) by striking out "interest" and inserting "interests" in lieu thereof.

(d) Section 1126(g) of title 11 of the United States Code is amended by striking out "any payment or compensation" and inserting "receive or retain any property" in lieu thereof.

SEC. 106. (a) Section 1127(a) of title 11 of the United States Code is amended by inserting "of a plan" immediately after "After the proponent" and by inserting "of such plan" immediately after "modification".

(b) Section 1127(b) of title 11 of the United States Code is amended by striking out "the court, after notice and a hearing, confirms such plan, as modified, under section 1129 of this title, and circumstances warrant such modification" and inserting "circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title" in lieu thereof.

SEC. 107. (a) Section 1129(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "chapter." and inserting "title." in lieu thereof;

(2) in paragraph (2), by striking out "chapter." and inserting "title." in lieu thereof;

(3) by amending paragraph (4) to read as follows:

"(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable;";

(4) in paragraph (5)(A)(ii), by striking out the period and inserting "; and" in lieu thereof;

(5) in paragraph (5)(B), by striking out "The" and inserting "the" in lieu thereof;

(6) in paragraph (6), by inserting "governmental" immediately after "Any";

(7) in paragraph (7), by inserting "of claims or interests" immediately after "each class", and by striking out "creditor's" in subparagraph (B) and inserting "holder's" in lieu thereof;

(8) in paragraph (8), by inserting "of claims or interests" immediately after "each class"; and

(9) by amending paragraph (10) to read as follows:

"(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.".

(b) Section 1129(b) of title 11 of the United States Code is amended—

(1) by striking out "Notwithstanding section 510(a) of this title, "if," and inserting "If" in lieu thereof;

(2) in paragraph (2)(A), by striking out

"lien" each place it appears and inserting "liens" in lieu thereof;

(3) in paragraph (2)(B)(ii), by inserting "under the plan" immediately after "retain"; and

(4) in paragraph (2)(C)(i), by striking out "claim" and inserting "interest" in lieu thereof and by striking out "and the value" and inserting "or the value" in lieu thereof.

(c) Section 1129(d) of title 11 of the United States Code is amended—

(1) by striking out "a party in interest that is";

(2) by inserting "the application of" immediately after "avoidance of" the second place it appears; and

(3) by adding at the end thereof the following new sentence: "In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.".

SEC. 108. (a) Section 1141(a) of title 11 of the United States Code is amended—

(1) by striking out "Except" and inserting "Notwithstanding section 510(a) of this title and except" in lieu thereof; and

(2) by striking out "any creditor or equity security holder of, or general partner in," and inserting "any creditor, equity security holder, or general partner in" in lieu thereof.

(b) Section 1141(c) of title 11 of the United States Code is amended to read as follows:

"(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.".

SEC. 109. (a) The heading for section 1142 of title 11 of the United States Code is amended to read as follows:

"§ 1142. Implementation of plan".

(b) The item relating to section 1142 in the table of sections for chapter 11 of title 11 of the United States Code is amended by striking out "Execution" and inserting "implementation" in lieu thereof.

(c) Section 1142(a) of title 11 of the United States Code is amended by striking out the comma after "plan" the second place it appears.

(d) Section 1142(b) of title 11 of the United States Code is amended by inserting "a" immediately after "by".

SEC. 110. Section 1144 of title 11 of the United States Code is amended by inserting "if and only" immediately after "revoke such order".

SEC. 111. (a) Section 1145(a) of title 11 of the United States Code is amended—

(1) by striking out "Except with respect to an entity that is an underwriter as defined in subsection (b) of this section, section" and inserting "Section" in lieu thereof;

(2) in paragraph (3), by striking out "or an affiliate";

(3) in paragraph (3)(B)(i), by inserting "or 15(d)" immediately after "13" and by inserting "or 78o(d)" immediately after "78m";

(4) by amending paragraph (3)(B)(ii) to read as follows:

"(ii) in compliance with the disclosure and reporting provision of such applicable section; and";

(5) in paragraph (3)(C), by striking out "two" each place it appears and inserting "one" in lieu thereof;

(6) in paragraph (3)(C)(ii), by striking out "180" each place it appears and inserting "90" in lieu thereof; and

(7) in paragraph (4), by striking out "stockholder" each place it appears and inserting "stockbroker" in lieu thereof.

(b) Section 1145(b) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "and except with respect to ordinary trading transactions of an entity that is not an issuer" immediately after "subsection";

(2) in paragraph (1)(C), by striking out "for" and inserting "from" in lieu thereof;

(3) in paragraph (2)(A)(i), by striking out "combination" and inserting "or combining" in lieu thereof; and

(4) in paragraph (2)(A)(ii), by striking out "among" and inserting "from or to" in lieu thereof.

SEC. 112. (a) Section 1146(c) of title 11 of the United States Code is amended by striking out "State or local".

(b) Section 1146(d)(1) of title 11 of the United States Code is amended by striking out "and" and inserting "or" in lieu thereof.

SEC. 113. Section 1161 of title 11 of the United States Code is amended by striking out "341" and inserting "342" in lieu thereof.

SEC. 114. Section 1163 of title 11 of the United States Code is amended by striking out "qualified" and inserting "eligible, qualified," in lieu thereof.

SEC. 115. Section 1166 of title 11 of the United States Code is amended by striking out "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" and inserting "subtitle IV of title 49" in lieu thereof.

SEC. 116. Section 1168(b) of title 11 of the United States Code is amended by inserting a comma immediately after "approval".

SEC. 117. Section 1169(c) of title 11 of the United States Code is amended by striking out "the Interstate Commerce Act (49 U.S.C. et seq.)" and inserting "subtitle IV of title 49" in lieu thereof.

SEC. 118. (a) Section 1170(a) of title 11 of the United States Code is amended by inserting "of all or a portion" immediately after "the abandonment".

(b) Section 1170(c) of title 11 of the United States Code is amended by inserting a comma immediately after "abandonment".

(c) Section 1170(d)(2) of title 11 of the United States Code is amended—

(1) by striking out "the abandonment of a railroad line" and inserting "such abandonment" in lieu thereof; and

(2) by striking out "termination" each place it appears and inserting "suspension" in lieu thereof.

SEC. 119. Section 1171(b) of title 11 of the United States Code is amended by striking out "such" and inserting "the same" in lieu thereof.

SEC. 120. Section 1173(a)(4) of title 11 of the United States Code is amended by striking out "compatible" and inserting "consistent" in lieu thereof.

SEC. 121. (a) Section 1301(b) of title 11 of the United States Code is amended by inserting "and may protest" immediately after "of" the first place it appears.

(b) Section 1301(c)(3) of title 11 of the United States Code is amended by inserting "continuation of" immediately after "by".

SEC. 122. (a) Section 1302(b) of title 11 of the United States Code is amended—

(1) in paragraph (2)(C), by striking out "and";

(2) by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, monies received or to be received in a case under chapter XIII of the Bankruptcy Act; and".

(b) Section 1302(e) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "fix" and inserting "set for such individual" in lieu thereof;

(2) in paragraph (1)(A), by striking out "for such individual";

(3) in paragraph (2), by inserting "made to entities entitled" immediately after "payments"; and

(4) in paragraph (2)(A), by striking out "of" and inserting "received by" in lieu thereof and by striking out "upon all payments" and inserting "of all such payments made" in lieu thereof.

SEC. 123. Section 1304(b) of title 11 of the United States Code is amended by striking out the comma immediately after "of the debtor".

SEC. 124. (a) Section 1307(b) of title 11 of the United States Code is amended by inserting a comma immediately after "time".

(b) Section 1307(c) of title 11 of the United States Code is amended—

(1) in paragraph (4), by inserting "a request made for" immediately before "additional";

(2) in paragraph (6), by striking out "and" immediately after the semicolon and inserting "or" in lieu thereof; and

(3) in paragraph (7), by inserting "other than completion of payments under the plan" immediately after "in the plan".

SEC. 125. (a) Section 1322(a)(2) of title 11 of the United States Code is amended by inserting a comma immediately after "payments".

(b) Section 1322(b) of title 11 of the United States Code is amended—

(1) in paragraph (2), by inserting ", or leave unaffected the rights of holders of any class of claims" immediately before the semicolon;

(2) in paragraph (4), by inserting "other" immediately after "claim or any";

(3) in paragraph (5), by striking out "maintenance of payments" and by striking out "on any unsecured claim or secured claim" and inserting "maintain payments on any claim" in lieu thereof;

(4) in paragraph (7), by inserting "subject to section 365 of this title," immediately before "provide", by striking out "or rejection" and inserting ", rejection, or assignment" in lieu thereof, and by striking out "under section 365 of this title" and inserting "under such section" in lieu thereof; and

(5) in paragraph (8), by striking out "any".

SEC. 126. Section 1323(c) of title 11 of the United States Code is amended by striking out "the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and" and inserting "such plan as modified, unless" in lieu thereof.

SEC. 127. Section 1324 of title 11 of the United States Code is amended by striking out "the" the second place it appears.

SEC. 128. (a) Section 1325(a)(1) of title 11 of the United States Code is amended by inserting "the" immediately before "other".

(b) Section 1325(a)(3) of title 11 of the United States Code is amended by inserting ", and represents the debtor's good faith effort" before the semicolon.

(c) Section 1325(b) of title 11 of the United States Code is amended by striking out "any" the second place it appears.

SEC. 129. Section 1326(a)(2) of title 11 of the United States Code is amended by inserting "of this title" immediately after "1302(d)".

SEC. 130. Section 1328(a)(2) of title 11 of the United States Code is amended by inserting ", 523(a)(8), and 523(a)(9)" immediately after "section 523(a)(5)".

SEC. 131. Section 1328(e) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "by the debtor" immediately after "obtained"; and

(2) in paragraph (2), by striking out "knowledge of such fraud came to the requesting party" and inserting "the requesting party did not know of such fraud until" in lieu thereof.

SEC. 132. Section 1329(a) of title 11 of the United States Code is amended—

(1) by inserting "of the plan" immediately after "confirmation" and by striking out "a plan" and inserting "such plan" in lieu thereof; and

(2) in paragraph (3), by striking out the comma.

SEC. 133. Section 15102 of title 11 of the United States Code is amended by striking out "chapter" the first place it appears and inserting "title" in lieu thereof.

SEC. 134. Section 15103(f) of title 11 of the United States Code is amended—

(1) by inserting "342(b)," immediately after "326(b),";

(2) by inserting "1106(a)(1), 1108," immediately after "1105"; and

(3) by inserting "1302(b)(1), 1302(b)(3)," immediately after "1302(a),".

SEC. 135. Section 15322(b)(1) of title 11 of the United States Code is amended by inserting "required to be" immediately after "bond", by striking out "(2)", and by inserting "of this title" before the semicolon.

SEC. 136. Section 15324 of title 11 of the United States Code is amended by inserting a comma immediately after "a trustee".

SEC. 137. Section 15330 of title 11 of the United States Code is amended by adding at the end thereof the following: "The notice required under section 330 of this title shall be given to the United States trustee.".

SEC. 138. (a) Chapter 15 of title 11 of the United States Code is amended by inserting after section 15330 the following new section:

"§ 15342. Meetings of creditors

"In a case under chapter 13 of this title, the United States trustee may call a meeting of creditors. The court may not preside at, and may not attend, any meeting under this section.".

(b) The table of sections for chapter 15 of title 11 is amended by inserting immediately below the item relating to section 15330 the following new item:

"15342. Meetings of creditors.".

SEC. 139. Section 15343 of title 11 of the United States Code is amended by striking out "section 341(a)" and inserting "section 342 or 15342" in lieu thereof.

SEC. 140. (a) Section 15701(a) of title 11 of the United States Code is amended by striking out "trustee established" and inserting "trustees established" in lieu thereof.

(b) Section 15701(b) of title 11 of the United States Code is amended by striking out "such persons" and inserting "the members of such panel" in lieu thereof.

SEC. 141. (a) Section 15703(a) of title 11 of the United States Code is amended by striking out "specified in section 15701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee." and by inserting "and subject to the provisions of sections 701 and 15701 of this title." in lieu thereof.

(b) Section 15703(b) of title 11 of the United States Code is amended by striking out "truste" and inserting "trustee" in lieu thereof.

SEC. 142. Section 15704 of title 11 of the United States Code is amended to read as follows:

"§ 15704. Duties of trustee

"The trustee shall—

"(1) if the business of the debtor is authorized to be operated, file with the United States trustee periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements; and

"(2) make and file interim reports on the condition of the estate with the United States trustee and make and file a final report and account of the administration of the estate with the United States trustee and the court.".

SEC. 143. Section 151102(b) of title 11 of the United States Code is amended by striking out "interest of" and inserting "interest," in lieu thereof.

SEC. 144. (a) Chapter 15 of title 11 of the United States Code is amended by inserting after section 151105 the following new sections:

"§ 151106. Duties of trustee and examiner

"A trustee shall perform the duties specified in sections 704(2), 704(4), 704(6), and 15704 of this title.

"(b) A trustee shall transmit a copy or a summary of any statement filed under section 1105(a)(4)(A) of this title to any creditors' committee, to any indenture trustee, to the United States trustee, and to any other entity as the court designates.

"§ 151108. Authorization to operate business

"Unless the court, upon the request of a party in interest or the United States trustee and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business.".

(b) The table of sections for chapter 15 of title 11 of the United States Code is amended by inserting after the item relating to section 151105 the following new items:

"151106. Duties of trustee and examiner.
"151108. Authorization to operate business.".

SEC. 145. (a) Section 151302(a) of title 11 of the United States Code is amended by inserting ", or shall appoint a distinterested person to serve," immediately after "The United States trustee shall serve".

(b) Section 151302(h) of title 11 of the United States Code is amended to read as follows:

"(b) The trustee shall—

"(1) perform the duties specified in sections 704(2), 704(4), 704(6), and 15704 of this title; and

"(2) dispose of, pursuant to regulations issued by the Attorney General, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act.".

TITLE II—AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE

SEC. 201. Section 151(c) of title 28 of the United States Code is amended by inserting a comma immediately after "suit".

SEC. 202. (a) Section 152 of title 28 of the United States Code is amended by adding at the end thereof the following:

"In recommending individuals to the President for appointment as bankruptcy judges, the Judicial Council of each circuit shall follow standards and procedures promulgated by the Judicial Conference of the United States. Such standards and procedures shall contain provision for public notice of all vacancies of bankruptcy judgeships. Further, such standards and procedures shall ensure that the Judicial Council gives due consideration to all qualified individuals, especially such groups as women, blacks, Hispanics, and other minorities."

(b) The Congress—

(1) takes notice of the fact that less than 2 per centum of bankruptcy judges are women, less than 3 per centum of bankruptcy judges are blacks, and only one bankruptcy judge is of Hispanic origin; and

(2) suggests that the President, in selecting individuals for nomination to bankruptcy judgeships created by this Act, give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin.

SEC. 203. Section 153(b) of title 28 of the United States Code is amended by striking out "or circuits" each place it appears and by striking out "or councils" each place it appears.

SEC. 204. Section 158 of title 28 of the United States Code is amended by striking out "Court" and inserting "Bankruptcy court" in lieu thereof.

SEC. 205. (a) Section 160(a) of title 28 of the United States Code is amended by striking out "each circuit" and inserting "such circuit" in lieu thereof.

(b) Section 160 of title 28 of the United States Code is amended by adding at the end thereof the following new subsections:

"(d) A panel may exercise the powers of a bankruptcy court.

"(e) A single judge of a panel may enter an order if irreparable damage will result if such order is not entered. Such order shall remain in force only until the hearing and determination by the panel of three judges.".

SEC. 206. (a) Section 294(c) of title 28 of the United States Code is amended by striking out "district or bankruptcy judge" and inserting ", district, or bankruptcy" in lieu thereof.

(b) Section 294(d) of title 28 of the United States Code is amended by striking out "district judge or bankruptcy judge" and inserting "district, or bankruptcy judge" in lieu thereof.

SEC. 207. Section 295 of title 28 of the United States Code is amended by inserting a comma immediately before "district, or".

SEC. 208. Section 376(a)(2)(A) of title 28 of the United States Code is amended by striking out section "section 337" and inserting "section 377" in lieu thereof.

SEC. 209. (a) Chapter 17 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 377. Bankruptcy judges

"(a)(1) Any bankruptcy judge who has attained the age of seventy years may retire after serving as a bankruptcy judge for at least ten years.

"(2) Any bankruptcy judge who has attained the age of sixty-five years may retire after serving as a bankruptcy judge for at least fifteen years.

"(3) Any bankruptcy judge who is not reappointed following the expiration of the term of office of such judge may retire upon completion of such term, if—

"(A) such judge has served as a bankruptcy judge for at least fourteen years, and

"(B) not earlier than nine months preceding the date of the expiration of the term of office of such judge and not later than six months preceding such date, such judge advised the President in writing that such judge was willing to accept reappointment to the bankruptcy court.

"(4) Any bankruptcy judge who becomes permanently disabled from performing the duties of the office shall retire.

"(b) Notwithstanding subsection (a)(3)(A) of this section, a bankruptcy judge continued in office by section 404(b) of the Bankruptcy Reform Act of 1979 who is not reappointed after March 31, 1984, shall be eligible to retire under subsection (a)(3) of this setcion and to receive retirement pay under subsection (c) of this section if such judge—

"(1) has continued in service until March 31, 1984, or after such date and until such judge's successor takes office,

"(2) has complied with the requirements of subsection (a)(3) of this section other than subparagraph (A), and

"(3)(A) has attained the age of sixty years,

"(B) has attained the age of fifty-five years and has served at least ten years in the aggregate as a referee in bankruptcy and a bankruptcy judge, or

"(C) has attained the age of fifty years and has served at least fourteen years in the aggregate as a referee in bankruptcy and a bankruptcy judge.

"(c)(1) A bankruptcy judge who has elected under subsection (e) of this section to receive retirement pay under this subsection and who retires under paragraph (1), (2), or (3) of subsection (a) of this section shall receive retirement pay during any period at a rate which bears the same ratio to the salary payable to a bankruptcy judge during such period as the number of years the bankruptcy judge who so elected has served as a bankruptcy judge after March 31,

1981, bears to 10, except that the rate of such retirement pay shall not exceed the rate of such salary for such period.

"(2) A bankruptcy judge who has elected under subsection (e) of this section to receive retirement pay under this subsection and who retires under subsection (a)(4) of this section shall receive retirement pay during any period at a rate—

"(A) equal to the rate of the salary payable to a bankruptcy judge during such period if before such retirement the bankruptcy judge who so elected has served as a bankruptcy judge not less than ten years beginning after March 31, 1981,

"(B) equal to 80 percent of the rate of the salary payable to a bankruptcy judge during such period if before such retirement the bankruptcy judge who so elected has served as a bankruptcy judge not less than ten years or

"(C) equal to 50 percent of the rate of the salary payable to a bankruptcy judge during such period if before such retirement the bankruptcy judge who so elected has served as a bankruptcy judge less than ten years.

Such retirement pay shall begin to accrue on the day following the day on which such judge's salary as a bankruptcy judge ceases to accrue, and shall continue to accrue during the remainder of the life of such judge. Retirement pay under this section shall be paid in the same manner as the salary of a bankruptcy judge.

"(3) In computing the rate of retirement pay under this subsection, that portion of the aggregate number of years of service which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if such part equals or exceeds 6 months.

"(d)(1) A bankruptcy judge continued in office by section 404(b) of the Bankruptcy Reform Act of 1978 who has elected under subsection (e) of this section to receive retirement pay under subsection (c) of this section may also elect—

"(A) for purposes of subsection (c) of this section, to treat services as a referee in bankruptcy or a United States bankruptcy judge as service as a United States bankruptcy judge, except that a year of service as a referee in bankruptcy or a bankruptcy judge occurring before April 1, 1981, shall be treated as one-fourth of a year of service occurring after March 31, 1981, or

"(B) to receive the lump sum credit computed under section 8331(8) of title 5, United States Code.

"(2) In the case of any bankruptcy judge continued in office by section 404(b) of the Bankruptcy Reform Act of 1978 who makes the election described in paragraph (1)(A) of this subsection to treat service as a referee in bankruptcy as service as a bankruptcy judge—

"(A) the retirement pay of such judge for any period shall not exceed 80 percent of the rate of the salary payable to a bankruptcy judge under subsection (c)(1) of this section for such period, and

"(B) there shall be transferred from the Civil Service Retirement and Disability Fund to the Judicial Survivors' Annuities Fund an amount which bears the same ratio to the lump sum credit computed with respect to such judge under section 8331(8) of title 5, United States Code, as nine bears to fourteen.

"(e)(1)(A) A bankruptcy judge may elect to receive retirement pay under subsection (c) of this section by filing notice thereof in writing with the Director of the Administrative office of the United States Courts. The Director shall transmit to the Office of Personnel Management a copy of each notice filed under this subparagraph.

"(B) Any bankruptcy judge continued in office by section 404(b) of the Bankruptcy Reform Act of 1978 who desires to make the election described in subsection (d)(1) of this section shall make such election as part of the election made by such judge under subparagraph (A) of this paragraph.

"(2) The election described in paragraph (1)(A) of this subsection may be made by a bankruptcy judge only during such judge's term of office or on the day on which such judge's successor takes office.

"(f)(1) A bankruptcy judge who has elected under subsection (e) of this section to receive retirement pay under subsection (c) of this section, with respect to whom such election is in effect, and who after such election—

"(A) accepts civil office or employment by the Government of the United States, other than the performance of judicial duties pursuant to section 294 of this title, or

"(B) performs, supervises or directs the performance of, legal or other professional services in connection with a case under title 11, United States Code,

shall forfeit all rights to retirement pay under this section for all periods beginning on or after the first day on which such judge accepts such office or unemployment, or engages in any activity described in subparagraph (B).

"(2) Paragraph (1) of this subsection shall not apply to a bankruptcy judge continued in office by section 404(b) of the Bankruptcy Reform Act of 1978 who is not reappointed upon the expiration of such judge's term of office on March 31, 1984, or before the appointment of such judge's successor.

"(g)(1) Except as otherwise provided in this subsection, the provisions of the civil service retirement laws, including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation, shall apply with respect to service as a bankruptcy judge, together with other service as an officer or employee to whom such civil service retirement laws apply, as if this section had not been enacted.

"(2) In the case of any bankruptcy judge who has filed an election pursuant to subsection (e) of this section to receive retirement pay under subsection (c) of this section—

"(A) no annuity or other payment, except as provided in subsection (d)(1) of this section, shall be payable to such judge under the civil service retirement laws with respect to any service performed by such judge (whether performed before or after such election is filed and whether performed as a bankruptcy judge or otherwise), and

"(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retirement pay payable to such judge under subsection (c) of this section or from any other salary, pay, or compensation payable to such judge, for any period during which such election is in effect.

"(h)(1) A bankruptcy judge who retires under subsection (a)(4) of this section before April 1, 1984, shall furnish to the Director of the Administrative Office of the United States Courts a certificate of disability signed by the chief judge of the circuit in which such bankruptcy judge is serving.

"(2) A bankruptcy judge who retires under subsection (a)(4) of this section after March 31, 1984, shall furnish to the President a certificate of disability signed by such chief judge.

"(i)(1) A bankruptcy judge who has filed an election under subsection (e) of this section to receive retired pay under subsection (c) of this section may revoke such election at any time before the first day on which retirement pay would begin to accrue with respect to such judge but for such revocation.

"(2) Any revocation under this subsection of an election shall be made by filing notice thereof with the Office of Personnel Management. The Office of Personnel Management shall transmit to the Director of the Administrative Office of the United States Courts a copy of each notice filed under this paragraph.

"(3) In the case of any revocation under this subsection of an election made under subsection (e) of this section—

"(A) for purposes of this section, a bankruptcy judge shall be treated as not having filed such election, and

"(B) for purposes of section 376 of this title—

"(i) such judge shall be treated as not having filed an election under subsection (e) of such section,

"(ii) subsection (g) of such section shall not apply with respect to such judge, and the amount credited to such judge's account, together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31, of each year to the date on which the revocation is filed, shall be returned to such judge,

"(C) no credit shall be allowed for service as a bankruptcy judge unless with respect to such service there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest, and

"(D) the Administrative Office of the United States Courts shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the effectiveness of the election made under subsection (e) of this section to receive retirement pay under subsection (c) of this section. If such deposit is made, service as a bankruptcy judge shall be treated as service with resepct to which deductions and contributions had been made during the period of service.

"(j) Paragraphs (1) and (11) of section 8331(1) of title 5, United States Code, shall not apply with respect to a bankruptcy judge continued in office by section 404(b) of the Bankruptcy Reform Act of 1978 for any period during which there is in effect an election made by such judge under subsection (e) of this section to receive retirement pay under subsection (c) of this section.

"(k) For purposes of this section the term 'bankruptcy judge' means, unless specified otherwise, a referee in bankruptcy continued in office by section 404(b) of the Bankruptcy Reform Act of 1978 or a United States bankruptcy judge.".

(b) The table of sections for chapter 17 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"377. Bankruptcy judges.".

SEC. 210. Section 451 of title 28 of the United States Code is amended—

(1) in the first undesignated paragraph by inserting "and appellate panels created under section 160 of this title" before the period;

(2) in the first and third undesignated paragraphs by striking out "and" the second place it appears in each such paragraph and inserting a comma in lieu thereof and by striking out ", the judges of which are entitled to hold office for a term of 14 years"; and

(3) in the third undesignated paragraph by striking out "Congress," and inserting "Congress" in lieu thereof and by striking out "and judge" and inserting "and judges" in lieu thereof.

SEC. 211. Section 456 of title 28 of the United States Code is amended—

(1) in the fourth undesignated paragraph, by inserting a comma immediately after "district"; and

(2) in the fifth undesignated paragraph, by striking out the semicolon immediately after "each district judge" and inserting a comma in lieu thereof.

SEC. 212. Section 569(a) of title 28 of the United States Code is amended by inserting "court" immediately after "of the bankruptcy".

SEC. 213. Section 571(b) of title 28 of the United States Code is amended by striking out "United States marshals, under regulations prescribed by the" and by striking out the comma immediately after "Courts".

SEC. 214. Sections 581(a) and 582(a) of title 28 of the United States Code are each amended by inserting ", without regard to the provisions of title 5 governing appointment in the competitive civil service," after "appoint".

SEC. 215. (a) Section 586(a) of title 28 of the United States Code is amended—

(1) in paragraph (3), by inserting ", remove for cause such trustees in cases under chapter 7 or 11 of such title" immediately after "title 11";

(2) in paragraph (5), by striking out "and" immediately after the semicolon;

(3) in paragraph (6), by striking out the period and inserting "; and" in lieu thereof; and

(4) by adding at the end thereof the following new paragraph:

"(7) administer oaths to and take the testimony of witnesses called to testify at meetings under title 11 or appoint a designee to so act.".

(b) Section 586(b) of title 28 of the United States Code is amended by striking out "trustee" the third place it appears and inserting "trustees to serve as standing trustee" in lieu thereof.

(c) Section 586(e)(2) is amended—

(1) by inserting "made to entities entitled" immediately after "payments" the first place it appears;

(2) in subparagraph (A), by striking out "of" and inserting "received by" in lieu thereof and by striking out "upon all payments" and inserting "of all such payments made" in lieu thereof;

(3) in subparagraph (B), by inserting "fee fixed under paragraph (1)(B) of this subsection" immediately after "the percentage"; and

(4) in subparagraph (B)(i), by striking out "individual" and inserting "individuals" in lieu thereof.

SEC. 216. Section 587 of title 28 of the United States Code is amended by adding at the end thereof the following: "The positions of such trustees shall not be in the Senior Executive Service.".

SEC. 217. (a) Section 604(a) of title 28 of the United States Code is amended—

(1) in paragraph (10), by striking out "(17)" each place it appears and inserting "(18)" in lieu thereof;

(2) by redesignating paragraph (17) as paragraph (18);

(3) by redesignating paragraph (13), as added by section 225(a)(2) of the Act of November 6, 1978 (92 Stat. 2549), as paragraph (17);

(4) by redesignating paragraph (14), as redesignated by section 225(a)(1) of the Act of November 6, 1978 (92 Stat. 2549), as paragraph (13); and

(5) by inserting immediately after paragraph (13) the following new paragraph:

"(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;".

(b) Subsection (f) of section 604 of title 28 of the United States Code, as added by section 225(b) of the Act of November 6, 1978 (92 Stat. 2549) is redesignated as subsection (h) and is amended by striking out "number and".

SEC. 218. Section 634(a) of title 28 of the United States Code is amended by inserting a comma after "salaries" the first place it appears and by striking out "rates for" and all that follows through "as amended" and inserting "an amount fixed in accordance with section 225 of the Federal Salary Act of 1967, subject to adjustment in accordance with such Act and section 461 of this title" in lieu thereof.

SEC. 219. (a) Section 773(c) of title 28 of the United States Code is amended by striking out "a circuit" and inserting "an appellate" in lieu thereof, and by striking out the parentheses around "but presents a substantial question".

(b) Section 773 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(d) Court reporters appointed or employed under this section shall be appointed or employed in accordance with all of the standards and procedures applicable to appointments or employment under section 753 of this title and shall be governed by the rules and regulations applicable to court reporters appointed or employed under section 753 of this title.".

SEC. 220. (a) Section 1293(a) of title 28 of the United States Code is amended by striking out "decisions" and inserting "judgments, orders, and decrees" in lieu thereof.

(b) Section 1293(b) of title 28 of the United States Code is amended—

(1) by striking out "an appellate panel created under section 160 or";

(2) by striking out "District court of the United States" and inserting "district court of the United States," in lieu thereof; and

(3) by inserting ", and of appeals from interlocutory orders and decrees of an appellate panel created under section 160 of this title, a district court, and a bankruptcy court, but only by leave of the court of appeals to which the appeal is taken" immediately before the period.

SEC. 221. Section 1334(c) of title 28 of the United States Code is amended by striking out "that section" and inserting "this section" in lieu thereof.

SEC. 222. (a) Section 1471(a) of title 28 of the United States Code is amended by striking out "subsection" and inserting "subsection" in lieu thereof.

(b) Subsection (c) and (e) of section 1471 of title 28 of the United States Code are each amended by striking out "commenced" and inserting "pending" in lieu thereof.

(c) Section 1471(c) of title 28 of the United States Code is amended by inserting "or a proceeding arising under title 11 or arising in or related to a case under title 11" immediately after "title 11".

(d) Section 1471(e) of title 28 of the United States Code is amended by inserting ", and of all property, wherever located, of the estate in such case" immediately before the period at the end thereof.

SEC. 223. Section 1472(1) of title 28 of the United States Code is amended by striking out "principle" and inserting "principal" in lieu thereof.

SEC. 224. (a) Section 1473(a) of title 28 of the United States Code is amended by striking out "Except" and inserting "Notwithstanding any Act of Congress that confers venue in a specific district and except" in lieu thereof.

(b) Section 1473(c) of title 28 of the United States Code is amended by striking out "section" the first place it appears and inserting "subsection" in lieu thereof.

SEC. 225. Section 1481 of title 28 of the United States Code is amended by inserting "(a)" before "A" and by adding at the end thereof the following new subsection:

"(b) A contempt punishable by a bankruptcy court includes any act that is in violation of a stay under title 11.".

SEC. 226. Section 1482(b) of title 28 of the United States Code is amended by striking out "judgments, orders," and inserting "orders" in lieu thereof.

SEC. 227. Section 1827(1) of title 28 of the United States Code is amended by striking out "referee in bankruptcy" and inserting "bankruptcy judge" in lieu thereof.

SEC. 228. Section 1871(a) of title 28 of the United States Code is amended to read as follows:

"(a) Grand jurors in district courts and petit jurors in district courts and bankruptcy courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section. The requisite fees and allowances shall be disbursed, on the certificate of the clerk of the district court or of the clerk of the bankruptcy court, by the clerk of the district court in accordance with the procedure established by the Director of the Administrative Office of the United States Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk of the district court only upon the order of a district judge or by the clerk of the bankruptcy court only upon the order of a bankruptcy judge.".

SEC. 229. Section 1914(a) of title 28 of the United States Code is amended by striking out "$60" and inserting "$30" in lieu thereof.

SEC. 230. Section 1923(b) of title 28 of the United States Code is amended to read as follows:

"(b) The docket fees of United States attorneys shall be paid to the clerk of the district court, the docket fees of United States trustees shall be paid to the clerk of the bankruptcy court, and all such fees shall then be paid by the clerks into the Treasury.".

SEC. 231. Section 1930(a)(1) of title 28 of the United States Code is amended by striking out "$60" and inserting "$30" in lieu thereof.

SEC. 232. Section 1962 of title 28 of the United States Code is amended by inserting "or bankruptcy court" immediately after "district court".

SEC. 233. Section 1963 of title 28 of the United States Code is amended—

(1) in each paragraph, by inserting "or bankruptcy court" immediately after "district court" the first place it appears;

(2) in the first sentence of the first undesignated paragraph, by inserting "with the clerk of the district court or the bankruptcy court, whichever is appropriate" before the period at the end thereof;

(3) by striking out "where registered" and inserting in lieu thereof "where entered".

(4) by adding at the end thereof the following new undesignated paragraph:

"An order of discharge or an order of confirmation in a case under title 11 which has become final may be registered in any other district by filing in the office of the clerk of the bankruptcy court of that district a certified copy of the order and when so registered shall have the same effect as an order of the bankruptcy court of the district where so registered and may be enforced in like manner.".

SEC. 234. Section 1964 of title 28 of the United States Code is amended by inserting "or bankruptcy court" immediately after "district court" each place it appears.

SEC. 235. Section 2075 of title 28 of the United States Code is amended by striking out "in cases under title 11" and inserting "in cases under title 11 and in proceedings arising under title 11 or arising in or related to cases under title 11" in lieu thereof.

SEC. 236. Section 2256(1)(C) of title 28 of the United States Code is amended by inserting "or under title 11" immediately after "title".

SEC. 237. (a) Section 1914 of title 28 of striking out subsection (d).

(b) The District of Columbia Code is amended—

(1) in section 15-701(a), by striking out "clerk of the United States District Court for the District of Columbia,";

(2) in section 15-703—

(A) by striking out "(b)" and subsection (a); and

(B) in the catchline of such section by striking out "Deposit for costs; security" and inserting in lieu thereof "Security";

(3) in section 15-704—

(A) in subsection (a) by striking out "(a)" and by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "the Superior Court of the District of Columbia"; and

(B) by striking out subsection (b);

(4) by striking out section 15-706;

(5) in section 15-712 by striking out "Any District of Columbia Court" and inserting in lieu thereof "The Superior Court of the District of Columbia and the District of Columbia Court of Appeals"; and

(6) in the analysis of sections for chapter 7 of title 15, by striking out the item relating to section 15-706.

TITLE III—AMENDMENTS TO THE ACT OF NOVEMBER 6, 1978

SEC. 301. The title of the Act entitled "An Act to establish a uniform Law on the Subject of Bankruptcies", approved November 6, 1978 (Public Law 95-598; 92 Stat. 2549) (hereinafter in this title referred to as the "Act") is amended to read as follows: "An Act to establish a uniform law on the subject of bankruptcies".

SEC. 302. The act is amended by inserting after the enacting clause the following: "That this Act may be cited as the 'Bankruptcy Reform Act of 1978'."

SEC. 303. Section 216 of the Act is amended by striking out "record" and inserting "records" in lieu thereof.

SEC. 304. Section 222 of the Act is amended by striking out "assistance" and inserting "assistants" in lieu thereof.

SEC. 305. Section 232 of the Act is repealed.

SEC. 306. Section 308(f)(3) of the Act is amended by striking out "C" and inserting "'(C)'" in lieu thereof.

SEC. 307. Section 402(c) of the Act is amended—

(1) by striking out "210," and inserting "205, 206, 207, 211, 213," in lieu thereof;

(2) by inserting "226," immediately after "225,"; and

(3) by inserting "248" immediately after "246,".

SEC. 308. (a) Section 403(a) of the Act is amended by striking out "this Act" and inserting "the provisions of this Act other than this subsection and subsections (b) and (d) of this section" and by striking out "the Act" and inserting "such provisions".

(b) Section 403(b) of the Act is amended by inserting "or after" immediately after "on".

(c) Section 403(e) of the Act is amended to read as follows:

"(e) Notwithstanding subsection (a) of this section—

"(1) the amount by which a fee exceeds $100,000 may not be charged under section 40c(2)(a) of the Bankruptcy Act in a case pending under such Act after September 30, 1979, or under section 40c(2)(b) of the Bankruptcy Act in a case in which the plan is confirmed after September 30, 1979;

"(2) after September 30, 1979, all moneys collected for payment into the referees salary and expense fund in cases filed under the Bankruptcy Act shall be collected and paid into the general fund of the Treasury; and

"(3) any balance in the referees' salary and expense fund in the Treasury on October 1, 1979, shall be transferred to the general fund of the Treasury and the referees' salary and expense fund account shall be closed.".

SEC. 309. (a) Section 404(b) of the Act is amended to read as follows:

"(b) The term of a referee in bankruptcy who is serving on the date of enactment of this Act is extended to and expires on March 31, 1984, or when his successor takes office, and such person shall have the title United States bankruptcy judge. During the period commencing on October 1, 1979, and ending on March 31, 1984 (hereinafter in this title referred to as 'the transition period'), unless a bankruptcy judge is certified to be not qualified by the Chief Judge of the Circuit Court after a finding that such judge is not qualified is made by a merit screening committee established under subsection (c) of this section, such judge shall serve in the court of bankruptcy continued under subsection (a) of this section to which such United States bankruptcy judge was appointed, in the manner prescribed by this title. Section 8335(a) of title 5 of the United States Code shall not apply to United States bankruptcy judges during the transition period. During the transition period, United States bankruptcy judges shall be exempt from annual and sick leave laws and regulations.".

(b) Section 404(c) of the Act is amended by striking out the first sentence and inserting in lieu thereof the following new sentence: "There shall be established for each judicial district a merit screening committee composed of the president or the designee of the president of the State bar association, the president or designee of the president of a local bar association for the area within the judicial district wherein a referee in bankruptcy maintains his official headquarters and the dean, or designee of the dean, of an accredited law school, if any, located within the judicial district or State, and if no such law school exists, then a lay member selected by the chief judge of the United States district court for the judicial district wherein the referee in bankruptcy maintains his official headquarters.".

(c) Section 404(d) of the Act is amended by striking out "41,".

(d) Section 404(e) of the Act is amended by inserting immediately after the first sentence the following new sentence: "Bankruptcy judges for the district shall decide where the headquarters office of the clerk of the bankruptcy court shall be located.".

(e) Section 404 of the Act is amended by adding at the end thereof the following new subsections:

"(h) During the transition period, the powers granted under section 2071 of title 28 of the United States Code shall be exercised by the United States bankruptcy court of a district, exclusive of the district court of such district, for the purpose of promulgating local rules of procedure to be applicable in cases and proceedings before a United States bankruptcy judge of such court, and such powers shall be exercised for such purpose by the appellate panels created under section 160 of title 28 of the United States Code to be applicable in appeals before such an appellate panel.

"(i) During the transition period, sections 155, 156, 157, 158, and 159 of title 28 of the United States Code, contained in section 201 of this Act, and the amendment contained in section 210 of this Act, shall apply to the courts of bankruptcy continued under section 404(a) of this Act the same as such amendments apply to the United States bankruptcy courts established under section 201 of this Act.".

SEC. 310. (a) Section 405(a) of the Act is amended—

(1) by striking out "such cases" the first place it appears and inserting "in all cases under title 11 or arising in or related to a case under title 11 pending during the transition period" in lieu thereof; and

(2) in paragraph (1)(C), by inserting ", except as provided in subsection (c) of this section" immediately before the period at the end thereof.

(b) Section 405(c)(2) of the Act is amended by inserting "240," immediately after "238,".

(c) Section 405(d) of the Act is amended by striking out "248" and inserting "247" in lieu thereof.

SEC. 311. Section 407(c) of the Act is amended by striking out "332" and inserting "333" in lieu thereof.

SEC. 312. Section 408 of the Act is amended by adding at the end thereof the following new subsection:

"(d) During the transition period, section 604(h) of title 28 of the United States Code does not apply to bankruptcy courts for districts listed in section 581(a) of such title.".

SEC. 313. Section 409(a)(1) of the Act is amended by striking out "September 30, 1983" and inserting "March 31, 1984" in lieu thereof.

TITLE IV—AMENDMENTS TO OTHER ACTS

SEC. 401. Section 19 of the Commodity Exchange Act (7 U.S.C. 24) is redesignated as section 20 of such Act.

SEC. 402. Section 4(e) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499d(e)) is amended—

(1) by inserting "under the Bankruptcy Act or been a debtor in a case filed under title 11 of the United States Code or received a discharge in such case" immediately after "bankrupt" the first place it appears; and

(2) by inserting "under the Bankruptcy Act or which has been a debtor in a case filed under title 11 of the United States Code" immediately after 'bankrupt' the second place it appears.

SEC. 403. Section 7A(c) of the Clayton Act (15 U.S.C. 18a(c)) is amended—

(1) by striking out "and" at the end of paragraph (11);

(2) by striking out the period at the end of paragraph (12) and inserting "; and" in lieu thereof; and

(3) by adding at the end thereof the following new paragraph;

"(13) transactions arising under title 11 of the United States Code or arising in or relating to cases under such title.".

SEC. 404. (a) Section 6(d) of the Securities Investor Protection Act (15 U.S.C. 78fff(d)) is amended by striking out "section 16(5)(A)" and inserting "section 16(4)(A)" in lieu thereof.

(b) Section 8(e)(4)(C) of such Act (15 U.S.C. 78fff(e)(a)(4)(C)) is amended by striking out "section 9(a)(5)" and inserting "section 9(a)(4)" in lieu thereof.

SEC. 405. Section 605(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(1)) is amended by inserting "(except cases under chapter 13 of title 11)" immediately after "Code", and by inserting "(except cases under chapter XIII)" immediately after "Act".

SEC. 406. Section 151 of title 18 of the United States Code is amended by striking out "mean" and inserting "means" in lieu thereof.

SEC. 407. Section 424(b)(3)(B) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 934(b)(3)(B)) is amended by striking out "the Bankruptcy Act" and inserting "title 11 of the United States Code" in lieu thereof.

SEC. 408. Section 3468 of the Revised Statutes of the United States (31 U.S.C. 193) is amended by adding at the end thereof the following new sentence: "This section does not apply, however, in a case under title 11 of the United States Code or in a case arising in or relating to a case under such title.".

TITLE V—RELATED PROVISIONS OF LAW

SEC. 501. Nothing in any provision of Federal or State law shall operate to prevent, stay, or otherwise prohibit a stockbroker or securities clearing agency from exercising a contractual right to liquidate a securities contract or to cause the liquidation of a securities contract, nor shall any court issue any order preventing, staying, or otherwise prohibiting the exercise of such contractual right, unless such order is authorized under the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or is required because of a threat to the national security. As used in this section, the term—

(1) "contractual right" includes, but is not limited to, a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency; and

(2) "securities contract" means a securities contract as defined in section 741 of title 11 of the United States Code.

SEC. 502. No provision of Federal or State law shall operate to prevent, stay, or otherwise prohibit a commodity broker or forward contract merchant from exercising a contractual right to liquidate a commodity contract or forward contract, or to cause the liquidation of a commodity contract or forward contract, and no court may issue any order preventing, staying, or otherwise prohibiting the exercise of such contractual right unless such order is required because of a threat to the national security. As used in this section, the term—

(1) "contractual right" includes, but is not limited to, a right set forth in a rule or bylaw of a clearing organization or a contract market or in a resolution of the governing board thereof; and

(2) "commodity contract" means a commodity contract as defined in section 761 of title 11 of the United States Code.

SEC. 503. During the period beginning on the date of the enactment of this Act and ending on April 1, 1984, the amendments contained in sections 222, 223, 224, 225, 226, and 236 shall apply to courts of bankruptcy continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-589; 92 Stat. 2549).

SEC. 504. This Act may be cited as the "Bankruptcy Technical Amendments Act of 1980".

TITLE VI—EFFECTIVE DATES

SEC. 601. (a) Except as provided in subsection (b) of this section, this Act and the amendments made by this Act shall take effect on the later of October 1, 1980, or the date of enactment of this Act and shall apply only to cases filed under title 11 of the United States Code after such date.

(b) The amendments made by sections 201, 202, 203, 204, 205, 210(1), 211, 212, 219, 220, 221, 222, 223, 224, 225, 226, and 236 of this Act shall take effect on April 1, 1984.

The SPEAKER pro tempore. Is a second demanded?

Mr. SENSENBRENNER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. EDWARDS) will be recognized for 20 minutes, and the gentleman from Wisconsin (Mr. SENSENBRENNER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 2 years ago, the 95th Congress passed the Bankruptcy Reform Act, a most important piece of legislation. Until then, the bankruptcy laws of the United States had not been completely reviewed since their enactment in 1898, even though major changes were made in 1938. Since those times, the economic character of this country changed but the basic laws dealing with financial distress had not.

The Bankruptcy Reform Act of 1978 went through extensive revision during the final days of the 95th Congress. These last-minute revisions left the final version of the bill in need of perfection, and that is what S. 658 attempts.

More than 90 percent of this bill, as long as it is, contains technical and stylistic modifications. This was the reason for bringing the bill to the floor 7 weeks ago also under suspension. However, because of opposition to one provision the required two-thirds vote could not be achieved.

Mr. Speaker, that one provision dealt with retirement for bankruptcy judges. Today, I am pleased to say that we have drastically revised this provision with the participation and agreement of those most concerned. I will speak to this in a moment; first, however, let me identify the most important of the substantive provisions.

A key provision of this bill has to do with our country's financial markets. The Bankruptcy Reform Act contains special provisions to deal with liquidations of securities and commodities brokers. These provisions, however, are incomplete. They must be corrected. If they are not corrected—as we have done so in this bill—the bankruptcy of an important brokerage firm could seriously disrupt the financial market.

Generally, what is involved is the continuous-net-settlement process—that method by which market transactions are concluded. Securities and commodities transactions must be settled. If they are not, clearing organizations or the exchanges themselves must guarantee them. If a bankruptcy of a broker occurs, many transactions might be unsettled at the time the petition in bankruptcy is filed. Under the law today, there is no provision allowing these transactions to be settled; in fact, such settlement would be prohibited. Therefore, the expectations of the markets and all who rely upon the integrity of that market process would be made insecure. It is obvious that this important correction must be made.

Another example of a problem in the financial market that we have identified since the enactment of the Bankruptcy Reform Act deals with municipal bonds. Today, the law now would cut off the rights of a municipal revenue bondholder immediately upon the filing of the petition under title 11. If this is not changed, municipalities will find it difficult to enter the bond market because potential purchasers of such securities will be reluctant to buy them. This is also corrected in S. 658.

Mr. Speaker, today bankruptcy judges are the only judges of U.S. courts who are not participants in the judicial retirement system; they derive retirement benefits through the Civil Service Retirement System. This the committee feels is inequitable. Further, without an equitable and adequate retirement system, the committee believes that many of the most qualified judges now sitting will soon leave the bench and it will be difficult to attract the most qualified persons in the future.

Contributing to this is the change in the way the bankruptcy judge is appointed. Now and in the past they have been appointed by the judges of the district court; beginning in 1984 they will be nominated by the President. The committee believes that participation in the judicial retirement system will be effective to encourage them to remain on the bench and to seek appointment in 1984.

Generally, there has never been opposition to bankruptcy judges' participation in the judicial retirement system beginning in 1984—as a matter of equity with other judges. Where the difference of opinion has existed and which crystallized in the opposition to this bill 7 weeks ago, is the extent to which bankruptcy judges would be given credit for service on the bench prior to 1984 and in the providing of judicial retirement benefits to those judges now sitting who are not reappointed in 1984. Mr. Speaker, it is with reference to these last matters that we have reached agreement.

Retirement for bankruptcy judges is proposed in S. 658 to be basically the same as that provided for the judges of the new claims court which was contained in H.R. 3806 passed by this body 1 week ago. In turn that retirement provision was modeled after the retirement benefits available to the judges of the U.S. Tax Court.

Mr. Speaker, what we have then is a system of retirement benefits for the judges of most article I courts which is virtually uniform.

Mr. Speaker, S. 658 contains many needed and important corrections and clarifications of the Bankruptcy Reform Act. With economic conditions today what they are and the possibility that bankruptcies will occur more often than they have in the past, many problems in interpretation, application, and administration of the law will be eliminated with the enactment of S. 658.

I strongly urge the adoption of this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Vermont (Mr. JEFFORDS).

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Mr. JEFFORDS. Mr. Speaker, I rise in support of S. 658, the Bankruptcy Act. This is a very complicated and technical bill, but its merits stand up under close examination.

When we considered the Bankruptcy Reform Act 2 years ago, the provisions relating to bankruptcy judge retirement were dropped because this body and the other body differed substantially on the issue, and we felt that in order to insure

timely action on the bill we would have to postpone revisions in the controversial bankruptcy judge retirement area. At that time, however, the managers of the measure pledged themselves to tackling retirement pay in the near future, and the bill before us today fulfills that promise.

S. 658 represents a balanced, equitable approach to the retirement pay issue, and moves us in the direction we must move if we want to keep our experienced and seasoned bankruptcy judges on the benches. This legislation does not provide these judges with preferential treatment, but simply brings their handling up to par with that for our other judges. In fact, this bill adopts the retirement model very similar to the one we gave our approval to last week for claims court judges. Under current law, bankruptcy judges are not participants in the judicial retirement system, and to my mind there is no justification for this.

It is certainly true that bankruptcy judges began as administrative employees of the courts, but over the years, they have been called upon to assume a steadily expanding judicial role. In the 1960's, for all intents and purposes they became judges, although they retained the title of referee. Then, eventually and appropriately, the title was changed in keeping with the change effected in the bankruptcy judges' duties. Under the current code enacted in 1979, the administrative functions of the judges have been eliminated, and they are full-blown judges. It is time that, in terms of their retirement pay, they were treated as such.

It is also important to note that we have altered the fashion in which our bankruptcy judges are selected. Formerly, they were appointed by the district courts. Now they are named by the President. Since we have, in effect, required that our experienced judges change horses in midstream and modified their reasonable expectations, it only makes sense to provide them with the incentive to go on, in the form of improved retirement pay.

In closing, I believe this legislation has been revised since we last deliberated on it in ways which should make it acceptable to the vast majority of the Members of this House. It was endorsed by the Judicial Conference this spring, and has the support of our bankruptcy judges. I think it is high time we updated the retirement provisions for these judges in order to make them commensurate with the greater mantel of responsibility we have asked them to bear. I enthusiastically urge my colleagues to give their strong backing to this bill. Thank you, Mr. Speaker.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from California (Mr. EDWARDS) has done a thorough and a comprehensive review of Senate bill 658 which makes technical changes to the Bankruptcy Code.

Seven weeks ago I led the opposition to a similar motion to suspend the rules on this legislation because of my opposition to not only a pay raise for bankruptcy judges but also due to the fact that the bill under suspension of the rules at that time contained what I thought was an unconscionably large increase in pensions, not only for the judges who would be reappointed by the President in 1984 but also those judges who would not be reappointed by the President at that time.

Since then, the pension provisions have been worked out so that my objections have been met and I am pleased to support the motion to suspend the rules that have been given to the House today by the gentleman from California (Mr. EDWARDS).

I believe that the changes that have been made in the last 7 weeks go a long way to establishing a uniform pension system for article I judges so that judges of the bankruptcy court would not be under one pension system, judges of the Tax Court under a different pension system, and judges of the Court of Claims and other article I courts under a third pension system. Consequently, my objections to this motion have been met. I am pleased to support the motion of the gentleman from California (Mr. EDWARDS) and I would like to commend that gentleman for his efforts in working out these difficulties with the bill.

At this time I yield 2 minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I am pleased to note that the problem which caused this bill to be defeated on suspension once before has been rectified, and that we will have the opportunity today to bring this legislation one step closer to enactment.

I support S. 658 because I believe it makes positive improvements to the Bankruptcy Reform Act passed in 1978. As some of you know, the Reform Act created two principal methods of personal bankruptcy. First, it modernized the traditional straight bankruptcy under chapter 7. That is the mechanism most of us are familiar with: Add up your assets, subtract your liabilities and your exemptions, and distribute what is left, secured creditors first.

It also created an important repayment plan under chapter 13. In the long run, it is this chapter which, I believe, will prove to be a major boon to creditors. It is designed to permit a moderately salaried debtor, with few tangible assets other than his home or car, to pay back his creditors under a plan approved and supervised by the bankruptcy court.

Some of you, though, may be aware of problems which have developed with regard to the court's interpretation of the debtor's "good faith" in proposing his repayment plan. Since the act became effective a year ago, there have been several instances in which bankruptcy judges have given their approval to plans which offered the bare minimum to creditors—that is, an amount equal to what they would have received under straight bankruptcy in chapter 7. That was clearly not our intent when we considered the Bankruptcy Reform Act of 1978.

An amendment I offered in subcommittee is designed to encourage judges to look past the paper on which the plan is written in order to determine what constitutes "good faith." We clearly intend that all factors relating to the debtor's ability to pay—his salary level, the nature of his debts—will be considered before the repayment plan is approved.

Also, you should know that under chapter 13 as set forth in the 1978 act, debts involving students loans are dischargeable. This is not the case under chapter 7. This oversight has been rectified in S. 658 and student loans are no longer dischargeable under any provision of the bill.

If we fail to pass this legislation today, and are unable to bring it before the floor under a rule in this Congress, we will be forced to begin the process anew in the next Congress. In the meantime, token repayment plans, for example, as well as student loans, will continue to be handled in a manner inconsistent with the intent of Congress.

I urge you to support this bill—your constituencies will benefit far more from its prompt passage than from its defeat.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I was a member of the subcommittee which drafted the Bankruptcy Reform Act which guided its way to enactment in the last Congress. It was a huge piece of legislation—139 pages in length to be exact—and there have been many problems, despite the years of care in drafting and creating it. This technical amendments bill seeks to remedy many of the oversights and gaps which have become apparent since last October.

The Senate passed S. 658 a year ago, and the Judiciary Committee of the House has been sculpting its version ever since. An immense amount of time and thought has been invested in the creation of this bill; it has almost universal support among those who are impacted by it. Even those are dissatisfied with portions of it, or who did not have their particular concerns addressed, have indicated to me and to other members of the subcommittee that they would not like to see its movement held up.

The only problem which caused some concern involved the retirement system which this bill provides for bankruptcy judges. The concerns of my colleague from Wisconsin (Mr. SENSENBRENNER) have been met in this regard, and, though a rule has been obtained, I can see no reason why this legislation should be delayed any longer. I urge its favorable consideration.

Mr. EDWARDS of California. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I would like to ask a question of the gentleman from California (Mr. EDWARDS),

the manager of the bill, if the gentleman would be so kind as to respond.

Mr. Speaker, I have had communication over the past weekend from court reporters of the Bankruptcy Court in the Los Angeles area who have expressed concern that they may have been, or may now be, omitted from coverage for retirement purposes under this bill. Some of them have been working for 25 or 30 years, I understand that the span is from 8 years to 40 years, in the Bankruptcy Courts and with the reorganization of the courts and the changes in the law they are quite anxious that their rights, if any, to retirement benefits and their jobs will be protected and that they will not be left out.

Would the gentleman explain whether or not the bill covers that situation?

Mr. EDWARDS of California. Mr. Speaker, will the gentleman from California yield?

Mr. DANIELSON. I am pleased to yield.

Mr. EDWARDS of California. This bill on page 103 in section 219 which actually begins on page 102 does deal with court reporters and it deals with them in an equitable way. It provides court reporters appointed or employed under this section shall be appointed or employed in accordance with all the standards and procedures applicable to appointments or employment under section 753 of this title. Here is the key phrase: "shall be governed by the rules and regulations applicable to court reporters appointed or employed under section 753 of this title."

What this means is that the reporters who are employed and those who will be employed in the future will be employed in the same way and be governed by the same rules and regulations applicable to court reporters in Federal district courts and other Federal courts. They are provided appropriate protection.

Mr. DANIELSON. Mr. Speaker, I thank the gentleman for that comment.

Is the gentleman able to say whether that means a reporter who is employed and has been for a period of time would not automatically be terminated and have to be rehired under some new rules?

Mr. EDWARDS of California. There is never a guarantee of that. However, what we did write into the bill was that these reporters who are already working for the bankruptcy judges, their employment will be subject to the applicable rules and regulations that the Federal district courts in general must comply with. That is a lot of protection but that is as far as we were able to go.

Mr. DANIELSON. Would I be safe in understanding that a reporter who has been employed for a period of years—I mean by that a tried, tested, and proven reporter who does a good job—can have a reasonable expectation of continuing his employment until his ordinary retirement years may come about?

Mr. EDWARDS of California. The gentleman from California is correct. There is nothing in the bill that would put such a court reporter in any kind of peril as long as he or she is doing a good job.

Mr. DANIELSON. The rule of reasonableness would apply then, would that be the idea?

Mr. EDWARDS of California. As usual, the gentleman is correct.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. EDWARDS) that the House suspend the rules and pass the Senate bill, S. 658, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid upon the table.

House Resolution 779 was laid on the table.

CLASSIFIED INFORMATION CRIMINAL TRIAL PROCEDURES ACT

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4736) to establish certain pretrial and trial procedures for the use of classified information in connection with Federal criminal cases, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4736

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Classified Information Criminal Trial Procedures Act."

TITLE I—PROCEDURES FOR DISCLOSURE OF CLASSIFIED INFORMATION IN CRIMINAL CASES

PRETRIAL CONFERENCES

SEC. 101. At any time after the filing by the United States of an indictment or information in a United States district court, any party to the case may request a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution. Upon such a request, the court shall promptly hold a pretrial conference to establish a schedule for any request for discovery of classified information and for the implementation of the procedures established by this title. In addition, at such a pretrial conference the court may consider any other matter which may promote a fair and expeditious trial. No admission made by the defendant or by any attorney for the defendant at such a conference may be used against the defendant unless the admission is in writing and is signed by the defendant and by the attorney for the defendant.

PROCEDURES FOR DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 102. (a)(1) Whenever a defendant in any Federal prosecution intends to take any action to disclose or cause the disclosure of classified information in any manner in connection with such prosecution, the defendant shall, before such disclosure and before the trial or any pretrial hearing, notify the court and the attorney for the United States of such intention and shall not disclose or cause the disclosure of such information unless authorized to do so by the court in accordance with this title. Such notice shall include a brief description of the classified information that is the subject of such notice.

(2)(A) Within ten days of receiving a notification under paragraph (1), the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of the classified information at issue that would otherwise be made during the trial or a pretrial hearing. Upon such a request, the court shall conduct such a proceeding.

(B) Any proceeding held pursuant to a request under subparagraph (A) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(C) If a request for a proceeding under this subsection is not made within ten days or if, at the close of such a proceeding, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or at any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided.

(b)(1) Whenever a defendant in a Federal prosecution intends to take any action to disclose or cause the disclosure, during the trial or any pretrial hearing, of any classified information and the defendant has not given notice under subsection (a)(1) with respect to such disclosure because the interest of the defendant in such disclosure reasonably could not have been anticipated before the expiration of the time for giving such notice, the defendant shall, before taking such action, notify the court and the attorney for the United States of such intention and shall not disclose or cause the disclosure of such information unless authorized by the court to do so in accordance with this title. Such notice shall include a brief description of the classified information that is the subject of such notice.

(2)(A) Within forty-eight hours of the receipt of a notification under paragraph (1), the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of the classified information at issue. Upon such a request, the court shall conduct such a proceeding.

(B) Any proceeding held pursuant to a request under subparagraph (A) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(C) If a request for a proceeding under this subsection is not made within forty-eight hours or if, at the close of such a proceeding, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court, subject to the provisions of section 106, shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided. In any order of the court under this subsection that is favorable to the defendant, the court shall specify the time to be allowed the United States to appeal such order under section 106.

(c)(1) At any time before or during trial the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of classified information which

has not been the subject of notice under subsection (a)(1) or (b)(1). Upon such a request, the court shall conduct such a proceeding.

(2) Any proceeding held pursuant to a request under paragraph (1) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(3) If, at the close of a proceeding held pursuant to this subsection, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court, subject to the provisions of section 106, shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or at any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided. In any order of the court under this subsection that is favorable to the defendant, the court shall specify the time to be allowed the United States to appeal such order under section 108.

(d) Upon receiving a request from the United States for a proceeding under subsection (a)(2), (b)(2), or (c)(1), the court shall issue an order prohibiting the defendant from disclosing or causing the disclosure of the classified information at issue pending conclusion of the proceeding.

(e) Before any proceeding is conducted pursuant to a request by the United States under subsection (a)(2), (b)(2), or (c)(1), the United States shall provide the defendant with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States. When the United States has not previously made the information available to the defendant, the information may be described by generic category, in such form as the court may approve, rather than by identification of the specific information of concern to the United States.

(f) During the examination of a witness by a defendant in any criminal proceeding, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible in accordance with the procedures established by this title. Upon such an objection, the court shall take such action to determine whether the response is admissible as will safeguard against the disclosure of any classified information. Such action may include requiring the United States to provide the court with a proffer of the response of the witness to the question or line of inquiry anticipated by the United States and requiring the defendant to provide the court with a proffer of the nature of the information sought to be elicited.

ALTERNATIVE PROCEDURE FOR DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 103. (a) Upon any determination by the court authorizing the disclosure of specific classified information under the procedures established by section 102, the United States may move that, in lieu of the disclosure of such specific classified information, the court order—

(1) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove; or

(2) the substitution for such classified information of a summary of the specific classified information.

The court shall grant such a motion of the United States if it finds that the statement or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information. The court shall hold a hearing on any motion under this section. Any such hearing shall be held in camera at the request of the Attorney General.

(b) The United States may, in connection with a motion under subsection (a), submit to the court an affidavit of the Attorney General certifying that disclosure of the classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the United States, the court shall examine such affidavit in camera and ex parte.

SEALING OF RECORDS OF IN CAMERA PROCEEDINGS

SEC. 104. If at the close of an in camera proceeding under this title (or any portion of a proceeding under this title that is held in camera) the court determines that the classified information at issue may not be disclosed or elicited at the trial or any pretrial hearing, the record of such in camera proceeding shall be sealed and preserved by the court for use in the event of an appeal.

PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMATION BY DEFENDANT, RELIEF FOR DEFENDANT WHEN UNITED STATES OPPOSES DISCLOSURE

SEC. 105. (a) Whenever the court denies a motion by the United States that it issue an order under section 103(a) and the United States files with the court an affidavit of the Attorney General objecting to disclosure of the classified information at issue, the court shall order that the defendant not disclose or cause the disclosure of such information.

(b) Whenever a defendant is prevented by an order under subsection (a) from disclosing or causing the disclosure of classified information, the court shall dismiss the indictment or information; except that, when the court determines that the interests of justice would not be served by dismissal of the indictment or information, the court shall order such other action, in lieu of dismissing the indictment or information, as the court determines is appropriate. Such action may include—

(1) dismissing specified counts of the indictment or information;

(2) finding against the United States on any issue as to which the excluded classified information relates; or

(3) striking or precluding all or part of the testimony of a witness.

FAILURE OF DEFENDANT TO PROVIDE PRETRIAL NOTICE

SEC. 106. If a defendant fails to comply with the notice requirements of subsection (a) or (b) of section 102 and the court finds that the defendant's need to disclose or cause the disclosure of the classified information at issue reasonably could have been anticipated before the expiration of the time for giving such notice under such subsection, the court may prohibit the defendant from disclosing or causing the disclosure of such classified information during trial and may prohibit the examination by the defendant of any witness with respect to any such information.

RECIPROCITY; DISCLOSURE BY THE UNITED STATES OF REBUTTAL EVIDENCE

SEC. 107. (a) Whenever the court determines, in accordance with the procedures prescribed in section 102, that classified information may be disclosed in connection with a criminal trial or pretrial hearing or issues an order pursuant to section 103(a), the court shall—

(1) order the United States to provide the defendant with the information it expects to use to rebut the particular classified information at issue; and

(2) order the United States to provide the defendant with the name and address of any witness it expects to use to rebut the particular classified information at issue if, taking into account the nature and extent of the defendant's disclosures, the probability of harm to or intimidation or bribery of a witness, and the probability of identifiable harm to the national security, the court determines that such order is appropriate.

(b) If the United States fails to comply with an order under subsection (a), the court, unless it finds that the use at trial of information or a witness reasonably could not have been anticipated, may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the United States of any witness with respect to such information.

(c) Whenever the United States requests a pretrial proceeding under section 102, the United States, upon request of the defendant, shall provide the defendant with a bill of particulars as to the portions of the indictment or information which the defendant identifies as related to the classified information at issue in the pretrial proceeding. The bill of particulars shall be provided before such proceeding.

(d) The provisions of this section shall not apply to classified information provided by the United States to the defendant pursuant to a discovery request, unless the court determines that the interests of fairness so require.

APPEALS BY THE UNITED STATES

SEC. 108 (a) The United States may appeal to a court of appeals before or during trial from any decision or order of a district court in a criminal case requiring or authorizing the production, disclosure, or use of classified information, imposing sanctions for nondisclosure of classified information, or denying the issuance of a protective order sought by the United States to prevent the disclosure of classified information, if the Attorney General certifies to the district court that the appeal is not taken for purpose of delay.

(b)(1) If an appeal under this section is taken before the trial has begun, the appeal shall be taken within ten days after the date of the decision or order appealed from, and the trial shall not commence until the appeal is decided.

(2) If an appeal under this section is taken during the trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals (A) shall hear argument on such appeal within four days of the adjournment of the trial, (B) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (C) shall render its decision within four days of argument on appeal, and (D) may dispense with the issuance of a written opinion in rendering its decision.

(c) Any appeal and decision under this section shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

PROTECTIVE ORDERS; DISCOVERY; INTRODUCTION OF EVIDENCE

SEC. 109. (a) Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.

(b) Whenever the court determines pursuant to rule 16 of the Federal Rules of Criminal Procedure that the defendant is entitled to discover or inspect documents or materials containing classified information, the court shall authorize the United States to delete classified information from the documents or materials to be made available to the defendant, to substitute a summary of the classified information, or to substitute a statement admitting relevant facts that the classified information would tend to prove, if the court finds that such action will provide the defendant with substantially the same ability to prepare for trial or make his defense as would disclosure of the specific classified information. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(c) Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(d) When a writing or recorded statement (or a part thereof) is introduced into evidence by the United States, the court, upon motion of the defendant, may require the United States at that time to introduce any other writing or recorded statement (or any other part of the statement introduced) which ought in fairness to be considered contemporaneously with the statement introduced and which is relevant to the defendant's case. If such other writing or recorded statement, or such other part, contains classified information, the court, at the request of the United States, shall conduct the hearing on the defendant's motion in camera. If, at the conclusion of such hearing, the court requires the United States to introduce classified information, the procedures of section 103 shall apply.

(e) The United States may notify the court and the defendant before trial if it intends to introduce during the trial only a part of a writing or recorded statement containing classified information. Upon such notification, the court shall conduct, before the trial, an in camera proceeding to make the determinations required by section 109 (d).

SECURITY PROCEDURES

SEC. 110. (a) Within one hundred and twenty days of the date of the enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General and the Director of Central Intelligence, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeals, or Supreme Court. Such rules, and any changes in such rules, shall be submitted to the appropriate committees of Congress and shall become effective forty-five days after such submission.

(b) Until such time as rules under subsection (a) first become effective, the Federal courts shall in each case involving classified information adopt procedures to protect against the unauthorized disclosure of such information.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL DEFENSE

SEC. 111. In any prosecution in which the United States must establish as an element of the offense that material relates to the national defense or constitutes classified information, the United States shall notify the defendant, at the time of the pretrial conference or, if no such conference is held, at a time before trial specified by the court, of the portions of the material that it reasonably expects to rely upon to establish such element of the offense.

FUNCTIONS OF ATTORNEY GENERAL MAY BE EXERCISED BY DEPUTY ATTORNEY GENERAL AND A DESIGNATED ASSISTANT ATTORNEY GENERAL

SEC. 112. The functions and duties of the Attorney General under this title may be exercised by the Deputy Attorney General and by an Assistant Attorney General designated by the Attorney General for such purpose and may not be delegated to any other official.

DEFINITION

SEC. 113. As used in this title, the term "classified information" means information or material that is designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security or any Restricted Data, as defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

TITLE II—GUIDELINES AND REPORTS

GUIDELINES PRESCRIBED BY THE ATTORNEY GENERAL

SEC. 201. Within ninety days of the date of the enactment of this Act, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in deceding whether to prosecute a violation of Federal law in which there is a possibility that classified information will be disclosed. Such guidelines shall be promptly transmitted to the appropriate committees of the Congress.

ANNUAL REPORT TO CONGRESS BY THE ATTORNEY GENERAL

SEC. 202. The Attorney General shall report to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the chairmen and ranking minority members of the Committees on the Judiciary of the Senate and the House of Representatives once each year concerning the operation and effectiveness of this Act. Such report shall include summaries of those cases in which a decision not to prosecute or not to continue a prosecution was made because of the possibility that classified information would be disclosed.

TITLE III—EFFECTIVE DATE

SEC. 301. The provisions of this Act shall become effective upon the date of the enactment of this Act, but shall not apply to any prosecution in which an indictment or information was filed before such date.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

□ 1430

The SPEAKER pro tempore. The gentleman from Kentucky (Mr. MAZZOLI) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from the Commonwealth of Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I move to suspend the rules and consider the bill (H.R. 4736) which responds to a phenomenon currently threatening both the fair administration of justice and the effective operation of our intelligence services.

The phenomenon has come to be called "graymail." Graymail occurs when the Government is prevented from initiating a prosecution or is forced to dismiss a pending prosecution because of its fear that the defendant will disclose or cause the disclosure of classified information during trial.

This phenomenon is not limited to espionage prosecutions. Graymail can also occur—indeed, it has occurred—in narcotics and murder trials, as well as in cases involving the prosecution of Government officials and businessmen.

In its worst extent graymail appears when a defendant threatens to disclose any and all classified information in his possession, whether or not it is related to the issues of the case. Graymail may also mean nothing more than that a defendant is exercising his legitimate rights to defend himself through the use of relevant and admissible classified information.

In either instance, however, the result may be the same: A criminal case is terminated prematurely, justice is not done, and public confidence in our prosecutional authorities is lessened.

H.R. 4736 is intended to insure that classified information which bears no possible relationship to the issues in a criminal trial is not disclosed. It is also intended to insure that classified information that is relevant to the defendant's case will be identified prior to trial, before it is publicly revealed, so that the Government can make an informed decision in determining whether or not the benefits of prosecution will outweigh the harm stemming from public disclosure of such information.

The heart of the bill is its requirement that a criminal defendant notify the court and the Government before trial of any intention to disclose or cause the disclosure of classified information during trial. The Government may then obtain, prior to trial and in camera a ruling on the relevance or admissibility of the information and may take an interlocutory appeal from an adverse decision. It is to be emphasized that the bill does not alter the existing standards for determining relevance or admissibility.

In some instances, if the court makes the specific determination that to do so would provide the defendant with substantially the same ability to make his defense, the court may order that a specific item of classified information be replaced by a summary thereof or a stipulation to the facts such information tends to prove. The bill also requires the Government to provide the defendant with pretrial notice of the evidence it intends to use to rebut the information furnished in advance by the defendant.

Title II of the bill is directed at the preindictment stage of the criminal process. It is intended to insure that the executive branch has its own house in order and that the initial decisions on

whether to seek an indictment in a case where classified information is likely to arise is made pursuant to established criteria and after all the consequences of a decision have been carefully considered. Thus title II directs the Attorney General to promulgate guidelines to be used by the Department of Justice in deciding whether or not to prosecute a case in which there is a possibility that classified information will be disclosed. In addition, the Department of Justice must report annually to the Intelligence Committees on the operation of the act. The report must include summaries of those cases which were not pursued because of the possibility that classified information would be disclosed. The Judiciary Committee amendment, on which there is agreement, would extend this reporting to the chairmen and ranking minority members of the Judiciary Committees of both Houses.

Title III of the bill provides that the bill will become effective upon enactment, except that the new procedures shall not apply to any prosecution formally begun before the date of enactment.

Mr. Speaker, this bill was reported unanimously by both the Intelligence Committee and the Judiciary Committee. A similar bill was also reported unanimously by the Senate Judiciary Committee and passed the Senate without any opposing votes. The members and staff of these committees have spent many hours attempting to carefully craft this legislation so that, without impinging on the rights of criminal defendants, it will enable the Government to more effectively prove cases involving classified information. We have worked very closely with Senator BIDEN, Senator KENNEDY, and Assistant Attorney General Heymann and their able staffs, as well as with interested members of the Defense Bar and groups such as the ACLU and the American Bar Association.

I am proud to say that all these interested parties support the legislation, and I urge its adoption.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4736, the Classified Information Criminal Trial Procedures Act. This legislation would provide a definitive structure to what is currently a chaotic and hazy situation when classified information becomes a matter of importance in a criminal prosecution.

Mr. Speaker, the problem of graymail is presented when the Government must choose between dismissing a criminal prosecution or facing the possible court ordered disclosure at trial of sensitive, classified national security information. The major impediment to solving this problem is lack of clarity as to the legal relevance in a criminal trial of an individual piece of classified information. Sometimes a defendant will attempt to blackmail the Government into dismissing a case by threatening to disclose certain classified matters at trial. At other times, classified information is, indeed, relevant to a legitimate defense to a criminal charge, but the Government has no recourse to a legislative mechanism for ameliorating the Government's difficulty.

H.R. 4736 provides a well reasoned, delicately balanced solution to this extremely complex problem.

H.R. 4736 would establish a mechanism whereby legal issues in a criminal prosecution relating to classified information would for the most part be resolved prior to trial. Closed, in camera hearings would be held by the court, so that only those bits of evidence which the judge rules, in advance, to be relevant to the defense would be admissible. However, in order to provide reasonable flexibility for the defendant classified issues which he could not have anticipated prior to trial can be likewise dealt with on an in camera basis during the trial itself.

The net result of these procedures is to allow the Government certainty as to what classified information will have to be released at trial and thereby permit the Government to aggressively prosecute violations of the Federal criminal laws without having to endanger our national security.

Mr. Speaker, I urge the House to pass H.R. 4736.

Mr. Speaker, I am happy to yield such time as he may consume to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I thank my friend, the gentleman from Illinois, for yielding.

Mr. Speaker, just last week criminal trials began here in Washington for two high Government officials involved several years ago in Watergate: W. Mark Felt and Edward F. Miller Their superior, former FBI Director L. Patrick Grey, has yet to come to trial. The reason these trials have taken so long to commence is due in part to the continuing controversy over graymail.

Very simply, graymail has come to represent an attempt by a criminal defendant to delay prosecution or have charges against him dropped altogether as a result of his claim that he will seek disclosure of classified materials as part of the defense. Legislation designed to streamline this process has been bouncing around Congress for a number of years and a two-thirds vote today would go a long way to achieving enactment before the Congress closes its doors for this year.

The bill requires that a criminal defendant give notice of his intention to use classified material in his defense at trial. Having done this, the Government would be entitled to a private, in camera adversary proceeding before a Federal judge. Once this hearing has been concluded, the judge would then be empowered to either bar disclosure of the material or permit disclosure of some or all of it. If the Government is dissatisfied with the judge's decision, it may immediately take an interlocutory appeal to the appropriate appellate court.

This is a bill which has the support of both the Department of Justice, the FBI, and the ACLU. It is a bill which I have supported continuously since its introduction and which deserves passage.

During committee consideration, I joined my colleague from Virginia (Mr. BUTLER) in expressing my concern that certain provisions of the bill seemed to require that the Department of Justice file an annual report on its progress to both the Intelligence and the Judiciary Committees of the House and Senate. It was my feeling then, and I am pleased to say that the committee report now clarifies my concerns, that any reporting obligation should be limited to a statistical report on the progress of the bill and should address intself to no classified materials. It is my understanding that the chairman of the subcommittee, Mr. EDWARDS, agrees with this interpretation.

Mr. BUTLER is satisfied, as am I, and I therefore endorse this legislation and urge my colleagues to do likewise.

Mr. MAZZOLI. Mr. Speaker, I yield such time as he would desire to the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr. Speaker, I thank the gentleman from Kentucky for yielding.

First of all, I would like to complement the floor manager of this bill, the gentleman from Kentucky, and the other members of the House Permanent Select Committee on Intelligence on the excellent job they did in drafting this legislation. The Intelligence Committee spent months working closely with the Justice Department, the intelligence community, the defense bar, and other interested groups to develop legislation in this area.

In its own consideration of the legislation, it became immediately apparent to the Judiciary Committee that there was a remarkably broad range of support for the bill. That range of support I think indicates how well the Intelligence Committee balanced all of the competing interests at stake in this bill.

I do not always see eye to eye with my colleagues on the House Intelligence Committee, particularly in areas where fundamental constitutional rights could be affected. In this case, important sixth amendment rights of confrontation and compulsory process were closely entwined with virtually every aspect of this bill.

But the proper balance between the needs of national security and constitutional guarantees was struck by the Intelligence Committee. The unanimous vote in the Judiciary Committee is a further indication that this bill deserves the support of this body.

The bill is a lawyer-like response to a series of delicate legal problems. It is primarily a procedural bill. It does not attempt to alter substantive rights or to change the rules of evidence or criminal procedure. It is a workable solution to the graymail dilemma and as such I think deserves the support of the House.

● Mr. BOLAND. Mr. Speaker, I rise in strong support of H.R. 4736, the Classified Information Criminal Trial Procedures Act. It is a carefully crafted effective solution to the graymail problem which has burdened our criminal justice system for several years.

The gist of the problem is that there now exists no uniform procedural mechanism enabling the Government to determine, pretrial, what classified information will be disclosed during trial. Without such knowledge, a decision on whether to prosecute a case involving classified information is at best a guessing game and a decision not to prosecute—based on fear of the unknown—is the likely result.

H.R. 4736 will enable the Government to make an informed decision in such cases and result in both the better administration of justice and fewer unnecessary disclosures of classified information. These results will be achieved without impinging on the rights of criminal defendants.

The wide-ranging bipartisan support which H.R. 4736 commands is perhaps the best evidence that the problems it addresses are real and immediate and that the manner in which it addresses them is correct. The bill is supported by the CIA and the ACLU, by the Justice Department and the Center for National Security Studies. It has been endorsed by the American Bar Association. It was reported without a dissenting vote by both the Judiciary Committee and the Intelligence Committee.

Such a coalescence of support also attests to the skill and dedication brought to this endeavor by the members and staff of the Intelligence and Judiciary Committees, and those with whom they worked closely in the Senate and Department of Justice.

The gentleman from Kentucky (Mr. MAZZOLI) has worked particularly long and hard on this measure, as have the gentlemen from Illinois (Mr. MURPHY, Mr. McCLORY, and Mr. HYDE), and the gentleman from California (Mr. EDWARDS). I commend them for their efforts and urge your support for this important legislation which is the product of their labors.●

□ 1440

Mr. MAZZOLI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky (Mr. MAZZOLI) that the House suspend the rules and pass the bill, H.R. 4736, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that the Permanent Select Committee on Intelligence, be discharged from further consideration of the Senate bill (S. 1482) to provide certain pretrial, trial, and appellate procedures for criminal cases involving classified information, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1482

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Classified Information Procedures Act".

DEFINITIONS

SEC. 1. (a) "Classified information", as used in this Act, means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in section 2014(y) of title 42, United States Code.

(b) "National security", as used in this Act, means the national defense and foreign relations of the United States.

PRETRIAL CONFERENCE

SEC. 2 At any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution. Following such motion, or on its own motion, the court shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by section 5 of this Act, and the initiation of the procedure established by section 6 of this Act. In addition, at the pretrial conference the court may consider any other matters which relate to classified information or which may promote a fair and expeditious trial.

PROTECTIVE ORDERS

SEC. 3. Upon request of the Government, the court shall issue a protective order to guard against the compromise in connection with a prosecution by the United States of any classified material.

DISCLOSURE OF CLASSIFIED INFORMATION TO DEFENDANTS

SEC. 4. The court may authorize the Government to delete specified items of classified information from documents to be made available to the defendant, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The Government's motion requesting such authorization and materials submitted in support thereof shall, upon request of the Government, be considered by the court in camera and not disclosed to the defendant.

NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED INFORMATION

SEC. 5. (a) Notice by Defendant —If a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or where no time is specified within thirty days prior to trial, notify the attorney for the Government and the court in writing. Whenever a defendant learns of additional classified information he reasonably expects to disclose at any such proceeding, he shall notify the attorney for the Government and the court in writing as soon as possible thereafter. Such notice shall include a brief description of the classified information. No defendant shall disclose any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection, until the Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 6 of this Act, and until the time for the Government to appeal such determination under section 7 has expired or any appeal under section 7 by the Government is decided.

(b) FAILURE TO COMPLY.—If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION

SEC. 6. (a) MOTION FOR HEARING.—After the United States receives notification pursuant to section 5 or otherwise learns of any classified information that the defendant may disclose or cause to be disclosed at a trial or pretrial proceeding, the Government may, within the time specified by the court, move for a hearing concerning any such information. In connection with its motion, the Government may submit the classified information along with an explanation of the basis for the classification to the court for its examination in camera and shall provide the court with an affidavit of the Attorney General, the Deputy Attorney General, or a designated Assistant Attorney General certifying that the information is classified. The hearing, or specified portion thereof, shall be held in camera whenever the Government certifies that a public proceeding may result in the compromise of classified information.

(b) HEARING.—(1) Prior to the hearing, the Government shall provide the defendant with notice of the information that will be at issue. This notice shall identify the specific classified information that will be at issue whenever that information has previously been made available to the defendant in connection with the pretrial proceedings. The Government may describe the information by generic category approved by the Court rather than identifying the specific information of concern to the Government when the Government has not previously made the information available to the defendant in connection with the pretrial proceedings.

(2) Following a hearing, the court shall determine whether and the manner in which the information at issue may be used in a trial or pretrial proceeding. As to each item of classified information, the court shall set forth in writing the basis for its determination. Where the Government's motion under subsection (a) is filed prior to the trial or pretrial proceeding, the court shall rule prior to the commencement of the relevant proceeding.

(4)(A) If the court determines that the information may not be disclosed or elicited at a pretrial or trial proceeding the record of the hearing shall be sealed and preserved by the Government in the event of an appeal. The defendant may seek reconsideration of the court's determination prior to or during trial.

(B) In lieu of authorizing disclosure of the specific classified information, the court shall, if it finds that the defendant's right to a fair trial will not be prejudiced, order—

(i) substitution of a statement admitting relevant facts that the specific classified information would tend to prove, or

(ii) substitution of a summary or portion of a specific classified information.

(C) If the court determines that these alternatives to full disclosure may not be used and the Government provides the court with an affidavit of the Attorney General, Deputy Attorney General, or designated Assistant Attorney General objecting to disclosure of the information, the court shall issue any order which is required in the interest of justice. Such an order may include, but need not be limited to an order—

(i) striking or precluding all or part of the testimony of a witness; or

(ii) declaring a mistrial; or

(iii) finding against the Government on any issue as to which the evidence relates; or

(iv) dismissing the action, with or without prejudice; or

(v) dismissing specified counts of the indictment against the defendant.

Any such order shall permit the Government to avoid the sanction for nondisclosure by agreeing to permit the defendant to disclose the information at the pertinent trial or pretrial proceeding. The Government may exercise its right to take an interlocutory appeal prior to determining whether to permit disclosure of any classified information.

(c) RECIPROCITY.—Whenever the court determines pursuant to subsection (b) that classified information may be disclosed in connection with a trial or pretrial proceeding, the court shall, unless the interest of fairness does not so require, order the Government to provide the defendant with the information it expects to use to rebut the classified information. The court may place the Government under a continuing duty to disclose such rebuttal information. If the Government fails to comply with its obligation under this subsection, the court may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the Government of any witnes with respect to such information.

INTERLOCUTORY APPEAL

SEC. 7. (a) An interlocutory appeal by the United States taken before or after the defendant has been placed in jeopardy shall lie to a court of appeals from a decision or order of a district court in a criminal case requiring the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

(b) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (i) shall hear argument on such appeal within four days of the adjournment of the trial, (ii) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (iii) shall render its decision within four days of argument on appeal, and (iv) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

INTRODUCTION OF CLASSIFIED INFORMATION

SEC. 8. (a) CLASSIFICATION STATUS.—Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(b) PRECAUTIONS BY COURT.—The court, in order to prevent unnecessary disclosure of classified information involved in any criminal proceeding, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein.

(c) TAKING OF TESTIMONY.—During the examination of a witness in any criminal proceeding, the Government may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring the Government to provide the court with a proffer of the witness' response to the question or line of inquiry and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

SECURITY PROCEDURES TO SAFEGUARD AGAINST COMPROMISE OF CLASSIFIED INFORMATION DISCLOSED TO THE COURT

SEC. 9. (a) Within one hundred and twenty days following the date of enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe security procedures for protection against the compromise of classified information submitted to the Federal district courts, the courts of appeals, and the Supreme Court.

(b) Until such time as procedures are promulgated pursuant to subsection (a), the Federal courts shall in each case involving classified information adopt procedures to protect against the compromise of such information.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL DEFENSE

SEC. 10. In any prosecution in which the Government must establish that material relates to the national defense or constitutes classified information, the Government shall notify the defendant, within the time specified by the court, of the portions of the material that it reasonably expects to rely upon to establish the national defense or classified information element of the offense.

SEC. 11. Section 1 through 10 of this Act may be amended as provided in section 2076, title 28, United States Code.

ATTORNEY GENERAL GUIDELINES

SEC. 12. (a) Within one hundred and eighty days of enactment of this law, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision whether to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed. Such guidelines shall be transmitted to the appropriate committees of Congress.

(b) When the Department of Justice decides not to prosecute a violation of Federal law pursuant to subsection (a), an appropriate official of the Department of Justice shall prepare written findings detailing the reasons for the decision not to prosecute. The findings shall include—

(1) the intelligence information which the Department of Justice officials believe might be disclosed,

(2) the purpose for which the information might be disclosed,

(3) the probability that the information would be disclosed, and

(4) the possible consequences such disclosure would have on the national security.

(c) Consistent with applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the Attorney General or his designee shall report orally or in writing semiannually to the Permanent Select Committee on Intelligence of the United States House of Representatives and the Select Committee on Intelligence of the United States Senate on all cases where a decision not to prosecute a violation of Federal law pursuant to subsection (a) has been made.

REPORTS TO CONGRESS

SEC. 13. The Attorney General shall deliver to appropriate committees of Congress a report concerning the operation and effectiveness of this Act and including suggested amendments to this Act. For the first three years this Act is in effect, there shall be a report each year. After three years, such reports shall be delivered as necessary.

MOTION OFFERED BY MR. MAZZOLI

Mr. MAZZOLI. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAZZOLI moves to strike out all after the enacting clause of the Senate bill, S. 1482, and to insert in in lieu thereof the provisions of H.R. 4736, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "An act to establish certain pretrial and trial procedures for the use of classified information in connection with Federal criminal cases, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 4736) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 1482

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill, S. 1482, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and without objection, appoints the following conferees: Messrs. BOLAND, MAZZOLI, EDWARDS of California, DRINAN, MCCLORY, and HYDE.

There was no objection.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

SAFE DRINKING WATER ACT AMENDMENTS

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8117) to amend the Safe Drinking Water Act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 8117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 1416(b)(2) of the Public Health Service Act is amended by striking out "1981" in subparagraph (A)(i) thereof and substituting "1984" and by striking out "1983" in subparagraph (B)(i) thereof and substituting "1986".

SEC. 2. (a) Part C of title XIV of the Public Health Service Act is amended by adding the following at the end thereof:

"OPTIONAL DEMONSTRATION BY STATES RELATING TO OIL OR NATURAL GAS

"SEC. 1425. (a) For purposes of the Administrator's aproval or disaproval under section 1422 of that portion of any State underground injection control program which relates to—

"(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

"(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

in lieu of the showing required under subparagraph (A) of section 1422(c)(1) the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

"(b) If the Administrator revises or amends any requirement of a regulation under section 1421 relating to any aspect of the underground injection referred to in subsection (a), in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) has been made, in lieu of the showing required under section 1422(b)(1)(B) the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraph (A) through (D) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

"(c)(1) Section 1422(b)(3) shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

"(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 1422 in the same manner as provided in such subsection with respect to a determination described in such subsection.

"(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.".

(b) Section 1423(a)(1) of such Act is amended by inserting after "(within the meaning of section 1422(b)(3)" the following: "or section 1425(c)".

(c) Section 1433(c)(2) of title XIV of the Public Health Service Act is amended by inserting the following at the end thereof: "Such term includes, where applicable, a program which meets the requirement of section 1425.".

SEC. 3. Section 1421(d)(1) of the Public Health Service Act is amended by adding the following at the end thereof: "Such term does not include the underground injection of natural gas for purposes of storage.".

SEC. 4. (a) Section 1415 of the Public Health Service Act is amended by inserting the following section heading at the beginning of such section: "Variances".

(b) Section 1416(a)(2) of the Public Health Service Act is amended by inserting immediately after "requirement," the following: "or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system.".

(c) Section 1421(b)(1)(A) of the Public Health Service Act is amended by striking out "effective three years after the date of the enactment of this title," and inserting in lieu thereof the following: "effective on the date on which the applicable underground injection control program takes effect,".

(d) Section 1443(b)(2) of the Public Health Service Act is amended by striking out the second and third sentences therein and inserting in lieu thereof the following: "No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 1421.".

SEC. 5. Section 1442 of title XIV of the Public Health Service Act is amended by inserting the following new subsection after subsection (d) and by redesignating subsection (e) as (f):

"(e) The Administrator is authorized to make grants to a public water system which is required, under State or local law, to meet standards relating to drinking water turbidity which are more stringent than the standards in effect pursuant to this title. Such grants shall be used by the public water system for the development and demonstration (including construction and installation) of any water filtration system which will demonstrate a new or improved method of meeting such more stringent standards.".

The SPEAKER pro tempore. Is a second demanded?

Mr. BROYHILL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. WAXMAN) will be recognized for 20 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when the Safe Drinking Water Act was reauthorized last year, I pledged that the Subcommittee on Health and the Environment would conduct vigorous oversight over the act and recommended needed amendments. Since then, the subcommittee has held 5 days of oversight hearings, including field hearings in Chicago and Pittsburgh. The bill which comes before you today is the product of that oversight.

During our hearings, many difficult and important issues were raised. We do not purport to have thoroughly dealt with all those issues in the reported bill. Rather, we have confined ourselves to proposing amendments to the Safe Drinking Water Act that are needed right away to adjust deadlines, or to improve Federal-State coordination, or to modify program coverage. We intend to undertake further oversight over the act in the next Congress and study possible additional changes to the act.

Section 1 of the bill extends for 3 additional years the power of the States to grant temporary case-by-case exemptions from the interim primary drinking water regulations. Thirteen thousand six hundred systems—most of them serving fewer than 2,500 people—are estimated by the Environmental Protection Agency to be unable to comply with the interim standards by the current January 1, 1981, statutory deadline. In the great majority of cases, noncompliance has been caused by lack of adequate leadtime or financial resources to make needed improvements. The additional exemption period permitted by this bill will allow orderly planning of needed improvements and will permit exploration of all available funding sources, such as through the Small Business Administration and the Farmers Home Administration.

Under the bill, the States would set compliance deadlines for systems on an individual basis. We expect that these compliance dates will be set on the basis of appropriate engineering studies to determine the alternatives available to the particular system. We expect also that systems will be brought into compliance as soon as possible, as is required by the act. In granting exemptions and setting compliance dates, no distinction is intended to be made between privately—and publicly—owned systems.

Section 2 provides States with an alternative means for States to acquire primary enforcement responsibility for the control of underground injection related to the recovery and production of oil and natural gas.

At present, a State may obtain primary enforcement responsibility for controlling underground injection only by showing that its underground injection control program meets the requirements of EPA regulations. Representatives of States that regulate underground injection related to the recovery or production of oil or natural gas testified in oversight hearings that they already have programs that meet the requirements of the Safe Drinking Water Act and prevent the underground injection which endangers drinking water sources. The bill would allow those States to continue their programs, unencumbered by additional Federal requirements, if they can demonstrate that their programs meet the requirements of the act. A State that can make this demonstration would be considered to have primary enforcement responsibility the same as a State that has met EPA's regulations.

Section 3 deletes the underground storage of natural gas from the statutory definition of underground injection. Natural gas storage operators testified in oversight hearings that the mere possibility of Federal regulation would discourage needed expansion of gas storage facilities. Since there currently is no evidence that gas storage poses a risk to drinking water quality, we chose to delete gas storage from the underground injection control program.

Section 4 makes various needed technical amendments. Section 5 allows grants to be made to a public water system for the purpose of developing a water filtration system which will demonstrate a new or improved method of meeting State turbidity standards that are stricter than Federal standards. A technical change has been made in this section to reflect the committee's intent that these grants be discretionary.

Mr. Speaker, the changes proposed in H.R. 8117 are necessary to a workable program of improving drinking water quality across the Nation. I commend all of those who have worked to bring forth this bill. I respectfully urge my colleagues to support H.R. 8117.

Mr. BROYHILL. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I would like to thank Mr. WAXMAN, chairman of the Subcommittee on Health and the Environment, for his efforts on behalf of H.R. 8117. This legislation makes necessary midcourse corrections in the administration of the Safe Drinking Water Act. Of course, the act will be scrutinized during the 1982 reauthorization process with an eye on more extensive changes to the extent they are necessary.

I would be remiss if I did not thank my colleague from Texas (Mr. GRAMM) and emphasize my support for his tireless efforts with respect to even more comprehensive adjustments in the existing statute.

Section 1 of H.R. 8117 extends for 3 years the power of the States to grant exemptions from the national interim primary drinking water regulations. Under the Safe Drinking Water Act, exemptions are the main source of local relief from the deadlines of the regulations. Because as of this date all EPA drinking water regulations are interim regulations, the exemption provision for such regulations would have been a dead letter without this legislation.

Of course, one of the reasons for this state of affairs is the fact that the Administrator of EPA has not issued revised national drinking water regulations. However, this reluctance to do so is understandable in light of substantial doubt concerning an adequate basis for such an action in view of the fact that the report on the study conducted by the National Academy of Sciences did not contain prerequisite proposals for recommended maximum contaminant levels.

To compensate for the expected demise of the exemption program for interim regulations, EPA had proposed a strategy of enforcement priority for small systems.

The extending of exemption deadlines has several advantages over the small systems strategy. First, thousands of systems which would be in violation of law would not be carrying the stigma and anxiety of such violations if they obtained an exemption. Second, an exemption shields the systems from citizen suits to require compliance with Federal standards under section 1449 of the act. Third, a utility that obtains an exemption is not subject to an EPA enforcement action under section 1414 of the act. Fourth, civil proceedings for violating Federal standards under section 1414 may not be maintained against a system that has been granted an exemption except where the system fails to comply with its compliance schedule. Fifth, EPA has only restricted authority to police State exemption practices under section 1416. Sixth, a decision on the State granting of exemptions is subject to judicial review under section 1448.

I have been somewhat concerned that the guidelines for determinations of economic factors for granting exemptions as presented in EPA's "Guidance for the Issuance of Variances and Exemptions" have been unduly restrictive. However, EPA was wise enough in its preface in that document to indicate that it will comprehensively review State-issued exemptions at best every 3 years. State regulators are best positioned to judge whether there are compelling factors affecting a local system's ability to comply with the unique circumstances presented by each case. The Committee on Interstate and Foreign Commerce made it clear in its report accompanying this bill that EPA should not exercise its limited authority to revoke exemptions if the States are making good faith efforts at implementation of the law.

The committee made clear its intentions that private and public water suppliers be treated alike because the customer economic impact will be the same. Any language in the guidance documents indicating a bias toward financial constraints peculiar to public systems is, therefore, too restrictive. In any event, States have broad authority to issue exemptions under certain statutory requirements without reference to any set formula. I might mention in passing that in a portion of the committee report dealing with exemptions, due to a clerical error, the last phrase of a sentence which should have read "the committee does not believe that whether a system is privately or publicly owned is relevant in determining this date or whether an exemption is granted" was inadvertently placed in the last sentence of that paragraph.

Section 2 of the bill should free the producing States which have been doing a good job of regulating underground injection relating to oil and natural gas from the requirements of EPA regulations and allow them to continue their current programs. This would result in substantial saving to consumers and relieve a matter which would otherwise exacerbate Federal-State relations. States have demonstrated substantial expertise and effectiveness in protecting underground sources of drinking water in oil and gas operations. I might say that I thought that Federal regulations in this area of underground injection were unnecessary and disruptive in the first instance and interfered and impeded oil and gas operations.

Section 3 of the bill was necessary to prevent EPA from discouraging expansion of natural gas storage facilities. Gas storage facilities have not proved a threat to drinking water quality.

I urge my colleagues to support the bill.

□ 1450

Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. MCCLORY), who has also been quite interested in this bill. Although he is not a member of the committee, he has been very helpful in helping us to formulate this bill and bringing it to the floor today.

Mr. MCCLORY. I thank my colleague, the gentleman from North Carolina, for yielding.

Mr. Speaker, I want to commend my colleague from California, Mr. HENRY WAXMAN, my colleague from North Carolina, Mr. JIM BROYHILL, and my colleague from Kentucky, Dr. TIM LEE CARTER, for continuing to hear and try to understand the problems of my constituents in Illinois related to the presence of barium found naturally in their community water supplies.

The problem regarding the validity of the barium standard was brought to me by officials of small communities in my congressional district who would find installation of a treatment plant financially burdensome and especially so if they felt it might not be necessary in order to protect their health.

I felt compelled to continue to pursue the subject and Mr. WAXMAN was kind enough to hold a committee field hearing in Chicago in order to hear from local officials, scientists, the Illinois EPA, and the U.S. EPA.

At this hearing, varying opinions were expressed, but all agreed that additional studies regarding the effect of barium on human health would be beneficial. I feel it is imperative that additional studies be conducted if EPA is to impose environmental requirements on the communities.

Mr. Speaker, the community officials in my congressional district want these studies. They have always made it clear to me that if they felt the barium standard were correct and barium actually posed a danger to health, they would be the first to seek appropriate treatment facilities, since they live in these areas and drink the water.

The State officials charged with enforcement of Federal EPA standards throughout the Nation feel an urgent need for legislation such as that contained in this amendment to the Safe Drinking Water Act to allow them to continue to grant exemptions where authorized by the act. This amendment will provide such relief for an additional 3 years. It is my understanding that during this 3-year period it is expected that the Federal EPA will conduct or authorize studies so that revised standards will be based on more adequate scientific data. Mr. WAXMAN, am I correct in this assumption?

Mr. WAXMAN. If the gentleman will yield, yes, the committee in its report has mentioned a desire and expectation that additional studies be conducted in order to provide a more adequate scientific basis for standards which are being reviewed, as well as to develop standards for presently unregulated contaminants.

Mr. MCCLORY. Mr. WAXMAN, I hope that it is also the desire of your subcommittee and committee that no action will be taken to prevent the extension of water service for residential, commercial, or industrial use in those communities where the State EPA's see fit to grant exemptions in accord with the act.

Mr. WAXMAN. Yes, in general it is the desire of the subcommittee and the committee that communities that receive exemptions in accord with the act be allowed to grow and develop without hindrance in order to provide a better financial base for compliance with revised standards.

Mr. MCCLORY. Again, I thank my colleague from California, Mr. HENRY WAXMAN, my colleague from North Carolina (Mr. BROYHILL), and the gentleman from Kentucky (Dr. CARTER) for their cooperation and authorship of this amendment before us, H.R. 8117, which I have been happy to cosponsor.

Mr. Speaker, I urge my colleagues to vote for passage of this amendment at this time in order to provide urgently needed legislative relief to my constituents—and I am sure to many of your constituents as well.

Mr. Speaker, I am particularly pleased to have action by the House on this measure because of the hardship which has been experienced by a number of communities in my congressional district. As I have indicated before on the floor of the House, barium in combination with other elements, as well as radium in combination with other elements, are and have been found naturally in the water supplies in a number of communities in my congressional district. The presence of barium, and to a lesser extent radium, in such water supplies has existed since time immemorial without any apparent adverse effect on the health of the citizens who have been consuming water from these community water supplies. The level of barium in the water varies from 2 or 3 parts per million to as much as 10 parts per million. However, the interim standard for barium in water has been established by the Federal EPA at one part per million—a standard which responsible scientists, including those from the Argonne National Laboratory, as well as the State EPA director of the division of public water supplies contend is unwarranted on the basis of existing scientific and epidemiological data.

Mr. Speaker, the amendments which are contained in this legislation (H.R. 8117) should provide the necessary time within which further scientific and epidemiological studies may be completed to the end that a standard or standards may be established which have the authenticity to receive the support of the scientific community and which likewise would have the backing of the State EPA directors and public officials in the areas where such community water systems are found.

Mr. Speaker, the legislation which we are acting upon today should provide the necessary time within which a more reliable barium standard may be established.

Mr. Speaker, I appreciate the action taken by the subcommittee and the full committee. This evidence of cooperation between the Congress and the local communities and local officials who are involved as well as between the Congress and the State EPA directors seems to me entirely consistent with the intent of the Congress in the enactment of the Safe Drinking Water Act.

Mr. Speaker, it is also significant that this legislation has the strong support of Gov. James Thompson of Illinois, who, as representative of all of the communities in our State, feels strongly that this measure is needed in order to protect the communities directly involved and to permit uninterrupted economic development in our State.

Mr. Speaker, I want also to add that this legislation has the unanimous backing of State EPA directors represented by the State Conference of Sanitary Engineers, as evidenced by the testimony of Ira Markwood who is chairman of their water supply committee. Accordingly, this measure has national significance and broad national support.

With this in mind, I again urge my colleagues to vote in favor of H.R. 8117 today.

Mr. BROYHILL. Mr. Speaker, I yield myself 1 minute.

I do want to commend my colleague, the gentleman from Illinois (Mr. MCCLORY), for his diligence in this matter. I do agree with the gentleman with respect to the issues that he has raised here; and, of course, the gentleman has well represented his constituents with respect to this matter because he was rather persistent in their behalf and he did, at the same time, work with the subcommittee and the members in an attempt to work our satisfactorily legislative language in order to help the various communities with the problem that the gentleman has mentioned today.

Mr. MCCLORY. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Illinois.

Mr. MCCLORY. Mr. Speaker, again I want to thank the gentleman for his cooperation. I might say that my colleague from the adjoining district, the gentleman from Illinois (Mr. PHILIP M. CRANE), is also concerned about this subject.

Mr. WAXMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. GRAMM), who I earlier mentioned played such an important role in the development of this legislation.

Mr. GRAMM. Mr. Speaker, I would like to thank the gentleman from California, the distinguished chairman of this subcommittee.

I think that this bill represents an important first step in bringing rationality into the whole environmental debate. We have done no damage to environmental protection here. But we have found those areas, such as underground storage of natural gas, and injection of brine to produce oil and gas, where there were real problems, where there were real questions concerning what benefits were to be gained by new regulations, new paper work, filling out new forms, and what was to be lost in terms of energy production and the sale of energy to the American consumer.

We have taken the case where deadlines for the meeting of requirements imposed by EPA could not be met, where the standards themselves could not be defined in time for these deadlines to be binding, and we have set out, I think, a realistic time schedule.

I would just like to say that I appreciate the help of our distinguished chairman, the ranking minority member of this committee, and I think we have taken a step in the right direction. I am hoping that in 1982, when we rewrite the Safe Drinking Water Act, we will have an opportunity to focus in on the basic issues themselves, on the issue of who the burden of proof should rest upon when we impose binding constraints on the local government and on local waterworks.

I hope that we can debate the full range of issues, but I think this bill gives us breathing room. This bill addresses in a very realistic manner the most binding constraints that we face.

Mr. GONZALEZ. Mr. Speaker, will my distinguished colleague, the gentleman from Texas, yield for the purpose of a question?

Mr. GRAMM. I will be very happy to yield to my colleague from Texas.

Mr. GONZALEZ. I rise only because I have not had a chance to examine to see if there is any—chances are there is not—reference to what concerns us most in my district. Five years ago I had the great satisfaction of having an amendment that affected really a very unique situation, probably not only in this country but in the world, where a city is dependent for its sole source of drinking water on an aquifer, and the amendment was adopted. It provides for certain criteria in the cases of grants and, I imagine, the followup EPA rules.

Does the gentleman have any knowledge as to whether anything contained in this amendment today has any reference to the single-source aquifer situation provided for and now contained in the law?

Mr. GRAMM. The answer to that question is no, it in no way changes that aspect of the law which was written by the distinguished gentleman from Texas and in no way lessens those protections and the recognition of that unique problem.

Mr. GONZALEZ. I thank the distinguished gentleman.

● Mr. CORCORAN. Mr. Speaker, I wish to express my support for H.R. 8117, which will permit States to grant exemptions to water systems on a case-by-case basis from the U.S. Environmental Protection Agency's (EPA) interim primary drinking water regulations for 3 to 5 years.

The State of Illinois has lately encountered problems with the maximum contaminant levels for barium, fluoride and radioactivity as set by the EPA. Barium, fluoride and radioactivity occur naturally in many water supplies in Illinois, including 20 communities in the 15th District, which I represent.

While it seems possible that the EPA regulations relative to both barium and radioactivity are needed and are important because at some level both of these substances pose a public health problem, there is significant controversy involved in this matter. The basis for the regulations, as they are currently set, have repeatedly been disputed by experts in the field. In light of the significant amount of controversy as to the "safe" levels

of these substances in drinking water, and the apparent lack of any distinguishable effects resulting from the people of Illinois drinking the water having levels of excess of either or both of these substances, I am convinced that the EPA regulations are excessive.

The cost of compliance for the small water systems which are in violation of these standards is prohibitive. Illinois State law prevents any additional extensions of water supplies which are not in compliance. Rather than force these noncomplying systems to install equipment of unknown benefit, additional time, as granted by this legislation, is needed for research to establish proper maximum contaminant levels.

I have been contacted by the Governor of Illinois and local officials and residents of the areas which are affected by these regulations. In pursuing this problem, I have repeatedly contacted the EPA Administrator, Douglas M. Costle, in hopes that the EPA would reevaluate these regulations and offer reasonable methods for treatment to these communities. However, it quickly became apparent that only legislative action would grant the necessary relief. I commend Congressman ROBERT MCCLORY for his hard work in bringing this matter to the attention of my colleagues.

This extension will allow time for studies on these Federal standards so that EPA can develop the proper documentation for a new set of standards on these substances.●

● Mr. CARNEY. Mr. Speaker, today we are considering amendments to the Safe Drinking Water Act of 1974. That legislation contains provisions to protect groundwater management. I am aware that this bill has been carefully constructed to meet the needs of certain sections of the country and the concerns of environmental interests. I am also aware that these amendments are brought up on the suspension calendar, just as the extension of the Safe Drinking Water Act was last year at this time. In my opinion, the act is incomplete. We need legislative authority for a comprehensive program for groundwater protection.

Half of the United States depends on groundwater for its drinking water. Nevertheless, groundwaters across the United States have become increasingly polluted, thus endangering the one substance without which none of us can survive. The pollution we must be concerned about includes discharges from septic tanks and cesspools, as well as from leachate from land disposal sites, which injects chemical and industrial wastes into our water supply. Oil and gas exploration has caused groundwater pollution in some parts of the country. Finally, chemicals applied directly to the ground by man—such as pesticides and highway deicing salts, have also resulted in an increase in groundwater pollution.

It is interesting that this safe drinking water legislation is sandwiched between two other more extensive bills that will improve water quality and the safety of Americans. Last week the House approved the Oil Pollution Liability and Compensation Act, to provide means of cleaning up coastal waters that have been hit by oilspills. Later this week, we will consider the Hazardous Waste Containment Act. That bill will establish a program with teeth to protect the public from dangers posed by hazardous waste sites. This so-called superfund legislation will help to provide the financial assistance necessary to clean up hazardous waste sites.

However, as vital as these latter two bills are, it is necessary that we come to grips with the need for Federal authority to identify groundwater quality standards, and, above all, to develop technology to assure that polluted groundwater can be made potable.

It is my expectation that the groundwater problem will receive much closer attention during the 97th Congress. When that legislation comes to the floor, I sincerely hope that it will not be on the suspension calendar as it has been for the past 2 years. Legislation as important and expensive as the Safe Drinking Water Act deserves close attention by all Members.●

● Mr. PHILIP M. CRANE. Mr. Speaker, barium, a silver-white metallic element, appears naturally in community drinking water in many Illinois communities. For as long as residents of northern Illinois have been drinking ground water, they have undoubtedy been imbibing barium as well. No one seemed to notice until 1974. The Safe Drinking Water Act of 1974 empowered the Environmental Protection Agency to set standards for drinking water. By January 1, 1981, drinking water was to be in compliance with EPA's standards. This 7-year delay was thought to be more than adequate to allow communities to install filters or whatever technology was necessary to comply with EPA's edicts.

In setting that 7-year deadline, Congress overlooked a detail—the EPA does not move with the efficiency of a free market business. Four years later, EPA was just getting around to issuing its standards for drinking water. This left just 3 years to comply with the standards.

Even more distressing than the abbreviated time for compliance after EPA announced its regulations, however, is the basis for these requirements. Although EPA cited the customary laundry list of studies documenting the dangers of this trace metal in drinking water, only one of those studies, according to an EPA source, was a study actually done on people drinking water in a community. The rest of the studies were of the "rat drinking 700 bottles of soda and dying of cancer an instant before drowning" variety. The single epidemiological study (study on homo sapiens in his natural habitat) was even considered unsatisfactory by EPA. Evidently the study did not account for individuals who had installed their own private water softening devices.

Notwithstanding the reduced time for compliance and the questionable scientific support for the dangers of barium, any community without a device to remove the dangerous natural element from drinking water on January 1, 1980, will be subject to fines of not more than $5,000 every day they fail to comply. EPA will teach us not to drink our water, if they have to fine us down to our last dollar.

This is an example the Federal Government's protective zeal carried to excess. Surely no one would suggest that communities in Illinois or anywhere else would continue to distribute water that would threaten community health. The local officials, who must drink the water themselves, would be the first to install appropriate treatment facilities and warn all residents of the danger in the interim. Perhaps EPA should be reminded that self-preservation is more motivating than any fine. If the danger of barium is established, fines will not be necessary; the initial warning will elicit immediate precautions.

H.R. 8117, the bill before the House today, will grant Illinois communities and the rest of the Nation another 3 years to comply with EPA drinking water requirements. In the interim, EPA will conduct more studies in search of the conclusive evidence that barium is dangerous. EPA supports this delay.

Indeed EPA is wise in supporting this delay. EPA's own publication, "National Interim Primary Drinking Water Regulations," states that "no study appears to have been made of the amounts of barium that may be tolerated in drinking water of effects from prolonged feeding of barium salts from which an acceptable water guideline may be set." While the barium standard is not the only requirement delayed by this bill, any standard based on such flimsy evidence should not be enforced against communities who would need no compulsion to protect themselves if the danger were substantiated.

As you may detect, I would prefer to reconsider this barium standard in its entirety. But, we can at least delay its effective date. I have sponsored H.R. 5675 and H.R. 7189 to effect this delay. Maybe we can reconsider this environmental policy another day. Meantime, I urge the passage of H.R. 8117's provisions to delay the safe drinking water requirements.●

● Mr. BOLAND. Mr. Speaker, the Committee on Interstate and Foreign Commerce reported H.R. 8117 on Friday, September 19, 1980. During committee action, an amendment was agreed to that required the EPA Administrator to make grants to a public water system to meet standards relating to drinking water turbidity more stringent than those in effect under the Public Health Service Act. The original committee amendment did not authorize appropriations for this purpose. It would have required the reallocation of the existing authorization. The original amendment could have required the reallocation of funds appropriated for fiscal year 1980 in Public Law 96-103. As such, it constituted an appropriation in a legislative bill and was in violation of clause 5, rule XXI.

Mr. Speaker, I am pleased that when this issue was brought to the attention of the Commerce Committee, the response was quick and satisfactory. The committee amendment has been technically adjusted and it now authorizes, rather than requires, the EPA Administrator to make grants to a public water system. Thus the amendment does not violate House rules and the prerogatives of the Committee on Appropriations are preserved. I commend the gentleman from California (Mr. WAXMAN) for his understanding in resolving this matter.●

● Mr. LEE. Mr. Speaker, the bill before us is a meritorious and reasonable one, representing a compromise between theory and reality. I want to commend my good friend and colleague, the gentleman from North Carolina, Mr. BROYHILL; the chairman of the subcommittee, Mr. WAXMAN; my colleague, the gentleman from Texas, Mr. GRAMM; and the other members of the Subcommittee on Health and the Environment for the many hours of hard work they have put into this legislation. I think it truly represents an attempt to respond to and accommodate the needs of those parties that will be affected by the law, while continuing to strive for improved drinking water systems across the country.

I am especially pleased with that provision of the bill which authorizes the Administrator of the Environmental Protection Agency to make money available to a public water system for the development and demonstration of a water filtration system that will show a new or improved method of meeting standards required under State or local law as they relate to turbidity, which are more stringent than those mandated by the Federal Government.

Discussion during consideration of H.R. 8117 by the full Commerce Committee made it clear that the committee intends that this demonstration grant be awarded to the village of Cayuga, N.Y. The village is experiencing difficulty in meeting Federal and State drinking water standards due to turbidity or muddiness of the water supply. The raw water supply for this community of less than 700 people is drawn from Cayuga Lake where the inlet at the village end of the lake is sometimes in as little as 4 feet of water. When the wind blows from the south or the southwest, severe turbidity occurs as the result of wave action along the lake's east shore. Turbidity also occurs in the spring when the ice on the lake breaks and the barge canal is refilled to a navigation level.

Village fathers have investigated a number of alternatives to meet Federal and State safe drinking water requirements; however, with a tax base made up of fewer than 700 citizens—and 25 percent of that tax base is due to the town's only industry—it is impossible for the community to afford a conventional water treatment plant that would cost in excess of $1 million.

Village officials have become aware of a new technology that could resolve their problem for as little as $250,000. The community has utilized all the money they had to try this new filtration method, and the system was able to meet the Federal standard; however, the higher State standard could be met only 10 months out of the year. The technology has now been modified even further, and it is thought the system will be able to meet the State standard all 12 months of the year. This demonstration grant will allow this small, rural community to try a new and cost-effective filtration technology under very difficult conditions.

We think the demonstration of the success of this new, and now improved innovative water filtration technology in the village of Cayuga, N.Y., will prove to be a real boon for other jurisdictions around the country which may in the future experience similar financial difficulties in meeting strict water purity standards. It will also further the purposes of the act in providing a more cost-efficient means to clean up the Nation's drinking water supplies.

I join my colleagues on the committee in urging the speedy passage of this legislation.●

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 8117, under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

The was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. WAXMAN) that the House suspend the rules and pass the bill, H.R. 8117, as amended.

The question was taken.

Mr. WEAVER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b), rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

□ 1500

PERMISSION TO FILE CONFERENCE REPORT ON S. 1177, MENTAL HEALTH SYSTEMS ACT

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. STAGGERS submitted the following conference report and statement on the bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 96-1367)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Mental Health Systems Act".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Findings.

TITLE I—GENERAL PROVISIONS

PART A—DEFINITIONS

Sec. 101. Definition of community mental health center.
Sec. 102. Other definitions.

PART B—STATE ADMINISTRATIVE RESPONSIBILITIES

Sec. 105. State mental health authority.
Sec. 106. Mental health service areas.
Sec. 107. Allotments to States to improve the administration of State mental health programs.

TITLE II—GRANT PROGRAMS

Sec. 201. Grants for community mental health centers.
Sec. 202. Grants for services for chronically mentally ill individuals.
Sec. 203. Grants for services for severely mentally disturbed children and adolescents.
Sec. 204. Grants for mental health services for elderly individuals and other priority populations.
Sec. 205. Grants for non-revenue-producing services.
Sec. 206. Grants for mental health services in health care centers.
Sec. 207. Grants and contracts for innovative projects.
Sec. 208. Grants for the prevention of mental illness and the promotion of mental health.

TITLE III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

Sec. 301. State mental health services programs.
Sec. 302. Contents of programs.
Sec. 303. Mental health provisions of State health plans.

PART B—APPLICATIONS AND RELATED PROVISIONS

Sec. 305. State administration.
Sec. 306. Processing of applications by State mental health authorities.
Sec. 307. Applications.
Sec. 308. Indian tribes and organizations.
Sec. 309. Procedures.

PART C—PERFORMANCE

Sec. 315. Performance contracts.
Sec. 316. Performance standards.
Sec. 317. Evaluation and monitoring.

PART D—ENFORCEMENT

Sec. 321. Enforcement.

PART E—MISCELLANEOUS

Sec. 325. National Institute of Mental Health Prevention Unit.
Sec. 326. Technical assistance.
Sec. 327. Indirect provision of services.
Sec. 328. Cooperative agreements.

TITLE IV—ASSOCIATE DIRECTOR FOR MINORITY CONCERNS

Sec. 401. Associate Director for Minority Concerns.

TITLE V—MENTAL HEALTH RIGHTS AND ADVOCACY

Sec. 501. Bill of rights.
Sec. 502. Grants for protection and advocacy programs.

TITLE VI—RAPE PREVENTION AND CONTROL

Sec. 601. Rape prevention and control.
Sec. 602. Grants for services for rape victims.

TITLE VII—EXTENSION OF COMMUNITY MENTAL HEALTH CENTERS ACT

Sec. 701. One-year extension of Community Mental Health Centers Act.

TITLE VIII—MISCELLANEOUS

Sec. 801. Employee protection.
Sec. 802. Report on shelter and basic living needs of chronically mentally ill individuals.
Sec. 803. Obligated service for mental health traineeships.
Sec. 804. Conforming amendments.
Sec. 805. Special pay for Public Health Service physicians and dentists.
Sec. 806. Contract authority.

TITLE IX—MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEMS

Sec. 901. Mechanized claims processing and information retrieval systems.

FINDINGS

SEC. 2. The Congress finds—

(1) despite the significant progress that has been made in making community mental health services available and in improving residential mental health facilities since the original community mental health centers legislation was enacted in 1963, unserved and underserved populations remain and there are certain groups in the population, such as chronically mentally ill individuals, children and youth, elderly individuals, racial and ethnic minorities, women, poor persons, and persons in rural areas, which often lack access to adequate private and public mental health services and support services;

(2) the process of transferring or diverting chronically mentally ill individuals from unwarranted or inappropriate institutionalized settings to their home communities has frequently not been accompanied by a process of providing those individuals with the mental health and support services they need in community-based settings;

(3) the shift in emphasis from institutional care to community-based care has not always been accompanied by a process of affording training, retraining, and job placement for employees affected by institutional closure and conversion;

(4) the delivery of mental health and support services is typically uncoordinated within and among local, State, and Federal entities;

(5) mentally ill persons are often inadequately served by (A) programs of the Department of Health and Human Services such as medicare, medicaid, supplemental security income, and social services, and (B) programs of the Department of Housing and Urban Development, the Department of Labor, and other Federal agencies;

(6) health care systems often lack general health care personnel with adequate mental health care training and often lack mental health care personnel and consequently many individuals with some level of mental disorder do not receive appropriate mental health care;

(7) present knowledge of methods to prevent mental illness through discovery and elimination of its causes and through early detection and treatment is too limited;

(8) a comprehensive and coordinated array of appropriate private and public mental health and support services for all people in need within specific geographic areas, based upon a cooperative local-State-Federal partnership, remains the most effective and humane way to provide a majority of mentally ill individuals with mental health care and needed support; and

(9) because of the rising demand for mental health services and the wide disparity in the distribution of psychiatrists, clinical psychologists, social workers, and psychiatric nurses, there is a shortage in the medical specialty of psychiatry and there are also shortages among the other health personnel who provide mental health services.

TITLE I—GENERAL PROVISIONS

PART A—DEFINITIONS

DEFINITION OF COMMUNITY MENTAL HEALTH CENTER

SEC. 101. (a) For purposes of this Act, the term "community mental health center" means a legal entity (1) through which comprehensive mental health services are provided—

(A) principally to individuals residing in a mental health service area, with special attention to those who are chronically mentally ill,

(B) within the limits of its capacity, to any individual residing or employed in such area regardless of ability to pay for such services, current or past health condition, or any other factor, and

(C) in the manner prescribed by subsection (b), and (2) which is organized in the manner prescribed by subsections (c) and (d).

(b)(1) The comprehensive mental health services which shall be provided through a community mental health center are as follows:

(A) Beginning on the date the community mental health center is established for purposes of section 201, the services provided through the center shall include—

(i) inpatient services, emergency services, and outpatient services;

(ii) assistance to courts and other public agencies in screening residents of the center's mental health service area who are being considered for referral to a State mental health facility for inpatient treatment to determine if they should be so referred and provision, where appropriate, of treatment for such persons through the center as an alternative to inpatient treatment at such a facility;

(iii) provision of followup care for residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility;

(iv) consultation and education services which—

(I) are for a wide range of individuals and entities involved with mental health services, including health professionals, schools, courts, State and local law enforcement and correctional agencies, members of the clergy, public welfare agencies, health services delivery agencies, and other appropriate entities; and

(II) include a wide range of activities (other than the provision of direct clinical services) designed to develop effective mental health programs in the center's mental health service area, promote the coordination of the provision of mental health services among various entities serving the center's mental health service area, increase the awareness of the residents of the center's mental health service area of the nature of mental health problems and the types of mental health services available, and promote the prevention and control of rape and the proper treatment of the victims of rape; and

(v) the services described in subparagraph (B) or, in lieu of such services, the center shall have a plan approved by the Secretary under which the center will, during the three-year period beginning on such establishment date, assume in increments the provision of the services described in subparagraph (B) and will upon the expiration of such three-year period provide all the services described in subparagraph (B).

(B) After the expiration of such three-year period, a community mental health center shall provide, in addition to the services required by subparagraph (A), services which include—

(i) day care and other partial hospitalization services;

(ii) a program of specialized services for the mental health of children, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary);

(iii) a program of specialized services for the mental health of the elderly, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary);

(iv) a program of transitional half-way house services for mentally ill individuals who are residents of its mental health service area and who have been discharged from inpatient treatment in a mental health facility or would without such services require inpatient treatment in such a facility; and

(v) provision of each of the following service programs (other than a service program for which there is not sufficient need (as determined by the Secretary) in the center's mental health service area, or the need for which in the center's mental health service area the Secretary determines is currently being met):

(I) A program for the prevention and treatment of alcoholism and alcohol abuse and for the rehabilitation of alcohol abusers and alcoholics.

(II) A program for the prevention and treatment of drug addiction and abuse and for the rehabilitation of drug addicts, drug abusers, and other persons with drug dependency problems.

(2) The provision of comprehensive mental health services through a center shall be coordinated with the provision of services by other health and social service agencies (including public mental health facilities) in or serving residents of the center's mental health service area to ensure that persons receiving services through the center have access to all such health and social services as they may require. The center's services (A) may be provided at the center or satellite centers through the staff of the center or through appropriate arrangements with health professionals and others in the center's mental health service area, or, with the approval of the Secretary, in the case of inpatient services, emergency services, partial hospitalization, transitional half-way house services, and certain specialized services, through appropriate arrangements with health professionals and others serving the residents of the mental health service area, (B) shall be available and accessible to the residents of the area promptly, as appropriate, and in a manner which preserves human dignity and assures continuity and high quality care and which overcomes geographic, cultural, linguistic, and economic barriers to the receipt of services, and (C) when medically necessary, shall be available and accessible twenty-four hours a day and seven days a week.

(3)(A) The mental health care of every patient of a center shall be under the supervision of a member of the professional staff of the center. The center shall provide for having a member of its professional staff available to furnish necessary mental health care in case of an emergency.

(B) Any medical services provided by a center shall be under the supervision of a physician unless otherwise permitted by State law. Whenever possible, the supervising physician shall be a psychiatrist.

(c)(1) Except as provided in paragraph (2) or (3), a community mental health center shall have a governing body which (A) is composed of individuals who reside in the center's mental health service area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area, and (B) is required to meet at least once a month, to establish general policies for the center (including a schedule of hours during which services will be provided), to approve the center's annual budget, and to approve the selection of a director for the center. At least one-half of the members of such body shall be individuals who are not providers of health care.

(2)(A) Except as provided in subparagraph (B), in the case of a community mental health center which is operated by a governmental agency or a hospital, such center may, in lieu of meeting the requirements of paragraph (1), appoint a committee which advises it with respect to the operations of the center and which is composed of individuals who reside in the center's mental health service area, who are representative of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care. A center to which this subparagraph applies shall submit to such a committee for its review any application for a grant under section 201.

(B) Subparagraph (A) does not apply with respect to a community mental health center which on the date of the enactment of this Act had a governing body which met the requirements of paragraph (1).

(3) Paragraph (1) does not apply to a community mental health center which is operated by a primary care center, community health center, or migrant center which meets the applicable requirements of part D of title III of the Public Health Service Act.

(4) For purposes of paragraphs (1) and (2), the term "provider of health care" has the same meaning as is prescribed for that term by section 1531(3) of the Public Health Service Act.

(d) A center shall, in accordance with regulations prescribed by the Secretary, have (1) an ongoing quality assurance program (including multidisciplinary utilization and peer review systems) respecting the center's services, (2) an integrated medical records system (including a drug use profile) which, in accordance with applicable Federal and State laws respecting confidentiality, is designed to provide access to all past and current information regarding the health status of each patient and to maintain safeguards to preserve confidentiality and to protect the rights of the patient, (3) a multidisciplinary professional advisory board, which is composed of members of the center's professional staff, to advise the governing board or the advisory committee in establishing policies governing medical and other services provided by such staff on behalf of the center, and (4) an identifiable administrative unit which shall be responsible for providing the consultation and education services described in subsection (b)(1)(A)(iv). The Secretary may waive the requirements of clause (4) with respect to any center if he determines that because of the size of such center or because of other relevant factors the establishment of the administrative unit described in such clause is not warranted.

OTHER DEFINITIONS

SEC. 102. For purposes of this Act:

(1) The term "Secretary" means the Secretary of Health and Human Services.

(2) The term "State" includes (in addition to the fifty States) the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(3) The term "State mental health authority" means the agency of a State designated under section 105 to be responsible for the mental health programs of the State.

(4) The term "mental health service area" means an area established under section 106.

(5) The term "nonprofit", as applied to any entity, means an entity which is owned and operated by one or more corporations or associations no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or person.

(6) The term "priority population group" means an identifiable population group in a mental health service area which is unserved or underserved by mental health programs in such area as determined under a health systems plan or a State health plan in effect under section 1513 or 1524 of the Public Health Service Act.

(7) The term "Governor" means the chief executive officer of a State.

PART B—STATE ADMINISTRATIVE RESPONSIBILITIES

STATE MENTAL HEALTH AUTHORITY

SEC. 105. Each State shall designate an agency of the State to be responsible for the mental health programs of the State.

MENTAL HEALTH SERVICE AREAS

SEC. 106. (a) Each catchment area of a community mental health center designated under the Community Mental Health Centers Act is redesignated as a mental health service area.

(b) A mental health service area in a State shall, except to the extent permitted under regulations of the Secretary, have boundaries which conform to or are within the boundaries of a health service area established under title XV of the Public Health Service Act and, to the extent practicable, conform to boundaries of one or more school districts or political or other subdivisions in the State.

(c)(1) The State mental health authority of a State shall review the boundaries of any mental health service area in the State which does not meet the requirements of subsection (b) and shall make such revisions in the boundaries of the area as may be necessary to meet such requirements.

(2) The State mental health authority of a State may review the boundaries of any mental health service area in the State and may revise the boundary of any such area to—

(A) ensure that the size of such area is such that the services to be provided in the area are available and accessible to the residents of the area promptly, as appropriate, and

(B) ensure that the boundary of such area eliminates, to the extent possible, barriers to access to the services provided in the area, including barriers resulting from an area's physical characteristics, its residential patterns, its economic and social groupings, and its available transportation

(3) In conducting a review of a boundary under paragraph (1) or (2) a State mental health authority shall provide notice of its review and shall provide a reasonable opportunity for a hearing on its review and any proposed boundary revision.

ALLOTMENTS TO STATES TO IMPROVE THE ADMINISTRATION OF STATE MENTAL HEALTH PROGRAMS

SEC. 107. (a) For the purpose of assisting State mental health authorities to improve the administration of State mental health programs and to carry out their activities under this Act relating to—

(1) planning and program design,
(2) data collection,
(3) data analysis,
(4) research,
(5) evaluation,
(6) setting and enforcing regulatory and other standards,
(7) reporting to the Secretary, and
(8) establishing, expanding, or operating mental health patients rights protection programs,

the Secretary shall, for each fiscal year and in accordance with regulations, allot to the States the sums appropriated for such year under subsection (c) on the basis of the population and the financial need of the respective States. The populations of the States shall be determined on the basis of the latest figures for the populations of the States available from the Department of Commerce.

(b) No allotment may be made to a State under subsection (a) unless the State has submitted to the Secretary an application for the allotment containing such information as the Secretary may require.

(c) There are authorized to be appropriated for allotments under subsection (a), $15,000,000 for the fiscal year ending September 30, 1982, $15,000,000 for the fiscal year ending September 30, 1983, and $15,000,000 for the fiscal year ending September 30, 1984.

(d) Effective September 30, 1981, section 314(g) of the Public Health Service Act is repealed.

TITLE II—GRANT PROGRAMS

GRANTS FOR COMMUNITY MENTAL HEALTH CENTERS

SEC. 201. (a)(1) The Secretary may make grants to any public or nonprofit private community mental health center to assist it in meeting its costs of operation (other than costs related to construction).

(2) No application for a grant under paragraph (1) for a community mental health center which has not received a grant for its operation under the Community Mental Health Centers Act may be approved unless the application is accompanied by assurances, satisfactory to the Secretary, that the grant applied for and the State, local, and other funds and the fees, premiums, and third-party reimbursements which the applicant may reasonably be expected to collect in the year for which the grant would be made are sufficient to meet the projected costs of operation for that year.

(3) Grants under paragraph (1) may only be made for a grantee's costs of operation during the first eight years after its establishment. In the case of a community mental health center which received a grant under section 220 of the Community Mental Health Centers Act (as in effect before the date of enactment of the Community Mental Health Centers Amendments of 1975) or section 203(a) of such Act (as in effect after such date), such center shall, for purposes of grants under paragraph (1), be considered as having been in operation since its establishment for a number of years equal to the sum of the number of grants it received under such sections and the number of grants it has received under paragraph (1).

(b) Each grant under subsection (a) to a community mental health center shall be made for the costs of its operation for the one-year period beginning on the first day of the month in which such grant is made.

(c)(1) The amount of a grant for any year

made under subsection (a) shall be the lesser of the amounts computed under subparagraph (A) or (B) as follows:

(A) An amount equal to the amount by which the grantee's projected costs of operation for that year exceed the total of State, local, and other funds and of the fees, premiums, and third-party reimbursements which the grantee may reasonably be expected to collect in that year.

(B)(i) Except as provided in clause (ii), an amount equal to the following percentages of the grantee's projected costs of operation: 80 percent of such costs for the first year of its operation, 65 percent of such costs for the second year of its operation, 50 percent of such costs for the third year of its operation, 35 percent of such costs for the fourth year of its operation, 30 percent of such costs for the fifth and sixth years of its operation, and 25 percent of such costs for the seventh and eighth years of its operation.

(ii) In the case of a grantee providing services for persons in an area designated by the Secretary as an urban or rural poverty area, an amount equal to the following percentages of the grantee's projected costs of operation: 90 percent of such costs for the first two years of its operation, 80 percent of such costs for the third year of its operation, 70 percent of such costs for the fourth year of its operation, 60 percent of such costs for the fifth year of its operation, 50 percent of such costs for the sixth year of its operation, 40 percent of such costs for the seventh year of its operation, and 30 percent of such costs for the eighth year of its operation.

(2) If in a fiscal year the sum of—

(A) the total of State, local, and other funds, and of the fees, premiums, and third-party reimbursements collected in that year, and

(B) the amount of the grant received under subsection (a) by a center or entity,

exceeds its actual costs of operation for that year, and if the center is eligible to receive a grant under subsection (a) in the succeeding year, an adjustment in the amount of that grant shall be made in such a manner that the center may retain such an amount (not to exceed 50 per centum of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center (i) to expand and improve its services, (ii) to increase the number of persons eligible to receive services from such a center which it is able to serve, (iii) to modernize its facilities, (iv) to improve the administration of its service programs, and (v) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

(d)(1) For initial grants under subsection (a) there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1982, $35,000,000 for the fiscal year ending September 30, 1983, and $40,000,000 for the fiscal year ending September 30, 1984.

(2) There are authorized to be appropriated for the fiscal year ending September 30, 1982, and for each of the next nine fiscal years such sums as may be necessary to make grants, for the number of years prescribed by subsection (a)(3), to community mental health centers which received an initial grant for operations under the Community Mental Health Centers Act or this Act for a fiscal year beginning before October 1, 1984.

(3) Of the total amount appropriated under paragraphs (1) and (2) for any fiscal year, the Secretary may obligate not more than 5 percent for grants under subsection (a) to a community mental health center which is operated by a hospital and which has an advisory committee as prescribed by section 101(c)(2).

GRANTS FOR SERVICES FOR CHRONICALLY MENTALLY ILL INDIVIDUALS

SEC. 202. (a)(1) The Secretary may make grants to any State mental health authority, community mental health center, or other public or nonprofit private entity for projects for the provision of mental health and related support services for chronically mentally ill individuals. No grant may be made under this subsection for a project unless the project provides for at least the following:

(A) The identification of the chronically mentally ill individuals residing in the area to be served by the project.

(B) Assistance to such individuals in gaining access to essential mental health services, medical and dental care and rehabilitation services, and employment, housing, and other support services designed to enable chronically mentally ill individuals to function outside of inpatient institutions to the maximum extent of their capabilities.

(C) Assuring the availability, for each such chronically mentally ill individual who needs both mental health and related support services, of an individual to assume responsibility for seeing to it that the individual receives any such service that the individual needs.

(D) Coordinating the provision of mental health and related support services to such individuals with the provision of other services to them.

(2) A grant under this subsection for a project in a mental health service area served by a community mental health center may be made only to the community mental health center or to the State mental health authority of the State in which the area is located, except that, if the Secretary finds that because of exceptional circumstances in the mental health service area the chronically mentally ill individuals in the area would be otherwise underserved, a grant may be made to any other public or private nonprofit entity.

(3) In considering applications for grants under this subsection, the Secretary shall give special consideration to applications for projects designed to supplement and strengthen existing community support services.

(b) The Secretary may make grants to any State mental health authority to—

(1) improve the skills of personnel providing services to chronically mentally ill individuals by providing or arranging for the provision of inservice training, other training, or retraining for such personnel; or

(2) coordinate the operations of State agencies or intrastate regional agencies responsible for mental health and related support services for chronically mentally ill individuals, and coordinate the provision of mental health and support services for chronically mentally ill individuals with the provision of services to such individuals under titles IV, V, XVI, XVIII, XIX, and XX of the Social Security Act, the Rehabilitation Act of 1973, the United States Housing Act, the Comprehensive Employment and Training Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Older Americans Act, and other Federal and State statutes.

(c)(1) No entity may receive more than eight grants under this section.

(2) The amount of any grant under subsection (a) or (b) shall be determined by the Secretary, except that the amount of—

(A) the first and second grant may not exceed 90 percent of the costs (as determined by the Secretary) of the project for which the grant is made;

(B) the third grant may not exceed 80 percent of such costs;

(C) the fourth grant may not exceed 70 percent of such costs;

(D) the fifth grant may not exceed 60 percent of such costs;

(E) the sixth grant may not exceed 50 percent of such costs;

(F) the seventh grant may not exceed 40 percent of such costs; and

(G) the eighth grant may not exceed 30 percent of such costs.

(3) If in a fiscal year the sum of—

(A) the total of State, local, and other funds, and of the fees, premiums, and third-party reimbursements collected in that year, and

(B) the amount of the grant received under subsection (a) by an entity,

exceeds its actual costs of operation for that year and if the entity is eligible to receive a grant under subsection (a) in the succeeding year, an adjustment in the amount of that grant shall be made in such a manner that the entity may retain such an amount (not to exceed 50 per centum of the amount by which such sum exceeded such costs) as the entity can demonstrate to the satisfaction of the Secretary will be used to enable the entity (i) to expand and improve its services, (ii) to increase the number of persons eligible to receive services from such an entity which it is able to serve, (iii) to modernize its facilities, (iv) to improve the administration of its service programs, and (v) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

(d)(1) Except as provided in paragraph (3) no grant may be made to an entity under subsection (a) or (b) unless the entity meets the requirements of paragraph (2).

(2)(A) Except as provided in subparagraph (B), an applicant for a grant under subsection (a) to provide the services described in that subsection shall have a governing body which (i) is composed of individuals who reside in the entity's mental health service area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area, and (ii) is required to meet at least once a month, to establish general policies for the entity (including a schedule of hours during which services will be provided), to approve the entity's annual budget, and to approve the selection of a director for the entity. At least one-half of the members of such body shall be individuals who are not providers of health care.

(B) An applicant which is a hospital, a State agency, or other public or nonprofit private entity which does not have as its primary purpose the provision of mental health services under grants under subsection (a) may appoint a committee which advises it with respect to the operations of the entity which are funded with a grant under subsection (a) or (b) and which is composed of individuals who reside in the entity's mental health service area, who are representative of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care.

(3) Paragraph (1) does not apply with respect to an entity which is a primary care center, community health center, or migrant health center and which meets the applicable requirements of part D of title III of the Public Health Service Act.

(4) For purposes of paragraph (2), the term "provider of health care" has the same meaning as is prescribed for that term by section 1531(3) of the Public Health Service Act.

(e) For grants under subsections (a) and (b) there are authorized to be appropriated $45,000,000 for the fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for the fiscal year ending September 30, 1984.

GRANTS FOR SERVICES FOR SEVERELY MENTALLY DISTURBED CHILDREN AND ADOLESCENTS

SEC. 203. (a) The Secretary may make grants to any State mental health authority, community mental health center, or other public or nonprofit private entity for the provision of mental health and related support services for severely mentally disturbed children and adolescents and for members of their families. The services which may be provided under a grant under this subsection shall include at least one of the following:

(1) The identification and assessment of the needs of severely mentally disturbed children and adolescents and the provision of needed mental health and related support services which are not provided by existing programs.

(2) Assuring the availability of appropriate personnel to be responsible for providing, or arranging for the provision of, the needed mental health and related support services for such children and adolescents.

(3) The provision of auxiliary mental health services under the Education for All Handicapped Children Act of 1975 to such children and adolescents who are handicapped.

(4) The establishment of cooperative arrangements with juvenile justice authorities, educational authorities, and other authorities and agencies that come in contact with such children and adolescents to ensure referral of such children and adolescents for appropriate mental health and related support services.

A grant made under this subsection for a project in a mental health service area served by a community mental health center may be made only to the community mental health center or to the State mental health authority of the State in which the area is located, except that, if the Secretary finds that because of exceptional circumstances in the mental health service area the severely mentally disturbed children and adolescents in the area would otherwise be underserved, a grant may be made to any other public or private nonprofit entity.

(b) The Secretary may make grants to any public entity for projects to coordinate the provision of mental health and related support services to severely mentally disturbed children and adolescents with the activities of community agencies and State agencies and with the provision of services available to such children and adolescents under titles IV, V, XVI, XIX, and XX of the Social Security Act, the Education for All Handicapped Children Act of 1975, the Developmental Disabilities Assistance and Bill of Rights Act, the Rehabilitation Act of 1973, and other Federal and State statutes.

(c)(1) No entity may receive more than eight grants under this section.

(2) The amount of any grant under subsection (a) or (b) shall be determined by the Secretary, except that the amount of—

(A) the first and second grant may not exceed 90 percent of the costs (as determined by the Secretary) of the project for which the grant is made;

(B) the third grant may not exceed 80 percent of such costs;

(C) the fourth grant may not exceed 70 percent of such costs;

(D) the fifth grant may not exceed 60 percent of such costs;

(E) the sixth grant may not exceed 50 percent of such costs;

(F) the seventh grant may not exceed 40 percent of such costs; and

(G) the eighth grant may not exceed 30 percent of such costs.

(3) If in a fiscal year the sum of—

(A) the total of State, local, and other funds, and of the fees, premiums, and third-party reimbursements collected in that year, and

(B) the amount of the grant received under subsection (a) by an entity,

exceeds its actual costs of operation for that year and if the entity is eligible to receive a grant under subsection (a) in the succeeding year, an adjustment in the amount of that grant shall be made in such a manner that the entity may retain such an amount (not to exceed 50 per centum of the amount by which such sum exceeded such costs) as the entity can demonstrate to the satisfaction of the Secretary will be used to enable the entity (i) to expand and improve its services, (ii) to increase the number of persons eligible to receive services from such an entity which it is able to serve, (iii) to modernize its facilities, (iv) to improve the administration of its service programs, and (v) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

(d)(1) Except as provided in paragraph (3), no grant may be made to an entity under subsection (a) or (b) unless the entity meets the requirements of paragraph (2).

(2)(A) Except as provided in subparagraph (B), an applicant for a grant under subsection (a) to provide the services described in that subsection shall have a governing body which (i) is composed of individuals who reside in the entity's mental health service area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area, and (ii) is required to meet at least once a month, to establish general policies for the entity (including a schedule of hours during which services will be provided), to approve the entity's annual budget, and to approve the selection of a director for the entity. At least one-half of the members of such body shall be individuals who are not providers of health care.

(B) An applicant which is a hospital, a State agency, or other public or nonprofit private entity which does not have as its primary purpose the provision of mental health services under grants under subsection (a) may appoint a committee which advises it with respect to the operations of the entity which are funded with a grant under subsection (a) or (b) and which is composed of individuals who reside in the entity's mental health service area, who are representative of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care.

(3) Paragraph (1) does not apply with respect to an entity which is a primary care center, community health center, or migrant health center and which meets the applicable requirements of part D of title III of the Public Health Service Act.

(4) For purposes of paragraph (2), the term "provider of health care" has the same meaning as is prescribed for that term by section 1531(3) of the Public Health Service Act.

(e) For grants under subsections (a) and (b) there are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1982; $12,000,000 for the fiscal year ending September 30, 1983, and $15,000,000 for the fiscal year ending September 30, 1984.

GRANTS FOR MENTAL HEALTH SERVICES FOR ELDERLY INDIVIDUALS AND OTHER PRIORITY POPULATIONS

SEC. 204. (a)(1) The Secretary may make grants to any public or nonprofit private entity for projects for services for elderly individuals. Each such project shall include at least the following:

(A) The location of elderly individuals in the mental health service area or areas served by the entity who are in need of mental health services.

(B) The provision or arrangement for the provision of medical differential diagnoses of elderly individuals in such area or areas to distinguish between their need for mental health services and other medical care.

(C) The specification of the mental health needs of elderly individuals in such area or areas and the mental health and support services required to meet such needs.

(D) The provision of—

(i) the mental health and support services specified under subparagraph (C) in the communities in such area or areas, or

(ii) such services for elderly individuals in nursing homes and intermediate care facilities in such area or areas and training of the employees of such homes and facilities in the provision of such services.

(2) The Secretary may make grants to any public or nonprofit private entity in a mental health service area in which, as determined by the Secretary, the services described in paragraph (1) are being provided to enable the entity to—

(A) assure the availability of appropriate personnel to be responsible for the provision of or for arranging for the provision of, such services to elderly individuals; or

(B) coordinate the provision of such services to elderly individuals; or

(B) coordinate the provision of such services to elderly individuals with (i) the area agency on aging (as defined in the Older Americans Act) and other community agencies providing mental health and related support services for elderly individuals, and (ii) with the provision of services available to elderly individuals under titles XVI, XVIII, XIX, and XX of the Social Security Act, the Older Americans Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment, and Rehabilitation Act, the United States Housing Act, the Domestic Volunteer Service Act of 1973, and other Federal and State statutes.

(3)(A) No entity may receive more than eight grants under paragraph (1) or (2).

(B) The amount of any grant under paragraph (1) or (2) shall be determined by the Secretary, except that the amount of—

(i) the first and second grant may not exceed 90 percent of the costs (as determined by the Secretary) of the project for which the grant is made;

(ii) the third grant may not exceed 80 percent of such costs;

(iii) the fourth grant may not exceed 70 percent of such costs;

(iv) the fifth grant may not exceed 60 percent of such costs;

(v) the sixth grant may not exceed 50 percent of such costs;

(vi) the seventh grant may not exceed 40 percent of such costs; and

(vii) the eighth grant may not exceed 30 percent of such costs.

(C) If in a fiscal year the sum of—

(i) the total of State, local, and other funds, and of the fees, premiums, and third-party reimbursements collected in that year, and

(ii) the amount of the grant received under paragraph (1) by an entity,

exceeds its actual costs of operation for that year and if the entity is eligible to receive a grant under paragraph (1) in the succeeding year, an adjustment in the amount of that grant shall be made in such a manner that the entity may retain such an amount (not to exceed 50 per centum of the amount by which such sum exceeded such costs) as the entity can demonstrate to the satisfaction of the Secretary will be used to enable the entity (I) to expand and improve its services, (II) to increase the number of persons eligible to receive services from such an

entity which it is able to serve, (III) to modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

(D) A grant made under paragraph (1) for a project in a mental health service area served by a community mental health center may be made only to the community mental health center or to the State mental health authority of the State in which the area is located, except that, if the Secretary finds that because of exceptional circumstances in the mental health service area the elderly individuals in the area would otherwise be underserved, a grant may be made to any other public or private nonprofit entity.

(E)(i) Except as provided in clause (iii), no grant may be made to an entity under paragraph (1) or (2) unless the entity meets the requirements of clause (ii).

(ii)(I) Except as provided in subclause (I), an applicant for a grant under paragraph (1) to provide the services described in that paragraph shall have a governing body which is composed of individuals who reside in the entity's mental health service area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area, and which is required to meet at least once a month, to establish general policies for the entity (including a schedule of hours during which services will be provided), to approve the entity's annual budget, and to approve the selection of a director for the entity. At least one-half of the members of such body shall be individuals who are not providers of health care.

(II) An applicant which is a hospital, a State agency, or other public or nonprofit private entity which does not have as its primary purpose the provision of mental health services under grants under paragraph (1) may appoint a committee which advises it with respect to the operations of the entity which are funded with a grant under paragraph (1) or (2) and which is composed of individuals who reside in the entity's mental health service area, who are representative of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care.

(iii) Clause (i) does not apply with respect to an entity which is a primary care center, community health center, or migrant health center and which meets the applicable requirements of part D of title III of the Public Health Service Act.

(iv) For purposes of clause (ii), the term "provider of health care" has the same meaning as is prescribed for that term by section 1531(3) of the Public Health Service Act.

(b)(1) The Secretary may make grants to any public or nonprofit private entity for any project for mental health services which—

(A) is designed to serve principally one or more priority population groups in a mental health service area, and

(B) is available to all residents of the area.

(2) A grant made under paragraph (1) for a project in a mental health service area served by a community mental health center may be made only to the community mental health center or to the State mental health authority of the State in which the area is located and only if the Secretary finds that because of exceptional circumstances in the mental health service area priority populations in the area would be otherwise underserved.

(3)(A) Not more than four grants may be made under paragraph (1) to the same entity which it is able to serve, (III) to modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

(4) For purposes of this subsection, if a grant could be made under subsection (a) or section 202 or 203 for a project designed primarily to serve a particular population group, such population group shall not be included in the priority population groups for which grants are authorized under this subsection.

(c) An application for a grant under subsection (b) may be approved only if—

(1) the application contains satisfactory assurances that the project for which the application is made will lead to increased or more appropriate mental health services for a priority population group or to the development of mental health services for such a group;

(2) the application contains satisfactory assurances that members of the priority population group or groups to be served by the project will be afforded reasonable opportunity to comment on performance under the project; and

(3) the applicant (A) will during the first three years that it receives a grant under subsection (b) provide outpatient mental health services and any two of the following mental health services determined to be of the greatest need for the priority population to be served by the applicant: inpatient, screening, followup, consultation and education, and emergency services, and (B) unless the applicant is a community mental health center or a State mental health authority receiving a grant under subsection (b) as authorized by paragraph (2) of that subsection, has a plan satisfactory to the Secretary for the provision of all the mental health services described in clause (A) upon the expiration of the first three years that it receives a grant under subsection (b).

The Secretary may not approve an application of an entity which has received a grant for three years under subsection (b) unless the applicant is providing all the mental health services described in paragraph (3)(A).

(d)(1) Except as provided in paragraph (3), no grant may be made to an entity under subsection (b) unless the entity meets the requirements of paragraph (2).

(2)(A) Except as provided in subparagraph (B), an applicant for a grant under subsection (b) to provide the services described in that subsection shall have a governing body which (i) is composed of individuals who reside in the entity's mental health service area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area, and (ii) is required to meet at least once a month, to establish general policies for the entity (including a schedule of hours during which services will be provided), to approve the entity's annual budget, and to approve the selection of a director for the entity. At least one-half of the members of such body shall be individuals who are not providers of health care.

(B) An applicant which is a hospital, a State agency, or other public or nonprofit private entity which does not have as its primary purpose the provision of mental health services under grants under subsection (b) may appoint a committee which advises it with respect to the operations of the entity which are funded with a grant under subsection (b) and which is composed of individuals who reside in the entity's mental health service area, who are representative of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care.

(3) Paragraph (1) does not apply with respect to an entity which is a primary care center, community health center, or migrant health center and which meets the applicable requirements of part D of title III of the Public Health Service Act.

(4) For purposes of paragraph (2), the term "provider of health care" has the same meaning as is prescribed for that term by section 1531(3) of the Public Health Service Act.

(e) For grants under this section there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1982, $35,000,000 for the fiscal year ending September 30, 1983, and $40,000,000 for the fiscal year ending September 30, 1984. Not less than 40 percent of the amount appropriated under this subsection for any fiscal year shall be obligated by the Secretary for grants under subsection (a).

GRANTS FOR NON-REVENUE-PRODUCING SERVICES

SEC. 205. (a)(1) The Secretary may make grants to any public or nonprofit private community mental health center to assist in meeting the costs (as determined by the Secretary by regulation) of—

(A) providing the consultation and education services described in clause (iv) of section 101(b)(1)(A),

(B) providing the followup services described in clause (iii) of such section,

(C) administering the mental health service programs of the center,

(D) providing individuals who will be responsible for assuring that individuals in need of both mental health services and support services receive each of the services that they need, and

(E) any other non-revenue-producing service which the Secretary determines is appropriate for a community mental health center to provide.

(2) To be eligible for a grant under paragraph (1) a community mental health center must—

(A) have received a grant under section 203(a) of the Community Mental Health Centers Act, under section 220 of such Act as in effect before July 29, 1975, or under section 201 of this Act; and

(B) because of the limitations on the period for which a center may receive such a grant or on the number of such grants the center may receive, be no longer eligible to receive such a grant.

(b) An application for a grant under subsection (a) shall contain assurances satisfactory to the Secretary that the applicant will, during the period which it receives a grant under subsection (a), provide, at a minimum—

(1) the comprehensive mental health services described in clauses (i) through (iv) of section 101(b)(1)(A), and

(2) any service described in section 101(b)(1)(B) which the center was providing in the last year it received a grant under the Community Mental Health Centers Act or this Act for its operations.

Such an application shall also include information regarding the extent to which and manner in which the applicant has served chronically mentally ill individuals in prior years (if such service has been provided) and proposes to serve chronically mentally ill individuals during the fiscal year for which the grant is sought.

(c)(1) No community mental health center may receive more than five grants under subsection (a).

(2) The amount of a grant under subsection (a) shall be determined by the Secretary, except that no grant may exceed the product of $1.25 and the population of the mental health service area of the community mental health center receiving the grant. The population of a mental health service area shall be determined on the basis of the latest figures for the populations of the States available from the Department of Commerce.

(d) For grants under subsection (a) there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1982, $35,000,000 for the fiscal year ending September 30, 1983, and $40,000,000 for the fiscal year ending September 30, 1984.

GRANTS FOR MENTAL HEALTH SERVICES IN HEALTH CARE CENTERS

SEC. 206. (a)(1) For the purpose of assisting health care centers to participate appropriately in the provision of mental health services to their patients, the Secretary may make grants to—

(A) any public or nonprofit private entity which provides mental health services that include at least twenty-four-hour emergency services, outpatient services, and consultation and education services (as described in section 101(b)(1)(A)(iv)) and has in effect an agreement of affiliation, described in paragraph (2), with an entity which is a health care center; or

(B) any public or nonprofit private health care center which has in effect an agreement of affiliation, described in paragraph (2), with an entity described in subparagraph (A).

(2) An agreement of affiliation referred to in paragraph (1) is an agreement between a mental health services entity described in paragraph (1)(A) and a health care center which agreement—

(A) describes the geographical area the residents of which will be served by the mental health services to be provided under the agreement;

(B) provides for the employment of at least one mental health professional to serve as a liaison between the parties to the agreement and include a description of the qualifications to be required of that person and of any other professional mental health personnel to be employed under the agreement;

(C) provides satisfactory assurances that the mental health services entity will make mental health services available to patients of the center referred to it by the liaison or other mental health professionals; and

(D) includes transportation arrangements and other arrangements for effecting referral from the center to the mental health services entity of patients needing the services of such entity.

(b) Any grant under subsection (a) may be made for a project for any one or more of the following:

(1) The costs of the liaison or other mental health professionals providing services in the health care center in accordance with an agreement of affiliation.

(2) Mental health services provided by other personnel of the center which the mental health services entity determines can be appropriately provided by such personnel.

(3) Consultation and inservice training on mental health provided to personnel of the health care center by the mental health services entity.

(4) Establishing liaison between the center and other providers of mental health services or support services.

(c)(1) No entity may receive more than eight grants under subsection (a).

(2) The amount of any grant under subsection (a) shall be determined by the Secretary, except that the amount of—

(A) the first and second grant may not exceed 90 percent of the costs (as determined by the Secretary) of the project for which the grant is made;

(B) the third grant may not exceed 80 percent of such costs;

(C) the fourth grant may not exceed 70 percent of such costs;

(D) the fifth grant may not exceed 60 percent of such costs;

(E) the sixth grant may not exceed 50 percent of such costs;

(F) the seventh grant may not exceed 40 percent of such costs; and

(G) the eighth grant may not exceed 30 percent of such costs.

(3) If in a fiscal year the sum of—

(A) the total of State, local, and other funds, and of the fees, premiums, and third-party reimbursements collected in that year, and

(B) the amount of the grant received under subsection (a) by a center or entity, exceeds its actual costs of operation for that year and if the center or entity is eligible to receive a grant under subsection (a) in the succeeding year, an adjustment in the amount of that grant shall be made in such a manner that the center or entity may retain such an amount (not to exceed 50 per centum of the amount by which such sum exceeded such costs) as the center or entity can demonstrate to the satisfaction of the Secretary will be used to enable the center or entity (i) to expand and improve its services, (ii) to increase the number of persons eligible to receive services from such a center or entity which it is able to serve, (iii) to modernize its facilities, (iv) to improve the administration of its service programs, and (v) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

(d) For grants under subsection (a) there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1982, $17,500,000 for the fiscal year ending September 30, 1983, and $20,000,000 for the fiscal year ending September 30, 1984.

(e) For purposes of this section, the term "health care center" includes an outpatient facility operated in connection with a hospital, a primary care center, a community health center, a migrant health center, a clinic of the Indian Health Service a skilled nursing home, an intermediate care facility, and an outpatient health care facility, of a medical group practice, a public health department, or a health maintenance organization.

GRANTS AND CONTRACTS FOR INNOVATIVE PROJECTS

SEC. 207. (a) The Secretary may make grants to any public or nonprofit private entity for—

(1) projects for the training and retraining of employees adversely affected by changes in the delivery of mental health services and for providing such employees assistance in securing employment;

(2) projects for the innovative use of personnel in the management and delivery of mental health services; and

(3) any other innovative project of national significance respecting mental health services and mental health services personnel.

The Secretary may enter into contracts for the projects described in this subsection with any private entity which is engaged solely in the provision of mental health services.

(b)(1) The total number of grants and contracts which an entity may receive under subsection (a) may not exceed five.

(2) The amount of any grant under subsection (a) shall be determined by the Secretary.

(c) No contract may be entered into under subsection (a) unless an application therefor has been submitted to and approved by the Secretary. The application shall be submitted in such form and manner and shall contain such information as the Secretary may prescribe.

(d) Of the total amount appropriated for any fiscal year under sections 201 through 206, five percent is available to the Secretary in such fiscal year for grants and contracts under subsection (a). Of the funds obligated in any fiscal year by the Secretary for such grants and contracts, not less than 50 percent shall be obligated for approvable projects described in subsection (a)(1).

GRANTS FOR THE PREVENTION OF MENTAL ILLNESS AND THE PROMOTION OF MENTAL HEALTH

SEC. 208. (a) The Secretary may make grants to any public or nonprofit private entity for projects for the prevention of mental illness and the promotion of mental health or to demonstrate the effectiveness of intervention techniques and mental health promotion activities in the—

(1) maintenance and improvement of the mental health of individuals and groups of individuals particularly susceptible to mental illness,

(2) prevention of the onset of mental illness in such individuals, and groups,

(3) prevention of the deterioration of the mental health of such individuals and groups,

(4) education of the general public regarding mental health problems and mental illness, the prevention of mental health problems and mental illness, and the promotion of mental health, and

(5) provision of screening, consultation, referral, and education in public school systems and in places of employment to detect and prevent early mental health problems and to promote mental health.

(b) Projects supported by grants under subsection (a) shall be consistent with national goals and priorities regarding the prevention of mental illness and promotion of mental health determined by the Director of the National Institute of Mental Health under section 455(d)(1) of the Public Health Service Act.

(c) An application for a grant under subsection (a) shall—

(1) define the techniques and mental health promotion activities to be funded by the grant;

(2) define the individuals or groups of individuals to be served by such techniques and activities; and

(3) provide for the evaluation of the effectiveness of such techniques and activities and describe the methodology to be used in making such evaluation.

(d) No entity may receive more than eight grants under subsection (a). The amount of a grant under subsection (a) shall be determined by the Secretary.

(e) For the purpose of grants under subsection (a) there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1982, $7,000,000 for the fiscal year ending September 30, 1983, and $8,000,000 for the fiscal year ending September 30, 1984.

PART A—STATE MENTAL HEALTH SERVICES PROGRAMS

STATE MENTAL HEALTH SERVICES PROGRAMS

SEC. 301. The State mental health authority of and any entity in a State is not eligible to receive a grant under title II or this title for any fiscal year unless such State has in effect a State mental health services program which—

(1) has been prepared by the State mental health authority in consultation with the Statewide Health Coordinating Council of the State, and

(2) is consistent with the provisions relating to mental health services of the State health plan prepared in accordance with section 1524(c)(2) of the Public Health Service Act.

CONTENTS OF PROGRAMS

SEC. 302. A State mental health services program shall be submitted in such form and manner as the Secretary prescribes. The program shall consist of an administrative part and a services part as follows:

(1) The administrative part shall—

(A) provide that the State mental health authority will assume responsibility for administration of the program;

(B) provide for the designation of a State advisory council to consult with the State mental health authority in administering the program, which council shall include—

(i) representatives of nongovernmental organizations or groups, and of State agencies, concerned with the planning, operation, or use of facilities for the provision of mental health services, and

(ii) representatives of consumers and providers of such services who are familiar with the need for such services,

and the non-provider members of which shall constitute at least one-half of the membership of the council;

(C) provide that the State mental health authority will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

(D) provide that any statistics or other data included in the program or on which the program is based will conform to such criteria, standards, and other requirements relating to their form, method of collection, content, or other aspects as the Secretary may prescribe;

(E) provide that the State mental health authority will from time to time, but not less often than annually, review the program and submit to the Secretary appropriate modifications thereof which it considers necessary;

(F) include provisions, meeting such requirements as the Office of Personnel Management may prescribe, relating to the establishment and maintenance of personnel standards on a merit basis; and

(G) include a statement of the arrangements made pursuant to section 801.

(2) The services part shall—

(A) identify the mental health service areas within the State;

(B) identify the need in each mental health service area of the State for mental health and related support services after consideration of—

(i) the demographic, economic, cultural, and social characteristics of the population of the area, and

(ii) the special mental health services needs in the area of chronically mentally ill individuals, emotionally disturbed children and adolescents, elderly individuals, and other priority population groups;

(C) identify and evaluate the public and private mental health facilities, the mental health personnel, and the mental health services available in each mental health service area, and determine the additional facilities, personnel, and services necessary to meet the mental health needs of each area;

(D) identify the methods used (i) to determine the mental health needs of each mental health service area, and (ii) to evaluate the facilities, personnel, and services of each mental health service area;

(E) provide the information described in subparagraphs (B) through (D) for mental health services and related support service needs which relate to more than one mental health service area;

(F) list the mental health service needs of each mental health service area in the order of priority that such needs should be addressed through the use of existing Federal, State, and local resources;

(G) identify measures which need to be taken to alleviate geographic, cultural, linguistic, and economic barriers with respect to the delivery of mental health services in the mental health service areas;

(H) identify the legal rights of persons in the State who are mentally ill or otherwise mentally handicapped and describe any measure which needs to be taken to protect such rights;

(I) describe the actions which need to be taken by the State and entities in communities of the State to coordinate the provision of mental health and related support services in the State;

(J) describe, in specific terms, the actions the State mental health authority will take—

(i) to continue the provision of appropriate services which have been provided by local entities in the State with financial assistance under the Community Mental Health Centers Act and this Act and for which Federal financial assistance is no longer available;

(ii) to promote the development of comprehensive mental health services in each mental health service area where such services are currently unavailable;

(iii) to ensure substantially that, within a five-year period after the program is in effect in the State (or within such longer period as the Secretary, upon request of the State mental health authority, permits)—

(I) residents of public inpatient mental health facilities who have been inappropriately placed in such facilities are discharged, and, to the extent appropriate, are placed in the least-restrictive settings and provided mental health and related support services appropriate to such persons' level of functioning;

(II) persons who need to be placed in inpatient mental health facilities are placed in the least-restrictive settings and provided mental health and related support services appropriate to such persons' level of functioning; and

(III) persons who are discharged from, or are in need of placement in, inpatient mental health facilities are informed of available community-based facilities and programs providing mental health and related support services, and provided access to a sufficient number of adequately staffed and adequately funded community-based facilities and programs providing mental health and related support services; and

(iv) to assist the courts and other public agencies, and appropriate private agencies, in screening persons being considered for inpatient care in mental health facilities in the State in order to determine if such care is medically or psychologically indicated;

(K) include a description of the services made available for mentally ill individuals in the State under titles IV, V, XVI, XVIII, XIX, and XX of the Social Security Act, the Education for All Handicapped Children Act of 1975, the Older Americans Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment, and Rehabilitation Act, and other relevant Federal statutes;

(L) describe the steps being taken in the State to coordinate the provision of services under this Act with the provision of services under the Acts referred to in subparagraph (K); and

(M) contain or be accompanied by such additional information or assurances and meet such other requirements as the Secretary prescribes in order to achieve the purposes of this Act.

MENTAL HEALTH PROVISIONS OF STATE HEALTH PLANS

SEC. 303. Section 1523(a)(1)(B) of the Public Health Service Act is amended by inserting after "the statewide health needs of the State" the following: ", including the need for mental health services in the State,".

PART B—APPLICATIONS AND RELATED PROVISIONS

STATE ADMINISTRATION

SEC. 305. (a) The Secretary may enter into an agreement with any qualified State mental health authority of a State under which the authority will be the exclusive agent for the State and entities within the State for purposes of the financial assistance programs authorized by title II (other than the programs authorized by sections 207 and 208).

(b) For purposes of subsection (a), a qualified State mental health authority is an authority which meets the following requirements:

(1) A State mental health authority shall demonstrate to the satisfaction of the Secretary (A) that it is effectively implementing its State mental health services program prepared pursuant to section 301, and (B) that it, or another agency of the State, is making a good faith effort to establish and implement procedures for carrying out the requirements of paragraph (2).

(2)(A) For the purpose of eliminating the overconcentration of chronically mentally ill individuals in any community or group of communities in a State, the State mental health authority of the State shall monitor the discharge and diversion of such individuals into communities by inpatient mental health facilities.

(B) A State mental health authority shall administer a program of services for chronically mentally ill individuals in the State who have been discharged or diverted from inpatient mental health facilities. Such program shall include at least the following:

(i) The timely notification by the inpatient mental health facilities in the State to the appropriate community mental health centers or other entities of the discharge of and the location of the residence of each chronically mentally ill individual who has given an informed consent to such notification.

(ii) Before a chronically mentally ill individual is discharged from an inpatient mental health facility into a community, a prerelease consultation between the facility and the appropriate community mental health center or other entity respecting the individual if the individual has given an informed consent to such consultation. Such consultation shall take place without delaying the discharge of such individual from the mental health facility. Such consultation shall include a preliminary evaluation of the physical, mental, social, and monetary needs of the individual to be discharged, and an identification of the services and programs for which such individual is eligible.

(iii) Development by each inpatient mental health facility of a written treatment and services plan for each chronically mentally ill individual who is to be discharged or who is diverted by the facility and who has given an informed consent to the development of such plan. The plan shall be developed in consultation with a case manager in the community mental health center or other appropriate entity in the mental health service area in which such individual will or does reside. Such plan shall—

(I) to the maximum extent feasible, be developed with the participation of the individual discharged or diverted and the family of such individual;

(II) include appropriate living arrangements suited to the needs of the individual, and, if the individual resides or is to reside in a residence in which there are at least three other chronically mentally ill individuals with whom the individual is not related by blood or marriage and which charges the individual for residing in the residence, assure that the residence meets the requirements prescribed under subparagraph (C) or meets the comparable requirements established under section 1616(e) of the Social Security Act;

(III) describe appropriate mental health services and other needed services, such as medical and dental services, rehabilitation services, vocational training and placement, social services, and living skills training; and

(IV) identify specific programs and services for which the individual is eligible, including income support.

There shall be a periodic reevaluation of the plan at least every one hundred and twenty days.

(iv) In the case of a chronically mentally ill individual for whom a plan has been developed under clause (iii), designation of a case manager to be responsible for the implementation of the plan and the coordination of services under the plan.

(v) The establishment and enforcement of minimum standards for the provision of followup care for the chronically mentally ill by community mental health centers and other appropriate entities.

Compliance with the informed consent requirements of the program shall be determined in accordance with the law of the State in which the program is in effect.

(C) A State mental health authority shall develop a program for regulating, in accordance with guidelines established by the Secretary, residences in which there are at least four chronically mentally ill individuals who are not related by blood or marriage, which charge such individuals for residing in the residence, and which do not meet the comparable requirements established under section 1616(e) of the Social Security Act. Such program shall include the following:

(i) Minimum standards for aproval of a residence, including a standard which requires a mechanism to be available to the residents who are chronically mentally ill to provide referral to and assistance in reaching appropriate medical, dental, mental health, and other services not available at a residence, compliance with appropriate life safety, fire, and sanitation codes, and access for visitation during reasonable hours without prior notice by appropriate mental health and social service staff.

(ii) Procedures for the evaluation, inspection, and monitoring of the compliance of the residence with the requirements of the program.

(iii) Remedies for noncompliance with such requirements.

(D) A State mental health authority shall provide educational or informational services to educate the population of the State regarding the problems of chronically mentally ill individuals, the need for community involvement in programs designed to resolve the problems of chronically mentally ill individuals outside institutional settings, and the resources available or needed to help such programs succeed.

(E) A State mental health authority shall improve the skills of personnel involved in providing services for chronically mentally ill individuals through inservice training, retraining, or other training of such personnel.

(F) A State mental health authority shall provide satisfactory assurances to the Secretary that it will submit a biennial report to the Secretary regarding its efforts and progress under this paragraph, including the manner in which the needs of chronically mentally ill individuals in each mental health service area in the State are being met within the community and the State's progress in implementing mechanisms to ensure that, as chronically mentally ill individuals are discharged from mental health facilities, increased State mental health funds are available for community-based care.

(c) No agreement may be entered into under subsection (a) with a State mental health authority unless the authority has submitted an application to the Secretary in such form and manner as the Secretary shall prescribe. The Secretary shall publish a notice in the Federal Register identifying the States which have made an application for an agreement under subsection (a) and, in considering an application, the Secretary shall provide a reasonable opportunity for submission of comments on the application.

(d) The Secretary may make grants to States which have entered into agreements under subsection (a) for purposes of assisting the States in meeting the costs of carrying out the agreements. For grants authorized by this subsection there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1982, $4,000,000 for the fiscal year ending September 30, 1983, and $5,000,000 for the fiscal year ending September 30, 1984.

PROCESSING OF APPLICATIONS BY STATE MENTAL HEALTH AUTHORITIES

SEC. 306. (a) Each applicant for a grant under title II (other than an applicant for a grant under section 207 or 208) shall submit its application to the State mental health authority for its State in accordance with such requirements as the authority may prescribe.

(b)(1) If a State mental health authority has entered into an agreement under section 305, the authority shall carry out the following:

(A) The authority shall consider the applications submitted to it in accordance with subsection (a), and, in the course of such consideration, shall provide the applicants and other interested persons with a reasonable opportunity for a hearing before the authority on the applications. The authority shall also provide a reasonable opportunity for a hearing on applications the authority proposes to submit for itself to the Secretary.

(B) The authority may modify any application submitted to it and may return an application to an applicant.

(C) The authority shall (i) rank all the applications which the authority proposes to transmit to the Secretary in the order in which the authority determines the applications should be funded when approved by the Secretary, and (ii) in accordance with the agreement entered into under section 305, transmit such applications to the Secretary.

If the State mental health authority modifies or returns an application, the State mental health authority shall provide the applicant involved with a statement of the reasons for the modification or return.

(2) If a State mental health authority has not entered into an agreement under section 305, the authority shall carry out the following:

(A) The authority shall consider the applications submitted to it in accordance with subsection (a), and, in the course of such consideration, shall provide the applicants and other interested persons with a reasonable opportunity for a hearing before the authority on the applications. The authority shall also provide a reasonable opportunity for a hearing on applications the authority proposes to submit for itself to the Secretary.

(B) For each category of grants under title II for which an application was submitted to or proposed by the authority, the authority shall (i) rank all the applications for such category of grants in the order in which the authority determines the applications should be funded when approved by the Secretary, and (ii) in accordance with regulations issued by the Secretary, transmit such applications to the Secretary.

(c)(1) An applicant may appeal to the Secretary a decision of a State mental health authority under subsection (b)(1) to return to the applicant its application or to modify its application. In reviewing the decision of the authority, the Secretary shall provide the authority and the applicant involved a reasonable opportunity for a hearing on the appeal of the decision of the authority. If the Secretary finds that the decision of the authority was arbitrary or capricious, the Secretary—

(A) shall, if the decision of the authority was to return the application, return the application to the authority for ranking, and

(B) shall, if the decision of the authority was to modify the application, provide the authority an opportunity to change its rank of the application, and the Secretary may consider the application without regard to the modifications.

(2) An applicant may appeal to the Secretary a decision of a State mental health authority under subsection (b)(2) ranking the application. In reviewing the decision of the authority, the Secretary shall provide the authority and the applicant involved a reasonable opportunity for a hearing on the appeal of the decision of the authority. If the Secretary finds that, on the basis of the record established in the hearing provided under the preceding sentence, there is substantial evidence that the activity proposed in the application involved would better carry out the purposes of the section under which it would be funded than other applications under that section given a higher rank, the Secretary may consider the application without regard to the rank given the application by the State mental health authority.

(3) A decision of the Secretary under paragraph (1) or (2) is not subject to judicial review.

(d) If a State mental health authority fails to carry out, in accordance with an agreement entered into under section 305 or with regulations issued by the Secretary, its responsibilities under subsection (b) with respect to applications submitted to it, the applicants under such applications shall be provided an opportunity to submit their applications directly to the Secretary.

APPLICATIONS

SEC. 307. (a) No grant may be made under this title or title II unless an application

therefor is submitted to and approved by the Secretary. The application shall be in such form, submitted in such manner, and contain such information, as the Secretary may require.

(b) An application for a grant under section 201, 202, 203, or 204 must, in addition to the application requirements prescribed in the section under which the grant is to be made, contain or be accompanied by—

(1) a financial plan and budget covering the year for which the grant is sought (and such additional period as the Secretary may require) showing the sources of funding for the project and allocating the funds available for the project among the various types of services to be provided or assisted or the various types of activities to be conducted or assisted and among the various population groups to which the project is directed;

(2) a statement of the objectives of the project;

(3) with respect to health services which are to be provided, assurances satisfactory to the Secretary that—

(A) the applicant (i) has prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts to be applied to the payment of such fees or payments which discounts are adjusted on the basis of the patient's ability to pay; (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such approved schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (B) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as the Secretary may require to determine compliance with this subparagraph; and

(B) the applicant has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program; and

(C) the applicant will adopt and enforce a policy (i) under which fees for the provision of mental health services through the applicant will be paid to the applicant, and (ii) which prohibits health professionals who provide such services to patients through the applicant from providing such services to such patients except through the applicant.

(4) in the case of a project which will serve a population which includes a substantial proportion of individuals of limited English-speaking ability, assurances satisfactory to the Secretary that the applicant has (A) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (B) identified an individual on its staff who is fluent in both that language and English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivity and bridging linguistic and cultural differences;

(5) assurances that the applicant has in effect a system, satisfactory to the Secretary, to assure that an employee of the applicant who reports to any officer or employee of the Department of Health and Human Services or appropriate State authority any failure on the part of the applicant to comply with an applicable requirement of this Act or regulation of the Secretary or requirement of State law will not on account of such report be discharged or discriminated against with respect to the employee's compensation or the terms, conditions, or privileges of the employee's employment;

(6) satisfactory assurances that each facility to be used in the provision of mental health or support services to be supported by the grant applied for meets the requirements of applicable fire and safety codes imposed by State law;

(7) information on the organization and operation of the applicant;

(8) satisfactory assurances that the applicant will submit such reports, at such times and containing such information, as the Secretary may request and maintain such records as the Secretary may find necessary for purposes of this Act, and afford the Secretary and the Comptroller General of the United States such access to such records and other documents as may be necessary for an effective audit of the project;

(9) satisfactory assurances that funds made available under this Act will be used to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of those Federal funds, be made available for the purpose for which the funds under this Act are made available, and will in no event supplant such non-Federal funds;

(10) satisfactory assurances that measures have been taken by the applicant to consult with members of the group or groups to be served, members of the public, and affected organizations and agencies during the development of the application, and to give reasonable opportunities to members of such groups, members of the public, and interested organizations and agencies to comment on the application;

(11) assurances that the applicant has made satisfactory efforts to coordinate the services to be provided with other mental health and support services in the same area;

(12) in the case of a grant under section 201 or 202, information regarding the extent to which and manner in which the applicant has served chronically mentally ill individuals in prior years (if such service has been provided) and proposes to serve chronically mentally ill individuals during the fiscal year for which the grant is sought;

(13) statistics and other information requested by the Secretary necessary to evaluate the compliance of the application with the requirements of this section;

(14) satisfactory assurance that the project is consistent with the State mental health services program; and

(15) such other information and material and such other assurances as the Secretary may prescribe.

(c) If an entity has received a grant under section 201, 202, 203, 204, or 206, the entity is not eligible to apply for a grant under another of such sections unless it continues to provide the service it provided under the grant it received or the Secretary determines that the service is not needed.

(d) If a grant is made for any fiscal year under section 202, 203, or 204(a) for a project in a mental health service area, no more than one grant may be made for such fiscal year for a project in such mental health service area under any one of the other such sections.

INDIAN TRIBES AND ORGANIZATIONS

SEC. 308. (a) Except as provided in this section, the requirements of this title and title II shall apply with respect to any application of an Indian tribe, intertribal organization, or urban Indian organization made for a grant under title II.

(b)(1) Any Indian tribe or intertribal organization may apply directly to the Secretary for a grant under title II for the provision of mental health services if such services will be available within or will specifically serve—

(A) a federally recognized Indian reservation,

(B) any land area in Oklahoma that is held in trust by the United States for Indians or that is a restricted Indian-owned land area,

(C) a native village in Alaska (as defined in section 3(c) of the Alaska Native Claims Settlement Act), or

(D) an Indian community the members of which are recognized as eligible for services under the Indian Health Care Improvement Act.

(2) An application of an Indian tribe or intertribal organization authorized by paragraph (1)—

(A) shall also be submitted by the applicant to the Indian Health Service and may not be approved by the Secretary unless the Indian Health Service certifies that the application is consistent with the Tribal Specific Health Plan of the tribe or tribes to be served by the grant,

(B) shall not be subject to consideration by a State mental health authority,

(C) may be made without regard to the State mental health services program in effect in the State in which the tribe or organization is located, and

(D) may be considered, approved, and funded by the Secretary without regard to the mental health service area or areas in which the services under the grant will be provided.

(c) If the application of any Indian tribe, intertribal organization, or urban Indian organization for a grant under title II requests that the Indian Health Service or any entity of the Service provide the mental health services under the grant to members of such tribe or organization—

(1) the application shall not be subject to consideration by a State mental health authority, and

(2) if the application is approved, payments under the grant shall be made to the Indian Health Service or entity of the Service as requested in the application.

(d) For purposes of this section—

(1) the term "Indian tribe" has the same meaning as is given that term by the Indian Self-Determination Act, and

(2) the term "urban Indian organization" has the same meaning as is given that term by the Indian Health Care Improvement Act.

PROCEDURES

SEC. 309. In considering any application for a grant or contract under this title or title II, the Secretary shall provide a reasonable opportunity for the submission of comments on the application. If the Secretary does not approve an application, the Secretary shall provide the applicant and the State mental health authority of the State in which the applicant is located to the Secretary with a statement of the reasons of the Secretary for not approving the application.

PART C—PERFORMANCE

PERFORMANCE CONTRACTS

SEC. 315. No payment may be made under any grant or contract made or entered into under title II or this title unless the Secretary has entered into a contract with the entity to which the grant has been made or with which the contract has been entered into specifying the following with respect to the performance of the activities for which the grant or contract was made or entered into:

(1) A schedule for the performance of such activities.

(2) The standards by which the performance of such activities by the entity will be monitored and evaluated, the incentives which will be provided the entity to meet such standards, and the role of the Secretary and of consumers and representatives of communities affected by such activities in such monitoring and evaluation.

(3) The methods and format which will be used in collecting and transmitting data to the Secretary respecting the performance of such activities.

(4) An expeditious and impartial method for the resolution of disputes between the entity and the Secretary respecting the performance of such activities.

(5) Such other matters which the Secretary includes in the contract to carry out the purposes of the section under which the grant or contract was made or entered into.

PERFORMANCE STANDARDS

SEC. 316. (a) The Secretary shall prescribe standard measures of performance designed to test the quality and extent of performance by the recipients of grants and contracts under title II or this title, the Secretary to which such performance has helped to achieve the national or other objectives for which the grants or contracts were made or entered into.

(b) In determining whether or not to approve an application for a grant or contract under title II or this title, the Secretary shall consider the performance by the applicant under any prior grant or contract under title II or this title as measured under subsection (a).

EVALUATION AND MONITORING

SEC. 317. (a) With the approval of the Secretary, any recipient of a grant or contract under title II or this title may use a portion of that grant or contract for evaluation of the project or activity involved.

(b) Not more than 1 per centum of the total amount appropriated under title II and this title for any fiscal year shall be used by the Secretary, or through contracts with State mental health authorities or other entities, to monitor activities of the recipients of grants and contracts under title II or this title to determine if the requirements of this Act applicable to the receipt of such grants or contracts are being met.

PART D—ENFORCEMENT

ENFORCEMENT

SEC. 321. (a) If the Secretary determines that there has been a substantial and persistent failure—

(1) by a State mental health authority to implement its State mental health services program in accordance with the requirements of part A of this title, the Secretary may issue a proposed order to stop payments under title II and this title to any entity in the State, including the State mental health authority, until the Secretary is satisfied that such failure has been or will be corrected, or

(2) by any entity in a State which is receiving funds under a grant or contract under title II or this title to comply with the requirements of this title (other than the requirements of part A), the Secretary may issue a proposed order to stop payments under such grant or contract until the Secretary is satisfied that such failure has been or will be corrected.

The Secretary shall notify each entity affected by an order issued under this subsection of the effect of the order.

(b) If the Secretary issues an order under subsection (a), the Secretary shall provide a reasonable opportunity for an informal hearing for the entities affected by the order. Such a hearing shall be held in the State in which such entities are located. If after such a hearing the Secretary reaffirms the determination on which the order was based, the Secretary may discontinue payments as specified in the proposed order or as revised by the Secretary after the hearing.

PART E—MISCELLANEOUS

NATIONAL INSTITUTE OF MENTAL HEALTH PREVENTION UNIT

SEC. 325. Section 455 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"(d) The Director shall designate an administrative unit in the Institute to—

"(1) design national goals and establish national priorities for—

"(A) the prevention of mental illness, and

"(B) the promotion of mental health,

"(2) encourage and assist local entities and State agencies to achieve the goals and priorities described in paragraph (1), and

"(3) develop and coordinate Federal prevention policies and programs and to assure increased focus on the prevention of mental illness and the promotion of mental health."

TECHNICAL ASSISTANCE

SEC. 326. Such portion as the Secretary may determine, but not more than 2 percent, of the total amount appropriated under title II for any fiscal year is available to the Secretary to provide technical assistance, including short-term training to any State mental health authority or other entity which is or has been a recipient of a grant under title II or this title to assist it in developing, or in better administering, the mental health services program or programs for which it is responsible.

INDIRECT PROVISION OF SERVICES

SEC. 327. Except as provided in section 101(b)(2), any mental health service which an entity is responsible for providing in a mental health service area under a grant or contract under title II may be provided by it directly at its primary or satellite facilities or through arrangements with other entities or health professionals and others in, or serving residents of, the same mental health service area.

COOPERATIVE AGREEMENTS

SEC. 328. In lieu of providing funds under a grant under title II or this title, the Secretary may provide such funds under a cooperative agreement, and all requirements which would apply with respect to such a grant shall apply to the cooperative agreement.

CONTRACT AUTHORITY

SEC. 329. The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

TITLE IV—ASSOCIATE DIRECTOR FOR MINORITY CONCERNS

ASSOCIATE DIRECTOR FOR MINORITY CONCERNS

SEC. 401. (a) Section 455 of the Public Health Service Act (as amended by section 325 of this Act) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Director of the National Institute of Mental Health shall designate an Associate Director for Minority Concerns.

"(2) The Secretary, acting through the Associate Director for Minority Concerns, shall—

"(A) develop and coordinate prevention, treatment, research, and administrative policies and programs to assure increased emphasis on the mental health needs of minority populations.

"(B) support programs and projects relating to the delivery of mental health services to minority populations, including demonstration programs and projects;

"(C) develop a plan to increase the representation of minority populations in mental health service delivery and manpower programs;

"(D) support programs of basic and applied social and behavioral research on the mental health problems of minority populations;

"(E) study the effects of discrimination on institutions and individuals, including majority institutions and individuals;

"(F) develop systems to assist minority populations in adapting to, and coping with, the effects of discrimination;

"(G) support and develop research, demonstration, and training programs designed to eliminate institutional discrimination; and

"(H) provide increased emphasis on the concerns of minority populations in training programs, service delivery programs, and research endeavors of the Institute.".

(b) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act or October 1, 1981, whichever occurs later.

TITLE V—MENTAL HEALTH RIGHTS AND ADVOCACY

BILL OF RIGHTS

SEC. 501. It is the sense of the Congress that each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require; and in making such review and revision should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in con-

nection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person; and

(iii) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by witholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

GRANTS FOR PROTECTION AND ADVOCACY PROGRAMS

SEC. 502. (a)(1) The Secretary may make grants to any public or nonprofit private entity for projects to protect and advocate the rights of mentally ill individuals if the entity—

(A) has the authority and ability to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of mentally ill individuals, and

(B) is independent of any entity which provides treatment or services to mentally ill individuals.

(2) A grant under paragraph (1) for the first fiscal year for which funds are appropriated under subsection (d) may be made only to an entity of the government of a State designated by the Governor of the State or a public or nonprofit private entity in a State recommended by the Governor of the State. A grant under paragraph (1) for a succeeding fiscal year may be made to any public or nonprofit private entity, except that in considering an application of an entity which is not an entity of State government designated by the Governor or which has not been recommended by the Governor of a State, the Secretary shall notify the Governor of the State in which such entity is located of the application and shall provide the Governor and other interested persons a reasonable opportunity for a hearing on the application.

(b) The Secretary may make grants to any public or nonprofit private entity for the provision of training and technical assistance for entities carrying out projects to protect and advocate the rights of mentally ill individuals.

(c) No grant may be made under subsection (a) or (b) unless an application therefor is submitted to and approved by the Secretary. The application shall be submitted in such form and manner, and shall contain such information, as the Secretary may prescribe.

(d) For grants under subsections (a) and (b), there are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1982, $12,500,000 for the fiscal year ending September 30, 1983, and $15,000,000 for the fiscal year ending September 30, 1984. Not more than 10 percent and not less than 5 percent of the amount appropriated under this subsection for any fiscal year shall be obligated for grants under subsection (b).

TITLE VI—RAPE PREVENTION AND CONTROL

RAPE PREVENTION AND CONTROL

SEC. 601. (a) The Secretary, acting through the National Center for the Prevention and Control of Rape (hereafter in this section referred to as the "Center"), may, directly or by grant, carry out the following:

(1) A continuing study of rape, including a study and investigation of—

(A) the effectiveness of existing Federal, State, and local laws dealing with rape;

(B) the relationship, if any, between traditional legal and social attitudes toward sexual roles, the act of rape, and the formulation of laws dealing with rape;

(C) the treatment of the victims of rape by law enforcement agencies, hospitals or other medical institutions, prosecutors, and the courts;

(D) the causes of rape, identifying to the degree possible—

(i) social conditions which encourage sexual attacks, and

(ii) the motives of offenders, and

(E) the impact of rape on the victim and family of the victim;

(F) sexual assaults in correctional institutions;

(G) the estimated actual incidence of forcible rape as compared to the reported incidence of forcible rape and the reasons for any difference between the two; and

(H) the effectiveness of existing private and local and State government educational, counseling, and other programs designed to prevent and control rape.

(2) The compilation, analysis, and publication of summaries of the continuing study conducted under paragraph (1) and the research and demonstration projects conducted under paragraph (5). The Secretary shall submit not later than March 30, 1983, to the Congress a summary of such study and projects together with a review of their effectiveness and recommendations where appropriate.

(3) The development and maintenance of an information clearinghouse with regard to—

(A) the prevention and control of rape;

(B) the treatment and counseling of the victims of rape and their families; and

(C) the rehabilitation of offenders.

(4) The compilation and publication of training materials for personnel who are engaged or intend to engage in programs designed to prevent and control rape.

(5) Assistance to community mental health centers and other qualified public and nonprofit private entities in conducting research and demonstration projects concerning the prevention and control of rape, including projects (A) for the planning, development, implementation, and evaluation of alternative methods used in the prevention and control of rape, the treatment and counseling of the victims of rape and their families, and the rehabilitation of offenders; (B) for the application of such alternative methods; and (C) for the promotion of community awareness of the specific locations in which, and the specific social and other conditions under which sexual attacks are most likely to occur.

(6) Assistance to community mental health centers in meeting the costs of providing consultation and education services respecting rape.

(b) The Secretary shall appoint an advisory committee to advise, consult with, and make recommendations to the Secretary on the implementation of subsection (a). The recommendations of the committee shall be submitted directly to the Secretary without review or revision by any person without the consent of the committee. The Secretary shall appoint to such committee persons who are particularly qualified to assist in carrying out of the functions of the committee. A majority of the members of the committee shall be women. Members of the advisory committee shall receive compensation at rates, not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, for each day (including travel-time) they are engaged in the performance of their duties as members of the advisory committee and, while so serving away from their homes or regular places of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(c) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. The application shall be submitted in such form and manner and contain such information as the Secretary may prescribe.

(d) For the purpose of carrying out subsection (a), there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1981, $1,500,000 for the fiscal year ending September 30, 1982, $1,500,000 for the fiscal year ending September 30, 1983.

(e) For purposes of subsection (a), the term "rape" includes statutory and attempted rape and any other criminal sexual assault (whether homosexual or heterosexual) which involves force or the threat of force.

(f) Part D of the Community Mental Health Centers Act is repealed.

GRANTS FOR SERVICES FOR RAPE VICTIMS

SEC. 602. (a) The Secretary may make grants to any public or nonprofit private entity to assist in meeting the cost of—

(1) providing counseling and followup counseling for rape victims and the immediate family of rape victims;

(2) providing assistance in securing mental health, social, medical, and legal services for rape victims;

(3) demonstration projects to develop and implement methods of preventing rape and assisting rape victims.

(b)(1) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. The application shall be submitted in such form and manner and contain such assurances as the Secretary may require that the applicant will comply with the requirements of subsection (c) and such other information as the Secretary may prescribe.

(2) The amount of any grant under this section shall be determined by the Secretary, except that the amount may not exceed 90 per centum of the cost of the project (as determined by the Secretary) with respect to which the grant is made.

(c)(1) In carrying out this section, the Secretary shall coordinate with other activities related to rape carried out by the Secretary and the heads of other Federal departments and agencies.

(2) The Secretary shall establish a grant review panel to make recommendations to the Secretary with respect to the approval of applications for grants under subsection (a). The Secretary shall appoint individuals to the panel who are or have been engaged in the provision of services to rape victims.

(d)(1) There are authorized to be appropriated for grants under subsection (a) $6,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, $12,000,000 for the fiscal year ending September 30, 1983, and $12,000,000 for the fiscal year ending September 30, 1984.

(2) The Secretary may in a fiscal year obligate not more than 7.5 percent of the funds appropriated for that fiscal year under paragraph (1) to provide, upon request, technical assistance in the development and submission of applications for a grant under subsection (a). Such assistance shall be provided only to those entities which the Secretary determines do not possess the resources or expertise necessary to develop and submit such an application.

(e) No officer or employee of the Federal Government or of any recipient of a grant under subsection (a) may use or disclose any personally identifiable information obtained, in carrying out an activity assisted by such grant, by the recipient (or an officer or employee of the recipient) from a rape victim or a rape victim's immediate family unless such use or disclosure is necessary to carry out the activity or is made with the consent of the person who supplied the information. Such information shall be immune from legal process and may not, without the consent of the person furnishing the information, be admitted as evidence or otherwise used in any civil or criminal action or other judicial or administrative proceeding.

TITLE VII—EXTENSION OF COMMUNITY MENTAL HEALTH CENTERS ACT

ONE-YEAR EXTENSION OF COMMUNITY MENTAL HEALTH CENTERS ACT

SEC. 701. (a) Subsection (d) of section 202 of the Community Mental Health Centers Act (42 U.S.C. 2689a(d)) (relating to grants for planning) is amended by striking out "for the fiscal year ending September 30, 1980" and inserting in lieu thereof "each for the fiscal year ending September 30, 1980, and the next fiscal year".

(b) Subsection (d) of section 203 of such Act (relating to grants for initial operation) is amended—

(1) in paragraph (1), by (A) striking out "and" after "1979,", and (B) inserting before the period a comma and the following: "and $37,000,000 for the fiscal year ending September 30, 1981"; and

(2) effective October 1, 1981, by striking out "(1)" and paragraph (2).

(c) Subsection (c) of section 204 of such Act (42 U.S.C. 2689c(c) (relating to grants for consultation and education services) is amended (1) by striking out "and" after "1979,", and (2) by inserting before the period a comma and the following: "and $15,000,000 for the fiscal year ending September 30, 1981".

(d)(1) Section 213 of such Act (42 U.S.C. 2689h) (relating to financial distress grants) is amended (1) by striking out "and" after "1978,", and (B) by inserting after "1979," the following: "and $20,000,000 for the fiscal year ending September 30, 1981,".

(2) Section 212(c) of such Act (42 U.S.C. 2689g(c)) of such Act is amended by striking out "five" and inserting in lieu thereof "six".

(e) Section 206(e)(2)(B) of such Act (42 U.S.C. 2689e(e)(2)(B)) is amended by striking out "the fiscal year ending September 30, 1979, and during the fiscal year ending September 30, 1980" and inserting in lieu thereof "the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981".

TITLE VIII—MISCELLANEOUS

EMPLOYEE PROTECTION

SEC. 801. (a)(1) Each State mental health authority shall have in effect equitable arrangements to protect the interests of employees affected adversely by actions taken by the State mental health authority to emphasize outpatient mental health services. Such arrangements shall include arrangements designed to preserve employee rights and benefits and to provide training and retraining of employees, where necessary, for work in mental health or other fields and arrangements under which maximum effort will be made to place employees in employment. The arrangements required by this paragraph shall be established by a State mental health authority in accordance with regulations issued by the Secretary with the concurrence of the Secretary of Labor.

(2) The Secretary shall issue the regulations referred to in paragraph (1) not later than six months after the date of the enactment of this Act.

(b) Whenever the Secretary, after reasonable notice and opportunity for a hearing to the State mental health authority involved, finds (after consultation with the Secretary of Labor) that there is a failure to comply substantially with the requirements of subsection (a), the Secretary may, until the Secretary is satisfied that there will no longer be any such failure, discontinue payments to the State mental health authority under sections 107 and 305.

(c) Not later than March 1, 1983, and March 1, 1984, the Secretary of Health and Human Services shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a report on actions taken under subsection (a). The report shall in-

clude the comments of the Secretary of Labor on such actions and shall include—

(1) a statement of the number, by State, of public inpatient mental health facilities which have been closed or partially closed since the date of the enactment of this Act,

(2) a statement of the number, by State, of public employees who were adversely affected by such closings,

(3) a summary, by State, of the arrangements made under subsection (a) for such employees and the cost of carrying out such arrangements,

(4) a description of agency procedures, resources, and personnel used to implement subsections (a) and (b), and

(5) a description of the training and retraining projects funded under section 207.

REPORT ON SHELTER AND BASIC LIVING NEEDS OF CHRONICALLY MENTALLY ILL INDIVIDUALS

SEC. 802. (a) The Secretary of Health and Human Services and the Secretary of Housing and Urban Development shall jointly submit a report to the Committees on Labor and Human Resources and Banking, Housing, and Urban Affairs of the Senate, and the Committees on Interstate and Foreign Commerce and Banking, Finance and Urban Affairs of the House of Representatives, relating to Federal efforts to respond to the shelter and basic living needs of chronically mentally ill individuals.

(b) The report required by subsection (a) shall include—

(1) an analysis of the extent to which chronically mentally ill individuals remain inappropriately housed in institutional facilities or have otherwise inadequate or inappropriate housing arrangements;

(2) an analysis of available permanent noninstitutional housing arrangements for the chronically mentally ill;

(3) an evaluation of ongoing permanent and demonstration programs, funded in whole or in part by Federal funds, which are designed to provide noninstitutional shelter and basic living services for the chronically mentally ill, including—

(A) a description of each program;

(B) the total number of individuals estimated to be eligible to participate in each program, the number of individuals served by each program, and an estimate of the total population each program expects to serve; and

(C) an assessment of the effectiveness of each program in the provision of shelter and basic living services;

(4) recommendations of measures to encourage States to coordinate and link the provisions in State health plans which relate to mental health and, in particular, the shelter and basic living needs of chronically mentally ill individuals, with local and State housing plans;

(5) recommendations for Federal legislation relating to the provision of permanent residential noninstitutional housing arrangements and basic living services for chronically mentally ill individuals, including an estimate of the cost of such recommendations; and

(6) any other recommendations for Federal initiatives which, in the judgment of the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, will lead to improved shelter and basic living services for chronically mentally ill individuals.

(c) The report required by subsection (a) shall be submitted to the committees referred to in subsection (a) no later than January 1, 1981.

OBLIGATED SERVICE FOR MENTAL HEALTH TRAINEESHIPS

SEC. 803. (a) Section 303 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"(d)(1) Any individual who has received a clinical traineeship, in psychology, psychiatry, nursing, or social work, under subsection (a)(1) that was not of a limited duration or experimental nature (as determined by the Secretary) is obligated to serve, in service determined by the Secretary to be appropriate in the light of the individual's training and experience, at the rate of one year for each year (or academic year, whichever the Secretary determines to be appropriate) of the traineeship.

"(2) The service required under paragraph (1) shall be performed—

"(A) for a public inpatient mental institution providing inpatient care or any entity receiving a grant under the Mental Health Systems Act,

"(B) in a health manpower shortage area (as determined under subpart II of part D of this title), or

"(C) in any other area or for any other entity designated by the Secretary,

and shall begin within such period after the termination of the traineeship as the Secretary may determine. In developing criteria for determining for which institutions or entities or in which areas, referred to in the preceding sentence, individuals must perform service under paragraph (1), the Secretary shall give preference to institutions, entities, or areas which in his judgment have the greatest need for personnel to perform that service. The Secretary may permit service for or in other institutions, entities, or areas if the Secretary determines that the request for such service is supported by good cause.

"(3) Any individual who fails to perform the service required under this subsection within the period prescribed by the Secretary is obligated to repay to the United States an amount equal to three times the cost of the traineeship (including stipends, and allowances) plus interest at the maximum legal rate at the time of payment of the traineeship, multiplied, in any case in which the service so required has been performed in part, by the percentage which the length of the service not so performed is of the length of the service so required to be performed.

"(4)(A) In the case of any individual any part of whose obligation to perform service under this subsection exists at the same time as any part of the individual's obligation to perform service under section 752 or 753 (because of receipt of a scholarship under subpart IV of part C of title VII) or the individual's obligation to perform service under section 472 (because of receipt of a National Research Service Award), or both, the same service may not be used to any extent to meet more than one of those obligations.

"(B) In any case to which subparagraph (A) is applicable and in which one of the obligations is to perform service under section 752 or 753, the obligation to perform service under that section must be met (by performance of the required service or payment of damages) before the obligation to perform service under this subsection or under section 472.

"(C) In any case to which subparagraph (A) is applicable, if any part of the obligation to perform service under section 472 exists at the same time as any part of the obligation to perform service under this subsection, the manner and time of meeting each obligation shall be prescribed by the Secretary.".

"(5) In disseminating application forms to individuals desiring traineeships, the Secretary shall include with such forms a fair summary of the liabilities under this subsection of an individual who receives a traineeship.

(b) The amendment made by subsection (a) applies in the case of any academic year (of any traineeship awarded under section 303(a)(1) of the Public Health Service Act) beginning after the date of the enactment of this Act if the award for such academic year is made after such date.

CONFORMING AMENDMENTS

SEC. 804. (a) The second sentence of section 455(a) of the Public Health Service Act (42 U.S.C. 289k-1(a)) (relating to the National Institute of Mental Health) is amended—

(1) by striking out "and" after "sections 301 and 303 of this Act" and inserting in lieu thereof a comma; and

(2) by inserting ", and the Mental Health Systems Act" after "Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (other than part C of title II)".

(b) Section 507 of the Public Health Service Act (42 U.S.C. 225a)(relating to grants to Federal institutions) is amended—

(1) by striking out "and" after "drug dependence,"; and

(2) by inserting ", and appropriations under title VI of the Mental Health Systems Act" before "shall also be available".

(c) Section 513 of the Public Health Service Act (42 U.S.C. 229b)(relating to evaluation of programs) is amended by inserting "the Mental Health Systems Act," after "Community Mental Health Centers Act,".

(d) Section 1513(e)(1)(A)(i) of the Public Health Service Act (42 U.S.C. 3001-3(e)(1)(A))(relating to functions of health systems agencies) is amended by inserting "the Mental Health Systems Act," after "Community Mental Health Centers Act,".

SPECIAL PAY FOR PUBLIC HEALTH SERVICE PHYSICIANS AND DENTISTS

SEC. 805. Section 208(a) of the Public Health Service Act (42 U.S.C. 210(a)) is amended (1) by inserting "(1)" after "(a)", and (2) by adding at the end the following:

"(2) Commissioned medical and dental officers in the Regular and Reserve Corps shall while on active duty be paid special pay in the same amounts as, and under the same terms and conditions which apply to, the special pay now or hereafter paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37, United States Code.".

CONTRACT AUTHORITY

SEC. 806. The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

TITLE IX—MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEMS

MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEMS

SEC. 901. Section 1903 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(r)(1)(A) In order to receive payments under paragraphs (2) and (7) of subsection (a) without being subject to per centum reductions set forth in subparagraph (C) of this paragraph, a State must have its mechanized claims processing and information retrieval systems, of the type required to be operational under paragraph (1), initially approved by the Secretary in accordance with paragraph (5)(A) on or before the deadline established under subparagraph (B).

"(B) The deadline for approval of such systems for a State is the last day of the fourth quarter that begins after the date on which the Secretary determines that such systems became operational as required under paragraph (1).

"(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2) and (7) of subsection (a) with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning after such deadline, and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters during which the State fails to meet the requirements of subparagraph (A); except that—

"(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph, and

"(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State's systems are approved by the Secretary as provided in subparagraph (A).

"(D) Any State's systems which are approved by the Secretary for purposes of subsection (a)(3)(B) on or before the date of the enactment of this subsection shall be deemed to be initially approved for purposes of this subsection.

"(3)(A) When a State's systems are initially approved, the 75 per centum Federal matching provided in subsection (a)(3)(B) shall become effective with respect to such systems, retroactive to the first quarter beginning after the date on which such systems became operational as required under paragraph (1), except as provided in subparagraph (B).

"(B) In the case of any State which was subject to a per centum reduction under paragraph (2), the per centum specified in subsection (a)(3)(B) shall be reduced by 5 percentage points for the first two quarters beginning after the deadline established under paragraph (2)(B), and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters beginning after such deadline and before the date on which such systems are initially approved, except that no reduction shall be made under this paragraph for any quarter following the quarter during which the State's systems are initially approved by the Secretary.

"(4)(A) The Secretary shall review all approved systems not less often than once each fiscal year, and shall reapprove or disapprove any such systems. Systems which fail to meet the current performance standards, system requirements, and any other conditions for approval developed by the Secretary under paragraph (6) shall be disapproved. Any State having systems which are so disapproved shall be subject to a per centum reduction under subparagraph (B). The Secretary shall make the determination of reapproval or disapproval and so notify the States not later than the end of the first quarter following the review period.

"(B) If the Secretary disapproves a State's systems under subparagraph (A), the Secretary shall, with respect to such State for quarters beginning after the determination of disapproval and before the first quarter beginning after such systems are reapproved, reduce the per centum specified in subsection (a)(3)(B) to a per centum of not less than 50 per centum and not more than 70 per centum as the Secretary determines to be appropriate and commensurate with the nature of noncompliance by such State; except that such per centum may not be reduced by more than 10 percentage points in any 4-quarter period by reason of this subparagraph. No State shall be subject to a per centum reduction under this paragraph (1) before the fifth quarter beginning after such State's systems were initially approved, or (ii) on the basis of a review conducted before October 1, 1981.

"(C) The Secretary may retroactively waive a per centum reduction imposed under subparagraph (B), if the Secretary determines that the State's systems meet all current performance standards and other requirements for reapproval and that such action would improve the administration of the State's plan under this title, except that no such waiver may extend beyond the four quarters immediately prior to the quarter in which the State's systems are reapproved.

"(5)(A) In order to be initially approved by the Secretary, mechanized claims processing and information retrieval systems must be of the type described in subsection (a)(3)(B) and must meet the following requirements:

"(i) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

"(ii) The State must provide that information on probable fraud or abuse which is obtained from, or developed by, the systems, is made available to the State's medicaid fraud control unit (if any) certified under subsection (q) of this section.

"(iii) The systems must meet all performance standards and other requirements for initial approval developed by the Secretary under paragraph (6).

"(B) In order to be reapproved by the Secretary, mechanized claims processing and information retrieval systems must meet the requirements of subparagraphs (A)(i) and (A)(ii) and performance standards and other requirements for reapproval developed by the Secretary under paragraph (6).

"(6) The Secretary, with respect to State systems, shall—

"(A) develop performance standards, system requirements, and other conditions for approval for use in initially approving such State systems, and shall further develop written approval procedures for conducting reviews for initial approval, including specific criteria for assessing systems in operation to insure that all such performance standards and other requirements are met;

"(B) by not later than October 1, 1980, develop an initial set of performance standards, system requirements, and other conditions for reapproval for use in reapproving or disapproving State systems, and shall further develop written reapproval procedures for conducting reviews for reapproval, including specific criteria for reassessing systems operations over a period of at least six months during each fiscal year to insure that all such performance standards and other requirements are met on a continuous basis;

"(C) provide that reviews for reapproval, conducted before October 1, 1981, shall be for the purpose of developing a systems performance data base and assisting States to improve their systems, and that no per centum reduction shall be made under paragraph (4) on the basis of such a review;

"(D) insure that review procedures, performance standards, and other requirements developed under subparagraph (B) are sufficiently flexible to allow for differing administrative needs among the States, and that such procedures, standards, and requirements are of a nature which will permit their use by the States for self-evaluation;

"(E) notify all States of proposed procedures, standards, and other requirements at least one quarter prior to the fiscal year in which such procedures, standards, and other requirements will be used for conducting reviews for reapproval;

"(F) periodically update the systems performance standards, system requirements, review criteria, objectives, regulations, and guides as the Secretary shall from time to time deem appropriate;

"(G) provide technical assistance to States in the development and improvement of the systems so as to continually improve the capacity of such systems to effectively detect cases of fraud or abuse;

"(H) for the purpose of insuring compatibility between the State systems and the systems utilized in the administration of title XVIII—

"(i) develop a uniform identification coding system (to the extent feasible) for providers, other persons receiving payments under the State plans (approved under this title) or under title XVIII, and beneficiaries of medical services under such plans or title;

"(ii) provide liaison between States and carriers and intermediaries having agreements under title XVIII to facilitate timely exchange of appropriate data; and

"(iii) improve the exchange of data between the States and the Secretary with respect to providers and other persons who have been terminated, suspended, or otherwise sanctioned under a State plan (approved under this title) or under title XVIII;

"(I) develop and disseminate clear definitions of those types of reasonable costs relating to State systems which are reimbursable under the provisions of subsection (a)(3) of this section; and

"(J) report on or before October 1, 1981, to the Congress on the extent to which States have developed and operated effective mechanized claims processing and information retrieval systems.

"(7)(A) The Secretary shall waive the provisions of this subsection with respect to initial operation and approval of mechanized claims processing and information retrieval systems with respect to any State which—

"(i) had a 1976 population (as reported by the Bureau of the Census) of less than 1,000,000 and which made total expenditures (including Federal reimbursement) for which Federal financial participation is authorized under this title of less than $100,000,000 in fiscal year 1976 (as reported by such State for such year), or

"(ii) is a Commonwealth, or territory or possession, of the United States,

if such State reasonably demonstrates, and the Secretary does not formally disagree, that the application of such provisions would not significantly improve the efficiency of the administration of such State's plan under this title.

"(B) If the Secretary determines that the application of the provisions described in subparagraph (A) to a State would significantly improve the efficiency of the administration of the State's plan under this title, the Secretary may withdraw the State's waiver under subparagraph (A) and, in such case, the Secretary shall impose a timetable for such State with respect to compliance with the provisions of this subsection and the imposition of per centum reductions. Such timetable shall be comparable to the

timetable established under this subsection as to the amount of time allowed such State to comply and the timing of per centum reductions.

"(B)(A) The per centum reductions provided for under this subsection shall not apply to a State for any quarter with respect to which the Secretary determines that such State is unable to comply with the relevant requirements of this subsection—

"(i) for good cause (but such a waiver may not be for a period in excess of 2 quarters), or

"(ii) due to circumstances beyond the control of such State.

"(B) If the Secretary determines under subparagraph (A) that such a reduction will not apply to a State, the Secretary shall report to the Congress on the basis for each such determination and on the modification of all time limitations and deadlines as described in subparagraph (C).

"(C) For purposes of determining all time limitations and deadlines imposed under this subsection, any time period during which a State was found under subparagraph (A)(ii) to be unable to comply with requirements of this subsection due to circumstances beyond its control shall not be taken into account, and the Secretary shall modify all such time limitations and deadlines with respect to such State accordingly.".

And the Senate agree to the same.

That the House recedes from its amendment to the title of the bill.

HARLEY O. STAGGERS,
HENRY A. WAXMAN,
RICHARDSON PREYER,
ANDY MAGUIRE,
TOM LUKEN,
DOUG WALGREN,
BARBARA A. MIKULSKI,
JAMES T. BROYHILL,
TIM LEE CARTER,
SAM DEVINE,
DAVE STOCKMAN,
Managers on the Part of the House.

EDWARD KENNEDY,
HARRISON A. WILLIAMS, Jr.,
CLAIBORNE PELL,
GAYLORD NELSON,
ALAN CRANSTON,
HOWARD M. METZENBAUM,
DICK SCHWEIKER,
J. K. JAVITS,
ORRIN HATCH,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1177), an act to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

FINDINGS AND PURPOSE

The Senate bill included findings and purposes.

The House amendment did not include findings or purposes.

The Conference substitute conforms generally to the findings of the Senate bill.

DEFINITIONS

The Senate bill contained definitions.

The House amendment contained some definitions not in the Senate bill.

The Conference substitute includes most definitions from the Senate bill and the House amendment, with some modifications.

STATE MENTAL HEALTH SYSTEMS

The Senate bill required as a condition of funding under the Act that each State meet several requirements regarding its mental health system, including the designation of State mental health authorities and mental health service areas, the inclusion in State health plans of mental health provisions, and the preparation of mental health operations programs; an enforcement provision was also included.

The House amendment contained similar provisions except that no additions were made to the State health plan.

The Conference substitute conforms generally to the Senate bill.

COMMUNITY MENTAL HEALTH CENTERS

The Senate bill authorized the Secretary to fund comprehensive community mental health centers.

The House amendment contained a similar provision.

The Conference substitute conforms generally to the House amendment.

SERVICES FOR CHRONICALLY MENTALLY ILL INDIVIDUALS

The Senate bill authorized the Secretary to fund programs which provide mental health services and support services to the chronically mentally ill.

The House amendment contained a similar provision but limited eligibility for such grants in areas with community mental health centers to the centers and to State mental health authorities.

The Conference substitute conforms generally to the Senate bill, but contains the House limitation in a modified form.

SERVICES FOR SEVERELY DISTURBED CHILDREN AND ADOLESCENTS

The Senate bill authorized the Secretary to fund programs which serve severely disturbed children and adolescents.

The House amendment contained a similar provision but limited eligibility for such grants in areas with community mental health centers to the centers and to State mental health authorities.

The conference substitute conforms generally to the Senate bill but contains the House limitation in a modified form.

SERVICES FOR ELDERLY INDIVIDUALS AND OTHER PRIORITY POPULATIONS

The Senate bill authorized the Secretary to fund programs which serve elderly individuals and programs which serve priority populations.

The House amendment provided a single authority to support programs to serve such priority populations as the elderly, children, and minorities and specified that such grants might be made only in areas without community mental health centers. The amendment further limited the number of grantees per service area and the number of grants per grantee. The amendment also required that a grantee provide at least three mental health services in its first year of funding and at least six in its fourth year.

The Conference substitute regarding the elderly conforms generally to the Senate bill. With respect to the required medical differential diagnosis, the Conferees expect that it shall consist of a physical examination, including a neurological evaluation, in order to distinguish and treat organic brain syndromes. Funding for services to the elderly is to constitute no less than 40 percent of funds obligated under this section.

The Conference substitute regarding priority populations conforms generally to the House amendments.

NON-REVENUE-PRODUCING ACTIVITIES

The Senate bill authorized the Secretary to assist community mental health centers and, in areas without community mental health centers, other entities, to provide specified non-revenue-producing services.

The House amendment contained a similar provision but limited eligibility to community mental health centers.

The Conference substitute conforms generally to the House amendment.

MENTAL HEALTH SERVICES IN HEALTH CARE CENTERS

The Senate bill authorized the Secretary to provide funds to establish linkages between (1) mental health facilities and programs, and (2) health facilities and programs, nursing homes, and intermediate care facilities.

The House amendment authorized the Secretary to provide funds to mental health services providers or to ambulatory health care centers (including nursing homes) to provide mental health services to such centers' patients.

The Conference substitute conforms generally to the House amendment.

INNOVATIVE PROJECTS

The Senate bill provided that the Secretary could set aside as much as 5 percent of mental health funds for grants for innovative projects.

The House amendment contained a similar provision but required that no less than 50 percent of funds obligated under this section be used for projects involving training.

The Conference substitute combines provisions of both bills.

PREVENTION PROGRAMS

The Senate bill authorized the Secretary to fund projects designed to prevent mental illness and promote mental health.

The House amendment authorized projects to demonstrate methods of preventing mental illness and promoting mental health

The Conference substitute combines provisions of both bills.

PREPARATION GRANTS

The House amendment contained a provision not included in the Senate bill which authorized the Secretary to make preparation grants to entities to assist in planning mental health service programs.

The Conference substitute does not contain a similar provision.

STATE MENTAL HEALTH FORMULA GRANTS

The Senate bill repealed the provisions of current law which authorize the making of formula grants to the States (Section 314(g) of the Public Health Service Act) but established in the Systems Act a comparable formula grant authority which provided for the Secretary to assist States in carrying out their administrative responsibilities.

The House amendment contained no comparable formula grant authority. The House amendment did, however, establish a grant program through which the Secretary was to assist State mental health authorities to improve their administrative capacities.

The Conference substitute conforms generally to the Senate bill.

IMPROVEMENT OF STATE ADMINISTRATION

The House amendment contained a provision not included on the Senate bill which authorized grants to improve the administration of State mental health programs.

The Conference substitute contains no similar provision.

ELIGIBILITY

The Senate bill required all applicants for funds to have either a governing board or—in the case of a hospital, public entity, or entity whose primary purpose is not the provision of services under the Act—an advisory board.

The House amendment required community mental health center applicants to have either a governing board, or in the case of a hospital or governmental agency, an advisory board.

The Conference substitute conforms generally to the Senate bill.

APPLICATION PROCESS

The Senate bill established a two-tier application process. Applications were either to be (1) submitted to the State mental health authority for review and, after a public hearing be transmitted to the Secretary for approval and funding, or (2) to be integrated by a qualifying State mental health authority into a single application and—after a public hearing—be transmitted to the Secretary who was to handle any appeals, and approve and fund the application.

The House amendment did not specify an application process, but required that applications for CMHC's, priority population, and non-revenue-producing grants be approved by the State mental health authority in order to be funded. In addition, the House amendment required that applications to establish CMHC's or applications to serve chronically mentally ill individuals or severely disturbed children and adolescents be funded in the following order: State-run programs, CMHC-run programs, and other programs.

The Conference substitute combines both Senate and House provisions and specifies that a two-tier application process is to be used.

In the first tier, applications for funding are to be submitted to the State mental health authority. Concurrently, the State mental health authority may also prepare applications of its own. After notice to the applicants and hearings at which other interested parties may also submit comments, the State authority may make recommendations and is to rank in priority order (and by specific grant category) the applications of local entities. The Secretary may fund applications only in the order ranked by the State authority. An applicant dissatisfied with its rank may appeal to the Secretary. In reviewing an appealed ranking, the Secretary is to provide the authority and the applicant involved a reasonable opportunity for a hearing. If the Secretary then finds on the basis of the hearing record that there is substantial evidence that the activity proposed in the application would better carry out the purposes of the section under which it would be funded than would other applications under that section given a higher rank, the Secretary may consider the application without regard to the rank given the application by the State mental health authority. The decision of the Secretary is not to be subject to judicial review. The Conferees intend that in conducting this review and appeal the Secretary shall carefully consider the purposes of this Act with regard to increasing mental health services to those priority populations that have not received needed mental health services. The conferees further expect that the Secretary will give consideration to creative and innovative ways to deliver mental health services.

In the second tier, the State mental health authority may, under specified circumstances, become the exclusive agent within the State for mental health services funded under this Act. In order to become an exclusive agent, the State must demonstrate that it is effectively implementing its mental health services program, as well as making a good faith effort to meet certain requirements related to services to the chronically mentally ill. Once designated as such an agent, the State authority is to review local entities' applications for funding and may modify an application or exclude an application from consideration by the Secretary. Concurrently, the State authority may add applications of its own. All applications not excluded from consideration are then to be ranked by the State authority and transmitted to the Secretary. Local entities whose applications were excluded or modified by the State authority may then appeal to the Secretary and, if after notice and hearing, the Secretary finds the State authority's decision to be arbitrary or capricious, the appealed application is to be ranked by the State mental health authority and is to be transmitted to the Secretary. The Secretary may fund applications only in the order ranked by the State authority. Authorizations of grants to aid States in carrying out their responsibilities under this section are $3 million in FY 1982, $4 million in FY 1983, and $5 million in FY 1984.

INDIANS

The Senate bill provided that Indian tribes or intertribal organizations could apply for grants for mental health services directly to the Secretary or could receive such services through the Indian Health Service.

The House amendment provided that the Indian Health Service could apply for such grants.

The Conference substitute conforms generally to the Senate bill but requires that the Indian Health Service certify that applications are consistent with the appropriate tribal specific health plan.

LIMITS ON FUNDING

The Senate bill provided that no entity could receive funding for the same services for more than eight years and specified declining funding over that period.

The House amendment contained a similar provision with respect to community mental health centers but limited the number of years in which an entity could receive grants for non-revenue-producing activities or to serve priority populations. The House amendment contained no provision for limits on other grants.

The Conference substitute conforms generally to the Senate bill but limits priority population grants to four years and specifies a different percentage of federal support for community mental health centers in non-poverty areas and for grants to serve priority populations.

The Senate bill also provided that grants for non-revenue-producing activities could not exceed $1.50 per capita of the population of the affected area.

The House amendment contained a similar provision but limited the amount to $1.00 per capita.

The Conference substitute conforms to the House amendment except that the amount is limited to $1.25 per capita.

The Senate bill also contained current law provisions limiting entities with advisory boards (hospitals and government-operated community mental health centers) to 5 percent of the appropriation for community mental health centers.

The House amendment set no such limit.

The Conference substitute conforms to the Senate bill, except the limit of 5 percent does not apply to public entities with advisory boards.

CARRY-OVER OF FUNDS

The Senate bill provided that if a community mental health center's or other entity's revenues (including federal grants) exceeded its total costs, the Center or entity could retain as much as 5 percent of the cost of its program in a reserve fund for use in the following year.

The House amendment contained a similar provision but limited the amount to 5 percent of the excess of revenues over costs.

The Conference substitute conforms generally to the House amendment but provides that the amount that may be carried over is to be limited to 50 percent of the excess of revenues over costs.

PERFORMANCE CONTRACT

The Senate bill provided that after an application was chosen for funding, the applicant and the Secretary were, as a condition of funding, to enter into a "performance contract" which specified the responsibilities of both the applicant and the Secretary.

The House amendment contained no similar provision.

The Conference substitute conforms to the Senate bill with modifications. While the Conferees anticipate that the specification of standards and schedules will aid monitoring and evaluation efforts, the Conferees do not intend this section to create a second application process and it is, therefore, expected that the procedure and additional documentation required by this section will be limited for both the Secretary and the grantee.

REPORT ON THE CHRONICALLY MENTALLY ILL

The Senate bill provided for the submission of a report to Congress on the treatment and care of the chronically mentally ill.

The House amendment contained no similar provision.

The Conference substitute conforms generally to the Senate bill.

PREVENTION UNIT

The Senate bill provided for a Prevention unit within the National Institute of Mental Health.

The House amendment had no similar provision.

The Conference substitute generally conforms to the Senate provision.

ASSOCIATE DIRECTOR FOR MINORITIES

The Senate bill provided for the designation of an Associate Director of the National Institute of Mental Health for Minority Concerns to assist the Director.

The House amendment contained a similar provision but specified that the Secretary was to act through the Associate Director in carrying out the purposes of the section.

The Conference substitute conforms generally to the House amendment.

The Conferees anticipate that the Associate Director will be provided sufficient staff and financial support, including the staff and funding of the Center for Minority Group Mental Health Programs, to ensure effective implementation of this Title.

THE SENSE OF CONGRESS REGARDING PATIENT'S RIGHTS

The Senate bill provided for a recommended bill of rights.

The House Amendment had no similar provision.

The Conference substitute conforms generally to the Senate bill.

ADVOCACY

The Senate bill contained a provision requiring that each State have in effect a system to protect and advocate the rights of mentally ill individuals. States without such a system were to be ineligible to receive funds for community mental health services.

The House amendment had no similar provision.

The Conference substitute generally conforms to the Senate provision. The Conference substitute, however, does not require that each State establish such a system but rather that the program be voluntary within States and that there be no penalties attached for failure to establish such a program. The Conference substitute further provides that grants for an advocacy program shall, for the first fiscal year for which funds are appropriated under this section, only be made to an entity of the government of a State designated by the Governor of the State or a public or nonprofit private entity in a State recommended by the Gov-

ernor of the State. In succeeding years, grants may be made to any public or nonprofit private entity after consultation with the Governor of a State. Authorizations for grants under this section are $10 million in FY 82, $12.5 million in FY 83, and $15 million in FY 84.

RAPE RESEARCH AND SERVICES TO RAPE VICTIMS

The Senate bill provided for the reauthorization of the existing rape research program with authorizations of $6 million for FY 1981, $9 million for FY 1982, and $12 million for FY 1983.

The House amendment authorized the rape research program only for FY 1981.

The Conference substitute continues the research program for three years with funding levels of $6 million in FY 1981, $1.5 million in FY 1982, and $1.5 million in FY 1983.

The Conferees anticipate that this will be the final authorization of the rape research program and that the Secretary will use any funds made available under this section to complete any outstanding projects or to fulfill any outstanding commitments. The Conferees further intend that the new program to provide services to rape victims will be provided sufficient staff and financial support to ensure effective implementation.

CONFIDENTIALITY OF MENTAL HEALTH RECORDS

The Senate bill included a provision regarding the confidentiality of mental health records.

The House amendment contained no similar provision.

The Conference substitute contains no similar provision. Although the Conferees agree on the importance of assuring confidentiality of mental health records and protecting the privileged communications between patients and mental health professionals, they were not able to reach an agreement on the best approach for achieving these objectives.

EMPLOYEE PROTECTIONS

The Senate bill provided that the Secretary of Labor was to promulgate regulations to protect the interests of employees adversely affected by actions to emphasize outpatient treatment and that the Secretary of Labor was to certify that states were in compliance with these regulations. The interests to be protected included collective bargaining agreements, collective bargaining rights, job reassignment, retraining, pension benefits, health benefits, other fringe benefits, and severance pay. The Senate bill also allowed grants for services to chronically mentally ill individuals to be used for job placement, training, and retraining for employees of inpatient facilities.

The House amendment provided that the State mental health services plan was to include fair and equitable arrangements (as determined by the Secretary of Health and Human Services after consultation with the Secretary of Labor) to protect the interests of employees adversely affected by actions to emphasize outpatient treatment. If the Secretary found, after notice and hearing that the State's plan or its administration of the plan failed to comply with the requirements of this or other planning provisions then the Secretary was authorized to discontinue payments. The House bill also allowed grants for innovative projects to be used for training, retraining and placement of adversely affected employees.

The Conference substitute provides that the Secretary of Health and Human Services is to issue, within six months of the date of enactment, regulations describing the arrangements each State mental health authority must have in effect to protect the interests of adversely affected employees. These regulations are not to become effective until the Secretary of Labor concurs. Arrangements described by these regulations are to include employees' rights and benefits, such as those described in Section 1642(c)(1) of the Public Health Service Act. The Conference substitute goes on to provide that if, after reasonable notice and opportunity for a hearing, the Secretary finds that a State mental health authority has failed to comply with this section, the Secretary may discontinue payments to the State under Sections 107 and 305. In applying the provisions of this section, the Conferees intend that the Secretary of Health and Human Services may, to the extent feasible, consistent with the objective of protecting against a worsening of the positions of affected employees, take into account the State's financial circumstances and legal requirements. Not later than March 1, 1983 and March 1, 1984 the Secretary of Health and Human Services shall report on the implementation of these provisions.

REPORT ON SHELTER AND BASIC LIVING NEEDS OF CHRONICALLY MENTALLY ILL INDIVIDUALS

The Senate bill required the Secretary of the Department of Health and Human Services and the Secretary of Department of Housing and Urban Development to submit jointly a report on Federal efforts to respond to the shelter and basic living needs of the chronically mentally ill.

The House amendment had no similar provision.

The Conference substitute conforms to the Senate bill.

REPORT ON THE IMPLEMENTATION OF THE MENTAL HEALTH SYSTEMS ACT

The Senate bill required the Secretary of the Department of Health and Human Services to submit a report on the implementation of the Mental Health Systems Act.

The House amendment had no similar provision.

The Conference substitute contains no similar provision.

SPECIAL PAY FOR THE PUBLIC HEALTH SERVICE PHYSICIANS AND DENTISTS

The House amendment contained a provision not included in the Senate bill which provided that commissioned medical and dental officers were to be paid at rates equal to the special pay paid to commissioned medical and dental officers of the Armed Forces.

The Conference substitute conforms to the House amendment. It is the intent of the Conferees to ensure a strong corps of commissioned Public Health Service physicians and dentists by continuing the tradition of comparable pay with the Armed Services.

MEDICAID MANAGEMENT INFORMATION SYSTEM

The Senate bill required States to establish a mechanized claims processing and information retrieval system.

The House amendment contained no similar provision.

The Conference substitute conforms to the Senate bill.

TITLE

The House recedes from its amendment to the title of the bill.

HARLEY O. STAGGERS,
HENRY A. WAXMAN,
RICHARDSON PREYER,
ANDY MAGUIRE,
TOM LUKEN,
DOUG WALGREN,
BARBARA A. MIKULSKI,
JAMES T. BROYHILL,
TIM LEE CARTER,
SAM DEVINE,
DAVE STOCKMAN,
Managers on the Part of the House.

EDWARD KENNEDY,
HARRISON A. WILLIAMS, Jr.,
CLAIBORNE PELL,
GAYLORD NELSON,
ALAN CRANSTON,
HOWARD M. METZENBAUM,
DICK SCHWEIKER,
J. K. JAVITS,
ORRIN HATCH,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

FEDERAL RAILROAD SAFETY AUTHORIZATION ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 7104, to amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7104

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Authorization Act of 1980".

AUTHORIZATION FOR APPROPRIATIONS

SEC. 2. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by striking out section 212 and by adding at the end thereof the following new section:

"SEC. 214. AUTHORIZATION FOR APPROPRIATIONS.

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed $38,000,000 for the fiscal year ending September 30, 1981, and not to exceed $40,000,000 for the fiscal year ending September 30, 1982.

"(b) The amounts appropriated under subsection (a) of this section for a fiscal year shall be available for expenditure in such fiscal year as follows:

"(1) For the Office of Safety, including salaries and expenses for not more than (A) six hundred safety inspectors, (B) forty-five signal and train control inspectors, and (C) one hundred and twenty-five clerical personnel, not to exceed $22,500,000 for the fiscal year ending September 30, 1981, and not to exceed $24,000,000 for the fiscal year ending September 30, 1982. Such funds shall be available for travel expenses of safety inspectors for not less than twenty days per month.

"(2) To carry out the provisions of section 206(d) of this Act, relating to State safety programs, not to exceed $2,000,000 for the fiscal year ending September 30, 1981, and not to exceed $2,500,000 for the fiscal year ending September 30, 1982.

"(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed $3,500,000.

(4) For conducting safety research and development activities under this Act, not to exceed $10,000,000, of which not less than $500,000 shall be available for assisting in the treatment of alcohol and drug abuse problems of railroad employees.

"(c) Sums appropriated under this section for research and development, automated track inspection, and the State safety grant program are authorized to remain available until expended.".

EMERGENCY SAFETY ORDERS

SEC. 3. Section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) is amended to read as follows:

"SEC. 203. EMERGENCY POWERS.

"(a) If the Secretary determines, on the basis of testing, inspection, investigation, or research carried out pursuant to this title, that an unsafe condition or practice, or a combination of unsafe conditions or practices, or both, create an emergency situation involving a hazard of death or injury to persons, the Secretary may immediately issue an order, without regard to the provisions of section 202(b) of this title, imposing such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation.

"(b) After the issuance of an order under this section, opportunity for review of such order shall be provided in accordance with section 554 of title 5, United States Code.

"(c) If a petition for review of an order has been filed under subsection (b) of this section but administrative review of such order has not been completed by the end of the thirty-day period beginning on the date such order was issued, such order shall cease to be effective at the end of such period unless the Secretary determines in writing that the emergency situation remains in existence.

"(d) In issuing any order under this section, the Secretary shall describe the conditions or practices which create an emergency situation (as determined by the Secretary), and shall establish standards and procedures under which relief from such order may be obtained. Nothing in this subsection shall be construed to affect the discretion of the Secretary under this section to maintain an order in effect until the emergency situation has been abated.

"(e) Any employee of a common carrier by railroad engaged in interstate or foreign commerce who may be exposed to imminent physical injury in the course of his employment because of the Secretary's failure, without any reasonable basis, to seek relief under subsection (a) of this section, or the authorized representative of such an employee, shall have the right to bring an action against the Secretary in the United States district court for the judicial district in which the emergency situation is alleged to exist or in which the employer has its principal executive office, or for the District of Columbia, to compel the Secretary to issue an order under this section. The failure of the Secretary to seek relief under subsection (a) of this section shall be reviewed solely under the standards of section 706 of title 5, United States Code.".

SCOPE OF STATE PARTICIPATION

SEC. 4. (a) Section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435) is amended by adding at the end thereof the following new subsection:

"(g) In addition to the provisions for State participation set forth in subsections (a) and (c) of this section, the Secretary may enter into agreements with any State to provide investigative and surveillance activities with respect to those functions transferred to the Secretary by section 6(e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655(e)(1), (e)(2), and (e)(6(A)).".

(b) Section 206(d) of the Federal Railroad Safety Act of 1970 (435 U.S.C. 435(d)) is amended by inserting "or (g)" immediately after "subsection (c)".

STATE ENFORCEMENT POWER

SEC. 5. Section 207 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 436) is amended to read as follows:

"SEC. 207. ENFORCING COMPLIANCE WITH FEDERAL RAILROAD SAFETY RULES, REGULATIONS, ORDERS, AND STANDARDS

"(a)(1) In any case in which the Secretary has failed to assess the civil penalty applicable under section 209 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title or under any law transferred by section 6(e)(1), (e)(2), or (e)(6)(A) of the Department of Transportation Act, within sixty days after the date on which notification was received by the Secretary from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for the assessment and collection of the civil penalty included in or made applicable to such rule, regulation, order, or standard.

"(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that no violation has occurred.

"(b)(1) In any case in which the Secretary has not commenced an action for injunctive relief under section 210 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title or under any law transferred by section (e)(1), (e)(2), or (e)(6)(A) of the Department of Transportation Act, within 15 days after the date on which the Secretary received notification of the violation, together with a request that an injunctive action be instituted, from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for injunctive relief to restrain further violation of such rule, regulation, order, or standard.

"(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that (A) no violation has occurred, or (B) an action for injunctive relief is not necessary because of other enforcement action undertaken by the Secretary with respect to the subject violation.

"(c) A State agency may not bring an action under this section in any United States district court located outside the boundaries of the State.".

CONSOLIDATION OF ADMINISTRATIVE POWERS

SEC. 6. (a) Section 208(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437 (b)) is amended by inserting "and under the functions transferred by section 6(e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A))" immediately after "this title".

(b) Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) is amended by adding at the end thereof the following new subsection:

"(d)(1) In carrying out the functions formerly vested in the Interstate Commerce Commission and transferred to the Secretary by section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A)), the Secretary is authorized to perform any act authorized in subsection (a) of this section that he considers necessary to carry out such transferred functions, including, but not limited to, conducting investigations, making reports, issuing subpenas, requiring production of documents, taking depositions, and prescribing recordkeeping and reporting requirements. The Secretary is further authorized to issue orders directing compliance with the laws transferred by section 6 (e)(1), (e)(2), and (e)(6)(A)) of the Department of Transportation Act or with any regulation or order issued thereunder.

"(2) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce by appropriate means any order issued by the Secretary under paragraph (1) of this subsection.".

CRIMINAL PENALTY FOR FALSE REPORTING

SEC. 7. Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) is amended by adding at the end thereof the following new subsection:

"(e) Any person who knowingly and willfully—

"(1) makes a false entry in any record or report required under this title to be made, prepared, or preserved;

"(2) destroys, mutilates, changes, or by another means falsifies any such record or report.

"(3) does not enter required specified facts and transactions in any such record or report;

"(4) makes, prepares, or preserves any such record or report in violation of a regulation or order issued under this title; or

"(5) files a false record or report with the Secretary,

shall be fined not more than $5,000, or imprisoned for not more than two years, or both.".

VENUE

SEC. 8. (a) Section 209(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(c)) is amended by striking out "having jurisdiction in the locality where such violation occurred" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(b) Section 6 of the Act of March 2, 1893 (45 U.S.C. 6), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(c) Section 9 of the act of February 17, 1911 (45 U.S.C. 34), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(d) Section 25(h) of the Act of February 4, 1887 (49 U.S.C. 26(h)), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

INJUNCTIVE RELIEF

SEC. 9. (a) Section 210(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439(a)) is amended by inserting "and to restrain violations of or to enforce rules, regulations, orders, or standards established under any statute transferred to the Secretary under section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A))" immediately before the period at the end thereof.

(b) Section 210 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439) is amended by adding at the and thereof the following new subsection:

"(c) Subject to section 207(d) of this title, any action under subsection (a) of this section may be brought in the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office.".

PROTECTION AND RIGHTS OF EMPLOYEES

SEC. 10. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by inserting after section 211 the following new section:

"SEC. 212. PROTECTION AND RIGHTS OF EMPLOYEES.

"(a) A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee because such employee, whether acting in his own behalf or in a representative capacity, has—

"(1) filed any complaint or instituted or caused to be instituted any proceeding under or related to the enforcement of the Federal railroad safety laws; or

"(2) testified or is about to testify in any such proceeding.

"(b)(1) A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if—

"(A) the refusal is made in good faith and no reasonable alternative to such refusal is available to the employee;

"(B) the hazardous condition is of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that—

"(i) the condition presents an imminent danger of death or serious injury; and

"(ii) there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory channels; and

"(C) the employee, where possible, has notified his employer of his apprehension of such hazardous condition and of his intention not to perform further work unless such condition is corrected immediately.

"(2) The provisions of this subsection shall not apply to security personnel employed by a railroad to protect persons and property transported by such railroad.

"(c)(1) Any dispute, grievance, or claim arising under this section shall be subject to resolution in accordance with the procedures set forth in section 3 of the Railway Labor Act (45 U.S.C. 153).

"(2) In the case of any violation of subsection (a) or (b) of this section, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 3 of the Railway Labor Act shall, where appropriate, award backpay to the aggrieved employee and order such employee reinstated to his position.

"(d) Whenever an employee of a railroad is afforded protection under this section and under any other provision of law in connection with the same allegedly unlawful act of an employer, if such employee seeks protection he must elect either to seek relief pursuant to this section or pursuant to such other provision of law.

"(e) As used in this section, the term 'Federal railroad safety laws' means this Act, the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), and those laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2) and (6)(A) of section 6 of the Department of Transportation Act (49 U.S.C. 1655(e)(1), (2), and (6)(A)).".

PAY CLASSIFICATIONS

SEC. 11. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by inserting after section 212, as added by section 10 of this Act, the following new section:

"SEC. 213. PAY CLASSIFICATIONS.

"Notwithstanding any other provision of law—

"(1) the position held by a fully experienced and qualified railroad safety inspector employed by the Department of Transportation shall be classified in accordance with chapter 51 of title 5, United States Code, but not lower than Grade GS-12 of the General Schedule; and

"(2) the position held by a railroad safety specialist employed by the Department of Transportation shall be classified in accordance with chapter 51 of title 5, United States Code, but not lower than Grade GS-13 of the General Schedule.".

HOURS OF SERVICE ACT AMENDMENT

SEC. 12. Section 5(a) of the Act of March 4, 1907 (45 U.S.C. 64a(a)), commonly known as the Hours of Service Act, is amended to read as follows:

"SEC. 5. (a)(1) Any common carrier subject to this Act, or any officer or agent thereof, that requires or permits any employee to go, be, or remain on duty in violation of section 2, section 3, or section 3A of this Act, or that violates any other provision of this Act, shall be liable for a penalty of $500 for each violation, to be recovered in an action to be brought by the United States attorney in the district court of the United States for the judicial district in which such violation occurred or in which the defendant has its principal executive office. It shall be the duty of the United States attorney to bring such an action upon satisfactory information being lodged with him. In the case of a violation of section 2(a)(3) or (a)(4) of this Act, each day a facility is in noncompliance shall constitute a separate offense.

"(2) No action may be brought under this section after the expiration of the two-year period beginning on the date the violation occurred unless administrative notification pursuant to the Federal Claims Collection Act (31 U.S.C. 951-953) has been provided to the common carrier within such two-year period, but in no event may any such action be brought after the expiration of the period specified in section 2462 of title 28, United States Code.".

LOCOMOTIVE INSPECTION ACT AMENDMENT

SEC. 13. Section 6 of the Act of February 17, 1911 (45 U.S.C. 29), is amended by striking out the fourth and fifth sentences and inserting in lieu thereof the following: "Each carrier subject to such sections shall keep on file the report of each inspection required by such rules and regulations and the report showing the repair of the defects disclosed by the inspection. The rules and regulations referred to in this section shall prescribe the manner in which such reports shall be kept.".

SAFETY OF RAILROAD PASSENGER EQUIPMENT

SEC. 14. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following new subsection:

"(h)(1) The Secretary shall, within two years after the date of enactment of this subsection, issue such initial rules, regulations, orders, and standards as may be necessary to insure the safe construction, maintenance, and operation of railroad passenger equipment. The Secretary shall periodically review such rules, regulations, orders, and standards and shall, after a hearing in accordance with subsection (b) of this section, make such revisions in such rules, regulations, orders, and standards as may be necessary.

"(2) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary shall—

"(A) concentrate on those areas which, in the judgment of the Secretary, present the greatest opportunity for enhancing the safety of railroad passenger equipment; and

"(B) give significant weight to the expenditures that would be necessary to retrofit existing equipment and to alter specifications for equipment on order;

"(3) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary may consult with the National Railroad Passenger Corporation, public authorities that operate passenger service, other rail carriers that transport passengers, organizations of passengers, and organizations of employees. Such consultations shall not be subject to the Federal Advisory Committee Act, but minutes of such consultations shall be placed in the public docket of the rulemaking proceeding.

"(4) As used in this subsection, the term 'railroad passenger equipment' means all railroad equipment used for the transportation of passengers, whether in commuter or intercity service.".

ALASKA RAILROAD ACT AMENDMENT

SEC. 15. The first section of the Act of March 12, 1914 (43 U.S.C. 975), is amended by inserting immediately after the first undesignated paragraph the following new paragraph:

"Any security officer employed to protect life and property on the railroad is authorized to maintain law and order, to carry firearms, and to make arrests on railroad property with a warrant for any offense committed against the laws of the United States, and to make arrests without a warrant for any offense committed upon property of the railroad if there is reasonable ground to believe that the offense constitutes a felony under the laws of the United States and the person to be arrested has committed or is committing the felony.".

STUDIES AND REPORTS

SEC. 16. (a) The Secretary of Transportation shall conduct a study regarding employee training in the railroad industry as it affects railroad safety. Among other factors, such study shall consider the appropriate Federal role, if any, in such training, and the adequacy of such training. The results of such study, together with recommendations for any necessary legislation, shall be submitted to the Congress by December 31, 1980.

(b)(1) The Secretary of Transportation shall make every possible effort to expedite promulgation of a final rule regarding the retrofitting of Department of Transportation specification 105 tank cars with shelf couplers. In the event that such rule is not promulgated prior to December 31, 1980, the Secretary of Transportation shall submit to the Congress a status report with respect to such rule, indicating the Federal Railroad Administration's activities to such date, the current status of such rule, and an estimate as to when a final rule will be promulgated.

(2) Whenever the Secretary of Transportation submits a status report pursuant to the provisions of paragraph (1) of this subsection, or when the Federal Railroad Administration promulgates a final rule with respect to the retrofitting of Department of Transportation specification 105 tank cars with shelf couplers, the Secretary shall transmit to the Congress any other recommendations and anticipated action by the Department of Transportation with respect to the retrofitting of such tank cars.

(c)(1) The Secretary of Transportation shall submit to the Congress a systems safety plan relating to the activities of the Department of Transportation in carrying out rail safety laws. The Secretary shall complete such plan at the earliest possible date, but in no event shall the study be submitted later than January 31, 1981.

(2) As part of the plan submitted to the Congress under paragraph (1) of this subsection, the Secretary of Transportation shall develop a methodology to determine frequency and schedules of safety inspections, giving appropriate priority to track and equipment involved with passenger trains and hazardous cargos. Such methodology shall further take into consideration safety records of the rail carriers, location of track and equipment in population centers, volume of usage of track and equipment, and any other factors that the Secretary considers relevant to railroad safety.

EFFECTIVE DATE

SEC. 17. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect on the date of enactment of this Act.

(b) Section 11 of this Act shall take effect on October 1, 1980, or on the date of enactment of this Act, whichever is later.

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. FLORIO) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. MADIGAN) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from New Jersey (Mr. FLORIO).

Mr. FLORIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this important piece of legislation that is vital to the safety of our rail system and our railroad employees. H.R. 7104, the Federal Railroad Safety Authorization Act of 1980, has a number of provisions that will help insure safe railroads and provide needed protection for the safety of our railroad employees.

The bill that is before us today differs in a few minor respects from the bill as reported from the House Commerce Committee. This is because my staff has worked with the staff of the Senate Commerce Committee to develop a bill that would be acceptable to the Senate. This bill should be acceptable to the other body, which has already passed its own bill, and its passage will avoid the need for a conference.

This bill reauthorizes the Federal Railroad Administration's rail safety program for 2 years. It provides $38 million for fiscal 1981 and $40 million for fiscal 1982. The committee bill had provided $38 million for each year. The Department of Transportation felt that amount would be insufficient to carry out its crucial safety functions in fiscal 1982. Because of the importance of railroad safety, I agree to propose a small increase in the authorization for the second year. This will insure that the FRA can continue its crucial safety function.

For safety research and development, $10,000,000 is authorized, of which at least $500,000, shall be available for assisting in the treatment of alcohol and drug abuse problems of rail employees. I am aware that DOT fiscal year 1980 appropriations include $28,245,000 for R. & D. for "track, equipment, and personal safety," and that the principal thrust of programs falling under that description is the improvement of safety. At the same time, a number of those programs have dual purposes related to safety and improved reliability or efficiency and should continue to be funded under the Department of Transportation Act. The intent in providing a specific authorization for safety R. & D. is not to reduce funding levels for this purpose but to emphasize our view that a substantial R. & D. effort in direct support of the railroad safety regulations programs should be continued.

Similarly, the bill does not intend to limit spending for alcohol and drug abuse treatment assistance to $500,000. Rather, we expect FRA to use the $500,000 to supplement any existing money used assisting in the treatment of these problems. Particularly, we are aware of a number of railway employees assistance programs (REAP's) operated on the property of individual carriers. A recent study done for the FRA has revealed that different programs have varying levels of effectiveness. We contemplate that this new funding could be used to conduct a demonstration program to test the effectiveness of particular strategies, particularly with carriers with existing programs that lack effectiveness.

We are also aware of the possibility that FRA will not feasibly be able to use all the authorized amount of $500,000 for this purpose. We would expect any unexpended portion of this $500,000 to be carried forward for the same purpose in future fiscal years.

I must also note that the Senate bill had contained only a 1-year authorization. The Senate was concerned that the results of the system safety plan under development by the FRA might require changes in the safety program for fiscal year 1982. The other body preferred to evaluate the results of this study before authorizing the rail safety program for fiscal 1982. They have now agreed to accept our 2-year authorization. We share their concern, however, about the possible impacts of the results of the system safety plan on the future of the rail safety program and intend to hold oversight hearings after its expected release early next year.

The bill strengthens the FRA's inspection and enforcement program in several respects. It requires the FRA to develop a systems safety plan which includes a methodology for safety inspections to insure inspections of track and equipment where they are most needed.

It clarifies the scope of FRA's emergency power to insure that FRA is not limited to dealing with just isolated, individual safety problems, as one recent court case has suggested. This legislation makes clear that FRA also has the authority to deal with the more serious safety emergencies involving widespread unsafe conditions or practices.

We have agreed to adopt language in this section that required the FRA to describe the conditions which create the emergency and standards and procedures for seeking relief from an emergency order. But I want to make it clear to reviewing courts our intent in accepting this language. Obviously, FRA must provide notice to the affected railroad of the nature of the emergency and general standards for remedying the problems that have caused the emergency. Surely, the due process clause requires this. But because of the exigencies of any emergency situation, the Secretary should not and cannot be held to an immediate detailed accounting of every specific problem. Similarly, the railroad must ultimately be responsible for remedying the conditions responsible for the emergency situation. The Secretary should not be put in a position of detailing to the railroad exactly how it should run its property.

Similarly, there may be circumstances where an order must be of indefinite duration, such as emergency order No. 5, relating to the free switching of certain tank cars without head shields. In all events, the rail carrier is protected by the opportunity for administrative review and the automatic expiration of the order within 30 days, unless uncontested or extended in writing by the Secretary.

The bill also addresses a problem that has made it difficult for FRA to attract qualified safety inspectors. The Office of Personnel Management has downgraded FRA's safety inspectors one grade far below comparable industry salaries. This has hurt morale and prevented FRA from hiring needed new inspectors. The bill would merely maintain the traditional GS-12 classification—which itself is even below usual industry pay scales. While the Senate did not deal with this issue in its bill, it has accepted our provision.

FRA has been justly criticized in the past for not moving aggressively enough to insure rail safety. These provisions will help give it the tools it needs.

The bill also provides important protections for the safety of railroad employees. Employees would be protected from discrimination or firing for reporting safety violations. Unfortunately, I am aware of a recent case of a railroad employee who was fired for doing just that. This bill would clearly prevent that.

Railroad employees would also be protected from discrimination if they refused to work in situations involving an imminent danger of death or serious injury. Employees in other industries already receive similar protection from an OSHA regulation, which was recently upheld by the Supreme Court. Railroad employees work in a hazardous industry and they need and deserve this protection.

Under this provision, refusal to work must be in good faith. Obviously, many jobs in the industry involve inherently hazardous activities. Rail workers are often called upon to work in inclement weather. They must often deal with hazardous chemicals. Obviously, the employer has the responsibility to provide appropriate protection. But, assuming appropriate protection is provided, this remedy should not be available merely because of the inherent hazardous nature of the job.

Under this provision, an employee who was fired or felt he was discriminated against could file a grievance through the existing Railway Labor Act grievance machinery. The grievance board could order the employee reinstated, and under already existing practice, award back pay.

The Senate bill has no protections for employees. They accepted our entire provision, with only one real change. The committee bill had allowed the grievance boards to award exemplary damages to employees, in addition to back pay, where justified. This was a controversial proposal, and was dropped as part of our compromise with the Senate.

We also agreed to two perfecting amendments. We have adopted a provision exempting security personnel whose job it is to protect life and property from the provision allowing employees to refuse to work when confronted with a hazardous situation presenting a danger of death or serious injury. By the nature

of their jobs, these personnel, such as Amtrak police, must expose themselves to dangerous situations.

We also agreed to a provision clarifying the relationship between the remedy provided here and a possible separate remedy under OSHA. Certain railroad employees, such as employees working in shops, could qualify for both the new remedy provided in this legislation, or an existing remedy under OSHA. It is our intention that pursuit of one remedy should bar the other, so as to avoid resort to two separate remedies, which would only result in unneeded litigation and inconsistent results.

This bill also expands the role of the States in the safety program. States can currently participate in safety investigation and enforcement, but in very limited areas. The bill allows them to participate in all areas of railroad safety. Since State participation is funded with 50 percent State dollars, this will result in more effective use of limited Federal dollars.

While both bills had similar provisions, we accepted the Senate language in this regard, which gives the FRA a little more discretion in how and when to get the States involved in these other areas. But it is our definite intent that FRA should move forward in this area.

Similarly, the bill expands the ability of the States to take enforcement action. Currently, participating States must wait 90 days before they can go to court. This legislation would allow States to go to court after 15 days for injunctive relief and after 60 days for civil penalties. The committee bill would have allowed States to go to court immediately for injunctive relief. However, the Senate would not have accepted this provision. In the interest of insuring a bill this session, I agreed to accept the Senate waiting period of 15 days.

The bill before us today also contains a provision requiring the Department of Transportation to issue regulations as needed to insure safe intercity and commuter passenger equipment and operations. The National Transportation Safety Board, concerned about passenger train accidents, has urged the Department and its Federal Railroad Administration to address this important area. While there are currently safety regulations covering freight cars, there are none for passenger cars. While this provision does not add to FRA's existing regulatory authority, it would insure passenger safety is fully addressed.

This provision requires the Secretary to concentrate on those areas which, in the Secretary's judgment, present the greatest opportunity for enhancing the safety of railroad passenger equipment and operations. This will insure that resources are spent where they can produce the greatest return in terms of safety.

The Secretary must also give significant weight to expenditures that would be necessary to retrofit existing equipment and alter the specifications for equipment on order. It is our intent that equipment standards developed under this subsection be generally prospective in nature. At the same time, however, there may be serious safety problems that must be addressed by retrofitting of existing equipment. With proper justification, the Secretary could proceed in this manner.

The authority given the Secretary under this subsection applies to commuter and intercity passenger operations, but not mass transit operations.

This provision was not in the committee bill, but I had intended to offer it as a separate amendment. Since the Senate has accepted it, it is included in the bill before us today.

The bill also contains another provision not in the committee bill, which I added at the request of the administration. It would simply allow Alaska railroad police to carry firearms and make arrests. This has also been accepted by the Senate.

There are other provisions, mostly of a technical nature, which should improve the FRA's ability to run a good safety program.

A safe railroad system is important to our States and communities, our railroad passengers, our railroad employees, and our Nation. I urge your support of this important bill.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to commend the gentleman from New Jersey for his expeditious handling of the Federal Railroad Safety Authorization Act of 1980. While this bill is very important, it is relatively noncontroversial. Therefore, we are conserving precious time by handling this bill on the Suspension Calendar. I would like to further commend the gentleman from New Jersey for initiating negotiations with the Senate. An acceptable agreement has been reached with the Senate and this will preclude the need for a conference. Our subcommittee is in the final legislative stages of passing railroad deregulation, superfund, and RCRA. By considering the rail safety bill on suspension and precluding the need for a conference, we will be able to focus our time and energy on those issues which need to be resolved.

The gentleman from New Jersey has already itemized the major provisions of the rail safety authorization bill and submitted a more detailed statement for the record to provide legislative history. Therefore, I would like to elaborate on some provisions which are of particular interest to me and to the minority and to further clarify the changes which have been adopted as a result of our negotiations with the Senate.

The rail safety authorization which was passed by the Senate contained a 1-year authorization at a level of $28 million. The Senate has agreed to adopt the House version which contains a 2-year authorization. The House authorization is $10 million higher in fiscal year 1981 because the authorization contains $10 million for railroad safety research and development. The Senate Commerce Committee chose to let the Senate Appropriations Committee fund railroad safety research and development through the Office of the Secretary using a standing authorization.

The House bill mandates that not less than $500,000 of the R. & D. money be spent assisting railroad employees in the treatment of alcohol and drug abuse problems. Between 1977 and 1979, the University Research Corp. studied the drinking practices of workers on seven railroads employing 234,000 workers. Of those employees studied, 47,000 were managers and others not working under union contract, 115,000 were nonoperating personnel, and 72,000 were operating personnel. This study points out that 19 percent of all railroad employees are problem drinkers. This percentage is even higher for operating employees. On one railroad, 34 percent of the operating personnel are problem drinkers. These statistics are frightening as one envisions the calamaties which are inevitable if these problems are not cured.

Railroad labor organizations have been in the forefront of working with management to establish alcoholic rehabilitation programs throughout the industry. Today, most railroads have a program of some kind. The purpose of the money in this bill which is earmarked for alcoholic rehabilitation should be used to establish a demonstration program which can pull together the best features of all available programs. Prevention, identification, and rehabilitation of problems caused by drugs or alcohol should be the goal of every employer. Railroads can and should set an example for every industry because of the close interrelationship between drug or alcohol abuse and safety.

I would like to express my strong support for the various provisions in this bill which expand employee protection rights. Under this bill, an employee who may be exposed to imminent harm will be able to bring an action to compel the Secretary to issue an order to abate such an emergency situation.

Second, this bill prohibits a railroad employee from being discharged on the basis that such employee either filed a complaint or testified in a proceeding related to the enforcement of Federal railroad safety laws. If an employee is discharged because of his involvement in such a proceeding, an adjustment board is required to provide the employee with back pay along with reinstating such employee.

Third, another provision in the bill insures that safety inspectors and safety specialists will be employed at the GS-12 and the GSC-13 levels respectively rather than being downgraded. These provisions along with others in the bill will improve the quality of the railroad inspectors, and the safety conditions within the industry, and the moral within the railroad industry.

The House amendment adopts two provisions which the Senate included in their railroad safety authorization. The first requires the Secretary of Transportation to conduct a study of the effectiveness of employee training within the railroad industry. The second provision requires the Secretary of Transportation to make every possible effort to expedite the promulgation of a final rule regarding the retrofitting of 105 tank cars with shelf couplers according to Department of Transportation specification.

Mr. Speaker, this legislation is essential to the efficient functioning of a safe railroad network and I urge its adoption.

□ 1510

Mr. FLORIO. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GONZALEZ).

Mr. GONZALEZ. Mr. Speaker, I thank the distinguished subcommittee chairman for yielding this time.

I rise in order to express my support for this very important legislation and to thank the subcommittee chairman and his colleagues on the subcommittee for preparing this legislation and presenting it to the House. It is very much needed.

A few years ago I was speaking out on the question of transportation safety and I realized that the deficiencies that I think the gentleman specifically addresses himself to in this legislation, such as the inspectors and the like.

There was just one question that I wanted to ask and that is if there is any specific addressing in this legislation to the question of the transportation of hazardous material, which I think is a continuing problem.

Mr. FLORIO. Yes. I would say in response to the gentleman's question, that subject is dealt with more in the hazardous materials transportation authorization, which has been reported from the Interstate and Foreign Commerce Committee and which is now in the process of proceeding through the legislative process; so yes, we do deal with important issues such as emergency response capability and all the other items that the gentleman is very conversant with.

Mr. GONZALEZ. And hopefully also in the provision for research and development area, I would hope there would be some coordination with this other hazardous materials transportation board.

Mr. FLORIO. Yes. The gentleman is correct. There is a coordination.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. FLORIO) that the House suspend the rules and pass the bill, H.R. 7104, as amended.

The question was taken.

Mr. WEAVER. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is withdrawn.

Mr. FLORIO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2730) to amend the Federal Railroad Safety Act of 1970 and other rail safety acts to extend authorization for appropriations, and for other purposes, and ask for its immediate consideration.

The SPEAKER pro tempore. The Chair will advise the gentleman that since the House bill has not passed, that will not be in order at this time.

Mr. WEAVER. Mr. Speaker, since there has been no intervening business, may I withdraw my point of order?

The SPEAKER pro tempore. The point of order is withdrawn under the rule.

Does the gentleman from Oregon desire that the Chair put the question on this particular bill that is now before the House?

Mr. WEAVER. No, Mr. Speaker.

The SPEAKER pro tempore. Does the gentleman desire to have this vote deferred until tomorrow?

Mr. WEAVER. No, I do not.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. FLORIO) that the House suspend the rules and pass the bill, H.R. 7104, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. FLORIO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2730) to amend the Federal Railroad Safety Act of 1970 and other rail safety acts to extend authorization for appropriations, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey (Mr. FLORIO)?

Mr. WEAVER. Mr. Speaker, I reserve the right to object to ask the manager of the bill a question.

Does the manager of the bill expect to bring the railroad retirement bill from his subcommittee this week?

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. WEAVER. I will yield to the gentleman from New Jersey.

Mr. FLORIO. As the gentleman knows, there is railroad retirement legislation that has been introduced—a bill that is an interim piece of legislation. We are looking forward to a major modification of the railroad retirement system to deal with the funding problems that that system has.

We are under the impression that management and labor are negotiating a proposal that will be submitted to this House. It is our understanding, as a matter of fact, I would go so far as to say there is a commitment, that by the end of this year there will be a proposal to be submitted to the House. It is the intention of the House, as I see it, to enact legislation that will correct the deficiencies in the fund, based in large measure upon the recommendations that will be coming from rail labor and rail management.

Mr. WEAVER. Mr. Speaker, I thank the gentleman from New Jersey.

I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey (Mr. FLORIO)?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2730

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Authorization Act of 1980".

AUTHORIZATION FOR APPROPRIATIONS

SEC. 2. Section 212 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 441), is amended to read as follows:

"SEC. 212. AUTHORIZATION FOR APPROPRIATIONS.

"There are authorized to be appropriated to carry out the provisions of this Act not to exceed $28,000,000 for the fiscal year ending September 30, 1981, and such sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law. Sums appropriated for automated track inspection and the State safety grant program are authorized to remain available until expended.".

INJUNCTIVE RELIEF

SEC. 3. (a) Section 210(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439 (a)), is amended by inserting the following immediately before the period at the end thereof: ", and to restrain violations or to enforce rules, regulations, orders, or standards established under any statute transferred to the Secretary under subsections (e)(1), (e)(2), and (e)(6)(A) of section 6 of the Department of Transportation Act, as amended (49 U.S.C. 1655(e) (1), (2), and (6)(A))".

(b) Section 210 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439) is further amended by adding at the end thereof the following:

"(c) Actions under subsection (a) of this section may be brought in the United States district court where any action or transaction constituting the violation occurred or where the defendant has its principal executive office. Nothing in this section shall authorize any State agency participating in investigative and surveillance activities under the provisions of section 206 of this title to bring a cause of action under this section in any United States district court located outside of the boundaries of the State.".

VENUE

SEC. 4. (a) Section 6 of the Act of March 2, 1893, as amended (45 U.S.C. 6) is amended—

(1) by striking "having jurisdiction" immediately following the words "United States" the second time they appear; and

(2) by inserting "or where the defendant has its principal executive office" immediately following the word "committed".

(b) Section 9 of the Act of February 17, 1911, as amended (45 U.S.C. 34), is amended

(1) by striking "having jurisdiction" immediately following the words "United States" the second time they appear; and

(2) by inserting "or where the defendant has its principal executive office" immediately following the word "committed".

(c) Section 25(h) of part I of the Interstate Commerce Act, as amended (49 U.S.C. 26(h)) is amended—

(1) by striking "having jurisdiction" immediately following the words "United States" the second time they appear; and

(2) by inserting "or where the defendant has its principal executive office" immediately following the word "committed".

(d) Section 209(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(c)) is amended—

(1) by striking "having jurisdiction" immediately following the words "United States" the second time they appear; and

(2) by inserting "or where the defendant has its principal executive office" immediately following the word "occurred".

HOURS OF SERVICE AMENDMENTS

SEC. 5. Subsection (a) of section 5 of the Hours of Service Act, as amended (45 U.S.C. 64a(a)), is amended to read as follows:

"(a) Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of section 2, section 3, or section 3A, or violating any other provision

of this Act shall be liable to a penalty of $500 for each and every violation, to be received in a suit or suits to be brought by the United States attorney in the district court of the United States in the locality where such violations shall have been committed or where the defendant has its principal executive office. In the case of paragraphs (2) and (4) of subsection 2(a) of this Act, each day a facility is in noncompliance shall constitute a separate offense. It shall be the duty of such United States attorney to bring such suit upon satisfactory information being lodged with such attorney; but no such suit shall be brought after the expiration of 2 years from the date of such violation except when administrative notification pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953) has been provided to the common carrier within 2 years from the date of the violation, and in no event shall suit be brought after the expiration of the period specified in section 2462 of title 28, United States Code.".

CONSOLIDATION OF ADMINISTRATIVE POWERS; CRIMINAL PENALTY FOR FALSE REPORTING

SEC. 6. (a) Section 208(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437 (b)) is amended by inserting "and under the functions transferred by subsections (e)(1), (e)(2), and (e)(6)(A) of section 6 of the Department of Transportation Act, as amended (49 U.S.C. 1655(e) (1), (2), and (6)(A))" immediately following the word "title" the first time it appears therein.

(b) Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) is further amended by adding at the end thereof the following:

"(d) In carrying out the function formerly vested in the Interstate Commerce Commission and transferred to the Secretary by subsections (e)(1), (e)(2), and (e)(6)(A) of section 6 of the Department of Transportation Act (49 U.S.C. 1655(a) (1), (2), and (6)(A)), the Secretary is authorized to perform such acts as are authorized in subsection (a) of this section including, but not limited to, conducting investigations, making reports, issuing subpenas, requiring production of documents, taking depositions, and prescribing recordkeeping and reporting requirements as he deems necessary to carry out the transferred functions. The Secretary is further authorized to issue orders directing compliance with the statutes transferred by subsections (e)(1), (e)(2), and (e)(6)(A) of section 6 of the Department of Transportation Act or with any regulation or order issued thereunder. The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.".

(c) Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) is further amended by adding at the end thereof the following:

"(e) With respect to any record or report required under this title to be made, prepared, or preserved, any person who knowingly and willfully (1) makes a false entry in the record or report; (2) destroys, mutilates, changes, or by another means falsifies the record; (3) does not enter required specified facts and transactions in the record; (4) makes, prepares, or preserves the record in violation of a regulation or order issued under this title; or (5) files a false report or record with the Secretary, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.".

EMERGENCY SAFETY ORDERS

SEC. 7. Section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) is amended to read as follows:

"SEC. 203. EMERGENCY POWERS

"(a) If through testing, inspection, investigation, or research carried out pursuant to this title, the Secretary determines that an unsafe condition or practice, or a combination of conditions or practices, or both, creates an emergency situation involving a hazard of death or injury to persons, the Secretary may immediately issue an order, without regard to the provisions of section 202(b) of this title, imposing such restrictions or prohibitions as may be necessary to bring about the abatement of the emergency situation.

"(b) Subsequent to the issuance of an order under this section, opportunity for review shall be provided in accordance with section 554 of title 5 of the United States Code.

"(c) If administrative review of an order pursuant to subsection (b) of this section has not been completed within a period of 30 days after the date of issuance of the order, such order shall cease to be effective at the end of such period, unless the Secretary determines in writing that the emergency situation remains in existence.

"(d) Any order issued under this section shall identify the conditions or practices which create an emergency situation (as determined by the Secretary), and shall set forth standards under which relief from such order might be obtained. Nothing in this subsection shall be construed to affect any discretion of the Secretary to issue orders responsive to emerging safety problems.".

ELIMINATION OF REPORTING REQUIREMENTS UNDER LOCOMOTIVE INSPECTION ACT

SEC. 8. Section 6 of the Act of February 17, 1911 (45 U.S.C. 29), is amended by striking the fourth and fifth sentences thereof.

STUDIES AND REPORTS

SEC. 9. (a) The Secretary of Transportation shall conduct a comprehensive study regarding State participation in railroad safety programs as provided in section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435). Such study shall specifically—

(1) assess the success of each program in a participating State;

(2) identify the specific reasons for such success, or lack thereof;

(3) project the effect that increased State authority in the area of railroad safety inspection and enforcement would have on the success of the State programs;

(4) estimate the funding requirements which would be associated with incre sed State authority in the area of railroad safety inspection and enforcement; and

(5) provide such other information as the Secretary deems necessary.

The Secretary shall transmit to the Congress the conclusions of such study, together with recommendations with respect to any additional legislation which the Secretary determines necessary, not later than December 31, 1980.

(b) The Secretary of Transportation shall conduct a study regarding employee training in the railroad industry as it affects railroad safety. Among other factors, such study shall consider the appropriate Federal role, if any, in such training, and the adequacy of such training. The results of such study, together with recommendations for any necessary legislation, shall be submitted to the Congress by December 31, 1980.

(c)(1) The Secretary of Transportation shall make every possible effort to expedite promulgation of a final rule regarding the retrofitting of Department of Transportation specification 105 tank cars with shelf couplers. In the event that such rule is not promulgated prior to December 31, 1980, the Secretary of Transportation shall submit to the Congress a status report with respect to such rule, indicating the Federal Railroad Administration's activities to such date, the current status of such rule, and an estimate as to when a final rule will be promulgated.

(2) Whenever the Secretary of Transportation submits a status report pursuant to the provisions of paragraph (1) of this subsection, or when the Federal Railroad Administration promulgates a final rule with respect to the retrofitting of Department of Transportation specification 105 tank cars with shelf couplers, the Secretary shall transmit to the Congress any other recommendations and anticipated action by the Department of Transportation with respect to the retrofitting of such tank cars.

(d) The Secretary of Transportation shall submit to the Congress a systems safety plan relating to the activities of the Department of Transportation in carrying out rail safety laws. The Secretary shall complete such plan at the earliest possible date, but in no event shall the study be submitted later than January 31, 1981.

STATE SAFETY POWERS

SEC. 10. (a) Section 207 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 436) is amended to read as follows:

"SEC. 207. ENFORCING COMPLIANCE WITH FEDERAL RAILROAD SAFETY RULES, REGULATIONS, ORDERS AND STANDARDS.

"(a) In any case in which the Secretary has failed to assess the civil penalty applicable under section 209 of this title with respect to a violation of any railroad safety rule, regulation, order or standard issued under this title within 90 days after the date on which notification was received by the Secretary from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to the district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for the assessment and collection of the civil penalty. This subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that no violation has occurred.

"(b) In any case in which the Secretary has not commenced an action for injunctive relief under section 210 of this title with respect to a violation of any railroad safety rule, regulation, order or standard issued under this title within 15 days after the date on which the Secretary received notification of the violation, together with a request that an injunctive action be instituted, from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for injunctive relief to restrain further violation of such rule, regulation, order or standard. This subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that (1) no violation has occurred; or (2) an action for injunctive relief is not necessary because of other enforcement action undertaken by the Secretary with respect to the subject violation.

"(c) A State agency may not bring an action under this section in any United States district court located outside the boundaries of the States.".

(b)(1) Section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435) is amended by adding the following new subsection:

"(g) In addition to the provisions for State participation set forth in subsections (a) and (c) of this section, the Secretary may enter into agreements with any State to provide investigative and surveillance activities with respect to those functions transferred to the Secretary by subsection (e)(1), (e)(2), and (e)(6)(A) of section 6 of the Department of Transportation Act (49 U.S.C. 1655(e)(1), (2), (6)(A)).".

(2) Subsection 203(d) of said Act is amended by adding "or (g)" immediately following the words "subsection (c)".

MOTION OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. FLORIO moves to strike out all after the enacting clause of the Senate bill, S. 2730, and to insert in lieu thereof the provisions of H.R. 7104, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill, H.R. 7104, was laid on the table.

House Resolution 762 was laid on the table.

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

Mr. SCHEUER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7939) to amend the Securities Investor Protection Act to increase the amount of protection available under such act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission.

The Clerk read as follows:

H.R. 7939

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AMENDMENTS TO THE SECURITIES INVESTOR PROTECTION ACT

SECTION 1. Section 9(a) of the Securities Investor Protection Act (15 U.S.C. 78fff-3(a)) is amended—

(1) by striking out "$100,000" and inserting in lieu thereof "$500,000"; and

(2) in paragraph (1), by striking out "$40,000" and inserting in lieu thereof "$100,000".

AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

SEC 2. Section 1122 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3422) is amended to read as follows:

"SECURITIES AND EXCHANGE COMMISSION

"SEC. 1122. Except as provided in the Securities Exchange Act of 1934, this Act shall apply with respect to the Securities and Exchange Commission.".

AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934

SEC. 3. Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end thereof the following:

"(h)(1) The Right to Financial Privacy Act of 1978 shall apply with respect to the Commission, except as otherwise provided in this subsection.

"(2) Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may have access to and obtain copies of, or the information contained in financial records of a customer from a financial institution without prior notice to the customer upon an ex parte showing to an appropriate United States district court that the Commission seeks such financial records pursuant to a subpena issued in conformity with the requirements of section 19(b) of the Securities Act of 1933, section 21(b) of the Securities Exchange Act of 1934, section 18(c) of the Public Utility Holding Company Act of 1935, section 42(b) of the Investment Company Act of 1940, or section 209(b) of the Investment Advisers Act of 1940, and that the Commission has reason to believe that—

"(A) delay in obtaining access to such financial records, or the required notice, will result in—

"(i) flight from prosecution;

"(ii) destruction of or tampering with evidence;

"(iii) transfer of assets or records outside the territorial limits of the United States;

"(iv) improper conversion of investor assets; or

"(v) impeding the ability of the Commission to identify or trace the source or disposition of funds involved in any securities transaction;

"(B) such financial records are necessary to identify or trace the record or beneficial ownership interest in any security;

"(C) the acts, practices or course of conduct under investigation involve—

"(i) the dissemination of materially false or misleading information concerning any security, issuer, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected; or

"(ii) a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated; or

"(D) the acts, practices or course of conduct under investigation—

"(i) involve significant financial speculation in securities; or

"(ii) endanger the stability of any financial or investment intermediary.

"(3) Any application under paragraph (2) for a delay in notice shall be made with reasonable specificity.

"(4)(A) Upon a showing described in paragraph (2), the presiding judge or magistrate shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution involved from disclosing that records have been obtained or that a request for records has been made.

"(B) Extensions of the period of delay of notice provided in subparagraph (A) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection or section 1109(a), (b)(1), or (b)(2) of the Right to Financial Privacy Act of 1978.

"(C) Upon expiration of the period of delay of notification ordered under subparagraph (A) or (B), the customer shall be served with or mailed a copy of the subpena insofar as it applies to the customer together with the following notice which shall describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records:

" 'Records or information concerning your transactions which are held by the financial institution named in the attached subpena were supplied to the Securities and Exchange Commission on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under section 21(b) of the Securities Exchange Act of 1934 that (state reason). The purpose of the investigation or official proceeding was (state purpose.'.

"(5) Upon application by the Commission, all proceedings pursuant to paragraphs (2) and (4) shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate may permit.

"(6) The Commission shall compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of paragraph (2) of this subsection or the provisions of the Right to Financial Privacy Act of 1978 to obtain access to financial records of a customer and include it in its annual report to the Congress. Section 1121(b) of the Right to Financial Privacy Act of 1978 shall not apply with respect to the Commission.

"(7)(A) Following the expiration of the period of delay of notification ordered by the court pursuant to paragraph (4) of this subsection, the customer may, upon motion, reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate finds that the movant is the customer to whom the records obtained by the Commission pertain, and that the Commission has obtained financial records of information contained therein in violation of this subsection, other than paragraph (1), it may order that the customer be granted civil penalties against the Commission in an amount equal to the sum of—

"(i) $100 without regard to the volume of records involved;

"(ii) any out-of-pocket damages sustained by the customer as a direct result of the disclosure; and

"(iii) if the violation is found to have been willful, intentional, and without good faith, such punitive damages as the court may allow, together with the costs of the action and reasonable attorneys fees as determined by the court.

"(B) Upon a finding that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), the court, in its discretion, may also or in the alternative issue injunctive relief to require the Commission to comply with this subsection with respect to any subpena which the Commission issues in the future for financial records of such customer for purposes of the same investigation.

"(C) Whenever the court determines that the Commission has failed to comply with this subsection, other than paragraph (1), and the court finds that the circumstances raise questions of whether an officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation, the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. After investigating and considering the evidence submitted, the Office of Personnel Management shall submit its findings and recommendations to the Commission and shall send copies of the findings and recommendations to the officer or employee or his representative. The Commission shall take the corrective action that the Office of Personnel Management recommends.

"(8) The relief described in pargraphs (7) and (10) shall be only remedies or sanctions available to a customer for a violation of this subsection, other than paragraph (1), and nothing herein or in the Right to Financial Privacy Act of 1978 shall be deemed to prohibit the use in any investigation or proceeding of financial records, or the information contained therein, obtained by a subpena issued by the Commission. In the case of an unsuccessful action under paragraph (7), the court shall award the costs of the action and attorney's fees to the Commission if the presiding judge or magistrate finds that the customer's claims were made in bad faith.

"(9)(A) The Commission may transfer financial records or the information contained therein to any government authority if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978, except that the customer notice required under section 1112 (b) or (c) of such Act may be delayed upon a showing by the Commission, in accordance with the procedure set forth in paragraphs (4) and (5), that one or more of subparagraphs (A) through (D) of paragraph (2) apply.

"(B) The Commission may, without notice to the customer pursuant to section 1112 of the Right to Financial Privacy Act of 1978, transfer financial records or the information contained therein to a State securities agency or to the Department of Justice. Financial records or information transferred by the Commission to the Department of Justice or to a State securities agency pursuant to the provisions of this subparagraph may be disclosed or used only in an administrative, civil, or criminal action or investigation by the Department of Justice or the State securities agency which arises out of or relates to the acts, practices, or courses of conduct investigated by the Commission, except that if the Department of Justice or the State securities agency determines that the information should be disclosed or used for any other purpose, it may do so if it notifies the customer, except as otherwise provided in the Right to Financial Privacy Act of 1978, within 30 days of its determination, or complies with the requirements of section 1109 of such Act regarding delay of notice.

"(10) Any government authority violating paragraph (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A) with respect to a violation by the Commission in obtaining financial records.

"(11) Notwithstanding the provisions of this subsection, the Commission may obtain financial records from a financial institution or transfer such records in accordance with provisions of the Right to Financial Privacy Act of 1978.

"(12) Nothing in this subsection shall enlarge or restrict any rights of a financial institution to challenge requests for records made by the Commission under existing law. Nothing in this subsection shall entitle a customer to assert any rights of a financial institution.

"(13) Unless the context otherwise requires, all terms defined in the Right to Financial Privacy Act of 1978 which are common to this subsection shall have the same meaning as in such Act.".

CONFORMING AMENDMENT

SEC. 4. The second sentence of section 21(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(g)) is amended by inserting "and in subsection (h)" after "as used herein".

EFFECTIVE DATES

SEC. 5. (a) The amendments made by section 1 of this Act shall take effect on the date of enactment of this Act.

(b) The amendments made by sections 2, 3, and 4 of this Act shall take effect on November 10, 1980. Nothing in this Act or in the Right to Financial Privacy Act of 1978 shall apply to any Securities and Exchange Commission subpena issued prior to such date.

The SPEAKER pro tempore. Is a second demanded?

Mr. BROYHILL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. SCHEUER) will be recognized for 20 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. SCHEUER).

Mr. SCHEUER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7939 addresses two important securities issues.

The first concerns amendments to the Securities Investor Protection Act of 1970 which will increase the insurance coverage for investors who maintain cash and securities with broker-dealers.

These accounts are insured by the Securities Investor Protection Corporation presently in the amounts of $40,000 for cash and $100,000 for securities.

Because of inflation, because of the recent increases in insurance coverage for deposits in banks, and because of the continuing need to assure investor confidence in our securities marketplace, the provisions of H.R. 7939 would increase the present coverage to $100,000 for cash and a maximum of $500,000 for securities and cash for each investor.

I would add that since the Securities Investor Protection Corporation maintains its own insurance fund, that the increased coverage will not cost the public a single penny.

This provision has the enthusiastic endorsement of the industry, the Securities Investor Protection Corporation, and the Securities and Exchange Commission.

The other subject incorporated in H.R. 7939 amends the Right to Financial Privacy Act of 1978.

That act, which will not take effect with respect to the Securities and Exchange Commission until November 10 of this year, inadvertently imposes unnecessary burdens on the ability of the Commission to subpena financial records maintained with banks.

Without the provisions contained in H.R. 7939, the Right to Financial Privacy Act would require that in virtually all cases where the SEC seeks the records of an individual in the custody of a bank, that the Agency give the individual 14 days notice prior to the production of such records.

Moreover, it would require that the SEC supply the individual with forms to facilitate his contesting such production in the Federal district court.

Obviously, in certain cases prior notice provisions would induce the destruction of records or the transfer of records and assets outside of the country, and impede the ability of the Commission to identify or trace the source or distribution of funds in securities transactions.

In addition, they might also so delay the bringing of many cases by the SEC as to jeopardize the ability of the defrauded investor to recover his losses before the running of the statute of limitations.

Finally, and I cannot overemphasize this particular facet, the provisions would encourage persons who wish to mask their securities transactions—for whatever reason—to utilize the services of banks rather than broker-dealers.

Therefore, the provisions of H.R. 7939 seek to alleviate these adverse effects while maintaining, to a reasonable extent, the confidentiality of customer records maintained with banks.

It would require that if the SEC wished to subpena records of individuals maintained with banks and if the Agency felt there was a likelihood that prior notice of issuance of the subpena would result in the kinds of abuses I discussed, or further violations of the securities laws, then that Agency, on an ex parte basis, could go before a Federal district judge.

Upon a proper showing by the Commission the judge may authorize the issuance of the subpena without prior notice.

Moreover, the bill would restrict the transfer of such subpenaed records by the SEC to agencies other than the Justice Department and State securities agencies without complying to the prior notice provisions.

However, even Justice and the State securities agencies may not use such information in connection with any proceeding not arising out of the original commission investigation, without providing prior notice.

These amendments to the Right to Financial Privacy Act are necessary to assure that the SEC's important role in combating white-collar crime is not unnecessarily impeded.

These provisions will also insure a magnitude of customer confidentiality that has not previously existed.

Finally, these provisions will narrow, if not eliminate, the competitive imbalance that the Right to Financial Privacy Act would create between banks and broker-dealers.

I urge that my colleagues support the provisions of H.R. 7939.

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Mr. CAVANAUGH. Mr. Speaker, will the gentleman yield?

Mr. SCHEUER. I am happy to yield to the gentleman.

Mr. CAVANAUGH. I thank the chairman for yielding.

First of all I would like to commend the chairman for bringing this legislation to the floor. My primary interest in the legislation, as the gentleman knows, is with the portion of the legislation dealing with the extension of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission.

At the time of the passage of the Right to Financial Privacy Act of 1978 I was a member of the Committee on Banking, Finance and Urban Affairs, and together with other interested members of that committee, primarily the gentleman from California (Mr. ROUSSELOT), the gentleman from Connecticut (Mr. MCKINNEY), and the gentleman from New York (Mr. LAFALCE) sought to promote and implement and eventually successfully enact the Right to Financial Privacy Act, whose origin went back to an earlier proposal by the gentleman from California (Mr. GOLDWATER) in conjunction with a former Member of the House from New York, Mr. Koch, who had originated the comprehensive privacy legislation from which all of this legislation has finally evolved.

But at the time of the enactment of that legislation it was understood and appreciated by the Committee on Banking, Finance and Urban Affairs that appropriate consideration had not been given to the special circumstances that surrounded the investigatory and regulatory requirements of the Securities and Exchange Commission.

In light of that it was decided to provide an exemption for the Securities and Exchange Commission and that exemption, which was provided in the Right to Financial Privacy Act of 1978, expires, as the Chairman has noted, in November of this year, therefore, necessitating this legislation if we were to accomplish the goals of requiring the same kinds of protection which the Right to Financial Privacy Act extended to customers of banks from unreasonable and unwarranted intrusions into their bank records by all agencies of government, if we were to extend those protections to protect depositors from unwarranted and unrestricted intrusion by the Securities and Exchange Commission. That is the context in which this legislation comes to the floor.

Throughout the course of the past year I have been involved with the gentleman's committee in this legislation, as have other members of the Committee on Banking, Finance and Urban Affairs concerned with this issue. As the chairman well knows, we went through protracted discussions with the Securities and Exchange Commission whose initial goal was to seek a total exemption and who eventually acquiesced in coming under the basic principles of the Right to Financial Privacy Act of 1978, which was a major change of philosophy on their part, and a significant one, in which we now have established a coherent system of privacy protections that apply to all agencies of government, but one which also, as this legislation does, takes appropriate recognition of the differing missions, goals, and responsibilities of the Securities and Exchange Commission.

I want to simply say to the chairman that I think his committee has done an outstanding job in accommodating the sensibilities of many of us who have had a history of involvement in this legislation and also accommodating the jurisdictional and protecting the jurisdictional interests of the Committee on Banking, Finance and Urban Affairs. That committee will have continuing jurisdictional and oversight capability in supervising the implementation of the provisions of H.R. 7939 as they apply to the Securities and Exchange Commission.

I just wanted to make one final comment with regard to the concerns of some Members and particularly a Member who is not here today, the gentleman from California (Mr. ROUSSELOT) who, throughout the year, has been of great assistance in providing criticisms and inputs into this legislation. The results of those inputs are interwoven throughout the final product by tightening down the exemptions that are afforded to the Securities and Exchange Commission and enhancing the protection which bank depositors will enjoy. I think the gentleman from California (Mr. ROUSSELOT) is primarily responsible for the narrow scope of this legislation.

That is not to say that at the end, as in any legislative process, there are not continuing concerns. But it is my understanding that this legislation enjoys the support of the Securities and Exchange Commission as well as the Securities Industry Association. I have received a letter addressed to the gentleman from California (Mr. ROUSSELOT), expressing their support for the legislation dated today, a letter from Mr. O'Brien of the Securities Industry Association.

Nonetheless, there are remaining issues that it is my understanding the chairman has promised will be addressed in the next session of Congress and that he is committed to holding early and comprehensive hearings on the matter of competitive equity, which does greatly concern the Securities Industry Association and others. On those issues, other issues which may be of concern to the gentleman from California (Mr. ROUSSELOT): Is it the chairman's intention to hold early and comprehensive hearings on the implementation of this legislation?

Mr. SCHEUER. Indeed it is, and we would hope to hold those hearings, if it is possible and convenient, jointly with the members of the Committee on Banking, Finance and Urban Affairs who are so interested.

I want to say at this point in the RECORD how much I admire the work of my colleague from Nebraska (Mr. CAVANAUGH) who has played an extraordinarily statesmanlike role in working with the members of the Interstate and Foreign Commerce Committee and other members of the Committee on Banking, Finance and Urban Affairs, working with SIPC, with the SEC, with the Securities Industry Association in bringing about a really total consensus on this matter. He has played a highly effective role, and he has great credibility in this area. I want to congratulate him for his really splendid work over a long period of time.

Mr. CAVANAUGH. I thank the gentleman.

Mr. SCHEUER. Let me point out how broad the support is for this consensus which the gentleman from Nebraska (Mr. CAVANAUGH) has wrought. The sponsors of this legislation include the chairman of the full Interstate and Foreign Commerce Committee, the gentleman from West Virginia (Mr. STAGGERS), the gentleman from North Carolina (Mr. PREYER), the gentleman from California (Mr. GOLDWATER), the gentleman from New York (Mr. OTTINGER), the gentleman from Texas (Mr. ECKHARDT), the gentleman from New Jersey (Mr. RINALDO). On the Committee on Interstate and Foreign Commerce, the chairman, the gentleman from Wisconsin (Mr. REUSS), the gentleman from California (Mr. STARK), the gentleman from Connecticut (Mr. MCKINNEY), the gentleman from New York (Mr. LAFALCE), and, of course, the gentleman from Nebraska (Mr. CAVANAUGH). So the gentleman really has achieved a remarkable consensus from those two committees and I congratulate him for it. I will tell him that we are all in his debt.

Mr. Speaker, I have no further requests for time on this side.

Mr. BROYHILL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this bill.

The first part of H.R. 7939 amends the Securities Investor Protection Act to raise the protective limits of the act to more realistic levels. The equity account limit will be raised to $500,000 while the cash account limit will be increased to $100,000. I hasten to add that this will not cost the American taxpayer a single dime. All of the Security Investor Protection Corporation costs are met through its fund and through membership fees.

Strong support for this portion of the bill has been urged by the broker-dealer community and the exchanges because it promotes confidence in the securities markets. The bill does not insure against personal losses in the stock market, but rather insures against the insolvency of the broker-dealer that an investor uses to trade. In the same way that the Federal Deposit Insurance Corporation insures savers against the insolvency of banks, the Securities Investor Protection Corporation insures investors against the insolvency of broker-dealers. I support this amendment as sensible legislation.

I also wish to express support for the amendments in sections 2 and 3 of this bill providing a limited exemption to the Financial Privacy Act for the SEC.

In view of the SEC's law enforcement and investor protection role, the current provisions of the Financial Privacy Act are not quite suited to the SEC. They will do more harm than good.

Compromise legislation has been worked out that is still in keeping with the spirit of the Financial Privacy Act, yet goes a long way toward investor protection. All of the provisions of the Financial Privacy Act would apply to the SEC except for two sections. The first difference deals with an expanded delay of notice provisions. The SEC feels that it needs this added criteria to protect investors and to promote stable markets. The next partial exemption relates to referral of cases to the Department of Justice for criminal prosecution. In this instance, the Department of Justice will notify the individual involved instead of the SEC.

From the standpoint of personal experience, my committee has direct jurisdiction over the SEC. We authorize every program. I can assure my colleagues that we do not give the SEC enough resource in terms of funds or personnel to issue unnecessary subpenas. As a matter of fact, the SEC must overlook minor infractions because it has only enough to pursue major violations that pose a threat to many investors.

To conclude, I believe that this is fair legislation and should be adopted.

● Mr. WYLIE. Mr. Speaker, it seems to me that the Banking Committee should hold hearings on the Right to Financial Privacy Act provisions of H.R. 7939. I therefore believe that the House should not pass this bill under the suspension procedure.

I hasten to note that I do not oppose the Right to Financial Privacy Act or its application to the Securities and Exchange Commission. If this bill does not pass and we do not enact similar legislation, the Right to Financial Privacy Act

will apply in full to the SEC after November 10, 1980. By rejecting this bill we may actually assure bank customers greater privacy than they would enjoy under H.R. 7939.

I must comment on two other matters concerning this bill. First, I note that the primary justification for the legislation is the administrative convenience of the SEC. We should not be primarily concerned with any agency's administrative convenience in passing the Right to Financial Privacy Act and I have doubts that the SEC has pleaded a persuasive case in offering its administrative convenience as a reason for looser adherence to the rules of financial privacy.

A further matter is the fact that the bill does not address the privacy of an individual's securities accounts records. With the blurring of distinctions between the banking and securities industries, perhaps we should consider applying the Right to Financial Privacy Act to securities accounts. This question could be addressed in hearings.

We should act only after a careful review of these and other related questions. It seems that the bill as it stands has not been adequately reviewed and, therefore, I urge a no vote on the bill as a Suspension Calendar measure.●

● Mr. STANTON. Mr. Speaker, after my review of this legislation I have determined that enough questions remain unanswered about its provisions affecting the Right to Financial Privacy Act that I must oppose it in its present form. I support the principal purposes of the bill, for I believe that the insurance limits for securities investors should keep pace with increases in deposit insurance. Similarly, I believe that the Right to Financial Privacy Act should apply to the Securities and Exchange Commission.

The bill before us, H.R. 7939, may not adequately accomplish that latter end.

Section 1122 of the Right to Financial Privacy Act exempted the SEC from the act's provisions for a 2-year period in order to permit a review of the act and its effect on the SEC. H.R. 7939 resulted from discussions between the SEC and Members and staff of the House. It was not the product of hearings. It is intended to reconcile the privacy interests of bank customers with the SEC's interest in access to records in aid of its law enforcement efforts, according to the report accompanying the bill.

I am not certain that we have enough information in this matter to allow us to proceed. As I read the bill, it provides the SEC a far greater latitude under the Right to Financial Privacy Act than any of the other agencies subject to its provisions currently enjoys. To be assured that the SEC has fully justified its privileged status we should review its assertions in a hearing. Many questions about this bill are unanswerd in the report and I would expect these questions to be reviewed in that hearing.

The principal question is, of course, why the SEC cannot operate under the terms of the Right to Financial Privacy Act. I note that the other agencies subject to that act, some with concurrent Securities Act's jurisdiction, have not asserted that they are unable to work within the bounds of the Right to Financial Privacy Act.

A corollary question in this regard is whether the SEC may abuse its privileged status under H.R. 7939. I note, for instance, that the SEC does not have to prove a legitimate law enforcement interest in order to employ the relaxed procedures available under H.R. 7939. The existing act makes similar procedures available to a bank supervisory agency only upon a showing of a legitimate law enforcement inquiry within the jurisdiction of the agency.

I have no doubt that securities law violations are serious matters. But I wonder whether they are more important or more volatile than other legitimate law enforcement actions in which bank records may be necessary or useful as evidence. A hearing would show whether bank records should be more available to the SEC for its enforcement activities than to other Federal law enforcement agencies in pursuit of their functions.

I am pleased that proponents of H.R. 7939 have expressed a willingness to hold hearings early in the 97th Congress on the issues which I have discussed. However, I had hoped that the bill would be considered with a committee amendment to delay the effective date of the bill or to provide for an early expiration date, to insure that early action would be taken should the hearings reveal that the legislation needs to be amended.

Under the circumstances, I must urge my colleagues to vote against suspending the rules to pass H.R. 7939, and that the bill be brought up instead under an open rule.●

● Mr. ROUSSELOT. Mr. Speaker, it is with considerable reluctance that I must oppose this legislation. I have no quarrel with the provisions which would increase insurance under the SIPC program for securities investors. This action is a logical counterpart to the action taken earlier this year under Public Law 96–221 to increase insurance at depository institutions—commercial banks, savings and loans, mutual savings banks, and credit unions—from $40,000 to $100,000.

The reasons why I must oppose this bill have to do with the amendments to the Right to Financial Privacy Act of 1978 which are contained in this bill. In this case the precedent set in the banking legislation has not been followed. This would not in itself be a reason to oppose the bill, but no hearings have been held by either the Committee on Interstate and Foreign Commerce or the Committee on Banking, Finance and Urban Affairs to justify the departures from the precedent established in the original Right to Financial Privacy Act.

Members will recall that the purpose of the Right to Finance Privacy Act was to establish that customers of depository institutions have a legitimate expectation of privacy in their financial records and to require that agencies seeking to obtain customer records must, wherever practicable, show probable cause and provide notice to the customer. The Right to Financial Privacy Act represents an effort to strike a reasonable balance between the right and expectation of privacy on the part of the customer and the legitimate needs of law enforcement authorities.

At the time the Right to Financial Privacy Act was before the Banking Committee, one agency, the Securities and Exchange Commission claimed that it could not live with the bill, and I believe it is fair to say that the SEC threatened to kill the bill if it were not granted an exemption. Although I have never been convinced that the SEC cannot function under the same provisions which apply to the Justice Department and to all other law enforcement agencies, in order to defuse the SEC's objections to the bill, it was agreed that the SEC would enjoy a 2-year exemption from the act, during which time efforts would be made to develop procedures which could satisfy the needs of customers of depository institutions and the "unique" needs of the SEC.

The bill which you have before you is supposed to represent a balanced answer to the dilemma posed by the SEC exemption. Unfortunately, in the absence of hearings, we have no way of knowing. What we do know is that there are two major issues affecting the rights of customers of financial institutions which have not been resolved during the 2 years in which the SEC has enjoyed an exemption from the Right to Financial Privacy Act:

1. POSSIBLE ABUSE OF SPECIAL SEC PROVISIONS

The basic scheme of the privacy provisions of H.R. 7939 is that wherever practicable, the SEC will follow the procedures set forth in the Right to Financial Privacy Act, but that under emergency circumstances, such as cases in which there is a danger that the subject might alter bank records or leave the country, the SEC would be able to use special subpena procedures and would be permitted to notify the customer after the fact. In the absence of hearings, there has not been an adequate showing as to why the SEC cannot abide by the provisions of the Right to Financial Privacy Act, nor have customers of financial institutions and others affected by the legislation been given an opportunity to present their views. It has been alleged that the SEC might try to use the "emergency" procedures as the "standard operating procedure" of the agency, if this bill becomes law. In the absence of hearings, we have no way of knowing whether or not the SEC would truly confine its use of the emergency provisions to "appropriate" cases.

2. PROTECTION OF SECURITIES CUSTOMERS

The bill before you today has another glaring shortcoming. It applies only to efforts by the SEC to obtain the records of banking customers, while no protection whatever is afforded to customers of brokerage firms whose records are subject to unlimited access by the SEC without notice. With the advent of money market mutual funds at brokerage firms, these firms are being used by many customers of other financial institutions who invest a portion of their cash in money funds and other securities. These customers, I would argue are entitled to the same expectation of privacy in their securities records which Congress has

recognized they properly have in their bank records, but this bill does nothing to recognize this expectation, and no hearings have been held on the issue of providing adequate protection of the privacy of customers of securities firms.

The solution to the problems which I have raised is to insure that, if this House decides that it must enact this legislation without the benefit of hearings, assurance would be provided that hearings will be held on the two issues which I have raised and that there will be a timely opportunity to correct whatever deficiencies in the bill are disclosed by the hearings.

One formula by which this could be achieved, although by no means the only formula, would be to provide for a 6-month sunset of the privacy provisions of H.R. 7939, so that hearings could be held and corrective action taken before the exceptional procedures established for the SEC under this bill have an opportunity to become entrenched.

I appreciate the assurances which have been provided that hearings on the issues I have raised will be held early in the next Congress. My concerns are that, as matters now stand, these hearings would be held after the bill will have taken effect, and that there is no provision for either a sunset or a delayed effective date to accommodate the results of the hearings. I express these concerns not on behalf of any industry association but on behalf of those parties, both securities firms and securities customers, who are affected by this bill but who will not have an opportunity to be heard until after it has been enacted.

For all of the reasons stated above, I urge my colleagues to vote against suspending the rules to pass this bill, so that it can be considered under a rule permitting amendments to be offered.●

● Mr. STAGGERS. Mr. Speaker, I believe this legislation deserves the support of each and every Member of the House who is concerned about investor protection and the right to financial privacy.

H.R. 7939 addresses two areas: First, section 1 of the bill would increase insurance coverage for cash and securities maintained with securities dealers by customers from $40,000 and $100,000 to $100,000 and $500,000, respectively. This insurance is provided by the Securities Investor Protection Corporation, a private, nonprofit organization. This provision would have no cost impact on the Federal budget and would go far toward bolstering customer confidence and meeting inflation.

The rest of the bill would amend the Securities Exchange Act of 1934, incorporating several provisions of the Right to Financial Privacy Act.

When the right to Financial Privacy Act was passed in 1978, it was not clearly recognized that: First, the bill virtually applied only to the SEC because Justice Department subpenas were excluded and the IRS is subject to a separate statute; and second, the provisions of the statute requiring prior notification of the issuance of a subpena would have a devastating impact on the important law enforcement function of the SEC where market manipulation or other financial fraud is involved. Accordingly, the Banking Committee temporarily exempted the SEC from the act. That exemtpion expires on November 10, 1980, so timely passage of this legislation is crucial. We must act to insure that the transition to coverage of the SEC by the law is smooth and disrupts the vital activities of the SEC as little as possible, while assuring adequate protection to individuals.

The Banking Committee has declined to have a hearing on this matter and waived jurisdiction. Nonetheless, the Banking Committee played a key role in drafting H.R. 7939. Mr. CAVANAUGH particularly should be commended for his close scrutiny of all facets of this legislation. Mr. REUSS, chairman of that committee, Mr. MCKINNEY and Mr. LAFALCE are supporters of the bill, along with house privacy advocates Mr. GOLDWATER, Mr. PREYER, Mr. ST GERMAIN, Mr. STARK who played major roles in the passage of the Financial Privacy Act. The legislation was drafted in consultation with these members, the SEC and other interested parties. I believe that this legislation provides citizens with protections against potential misuse of SEC subpena authority comparable to the protections they now enjoy regarding other Government requests for bank records.

H.R. 7939 provides substantial privacy protections to bank customers by requiring that they be notified following SEC access to their financial records and giving them a right to obtain relief in court for any improper access. That is, the SEC, pursuant to a valid investigation, may subpena records from a bank and delay notice to the customer for a period of 90 days upon an exparte showing to a Federal district court judge or magistrate that such prior notice, among their things, might result in flight from prosecution, destruction of or tampering with evidence, transfer of assets and records outside the territorial limits of the United States, improper conversion of investor assets, or impeding the ability of the SEC to identify or trace the source or disposition of funds involved in securities frauds.

The bill would also preclude the SEC, without providing prior notice, from transferring such financial records to any agency except the Justice Department or a State securities agency for prosecution arising out of the conduct investigated. Citizens are provided remedies and sanctions for violations and abuses by the SEC. These include punitive damages, costs of the action and attorneys' fees as well as disciplinary action against SEC employees.

I think this is a fair solution and I urge the Members of the House to support H.R. 7939 without further amendment as it represents a truly balanced bill.●

Mr. BROYHILL. Mr. Speaker, I have no other requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. SCHEUER) that the House suspend the rules and pass the bill, H.R. 7939.

The question was taken.

Mr' LUNGREN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

□ 1530

GENERAL LEAVE

Mr. SCHEUER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend the remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

SMALL BUSINESS INVESTMENT INCENTIVE ACT OF 1980

Mr. SCHEUER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7554) to amend the Securities Act of 1933 and the Investment Company Act of 1940 to provide incentives for small business investment, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7554

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Investment Incentive Act of 1980".

TITLE I—AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

DEFINITIONS

SEC. 101. Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end thereof the following new paragraphs:

"(46) 'Eligible portfolio company' means any issuer which—

"(A) is organized under the laws of, and has its principal place of business in, any State or States;

"(B) is neither an investment company as defined in section 3 (other than a small business investment company which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 3(c); and

"(C) satisfies one of the following:

"(i) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934;

"(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company; or

"(iii) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly

intended by the policy and provisions of this title.

"(47) 'Making available significant managerial assistance' by a business development company means—

"(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

"(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

"(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

"48 'Business development company' means any closed-end company which—

"(A) is organized under the laws of, and has its principal place of business in, any State or States;

"(B) is operated for the purpose of making investments in securities described in sections 55(a) (1) through (3), and makes available significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development "company" as satisfying the 70 per centum of the value of its total assets condition of section 55; and

"(C) has elected pursuant to section 54(a) to be subject to the provisions of sections 55 through 65.".

ATTRIBUTION OF BENEFICIAL OWNERSHIP

SEC. 102. Section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)) is amended to read as follows:

"(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. For purposes of this paragraph:

"(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).

"(B) Beneficial ownership by any person who acquires securities or interests in securities of an issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title, where the transfer was caused by legal separation, divorce, death, or other involuntary event.".

EXEMPTION FROM INVESTMENT COMPANY ACT OF 1940

SEC. 103. Section 6 of the Investment Company Act of 1940 (15 U.S.C. 80a-6) is amended by adding at the end thereof the following new subsection:

"(f) Any closed-end company which—

"(1) elects to be treated as a business development company pursuant to section 54; or

"(2) would be excluded from the definition of an investment company by section 3(c)(1), except that it presently proposes to make a public offering of its securities as a business development company, and has notified the Commission, in a form and manner which the Commission may by rule, prescribe, that it intends in good faith to file, within 90 days, a notification of election to become subject to the provisions of sections 55 through 65,

shall be exempt from sections 1 through 53, except to the extent provided in sections 59 through 65.".

VALIDITY OF CONTRACTS

SEC. 104. Section 47(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-46(b)) is amended to read as follows:

"(b)(1) A contract that is made, or whose performance involves, a violation of this title, or of any rule, regulation, or order thereunder, is unenforceable by either party (or by a nonparty to the contract who acquired a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate any provision of this title or of any rule, regulation, or order thereunder) unless a court finds that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of this title.

"(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this title.

"(3) This subsection shall not apply (A) to the lawful portion of a contract to the extent that it may be severed from the unlawful portion of the contract, or (B) to preclude recovery against any person for unjust enrichment.".

REGULATION OF BUSINESS DEVELOPMENT COMPANIES

SEC. 105. The Investment Company Act of 1940 is amended by adding at the end thereof the following new sections:

"ELECTION TO BE REGULATED AS A BUSINESS DEVELOPMENT COMPANY

"SEC. 54. (a) Any company defined in sections 2(a)(48) (A) and (B) may elect to be subject to the provisions of sections 55 through 65 by filing with the Commission a notification of election, if such company—

"(1) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934; or

"(2) has filed a registration statement pursuant to section 12 of the Securities Exchange Act of 1934 for a class of its equity securities.

"(b) The Commission may, by rule, prescribe the form and manner in which notification of election under this section shall be given. A business development company shall be deemed to be subject to sections 55 through 65 upon receipt by the Commission of such notification of election.

"(c) Whenever the Commission finds, on its own motion or upon application, that a business development company which has filed a notification of election pursuant to subsection (a) of this section has ceased to engage in business, the Commission shall so declare by order revoking such company's election. Any business development company may voluntarily withdraw its election under subsection (a) by filing a notice of withdrawal of election with the Commission, in a form and manner which the Commission may, by rule, prescribe. Such withdrawal shall be effective immediately upon receipt by the Commission.

"FUNCTIONS AND ACTIVITIES OF BUSINESS DEVELOPMENT COMPANIES

"SEC. 55. (a) It shall be unlawful for a business development company to acquire any assets (other than those described in paragraphs (1) through (7) of this subsection) unless, at the time the acquisition is made, assets described in paragraphs (1) through (6) below represent at least 70 per centum of the value of its total assets (other than assets described in paragraph (7) below):

"(1) securities purchased, in transactions not involving any public offering or in such other transactions as the Commission may, by rule, prescribe if it finds that enforcement of this title and of the Securities Act of 1933 with respect to such transactions is not necessary in the public interest or for the protection of investors by reason of the small amount, or the limited nature of the public offering, invloved in such transactions—

"(A) from the issuer of such securities, which issuer is an eligible portfolio company, or from any person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company; or

"(B) from the issuer of such securities, which issuer is described in sections 2(a)(46) (A) and (B) but is not an eligible portfolio company because it has issued a class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934, or from any person who is an officer or employee of such issuer, if—

"(1) at the time of the purchase, the business development company owns at least 50 per centum of—

"(I) the greatest number of equity securities of such issuer and securities convertible into or exchangeable for such securities; and

"(II) the greatest amount of debt securities of such issuer,

held by such business development company at any point in time during the period when such issuer was an eligible portfolio company, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid or prepaid in the ordinary course of business or incident to a public offering of securities of such issuer, shall not be considered to have been held by such business development company for purposes of this requirement; and

"(II) the business development company is one of the 20 largest holders of record of such issuer's outstanding voting securities;

"(2) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 2(a)(46)(C)(ii);

"(3) securities purchased in transactions not involving any public offering from an issuer described in sections 2(a)(46) (A) and (B) or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such issuer, or from any person in transactions incident thereto, if such securities were—

"(A) issued by an issuer that is, or was immediately prior to the purchase of its securities by the business development company, in bankruptcy proceedings, subject to reorganization under the supervision of a court of competent jurisdiction, or subject to a plan or arrangement resulting from such bankruptcy proceedings or reorganization;

"(B) issued by an issuer pursuant to or in consummation of such a plan or arrangement; or

"(C) issued by an issuer that, immediately prior to the purchase of such issuer's securities by the business development company, was not in bankruptcy proceedings but was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements;

"(4) securities of eligible portfolio companies purchased from any person in transactions not involving any public offering, if there is no ready market for such securities and if immediately prior to such purchase the business development company owns at least 60 per centum of the outstanding equity securities of such issuer (giving effect to all securities presently convertible into or exchangeable for equity securities of such issuer as if such securities were so converted or exchanged);

"(5) securities received in exchange for or distributed on or with respect to securities described in paragraphs (1) through (4) of this subsection, or pursuant to the exercise of options, warrants, or rights relating to securities described in such paragraphs;

"(6) cash, cash items, Government securities, or high quality debt securities maturing in one year or less from the time of investment in such high quality debt securities; and

"(7) office furniture and equipment, interests in real estate and leasehold improvements and facilities maintained to conduct the business operations of the business development company, deferred organization and operating expenses, and other noninvestment assets necessary and appropriate to its operations as a business development company, including notes of indebtedness of directors, officers, employees, and general partners held by a business development company as payment for securities of such company issued in connection with an executive compensation plan described in section 57 (j).

"(b) For purposes of this section, the value of a business development company's assets shall be determined as of the date of the most recent financial statements filed by such company with the Commission pursuant to section 13 of the Securities Exchange Act of 1934, and shall be determined no less frequently than annually.

"QUALIFICATIONS OF DIRECTORS

"SEC. 56. (a) A majority of a business development company's directors or general partners shall be persons who are not interested persons of such company.

"(b) If, by reason of the death, disqualification, or bona fide resignation of any director or general partner, a business development company does not meet the requirements of subsection (a) of this section, or the requirements of section 15(f)(1) of this title with respect to directors, the operation of such provisions shall be suspended for a period of 90 days or for such longer period as the Commission may prescribe, upon its own motion or by order upon application, as not inconsistent with the protection of investors.

"TRANSACTIONS WITH CERTAIN AFFILIATES

"SEC. 57. (a) It shall be unlawful for any person who is related to a business development company in a manner described in subsection (b) of this section, acting as principal—

"(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

"(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

"(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 21(b) or section 62; or

"(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

"(b) The provisions of subsection (a) of this section shall apply to the following persons:

"(1) Any director, officer, employee, or member of any advisory board of a business development company or any person (other than the business development company itself) who is, within the meaning of section 2(a)(3)(C) of this title, an affiliated person of any such person specified in this paragraph.

"(2) Any investment adviser or promoter of, general partner in, principal underwriter for, or person directly or indirectly either controlling, controlled by, or under common control with, a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company), or any person who is, within the meaning of section 2(a)(3) (C) or (D), an affiliated person of any such person specified in this paragraph.

(c) Notwithstanding paragraphs (1), (2), and (3) of subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of such paragraphs. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

"(1) the terms of the proposed transaction including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned;

"(2) the proposed transaction is consistent with the policy of the business development company as recited in the filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders or partners; and

"(3) the proposed transaction is consistent with the general purposes of this title.

"(d) It shall be unlawful for any person who is related to a business development company in the manner described in subsection (e) of this section and who is not subject to the prohibitions of subsection (a) of this section, acting as principal—

"(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

"(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

"(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 21(b); or

"(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such affiliated person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

"(e) The provisions of subsection (d) of this section shall apply to the following persons:

"(1) Any person (A) who is, within the meaning of section 2(a)(3)(A), an affiliated person of a business development company, (B) who is an executive officer or a director of, or general partner in, any such affiliated person, or (C) who directly or indirectly either controls, is controlled by, or is under common control with, such affiliated person.

"(2) Any person who is an affiliated person of a director, officer, employee, investment adviser, member of an advisory board or promoter of, principal underwriter for, general partner in, or an affiliated person of any person directly or indirectly either controlling or under common control with a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company).

For purposes of this subsection, the term 'executive officer' means the president, secretary, treasurer, any vice president in charge of a principal business function, and any other person who performs similar policy-making functions.

"(f) Notwithstanding subsection (d) of this section, a person described in subsection (e) may engage in a proposed transaction described in subsection (d) if such proposed transaction is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in the busi-

ness development company on the basis that—

"(1) the terms thereof, including the consideration to be paid or received, are reasonable and fair to the shareholders or partners of the business development company and do not involve overreaching of such company or its shareholders or partners on the part of any person concerned;

"(2) the proposed transaction is consistent with the interests of the shareholders or partners of the business development company and is consistent with the policy of such company as recited in filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders or partners; and

"(3) the directors or general partners record in their minutes and preserve in their records, for such periods as if such records were required to be maintained pursuant to section 31(a), a description of such transaction, their findings, the information or materials upon which their findings were based, and the basis therefor.

"(g) Notwithstanding subsection (a) or (d), a person may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any person and furnish the services incident thereto.

"(h) The directors of or general partners in any business development company shall adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction in which such business development company or a company controlled by such business development company proposes to participate, with respect to the possible involvement in the transaction of persons described in subsections (b) and (e) of this section.

"(i) Until the adoption by the Commission of rules or regulations under subsections (a) and (d) of this section, the rules and regulations of the Commission under section 17(a) and (d) applicable to registered closed-end investment companies shall be deemed to apply to transactions subject to subsections (a) and (d) of this section. Any rules or regulations adopted by the Commission to implement this section shall be no more restrictive than the rules or regulations adopted by the Commission under sections 17(a) and (d) that are applicable to all registered closed-end investment companies.

"(j) Notwithstanding subsections (a) and (d) of this section, any director, officer, or employee of, or general partner in, a business development company may—

"(1) acquire warrants, options, and rights to purchase voting securities of such business development company, and securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan offered by such company which meets the requirements of section 61(a)(3)(B); and

"(2) borrow money from such business development company for the purpose of purchasing securities issued by such company pursuant to an executive compensation plan, if each such loan—

"(A) has a term of not more than ten years;

"(B) becomes due within a reasonable time, not to exceed sixty days, after the termination of such person's employment or service;

"(C) bears interest at no less than the prevailing rate applicable to 90-day United States Treasury bills at the time the loan is made;

"(D) at all times is fully collateralized (such collateral may include any securities issued by such business development company); and

"(E)(i) in the case of a loan to any officer or employee of such business development company (including any officer or employee who is also a director of such company), is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in such company on the basis that the loan is in the best interests of such company and its shareholders or partners; or

"(ii) in the case of a loan to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company, is approved by order of the Commission, upon application, on the basis that the terms of the loan are fair and reasonable and do not involve overreaching of such company or its shareholders or partners.

"(k) It shall be unlawful for any person described in subsection (l)—

"(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from the business development company) for the purchase or sale of any property to or for such business development company or any controlled company thereof, except in the course of such person's business as an underwriter or broker; or

"(2) acting as broker, in connection with the sale of securities to or by the business development company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds—

"(A) the usual and customary broker's commission if the sale is effected on a securities exchange;

"(B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities; or

"(C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected,

unless the Commission, by rules and regulations or order in the public interest and consistent with the protection of investors, permits a larger commission.

"(l) The provisions of subsection (k) of this section shall apply to the following persons:

"(1) Any affiliated person of a business development company.

"(2)(A) Any person who is, within the meaning of section 2(a)(3)(B), (C), or (D), an affiliated person of any director, officer, employee, or member of an advisory board of the business development company.

"(B) Any person who is, within the meaning of section 2(a)(3)(A), (B), (C), or (D), an affiliated person of any investment adviser of, general partner in, or person directly or indirectly either controlling, controlled by, or under common control with, the business development company.

"(C) Any person who is, within the meaning of section 2(a)(3)(C), an affiliated person of any person who is an affiliated person of the business development company within the meaning of section 2(a)(3)(A).

"(m) For purposes of subsections (a) and (d), a person who is a director, officer, or employee of a party to a transaction and who receives his usual and ordinary fee or salary for usual and customary services as a director, officer, or employee from such party shall not be deemed to have a financial interest or to participate in the transaction solely by reason of his receipt of such fee or salary.

"(n)(1) Notwithstanding subsection (a)(4) of this section, a business development company may establish and maintain a profit-sharing plan for its directors, officers, employees, and general partners and such directors, officers, employees, and general partners may participate in such profit-sharing plan, if—

"(A)(i) in the case of a profit-sharing plan for officers and employees of the business development company (including any officer or employee who is also a director of such company), such profit-sharing plan is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in such company on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; or

"(ii) in the case of a profit-sharing plan which includes one or more directors of the business development company who are not also officers or employees of such company, or one or more general partners in such company, such profit-sharing plan is approved by order of the Commission, upon application, on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; and

"(B) the aggregate amount of benefits which would be paid or accrued under such plan shall not exceed 20 per centum of the business development company's net income after taxes in any fiscal year.

"(2) This subsection may not be used where the business development company has outstanding any stock option, warrant, or right issued as part of an executive compensation plan, including a plan pursuant to section 61(a)(3)(B), or has an investment adviser registered or required to be registered under title II of this Act.

"(o) The term 'required majority', when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

"CHANGES IN INVESTMENT POLICY

"SEC. 58. No business development company shall, unless authorized by the vote of a majority of its outstanding voting securities or partnership interests, change the nature of its business so as to cease to be, or to withdraw its election as, a business development company.

"INCORPORATION OF PROVISIONS

"SEC. 59. Notwithstanding the exemption set forth in section 6(f), sections 1, 2, 3, 4, 5, 6, 9, 10(f), 15(a), (c), and (f), 16(b), 17(f) through (j), 19(a), 20(b), 32(a) and (c), 33 through 47, and 49 through 53 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company.

"FUNCTIONS AND ACTIVITIES OF BUSINESS DEVELOPMENT COMPANIES

"SEC. 60. Notwithstanding the exemption set forth in section 6(f) section 12 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the Commission shall not prescribe any rule, regulation, or order pursuant to section 12(a)(1) governing the circumstances in which a business development company may borrow from a bank in order to purchase any security.

"CAPITAL STRUCTURE

"SEC. 61. (a) Notwithstanding the exemption set forth in section 6(f), section 18 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

"(1) The asset coverage requirements of section 18(a)(1)(A) and (B) applicable to business development companies shall be 200 per centum.

"(2) Notwithstanding section 18(c), a business development company may issue more than one class of senior security representing indebtedness if such business development company does not have outstanding any publicly held indebtedness, and all such securities of each class are—

"(A) privately held or guaranteed by the Small Business Administration, or banks, insurance companies, or other institutional investors; and

"(B) not intended to be publicly distributed.

"(3) Notwithstanding section 18(d)—

"(A) a business development company may issue senior securities representing indebtedness accompanied by warrants, options, or rights to subscribe or convert to voting securities of such company, if—

"(i) such warrants, options, or rights expire by their terms within ten years;

"(ii) such warrants, options, or rights are not separately transferable unless no class of such warrants, options, or rights and the senior securities accompanying them has been publicly distributed;

"(iii) the exercise or conversion price is not less than the current market value at the date of issuance, or if no such market value exists, the current net asset value of such voting securities; and

"(iv) the proposal to issue such securities is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 57(o)) of the directors of or general partners in such company on the basis that such issuance is in the best interests of such company and its shareholders or partners; and

"(B) a business development company may issue, to its directors, officers, employees, and general partners, warrants, options, and rights to purchase voting securities of such company pursuant to an executive compensation plan, if—

"(i)(I) in the case of warrants, options, or rights issued to any officer or employee of such business development company (including any officer or employee who is also a director of such company), such securities satisfy the conditions in clauses (i), (iii), and (iv) of subparagraph (A); or (II) in the case of warrants, options, or rights issued to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company, the proposal to issue such securities satisfies the conditions in clauses (i) and (iii) of subparagraph (A), is authorized by the shareholders or partners of such company, and is approved by order of the Commission, upon application, on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its shareholders or partners;

"(ii) such securities are not transferable except for disposition by gift, will, or intestacy;

"(iii) no investment adviser of such business development company receives any compensation described in paragraph (1) of section 205 of title II of this Act, except to the extent permitted by clause (A) or (B) of that section; and

"(iv) such business development company does not have a profit-sharing plan described in section 57(n).

Notwithstanding this paragraph, the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25 per centum of the outstanding voting securities of the business development company, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, employees, and general partners pursuant to any executive compensation plan meeting the requirements of subparagraph (B) of this paragraph would exceed 15 per centum of the outstanding voting securities of such company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20 per centum of the outstanding voting securities of such company.

"(4) For purposes of measuring the asset coverage requirements of section 18(a), a senior security created by the guarantee by a business development company of indebtedness issued by another company shall be the amount of the maximum potential liability less the fair market value of the net unencumbered assets (plus the indebtedness which has been guaranteed) available in the borrowing company whose debts have been guaranteed, except that a guarantee issued by a business development company of indebtedness issued by a company which is a wholly-owned subsidiary of the business development company and is licensed as a small business investment company under the Small Business Investment Act of 1958 shall not be deemed to be a senior security of such business development company for purposes of section 18(a) if the amount of the indebtedness at the time of its issuance by the borrowing company is itself taken fully into account as a liability by such business development company, as if it were issued by such business development company, in determining whether such business development company, at that time, satisfies the asset coverage requirements of section 18(a).

"(b) A business development company shall comply with the provisions of this section at the time it becomes subject to sections 55 through 65, as if it were issuing a security of each class which it has outstanding at such time.

"LOANS

"SEC. 62. Notwithstanding the exemption set forth in section 6(f), section 21 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that nothing in that section shall be deemed to prohibit—

"(1) any loan to a director, officer, or employee of, or general partner in, a business development company for the purpose of purchasing securities of such company as part of an executive compensation plan, if such loan meets the requirements of section 57(j); or

"(2) any loan to a company controlled by a business development company, which companies could be deemed to be under common control solely because a third person controls such business development company.

"DISTRIBUTION AND REPURCHASE OF SECURITIES

"SEC. 63. Notwithstanding the exemption set forth in section 6(f), section 23 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

"(1) The prohibitions of section 23(a)(2) shall not apply to any company which (A) is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company, and (B) immediately after the issuance of any of its securities for property other than cash or securities, will not be an investment company within the meaning of section 3(a).

"(2) Notwithstanding the provisions of section 23(b), a business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock, and may sell warrants, options, or rights to acquire any such common stock at a price below the current net asset value of such stock, if—

"(A) the holders of a majority of such business development company's outstanding voting securities, and the holders of a majority of such company's outstanding voting securities that are not affiliated persons of such company, approved such company's policy and practice of making such sales of securities at the last annual meeting of shareholders or partners within one year immediately prior to any such sale, except that the shareholder approval requirements of this subparagraph shall not apply to the initial public offering by a business development company of its securities.

"(B) a required majority (as defined in section 57(o)) of the directors of or general partners in such business development company have determined that any such sale would be in the best interests of such company and its shareholders or partners; and

"(C) a required majority (as defined in section 57(o)) of the directors of or general partners in such business development company, in consultation with the underwriter or underwriters of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of such company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that the price at which such securities are to be sold is not less than a price which closely approximates the market value of those securities, less any distributing commission or discount.

"(3) A business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock upon the exercise of any warrant, option, or right issued in accordance with section 61(a)(3).

"ACCOUNTS AND RECORDS

"SEC. 64. (a) Notwithstanding the exemption set forth in section 6(f), section 31 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the reference to the financial statements required to be filed pursuant to section 30 shall be construed to refer to the financial statements required to be filed by such business development company pursuant to section 13 of the Securities Exchange Act of 1934.

"(b)(1) In addition to the requirements of subsection (a), a business development company shall file with the Commission and supply annually to its shareholders a written statement, in such form and manner as the Commission may, by rule, prescribe, describing the risk factors involved in an investment in the securities of a business development company due to the nature of such company's investment portfolio, and shall supply copies of such statement to any registered broker or dealer upon request.

"(2) If the Commission finds it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title, the Commission may also require, by rule, any person who, acting as principal or agent, sells a security of a business development company to inform the purchaser of such securities, at or before the time of sale, of the existence of the risk statement prepared by such business development company pursuant to this subsection, and make such risk statement available on request. The Commission, in making such rules and regulations, shall consider, among other matters, whether any such rule or regulation would impose any unreasonable burdens on such brokers or dealers or unreasonably impair the maintenance of fair and orderly markets.

"LIABILITY OF CONTROLLING PERSONS; PREVENTING COMPLIANCE WITH TITLE

"SEC. 65. Notwithstanding the exemption set forth in section 6(f), section 48 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that

the provisions of section 48(a) shall not be construed to require any company which is not an investment company within the meaning of section 3(a) to comply with the provisions of this title which are applicable to a business development company solely because such company is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company.".

TITLE II—AMENDMENTS TO THE INVESTMENT ADVISERS ACT OF 1940

DEFINITION OF BUSINESS DEVELOPMENT COMPANY

SEC. 201. Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end thereof the following new paragraph:

"(22) 'Business development company' means any company which is a business development company as defined in section 2(a)(48) of title I of this Act and which complies with section 55 of title I of this Act, except that—

"(A) the 70 per centum of the value of the total assets condition referred to in sections 2(a)(48) and 55 of title I of this Act shall be 60 per centum for purposes of determining compliance therewith;

"(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 55 through 65 of title I of this Act; and

"(C) the securities which may be purchased pursuant to section 55(a) of title I of this Act may be purchased from any person.

For purposes of this paragraph, all terms in sections 2(a)(48) and 55 of title I of this Act shall have the same meaning set forth in such title as if such company were a registered closed-end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 55 through 65 of title I of this Act shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.".

REGISTRATION REQUIREMENTS

SEC. 202. Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended by striking out the period at the end of the paragraph (3) and inserting in lieu thereof the following: ", or a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this title, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner.".

INVESTMENT ADVISORY CONTRACTS

SEC. 203. Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended—

(1) by striking out "or" immediately before "(B)" in the sentence following paragraph (3) thereof; and

(2) by striking out the period at the end of such sentence and inserting in lieu thereof the following: ", or (C) apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in this title, if (i) the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 61(a)(3)(B)(iii) of title I of this Act is satisfied, and (ii) the business development company does not have outstanding any option, warrant, or right issued pursuant to section 61(a)(3)(B) of title I of this Act and does not have a profit-sharing plan described in section 57(n) of title I of this Act.".

TITLE III—AMENDMENTS TO OTHER FEDERAL SECURITIES LAWS

SMALL OFFERING INCREASE

SEC. 301. Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended by striking out "$2,000,000" and inserting in lieu thereof "$5,000,000".

AMENDMENTS TO THE TRUST INDENTURE ACT OF 1939

SEC. 302. (a) Section 304(a)(8) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(88)) is amended by striking out "more than $250,000 aggregate principal amount of any securities of the same issuer" and inserting in lieu thereof the following: "an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations".

(b) Section 304(a)(9) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(9)) is amended—

(1) by striking out "$1,000,000 or less" and inserting in lieu thereof "$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations";

(2) by striking out "more than $1,000,000" and inserting in lieu thereof "more than $10,000,000"; and

(3) by inserting immediately before the semicolon at the end thereof the following: ", or such lesser amount as the Commission may establish by its rules and regulations".

The SPEAKER pro tempore. Is a second demanded?

Mr. BROYHILL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. SCHEUER) will be recognized for 20 minutes and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. SCHEUER).

Mr. SCHEUER. I yield myself such time as I may consume.

Mr. Speaker, Congress has been concerned with the lack of access to the capital markets by small and developing companies, which many people feel are the backbone of this country's economy. The reasons for this problem are widespread and complex. Perhaps the principal causes lay with the general economy and our tax structure.

Nevertheless, I firmly believe that H.R. 7554, even though confined to the securities laws, will prove an invaluable source of venture capital. Venture capital in this country is provided through either private venture capital companies with a limited number of affluent investors or by small business companies under the aegis of the Small Business Administration. Both of these kinds of companies have a problem.

If they grow too large in terms of investors, they fall under the provisions of the Investment Company Act of 1940. Although this act works very effectively for the garden variety investment companies including mutual funds, its restrictions on venture capitalists are too severe to permit them to operate under its provisions.

H.R. 7554 would provide for the creation of a new venture capital entity called a business development company which would be relieved of compliance with the more onerous and unnecessary provisions of the Investment Company Act and which would allow public investor participation with appropriate safeguards against abuses.

A business development company essentially must be at least 70 percent invested in the securities of small, thinly traded companies, to which the business development company must make available significant managerial assistance.

Among the burdens that would normally be imposed by the Investment Company Act of 1940 which would be alleviated by this bill, is the time-consuming requirement that all transactions with company affiliates be approved by the Securities and Exchange Commission. Except in a limited number of cases, this legislation would permit such transactions if approved by a majority of the board of directors with no interest in the transaction.

The bill also permits more liberal leveraging of the company's assets and the issuance of multiple classes of debt securities, which may also be accompanied by warrants options or conversion rights.

Nevertheless, the bill contains significant conflict of interest prohibitions and antifraud and breach of fiduciary duty provisions.

In addition, in furtherance of investor interests, the board of a business development company must have a majority of disinterested directors. Finally, and it is difficult for me to overemphasize the importance of this particular matter, it is intended that a private right of action be implied with respect to the provisions of this bill. Such private right of action is necessary to adequately protect the interests of the public investor. In its absence an intolerable burden would be placed upon the Commission's limited resources to insure adequate investor protection.

Other provisions of the bill amend the Investment Advisers Act of 1940 to make clear that managers or advisers to private business development companies will not fall under the provisions of the Investment Advisers Act if the number of investors in such companies exceed 14. In addition, section 3(b) of the Securities Act of 1933 is amended to increase from $2 million to $5 million the amount of securities which the Commission may authorize be issued without complying with the full registration provisions of the Securities Act.

The bill would similarly amend the Trust Indenture Act of 1939 to increase the total amount of debt securities the Commission may authorize to be issued with partial or total exemptions from that act. This legislation is enthusiastically endorsed by the venture capital industry, the small business investment company industry, and the Securities and Exchange Commission.

I urge the support of my colleagues.

Mr. Speaker, I wish to offer a particular commendation to the SEC, Commissioner Stephen Friedman, the dedicated staff members of that Commission, and my distinguished colleague, the gentleman from North Carolina (Mr. BROYHILL) who has been sponsoring this legislation for many, many years. This is a personal victory for him of no mean consequence.

I wish to commend Commissioner Friedman, his marvelously competent staff, the gentleman from North Carolina (Mr. BROYHILL) and his staff and the members of the securities industry who worked so long and so hard to achieve a consensus on what is a major change in the philosophy of the SEC on the need for a good deal of regulation, much of it perceived to be overregulation that has accrued over the period since the installation of the Securities Act in 1940. Many of these unnecessary layers of regulation were removed in 1970 but over the past decade it has become clear that much of the existing regulatory burden was unnecessary and the gentleman from North Carolina (Mr. BROYHILL), in providing the leadership for this comprehensive rethinking of the limitations and the administrative burden that was placed on small investors by the 1940 act and the cooperation that he received from the SEC, has produced a quantum jump forward, in enabling small business to reach into the capital market in an inexpensive timely cost-effective way and Congressman BROYHILL and Commissioner Stephen Friedman together are due an enormous amount of credit.

Mr. Speaker, I do not have any further requests for time on this side and I yield back the balance of my time.

Mr. BROYHILL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we do have an opportunity today in passing this bill to do more than just talk about helping small business because what this bill does to modernize the securities law with respect to the business development companies.

The gentleman from New York (Mr. SCHEUER) has already explained this bill. It does amend the securities law to provide that a business development company under certain circumstances can get exemption from the 1940 Investment Act and, of course, be subject to a separate regulatory scheme that is geared toward making more capital available to the small business development companies.

This is a bill that has been worked out on a bipartisan basis. As the gentleman from New York has pointed out, I have introduced this bill in several Congresses and I do want to thank the gentleman publicly for the cooperation and the help that the gentleman has given in bringing this bill to the floor today. It has taken a lot of negotiation on both sides in order to get this bill worked out so it is acceptable to all concerned.

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I do want to join in in thanking the Securities and Exchange Commission, and especially Commissioner Friedman, for their assistance in helping work out the details, the legislative language which is in the amended part of H.R. 7554.

Mr. BROYHILL. Mr. Speaker, we have an opportunity today to translate the rhetoric about helping small business into something more tangible. The Small Business Investment Incentive Act modernizes the Investment Company Act of 1940. It knocks down artificial barriers to capital formation that have been hurting small business for years. Within the context of the existing laws, a new framework has been established, making equity capital more available to new enterprise.

In the past 10 years small developing companies have been the primary supplier of new jobs. Most of our new technology is also the product of small business efforts. And experience has shown that smaller businesses become the spark to further community development. Briefly, I would like to point out some of the highlights of my bill.

TITLE I AMENDS INVESTMENT COMPANY ACT OF 1940

This legislation would exempt certain venture capital and small business investment companies from the Investment Company Act of 1940, provided they invest at least 70 percent of their assets in small, developing concerns. No constraints are placed on the remaining 30 percent.

Once an SBIC or venture capital company is elected to become a "business development company" it would be subject to a separate regulatory scheme that is geared toward making more capital available to small business.

A business development company will have greater flexibility in operations and financial structure because under this legislation business decisions are now made by the directors of the company or the stockholders. Under the 1940 act these decisions required the prior approval of the SEC.

To attract talented persons business development companies will be permitted to offer attractive executive compensation plans hinged to the growth of the company.

Finally, certain provisions of the 1940 act are incorporated to protect shareholders against questionable practices by officers or directors of the business development company.

TITLE II AMENDS THE INVESTMENT ADVISORS ACT OF 1940

Title II defines business development company so that persons that are potentially regulated under the Advisors Act can also take advantage of the savings and flexibility provided by title I. In addition more capital will be made available to small business because of changes under the so-called "attribution rule." And through performance-based compensation plans, talented persons will be attracted to advise business development companies.

TITLE III AMENDS OTHER SECURITIES LAWS

The Small Offering Exemption will be raised from $2 to $5 million. The Trust Indenture Act of 1939 will also be amended to raise the debt offering exemption to $10 million.

A nearly identical bill was passed unanimously by the Senate Banking Committee several weeks ago. I strongly urge my colleagues to vote for this small business bill.

● Mr. STAGGERS. Mr. Speaker, this legislation addresses a genuine economic crisis unfolding around our Nation today—the slowing of the flow of capital to American enterprise, particularly to smaller, growing, and innovative businesses. The importance of these businesses to the American economic system in terms of productivity, increased competition (here and abroad) and the jobs they create is, of course, known by us all. The need to reverse this downward trend is of compelling public concern. This bill attacks one of the causes of this slowdown and seeks specifically to reduce some of the costs of Government regulation imposed on the capital-raising process, without sacrificing necessary investor protection.

The exceptional efforts of Mr. SCHEUER and Mr. BROYHILL and all the members of the Consumer Protection and Finance Subcommittee have brought a well-balanced legislative package to the House floor. Anyone, who picks up a newspaper today and reads the financial section or listens to the owners of small businesses in his district, should be as convinced as I am of the need for legislation that will permit small businesses to have greater flexibility to insure their ability to raise the capital necessary for investment in plant and equipment and the industrial and commercial growth of this country.

This bill also deals with so-called venture capital activity. Plainly, these companies serve a valuable function by investing in, and providing managerial assistance to, small, growing or financially troubled businesses. H.R. 7554 seeks to remove SEC regulatory burdens on venture capital activities that might create unnecessary disincentives to the legitimate provision of capital to small and developing business, such as those newly formed to carry out our Nation's commitment to synthetic fuel development, biogenetics and other vital developing enterprises. At the same time, the legislation provides continued investor protection where necessary to maintain investor confidence in the integrity of the marketplace in offerings by small untested and high-risk businesses.

H.R. 7554 is the product of several years of extensive hearings and input from interested parties. It has been carefully crafted and deserves the support of the Members.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. SCHEUER) that the House suspend the rules and pass the bill, H.R. 7554, as amended.

The question was taken.

Mr. SCHEUER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT ON TUESDAY, WEDNESDAY, AND THURSDAY, SEPTEMBER 23, 24, AND 25, 1980, DURING 5-MINUTE RULE

Mr. VOLKMER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit while the House is reading for amendment under the 5-minute rule on Tuesday, September 23; Wednesday, September 24; Thursday, September 25, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. McCLORY. Mr. Speaker, reserving the right to object, there is a bill on the schedule called the gasohol bill. The gentleman is not including that?

Mr. VOLKMER. If the gentleman will yield, H.R. 7873, the Gasohol Competition Act, will not be included in the request.

Mr. McCLORY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

CUSTOMS COURTS ACT OF 1980

Mr. VOLKMER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7540) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7540

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Customs Courts Act of 1980".

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

COMPOSITION OF COURT

SEC. 101. Section 251 of title 28, United States Code, is amended to read as follows:

"§ 251. APPOINTMENT AND NUMBER OF JUDGES; OFFICES

"(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.

"(b) The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge shall continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.

"(c) The offices of the Court of International Trade shall be located in New York, New York.".

ASSIGNMENT OF JUDGES

SEC. 102. (a) Section 293(b) of title 28, United States Code, is amended by striking out "Customs Court" and all that follows through "need arises" and inserting in lieu thereof "Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate in which the need arises".

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims.".

TITLE II—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

JURISDICTION OF THE COURT

SEC. 201. Chapter 95 of title 28, United States Code, is amended to read as follows:

"CHAPTER 95—COURT OF INTERNATIONAL TRADE

"Sec.
"1581. Civil actions against the United States and agencies and officers thereof.
"1582. Civil actions commenced by the United States.
"1583. Counterclaims, cross-claims, and third-party actions.
"1584. Cure of defects.
"1585. Powers in law and equity.

"§ 1581. Civil actions against the United States and agencies and officers thereof

"(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest in whole or in part, under section 515 of the Tariff Act of 1930.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

"(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

"(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

"(2) any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and

"(3) any fiscal determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and

"(3) any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930; and

"(2) any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930.

"(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

"(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

"(1) revenue from imports on tonnage;

"(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

"(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

"(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

"(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

"§ 1582. Civil actions commenced by the United States

"The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

"(1) to recover a civil penalty under section 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

"(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or

"(3) to recover customs duties.

"§ 1583. Counterclaims, cross-claims, and third-party actions

"In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court of the United States, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where such action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Customs and Patent Appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals or to the Court of Customs and Patent Appeals where such action shall proceed as if it had been commenced in such court in the first instance.

"§ 1585. Powers in law and equity

"The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.".

TITLE III—COURT OF INTERNATIONAL TRADE PROCEDURE

COURT PROCEDURE

SEC. 301. Chapter 169 of title 28, United States Code, is amended to read as follows:

"CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

"Sec.
"2631. Persons entitled to commence a civil action.
"2632. Commencement of a civil action.
"2633. Procedure and fees.
"2634. Notice.
"2635. Filing of official documents.
"2636. Time for commencement of action.
"2637. Exhaustion of administrative remedies.
"2638. New grounds in support of a civil action.
"2639. Burden of proof; evidence of value.
"2640. Scope and standard of review.
"2641. Witnesses; inspection of documents.
"2642. Analysis of imported merchandise.
"2643. Relief.
"2644. Interest.
"2645. Decisions.
"2646. Retrial or rehearing.
"2647. Precedence of cases.

"§ 2631. Persons entitled to commence a civil action

"(a) A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

"(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

"(d)(1) A civil action to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act may be commenced in the Court of International Trade by a worker, group of workers, certified or recognized union, or authorized representative of such worker or group that applies for assistance under such Act and is aggrieved by such final determination.

"(2) A civil action to review any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act may be commenced in the Court of International Trade by a firm or its representative that applies for assistance under such Act is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

"(3) A civil action to review any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act may be commenced in the Court of International Trade by a community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

"(e) A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

"(f) A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.

"(g)(1) A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.

"(2) A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended.

"(h) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part, under section 515 of the Tariff Act of 1930.

"(i) Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

"(j)(1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

"(A) no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;

"(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

"(C) in a civil action under section 771(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

"(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

"(k) In this section—

"(1) 'interested party' has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

"(2) 'party-at-interest' means—

"(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

"(B) a manufacturer, producer, or wholesaler in the United States of a like product;

"(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and

"(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

"§ 2632. Commencement of a civil action

"(a) Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

"(b) A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

"(c) A civil action in the Court of International Trade under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

"(d) The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

"§ 2633. Procedure and fees

"(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than $5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

"(b) The Court of International Trade shall prescribe rules governing the summons, pleading, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

"(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

"§ 2634. Notice

"Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

"§ 2635. Filing of official documents

"(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules and as a part of the official record—

"(A) the consumption or other entry and the entry summary;

"(B) the commerical invoice;

"(C) the special customs invoice;

"(D) a copy of the protest or petition;

"(E) a copy of the denial, in whole or in part, of the protest or petition;

"(F) the importer's exhibits;

"(G) the official and other representative samples;

"(H) any official laboratory reports; and

"(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

"(b)(1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

"(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

"(B)(i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

"(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions, as the court may order.

"(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

"(d)(1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which such determination was based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

"(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

"(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

"(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

"(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(d)(1) A civil action contesting a determination by the administering authority under section 703(c) or 733(c) of the Tariff Act of 1930 that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(2) A civil action contesting a negative determination by the administering authority under section 703(b) or 733(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(e) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

"(f) A civil action contesting of final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(g) A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

"(h) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

"(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

"(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

"(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if such new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

"(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

"§ 2640. Scope and standard of review

"(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516 of the Tariff Act of 1930.

"(3) Civil actions commenced to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

"(4) Civil actions commenced under section 777(c)(2) of the Tariff Act of 1930.

"(5) Civil actions commenced to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930.

"(6) Civil actions commenced under section 1582 of this title.

"(b) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

"(c) In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act, the court shall review the matter as specified in section 284 of such Act.

"(d) In any civil action not specified in this section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) The Court of International Trade may enter a money judgment —

"(1) for or against the United States in any civil action commenced under section 1581 or 1582 of this title; and

"(2) for or against the United States or any other party in any counterclaim, crossclaim, or third-party action under section 1583 of this title.

"(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision

"(c)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

"(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

"(3) In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

"(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

"(d) If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

"§ 2644. Interest

"If in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930 the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

"§ 2645. Decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law; or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) After the Court of International Trade has rendered a judgment the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and in the manner provided in section 2601 of this title.

"§ 2646. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

"§ 2647. Precedence of cases

"The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a)(1)(B)(i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.".

JURY TRIALS

SEC. 302. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1876. Trial by jury in the Court of International Trade

"(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

"(b) Whenever the Court of International Trade conducts a jury trial—

"(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

"(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

"(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

"(4) jurors shall be compensated in accordance with section 1871 of this title.".

(b) The section analysis for chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1876. Trial by jury in the Court of International Trade.".

(c) Section 1862 of title 28, United States Code, is amended by inserting "or in the Court of International Trade" immediately after "United States".

TITLE IV—COURT OF CUSTOMS AND PATENT APPEALS

JURISDICTION OF THE COURT

SEC. 401. (a)(1) Section 1541(a) of title 28, United States Code, is amended to read as follows:

"(a) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from all final decisions of the Court of International Trade.".

(2) Section 1541 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from interlocutory orders of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions.".

(b)(1) Section 1543 of title 28, United States Code, is amended to read as follows:

"§ 1543. International Trade Commission determinations

"The Court of Customs and Patent Appeals shall have jurisdiction to review the final determinations of the United States

International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade.".

(2) The item relating to section 1543 in the section analysis of chapter 93 of title 28, United States Code, is amended to read as follows:

"1543. International Trade Commission determinations.".

POWERS OF THE COURT

SEC. 402. (a) Chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new section:

"§ 1546. Powers in law and equity

"The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, a court of appeals of the United States.".

(b) The section analysis of chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new item:

"1546. Powers in law and equity.".

COURT OF CUSTOMS AND PATENT APPEALS

SEC. 403. (a) Section 2601(a) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed.".

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" immediately after "appeal" each place it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of".

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code, is amended by inserting immediately after the first sentence the following new sentences: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether the findings of fact are clearly erroneous, whether or not the party raising such question made an objection to such findings in the Court of International Trade or made a motion to amend such findings.".

(e)(1) Section 2602 of title 28, United States Code, is amended to read as follows:

"§ 2602. Precedence of cases

"The following civil actions in the Court of Customs and Patent Appeals shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a)(1)(B) (i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.

"(5) Fifth, an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202).".

(2) The item relating to section 2602 in the section analysis of chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases.".

RULES OF EVIDENCE

SEC. 404. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Rules of evidence

"Except as provided in section 2639 or 2641(b) of this title or in the rules prescribed by the court, the Federal Rules of Evidence shall apply in the Court of Customs and Patent Appeals in any appeal from the Court of International Trade.".

(b) The section analysis of chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2603. Rules of evidence.".

JUDICIAL CONFERENCE

SEC. 405. (a) Chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new section:

"§ 2604. Judicial conference

"The chief judge of the Court of Customs and Patent Appeals is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.".

(b) The section analysis of chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new item:

"2604. Judicial conference.".

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28

SEC. 501. The following provisions, of title 28, United States Code, are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

(1) The item relating to chapter 11 in the chapter analysis of part I.

(2) The chapter heading of chapter 11.

(3) Section 253(a).

(4) Section 254.

(5) Section 255(a).

(6) Section 257.

(7) Section 292(e).

(8) Section 293(c).

(9) Section 372 (a) and (b).

(10) Section 451 (including that section as it will become effective on April 1, 1984).

(11) Section 456.

(12) Section 569(a) (including that section as it will become effective on April 1, 1984).

(13) The item relating to chapter 55 in the chapter analysis of part III.

(14) Section 605.

(15) Section 610.

(16) The chapter heading of chapter 55.

(17) Section 871.

(18) Section 872.

(19) Section 873.

(20) The item relating to chapter 95 in the chapter analysis of part IV.

(21) Section 1340.

(22) The item relating to section 1541 in the section analysis of chapter 93.

(23) The section heading for section 1541.

(24) Section 1541(b).

(25) The item relating to chapter 169 in the chapter analysis of part VI.

(26) The item relating to section 2601 in the section analysis of chapter 167.

(27) The section heading for section 2601.

(28) Section 2601 (a), (b), and (c).

SEC. 502. Section 252 of title 28, United States Code, is amended by striking out "Judge of the Customs Court" and inserting in lieu thereof "Judges of the Court of International Trade".

SEC. 503. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

SEC. 504. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court.".

SEC. 505. Section 1337 of title 28, United States Code is amended by adding at the end thereof the following new subsection:

"(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.".

SEC. 506. Section 1352 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 507. Section 1355 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 508. Section 1356 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 509. The second paragraph of section 1491 of title 28, United States Code, is amended by striking out "in suits" and inserting in lieu thereof "of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action".

SEC. 510. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" the first place it appears.

SEC. 511. (a) Chapter 125 of title 28, United States Code, is amended by inserting immediately after section 1963 the following new section:

"§ 1963A. Registration of judgments of the Court of International Trade

"(a) A judgment in any civil action for the recovery of money or property entered by the Court of International Trade which has become final by appeal or expiration of time for appeal may be registered in any judicial district by filing a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

"(b) A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.".

(b) The section analysis of chapter 125 of title 28, United States Code, is amended by inserting immediately after the item relating to section 1963 the following new item:

"1963A. Registration of judgments of the Court of International Trade.".

SEC. 512. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" in the first sentence.

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS

SEC. 601. The following provisions of law are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

(1) Section 6001 of title 18, United States Code.

(2) Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305).

(3) Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)).

(4) Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503).

(5) Section 514 (a) and (b) of the Tariff Act of 1930 (19 U.S.C. 1514 (a) and (b)).

(6) Section 516 (d), (e), and (f) of the Tariff Act of 1930 (19 U.S.C. 1516 (d), (e), and (f)).

(7) Section 516A (a)(2), (c), (d), and (e) of the Tariff Act of 1930 (19 U.S.C. 1516a (a)(2), (c), (d), and (e)).

(8) Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526).

(9) Section 309(9) of the Ethics in Government Act (28 U.S.C. app.).

(10) Section 7443(d) of the Internal Revenue Code of 1954.

(11) Section 906 of title 44, United States Code.

SEC. 602. Section 103(h) of the Act of March 27, 1978 (92 Stat. 170; 16 U.S.C. 791 (h)) is amended by striking out "section 250 of the Trade Act of 1974 (88 Stat. 2029)" and inserting in lieu thereof "section 284 of the Trade Act of 1974, except that such review shall be in the appropriate court of appeals of the United States, and the judgment of such court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.".

SEC. 603. The first section of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall be known" approved May 28, 1926 (19 U.S.C. 405a), is repealed.

SEC. 604. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended—

(1) by inserting "for review in accordance with chapter 7 of title 5, United States Code" immediately before the period at the end of the fourth sentence; and

(2) by striking out the last sentence and inserting in lieu thereof the following new sentence: "Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code.".

SEC. 605. (a) Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1514(a)(4)) is amended to read as follows:

"(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;".

(b) Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is further amended by striking out "section 2632 of title 28 of the United States Code within the time prescribed by section 2631" and inserting in lieu thereof "chapter 169 of title 28 of the United States Code within the time prescribed by section 2636".

SEC. 606. Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) is amended by striking out "section 1582" and inserting in lieu thereof "section 1581".

SEC. 607. (a) Section 516(a) of the Tariff Act of 1930 is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by striking out "(as defined in section 771(9) (C), (D), and (E) of this Act)";

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(4) by inserting at the end thereof the following new paragraph:

"(2) As used in this section, the term 'interested party' means a person who is—

"(A) a manufacturer, producer, or wholesaler in the United States;

"(B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or

"(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States,

of goods of the same class or kind as the designated imported merchandise.".

(b) Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

SEC. 608. (a) Section 516A(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(1)) is amended to read as follows:

"(1) REVIEW OF CERTAIN DETERMINATIONS.—

"(A) THIRTY-DAY REVIEW.—Within 30 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

"(ii) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or

"(iii) a negative determination by the Commission, under section 703(a) or 733 (a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

"(B) TEN-DAY REVIEW.—Within 10 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the administering authority, under section 703(c) or 733 (c) of this Act, that a case is extraordinarily complicated, or

"(ii) a negative determination by the administering authority under section 703(b) or 733(b) of this Act,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.".

(b) Section 516A(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(3)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

(c) Section 516A(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1516a(c)(2)) is amended by striking out the second sentence.

(d) The second sentence of section 516A(d) of the Tariff Act of 1930 (19 U.S.C. 1516a(d)) is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.".

SEC. 609. Section 592(e) of the Tariff Act of 1930 (19 U.S.C. 1592(e)) is amended by striking out "(e) DISTRICT COURT PROCEEDINGS.—" and all that follows through "under this section—" and inserting in lieu thereof the following:

"(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—".

SEC. 610. Section 604 of the Tariff Act of 1930 (19 U.S.C. 1604) is amended—

(1) by striking out "every United States district attorney" and inserting in lieu thereof "the Attorney General of the United States";

(2) by inserting "or the Court of International Trade" immediately after "district court"; and

(3) by striking out "such district attorney" and inserting in lieu thereof "the Attorney General".

SEC. 611. (a) The second sentence of the second paragraph of section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out "in the circuit court" and all that follows through "District of Columbia" and inserting in lieu thereof "in the Court of International Trade".

(b) Section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out the next to last sentence of the second paragraph.

SEC. 612. Section 250 of the Trade Act of 1974 (19 U.S.C. 2322), and the item relating to such section in the table of contents of such Act, are repealed.

SEC. 613. (a) Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.) is amended by redesignating section 284 as section 285 and by inserting immediately after section 283 the following new section:

"SEC. 284. JUDICIAL REVIEW.

"(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

"(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals,

as prescribed by the rules of such court. The judgment of the Court of Customs and Patent Appeals shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.".

(B) The table of contents of the Trade Act of 1974 (19 U.S.C. 2101 et seq.) is amended by striking out the item relating to section 284 and inserting in lieu thereof the following new items:

"Sec. 284. Judicial review.
"Sec. 285. Effective date.".

TITLE VII—EFFECTIVE DATES AND MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 701. (a) Except as provided in subsection (b) of this section, the provisions of any amendments made by this Act shall take effect on November 1, 1980.

(b)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the 90th day after the effective date of this Act:

(A) Sections 1582, 2639(a)(2), and 2640 (a)(6) as amended by sections 201 and 301 of this Act.

(B) Sections 1352, 1355, and 1356, as amended by section 506, 507, and 508 of this Act.

(2) Section 592(e) of the Tariff Act of 1930, as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after 90th day after the effective date of this Act.

TREATMENT OF REFERENCES

SEC. 702. Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade.

EFFECT ON CUSTOMS COURT JUDGES

SEC. 703. (a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act shall not affect the status of any individual serving as judge or chief judge of the Customs Court on the date of enactment of this Act.

(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act, shall apply to any individual serving as a chief judge on or after the date of enactment of this Act.

EFFECT ON PENDING CASES

SEC. 704. Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment of this Act under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment.

TVA LEGAL REPRESENTATION

SEC. 705. Nothing in this Act affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 to represent itself by attorneys of its choosing.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. VOLKMER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Missouri (Mr. VOLKMER).

Mr. VOLKMER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7540 completes a task which was begun over 10 years ago when Congress modernized the procedures of the U.S. Customs Court by means of the Customs Courts Act of 1970. At that time, it was decided to address the issues of the court's status, jurisdiction, and powers in subsequent legislation.

H.R. 7540 is that subsequent legislation. The bill creates a comprehensive system of judicial review of civil actions arising out of import transactions and the Federal statutes affecting international trade.

Existing laws pertaining to the jurisdiction of the Customs Court specifically limit the subject matter jurisdiction of the court, the class of persons with standing to institute actions, and the forms of remedies available before the court. As a consequence of these limitations, aggrieved persons have tried, with increasing frequency, to challenge administrative actions involving importations in the Federal district courts. Such actions are filed when the subject matter is not clearly assigned by law to the Customs Court; or, when the aggrieved person has no standing in the Customs Court; or, when the remedy sought is not available in the Customs Court.

When a plaintiff alleges that he has no effective access to, or cannot obtain an adequate remedy from the Customs Court, the district courts are asked, usually unsuccessfully, to take jurisdiction over the dispute under one of their general or specific jurisdictional statutes. These cases and the resulting court decisions have created much confusion for potential litigants and the courts. Thus, the uniformity required by the Constitution is provided for only in those relatively few administrative actions which are within the Customs Court's presently limited jurisdiction.

The Customs Courts Act of 1980 resolves these problems by clarifying and revising the statutes governing the Customs Court's status, jurisdiction, and powers. This bill explicitly grants all judicial powers in law and equity to the Court of International Trade, as the Customs Court is redesignated, thereby completing its full transformation to article III status. Second, H.R. 7540 reemphasizes and clarifies Congress intent that the expertise and national jurisdiction of the Court of International Trade be utilized exclusively in the resolution of disputes arising out of import transactions. In so doing, the bill eliminates the confusion caused by the presently ill-defined division of jurisdiction between the Customs Court and the Federal district courts.

Over the years, the Federal district courts have become overworked, thus leading to significant delays in the resolution of cases. The recent increase in international trade litigation has contributed to this problem. Moreover, with the passage of the Trade Agreements Act of 1979 and the Customs Procedural Reform and Simplification Act of 1978, there has occurred an expansion of the right of judicial review for parties adversely affected by an administrative decision relating to an import transaction. Enactment of the Customs Courts Act of 1980 will relieve the district courts of some of their overcrowded dockets by providing that the underutilized U.S. Customs Court have exclusive jurisdiction over civil actions involving import transactions.

H.R. 7540, the Customs Courts Act of 1980, has the strong endorsement of the administration, the judiciary, the American Bar Association, the private bar, and the business community.

Mr. McCLORY. Would the gentleman from Missouri yield?

Mr. VOLKMER. I would be happy to yield to the gentleman from Illinois.

Mr. McCLORY. It is my understanding that there are several changes in H.R. 7540, as it was reported by the full Judiciary Committee. Would the gentleman be kind enough to comment on those changes?

Mr. VOLKMER. The gentleman from Illinois is correct in his understanding, and I shall be happy to comment on such changes.

These changes were accomplished through the cooperation and with the aid of the gentleman from Illinois (Mr. McCLORY) and the minority staff of the House Judiciary Committee. I am equally grateful for the guidance of the Subcommittee on Trade of the House Ways and Means Committee as to the change in the jurisdictional and standing provisions for civil actions reviewing a final administrative determination with respect to eligibility for adjustment assistance under the Trade Act of 1974.

At this time, I shall briefly discuss those amendments. The first amendment pertains to section 101 of the bill and retains the existing requirement respecting the political affiliation of the judges of the court.

The second amendment clarifies the court's jurisdiction under proposed section 1581(d) over a final determination by the Secretary of Labor regarding the eligibility of workers for adjustment assistance under the Trade Act of 1974 or by the Secretary of Commerce respecting the eligibility of firms or communities for such assistance under that act. In light of this amendment, conforming changes are made in several other sections of the bill. One change is made to proposed section 2631(d) in order to conform the standing requirement for judicial review of such determination to that permitted in the administrative review process.

The remaining four amendments are technical in nature. The initial one clarifies the authority of the court to grant monetary relief for or against private parties and the United States. The second technical amendment provides a date certain, November 1, 1980, for the effective date of this legislation.

The third technical amendment clarifies the effect of H.R. 7540 upon the right of the Tennessee Valley Authority to represent itself in the Court of International Trade.

The final amendment changes the name of the Court of Appeals for International Trade, Patents, and Trademarks back to the Court of Customs and Patent Appeals. The amendment is necessary because of the House's passage of H.R. 3806 on September 15, 1980.

Similar legislation already has been considered by the Senate and was passed by unanimous consent on December 18, 1979.

Mr. Speaker, H.R. 7540 is necessary remedial legislation. In many respects the Customs Courts Act of 1980 continues the reforms that were initiated with the Trade Agreements Act of 1979. In so doing, this legislation clearly defines the jurisdiction and powers of the U.S. Court of International Trade so to allow it to make full use of its expertise and resources in addressing international trade litigation. With the passage of H.R. 7540 the jigsaw puzzle of statutes that govern the court's status, jurisdiction, powers, and procedures will be complete.

Accordingly, I urge the adoption of H.R. 7540, the Customs Courts Act of 1980.

□ 1550

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, I rise in support of H.R. 7540, the Customs Court Act of 1980. The bill represents, in many respects, the completion of reforms which were initiated with the Trade Agreements Act of 1979. The Ways and Means Trade Subcommittee, which I chair, has maintained great interest in this legislation, since it involves the major U.S. international trade statutes which come within our jurisdiction—the Trade Agreements Act of 1979, the Trade Act of 1974, and the Tariff Act of 1930.

The Customs Court Act of 1980 will equip our judicial system with the tools necessary to effectively interpret our Nation's complex laws dealing with international trade. It clarifies important jurisdictional issues, and assures meaningful access to judicial review of civil actions arising out of our import transactions.

I am grateful to the Judiciary Committee for their spirit of cooperation in considering the views of the Trade Subcommittee on H.R. 7540. Throughout the entire process of committee hearings and markups, we have worked closely on many substantive issues. For the most part, our recommendations have been followed, and our concerns have been alleviated. The Trade Subcommittee expressed particular concern with clarifying the residual jurisdiction of the new Court of International Trade, and I am happy to say that our suggestions on this matter were fully adopted. Many other provisions in this bill have been modified in a manner which accommodates the Trade Subcommittee's views, and we are grateful for these actions by the Judiciary Committee.

I would like to clarify one substantive issue in the bill, which involves proposed section 2631(d) of title 28 of the United States Code. This is a standing provision, specifying who may bring a civil action to review a final determination of either the Secretary of Labor or Secretary of Commerce with respect to eligibility for trade adjustment assistance. While the subsection governing workers' adjustment assistance limits standing to those parties that actually applied for adjustment assistance and were aggrieved by a final determination of the Secretary of Labor, the subsections governing adjustment assistance for firms and communities expands the standing eligibility to any other interested domestic party that is aggrieved by a final determination of the Secretary of Commerce.

My understanding is that these standing provisions maintain present administrative practice, and do not alter existing procedures in any respect. I understand further that the Departments of Labor and Commerce have no objection to these provisions.

I would like to ask the gentleman from Missouri if these understandings are correct.

Mr. VOLKMER. Mr. Speaker, I would like to reply to the gentleman from Ohio (Mr. VANIK) by saying that his understandings are correct. The answer is, yes, and I wish again to commend the gentleman from Ohio for his input in this legislation and his assistance to the Committee on the Judiciary in its consideration of this legislation.

Mr. VANIK. Mr. Speaker, I thank the gentleman from Missouri for clarifying this matter, and I urge passage of the bill.

Mr. VOLKMER. Mr. Speaker, I have no further requests for time.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the enactment of H.R. 7540, the Customs Court Act of 1980, as a necessary reform of the law concerning the jurisdiction and powers of the Customs Court. It is to be hoped that this legislation will so clarify the law regarding judicial review of civil actions arising out of import transactions that we will for the first time in recent years achieve uniformity of decision-making manifestly required in this area by the public interest.

I particularly commend the decision to continue the political diversity requirement for membership on the Customs Court, a requirement which the court has had throughout its entire history. In my view, there are compelling equitable and practical reasons why we should continue to provide that no more than five of the nine judges on the court can be members of the same political party.

The diversity requirement essentially seeks to balance the process of selecting judges for the Customs Court. As we know, political considerations have always played a significant role in the selection of judicial nominees—and will, undoubtedly, play a part in the President's selection of the chief judge of the Customs Court, as he is authorized to do by this legislation. And we all know that it is customary for Presidents to look to their own political party for judicial nominees. What a diversity requirement does, however, is to ameliorate partisan considerations by requiring a President on occasion to seek a qualified candidate from outside of his own party. As a consequence, over a period of time a far larger and more diverse pool of talent would be drawn upon in making nominations. In a real sense, a diversity requirement helps depoliticize the selection process, and this has always heretofore been a commendable aspect of Customs Court judicial nominations.

Retention of the political diversity requirement is also sound policy when we consider the fact that the Customs Court inevitably makes international economic policy, particularly in its judicial review of agency determinations relating to antidumping and countervailing duty cases. Every one of our citizens may be affected by such actions. Taken in this context, politically balanced membership will be not only more appropriate but also healthier for the American body politic.

In sum, both fairness and practicality warrant our perpetuating in this legislation a requirement which in the past has increased the breadth and improved the caliber of the Customs Court bench, thereby benefiting both the parties appearing before it and the public as a whole. And in time to come we may expect these manifold advantages will continue.

Mr. Speaker, I urge enactment of the Customs Court Act of 1980. May I add, Mr. Speaker, that if this measure should end up in a House-Senate conference, I shall count upon our House conferees to work diligently to maintain the position of the House without qualification.

● Mr. RODINO. Mr. Speaker, H.R. 7540, the Customs Courts Act of 1980, provides for significant and much needed reform of the laws governing the U.S. Customs Court.

Many complex questions have been raised over the years concerning the jurisdiction of the Customs Court, its scope of review and the type of relief the court may award. Periodically, the Congress has examined these issues and has altered the court's status, jurisdiction and powers in a manner intended to solve a specific problem or to meet a specific need at a particular time.

Since 1890, the U.S. Customs Court has been in constant evolution. In 1890, the court was an administrative unit within the Department of the Treasury, known as the Board of General Appraisers, with the responsibility of reviewing decisions by Customs officials on the classification and valuation of imported merchandise. Because customs duties were the principal source of revenue for the Government, the tariff statutes and the corresponding administrative procedures were designed to maximize the Government's ability to collect such duties with a minimal emphasis on judicial review.

In 1926, as the types of decisions relating to imports expanded, Congress replaced the outmoded Board with an article I court, the U.S. Customs Court. The 1926 legislation made no essential changes in the powers, procedures, and duties of the reconstituted Board. In fact, the court continued to function in most matters as would have its predecessor in reviewing the actions of the Bureau of Customs. This pattern continued for some 44 years, despite the fact that in 1956 Congress declared the court "to be a court established under article III of the Constitution of the United States."

In 1970, Congress recognized that the statutes governing the Custom Court's jurisdiction and procedures were out-

dated. Congress also noted that the administrative and judicial processes were unresponsive to the increased tendency of American importers and domestic manufacturers to challenge Customs decisions. The Customs Court Act of 1970 made signincant procedural reforms in the workings of the Bureau of Customs and the Customs Court, but it left unresolved the substantive issues of the court's jurisdiction and powers.

With the completion of the multilateral trade negotiations in Tokyo, Congress enacted the Trade Agreements Act of 1979. That act provided for major revisions in the overall statutory structure for administrative and judicial review of decisions pertaining to imported merchandise and import transactions. Title X of the act provided for expanded responsibilities for the Customs Court by creating new causes of action that could be asserted in the court. The act further expanded the traditional notions of standing to permit parties other than importers, wholesalers, and domestic manufacturers to seek judicial review of any Government action or inaction pertaining to import transactions.

In particular, significant changes were made in the area of judicial challenges to antidumping and countervailing duty determinations. The Trade Agreements Act also authorized the court, for the first time, to issue preliminary or permanent injunctive relief in limited circumstances.

This patchwork quilt approach has made the statutes governing the court's jurisdiction and remedial powers awkward and uncoordinated. The result is a series of laws that do not always serve the public interest.

As international trade has grown in its impact on the American economy, a corresponding increase has occurred in civil litigation involving import transactions. However, despite the fact that modern day international trade litigation has become increasingly complicated, the primary statutes governing the U.S. Customs Court have not kept pace with the problems posed by such litigation. Traditionally, the majority of cases before the Customs Court pertain to classification and valuation issues, with the remainder involving challenges to antidumping and countervailing duty determinations. In almost all of the cases, the court could only agree or disagree with the decision of the administrative agency. The court could not issue money judgments or provide equitable relief. As previously stated, the Trade Agreements Act of 1979 gave the Customs Court new and increased responsibilities in the field of international trade litigation, particularly with antidumping and countervailing duty cases, but the 1979 act failed to authorize an explicit grant of all powers in law and equity. Thus, the law remains unclear on the authority of the Customs Court, a duly constituted article III court, to grant the remedy demanded by the case before it, such as mandamus or injunctive relief.

Furthermore, under current law, the jurisdiction of the Federal district courts is defined to encompass cases which may be within the jurisdiction of the U.S. Customs Court. Since the statutes defining the jurisdiction of the Customs Court are so intricate and because international trade matters are more complex, it has become more difficult to determine, in advance, whether or not a particular case falls within the jurisdiction of the Customs Court or the district courts.

The result is inconsistency of judicial decisions. In some instances the Federal district courts have asserted jurisdiction over international trade cases, while declining to do so in other cases. Litigants proceed with some degree of uncertainty when choosing a forum for judicial relief. If an improper forum is chosen, the result may be a holding that the plaintiff is before the wrong court. A dismissal for want of jurisdiction can effectively preclude a judicial determination of the case on its merits.

Furthermore, the type of relief available depends greatly on a plaintiff's ability to persuade a court that it possesses jurisdiction over a particular case. Thus, some individuals will obtain relief which is denied others, who, by chance, select an improper forum to institute suit.

H.R. 7540 is designed to eliminate many of the problems faced by litigants in international trade cases before the Federal courts. The Customs Courts Act of 1980 creates a comprehensive system of judicial review of civil actions arising from import transactions, utilizing the specialized expertise of the U.S. Customs Court and the Court of Customs and Patent Appeals to insure a national uniformity in the judicial decisionmaking process. H.R. 7540 assures better access to the courts for such civil actions by more clearly defining the division of jurisdiction between the district courts and the Customs Court.

In addition, the Customs Courts Act of 1980 provides the Customs Court with all the necessary remedial powers in law and equity possessed by other courts established under article III of the Constitution, so that it may fashion an appropriate remedy for each and every case.

In order to reflect the expanded jurisdiction of the court, this legislation changes the name of the U.S. Customs Court to the U.S. Court of International Trade. This designation is more descriptive of the court's clarified and expanded jurisdiction and its new judicial functions and purposes relating to international trade.

The essential purpose of this legislation is best summarized by the following quote from the committee report:

> (P)ersons adversely affected or aggrieved by agency actions arising out of import transactions are entitled to the same access to judicial review and judicial remedies as Congress has made available for persons aggrieved by actions of other agencies.

H.R. 7540, the Customs Courts Act of 1980, has the endorsement of:

First. The administration (the Departments of Justice, Treasury, Labor, and Commerce);

Second. The International Trade Commission;

Third. The Administrative Conference of the United States;

Fourth. The U.S. Customs Court;

Fifth. The U.S. Court of Customs and Patent Appeals;

Sixth. The ABA's Standing Committee on Customs Law;

Seventh. The Association of the Customs Bar;

Eighth. Representatives of the importers community;

Ninth. Representatives of the customhouse brokers community; and

Tenth. Private customs law practitioners.

H.R. 7540 incorporates many of the recommendations of the witnesses who appeared before the Judiciary Committee's Subcommittee on Monopolies and Commercial Law. Furthermore, the Judiciary Committee has engaged in a continuing dialog with the Ways and Means Committee's Subcommittee on Trade to assure that H.R. 7540 is consistent with their work in American foreign trade policy, particularly in the area of imports. As a result, H.R. 7540 is noncontroversial legislation that is satisfactory to all parties, the administration, the courts, business, labor, and the private bar.

At this time, I will highlight some of the major provisions of the legislation. Proposed section 1581 sets forth the major grants of subject matter jurisdiction to the Court of International Trade. This section makes it clear that the court has exclusive jurisdiction over any civil action against the United States, its agencies, or officers arising out of the Federal statutes governing import transactions.

Subsection (i) or proposed section 1581 plays a major role in the revised and clarified structure of the exclusive jurisdiction of the Court of International Trade. Quoting from the House report:

> The Committee has included this provision in the legislation to eliminate much of the difficulty experienced by international trade litigants who in the past commenced suits in the district courts only to have those suits dismissed for want of subject matter jurisdiction. The grant of jurisdiction in subsection (i) will ensure that these suits will be heard on their merits.

Simply put, subsection (i) is the embodiment of the principle that if a cause of action involving an import transaction exists, other than as provided for in subsections (a)–(h) of proposed section 1581, then that cause of action should be instituted in the U.S. Court of International Trade rather than the Federal district courts or courts of appeals.

It should be noted that subsection (i) is not intended to permit the circumvention of the provisions of section 516A of the Tariff Act of 1930. The word "determination" in the fourth full paragraph on page 48 of the House report is intended to be construed in harmony with the preceding paragraph on that page. Therefore, the word "determination," as utilized in the fourth full paragraph, incorporates the same "preliminary administrative action(s)" referred to in the preceding paragraph.

Another essential provision in this legislation is proposed section 1585. This section removes any doubt that the Court of International Trade has authority to award the relief necessary to remedy an

alleged injury in a civil action before the court. The committee intends to make it clear that the court possesses all plenary powers in law and equity, thereby completing the full transformation of the court to article III status.

Closely related to section 1585 is proposed section 2643, which sets forth the types of relief that may be ordered by the Court of International Trade. Proposed section 2643 restates the general principle that the court may order any form of relief that it deems appropriate. However, the section also contains certain exceptions to that rule.

Subsection (c)(4) of the proposed section 2643 provides that the Court of International Trade may only grant declaratory relief in a civil action commenced pursuant to proposed section 1581(h), regarding judicial review of a ruling by the Secretary of the Treasury. On page 61 of the report, the committee stated that declaratory relief is appropriate for this type of action and to permit otherwise would "encourage persons to bring suit under proposed section 1581(h) rather than pursuing traditional methods of challenging the Secretary's ruling or a lack thereof."

The last sentence of the paragraph explaining subsection (c)(4) is partially incorrect in that it indicates that the committee "did intend to create such a major shift in trade policy." Such is not the case. The committee chose to authorize only declaratory relief in civil actions under proposed section 1581(h) because it did not desire to make such civil actions the rule rather than the exception and because it did not intend to create such a major shift in trade policy.

There is also need to clarify a possible ambiguity in the report's language on the interest provision, proposed section 2644. The report states that an order for reliquidation in accordance with the decision of the court "shall be deemed within the definition of the phrase 'money judgment' as used in this section." Rather than the phrase "money judgment," the report should have read "monetary relief as used in this section." There is no intent to change the meaning of the report but only to reflect accurately the language of the proposed section.

I wish now to comment on several of the amendments to H.R. 7540.

The first amendment pertains to section 101 of the bill and retains the political affiliation requirement of the judges of the court, as now contained in existing law, 28 U.S.C. 251(a).

The second amendment pertains to proposed section 1581(d) and the court's jurisdiction over civil actions commenced to review eligibility determinations by the Secretary of Labor and the Secretary of Commerce for adjustment assistance. The amendment conforms H.R. 7540 with the Trade Act of 1974. In so doing, the Customs Courts Act of 1980 reemphasizes the intent of the Trade Act when it provided for judicial review of a final determination of the Secretary with respect to eligibility for adjustment assistance.

Conforming amendments are also made to proposed section 2631(d), 2636(e), 2640(c), and 2643(c)(2), as contained in section 301 of the bill and to proposed section 284 of the Trade Act of 1974, as contained in section 613 of the bill. A final conforming amendment is made to section 103(h) of the Redwood National Park Act, to avoid disturbing the intent of that act.

With respect to the amendment to proposed section 2631(d), I offer an additional clarification. Since the filing of the report, there has been some concern over the potential ambiguity regarding those parties who have standing to seek judicial review of a final determination by the Secretary of Labor regarding eligibility of workers for adjustment assistance or the Secretary of Commerce concerning the eligibility of firms or communities for such assistance.

Standing for review of a final determination by the Secretary of Labor under section 223 of the Trade Act of 1974 will extend to "a worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination." Under this language it is possible for a firm to seek judicial review of such determination as long as the firm is an "authorized representative of such worker or group."

Standing for review of a final determination by the Secretary of Commerce under section 251 of the Trade Act of 1974 will extend only to "a firm or its representative that applies for assistance under such act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination."

Standing for review of a final determination by the Secretary of Commerce under section 271 of the Trade Act of 1974 will extend only to "a community that applies for assistance under such act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination."

In all three instances standing for judicial review will follow that for administrative review by the particular agency in question. Furthermore, in both provisions pertaining to review of a final determination by the Secretary of Commerce, the phrase "interested domestic party" is to have the same meaning as provided for in proposed section 2631(d) in the committee report.

The next amendment clarifies the authority of the Court of International Trade to issue money judgments pursuant to proposed section 2643(a). As drafted, that section only authorizes money judgments "for or against the United States." However, by virtue of the court's jurisdiction under proposed section 1583 it is possible for one private party to seek monetary relief from another private party. Thus, there is a need to remove any doubt about the court's authority to grant such monetary relief.

The next amendment pertains to section 701, the effective date provision. The amendment strikes the current language, which provides that the legislation is effective on the date of enactment and inserts in its place a specific date, November 1, 1980. In this way all interested parties, potential litigants, the Government and the court will be certain of the effective date of the Customs Courts Act of 1980, thereby removing any possible hardship that could be occasioned by the vagueness of the present language.

Another amendment provides a clarification of the effect of this legislation on the ability of the Tennessee Valley Authority (TVA) to represent itself by attorneys of its choosing. This maintains the state of the law relating to the TVA as established under the TVA Act of 1933.

The final amendment is a technical one striking the change in name of the Court of Customs and Patent Appeals to the Court of Appeals for International Trade, Patents and Trademarks. The retention of the original name is necessitated by the recent passage of H.R. 3806, which combines the Court of Customs and Patent Appeals and the Court of Claims into the Court of Appeals for the Federal Circuit that legislation is to become effective October 1, 1981.

In light of the real possibility of the enactment of both bills, it is unnecessary to change the name of the Court of Customs and Patent Appeals twice within a 1-year period.

In summary, H.R. 7540 offers the international trade community, as well as domestic manufacturers, consumer groups, labor unions, and other concerned citizens, a vastly improved forum for judicial review of administrative actions of the U.S. Customs Service and other Government agencies dealing with imported merchandise. The provisions of the Customs Courts Act, when coupled with the Trade Agreements Act of 1979, make it clear to those who suffer injury that they may seek redress in a court with confidence that their case will be heard on the merits and not decided upon jurisdictional grounds. Furthermore, if they are successful, they can feel confident that the Court of International Trade will be able to afford them the relief that is appropriate and necessary to make them whole.

Enactment of this legislation is a significant step in affording international trade litigants the assurance that they are before the proper forum and can obtain the necessary relief. H.R. 7540 will provide uniformity in the judicial decisionmaking process for import transactions as required under article I, section 8 of the Constitution. Most importantly, H.R. 7540 removes much, if not all, of the uncertainty surrounding the status of the U.S. Customs Court and the statutes governing its jurisdiction and remedial powers. Accordingly, I urge my colleagues to support the Customs Courts Act of 1980.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. VOLKMER) that the House suspend the rules and pass the bill, H.R. 7540, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. VOLKMER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from fur-

ther consideration of the Senate bill (S. 1654) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1654

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Customs Courts Act of 1979".

TITLE I—PURPOSES

SEC. 101. The Congress declares that the purposes of this Act are—

(a) to provide for a comprehensive system of judicial review of civil actions arising from import transactions, utilizing, whenever possible, the specialized expertise of the United States Customs Court and Court of Customs and Patent Appeals and insuring uniformity afforded by the national jurisdiction of these courts;

(b) to assure access to judicial review of civil actions arising from import transactions, which access is not presently assured due to jurisdictional conflicts arising from the presently ill-defined division of jurisdiction between the district courts and the customs courts;

(c) to provide expanded opportunities for judicial review of civil actions arising from import transactions;

(d) to grant to the customs courts the plenary powers possessed by other courts established under Article III of the Constitution of the United States; and

(e) to change the name of the United States Customs Court to the United States Court of International Trade to be more descriptive of its expanded jurisdiction and its new judicial functions and purposes relating to international trade in the United States.

TITLE II—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

SEC. 201. The United States Customs Court shall continue as constituted on the day before the date of enactment of this Act, and shall, after the date of enactment of this Act, be known as the United States Court of International Trade.

SEC. 202. (a) Section 251 of title 28, United States Code, is amended by striking out the first and second paragraphs of such section and inserting in lieu thereof the following:

"(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. The court is a court established under Article III of the Constitution of the United States.

"(b)(1) The chief judge shall be the judge in regular active service who is senior in commission of those judges who—

"(A) are sixty-four years of age or under;

"(B) have served for at least one year as judge of the court; and

"(C) have not served previously as chief judge.

"(2)(A) In any case in which no judge meets the qualifications under paragraph (1), the youngest judge in regular active service who is sixty-five years of age or over and who has served as a judge of the court for at least one year shall act as the chief judge.

"(B) In any case under subparagraph (A) in which there is no judge in regular active service who has served as a judge for more than one year, the judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

"(3)(A) Except as provided in subparagraph (C), a chief judge shall serve for a term of seven years, and may continue to serve after the expiration of such term until another judge is eligible to serve as chief judge under paragraph (1).

"(B) Except as provided in subparagraph (C)), a judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until another judge is eligible to serve as chief judge under paragraph (1).

"(C) A judge may not serve or act as chief judge after attaining the age of seventy years unless no other judge is eligible to serve as chief judge under paragraph (1) or is eligible to act as chief judge under paragraph (2).

"(c) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as a judge, he may so certify to the Chief Justice of the United States, and thereafter, the chief judge of the court shall be such other judge who is qualified to serve or act as the chief judge under subsection (b).".

(b) The third paragraph of section 251 of title 28, United States Code, is amended by inserting "(d)" immediately before "The offices".

(c) The amendments made by this section to section 251 of title 28, United States Code, shall take effect on the date of enactment of this Act, except that those judges serving on the United States Customs Court on the day before the date of enactment of this Act shall continue to serve as judges of the Court of International Trade, and the chief judge of the Customs Court serving on the day before the date of enactment of this Act shall continue to serve as chief judge of the Court of International Trade until he attains the age of seventy years.

SEC. 203. (a) Section 293(b) of title 28, United States Code, is amended by striking out all that appears after "duties" and inserting in lieu thereof the following: "in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises.".

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims.".

TITLE III—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

SEC. 301. (a) Chapter 95 of title 28, United States Code, is amended to read as follows:

"CHAPTER 95—COURT OF INTERNATIONAL TRADE

"Sec.
"1581. Civil actions against the United States.
"1582. Civil actions commenced by the United States.
"1583. Counterclaims.
"1584. Cure of defects.
"1585. Powers generally.

"§ 1581. Civil actions against the United States

"(a)(1) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by any person whose protest under the Tariff Act of 1930 has been denied, in whole or in part, by the appropriate customs officer, if the administrative decision, including the legality of all orders and findings entering into the protest, involves—

"(A) the appraised value of merchandise;

"(B) the classification, rate, and amount of duties chargeable;

"(C) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

"(D) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody (including a notice of constructive seizure) under any provisions of the customs laws, except a determination appealable under section 337 of the Tariff Act of 1930;

"(E) the liquidation or reliquidation of an entry, or a modification thereof;

"(F) the refusal to pay a claim for drawback; or

"(G) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930.

"(2) Section 516A of the Tariff Act of 1930 provides the exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 or 516A of the Tariff Act of 1930.

"(c)(1) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review advice, findings, recommendations, and determinations of the International Trade Commission under sections 131, 201, 202, 203, 304, 406, and 503 of the Trade Act of 1974, sections 336 and 338 of the Tariff Act of 1930, and section 22 of the Agricultural Adjustment Act, solely for the purposes of determining the procedural regularity of those actions.

"(2) If no advice, findings, recommendations, or determinations have been provided to the President by the International Trade Commission, the Court of International Trade shall have exclusive jurisdiction to review any action of the commission under the sections specified in paragraph (1) of this subsection, solely for the purposes of determining the procedural regularity of those actions.

"(d) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review any action of the Office of the Special Trade Representative under section 302(b)(1) or 304 of the Trade Act of 1974, solely for the purposes of determining the procedural regularity of those actions.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action to review any determination of the Secretary of Labor or the Secretary of Commerce certifying or refusing to certify workers, communities, or businesses as eligible for adjustment assistance under the Trade Act of 1974. No injunction or writ of mandamus shall be issued in any civil action arising under this subsection.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by a party-at-interest to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 777(c)(2) of the Tariff Act of 1930.

"(h)(1) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a) through (g) of this section and subject to the exceptions provided in subsection (i), the Court of International Trade shall have exclusive jurisdiction over any civil action against the United States, its agencies or its officers, which—

"(A) arises directly from import transactions; and

"(B)(i) involves the Tariff Act of 1930, the Trade Expansion Act of 1962, the Trade Act of 1974, or the Trade Agreements Act of 1979; or

"(ii) a provision of—

"(I) the Constitution of the United States,

"(II) a treaty of the United States,

"(III) an executive agreement executed by the President, or

"(IV) an Executive order of the President, which directly and substantially involves international trade.

"(2) Section 516A of the Tariff Act of 1930 provides the exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

"(i)(1) The Court of International Trade shall not have jurisdiction—

"(A) of any civil action arising under section 305 of the Tariff Act of 1930;

"(B) subject to the provisions of paragraph (2), to review any ruling or refusal to issue or to change a ruling relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, and similar matters issued by the Secretary of the Treasury under applicable regulations other than in connection with a civil action commenced under subsection (a) of this section; or

"(C) of any civil action with respect to any effort by the United States to recover a civil fine or penalty or to enforce a forfeiture, to recover upon a bond, or to recover customs duties, other than as specified in section 1582 of this title.

"(2) Paragraph (1)(B) shall not apply if a plaintiff demonstrates that, without a substantial doubt, (A) it would be commercially impractical to obtain judicial review under subsection (a) of this section; and (B) the plaintiff would otherwise suffer irreparable injury. If the plaintiff fulfills the conditions set forth in the preceding sentence and demonstrates that the Secretary's ruling or refusal to issue or to change a ruling is arbitrary or capricious or otherwise contrary to law, the court shall award appropriate declaratory relief.

"§ 1582. Civil actions commenced by the United States

"(a) Subject to the provisions of subsections (b) and (c) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced by the United States under section 592, 704 (i)(2), or 734(i)(2) of the Tariff Act of 1930.

"(b)(1) Any party to a civil action described in subsection (a) who desires to have the action tried before a jury may, within 30 days after the action is commenced in the Court of International Trade, file a motion with the clerk of the court requesting a transfer of the action to an appropriate district court.

"(2) The Court of International Trade shall promptly order the action transferred to the appropriate district court if the court determines that the moving party is entitled to a trial by jury in such action.

"(c) Within 10 days after the issuance of an order of transfer under subsection (b)(2), the clerk of the Court of International Trade shall transmit all pleadings and documents to the clerk of the appropriate district court. The action shall proceed as if it had been commenced in the district court in the first

instance, and the court shall determine the matter de novo.

"(d) The relevant provisions of sections 2641 through 2465 of this title, section 592(e) of the Tariff Act of 1930, and the Federal Rules of Evidence shall apply in any action commenced in the Court of International Trade or transferred to a district court under this section.

"§ 1583. Counterclaims

"The Court of International Trade shall have jurisdiction to render judgment upon any counterclaim asserted by the United States—

"(1) which arises out of an import transaction pending before the court;

"(2) to recover upon a bond relating to an import transaction pending before the court; or

"(3) to recover customs duties relating to an import transaction pending before the court.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where the action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court or a court of appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals, where the civil action shall proceed as if it had been commenced in the district court or court of appeals in the first instance.

"§ 1585. Powers generally.

"The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.".

(b) The table of chapters for part IV of title 28, United States Code, is amended in the item relating to chapter 95 by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade".

TITLE IV—COURT OF INTERNATIONAL TRADE PROCEDURE

SEC 401. (a) Chapter 169 of title 28, United States Code, is amended to read as follows:

"CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

"Sec.
"2631. Persons entitled to commence a civil action.
"2632. Commencement of a civil action.
"2633. Procedure and fees.
"2634. Notice.
"2635. Filing of official documents.
"2636. Time for commencement of action.
"2637. Exhaustion of administrative remedies.
"2638. New grounds in support of a civil action.
"2639. Burden of proof; evidence of value.
"2640. Scope and standard of review.
"2641. Witnesses; inspection of documents.
"2642. Analysis of imported merchandise.
"2643. Relief.
"2644. Decisions; findings of fact and conclusions of law; effect of decisions.
"2645. Retrial or rehearing.
"2646. Precedence of cases.

"§ 2631. Persons entitled to commence a civil action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest under section 514 of the Tariff Act of 1930, or by his estate, heirs, or successors or by a surety of such person in the transaction which is the subject of the protest.

"(b) A civil action contesting the denial in whole or in part, of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the domestic interested party who filed the petition or his estate, heirs, or successors.

"(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the administrative proceeding or his estate, heirs, or successors.

"(d) A civil action to a review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any party-at-interest.

"(e) A civil action involving an application for an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the investigation.

"(f) A civil action, other than a civil action specified in subsections (a) through (e) of this section, may be commenced in the Court of International Trade by any person adversely affected or aggrieved by an agency action within the meaning of section 702 of title 5, United States Code.

"(g) Except in civil actions commenced under section 1581(a) of this title or section 516 of the Tariff Act of 1930, any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in that civil action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

"(h) Any person who is a party to the investigation and would be adversely affected or aggrieved by a decision in a civil action involving an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may, by leave of court, intervene in that civil action.

"(i) For the purposes of this section, the term—

"(1) 'interested party' means—

"(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under title VII of the Tariff Act of 1930, or a trade or business association the majority of the members of which are importers of such merchandise;

"(B) the government of a country in which such merchandise is produced or manufactured;

"(C) a manufacturer, producer, or wholesaler in the United States of a like product;

"(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; and

"(E) a trade or business association the majority of whose members manufacture, produce, or wholesale a like product in the United States;

"(2) 'domestic interested party' means a party as defined in subparagraphs (C), (D), and (E) of paragraph (1);

"(3) 'party-at-interest' means—

"(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination;

"(B) a manufacturer, producer, or wholesaler in the United States of a like product;

"(C) United States members of a labor organization or other association of workers whose members are employed in the manu-

facture, production, or wholesale in the United States of a like product; and

"(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

"(4) 'like product' means a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation under title VII of the Tariff Act of 1930 or a final determination under section 305(b)(1) of the Trade Agreements Act of 1979.

"§ 2632. Commencement of a civil action

"(a) Each civil action under section 516 of the Tariff Act of 1930 or section 1581(a) of this title shall be commenced by filing with the clerk of the Court of International Trade a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

"(b) Each civil action under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in that section, with the content and in the form, manner, and style prescribed by the rules of the court.

"(c) Except for those civil actions specified in subsections (a) and (b) of this section, all civil actions shall be commenced by filing with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

"(d) The Court of International Trade may prescribe by rule that any pleading or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

"§ 2633. Procedure and fees

"(a) A filing fee shall be payable upon the commencement of an action. The amount of the fee shall be fixed by the Court of International Trade, but shall be not less than $5 nor more than the filing fee for commencing a civil action in a United States district court. The Court of International Trade may fix all other fees to be charged by the clerk of the court.

"(b) The Court of International Trade shall prescribe rules governing pleadings and other papers, including their amendment, service, and filing, and for consolidations, severances, suspension of cases, and other procedural matters.

"(c) All pleadings and other papers filed in the Court of International Trade shall be served on all parties in accordance with the rules prescribed by the court. When the United States, it agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the agencies whose actions are complained of, and when injunctive relief is sought, upon the named officials sought to be enjoined.

"§ 2634. Notice

"Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action in accordance with the rules prescribed by the court.

"§ 2635. Filing of official documents

"(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, or the denial of a petition under section 516 of that Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as part of the official record—

"(A) the consumption or other entry and the entry summary;

"(B) the commercial invoice;

"(C) the special customs invoice;

"(D) a copy of protest or petition;

"(E) a copy of the denial of a protest or petition in whole or in part;

"(F) any importer's exhibits;

"(G) the official and other representative samples;

"(H) any official laboratory reports; and

"(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

"(b)(1) In any action commenced under section 516A of the Tariff Act of 1930, within forty days or within such period of time as the Court of International Trade may specify, after service of the complaint upon the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the commission shall transmit to the clerk of the court, as prescribed by its rules, the record which, unless otherwise stipulated by the parties, shall consist of—

"(A) a copy of all information presented to or obtained by the administering authority or the commission during the course of the administrative proceedings, including all governmental memorandums pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

"(B) a copy of the determination with a statement of reasons, if any, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

"(2) Any documents, comments, or information accorded confidential or privileged status and required to be transmitted to the clerk of the Court of International Trade under paragraph (1) shall be transmitted as prescribed by its rules to the clerk of the court under seal, and its confidential or privileged status shall be preserved in the litigation. Any such documents, comments, or information shall be accompanied by a nonconfidential description of the nature of such confidential documents, comments, or information. The court may examine, in camera, the confidential or privileged material and may make such material available under such terms and conditions as the court may order.

"(c) Within fifteen days or within such period of time as the Court of International Trade may specify, after service of the complaint upon the administering authority or the commission in a civil action involving an application for an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the commission shall transmit, as prescribed by its rules, to the clerk of the court under seal, the confidential information involved together with the pertinent parts of the record.

"(d)(1) In any other civil action in which judicial review is based upon the record made before the agency, the agency shall, within forty days or within such time as the Court of International Trade may specify after service of the complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which it is based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with regard to the agency's action, identifying and transmitting, under seal, any documents, comments, or other information obtained on a confidential basis, including a nonconfidential description of the nature of such confidential documents, comments, or information.

"(2) The parties may stipulate that fewer documents, comments, or other information than that specified in paragraph (1) shall be transmitted to the court.

"(3) The confidentiality accorded such documents, comments, and information shall be preserved in the litigation, but the court may examine in camera such documents, comments, and information and may order the disclosure of such documents, comments, or information under such terms and conditions as the court deems appropriate.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial, in whole or in part, of a protest by the Customs Service;

"(2) if no notice is mailed within the two-year period specified in section 515(a) of the Tariff Act of 1930, within one hundred and eighty days after the date of the expiration of the two-year period specified in such section; or

"(3) within one hundred and eighty days after the date of a protest by operation of law under the provisions of section 515(b) of the Tariff Act of 1930.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice transmitted under section 516(c) of the Tariff Act of 1930.

"(c) A civil action contesting a determination by the administering authority, under section 703(c) or 733(c) of the Tariff Act of 1930, that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of the determination in the Federal Register.

"(d) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(c) or 733(c) of that Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of publication of the determination in the Federal Register.

"(e) A civil action involving an application for an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of a request for confidential information.

"(f) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of publication of the determination in the Federal Register.

"(g) A civil action, other than an action specified in subsections (a) through (f) of this section, of which the court has jurisdiction under section 1581 of this title is barred unless commenced in accordance with the rules of the Court of International Trade within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced only if all liquidated duties, charges, and exactions have

been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, and exactions is limited to the sum of any bond relating to each entry included in a denied protest. If a surety commences a civil action in the Court of International Trade, the surety shall recover only the amount of the liquidated duties, charges, and exactions paid on the entries included in the action. The excess amount of any recovery shall be paid to the importer of record, or its estate, heirs, successors, or assigns.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced only by a person who has first exhausted the procedures specified in that section.

"(c) In any civil action not specified in this section, the Court of International Trade shall require the exhaustion of appropriate administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any case in which the denial, in whole or in part, of a protest is a precondition to the institution of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if the new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative determinations listed in section 514 of the Tariff Act of 1930 that were contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a) In any civil action over which the Court of International Trade has jurisdiction under subsection (a) or (b) of section 1581, the determination of the Secretary of the Treasury, the administering authority, or the International Trade Commission, or their delegates, is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging the determination.

"(b) Where the value of merchandise or any of its components is in issue—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had may be admitted into evidence when served upon the opposing party in accordance with the rules of the Court of International Trade;

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material; and

"(3) the value of merchandise shall be determined from the evidence in the record and that adduced at the trial, whether or not the merchandise or sample thereof is available for examination.

"(c) The provisions of subsection (a) shall not apply to any action commenced in the Court of International Trade under section 1582 of this title, unless permitted by the Federal Rules of Evidence.

"§ 2640. Scope and standard of review

"(a) The Court of International Trade shall determine the matter de novo upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930 involving—

"(A) except to the extent judicial review is available under subsection (b) of this section in the case of a determination made reviewable under section 516A of the Tariff Act of 1930—

"(i) the appraised value of merchandise;

"(ii) the classification, rate, and amount of duties or fees chargeable;

"(iii) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; and

"(iv) the required redelivery of imports under the terms of an entry bond or the exclusion of merchandise from entry or delivery under the customs laws or under an action of the Customs Service;

"(B) the refusal to pay a claim for a drawback; and

"(C) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516(c) of the Tariff Act of 1930.

"(3) Civil actions commenced under section 1581(f) of this title.

"(4) Civil actions commenced under section 1581(g) of this title.

"(5) Civil actions commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action commenced under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of that section.

"(c) In any civil action commenced under subsection (c) or (d) of section 1581 of this title, the court shall review the matter as specified in those subsections.

"(d) In any civil action commenced under section 1581(e) of this title, the court shall review the matter as specified in section 250 of the Trade Act of 1974. The determination of the Secretary of Commerce under sections 251 and 271 of the Trade Act of 1974 shall be subject to judicial review in the same manner and to the same extent as provided in section 250 of the Trade Act of 1974.

"(e) In any civil action not specified in this section, the court shall review the matter as provided in section 706 of title 5, United States Code.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence under rules prescribed by the court. Except as provided in section 2639 of this title, subsection (b) of this section, or any rule prescribed by the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that in any civil action trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by foreign governments or foreign persons, shall not be disclosed or shall be disclosed to a party, its counsel, or any other person, only under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) In any civil action commenced under section 1581 or 1582 of this title or in any counterclaim asserted under section 1583 of this title, the Court of International Trade may, if appropriate, enter a judgment for money for or against the United States.

"(b) In any civil action commenced under section 1581(a) of this title or section 516 of the Tariff Act of 1930, if the Court of International Trade is unable to arrive at the correct determination on the basis of the evidence presented, the court may order such further administrative or adjudicative procedures that the court deems necessary.

"(c) In any civil action involving an application for an order requiring the administering authority or to the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the court may issue an order of disclosure only with respect to the information specified in that section.

"(d) In addition to the orders specified in subsections (a), (b), and (c) of this section, the Court of International Trade may order any form of relief which is appropriate, including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction.

"(e) The Court of International Trade may, in extraordinary circumstances, grant appropriate preliminary or permanent injunctive relief upon the request of a person who, after exhausting all appropriate administrative remedies, would have the right to commence a civil action in the Court of International Trade. In ruling upon such a request, the court shall consider, among other matters, whether the person making the request will be irreparably injured if the relief is not granted, and if so, whether the irreparable injury outweighs the effect that the issuance of the requested injunction would have upon the public interest.

"§ 2644. Decisions; findings of fact and conclusions of law; effect of decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing an injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law, or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) Upon motion of a party, or upon its own motion, made not later than thirty days after entry of judgment, the court may amend its findings or make additional findings and may amend the decision and judgment accordingly.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted under section 2645 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and the manner provided in section 2601 of this title.

"§ 2645. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order the court may, upon motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A party's motion shall be made or the court's action on its own motion shall be taken, not later than thirty days after entry of the judgment or order.

"§ 2646. Precedence of cases

"(a) A civil action involving the exclusion of perishable merchandise shall be given precedence over other civil actions pending before the Court of International Trade, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

"(b) Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A(a)(1)(B) or under section 516A(a)(1)(E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

"(c) Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion or redelivery or merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.".

(b) The table of chapters for part VI of title 28, United States Code, is amended in the item relating to chapter 169 by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade".

TITLE V—COURT OF CUSTOMS AND PATENT APPEALS

SEC. 501. (a) Section 1541(a) of title 28, United States Code, is amended by striking out: "and from any interlocutory order grant-

ing, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or modify an injunction, under section 516A (c)(2) of the Tariff Act of 1930:".

(b) Section 1541 is amended by adding at the end thereof the following:

"(c) The Court of Customs and Patent Appeals has exclusive jurisdiction of any appeal from an interlocutory order of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions.".

SEC. 502. (a) Section 1543 of title 28, United States Code, is amended to read as follows:

"§ 1543. International Trade Commission determinations

"The Court of Customs and Patent Appeals shall have jurisdiction to review the determinations of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade.".

(b) The table of sections for chapter 93 of title 28, United States Code, is amended by amending the item relating to section 1543 to read as follows:

"1543. International Trade Commission determinations.".

SEC. 503. (a) Chapter 93 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1546. Rules of evidence; powers in law and equity; exclusive jurisdiction

"(a) Except as provided in secton 2639 of this title, subsection (b) of section 2641 of this title, or any rules prescribed by the Court of Customs and Patent Appeals, the Federal Rules of Evidence shall apply in the Court in any appeal from the Court of International Trade.

"(b) The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, the courts of appeals of the United States.

"(c) The Court of Customs and Patent Appeals has exclusive jurisdiction to review—

"(1) any decision of the Secretary of the Treasury to deny or revoke a customs brokers' license under section 641(a) of the Tariff Act of 1930; and

"(2) any action challenging an order to revoke or suspend a license under section 641 (b) of the Tariff Act of 1930.".

(b) The table of sections for chapter 93 of that title is amended by adding at the end thereof the following:

"1546. Rules of evidence; powers in law and equity; exclusive jurisdiction.".

SEC. 504. (a) Section 2601(a) of title 28, United States Code, is amended by adding the following at the end thereof: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed.".

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" after "appeal" each time it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of".

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code is amended by inserting the following after the first sentence: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether findings of fact are clearly erroneous, whether or not the party raising the questions made an objection to such findings in the Court of International Trade or made a motion to amend such findings.".

SEC. 505. (a) Section 2602 of title 28, United States Code, is amended to read as follows:

"§ 2602. Precedence of cases

"(a) A civil action involving the exclusion of perishable merchandise shall be given precedence over other civil actions pending before the Court of Customs and Patent Appeals, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

"(b) Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A(a)(1)(B) or under section 516A (a)(1)(E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

"(c) Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion or redelivery of merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practical date and expedited in every way.

"(d) Except those civil actions given precedence under subsection (a), (b), or (c), an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202) shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.".

(b) The item relating to section 2602 in the table of sections for chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases.".

SEC. 506. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Judicial Conference

"The Court of Customs and Patent Appeals is authorized to conduct an annual judicial conference for the purposes of considering the business of the court and improvements in the administration of justice in the court.".

(b) The table of contents for chapter 167 of such title is amended by adding at the end thereof the following new item:

"§ 2603. Judicial conference.".

TITLE VI—CONFORMING AMENDMENTS RELATING TO THE NAME OF THE COURT

SEC. 601. Section 1 of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall hereby after be known", approved May 28, 1926 (19 U.S.C. 405(a)), is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

SEC. 602. Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 603. Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 604. Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 605. Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

SEC. 606. Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 607. Section 516(e) of the Tariff Act of 1930 (19 U.S.C. 1516(e)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 608. Section 516(f) of the Tariff Act of 1930 (19 U.S.C. 1516(f)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 609. Section 516A of the Tariff Act of 1930 is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

SEC. 610. Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 611. Section 563(a) of the Tariff Act of 1930 (19 U.S.C. 1563) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 612. Section 7443(d) of the Internal Revenue Code of 1954 (26 U.S.C. 7443(d)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 613. Section 252 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 614. Section 253(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 615. Section 254 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 616. Section 255(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 617. (a) Section 293(b) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

(b) Section 293(c) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 618. Section 569(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 619. Section 605 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 620. Section 871 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 621. Section 873 of title 28, United States Code is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 622. Section 1340 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade."

SEC. 623. (a) Section 1541(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) Section 1541(b) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 624. Section 2601 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 625. The table of chapters for part I of title 28, United States Code, is amended in the item relating to chapter 11 by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 626. The table of chapters for part III of title 28, United States Code, is amended in the item relating to chapter 55 by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 627. (a) The section heading for section 1541 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) The table of sections for chapter 93, title 28, United States Code, is amended in the item relating to section 1541 by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 628. (a) The section heading for section 2601 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) The table of sections for chapter 167, title 28, United States Code, is amended in the item relating to section 2601 by striking out "Customs Court" and inserting "Court of International Trade".

TITLE VII—TECHNICAL AND CONFORMING AMENDMENTS

SEC. 701. Section 337(c) of the Tariff Act of 1930 is amended—

(1) by inserting immediately after "Appeals" the following: ", subject to chapter 7 of title 5, United States Code,"; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "Notwithstanding the foregoing, review of commission determinations under subsection (d), (e), and (f) as to it findings on the amount and nature of bond, the appropriate remedy, or the effect of such order on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers, shall be reviewable only for abuse of administrative discretion.".

SEC. 702. Section 516A(a)(1) of the Tariff Act of 1930 is amended by inserting "or such other time as provided by statute" immediately after "30 days".

SEC. 703. The second sentence of section 516A(c)(2) of the Tariff Act of 1930 is amended to read as follows: "In ruling upon a request for such injunctive relief, the court shall consider the factors set forth in section 2643(c) of title 28, United States Code.".

SEC. 704. The second sentence of section 516A(d) of the Tariff Act of 1930 is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section in the form, manner, style and within the time prescribed by the rules of that court.".

SEC. 705. Section 592(e) of the Tariff Act of 1930 is amended in the introductory paragraph to read as follows:

"(e) COURT OF INTERNATIONAL TRADE AND DISTRICT COURT PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade or in a United States district court, under section 604 of this Act for the recovery of any monetary penalty claimed under this section, or transferred from the Court of International Trade to a district court under section 1581 of title 28, United States Code—".

SEC. 706. (a) The second sentence of the second paragraph of paragraph (b) of section 641 of the Tariff Act of 1930 is amended by striking out all that appears after "filing," and before "sixty," and inserting in lieu thereof "in the Court of Customs and Patent Appeals, within".

(b) The second paragraph of section 641(b) of the Tariff Act of 1930 is amended by inserting the following immediately after the third sentence: "For purposes of this paragraph, all relevant rules prescribed in accordance with sections 2072 and 2112 of title 28, United States Code, apply to the Court of Customs and Patent Appeals.".

SEC. 707. (a) Section 250(a) of the Trade Act of 1974 is amended by striking out "court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Court of International Trade".

(b)(1) Section 250(c) of the Trade Act of 1974 is amended by inserting the following immediately after the first sentence: "The judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals as prescribed by the rules of the Court of Customs and Patent Appeals.".

(2) Section 250(c) of the Trade Act of 1974 is further amended by striking out "court" the second time it appears and inserting in lieu thereof "Court of Customs and Patent Appeals".

SEC. 708. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

SEC. 709. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following:

"(f) When the Court of International Trade is sitting in a judicial district other than the Southern and Eastern Districts of New York, the clerk of that district court or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of that district court, shall act in the district as clerk of the Court of International Trade in accordance with the rules and orders of the Court of International Trade for all purposes relating to any case pending before the court.".

SEC. 710. Section 1331(a) of title 28, United States Code, is amended by adding at the end thereof the following: "The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade.".

SEC. 711. Section 1337 of title 28, United States Code, is amended by adding at the end thereof the following:

"(c) The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade.".

SEC. 712. Section 1355 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title.".

SEC. 713. Section 1356 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title.".

SEC. 714. The second paragraph of section 1491 of title 28, United States Code, is amended by inserting "within the exclusive jurisdiction of the Court of International Trade, or" after "suits" the first time its appears in the first sentence.

SEC. 715. Section 1910 of title 28, United States Code, is amended by inserting "or the Court of International Trade" after "court" the first time it appears.

SEC. 716. Section 1963 of title 28, United States Code, is amended by inserting the following immediately after "district court" the first time it appears: "or in the Court of International Trade".

SEC. 717. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or Court of International Trade" after "court" in the first sentence.

SEC. 718. (a)(1) Except as provided in paragraph (2), this Act, and the amendments made by this Act, shall become effective on the date on which title VII of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, takes effect.

(2) The amendments made by section 506 of this Act shall become effective on October 1, 1980.

(b) Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment under jurisdictional statutes relating to the United States Customs Court or the United States Court of Customs and Patent Appeals in effect before the date of enactment of this Act.

(c)(1) Except as provided in paragraph (2), in reviewing any determination made before January 1, 1980, under section 303 of the Tariff Act of 1930 or the Antidumping Act, 1921, the Court of International Trade and the Court of Customs and Patent Appeals shall base its review on the law as it existed on the date of such determination.

(2) The scope of review and procedures for such review shall be governed by the provisions of, and the amendments made by, this Act.

MOTION OFFERED BY MR. VOLKMER

Mr. VOLKMER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. VOLKMER moves to strike out all after the enacting clause of the Senate bill, S. 1654, and to insert in lieu thereof the provisions of H.R. 7540, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VOLKMER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 7540, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

DOCUMENTARY MATERIALS PRIVACY PROTECTION ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3486) to limit governmental search and seizure of materials possessed by persons involved in first amendment activities, to provide a remedy for persons aggrieved by violations of the provisions of this act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Documentary Materials Privacy Protection Act of 1980".

UNLAWFUL ACTS

SEC. 2. (a) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product

materials possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate: *Provided, however,* That a government officer or employee may not search for or seize materials described in subsection 2(a) under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797, 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42 U.S.C 2277, or 50 U.S.C. 783); or

(2) there is reason to believe that the immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being.

(b) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate: *Provided, however,* That a government officer or employee may not search for or seize materials described in subsection 2(b) under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797, 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42 U.S.C 2277, or 50 U.S.C. 783); or

(2) there is reason to believe that the immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being;

(3) there is reason to believe that the giving of notice pursuant to a subpena duces tecum would result in the destruction, alteration, or concealment of the materials; or

(4) the materials have not been produced in response to a court order directing compliance with a subpena duces tecum, and

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpena would threaten the interests of justice.

In the event a search warrant is sought pursuant to this subparagraph, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

INAPPLICABILITY OF THIS ACT TO SEARCHES AND SEIZURES CONDUCTED TO ENFORCE THE CUSTOMS LAWS OF THE UNITED STATES

SEC. 3. This Act shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of or at international points of entry into the United States in order to enforce the customs laws of the United States.

REMEDIES

SEC. 4. For violations of this Act by an officer or employee of the United States, there shall be a cause of action against the United States as provided by section 1346(b) and chapter 171 of title 28, United States Code. Remedies against the United States provided by this section shall be the exclusive remedy or sanction, including the Exclusionary Rule.

DEFINITIONS

SEC. 5. (a) "Documentary materials", as used in this Act, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magnetically or electronically recorded cards, tapes, or discs, but does not mean contraband, the fruits of a crime, or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(b) "Work product", as used in this Act, means any documentary materials created by or for a person in connection with his plans, or the plans of the person creating such materials, to communicate to the public, except such work product as constitutes contraband or the fruits or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(c) "Any other governmental unit," as used in this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

TITLE II. ATTORNEY GENERAL GUIDELINES

SEC. 201. (a) The Attorney General shall, within six months of date of enactment of this Act, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of an offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained.

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between clergyman and parishioner; lawyer and client; or doctor and patient; and

(4) a requirement that an application for a warrant to conduct a search governed by this Title be approved by an attorney for the government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within 24 hours of such emergency the appropriate United States Attorney is notified.

(b) The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on the use of search warrants by Federal officers and employees for documentary materials described in subsection (a)(3).

SEC. 202. Guidelines issued by the Attorney General under this Title shall have the full force and effect of Department of Justice regulations and any violation of these guidelines shall make the employee or officer involved subject to appropriate administrative disciplinary action. However, an issue relating to the compliance, or the failure to comply, with guidelines issued pursuant to this Title may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, sometimes a longstanding principle of constitutional jurisprudence is thrown into doubt by a decision of the Supreme Court which—while it may answer a narrow question based on specific facts—leaves Government officials and members of the public in doubt as to how to interpret the law. When this occurs it is often best for Congress to step in to fill the void, rather than to await the results of many years of potential litigation which will again redefine the principle. This is the case with respect to the matter before us today—legislation to redefine a portion of the law of search and seizure in response to the Supreme Court's decision in Zurcher against Stanford Daily in 1978.

Prior to Stanford Daily, the long established interpretation of the fourth amendment had held that a search warrant was considered to meet the constitutional ban on general searches only if the evidence sought constituted contraband, or fruits or instrumentalities of a crime. This rule was modified in 1967 in Warden against Hayden to permit searches for mere evidence, but the facts of that case involved evidence obtained incidental to an arrest.

In the Stanford Daily case the Supreme Court swept away 200 years of jurisprudence greatly limiting searches directed against innocent third parties. The opinion of the Court, delivered by

Mr. Justice White, set forth a new theory governing third party searches—identifying the standard to be applied in issuing such warrants as one of "reasonableness." Further, while recognizing that any reasonableness requirement must be established with "scrupulous exactitude," where a newspaper was involved, the Court's opinion did not conclude that the first amendment placed any additional restraints on such searches.

The public and congressional response to the Supreme Court's decision was immediate. Newspaper editorials appeared all over the country condemning the Court's decision. And in Congress numerous members, of every ideological and political stripe, introduced remedial legislation. Meanwhile, the President ordered the Attorney General to study the issue and make a legislative recommendation to him. After consultation with constitutional scholars, civil libertarians, law enforcement authorities, and Cabinet officers, the President recommended H.R. 3486, the bill before us today.

As introduced the bill before you protected third parties from arbitrary searches only where first amendment interests were involved. However, with the exception of the Department of Justice, not a single witness in favor of the legislation testified that the protections of the bill should be limited to the press alone. In fact, the representatives of media organizations were among the strongest proponents of expanding the legislation to protect all innocent third parties from arbitrary search and seizure. A great deal of apprehension was expressed about singling out the press for special treatment.

As a result, when the committee met for markup it was agreed that the legislation should be extended to provide guidance to Federal law enforcement officials as to the circumstances under which search warrants should be used to obtain information from innocent third parties other than those engaged in first amendment activities. However, because of the constitutional and policy implications of regulating the police powers of State and local authorities, the committee decided to limit the applicability of any broader third party provisions of the bill to searches by Federal officials only. Of course, we would hope that State legislatures would follow suit, and indeed eight States have already enacted similar legislation. With respect to searches directed against persons preparing materials for broadcast or publication, we retained the features of the original bill—which apply to State and local as well as Federal officials. The justification involved is the historic obligation of the Federal Government to protect the free speech values of the first amendment.

At this point I should note for Members that the Department of Justice and several of our colleagues opposed the amendment adopted by the committee which appears in its report filed on May 30. While the Attorney General strongly urged us to fill the legal void created by the Stanford Daily case in the first amendment area, he desired more flexibility in developing procedures for searches of other third parties.

However, subsequent to the filing of the committee report we have consulted with representatives of the Department of Justice and worked out an alternative which meets with the full approval of the Attorney General and the Department. That alternative is reflected in the committee amendment which I am offering with the bill today. The essential difference between it and the original reported version is that it makes the decision to apply for a warrant for a third party search an administrative matter to be handled solely within the Department of Justice, acting pursuant to statutory guidelines, rather than a judicial matter, requiring the supervision of the judge issuing the warrant. This is basically the procedure which was approved earlier by the Senate when it passed S. 1790, the counterpart to H.R. 3486. Indeed Mr. Speaker, I hope that with the passage of this committee amendment the Senate may accept the House bill without the necessity of a conference.

In addition to providing for administrative guidelines rather than judicial permission for seeking a third party search warrant, the committee amendment contains several other minor changes in the reported bill.

Finally, we have incorporated the suggestions of the gentleman from Ohio (Mr. KINDNESS) for certain technical and clarifying changes.

Mr. Speaker, this is a reasonable bill. It consists entirely of language drafted or approved by law enforcement officials themselves. It enjoys the support of members of all political persuasions. It is endorsed by groups such as the American Society of Newspaper Editors, the Radio Television News Directors Association, the American Newspaper Publishers Association, the American Medical Association, and American Psychiatric Association as well as the ACLU and others. With the committee amendment being offered in conjunction with the bill, I believe it is a noncontroversial bill.

□ 1600

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend the gentleman from Wisconsin (Mr. KASTENMEIER), the subcommittee and the full committee for having produced this very important piece of legislation and also to state that the gentleman from Wisconsin has fairly and accurately and fully explained this legislation.

Mr. Speaker, I rise in support of H.R. 3486, the Documentary Materials Protection Privacy Act. When this bill was reported by the full Judiciary Committee, I strongly opposed it on the basis of section 3 of the bill. Section 3 of the bill would have extended the restrictions on third party searches beyond the area in which first amendment interests are implicated.

Among the primary reasons for opposition to section 3 of the bill by the Justice Department and the law enforcement community were: The difficulty of ascertaining at the early stages of an investigation the identity of all participants in a crime, the probability of destruction or alteration of evidence sought by subpena, the limited availability of subpenas as investigative tools, and the absence of evidence of abuse of existing third party search powers by Federal law enforcement. At the time the Judiciary Committee considered H.R. 3486, I found these to be valid concerns, indeed.

Recently, however, a compromise that is acceptable to the Department of Justice, proponents of section 3, and myself, was reached. Under the compromise, which is embodied in a committee amendment, section 3 would be deleted from the bill and the Attorney General would be mandated to promulgate guidelines to govern searches in the third party area.

H.R. 3486, with section 3 deleted, and a guideline approach adopted in lieu thereof, represents a bill which will provide adequate protection for important privacy rights, while insuring legitimate law enforcement needs. I urge my colleagues to support the passage of H.R. 3486.

Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from California (Mr. McCLOSKEY).

□ 1610

Mr. McCLOSKEY. Mr. Speaker, I would like to commend the chairman and members of the Committee on the Judiciary for bringing this bill to the floor in this form. I think it would have been tragic if we had allowed this session of Congress to elapse without resolving the problem that Mr. Justice Stevens referred to in his opinion in the case of the Stanford Daily against Chief Zurcher of Palo Alto.

It is my privilege to represent both the city of Palo Alto and Stanford University. It was significant that in this raid by the Palo Alto Police Department on the editorial offices of the Stanford Daily that the city council of the city of Palo Alto, after winning their case in court, took the position that Congress should amend the law as it is doing in this fashion.

I am sure there are a number of us who would like to extend the protections for the press that are contained in this bill to innocent third parties and perhaps priests and lawyers and doctors who have generally had the privilege against search and seizure of this kind; but in view of the need to have some legislation enacted to protect the press and in view of the other provisions that have been enacted as part of the compromise on the bill, it seems to me that all of us should support the passage of the bill in this form.

Mr. McCLORY. May I say to the gentleman from California that it is contemplated that the guidelines which are mandated by the new section 3 of this legislation, which have been worked out with the Department of Justice, that protection will be provided for the privacy which exists between attorney and client, between patient and doctor, and other rights of privacy which we do want protected. In other words, this is not merely a bill which is directed to the journalists, although we want to protect

their interests as well, but we, at the same time, want to be sure that there are no unlawful, unconstitutional searches and seizures, and we expect that the guidelines will protect these constitutional rights of all American citizens.

Mr. McCLOSKEY. I thank the gentleman. I look forward to the formulation of those guidelines by the Attorney General. I hope he will carry on that high tradition which has only recently been established at the Department of Justice.

The SPEAKER pro tempore. Will the gentleman from Wisconsin (Mr. KASTENMEIER) yield to the gentleman from Oregon (Mr. AUCOIN) at this point?

Mr. KASTENMEIER. I yield to the gentleman from Oregon.

REQUEST TO CONSIDER SENATE AMENDMENTS TO HOUSE AMENDMENTS TO S. 1442, AUTHORIZING DOCUMENTATION OF VESSEL "SARA" AS VESSEL OF THE UNITED STATES WITH COASTWISE PRIVILEGES

Mr. AUCOIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the Senate bill (S. 1442) to authorize the documentation of the vessel, *Sara*, as a vessel of the United States with coastwise privileges, with Senate amendments to the House amendments thereto, and agree to the Senate amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendments to the House amendments, as follows:

Page 3, line 23, of the House engrossed amendment, strike out "berth" and insert "load".

Page 4, line 2, of the House engrossed amendment, strike out "berthing" and insert "loading".

Page 4, after line 4, of the House engrossed amendment, insert:

SEC. 6. Notwithstanding section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883), or any other provision of law to the contrary, the vessel known as the Scuba King, official numbered 532376, owned by Bernard Despins, shall be entitled to be documented to engage in the fisheries and the coastwise trade upon compliance with the usual requirements, so long as such vessel is, from the date of enactment of this section, continuously owned by a citizen of the United States. For the purposes of this section, the term "citizen of the United States" includes corporations, partnership, and associations, but only those which are citizens of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon (Mr. AUCOIN)?

Mr. McCLOSKEY. Mr. Speaker, reserving the right to object, I wonder if I could ask the gentleman from Oregon to explain what, if any, changes are in the bill from that that passed the House on suspension last August 26?

Mr. AUCOIN. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Oregon.

Mr. AUCOIN. Yes; I would be pleased to respond to my friend from California. The other body on September 19, 1980, passed S. 1442 with two changes. The Senate added another vessel to the six named in the bill, the *Scuba King*, which has the same characteristics as the other six vessels that the House included in its legislation.

In addition to that, the Senate changed the priority berthing to priority loading, a change which all agree is necessary so that vessels which have berthing priority will not tie up and occupy scarce dock space before the hold which it has contracted to carry is available for loading. Those are the only changes.

The SPEAKER pro tempore. The Chair would like to advise the gentleman from Oregon (Mr. AUCOIN) that the time now being consumed comes from the time of the gentleman from Wisconsin (Mr. KASTENMEIER).

Is there objection to the request of the gentleman from Oregon (Mr. AUCOIN)?

Mr. DANIELSON. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Chair now recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

DOCUMENTARY MATERIALS PRIVACY PROTECTION ACT

Mr. KASTENMEIER. Mr. Speaker, I yield myself 1 minute to express my thanks to the members of the committee who worked on this bill. I refer to some of the amendments which were in fact offered by various members of the full committee and the subcommittee of the Committee on the Judiciary and to indicate as a result of the colloquy between the gentleman from Illinois (Mr. McCLORY) and the gentleman from California (Mr. McCLOSKEY), who was an early proponent of legislation, that indeed section 3 is replaced by title II, Attorney General guidelines. It is quite explicit in terms of what it requires in terms of the development of guidelines. It calls for those guidelines to have the full force and effect of the Department of Justice regulations, and it also calls upon the Attorney General to report annually to the committees of the Congress in terms of this matter so that we will be able to monitor on a year-to-year basis the issuance of such warrants, and whether the procedures are as contemplated.

The SPEAKER pro tempore. The time of the gentleman from Wisconsin (Mr. KASTENMEIER) has expired.

Mr. KASTENMEIER. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I have come to the well reluctantly but necessarily because I oppose this bill. I think it is a bad bill, and I hope that tomorrow when the time comes to vote, it will be defeated.

I have not seen the amendment which the gentleman from Wisconsin refers to. Apparently it is not in print. I did inquire for it earlier this afternoon. So I do not know for sure what it contains.

However, I must therefore address mysel fto the bill as it is in print.

In the first place, I respectfuly submit that we are not here dealing with a question of constitutionality. The Supreme Court of the United States in the case of *Zurcher* v. *Stanford Daily*, 1978, reported at 436 U.S. at 547, found that this search, that this issuance of a warrant, was constitutional. We are not confronted with the issue of constitutionality.

I respectfully submit that if these activities are not unconstitutional, we are here, by this law, diminishing the availability of the search warrant to be used in connection with the enforcement of our criminal laws.

If these activities were unconstitutional, this bill would not be necessary because we can neither add to, nor subtract from, the Constitution by legislation.

I oppose the purposes of this bill, H.R. 3486, in their entirety. I believe that there should be no special exceptions from the coverage of the fourth amendment for those persons known as the press, nor for anyone else.

The bill would exempt from the reach of search warrants materials in the possession of persons who intend to disseminate the material to the public in some form of public communication, whatever that may be. There are certain limited exceptions.

In my opinion the Congress would be making a gross and unacceptable error if it were to create an elite class of persons, be they press or anyone else, who would enjoy a privileged status under our laws and the Constitution. It is fundamental in our system of justice that no one should be above the law and the Constitution. The Judiciary Committee itself made that point eminently clear when it voted articles of impeachment against former President Nixon. And the Supreme Court of the United States clearly did the same in its decision in the *United States* v. *Nixon*, 418 U.S. 683 (1974).

Those who fear that law enforcement has the right, under present law, to conduct unreasonable and unwarranted excursions into the private papers of the people could well read again the clear and exacting standards for searches which are set forth in the fourth amendment to the Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

And no warrants shall issue, but upon probable cause, supported by oath or affirmation,

And particularly describing the place to be searched, and the persons or things to be seized.

Those standards are high. They insure that the security of the people in their fundamental area of privacy shall not be violated, and that no search warrant can issue unless:

First. The proposed search is reasonable;

Second. There is probable cause;

Third. Supported by oath or affirmation;

Fourth. Describing with particularity;

Fifth. The place to be searched; and

Sixth. The persons or things to be seized.

These are very high standards. They have stood the test of time and trial since 1791; they have been briefed, argued, debated, and refined in numerous decisions of our courts; and they have provided the American people with a degree of security in their persons, homes, papers and effects that has never been equaled in any society.

Further, there are other safeguards which prevent the indiscriminate issuance of search warrants. For instance, we must remember that search warrants are not issued by the law enforcement authorities themselves. Those officers must go to court or a magistrate and apply for the issuance of the warrant. That application must reflect the probable cause and other particulars set forth in the fourth amendment, and it must be supported by oath or affirmation before the court will issue the warrant.

The special elite corps which the bill would protect in its section 2 is indefinable. I submit that very nearly anyone or everyone can reasonably contend that he plans to disseminate the documentary material in his possession to the public in some form of public communication; either now or later. This would certainly apply to anyone who has the intent of ever distributing to the public a newsletter, a mimeographed flyer, some gossip on a radio talk show, or a handbill, as well as to a traditional newspaper.

I respectfully submit that this is bad legislation, and it should be soundly defeated. Its great evils are that it creates an elite corps of persons who would be above the law—a classification to which a responsible and professional newsman should not subscribe; it creates sanctuaries for the concealment of evidence of crime; and it would impose severe and added burdens on law enforcement at a time when the public is crying out for more and more effective enforcement of our laws.

Here are some more of my objections: Who is covered by this bill? I do not know. I have studied it. In section 2(a) it says that—

It shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or to seize any work product materials possessed by a person.

□ 1620

Possessed by a person—what person? Any person. There is no limitation whatsoever so long as the possession is with a purpose to disseminate to the public a newspaper, book, broadcast, or similar form of public communication.

Well, I respectfully submit, Mr. Speaker, some day I intend to publish my memoirs a fortiori, everything in my files I do intend some day possibly to disseminate to the public in the form of a book, newspaper, broadcast, or other similar form of public communication.

I respectfully submit that that open door is available to anyone who might wish to use it.

Under subsection (b) under section 2, we go beyond "work product" to any documentary material; in fact, specifically "documentary materials, other than work product."

We now open the door completely and bring in everything that is documentary. That is defined later on in the bill to be almost every conceivable sort of thing, whether it be in print, tape, videotape, negative, film, out-take, or interview file; just about anything that is tangible. It is very broad, Mr. Speaker.

I also respectfully point out that this bill has been presented to the House in a somewhat unfortunate manner. The Whip Advisory refers to this as protecting "institutional press." There is nothing in the bill referring to institutional press. But if there were, I do not know how we would define it.

How about poor Tom Paine of our Revolution, who put out a flier once in a while to stir the spirit of freedom in our patriots? Would he qualify as institutional press? I doubt it. I think you and I, Mr. Speaker, and everyone else in this House has put out more press releases than Tom Paine generated in his entire life. Therefore, are we the press? Perhaps we are. If so, if this bill is enacted we cannot be searched, gentlemen.

And this bill, Mr. Speaker, not only prevents seizure, it prevents search. No person can search. He cannot search in a public parking lot. He cannot search anywhere. He simply cannot search. If what he is going after is work product or documentary material, no more search. That is the end of it.

The title of the bill speaks of "first amendment activities," yet the bill seems to be restricted to activities which relate to what is commonly called "the press." The first amendment provides that the Congress shall make no law—

Respecting an establishment of religion;

Or prohibiting the free exercise thereof;

Or abridging the freedom of speech;

Or of the press;

Or the right of the people peaceably to assemble; and

To petition the Government for a redress of grievances.

None of these basic rights is affected by this bill except, inferentially, freedom of the press. After indirectly touching that freedom the bill soars off into the unknown and prohibits all Government officials, Federal State, county, and local, from: First, searching for (no matter where); and second, from seizing, (no matter what the circumstances), documentary material.

I submit that is outrageous that all law enforcement officers are flatly prohibited from searching for documentary materials which are evidence of criminal activity solely because the possessor of them can represent that he has a purpose to disseminate the materials to the public in a "newspaper, book, broadcast, or other similar form of public communication," and then to define "documentary materials" in the broadest possible terms.

I seriously question that the Congress has the naked right to bar the search and seizure activities of non-Federal law enforcement officers in matters that do not violate the Constitution, and clearly the Supreme Court held in Zurcher against Stanford Daily that the events described therein were not unconstitutional. Yet this bill does precisely that, it bars State and local law enforcement officers from conducting searches for seizures of documentary evidence.

It has also been argued that the Supreme Court decision in Zurcher sets up a "new standard, of reasonableness." I submit, Mr. Speaker, that there is nothing new about that standard, it is as old as the fourth amendment itself. That amendment requires, we will remember, that—

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

Stating that the standard is "reasonable" is only the affirmative form of stating that the searches shall not be "unreasonable." Lastly, this bill is preferential in nature in that it favors unreasonably one class of persons over many others who are similarly situated. It is 180 degrees the opposite of "equality before the law."

I urge the defeat of this bill.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

It is true that the bill comes to the floor in a slightly different form than it emerged from the Committee on the Judiciary as a result of this amendment; but the result of the amendment, it seems to me, is to assure that the law enforcement agencies will continue to have the kind of authority which they require in connection with searches and seizures, which are in pursuance of enforcement of suspected criminal activity.

As a substitute for the elimination of the paragraph which would have limited the law enforcement authority in this area, there is a new section being added which specifies that the Attorney General shall within 6 months of the date of enactment of the act provide guidelines which would be a directory of Federal officers who feel that documentary materials which are in private possession are essential and are important to have in connection with the criminal prosecution.

It seems to me that those of us who objected to the provisions which would have limited law enforcement agencies are satisfied that this provision authorizing the establishment of guidelines is an adequate answer and will protect the law enforcement community. At least, that is my feeling and that is my expectation.

I do not want to do anything to limit or restrict full and fair law enforcement. I think that this legislation would not do that.

At the same time, it does seem that there was a public concern as a result of the search carried out in connection with the Stanford Daily situation. This would provide for the issuance of subpenas and not search warrants in connection with that kind of an investigation, that kind of a requirement or desire for documentary evidence.

So I have the feeling that the legislation is in good shape now and does respond to the needs of the law enforce-

ment community, at the same time protecting the constitutional interests of the private citizen. I believe that the measure should be overwhelmingly passed.

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. DANIELSON. Mr. Speaker, would the gentleman yield for a question?

Mr. KASTENMEIER. I yield for a question.

Mr. DANIELSON. What is the nature of the amendment which apparently accompanies the bill; would the gentleman state, so that the record will reflect it?

Mr. KASTENMEIER. The amendment consists of striking section 3 which was objected to, as pointed out by the gentleman from Illinois (Mr. McCLORY) by some Members, which was a requirement that the Federal Government in all cases of innocent third party searches go through the same procedures more or less as in section 2, and in lieu thereof placing Attorney General guidelines which are a slight variation of those enacted by the Senate in lieu of a statutory requirement that these warrants be obtained only in a particular way.

Mr. DANIELSON. In other words, section 3 as it appears in the printed bill has been stricken in its entirety and a different section, including the guidelines to which the gentleman refers, has been substituted in its place?

Mr. KASTENMEIER. Yes, and the guidelines consist of a single page that I thought was available to the gentleman. I am sorry it was not earlier so that the gentleman could have had a chance to examine it more closely.

Mr. DANIELSON. Section 4 remains as it was, I gather.

Mr. KASTENMEIER. Yes, the remedy section, indeed, as offered by the gentleman from Illinois (Mr. HYDE) and supported by the gentleman from California remains intact.

Mr. DANIELSON. That would be both section 4 and section 5 relative to the Tort Claims Act.

Mr. KASTENMEIER. Yes, exactly.

Mr. DANIELSON. There is a definition in the bill, subsection (c) on page 10, line 4.

Mr. KASTENMEIER. In terms of the definition, page 2 of the committee amendment, consisting really of technical amendments offered by the gentleman from Ohio (Mr. KINDNESS) were accepted and modified very slightly the definition section. This is reflected on page 2.

Mr. DANIELSON. On page 10, there is a definition of "any other governmental unit", to which I refer.

Mr. KASTENMEIER. That remains unchanged.

Mr. DANIELSON. There is no language within the bill that I am aware of that refers to any other governmental unit, so I am bringing that to the attention of the gentleman. I think it may be only a technical error, but I do not find any other use of that phrase within the bill.

Mr. KASTENMEIER. My memory is not precise on that point. I do not recall how the term is used.

Mr. DANIELSON. One other thing. This does restrict the right of not only Federal law enforcement officials, but it inhibits the right of State officials, county, municipal, or any others, as well, to use search warrants for evidentiary documentary material.

Mr. KASTENMEIER. Yes, as far as section 2 is concerned in terms of the first amendment, it always has been both a State and Federal bill.

Mr. DANIELSON. I thank the gentleman.

● Mr. QUAYLE. Mr. Speaker, I commend the House Judiciary Committee and my colleagues for completing action on H.R. 3486 the Documentary Materials Privacy Protection Act, a bill to remedy the Supreme Court's Zurcher against Stanford Daily decision, and bringing it to the floor.

I have worked to achieve just such a remedy since the Court ruled on this case on May 31, 1978. In this decision, the Court ruled that it is lawful to conduct surprise searches against a news organization, business, or private home even if the employees or occupants were innocent of wrongdoing.

This decision weakened the first and fourth amendments and intruded into the privacy not only of the media, but of all citizens.

On June 7, 1978, I introduced the Citizen Protection Act to mandate any law official use a subpena to gather information from a person who has "a reasonable expectation of privacy."

In making the decision, the Court specifically called for "congressional action to establish a nonconstitutional protection against possible abuses of the search warrant procedure."

Although the Zurcher case concerned a newspaper, the effect of the decision was much broader. In effect, every business, home, or office could be subject to a forcible entry and search even though none of the persons employed or residing there were suspected of a crime.

I do not argue that prosecutors and law enforcement officers should have the authority to gather evidence. My legislation, which is similar to that considered by the House, stated specifically that if a person is considered to be involved in a crime or if there is reasonable evidence that the material sought could be destroyed while the subpena is being sought, then other methods may be used.

However, I commend my colleagues for their steadfast support of freedom from unreasonable search and seizure. This freedom traces back to the colonial period when Samuel Adams drafted the "Rights of Colonists and the List of Infringements and Violations of Rights in 1772." By passing this bill we are in keeping with the great expectations of our forefathers.

It is the role of Congress to insure that the rights of all Americans are protected in 1980 as the framers of the Constitution intended in 1776. In passing this legislation we have carried out our duty to respond to the Court's challenge by mandating the use of the subpena rather than forced unannounced searches to innocent third parties.●

● Mr. KINDNESS. Mr. Speaker, I rise to contribute to the legislative history of H.R. 3486 which was considered earlier today.

During full committee markup, I raised several questions about certain words and phrases which were used in the bill because I felt that they lacked precision and thus could lead to confusion as to exactly what this bill protected and how law enforcement authorities were to comply with its provisions.

My first concern was the definition of "documentary materials." As stated in the bill, it seemed to be an attempt to give examples that related to the newsroom; yet, it failed to recognize the increasingly sophisticated means of recording information. The committee amendment includes a new definition which I believe more adequately reflects the modern-day meaning of "documents upon which information is recorded."

The second area of concern had to do with the phrase "the criminal offense for which the materials are sought." My question was "Sought for what?" I raised this and the previous question in a letter to Philip Heymann, Chief of the Criminal Division of the Department of Justice. I believe that my letter and his response, which are here submitted for the record, more fully explain my concern over this phraseology and the substitution, in the committee amendment, of the phrase "the criminal offense to which the materials relate."

HOUSE OF REPRESENTATIVES,
Washington, D.C., April 18, 1980.

Mr. PHILIP HEYMANN,
Assistant Attorney General, U.S. Department of Justice, Criminal Division, Washington, D.C.

DEAR PHIL: As you know, the House Judiciary Committee yesterday reported a bill intended to provide protection to newspersons and "innocent third parties" from searches such as that which prompted the Zurcher v. Stanford Daily case.

I am told that your division had quite a bit to do with the drafting of this legislation, and since the Committee was unable to answer my questions, I would like to pose them to you.

1. In the definition section, it is not at all clear to me what is meant by "tapes", "outtakes", and "interview files". Since video tapes are specifically mentioned, does "tapes" refer to just audio tapes? How about computer tapes? Isn't an "outtake" film on videotape? Is "interview file" a widely-accepted term of art in the news business and understood by law enforcement personnel so as to be a meaningful term to use? Isn't an "interview file" composed of written or printed material, audiotapes, photographs, etc. (which are otherwise listed). Just what does this term mean?

2. In four instances in the bill, the following language appears: ". . . the offense for which the materials are sought . . .". Are the materials sought for the investigation of the criminal offense? the prosecution of that offense? The language of the bill implies that the materials would be sought for the commission of the crime—an obviously unintended grammatical error. Should steps be taken to negate inferences that the materials sought be relevant to the prosecution of the offense or must be admissible evidence?

I have some difficulties with this legislation in other respects; but if the bill passes into law in this form. I don't want to share the embarrassment of having done nothing to at least clear up the areas discussed in this letter. I would appreciate your support in formulating amendment language to be offered when the bill is considered by the House of Representatives. Your early attention to these questions would be most helpful and I hope to hear from you before the full House of Representatives takes up this bill.

Sincerely yours,
THOMAS N. KINDNESS,
Member of Congress.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., June 9, 1980.

Hon. THOMAS N. KINDNESS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN KINDNESS: This is in response to the questions you raised concerning the language of certain provisions of H.R. 3486.

First, you are correct in noting that there is some overlap in the terms which are incorporated in the bill's definition of "documentary materials." It was intended that these terms serve as illustrations of the types of documentary materials which might be sought in a search coming within the scope of the bill as drafted by the Department of Justice for the Administration. They were not intended to be either all inclusive or mutually exclusive.

In light of the actions of the Committee in approving an expansion of the scope of the bill far beyond the area of First Amendment activities to which the bill was originally limited, the retention of these terms as illustrations of "documentary materials" may be out of place since they were examples of documentary materials likely to be held by those involved in First Amendment activities.

Your second question concerned the language "the offense for which the materials are sought." Perhaps this phrase could be clarified if it were amended to read "the offense to which the materials sought relate." Rule 41(b) of the Federal Rules of Criminal Procedure presently requires that materials sought by search bear a relationship to a particular criminal offense. Rule 41(b) provides:

"(b) Property Which May be Seized with a Warrant. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as a means of committing a criminal offense."

However, you are correct in suggesting that there should be no inference that the materials sought be admissible as evidence. Determinations of admissibility occur at suppression hearings and at trial. The question of the admissibility of the items to be seized as evidence at trial is not at issue at a warrant proceeding.

Since you expressed an interest in this legislation generally, I am enclosing a copy of the Attorney General's recent letter to the Chairman and members of the Senate Judiciary Committee concerning S. 1790, the Senate *Stanford Daily* bill.

Sincerely,
PHILIP B. HEYMANN,
Assistant Attorney General,
Criminal Division.●

● Mr. HYDE. Mr. Speaker, I rise in reluctant support of this legislation. Since the moment it emerged from the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, I opposed a provision then contained in section 3 of the bill and which was designed to extend the "subpena-first" rule to "all innocent third parties." At that time, I offered an amendment to strike that section 3 as a part thereof. Instead, guidelines have evolved and the Department of Justice has indicated a willingness to accept them. Apparently a compromise has been reached, the wisdom of which I am not yet convinced.

As has been stated, this legislation is principally designed to protect the public's right to know. It is not designed to make a sweeping change in constitutional law regarding the probable cause standard contained in the fourth amendment. In Zurcher against Stanford Daily, 436 U.S. 597 (1978), the Court held that the fourth amendment's minimal requirement for the issuance of a search warrant is probable cause to believe the evidence exists where you wish to search. Congress, of course, has the power to broaden and build upon that standard. This is what we have done with the creation of the "subpena first" rule now contained in the bill. By this procedure, law enforcement authorities must seek a subpena first before resorting to the issuance of a search warrant. Unfortunately, the sponsors of this legislation are not content to make changes which protect confidential informants from discovery pursuant to unannounced searches. They seek to extend this rule to "all third parties," including employees and relatives of criminals.

On March 31, 1980, Attorney General Benjamin Civiletti denounced the passage of H.R. 3486 with section 3 as a part thereof. Similarly, the other body was unable to pass its version of the bill with section 3 as a part thereof. Instead, guidelines have evolved and the Department of Justice has indicated a willingness to accept them. Apparently a compromise has been reached, the wisdom of which I am not yet convinced.

In my judgment there is no logical distinction between guidelines and the provisions of section 3. This bill is designed to protect the public's right to know, and in doing so to protect confidential sources whose identities may inadvertently be discovered during an unannounced search pursuant to a warrant. It is not designed to protect employees of organized crime and family members who may frequently serve as statutorily created sanctuaries in which previously accessible evidence can be stored indefinitely.

It is because I sincerely support the public's right to know and the protections provided in this bill to insure that right that I will support this bill. I hope the guidelines the Department issues will not hinder the performance of its law enforcement responsibilities.●

● Mr. RAILSBACK. Mr. Speaker, I would like to commend the chairman and members of the subcommittee for their efforts on H.R. 3486, which I believe represents a reasonable approach to the sensitive issues posed by the Supreme Court's decision in Zurcher against Stanford Daily. I would also like to commend my good friend and colleague from Indiana (DAN QUAYLE) as well as my good friend and colleague, PETE McCLOSKEY, who have been instrumental in the consideration and shaping of this legislation.

In Zurcher, the Court held that neither the fourth amendment's prohibition of unreasonable searches and seizures, nor the first amendment's protection of freedom of the press, prohibited the police, pursuant to a warrant from searching the office of a newspaper, although no member of the newspaper's staff was suspected of criminal activity. However, as the Court acknowledged in its opinion, the Congress and State legislatures are not precluded from passing legislation to provide the safeguards that the Court ruled were not compelled by the Constitution.

I think, to fully appreciate the implications of the Zurcher decision, it is imperative to view it in conjunction with the Supreme Court's 1967 decision in Warden against Hayden. Pre-Hayden, warrants were used to search for contraband, fruits, and instrumentalities of a crime, but mere evidence such as documents, had never been considered a lawful object of a search. In Warden against Hayden, the Court overruled the "mere evidence" rule and as a result, any material that is considered relevant to a criminal investigation is subject to search and seisure. But the subject of the search in Warden was a criminal suspect. Not until Zurcher were nonsuspects made subject to broad searches.

As Justice Stevens noted in his dissent in Zurcher.

> Countless law-abiding citizens—doctors, lawyers, merchants, customers, bystanders—may have documents in their possession that relate to an ongoing criminal investigation. The consequences of subjecting this large category of persons to unannounced police searches are extremely serious. The ex parte warrant procedure enables the prosecutor to obtain access to privileged documents that could not be examined if advance notice gave the custodian an opportunity to object. The search for the documents described in a warrant may involve the inspection of files containing other private matter.

H.R. 3486 is based on the principle that the Government should not make unnecessary or unreasonable intrusions into an innocent party's affairs. In this regard, H.R. 3486 would provide statutory protection for press searches conducted by State, local, and Federal law enforcement officials. There will be a committee compromise amendment covering nonsuspects not engaged in first amendment activities. The amendment mandates that the U.S. Department of Justice create guidelines for Federal searches seeking documentary materials and brings H.R. 3486 into general conformity with the Senate bill. The value of the guidelines is that they will serve as an example for the State and local communities where all of the abuses have, to date, occurred.

I believe H.R. 3486 represents a careful balancing of the interest of law enforcement on the one hand, and the privacy rights of individuals on the other. I urge my colleagues to support the adoption of H.R. 3486.●

● Mr. SAWYER. Mr. Speaker, I rise in support of H.R. 3486, an important bill that would modify the Supreme Court's decision in Zurcher against Stanford

Daily. During the 5 days of hearings held by the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, it was the consensus of the witnesses that Zurcher posed a serious threat to the constitutionally guaranteed rights of individual privacy and freedom of the press.

H.R. 3486 creates a statutory protection for press searches of State, local, and Federal law enforcement officials. For other nonsuspects not engaged in first amendment activities, H.R. 3486 mandates that the Justice Department create guidelines for searches seeking documentary materials. Originally, I had introduced my own bill, H.R. 1305, that would protect all innocent third parties from police searches except under certain conditions. This approach was the recommendation of a Republican task force on privacy which I chaired during the 95th Congress. However, I recognize that the guideline approach is an improvement over current law and can provide significant protection for individual privacy rights.

It is my hope, and the committee's intention, that State legislatures will look toward H.R. 3486 as a model and draft their own responses to Zurcher against Stanford Daily. I urge an "aye" vote on H.R. 3486.●

● Mr. KOSTMAYER. Mr. Speaker, today I join the gentleman from North Carolina (Mr. PREYER), the distinguished chairman of the Subcommittee on Government Information and Individual Rights, in introducing legislation to amend the Privacy Act of 1974 and the Communications Act of 1934 to provide for the protection of telephone records.

The need for legislation such as that introduced today by the gentleman from North Carolina and myself has been apparent since the U.S. Supreme Court's decision in 1979 in the case of Smith against Maryland. The Court held then that the installation of a pen register, a device to record the telephone numbers dialed, at the request of the police is not a search within the meaning of the fourth amendment and does not require a warrant. The Court reasoned that a private citizen's use of a telephone carries an assumed risk that the telephone company will reveal information about dialed numbers to the police, in other words that there is no expectation of privacy on the part of the citizen.

Mr. Speaker, I believe the Smith against Maryland decision is contrary to the public interest and contrary to recent congressional intent to tighten—not weaken—fourth amendment privacy safeguards. For example, in title III of the Omnibus Crime and Safe Streets Act of 1968 Congress forbade the use of electronic surveillance except when judiciary authorized upon application by law enforcement authorities in limited circumstances. Congress determined that a wire tap is a particularly intrusive investigatory device which demands considerable safeguards against abuse. Title III was enacted to give the police a means to use wire taps and other forms of electronic surveillance necessary to combat sophisticated forms of crime, and to permit such use only consistent with the rights of individuals and consistent with constitutional interpretations of the right of privacy.

The Supreme Court's approval of the installation of pen registers last year without a court order or warrant, is in sharp contrast to the policy laid down by Congress in the 1968 act.

Furthermore, in the Foreign Intelligence Surveillance Act of 1978, Congress required judicial authorization not only for electronic wiretaps but also for pen register installation in connection with foreign intelligence surveillance activities. If Congress has deemed it necessary for judicial approval for pen register surveillance of foreign agents, certainly U.S. citizens deserve no less protection under our laws.

In 1977, Mr. Speaker, the Privacy Protection Study Commission, recommended to Congress in its report that access to telephone records by Government agents be permitted only through the use of a subpena. The Privacy Protection Study Commission (PPSC) reviewed the recordkeeping practices of the telephone companies and also the nature of the information needed by the telephone company to accurately bill its customers. Such records normally include such information as the date, time, and duration of each call as well as the numbers—even local numbers—dialed from a subscriber's phone. It is therefore quite simple upon examination of such a record to draw a fairly complete and I think intrusive profile of the telephone subscriber's social, business, and political contacts.

The record is the property of the telephone company, and normally is used solely for billing purposes. But contrary to the reasoning of the Supreme Court, should not the subscriber have some proprietary interest in the information contained in the record if it is used for any other purpose besides billing?

The PPSC reviewed the practices of the American Telephone & Telegraph Co. and its subsidiaries and learned that it has been their policy to provide customer records to Government agencies upon the presentation of administrative subpena or summons, with notice to the customer. However, a Government agency need only certify to the telephone company that contemporaneous notice to the customer would impede or obstruct an official investigation, and there will be no notice for a period of 90 days. The telephone company told the PPSC that 80 to 85 percent of agency requests for records contain such a nondisclosure directive.

A.T. & T. told the Privacy Commission that it would not alter its policy to require a court order rather than administrative summons or letter of demand from the investigating agency, unless Congress enacted such a requirement into law. For that reason, the PPSC concluded that access to telephone records by Government agents should be permitted only through the use of a subpena with notice to the customer and with the right for the customer to challenge the Government's actions, and so recommended.

The legislation I have introduced today adopts this recommendation, but provides that if an investigation would be compromised by a contemporaneous disclosure, the Government can secure such records through a warrant certified by a judge showing probable cause to believe that criminal activity is involved and that the information sought is relevant to the investigation and could not reasonably be obtained elsewhere. The legislation therefore fully protects legitimate inquiries on the part of the Government which would be compromised by disclosure.

Mr. Speaker, Justice Felix Frankfurter once wrote, the history of liberty has largely been the history of procedural safeguards.

Congress over the last decade has been responsive to the need for such safeguards through the enactment of legislation such as the Privacy Act, 1974, the Family Education Rights and Privacy Act, 1974, and the Right to Financial Privacy Act, 1978, incorporated as title XI of the Financial Institutions Control Act.

The need for procedural safeguards in the area of telephone records has been sharpened in recent days by the disclosure that the Department of Justice within the last year has subpenaed telephone records of the New York Times and one of its reporters contrary to the Department's own guidelines articulated in the wake of the Supreme Court decision in Zurcher against Stanford Daily (1978). This incident has been discussed in the press, on the editorial pages of the Nation's newspapers and was raised by the gentleman from North Carolina on the floor of the House on September 10, 1980. The actions of the Department of Justice in procuring telephone records of reporters—reporters not suspected of any crime nor the targets of any investigations—is troubling to me and is further reason why I believe legislation is needed.

Finally, Mr. Speaker, I might point out the legislation that I am introducing is identical to that bill introduced today by the chairman of the subcommittee, the gentleman from North Carolina (Mr. PREYER), in all but two respects. Section IV(c)(2) of my bill mandates that under ordinary circumstances telephone records held by the phone company be destroyed within 180 days. This provision corresponds to existing telephone company policies. Also, the standard established by my legislation for issuance of a warrant without notification to the subscriber is that of probable cause, not the standard of reasonable cause used in the legislation of the gentleman of North Carolina. Probable cause is the standard required under the fourth amendment for a search warrant.

Mr. Speaker, I urge my colleagues to join with the gentleman from North Carolina and myself in supporting legislation to extend privacy protections to telephone records of the citizens of this country.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, H.R. 3486, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to limit governmental search and seizure of documentary materials possessed by persons, to provide a remedy for persons aggrieved by violations of the provisions of this act, and for other purposes."

A motion to reconsider was laid on the table.

House Resolution 749 was laid on the table.

□ 1630

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 1790), entitled the "Privacy Protection Act of 1980."

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Protection Act of 1980".

TITLE I—FIRST AMENDMENT PRIVACY PROTECTION

PART A—UNLAWFUL ACTS

SEC. 101. (a) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense for which such materials are sought: *Provided, however,* That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense for which such materials are sought consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, United States Code, or section 224, 225, or 227 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2277), or section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783)); or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(b) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense for which such materials are sought: *Provided, however,* That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense for which such materials are sought consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, United States Code, or section 224, 225, or 227 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2277), or section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783)); or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(3) there is reason to believe that the giving of notice pursuant to a subpena duces tecum would result in the destruction, alteration, or concealment of such materials; or

(4) such materials have not been produced in response to a court order directing compliance with a subpena duces tecum, and—

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpena would threaten the interests of justice.

(c) In the event a search warrant is sought pursuant to paragraph (4)(B) of subsection (b), the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

PART B—REMEDIES, EXCEPTIONS, AND DEFINITIONS

SEC. 105. This Act shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of, or at international points of, entry into the United States in order to enforce the customs laws of the United States.

SEC. 106. (a) A person aggrieved by a search for or seizure of materials in violation of this Act shall have a civil cause of action for damages for such search or seizure—

(1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this Act, or against any other governmental unit, all of which shall be liable for violations of this Act by their officers or employees while acting within the scope or under color of their office or employment; and

(2) against an officer or employee of a State who has violated this Act while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity as provided in paragraph (1).

(b) It shall be a complete defense to a civil action brought under paragraph (2) of subsection (a) that the officer or employee had a reasonable good faith belief in the lawfulness of his conduct.

(c) The United States, a State, or any other governmental unit liable for violations of this Act under subsection (a)(1), may not assert as a defense to a claim arising under this Act the immunity of the officer or employee whose violation is complained of or his reasonable good faith belief in the lawfulness of his conduct, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

(d) The remedy provided by subsection (a)(1) against the United States, a State, or any other governmental unit is exclusive of any other civil action or proceeding for conduct constituting a violation of this Act, against the officer or employee whose violation gave rise to the claim, or against the estate of such officer or employee.

(e) Evidence otherwise admissible in a proceeding shall not be excluded on the basis of a violation of this Act.

(f) A person having a cause of action under this section shall be entitled to recover actual damages but not less than liquidated damages of $1,000, such punitive damages as may be warranted, and such reasonable attorneys' fees and other litigation costs reasonably incurred as the court, in its discretion, may award: *Provided, however,* That the United States, a State, or any other governmental unit shall not be liable for interest prior to judgment.

(g) The Attorney General may settle a claim for damages brought against the United States under this section, and shall promulgate regulations to provide for the commencement of an administrative inquiry following a determination of a violation of this Act by an officer or employee of the United States and for the imposition of administrative sanctions against such officer or employee, if warranted.

(h) The district courts shall have original jurisdiction of all civil actions arising under this section.

SEC. 107. (a) "Documentary materials", as used in this Act, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, tapes, videotapes, negatives, films, out-takes, and interview files, but does not include contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used as, the means of committing a criminal offense.

(b) "Work product materials", as used in this Act, means materials, other than contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used, as the means of committing a criminal offense, and—

(1) in anticipation of communicating such materials to the public, are prepared, produced, authored, or created, whether by the person in possession of the materials or by a person other than the person in possession of the materials;

(2) are possessed for the purposes of communicating such materials to the public; and

(3) include mental impressions, conclusions, opinions, or theories of the person who prepared, produced, authorized, or created such material.

(c) "Any other governmental unit", as used in this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

SEC. 108. The provisions of this title shall become effective on October 1, 1980, except that insofar as such provisions are applicable to a State or any governmental unit other than the United States, the provisions of this title shall become effective one year from the date of enactment of this Act.

TITLE II—ATTORNEY GENERAL GUIDELINES

SEC. 201. (a) The Attorney General shall, within six months of the date of enactment

of this Act, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials are sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained; and

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship.

(b) The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on, the use of search warrants by Federal officers or employees for documentary materials described in subsection (a)(3).

(c) An issue relating to the compliance, or to the failure to comply, with guidelines issued pursuant to this section may not be litigated, and a court may not entertain such an issue as a basis for the suppression or exclusion of evidence.

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KASTENMEIER moves to strike out all after the enacting clause of the Senate bill, S. 1790, and to insert in lieu thereof the provisions of H.R. 3486, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to limit governmental search and seizure of documentary materials possessed by persons, to provide a remedy for persons aggrieved by violations of the provisions of this act, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3486) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 1790

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees: Messrs. KASTENMEIER, DANIELSON, MAZZOLI, HARRIS, GUDGER, CARR, RAILSBACK, SAWYER, and MOORHEAD of California.

There was no objection.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 3486, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

HOSTAGE RELIEF ACT OF 1980

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7085), to provide certain benefits to individuals held hostage in Iran and to similarly situated individuals, and for other purposes as amended.

The Clerk read as follows:

H.R. 7085

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hostage Relief Act of 1980".

TITLE I—SPECIAL PERSONNEL BENEFITS

DEFINITIONS

SEC. 101. For the purposes of this title—

(1) The term "American hostage" means any individual who, while—

(A) in the civil service or the uniformed services of the United States, or

(B) a citizen or resident alien of the United States rendering personal service to the United States abroad similar to the service of a civil officer or employee of the United States (as determined by the Secretary of State),

is placed in a captive status during the hostage period.

(2) The term "hostage period" means the period beginning on November 4, 1979, and ending on the later of—

(A) the date the President specifies, by Executive order, as the date on which all citizens and resident aliens of the United States who were placed in a captive status due to the seizure of the United States Embassy in Iran have been returned to the United States or otherwise accounted for, or

(B) January 1, 1983.

(3) The term "family member", when used with respect to any American hostage, means—

(A) any dependent (as defined in section 5561 of title 5, United States Code) of such hostage; and

(B) any member of the hostage's family or household (as determined under regulations which the Secretary of State shall prescribe).

(4) The term "captive status" means a missing status arising because of a hostile action abroad—

(A) which is directed against the United States during the hostage period; and

(B) which is identified by the Secretary of State in the Federal Register.

(5) The term "missing status"—

(A) in the case of employees, has the meaning given it in section 5561(5) of title 5, United States Code;

(B) in the case of members of the uniformed services, has the meaning given it in section 551(2) of title 37, United States Code; and

(C) in the case of other individuals, has a similar meaning as that provided under such sections, as determined by the Secretary of State.

(6) The terms "pay and allowances", "employee", and "agency" have the meanings given to such terms in section 5561 of title 5, United States Code, and the terms "civil service", "uniformed services", and "armed forces" have the meanings given to such terms in section 2101 of such title 5.

PAY AND ALLOWANCES MAY BE ALLOTTED TO SPECIAL SAVINGS FUND

SEC. 102. (a) The Secretary of the Treasury shall establish a savings fund to which the head of an agency may allot all or any portion of the pay and allowances of any American hostage which are for pay periods during which the American hostage is in a captive status and which are not subject to an allotment under section 5563 of title 5, United States Code, under section 553 of title 37, United States Code, or under any other provision of law.

(b) Amounts so allotted to the savings fund shall bear interest at a rate which, for any calendar quarter, shall be equal to the average rate paid on United States Treasury bills with three-month maturities issued during the preceding calendar quarter. Such interest shall be compounded quarterly.

(c) Amounts may be allotted to the savings fund from pay and allowances for any pay period ending after November 4, 1979, and before the establishment of the savings fund. Interest on amounts allotted from the pay and allowances for any such pay period shall be calculated as if the allotment had occurred at the end of the pay period.

(d) Amounts in the savings fund credited to any American hostage shall be considered as pay and allowances for purposes of section 5563 of title 5, United States Code, (or in the case of a member of the uniformed services, for purposes of section 553 of title 37, United States Code) and shall otherwise be subject to withdrawal under procedures which the Secretary of the Treasury shall establish.

MEDICAL AND HEALTH CARE AND RELATED EXPENSES

SEC. 103. Under regulations prescribed by the President, the head of an agency may pay (by advancement or reimbursement) any individual who is an American hostage, or any family member of such an individual, for medical and health care, and other expenses related to such care, to the extent such care—

(1) is incident to that individual being an American hostage; and

(2) is not covered by insurance.

EDUCATION AND TRAINING

SEC. 104. (a)(1) Under regulations prescribed by the President, the head of an agency shall pay (by advancement or reimbursement) a spouse or child of an American hostage for expenses incurred for subsistence, tuition, fees, supplies, books, and equipment, and other educational expenses, while attending an educational or training institution.

(2) Except as provided in paragraph (3), payments shall be available under this subsection for a spouse or child of an individual who is an American hostage for education or training which occurs—

(A) after the ninetieth day after the date the individual is placed in a captive status, and

(B) on or before—

(i) the end of any semester or quarter (as appropriate) which begins before the date on which the hostage ceases to be in a captive status, or

(ii) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the 12-week period following that date.

In order to respond to special circumstances, the President may specify a date for purposes of cessation of assistance under subparagraph (B) which is later than the date which would otherwise apply under subparagraph (B).

(3) In the event an American hostage dies and the death is incident to that individual being an American hostage, payments shall be available under this subsection for a spouse or child of an individual who is an American hostage for education or training which occurs after the date of death.

(4) The preceding provisions of this subsection shall not apply with respect to any

spouse or child who is eligible for assistance under chapter 35 of title 38, United States Code.

(b)(1) In order to respond to special circumstances, the head of an agency may, under regulations prescribed by the President, pay (by advancement or reimbursement) an American hostage for expenses incurred for subsistence, tuition, fees, supplies, books, and equipment, and other educational expenses, while attending an educational or training institution.

(2) Payments shall be available under this subsection for an American hostage for education or training which occurs—

(A) after the termination of such hostage's captive status, and

(B) on or before—

(i) the end of any semester or quarter (as appropriate) which begins before the date which is 10 years after the day on which the hostage ceases to be in a captive status, or

(ii) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the 12-week period following that date.

(c) Assistance under this section shall be discontinued for any individual whose conduct or progress is unsatisfactory under standards consistent with those established pursuant to section 1724 of title 38, United States Code.

(d) In no event may assistance be provided under this section for any individual for a period in excess of 45 months (or the equivalent thereof in part-time education or training).

(e) Regulations prescribed by the President under this section shall provide that the program under this section be consistent with the assistance program under chapters 35 and 36 of title 38, United States Code.

EXTENSION OF APPLICABILITY OF CERTAIN BENEFITS OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

SEC. 105. (a) Under regulations prescribed by the President, an American hostage is entitled to the benefits provided by the Soldiers' and Sailors' Civil Relief Act of 1940 (40 U.S.C. App. 501 et seq.), including the benefits provided by section 701 (50 U.S.C. App. 591) but excluding the benefits provided by sections 104, 105, 106, 400 through 408, 501 through 512, and 514 (50 U.S.C. App. 514, 515, 516, 540 through 548, 561 through 572, and 574).

(b) In applying such Act for purposes of this section—

(1) the term "person in the military service" is deemed to include any such American hostage;

(2) the term "period of military service" is deemed to include the period during which such American hostage is in a captive status; and

(3) references to the Secretary of the Army, the Secretary of the Navy, the Adjutant General of the Army, the Chief of Naval Personnel, and the Commandant, United States Marine Corps, are deemed to be references to the Secretary of State.

(c) The preceding provisions of this section shall not apply with respect to any American hostage covered by such provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 by reason of being in the armed forces.

APPLICABLITY TO COLOMBIAN HOSTAGE

SEC. 106. Notwithstanding the requirements of section 101(1), for purposes of this title, Richard Starr of Edmonds, Washington, who, as a Peace Corps volunteer, was held captive in Colombia and released on or about February 10, 1980, shall be held and considered to be an American hostage placed in a captive status on November 4, 1979.

EFFECTIVE DATE

SEC. 107. The preceding provisions of this title shall take effect as of November 4, 1979.

TITLE II—TAX PROVISIONS

SEC. 201. COMPENSATION EXCLUDED FROM GROSS INCOME.

For purposes of the Internal Revenue Code of 1954, the gross income of an individual who was at any time an American hostage does not include compensation from the United States received for any month during any part of which such individual was—

(1) in captive status, or

(2) hospitalized as a result of such individual's captive status.

SEC. 202. INCOME TAXES OF HOSTAGES WHERE DEATH RESULTS FROM CAPTIVE STATUS.

(a) GENERAL RULE.—In the case of an individual who was at any time an American hostage and who dies as a result of injury or disease or physical or mental disability incurred or aggravated while such individual was in captive status—

(1) any tax imposed by subtitle A of the Internal Revenue Code of 1954 shall not apply with respect to—

(A) the taxable year in which falls the date of such individual's death, or

(B) any prior taxable year ending on or after the first day such individual was in captive status, and

(2) any tax imposed under such subtitle A for taxable years preceding those specified in paragraph (1) which is unpaid at the date of such individual's death (including interest, additions to the tax, and additional amounts)—

(A) shall not be assessed,

(B) if assessed, the assessment shall be abated, and

(C) if collected, shall be credited or refunded as an overpayment.

(b) DEATH MUST OCCUR WITHIN 2 YEARS OF CESSATION OF CAPTIVE STATUS.—This section shall not apply unless the death of the individual occurs within 2 years after such individual ceases to be in captive status.

SEC. 203. SPOUSE MAY FILE JOINT RETURN.

(a) GENERAL RULE.—If an individual is an American hostage who is in captive status, such individual's spouse may elect to file a joint return under section 6013(a) of the Internal Revenue Code of 1954 for any taxable year—

(1) which begins on or before the day which is 2 years after the date on which the hostage period ends, and

(2) for which such spouse is otherwise entitled to file such a joint return.

(b) CERTAIN RULES MADE APPLICABLE.—For purposes of subsection (a), paragraphs (2) and (4) of section 6013(f) of such Code (relating to joint return where individual is in missing status) shall apply as if the election described in subsection (a) of this section were an election described in paragraph (1) of such section 6013(f).

SEC. 204. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF CAPTIVE STATUS.

(a) GENERAL RULE.—In the case of any individual who was at any time an American hostage, any period during which he was in captive status (and any period during which he was outside the United States and hospitalized as a result of captive status), and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) whether any of the acts specified in paragraph (1) of section 7508(a) of the Internal Revenue Code of 1954 was performed within the time prescribed therefor, and

(2) the amount of any credit or refund (including interest).

(b) APPLICATION TO SPOUSE.—The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after the date on which the hostage period ends.

(c) Section 7508(d) MADE APPLICABLE.—Subsection (d) of section 7508 of the Internal Revenue Code of 1954 shall apply to subsection (a) in the same manner as if the benefits of subsection (a) were provided by subsection (a) of such section 7508.

SEC. 205. DEFINITIONS AND SPECIAL RULES.

(a) AMERICAN HOSTAGE.—For purposes of this title, the term "American hostage" means any individual who, while—

(1) in the civil service or the uniformed services of the United States, or

(2) a citizen or resident alien of the United States rendering personal service to the United States abroad similar to the service of a civil officer or employee of the United States (as determined by the Secretary of State),

is placed in a captive status during the hostage period.

(b) HOSTAGE PERIOD.—For purposes of this title, the term "hostage period" means the period beginning on November 4, 1979, and ending on whichever of the following dates is the earlier:

(1) the date the President specifies, by Executive order, as the date on which all citizens and resident aliens of the United States who were placed in a captive status due to the seizure of the United States Embassy in Iran have been returned to the United States or otherwise accounted for, or

(2) December 31, 1981.

(c) CAPTIVE STATUS.—For purposes of this title—

(1) IN GENERAL.—The term "captive status" means a missing status arising because of a hostile action abroad—

(A) which is directed against the United States during the hostage period, and

(B) which is identified by the Secretary of State in the Federal Register.

(2) MISSING STATUS DEFINED.—The term "missing status"—

(A) in the case of employees, has the meaning given it in section 5561(5) of title 5, United States Code,

(B) in the case of members of the uniformed services, has the meaning given it in section 551(2) of title 37, United States Code, and

(C) in the case of other individuals, has a similar meaning as that provided under such sections, as determined by the Secretary of State.

For purposes of the preceding sentence, the term "employee" has the meaning given to such term by section 5561(2) of title 5, United States Code.

(d) HOSPITALIZED AS A RESULT OF CAPTIVE STATUS.—

(1) IN GENERAL.—For purposes of this title, an individual shall be treated as hospitalized as a result of captive status if such individual is hospitalized as a result of injury or disease or physical or mental disability incurred or aggravated while such individual was in captive status.

(2) 2-YEAR LIMIT.—Hospitalization shall be taken into account for purposes of paragraph (1) only if it is hospitalization—

(A) occurring on or before the day which is 2 years after the date on which the individual's captive status ends (or, if earlier, the date on which the hostage period ends), or

(B) which is part of a continuous period of hospitalization which began on or before the day determined under subparagraph (A).

(e) CIVIL SERVICE; UNIFORMED SERVICES.—For purposes of this section, the terms "civil service" and "uniformed services" have the

meanings given to such terms by section 2101 of title 5, United States Code.

(f) APPLICATION OF TITLE TO ALL TEHRAN HOSTAGES.—In the case of any citizen or resident alien of the United States who is determined by the Secretary of State to have been held hostage in Tehran at any time during November 1979, for purposes of this title—

(1) such individual shall be treated as an American hostage whether or not such individual meets the requirements of paragraph (1) or (2) of subsection (a), and

(2) if such individual was not in the civil service or the uniformed services of the United States—

(A) section 201 shall be applied by substituting "earned income (as defined in section 911(b) of the Internal Revenue Code of 1954) attributable to" for "compensation from the United States received for", and

(B) the amount excluded from gross income under section 201 for any month shall not exceed the monthly equivalent of the annual rate of basic pay payable for level V of the Executive Schedule.

(g) APPLICATION OF TITLE TO INDIVIDUAL HELD CAPTIVE IN COLOMBIA.—For purposes of this title, Richard Starr of Edmonds, Washington, who, as a Peace Corps volunteer, was held captive in Colombia, shall be treated as an American hostage who was in captive status beginning on November 4, 1979, and ending on February 10, 1980.

(h) SPECIAL RULES.—

(1) COMPENSATION.—For purposes of this title, the term "compensation" shall not include any amount received as an annuity or as retirement pay.

(2) WAGE WITHHOLDING.—Any amount excluded from gross income under section 201 shall not be treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1954.

SEC. 206. STUDY OF TAX TREATMENT OF HOSTAGES.

(a) STUDY.—The Chief of Staff of the Joint Committee on Taxation shall study all aspects of the tax treatment of citizens and resident aliens of the United States who are taken hostage or are otherwise placed in a missing status.

(b) REPORT.—The Chief of Staff of the Joint Committee on Taxation shall, before July 1, 1981, report the results of the study made pursuant to subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—TREATMENT OF THE HOSTAGES IN IRAN

VISITS BY THE INTERNATIONAL RED CROSS

SEC. 301. (a) The Congress finds that—

(1) the continued illegal and unjustified detention of the American hostages by the Government of Iran has resulted in the deterioration of relations between the United States and Iran; and

(2) the protracted length and the conditions of their confinement have reportedly endangered the physical and mental well-being of the hostages. (b) Therefore, it is the sense of the Congress that the President should make a formal request of the International Committee of the Red Cross to—

(1) make regular and periodic visits to the American hostages being held in Iran for the purpose of determining whether the hostages are being treated in a humane and decent manner and whether they are receiving proper medical attention;

(2) urge other countries to solicit the cooperation of the Government of Iran in the visits to the hostages by the International Committee of the Red Cross; and

(3) report to the United States its findings after each such visit.

The SPEAKER pro tempore. Is a second demanded?

Mr. BUCHANAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. FASCELL) will be recognized for 20 minutes, and the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Speaker, I yield to the distinguished chairman of the full committee, the gentleman from Wisconsin (Mr. ZABLOCKI).

APPOINTMENT OF CONFEREES ON H.R. 6790, FOREIGN SERVICE ACT OF 1980

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees: From the Committee on Foreign Affairs, Messrs. FASCELL, ZABLOCKI, MICA, GRAY, BUCHANAN, and PRITCHARD; from the Committee on Post Office and Civil Service, Messrs. HANLEY, FORD of Michigan, Mrs. SCHROEDER, Messrs. CLAY, TAYLOR, and LEACH of Iowa.

There was no objection.

The SPEAKER pro tempore. The Chair now recognizes the gentleman from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have before us today H.R. 7085, the Hostage Relief Act of 1980, which has been considered by three committees of the House: The Committee on Foreign Affairs, Post Office and Civil Service, and Ways and Means. What we are considering is a compromise substitute for this legislation.

H.R. 7085, as amended, would provide certain relief benefits to our hostages in Iran and to their families. I will discuss the provisions contained in title I of the bill relating to special personnel benefits, and title III of the bill regarding the treatment of the hostages in Iran. I will then yield to the chairman of the Ways and Means Committee for the purpose of discussing the tax benefits contained in title II.

Section 101 of the bill contains definitions, an effective date of November 4, 1979, and a sunset provision which is the later of the date on which the President determines that all Government employees and resident aliens who were held hostage in Iran have been returned or accounted for, or January 1, 1983.

Section 102 sets up a special interest-bearing savings fund into which the unallotted portion of a hostage's pay could be deposited. This fund would earn interest at a rate which is equal to the average rate paid on U.S. Treasury bills with 3-month maturities issued during the preceding calendar quarter. The interest would be compounded quarterly.

Section 103 provides for the payment of medical and health care expenses—by advancement or reimbursement—and related expenses of the hostages and their families, to the extent that they are not covered by medical insurance and that such treatment is related to an individual being an American hostage.

Section 104 provides educational and training benefits for the spouse or child of a hostage. The benefits would start after the 90th day an individual is placed in a captive status and would stop at the end of any semester or quarter which began before the date on which the hostage ceased to be in a captive status. However, the President may, under special circumstances, extend the benefits for a longer period of time.

Section 104 also contains a provision that in the event an American hostage should die and the death is related to that individual being a hostage, payments will be made for the spouse or child for education or training after the date of death.

Another benefit in this section would provide education or training to a former hostage, under special circumstances. Such a benefit would be available under regulations prescribed by the President. They would not begin until after the end of the hostage's captive status and would be in effect for 10 years after that date, but the benefits themselves would not be in excess of 45 months or the part-time equivalent thereof.

Section 105 gives the hostages relief from any civil actions which may be taken against them during their captivity. It brings into effect certain provisions of the Soldiers' and Sailors' Civil Relief Act of 1940. The benefits provided by that act would prevent a hostage from being sued in a civil court until that individual is in a position to respond to the action.

Section 106 gives the benefits contained in H.R. 7085, as amended, to Richard Starr, who, as a Peace Corps volunteer, was held captive in Colombia and was released in February 1980. The benefits would begin as if he were in a captive status on November 4, 1979.

Section 107 provides an effective date of November 4, 1979 to title I of the legislation.

Title III of H.R. 7085, as amended, calls for the President to make a formal request of the International Red Cross to make regular and periodic visits to the hostages to determine whether they are being treated in a humane and decent manner and are receiving proper medical attention. It also states that the International Red Cross should urge other countries to ask for the cooperation of the Government of Iran to allow such visits and that the International Red Cross should report to the United States its findings after each such visit.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, I rise in support of H.R. 7085, as amended by the compromise substitute at the desk.

This legislation is intended as an expression of the Nation's recognition of the difficulties faced by those held hostage as a result of their Government service. While similar legislation has beeen enacted in the past for those in the military service, the Congress has not expanded such protection to civilians in Government service. The benefits contained in H.R. 7085, as amended, are based on those which were given to POW's as a result of the Vietnam war. Some of those benefits are still in effect and thus give the military personnel who are being held hostage some relief, but the civilian Government employees still have no such relief for themselves or their families.

The Congress must act now to alleviate, to the extent possible, the burdens of the hostages and their families and to make certain that all necessary assistance is provided upon their return home. It must assure that any assistance these families require is readily available. H.R. 7085, as amended, does just that, as the distinguished gentleman from Florida has fully explained.

I would like to take this opportunity to thank the members of the various committees involved in the consideration of this legislation for their cooperation in bringing to the floor a compromise substitute which retains the intent of the original legislation, which I cosponsored. The Committees on Foreign Affairs, Ways and Means, and Post Office and Civil Service have worked together in a timely fashion so that this legislation can be acted on before the Congress adjourns. I also understand that the Armed Services Committee supports the compromise substitute which includes certain additional benefits for military personnel held hostage.

I would also like to thank the Budget Committee for its cooperation in agreeing to the consideration of this bill under suspension of the rules.

Mr. Speaker, I urge the adoption of H.R. 7085, as amended.

□ 1640

Mr. FASCELL. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, although the safe return of the Americans held hostage in Iran since November 4, 1979, remains uppermost in the minds of their families and the rest of the Nation, the Committees on Post Office and Civil Service, Foreign Affairs, and Ways and Means have turned their attention to some of the practical consequences of the hostages' absence.

As a result, the committees reported slightly differing versions of legislation to provide a special interest-bearing salary savings fund, medical and health benefits, tax relief, education and training benefits, and stays of civil actions affecting the hostages' property rights. I believe that the compromise substitute offered today represents an excellent synthesis of the interest each of the committees has in the welfare of the hostages.

At the outset, I would like to note that these special personnel benefits are not intended as part of the Foreign Service Act, but are contained in a separate piece of legislation designed as a temporary measure addressing the most immediate needs of the hostages and their families. The committee adopts this approach because it agrees with the administration that permanent legislation should await a thorough and independent study of the practical problems that arise in a hostage situation.

I would like to clarify the differences between the compromise substitute and the bill as reported by the Committee on Post Office and Civil Service. One change relates to the definition of "the hostage period." In the bill as reported by the committee, the hostage period began on November 4, 1979—the date of the takeover of the U.S. Embassy in Iran—and ended upon the return of the hostages or on the date the President specifies the hostages are otherwise accounted for. The compromise also sets November 4, 1979, as the beginning of the hostage period, but states that the hostage period runs until the date the President specifies that the hostages have been returned to the United States, or otherwise accounted for, or on January 1, 1983, whichever is later.

The Committee on Post Office and Civil Service agrees to this change with the understanding that the administration will study and report to the committees early enough to permit enactment of permanent legislation by January 1, 1983.

Another change relates to education and training benefits. The bill reported by the Committee on Post Office and Civil Service provided reimbursement for education and training expenses incurred by spouses and children. However, it did not provide education benefits for the hostages themselves.

The committee is pleased to agree to the inclusion of education and training benefits for the hostages in the compromise substitute. The committee believes this provision wisely anticipates the possibility that some of the hostages might want additional education or training upon their return. If so, the committee believes that a hostage's expenses related to this education and training should be reimbursed. The committee also supports inclusion of title III, which relates to visits by the International Red Cross.

The rest of the provisions of the compromise substitute are virtually identical to the core of the bill reported by the Committee on Post Office and Civil Service. These provisions reflect the general intent of the bill as originally introduced by Mr. FASCELL, but enlarge its scope in line with the recommendations by the administration. Specifically, they:

Eliminate the $25,000 limit on reimbursement for medical expenses;

Authorize medical expense reimbursements for "family members" as well as dependents;

Extend education reimbursement benefits to children as well as to spouses;

Include military personnel in provisions relating to the savings program and medical reimbursements; and

Limits application of the bill's provisions to the current hostage situation.

In addition to the administration's recommendations, other changes made by the committee that are also part of the compromise substitute:

First. Permit funds to be withdrawn from the savings fund to meet unexpected needs of the hostages or the families;

Second. Provide that interest be paid retroactively on the salaries held in personnel offices prior to the establishment of the savings fund;

Third. Permit extensions of eligibility for educational and training benefits under special circumstances; and

Fourth. Permit payment of allowable expenses by either advancement or reimbursement.

Consequently, the reported bill alters the scope and coverage of the introduced bill in three significant ways. As mentioned, it is a temporary measure, not permanent legislation, and expires at the end of the defined Iranian hostage situation. Second, it covers the military as well as the civilian hostages. Third, it extends certain benefits not only to the hostages' spouses and children, but also to other family or household members.

For the most part, these changes are reflected in the reported bill's controlling definitions and eligibility for the intended benefits of the reported bill hinges on the definitions of "American hostage" and "family member." These terms replace and expand upon the introduced bill's reference to employees, spouses, and dependents.

As defined in the reported bill, the terms "American hostage" and "captive status" do two things: One, they expressly include the military personnel who are among the Americans held hostage in Iran; and two, they limit the legislation's application to the current Iranian situation.

By reference to an existing definition of "dependent," the reported bill includes wives, unmarried children under 21—including step-children or adopted children—dependent parents, and other qualifying individuals under the definition of "family member." Subject to regulations to be prescribed by the Secretary of State, it also includes members of the hostages' families or households who are not technically "dependent."

The committee's use of the term "family member" is a deliberate expansion of the coverage of the introduced bill, which was limited to spouses and dependents. It reflects an administration suggestion that certain benefits should be available to individuals who might not be dependent on a hostage for financial support, but who have nevertheless suffered physical, mental, or emotional distress because of their close relationship to the hostage. The committee agrees with the administration and believes that the term "family members" allows the greatest flexibility in identifying those individuals entitled to the legislation's intended benefits.

The reported bill also provides that for purposes of this legislation, Richard Starr of Edmonds, Wash., is deemed an American hostage who entered into a

captive status on or after November 4, 1979. Starr was kidnapped by Communist guerrillas on February 14, 1977, while serving as a Peace Corps volunteer in Colombia. He was released on or about February 10, 1980. Without this provision, the fact that Starr's initial capture predates November 4, 1979—the day the bill identifies as the beginning of the hostage period—would preclude his eligibility for the special personnel benefits.

I believe that the compromise substitute before you today will alleviate—to the extent possible—some of the financial burdens on the hostages and their families. I urge your support of this measure.

Mr. FASCELL. Mr. Speaker, I reserve the balance of my time.

Mr. BUCHANAN. Mr. Speaker, I yield such time as he may consume to the ranking minority member of the Committee on Ways and Means, the gentleman from New York (Mr. CONABLE).

Mr. CONABLE. Mr. Speaker, I support the suspension of rules and immediate passage of H.R. 7085, the Hostage Relief Act of 1980.

Title II, the Ways and Means Committee amendment to H.R. 7085 would exempt from Federal income tax the salaries of the American hostages in Iran.

The tax law currently contains provisions giving special tax treatment to military personnel serving in combat zones. H.R. 7085 extends similar treatment to the American hostages in Iran. Legislation is needed to accomplish this result because the hostages generally are U.S. Government employees but they are not military personnel.

First, H.R. 7085 exempts from income tax the salaries of the hostages beginning November 4, 1979, and extending through the period of their confinement. The committee realized that a more long-range approach is desirable, but decided to limit the current bill to the Iranian situation by putting an expiration date of December 31, 1981, on the bill's special tax treatment. The fixed expiration date was selected because it will allow the committee to study the general policy which should apply to detained Americans and develop a permanent tax provision.

Second, in the event of a hostage's death, all of his income tax liability will be waived. Third, the bill allows the spouses of hostages to file joint tax returns even though the spouse is unable to sign the return. Finally, the bill extends the many deadlines in the tax law—such as filing returns—by the period of captivity plus 180 days.

H.R. 7085 concludes by directing the Joint Committee on Taxation to study the tax treatment of American citizens taken hostage or otherwise missing. The report will be submitted by July 1, 1981, so that the Congress will be able to develop permanent statutory provisions before the December 31, 1981, expiration date in H.R. 7085 occurs.

Mr. Speaker, we owe the courageous American diplomats in Iran every consideration. H.R. 7085 will provide a small token of relief to the hostages and their families.

Mr. BUCHANAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. LEACH).

Mr. LEACH of Iowa. Mr. Speaker, this is a very modest but very symbolic bill. It is designed to reward several of our citizens who have been deprived of their freedom by a foreign government and forsaken of their rights by our own.

Two hundred years ago our forefathers staked their lives on the principle that taxation without representation is tyranny. Today our hostages have no representation. They should not be taxed.

One cannot put a price tag on freedom but if our hands are tied abroad they are not at home. This legislation is one measure of support for hostages. It is the least we can do for them.

Mr. Speaker, I strongly support the principle of early and unanimous passage.

Mr. BUCHANAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 7085 and to associate myself with the remarks of the gentleman from Florida (Mr. FASCELL).

For 324 days Americans have been hold captive in Iran, separated from their families and denied even the rights guaranteed prisoners of war. Fifty-one of those still being held hostage were sent to Iran by their Government to represent our country. They are being held in violation of numerous international laws and treaties.

Other hostages have been released or escaped. Their trauma was the same although their time of captivity was less.

All of these men and women have been subjected to unknown hardships and deprivation. Their lives will be unalterably changed. We pray that there will be no permanent or long lasting physical or emotional damage.

The legislation before us today is the least we can do for these Americans who have lost nearly a year of their lives.

It is supported by the administration and by the hostage families.

Two weeks ago when we passed the Foreign Service Act of 1980, we recognized the increased hardships and demands placed upon Foreign Service officers—hardships akin to those faced by the military in combat zones.

By this legislation, we extend to American civilians and their families benefits similar to those provided to our POW's in Vietnam.

With H.R. 7085, we are saying to our hostages, "we appreciate your service to our country and we will not forget this service even after you return."

I strongly urged its adoption.

Mr. FASCELL. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Ways and Means Committee, the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I would like to first commend the distinguished gentleman from Florida (Mr. FASCELL) for having brought this legislation to the floor. The Committee on Ways and Means has been extremely proud to participate in the consideration of this bill, in providing the tax measures which are an important component of the package.

Mr. Speaker, the Ways and Means Committee considered title II of H.R. 7085, the Hostage Relief Act of 1980. These tax provisions of the bill provide tax relief to the American hostages in Iran, other American hostages, and their families. Under the bill, Federal employees held hostage could exclude from income their Federal compensation. If death results to a U.S. citizen or resident alien from captivity, all income tax liability of that individual from the initial year of captivity to the year of death would be forgiven. The spouse of a hostage would be permitted to file a joint return. Various deadlines under the tax laws would be postponed during the period of captivity and for 180 days thereafter. Finally, the staff of the Joint Committee on Taxation is directed to make a study of this area.

Mr. Speaker, I strongly urge the adoption of H.R. 7085, which would provide much-needed relief to the American hostages and their families.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I will be happy to yield to my friend from Florida.

Mr. FASCELL. Mr. Speaker, I want to thank the distinguished chairman of the Committee on Ways and Means for the prompt, careful and generous consideration given by him and the members of his committee in a very thoroughly bipartisan manner, and for making it possible to bring this legislation to the floor today.

While I have the opportunity to thank everyone for this truly bipartisan effort, let me say that since this idea was conceived in the Subcommittee on International Operations of the Committee on Foreign Affairs, we have had nothing but the finest cooperation from the ranking minority member, the distinguished gentleman from Alabama (Mr. BUCHANAN). We have had that same cooperation from the chairman of the Committee on Post Office and Civil Service (Mr. HANLEY), members of that committee on both sides of the aisle, and its subcommittees.

Mr. Speaker, none of this would have been possible without the untiring interest and support of the Family Liaison Action Group; particularly Katherine Keough and Louisa Kennedy. For them and their families we are happy to speed this bill on its way. I thank the distinguished chairman.

● Mr. DERWINSKI. Mr. Speaker, the Hostage Relief Act is a good bill reflecting the combined effort of three House committees: the Foreign Affairs Committee, the Ways and Means Committee, and the Post Office and Civil Service Committee. The substitute text which emerged from these committees is fair and decent and is the least we can do for those Americans being held hostage and their families.

Although the bill pertains to special benefits afforded these Americans, it is more to secure indemnity for the hostages whose fate is still in the clutches of an uncompromising and detestable government. The lives of these innocent Americans have been traumatically interrupted not only by imprisonment but also at home, where the families of these Americans must live each day hour by hour awaiting the latest news which might once again happily unite them.

Of course, it is impossible to predict the outcome of this affair; the damages done here will never be fully realized until it has ended once and for all. But what we can do right now is to prepare for the day these Americans are brought home, prepare for the day when they are reunited with their families so they may resume a normal and happy lifestyle with as little hardship and as much ease as possible.

The provisions of the bill have been carefully examined by my colleagues and provide for a special salary savings fund, a continuation of educational benefits and opportunities, a deferment of tax liabilities, and several other provisions.

The major provision of the bill is the postponement of civil action regarding the property rights of the hostages. Iranian assets here are currently frozen while American property in Iran has been confiscated. The tangled webs which will emerge after the Iranian hostage crisis has ended will take years to unwind. The sooner we prepare for that day the more readily will we be able to deal with these problems when they arrive.

I strongly support this legislation and urge its immediate enactment.●

● Mr. BROOMFIELD. Mr. Speaker, on Monday, September 22, our hostages in Iran will enter their 324th day of captivity. Three hundred and twenty-four days apart from their families and loved ones, 324 days away from the warmth of their homes, 324 days in a country beset by internal upheaval, parliamentary politics, and now at war with one of its neighbors, our hostages remain the victims of a grim and contemptible charade set in motion by the Government of Iran in open and continued defiance of international law.

In the past year our hostages have been incarcerated cruelly and unjustly, be they in Iran or Bolivia. In particular, our hostages in Tehran have endured a great deal, frustrated by a U.S. rescue mission which not only failed in its purpose, but also left eight Americans dead on a remote salt plateau. Moreover, the families of our hostages have also undergone severe mental, emotional, and physical strain, and in some instances, economic hardpship due to these contemptuously forced separations.

It is for these reasons, Mr. Speaker, that we should favorably consider the legislation we have before us today. The Hostage Relief Act of 1980 is intended as an expression of our Nation's recognition of the many difficulties faced by those held hostages as a result of Government service. While such legislation has been enacted in the past for those in military service, such as the POW's as a result of the Vietnam war, this marks the first time that the Congress has expanded such protection and benefits as medical reimbursement and preferential tax treatments to those in civilian Government service and their families. This should be done now in order that, to the extent possible, many burdens of the hostage situation can be alleviated.

The provocative attack upon our Embassy in Tehran and more recently, the attacks upon our Ambassador to Lebanon and the U.S. Embassy in El Salvador, underscore the danger of American Government service in a world increasingly bent upon terrorism and hostage mentalities. In order to better express America's united support for our hostages and their families and to insure that some medical and economic protection is in place for American Government personnel held hostage—in present and in future situations—I urge my colleagues to favorably consider the legislation before us today.●

Mr. FASCELL. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FASCELL) that the House suspend the rules and pass the bill, H.R. 7085, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide certain benefits to individuals held hostage in Iran and to similarly situated individuals.".

A motion to reconsider was laid on the table.

□ 1650

AUTHORIZING DOCUMENTATION OF VESSEL, "SARA," AS VESSEL OF UNITED STATES WITH COASTWISE PRIVILEGES

Mr. AUCOIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the Senate bill (S. 1442) an act to authorize the documentation of the vessel, *Sara*, as a vessel of the United States with coastwise privileges, with Senate amendments to House amendments thereto, and agree to the Senate amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendments to the House amendments, as follows:

Page 3, line 23, of the House engrossed amendment, strike out "berth" and insert "load".

Page 4, line 2, of the House engrossed amendment, strike out "berthing" and insert "loading".

Page 4, after line 4, of the House engrossed amendment, insert:

SEC. 6. Notwithstanding section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883), or any other provision of law to the contrary, the vessel known as the *Scuba King*, official number 532376, owned by Bernard Despins, shall be entitled to be documented to engage in the fisheries and the coastwise trade upon compliance with the usual requirements, so long as such vessel is, from the date of enactment of this section, continuously owned by a citizen of the United States. For the purposes of this section, the term "citizen of the United States" includes corporations, partnerships, and associations, but only those which are citizens of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802).

Mr. AUCOIN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Oregon?

Mr. MCCLOSKEY. Mr. Speaker, reserving the right to object, I address this question to the gentleman from Oregon: Is this the matter we discussed a few minutes ago?

Mr. AUCOIN. Will the gentleman yield?

Mr. MCCLOSKEY. I will be glad to yield.

Mr. AUCOIN. I appreciate the gentleman yielding to me. It is exactly the subject we discussed a moment ago.

Mr. MCCLOSKEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. COURTER. Mr. Speaker, due to an illness in my immediate family, I was unable to be present during the vote on final passage of H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act, rollcall No. 571, on September 19, 1980.

Had I been present I would have voted "yea."

Mr. Speaker, I ask unanimous consent that the RECORD so reflect.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

SUPPORT FOR ECONOMIC DEVELOPMENT ADMINISTRATION

(Mr. PERKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PERKINS. Mr. Speaker, I take to the floor to express my deep regret that conferees on S. 2719, authorizing the Housing and Community Development Act of 1980, have failed to reach agreement on a final version of the bill.

I hope that our colleagues will make another effort to get together and bring back a conference report for early passage by the House.

My remarks here today deal particularly with the impact of this situation on the Economic Development Administration, one of the most effective agencies in the Federal Government for fighting unemployment and inflation.

In my district, as in many other underdeveloped and distressed areas across the country, we depend upon EDA to help us build an environment for jobs and industry.

EDA has done a tremendous job in carrying out that mission, by building the infracture of progress in the form of water lines, community facilities and the like—all of those things which make economic development and growth possible.

For the past year, EDA has been operating on a continuing resolution. This has meant that residents of distressed areas such as Hazard, Ky., lost millions of dollars of economic development assistance that would have been available to them under President Carter's EDA proposals.

In public works grants alone, we lost $265 million that had been proposed for the fiscal year ending this month.

For the coming fiscal year, the loss of the expanded EDA legislation will mean an even greater loss in public works moneys, as well as economic adjustment funds so critical to the redevelopment efforts of communities badly hurt by the loss of jobs in the automobile and steel industries.

Only $315 million will be available for these public works and adjustment programs, which is $340 million less than would have been available under the expanded program.

But this does not tell the whole story. EDA already has a backlog of $300 million in public works applications which it had hoped to be able to fund with the expanded public works appropriation proposed but never enacted because of the deadlock over the authorizing legislation.

If the impasse continues, it is no secret that EDA is out of the public works business for the coming fiscal year—even before it starts. The new industrial park or the rehabilitated commercial structure a distressed community may need to retain or attract new firms, will not be possible until more than a year from now. So more jobs are going to disappear from areas that cannot afford to lose even one job.

In closing, I would point out that we have also lost more than $2 billion in loans, guarantees, and interest subsidies in private sector investment and millions of jobs for residents of distressed areas.

The day the conferees break up in deadlock is a black letter day for my district, and a sad one for the Nation. We need an expanded EDA program, not a constricted one.

I just hope the conference committee of the House and Senate will go back to the table and settle this matter quickly in the national interest.

A TIME FOR MORAL JUSTICE

The SPEAKER pro tempore. Under a previous order of the House the gentlewoman from Massachusetts (Mrs. HECKLER) is recognized for 10 minutes.

● Mrs. HECKLER. Mr. Speaker, holidays are times of happiness and commitment to faith, family, and traditional moral values. Our Jewish friends have just celebrated the High Holy days which mark the 5741st year of the Jewish calendar.

I wish to share with my colleagues an editorial from the Jewish Times which calls for a regeneration of moral standards and justice and reaffirms Israel's longstanding desire for a peaceful relationship with its Middle East neighbors.

The writer also discusses the decline in Soviet Jewish emigration—a disturbing decline that I and many of my colleagues in Congress recently addressed in letters to Leonid Brezhnev and the chairmen of the U.S. delegation to the Madrid Conference of the Commission on Security and Cooperation in Europe.

These letters seek relief for the many Soviet Jews not permitted to leave the Soviet Union because of the unjust enforcement of first-degree kinship regulations in the Soviet Union. Such regulations contravene the Helsinki Final Act and account for the fact that Soviet Jewish emigration this year has declined by almost 40 percent since last year.

A desire for world peace and a respect for political integrity are traditional values that America shares with Israel. Now is an appropriate time to recommit ourselves to people who share these values. Now is an appropriate time, as well, to recommit ourselves and our efforts to those who seek and are denied justice.

Mr. Speaker, I insert the column, "5741—Time for Moral Justice" be inserted into the RECORD:

5741—TIME FOR MORAL JUSTICE

Rosh Hashanah is a time to pause to examine the direction of our lives and the value of our deeds and to weigh promises kept and unfulfilled. It is a time to reflect on our responsibilities to one another, and to the heritage of hope and faith that unites us.

As we gather to worship during the High Holy Days marking this new year, 5741, we join throughout the world to pray for a regeneration of moral standards and justice. We must counter the growing forces of evils being unleashed in the political world today by holding firm to the High Holy Day ideals of peace and Brotherhood among man.

During the past year Israel remained strong. The Jewish people continued to be vigilant in the face of physical threats to survival. Although peace is still not a permanent reality in the Middle East, Israel's largest neighbor, Egypt, is talking accommodation, not war.

We must dedicate ourselves to continue to meet the challenge of anti-Semitism wherever it may be found. Today it is more and more pointed at Israel. In the face of manipulated U.N. majorities for the Palestinian Liberation Organization, of intensified Arab pressures on Jersualem, and of West Europe's wavering in the face of Soviet and Arab threats in the Middle East, the Camp David accords will be the surest way to peace for Israel and its Arab neighbors.

During the past year principles of personal and international behavior were discarded in favor of instant gratification or convenience.

There have been dire forebodings of a decline in Soviet immigration, and an increase in Soviet anti-Semitism in the media, employment, schools, and professions.

We are sensitive to the vulnerable Jewish community in Iran, where executions of individual Jews have developed into a sinister pattern. The Syrian Jewish community has faced a continued plight in which 5,000 hostages are prevented from leaving and are subject to loss of freedom.

One of the difficult questions now being debated at the United Nations and elsewhere is the position Jerusalem should play in the structure of the State of Israel. During the coming year Jews worldwide must redouble their efforts in appeals to the world to maintain an undivided Jerusalem as the capital of both Israel and the Jewish people.

American Jewry has recently seen its high hopes for pro-Israel actions by the U.S. administration fall. In this dire time of Israel and world Jewry beseiged by Arab hostility and so-called allies whose allegiance is so readily for sale, what does the coming year portend?

At this hour, as in days gone by, Jewish survival is dependent on Jewish revival. With an inner strength and purpose, we can withstand the intense battles that face us on every front during 5741.●

LEAGUE OF WOMEN VOTERS DEBATE: REAGAN OFFERS HOPE; ANDERSON-CARTER MESSAGE IS THAT "AUSTERITY IS JUST AROUND THE CORNER"

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 30 minutes.

● Mr. KEMP. Mr. Speaker, the alternatives offered to the American people by Ronald Reagan and President Carter were clearly presented at last night's League of Women Voters debate in Baltimore, even though Mr. Carter did not deign to show up. JOHN ANDERSON established himself as a surrogate for President Carter on most questions of Federal policy. Mr. ANDERSON was an effective spokesman for the rather pessimistic view of the future that he shares with President Carter. Given such a clear presentation of the choices, I believe that a majority of the viewers of the debate surely sided with Governor Reagan. At the same time, I believe, Mr. ANDERSON improved his standing among many of those potential supporters of Mr. Carter who formerly favored Senator KENNEDY.

Last night, in effect, Governor Reagan debated a President Carter—one who was, perhaps uncharacteristically, willing to be clear about his policies, and, also uncharacteristically, a President Carter who refrained from baseless ad hominem attacks.

Mr. ANDERSON, in last night's debate, established that he is in substantive, if not stylistic, agreement with Mr. Carter—on blaming inflation and energy scarcity on the American people, on the desire to change Americans rather than Government policies—for example, the call for creating a "new conservation ethic" of changed lifestyles—on favoring automatic tax rate increases caused by inflation, and on extending Federal authority into the personal lives of all Americans and their families.

The debate was one of the best pieces of evidence that, of the Presidential candidates, Governor Reagan's world view is the most coherent and at the same time the most optimistic about producing our way out of these problems.

On the question of inflation, Governor Reagan set himself apart from both President Carter and Congressman ANDERSON's view that inflation is caused by the desire of Americans for a better life. He rejected their common agreement on Federal policies which continue to raise tax rates and unemployment, and on a proposal for imposing tax penalties on wages which keep up with inflation. Instead, Governor Reagan stood alone in arguing that inflation is nothing but the decline in the value of the money produced by Government—a monetary problem. He offers monetary restraint to fight inflation, and a removal of tax and regulatory disincentives to encourage economic growth and full employment. With such a plan, Governor Reagan said he believed that the 7.5-percent average annual inflation forecast by the Senate Budget Committee over the next 5 years could be rapidly eliminated. In saying so, Governor Reagan has made himself the first Presidential candidate in decades to pledge a return to honest money, instead of merely slowing down the rate at which the Federal Government debases its currency.

When the debate turned to special problems like urban decline and the energy problem, it was Governor Reagan, not Mr. ANDERSON or Mr. Carter, who was logical and consistent.

On the subject of reviving our cities, for example, Mr. ANDERSON abandoned the fiscal restraint for which he is asking voters to choose him; he proposed two $4 billion new, Federal trust funds and several billion dollars of additional spending, all in the same class with President Carter's neglected promise to rebuild the South Bronx with an urban Marshall plan.

In fact, Mr. ANDERSON said he would fund these projects to aid our already overtaxed inner cities by further raising excise taxes.

Governor Reagan, on the other hand, made three sensible and incentive-oriented proposals. First, to remove entangling strings from Federal grants to cities. Second, to establish jobs and enterprise zones in our inner cities to offer tax incentives to both businesses and workers. And third, to enact a program to allow urban homesteading of now abandoned and federally owned buildings.

On energy, Governor Reagan demonstrated that he is the only one of the three Presidential candidates who understands how the price mechanism works. In opposing a new tax on gasoline—Mr. ANDERSON's 50-cent-a-gallon tax, and Mr. Carter's 10-cent-a-gallon tax—Governor Reagan pointed out that such policies prevent a balanced approach of encouraging both prudent conservation and increased production. A gasoline tax, by increasing the cost to consumers, forces conservation; but it does not provide consumers with any additional supplies, because it does not increase the incentive for producers. Removing Federal price controls on energy, on the other hand, would both encourage consumers to conserve energy in paying the true cost of producing energy; and increase the production of our abundant energy supplies—especially the known secondary and tertiary reserves which we know are in the ground, but which cannot be produced if the aftertax return on investment is below the market price.

Mr. Carter and Mr. ANDERSON, on the other hand, are offering an opposite prescription—the closing of vast areas of potentially energy-rich land. Mr. ANDERSON, like Mr. Carter, favors the closing of 200,000 square miles of land in Alaska to exploration—an area equal in size to the 11 States north and east of Ohio: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, New Jersey, Massachusetts, Delaware, Maryland, New York, and Pennsylvania.

In short, both Mr. ANDERSON, who was present at last night's debate in person, and Mr. Carter, who was present in spirit, are telling the American people that if either of them is elected, austerity is just around the corner.

Governor Reagan contrasted this dismal view of the future with his own optimism in his summary remarks:

For 200 years, we've lived in the future, believing that tomorrow would be better than today and today would be better than yesterday. I still believe that. I'm not running for President because I believe that I can solve the problems we've discussed tonight. I believe the people of this country can. And together we can begin the world over again.

Mr. Speaker, with the combination of policies Governor Reagan is recommending—monetary policy to fight inflation, and a comprehensive program of tax rate reduction, budgetary and regulatory reform to fight stagnation—we can get this country moving again, back toward full employment without inflation.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska (Mr. CAVANAUGH) is recognized for 5 minutes.

● Mr. CAVANAUGH. Mr. Speaker, on Thursday, September 18, and Friday, September 19, meetings with local officials in my district necessitated my absence from the House. Had I been here, I would have cast the following votes:

THURSDAY, SEPTEMBER 18, 1980

Rollcall No. 560, House Concurrent Resolution 367, disapproving the proposed export of nuclear fuel to India pursuant to export license application ESNM-1569. "Yea."

Rollcall No. 561, House Resolution 789, rule to allow consideration of continuing appropriations for 1981 (H.J. Res. 610). "Yea."

Rollcall No. 562, notice to recommit, House Joint Resolution 610. "Nay."

Rollcall No. 563, passage of House Joint Resolution 610. "Yea."

Rollcall No. 564, Long of Maryland amendments to International Monetary Fund quota increase, H.R. 7244. "Yea."

Rollcall No. 565, Neal motion to H.R. 7244 in the nature of a substitute. "Yea."

FRIDAY, SEPTEMBER 19, 1980

Rollcall No. 566, motion to resolve into the Committee of the Whole House to consider H.R. 7020, amendments to the Solid Waste Disposal Act. "Yea."

Rollcall No. 567, conference report on H.R. 3904, Multiemployer Pension Plan Amendments of 1979. "Yea."

Rollcall No. 568, resolve into the Committee of the Whole House for the consideration of Comprehensive Oil Pollution Liability and Compensation Act (H.R. 85). "Yea."

Rollcall No. 569, quorum call.

Rollcall No. 570, Wyatt amendment to H.R. 85. "Nay."

Rollcall No. 571, final passage of H.R. 85. "Yea." ●

EXTENSION OF RAPID RAIL TRANSIT TO DULLES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. MCKINNEY) is recognized for 5 minutes.

● Mr. MCKINNEY. Mr. Speaker, last week, I introduced a bill to amend the National Capital Transportation Act of 1969 to authorize additional Federal contributions for the designing, construction, and equipping of a rapid rail transit line to the Dulles International Airport which sits on the fringe of the Washington metropolitan area.

Proposals for a rail extension to Dulles have been around ever since the airport, as well as the Washington Metro system, was originally conceived. What I am simply doing at this time is resurrecting an old concept which I consider very necessary.

Dulles International Airport was built in the mid-fifties/early sixties to serve the Washington metropolitan area. The airport's proponents envisioned that by the year, 1990 or 2000, Dulles would become the major airport of the Nation's Capital. Today, 20 years after its dedication, Dulles International Airport languishes in a sea of uncertainty and is constantly plagued by problems. Paramount among these problems has been its lack of growth. Considering the fact that close-in National Airport has been able to compete with Dulles, it is not very difficult for any of us to comprehend Dulles' plight.

In October of 1972, former Virginia Senator William B. Spong, took to the floor of the Senate in support of legislation aimed at accomplishing exactly what I propose today. At that time, he noted that it was mandatory for the Senate to pass his legislation "if we are to redress the imbalance which now exists in usage of the Washington area airports." In fact, Senator Spong's assertion 8 years ago that "air traffic at National continues to grow fostered by Federal policies, while the minimal attention is given to Dulles" is as pertinent today as it was then. Unfortunately, while the Senate passed the Spong proposal, the House failed to enact that legislation because of time constraints.

My bill, H.R. 8163 contains provisions which provide for two additional Metro statons to be built along the Dulles extension. Thus, in approving this legislation we will not only be bringing Metro to the airport, but also providing mass transportation to one of the fastest growing section of the suburban Washington area.

Mr. Speaker, in recent months, we in Congress seem to have gotten embroiled in the controversy surrounding the continued growth of National Airport. Suffice it for me to repeat here on this floor what I and others have said so often in the past, "National Airport is a disaster waiting to happen." National

Airport has grown as much as possible within the confines of a populated area and now even the Federal Aviation Administration acknowledges that in coming years Dulles and Baltimore/Washington International are going to have to absorb the traffic that National can no longer handle.

Twenty years ago the planners were citing Dulles to be the major airport in the year 2000. That date is not very far off. Personally, I do not think that we should wait until 1985 or 1990 to awaken to the realization that we failed to provide mass transit access to what will eventually become the national capital's major air link with the Nation and the world.

I know full well that there are those in this Congress who will agree with me on this proposal and say "OK, let's go ahead." Others will say "Well, it sounds logical but let's study it." To those who advocate further study, I must ask "Can we afford it." Already, since 1972, the costs of this extension have increased fivefold. We are probably all in agreement that someday, perhaps not today, Metro will be extended to Dulles. Why do not we face up to the inevitable and authorize these funds so that the planning, design, and construction can move forward today.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. NELSON (at the request of Mr. WRIGHT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LEACH of Iowa) to revise and extend their remarks and include extraneous material:)

Mrs. HECKLER, for 10 minutes, today.

Mr. KEMP, for 30 minutes, today.

(The following Members (at the request of Mr. AUCOIN) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 15 minutes, today.

Mr. CAVANAUGH, for 5 minutes, today.

Mr. BREAUX, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. BOLAND, to revise and extend during consideration of H.R. 8117 and to revise and extend during consideration of H.R. 4736.

(The following Members (at the request of Mr. LEACH of Iowa) and to include extraneous matter:)

Mr. MCKINNEY.

Mr. WILLIAMS of Ohio.

Mr. DERWINSKI in two instances.

Mr. FISH.

Mrs. SNOWE in two instances.

Mr. FRENZEL in five instances.

Mr. HOLLENBECK.

Mr. QUAYLE.

Mr. COURTER.

Mr. MCCLOSKEY.

(The following Members (at the request of Mr. AUCOIN) and to include extraneous matter:)

Mr. JACOBS.

Mr. ANDERSON of California in 10 instances.

Mr. GONZALEZ in five instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Ms. HOLTZMAN in 10 instances.

Mr. JONES of Tennessee in 10 instances.

Mrs. SPELLMAN.

Mr. BONER of Tennessee in five instances.

Mr. SANTINI.

Mr. COELHO.

Mr. FAZIO.

Mr. WEISS.

Mr. CHAPPELL.

Mr. EDWARDS of California.

Mr. WYATT.

Mr. MOFFETT in three instances.

Mr. HUBBARD.

Mr. MAZZOLI.

Mr. DINGELL.

BILL PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on September 19, 1980, present to the President, for his approval, a bill of the House of the following title:

H.R. 3292. An act to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes.

ADJOURNMENT

Mr. AUCOIN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 55 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, September 23, 1980, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5351. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Harry E. T. Thayer, Ambassador-designate to Singapore, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5352. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

5353. A letter from the Chairman, U.S. Advisory Commission on Public Diplomacy, transmitting the Commission's first report on the International Communication Agency, pursuant to section 8 of Reorganization Plan No. 2 of 1977; to the Committee on Foreign Affairs.

5354. A letter from the Vice President for Government Affairs, National Railroad Passenger Corporation, transmitting the financial report of the Corporation for the month of July 1980, pursuant to section 608(a)(1) of the Rail Passenger Service Act of 1970, as amended; to the Committee on Interstate and Foreign Commerce.

5355. A letter from the Secretary of Health and Human Services, transmitting notice of a delay until September 30, 1981, on the report on the study of the desirability of mandatory age retirement for certain pilots, required to be submitted by December 29, 1980, by Public Law 96-171; to the Committee on Public Works and Transportation.

5356. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease in Washington, D.C., for the Federal Labor Relations Authority; to the Committee on Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ULLMAN: Committee on Ways and Means. H.R. 7709. A bill to amend the Tariff Schedules of the United States to increase the quantity of cigarettes that may be accorded duty-free treatment if acquired in the insular possessions and entered by returning U.S. residents; with amendments (Rept. No. 96-1360). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 6750. A bill entitled "The Hovercraft Skirt Tariff Act"; with amendments (Rept. No. 96-1361). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 7660. A bill to extend duty-free treatment to certain freight containers; with amendment (Rept. No. 96-1362). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 7802. A bill to amend the Tariff Schedules of the United States with respect to the rates of duty on ephedrine, racephedrine, and their salts; with amendments (Rept. No. 96-1363). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report pursuant to section 302 (b) of the Congressional Budget Act of 1974. (Rept. No. 96-1364). Referred to the Committee of the Whole House on the State of the Union.

Mr. DELLUMS: Committee on the District of Columbia. H.R. 7658. A bill to amend the National Capital Transportation Act of 1969 to require the Secretary of Transportation to contract with the Washington Metropolitan Area Transit Authority for a comprehensive study of extending the rail rapid transit line specified in the adopted regional system; with amendment (Rept. No. 96-1365). Referred to the Committee of the Whole House on the State of the Union.

Mr. BEVILL: Committee of Conference. Conference report on H.R. 7590. (Rept. No. 96-1366). Ordered to be printed.

Mr. STAGGERS: Committee of Conference. Conference report on S. 1177. (Rept. No. 96-1367). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BENNETT (for himself, Mr. SPENCE, Mr. HAMILTON, Mr. HOLLENBECK, Mr. PREYER, Mr. LIVINGSTON, Mr. FOWLER, Mr. THOMAS, Mr. STOKES, Mr. SENSENBRENNER, Mr. RAHALL, and Mr. CHENEY):

H.R. 8176. A bill to amend the Federal Rules of Criminal Procedure with respect to the disclosure of matters occurring before a grand jury; to the Committee on the Judiciary.

By Mr. HEFTEL (for himself, Mr. OTTINGER, Mr. FISH, Mr. ROUSSELOT, Mr. DOWNEY, Mr. WHITEHURST, Mr. PORTER, Mr. STUDDS, Mr. EDGAR, Mr. NEAL, Mr. EVANS of Georgia, Mr. HUGHES, Mr. MCDADE, Mr. WOLPE, Mr. MURPHY of Pennsylvania, Mr. JEFFORDS, Mr. FAZIO, Mr. YATRON, Mr. LEDERER, Mr. SCHEUER, Mr. SEIBERLING, Mr. LUKEN, Mr. DIXON, Mr. MAVROULES, Mr. SAWYER, and Mr. SHUMWAY):

H.R. 8177. A bill to amend the Internal Revenue Code of 1954 to provide that the energy percentage of the investment tax credit shall be 20 percent for specially defined energy property, certain alternative energy property, recycling equipment, and qualified conservation property, and to allow refunds of the investment tax credit to the extent attributable to such 20-percent energy credit; to the Committee on Ways and Means.

By Mr. KASTENMEIER (for himself, Mr. DANIELSON, Mr. MAZZOLI, Mr. GUDGER, Mr. HARRIS, Mr. RAILSBACK, Mr. MOORHEAD of California, and Mr. SAWYER):

H.R. 8178. A bill to amend title 28 to make certain changes in judicial districts and in divisions within judicial districts, and other purposes; to the Committee on the Judiciary.

By Mr. UDALL (for himself and Mr. BINGHAM):

H.R. 8179. A bill to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 relating to liability for accidents at nuclear facilities, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. ROTH:

H. Con. Res. 436. Concurrent resolution accepting the gift of a red oak tree as a symbol of the hopes of the American people for the immediate release of the hostages in Iran and dedicating the tree to the principles of individual freedom and world peace; to the Committee on Public Works and Transportation.

MEMORIALS

Under clause 4 rule XXII, memorials were presented and referred as follows:

532. By the SPEAKER: Memorial of the Legislature of the State of California, relative to the fuel allocation program; to the Committee on Interstate and Foreign Commerce.

533. Also, memorial of the Legislature of the State of Louisiana, relative to drought relief for farmers; jointly, to the Committees on Agriculture and Small Business.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. COELHO:

H.R. 8180. A bill for the relief of Irene Elizabeth Evans; to the Committee on the Judiciary.

By Mr. DANIELSON:

H.R. 8181. A bill for the relief of the Brooklyn Times; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 652: Mr. HUBBARD.

H.R. 7189: Mr. MADIGAN.

H.R. 7773: Mr. PEPPER and Mr. JOHNSON of California.

H.R. 7781: Mr. OBERSTAR.

H.R. 8163: Mrs. SPELLMAN and Mr. BARNES.

H.R. 8169: Mr. PORTER, Mr. STOCKMAN, Mr. HANSEN, Mr. FORYSTHE, and Mr. DRINAN.

AMENDMENTS

Under cause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 6979

By Mr. WYATT:

—Page 16, lines 13 and 14, strike out "AND THE COASTAL ZONE MANAGEMENT ADVISORY COMMITTEE".

Page 16, strike out lines 15 and 16 and insert in lieu thereof the following:

Section 310 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456c) is repealed.

Page 3, line 13, insert "(including the maintenance of channels and the construction and maintenance of berths)" immediately after "transportation".

Page 3, line 15, insert "or adjacent to" immediately after "in".

Page 9, line 22, insert "public safety or" immediately after "for the purpose of".

Page 10, line 1, insert "or replacement" immediately after "removal".

Page 18, line 24, strike out "and".

Page 19, line 2, strike out the period and insert in lieu thereof "; and".

Page 19, between lines 2 and 3 insert the following:

(3) by adding the following new sentence at the end of the section:

"No grant for acquisition of land may be made under this section without the approval by resolution of the government of the political subdivision of the state in which is located the land proposed to be acquired.".

—Page 18, line 24, strike out "and".

Page 19, line 2, strike out the period and insert in lieu thereof "; and".

Page 19, between lines 2 and 3 insert the following:

(3) by adding the following new sentence at the end of the section:

"No grant for acquisition of land may be made under this section without the approval of the governor of the state in which is located the land proposed to be acquired."

—Page 16, between lines 16 and 17 insert the following:

SEC. 10. ANNUAL PAYMENTS IN COMPENSATION FOR LOSS OF PROPERTY TAX REVENUES.

The Coastal Zone Management Act of 1972 is further amended by adding immediately after section 309 the following new section:

"COMPENSATION FOR LOSS OF CERTAIN PROPERTY TAX REVENUES

"SEC. 309A. If any land or interest therein is acquired in part with a grant made available under section 306A or 315, the Secretary shall pay annually to the coastal state or unit of general purpose local government (as defined in section 308(1)(3)) concerned an amount equal to the annual property tax revenues that would have been collected with respect to such land by such State or unit but for such acquisition. In computing the payments required to be made by this section, the Secretary shall take into account any change in property tax assessments or rates that would, but for such acquisition, have affected the amount of the tax revenues collected by such State or unit."

Redesignate the succeeding sections of the bill accordingly.

—Page 19, insert the following new section 12 after line 2 and renumber the remaining sections:

SEC. 12. RULES AND REGULATIONS.

Section 317 of the Coastal Zone Management Act of 1972 (16 U.S.C 1461) is amended by adding a sentence at the end of the section to read as follows:

"However, there shall be no presumption that any rule or regulation of the Secretary is valid, and whenever the validity of any such rule or regulation is drawn in question in any court of the United States or of any State, the court shall not uphold the validity of such challenged rule or regulation unless such validity is clearly and convincingly shown: *Provided, however*, That if any rule or regulation is set up as a defense to any criminal prosecution or action for civil penalty, such rule or regulation shall be presumed valid until the party initiating the criminal prosecution or action for civil penalty shall have sustained the burden of proof normally applicable in such actions.".

H.R. 7020

By Mr. GORE:

—Page 47, line 17 after "party" insert: "other than (i) an employee or agent of the defendant, or (ii) a person whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant,".

Page 48, line 3, strike out "(2)" and substitute "(3)".

Page 48, after line 4 insert the following new paragraph:

"(2) For purposes of paragraph (1)(C) a defendant (including any person involved in the generation, transportation, treatment, storage, or disposal of hazardous waste) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of the third party and that he exercised due care in light of all relevant facts and circumstances.

Page 48, line 5, strike out "(2)" and substitute "(3)".

—Page 48, line 6, after "establishes" insert "by a preponderance of the evidence".

Page 48, line 11, after "establishes" insert "by a preponderance of the evidence".

Page 48, strike out lines 16 through 20 and insert in lieu thereof:

"(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the liability among the parties where deemed appropriate based upon evidence presented by the parties as to their contribution. In apportioning liability under this subparagraph, the court may consider among other factors, the following:

"(i) the ability of the parties to demonstrate that their contribution to a discharge, release, or disposal of a hazardous waste can be distinguished;

"(ii) the amount of hazardous waste involved;

"(iii) the degree of toxicity of the hazardous waste involved;

"(iv) the degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous waste;

"(v) the degree of care exercised by the parties with respect to the hazardous waste

concerned, taking into account the characteristics of such hazardous waste; and

"(vi) the degree of cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment."

Page 48, line 21, strike "this paragraph" and insert "subparagraph (A)".

H.R. 7112

By Mr. MAGUIRE:

—Page 16, immediately before line 1 insert the following new section (and redesignate the succeeding sections accordingly):

SEC. 104. EXCLUSION OF CERTAIN TAXES FROM TAX EFFORT COMPUTATIONS.

(a) AMENDMENT.—Section 109(c)(2)(A) of the State and Local Fiscal Assistance Act of 1972 is amended to read as follows:

"(A) TAXES TAKEN INTO ACCOUNT.—The State and local taxes taken into account under paragraph (1) are—

"(i) the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems and other special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

"(ii) adjusted, to the extent practicable (under regulations prescribed by the Secretary), by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to the fraction of any severance, production, or sales taxes, imposed by the State or by any unit of local government or other political subdivision of the State on the extraction or sale of mineral resources, the burden of which is not borne by the residents of such State.".

(b) CONFORMING AMENDMENT.—Section 109(c)(2) is further amended by adding at the end thereof the following new subparagraph:

"(C) MINERAL RESOURCES.—For purposes of subparagraph (A)(ii), the term 'mineral resources' means petroleum, natural gas, or coal.".

By Mr. WALKER:

—Page 2, strike out lines 3 through 5; on line 6, redesignate section 101 as section 2; on page 8, line 13, redesignate section 102 as section 3; on page 12, line 23, redesignate section 103 as section 4; on page 16, line 1, redesignate section 104 as section 5; on page 16, line 9, redesignate section 105 as section 6; and on page 16, beginning on line 13, strike out all of title II of the bill through line 19 on page 38.

—Page 16, beginning on line 13, strike out all of title II of the bill through line 19 on page 38.

S. 885

By Mr. WEAVER:

(Amendment to the amendment in the nature of a substitute (text of H.R. 8157).)

—Page 6, line 13, strike ", including" and insert "based on".

—Page 10, lines 15–21, strike "(A) electric power," and all that follows down through page 10, line 21 and insert in lieu thereof: "electric power, electric power output of generating facilities, programs and measures to conserve electric power, renewable energy technologies, and programs and measure to utilize renewable technologies.".

—Page 11, line 24, strike "two persons from each State" and insert "four persons from Washington, three persons from Oregon, and two persons each from Idaho and Montana".

—Page 41, line 12, strike "and to each requesting investor-owned utility";

Page 41, line 13, strike the comma and insert in lieu thereof "or";

Page 41, line 14, strike "or investor-owned utility";

Page 42, line 5, strike "(2) Contracts" and all that follows down through page 42, line 8, renumbering accordingly;

Page 42, line 13, after "cooperative" strike the comma and insert in lieu thereof "or";

Page 42, lines 13–14, strike "or investor-owned utility".

—Page 48, line 23, after "customer" insert "and, notwithstanding any provision of section 7, such electric power shall be sold at a price that reflects the full cost of acquiring such power plus the appropriate administrative costs of the Administrator".

—Page 53, line 3, strike "(7) The" and all that follows down through page 53, line 5.

—Page 54, line 20, after "Act." insert a new subsection, renumbering accordingly:

"(b) In making any payment to a utility for the acquisition of a resource under section 6(a)(2) or for the exchange of power under section 5(C), the Administrator shall exclude the costs of construction work in progress."

—Page 58, line 19, after "Congress" insert "pursuant to bills reported from the Committees of Congress having jurisdiction, under the applicable rules of the respective Houses of Congress, over substantive amendments to the Bonneville Project Act and the Federal Columbia River Transmission System Act,".

—Page 59, line 18, after "Council.", insert:

"(d) Prior to the acquisition of a specific major resource, any utility may notify the Administrator of its determination not to participate in such resource if such utility has determined by a referendum or a vote by its governing body not to participate in such resource.

"In the event of such notification, the Administrator shall not include costs from such resource in the rates charged such utility, and the Administrator, in allocating power among the utilities, shall not allocate to nonparticipating utilities any power from such resource. Such allocation shall be adjusted from time to time to take into account the historical operating experience of the resource."

—Page 60, line 20, strike "(f)(1) For" and all that follows down through page 62, line 18;

Page 55, line 22, strike "(f)";

Page 55, line 25, strike "to" and all that follows down through "resource," on page 56, line 2:

Page 52, line 2, strike "(f),";

Page 57, line 15, strike "In the case" and all that follows down through page 57, line 22;

Page 60, line 11, strike "(including" and all that follows down through page 60, line 14, and insert in lieu thereof a period;

Page 91, line 7, strike "(E)" and all that follows down through page 91, line 8, and renumber accordingly.

—Page 71, line 1, after "(1)" insert "(A)";

Page 71, line 1, strike out "a rate or";

Page 71, line 5, strike out "Such rate or rates shall" and all that follows down through page 71, line 12 and substitute:

"(B) The rates of general application established under this paragraph for electric power sold to meet such general requirements and loads under section 5(c) shall consist of the following separate rates—

(i) A rate which shall recover both (I) the costs of that portion of the Federal base system resources needed to serve such general requirements and loads and (II) the costs of the electric power acquired by the Administrator under section 5(c) to serve such general requirements and loads.

(ii) Separate rates which shall recover the costs of any additional electric power acquired by the Administrator from sources other than the sources referred to in clause (i) in order to serve such general requirements and loads under section 5(c).

(C) The rates under clause (ii) of paragraph (B) shall consist of the following separate rates—

(i) A rate for that amount of additional electric power referred to in clause (ii) of subparagraph (B) which is initially purchased by the Administrator in the first ten year period during which any such additional electric power is purchased by the Administrator for purposes of sales referred to in such clause (ii).

(ii) Separate rates for that amount of additional electric power referred to in clause (ii) of subparagraph (B) which is initially purchased in each succeeding ten year period during which any such additional electric power is purchased by the Administrator for purposes of sales referred to in such clause (ii).

(D) The rates established pursuant to subparagraph (B)(ii) for any electric power acquired by the Administrator from a new resource shall recover the full costs of such new resource over its useful life.

(E)(i) The Administrator shall annually allocate the electric power sold at the rate established under clause (i) of subparagraph (B) to the customers referred to in subparagraph (A), including public bodies and cooperatives formed after the date of the enactment of this Act which initially become customers of the Administrator after such date.

(ii) In the case of the public body, cooperative, and Federal agency customers, such allocation shall be in proportion to general requirements of each such customer, except that the allocation shall be adjusted to give equitable consideration to differing rates of population growth, employment, and irrigated acreage.

(iii) In the case of the customers acquiring electric power pursuant to section 5(c), such allocation shall be adjusted on the basis of population growth and irrigated acreage.

(F) Each separate rate required pursuant to this subparagraph shall be separately stated on a billing provided to the customer for purposes of periodically notifying the customer of the charges for electric power purchased subject to each such rate.

(G) Whenever the rates charged to public body, cooperative, and Federal agency customers are modified by reason of the limitation contained in paragraph (2), such modified rates shall be established, where practicable, as separate rates charged according to the rate structure described in subparagraphs (B) and (C), and where not practicable, according to a rate structure which the Administrator determines will maintain the effects of such separate rates and will carry out the purposes of subparagraphs (B) and (C).".

Page 80, strike "(j) All" and all that follows down through line 4 on page 81.

—Page 95, line 4, strike "(h)(1) No" and all that follows down through page 97, line 9.

SENATE—*Monday, September 22, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. MAX BAUCUS, a Senator from the State of Montana.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Almighty God, Ruler of men and nations, may Thy spirit descend upon and pulsate through the hearts and minds and wills of all who serve in this Government. Grant to each person the wisdom and grace to fulfill his role in the spirit of a servant. Banish all unworthy impulses. Consecrate all personal ambition. Control all selfish drives. Overrule all mistakes. Confirm what is right. Give us sanctified wisdom and strength for the future. In the freedom of the Republic Thou has blessed from generation to generation, give us now that higher guidance which leads us to know and to do Thy will.

We pray in His name who showed us the way of Thy kingdom. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 22, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MAX BAUCUS, a Senator from the State of Montana, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. BAUCUS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

ORDER FOR RECESS UPON COMPLETION OF BUSINESS ON FRIDAY, SEPTEMBER 26, 1980, UNTIL MONDAY, SEPTEMBER 29, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on Friday it stand in recess until the hour of 12 o'clock noon on Monday, September 29, 1980.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I am ready to yield back my time.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the acting minority leader is recognized.

Mr. STEVENS. Mr. President, I yield back our time.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 7631 which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate resumed consideration of the bill.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business not to extend beyond 15 minutes and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

RECESS UNTIL 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 11 a.m. today.

There being no objection, the Senate, at 10:03 a.m., recessed until 11 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. LEVIN).

RECESS UNTIL 11:31 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 11:01 a.m., recessed until 11:31 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. LEVIN).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The Senate continued with the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is H.R. 7631.

Mr. ROBERT C. BYRD. I thank the Chair.

The PRESIDING OFFICER. The pending question is the amendment of the Senator from Massachusetts.

Mr. PROXMIRE. Mr. President, I understand that the Senator from Massachusetts feels very strongly about his amendment. I hope he will come and present his amendment positively so we can debate it and discuss it. We have a great deal to do here. There is very little time left before the Senate will recess for the election. I hope that we can move as expeditiously as possible and there will not be any further delay.

Unfortunately, this morning the leader called us in at 10 o'clock with the understanding that we could proceed with this bill and finish it today. We have already had an hour and a half of delay. I earnestly hope there will be no further delay and we can deal with the amendments expeditiously.

Mr. ROBERT C. BYRD. Mr. President, the delay resulted from my desires to protect the managers of the bill. I simply wanted to make that explanation for the record.

Mr. PROXMIRE. Mr. President, I appreciate that. Speaking for the majority, I was here, ready and willing to spring into action at 10 o'clock.

Mr. President, I see that the Senator from Massachusetts is in the Chamber.

Mr. TSONGAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. TSONGAS. Does the Senator from Maryland seek recognition?

Mr. MATHIAS. No; we are awaiting the words of wisdom from the Senator from Massachusetts.

AMENDMENT NO. 2335

Mr. TSONGAS. Mr. President, let me say first of all that I am delighted to finally get to this amendment. We tried to raise it on Friday. I thought we had achieved an accommodation, but that apparently has fallen through. So we will play out the scenario to whatever end this morning.

Mr. President, I am proposing an amendment to restore $200 million to the

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

community development block grant program.

I am proposing this amendment with Senators WILLIAMS, CRANSTON, JAVITS, REIGLE, SARBANES, SASSER, STEWART, MOYNIHAN, DURENBERGER, and LEVIN. As you can see, it is a coalition that spans both political parties and, indeed, various geographies.

This amendment would provide for a fiscal year 1981 appropriation of $3.95 billion, which is identical to the Senate Banking Committee's authorization level, and to the administration's budget request.

Let me briefly highlight the compelling case for maintaining our full commitment to this important program:

First. Our amendment would provide only a modest increase of 4 percent over last year's CDBG funding level. This program has throughout its history only received modest increases. In an inflationary economy, this in effect has resulted in a loss of real spending power over the years. Our 4-percent increase will only partially offset the inflationary pressures on this program in fiscal year 1981. Assuming an annul inflation rate of 13 percent, the amendment in fact represents a 9-percent reduction in real spending power for community and economic development programs for distressed areas and for low- and moderate-income persons.

So what we are seeking here is not some unwarranted increase in funding, but, rather, to bring it to a level which represents a 9-percent reduction in real dollars over last year. Is that to be considered unreasonable?

Second. I would strongly maintain that efforts to reduce budget expenditures cannot be directed at community and economic development programs which are in fact part of our overall economic policy. The specific national objectives of the CDBG program include: the alleviation of physical and economic distress, the stimulation of private investment and community revitalization, the provision of economic opportunities for low- and moderate-income persons.

Our current national economic woes are particularly evident in our cities, and the burdens of our economic troubles fall heavily on the low- and moderate-income persons in those cities.

Indeed, there was an article that appeared over the weekend about the plight of our cities and about some of the very unhappy forecasts given our current economic situation.

The CDBG program helps put communites, and businesses and workers back on a strong footing. This is not the time to retreat from our support for those efforts.

Third. We should be clear that the impact of a $200 million cut in funds for this program will be widespread, and in many areas those cuts will be severe.

CDBG funds are widely dispersed to our Nation's cities, counties, towns and townships. In fiscal year 1979, 3,305 CDBG grants were approved, including 1,290 grants to large cities averaging $2.1 million, and an additional 1,809 grants to small cities averaging $438,000.

This is not a program of limited impact or particiption, and any cuts in program operations will be felt and shared by all those involved.

Even if funding remains constant—and we are not even arguing for that; we accept the 9-percent reduction in real dollars—a number of new large cities and counties will become qualified for CDBG funds in fiscal year 1981. Those cities and counties will be funded at the expense of existing program participants. If the Senate Appropriations Committee cut is sustained by the full Senate, many of the largest and most distressed cities will suffer substantial program decreases in addition to the reductions caused by increased numbers of participants.

It just makes sense, Mr. President. The more people you have in the program, the less money you have to give out, the less will be the participation of any one community.

Reductions in CDBG funds of the order suggested by the Senate Appropriations Committee will also have a severe impact on smaller communities. Multiyear grant commitments to small cities will require $500 million in fiscal year 1981 to support ongoing small cities programs. In addition, current demand for for small cities funds exceeds available funds by 3 to 1. Any major funding reductions will further delay or prevent expended participation by smaller distressed communities.

My personal experience with the smaller communities of Massachusetts leads me to believe that this would be particularly problematic for our older urban areas under 50,000 in population, which are suffering industrial dislocation and severe fiscal distress.

Fourth, let me comment on an issue that will be raised in rebuttal. That is the issue of the so-called drawdown. The drawdown issue has been given as the major reason for cutting the $200 million from the CDBG appropriation, and much has been made of a GAO study which indicated that, as of the end of April 1980, $3.4 billion in CDBG funds had not yet been drawn down by local government participants. This kind of figure, I admit, has good shock value, but it seems to me that there is some obligation to examine it in its proper context.

Over 70 percent—70 percent—of the $3.4 billion in unused funds had been obligated at the end of fiscal year 1979 and had been available for 6 months or less. Many physical development activities require commitments of funds prior to drawdown. Anyone who has worked in a city knows that. For example, a city may commit $2 million for a water system repair contract and pay the contract on a monthly basis. The construction contract requires that the funds be committed in advance, but payments are made as work proceeds.

Now, is that lack of drawdown somehow inappropriate? Of course not. In the early years of the program, cities were developing comprehensive strategies for community development. That was the whole purpose of the program, rather than the shotgun approach, in which communities were forced, in order to have these moneys, to develop a comprehensive strategy.

Accumulations of funds did occur during that time. The drawdown ratio has improved dramatically, from 51 percent in 1976 to 104 percent in 1979–80.

In other words, the amount of money committed under the community development program was greater than the moneys that were put into it. So when we talk about drawdown, what we are talking about, in essence, is the legacy of the earlier years, when communities were trying to get their acts together, not the current situation. Early accumulations are being eliminated, and there is greater departmental emphasis on improving the rate at which entitlement communities implement their CDBG programs.

I share my colleague's concern that HUD closely monitor both the quality and the timeliness of CDBG fund utilization. However, I do not share the approach that the committee has taken. We have a GAO study, and drawdown problems, so, we should rush in here with a major cut in funding as a solution to the quality and the timing of fund use. It seems to me obvious that you do not solve this sort of problem by providing less money, but through performance criteria and monitoring.

To put it another way, to the extent a community is trying to achieve a comprehensive development plan, and we, in essence, say to this community, you either draw down your funds now or you are going to lose it, we then provide all the incentive possible for a haphazard, slipshod development program. This is not a theoretical concern. Every Senator has in his State communities that have seen this kind of rather unfortunate pressure being applied and therefore a rush to adjust it.

Finally, Mr. President, let me point out to my colleagues that what we have here is a highly successful program, with tremendous, visible, outstanding results. If Senators question my word, they can call their mayors. The CDBG program has truly become the backbone of our efforts to revitalize our cities and towns. It is entering its 7th year of operation with the overwhelming support of a broad-based coalition of local government groups. The reauthorization legislation passed both the House and Senate this summer by a wide margin.

In addition to the public improvements and social services which this program supports, CDBG has become an increasingly critical component of housing and economic development projects involving other public funds and private resources. A survey of the first 5 years of the CDBG program in large cities reveals the solid record of accomplishments.

During that period, CDBG funds supported an estimated 290,000 units of rehabilitated housing. And in communities which had programs to leverage private funding for housing rehabilitation, every dollar of CDBG funds leveraged an additional $1.50 in private funds.

CDBG funds also supported efforts to rebuild and replace our urban infrastructure, with an estimated 7,700 miles of improved streets, 4,500 miles of water and sewer systems and elimination of 100,000 unsafe units from our housing stock.

Mr. President, this is not a program of unknown or limited impact. It has proven its worth as a valuable component of our national economic objectives. I would suggest that Senators who are serious about the long term success of those objectives, which cannot be separated from our Nation's communities and the businesses and the people in those communities, should support full funding for the CDBG program.

Mr. President, let me say that I have spent a great deal of my time, in the 11 years I have been in politics, on the issue of trying to bring cities back. I probably spend more of my own personal time on this issue than any other Member of the Senate. I have seen how a community succeeds and I have, unfortunately, seen how they fail. In my opinion, there are two worthwhile programs that, over the long term, offer the cities one real opportunity to come back. They are this program and the UDAG program. If those two programs are not given some kind of priority and at least brought into some kind of level of funding and not drastically cut, what mechanism does the city have? The property tax? Senators should talk to their mayors about that.

Every single improvement taking place in many of the cities in this country in terms of capital reinvestment, in terms of infrastructure renewal, comes out of those two programs. If this program is allowed to wither, as the committee would suggest, by having this $200 million cut, how can we look, over the long term, to any kind of revitalization of these cities?

The quality of life in this country to most Americans happens to be a function of the cities they live in; and the CDBG program and the UDAC program in my mind, are the two programs coming out of Washington that offer realistic opportunity not only for renewal in the classical sense but also the capacity to leverage in private funds so that these communities become not wards of the State but have some self-sustaining capability. These cities have to be made livable, and this program is an important component of that effort.

I will read the organizations that are endorsing the amendment:

American Baptist Churches, U.S.A., Office of Governmental Relations.
AFL–CIO.
American Friends Service Committee.
Americans for Democratic Action.
Children's Foundation.
Consumer Federation of America.
Council of State Community Affairs Agencies.
Council of State Housing Agencies.
Friends Committee on National Legislation.
Housing Assistance Council.
Human Environment Center.
International Union, UAW.
League of Women Voters of the U.S.
National Association for the Advancement of Colored People.
National Association of Counties.
National Association of Housing and Redevelopment Officials (NAHRO).
National Association of Housing Cooperatives.
National Association of Social Workers.
National Conference of Catholic Charities.
National Consumer Law Center.
National Hispanic Housing Coalition.
National Housing Conference.
National Housing Law Project.
National Leased Housing Association.
National League of Cities.
National Low Income Housing Coalition.
National Neighbors.
National Retired Teachers Association/American Association of Retired Persons.
National Rural Housing Coalition.
National Urban Coalition.
National Urban League.
Rural America.
Rural Coalition.
United Church of Christ, Office of Church and Society.
United Food and Commercial Workers, International Union.
United Presbyterian Church, Washington Office.
U.S. Catholic Conference.
U.S. Conference of Mayors.

How can anyone possibly oppose such a noteworthy coalition?

Mr. PROXMIRE. Mr. President, I must say that the Senator from Massachusetts has read a most compelling and impressive list of supporters of his amendment, and I congratulate him on having such broad and impressive support. These are fine organizations staffed by very fine people. However, we all know that we do not vote in this body on the basis of organizational support—at least, not exclusively on that basis. We look at the merits of the proposal; and I believe the case against the pending amendment is very powerful.

Mr. President, there are three compelling reasons for opposing the Tsongas amendment to restore $200 million the Appropriations Committee cut from the administration's community development block grant request.

First, the Congress committed itself to such a cut in passing the first concurrent budget resolution. To repudiate that commitment today would send a signal to the American public that we were not really serious about trying to hold down the Federal deficit. It would be a repudiation of our budget resolution vote.

Second, a General Accounting Office report makes it clear beyond the shadow of a doubt that the block grant program is awash in a sea of unused dollars and that a modest 5-percent cut in the program, as proposed by the Appropriations Committee, will not have an adverse effect on the program. Here is what the August 20 GAO report found:

First. There was a current backlog of about $3.4 billion in unspent block grant funds as of April 30, 1980. This backlog was increased by some $2.7 billion with the addition of new funds in early summer of this year. At current or anticipated spending rates, Appropriations Committee staff have calculated that it could take up to 10 years to spend the $3.4 billion backlog alone, assuming new appropriations are granted each year. It could take 10 years to spend that amount.

Second. HUD is setting standards to force communities to push out these unspent dollars at a faster rate. The Senator from Massachusetts made the argument that spending under this block grant program is going on at an accelerating rate, and it certainly is, because communities are under pressure from HUD to spend money faster than they have in the past.

In fact, internal HUD personnel evaluations have been based in part on how fast Federal employees can get communities to spend.

Third. This pressure to spend creates the potential for inefficient expenditures. In an internal HUD document discussing a city which was cited for low expenditure rates, the following statement was made:

The use of CDBG funds to finance the purchase and rehabilitation of houses is becoming the dominant feature of the rehabilitation assistance program. This results in greater "drawdowns" for the same amount of rehabilitation work accomplished.

In addition, some city officials told GAO that emphasis on faster spending could cause communities to spend funds on projects they are used to doing and have done in the past rather than on projects they need the most.

Fourth. HUD's Inspector General has found that some grantees are drawing down the funds faster than they need them and are investing these Federal funds instead of making timely disbursements to finance block grant activities. For example, an Inspector General report of July 22, 1980, disclosed that a grantee earned interest of $86,735 on excessive drawdowns of $1,766,124.

In other words, grantees are drawing down Federal funds and investing them in Treasury bills, or other securities, and getting interest on those investments. Certainly, we did not design this program as a means of enabling communities to earn interest on unused Federal dollars.

Fifth. HUD's Inspector General in his reports to Congress has stated that HUD has not adequately monitored block grant program participants. In addition, the Inspector General has found that grantees are not properly monitoring and evaluating their projects. This lack of monitoring raises questions about whether block grant funds have been spent in an economical, efficient, and effective manner.

Finally, HUD's Inspector General has just provided the committee with a summary of a special operational survey report that has been submitted in draft form to HUD's Assistant Secretary for Community Development regarding community development block grant rehabilitation activities. The summary raises some very disturbing questions about the way in which block grant funds are being spent. Let me quote briefly from the summary:

The operational survey produced examples of a variety of deficiencies in the administration of the program, including contractor billing for work not done, grantee certifying work completed when it was not, initial inspections either not performed or not documented, cost estimates and work write-ups vague or not prepared at all. The above types of deficiencies can result in ex-

cessive repair costs and payment for work not actually done or done poorly.

Mr. President, this is precisely what happens when money is spent too fast and when it is pushed out by an agency. If we provide the full $3.95 billion requested by the administration, we can be sure that that kind of unfortunately sloppy expenditure is going to take place.

The summary goes on to say, and again I quote:

> The (block grant) regulations do not now provide specific administrative procedures which grantees must follow in administering (block grant) rehabilitation programs. Corrective actions are needed to assure that (block grant) funds are used efficiently, effectively and economically, and will not adversely affect the flexibility needed.

What this summary tells me, and I hope tells my Senate colleagues, is that the 30 percent or so of the block grant funding that goes into rehabilitation work is not being adequately monitored and much of it may be wasted. Under these circumstances a 5-percent cut seems entirely reasonable.

To sum up my remarks a $200 million reduction in the block grant program as proposed by the Appropriations Committee will have a number of desirable consequences. First, it will give communities a reason for monitoring more closely the use to which block grant funds are put. Second, it will relieve the pressure on HUD to force communities to spend at a faster rate. And, third, it will meet the goals Congress set for itself in the first budget resolution.

Mr. President, the distinguished Senator from South Carolina, the chairman of the Budget Committee, Senator HOLLINGS, has told me he is very much opposed to the Tsongas amendment. I hope he can come to the Chamber to make a statement. He has a statement prepared, I understand, in opposition to the amendment.

The distinguished ranking minority member of the Budget Committee, Senator BELLMON, spoke very forcefully on this issue on Thursday.

I point out, also, that we cut the funds the amendment attempts to restore in subcommittee. There was no effort in the full Appropriations Committee to restore the funds. Apparently no member of the full Appropriations Committee felt either that the committee would accept it or that the effort to restore the funds was merited on the basis of the facts.

Mr. President, I yield the floor.

Mr. WILLIAMS. Mr. President, I rise to support strongly the amendment offered by the distinguished Senator from Massachusetts (Mr. TSONGAS). I am pleased to be a cosponsor of this effort to restore full funding to the community development block grant program, which the full Senate authorized in June.

The ability of our communities, both urban and rural, to offer their citizens personal safety, family stability, decent shelter, and employment opportunities constitutes one of the most vital determinants of the health and security of our Nation. The community development block grant program is a recognition on our part of the diversity of America's communities. The local creativity and ingenuity which this diversity spawns is a source of national strength; it is a source which we cannot afford to diminish.

The evolution of this block grant program resulted from our experiences with attempts to prescribe a uniform Federal response to the distress of communities and neighborhoods throughout America. In 1974, Congress enacted the community development block grant program upon the understanding that each neighborhood and each community is distinct. Each is rich in its own abilities and resources; yet all too many are inadequately equipped to respond to the many problems which confront them. Thus, we have many rural communities which still lack sanitary facilities, in which housing is totally inadequate.

In cities, too, the problems are enormous. Boston loses half its fresh water daily through leaking pipes. Detroit has an unemployment level over 16 percent; McAllen, Tex. 9.9 percent. That which will work in Boston, will not work in Seattle. That which will help to alleviate the distress in Atlanta, will not be the best approach in Gary, Ind.

The adoption of the community development block grant program was based upon our experience that distressed communities will not recover by themselves. Rather, they depend upon the cooperative efforts of government—Federal, State, and local. Our experience showed that the elected officials of communities were best able to perceive the most effective means to improve their communities and to alleviate the more cruel affliction affecting especially the poor, the elderly, and the handicapped.

In a very real sense, we said we would provide assistance based upon need in a manner supportive of local experience, capability, and creativity. Cutting Federal assistance does not make the problems go away. It means that mayors and local leaders are forced to defer dealing with them. They are forced to let them fester—knowing only too well that with each day they are ignored, they grow more serious and more expensive in both human and fiscal terms to remedy at some point in the future.

The reduction in CD funds, however, would appear to represent a finding by this Congress that the need for housing rehabilitation, infrastructure improvements, and greater employment has dissipated.

In fact, improvements have been made. Yet, today, spiraling energy costs have severely exacerbated housing and transportation costs in our cities. They have led to the abandonment of inner city housing and industry and have threatened to cripple the mobility of urban residents. Added energy costs, inflation, and increased unemployment have detracted from communities' ability to deal with crime, education, housing, and public services.

America, as the historian Daniel Boorstin, noted, was envisioned as a "city on the hill". Our Nation held forth a flame to all other nations of the world that our cities were a home of promise and freedom.

Indeed, we have been a beacon. Even in the last few weeks, we have seen nations behind the Iron Curtain divert their resources to community needs. These governments have recognized that their nations can be no stronger than the communities upon which they are built.

Mr. President, I think we should examine what $200 million in CDBG funds means—what will be the result of the committee bill. For example, adoption of this amendment could provide more than 28,000 loans and grants for single-family home rehabilitation, loans and grants which are increasingly being used for energy conservation. The funding would be adequate for the construction of 200 senior citizen centers.

It would be enough to provide countless training and employment opportunities for citizens. It would mean that many of the hundreds of small, nonmetropolitian communities who have never applied before for CD funding would actually have a realistic hope.

It should be recognized that even with full funding, the community development program would have less in real dollars for our communities than in fiscal year 1980. The administration's request only represented a 4-percent increase, which, when compared to the cost of living, results in a 9-prcent decrease in actual funding. Such a level would require urban and rural communities to tighten their belts, but would not threaten essential services. By contrast, the level requested by the committee would represent nearly a 15-percent reduction in the program. It is difficult to imagine any community which could forgo 15 percent without giving up essential programs, or without deferring critical maintenance programs. If we are concerned that our cities be healthy, then we must carefully consider just how much the committee bill would force them to give up.

Let us not shortchange our communities. If we can demonstrate that their needs are in some sense met, or that their Federal block grant funds are generally being abused, then we would have reason indeed to temper this program. Yet, by every yardstick, distress is still prevalent. And by every measure, communities have been uniquely resourceful in using community development block grant funds to address their most pressing needs.

I did not hear all of the statement of the most distinguished able chairman of our committee, whom we respect and admire so much, but I did hear him lament that so much of the CDBG money had not been drawn down, had not been spent, but at the same time that communities are not spending it fast enough.

It came as a shock to come through the door and to hear from our chairman a regret that there was not a speedup in funding to get under certain time deadlines.

The commitments are made. The contracts are out there. When they are building a new sewer line or water line, they better not speed it up beyond the

capacity and capability of the community to accept that money and put it into use.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. PROXMIRE. The Senator completely misunderstood what I said, and I do not blame him. He did come in after I had started my statement.

The point this Senator made was that community development block grant funds are being spent too fast. HUD is pushing the communities to spend the money. We have documentation of that. The GAO report documents it. There is no question that the money is being spent too fast and being spent foolishly and wastefully as a result. The GAO report has a great deal to say about that.

That is why we want to slow the block grant program down slightly, but not very much. The committee has recommended a slowdown of 5 percent in a $3.95 billion program, almost a $4 billion program. A cut of $200 million is relatively modest and that would prevent the rapid spending which both the Senator from New Jersey and the Senator from Wisconsin deplore. The cut would require HUD and local communities to operate more efficiently and more carefully.

I am glad the Senator from New Jersey supports my position that communities should not spend block grant money as rapidly as they are now.

We only disagree on how to prevent that rapid waste of money. I would do it by holding down the money available to the program, and apparently the Senator from New Jersey feels communities will not spend money as rapidly if they have more money to spend. I cannot follow that line of reasoning.

Mr. WILLIAMS. Mr. President, will the Senator agree that some of the needed community development programs perhaps cover more than a year in actual construction? It would seem to me that a city which is losing half of its water supply with leaking pipes and wants to improve its infrastructure for the delivery of water would want to encourage contracts. Although such a city would not be spending the money for up to 2 or 3 years, to get in that contract now would give it a contract price at today's rates, rather than at inflated rates later.

Mr. PROXMIRE. That may be absolutely correct, and that is precisely why I think we should not appropriate the money—we are appropriating the money in this bill, not authorizing it—until the money is needed.

The record indicates they do not need as much money as they have because they have not been able to spend it, in spite of all the pressure they are receiving from HUD.

Mr. WILLIAMS. I am certain the Senator said at some point that appropriated moneys had not been obligated—there is a backlog in spending, and that is what shocked me—because the money is there. If it is banked and ready to draw down in an orderly way, it would seem to make a lot more sense to encourage careful spending than to force people to use it, spend it.

Mr. PROXMIRE. We are not forcing communities to spend. We are making $3.75 billion available beginning October 1 and ending next September 30. If they are going to proceed in an orderly and efficient way, they do not need the $3.95 billion requested in the President's budget.

Mr. WILLIAMS. I would hope the Senator from Massachusetts, who has been part of this debate all through this morning, might come in at this point because, as I stated, I did not hear the Senator from Wisconsin's full statement in this regard. But I believe the record is now unclear as to just how we should approach this business of appropriated funds and when they have been spent—when in an orderly way they should be spent, and I think there is more to be said on this.

I will say that another surprise I had was Friday when we were in here. When I left to go to the housing conference, I thought we had solved this whole community development block grant amendment question with a compromise in the amount of money. Evidently it has not been. I thought the chairman had indicated there would be a compromise.

Mr. PROXMIRE. I honestly think the cut of $200 million recommended by the Appropriations Committee is a compromise. The committee felt it was providing an adequate amount. As I say, there was no attempt to restore the funds in full committee. I think that is a modest cut and can be viewed as a compromise. But to my mind there is no compromise between the $3.95 billion proposed by the Tsongas amendment and $200 million less.

Mr. TSONGAS. Mr. President, will the Senator yield?

Mr. WILLIAMS. I would be happy to yield.

Mr. TSONGAS. On the issue of drawdown if you are a mayor or you are an official at HUD, and the concern is the drawdown in terms of the efficiency of the spending, and if you are now told, "Look, if you do not spend that money we are going to cut your appropriations," is not the normal reaction to spend it faster? So, in fact, by cutting the $200 million out we insure that the normal, orderly process of community development planning and spending is now going to be accelerated, because if they do not accelerate it there is going to be more money taken out next year and the year after that?

(Mr. BOREN assumed the chair.)

Mr. PROXMIRE. The Senator from Massachusetts is putting the Senator from Wisconsin into a Catch-22 position.

Mr. TSONGAS. If I may say so, the Senator put himself in that position.

Mr. PROXMIRE. After all, if communities have more money than they can effectively spend then we are following a commonsense approach if we cut it. I cannot see why that puts communities in a particularly vulnerable position. Maybe the more logical argument is that we have not cut the program deeply enough and we ought to cut it more.

Mr. TSONGAS. If the Senator will yield, Mr. President, it seems to me that in 1974, which was the year that the CDBG program was passed, if I remember correctly what happened was that communities were given money on an entitlement basis but had to come up with strategies, and by definition this was the first time many of these communities had to even think about this notion, so by definition beginning in the early years you had entitlements for which the programs had not been articulated.

Over time, and last year, you had a 104-percent drawdown. Programs catch up with the appropriations.

To the extent that you now cut it you are saying, for example, to a community that has spent its money wisely, there is no drawdown, "We are going to cut our funds." Why? Because somehow there is a pot out there.

Mr. PROXMIRE. Mr. President, will the Senator yield? This is precisely what HUD is doing already. They are doing it now. Let me read from the GAO report, which quotes some HUD directives:

> The Department has identified Camden City as an entitlement community that has an inadequate drawdown rate.

In other words, Camden is not drawing down their funds quickly enough, not spending the money fast enough.

> We are therefore requesting that you submit quarterly reports indicating how you intend to drawdown an amount at least equal to your 1980 entitlement during the current fiscal year.
>
> Because the City's [Moss Point, Miss.] 64 percent drawdown average is 11 percentage points below the State average of 75 percent for entitlements, we request that you continue to submit the monthly reports required by grant condition number 2.

The HUD directives go on to say:

> As of December 4, 1979, the City [Durham] has utilized only $6,674,000 or 54 percent of the available $12,420,000 in Block Grant funds. This expenditure rate is the lowest of any formula city in North Carolina and has resulted in Durham being designated by the Department as the only entitlement poor performer in North Carolina.

In other words, HUD is saying the communities are not spending their money fast enough now. Under the circumstances I do not see how we can come to any conclusion except that these communities have more money than they can currently use.

Mr. TSONGAS. If I may read from a letter sent to the chairman dated August 20, 1980, by the Comptroller General of the United States, the second page, B199908:

> He (i.e., the Inspector General) has not, however, established that the emphasis on drawdown has caused inefficient spending.

The Senator has the same report that I do.

What the Senator is doing is not what my amendment would do, which is to simply put the program back into the stated 9-percent real cut; and to cut it another $200 million, as the committee has done, is to insure a panic in the administration and in the cities to spend this money as quickly as possible. Rather than curing the disease, the treatment suggested by the committee is simply going to make it all the more fatal.

Mr. PROXMIRE. The same GAO report the Senator quoted from pointed out that because of a short timeframe, the GAO has not been able to analyze this issue completely. However the GAO concludes on page 16 of their report as follows:

> We believe that the emphasis HUD is putting on spending block grant funds in directives and guidance to its administrators and to entitlement communities creates the potential for ineffective and inappropriate use of such funds. This emphasis seems particularly questionable in light of the HUD Inspector General's past findings on the lack of adequate monitoring by HUD of the uses of block grant funds by grantees as well as inadequate grantee monitoring.

In other words, the report's final conclusion is that under the present circumstances, with the amount of money that the Congress is currently providing to the Department, HUD is pressuring communities to spend faster. For that reason it seems to me we have every reason to pare the program slightly. All we are talking about is a 5-percent cut in the funds available.

Mr. TSONGAS. The Senator's cut in committee is to exacerbate that situation.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I rise in strong support of the amendment that is being offered today by the Senator from Massachusetts. I do not think there is anybody in the Senate who would disagree with the requirement that we hold down Federal spending. We are doing that in a number of areas. I serve on the Budget Committee and we have cuts virtually across the board. Not as much as I would like to see in some areas, more in other areas, but clearly we are in a time period when everybody wants to try to hold down Federal spending as much as possible.

But this program has already borne, I think, its full and fair share of fiscal stringency without having to take the additional cut that has been proposed.

The amount that was requested by the administration already represents an effective cut of 9 percent from the 1980 current level of service, and that assumes an annual inflation rate of about what we have experienced over the last year, about 13 percent. At the same time, additional local governments will be added to the program in 1981, which further reduces the amount that is available to each community. So we are talking about those two levels of reduction for openers, without any thought of further cuts.

I do not think that the community development block grant program is the right program to single out for special additional cuts. We all know that local governments are hard pressed by both inflation and unemployment, and this particular program is badly needed to prevent current economic difficulties from turning into permanent blight in more and more of our communities across the country.

Two hundred million dollars is a small amount in terms of the overall scope of the Federal budget, but in this instance I think it provides the margin that is needed by communities to preserve the momentum they have been establishing in trying to restore and preserve neighborhoods.

We talk a lot around here about a Federal-local partnership, and I happen to believe strongly in that. This is one area where we have such a partnership working and where we have managed to maintain a very substantial amount of local initiative, discretion, and fine-tuning in developing specific goals and addressing them community by community.

I do not want to see us back away from that partnership, as we could do if we singled this area out for additional cuts.

The community development block grant program is highly targeted on housing rehabilitation. Housing funds are now shrinking. Inflation and high interest rates are making it more and more difficult to build new housing units. We cannot afford to cut support for programs that prevent housing units from being lost from our existing stock.

Furthermore, the community development block grant program is targeted on activities which benefit low and moderate income households. As we know, these are the people who are most vulnerable and are always the hardest hit by a recession. And, of course, we are in one now.

I might say that the block grant program is especially vital to smaller cities—and I certainly have a number of them in my State of Michigan, as we all do wherever we come from. In fact, this program is usually the only source of Federal funds for community development in these cities. A $200 million cut will deny fiscal year 1981 funding to many of these smaller communities which have been funded in the past. That means they will not be able to continue programs which are already underway. And it means that they will lose the professional talent that they have been able to attract needed to run programs for development and redevelopment in the future. The demand for small cities grants already exceeds the amount available by a factor of 3 to 1. I know from talking to local officials and community leaders how important these grants are to smaller communities in my State and I know it is just as true in other States.

Mr. President, the Senate Appropriations Committee has tried to justify this special cut on the basis of a report solicited from GAO. The report shows that as of April 30, 1980, $3.4 billion in community development block grant funds had been obligated but not actually spent. This is a false and misleading issue. These are not funds available for new activities. They appear as not spent as a result of the way the books are kept.

A substantial overhang of funds will appear at the end of any accounting period because community development activities require extensive planning and long lead times. The program emphasizes sizes physical development. It is directed at the comprehensive revitalization of neighborhoods, which requires careful coordination of a wide range of programs and services. By statute we have required extensive citizen participation in planning for the use of these funds. For all these reasons local action under their community development programs is not immediately recorded as a Federal outlay on the books of the Treasury. Furthermore, drawdown rates, as they are called, have steadily increased from year to year. This has occurred as communities have moved out of the planning and early implementation stages and now have many community development activities which continue from year to year. But many other activties will continue to require planning and coordination and unspent balances will continue to appear.

The committee in effect recognizes these facts about the nature of spending patterns under this program, because it also chastizes HUD for urging communities to spend money faster. It is asserted that such pressure creates the possibility for inefficient use of funds. The GAO report on which the committee is relying does cites examples of HUD pressures to increase drawdown rates. I have looked at these examples carefully and all they tell me is that HUD has been using unusually low drawdown rates as an indication that a local government may be having trouble administering the program. Such communities may need closer monitoring and, perhaps, some technical assistance. But only 32 of 629 entitlement communities have been the subject of this kind of concern, according to the GAO report.

The case is not as of this point, that HUD is bringing undue pressures for faster spending. However, if we want to create pressures for spending money too fast in this program, then this kind of punitive cut based on a quite normal overhang of funds is precisely the way to achieve that result. This is what troubles me the most about this cut. It sends the wrong signals and creates the wrong incentives for program administrators.

Finally, my colleague and my friend from Wisconsin and my chairman on the Banking Committee has argued that restoring this $200 million would be a "partial repudiation of the first budget resolution." Well, I want to respond to that as a member of the Budget Committee. I would like to challenge that assertion, because $200 million was not cut from this program by the Budget Committee, which does not make line item decisions on programs, as we know. Rather, the Budget Committee based its assumption for the final 1980 level in this budget category on the assumption that the President was planning to ask for a modest recession in 1980 funding for community development. The relationship between this cut, which did not come out of the basic community development block grant program, and our assumptions for 1981 was not entirely clear. But I did not believe at that time, and I do not believe now, that we intended to cut the community development block grant program below the authorized level in 1981.

So I strongly support—I see my friend from Florida (Mr. CHILES) is raising his eyebrow here and I am sure he will want to give his own interpretation of what we did in the first budget resolution. But I feel very strongly that what we have here

is an effort to make a false economy. We are talking about a situation trying to stabilize and strengthen and build our communities across the United States. Many of them are in trouble, as we know, because of the recession. I think to make additional cuts in this program at this time makes no sense.

I urge my colleagues to join in supporting the Senator from Massachusetts on this issue.

Mr. CHILES addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I think the Tsongas amendment to add $200 million to the HUD appropriation bill for community development block grants is a well-intentioned amendment. It would add funds to a program which has done many valuable things in Florida as well as the rest of the country.

It is consistent with many amendments I see come up, though, to appropriation bills that are good amendments. In fact, I served 12 years in the State legislature, and I have been here 10 years, and I do not believe that I have ever voted for a bad amendment to an appropriations bill. They all were going to do some good and they all were going to help somebody, or there was a group that they were going to help.

The problem in the Federal Government, though, is a little different than the State government. Before we could go home from the Florida Legislature where we had put on those well-intentioned amendments, we had to raise taxes before we could go home, if our well-intentioned amendments cost more money than we were going to take in.

We have had a different situation in the Federal Government. We could make those well-intentioned amendments—and we did so in this body and the House did so, on their side—and at the end, when we added it up and we had spent more than we had taken in, we simply would run the printing press. We would sell some Government bonds and debentures; we would raise the debt ceiling. That is what we have been doing year after year and that is why we have had budgets that were out of balance year after year. That is why we are reaping a harvest of high inflation largely caused by Federal deficits. That is why we came along with the Budget Act and we said that we are going to do something to limit spending and not just add things on because they sound good, without asking whether we can afford them.

We have these well-intentioned amendments, but somebody has to say, "Wait a minute, there are only so many dollars in the store. We only can purchase certain well-intentioned things, so we have to set some priorities. We have to determine what is it that we are going to spend our money for."

That is the process that we have been going through under the new Budget Act. That is the process that we went through in this budget function and with this appropriation bill.

Now, the Senator from Wisconsin comes to the floor—in fact, when he was in the committee, he had a subcommittee allocation given from the budget resolution of how much money he could spend. He has a lot of good things in there that we are for. He has UDAG; we are certainly for that. It is certainly a good program. He has section 8 housing. He has section 202 housing for the elderly. He has the NASA budget. He has EPA water and sewer grants.

He has all these things in his appropriations bill. And because so many of these well-intentioned things require increased funds, he came to the committee and found out his well-intentioned things cost $900 million more than was available in the ceiling. So we had to make an across-the-board cut of all those good programs by 2 percent to try to get back in line.

Now we have another well-intentioned amendment for $200 million. The budget ceiling is all used up right now, without any more room. If we do this, do we go back and cut elderly housing a percentage? Do we cut UDAG or water and sewer some more? Is that what we are going to do?

I listened to my distinguished friend from Michigan (Mr. RIEGLE). I love his work on the floor and especially his use of language when he read that language out of the Budget Committee report that said that we expect the President to hold this program at the 1980 level. Certainly, we did not intend to make any cut. To hold it at the 1980 level is to hold it at the figure that we now have in this bill and it is not a cut.

People keep saying we cut this program $200 million. We are not cutting the program. We are simply saying we are not going to allow it to grow this year. We are going to allow it to stay at the 1980 level for this year. Suddenly that gets translated as being a cut.

Well, I guess it is easy to translate that, because the program has been growing at a rate of 15 percent a year over the last 5 years that the program has been going. But the Budget Committee and the Congress had to make some decisions. We did make a decision concerning an area where there is considerable money, $7 billion, I think, that is unspent that has been appropriated, ready for spending but has not been spent. We said, "Here is an area that can allow them to catch up to that $7 billion that is there. And we are talking about $200 million out of all of this program. Here is an area that we can try to hold down to see if we can take care of all of these other well intentioned programs that we have to spend money for and still see if we can bring the budget into balance."

I know the Senator from Florida voted for the budget resolution. As I recall, I think the Senator from Wisconsin (Mr. PROXMIRE) did. I believe the Senator from Michigan (Mr. RIEGLE) did and the Senator from Massachusetts (Mr. TSONGAS) did. I believe the Senator from New Jersey (Mr. WILLIAMS) voted for the budget resolution. At that time, we were talking about a number that required such restraint.

Now, at some stage, we have to decide that we cannot have it both ways. We cannot be for a budget resolution and say we are going to hold to a certain level of funding and then come out on the floor and say, "But I want to put in this addition and I want to put in that addition."

I know the position the Senator from Wisconsin is in. Where does he make up this $200 million now? What one of these good intentioned programs does he seek to cut, or where else can we cut, if we added this $200 million?

We are already cutting this bill right now across the board 2 percent because it was out of balance, and yet now some Members are trying to add more and more programs to it.

I think at some stage we need to debate this when we are debating the budget resolution. If we are saying there is not enough room in the resolution for all the programs, then we can make a cut somewhere and put more money in. Or the Members can say they want a bigger deficit. Those amendments have come up on the floor before. We have had those amendments and some pass. As we try to come out to fit this appropriation within what the levels are, I do not see how we would have room.

Mr. President, I feel that rather than cut elderly housing, rather than cut UDAG, rather than cut some of these other areas, we should allow this program to use that $7 billion that is sitting there, which is backed up, which is not used, and to be able to resist adding new money—I stress that we are not making a cut. We should just not add $200 million additional growth in this program when we have been adding at the rate of 15 percent a year. That is what we were trying to do in the Budget Committee and it simply makes sense. It is not an easy choice when you look at any of these areas, but if we had allowed every program to continue at its current rate of growth—and there is a constituency for every one of those programs—and they are all good and all well intentioned—if we allowed every one to continue its current rate of growth, we would have had a budget that was $40 billion greater in deficit than the budget we have before us today.

If, on the other hand, we turn around, after we have restrained some of those programs and say, "Wait a minute. That is not fair. This one should be growing at the same rate that it was growing at before," so we call that a cut and we add on, we will be right back where we were before the Budget Act started.

Mr. President, I want to support the Senator from Wisconsin. I think he has made an exceptional effort to work with his budget, to try to hold it within the levels that were mandated by the Senate and by the Congress in the budget resolution. I applaud him for that. The fact that he had to make an across-the-board cut, which certainly none of us like to make, is understandable to me because where do you turn to cut $900 million? Now you are talking about adding another $200 million, and that means that some of these other programs are going to be shortchanged if you have to do that.

I therefore, urge my colleague to support the Senator from Wisconsin and reject the Tsongas amendment.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the following members of the Senate Commerce Committee staff be granted the privileges of the floor during the consideration of this bill, H.R. 7631: Craig Voorhees, Jim Gehrig, and Ron Konkol.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I wonder if the Senator from Wisconsin would help me out with a couple of questions I have. First of all, I wonder if he knows what percentage of the $3.4 billion consists of unobligated funds.

Mr. PROXMIRE. I guess the Senator is referring to the $3.4 billion that has not been spent.

Mr. LEVIN. As I understand it the Senator said there was $3.4 billion of unspent money.

Mr. PROXMIRE. I did say that. That figure is right. It is my understanding that virtually all of the $3.4 billion has been obligated by the Department.

Mr. LEVIN. Is obligated?

Mr. PROXMIRE. That is correct. The funds have been allocated to communities but they obviously are having difficulty spending the money. To spend all of these funds, according to one estimate, would require 10 years.

Mr. LEVIN. Based on the Senator's information, what percentage of the money which has been allocated to the communities, which I presume is approximately the $3.4 billion they have not spent, has been obligated by the communities on projects? That has to be the critical question. These communities enter into contracts, long-range construction contracts.

Mr. PROXMIRE. If the Senator will refer to page 3 of the Comptroller General's report, he will find that communities have drawn down 72 percent as of April 30, 1980. That is the most recent date for which we have figures.

Mr. LEVIN. That was 72 percent of $3.4 billion?

Mr. PROXMIRE. That is the cumulative rate, of April 30, 1980, for the previous 4 years.

Mr. LEVIN. I wonder if the information is available to answer the question I asked about the $3.4 billion which has been allocated to communities but unspent by them, according to the Senator. Does the Senator have information available to him as to what percentage of that figure used by the Senator has not been obligated by the communities?

Mr. PROXMIRE. We do not know, but my presumption would be, since they have not drawn it down, that they probably have not obligated most of the $3.4 billion.

Mr. LEVIN. As I understand the regulations, there is a requirement that the grant recipients draw down only as much money as they can spend in 3 days. My understanding that the money drawn down by local communities can only be for funds it is immediately obligated to pay. If it has a long-term construction project, where it has to pay out money over a period of a year or 2, it cannot draw down money that it does not yet owe under that contract though it is obligated to make those payments as the construction is done. That is why the question is so critical.

In the armed services budget we have hundreds of millions of dollars that have not been spent. It probably is more than that. I do not know the exact figure. We have hundreds of millions of unspent balances in the armed services budget but most if not all of that money is obligated. Now, they come along and say because we are building a warship that takes 10 years to build, we should not appropriate money for the next one.

Mr. ROBERT C. BYRD. Mr. President, could we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

Mr. LEVIN. That is why I could not believe that that question becomes a critical question as to what percentage is not obligated.

I worked in the city for 8 years before coming to the Senate, as my friend from Wisconsin knows. I know how complicated it is to get these construction projects going, how long it takes to get them completed, and when there is rehabilitation work on houses how long it takes for that process to work. It is my understanding, and the Senator can correct me if I am wrong, that a substantial portion of that $3.4 billion, the so-called unspent block grant funds, which the Senator says this program is awash in, is money which has been obligated by the States. They cannot draw it down any faster because the money is not yet owed by them. On the other hand, they have to have that money where it is safely appropriated ready for them to draw down when they themselves are obligated under contracts to make their payments.

Second, Mr. President, I react the following way to what the Senator said about pressure for hurry-up spending. The Senator from Wisconsin has indicated that we have to take some of the pressure off this hurry-up spending and the way to take the pressure off is to cut this by an additional $200 million, so then they will not have so much money they are going to want to spend Both sides, in a sense, are in a "Catch-22" situation in this argument, except it was the Senator from Wisconsin who led off his debate by saying that there are $3.4 billion in block grant funds that has just been sitting around, that the program is awash in a sea of unused dollars; therefore, we ought to cut the program. If that does not provide a pressure on this program to spend money because they are going to be penalized by the Senate if the money is not spent, even though it may be obligated, I do not know what does.

If you want to take the pressure to spend off—and I think that means pressure to waste—you cannot punish people for not spending money fast enough—again particularly if a portion of that money has been obligated, and I believe a substantial portion of that money has been obligated. Mr. President, I agree with the Senator from Massachusetts that when you punish people and deduct money from their program because they have $3.4 billion in money that has not been spent, you are, in effect, punishing them for not spending money fast enough. They are going to proceed next year to spend money even faster so the Senate will not come along and do to them next year what we are proposing to do this year. That is going to provide additional pressure for the hurry-up spending that I think the Senator from Wisconsin and every Senator in this body should be seeking to avoid.

Mr. PROXMIRE. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. PROXMIRE. I want to read a little further from the GAO report, because it spells out what we are trying to get at. Page 4 of the report says:

> HUD officials told us on August 18, 1980, that the current rate of spending for block grant recipients is about 105 percent of their average monthly entitlement. HUD's fiscal year 1981 operating plan calls for grantees to draw down at a rate of 110 percent of the amount drawn down in 1980. Even if this goal is achieved, however, it could take a number of years for grantees to draw down the $3.4 billion backlog.

It will take years for communities to draw down the funds currently available, not just 12 months. In view of the fact that we are appropriating money, not just authorizing it, for the fiscal year beginning October 1 of this year and ending September 30 of next year, it seems to me that to pare the total requested by 5 percent, to reduce the total amount from $3.95 to $3.75 billion, should not in any way inhibit either HUD or the communities from meeting their contractual obligations.

Mr. LEVIN. With one exception, that that money has been obligated by the communities. I repeat to my friend from Wisconsin that I believe a substantial portion of this money is obligated. The reason it is obligated by the communities is that they have long-term construction contracts.

Mr. PROXMIRE. Mr. President, we are not taking any of that money away. We are just making a moderate reduction in appropriations for the coming fiscal year.

Mr. LEVIN. I understand, but the Senator from Wisconsin is pointing to that, saying this program is awash in a sea of unused dollars. Mr. President, these are obligated dollars, not unused. They have to be in the bank, committed, appropriated before a local government can obligate the money under a long-term construction contract. I happen to agree with the last sentence, that it will take years for grantees to draw down on the $3.4 billion. That is because at least a portion of that money is tied up, I believe, and I am not certain, but based on my experience in local government, I believe a substantial portion of that reflects obligations that local governments have entered into.

Mr. PROXMIRE. Some of the money is sitting in banks and drawing interest that is accruing to the advantage of local communities.

Mr. LEVIN. That is why I asked my friend from Wisconsin whether or not that report he quoted or from any other information he might have available to him, can he tell us what portion of the $3.4 billion is money which has been obligated by the local government?

Mr. PROXMIRE. GAO has not made that inventory, Mr. President. Neither HUD nor GAO have complete figures on obligations by communities. They did give us specific examples. Indications are that a substantial amount is unobligated. I have not heard a word yet said by the distinguished Senator from Michigan or other advocates of the Tsongas amendment indicating that if we cut this $200 million, any community would be unable to honor its commitments.

Mr. SARBANES. Will the Senator yield?

Mr. LEVIN. Yes, I yield.

Mr. SARBANES. Mr. President, I am glad the Senator from Wisconsin just raised that particular point, because I think one of the great weaknesses in the argument he is making is apparently the assumption that all grantees are in the same equivalent position.

Mr. PROXMIRE. We do not make that assumption at all.

Mr. SARBANES. I am glad to hear that, because there is absolutely no warrant for making that assumption.

We have first the point that the Senator from Michigan has just been raising, which I think is an excellent point, that this report which the chairman got from the GAO does not, as I read it, go into the question of making the distinction between spending and obligation. The first point I want to make is that the community development block grant program is a formula program. The Congress put together a number of programs with a formula of entitlement so that communities could have this money and develop their own plans in terms of its expenditure. Funds come to them automatically under a formula with a well-developed scheme for local participation in developing how they are going to use this money. I agree with the Senator from Massachusetts in what he said earlier, that some of the most imaginative, innovative, and creative programs that have been developed at the local level have been as a consequence of this program. The formula gives them an entitlement which they know they will have and they are able, therefore, to go ahead and make use of them.

The Senator from Michigan has made a very important point; that is, that the community receives an entitlement. How fast it draws down on it depends on how quickly the program can move. They may either be doing the wrong thing by drawing down too quickly or they may be doing the wrong thing by not drawing down quickly enough. There is no simplistic answer to that question. You have to look at the entitlement, look at the program, look at how they are proceeding, and look at how skillfully they are making use of the money.

The second point is that I do not understand, if the Senator from Wisconsin grants that there is no assumption of an equivalent situation in every community, how he can then deny that for those communities which have their community development block grant program geared up and are really making very effective use of this money that this cut will not harm their programs. An overall cut made with no distinction amongst communities as to how they are using the money, will certainly affect all their entitlements and result in a cut to the entitlement of those communities that have a fully developed local plan with all the local participation involved and are using the CDBG program in a very effective way. It seems to me, aside from the merits—which I think are dubious—of the argument being made by the Senator from Wisconsin on the basis of this GAO report, it is very clear that a number of communities are going to be unfairly penalized because they have a very effective program going and this cut is obviously going to impact upon them.

Mr. RIEGLE. Will the Senator yield at that point?

Mr. SARBANES. Mr. President, do I have the floor?

The PRESIDING OFFICER. The Senator from Maryland has the floor.

Mr. SARBANES. I yield to the distinguished Senator from Michigan.

Mr. RIEGLE. I thank the Senator for yielding, because he makes a critical point here. As a matter of fact, if we take the main piece of evidence being offered by the Senator from Wisconsin, the GAO audit, we had 629 entitlement communities in the period of the audit and the GAO audit itself only points to 32 of those that have real problems with drawdown rates. So, because there are 32 communities HUD has had to urge to improve their administration of this program, the other roughly 600 entitlement communities plus over 2,000 other communities which receive discretionary funding are being asked to pay a price. That is the suggestion here. It is really outrageous.

Mr. SARBANES. That is right. Mr. President, it is a classic example of coming in with a remedy to a situation, and we are not even sure the situation itself exists, as the junior Senator from Michigan has pointed out by his very effective questioning regarding the distinction between obligation and spending. We are not even sure that the basic situation exists, but even if it does, it is a classic example of a remedy that penalizes a host of communities who have done a very effective job with this program.

Mr. TSONGAS. Will the Senator yield?

Mr. SARBANES. I yield to the Senator.

Mr. TSONGAS. I also point out that in the 6 years since this program has been authorized that there has been a total of $19.3 billion appropriated.

Even if we take the Senator's figures, part of that has not only been obligated, but spent. If my mathematics are anywhere near correct, 83 percent of the money has already been both obligated and spent.

I also point out that 2.4 of the 3.4 referred to in the report was only made available 6 months prior to the report.

So what is left has only been available for disbursements for 6 months prior to that report.

Mr. President, we have the CDBG program, it deals with long-term economic development, as, indeed, in the military, as pointed out by the Senator from Massachusetts. If we have a CDBG with 100-percent drawdown, then it is not doing its job.

Mr. SARBANES. That is right. The only way we would have that is if we proceed on the assumption that the CDBG program should be funded and spent in the annual 12-month period.

The community development block grant program, which represents a consolidation of 10 categorical urban development programs, was designed to provide this money as an entitlement and allow the community to plan around it, project out programs, some of which would be done in a shore time span, some longer.

What is the most efficient and effective way to carry forward the program relates to the substance of the program.

But the assumption was also made that on the next funding cycle there would be an entitlement with which the community could plan its next round of programs under the block grant program.

I think much of the focus here has gone astray from the essential strength of this program and what it represents and the way this program evolved into a very effective partnership between the Federal and local governments—one of the best.

To come in with this overall cut and make none of these distinctions, to use the drawdown argument when it is subject to the questioning the junior Senator from Michigan has made with respect to the distinction between spending and obligation, and to ignore the argument the senior Senator from Michigan has made about the unfairness to those communities that have carried forward an effective program, is simply to penalize those who have been able to do the best job.

That is not an effective way to encourage efficiency, or develop confidence in Government, or to make good policy.

Mr. RIEGLE. Will the Senator yield on that point?

Mr. SARBANES. I yield.

Mr. RIEGLE. It almost sounds as if the opponents would feel better if the Federal Government would turn all this money over to the local unit of Government at the time the entitlement is made.

Mr. SARBANES. Will the Senator yield?

Mr. RIEGLE. Surely.

Mr. SARBANES. I think one criticism the Senator from Wisconsin made, if they draw it down and are holding it, and drawing interest on it, then I think they are overreaching with respect to the program. If changes were designed to deal with that particular problem, I would have a lot of sympathy with that.

But the Senator says that one of the reasons we probably have this draw down problem is that the Federal Government has instituted requirements to prevent that from happening.

Mr. RIEGLE. Exactly, and it is much better to leave that money until needed

sitting in the Federal Treasury. It just makes more sense to leave it there.

So the opponents are really on a wild goose chase, but they are hurting over 2,600 communities, unless we can keep this program whole.

Mr. WILLIAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. WILLIAMS. Mr. President, first, I think we are fortunate the junior Senator from Michigan comes from a background of working within a major city, Detroit, and can tell us the practical aspects of contracts, commitments, and orderly delivery under a longer term program than 1 year.

Mr. President, I have a letter addressed to the chairman of the Appropriations Committee (Mr. MAGNUSON) from the mayor of the city of Atlantic City, N.J. I will read two paragraphs:

May I also suggest that while funds may not be spent immediately they very often are encumbered for specific projects which may be delayed for various problems which may crop up such as land acquisition, construction or the like. I am sure you will agree that it is far more important that monies be expended wisely and well rather than merely rapidly.

In short, because funds are not spent immediately does not mean that these funds are not desperately needed to buttress long-range planning and development. Rebuilding worn-out metropolitan areas is not a speedy nor a short-term project.

Mr. President, I ask unanimous consent to have the letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CITY OF ATLANTIC CITY, N.J.,
EXECUTIVE DEPARTMENT,
September 3, 1980.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Appropriations Committee on HUD-Independent Agencies, Senate Office Building, Washington, D.C.

DEAR SENATOR: It was with deep concern that I learned of the Senate Appropriations Subcommittee's recommendations to cut the 1981 budget for the Community Development Block Grant (CDBG) by $200 million.

As Mayor of a city presently undergoing traumatic redevelopment in order to overcome years of extensive economic decline, permit me to express as forcefully as I can how vital CDBG funds are in all phases of communal life among moderate income and poor families, as well as senior citizens, in housing, social services, relocation, the rehabilitation of homes, demolition, land acquisition and capital improvements.

May I also suggest that while funds may not be spent immediately they very often are encumbered for specific projects which may be delayed for various problems which may crop up such as land acquisition, construction or the like. I am sure you will agree that it is far more important that monies be expended wisely and well rather than merely rapidly.

In short, because funds are not spent immediately does not mean that these funds are not desperately needed to buttress long-range planning and development. Rebuilding worn-out metropolitan areas is not a speedy nor a short-term project.

At a time when the overall economy of the nation is depressed and the housing industry is facing critical problems, CDBG is often the one, bright, hopeful resource struggling municipalities and deserving citizens can look to for desperately needed aid.

Thank you for your thoughtful concern and kind attention in this matter.

With all best wishes and admiration, I am,
Very truly yours,
JOSEPH LAZAROW, *Mayor.*

Mr. WILLIAMS. Mr. President, right now, the drawdown is at a rate of 110 percent, which indicates that careful development is now occurring and the expenditures are being made. The chairman of the subcommittee, the distinguished chairman of the Banking Committee, should be very happy that now the orderly processes are resulting in orderly expenditures, and at a rate more than the appropriations level figure.

● Mr. HOLLINGS. Mr. President, I must oppose the Tsongas amendment, because it would add $200 million in new budget authority to the cost of the HUD-independent agencies appropriation bill, and add to the Federal deficit in fiscal year 1981.

This budget authority was not included in the first budget resolution adopted by the Congress in June. Nor was it included in the second budget resolution reported by the Senate Budget Committee just last month.

To hold the line on unnecessary spending, the budget resolutions assumed fiscal year 1981 funding for the community development block grant program at a level of $3.75 billion in budget authority—$200 million below the President's request.

This was not a draconian cut. The CDBG program has grown at a tremendous clip since 1976, from $1.8 billion to $3.75 billion. That is a growth rate of 15 percent per year. Even discounting for inflation, the program has grown at an annual rate of 6.5 percent.

Moreover, much of the money that has been appropriated over these past few years has not been spent. Currently, about $7.0 billion has been appropriated and obligated to States, but not yet drawn down by them.

Where is the compelling argument to add $200 million to these huge unexpended balances?

I do not see it, Mr. President, especially when it means busting the budget by another $200 million.

I am not against community development programs. In fact, I am for them. The community development block grant program has been a vehicle for many communities in South Carolina to make the necessary improvements to promote economic development. The economic growth in Greenville, Columbia, and my own Charleston could not have taken place as rapidly without community development funds.

When I was in need of funds to provide a water system for an extremely poor area in my State, I found the only source of grant funds available was the community development block grant program, and that community competed successfuly for those funds. My record in the Appropriations Committee will substantiate my consistent support in this area.

But a vote against this amendment is not a vote against community development. It is simply a vote against adding additional funds which cannot be spent. And it is a vote against unbudgeted spending.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts. The yeas and nays have been ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Massachusetts. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. LEAHY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New York (Mr. MOYNIHAN), the Senator from Georgia (Mr. NUNN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 13, nays 59, as follows:

[Rollcall Vote No. 429 Leg.]

YEAS—13

Bradley	Randolph	Tsongas
Burdick	Ribicoff	Weicker
Jackson	Riegle	Williams
Levin	Sarbanes	
Mathias	Sasser	

NAYS—59

Armstrong	Hart	Packwood
Baucus	Hatch	Pell
Biden	Hatfield	Percy
Boren	Hayakawa	Pressler
Boschwitz	Heflin	Proxmire
Byrd, Harry F., Jr.	Heinz	Pryor
Byrd, Robert C.	Helms	Roth
Chafee	Hollings	Schweiker
Chiles	Humphrey	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
Danforth	Kassebaum	Stevens
Dole	Laxalt	Stevenson
Domenici	Lugar	Talmadge
Exon	Matsunaga	Thurmond
Ford	Melcher	Tower
Garn	Metzenbaum	Wallop
Glenn	Mitchell	Warner
Gravel	Morgan	Young
	Nelson	Zorinsky

NOT VOTING—28

Baker	Durenberger	Magnuson
Bayh	Durkin	McClure
Bellmon	Eagleton	McGovern
Bentsen	Goldwater	Moynihan
Bumpers	Huddleston	Nunn
Cannon	Inouye	Schmitt
Church	Javits	Stewart
Cranston	Kennedy	Stone
Culver	Leahy	
DeConcini	Long	

So Mr. TSONGAS' amendment (No. 2335) was rejected.

UP AMENDMENT NO. 1632

Mr. RIBICOFF. Mr. President, I send an unprinted amendment to the desk, which is cosponsored by Senators TSONGAS, BRADLEY, JAVITS, MOYNIHAN, DURENBERGER, and LEVIN, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) for himself and others proposes an unprinted amendment numbered 1632:

On page 19, line 20, after the figure "$2,712,000.", add the following new clause: "provided, at least $250,000 shall be available for the Carbon Dioxide Study authorized in Public Law 96-294."

Mr. RIBICOFF. Mr. President, this amendment would direct that of the funds presently appropriated in this bill for the White House Office of Science and Technology Policy, at least $250,000 be earmarked for an assessment of the long-term effects of carbon dioxide accumulation in the atmosphere, the so-called "greenhouse effect." This program was authorized in the Energy Security Act, signed into law in July 1980 by the President.

This Congress has been committed for more than a year to this long-term assessment. The CO_2 problem has been thoroughly documented by both the Government Affairs Committee in a symposium of scientists and Senators in July 1979, and in hearings conducted by Senator TSONGAS in the Energy Committee last April.

CO_2 accumulations in our atmosphere present the United States and the world with a serious dilemma. The problem posed by these accumulations, which is caused by man's increased combustion of fossil-based fuels, was drawn to my attention by a number of prominent scientists in the summer of 1979 and by Chancellor Helmut Schmidt of West Germany. It is being addressed on a limited basis within the U.S. Government by an interagency task force led by the Department of Energy. Groups within the National Academy of Sciences have also recently done some preliminary assessments.

The symposium which I convened a year ago reached conclusions repeated later in a special study by the Academy's Climate Research Board. My symposium found that—

The possible long-term impacts of CO_2 accumulations in the atmosphere are important enough to require continuous high-level attention of scientists and energy policymakers both in the United States and abroad . . . Questions still exist on many aspects of the CO_2 problem . . . While these uncertainties remain we cannot predict the precise consequences of uncontrolled fossil fuel use.

Specifically, the findings were that:

First. Increasing concentrations of CO_2 into the atmosphere have been at a rate faster than can be absorbed by the oceans and land biological sinks.

Second. A doubling of the present concentration would probably occur within 50 years and cause a major heating of the earth—averaging around 2 to 3 degrees Centigrade.

Third. This heating may well cause severe climate changes varying greatly from region to region and have severe impacts on some societies.

Fourth. There are still major uncertainties in the pace and impact of the warming, and how the effects will occur. We have not even begun to address the question of reducing the severity of some of the possible effects.

Fifth. Thus we need to deepen our understanding of this phenomenon as quickly as possible. We need to know more about the carbon cycle, future fossil fuel use and fossil-based synthetic fuel use, climate changes which are likely to occur at different CO_2 levels.

Sixth. The CO_2 problem is a global one which needs global solutions. There is some effort, but inadequate and uncoordinated to get at this problem in the international community.

It is important that we marshal the resources to focus on all aspects of this problem as soon as possible. If it becomes necessary to make decisions on our fuel mix in order to reduce the dangers that may arise from CO_2 concentrations, we will need 10 to 20 years to do it. Other nations will also need accurate information on the potential danger to shift their fuel mixes if necessary and to reduce whatever effects climate change may bring.

I believe the separate invstigation conducted by Senator TSONGAS reached similar conclusions.

Mr. President, in light of these findings, I proposed an amendment to S. 932, the Energy Security Corporation bill, cosponsored by 9 other Senators, which directed the White House Science Office to enter into an agreement with the National Academy of Sciences to develop a worldwide assessment of the impact of fossil fuel combusion. The Academy was encouraged to work in conjunction with other nongovernmental bodies (like the International Council of Scientific Unions) and intergovernmental bodies (such as the World Meteorological Organization) in this effort.

The amendment, which was substantially adopted by the conferees on that bill, directed the Academy report to the Congress on three things:

First, how a long-term program of domestic and international research, monitoring, modeling and assessment of the causes and effects of atmospheric CO_2 accumulations should be structured.

Second, how the United States can best lead this effort.

Third, how the ongoing U.S. Government assessment program can be strengthened to provide information and recommendations of the highest possible value to policymakers.

I was very pleased that the Conferees adopted my amendments and specifically that the authors of the National Climate Act in the House of Representatives wrote the conference urging their colleagues not only to accept, but strengthen the proposed program. The conference adopted their suggestion that the program be expanded from a 2-year $2 million study, to a 3-year $3 million study. They argued the amendment would stimulate a fresh and thorough international assessment of the problem and a fuller American program than is currently underway.

I have worked closely throughout this process with the President of the National Academy of Sciences, Dr. Philip Handler. He has reported to me that the scientific community is very excited over the prospects of this program. He wrote on September 18 of this year that the Academy has begun an "organizing effort to carry out such a study in the Academy. Our Climate Research Board is, even now, preparing a program plan that would, in my view, assure the Congress of the appropriateness and quality of current national and international initiatives and also would identify research opportunities that are not being adequately pursued."

Mr. President, I ask unanimous consent that the letter from Dr. Philip Handler be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL ACADEMY OF SCIENCES,
September 18, 1980.

Hon. ABRAHAM RIBICOFF,
U.S. Senate,
Washington, D.C.

DEAR SENATOR RIBICOFF: In the summer of 1979 we discussed the possible effects on climate of an increase of carbon dioxide in the atmosphere resulting from growing dependence on and use of fossil fuels. Largely as a result of the efforts that you initiated at that time, the Energy Security Act (P.L. 96-294, Title VII, Subtitle B) incorporates a provision that authorizes a comprehensive study by the National Academy of Sciences of the problems potentially associated with the accumulation of carbon dioxide in the atmosphere.

As a preliminary response to this Congressional initiative, we have been organizing an effort to carry out such a study in the Academy. Our Climate Research Board is, even now, preparing a program plan that would, in my view, assure the Congress of the appropriateness and quality of current national and international initiatives and also would

identify research opportunities and strategies that are not being adequately pursued.

Under the Act, responsibility for funding the study lies with the Office of Science and Technology Policy. While I am sure that concerned Federal officials are fully committed to the assessment and investigation of the impact of fossil fuel combustion on the accumulation of carbon dioxide in the atmosphere, and its sequelae, time constraints and other priorities may unfortunately delay the timely submission of the requisite appropriation request.

As you indicated, when introducing the authorizing legislation for the study, it is important that we marshal the resources needed to focus on all aspects of this problem as soon as possible. In my view, the availability of $250,000 for fiscal year 1981 would permit us to move ahead with this assessment in a manner consistent with your intent.

It would be most unfortunate if this useful undertaking were allowed to fall by the wayside for lack of funds.

Sincerely yours,

PHILIP HANDLER,
President.

Mr. RIBICOFF. Mr. President, I am disappointed by indications that, despite this persuasive record and clear direction by the Congress, the White House Science Adviser may not undertake the authorized program. It is disquieting to note the report of the Appropriations Committees that the Adviser's testimony on his programs was so vague and unspecific that he has provided the Congress with virtually no guidance on his intentions for fiscal year 1981. Indeed, Dr. Handler has become so concerned with the attitude of the Science Adviser that he indicates to me his concern that the program is in jeopardy. He states his belief that the Science Office does not intend to follow our direction in this matter. I have sought a clarification of the Adviser's programing and not been satisfied.

Therefore my cosponsors and I believe that we should insure there will be adequate funding of the CO_2 study in fiscal year 1981. The National Academy has said that for an adequate beginning to be made, $250,000 would be needed in fiscal year 1981. This amendment provides that such an amount be earmarked within the Adviser's budget for this purpose. It does not appropriate any new money in this legislation but insures that congressional intent be carried out within the program funded through this bill.

I ask for my colleagues' support of my amendment and hope that it will be adopted.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. RIBICOFF. Mr. President, I am pleased to yield to the distinguished chairman of the committee.

Mr. PROXMIRE. Mr. President, some time ago the distinguished Senator from Connecticut pointed out the terribly threatening effect this carbon dioxide "greenhouse" problem represents to our very existence and because of the enormous increase in the development of various substitutes for oil, particularly coal, this could be a most tragic problem not only for this country but for everybody in the world.

Mr. RIBICOFF. The Senator is absolutely right. The matter was first brought to my attention by Chancellor Helmut Schmidt of West Germany, who pointed out that the global consequences were horrendous and that it is one of the most difficult problems facing the entire world.

We had a symposium in the Governmental Affairs Committee in which scientists documented the tragic possibilities; the melting of the Antarctic ice cap, the flooding of continents, and the dramatic changes in agricultural zones across the world. As a consequence, the Congress passed and the President signed, as part of the Energy Security Act, that we examine the long-term consequences of CO_2 accumulations, monitor them, and suggest some solution.

Now we are initiating an $88 billion synthetic fuels corporation. We ought to know where we are going and the National Academy of Sciences have geared up to start making this study.

I do not think we can afford to delay it. It is not going to take much money, $250,000 in fiscal year 1981.

Mr. PROXMIRE. As I understand it, the Senator from Connecticut has shown that a number of outstanding scientists, responsible, thoughtful, conservative, careful scientists say that this could represent the kind of terrible threat to mankind's existence the Senator is talking about.

Mr. RIBICOFF. That is right.

Mr. PROXMIRE. We are not just citing some spooky article that appeared in some far-out publication. These are the outstanding scientists in the community; these are the true experts.

Mr. RIBICOFF. When we had the symposium, I had a telephone call from Woods Hole, where the leading scientists in this field happened to be meeting at that time. They told me they all agree with my proposal.

Mr. PROXMIRE. As I understand it, what the Senator is proposing is not that we add money, but that we simply earmark $250,000 of the money already recommended by the Appropriations Committee for the purpose of making this study.

Mr. RIBICOFF. That is right. The chairman is absolutely correct. We are not asking for an additional dime by the earmarking of $250,000 from the sums already in this bill.

Mr. PROXMIRE. Mr. President, I am happy to support the amendment.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. RIBICOFF. I am pleased to yield.

Mr. MATHIAS. Mr. President, I am certainly sympathetic with the purpose of this amendment.

I wonder if the Senator from Connecticut could tell us if it is his intention that this study be a global study? It is the whole atmosphere surrounding the planet Earth, is that not right?

Mr. RIBICOFF. I would say the start has to be made in the United States by the National Academy of Sciences. But I do believe that scientists all over the world have to take a part in this, because there is no way that you can study the atmosphere and confine it just to the United States. The program calls for the Academy to take a leadership role now in the international community on this matter.

Mr. MATHIAS. And this is such a concerning problem, because the distinguished Senator from West Virginia (Mr. RANDOLPH) knows that we have developed in this country a very high technology for burning coal with a minimum adverse effect on the environment. But there are other parts of the world that may not be employing the same high level of technology protective of our environment and the people of the United States would suffer the adverse effects of that environmental damage which may be inflicted in the People's Republic of China or somewhere in Africa or somewhere in Eurasia.

Mr. RIBICOFF. The Soviet Union, West Germany, Poland—it can happen anywhere.

Mr. MATHIAS. But all the human race would suffer.

Mr. RIBICOFF. The whole human race would suffer.

Mr. MATHIAS. It is another instance of how the world is more interdependent than ever before.

Mr. RIBICOFF. The Senator is correct.

Mr. MATHIAS. For that reason, I think the amendment of the Senator from Connecticut is an excellent one and I am happy to support it

Mr. RIBICOFF. Mr. President, I am pleased to yield to the distinguished Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I appreciate the Senator from Connecticut yielding to me. He is knowledgeable in this area. He is one of many that support the work upon the environmental subject matter within our Committee on Environment and Public Works.

I have had the opportunity to study this proposal. I feel that it is necessary and timely. I feel very strongly that the Senate has a responsibility to act in a matter of this kind that goes beyond any one fuel or potential alternatives to that fuel. The problem of possible carbon dioxide buildup from fossil fuel burning is a matter that concerns the environment, the quality of life throughout the constantly shrinking world—a world in which we are brought closer and closer together by means not so much of destruction, but of mobility. This is a matter which our committee has also recently addressed, in a request to the Office of Technology Assessment to undertake an analysis of the impact of several large-scale activities such as increased fuel burning on the atmosphere.

If agreeable with the able Senator from Connecticut (Mr. RIBICOFF), I would like to be added as a cosponsor.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the distinguished Senator from West Virginia, Senator RANDOLPH, be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Connecticut (Mr. RIBICOFF).

The amendment (UP No. 1632) was agreed to.

Mr. PROXMIRE. Mr. President, I

move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

AMENDMENT NO. 2367

(Purpose: To provide for two hundred forty thousand three hundred and ninety-two units of additional assisted housing for 1981, rather than two hundred eighty thousand and eighteen)

Mr. EXON. Mr. President, I call up my amendment that I offered on Friday regarding section 8 housing and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. EXON) proposes an amendment numbered 2367:

On page 2, line 13, strike "$1,417,400,000" and insert in lieu thereof "$1,284,963,355".

One page 2, line 18, strike "$30,877,500,000" and insert in lieu thereof "$27,476,552,375".

Mr. EXON. Mr. President, once again I take the floor to discuss the matter of appropriations for section 8 housing programs. On Friday last, I spoke about many of the current problems which plague section 8 programs, and cited, for the RECORD, the critical report of the General Accounting Office dated June 6, 1980.

Mr. President, I will not repeat the arguments I made last week on this issue. Those comments can be found in the CONGRESSIONAL RECORD of Friday, September 19, on page S12943. However, please allow me to summarize the substance of my amendment. The amendment I am offering does not cut section 8 housing. It allows for the addition of approximately 240,000 assisted housing units for 1981, the same number as are being added for the current year. Acceptance of my amendment will disapprove the Appropriations Committee's recommendation of approximately 16-percent increase in additional units. In view of the GAO report and need for fiscal discipline, I believe it is entirely inappropriate to allow a 16-percent increase in assisted housing for 1981.

Approval of my amendment would reduce 1981 budget authority by $3.4 billion. It would have little or no effect on budget outlays for 1981, but the amendment would progressively reduce outlays for section 8 housing in succeeding years, eventually to total $3.4 billion, as compared to the provisions currently in the Appropriations Committee's recommendations.

Although the control of outlays is highly important, because outlays determine the amount of any Federal budget deficit or surplus, it is just as important to reduce budget authority if we are ever going to get a handle on Federal spending. As we all know, one of the problems of balancing the Federal budget in any particular year is that a relatively small percentage of the budget is subject to immediate control of outlays. Most budget outlays are actually controlled by entitlements and budget authority which has been granted in previous years. Reducing budget authority for section 8 programs now, while it will not affect section 8 outlays in 1981, will certainly help Congress control spending in the future.

Apparently this fact of budgeting is not appreciated by the Department of Housing and Urban Development. In a document recently prepared by that department it was argued that:

A cut in the level of long-term commitments will have . . . little impact on the federal budget because of the long-term nature of the commitment. . . . With the expected mix of new and existing units, a cut of billion[s] in budget authority in 1981 will have virtually no impact in 1981 outlays. . . .

Mr. President, it is exactly this kind of thinking which has gotten our country into its current fiscal difficulties. Simply because an amendment has no immediate outlay impact is a very weak argument against it. By authorizing excessive budget authority to the section 8 program, a program which is receiving more and more criticism with each passing year, we are not only asking for trouble in a housing program, we are inviting fiscal calamity for the entire Federal budget. The Federal liability currently existing for section 8 programs is already in the hundreds of billions of dollars, and, depending upon economic conditions which would see rents rising faster than incomes, could cause our Government a fiscal crisis against which our past year's difficulties would surely pale.

Again, let me state that this amendment is not one I offered earlier in the Senate Budget Committee. That amendment would have reduced section 8 housing programs further and would have required certain programmatic changes. The amendment I am now offering merely proposes to hold expansion of section 8 at the same level as we settled upon for the current fiscal year.

In closing, Mr. President, it must be stated again that our No. 1 long-term domestic problem is inflation—not recession. A favorable vote on this amendment will show that the Senate recognizes that fact and is prepared to do something about it.

Mr. PROXMIRE. Mr. President, I am in a difficult position on this amendment because I am, of course, managing the bill as chairman of the HUD—Independent Agencies Subcommittee of the Appropriations Committee. Therefore, I am under some obligation to represent the position taken by the committee. But I must say that this is a most important amendment. I rise in support of the amendment, recognizing that other members of the committee may, of course, disagree and argue against the Exon amendment.

I think if there is any issue which concerns the American people more than any other, it is inflation. We know that inflation was a little worse a few months ago than it is now. At the same time, Mr. President, if we pay any attention to the statistics that we have before us, we know that inflation is likely to get a great deal worse in the coming months and in the coming years.

The most recent Wholesale Price Index has made it clear that wholesale prices rose very sharply last month, particularly at the intermediate food level. As a matter of fact, food prices rose for the 2 months of July and August at the unprecedented rate of 9 percent each month. That is an 18-percent increase in food prices in 2 short months. It works out to an increase of more than 100 percent in 1 year.

Of course, all of this will not be reflected fully in consumer price increases, but it is going to be reflected at least in part. More Americans are familiar with what food costs in the grocery store than with the Consumer Price Index, so I think if we feel we are under pressure now to hold down spending because of inflation, we should recognize that we are going to be under a great deal more pressure in coming weeks, months, and years. I think we all know that the one certain action that we can take to combat inflation with the support of the overwhelming majority of the American people, although there are other things we can do, is to hold down Federal spending.

This is precisely what the Senator from Nebraska is doing with his amendment. The amendment cuts funds provided in the bill for additional subsidized housing units. It does not reduce the Government's current assisted housing program. Far from it. Even if the amendment is adopted, the Government will be able to subsidize an additional 240,000 units in 1981. So even with the Exon amendment, there will be moderate growth in the assisted housing program.

Mr. President, as the Senator from Nebraska has pointed out, the costs of this housing program are immense, and they go on for years and years and years, literally for generations.

The yearly costs of our current subsidized housing commitments are growing by leaps and bounds. Budget outlays attributable to payments required by subsidized housing contracts were $3.56 billion in 1979, are expected to be $4.37 billion in 1980, and are projected to be $5.48 billion in 1981. This represents a growth of 54 percent in just 2 years. I will repeat that. This program has grown at a rate of more than 50 percent in 2 years.

Furthermore, these are long-term commitments which we must honor for periods of up to 40 years. When I say "more than a generation," I am not just kidding. The period of commitment is 40 years. This is an uncontrollable portion of the budget. We should be extremely cautious about adding to these commitments by giving the Department of Housing and Urban Development authority to enter into new contracts.

The Exon amendment, by holding new commitments to last year's level, takes that cautious approach, a cautious and moderate approach which I think we should support.

A recent GAO report which was critical of the assisted housing program pointed out that in 1979 $400 to $600 monthly rental levels for various sizes and types of newly constructed and rehabilitated units in many locations were commonplace. In New York City and San Francisco, levels for some three- and

four-bedroom units were set at $900 to almost $1,100 per month.

Those were assisted units. Clearly, those fair market rents have increased since 1979. We should be cautious about adding additional units to a program that is so costly that in some cases subsidized rents are much higher than those paid by the average American—rents higher than the taxpayer who pays for the subsidy pays for unsubsidized private rental property or pays each month for the home he is trying to buy.

Mr. President, our long-term assisted housing commitments are presently estimated to be $128 billion. We must honor those commitments. We should also be extremely cautious in adding to them, especially since the Congressional Budget Office has indicated—get this figure because it is one that really staggered me—that one housing unit for one assited family could cost the Government as much as $710,000, three-quarters of a million dollars, over the life of a 40-year contract. That is the cost of one housing unit.

Mr. President, we should be aware of that.

Of course, that takes into consideration the realistic fact that we are likely to have inflation for many years to come and that utility costs and housing costs are going up. The Federal Government, once we get into these housing programs, provides for the difference between 25 percent of the income of the tenant and the fair housing cost. But the projection, and it is a realistic, honest projection, is that this can cost us as much as three-quarters of a million dollars for a single housing unit.

So I think what the Senator from Nebraska is doing is moderate, is sensible, is cautious, and is responsible. I hope the Senate will support this amendment.

Mr. EXON. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. WILLIAMS. Mr. President, I regret very much that this amendment has been offered. As much as I respect the distinguished Senator's concern about the need to control the cost of Government—I certainly share that view and I know how seriously he is taking his responsibilities as a member of the Budget Committee. I know it is a thankless responsibility. He has served there with distinction and has been very active in that committee's deliberations. However, I must oppose this amendment because of the harm I believe it would do.

Mr. President, it would slash housing assistance in the face of a deepening rental housing shortage. It would unnecessarily and unfairly punish the poor, whose opportunity for finding decent affordable housing is slim without the aid of the Federal Government. It would ultimately cause far more costs for our taxpayers than it would save. I am particularly concerned that the amendment appears to be driven by recent attacks on the program, appearing in a GAO report, the Reader's Digest, and several newspaper articles, which attempt to dress up what impresses me as half truth, inaccuracy, misstatement, and innuendo as fact, and which cannot go unchallenged.

By all available evidence, the Nation is gripped by a crisis in multifamily housing production. According to information prepared by the Department of Housing and Urban Development, the shortfall in multifamily housing will range from 170,000 to 300,000 units per year through the 1980's if present trends hold. In other words, the loss of units to the stock, combined with a surge in family formation, is overwhelming our production.

With housing construction in a depression, millions of young families who are finding themselves priced out of the homeownership market, are competing with lower income citizens for a dwindling number of rental units. Vacancies in many areas are almost nonexistent. The national rental vacancy rate is hovering at an all-time low. This condition naturally places great pressure on the cost of housing, as Assistant Secretary for Housing Larry Simons testified during hearings before the Housing Subcommittee last Spring. Now, along comes this amendment to cut back housing production still further, one of the most inflationary actions that could be proposed.

If housing shortages create hardship for the general population, then for low-income persons, particularly poor families, the situation is often desperate. They stand little chance of success in competing for available units. A Library of Congress report issued last year estiated that the Nation must produce 600,000 single and multifamily units a year for the next 10 years just to keep pace with the needs of low- and moderate-income people. We are not producing anywhere near that amount. A November 1979, GAO report stated that the rental housing shortage was so acute that Congress should take immediate action to relieve it.

Mr. President, I commend the Senator from Wisconsin, chairman of the Subcommittee on Housing, for his actions as he led our committee through the development of a program that would be reflective of this situation. He had more vision, more wisdom, than I. I rather opposed his approaches, as they were in development. But the longer I looked at the proposal of the Senator from Wisconsin, the more I knew that, for many reasons, it made a great deal of sense, faced with this critical housing production situation as we are. Unfortunately, that program was not accepted.

Mr. PROXMIRE. That is right, Mr. President, it was not accepted. The Senator from New Jersey and the Senator from Wisconsin did our best to get it accepted. What appealed to me so much about that program, Mr. President, is that it would not have cost any more—in fact may have cost less—than the administration's program and provided far more housing.

Now we are faced with a very different situation, as the Senator recognizes. The Senator from Nebraska is simply offering a straight, clear-cut reduction in the increase in housing. The amendment by the Senator from Nebraska would still provide for an additional 240,000 housing units in 1981. I realize that we would like to have more if we could, but it is simply a matter of being in a position where we have to make a very painful choice. It would be fine to have additional housing production, but to provide that the Federal Government has to provide it and not the private sector seems to this Senator to be the issue. That is true particularly in view of the terrific problem we have in trying to balance the budget.

It is no accident that the Senator from Nebraska is a member of the Budget Committee. The Budget Committee is confronted with a terrible dilemma now of facing probably a $20 billion or $30 billion deficit in 1981, a year when we are trying so hard to achieve a balanced budget.

Mr. President, if we are going to have a balanced budget somewhere in the future—1981, 1982, 1983, or 1984—this is exactly the kind of program we are going to have to have, the sort of moderate approach in the amendment of the Senator from Nebraska.

Mr. WILLIAMS. Mr. President, the budget situation has eclipsed our whole view of our housing needs. The amendment that is offered by the distinguished Senator from Nebraska deals with what is in the appropriations bill in terms of the number of units that will be supported by the appropriation. The bill, as I understand it, is at 280,018 units—am I right on that? The bill that comes to us from Appropriations would support 280,081 units. The amendment would reduce that to 240,000.

Mr. President, it takes a period of a year to get the commitments out and I am advised that, given the inflationary facts of life, the 280,000 appropriated will, in fact, buy, at the end of term, a reduced number, down to 240,000. If it is true, that inflationary factors, will reduce it through this amendment to 240,000, then, at the end of term, because of inflation, that number will come down to 202,000. So the figures are not hard and fast at the number of units that the Senator from Nebraska proposes.

If that is true, let us look at the situation of what we need in rental housing construction. Of course, that is exactly what the Senator from Wisconsin knows even better than I, because that is what he addressed himself to in his proposal which was in our housing bill that recently came here to the Senate; but which was rejected.

Mr. PROXMIRE. If the Senator will yield on that point, the difficulty is that it is very, very hard to know what the inflation rate is likely to be. One of the elements that promotes inflation, of course, is a Government housing program that crowds the private sector by using the same materials, manpower, and so forth. One of the effects of the Exon amendment would be to ease the inflationary pressures somewhat in the construction area. We do not have a situation where

we know inflation is going to be 10 percent, 12 percent or 14 percent. The level of inflation will depend, to no inconsiderable extent, on the amount of publicly assisted housing, which always tends to drive prices up, for many reasons which the Senator from Wisconsin, the Senator from Nebraska, and the Senator from New Jersey all agree on, I am sure. One is that the Federal Government as a buyer of housing is far less careful, pays the top dollar for wages, moves into markets and bids up prices and has done so consistently. For that reason, I think certainly, if we do not accept the Exon amendment, if we deny the Exon amendment, we are going to have more inflation than is acceptable.

Mr. WILLIAMS. Mr. President, for those not with assisted housing and of low income, they are the ones who are going to feel increasingly the harsh effects of inflation, because if we do not have increase construction in rental housing, there will be more competition for the units that are there and, with that, competition—and I might add everybody is not rent controlled. I think there is reason to believe that rent controls are a disincentive to construction, but most areas are not rent controlled. Without production coming on, we have more pressure by more people for existing units. That is where inflation is going to be, for those tenants of lower income, whose only base is in rental housing. They are the ones who are going to feel not only today's inflation, but, in rental housing, even a more gross and grotesque rate of inflation.

Mr. PROXMIRE. If the Senator will yield for 1 minute, and I apologize for interrupting, the Senator from Nebraska appropriately pointed out, very ably, last Friday, that only one low-, moderate-income person out of every 13 eligible actually gets assistance. The overwhelming majority will not be helped by this program.

Mr. WILLIAMS. But those will be hurt if we do not get some more units on line.

Mr. PROXMIRE. Most low-income families will be hurt, anyway, and hurt because the program will tend to drive up the price of construction and thus drive up rental costs.

Mr. WILLIAMS. I ask the Senator from Wisconsin to yield. At 2 o'clock there is a housing conference, with the housing group from the House of Representatives. Shall I go over to that conference and accept the Senator from Wisconsin's intermediate, middle-income program which the House retained in a pilot way to see whether we can get this started, to see if it will work?

Mr. PROXMIRE. We will miss the Senator very much on the floor, but I hope the Senator goes to the conference because it is very important. I must say, having been defeated, as we were on the floor of the Senate, that we have to maintain the Senate position. Frankly, looking at it as objectively as I can, I do not see how we can accept another new housing program.

I think, as the New York Times said, we need that like a hole in the head.

We cannot justify any Government program that provides housing for people with incomes of over $40,000 a year, when we are not doing it for those with incomes under $5,000 a year.

So I will have to take the position the Senate took by majority vote. I think the Senate was probably right and that we will have to oppose the new program.

Mr. WILLIAMS. As I understand it, the House did not go all the way with the Senator from Wisconsin's program, but they did put a modest beginning in the nature of a pilot. To see if it works.

Mr. PROXMIRE. I am against that.

Mr. WILLIAMS. Does the Senator not want to see if his idea will work?

Mr. PROXMIRE. I am afraid not, some oppose it, and——

Mr. WILLIAMS. I will say, when we vote in the conference I might vote with the position No. 1 of the Senator from Wisconsin and at least give it a try on a pilot basis.

Mr. President, the Congress has pursued such a restrictive budget course, that any attempts to respond to the GAO's warning about the rental housing crisis have been choked off. For fiscal year 1981, the first concurrent budget resolution allowed $30.9 million in budget authority for assisted housing, $2.3 billion below the President's budget request. The HUD Appropriations Subcommittee reduced the budget resolution figure by $272 million and then the full Appropriations Committee cut out another 2 percent.

The Senator's amendment would cut $3.4 billion in budget authority from a budget recommendation that has already been sliced three different ways. It is my understanding that the Senator claims his amendment would provide about 240,000 units of section 8 and public housing. Let us take a close look at the figures, because in fact the amendment will produce far less. The fiscal year 1980 appropriation was for $27.3 billion in budget authority. According to HUD, this amount will permit 202,000 reservations by October 1, 1980. The amendment would provide only slightly more funds, $27.4 million in budget authority. It seems to me that the rate of inflation between fiscal year 1980 and fiscal year 1981 will severely erode the number of units that can be assisted to the point that they drop below 200,000. By comparison, the number of reservations achieved in fiscal year 1977 was 388,000, while in fiscal year 1978 it was 326,000. The trend that this amendment would continue sets us on a course for higher housing prices, greater overcrowding, declining housing quality, and retarded progress in strengthening the social and economic foundations of our urban neighborhoods.

This leads us to question what practical purpose the Senator hopes to achieve by offering this amendment. Will it reduce inflation? I would be happy to hear the Senator state how many points this amendment will knock off the inflation rate. Of course, he cannot. In fact, as I have pointed out, the loss of production caused by this amendment will actually help fuel inflation by contributing to further shortage.

Perhaps this amendment is designed to serve as a symbol of congressional budget restraint. I am sure that in the Senate's rush to bust the budget with a $39 billion tax bill, and with a boost in defense expenditures by $26.8 billion over fiscal year 1980, the symbolism to be found in this amendment will be lost in the dust. For fiscal year 1981, the actual outlays saved by this amendment will total zero.

Maybe this amendment will reduce costs to the Government. Wrong again. As a result of this amendment, as many as 40,000 jobs would be lost, along with more than $340 million in construction workers' wages and millions in tax revenues for Federal, State, and local governments. Of course, there are some costs that cannot be calculated, such as the millions of dollars in private investment frightened away from neighborhoods that must remain blighted because this amendment has denied them new housing that could help rejuvenate them—or the money that must go to fight crime in abandoned, deteriorated housing projects that could have been rehabilitated with the funds withheld from them by this amendment. And then there are the human costs for those who are told they must remain in unsafe, unsanitary housing, or in housing they cannot afford, because there just are not enough section 8 units to go around. The program is already so small compared to the need. Must we slam the door in still more faces?

The Senator bases his amendment in part on the criticism leveled against the program in recent months. As chairman of the Senate Housing Subcommittee, I am aware of these charges, and of the great harm that they do to public confidence in the program. I am also aware they are for the most part unfair and misleading attacks on a program that is in truth doing its job. I welcome this opportunity to set the record straight about the section 8 program. Let us look at a few examples of the misrepresentation and inaccuracy.

The GAO report claimed that section 8 fair market rents have grown too quickly and too high. However, GAO based its conclusions not on comparisons with early section 8 rents, but on rents under the old section 23 program. Oddly enough, several years ago, GAO was complaining that HUD set its section 8 rents too low.

GAO also asserted that section 8 projects are excessively costly, using as examples certain section 8 assisted projects in New York City. Actually, these projects were built under another program, found themselves in financial trouble, and only received section 8 assistance to preserve the housing, and to prevent huge insurance losses for the Federal Government.

The Reader's Digest article on section 3 is rife with misstatement. It confuses fair market rents with contract rents, overstates budget authority totals, wrongly states that HUD guarantees developers a 10-percent profit, mixes up annual payments to liquidate contracts with long-term budget authority in attempting to show the growth of the program, implies incorrectly that the pro-

gram was hastily considered at the time of its original enactment, wrongly states that developers are encouraged to build luxury buildings, when the law and regulations specifically prohibit it, and incorrectly asserts that a noncontroversial provision in last year's housing bill to improve verification of tenant incomes was vigorously opposed by industry interests. Mr. President, I ask unanimous consent that a response to the Reader's Digest article, prepared by Mr. Charles Edson, be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE REAL SECTION 8—A READER'S DIGEST REBUTTAL

(By Charles L. Edson) *

The June 1980 Reader's Digest article by Donald Robinson on the Section 8 program has the provocative title "Billion Dollar Nightmare at HUD". The article is no less so, indicating that Section 8 was adopted as a Congressional afterthought and is now the haven of "rip-off artist" developers who obtain Section 8 projects through political favoritism, if not corruption, and in any event give less than value received.

Careful examination shows that the article departs significantly from reality, thereby maligning a program that will soon be providing decent housing for over 1.6 million lower-income American families. Let's look at the record.

A WELL CONSIDERED PROGRAM

We are first told that Section 8 was a "generally ignored" and "obscure" program when enacted in the Housing and Community Development Act of 1974, receiving a miniscule "appropriation" of $42 million (at p. 129). Nothing could be further from the truth.

The genesis of Section 8 was a six-month Nixon administration study in 1973 on restructuring the nation's subsidizing housing programs in light of the moratorium on the existing programs proclaimed that January. In September 1973, President Nixon introduced the Section 8 concept of providing housing assistance payments to owners equal to the difference between market rent for the unit and what the tenant could pay based on family income. Unlike the fixed subsidy mechanism of prior programs, the housing assistance payments would be adjusted for inflation to insure project solvency. Although Section 8 was not then on the books, the President stated that by revising an existing program—Section 23 Leased Housing—the housing assistance payment concept could be implemented immediately.

In the fall of 1973 the administration introduced legislation (H.R. 10688, 93rd Congress) to put Section 8 into statutory form. The House Committee on Banking and Currency held hearings over a three-week period on the new housing and community development programs. The Senate Banking and Currency Committee on October 2, 3 and 4, 1973 held comprehensive hearings specifically directed to the administration's housing proposals.

Next, the Housing Subcommittee of the House Banking and Currency Committee considered the bill from February 5 to April 30, 1974 followed by three weeks of full commitee deliberation. The Senate Banking and Currency Committee spent an unprecedented twenty-six days "marking up" the 1974 legislation. As Senator William Proxmire summed up the process, "This was a bill which required many months of hearings, and the longest markup session I have ever seen." [1]

The careful programmatic examination given by both Committees can be seen from the attention directed to Section 8 in the Committee Reports.[2] There was also extensive floor debate on the new housing program before Senate passage by a 76–11 vote on March 11 and House passage by a 351–25 vote on June 20.

Significantly, Congress in the 1974 Act authorized nearly $900 million in contract authority for the new program. In current dollars this exceeds the $1.25 billion of contract authority (not $3 billion as incorrectly stated in the article) which President Carter requested for FY 1981. In evaluating the Government's commitment to a housing subsidy program, the relevant figure is contract authority—not appropriations; once a housing assistance payment contract is signed, the Government has a full-faith commitment to make the subsidy payments for the contract term. Thus, the $42 million 1974 appropriation merely indicates that in the initial program year very few housing projects would be in operation to receive the subsidy.

In contrast to the author's presenting an erroneously low figure for the initial obligations under the program, he presents a deceptively high figure in setting the program's long-term cost. HUD's obligation to pay the $130 billion in subsidies is not an immediate one, but extends over 40 years. Under budgetary concepts virtually unique for the housing assistance programs, the total cost over the 20 to 40-year contract period must be charged as budget authority in the year obligated. This is analogous to charging the long-run operating cost of an aircraft carrier, as well as its initial cost, to the first year's budget. If all government programs were given the Section 8 accounting treatment, then astronomically high figures would be produced.

We can perhaps criticize Congress for the misleading way that it accounts for Section 8. However, we cannot fault our lawmakers for giving "little thought" to or "generally ignoring" the program, as charged by the author and Senator Armstrong.

COST AND PROFITS

Next the author indicates that the program is a bonanza for developers who reap huge profits at the expense of the poor. As an example the author asserts that a developer submits his application to HUD who then determines a "fair market rent" that the developer can charge for each apartment. In addition we are told that the developer is encouraged to submit applications for luxurious apartments and thus get higher rents (at p. 130).

In the first place, the developer does not negotiate the Fair Market Rent for the project. On the contrary, HUD publishes Fair Market Rents for every area in the country on an annual basis. Further, the developer does not receive the published Fair Market Rent; instead, he gets a "contract rent" which must meet a "rent reasonable test" as required by the Regulations (24 C.F.R. 880.204(b)(2)). In general, this means that the rents must be comparable to "unassisted units of similar age, design and location which provide comparable amenities and services." This test often results in actual contract rents below the published Fair Market Rents; in any event published rents can only be exceeded by 20 percent and then only on appeal to HUD's area or central office. As a result, recent high interest rates have made many Section 8 projects infeasible under the HUD approved contract rents.

As to luxury apartments, the Regulations specifically provide (24 C.F.R. 880.204(e)) that amenities in Section 8 projects are "limited to those amenities which are provided in unassisted housing of modest design in the market area. . . ."

We are then told that any developer who gets Section 8 funds can "quickly" get a 90 percent mortgage from a bank. Fast profit indeed! Obtaining a bank mortgage loan is a time consuming and frustrating process; such conventional loans have been rare indeed. Even if a project is HUD–FHA insured, there are many cases where the developer cannot receive the 90 percent mortgage because the HUD-approved rents are so low that there is just not enough cash flow to support a mortgage at the 90 percent level. Finally, with FHA financing, forget about a fast anything; FHA processes on a geological time schedule.

The author also states that HUD "guarantees" the developer a profit of 10 percent. Not true! We believe that the author is referring to the fact that in an FHA insured mortgage, there is a builder's and sponsor's risk allowance (BSPRA) of 10 percent of all costs except land costs, or about 8½–9 percent of the total project costs. This is actually a non-cash allowance which the developer can credit against his required equity contribution. Out of this percentage, the developer must pay the contractor's fees, the cost of providing bonds or letters of credit, professional fees not included in the mortgage, and other so-called "over and above costs" that are not covered by the mortgage. Indeed these payments could be more than the BSPRA.

In the Spring of 1980 the Surveys and Investigations Staff of the House Appropriations Committee made a comprehensive study of developer profits under the Section 8 program. As a guardian of the federal purse, the House Appropriations Committee has traditionally given the Section 8 program careful scrutiny. Their report was thorough and objective and here's what it has to say on developer's profits:

"The fact that project costs are high with large amounts of private investment capital and tax shelter benefits derived does not necessarily mean that the services of developers are not being provided at a reasonable cost." (A Report to the Committee on Appropriations, U.S. House of Representatives, on the HUD Section 8 Program, April 1980, at p. 37).

The report continues:

"The amount of work done by developers for the production of Section 8 housing is large. It calls for a high degree of individual competence. There are many obstacles and risks—some administrative, some technical, and some financial. The work involves a closely related series of interdependent and high priced services that must be brought together by the developer and be processed against and through the housing production system." (at p. 38).

Section 8 developers must deal with a myriad of federal, state and local officials and the laws and regulations that they enforce. Other obstacles include vigorous neighborhood opponents in many cases and spiraling materials and labor costs in every case. For every one of their successes generally several projects have fallen through with significant out-of-pocket expenses. As the report indicates, developers work hard for every penny they get.

As the author correctly points out (at p. 130), ownership in the project is often sold, or syndicated by the developer to investors who receive the benefit of the tax losses generated by the project. Syndication does not result from any loophole. Congress specifically tailored the Tax Reform Act of 1969 and the Tax Reform Act of 1976 to encourage investment in low and moderate income housing by providing certain tax benefits to such housing (See e.g. Section 189 and Section 1250 of the Internal Revenue Code). As stated in the House Appropriations Committee report:

"Without syndication there would be far fewer housing projects, since most developers are not financially able to provide the necessary capital it takes to build and maintain projects for a period of years." (at p. 43.)

THE FAVORITISM ISSUE

Program corruption and mal-administration are the next charges. The author indicates that all a developer has to do is submit construction plans to HUD and the application is then processed and presumably approved. Actually, in allocating program funds through a HUD area office, HUD publishes a Notice of Fund Availability (24 C.F.R. 880.304) announcing a competition for the funds. Often twenty to thirty developers compete on a given project and HUD chooses the application on a strict ranking system (24 C.F.R. 880. 306–307). In the alternative HUD allocates funds to state housing finance agencies who in turn choose the developer. To encourage procedures consistent with state needs when a housing finance agency is involved, HUD does not set forth the same rigid ranking procedures. However, virtually all state agencies have adopted competitive procedures similar to HUD for choosing developers.

The corruption charge includes an allegation of favoritism in one state agency which has been denied. No criminal charges have been brought. The "string of convictions and federal-state indictments in New Jersey" (at p. 132) is quite an overstatement. In fact no state or federal housing official has been indicted; the three indictments and one conviction involved private parties participating in the program. These are the only suggestions of corruption in a program where thousands of projects totalling over 700,000 units have been awarded under the new construction or substantial rehabilitation phases of the program, a truly remarkable record.

The author cites as his "classic example" of lax administration the Taino Towers Project located in East Harlem New York (at p. 131). What he does not say is that this project was funded under the 236 Program, the now discarded subsidy program that Section 8 was designed to replace. Granted, HUD has now allocated funds under the Section 8 existing program to the project to make it feasible so that the development funds expended under Section 236 will not be wasted. That Section 8 is being used to save a failed development is hardly an indictment of Section 8.

We agree that HUD's program administration could be improved and it should keep better statistical track of program numbers. If this is the worst that can be said about a department administering a subsidy program now funded to provide decent housing for nearly four million Americans, then the program seems very sound indeed.

THE SUCCESS OF SECTION 8

We have talked of the success of Section 8 in terms of quantity—the millions of people housed. But Section 8 is more than a quantity program—it is quality as well. It was the intent of the program sponsors to provide for housing that would readily blend into a community and would not be branded as "public housing": as a result, there are hundreds of attractive Section 8 projects located throughout the country that few know are government subsidized. Accordingly, there is far more acceptance of Section 8 in suburban communities than there is of public housing; much needed economic integration is the result. On the other hand, the Section 8 substantial rehabilitation program is contributing significantly to the revitalization of our inner-city areas.

That Congress established 80 percent of median income as the Section 8 limit for a "lower income" family (not "poor" as the article erroneously states at p. 130) is very salutary. First, it assures some degree of economic integration within a project so that housing projects do not become ghettoes for the very low income. Second, it does provide housing opportunities for the forgotten Americans of moderate income who are desperately in need of assistance.

Finally, Section 8 has produced millions of man-years of needed constructon jobs; real emphasis is placed on minority employment.

THE IRONIC CONCLUSION

In fairness, the author does a real service in pinpointing the need to build low income rental housing and rightly identifies the impediment to such production as rent controls and declining private industry participation in conventional housing (see p. 131). Indeed, after all the scathing and inaccurate indictments, the author concludes quite properly that Section 8 should not be abolished; instead, he presents seven suggestions for "drastic reform."

Ironically, the program's staunchest advocates have long favored six of the "reforms"—competition for project selection, elimination of red tape, preservation of existing housing (40 percent of Section 8 units are funded under the flourishing existing housing program), "moderate rentals", effective verification of tenant income, and the rooting out of any corruption. The only unsound suggestion is lowering the eligible income level to 50 percent of median as this frustrates the goal of economic integration and aiding lower middle class families as discussed above. In addition, more subsidy would be required.

Although the author obviously believes in the continuance of Section 8, his unfounded charges undermine the public support vital to achieve that end. We must set the record straight.

Mr. WILLIAMS. Mr. President, the section 8 program is complex, largely because it is an attempt to meet the varied needs of localities. It is bound to come in for its share of criticism because of its complexities and because of the large budget obligations it entails. Some criticism is justified and the Department as well as the Congress should continuously strive to see that it operates in the most efficient manner possible. But the kind of amendment offered by the distinguished Senator from Nebraska does nothing to improve the program. It is purely punitive in nature. In fact, the only complaint about the program to which the amendment responds directly to is one of inequity, that the program serves too few. Its response is to cut 100,000 or more people out of the program.

Mr. President, this amendment should be defeated. Its cost is simply too great—for our low-income citizens who look to the Federal Government for basic, decent housing, for communities seeking to provide their residents with better neighborhoods to live and work in, and for our taxpayers who must ultimately foot the bill when the Federal Government retreats from its responsibilities to address real human need.

Mr. President, I ask unanimous consent that at this time a list of 35 separate organizations which oppose this amendment be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

ORGANIZATION SIGNING MEMORANDUM TO U.S. SENATE ON HUD APPROPRIATIONS, SEPTEMBER 12, 1980

American Baptist Churches, U.S.A., Office of Governmental Relations.
American Friends Service Committee.
Americans for Democratic Action.
Children's Foundation.
Consumer Federation of America.
Council of State Community Affairs Agencies.
Council of State Housing Agencies.
Friends Committee on National Legislation.
Housing Assistance Council.
Human Environment Center.
International Union, UAW.
League of Women Voters of the U.S.
National Association for Advancement of Colored People.
National Association of Housing and Redevelopment Official (NAHRO).
National Association of Housing Cooperatives.
National Association of Social Workers.
National Conference of Catholic Charities.
National Consumer Law Center.
National Hispanic Housing Coalition.
National Housing Conference.
National Housing Law Project.
National Leased Housing Association.
National Low Income Housing Coalition.
National Neighbors.
National Retired Teachers Association/American Association of Retired Persons.
National Rural Housing Coalition.
National Urban Coalition.
National Urban League.
Rural America.
Rural Coalition.
United Church of Christ, Office of Church and Society.
United Food and Commercial Workers, International Union.
United Presbyterian Church, Washington Office.
U.S. Catholic Conference.

Mr. EXON. Mr. President, I ask unanimous consent that the Senator from North Carolina (Mr. HELMS) be added as a cosponsor to the amendment.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, it is so ordered.

Mr. EXON. Mr. President, I would like to reply to some of the statements made by my friend from New Jersey with regard to the amendment before us.

The basic thrust of the argument advanced by the Senator from New Jersey, which is the line being followed by HUD, is that we must continue this program and that if the Exon amendment becomes law we are not going to keep up with the inflationary rate with regard to section 8, this highly subsidized Federal program.

Mr. President, as we wrestle to try and bring the Federal budget under control, I hear time and time again the argument that I have heard on the floor of the Senate this afternoon against my amended. That is, simply, that with the inflation soaring through the economy today, we have to raise everything accordingly or we are going to penalize someone.

It comes back to the question, Mr.

* Lane and Edson, P.C., Washington, D.C.; Council, National Leased Housing Association for whom this rebuttal was prepared.

[1] CONGRESSIONAL RECORD of August 13, 1974 at S14881.

[2] House and Senate Reports at pp. 368–375 and pp. 611–615 respectively of the Compilation of the Housing and Community Development Act of 1974 prepared by Subcommittee on Housing of the Committee on Banking and Currency, House of Representatives (1974).

President, which comes first, the chicken or the egg?

There can be no question, Mr. President, that the poor and the underprivileged and the senior citizens living on fixed income are the ones that are hurt most by the inflationary spiral that we are continuing to experience.

Nevertheless, if we are going to try to help those people, then it seems to me that those of us in the Congress of the United States must at least begin to take some preliminary, tiny, first steps to bring Government spending under control, because if we accept the argument that we must pass each type of legislation, on all the Federal programs, just to keep up with the inflationary spiral, we find ourselves locked once again into that whirlwind, that cyclone, the theory of, let us all keep chasing the dog's tail because we have no place else to go.

Mr. President, I think it has long since passed the time that we in the Congress, that have the responsibility for setting the Federal budget, recognize that if we accept that philosophy that we should keep insulating everyone up and down the economic scale from inflation, that by so doing we eliminate more and more the pressures from the public at large to really do something about inflation.

Therefore, I cannot accept the argument that we should accept the 16-percent increase authorized by the Appropriations Committee for the section 8 housing program because, I emphasize once again, that mine is only a modest reduction, not affecting the outlays in 1981, but, in the end, it will save about $3.4 billion in the outyears.

Now, to the program itself, the Senator from Wisconsin has ably said once again why he is supporting the Exon amendment.

Mr. MATHIAS. Will the Senator yield?

Mr. EXON. I am happy to yield to the Senator from Maryland.

Mr. MATHIAS. The Senator makes an interesting point here, that he cannot accept the 16-percent increase in section 8 appropriations. It just seems to me that we ought to keep in mind that in this bill we are not only dealing with the section 8 appropriations, we are dealing with a HUD package that involves, in fact, 21 agencies, and this bill, at the most, is $4,189,000,737 under—under—the budget.

Now, the Senator is properly concerned about the level of expenditures, and I am concerned about the level of expenditures. But I think it has to be recognized that we are more than $4 billion under the budget.

If the Senator will yield further, I do not want to trespass on his time, but it is so exactly on point that I think it is, perhaps, the proper place to comment as to just where some of these budget reductions have been made by the committee, cuts that have been made in the budget that have not been restored.

Just for example, local government transition assistance, $500 million—one-half a billion dollars—cut.

Assisted housing, $2.3 billion—not million dollars, but billion dollars—cut.

Community development block grants, $200 million, cut.

EPA waste water construction grants, $300 million, cut.

Veterans readjustment benefits, $179 million, cut.

Veterans Administration major construction, $112 million, cut.

There is an across-the-board cut of 2 percent, which amounts to $992 million.

When the Senator talks about grappling with Government expenditures, I submit to the Senator that this committee is grappling, and we have cut and we have cut to the point that it hurts.

So that when we oppose a further cut, we are opposing it out of real prudence and concern for the welfare of the people of this country and for the welfare of the great cities of this country which are dependent upon this appropriations bill.

Mr. EXON. Mr. President, I am not privy to all the facts and figures that have just been presented by the distinguished Senator from Maryland. However, I suspect that the cuts he has emphasized time and time again are likely not cuts in the program from the total authorization but probably are cuts that have been envisioned as a result of the inflation pressures.

I am not privy, either, to the cuts that have been made by the committee. But if there is a program that does need some cutting, it is the section 8 program. Therefore, if the committee has recommended a 16-percent increase in the section 8 program, as they have, then perhaps as to some of the programs that have been suggested by the Senator from Maryland, if they did receive cuts, whether they were actual cuts or not, the committee made some errors in that particular area.

Mr. MATHIAS. Well, that is——

Mr. EXON. Mr. President, I think I still have the floor.

The PRESIDING OFFICER. The Senator from Nebraska has the floor.

Mr. EXON. Mr. President, since we are talking about this section 8 program and the 16-percent increase as authorized by the committee, let me review just how bad I believe this program is and how far out of hand the program must be by any rational consideration.

There has been some talk about what this is going to do to the underprivileged families. The Senator from Wisconsin has indicated that I pointed out the other day that many of our so-called and legitimate underprivileged families are not receiving the benefits that some would imagine they have under the section 8 program.

This program is not well targeted, in my opinion. Families with incomes of more than $20,000 per year are eligible for section 8 assistance, while only one out of every 13 households with incomes below $6,000 per year are currently receiving benefits under the housing subsidy program. Families are able to receive subsidies of more than $6,000 per year, which is much more than is provided typically by other income security programs.

Furthermore, many of the welfare programs are designed to assist temporarily those who find themselves in need of some type of support. This is not so with the section 8 subsidies.

Mr. President, most of our country's other large income security programs, such as food stamps, aid to families with dependent children, and other costly programs, are based on the premise that some people need a helping hand from time to time. That is not so with the section 8 program, for we are creating a permanent dependency with this program as it now operates.

As the Senator from Wisconsin pointed out a few moments ago, this is one of our most expensive programs—in fact, up to $700,000 per unit, in cost to the taxpayers of the United States, over a 40-year period. I am surprised that there are those on the floor of the U.S. Senate who would oppose the amendment I have offered, because I believe it is a step, if only a tiny step, in the right direction.

Mr. MATHIAS. Mr. President, I assure my good friend the Senator from Nebraska that these cuts to which I have referred are not imaginary. They are very real, as the Nation will discover when it attempts to utilize the diminished programs to which they relate.

However, I am concerned about the basis upon which this amendment has been formulated, because I believe that the Senator's concern stems, in a very large measure, from the projections of the section 8 program.

Am I right about that?

Mr. EXON. Certainly, the projection of cost in the outyears is a major concern of mine. It is estimated, conservatively, that at this time if we were not to build one more section 8 housing unit, which we are not going to do—I emphasize once again that the amendment I have offered still would allow a 240,000-unit increase—but even if we would not build one more section 8 housing program, in the outyears this is going to cost the taxpayers of this country about $150 billion, at a minimum.

Mr. MATHIAS. That is exactly the point I wanted to make. I am sure that one can sit down with a slide rule and come up with a figure of that kind. But these projections do not always pan out the way the slide rule indicates. Human factors are involved.

I agree with the Senator that you should take the longest look you can, that you should try to look over the horizon and see what the future holds.

I believe the Senator knows, probably better than anyone else in this Chamber, that making such long-range estimates can be a very tricky business, a very uncertain proposition. A very small change in the assumption on inflation can make a huge difference in the final outcome.

I recall an experience from my Navy days. If you might be only 1 degree off your set course and if you made that course correction and got back on course within a minute or two, not very much damage had been done.

But if you allowed that 1 degree in

course error to persist over an amount of hours then you would be a long way from the spot that you were supposed to reach after that amount of steaming. That is exactly the kind of problem we have here.

For instance, if we were to assume an annual inflation rate of 10 percent on the average price house in the Washington metropolitan area, and unhappily for the people in the Washington metropolitan area that average price is about $100,000—it, however, comes out to be a convenient figure to use for figuring a statistic—if you assume an average price of $100,000 and an annual inflation rate of 10 percent over the next 40 years that means—and incidentally 40 years is the time frame in which we are looking at the section 8 projections—that the average price house in the Washington metropolitan area in 40 years' time will cost $4,526,000.

I just cannot accept that. I just do not think that is going to happen. God forbid that it should happen.

But if you carry out these projections, without allowing for the kind of human factors that are ultimately going to play a part, that is what would happen. Or suppose you say well that 10 percent was 2½ points off what it really was, so let us assume an inflation rate of 7½ percent over a 40-year period. Then that would mean the average price house in the Washington metropolitan area in 40 years' time would cost $1,804,000.

I do not believe it. It could happen. But it just shows us that relying on these projections over too long a range does give us the same problem that the officer of the deck on a man-of-war of the U.S. Navy has. If he sets that course and does not make course adjustments as he goes along every few minutes, if he does not see that he is right on that course and he allows a little bit of assumed error to deflect him by the end of a long cruise he will be way, way off the point on the charts that he had hoped to reach.

Mr. President, I think we should look at the substance of this amendment and of the program that it would affect.

The original administration request for $33.2 billion in budget authority was to fund an estimated 300,000 units of section 8 and public housing during fiscal year 1981. Because of budget constraints, the proposed level was well below the generally recognized level of need because if there is one shortage in this country that most people recognize it is a shortage in housing, and this request has already reflected an actual decline in the level of Federal housing assistance caused by inflation in the cost of construction of houses.

The Senate on top of that has already cut the proposed level by $2.3 billion, a cut, if we accept the budget cost and mix assumptions, that would reduce the level of housing subsidies to approximately 279,918 units, or a little more than 20,000 units below the budget request.

So here we are with housing in short supply in the country and as a result of the Senate's action already taken we have cut out 20,082 units.

The proposed reduction of an additional $3.4 billion would mean a further reduction to 240,777 units—or a further cut of almost 39,141 units for a total reduction of 59,223 units, for a total reduction of almost 60,000 units, almost one-fifth of what we had hoped to construct, again based on the original budget assumptions.

Of course, depending on what happens to inflation during the remainder of 1980 and during 1981, the actual level of units assisted in 1981 could drop even lower; that would be to less than 22,000 units if the proposed reduction in budget authority that is contemplated by this amendment were to be enacted.

These reductions come at a time when the vacancy rate on rental housing nationwide is at the lowest level ever recorded—and at the same time when the construction of unsubsidized, non-luxury rental housing has virtually halted, has just stopped.

The major factors that have influenced the cost of subsidized housing in recent years are the same that affect all housing: the cost of land, financing and operating costs—particularly utilities. And we dealt with that question in relation to public housing earlier in the debate on this appropriation.

Housing has been the victim of inflation, not the cause of it. It has been one of the principal victims of inflation. Each of the factors affecting housing costs are really related to forces that are beyond the control of the average builder, beyond the control of local government, as the distinguished Senator knows from his long experience in the executive branch of State government, and even forces that are beyond the control of the Department of HUD. Unless a steady supply of new rental housing is assured, the gaps between demand and supply will worsen and the rents will continue to go up. They will constitute a larger and larger percentage of the family income of the tenants and they will constitute in themselves an inflationary factor in the national scene.

Just last Monday, a week ago today, the Washington Post ran a story entitled "Area Income Housing Bite Passes The Traditional 25 Percent."

In that article the Post reporter, Patricia Camp, made the following points that there are an estimated 110,000 families of the Washington metropolitan area who pay more than 35 percent, more than a third of their annual income for housing which is, of course, a very big increase from the traditional pattern in which housing costs normally consumed a quarter of the household income.

She further pointed out that the growing ranks of the people whose housing costs them more than a quarter of their income make up more than one out of every five tenant households and some of these people—and I know this is a matter of concern to the Senator from Nebraska—are poor and they are paying disproportionate amounts of their income for housing simply because they do not have any other choice. Where else are they going to go? There is not any alternative for them and Government subsidized housing which could lower their housing costs is very limited.

Last year more than half, to be exactly precise about 51.2 percent of the area's home buyers who bought their homes from savings and loan associations, paid more than a quarter of their household income for housing, and that contrasts very sharply with the situation 2 years earlier in 1977 when only about 36 percent had done so.

So I just cite those figures to show the kind of situation that we are heading into here that will get worse if the Senate adopts this amendment.

The reason I say it will get worse is that because a cut in the level of long-term commitments will have a drastic effect on the overall level of rental housing production all over the country.

But it will have very little impact on the Federal budget because of the long-term nature of this commitment. In other words, you will get a very sharp reduction in terms of housing supply. You will get a nearly negligible reaction in terms of Federal outlays and in the immediate effect on inflation.

So I am afraid this amendment comes very close to being a classic illustration of a remedy that is worse than the disease it is designed to cure.

The bulk of units are newly constructed or substantially rehabilitated, and the Federal subsidy payments do not start until after the unit is completed or rehabilitated, and eligible tenants actually move in, become occupants.

Thus, for the projects that are approved in 1981, which would contemplate a construction start in 1982, subsidy outlays really would not normally occur until about 1984. There is about a 2- to 3-year time lag.

Even for subsidies to existing units which, of course, would be anticipated to have faster outlays, the full impact of the reduction would really be very minimal in the coming year.

With the expected mix of new and existing units, the cut in budget authority for 1981 would really have virtually no impact at all on 1981 outlays, and it would reduce the outlays in 1982 by, perhaps, $10 million. But at the same time it would deny to 39,141 American families who are looking for a place to live the kind of housing we would otherwise be able to help them to occupy.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. I will only take 2 or 3 minutes. We will have to vote and I am prepared to vote. The yeas and nays have been ordered.

The PRESIDING OFFICER. Might the Chair inquire of the Senator from Nebraska, the Senator in the chair at some point would like to speak to the amendment in opposition.

Mr. EXON. This Senator will be happy to accord the favor to his friend from Michigan. I will assume the chair in a few moments and allow him to speak against the amendment, which is above and beyond the usual call of duty.

The PRESIDING OFFICER. I thank the Senator. I see the Senator from Oklahoma approaching, but I assumed my good friend would have accorded me that opportunity, so I will shortly join him on the floor.

The PRESIDING OFFICER (Mr. BOREN). The Senator from Nebraska.

Mr. EXON. Mr. President, I would like to straighten out and remove a cloud, I think, that may have been placed in some Senators' minds by the vivid description of millions and billions of dollars, and the people who are literally going to be thrown out on the street if the Exon amendment is passed, as ably stated by the Senator from Maryland.

Mr. President, in the first place, the $150 billion that I cited earlier in debate that the section 8 housing program is costing the taxpayers of the United States in the outyears of up to 40 years is a conservative estimate. It is based on a theory of a 6- to 7-percent inflationary rate during that period.

As a member of the Budget Committee we have heard economists from all walks of life, in fact all of the economists who testified before the Budget Committee in the last month, have said that we were going to see in the next 3 years a minimum inflationary rate of 8 percent per annum per year. I hope they are not correct but I suspect they are.

If the inflationary pressures we have experienced in the recent past are any semblance of what we might see in the future, then I would say that the $150 billion estimate that I made was a conservative one.

I think it is not fair to indicate that if you are off one degree when you start out on a course you can project that out to almost unbelievable figures to the extent that a home in Washington, these days, would be worth $4 million 40 years from now. If that comes to pass, because of the experience of this Senator from Nebraska, who came here less than 2 years ago and paid three times more for a home in Washington, D.C. than I would have had to pay to buy the same home in Nebraska, where we enjoyed a good life, I think I know better than anyone else the inflationary pressures that are here present in Washington, D.C., and a substantial amount of that is the fact that Washington, D.C. lives and breathes and exists on Federal expenditures.

I suspect if my home is worth $4 million 40 years from now, then while it has not been a burning ambition of mine, I will become a millionaire for the first time. But then a millionaire will not amount to much then because you will have to be a billionaire to be in the upper structure of income as far as these United States are concerned.

If that is true 40 years from now, to put this in perspective, then I would say that the Senator from Nebraska's estimates of $150 billion in the next 40 years for the cost of the section 8 housing program would indeed pale by comparison, because it would be in the trillions of dollars if we are going to use those kinds of comparative facts, which I think we should not.

Therefore, some of the arguments that have been offered by my friend from Maryland with regard to statistics and inflation are somewhat like the boy who was herding the sheep crying "Wolf. Wolf. Wolf." Then when the wolf did show up no one would believe him.

The fact of the matter is that the section 8 housing program is one of the most costly and, I think, inefficient programs we have going now.

I am somewhat amazed, Mr. President, at the Senator from Maryland lacing the amendment which has been offered by the Senator from Nebraska to the point where you would think that people were literally going to be thrown out on the streets if this amendment passes, and the homebuilding industry would literally be closed down.

This is hardly factual, Mr. President, when you compare the fact that the Senator from Nebraska's amendment before this body allows a 240,000-unit increase in section 8 housing as compared to the 280,000 units that have been offered by the Appropriations Committee.

So to put this in perspective, Mr. President, the Senator from Nebraska's amendment, if accepted, would result in our building 240,000 instead of 280,000, a reduction of only 40,00 units.

Therefore, the conservative approach by the Senator from Nebraska, a modest decrease, if you will, in comparison to what is anticipated by HUD, and they certainly are not known for their conservatism in this area, to take the figures of HUD, I think, would be another step at fiscal irresponsibility, and in this area I think the leaders of this Nation do not score too well over the past several years.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. Mr. President, let me say at the outset that my good friend from Nebraska was very kind to offer to take the chair so that I might come down and speak against his amendment. It is typical of the kind of graciousness and fairness that I have seen him exhibit at all times and, therefore, it is hard for me to take the floor in opposition to an amendment that he offers.

But in the same spirit of friendship and goodwill, I want to say directly that I think this is a bad amendment. My friend offered it in the Budget Committee and, as he knows, we voted it down there.

Mr. EXON. Will the Senator yield?

Mr. RIEGLE. Yes, of course.

Mr. EXON. The Senator must not have been listening to the debate, because I advised my friend from Michigan and that this is not the amendment that I offered in the Budget Committee that failed on an 8 to 7 vote. I was on the floor Friday and if the Senator from Michigan would simply look in the RECORD, he has been ill-advised and misinformed if he said that the amendment that I am offering here was the same one that was voted down by a vote of 8 to 7, if I remember correctly, in the Budget Committee. This is a watered-down version.

I thank the Senator for yielding. I thought I ought to correct that. That is not the fact.

Mr. RIEGLE. The Senator is right. And I should not have used the word "same." I should have used the word "similar." I would use the word "similar" and correct my statement to that extent: That this is not exactly the same amendment, but it is similar and it has the same intent, that is, to make a substantial cut in this program.

The Senator has no disagreement with the fact that he offered an amendment to make a cut in the Budget Committee and, as he just noted, the Budget Committee, in its wisdom, voted to the contrary and it turned down his amendment. It did so for good reasons, and I would like to repeat some of those reasons here now.

This cut would come at a time when the housing industry remains in serious difficulty, the victim of inflation and high interest rates. Production of unsubsidized multifamily rental housing has virtually come to a standstill. In 1979—even before this year's housing depression—over half of multifamily rental construction starts were HUD subsidized. So a cut of 40,000 units, half of which would be new units, would represent the loss of a major portion of all the new multifamily rental housing this country would otherwise build.

It is not just the housing industry that needs help, although, clearly it does. It is people who need housing assistance. Almost 6 million American households still live in physically inadequate housing units. Two million of these households are elderly. Most are poor people who cannot afford better housing on their own. The ability of poor people to pay for adequate housing is actually getting worse. Over 7 million low-income households paid more than half their income for shelter in 1977, which is the most recent year for which we have data, but it is clear from everything we can see that that number would be higher today.

My friend from Nebraska would have us believe that the section 8 program is not targeted to these needy households. In fact, the average income of section 8 families is around $4,500 per year and over three quarters of assisted households have incomes below 50 percent of median. We keep the formal income limits of our housing programs high enough to include some moderate income families so that we can avoid the mistake sometimes made in the past of filling whole buildings with the very poor. We include some moderate income families so that when our cities build section 8 housing as part of their neighborhood revitalization efforts it can be stabilizing, mixed-income housing. We also keep the income limits relatively high so that as people start to improve their circumstances they do not immediately lose the right to live in assisted housing. But the section 8 program mainly serves the very poor, and that is as it should be.

We should also remember that the higher the income of a section 8 household, the more rent that household pays. This fact seems to get lost when figures are cited which appear to combine the highest allowable incomes with the highest possible subsidy levels. So the way we have structured this program is fair to people at different income levels.

Nor does housing assistance go to a lucky few. It has been asserted that only 1 in 13 households with incomes below

$6,000 per year can receive housing assistance.

This number—1 in 13—has been used since at least 1977 in debates. Like this, but it is a very misleading figure. It assumes that homeowners are eligible for section 8, which they are not. It also assumes that all income eligible families need assistance and are willing to do what is necessary to get it. In fact, a family which lives in adequate housing and does not pay more than a quarter of its income for shelter has no reason to apply for housing assistance. Fortunately, we have some poor families in this country who may need other types of help, but are not housing needy. In addition, many families which might benefit from assisted housing are not willing to join a housing program, for a variety of reasons. Some live in housing which does not qualify and are not willing to move. Others perceive that their incomes will soon increase and do not want to join a program on a very short term basis. We know from the evidence of an experimental housing program that less than 40 percent of renters in this income range will join a program similar to section 8.

So even in 1977 we were doing better than 1 in 13. And, while we have not provided adequate levels of funding for housing assistance since the midseventies, we have not stood still either. The funds we have appropriated through fiscal 1980 for section 8 and public housing are now sufficient to house over 3 million families.

And we might ask ourselves the question, Where would we be today if we had not taken those actions, and where would those 3 million families be?

When we add the older section 236 and rent supplement program units occupied by lower income families, the total is over 3½ million. This does not help the 6 million families who are still in substandard housing or the 7 million who pay over half their income for housing, but it does mean we have come a long way. We should be proud of this accomplishment and should continue to add meaningful numbers of assisted housing units each year. I think we ought not to listen to those who say we should give up the fight for decent housing for all of our citizens just because the fight is long and because it is hard.

I know there is a need to make economies in this budget and, as my friend from Nebraska knows, we have made enormous economies. We have cut all over the place. And when in the Budget Committee, which is not a committee overly sympathetic to activities of this kind, when we established this level, as we did after debate and votes in that committee, I think we picked a fair level. We picked a level that was in keeping with the rest of our national priorities and with the spending limits that we felt we had to impose this year.

So to come along at this point and make cuts, I think, is not sound and will not leave us with a set of balanced national priorities that go to our fundamental needs here in the United States.

It is not asking too much that people should want to be able to live in decent housing. We all know the difficulties people have to contend with in trying to hold families together and to cope with the stress of low income, with the high cost of food, and with bad schools and crime problems in many neighborhoods, especially in our major urban areas. If we also take a walk on the problem of seeing to it that there is decent housing for as many people as we can reach, then we are falling short of what we ought to be committed to in this country and what I think we should strive to achieve. That is why the Budget Committee, in its wisdom, voted down a similar amendment by the Senator from Nebraska, and I hope the Senate will support that action today.

Mr. MATHIAS. Mr. President, I do not want to prolong this debate, but I do think we need to take just about 1 minute in conclusion in assessing what this amendment will mean to families across this country, the men and women of America.

The General Accounting Office noted last November that rental housing has suffered a major decline. The outlines of the problem are these: Record-low nationwide rental vacancy rates with reasonably priced rental units simply nonexistent in many major cities all the way from New York to Los Angeles, from Miami to Seattle; a very low level of unsubsidized rental construction; a proliferation of rental control; growth of rent at rates that, in all fairness, may be too low to keep up with operating costs, but too high for tenants with low and moderate incomes, and an increasing pace of conversions to condominiums and cooperatives, which means that tenants who cannot raise the capital to buy the equity are out in the street.

In 1979 the industry produced nearly 430,000 units in multifamily structures. By multifamily units, I am talking about five or more. Of these, HUD now estimates that 100,000 were co-ops or condominiums, 175,000 were subsidized under the assisted housing programs, and another 25,000 received tandem or targeted tandem subsidies or FHA mortgage insurance.

This means that really less than 130,000 units, unsubsidized, uninsured, multifamily rental units, were started in 1979, less than 130,000. It is a pretty shocking figure measured against the demonstrated need in this country.

If you want to look at it in a slightly different way, we can see that HUD subsidy or mortgage insurance was responsible for 60 percent of 1979 multifamily rental starts.

Contemplate that fact while you contemplate the cut implicit in this amendmen. For 1980 we can expect even lower levels. We can expect from 275,000 to 325,000 multifamily starts with 50,000 to 75,000 of those being built for ownership. Out of the remaining 250,000 multifamily rental units—and that is an optimistic estimate—180,000 should be assisted units and another 20,000 should receive FHA mortgage insurance or other subsidy.

Thus, you can see that the unassisted, unsubsidized, uninsured starts will have dried up to fewer than 50,000. In making this estimate, I have not attempted to make a projection of what the impact of the current rates will be, but it certainly will not be a beneficial impact.

So as I see this picture, the development of unassisted, uninsured units is declining very, very rapidly, and this amendment will accelerate the decline in the assisted housing area. That can mean only tragedy for 40,000 American families who are looking for a better place to live. I hope the Senate will reject the amendment.

The PRESIDING OFFICER (Mr. RIEGLE). The question is on agreeing to the amendment. The yeas and nays have been ordered.

Mr. BELLMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BELLMON. Are we under a time limitation?

The PRESIDING OFFICER. No, we are not.

Mr. BELLMON. Mr. President, I am more or less persuaded by the statement my friend from Maryland has just made, that there is a need for a substantially increased amount of low- and middle-income housing in this country. I regret that I find myself on the opposite side in this matter for reasons that I will explain in just a moment.

I have come here to support the Exon amendment which reduces by $3.4 billion the budget authority available from the section 8 program.

The Exon amendment would reduce the $29.8 billion authority provided in the bill for subsidized housing in such a way that according to CBO estimates it would reduce subsidized starts from 269,000 units in fiscal year 1981 to 233,000 units. I submit, that is still a substantial number of units, enough to take care of the multifamily units that Senator MATHIAS was just discussing.

I might say, Mr. President, that in our Budget Committee markup, Senator EXON moved to strike the section 8 program. I did not support him, but I have supported his effort to trim the program back in an effort to improve it.

The section 8 program was implemented in 1974 replacing the old section 235, public housing and 221(d) 3 and (d) 4 programs. Under those programs, subsidized programs totaled 414,000 units in 1960, and 970,000 units by 1970—a 8.7 percent per year growth rate. But by 1980, total units under the new and old program totaled 3.2 million units—or, an average growth of 12.7 percent per year in the 1970 decade. That is a very significant amount of housing growth. Without any additional units this year the Federal Government is obligated to outlay $224 billion over the next 40 years—and considerably more if rents grow faster than tennant income, as they have over the last several years.

Yet, the program would be worthwhile if it were an effective program. Recent GAO and CBO studies indicate, however, that it is not an effective program in that it is not reaching the people Congress intended to reach.

For one thing, Mr. President, it is not targeted closely enough. Forty percent

of the Nation's 60 million households would be eligible for some form of housing assistance. Of this number, 30 percent, or 18.3 million, are eligible for section 8 assistance. This makes section 8 subject to the exact same criticism that was directed to the programs it replaced: The problem is the choice as to who receives the subsidy is nearly random but benefits primarily the middle-income tenant.

GAO, in a recent report, indicated that they found instances controllable by HUD, where program rents and costs were far greater than conditions warranted. In San Francisco, rents had increased 121 percent between 1974 and 1978, 95 percent in Cincinnati, and 72 percent in Atlanta—averages of 53 percent in the 17 cities surveyed—at a time when the rent component of the CPI averaged only a 23-percent increase.

So in these section 8 housing units the rents were going up at multiples of the increase in the rent component of the CPI.

The problem here is that the managers of the program are letting the rent rise far faster than conditions warrant.

I am hopeful that abuses of "GNMA up-front financing" and windfall profiteering by project condominium conversion have been cured by recent legislation. But, I am alarmed over continued abuses and the seeming inability of HUD to adequately administer this admittedly complex program.

Mr. President, I support the amendment in the hope that it will cause a renewed look at alternatives to this costly and cumbersome Federal effort to help with our housing needs. There is no question that our country needs more low- and middle-income housing. There is serious question, however, whether the existing section 8 program as currently administered is reaching areas of greatest need. Section 8 needs to be more closely targeted so that it does help those that Congress intended to reach.

Mr. President, I believe that approval of the Exon amendment will help accomplish this objective.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MELCHER (after voting in the affirmative). Mr. President, on this vote, I have a live pair with the Senator from Alabama (Mr. STEWART). If he were present and voting, he would vote "nay" and I have voted "aye." Therefore, I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Georgia (Mr. NUNN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), the Senator from New Mexico (Mr. SCHMITT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER (Mr. PRYOR). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 35, nays 40, as follows:

[Rollcall Vote No. 430 Leg.]

YEAS—35

Armstrong	Hatch	Proxmire
Bellmon	Hatfield	Pryor
Boren	Hayakawa	Roth
Boschwitz	Helms	Sasser
Byrd, Harry F., Jr.	Hollings	Simpson
	Humphrey	Stennis
Chiles	Jepsen	Talmadge
Domenici	Johnston	Thurmond
Exon	Laxalt	Tower
Ford	Lugar	Wallop
Garn	Morgan	Warner
Hart	Percy	Zorinsky

NAYS—40

Baucus	Heinz	Pressler
Biden	Inouye	Randolph
Bradley	Jackson	Ribicoff
Burdick	Kassebaum	Riegle
Byrd, Robert C.	Leahy	Sarbanes
Chafee	Levin	Schweiker
Cochran	Mathias	Stafford
Cohen	Matsunaga	Stevens
Danforth	Metzenbaum	Stevenson
Dole	Mitchell	Tsongas
Durkin	Moynihan	Weicker
Glenn	Nelson	Williams
Gravel	Packwood	
Heflin	Pell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Melcher, for.

NOT VOTING—24

Baker	DeConcini	Magnuson
Bayh	Durenberger	McClure
Bentsen	Eagleton	McGovern
Bumpers	Goldwater	Nunn
Cannon	Huddleston	Schmitt
Church	Javits	Stewart
Cranston	Kennedy	Stone
Culver	Long	Young

So the amendment of the Senator from Nebraska (No. 2367) was rejected.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. Are there further amendments?

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1633

(Purpose: To prohibit the Office of Consumer Affairs from using appropriated funds to intervene in Federal agency adjudicatory or regulatory proceedings)

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an unprinted amendment numbered 1633:

On page 22, line 17, before the period add the following: ", except that, none of such funds may be used by the Office to intervene in any Federal agency adjudicatory or regulatory proceedings".

Mr. DANFORTH. Mr. President, for a period of almost 20 years Congress considered the possibility of establishing a Consumer Protection Agency. The bill to create such an independent agency was first introduced by Senator Kefauver in the early 1960's, and during the 1960's and the 1970's the subject of the wisdom of a Consumer Protection Agency was before the Congress.

During two Congresses this subject was so heatedly debated that it involved the Senate in a filibuster.

In the 92d Congress and again in the 93d Congress the bills to create such an agency were blocked by filibuster. Then finally in 1978 the bill to create such an agency was defeated in the House by a vote of 227 to 189.

The next year, after the House decided that it was opposed to establishing an independent consumer protection agency, the Office of Consumer Affairs began intervening in agency, Office of Consumer Affairs began intervening in agency, regulatory agency, matters.

Mr. President, the purpose of the Consumer Protection Agency, which was so long before the Congress was, and I quote, "To represent and advocate the interests of consumers before Federal agencies." That was the stated purpose of the Consumer Protection Agency.

Therefore, when Congress failed to pass a bill to create an independent Consumer Protection Agency, it failed to pass a bill which would establish an agency to represent and advocate the interests of consumers before Federal agencies, and when the House of Representatives defeated such a bill in 1978, it defeated a bill to create an agency to represent and advocate the interests of consumers before Federal agencies.

One year later, in 1979, the Office of Consumer Affairs, an office which was created not by Congress but the President, began work in intervening before regulatory agencies.

The Director of the Office of Consumer Affairs testified before a House subcommittee as follows:

> Another area in which we plan to devote increased resources is in our intervention program. Last year, we reported to the subcommittee our involvement in a case before the Federal Energy Regulatory Commission in which a public utility was seeking to include the cost of construction work in progress in its rate business. While this may appear to be a technical point, the ramifications for consumers from such an adopted precedented change would be enormous. Accordingly, for the first time in history, U.S.O.C.A. asked the presiding officer if U.S.O.C.A. could be a full party to this proceeding. The presiding officer concurred.

Mr. President, the amendment that I have offered would prohibit the Consumer Protection Agency from spending any funds appropriated in this bill for the purpose of intervening in agency proceedings.

The issue that is before the Senate in this amendment is not the wisdom of creating a Consumer Protection Agency, nor is it the wisdom of one Federal agency being empowered to intervene in proceedings before other Federal agencies.

As a matter of fact, 2 years ago, I voted to report the bill to establish a consumer protection agency out of the Governmental Affairs Committee of the Senate. The question of the advisability of having a Consumer Protection Agency is one that is keenly debated. There are those—including the editorial page of the Washington Post—who state quite vigorously that we should not have such a Consumer Protection Agency. The Washington Post takes the view that it is not really possible for an agency of the Federal Government to accurately purport to represent the interests of consumers: that consumers represent the public at large and for an agency of the Government to state that it is the spokesman for consumers is a presumptuous matter that cannot be properly done.

But the issue that is presented by this amendment is not the wisdom or lack of wisdom of establishing the Consumer Protection Agency. The issue here is whether the President can create in effect a consumer protection agency when the Congress of the United States has expressly voted that we do not want one. When the Congress of the United States says that we do not want to have an agency which intervenes for other Federal agencies, is it then appropriate for the executive branch, on its own, through the Consumer Protection Protection Agency, which was never created by Congress in the first place, to create such a process of intervention? It is clear where we are heading if we do not in this appropriations bill limit the role of the Consumer Protection Agency and prevent it from intervening.

In its budget request, the U.S. Office of Consumer Affairs has asked for an increase next year from $62,749 in 1980 to $118,069 in 1981 for funding its intervention program.

Reading some excerpts from the budget document, which is entitled "United States Office of Consumer Affairs Estimate of Appropriations, Fiscal Year 1981," the excerpts states as follows:

> In fiscal year 1979, USOCA intervened as a full party in a Federal agency adjudicatory proceeding for the first time in its history. The particular case was before the Federal Energy Regulatory Commission.
>
> Since the USOCA involvement in the FERC case, the Office has intervened in two additional proceedings, both before the Federal Communications Commission.
>
> Participation as a full party in these proceedings is extremely expensive. As a result, there are many more cases in which USOCA could become involved, but has not due to limited resources and expertise. In fiscal year 1981, USOCA proposes to allocate more staff to its interventions program. With the $30,000 requested, small contracts would be let or experts would be hired on a daily basis to provide the specialized advice and technical information required for these cases. While our estimates cannot be precise, in general, it is believed the additional funds requested and the reallocation of staff would enable three to five interventions during fiscal year 1981.

Mr. President, in offering this amendment, my position is very simple. It is not that a Consumer Protection Agency is a good idea or a bad idea. I think that is a separate issue which is very debatable. The question is whether the Congress of the United States having said "No," the President is now in a position to say "Yes."

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I recognize that my good friend from Missouri has an amendment that has a great deal of support in this body. In fact I have discussed this with the Senator from Missouri and I expect that, in the event of a rollcall vote, he might very well prevail. For that reason I am not going to ask for a rollcall but I am going to state my reasons for opposing the amendment.

What this amendment would do, if passed in its present form, would be to erase one of the last remaining opportunities for the consumer to be represented by the Federal Government both in regulatory and adjudicatory proceedings.

Now the Senator from Missouri is exactly right. In 1978, the Congress unfortunately, did kill legislation that would have created an independent Federal agency for consumer advocacy.

I remember what a red-hot issue that was in the country, with Mr. Ralph Nader pushing it very hard and with the business community aroused to lobby against it, which they did very effectively.

I supported that legislation, as did my good friend from Missouri, I understand. However, in rejecting that new agency, it is my judgment that it was not the intent of Congress to eliminate the concept of Federal consumer representation. Rather, it was clearly understood that consumer representation would continue within the Federal Government through the activities of the U.S. Office of Consumer Affairs and those of other officially designated consumer affairs professionals in the various executive branch departments and agencies. Although Senator DANFORTH is correct that specific statutory authority authorizing OCA to participate in these proceedings is lacking, it would seem to me that the mandate of Executive Order 11583, OCA's enabling legislation, clearly directs the Office to represent the interests of consumers in appropriate proceedings in the formulation of policies that affect the consumer interests. The Office has participated in proceedings affecting the rates consumers pay for telephone service, energy and other utilities, and other important areas where the impact on consumers could be substantial.

Mr. President, the Senator from Missouri makes the fundamental point that we have acted on this principle and that, therefore, there should be no representation, as I understand his argument, no representation of the consumer by agencies that are financed by the Federal taxpayers.

Mr. President, we are not talking about some monolithic bureaucracy with hundreds of attorneys and bureaucrats packing the rulemaking hearings to represent the consumer's interest.

The Office of Consumer Affairs' participation in ratemaking proceedings has consisted usually of one attorney and a small amount of outside technical assistance.

We all know, if we have been around Washington at all, that almost all the representation comes from those who oppose Federal regulations, and it is a good thing that they are vigorous. They should be and they deserve to be. They are represented by the most competent, highly paid lawyers, and by experts in great numbers. I think it is in the interest not only of the consumer but the interest of everybody involved that this be as balanced as possible.

As the Senator from Missouri has pointed out, there is no question that the creation of a separate, large Federal agency to represent the consumer was defeated. Again, I would argue that that does not mean that under no circumstances can the consumer, with his great interest, not be represented. He should be represented at least to some limited extent.

It appears also that in undertaking its Federal ratemaking participation programs, the Office has exercised prudence and restraint before initiating action.

The Office assesses whether the decision of the regulatory agency will have a substantial impact on consumers; whether the decision will have significant precedential value for or against the consumers' interest; and whether the consumers' interests will otherwise be adequately represented in the proceedings, among other things, before it decides to participate. If they are, of course, then the Office would not take part.

Mr. President, I believe that OCA has served a useful purpose in representing the consumer in these proceedings. Esther Peterson has done a marvelous job in keeping Federal consumer representation issues alive in the aftermath of the defeat of the Agency for Consumer Advocacy. She has done it in a way that I think is sensible and in keeping with what the Senator from Missouri properly pointed out was the sense of the Congress. I feel it would be amiss to prevent this small Federal office from fulfilling its mandate to assure that agencies receive testimony under these limited circumstances in Federal policy regulatory proceedings from this modest representative of consumers.

As I say, we disagree on this amendment. As I have indicated, I think the Senator from Missouri may well have the votes. I recognize for that reason that it

is probably necessary to save the time of the Senate to proceed with a voice vote.

I would like to read a statement on behalf of Senator CANNON.

Senator CANNON is chairman of the Committee on Commerce, Science, and Transportation. He is concerned about Senator DANFORTH's amendment, but Senator CANNON is not in town today. I would like to read this brief statement on his behalf. Senator CANNON would have me say this:

Senator Danforth's amendment would prohibit the Office of Consumer Affairs from intervening in agency regulatory and adjudication proceedings. This office was created by Executive Order of the President. Under the Executive Order, 11583, the U.S. Office of Cousumer Affairs is directed to assure that the interests of consumers are presented and considered in a timely manner by the appropriate levels of the Federal Government in the formulation of policies and in the operation of programs that effect the consumer interest.

The Consumer Subcommittee of the Commerce Committee is the oversight and authorizing Committee of the principal federal agencies with consumer protection activities. It would be appropriate for the Commerce Committee to address the concern raised by Senator Danforth and to make a recommendation to the Senate as to whether the Office of Consumer Affairs should be subjected to the same oversight scrutiny that Congress imposes on other agencies and as to whether this office needs statutory authorization to intervene in agency proceedings. In this regard, I wish to note that there is no line item authorization for intervention activities of the Office of Consumer Affairs and there is no authorization in statute for the Office of Consumer Affairs intervention activities. While I might well support an amendment after the Commerce Committee has an opportunity to make its findings and recommendations, action today would preclude careful consideration of the amendment's implications. I would urge that the amendment be defeated.

Mr. President, I think all of us recognize that the procedures are of vital importance, and procedures in this case which would override the interest of an authorizing committee, prevent them from having hearings on a matter of this significance, would be a mistake. That is the reason, as I understand, why Senator CANNON, who, unfortunately, could not be here, but who is chairman of the Commerce Committee, asked that his objection to the amendment be made clear to the Senate.

Mr. MATHIAS. Mr. President, I think I understand the purpose of this amendment. I sympathize with the purpose of the amendment if that purpose is to reduce a sense of harassment on the part of the business community. But I think we have to look at the other side of that coin, too, the situation in which the consumer feels helpless and in some cases hopeless in dealing with the large industries in which the individual seems to have so little impact.

It is for that reason that the concept of consumer advocacy became an important experiment in American society.

I would hope that we would not adopt this amendment, certainly not at this time, certainly not until we have had more experience with this interesting experiment, participatory government, allowing citizens to have a role in the process, bringing citizens more closely into the decisions that we make as a society.

For that reason, I would oppose the amendment and join with my colleague, the Senator from Wisconsin, in hoping that the Senate will defeat it.

Mr. PROXMIRE. Mr. President, I might just point out that at the time that the independent Federal Agency for Consumer Advocacy was defeated, there was a great deal of talk that it would be at least a $10 million agency, that it would be extremely active in its protestations of consumer interests, and thus be extremely unfair to business which might take a contrary view.

I might point out that the amount which will be spent in the coming year, as I understand it, by the agency headed by Esther Peterson, the Office of Consumer Affairs, would be less than $120,000. As a matter of fact, it is $118,000, to be precise. That $118,000 is less than 1/100th, less than 1 percent, of the amount that the independent Federal Agency for Consumer Advocacy would have had at its disposal, in all likelihood, and it might well have had more.

So we are talking about an extraordinarily limited rifleshot here where the agency can intervene, as I say, on rare occasions. Because it is so limited it obviously would intervene only when it had a distinct effect of establishing precedent. I would hope that under those circumstances it might be able to continue that very vital role for an extraordinarily modest investment on the part of the taxpayers.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, it seems that the Senate must go through a certain procedure about once every 3 weeks to convince the American people that the American consumer has very few friends in the Congress. However, I am pleased with the opposition to the amendment by the chairman of the committee, the distinguished Senator from Wisconsin, the opposition to it which has been expressed by the distinguished chairman of the Commerce Committee, Senator CANNON, and also, the opposition which has been expressed by the ranking minority member of the committee, Senator MATHIAS.

This body, I think, has yet to indicate on any single occasion of this session that it is concerned about consumers. We have issues that come before us routinely and, routinely, they get adopted and the consumer gets the short end of the stick.

I have just heard my good friend from Wisconsin state that he feels that the Senator from Missouri has the votes. I want to say that I am not certain that he has the votes. I am not prepared to concede that he has the votes. I am not prepared to admit that this body is that anticonsumer, in spite of the record which we have made on many earlier occasions.

Mr. President, I think that there can be no argument about it, this amendment, if accepted and made a final part of the legislation, would be a major setback for American consumerism and, even more than that, for openness in Government.

The distinguished Senator from Wisconsin has pointed out that, certainly, we are not talking about saving a lot of money. He pointed out that we are talking about a sum of about $118,000. We have billions of dollars available to us for any program that special interest groups are interested in, but when it comes to the Office of Consumer Affairs, a Government entity which among other things represents consumer interests in the Federal regulatory and rulemaking processes and procedures, then we have to cut back.

Mr. President, it is rather sad. It is sad that I find myself on this floor today opposing another anticonsumer amendment from my good friend from Missouri. I do not know why he does not like the consumers. They are really very nice people. They mean well. They try to feed their families, try to live in decent housing; they are humans. I know that that is not exactly an accepted fact, but these are people who do not have any spokesperson around here. They do not have any lobby. Regardless of what the issue is, those groups that have lobbies around Congress are the ones whose voices are heard. Those who do not, regardless of their numbers—such as the American consumer—are the ones who constantly get the short end of the stick.

Mr. President, slice it any way you want. Call it whatever you want. Say that it has to do with unauthorized activity. All of that comes out to a whole lot of nothing. What this really amounts to is yet another congressional assault on the consumers of this country. It is just one more in a long line of anticonsumer actions that Congress has been taking in recent years.

Three years ago, Mr. President, Congress attempted to create the Consumer Protection Agency. It was defeated in the House. It did not come to a vote in the Senate. I know that when some of us tried to bring it to a vote, we found that we could not because, unless we had enough votes to cut off debate and get a cloture motion through and voted upon affirmatively, we would not be able to prevail upon the leader to bring it to a vote.

And when the issues came to the floor of the Senate having to do with the oil companies, day in and day out, this Congress buckled to the pressure of the oil companies, going back to when we lifted controls from natural gas prices.

Mr. President, what is so horrible about the American consumer that, every month, we have to have another effort to deprive him or her of any say in his or her government? Why do we take actions which, in essence, give the oil companies a license to gouge the consumer?

It was not long ago that we battled on this floor about the Federal Trade Commission. Oh, the Federal Trade Commission was a terrible institution. It was doing violence to all the principles that the Senator from Missouri talks about. What

were they doing? They were standing up for the American consumer, one of the only agencies in our Government that does stand up for the American consumer. So, when it had to do with the FTC and insurance companies—no, that is verboten. That will not fly. We are not going to permit the FTC to investigate insurance companies.

And when the FTC wanted to get into the whole question of advertising on children's television, Congress had to do a job on that, too. All because the lobbies were here and the consumers had no spokesperson.

Then the FTC was involved in trying to do something about those organizations that claim to provide standards and certification for products in the market place. Congress told the American people that, somehow, those agencies providing standards and certification are looking out for the consumers, for the people. Do not kid yourself. They are controlled and run by the industries that set them up. When the FTC tried to do something about that, again, the voices of anticonsumerism were to be heard on the Senate floor.

Mr. President, I object strongly to the amendment before us. We in Congress should not use the appropriation process to thwart Federal policies which encourage some spokesperson, somebody to be there at a hearing, participating in the Federal regulatory process on behalf of the American consumer.

My colleague from Missouri supported his amendment by arguing that the Office of Consumer Affairs does not have proper authority to intervene in regulatory or adjudicatory proceedings of Federal agencies. Moreover, the Senator has argued that the failure of Congress to create the Consumer Protection Agency 3 years ago is proof positive that Congress opposes having a Government office intervene in agencywide regulatory proceedings in behalf of American consumers.

I think that the Senator from Missouri misreads the action of the Congress. It is true that the House did not adopt legislation creating the Consumer Protection Agency. The Senate did not vote on it. But I must say that I am not at all persuaded by these facts. With the signing of Executive Order 11583, the Office of Consumer Affairs was, indeed, given authority to intervene on behalf of consumers in Federal regulatory processes. Furthermore, Congress legitimized this authority during the appropriation process last year. At that time, the OCA budget request made no secret of the fact that funds were to be used for this important program and they remained in the budget.

Mr. President, I do not oppose enacting authorizing legislation to support the activities of the Office of Consumer Affairs, and I salute the leadership of the distinguished Senator of the Committee on Commerce who indicated his opposition to the amendment and indicated a willingness to conduct hearings with respect to the subject.

But to attach this amendment to an appropriation bill is wrong and it can be justified only if we are determined there will be no spokesperson for the American consumer in any arm of the U.S. Government.

I believe there should be authorizing legislation for OCA's efforts. I look forward to such a bill. But I object strenuously to the attempt to destroy OCA's activities before Congress has had the opportunity to consider such legislation.

It would be irresponsible to deny consumers the representation that OCA has been affording them. Moreover, it would be irresponsible to terminate OCA's involvement in ongoing proceedings before the FCC and FERC.

Why would we possibly want to set them back? Why would we want to stop proceedings that are moving forward and the consumers' voices being heard?

We can say we did not authorize some bill 3 years ago but that proves little. That does not prove whether or not this Congress would pass it now. We are a continuing body, and the fact is that each 2 years a certain number of Members change.

Many of the cases presently pending are near completion. It simply does not make sense to undercut the role that OCA has played in these proceedings.

Opposition to the Consumer Protection Agency, a position with which I heartily disagreed, actually concerned a totally different set of circumstances and issues.

There Congress was voting against the creation of a new Federal agency that would have mandatory authority not just to intervene before a Federal agency but to participate as well in any judicial review of an agency's decision. The issue before us today is whether an existing executive office can intervene in a regulatory proceeding if—and it is a big if—the Federal agency involved gives that office permission to do so.

There cannot be much argument about the fact that consumers will benefit from the OCA's efforts. If the distinguished Senator from Missouri did not think consumers would benefit, I doubt very much the amendment would be offered.

Let me give some examples of what we are talking about, the kinds of cases OCA has so far intervened in with the permission of the FCC and the Federal Energy Regulatory Commission.

Before I refer to these specific matters, let me emphasize that I do not know the merits of the cases. I am not sure which side is right or wrong. But I do know the consumers of this country have a right to have their point of view spoken for and represented.

One case before the FCC, the American Telephone & Telegraph Co. case involving an overcharge, involved a matter in late 1979, following the receipt of information that A.T. & T. had exceeded its legally established rate of return on revenues for interstate and foreign telephone services, the FCC initiated a formal inquiry to determine the extent of the overage and appropriate remedial action. At stake was approximately $100 million.

No one can deny the fact that AT&T has all the legal resources that any company could possibly have at its beck and call.

The OCA sought to represent the interest of residential telephone subscribers and urged that the excess revenues be refunded to consumers. This was the first time in the history of FCC telephone regulation that the interest of residential telephone users was formally represented in a regulatory proceeding.

I would venture to say that in that case A.T. & T. did not have less than three to five lawyers sitting at the table, each one of whom was more than likely getting paid more than the total annual budget of the OCA.

I am not certain if this is the particular case the distinguished Senator from Wisconsin referred to in which there was only one representative from OCA, whether it was one or two; does the Senator from Wisconsin know?

(Mr. BOREN assumed the chair.)

Mr. PROXMIRE. The situation, as I understand it, is that there is usually only one attorney representing OCA. They might get technical advisers, but only one lawyer would represent the OCA. That is true.

Mr. METZENBAUM. I thank the Senator from Wisconsin.

In another case, at the FCC, involving A.T. & T., having to do with rate of return, A.T. & T. filed for an increase in its allowable rate of return exceeding its 1978 earnings. Acting as coordinator for a consortium of eight State-appointed consumer advocates, two State attorneys general, and eight State utility commissions, the OCA opposed the application. The impact on consumers from the outcome of this proceeding relates to the level of charges for long distance telephone service. This proceeding is particularly important for consumers because State utility regulators often look to the FCC for guidance on the appropriate rate of return for local telephone service rate structures.

We should not be here this afternoon debating the question of whether or not we ought to preclude the Office of Consumer Affairs from intervening. That should not be the issue on the floor.

What we ought to do is have one of those very laudatory resolutions we pass so often in this body indicating our appreciation that one Government office which spends less than $120,000 a year can be doing as much as it is doing.

It is almost incredible. Rarely can we get anything done for $118,000 in Government. But in this instance, the OCA is doing an effective, a sufficiently effective, job. Yet my good friend from Missouri is on the floor advocating that we put them out of business.

In another case, this one before the Federal Energy Regulatory Commission involves the Virginia Electric Power Co., and the question of the impact of management decisions on consumer costs.

The OCA has joined in a request to the Federal Energy Regulatory Commission to conduct an investigation into alleged mismanagement by the Virgnia Electric Power Co. The issues in the case bear on the responsibility of utility managers to pursue prudent load management and to adopt other available legal remedies before charging consumers for third party error which causes outages and increases costs.

If the Office of Consumer Affairs is not going to be heard in that kind of hearing, then I ask my friend from Missouri, who is going to be heard? Who is going to speak for the American consumer?

I do not think there is any answer because there will be no voice, no voice before FERC, no voice before FCC, no voice in other areas where the consumer is entitled to have some person speaking for him or her.

Mr. President, I cannot say to this body strongly enough that, foreclosing citizen access to the regulatory process is not a matter that should be dealt with lightly. It is not a matter we should be legislating through the back door of the appropriations process.

This amendment should be described and should have a title on it. It should be called another instance of anticonsumerism on the part of Congress. It should not be adopted; and if this Senator will have his way, it will not be adopted.

I have heard my friend from Wisconsin indicate that he did not feel that there should be a vote. There probably is no other Member of this body with whom I am in more total agreement, day in and day out, than with him, and certainly with respect to consumer protection issues. However, I believe he will respect my position if I say that at this point I wish to reserve judgment on that subject, until the debate continues.

Mr. DANFORTH. Mr. President, it is a little unusual for me to hear myself described as an anticonsumerist. I had the privilege of serving as the attorney general of the State of Missouri for 8 years. During that time, the predecessor of Mrs. Peterson, Virginia Knauer, described me as running the best consumer protection agency in any attorney general's office in the country. Our office not only enforced the consumer protection laws to the best of our ability but also drafted every piece of consumer protection legislation that was passed by the Missouri General Assembly during that 8-year period.

So I do not believe that the question of being for or against consumers is before us; nor is the wisdom of having a consumer protection agency.

I am sure that there are those who feel very strongly about it. Two years ago, I was one of those who voted in the Committee on Governmental Affairs to report a bill creating a Consumer Protection Agency. I am not sure I would do that again; but that was my position at the time, and I would have to review it again to determine whether I would. I do not know.

However, back in 1978, relating to the question of the advisability of a Consumer Protection Agency, the Washington Post said the following, in discussing the matter:

> That gets to the real problems with this bill. One is the assumption that consumers' interests are so clear, so consistent—and somehow so distinct from the general public interest. Consumer advocates argue, of course, that they do represent the general public. Yet the public interest, in the modern regulatory world, is usually more complex; it may involve balancing a given degree of safety against a certain increment of cost, or keeping down tomorrow's price increases without jeopardizing next year's supplies, or making a much more complicated type of accommodation among a hundred forces and factors bearing on the marketplace. Those who emphasize health or safety or retail cost should certainly be heard, along with those who have other priorities. But to enshrine any particular "consumer" viewpoint in a government advocacy office raises philosophical problems that trouble us.

Similarly, in 1977, Leon Jaworski wrote a letter to JACK BROOKS, chairman of the Committee on Governmental Operations of the House of Representatives, taking the same position. He said, in part:

> Let us consider the implications of this authority. To do so, we must first inquire who are the new agency's constituents. They are called "consumers" as if there were a difference between a "consumer" and a "person." In fact, of course, there is none. The agency will ostensibly represent the interest of every man, woman and child in this nation.
>
> This conclusion leads to the question of how the interest of the people will be determined in any given matter. There are no criteria in the bill for defining that interest, nor could there be. Definition of the national interest is the most difficult and most fundamental objective of government; and ultimate responsibility for its accomplishment is placed by the Constitution upon the elected Members of Congress and the President. I have severe reservations about the delegation of so broad and basic a role to one unelected official.

As a matter of fact, in these various consumer proceedings, it is not the case that the consumer would go totally unrepresented if the Consumer Protection Agency did not appear as an intervenor. In one of the FCC rulemaking hearings, Docket 79–187, a variety of organizations appeared: The General Services Administration, the U.S. Independent Telephone Association, the National Citizens Committee for Broadcasting, the Consumer Federation of America, the Missouri Public Service Research Group, the California Department of Consumer Affairs, and so on.

Again, the question really is not whether or not a consumer protection agency is a good idea. The issue is, what is the role of Congress in determining the course that Government should follow? The constitutional role of the Congress of the United States is to establish public policy, to create agencies of Government, to authorize programs, to appropriate funds in accordance with those authorizations. That is the way the system is to work.

The fact is that, in this case, the Congress of the United States never has authorized the U.S. Office of Consumer Affairs—the Congress of the United States never has authorized this Consumer Affairs Office to intervene in any regulatory proceeding.

It is not as though Congress had remained silent. Congress did not remain silent. Congress considered the matter for approximately 18 years, and at the end of that time, in 1978, the House of Representatives voted; and by a substantial majority, the House of Representatives voted that it did not want to create an Agency of Consumer Protection to intervene in Federal regulatory agencies. That is the last word, the most recent word, from the Congress of the United States; and that most recent word, very simply, is the word "No."

Congress having said "No," the Office of Consumer Affairs says, "We don't believe Congress. We think that 'no' really means 'yes.' "

We are going to proceed to set up an intervention program even though Congress has expressly said it does not want one.

That really is the issue before us. Maybe we want such a program, but let us create it by an act of Congress and then appropriate funds. Talk about legislating on an appropriations bill. That is legislating on an appropriations bill to provide funds in an appropriations bill for conducting an activity which Congress previously has said cannot be conducted.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri.

Mr. METZENBAUM. Mr. President, will the Senator from Missouri yield for a question?

Mr. DANFORTH. Mr. President, I have yielded the floor, but I would be happy to entertain a question.

Mr. METZENBAUM. Does the Senator from Missouri agree that the legislation creating the Consumer Protection Agency would have gone much further in giving the Agency not only authority to intervene but also to participate at the judicial level and really far greater authority across the board than the actions of the Office of Consumer Affairs, which does very little more than intervene in cases in order to present a point of view but has not participated in the litigation process?

Mr. DANFORTH. Mr. President, yes, I do agree with the Senator from Ohio that the purpose section of the committee report of the Governmental Affairs Committee states as follows:

> The purpose of this bill is to protect the interests of consumers and to promote consumer protection in the United States.
>
> To achieve this purpose, the bill creates an independent Agency for Consumer Advocacy (ACA) to represent and advocate the interests of consumers before other Federal agencies and Federal courts. The Agency for Consumer Advocacy will also receive and transmit complaints from consumers, and develop and disseminate information concerning interests of consumers.
>
> One of the most important reasons for the failure of Federal programs to provide full protection to consumers has been the absence of effective and vigorous representation of consumer interests before the agencies which conduct and plan programs affecting consumers. The ACA is designed to remedy this by providing such representation before Federal agencies and courts.
>
> The Agency for Consumer Advocacy will function as an advocate and spokesman for consumer interests. It will have no authority to directly regulate activities affecting the interests of consumers. Nor may it dictate in any way how other Federal agencies act on matters of interest of consumers.

So my answer to the Senator from Ohio is that they are not precisely the same in that the proposed Agency for Consumer Advocacy would have permitted not only advocacy of interest of consumers before Federal agencies but also

before Federal courts; whereas, the program that has been undertaken by the Office of Consumer Affairs is, of course, limited to agencies and does not apply to courts.

However, let me add this, that in testifying before a House committee—if I could find it, Mr. President, and I think I can in just a minute—it is very clear that the effort of the Office of Consumer Affairs is to take as much of the duties that were to go to the independent consumer protection agency as possible.

Congressman BOLAND was engaged in questioning Mrs. Peterson, and I am quoting the transcript, Mr. BOLAND said:

> You say on your last page, "The consumer movement is not dead, but it is clear the consumers have suffered some setbacks in Congress."
>
> Mrs. PETERSON. Yes.
>
> Mr. BOLAND. You believe that they are only temporary and that you will find in the years to come that some of the actions that have been taken have been unwise. What were those actions?
>
> Mrs. PETERSON. The one with which I was very disappointed was losing the bill for an independent consumer agency. This would have been set up under Congressional authority, a staff that had the business of representing the consumer.
>
> Mr. BOLAND. You are making every effort to correct that through this Office, are you not?
>
> Mrs. PETERSON. We are working at it.

So, in answer to the Senator from Ohio, the Office of Consumer Affairs does not have the power to intervene in court, but it is attempting, according to the testimony of Mrs. Peterson, to intervene in regulatory proceedings, and that is precisely what the independent agency was supposed to do.

Mr. METZENBAUM. Mr. President, I am about to move to lay the amendment on the table, but if my friend from Missouri, the proponent of the amendment, wishes to be heard further or anyone else wishes to be heard, I will withhold that motion to that point.

I gather there are no others who wish to be heard.

Mr. President, I move to lay the amendment on the table, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Missouri (UP No. 1633). On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The PRESIDING OFFICER. Are there Senators in the Chamber wishing to vote?

The result was announced—yeas 37, nays 39, as follows:

[Rollcall Vote No. 431 Leg.]

YEAS—37

Baucus	Inouye	Proxmire
Biden	Jackson	Randolph
Bradley	Leahy	Ribicoff
Burdick	Levin	Riegle
Byrd, Robert C.	Mathias	Roth
Dole	Matsunaga	Sarbanes
Durkin	Melcher	Stafford
Exon	Mitchell	Stevenson
Glenn	Morgan	Tsongas
Gravel	Moynihan	Weicker
Hart	Nelson	Williams
Heinz	Packwood	
Hollings	Pell	

NAYS—39

Armstrong	Hatfield	Pryor
Bellmon	Hayakawa	Sasser
Boren	Heflin	Schmitt
Boschwitz	Helms	Simpson
Byrd, Harry F., Jr.	Humphrey	Stevens
Chafee	Jepsen	Talmadge
Chiles	Johnston	Thurmond
Cochran	Kassebaum	Tower
Cohen	Laxalt	Wallop
Danforth	Lugar	Warner
Domenici	Metzenbaum	Young
Garn	Nunn	Zorinsky
Hatch	Percy	
	Pressler	

NOT VOTING—24

Baker	DeConcini	Long
Bayh	Durenberger	Magnuson
Bentsen	Eagleton	McClure
Bumpers	Ford	McGovern
Cannon	Goldwater	Schweiker
Church	Huddleston	Stennis
Cranston	Javits	Stewart
Culver	Kennedy	Stone

So the motion to lay on the table Mr. DANFORTH's amendment (UP No. 1633) was rejected.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the motion to lay on the table was rejected and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "nay."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 38, nays 39, as follows:

[Rollcall Vote No. 432 Leg.]

YEAS—38

Baucus	Inouye	Pell
Biden	Jackson	Proxmire
Bradley	Leahy	Randolph
Burdick	Levin	Ribicoff
Byrd, Robert C.	Mathias	Riegle
Cranston	Matsunaga	Sarbanes
Dole	Melcher	Sasser
Durkin	Metzenbaum	Stafford
Glenn	Mitchell	Stevenson
Gravel	Morgan	Tsongas
Hart	Moynihan	Weicker
Heinz	Nelson	Williams
Hollings	Packwood	

NAYS—39

Armstrong	Hatch	Roth
Bellmon	Hatfield	Schmitt
Boren	Hayakawa	Simpson
Boschwitz	Heflin	Stennis
Byrd, Harry F., Jr.	Helms	Stevens
Chafee	Jepsen	Talmadge
Chiles	Johnston	Thurmond
Cochran	Kassebaum	Tower
Cohen	Laxalt	Wallop
Danforth	Lugar	Warner
Domenici	Nunn	Young
Exon	Percy	Zorinsky
Garn	Pressler	
	Pryor	

NOT VOTING—23

Baker	Durenberger	Long
Bayh	Eagleton	Magnuson
Bentsen	Ford	McClure
Bumpers	Goldwater	McGovern
Cannon	Huddleston	Schweiker
Church	Humphrey	Stewart
Culver	Javits	Stone
DeConcini	Kennedy	

So the motion to reconsider was rejected.

UP AMENDMENT NO. 1633

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Missouri.

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri. The yeas and

nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "nay."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 42, nays 36, as follows:

[Rollcall Vote No. 433 Leg.]

YEAS—42

Armstrong	Hatfield	Roth
Bellmon	Hayakawa	Sasser
Boren	Heflin	Schmitt
Boschwitz	Helms	Simpson
Byrd, Harry F., Jr.	Humphrey	Stennis
Chafee	Jepsen	Stevens
Chiles	Johnston	Talmadge
Cochran	Kassebaum	Thurmond
Cohen	Laxalt	Tower
Danforth	Lugar	Wallop
Domenici	Morgan	Warner
Exon	Nunn	Young
Garn	Percy	Zorinsky
Hatch	Pressler	
	Pryor	

NAYS—36

Baucus	Hollings	Packwood
Biden	Inouye	Pell
Bradley	Jackson	Proxmire
Burdick	Leahy	Randolph
Byrd, Robert C.	Levin	Ribicoff
Cranston	Mathias	Riegle
Dole	Matsunaga	Sarbanes
Durkin	Melcher	Stafford
Glenn	Metzenbaum	Stevenson
Gravel	Mitchell	Tsongas
Hart	Moynihan	Weicker
Heinz	Nelson	Williams

NOT VOTING—22

Baker	Durenberger	Magnuson
Bayh	Eagleton	McClure
Bentsen	Ford	McGovern
Bumpers	Goldwater	Schweiker
Cannon	Huddleston	Stewart
Church	Javits	Stone
Culver	Kennedy	
DeConcini	Long	

So the amendment of the Senator from Missouri (UP No. 1633) was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1634

(Purpose: To prohibit the use of federal funds to pay the expenses of persons intervening in regulatory proceedings except for travel, per diem, and the costs of preparing material for the public record proceedings under the Toxic Substances Control Act)

Mr. DANFORTH. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an unprinted amendment numbered 1634.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 48, strike line 15 and 16 and insert in lieu thereof the following: "except for travel, per diem and the costs of preparing materials for the public record in proceedings under the Toxic Substances Control Act (15 U.S.C. 2605 (4)(A). Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to Section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.)"

Mr. DANFORTH. Mr. President, the purpose of this amendment is to prohibit the use of appropriated funds to pay the expenses of persons intervening in agency regulatory or adjudicatory proceedings except where expressly authorized by statute. Of the agencies covered by this bill, only one has express statutory authority to fund intervenors, and that is the Environmental Protection Agency. The amendment recognizes that authority but also would apply the constraints recommended by the Appropriations Committee. The purpose of the amendment is to make clear that no implied authority to create intervenor funding programs is recognized.

In addition, the amendment contains a "savings" provision to recognize a unique situation which exists at the Consumer Product Safety Commission.

The Consumer Product Safety Commission has separate authority under section 7 of the Consumer Product Safety Act to develop safety standards through what is commonly referred to as the "offeror process." This portion of the statute does not carry and has never carried with it express or implied authority for establishment of what are commonly referred to as "public participation" or "intervenor funding programs."

Mr. President, the question of so-called public participation has caused great controversy in Congress. There are some programs which have been authorized expressly by Congress, such as the FTC program for public participation, but that has been done with some care in the statute to provide parameters for public participation programs.

The point of this amendment is to make it clear that no funds under this bill will be available for use in public participation programs other than those programs expressly authorized by Congress, which, in the case of this bill, is the Toxic Substances Act program of the Environmental Protection Agency and the unique situation involving the Consumer Product Safety Commission.

Mr. THURMOND. Mr. President, I am strongly in support of the amendment offered by the distinguished Senator from Missouri modifying certain language on public participation funding which was added to H.R. 7631, the HUD appropriation bill, during subcommittee consideration of that bill. The House-passed bill contains an absolute prohibition on the use of funds appropriated by this legislation "to pay the expenses of, or otherwise compensate, non-federal parties intervening in regulatory or adjudicatory proceedings." This language would have the effect of terminating ongoing public participation funding programs at the Environmental Protection Agency, the Consumer Product Safety Commission, and the Office of Consumer Affairs.

The Senate Appropriations Subcommittee processing this bill added, however, a very significant exception to this prohibition—an exception which would allow funds to be paid out to various groups for travel, per diem and the costs of preparing materials for the public record. Mr. President, this is a very significant exception, one which if interpreted broadly by the three affected agencies, may end up being a very weak restraint on how EPA, CPSC, and OCA spend the funds available to them. The committee report contains some restrictions or guidelines on how these agencies should dole out their public participation funds.

I sincerely doubt, however, in light of the significant abuses which have been uncovered in various intervenor funding programs, that such report language would constitute a serious constraint on agency expenditures. If congressional guidelines in this area are to have any effect at all, they need to be placed in the statute itself, and not merely in the committee report. The House language flatly prohibiting the use of our tax dollars for such intervenor funding programs is, however, far superior to a carefully drafted and restrictive Senate provision. I strongly support the termination of all ongoing public participation funding programs and have vigorously opposed and will continue to oppose attempts to create new programs.

Mr. President, the minority members of the Judiciary Committee, with the exception of the Senator from Maryland, have been involved in an ongoing struggle over several years to prevent passage by the committee of intervenor funding legislation. We have so far been successful in those efforts. The regulatory reform bill reported earlier this year by the Judiciary Committee does not contain such a provision. The Governmental Affairs Committee bill on regulatory reform does, however, establish an intervenor funding program for agency proceedings on a Government-wide basis.

S. 262, as reported by Governmental Affairs, would authorize $10,000,000 for such a program for the fiscal year ending September 30, 1981, and $20,000,000 for each of the 3 succeeding fiscal years. As I am sure my colleagues are well aware, these two committees are currently attempting to work out a compromise regulatory reform bill, which might be brought to the Senate floor in the near future. I have made it absolutely clear during the negotiations that I would, under no circumstances, support a regulatory reform bill containing intervenor funding and would, instead, work actively to defeat any measure containing such an authorization.

Mr. President, the purported justification for intervenor funding programs is to provide interested members of the public who lack the financial resources an opportunity to participate in agency proceedings. I contend, first of all, that such programs are unnecessary to insure adequate representation of the public interest. That is precisely what agencies, such as the Environmental Protection Agency, were created to do.

Congress has specifically charged the EPA and its staff with the responsibility of protecting our environment and the public health. If agencies, such as EPA are not properly discharging these duties, Congress should investigate and take appropriate action, rather than use taxpayer dollars to pay outside groups to intervene in public regulatory proceedings.

Second, Mr. President, I am opposed to intervenor funding because these programs are obviously subject to a great deal of abuse. Past experience has shown that such abuses have indeed occurred. Some agencies have tended to dole out Federal funds primarily to public interest groups supporting the agency point of view. Rather than giving the money to interested, individual members of the public, agencies have typically awarded funds to established public interest groups, who may have close connections with particular agency officials. Obviously, this type of activity does nothing to insure balanced agency proceedings and to protect the public's best interest.

Examples of such abuse are not difficult to obtain, particularly regarding the Federal Trade Commission's program. The Wall Street Journal, for example, commented in an editorial earlier this year that:

> The most questionable aspect of the FTC's activities in recent years has been its habit of paying Washington lobbyists to stir up opportunities for FTC investigations and regulations. A spate of private bureaucracies like Americans for Democratic Action, the Sierra Club, and Ralph Nader's Center for Automobile Safety now earn a living by representing "the public interest" in FTC proceedings.

The close professional connections between present agency officials and those groups or organizations receiving public participation funding would be difficult, if not impossible, to miss. Michael Pertschuk, now Chairman of the FTC, was a former Nader associate and has already granted more than $150,000 to various Nader groups. A list of other recipients of FTC funding reads like a "Who's Who" of activist organizations—the Union of Concerned Scientists, Friends of the Earth, the Sierra Club, the Environmental Defense Fund, and the National Resources Defense Council. It is difficult to believe that continual funding of these same types of organizations results in a more balanced representation of the public interest.

Examples of close relations between agency officials and funding recipients may be found in other agencies as well. Assistant Secretary of Agriculture, Carol Tucker Foreman, granted $23,536 to the Consumer Federation of America to do a study shortly after coming to her new Government job—having just left her post as executive director of that same Consumer Federation of America. I might also add that this grant was more than twice as large as the maximum allowed under then current USDA guidelines and that CFA had already publicized what its study should conclude before receiving the grant to do the study.

I also find very disturbing the attitude with which heads of these so-called "public interest" groups accept our hard-earned tax dollars. For example, a Denver-based group called "Ecocycle" received $30,000 from the Environmental Protection Agency. Upon receiving this amount, one of the leaders of this organization commented that, "It was the easiest, simplest money we ever came across." This may be easy money to the leaders of "Ecocycle," but I sincerely doubt that American taxpayers, who work hard for the money they wind up paying to the Government, would share this opinion. Taxpayers are sick and tired of excessive, wasteful spending by the Federal Government; and intervenor funding programs are a prime example of wasteful allocation of our tax dollars.

Mr. President, I support the Danforth amendment which would have the effect of completely cutting off this "simple, easy money," except in proceedings under the Toxic Substances Control Act. I am opposed to any exception to the flat prohibition found in the House bill—especially one as broad as the Appropriations Committee has included in its bill. I strongly urge my distinguished colleagues to vote in favor of this amendment offered by the able Senator from Missouri.

● Mr. HAYAKAWA. Mr. President, I strongly support Senator DANFORTH's amendment because I agree that the use of public participation (intervenor) funding needs definite statutory guidance from Congress in order to be carried out effectively. It is a well-meaning program, but it has proven to be an easily abused program and a waste of the taxpayers' money.

The intervenor funding program was developed in order to allow for participation in the Federal regulatory process by those public goups which are unable to afford the cost of coming to Washington, appearing before the Federal agencies, and preparing the materials needed for such an appearance. The expenditure of these funds by the FTC serves as a demonstration as to why statutory guidance is needed for this program.

During fiscal year 1978–79, the Americans for Democratic Action received $172,126, the Center for Science in the Public Interest—$84,614, the Community Nutrition Institute—$40,666, the Council on Children, Media and Merchandising—$185,840, the Media Access Project—$36,813, the National Consumers League—$109,727, and the National Consumer Law Center received $137,823. All these groups currently have an office in Washington, therefore, travel costs must have been minimal, if there were any at all. Furthermore, I find it hard to believe that it cost the Center for Science in the Public Interest $84,614 to prepare materials for one proceeding and the Council on Children, Media and Merchandising $185,840 for four proceedings. The most inexpensive funding to a group, with an office in Washington, went to the Media Access Project, $36,813 for one proceeding.

This outpouring of taxpayers' money without guidelines or standards is totally unacceptable. I hope my colleagues will join with Senator DANFORTH to prohibit the use of public participation funding until Congress sets up the guidelines and standards needed to be sure this program is run correctly.●

Mr. PROXMIRE. Mr. President, I am unsympathetic to the arguments raised by the Senator from Missouri regarding the use of Federal funds to support public participation in regulatory or adjudicatory proceedings. This matter was discussed at some length during subcommittee markup and it was acknowledged that abuses had occurred in the past. However, the committee felt that provision should be made to allow for the payment of travel, per diem, and the preparation of materials for the public record for individual consumers and organizations who have a unique contribution to make and who otherwise could not afford to bring their experiences to the attention of the appropriate agencies in Washington or elsewhere.

The committee has specifically directed the affected agencies to carefully review their public participation program and implement the following guidelines:

First. Funding should only be made available where the individual or organization would not, because of the costs involved, participate and where such participation is needed for a complete public record.

Second. Federal funds should be limited on those activities that are directly related to the presentation of materials for the public record, excluding background material or special purpose materials to be used by the agency for ancillary purposes.

Third. The amount made available to any one individual or organization for any one proceeding shall not exceed, exclusive of travel and per diem $3,000 without prior notification to the Committee on Appropriations.

Fourth. The total annual amount made available to any one individual or organization shall not exceed the larger of 10 percent of all such funds available to the agency for this purpose or $5,000.

Fifth. An accounting of the use of all public participating funds shall be made on a semiannual basis to the Committees on Appropriations.

Sixth. Funds should not be used to purchase services that would normally

be provided by regular employees, consultants, or contractors, or to fund views already represented and fully documented.

So the committee has not just given these agencies blanket approval of their public participation activities. We have been restrictive and we expect all agencies to comply with these directives to the letter.

As I understand it, the Senator's amendment would not negate the substance of the committee's report language which establishes specific goals and guidelines for the agencies affected by the public participation language in the bill. It would, as I understand it, strike our provision that allows funding for travel, per diem, and the preparation of materials and would insert language that would allow only those activities authorized under legislation for the Consumer Product Safety Commission and the toxic substances program at the Environmental Protection Agency. Those two agencies, of course, would bear the major brunt of an amendment prohibiting any public participation funding.

I understand that the Senator's office has discussed this amendment with the chairman of the Consumer Product Safety Commission, Susan King, and that she could live with this amendment. EPA has also told the subcommittee that it can live with this compromise language which protects the activities under the Toxic Substances Control Act.

Therefore, I have no problem with the amendment. Of course, this issue would ultimately have to be resolved in conference with the House, which has included a strict prohibition in their version of this appropriation bill.

If there are no objections from the Senator from Maryland, the ranking minority member of the subcommittee, I will accept this amendment.

Mr. MATHIAS. Mr. President, I believe that the Senator from Wisconsin, the manager of the bill, has stated the situation accurately—that we are faced with certain problems here that have to be confronted.

The House version entirely eliminates public participation; and, as the Senator from Wisconsin has pointed out, that is what will have to be confronted in the conference.

The Senate bill at least allows for travel per diem and expenses for preparation of materials for the public record.

I believe this is about as good as we can do under the circumstances, and I concur in the judgment made by the Senator from Wisconsin.

● Mr. DOLE. Mr. President, the Senator from Kansas is pleased to cosponsor the Senator from Missouri's (Mr. DANFORTH) amendment limiting the funding of private groups' participation in regulatory agency proceedings. Several agencies are now authorized by statute to subsidize public participation in their proceedings. Other agencies, in an exercise of what they consider to be their implied power, have set up such funding programs without specific congressional authorization. This amendment clearly prohibits the establishment of intervenor funding programs without such congressional authorization.

The Senator from Kansas believes that this prohibition is a wise step not only because he feels that regulatory agencies, which are creatures of the Congress, do not have the inherent power to set up such funding programs, but also because intervenor funding, even where authorized by statute, is flawed in concept and in practice. Intervenor funding, in spite of the well meaning arguments made for it, is fundamentally unfair. Through intervenor funding taxpayers' dollars are used to advocate views that all taxpayers do not necessarily share or consider to be in the public interest. Furthermore, in deciding who to fund, an intervenor funding program gives a Government official the final decision as to what interest group will contribute to an agency proceeding, essentially allowing that official to set the bounds of legitimate public debate. It is as outrageous as allowing Congress to pay lobbyists to lobby.

Even people in so-called "public interest" groups do not uniformly support intervenor funding. For example, John W. Gardner, the founder of "Common Cause," has warned that, "we could easily create a class of kept critics, and damage the future of an independent public interest movement."

Experience with the intervenor funding program at the Federal Trade Commission shows that such programs are subject to great abuse. The FTC program involved the funding primarily of groups in agreement with the agency, the funding of groups who did not need assistance, and the repeated funding of the same groups. In addition, we saw the participation of the FTC staff in proceedings before the agency and in the selection of groups to be funded.

Intervenor funding would increase public participation in agency rulemaking only if one considers that the professional "public interest" groups represent the public interest. Evidence indicates that such funding will often be used to subsidize views obviously at variance with public sentiment. For example, in the rulemaking involving children's advertising, the FTC budgeted $340,000 to proregulation groups, with only $849 for the opposition. Yet during the consideration of the FTC bill, it was this particular rulemaking that was so vigorously attacked in the Senate, and obviously more representative body than any agency.

In the opinion of this Senator, the "public interest" groups who have received, and will receive, these funds represent a distinct, and limited ideological position, not necessarily some genuine view of a significant segment of the public. If a group does not have a constituency willing to support it, how significant can the so-called public interest it represents be?

Consequently, though this Senator might support an even stronger measure, he feels that the Senator from Missouri's proposal is meritorious, deserves this Senator's cosponsorship, and merits the approval of all his colleagues in the Senate.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri.

The amendment (UP No. 1634) was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1635

(Purpose: To eliminate the 2% across-the-board cut)

Mr. MATHIAS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an unprinted amendment numbered 1635:

On page 48 beginning with line 24 strike out through line 6 on page 49.

Mr. MATHIAS. Mr. President, on page 48 of the bill, line 24, section 412 reads as follows:

SEC. 412. Of the total budget authority provided in this Act, for payments not required by law, 2 per centum shall be withheld from obligation and expenditure: *Provided*, That of the amount provided in this Act for each appropriation account, activity, and project, for payments not required by law, the amount withheld shall not exceed 5 per centum: *Provided further*, That this amendment shall not apply to funds provided in this Act for the Veterans' Administration.

This is the language which I have moved to strike, and the reason I have moved to strike it is because I think there is inherent in the language a problem, both a general problem and a specific problem.

First, from the general standpoint, I believe that any kind of an across-the-board reduction really negates the whole purpose of the appropriations process.

Why do we hold hearings? Certainly the Senator from Wisconsin is an outstanding example of the kind of careful scrutiny that we provide in the appropriations process. He sits for endless hours as the chairman of this subcommittee hearing witnesses, weighing the evidence, trying to determine what are priorities for expenditures of public funds, trying to determine what can be deferred to another year, and trying to determine what we can do without.

But what is the purpose of all that careful scrutiny if in the long run we are just going to say we will just take 2 percent off the top without regard to priorities, without regard to the timing of the expenditure, and without regard to what can be deferred and what is urgently necessary now?

If the budget savings are to be realized, then they should be done on the basis of a review of an individual program on a priority basis. Otherwise, all the programs get hurt regardless of how much merit they have and how urgent they are.

The specific wording of this amendment also creates problems. To begin

with, the provision specifies that budget authority "shall be withheld from obligation and expenditure." As far as the Congressional Budget Office is concerned, this does not mean that we have made a cut in budget authority. The $1,020,000,000 assumed savings are, in fact, only being held in reserve, and all of this budget authority will at some time someday be still appropriated.

In addition, the provision gives to the Office of Management and Budget the authority to withhold from zero to 5 percent with an average of 2 percent. The leeway given to OMB violates the spirit of the 1974 Budget Act. With this provision, as now written, OMB can set its own priorities and can, in effect, impound up to 5 percent of an agency's funds regardless of what the Appropriations Committee may have determined after careful hearings and careful weighing of the evidence.

For example, OMB might take zero or $112 million, or it might take up to $279 million from the National Aeronautics and Space Administration, depending upon whether it was exercising its discretion to take zero or to take 2 percent or to take 5 percent.

That really is a rather alarming kind of precedent to set and a rather alarming discretion to give to OMB.

We say do not take anything at all, take more than a quarter of a billion dollars, take something in between. The criteria by which they would do this are entirely subjective in their own minds. It is just what they feel like at the moment, not what Congress is deciding the national priorities may be.

The uncertaintly of the size of the OMB cut creates management problems for every agency covered in this bill. How is any one of these agencies to know what their appropriation is going to be next year? There is no way, unless they can read the minds of the people in OMB who sit there contemplating what they will take from each agency when they decide to take something.

They really in the agencies covered by this bill cannot begin to plan their own programs and to administer the programs effectively and efficiently until they know what the bottom line is going to be.

Let me just very briefly direct the attention of our colleagues to another consequence of this across-the-board cut, and that is its impact on the Senate proposed amendment. The effect is to make these amendments meaningless, to wipe them out.

For example, Senator CHILES' amendment to increase housing for the handicapped and for the elderly. In real effect that just is wiped out. The Senator from Florida might just as well not have offered that amendment.

The Senator from Connecticut (Mr. WEICKER) offered an amendment to provide funds for congregate housing services. The effect of the 2-percent cut is simply to wipe that out. He might just as well not have offered it.

The Senator from New Mexico (Mr. SCHMITT) offered an amendment to fund various NASA research and development programs. The 2-percent cut just will wipe that out. Senator SCHMITT might as well not have offered that program.

The Senator from Washington, the chairman of the full committee, (Mr. MAGNUSON) offered an amendment to initiate a NASA research and development program on solar propulsion. This 2-percent cut will just wipe that out.

I myself have offered a modest amendment to fund the National Science Foundation's small business innovation and science education programs, and that will be wiped out, as would be the amendment of the Senator from Florida for the elderly and the handicapped.

So, if we want to save these useful amendments, we have to adopt the pending amendment.

It is not likely that any of the funds provided in these amendments will be available for their intended purposes. The first thing that OMB will undoubtedly do is to eliminate all of these congressional initiatives in order to reinstate the administration's priorities. What Congress thinks is important will be delivered bound and gagged to the tender mercies of OMB, which is charged by the President with the protection and promotion of the President's program, and if we do that we will deserve what we get which will not be much.

Then there are cuts that OMB will make in other parts of the bill and, as I pointed out, they can be from 0 to 5 percent. For example, these are some of the results that may occur.

Assisted housing can lose up to $992 million. Community development grants can lose up to $187 million. It can take the full 5 percent from that one source if it wants to do it and, of course, that loss of $187 million will be on top of the $200 million cut already made by the committee confirmed today by the Senate in the defeat of the Tsongas amendment.

EPA abatement, control and compliance can lose as much as $27 million.

The EPA construction grants can lose as much as $170 million on top of the cuts already made by the committee and amounting to $300 million.

The emergency civil defense program can lose up to $8 million. NASA research and development can lose $221 million after we deliberately added $65.5 million because we thought it was desperately needed. The National Science Foundation research and development could lose $50 million, or a cut that would bring research and development funding below the 1980 level adjusted for inflation. So at a time when we are all concerned about the forward motion of the United States in the field of research we would be falling backward.

Revenue sharing could lose as much as $228 million in local government funding.

Mr. President, carrying this across-the-board approach one step further we could really just simplify this entire appropriations process because we have reported a bill that contains a $4.3 billion cut in budget authority. That is about a 6-percent reduction under the President's request for the fiscal year. Perhaps we could just have taken the administration's request for every item covered in the bill, and I would remind you that that is about $73.5 billion, and simply have taken 6 percent out of each account. That would have been the simple way. It would have saved the Senator from Wisconsin many weary hours sitting in the committee listening to witnesses, studying the evidence, and we could have saved a lot of time and a lot of effort by that simple approach of slashing 6 percent off of everything.

Section 412 reflects that kind of approach. In my mind the inclusion of section 412 has moved the Congress in the direction of renouncing its responsibility for making budget decisions in favor of delegating those decisions to the Office of Management and Budget, and I cannot support that kind of policy.

Mr. WILLIAMS. Mr. President, will the Senator yield?

Mr. MATHIAS. Certainly I yield.

Mr. WILLIAMS. Everything the Senator from Maryland has said certainly should alert the Members of this body that our work, so painstakingly done, can be undone by the OMB. I just wanted to ask the Senator from Maryland a question or two, if I could. We had a long debate, and then came to a record decision that assisted housing should not be reduced by the amount in the Exon amendment. This was full Senate action.

If this provision is included in the appropriations bill, the OMB and a little committee there or the Director of OMB, one individual, could nullify that specific action that was taken here on this bill today.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. WILLIAMS. Yes.

Mr. PROXMIRE. It is my understanding it is quite different because what the Exon amendment did was to reach out and affect a great deal of obligational authority over a period of 40 years. It did not affect outlays at all. Of course, what this amendment would do would be to cut outlays. It could cut outlays up to 5 percent.

Mr. WILLIAMS. Why does it say "budget authority provided in this act"? What is the difference in meaning there between——

Mr. PROXMIRE. Well, we have to look at budget authority as well as outlays here.

Mr. WILLIAMS. Well, section 412—I will read it:

Of the total budget authority provided in this act for payments—

Mr. PROXMIRE. Will the Senator give me that citation again?

Mr. WILLIAMS. It is on page 48 of the bill, section 412. Those are the opening words of section 412, "withheld from obligation and expenditure."

Mr. PROXMIRE. The amendment that was offered today by the Senator from Nebraska on which we had a close vote in the Senate would have cut some $3.4 billion from budget authority.

Now, this would cut 2 percent, but it would be at the discretion of the Office of Management and Budget and they could cut none if they wished to do so or they could cut 5 percent.

Mr. WILLIAMS. Or they could go to 5 percent.

Mr. PROXMIRE. So to say it automatically nullifies the action we took on that amendment might or might not be true.

Mr. WILLIAMS. Not automatically. It would take one person to come to that decision, and I gather it is the Director of OMB.

Mr. MATHIAS. Certainly he would have the last word.

Mr. PROXMIRE. He would have a voice in that, there is no question about that. That is correct.

Mr. WILLIAMS. May I ask another question? It seems to me that all the appropriations process, all the work and thought and consideration that goes into that, should—I agree with the Senator from Maryland—not be undone with a snap of a finger.

Mr. PROXMIRE. May I say to my good friend if he had been with us in committee, he would have, I think, understood and sympathized with our terrific dilemma. The Senator from New Jersey and the Senator from Maryland are making a very good point. I agree wholeheartedly that these across-the-board cuts and giving discretion to OMB are not things I would like to do. But what else can we do?

The Senator from Wisconsin, in his recommendations to the subcommittee, recommended as strenuously as I know how, specific reductions that would have put us within the budget. I was overruled by the subcommittee. They decided they would go up in a number of areas, which I am going to specify in a minute. Under those circumstances, when Senator HOLLINGS and Senator BELLMON came to the committee meeting and said that we were in violation of the first budget resolution and in almost certain violation of the second budget resolution, and we have to take action, it was clear that there was no way we would go back and make the specific reductions I had recommended before.

The only way we could make these cuts was to recommend an across-the-board 2-percent reduction, which I did not like to do. The Senator from New Jersey or the Senator from Maryland, if they can suggest how we can cut $1.1 billion out of this bill—and that is what this amounts to, $1.1 billion—if they can show where they can make it, I would be delighted. I will support any cut they want to make here in any program they wish. But there is no way we can do that here. The only way we can cut spending is to have this kind of an across-the-board reduction.

Let me point out what the amendment of the Senator from Maryland does. It would add $1.1 billion to this bill. It pushes it in here. There is one exemption. We do exempt the Veterans' Administration. It is full of entitlement programs, and it is perfectly obvious that trying to cut the Veterans' Administration would not be effective.

We give discretion because I think it could be better than a blind, automatic cut of 2 percent, and discretion has to reside somewhere in order to make some kind of a judgment.

I wish the Congress, as I say, could go over this, go over each one of these areas, and make cuts. As chairman of the subcommittee I recommended that. But that recommendation was overruled by the subcommittee and then by the full committee. The full committee, not by a close vote but by a vote of 10 to 1, voted for the 2-percent reduction.

I offered it at the suggestion of Senator HOLLINGS supported by Senator BELLMON, and then the committee voted overwhelmingly in favor of it. I think Senator MATHIAS was the only Senator present in the Appropriations Committee who voted against it.

Mr. WILLIAMS. I am sure the Senator from Maryland will relate this to the appropriations pactice and the overlay of Budget Committee action on the appropriations process, but I would like to raise one further question now with the Senator from Wisconsin.

As I read it, it does not indicate when the cutting decisions are to be made. These appropriations are for fiscal 1981, is that right? At some point during that year these cuts must, under this provision, be made.

Mr. PROXMIRE. The Senator is correct.

Mr. WILLIAMS. I would think every department would have to start the year with the premise that they have 2 percent less than the appropriated amounts for their departments. Therefore, they would have to put 2 percent as a reserve, and just when in the year would that happen? It just seems to me this lends itself to one of the worst kinds of mismanagement I can imagine in Government, when you come toward the end of a year, and you have not obligated all of the money that you have authority to obligate, and you are coming up to that end-of-year deadline, that is when all that rush to obligate is made.

Mr. PROXMIRE. No, there is no way this will drag on to the end of the year. What we do here is give the Office of Management and Budget the authority to make these reductions, and with discretion to make the reductions where they have to make them.

Mr. WILLIAMS. When?

Mr. PROXMIRE. They can make them early in the year. Now obviously they would have a few days before the year begins. It begins October 1. That is less than it was 2 years ago. But before we act on this I presume it will probably be only a day or two before the beginning of the year. Then when the allocations are made the Office of Management and Budget can either reduce each budget by 2 percent or, as we indicate, by nothing, or 5 percent in others. But they have to make an aggregate cut of 2 percent.

There is no reason in the world why the Office of Management and Budget should take more than a few days to make those decisions.

Mr. WILLIAMS. I would like to hear from the Senator from Maryland on that, also.

I will make the observation that they have a full calendar of demands upon them now. Getting ready in the next budget to give thoughtful attention to intelligent cutting within the first few days almost tells us that it will not be intelligent cutting.

Mr. PROXMIRE. Mr. President, I ask the Senator, what would he do? What would he do if he were in the position of the Senator from Wisconsin? We have to comply with the budget resolution. We have no alternative. The budget resolution is meaningless, otherwise. We have the Appropriations——

Mr. WILLIAMS. Why do we have an Appropriations Committee?

Mr. PROXMIRE. Why do we have a Budget Committee?

Mr. WILLIAMS. Good question.

Mr. PROXMIRE. We have an Appropriations Committee so we can reconcile that. We tried to reconcile the recommendations of the Budget Committee and I felt we were coming fairly close to it. But I was overruled by the members of the subcommittee and the Appropriations Committee. They made a decision they have every right to make and we turned out to be over, substantially over. The only way we could reconcile this was by a reduction.

The Senator could move to recommit the bill. I would not object to that. I would vote for it, rather than having us go forward with a clear violation of what the Senate did when it accepted the budget resolution.

I think it is easy to attack that 2 percent cut. I agree that it is something that is not the best way to proceed by any means, but there is no alternative here, unless the Senator feels that we can be, and what I think is, irresponsible, and go ahead and appropriate more than the budget resolution permits.

We have a budget resolution. We have made a commitment. We have said we are going to come in within that limitation. Having done so, it seems to me we have to live up to it. It is painful, but we have to do it.

As I say, the Appropriations Committee had to vote on it and voted 10 to 1. It was not close.

Mr. MATHIAS. I think we ought to look at the figures; take a little advice from Will Rogers and look at the record.

What are the facts? What are the figures? What is the record?

As of this minute, in this bill, the budget authority is $1.8 billion under the resolution and in outlays it is $0.4 billion under. So we are within it.

Mr. PROXMIRE. Will the Senator yield on that?

Mr. MATHIAS. Where the dispute comes is where you go from here. But, strictly, speaking, we are within the resolution.

Mr. PROXMIRE. We got our figures from the Budget Committee. Of course, the Senator says "as of the moment."

Mr. MATHIAS. As of the moment.

Mr. PROXMIRE. But we know there is going to be $1.3 billion coming down the pike in fiscal 1981 for veterans' compensation, pensions, GI bill, and so forth. We know there is going to be $200 million which we will all recognize has to be taken. I talked to Senator HOLLINGS, the chairman of the Budget Committee today, and he said there is no question we have to appropriate that amount.

We know there is going to have to be

$100 million for Presidential R. & D. initiatives, research and development initiatives. We know that is coming down. We have to leave room for that.

Furthermore, the figures that we have from the Budget Committee would indicate that even with these cuts we are going to probably be somewhat over the amount allowed, or at least very close to it.

Mr. MATHIAS. But the distinguished Senator from Wisconsin, with his prescience and experience, pointed out in his opening statement that if the HUD-Independent Agencies Subcommittee does not receive an additional allocation under a second budget resolution, we are going to have problems in the future. Now, we all agree about that. We are going to have problems in the future.

But, as of tonight, as of the moment, under this budget resolution, we are within the limits.

Mr. PROXMIRE. The Budget Committee, which was ably represented by both the chairman and the ranking member, gave us the figures that the Budget Committee itself had arrived at. There was no question about those figures in the Appropriations Committee and the Senator from Maryland and all of us had an opportunity to challenge and question those figures. Those figures were accepted.

Our staff has very carefully and diligently explored those figures. The conclusion has been that it was necessary for us to have what we thought was about a $990 million reduction. Now we know it is $1.1 billion, because we added revenue sharing.

At any rate, we are not doing it because we like to do it. I do not like a 2-percent cut, either. I agree it is a poor alternative.

Mr. MATHIAS. Mr. President, the Senator knows, and I think the Budget Committee understands, that there are some items out there that are going to have to be taken care of—$100 million for HUD low-income housing projects, fuel adjustments for fiscal year 1980. That fiscal year is winding down and we pretty well know that is a commitment that is going to have to be taken care of. A $200 million for HUD low-income housing projects fuel adjustments for fiscal year 1981. That is a little more speculative, but you can pretty well figure on it. A $200 million for veterans' benefits, based on 14.3 percent versus an 11.8-percent increase. So you have almost 3 percent additional there that had not been anticipated. Then the President proposed some new R. & D. programs which may be very valuable to the country, but they are going to cost $100 million.

These things are well-known commitments coming down the pike, and they are being charged against this bill when everybody understands that they were not included in the first concurrent resolution. They are going to have to be taken care of in the next resolution and the Budget Committee anticipates that these are problems coming down the road that will have to be recognized in the next resolution.

I yield to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, I would like to propose a question to both the Senator from Maryland and the Senator from Wisconsin. It is my understanding that the Senator from Maryland is moving to strike section 412. Is that correct?

Mr. MATHIAS. That is correct.

Mr. BRADLEY. And section 412 requires a 2-percent across-the-board reduction. Is that correct?

Mr. MATHIAS. A 2-percent across-the-board reduction, but with the hooker that OMB can go up to 5 percent in some programs, but with an average of 2 percent.

Mr. BRADLEY. I wonder if the Senator from Maryland could clarify for the record his interpretation of section 412 as it pertains to general revenue sharing. Both House and Senate committees have reauthorized general revenue sharing payments to local governments as entitlements. Therefore, it seems the provision of section 412 of the appropriations bill, which gives OMB that authority to cut programs from 0 to 5 percent, does not apply to the funding of general revenue sharing, given its entitlement status, making it funds "required under the law." Is that correct?

Mr. MATHIAS. I wish I could answer the Senator from New Jersey that he was correct in the assumption, but I am afraid the facts are otherwise.

We have exempted the Veterans' Administration entitlement programs because they are entitlement programs. Section 412 does not exempt revenue sharing from these cuts. As a matter of fact, if OMB wanted to take everything that it could out of the hide of revenue sharing, it could take about $228 million from the local governments and the local communities of this country.

Mr. BRADLEY. As I understand——

Mr. PROXMIRE. If the Senator will yield, I believe I can help the Senator on this.

Mr. BRADLEY. Will the Senator let me respond? As I understand it, that would mean that revenue-sharing payments due to local governments across this country in January would, in fact, be cut. Is that correct?

Mr. PROXMIRE. May I answer the Senator on that? If I can answer the Senator, I call the Senator's attention to page 48, lines 24 and 25 of the bill, which says "of the total budget authority provided in this act for payments not required by law."

We do not yet have the authorization for revenue sharing. We do not know what it is going to be. But in the event the law requires that that payment be made, and in the event it is an entitlement program, then I presume that the interpretation of that by the Office of Management and Budget would be that revenue sharing could not, under those circumstances, be reduced. But nobody has seen that because they have not decided to authorize revenue sharing as yet. When it is authorized we can see it and we can answer the questions of the Senator from New Jersey.

My guess is that this will come under that provision for payments not required by law and the cut would not cover revenue sharing.

Mr. MATHIAS. But the Senator from Wisconsin would have to admit that this is exposing revenue sharing to a very great risk. It is putting it in jeopardy.

Mr. BRADLEY. If I may add in response, the Senator from Wisconsin on this very floor just a few days ago accepted the change in the appropriations bill which would add $4.6 billion for local revenue sharing, which the Senator had struck from the bill. I assured the Senator at that time that the Finance Committee had acted on revenue sharing and that it would be reported if not today then tomorrow, with the action having taken place last Thursday. Therefore, to argue that it will not be authorized I think is just really not correct.

Mr. PROXMIRE. This Senator never argued it would not be authorized. I simply said that we should wait until it is authorized so we could see exactly what the Senate did. As the Senator knows, what a committee recommends to the Senate is not necessarily what the Senate will adopt. We probably will not change that. We will probably pass revenue sharing as far as the entitlement nature of it is concerned, the requirement as to whether it will be paid or not, precisely the way the Finance Committee recommends it. We may not, however. I cannot tell the Senator definitely until we act on it.

Mr. BRADLEY. To be consistent with my position last week on the floor where a great number of the Senators agreed that we did want to preserve the local revenue sharing, I cannot support section 412 and would support the Mathias amendment. I think in some ways section 412 is an abdication of authority by the Appropriations Committee and the Senate. We have an authorization process, an appropriations process, and a budget process. I do not think we should turn over this responsibility to the OMB to make cuts where and when and in what programs they decide. I think, in fact, it could have devastating impacts on certain programs that have already been heavily cut by the Appropriations Committee. EPA, block grants, section 8, for example, would be crippled beyond description if the 5 percent discretionary cut took place in these areas.

I would hope that the Senate would have the sense to reconsider section 412 and support the Mathias amendment because the effect of section 412 could be, in fact, that all of the amendments the Senate has adopted to date on this bill to add appropriations could be scotched by giving that discretion to cut from zero to 5 percent to OMB.

So I rise to strongly support the amendment of the Senator from Maryland and hope that we all agree that general revenue sharing is an important concept to preserve, and the funding also which would be required to preserve that concept.

Mr. SCHMITT addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. SCHMITT. Mr. President, I wonder if the distinguished Senator from Wisconsin and the distinguished Senator

from Maryland, with the assistance of the Senator from Oklahoma from the Budget Committee, could clarify some situations we are in by answering some questions.

The first question I would pose is the relation of the effect of the Mathias amendment on the allocation received by the subcommittee from the full Appropriations Committee based on the first concurrent resolution. Would the effect of the amendment put us over that allocation?

Mr. PROXMIRE. It is my understanding it would put us over in outlays.

Mr. SCHMITT. In outlays?

Mr. PROXMIRE. Yes.

Mr. SCHMITT. And that is based on what budgetary cost attributed to the amendment?

Mr. PROXMIRE. The amendment, as I understand it, would add $134 million in outlays.

Mr. BELLMON. And $992 million in budget authority.

Mr. PROXMIRE. There might be some change because of the fact that we added revenue sharing on the floor which, as we indicated in our exchange with the Senator from New Jersey, would also increase the total. But it would be in that general area.

Mr. SCHMITT. But it makes us close to the allocation if not over in outlays in the budget authority as well?

Mr. PROXMIRE. If we do not take into account any future requirements—

Mr. SCHMITT. I want to see if I can dissect the problem at little bit.

Mr. PROXMIRE. If there is no accounting for any future requirements, we might be all right.

Mr. SCHMITT. Given the first budget resolution and if allocated?

Mr. PROXMIRE. But it would be very unrealistic if not dishonest. I think it would be dishonest, really, for us to do that, because we know perfectly well we are going to have additional requirements for the fiscal year. There is no question about it.

Mr. MATHIAS. If the Senator from Wisconsin will yield, that is the reason we have a second concurrent resolution.

Mr. SCHMITT. That is the next question. The Senator anticipated my question. That is that the allocations we have been talking about are based on a first concurrent budget resolution which has been approved by the Congress. We are awaiting the second concurrent budget resolution. Therein lies the difficulty.

Mr. PROXMIRE. We are already over $134 million in outlays even without waiting for the second budget resolution.

Mr. SCHMITT. We are over with respect to the allocations that the Appropriations Committee gave the subcommittees. We are not over with respect to the total budget resolution as it relates to the Appropriations Committee. Am I correct?

Mr. PROXMIRE. Not yet. We have not passed the bills yet.

Mr. SCHMITT. It may cause problems for other subcommittees if we are over, but, nevertheless, as far as the actual mechanical allocation of the appropriations full committee allocations, we have not gone over.

(Mr. BAUCUS assumed the chair.)

Mr. PROXMIRE. It is my understanding that the bill cannot be enrolled in its present form if we pass the Mathias amendment.

Mr. SCHMITT. The subcommittee allocations being exceeded permits enrollment of the bill?

Mr. PROXMIRE. That is right. If we pass the second resolution which is more generous, it might have an effect on it.

Mr. MATHIAS. A beneficial effect.

Mr. PROXMIRE. Whether we do or not is an important issue. There is a strong and proper determination in the Congress to hold down these resolutions and not to go up constantly $1 billion more each time with each resolution.

Mr. SCHMITT. But on the question of supplementals, the additional costs which have been outlined before this committee, really must be addressed by the second concurrent resolution and not by the first resolution. Is that correct?

Mr. MATHIAS. Yes, the Senator is right. And these are costs that are recognized. They are not some sort of hidden costs. They are not something coming on us without notice. These are things that are coming down the pike that everybody has seen and which are loaded into the accounting against this bill, even though we know they are the kinds of things that need to be dealt with in the second concurrent resolution. I have outlined them specifically. They involve HUD low-income housing fuel adjustments. They involve veterans benefits. They provide the President's suggestions for new research and development. These are things that are known. But they are the kind of things which we would normally be contemplating by the second concurrent resolution.

Mr. SCHMITT. So the problem we have, the legislation problem, of dealing realistically with this bill or any appropriations bill is that there is no second concurrent budget resolution offering the guidance to us as we consider these measures.

Mr. BELLMON. If the Senator will yield, Mr. President, the normal procedure is to pass the first budget resolution, which sets targets, then pass the appropriation bills, hopefully at or below those targets. Then if, for some reason, the bills are above the targets, we do then pass the second budget resolution and it becomes binding. So if it turns out the bills are above the targets of the second resolution, then we have to go into reconciliation.

Mr. SCHMITT. The point this Senator is trying to make is that it seems that, to some degree, we are continually trying to put carts before horses. The Appropriations Committee keeps talking about the second concurrent budget resolution as if it is going to save the day. The Budget Committee keeps talking about the second concurrent budget resolution as if it is going to control the appropriations bills. We have goteten ourselves into a bind by not acting on any of these measures in an orderly process.

Mr. BELLMON. The Senator is correct.

Mr. SCHMITT. How we get out of that, I do not know. The Senator from Maryland is entirely to correct in that we know there are certain costs coming down the pike and that, without making fundamental law, we are going to have a very difficult time providing for them. I am not offering a solution. Like everybody else, I am simply outlining the problem.

Mr. PROXMIRE. If the Senator will yield, what we can do is quite simple. If we pass the Mathias amendment, we can recommit the bill and wait for the second budget resolution. That would be the honest, responsible way to do it. But of course, we would be delaying this bill further and if the second concurrent resolution is adopted by the Senate, not just recommended by the committee, and should be restricted in the conference or the Congress, then we would have no alternative but to make cuts, one way or the other.

Mr. SCHMITT. Mr. President, I yield the floor to the Senator from Oklahoma.

UP AMENDMENT NO. 1636

(Purpose: To reduce budget authority provided in this Act by 2 percent)

Mr. BELLMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant, legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes an unprinted amendment numbered 1636:

On page 48, beginning with line 24, strike out through line 6 on page 49 and insert the following:

SEC. 412. Notwithstanding any other provision of this Act, the total budget authority provided by this Act for each Department or independent agency for payments not required by law shall be reduced by 2 per centum: *Provided*, That this section shall not apply to budget authority provided by this Act for the Veterans' Administration.

Mr. BELLMON. Mr. President, this amendment has been read. It is totally self-explanatory. I should like to take just a moment to discuss it.

The Senator from Maryland is correct in noting that section 412 of the bill does not accomplish the purpose for which it was intended—to reduce budget authority $1 billion below the amount required by the reported appropriations bill. The Congressional Budget Office indicates that such language cannot be scored as a reduction in budget authority, even if such authority cannot be obligated in fiscal year 1981.

It is imperative that such a reduction be made, however, at least I feel that it is. The HUD appropriation bill, as amended, appropriates $74.9 billion of budget authority. Appropriation of another $1.7 billion is anticipated later in the fiscal year—primarily for cost-of-living increases in the veterans' compensation program. This would put the HUD Subcommittee about $900 million over its $75.6 billion allocation—the amount that the full Appropriations Committee anticipated would be required.

Mr. President, I wish to amend the Mathias amendment not only to eliminate the existing section 412 language but to substitute in its place language

which would effect a 2 percent, across-the-board cut for each department or agency included in the HUD appropriations bill, with the exception of the Veterans' Administration. This is the intent and purpose of the amendment offered by myself and cosponsored by Senator HOLLINGS and accepted by the full Appropriations Committee earlier this month.

This amendment does nothing more than accomplish the intent of that amendment.

I should note that, even with this amendment, the bill remains about $1.6 billion over the subcommittee's outlay allocation after taking account of possible later requirements. I regret that my amendment will not reduce this overage. However, holding the budget authority within the limits contemplated by the Appropriations Committee is a significant achievement.

I should also note that exempting research and development expenditures from the 2-percent cut would reduce the amount of the cut by $100 million in budget authority and would, thus, make the total bill that much over the Appropriations Subcommittee allocation. I recognize the desire of some of my colleagues to make this exemption. Nevertheless, even after the 2-percent cut, $6.4 billion of R. & D. funds exist for NASA, National Science Foundation, and other agency R. & D. expenditures—a substantial sum well above 1980 funding levels.

Mr. President, the entire Senate should understand the budget implications of what is happening in the appropriations process. If we do not hold all spending bills within Congress spending goals, we are seriously eroding the budget discipline to which the Senate committed itself last spring. If we continue on our present track, 1981 spending will be $20 to $30 billion higher than the $613 billion target we imposed on ourselves only last June.

Mr. President, that is basically the reason for my amendment. If we do not hold each bill down, the Senate is going to look at total 1981 spending that is $20 to $30 billion higher than we agreed to last June.

Adoption of this amendment, in my judgment, is imperative, because this is one of the important bills we shall be considering. If we do not start holding the line on this bill, I am not sure we shall hold it on bills that will come along later.

Mr. President, this amendment does nothing more than accomplish the objective we felt we were accomplishing when the bill was reported out of full Appropriations Committee. Mr. President, I strongly urge adoption of this amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, will the Senator yield for a clarifying question?

Mr. BELLMON. Yes, I yield.

Mr. PROXMIRE. As I understand it, this amendment meets the argument that we have simply handed over our discretion as a Congress, in the committee amendment, to the head of OMB. In other words, we said any cut between zero and 5 percent. Here the Senator from Oklahoma is saying that the cut shall be 2 percent; is that correct?

Mr. BELLMON. That is correct. It also exempts the Veterans' Administration.

Mr. PROXMIRE. It also says for payments not required by law. Would that mean if there is an entitlement program that requires a payment by law, there would be no cut in it?

Mr. BELLMON. That is the meaning of the amendment.

Mr. PROXMIRE. So in the event revenue sharing is an entitlement program, revenue sharing would not be reduced?

Mr. BELLMON. That is true.

Mr. PROXMIRE. I thank the Senator.

Mr. President, I support the amendment.

Mr. MATHIAS. Mr. President, let me utter just a word of caution about this amendment and a word of modest disagreement with the Senator from Wisconsin. This does not cure the problem of delegation to OMB of the discretion to make very large cuts in some programs and no cuts at all in other programs. It transfers that discretion from the Director of OMB to the Secretary of HUD.

Mr. BELLMON. Will the Senator yield?

Mr. MATHIAS. Certainly.

Mr. BELLMON. The amendment would require a 2-percent cut, agency by agency. Inside an agency, the cut could be more or less than 2 percent in the individual programs.

Mr. MATHIAS. That is precisely right. So that what will happen is that the same effect will probably take place, because the President will direct OMB to make recommendations within agencies. So the Director of OMB will then do indirectly what he would have done directly in the amendment in its primitive form.

Just as an example, these are the kinds of accounts within which these cuts can be made: annual contributions or section 202 programs for the elderly and the handicapped; congregate services; low-income housing; troubled projects; Federal Housing Administration; GNMA; solar energy and energy conservation; community development grants; UDAG grants; comprehensive planning; rehabilitation loan fund; housing counseling and assistance; neighborhood self-help; policy development research; fair housing assistance.

Each one of these is a separate account and there can be all kinds of shifting around within those programs. These are very large sums of money that we are dealing with here. What we are doing is delegating to the executive branch the work of the Appropriations Committee to determine the priorities.

● Mr. LEVIN. Mr. President, I oppose the amendment offered by the Senator from Oklahoma. This amendment, which reduces the total budget authority within the bill by agency, is an abrogation of congressional responsibility. While the amendment would not permit OMB to administer budget cuts, as the committee amendment would, it does permit agency heads and Administrators to determine budget cuts. It fails to allocate spending reductions after a careful analysis of specific programs and spending patterns by Senate and House committees. With this amendment, Congress effectively removes itself from the determination of these cuts.

When the Senate considered the McGovern "transfer" amendments involving the reduction of a fixed percentage of defense dollars. I opposed such broad brush budget actions for much the same reasons I now oppose the Bellmon amendment today. Congress must not delegate authority for program budget reductions to department heads. Congress should retain the responsibility for determining which specific programs or activities will be cut or which programs would be increased as a result of those reductions.●

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. A rollcall vote is now in order since a Senator has responded already to the rollcall. The rollcall is in order.

Mr. STEVENSON. Mr. President, the Senator was seeking recognition before a Senator responded on the rollcall, I believe.

The PRESIDING OFFICER. In the opinion of the Chair, since the Senator from Montana responded to the rollcall before the Chair heard the Senator from Alabama seek recognition, it is the opinion of the Chair that the rollcall was in order.

The clerk will continue to call the roll.

The assistant legislative clerk resumed calling the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I also announce that the Senator from Montana (Mr. MELCHER) is absent because of illness.

Mr. STEVENS. I announce that the

Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 56, nays 20, as follows:

[Rollcall Vote No. 434 Leg.]

YEAS—56

Armstrong	Glenn	Nunn
Baucus	Hatch	Packwood
Bellmon	Hatfield	Pell
Biden	Hayakawa	Percy
Boren	Heinz	Pressler
Boschwitz	Helms	Proxmire
Burdick	Hollings	Pryor
Byrd, Harry F., Jr.	Humphrey	Ribicoff
Byrd, Robert C.	Inouye	Roth
Chafee	Jackson	Sasser
Chiles	Jepsen	Simpson
Cochran	Kassebaum	Stafford
Cohen	Laxalt	Stevens
Danforth	Leahy	Talmadge
Dole	Lugar	Thurmond
Domenici	Matsunaga	Tower
Exon	Mitchell	Wallop
Garn	Morgan	Warner
	Nelson	Zorinsky

NAYS—20

Baker	Levin	Schmitt
Bradley	Mathias	Stevenson
Cranston	Metzenbaum	Tsongas
Durkin	Moynihan	Weicker
Gravel	Randolph	Williams
Hart	Riegle	Young
Heflin	Sarbanes	

NOT VOTING—24

Bayh	Eagleton	Magnuson
Bentsen	Ford	McClure
Bumpers	Goldwater	McGovern
Cannon	Huddleston	Melcher
Church	Javits	Schweiker
Culver	Johnston	Stennis
DeConcini	Kennedy	Stewart
Durenberger	Long	Stone

So the amendment (UP No. 1636) was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the precedents of the Senate because the amendment offered by the Senator from Oklahoma (Mr. BELLMON) is an amendment in the nature of a substitute and covers the entire language of section 412, the section proposed to be stricken by the amendment offered by the Senator from Maryland (Mr. MATHIAS) and because the amendment offered by the Senator from Oklahoma prevailed, no action will be taken on the amendment offered by the Senator from Maryland.

ORDER FOR THE RECOGNITION OF SENATORS BIDEN AND DANFORTH TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees are recognized under the standing order, Messrs. BIDEN and DANFORTH be recognized each for not to exceed 15 minutes before the Senate proceeds to the consideration of the nuclear fuel sale resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1637

(Purpose: To exempt research and development from the provisions of Sec. 412)

Mr. HEFLIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. HEFLIN) proposes an unprinted amendment numbered 1637:

On page 52 after line 19 add:

"SEC. 418. Notwithstanding any other provision of this Act, the total budget authority for research and development provided in the Act shall be exempt from any or all reductions which may be levied on the overall Act."

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me

Mr. HEFLIN. I yield.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator.

Mr. President, may I ask Senators how many other amendments are expected to be called up? Mr. MATHIAS has an amendment.

Mr. HELMS. I have the same four I had Friday afternoon.

Mr. ROBERT C. BYRD. Mr. HELMS has four amendments.

Mr. HUMPHREY has one amendment.

Mr. BRADLEY has one amendment.

How many Members expect to ask for rollcall votes on their amendments?

Mr. ROBERT C. BYRD. Mr. MATHIAS does.

Mr. HELMS. Mr. President, if the majority leader will yield, I have no way of assessing that. Senator PROXMIRE and I have discussed two or three of them, and I think he may be willing to accept them, but I do not know.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished manager of the bill be able to comment?

Mr. PROXMIRE. Mr. President, unfortunately I cannot. While the Senator from Alabama is discussing his amendment perhaps I will have a chance to discuss this with the Senator from North Carolina so that I have an opportunity to assess the situation.

Mr. MATHIAS. The Senator from Alabama I think wants a rollcall vote on his amendment.

Mr. ROBERT C. BYRD. He wishes to have a rollcall vote.

Mr. HEFLIN. I do, unless the Senator from Wisconsin, the manager, will accept this amendment.

Mr. PROXMIRE. I am afraid not.

Mr. ROBERT C. BYRD. Mr. President, I am trying to ascertain whether or not we should proceed to try to finish the bill tonight.

The Senator from New Jersey wishes a rollcall vote on his amendment.

Mr. BRADLEY. That is correct.

Mr. ROBERT C. BYRD. So those are two rollcall votes. Mr. MATHIAS wishes a rollcall vote so that is three. And Mr. HELMS maybe.

So this would mean, if we did nothing but start calling the roll right now, it would be 8 p.m. on those rollcall votes, not counting any rollcall votes on the amendments of Mr. HELMS, and there may be rollcall votes on his, but that would allow for no debate at all. It would be at least at the earliest 8 p.m.

I wish to ask the managers of the bill how they feel. It looks to me as though if we finish the bill, it would be 10 p.m.

Mr. PROXMIRE. Mr. President, if the Senator will yield, I earnestly hope the Senate will try to finish this bill tonight, even if it takes until 10 or 11 p.m. I realize it is a serious imposition on Senators. But it is a bill that has been pending since last Monday. It is the kind of bill, frankly, that if we do not finish it tonight, we are going to be on it for whatever time we can devote to it. We have another matter up tomorrow and Wednesday as Senators know. I hope we can stick with this bill and finish it. I hope we attempt to do it.

The Senator from North Carolina is a very accommodating man. He does not take long on his amendments. I hope we can dispose of those amendments rather quickly. I hope under the circumstances we can finish with the bill by 10 p.m.

Mr. MATHIAS. Mr. President, I concur in the judgment of my friend from Wisconsin, but I think realistically the amendment that I am forced to offer is going to be a complex one. There is a lot of interest in it. There may be a lot of participation in it. I would not want to delude the Senate or the majority leader that it is going to be disposed of very quickly.

I see the Senator from Arkansas raising his eyebrows, licking his chops, and getting ready for the fray.

Mr. BIDEN. Mr. President, if there is a reasonable prospect of completing this bill tonight, I understand the leader's feelings, and I will not object, not that I could object any way, but I will make my objection known. I have a feeling we are into what often occurs here, understandably, and that is we will probably stay here until probably 10 p.m. tonight and still not finish the bill and be back on it tomorrow. In fact, we have time to do it all. I, for one, would hope we would act on maybe an amendment or so but not keep us here until 10, 11 or 12 o'clock, and let this thing drag.

Mr. PROXMIRE. Mr. President, I earnestly hope we do stay and finish the bill. It is painful and tough. If we do not, we are going to stretch this out for the next couple of days. I realize the majority leader is in a very difficult position. But I hope that he comes down on the side of severity.

Mr. ROBERT C. BYRD. I say the Senator has been very considerate of the Senate. He has been willing to have his bill pushed aside temporarily repeatedly, and I have a lot of empathy for his wanting to continue action on it.

Why do we not proceed to finish the amendment by Mr. HEFLIN and then take another look at the situation?

Mr. PROXMIRE. All right.

Mr. ROBERT C. BYRD. If we could

finish by 10 p.m., it would be fine. One thing we do not want to do is go beyond the point of no return thinking we are going to finish and then find that after we have spent the entire evening, being here until 10, 10:30 or 11 p.m., we are still not going to finish. That is the one thing I do not think we ever do, or it is very seldom.

If we will go ahead, we will make a decision around 7 or 7:30 p.m. that we are going to go to the end and we try to stick to it.

We do not want to go to 9:30 or 10 and then not finish. If we are not going to finish, we ought to go out after the Senate acts on this pending amendment. So let us assess the situation and see if we can resolve this matter at the time the Senate disposes of his amendment.

Mr. BRADLEY. Mr. President, will the Senator yield at that point?

Mr. ROBERT C. BYRD. Yes.

Mr. BRADLEY. My amendment is directly related to the amendment of the Senator from Alabama. Therefore, I think ours should be taken up together and it probably will not take much time.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. BRADLEY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alabama has the floor.

Mr. HEFLIN. I yield to the Senator from New Jersey.

UP AMENDMENT NO. 1638

(Purpose: To reduce the appropriations for each department or independent agency by 2 per centum)

Mr. BRADLEY. Mr. President, I send an amendment to the desk in the nature of a substitute and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey (Mr. BRADLEY) proposes an unprinted amendment numbered 1638 in the nature of a substitute to the Heflin amendment, unprinted numbered 1637.

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. PROXMIRE. I object. I want the amendment read.

The ACTING PRESIDENT pro tempore. Objection is heard.

The legislative clerk read as follows:

In lieu of the language proposed to be inserted insert the following:

"SEC. 418. notwithstanding any other provision of this Act, the total budget authority for research and development and general revenue sharing provided in the Act shall be exempt from any or all reductions which may be levied on the overall Act."

Mr. BRADLEY. Mr. President, this amendment—and I will be very brief—simply protects revenue sharing from this cut, from any reasonably possible attack. The previous amendment protected all entitlements programs, and it is conceivable, although unlikely, that in considering revenue sharing the local share might not make that an entitlement, so this simply locks up the revenue-sharing funds from the cut that is proposed by the amendment just adopted by the Senate.

Mr. PROXMIRE. Mr. President, why does not the Senator from Alabama simply modify his amendment to accept the Bradley amendment and then we can discuss them as a single package. Would that be all right? We do not have to take them up separately.

Mr. BRADLEY. It is a substitute so they are together.

Mr. HEFLIN. As long as they are not subject to any amendments.

Mr. BRADLEY. They are both on revenue sharing.

Mr. PROXMIRE. Mr. President, may I say then that I will object to the amendments together, but I think in order to save time we might by voice vote accept the substitute amendment and then have the opportunity to discuss the Senator from Alabama's amendment as amended. Does the Senator understand?

Mr. BRADLEY. If the Senator is prepared to accept the substitute, I would be delighted.

Mr. PROXMIRE. First, may I inquire from the Chair. May I ask, Mr. President, if the Bradley amendment is accepted as a substitute for the amendment of the Senator from Alabama, does that put the entire amendment in the bill or does it simply mean the amendment of the Senator from Alabama, as amended by the Senator from New Jersey, is then before the Senate?

The ACTING PRESIDENT pro tempore. If the amendment offered by the Senator from New Jersey is accepted, and if it is a substitute, then that language will be before the Senate and may not be amended.

Mr. PROXMIRE. Then it would be in the bill.

The ACTING PRESIDENT pro tempore. Would not be in the bill. The Senate would then have to vote on the amendment offered by the Senator from Alabama, as amended.

Mr. PROXMIRE. That was my understanding. So if we simply accept the Bradley amendment then we have the Heflin-Bradley amendment before us, and we have the opportunity to vote up or down on that amendment; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. PROXMIRE. I have no objection to having the Senate act on the Bradley substitute. That would put the Heflin-Bradley amendment before us for consideration.

Mr. BRADLEY. Mr. President, I move its adoption.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from New Jersey.

Mr. BRADLEY'S amendment (UP No. 1638) was agreed to.

The ACTING PRESIDENT pro tempore. The question now is on agreeing to the amendment of the Senator from Alabama, as amended.

Mr. HEFLIN. Mr. President, this amendment would protect research and development from the 2-percent cut. In the across-the-board cut you have here some independent agencies, such as the National Aeronautics and Space Administration, the National Science Foundation, which are carrying on research. In HUD there is considerable research being undertaken with respect to solar energy. These, in my judgment, are very important programs, and that research and development is very much needed. It is also needed because of the fact that, as we look across these agencies, it will increase our national productivity. To cut research and development from this bill, in my judgment, would be counterproductive.

The new budget authority for research and development for the various agencies and departments that is contained in this bill is extremely important.

The Joint Economic Committee recently recognized that the only way to absorb higher energy costs without higher inflation is to increase our national productivity. The wellsprings of this Nation's productivity and future economic growth are in higher technology products. High technology is a direct result of advanced research and development. The U.S. economic competitiveness can be maintained only if we continue to seize the technological initiative.

It has been widely recognized that high technology research and development results in significant social returns all out of all proportion to their cost.

My amendment would provide here that regardless of the across-the-board cuts in the bills, such as in section 412, that the budget authority for research and development would be exempt. I think it is an important issue and we should consider it carefully; this is going to be important in a lot of ways.

We have, for example, in NASA some very important developments that are taking place in research and development. One of these deals with the use of solar energy as a method of space propulsion. Today we have the conventional type of propulsion, which is chemical. But through research and development a new concept of propulsion using the Sun's energy is possible. This solar electric propulsion concept to propel into space our spacecraft, to be used particularly with the Shuttle, would be an important advancement.

I do not want to see OMB or some other body strike this from the program, as well as some of the other initiatives that should be started in NASA. I understand there are also some new developments in the National Science Foundation; there are developments that will be going into solar energy in housing that are very important.

The President has given us a goal by the year 2000 to have 20 percent of our energy needs provided by solar energy. I think it would be very, very disastrous to this country to start cutting on our research and development.

Therefore, I ask the Members of the Senate to adopt my amendment, which would protect research and development from these cuts.

Mr. PROXMIRE. Mr. President, will

the Senator yield for a question? Can he give us any idea how much money this would take? It would not add any money to the bill, as I understand it. It would not add any money to the bill because what it would do is allow us to spend less money for housing, and so forth, and environment, and some of the other purposes, and we would spend the full amount that was in the bill originally for R. & D.; is that correct?

Mr. HEFLIN. That is my understanding.

Mr. PROXMIRE. Well, as I calculate it, NASA is virtually entirely an R. & D. agency—not entirely, but very close to it. It is a more than a $5 billion agency. So I take it that this would mean that we would have to find a way to take $100 million more out of other programs. Is that right? Because we would exempt the $100 million otherwise that might come one way or another out of NASA.

Mr. HEFLIN. Only the 2-percent cut would not be applicable to research and development.

Mr. PROXMIRE. Well, if the Senator does it that way, then it would put money back into the bill. It would mean that there would be no cut in R. & D. for NASA, which is practically the whole NASA program. In other words, NASA would be exempt from the cut. The 2 percent, however, would be cut from the other programs. Then we would lose some $100 million more for NASA.

Mr. HEFLIN. Mr. President, I do not believe you would have the 2-percent cut across the board, as the committee has had it. It would say that for research and development, there would not be any cut in research and development.

Mr. PROXMIRE. Well, the Senator indicates that research and development shall be exempt from any or all reductions which may be levied on the overall act. Then the amendment would take the amount for research in the National Science Foundation and for NASA and for revenue sharing and set them aside and then we would cut 2 percent of what was remaining. Is that right?

Mr. HEFLIN. That is right.

Mr. PROXMIRE. Then that would mean that we would have a lesser cut and, therefore, there would be more money in the bill than if the Heflin-Bradley amendment had not been offered. In other words, we would still have, as I calculate it, more than $200 million added to the bill, in effect, by the Heflin-Bradley amendment.

Mr. HEFLIN. As I understand it, for R. & D. across the board, it amounts to about $140 million.

Mr. PROXMIRE. Well, then, we have revenue sharing, in addition to that.

Mr. MATHIAS. Will the Senator from Wisconsin yield?

Mr. PROXMIRE. Yes.

Mr. HEFLIN. That is a moot question.

Mr. PROXMIRE. I think it is a moot question. That is why I was very disappointed that the Senator from New Jersey offered his substitute. It is an attractive program that many Senators feel very strong about, but there is just no question in my mind that it will be deemed an entitlement program. It has been in the past. I think the Senate, if not the committee, would make that very clear.

Therefore, because it is a program that would provide money in accordance with the law, there would be no cut made.

Mr. MATHIAS. If the Senator from Wisconsin will yield, the way he has interpreted the Heflin amendment, I think, is an attractive way to interpret it; that the R. & D. money would be exempted, but that the other parts of the program would not suffer a commensurate increase in cut.

If that is the way we can leave this, I think this is a happier way to leave it than under the other interpretation, which would be that the R. & D. money was exempted. Then all of the cuts, all of the 2 percent has to come out of the operating budget.

Mr. PROXMIRE. It may be a happier way for the Senator from Maryland. It depends on your viewpoint. From the standpoint of the taxpayer, it is not a very happy way, because it means he has to spend $140 million more than he would otherwise have to spend. Once we start exempting, where do we stop? We have the environmental programs. We have community development programs. We have a lot of other very attractive programs. We have a lot of other very attractive programs that other Senators can get up and say, "I think we ought to exempt these programs."

So if you are going to begin to make exemptions of this kind, it seems to me it is unfair. A 2-percent cut really is not cutting any of these programs at all. They can live with a 2-percent reduction. But $140 million is a lot of money.

What the Senator is doing is he is adding $140 million to the bill above what the Appropriations Committee provided. Is that not right?

Mr. HEFLIN. What we are doing in this instance is protecting research and development. We feel that is something the committee should have done. Our effort here to protect that and to protect it in that manner.

It also protects it from the possibility of the 5 percent that could occur from OMB if the House language should prevail. That is the way it is written with the 2 and 5 percent. If 5 percent is taken out of NASA's research and development program, we would have no research and development.

Mr. PROXMIRE. Let me point out to my good friend from Alabama that if you take 2 percent, you have 98 percent remaining. No. 1. No. 2, the NASA budget, which is the principal agency that would be affected by the amendment of the Senator from Alabama, is $65 million over the budget now. So it is not an agency that has been starved by the committee. We put in more than the administration requested, $65 million more.

To now say that they will be exempt, even though they are over the budget, and that these other agencies that are, in many cases, under the budget shall be cut further seems to be inequitable. Add to this the further unfortunate fact that you are adding $140 million to the bill by your amendment.

Mr. SCHMITT. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield to my friend from New Mexico.

Mr. SCHMITT. Just for clarification, I think it is well to point out that R. & D., significant research and development occurs in the Department of Housing and Urban Development, in the Environmental Protection Agency, in the National Science Foundation, as well as in NASA. And there may be one or two other areas where R. & D. would be protected under this particular amendment.

Mr. PROXMIRE. Will the Senator yield on that?

Mr. SCHMITT. I will just add one other thing. As the Senator from Wisconsin is well aware, we have a very unusual and I would say very uncomfortable situation in conference on this bill, because the House has put nothing in their bill for NASA. I do not think it is realistic to really look at the total NASA budget in terms of any particular other bill because of that situation with the House.

Mr. PROXMIRE. I think the Senator knows it was not because of any bias against NASA in the House. There is strong support there for NASA. The reason there was because it was not authorized. They will go with the full amount for NASA, in all likelihood. It is very unlikely they are going to use that position for a reduction in NASA.

But I point out to my friend that this does not just exempt NASA. It exempts a number of other agencies; HUD, for instance. And the Senator from New Mexico supported some of the reductions for HUD in R. & D. Many people support research and development. OK. It is great. Stand up and salute. But we know that some of these programs are good and some are not.

Mr. SCHMITT. If the Senator from Wisconsin will yield, he is absolutely correct. Some are good and some are not. In the process of the amendments it is sometimes difficult to draw a distinction. But I think it is important for us to recognize the deficiencies that are being created within our total research and development technology base in this country.

Although there might be a more elegant crafting of the amendment offered by the Senator from Alabama, as modified by the Senator from New Jersey, nevertheless, the intent, as I understand it, is to see that research and development does proceed in this very uncomfortable period for the United States, for we have fallen behind the rate of growth of our technology base in many areas and particularly those areas covered by the Senator's amendment, with the possible exception of some of the activities in HUD. The solar activities in HUD are certainly worth preserving. A great deal of that activity is done in cooperation with the Department of Energy and NASA and other agencies and I think can stand up fairly well to objective scrutiny.

There are other activities called research and development that the Senator well knows I question. Unfortunately, it is very difficult, it is almost impossible to get to those details on the floor as we could in the committee hearings and in the committee markup.

Mr. PROXMIRE. Mr. President, I just say that we leave 98 percent of the money that was provided for R. & D. for NASA and so forth. The option is whether or not the Senate wants to make it 100 percent and, at the same time, add another $140 million to the bill. That is the issue.

Have the yeas and nays been ordered?

Mr. SCHMITT. I do not think so as yet.

The ACTING PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. PROXMIRE. Does the Senator request the yeas and nays?

Mr. HEFLIN. Yes.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SCHMITT. Mr. President, I would make one final comment, and then, unless the Senator from Illinois seeks the floor, we can go ahead.

The Senator from Illinois and I were in a hearing the other day which was an oversight hearing on the Office of Science and Technology Policy. I will not speak for him, but I frankly was very disappointed in the administrations sanguine view of the state of research and development in our country.

To say the least, they put a very rosy picture on a situation in this country that this Senator and other Senators, I am sure, and others both inside and outside the Government, think is a poor definition. Basic research policy is simply not occurring in a great many areas where it should be occurring. A great deal of that is covered by this bill. I hope Senators as they cast their vote will recognize that there is a policy vacuum in this country and that policy vacuum is going to have to be filled by the Congress. The administration has not filled it and does not seem in many areas intent on filling it. This vote really is to put the Congress on record that research and development is going to proceed forward as it should in a country like the United States.

SEVERAL SENATORS. Vote! Vote!

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment, as modified, of the Senator from Alabama. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Alaska (Mr. GRAVEL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I also announce that the Senator from Montana (Mr. MELCHER) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 35, nays 38, as follows:

[Rollcall Vote No. 435 Leg.]

YEAS—35

Baker	Humphrey	Riegle
Boschwitz	Jepsen	Roth
Bradley	Kassebaum	Sarbanes
Cochran	Laxalt	Schmitt
Cranston	Leahy	Stafford
Danforth	Levin	Stevens
Durkin	Lugar	Stevenson
Glenn	Matsunaga	Tower
Hatch	Moynihan	Weicker
Hayakawa	Packwood	Williams
Heflin	Pell	Young
Heinz	Randolph	

NAYS—38

Armstrong	Domenici	Nunn
Baucus	Exon	Percy
Bellmon	Garn	Proxmire
Biden	Hart	Pryor
Boren	Hatfield	Ribicoff
Burdick	Helms	Sasser
Byrd, Harry F., Jr.	Hollings	Simpson
Byrd, Robert C.	Inouye	Talmadge
Chafee	Jackson	Thurmond
Chiles	Metzenbaum	Tsongas
Cohen	Mitchell	Wallop
Dole	Morgan	Warner
	Nelson	Zorinsky

NOT VOTING—27

Bayh	Ford	Mathias
Bentsen	Goldwater	McClure
Bumpers	Gravel	McGovern
Cannon	Huddleston	Melcher
Church	Javits	Pressler
Culver	Johnston	Schweiker
DeConcini	Kennedy	Stennis
Durenberger	Long	Stewart
Eagleton	Magnuson	Stone

So Mr. HEFLIN's amendment (UP No. 1637), as modified, was rejected.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE URBAN DEVELOPMENT ACTION GRANT PROGRAM—A SUCCESSFUL TOOL FOR URBAN REVITALIZATION

● Mr. MITCHELL. Mr. President, I rise today to say a few words in support of the urban development action grant (UDAG) program. The HUD appropriations bill currently pending contains $6.5 million for it, the same level as in the present fiscal year.

The urban development action grant program is, in my opinion, one of the more important and effective Federal programs that has been developed to date. Its aim is to revitalize distressed towns and cities throughout the country by means of economic development and reclamation of deteriorated neighborhoods.

The program has many attractive features that contribute to its success. First, it supports a wide variety of activities—from industrial to commercial to housing rehabilitation. In this manner, distressed communities have a substantial amount of flexibility in designing a revitalization program that is tailored to their needs and suited to remedy specific problems.

Second, the program requires private investment for specific projects before they can ever receive UDAG funds. This is significant because it insures that revitalization projects of various kinds are conceived and planned in conjunction with individuals of the private sector. It gives them a stake in the venture by letting them make some of the crucial decisions as to the extent of renovation or the extent of new business or industry to be generated. And it maintains their interest throughout the process because they have a direct financial investment in the activities.

The concept of a public-private partnership in helping to achieve the revitalization of our cities is sound. The proof of that statement lies in the successes achieved in UDAG communities throughout the country.

And those successes are reflected in the congressional support which has been shown thus far. During the first 2 years of the program's history, annual appropriations totaled $400 million. However, the program's popularity helped boost spending to $675 million during fiscal 1980 and both Houses of Congress are recommending a similar amount of funding for the coming year.

This, Mr. President, is significant. At a time when Congress is scrutininzing all programs, and cutting back on a number of them, the UDAG program is passing through the authorizing and appropriations committees with flying colors. The House and Senate passed housing authorization legislation earlier this year which authorizes the program at $675 million during each of the next 3 fiscal years. And both the House and Senate Apprpriations Committees are calling for $675 million in actual funding for fiscal year 1981.

In continuing the program at this level of funding, there is a realization on all sides that Congress is getting much more than $675 million worth of revitalization activities. We will see three or more times as many private dollars injected into those same activities. The total investment being made in the distressed communities of this country should therefore go a long way in reversing their decline and bringing to them new economic and financial health.

I am proud to say that the urban development action grant program has been not only popular but successful in my home State of Maine. A dozen communities, both large and small, are now participating in it. In the few months since I have been in the Senate, I have visited many of those same cities—cities such as Portland, Biddeford, Rockland and Pittsfield. I encountered a great

deal of enthusiasm about the program and the benefits which will accrue.

Word of the UDAG program's success has spread throughout the State. I was recently advised that the city of Calais, in the easternmost part of Maine, has submitted a proposal for approval to the Department of Housing and Urban Development.

Mr. President, I applaud the individuals from the public and private sectors who have worked to bring new life to their communities. The urban development action grant program has proven to be a successful tool in the revitalization of distressed cities.

I hope to see more communities in Maine parficipate in it—and am pleased to see enthusiastic congressional support for its continuation at a full level of funding.

Mr. ROBERT C. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. May I have the attention of the Senate?

The ACTING PRESIDENT pro tempore. The Senate is not in order.

The Senator from West Virginia.

ORDER OF PROCEDURE ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, under the order entered some days ago, the Senate on tomorrow, after the recognition of the two leaders or their designees under the standing order, is to proceed to the consideration of Calendar Order No. 1028, Senate Concurrent Resolution 109, concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station.

Mr. President, if the Senate is to stay in this evening until it completes action on the HUD appropriation bill, in all likelihood it will require another 3 or 4 hours.

Mr. President, I ask unanimous consent that the order be changed as follows: That immediately upon the completion of the orders for the recognition of the two leaders or their designees, and the orders for the recognition of other Senators which have been entered already, the Senate on tomorrow resume consideration of the HUD appropriation bill; and that upon the disposition of the HUD appropriation bill, the Senate then proceed to the consideration of Calendar Order No. 1028, the Tarapur resolution.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the purpose of the reservation is to provide an opportunity to advise the majority leader that I have checked with the responsible members of the Foreign Relations Committee on this side, and with other interested Senators, and I find that the general view is that this is a more reasonable and logistical way to conduct the affairs of the Senate in respect to this appropriation bill and Tarapur.

Therefore, I wish to state to the majority leader that I do not object to his request, as stated.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

I want to make sure that prolonged action on the HUD appropriation bill does not get in the way of the disapproval of the resolution.

I, therefore, ask unanimous consent that if the Senate does not complete action on the HUD appropriation bill tomorrow, and I do not think there is any doubt but that the Senate will complete action on the HUD appropriation bill tomorrow, the Senate then, the following day, proceed to the consideration of Calendar Order No. 1028, after the leaders or their designees have been recognized under the standing order.

Mr. BAKER. Mr. President, once again, reserving the right to object, and I have no intention of objecting, I agree with the majority leader that that is a reasonable precaution to take.

I might say, however, I know of absolutely no inclination on this side to delay or slow down the consideration of the HUD appropriation bill or, certainly, no inclination or intention to try to postpone the vote on the resolution of disapproval.

I will vote against the resolution of disapproval. I know that there are other Members on this side who have a different and contrary view.

But I know of no movement to try to thwart the will of the Senate in that respect.

Mr. ROBERT C. BYRD. I thank the minority leader.

Mr. GLENN. Reserving the right to object, and I do not plan to object, that is the main concern I had, that we remember we have a time running on this particular resolution of disapproval that expires the 27th of September—I ask the Parliamentarian—which I believe is the 60-day limit, not too close to that time period.

I hope whenever we do bring Tarapur up that we have a full day to have some continuity and go right through.

I would be happy to agree now to put this off to be the order of business the day after tomorrow and take it up in the morning and go right through.

I do not know whether most Members realize, we have a 10-hour time limit that was written into that law, 5 hours equally divided. So we could have a 10-hour session on 1 day. That would be a good way to take care of it.

Mr. MOYNIHAN. Will the Senator yield?

Mr. GLENN. Yes.

Mr. MOYNIHAN. I endorse the proposal. It seems to me that the Tarapur decision is a major one and ought to be an occasion in which the Senate considers the matter from beginning to end in one session, when we are all present.

I think the Senator from Ohio made a very wise proposal. I would like to endorse it.

Mr. GLENN. I appreciate the remarks of the distinguished Senator from New York.

It is a very important matter. I will not give a speech on it this evening.

But I hope Members could all set aside time to participate in the debate. It can determine our nuclear policy for the foreseeable future. I think it is that important, and that something of this import deserves very close attention. I hope we can give it personal attention on the floor.

I would be happy if we had a full day and perhaps have as many Members as possible on the floor to go through the whole thing in 1 day.

Mr. SARBANES. Will the Senator yield?

Mr. GLENN. Certainly.

Mr. SARBANES. I agree, although we are on different sides of the issue. I think the important thing is that once we take it up we not interrupt it or set it aside to consider other measures. I think that is more important than whether we begin debate tomorrow afternoon and have part of the debate then and then go over to the next day in order to complete it.

In fact, I can see some advantages to the latter approach, to give Members an opportunity overnight to think through some of the opening arguments which will have been made.

But I do agree that once we go to it, we ought not then set it aside to take up some other measure.

But I think we could go to it and do a good part of the debate and, if time did not permit, resume it next day.

Mr. GLENN. Could the majority leader give us any estimate of what he thinks the time will be that will be left on the current bill?

Mr. ROBERT C. BYRD. I really cannot. As I indicated a moment ago, it probably would require another 3 to 4 hours to finish it tonight. What it will require on tomorrow, I do not know. It might be less; it might be a little more.

Mr. GLENN. I withdraw my objection.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, for the benefit of the knowledge of the Senate, there will be no more rollcall votes today.

I thank Mr. PROXMIRE for his cooperation and his consideration in being willing to proceed to resume consideration of the bill on tomorrow rather than to continue it today.

Both he and Mr. MATHIAS have seen the HUD appropriations bill moved aside temporarily a number of times, and they have been very cooperative and understanding in this regard, and I hesitate to make the request again tonight. I appreciate the cooperation, and I am sure the minority leader does, also. I hope it will not have to be done again.

VETERANS DISABILITY COMPENSATION AND HOUSING BENEFITS AMENDMENTS OF 1980

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Chair be permitted to lay before the Senate a message from the House of Representative on H.R. 7511.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CRANSTON. Mr. President, this is an effort to get before the Senate a message that must pass in order to take final action on a measure that has passed the Senate and passed the House. A compromise has been worked out with the House committee to provide for a very much-needed cost-of-living increase in the rates of compensation for 2.3 million service-connected disabled veterans and dependency and indemnity compensation for the survivors of veterans who have died from service-connected causes.

The bill also makes improvements in Veterans' Administration housing assistance programs.

This is an increase in allotments that is fair, that veterans and their dependents and survivors are entitled to receive on time, just as did social security and SSI beneficiaries, railroad retirees, and non-service-connected disabled pensioners.

If we do not act on this bill now or in the very immediate future, those checks will not go out on time. These veterans, their survivors, and their dependents will not get the catch-up they are entitled, which has occurred for social security beneficiaries, for SSI beneficiaries, for railroad retirees, and for non-service-connected disabled veteran pensioners.

It makes no sense at all to deny this to these veterans and their survivors and dependents.

Mr. President, I inquire from the distinguished minority leader why he felt it necessary to object.

Mr. BAKER. Mr. President, if the Senator will yield, there is nothing more fundamental in the Senate than that an objection by an individual Member stands on its own and requires no explanation.

The request by the distinguished assistant majority leader, I think, is a reasonable request under the circumstances, and I will honor his request to this extent: The objection was lodged by the Senator from Tennessee but on behalf of another Member on this side.

As I believe the Senator from California knows, throughout my tenure as leader, I have declined to identify those who request that I lodge objections on their behalf, and therefore I must respectfully do so at this time.

Mr. CRANSTON. I understand that.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. MITCHELL). What is the will of the Senate?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 30 minutes, and that Senators may speak therein.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

THE TITAN II EXPLOSION

Mr. PRYOR. Mr. President, on Friday morning in Damascus, Ark., a Titan II missile exploded leaving 1 dead, 1 critically injured, and at least 20 others hurt.

It was not an easy 48-hour period for the residents of the surrounding area, for the military, or for any of us for that matter. The threat of toxic vapors escaping into the atmosphere together with the possible dangers of radiation leaks from a nuclear warhead that was thrown from the missile gave us good reason for concern.

However, it is not entirely about the accident at Damascus that I wish to speak today. There are still 53 other missiles in Arkansas, Kansas, and Arizona and it is our responsibility now to turn our attention to the remaining sites.

Last Tuesday, the Senate authorized the installation of a siren alarm system at each of the Titan II missile sites in populated areas. We must now do everything possible to insure that this amendment is included in the conference report on the military construction bill. This is the least we can do.

To a degree, we were fortunate in the case of the Damascus incident. Time was on our side. Most people were home from work and in front of their television sets or within earshot of their radios and telephones when the evacuation orders were given. In this case our present primitive, "Paul Revere" method of warning worked reasonably well. The sheriff and other designees were able to spread the word by telephone or going from door to door. Still there were those who live in the surrounding area who were not aware of the danger and did not leave their homes.

Next time, the timing might not be so good. Farmers might be in the fields working. Children might be out playing or in the school nearby. It might take hours to find them to tell them of the possible dangers of toxic vapors or falling debris.

As many of my colleagues will recall, I have been extremely concerned about the lack of an effective warning system almost since coming to the Senate.

Last year, the defense appropriations bill was amended on the floor to give the Air Force the authority to install such a system. But, obviously they did not feel compelled to act upon this recommendation.

Now, I think it is time not just to move ahead with the installation of warning devices, but to take a critical look at the safety of the entire Titan II system. It must be a much more critical look than was taken in the May 1980, Air Force study which called the physical condition of the Titan II weapon system "good and considered better now than when it was new."

This same study also said "maintenance procedures are adequate to safely and effectively maintain the system."

Last week's explosion together with the continued incidents of leakage over the past few years lead me to have serious doubts about this report.

This morning I met with the distinguished chairman of the Senate Armed Services Committee, Senator STENNIS, who indicated that the committee was undertaking an investigation of the entire Titan II weapon system.

I for one appreciate the immediate response of the Senator from Mississippi to this situation. One of his staff people was in Arkansas by Friday afternoon in order to be able to give the chairman and the committee a first hand report.

There are many questions we need answered. Are the missiles safe? Are they adequately maintained? Are they the most effective commitment of our defense dollars? How do they fit into our overall security plan?

Many of these same questions are raised in a recent set of articles by Washington Post writer Walter Pincus. I commend this series to the Senate and ask that they be reprinted in the RECORD at the conclusion of my remarks.

While reading these articles, it should be noted that they were written and scheduled to run even before the incident at Damascus.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 20, 1980]

AGING TITAN II WAS TIME BOMB READY TO GO OFF

(By Walter Pincus)

For several years, the 54 aging, giant Titan II missiles have been major accidents waiting to happen.

Before yesterday, two airmen had been killed and nearly 80 injured, some seriously, as the result of leaks in the missile's fuel and propulsion systems and other accidents.

In addition, there have been hundreds of small incidents in the last five years, most of them unreported to the public, and a number of close calls.

In August 1979, for example, a metal rod dropped on an electric circuit breaker in a Titan silo near Heber Springs, Ark., causing a fire. While the flames were being extinguished, the oxidizer and fuel in the missile heated up, creating great pressure.

According to a senior technician there, "Only great skill kept that missile from exploding." Unlike rural Damascus, site of yesterday's accident, Heber Springs is located in a populated area.

The Heber Springs incident and nine other leaks and accidents at Arkansas Titan sites since March 1979 became public only last month. They were contained in a list the Air Force turned over in response to requests from Sen. David Pryor (D-Ark.), The Washington Post and network news producer Robert Lissit.

Last January, responding to similar requests from Kansas congressmen, the Air Force disclosed there had been 125 incidents between 1975 and 1979 at Titan sites in Arkansas, Arizona and Kansas.

The Titan II was first tested in 1961 and by December 1963, the three Titan squadrons totaling 54 missiles were declared operational.

With a nine-megaton warhead—equivalent to nine million tons of TNT—it was more than 700 times more powerful than the Hiroshima bomb. The purpose of the Titan II warhead was to threaten enemy cities. Initially it was aimed, for the most part, at targets on Mainland China.

Originally designed for 10 years of service, the Titans were scheduled to be retired beginning in 1971. The Pentagon wanted to get away from their dangerous liquid propellants in favor of the safer solid-fueled Minuteman.

The Titans, however, have remained operational for more than 18 years, a bitter re-

minder of Henry Kissinger's unsuccessful attempt to trade them away during the 1972 SALT I negotiations.

Kissinger offered the Titans as a sacrifice to get the Soviets to reduce the number of their giant SS9 missiles. The deal failed, and the Titans have remained in America's arsenal since.

In recent years, however, the Air Force Strategic Air Command began to run out of parts for the complex missile system. And since the Johnson administration had planned to retire them, no additional missiles were bought, the normal backup missiles had been used up and reliability test firings had to be stopped.

During its normal lifetime, the missile occasionally began to leak the highly volatile liquid fuel and oxidizer that is used to ignite the fuel.

Beginning in 1978, however, as the aging fuel system seals began to corrode, the leaks became more serious.

That year there were two major leaks that became public. One was in Arkansas, at Damascus; the second near Rock, Kan., where two airmen lost their lives and 30 others were injured as a result of exposure to the deadly oxidizer gas.

Despite the fatalities, there was little general public concern over the Titan II.

SAC already had been forced to make major repairs in Titan operational systems. For example, the guidance mechanisms had begun to fail in the mid-1970s. A system was developed out of the Titan III space launcher and put in the Titan II.

The last firing of a Titan II missile took place in 1976 when the new guidance system was tested. It was declared a success and over the next three years, the new guidance mechanism was put into the remaining missiles.

No Titan IIs, however, have been flight tested since that date. In fact, since there are only two spare Titan II shells, the Air Force has yet to replace the Rock, Kan. missile that was destroyed by the major leak.

Since the 1978 leaks, SAC emphasis has been on developing better safety systems for handling the toxic fuel and oxidizer.

While this repair work has been going on, however, SAC has been fighting off all efforts in Congress to question the missile's safety or usefulness.

In 1979, Pryor tried to get funds for an alarm system at the missile sites to warn neighborhood civilians of a leak, SAC opposed it and the senator had to be satisfied with an Air Force study on the safety of the Titan.

Meanwhile, Pryor's aide in Arkansas, James L. Rutherford III, began private talks with officers and airmen on the Titan II repair and maintenance program.

He discovered, for example, that on the day Pryor was taken to look at one Titan site in 1979, the missile at another site was leaking.

He also was told that on that day, 13 of the 18 safety devices designed to record dangerout levels of oxidizer gas in silos at the Arkansas sites were not working.

Many of the airmen assigned to the missile sites said they were worried about the constant breakdowns inside the silos.

A top technician told Rutherford that he was having trouble keeping qualified engineers working on solving the new problems that were developing on the old missile. Engineers were needed he said, because there were no longer spare parts and repairs had to be improvised.

When the Air Force released its report on the Titan II this May, it declared the system safe for the foreseeable future and said it "would remain a highly reliable, accurate weapons system through the 1990s."

The report, however, pointed out that 19 Titan II missiles had needed one or more tank patches because of corrosion, an indication that the skin of the missile was weakening.

The only hint that perhaps something might be amiss with the weapon came in the Air Force recommendation that the refueling crews be given extra pay because of hazardous duty.

In an interview in May, Rutherford said he feared, "there is going to be a major disaster one day and innocent people are going to be hurt."

[From the Washington Post, Sept. 21, 1980]

PLOY SEEN BEHIND TITAN LONGEVITY

(By Walter Pincus)

The aged, accident-prone Titan II missiles are being kept in service, military and civilian technicians who work at the sites believe, because "they are the missiles the Soviets fear most."

But there is evidence the Titans are still around because in 1972 the Soviets feared them less than other types of missiles that might have replaced them.

Under the SALT I agreement published that year, the United States had the right to trade the 54 Titan IIs for three new missile-launching submarines. But before Soviet Premier Leonid Brezhnev signed that agreement, sources said, he wanted written assurances from President Richard M. Nixon that the United States would not exercise that option.

In a secret, written "assurance," sources involved in the negotiations said, Nixon told the Soviets he had "no intention" of replacing the Titan IIs with new submarine-launched missiles. In effect, Nixon froze the already 9-year-old missiles into permanent operational service.

"The Soviet concern was not with the Titans," a member of the U.S. negotiating team said recently, "but that we would get rid of them for [sub-launched missiles]."

William Hyland, who worked with Henry A. Kissinger in writing the final SALT language, at a Moscow summit in 1972, said yesterday that he recalled "we gave them something in writing" on the Titan, but he did not remember "if they asked or we volunteered it."

Hyland did recall Brezhnev was worried that the Trident submarine, which was then in early planning stages, would "flood the oceans with hundreds and hundreds of [multiwarhead] submarine missiles."

The original notion was to trade off the Titans for the biggest missiles in the Soviet arsenal, the SS9. Some of those giants carried a 25-megaton warhead.

But the Soviets would not buy any deal with their SS9s, so a new arrangement was devised.

The U.S. Titans and two early Soviet ICBMs, the SS7 and SS8, were termed older types." Agreement was reached that "older types" could not be replaced by modern land-based ICBMs. Each side could dismantle these "older types" and replace them with an equal number of new sub-launched missiles.

The Soviets ended up doing just that, since SALT I was signed, they have destroyed all 209 of their SS7s and SS8s and added an equal number of sub-launched missiles.

The 1972 agreement permitted the United States to have up to 44 strategic missile submarines—three more than the 41 Polaris and Poseidon subs then operational.

But the United States has never gone over 41. In fact there are plans now to dismantle two Polaris submarines so that the SALT I and SALT II limits are not breached when the first Trident sub becomes operational later this year.

Hyland yesterday said he believed the Nixon "assurance" that the Titans would not be replaced ran only for the five-year term of the 1972 protocol. He suggested it was possible under the SALT agreements to take down the Titans now and replace them by keeping in operation the two Polaris subs scheduled for deactivation.

Former Defense Secretary Melvin R. Laird said last week he "had heard" of the Nixon letter to Brezhnev about the Titan but had never seen it.

In Laird's words the Titan thereafter became "one of those systems that just stood around" without having a meaningful mission.

The SALT focus on overall power made it "politically foolish," according to Hyland, for anyone to suggest dismantling the Titans without getting some concession from the Soviets.

One reason for keeping the Titans, according to Hyland, was "so we could count something."

Their warheads, at nine megatons apiece, were far larger than those of the Minuteman II (one megaton) and meant that 54 Titans represented about one-third of the total explosive power of the U.S. landbased ICBMs.

In the years after the SALT I agreement and the Nixon "assurance," the Pentagon studied several ways to upgrade the Titans, since the 1972 SALT agreement with the Soviets barred the United States from replacing them with a more modern intercontinental ballistic missile.

One study, according to a former government official, was directed at providing the Titan with more than one bomb—making it a so-called MIRVed missile. "They decided it wouldn't pay to do that for only 54 missiles," the source said.

[From the Washington Post, Sept. 22, 1980]

BROWN TO REVIEW FINDINGS—TITAN SAFETY STUDY IS SET

(By Walter Pincus)

Defense Secretary Harold Brown has ordered the Air Force to reexamine the safety of the entire Titan II missile system, less than six months after a congressionally mandated study declared the missile safe.

The Air Force concluded in that study, released last May, that the system was better than when it was originally deployed 18 years ago.

Brown, who said he ordered the reexamination after talking with President Carter, said his office would review the Air Force findings this time.

Brown also announced yesterday that the Titans are scheduled to be replaced by the solid-fueled MX missile. The MX is not expected to start being deployed until 1986. At that point, the Titans, which originally were designed to last 10 years, will have been operational for 25 years.

Friday's accident at the Titan site near Damascus, Ark., presented a new problem for Air Force officers trying to keep the aging, liquid-fueled missile system operational.

According to sources familiar with the Titan, it was the first time there has been a major leak of its volatile fuel, Aerozine-50.

Two major Titan accidents in 1978—which caused the death of two airmen and injured more than 30 others—stemmed from leaks of nitrogen tetroxide, the oxidizer that is mixed with the fuel to provide the missile's propellant force.

Sources said yesterday that once the skin of the missile had been punctured by a dropped wrench socket late Thursday afternoon, no one could figure out how to stop the substantial Aerozine-50 leak.

Investigation of the leak also may raise anew the question of the adequacy of the safety equipment used by technicians called on during accidents such as Friday's, which killed one airman and injured 21 others. The dead airman, Sgt. David Livingston, died of pulmonary complications as a result of breathing toxic fumes, according to doctors who treated him.

One dotcor involved in treating Livingston and Sgt. Jeff Kennedy, who also was exposed to fuel and oxidizer vapors, said yesterday he believed the deadly gases passed right through their protective suits.

That possibility was partly confirmed by the vice commander of the Strategic Air Command, Lt. Gen. Lloyd R. Leavitt, Jr., at his news conference Saturday in Little Rock.

Leavitt said Livingston and Kennedy had been told to leave the silo when their vapor detectors showed a vapor level at the highest calibration. It "wasn't safe even in their suits," Leavitt told reporters.

According to an Air Force report delivered to members of Congress after the explosion Friday, technicians evacuated the silo after noticing "vapors rising from Level 7," the site of the puncture.

That first indication of the vapors was noted at 6:47 p.m.

Slightly more than one hour later, according to the Air Force report to Congress, the missile crew—located in an underground, concrete-protected control room off to the side of the silo—reported "hazard indicators" due to the fuel leak.

At that point, the missile was sprayed with water from tanks at the top of the silo. Two hours later, the leak had become worse and, according to the Air Force report to Congress, "it was decided to evacuate the control center" at the missile site.

At the same time, between 9:30 and 10 p.m., according to the report, local officials were told to evacuate the civilian population "within a two-mile area."

The Air Force people on the scene, one source said yesterday, "believed it was touch and go as to whether or when it would explode.

Around midnight, however, the Air Force decided to look inside the silo to see what was happening.

"We decided we needed to know more," was the way SAC Vice Commander Leavitt put it Saturday. "We decided to send a crew in," he said, recognizing it was "extremely risky."

Leavitt said the men sent down to the silo were told that if the readings on their vapor detectors rose to the highest point, they were to return immediately. The first group, according to Leavitt, had no high vapor reading but ran into difficulty opening the sealed doors between the control center and the silo. They returned to the surface when the oxygen in their safety suits ran out.

Livingston and Kennedy then went down. Their vapor detectors, however, went off scale at the first set of doors. They immediately returned to the surface and had just emerged when the fuel exploded.

Livingston survived an operation on his stomach for a wound caused by flying concrete, but two hours later, his lungs "became like a sieve" and in another two hours he died, sources said. Kennedy showed the same type of lung decline Friday evening, according to sources, but his condition, unlike Livingston's, did not get worse. He was in stable condition last night.

Sen. David Pryor (D-Ark.), who has pressed for immediate installation of a civilian warning system at all Titan sites as a result of the 1978 accidents, said yesterday that he was reviewing data on the Titan IIs before deciding his next step. Pryor's original proposal in 1979 for such a system was opposed by the Air Force as costly and unnecessary, and last May's safety report repeated that contention.

The Senate, however, passed Pryor's proposal last Tuesday as part of the fiscal 1981 defense construction authorization bill. To equip all 54 sites—18 each in Arkansas, Kansas and Arizona—wold cost about $540,000.

During an appearance on "Face the Nation" (CBS, WDVM), Brown refused to discuss the specifics of the missile's nuclear warhead. Nonetheless he made it clear that despite the violence of the propellant explosion, the warhead had remained intact.

News reports from the Arkansas site yesterday said heavy trucks and a crane had been moved onto the site.

On Saturday a government source said the war-head would be trucked to Little Rock Air Force Base.

Sam Tatom, Arkansas director of public safety, said yesterday he felt the 10-megaton warhead had been moved. "Unofficially, I don't think there's a warhead" in the silo area any longer, he said.

He based his conclusion on Air Force officials' attitudes toward security in the area and their agreement to allow him and Arkansas Gov. Bill Clinton to make a personal inspection of the grounds today.

Brown also told reporters that he does not know of the 1972 note then President Nixon gave Soviet Premier Leonid Brezhnev assuring the Soviets had no intention of taking down the Titan IIs and replacing them with submarine-launched missiles.

Participants in the 1972 Moscow summit, at which the exchange took place, said recently that the Soviets had demanded such an assurance because they were more afraid of any new U.S. sub-launched missiles than they were of the then nine-year-old Titans.

THE CURRENT PLIGHT OF THE FARMER

Mr. THURMOND. Mr. President, I rise today to express my deep concern over the current plight of the American farmer. These hard-working citizens, who face more hardships day in and day out than any other group, have suffered tremendously this year from circumstances totally beyond their control.

The farmers of our country have suffered severe economic hardships, this year as a result of a grain embargo, uncontrolled inflation, record high interest rates, and prolonged adverse weather conditions. Beset with such problems, it is no wonder that second quarter 1980 farm income figures are 40 percent lower than those of 1979.

Mr. President, many of the farmers in my State of South Carolina are on the brink of financial disaster. In addition to the problems common to all farmers, the farmers of South Carolina have been afflicted by one of the worst droughts in the State's history. Clemson University Extension officials estimate that South Carolina farmers will lose over $344 million this year as a result of drought. Further worsening the situation is an aflatoxin infestation of the State's corn crop.

Mr. President, this aflatoxin infestation poses a most severe problem for South Carolina corn producers. The Food and Drug Administration has established an aflatoxin level of 20 parts per billion (ppb) for corn entering interstate commerce. South Carolina has established a tolerance level of 100 ppb, a level considered to be safe for all mature, nonlactating animals. Yet because of the exceedingly strict FDA standards, South Carolina corn producers cannot market their crop outside of the State if it contains aflatoxin levels above 20 ppb. In addition, farmers cannot obtain Commodity Credit Corporation loans on corn containing aflatoxin above the 20 ppb level.

Despite requests by the Departments of Agriculture in South Carolina and other States, FDA has refused to establish a tolerance level above the current level for interstate shipment of corn infected with aflatoxin for feeding to nonlactating, mature livestock. This refusal could result in the destruction of approximately 9 million bushels of South Carolina corn—a blow that would be devastating to the State's corn producers.

Mr. President, we must make every effort to insure that farmers receive the assistance they so desperately need and deserve. In my opinion, there is no group which is more important to our country than the farmers who produce the food and fiber necessary to our survival. To allow our farmers to be forced out of business because of weather conditions or an insensitive government agency would indeed be an injustice.

Mr. President, I ask unanimous consent that a letter from the Honorable Bryan Patrick, South Carolina Commissioner of Agriculture, be included in the RECORD at the conclusion of my remarks along with letter I have written to Secretary of Agriculture Bergland, Senator HELMS, Senator TALMADGE, Commissioner Goyan of the Food and Drug Administration, and Administrator Fitzgerald of the Agricultural Stabilization and Conservation Service concerning the current problems confronting the agricultural sector.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SOUTH CAROLINA
DEPARTMENT OF AGRICULTURE,
August 18, 1980.

Hon. J STROM THURMOND,
Russell Senate Office Building,
Washington, D.C.

DEAR STROM: Farmers in South Carolina and many other states are facing financial disaster. In order to plant crops in 1980, they were forced to sell their 1979 production at depressed prices in early spring and at the same time finance this year's crops at unbelievably high interest rates. With production costs up almost 20 percent over 1979, even if farmers produced record yields in 1980, their economic survival would still be in jeopardy.

Inflationary costs of production, high interest rates and loss of established markets which caused depressed prices are the direct result of government decisions. Added to all of these adversities, South Carolina farmers and thousands in other states are faced with drought and record high temperatures over which no one has any control.

The result of extreme drought and prolonged 100 degree plus temperatures find South Carolina farmers faced with losses conservatively estimated now at over 200 million dollars. We could easily reach or surpass the 300 million dollar loss of 1977 if sufficient moisture and lower temperatures do not return and continue throughout the balance of our growing season.

Large cooperations and foreign interest are in the market for farmland in South Carolina and this nation. If we are to survive as a nation we must save the backbone of our country, the American family farmer from financial disaster over which he has no control.

On behalf of discouraged farmers everywhere, the agricultural leaders of South Carolina join me in urgently requesting your sup-

port for programs, not for farmer profit, but their survival. I know of no better investment that will pay bigger dividends to the American taxpayer.

Your help is needed now to:

1. Make all agricultural products eligible for disaster assistance in addition to grains, cotton and rice. This assistance only allows the farmer to recover a small portion of his production costs when natural disaster strikes.

2. Return this small assistance to 100 percent of yield history as was allowed during the 1977 disaster and not the 60 percent allowed today.

3. In addition to farmers that are eligible for low interest (5 percent), Farmers Home Administration loans allow other farmers the right to obtain loans from their regular financing sources at 5 percent interest with government making up the difference. These loans would be used to pay only production debts up to the amount of disaster losses.

I realize that the Federal Crop Insurance bill, when enacted, will give farmers some protection from uncontrollable natural disasters. However, unless our farmers are given help now, many will not be around to participate in this insurance program.

For the survival of America, the necessity of a sufficient supply of food and the hope of the dedicated American farmer, we ask your help now.

Very truly yours,

BRYAN PATRICK,
Commissioner of Agriculture.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., August 20, 1980.

Hon. BOB BERGLAND,
Secretary, Department of Agriculture,
Washington, D.C.

DEAR MR. SECRETARY: As you know, many of South Carolina's farmers are facing severe financial difficulties due to prolonged adverse weather conditions. If these farmers are to survive economically, definite actions must be taken immediately to relieve their distress. I urge you to do everything within your power to expedite the process of declaring all affected areas within the State eligible for disaster relief. It is also of extreme importance that any claims for disaster relief be processed as quickly as possible.

I would also like to direct your attention to the attached letter I have just received from South Carolina's Commissioner of Agriculture, the Honorable Bryan Patrick. In order to avert substantial financial losses by the farming community of South Carolina, I urge you to take any administrative action necessary to address the concerns expressed in this correspondence. Should legislative action be required, I would hope that the Administration would promptly recommend to Congress appropriate changes in the law.

Thank you for your prompt attention to this most important matter.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., August 21, 1980.

Hon. JESSE HELMS,
U.S. Senate,
Washington, D.C.

DEAR JESSE: As you know, the farmers of our States are facing severe financial difficulties due to prolonged adverse weather conditions. We cannot allow these farmers to suffer economic disaster for reasons completely beyond their control.

For your information, I have attached a copy of a letter I have just received from South Carolina's Commissioner of Agriculture, the Honorable Bryan Patrick. With the aforementioned facts in mind, I respectfully urge the Senate Agriculture Committee to give careful consideration to the recommendations contained in this correspondence.

I look forward to working with you to ensure that our Nation's beleaguered farmers receive the assistance they so desperately need and deserve.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., August 21, 1980.

Hon. HERMAN E. TALMADGE,
U.S. Senate,
Washington, D.C.

DEAR HERMAN: As you know, the farmers of our States are facing severe financial difficulties due to prolonged adverse weather conditions. We cannot allow these farmers to suffer economic disaster for reasons completely beyond their control.

For your information, I have attached a copy of a letter I have just received from South Carolina's Commissioner of Agriculture, the Honorable Bryan Patrick. With the aforementioned facts in mind, I respectfully urge the Senate Agriculture Committee to give careful consideration to the recommendations contained in this correspondence.

I look forward to working with you to ensure that our Nation's beleaguered farmers receive the assistance they so desperately need and deserve.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., September 18, 1980.

Mr. JERE E. GOYAN,
Commissioner, Food and Drug Administration, Rockville, Md.

DEAR COMMISSIONER GOYAN: Please find enclosed a copy of a letter I recently sent to Associate Commissioner Hile.

It has come to my attention that all requests for a temporary relaxation of the allowable amount of aflatoxin in corn for interstate commerce have been denied by the Food and Drug Administration. Although I am not an expert in this matter, I find it hard to believe that the FDA would refuse to show any flexibility in its regulations on aflatoxin.

It is my understanding that corn with levels of aflatoxin more than 20 parts per billion (ppb) and less than 100 ppb are safe for all mature species of poultry and animals, and that levels of up to 200 ppb are safe for non-pregnant dairy heifers over 6 months old, beef feeder calves, bulls, and non-lactating beef brood cows. In light of these facts, I do not understand why the FDA refuses to raise the allowable amount of aflatoxin in corn for interstate commerce above the 20 ppb level. It seems to me that a level of 50 ppb would provide adequate protection for the consumer, and at the same time, substantially reduce economic losses to the farmer.

I would appreciate you reconsidering your decision on this most serious matter, as a reasonable relaxation would do much to provide the farmers of South Carolina the assistance they so desperately need.

Thank you for your prompt consideration of my request.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., September 19, 1980.

Mr. RAY V. FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C.

DEAR ADMINISTRATOR FITZGERALD: As you may know, the corn producers of South Carolina have already suffered tremendous losses due to drought. Their situation has now worsened as a result of aflatoxin infestation.

It is my understanding that the Commodity Credit Corporation will not make loans to farmers on any corn with aflatoxin levels greater than 20 parts per billion, the tolerance level established by the Food and Drug Administration for corn shipped in interstate commerce. This results in a tremendous hardship for many farmers who frequently obtain loans on their crop for operating capital or because of market conditions.

As South Carolina has established a tolerance level of 100 parts per billion for corn in intrastate shipment, any corn containing a level of aflatoxin below this level could be marketed in the State. In light of this fact, it would appear reasonable to make farmers CCC loans on corn with aflatoxin levels below 100 parts per billion. I would appreciate your looking into this most serious matter and giving every consideration to raising the tolerance level, insofar as loan eligibility is concerned, so that affected farmers will not be forced to suffer unduly.

Thank you for your prompt consideration of my request.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

NATIONAL CYSTIC FIBROSIS WEEK

Mr. MATHIAS. Mr. President, this week, September 21–27, is National Cystic Fibrosis Week. I was pleased to introduce the Senate resolution that directed the President to set aside this week to call attention to this deadly disease, because I believe that increased public understanding of cystic fibrosis will contribute to efforts to find a cure or control for it.

Cystic fibrosis (CF) is the most common fatal genetic disease in America. Over 13,000 young people with CF, including about 200 in my own State of Maryland, are being seen in CF centers across the country. Each of them spends hours in therapy each day, merely to stay alive. Many of them face the prospect of weeks in the hospital every year. All of them know that there is no cure for CF.

Despite the bleak present, there is hope for the future for those with CF. I am fortunate to have in my State both the National Institutes of Health and the national headquarters of the Cystic Fibrosis Foundation. Between them, these organizations are supporting more than $13 million this year in research to increase our understanding of the disease.

Some of this research is directed toward the problem of lung infection. Children and adults with CF are confronted with frequent lung infections that resist treatment, brought about, scientists believe, through some defect in the body's immune system. Close examination of the unusual mucus produced by people with CF, studies of the immune system, development of new antibiotics and vaccines, and work on the bacteria themselves are all being pursued with the goal of providing a new way to deal with these infections. If that is achieved, one of the major problems in CF will be overcome.

Genetics is another focus of CF research. It has long been known that CF is a genetic disease, and that at least 10 million Americans are symptomless carriers of the CF gene. To date, however, scientists have not been able to develop a method of identifying carriers or of detecting CF before birth. In the last few years, a number of promising research leads have developed in this area, and there is substantial hope for a breakthrough here in the 1980's.

A third major area of research is related to these first two. Scientists do not understand the basic underlying defect in CF. They can describe the disease in terms of its symptoms—pancreatic insufficiency, respiratory problems, and the like—but they do not know why the body produces these symptoms. Considerable study of CF-affected cells is being conducted to pinpoint the mechanism that differentiates those cells from normal ones. If this line of research is successful, it may ultimately be possible to develop an effective long-term control for CF, and extend life expectancy by decades.

All this research is interrelated. The explanation of the basic defect may lead to an answer to the problem of lung infections, while a carrier test could provide the clue to the basic defect. Because CF is a uniquely human disease, much of the research must be done on human tissue samples, which makes the work very difficult.

The National Institutes of Health and the Cystic Fibrosis Foundation are working together in a research program that addresses these questions and more. I have been pleased to learn of the close cooperation between the two organizations, and hope that other voluntary health groups will follow suit. The CFF uses its contributors' funds to support research training, new investigator awards, and other programs for which Federal funds are limited, while NIH concentrates on the larger-scale research projects. In this way, both the taxpayers and the donors are assured of the best use of their money, and more importantly, that the answers to CF will be found more rapidly.

In recent years, I have supported increased funding for the National Institutes of Health for research in CF, and I will continue until the diagnosis of CF is no longer a death warrant for thousands of America's young people. As this statement shows, there is hope if we persevere. National Cystic Fibrosis Week is one way to keep that momentum growing.

I ask unanimous consent that President Carter's proclamation for National Cystic Fibrosis Week appear at this point in the RECORD.

There being no objection, the proclamation was ordered to be printed in the RECORD, as follows:

A PROCLAMATION

Cystic fibrosis is the most common fatal genetic disease afflicting American children today. An inherited disorder of unknown cause, cystic fibrosis affects approximately 20,000 to 30,000 infants, children, and young adults. While the cost of medical treatment reaches into the millions of dollars, the costs of cystic fibrosis in terms of human suffering are inestimable.

Through biomedical research, the outlook for cystic fibrosis patients has become brighter over the years. Long considered fatal in childhood, cystic fibrosis has begun to yield to the efforts of science. The life expectancy of cystic fibrosis victims has increased well into the teens, twenties and beyond. Moreover, improved methods of treatment have enhanced the quality of patients' lives. Despite this progress, however, the basic cause of cystic fibrosis, as well as its cure, continues to elude investigators.

The Department of Health and Human Services, in cooperation with private, voluntary agencies, is meeting the challenge of cystic fibrosis with an intensified research program. Through the National Institutes of Health, the Department's biomedical research arm, studies are now under way to identify the causes—and consequences—of the disease, and to develop improved methods of detection, treatment, and, eventually, prevention.

In recognition of the progress that has been made, and of the many research questions that still remain to be answered, the Congress has by House Joint Resolution 445 designated the week of September 21, 1980, "National Cystic Fibrosis Week", a time to highlight the hope for the future that this Nation shares with cystic fibrosis victims and their families.

Now, therefore, I, Jimmy Carter, President of the United States of America, do hereby proclaim the week beginning September 21, 1980, as "National Cystic Fibrosis Week."

In witness whereof, I have hereunto set my hand this twenty-second day of July, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.

JIMMY CARTER.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Mr. MATHIAS. Mr. President, I recently received an important communication from Colonel Robert W. Landon, General Chairman of the International Association of Chiefs of Police Division of State and Provincial Police, and Chief of the Washington State Patrol. The message outlines that organization's support for funding to assure compliance with the 55-mile-per-hour speed limit. I ask unanimous consent that the text of that communication appear in the RECORD.

There being no objection, the communication was ordered to be printed in the RECORD, as follows:

GAITHERSBURG, MD.

On behalf of the division of state and provincial police of the International Association of Chiefs of Police, I request that the following statement be entered into the formal record of these proceedings:

"The division of state and provincial police of the International Association of Chiefs of Police is a membership organization comprised of state law enforcement agencies, currently conducting our annual business meeting in St. Louis, Missouri. An issue before our conference which is of great concern, is the Surface Transportation Act of 1980, H.R. 7831. Specifically, the appropriation of funding to the several states for 55 m.p.h. national maximum speed limit enforcement programs, on behalf of each state law enforcement administrator who is a member of the Division, I am pleased to notify you of our support for the 40 million dollar appropriation recommended by the Senate Committee on Appropriations, Subcommittte on Transportation, This funding will greatly assist the states in their continued efforts in meeting the compliance criteria for 55 m.p.h. speed limit enforcement, as prescribed by the U.S. Congress. It will also help the balance of payment by reducing our country's dependence on foreign oil. The I.A.C.P. Division of State and provincial police is pleased to support this legislation and urges the members of the Senate to pass this much needed legislation.

COLONEL ROBERT W. LANDON,
General Chirman, International Association of Chiefs of Police, Division of State and Provincial Police, and Chief, Washington State Patrol.

GENOCIDE: A BENEFICIAL MEASURE THAT WOULD NOT BURDEN THE ECONOMY

Mr. PROXMIRE. Mr. President, many of the measures coming before the Senate which seek to maintain or improve the living conditions in this country are necessarily costly. We are often faced with the prospect of burdening the economy when enacting such socially beneficial legislation. Stopping inflation, attaining a balanced budget, controlling Government spending and lowering taxes are factors which must be fully considered by anyone wishing to create or expand programs directed at satisfying the needs of the American people.

There is one measure, however, that the Senate can undertake which will serve the citizens of this land and not strain the economy. I refer to the Genocide Covention. Ratification of this international treaty would not require any financial outlay and would act to protect our constitutents from harassment and destruction.

The purpose of the treaty is to make genocide an international crime. Upon entering into the covenant, the signator agrees to attempt to prevent genocide by punishing anyone, be they public official or private citizens, who commits certain defined acts with the intention of destroying an entire racial, national or ethnic group. The acts constituting genocide include the killing of, the infliction of serious bodily harm to, and the permanent impairment of mental facilities of members of a homogenous group.

It is ironic that a measure not involving substantial economic costs and aimed at benefiting the public can be before the Senate for 31 years and not be given approval. We find it so difficult to meet the needs of our constituents because of the necessity to save tax dollars. Yet, we hesitate to pass this essentially costless treaty. Let us hesitate no longer.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE SUMMARY OF THE SECOND BIENNIAL REPORT ON NATIONAL URBAN POLICY—PM 243

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I am pleased to issue the Executive Summary of the Second Biennial Report on National Urban Policy, as called for by Congress in the Housing and Urban Development Act of 1970, as amended in 1977.

In 1978, I committed my Administration to implementing in cooperation with the Congress the nation's first comprehensive urban policy. Our efforts have yielded important benefits to cities, urban counties and their residents. It is my hope that this Executive Summary, and the full Biennial Report on which it is based, will help us define this nation's urban policy agenda for the 1980s.

JIMMY CARTER.

THE WHITE HOUSE, *September 22, 1980.*

ANNUAL REPORT OF THE DRUG POLICY OFFICE OF THE DOMESTIC POLICY STAFF—PM 244

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

Pursuant to Sec. 4 of the Drug Abuse Prevention, Treatment, and Rehabilitation Amendments of 1979 (P.L. 96–181; 21 U.S.C. 1117), I transmit herewith the Annual Report of the Drug Policy Office of the Domestic Policy Staff.

This report reflects the nature and accomplishments of the drug abuse policy coordination function and highlights the major activities and accomplishments of the Administration in reducing the effects of drug abuse in the United States. As we move forward in the decade of the 1980s, I pledge my continued support to our fight against drug abuse.

JIMMY CARTER.

THE WHITE HOUSE, *September 22, 1980.*

PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on September 19, 1980, he had approved and signed the following act:

S. 299. An act to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

MESSAGES FROM THE HOUSE

At 12:57 p.m. a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks announced that the House has passed the bill (S. 2711) to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 610. Joint resolution making continuing appropriations for the fiscal year 1981, and other purposes.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 367. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1569;

H. Con. Res. 368. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1379; and

H. Con. Res. 432. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM–1379 and XSNM–1569.

HOUSE MEASURE REFERRED

The following measure was read twice by its title and referred as indicated:

H.J. Res. 610. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes; to the Committee on Appropriations.

HOUSE MEASURES PLACED ON CALENDAR

The following concurrent resolutions were read by their titles and placed on the calendar:

H. Con. Res. 367. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1569;

H. Con. Res. 368. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1379; and

H. Con. Res. 432. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM–1379 and XSNM–1569.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on the Budget, without amendment:

S. Res. 516. Resolution waiving section 402(a) of the Congressional Budget Act with respect to the consideration of S. 1411.

By Mr. RIBICOFF, from the Committee on Governmental Affairs, with an amendment (in the nature of a substitute):

S. 2267. A bill to amend the Civil Service Reform Act of 1978 (Rept. No. 96–976).

By Mr. HOLLINGS, from the Committee on the Budget, without amendment:

S. Res. 515. Resolution to waive section 402(a) of the Budget Act with respect to the consideration of H.R. 4084, authorizing funds for fiscal year 1981 for the Suisun Marsh, California; and

S. Res. 522. Resolution waiving section 402(a) of the Congressional Budget Act with respect to the consideration of S. 2829.

By Mr. JACKSON, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 524. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2734. Referred to the Committee on the Budget.

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute):

S. 2734. A bill to authorize the Secretary of the Interior to transfer certain land and facilities used by the Bureau of Mines, and for other purposes (Rept. No. 96–977).

By Mr. ROBERT C. BYRD (for Mr. CANNON), from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 1196. An act to revise and improve the laws relating to the documentation of vessels, and for other purposes.

By Mr. PERCY, from the Committee on Governmental Affairs, with amendments, and an amendment to the title:

S. 2958. A bill to ensure the development and implementation of policies and procedures to encourage the Veterans' Administration and the Department of Defense to cooperate in the efficient and effective use of Federal medical resources, and for other purposes (Rept. No. 96–978).

By Mr. ROBERT C. BYRD (for Mr. CANNON), from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 3748. An act to provide for a uniform national three-year statute of limitations in actions to recover damages for personal injury or death arising out of a maritime tort, and for other purposes.

By Mr. ROBERT C. BYRD (for Mr. CANNON), from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 5451. An act to amend the Merchant Marine Act, 1936, to revise and reenact the laws pertaining to United States Merchant Marine Academy and to State maritime academies and for other maritime education and training purposes.

By Mr. ROBERT C. BYRD (for Mr. CANNON), from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 6242. An act to establish a Towing Safety Advisory Committee in the Department of Transportation.

By Mr. ROBERT C. BYRD (for Mr. CANNON), from the Committee on Commerce, Science, and Transportation, with amendments:

H.R. 6665. An act to implement the Protocol of 1978 Relating to the International

Convention for the Prevention of Pollution from Ships, 1973, and for other purposes.

By Mr. ROBERT C. BYRD (for Mr. CANNON), from the Committee on Commerce, Science, and Transportation, with amendments:

H.R. 6671. An act to unify the rules for preventing collisions on the inland waters of the United States, and for other purposes (Rept. No. 96–979).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following executive reports were submitted:

By Mr. PELL (for Mr. CHURCH), from the Committee on Foreign Relations, without reservation:

Executive K, 96–2. Amendments to the Convention on Inter-Governmental Maritime Consultative Organization signed at Geneva, March 6, 1948 (the IMCO Assembly) (Executive Rept. 96–51).

By Mr. PELL, from the Committee on Foreign Relations:

Jack Robert Binns, of Washington, to be Ambassador Extraordinary and Plenipotentiary of the United States to Honduras.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Jack R. Binns.

Post: U.S. Ambassador to Honduras.

Contributions, amount, date, and donee:
(If none, write none)

Self: See attached sheet.

Spouse: None.

Children and Spouses Names: Katherine A., None, Margaret M., None.

Parents Names: Margaret M. Burrill, None.

Grandparents Names: deceased.

Brothers and Spouses Names: None.

Sisters and Spouses Names: None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of any pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

POLITICAL CONTRIBUTIONS

Date, recipient, and amount:

1976

February: Democratic Party of U.S., $30.00.

April: Democrats Abroad (United Kingdom), $190.00.[1]

October: Democrats Abroad (UK), $7.50.

1977

June: Democrats Abroad (UK), $50.00.[2]

1978

September: Committee to Re-Elect Tom Foley, $50.00.

1979

None.

1980

January: Democrats Abroad (Costa Rica), $12.00.[3]

February: Democrats Abroad (CR), $24.00.[4]

March: Democrats Abroad (CR), $12.00.[3]

[1] Contribution in Pounds Sterling, £95.00.
[2] Contribution in Pounds Sterling, £25.00.
[3] Contribution in CR Colones, c100.00.
[4] Contribution in CR Colones, c200.00.

By Mr. PELL, from the Committee on Foreign Relations:

William Bodde, Jr., of Maryland, to be Envoy Extraordinary and Plenipotentiary of the United States to the Republic of Kiribati.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted comittee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: William Bodde, Jr.

Post: Ambassador to Fiji, Tonga, Kiribati, Tuvalu.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: $5.—Dollars for Democrats 1979. $25.—Democrats for Carter/Mondale abroad 1976.

3. Children and Spouses Names: Wife, Ingrid, step-daughter: Barbara, sons: Peter and Christopher.

4. Parents Names: William and Georgianna Bodde (maiden name Curry) (deceased).

5. Grandparents Names: Frederik Bodde and Lambertina van de Gumater (deceased); John Curry and Mary O'Connor.

6. Brothers and Spouses Names: None.

7. Sisters and Spouses Names: Anna M. Ryan and James Ryan, Dorothea Sain.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Charles F. Meissner, of Maryland, for the rank of Ambassador during his tenure of service as U.S. Special Negotiator for Economic Matters.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Charles F. Meissner.

Post: U.S. Special Negotiator for Economic Matters.

Contributions, amount, date, and donee:

1. Self: (See attached).

2. Spouse: (See attached).

3. Children and Spouses Names: Christine and Andrew Meissner, none.

4. Parents Names: Harriet E. Meissner, none.

5. Grandparents Names: None.

6. Brothers and Spouses Names: David G. and Judith Meissner, none.

7. Sisters and Spouses Names: None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

POLITICAL DONATIONS OF CHARLES F. AND DORIS M. MEISSNER

1976

Women's Lobby, $15.
Democratic National Committee, $15.
Mauer for Congress, $10.
National Women's Political Caucus, $15.
Bella Abzug, $25.
Democratic National Committee, $15.
ERA America, $15.
Women Campaign Fund, $15.
Gloria Schaeffer, $25.
ERA America, $50.

1977

National Organization for Women, $15.
National Women's Political Caucus, $100.
ERA America, $50.
National Women's Political Caucus, $75.
ERA America, $100.
Democratic National Committee, $15.
Democratic National Committee, $15.

1978

Women's Campaign Fund, $25.
Committee for Tim Worth, $25.
National Women's Educational Fund, $25.
Ravenal for Governor, $25.
Dick Clark for Senate, $100.
Zapata for Congress, $100.
National Women's Political Caucus, $25.
Women's Campaign Fund, $150.
Dick Clark for Senate, $100.

1979

National Women's Political Caucus, $200.
Women Campaign Fund, $25.
National Women's Political Caucus, $200.
Women Campaign Fund, $70.

1980

None to date—June 1, 1980.

By Mr. PELL, from the Committee on Foreign Relations:

Jerrold Martin North, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Republic of Djibouti.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: North, Jerrold Martin.

Post: Ambassador to Djibouti.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children: Names, Lore, Linden, Courtney, none.

4. Parents: Names, Esther, North, none.

5. Grandparents: N/A.

6. Brothers and spouses: N/A.

7. Sisters and spouses: Names, Arlene Levin, Sol Levin, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Fernando E. Rondon, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Democratic Republic of Madagascar.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's

commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Fernando E. Rondon.

Post: Ambassador to Madagascar.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and spouses: Names, F. Mark (age 17), Lawrence (age 14), Susan (age 10), none.

4. Parents: Names, Mother, Martha Rondon, Father deceased, none.

5. Grandparents: Names, deceased.

6. Brothers and spouses: Names, Mr. and Mrs. Richard Rondon, none.

7. Sisters and spouses: Names, Mr. and Mrs. Jose Gonzalez, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

John W. Shirley, of Illinois, for promotion to the Class of Career Minister for Information.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: John William Shirley.

Post: Career Minister.

Contributions, amount, date, and donee:

1. Self: John W. Shirley, none.

2. Spouse: Katherine H. Shirley, none.

3. Children and spouses: Names, Pamela Mary Sheppard (daughter), Alexandria Jean Shirley (daughter), none.

4. Parents: Names, William Shirley (father), Yvette Rosen (mother), none.

5. Grandparents: Not applicable.

6. Brothers and spouses: Not applicable.

7. Sisters and spouses: Not applicable.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Morton I. Abramowitz, of Massachusetts, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Morton Abramowitz.

Post: U.S. Ambassador—Bangkok, Career Minister in the foreign service.

Contributions, amount, date, and donee:

1. Self: $200, 1976, Sen. Muskie. $75, 1978, Harry Schunetz.

2. Spouse: $100, 1977–78, Michael Barros.

3. Children and spouses: Names, Michael, Rachel, none.

4. Parents: Names, Ida Glass, none.

5. Grandparents:

6. Brothers and spouses: Names, Mr. and Mrs. Irving Abramowitz, none.

7. Sisters and spouses: Names, Mr. and Mrs. W. Epstein, Molly Tatel, E. Sres, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Richard J. Bloomfield, of Connecticut, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Richard J. Bloomfield.

Post: Career Minister.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: Patricia A. Bloomfield, none.

3. Children and spouses: Thomas (wife Mary), Ann, Richard, William: All none.

4. Parents: Deceased.

5. Grandparents: Deceased.

6. Brothers and spouses: None.

7. Sisters and spouses: None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Paul H. Boeker, of Ohio, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted commitee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Paul H. Boeker.

Post: Career Minister.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and spouses: Names, Michelle, Kent, and Katherine Boeker, none.

4. Parents: Names, Victor and Esther Boeker, none.

5. Grandparents: deceased.

6. Brothers and spouses: Names, Ralph and Marilyn Boeker, Bruce and Barbara Boeker, none.

7. Sisters and spouses: None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Walter L. Cutler, of Virginia, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Cutler, Walter L.

Post: Career Minister.

Contributions, amount, date, and donee:

1. Self: none.

2. Spouse: Sarah B. Cutler, none.

3. Children and Spouses: Names, Allen B. Cutler, Thomas G. Cutler, none.

4. Parents: Names, Leon A. Bradley, Esther D. Bradley, none.

5. Grandparents: none.

6. Brothers and Spouses, none.

7. Sisters and Spouses, names, Sally D. Cutler, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

William H. Gleysteen, Jr., of Pennsylvania, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Nominee: William H. Gleysteen, Jr.

Post: Career Minister (Ambassador to the Republic of Korea).

Contributions, amount, date and donee:

1. Self: none.

2. Spouse: none.

3. Children and Spouses; Thea, Guy, Michael, none.

4. Parents; deceased, none.

5. Grandparents: Deceased, none.

6. Parents-in-law O. Edmund Clubb & Marianne Clubb, $10, June 14, 1975, Democratic Party; $3, June 23, 1975, Catskill Democratic Club; $15, October 14, 1975, Shriver for President Committee; $25, December 10, 1975, Democratic DSG Campaign Fund; $10, February 3, 1976; Udall 1976 Committee; $10, April 16, 1976, Democratic Party; $10, May 18, 1976, Udall 1976 Committee; $10, June 8, 1976, Shriver for President Committee; $10, July 16, 1976, Ramsey Clark Senate 1976 Committee, $25, August 6, 1976, Democratic Party; $3, September 23, 1976, Catskill Democrat's Club, $20, October 24, 1976, Greene County Democratic Committee; $15, October 16, 1976, Democratic Committee; $10, November 28, 1976, Udall 1976 Committee; $12, October 23, 1977, Catskill Democratic Committee; $15, March 29, 1977, Democratic National Committee, $25, April 17, 1977, Fraser for Senate; $20, April 21, 1978, Pattison 1978 Campaign; $10, 1978, Drinan for Congress; $50, 1978, Democratic National Committee; $25, 1978, Committee to Elect Betty Hall; $25, 1978, DSG Campaign Fund; $50, 1980, Friends of Liz Holtzman; $25, 1980, Democratic Congressional Campaign Committee.

7. Brothers and Spouses: T. Carter Gleysteen, Mary H. Gleysteen(s) $25, January 1, 1980, George Bush.

Culver Gleysteen, $50, 1975, Democratic National Committee.

Elizabeth M. Gleysteen (s), $100, 1976, Democratic National Committee; $50, 1978, Marion Barry; $20, 1978, East Hampton Democratic Committee.

Dirk Gleysteen, Marguerite B. Gleysteen (s), none.

8. Sisters and spouses: Alice G. Morton, none.

Margaret G. Huie, $25, July 8, 1975, Republican National Finance Committee.

Byron S. Huie, Jr. (s), $25, July 7, 1976, Republican National Finance Committee; $50, October 18, 1976, John Grady Campaign Fund; $25, July 22, 1977, Republican National Finance Committee; $30, September 19, 1977, Republican National Finance Committee; $35, April 17, 1978, National Republican Senatorial Committee; $50, July 7, 1978, GOP Victory Fund; $40, April 27, 1978, Republican National Committee; $35, February 10, 1979, National Republican Senatorial Committee; $35, March 7, 1979, National Republican Senatorial Committee; $25, May 11, 1979, Legislative Campaign National Committee; $40, June 15, 1979, Republican National Committee; $50, October 26, 1979, National Republican Congressional Committee; $25, October 26, 1979, National Republican Senatorial Committee; $25, January 17, 1980, Republican National Committee; $25, March 4, 1980, National Republican Senatorial Committee.

Anne G. Kramer, Elmer E. Kramer (s), none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Roger Kirk, of the District of Columbia, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee—Roger Kirk.

Post—Career Minister.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse.

3. Children and Spouses Names: None.

4. Parents Names: Lydia Chapin Kirk, see attached.

5. Grandparents: Deceased.

6. Brothers and Spouses: None.

7. Sisters and spouses: See attached.

I have listed above the names of each member of my immedate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

ATTACHMENT

Contributions, amount, date, and donee:

Mother, Mrs. Alan G. Kirk, $25, 1976, Carter Presidential campaign; $25, 1977, Democratic National Committee; $25, 1979, Carter/Mondale Presidential campaign.

Sisters and Spouses: Marian Kirk Appel, none.

John W. Appel, $35, 1976, Republican Party; $35, 1977, Republican Party; $35, 1978, Republican Party; $35, 1979, Republican Party; $35, 1980, Republican Party.

Deborah Kirk Solbert: $100, 1976, Udall.

Peter O. A. Solbert: $250, 1976, Udall (N.Y. '76 Committee); $10, 1976, Udall ('76 Committee); $200, 1976, Democratic National Committee; $25, 1979, Senator Javits; $250, 1980, Anderson for President Committee; $150, 1980, Carter/Mondale Presidential Committee; $25, 1980, Friends of Bill Moorehead Committee; $100, 1980, John Lindsay; $50, 1980, Democratic Committee.

By Mr. PELL, from the Committee on Foreign Relations:

Edward R. Masters, of Ohio, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Edward E. Masters.

Post: Career Minister.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses; Names, Edward R., None; Julie A., none.

4. Parents: Names, Ethel V. Masters, none; father, deceased.

5. Grandparents: Names, deceased.

6. Brothers and Spouses: Names, none (no brothers).

7. Sisters and Spouses: Names, none (no sisters).

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Robert B. Oakley, of Louisiana, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Robert R. Oakley.

Post: Kinshasa, Zaire.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: Names: None.

4. Parents Names: Mrs. J. B. Oakley, Shreveport, La., $50, October 1978, Senator J. B. Johnston (Dem. Louisiana).

5. Brothers and Spouses, Names: Mr. and Mrs. Thomas Elliott, Ft. Wayne, Indiana, $50, April 1979, Winfield Moses, Dem. candidate for Mayor Ft. Wayne.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Robert M. Sayre, of Virginia, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Robert M. Sayre.

Post: Career Minister.

Contributions, amount, date, donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses Names: Marian, Robert Jr., Daniel, none.

4. Parents: Names, deceased.

5. Grandparents: Names, deceased.

6. Brothers and Spouses: Names, Arthur, William, Francis, Mark, Donald, and Richard, none.

7. Sisters and Spouses: Names, Edna, Dorothy, Emily, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Talcott W. Seelye, of Maryland, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Seelye, Talcott W.

Post: U.S. Embassy, Damascus, Syria.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses Name, None.

4. Parents: Names, None.

5. Grandparents: Names, None.

6. Brothers and Spouses: Names, None.

7. Sisters and Spouses: Names, None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my

knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Nicholas A. Veliotes, of California, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Nicholas A. Veliotes.

Post: Career Minister.

Contributions, amount, date, and donee:

1. Self: $25, February, 1976, Citizens with Celeste; $25, March 1976, Jack Calkins, Cong. Committee; $25, February, 1977, Citizens with Celeste.

2. Spouse: $25, February, 1976, Citizens with Celeste; $25, March, 1976, Jack Calkins Cong. Committee.

3. Children and Spouses: Names, Christopher, Michael, none.

4. Parents: Names, Irene Zoobrick, Loucille Horrom, (mother-in-law, deceased), $5, summer of 1976, local Democratic campaign committee.

5. Brothers and Spouses: Names, John and Phyllis Otis, none.

6. Sisters and Spouses: Names, Dorothy and John Chessari, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr. PELL, from the Committee on Foreign Relations:

Richard D. Vine, of California, for promotion to the class of Career Minister.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

STATEMENT OF POLITICAL CONTRIBUTIONS

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Richard Vine.

Post: Career Minister.

Contributions, amount, date, and donee:

1. Self: none.

2. Spouse: none.

3. Children and Spouses: Name, Gail Vine Mangold, Claude Mangold, none.

4. Parents: Names, deceased.

5. Grandparents: Names, deceased.

6. Brothers and Spouses: Names, George H. Vine, Jr., John Vine, none.

7. Sisters and Spouses: Names, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

By Mr PELL, from the Committee on Foreign Relations:

The following-named persons to be members of the Board of Directors of the Inter-American Foundation:

Guy Felix Erb, of California;
Doris B. Holleb, of Illinois;
Paula Stern, of the District of Columbia; and
Luis Guerrero Nogales, of California.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

The following-named persons to be the Representative and an Alternate Representative of the United States to the 24th Session of the General Conference of the International Atomic Energy Agency:

Representative: Gerard C. Smith, of the District of Columbia; and

Alternate Representative: Joseph Mallam Hendrie, of New York.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

E. G. Koury, of Ohio, to be a member of the Board of Directors of the Overseas Private Investment Corporation.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

Leonard Silverstein, of Maryland, to be a member of the U.S. Advisory Commission on Public Diplomacy.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

Roger Kirk, of the District of Columbia, to be Alternate Representative of the United States to the 24th Session of the General Conference of the International Atomic Energy Agency.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

The following-named persons to be representatives of the United States to the 21st Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Robin Duke, of New York;
Barbara W. Newell, of Massachusetts;
Elie Abel, of California;
John E. Fobes, of North Carolina; and
John Hope Franklin, of Illinois.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

The following-named persons to be Representatives of the United States to the Thirty-fifth Session of the General Assembly of the United Nations:

Donald F. McHenry, of Illinois;
William J. vanden Heuvel, of New York;
Jacob K Javits, United States Senator from the State of New York;
Paul E. Tsongas, United States Senator from the State of Massachusetts; and
Hannah D. Adkins, of Oklahoma.

(The above nominations from the Committee on Foreign Relations were reported with the recommendations that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate).

By Mr. PELL, from the Committee on Foreign Relations:

The following-named persons to be alternate representatives of the United States to the 21st Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Sandra Lopez Bird, of New York;
Joseph D. Duffy, of the District of Columbia;
Kathleen Nolan, of California;
Beatrice Ranis, of California; and
Robert Revelle, of California.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

Joan Edelman Spero, of New York, to be Alternate Representative of the United States to the Thirty-fifth Session of the General Assembly of the United Nations.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PELL. Mr. President I also report favorably sundry nomination lists in the Diplomatic and Foreign Service which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, ask that they be placed on the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations so ordered to lie on the Secretary's desk appeared in the RECORD on July 2 and September 15, 1980.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. RIBICOFF (by request):

S. 3130. A bill for the relief of the Brooklyn Times; to the Committee on Governmental Affairs.

By Mr. RIBICOFF (by request):

S. 3131. A bill to amend the District of Columbia Self-Government and Government Reorganization Act to clarify the limitations on the legislative authority of the Council of the District of Columbia; to the Committee on Governmental Affairs.

By Mr. DOMENICI:

S. 3132. A bill to consolidate the intermingled public lands between Farmington and Gallup, New Mexico; to the Committee on Energy and Natural Resources.

By Mr. ARMSTRONG:

S. 3133. A bill to reinstate and validate certain United States oil and gas leases numbered C-9496, C-9711, C-11600, C-11621, C-11622, C-11630, C-11631, C-11597, C-11599, C-13774, C-14197, C-17049, C-18262, C-26048, C-13532, C-11581, C-11585, C-11590, C-11591, and C-11595; to the Committee on Energy and Natural Resources.

By Mr. BRADLEY:

S. 3134. A bill to provide an Electric Car Tax Credit; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 3135. A bill to provide for a temporary program of Federal supplemental unemployment compensation; to the Committee on Finance.

By Mr. ROTH:

S.J. Res. 204. Joint resolution requiring the President to call a Convocation on American Federalism; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RIBICOFF (by request):

S. 3130. A bill for the relief of the Brooklyn Times; to the Committee on Governmental Affairs.

THE BROOKLYN TIMES

● Mr. RIBICOFF. Mr. President, at the request of the Comptroller General of the United States, I am introducing legislation for the relief of the Brooklyn Times.

I ask unanimous consent that the text of the bill, and the accompanying report of the Comptroller General be printed in the RECORD.

There being no objection, the bill and the report were ordered to be printed in the RECORD, as follows:

S. 3130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Comptroller General of the United States be, and he hereby is, authorized and directed to settle and adjust the claim of the Brooklyn Times, Brooklyn, New York, for an advertisement published on March 29, 1978, for the Department of the Army and to allow in full and final settlement of such claim the sum of $280. Such amount shall be payable from the applicable appropriation of the Department of the Army.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C. September 4, 1980.

Hon. WALTER F. MONDALE,
President of the Senate.

DEAR MR. PRESIDENT: Pursuant to the Meritorious Claims Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we have the honor to transmit our report and recommendation to the Congress concerning the claim of The Brooklyn Times against the United States. We request that you please present the same to the United States Senate.

An identical report is being transmitted to the Speaker of the House of Representatives.

Sincerely yours,
HARRY R. VAN CLEVE,
For the Comptroller General of the United States.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., September 4, 1980.

To the Congress of the United States:

In accordance with the Meritorious Claims Act of April 10, 1928, 31 U.S.C. § 236 (1976), we make the following report and recommendation on the claim of The Brooklyn Times, 108 West End Avenue, Box 723, Brooklyn, New York 11235, for $280. This claim originates as a result of a newspaper advertisement furnished by the named publisher for the Department of the Army in its March 29, 1978, issue. This claim cannot be settled by the General Accounting Office since the advertisement was placed without prior authorization in violation of 44 U.S.C. § 3702 (1976), which reads as follows:

"Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is presented with the bill a copy of the written authority."

Ordinarily, we do not report to the Congress under the Meritorious Claims Act claims which cannot be paid by reason of a prohibitory statute. In the instant case, however, the provisions of 44 U.S.C. § 3702 do not prohibit advertising in newspapers but, instead, prohibit payment unless written authority for such advertising is issued in advance. In other words, the primary purpose of the statute appears to be to prescribe the contracting procedure to be followed before a contract for advertising may be awarded rather than to prohibit the making of such a contract.

Our office by letter dated November 25, 1974, B-181337, recommended to the Congress that 44 U.S.C. § 3702 be repealed. However, unless and until it is repealed the provisions thereof require the denial of any payment to a publisher who has furnished advertising to the Government where the Government agent, through error or oversight, has not complied with the statute in procuring the advertising. As a consequence, a publisher's only relief is pursuant to the Meritorious Claims Act or enactment of a private relief bill.

In view of the fact that the publisher acted in good faith in furnishing advertising which benefited the Government, we recommend that the claim be authorized for payment.

If the Congress agrees with our recommendation in this matter, it is suggested that enactment of a statute in substantially the following form will accomplish the desired purpose.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Comptroller General of the United States be, and he hereby is, authorized and directed to settle and adjust the claim of The Brooklyn Times, Brooklyn, New York, for an advertisement published on March 29, 1978, for the Department of the Army and to allow in full and final settlement of such claim the sum of $280. Such amount shall be payable from the applicable appropriation of the Department of the Army."

HARRY R. VAN CLEVE,
For the Comptroller General of the United States.●

By Mr. RIBICOFF (by request):

S. 3131. A bill to amend the District of Columbia Self-Government and Governmental Reorganization Act to clarify the limitations on the legislative authority of the Council of the District of Columbia; to the Committee on Governmental Affairs.

LEGISLATIVE AUTHORITY OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

● Mr. RIBICOFF. Mr. President, at the request of the Mayor of the District of Columbia, I am introducing a bill to amend the District of Columbia Self-Government and Governmental Reorganization Act to clarify the limitations on the legislative authority of the Council of the District of Columbia.

I ask unanimous consent that the text of the bill, and the accompanying letter explaining its purposes, be printed in the RECORD.

There being no objection, the bill and letter were ordered to be printed in the RECORD, as follows:

S. 3131

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6021 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-147) is amended as follows:

(1) Subsection (a)(3) of such section is amended by striking the semicolon and inserting in lieu thereof: *Provided,* That within the meaning of this paragraph the terms 'functions of the United States' shall not include functions relating to the District which are performed by Federal officers or employees pursuant to an Act of Congress applicable exclusively to the District or pursuant to an agreement between the United States and the District under section 731 of this Act;".

(2) Subsection (a)(4) of such section is amended by striking the semicolon and inserting in lieu thereof "; *Provided,* that this paragraph shall not be construed as restricting the authority of the Council under section 431(a) of this Act to provide by law the extent of the jurisdiction of the District of Columbia Courts to review orders and decisions of the Mayor, the Council or any agency of the District;".

(3) Subsection (a)(3) of such section is amended by striking the semicolon and inserting in lieu thereof "; *Provided,* That this paragraph shall not be construed as prohibiting the Council from imposing a tax on incorporated or unincorporated businesses for the privilege of carrying on a trade or business in the District of Columbia;".

(4) Such section is amended by adding at the end of subsection (c) thereof the following new subsection:

"(d) The limitations on the legislative authority of the Council enumerated in subsection (a) of this section shall be strictly construed in a manner consistent with the Congressional purposes stated in section 102 (a) of this Act."

SEC. 2. The amendment made by paragraph (1) of section 1 of this Act shall apply to acts of the Council of the District of Columbia passed on or after April 22, 1980.

THE DISTRICT OF COLUMBIA,
Washington, D.C., August 15, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Government of the District of Columbia has the honor of submitting for the consideration of Con-

gress a draft bill "To amend the District of Columbia Self-Government and Governmental Reorganization Act to clarify the limitations on the legislative authority of the Council of the District of Columbia."

The bill would clarify the language of certain enumerated limitations on the legislative power granted to the District contained in section 602(a) of the Self-Government Act. The primary purpose of the Self-Government Act, as stated in section 102 (a), was to "grant the inhabitants of the District powers of local self-government . . . and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters." Thus, the Act broadly provides that the "legislative power of the District shall extend to all rightful subjects of legislation within the District" subject to constitutional restrictions and the limitations enumerated in title VI of the Act. However, certain of these limitations, in crucial areas, have been subject to conflicting interpretations by the courts and by Federal and District agencies, the result of which has been to bring into question certain facets of the legislative powers of the District under home rule. Unfortunately, the legislative history of the Self-Government Act has provided little guidance. Consequently, the scope of the limitations on the Council's authority, which may have been understood in the 93rd Congress, is often no longer clear. The bill would resolve these uncertainties in accordance with the stated purposes of the Self-Government Act.

I. FUNCTIONS OF THE UNITED STATES

Paragraph (1) of the bill would clarify section 602(a)(3) of the Act which prohibits the Council from enacting legislation "which concerns the functions or property of the United States . . . ". The Council's recent action to establish a local workers' compensation program and to end the District's participation in the more costly Federal Longshoremen's and Harbor Workers' Act was questioned by the Solicitor of Labor, who stated that the Council was without authority to enact such legislation on the theory that since Congress had transferred certain other functions of the Secretary of Labor under title II of the Self-Government Act, effective July 1, 1974, those functions not transferred could not be transferred by Act of Congress.

The Corporation Counsel, however, concluded that the failure of Congress to affirmatively transfer the workers' compensation function to the District did not necessarily preclude a later transfer by the Council under its delegated authority. She determined that the Council was given the power to amend Acts of Congress applicable exclusively to the District of Columbia under title IV of the Self-Government Act (which did not become effective until January 2, 1975) and that the Act of Congress including District workers under the Longshoremen's program was such a local act.

The Corporation Counsel advised, however, that since the question whether Congress has placed responsibility in a Federal official and the scope of section 602(a)(3) were not precise, it would be preferable to seek clear Congressional authorization for the Council to act in such situations. The proposed amendment to section 602(a)(d) would accomplish this.

The bill would add a proviso to section 602(a)(3) that would make it clear that the prohibition against acts concerning "functions . . . of the United States" would not preclude the District from assuming responsibility for purely local or statelike programs and functions, such as workers' compensation, simply because it would replace local activities that had been performed by Federal officers and employees, for convenience or governmental economy, pursuant to local congressional enactments or contractual agreements between the Federal and District Governments.

The amendment would not affect the limitation on the Council's authority with respect to Federal agencies, Federal representation, or Federal appointments. Section 2 of the bill would make this amendment applicable to acts of the Council passed on or after April 22, 1980, the date of the Council's passage on first reading of the District of Columbia Workers' Compensation Act, in order to preclude any challenges to this act based on the theory that it exceeded the Council's authority under section 602(a)(3).

II. ADMINISTRATIVE PROCEDURE ACT AMENDMENTS

Paragraph (2) of the bill would clarify section 602(a)(4) of the Self-Government Act, which prohibits the Council from enacting any act "with respect to any provision of title 11 of the District of Columbia Code (relating to the organization and jurisdiction of the District of Columbia courts)". Questions have arisen with respect to the scope of the Council's authority to amend the District of Columbia Administrative Procedure Act, D.C. Code, section 1-1501 *et seq.*, to determine appellate rights with respect to decisions and orders of local administrative agencies.

Section 431(a) of the Self-Government Act, the Charter provision which establishes the basic jurisdiction of the District of Columbia Courts, grants the courts unqualified jurisdiction over local criminal and civil cases, but expressly provides that the jurisdiction of the Courts to review orders and decisions of the Mayor, the Council, or any District agency shall be "to the extent provided by law". Thus, the Council has enacted legislation with respect to specific agencies that alters the scheme set forth in the Administrative Procedure Act, which provides for review of 'contested cases" in the Court of Appeals, leaving noncontested cases in the Superior Court.

However, the Council's enactment of such legislation has given rise to controversy. See *Capitol Hill Restoration Society* v. *Moore*, D.C. App., 410 A. 2d 184 (1979); *Columbia Realty Venture* v. *D.C. Housing Rent Commission*, D.C. App., 350 A. 2d 120, 124 (1975). In order to dispell future uncertainty, the bill would add a proviso to section 602(a)(4) that would make it clear that the prohibition against acts with respect to title 11 of the Code would not preclude the Council from amending the Administrative Procedure Act—which is contained in title 1 of the Code, not title 11—under authority provided in section 431(a) of the Self-Government Act.

Such amendment would, in our view, be consistent with the intent of the 93d Congress to withhold from the Council the power to reorganize the District of Columbia Courts in view of the fact that it had recently enacted the D.C. Court reorganization Act of 1970.

III. TAXING AUTHORITY

Paragraph (3) of the bill would clarify section 602(a)(5) of the Act, which prohibits the Council from imposing "any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms 'individual' and 'resident' to be understood for the purposes of this paragraph as they are defined in section 4 of the title I of the District of Columbia Income and Franchise Tax Act of 1947)."

It is necessary to clarify this provision in view of the recent decision of the District of Columbia Court of Appeals in *Bishop* v. *District of Columbia*, D.C. App., 410 A.2d 955 (1979), *reinstated and modified en banc*, 411 A.2d 997, *cert. denied*, 48 U.S.L.W., 3764 (1980). Without authority to tax business activities in the District of Columbia, the District Government will be severely restricted in its ability to generate sufficient revenue and will be faced with creating and perpetuating a grossly inequitable taxing scheme.

The clarification in the bill would rectify these problems without removing the restriction on the Council with respect to imposing an income tax on the wages and salaries of non-residents who work in the District of Columbia, as originally intended by Congress.

Over thirty years ago Congress enacted the District of Columbia Income and Franchise Tax Act of 1947, 61 Stat. 328, ch. 258, D.C. Code, section 47-1551 et seq., which imposed a tax on various unincorporated businesses for the privilege of engaging in a business in the District. See D.C. Code, section 47-1574b. Since its enactment, this tax has been applied to a variety of unincorporated businesses without regard to the residency of the owner of the business.

Exempted from the Act, however, were professionals who, by law, custom, or ethics, were not permitted to incorporate, and certain personal service businesses. Before 1979, the highest appellate court for the District of Columbia held this to be a franchise tax, not an income tax. *District of Columbia* v. *Pickford*, 86 U.S. App. D.C. 17, 179 F. 2d 271 (1979).

In 1971, Congress enacted the District of Columbia Professional Corporation Act, Pub. L. 92-180, 85 Stat. 576, D.C. Code, section 29-1101 et seq., which, for the first time, permitted these professional businesses to incorporate; however, it continued their exemption from the tax on unincorporated businesses. Id. section 21, D.C. Code, section 47-1574 (1973).

In 1975, the council enacted the District of Columbia Revenue Act of 1975, D.C. Law No. 1-30, which repealed the professional exemption from the unincorporated business tax. *Id.* section 605. The Act, however, permitted the owners of such professional businesses to subtract 70 percent of their gross receipts as a personal salary (personal income) deduction, as well as $2,500 exemption, prior to calculating the tax.

The Council read section 602(a)(5) of the Self-Government Act as a limitation on its power to impose a tax on the personal income of nonresident individuals, but not as precluding the extension of provisions of the District of Columbia Income and Franchise Tax Act of 1947 imposing a franchise tax on nonresident business entities to a group of professional and personal services businesses, which had been exempted from the tax solely as a matter of legislative grace. The Revenue Act of 1975 was transmited to Congress for review under section 602(c) of the Self-Government Act and, after hearings by committees in both Houses, was allowed to take effect.

The act was challenged in court by nonresident professionals. The trial court sustained the act as being within the Council's authority. However, the D.C. Court of Appeals reversed on the ground that the act violated section 602(a)(5) of the Self-Government Act. The decision of the Court of Appeals reinstated the tax exemption for professional businesses and will require the District to refund, with interest, those taxes collected under the Revenue Act of 1975 since its enactment five years ago.

It will cost the District approximately $41.4 million annually. Moreover, the decision creates an inequitable situation in the administration of the District's tax laws by exempting nonresident professional businesses from a tax that has been imposed on nonresident owners of other unincorporated businesses for over thirty years, despite the fact that these professional businesses are now permitted to incorporate.

In order to remedy this situation, the bill would add a proviso to section 602(a)(5) of the Self-Government Act that would make it clear that the prohibition against imposing a tax on the personal income of nonresident individuals would not preclude the District from extending the Congressionally enacted franchise tax to unincorporated business entities for the privilege of doing business in the District, from enacting a gross receipts tax on businesses operating in the District, or from imposing any other type of tax on business, as distinct from personal, income.

The legislative history should clarify further that section 602(a)(5) of the Act simply prohibits a tax on the personal salaries and wages of nonresidents, such as the thousands of nonresidents who work for the Federal Government and Congress but live outside the District. Such clarification would be consistent with congressional concerns in 1939, when the District of Columbia Income Tax law was enacted, and in 1973, when the Self-Government Act was enacted.

This clarification is important in order to eliminate as much doubt as possible concerning the legislative authority of the Council. As the Supreme Court pointed out in *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100 (1953), the legislative power delegated the District by Congress should be deemed comparable to that of a state legislature. Any problems with regard to individual taxing measures can be adequately addressed by Congress either during the 30-day layover period, when Congress may disapprove a measure by concurrent resolution, or by Congressional legislation.

IV. HOME RULE PRINCIPLE

Paragraph (4) of the bill would add a new subsection to section 602 of the Self-Government Act providing that the limitations on the legislative powers of the Council enumerated in section 602(a) should be strictly construed in accordance with the basic purposes of the act stated in section 102(a).

This addition would be an important reaffirmation by Congress that it intended to relieve itself of local burdens and that, absent violation of a specific, narrowly-defined restriction, it is to be presumed that the Council acted within its authority. The Congressional Committees have acted in accordance with this view since enactment of the Self-Government Act.

Recent court decisions, however, have seriously blurred the broad delegation of legislative authority over all rightful subjects of legislation. Such clarification and reaffirmation should assist in resolving future questions relating to the Council's authority since paragraph (4) is intended to be read as favoring a finding that the Council has authority comparable to a state legislature (see *District of Columbia* v. *John R. Thompson Co.*, supra) except as specifically and precisely limited.

We, therefore, urge the prompt and favorable consideration by Congress of the draft bill.

Sincerely,

MARION S. BARRY, Jr.,
Mayor.●

By Mr. DOMENICI:

S. 3132. A bill to consolidate the intermingled public lands between Farmington and Gallup, N. Mex.; to the Committee on Energy and Natural Resources.

CONSOLIDATION OF CERTAIN FEDERAL LANDS

● Mr. DOMENICI. Mr. President, for several years, the Bureau of Land Management has been negotiating with the Navaho Nation to exchange public lands containing unauthorized Indian occupancies for certain Indian fee lands intermingled with public lands and having high resource values. The public lands occupied by the Indians are scattered between Farmington and Grants, N. Mex. The Indian fee lands are located in the Malpais south of Grants. Tentative negotiations have identified approximately 80,000 acres of Indian fee to be acquired from the Indians and 57,000 acres of public land to be disposed of to the Indians. The Navahos have taken the position that they will not exchange unless they can take the public land in trust status rather than in fee. BLM has filed application to withdraw the public lands to protect them from further conflicts during the process of completing the exchange.

Mr. President, this legislation would enable the proposed exchange to take place and will go a long way in reducing the checkerboard landownership in the Four Corners area of New Mexico.●

By Mr. ARMSTRONG:

S. 3133. A bill to reinstate and validate certain U.S. oil and gas leases numbered C-9496, C-9711, C-11600, C-11621, C-11622, C-11630, C-11631, C-11597, C-11599, C-13774, C-14197, C-17049, C-18262, C-26048, C-13532, C-11581, C-11585, C-11590, C-11591, and C-11595; to the Committee on Energy and Natural Resources.

REINSTATEMENT OF CERTAIN OIL AND GAS LEASES

● Mr. ARMSTRONG. Mr. President, I am today introducing a bill to reinstate 21 oil and gas leases issued to the Public Service Co. of Colorado but terminated by the Department of the Interior because the checks for payment of the annual lease rental were received several days late.

The law on this subject requires that the holder of a lease must exercise "reasonable diligence" in paying the annual rental in a timely manner, and makes it clear that the penalty for failure to submit the rental payment on time could be termination of the lease. Because the statutory and case law is quite explicit, I would not become involved in this case unless the circumstances were unusual and warranted special treatment. I believe the circumstances in this case meet this test.

The Public Service Co. (PSCo), through its subsidiary Fuel Resources Development Co. (Fuelco), followed its normal operating procedures in this case and prepared a check and cover letter on October 10, 1978, for a rental payment that was due on November 1. The check and letter were sent by certified mail.

When it became apparent that the check had not arrived, PSCo prepared a second check, which arrived at the BLM office on November 7, 1978. The Interior Department served a notice of termination shortly thereafter. The Public Service Co. appealed, first to the Department and then to the Interior Board of Land Appeals (IBLA).

On a 2-to-1 vote, the IBLA upheld the DOI decision, refusing to consider the company's argument that the check has been mailed on time but had apparently been lost in the company's internal mail system. The Board ruled that "mailing a rental payment after expiration of the lease anniversary date does not constitute reasonable diligence," regardless of any special circumstances which may be involved.

The dissenting judge cited an earlier case in which Congress had reinstated a Utah lease on the ground that the fact that a rental payment is not mailed until the due date does not necessarily mean an absence of reasonable diligence, particularly where the delay is completely inadvertent. The dissent argued that "the inadvertent loss of any advance rental payment should not—result in lease termination—simply because the loss occurred in a company mail system rather than the U.S. Post Office."

I agree with the dissent. The standard is one of reasonable diligence, not absolute perfection which permits no errors or accidents at any time. A company meets that standard if it sets up a payment system which can reasonably be expected to operate efficiently and which, in fact, has a proven track record of getting lease rental payments to the BLM office on time.

PSCo and Fuelco have met that standard, in my opinion. I do not believe they should be penalized because their system broke down and a check was lost once in many years of smooth operation.

It appears to me that the DOI/IBLA standard for "reasonable diligence" is arbitrary, unnecessarily strict, and not in accord with either Congress intent under the Mineral Leasing Act or the general case law on the subject of diligence. Since I believe that the companies were reasonably diligent and that Interior has interpreted and applied the statutory standard incorrectly, I urge reinstatement of these leases.

Reinstatement seems justified for additional reasons, as well. The Public Service Co. acquired these leases in 1973 and made the required rental payments on time each year, with the single exception of 1978, when payment was inadvertently made a few days late. Moreover, Public Service has already spent $12 million on these leases and intends to proceed with further exploration and hopefully go to production; in fact, it would like to drill two more holes yet this year, if the leases are reinstated in time.

Thus, failure to reinstate these leases would be most unfair to a company which has invested large sums of money in what is clearly a valuable leasehold. It would also be an unwarranted windfall to any lessee who should happen to acquire these valuable leases once they are again made available through the simultaneous drawing system.

There is also congressional precedent for my measure. In 1976, in the case I mentioned earlier, the 94th Congress reinstated a Utah oil and gas lease which had been terminated because the rental check was received late, due to the unexpected illness of the company's office clerk. The House report on H.R. 2782 noted that Congress intent under the Mineral Leasing Act was "to allow reinstatement of a lease in a case where late payment is due to inadvertence on the part of lessee" and the lessee "acted in good faith to meet the diligence requirements under the statute."

Finally, reinstatement would be in the public interest, since the public will clearly benefit if continued exploration results in a commercial discovery.

A companion measure to my bill (H.R. 6258) has already been passed by the House of Representatives, on a voice vote, and referred to the Senate. I urge the Senate to expedite passage of this small, but important, measure, so that the Public Service Co. of Colorado can get on with the vital business of reducing our dependence on foreign oil and providing a secure domestic supply of reasonably priced energy for Colorado's consumers.●

By Mr. BRADLEY:

S. 3134. A bill to provide an electric car tax credit; to the Committee on Finance.

ELECTRIC CAR TAX CREDIT

Mr. BRADLEY. Mr. President, I am today introducing legislation to promote the manufacture and sale of electric cars. The electric car holds exciting promise of providing urban Americans with affordable, clean and efficient transportation. Mass production of these cars would enable us to make real progress in reducing air pollution, cutting oil imports and creating new jobs for Americans.

By 1985, U.S. automobile manufacturers will have the technical capability to produce an electric car that can cruise along at 50 to 60 miles per hour for at least 150 miles. And the fuel for these cars will cost much less than the gasoline for today's standard combustion engine. Electric vehicles will also be cheaper and easier to maintain than conventional automobiles. Gasoline engines require constant tune-ups, antifreeze, mufflers and a host of other parts to operate smoothly. Servicing these parts is expensive. But an electric vehicle needs only an electric motor and a battery pack so there is virtually no maintenance.

Both the United States and the foreign automobile industries are starting to take the electric car's potential seriously. General Motors has announced a 1984 target date for producing its first generation electric car. Chrysler and General Electric have teamed up to produce an electric car that will get over 100 miles between charges. Volkswagen and Toyota are also testing several electric versions that could be on the market in a couple of years. Together, these firms have the mass marketing potential to deliver hundreds of thousands of electric vehicles to the motoring public within a few years. In the meantime, motorists will increasingly be able to do take advantage of "conversion cars"—gasoline vehicles converted to electrics. Although there are presently only a handful of companies converting combustion engines to electricity, the number is bound to grow.

A tax credit would promote these trends by stimulating consumer interest in the electric car and by making the cost of these vehicles more fully competitive with standard automobiles. I am proposing a bill that would provide a tax credit of 15 percent of the purchase price, or conversion cost—up to $1,500—of a car designed to carry at least four passengers, and 10 percent—up to $1,000—for a two-seater. The reason for the differential is to encourage manufacturers to build an acceptable electric alternative to the typical American family, gas-powered car—the four-passenger standard model. Detroit carmakers are gearing up to produce by 1984 only little two-seater commuter cars for city and local driving, which has limited appeal, based on car buying habits and trends. Only 2 percent of the motoring public buys two-seater vehicles, almost all of which are sport cars. Ninety-eight percent of the cars purchased in America are four-passenger models, and sedans and station wagons that can seat from six to nine persons. If the electric vehicle is to provide a serious alternative to standard combustion engines, it must meet the needs of the majority of American drivers.

By Mr. MOYNIHAN:

S. 3135. A bill to provide for a temporary program of Federal supplemental unemployment compensation; to the Committee on Finance.

FEDERAL SUPPLEMENTAL UNEMPLOYMENT COMPENSATION

● Mr. MOYNIHAN. Mr. President, I am introducing today a bill to provide a temporary program of Federal supplemental unemployment compensation.

On August 28, 1980 the President announced an "economic program for the eighties." It is a broad, multifaceted program for the economic revitalization of the country that recognizes our serious economic problems and proposes a variety of ways to create jobs.

The enactment of a supplemental unemployment compensation program is part of the President's program, but it is much more urgent than other provisions of the President's program. What I propose is not a new idea. The Congress has in the past authorized additional unemployment benefits during recessions. Legislation authorizing a third tier of benefits was enacted in the 1970's, at first providing an additional 13 weeks of benefits, and later 26 weeks, to workers who had exhausted both regular and extended benefits. Authorization for these extra benefits expired on January 31, 1978.

Although economists differ on the length and the depth of the current recession, there is no disagreement that it began in January and that unemployment rates at least as high as the current level will continue for several more months. There have been more than 8 million Americans unemployed since May. Two hundred and fifty eight thousand workers have exhausted their extended benefits for the latest 6-month period for which data is available. Until the economy shows significant improvement, jobs will remain scarce. Individuals and communities lack the resources to support the unemployed and their dependents.

This program is targeted to these people. The principal feature of this bill is the extension of unemployment compensation for up to an additional 13 weeks after a person's current benefits are exhausted. A National and State trigger system would activate the supplemental benefits program only during periods of high unemployment. Benefits from this program would be financed from general revenues. This is a temporary emergency program. It would be in effect only for 6 months, from October 1, 1980, to March 31, 1981.

Mr. President, I cannot overstate the importance and urgency of this proposed program. We are in one of the deepest recessions ever. Although recent indicators suggest some measure of recovery, our economic problems are complex and deep rooted; they will not be solved overnight. There are millions of working people who have lost their jobs during this recession. They are the victims of our troubled economy. Many of them have remained unemployed for long periods because there is a shortage of suitable jobs. This bill is a temporary measure to provide these workers with an additional measure of protection during periods of prolonged joblessness until economic conditions permit their reentry into the labor force. I hope the Senate will agree, and will enact this bill into law at the earliest possible time.●

By Mr. ROTH:

S.J. Res. 204. Joint resolution requiring the President to call a Convocation on American Federalism; to the Committee on Governmental Affairs.

CONFERENCE ON FEDERALISM

● Mr. ROTH. Mr. President, I am today introducing a joint resolution and submitting a concurrent resolution providing for and encouraging the creation of a National Conference on Federalism. I think we need a thorough reassessment of our federal system of government and before I explain my proposed measures, I would like to describe the reasons a conference on federalism is, in my opinion, necessary.

The story is told of a newly appointed Federal official who came to Washington full of enthusiasm and determination to make Government work and improve the effectiveness of his agency. After a few weeks on the job, a major problem surfaced in one of his agency's programs. Intent on quickly resolving the issue, the official asked his assistant to call into his office the person responsible for the program.

A few minutes later, the new chief was astounded to see 17 people troop into his office, and he asked his assistant who they all were.

"They," came the reply, "are the 'person' responsible for the program."

This story is symbolic of the condition of the modern American federal system. For, just as responsibility for this program was divided among numerous people, responsibility for governance is fragmented among the many governments in our system. Beneath the Federal Government, there are countless other governments including States, counties, cities, towns, townships, boroughs, special districts, COG's and others as well. In fact, there are some 80,000 governments of various types actively participating in the Federal "experiment" including 41,000 cities and counties, 1,600 school districts, 23,000 special districts, 50 States and 1,800 regional governments and organizations. At one time in our history, the roles and responsibilities of these governments were neatly defined but today we face a confusing overlap of governmental roles. This system is inefficient, unaccountable and a poor means of delivering public services.

As a result, like the new agency head, most Americans find modern federalism a confusing and impenetrable maze. The number of participants in the system is large, which creates part of the confusion, but, more importantly, no one is fully responsible for anything; and everyone is responsible for everything. None of the partners in the existing federal system is forced to take responsibility for the mistakes made in governing, for there is always someone right next door to whom the buck can be passed. And today endless buck passing is a continuous occurrence in our federal system.

Federalism was not supposed to work like this. For nearly 200 years, Americans have worked to reconcile the twin goals of variety—or diversity—and unity through a federal system of government. Its hallmark is, theoretically, a sharing of power among a national government, the States and local governments. The federal system of government, as it was originally envisioned, was intended to make Government more accountable to its citizens and less intrusive through an effective sharing of powers and functions among the levels of government.

This shared power or "federal" characteristic of our system has been discussed and examined since the founding of our Republic. The debate began with the Federalist Papers, the important book on American Government. Yet, today, as at no other time in our history, the question is raised, among elected officials, scholars, and many citizens, as to whether such a system of shared and divided powers is equal to the complex and critical domestic problems facing our Nation.

The modern federal system has remained a vague mystery to most Americans. Few Americans realize the effects such a unique system has on their lives, and textbook descriptions, even as late at the 1960's, no longer accurately portray American Government. While most Americans realize that government plays a role in their lives, few understand exactly how they can best participate in the confusing modern governmental structure, and confusion and perplexity have resulted in cynicism on the part of many citizens.

As an example of the way in which the modern federal form of government affects the lives of us all, take a relatively simple government activity like fire protection. Most Americans would assume that this is a strictly local function consisting of local fire companies, fire protection districts, and local volunteer firemen.

But they would be wrong. Every Federal executive department, except State and Defense, as well as at least 11 other Federal agencies, are involved in fire-related activities that affect us all. Moreover, in addition to general revenue sharing, sometimes used to support fire service delivery, 52 Federal grant-in-aid programs administered by 24 separate Federal agencies are distributed to States and localities in support of firefighting activities. Eight Federal agencies make loans of money or equipment that can be used to improve fire protection and five collect data related to fire incidence, injuries, and losses. In addition, most States operate various civil defense programs and maintain emergency response agencies which have a hand in firefighting programs. And that is just one small, relatively insignificant function of government.

Perhaps because of the relative obscurity and complexity of our federal system, few Americans realize that the system is in serious disarray. Intergovernmental relationships have lost their vitality and the system has become less and less able to adapt effectively to changing circumstances. In many respects, our federal system no longer works as it was intended.

The signs of this breakdown in the intergovernmental system are numerous if not always visible. They include the massive, unrestrained growth of government at all levels, the increased size, complexity, and confusion evident in the existing federal grants-in-aid system, the continuing expansion of the Federal Government's authority and influence over the other participants in the system and the increasing lack of accountability to the taxpayers evidenced by government at all levels.

As a longstanding member of the Advisory Commission in Intergovernmental Relations, an independent Federal agency assigned the task of continually studying our federal system, I have watched many of these trends develop over the years. The Commission, after months of careful work, is now in the process of releasing a major study which describes, in striking detail, the difficulties facing American federalism as the Nation enters the decade of the eighties. Its conclusions should give pause to all of us concerned about the vitality and health of our system of government in the future.

Growth in the size and influence of government, but especially the Federal Government, is one major symptom of a weakened federal system. The Founding Fathers intentionally created a government of dispersed powers to prevent the accumulation of overbearing power in any one organization. For this reason, the 10th amendment to the Constitution provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively * * *." Somewhat differing interpretations have been given to the "reserved powers" provision over the years, but it has, until recently, acted as an effective protection for the States and a block to the expansion of excessive Federal power.

It no longer offers such protection. Through the grant-in-aid device, mandates, and Federal preemption of State laws, the Federal Government has grown at an unbelievable rate. The projected $600 billion plus fiscal year 1981 Federal budget, the startling explosion of Federal agencies (between 1961 and 1973 141 new agencies were created), the creation of over 100 regulatory programs and activities and the tripling of of the average annual size of the Federal Register since the mid-sixties are evidence of this expansion.

Even more revealing is the continued dominance of the Federal Government in the collection of revenues. In 1979, for the first time in many years, local revenues fell as a percentage of gross national product. The localities collected revenues amounting to 3.6 percent of the gross national product, while States had receipts of approximately 5.6 percent.

By contrast, the Federal Government raised revenues totaling nearly 19 percent of the GNP in 1979. Social security taxes, a component of the total Federal revenue picture, grew so large (approximately $120 billion for fiscal year 1979) that it has become a four dimension in our intergovernmental tax structure. In fact, social security tax receipts exceeded those of all local governments by $40 billion in 1979, a startling figure. As one wit has noted dryly, "A taxpayer can be described as a Federal employee who doesn't have to take a civil service examination."

The influence of the Federal Government is often indirect, and evidence of the real dimensions of its growth often are hidden, because Federal bureaucrats seldom directly administer programs. Instead, they hand out money to the States, localities, and nonprofit groups who must take the responsibility for administering these programs and insuring that the benefits reach those who qualify. This aspect of federalism is a relatively recent phenomenon and has come about primarily through the rapid expansion of Federal grant-in-aid programs and mandates. Indeed, "hot potato" federalism, in which the Federal Government appears to confront every pressing problem while passing the buck down to States and localities through grants, is a primary reason for the inadequate and ineffective implementation of Government programs. It is also a primary cause, as the ACIR report so well documents, of the disarray and chaos currently evident in our Federal system.

The confusion in the Federal grant-in-aid system is clearly revealed by the ACIR study. Effective grant management is a serious problem and is a result, at least in part, of the complexity of the Federal assistance network. In 1960, for example, there were 132 assistance programs to States and localities and just over $7 billion was spent on those programs, representing less than 2 percent of the GNP. Today, close to 500 assistance programs exist accounting for $88 billion of the Federal budget and 3.4 percent of the GNP. In 1970, only two grant programs cost the taxpayers over $1 billion; today, there are 15.

Numbers alone do not reveal the complexity of the grants process. Ninety percent of the programs are authorized

in the form of narrow, paperwork laden grants which severely restrict the ability of the States and localities to efficiently implement policies. The paperwork is nearly choking the system. For example, State applications and plans under the medicaid grant program include over 40 assurances and reports. One city official told my office that grant applications never leave his office unless they are more than 2 or 3 inches thick. Current grant law and regulation would fill, if compiled in a central place, over 800 law volumes, and, recent estimates indicate that the paperwork burden may approach 50 percent of some grant program funds.

To administer these Federal programs, States and localities have hired an army of new employees. While many may argue that Federal employment has grown only slightly over the year, the reality is that the Federal Government exports its problems and its chaos down to the States and localities. In my home State, in the city of Wilmington, 2,218 city employees were on the payroll in 1952 and the city had a population of just over 110,000 people. Although the population had dropped to 76,000 by 1975, city employment jumped to nearly 3,700. One reason was simply a demand for more city services. But, a second reason is the need to monitor and administer federally assisted programs.

All told, Federal employment has risen from 2.1 million in 1950 to 2.8 million in 1976 while State and local employment exploded during the same period from 4.3 million to 12 million. The vast increase in grant-in-aid programs, the explosion in grant conditions and rules—currently some 1,040 conditions are attached to Federal assistance programs—and the expanding Federal tendency to mandate, or directly order, State and local actions, are significant factors in stimulating public sector growth.

The Federal Government has also increased its functional role in our federal system at the expense of States and localities. The same Federal Government that once devoted almost all of its attention to providing national defense, running the post office, conducting foreign affairs, and raising taxes, now devotes over two-thirds of its revenues to financing shared functions in which other levels of government or individuals have roles as partners or beneficiaries. The Federal Government is so financially intertwined with States and localities and other entities that whatever it does affects the whole Nation. States and localities are becoming, in many cases, mere administrative arms of the Federal Government.

ACIR has found that the Federal Government's role in all major government functions has increased, at least since the beginning of the 1960's. Of 17 basic Government functions or areas ranging from health services to public safety, the Federal Government has a significant or majority role in all but 7. Even in areas like public safety—police protection—in which the States and localities were thought to be preeminent, the Federal Government has begun to take a significant role. ACIR found, using a carefully constructed measuring scheme designed to indicate the level of centralization in American Government on a scale from 5—least centralized—to 1—most centralized—that the average degree of centralization has moved toward the Federal Government, from a measure of 2.8 to 2.5 since 1964.

The influence, size, and authority of the Federal Government has mostly increased since the sixties and, as a result, functional roles of each of the levels of government are no longer clear.

In effect, the ACIR report describes a federal system which functions ineffectively and inefficiently at best. It is a system in need of repair. The traditional values inherent in a balanced federal system—maximum opportunity for citizen participation in government, promotion of political choice and cultural diversity, increased opportunities to experiment with new ideas and policies at the State and local level, enhanced individual liberties—are being eroded. The poor performance of government programs, due in large part to the chaotic condition of our federal system, produces cynicism on the part of citizens who expect the promises of government to be translated into performance. And, of course, the costs of government, exacerbated by the problems evident in American Federal Government, are phenomenal and affect taxes paid by citizens at all three levels of government.

How does the current confusion in the federal system really affect the average taxpayer? That question is perhaps one of the most important since it is the economic and fiscal effects of the intergovernmental process that most directly affect the everyday life of citizens.

There are no definitive answers to this question, but one recent study, conducted by the Urban Institute, reveals that modern federalism does exact a real price which is, at least in part, translated into higher taxes at all levels of government. After reviewing six Federal laws which must be implemented and enforced by local governments, the study revealed that the costs of these Federal programs to the seven jurisdictions sampled amounted to an average of $25 for every person living in those cities and counties. In other words, the federally mandated costs of compliance to the local governments might well force the taxpayers in these governments to pay $25 more in taxes than would be the case without these Federal requirements.

It should be pointed out that there are benefits to these programs, and States and localities do receive some money to offset Federal mandates. But, as the study makes clear, the $25 per capita figure reflects expenditures that the local governments might have made on their own but have not, in fact, wished to make. From the perspective of local elected officials, virtually all the costs associated with these programs exceeded the benefits—else the programs would have been undertaken without a mandate from Washington. What the study clearly reveals, in sum, is that the confusion in our federal system is costly to the local taxpayer. Unlike the costs of Federal regulation of the private sector, where consumers may avoid some of the costs of regulation by altering buying habits, there is no way to avoid increased taxes.

What can be done to stimulate a more balanced, effective federal system? Present circumstances, in my view suggest the need for a thorough reassessment of the status of American federalism. It seems unlikely that any of the intergovernmental shortcomings cited here will be resolved easily or through continued haphazard and incremental change. Such a reassessment, conducted in the form of a national conference on federalism composed of elected officials at all levels, would carefully reexamine the roles of Federal, State, and local governments. It would seriously look at ways to reassign responsibilities clearly and openly so that governments at all levels are, once again, made fully accountable to their citizens.

The joint and concurrent resolutions which I am introducing today encourage the formation of such a conference, or convocation, on federalism. I am offering two different legislative proposals because I feel it is important to put the Congress on the record as soon as possible on this matter. If hearings cannot be held this year on my joint resolution, I hope the Senate will approve the concurrent resolution which would express the Senate's support for the concept of a federalism conference without the force of law.

Mr. President, I previously introduced a bill with Senator EAGLETON, to provide for the creation of a Citizen's Commission to study government at all levels. I do not believe my proposal for a conference on federalism would conflict with the Citizen's Commission. In fact, I believe that the federalism conference would improve the overall examination of government envisioned by the Eagleton-Roth bill. I expect, at any rate, that the issue of a conference on federalism can be examined in conjunction with the Eagleton-Roth proposal next year in the Govermental Affairs Committee. I hope my colleagues will give serious consideration to the idea of a conference on federalism as outlined in the two bills I offer today.

Mr. President, I ask unanimous consent that the text of the joint resolution and a description of the pronosal be printed in the RECORD at this time.

There being no objection, the joint resolution and description were ordered to be printed in the RECORD as follows:

S.J. RES. 204

Whereas the American federal system of government has been, since its founding nearly two hundred years ago, a unique and adaptable governmental structure which has preserved and protected the individual freedoms of the American people;

Whereas the American federal system has pragmatically adapted to the changes the United States has experienced during its two centuries of existence;

Whereas the adaptability of the American federal system has been severely strained as the fiscal and political constraints and balances of the system have begun to erode;

Whereas the American federal system is presently dysfunctional in that the relationships between levels of government have increasingly become more pervasive, unmanageable, ineffective, costly, confusing, and unaccountable to the public;

Whereas clearly recognizable symptoms of dysfunction in the federal system are that (A) State and local government budgets have become more dependent on Federal grant funds, and (B) all levels of government have become more constrained and less able to act due to the maze of regulations, rules, and laws which govern the complex interactions of the various participants in the federal system; and

Whereas needless complexity, diffused accountability, a lack of clear direction, and fragmentation of responsibilities in the dysfunctional federal system necessitate the calling of a convocation of elected officials from all levels of government to discuss the condition of the federal system and to develop joint strategies to remedy the weaknesses which have developed in the system: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the "American Federalism Rejuvenation and Renaissance Resolution of 1980".

CONVOCATION OF AMERICAN FEDERALISM

SEC. 2. (a) By January 1, 1981, the President shall call a Convocation on American Federalism (hereinafter referred to as the "Convocation"). The Convocation shall bring together elected officials of the Federal Government and State and local governments in order to stimulate a national assessment of the federal system of government and develop recommendations concerning such system in accordance with section 3. The President shall consult fully with the Congress in convening such Convocation.

(b) The Convocation shall elect a Chairman from among the delegates to the Convocation.

(c) The Convocation shall meet at such times and in such places as the Convocation finds appropriate. The Convocation shall complete its deliberations and adjourn by January 1, 1982, and, by May 1, 1982, shall publish a final report and such interim reports as it finds appropriate.

(d) Delegates to the Convocation may arrange and conduct conferences and other activities at the regional and State levels and, in order to prepare for the Convocation, may direct such conferences and activities toward the consideration of the matters described in section 3.

DUTIES OF THE CONVOCATION

SEC. 3. The Convocation shall—

(1) examine the history and development of the American federal system and identify the present strengths and weaknesses of the system;

(2) debate and define which governmental functions are inherently national in nature and which governmental functions are inherently State or local in nature, and examine how such functions are currently allocated to various levels of government, including an analysis of such allocation in regulatory and program activities;

(3) identify and discuss the fiscal and functional roles of each level of government and any changes in current functional or programmatic roles which may be necessary and appropriate;

(4) debate and define the power of Congress to regulate interstate commerce and the use of such power to preempt State and local regulatory authority and to impose mandates on State and local governments;

(5) debate and define the limits and constraints on the power of the Congress to attach conditions to the distribution of Federal financial assistance, including the use of such power to regulate or mandate actions of State or local governments; and

(6) discuss and develop strategies to simplify the federal grant system and to ensure that the system is effective and is utilized only where appropriate and where direct provision of services by the Federal Government would not be effective.

PLANNING AND ADMINISTRATION OF THE CONVOCATION

SEC. 4. (a) From the date of enactment of this Act through the day on which the Chairman of the Convocation is elected under section 2 (b), the Convocation shall be planned and administered under the direction of the Chairman of the Advisory Commission on Intergovernmental Relations. In planning and administering the Convocation, the Chairman of the Advisory Commission is authorized to—

(1) request the cooperation of such Federal departments and agencies as may be appropriate;

(2) provide all reasonable assistance, including financial assistance, to State and local governments in enabling them to organize and conduct conferences on American federalism prior to the Convocation;

(3) prepare and make available necessary background materials for use of delegates to the Convocation; and

(4) engage such personnel as may be necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) On and after the day after the date on which the Chairman of the Convocation is elected, the Chairman of the Convocation shall be responsible for the planning and administration of the Convocation and shall have the powers described in clauses (1), (2), (3), and (4) of subsection (a). In planning and administering the Convocation the Chairman of the Convocation is authorized—

(1) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code; and

(2) to enter into agreements with the Administrator of General Services for necessary financial, administrative, and other support services, for which payment shall be made by reimbursement from funds of the Convocation in such amounts as may be agreed upon by the Chairman of the Convocation and the Administrator of General Services.

AUTHORIZATION

SEC. 5. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this joint resolution.

DESCRIPTION OF "AMERICAN FEDERALISM REJUVENATION AND RENAISSANCE RESOLUTION OF 1980"

(By SENATOR WILLIAM V. ROTH, Jr.)

The "American Federalism Rejuvenation and Renaissance Resolution of 1980" provides for the creation of a Convocation on Federalism which would provide a forum for the discussion of the serious difficulties facing our federal system of government.

The Convocation would, in essence, be a gathering of elected officials at all three levels of government to examine the current condition of federalism in America. It would be officially created by the President of the United States who would issue a proclamation stating the purposes of the Convocation and inviting elected officials at all levels of government to attend. The President would be required to consult fully with Congress before issuing the proclamation. The Convocation would be required to convene on or before January 1, 1981.

The Convocation is intended to be broad based and, for this reason, the Resolution contains no definitions which would limit the attendance of any elected official from any level of government. The key to a successful Convocation, which carefully and completely reviews the condition of federalism, is the active participation of as many elected officials in government as possible. The contributions of governments of all types and at all levels will be crucial to the success of the Convocation.

The delegates to the Convocation are directed, in the Resolution, to examine and debate several specific issues which exemplify the weaknesses apparent in government today. These include the fragmentation and confusion concerning the roles and responsibilities of governments at all levels, the ineffective and wasteful federal assistance network and the powers and authorities which should belong to each level of government in a balanced federal system. The delegates to the Convocation must issue a final report concerning their deliberations and findings by May 1, 1982.

In an effort to isolate the Convocation from unnecessary controversy or political interference, the initial planning and preparation will be the responsibility of the Advisory Commission on Intergovernmental Relations, a non-partisan, independent executive branch agency in the federal government. The ACIR is very familiar with the issues surrounding our federal system since one of its major responsibilities is to continually study the intergovernmental relationships of our government. The Commission would be responsible for planning the Convocation until it convened and would provide continuing assistance to the delegates at the Convocation once its chairman had been chosen.●

ADDITIONAL COSPONSORS

S. 2718

At the request of Mr. STEVENSON, the Senator from Pennsylvania (Mr. SCHWEIKER) was added as a cosponsor of S. 2718, an original bill to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

S. 3006

At the request of Mr. WALLOP, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 3006, a bill to amend the Internal Revenue Code of 1954 to provide a nonrefundable tax credit for investment in qualified industrial energy efficiency and fuel conversion projects.

SENATE JOINT RESOLUTION 189

At the request of Mr. STEVENSON, the Senator from Maine (Mr. MITCHELL) was added as a cosponsor of Senate Joint Resolution 189, a joint resolution to establish a Commission on Presidential Nominations.

SENATE JOINT RESOLUTION 193

At the request of Mr. RIEGLE, the Senator from Alabama (Mr. HEFLIN) was added as a cosponsor of Senate Joint Resolution 193, a joint resolution authorizing the President to enter into negotiations with foreign governments to limit the importation of automobiles and trucks into the United States.

SENATE JOINT RESOLUTION 196

At the request of Mr. PROXMIRE, the Senator from Nevada (Mr. LAXALT), the Senator from Oregon (Mr. HATFIELD), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. RIEGLE), the Senator from Montana (Mr.

MELCHER), the Senator from California (Mr. CRANSTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Kentucky (Mr. FORD), the Senator from Michigan (Mr. LEVIN), the Senator from North Dakota (Mr. BURDICK), the Senator from Texas (Mr. BENTSEN), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Florida (Mr. CHILES), the Senator from New Mexico (Mr. SCHMITT), the Senator from Alaska (Mr. GRAVEL), the Senator from Alabama (Mr. HEFLIN), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Arizona (Mr. DECONCINI), the Senator from Tennessee (Mr. SASSER), the Senator from Nebraska (Mr. EXON), the Senator from New York (Mr. MOYNIHAN), and the Senator from Maine (Mr. MITCHELL), were added as cosponsors of Senate Joint Resolution 196, A joint resolution authorizing the President to proclaim March 16 of each year as "Freedom of Information Day".

SENATE JOINT RESOLUTION 201

At the request of Mr. CRANSTON, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of Senate Joint Resolution 201, a joint resolution to provide for the designation of a week as "National Lupus Week."

SENATE JOINT RESOLUTION 202

At the request of Mr. DOMENICI, the Senator from California (Mr. CRANSTON) was added as a cosponsor of Senate Joint Resolution 202, a joint resolution to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week."

SENATE CONCURRENT RESOLUTION 116

At the request of Mr. THURMOND, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of Senate Concurrent Resolution 116, a concurrent resolution expressing the sense of the Congress on the Baltic States question.

SENATE CONCURRENT RESOLUTION 117

At the request of Mr. MOYNIHAN, the Senator from New Jersey (Mr. BRADLEY) was added as a cosponsor of Senate Concurrent Resolution 117, a concurrent resolution expressing the sense of the Congress that the President should convey to the Soviet Government the deep concern of the Congress and the American people for the fate of Raoul Wallenberg and that the U.S. delegation to the Madrid Conference on Security and Cooperation in Europe should urge consideration of the case of Raoul Wallenberg at that meeting by the signatories to the Helsinki Final Act.

SENATE CONCURRENT RESOLUTION 125—SUBMISSION OF A CONCURRENT RESOLUTION CALLING FOR A CONVENTION ON FEDERALISM

Mr. ROTH submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 125

Whereas the American federal system of government has been, since its founding nearly two hundred years ago, a unique and adaptable governmental structure which has preserved and protected the individual freedoms of the American people;

Whereas the American federal system has pragmatically adapted to the changes the United States has experienced during its two centuries of existence;

Whereas the adaptability of the American federal system has been severely strained as the fiscal and political constraints and balances of the system have begun to erode;

Whereas the American federal system is presently dysfunctional in that the relationships between levels of government have increasingly become more pervasive, unmanageable, ineffective, costly, confusing, and unaccountable to the public;

Whereas clearly recognizable symptoms of dysfunction in the federal system are that (A) State and local government budgets have become more dependent on Federal grant funds, and (B) all levels of government have become more constrained and less able to act due to the maze of regulations, rules, and laws which govern the complex interactions of the various participants in the federal system; and

Whereas needless complexity, diffused accountability, a lack of clear direction, and fragmentation of responsibilities in the dysfunctional federal system necessitate the calling a convocation of elected officals from all levels of government to discuss the condition of the federal system and to develop joint strategies, to remedy the weaknesses which have developed in the system: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that by January 1, 1981, the President should call a Convencation on American Federalism (hereinafter referred to as the "Convocation") in accordance with the provisions of this concurrent resolution. The purpose of the Convocation is to bring together elected officials of the Federal Government and State and local governments in order to stimulate a national assessment of the federal system of government and develop recommendations concerning such system in accordance with section 2.

(b) The Convocation should establish procedures for—

(1) the election of a Chairman from among the delegates to the Convocation;

(2) the holding of meetings at such times (until January 1, 1982) and in such places as the Convocation finds appropriate; and

(3) for the publication of a final report by May 1, 1982 and such interim reports as the Convocation finds appropriate.

(c) Delegates to the Convocation and other interested individuals and organizations should be authorized to conduct conferences and other activities at the regional and State levels and, in order to prepare for the Convocation, to direct such conferences and activities toward the consideration of the matters described in section 2.

SEC. 2. The Convocation should—

(1) examine the history and development of the American federal system and identify the present strengths and weaknesses of the system;

(2) debate and define which governmental functions are inherently national in nature and which governmental functions are inherently State or local in nature, and examine how such functions are currently allocated to various levels of government, including an analysis of such allocation in regulatory and program activities;

(3) identify and discuss the fiscal and functional roles of each level of government and any changes in current functional or programmatic roles which may be necessary and appropriate;

(4) debate and define the power of Congress to regulate interstate commerce and the use of such power to preempt State and local regulatory authority and to impose mandates on State and local governments;

(5) debate and define the limits and constraints on the power of the Congress to attach conditions to the distribution of Federal financial assistance, including the use of such power to regulate or mandate actions of state or local governments; and

(6) discuss and develop strategies to simplify the federal grant system and to ensure that the system is effective and is utilized only where appropriate and where direct provision of services by the Federal Government would not be effective.

SEC. 3. (a) From the date of enactment of this Act through the day on which the Chairman of the Convocation is elected under section 1(b), the Convocation should be planned and administered under the direction of the Chairman of the Advisory Commission on Intergovernmental Relations. In planning and administering the Convocation, the Chairman of the Advisory Commission should—

(1) request the cooperation of such Federal departments and agencies as may be appropriate;

(2) provide all reasonable assistance, including financial assistance, to State and local governments in enabling them to organize and conduct conferences on American federalism prior to the Convocation; and

(3) prepare and make available necessary background materials for use of delegates to the Convocation.

(b) On and after the day after the date on which the Chairman of the Convocation is elected, the Chairman of the Convocation should be responsible for the planning and administration of the Convocation and should exercise the powers described in clauses (1), (2), and (3) of subsection (a).

(The remarks of Mr. ROTH concerning this concurrent resolution appear with his remarks on Senate Joint Resolution 204 in today's RECORD.)

SENATE RESOLUTION 524—ORIGINAL RESOLUTION REPORTED TO WAIVE THE BUDGET ACT

Mr. JACKSON, from the Committee on Energy and Natural Resources, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 524

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 2734. Such waiver is necessary because S. 2734 authorizes appropriations for fiscal year 1980 of $5,400,000 which was not included in the committee's submission to the Budget Committee.

The amount authorized by S. 2734 is not significant enough to adversely affect the congressional budget.

SENATE RESOLUTION 525—SUBMISSION OF A RESOLUTION RELATING TO THE SEATING IN THE UNITED NATIONS OF A PERMANENT REPRESENTATIVE OF CAMBODIA

Mr. HOLLINGS submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 525

Whereas the Democratic Kampuchean government of Pol Pot in Cambodia was one of the most oppressive and murderous regimes in history, having been responsible, directly or indirectly, for the death of an estimated 1,200,000 to 1,800,000 Cambodians during a four-year period;

Whereas at present the Vietnamese-installed regime headed by Heng Samrin occupies much of Cambodia and is dependent for its continuing support on the Socialist Republic of Vietnam;

Whereas the United Nations General Assembly voted in 1979 to seat a representative of the Pol Pot government;

Whereas the regime headed by Heng Samrin is expected to request the seating of one of its representatives in the current session of the United Nations General Assembly; and

Whereas the United States Government disapproves of both the Cambodian faction headed by Pol Pot and the faction headed by Heng Samrin: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should direct the Permanent Representative of the United States to the United Nations to abstain in any vote with respect to the continued seating of a representative of the Cambodian faction headed by Pol Pot as permanent representative of Cambodia to the United Nations.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

● Mr. HOLLINGS. Mr. President, I submit today a resolution expressing the sense of the Senate that the United States should not cast a vote in favor of either the Pol Pot or the Heng Samrin cabals from Cambodia when the issue of seating a representative from one of them is again raised at the United Nations.

The "Democratic" Kampuchean government of Pol Pot was one of the most despicable regimes in all of history, having been responsible for the deaths of an estimated 1.2 to 1.8 million Cambodians.

The United States should not in any way express support for so vile a regime. I understand very well that "human rights" diplomacy can be carried to overly-zealous excess on occasion, and that a holier-than-thou attitude toward diplomacy often creates more problems, and encourages more evil, than it solves.

But I cannot understand how the United States could retain one iota of credibility for fundamental human rights if it again votes in favor of seating the representative of so barbaric a conspiracy.

Nor, of course, should we be supporting the Vietnamese-backed regime of Heng Samrin. This group presently occupies much of Kampuchea, but is dependent upon the Government of Vietnam for its existence and support. This cabal is no more worthy of our support than is the other.

There comes a time when the leader of the free world must take a stand in defense of the most elemental virtues of humanity and civilization. Here the choice seems clear. On the one hand, we can go with the genocide of Pol Pot or the blatant aggression of Heng Samrin. On the other, we can reaffirm those principles of civilization without which the whole world would be plunged into the abyss of darkness. Mr. President, with that kind of choice, there should be no problem deciding. We are confronted now with the necessity to express our disapproval of both these groups.

United Nations action on this question may come very soon—perhaps as early as this week. Therefore, we must register the will of the Senate with dispatch. My resolution expresses the sense of the Senate that the President should direct the Permanent Representative of the United States to the United Nations to abstain in any vote on the seating of a representative of the Cambodian faction of Pol Pot. And I ask for prompt Senate consideration of this measure.●

AMENDMENTS SUBMITTED FOR PRINTING

MODIFICATION OF FEE STRUCTURE UNDER FEDERAL SECURITIES LAWS—S. 2990

AMENDMENT NO. 2369

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted an amendment intended to be proposed by him to the bill (S. 2990) to amend Federal securities laws to facilitate the mobilization of capital for new small- and medium-sized companies by encouraging venture capital activities and promoting public investment.

Mr. PROXMIRE. Mr. President, I am submitting an agreement to S. 2990, the Small Business Securities Acts Amendments of 1980. The contents of the amendment are identical to S. 3102 which I introduced on September 8, 1980, except that the effective date of the amendment would be delayed for 6 months to allow the SEC and the securities industry to plan for the orderly implementation of the requirements of the bill.

AMENDMENT OF IMMIGRATION AND NATIONALITY ACT—S. 1763

AMENDMENT NO. 2370

(Ordered to be printed and to lie on the table.)

Mr. COCHRAN proposed an amendment intended to be proposed by him to the bill (S. 1763) to amend the Immigration and Nationality Act to improve the efficiency of the Immigration and Naturalization Service, and to establish a different numerical limitation for immigrants born in foreign contiguous territories, and for other purposes.

Mr. COCHRAN. Mr. President, when the Immigration and Nationality Efficiency Act of 1980, S. 1763, is brought to the floor, a I plan to offer an amendment to delete section 5.

Section 5 would allow entry into the United States of approximately 60,000 additional immigrants. The immigrants comprise first, second preference applicants—spouses and minor children of legal resident aliens from Mexico, the Philippines, Hong Kong, and Belize—whose approved petitions to grant entry status were filed prior to October 8, 1979, and second, persons claiming to invest $40,000 in the United States who established entitlement to entry status prior to June 1, 1978.

The Select Commission on Immigration and Refugee Policy, established during the 95th Congress, has a mandate to study our present immigration laws and practices and to recommend a coherent, efficient and humane immigration policy. Today, our immigration policy is without direction. It is the purpose of the Select Commission to help us establish priorities—to decide whether our immigration laws should respond to our special relationships with other countries by way of granting them higher immigration allowances, or whether we should respond to the need to reunite families, or the needs of the economically and/or politically oppressed.

Next March the Select Commission will submit its recommendations to Congress. It is expected that a definition of policy on families of immigrants will be included in this report. My suggestion is that we wait for this recommendation before we make a policy change of this dimension.

In view of the unprecedented influx of refugees in the recent past, it would be unwise to compound our current immigration problems with some 60,000 additional immigrants. I hope my colleagues will join with me in my amendment to delete section 5 of this bill.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND SUNDRY INDEPENDENT AGENCIES APPROPRIATIONS, 1981—H.R. 7631

AMENDMENT NO. 2371

Mr. MATHIAS submitted an amendment intended to be proposed by him to the bill (H.R. 7631) after making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

AMENDMENT NO. 2372

Mr. HELMS submitted an amendment intended to be proposed by him to the bill H.R. 7631, supra.

NOTICE OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, I would like to announce that the Labor and Human Resources Committee, on home energy assistance, that was scheduled for September 24, in Washington, D.C., has been postponed. The committee will reschedule the hearing at a later date.

ADDITIONAL STATEMENTS

CHALLENGING ECONOMIC MYTHS

● Mr. HATCH. Mr. President, our economy is in a desperate situation. Inflation is eating up workers' and retirees' incomes, our unemployment figure grows every day, interest rates have soared and we are finding it more difficult to compete in foreign markets. Our standard of living has gone down at the same time our cost of living has gone up. It is no wonder Americans are fed up with Government.

I maintain, Mr. President, that we find

ourselves in this economic mess because policymakers still refuse to acknowledge that the economic prescription they have chosen for the Nation to follow is based on several economic myths. Our attempt at making these myths real has failed dismally as if we thought we really could receive a gold coin from the tooth fairy.

I heartily concur with the following article written by Dr. Joseph Peery for the Tracy-Collins Bank and Trust Co. in Salt Lake City. This article successfully explodes some of these popular, though unworkable, myths about economics and I urge my colleagues in the Senate to note it carefully. I ask that the article be printed in the RECORD.

The article follows:

MISLEADING ECONOMICS MYTHS

The purpose of this letter is to challenge some of the misleading and harmful economic myths that continue to circulate year after year and are generally uncritically accepted as valid by the news media, most of our politicians and by too many of our professional and business leaders.

These myths are dangerous because they have led to misguided legislation and harmful government tax spending and regulatory policy decisions.

THE "TAX CUT" MYTH

Your taxes are going up sharply. They are not going to be cut. The so-called tax cuts being sponsored by both Republicans and Democrats are merely partial relief from the huge tax increases already scheduled to go into effect next year.

Most of us know our "real" or inflation-corrected income is not going up, only our money income.

The federal income tax is "progressive." That means that as our inflated money income goes up the government keeps taking a larger and larger share of it. This inflation-caused creep into higher tax brackets alone will force us to pay an extra 18 to 20 million dollars in federal income taxes over the next twelve months.

Just to take us back to the tax levels of two years ago would require a federal income tax cut of at least 36 billion, and that's more than the maximum tax cut being discussed in Washington.

Other taxes will also take big jumps in 1981. The so-called windfall profits tax on oil companies is really more like a sales tax. As the price of domestically produced oil rises toward the world price, the government takes the lion's share of the increased revenues for itself. We consumers will pay this tax in the form of higher gasoline and other oil product prices.

This new oil tax should generate an extra 25 or 30 billion for the federal government by the end of next year.

Social Security taxes are now scheduled for a big increase next January. The percentage paid by workers and employees, and the maximum amount of the individual income taxed, are all scheduled for increases. Increased social security taxes next year will bring in another extra 15 billion to the federal government.

All in all, federal taxes are now scheduled to increase 60 to 70 billion in 1981. So any so-called tax cut will only be a partial offset to a huge tax increase. After the coming "tax cut," your federal taxes will still go up sharply. In fact, next year after the tax cut, the percentage of our total income taken in taxes will be the highest since World War II.

THE "CUT-GOVERNMENT SPENDING" MYTH

Last January the president presented to Congress an "austere" budget with suggested "cuts" in federal spending. Concerned about higher than expected inflation, the president sent a second budget message to Congress in March demanding an additional twenty billion dollar "cut" in federal spending for the fiscal year starting this October.

What has really happened? Instead of cutting federal spending, Congress has authorized increases in spending time after time. In fact, over the past twelve months, federal spending has increased at over a 16 percent annual rate. This should be compared to our inflated national income, which grew 8 percent. It's a bit shocking to discover that instead of cutting, government has increased its spending twice as fast as our national income has grown.

This will continue the coming fiscal year because slower economic growth reduces the expected tax take and increases welfare payments. In fact, Congress claims they can do nothing about this because seventy percent of the federal budget cannot be controlled.

THE "UNCONTROLLABLE SPENDING" MYTH

The Constitution obligates Congress to provide for "our common defense" and to pay interest on the federal debt, but little else. Defense and interest payments now account for one-third only of federal spending. The other two-thirds is spent on programs never contemplated by those who established our Constitution. It would be hard for them to comprehend that today's Congress would authorize 13 billion to run a department of energy; 20 billion for transportation; 9 billion for community development; 31 billion for health services; and 220 billion for "income security."

The framers of the Constitution would be shocked to discover that 21 million citizens would be perfectly willing to accept food stamps at a cost to the taxpayers of 9 billion, or that 30 percent of our entire population gets some income support from state, local and federal government.

That fact is that over the past 45 years, and particularly over the past 15, Congress has funded scores of spending programs backed by organized pressure groups. Most of these spending programs continually attract more people, and most are indexed to inflation so they automatically increase year after year. Such spending is now more than half the federal budget.

When Congress says that most federal spending is not subject to budget control they mean these programs that Congress itself enacted.

All of these programs are subject to congressional control. All of these programs can be changed, reduced or eliminated. All of these programs are tenaciously defended by large organized groups of recipient and a powerful entrenched bureaucracy.

When Congress says that this spending is not "controllable," what they really mean is that Congress is not willing to take the political risk entailed in bringing the growth of spending in these programs under control. Congress does not even appear willing to make such moderate reforms as tightening eligibility to enforce more effective auditing, to reduce waste and dishonesty or to modify or eliminate programs that have failed to meet desired objectives.

As the result, we continue to see explosive growth in spending on these programs that Congress itself created.

THE MYTH OF "ELIMINATING POVERTY"

The meaning of "poverty" has changed in our affluent society. To be poor once meant to have less than what one physically needs to survive.

Today poverty has come to mean inequality, not physical misery. The poor are poor because they have less than others. In America most of the poor have electricity, telephones, hot and cold drinkable water, inside plumbing and T.V. sets. American poor have a standard of living that would be judged to be unattainable luxury by half the people living on this planet.

This does not mean, however, that the poor in this country do not feel poor; they do, for they have incomes considerably below the average.

Once "being poor" becomes relative and not absolute, it is difficult to draw a line between poverty and reasonably adequate income. Recently some U.S. senators attacked the 10 cents a gallon gasoline price increase backed by the president as a "hardship on the poor." In some minds at least, you can drive a car and still be in poverty.

The only cure for relative poverty is equality of income. Equal pay for unequal performance, however, is viewed as unjust by most people, so our society faces an unanswerable dilemma.

In recent years we have tried to eliminate poverty by transferring income from the middle class to lower income people. Dozens of social programs have been implemented by Congress for this purpose. Such income transfers are both direct cash payments and indirect benefits such as subsidized housing, food stamps and medicaid. Income transfers to the poor are also untaxed by those who receive them.

As income transfers to the poor have increased, the economic sacrifice of being poor has diminished with the result that more people become unable or unwilling to seek or take employment at lower market rates. Employability is easily reduced, without fakery, by child bearing, sickness, selectivity with respect to jobs or a growing conviction that jobs are not available.

As transfer payments, or the "price" of being poor rises, the supply of poor people tends to increase. Generous welfare payments without a work requirement guarantee the continuation of official poverty. We now have less real poverty associated with increasing relief rolls.

THE "SOAK THE RICH" MYTH

A driving force behind the growth of government income transfer programs has been the widespread belief that somehow the rich got their wealth and high incomes by exploiting the poor. This belief is based on two misconceptions:

1. That the economic pie is fixed in size, so if some get more, others must get less.

2. That the combined income of the rich is so large that if part is taxed away and given to those with low income, poverty can be cured.

Both of these concepts are fallacious.

When this country was founded, real per capita personal income (income corrected for inflation) was one-twentieth of what it is today, and 95 percent of the population was poor in today's terms.

A hundred years later through self-reliance, creativity and hard work, combined with a minimum of government interference in the economic process, one-third of the American people had achieved incomes above the poverty level.

By 1925 productivity had increased sufficiently so that half of our population was no longer in poverty.

By 1960 three-quarters of all families had incomes above the official poverty level.

By 1973 this had risen to 89 percent, where it has remained for reasons discussed earlier.

During this long period of economic growth, some people became very rich. They also invested most of their income in advancing technology that made continued increases in the standard of living of the American people possible.

Today the share of the country's total income going to the rich is grossly exaggerated. Consider the following facts:

The share of total income going to those with incomes of $500,000 a year or more is just one-half of one percent. Hardly worth getting excited about. Half of this income is also taxed away.

The share of total income going to those who make $200,000 or more is just 1½ percent.

The share going to those who make $100,000 or more is 4 percent.

Those making between 60 and 100 thousand get 4 percent.

Now comes the important fact. 90 percent of all this nation's income goes to those making less than $60,000 a year.

The rich have not exploited the poor. During the long history of our economic development, the people as a whole have been the principle beneficiaries.

THE "RICH CAN PAY THE TAXES" MYTH

As was previously shown, 90 percent of our total national income goes to those households that make less than $60,000 a year. Total government spending now exceeds 40 percent of national income. It is therefore obvious that those making less than $60,000 must pay the bulk of all taxes.

The total income of everyone making more than $60,000 a year is only equal to 25 percent of all government spending.

The total income of all those over $100,000 is equal to only 10 percent of all government spending.

The following facts are worth remembering:

If $40,000 a year was the maximum income anyone could keep, and all family income above $40,000 was taxed away, all of that extra revenue would pay for only 14 percent of government spending.

This means only one thing: the middle class must and will pay almost all taxes. The total income of the rich is not large enough to make much difference.

This brings to mind another myth. Whenever any organized group feels abused, they demand financial help from the government, as though the government had unlimited resources. No one ever asks, "Where is the money coming from?" or "Who is going to pay?"

We can now see that the middle income taxpayers will pay. When government gives money to help lower income people with their utility bills, the middle class pays. When low income families get cheap rent in government subsidized housing, the middle class pays. When people spend food stamps, the middle class pays for them.

It would be refreshingly honest if every time a politician introduced a new spending bill, he would also say, "And of course we expect the middle class to pay for this."

It is important to remember that if your income is between 8,000 and 60,000 dollars a year, you are part of the group that pays the bulk of all taxes, and any increase in government spending will be paid for by you and others like you.

THE "LET'S TAX BUSINESS" MYTH

Frequently, when there is need for additional revenue, politicians will introduce bills to increase business taxes, as though by doing this consumers could avoid the tax. This is of course not true. Business does not pay taxes. Only people pay taxes. We are all consumers, so consumers pay all taxes.

It is also not true that taxes can be assessed so that owners of business can be forced to pay most taxes. Consider the following facts:

We have about three million family farms and another twelve million small businesses organized as proprietorships and partnerships. All of the income these businesses earn is counted as their personal income, not profit, and is taxed as such.

Last year, the total income of all these 15 million farms and proprietorships was 130 billion dollars, or an average of less than $9,000 a year each. Obviously, we can't shift much of the total tax burden to small business and family farms.

Corporations, however, are a different matter. We have more than a million corporations, and some are very large indeed.

This year, total economic corporate profit as reported in our national income accounts will be about 150 billion, and federal and state taxes will take about 90 billion of that. After paying taxes, corporations will have 60 billion left for stockholder dividends (which are again taxed up to 70 percent) and for growth.

Now for the clincher. This year state, local and federal government will spend about 850 billion dollars. After paying taxes, corporations will have 60 billion, so if all of their after-tax profit were taxed away, this extra 60 billion in taxes would pay for only 7 percent of government spending.

Of course, if corporate taxes were raised sixty billion, they would have to be passed on to consumers in the form of higher prices, or corporations would all go broke.

It is simply not possible to shift any meaningful part of our taxes from consumers to business.

ECONOMIC "MYTHS" SHOULD BE CHALLENGED

As long as politicians talk about tax cuts when they should talk about tax increases, or talk about cutting government spending when they know it is programmed to increase, or when they talk about eliminating poverty when they know it can't be done, or when they attempt to shift taxes to the rich or to business when they know that consumers pay all taxes and middle income families must and will pay most of them, these economic myths will remain part of our political life. You can expect government spending and taxes to continue to grow faster than your income.

It is important that all informed people challenge these myths whenever they can.●

SENIOR EXECUTIVE SERVICE DISTINGUISHED EXECUTIVE AWARDS

● Mr. RIBICOFF. Mr. President, nearly 2 years ago the Congress enacted the Civil Service Reform Act of 1978. That statute constituted the first substantive overhaul of our Federal employment system since the creation of the Civil Service Commission in 1883. Among the changes which have been implemented since the enactment of this important legislation is the Senior Executive Service.

The SES is the core of the executive branch. Its members are senior Government managers and executives—the majority of whom are career employees who have given long years of valuable service to the American public. To join the SES, the statute requires that these individuals relinquish their rights of tenure. Unlike the old system, rank must now be earned through individual accomplishment rather than acquired through position. Performance alone is the determinant of pay and other personnel actions. In judging performance, an individual is accountable for not only the programs within his responsibility, but also for the employees under his or her supervision.

These are important changes in Federal personnel management. However, there were other features of the SES brought into the Government which have been borrowed from the private sector. The Civil Service Reform Act permits agency heads to provide incentive bonuses to career members of the SES for their exceptional performance. These bonuses are limited in number, but provide an opportunity to recognize accomplishment and encourage sustained performance.

In addition to the bonuses, the President is authorized to grant ranks to members of the SES for their distinguished and meritorious service. These ranks carry awards of up to $20,000 to each senior executive recognized. Mr. President, it was the judgment of the Congress 2 years ago that this is a small price to pay for the continued service of individuals whose contributions far exceed the costs of these ranks.

On September 9, 1980, the first Presidential Distinguished Ranks were awarded and the Presidential Meritorious Ranks announced. Forty-nine members of the SES were awarded for their distinguished service to our country. The combined identifiable savings of these individuals was in excess of $130 million. Savings, however, is only one of many factors to be considered in determining what individuals are to be recognized for their sustained extraordinary accomplishment.

Mr. President, I ask that the remarks of President Carter and Director Campbell of the Office of Personnel Management at the Distinguished Executive Awards Ceremony be printed in the RECORD.

The remarks follow:

REMARKS BY ALAN K. CAMPBELL

Good Afternoon.

I am Alan Campbell, Director of the Office of Personnel Management, and on behalf of President Carter I welcome you to the White House. The President will be joining us shortly.

Two and one-half years ago, President Carter proposed the Civil Service Reform Act to bring the most comprehensive improvements to the Federal service in nearly a century. With this ceremony, I think all of us can truly say that civil service reform is a reality, and that the President's vision of a more efficient and effective Government is coming true—that his promise is being kept.

Being awarded today are the first Presidential Distinguished Ranks, and being announced are the Presidential Meritorious Ranks. Established by the Civil Service Reform Act these are the highest awards which may be earned by career civil servants.

The 49 recipients individually and collectively have expanded the frontiers of this country in research, management, economics, law, and human, intergovernmental, and international relations.

Also with us today are individuals from all sectors of society—Congressional leaders and professional, academic, civic, labor and business organization representatives—who, along with career civil servants, joined with President Carter to create the Civil Service Reform Act, and the Senior Executive Service which is the keystone of that legislation. To all of you, I again express the thanks of the Administration and Federal employees for your generous support and vote of confidence in Federal service.

And now, with the assistance of the Cabinet Secretaries and Agency Heads whose personal commitment to the Civil Service Reform Act has been so critical to the success of the legislation's implementation, I have the honor to present the 1980 Senior Executive Service Distinguished Presidential Rank Awards.

REMARKS OF THE PRESIDENT

The PRESIDENT: Thank you very much. Scotty Campbell and fellow government em-

ployees, it is a pleasure to be with you. Also I hope all of us have long years of service in the future.

I have just come back from a very fine visit to New Jersey to see a new steel plant that is exciting for an engineer and a President to observe. This is the most modern steel plant in the world. Each employee produces 1,340 tons of steel per year, including all executive management. This is the highest productivity per steel worker in the world. They use thirty percent as much energy as the former steel plants used. They make steel rod of the highest quality, and fifty percent of it, you might be interested in knowing, is sold at this time to the People's Republic of China, successfully competing in price half the world away with the Japanese steel plants that are much closer. The dynamism and competence of our own nation and its free enterprise system, in my judgment, is equaled by the dynamism and competence of the public servants like you, who represent the American people in our Federal Government.

I came to the presidency determined to make my own administration and the government in general more responsive to the American public and at the same time more efficient in the delivery of services to those who look to us for leadership and for service. Since taking office, I have seen repeatedly that the key to more effective government, which we all desire, has been our creation of a more productive, more dynamic, and more cost-conscious federal work force.

In 1978, with the help of many of you assembled here, I was able to sign into law a bill which completely overhauled the civil service system of the Federal Government for the first time in one hundred years. It was a landmark achievement. It was Scotty Campbell's concept, which the Congress courageously passed for my signature. It was one of the most significant achievements of my own administration.

The Civil Service Reform Act gives Federal managers, like many of you, some of the same management incentives that have proved so effectively to make our private economy and its free enterprise system competitive and the pride of the entire world. It emphasizes performance, not just longevity. It lets us select individual public servants and reward them, and thereby in a positive way encourage others to excel.

Today's ceremony is unprecedented, and it it also long overdue, in my judgment. Too often we single out Federal managers only when there has been a problem. We focus attention only on the shortcomings of the Federal bureaucracy and our public servants. This is no way to run a government, nor any enterprise.

Federal managers exert an enormous influence on us all. Your responsibilities are often staggering in their scope and complexity and difficulty. Some of you are the most important executives in America. Where we find excellence, we need to acknowledge and reward that excellence publicly.

I am pleased to be present today for this distinguished executive awards ceremony for the forty-nine men and women who have served our country so well. Let me say that your service to our country has been truly distinguished. You are the best of the government's senior executives; in my opinion the best of the best. I know that the awards have already been issued to you, but I would like to mention just a few who have come to my attention personally, and I think are representative of the entire group's achievements.

Harold Denton of the NRC has won wide praise for his performance following the Three Mile Island accident. I talked to Harold just a few hours after this accident occurred. When I went to the Three Mile Island plant the Sunday following the accident I went into the control room with Harold, and from then on I saw on television every night his calm, professional, reassuring voice letting the American people know that they need have no fear.

Chris Craft of NASA made space travel the safest transportation in the world. He has directed as you know and was principal organizer of the Mission Control Center in Houston of Mercury, Gemini and the Apollo space missions, one of the most notable technological achievements in history.

Claude Farina saved the United States Air Force 28 million dollars through better logistics management an achievement which would ordinarily not go recognized by the American people.

Charles Swinburn of the Department of Transportation saved taxpayers 100 million dollars by restructuring the Amtrak route system.

I could go on and on. I am sure that Scotty Campbell has already recognized individually what you all have accomplished. But on behalf of 240 million Americans I want to say from the bottom of my heart, as President, thank you for what you have meant to our country. These awards today are a solid investment for our country. The millions of dollars that you forty-nine people have saved the taxpayers could fund the senior executive bonuses for many decades in the future, even generations. In honoring you I hope to encourage others, all public servants, to higher levels of accomplishment. And I also want to make your excellence known to your employers, the people of America.

Thank you very much. God bless every one of you. ●

THE HEALTH MANPOWER REAUTHORIZATION ACT OF 1980 (S. 2375)

○ Mr. HATCH. Mr. President, the latest official census figures made publicly available as well as surveys taken by numerous private health planning organizations reveal a dramatic population shift in our country. As our national population has grown, States in the southern and western regions have outdistanced the rest of the Nation. These States need additional human services of different varieties, but most especially health manpower services because the prevailing geographic distribution of doctors, nurses, medical practitioners, and other health professionals has not kept pace with our new health manpower needs.

I recall the debate which ensued after Health Subcommittee hearings on this legislation last year. Several of my colleagues argued with the Carter administration's assertion that, according to the White House, there is no health manpower shortage in this country. This White House contention, though, was based entirely on national aggregate figures. It did not take into account what is in fact the fundamental cause of the current national health manpower shortage, the problem of maldistribution.

Maldistribution is public administration language for a critical and growing problem. For example, only 9 of the 29 counties in my State have enough physicians to meet the bare minimum, recommended ratio of 1 doctor to every 2,000 residents. Four counties in Utah, Rich, Daggett, Piute, and Wayne, have no doctors at all. Five counties have what is considered in HHS-Department parlance, a "critical" shortage with less than 1 physician for each 3,000 residents.

I talk about Utah because it is my own and obviously the State I know most about, but the problem I describe is endemic; national; and symptomatic of that which plagues more than a half of the States in our country. It is a problem created by the Federal Government, inadvertently and as usual for the purest of reasons. For slightly over a decade, the Federal Government has subsidized and in various other ways cajoled young people seeking medical careers into working in the larger, urban communities. This human windfall of medical talent and energy for cities like Boston, New York City, Chicago, and others has resulted in an oversupply of health personnel in some areas of the country, with too few men and women to fill the health related jobs needed to be filled elsewhere.

This is one of the major reasons why the legislation we are now prepared to consider, the Health Manpower Reauthorization Act of 1980, is so important. Federal health study loans and incentive grants would be more equitably distributed should this legislation be enacted than is the case under prevailing law.

I was pleased to take part in drafting additional changes to existing law which improve the administrative mechanism of Federal health manpower programs.

The first of these is intended to improve the operation of the service contingent loan program, my provision guaranteeing increased public disclosure before major policy changes are made. Henceforth, the Secretary of Health and Human Services would be required to perform a survey of health manpower needs based on the most recent data available and the Congress would be informed and time provided for comment before any action is taken.

There are also improvements in the grant procedures. Henceforth, "incentive grants" will actually be what their name implies, incentives to induce medical students to practice in underdeveloped, underserviced and rural areas of the country. The program has been set up without the previous and in my opinion fiscally reckless assumption that all schools will be expected to apply. They will no longer be "all or nothing" grants, but a program of partial health studies' grants which are more widely distributed among the Nation's medical, pharmacy, and nursing schools; and those of us who worked on this in the Health Subcommittee have every reason to believe that the revised formula will save us money after the program is in operation.

As one who has committed responsibilities and loyalty to the Budget Committee, along with Labor/Human Resources and my other legislative committee assignments, I am especially pleased with this aspect of our creation. With this bill, medical students will be able to borrow the money to go to school through a set of student assistance programs which emphasize loans to the many rather than simply grants to the select few.

Finally, the legislation assures needed institutional aid for colleges of pharmacy, veterinary medicine, and special schools of public health; institutional

incentive grants which amount to $70 million in 1982; $77 million in 1983; and $84 million in 1984.

Over a period of years, the Federal Government through selective subsidization created the problem our Nation faces today. It is the problem of severe health manpower shortages which are particularly acute in the smaller and the border States. This legislation will go a good distance in righting these wrongs. I am proud to have worked on it; proud to be among my Health Subcommittee colleagues in reporting it; and proud to solicit my colleagues support for its approval and swift enactment.●

NATIONAL CYSTIC FIBROSIS WEEK

● Mr. MORGAN. Mr. President, this week, September 21–27, is National Cystic Fibrosis Week. The fight against cystic fibrosis has long been an interest of mine and my wife's. In fact, my wife, Katie, has served for many years as a national trustee of the Cystic Fibrosis Foundation, and we have watched that organization grow in both size and sophistication in supporting more research and better care for those born with cystic fibrosis.

Cystic fibrosis (CF) is a fatal genetic disease that strikes 1 in every 1,800 children born in America. There has been progress in treating CF, and half the children born today with the disease will live past their teenage years, in contrast to a life expectancy of only 6 months in the 1950's. But it still kills too many people at too young an age. I was pleased to see the Congress and the President act to declare National Cystic Fibrosis Week, so that more of our citizens will learn what needs to be done to conquer this disease.

People born with CF are not visibly handicapped, and many of us are not aware that anyone we know has the disease or has had a child with it. In a recent issue of Sports Illustrated, senior sportswriter Frank Deford (whose daughter died of CF earlier this year) wrote a moving story about Jimmy the Greek. I think that Jimmy the Greek's story is an important one to read, not because he is one of North Carolina's most televised citizens, but because it shows what CF can do to the life of any one of us. You see, Jimmy the Greek has had three children born with CF, and he has already suffered the pain of watching two of them die. It is for the thousands of families who face this burden—some famous, most not—that I believe we must continue our efforts to find the answer to cystic fibrosis.

I ask that part of Mr. Deford's article in Sports Illustrated be printed in the RECORD.

The article follows:

JIMMY THE GREEK

If The Greek is getting carried away by himself and all the attention he receives, at least he is brought back to an even keel at home. The Snyder household has always been Joan's place, but now that Jimmy's office is at home—his office is the closest telephone—it is Stephanie who has emerged as the majordomo. Although only 21, she is mature well beyond her age and plays a significant role in supervising the corporate and ceremonial Jimmy The Greek. Among other things, Stephanie has outstanding ears: she is so much in charge that she overhears telephone conversations in other rooms and will interrupt from afar, screaming out corrections: "No, no, Mother, the trapezius muscle." "No, Daddy, not Robert Redford. You're in the movie with Burt Reynolds."

But there is still some kid in Stephanie, and she and her sidekick, Anthony, 16 constantly tease Daddy, prick his balloon.

Joan drives the Caddy into the garage. There are large blowups there of major articles done on The Greek. "Stephie, when are we finally gonna get these articles framed?" he asks.

"Daddy, I just haven't had time."

The Greek starts, "You'd think—"

Stephanie interrupts, "I know. 'How many children have a father—' "

Anthony chimes in, and they finish in singsong unison, " '—who made the front page of The Wall Street Journal?' "

The Greek gets out of the car, glancing back at them helplessly with a Rodney Dangerfield aspect. He smiles. Whatever happens, they have everything.

They do. But Jamie, the oldest boy, 23, has cystic fibrosis; Florence, the oldest girl, is dead of it; and so is Tina, the baby. How many men bury their mother as a child, and their babies as a father? What are the odds on that?

"After Tina, I was mad at God for three years," Jimmy says. Death has played with him; twice he canceled out on planes at the last minute, and then they crashed, all aboard killed. What are the odds on that?

The irony is that cystic fibrosis is a disease of simple, unyielding genetic numbers: one out of every 20 Caucasians carries the genes; when two carriers marry, there is then a 25 percent chance that a child of theirs will be born with the disease. Thus, one of every 1,600 white children born has cystic fibrosis. But the odds-maker didn't want to accept this. Frustrated, desolate at the deaths of two daughters, at the disease of his namesake, and all the attendant misery, The Greek would thrash about in despair, get mad at Joan and cry out about her "sick genes." It was a horror, the family man searching for a family.

Few diseases are more disruptive than cystic fibrosis. The patient requires constant attention, an hour or more a day of strenuous physical therapy. The children do not live; they are kept alive. The disease primarily attacks the respiratory system; also the digestive and, in males, the reproductive organs, all of life itself. Treatment can be incredibly expensive. Jamie's expenses for a year of treatment were $35,000, and his Catch-22 reward for making 23, covering the spread, was that he became uninsurable. So voracious and exhausting is the disease that it often destroys the families of patients. The incidences of divorce, desertion, wifebeating and alcoholism are all higher among cystic fibrosis families. The healthy children are torn with guilt that they escape the curse, and parents—like The Greek—become distraught that they "gave" the disease to their own children.

The '60s was when it all unraveled for the Snyder family. Florence was already dead, and Jamie had been diagnosed. Tina wasn't born yet. It was at this time that Bobby Kennedy the Attorney General, went after the syndicate, after Vegas. The Greek was a name, a symbol. The Greek was vulnerable, too. Pegging him was like catching a restaurant on one of 250 possible fire-department violations. They indicted The Greek for passing casual betting information over the phone, interstate—essentially the same kind of information he dispenses every Sunday on TV. The affair destroyed him. He finally pleaded *nolo contendere*, taking probation and a fine. But he was broke, in debt, out of *money*, a felon, and any chance he had for a pardon required that he quit gambling.

Almost every nickel of what he could hustle went to pay for Jamie's medication. The Greek had to borrow money so that his family could eat. It was two years or more before anybody got new clothes. Stephanie remembers one time, an all-day outing, when she returned in the evening in the same dress. Another girl said, "Hey, you got the same dress on." She didn't tell her friend that it was the only dress she owned. This is why The Greek buys her a mink coat now, even if she doesn't want it.

But the Snyders survived. "I'd never been poor," Joan says, "but I was never really worried because I knew Jim could put his mind to it and find ways to make money. I knew, with Jim, I'd have money again. He's a fighter."

"I hustled, I played a little cards, I figured out the newspaper column," The Greek says. And that, as it turned out, was the key. He had never written before in his life, but he started turning out a column for the Las Vegas *Sun*. It paid next to nothing, but it began to establish him as a figure, the Mister Odds he has become. No longer was he a gambler, now he was a service.

But then, just as he began to crawl out of debt and from out of the glare of being a felon, little Tina was born. It was the day after Christmas 1965, and her tiny body was so ravaged by the disease that she had to spend seven hours of her first day of life being operated on. But she survived and came home to spend two and a half years in the shadow of death. Worse, in a way, she grew just well enough for them all to know how it might have been. Laughing, struggling, Tina would follow her older brother around—"Antsy," she called Anthony— dragging her doll after him. Stephanie still keeps that in her room.

But Tina's lungs were too scarred, and when, mercifully, she was finally taken from her pain, The Greek wrote his whole column in the Sun about her. He made her an All-American "in the game of fighting to live," and he carried that metaphor through, concluding, "Her mother rushed her to the hospital and called all her coaches. For nine days she battled . . . but the cystic condition was too much . . .

"Now the Commissioner from up above was watching and decided to draft this gallant little player. With the experience she had, He thought, she would make a great coach for his 'Little Angels.' The draft went through Saturday afternoon, and with the help of Father Baldus, she was sent on her journey up to the 'Little Angel League' Monday noon. The game was over—who was the winner?

"Only those who had the opportunity to watch this Little All-American perform. True, she had her bad days on the field, but the happiness and joys that she gave on her good days far overcame the bad ones. These, we, her rooting section, will never forget—and for these days that will never be forgotten, we are very thankful and grateful to the Commissioner above."

It has been 12 years now since Jimmy lost his second baby. "I still haven't gotten over it," The Greek says. "If only He could have taken me instead."

Stephanie was old enough to understand, and she had gone through some of the same agonies that her father did when he was growing up. Jamie, of course, has the disease: 1,600-to-1. He is quiet, like his mother, with his father's analytical mind: a chess player, mathematician, astronomer. He has gone back to Las Vegas. Finally, there is the son left at home, Anthony, and between him and The Greek there is a special tension. The boy is tall and strong and handsome, an athlete, looking very much like the father did when he was his age, the young gambler already.

One day, in a limousine, The Greek suddenly said, "I'm sorry, I love him, but I've never been that close to Jamie. Forgive me, I'll do anything for him, anything, but I never could. You know, Joan was always taking care of him. Maybe that's why, vicariously, I live so much in Anthony's shoes."

He stared out the tinted window. The Greek is safe now himself. In late 1974 he received a presidential pardon. Now he is a national TV star, national columnist, national celebrity. "Hey, it's The Greek!" "Hey Jimmy, who do you make—?" "Greek, who's the favorite in—?" Jimmy The Greek, the former Jim Snyder, late of Steubenville, Vegas' own.

Most people who identify themselves as family men hold a pat hand in that regard. They have 2.3 children, 1.0 of whom plays the violin, and a lovable dog, and they have a nine-to-five job with major medical and a parking place. It's odds-on to make it as a family man this way. Stephanie says her father still acts like a kid because he never had a childhood himself. Possibly, but more likely, it seems, he acts like a kid because, for one reason or another, his children never had real childhoods. If only you could capture childhood, put velvet behind it and a bright light on it.

Out of the house it is easy for The Greek. Out of the house, as Joan trusted, even in the worst of times The Greek would know how to find an edge. Long ago he had first left home, left the grocery, when his father wouldn't take his advice about how much meat to order. But soon thereafter, Jimmy's father needed one of those newfangled Birds-Eve freezers. The son came up with the cash for it. It was gambling money. There was a tear in the old man's eye as he took the bills. Jimmy has never forgotten that. Ever after, you can be sure, The Greek has only wanted to be a father, crying for happiness.●

THE 175TH ANNIVERSARY OF THE LEWIS AND CLARK EXPEDITION

● Mr. HATFIELD. Mr. President, 1980 is a very special year for all Americans. In this year, we celebrate the 175th anniversary of the Lewis and Clark Expedition; one of the most daring and profitable ventures the United States has ever undertaken. Meriwether Lewis and William Clark set out with a small band of men (and eventually one woman—an Indian, Sacajawea) to cross the uncharted and unknown to secure claim to a very important possession, Oregon. Their mission included determining the existence (or nonexistence) of the mythical "Northwest Passage" from the east to west coast, and to prepare the Indians for American sovereignty.

They approached their duties with energy and devotion, returning with a wealth of knowledge (much of it outside the scope of their original mission) for the development of the United States.

I salute the accomplishments of these brave and devoted men, and hope that the spirit of their efforts will serve as a model for this, and future generations of Americans.

I submit for the RECORD the following items:

A section from "The Old West: the Trailblazers," Time-Life Books;

A chapter from "The Pathfinders," by Gerald Rawling; and

An article from "We Proceeded On," the official publication of the Lewis and Clark Trail Heritage Foundation, Inc., regarding a recent commemoration of the expedition.

The material follows:

50-YEAR-OLD WASHINGTON-OREGON BRIDGE CHANGES NAME TO HONOR 175TH ANNIVERSARY OF LEWIS AND CLARK EXPEDITION

On July 6, 1980, the 50-year-old *Longview Columbia River Bridge* which spans the river joining Longview, Washington, with Rainier, Oregon, became the *Lewis and Clark Bridge* at a special ceremony celebrating the 50th Anniversary of the structure and the 175th Anniversary of the Lewis and Clark Expedition; 250 Lewis and Clark enthusiasts, and state and local dignitaries attended the event. The Honorable Victor Atiyeh, Governor of Oregon and former Washington State Congresswoman Julia Butler Hansen, representing Washington's Governor Dixy Lee Ray, were in attendance and spoke briefly. Mitchell Doumit, Chairman of the *Washington Lewis and Clark Trail Committee*, and past president of the national *Lewis and Clark Trail Heritage Foundation*, provided the background for this event in his remarks about the famous Expedition's passage through this region in November 1805 and March 1806.

John M. McClelland, Jr., Washington state newspaperman, and a former member of the Washington *Lewis and Clark Trail Committee*, related the history of the bridge's conception, financing and construction. The structure was built in about 30 months at a cost of $5.8 million, and was opened on March 29, 1930. The State of Washington became sole-owner of the bridge when it took title from the original financers in 1947. The bridge remained a toll bridge until 1965.

The impressive structure, including approaches, is 1.6 miles in length. The center cantilever span, one of the largest in the world, measures 1200 feet and rises 195 feet above the Columbia River channel. Chief designer for the structure was Joseph B. Strauss of Chicago, who later designed the Golden Gate (San Francisco, California) Bridge. During construction Longview's *The Daily News* faithfully recorded the daily details—13,000 tons of steel, 2 million rivets, and the interesting fact that a Robert E. Peary, Jr., son of the man who first reached the North Pole, was one of the project engineers.

Foundation Secretary Hazel Bain, Longview, who also serves as Secretary of the *Washington Lewis and Clark Trail Committee*, spear-headed the request to local legislators to introduce and sponsor the name change legislation. The legislative committee hearing passed the proposal 17–0, and the State Senate voted 47–0 to adopt the change, followed by unanimous approval by the State House of Representatives.

The bridge naming ceremony was well planned by Hazel with the help of the Longview Chamber of Commerce and the Port Longview Commission. Visitors to Longview were pleasantly surprised to note that the Traffic Operations Division of the Washington State Department of Transportation had in place a number of signs designating the bridge by its new name. Hazel Bain acted as Mistress of Ceremonies, and as the event came to an end, called on national Foundation Vice President, Irving Anderson, Portland, Oregon, who represented Foundation President Bob Saindon, Helena, Montana, and the national Foundation, to make the official proclamation bestowing the name of the Lewis and Clark Bridge on the impressive structure.

THE PATHFINDERS: THE HISTORY OF AMERICA'S FIRST WESTERNERS

(By Gerald Rawling)

CHAPTER 1: LEWIS AND CLARK: THE JUMP-OFF

In June 29, 1803, Thomas Jefferson, third President of the United States, wrote a directive to his personal secretary that set in motion forces destined to carry American sovereignty across the Mississippi clear to the Pacific Coast. The secretary was a twenty-nine-year-old Captain in the United States First Infantry, detached for special duties. His name was Meriwether Lewis, and the Presidential memorandum launched the Lewis and Clark expedition.

The voyage of Lewis and Clark was the basic art, the fundamental source, to which every step in the story of the American Far West can be related back. These two men and the thirty or so members of their party were pathfinders in the exact sense. They were prompted by no other motive than the discovery of a route to the Pacific by following the great watercourses of the continent.

"The object of your mission," Jefferson wrote, "is to explore the Missouri River, and such principal stream of it, as, by its course and communication with the waters of the Pacific Ocean, may offer the most direct and practicable water communication across this continent for the purposes of commerce."

Jefferson, his mind conditioned by the centuries-old misconceptions of the shape, size and topography of the American continent, was still looking for that most durable of geographical myths, the Northwest Passage. The theory was simple. The discovery of the mouth of the Columbia River by an American ship's captain, Robert Gray, in 1792 had at last produced the long-sought-after River of the West—and the tidy symmetry of hypothetical geography did the rest. If the Columbia or one of its tributaries could be made to head with the Missouri, a continuous transcontinental waterway would be established from the Pacific to the junction of the Missouri and the Mississippi and thence to the Atlantic seaboard by a choice of routes over existing channels.

There were a number of good reasons for wishing this state of affairs to be so, not least among which was the prospect of streamlining the prosperous Northwest trade in sea-otter skins by eliminating the costly and hazardous detour round Cape Horn. But the problem of increasing the Northwest trade profit potential, while important, could not be described as vital. By 1804 the Yankee traders had practically cornered the market, and were receiving all the benefits usually associated with a monopoly. However, things were very different in the fur trade—and by that term one must understand chiefly the commerce in beaver pelts—for here the Americans were at a considerable disadvantage. It was common knowledge in St. Louis, the emporium and frontier headquarters of the fur trade, that British representatives of the long-established and venturesome Hudson's Bay Company and the even more aggressive and far-ranging Northwest Company had penetrated deep into Upper Louisiana where, far removed from their bases on the Assiniboine and the Saskatchewan, they were trading with the tribes of the Upper Missouri and transporting the contraband furs across the border into Canada. The Spaniards had made some fitful efforts to control this systematic poaching but with no significant success. Now, with the conclusion of the Louisiana Purchase, the problem passed from the feeble grasp of Spain into the hands of a young republic with a President who took a forceful and active personal interest in the fur trade.

Jefferson acted at once. He saw a long way ahead and put his plan into operation without waiting for the slow march of events to catch up with his vision. In January, 1803, two months before the Louisiana negotiations were completed and five months before the news of the purchase reached Washington, the President asked Congress for an appropriation of $2,500 to equip the Lewis and Clark expedition. The purposes of the exploration, while doubtless adding greatly to

the existing store of scientific and geographical knowledge, were to be primarily the furtherance of American interests in the fur trade. The Indians of the Upper Missouri, noted Jefferson, were known to "furnish great supplies of furs and peltry to the trade of another nation, carried on in a high latitude through an infinite number of portages and lakes shut up by ice through a long season." That is, the skins were going over the Canadian border and then by the long and tortuous canoe route to Montreal for shipment to the world markets. It followed that a river passage down the Missouri and thence to the Atlantic ports would be infinitely quicker and more economical than the Northwest Company's endless chain of lakes with its many portages and total closure during the winter freeze-over. A bold imagination was at work here.

Not only was Jefferson planning to push the British fur traders back over the Canadian border, but he was hoping to compete with them for a substantial share of their own trade in the rich beaver country of the Assiniboine, Saskatchewan and Athabaska rivers by providing a cheaper and more efficient carrying system for getting the furs to deep-water transport and thence to market.

If the commercial considerations behind the Lewis and Clark expedition were of grave concern to the United States, the political background was scarcely less so. There were, to begin with, an unguessable number of Indians in Louisiana who would have to be impressed with the fact that the Great White Father now lived in Washington and not in Paris or Madrid. Thus, Jefferson's instructions were explicit. The Indians of the Missouri drainage basin were to be prepared for American sovereignty and American trade, particularly the Teton Sioux, a powerful and aggressive nation, old allies of the British, who virtually dominated the river trade in their own territory. There was also an instruction to arrange permanent peace treaties between the different Plains tribes—a pious hope that shows how little the Americans yet understood the philosophy of their new subjects.

One final consideration: Oregon. Possession of the Columbia River, or at any rate a considerable part of it, was essential for the successful realization of the President's scheme. The known or traversed portion of the Columbia—that is, from the Cascade Mountains to the sea—lay wholly in the territory of Oregon; and American claims to that country rested solely on the discovery by Captain Gray which we have already mentioned. The claim was a good one but it was untested, and vigorously disputed by the British. A land crossing from the States would do much to bolster up American rights in the territory.

Against this background, then, the members of the Lewis and Clark party went into winter quarters near the mouth of the Missouri, and embarked on a tough course of training preparatory to the "jump-off" in the spring of 1804.

Meriwether Lewis was Jefferson's personal choice as commander of the expedition. He was a family friend as well as an official colleague, and the exploration of the interior West was a subject which had long been a "darling project" of his heart. Lewis himself chose William Clark as his cocommander and, with full Presidential backing, promised him a captaincy and joint powers of leadership; but red tape in the War Department was not so easily circumvented, and Clark was actually gazetted as a second lieutenant in the Corps of Artillerists. The official snub in no way bothered the resilient Clark. A militia captain who had seen considerable Indian fighting, he assumed his old title, was known to the members of the party as "Captain" Clark, and signed official orders with that rank. The promised equality of command was made effective, as will presently be observed.

Between them the leaders possessed all the special qualities necessary for the successful prosecution of the enterprise. Both were natural commanders; both were frontiersmen, woodsmen and rivermen with a wide experience of wilderness life; both had an altogether remarkable understanding of Indian psychology. Add to this a high intelligence quotient, an instinctive feeling for topographical analysis (which both men possessed to a marked degree) and a handful of more commonplace qualities—courage, stamina, patience, boldness, physical fitness, mental agility. It was the formula for successful wilderness travel, and we shall see it illustrated over and over again.

The remainder of the party, which was formed as a military unit, consisted of three sergeants and twenty-one enlisted men, all handpicked volunteers, many of them with valuable experience as frontiersmen. George Drewyer (or Drouillard) was hired as interpreter and hunter, and the numbers were completed with Clark's Negro servant, York. Additionally, a corporal and six privates and a boatload of St. Lewis rivermen were to accompany the expedition as far as the Mandan villages to assist in carrying the stores and to provide added strength while passing through the territory of the more hostile of the Missouri tribes.

On Monday, May 14, 1804, the members of the Lewis and Clark expedition embarked in a fifty-five-foot keelboat and, accompanied by the auxiliary soldiers and rivermen in two pirogues—large, open rowing boats—set out to discover the first transcontinental route to the Pacific between Canada and Mexico.

Slowly they learned the difficult technique of the river. The Missouri was never easy—although here in the lower reaches it was at its most docile. The current was powerful the depth adequate but variable with constant shoals and sandbars, particularly on the bends where continual washing away of the bank caused the channel to cross from one side of the river to the other.

As the spring days lengthened into full summer, the vagaries of the prairie weather added to the problems of navigation. Sudden, violent rainsqualls lashed the river surface into a frenzy of whitecaps; the boats became unmanageable under sail, driving into the bank or onto midstream islands or hard aground on sandbars. From all such predicaments they had to be extricated by manpower—the crews struggling and cursing, waist-deep in water or knee-deep in mud, heaving and straining, splashing and floundering, with the towline cutting into their hands and scoring their shoulders.

The journals of the expedition are full of such incidents. There is a typical entry written when they were only ten days out:

passed a verry bad part of the River Called the Deavels race ground. . . . We attempted to pass up under the Lbd. Bank which was falling in so fast that the evident danger obliged us to cross between the Stdb. Side and a Sand bar in the middle of the river. We hove up near the head of the Sand bar, the Same moveing and backing caused us to run on the sand. The swiftness of the Current Wheeled the boat, Broke our Toe rope, and was nearly over Setting the boat, all hands jumped out on the upper Side and bore on that Side untill the Sand washed from under the boat and wheeled on the next bank. . . ." *

There follows more in a similar strain. (They had to swim ashore with a fresh towline, swing her off the sandbar with the help of the flow and then haul her up in the teeth of the current from a crumbling bank.) Clark was acknowledged the better riverman of the two and he normally acted as commodore of the little convoy while Lewis was ashore with Drewyer making topographical notes and keeping the entire party supplied with fresh meat.

Game was unbelievably plentiful, and a lavish steak diet helped to make life bearable. Despite some mild attacks of dysentery and an outbreak of boils and "tumers," the members of the party enjoyed excellent health. And the men were settling in to the discipline of the trail. In the first two months there were a number of infringements—leave-breaking, insubordination, drunkenness on duty, sleeping on guard and two desertions. The offenses were all dealt with promptly and firmly. Thereafter there were no disciplinary troubles of any kind.

But the Captains had other responsibilities besides those of platoon commanders. There were no trained scientists with the expedition, and the leaders had to fulfill the duties of cartographer, navigator, meteorologist, botanist and zoologist. More particularly they were the anthropologists and the ethnologists of the party, and by the end of July they were beginning to meet Indians.

They had reached the mouth of the Platte River, the half-way mark in empirical knowledge of the Missouri, without encountering any natives apart from a band of Kickapoo hunters (who were tamed reservation Indians). They missed the Kansa tribe, who had temporarily migrated westward for the summer hunt, and, more important, they failed to find the Pawnees for the same reason. But they sent out Drewyer and another experienced plainsman, Cruzatte, to round up such Indians as they could find and summon them to a council. A suitable site for the assembly was found about fifty miles upriver, and was christened Council Bluffs. (It was an apt choice—as a trading post it would remain important for many years in the fur trade.)

This was the sphere of influence of a closely related group of tribes belonging to the Siouan family—Otos, Omahas and Poncas. All of them practiced blackmail, intimidation and river piracy when the opportunity offered, but they were past their best: smallpox, whiskey from the white men and constant pressure from the more belligerent and better-armed Sioux had cowed them. The Omahas had had a brief hour of notoriety under their famous pirate-king of a chief, Blackbird, who terrorized the river traders and learned the use of arsenic to settle disputes within the tribe. But Blackbird was dead, carried off by the smallpox, and Clark notes that he visited the grave.

The council was disappointing but served well enough as a dress rehearsal for more important occasions to come. Drewyer and Cruzatte managed to bring in some Otos, including six minor chiefs and a number of representatives of the almost extinct Missouris. (The tribe had been practically annihilated by the Sauks and Foxes, and the remnants found sanctuary where they could. These few had joined the Otos.) The Captains paraded the entire ship's company, collected the Indians under an awning improvised out of the mainsail and delivered a long speech expressive of the expedition's purpose, the location of the new White Father and ending with "Some advice to them and Directions how they were to conduct themselves"—that is, they were to stop raiding other tribes and contribute to a general peace.

Any Indians—even Otos—were equal to this sort of occasion. With grave dignity and one eye on the presents which would surely be distributed soon, the chiefs gave solemn assurances of their good faith and of their love for the White Father—then dropped sly hints about the niggardly treatment they had received from the Spanish and the French. They received their reward: a few medals (of the second and third grades for Otos), a canister of powder, a bottle of whiskey and three imposing certificates designat-

* From Clark's journal. His spelling was unconventional, even by the standards of his own time.

ing the holders official tribal chiefs in the records of the United States Government. One of the Otos, gambling for a bigger present, handed back his certificate with a saucy remark about the President's meanness—but the Captains were ready for something like this and were not going to be intimidated—or appeased (when asked to return the certificate they would not at first do so). They soundly scolded the Otos, and "rebuked them very roughly for having in object goods and not peace with their neighbours." After that, there was no more trouble.

A few days later the expedition suffered its first and only fatal casualty when Charles Floyd, one of the sergeants, was "taken very bad all at once with a Bilious Chorlick." The illness was acute, and he died within twenty-four hours. The symptoms suggest that he was suffering from peritonitis, which would almost certainly have proved fatal at that time even had qualified medical attention been available.

As the party worked its way northward, the river began to show its worst characteristics. From the beginning it had always been awkward, capricious and dangerous—snagged with unexpected obstacles in the most innocent-seeming places. Now, with an increasing number of bends, they were eternally running into rafts of matted driftwood, plowing into shoals and sandbars—now more frequent than ever—or trying to haul the boats up against the current while the bank crumbled into the water under the feet of the towing party. And the Missouri always had new tricks with which to plague them. They became familiar with the sawyers for which Mark Twain's Tom was named—floating logs charging down with the current that could rip open the hull of a keelboat—and the equally deadly planters—tree trunks embedded in the river bottom, forming invisible snares capable of capsizing or sinking anything smaller than a steamboat. But there were expert rivermen in charge, and the party kept moving. Turning west again, they began passing tributaries flowing in from the north—the Little Sioux, the Big Sioux, the Vermillion and the James. Then, on August 27th, they met their first Sioux.

They were Yanktons, currently the most amiable of the Plains Sioux, and if the Captains expected any difficulty in dealing with them, it did not materialize. They were, however, full-blooded Plains Indians, the first the Americans had seen, and the Captains spent two days making copious notes on dress, physique, weapons, artifacts and the hundred and one minutiae of Indian daily life. They even embarked on the composition of a vocabulary.

They could not afford to linger overlong with the Yanktons, and after the usual round of barbaric pleasantries the expedition pushed on, first west, then north again. They learned that the Teton Sioux were encamped on Bad River (which they would rename the Teton), and as the boats crawled past White River and round the Garantuan loop of the Grand Detour, the Captains had an opportunity to sum up their progress so far. They had reason to congratulate themselves. Something like eight hundred miles out from St. Louis, they were now as proficient at navigating the Missouri as they ever would be. Game was still plentiful, fuel and water abundant. The men were in good spirits and by now were settled down into a compact, efficient and, when necessary, aggressive unit.

Inspired leadership by the Captains and intelligent cooperation from Drewyer, Cruzatte and the others had brought them this far. Now they were about to meet the Teton Sioux, the toughest of the river tribes and the most rugged opposition they were likely to meet this side of the mountains. The Captains, fully aware of the reputation of this belligerent tribe, knew that they were approaching the first real crisis of the expedition. They made their plans accordingly.

CHAPTER 2: LEWIS AND CLARK: THE RIVER TRIBES

The Sioux were probably the most famous of the Plains Indians—perhaps of all Indians—and the Teton branch was certainly the most celebrated division of the tribe. The chain of circumstances destined to bring about this notoriety would not be forged for another sixty or seventy years when continual pressure from the white man's frontier finally forced them into full-scale war and provided a cause for a succession of great leaders—Red Cloud, Crazy Horse, Gall, Sitting Bull and the rest—who ensured for them a prominent place in the history of the American West. This should not lead anyone to suppose that in earlier times they could be dismissed as insignificant. Even in 1804 they were a people to be reckoned with, and no one, least of all Lewis and Clark, underestimated them.

The Sioux, as perhaps has already been made clear, were an aggressive tribe. But not the fiercest. The Blackfeet were far more deadly, and so were the Comanches. As a nation the Sioux were outclassed in many other ways. The Crows and Cheyennes were better specimens both mentally and physically, the Arapahos were more intelligent, The Nez Percés superior craftsmen and the Mandans more elaborate in their culture. That said, it must be added that the Sioux, numerically strong, warlike, swaggering and violently excitable, served well enough for a brand image of the Plains culture, and as such they may be considered worthy of closer attention than has been given to the other tribes we have so far encountered.

Originally forest dwellers from across the Canadian border, they were gradually pushed southward and westward by their ancient enemies, the Chippewas or Ojibways. The word Sioux itself comes from a French corruption of the Chippewa name for the tribe, "nadessioux," meaning "enemy," and the Chippewas had good reason to feel like this, since they had been at war with the tribe for two hundred years. The opponents were fairly evenly matched, but the white man's intervention upset the balance of power—not for the first or the last time—and when the Chippewas began getting guns from French traders the Sioux were left with no alternative but to give ground by falling back across the border into the United States. By 1750 the seven main divisions of the tribe had reached Minnesota, where four of them, corporately known as the Santee Sioux, settled in the area of the Minnesota River. The remaining three—the Yankton, Yanktonai and Teton branches—kept moving westward, reached the Missouri and adopted the culture of the Plains Indians.

Once they had obtained horses, the Teton Sioux quickly came to terms with their new environment. They became the terror of their weaker neighbors, and mercilessly raided the Omahas, the Arikaras, the Minnetarees and the Mandans, all of whom, apart from the Arikaras, were their own relatives. Farther afield they would fight anyone when the mood was on them, but, like all tribes, they had particular hates. They were immemorial enemies of the Pawnees, Snakes and Crows, and in 1795 they had had a titanic struggle with the Cheyennes, although they later worked out a semipeaceful coexistence with that tribe.

Altogether a good example of a typical Plains people. At the time of the expedition's arrival they had got the river trade neatly sewed up on their own terms. The few traders that they allowed to trickle through to the tribes farther upriver paid them a handsome gratuity for the privilege. The remainder were stopped and forced to sell their goods on the spot at rates fixed by the Sioux, which amounted to little better than robbery. In this fashion they acted as middlemen in the trade, and controlled the supply of goods to their enemies.

Off the mouth of Bad River, September 25, 1804. In an atmosphere of growing tension, the Captains took such routine precautions as they considered necessary—with the company poised at action stations and the keelboat anchored well away from the bank out in midstream. Ashore, a small and heavily armed working party labored over the erection of a flagstaff and "a orning" in preparation for the usual grand council, at the same time keeping a circumspect eye on the one hundred and forty Sioux lodges pitched in the vicinity. The Indian strength was growing hourly as more hunting parties came in from the hinterland, and by midday the Captains calculated they had a big-enough audience to make a start on the usual formalities. Both leaders went ashore and with great solemnity smoked the pipe and delivered the routine speech. The address was a somewhat abbreviated one, since nobody in the party spoke the Sioux tongue fluently (although the invaluable Drewyer helped out with sign language), and to make up for this deficiency, Lewis decided to invite some of the chiefs aboard the keelboat.

There were three chiefs—Black Buffalo, The Partisan and Buffalo Medicine—and two "considerable men" from their retinue. Clark passed round the whiskey bottle, but the party atmosphere was short-lived. They had a quarter of a glass each "which they appeared to be very fond of, sucked the bottle after it was out and soon began to be troublesome." The Partisan pretended to be drunk "as a Cloake for his rascally intentions," and before very long the Captains had had quite enough of their unruly guests.

With some difficulty, Clark got them ashore in one of the pirogues. As soon as they touched the bank, three young Sioux warriors seized the painter and held it fast while another brave hugged the mast. At once The Partisan dropped his drunkard's act and turned bully, manhandling Clark and telling him that the presents they had received were insufficient tribute to the great Sioux nation, that the party would not be allowed to go any farther upriver and that one of the pirogues with its cargo of trade goods would have to be left behind.

This was the bad moment the Americans had feared. It had been expected, and it had been catered for. Redheaded Captain Clark lost his temper with The Partisan—who was getting very personal "both in words and justures"—and drew his sword. Out in the keelboat, Lewis sounded action stations, and half a hundred Sioux warriors, who had strung their bows and drawn arrows from their quivers waiting for the white men to back down, found themselves staring into the rifle muzzles of thirty-odd well-armed and resolute men. "I felt My Self warm," Clark wrote later, "and Spoke in very positive terms." It was enough. For a long moment the two parties scowled at each other and the outcome wavered in the balance. But the Sioux bluff had been called and, in the event, they were the ones who backed down. Strong-arm methods now gave way to wheedling and begging. Unimpressed, the Americans took their boats a couple of miles upriver, and anchored off a small midstream island which they christened Bad Humoured Island, "as we were in a bad humer." Black Buffalo and Buffalo Medicine, thoroughly subdued, asked if they could come aboard again. The Captains consented, and the two chiefs slept the night in the cabin of the keelboat—although nobody else got much sleep, and reinforced guards patrolled the bank all through the dark hours.

For the next forty-eight hours the Americans remained tense and watchful, but there were no more "moments," and the Sioux seemed to have completely forgotten the dramatic episode of the first day—indeed, they proved themselves most genial hosts, organizing banquets and ceremonial dances, indulging in endless oratory and even laying on a dog feast—treatment normally accorded visiting royalty—while Black Buffalo made flattering remarks about the Great White Father and offered up a sacrifice in front of the American flag. Nobody was deceived by this abrupt change of tactics. The Sioux were fencing for an opening, looking for a propitious moment to catch the Americans off their guard. But the Captains had gauged the measure of their opponents to a millimeter, and the Tetons never got the opportunity they were hoping for. Presently the Americans were given proof of just how accurate their reading of the Indians' motives had been.

In the course of their discussions with the Tetons, it was disclosed that twenty-five Omaha prisoners were held in the village, survivors of a skirmish in which, so the Sioux claimed, seventy-five Omahas had been killed. The Americans could hardly let this pass unrebuked, and the Sioux were given the by now familiar lecture about the general Plains peace and told that they must return the prisoners to their own people. Meanwhile, the kind-hearted Clark sent Cruzatte, who could speak Omaha, to distribute a few small presents among the captives. This generosity brought its own reward when one of the Omahas told Cruzatte that the Sioux were planning to stop the expedition, murder the personnel and take for themselves the king's ransom in trade goods stored under the tarpaulins in the pirogues. The Sioux then, still had a lesson to learn.

That night the Indians nearly got their opening when one of the pirogues fouled the keelboat's anchor cable and cut the bigger craft adrift. As the keelboat began to drop downstream, there was a deal of shouting and confusion in the American camp, which the Tetons neatly used as an excuse for getting into battle dress on the pretext that they believed the village was being attacked by Omahas. For a full half hour two hundred heavily armed warriors pranced about on the bank, supposedly searching for the enemy, but in fact waiting for the single opportunity they needed to put the Americans down. They never got their chance, since the Captains quickly realised what was going on and held the party ready for action all night—but once again the members of the expedition had to manage without their sleep.

The affair reached its climax next day, the twenty-eighth. It was time to move on, and as soon as the Americans let it be known, the situation became critical again. The keelboat, now anchorless, was moored to the bank with the two pirogues lying outboard, and as the Americans prepared to leave, the entire Sioux fighting force turned out wearing their full war equipment.

Outthought, outbluffed and outmaneuvered, the Sioux could think of nothing better than a repetition of their first show of force. As Lewis gave the order to cast off, some of the young braves seized the mooring lines and held them fast while the familiar Sioux extortion game started. If the white men would part with some tobacco for the warriors, the boats would be allowed to leave. And so on. The Captains would see clearly enough where this was leading, and they flatly refused to hand out any more presents, "Stating proper reasons to them for it." It was a repetition of the earlier bluffing game, and the Captains were incomparably the better players. Clark, evidently feeling himself warm again, grabbed one of the swivel guns mounted on the cabin top and pointed it at the crowd with the portfire ready in his hand—then he spoke to Black Buffalo "so as to touch his pride."

Once more the no-nonsense policy paid its dividend. Faced with determination and resolution, the Sioux bluster collapsed. With petulant resignation the chiefs ordered the warps cast off and, helped by a convenient southeasterly breeze, the little flotilla pushed out on a broad reach heading north, away from the influence of the Teton Sioux.

In their first encounter with a really important Plains tribe the Captains had won a very considerable victory. The Sioux were the dominant tribe in this region, and news of their defeated spread quickly. The terrors of the Upper Missouri had been humbled. Their enemies rejoiced—and made a mental-note: you cannot fool or intimidate or blackmail these Americans. One of the principal objects of the expedition had been achieved. The Indians of the Upper Missouri basin had been inspired with a profound respect for American authority.

Some patterns of tribal psychology and behavior were emerging. According to the Indian conception of diplomacy, you got what you wanted by bluster and threats. When that failed, you resorted to flattery, appeasement and hard-luck stories. If that did not work, you dropped the subject and waited for more propitious circumstances. Above all, you did not attack a well-armed, vigilant and resourceful enemy, even though you knew that in the end you could defeat him. The price was too high.

"Sand bars are so numerous that it is impossible to describe them & think it unnecessary to mention them." Navigation, if that is the word for it, of the Upper Missouri was proving no easier in the higher reaches. Struggling on up the river with representatives of the mightly Teton Sioux begging tobacco or trying to recover face by shouting insults from the bank, the party rested their ruffled tempers, soothed their frayed nerves and tried to catch up on their sleep. For ten days they suffered only the routine physical discomforts of the river before reaching the site of their next problem in diplomatic relations—the mud villages of the Arikaras just above Grand River.

Unquestionably the party's reputation had traveled much faster than the expedition itself. The Arikaras knew all about the events at Teton River, and took the lesson to heart. By Plains standards they were a second-rate tribe, and by any standards could be counted unsavory, dirty, treacherous and cruel. Nevertheless they liked to make war when the odds were right and would cause plenty of trouble in their time. As actors, however, they could be rated fairly high. Their reputation for river piracy and general thuggery was second only to that of the Sioux, and yet they greeted the Captains with obsequious deference and displayed model behavior throughout the expedition's short visit.

The Arikaras, or the Rees, as the white traders usually called them, lived in permanent mud villages on the banks of the Missouri where they grew corn, but in all other respects they conformed to the general pattern of the Plains culture. They were of Caddoan stock, close relatives to the Pawnees, and at one time the two tribes had lived far to the south on Red River. In their northerly migration both tribes followed the Missouri, but the Arikaras ascended much higher than the Pawnees who settled the area between the Kansas and the Platte rivers. There will be another place to discuss the Pawnees, who must be assessed as a first-class Plains tribe and a major factor in the story of the West. The Rees were their poor relations. They were horse Indians and ranged fairly widely, trading with the Cheyennes, the Crows and even the more distant Kiowas. Like other Plains tribes they had their traditional enemies. But on the whole they were not distinguished warriors, even by Indian criteria, and at the time that Lewis and Clark met them they were regularly being trounced by the Sioux, the Mandans and the Minnetarees.

In the eyes of the Americans, however, the Rees had one good, solid virtue—their women were open-handed with their favors. This is not the place to discuss the sexual behavior of the Plains Indians—it will be sufficient to say that their customs were a great deal freer than the white man's and that those of the Arikaras were the most uninhibited of all. Additionally, the Ree girls were a lot better-looking by United States Army standards than any of the Indian women they had met so far.

All this did wonders for morale, and the soldiery took full advantage of the situation. It made up for the trying time they had had with the Sioux. "Their womin very fond of carressing our men etc.," noted Clark, and the Negro, York, was a sensation—nobody here had ever seen a black man before, and the Arikara girls queued up to make assignations with him. If the Captains themselves sought relief in the arms of the Ree women, neither of them put it on paper, although Clark does mention that each of them was presented with a "handsom young squar," an embarrassing gift which both declined despite the fact that the ladies "pursisted in their civilities."

In this atmosphere of entente cordiale, and through an orgy of pipe-smoking, feasting and oratory, the Arikaras glibly agreed to make peace with their enemies. They even requested permission to send a trucial envoy with the expedition as far as the Mandans to initiate peace talks with that tribe. The Captains swallowed this one. They did not yet realize that Indians in a cooperative mood would concoct any story that they thought might make welcome hearing to their guests. In any case, as it happened, it suited the Arikaras very well to have peace just now, and they hoped that Lewis and Clark could mediate for them.

Among the Rees they met some Cheyennes. The Captains' notebooks on the Plains Indians were filling up—customs' manners, alliances, intertribal relations. They began to learn about the vast and intricate intertribal trade that had taken horses and was now taking guns to the most distant people of the Plains. There were regular trading visits—the Cheyennes to the Arikaras, the Minnetarees to the Crows—and local white traders could tell the Americans of at least ten tribes reached by the Arikaras horse trade. A harvest of knowledge was being gathered in that would be the first step in conquering the Great American Desert.

It was mid-October when they took leave of the Rees with "great Cordiality and serimony." A biting edge to the wind, sudden, short snowstorms and chilling rain told them that it was time to think about their winter quarters. The decision was an easy one. Only one hundred miles farther upstream were the Mandan villages, farthest point on the Missouri reached by white traders and ultimate frontier of American knowledge concerning the Far West.

They made it in a week. By October 29th they had chosen a site for their winter post and had started clearing the ground, felling the cottonwoods and cutting and shaping the logs in preparation for the building of their quarters. Fort Mandan they would call it, and it would be their home for five months.

CHAPTER 3: LEWIS AND CLARK: THE CONTINENTAL DIVIDE

They learned what it was to sit out the rigors of a northern winter. There was snow here—not much, but enough to restrict movement—a soft, clean blanket whispering out of the grayish yellow sky or shrieking down in near-horizontal fury on the razor-sharp edge of the Plains wind. Not for the first time Americans began to think of the

Great Plains as steppes. The cold was, indeed, of Siberian intensity, and on January 20, 1805, Clark could blow into his mittens and write, "Murckery this morning stood at 40 below 0." The severe weather brought its toll of minor troubles with the boats anchored fast in several feet of ice, and York, the popular ladies' man, was forced into temporary retirement with a frost-bitten penis. There were, however, more serious problems than York's loss of status among the Mandan women. Jefferson's waterway vision had suffered a major setback—the river was frozen over from November to March.

But their life, if strenuous and occasionally hard, was, in off-duty hours, comfortable and well fed. Game was plentiful here—the master frontiersmen, Lewis and Clark, had seen to that—and buffalo hump ribs hissed and crackled over the open fires every evening while Cruzatte, the expert plainsman, riverman and hunter, displayed further virtuosity on the fiddle to the delight of his companions and to the reverential awe of the Indians.

The Mandans were by a long way the most friendly natives they had met—they were one of the few tribes that genuinely liked the whites—and their women were amiable, handsome and, beyond doubt, willing. Like most of the river tribes, the Mandans compromised between the nomadic and the sedentary cultures, living in permanent villages near the river but penetrating deep into the Plains for hunting, trade or war. They were farmers of a sort, although the term sits strangely on any Plains tribe, and their harvest of corn, squash and pumpkins served rather as a trading surplus and a bolster for their economy during periodic migrations of the buffalo than as a staple diet. Perhaps their most untypical feature was an altogether remarkable predisposition toward peace with their neighbors.

The Mandans rarely if ever took the initiative in war, and confined most of their military activities to beating off the attacks of more aggressive tribes—principally the Sioux, of course, everybody's enemy in this region—but they were quite capable of holding their own when necessary and, if the odds dictated defensive tactics, their big earth lodges, half sunk in the ground and covered with a thick crust of sun-dried mud, could be turned into efficient little fortresses.

Not much farther upstream, near the mouth of Knife River, and living in very similar circumstances, were the close relatives and traditional allies of the Mandans, the Minnetarees. The Captains called them the Big Bellies, a translation from the French "Gros Ventres," and since it is important to distinguish these Gros Ventres from another tribe of the same name, we may deviate momentarily for a word of explanation. Minnetaree was a Siouan word used by the Mandans to designate the tribe, although modern ethnologists call them the Hidatsa, a term seldom found in contemporary records. "Gros Ventres" was a French interpretation of the gesture that indicated these people in the lingua franca of the Plains, the sign language, and the expression was commonly used by the traders of the day. Unfortunately for the student of Western history, the name Gros Ventre was also applied to an entirely different tribe of Algonquin stock living farther west just across the Canadian border. These latter Indians were close relatives of the Arapahos, although they had long since formed a splinter group and drifted northward, finally attaching themselves to the Blackfeet to whom they were also related. Ethnologists call them the Atsina, and some early writers referred to them as the Fall Indians (apparently because they lived near the Falls of the Saskatchewan), but the Blackfoot name for the tribe was translated as "gut people," and this in turn became rendered as Gros Ventres. The Fall Indians were one of the most ferocious of the Plains tribes, and they will be repeatedly appearing in full war paint during the progress of this narrative. After saying all this, it will be as well to avoid any confusion in the following pages, and the term Gros Ventre will always be used in reference to the Atsina and never to the Hidatsa, who will be described by their Siouan name, Minnetaree.

The tribal status of the Minnetarees in the Plains hierarchy lay somewhere between the peaceably disposed Mandans and the truculent Sioux. Chittenden,* who is usually accurate on the subject of Indians, seriously underrates them when he says that they were not a warlike people, although he does add that they were "liable to frequent misunderstandings with other tribes." Undeniably they managed to achieve peaceful coexistence with the Mandans, and there were close family ties with the Crows, to whose tribe, at one time, they had belonged. But "misunderstandings," however frequent, will hardly do to describe their continual war with the Sioux their regular forays against the Shoshones and their occasional horse-stealing and scalp-lifting expeditions deep into the country of the Blackfeet, the Assiniboins and the Crees.

All this, of course, from the standpoint of Lewis and Clark, was utterly reprehensible, and the Minnetarees would have to be given a stern lecture on the follies of intertribal war when a convenient opportunity arose. In the meantime their raiding habits could be turned to good account by giving the Americans some first-hand information about the upper reaches of the Missouri. By patient questioning through interpreters, by watching Minnetaree chiefs scratching with sharpened sticks on the mud floors of their huts, the Americans began to gather in precious information about the country farther west. They learned of the Great Falls and the Three Forks; they heard for the first time accurate information of the Yellowstone and its principal tributaries, the Powder, the Tongue and the Bighorn; they began to understand something, though by no means all, about the Rocky Mountains. It was becoming clear that the Rockies were a multiple system of ranges, and not a single chain as they originally were led to believe.

The fundamental problem of crossing the Divide had always been at the core of Lewis and Clark's thinking in relation to the expedition. Clearly some sort of land traverse—conceivably an easy portage, but quite possibly a lengthy and difficult march—would have to be faced when transferring the party from the Atlantic to the Pacific drainage. Further, a land march of any distance meant that they would have to have horses—with the weight of supplies and equipment they were at present carrying in the boats, travel on foot would be next to impossible. It was the Minnetarees who unwittingly supplied a possible solution. In the course of daily discussions with the Captains they made constant reference to their old enemies, the Shoshones or Snakes, an important transmontane tribe which made an annual migration onto the Plains in search of buffalo.

As the Americans learned more about the Shoshones and their place in the pattern of Plains society, it became clear that the tribe was going to be crucially important next summer when they might expect to have reached the foothills of the Rockies. Not only did the Shoshones have large horse herds, which meant that the Americans could buy animals for any necessary land march, but they were residents of the "other side," and their guides could be hired to lead the party through the mountains to Columbia waters.

The importance of this distant tribe focused sudden and unexpected attention on a recently recruited member of the expedition. In their dealings with the Indians, Lewis and Clark had made a practice of hiring local white traders as interpreters. At Fort Mandan they had acquired the services of René Jessaume, part-time agent of the British Northwest Company, as interpreter to the Mandans, and Toussaint Charbonneau, resident trader among the Minnetarees, for similar duties with that tribe. Charbonneau, an experienced Indian trader and frontiersman, had further agreed to accompany the expedition to the Pacific. He was a useful addition to the party, but his most valuable contribution lay in the fact that one of his Indian wives was a Snake.

She was the girl, Sacajawea, captured by the Minnetarees on one of their periodic raids five years earlier, in the vicinity of the Three Forks of the Missouri. Her importance was dual: she spoke the Shoshone language and she knew where they could be found.

Rough-hewing a plan for the next season's travel was only one of the many problems that busied Lewis and Clark in this winter of 1804–1805. Local Indian affairs occupied a good deal of their time, and in their capacity of ambassadors from the Great White Father they arbitrated in peace talks between the Arikaras and the Mandan-Minnetaree combine. Then a big band of Assiniboins came in to trade for corn—dangerous, volatile Indians who aced the middleman's part in the British trade from across the border and were therefore interesting politically as well as ethnologically. Shortly afterward the Americans were privileged to inspect more tangible evidence of British fur interests. On arrival at the Minnetaree villages they had found a small Hudson's Bay Company brigade. Now a detachment from their great rivals, the Northwest Company, moved in to compete for the trade. What followed was typical of the fur trade anywhere—a brisk commercial war with each of the British parties resorting to every known kind of thimble-rigging to snatch the best furs on the market. Everybody, however, was very polite to the Americans (understandably so, since the British were trading in United States territory), at the same time doing their best to find out all they could about the expedition by pumping the Captains for information. They found out little that was of any use to them, and Laroque, the Northwest partisan,[1] evidently under orders from Montreal, actually went so far as to ask if he could join the expedition. He got a polite refusal.

The Teton Sioux, still trying to recover status, were rumbling threats of war all through the winter. It was mostly talk, but one or two Mandans and Minnetarees lost their scalps, and Clark slipped up badly when he sent out a very small party (Drewyer and three men) to bring in a cache of meat that he had concealed on a previous hunting expedition. Twenty-five miles below the fort, the Sioux at last got the drop on the Americans. In the face of more than a hundred Tetons, Drewyer wisely held his fire and stood by while the Sioux helped themselves to the meat, robbed two men of their knives, and snatched a brace of horses. Happily, the Sioux were commanded by a chief who was an old enough hand to know just how far he could go with impunity. He left the whites with their scalps intact, and disappeared. Pursuit was futile, but Lewis made the effort the next morning with twenty-four men, floundering through the snow and finding nothing but the burned-out ruins of the cache where Clark had concealed his meat. Measured in goods of intrinsic value, the loss was small, but in Plains terms the Sioux had scored heavily, and the Americans' reputation along the river suffered accordingly.

Before the ice melted and the party could get under way again, there was one further event of importance. At five o'clock in the evening of February 11, 1805, Sacajawea added a further name to the roll call of the Lewis and Clark expedition by producing her firstborn, a son. The poor girl's labor was tedious and painful, and Lewis records that, on the advice of René Jessaume, he administered two crushed and diluted rings from the tail of a rattlesnake in accordance with the local custom for hastening childbirth. "Whether this medicine was truly the cause or not I shall not undertake to determine," he wrote later, "but I was informed that she had not taken it more than ten minutes before she brought forth."

April 7, 1805, saw the expedition ready to take the river again. The keelboat was returned downstream with the surplus men, government dispatches, private letters and nine cases of specimens for the President. The company, thirty-three of them now, including Drewyer, Charbonneau, York, Sacajawea and her infant son, was by this time a well-tried, hardened unit. "The party are in excellent health and sperits," wrote Lewis, "sealously attached to the enterprise, and anxious to proceed; not a whisper or murmur of discontent to be heard among them, but all act in unison with the most perfect harmony."

They still had the two pirogues, which became steadily more unwieldy as they ascended the river, and six homemade cottonwood dugouts now replaced the keelboat. The canoes were shallow-drafted, and therefore easier to handle in the ever more frequent shoal water, but narrow beam and lumpy lines made them sluggish on the helm, and all the craft made their best distance under tow.

Food continued to prove their simplest problem despite the size of the party. Buffalo, elk and bighorn were always profuse, and for a change of diet there were beaver, porcupine and numberless varieties of wildfowl. Charbonneau was the "wrighthand cook" of the party, and Lewis records in detail and with evident satisfaction the hunter's preparation of boudins, a kind of Plains haggis in which the large intestine of a buffalo is stuffed with fillet steak, liver, kidneys and other delicacies. Boiled in a kettle and lightly browned in a pan of bear's grease, it was universally popular with the party. (And it would retain its reputation in later years as a mountain gourmet's choice.) Then, on April 29th, they had their first encounter with a new species of game—the grizzly bear.

The grizzly, about which we must have something to say in a later chapter, was by a long way the most dangerous of the Plains fauna. Lewis was lucky enough to kill the first one fairly easily, and decided that they were "by no means as dangerous as they have been represented," but subsequent encounters with "grisly" bears were not quite so straightforward. One animal, attacked by no less than six experienced hunters and shot clean through the body with eight rifle balls, was still sufficiently dangerous to chase two men in the Missouri and take a furious header after them. Later, Lewis himself, caught on his own with an unloaded rifle, was attacked by one of these monsters and driven chestdeep into the river where he turned at bay, prepared to defend himself with a short steel-shod pike. Happily—but for no apparent reason—the grizzly's attention was distracted, and the beast abruptly turned and shambled off, leaving the Captain to emerge shakily from the water and return to camp in a thoughtful mood after carefully reloading his gun. Later he wrote in his journal that "the curiousity of our party is pretty well satisfied with respect to this animal."

There were more serious problems than grizzlies. The expedition was heading due west for the mountains now, and on June 5th they received a stunning surprise—the river forked. Problem: which one was the Missouri? Information gathered from the Minnetarees, which had proved fairly reliable in assisting to identify the Yellowstone, the Milk and the Musselshell, had made no mention of this junction, and it is evident that Sacajawea was unable to help either.

It was a critical moment. With the traveling season already two months gone, with mountainous country ahead and a land traverse of unknown length, and with no sign yet of the Snakes and their vital horse herds, they could not afford to make mistakes. Anxiously, cautiously, with a clear understanding of what was at stake, the members of the party scanned the two rivers for some clue as to their identity.

After consideration, the rank and file with all the weighty opinion of the rivermen behind them, including the acknowledged expert, Cruzatte, plumped for the north fork with its narrower, deeper channel, its brown, muddy, turbulent waters and its close resemblance in every respect to the river they had come to know so well. The Captains were "not quite so precipitate." The southern stream was a complete contrast—clear, fast and unruffled with a bottom of smoothed stones—but, and this was important, it had more the appearance of a mountain stream, and mountains there must be before much longer if they were to reach the Pacific this year. After their "cogitating faculties" had been put to work, Lewis and Clark decided that they were in the minority and voted for the southern fork. But they had to be sure.

There was only one way of putting their theory to the test, and the party split up to explore both rivers for a short way, Clark taking the southern fork and Lewis the northern. Within two days Clark could state categorically that the south fork was the Missouri, and only twenty-four hours later Lewis had correctly identified the northern stream as a tributary of comparatively minor importance. It remained to reunite the parties and to christen the north fork Marias River in honor of Miss Maria Wood, one of Lewis's romantic interests. Lewis conscientiously adding that the muddy hue of its waters "but illy comport with the pure celestial virtues and amiable qualifications of that lovely fair one." Ten days later they reached another obstacle to Jefferson's water route—the Great Falls of the Missouri.

The adjective "great" was a little on the strong side—the Falls were only eighty feet high—but they were three hundred yards wide and impressively beautiful. An obstacle of this size obviously involved a difficult portage, a fact that carried a good deal more practical significance for the men who would have to make it than the grandeur of the scenery. By the time the Captains had done some reconnaissance, and found the river channel chopped up into rapids for a matter of ten miles, it became apparent that the detour was going to be lengthy as well.

In the end it worked out to seventeen miles. It took them a month, and proved the hardest work they had yet had to face. Clark was a tireless engineer and surveyor, prospecting the route, supervising the construction of crude cottonwood truck frames to transport the loaded canoes, organizing caches for nonessential equipment and directing the building of more canoes to replace the pirogues. (One of these had been concealed at the mouth of Marias River; the other was being buried here to simplify the portage.)

Everything seemed calculated to hinder them. The breathless, stunning heat was relieved only by sudden, vicious hailstorms and rainsqualls that flooded the portage trail and turned it into a quagmire. Splinter-sharp rocks, cactus and prickly pear tore their moccasins to shreds, and game was so abundant that it became a nuisance. Grizzlies, under the impression that their hunting grounds were being invaded, repeatedly charged them, and herds of buffalo jostling each other in a mad rush to the water's edge were nearly as dangerous. Overshadowing everything was the somber realization that they had been three months on the trail without reaching the Rocky Mountains—time was becoming precious.

No one was sorry to enter the water again on July 15th, although it was towing all the way now against a brawling mountain current, often with steep canyon walls narrowing the stream down to a millrace. Almost at once they were in the mountain country, skirting the Big Belts—the first range they had seen that properly forms part of the Rockies—and passing through a spectacular vertical gash in the rocks that Lewis named, appropriately enough, the Gate of the Rocky Mountains. Beyond the "gate" stretched a bleak plain, and at the farther end they came to another major landmark, the Three Forks.

Here they were in Shoshone country—at this time of year anyway—in fact, they had been looking for Shoshones ever since the Great Falls; and the continued absence of these Indians with their all-important horse herds provided a new source of worry. Since leaving Fort Mandan, indeed, they had seen no Indians at all, a remarkable occurrence which suggests that the expedition's reputation, running far ahead of it, had persuaded the Blackfeet, the Gros Ventres, the Assiniboins and the Crows to prosecute their summer hunt elsewhere. Tantalizingly, there was plenty of Indian sign about, with smoke signals always just a little way ahead, and it slowly began to dawn on the Captains that the Snakes were deliberately avoiding them.

The Three Forks, they decided, was the source of the Missouri. The northern fork, which, on the advice of the Minnetarees, they chose to ascend, they named the Jefferson, calling the others the Madison and the Gallatin after the Secretaries of State and the Treasury. Clark, normally acknowledged the better scout of the two leaders, was physically worn out after the tremendous anxieties and exertions of the stretch between the Great Falls and the Three Forks, and it thus fell to Lewis to range out ahead with Drewyer and two others in search of the Snakes while Clark superintended the laborious ascent of the Jefferson—which was proving more difficult than the Missouri had ever been.

Sacajawea now proved her worth as she began to recognize landmarks, and, following her suggestions, Lewis and his small advance party found the trail across the Beaverhead Range, cross the Continental Divide through Lemhi Pass and emerged onto the Columbia watershed. Next day, after a couple of false starts, Lewis and Drawyer skillfully contrived to lull the fears of the terror-stricken Shoshones (who imagined that the newcomers were marauding Blackfeet) and managed to make contact with a small band. The Indians, who had probably never seen white men, were almost paralyzed with fright, and only by appealing to their curiosity and greed was Lewis able to coax them along the back trail toward Clark and the main body. The Shoshones were still jumpy when the little party sighted Clark's canoes shuddering up the Jefferson under tow, and the atmosphere was charged with nervous tension as the two companies reunited. Immediately Lewis played his trump card—Sacajawea—to elicit a response exceeding his most extravagant hopes. By an

* Hiram Chittenden: *History of the American Fur Trade in the Far West*. This eminent treatise is quoted so often that no further acknowledgments are considered necessary. But please see "Note on Bibliography."

[1] The leader of a company of fur traders in the field. His command, called a brigade, was usually a large one—anything from thirty to a hundred men.

extraordinary coincidence he had lighted on the very band from which she had been carried off five years earlier. And better yet—their chief was her brother.

The Captains relaxed. Now they could have their horses.

CHAPTER 4: LEWIS AND CLARK: THE PACIFIC

Once their initial fears were allayed, the Shoshones proved friendly and hospitable. They were a tough tribe, shrewd, industrious and warlike, with an economy balanced between the mountain salmon and the Plains buffalo. Physically slighter than the nations with a full Plains culture, they were the titular tribe of the Shoshonean family which included the Camanches, the Utes, the sedentary Hopis and other lesser known and widely scattered tribes, most of them inhabiting the country west of the Divide. They raided the Blackfeet, which meant they had plenty of nerve; they were inveterate enemies of the Crows and Utes; and in their long-standing war with the Sioux they more than held their own.

The barter for horses was successfully concluded. The white man's trade goods were a luxurious novelty to the Snakes. Among many bargains struck, Lewis records that he obtained three very good horses in exchange for a uniform coat, a pair of leggings, a few handkerchiefs and three knives—total value about twenty dollars. Once they were mounted, the Americans were impatient to be on the move again. But there were still formalities to be observed, and at the usual grand council the Captains promised these Indians to bring the American trade into their country, notwithstanding the fact that they lived beyond the borders of Louisiana in territory whose ownership was problematical. There followed a stern lecture on the follies of intertribal war, and, with a straight face, the Shoshones agreed to make peace with their enemies.

And then to the more immediate matters. Could the chiefs direct them to a river which flowed westward to "the great lake of water which was illy talsted, and where the white men lived"? The Snake chief—they rendered his name Cameahwait—became evasive. It was folly, he suggested, for the expedition to consider trying to reach the Pacific—the trail was difficult, the coastal tribes inhospitable. Much better to stay here with the friendly Snakes, and accompany them to the Three Forks for their big buffalo hunt. No great powers of perception were needed to work out the motives behind this speech. The Shoshones wanted to stay close to these valuable new friends whose superior armament could provide devastatingly efficient protection from Blackfeet and Minnetarees during the annual hunt. If possible, the white men must be prevented from infiltrating farther toward the coast—for the Snakes already saw themselves in the role of middlemen controlling the supply of American trade goods to the tribes farther west.

The Captains were not fobbed off as easily as this, and, with skillful insistence, Clark kept probing for information. He learned of the Salmon River which, the Indians told him, led to the sea. This seemed a promising route until an old Shoshone, who proved their most valuable informant, told them that the river was quite unnavigable and that it could not be followed on foot or on horseback. (Another blow to the Jefferson waterway scheme, and a deep disappointment to the Captains who had been relying on this river from information they had obtained at Fort Mandan last winter. Clark spent four days checking up, but the old man was right, and the Salmon River route was quite out of the question. No boats could survive in the swift fury of this mountain stream with its rock-strew bed and its many cataracts and waterfalls, and no horse could possibly travel along the sheer canyon walls through which it flowed.) Well, that meant they had to find another way. Once again it was Clark who wheedled the Snakes into providing it. After a series of patient cross-examinations, Cameahwait and the old man eventually admitted to the existence of a pass farther north. It was used, they said, by the Nez Percés in their journeys between the salmon country and the Great Plains. They added, truthfully, that it was a difficult trail and completely lacking in game.

That settled it. If the Neb Percés could make the journey, Lewis and Clark's soldiers could—and if starvation threatened, they could eat their horses. With the old man, whom they christened Toby, and one of his sons as guides, they parted company with the Snakes on August 30th, and struck out northward along the foot of the Bitterroot Range. They took with them the twenty-nine horses they had been able to buy from their late hosts—twenty-nine was not enough, but it was all the Shoshones could spare on the eve of the big hunt.

The high trail was broken, slippery and precipitous. Rain and sleet hammered at them continually, and the horses were always in trouble—stumbling, shying or sliding down scree slopes. Many of the animals were injured, and all progress was made "with the greatest difficulty risque etc." But the going gradually became easier as the trail improved and the men began to get used to handling packhorses. Soon they had a real stroke of luck when they met a band of Flatheads, friendly Indians with big horse herds and plenty to spare. The party stopped long enough to trade, and increased its own *caballada* to forty mounts.

Toby found the Neb Percé buffalo road for them. And as they climbed out of the Bitterroot Valley onto a ridge trail with an altitude of 7,500 feet, they realized that the worst of the journey was yet to come. From here on it was nerve-fraying, muscle-wrenching mountain travel for nine days. Numbed with cold and hunger, saturated with rain, sleet and snow, the party suffered hardships on a scale greater than anything they had encountered before—for the first and only time, morale began to waver.

Fortunately, such conditions could not last forever. They emerged onto a plateau of lower altitude with gentler surroundings, and then Clark, out ahead with six hunters looking for game, met his first Nez Percés. They were friendly. Better still, they had food—strange food, admittedly: dried salmon, dried berries and a kind of flour made from pounded camas root—but edible and therefore welcome. Clark started bulk-buying on the spot, sending a horseload of the stuff back to fill the gaunt bellies of the main party. Then he went into camp with these affable new Indians while he waited for Lewis and the others to catch up.

The Nez Percés were of the linguistic group known as the Shahaptian, their neighbors and friends, the Flatheads, belonging to the Salishan stock. The two tribes, although unrelated, had a great deal in common. Like the Shoshones, they were quasi-Plains Indians, venturing annually onto the Plains to stock up on buffalo meat for the winter. At other times their way of life revolved round the river and the salmon. They were less temperamental than the Shoshones, and consequently more reliable, but while both tribes were of a peaceable disposition, rarely taking the offensive even with their enemies, they could be as tough and resilient as any Plains tribe when circumstances forced them to be so. Their habitual enemies were the Blackfeet—the cocks o' the north, and as ferocious a tribe as could be met with on the plains. But the Flatheads and the Nez Percés were not intimidated by the fierce reputation of their neighbors—they had their own well-established warrior tradition, and were fully capable of standing up to Blackfoot aggression. Of the two tribes, the Nez Percés were somewhat advanced culturally, and they had a well-deserved Plains reputation as craftsmen. Among other things, they were one of the few tribes to practice selective horse breeding. And Nez Percé bows were a staple in the trade—short and double-curved, with a twanging resilience that made them the most powerful of all Plains weapons.

With the Flatheads and the Nez Percés, Lewis and Clark sowed the seeds of enduring friendship and respect for the white people. Throughout the period which we treat here, and on to the 1870's their reliability and their loyalty to the Americans never wavered. The Flatheads, in fact, never came out against the whites at any time—not even when their country became valuable to Americans, and they suffered gross injustices at the hands of land-hungry settlers. The Nez Percés submitted to similar indignities for many years with well-bred contempt until at last one of their great leaders, Chief Joseph, turned against the whites in a hopeless, gallant fight for the rights of his people. The loyalty and friendship of these two tribes created a valuable oasis in the Great American Desert. For the next sixty years, all transmontane travelers in the Northwest would have much for which to thank the Captains.

They were finally on a navigable, westward-flowing river (it was the Clearwater). For the last time they built themselves canoes, and cached those supplies they did not need or had not room to carry. The horses would have to be abandoned here, and they branded the animals, leaving them to run with the Nez Percé herds—something they could never have done with the Snakes or the Minnetarees, and a remarkable illustration of the mutual trust which had already been created between these Indians and the white men.

Their departure was delayed temporarily while the members of the expedition recovered their health. The abrupt changeover from the all-meat diet of the Plains to the salmon-and-root staple of the far-western tribes had played havoc with their digestions, and most of the party was prostrate. Within a reasonable time they were fit to move again, and their systems eventually became conditioned to the new fare—although they quickly tired of it, and everybody longed for buffalo meat.

Two of their Nez Percé friends—Twisted Hair and Tetoharsky by name—had agreed to go along part of the way, acting as guides and interpreters, and with their help the expedition navigated the perilous course of the Clearwater.

On October 10th, after three days of spectacular and dangerous travel, they debouched into the Snake, the principal tributary of the Columbia. Clark immediately recognized it as part of the same system that had proved impassable at the Shoshone camp. (He was right. The Salmon River empties into the Snake some fifty miles above the mouth of the Clearwater.) The canyons here were on a more diminished scale than those that they had seen in the Bitterroots—but they were bad enough.

The constant problem now was rapids. And the time factor, as always. Clark noted that they should have made more portages than they did, but the inevitable delays involved in getting the boats in and out of the water often seemed to make it worthwhile running the risk of shooting the rapids. Fortunately, there was plenty of local expert advice on tap, and the party was daily attended by noisy, affable and everhelpful Flatheads and Nez Percés, who knew all the bad stretches of the river through their fishing activities. Finally the Captains worked out a routine for negotiating rapids, when it became clear that

they were going to be a daily problem. The nonswimmers of the party trudged round the obstacles carrying the more important cargo, while the strong swimmers shot the rapids in the lightened canoes to save the time and trouble of portaging the unwieldly craft. It was a dangerous business, and there were several spills. No body was drowned, but there were some near misses. On one occasion, Drewyer's canoe capsized, resulting in the loss of some of the seriously depleted stock of trade goods—the only currency with which the Americans could pay for food, labor and information.

On October 16th, they reached the Columbia. If the party celebrated this long-awaited and momentous occasion, the journals make no reference to it. Clark merely notes in detail the negotiation of some more than usually difficult rapids, and goes on to say, "having taken Diner set out and proceeded on Seven miles to the junction of this river and the Columbia which joins from the NW." Far more importance was attached to the purchase that evening of seven dogs for the stew-pot—everyone was by now heartily sick of the salmon diet.

Entry into the bigger river brought no relief from rapids—indeed, the going was worse than ever. One boat was lost in the negotiation of Celilo Falls. Then Cruzatte and Drewyer had to advise the Captains on how to get through The Dalles. Here the Columbia narrowed to forty-five yards, and flung itself through a twelve-mile-long series of rapids. There was no question of portaging—the canyon walls were sheer. The only thing to do was to run the boats through. And somehow Cruzatte and Drewyer managed it, to the astonishment of the local natives who crowded the banks below in the hope of witnessing a spectacular disaster.

They encountered some Wallawallas on this stretch, the last Indians they met with any vestige of tribal pride or dignity. After the Wallawallas, it was the sly, thieving, degenerate coastal tribes who stole everything they could lay their hands on and would have massacred the entire party just for practice, had not the Captains adhered strictly to their routine security precautions.

There job well done, the Nez Percé guides, Twisted Hair and Tetoharsky, now turned for home. They could no longer help with the language, and the expedition required no further guidance to reach the sea. Already there was evidence of the Northwest trade—scarlet and blue blankets, a sailor's jacket, then muskets, swords, pistols, powder flasks, woolen clothing, kettles and the thousand-and-one trivia of the Indian trade.

At the beginning of November they reached the last serious obstacle—the Cascades. There were two falls, the Upper and the Lower Cascades, where the river cut its gorge through the Cascade Mountains. They had to portage them both, rolling the dugouts over the rocks on logs. Below the Cascades the Columbia was at last a navigable river by any standards. The water was deep, too salt to drink and there was a tide.

They were not too soon. It began to rain with the foggy soaking drizzle of the coastal winter, and blustering northwesterly winds whipped up the river surface into a choppy sea. The Columbia widened to several miles, and the party could add seasickness to the impressive list of the privations they had suffered.

At last, on November 7th, Clark wrote: "Great joy in camp, we are in view of the Ocian, this great Pacific Octean which we been so long anxious to See." He was wrong, deceived by the ever-widening Columbia and the breakers in the big estuary. But a week later they were truly at the mouth of the river. Unloading the cottonwood dugouts that had served them so well, the party named the spot Fort Clatsop for the local Indians, and started building the quarters that would house them through their second winter away from home.

Jefferson's schemes for a transcontinental commercial waterway were brought to nothing. And, perhaps more important, his hopes for competing with the British in the Canadian fur trade were clearly shown to be impracticable. But there were compensations. The American title to Oregon was buttressed in exactly the way that Jefferson had intended. It would take forty years to reach agreement with the British, but Gray's discovery of the Columbia backed by Lewis and Clark's land crossing would form the basis of the American claim through all the negotiations, and would eventually prove effective.

The Captains brought back encouraging news for the fur traders also. Drewyer, their expert trapper, had demonstrated that the Upper Missouri tributaries abounded in beaver and that the untapped sources beyond the Mandan villages contained a rich harvest of fur equal to anything the British could show in the valleys of the Assiniboine and the Saskatchewan. Just how the American traders reacted to this information forms the best part of the remainder of this book.

But the most important contribution made by Lewis and Clark to the history of the Far West was not political or commercial—it was not even, strictly speaking, geographical, although of course the expedition was spectacularly successful in all these ways. What makes Lewis and Clark stand head and shoulders above all American pathfinders is the fact that they sowed a seed in the minds of the American people. That seed would take forty years to reach maturity. When it finally came to flower, it would be called "Manifest Destiny," and a conviction would possess the minds of United States citizens that their country stretched from coast to coast all the way from Canada to Mexico.

But that is going ahead too fast. . . .

We may leave Lewis and Clark at Fort Clatsop, although their adventures were less than half over. The outward journey has been dealt with at some length because it was a brilliant demonstration—almost a textbook example—of the difficult art of wilderness travel, and because of its fundamental importance in the story of the American Far West. The return trip, after a winter on the Pacific Coast, was managed with equal courage, efficiency and intelligence, but covers much the same ground with some relatively minor variations where the Captains decided that certain rivers, valleys or mountain ranges required further exploration. They returned to St. Louis, where they received a heroes' welcome, on September 23, 1806.

William Clark settled in St. Louis, where he lived out a full and happy life as Superintendent of Indian Affairs and dozen of fur traders. If he was lionized by the whites—and his social standing reached a point where newcomers to the fur trade automatically paid him a courtesy call—then he was positively deified by the Plains Indians, for whom he was responsible. All through the remainder of his life, he was forever being asked to accompany government embassies to the tribes and to help in peace negotiations, boundary disputes and so on. He genuinely liked Indians, and probably did as much as anyone to try to break down the dense barriers of misunderstanding that plagued all relations between the red men and the white.

The fate of Meriwether Lewis was less happy. He was made Governor of Louisiana Territory in recognition of his services, but he died suddenly in mysterious circumstances only three years later while on his way from St. Louis to Washington. Lewis was the deeper thinker of the two—more introverted and more self-critical. Here is part of his diary entry for August 18, 1805, written while quartered with the Shoshones in the heart of the Rocky Mountains:

"This day I completed my thirty first year, and conceived that I had in all human probability now existed about half the period which I am to remain in this Sublunary world. I reflected that I had as yet done but little, very little, indeed, to further the hapiness of the human race or to advance the information of the succeeding generation. I viewed with regret the many hours I have spent in indolence, and now soarly feel the want of that information which those hours would have given me had they been judiciously expended, but since they are past and cannot be recalled, I dash from me the gloomy thought, and resolved in future, to redouble my exertions and at least indeavour to promote those two primary objects of human existence, by giving them the aid of that portion of talents which nature and fortune have bestoed on me; or in future, to live for *mankind*, as I have heretofore lived to *myself*."

Here is the rare gift of humility. Meriwether Lewis would be sincerely astonished to know that history remembers him as one of the two greatest pathfinders in the trans-Mississippi West.

THE TRAILBLAZERS

(By the Editor of Time-Life Books)

AN EPOCHAL THRUST TO THE PACIFIC

On January 18, 1803, President Thomas Jefferson sent a confidential message to Congress. "The river Missouri," it stated, "& the Indians inhabiting it, are not as well known as is rendered desirable by their connection with the Mississippi & consequently with us. . . . An intelligent officer with ten or twelve chosen men . . . might explore the whole line, even in the Western Ocean. . . ." This group, variously known as the Lewis and Clark expeditious or the Corps of Discovery, turned out to be the most carefully conceived, brillantly led, and probably the most profitable piece of trailblazing in history up to that time.

This first announcement of Jefferson's, only 1,300 words long, was deliberately sketchy about the nature of the mission—and understandably so. For in his artful fashion, Jefferson was asking Congress to authorize a military reconnaissance into vast and virtually unknown lands that were claimed by the two most powerful nations in the world, France and Britain, with a third Spain, clinging to a hold in the South and Far West. Jefferson knew the legislators were likely to boggle at such a chancy proposition: indeed, his political opposition in the Federalist Party would object to almost anything he proposed. He therefore chose language that was contrived both to minimize the risks and to render the halt irresistible. He avoided any use of the word "military," pointing out instead the opportunities for "extending the external commerce of the U.S." He spoke enticeingly of "great supplies of furs & peltry" to be obtained from the Indians, who up to that time had sold their furs solely to the British Hudson's Bay Company and the North West Company of Canada. As a clincher, he made the temptation cheap, asking only $2,500 to finance the project (though in the end the actual cost came to $38,722.25).

On February 28, 1803, Congress approved the venture, Jefferson was quietly jubilant. For upwards of two decades as a public servant he had been actively scheming at ways to find out what lay in the great void beyond the Mississippi, and to establish some sort of American presence there. In fact long before he became President, Jefferson, who was both a scientist and a brillant geopolitician, had made at least two abortive efforts to satisfy his own scholarly curiosity and at the same time to open the door at least a crack for U.S. expansion into the West.

While Minister to France in 1786, he came across an adventurer named John Ledyard. Ledyard struck him as "a man of genius, of

some science, of fearless courage and enterprise . . . and of a roaming restless character." Jefferson urged him to approach the American West by an outlandish course: across Europe and Asia to eastern Siberia, thence over the Bering Sea to Vancouver Island, down the New World's coast and inland to the Missouri River. Ledyard eagerly undertook the challenge and managed to walk 3,000 miles into Siberia before Catherine the Great got wind of him and, suspecting that he was a spy, had him escorted back to Poland under armed guard.

At that point-Jefferson wrote off Ledyard, but not his own curiosity or aspirations. A few years later, by which time he was Secretary of State, he came up with another candidate to traverse the Far West. His new choice was André Michaux, a French émigré who had become a Carolina landowner and sometime botanist and explorer. He claimed that he could find a way across the continent via the Missouri. Encouraged by the man's scientific credentials, Jefferson commissioned him to make the trip. But Michaux, it turned out, was a spy—an agent provocateur in the service of the notorious, trouble making French Minister, Citizen Edmond Charles Genêt. Michaux had gotten only as far as Kentucky when he was called back and strongly advised to return to botany.

Jefferson carried his westering ambitions into the White House, and from this lofty vantage point he perceived even more acutely the necessity of establishing a trans-Mississippi foot hold for the United States. By that time the British had already accomplished a continental crossing: in 1793 a fur trader named Alexander Mackenzie had blazed a trail across northwestern Canada to the Pacific, and there was some concern that he might try again, this time perhaps along the Columbia River. To further complicate matters, war between France and Britain was imminent, and the President sensed that its destructive waves would probably spill over into North America.

In 1802 Napoleon assigned two powerful armies to service in the New World. The first headed for San Domingo to oust the Negro revolutionary Toussaint L'Ouverture and regain control of the Caribbean island. The second, secretly assembled, was intended to police Louisiana. But yellow fever and the guerrilla tactics of L'Ouverture destroyed the first army in San Domingo, and when it was all but wiped out Napoleon sent the second in relief. That, too, was quickly cut down and it never reached Louisiana.

Overextended and sorely in need of cash to finance his war machine Napoleon turned to negotiating with Jefferson's emissaries in Paris for the sale of the French possessions in America. In April 1803 the two parties agreed on the terms of the Louisiana Purchase (map, below), by which the United States eventually gained 800,000 square miles between the Mississipoi and the Rocky Mountains. Now Jefferson no longer needed secrecy or guile to move westward. As President he had a legitimate duty to examine the new lands.

He was more than ready to do so. By the time the teritory was transferred to United States ownership, Jefferson's secretary, young Captain Merriwether Lewis, had assembled all of the equipment for the Corps of Discovery, and his co-commander, Second Lieutenant William Clark, was already at the mouth of the Missouri, drilling the men and selecting additional baggage for the great trip into the hinterland. On March 9, 1804, Captain Lewis, dressed up in the best of his uniform coats for what would be the last time in more than two years, appeared at the Government House in St. Louis. There, as a witness, he put his signature to the document completing the great land transaction—and removing the last formal barrier to the historic venture. Lewis and Clark and their men would be the first Americans to carve a track across the West all the way to the Pacific; they were the pathfinders for a nation. In their wake would follow the mountain men, prospectors, cattlemen, sodbusters, tracklayers and city builders—the successive generations of an empire.

When Jefferson noted in his message to Congress that the West was "not as well known as is . . . desireable" he was drastically understanding the case. In truth, most of the trans-Mississippi territory remained, as French traders called it, pays inconnu, unknown land. The best maps Jefferson could obtain for the Corp's guidance represented a mixed bag of geographical information collected here and there over 200 years, and offered little more than outlines and guesswork. The Missouri River had been charted only as far above St. Louis as the Mandan villages in the Dakota region. British, Russian and Spanish explorers had touched tentatively here and there along the Pacific Coast north of California, but no one had charted the Columbia River beyond its mouth. No whiteman knew the distance from the Dakota region to the Columbia, much less what lay in between.

Because of this vacuum of knowledge fantastic tales had arisen. Some were based on a modicum of fact, others were entirely imaginary. In either case, through repetition and the absence of disproof, they had come to bear the color of revealed truth. Strange and wondrous folk were said to dwell in the vastness. Among these were a tribe of manhating, arrow-shoting Amazons, each of whom had her right breast removed because it got in the way of the bowstring; and a tribe of Welsh-speaking Indians descended from a Briton who had reached the Americas long before Columbus. One particularly bizarre story had it that in an eerie region called Les Côles Brûlées (the Burnt Cliffs) would be found a community of devils in human form standing only 18 inches high.

Jefferson had no way of knowing the accuracy of most of these reports; indeed, in adressing Congress he had mentioned rumored geographical marvels, including a mountain made entirely of salt. He was determined that the Corps of Discovery must learn what was really out there in the wilderness. And Meriwether Lewis, the man whom he selected to report on the facts, was no dreamer or schemer like Ledyard or Michaux. On the contrary, Lewis' mind was in perfect congruity with that of the President, and for good reason. Jefferson had been grooming him for years.

Meriwether Lewis' family had been neighbors of Jefferson's in Albemarle County, Virginia. After Lewis' father died, his mother remarried and the family moved to the frontier in Georgia. Lewis spent his boyhood on the very fringes of the American wilderness. By the time he returned to Virginia in his teens to manage his father's land, he had acquired an essential qualification of exploration—the ability to live in wild country. The statesman and the young man became fast friends; whenever Jefferson felt like talking, he would summon Lewis with a mirror blinking in the sun.

During these early conversations, Jefferson began to share his grand design with Lewis, and the young man responded eagerly, volunteering to go into the wilderness in 1792 when he was only 18 years old. Though Jefferson turned Lewis down at that time in favor of Michaux, nevertheless the President was impressed by his youthful neighbor's boldness; he later recalled that "I told him it was proposed that the person engaged should be attended by a single companion only, to avoid exciting alarm among the Indians. This did not deter him."

In 1794 when the Whiskey Rebellion erupted, Lewis volunteered for the Army. He had risen to captain by the time Jefferson became President in 1801. Upon taking office, Jefferson invited Lewis to be his private secretary, and late into the evenings the two friends developed their scheme for a probe to the Pacific, grounding the adventure in the kind of detailed planning that would become its hallmark.

Jefferson's first priority in setting up the Corps was to pick the right people. In Lewis he had a superb leader with strength of body, woods-wisdom, an inquiring turn of mind, determination and coolness under stress. So well qualified was Lewis that in the whole following century of Western trailblazing only one man came close to matching his abilities. That man was Joe Walker, one day to be king of the tough breed called the mountain men, but in 1802 still a small boy growing up on a farm carved out of the Tennessee woods.

But qualities of command were not enough. The ideal man for this journey, Jefferson felt, should possess a knowledge of "botany, natural history, mineralogy & astronomy." Accordingly, Jefferson dispatched Lewis to Philadelphia for instruction at the University of Pennsylvania and at the American Philosophical Society, then the nation's reigning scientific institution.

For a month and a half, beginning in mid-April 1803, Lewis submitted himself to concentrated tutoring. From the mathematician Robert Patterson he learned celestial navigation. Other renowned researchers, such as the naturalist Benjamin Smith Barton, anatomist Caspar Wistar and the physician Dr. Benjamin Rush, drilled him in their various specialties and interests. Dr. Ruth urged him to inquire among the Indians into such matters as suicide and murder, burial customs, diet, medicines, menstruation, breast feeding, bathing, fasting, longevity and religious practices. Lewis was asked particularly to determine, if posaible, any affinities between Indian religions and Judaism—since it was believed by some people that American Indians might actually be the descendants of lost tribes of wandering Jews.

In addition to priming Lewis with questions about the medical practices of the tribes, Dr. Rush furnished Lewis with a rather impractical list of Rules of Health, advising, for example, against marching if the men felt "the least indisposition." He also gave Lewis a generous supply of "Doctor Rush's pills" for "costiveness," or constipation. Lewis and Clark, were to fall back on this remedy for almost any ailment—including diarrhea.

During his educational marathon, Lewis gave particular thought to the question of who would accompany him as adjutant. At length he chose a Kentucky frontiersman and old Army comrade, William Clark, younger brother of the famous frontier fighter of the Revolution, General George Rogers Clark. Clark accepted with delight—and with deplorable spelling: "I will chearfully join you," he wrote. "My friend I do assure you that no man lives whith whome I would perfur to undertake Such a Trip &c. as your self." In an exchange of compliments, Lewis declared that Clark's authority would be equal to his own. He promised his old friend a captaincy (and later became lastingly bitter at the War Department's refusal of that promotion).

Together, the two men went about the critical work of assembling their crew. When seeking volunteers for the mission, they carefully avoided "Gentlemens sons" who smelled adventure. Lewis declared: "We must set our faces agiust all such applications and get rid of them on the best terms we can. They will not answer our purposes." Instead the leaders agreed they wanted solid frontiersmen, stable of character, self-reliant but amenable to the harsh discipline that circumstances would impose even if the leaders did not. In addition the men should have a wide array of skills, for the Corps would need hunters to supply meat, boatmen wise in the ways of rivers, carpenters to build winter quarters and blacksmiths to repair equipment. In the end they assembled a party of 30, including 17 regular soldiers, 11 enlistees, a half-breed to serve as an interpreter, Clark's giant Negro servant York and Lewis' dauntless Newfoundland dog Scammon. They picked no drifters, drunks, neurotics or romantics. The proof of their judgment was that during their journey through 7,689 miles of dangerous wilderness only two of the men failed under stress.

Lewis had the job of selecting their gear. Early on, he made a trip to Harpers Ferry, West Virginia, where the arsenal had already received orders to supply his weapons. There, impressed by the accuracy of the Kentucky long rifle but concluding that it was too fragile, he redesigned the piece so effectively that Lewis' "Harpers Ferry Rifle" became the standard weapon and first mass-produced infantry arm for the United States Army. He ordered swivel cannons as heavy armament. And more or less on a whim he also decided to take along a newfangled semi-toy, an air rifle.

In Pittsburgh, Lewis commissioned the building of the Corps's principal transport—a 60-foot keelboat, or barge. Demanding and impatient when it came to seeing the needs of the Corps fulfilled, he was infuriated by the rumpot habits of the boat builder and wrote the President that he had been "most shamefully detained by . . . unpardonable negligence." Lewis straightened out this situation without Presidential help, but in all matters of preparation and equipment, Jefferson remained a close and fascinated consultant.

The President noted with approval the medicine chest and its contents, which included a supply of opium and laudanum. He concurred with the need for a "Cheap portable Microscope," hydrometers, an iron-framed collapsible canoe invented by Lewis, and a "portable soup" whose recipe was concocted by Lewis with the advice of a Philadelphia chef. (The men later learned to loathe the stuff.)

To help the Corps befriend the Western Indians—and perhaps smooth the way toward future trade—Lewis and Jefferson agreed upon a lavish stock of gifts. In fact the largest cost item on Lewis' supply inventory was $669.50 for presents. These included colored beads, calico shirts, handkerchiefs, mirrors, bells, needles, thimbles, ribbons, sheet metal, kettles and brass curtain rings to be worn on the fingers. Lewis also brought along dozens of peace medals, some of them bearing on one face a likeness of President Jefferson and on the obverse two hands clasped in friendship.

By the spring of 1804, after the official transfer of the Louisiana Territory to American ownership, the Corps of Discovery was ready to go. Now all the careful planning would be put to the test of the wilderness: Jefferson's decades of political maneuvering and diplomacy, his foresight and boldness and mastery of detail, his wisdom in choosing the man who would lead the mission and, most of all, his instinct about the West as the direction of American destiny. On May 14 the expedition started up the Missouri.

For the next 2 years 4 months and 10 days, the explorers were beyond all advice or support, having rowed, paddled, trudged and ridden horseback quite literally beyond the edge of the known world.

They had scarcely moved beyond the familiar stretches of the lower Missouri when the leaders found much to marvel at. "This senery already rich pleasing and beautiful was still farther hightened by immence herds of Buffaloe, deer Elk and Antelopes which we saw in every direction feeding on the hills and plains," wrote Lewis who, like Clark, tended to improvise spelling. "I do not think I exagerate when I estimate the number of Buffaloe which could be compre|hend|ed at one view to amount to 3,000." Farther on they would see herds of well over 10,000 buffalo, at times "attended by their shepperds the wolves" or feeding in company with other game "in one common and boundless pasture. . . . the buffaloe Elk and Antelope are so gentle that we pass near them while feeding, without appearing to excite any alarm among them; and when we attract their attention, they frequently approach us more nearly to discover what we are."

Lewis and Clark added faithfully to their notes throughout the trip, compiling enormously detailed and flavorful journals. Others of the party fell into a similar habit. Amid the scientific data and personal wonderment in these journals was a measure of straightforward complaining. The men soon learned to detest the serpentine Missouri, with its caved-in banks and treacherous sandbars. Even more annoying were the hordes of gnats that flew into the eyes, and the mosquitoes that sought every patch of open skin. Lewis noted that mosquitoes "continue to infest us in such a manner that we can scarcely exist; for my own part I am confined by them to my bier at least ¾th of my time. My dog even howls with the torture he experiences from them . . . they are so numerous that we frequently get them in our thrats as we breath."

Lewis found an additional early hazard in his own passionate curiosity. He tested mineral deposits by taste, trying suspected alum, cobalt and other ores with his tongue. As a result he fell painfully ill from arsenic or some other metallic poison. A purge with a "Dost of Salts" cured him.

Eleven weeks out the party encountered its first Indians, the Otos. After liberally distributing gifts and peace medals bearing Jefferson's likeness to this amiable tribe, Lewis addressed them in a speech that helped to set the pattern of official United States policy toward the Indians in the West:

"Children. The great chief of the Seventeen great nations of America, impelled by his parental regard for his newly adopted children on the troubled waters, has sent us out to clear the road . . . [He] has commanded us his war chiefs to undertake this long journey . . . You are to live in peace with all the white men, for they are his children; neither wage war against the red men, your neighbours, for they are equally his children and he is bound to protect them. 'Injure not the person of any traders who may come among you. . . . Do these things which your great father advises and be happy. Avoid the councils of bad birds; turn on your heel from them as you would from the precipice of an high rock . . . lest by one false step you should bring upon your nation the displeasure of your great father . . . who could consume you as the fire consumes the grass of the plains."

Though Lewis, by Jefferson's express order, was a good deal more diplomatic than many of those who followed him, nevertheless his basic stance toward the Indians was stern. Be conciliatory, he warned the Indians, or you will be sorry.

In this aggressive approach to diplomacy, Lewis found that his air rifle was an excellent asset. One of the party recorded the occasion. "Captain Lewis shot his air gun, told them that there was medician in hir, and that She would do great Execution. They were all amazed at the curiosity and as soon as he had shot a flew times, they all ran hastily to see the Eall holes in the tree and they Shouted aloud at the Site of the execution she would do."

Seventy-five miles beyond the meeting place with the Otos, death struck the party for the first and only time. Many of the Corpsmen had begun suffering from boils and stomach disorders, which Lewis attributed to the Missouri's scummy water. The symptoms of Sergeant Charles Floyd seemed especially ominous. On August 19 when the party was camped near the site of the present-day Sioux City, Iowa, Floyd started vomiting and became violently diarrheal. The leaders were at a loss for a remedy. The next day, the ailing sergeant called Clark to him and said, "I am going away. I want you to write me a letter." Before Clark could lay hands on his writing materials, the sergeant was dead. The cause was recorded as the "Biliose Chorlick."

Even while Floyd lay on his deathbed, Lewis had to deal with the first and worst disciplinary crisis of the expedition. A few days earlier, Moses Reed, a volunteer, had asked for and received permission to backtrack to the party's last camp to search for a lost knife. When he did not return Lewis realized Reed might be deserting. Quickly, Lewis dispatched a group after Reed "with order if he did not give up Peaceibly to put him to Death." They found Reed back among the Otos. He tried to wheedle a guard into letting him flee but the Corpsman was adamant.

Upon being returned to the expedition's camp, Reed was punished for his attempted desertion in a manner that created a permanent impression on his fellow Corpsmen. Clark described the matter tersely: "[We] proceeded to the trial of Reed, he confessed that he 'Deserted & stold a public Rifle Shotpouch Powder & Ball' and requested we would be as favourable with him as we Could consistantly with our Oathes—which we were and only Sentenced him to run the Gantlet four times through the Party & that each man with nine Switches Should punish him and for him not to be considered in future as one of the Party."

On only one other occasion, more than 400 miles farther up the Missouri, were the commanders put to the necessity of severely punishing a malingerer. The culprit this time was John Newman, an army private; he was sentenced to 75 lashes and discharge from the expedition (he was later sent back to St. Louis). The meting out of the lashes was witnessed by Indians. Clark recorded the reaction of the chief. "The punishment of this day allarmd, the Indian Chief verry much, he cried aloud (or effected to cry)." Clark explained to the chief the necessity of making an example and maintaining discipline; the Indian agreed that discipline was necessary but "his nation never whiped even their Children, from their burth." How then, Clark inquired, would the chief have made an example in a similar case? The chief's advice was simple: kill him.

Near the spot where this unhappy episode occurred, the Corps leaders' firmness was put to a different kind of test. All the way upriver, Lewis and Clark had anticipated with some apprehension a possible confrontation with the Teton Sioux, who dominated a long stretch of the upper Missouri and were reputed to be both warlike and arrogant. For years they had terrorized neighboring tribes and exacted tribute from any traders who came their way.

At the mouth of the Teton River in South Dakota, the Corps did indeed encounter a party of Teton Sioux. In an effort at frontier diplomacy Lewis and Clark invited the chiefs on board their keelboat. However, the Indians showed little inclination to be friendly, and at last Clark and a few of the men rowed them back to shore. At this point, one pugnacious young chief became deliberately provocative. As Clark's journal recounted the episode, the Indian "was very insolent both in words & justures (pretended Drunkenness & staggered up against me) declareing I should not go on, Stateing he had not receved presents sufficient from us, his justures were of Such a personal nature I felt My self Compeled to Draw my Sword (and Made a Signal to the boat to prepare for action)."

Seeing this dangerous turn of events from the keelboat, Captain Lewis ordered his men to arms. Some of the Sioux warriors, meanwhile, strung their bows and drew arrows. But before letting fly they hesitated, perhaps because the swivel cannons and all the rifles on the keelboat were aimed right at them. At that point Clark coolly dismissed his own men, ordering them to row back to the keelboat. He stood alone on the shore until Lewis sent reinforcements.

As soon as the additional men arrived, the Indians withdrew a short distance. Clark turned on his heel and walked straight toward the boat without a backward glance. Utterly outfaced, some of the Indians begged to be taken on board for a fresh start at negotations. Clark granted their request, but he was still seething. "We proceeded on about 1 Mile & anchored out off a Willow Island placed a guard on Shore to protect the Cooks & a guard in the boat . . . I call this Island bad humered Island as we were in a bad humer."

Thereafter the Teton Sioux, though they remained basically hostile, never again mounted a serious threat to the Corps. Puzzled but clearly impressed by these firm-handed white men, the tribe took to begging and offering women for the explorer's beds. "A curious custom," wrote Clark, "is to give handsom squars to those whom they wish to Show some acknowledgements to." The offers were not always refused, either here or later. Among the Arikaras, Lewis observed that the women were "handsome and lively and disposed to be amorous." Clark confided to his diary that he had never seen more friendly and persistent "squars"; they were "verry found of caressing our men." On one occasion upriver, however, a warrior had second thoughts about the policy; after giving his wife to a Corpeman for one night, he became so enraged when she attempted to stay with the expedition that he threatened to kill her. The woman was promptly returned and her irate husband soothed with presents.

For most of the journey, Lewis felt that it was wisest to allow the men these diversions with Indian women. However, when the Corps reached the Pacific, where the Indians had already encountered other white adventurers and their diseases, Lewis warned against any contact. But several men were infected—one of them by a woman who bore upon an arm the tattooed brand of a former white admirer, "J. Bowman."

In the mid-autumn of 1804 the party reached the mouth of the Knife River in the future state of North Dakota. There they decided to make winter camp among the Mandan Indians. The men of the Corps set to work erecting a fort, a sturdy log structure sheltered from the wind both by woods and the rimrock along the river's edge. Again the emphasis on caution and thoroughness paid off, for the winter of 1804–1805 was a bitter one; Lewis recorded temperature down to 45° below and, on one really cold day, noted that some of the expedition's hard liquor that had been left outside froze solid in 15 minutes.

Nevertheless the resourceful commanders were able to put the long, enforced halt to good use. During the five months at Fort Mandan, as they called their quarters, Clark found a chief named Big White who claimed to know the terrain far ahead. Clark spent hours translating the chief's crude maps, drawn in the sand, into a chart of the upper Missouri and its tributaries. One piece of information from Big White and the other Mandans was particularly exciting. They "inform us, that the Missouri is navigable nearly to its source," wrote Lewis, "and that . . . at a distance not exceeding half a day march, there is a large river running from South to North . . . We believe this stream to be the principal Southfork of the Columbia river." That river, he knew, would lead to the Pacific Ocean.

While Clark occupied himself with geography, Lewis cultivated Indian friendship. Playing the role of diplomat and the first American landlord of this newest extension of United States territory, Lewis ordered the expedition's blacksmith to help mend the Indian hoes and battle-axes, and he donated fragments of a burned-out iron stove to make new tools and weapons. He gave away an iron gristmill, hoping to ease the women's work in grinding cornmeal. But the warriors had other ideas; they broke the machine into fragments and shaped the metal into arrowheads.

While wintering over with the Mandans, Lewis recruited two new crew members from a neighboring village of the Minnetaree tribe. One turned out to be a craven nuisance, the other a prize beyond any price. The nuisance was Toussaint Charbonneau, a French-Canadian whom Lewis hired to interpret; the prize was his wife Sacajawea—a name that later generations of schoolchildren came to know by heart as the beautiful and courageous Indian princess who helped to lead America westward.

Sacajawea (Lewis and Clark commonly wrote of her as "the Indian Woman" because they could not spell her name) was a Shoshoni. She had been captured by the Minnetarees when about 11 years old, and later sold to Charbonneau as a slave. Now, at 16, she was married to him and hugely pregnant. Perhaps hoping to see her own people once more, she seemed anxious to go upriver with the Corps. Lewis consented to take her along because he thought—with superb intuition as it turned out—that she might be useful if the expedition did indeed meet the Shoshonis to the west.

When her time came that February, she underwent a long and agonizing labor. Although Lewis, clinical skills were by now improving (he had successfully amputated frostbitten toes) he was out of his depth in obstetrics. Luckily a fur trader who was visiting the Mandans suggested a dosage of rattlesnake rattles as proper therapy. "Having the rattle of a snake by me I gave it to him and he administered two rings of it to the woman broken in small pieces," Lewis reported. "I was informed that she had not taken it more than ten minutes before she brought forth."

On April 7, 1805, the Corps of Discovery gathered its gear and again headed West. Lewis noted with astonishment that in this virgin land beavers swam fearlessly in their streams in broad daylight. One day a buffalo calf followed him about like a pet dog. On the riverbank, he saw for the first time huge pawprints of the "white bear"—the dreaded grizzly.

Out hunting a few weeks thereafter, Lewis shot a buffalo. He stood watching the animal die, not thinking to reload his gun, and a grizzly came within 20 steps before Lewis saw it. Later he recounted the next few terrifying moments: "It was an open level plain, not a bush within miles nor a tree within less than three hundred yards . . . the river bank was sloping . . . in short there was no place by means of which I could conceal myself from this monster . . . he pitched at me, open mouthed, and full speed, I ran about 80 yards and found he gained on me fast. I then run into the water the idea struk me to get into the water to such debth that I could stand and he would be obliged to swim, and that I could . . . defend myself with my espontoon [an old-fashioned, spear-pointed weapon that Lewis used to steady his rifle when shooting] . . . the moment I put myself in this attitude of defence, he sudonly wheeled about . . . declined to combat on such unequal grounds, and retreated with quite as great precipitation as he had just before pursued me."

On May 26 Lewis came within first sight of one of the greatest landmarks on the journey. He had climbed a hill near what is now Cow Creek in Montana when he saw, far off, a range of peaks. He later confided his feelings to his journal. "These points of the Rocky Mountains were covered with snow and the sun shone on it in such a manner as to give me the most plain and satisfactory view. While I viewed these mountains I felt a secret pleasure in finding myself so near the head of the heretofore conceived boundless Missouri; but when I reflected on the difficulties which this snowy barrier would most probably throw in my way to the Pacific, and the sufferings and hardships of myself and party in them, it in some measure counterbalanced the joy I had felt in the first moments in which I gazed on them. But as I have always held it a crime to anticipate evils I will believe it a good comfortable road until I am compelled to believe differently."

He was soon prompted to so believe. Proceeding up the Missouri, the party came to a fork that did not seem to fit with the map Clark had drawn with the Mandans. Here two streams of apparently equal volume joined. Which was the real Missouri? Most of the Corpsmen picked the northerly branch as the correct one, for a sound reason: that stream was a silt-laden and generally repulsive as the rest of the Missouri. The south branch ran clear.

But Lewis and Clark were not so sure, and now they displayed yet another dimension of their leadership qualities: a refusal to accept the obvious. They suspected that the clarity of the south fork indicated an origin in the high barren Rockies. To double-check, each man picked a branch to explore with a small party. Lewis took the muddy fork. Seeing that its course continued northward he concluded that he was not on the main stream, and that if the expedition took this fork it would soon be wandering futilely into the endless plains of Canada. On a quirkish impulse, he named the tributary Maria's River (later spelled Marias) for a girlfriend back home, although he felt obliged to remark that "the hue of the waters of this turbulent and troubled stream but illy comport with the pure celestial virtues and amiable qualifications of that lovely fair one."

Then he returned to camp, where he found that Clark had confirmed his own conclusions. They took the south fork and upon this carefully weighed decision turned the fate of the Corps of Discovery. A wrong choice, wrote Lewis, "would not only loose us the whole of this season but would probably so dishearten the party that it might defeat the expedition altogether." Lewis was particularly gratified that the men, despite their doubts about the south fork, were so willing to trust the judgment of the commanders.

The next hurdle, formidable indeed, confronted the Corps of Discovery in the form of the Great Falls of the Missouri. The sight of the roaring falls dumfounded Captain Lewis. Noting that the torrent was 300 yards wide and at least 80 feet high, he wrote, "The water after descending strikes against the abutment . . . on which I stand and seems to reverberate and being met by the more impetuous current they roll and swell into half formed billows of great height."

The portage around the falls covered more than 18 miles, over rough terrain grown with spiky cactus that tormented the men through their double-soled moccasins. To move the heavy equipment. Lewis set a crew to hewing primitive cart wheels from the 22-inch trunk of a cottonwood tree. These wheels, he noted in his journal, "with couplings, tounga-and bodies . . . might either be used without the bodies for transporting our canoes, or with them in transporting our baggage." They were used for both, although getting the entire load around the Great Falls took 24 days and left the Corps close to exhaustion.

But soon they were again "under way much

to my joy," as Lewis wrote. And now they were in the high country where the Shoshone tribe lived—and where Sacajawea had spent the first 11 years of her life until the Minnetarees had captured her in a raid. The Indian woman had already demonstrated great courage and presence of mind when her husband, who could not swim and whom Lewis described as "perhaps the most timid waterman in the world," allowed one of the smaller boats to be nearly capsized in a squall, then froze at the tiller in a panic. With the boat "topsaturva," light objects among their gear spilled overboard. While Charbonneau was "crying to his god for mercy," Sacajawea alertly retrieved the equipment from the water. Lewis gratefully recorded her "fortitude and resolution."

As the party neared the source of the Missouri, Sacajawea proved her ultimate value. She recognized landmarks and helped to guide the Corps up into the mountains. Moving quickly, the Corps reached the roof pole of the continent of North America—the Continental Divide. Just short of it one member of the expedition, Hugh McNeal, ostentatiously spread his legs and straddled a stream that he took to be the headwaters of the river they had followed for 2,400 miles (the actual source lay up another stream). In his journal Lewis recorded how McNeal had effusively "thanked his god that he had lived to bestride the mighty & heretofore deemed endless Missouri."

From that point Lewis swiftly led his men two miles over a ridge and through the later-named Lemhi Pass. After descending a short way, he paused to slake his thirst at a sparkling rivulet. "Here," he wrote proudly, "I first tasted the water of the great Columbia river." The brook was not the true Columbia but it was indeed a tributary. At long and arduous last, the Corps was on the Pacific slope.

Lewis was particularly anxious to meet with Sacajawea's people. Having been forced to abandon the boats, the expedition needed horses to continue the journey; their only hope of getting them quickly was to make friends with Shoshones. But the tribe at first proved "affrighted" and evasive. When at last the Corps did make contact with them, the Indians remained uneasy and ready to vanish into the forest until, suddenly, a woman rushed to embrace Sacajawea. They had been girlhood friends. The Shoshones relaxed somewhat and a formal powwow began. Suddenly Sacajawea ran forward and threw her arms around the chief, Cameahwait; she had just recognized him as her brother. Beginning on this happy note, negotiations with the Indians proceeded smoothly, and the Shoshone chief eventually agreed to supply the white men with horses. In late August the Corps of Discovery set off again. Sacajawea chose to go with them. She, her husband and infant son would stay with the party until they once again returned to the Minnetaree village 13 months later.

Although the horses obtained from the Shoshones greatly eased the burden of baggage and the Corps was now headed downhill, the trek itself continued hard. The precipitous western face of the Rockies was cut by torrents, steep slopes and ribbed ledges that seemed all but impassable. Worse still, virtually all wild game seemed to have vanished. And though the Columbia, whose course they now followed, was full of salmon, the fish had already spawned. They were generally dead or dying and unfit for horse fodder. Even dogs, whose flesh Lewis had found more to his taste than most any other meat, were hard to find among the little-known Indians the party now came upon.

Despite the hardships of the way and their own personal discomfort, Lewis and Clark kept the men moving, and continued to record their impressions of each new tribe. Lewis openly admired the Nez Percés for their pride of bearing but even more for the splendid Appaloosa horses they pastured. The coast-dwelling Chinooks and Clatsops, on the other hand, he learned to regard with a sort of exasperation; he judged them to be shiftless beggars and thieves. In meeting Indians, Lewis—now thoroughly weatherworn and suntanned—had to roll up his buckskin sleeves to establish his identity as a white man.

Then, quite suddenly, on November 7, 1805, came the climactic moment for the Corps of Discovery. Far off the men heard for the first time the rumble of Pacific breakers. Clark wrote, "Great joy in camp we are in view of the Ocian, this great Pacific Octean which we been so long anxious to See. and the roreing or noise made by the waves brakeing on the rockey Shores (as I suppose) may be heard distictly."

By December 7, 1805, they had camped on the south bank of the Columbia near its mouth. From this spot, they could keep watch over the heaving Pacific and hail any ship that might come by. For it had occurred to President Jefferson, who seemed able to think of everything, that if the journey out proved very dangerous, the Corps might have to come home by ship, intercepting some trader's vessel on the West Coast. Accordingly he had furnished Lewis with a letter of credit authorizing him to draw upon United States envoys anywhere—including Java, the island of Mauritius and the Cape of Good Hope. This unrestricted line of credit from the nation's treasury was perhaps the ultimate expression of the President's confidence in the youthful leader of the expedition.

By January 1 the Corps had hewed a stockade and winter quarters which they named Fort Clatsop. Clark had already fallen out of love with the Pacific, whose noise he could not bear. "The sea," he wrote, "which is immediately in front roars like a repeeted roling thunder and have rored in that way ever since our arrival in its borders which is now 24 days . . . I cant say Pasific as since I have seen it, it has been the reverse."

No ship hove over the horizon and, in any case, Lewis longed to conduct further investigations of the land on the way home. Impatient for spring, the men broke camp on March 23, 1806, and headed east.

In psychological terms, the six-month journey back was easier. This time the party knew the way and, more fundamentally, they knew there was a feasible route. But the trip itself included all the physical stress that had accompanied the Corp's westering. Moreover the homeward journey produced two incidents representing the only grievous violence of the entire expedition. Both involved Lewis, who, with six men, had separated from Clark in order to reconnoiter fresh country. Camped with some seemingly amicable Blackfeet, Lewis awoke at a cry of alarm to discover that the Indians were stealing rifles from the sleeping explorers. In the ensuing melee one Blackfoot was stabbed to death and another wounded by a shot. Though Lewis was in no logical sense to blame, any hope for peaceful relations with the Blackfeet was shattered. For decades afterward, the tribe made war upon the pioneers who came westward on the Lewis and Clark trail.

The other mischance was also a shooting—and Lewis himself was the victim. While hunting meat, a member of the party, who had only one eye, mistook Lewis for an elk or bear and shot him in the buttocks. For weeks Lewis was in considerable pain, and had to be carried in a litter.

Lewis was reunited with Clark near the mouth of the Yellowstone in mid-August, and he was still suffering from his wound when, on September 20, 1806, far downstream on the Missouri once more, the Corps passed a French settlers' village called La Charette—the first visible sign of white man's civilization they had seen in nearly two and a half years. Clark entered in his record, "we saw some cows on the bank which was a joyfull Sight to the party and caused a Shout to be raised for joy."

It was a shout of jubilation, of relief and of triumph. They were home from the wilderness. They were alive and safe. They had vindicated a President's faith and judgment. With strength, endurance, discipline and the exercise of uncommon common sense, they had opened the way to half a continent. Moreover, they had gone into the unknown and brought back knowledge and solidified the American title to lands that had doubled the size of the nation.

Word of their return spread rapidly (most people had given them up for lost) and newspapers across the land rushed into print with summaries of their achievement. The *Columbia Centinel* of Boston carried this capsule account: "A Letter from *St. Louis* (*Upper Louisiana*), dated Sept. 23, 1806, announces the arrival of Captains Lewis and Clark, from their expedition into the interior.—They went to the *Pacific Ocean;* have brought some the natives and curiosities of the countries through which they passed, and only lost one man. They left the *Pacific Ocean* 23rd March, 1806, where they arrived in November, 1805;—and where some American vessels had been just before.—They state the Indians to be as numerous on the *Columbia* river, which empties into the *Pacific*, as the whites in any part of the U.S. The winter was very mild on the *Pacific*.—They have kept an ample journal of their tour; which will be published, and must afford much intelligence." Much intelligence indeed.●

THE CHILDREN OF ISRAEL

Mr. STEVENSON. Mr. President, Vermont Royster has given us a sober view of the difficulties we and the countries of the Middle East face in struggling to bring an end to the Arab-Israeli conflict, which has troubled that region for more than 30 years. His column in the Wall Street Journal on September 17 underscores the policy dilemma facing Israel if peace is to be achieved. It deserves wide readership, and I submit it to be printed in the RECORD.

The column referred to is as follows:

THE CHILDREN OF ISRAEL

(By Vermont Royster)

In 1948 the land we know as Israel was born in pain and grief.

For the Jews it was an ancient homeland, refuge for the wandering tribes. It was also, though, an ancient homeland for the people of Palestine, kinsmen in race and religion to surrounding Arab and Moslem nations.

To the north lay Lebanon, to the northeast Syria, to the southeast Jordan, to the southwest Egypt. All were Israel's implacable enemies. Among more distant nations only this one proved truly a faithful friend. Others viewed Israel's birth with ranges of suspicion, disfavor, coolness or indifference.

The new nation survived by the valor of its arms. By the sweat of its labor it made the desert bloom as it had not since Biblical days. But neither its valor nor its labor would have been enough without the aid of its steadfast friend. And the ring of foes remained unbroken.

Then on its 30th birthday there came unexpectedly hope that Israel at last might find a way to live in peace. Hope came, ironically from the land of Pharoahs, from which millenia ago the children of Israel had fled. President Sadat electrified the world with his visit to Jerusalem, and this was followed in 1978 by Camp David, where the president of Egypt and the prime minister of Israel sat

down together. This sowed further seeds of optimism.

At Camp David, so the world understood, the two men agreed on a framework for peace between their countries. Israel would return to Egypt the Sinai. Negotiations would be held over the West Bank of the Jordan, occupied by Israel since the 1967 war, and over the future of the Palestinians to whom the land of Israel was also home. While these negotiations pended, or so we all thought, there would be a five-year moratorium on any new Israeli settlements in the disputed West Bank area.

It didn't work out that way. The Sinai was returned but Israel continued to allow new settlements in much of the disputed area, seeming thereby to preempt much of what was to be negotiated. This threatened a breakdown of those negotiations, alienated Egypt further among its fellow Arabs and Moslems and brought criticism from many quarters. The optimism of Camp David gave way to discouragement.

The saddest part of this renewed discouragement is that it led many who had long supported the Israeli dream for peace and security to wonder about the Israeli government's devotion to the cause of peace it professes.

That criticism, except that from the Arab foes, was not an attack on Israeli's existence or on the Israeli people. It cannot be dismissed as anti-Semitism. It was criticism of a government's political policy, which is something entirely different.

Moreover, it was not heard only among those who may be hostile to Israel or indifferent to its future. It was heard even among the councils of the Israeli elders and among those, such as the Jews of America, whose hearts and minds are devoted to the future of the Jewish homeland.

As long as a year ago Moshe Dayan, who had been the Israeli battlefield commander in wars between 1956 and 1967 and who had afterwards served as minister of defense, resigned as the government's minister of foreign affairs in protest against the government's policy of seizing Arab lands and establishing new settlements. About the same time Israel's highest court ruled against the government on one such settlement and ordered its abandonment.

This year there has been more public and more widespread protest against the policy of the Begin government. The United Nation's Security Council voted to condemn the Begin government's intransigence; on that vote the United States, whether by accident or design, abstained; in any event it did not defend the Israeli government with a veto of the resolution.

More recently there has been a critical statement from many Jewish leaders both in Israel and in the United States protesting what was called the "extremism" of Prime Minister Begin. It was signed by 56 prominent American Jews and by some 250 Israelis, including five former generals.

Now, once more, it appears that the negotiating process can be resumed. At least President Sadat, despite all the hostility he's received from other Moslem nations, has reopened the door and Prime Minister Begin hasn't slammed it shut. There is even talk of another Sadat-Begin meeting with the President after the election.

So, once more, there is hope. But it is clear now that the issues to be resolved—the matter of Jordan's West Bank and the future of Palestinians in the area—remain if not intractable at least more difficult than they appeared in the euphoria after Camp David. It also seems clear to me, as it does to many Israelis themselves, that the difficulties will be compounded unless the Israeli government will forbear foreclosing much of what is to be negotiated before negotiations can even begin.

On certain matters, those which truly involve the military safety of the country, any Israeli government must stand firm. Others, such as the status of Jerusalem, admit of no easy resolution. But if the government uses the cloak of defense to cover intransigence on everything as even some of its own generals think has happened, there is small hope that the next negotiations will be any more successful than the past.

The stakes are high. Israel is a tiny country and, except for Egypt, is still surrounded by implacable foes. Its very existence remains precarious, depending not only upon the valor of its people but upon the good will of those who have sustained it through many troubles.

That means that much rests upon the wisdom of its elders. If they dig in, immovable, on every issue upon which peace depends, then for all that valor the children of Israel may weep again.

A CENTURY OF MIGRATION

● Mr. SCHMITT. Mr. President, as most Senators know, the Select Commission on Immigration and Refugee Policy will make its formal report on proposed changes in U.S. immigration policy in March of 1981. As you may know, I have had an interest in the problems of the undocumented migrant workers from Mexico, especially their entry into and absorption by the U.S. economy.

Recently Richard Louv wrote a series on this subject for the San Diego Union entitled "Southwind." His first article described "A Century of Migration" and points out that the U.S. Government, through conflicting policies and nonpolicies has encouraged past migrations. When such migration was prohibited, as at the present time, the Government has created that inhumane class of persons known as "coyotes" or smugglers of people.

I have introduced S. 1427—the United States-Mexico Good Neighbor Act—which would create a temporary migrant worker program, which when coupled with other proposals, will help solve this terrible problem. To solve the problems of the present, we must understand the past.

To help my colleagues in this task, I ask that the article I referred to be printed in the RECORD.

The article follows:

A CENTURY OF MIGRATION

The wind races through the canyons. Dusty trucks, loaded with furniture and children, rumble past cardboard shelters where Mixtec Indians crouch before small fires. On a radio somewhere, the Bee Gees are singing.

The pilgrims arrive by the hundreds each week from far-off places like Jalisco, Oaxaca and Michoacan. Some of them migrate once or twice a year, to slip across the border and increase their income 800 percent. Some of them never come back.

Tijuana's highest elevation is called Chapultepec, or "Grasshopper Hill." The migrants talk among themselves about the wealth on Chapultepec. Even legends could not compare with the reality. One of the homes, known as the "Versailles of Tijuana," has a roof of solid copper, an indoor movie theater and a private discotheque. Another palace contains a reproduction of a Baskin Robbins Ice Cream Parlor.

As for this wealth, the migrants shrug. They do not look to Chapultepec for relief from poverty. Like their parents and grandparents before them, they look toward the border, where the wind flattens the grass and sweeps northward . . .

It began in the 1880s, when the Southern Pacific and Santa Fe Railroads, hungry for cheap labor, imported trainloads of Mexican laborers. Almost ten percent of Mexico's total population came north, in this first wave, to build and maintain a modern transportation system along pathways first blazed by their Spanish and Mexican forefathers.

The early migrants spread throughout the West and as far east as Kansas City and Chicago. Many families spent their entire stay in the U.S. bouncing around the Southwest in empty boxcars. Along the isolated desert rail routes and big city switching yards, they settled in clusters of section-crew shacks which later would grow into major Mexican-American communities.

"The kinship and friendship networks established in those days have grown and strengthened," says Dr. Calvin Blair, a University of Texas authority on the migration. "This is a major reason why today's migrants can dissolve so easily into society."

After the railroads were completed in the early 1900s, the Southwest needed cheap labor to construct irrigation systems. Even as the U.S. began to close its doors to most foreign immigrants, pragmatists in the Western states convinced the federal government to allow massive numbers of Mexicans to work the fields.

Laws designed to regulate the early migration were vague, unenforced, and periodically suspended to accommodate U.S. labor needs. Until the 1920s, the border was basically "open," a stipulation of the treaty ending the Mexican-American War in 1848.

Valente Ramirez, born in Mexico in 1897 and now retired in Los Angeles, came north in the first wave.

"When I was seven, my father's friends brought him home in a stretcher. His back was broken. It took him a year to die, and on the day after the funeral I went to work in the same minute, picking up the small pieces of ore," he remembers.

At 13, Ramirez saw the Mexican revolutionaries of 1910 marching in the streets of his village. Impressed with the uniforms, he joined the army. "I wanted to fight against injustice, but my mother bribed me back out."

By 1914, Ramirez' younger sisters and brothers had died of small pox. "I watched their bodies almost decompose in front of me." Almost 70 years later Ramirez still weeps at the memory.

"My mother told my older sisters and me that it was time to go north. We contracted a mule team to take us 200 miles to El Paso. When we reached the Rio Grande, the river was too swollen to cross. We were very disappointed. Along the river, bodies were hanging in the trees—revolutionary bandits. We didn't know how to cross; we had to stay with the bodies. We decided to take the risk, and suddenly there appeared on the other bank tall men on giant horses. They were Texas Rangers patrolling the river. They warned us not to cross, that the river was too deep and high there. They said to us, 'Stay here, we will be back tomorrow.'

"The next day, the river was lower and the Rangers returned. They rode their horses to the middle of the river, meeting us halfway. They caught the reins of our mule team, and led us safely across. They took us to a town nearby, where we got work immediately—at 10 cents an hour in company chits."

Dr. Richardo Romo, a historian at the University of California, San Diego, (UCSD), recently tape-recorded Valente Ramires' account. Romo points out, "though Valente

still believes the Rangers did it for friendship, in those days even the Texas Rangers were probably working as labor recruiters."

The new arrivals were highly prized. Texas cotton growers and Colorado beet farmers fought—sometimes violently—over who would get the migrants.

"Man-snatchers" sold crews of workers to one employer, stole them back at night, and resold them to another grower in the morning.

"Crews of imported Mexicans were marched through the streets of San Antonio under armed guard in broad daylight," wrote Carey McWilliams in his definitive account, "North From Mexico" (1948). "Shipments of workers en route to employers were often kept locked up at night in barns, warehouses, and corrals, with armed guards to prevent their theft; in Gonzalez County, workers who attempted to breach their contracts were chained to posts and guarded by men with shotguns."

Although conditions in the U.S. under which they worked were brutal, the migrants were often escaping far worse fates. They fled starvation and the Mexican Civil War, which raged between 1910 and 1919. Many of them were landless peasants, uprooted and set adrift by continually turbulent Mexican politics. Then, as now, the gap between rich and poor seemed more breachable in the U.S. than in Mexico.

"For the first (and probably the last) time in American history, tens of thousands of Mexicans were readily admitted to the U.S. . . . as economic refugees," according to Dr. Wayne Cornelius, director of UCSD' Program in U.S.-Mexican Studies. The American hospitality coincided with World War I—and a shortage of young, male, American workers.

When Johnnie came marching home again, Mexican workers were herded up and sent back across the border, ostensibly as a solution to a post-war economic recession. Mexican migrants who crossed the border without inspection were now considered "illegal aliens."

As Cornelius tells it, "Urged on by labor leaders and politicians, mobs of native-born Americans in Texas, Oklahoma and other states launched attacks on Mexicans in their work places; vigilante groups terrorized them in their homes and destroyed their property."

Between 1920 and 1921, nearly 100,000 Mexicans left the U.S.

"Around 1920, I remember visiting Los Angeles," recalls retired ironworker Edward Contreras, who lives in San Diego. "I saw Mexicans being rounded up; the police were beating them. A banner was stretched across one major street that read 'Mexico Wants You'."

Contreras' mother and father had arrived in San Diego in 1900; his mother by sidewheeler steamer from La Paz, and his father by horseback from Ensenada.

"My father went to work as a laborer and served as excavation foreman on the construction of the U.S. Grant Hotel," says Contreras. "He supervised other migrants in the laying of a section of old Highway 101. Our family avoided the later hardships and recriminations because my father had become well established so early. But my father was very bitter about the treatment of Mexicans."

Even as the political climate was turning against Mexican workers, U.S. growers continued to recruit them. Manuel Terrazas, now retired in Los Angeles, came north from Chihuahua in 1922:

"In El Paso, the labor contractors put us in boxcars and tagged us like cattle. We were to be shipped to the San Joaquin Valley." Terrazas jumped off the train near Los Angeles, and found work with an oil company. Like many Mexican workers who feared deportation, Terrazas accepted unusual working conditions. Until after World War II, the oil company fired him on the 30th day of every month, rehired him on the first.

"As a consequence, Manuel never received normal company benefits," says UCSD's Ricardo Romos. "He got a 50-year pin when he retired, but not a 50-year pension."

The transition of the Mexican migration's status from sanctioned to illegal created an industry of coyotes (human smugglers) and enganchistas ("underground" labor contractors).

Huddled under tarpaulins, migrants were trucked by the thousands across state lines, over back roads at night. Exhausted, some workers would tie themselves to the truckbed stakes to keep from falling out. Mexican workers were recruited and sent by truck or train to Detroit, Pittsburgh, and even the Mississippi Delta.

"An entire trainload was at one time shipped from Texas to Seattle for employment in the Alaska canneries," wrote McWilliams. Said a California grower in 1927, "Mexicans scatter like clouds. They are all over America."

The U.S. profited greatly from their presence. Most historians believe the phenomenal growth of the Southwest could not have taken place without the migrants.

"The development of the Southwest occurred at a time when the living and working conditions of American workmen were undergoing rapid improvement," wrote McWilliams. "It was not easy to find in these years a large supply of labor that would brave the desert heat and perform the monotonous stoop-labor, hand-labor tasks. . ."

Despite his contribution, the Mexican laborer was not rewarded. Between 1916 and the late 1940s, the migrants earned an average annual income of $500 or $600 per family.

As the Depression hit, "dust bowl" farmers from Texas and Oklahoma poured into California, providing a new source of cheap labor for agribusiness. Another, more massive, repatriation campaign was launched. More than 415,000 Mexicans were forcibly expelled from the U.S. between 1929 and 1935, and thousands more left voluntarily under pressure from local police who ran their own unofficial repatriation programs. The expulsions took place on the pretext that the Mexicans were in the U.S. without visas, even though that had not been illegal until 1929.

"The fact that many of these people had married American citizens or were eligible for citizenship but had not formally completed the immigration process was no barrier," writes University of Arizona historian Dr. Vernon M. Briggs, Jr.

Even many U.S.-born Mexican-Americans were pushed into Mexico.

"As a child of 10 or 11 I can remember the big cattle boats coming down from L.A., shipping Mexicans back to Mexico," recounts Herb Ibarra, now principal of San Diego High School. "It was a hungry time; my father was dead. My mother knew that a relative of ours was on one of the boats, so she took me with her to San Diego Harbor. I won't ever forget the boats, the humanity packed onto the decks under armed guard. We saw our relative on the boat and we waved, but the guards wouldn't let us talk, wouldn't let anybody off the boat. I saw all of this looking between the legs of adults."

Ibara's mother never expressed to her son how she felt about the repatriations. "You don't discuss these things with children," says Ibarra. "If the same thing happened today, I would not discuss it with my own children."

For Mexican Americans, the period was fearful, bitter, unmentionable. The repatriations were followed by further recriminations.

Young members of a Mexican-American gang in Los Angeles were falsely convicted of murdering a young Mexican-American, whose body had been found next to "Sleepy Lagoon," a reservoir frequented by the gang. In the swirl of controversy surrounding the case, the press and public hearings asserted that the Mexican-American community had been infiltrated by communists.

In nationally publicized testimony, a representative of the Los Angeles county sheriff's department, supported fully by the sheriff, claimed that Mexicans were biologically prone to crime since their Aztec ancestors had believed in human sacrifice.

Comparing Mexicans to "wildcats," Lt. Edward Duran Ayres contended "although a wildcat and a domestic cat are of the same family, they have certain characteristics so different that while one may be domesticated, the other must be caged to be kept in captivity." Mexicans, claimed Ayres, had migrated to the United States for an easier life.

Cary McWilliams, then a writer, lawyer and chief of California's division of immigration and housing, department of industrial relations, took up the cause of the imprisoned youths. The Sleepy Lagoon Defense Committee, headed by McWilliams, campaigned successfully for a new trial; the original decision was overturned and the boys were released. The case served as a focal point for racial friction which ultimately exploded with the so-called "zoot-suit riots" in 1943 between Mexican-American youths and U.S. marines and sailors.

In another ironic twist in the history of the Mexican migration, the U.S. again began actively recruiting Mexican workers in the early 1940s. World War II had created another manpower shortage—even Mexican aliens were being drafted into the U.S. armed services. So the call went out again.

This time, Mexican laborers came somewhat reluctantly, fearing the draft and another repatriation. The Mexican and U.S. governments, however, established a bi-partisan approach, popularly known as the bracero program, under which Mexico supplied the workers, and the U.S. government served as labor contractor for the growers.

The braceros were restricted to short-term agricultural work. They were afforded more humane treatment than the migrants who had come before them, but only slightly.

Demand for cheap labor was much greater than the 100,000 migrants a year the bracero program contracted; many Mexicans who could not get on the hiring lists crossed the border anyway, as illegals.

After the Korean War, rising unemployment again led to mass roundups and deportations. Known as "Operation Wetback," the campaign sent home more than a million Mexicans in 1954. The bracero program was continued into the early 1960s and then terminated, even as rural unemployment in Mexico was rising. Consequently, many of the migrants who had worked in the U.S. as braceros continued to do so, as illegal aliens.

"In a sense," says Cornelius, "the bracero program never really ended. It simply went underground."

Carey McWilliams says today: "The migration should not be considered an immigration problem, but a new kind of reality."

San Diego State economist Dr. Norris Clement describes the U.S. approach to Mexican labor during the last century as "now we need them, now we don't." The fluctuating policy, he contends, helped institutionalize the migration, creating a dependency not only in our economy, but also in Mexico's.

Indeed, Wayne Cornelius estimates that in many rural Mexican communities half of the working males have journeyed to the U.S. at least once. Fed by the northern promise, border cities such as Tijuana are among the fastest growing populations in the world.

What began as economic expediency has become something like the wind.●

ADDRESS BY SENATOR HUDDLESTON BEFORE THE KENTUCKY BANKERS ASSOCIATION

● Mr. HUDDLESTON. Mr. President, I recently gave a speech to the Kentucky Bankers Association on economic and national defense issues facing this country. I ask that excerpts from my speech be printed in the RECORD.

The material follows:

ADDRESS BY SENATOR HUDDLESTON

I have found since entering public life that most issues of real signifiance to local communities, states and the nation have their origin and their solution in our economy.

How we manage the economy, how we let it work for us, and how we distort or unnecessarily interfere with it, determines to a great extent the prosperity, health and well being of our beloved America.

Economics is not a science, and anyone—especially a banker who has lived through the last two decades—knows just how inexact a science it is.

But all economists are billed as experts.

Which reminds me of the definition of an expert—someone who knows more about less than anyone, and who can back it up with figures.

We have hundreds of expert economists in the government—and in private industry—and their record is not much better than mine at Churchill Downs.

But the fact that economics is an inexact science does not eliminate the necessity of trying to understand the economy, trying to manage it, and trying to make it work for the benefit of our fellow citizens.

We are in a somewhat crazy situation today where many of the tried and tested remedies of the past no longer work—the economy, in many respects, seems oblivious to our efforts to control or direct it.

The terrible record of forecasting the current recession—as to when it would hit, how long it would last, its severity and its impact on inflation and unemployment—is just the latest manifestation of the uncertainty that exists.

We could spend all day talking about how we got in the current mess but I'd rather spend my time today talking about how we get out of it.

Let me begin by acknowledging that my views are no more expert than anyone else—but they are my views—and I will try to lay them out as candidly as I can.

First, despite the unacceptably high rate of unemployment, and all of the heartache that entails for individuals, our most basic problem remains inflation.

If we do not deal with inflation, all of our other problems will merely get much worse and the ultimate cure will be much worse. More jobs and higher wages can easily be destroyed by runaway inflation.

For that reason, I am against enacting a tax cut this year.

Some kind of tax cut is feasible and probable during 1981, but it would be foolish to go ahead and enact it now in the heat of a political campaign, rather than waiting a few more months to assess the state of the economy, and to remove the legislation as much as possible from the highly-charged political context.

Enacting a tax cut now would be a signal to the financial markets of the world—and of Wall Street—that we have abandoned the effort to restrict federal spending and reduce excessive consumer demand—in effect, abandoning the fight against inflation. Let's keep a steady course for a few months.

For that same reason, I could not support a $12 billion public jobs program—as proposed in my own party's platform—because the benefits are dubious and the greater need is to exercise fiscal restraint and combat inflation.

We need more jobs, but we need them in the private sector, not on the federal payroll.

The answer to the recession should not be a flood of new government programs. Rather, we should exercise fiscal restraint, and having done so, sometime next year consider a moderate tax cut for individuals and businesses.

The kind of tax cut we enact is vital. We must provide some relief to individuals to offset the loss of purchasing power, higher Social Security taxes, and new taxes from "bracket creep."

However, a major portion of any tax cut should be directed toward industrial stimulus, enhanced productivity, and replacement of outmoded plants and equipment.

The need is not so much to stimulate consumer demand as it is to stimulate new and more efficient production that will create lasting jobs and enhance our competitive position in world markets.

We must have targeted, not across-the-board tax cuts if we are to address the problems of productivity and outmoded industrial capacity.

We must have tax laws that encourage savings and the growth of investment capital.

An across-the-board cut is nondiscriminatory, does not ensure the proper emphasis, and runs the risk of stimulating inflation without addressing the longterm problem.

Americans are accustomed to exaggerated rhetoric and rather simplistic schemes and notions during an election year—and this year is certainly no different—on either side.

And while I certainly make no apologies for the zig-zag economics of the current administration—I must say that when a candidate promises you a $30 billion tax cut, significantly higher defense spending, and a balanced budget—then you better hold on to your wallet.

Finally, let me state the obvious: the Fiscal Year 1981 budget will not be balanced, despite all of the rhetoric you have heard.

The reason is simple: although Congress has done a better job of cutting back and restraining spending than at any time in the last decade, you simply cannot balance the budget during a severe recession.

Increased outlays for unemployment benefits and the decreased tax revenues due to the economic slump have destroyed the hope of a balanced budget in 1981.

The time to balance the budget is when the economy is booming; not when it is in recession. We should have been working for the balanced budget over the past several years, rather than waiting until this year of recession.

Our current problems started back during the Vietnam War—when the economy was booming—and rather than tax ourselves to pay for the war, or cut back on other programs, we decided to have both guns and butter.

The result was big deficits, structural dislocations of the economy, and the beginning of an inflationary spiral and psychology that finally got out of hand earlier this year.

We tried to have our cake and eat it too—and we are now paying the price.

This, I think, is a good point at which to turn to the other principal problem occupying our country today—foreign and defense policy.

We all know that the days of colonialism and serving as the world's policeman are over, a relic that died with World War II and Vietnam.

We can no more police or dictate to the world than can the Russians, the Chinese, or anyone else.

We cannot defend every country, nor can we enforce our will on them—and neither can the Russians, as they are learning in Afghanistan and Poland.

But there is a legitimate and necessary role for American power—including military strength—in providing for stability in a rather fragile world of contentious nations and ideologies.

The United States and its Western allies have since the end of World War II provided the conventional and strategic defenses to counter and hold in check the often aggressive policies of the Soviet Union and its allies. This has been done at great cost of money, and at tremendous cost in human lives.

We have played this role because we had no other choice, and because no one else had the capability. The same holds true today. I am frequently visited by groups and individuals who oppose all military spending on grounds that we must stop producing weapons of death and destruction. Eliminating nuclear weapons and other armaments, they say, is the only way to peace.

These are well-meaning people, and I totally share their horror at the prospect of a nuclear war—or any war for that matter. I also share their desire for legitimate arms control and reduction.

But the truth is that until the Soviets are willing to restrain their aggressive activities, until they curb their own military buildup, and until balanced and verifiable arms control agreements can be reached, this country has no alternative but to improve our military strength.

DEFENSE INVOLVES MANY FACTORS

But while the Soviets suffer geographic and economic disadvantages, and must defend lengthy and sometimes hostile borders, the magnitude of Soviet defense spending in recent years poses a serious challenge to the Western world.

During the 1960s the United States devoted more resources to defense than the Soviet Union, but by 1972 Soviet spending surpassed U.S. spending.

The continuing real growth in Soviet defense spending throughout the rest of the 70s resulted in their defense spending exceeding that of the United States by 20-30 percent for the decade.

We reversed the downward trend in defense spending in Fiscal Year 1977, and the President's budget projections for Fiscal Years 1981 through 1985 will significantly narrow the disparity between U.S. and Soviet spending.

Even higher budget projections approved by the Congress during consideration of this year's budget resolution will, if carried through, narrow that gap much faster.

UNITED STATES IS NOT SECOND-RATE POWER

What does it all mean? It does not mean that the Soviets are now superior to the United States, either militarily or in any other way.

As a member of the Senate Intelligence Committee, the Defense Appropriations Subcommittee, and chairman of the Military Construction Appropriations Subcommittee, I am constantly briefed on the relative strengths of the two superpowers. There is no reason for the American people to fear that we have suddenly become a second-rate power.

But it does mean that unless we put our shoulder to the wheel, unless we make the sacrifice, and unless we as a nation have the will to match this Soviet buildup, we could find ourselves and our allies in a very vulnerable position.

STRENGTH TO COMBAT ADVENTURISM

If a disparity in relative military strength should develop, it will doubtless embolden the Soviet leaders to pursue a more adventurist policy—much like their invasion of Afghanistan. Unfortunately, appeals to logic and moderation and good will do not have much impact in the realpolitik world of today's Soviet leadership. They may not understand reason and good will, but they do understand power—and strength—and resolve.

I am not advocating a return to the cold war; it may be that detente—properly understood—is still possible. Certainly brinkmanship is not in order, and meaningful arms control continues to be desirable and feasible.

But history has shown that the Soviets will engage in such endeavors only when confronted with a strong, determined adversary that can match them strength for strength.

MILITARY STRENGTH IS COSTLY

The best position from which to negotiate is strength.

The best way to achieve arms control is through strength.

Indeed, the best way to maintain peace is through strength.

This will not come easily. Recent budget actions in the Senate have shown that in order to meet defense needs we will have to make sacrifices in domestic programs.

The domestic programs being cut are often good ones like child nutrition, education, economic development, water resources, and on down the line.

My judgment is that the American people have come to the realization—through events like Iran and Afghan'stan—that such sacrifices are essential. They are essential not only to our own well being, but also to our allies in Western Europe, the independent states of the Middle East that control the world's oil supplies, the emerging nations of Africa and Asia, and even the freedom loving people of Soviet satellite states throughout Eastern Europe.

A SURE COURSE AND STEADY RESOLVE

Defense spending and capability are not the only requirements for maintaining a stable world. The nation's political leadership must pursue a steady course, one that demonstrates both a certainty of resolve and a willingness to reduce tensions based on mutual constraints. Uncertainty and weakness invite adventurism; resolve, strength and a steady hand promote restraint.

Let me conclude by saying that while we have serious economic and national defense problems—they are problems that can be managed by resolute and steady leadership.

They will not be solved by constant policy changes and flip-flops, nor will they be solved by alarmist and simplistic notions that make the heart beat faster but defy reality.

I truly believe this country will, as it always has, respond to the situation. I trust we have not lost confidence in ourselves, or in our ability to meet and resolve even the most difficult issues.

I certainly have not lost that confidence, and I trust you have not either.●

ALLIES REPLACE U.S. EXPORTS TO RUSSIA

● Mr. STEVENSON. Mr. President. I call to the attention of my colleagues an item which appeared in yesterday's New York Times. It is reported that the U.S. Government has protested to the French because a French company, Creusot Loire, has signed a $300 million contract to build a steel mill in Russia. The mill would have been built by an American firm, Armco, if it had not been for the export restrictions imposed by President Carter following the Russian invasion of Afghanistan.

The article also reports that a few weeks ago the U.S. Government protested to the German Government because a German firm, Klöckner Werke, will build a $311 million aluminum plant in Siberia which would have been built by Alcoa were it not for the administration's export restrictions. Neither the Germans nor the French have shown any willingness to follow the American example of export forbearance.

The administration's embargo is having the effect objective observers expected: it is shifting American exports and American jobs to our allies; it is depriving the Russians of nothing.

Mr. President, I ask the article from the New York Times be printed in the RECORD.

The article follows:

U.S. SAID TO PROTEST FRENCH-SOVIET TRADE

(By Paul Lewis)

PARIS, September 17—The Carter Administration has protested privately to the French Government that a leading French steel company has breached Western sanctions imposed on the Soviet Union in retaliation for its military intervention in Afghanistan, according to diplomatic sources.

The Creusot Loire Group of France announced today that it had signed a $300 million contract to build a steel mill for cold-rolled products at Novolipetsk, about 150 miles south of Moscow, to produce about 480,000 tons of special steel plate a year using a Russian process.

Earlier this year, Armco, a leading American steelmaker, was forced to withdraw from a similar contract it had won with Nippon Steel of Japan against a rival bid by Creusot Loire, after President Carter embargoed all exports of American technology to the Soviet Union.

SAID TO BE SECOND COMPLAINT

This is the second time within a few weeks, the sources say, that the Carter Administration has complained that an allied government was violating the sanctions agreement by allowing its companies to accept Soviet business that American companies had turned down, despite promises by all leaders of the Western allies not to allow this.

Other Western nations were unwilling to imitate President Carter's outright embargo, but they promised that companies would not be allowed to undercut American concerns by filling canceled Russian contracts. They have also agreed for the moment on stricter enforcement of existing restrictions by the North Atlantic Treaty Organization on the sale of strategically valuable goods to Russia.

Creusot Loire executives denied today that they were undercutting Western sanctions, saying the Russian plant they are building was completely different from the canceled Armco project, because it is smaller, less sophisticated and does not involve any significant transfer of Western technology.

"Armco was going to use their own technology and guarantee the quality of the product; we're not doing that," said Bernard Sillan, who negotiated the Creusot Loire contract with Mettalurgimport, a Russian state import agency.

The Carter Administration is reported unimpressed by this argument, believing that the French company is effectively meeting a Russian need created by the United States embargo. A spokesman for Armco at its Ohio headquarters dismissed the French case today as "Gallic logic."

President Carter is reported to have raised the matter privately with President Valéry Giscard d'Estaing of France during the recent meeting of Western leaders in Venice. But he is said to have received assurances only that France would not export strategically valuable technology to the Soviet Union.

Only a few weeks ago, the Carter Administration protested privately to the West German Government, sources here say, over a similar case, in which Klöckner-Werke agreed to build a $311 million aluminum plant in Siberia, after the Aluminum Company of America had been forced to withdraw because of the United States embargo.●

FOR A BALANCED BUDGET

● Mr. HARRY F. BYRD, JR. Mr. President, on August 27 the Southeastern Lumber Manufacturers Association adopted a resolution calling upon the Congress to enact a balanced budget and limit Federal spending.

I commend this fine association for its interest in the effort to achieve fiscal responsibility.

The legislatures of 30 States have petitioned the Congress to call a Constitutional Convention to frame a balanced budget amendment. The State legislators understand that accumulated deficit spending by the Federal Government is the leading cause of double-digit inflation, which is eroding the value of the paycheck of every working man and woman.

I believe we must achieve a balanced budget. I do not fear the consequences of a Constitutional Convention, but my own preference is that Congress itself assume responsibility in this matter.

This means that the Congress should pass a balanced budget amendment and submit it to the States for ratification. I am a cosponsor of Senate Joint Resolution 126, which requires a balanced budget except when three-fifths of each House of Congress shall have voted to approve a 1-year deficit.

I ask that the resolution of the Southeastern Lumber Manufacturers Association be printed in the RECORD.

The resolution follows:

A RESOLUTION

Whereas, the federal debt exceeds $800 billion and Congress will likely approve a 1981 budget with a deficit of $30 billion, or more;

Whereas, during this Administration, federal spending has increased 41 percent, taxes have increased 49 percent, inflation has increased from 5 percent to 18 percent and the average American family has suffered the sharpest decline in its purchasing power in the last 40 years;

Whereas, small business is vital to the American economy and it does not need further examination of its problems—it needs effective and responsible fiscal legislative action;

Whereas, Southeastern Lumber Manufacturers Association, comprised of 414 small business lumber manufacturers located in twelve states, recognizes and desires to emphasize the steps taken by Congress to slow down the growth of money and tighten controls on spending; now, therefore, be it

Resolved, That Congress immediately act to reduce the size of the federal government deficit by achieving a balanced budget and limit federal spending by passing H.R. 5371 to limit fiscal 1981 spending to 21 percent of

the Gross National Product and limit spending in subsequent years to 20 percent of the Gross National Product;

Resolved, That Congress slow down the rapid growth in federal government spending and taxing to less than the growth in people's income; and

Resolved, That Congress slow the growth of the nation's money supply to match the growth in output.●

REMEMBER THE "LIBERTY"

● Mr. STEVENSON. Mr. President, James M. Ennes has written a book about the Israeli attack on the U.S.S. *Liberty* which is worthy of the Members' attention. That attack killed 34 American seamen, wounded others and nearly destroyed the American ship. This book gives convincing evidence that the attack was deliberate and that the facts, including the Navy's bungling before and during the attack, were covered up. I urge the Members to read this book and invite their attention to a review of it in the Washington Post. Mr. President, I ask that this review be printed in the RECORD.

The review follows:

REMEMBER THE "LIBERTY"

(By L. M. Bucher)

Tragedy, colossal communications blunders and a classic government cover-up abetted by the U.S. Navy, are the main ingredients of this excellent book by James M. Ennes Jr. A cryptographic specialist, Lieutenant Ennes was one of 287 men aboard the USS *Liberty* on June 8, 1967, when Israeli air and naval forces attacked and inflicted tremendous damage on the ship. Thirty-four Americans were killed; Ennes was one of the 171 others who were wounded.

Thank God the entire crew was not killed. Had they been, the *Liberty* incident might be forever forgotten, like the unarmed Navy surveillance aircraft shot down by North Korea in April 1969.

I believe that, if the lessons of the *Liberty* had been known to planners and commanders involved with the USS *Pueblo*, the sorry tragedy of that ship would never have happened as it did. The "Pueblo Incident," in which I was a principal player, bore many striking resemblances to the story of the *Liberty*. The two ships had almost identical electronic surveillance missions, although *Liberty's* displacement was more than 12 times that of *Pueblo* and she was crewed by more than three times the personnel. The similarities are a terrible confusion in command and control, a lack of response to desperate calls for assistance during attack and a cover-up for incompetency at the top. But *Liberty* was pounded many times more heavily than *Pueblo* was, with far more devastating results.

The *Liberty* tragedy began deep in the maze of the intelligence community in Washington when in 1967 Israeli-Egyptian relations began to deteriorate. Washington "experts," sensing an opportunity to reap huge amounts of electronic intelligence, ordered *Liberty* from more prosaic operations along the African continent to the waters contiguous to Israel and Egypt. The ship arrived just after hostilities erupted.

Liberty's captain, Commander William L. McGonagle, realized the great danger inherent in operating in a war zone and requested close support from the commander of the Sixth Fleet. As was later to be the case with *Pueblo*, close support was denied. McGonagle was promised, however, as I was on the *Pueblo* that help would be instantaneous in the event of trouble. Carrier air support was only 10 minutes away.

Later, seven minutes after the first devastating rocket attack from Israeli jets, *Liberty's* call for help was acknowledged by the carrier USS *Saratoga*. Incredibly, not one *Saratoga* aircraft ever arrived to help the stricken ship. Nor for that matter did any U.S. military assistance arrive during the hour and 20 minutes of continuous air and torpedo boat attacks.

This debacle is partially explained by the author. The Naval Court of Inquiry that looked into the affair abysmally failed to fix any blame for the terrible failure to aid compatriots undergoing foreign attack. Not only was blame not fixed, the facts were covered up.

How it is possible to maintain high morale in the Navy in the face of such inglorious performance by senior officers and government officials is beyond imagination. The *Liberty* incident clearly demonstrates once again that America's defense communication capabilities and performance are inept beyond the public's wildest dreams.

Ennes contends that the Israeli attack was deliberate, not an accident, as the Israeli government has said it was. He cites plausible and logical evidence. He recalls that Israeli aircraft made numerous low-level photographic and reconnaissance flights directly over *Liberty* in the eight hours immediately preceding the attack. He states unequivocally that *Liberty's* American flag was standing out in an eight-knot wind during that reconnaissance; this precludes any chance of misidentification. He contends that Israeli attackers used napalm against *Liberty* with devastating effect, and that Israeli motor torpedo boats repeatedly machine-gunned *Liberty* sailors fighting the napalm fires on deck and later strafed her life rafts in the water. Our government, including President Johnson, negligently and with thorough dishonesty, allowed these events to occur, and then covered them up in order not to embarrass an ally.

Why would an ally attack one of our ships? Ennes suggests a possible explanation. The week before the *Liberty* incident, President Johnson had warned the Israeli government that the United States would not support them in any action in which they were the aggressor. Israel contended that the actions it undertook in subsequent days against Egypt and Jordan were defensive. On the day of the attack on the *Liberty*, the Israelis had planned a strike into Syria. But, only hours before it was to begin, the *Liberty* moved into position to monitor and record it. Since Israel had no desire to appear to be the aggressor, Ennes suggests that Israel decided to put the *Liberty* out of action in order to conceal from the United States and the rest of the world its real intentions towards Syria. The fact that Israel did strike Syria the day after the *Liberty* incident gives credibility to Ennes' theory.

The book, which reads like a thriller, should be required for all government employes. The writing is first-class. The relationships and conflicts of important shipboard personalities add suspense and human drama to the story.

Those personalities include Commander McGonagle, a ramrod-straight courageous captain, affectionately called "Shep" or "Magoo" by his officers and men. McGonagle remained on the bridge, though seriously wounded and bleeding heavily throughout the Israeli attacks. His survival can only be called miraculous. His great courage and uncommon tenacity undoubtedly saved his life. He was ultimately awarded the Medal of Honor, but not at the White House as is normal. Our government did not wish to draw attention to the incident.

McGonagle was well served by an equally courageous executive officer, Lieutenant Commander Philip McC. Armstrong, a Naval Academy graduate who was killed in the attack. He ran the ship and was idolized by the crew. But Armstrong's personal conduct must have grated heavily upon the captain. He played fast and loose with regulations, often drinking heavily, even at sea, and the crew often followed his lead. In my 27½ years of service, enlisted and commissioned, I knew of only one officer who routinely drank aboard ship, and he was later courtmartialed. To have had the drinking that prevailed on the *Liberty* is incredible, although there is nothing to suggest that it played a role on the day of the attack. Even more incredible is McGonagle's claim that he was unaware of any of it.

Another fine characterization in the book is of Lieutenant George H. Golden, the ship's engineer, who was magnificently innovative and heroic throughout the attack. There were many other described in the book whose performance was of the highest order.

Americans can take great pride in the officers and men of the USS *Liberty*, but they should deplore the bumbling politicans, bureaucrats and military brass who failed those men and then covered up. The entire matter and the 34 dead Americans cry out for justice, regardless of who gets tarnished. But don't hold your breath.●

IRS EXAMINATION GUIDELINES FOR PRIVATE SCHOOLS

● Mr. HELMS. Mr. President, under present law the Internal Revenue Service may move to deny or withdraw the tax-exempt status of any school which fails to meet the standards of Revenue Procedure 75–50. Under Revenue Procedure 75–50, a racially nondiscriminatory policy must be stated by every private school in its governing instruments and governing body resolutions; this policy must be publicized to all segments of the general community served by the school, either by notice in a newspaper or by use of other media.

Mr. President, Revenue Procedure 75–50 states the information that every school filing an application for recognition of exempt status must provide. Also included are an assortment of recordkeeping requirements, mandating the retention for at least 3 years of records indicating the racial composition of the school's student body, faculty and administrative staff; records documenting the award of financial assistance, copies of all brochures, catalogs, and advertising dealing with student admissions, programs, and scholarships; and copies of all materials used by or on behalf of the school to solicit contributions. Failure to maintain or to produce the required reports and information creates a presumption that the school has failed to comply with the law and thus has a racially discriminatory policy as to students.

Under existing law, a private school must be able to affirmatively demonstrate, as in the case of an audit, that it has adopted a racially nondiscriminatory policy as to students and that this policy has been made known to the general public, and that since the adoption of that policy the school has operated in a good faith manner in accordance with it.

IRS agents seeking to determine whether a school has complied with the requirements of Revenue Procedure 75–50 may examine a wide range of policies, activities, and documents of the school. The Internal Revenue Service has published nine pages of detailed guidelines which its agents are presently using to enforce current law against the granting of a tax exemption to private schools which discriminate. These guidelines are in force today and are not disturbed or anyway limited by the action of the Congress in enacting the so-called Ashbrook-Helms amendment to the 1980 Treasury appropriations bill.

Mr. President, because so many of our colleagues are concerned that the Internal Revenue Service take appropriate action under the law, I ask that sections 341 and 7(10) 72 of the IRS's Exempt Organizations Examination Guidelines Handbook be printed in the RECORD.

The material follows:

EXEMPT ORGANIZATIONS EXAMINATION GUIDELINES HANDBOOK

340 (9–26–77).
Examination, Guidelines for Educational Organizations.
341 (9–26–77).
Private Schools.
341.1 (9–26–77).
Racially Nondiscriminatory Policy in Private Schools.
341.11 (9–26–77).
General Considerations.

(1) The examination techniques and guidelines contained in this text are for use as an aid in examining educational institutions to determine if they have adopted and are implementing a racially nondiscriminatory policy as to students as required for exemption in accordance with the provisions of Rev. Rul. 71–447, 1971–2 C.B. 230, and in the manner required by Rev. Proc. 75–50, 1975–2 C.B. 587.

(2) In examining educational institutions to determine whether they are in compliance with the requirements of Rev. Proc. 75–50, examiners are dealing with a difficult and sensitive tax law area. Accordingly, the examiner is to use professional judgment concerning the depth and scope of the examinations to ensure that sufficient facts are obtained to support the conclusions reached.

(3) Insofar as possible, the examining agent should make direct use of any relevant information regarding the racially discriminatory or nondiscriminatory nature of the educational institution under Service examination that may have been previously assembled and analyzed by other government agencies. An important independent goal in this regard is the complete elimination of all duplicative effort that is not absolutely essential to a proper fulfillment of the nondelegable statutory responsibilities of the Internal Revenue Service. All Service employees should accordingly be mindful that insofar as the factual findings of other governmental agencies have been used as a basis for either continuing or withholding consequential amounts of financial benefit by way of grant, loan or contract, any governmental action previously taken on the basis of such findings may properly be treated as an independently significant operative fact and this given real and substantial independent weight in determining whether or not the school is adequately meeting racially nondiscriminatory requirements of Rev. Rul. 71–447.

(4) The ultimate test of nondiscrimination for present purposes is equal availability to all racial and ethnic groups. The continuing absence of ethnic or racial minority students from any given school for an extended period after its formal adoption and public announcement of a racially nondiscriminatory policy of the character contemplated by Rev. Rul. 71–447 raises a question whether the school is adhering to such a policy in good faith. The continuing absence of such students may, however, be readily explainable in some instances on the basis of their general inability to afford the tuition charged by the school, their general satisfaction with the available public school programs and corresponding lack of interest in the private school, or even to a deliberate boycotting of the latter school by one or more minority groups.

(5) Any long-continued operation of a private school without minority students, nonetheless, requires that the Service make a special effort to develop all the facts and circumstances affecting the actual availability of the school on equal terms to all racial and ethnic groups. If the school first began operating and/or substantially enlarged its enrollment at the same time that nearby public school operations were initially required to take major steps toward effective desegregation, there will be even more reason for the Service to conduct a searching inquiry into all the circumstances surrounding the school's recruitment and admission policies, and the administration of its programs, including the hiring of faculty and administrative staff. The Service should not reaffirm the exempt status of any school that has no minority students and/or is in an area where the public schools have been required to desegregate without first obtaining reasonably adequate assurance that the manner in which the school has publicized its racially nondiscriminatory policy as to students was actually "intended and reasonably effective" to bring its policy to the attention of all potentially interested racial (and ethnic) groups. Further, exemption should not be reaffirmed where any action "qualifying or negating its published statements" has been taken by or on behalf of the school. Such obligations were specifically imposed on the Service with respect to all Mississippi schools by the injunction order issued in Green v. Connally, 330 F. Supp. 1150, (D.D.C. 1971) aff'd per curiam, sub nom. Coit v. Green, 404 U.S. 997 (1971) and were effectively made applicable to all schools in Rev. Proc. 75–50.

(6) Rev. Proc. 75–50 requires schools to retain certain potentially significant records and establishes detailed guidelines for use in determining whether the requirement of racial nondiscrimination announced in Rev. Rul. 71–447 and confirmed in Rev. Rul. 75–231, 1975–1 C.B. 158 has been met. The guidelines make it evident that the Service stands committed to making extensive use of thorough field audits to obtain more adequate assurance of genuine compliance with all aspects of the racially nondiscriminatory requirement in terms of both form and substance. EO specialists assigned to such cases should thus conduct appropriately wide-ranging inquiries that encompass the possible use or endorsement of any racially discriminatory practice with respect to students. The EO specialist is entitled to draw reasonable inferences in light of all attendant facts and circumstances with respect to the ultimate question of whether or not the school is in fact equally available to students from all segments of the community on a racially nondiscriminatory basis.

(7) Since these examination guidelines relate only to certain special requirements for schools, the EO specialist also should refer to Chapter 100 of this Handbook for general examination techniques applicable to all exempt organizations.

(8) Other reference materials of potentially special value in connection with a review of whether a school has a racially nondiscriminatory policy include the following:

(a) Compliance Report of Institutions of Higher Education. This report is required by the Office for Civil Rights from colleges and universities which receive, are applicants for, or expect to be applicants for Federal financial assistance. A copy of this report which contains racial and ethnic enrollment data, should be available at the college.

(b) List of Title VI Assurances Received, U.S. Department of Health, Education, and Welfare, Office for Civil Rights. This annual listing contains the names of medical institutions, health facilities, health and welfare agencies, colleges and universities, and other institutions and organizations which have submitted Assurances of Compliance with the non-discrimination provisions of Title VI of the Civil Rights Act of 1964. The Office for Civil Rights has been requested to mail this report directly to the key district offices.

(c) Racial and Ethnic Enrollment Data from Institutions of Higher Education, 1972, U.S. Department of Health, Education, and Welfare, Office for Civil Rights. This publication contains the most current racial and ethnic enrollment data that is readily available on any institution of higher learning receiving or expecting to receive some form of Federal financial aid or assistance.

(d) Status of Title VI Compliance Interagency Report, U.S. Department of Health, Education, and Welfare, Office for Civil Rights. This is a periodic report normally updated every week that shows the status of all current actions being taken by DHEW to achieve compliance with Title VI of the Civil Rights Act of 1964. The Office of Civil Rights has been requested to mail this report directly to the key district offices.

(e) Rev. Rul. 71–447, 1971–2 C.B. 230, holds that a private school that does not have a racially nondiscriminatory policy as to students does not qualify for exemption.

(f) Rev. Rul. 75–231, 1985–1 C.B. 158, holds that organizations, including churches, that conduct schools with a policy of refusing to accept children from certain racial and ethnic groups will not be recognized as tax-exempt charities under sections 170 and 501(c)(3) of the Code.

(g) Technical Information Release=1379, dated May 27, 1975, states that the Service will apply the de minimis rule in administering Rev. Rul. 75–231.

(h) Rev. Proc. 72–39, 1972—2 C.B. 818, restates the effect of including a given organization in Publication 78 (Cumulative List of Organizations Described in Section 170 of the Internal Revenue Code of 1954), and sets forth the conditions under which advance assurance of deductibility of contributions will be suspended.

(i) Rev. Proc. 75–50, 1975—2 C.B. 587, sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from Federal income tax under section 501(c)(3) of the Code, or are presently recognized as exempt from tax, have a racially nondiscriminatory policy as to students.

(j) Announcement 76–57, 76–16 I.R.B. 24, states, in part, that the initial annual certification of racial nondiscrimination that section 4.06 of Rev. Proc. 75–50 requires of each private school is to cover a period ending with the school's first calendar or fiscal year beginning after December 31, 1975.

(k) Manual Supplement 7(10)G–10 (Rev. 1), dated May 24, 1977—Private School Examinations. This Supplement provides the instructions and procedures for conducting private school examinations for both church-related and nonchurch-related private schools.

(l) *Norwood* v. *Harrison*, 382 F. Supp. 921 (N.D. Miss., July 12, 1974) (Keady J.). This case contains a discussion of various facts and circumstances that were deemed relevant to determining whether certain private schools in Mississippi were racially discriminatory for the purpose of being eligible to obtain state owned textbooks. The Service

does not impose a presumption on any school, as the Court did in *Norwood*, requiring instead that all questions about adherence to the requisite kind of racially nondiscriminatory policy should be resolved independently.

(m) *Green* v. *Connaly*, 330 F. Supp. 1150 (D.D.C. 1971) aff'd per curiam, sub nom. *Coit* v. *Green*, 404 U.S. 997 (1971). To the extent that the *Green* court order imposes more rigorous requirements than Rev. Proc. 75–50, such order is controlling for all Mississippi schools.

(n) Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (1974). Generally speaking, the Family Educational Rights and Privacy Act of 1974 (which is referred to in section 7.02–2 of Rev. Proc. 75–50) outlaws all releases of personally identifiable information contained in educational records of any school to anyone other than the affected students or their parents, except under certain specified conditions. These conditions include procurement of advance written consent from parents. They further permit such releases to be made in compliance with a judicial order or pursuant to a lawfully issued subpoena, provided, however, that advance notice of each record release is first given to the affected students and their parents. Any public or private agency or institution that fails to observe these restrictions would thereby become ineligible to receive funds under any of the Federal Aid programs provided for in the General Education Provisions Act (20 U.S.C. §§ 1221 et seq.). The restrictions so provided for do not apply to so-called directory information of the various classes specified in 20 U.S.M. § 1232g(a)(5)(A) and are likewise inapplicable to any data that may be assembled on a group basis or otherwise limited to information that is not personally identifiable.

Thus, requests for statistical information not containing such personally identifiable data that a school can tabulate from individual records are not precluded by the Act. An examining agent may likewise properly request that a school supply him/her with copies of records otherwise coming within the ambit of this Act, subject to the prior deletion of names, social security numbers, and the like to the extent required to keep the remaining data from being personally identifiable information. Separate lists containing names, addresses, and similar "directory" information that schools have customarily made available to the general public are also excepted from the coverage of this Act. Further, the fact that the Act may bar or restrict a release to the Service of any individual applications for enrollment would not excuse the school from giving the examining agent a listing of the names and addresses of all unsuccessful applicants for admission nor prevent the Service from independently developing complete personally identifiable data about representative samples (or all) of such individuals.

341.12 (9–26–77).

Initial Contact Items.

(1) Include the following information and documents in the items to be sought in the initial contact:

(a) Current brochures, catalogues, and any other written advertisements dealing with student admissions, programs, and scholarships.

(b) Blank application forms used for employment, student admissions, scholarships, loans, or any other financial aid.

(c) Documentation as to how the racially nondiscriminatory policy has been publicized.

(d) Statistical data relating to the racial and ethnic composition of students and staff.

(e) Correspondence files relating to solicitation of funds, contributions received, acceptance and rejection of students, and denial or approval of scholarships, loans, or other student aid.

(f) Schedule for tuition and fees.

(g) If Federal funds are being received, obtain a copy of the Assurance of Compliance under Title VI (HEW Form 441) that is required by the Office for Civil Rights and any other applications or agreements relating to Federal aid from, through, or under the Veterans Administration, Department of Health, Education, and Welfare, National Defense Education Act, National Science Foundation, and/or the Department of Agriculture, Food and Nutrition Services (i.e. Department of Agriculture Form 67 relating to the national school lunch program).

(h) Copies of any Federal or state audit reports that relate to the financial operations of the school or to its status under any Federal, state or local law requiring any phase of its operations to be conducted on a racially nondiscriminatory basis. If the school has no copies of any such report but has reason to believe that its activities in this regard may have been subject of a reasonably current investigation by any other government agency, the agent should solicit its cooperation in helping him procure access to copies of any and all reports that may have been prepared in this connection as well as to the official records of any relevant administrative or judicial proceeding in which such an issue may have been raised.

341.13 (9–26–77)

The Examination.

(1) All pertinent items should be explored to the extent necessary to determine that the school is in fact available to students on a racially nondiscriminatory basis and that the school is otherwise qualified for tax-exempt status. The items below are examples of points that should be covered in an examination. The examiner should determine, based on the facts and circumstances of each case, any additional areas that should be covered. Supporting documentation should be requested.

(2) Review enabling documents and bylaws to determine if the school has adopted a racially nondiscriminatory policy as to students. Such action must be affirmatively shown by a statement in the school's charter, bylaws, or other governing instrument, or by a resolution of its governing body. (Rev. Proc. 75–50, section 4.01.)

(3) Review minutes of the Board of Directors and any committees thereof and note any items that indicate the organization's compliance or non-compliance with racially nondiscriminatory policies or activities.

(a) Record information relating to dates of school's formation and of all significant changes in the size and racial composition of the student body. These dates and the approximate dates the courts initiated local desegregation may, along with other relevant data, be an indication of racial discrimination as to students.

(b) Note whether any special steps have been taken to disseminate student application forms, brochures, or information about the school's scholarship programs or other programs, and its racially nondiscriminatory policy.

(c) Review the minutes of 2 or 3 prior years for a more complete understanding of the school's policies and programs.

(d) Determine what effect any changes in the enabling documents, bylaws, resolutions, admissions policy, tuition rate, recruitment practices, employment policies, property holdings and/or scholarship, loans or financial aid programs and standards could reasonably be expected to have had on the implementation of the school's nondiscriminatory policy.

(4) Review the school's correspondence files for the purpose of determining whether the school is or is not implementing a racially nondiscriminatory policy as to students. (See also (1)(g)14 concerning the Family Educational Rights and Privacy Act of 1974.)

(5) Determine whether the school has made its racially nondiscriminatory policy as to students known to all segments of the general community served by the school.

(a) If the school uses newspaper notices for this purpose, determine whether such notices have been published in a newspaper of general circulation that serves all racial segments of the community (see section 4.03 of Rev. Proc. 75–50), and determine whether:

1. The notice meets the size and type requirements,

2. The notice contains the approved statement contained in Rev. Proc. 75–50 or other acceptable statement, and

3. The publication was made annually during the registration period or student solicitation period.

(b) If publicizing of a racially nondiscriminatory policy as to students is by use of the broadcast media, review copies of tapes, transcripts, or records showing the number, duration, and time periods the policy statement was broadcast to determine if it was effectively communicated to all segments of the general community served by the school.

1. Determine whether the notice was broadcast during the school's registration period(s), or student solicitation period(s).

2. Determine whether the wording used in the broadcast announcement is a reasonable equivalent of the suggested newspaper statement set forth in section 4.03(a) of Rev. Proc. 75–50.

(c) If a school has failed to publish or broadcast its racially nondiscriminatory policy, determine if it meets the requirements of the exceptions specified in section 4.032 of Rev. Proc. 75–50.

(d) Ascertain whether the racially nondiscriminatory policy statement has been communicated directly to leaders of minority racial groups. Such action alone is not considered effective publicity. If, however, such a communication is carried out in addition to meeting the newspaper or broadcast publicity requirements of Rev. Proc. 75–50 such communication would tend to indicate good faith adherence to a nondiscriminatory policy as to students.

(e) Determine if the school has included the required statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships.

(f) Ascertain whether the school has made the mandatory reference to its racially nondiscriminatory policy in other written advertising that it uses as a means of informing prospective students of its programs. The following references will be acceptable: "The M school admits students of any race, color, and national or ethnic origin."

(g) Determine if the school has publicly disavowed or repudiated any statements purported to have been made on its behalf, after November 6, 1975, that are contrary to its publicity of a racially nondiscriminatory policy as to students, to the extent that the school or its principal officials were aware of such statements. (See section 4.03–2, Rev. Proc. 75–50.)

(h) Review any publicity scrapbooks for published news releases. Document any reference to the school's racially nondiscriminatory policy; also document any reference to athletic, or extra-curricular activities with other discriminatory or nondiscriminatory organizations. Note any reference to seminars or speeches by racial or ethnic leaders at the school as well as efforts by the school to promote its racially nondiscriminatory policy and to recruit students from racial and ethnic minority groups.

(6) Determine that all annual certifications required by section 4.06 of Rev. Proc. 75–05 have been duly executed as a part of any required Forms 990, or if the organization is not required to file Form 990, by Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

(7) Ascertain whether the school has satisfied the recordkeeping requirements of Rev. Proc. 75–50.

(a) Determine that the school has maintained either independent records or reports filed in accordance with the requirements of an agency or agencies of the Federal, state, or local government that:

1. Indicate the racial composition of the student body, faculty, and administrative staff for each academic year. (The racial composition may be an estimate based on the best information available without requiring student applicants, students, faculty or administrative staff to submit information to the school that the school otherwise does not require.)

2. Document that scholarships and financial assistance are awarded on a racially nondiscriminatory basis.

(b) Agencies requiring the above racial composition information may be State Boards of Education, City or County School Districts, Equal Employment Opportunity Commission, Department of Labor Office of Federal Contract Compliance, HEW Office for Civil Rights and/or Office of Education, Federal or State Courts, Department of Veterans Affairs, or Food and Nutrition Service, Department of Agriculture.

(c) Ascertain that copies of all brochures catalogues and advertisements dealing with student admissions, programs and scholarships are retained in accordance with section 701 of Rev. Proc. 75–50.

(d) Ascertain that copies of all solicitations for funds have been retained as required by section 7.01 of Rev. Proc. 75–50.

(e) Limitations.

1. A school is not required to release personally identifiable records or personal information contained therein except in accordance with the "Family Education Rights and Privacy Act of 1974," 20 U.S.C. § 1232g.

2. A school is not required to keep records, the maintenance of which is prohibited under state or federal law.

(8) Review the school's racial nondiscriminatory policies and practices with respect to the recruitment and admission of students.

(a) Obtain the racial/ethnic composition of the student body. Review student yearbooks for evidence of racial and ethnic composition of students.

(b) Determine to what extent either the promotion or recruitment efforts for students have been confined to one or more specific racial and ethnic groups.

(c) Ascertain whether the school has a meaningful and continuous racial and ethnic recruitment program for students.

(d) Ascertain standards of admissions. (Schools that favor racial minority groups with respect to admissions, facilities and programs, or financial assistance are not considered to be discriminating on the basis of race if the purpose is to promote the establishment and maintenance of the school's racially nondiscriminatory policy as to students.)

(e) Determine what the school charges for tuition and whether such charge is beyond the practical reach of all or nearly all of the families in a particular racial or ethnic group.

(f) Determine whether the Board of Directors must pass on all applications for admission and whether parents must appear at the school or elsewhere at time of registration or to obtain registration applications.

(g) Ascertain what enrollment limits, if any, have been enforced and how such limits were established.

(h) Review the practices the school follows with regard to waiting lists. Determine whether there are any such lists at the present time, whether applicants are accepted as students out of sequence on list and, if so, why.

(i) Determine whether cash deposits are required at time of registration or application for registration, whether all applicants are required to pay the same amount and whether deposits are refundable.

(j) Follow up on any leads tending to show either presence or absence of discrimination as to students and document any information so obtained. This should include comparison of racial mix at the school with other private schools in the same general area and full development of apparent reasons for any notable disparities.

(k) If possible, review records pertaining to rejected and accepted applicants and determine the total number of rejected and accepted applicants by racial and ethnic categories. (However, see section (1)(g)(14) concerning the Family Educational Rights and Privacy Act of 1974.)

(l) Review the student application form for any evidence of a racially discriminatory admissions policy. Determine whether the application form calls for a picture or information as to race.

(m) Determine whether the registration period has been adequately publicized and whether advance registration time or other priority is given for this purpose to children of founders, contributors, or the like.

(n) Determine whether the school relies on religious tenets as a basis for refusing or restricting interstudent relationships, or accepting students from certain racial and ethnic groups.

(9) Determine whether any of the school's facilities or programs, such as cafeterias, athletic events, community events (i.e., parades and marching band demonstrations), adult evening classes, and any other extracurricular activities are operated in a racially discriminatory manner.

(a) Determine whether any racial and ethnic groups or leaders have been invited to attend or participate in any of the school's activities and, if not, the reasons.

(b) Determine whether the school participates in extracurricular activities, including athletics, only with public or private schools that have no students from racial or ethnic minority groups.

(10) Review the school's racial nondiscriminatory policies and practices with respect to the employment of faculty and staff.

(a) Determine the racial and ethnic composition of the faculty, staff, and administrators. Review student yearbooks for evidence of racial and ethnic composition of faculty, staff, and administrators.

(b) Review employment applications as well as related correspondence and determine if rejections are based on racial and ethnic reasons. Determine whether the application form calls for a picture or information as to race.

(c) Determine whether standards for employment are higher for minorities.

(d) Determine whether the school has an active recruitment program for faculty and staff. If so, determine whether such program has been confined to one or more specific racial or ethnic groups.

(e) Determine whether the school hires through private agencies and, if so, whether such agencies recruit on a racially nondiscriminatory basis.

(f) If the school has no minority employees, determine the reasons why.

(11) Determine whether all grants of financial aid generally are made on a nondiscriminatory basis, whether their availability on that basis is made known throughout the general community being served by the school, and whether any preferential aid given to the members of one or more racial groups is of such kind or amount that it does not significantly derogate from the school's maintenance of its racially nondiscriminatory policy as to students. (See section 4.05 of Rev. Proc. 75–50.)

(a) Review all applicable requirements for each form of financial aid available for use at the school and obtain sample application forms.

(b) Determine the aggregate number and the amount of all scholarships and loan funds awarded for the year(s) under examination by racial and ethnic categories in each case.

(c) Determine whether the availability of financial aid on a nondiscriminatory basis is referred to in catalogues brochures, published newspaper notices, broadcast media notices and/or other written advertisements. (Student aid in the form of free housing, books, or failure to enforce tuition debts is considered financial aid for the purpose of this determination.)

(12) One of the contentions of private schools is that they offer an alternative course of action to parents who see the public educational system as offering substandard education. Therefore, inquiries should be made into these areas:

(a) Whether the school is accredited and, if so, by what organization it is accredited.

(b) What organizations the school is a member of.

1. The stated purposes of these organizations.

2. Whether these organizations espouse a policy of racial segregation.

3. Whether these organizations consist of all or nearly all member schools who have a common feature of having no students from racial or ethnic minority groups.

4. Whether these organizations provide prospective employment lists or job referral services for their members, and whether the recruitment or referral system is racially nondiscriminatory.

5. Whether these organizations are associated with, or work with local or state governmental agencies.

(c) Whether State certification is required for State textbook assistance.

(d) If state or local governments rent or provide free textbooks, whether the school participates in the program. If not, why not and the extent to which textbooks in actual use by the school differ from those available through governmental sources. Also, determine whether the school participates in any other Federal, state or local government assistance program available to it and, if not, why not. Further, determine whether the school has applied for Federal, state or local government assistance which has been rejected, and the reasons for such rejection.

(13) Determine whether the school has any program of preparing present student body and staff for minorities in the future. Also determine whether the school has taken any special steps to avoid having minority children or their parents subjected to physical abuse, employment reprisal or the like if such students enroll, or attempt to enroll, in the school.

(14) Determine whether any donations (such as land, buildings or other property) were made to the school by individuals or organizations which have as their objective the maintenance of a segregated public or private school education.

(15) Inspect documentation relating to any receipt by gift or bargain purchase from any individual or organization of assets pre-

viously used for racially discriminatory purposes. Ascertain if the gift or bargain purchase was for the purpose of implementing a racially discriminatory policy as to students.

* * * * *

7(10)72 (6-26-80).

Private School Examinations.

7(10)72.1 (6-26-80).

Instructions and Procedures.

(1) The following procedures, except for the procedures on Advance Approval of Examinations apply to all private schools:

(a) Family Educational Rights and Privacy Act of 1974. Private schools will not be required to release personally identifiable records or personal information contained therein except in accordance with the requirements of the "Family Educational Rights and Privacy Act of 1974," 20 U.S.C. 1232g (1974). (See Section 7.02 of Rev. Proc. 75-50.)

(b) Private school checksheet. From 5788. (Private School Racial Nondiscrimination Checksheet) will be completed for each private school examination.

(c) Private School Examination Worksheet Form 5529. (Private School Examination Results) will be completed for each private school examination. See Chapter (10)00 of IRM 7530. EP/EO Reports Handbook.

(d) Advance Approval of Examinations—

1. If the church-related private school is a separate legal entity, the pre-examination procedures and the advance approval and notification procedures of IRM 7(10)71 will apply only if the school actually claims to be a church.

2. In accordance with the pre-examination procedures of IRM 7(10)71 the school will be sent a letter requesting, at a minimum, the specific information listed in d below. The letter should also make reference to the following—

a. Rev. Rul. 75-231, setting forth the Service's position that organizations, including churches, which operate schools must have a racially nondiscriminatory policy as to students to be recognized as exempt from Federal income tax.

b. Rev. Proc. 75-50, providing guidelines and recordkeeping requirements for determining whether private schools have racially nondiscriminatory policies as to students.

c. That the purpose of requesting the specified information is to ascertain whether an examination is necessary in order to determine compliance with Rev. Rul. 75-231 and Rev. Proc. 75-50.

d. That the information is being requested in accordance with the procedures specified in Income Tax Regulations 301.7605-1(c)(2). These procedures provide, in part, that before concluding an examination is necessary, the Service will attempt to obtain necessary information by written request to the organization.

3. At a minimum, the following specific information will be requested from the school—

a. Does the school have a racially and ethnically nondiscriminatory policy as to students by statement in its charter, bylaws, resolution of its governing body, or other governing instrument? If "Yes," in what document is the statement made and what is the specific language of the statement. If "No," explain.

b. Has the school publicized its racially and ethnically nondiscriminatory policy during the periods of solicitation for students or, in the absence of such a program, during registration periods in a manner that makes such policy known to all segments of the general community served by the school? If "Yes," describe. Also, if such policy has been publicized by one or more newspaper advertisements, furnish a copy of the most recent advertisement. If the school did not publicize its racially and ethnically nondiscriminatory policy, explain.

c. Does the school include a statement of its racially and ethnically nondiscriminatory policy in all brochures and catalogues dealing with student admissions, programs, and scholarships, and include a reference to this policy in other written advertisements used to inform prospective students of its program? If "Yes," submit all brochures, catalogues and other written advertisements used during the last academic year if the school is not currently in session, or for the present academic year if the school is currently in session. If "No," explain.

d. Is the school affiliated with, related to, or directly controlled or supervised by a church, or a convention or an association of churches? If "Yes," is the school separately incorporated?

e. Does the school discriminate in any way on the basis of race or ethnic origin with respect to students' rights or privileges, admissions policies, employment of faculty or administrative staff, scholarships or other financial assistance, educational policies, use of facilities, athletic programs, or other extra-curricular activities? If "Yes," to any of the foregoing, explain. If "No" to any of the foregoing, describe the action, if any, that supports such conclusion.

f. Does the school receive any financial aid or assistance from a governmental agency? Has the school's right to such aid ever been revoked or suspended? If "Yes" to either of the foregoing, explain.

g. Does the school maintain records indicating the racial/ethnic composition of its student body, faculty, and administrative staff; records sufficient to document that scholarship and other financial assistance is awarded on a racially and ethnically nondiscriminatory basis; copies of all catalogues, brochures, and advertising dealing with student admissions, programs, and scholarships; and copies of all materials used by or on behalf of the school to solicit contributions. If "No" to any of the foregoing, explain.

h. Submit representative copies of all materials used to solicit contributions during the last academic year if the school is not currently in session, or during the present academic year if the school is currently in session.

i. Have any statements been made after November 6, 1975, purporting to be on behalf of the school, that are contrary to the school's publicly of a racially and ethnically nondiscriminatory policy as to students? If "Yes," has the school publicly disavowed or repudiated such statements, to the extent that the school or its principal officials were aware of such statements? Explain.

j. Provide data showing the racial and ethnic composition of enrolled students, of faculty, and of administrative staff at the close of the last academic year, if the school is not currently in session, or for the start of the present academic year, if the school is currently in session. Also, provide data showing the racial and ethnic composition of enrolled students who have received scholarship and loan funds, and the amount of such scholarship and loan funds. (This data may be an estimate based on the best information readily available to the school, without requiring student applicants, students, faculty or administrative staff to submit information to the school that the school otherwise does not require. To the extent that any of these categories of information has been included in a report(s) filed with an agency or agencies of Federal, State or local Government, copies of such report(s) will be acceptable if current within one year.) Describe the method by which racial/ethnic composition is determined for the school records or Government report purposes.

4. Upon completion of the pre-examination procedures, the organization will be furnished an appropriate letter. If the organization has satisfactorily furnished the requested information and it is concluded that no examination is necessary, the organization will be furnished a letter report that the Service's inquiry has been concluded, that it appears the school has complied with Rev. Rul. 75-231 and Rev. Proc. 75-50 and, therefore, that no examination is necessary. If, however, it is concluded that an examination is necessaray to determine compliance with Rev. Rul. 75-231 and Rev. Proc. 75-50, then the organization will be so advised, and the advance notification procedures of IRM 7(10)71 will be followed.

5. Reporting of Examination.

a. A report of examination described in IRM7(10)64 will be prepared for all nonchurch-related school examinations, and for all church-related school examinations conducted beyond the pre-examination procedures.

b. In the case of church-related schools that are not separate legal entities, the examination generally will be limited to determining whether the school's operations comply with the racially nondiscriminatory requirements. Therefore, the examination report should also be so limited. The report will be issued to the lowest church organizational unit which operates the school. If the examiner is unable to determine the lowest church organizational unit, or if other questions arise in connection with the issuance of the report, a memorandum should be prepared and sent to the National Office, Exempt Organizations Division (Attention: E:EO:O:R) summarizing the facts and circumstances involved and requesting classification as to who should receive the examination report.

7(10)72.2 (6-26-80).

Review of Private School Cases.

EP/EO Division will review all private school examinations including those cases in which information obtained under the pre-examination procedures in IRM 7(10)71 constitutes the sole basis for determining that the school appears to comply with Rev. Rul 75-231 and Rev. Proc. 75-50.

7(10)72.3 (6-26-80).

Nc Change—Corrective Action Cases.

(1) A school must comply with the requirements of Rev. Proc. 75-50 in order to demonstrate that it has a racially nondiscriminatory admissions policy. However, the Service's approach is, and has been, to avoid applying rules mechanically in an area that requires careful judgment of all facts and circumstances. Thus, where the history of a school and the surrounding facts and circumstances indicate that the school has a racially nondiscriminatory admissions policy, revocation of such school's exemption on the basis that a particular requirement of Rev. Proc. 75-50 has not been met may be inappropriate. Rather, the appropriate action may be to give the school an opportunity to take corrective action to conform to the particular requirement of Rev. Proc. 75-50. For example, if information obtained in a private school examination demonstrated that the school, by reason of its racial constituency or other facts, practices a racially nondiscriminatory admissions policy, and that the school has satisfied all the requirements of Rev. Proc. 75-50 except that its brochures do not contain a statement concerning its racially nondiscriminatory admission policy, the appropriate action would not be revocation, but rather to have the school revise the brochures to include the racially nondiscriminatory statement.

(2) EP/EO key districts will establish a file for ensuring control over timely follow-up on private school cases involving corrective action. These follow-up procedures are also applicable to pre-examination cases described in 7(10)72.1:(1)(d)(3), where it is concluded that although no examination is required, certain corrective action is necessary.

(3) In all cases where a private school has agreed to take corrective action to conform to the private school compliance requirements of Rev. Proc. 75-50, the specialist will prepare a no-change letter which advises the organization of the nature of the corrective action that it has agreed to take. A copy of the no-change letter will be placed in the control file (referred to in (2) above) for follow-up action within the year following the year of the examination.

(4) Follow-up action is mandatory on all cases involving corrective action. The follow-up action may be an examination, if warranted, or it may simply involve contacting the private school and soliciting certain information. For example, if the corrective action is similar to that described in (1) above, where the private school has given assurances that future brochures will contain a statement concerning its racially nondiscriminatory admissions policy, contacting the private school and securing the brochures may be adequate.

(5) Time expended on follow-up activities not involving an examination will be charged to Activity Code 313100 (Classification). If the follow-up activity involves an examination, time expended should be charged to Activity Code 339100 (Private Schools).

(6) After the follow-up action has been completed, the specialist will make a note on the copy of the no-change letter indicating the nature of the follow-up action taken, the results of the follow-up action, and the date of the action was completed. The copy of the no-change letter will be maintained in the control file for three years after which it will be made a part of the administrative file.

(7) Follow-up action with respect to church-related schools will not constitute an examination for purposes of the church-related school examination program unless such follow-up action involves the scope of inquiry specified in 7(10)72.1:(1)(d)3.

(8) Follow-up action with respect to nonchurch schools will not constitute an examination for purposes of the nonchurch school examination program unless such follow-up action results in a full examination of the school's operations and activities.

(9) Section 4.08 of Rev. Proc. 75-50 provides that failure to comply with the guidelines will ordinarily result in proposed revocation of exemption. Therefore, where a school will not agree to take corrective action necessary to comply with the guidelines, proposed adverse action should be considered. However, where doubt exists as to what is the appropriate action, the specialist should request technical advice in accordance with the procedures described in Rev. Proc. 73-8, 1973-1 C.B. 754.

(10) The corrective action approach is not intended to be used where revocation action is appropriate. As indicated in (9) above, corrective action is applicable only where all the facts and circumstances indicate that the school practices a racially nondiscriminatory policy with respect to students, notwithstanding that a particular requirement of Rev. Proc. 75-50 may not have been met. However, where upon completion of the examination and all administrative appeal procedures, the facts and circumstances adequately show that a school has actually practiced racial discrimination, exemption should be revoked even though the school may agree to change its policy and practice in the future. For example, if it is found that a school has in fact rejected qualified applicants for admission solely on the basis of their racial or ethnic background, then exemption should be revoked for those years in which the violations occurred. This is true notwithstanding that the school agrees to take steps to change its racially discriminatory policy in the future. If the private school's exemption is revoked, it may of course reapply for recognition of exemption under the procedures outlined in Rev. Proc. 72-4, 1972-1 C.B. 706, after it has taken the necessary corrective action.

(11) The situation described in (10) above concerning rejection of applicants for racial or ethnic reasons would also appear to warrant initiating action to suspend advance assurance of deductibility of contributions in accordance with the procedures outlined in Revenue Procedure 72-39, 1972-2 C.B. 818. Such suspension action should be initiated as soon as the information is developed which raises serious doubt concerning the organization's continued qualification for exemption.

(12) The United States District Court for the District of Columbia has ordered specific guidelines and recordkeeping requirements for Mississippi private schools. Green v. Connally, 330 F. Supp. 1150, aff'd sub nom. Coit v. Green, 404 U.S. 997 (1971). The corrective action approach is not appropriate where a Mississippi private school is found not to meet the requirements of the Court's order. Where it is determined, after completion of the examination and all administrative appeal procedures, that the requirements of the Court's order have not been satisfied, the private school's exempt status should be revoked.●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask unanimous consent to have printed in the RECORD at this point the notification I have just received. A portion of the notification, which is classified information, has been deleted for publication, but is available to Senators in the office of the Foreign Relations Committee, room S-116 in the Capitol.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 12, 1980.

Hon. FRANK CHURCH,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the requirements of Section 36(b) of the Arms Export Control Act, we are forwarding under separate cover Transmittal No. 80-105, concerning the Department of the Air Force's proposed Letter of Offer to a NATO country for defense articles and services estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-105]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i)(U) Prospective Purchaser: Netherlands.

(ii)(C) Total Estimated Value: (Deleted).

(iii)(C) Description of Articles or Services Offered: (Deleted).

(iv)(U) Military Department: Air Force (SVI).

(v)(U) Sales Commission, Fee, etc. Paid, offered or Agreed to be Paid: None.

(vi)(U) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex.

(vii)(U) Section 28 Report: Included in report for quarter ending June 30, 1980.

(viii)(U) Date Report Delivered to Congress: September 12, 1980.●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD at this point the notification which has been received. The classified annex referred to in the covering letter is available to Senators in the office of the Foreign Relations Committee, room S-116 in the Capitol.

The material follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 15, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-103 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter of Offer to Italy for defense articles and services estimated to cost $149 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-103]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Italy.

(ii) Total Estimated Value:

[In millions]	
Major Defense Equipment*	$140
Other	9
Total	149

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Equipment and services for two new AUDACE class ships. This will involve the radar system, missile system, weapon direction system, and command and control equipment for the TARTAR missile.

(iv) Military Department: Navy (LDA).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See annex under separate cover.

(vii) Section 28 Report: Included in report for quarter ending 30 June 1980.

(viii) Date Report Delivered to Congress: September 15, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 18, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-106, concerning the Department of the Air Force's proposed Letter of Offer to Germany for defense articles and services estimated to cost $31 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-106]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Germany.

(ii) Total Estimated Value:

[In millions]

Major defense equipment*	0
Other	$31
Total	31

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Advanced F-4 aircraft flying training for 20 combat aircrews and air warfare instructor qualification for eight instructor aircrews under a dedicated German Air Force flying program at George AFB, California.

(iv) Military Department: Air Force (TMW).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Included in report for quarter ending 30 June 1980.

(viii) Date Report Delivered to Congress: September 18, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 16, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-108, concerning the Department of the Navy's proposed Letter of Offer to Canada for defense articles and services estimated to cost up to $250 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-108]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Canada.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$0
Other, up to	250
Total, up to	250

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: In connection with Canada's direct commercial purchase of CF-18 aircraft, a Memorandum of Understanding (MOU) is being negotiated which will define the extent to which U.S. Government support can be made available to Canada under the FMS program. Potential cases include a cooperative logistics program, aircrew training, program management efforts, appraisal and fatigue study efforts, engineering change proposals, support equipment including U.S. government furnished equipment, and repair services.

(iv) Military Department: Navy (GNR).

(v) Sales Commission, Fee, etc. Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: September 16, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 16, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-107, concerning the Department of the Air Force's proposed Letter of Offer to NATO for defense articles and services estimated to cost $153 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-107]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: NATO.

(ii) Total Estimated Value:

[In Millions]

Major Defense Equipment*	$143
Other	10
Total	153

* As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: One NATO IIID Communications Satellite (SATCOM) and an option for a second SATCOM, each including launch vehicle, related services, and on-orbit test and evaluation.

(iv) Military Department: Air Force (YAN).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: September 16, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 15, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-119, concerning the Department of the Army's proposed Letter of Offer to Greece for defense articles and services estimated to cost $35 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620c(d) of the Foreign Assistance Act of 1961 that this action is consistent with Section 620c(b) of that statute.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-119]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Greece.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$31
Other	4
Total	$35

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Eight AH-1S helicopters.

(iv) Military Department: Army (WJB).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Included in report for quarter ending 30 June 1980.

(viii) Date Report Delivered to Congress: September 15 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 15, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, United States Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-98, concerning the Department of the Army's proposed Letter of Offer to the Netherlands for defense articles and services estimated to cost $73.6 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-98]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Netherlands.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$64.0
Other	9.6
Total	$73.6

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: One hundred forty-four M198 towed howitzers with technical data package, support equipment, and concurrent spare parts.

(iv) Military Department: Army (VKK).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: September 15, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 12, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-88, concerning the Department of the Army's proposed Letter of Offer to India for defense articles and services estimated to cost $78.7 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-88]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: India.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$69.8
Other	8.9
Total	$78.7

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Two hundred ninety-one thousand 155mm projectiles, and 302,400 component propellant charges with fuzes and primers.

(iv) Military Department: Army (UME).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Included in report for quarter ending 30 June 1980.

(viii) Date Report Delivered to Congress: September 12, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 12, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-90, concerning the Department of the Army's proposed Letter of Offer to India for defense articles and services estimated to cost $111.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-94]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: India.

(ii) Total Estimated Value:

[In millions]

Major Defense Equipment*	$106.0
Other	5.0
Total	$111.0

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Two hundred thirty M198 155mm towed howitzers with spare parts, support equipment, and the services of a Quality Assurance Team and a Mobile Training Team.

(iv) Military Department: Army (UMC).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be sold: None.

(vii) Section 28 Report: Included in report for quarter ending 30 June 1980.

(viii) Date Report Delivered to Congress: September 12, 1980.●

ORDER FOR RECOGNITION OF SENATOR HATCH TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the name of Mr. HATCH be added to the names of Senators to be recognized tomorrow morning for not to exceed 15 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

COAST GUARD AUTHORIZATIONS, 1981-82

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2489.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2489) entitled "An Act to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That funds are hereby authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1981, as follows:

(1) for the operation and maintenance of the Coast Guard, including expenses related to the Capehart housing debt reduction: $1,248,367,000;

(2) for the acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto: $469,320,000;

(3) for the alteration or removal of bridges over navigable waters of the United States, constituting obstructions to navigation: $16,200,000; and

(4) for research, development, test, and evaluation: $30,000,000.

SEC. 2. For fiscal year 1981, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,600: *Provided*, That the ceiling shall not include members of the Ready Reserve called to active duty under the authority of section 764 of title 14, United States Code.

SEC. 3. For fiscal year 1981, average military training student loads for the Coast Guard are authorized as follows:

(1) recruit and special training: 4,175 student-years;

(2) flight training: 117 student-years;

(3) professional training in military and civilian institutions: 595 student-years; and

(4) officer acquisition: 925 student-years.

SEC. 4. The second sentence of subsection 475(a) of title 14, United States Code, is amended to read as follows: "When any such lease involves housing facilities in a foreign country, the lease may be made on a multiyear basis for a period not to exceed five years, and, in accordance with local custom and practice, advance payment may be made for the lease.".

SEC. 5. The third sentence of subsection 650(a) of title 14, United States Code, is amended to read as follows: "In these regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts.".

SEC. 6. The last sentence of subsection 214(d) of title 14, United States Code, is amended to read as follows: "A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive the increases in pay and allowances authorized for that grade.".

SEC. 7. (a) Chapter 13 of title 14, United States Code, is amended by adding a new section 512 as follows:

"§ 512. Monetary allowance for transportation of household effects

"The transportation and reimbursement authorized by subsection (b) of section 406 of title 37, United States Code, shall be available hereafter to pay a monetary allowance in place of such transportation to a member who, under regulations prescribed by the Secretary, participates in a program designated by the Secretary in which his baggage and household effects are moved by a privately owned or rental vehicle. This allowance shall not be limited to reimbursement for actual expenses and may be paid in advance of the transportation of the baggage and household effects. The allowance shall, however, be in an amount that will result in savings to the Government when the total cost of the movement of baggage and household effects is compared with the cost that otherwise would have been incurred under subsection (b) of section 406 of title 37, United States Code.".

(b) The analysis of chapter 13 of title 14, United States Code, is amended by adding the following item at the end thereof.

"512. Monetary allowance for transportation of household effects.".

SEC. 8. When an inspection or examination of a vessel documented or to be documented as a vessel of the United States is conducted at a foreign port or place at the request of the owner or operator of the vessel, that owner or operator shall reimburse the Secretary of the department in which the Coast Guard is operating for the travel and subsistence expenses incurred by the personnel assigned to perform the inspection or examination. Amounts received as reimbursement for these expenses shall be credited to the appropriation for operating expenses of the Coast Guard.

SEC. 9. The joint resolution of June 4, 1958 (72 Stat. 179; 36 U.S.C. 161) is amended by striking the words "week which includes July 4" and inserting in lieu thereof the

words "week commencing on the first Sunday in June".

SEC. 10. (a) Chapter 17 of title 14, United States Code, is amended by adding a new section 660 as follows:

"§ 660. Transportation to and from certain places of employment

"(a) Whenever the Secretary determines that it is necessary for the effective conduct of the affairs of the Coast Guard, he may, at reasonable rates of fare fixed under regulations to be prescribed by him, provide assured and adequate transportation by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed by, the Coast Guard; and during a war or during a national emergency declared by Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for the the Coast Guard.

"(b) Transportation may not be provided under subsection (a) unless the Secretary or an officer designated by the Secretary, determines that—

"(1) other transportation facilities are inadequate and cannot be made adequate;

"(2) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

"(3) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

"(c) To provide transportation under subsection (a), the Secretary may—

"(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

"(2) maintain and operate that equipment by enlisted members or employees of the Coast Guard, or by private persons under contract; and

"(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer designated by the Secretary, and that may provide for the pooling of government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

"(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c)(3), shall be covered into the Treasury as miscellaneous receipts.".

(b) The analysis of chapter 17 of title 14, United States Code, is amended by adding the following item at the end thereof:

"660. Transportation to and from certain places of employment.".

SEC. 11. Paragraph (1) of the first section of Public Law 96-23 (93 Stat. 68) is amended by striking "$1,058,357,000;" and substituting "$1,091,357,000;".

SEC. 12. The President shall submit to the Congress, with the fiscal year 1982 budget request for the Coast Guard and each subsequent budget request, the current copy of the Coast Guard's Capital Investment Plan, Cutter Plan, Aviation Plan, and Shore Facilities Plan.

SEC. 13. Section 2(c) of Public Law 96-324 is amended by striking the words "the Canal Zone,".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTOMOBILE FUEL EFFICIENCY ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2475.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2475) entitled "An Act to amend title V of the Motor Vehicle Information and Cost Savings Act, 'Improving Automotive Efficiency', to exempt very low volume automobile manufacturers from certain requirements of the Act, to encourage increase of the domestic value added content in labor and materials of foreign automobiles sold in the United States, to extend the time available to all manufacturers for carry forward or carry back of credits earned under the Act, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Automobile Fuel Efficiency Act of 1980".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Fuel efficiency standards applicable to small manufacturers.
Sec. 4. Modification of local content requirements to encourage domestic production of fuel efficient automobiles.
Sec. 5. Adjustments regarding standards for light-duty trucks.
Sec. 6. Determinations of unlawful conduct; 3-year carryforward and carryback.
Sec. 7. Exemptions for emergency vehicles.
Sec. 8. Technical, clerical, and conforming amendments.
Sec. 9. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the United States is currently importing significant quantities of the petroleum used in the United States;

(2) automobile fuel usage accounts for a major portion of petroleum use within the United States; and

(3) the manufacture and use of more fuel efficient automobiles would reduce the dependence of the United States on imported petroleum.

(b) PURPOSES.—It is the purpose of this Act—

(1) to amend certain Federal automobile fuel economy requirements to improve fuel efficiency, and thereby facilitate conservation of petroleum and reduce petroleum imports, and

(2) to provide full employment in the domestic automobile manufacturing sector.

SEC. 3. FUEL EFFICIENCY STANDARDS APPLICABLE TO SMALL MANUFACTURERS.

(a) STANDARDS.—(1) Section 502(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(c)) is amended by inserting "(1)" after "(c)", and by adding at the end thereof the following new paragraph:

"(2) Any manufacturer may elect in any application submitted under paragraph (1) to consolidate the applications for, and administrative determinations regarding, exemptions and alternative average fuel economy standards for two or more of the model years after model year 1981 and before model year 1985.".

(2)(A) The Secretary of Transportation shall review the requirements and procedures established pursuant to section 502(c)(1) of such Act (as redesignated by this subsection) as soon as practicable after the date of the enactment of this Act and modify such requirements and procedure to the maximum extent practicable in order to further reduce administrative burdens on such applicants and the Secretary, and expedite determinations regarding such applications.

(B) The Secretary shall notify the Congress of the Review and actions taken or to be taken under this paragraph in the first annual report to the Congress which is made under section 512 of such Act after the completion of such review.

(b) CERTAIN REPORTING REQUIREMENTS.—Section 505(a) of such Act (15 U.S.C. 2005(a)) is amended by inserting at the end thereof the following new paragraph:

"(4) The provisions of this subsection shall not apply to any manufacturer for any model year for which that manufacturer is subject to alternative average fuel economy standards under section 502(c).".

SEC. 4. MODIFICATION OF LOCAL CONTENT REQUIREMENTS TO ENCOURAGE DOMESTIC PRODUCTION OF FUEL EFFICIENT AUTOMOBILES.

(a) CERTAIN NEW DOMESTIC MANUFACTURERS.—(1) Section 503(b) of such Act (15 U.S.C. 2003(b)) is amended by adding at the end thereof the following new paragraph.

"(3)(A) After consideration of a petition (and comments thereon) for an exemption from the provisions of paragraph (1) filed by a new domestic manufacturer, the Secretary shall, by order, grant an exemption from such provisions for passenger automobiles manufactured by that manufacturer during the period provided for in such order, if the Secretary finds, after notice and reasonable opportunity for written or oral comment, that the manufacturer has demonstrated for such period that the proposed exemption—

"(i) would promote employment in the United States related to motor vehicle manufacturing, and

"(ii) would reduce the volume of parts and supplies imported into the United States and used in automobiles manufactured by that manufacturer.

"(B) In making any finding under subparagraph (A), the Secretary shall take into consideration any benefits available under the amendments made by the Automobile Fuel Efficiency Act of 1980.

"(C) For purposes of this paragraph, the term 'new domestic manufacturer' means—

"(i) any manufacturer which began automobile production or assembly in the United States after December 22, 1975, and before May 1, 1980; or

"(ii) any manufacturer which began automobile production or assembly in the United States on or after May 1, 1980, and has engaged in such production or assembly in the United States for at least one model year ending on or before December 31, 1985.

"(D) Any decision by the Secretary to grant or deny an exemption under subparagraph (A) shall be made, and notice thereof published in the Federal Register, not later than 120 days after the date of the petition for that exemption. The Secretary may extend such period to a specified date if the Secretary publishes notice thereof in the Federal Register, together with the reasons for such extension. Any decision by the Secretary on such exemption shall become final 30 days after the publication of such notice unless a petition for judicial review is filed under subparagraph (E).

"(E) Any person adversely affected by a decision on such an exemption may, not later than 30 days after publication of notice of such decision, file a petition for review of such decision with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides, or in which the principal place of business of such person is located. The United States court of appeals involved shall have jurisdiction to review such decision in accordance

with section 706(2)(A) through (D) of title 5, United States Code, and to affirm, remand, or set aside the decision of the Secretary. Except as otherwise provided in this subparagraph, section 504 (c) and (d) shall apply to such review to the same extent and manner as it applies with respect to review of any rule prescribed under this section or section 501, 502, or 506.

"(F) Notwithstanding section 502(j), in the case of any model year for which an exemption has been granted to any new domestic manufacturer under this subsection—

"(i) no credit may be earned under section 502(j)(1)(B) by the manufacturer; and

"(ii) no credit may be made available under section 502(j)(1)(C) for the manufacturer.".

(2) Section 512 of such Act (15 U.S.C. 2012) is amended by adding at the end thereof the following new subsection:

"(c)(1) After an exemption has been granted under section 503(b)(3), the Secretary and the Secretary of Labor shall annually conduct a joint examination of the extent to which the amendment made to section 503(b)(3) by section 4(a)(1) of the Automobile Fuel Efficiency Act of 1980—

"(A) achieves the purposes of that Act and this part, including whether such amendment has promoted employment in the United States related to motor vehicle manufacturing,

"(B) has not caused undue harm to the motor vehicle manufacturing sector in the United States, and

"(C) has permitted any manufacturer that has assembled passenger automobiles which are considered domestically manufactured under section 503(b)(2)(E) to thereafter assemble in the United States passenger automobiles of the same model type which have less than 75 percent of their value added in the United States or Canada, together with the reasons for such action.

"(2) The Secretary shall include the results of such examination in each annual report that is made to the Congress under subsection (a) more than 180 days after an exemption has been granted under section 503(b)(3) of this subsection, or transmit the results of such examination directly to the Congress before such a report in any case in which circumstances so warrant.".

(b) TRANSITION PROVISIONS FOR CERTAIN NEW DOMESTIC PRODUCTION.—Section 503(b) of such Act (15 U.S.C. 2003(b)) is amended by adding at the end thereof the following new paragraph:

"(4)(A) If a plan has been submitted by a manufacturer and approved by the Secretary under subparagraph (B), the EPA Administrator shall for each of the four model years covered by such plan include under paragraph (1)(A) (and exclude under paragraph (1)(B)) with respect to that manufacturer not more than 150,000 passenger automobiles which are manufactured by that manufacturer but which do not qualify as domestically manufactured if—

"(i) the model type or types involved have not previously been domestically manufactured;

"(ii) at least 50 percent of the cost to the manufacturer of each such automobile is attributable to value added in the United States or Canada;

"(iii) in the case of any such automobile the assembly of which is completed in Canada, that automobile is imported into the United States not later than 30 days following the end of the model year involved; and

"(iv) such automobile model type or types are domestically manufactured before the close of the fourth model year covered by such plan.

"(B)(i) A manufacturer may submit to the Secretary for approval a plan, including supporting material, which shall set forth the actions, and the dates by which such actions are to be taken, which will assure that the automobile model type or types referred to in subparagraph (A) will be domestically manufactured before the end of the fourth model year covered by such plan.

"(ii) The Secretary shall promptly consider and act upon any plan submitted under this subparagraph. The Secretary shall approve any such plan unless—

"(I) the Secretary finds that the plan is inadequate to meet the requirements of this paragraph, or

"(II) the manufacturer has previously submitted a plan which has been approved by the Secretary under this paragraph.

"(C) This subparagraph shall only apply with respect to model years beginning after model year 1980.".

(c) CONFORMING AMENDMENTS.—(1) Section 501(8) of such Act (15 U.S.C. 2001(8)) is amended by adding at the end thereof the following new sentence: "Such term also includes any predecessor or successor of such a manufacturer to the extent provided under rules which the Secretary shall prescribe.".

(2) Section 503(b)(1) of such Act (15 U.S.C. 2003(b)(1)) is amended—

(A) in subparagraph (A), by inserting "and passenger automobiles which are included within this category pursuant to paragraph (3)" after "manufactured by such manufacturer"; and

(B) in subparagraph (B), by inserting "and which are not included in the domestic category pursuant to paragraph (3)" after "manufactured by such manufacturer".

(3) Section 503(b)(2)(F) of such Act (15 U.S.C. 2003(b)(2)) is amended by striking out "or 1979," and inserting in lieu thereof "or any subsequent model year,".

SEC. 5. ADJUSTMENTS REGARDING STANDARDS FOR LIGHT-DUTY TRUCKS.

Section 502 of such Act (15 U.S.C. 2002), as amended, is further amended by adding at the end thereof the following new subsection:

"(k)(1) On the petition of any manufacturer for any model year beginning after model year 1981 and before model year 1986, the Secretary may conduct an examination of the impacts of any standard under subsection (b) on that manufacturer or a class of manufacturers. If after consideration of the results of that examination the Secretary finds in accordance with paragraph (2) that the manufacturer has demonstrated that such manufacturer or class of manufacturers would not otherwise be able to comply with such standard for that model year without causing severe economic impacts, such as plant closures or reduction in employment in the United States related to motor vehicle manufacturing, the Secretary shall, by order, make an adjustment or otherwise provided relief regarding—

"(A) the manner by which the average fuel economy of that manufacturer or class of manufacturers is calculated for purposes of that standard, or

"(B) other aspects regarding the application of that standard to the manufacturer or class of manufacturers to the extent consistent with the provisions of this title.

"(2) Any finding by the Secretary under paragraph (1) shall be made (A) after notice and a reasonable opportunity for written or oral comment, and (B) after consideration of the benefits available under the amendments made by the Automobile Fuel Efficiency Act of 1980.

"(3) The authority of the Secretary under this subsection to make any adjustment or provide other relief shall not be effective for any model year after model year 1985.

"(4) The Secretary shall notify the Congress of any adjustment or other relief provided under this section in the first annual report submitted to the Congress under section 512 after the order is issued providing for that adjustment or relief.

"(5) Any final decision of the Secretary under this subsection shall be made, take effect, and be subject to judicial review to the same extent and in the same manner as is provided for under section 503(k) in the case of new domestic manufacturers.

"(6) The availability of any adjustment or other relief under this subsection shall not be taken into account in prescribing standards under subsection (b).".

SEC. 6. DETERMINATIONS OF UNLAWFUL CONDUCT; 3-YEAR CARRYFORWARD AND CARRYBACK.

(a) UNLAWFUL CONDUCT.—Section 507 of such Act (15 U.S.C. 2007) is amended—

(1) by striking out "The" and inserting in lieu thereof "(a) Subject to subsection (b), the"; and

(2) by adding at the end thereof the following new subsection:

"(b) A manufacturer shall not be considered to have engaged in unlawful conduct, or to have failed to comply with any fuel economy standard applicable to such manufacturer under section 502, if the average fuel economy of such manufacturer, after taking into account the credits then available to the manufacturer under section 502(j), would result in the applicable standard being met or exceeded.".

(b) 3-YEAR CARRYFORWARD AND CARRYBACK OF CREDITS.—Section 502 of such Act (15 U.S.C. 2002) is amended by adding at the end thereof the following new subsection:

"(j)(1)(A) For purposes of this part, credits under this subsection shall be considered to be available to any manufacturer upon the completion of the model year in which such credits are earned under subparagraph (B) unless under subparagraph (C) the credits are made available for use at a time prior to the model year in which earned.

"(B) Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established under subsection (a) or (c) (determined by the Secretary without regard to any adjustment under subsection (d) or any credit under this subsection), such manufacturer shall be entitled to a credit, calculated under subparagraph (C), which—

"(i) shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately prior to the model years in which such manufacturer exceeds such applicable average fuel economy standard, and

"(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

"(C)(i) At any time prior to the end of any model year, a manufacturer which has reason to believe that its average fuel economy for passenger automobiles will be below such applicable standard for that model year may submit a plan demonstrating that such manufacturer will earn sufficient credits under subparagraph (B) within the next 3 model years which when taken into account would allow the manufacturer to meet that standard for the model year involved.

"(ii) Such credits shall be available for the model year involved subject to—

"(I) the Secretary approving such plan; and

"(II) the manufacturer earning such credits in accordance with such plan.

"(iii) The Secretary shall provide notice to any manufacturer in any case in which the average fuel economy of that manufacturer is below the applicable standard under subsection (a) or (c), after taking into account credits available under subparagraph (B)(i), and afford the manufacturer a reasonable period (of not less than 60 days) in

which to submit a plan under this subparagraph.

"(D) The amount of credit to which a manufacturer is entitled under this paragraph shall be equal to—

"(i) the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer in the model year in which the credit is earned pursuant to this paragraph exceeds the applicable average fuel economy standard established under subsection (a) or (c), multiplied by

"(ii) the total number of passenger automobiles manufactured by such manufacturer during such model year.

"(E) The Secretary shall take credits account for any model year on the basis of the number of tenths of a mile per gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the volume of passenger automobiles manufactured that model year by the manufacturer. Credits once taken into account for any model year shall not thereafter be available for any other model year. Prior to taking any credit into account, the Secretary shall provide the manufacturer involved with written notice and reasonable opportunity to comment thereon.

"(2) Credits for manufacturers of automobiles which are not passenger automobiles shall be earned and be available to be taken into account for model years in which the average fuel economy of such class of automobiles is below the applicable average fuel economy standard established under subsection (b) to the same extent and in the same manner as provided for under paragraph (1). Not later than 60 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations to carry out the provisions of this paragraph.

"(3) Whenever a civil penalty has been assessed and collected under section 508 from a manufacturer who is entitled to a credit under this subsection, the Secretary of the Treasury shall refund to such manufacturer the amount of the civil penalty so collected to the extent that penalty is attributable to credits available under this subsection.

"(4) The Secretary may prescribe rules for purposes of carrying out the provisions of this subsection.".

(c) CONFORMING AMENDMENTS.—(1) Subsections (a) and (b) of section 508 of such Act (15 U.S.C. 2008) are each amended by striking out "507(1)", "507(2)", "507(3)", and "507(a) (1) or (2)", respectively.

(2) Section 508(a) of such Act (15 U.S.C. 2008(a)) is amended by striking out paragraph (3).

(3) Subparagraphs (A) and (B) of section 508(b)(1) of such Act (15 U.S.C. 2008) are each amended—

(A) by striking out "(i) $5 for each tenth" and inserting in lieu thereof "the amount obtained by multiplying $5 by (i) the number of tenths";

(B) by striking out "by (ii) the total" and inserting in lieu thereof "by the"; and

(C) by striking out the period at the end thereof and inserting in lieu thereof ", reduced by (ii) the credits then available under section 502(j) for such model year".

(4) Section 508(d) of such Act (15 U.S.C. 2008(d)) is amended by striking out paragraph (4).

(d) EFFECTIVE DATE.—Under such regulations as the Secretary of Transportation shall prescribe, the amendments made by this section shall apply to the 3 model years preceding the model year during which this Act is enacted.

SEC. 7. EXEMPTION FOR EMERGENCY VEHICLES

Section 502 of such Act (15 U.S.C. 2002) is amended by redesignating subsection (g) and the following two subsections as subsections (h), (i), and (j), respectively, and by inserting after subsection (f) the following new subsection:

"(g)(1) At the election of any manufacturer, the fuel economy of any emergency vehicle shall not be taken into account in applying any fuel economy standard prescribed by or under subsection (a), (b), or (c). Any manufacturer electing to have the provisions of this subsection shall provide written notice of that election to the Secretary and to the Environmental Protection Agency Administrator.

"(2) For purposes of paragraph (1), the term 'emergency vehicle' means any automobile manufactured primarily for use—

"(A) as an ambulance or combination ambulance-hearse,

"(B) by the United States or by a State or local government for police or other law enforcement purposes, or

"(C) for other emergency uses prescribed by the Secretary of Transportation by regulation.".

SEC. 8. TECHNICAL, CLERICAL, AND CONFORMING AMENDMENTS.

(a)(1) The table of contents for such Act is amended by striking out the item relating to part A

(2) Section 2 of such Act (15 U.S.C. 1901) is amended by striking out "except part A of title V" and inserting in lieu thereof "except title V".

(3) Title V of such Act is amended by striking out the designation relating to part A

(b) Section 501(9) of such Act (15 U.S.C. 2001(9)) is amended by striking out "manufacturer" and inserting in lieu thereof "manfacture".

(c) Section 502(b) of such Act (15 U.S.C. 2002(b)) is amended by striking out "and shall be" and inserting in lieu thereof "and such standards shall be".

(d) Section 502(d)(3)(E) of such Act (15 U.S.C. 2002(d)(3)(E)) is amended by striking out "subparagraph," and inserting in lieu thereof "subsection,".

(e) Section 503(b)(2)(A)(ii)(I) of such Act (15 U.S.C. 2003(b)(2)(A)(ii)(I)) is amended by striking out "base" the last place it appears.

(f) Section 508(b)(1)(A) of such Act (15 U.S.C. 2008(b)(1)(A)) is amended by inserting before ", shall be" the following "with respect to any model year".

SEC. 9. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the date of the enactment of this Act.

Amend the title so as to read: "An Act to amend the Federal automobile fuel efficiency program established under title III of the Energy Policy and Conservation Act for the purpose of facilitating conservation of petroleum and reducing petroleum imports, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate disagree to the amendments of the House and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. CANNON, Mr. STEVENSON, Mr. RIEGLE, Mr. SCHMITT, and Mrs. KASSEBAUM conferees on the part of the Senate.

COMMISSION ON CIVIL RIGHTS AUTHORIZATIONS, 1981

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAYH, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2511.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2511) entitled "An Act to amend the Civil Rights Act of 1957 to authorize appropriations for the United States Commission on Civil Rights for fiscal year 1981", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Civil Rights Commission Authorization Act of 1980".

SEC. 2. Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975e) is amended by striking out "1980" and inserting "1981" in lieu thereof.

Amend the title so as to read: "An Act to amend section 106 of the Civil Rights Act of 1957 to authorize appropriations for the Commission on Civil Rights for the fiscal year 1981.".

UP AMENDMENT NO. 1639

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAYH I move that the Senate concur in the amendments of the House with a further amendment, which I send to the desk on behalf of Mr. BAYH.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) on behalf of Mr. BAYH proposes an unprinted amendment numbered 1639:

Strike out all after the word "amended" in Section 2 and insert in lieu thereof the following:

"(1) by striking out '$14,000,000' and inserting in lieu thereof '$12,600,000'; and

"(2) by striking out '1980' and inserting in lieu thereof '1981'.".

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PUBLIC BUILDINGS ACT AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2080.

The PRESIDING OFFICER laid before the Senate the following message from the House of Represenatives:

Resolved, That the bill from the Senate (S. 2080) entitled "An Act to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That section 7 of the Public Buildings Act of 1959, as amended, is further amended by adding at the end thereof the following:

"(e) Whenever the Administrator determines that the best interest of the United States will be served, the Administrator is authorized to issue obligations for purchase by the Secretary of the Treasury, to the extent authorized in annual appropriation Acts, in amounts necessary to finance the acquisition or construction of any public building. The obligations issued shall be upon such terms and conditions as may be prescribed by the Secretary of the Treasury, taking into account that repayments shall not begin until the building is ready for occupancy and shall not extend beyond the useful life of the building but in no case for more than thirty years from the date of the initial repayment. Such obligations shall bear interest at a rate determined by the Secretary taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturity. No funds for public building acquisition or construction authorized by this section may be appropriated if such construction or acquisition has not been approved by resolutions adopted by the Committees on Environment and Public Works of the Senate and Public Works and Transportation of the House of Representatives."

SEC. 2. The Public Buildings Act of 1959, as amended, is amended by striking out "Committee on Public Works of the Senate and House of Representatives" and "Committee on Public Works of the Senate or House of Representatives" wherever they appear and inserting in lieu thereof at each such place "Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives" and "Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives", respectively. Section 11(b) of such Act is further amended by striking out "Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives" and inserting in lieu thereof "Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives".

SEC. 3. The amendment made by the first section of this Act shall take effect October 1, 1980.

Amend the title so as to read: "An Act to amend the Public Buildings Act of 1959, to authorize the Administrator of General Services to issue obligations for the construction and acquisition of public buildings, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I move that the Senate disagree with the amendments of the House, request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. MITCHELL) appointed Mr. RANDOLPH, Mr. MOYNIHAN, Mr. BURDICK, Mr. MITCHELL, Mr. STAFFORD, Mr. CHAFEE, and Mr. SIMPSON conferees on the part of the Senate.

LAW ENFORCEMENT ASSISTANCE AT CORPS OF ENGINEERS PROJECTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 793.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, Calendar Order 793 has been cleared on our calendar. We have no objection to its consideration and passage.

I understand, as well, there is an amendment by the distinguished Senator from New York (Mr. MOYNIHAN).

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2724) to extend authorizations for law enforcement assistance at Corps of Engineers projects.

The Senate proceeded to consider the bill.

● Mr. MOYNIHAN. Mr. President, on May 15, 1980, the Environment and Public Works Committee reported the bill, S. 2724, law enforcement assistance at Corps of Engineers projects. The purpose of the bill is to reauthorize for a 2-year period a program of contracting out law enforcement services at recreation areas located on Federal lands at corps water resources development projects. The program had been established originally as a 2-year experiment by Congress in section 120 of the Water Resources Development Act of 1976 (Public Law 94-587).

Nearly all of the divisions of the Corps of Engineers participated in the program. Each division reported that the contracts were very successful and each recommended the continuation of the program. Cooperation increased substantially between local law enforcement officials and corps project personnel. The presence of contract law enforcement officers was considered a tangible deterrent to crime and vandalism.

In 1978, the corps awarded 191 contracts totaling $2,166,525 and in 1979, 244 contracts totaling $3,120,900. Although not all of the $6 million authorized for the program for each fiscal year was, in fact, used, the corps believes that the full funding level will be needed in the coming years to meet increasing demand. Wide acceptance of this program has created a desire on the part of many other localities to participate. In addition to the 33 States now participating in the contract law enforcement program, several more States have recently acquired authority to participate.

The Corps of Engineers maintains its own staff of 920 rangers and managers. Their authority is limited to the issuance of citations for violations of the rules and regulations governing the public use of recreation areas at corps projects. As a result of the contract law enforcement program, rangers have been able to patrol areas which in the past may not have received adequate coverage.●

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by Mr. CULVER.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR CULVER

I am extremely pleased that S. 2724 includes a provision I introduced last year which authorizes the acquisition and enhancement of Nahant Marsh as part of any work by the U.S. Army Corps of Engineers of the proposed Davenport, Iowa, flood control project.

After a series of floods in the 1960's, Congress authorized a flood control plan for Davenport in 1970. After completion of the design studies, however, I became concerned that the proposed project would have an unintended detrimental impact on Nahant Marsh, one of the outstanding natural resources of the Quad Cities area. The marsh is a unique meadow wetland, developed over many decades, and it provides habitat for many varieties of wildlife and flora. It is one of the few remaining wildlife areas adjacent to the urbanized Quad Cities, and many school children, nature conservation groups, and individual citizens visit the marsh each year.

Nahant Marsh is a fragile ecosystem that must be protected. The Corps of Engineers has recommended that it be acquired and certain enhancement measures be taken to preserve it. These measures include controlling the water elevation of the wetland area during the dry season and the deposit of silt during runoff.

The proposal to protect Nahant Marsh constitutes a post-authorization change which must be approved by Congress. The Senate approved this measure in 1978, but the House failed to take final action before adjournment. Enactment of S. 2724 affords the opportunity for Congress to help protect this critically important environmental habitat. I urge my colleagues to approve this measure.

UP AMENDMENT NO. 1640

(Purpose: To authorize certain water resource activities in the waters of the United States)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MOYNIHAN, I send an amendment to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) proposes an unprinted amendment numbered 1640.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 2, strike the following: "September 30, 1980".

On page 2, insert immediately after line 3:

"ERIE BASIN NON-NAVIGABILITY, NEW YORK

SEC. 2. That portion of Lake Erie known as the Erie Basin in the Buffalo Harbor lying within the area described in the Senate Environment and Public Works Committee Print 96-16 is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and laws of the United States, and the consent of Congress is hereby given to the filling in of all or any part thereof or the erection of permanent structures thereon.

TRENT RIVER, NORTH CAROLINA

SEC. 3. Those portions of the Trent River in the city of New Bern, county of Craven, State of North Carolina, bounded and described in Committee Print Numbered 95-56 of the Committee on Public Works and Transportation of the House of Representatives are hereby declared to be non-navigable waters of the United States within the meaning of the laws of the United States.

CONCHAS LAKE, NEW MEXICO

SEC. 4(a). The Secretary of the Army, acting through the Chief of Engineers, is prohibited from determining the forty-five-acre cabin site in the south recreation area at Conchas Lake, New Mexico, to be in excess

of project needs prior to 1996, unless such a determination is agreed to by the Governor of the State of New Mexico or his designee.

(b) The Secretary of the Army, acting through the Chief of Engineers, shall not require the removal or sale and purchase of existing cabins, cottages, or other privately owned improvements located on the site referred to in subsection (a) of this section prior to 1996, unless agreed to by the Governor of the State of New Mexico or his designee. Existing and prospective lease arrangements shall reflect the requirements of this section."

ALBUQUERQUE, NEW MEXICO

SEC. 5. Any Federal project submitted for authorization for construction of new levees or modification of existing levees for the control of floods within the Rio Grande from Bernalillo, New Mexico, to Belen, New Mexico, shall not require raising or modification of existing bridge structures within the project area to pass river flows in excess of that the bridges can now accommodate and estimated to be 42,000 cubic feet per second.

MOUNTRAIL COUNTY, NORTH DAKOTA

SEC. 6. Section 44(b) of the Water Resources Development Act of 1974 (Public Law 93-251; 88 Stat. 12) is amended by striking paragraph (2) and inserting in lieu thereof the following:

"(2) The lands conveyed pursuant to this section shall be used by the Mountrail County Park Commission, Mountrail, North Dakota, for Public park and recreation purposes; Provided, That the park commission may designate a portion of the lands conveyed for leasing of cabin sites. The Mountrail County Park Commission shall reimburse the Federal Government for lands so used at the fair market value for such property. If any lands used for public purposes are ever used for any other purpose, title thereto shall revert to, and become the property of, the United States which shall have the right of immediate entry thereof.".

● Mr. MOYNIHAN. Mr. President, the Buffalo Waterfront Village development represents a joint public and private sector effort to create nearly $100 million of new urban investment within an urban renewal area of the city's waterfront adjacent to Lake Erie and the Erie Basin Marina. The 66-acre Waterfront Village site is owned by the city of Buffalo Urban Renewal Agency, and subject to an urban renewal plan adopted October 22, 1963, which was subsequently amended to provide for the Waterfront Village development plan. The urban renewal plan and amendment have been approved by the Department of Housing and Urban Development, and the New York State Division of Housing and Community Renewal.

The public sector financial commitment to the Waterfront Village project amounts to nearly $10 million, funding for which is being provided on a proportionate basis through a Federal grants contract between the Department of Housing and Urban Development and the city of Buffalo Urban Renewal Agency. The public sector funding has been allocated for costs associated with preparing the site for private development including major utilities in the primary roadways.

To date, nearly $15 million of private development has commenced with an additional $5.7 million of public funds allocated for utility installation. Commitments have been received by the Urban Renewal Agency for an additional $52.7 million of private investment. In fact, development projections indicate that by June 1982, nearly $66 million of public and private investment will have occurred within the Waterfront Village redevelopment area.

The provision is necessary to allow this exciting and creative urban development project in the city of Buffalo to proceed immediately. It will remove the cloud of "navigational servitude" whereby the Federal Government can at any time reclaim land once considered to be navigable waters.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2724

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Water Resources Development Act of 1976 (Public Law 94-587) is amended as follows: Subsection (b) of section 120 is amended by striking out "and September 30, 1979" and inserting in lieu thereof "September 30, 1979, September 30, 1981, and September 30, 1982.".

ERIE BASIN NONNAVIGABILITY, NEW YORK

SEC. 2. That portion of Lake Erie known as the Erie Basin in the Buffalo Harbor lying within the area described in the Senate Environment and Public Works Committee Print 96-16 is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and laws of the United States, and the consent of Congress is hereby given to the filling in of all or any part thereof or the erection of permanent structures thereon.

TRENT RIVER, NORTH CAROLINA

SEC. 3. Those portions of the Trent River in the city of New Bern, county of Craven, State of North Carolina, bounded and described in Committee Print Numbered 95-56 of the Committee on Public Works and Transportation of the House of Representatives are hereby declared to be nonnavigable waters of the United States within the meaning of the laws of the United States.

CONCHAS LAKE, NEW MEXICO

SEC. 4. (a) The Secretary of the Army, acting through the Chief of Engineers, is prohibited from determining the forty-five-acre cabin site in the south recreation area at Conchas Lake, New Mexico, to be in excess of project needs prior to 1996, unless such a determination is agreed to by the Governor of the State of New Mexico or his designee.

(b) The Secretary of the Army, acting through the Chief of Engineers, shall not require the removal or sale and purchase of existing cabins, cottages, or other privately owned improvements located on the site referred to in subsection (a) of this section prior to 1996, unless agreed to by the Governor of the State of New Mexico or his designee. Existing and prospective lease arrangements shall reflect the requirements of this section.

ALBUQUERQUE, NEW MEXICO

SEC. 5. Any Federal project submitted for authorization for construction of new levees or modification of existing levees for the control of floods within the Rio Grande from Bernalillo, New Mexico, to Belen, New Mexico, shall not require raising or modification of existing bridge structures within the project area to pass river flows in excess of that the bridges can now accommodate and estimated to be 42,000 cubic feet per second.

MOUNTRAIL COUNTY, NORTH DAKOTA

SEC. 6. Section 44(b) of the Water Resources Development Act of 1974 (Public Law 93-251; 88 Stat. 12) is amended by striking paragraph (2) and inserting in lieu thereof the following:

"(2) The lands conveyed pursuant to this section shall be used by the Mountrail County Park Commission, Mountrail, North Dakota, for public work and recreation purposes: *Provided*, That the park commission may designate a portion of the lands conveyed for leasing of cabin sites. The Mountrail County Park Commission shall reimburse the Federal Government for lands so used at the fair market value for such property. If any lands used for public purposes are ever used for any other purpose, title thereto shall revert to, and become the property of, the United States which shall have the right of immediate entry thereof.".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider the nominations on the Executive Calendar beginning with the U.S. Army on page 7, going through U.S. Army on page 8, and going through page 9, nominations placed on the Secretary's desk in the Air Force, Army, Navy, and Marine Corps.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, once again the purpose of the reservation is to provide an opportunity to advise the majority leader that all of the items identified by him just now on our Executive Calendar are cleared. We have no objection to their consideration and confirmation.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

The assistant legislative clerk proceeded to read nominations on the Executive Calendar.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader, and I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

U.S. ARMY

Maj. Gen. James Mason Thompson, to be lieutenant general.

Maj. Gen. William Joseph Hilsman, to be lieutenant general.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, NAVY AND MARINE CORPS

Air Force nominations beginning Lewis Aaronson, to be lieutenant colonel, and ending John H. Whiting, to be lieutenant colonel.

Air Force nominations beginning Daniel J. Abshire, to be captain, and ending Charles M. Wormington III, to be first lieutenant.

Air Force nominations beginning James H. Addy, to be lieutenant colonel, and ending Ronald C. Szarlan, to be lieutenant colonel.

Army nominations beginning Louis J. Zeleznikar, to be colonel, and ending Alexander H. Von Plinksy, to be second lieutenant.

Army nominations beginning James L. Abrahamson, to be colonel, and ending Maryrose F. Troniar, to be colonel.

Navy nominations beginning Dennis D. Guy, to be ensign, and ending Sarv M. Grover, to be commander.

Navy nominations beginning Jeffrey J. Ahern, to be lieutenant (j.g.), and ending Sharon R. Thomas, to be lieutenant (j.g.).

The nomination of Robert P. Doyle, U.S. Marine Corps, to be second lieutenant.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move en bloc to reconsider the vote by which the nominees were confirmed en bloc.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order entered earlier, that the Senate stand in recess until the hour of 10 o'clock tomorrow morning.

The motion was agreed to; and at 8:15 p.m. the Senate recessed until Tuesday, September 23, 1980, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 22, 1980:

GENERAL ASSEMBLY OF THE UNITED NATIONS

The following-named persons to be Representatives of the United States of America to the 35th session of the General Assembly of the United Nations:

Donald F. McHenry, of Illinois.

William J. vanden Heuvel, of New York.

Jacob K. Javits, U.S. Senator from the State of New York.

Paul E. Tsongas, U.S. Senator from the State of Massachusetts.

Hannah D. Atkins, of Oklahoma.

The following-named persons to be Alternate Representatives of the United States of America to the 35th session of the General Assembly of the United Nations:

Nathan Landow, of Maryland.

Barbara Newsom, of California.

Richard W. Petree, of Virginia.

Joan Edelman Spero, of New York.

H. Carl McCall, of New York.

DEPARTMENT OF STATE

John A. Burroughs, Jr., of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Malawi.

Sally Angela Shelton, of Texas, now Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Saint Lucia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Saint Lucia concurrently with her positions as Ambassador to Barbados, to Grenada and to the Commonwealth of Dominica.

Jack B. Kubisch, of North Carolina, a retired Foreign Service officer, for the rank of Ambassador while serving as U.S. Special Negotiator of a successor agreement or treaty to the current United States-Spanish Treaty of Friendship and Cooperation.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 22, 1980:

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. James Mason Thompson, 519-16-9499, Army of the United States (brigadier general, U.S. Army).

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of Section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. William Joseph Hilsman, 500-30-3135, Army of the United States (brigadier general, U.S. Army).

IN THE AIR FORCE

Air Force nominations beginning Lewis Aaronson, to be lieutenant colonel, and ending John H. Whiting, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 1980.

Air Force nominations beginning Daniel J. Abshire, to be captain, and ending Charles M. Wormington III, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 1980.

Air Force nominations beginning James H. Addy, to be lieutenant colonel, and ending Ronald C. Szarlan, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 9, 1980.

IN THE ARMY

Army nominations beginning Louis J. Zeleznikar, to be colonel, and ending Alexander H. Von Plinsky, to be second lieutenant, which nominations were received by the Senate on August 29, 1980, and appeared in the CONGRESSIONAL RECORD of September 3, 1980.

Army nominations beginning James L. Abrahamson, to be colonel, and ending Maryrose F. Troniar, to be colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 1980.

IN THE NAVY

Navy nominations beginning Dennis D. Guy, to be ensign, and ending Sarv M. Grover, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 1980.

Navy nominations beginning Jeffrey J. Ahern, to be lieutenant (j.g.), and ending Sharon R. Thomas, to be lieutenant (j.g.), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 1980.

IN THE MARINE CORPS

The following-named Marine Corps enlisted commissioning education program graduate for permanent appointment to the grade of second lieutenant in the U.S. Marine Corps, pursuant to title 10, United States Code, section 5583, subject to the qualifications therefor as provided by law:

Doyle, Robert P.

EXTENSIONS OF REMARKS

INTELLIGENCE IDENTITIES BILL THREATENS THE FIRST AMENDMENT

HON. TED WEISS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. WEISS. Mr. Speaker, this week the House is scheduled to consider H.R. 5615, the Intelligence Identities Protection Act. This legislation would prohibit the disclosure of the identity of covert U.S. intelligence agents. Unfortunately, the bill has been so broadly drawn that it now poses grave risks to the first amendment rights of all citizens.

Law professors, civil liberties organizations, newspaper publishers and editorialists, and numerous other interested groups and individuals have expressed serious concern over the constitutionality and the potential abuses of this legislation. The American Civil Liberties Union has prepared an extensive memorandum discussing the constitutional problems with H.R. 5615. I share this document with my colleagues to contribute to an informed debate on this important issue. I am therefore inserting portions of the memorandum into the RECORD.

AMERICAN CIVIL LIBERTIES UNION
MEMORANDUM

WASHINGTON OFFICE, *July 31, 1980.*

Re: Agent identities bill S. 2216 as reported by the Senate Intelligence Committee on July 29, 1980.

To: Interested parties.

From: Jerry J. Berman and Morton H. Halperin.

INTRODUCTION AND OVERVIEW

Congress is rushing to enact legislation to criminalize the activities of Philip Agee and the publishers of the Covert Action Information Bulletin who identify and expose CIA agents abroad. However, in their haste, Congress is ignoring or putting aside serious constitutional issues presented by the legislation. Until recently, both the House and Senate intelligence committees had deferred action on "agent identities bills" because of civil liberties objections to provisions of the bill that would criminalize the identification of CIA agents by any person, including the press, even from public sources and nonclassified information. Reports in early July that the home of an American was fired on after he was named as a CIA station chief in Jamaica by the CAIB reignited demands for an agent identity bill and caused many members of Congress to vote for the legislation despite their reservations about its constitutionality. Unless Congress is made aware of the serious "overbreadth" of the legislation, it is almost certain to pass in this Congress.

On July 29th, the Senate Intelligence Committee marked up and reported S. 2216, its version of an "agent identity bill." We use quotations here to point up the fact that the bill does far more than criminalize the exposure of CIA agents serving abroad in circumstances which place their lives in danger. That is the popular understanding of the measure and the reason for its sympathetic reception. However, it must be emphasized that S. 2216 would punish any person who exposed the identity of a CIA agent, CIA informant, or CIA source of operational assistance. Moreover, both the Senate and House bill have been amended to protect FBI agents, informants, and sources in counterintelligence and counterterrorism investigations and activities in the United States. In other words, the bill would not only punish a person who identifies the CIA station chief in Angola, but also punish one who identifies an FBI informant in the Communist Party, U.S.A., in New York or King Hussein of Jordan, a source of operational assistance to the CIA. Moreover, the legislation is not limited to circumstances in which CIA agents, or sources would reasonably be in danger. Using legitimate concern over the murder of Richard Welsh in Athens and the attack on the home of the American in Jamaica, the CIA is pressing a far broader "source protection bill" which may seriously inhibit public debate on intelligence issues.

Section 501 (a) and (b) of S. 2216 would make it a crime for a present or former government official who learned the identity of CIA or FBI agents or sources through access to classified information to knowingly reveal that identity to an unauthorized person. These sections, which have identical counterparts in the House version, H.R. 5615, raise no serious objections. The government has a right to protect classified information and to place special obligations on government officials entrusted with classified information.

The problem with S. 2216 is that section 501 (c) would punish any person who: In the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States.

It is this section which raises serious civil liberties concerns. Clearly, the section would punish the press for publishing certain information which reveals the identity of CIA or FBI agents or informants. Because it would penalize any person, including the press, for publishing or revealing identities from "any" and not just "classified" information, the statute is subject to serious challenge as overbroad and unconstitutional. Finally, because the definition of "covert agent" is so broad, the statute will have a considerable adverse impact on public debate. For these reasons, spelled out more fully below, the ACLU, press witnesses such as Floyd Abrams and Ford Rowan, and the Justice Department have objected to various versions of the agents identity bill which attempt to reach the private sector.

A. Section 501(c) punishes publication by the press

The freedom of the press includes the right to gather and report the news even if the news is from classified sources. *New York Times Co. v. United States*, 403 U.S. 713 (1971). Section 501(c) would prohibit the press from publishing the identity of CIA and FBI agents or informants if it was "in the course of a pattern of activities intended to identify and expose covert agents" with "reason to believe" that "such activities would impair or impede the foreign intelligence activities of the United States. An investigative reporter might engage in exactly such a "pattern of activities" to report CIA involvement in a foreign country or to show FBI investigative abuses in its efforts to locate a group such as the Weather Underground (a counterintelligence, counterterrorism investigation). The very existence of this legislation and the statements of the Administration would lead a reasonable person to conclude that the revelation of identities would "impair or impede" the intelligence activities of the United States. The fact that the motive or intent of the reporter was to inform the public by exposing CIA involvements or FBI wrongdoing is irrelevant under section 501(c).

Only twice in our history has Congress legislated a prohibition on the right of the press to publish classified information: a narrow prohibition on publishing codes, 18 U.S.C. §798 and highly sensitive atomic energy information, 42 U.S.C. §2274. Both involve highly technical information which minimally restrict the flow of news. When broader categories of information have been involved, such as when congress considered and enacted the current espionage laws, the press and publication were excluded from the reach of the statutes. See Edgar and Schmidt, The Espionage Statutes and the Publication of Defense Information, 73 Col. L. Rev. 930–1087 (1973).

Clearly, names of agents are often crucial to the meaning of a news story. Consider the Washington Post story that the head of the government of Jordon was in the employ of the CIA, or consider an investigative reporter who seeks to determine if the Watergate burglars have CIA connections. He discovers that several of them do and that one is a CIA agent and his story includes their names. As Floyd Abrams pointed out in his testimony on the bill, the New York Times could have been prosecuted for publishing the fact that Francis Gary Powers was the pilot of the U-2 spy plane. All of these examples would run afoul of the statute. Even if the revelation was a single story, it is not clear that the act of investigating the story and preparing to publish it are insufficient to meet the government's concept of "pattern of activities." Repeatedly during markup it was made clear that pattern does not mean a pattern of disclosures but simply a pattern of acts with a purpose to disclose. The statute is not meant to give a person an opportunity to identify one agent without risk of prosecution unless he or she names others.

B. Section 501(c) is overbroad and unconstitutional because it would punish any person or the press for publishing the identity of an agent or source derived wholly from public, nonclassified sources

Aside from the policy questions involved in Congress punishing publication or communication of classified information which reveals the identity of an agent or intelligence source, section 501(c) goes further by prohibiting publication of an identity even if the person or reporter derived the identity or identities wholly from public sources. Designed to reach Louis Wolfe of the Covert Action Information Bulletin, who claims to gain all of his information about CIA agents from public, non-classified sources, the section is overbroad, and unconstitutional. For example, a scholar doing a study of American policy in Asian countries seeks to learn about the CIA's role there and for that purpose analyses documents which reveal the identities of CIA agents. He writes an article or book in which he reveals the name of a foreigner who cooperated with the CIA. Both he and the publisher of his book could be indicted for revealing the identity.

In testimony before the House Intelligence Committee, Deputy Assistant Attorney General Robert L. Keuch, speaking for the Justice Department, accurately and succinctly summed up the decisions of the courts on this question. These decisions hold that no one can be convicted of espionage or of compromising information relating to the national defense: "If the information was made available to the public, or if the government did not attempt to restrict its dissemination or if the information was available to everyone from lawfully accessible sources." The case directly on point is the widely quoted opinion of Judge Learned Hand in *U.S. v. Heine*, 151 F. 2d 813 (1945). Heine engaged in an activity very similar to that which appears to have given rise to section 501(c) of S. 2216. In the words of Judge Hand: "The information which Heine collected was from various sources: ordinary magazines, books and newspapers; technical catalogues, handbooks and journals; . . . This material he condensed and arranged in his reports . . . All this information came from sources that were lawfully accessible to anyone who was willing to take the pains to find, sift, and collate it. Judge Hand went on to note that the Supreme Court had held in *U.S. v. Gorin*, 312 U.S. 19 at 28 (1941) that: it is obviously lawful to transmit any information . . . which the services had themselves made public." Judge Hand noted that there can be no possible basis for distinguishing information which has never been classified and hence it "certainly cannot be unlawful to spread such information within the United States." Id.

C. The definition of covert agent sweeps too broadly

Originally, the agent identity bill was intended to punish persons who identified CIA employees abroad in circumstances which put their lives in jeopardy. See, S. 2525, the "National Intelligence Reorganization and Reform Act of 1978", Feb. 9, 1978. Today's bill is a source protection bill for the CIA and, the FBI.

Section 506(4) defines a covert agent to mean "an officer or employee of an intelligence agency, or a member of the Armed Forces assigned to duty with an intelligence agency whose identity as such an officer employee or member is classified information and who is serving outside the United States or has within the last 5 years served outside the United States. . . ." The section also covers U.S. citizens who acted outside the United States as informants or sources of operational assistance to the CIA. This definition is responsive to the danger Congress set out to rectify.

However, section 506(4) goes much further: It includes any foreigner who resides either inside or outside the United States who is a "present or former agent of, or a present or former informant or source of operational assistance to an intelligence agency." Regardless of the merits of their need for protection, the breadth of the definition could inhibit serious discussion of any U.S. covert operation or clandestine activity in a foreign country. For example, John Stockwell could not have written "In Search of Enemies" about Angola even though it did not identify U.S. agents because it identified sources of operational assistance to the CIA in Angola.

Equally if not more troubling, the definition of covert agent now includes any person "who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation." While Director William Webster requested coverage for his agents, this recent amendment probably goes much further than his request. It not only covers FBI agents but it covers informants and sources as well. It not only covers FBI agents working abroad but also those working in the United States. Because of its breadth, reporters might run afoul of the statute for reporting on FBI investigations of citizens in the United States who may be targeted by the Bureau under its counterintelligence or counterterrorism authority. In the past, FBI counterintelligence investigations included the investigation of Martin Luther King, Jr., the Communist Party, USA, the Socialist Workers Party, the anti-war movement (to discover foreign connections), and a source of other investigations. Today counterintelligence and counterterrorism investigations are more closely focused on groups suspected of acting for or on behalf of a foreign power but current guidelines are subject to change with the stroke of a pen. In effect the statute could inhibit reporting as well as citizens' efforts to determine whether their own group is infiltrated by FBI agents or informants. (It should be noted that under current guidelines, infiltration and informant coverage is not limited to groups suspected of criminal activity and can include wholly lawful groups if necessary in the view of the FBI to monitor or uncover foreign dominated groups or persons.)

The rationale for this broad coverage under the agents protection bill has not been put forward by the Administration. There is no record of former agents naming FBI agents or a group exposing these agents and placing their lives in jeopardy either in the United States or abroad. Moreover, there is no showing that traditional law enforcement means are ineffective in providing protection for FBI agents and informants even if groups are dedicated to exposing them in the United States. Unlike CIA agents abroad, they are not serving in a hostile country beyond the control of our own law enforcement agencies to protect.

D. Conclusion

This memorandum was meant to highlight some of the central problems presented by the agents indentities bill as reported by the intelligence committees. We hope it has demonstrated that the bill requires further scrutiny and amendment by Congress.●

VOICE OF DEMOCRACY SCHOLARSHIP WINNER

HON. ANTHONY TOBY MOFFETT
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. MOFFETT. Mr. Speaker, each year the Veterans of Foreign Wars of the United States and its ladies auxiliary conduct a Voice of Democracy contest in which more than 250,000 high school students compete for national, State, and local scholarships totaling $575,000. This year's theme was "My Role in America's Future."

The Connecticut State winner this year was 17-year-old Elizabeth Sweeny of New Milford. I would like to share with my colleagues Liza's outstanding speech:

America is growing and so am I. America is learning and so am I. America is changing and so will I. I must do these things because my forefathers, the workers, the voters, and the soldiers gave this country its independence and greatness. My duty stems from these men. I must support my country to the best of my ability.

So I take my place as a learner. Because my country has a policy of freedom of thought and speech, I have endless opportunities to advance myself through education, books and varied cultures. This policy allows me to develop my own opinions and find out what is really going on in this world. In today's society this is important because every citizen has a role in the workings of this country. He or she must be able to make the correct decision before placing a hand on the voting machine. I must learn to be responsible for the views I support, the people who depend on me, and the decisions I make for my country.

It is my duty to my country and to myself to adopt a role in society which will make me as complete a person as possible. Included in the process of becoming a complete person, I must leave room to grow. America is constantly changing, progressing and embracing new ideas. I must grow in order to keep up with the changes we all make from day to day. The future of our world depends on growth and change, my part of this change and growth is very small, but united with my neighbors, family and country, I am an important part of this change and growth. It is my duty and my role to uphold this expansion and promote it every day in any way possible.

I can and will promote change and progress after I have learned about my country through service in my community and participation in society as an active supporter of the work ethic. America's greatness stems from every person in it, working, participating and helping makes me a person. Every person leaves a footprint in the sands of time, my footprint will be that of an ordinary person, who, like all people are made extraordinary by the experience of being an American. Here is my role; I will be an American. This is a privilege and carries with it certain responsibilities. These responsibilities include helping and understanding my neighbors and those I will encounter every day. These people will represent the whole world because America is the melting pot of nations. We embrace all peoples. In my dealings with people on a day to day basis, I must uphold the policies my country extends to their native countries, one of friendship and acceptance for what and who they are. It is not my role to change unless change is needed. It is my duty to understand and accept. It is my right to ask to be understood and accepted, because America means equality for all. My role in American society is to be an equal among equals. We have no kings. We have had great leaders to guide us to our position of racial and religious freedom, and of that as a world power. We will need great leaders in the future. We also need the great people behind them; the people who chose them, the backbone of this country, housewives, executives, people from all walks of life, from whom these great leaders draw strength and support. These are the people

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

like myself who will never address thousands from a podium or bandwagon but whose voice counts. We all have a hand in the working of this country. It is not necessary to achieve wealth, power and fame, being an American, a citizen, a doer, brings as many rewards and fulfillments. Here is my role. I am an American.●

WELCOME TO JONATHAN FREDERICK BARBEE

HON. JOE WYATT, JR.

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. WYATT. Mr. Speaker, I rise today on this most happy occasion to let you and my colleagues here in the House of Representatives know that we have a new citizen. Jonathan Frederick Barbee was born today in El Campo, Tex. Jonathan, the son of Chris and Carol Barbee, was born at 9 o'clock this Monday morning, September 22, 1980.

I want to welcome Jonathan to Texas, and on behalf of the rest of the Texas delegation and the entire Congress, express my sincerest congratulations to the parents; and to Jonathan express my sincerest best wishes on beginning a new adventure in one of the best spots in the whole world. It is not every child who has the good fortune to have parents such as yours, and to live in such a fine community as El Campo, Tex. With a beginning like that I know there will be great things to come from him.●

TRIBUTE TO GERTRUDE L. POE

HON. GLADYS NOON SPELLMAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mrs. SPELLMAN. Mr. Speaker, poet Ralph Waldo Emerson wrote that "an institution is the lengthened shadow of one man." Had he known Gertrude Poe he would have added the words "or one woman." For Miss Poe, although slight of build, has for more than four decades cast an imposing shadow over my own community of Laurel, Md., and one of its institutions.

The institution is our town newspaper, the Laurel News Leader. Throughout her 41-year association with the paper, Gertrude L. Poe was more than its editor and its publisher—she was its guiding force and spirit. And, as such, she had an unequaled and unique impact on both the newspaper and the community it serves.

A slim, trim, magnificently groomed, exquisitely dressed, useful woman, Gertrude belies the fact of a 41-year career. Her charm, her wit, and her ever-pleasant demeanor have earned her the love of countless friends while her competence in her profession is recognized by the entire community of the fourth estate.

Oddly, initially she had no desire to be a journalist. She took over as editor of what was then an 8-page tabloid in 1939, at the request of the paper's owner, G. Bowie McCeney. Fresh out of law school, she had hoped to join Mr. McCeney's law firm, not edit his newspaper.

But, fortunately for all of us, Miss Poe quickly found things she liked about journalism. In the end, she shepherded Mr. McCeney's newspaper through 2,132 weekly editions. And it flourished under her stewardship.

Originally called the Laurel Leader, the newspaper became the chief recorder of events in and around Laurel. It grew in size and, more importantly, in staff. Miss Poe no longer had to be editor, reporter, seller of ads, all wrapped up into one.

In 1946, the tabloid Leader became full size. It merged with the Bowie Register and College Park News to become the Laurel News Leader. And, somewhere along the way, it became financially sound. That development, together with Miss Poe's leadership, insured its survival to the present day.

Through it all, Gertrude Poe's steady hand at the helm guided its growth. Her standards were high; her integrity unquestioned. Through a period of vast changes in attitudes and lifestyles, hers was a thoughtful voice of reason and stability. Through years when the role of journalism itself underwent revolutionary changes, she never lost sight of her basic objective: to chronicle, as she put it, "Laurel's saga" over time.

I've heard it said that a newspaper is "the first rough draft of history." And that is exactly what the News Leader has been under Gertrude L. Poe, the first rough draft of Laurel's history for 41 years.

Of course, Miss Poe was not afraid to prod when she thought prodding was necessary. The city took her advice on more than one occasion and is better off today for having done so. She was a consummate journalist, tempered with concern and love for her neighbors.

Mr. Speaker, in June of this year, Gertrude Poe decided to step down as editor and publisher of the News Leader. She relinquished control to a team which, from all indications, will continue to provide a journalistic product in keeping with the standards she set for more than four decades. That she is missed—greatly—by the many readers of the News Leader and others in the community, goes without saying. Certainly, we are all pleased that she now has the chance to enjoy life at a quieter pace. And we know that new projects and new challenges will occupy her in retirement. But we cannot help a touch of sadness at the thought that the woman who has been called Maryland's first lady of journalism no longer edits what we think of as our newspaper.

In characteristic manner, Gertrude Poe, in a farewell column, credited others more than herself for the News Leader's success. She praised the paper's staff, its advertisers, its readers, and it supporters and thanked them all for helping her put the News Leader together each week for 41 years.

Tomorrow, Mr. Speaker, many of Gertrude Poe's friends and admirers will have the chance to return that praise when we gather in Baltimore to pay tribute to Miss Poe's own contribution and unmatched efforts over those same 41 years. I will be proud to be among those helping to chronicle the career of Laurel's own chronicler at that affair. And I will be most honored to be among those paying high tribute to one whose imprint on the community of Laurel has been so significant.

Mr. Speaker, I know my colleagues will want to join in acknowledging the many fine achievements of Gertrude L. Poe. I know, too, they will want to wish Miss Poe happiness and good health in all her future years. And most of all, Mr. Speaker, I know my colleagues will want to join in offering heartfelt thanks and sincere appreciation to Gertrude Poe for her years of dedication and commitment. The News Leader is truly an institution, and Gertrude L. Poe, its beloved editor and guiding spirit, will long cast a lengthened shadow.●

CONGRESSIONAL RURAL CAUCUS LAUDS RURAL DEVELOPMENT POLICY ACT OF 1980 EFFORTS BY SMALL CITIES, TOWNS, AND RURAL AREAS

HON. WES WATKINS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. WATKINS. Mr. Speaker, on September 15 and 16, 1980, the House and Senate, respectively, passed H.R. 3580, the Rural Development Policy Act of 1980, which provides for the establishment and coordination of a comprehensive nationwide rural development policy, and the authorization of appropriations for title V of the Rural Development Act of 1972, and for other purposes.

This measure will be signed into law by President Carter in the near future and the President will address the importance of the act as a major step in implementation of the Carter administration small community and rural development policy statement of December 1979, the Rural Development Act of 1972, and the newly authorized Under Secretary of Agriculture for Small Community and Rural Development.

As chairman of the CRC and its advisory team, I reaffirm our continued cooperation with the President, executive branch, Congress, and the private and public sector to insure positive and effective implementation of these policies, programs, and strategies.

I commend the majority and minority congressional leadership for its bipartisan efforts which resulted in this legislation which has consensus among many Federal, State, and local small community, towns, and rural area advocates.

The CRC and CRCAT have encouraged rural development and small farm research and extension under the title V provisions. Concern has also been expressed to eliminate unnecessary reports and to avoid duplication of efforts and bureaucracy.

Additional authorization for rural development planning grants, use of the circuit rider program to help small communities, and the establishment of a system to provide information and technical assistance at the local level are an integral part of this effort.

Those of us who have labored diligently in this legislative effort know too well that support and coordination remain key factors in the realization of an effective national rural development policy and strategy which must be backed up by a realistic process and strategy.

Fairness and equity in the allocation and distribution of programs, services, and funds are essential to insure accessibility to and delivery of private and public financial resources and to maintain and create jobs in small cities, towns, and rural areas, both in the farm and nonfarm sectors.

Mr. Speaker, let me again assure you that the Congressional Rural Caucus and its advisory team will continue our joint efforts to improve the economic and social well-being of the residents of our small cities, towns, and rural areas.

Thank you.●

CONGRESSIONAL FLYING CLUB

HON. DON H. CLAUSEN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. CLAUSEN. Mr. Speaker, tonight in room 121, Cannon House Office Building, the Congressional Flying Club is starting a 6-week ground school. The classes will be held each Tuesday and Thursday evening from 6 to 8:30. The Congressional Flying Club is pleased to advance the education of Members and staff in aviation matters.

Last year the ground school was a big success and we are looking forward to having many more aviation enthusiasts attend this year.

The distinguished Senator from Utah, Senator JAKE GARN, is the vice president of the flying club and I have the pleasure of being president. We invite everyone interested in aviation, pilots and nonpilots alike, to attend the classes each Tuesday and Thursday evening.●

FACTS ABOUT PACIFIC NORTHWEST POWER BILL

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. DINGELL. Mr. Speaker, last week Congressman SWIFT, on behalf of Chairmen STAGGERS, UDALL, and myself and the following other cosponsors, introduced H.R. 8157: Mr. BROWN of Ohio, Mr. CLAUSEN, Mr. KAZEN, Mr. LUJAN, Mr. SHARP, Mr. SYMMS, Mr. ULLMAN, Mr. FOLEY, Mr. PRITCHARD, Mr. MCCORMACK, Mr. DUNCAN of Oregon, Mr. BONKER, and Mr. DICKS.

H.R., 8157 is a compromise version of S. 885 as reported by the Commerce and Interior Committees.

To help my colleagues understand this important bill, the following is a summary of it:

PRINCIPAL FACTS ABOUT H.R. 8157—THE PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

I. PLANNING COUNCIL—SECTION 4(a)-(c)

1. State council

(a) Permanent 8 member State Council established pursuant to agreement between Idaho, Washington, Oregon, and Montana to which Congress consents. Agreement triggered by State appointment of 6 members to Council under State law.

(b) Each State has 2 members on Council.

(c) States have until June 30, 1981 to appoint at least 6 members, but by request of 2 Governors, this time will be extended an additional 6 months.

(d) Members appointed for 3 year terms, except initially one member from each State will have two year terms.

(e) Chairman selected by Council members from among themselves.

(f) Members and staff are not Federal employees.

(g) Certain Federal laws (in addition to H.R. 8157) that are applicable to Bonneville Power Administration (BPA) are intended to apply to Council. These relate to contracts, conflicts-of-interests, financial disclosure of members and staff, open meetings, advisory committees, disclosure of information (e.g., Federal Advisory Committee Act, Freedom of Information Act, Ethics in Government Act, Sunshine Act).

2. Backup Federal council

If State Council not formed within above time (June 30, 1981, plus 6 months), or if Council or any substantial function held unlawful by final Federal court determination, or if the conservation plan or fish and wildlife plan held ineffective by such court by reason of establishment of Council, Federal Council is established.

(a) 8 members appointed by Secretary of Energy (2 per State) from list provided by each Governor.

(b) Chairman selected by members. Members and staff are Federal employees.

(c) Council permanent, unless at any time one year after plan and program adopted finally at least three Governors jointly request termination. DOE Secretary will terminate 90 days after request.

(d) If Council terminated, fish and wildlife functions of Council continue to be carried out jointly by Secretary of Interior, BPA, and Administrator of National Marine Fisheries Service.

(e) Upon termination all other Council functions terminate, but BPA may not implement proposal to acquire major generating resource or grant billing credits for such resource until expenditure of funds is authorized by Congress. A major generating resource must have planned capability of over 50 average megawatts.

II. REGIONAL CONSERVATION AND ELECTRIC POWER PLAN—SECTION 4(d)-(g)

(a) Council has 2 years after establishment to prepare plan for region. The region is Oregon, Washington, Idaho, part of Montana, and those parts of Nevada, Utah, and Wyoming in the Columbia River drainage basin.

(b) Requires public hearings.

(c) Once plan adopted, all BPA actions must be consistent with plan, except as otherwise provided.

(d) Sets forth criteria for plan with priority to conservation and renewable resources, but other resources are not excluded.

(e) Must include demand forecast of at least 20 years and forecast of needed power resources, as well as model conservation standards.

(f) Council can recommend surcharge on BPA customers if customers fail to implement conservation measures that achieve energy savings comparable to those to be obtained under model standards.

III. FISH AND WILDLIFE PROGRAM—SECTION 4(h)

(a) Council must adopt program to protect, mitigate, and enhance fish and wildlife. Program becomes part of above plan.

(b) Applies solely to fish and wildlife on the Columbia River and its tributaries. Nothing shall alter, modify, or affect in any way the laws applicable to rivers or river systems, including electric power facilities related thereto, other than the Columbia River and its tributaries, or affect the rights and obligations of any agency, entity, or person under such laws.

(c) Council solicits recommendations from Federal, and the region's State, fish and wildlife agencies, Indian tribes, and others. They have 90 days to respond, but this time can be extended. Provision for public comment and hearings.

(d) Sets forth criteria and principles for program. Council determines if recommendations are consistent with purposes.

(e) Council to adopt program within 1 year after time established for receipt of recommendations.

(f) BPA to use its revolving fund and authorities to protect, mitigate, and enhance fish and wildlife affected by hydro projects of Columbia River and tributaries. Expenditures from fund made in accordance with requirements of Columbia River Transmission System Act under which the revolving fund was established.

IV. SALE OF POWER—SECTION 5

(a) All power sales, including exchange sales, are subject at all times to the preference provisions of the Bonneville Project Act. They retain and assure preference and priority in BPA power sales to public bodies and cooperatives.

(b) Requires BPA to offer to sell to each preference agency and to each investor-owned utility (IOU) the firm power it needs to meet its firm power load within the region to the extent that it cannot do so with its own resources.

(c) Reaffirms 5-year pullback provisions of Bonneville Project Act.

(d) Authorizes BPA to sell electric power to Federal agencies in region.

(e) BPA to include in contracts for the sale of power of utilities provisions permitting restriction of obligations to meet such customers' full requirements during any period of insufficiency. In the case of public

bodies, cooperatives and Federal agencies, the contract must specify a reasonable period between the date the notice is issued and the date it is to take effect.

(f) Permits power exchange and power sales whereby rate relief will be provided residential customers of investor-owned utilities. Benefits of exchange must be passed directly through to residential customers.

(g) Authorizes BPA to sell power to existing direct service industrial (DSI) customers that have a BPA contract at the date this bill is enacted. Initial long-term 20-year contracts are to be offered by BPA to these customers. In return for these new contracts, the DSI's would have to agree to terminate their current contracts.

(h) Prohibits sale to new DSI's. Prohibits BPA from selling to existing DSI's amounts of power in addition to their entitlement except in accordance with strict procedures. These procedures require the BPA and Council to determine that such sales are consistent with the plan.

V. RESOURCE ACQUISITION—SECTION 6

(a) Requires BPA to acquire conservation, conservation measures and renewable resources installed by residential and small commercial consumers in meeting his obligations to satisfy the load of his customers. These measures and resources must be consistent with the priority tests of section 4(e)(1) and the considerations of section 4(e)(2). The Administrator need not await a plan to utilize this authority. He must, however, apply these section 4(e) provisions to the proposed acquisition.

(b) BPA must also acquire other resources consistent with the plan, except as otherwise permitted. These include major generating resources.

(c) BPA can acquire non-major resources that are inconsistent with plan, but consistent with section 4(e) (1) and (2).

(d) If no plan in effect, BPA may acquire resources consistent with section 4(e) (1) and (2).

(e) BPA not to reduce efforts to achieve conservation and acquire renewable resources.

(f) Establishes detailed procedures preliminary to any acquisition of major resources, including public hearings. For each such proposal the BPA must (A) publish notice, with copies to the Council and, as appropriate, the Governor of a State where a facility is to be constructed or a conservation measure implemented; (B) conduct public hearings; (C) develop an administrative record; and (D) prepare a written discussion, including a determination of whether the proposed acquisition is consistent with the plan, or notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligation under this Act. If no plan is in effect, then the BPA must find that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

If either the BPA or the Council determines that the proposal is not consistent, the Administrator may not proceed until the expenditure of funds for the proposal has been specifically authorized by an Act of Congress. After that, he must wait 90 days. All acquisitions must comply with all applicable environmental laws, as well as other applicable laws.

(g) In acquiring a resource under this section, the BPA will not own or construct any generating resources. The BPA's acquisition will be by contract to pay for the capability or, in some cases, a specific amount of power from a utility's system or power associated with a generating resource or conservation resource or group of resources.

(h) Authorizes BPA to grant billing credits to customers and provide services if, by undertaking independent conservation or resource programs, they reduce the obligation to acquire resources.

(i) Requires BPA to include in BPA contracts enforceable terms and conditions which will allow it to exercise effective oversight for all resources it acquires, including conservation activities for which it provides billing credits.

(j) Makes it explicit that the Act does not authorize any form of "Federal guarantee" for bonds sold to finance resources acquired by BPA. All contractual and other obligations required of BPA under the Act are secured solely by Bonneville's revenues. The full force and credit of the United States is not pledged. In addition, all offerings and promotional material for resources acquired by BPA under this Act must specifically state that the obligations were not guaranteed by the Federal government.

(k) Requires that financial assistance, billing credits and other benefits be distributed equitably to each class of customer throughout the region.

VI. RATES—SECTION 7

(a) Requires BPA periodic review of rates to measure that BPA's total costs, are recovered including amortization of the Federal investment.

(b) Establishes the rates for power sold to meet the general requirements of public bodies, cooperatives, and Federal agency customers within the Pacific Northwest, and for sales under the 5(c) exchange. This rate will be BPA's lowest firm power rate. Section 7(b)(2) establishes a "rate ceiling" for preference customers that seeks to assure these customers that their rates will be no higher than they would have been had BPA not been required to participate in power sales or purchase transactions with non-preference customers under this Act.

(c) Prescribes the rates applicable to DSI's.

(d) Establishes the rate or rates for sales to investor-owned utilities other than sales pursuant to the exchange, authority, preference customers for power needed to meet the requirements of new large single "loads" and all other miscellaneous sales.

(e) Establishes detailed procedures for ratemaking.

(f) Requires BPA to provide information in rate schedules and billings to its customers on the cost of different resource categories and new resources.

(g) Reaffirms that all rates or rate schedules proposed by the Administrator for the sale of non-firm energy outside of the region, but within the United States, shall become effective only after review by the Federal Energy Regulatory Commission for conformance with the requirements of existing law applicable to BPA sales: the Bonneville Project Act, the Flood Control Act of 1944 and the Federal Columbia River Transmission System Act. FERC's review will be based on the BPA record and on any subsequent FERC proceedings. In performing its review, the Commission shall afford any party to the BPA proceedings conducted under section 4(i) an opportunity for an additional hearing, to be conducted in accordance with procedures established by the Commission for ratemaking under the Federal Power Act.

(h) Provides for impact aid payments to local governments regarding BPA transmission facilities. Does not apply to Federal lands.

VII. AMENDMENTS TO EXISTING LAW AND ADMINISTRATIVE PROVISIONS—SECTIONS 8 AND 9

(a) Section 8 makes a number of amendments to the Federal Columbia River Transmission System Act aimed at carrying out other provisions of the bill. These largely relate to the funding and bonding authority of the Act.

(b) Section 8 includes a penalty provision where BPA fails to make timely payments to the Treasury to amortize the Federal investment.

(c) Effective after October 1, 1981, the present bond limitation in the Transmission Act is increased, subject to annual appropriations, by an additional sum of $1,250,000,000.

(d) Preserves, but does not extend the ability of publicly-owned utilities to finance power resources with governmental obligations, the income from which is exempt from Federal taxation as provided in section 103(a)(1) of the Internal Revenue Code.

(e) Provides a limited exemption for the Public Utility Holding Company Act of 1935 by exempting from the definition of "electric utility company" in that Act any company which owns or operates facilities for the generation of electricity generated by such company to be sold directly or indirectly to the Administrator. At least 90 percent of such generation must be sold directly or indirectly to BPA. The Securities and Exchange Commission, with the concurrence of the Administrator, must determine that the organization of such company is consistent with the policies of section 1 (b) and (c) of the Public Utility Holding Company Act of 1935. SEC must supervise provision.

VIII. WATER

It provides that nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act or any plan or program adopted pursuant to the Act (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.●

H.R. 8096—WILD AND SCENIC RIVERS LEGISLATION

HON. ANTHONY TOBY MOFFETT

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. MOFFETT. Mr. Speaker, I would like to state for the RECORD my support of H.R. 8096, the Wild and Scenic Rivers Act Amendments of 1980. Specifically, I would like to discuss my amendment which designates a segment of the Farmington River for study for possible inclusion in the National Wild and Scenic Rivers System.

The Farmington River is unique. Although it is located within easy access of the Greater Hartford urban area, it has maintained many of its natural qualities. The State department of environmental protection has designated its waters as class B. The river contributes substantially to the maintenance of a viable fishery through a most ambitious program, the restoration of Atlantic salmon after their absence for

over 100 years. In addition, the river is a fishing splendor, with trout, shad, and other species. The healthy variety of fish contributes immeasurably to maintaining superior water quality, aquatic life, and the recreational value of the river.

A number of communities along the river have initiated their own river management plan. But what is still missing—what must be made an important part of the preservation effort—is an inventory of the river's natural resources and recommendations for an overall river management plan. It is only after such a study is completed, with the assistance of local citizens and town leaders, that the Farmington Valley communities can choose the most appropriate plan for the river's management.

There are other favorable benefits that would accrue from enactment of this legislation. First, the bill calls for an examination of the compatibility of low-head hydroelectric power on the Farmington River and the river's inclusion in the National Wild and Scenic Rivers System. I have requested that the compatibility of the two be studied because the Farmington River has great potential as both a generator of low-head hydroelectric power and for inclusion in the National Rivers System.

There are four dams on the Farmington River, two of which are under serious consideration as sites for the restoration of low-head hydroelectric power by the Canton Conservation Commission. It is unclear at this time when and if hydroelectric generation will actually take place. Such projects always take time. But preserving the scenic beauty and the recreational value of the river need not be incompatible with the development of hydroelectric power. Only minor modifications will be made to existing dams. I have specifically requested that the study of the river take no more than 2 years so we can pinpoint, as soon as possible, those factors which determine the compatibility of the two. For example, what kind of fish ladders need to be used to insure that anadromous fish can travel safely upstream? What is the maximum height for splashboards so that the size of the dam or the flow patterns of the river are not significantly altered? Are there any other effects of low-head hydroelectric generation which might adversely affect the quality of the river?

The second significant clause in the bill states that the river study will not preclude the development of low-head hydroelectric power on the Farmington River at existing impoundments. Under the Rivers Act, the Farmington is protected from any federally licensed or funded program which would adversely affect the river—during the study period by the Department of the Interior and during the congressional study period thereafter. To generate power, the Canton Conservation Commission will need a license from the Federal Energy Regulatory Commission (FERC). But, the license might be delayed because of the river's study designation. I have, however, been in contact with the Park Service, the Canton Conservation Commission, the Farmington Valley Watershed Association, and others. All have indicated to me that the dam modifications should not significantly alter the river's natural resources.

There is another reason why I feel confident in permitting the development of low-head hydroelectric generation on the Farmington River even without the benefit of the river study. Because of the Atlantic salmon restoration program, the State department of environmental protection is closely monitoring the fish passageway plans of the Canton Conservation Commission. The Commission must present a satisfactory fishladder plan to the State before it will permit the Commission to institute hydroelectric generators.

I would like to emphasize the importance of low-head hydroelectric facilities to northwestern Connecticut. New England residents are paying among the highest prices in the Nation for energy. The installation of hydroelectric generators on the Farmington River would help alleviate this area's dependence on imported oil and imported oil prices.

I would like to state, for the record, the tremendous amount of support I have received from residents of Connecticut's Sixth District for a study of the Farmington River. At least seven local and state-wide conservation commissions, over seven planning and zoning commissions, the State council on environmental quality, and many citizens have all urged me to do all that I can to see that the Farmington River is authorized for study in the Wild and Scenic Rivers System and that such a study does not preclude development of low-head hydro on the Farmington River.

Because the residents of the Farmington Valley strongly support the addition of hydroelectric generation and the Canton dams, and because so much planning for it has already taken place, I feel it would be unduly harmful and unnecessary to halt the development of low-head hydro on the river at existing sites. Furthermore, there is ample evidence that the river's integrity would not be harmed.

There is no inherent conflict between river conservation and potential low-head hydroelectric generation. Here is an opportunity for the Congress to enact model legislation preserving the scenic, wild and recreational values of a river while also promoting the development of a clean, safe, renewable energy resource. I urge that the Congress support this legislation.●

UNSELFISH AMERICAN DONATES BLOOD

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. CHAPPELL. Mr. Speaker, I would like to call the attention of my colleagues in the House to the efforts of a truly unselfish and very patriotic American—Mr. Eugene Hodges. Mr. Hodges, a member of the VFW Post 1590 and the Shriners, has over the past 21 years donated over 10½ gallons of blood to his fellow man.

For these efforts he has received recognition in the Bai Shrine Temple publication as well as receiving the Legion Citation of Appreciation. It is to such dedicated individuals as Eugene Hodges that many of our fellow citizens owe their lives. We are all dependent on donors when there is a special need or emergency. As you know no substitute for blood has ever been developed; the only source is still the human body. And that is why Mr. Hodges' contribution to mankind is particularly significant and deserves praise.

I am sure the people of my district in Florida take pride that one of our own has given of himself so unselfishly. In fact, his contribution reminds me of this proverb:

> Man is measured by his deeds. As he goes along life's way, it matters not whether he is famous or unknown, possessed of material goods or whether he walks in humble paths. Man's humanity and concern for his fellow man is what accounts for his greatness in the book of life.

Eugene Hodges embodies the true meaning of "giving of oneself to another."●

WORKERS WON SIGNIFICANT VICTORY, BUT "BOTTOM LINE" STILL REMAINS QUESTION MARK

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. DERWINSKI. Mr. Speaker, the Zgoda is the official publication of the Polish National Alliance of America (PNA), which, by the way, recently commemorated its 100th year of service to the Polish community. The PNA is the largest fraternal ethnic organization in the United States.

In the Zgoda's September 15 edition, the publication commented on the recent workers' strike in Poland in such a manner that most journalists could not express. I insert this commentary and a memorandum which was presented during a meeting between State Department officials and members of the PNA:

WORKERS WON SIGNIFICANT VICTORY, BUT "BOTTOM LINE" STILL REMAINS QUESTION MARK

GDANSK.—The 18-day strike which began August 14 in the huge shipyards here and spread to Szczecin and as far south as the Slask (Silesia) coal mines, came to a peaceful end Saturday, August 30, when the powerful Politburo of the Communist Party ratified an agreement initiated by Vice Premier Mieczyslaw Jagielski and strikers' representative Lesek Walesa.

The Polish workers won something unheard of in the communist monolith of tyranny, namely the right to organize free trade unions and the recognition of their right to strike.

Another crucial demand won by the workers is "respect for freedom of speech, the press and publications", which in reality means wider access for the Catholic Church to the printed and electronic media.

In the United States, President of the United Auto Workers Douglas Frazer disclosed on a nation wide television program, that his and other unions helped the Polish strikers with cash contributions delivered through the International Federations of Metal Workers in Switzerland. The money was earmarked for "food and other assistance."

American Polonia through its Polish American Congress was deeply concerned with the struggle and initiated several moves under President Aloysius A. Mazewski to defuse the potentially dangerous situation and help the Polish nation to overcome its current economic difficulties.

The workers' struggle in Poland is not over. The implementation of all 21 points of agreement by the Communist Government will be the test case.

In American expression, "the bottom line" of the agreement still remains to be written.

According to the United Press International, the Polish Communist government agreed:

To workers' right to form "free, self-governing trade unions" as long as these do not act as political parties or contest the Communist Party's dominance.

To write into law the right to strike. The law also would determine conditions under which strikes are organized and the responsibility for infractions.

To respect freedom of speech, the press and publication.

To free political prisoners and reinstate expelled students to colleges, but it asked the strike committee for a list of names.

To make public complete information about Poland's social-economic situation and let all groups and social classes take part in discussions of the reform program.

To full pay for all workers during the time they were on strike.

To increase salaries up to 1,000 zlotys ($34) a month for all workers earning less than 3,500 zlotys ($116) and give a flat 500-zloty ($16.66) monthly increase to those earning more.

To see to it that Poland's marketplace be fully supplied with food products, only surpluses to be exported.

To stabilize prices, with one price for both state and commercial shops.

To make sure there are no special privileges for Communist Party members in selection of management personnel.

To study, with the new unions, the adequacy of pensions and consider reducing retirement age for physically strenuous professions.

To raise the number of kindergartens for children of working mothers.

To offer maternity leave on a three-year plan, 100 percent of the mother's salary for the first year, 50 percent of the mother's salary for the second year and the same amount with a 2,000-zloty limit for the third year.

MEMORANDUM ON CURRENT CONDITION IN POLAND

President of the Polish American Congress, Mr. Aloysius A. Mazewski presented the following memorandum:

Developments in Poland—culminating in the current confrontation between the striking workers and the country's Communist dictatorship pose a challenge and a test of the consistency of the United States policy of support for human rights.

The Polish American community expresses its full support and solidarity for the efforts of the Polish workers and people as they seek a greater measure of human rights and freedoms.

The initial reaction of the Department of State in order to avoid or minimize the risk of Soviet intervention was to state that these developments are exclusively an internal matter of Poland. This was interpreted by the Mass Media and many others, especially Poles and Polish Americans, as a lack of understanding and concern, and an abandonment of the United States commitments under the Helsinki accords.

Soviet Union does not need a pretext to intervene militarily. It will—pretext or no pretext—if and when it concludes that the monopoly of Communist power and the cohesiveness of the Warsaw Pact block is being challenged. Polish strikers, as well as opposition groups in Poland, are fully aware of this reality.

Accordingly, no such direct challenge is contained in the demands advanced by striking workers, even though they include abolition of censorship, freedom of speech and establishment of free trade unions, which are all within the perimeters of the Helsinki Act, the International Covenant on Civil and Political Rights, and more so the Constitution of Poland.

Demands formulated by the strike committee are just. Resolution of the economic and political crisis which paralyses Poland requires establishment of conditions leading to full participation of its citizens, especially workers and farmers, in the vital decisions affecting their lives. Such participation and cooperation must be based on free representation and uninhibited debate of problems and their solutions.

We are cognizant of the fact, that the implementation of these just demands, can be achieved through an evolutionary process.

We believe that consistent with our professed policy of support for human rights, within the framework of the Helsinki Declaration, the United States government should urgently:

Express its moral support for the strikers demands for respect of their human rights and dignity;

Denounce possible recurrence of repression and intimidation;

Emphasize that in the interests of current and future international relations and cooperation, peace and stability, the conflict must be resolved by the Polish people and Polish authorities, without any outside physical interference;

Call upon both sides to act with a sense of realism and judicious restraint.

The underlying cause of strikes is the deepening economic crisis, brought about mainly by the inefficient, wasteful and corrupt Communist system of centralised planning and management of the country's economy. To help restore Poland's economic viability we recommend the United States government to offer Poland an extended program of economic assistance. It should be predicated on the Polish government's introduction of remedial, structural reforms, which are prerequisites to its future economic progress.

Accordingly we also urge the United States Government to immediately establish a strong economic assistance program to Poland which would focus upon:

1. The rescheduling of the repayment of Poland's foreign debt.

2. The extension of additional grain credits of at least 675 million dollars for 1980.

3. An emergency food program.

4. Double Poland's fishing quotas in Alaskan waters for 1980.

Such an economic, assistance program is simply a reflection of the moral commitment that is a necessary part of any effective human rights program.

Events in Poland demonstrate the crucial importance of the free flow of information provided by the Radio Free Europe/Radio Liberty and the Voice of America.

In summary, we are confident, that this two-pronged approach by the United States Government: efforts to promote negotiated settlement of Polish workers' demand, and a parallel offer to aid Poland to enable it to overcome the pervasive economic stagnation, will significantly strengthen Poland internally. We firmly believe that this would enhance United States national interests and security, since Poland, traditionally a friend and ally of western democracies, and of the United States particularly, will thus provide a strong element of European stability and peace.

The Polish American Community trusts that our requests will be urgently considered and that it will be informed and consulted concerning their implementation.●

TRIAL OF KIM DAE JUNG

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. EDWARDS of California. Mr. Speaker, I want to take this opportunity to insert into the RECORD the statement by Amnesty International concerning the death sentence recently given Kim Dae Jung by the military court in South Korea.

I share the concern expressed in this news release. By all accounts the trial failed to meet any standards of justice. Even our State Department has referred to the charges against Kim Dae Jung as "farfetched."

The U.S. Government cannot sit aside and continue to conduct a business as usual policy. We cannot continue to blindly hold out security commitment sacred while witnessing the erosion of any progress toward a democratic system. There comes a point when we must carefully weigh our continued security commitment with our support for a government which refuses to recognize the civil and political rights of its citizens. The execution of Kim Dae Jung would certainly signal such a time.

The news release follows:

[Amnesty International News Release]

AMNESTY INTERNATIONAL SAYS TRIAL OF KIM DAE-JUNG AND 23 OTHERS FAILED TO MEET INTERNATIONAL STANDARDS OF FAIRNESS

Amnesty International said today (Wednesday, September 17, 1980) that it was appalled by the death sentence passed by a South Korean military court on opposition leader Kim Dae-Jung after a trial that failed to meet internationally recognized standards of fairness.

The international human rights organization said Kim and 23 co-defendants, who received prison sentences, were not permitted to present a proper defense and there was evidence that they were threatened and ill-treated during pre-trial detention.

Kim was held incommunicado for three months after his arrest on May 17. He later told the court that he had been questioned for up to 15 hours a day in an underground room during the first two months of his detention, sometimes stripped of his clothes. Another defendant, Dr. Lee Moon-Young, told the court he was severely beaten during interrogation.

A number of lawyers who had taken human rights cases in the past were taken into custody by the authorities during this time, and some were forced to promise to give up their practices, according to reports reaching Amnesty International. The result was that the families of Kim and other defendants were unable to retain a lawyer of their choice.

Kim met his government-appointed lawyers for the first time on August 13—the day before the trial began—the reports to Amnesty International said. He and the other defendants were not allowed to call defense witnesses.

Before the trial began, government-controlled news media publicized detailed accusations against the defendants of conspiracy and sedition, presenting as fact charges that had not been heard by any court at that time, and that have still not been heard by any court operating to the minimum requirements for fair trial, Amnesty International said.●

TRIBUTE TO CHINESE RAILROAD WORKERS

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. COELHO. Mr. Speaker, upon the completion of the "impossible dream," the western anchor of the Transcontinental Railroad, on May 10, 1869, the Central Pacific Railroad realized that the San Joaquin Valley needed rapid transportation to get their farm crops to the open market. Consequently they decided to build a railway through the valley, from Lathrop south to Los Angeles, running through Fresno.

The Central Pacific brought the Chinese pioneer railroad workers, who had just completed the western leg of the Transcontinental, and who by this time were hailed as "the experts," to work on this project. There were 18 tunnels that had to be blasted through the Tehachapi Mountains; they had already completed 15 tunnels through the Sierra Nevadas for the Transcontinental link.

Leland Stanford, then Governor of the State of California, and a member of the Central Pacific's "Big Four" said:

Without these loyal and hard working Chinese laborers, the Central Pacific would have never undertaken the job of constructing the western anchor of the Transcontinental Railroad.

On October 10, 1865, Stanford reported to President Andrew Johnson:

As a class, the Chinese are quiet, peaceable, industrious, patient, and economical. Ready and apt to learn all the different kinds of work required in railroad building, they soon became as efficient as the white laborers.

Construction began on December 31, 1869, at Lathrop and by June of 1872 they had reached Borden Junction, Madera County, then known as Alabama Colony. It was at Borden where more than 2,500 Chinese were stationed. Because the burial of the deceased was of prime importance, the Chinese pioneers immediately acquired the northeast corner of avenue 12 and road 29½ in Madera County for their cemetery. At the request of the Chinese workers themselves, the remains of most of these people have been exhumed and returned to their individual villages for reburial.

Mr. Speaker, on Tuesday, October 14, I will have the privilege to be a guest at a dinner honoring the memory of these Chinese railroad workers. I commemorate these loyal, hard-working, and dedicated Chinese pioneers who did the impossible when they drilled the 15 tunnels through the Sierra Nevadas and the 18 tunnels through the Tehachapis. Not only the third and fourth generation descendants of these pioneers, but all of us should be proud of their accomplishments.●

NATIONAL CYSTIC FIBROSIS WEEK

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. FRENZEL. Mr. Speaker, the Nation is observing this week, September 21-27, as National Cystic Fibrosis Week. Cystic fibrosis is an incurable, fatal, inherited disease that primarily attacks the lungs and digestive system. It is the No. 1 genetic killer of children and young people in the United States.

Despite the severity of the disease and its devastating consequences, however, public knowledge about CF remains distressingly low. The primary goal of CF Week, then, is to increase public education about this fatal disease—and, in turn, to increase public support for research, care, and education programs in cystic fibrosis.

So far, these programs have been strikingly successful. For example, 25 years ago few children with CF lived beyond 3 years of age. Today, half of those children born with CF can expect to live into their twenties. Much of the credit for this dramatically improved outlook must go to the Cystic Fibrosis Foundation, a leading voluntary health organization which directs U.S. efforts in cystic fibrosis, and which this year is celebrating its 25th anniversary. But I believe that unless our national research effort continues to grow with a partnership of voluntary organizations like the CF Foundation and Government support through the National Institutes of Health, we will not be able to continue to extend lives and improve health for people with cystic fibrosis or other serious diseases.

Mr. Speaker, this plea is expressed forcefully in the following message by Richard E. Vodra, director of public policy for the CF Foundation, which appeared in the foundation's newsletter Perspective. I urge my colleagues to continue their support of Federal health research.

The article follows:

CF RESEARCH: NOW IS NOT THE TIME TO SLOW DOWN

(By Richard E. Vodra)

Throughout its 25-year history, the Cystic Fibrosis Foundation has been engaged in a race against time, a contest that pits the effort to protect lives against the number one genetic killer of young people in America. It is not a race with a clear finish line. Every year we succeed when the life expectancy of people born with CF is extended. Every day we fail when additional children and young adults die from CF.

Today the Cystic Fibrosis Foundation is faced with new challenges. The economy is moving into a recession and family budgets are being stretched tight by inflation. Congress is trying to balance the Federal budget, cutting back wherever possible. Our job is to continue the momentum of CF research, even in the face of these discouraging developments.

The record of progress is promising.

Data from the new Patient Registry of CF Centers show that the life expectancy of people born today with CF is now 21 years, a figure important in both human and symbolic terms.

Major research efforts are under way to find a genetic marker for CF and to understand the basic genetic problem that causes the disease. Scientists in Europe and North America, many with CFF support, have reported positive findings from a number of different approaches. All of these findings are very preliminary, and the results need to be confirmed by other scientists and standardized before they could be put into use, but there is more cause for optimism than ever before.

Research into the process of secretion is developing new information about the mechanics of excess mucus production in CF. While this is still very basic research, it could lead to better means to control this important aspect of CF.

Immunology, the study of the body's defenses against infection, is a rapidly-growing area of CF research. Scientists are developing a better understanding of why *pseudomonas* infections are so common, and so hard to combat, in CF. This understanding could lead to new strategies to treat the infections that are the most serious of CF's effects on the body.

In terms of effort and support, the last few years have shown a great acceleration in CF research. In 1977, the Cystic Fibrosis Foundation was funding slightly more than $1 million in research, while the Federal government, through the National Institutes of Health, funded grants, contracts, and other research into CF totalling about $4.6 million.

These figures have grown significantly. The current research budget of the CFF has reached $2.5 million, and it now includes innovative programs to attract new investigators and to provide money for feasibility studies. At NIH, CF research now exceeds $11 million for the current fiscal year, according to data provided to the Congress, with important research in six different Institutes and divisions. More scientists are investigating more research leads than ever before.

These researchers need continued, and growing, support. We must continue to expand our Foundation's resources so that no worthwhile project is turned down for lack of funds. We must continue to urge Congress to consider health research a priority, even in a time of restraint, because people's lives are at stake.

The CF research team includes more than just the scientists. It includes Senators and [fund-raising] Chairmen, Representatives and Bowl-for-Breath coordinators—all of us. Only if everyone does more than their fair share will we have a chance of saving the lives of the thousands of young people with cystic fibrosis. Our response to the new challenges of the 80's will determine whether we are worthy of those we serve.●

TRIBUTE TO DAN THOMAS

HON. LYLE WILLIAMS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. WILLIAMS of Ohio. Mr. Speaker, I rise today to pay tribute to one of the great labor leaders of the Mahoning Valley, Dan Thomas.

Dan was born on June 8, 1915, in Blue Island, Ill., but his family moved to Youngstown shortly thereafter.

His long association with the steel industry began in 1935 when Dan went to work for the Youngstown Sheet & Tube Co. In 1936, he was one of the original organizers of the Steelworkers Organizing Committee. Because of his activity on behalf of his fellow workers, Dan was fired from his job in 1937. It was not until 1940 that he was reinstated with back pay by the NLRB.

In 1942, Dan Thomas became a vice president and the first grievance committee chairman of USW Local 1462. From 1945 through 1960 his coworkers honored him with the presidency of that same local USW Local 1462.

In 1960, Dan Thomas joined the staff of the United Steelworkers District 26. For the past 10 years he has served as the subdistrict director in Warren, Ohio.

Dan has been married for 41 years to the former Bess Mays. He is the proud father of three—Danny Jr., Esther, and Rebecca—as well as being the grandfather of four.

As a proud man and great union leader, Dan Thomas fought to keep the Communists out of the trade union movement, fought for the civil rights of all people and organized the Youngstown-Warren area for the betterment of his fellow workers.

On this, the occasion of Dan's retirement, I would like to take this opportunity to pay tribute to Dan Thomas. His ceaseless efforts on behalf of steelmakers brought dignity and security to the working people of the Mahoning Valley. He is a great man to whom we all owe a debt and I just want to add thank you, Dan Thomas.●

THE INTELLIGENCE IDENTITIES PROTECTION ACT

HON. ANTHONY TOBY MOFFETT

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. MOFFETT. Mr. Speaker, I would like to briefly discuss H.R. 5615, the so-called Intelligence Identities Protection Act, which the House will consider this week.

Although the title of the bill implies that it only seeks to protect the irresponsible disclosure of the identity of intelligence operatives, the bill unfortunately goes beyond this laudable goal. It makes the disclosure of any current or former intelligence official—who has served within the past 5 years—made with the intent to impair and impede the foreign intelligence of the United States a criminal offense. The disclosure of an intelligence operative would be a criminal offense even if based on public sources of information.

Criminalizing disclosure based on public information strikes at the heart of first amendment rights. Disclosure made with the "intent to impair and impede" the foreign intelligence activities of the United States is a subjective judgment, at best. I would therefore urge my colleagues to carefully consider the constitutional implications of this legislation, as outlined in the following article by John Shattuck, national legislative director of the American Civil Liberties Union.

TRYING TO SPOOK THE PRESS

It is February 1973. Reporters for the Washington Post covering the Watergate story are tracking down evidence that the burglars have CIA connections. The day before a front-page article is scheduled to appear identifying one of the burglars as a CIA agent, The Post's managing editor receives a call from the White House urging him to kill the story because it would impair "an intelligence source of operational assistance." The editor and the reporters consider the request, but decide that the information is too important to withhold. Two days after the story is published they are charged with violating a new law that makes it a crime to publish the identity of an intelligence source or agent, and they face the possibility of 10 years in prison and a $50,000 fine.

Farfetched? Not if you have read drafts of the intelligence Identities Protection Act of 1980. This bill flies in the face of the First Amendment, which broadly states that "Congress shall make no law . . . abridging freedom of speech or of the press." Today this prohibition is in danger of being disregarded by a Congress obsessed with national security secrecy. Six years after a president was forced to resign or face impeachment because of abuses of power under the cover of national security, and four years after a Senate select committee reached the "fundamental conclusion that intelligence activities have undermined the constitutional rights of citizens," Congress in the name of national security and intelligence protection is on the verge of enacting the most severe abridgment of freedom of the press since the Alien and Sedition Laws of the late 18th century.

The Intelligence Identities Protection Act would make it a crime to publish "any information that identifies an individual as a covert agent" of the CIA or the FBI. Part of the bill would prohibit CIA or FBI employees from disclosing classified information about secret agents, but another section sweeps far more broadly. In the candid words of Rep. Edward Boland (D-Mass.), chief sponsor of the bill in the House of Representatives, this provision "could subject a private citizen to criminal prosecution for disclosing unclassified information obtained from unclassified sources."

It is aimed at the editors of Covert Action Information Bulletin, a journal that opposes CIA clandestine interference in the affairs of other countries and that has been widely condemned for using public information to identify CIA agents. Another sponsor of the legislation has stated that he wants "to put away" the Bulletin editors. That would also mean putting away the New York Times reporter who writes a series of articles about CIA agents who secretly work to "destabilize" the democratically elected government of Chile, or any other journalist or editor who makes a difficult decision to publish lawfully obtained information about intelligence agencies.

Three of the four congressional committees that have approved the agent identities bill have failed to limit the scope of the new crime. The House version reported by the Judiciary and Intelligence committees requires an "intent to impair or impede the intelligence activities of the United States." This standard would authorize inquiries into the political purposes of CIA critics and would do little to protect those writing expresses sharp opposition to particular CIA activities. The House committee report blandly asserts that "critics of U.S. intelligence would stand beyond the reach of the law if they made their disclosures for purposes other than impairment of U.S. intelligence activities."

A bill approved by the Senate Intelligence Committee offers even less assurance to investigative reporters covering the CIA by providing that they need not "intend" to impair foreign intelligence activities, but only have "reason to believe" that a "pattern of activities intended to identify agents" will do so. A series of articles or a week of investigation would presumably be enough to establish a "pattern of activities." A pre-publication warning to a journalist by the CIA—or even general knowledge of the CIA's sensitivity about the subject of an article—would constitute "reason to believe." Only the Senate Judiciary Committee has attempted to narrow the scope of the proposed crime by adopting an amendment sponsored by Sen. Edward Kennedy, but strong efforts are expected to be made on the Senate floor to remove the Kennedy amendment and restore the original bill.

In the face of these sweeping provisions, it is not surprising that many First Amendment scholars have reached the conclusion that the Intelligence Identities Protection Act is unconstitutional. For the first time in our history it would penalize the publication of information that is already public and thus strike a blow at the heart of a free press.

More surprising is the fact that congressional authors of the broadest bill apparently do not disagree with this assessment but are determined to plow ahead because, according to Sen. Richard Lugar (R-Ind), "we are [not] going to be able to have both an ongoing intelligence capability and a totality of civil rights protection." Nearly two centuries ago, James Madison, one of the authors of the Bill of Rights, warned against this kind of assertion when he observed that "it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad." It is not too late for Congress to heed Madison's warning. If it does not, the courts will have to do so.●

TVA STAFF AND BUDGET INCREASE

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. HUBBARD. Mr. Speaker, I am heartened by what now appears to be a trend in the Congress to check the spread of Government bureaucracy. However, it seems we have omitted one Federal agency in our oversight of independent establishments and Government corporations, that being the Tennessee Valley Authority. As a Member of Congress whose constituency is affected by the actions of TVA, I am disturbed by the agency's rapid expansion of staff and increase in budget. I would like to share with my colleagues the concern of my constituents, Mr. and Mrs. H. J. Hornback of Murray, Ky., about this situation. I submit their correspondence to me:

DEAR SIR: Help! We have had enough. Please, let's do something to break up the present TVA organization. We retired in this area because of the attraction of west Kentucky, and Kentucky Lake, low taxes, and low power cost, we built our home according to suggested power conservation plans—full insulation, storm windows, exhaust fan, heat pump, etc. We now find our electric power will be double to that of when we built, and why?

When Kentucky Lake was impounded the people who had their land taken from them were told, "You won't have to milk old Betsy in the dark any more because we are going to let you have electric power at only one cent a K.W. At that time TVA's sole responsibility was flood control of the Tennessee River water shed, power, and recreation on their impoundments only. Now look at them—they are into everything from welfare to direct competition with the Department of Interior (I.B.L.). We are now told that our rates are going up so there will be plenty of power in the future—How about letting the future users pay for the future power? We are also told over and over that their rates are competitive with the other southern States—hell, why shouldn't they be? Are they not a non-profit organization supported not only by the rates we pay but also to some degree by our taxes?

I know of no one in this area that has anything good to say about the present TVA organization, so how about putting a feather in your hat by starting the ball rolling. You will find that we will be with you.

Yours turly,

Mr. and Mrs. H. J. HORNBACK.●

WHO OWNS THE AIRWAVES?

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. JACOBS. Mr. Speaker, the following editorial from Electronic Design is, in my view, thought provoking:

WHO OWNS THE AIRWAVES?

Another right of the individual appears headed for a challenge if Congress approves Rep. Richardson Preyer's (D-NC) bill, H.R. 7747. That measure makes it unlawful and punishable by fine, to intercept subscription telecommunications; that is, any telecommunications intended for receipt by a person who has agreed to pay a fee or charge. More specifically, this includes cable television, multipoint distribution service (MDS), or satellite television. Fines can total up to $1,000. If the person receiving the transmissions profits by them, as by selling the right to view television shows, the penalties become stiff indeed, up to $250,000 in fines and up to 18 months in jail for the first offense.

The measure has cleared the House Communications subcommittee and now has the approval of the House's Commerce Committee. While hurdles remain, Congress seems receptive to the idea of an antipiracy law.

In recent years, the airwaves have been filled with entertainment intended for distribution to paying customers. Home Box Office and Showtime are two examples. The allure of free, first-class television entertainment is too much for the video addict; and many now pluck first-run movies from the air. Receiving systems for 2-GHz terrestrial-link video, complete with antenna, sell for as little as $300.

Even the higher microwave frequencies are being tapped daily by the more affluent viewer with two or three thousand dollars to spare. Receivers for direct reception of satellite transmissions and the know-how to set them up are readily available and widely promoted. One well-known American electronics firm is marketing a complete receiver for just $1,995—not a casual purchase but not outside the budget of a television diehard.

Preyer's measure would put a stop to all this—at least, that is the hope of the common-carrier industry, which is trying to protect its product.

At some point, proponents of the measure must face a very basic question, "Who owns the airwaves?" The answer, clearly, is: everyone. The ether, as it was once called, is appropriately considered a public resource, and those who use it are granted license to do so.

Preyer contends that "one of the primary objectives of the bill is to offer protections to a wide range of legitimate economic and property concerns. . . ." While it is true that a television program can have substantial economic value, is it necessary to abjure the individual's right to intercept radio transmissions, in any form, which cross his or her property? Should those who now comply with the law be made criminals by merely "intercepting" radio transmissions? Only if the economic harm falls on the majority and its burden is substantial could such actions be justified. That, however, is not the case at hand.

Existing technology can make data of any type secure against unauthorized use. Protection of information in transit, over the air or through wires, has long been the responsibility of those (whether in the military or industry) whose investment would be jeopardized.

Video scrambling is not a technically insurmountable feat. Pay-television stations are now using it to protect their broadcast products. Secure locks, after all, and not fear of the law, keep the brigands out.

In a society with so many unenforceable laws, yet one more seems ill-advised. True, substantive harm could result to video distributors if enough people set themselves up on 2 GHz or on the satellite bands. A greater harm, however, results from the encroachment on what appears to be a fundamental right—to see and listen to the airwaves, all of them, without restriction. Any law which circumscribes our ability to access the airwaves reminds us of the strictures of a totalitarian society intent on suppressing public knowledge. In the case at hand, the right, however ill-defined, to intercept radio signals traversing our property supersedes the protection of profits.●

TRIBUTE TO CHIEF OF POLICE ROBERT P. MAGNUSSEN

HON. JAMES A. COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. COURTER. Mr. Speaker, I rise today to give special recognition to one of my constituents, Chief of Police Robert P. Magnussen, who has served the township of Mine Hill, N.J., for 20 years as a leader on the police force and by contributing his time to various community organizations.

Chief Magnussen's career began in 1960 when he was appointed a patrolman in Mine Hill Township. In 1963, he was promoted to sergeant and, 1 year later, honored with the rank of chief of police, a position he has held with distinction ever since. I might also add that Chief Magnussen was the youngest chief of police appointed in Morris County.

In addition to his outstanding record with the police force, Chief Magnussen is an active member of the Morris County Chiefs of Police Association, the New Jersey State Association of Chiefs of Police, and the International Association of Chiefs of Police. He also holds a silver life card in the New Jersey State Policemen's Benevolent Association.

On October 24, the Mine Hill Police Department and the township of Mine Hill will honor Chief Magnussen for his many years of dedicated service with a commemoration dinner.

On behalf of myself and my colleagues in the House of Representatives, I would like to thank Robert Magnussen most sincerely for a job well done in his unselfish efforts to insure that Mine Hill Township continues to be a safe and friendly place to live.●

AN ALTERNATIVE TO THE MX LAND-BASED SYSTEM

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. SEIBERLING. Mr. Speaker, last week the House, mistakenly in my opinion, turned down the amendment offered by our colleague PAUL SIMON, which would have prohibited the expenditure of funds on the MX land-based system pending the completion of the environmental impact statement, the OTA study, and certain other studies that are presently in the works. This is unfortunate, not only because of the enormous cost of the land-based mode, as compared to the submarine basing mode, but the high probability that the land-based mode will be both more provocative and less secure than the submarine basing mode.

On Tuesday, September 16, the Washington Post carried an excellent article by Jeremy Stone, director of the Federation of American Scientists, on this very subject. Mr. Stone pointed out that a strategy which puts our MX missiles in the sea-based mode would leave only the Soviets with a vulnerable land-based force. Since our force would be invulnerable to a first strike, this would reduce the likelihood of either side having the incentive for launching a first strike. Mr. Stone also pointed out that no suitable forum really exists to decide issues of this magnitude. As he says:

> The situation cries out for a high-level commission, as proposed by Senator Kennedy (and endorsed by both hawks and doves), that would consider U.S. strategic posture in the next two decades in the light of Afghanistan and other recent developments. Now, while we are still at the fork in the road, would it not be wise to stop and think?

The full text of Mr. Stone's article follows:

TWO PATHS IN NUCLEAR STRATEGY

The United States and the Soviet Union continue to move steadily into strategic postures and toward the adoption of related doctrines that interact with each other in such a way as to encourage rapid escalation rather than deliberate response. Presidential Directive 59 appears to be more than just another milestone in this evolution, incorporating, among other things, an important, previously unannounced and highly inflammatory threat to attack the Soviet command and control. But the root issue lies deeper than PD59, in a fundamental choice for U.S. (and Soviet) strategic planning: whether to move forward or back in maintaining land-based missiles.

At bottom, there are two general paths open to the U.S. Defense Department in response to the growing vulnerability of our 1,000 land-based Minuteman missiles. In the first course, we would redouble our effort to resist technological trends, in a strategy worthy of King Canute, in order to match Soviet maintenance of land-based missiles and Soviet threats against our missiles. Here the vulnerabilities of our land-based force are resolved by purchasing a new (MX) land-based missile force, but one whose improved security rests unreliably on deception in a deployment shell game.

If the new land-based missile force were suddenly to be deemed, like the old, vulnerable to Soviet attack, more and more MX holes (and MX missiles) would be constructed—an expensive proposition in which good money is thrown after bad.

When and if this failed, an anti-ballistic missile system would be built to protect the MX missiles. (This would require amending the ABM treaty, thereby risking the destruction of an agreement that has saved both the United States and the Soviet Union untold tens of billions of dollars in useless expenditures.)

And if this ABM solution were to seem infeasible, the missiles would be prepared to "launch on warning" (i.e., to launch on the 20-minute warning of enemy attack); this is a cheap but absurdly dangerous fix, as recent computer failures have shown. (Nevertheless, it is already part of U.S. doctrine that we might fire on warning.)

There is another path that accepts the inevitability of land-based missile vulnerability but "finesses" the Soviet attack. This strategy would put less—rather than more—emphasis on land-based missiles. We could keep Minuteman missiles (which are only about 25 percent of our strategic force) as a waning asset, or phase them down. We would make whatever compensating adjustments might be desired in our bomber and sea-based forces. The finessing path tends to move a major part of America's deterrent, and hence America itself, out of the line of fire of limited war.

This choice between the two paths has important implications for firing doctrines and hence for the overall likelihood of war. If one side has vulnerable missile forces, it has a defensive motivation to fire them more quickly ("use them or lose them"). And to the extent that the other side possesses vulnerable land-based missiles, one has also an offensive motivation ("time-urgent targets"). Worst of all, if both sides find themselves with vulnerable missile forces, both would have both motivations, and a cycle of reciprocating expectations ("better first than second") would increase the likelihood of preemptive escalation. Some catalytic outbreak of violence in Europe or wherever might then bring down the roof.

The finessing path would leave the Soviet land-based missiles (which are 70 percent of their force) vulnerable, in time, to our sea-based force. But since the reverse would not be true, the corresponding cycle of expectations would not exist. Thus, in fact, the path of finessing the Soviet threat leaves the Soviets trumped. More important, it depresses the likelihood of wars nobody wants by diminishing first-strike incentives.

The Defense Department fears that the path of finessing, and outmoding, the Soviet missile threat—by removing U.S. land-based missile targets—would seem a kind of acquiescence in coercion, even if compensating steps were taken with our other strategic forces, such as new kinds of sea-based forces. It argues also that some as-yet-unforeseeable future vulnerability of our sea-based deterrent in the 1990s might be importantly backstopped by land-based forces. But land-based force vulnerabilities (including those of MX) are already all too foreseeable to make this very plausible. Really, the choice appears to be one between inertia and agility.

The issues obviously go deeper than space here permits; unfortunately, no suitable forum really exists to decide issues of this magnitude. The situation cries out for a high-level commission, as proposed by Sen. Kennedy (and endorsed by both hawks and doves), that would consider U.S. strategic posture in the next two decades in the light of Afghanistan, SALT II, PD59, the very possible congressional defeat of the MX basing scheme, the growth of Soviet forces and all the rest.

With weapon systems taking 10 years to build and designed to function for 20 years beyond that, America can no longer afford to examine its defense posture only in the annual snapshots of congressional review. Now, while we are still at the fork in the road, would it not be wise to stop and think?●

TRIBUTE TO THE ROEMER BOLLERMAN AMERICAN LEGION POST 221

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. HOLLENBECK. Mr. Speaker, on September 27, the Roemer Bollerman American Legion Post No. 221 of Ridgefield, N.J., will start its new service year with the installation of its newly elected officers. I wish to take this appropriate opportunity to recognize the record of accomplishment of this group of war veterans who continue, in peacetime, to serve and honor and defend our system of government.

Since its founding in 1919, the Roemer Bollerman Post has maintained a proud tradition of community service. It annually sponsors youth programs that have afforded countless young citizens the chance to participate in oratorical and essay contests; to attend Boys and Girls State leadership training; and to attend college with the assistance of Legion scholarships. The post sponsors annual children's parties and sporting events during which residents share in the true community spirit of good fellowship. Annual Memorial Day and Fourth of July parades also bring area residents together to pause in reflection of the meaning of American citizenship and in celebration of the freedoms we enjoy.

The Roemer Bollerman Post founded and continues to assist the Ridgefield Ambulance Corps, and its membership takes the time to visit regularly with disabled war veterans confined to area veterans' hospitals.

At this critical crossroads in our history, the Nation needs, as never before, this type of vital interest and active participation of its citizens. It is our very best assurance that the precious trust we hold today will be passed, proudly, to future generations of young Americans.

I extend my appreciation to the more than 300 members of the Roemer Bollerman American Legion Post 221 for their dedication to the principles on which this Nation was founded and has flourished. And I extend my congratulations and best wishes for another highly successful year in community service to the post's newly elected leadership: Commander-elect Robert Jacoberger; Vice-Commanders-elect William Russell, Carl Paulson and Richard Cleri; and Auxiliary President-elect Mary Gibson.●

HOUSE CONCURRENT RESOLUTION 434

HON. CHRISTOPHER J. DODD

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. DODD. Mr. Speaker, On September 22, Congressman WEISS and I reintroduced a concurrent resolution, House Concurrent Resolution 434, regarding the case of Swedish diplomat Raoul Wallenberg. Those of my colleagues joining Mr. WEISS and myself in cosponsoring this legislation are: Ms. HOLTZMAN, Mr. BONKER, Mr. DERWINSKI, Mr. BEDELL, Mr. BOWEN, Mr. FITHIAN, Mr. HALL of Ohio, Mr. BINGHAM, Mr. WOLFF, Mr. ROSENTHAL, Mr. PRITCHARD, Mr. GILMAN, Mr. BARNES, Mr. WOLPE, and Mr. GRAY.

The new resolution is a combination of the two bills that Mr. WEISS and I submitted earlier this year to honor Raoul Wallenberg for his role in saving the lives of 90,000 Budapest Jews during World War II and to request that his case be discussed during the proceedings of the Madrid Conference on Security and Cooperation in Europe.

House Concurrent Resolution 434 was reported out of the House Subcommittee on International Organizations on September 16, and will soon be considered by the Foreign Affairs Committee. At the time of the subcommittee hearing on the Wallenberg legislation, I submitted testimony which I would like to share with my colleagues.

The testimony follows:

TESTIMONY OF HON. CHRISTOPHER J. DODD

Mr. Chairman, Members of the Subcommittee on International Organizations, I want to thank you for this opportunity to testify on the Weiss/Dodd bill, H. Con. Res. 341, which I believe combines the best of our two bills regarding the case of Swedish Diplomat Raoul Wallenberg.

Thirty-six years ago, in 1944, a man walked along the edge of a crowded railroad platform in Budapest, Hungary. He did his work quickly and without ceremony, thrusting neutral Swedish passports into hundreds of outstretched hands. They were the hands of the doomed; men, women, and children destined for Auschwitz and Birkenau. He never knew the names of those he rescued, but they carried his name like a torch. Raoul Wallenberg became the angel of hope and mercy amidst the depravity of the Holocaust for thousands of Hungarian Jews.

Almost single-handedly, Wallenberg distributed Swedish passports to 20,000 of Budapest's Jews and protected 13,000 more in safe houses that he rented that flew the Swedish flag. He pulled people out of death marches to concentration camps, and those who remember say that his work with other representatives of neutral countries with embassies in Hungary saved the lives of an additional seventy thousand Hungarian Jewish citizens.

On July 9, 1944, Swedish Diplomat Raoul Wallenberg was sent to Hungary at the request of the American War Board and his own government with a mission of saving as many of Hungary's Jews as possible from Nazi gas chambers. Despite open harassment by the Nazis and threats to his life, Wallenberg worked relentlessly without thought to his own safety. At one point, Adolf Eichmann told Wallenberg, "Don't think you are immune just because you are a diplomat and a neutral."

But, as it turned out, it was not the Nazis that Raoul Wallenberg had to fear. On January 17, 1945, as the Russians moved into Hungary, Raoul Wallenberg was called to Soviet headquarters in Debrecen. He never returned and for thirty-five years his disappearance has been shrouded by a wall of silence by the Soviets.

It is unclear why there has been so much conflicting information from the Soviet Union about Raoul Wallenberg, or why the Soviets would have arrested him in the first place. In August of 1947, after many inquiries by the Swedish Government, the Soviet government stated that Wallenberg was "not known in the Soviet Union." But in 1957, Deputy Foreign Minister Andrei Gromyko said that records showed that a prisoner at Lubyanka prison named "Walenberg" died of a heart attack on July 17, 1947. Despite that report, former Russian prisoners including Aleksandr Solzhenitsyn and Jan Kaplan have said that they met a Swede fitting Wallenberg's description during their periods of imprisonment.

We should all remember the horrors perpetrated during the Holocaust, but it is even more important to remember the courageous and compassionate acts of people like Raoul Wallenberg who endure as examples of man's capacity for good. The resolution you are considering today House Concurrent Resolution 341, honors Raoul Wallenberg for his selfless and humane acts, but more importantly, the resolution directs the U.S. Delegation to the Madrid Conference on Security and Cooperation in Europe to request that the case of Raoul Wallenberg be raised during consideration of compliance with the Helsinki Final Act by signatory nations.

The internment of Wallenberg is in direct contravention of the Final Act, which states: "The participating states will respect human rights and fundmental freedoms . . . and fulfill in good faith their obligations under international law . . ." The abduction of Raoul Wallenberg by the Soviets was a violation of diplomatic immunity. As a signatory nation, the Soviet Union has an obligation to cooperate in an investigation into Wallenberg's whereabouts, an obligation that has yet to be fulfilled.

Elie Wiesel describes the face of the spectator as "reflecting no pity, no pleasure, no shock, not even anger or interest. Impassive, cold, impersonal. The face was indifferent to the spectacle. The face is neither Jewish nor anti-Jewish, a simple spectator, that's what it is." It is a face for which all of us have a predilection. But it is not the face of the man who stood on that train platform meting out those precious passports.

The face of Raoul Wallenberg is the face of a man who refused to be indifferent, complacent, or ignorant of the suffering of others. His is the face of a hero—a symbol of the best mankind has to offer. Raoul Wallenberg refused to ignore the plight of the Jews of Hungary. Let us today show that we will not be indifferent to the plight of Raoul Wallenberg.

The American War Board financed Wallenberg's mission, and the United States has a responsibility to determine what became of him. The world has a right to know the fate of this remarkable man. I would urge all of my colleagues to support House Concurrent Resolution 341 which honors Raoul Wallenberg and calls for raising of his case at the Madrid Conference to be held in November. It is the least we can do, and I pledge that it is only the beginning.●

THE STRANGE CASE OF H.R. 7039: THE AMERICAN FISHERIES PROMOTION ACT

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. McCLOSKEY. Mr. Speaker, strange doings are afoot on H.R. 7039, the so-called American Fisheries Promotion Act.

The bill was reported by the House Merchant Marine and Fisheries Committee last June 26 over the vigorous opposition of the administration. Its primary proponent was the gentleman from Louisiana, JOHN BREAUX, chairman of the Fish and Wildlife Subcommittee.

H.R. 7039, as originally reported, was essentially a collection of goodies for the U.S. commercial fishing industry, artfully drafted to appeal to fishing interests in enough coastal States to assure endorsement by a committee composed primarily of representatives of those States.

In committee debate, members freely expressed and acquiesced in the philosophy that since farmers received substantial subsidies, why should not fishermen? That fisheries, unlike agricultural products, were a depletable resource, was a point which was ignored.

One benefit to the fishing industry, an extension of the so-called capital construction fund provision of the Internal Revenue Code to fish canneries, was expressly voted down by the committee.

Until last Friday, September 19, the administration strongly opposed the bill.

Suddenly, however, today's Washington Post announced that the administration had agreed to a wholly

new bill, one which contained the capital construction fund provision and a number of other substantial changes from the bill the committee reported nearly 3 months ago.

The Post stated that the new bill was expected to pass on the Suspension Calendar this afternoon, in time for President Carter and Senator MAGNUSON to mention its passage in their campaign tour of the pivotal State of Washington tomorrow.

I hastened to my office this morning and asked my staff for a copy of the new bill.

Strangely, my minority staff could not get a copy. No one on the majority staff seemed to be able to find a copy, and until I called Chairman BREAUX at approximately 11 a.m., I was unable to get one. The new bill was scheduled as No. 19 on today's Suspension Calendar, and expected to be heard shortly after 4 p.m.

Upon review, the new H.R. 7039 appeared to contain 26 pages and at least 5 major changes in the bill reported by the committee last June:

First, the capital construction fund provision rejected by the committee had been reinserted in the bill.

Second, the phaseout of foreign fishing provisions had been materially altered.

Third, the 75-percent requirement for use of Saltonstall-Kennedy funds in private—rather than governmental—projects had been reduced to 50 percent.

Fourth, the computation of foreign fishing fees, and their automatic transfer to a fishing loan fund, were changed.

Fifth, the two-House veto was replaced by a simple requirement that the regulations by the Secretary of Commerce be transmitted to the Congress.

Sixth, the 100-percent observer coverage on foreign vessels was altered to permit waivers by the Secretary.

These changes are not only substantial, they are of crucial importance to both foreign policy and tax policy.

The capital construction fund's availability to fish packers, for example, will, for the first time breach the time-honored principle that maritime subsidies are justified solely on national security grounds—to maintain ships and a shipyard base for a strong U.S. merchant marine in the event of war.

The CCF works this way if H.R. 7039 is adopted: A fish packer such as Castle & Cooke or Ralston-Purina can remove $10 million in earnings from their taxable income merely by depositing it in a capital construction fund, announcing plans to use the funds some years hence for the construction of a new cannery.

When the cannery is built, the reserved funds will merely lower its tax base, for depreciation purposes.

Literally millions could be lost to the Treasury under this open ended tax benefit.

As these remarks are being prepared on the floor, 5 p.m. Monday, September 22. I have just been advised that Chairman BREAUX has pulled the bill off the floor this afternoon, but that it will be reoffered on the Suspension Calendar tomorrow in some new form, possibly with the CCF provisions removed.

This would be a small comfort, but for the fact that in the committee markup session last June 26, the CCF provisions were also removed under assurances that they could be readded in conference with the Senate.

For all of these reasons, it seems to me we should reject H.R. 7039 in whatever form it may be offered on suspension.

Under the circumstances it would seem appropriate to have at least 1 day of hearings on this substantially changed bill which none of us have had time to properly consider, and which represents such major changes in U.S. law and policy.

A copy of today's Washington Post article follows:

HOUSE TO VOTE TODAY ON BILL TO RESTRICT U.S. FISHING WATERS

(By Ward Sinclair)

In a turnaround certain to please coastal states, the Carter administration has agreed to a House bill aimed at gradually eliminating foreign fishermen from the U.S. 200-mile zone.

A compromise on the controversial fisheries promotion bill pushed by Rep. John B. Breaux (D-La.) is scheduled to be called to final House vote today.

Such action, with approval expected, would come on the eve of an important campaign visit by President Carter Tuesday to Washington, a state with major fishing interests who consider the bill vital.

"The fishing industry in the Pacific Northwest sees this bill as its equivalent of the Chrysler Corp. bailout," a Department of Commerce spokesman said. "They think this is their year."

The White House-Breaux compromise, achieved last week after long negotiations, also could give a boast to Sen. Warren G. Magnuson (D.-Wash.), who, like Carter, is facing a tough reelection battle.

Magnuson is the chief sponsor of a narrower Senate-passed bill whose fate is linked to the Breaux measure. Quick House-Senate agreement on the two bills is expected, assuring enactment this year.

Although the new Breaux version is not as sweeping as the bill that drew administration opposition, it still contains many of the provisions that led Rep. Paul N. McCloskey Jr. (R-Calif.) to call the measure a classic of special-interest messaging.

He termed it "a collection of goodies for the U.S. commercial fishery industry" and complained that it gave unneeded subsidies to fishermen and on-shore processing units of giant agribusiness firms, such as Del Monte, Ralston-Purina and Castle and Cooke.

An aide to Breaux on the House Merchant Marine and Fisheries Committee said weeks of negotiation brought agreement on new wording from the departments of State and Commerce as well as the White House.

He and some administration aides rejected the notion that the agreement had an election-campaign tinge. Others, however, took issue and predicted Carter will discuss the new fishing policy when he visits Tacoma, Wash.

A major change achieved through the negotiations involves a hotly debated reference to ban foreign fishermen from the 200-mile territorial zone declared by the United States in 1976. The Breaux bill, in a bow to the industry in his and other key fishing states, would have phased foreigners out of the zone by about 1990.

The State Department objected strongly to the forced phaseout. The National Oceanic and Atmospheric Administration under Commerce, opposed subsidy aspects of the Breaux bill.

The agreement reached last week still aims for a phaseout, but there is no deadline involved, and the phaseout would not be arbitrary. It would be keyed to foreigners' ability to harvest their allotments and to U.S. fishermen's ability to harvest theirs.

"This way, regional councils will play a key role in determining fishing levels and if the U.S. fishermen don't perform, there will be no fishing cutbacks for the foreigners" a Breaux aide said.

Although some view the effort to expel foreigners as a dangerous step that will provoke retaliation, administration officials insisted that a modified phaseout is consistent with declaration of the 200-mile zone.

"We have declared the 200-mile zone, and its purpose was to say this belonged to us. But without a system of allocations to promote U.S. fishing, there remains an inconsistency," a State Department officials said.

"The question has been whether you arbitrarily kick everyone out of that 200-mile zone."

Other compromises negotiated with Breaux include modified fee schedules for foreign fishermen's permits, so they are not priced out of the zone, and a less stringent and costly plan for putting U.S. enforcement monitors on foreign boats.

Although Breaux, an enemy of federal regulation, concedes his bill creates more regulation, he said through an aide last week that no new costs will fall on U.S. taxpayers. Permit fees will finance the program.●

INTELLIGENCE AGENTS PROTECTION BILL WOULD UNDERMINE FREE PRESS

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1980

● Mr. SEIBERLING. Mr. Speaker, the intelligence agents identities protection bill, H.R. 5615, which is listed for action later this week, contains necessary restrictions on disclosures by Government employees which would identify American intelligence agents and thus jeopardize their safety as well as the security of CIA and FBI intelligence gathering programs. Unfortunately, the bill, as reported by the Intelligence and Judiciary Committees, goes beyond that by proposing to make it a crime to disclose nonsecret information as to the identity of an intelligence agent.

Under the act, the New York Times, for example, might have been prosecuted for publishing the Pentagon Papers, and other newspapers might have been prosecuted for republishing what had already appeared in the New York Times. Obviously, a line has to be drawn somewhere, but the committees' bill goes much too far in infringing upon the freedoms guaranteed by the first amendment. Such freedoms themselves are at the core of the free society that the intelligence agencies are supposedly constituted to protect.

Editorials by several leading newspapers have already been printed in the RECORD pointing out the dangerous infringements on freedom of the press contained in the bill. To this list, I am offering for today's RECORD an editorial from the Akron Beacon Journal of Tuesday, September 9, immediately following these remarks:

AN UNWARRANTED CONTROL

The Congress seems to be ready to embrace the idea that it should be a crime to disclose information about the United States government that is not classified for security reasons.

The Congress is coming to that view in legislation it is now passing designed to protect agents of the CIA and informers for the FBI.

That apparent legislative decision, however, raises a number of problems, as Tom Wicker of the New York Times pointed out recently.

Once the government begins to control the flow of information in the country, the chances for growing and continued abuses of freedom are enlarged.

In this case, the Congress and the CIA have been trying to solve an extremely sensitive problem. For their own reasons, several small groups have made it their cause to expose and publish the names of CIA agents around the world. Using nonclassified government documents, they have had some success, although how much is unclear. And some of the people whose names they have disseminated have in turn become targets of violence in volatile areas of the world.

Obviously, the CIA needs agents and the FBI needs informers. The world is complex, the struggles in which the country finds itself abroad are often difficult, and the need for information gathered by agents, or, more accurately, spies, is great.

The government must do what it can to protect its agents. At the same time, however, the Congress should not take action that constitutes a blow against American freedoms.

That is what the current legislation would do, making it a crime to disclose non-secret information if the identity of a "covert agent" of the CIA or an informer of the FBI were made public.

There is room in the vague definitions so far established by committees of the Congress for a lot of mischief. Under the definitions, the New York Times, for example, might be declared to have committed a criminal act in its publishing of the Pentagon Papers. That decision by the Times was valuable for the country, and allowed Americans in hindsight to learn about government deception of the public in the conduct of the war in Vietnam.

The categories for criminal prosecution being established by the Congress are too broad, especially in the fact that they attach criminality to non-secret information.

It will be unfortunate for the country, and potentially dangerous, if in attempting to correct one problem, the Congress creates more problems. In this case, that is what is happening.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 23, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 24

8:30 a.m.
Energy and Natural Resources
To hold hearings on the nominations of John D. DeButts, of Virginia; Catherine B. Cleary, of Wisconsin; Frank Savage, of New York; Cecil D. Andrus, of Idaho; Joseph L. Kirkland, of the District of Columbia; and Frank T. Cary, of Connecticut; each to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation.
1202 Dirksen Building

9:30 a.m.
Judiciary
Jurisprudence and Governmental Relations Subcommittee
To resume oversight hearings on judicial impact statements.
6226 Dirksen Building

*Labor and Human Resources
Health and Scientific Research Subcommittee
To hold oversight hearing on the implementation of the National Health Service Corps program of the Health Services Administration under the Department of Health and Human Services.
4232 Dirksen Building

10:00 a.m.
Finance
Business meeting, to consider miscellaneous tax measures.
2221 Dirksen Building

Foreign Relations
International Economic Policy Subcommittee
To hold hearings on U.S. policy with respect to economic relations between developing and industrialized countries.
4221 Dirksen Building

Governmental Affairs
To hold hearings on S. 2606, establishing an Office of Strategic Trade as an independent executive agency, focusing on current U.S. policies governing the export of strategic technology to Soviet bloc nations.
3302 Dirksen Building

Governmental Affairs
Energy, Nuclear Proliferation, and Federal Services Subcommittee
To hold hearings to review the accuracy of the 1980 census count.
1224 Dirksen Building

10:30 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

1:00 p.m.
Conferees
On H.R. 7831, appropriating funds for fiscal year 1981 for the Department of Transportation.
S-128, Capitol

2:00 p.m.
Conferees
On H.R. 6942, authorizing funds for fiscal year 1981 for foreign development and international security assistance programs, and funds for fiscal year 1981 for the Peace Corps.
S-116, Capitol

Conferees
To resume on H.R. 2977, authorizing funds through fiscal year 1983, to establish a program to increase participation by States and local governments to prevent domestic violence, to provide assistance to victims of crime, and to establish Commissions on National Youth Service.
S-145, Capitol

SEPTEMBER 25

8:30 a.m.
Energy and Natural Resources
To continue hearings on the nominations of John D. Debutts, of Virginia; Catherine B. Leary, of Wisconsin; Frank Savage, of New York; Cecil D. Andrus, of Idaho; Joseph L. Kirkland, of the District of Columbia; and Frank T. Cary, of Connecticut; each to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation.
Room to be announced.

9:30 a.m.
Judiciary
To hold hearings on the nomination of Walter M. Heen, to be U.S. District Judge for the District of Hawaii.
1318 Dirksen Building

Judiciary
Antitrust, Monopoly and Business Rights Subcommittee
To resume hearings on S. 2798, providing financial assistance for small business concerns for the acquisition of motor fuel service stations and to regulate motor fuel sales.
2228 Dirksen Building

Judiciary
Limitations of Contracted and Delegated Authority Subcommittee
To resume oversight hearings on the contracting-out procedures of consultants by the Federal Government.
5110 Dirksen Building

*Labor and Human Resources
To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, to increase the tax the employers are required to pay into the fund on behalf of active workers of the railroad industry.
4232 Dirksen Building

Select on Small Business
To resume oversight hearings on the Small Business Administration's surety bond guarantee program, focusing on alleged organized criminal involvement in the program.
424 Russell Building

10:00 a.m.
Commerce, Science, and Transportation
To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.
235 Russell Building

Governmental Affairs
To continue hearings on S. 2606, establishing an Office of Strategic Trade as an independent executive agency, focusing on current U.S. policies governing the export of strategic technology to Soviet bloc nations.
3302 Dirksen Building

2:00 p.m.
Finance
Health Subcommittee
To resume hearings on the FBI's current and prospective investigation into medicare and medicaid fraud and abuse.
2221 Dirksen Building

SEPTEMBER 26

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

SEPTEMBER 29

9:30 a.m.
Finance
Health Subcommittee
To hold hearings on S. 3029, to establish a National Professional Mental Health Services Commission.
2221 Dirksen Building

10:00 a.m.
Finance
Taxation and Debt Management Generally Subcommittee
To hold hearings on S. 3006, increasing the tax incentives for industrial energy conservation.
6226 Dirksen Building

SEPTEMBER 30

10:00 a.m.
Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume oversight hearings on the implementation of certain programs of the General Services Administration.
3302 Dirksen Building

Labor and Human Resources
Health and Scientific Research Subcommittee
To resume oversight hearings on the implementation of the National Health Service Corps program of the Health Services Administration under the Department of Health and Human Services.
4232 Dirksen Building

OCTOBER 1

10:00 a.m.
Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To continue oversight hearings on the implementation of certain programs of the General Services Administration.
3302 Dirksen Building

CANCELLATIONS

SEPTEMBER 24

10:00 a.m.
*Labor and Human Resources
To hold oversight hearings on the implementation of the home energy assistance program.
4232 Dirksen Building

HOUSE OF REPRESENTATIVES—*Tuesday, September 23, 1980*

The House met at 11 a.m.

The Reverend Monsignor John T. Doherty, St. John's Parish, Bronx, N.Y., offered the following prayer:

O God, our Father, once again we place ourselves in Your holy presence and under the power of Your word.

We acknowledge that You are truly the Lord of the universe and the ruler of all nations.

With grateful hearts we thank You for all the gifts that You have given to us.

With anxious hearts, we ask that all the great knowledge of Your universe that You have permitted us to share will be accompanied by the wisdom that comes from Your revealing word.

Joining our hearts with all who have gone before us in this great Nation, and with all the nations of the Earth, we know that Your word calls us to be people of justice and of peace.

In our deliberations this day we ask for this gift of wisdom, under the power of Your holy name.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agree to the amendment of the House to a bill of the Senate of the following title:

S. 2489. An act to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.

The message also announced that the Senate agree to the amendments of the House with an amendment to a bill of the Senate of the following title:

S. 2511. An act to amend the Civil Rights Act of 1957 to authorize appropriations for the United States Commission on Civil Rights for fiscal year 1981.

The message also announced that the Senate agree to the amendment of the House with an amendment to a bill of the Senate of the following title:

S. 1946. An act to reform the economic regulation of railroads, and for other purposes.

The message also announced that the Senate insists on its amendment and request a conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. CANNON, Mr. LONG, Mr. EXON, Mr. PACKWOOD, and Mrs. KASSEBAUM to be the conferees on the part of the Senate.

The message also announced that the Senate disagree to the amendments of the House to the bill (S. 2080) entitled "An act to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. RANDOLPH, Mr. MOYNIHAN, Mr. BURDICK, Mr. MITCHELL, Mr. STAFFORD, Mr. CHAFEE, and Mr. SIMPSON to be the conferees on the part of the Senate.

The message also announced that the Senate disagree to the amendments of the House to the bill (S. 2475) entitled "An act to amend title V of the Motor Vehicle Information and Cost Savings Act, 'Improving Automotive Efficiency', to exempt very low volume automobile manufacturers from certain requirements of the act, to encourage increase of the domestic value added content in labor and materials of foreign automobiles sold in the United States, to extend the time available to all manufacturers for carry forward or carry back of credits earned under the act, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. CANNON, Mr. STEVENSON, Mr. RIEGLE, Mr. SCHMITT, and Mrs. KASSEBAUM to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2724. An act to extend authorizations for law enforcement assistance at Corps of Engineers projects.

REV. MSGR. JOHN T. DOHERTY

(Mr. BINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker, it is my pleasure and privilege to have sponsored today as our guest clergyman Msgr. John T. Doherty of my district.

Monsignor Doherty studied at Cathedral College, St. Joseph's Seminary, and Fordham University, receiving a masters degree in sociology at Fordham. He was ordained to the priesthood in 1945 and worked in secondary education until 1962 as a teacher and then department head at Cardinal Hayes High School. He was then assistant superintendent of Catholic Schools in the Archdiocese of New York from 1962 to 1971.

Since 1971 he has been pastor of St. John's Church in Kingsbridge, the Bronx. He is very actively involved in work in the community, and particularly in neighborhood preservation activities which are so necessary in that area. He serves on the board of a remarkable organization with which I have worked in many mutual interests, the Northwest Bronx Community and Clergy Coalition. He is also a board member of the Marble Hill Neighborhood Improvement Corp.

Mr. Speaker, it is a delight to have Monsignor Doherty with us today and to have heard his beautiful prayer.

Mr. BIAGGI. Mr. Speaker, I join with my distinguished colleague from New York (Mr. BINGHAM) in welcoming to the House, Father John Doherty, pastor of St. John's Church in the Bronx.

Father Doherty has served with great distinction as pastor of St. John's since 1971. Prior to that he had an extremely beneficial tenure as assistant superintendent for the various schools operated by the Archdiocese of New York. The schools operated by the archdiocese are among the best in the Nation.

In addition to the many time consuming activities involved in Father Doherty's pastoral work, he is a very active member of the community where the church is located, the Northwest Bronx. Father Doherty serves as an active member of the Northwest Bronx Community and Clergy Coalition—one of the most unique and successful neighborhood organizations in the entire city of New York.

Today's priest must maintain a relevance to the people in his parish. Father Doherty is a man who has earned the respect and affection of his parishioners. It was a pleasure to have him give the opening prayer today and we wish him continued good health.

MAKING IN ORDER ON TOMORROW OR ANY DAY THEREAFTER CONSIDERATION OF CONFERENCE REPORT ON H.R. 7590, ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1981

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that it be in order on Wednesday, September 24, 1980, or any day thereafter, to consider in the House the conference report on the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 7592, MILITARY CONSTRUCTION APPROPRIATION, 1981

Mr. McKAY. Mr. Speaker, I ask unanimous consent to take from the Speaker's

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.
● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

table the bill (H.R. 7592) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Utah? The Chair hears none, and appoints the following conferees: Messrs. McKay, Ginn, Steed, Addabbo, Long of Maryland, Whitten, McEwen, Regula, and Conte.

APPOINTMENT OF CONFEREES ON S. 2475, AUTOMOBILE FUEL EFFICIENCY ACT OF 1980

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2475) to amend title V of the Motor Vehicle Information and Cost Savings Act, "Improving Automotive Efficiency," to exempt very low volume automobile manufacturers from certain requirements of the act, to encourage increase of the domestic value added content in labor and materials of foreign automobiles sold in the United States, to extend the time available to all manufacturers for carryforward or carryback of credits earned under the act, and for other purposes, with the House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia? The Chair hear none, and appoints the following conferees: Messrs. Staggers, Dingell, Ottinger, Sharp, Moffett, Broyhill, Brown of Ohio, and Stockman.

□ 1110

APPOINTMENT OF CONFEREES ON S. 1946, RAILROAD TRANSPORTATION POLICY ACT OF 1980

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1946) to reform the economic regulation of railroads, and for other purposes, with a Senate amendment to the House amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and appoints the following conferees: Messrs. Staggers, Florio, and Santini, Ms. Mikulski, Messrs. Murphy of New York, Matsui, Eckhardt, Broyhill, Madigan, Lee, and Loeffler.

As an additional conferee, Mr. Levitas, solely for consideration of section 707 of the House amendment and modifications committed to conference.

CONTINENTAL DOLLAR

(Mr. COLLINS of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Speaker, do you remember the continental dollar?

When the Colonies first declared their Independence and established the Continental Congress, the Continental Congress spent money and took in tax revenue. In managing these United States, they spent more money than they were taking in, so they printed more continental dollars to pay the overdrafts. As they continued to print more continental dollars without revenue to offset them, the value of the dollar began dropping. In a 5-year period, back in 1780, the continental dollar dropped to where it was worth just 1 penny. The value was only 1 cent on the dollar.

With the money so worthless, they coined the slogan, "It isn't worth a continental dollar." Even today you still hear people say "It isn't worth a Continental."

This year Congress overspending will create 15 percent inflation which means the dollar drops 15 percent in value and prices rise in 15 percent inflation.

This year the average American will be getting more in what they call a cost-of-living increase. But the value of the money finds him actually with 5 percent less purchasing power than he had last year. Let me put it this way. A person who made $1,000 a month in 1979 may be getting $1,100 a month this year. But his actual purchasing power is only $950 compared to last year's money.

A constitutional amendment requiring a balanced budget from Congress each year is essential for America's future.

JOHN MARTIN RECEIVES McCORMACK AWARD

(Mr. FRENZEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, this morning, at 10 a.m., in the Rayburn Room, John Martin, the chief counsel of the Ways and Means Committee received the McCormack Award, the highest award that one of our employees can receive here for achievement in his work.

John Martin is a splendid example of the best that is in all of our staffs. His work that earned the receipt of the McCormack Award is symbolic of the great work that is done by lots of people like John around here.

We on the minority of the Ways and Means Committee are particularly proud of him. He has been consistently helpful to all members of the committee. There are days that we could wring his neck for the rulings that he suggests to the chairman that make our amendments out of order, but we love him. We are proud of his work. I congratulate John Martin on this recognition of his effective, dedicated work, and I hope that all of the employees of the House will share in John Martin's honor.

CONGRESSIONAL BASEBALL GAME

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, it has been said that even a blind hog stumbles upon an acorn every once in a while. That every dog has his day. That even the least among us can, for an instant, know greatness.

The proof of these old sayings was never so evident as it was on the night of July 26, 1979, when for the first time in what seems like an eon of frustration and disappointment, the Democrats stumbled around the base pads, put forth a very dogged effort, and found out that, even with the least of talent, they could for an instant enjoy a moment of greatness. Mr. Speaker, last year the Democrats finally won a congressional baseball game after 7 straight years of bitter defeat.

But, Mr. Speaker, this year there is a new ball game. Tomorrow night at Four-Mile Run Park in Alexandria at 8 p.m., once again the crack of the bats and the roar of the crowd will surely herald a great Republican victory. The taste of last year's victory will be only a fleeting sip for the Members from the other side of the aisle. Scores will be resettled and the battle joined to the donkey's dismal demise.

Even in the face of a difficult legislative schedule, the Congress had to persevere to have this game. We would never want it said that we followed the precedent of our President in this past Sunday night's debate and opt for the "empty chair" approach to this year's game. The fact is that the only empty space in this year's game will be on the base paths when the Democrats come to bat.

So, it is with a sense of great anticipation and certain victory that as general manager of the mighty elephants, I offer this year's challenge. My coach, Carl Pursell and his gang of 14 smell sweet victory in the autumn mist of Four-Mile Run in Alexandria at 8 tomorrow night.

TRIBUTE TO THE LATE HONORABLE THOMAS BACON FUGATE

(Mr. WAMPLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WAMPLER. Mr. Speaker, I rise to inform the House of the passing of Thomas Bacon Fugate, who served as a Member of this body in the 81st and 82d Congresses, 1949 to 1953, representing the Ninth Congressional District of Virginia.

Thomas Bacon Fugate was born in 1899, in Claiborne County, Tenn., but spent most of his life in southwestern Virginia where he was a banker, a farmer, a businessman, and an outstanding public servant.

He started his public career as a young man, having been elected to the Virginia House of Delegates in 1928. He served as a member of the Virginia Board of Public

Welfare for 10 years; was a delegate to the Democrat National Convention in 1944; and was a member of the Constitutional Convention of Virginia in 1945. In addition, he was a director of the Virginia-Tennessee Farm Bureau; vice president of the Grace Nettleton Home for Girls in Harrogate, Tenn.; a member of the board of trustees and vice president of Lincoln Memorial University; and a trustee of King College and Emory and Henry College.

During Congressman Fugate's tenure in the House of Representatives, he sponsored legislation to modernize the Panama Canal, a project in which he took great pride.

Mr. Fugate is survived by his wife, two sons and two daughters. He was member of Mount Carmel Presbyterian Church in Rose Hill, Va., where services will be held in his memory Wednesday, September 24, at 2 p.m.

Thomas Bacon Fugate lived a life of dedication and distinction, serving family, community, commonwealth, and country in an exemplary manner. I extend heartfelt sympathy to his family and friends.

GENERAL LEAVE

Mr. WAMPLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the life, character and public service for the late Honorable Thomas Bacon Fugate.

The SPEAKER pro tempore (Mr. Minish). Is there objection to the request of the gentleman from Virginia?

There was no objection.

CONGRATULATIONS TO JOHN MARTIN

(Mr. JONES of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES of Tennessee. Mr. Speaker, I rise today in recognition of a special award presented to Mr. John Marshall Martin, who is chief counsel and staff director of the House Committee on Ways and Means. Mr. Martin was presented the 10th annual John W. McCormack Award of Excellence in ceremonies this morning.

I rise today on this occasion because Mr. Martin hails from Martin, Tenn., which is located in my congressional district in Tennessee. He joined the professional staff of the Committee on Ways and Means while one of my predecessors, the late Honorable Jere Cooper, was serving as that committee's chairman.

Mr. Martin was elevated to his present position by our former colleague and friend, the Honorable Wilbur Mills, in 1968.

It is with great honor that I bring Mr. Martin's achievement to the attention of this body. He has done an outstanding job as the top staff person on the Ways and Means staff. He has demonstrated a remarkable ability to handle the complexities of important tax legislation so that even a country boy like myself can understand it. In addition, he has demonstrated a genuine affection for employees, concern for their welfare, devotion to this body, and consistent friendliness and kindness. I cannot think of a finer person worthy of receiving this award. I congratulate Mr. Martin for his achievement and I hope that other Members of this body will take the time to offer their congratulations as well. He is an employee of this House we can all be proud of.

ADMINISTRATION'S DISMAL RECORD ON ECONOMIC ISSUES

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, It is time for Jimmy Carter to quit hiding in the Rose Garden. I, for one, would be interested in hearing him try to explain away his administration's dismal record on economic issues. For example, Mr. President, how, at a time when unemployment continues to plague our own auto industry, can you justify rolling out the red carpet for a company that wants to import Soviet-made cars into this country? How, Mr. President, can you justify to laid-off auto workers the fact that your administration has been helping the Satra Corp. with its plans to begin importing the Lada into this country within the next couple of years? How, Mr. President, can you justify to American farmers who were hurt by your grain embargo that it is all right to allow the Soviets to sell their products here? How, Mr. President, can you justify to American athletes who gave up going to the summer Olympics that it is OK for the EPA to work with Soviet technicians for the last 3 years in making sure that the Lada is fuel efficient and will meet our environmental guidelines? Mr. President, the voters deserve some answers.

□ 1120

UNITED STATES MAKING TRAGIC MISTAKE IN RECOGNIZING REGIME OF POL POT

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, it appears that the Carter administration is about to make a tragic mistake in voting once again in the United Nations, to recognize the murderous regime of Pol Pot as the legitimate Government of Cambodia.

It is my sincere opinion that such an action would not only constitute a legal fiction, in that the Khmer Rouge do not control the land mass of Cambodia, but it would also mean that the administration is once again selectively employing its highly touted "Human Rights" policy.

How can the administration protest the absence of democratic freedoms in the various juntas of Latin America, yet close its eyes to the atrocities of a regime which systematically murdered millions of its people?

Not since the extermination policies of the third reich has the world witnessed death in such massive doses as it has under the bloody regime of Pol Pot.

A recent report by the American Friends Service Committee indicated that in one camp alone, Pot and his minions tortured and murdered some 20,000 people, including 2,000 young children. Four Americans, two from my district, suffered such a fate.

And this is the regime that Jimmy Carter would recognize as the legitimate Government of Cambodia?

To be sure, the government which the Vietnamese imperialists have imposed on the people of Cambodia is no more legitimate. But the concerns of geopolitics should not force us to close our eyes to Pol Pot's atrocities.

Surely, it is in the best interests of the United States, and in the best peace loving traditions of the United States to recognize neither of these imposter governments and to wait until the Cambodia people have the opportunity to determine their own destiny, once again.

AMERICAN FISH PROMOTION ACT

(Mr. BREAUX asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BREAUX. Mr. Speaker, yesterday we were supposed to come under suspension on the bill, H.R. 7039. That bill is scheduled for suspension this morning. The reason it was pulled yesterday was because some of the sections, specifically the section dealing with amendments to the capital construction fund were a part of that bill.

Today the bill that will be presented under suspension does not have the section dealing with the capital construction fund. I thought it was an important part of the legislation, but understand quite well that if it had been included in the bill, that the bill would not have passed. I certainly yield to those members of the Committee on Ways and Means who expressed some concern about it being taken up in that manner.

The bill that we will be presenting to the floor today will not have that section.

The other provisions of the other bill provide a major development program for the American fishing industry and I would urge the Members to give it favorable consideration.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

After all motions to suspend the rules have been entertained and debated and after those motions to be determined by "nonrecord" votes have been disposed of, the Chair will then put the question on each motion on which further proceedings were postponed.

AUTHORIZING SECRETARY OF THE INTERIOR TO TRANSFER CERTAIN LAND AND FACILITIES USED BY BUREAU OF MINES

Mr. MURPHY of Pennsylvania. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 7385, to authorize the Secretary of the Interior to transfer certain land and facilities used by the Bureau of Mines, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7385

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) the Secretary of the Interior is authorized to enter into a contract with Carnegie-Mellon University, whereby the United States agrees to convey, and Carnegie-Mellon University agrees to accept, all right, title, and interest of the United States in and to the property described in subsection (b) hereof. The contract shall provide, inter alia, that Carnegie-Mellon University, at the time of the conveyance of title to said property, shall pay to the United States the amount which the Secretary of the Interior determines to be the fair market value of the property conveyed, or $5,400,000, whichever is greater. Should the cost of the engineering, design, and construction of the facility and related improvements authorized by section 2 of this Act and the fair market value each amount to less than $5,400,000, Carnegie-Mellon University shall pay the higher of two amounts. (2) The conveyance shall not be effective until (i) the facility authorized pursuant to section 2 of this Act is completed and ready for occupancy; and (ii) Carnegie-Mellon University enters into a long-term agreement with the Secretary of Labor on behalf of the Mine Safety and Health Administration to lease to the Mine Safety and Health Administration all of that portion of the property designated as Building A (Main Building) and Building B (Service Building) and adjacent parking areas until such time as the Secretary of Labor determines that the property is no longer needed for occupancy and use by the Mine Safety and Health Administration.

(b) The property referred to in subsection (a) includes land and improvements thereon owned by the United States and used for the Pittsburgh facility of the Bureau of Mines, such land being situated in the Oakland area of Pittsburgh, Pennsylvania, and known as 4800 Forbes Avenue.

(c) The Secretary of Labor, on behalf of the Mine Safety and Health Administration, is authorized to enter into a lease agreement with Carnegie-Mellon University and take such other actions as are necessary to occupy and use the space referred to in clause (ii) of subsection (a)(2) at a fair and reasonable price and under terms to be determined by the Secretary of Labor.

SEC. 2. (a) After a duly authorized representative of Carnegie-Mellon University has executed the contract referred to in paragraph (1) of subsection (a) of section 1 of this Act, the Secretary of the Interior may, with funds appropriated for such purposes, enlarge, equip, and improve the research facility of the Bureau of Mines near Bruceton, Pennsylvania, and may transfer such operations as he deems appropriate to such facility from the facility at Pittsburgh, Pennsylvania.

(b) In order to carry out this section, there is hereby authorized to be appropriated not more than $5,400,000 for the engineering, design, and construction of facilities and related improvements at the research facility of the Bureau of Mines near Bruceton, Pennsylvania.

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. MURPHY) will be recognized for 20 minutes, and the gentleman from California (Mr. LAGOMARSINO) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. MURPHY).

Mr. MURPHY of Pennsylvania. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the provision of H.R. 7385 as now proposed to the House is the product of the joint efforts of my colleagues from Pennsylvania. Mr. MOORHEAD, Mr. GAYDOS and myself. We have worked with our counterparts on the Senate side, and with representatives of the administration and Carnegie-Mellon University in developing an agreement which we all support.

The purpose of H.R. 7385 is to provide for the conveyance of certain property used by the Bureau of Mines and other Federal agencies to the Carnegie-Mellon University at the fair market value price, but not less than $5.4 million. The parcel involved is adjacent to and in fact surrounded by the university campus and is considered to be the only property available to meet its need for expansion.

Many of the activities of the Bureau of Mines have already been relocated at its Bruceton, Pa., facilities. If H.R. 7385 is enacted, the remaining Bureau operations at the Pittsburgh site will be moved to a new facility to be constructed at Bruceton. The income from the sale of the Pittsburgh property to the university should be more than adequate to pay for the cost of constructing the new building.

Another important agency having operations at the Pittsburgh site is the Mine Safety and Health Administration. Under the terms of the language agreed upon, that agency will be assured continued occupancy of the space it needs under a long-term lease agreement.

I want to repeat that the language in the bill now before the House has been agreed to by all concerned. It is the language recommended by the administration. It protects the U.S. interest in receiving the full value of the property and, at the same time, helps Carnegie-Mellon University meet its critical need for more space for its research and educational programs.

I urge the adoption of the bill, as amended.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Pennsylvania (Mr. MURPHY) has explained the purpose and content of this bill very well. I agree with everything he says.

To my knowledge, there is no controversy about or opposition to this legislation. I urge its approval and yield back the balance of my time.

Mr. MURPHY of Pennsylvania. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. GAYDOS).

Mr. GAYDOS. I thank the gentleman for yielding.

Mr. Speaker, I was the framer of the amendment, the major amendment. It did put into place in this legislation certain safeguards, one of which I would like to emphasize for the record. Under this amendment and the legislation in general, the Secretary of Labor under the MSHA Act will have final disposition and discretion as to what action will be taken regarding occupancy. It further provides that the employees at the institution be housed in a new building at the Bureau of Mines in Bruceton, which is in my district. So that contingency has been provided for.

In conclusion, I would like to point out to my colleagues that fair market value of subject property is part of this legislation, and there will be no giveaway. The parties that analyzed the overall intent of this legislation, in light of the needs dictated by the situation are in full agreement. There will be no money lost under the circumstances to the Federal Government.

I want to thank my colleague for allowing me this opportunity to present these facts for the record.

Mr. MURPHY of Pennsylvania. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I rise in support of this legislation, which is supported by all the Members of the House from western Pennsylvania and by both Pennsylvania Senators on a bipartisan basis.

I want to pay special tribute to my colleague from Pennsylvania (Mr. GAYDOS) who worked out the amendment that has satisfied all the parties concerned in this legislation. And I also want to thank my colleague (Mr. AUSTIN MURPHY), a member of the Interior Committee, who is handling the bill on the floor.

This is good legislation for the country, and the taxpayer is protected. It will not cost the Government a nickel since Carnegie Mellon University is prepared to pay the full fair market value of the property at the time of conveyance, which will be used to finance a new addition to the present Bureau of Mines facility at Bruceton, Pa., within the same metropolitan area.

Mr. Speaker, the history of this legislation goes back to 1957, when the idea was first discussed by Carnegie Institute of Technology, as it was then called, with

the Bureau of Mines. The Bureau was interested in consolidating its operations at their Bruceton facility and initiated conversations with CIT to ascertain their interest in acquiring the property.

Bills have been introduced in Congress on at least three occasions since that time, and each time we have been unsuccessful in accomplishing it, either because of inaction, last minute appropriation cuts, or disagreements concerning the fair market value of the property. I am proud to have finally seen this piece of legislation pass the House of Representatives before I end my 22 years of service in Congress. It is something I have worked for since my first bill was introduced in 1967.

In order to understand how appropriate this transfer is, it is necessary to know the proximity of the building to the Carnegie Mellon University campus. The BOM facility was designed by the same architect who planned the CMU campus, and it is built in the same style. The design of the buildings blends right into the campus, and since it is immediately adjacent to the campus is a natural extension of it. The main building, known as building A, has recently been placed on the National Register of Historic Buildings, and like its counterparts on the CMU campus, was built for the kind of research and scientific studies that has made the Carnegie Mellon University famous throughout the world.

Carnegie Mellon is a major research center for science and technology. The growth in research, accompanied in the same period by a growth of about 20 percent in students, has created a severe shortage, and the university must acquire additional facilities if it is to continue to hold a leading role in science and technology research. Carnegie Mellon has started a new institute for research on robotics in the context of automation of manufacturing. In view of the declining work force in the 1980's and the pressing need to increase productivity, this research program is vital to the national interest. Carnegie Mellon is one of the few research universities in the United States with the background and resources to undertake a major robotics program.

The Bureau of Mines has long been interested in consolidating their facilities at their main location in Bruceton, Pa., located approximately 23 miles from the Forbes Avenue location, and within the same metropolitan area. At the moment, their operations are split between the two sites, with some employees at the Bruceton facility working in temporary quarters—trailers—until a permanent structure is available. There are approximately 104 employees of the Bureau of Mines at the Forbes Avenue facility, and another approximately 240 employees of the Mine Safety and Health Administration at the same location.

The Bureau of Mines employees will be transferred to Bruceton if they wish to continue to work for the Department of Interior. They will have the option of being hired by Carnegie Mellon University if they do not want to make the transfer. The employees of the MSHA under the Department of Labor—formerly the Mine Enforcement and Safety Administration, MESA, part of the Bureau of Mines—will be allowed to continue their operations at the Forbes Avenue location under a long-term lease agreement with the university, until such time as they determine they no longer need the space.

The language in the amendment, offered by Congressman GAYDOS, has been worked out jointly by the Department of Labor, the Department of Interior and the Office of Management and Budget and has the full support of the administration.

As recommended, H.R. 7385, as amended, authorizes the appropriation of $5.4 million for the construction of the Bureau of Mines replacement facility. This cost is to be fully reimbursed—up to $5.4 million—by Carnegie Mellon University at the time of conveyance of title to the Forbes Avenue property; however, if the fair market value of that property exceeds $5.4 million, then Carnegie Mellon will be required to pay the larger amount. Conveyance of title to the property will not be consummated until the new facility at Bruceton is completed and ready for occupancy so there should be no disruption of present operations.

Since the Government will be reimbursed for its construction costs, actual outlays should be minimal, and there is a possibility that the income from the sale of the Forbes Avenue site will exceed the cost of replacement. For this reason there should be no inflationary impact resulting from the bill.

Mr. Speaker, the same bill was introduced in the Senate by Senator Heinz—S. 2734—and was amended with the identical language as the House bill by the Senate Energy Committee. I anticipate no difficulty in having the Senate bill approved in the next day or so, and forwarded to the President for his signature.

Let me take this opportunity to thank the various members of the Pennsylvania congressional delegation who worked together to get this bill passed; the staffs of the House Interior Committee, and the Senate Energy Committee, who were so cooperative about seeing that all parties who had an interest in this legislation were heard, and considered in the drafting of the legislation, and the dedication and perseverance of the staffs of the Department of the Interior, the Department of Labor (MASH), and the congressional offices involved.

Mr. MURPHY of Pennsylvania. Mr. Speaker, I thank my colleagues from Pennsylvania and also my colleague from the State of California (Mr. LAGOMARSINO), who has assisted us in the Committee on Interior and Insular Affairs on this bill.

I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. MURPHY) that the House suspend the rules and pass the bill, H.R. 7385, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MURPHY of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7385, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

□ 1130

SALMON AND STEELHEAD MANAGEMENT AND ENHANCEMENT

Mr. BREAUX. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6959) to provide for the conservation and enhancement of the salmon and steelhead resources of Washington State, assistance to the treaty and nontreaty harvesters of those resources, and for other purposes, as amended.

The Clerk read as follows:

H.R. 6959

Strike all after the enacting clause and insert, in lieu thereof, the following:

FINDINGS, PURPOSES, AND POLICY

SECTION 1. (a) FINDINGS.—The Congress finds and declares the following:

(1) The stocks of salmon and steelhead which originate in the rivers of the conservation areas constitute valuable and renewable natural resources. Many groups of commercial, recreational, and treaty fishermen have historically depended upon these stocks of fish for their livelihoods and avocations. These fishery resources contribute to the food supply and economic health of the Pacific Northwest and Nation as a whole, provide valuable recreational experiences for thousands of citizens from various parts of the United States, and represent a central element of the cultures and economies of Indian tribes and the citizens of the Pacific Northwest.

(2) Over a period of several decades, competing uses of salmon and steelhead habitat and historical problems relating to conservation measures, the regulation of harvest, habitat management, and enhancement have depressed several of these stocks of salmon and steelhead.

(3) Improved management and enhancement planning and coordination among salmon and steelhead managers will help prevent further decline of salmon and steelhead stocks and will assist in increasing the supply of these stocks.

(4) The fishing capacity of nontreaty fishermen in the conservation areas established by this Act exceeds that required to harvest the available salmon resources. This excess capacity causes severe economic problems for these fishermen.

(5) The ability of the Klamath River and Treaty Tribes to enhance the salmon and steelhead resources passing their usual and accustomed fishing grounds is hindered by the lack of sufficient financial resources.

(6) The supply of salmon and steelhead can be increased through carefully planned enhancement measures designed to improve the survival of stocks and augment the production of artificially propagated stocks. By careful choice of species, areas and stocking procedures, enhancement programs can be used to—

(A) restore stocks through remedial actions to compensate for declines in resource production resulting from overfishing and environmental degradation;

(B) improve the distribution of fish among different groups of fishermen; and

(C) add stability to the fishery by reducing variations in fish availability.

(7) The decisions in the cases of the United States v. Washington and Sohappy v. Smith have resulted in temporary economic dislocation in the salmon fishery.

(b) PURPOSES AND POLICY.—It is therefore declared to be the purposes and policy of the Congress in this Act that—

(1) the various salmon and steelhead managers should coordinate their activities to ensure the effective conservation of the salmon and steelhead in the conservation areas;

(2) it is in the national interest to increase the supply of, and provide for the long-term conservation and optimum production of, the salmon and steelhead resources of the conservation areas and to minimize significant adverse interaction between naturally spawning and artificially propagated stocks;

(3) Federal financial assistance should be provided for the enhancement of salmon and steelhead resources within the conservation areas;

(4) the economic well-being of treaty and nontreaty commercial fishermen be improved and the recreation fishing opportunity for salmon and steelhead be enhanced; and

(5) all commercial and recreation fishermen and the Klamath River and Treaty tribes within the conservation areas shall have a reasonable opportunity to participate in the benefits, considered as a whole, of the enhancement program, consistent with other applicable law.

SEC. 2. As used in this Act—

(1) The term "Columbia River Tribe" means any of the following:

(A) The Confederated Tribes and Bands of the Yakima Indian Nation of Washington.

(B) The Confederated Tribes of the Warm Springs Indian Reservation of Oregon.

(C) The Confederated Tribes of the Umatilla Indian Reservation of Oregon.

(D) The Nez Perce Tribe of Idaho.

(E) Any other Indian tribe whose fishing rights in the Columbia River drainage basin—

(i) derive from a treaty between it and the United States, and

(ii) have been recognized by a Federal Court.

(2) The term "Columbia River management party" refers to the following:

(A) The State of Washington.

(B) The State of Oregon.

(C) A coordinating body duly authorized by the Columbia River Tribes.

(D) The Pacific Fishery Management Council established under section 302 of the Fishery Conservation and Management Act of 1976.

(3) The term "Columbia River conservation area" means—

(A) all habitat within the Columbia River drainage basin, and

(B) those areas in—

(i) the fishery conservation zone over which the Pacific Fishery Management Council has jurisdiction, and

(ii) the territorial sea of Oregon or Washington,

in which one or more stocks that originate in the habitat described in subparagraph (A) migrate.

(4) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures which are—

(A) required to rebuild, restore, or maintain, on which are useful in rebuilding, restoring, or maintaining, any fishery and the related habitat; and

(B) designed to assure that—

(i) a supply of food and other products may be taken and that recreational benefits may be obtained, on a continuing basis.

(ii) irreversible or long-term adverse effects on the fishery and the related habitat are avoided, and

(iii) there will be a multiplicity of options available with respect to future uses of the fishery and the related habitat.

(5) The term "enhancement project" means one or more specific activities undertaken to increase the survival or production of one or more stocks.

(6) The term "fishery" means one or more stocks which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(7) The term "habitat" means those portions of land or waters, including the constituent elements thereof—

(A) which one or more stocks occupy at any time during their life cycle, or

(B) which affect one or more stocks.

(8) The term "Klamath River conservation area" means—

(A) all habitat within the Klamath River drainage basin, and

(B) those areas in—

(i) the fishery conservation zone over which the Pacific Fishery Management Council has jurisdiction, and

(ii) the territorial sea of California,

in which one or more stocks that originate in the habitat described in subparagraph (A) migrate.

(9) The term "Klamath River management party" refers to the following:

(A) The State of California.

(B) The counties of Del Norte, Humboldt, Trinity, and Siskiyou, California.

(C) The Klamath River Tribes.

(D) The Pacific Fishery Management Council.

(10) The term "Klamath River Tribes" means the Hoopa Valley Tribe of the Hoopa Valley Reservation; the Karok Tribe; and the Yurok Tribe of the Hoopa Valley Reservation, all in the State of California.

(11) The term "optimum", with respect to the yield from a fishery, means an amount of the salmon or steelhead therefrom which—

(A) is consistent with applicable law;

(B) will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(C) is prescribed as such on the basis of the maximum sustainable yield from such fishery, and the escapement goals for the various stocks as modified by any relevant economic, social or ecological factors.

(12) The term "salmon" means any anadromous species of the family Salomidae and Genus Oncorhynchus, commonly known as Pacific salmon.

(13) The term "Secretary" means the Secretary of Commerce.

(14) The term "steelhead" means the anadromous rainbow trout species Salmo gairdneri, commonly known as steelhead.

(15) The term "stock" means any species, subspecies, race, geographical grouping, population, run, or other category of salmon or steelhead that is capable of being managed as a unit.

(16) The term "Treaty Tribe" means any Columbia River Tribe or Washington Tribe.

(17) The term "Washington conservation area" means—

(A) all habitat within the State of Washington other than the Columbia River drainage basin, and

(B) those areas in the fishery conservation zone referred to in paragraph (3)(B) over which the Pacific Fishery Management Council has jurisdiction and in which one or more stocks that originate in the habitat described in subparagraph (A) migrate.

(18) The term "Washington management party" refers to—

(A) The State of Washington.

(B) A coordinating body duly authorized by the Washington Tribes.

(C) The Pacific Fishery Management Council.

(19) The term "Washington Tribe" means any Indian tribe recognized by the United States Government, with usual and accustomed fishing grounds within the State of Washington (other than the Columbia River drainage basin), whose fishing rights therein derive from a treaty between it and the United States and have been recognized by a Federal court.

TITLE I—MANAGEMENT AND ENHANCEMENT OF SALMON AND STEELHEAD

CHAPTER 1—COMMITTEES AND PLANS

JOINT SALMON AND STEELHEAD MANAGEMENT COMMITTEES

SEC. 101. (a) ESTABLISHMENT.—If before the one-hundred and eightieth day after the date of enactment of this Act—

(1) each Columbia River management party notifies the Secretary in writing that it wishes to be a member of the Joint Columbia River Salmon and Steelhead Management Committee (hereinafter in this Act referred to as the "Columbia River Committee"), there is established, effective on and after the day on which the last of such notifications is received, such Committee;

(2) each Washington management party notifies the Secretary in writing that it wishes to be a member of the Joint Washington Salmon and Steelhead Management Committee (hereinafter in this Act referred to as the "Washington Committee"), there is established on and after the day on which the last of such notifications is received, such Committee; and

(3) each Klamath River management party notifies the Secretary in writing that it wishes to be a member of the Joint Klamath River Fisheries Conservation Committee (hereinafter referred to as the "Klamath River Committee"), there is established, effective on and after the day on which the last of such notifications is received, such Committee.

(b) MEMBERSHIP AND PROCEDURE.—(1) The Columbia River Committee shall consist of four members. The Washington Committee shall consist of three members. The Klamath River Committee shall consist of nine members. Each constituent management party of each such Committee shall be responsible for the selection and appointment of one member, and the appropriate officer of such party shall certify the appointment to the Secretary: *Provided*, That the Secretary of the Interior, after consultation with appropriate organizations and groups of Yurok Indians, shall appoint a member to the Klamath River Committee to represent the Yurok Tribe until such time as the Yurok Tribe organizes a tribal government and appoints its own member: *Provided further*, That the member appointed by the Secretary of the Interior to represent the Yurok Tribe shall have full authority to act for the Yurok Tribe as provided in this Act.

(2) Each such Committee shall have a Chairman, the term of office of which is one year. The members of each Committee shall fill the office of Chairman on a rotating basis. The sequence of rotation shall be determined by the Committee by lot.

(3) Each such Committee shall meet at the call of the Chairman or, in the case of the Columbia River Committee, upon demand of at least three voting members and, in the case of the Washington Committee, upon the demand of at least two voting members and, in the case of the Klamath

River Committee, upon the demand of five voting members.

(c) FUNCTIONS.—The functions of the Columbia River, Klamath River, and Washington Committees are to prepare, review, and, if necessary amend, in accordance with section 102, a management plan, and an enhancement plan, for their respective conservation areas.

(d) PER DIEM AND TRAVEL ALLOWANCES.—The members of each Committee (other than those who are full-time employees of the Federal or a State government), while away from their homes or regular places of business for purposes of carrying out their duties as members, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons intermittently employed in Government service.

(e) ADMINISTRATIVE SUPPORT.—The Secretary shall provide such clerical and technical support as may be necessary to enable each Committee to carry out its functions.

(f) SPECIAL PROVISIONS.—Any Klamath River Tribe or Treaty Tribe electing to not be represented on its respective management committee shall not be bound by any management plan or enhancement plan developed by such committee and will not be eligible to receive enhancement assistance provided in this Act.

MANAGEMENT PLANS AND ENHANCEMENT PLANS

SEC. 102. (a) MANAGEMENT PLANS STANDARDS.—Each Committee referred to in section 101(a), in preparing a management plan, and amendments thereto, for its respective conservation area shall apply conservation and management measures that shall—

(1) prevent overfishing and provide for—

(A) optimum production, and

(B) on a continuing basis, an optimum yield from the fishery;

(2) be based upon the best scientific information available;

(3) to the extent practicable, provide for the management of each individual stock as a unit throughout its range, and interrelated stocks may be managed as a unit or in close coordination;

(4) not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be—

(A) fair and equitable to all such fishermen;

(B) reasonably calculated to promote conservation; and

(C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges;

(5) where practicable, promote efficiency in the utilization of the fishery and the related habitat, except that such measures may not have economic allocation as their sole purpose;

(6) take into account and allow for variations among, and contingencies in, fisheries and catches;

(7) where practicable, minimize costs and avoid unnecessary duplication; and

(8) notwithstanding any of the above measures, provide for the harvest of shares in accordance with treaty or other Federally-protected Indian rights unless agreed otherwise by all affected parties.

(b) ENHANCEMENT PLAN STANDARDS.—Each such Committee, in preparing an enhancement plan, and amendments thereto, for its respective conservation area, shall set forth enhancement projects that shall—

(1) assure that all commercial and recreational fishermen and the Klamath River Tribes and Treaty Tribes within the conservation area shall have a reasonable opportunity to participate in the benefits, considered as a whole, of such projects;

(2) provide for the long-term conservation and optimum production of the salmon and steelhead resources of the conservation area and minimize to the extent practicable significant adverse interaction between naturally spawning and artificially propagated stocks;

(3) be designed to complement the contribution of existing sound State, Federal, and tribal enhancement activities; and

(4) be economically and biologically sound, and supported by adequate scientific research, and achieve significant benefits relative to their overall cost.

(c) PLAN CONTENTS.—(1) Each management plan, with respect to a fishery, shall contain the conservation and management measures necessary or appropriate for the conservation and management of the fishery that are consistent with the standards set forth in subsection (a) and any other applicable law, including, but not limited to—

(A) a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the cost likely to be incurred in its management, any recreational interests in the fishery, and the nature and extent of foreign fishing and the fishing rights of the Klamath River Tribes and Treaty Tribes therein; and

(B) an assessment and specification of the present and probable future condition of, and the maximum sustainable yield, the optimum yield, and the optimum production from, the fishery, which specification shall include a summary of the information utilized in making it; and

(2) Each enhancement plan shall set forth such enhancement projects to be carried out within the conservation area as are necessary or appropriate.

(d) DISCRETIONARY MEASURES.—(1) The conservation and management measures included within a management plan for a fishery may include—

(A) the designation of zones where, and periods when, fishing in the fishery shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) the establishment of specified limitations on the catch of salmon or steelhead (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factor) which are necessary or appropriate for the conservation and management of the fishery; and

(C) Prohibitions, limitations, conditions, or requirements on the use of specified types and quantities of fishing gear, fishing vessels, including such devises which may be required to facilitate enforcement of the plan; and

(2) All such discretionary measures shall be consistent with legal requirements relating to the regulation of treaty or other federally protected Indian fisheries.

(e) REVIEW AND AMENDMENT OF PLAN.—If a management plan or an enhancement plan enters into force and effect as provided for under section 103, the Columbia River, Klamath River, or Washington Committee, as the case may be, shall on a continuing basis review the sufficiency and effect of the plan in the light of actual implementation, enforcement, conservation and management and enhancement experience and determine if any amendment of the plan is necessary. Such Committee shall submit amendments deemed necessary by it to the Secretary for approval under section 104.

TAKING EFFECT OF PLANS

SEC. 103. (a) ENHANCEMENT PLANS.—An enhancement plan provided for under section 102 shall enter into force and effect with respect to the respective management parties of the Committee concerned, and chapter 2 shall take effect for purposes of assisting in the implementation of such plan, only if—

(1) the enhancement plan is unanimously agreed to by the Committee; and

(2) such plan is approved pursuant to section 104.

(b) MANAGEMENT PLANS.—A management plan provided for under section 102 shall enter into force and effect with respect to the respective management parties of the Committee concerned, and chapter 2 of this title shall take effect for purposes of assisting in the implementation of such plan, only if—

(1) the management plan is unanimously agreed to by the Committee;

(2) such plan is approved pursuant to section 104; and

(3) a formal agreement, to which each management party is signatory, is entered into under which each such party mutually obligates itself throughout the ten-year period beginning on the date of such approval—

(A) to implement and enforce the provisions of the plan and amendments thereto, through laws, regulations, ordinances or other appropriate means, within such geographical areas and with respect to such persons as may be subject to its jurisdiction and to the extent of its enforcement power.

(B) to engage in such coordination and consultation, through the Committee or otherwise, as may be necessary or appropriate to ensure, to the maximum extent practicable, that the plan is fully and efficiently implemented and to carry out the requirements relating to plan review and amendment set forth in section 102(e), and

(C) not to withdraw from participation in the plan unless all other management parties unanimously agree to so withdraw.

The formal agreement referred to in paragraph (3) may provide, and establish appropriate procedures, for the arbitration of disputes among the parties thereto relating to the carrying out of their obligations under the agreement.

(c) AMENDMENTS TO PLAN.—No amendment to the plan shall have force and effect unless the amendment—

(1) is unanimously agreed upon by the respective management parties; and

(2) is approved under section 104.

APPROVAL OF PLANS AND AMENDMENTS

SEC. 104. (a) IN GENERAL.—Any management plan, enhancement plan, or amendments to either prepared by the Columbia River, Klamath River, or Washington Committee shall be treated as having been approved by the Secretary unless, within the one hundred and twenty day period after the day on which the plan or amendments are submitted to the Secretary by such Committee, the Secretary finds, and publishes notification in the Federal Register, before the close of such period that the plan or amendment is not consistent with the appropriate standards and requirements set forth in section 102. The Secretary shall include in such notification the reasons for such finding. If the Secretary considers that the plan or amendments are consistent with such standards and requirements, he may publish notification to that effect in the Federal Register.

(b) COMMITTEE ACTION UPON DISAPPROVAL.—If the Secretary disapproves the plan or amendments thereto, the Committee concerned may undertake either or both of the following actions:

(1) Prepare a plan or amendments after taking into account the reasons for disapproval.

(2) Seek appropriate judicial review of the Secretary's disapproval.

(c) DATE OF APPROVAL.—For purposes of

this chapter, the date of approval of a management plan, enhancement plan, or amendments is, as the case may be—

(1) the expiration of the one hundred and twenty day period referred to in subsection (a); or

(2) the date on which notification of approval is published in the Federal Register.

EFFECT OF PLAN ON CERTAIN REQUIREMENTS UNDER THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

SEC. 105. Nothing in this Act shall be construed as affecting the provisions of title III of the Fishery Conservation and Management Act of 1976 as it applies with respect to fishery management plans and their application to any fishery; except that—

(1) the Pacific Fishery Management Council shall prepare such amendments to the fishery management plan as may be necessary or appropriate to make that plan consistent with any management plans and their application effect under this title;

(2) for purposes of such preparation, and Secretarial review pursuant to such title III, the management plan standards and requirements set forth in section 102 shall apply rather than those in such title;

(3) the Secretary may not partially disapprove any amendment prepared by the Council to carry out paragraph (1); and

(4) the Secretary may not prepare, under section 304(c) of such Act of 1976, any amendment required to made by the Council by paragraph (1).

CHAPTER 2—FINANCIAL ASSISTANCE FOR ENHANCEMENT

AUTHORITY TO MAKE GRANTS

SEC. 121. Upon approval of an enhancement plan of the Columbia River, Klamath River, or Washington Committee, the Secretary shall make grants to management parties and Klamath River Tribes and Treaty Tribes concerned to assist them to carry out, in whole or part, the enhancement projects specified in the plan. In deciding whether to make grants under this chapter, the Secretary shall take into consideration whether similar projects are being carried out under Federal, State, or private auspices.

TERMS AND CONDITIONS

SEC. 122. Each grant made under this chapter shall contain such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to implement the limitations in section 123 and 124 and to otherwise protect the interests of the United States.

GRANT LIMITATIONS

SEC. 123. (a) IN GENERAL.—The amount of any grant made under this chapter may not exceed one-half of the estimated cost of the enhancement project for which it is made; except that—

(1) grants for up to 100 per centum of the cost of the projects may be made to Klamath River Tribes and Treaty Tribes; and

(2) the State of Washington shall be treated on the date this chapter enters into effect with respect to it as having expended $32,000,000 (reduced by the amount treated as expended by the State under section 207 of this Act) on enhancement projects set forth in the plan which are eligible for assistance under this chapter.

(b) SPECIAL PROVISIONS.—(1) No Klamath River Tribe or Treaty Tribe is eligible for assistance under this chapter after a management plan affecting such tribe is approved under section 104 unless it enters into a written commitment, satisfactory to the Secretary, to participate, in good faith, in the implementation and enforcement of the management plan to the extent of its ability and jurisdiction.

(2) No management party or Klamath River Tribe or Treaty Tribe is eligible for assistance under this chapter unless it agrees not to undertake any enhancement project not specified in the enhancement plan if that project is inconsistent with such plan or with the management plan, if any, applicable to it.

(c) IN-KIND CONTRIBUTIONS.—In computing the estimated cost of any enhancement project, the Secretary shall take into account, in addition to cash outlays to be made by the grant recipient, the value of such in-kind contribution (including, but not limited to, personal services) and real and personal property applied by the recipient in carrying out the project. The Secretary shall establish by regulation the standards under which the value of in-kind contributions and real and personal property will be determined for purposes of this subsection. Any valuation determination made by the Secretary for purposes of this subsection shall be conclusive.

TERMINATION OR SUSPENSION OF ASSISTANCE UNDER CHAPTER

SEC. 124. (a) TERMINATION FOR REASON OF WITHDRAWAL FROM AGREEMENT.—If—

(1) a management plan for the Columbia River, Klamath River, or Washington Committee is not approved under section 104 within eighteen months after the date on which an enhancement plan is approved under such section for that Committee;

(2) the Secretary finds that the management parties have unanimously agreed to withdraw from participation in the plan before the termination of the ten-year period referred to in section 103(b)(3); or

(3) the Secretary finds that one or more management parties have not carried out their obligations under the agreement referred to in section 103(b)(3), or that one or more Klamath River Tribes, or Treaty Tribes have not carried out their commitments referred to in section 123(b)(1) with the result that the management plan concerned can no longer be implemented appropriately;

then effective on and after that date of such notification, the Secretary may not—

(A) receive applications for grants under this chapter;

(B) further process applications received, but not finally acted on, before such date; or

(C) disburse any moneys under this chapter.

(b) OTHER TERMINATION AND SUSPENSION.—(1) If the Secretary finds that—

(A) any management party or Klamath River Tribe or Treaty Tribe has failed to, or is not satisfactorily carrying out, the terms or conditions of a grant made under this chapter;

(B) any Klamath River Tribe or Treaty Tribe is not fulfilling its commitment entered into under section 123(b)(1); or

(C) any management party or Klamath River Tribe or Treaty Tribe is not fulfilling its commitment entered into under section 123(b)(2); the Secretary may, as the circumstances require, refuse to award a grant or suspend or terminate the disbursement of moneys under the grant.

(2) No action may be taken by the Secretary under paragraph (1), or under subsection (a)(3), unless the Secretary gives the party or tribe concerned notice of the proposed action and the reasons therefor, and a reasonable opportunity to take corrective action.

AUDIT

SEC. 125. Each recipient of a grant under this chapter shall make available to the Secretary and to the Comptroller General of the United States for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under the grant.

AUTHORIZATION OF APPROPRIATIONS

SEC. 126. (a) For purposes of carrying out this chapter (including, but not limited to, the operation and maintenance of enhancement facilities) there are authorized to be appropriated not to exceed $45,000,000 for the ten-year period beginning on October 1, 1981, for the Washington conservation area; not to exceed $25,000,000 for the ten-year period beginning on such date for the Columbia River conservation area; and not to exceed $15,000,000 for the ten-year period beginning on such date for the Klamath River conservation area.

(b) In addition to the amounts authorized under subsection (a) there are authorized to be appropriated to carry out steelhead enhancement projects (including, but not limited to operation and maintenance of enhancement facilities) not to exceed $7,000,000 for the ten-year period beginning on October 1, 1981, for the Washington conservation area; and not to exceed $7,000,000 for the ten-year period beginning on such date for the Columbia River conservation area.

TITLE II—COMMERCIAL FISHING FLEET ADJUSTMENT

FLEET ADJUSTMENT PROGRAM

SEC. 201. (a) IN GENERAL.—The Secretary, upon approval of a program submitted pursuant to section 203 of this title, is authorized to distribute Federal funds to the State of Washington (hereinafter in this title referred to as the "State"), subject to the standards, conditions, and restrictions set forth in this title, for the purchase of commercial fishing and charter vessels (including the associated fishing gear) and licenses by the State in accordance with the provisions of this title. The Federal share payable under this title shall not exceed 75 per centum in any fiscal year of the total costs of the program in that fiscal year.

(b) LEGAL TITLE.—Title to any vessel or other personal property purchased under a State program approved by the Secretary in accordance with the provisions of this title shall vest upon purchase in the State. If the State sells such vessels or other property, title may pass in accordance with such sale.

STANDARDS

SEC. 202. The State shall submit to the Secretary a program within three months of the date of enactment of this Act designed to—

(1) provide incentives for early retirement of licenses, or early sale of vessels;

(2) set aside specific allocations of funds for each gear type to achieve the specific fleet reductions provided for in the program;

(3) obtain an effective and expeditious reduction in the overall fishing capacity of and the number of vessels and licenses in the non-Indian commercial and charter salmon fishing fleets in the Washington conservation area; and

(4) provide State funding for 25 per centum of the total cost of the program.

PROGRAM APPROVAL

SEC. 203. (a) SUBMISSION FOR APPROVAL.—The State shall submit its program and submit revisions, modifications, or amendments to the Secretary in accordance with standards established pursuant to section 202 and in such manner and form as the Secretary shall prescribe.

(b) REQUIREMENTS FOR APPROVAL.—Prior to approving such program or any revision, modification, or amendment, and authorizing Federal funds to be distributed in accordance with this title, the Secretary must find that—

(1) the State, acting through its chosen agency or agencies, has authority to carry out a commercial and charter vessel fleet reduction program in accordance with the provisions of this title;

(2) the State program provides that a fishing or charter vessel may not be purchased by the State from other than the person who owned the vessel on the date of the enactment of this act;

(3) the State program prevents the expenditure of disproportionate amount of funds available for vessel acquisition on vessels owned by any one person;

(4) the State program prohibits the purchase of any fishing or charter vessel unless all State commercial and charter salmon fishing licenses attached to the vessel are also sold to the State;

(5) the State program provides that no person may purchase from the State any vessel which that person or a member of that person's immediate family had previously sold to the State;

(6) the State program provides that no person may purchase any vessel sold to the State pursuant to the program and use such vessel for commercial or charter salmon fishing in the Washington conservation area, unless State law provides that the use of such vessel could not result in any additional fishing effort in the non-Indian fishing fleet;

(7) the State program provides for purchase of vessels at their fair market value;

(8) the State program provides for the reduction of salmon fishing licenses, through purchase of such licenses at their fair market value, and the use of bonuses and schedule, to—

(A) secure an early retirement from the salmon fishery;

(B) recognize productiveness if the commercial harvesters using a gear type wish that gear type's specific allocation of funds to recognize productiveness; and

(C) recognize passenger-carrying capacity for charter fishing licenses;

(9) the State program provides, with respect to marginally productive commercial salmon fishermen, for the purchase of their salmon fishing licenses, but not their fishing vessels;

(10) the State will not, during the five-year period beginning on the date of enactment of this Act, issue any new commercial or charter salmon fishing license;

(11) the State has established a revolving fund for the operation of the fleet reduction program that includes an individual account for each category of fishing license (based on type of fishing gear used) and that any moneys received by the State or its agents from the resale of any fishing vessel or gear purchased under the program (A) shall be placed in such revolving fund, (B) shall, for at least three years from the date of the program's inception, be placed in the appropriate individual account, and (C) shall be used exclusively to purchase commercial fishing and charter vessels and licenses in accordance with the provisions of this title; and

(12) the State will notify the Secretary of the termination date of the State program and will pay to the United States Treasury an amount equal to 75 per centum of the balance, on such termination date, of the revolving fund referred to in paragraph (11).

(c) SECRETARIAL ACTION.—The Secretary shall approve such program within ninety days of the date of receipt of the program if found to be consistent with this Act and other applicable law. If the Secretary finds that such program is not in conformity with the provisions of this Act or other applicable law, he shall return such program to the State with recommendations. Any revision, modification, or amendment to the program shall be approved within thirty days of receipt unless found to be inconsistent with this Act or other applicable law.

REVIEW BY SECRETARY

SEC. 204. (a) IN GENERAL.—The Secretary shall conduct a continuing review of the State program to determine whether the program remains consistent with this Act or oher applicable law. Such review shall include a biennial audit of the records of the State program.

(b) ACTION UPON FINDING OF NONCOMPLIANCE.—If the Secretary finds that the program or the administration thereof is no longer in compliance with this title, he shall reduce or discontinue distribution of funds under this title, or take other appropriate action.

(c) DISPOSITION OF CERTAIN MONEY.—If the Secretary finds that any money provided to the State or obtained by the State from the resale of any fishing or charter vessel purchased under the program is not being used in accordance with the provisions of this title, the Secretary shall recover from the fund, and place in the United States Treasury, such moneys.

FLEET MOBILITY

SEC. 205. The Secretary in coordination with the Pacific Fishery Management Council in its salmon management plan shall ensure that the fishing effort reduction that results from the fleet adjustment program of this title and the license moratorium of the State is not replaced by new fishing effort from outside the State.

AUTHORIZATION OF APPROPRIATIONS

SEC. 206. There are authorized to be appropriated to the Secretary, for the purposes of carrying out the provisions of this title, $37,500,000 for the five-year period beginning October 1, 1981.

SPECIAL PROVISION

SEC. 207. On the date the Secretary approves the program under section 203, the State shall be treated as having expended such portion of $32,000,000 as the State deems appropriate for purposes of implementing the program.

TITLE III—MISCELLANEOUS

REGULATIONS

SEC. 301. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this Act.

REPORTS

SEC. 302. The States of Washington, Oregon, and California and the tribal coordinating bodies referred to in section (2)(C) and (18)(B) shall submit to the Secretary an annual report on the status of the program authorized by this Act or any other relevant report requested by such Secretary.

RELATION TO OTHER LAWS

SEC. 303. Nothing in this Act shall be construed—

(1) to diminish Federal, State, or tribal jurisdiction, responsibility, or rights in the field of resource enhancement and management, or control of water resources, submerged lands, or navigable waters; nor to limit the authority of Congress to authorize and fund projects; or

(2) as superseding, modifying, or repealing any existing applicable law, except as provided for in section 105 of this Act.

Amend the title so as to read: "A bill to provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.".

The SPEAKER pro tempore. Is a second demanded?

Mr. FORSYTHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. BREAUX) will be recognized for 20 minutes, and the gentleman from New Jersey (Mr. FORSYTHE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, H.R. 6959 is legislation that was originally initiated by the administration in an effort to seek a resolution of the longstanding bitter controversy over the salmon and steelhead resources of the Pacific Northwest This legislation authorizes the development and implementation of salmon and steelhead management and enhancement plans, and provides for a program to reduce fishing pressure in the State of Washington. The legislation would authorize a total Federal expenditure of $136.5 million over a 10-year period to the States and Indian tribes for enhancement and the Washington State buy-back program. Funds provided to the eligible States would be on a 50–50 matching fund basis with the exception of the buy-back program which would permit 75-percent Federal funding.

The enhancement authorization breaks down as follows: $52 million is authorized for enhancement in the Washington conservation area; $32 million is authorized for enhancement in the Columbia River conservation area; $15 million is authorized for enhancement on the Klamath River in northern California.

The sources of the problems with the salmon and steelhead resource on the west coast are numerous; the resolution of those problems will be difficult and complex. Salmon and steelhead hatch in fresh water and migrate to the ocean where they reach mature size, eventually completing their life cycle by returning to the fresh water place of their origin to spawn. The anadromous fish of the Pacific coast include steelhead trout and five species of salmon. These salmon are harvested by a variety of groups using different types of fishing gear in international, Federal and State waters. As a common property resource, salmon and steelhead are subject to the same resource management problems that plague other common property fisheries.

The situation with anadromous fish, however, is even more acute in that unlike other fisheries, the salmon return predictably to their spawning streams. Fishing gear can be placed in such a way that it is possible to take very high percentages of any individual salmon run. In addition, because salmon are dependent on a fresh water habitat to reproduce, they are especially susceptible to environmental degradation. Over the last 100 years the salmon resource of the Pacific coast has been reduced extensively as a result of changes in its fresh water habitat, competing demands over

the water resources of the West, overfishing, and uncoordinated management.

The construction of hydroelectric dams on the Columbia River has had a major impact on the salmon resource. Historically, the Columbia River and its tributaries were the greatest anadromous fish producer on the Pacific coast. A major commercial fishing industry developed along the Columbia River as early as the mid-19th century. Annual catches on the Columbia averaged 30 million pounds and peaked at more than 40 million pounds during the 75 years from 1866 to 1940. The status of the Columbia River as a major anadromous fish producer has been drastically changed as a result of competing demands on the water resources of the Columbia River basin. By the 1960's, the number of salmon and steelhead returning to the Columbia River system had been drastically reduced. The primary causes of this reduction are universally acknowledged to be the basin wide elimination and degradation of valuable salmon and steelhead habitat, fish-passage losses at the Columbia and Snake River Dams and rapidly growing ocean sport and commercial fisheries.

Since the 1960's, hundreds and millions of Federal, private, and State dollars for hatcheries, fish-passage facilities and other protection and enhancement programs have been spent and today it is estimated that artificial production accounts for over 50 percent of all fish returning to the Columbia River system.

Despite this tremendous investment, many of the salmon runs along the Columbia River have been reduced to critically low levels. Although the situation on the Columbia River is the most acute, other river systems in the Pacific Northwest and in California are also experiencing difficulties. The following are a few examples.

The Puget Sound chum harvest has been reduced dramatically from historic levels and has tended to fluctuate widely in recent years. Puget Sound pink salmon have also been reduced dramatically from historic levels and have been at relatively low levels for several years. The National Marine Fisheries Service has indicated that the wild stocks that originate in the coastal streams of Washington and Oregon are in a depressed state.

In California, the Klamath River system has been the subject of intense controversy over the last several years primarily resulting from the severe decline in the salmon resource in this system. Recently, the Pacific Fishery Management Council indicated that the Klamath system achieved an escapement of 38,000 king salmon in 1979 compared to an escapement goal of 115,000 fish.

The problems with the salmon resource of the Pacific coast have become even more acute as a result of the existence of special Indian fishing rights in several areas. These rights derive from treaties entered into between various Indian tribes and the U.S. Government at the time of the settlement of the Pacific Northwest.

During 1854 and 1855, the U.S. Government executed a number of treaties with the treaty tribes of the Pacific Northwest. Each treaty contained a provision guaranteeing off-reservation fishing rights to the tribes. This provision stated that "the right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the territory."

In 1974, a Federal district court in Washington State held that these treaties guaranteed to the Indian tribes the right to an opportunity to harvest 50 percent of the salmon and steelhead runs passing traditional fishing grounds. Between 1974 and 1979, numerous court decisions were rendered by Federal and State courts on this issue. Most of the legal questions were resolved by the U.S. Supreme Court last summer when it affirmed, in large part, the 1974 district court opinion.

Subsequent to the Supreme Court decision, the administration proposed legislation which sought to lessen the impact of the decision without altering any treaty Indian fishing rights. The administration proposed to provide $90 million of Federal funding to the State of Washington on a 50–50 matching basis. These funds would be used to enhance the resource and reduce the excess fishing capacity in the non-Indian fishing fleet.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held 2 days of hearings on the administration's proposal last fall and an additional hearing this past spring. The Senate passed their version of the legislation on May 5, 1980.

Neither the administration bill nor the Senate passed bill address what some of us believe to be a critical element of the salmon issue—the lack of any coordinated management of the resource. The existing management system does not insure that the enhancement funds will be well spent and will lead to the long-term conservation and restoration of the resource.

This issue was looked at in great depth by a Presidential task force that was created specifically to develop a settlement of the Washington State controversy. This task force advised us in very strong terms that further Government funding of enhancement is not urged unless the other resource management problems are addressed.

The Committee on Merchant Marine and Fisheries responded to the recommendation of the Presidential task force and similar recommendations of other knowledgeable resource managers, to address the need for improved management of the fishery. The bill reported by the Merchant Marine Committee established a mechanism to permit the various salmon management entities to agree on a management plan in order to continue receiving Federal enhancement assistance under the act. The provision adopted by the committee does not force any particular management arrangement on the various parties. Rather it allows the parties to voluntarily agree to a management plan. If they do not wish to agree to a management plan, they are not required to do so; but they would not be able to continue to receive enhancement funds under the bill unless they do agree to a management arrangement within 18 months of the approval of the enhancement plan.

The committee bill also included a series of amendments that were offered in full committee by the gentleman from California (Mr. McCLOSKEY) which attempted to address the Indian fishing rights issues that are occurring in other parts of the country. Although I did not oppose these amendments in full committee, on a further review of them, I determined that these amendments did considerable violence to other essential portions of the bill. More significantly, the amendments created the possibility that salmon and steelhead management on the west coast would become more disjoined than it is today. I was also concerned that the amendments constituted a major amendment to the Fishery Conservation and Management Act of 1976. A number of other members of the committee shared my concern about the effects of the McCloskey amendments. Seventeen members of the committee signed additional views opposing the McCloskey amendments.

The bill before us today deletes the portions of the Merchant Marine bill that were offered in full committee by the gentleman from California.

After the bill was reported by the Merchant Marine Committee, the Interior Committee received a sequential referral and further amended the legislation. The Interior Committee amendments deleted the amendments offered by the gentleman from California (Mr. McCLOSKEY) and inserted other provisions designed to address the salmon controversy that has developed on the Klamath River in northern California.

I have already noted that the status of the salmon resource on the Klamath River is not good. Last year the National Marine Fisheries Service estimated that the Klamath River achieved an escapement of 38,000 fish out of an enhanced escapement goal of 115,000. A significant controversy involving tribal claims to special fishing rights on the Klamath River system has developed in the last few years. The special rights in this case derive not from treaties, as is the case with Pacific Northwest, but pursuant to the establishment of an Indian reservation along the Klamath River. In 1975 a California court of appeals affirmed a lower court decision that the State of California could not regulate Indian fishing on the Klamath River Indian Reservation. This decision did not, however, resolve all remaining legal uncertainties. The State of California has argued that the court of appeals only held that the State could not regulate Indian fishing for "subsistence" absent a showing of a need for such regulation for conservation purposes. The State argues that the court did not define subsistence nor did it decide the question of the ability of Indians to fish for commercial purposes free of State regulation.

Since 1975, a commercial fishery has developed on the Klamath River. This

fishing has resulted in dangerous and sometimes violent confrontations between Indians and non-Indians on the river.

The bill reported by the Interior Committee, and the bill before us today, addresses the Klamath River situation by establishing a nine-member committee to prepare an enhancement and management plan for the Klamath River area. The State of California, the relevant Indian tribes, the local counties and the Pacific Fishery Management Council are represented on this committee which is modeled after the provisions adopted for the Pacific Northwest in the Merchant Marine Committee. We believe that the addition of the Klamath River to his bill is consistent with its other provisions.

Enhancement and coordinated management are the first two major components of this legislation. The third major component is the commercial fishing fleet adjustment program. The Indian treaties are not solely responsible for the economic dislocations in the salmon fishery. As noted above, environmental degradation has contributed to the decline of the resource and the associated dislocation. The overcapacity of the various salmon fleets in the Pacific Northwest has also created serious problems. In simple terms, the problem is that there are too few fish and too many fishermen.

The Presidential task force found that in each commercial fishing fleet in Washington State a large portion of the licenses are issued to license holders whose boats account for a very small portion of each fleet's production. Although these license holders do not contribute significantly to fleet landings, they do represent a large potential for growth in each fleet's fishing effort, and in the aggregate they diminish the opportunity for professional fishermen to make a living. The delivery of benefits to more active fishermen, and the elimination of highly restrictive fishing seasons, will be difficult and perhaps not possible so long as the potential for increased fishing effort remains.

H.R. 6959 proposes a fleet adjustment program which would seek to reduce the existing number of commercial vessels and licenses. Federal funding would be provided to the State of Washington to purchase vessels, licenses, and gear and prohibit their reentry into the salmon fishery.

We are hopeful that the buy-back program will succeed in substantially eliminating the existing overcapacity in the fleet, balancing the Indian and non-Indian fishing effort in the Washington conservation area, and ultimately lead to the revitilization of this fishery.

Mr. FORSYTHE. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I rise in support of the bill.

Mr. Speaker, H.R. 6959 establishes a comprehensive enhancement and management program for salmon and steelhead resources in the Pacific Northwest. Rivers once teeming with salmon continue their timeless flow, but the salmon are no more. Environmental degradation and the loss of habitat because of dam construction have reduced the magnificent salmon runs to a mere shadow of their former selves.

Mr. Speaker, the chairman of the subcommittee, the gentleman from Louisiana (Mr. BREAUX) has very well outlined the provisions of this legislation and made the very important point that so far as the bill that was dealt with in the Subcommittee on Fisheries and Wildlife of the Committee on Merchant Marine and Fisheries, the bill now before us made the key decision that we would not fund enhancement or the buy-back program without having a management scheme as an integral part of this legislation. Unless we have some way of determining how the fish are going to be managed, it seems obvious that to pour more money into enhancement to create more fish will not solve the problems. We will still have all the conflicts that now exist between the various fishing interests in all three of the States that are involved in this legislation, Washington, Oregon, and California. Integrated management was a bottom floor.

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I am very happy that the management provision of this legislation are intact. To me this is the most important feature of the bill.

We know that there are difficult times ahead in terms of final implementation of the restoration of this fishery, but this is an important and significant step that hopefully will work to satisfy the needs of those various fishing interests involved, but also primarily to really bring this fishery back to the status that it was once in so that the resources available will be available to all who are interested in the salmon fishery, whether it be sportsmen, the Klamath River, whether it be Indians in any of the three States involved, whether it be offshore trawlers, all of these have very vital interests involved in this legislation.

I encourage the Members of the House to support this bill.

Mr. Speaker, I yield 6 minutes to the gentleman from California (Mr. McCLOSKEY).

Mr. McCLOSKEY. Mr. Speaker, I have grave doubts about this bill because, in my judgment, we are not solving a problem which has arisen not just on the west coast in those States to which this bill is addressed but across this Nation, the question of treaty fishing rights, Indian rights on reservations, and States rights with respect to who governs anadromous fisheries from gravel to gravel as the States would like.

I appreciate the efforts, Mr. Speaker, of the chairman of the subcommittee, the gentleman from Louisiana (Mr. BREAUX) to resolve these issues. I think the best thing about the bill is that it creates the possibility at least that various Indian tribes and State governments, who have hitherto been unable to agree one with the other, may find at least a forum within which to seek agreement and to spend the sum of nearly $100 million, which we are offering over the next 10 years, to enhance fisheries if the various parties can agree.

But I would like to direct one question to the distinguished chairman, if I may, the gentleman from Louisiana (Mr. BREAUX). The question is this: If we enact this bill today, do we have a commitment from the Committee on Interior and Insular Affairs that next year they will hold joint committee hearings with the Fish and Wildlife Subcommittee to attempt to address nationally this question of fishing rights and Indians' rights versus States rights in anadromous fisheries?

Mr. BREAUX. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I am glad to yield to the gentleman.

Mr. BREAUX. Obviously I cannot speak for the Committee on Interior and Insular Affairs. The gentleman well knows that this committee has shown our interests in trying to address the problem in proper perspective by attempting to have field hearings in northern California on the Klamath River. I think we have tried to exhibit a genuine interest and desire to help solve this very complicated national problem which has developed as a result of Indian fishing treaties the United States has entered into.

I would be more than happy to say that yes, we will again in the next Congress move toward looking into a way of trying to resolve this to everyone's satisfaction. I realy cannot speak for the Committee on Interior and Insular Affairs, but I would think they would certainly share that expression.

Mr. McCLOSKEY. I thank the gentleman. I want to commend him for holding the hearings that he has on this problem. But as we reach the end of this Congress we find that the Committee on Interior and Insular Affairs, with their jurisdiction over Indians, has come into the picture and in some respects this bill represents a compromise to get past the Committee on Interior and Insular Affairs.

I see the gentleman from California (Mr. CLAUSEN) is on the floor. I wonder if the gentleman might respond to this question about hearings next year jointly by the two committees to address directly the question of States rights and Indian rights, reservation rights with respect to fishing.

Mr. CLAUSEN. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from California.

Mr. CLAUSEN. Mr. Speaker, I thoroughly concur with the request of the gentleman. To the extent that I can influence that request and the direction the committee would take, I will certainly move in that direction.

Mr. McCLOSKEY. The gentleman has discussed this matter with the chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona (Mr. UDALL) and has the chairman agreed to proceeding next year?

Mr. CLAUSEN. The Committee on Interior and Insular Affairs, is now in the process of meeting. Therefore the gen-

tleman from Arizona (Mr. UDALL) could not be on the floor of the House. But I am convinced that we can have that commitment from the chairman because this is one of the most important matters that will come before the committee this next year.

I commend the gentleman for bringing this up. We have to address this in a positive way and I will do everything I can to see that it is brought about.

Mr. McCLOSKEY. With that response, certainly much of my reservation is cured because the State of California has given its qualified approval to this bill. Their only reservation and the only concern of the State has been that by addressing the California problem this year we would never address it again in the near future. I know the gentleman from Louisiana (Mr. BREAUX) has tried to address it this year, but we have been frustrated by the inability of the two committees to get together.

That cures most of my reservation, though I might say, Mr. Speaker, that the idea of giving $37 million to Senator MAGNUSON's State at this time in history, with the President in Takoma today to announce this great gratuity from the Federal Government gives me some partisan concern as a Republican that we are acquiescing in a great benefit in the heat of an election campaign. But that is another matter.

Mr. BREAUX. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I would say to the gentleman from California that as he well knows, at this stage of the legislative process, every bill represents a compromise on both sides, whether it is this bill or the next bill or the rest of the bills we will consider in the next 2 weeks.

But I also say that never have I seen in my relatively short time here a group such as the members of the Northwest delegation work together on trying to resolve the problems that this legislation tries to address. It is very rare when one can get so many Members from various congressional districts to try and approach a problem that is as complex as this with the unanimity and the desire to reach an accommodation that we have seen exhibited by the members of the Northwest congressional delegation, from both the State of Washington as well as the State of Oregon, whether they be Republican or Democrat, knowing this is a problem that very few people win friends with, but trying to resolve something in the spirit of compromise to achieve a proper solution.

Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. BONKER).

Mr. BONKER. Mr. Speaker, I would like to take this opportunity to commend the gentleman from Louisiana (Mr. BREAUX), chairman of the Subcommittee on Fish and Wildlife, for a truly commendable job on the whole area of fishery resources. He has become one of the most knowledgeable persons in the Congress on the subject and is backed with a skilled staff to deal with these issues. For the inordinate amount of time he has given to our particular problems in the Northwest, I think I can speak on behalf of the entire delegation of our sincere appreciation for his work, for his staff commitment to helping us resolve the many conflicts that exist with the fishery resources.

I would also like to commend the gentleman from California (Mr. McCLOSKEY) and the gentleman from Michigan (Mr. DINGELL), both of whom have problems relating to fishing rights and Indian treaties in their respective areas. At some point this House will have to come up with a comprehensive legislative remedy to deal with many of these outstanding problems, but for their interests and support of this legislation we are deeply grateful. We are mutually committed to helping with their unique problems in the future.

Mr. Speaker, the bill before us represents the culmination of 5 years of working with the various segments of the fishing industry, the State Department of Fisheries in both Oregon and Washington, and the Indian tribes to come together in what has become a very serious problem as it affects the salmon resource in the Northwest. Through the patience, hard work and commitment of many interests, we have finally come to the Congress, and through a series of hearings and markup sessions, we now have before us legislation that represents a true compromise and, hopefully, an acceptable solution to our fishery resource problem.

Basically the legislation, as it has already been outlined by the chairman of the committee and ranking member, the gentleman from New Jersey (Mr. FORSYTHE), is legislation which essentially will enhance that resource and recognize the true value of salmon, not only to the Northwest but as an important commodity nationwide.

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Hopefully, the amount that is allowed in this bill will match efforts that are being made at the State level. The bill also contains a $14 million investment in steelhead enhancement. We attempted on the committee to accept an amendment that was offered by myself and the gentleman from Oregon (Mr. AUCOIN), the gentleman from Washington (Mr. PRITCHARD), and others on the committee to provide for decommercialization of the steelhead resource, recognizing that it is a sports fishery.

But we failed in that effort, so we feel that the $14 million that is included in this bill will help preserve the steelhead resource as well.

Once again, I want to commend the chairman and the ranking minority member for their support in this legislation.

Mr. Speaker, the salmon and steelhead enhancement bill before us today, H.R. 6959, represents the culmination of years of effort to develop a legislative solution to problems experienced in Washington State since the Federal Government undertook to meet its treaty obligations to its Native Americans nearly 7 years ago.

In the intervening years the entire fishing industry, a major segment of the State's economy, and the salmon and steelhead resources have suffered severe dislocation. The existence of the people in the fishing community has been threatened in the process.

The bill is, admittedly, of regional scope. It addresses only those unique problems associated with the Pacific Northwest and its Indians. While several areas of the Nation have similar concerns, none is exactly parallel to those that we direct our attention to with this legislation. And certainly none has been developed over such a long period of time after such extensive examination.

H.R. 6959 is a modest proposal. The Presidential task force that investigated the situation expended nearly 2 years of effort and recommended $220 million be spent by the Federal Government in Washington State. This bill, by comparison, would authorize the expenditure of $130 million over a 10-year period in both Washington and Oregon.

A part of the reason for the difference in funding levels is the spending that the State has undertaken in the intervening years while the legislation was being developed. Because of that effort, some aspects of the recommended response are now unnecessary.

But the provisions that remain in the bill are those that are of absolute importance if the fishing industry is to continue to contribute to the strong economy of the region, if the magnificent runs of salmon and steelhead are to be rebuilt, and if the people involved in the fishing community are to survive.

It is perhaps difficult for those in this Chamber who do not come from the Pacific Northwest to understand the substantial impact that has been felt by the people in the region. While the need to establish increased numbers of fish to sustain existing runs has been partially addressed through new State funding and a shifting of priorities, the people have suffered the cumulative effects of a declining resource, a reallocation of the available fish, a crisis in confidence in the lending institutions, and a nagging doubt about whether any future existed for the fishing community.

This legislation hold promise of restoring their faith and the faith of the thousands of citizens in the region who are somehow involved with the fishing community. It assures that the Nation will continue to meet its treaty obligations to its Native Americans. And, it recognizes a national need for protecting and enhancing fish resources that, absent the Federal funding in this measure, could well be lost forever.

Mr. FORSYTHE. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. PRITCHARD).

Mr. PRITCHARD. Mr. Speaker, this controversy over salmon and the court decisions concerning the Indian and non-Indian fishing has had our State and the entire coast in a turmoil. This has been not only detrimental to the fishermen but it has been very detrimental to the salmon stock, we have an obligation to make sure that future generations will have this fish stock and the opportunity as either sportsmen or commercial fisheries. So I want to thank the chairman, the gentleman from Louisiana (Mr. BREAUX) and the ranking minority member from New Jersey (Mr. FORSYTHE). I want to thank the gentleman from California (Mr. McCLOSKEY), for his cooperation. I want to thank the gentleman from California (Mr. CLAUSEN), who has a very difficult problem, and I want to pledge to him now that as members of the Northwest delegation we will be helpful and we will be supportive in his efforts to work out those difficulties that they have dealing with Indian fishing problems down in the Klamath River.

Mr. Speaker, I rise in support of H.R. 6959, the Salmon and Steelhead Resource Enhancement Act.

In 1974, a Federal district court judge, Judge George H. Boldt, ruled that several 1850's treaties with tribes in the Pacific Northwest gave the tribes the opportunity to harvest 50 percent of the harvestable salmon and steelhead resources in the case area. A similar decision in the Columbia River case area also quantified the extent of the fishing rights as 50 percent for the Columbia River tribes.

This was the first time in extensive Indian fishing rights litigation that a court decision precisely quantified the extent of the fishing rights. Subsequent to the Federal court decision in 1974, a similar case was denied certiorari before the U.S. Supreme Court in 1976. In 1978, a Presidential task force composed of the Secretaries of Commerce, Interior, and Justice issued its recommendation for a settlement plan which is quite similar to this legislation. In 1979, the U.S. Supreme Court finally heard a similar case arising from United States against Washington, and, in fact, affirmed the lower court's decision.

There has been a gradual progression toward reaching the kinds of compromises necessary to fashion the kind of legislation we have before us today. And, as many Members who have Indian fishing rights controversies in their areas know, these disputes are not easy to resolve, and, in fact, in the early stages, it is difficult to achieve any consensus at all. In the case of the Northwest, I feel that we have finally achieved sufficient consensus among all parties involved in order to move ahead with legislation at this time.

H.R. 6959 is based primarily on a two-pronged approach. First, it would establish an enhancement program involving the State of California, the Columbia River drainage basin, and the western Washington case area. The total enhancement program is authorized at a level of $99 million over a period of 10 years, and is required to be matched on a 50-50 basis by the States. Second, the legislation establishes a responsible buyback program, which would aid in reducing the total potential fishing effort in the salmon fishery. Due to the basic problem of too many fishermen chasing too few fish, it is essential in order for the fishery to function on a sound biological and economic basis, to begin to reduce the total level of fishing effort in the salmon fishery. Many economists have supported this approach in the Pacific salmon fishery for some period of time and this legislation would begin to implement such a policy in a gradual and responsible manner.

Finally, the legislation establishes a framework within which all of the affected parties, including the State management agencies, the tribal fisheries commissions, and the Pacific Fishery Management Council, can get together to work out acceptable areawide enhancement and management plans. As a result of these plans, there will be insured predictability within the fishery, better enforcement and compliance with regulations will result, and the salmon and steelhead resource will be guaranteed a sufficient level of protection.

Mr. Speaker, this is important legislation not only to the Northwest, but to the Nation. We should be able to assure future generations that they will be able to experience the benefits of salmon and steelhead fisheries resources. We should be able to assure future generations that we acted responsibly now in order to protect this unique and historic fishery.

Mr. Speaker, this legislation would go a long way toward providing this critical protection. I strongly support the passage of this legislation.

Mr. BREAUX. I yield 2 minutes to the gentleman from Oregon (Mr. AUCOIN).

Mr. WEAVER. Mr. Speaker, will the gentleman yield?

Mr. BREAUX. I will be pleased to yield to the gentleman from Oregon.

Mr. WEAVER. I thank the gentleman for yielding. I want to commend and congratulate my colleague, the gentleman from Oregon, on his fine and hard work on this bill and associated myself with his efforts.

Mr. AUCOIN. I appreciate the gentleman's remarks.

I rise, Mr. Speaker, in strong support of the legislation before us. I want to join with my colleagues from the Northwest in complimenting the chairman of this subcommittee, the gentleman from Louisiana (Mr. BREAUX) and the ranking minority member, the gentleman from New Jersey (Mr. FORSYTHE) for their leadership and perseverance, not to mention the patience they have exhibited in working with the members of the Northwest delegation and interested parties from within the region in developing and perfecting this vital legislation.

The management of salmon and steelhead is the most serious fisheries problem in the Pacific Northwest today. I submit that it is probably the most serious fisheries management problem in the Nation. But it is not just a geographical problem, nor is it just an economic problem. It is a very deeply divisive social issue. The problem has been brought on by Federal treaties and Federal court decisions. Because of that it has become a national problem.

Salmon and steelhead fisheries are characterized in the Pacific Northwest by declining runs. In 1972 the upriver adult return of spring chinook salmon on the Columbia was 279,400; by 1979 it had plummeted to 51,400. In 1969 the summer chinook run was 120,000; in 1979, it was 34,200. These fisheries are also characterized by too many fishermen, by conflicts among different user groups, by destruction of fisheries habitat, by court rulings on Indian fishing rights, and by ever-increasing regulation.

A big part of the solution to all of these problems is the legislation pending before us. This bill is based on a very positive principle: That the way out of these dilemmas is to produce more fish for all user groups, to return our salmon and steelhead stocks to their historic levels, and to stop the war between the factions that is so deeply dividing our region.

The program this bill establishes is moderate in cost, authorizing the expenditure of $136.5 million in Federal funds over 10 years. The resultant effort will be a partnership among all parties, with costs shared between the Federal Government and the States.

Quite properly H.R. 6959 is primarily an enhancement bill, providing both for restoration of natural runs as well as for expanded hatchery operations. And the bill specifically addresses the steelhead situation by providing $14 million earmarked for steelhead enhancement.

I am particularly pleased that the bill's coverage was expanded at my urging to include the critical Columbia River drainage basin. The original bill as introduced last fall dealt only with Puget Sound and the Washington coast, that is, the region known as the Judge Boldt case area. From our first hearings I pointed out that the problems and challenges on the Columbia River are the same as those in Puget Sound, and that the essence of the court decisions and their impacts are the same. Judge Belloni's decision in Oregon merely affirms the application of Judge Boldt's decision to the Columbia River. To deny the Columbia those funds would have been to deny justice to Oregon, a State with problems just as acute as Washington's.

H.R. 6959 provides a Federal response to a Federal problem, establishing a responsible and effective program. It is a good and needed bill, one that will rebuild our precious salmon and steelhead stocks.

I wholeheartedly urge my colleagues' support of the measure.

Mr. FORSYTHE. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, I rise in support of H.R. 6959, as reported by the Interior and Insular Affairs Committee, and to associate myself with the remarks of the distinguished chairman and ranking member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment (Mr. BREAUX and Mr. FORSYTHE).

We have, through intensive negotiations over the past weeks developed what we believe is a well-balanced, workable bill. As reported by the Interior Committee, the bill is substantially unchanged from the bill reported by the Subcommittee on Fisheries and Wildlife Conservation and the Environment with the addition of the Joint Klamath River Fisheries Conservation Committee.

The overall purpose of the bill is to provide for the conservation and enhancement of the salmon and steelhead

resources of Washington State, the Columbia River in Oregon and the Klamath River basin in California, and to provide assistance in the form of grants to Indians and non-Indians in their joint efforts to help protect and restore the fishery resources of these particular areas.

The bill provides for the establishment of five-, three-, and nine-member committees in the three regions, respectively, which are to prepare management and enhancement plans. Once approved by all members of the committees, the enhancement plans are submitted to the Secretary of Commerce who is given 120 days to review the plan. If he has objections, his decision must be for very specific reasons as spelled out in Section 102 of the bill. If the Secretary does not act to disapprove the plan, it is deemed to be approved and the Secretary is then authorized to make enhancement funds available to the management parties.

As discussed in detail in the Merchant Marine Committee report, the anadromous fish runs of the Pacific Northwest and northern California are valuable, renewable resources. Commercial, recreational, and Indian and non-Indian fishermen rely upon this resource for their livelihoods.

The fishery resources have been reduced over the past century as a result of a number of factors. Improved management and enhancement planning and coordination among the different groups can help prevent further declines in salmon and steelhead and begin to increase their numbers. The bill before us provides the mechanism for accomplishing these goals.

Each area has had its own particular problems as well as legal history. The bill recognizes these differences by providing for separate committees in each area. The Klamath River has been the site of a lengthy controversy involving Indian fishing rights and commercial and sports fishing interests; and the scene of dangerous confrontations between Indians and non-Indians on the river.

The membership, function, purpose, and powers of the Klamath River Committee, as established in the Interior Committee substitute, have been carefully crafted in response to this situation.

The parties involved all recognize that it is in their interests to establish a conservation, management, enhancement, and enforcement plan that will maximize and sustain the fishery resource yield potential of the Klamath River. The establishment of the Klamath River Committee will afford an opportunity to accomplish this objective once an acceptable management plan is negotiated and agreed to by all the parties involved. They can then avail themselves of the fishery enhancement funds authorized in the bill.

The Klamath River fishery has been the subject of a lengthy field hearing held in Eureka, Calif., by the Merchant Marine Committee on May 26, 1979. At that hearing, chaired by the gentleman from Louisiana (Mr. BREAUX), we heard from several dozen witnesses and received written testimony from many others. This comprehensive record has been followed up by more than a year of continued research into the problems in the area as well as an additional oversight hearing on July 2, 1980 on the salmon plan of the Pacific Fishery Management Council during which the Klamath River fishery was further examined.

The manner in which the Klamath River Committee has been formulated and will operate will maximize local control while fully protecting the rights of the parties involved. To be more specific the amendment, which I offered in the Interior Committee will:

First. Establish a nine-member Klamath River Fishery Conservation Committee composed of representatives from each of the four counties affected: Humboldt, Siskiyou, Del Norte and Trinity—who will speak strongly for commercial and sports fishermen; representatives from each of the three Indian tribes along the Klamath: The Hoopas, Yuroks, and Karoks; a representative of the State of California, and a representative from the Pacific Fisheries Management Council.

Second. Empower this committee to develop a salmon and steelhead enhancement and management plan for the river.

Third. Provide that the plan must be approved unanimously by the committee, thus giving each committee member a veto on the plan.

Fourth. Provide for automatic approval of the plan unless disapproved by the Secretary of Commerce within 120 days.

Fifth. Require the Pacific Fisheries Management Council to amend its current salmon management plan to be consistent with the plan developed by the Klamath Committee, and

Sixth. Authorize $15 million in Federal funds to carry out the plan after it has been approved.

We have provided a mechanism which, once enacted, will encourage those whose interests are vitally affected to sit down together and work out a program that is acceptable to all and then have that program carried out.

The success of the program depends on the sincere desire of all concerned to work out an acceptable solution. It is going to take a lot of give and take by each group, but that is what is required to resolve an issue of this complexity.

Mr. Speaker, I would like to take the remainder of my time to solicit from the chairman and the ranking member, as well as the members from the State of Oregon and the State of Washington, a commitment on their part that they will work with us on the Committee on Interior and Insular Affairs as well as the Committee on Merchant Marine and Fisheries next year to address the concerns that have been expressed by the State of California and the Pacific Coast Federation of Fishermen's Associations. I have received several letters and telegrams from them asking that we express our willingness to look into and address the California situation again next year, if necessary.

It is essential that we go back to the State of California and our concerned fishermen's organizations with assurances that the Merchant Marine and Fisheries Committee and the Interior and Insular Affairs Committee will jointly address their concerns as they relate to the Klamath River provisions which we have incorporated in the bill. Can I have that assurance from the gentleman from Louisiana (Mr. BREAUX), and the gentleman from New Jersey (Mr. FORSYTHE), and a similar strong commitment from the Oregon-Washington delegation.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. FORSYTHE. I yield 1 additional minutes to the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. I yield to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. I would only respond to the gentleman from California by giving him the strongest assurances that we can that this committee is very intent on doing everything we can to help solve the problem in California, particularly in the northern part of that State. Whether it requires additional committee hearings or whether it requires additional drafting sessions, the gentleman has our commitment that we will do everything we can to address that problem.

Mr. CLAUSEN. I yield to the gentleman from New Jersey (Mr. FORSYTHE).

Mr. FORSYTHE. I also fully support the statements made by the gentleman from Louisiana (Mr. BREAUX) that we will be more than anxious to try and cooperate not only to handle this problem but, as the gentleman knows, there are some other problems nationwide that I think the committee will have to get into.

Mr. CLAUSEN. I yield to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. I thank the gentleman for yielding. I will say to my good friend who has been so constructive in this particular effort, on behalf of myself and the Washington delegation, we will certinly do everything we can to cooperate with the gentleman's efforts next year.

Mr. CLAUSEN. I thank the gentleman and urge my colleagues to pass the bill, H.R. 6959, expeditiously so that we can begin to work with the other body in reconciling the differences between our respective bills and hopefully send a final version to the President for signature in the very near future.

I have received personal assurances from the leadership of our two committees that they will work in a cooperative fashion with the other body.

Our efforts will be directed at enacting legislation this year and will in no way jeopardize passage of the provisions affecting Oregon and Washington.

Mr. BREAUX. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. LOWRY).

Mr. LOWRY. Mr. Speaker, this legislation is vital to the rebuilding of our vital salmon and steelhead resources. I rise in strong suoport. I also rise to join the rest of the Members of the Northwest delegation in commending the subcommittee chairman, the gentleman from Louisiana (Mr. BREAUX), and the ranking minority member, the gentleman from New Jersey (Mr. FORSYTHE), for a

truly outstanding job in bringing this bill to its present status. Both the majority and minority staff of the Fisheries Subcommittee performed yeomen service in the committees behalf. Also I want to thank the gentleman from California (Mr. CLAUSEN) for the work that was done in the Interior Committee. It was excellent, and it was a service to the gentleman's area as well as our area. I want to thank the gentleman from California (Mr. MCCLOSKEY) for his constructive position today. I look forward, as do the rest of the members of our delegation, to working on this problem in the State of California with the gentleman next year. I am sure we will be able to come up with some suitable answers.

It has been a great pleasure to work with the other members of the Washington, Oregon, and Alaskan delegation in behalf of this important legislation. I commend my colleagues on a job well done.

Congressman PRITCHARD and I share the honor of serving the King County area and Mr. PRITCHARD also serves as the ranking minority member of the Subcommittee on Oceanography. He and his strong staff support was of particular importance in shaping this act.

I consider the addition of the Columbia River System to the enhancement portion of this act to be very important to our entire west coast fishery. The gentleman from Oregon (Mr. AUCOIN) assumed the lead in committee for the authorization of $25 million for the Columbia River and I congratulate the gentleman on that leadership. Our colleague, Mr. BONKER's consistent work for enchancing and protecting our valued steelhead trout is primarily responsible for a $14 million authorization earmarked for steelhead. I commend him for his work for that authorization.

House passage today of H.R. 6959 will allow us to accomplish this year what so many have sought for so long. I urge immediate passage of this bill.

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Mr. BREAUX. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. SWIFT).

Mr. SWIFT. Mr. Speaker, today the House is considering legislation to deal with one of the most difficult problems facing my region.

In 1974, Federal Judge George Boldt ruled that American Indian tribes, who were signators to treaties signed in the last century, were entitled to the right to take 50 percent of the harvestable salmon and steelhead fish of the region. The treaties were made with the tribes by the U.S. Government. The suits were filed and plead on behalf of the tribes by the U.S. Government through the Interior and Justice Departments. And the U.S. Federal courts made the decision and sustained it on appeal all the way through the U.S. Supreme Court on two separate occasions.

My point is this: This is not a regional bill. It is a national bill made necessary by Federal treaty and subsequent actions of the Federal Government and Federal courts.

However, the great injustice that has been perpetrated here is that only a tiny segment of Americans have had to shoulder the total burden of this Federal action: The non-Indian (technically nontreaty) commercial fishermen of the Northwest. They are the ones who have suffered enormous economic deprivation because of the Boldt decision and subsequent Federal action.

Today, sadly, thousands of non-Indian commercial fishermen sit idlely on the docks of my district and the districts of many of my colleagues while Indian fishermen attempt to catch their half of the fish. Mind you—this means that about 10 percent of the commercial fishermen in the region are out to catch 50 percent of the fish. And while they work at that, the remaining 90 percent of the fishermen—the non-Indian fishermen—are prevented from fishing at all. They have been severely restricted as to the number of days a month they are legally permitted to fish—sometimes only 1 or 2 days a month.

Now, much has been made of the historical, cultural, and economic importance of this fishery to the native Americans of the Northwest. And it is clear the claims are true.

What is also true, but less recognized, is the similar relationship of most non-Indian commercial fishermen to this vocation. I have met many times with both groups. They are both proud, both tied to the fisheries resource by history and the bonds that are forged by long battles with the sea to make it give up some of its bounty.

The non-Indian fishermen may be the last of our Nation's pioneers—rugged individualists who brave the elements in pursuit of salmon. For most of them, too, fishing has been part of family tradition—a family vocation requiring skills that are passed on from generation to generation—often with boats and gear as well. These are the lone Americans who are asked to shoulder virtually the entire burden of enforcing these ancient treaties.

These treaties were negotiated on behalf of the entire Nation—on behalf of all Americans. If now we find living up to those treaties has a cost—all Americans should pay the cost, not pass it on carelessly to a small group that cannot sustain it.

This bill is not a perfect solution. One doubts such a thing exists after the convolutions of treaties, courts, and Federal policy are superimposed on the vagaries inherent in management of the resource. But it does seek to increase the total resource so the limited share for the non-Indian fishermen is greater in absolute numbers.

It will reduce the number of fishermen that are after the resource by opening a way out for those who wish to leave the vocation without being destroyed economically. And it will lead toward a management system that can improve the resource while hopefully eliminating some of the anomolies that now plague the industry.

A word should be inserted here about the steelhead problem. Long a sports fish that could not legally be harvested for commercial purposes, the Boldt decision made it a 50-50 commercial fish too. Most Indians, the sportsmen of the Northwest and the resource do not benefit from this arrangement and a better way must be found to deal with that problem too. I had hoped this bill would offer some help in this regard as well.

But the major point that must be made clear here today is that this bill is not a piece of special, regional legislation. It is a bill that helps address a great injustice created in the pursuit of a resolution to another injustice. The Federal Government and the courts have determined what the treaties mean. And there is a cost to implementing that judgment—a cost that ought be shared by all in whose name the treaties were signed. That means it is a national problem and this is a national bill to resolve it.

I urge my colleagues—who cannot possibly know the agony this situation has caused the Northwest and the fishermen who have worked our waters for generations—I urge my colleagues to support this bill.

Mr. BREAUX. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. Mr. Speaker, today, I join with my colleagues from the Pacific Northwest to urge support for the single most important piece of salmon and steelhead legislation in decades, H.R. 6959.

This bill has been carefully crafted during this Congress, and after much study, it proposes an effective solution to the long-standing, bitter controversy over Pacific coast salmon and steelhead resources.

These problems stem from a series of Federal court decisions interpreting several treaties between Indian tribes and the U.S. Government, and competiton for a finite resource by treaty and nontreaty fishermen.

These decisions reserved to the treaty tribes the right to an opportunity to harvest 50 percent of the salmon and steelhead passing through traditional tribal fishing grounds.

The Belloni decision in 1969, the Boldt decision in 1974, and last year's Supreme Court decision to affirm these lower court treaty interpretations have resulted in a storm of controversy in the Pacific Northwest.

These decisions and a shortage of fish have had an extremely detrimental economic affect on nontreaty fishermen, and have spawned numerous violations of fishing laws. As a result, violence and enforcement problems have plagued the region. These problems threaten a very valuable national resource—our salmon and steelhead.

H.R. 6959 goes a long way toward solving these problems.

H.R. 6959 will coordinate salmon and steelhead management in Washington, Oregon, and California, and will provide Federal assistance to those States for needed salmon enhancement programs for 10 years.

This legislation also establishes salmon

and steelhead management committees for the State of Washington, the Columbia River in the States of Washington and Oregon, and the Klamath River in California. These committees will include representatives from the State, Indian tribes and the Federal Pacific Fishery Management Council, and will prepare salmon management and enhancement plans for their respective areas. These plans must be approved by the Secretary of Commerce.

If the Secretary approves an enhancement plan for any area, the parties to the plan would be eligible to receive Federal Assistance for salmon and steelhead enhancement activities. However, continued assistance for the enhancement projects would be contingent on the parties preparing an approved salmon management plan for their respective area.

H.R. 6959 requires that any grants for enhancement projects be on a 50–50 matching basis, except for grants of 100 percent to Indian tribes. The State of Washington will be treated as having already expended $32 million on enhancement projects.

To encourage a reduction in fishing effort on this resource, the bill provides that Washington State could submit a commercial fishing vessel adjustment or "buy-back" program to the Secretary of Commerce for approval. If approved by the Secretary of Commerce, the State of Washington would be eligible to receive Federal matching assistance to fund the program.

Mr. Speaker, H.R. 6959 is a good bill based on numerous hearings, studies, and compromises by the members of the Washington, Oregon, and California delegations and two committees.

This bill is necessary and provides for fair, effective management and enhancement of the region's salmon and steelhead, while equitably reducing fishing effort on the resources.

Additionally, it also protects some of the last remaining natural runs of salmon in the world. Without the protections contained in this bill, these runs and many others will be lost forever.

We cannot allow this to happen or the opportunity to resolve this long-standing controversy to pass.

For these reasons, I urge my colleagues in this Chamber to support this bill.

Thank you.

Mr. BREAUX. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. ALBOSTA).

Mr. ALBOSTA. Mr. Speaker, today, the Congress is considering H.R. 6959, the Northwest Fisheries Enhancement Act.

On the one hand, I am glad to see the west coast making progress toward settling the fishing rights controversies in their part of the country. On the other hand, I am disappointed that the Merchant Marine Committee was not able to include some assistance for areas of the Great Lakes that have similar problems.

This summer, the Merchant Marine Committee was not able to include some assistance for areas of the Great Lakes that have similar problems.

This summer, the Merchant Marine Subcommittee on Fisheries, Wildlife Conservation, and the Environment, came to Traverse City, Mich., in my district. There they heard testimony on two bills introduced by Congressman DINGELL and myself. These bills, taken together, contain elements that could solve the problems that we have in the Great Lakes.

I had hoped that an amendment to H.R. 6959 could have been offered in committee to provide aid for the Great Lakes. That amendment would have taken key elements of our bills to provide an answer for the problem we face in Michigan. I do not know whether the Great Lake fisheries, particularly Lake Michigan, can stand another season of heavy fishing like they have had in the past 2 years. The Grand Traverse Bay in my district is already cleaned out of lake trout, now.

Recently, however, Members from the Northwest have assured my Michigan colleague, JOHN DINGELL, that they will work closely with him in the Merchant Marine Committee next year to provide a solution for the similar problems facing Michigan. I also understand the distinguished chairman of the subcommittee will be able to assist us in developing legislation to resolve the situation in the Great Lakes. Therefore, we should not deprive the west coast of the bill that they need; but I will call on the Members of Congress who have supported this bill to lend a hand to Michigan next year.

I believe we will have a bill that will have the support of a majority of those interested in the preservation of the Great Lakes fisheries. I look forward to working with these Members, and I know that with this commitment we can finally solve this problem. I am also sure that the gentleman from Arizona, the distinguished chairman of the Interior Committee, will also work with us to solve this problem and preserve the fishing resources for the benefit of everyone involved.

Mr. BREAUX. Will the gentleman yield?

Mr. ALBOSTA. I do yield to the gentleman from Louisiana.

Mr. BREAUX. The gentleman has that assurance from the chairman of the subcommittee.

Mr. FORSYTHE. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I would like to close this debate with assurances to our colleague from Michigan, that as with the case of the people in the Northwest we are concerned with their problems the experience we gain with the legislation before us will enable us to move further.

Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Mr. BREAUX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would urge the Members to vote favorably on this legislation. It may not be everything everyone would ultimately desire. It is a step, however, in the right direction. I think it is one of which we can all be proud, at least of the work we have done up to this point, with a commitment to look very carefully at these problems of Indian fishing rights as well as the resource that is dwindling as a result of many of our previous decisions.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

● Mr. MURPHY of New York. Mr. Speaker, the purpose of H.R. 6959 is to provide for the enhancement and conservation of the salmon and steelhead resources of the Pacific Northwest.

The bill is in response to the consequences of a number of Federal court decisions interpreting treaties entered into in the 1850's between the United States and Indian tribes of the Washington territory. In 1974, Judge Boldt issued his famous decision interpreting the treaties as giving the Indian tribes of those areas a right to an opportunity to harvest 50 percent of the salmon and steelhead runs passing through their traditional fishing grounds.

These court decisions have resulted in considerable economic dislocations for non-Indian commercial and recreational fishermen, emotional resistance to the decisions' implementation, and difficulty in securing proper management of the salmon and steelhead resources.

With a view toward addressing the consequences of these decisions, in December 1979, the Administration sent to the Congress an executive communication which called for an expenditure of $90 million of Federal funds over the next 10-year period. Of this amount, $50 million would be used for salmon and steelhead enhancement in the State of Washington, $25 million for a buy-back program to reduce the size of the nontreaty fleet, and $15 million for loans to treaty tribes for upgrading their vessels and gear.

On August 21, 1980, the Committee on Merchant Marine and Fisheries reported H.R. 6959, which represents its response to the problems created by the court decisions. H.R. 6959, was sequentially referred to the Committee on Interior and Insular Affairs and that committee recently reported H.R. 6959, with amendments, reflecting its way of addressing these problems.

The Interior and Insular Affairs Committee version of the bill, which is before the House today in the nature of a substitute amendment, incorporates most of the bill as reported by the Committee on Merchant Marine and Fisheries.

The major provisions of H.R. 6959, as reported by the Interior and Insular Affairs Committee, are as follows:

First. Salmon and steelhead management committees would be authorized to be established for the State of Washington, the Columbia River in the State of Washington and Oregon, and the Klamath River in the State of California. The makeup of the committees would include representatives from the State, Indian tribes, and the Pacific Fishery Management Council. The committees would be authorized to prepare enhancement and management plans for their respective areas but such plans could not be implemented without the prior approval of the Secretary of Commerce.

Second. Parties to an approved enhancement plan would be entitled to receive Federal financial assistance on a 50–50 matching fund basis for salmon and steelhead activities except that financial assistance to Indian tribes could be up to 100 percent of the cost of carrying out any such activity.

Third. There would be authorized $99 million over a 10-year period for salmon and steelhead enhancement, of which $52 million would be available for the Washington conservation area, $32 million for the Columbia River area, and $15 million for the Klamath River area.

Fourth. The State of Washington would be authorized to submit a commercial fishing vessel buy-back program to the Secretary of Commerce for approval and, if approved, the State would be eligible to receive $3..5 million over a 5-year period to carry out the buy-back program on a 75-Federal, 25-State matching fund basis.

Mr Speaker, I strongly support H.R. 6959, as amended by the Interior and Insular Affairs Committee, and urge its prompt passage.●

● Mr. ASHLEY. Mr. Speaker, H.R. 6959 is legislation that is designed to resolve the longstanding controversy over the salmon and steelhead resources of the Pacific Northwest.

Many of the problems associated with these resources are the direct result of two Federal court decisions interpreting several treaties between Indian tribes and the U.S. Government, the Belloni decision in 1969 and the Boldt decision in 1974. These decisions mandated that treaty tribes have the right to an opportunity to harvest 50 percent of the salmon and steelhead runs passing through their traditional tribal fishing grounds.

Subsequent to the 1979 Supreme Court decision affirming the lower court's 1974 decision, the administration proposed legislation which sought to lessen the impact of the decision without altering any treaty Indian fishing rights. This proposal called for $90 million of Federal funding to the State of Washington on a 50–50 matching fund basis. These funds would be used to enhance the salmon and steelhead resources and reduce the fishing capacity of the non-Indian fishing fleet. The Senate reported legislation, S. 2163, similar to the administration proposal but increased its funding level to $162 million and broadened the program to cover the State of Oregon.

At the committee hearings on the legislation, it was brought out that the administration proposal as well as the Senate-passed bill did not address a critical element of the salmon and steelhead issue—resource management. The proponents for resource management argued that the existing management system is deficient in that it would not insure that the enhancement funds would be well spent and lead to the long-term conservation and restoration of these resources.

In response to this concern, our Subcommittee on Fisheries and Wildlife Conservation and the Environment, ordered H.R. 6959 reported, with amendments, which included resource management in its coverage. In fact, the various salmon management entities would be required to agree on a management plan in order to continue receiving Federal enhancement assistance. If they did not agree on such a plan on a voluntary basis, after 18 months the enhancement funds would be terminated.

Briefly explained, the subcommittee-reported bill would authorize the establishment of salmon and steelhead management committees for the States of Washington and Oregon. These committees would include representatives from the State, Indian tribes, and the Pacific Fishery Management Council. These committees would be authorized to prepare salmon and steelhead enhancement and management plans for their respective areas but before being put into effect the plans would have to be unanimously agreed to by the appropriate committee and subsequently approved by the Secretary.

Federal financial assistance would be provided to implement an approved enhancement plan but continued funding for enhancement projects would be contingent upon an approved management plan by the Secretary. There would be authorized $84 million over a 10-year period for enhancement projects, of which $52 million would be earmarked for Washington and $32 million for Oregon. Grants would be on a 50–50 matching fund basis except grants for Indian tribes' projects could be up to 100 percent. There would be authorized $37.5 million over a 5-year period to carry out a vessel buy-back program in Washington on a 75-Federal, 25-State matching fund basis.

The full committee, in its consideration of the bill, adopted the subcommittee's version of the bill and a number of amendments offered by Mr. MCCLOSKEY, which expanded the coverage of the bill to include the State of California and any other State where Indians have recognized rights to the State's anadromous fish. However, enhancement and management plans for California and other States would need to receive only a majority vote of its committee before such plans could go into effect.

On August 21, 1980, H.R. 6959 was sequentially referred to the Interior and Insular Affairs Committee. That committee recently reported H.R. 6959, with amendments, which incorporates most of the bill reported by the Committee on Merchant Marine and Fisheries. In fact, it is in essence the subcommittee-reported version of the bill with a rewrite of the McCloskey amendments. As reported by the Interior and Insular Affairs Committee, only the States of Washington, Oregon, and California would be covered by the legislation and California's coverage would be limited to the Klamath River. There would be authorized $15 million to carry out the California program.

Mr. Speaker, the version of the bill before the House for consideration today is the version reported by the Interior and Insular Affairs Committee and I urge the adoption of H.R. 6959, as amended by that committee.●

● Mr. UDALL. Mr. Speaker, I rise in support of the bill H.R. 6959, as reported by the Committee on Interior and Insular Affairs.

Before commenting on the bill, I would like to thank the leadership of the Merchant Marine Committee for their understanding and cooperation on this legislation and to particularly commend Congressman LOWRY for his assistance.

Mr. Speaker, my committee requested a sequential referral of this legislation solely because of its impact on Indian fishing rights as it was reported from the Merchant Marine Committee. The Interior Committee monitored the progress of the bill in the Merchant Marine Committee and we were well satisfied with the treatment of Indian fishing rights in the bill as amended by the Merchant Marine Subcommittee on Fisheries.

However, the further amendments adopted in the full Merchant Marine Committee greatly alarmed my committee. Those amendments would have abrogated or impaired valid Indian fishing rights and, perhaps, exposed the United States to a monetary liability.

Mr. Speaker, the Interior Committee bill is based upon the bill which came out of the Merchant Marine Subcommittee on Fisheries. We further modified that version of the bill to provide for a management and enhancement program for the Klamath River Basin in California. This fisheries system has many of the same pressures, including Indian fishing rights, as is present in the Washington and Oregon situations.

Mr. Speaker, I think it is obvious that the two committees are in accord on this legislation and that this bill has the general support of most of the concerned parties.

I urge approval of the bill.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. BREAUX) that the House suspend the rules and pass the bill, H.R. 6959, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes."

A motion to reconsider was laid on the table.

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that the Committee on Merchant Marine and Fisheries be discharged from the further consideration of the Senate bill (S. 2163) to provide for the conservation and enhancement of the salmon and steelhead resources of Washington State, assistance to the treaty and nontreaty harvesters of those resources, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2163

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PURPOSES

SECTION 1. (a) In order to assist commercial and recreational harvesters of the salmon and steelhead resources within the conservation area established by this Act in the State of Washington to overcome temporary economic dislocations arising from the decisions in the case of United States v. Washington, this Act authorizes the establishment of a cooperative program involving the United States, the State of Washington, the Treaty Tribes acting through the Northwest Indian Fisheries Commission, and other appropriate parties, to—

(1) encourage stability in and promote the economic well being of the commercial fishing and charter fishing industries and improve the distribution of fishing power between treaty and nontreaty fisheries through (A) the purchase of commercial and charter fishing vessels, gear and licenses; and (B) coordinated research, enforcement, enhancement and management of salmon and steelhead resources and habitat; and

(2) improve the quality of, and maintain the opportunities for, salmon and steelhead recreational fishing.

(b) The benefits of steelhead enhancement undertaken pursuant to this Act should accrue to the recreational fishery.

DEFINITIONS

SEC. 2. As used in this Act, unless the context otherwise requires:

(1) The term "charter vessels" means any vessels licensed by the State of Washington to carry passengers for hire for the purpose of recreational salmon fishing.

(2) The term "charter fishing" means fishing undertaken aboard charter vessels.

(3) The term "Columbia River Treaty Tribe" means the Confederated Tribes and Bands of the Yakima Indian Nation of Washington, the Confederated Tribes of the Warm Springs Indian Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation of Oregon, and the Nez Perce Tribe of Idaho, and any other treaty tribe whose fishing rights in the Columbia River drainage basin under a treaty have been recognized by a Federal Court.

(4) The term "Columbia River Inter-Tribal Fish Commission" means the organization established by the Columbia River Treaty Tribes to assist and coordinate tribal fisheries research, enhancement, and management within the Columbia River drainage basin.

(5) The term "commercial fishing" means fishing for the purpose of sale or barter.

(6) The term "commercial fishing vessel" or "fishing vessel" means any vessel, boat, ship, or other craft which is licensed for, and used for, equipped to be used for, or of a type which is normally used for, commercial salmon fishing.

(7) The term "conservation area" means all salmon and steelhead habitat within the State of Washington except for the Columbia River drainage basin and in the fishery conservation zone adjacent to the State which is subject to the jurisdiction of the United States.

(8) The term "enhancement" means projects undertaken to increase the production of naturally spawning or artificially propagated stocks of salmon or steelhead, or to protect, conserve, or improve the habitat of such stocks.

(9) The term "habitat" means those portions of the land or water, including the constituents elements thereof, (A) which salmon or steelhead occupy at any time during their life cycle, or (B) which affect the salmon or steelhead resources.

(10) The term "Northwest Indian Fisheries Commission" means the organization established by the Treaty Tribes to assist and coordinate tribal fisheries research, enhancement, and management within the conservation area.

(11) The term "recreational fishing" means fishing for personal use and enjoyment using conventional angling gear, and not for sale or barter.

(12) The term "salmon" means any anadromous species of the family Salmonidae and Genus Oncorhynchus, commonly known as Pacific salmon, including:

Chinook (king) salmon—Oncorhynchus tshawytscha;

Coho (silver) salmon—Oncorhynchus kisutch;

Pink (humpback) salmon—Oncorhynchus gorbuscha;

Chum (dog) salmon—Oncorhynchus keta; and

Sockeye (red) salmon—Oncorhynchus nerka.

(13) The term "salmon or steelhead resource" means any stock of salmon or steelhead.

(14) The term "Secretary" means the Secretary of Commerce.

(15) The term "State" means the State of Washington.

(16) The term "steelhead" means the anadromous rainbow trout species Salmo gairdneri, commonly known as steelhead.

(17) The term "stock" means a species, subspecies, race, geographical grouping, run, or other category of salmon or steelhead.

(18) The term "treaty" means any treaty between the United States and any Treaty Tribe or Columbia River Treaty Tribe that relates to the reserved right of such tribe to harvest salmon and steelhead within the conservation area or the Columbia River drainage basin.

(19) The term "Treaty Tribe" means any Indian tribe recognized by the United States Government, with usual and accustomed fishing grounds in the conservation area, whose fishing right under a treaty has been recognized by a Federal court.

TITLE I—COORDINATION

COORDINATION GRANTS

SEC. 101. (a) The Secretary, in cooperation with the Secretary of the Interior, is authorized to establish a program to provide grants to prepare plans for programs established in titles I, II, and III of this Act in order to promote coordinated research, enforcement, enhancement, and management of the salmon and steelhead resources within the conservation area and Columbia River drainage basin consistent with the purposes of this Act.

(b) Such grants shall be available for use by the State, the State of Oregon, the Northwest Indian Fisheries Commission, the Columbia River Inter-Tribal Fish Commission, or any joint governmental entity established for undertaking research, or providing advice on or mechanisms for coordinated management or enforcement, or preparing the plans and programs described in titles, I, II, and III of this Act.

MANAGEMENT COORDINATION

SEC. 102. The Secretary shall establish an advisory committee to develop effective procedures, mechanisms, or institutional arrangements to coordinate research, enhancement, management, and enforcement policies for Pacific Northwest salmon and steelhead, and to resolve disputes between management entities concerned with stocks of common interest. The committee shall include appropriate Federal, State, and tribal representatives and such other persons knowledgeable with regard to salmon resources of the area designated by the Secretary. Principal objectives of the coordinating mechanism shall include, but not be limited to—

(1) development of common principles to guide enhancement activities;

(2) promotion of harvest strategies and regulations which will encourage continued and increased investment by the salmon and steelhead producing jurisdictions;

(3) optimum use of resources and manpower for enforcement; and

(4) consideration of harvest and enhancement activities as they may relate to existing and future international commitments.

The conclusions of the advisory committee and the comments and recommendations of the Secretary shall be transmitted to Congress within one year of the date of enactment of this Act.

AUTHORIZATION OF APPROPRIATION

SEC. 103. There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this title in fiscal years commencing after September 31, 1980, an aggregate amount of $5,000,000. Funds appropriated pursuant to this section remain available to the Secretary until expended.

TITLE II—RESOURCE ENHANCEMENT AND HABITAT MAINTENANCE

SEC. 201. (a) AUTHORITY.—The Secretary and the Secretary of the Interior are authorized to establish a program to provide grants for projects for the enhancement of the salmon and steelhead resources of the conservation area.

(b) PLAN.—Any such project must be in accordance with a comprehensive enhancement plan developed and agreed to by the State and the Northwest Indian Fisheries Commission within 18 months after the date of enactment of this Act and approved by the Secretary and the Secretary of the Interior, as provided in this title. The State shall solicit and consider the comments and views of the Washington Salmon and Steelhead Research Council and interested commercial and recreational fishermen in developing the comprehensive enhancement plan.

(c) SCOPE.—The comprehensive enhancement plan, and any revisions, amendments, or modifications of such plan, shall describe all enhancement projects in the conservation area, and associated stocking policies (when relevant), including any related research necessary to such enhancement anticipated by the State and the Northwest Indian Fisheries Commission for a period of at least 5 years.

(d) STANDARDS.—The comprehensive enhancement plan shall include such standards, including restrictions or conditions as are necessary, to assure that any project included in the plan contributes toward the balanced and integrated development of the salmon and steelhead resources of the conservation area. Such standards shall include but not be limited to provisions designed to—

(1) assure that all commercial and recreational fishermen and the Treaty Tribes within the conservation area shall have an opportunity to participate in the benefits of the salmon resources development;

(2) minimize significant adverse interaction between naturally spawning and artificially propagated stocks;

(3) ensure that all projects included within the plan are designed to complement the contribution of sound State, Federal, and Tribal enhancement activities in the conservation area;

(4) ensure that all projects included within the plan are economically and biologically sound and supported by adequate scientific research; and

(5) assure that all projects included within the plan achieve significant benefits relative to the overall cost of each such project.

(e) APPROVAL.—(1) The Secretary and the Secretary of the Interior, shall review the comprehensive enhancement plan and approve such plan within 120 days of the date of receipt of the plan, if found to be consistent with this Act and other applicable law. If the Secretary and the Secretary of the Interior find that such plan is not in conformity with the provisions of this Act or other applicable law, they shall return such plan to the State and the Northwest Indian Fisheries Commission with recommendations.

(2) Upon receiving the plan, the Secretary and the Secretary of the Interior shall—

(A) publish a notice in the Federal Register of the availability of the plan;

(B) provide a copy of the plan to the Attorney General, the Pacific Fishery Management Council and, upon request, to any other interested person or group, and solicit and consider the comments and views of such persons or entities with respect to the plan;

(C) undertake a biological and technical review of the plan, in consultation with the Washington Salmon and Steelhead Research Council, and other individuals knowledgeable with regard to the salmon and steelhead resources of the conservation area;

(D) provide a copy of the plan to and consult with the Secretary of State, with respect to the effect of such plan on any international fisheries; and

(E) determine whether the State and the Northwest Indian Fisheries Commission, acting through its chosen agency or agencies, have the authority to carry out the plan in accordance with this Act, and any standards included within the comprehensive enhancement plan.

(3) The Secretary and the Secretary of the Interior shall not approve a comprehensive enhancement plan submitted by the State and the Northwest Indian Fisheries Commission unless the State and Northwest Indian Fisheries Commission agree not to undertake any salmon or steelhead enhancement project, using funds provided pursuant to this title or otherwise, that would be inconsistent with the comprehensive enhancement plan.

(f) STEELHEAD.—The comprehensive enhancement plan as it relates to steelhead shall seek to minimize the harvest of steelhead by nonrecreational fishing and shall be designed to—

(1) ensure that salmon enhancement projects included in the plan do not have significant adverse impacts on important steelhead stocks;

(2) ensure that the benefits of steelhead enhancement projects included in the plan accrue solely to recreational fisheries; and

(3) encourage the Treaty Tribes to forego or limit their nonrecreational fishing for steelhead, either by enhancement, management, or selective harvest techniques, in return for the salmon enhancement projects embodied in the comprehensive enhancement plan that will replace any resultant tribal losses.

(g) REVIEW, MODIFICATION, AMENDMENTS, OR REVISIONS.—The comprehensive enhancement plan shall be reviewed periodically. The Secretary, the Secretary of the Interior, the State, or the Northwest Indian Fisheries Commission may request a review, modification, or revision of the plan at any time. Any revision or modification of the plan, developed and agreed to by the State and the Northwest Indian Fisheries Commission, shall be approved by the Secretary and the Secretary of the Interior, within 45 days of receipt of the proposed revision or modification, if such revision or modification is in conformity with this Act and other applicable law. The Secretary and the Secretary of the Interior may withdraw approval of the plan if they find that (1) the plan or its implementation is not consistent with the Act, and (2) no modification or revision has been agreed to by the State and the Northwest Indian Fisheries Commission to correct any such inconsistencies.

ENHANCEMENT PROJECTS

SEC. 202. After the approval of the comprehensive enhancement plan, the State or the Northwest Indian Fisheries Commission may submit project proposals to the Secretary and the Secretary of the Interior in such manner and form as the Secretary shall prescribe. Such application shall include at least—

(1) plans, specifications, and cost estimates of the proposed enhancement project, including estimates of both the capital construction costs of the project and the operation and maintenance costs after commencement of the project;

(2) the enhancement goals that are sought to be achieved by the proposed project, including, but not limited to—

(A) a description of the affected stocks;

(B) an analysis of the expected impacts on the salmon and steelhead resource; and

(C) a projection of the expected impacts on each type of commercial and recreational fishing;

(3) evidence that the State, the Northwest Indian Fisheries Commission, or Treaty Tribe, acting through its chosen agency or agencies, has obtained or is likely to obtain any necessary titles to, interests in, rights-of-way over, or licenses covering the use of the relevant land;

(4) an analysis of, and supporting data for, the economic and biological integrity and viability of the project; and

(5) such other information as the Secretary and the Secretary of the Interior determine is necessary to assure that the proposed project is consistent with the approved enhancement plan and the provisions of this Act.

APPROVAL AND FUNDING OF PROJECTS

SEC. 203. (a) The Secretary and the Secretary of the Interior may approve any project that is consistent with the approved enhancement plan and the provisions of this Act, and shall promptly notify the State, the Northwest Indian Fisheries Commission, and upon request any other interested party of the approval of a project and the amount of funding made available under this title for such project.

(b) The total Federal share of all enhancement projects funded annually by this section shall not exceed 50 percent of the total amount expended for such projects, except that this limitation shall not apply to projects proposed by the Northwest Indian Fisheries Commission. The State share may include both real and personal property and shall include such amounts spent by the State, after July 1, 1977, for enhancement projects consistent with this Act and the plan. Title to, or other interest in, such property shall remain within the State.

(c) The Federal share shall be paid in such amounts and at such times as the Secretary deems appropriate, consistent with this Act and the goals of the comprehensive plan.

REVIEW OF ENHANCEMENT PROJECTS

SEC. 204. The Secretary and the Secretary of the Interior shall establish, in consultation with the State and the Northwest Indian Fisheries Commission, a system to monitor and evaluate on a continuing basis all enhancement projects for which funds have been distributed under this title, and may discontinue or suspend distribution of all or part of the funds if any project is not being carried out in a manner consistent with the comprehensive enhancement plan and this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 205. There are authorized to be appropriated to the Secretary, for the purposes of carrying out the provisions of this title, not to exceed the following sums:

(1) $42,000,000 for enhancement projects, to be available over a period of 8 years from October 1, 1981; and

(2) $30,500,000 for operation, maintenance and monitoring, where necessary, of enhancement projects authorized under this title, to be available over a period of 8 years following completion of each such project.

If the State and the Northwest Indian Fisheries Commission fail to submit a comprehensive enhancement plan as described in this title to the Secretary within 18 months after the date of enactment of this Act, the Secretary may revert all moneys appropriated pursuant to this section to the United States Treasury.

TITLE III—COLUMBIA RIVER RESOURCE ENHANCEMENT AND HABITAT MAINTENANCE

SEC. 301. (a) AUTHORITY.—The Secretary and the Secretary of the Interior are authorized to establish a program to provide grants for projects for the enhancement of the salmon and steelhead resources of the Columbia River drainage basin.

(b) PLAN.—Any such project must be in accordance with a comprehensive plan that is developed and agreed to by the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission within 18 months after the date of enactment of this Act and approved by the Secretary and the Secretary of the Interior, as provided in this title. The States shall solicit and consider the comments and views of interested commercial and recreational fishermen in developing the comprehensive enhancement plan.

(c) SCOPE.—The comprehensive enhancement plan, and any revisions, amendments, or modifications of such plan, shall describe all enhancement projects in the area, and associated stocking policies (when relevant), including any related research necessary to such enhancement, anticipated by the State, the State of Oregon, and the Columbia River for a period of at least 5 years.

(d) STANDARDS.—The comprehensive enhancement plan shall include such standards, including restrictions or conditions as are necessary to assure that any project included in the plan contributes toward the balanced and integrated development of the salmon and steelhead resources of the Columbia River drainage basin. Such standards shall include but not be limited to provisions designed to—

(1) assure that all commercial and recreational fishermen and the Columbia River Treaty Tribes within the area encompassed by the comprehensive enhancement plan and the fishery conservation zone adjacent to the State and the State of Oregon shall have an opportunity to participate in the benefits of the salmon resources development;

(2) minimize significant adverse interaction between naturally spawning and artificially propagated stocks;

(3) ensure that all projects included within the plan are designed to complement the contribution of sound State, Federal, and tribal enhancement and mitigation activities;

(4) ensure that all projects included within the plan are economically and biologically sound and supported by adequate scientific research; and

(5) assure that all projects included within the plan achieve significant benefits relative to the overall cost of each such project.

(e) APPROVAL.—(1) The Secretary and the Secretary of the Interior shall review the comprehensive plan and aporove such plan within 120 days of the date of receipt of the plan if such plan is found to be consistent with this Act and other applicable law. If the Secretary and the Secretary of the In-

terior find that such plan is not in conformity with the provisions of this Act or other applicable law, he shall return such plan to the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission.

(2) Upon receiving the plan, the Secretary and the Secretary of the Interior shall—

(A) publish a notice in the Federal Register of the availability of the plan;

(B) provide a copy of the plan to the Secretary of the Army, the Attorney General, the Pacific Fishery Management Council, the Administrator of the Bonneville Power Administration, and, upon request, to any other interested person or group, and solicit and consider the comments and views of such persons and entities, with respect to the plan.

(C) undertake a biological and technical review of the plan, in consultation with individuals knowledgeable with regard to the salmon and steelhead resources of the conservation area;

(D) provide a copy of the plan to and consult with the Secretary of State, with respect to the effect of such plan on any international fisheries; and

(E) determine whether the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission, acting through its chosen agency or agencies, have the authority to carry out the plan in accordance with this Act, and any standards included within the comprehensive enhancement plan.

(3) The Secretary and the Secretary of the Interior shall not approve a comprehensive enhancement plan submitted by the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission unless the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission agree not to undertake any salmon or steelhead enhancement project, using funds provided pursuant to this title or otherwise, that would be inconsistent with the comprehensive enhancement plan.

(f) STEELHEAD.—The comprehensive enhancement plan as it relates to steelhead shall seek to minimize the harvest of steelhead by nonrecreational fishing and shall be designed to—

(1) ensure that salmon enhancement projects included in the plan do not have significant adverse impacts on important steelhead stocks;

(2) ensure that the benefits of steelhead enhancement projects included in the plan accrue solely to recreational fisheries; and

(3) encourage the Columbia River Treaty Tribes to forego or limit their nonrecreational fishing for steelhead, either by enhancement, management, or selective harvest techniques, in return for the salmon enhancement projects embodied in the comprehensive enhancement plan that will replace any resultant tribal losses.

(g) REVIEW, MODIFICATION, AMENDMENTS, OR REVISIONS.—The comprehensive plan shall be reviewed periodically. The Secretary, the Secretary of the Interior, the State, the State of Oregon, or the Columbia River Inter-Tribal Fish Commission may request a review, modification, or revision of the plan at any time. The Secretary and the Secretary of the Interior may withdraw approval of the plan if they find that (1) the plan or its implementation is not consistent with the Act, and (2) no modification or revision has been agreed to by the State and the Columbia River Inter-Tribal Fish Commission to correct any such inconsistencies. Any revision or modification of the plan, developed and agreed to by the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission, shall be approved by the Secretary and the Secretary of the Interior, within 45 days of receipt of the proposed revision or modification, if such revision or modification is in conformity with this Act and other applicable law.

ENHANCEMENT PROJECTS

SEC. 302. After the approval of the comprehensive enhancement plan, the State, the State of Oregon, or the Columbia River Inter-Tribal Fish Commission may submit project proposals to the Secretary and the Secretary of the Interior in such manner and form as the Secretary shall prescribe. Such application shall include at least—

(1) plans, specifications, and cost estimates of the proposed enhancement project, including estimates of both the capital construction costs of the project and the operation and maintenance costs after commencement of the project;

(2) the enhancement goals that are sought to be achieved by the proposed project, including, but not limited to—

(A) a description of the affected stocks;

(B) an analysis of the expected impacts on the salmon and steelhead resource; and

(C) a projection of the expected impacts on each type of commercial and recreation fishing;

(3) evidence that the State, the State of Oregon, the Columbia River Inter-Tribal Fish Commission or Columbia River Treaty Tribe, acting through its chosen agency or agencies, has obtained or is likely to obtain any necessary titles to, interests in, rights-of-way over, or licenses covering the use of the relevant land;

(4) an analysis of, and supporting data for, the economic and biological integrity and viability of the project; and

(5) such other information as the Secretary and the Secretary of the Interior determine is necessary to assure that the proposed project is consistent with the approved enhancement plan and the provisions of this Act.

APPROVAL AND FUNDING OF PROJECTS

SEC. 303. (a) The Secretary and the Secretary of the Interior may approve any project that is consistent with the approved enhancement plan and the provisions of this Act, and shall promptly notify the State, the State of Oregon, the Columbia River Inter-Tribal Fish Commission, Tribal Fisheries Commission, and upon request any other interested party of the approval of a project and the amount of funding made available under this title for such project.

(b) The total Federal share of all enhancement projects funded annually by this section shall not exceed 75 percent of the total amount expended for such projects, except that this limitation shall not apply to projects proposed by the Columbia River Inter-Tribal Fish Commission. The State and the State of Oregon share may include both real and personal property and shall include such amounts spent by the State or the State of Oregon after July 1, 1977, for enhancement projects consistent with this Act and the plan. Title to, or other interest in, such property shall remain within the State.

(c) The Federal share shall be paid in such amounts and at such times as the Secretary deems appropriate, consistent with this Act and the goals of the comprehensive plan.

REVIEW OF ENHANCEMENT PROJECTS

SEC. 304. The Secretary and the Secretary of the Interior shall establish, in consultation with the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission, a system to monitor and evaluate on a continuing basis all enhancement projects for which funds have been distributed under this title, and may discontinue or suspend distribution of all or part of the funds if any project is not being carried out in a manner consistent with the comprehensive enhancement plan and this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 305. There are authorized to be appropriated to the Secretary, for the purposes of carrying out the provisions of this title, not to exceed the following sums:

(1) $20,000,000 for enhancement projects, to be available over a period of 8 years from October 1, 1981; and

(2) $10,000,000 for operation, maintenance and monitoring, where necessary, of enhancement projects authorized under this title, to be available over a period of 8 years following completion of each such project.

If the State, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission fail to submit a comprehensive enhancement plan as described in this title to the Secretary within 18 months after the date of enactment of this Act, the Secretary may revert all moneys appropriated pursuant to this section to the United States Treasury.

TITLE IV—COMMERCIAL FISHING FLEET ADJUSTMENT

FLEET ADJUSTMENT PROGRAM

SEC. 401. (a) The Secretary, upon approval of a program submitted pursuant to section 403 of this title, is authorized to distribute Federal funds to the State, subject to the standards, conditions, and restrictions set forth in this title, for the purchase of commercial fishing and charter vessels, gear, and licenses by the State in accordance with the provision of this title.

(b) Title to any vessel or other personal property purchased under a State program approved by the Secretary in accordance with the provisions of this title shall vest upon purchase in the State. If the State sells such vessels or other property, title may pass in accordance with such sale.

STANDARDS

SEC. 402. The State shall submit to the Secretary a program plan within 3 months of the date of enactment of this Act designed to—

(1) provide incentives for early retirement of licenses, or early sale of vessels and gear;

(2) set aside specific allocations of funds for each gear type to achieve the specific fleet reductions provided for in the program; and

(3) obtain an effective and expeditious reduction in the overall fishing capacity of and the number of vessels and licenses in the non-Indian commercial and charter salmon fishing fleets in the conservation area.

PROGRAM APPROVAL

SEC. 403. (a) The State shall submit its program and submit revisions, modifications, or amendments to the Secretary in accordance with standards established pursuant to section 402 and in such manner and form as the Secretary shall prescribe.

(b) Prior to approving such program or any revision, modification, or amendment, and authorizing Federal funds to be distributed in accordance with this title, the Secretary must find that—

(1) the State, acting through its chosen agency or agencies, has authority to carry out a commercial and charter vessel fleet reduction program in accordance with the provisions of this title;

(2) the State program prohibits the purchase of any fishing vessel unless all State commercial and charter salmon fishing licenses attached to the vessel are also sold to the State;

(3) the State program provides that no person may purchase from the State any vessel which that person or a member of that person's immediate family had previously sold to the State;

(4) the State program provides that no person may purchase any vessel sold to the State pursuant to the program and use such vessel for commercial or charter salmon fishing in the conservation area, unless State law provides that the use of such vessel could not result in any additional fishing effort in the non-Indian fishing fleet;

(5) the State program provides for purchase of vessels and gear at their fair market value;

(6) the State program provides for the reduction of salmon fishing licenses, through purchase of such licenses at their fair market value, and the use of bonuses and schedules, to—

(A) secure an early retirement from the salmon fishery;

(B) recognize productiveness if the commercial harvesters using a gear type wish that gear type's specific allocation of funds to recognize productiveness; and

(C) recognize passenger-carrying capacity for charter fishing licenses;

(7) the State program provides for the purchase of only salmon fishing licenses from outstanding marginally productive commercial salmon fishermen;

(8) the State maintains a moratorium, or similar program, to preclude the issuance of new commercial and charter salmon fishing licenses as of the effective date of this Act; and

(9) the State has established a revolving fund for the operation of the fleet reduction program that includes individual accounts for each gear type and that any moneys received by the State or its agents from the resale of any fishing vessel or gear purchased under the program (A) shall be placed in such revolving fund, (B) shall, for at least 3 years from the date of the program's inception be placed in the appropriate gear type account, and (C) shall be used exclusively to purchase commercial fishing and charter vessels, gear, and licenses in accordance with the provisions of this title.

(c) The Secretary shall approve such program within 90 days of the date of receipt of the program if found to be consistent with this Act and other applicable law. If the Secretary finds that such program is not in conformity with the provisions of this Act or other applicable law, he shall return such program to the State with recommendations. Any revision, modification, or amendment to the program shall be approved within 30 days of receipt unless found to be inconsistent with this Act or other applicable law.

REVIEW BY THE SECRETARY OF COMMERCE

SEC. 404. (a) The Secretary shall conduct a continuing review of the State program to determine whether the program remains consistent with the purposes of this Act and the provisions of this title. Such review shall include a biennial audit of the records of the State program.

(b) If the Secretary finds that the program or the administration thereof is no longer in compliance with this title, he shall reduce or discontinue distribution of funds under this title, or take other appropriate action.

(c) If the Secretary finds that any money provided to the State or obtained by the State from the resale of any fishing vessel or gear purchased under the program is not being used in accordance with the provisions of this title, the Secretary shall recover such moneys from the fund and place such moneys in the United States Treasury.

FLEET MOBILITY

SEC. 405. The Secretary in coordination with the Pacific Fishery Management Council in its salmon management plan shall ensure that the fishing effort reduction that results from the fleet adjustment program of this title and the license moratorium of the State of Washington is not replaced by new fishing effort from outside the State of Washington.

AUTHORIZATION OF APPROPRIATIONS

SEC. 406. There are authorized to be appropriated to the Secretary, for the purposes of carrying out the provisions of this title, $50,000,000 which shall be available over a period of 5 years from October 1, 1980: *Provided*, That no more than $25,000,000 is authorized to be appropriated in any one fiscal year.

TITLE V—MISCELLANEOUS

REGULATIONS

SEC. 501. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this Act.

REPORTS

SEC. 502. The State, the Northwest Indian Fisheries Commission, the State of Oregon, and the Columbia River Inter-Tribal Fish Commission shall submit to the Secretary an annual report on the status of the programs authorized by this Act or any other relevant report requested by such Secretary.

RELATION TO OTHER LAWS

SEC. 503. Nothing to this Act shall be construed—

(1) to diminish either Federal, State, or tribal jurisdiction, responsibility, or rights in the field of resource enhancement and management, or control of water resources, submerged lands, or navigable waters; nor to limit the authority of Congress to authorize and fund projects; or

(2) as superseding, modifying, or repealing any existing applicable law.

AUTHORIZATION OF ADDITIONAL APPROPRIATION

SEC. 504. In addition to other authorizations of appropriations contained in this Act, there are authorized to be appropriated to the Secretary beginning October 1, 1980, an amount not to exceed $5,000,000 for the purpose of developing fisheries port facilities in the State of Oregon. Such facilities shall be primarily intended to accommodate fisheries other than salmon. The Secretary shall obligate such funds for projects proposed by units of State or local government, Indian tribes, or private nonprofit entities, and approved by the State of Oregon in consultation with the National Marine Fisheries Service and the Economic Development Administration. To the extent practicable, the Secretary shall assure that projects under this section are integrated with planning and assistance under the Public Works and Economic Development Act. Funds available under this section shall not be used for any navigational improvement or other modification of the navigable waters of the United States. Funds appropriated pursuant to this section shall remain available until expended.

MOTION OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BREAUX moves to strike out all after the enacting clause of the Senate bill, S. 2163, and insert in lieu thereof the provisions of the bill, H.R. 6959, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 6959) was laid on the table.

GENERAL LEAVE

Mr. FORSYTHE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

HON. ROBERT WINTHROP KEAN

(Mrs. FENWICK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. FENWICK. Mr. Speaker, I have asked permission to address the House to inform the House of the sad news of the death of a former Member of this body, Mr. Robert Winthrop Kean, who died yesterday in my district.

He served in this House, as many of us may remember, in nine succeeding Congresses from January 3, 1939, to January 3, 1959. He served on the Mexican front. He was decorated in the First World War with a Silver Star Medal and the Distinguished Service Cross. Much more than this he was respected and loved in every place where he served, at home, in his hometown and State, and here in Congress. He was a man of integrity and honor and those qualities marked his service. He came of a family which served in this House in the 19th century as well as in this century. His uncle served as Congressman and Senator. Theirs is one of the most distinguished families in New Jersey from the point of view of honorable public service. I thought his memory should be brought to the House this day, the day after the day he died.

GENERAL LEAVE

Mrs. FENWICK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the life, character, and public service of the late Hon. Robert Winthrop Kean.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

AMERICAN FISHERIES PROMOTION ACT

Mr. BREAUX. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 7039, to provide for comprehensive research and development regarding U.S. fisheries, to expand the fishing fleet and fish processing capacity of the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7039

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "American Fisheries Promotion Act".

TITLE I—RESEARCH AND DEVELOPMENT REGARDING THE UNITED STATES FISHERIES

SEC. 101. RESEARCH AND DEVELOPMENT PROJECTS AND PROGRAMS.

(a) AMENDMENTS TO SALTONSTALL-KENNEDY ACT.—Section 2 of the Act of

August 11, 1939 (commonly referred to as the Saltonstall-Kennedy Act, 15 U.S.C. 713c-3), is amended—

(1) by striking out subsections (b), (c), (d), and (e);

(2) by redesignating subsection (a) as subsection (b);

(3) by inserting immediately before subsection (b) (as so redesignated) the following new subsection:

"SEC. 2. (a) DEFINITIONS.—As used in this section—

"(1) The term 'person' means—

"(A) any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands; and

"(B) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation), nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802) and for purposes of applying such section 2 with respect to this section—

"(i) the term 'State' as used therein includes any State referred to in paragraph (3),

"(ii) citizens of the United States must own not less than 75 percent of the interest in the entity or, in the case of a nonprofit entity, exercise control in the entity that is determined by the Secretary to be the equivalent of such ownership, and

"(iii) nationals of the United States and citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting the ownership and control requirements referred to in clause (ii).

"(2) The term 'Secretary' means the Secretary of Commerce.

"(3) The term 'State' means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

"(4) The term 'United States fishery' means—

"(A) any fishery subject to the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.);

"(B) any tuna fishery within the fishery conservation zone established by section 101 of such Act of 1976 (16 U.S.C. 1811); and

"(C) any fishery, other than one described in subparagraph (A) or (B), that is, or may be, engaged in by citizens or nationals of the United States or citizens of the Northern Mariana Islands.

"(5) The term 'citizen of the Northern Mariana Islands' means—

"(A) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

"(B) a corporation, partnership, association, or other entity organized or existing under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in subparagraph (A) or citizens or nationals of the United States, in cases in which 'owned' is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802).";

(4) by amending subsection (b) (as so redesignated)—

(i) by inserting "FUND.—" immediately after "(b)" and before the first word of such subsection,

(ii) by striking out "Secretary of the Interior" the first place it appears therein and inserting in lieu thereof "Secretary",

(iii) by striking out "and used by the Secretary of the Interior" and inserting in lieu thereof "only for use by the Secretary", and

(iv) by striking out clauses (1), (2), and (3) and inserting in lieu thereof the following: "(1) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c), and (2) to implement the national fisheries research and development program provided for under subsection (d).";

and

(5) by adding immediately after subsection (b) (as so redesignated) the following:

"(c) FISHERIES RESEARCH AND DEVELOPMENT PROJECT.—(1) The Secretary shall make grants from the fund established under subsection (b) to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

"(2) The Secretary shall—

"(A) at least once each fiscal year, receive, during a 60-day period specified by him, applications for grants under this subsection;

"(B) prescribe the form and manner in which applications for grants under this subsection must be made, including, but not limited to, the specification of the information which must accompany applications to ensure that the proposed projects comply with Federal law and can be evaluated in accordance with paragraph (3)(B); and

"(C) approve or disapprove each such application before the close of the 120th day after the last day of the 60-day period (specified under subparagraph (A)) in which the application was received.

"(3) No application for a grant under this subsection may be approved unless the Secretary—

"(A) is satisfied that the applicant has the requisite technical and financial capability to cary out the project; and

"(B) evaluates the proposed project as to—

"(i) soundness of design,

"(ii) the possibilities of securing productive results,

"(iii) minimization of duplication with other fisheries research and development projects,

"(iv) the organization and management of the project,

"(v) methods proposed for monitoring and evaluating the success or failure of the project, and

"(vi) such other criteria as the Secretary may require.

"(4) Each grant made under this subsection shall be subject to such terms and conditions as the Secretary may require to protect the interests of the United States, including, but not limited to, the following:

"(A) The recipient of the grant must keep such records as the Secretary shall require as being necessary or appropriate for disclosing the use made of grant funds and shall allow the Secretary and the Comptroller General of the United States, or any of their authorized representatives, access to such records for purposes of audit and examination.

"(B) The amount of a grant may not be less than 50 percent of the estimated cost of the project.

"(C) The recipient of the grant must submit to the Secretary periodic project status reports.

"(5)(A) If the cost of a project will be shared by the grant recipient, the Secretary shall accept, as a part or all of that share, the value of in kind contributions made by the recipient, or made available to, and applied by, the recipient, with respect to the project.

"(B) For purposes of subparagraph (A), in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out, the project. The Secretary shall establish (i) the training, experience, and other qualifications which shall be required in order for services to be considered as in-kind contributions; and (ii) the standards under which the Secretary will determine the value of in-kind contributions for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be conclusive.

"(d) NATIONAL FISHERIES RESEARCH AND DEVELOPMENT PROGRAM.—(1) The Secretary shall carry out a national program of research and development addressed to such aspects of United States fisheries (including, but not limited to, harvesting, processing, marketing, and associated infrastructures), if not adequately covered by projects assisted under subsection (c), as the Secretary deems appropriate.

"(2) The Secretary shall, after consultation with appropriate representatives of the fishing industry, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives, an annual report, that must be submitted not later than 60 days before the close of each fiscal year, containing—

"(A) the fisheries development goals and funding priorities under paragraph (1) for the next fiscal year;

"(B) a description of all pending projects assisted under subsection (c) or carried out under paragraph (1), in addition to—

"(i) a list of those applications approved and those disapproved under subsection (c), and the total amount of grants made, for the current fiscal year, and

"(ii) a statement of the extent to which available funds were not obligated or expended by the Secretary for grants under subsection (c) during the current fiscal year; and

"(C) an assessment of each project assisted under subsection (c) or carried out under paragraph (1) that was completed in the preceding fiscal year regarding the extent to which (i) the objectives of the project were attained, and (ii) the project contributed to fishery development.

"(e) ALLOCATION OF FUND MONEYS.—(1) With respect to any fiscal year, not less than 50 percent of—

"(A) the moneys transferred to the fund under subsection (b) or any other provision of law with respect to that fiscal year; and

"(B) such existing fund moneys carried over into that fiscal year;

shall be used by the Secretary during that fiscal year to provide financial assistance for projects under subsection (c); and the remainder of such moneys in the fund shall be used to implement the national fisheries research and development program established under subsection (d) during that fiscal year.

"(2) Moneys accruing to the fund established under subsection (b) for any fiscal year and not expended with respect to that year shall remain available for expenditure under this section without fiscal year limitation.".

(b) NATIONAL PRIORITY PROJECTS.—(1) In the administration of section 2 of the Act of August 11, 1939 (as amended by subsection (a)), the Secretary of Commerce shall, if an application is received during fiscal year 1981 or 1982 for a grant under subsection (c) of such section 2 to carry out—

(A) a project to enhance the opportunities for the marketing of United States fish products, either domestically or abroad, or both;

(B) a project to establish and operate a system (in which participation must be voluntary) to grade the quality of fish landed at a United States port; or

(C) a project to improve fuel efficiency in

carrying out fishing operations within one or more United States fisheries;

award the grant if the Secretary finds that the applicant and the proposed project meet the requirements in paragraph (3) of such subsection.

(2) If an application for a project described in paragraph (1) (A), (B), or (C) is not received during fiscal year 1981 or 1982 (or, if received, the applicant or the proposed project does not meet the requirements in subsection (c)(3) of such section 2, the Secretary of Commerce may carry out, pursuant to the national fisheries research and development program under subsection (d) of such section 2, such a project.

SEC. 102. UNITED STATES FISHERY TRADE OFFICERS.

(a) APPOINTMENT.—For purposes of carrying out export promotion and other fishery development responsibilities, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") shall appoint not fewer than six officers who shall serve abroad to promote United States fishing interests. These officers shall be knowledgeable about the United States fishing industry, preferably with experience derived from the harvesting, processing, or marketing sectors of the industry or from the administration of fisheries programs. Such officers, who shall be employees of the Department of Commerce, shall have the designation of fishery trade officers.

(b) ASSIGNMENT.—Upon the request of the Secretary, the Secretary of State shall officially assign fishery trade officers to such diplomatic missions of the United States as the Secretary designates (three of which shall be those in Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

(c) FUNCTIONS OF FISHERY TRADE OFFICERS.—The functions of fishery trade officers appointed under subsection (a) shall be—

(1) to increase the effectiveness of United States fishery export promotion efforts through such activities as the coordination of market development efforts and the provision of services and facilities for exporters of United States fishery products;

(2) to develop, maintain, and make available to interested persons, listings of (A) trade, government, and other organizations that are concerned with, or have an interest in, international trade in United States fishery products, and (B) United States fishery products available for such trade;

(3) to prepare quarterly reports regarding (A) the supply, demand, and prices of each United States fishery product exported, or for which there may be export potential, to the foreign nation or area concerned, and (B) the trade barriers or incentives of such nation or area that affect imports of such products; and

(4) to carry out such other functions as the Secretary may require.

(d) ADMINISTRATION.—The Secretary of State and the Secretary shall enter into cooperative arrangements concerning the provision of office space, equipment, facilities, clerical services, and such other administrative support as may be required for fishery trade officers and their families.

TITLE II—FINANCIAL ASSISTANCE WITH RESPECT TO FISHING VESSELS

SEC. 201. GUARANTEE OF OBLIGATIONS FOR FISHING VESSELS.

Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271–1280) is amended as follows:

(1) Section 1101 is amended by adding at the end thereof the following new subsections:

"(i) The term 'citizen of the Northern Mariana Islands' means—

"(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of Northern Mariana Islands; or

"(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which 'owned' is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802).

"(j) The term 'fishing vessel' has the meaning given such term by section 3(11) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(11)); and any reference in this title to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel.".

(2) Section 1103(f) is amended by inserting immediately before the period the following: "; except that—

"(1) not less than 3 percent, nor more than 7 percent, of such sum shall be reserved for the guarantee of obligations for fishing vessels that meet the economic soundness criteria set forth in section 1104(d)(1), and

"(2) not less than 3 percent, nor more than 7 percent, of such sum shall be reserved for the guarantee of obligations for fishing vessels that meet the economic soundness criteria set forth in section 1104(d)(2),

but the aggregate amount reserved for the purposes set forth in paragraphs (1) and (2) may not exceed 10 percent of such sum.".

(3) Section 1104 is amended—

(A) in subsection (a)—

(i) by striking out "(D) in the fishing trade or industry; or (E)" in paragraph (1) and inserting in lieu thereof "; or (D)";

(ii) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively, and by inserting immediately after paragraph (1) the following new paragraph:

"(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;";

(iii) by striking out "or" at the end of paragraph (4) (as redesignated by clause (ii));

(iv) by striking out "or (3)" in paragraph (5) (as so redesignated) and inserting in lieu thereof "(3), or (4)", and by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(v) by adding immediately after paragraph (5) the following:

"(6) financing the purchase of fishing vessels, the construction, reconstruction, reconditioning, or purchase of which was guaranteed under this title, that are sold at foreclosure, instituted by the Secretary, to third party purchasers, and the reconstruction or reconditioning thereof.";

(B) by adding at the end of subsection (b) the following:

"The Secretary may not establish, as a condition of eligibility for guarantee under this title, a minimum principal amount for any obligation covering the reconstruction or reconditioning of a fishing vessel. For purposes of this title, the reconstruction or reconditioning of a fishing vessel does not include the routine minor repair or maintenance of the vessel.";

(C) in subsection (d)—

(i) by striking out "No" and inserting in lieu thereof "(1) Except as provided in paragraph (2), no"; and

(ii) by adding at the end thereof the following:

"(2) In applying paragraph (1) with respect to commitments to guarantee, and the guarantee of, obligations for fishing vessels, the Secretary of Commerce may apply an economic soundness test that is less stringent than that which would apply but for this paragraph.

"(3) No commitment to guarantee, or guarantee, of an obligation may be made by the Secretary of Commerce under this title for the purchase of a used fishing vessel unless—

"(A) the vessel will be reconstructed or reconditioned and will contribute to the development of the United States fishing industry; or

"(B) the vessel will be used in the harvesting of fish from an underutilized fishery."; and

(D) in subsection (g)—

(i) by inserting "(1)" immediately after "(g)"; and

(ii) by adding at the end thereof the following new paragraph:

"(2) The Secretary of Commerce shall establish within the Fund the following subfunds:

"(A) The standard fishery subfund which shall contain all moneys received for, and incident to, the guarantee of obligations with respect to fishing vessels to which the economic soundness criteria set forth in section 1104(d)(1) apply.

"(B) The high-risk fishery subfund which shall contain all moneys received for, and incident to, the guarantee of obligations with respect to fishing vessels to which the economic soundness criteria set forth in section 1104(d)(2) apply.

"(C) The general subfund which shall contain all moneys received for, and incident to, the guarantee of obligations for vessels other than fishing vessels.".

(4) The first sentence of section 1105(d) is amended by inserting immediately before the period at the end thereof the following: ", and shall be paid from the appropriate subfund required to be established under section 1104(g)(2)".

SEC. 202. LOANS UNDER THE FISH AND WILDLIFE ACT OF 1956.

(a) LOAN AUTHORITY UNTIL OCTOBER 1, 1982—During the period beginning on the date of the enactment of this Act and ending at the close of September 30, 1982, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") may make loans from the fisheries loan fund established under subsection (c) of section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) only for the purposes set forth in subsections (b) and (c) of this section. Except to the extent that they are inconsistent with, or contrary to, this section, the provisions of such section 4 shall apply with respect to loans made for such purposes.

(b) LOANS TO AVOID DEFAULT ON OBLIGATIONS COVERING FISHING VESSELS.—(1) The Secretary may make loans for the purpose of assisting obligors to avoid default on obligations that are issued with respect to the construction, reconstruction, reconditioning or purchase of fishing vessels and that—

(A) are guaranteed by the United States under title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271–1280, relating to Federal ship mortgage insurance); or

(B) are not guaranteed under such title XI, but the fishing vessels concerned meet the use and documentation requirements, and the obligors meet the citizenship requirements, that would apply if the obligations were guaranteed under that title.

(2)(A) Within the 90-day period beginning

on the date of the enactment of this Act in the case of fiscal year 1981, and before the beginning of fiscal year 1982, the Secretary shall estimate the number, and the aggregate amount, of loans described in paragraph (1)(A) for which application will likely be made during each of such fiscal years and shall reserve that amount in the fisheries loan fund for the purpose of making such loans during such year (or if such amount is larger than the fund balance, the Secretary shall reserve the whole fund for such purpose).

(B) If any moneys are available in the fisheries loan fund for each such fiscal year after subparagraph (A) is complied with for that year, the Secretary shall use such moneys for the purpose of making loans described in paragraph (1)(B) during that year.

(C) At an appropriate time during each of fiscal years 1981 and 1982, the Secretary shall compare the actual loan experience during that year with the estimate made for that year under subparagraph (A) and if the Secretary determines, on the basis of such comparison, that the demand for loans described in paragraph (1)(A) will be less than estimated, the Secretary shall, for the fiscal year concerned, apply moneys reserved for such loans for the purpose of making loans described in paragraph (1)(B) and, to the extent not utilized for loans described in paragraph (1)(B), for the purpose of making loans under subsection (c).

(3) The Secretary may make loans under this subsection only to owners or operators who, in the judgment of the Secretary, have substantial experience and proven ability in the management and financing of fishing operations, and only if (A) loans for the purpose described in paragraph (1) are not otherwise available at reasonable rates which permit continued operation, and (3) the loans are likely to result in the financial viability of the fishing operations of the owners or operators. Each such loan shall be subject to such terms and conditions as the Secretary deems necessary or appropriate to protect the interests of the United States and to carry out the purpose of this subsection. In establishing such terms and conditions, the Secretary shall take into account, among such other factors he deems pertinent, the extent to which the obligations concerned have been retired, and the overall financial condition of the obligors. The interest rate on loans made under the authority of this subsection shall not exceed that rate determined by the Secretary to be sufficient to cover the costs incurred in processing and servicing of such loans.

(c) LOANS TO COVER OPERATING LOSSES.—(1) If the Secretary determines that moneys will be available in such fisheries loan fund for fiscal year 1981 or 1982, or both, after loans under subsection (b) are provided for for that year, the Secretary may make loans for the purpose of assisting owners and operators of fishing vessels to cover vessel operating expenses in cases where an owner or operator incurs, or may incur, a net operating loss within such fiscal year.

(2) Each loan made by the Secretary under this subsection shall be subject to such terms and conditions as the Secretary deems necessary or appropriate to protect the interests of the United States and to carry out the purposes of this subsection. The Secretary may make loans under this subsection only to owners or operators who, in the judgment of the Secretary, have substantial experience and proven ability in the management and financing of fishing operations, and only if (A) loans for the purposes described in paragraph (1) are not otherwise available at reasonable rates which permit continued operation, and (B) the loans are likely to result in the financial viability of the fishing operations of the owners or operators. The interest rate on loans made under this subsection shall be the rate prevailing for loans made under the Emergency Agricultural Credit Act of 1978 (7 U.S.C. preceding 1961 note).

(d)(1) Subsection (c) of section 4 of such Act of 1956 (16 U.S.C. 742C(c)) is amended—

(A) by striking out "September 30, 1980," each place it appears therein and inserting in lieu thereof "September 30, 1982," and

(B) by striking out the third, fourth, and fifth sentences thereof.

(2) The amendments made by paragraph (1) shall take effect on September 1, 1980.

TITLE III—AMENDMENTS TO THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

CHAPTER 1—PHASE-OUT OF FOREIGN FISHING IN FISHERIES SUBJECT TO THE EXCLUSIVE FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

SEC. 301. PHASE-OUT OF FOREIGN FISHING.

Section 201(d) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821(d)) is amended to read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) As used in this subsection—

"(A) The term 'base harvest' means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

"(B) The term 'harvesting season' means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

"(C) The term 'phase-out calculation factor' means, with respect to each United States fishery, 15 percent of the base harvest.

"(D) The term 'phase-out reduction factor amount' means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

"(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 75 percent of the phase-out calculation factor;

"(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the phase-out calculation factor; or

"(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 25 percent, but less than 50 percent, of the phase-out calculation factor.

For purposes of this paragraph, the term 'designated preceding harvest season' means—

"(I) until a phase-out reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

"(II) after such amount is first achieved, the most recent harvesting season in which a phase-out reduction factor amount was achieved.

"(E) The term 'phase-out fishing level' for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

"(i) an amount equal to the phase-out reduction factor amount for that harvesting season; and

"(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

"(F) The term 'United States fishery' means a fishery subject to the exclusive fishery management authority of the United States.

"(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

"(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of phase-out fishing levels), or

"(B) the phase-out fishing level determined pursuant to paragraph (3) for the harvesting season.

"(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the phase-out fishing level for that fishery for each harvesting season after the 1980 harvesting season.

"(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State and taking into account any recommendation of any appropriate fishery management council, determines that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e), shall allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

"(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

"(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

then such portion or part shall be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and taking into account any recommendation of any appropriate fishery management council.".

SEC. 302. ALLOCATION OF ALLOWABLE LEVELS OF FOREIGN FISHING.

(a) AMENDMENTS.—The last sentence of section 201(e)(1) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821(e)(1)) is amended to read as follows: "All such determinations shall be made by the Secretary of State and the Secretary on the basis of—

"(A) whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of United States fish products;

"(B) whether, and to what extent, such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fisheries products from United States processors or from United States fishermen;

"(C) whether, and to what extent, such nations and the fishing fleets of such nations have cooperated with the United States in the enforcement of United States fishing regulations;

"(D) whether, and to what extent, such nations require the fish harvested from the fishery conservation zone for their domestic consumption;

"(E) whether, and to what extent, such nations otherwise contribute to, or foster the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and providing harvesting or processing technology which will benefit the United States fishing industry;

"(F) whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

"(G) whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions, to fishery research and the identification of fishery resources; and

"(H) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.".

(b) TAKING EFFECT OF AMENDMENTS.—The amendments made by subsection (a) shall apply with respect to the 1981 harvesting season and harvesting seasons thereafter (as defined in section 201(d)(1) of the Fishery Conservation and Management Act of 1976, as amended by section 301).

SEC. 303. PERMIT FEES.

(a) INTERIM FEES.—(1) Effective with respect to permits issued under section 204(b) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824(b)(10)) for 1981, paragraph (10) of such section is amended by striking out the last sentence thereof and inserting in lieu thereof the following: "Such fees shall be formulated so as to ensure that the total receipts resulting from the payment of the fees for permits issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979; except that the fees imposed with respect to any fishery may not be set at a level that—

"(A) would render foreign fishing therein uneconomic; or

"(B) is lower than the level of fees imposed with respect to that fishery for 1979.

Whenever the exception in the preceding sentence is applied with respect to a fishery, the Secretary shall publish in the Federal Register a statement that sets forth the reasons therefor and identifies the supporting data. The fees collected by the Secretary under this paragraph for permits issued for 1981 shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.".

(b) PERMANENT FEES.—Effective with respect to permits issued under section 204(b) of such Act of 1976 after 1981, paragraph (10) of such section is amended to read as follows—

"(10) FEES.—Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year; except that the fees imposed with respect to any fishery may not be set at a level that—

"(A) would render foreign fishing therein uneconomic; or

"(B) is lower than the level of fees imposed with respect to that fishery for 1979.

Whenever the exception in the preceding sentence is applied with respect to a fishery, the Secretary shall publish in the Federal Register a statement that sets forth the reasons therefor and identifies the supporting data. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.".

SEC. 304. FISHERY DEVELOPMENT OBJECTIVES.

Section 2(b)(6) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801(b)(6)) is amended by inserting immediately before the period at the end thereof the following: ", and to that end, to ensure that optimum yield determinations promote such development".

SEC. 305. FISHERY MANAGEMENT COUNCIL TRAVEL FUNDS.

The second sentence of section 302(d) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852(d)) is amended by striking out "(c)(1)(C)," and inserting in lieu thereof ", (c)(1)(C) and (D),".

SEC. 306. NOTICE OF AVAILABILITY OF MANAGEMENT PLANS.

Section 305(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1855(a)) is amended by inserting "a notice of availability of" immediately after "Federal Register (A)".

CHAPTER 2—FULL OBSERVER COVERAGE PROGRAM UNTIL FOREIGN FISHING PHASE-OUT COMPLETED

SEC. 311. ESTABLISHMENT OF FULL OBSERVER COVERAGE PROGRAM.

Section 201 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821) is amended by adding at the end thereof the following new subsection:

"(i) FULL OBSERVER COVERAGE PROGRAM.—(1) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the fishery conservation zone.

"(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

"(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the fishery conservation zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being observed;

"(B) with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone—

"(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

"(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or

"(C) for reasons beyond the control of the Secretary, an observer is not available.

"(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act.

"(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

"(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.".

SEC. 312. EFFECTIVE DATE.

The amendment made by section 311 shall take effect October 1, 1981, and shall apply with respect to permits issued under section 204 of the Fishery Conservation and Management Act of 1976 after December 31, 1981.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. CONGRESSIONAL REVIEW OF REGULATIONS.

(a) IN GENERAL.—No regulation promulgated by the Secretary of Commerce to implement—

(1) section 2 of the Act of August 11, 1939 (commonly referred to as the Saltonstall-Kennedy Act, 15 U.S.C. 713c-3) as amended by section 101 of this Act;

(2) the amendments made by title II of this Act relating to the guarantee of obligations under title XI of the Merchant Marine Act, 1936 covering fishing vessels; or

(3) the amendments made by title III of this Act as they apply to the establishment of fees for foreign fishing permits issued after 1981, the establishment of a full observer coverage program, and the allocation of allowable levels of foreign fishing under the Fishery Conservation and Management Act of 1976;

shall have force and effect—

(A) unless a copy of the regulation is submitted to each House of Congress on the same day and while each House is in session; and

(B) before the close of the period of 60 days following the day on which the regula-

tion is submitted to Congress in accordance with subparagraph (A).

(b) PROCEDURAL PROVISION.—In computing the 60-day period referred to in subsection (a)(B), any day on which either House of Congress is not in session because of an adjournment of more than 5 days to a day certain, or an adjournment of the Congress sine die, shall be excluded.

SEC. 402. APPLICATIONS AND FILINGS FOR COMPENSATION FOR CERTAIN FISHING VESSEL AND GEAR DAMAGE.

(a) IN GENERAL.—If—

(1) any owner or operator of a fishing vessel who suffered, after September 17, 1978, and before the date of the enactment of this Act, damage to, or loss or destruction of, such vessel or fishing gear used with such vessel, but did not apply for compensation therefor under section 10 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980) within the 60-day period prescribed in subsection (c)(1) of such section; or

(2) any commercial fisherman who suffered, after September 17, 1978, and before the date of the enactment of this Act, damages compensable under title IV of the Outer Continental Shelf Lands Act of 1978 (43 U.S.C. 1841 et seq.), but who did not timely file a claim therefor within the 60-day period prescribed in section 405(a) of such Act;

such owner or operator may make application for compensation with respect to such damage, loss or destruction under such section 10, and such commercial fisherman may file a claim for, compensation for such damages under such title IV, to the Secretary of Commerce, within the 60-day period beginning on the date of the enactment of this Act.

(b) SPECIAL PROVISIONS.—(1) Notwithstanding any other provision of law—

(A) any application or filing timely made under subsection (a) shall be treated by the Secretary of Commerce as an application timely made under such section 10(c)(1), or as a filing timely made under such section 405(a), as the case may be, with respect to the damage, loss, or destruction claimed; and

(B) any claim for fishing gear loss that was pending on June 1, 1980, before the United States-Union of Soviet Socialist Republics Fisheries Claim Board or the American-Spanish Fisheries Board shall be treated by the Secretary of Commerce as a timely application made, on the date of the enactment of this Act, under such section 10(c)(1) for compensation for such loss.

(2) Section 403(c)(A) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1843(c)(2)(A)) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof "and the party admits responsibility;".

□ 1210

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLOSKEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

Mr. FRENZEL. Mr. Speaker, I object. And on that I demand tellers.

Tellers were ordered, and the Speaker pro tempore appointed as tellers Mr. BREAUX and Mr. FRENZEL.

The House divided, and the tellers reported that there were—yeas 16, nays 9.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 283, nays 91, answered "present" 1, not voting 57, as follows:

[Roll No. 572]

YEAS—283

Addabbo	Frost	Murphy, Ill.
Akaka	Fuqua	Murphy, Pa.
Albosta	Garcia	Murtha
Alexander	Gaydos	Myers, Ind.
Ambro	Gephardt	Natcher
Anderson, Calif.	Gibbons	Neal
Andrews, N.C.	Gingrich	Nelson
Annunzio	Ginn	Nowak
Anthony	Glickman	Oakar
Applegate	Goldwater	Oberstar
Ashbrook	Gonzalez	Obey
Ashley	Goodling	Ottinger
Aspin	Gore	Panetta
Atkinson	Gramm	Patten
AuCoin	Gray	Patterson
Bafalis	Green	Paul
Bailey	Guarini	Pease
Baldus	Gudger	Pepper
Barnard	Guyer	Perkins
Barnes	Hall, Ohio	Petri
Patman	Hall, Tex.	Peyser
Beard, R.I.	Hamilton	Pickle
Bedell	Hammer-schmidt	Prever
Benjamin	Hance	Price
Bennett	Hanley	Pritchard
Bethune	Hansen	Quayle
Bevill	Harkin	Rahall
Biaggi	Harsha	Railsback
Bingham	Hawkins	Rangel
Boggs	Heckler	Ratchford
Boland	Hefner	Reuss
Bolling	Hightower	Rinaldo
Bonker	Hillis	Roberts
Bonior	Hinson	Robinson
Bonker	Holland	Rodino
Bouquard	Hollenbeck	Roe
Brademas	Holt	Rose
Breaux	Hopkins	Rosenthal
Brinkley	Howard	Rostenkowski
Brodhead	Hubbard	Roth
Brooks	Huckaby	Roybal
Brown, Calif.	Hughes	Rover
Broyhill	Hutchinson	Russo
Buchanan	Hutto	Sabo
Burlison	Ireland	Scheuer
Burton, Phillip	Johnson, Calif.	Shannon
Byron	Jones, N.C.	Sharp
Campbell	Jones, Okla.	Shelby
Carney	Jones, Tenn.	Skelton
Carr	Kazen	Smith, Iowa
Chappell	Kildee	Snowe
Chisholm	Kindness	Snyder
Clausen	Kogovsek	Spellman
Clay	Kostmayer	St Germain
Cleveland	LaFalce	Stack
Coelho	Leath, Tex.	Staggers
Coleman	Lederer	Stangeland
Collins, Ill.	Lehman	Steed
Conte	Leland	Stenholm
Corman	Lent	Stewart
Cotter	Levitas	Studds
Courter	Livingston	Stump
D'Amours	Lloyd	Swift
Daniel, R. W.	Loeffler	Synar
Danielson	Long, La.	Tauzin
de la Garza	Long, Md.	Thompson
Derrick	Lott	Traxler
Dicks	Lowry	Trible
Dingell	Lujan	Udall
Donnelly	Lundine	Ullman
Dornan	McClory	Van Deerlin
Downey	McCormack	Vander Jagt
Drinan	McDade	Volkmer
Duncan, Oreg.	McHugh	Walgren
Early	McKay	Walker
Edgar	McKinney	Wampler
Edwards, Ala.	Maguire	Watkins
English	Markey	Waxman
Ertel	Marriott	Weaver
Evans, Ga.	Matsui	Weiss
Evans, Ind.	Mattox	White
Fary	Mavroules	Whitley
Fascell	Mazzoli	Whitten
Fazio	Mica	Williams, Mont.
Ferraro	Mikulski	Wilson, Tex.
Fithian	Miller, Calif.	Wolff
Flippo	Miller, Ohio	Wolpe
Florio	Minish	Wright
Foley	Mitchell, N.Y.	Wyatt
Ford, Mich.	Moakley	Yates
Ford, Tenn.	Mollohan	Yatron
Forsythe	Montgomery	Young, Fla.
Fountain	Moorhead, Pa.	Young, Mo.
Fowler	Motl	Zeferetti

NAYS—91

Abdnor	Gilman	Porter
Andrews, N.Dak.	Gradison	Pursell
Archer	Grassley	Quillen
Badham	Grisham	Regula
Beard, Tenn.	Hagedorn	Rhodes
Bereuter	Harris	Ritter
Broomfield	Horton	Rousselot
Burgener	Hyde	Rudd
Cheney	Jacobs	Sawyer
Clinger	Jeffords	Schroeder
Collins, Tex.	Jeffries	Schulze
Conable	Johnson, Colo.	Sebelius
Corcoran	Kastenmeier	Seiberling
Coughlin	Kelly	Sensenbrenner
Crane, Philip	Kemp	Shumway
Dannemeyer	Kramer	Shuster
Deckard	Lagomarsino	Simon
Devine	Latta	Smith, Nebr.
Dickinson	Leach, Iowa	Solars
Duncan, Tenn.	Lee	Solomon
Edwards, Okla.	Lewis	Spence
Erdahl	Luken	Stanton
Erlenborn	Lungren	Tauke
Evans, Del.	McCloskey	Thomas
Fenwick	Madigan	Vanik
Findley	Marlenee	Whitehurst
Fish	Martin	Whittaker
Fisher	Michel	Williams, Ohio
Frenzel	Moorhead, Calif.	Winn
Gialmo	Pashayan	Wydler
		Wylie

ANSWERED "PRESENT"—1

Bedell

NOT VOTING—57

Anderson, Ill.	Eckhardt	Myers, Pa.
Blanchard	Edwards, Calif.	Nedzi
Bowen	Emery	Nichols
Brown, Ohio	Heftel	Nolan
Burton, John	Holtzman	O'Brien
Butler	Ichord	Richmond
Carter	Jenkins	Santini
Cavanaugh	Jenrette	Satterfield
Conyers	Leach, La.	Stark
Crane, Daniel	McDonald	Stockman
Daniel, Dan	McEwen	Stokes
Daschle	Marks	Stratton
Davis, Mich.	Mathis	Symms
Davis, S.C.	Mineta	Taylor
Dellums	Mitchell, Md.	Vento
Derwinski	Moffett	Wilson, Bob
Dixon	Moore	Wilson, C. H.
Dodd	Murphy, N.Y.	Wirth
Dougherty	Musto	Young, Alaska

□ 1220

Mr. KASTENMEIER changed his vote from "yea" to "nay."

Messrs. ROTH, WOLPE, and COTTER changed their votes from "nay" to "yea."

So a second was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. BREAUX) will be recognized for 20 minutes, and the gentleman from California (Mr. McCLOSKEY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. BREAUX).

□ 1230

Mr. BREAUX. Mr. Speaker, I yield myself 7 minutes.

Mr. Speaker, H.R. 7039, the American Fisheries Promotion Act, is the most significant fisheries legislation in many years. The enactment of this measure will determine the course of fisheries development in the United States for decades to come. As the Congressional Budget Office has pointed out, the purposes of this legislation will be accomplished at no additional cost to the U.S. taxpayer.

This is a compromise measure. It represents the collective efforts of the Committee on Merchant Marine and Fisheries, the administration, and the American fishing industry. This bill, therefore, represents a real achievement, considering the diversity of positions which it has had to accommodate.

The enactment of the Fishery Conservation and Management Act of 1976 (FCMA) heralded a new era for American fisheries. The FCMA established exclusive fisheries management authority of the United States over all fish (except the highly migratory tuna) within a fishery conservation zone that extends from the seaward limits of our territorial waters to 200 miles from our coasts; over all U.S.-origin anadromous species throughout their range (except in the recognized zones of other nations); and over all fishery resources of the U.S. Continental Shelf beyond 200 miles. The United States assumed control of 20 percent of the world's living marine resources. By that action, we sought to provide for the effective conservation and management of vitally important fish stocks and to assure their development for the greatest overall benefit of the Nation. Coupled with Federal financial assistance and research and development programs, provision in the FCMA for preferential access by American fishermen to the harvest raised high hopes for rapid and full development of our industry.

The American Fisheries Promotion Act responds to the grim fact that our hopes for the U.S. fishing industry have not been realized. More than 3 years after the enactment of the FCMA, U.S. fishermen harvest only 33 percent, by volume, and 66 percent, by value, of the total catch in the FCZ. Taking into account the decreased total harvest since 1976, the U.S. displacement of foreign fishing in the FCZ has been only 1 percent per year, by volume, and less than 3 percent per year, by value. Foreign fishermen took from our zone, in 1979, fish valued at $470 million, actually $37 million more than the value of their catch in 1976.

U.S. imports of fisheries products have actually grown from $1.6 billion in 1976, to $3.8 billion in 1979. Last year our fisheries trade deficit was $2.7 billion, a $1 billion increase over the 1976 level. The imbalance of our fisheries trade represented 10 percent of the overall national balance of trade deficit. Twenty percent of the fish products that enter world trade from some 80 countries are destined for the United States. At the consumer level, of $12.6 billion spent in the United States for fish products in 1979, $6.3 billion, 50 percent of the total, was for imports.

Full development of our fishery resources by U.S. fishermen would transform this country into a net exporter of fish products, add $1 billion annually to the national economy and create 43,000 new jobs in the next decade for our people. To achieve these goals, to overcome the multiplicity of problems facing our industry, the enactment of the American Fisheries Promotion Act, a comprehensive development measure, is essential.

LOANS

Important sectors of the U.S. fishing industry are encountering unusually severe economic difficulties. These problems stem principally from increased operating costs—for fuel, in particular—soft markets, competition from subsidized foreign imports, and even adverse environmental conditions. Hardest hit is the gulf region, where hundreds of shrimp boats are reportedly tied to the dock.

The National Marine Fisheries Service (NMFS) estimates that up to $36 million in vessel loans guaranteed by the Federal Government could soon be in default. In addition, key Production Credit Associations (PCA's) in the Northwest fear substantial defaults, as large numbers of vessel owners are in arrears on their loan payments.

While the present situation is serious, it is likely to be short lived. What is needed is immediate assistance to avoid long-term impacts.

H.R. 7039 responds to these problems by revitalizing the fisheries loan fund, permitting emergency loans to be made until September 30, 1982. Because there is an important interest in avoiding U.S. taxpayer liability due to title XI defaults, the bill provides that the Secretary of Commerce would for each fiscal year estimate the amount of money needed to protect federally guaranteed loans and would reserve those funds for that purpose. Immediately thereafter, the Secretary could release moneys to assist other vessel owners in danger of default. What funds then remained could be used to assist historically successful fishermen who, due to circumstances beyond their control, were incurring or in danger of incurring net operating losses.

Interest rates on loans to avoid default would be set to cover administrative costs, only. The interest rate for loans to respond to net operating losses would be the same as for farmers under the Emergency Agricultural Credit Act of 1978; that is, the charge would be variable, depending on the cost of money to the Federal Government.

FISHERIES RESEARCH AND DEVELOPMENT

The Saltonstall-Kennedy Act was intended to assure that fisheries development would not want for adequate funding. Thirty percent of import duties on fish products were to be applied directly to R. & D. programs. Unfortunately, this has not happened. In 1979, only about one-half of the Saltonstall-Kennedy receipts of some $26 million was dedicated to fisheries development. H.R. 7039 would attempt to make certain that the original intent of Saltonstall-Kennedy was carried out. Moreover, the bill would place the emphasis of the Saltonstall-Kennedy program where it really belongs, on industry-initiated projects. The fishermen and fish processors know best what R. & D. work needs to be done.

Priority Saltonstall-Kennedy projects would deal with fuel efficiency, marketing and fish quality standards. H.R. 7039 recognizes that these are areas that deserve special emphasis.

LOAN GUARANTEES

The bill provides useful amendments to the vessel obligation guarantee program established under title XI of the Merchant Marine Act of 1936. Most importantly, 10 percent of the $10 billion available under the title XI program for all guarantees would be identified for fishing vessels. Eligibility would be limited to concerns that are 75 percent U.S. owned.

PHASE-OUT OF FOREIGN FISHING

As I have noted, foreign fishing in the U.S. fishery conservation zone has been reduced only marginally since the enactment of the FCMA. As the report of the Committee on Merchant Marine and Fisheries on H.R. 7039 recognizes, the fact is that, as long as foreign nations are permitted to continue a high level of fishing, much of it subsidized, in the U.S. zone, and at the same time to deny access by U.S. fish exports to important markets, the United States will be unable to achieve full development of its fishery resources.

The experience of the last several years has demonstrated that the device of optimum yield has not provided adequate recognition of the national interests of the United States in improved utilization of its fisheries by its own citizens. Biological factors have played too great a role, and economic interests have not been sufficiently taken into account. This approach has tended to ignore the plain language of the FCMA in section 3(18), which defines optimum yield to include economic and other domestic considerations and to serve the overall interests of the Nation.

Under the bill, each fishery management council would choose whether to continue with the previously established system or adopt a new formula which would provide for a phased reduction of foreign fishing on target species. For each season and for any fishery, the council could choose, in its discretion, the system it determined to be more advantageous.

The phaseout formula provides that, as U.S. fishing performance increases to specified levels in any fishery, the level of foreign fishing in that fishery will be reduced by a certain greater increment. The greater the U.S. performance, the greater the reduction of the level of foreign fishing. Thus, the system would provide a predictable reserved amount of fish which would be reasonable in relation to the demonstrated growth potential of U.S. fishermen in each fishery. Continued U.S. growth would bring further reserves. Some or all of what U.S. fishermen did not catch from the reserve amount could be held until the following year, if the fish would survive until then and if an earlier release would be deterimental to U.S. fishermen. This is consistent with the principle of optimum utilization. The role of the councils in determinations of whether and to what extent the surplus would be withheld or released in the phaseout formula would be precisely what it is under the currently prevailing system. The councils could also lower

the optimum yield in appropriate circumstances, and this would result in a further reduction of foreign fishing, in view of the fact that U.S. fishermen always retain preferential access to the resource. Of course, in no year could there be a release to foreign fishermen of an amount of fish that, in combination with the U.S. preferential catch, would exceed the optimum yield for the fishery.

On the other hand, in the unlikely event the optimum yield rose above, or the domestic catch fell below, previous levels, that resulting surplus, too, could be released to foreign fishermen, but only on the basis I have outlined. In the final analysis, the key point is that the release of unused fish could be delayed a year to serve the economic interest of U.S. fishermen. That is a very major step forward in our law, so far as fisheries development is concerned.

It is worth reviewing the specific formula for the phaseout. The first phased reduction of foreign fishing in any fishery would occur when U.S. fishermen increased their catch in that fishery by a certain amount over their 1979 level of harvest. There would be three such thresholds and three corresponding levels of reduction of foreign fishing. If U.S. fisherman increased their harvest from 25 up to 50 percent, from 50 up to 75 percent, or from 75 percent or more of 15 percent of the 1979 total allowable level of foreign fishing (TALFF) in a fishery, the TALFF for the following year would be reduced by an amount equal to 5, 10, or 15 percent, respectively, of the 1979 TALFF for that fishery. In a large volume fishery, such as pollock, it might take U.S. fishermen several years to increase their catch enough to reach the lowest threshold.

However, in smaller fisheries, the highest threshold might be achieved in a single season. Each time a threshold was achieved, that level of U.S. harvest would be the base upon which an additional increase in U.S. fishing would have to be achieved to attain the threshold for a further percentage reduction of the TALFF.

Let me illustrate. Say, in 1979, the TALFF for a fishery was 10,000 metric tons and the U.S. catch was 1,000 tons. To get the first percentage cut out of TALFF in accordance with the phaseout, the U.S. catch would have to increase by 375 tons (75 percent of 15 percent of the 1979 TALFF) over its 1979 level, for a total U.S. catch of 1,375 tons. The reward for U.S. fishermen the next year would be a reduction of TALFF by 500 tons. That reduction would, of course, be in addition to the reduction equal to the increase in the U.S. catch, that is, TALFF would be 8,125 tons (10,000 tons, minus the sum of 1,375 tons which the United States actually harvested and the 500 tons reward). The United States could grow into what would be, in essence, a special 500 ton reserve. Further such reductions of TALFF would be triggered by additional U.S. catch increases meeting the 375-ton target level.

In accordance with the formula, additional, larger increases in the U.S. catch would result in additional, larger reductions of TALFF. That is, if U.S. fishermen increased their catch in the fishery by 750 tons (50 percent of 15 percent of 1979 TALFF) over their harvest level when they achieved the earlier threshold, they would receive the benefit of an additional 1,000-ton cut in TALFF, the following year (plus a further cut equal to their actual increase in performance, that is 750 tons). TALFF would then be lowered to 6,375 tons.

Thus, the system offers real advantages to U.S. fishermen. Predictability would be enhanced. Surpluses could be held over until succeeding harvesting seasons. The economic benefits would be considerable. This provision is consistent with the treaty under negotiation at the Third U.N. Law of the Sea Conference. Our chief negotiator, Ambassador Elliot Richardson, and the Department of State have approved the precise language set out in these provisions of the bill.

ALLOCATIONS OF SURPLUS FISH

Improved access for U.S. fish products to foreign markets is an essential condition to the rapid development of our fishing industry. Trade barriers maintained against our products by foreign countries are at unacceptable levels. Ironically, it is these very countries which also are provided lucrative opportunities to fish in our zone. Worst of all, many of the fish that are caught by foreign vessels in the FCZ return to the United States as imports and contribute to the substantial deficit of our balance of payments. Value is added primarily in foreign countries, not in the United States.

H.R. 7039 places strong emphasis on the linkage between allocations of our surplus fish and the willingness of foreign potential recipients to provide improved export opportunities for U.S. fish products, purchase more U.S. fish exports, and transfer technology to the U.S. industry. In particular, I expect that foreign nations wishing to fish in the U.S. zone will reduce tariff and nontariff barriers on fish will receive appropriate consideration in return on TALFF allocations.

However, cooperation of foreign nations in avoiding gear conflicts with U.S. fishermen and in assuring the effectiveness of our conservation, management and enforcement programs remains essential and international cooperation on research is still very important. These factors cannot be ignored in making future allocations.

The recognition by the bill of domestic consumption by foreign nations of fish harvested by their own vessels in the U.S. zone is intended to insure that basic nutritional requirements of those nations are considered in the award of allocations.

The bill is consistent with international practice and the positions of the United States at the third United Nations Conference on the Law of the Sea.

OBSERVER COVERAGE

A prerequisite to development of U.S. fisheries is effective conservation and management of the stocks. Unfortunately, enforcement has fallen far short of what is required. The resources of the Coast Guard and NMFS are very limited and there is a clear need to augment them with extensive observer coverage. Moreover, much of the expense incurred in Coast Guard and NMFS enforcement is borne by U.S. taxpayers. On the other hand, observers are paid for directly, and in advance, by foreign fishermen.

I am appalled that there were 382 violations of the FCMA in 1979 by foreign fishermen and that there were many cases of seriously underreported foreign catches. In recent days there have been additional, very serious violations. NMFS believes that:

> The most effective means available to us in our efforts to control this problem is the use of increased observer coverage on board foreign fishing vessels, coupled with continued use of permit sanctions and recommendations for high penalties.

Consequently, the bill mandates one hundred percent observer coverage, with exceptions limited to certain specified circumstances. Mothership fleets must have observers processing vessels and on so many of the harvesting vessels as needed to obtain a representative sample of the by-catch.

The bill also recognizes that certain vessels may be in the U.S. zone for too brief a period or be too small or otherwise unfit for observers to be placed aboard. Examples would be vessels operating in a future Canadian effort on albacore in the U.S. zone by bilateral agreement, and the Japanese tuna fishing vessels in the Western Pacific Council area.

INCREASED FEES ON FOREIGN FISHING

No country in the world charges foreign fishermen less than does the United States for the privilege of fishing within 200 miles. NMFS estimates that, in 1979, the cost of administering the FCMA was $160,588,000. Yet the fees that we collected, less refunds, amounted to $14.5 million. Foreign fishermen took from our zone $470 million worth of fish. But the U.S. taxpayer bore more than $140 million in the expenses of running the zone. Clearly, that is an unacceptable situation and amounts to a subsidy by U.S. citizens of foreign fishing operations.

Under H.R. 7039, foreign fishing fee receipts for foreign fishing in the U.S. FCZ for 1981 must be no less than 7 percent of the ex-vessel value of the foreign harvest in the U.S. FCZ in 1979, except that the fees with respect to any fishery may not be set at a level which would render foreign fishing therein uneconomic or be lower than the level of fees imposed with respect to that fishery in 1979.

In 1979, the United States imposed: First, poundage fees of 3.5 percent of the ex-vessel value of species harvested by foreigners in the U.S. FCZ; and, second, varying permit application fees based upon the function and gross registered tonnage of a vessel. Therefore, in 1981, foreign fishing fees imposed under section 204(b)(10) of the FCMA, as amended could not be lower for any single species than 3.5 percent of the ex-vessel value of the species.

Furthermore, total receipts from a fishery could not be less than the sum of: First, an amount equal to 3.5 percent of the ex-vessel value of the species in that fishery, where applicable, plus, second, an amount equivalent to the sum of the permit application fee receipts which would have been received from that 1981 fishery under the 1979 permit application fee schedule.

After 1981, foreign fishing fees imposed under section 204(b)(10) of the FCMA, as amended, shall be at least an amount sufficient to return to the United States an amount which bears to the total costs of carrying out the provisions of the FCMA—including, but not limited to, fishery conservation and management, fisheries research, administration and enforcement—during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The same exceptions with respect to the economics of foreign fishing and the minimum level of fees for 1981, apply in 1982 and subsequent years. Whenever one of the exceptions is applied, the Secretary will be required to publish in the Federal Register a statement setting forth the reasons therefor and a statement identifying what supporting data is available for public review.

How the United States decides to spend the money from fees on foreign fishermen is entirely a domestic affair. H.R. 7039 provides that fees on foreign fishermen will go first to the fisheries loan fund, to the extent needed, and then to the general fund of the Treasury.

FISHERY TRADE OFFICES

American businessmen find it difficult to market their products abroad, not only because of the barriers that are imposed by foreign governments, but also because the United States does not have adequate fisheries representation in foreign countries. There are only two U.S. fisheries attachés in the entire world. But there are many countries in which U.S. products might find substantial markets. Therefore, H.R. 7039 provides that there shall be at least six fishery trade officers in key foreign capitals. The duties of these officials will be to maintain an up-to-date assessment of market opportunities and barriers abroad and to provide marketing assistance to U.S. exporters. This is an important task and I expect that it will be pursued vigorously.

CONCLUSION

H.R. 7039 provides the kind of comprehensive response to fisheries development that is required for the solution of the multitude of problems facing the U.S. fishing industry. Each one of the components of the bill has been carefully thought out after months of consideration. Hearings on the subject have been extensive and there has been close cooperation between the Congress, the administration, and the industry in moving this legislative proposal. I look forward to the swift enactment of H.R. 7039. The support for the measure has been overwhelming, leaving no doubt as to where the national interest lies. The enactment of this bill will at last set fisheries development in the United States on the right course.

Mr. McCLOSKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I address the House at this point to ask for a no vote on this bill on suspension for several reasons, one of which is procedural. I think the distinguished chairman of the subcommittee, the gentleman from Louisiana (Mr. BREAUX), will agree with me that this bill has pursued a rather strange procedure in order to reach the Suspension Calendar at this moment. This bill was originally reported out at the full Merchant Marine and Fisheries Committee in June. It contained 10 major provisions, eight of which have been changed as of last Friday, and I, as the ranking minority member on this committee, was unable to get a copy of these substantive changes until yesterday morning at approximately 11:15. At that point, this bill was scheduled to be on the Suspension Calendar yesterday. One of the provisions that it then included, the so-called capital construction funds provision, had been expressly voted down by the Committee on Merchant Marine and Fisheries by a unanimous vote in June.

□ 1240

The capital construction fund, Mr. Speaker, is a major issue. The capital construction fund provides to the operators of shipping companies and shipyards the benefit of a tax deferral on certain revenues if they are invested in a fund for the purchase or construction of U.S. built ships. This could result in an estimated $90 million annual revenue loss to the Treasury if major fish packers such as Castle and Cooke and Ralston-Purina desire to take earnings from their operations and place them in a capital construction fund for the future construction of new canneries. It would also, for the first time, provide maritime tax benefits grounded in national security policy to the fish packing industry.

Mr. BREAUX. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Louisiana.

Mr. BREAUX. The gentleman realizes the capital construction fund is not in the bill before the House.

Mr. McCLOSKEY. I do. I am addressing that point. I am going to ask the chairman about that point in a moment.

It was not in the bill when it was reported out of committee, but it was in the bill yesterday that the chairman was going to bring it to the floor, despite the fact that the committee had unanimously voted it down, was it not, Mr. Chairman? The answer to that is yes; is it not?

Mr. BREAUX. May I answer the gentleman's question?

Mr. McCLOSKEY. Yes.

Mr. BREAUX. The gentleman knows the Committee on Merchant Marine and Fisheries did not report the CCF provision in there in order to give the Committee on Ways and Means an opportunity to move, which they did not have the time to do.

Mr. McCLOSKEY. I understand that, but the answer to my question is, yes; when the committee reported out the bill in June it left out the capital construction fund provision for one reason. The committee majority and the chairman from Louisiana specifically said in the committee hearing that the capital construction fund was being left out in order to avoid the jurisdiction of the Committee on Ways and Means when it went to conference with the Senate. The Senate bill had the capital provision in it, and the House conferees intended that they would then cave in to the Senate.

I want to quote the chairman's words from the transcript of the June meeting of the Committee on Merchant Marine and Fisheries.

We had just voted down in the committee on June 12 my amendment to strike the capital construction fund. The gentleman from Louisiana (Mr. BREAUX) was then recognized for an amendment to reverse that vote and remove the capital construction funds provision on his own motion.

Let me quote from the transcript:

> The Chairman (Mr. MURPHY). The gentleman states the case correctly. The committee is in difficulty in Ways and Means right now with H.R. 85 as well as with the Omnibus Maritime Bill, and we are having great difficulty in the CCF provisions themselves as they refer to maritime let alone elements in this legislation.
>
> And I think the safest course would be to adopt his amendment at this point.

This is the amendment to delete the capital construction fund.

We go on:

> Mr. BREAUX. Mr. Chairman, I think in just a quick summary of the arguments, Ways and Means does have a claim on capital construction funds, and by taking this out of our bill, it will allow us to proceed in an orderly fashion to the floor without having a problem with another committee over their jurisdiction.
>
> I would also note that the concern of people who like the capital construction fund and what it would do, I strongly support it, absolutely committed to it being contained in a final package.

Those are the words of the chairman, the gentleman from Louisiana (Mr. BREAUX) in the committee, that we would take it out of the committee in order to get it removed from the jurisdiction of the Committee on Ways and Means, so that when we went to conference with the Senate, it could be put back in.

Let me quote further, because the gentleman from Louisiana (Mr. BREAUX) was not alone in this position.

> Mr. STUDDS. I want to support the gentleman's request.

This is to remove the capital construction fund.

> Mr. STUDDS (continuing). I think we were sort of in a flush of concentrating on the substance of the matter without thinking about the procedural situation when we adopted that amendment.

I share the gentleman's hope that we will end up with a statute with this provision in it, but I think that the most likely way to accomplish that, at this point, would be not to risk encountering the further delays that would ensue from a sequential referral to Ways and Means.

I have no objection to that procedurally, but yesterday, when the bill was to come up on the Suspension Calendar, it included again this capital construction fund. When the gentleman from Louisiana and the supporters of this bill saw the members of the Committee on Ways and Means on the floor prepared to oppose it, they pulled the bill off the Suspension Calendar yesterday and have brought it up again today but with the capital construction fund omitted from the bill.

I want to ask the chairman, is it not the intent of the gentleman and the gentleman from Massachusetts (Mr. STUDDS), and the supporters of this bill, that if we enact it on suspension today, when the gentleman gets over to conference with the Senate, the gentleman will cave in to the Senate conferees and put the capital construction fund back in the bill? I would like to have the chairman's answer on that point.

Mr. BREAUX. If the gentleman will continue to yield, the gentleman is absolutely, unequivocably, positively incorrect. I will tell him way.

It would be my hope that this bill would go to the Senate, that they could adopt it as is, and that would be the end of the bill without CCF. It would be the hope of this gentleman to bring that matter to the attention of the Committee on Ways and Means at the very beginning of the next Congress.

Mr. McCLOSKEY. I understand that commitment. I respect the gentleman's integrity; my primary reasons for objecting to this bill are to try to prevent what the gentleman intended to do, and the gentleman from Massachusetts (Mr. STUDDS) wanted to do, back in the June hearing.

In spite of the constitutional provision that revenue measures must initiate in the other body, we would have been allowing the Senate to pass the capital construction fund, ignoring it here in the House and then accepting in conference that which we constitutionally are not permitted to do, to accept a revenue measure not initiated by the House.

Let me argue now on the remaining issues of this bill.

Eight of the ten provisions of this bill have been materially changed in the last 4 days. It was only Friday that the administration removed their objections to the bill. Why? Because today at 4 p.m., Pacific standard time, the President and Senator MAGNUSON will be in the State of Washington discussing the great contributions of the congressional delegation from the State of Washington to the fisheries of the northwest coast. There is no reason to take up a bill of this magnitude on this floor on a suspension at this hour for any other reason.

Let me say this. This bill makes a major change in U.S. policy. We have justified, the Committee on Merchant Marine and Fisheries on which I have been privileged to sit for 12 years, we have justified subsidies for U.S. shipping and U.S. shipyards because we wanted to maintain a strong merchant marine and a strong shipyard base in the event of war. The entire basis for maritime subsidies and maritime tax benefits is based on national security.

For the first time, this bill will extend the title XI loan guarantees, the 87½ percent Federal guarantee of financing, to dockside facilities. Who does this benefit? This does not benefit the mom-and-pop operation. It is Castle and Cooke and Ralston-Purina and other major fish factories, who, for the first time, will get the benefit of title XI guarantees.

Mr. BREAUX. If the gentleman will yield further, maybe because the gentleman had not read the bill, and I know his problems with having not read the bill, that is a problem I really have not participated in, title XI does not cover shoreside facilities.

Mr. McCLOSKEY. The gentleman has removed the title XI extension to dockside facilities from this provision in the bill?

Mr. BREAUX. The gentleman is correct.

Mr. McCLOSKEY. I am terribly grateful the gentleman has done that, because otherwise we would have a hard time asking for maritime subsidies for national security in the future.

This points up, however, the problem of addressing a major bill on suspension, with 8 of 10 provisions changed in a major way, and with the members of the committee not even seeing the final version until the very day it is scheduled on the suspension calendar.

Mr. GRADISON. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Ohio.

Mr. GRADISON. I thank the gentleman for yielding.

I wish to express my concern about the possibility that the changes in the capital construction fund may ultimately find their way into law through a conference committee. I would point out that the Committee on Ways and Means, on which I serve, has not considered this matter, but did consider changes in the capital construction fund in connection with another bill, the Omnibus Maritime Act, which was referred to a few minutes ago.

Would the gentleman agree the safest course of action, if we want to make certain that no changes are made in the capital construction fund, would be to defeat this bill on suspension?

Mr. McCLOSKEY. I would have said that until I had the commitment from the gentleman from Louisiana that under no circumstances will we cave in to the Senate on that point. That is the assurance, is it not?

Mr. BREAUX. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Louisiana.

Mr. BREAUX. As I repeated once before, the intent is not to even have a conference if we can pass the bill as it is today at no cost to the taxpayer. There will not be a need for a conference.

Mr. McCLOSKEY. In deference to that answer by the gentleman and knowing we are going to have to maintain our guard against the Senate's powers in these closing days, I think the question of the gentleman from Ohio is answered in the affirmative. I have absolute faith in the gentleman from Louisiana.

Mr. TRIBLE. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Virginia.

Mr. TRIBLE. Mr. Speaker, I rise in support of H.R. 7039, the American Fisheries Promotion Act. This legislation comes at a critical period in the development of our Nation's fishing industry.

I believe it will bring a measure of relief to our hard-pressed fishermen and will permit us to more fully utilize America's great fisheries resources.

Independent vessel owners are suffering. To date, 44 vessel owners in the title XI loan guarantee program have already sought additional Federal financial assistance. The National Marine Fisheries Service estimates that defaults on title XI guarantee vessel loans could cost the U.S. taxpayer as much as $36 million.

This May, the New England Fish Co., one of the largest independent fishing companies in the United States, closed its doors and began the liquidation of assets to pay debts totaling more than $56 million.

At a time when our seafood industry is on the verge of bankruptcy, we allow foreign fishermen to harvest 67 percent of the fishery resources in our own 200-mile zone.

Indeed, with some 20 percent of the world's fishery resources located off our coasts, the United States remains a net importer of seafood—60 percent of the edible and industrial fish we use is supplied by foreign companies. This trend must not continue.

In 1979, our fisheries trade deficit amounted to $2.8 billion. This represents approximately 10 percent of the total U.S. balance-of-payments deficit.

The American Fisheries Promotion Act responds to our industry's crisis by recognizing three important facts: First, immediate financial assistance is desperately needed to sustain key segments of our fishing industry: second, new long-term programs are needed to stimulate domestic growth and improve our capacity to process the vast resources that lie off our coast; and third, these objectives must be reached without spending additional Federal tax dollars.

Not since the enactment of the Fisheries Conservation and Management Act of 1976 have we considered such a comprehensive piece of legislation that will protect the future of our industry at so small a cost. There are no authorizations for the expenditure of additional Federal tax dollars. Earlier established programs which are self-financing are restructured to be more responsive to prevailing conditions and are augmented with increased fees on foreign fishery operations in our 200-mile zone. Our current permit fees are the lowest in the world.

For 2 years funds will be used to supplement $6 million which have remained impounded since 1973 in the fisheries loan fund. Thereafter, they will be transferred to the general fund of the Treasury. The revitalization of the fisheries loan fund will provide immediate relief to those fishermen who have been most heavily impacted by current economic conditions and are near default on vessel mortgages.

The Fisheries Promotion Act also recognizes the need to guarantee that Saltonstall-Kennedy funds are used for fishery development projects and not to cover the National Marine Fisheries Service's administrative expenses. H.R. 7039 requires that at least 50 percent of the S-K funds be dedicated to industry-initiated research and development projects and the remaining funds used for projects undertaken by the Federal Government.

Unfortunately, the Fisheries Conservation and Management Act has not resulted in the exciting expansion of America's fishing industry anticipated at the time of its enactment in 1976. The administration has failed to use the tools provided by the FCMA to promote the growth of a healthy, well-balanced U.S. seafood industry. The authority to establish lower optimum yield levels in order to restrict foreign fishing has not been effectively used. Foreign nations still dominate in our fishery conservation zone.

We cannot continue to stand idle as our fishermen are excluded from foreign fishing grounds and still forced to compete with subsidized foreign vessels in our own waters. H.R. 7039 provides our industry with the opportunity it needs to fully utilize the vast resources within our fishery conservation zone by establishing a realistic and fair method for the gradual phase out of foreign fishing operations as our ability to harvest these resources grows.

It is equally crucial to the development of our fishing industry to gain improved access for American seafood products in foreign nations. While the United States encounters severe trade barriers abroad, foreign fishermen carry out their subsidized operations in our zone, take our fish home to their highly protective markets, process it and return it to the American producer at some of the highest prices paid for seafood throughout the world. It is amazing that these countries that maintain restrictive barriers on U.S. fish imports are permitted to continue their often massive harvesting of fish in our fishery conservation zone.

H.R. 7039 provides the assistance that the industry desperately needs, by insuring that fishery allocations to foreign nations are dependent on our access to foreign markets, and by sending fishery trade officers abroad to promote U.S. seafood products.

The multitude of problems confronting the U.S. fishing industry require that we act to protect the well-being of America's fishermen. I urge my colleagues to support this important legislation.

□ 1250

Mrs. SNOWE. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I would be glad to yield to the gentlewoman from Maine.

Mrs. SNOWE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise today as a cosponsor and in support of H.R. 7039, the American Fisheries Promotion Act of 1980. This measure is designed to address the concerns of our domestic fishing interests, not only those fishermen I represent in the Second District of Maine, but all American fishermen. At no cost to the American taxpayer—that is right, at no cost to the American taxpayer—this proposal has the potential to add $1 billion directly to our economy and over 40,000 new jobs.

Key elements of this measure will do three things. First, by increasing the dedication of Saltonstall-Kennedy funds from 30 to 50 percent, a substantial increase in revenue will be available to fund industry proposed fisheries development projects. Second, by extending the Federal loan guarantee program to fish processing plants and by establishing a 2-year loan program to assist fishing vessel owners who are in danger of defaulting on their vessel mortgage, this measure allows domestic fishermen the opportunity to greatly expand their involvement in the industry. And third, by establishing a formula for phasing out foreign fishing within the U.S. Fishery Conservation Zone (FCZ) in accordance with Law of the Sea Treaty implications, H.R. 7039 will promote U.S. displacement of foreign fishing within the 200-mile limit. Combined, these objectives will encourage a healthy American fishing industry.

Why do we need this bill? We need this bill because in recent years growth of the U.S. fishing harvest has been minimal—even with passage of the Fishery Conservation and Management Act of 1976. Adjusted to take into account the decreased total catch since 1976, U.S. displacement of foreign fishing by volume of fish harvested in the FCZ has been only 1 percent per year. Although the growth of exports has been substantial, the increase in imports has been greater. The result has been an expanding fisheries trade deficit for the United States.

We must reverse this trend. H.R. 7039 will do just that. It is a comprehensive proposal designed to create a self-sufficient American fishing industry. Furthermore, as I mentioned earlier, at no cost to the American taxpayer, this proposal could add $1 billion directly to our economy and create 40,000 new jobs. I, therefore, urge my colleagues to support this important piece of legislation before us today.

Mr. CARNEY. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY I yield to the gentleman from New York

Mr. CARNEY. Mr. Speaker, I, too, stand in support of the bill. I am cosponsor of the American Fisheries Promotion Act.

Mr. Speaker, in its September 22 edition, the Washington Post reported that the Carter administration has agreed to back the Fisheries Promotion Act for political reasons. The bill has been criticized as a handout for special interests, and some of the provisions of the legislation, as approved by the Merchant Marine and Fisheries Committee have been weakened so as to obtain ever wider support.

Let there be no doubt about this fact—it is in the national interest to develop our fishing industry.

Twenty percent of the world's available fishery resources are found within the U.S. Fishery Conservation Zone. The United States consumes 7.5 percent of the world's harvest, yet we take only 4 percent of the world's catch. The result is a staggering balance-of-payments deficit of $2.7 billion in the fisheries sector alone. The United States exported $1.1 billion in fisheries products. This fisheries trade deficit represents somewhat more than 10 percent of the total U.S. balance-of-payments deficit. The strain placed upon the U.S. dollar by this deficit adds to the rampaging inflation which is severely affecting Americans of all ages and economic strata.

A comprehensive fisheries development program could, within the next decade, create more than 40,000 jobs, add more than $1 billion per year to the U.S. economy, and reduce the U.S. trade deficit by $1.7 billion per year A comprehensive fisheries development program will convert the United States from a net importer to a net exporter of fisheries products.

Coastal communities like Suffolk County, N.Y. have seen their economy suffer from foreign exploitation of U.S. fisheries. This legislation will contribute to their swift revival.

The American Fisheries Promotion Act provides an effective means of realizing the full potential of the U.S. fishing industry at minimal cost to the taxpayer.

Key provisions of the bill include:

A plan by which American fishermen can increase the percentage of the total allocation of the catch available to them.

The immediate doubling of fees for fish harvested in U.S. waters by foreign fishermen. Within 2 years, foreign fishermen will pay the total cost of administering and enforcing Federal programs with which they must comply. The money will be used to establish a fisheries loan fund to provide low-interest loans to fishermen who have been heavily impacted by adverse economic conditions in the fishing industry.

Modification of the existing Saltonstall-Kennedy program which was ostensibly designed to promote fisheries research and development, but now largely supports a Federal bureaucracy—to require that no less than 50 percent of the money in it be dedicated to industry-initiated projects.

Mr. Speaker, this legislation is long overdue, and I urge its passage.

Mr. McCLOSKEY. Mr. Speaker, I hope the House notes the privilege of being the ranking minority member on this committee.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as a cosponsor of the American Fisheries Promotion Act (H.R. 7039), I rise in support of this much needed legislation designed to promote and develop the U.S. fishing industry.

Despite enactment of the Fishery Conservation and Management in 1976, we have yet to realize the maximum potential benefit to be derived from increased utilization of our own fishery resources. That legislation was designed to end foreign overfishing by establishing a 200-mile fishery conservation zone to enable our own fishing industry to better utilize our own fishery resources.

Twenty percent of the world's fisheries resources are within our 200-mile fishery conservation zone. Yet, since 1976, the United States has only been able to displace foreign fishing in our zone by 1 percent per year. Clearly, foreign fishing in our waters has not been significantly altered. What is also disturbing is that despite enactment of FCMA, our trade deficit in fisheries products increased to $2.7 billion last year—fully 10 percent of our Nation's total trade deficit.

Clearly the time has come for remedial legislation so the U.S. fishing industry can expand and better compete in the world marketplace. H.R. 7039 provides the wherewithal to achieve that goal. As reported by the Merchant Marine and Fisheries Committee on which I serve, the American Fisheries Promotion Act establishes incentive programs to promote and develop the U.S. fishing industry at no cost to the U.S. taxpayer, and the Congressional Budget Office concurs that this legislation will result in no new costs.

The bill amends FMCA to provide for a predictable, incremental phaseout of foreign fishing. Specified increases in fishing performance by U.S. fishermen would result in specified decreases in foreign fishing. As U.S. fishermen increase their harvest, reserves would be set aside for U.S. fishermen for the following year.

As well, H.R. 7039 assures that at least 50 percent of Saltonstall-Kennedy moneys are utilized for industry fisheries development projects.

By restructuring the 1956 fisheries loan fund, this bill also provides a needed cushion for vessel owners facing temporary operating losses due to market conditions and competition from heavily subsidized foreign fish imports. New fees on foreign fishing would provide funding for these short-term, low-interest emergency loans. This makes sense. U.S. fees on foreign fishing are lower than those imposed by any other nation in the world. By increasing those fees to a more reasonable level and establish a system to base them on foreign proportion of the total catch in the United States, we can provide for the financial demands on the fisheries loan fund.

The benefits to our economy which will result from enactment of the American Fisheries Promotion Act are many. By 1990, it is estimated that this legislation could generate 43,000 new jobs and add $1 billion to our gross national product. It is expected to increase fish product exports to $2.1 billion.

A revitalized and expanding fishing industry in our national interest. This legislation provides the wherewithal to accomplish that at no additional cost to the American taxpayer. I urge my colleagues to join in voting for H.R. 7039 to assure survival and promote expansion of America's fishing industry.

Mr. CLAUSEN. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I am glad to yield to the gentleman from California.

Mr. CLAUSEN. Mr. Speaker, I rise in support of the bill before us today, H.R. 7039, the American Fisheries Promotion Act. My congressional district has a coastline that spreads from just north of San Francisco to the Oregon border. The fishing industry is vital to the economy of the area and I commend the chairman and the members of the Merchant Marine and Fisheries Committee for bringing this important bill to the floor.

The purpose of this legislation is to promote the development of the fishing industry and the committee has done an excellent job in their efforts to see that all segments of the U.S. fishing industry would benefit from the legislation. Our domestic fishermen are frustrated and desperately in need of help and protection.

Two consistent problems reported by fishermen in my district are the siting of foreign vessels in restricted waters as well as the loss of gear as a result of these vessels running over fishing nets and buoys. This legislation addresses each of these problems by the establishment of 100 percent observer coverage on all foreign vessels within the U.S. fisheries zone and the establishment of a phase out mechanism for foreign vessels which starts with an automatic reduction of 15 percent in 1981 with further reductions of 10 or 15 percent in future years. Our objective is to phaseout the foreign fishermen in the fisheries management zone and to develop and enhance the fishery resource and markets for our domestic fishermen.

Other important provisions are the devitalization of the fisheries loan fund for a 2-year period to provide low interest loans to fishermen about to default on their fishing vessels; revitalization of the Saltonstall-Kennedy fisheries research and development program to assure industry participation in at least 75 percent of the Saltonstall-Kennedy funds; collection of increased fees on foreign fishing within the fishing conservation zone commensurate with the cost of enforcing and administering the Fishery Conservation and Management Act of 1976 as it relates to such foreign fishing; and the establishment of an express link between improved access to foreign markets and allocations of surplus fish to foreign nations.

At the present time two-thirds of the fish in the U.S. 200-mile fisheries zone are taken by foreign fishermen. The fishing industry's inadequate penetration of the domestic and foreign markets is a serious problem. While we export $1 billion in fishing products, we are currently importing $3 billion annually. This bill provides for special efforts to be made in research and development with particular emphasis on the marketing of fish products, fuel efficiency of fishing vessels, and the establishment of fish inspection quality standards.

This bill will provide a measure of stability and opportunity to our beleaguered fishermen. The Fishery Conservation and Management Act asserted the U.S. jurisdiction over all fish (except tuna) within the fishery conservation zone adjacent to the territorial sea and extending 200 miles from the U.S. coasts. The American Fisheries Promotion Act takes the next step in establishment of a modest long-term development program to enhance the opportunity for growth for our fishermen involved in this industry. I urge my colleagues to support this important legislation.

Mr. McCLOSKEY. Mr. Speaker, I yield 1 minute to the gentleman from Maine (Mr. EMERY).

Mr. EMERY. Mr. Speaker, I thank the gentleman very much for yielding.

I also rise in strong support of this legislation and commend the chairman of the subcommittee, the gentleman from Louisiana (Mr. BREAUX) and the other members of the committee for the work that they have done on this very important piece of legislation.

I would like to make one observation. The gentleman in the well (Mr. McCLOSKEY) referred to large firms engaged in fishing operations and indicated that this bill would not assist the small fishing operations as much as these larger ones.

I just want to tell the gentleman that one of the most difficult problems that we have had in Maine in recent years has been the fact that we have been in competition with the Canadian fishing industry, which is far better equipped to compete for resources common to both the United States and Canada. One of the things this bill will do is assist us very materially in promoting the development of our own resources. One of the provisions that I favor most strongly is the phaseout of foreign fishing that will occur as our domestic industry is able to take over a greater and greater portion of the fishing industry. We need this legislation desperately. I hope the House will vote favorably today.

Mr. BREAUX. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon, a cosponsor of the bill (Mr. AuCOIN).

Mr. AuCOIN. Mr. Speaker, I rise in strong support of the legislation before the House at this time, and I commend the distinguished gentleman from Louisiana (Mr. BREAUX) for his leadership in

giving Congress an opportunity today to take a second major step in the development of our offshore fisheries resources: The Fishery Conservation and Management Act passed by Congress only 4 years ago was the first step. The American Fisheries Promotion Act is the second major step. This legislative body has a unique opportunity today to capture the abundant wealth of that resource and to make it work for the benefit of this country.

It is significant that the United States consumes 7 percent of today's world fish harvest yet catches only 4 percent of that harvest. That fact is especially astounding when one considers that 20 percent of the world's fish are found off the shores of the United States.

I have talked with many American fishermen, as have many Members of this body. Those American fishermen today are dispirited. They are disappointed. They feel betrayed by the false promises they have found in the 200-mile act. That is because that act is an unfulfilled dream due to notable problems that this bill before us corrects. Among the shortcomings that fishermen in my district point out to me are problems of foreign countries refusing to import our products. They talk about fish gear conflicts and they talk about the lack of transfer of foreign technology to U.S. fishermen and processor.

One of the most important actions this legislation takes that has not been emphasized yet today is that it ties the foreign harvest allocation to the following four conditions: Improved foreign trade opportunities for U.S. fish products in the country that applies to fish for the surplus stocks off our shores; increased foreign purchases of U.S. fish products; reduced fishing gear conflicts by the vessels of the foreign country seeking surplus fish off our shores; and increased transfer of foreign technology to U.S. fishermen and processors.

I would like to note on gear conflicts that last year, 33 Oregon black cod fishermen filed claims for loss of their pots and long lines due to foreign vessels' disregard for American fishing gear in our offshore fisheries zone. Some U.S. fishermen have reported as many as seven separate incidents in a single claim.

The second fundamental strength of this bill is its provision for an effective 100-percent observer program on foreign fishing vessels. Fishermen have emphasized to me countless times that it is essential to police the 200-mile zone more thoroughly. This bill gives us the means to do just that. This bill gives us an effective 100-percent American observer program for every foreign vessel off our shores. That observer program will be funded by the fishing fees paid by the foreign vessel, so the U.S. taxpaver will not pick up the tab. This observer program gives us the enforcement that our fishermen have been looking for and rightfully expected when the 200-mile bill was passed by this Congress in 1976.

What we have before us in H.R. 7039 is landmark legislation. It is legislation that warrants this body's full support, because it gives the American fishing industry what it wants: not a bailout, but a chance. I urge my colleagues' support of this bill.

Mr. McCLOSKEY. Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey (Mr. FORSYTHE).

Mr. FORSYTHE. Mr. Speaker, I thank the gentleman from California for yielding this time.

At the outset I would actually like to conduct a colloquy with my chairman, the gentleman from Louisiana (Mr. BREAUX) on a matter that is of concern to the gentleman from Alaska and to get some legislative history.

Mr. Speaker, section 301 of this bill sets up a new system for determining the total allowable level of foreign fishing. If the regional fisheries management councils use this system, then any release of excess fish for foreign fishing during a harvesting season will be decided by the Secretary of Commerce. Further, any decision to withhold that release to a subsequent year will also be made by the Secretary.

In the past, the regional councils have had a significant role in deciding these releases. It is my understanding that no action will be taken by the Secretary that will decrease this role. Further, if the councils advise the Secretary on releases, it is the committee's intent that the advice of the councils will be taken as long as they are supported by appropriate economic, social, and scientific data.

When deciding to withhold a release of fish until a subsequent harvesting season, the Secretary must determine whether the release would be detrimental to the U.S. fishing industry. It is my understanding that the Secretary will follow the advice of the councils and further that the finding of detriment would be based on economic and social data, including the effect of the release on the marketing of U.S. fish products.

I would ask the gentleman from Louisiana (Mr. BREAUX) does the gentleman agree with this?

Mr. BREAUX. Mr. Speaker, the gentleman has stated the correct intent and I think it is clear from the language of the bill in section 301, his statement as to the effect and intent of that section is, indeed, correct.

Mr. FORSYTHE. I thank the chairman.

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Mr. Speaker, when the first colonists came to America, they found a land rich in fish and wildlife resources. To survive in this new land, Americans turned to the sea for sustenance—and until the arrival of massive foreign fleets the sea yielded its wealth. However, the decade of the sixties brought unrestricted foreign fishing to the shores of the United States. Unrestricted fishing meant overfishing—and fish stocks plummeted. The decline of the U.S. fishery resource resulted in severe economic damage to many of our coastal communities which were dependent upon the commercial and recreational fishing industry as a major source of employment.

To protect our fisheries this Congress passed the Fishery Conservation and Management Act which marked the dawning of a new era in fisheries conservation. The success of the FCMA in controlling overfishing is reflected by the fact that the foreign catch within the U.S. Fishery Conservation Zone has been reduced from 2.7 million metric tons in 1976 to just over 1.6 million metric tons in 1979. In the same period, the number of foreign fishing vessels was reduced from 2,500 to approximately 700. More importantly, fishery management plans are now being developed for all these fisheries so that these fish stocks can be adequately conserved.

By giving U.S. fishermen first access to the fish found off the U.S. coasts, the FCMA laid an economic foundation upon which the fishing industry could rebuild. The act caused a renewed interest in fisheries development and there has been a substantial increase in the level of investment in the U.S. industry. Nevertheless, the fact remains that the volume of the U.S. harvest within the 200-mile zone has increased from only 23 percent in 1976 to 33 percent in 1979.

However, the total harvest taken off U.S. shores has been significantly reduced because of restrictions on foreign fishing. If the U.S. harvest is measured in real terms, that is when you consider the decline in the foreign catch, the annual growth has been on the order of 1 percent. Although the FCMA achieved its goal of fishery conservation, the priority access given to U.S. fishermen has not resulted in the economic benefits originally expected.

Mr. Speaker, let there be no doubt about the facts—it is in the national interest to develop our fishing industry because significant economic advantages will flow from the full utilization of U.S. fishery resources. While 20 percent of the world's available fishery resources are found within the U.S. Fishery Conservation Zone, and while the U.S. consumes 7.5 percent of the world's harvest, we take only 4 percent of the world's catch. The result is an unacceptable balance of payments deficit in the fisheries sector.

In 1978, the United States exported $1.1 billion in fisheries products. At the same time we imported $3.8 billion of fish, shellfish, and related products. This fisheries trade deficit of $2.7 million represents somewhat more than 10 percent of the total U.S. balance of payments deficit. The strain placed upon the U.S. dollar by this deficit adds to the ramaging inflation which is severely affecting Americans of all ages and economic strata.

A comprehensive fisheries development program could, within the next decade, create more than 40,000 jobs, add more than $1 billion per year to the U.S. economy, and reduce the U.S. trade deficit by $1.7 billion per year—and I submit this is just the beginning. A comprehensive fisheries development program will convert the United States from a net im-

porter to a net exporter of fisheries products.

In addition, it is estimated that for every $1 million of fisheries landings, up to 113 jobs will be created. Coastal communities that have seen their economy suffer from foreign exploitation of U.S. fisheries will see a swift revival because of efforts made to develop the U.S. fishing industry.

The American Fisheries Promotion Act which we are considering today will, at no cost to the taxpayers except limited administrative expenses, provide an effective means of realizing the full potential of the U.S. fishing industry. At the outset, the bill recognizes that the only people who can truly develop the U.S. industry are the fishermen and the processors. Because of this fact, the bill amends the existing Saltonstall-Kennedy Act to specifically provide matching grants to the industry for the purpose of funding industry-initiated fisheries development projects. The bill requires that 50 percent of these moneys are funneled to the industry—those individuals who best know the development needs of the industry. H.R. 7039 also seeks to prevent the administration from ignoring the law and using Saltonstall-Kennedy Act funds for purposes totally unrelated to fisheries development. In my view, this diversion of Saltonstall-Kennedy Act funds is a clear violation of the law and is not to be tolerated any longer.

Although H.R. 7039 requires that 50 percent of the Saltonstall-Kennedy moneys are to be awarded for the implementation of industry-initiated projects, the legislation does not specify the process by which industry applications are to be reviewed and approved. It is the clear intent of this committee that, notwithstanding existing legal opinions to the contrary, the National Marine Fisheries Service should establish industry advisory panels to review and recommend which projects are most worthy of funding.

The bill also amends the fishing vessel loan guarantee program to authorize the use of the loan funds for the purchase of used fishing vessels if those vessels will be reconstructed for the further development of the fishing industry or will be used in an underutilized fishery. Current law authorized the use of the loan guarantee program for the reconstruction of fishing vessels.

However, the cost of acquiring a used vessel is not a permissible subject for a guarantee. Thus, fishermen can afford to reconstruct the vessel but cannot afford to purchase it. To remedy this problem, the amendment permits the use of CCF funds for the acquisition of used items. To avoid the problem of simply encouraging transfers of ownership without any further development of the fishing industry, the amendment prohibits the use of a loan guarantee in this manner unless there is a reconstruction involved or unless there is a clear benefit to the development of an underutilized fishery.

The amendment, however, does not specifically define what constitutes an "underutilized fishery." It is intended that the term "underutilized fishery" be considered in the context of the U.S. fishing industry alone. A fishery is harvester underutilized if U.S. fishermen are harvesting less than the optimum yield from the fishery.

In addition to the provisions I have already discussed, the American Fisheries Promotion Act attempts to improve the climate for U.S. fisheries development by insuring that U.S. fishermen have an assured access to fish which would otherwise be harvested by foreign fishermen. The legislation, however, retains the link between increased U.S. harvesting ability and a decreased foreign allocation. The bill increases the amount of fish reserved for U.S. fishermen—but if U.S. fishermen fail to harvest this extra fish within a specified time, the fish will be made available for foreign harvest.

Mr. Speaker, many foreign nations impose tariffs on imported fish which make U.S. products substantially less competitive. Generally, these tariffs exceed comparable U.S. tariffs. Further, some nations limit the amount of fish which may be imported into their country. The result is that U.S. access to foreign markets is restricted—and without this access the U.S. fishing industry cannot develop to its full potential. By restricting the amount of fish which foreign nations may harvest from our 200-mile zone by the assured access formula contained in H.R. 7039 these nations may be forced to reduce or eliminate their trade barriers.

The committee does not intend that the role of the regional fishery management councils established under the Fishery Conservation and Management Act be diminished by these amendments. The determination of the allowable level of foreign fishing will remain the prerogative of the regional councils. The councils will continue to determine the optimum yield of the fishery, the domestic allowable harvest, and the allowable level of foreign fishing.

With respect to any reallocation of a phaseout reduction factor amount, the Secretary of Commerce may only reallocate the fish if he finds that such an action would not be detrimental to the U.S. fishing industry. It is the committee's intent that such a finding could only be made if the United States was to secure a specific and a substantive concession from a foreign nation which would increase the harvesting and processing capacity of the U.S. fishing industry or would increase the market opportunities for U.S.-harvested or processed fish. A promise by a foreign nation to consider taking actions for the benefit of the U.S. industry is insufficient. Actions which do not result in tangible benefits to the U.S. industry are inadequate. Specific and concrete actions will be required before the Secretary can reallocate a phaseout reduction factor amount.

In addition to these amendments to the Fishery Conservation and Management Act, section 304 of H.R. 7039 amends the purposes of that act to insure that the determination of the optimum yield can be used for the development of the U.S. fishing industry. I wish to make it explicit that it is this committee's specific intent that in establishing the optimum yield for each fishery, a relevant economic factor which can be considered by each fishery management council is the need to enhance the market opportunities available to U.S.-harvested fish and to reduce the tariff and nontariff trade barriers to the exportation of such fish.

It is within the authority and the purpose of the councils to establish optimum yields which have the effect of restricting foreign fishing for the purpose of expanding the markets available to U.S. fishermen. If foreign nations can secure fish from their fishermen operating in the U.S. Fishery Conservation Zone, there may be no need or incentive to purchase U.S.-harvested fish. The amendment contained in section 304 is intended to insure that the determination of optimum yield can be, and is, used for the development of the U.S. fishing industry.

H.R. 7039 further amends the FCMA to require that the Secretary of Commerce, in allocating the allowable level of foreign fishing among applicant foreign nations, shall consider the extent to which these nations impose tariff and nontariff trade barriers that limit the access of U.S. fish products to foreign markets.

To further promote U.S. access to foreign fish markets, the legislation directs that at least six U.S. fisheries trade officers be assigned to U.S. diplomatic stations abroad. When our fisheries trade deficit constitutes approximately 10 percent of our total trade deficit, it behooves us to take every reasonable step to increase the market opportunities for our fish and fish products.

Thus far I have spoken exclusively to the issue of developing the U.S. industry. But it will do us no good to pass a development bill if the fish are all gone. The Fishery Conservation and Management Act was designed to solve this problem—and it would have if foreign overfishing had not continued. The current problem is that there is disturbing evidence that foreign fishing vessels are significantly underreporting the level of their catch. In fact, an internal National Marine Fisheries Service memo suggests that there exists a "formidable and possibly preplanned effort at noncompliance with (U.S. foreign fishing) regulations."

Reported violations depict underreporting of the foreign harvest ranging from 25 to 60 percent of the total catch onboard which the NMFS memo characterizes as "a serious and repetitive effort at noncompliance with the FCMA." This high level of underreporting constitutes a continuing threat because the optimum yield set for the fishery could easily be exceeded and the fishery will be overharvested. It is no longer realistic for us to expect voluntary compliance to

work, given the evidence of foreign underreporting.

Therefore, it is essential that we significantly increase the current level of U.S. observer coverage and H.R. 7039 does so by requiring that we achieve 100-percent observer coverage aboard foreign fishing vessels except when foreign vessels cannot accommodate an observer and where the effect of 100-percent coverage can be achieved by placing observers on motherships which receive foreign-harvested fish. The expense of maintaining these observers is to be paid by foreign fishing vessels.

Finally, H.R. 7039 recognizes that the fees the United States charges foreign fishermen for the privilege of fishing in the U.S. zone are substantially less than those charged by other coastal nations. In fact, a recent study by the National Marine Fisheries Service indicates that no foreign nation charges fees lower than those charged by the United States. In light of this, the American Fisheries Promotion Act requires that the level of foreign fees be doubled immediately and then be adjusted upward so that U.S. fees are more consistent with the costs of having foreign fishermen fishing in the U.S. zone.

Mr. Speaker, the legislation pending before us contains no authorizations. What the bill does is provide new hope and new direction for the U.S. fishing industry. The legislation adjusts existing programs to reflect the current needs of the fishing industry and in doing so recognizes that the direction and the pace of the development of the fishing industry must be determined by the industry itself.

The legislation also recognizes that the full development of the U.S. industry requires access to foreign markets and provides the means to assure that access. The legislation will bring an end to U.S. taxpayers subsidizing foreign fishing and will stop foreign fleets from undermining the Fishery Conservation and Management Act. The legislation will bring new jobs to our coastal communities and, by decreasing U.S. dependence on foreign imports, will reduce our balance of payments deficit.

Mr. Speaker, it is for these reasons that I urge the passage of H.R. 7039, the American Fisheries Promotion Act.

Mr. BREAUX. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. BONKER).

Mr. BONKER. Mr. Speaker, in 1975 this body passed the Fishery Management and Conservation Act known as the 200-mile-zone bill. The purpose at that time was to extend our fishing jurisdiction so that we could make this vast new resource available to U.S. domestic fishermen. We also recognized the fact that this country was importing 60 percent of all of the fishery resources we were consuming and in order to gain the full economic value of that resource, passage of the legislation was necessary.

We find now that 4 years later we have not realized that full potential. The foreign fishing fleets are still active off our coasts and our own fishermen are frustrated and overregulated.

This bill before us, H.R. 7039, will give our domestic fishermen the full incentives they need to compete effectively for that resource. It makes absolutely no sense that we extend our fishing zone to protect our own resource only to issue permits to foreign fishermen to compete for our resource. If we are to make our own fishing industry competitive, we must provide the necessary incentives and the opportunity for them to compete for that resource.

In this bill we have provided for those incentives. If they are successful, we will see U.S. fishermen competing effectively for all of the bottom fish that exist within our own fishing zone, thereby realizing the full economic benefits that are available.

The American Fisheries Promotion Act, H.R. 7039, is an important step in the effort to develop and utilize the vast fisheries resource that this Nation has available to it.

When Congress enacted legislation extending the boundaries of America 200 miles out to sea it appropriated nearly one-fifth of the fish resources of the world for this Nation. Since 1976, however, America has been obligated consistently to permit extensive harvest by foreign fleets within the 200-mile zone because our fishing fleets were either unwilling or unable to harvest all the fish available to them.

The shift of our harvest fleets from fully utilized and overutilized species—in the Northwest mostly salmon—to the newly available underutilized species has been a slow, haphazard process because no organized, systematic program was in place to develop the fisheries. And capital acquisition was necessarily an undertaking of private entrepreneurs.

One of the major reasons for this was the uncertainty among lenders of the future of fisheries. Although the United States had acquired vast new fisheries potential, the resource was still held available for world needs. The fish were for American fishermen if they were used by them, but any perceived shortfall in efforts to fully utilize the fish by domestic fishermen required immediate allocation to foreign fishing fleets with a historically demonstrated need of the resource.

This measure, as originally drafted, provided for a full phaseout of all foreign fishing within 200 miles of our coastline within 5 years. Although the final version of the bill is somewhat different, the fishing communities feel confident that an eventual end to foreign fishing is within sight.

Other provisions of the legislation respond to other needs that must be met if the fishing fleets of this Nation are to become able to harvest and then market the full potential that exists. Each of the sections is responsive to the range of problems that stand in the way of development of the infrastructure necessary to take advantage of the magnificent opportunity that has been provided.

These provisions as outlined below will provide the incentive and the protection needed to assume the leadership role that can be ours. The importance of each of them cannot be overemphasized. An analysis of each readily confirms this.

The bill changes the Saltonstall-Kennedy program so that:

First. No less than 50 percent of Saltonstall-Kennedy moneys would be dedicated to industry fisheries development projects and the balance of the moneys would be used for projects undertaken by the Federal Government;

Second. Matching Federal funds would be fixed at no less than 50 percent of each project's cost;

Third. The use of S-K moneys for non-Federal projects would be restricted to enterprises which are at least 75 percent United States owned;

Fourth. In-kind industry contributions in Federal-private cost sharing projects would be permitted;

Fifth. Criteria and a timetable for consideration of project applications would be established;

Sixth. A detailed report to Congress on the use of S-K funds would be required; and

Seventh. At least one S-K project would deal with voluntary fish quality standards, one with fish marketing, and one with fuel efficiency. In the event that suitable proposals by industry were not made, the Commerce Department could carry out the projects.

A section would be added regarding fishery trade officers to direct the Secretary of Commerce to appoint six fishery trade officers to posts abroad. These officers would assist U.S. companies in developing foreign trade opportunities in fish products.

The loan guarantee program established under title XI of the Merchant Marine Act of 1936 would be amended to:

First. Extend the capital construction fund to shoreside processing facilities;

Second. Authorize the purchase of used fishing vessels and fishing facilities for reconstruction, reconditioning, or transfer to underutilized fisheries;

Third. Restrict the use of title XI loan guarantees for shoreside facilities and processing and used fishing vessels to vessels and facilities which are 75 percent United States owned; and

Fourth. Establish subfunds for vessels that meet the usual "economic soundness" criteria; and vessels that meet less stringent criteria, due to their use in underutilized fisheries.

Ten percent of the $10 billion available to the Maritime Administration for loan guarantees would be placed in the fisheries subfunds, with no less than 3 percent nor more than 7 percent in each subfund.

The fisheries loan fund established under the Fish and Wildlife Act of 1956 would be restructured to assist historically successful vessel owners in danger of defaulting on their mortgage payments or vessel owners or operators who are suffering temporary operating losses due to market conditions and competition from heavily subsidized foreign fish imports. Potential defaults on loans

guaranteed under title XI of the Merchant Marine Act of 1936 would receive initial, not permanent, priority over other potential defaults and operating losses. No loans could be made after September 30, 1982. New fees on foreign fishing (see below) would provide the funding for this program.

A section would be added to amend the Fishery Conservation and Management Act of 1976 to provide for a predictable and incremental phaseout of foreign fishing. The achievement by U.S. fishermen of specified increases in fishing performance would result in specified decreases in foreign fishing. As U.S. fishermen increase their harvest, reserves would be set aside for U.S. fishermen for 1 year. After that year any unused U.S. reserve fish would be made available to foreign nations. This provision meets the concern of the State Department with respect to foreign policy and Law of the Sea Treaty implications.

A section would be added to increase fees on foreign fishing in the 200-mile fisheries zone for 1981 to a level twice that currently prevailing, but would be devised so as to avoid making any fishery uneconomic. After 1981, a permanent system of fees would be established based on the foreign proportion of the total catch in the U.S. zone. During the life of the amended fisheries loan fund (2 years), it would receive, to the extent needed, the proceeds from the new foreign fees. The balance would go to the general fund of the Treasury.

The section on allocations of surplus fish to foreign nations would mandate consideration of improved foreign trade opportunities for U.S. fish products, increased foreign sales of U.S. fish products, avoidance of gear conflicts by foreign vessels with U.S. fishing operations, and transfer of foreign technology to the U.S. fishermen and processors.

The section on the observer program would establish 100 percent U.S. observer coverage with respect to most foreign vessels operating in the U.S. zone. Certain specific waivers on coverage would be permitted to deal with special fishery circumstances, but effective coverage would still be 100 percent. All observer costs would be borne by foreign fishermen.

A section would be added to provide for a layover of 60 days for regulations promulgated pursuant to the act, except for those relating to the loan fund and the phaseout. This would permit adequate congressional review.

A section on filings for compensation for fishing vessel and gear damage would extend the filing periods for fishing vessel and gear damage claims under the Fishermen's Protective Act and title IV of the Outer Continental Shelf Lands Act of 1978 because the original time periods expired before implementing regulations were issued.

I urge your support of these crucial items.

Mr. McCLOSKEY. Mr. Speaker, I yield the balance of my time, 3 minutes, to the gentleman from Minnesota (Mr. FRENZEL).

Mr. PRITCHARD. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Washington.

Mr. PRITCHARD. Mr. Speaker, I rise in support of this measure.

Mr. LIVINGSTON. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Louisiana.

Mr. LIVINGSTON. Mr. Speaker, I thank the gentleman for yielding, and I rise in support of this measure.

Mr. Speaker, I am an original cosponsor of H.R. 7039. Its provisions directly address many of the fishing industry's problems, including seafood processing and marketing, foreign fishing within the U.S. 200-mile zone, fishing vessel loans, fisheries development, and fuel problems of the industry.

The fisheries loan fund will be restructured to assist vessel owners in danger of defaulting on their mortgage payments. New fees will be charged foreign fishermen who fish within our 200-mile zone, and the bill phases out foreign fishing within the zone under circumstances intended to reduce the effect of imports of such fish upon the American fishing industry.

I urge my colleagues to support this very worthwhile legislation.

Mr. LOTT. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Mississippi.

Mr. LOTT. Mr. Speaker, I would like to commend the Committee on Merchant Marine and Fisheries on the drafting of a comprehensive bill addressing some of the most serious problems of our American fishing industry.

The seafood industry has been and is one of our major industries in the Gulf of Mexico area for years, but is perhaps in the greatest danger it has ever been because of political and economic factors. The problems of the industry are being aggravated by the increased size of the fishing fleet and the presence of foreign vessels in our waters, as well as increased fuel, equipment, and supply costs. Furthermore, in the gulf we have had an inordinate problem with natural disasters, such as Hurricane Frederic and the uncontrolled introduction of fresh water into the gulf as a result of spring floods. The fishing industry is an important part of our economy, and we must see what we can do to assist it through these difficult times.

Along this line, I am particularly pleased to note the inclusion in this bill of a provision to restructure the existing loan program to assist successful boat owners who are in danger of defaulting on boat mortgages. This fisheries loan program is to last for only 2 years and is financed entirely from new fees on foreign fishing in U.S. waters. This type of help should give our gulf fishermen a chance to recover from the extreme difficulties they have labored under these last several years.

The United States has the potential to lead the world market in fishery production. Yet, foreign fishing concerns are landing two-thirds of all fish caught in U.S. coastal waters. To change this unfortunate situation, we must phase out foreign fishing on a sensible scale to protect our potential U.S. harvest, we must take the necessary steps to encourage foreign countries to grant us access to their markets, we must aid in the construction and refurbishing of processing plants for fish, we must "beef up" our enforcement manpower to assure foreign compliance with fishery conservation zone regulations, and we must enhance our research to further develop our fishing industry.

This legislation deals with all of these important challenges. I urge its passage.

Mr. FRENZEL. Mr. Speaker, I oppose H.R. 7039, the American Fisheries Promotion Act, as modified by the amendment offered by the gentleman from Louisiana (Mr. BREAUX). There are a number of things wrong with it.

The gentleman from Ohio (Mr. GRADISON) has pointed out that there is still a problem with the capital construction fund. Even if the House does send this bill to the other body we are in jeopardy of getting a conference report that might include that potential $90 million item which is not germane and invades another committee's jurisdiction. I hope that will not happen. Nevertheless, it looms as a potential difficulty.

Second, there are a number of things wrong with this bill. We call for some sort of an employee of the United States to be put into each foreign fishing vessel. I suspect that must be several hundred people. I am also told that several hundred people cannot be found for these jobs. If they were available, their hiring would certainly bump against the ceiling of the Leach amendment. I do not know where we are going to get them or how we are going to keep them out there. The fact is, we probably will not.

Another problem is the bill creates six fishery trade officers who are to be sent to the pleasure domes of the world; namely, Brussels, Tokyo, and Rome, who will not be accountable to the Embassy, not accountable to the trade officials within the Department of Commerce, but accountable to some unidentifiable fish czar.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I am happy to yield to the gentleman.

Mr. CONABLE. Mr. Speaker, I would like to associate myself with the gentleman's remarks and say that I oppose this measure also. I believe the gentleman is entirely on the right track with the things he is saying.

Mr. FRENZEL. I thank the gentleman for his contribution.

Creation of this additional new bureaucracy is, in my judgment, a dreadful mistake and will do nothing to promote American fishing.

In the first instance, title III of the proposed amendment established an elaborate scheme for phasing out all foreign fishing within the 200-mile resource

management area that lies beyond U.S. territorial waters, broadens the criteria for determining allocation levels for foreign fishing in these waters, substantially increases the permit fees and other charges paid by foreign operators, and requires 100-percent observer coverage of all foreign fishing harvests. The effect of these changes would be to reduce substantially, and, eventually, to eliminate all foreign fishing in the management areas, and while awaiting the final phaseout, to establish a system of fees and charges so high as to make fishing in U.S. waters barely economical.

Such elaborate protectionist measures contradict other provisions of this bill which call for aggressive export promotion of U.S. fish products and which demand market access for those products from countries whose remaining days to fish off our shores are to be strictly numbered. We cannot have it both ways—we cannot be highly protectionist of our own industries and at the same time expect other nations to open their doors freely to our exports.

An excellent example is Japan. U.S. exports of fish products to Japan have increased from $56 million in 1974 to $568 million in 1979. On the other hand, Japan is the largest user of fishing rights within our 200-mile zone and in 1979 paid some $10 million for the right to fish in our waters. Also, on visits by Members of Congress to the State of Alaska, local businessmen and government officials expressed an active interest in encouraging Japanese investment in fishery facilities as a method of increasing employment and otherwise boosting the State's economy.

Of course, we still have problems with Japan that remain to be resolved in spite of the growth of U.S. exports. Japan still maintains comparatively high rates of duty and certain quota restrictions on imports of fish products. Difficulties also exist between the United States and Canada because the United States claims the right to fish for migratory species within Canada's 200-mile limit. This bill removes important leverage the United States has in seeking solutions to these bilateral trade problems for the benefit of all U.S. exports.

The fact is that U.S. fishing interests are carefully guarded under current law. As provided in the Fisheries Conservation and Management Act of 1976, allocations for foreign fishing are made based upon the difference in the estimated fish resources available and the expected domestic harvest for any one year. The remaining amounts allocated for foreign fishing can be used as an important trade tool where, in bilateral and multilateral negotiations, we can gain market access commitments and other reciprocal trade concessions important to U.S. exports.

Mr. Speaker, I urge my colleagues to vote down this bill. It imposes a complicated, rigid, and expensive scheme for the phaseout of foreign fishing off U.S. shores, even though current law adequately protects U.S. fishing interests and provides for the conservation of our fish resources. Many other domestic industries are seeking such a protected environment in which to do business, but it should be our goal to preserve competitive market factors in every possible instance. Again, I urge my colleagues to defeat the bill.

Mr. BREAUX. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. FUQUA).

Mr. FUQUA. Mr. Speaker, I rise in strong support of H.R. 7039, the American Fisheries Promotion Act. Let me first thank my friend and colleague, JOHN BREAUX, for the outstanding work he and the other members of the Merchant Marine and Fisheries Committee have done to bring this measure to the House floor. Mr. Speaker, I had the privilege to testify in support of this legislation in hearings held by the Subcommittee on Fisheries, Wildlife Conservation, and the Environment earlier this year and Mr. BREAUX and his colleagues have continuously pressed for enactment of this type of legislation.

Mr. Speaker, the American fishing industry is in trouble. Many of those troubles are caused by factors over which the fishermen have no control and I believe it is our duty to help save this essential element of our economy. In testimony before Mr. BREAUX's subcommittee, witnesses spoke of the unfair competition from Mexican vessels. Mexico apparently subsidizes the cost of diesel for their own fleet and there are numerous reports of American boats being unable to refuel at Mexican ports or, if permitted to refuel, being charged outrageous prices. American fishermen are not afraid of competition. What they do want, however, is fair and honest competition.

As in other industries, equipment is getting older and should be replaced by newer, more fuel-efficient machines. This applies to boats as well as equipment on the docks. The loan guarantees will certainly help in this effort.

As chairman of the Committee on Science and Technology, I have a deep interest in research programs in many fields. Clearly, to me, there is a great need to improve research and development in this industry. Techniques are antiquated and, in simple terms, the fishing industry has not kept up with the technological improvements going on all around it. The R. & D. programs are essential. They are the true heart of this legislation.

The quality grading of fish catches is important to the consumer. Presently, inferior products from overseas are sold alongside much higher quality fish. The consumer needs to know the difference before making his or her choice. American fishermen do not resist quality grading. They welcome it. They do not resist efforts by the Government. They want our assistance to help cope with industry-wide problems.

This bill does not go as far as I would like to see it go. As one who has long supported capital cost recovery legislation, I believe we should consider the fishing industry as a prime candidate for any pilot project to determine if faster writeoffs do, indeed, lead to greater industry expansion. I believe tax benefits can be very useful to preserving American industry. While this bill does not accomplish all that I would like, it does, indeed, mark a dramatic turnaround in U.S. Government policy. Heretofore, we have, if you will pardon the pun, permitted the American fishing industry to flounder. Now, at last, we recognize the importance of this segment of our economy and state that we will begin to work with labor and management in the industry in a mutual effort to insure the vitality of the American fishing fleet.

Mr. BREAUX. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon (Mr. WEAVER).

Mr. WEAVER. Mr. Speaker, the fishermen on the hundreds of miles of Oregon coast I represent are in desperate straits as outlined so well by my colleague, the gentleman from Oregon (Mr. AUCOIN). I am proud that several of the key ideas behind this legislation originated among several fishermen in my district, Greg Chatman and Mimi Chapman, who took their American right to come back and petition the Congress and their Government and the culmination of their work is in this bill.

I want to commend the subcommittee chairman, the gentleman from Louisiana (Mr. BREAUX) and my colleague, the gentleman from Oregon (Mr. AUCOIN) and the other Members who have honed this legislation down, made it workable, and then made it, I am sure, effective to help U.S. fishermen in their time of need.

Mr. BREAUX. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. WYATT).

Mr. WYATT. Mr. Speaker, I rise in support of H.R. 7039. This legislation, while certainly no great panacea, should assist the economically depressed gulf shrimping industry in its struggle for survival over the long term. The serious problems this industry faces include the closing of fishing grounds, the rapid escalation in the costs of middle distillate, and growing competition for what resources do exist.

Ever since Mexico unceremoniously deprived our fishermen of a chance to harvest their surplus shrimp, gulf shrimpers have had to compete against a glut of foreign shrimp imports from Mexico's Government-subsidized fleet. These subsidies are in the form of cheap fuel and have threatened the very existence of the domestic shrimping industry.

While this bill offers little in the form of short-term solutions, it promises to provide assistance in developing new fisheries and markets for them.

This will all be for nothing, however, if the industry cannot survive over the next year. I now call upon the administration to take this one step further and assist us in solving the short-term problems that will enable the industry to use this legislation to expand, and, hopefully, prosper in the future.

Mr. BREAUX. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HUGHES) one of the sponsors of this legislation.

Mr. HUGHES. Mr. Speaker, I rise in strong support of this bill. The legislation is designed to give short-term assistance to American fishermen and develop a long-term policy for reducing our fisheries trade deficit.

In the past several years, Congress has taken steps to insure that our domestic fishing industry is protected from the onslaughts of unfair foreign competition. We have done this in a sensible fashion without imposing tariffs or duties that could ultimately do more harm than good to our commercial fishing industry.

Rather, Congress has seen the wisdom of offering other kinds of protections and incentives to American commercial fishermen. We have extended our territorial waters to 200 miles. We have developed a plan to encourage the science of aquaculture by offering grants and research incentives to those interested in increasing the size and quality of certain kinds of fish. The bill before us today is another component of a comprehensive plan of encouraging and promoting the American commercial fishing industry.

Domestic fish consumption has grown dramatically in the last decade. In fact, American fishermen have not been able to keep up with the demand for fish and we import a considerable amount. Domestic production of fish can and will be increased to reverse this trend by the enactment of legislation such as the bill now under consideration.

Commercial fishermen in certain areas of the United States are crying out for short-term assistance. Recent natural and environmental disasters make this kind of help imperative. That is why the revitalization of the fisheries loan fund for a specified period of 2 years as described in the bill is so important. Commercial fishermen who find themselves on the brink of defaulting can make a go of their businesses if low-cost loans are available to keep and maintain their fishing vessels.

The bill also makes sure that the sometimes heavy hand of Government takes a back seat. Industry participation in the Saltonstall-Kennedy fund is required for the promotion of research and development of fish production and marketing. This last provision will now reduce and eventually eliminate the trade deficit in fish and fish products.

I commend the merits of this bill to my colleagues and urge them to support its adoption.

Mr. BREAUX. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts (Mr. STUDDS), a sponsor of the legislation.

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Mr. STUDDS. Mr. Speaker, I rise in strong support of this bill which I consider critical. I would point out to Members that the only voices raised this afternoon in opposition to the bill have been those of the gentleman from California (Mr. MCCLOSKEY) and those of two members of the Committee on Ways and Means who argued strenuously against provisions which are not in the bill. I would say to the gentleman from California, dear friend though he is, that his vacation trips to my district are going to have to be incognito if he persists in acting in this fashion.

Members will recall that the gentleman led the fight on this floor 5 years ago against the 200-mile limit in the first place, without the enactment of which I would not have a fishing industry to defend at this time. The gentleman, the record should reflect, was the only dissenting voice in the entire Merchant Marine Committee on either side against this bill when it was reported.

Mr. Speaker, let me say that so much has been said about what this bill does not do that I think it behooves us at the end here to itemize very quickly what it does not do. I submit to you that the entire debate in opposition to this legislation has focused on provisions which are not in the bill. That is interesting, and that is irrelevant.

I have heard, for example, that the bill assesses consumers, somehow to the benefit of the industry. I have not heard this argued on the floor; I have heard it in private conversation amongst Members. That is not true.

We have heard that somehow there is new money in this bill, that there are somehow enormous new appropriations to be laid upon the American taxpayer. That is not true. There is no new money in this bill. This bill redirects existing authorizations and appropriations, and assesses higher fees on those foreign vessels fishing within the U.S. economic zone.

The gentleman from Minnesota wondered where we are going to get the money to pay the additional observers. That is the answer. That money is going to come from the increased fees on the foreign fishermen whose activities they have been observing.

We have heard it contended that all foreign fishermen will be excluded from our zone. That is not true. That was in an earlier version of the bill. This is an improved version which sets aside modest increments for U.S. fishermen in the hope that they will take advantage of them by expanding their activities, but if they do not, there will be no further set-aside.

We have heard it argued this measure is inconsistent with international law. Heaven help us all, even the Department of State now agrees with the bill as written. That must be reassuring to those Members who have been concerned about inconsistencies in international law. It is not even inconsistent with the current practices of other fishing nations. The increasing of the fees which we will assess on foreign vessels brings us roughly to where other nations around the world currently are in terms of levels of fees imposed on other nations' vessels.

There is no new tax treatment in this bill. All capital construction fund provisions have been deleted, and there is no provision for title XI, loan guarantee funds for shore-side processors, so that the concern of the gentleman from California that somehow great goodies will be given to Ralston-Purina and other biggies is moot.

Let me point out that one-tenth of this Nation's balance of trade deficit last year was in fish; $2.7 billion of our $27 billion deficit in trade was in imported fish. Two-thirds of the fish consumed by Americans is imported. This is not simply a question for those of us who represent regions of this Nation in which this industry is important; it is a question of the vital well-being of this Nation, and of the stability of the dollar. We all know what has happened to fuel prices. The same thing has happened to fishermen. We know what has happened to illegally subsidized fish imported into this country. We know that the Department of the Treasury has chosen not to impose countervailing duties, which they ought to do under the law.

I submit if this bill were brought to the floor by the Committee on Agriculture, they would hang their heads in shame because of the modesty of the bill. We have no price supports for our fishermen. We take for granted price supports for our farmers. I would remind the Members, Mr. Speaker, that fishermen are farmers. They are farmers of the sea. They are producers of food, and this bill represents the very least that this Congress can do by way of taking advantage of the 200-mile limit, which this Congress passed 4 years ago.

I urge the Members to pass this bill.

Mr. Speaker, I rise in support of H.R. 7039, the American Fisheries Promotion Act. Because New England has the longest and perhaps richest fishing tradition in our Nation, its people have always been acutely aware of the concerns and problems of this vital industry. Today's pressures of inflation, the tremendous increases in fuel prices, the influx of duty-free imported fish, and competition from heavily subsidized foreign fishing operations have placed our fishing industry in an intolerable position. The American Fisheries Promotion Act goes far in assisting our troubled industry without increasing the cost to our taxpayers.

I am particularly pleased that this bill incorporates many of the provisions of H.R. 5243, a bill which I introduced last September to pave the way for a coordinated approach to fisheries development. Specifically included in these provisions is the revitalization of the Saltonstall-Kennedy (S-K) funds, which traditionally has been the single most important source of funds for fisheries development programs. The amendments to the S-K fund assure the fishing industry that at least 75 percent of the available moneys will be dedicated to local industry projects. They also guarantee that the S-K funds will be obligated on a timely basis and provide for the needed congressional oversight to make certain that the program is operated according to congressional intent.

Mr. Speaker, the effectiveness of any fisheries development program depends upon strong industry support and a high level of local control. The nature of the industry is such that development programs will be primarily regional in scope, and innovative partnerships among the industry, State, and local governments, and the Federal Government will be necessary to move forward. Regional councils created under the Fisheries Conservation and Management Act should naturally be involved in fisheries development in order to express regional perspectives and priorities and to begin constructing the foundations on which to base wise congressional fisheries management programs. The amendments provided for in H.R. 7039 will, I believe, accomplish this.

Another important provision in the bill is the establishment of a program to place fisheries attaches in U.S. embassies in order to promote new foreign markets for American fish products. The recently concluded multilateral trade negotiations made substantial progress in reducing foreign trade barriers which impede U.S. exports of fish products. Combined with other provisions in the bill, this program will enable the United States to capitalize on new markets opening up abroad.

Finally, Mr. Speaker, I would like to focus on an amendment which I authored which would amend title IV of the Outer Continental Shelf Lands Act Amendments of 1978. This provision would amend title IV of the OCS Lands Act Amendments of 1978 to allow compensation from the fishermen's contingency fund even though damage incurred by fishermen is attributable to a financially responsible party. As you know, the fishermen's contingency fund under title IV compensates U.S. fishermen for damage resulting from Outer Continental Shelf energy activities. Compensation claims are presently ineligible if the damage is attributable to a financially responsible party. This situation could lead to difficulties where the oil company, or other responsible party, does not admit liability. It could cause delays in a payment of a claim to a fisherman and thus, delays in the ability of the fisherman to make a living. In addition, it would encourage denials of liability by an oil company, forcing expensive legal actions by a fisherman. My amendment would require compensation, even where the damage can be attributed to a financially responsible party, if that party will not admit responsibility for the damage. Under this amendment, the fund would pay the claim of the fisherman and then seek to collect the amount paid to the fisherman from the responsible party. Such action would often be a consolidated one involving the claims of various fishermen. There would therefore, still be an adjudication as to the liability of a particular oil company or other responsible party, but this would occur after the fisherman has received payment for his claim from the fund.

Mr. Speaker, the contingency fund as it is now constructed contains many innovative provisions. Compensating fishermen for the replacement costs minus salvage value of their gear and establishing a presumption of validity if certain conditions are met, are admirable aspects of the fund. However, the fund as it presently stands does not insure that a fisherman with a valid claim will be able to approach either a company admitting responsibility or the fund without the necessity of litigation.

The amendments made to the fund will, I believe, greatly enhance its effectiveness in terms of its day to day operations, efficiency of its administration and its utility to the fishing industry. As you are well aware, New England is blessed with Georges Bank, one of the richest fishing areas in the world. Continued pressures to explore for and develop new oil and gas reserves have and will continue to impact our fishing industry. In the frontier regions of the North Atlantic, it is critical that we have a useful and effective fisherman's contingency fund in order to minimize impacts on our fishing industry brought on by new oil and gas activities.

I urge my colleagues to support the passage of H.R. 7039.

Mr. FINDLEY. Mr. Speaker, will the gentleman yield?

Mr. STUDDS. I yield to the gentleman from Illinois.

Mr. FINDLEY. I thank the gentleman for yielding. I wonder if the gentleman could enlighten me on this question. Is there any provision in this bill which would pay fishermen not to fish?

Mr. STUDDS. No, there is no such provision. But I would suggest to the gentleman that if the Committee on Agriculture had jurisdiction, there probably would be.

I urge enactment of the bill.

Mr. BREAUX. Mr. Speaker, I would just say to the Members I think we have debated to a great extent the provisions, as the gentleman from Massachusetts has indicated, provisions that are not in the legislation. What we have remaining is a sound, solid program which we can be proud of which can help the American fishing industry for decades to come. One of the critical features is that this was accomplished without any authorization of the taxpayers' dollars. It was accomplished simply by a modest increase in the fees that foreign fishermen pay to take our fish out of our 200-mile zone. I think it is good legislation. I think it is legislation everyone can feel comfortable in supporting.

Mr. Speaker, I yield back the remainder of my time.

● Mr. MURPHY of New York. Mr. Speaker, the passage of the Fishery Conservation and Management Act of 1976—better known as the 200-Mile Act—marked the dawning of a new era in fisheries conservation. Not only did it create a priority access for U.S. fishermen to the fisheries resources within 200 miles of our shoes, but the act also established the economic foundation for the development of all segments of the U.S. fishing industry.

That U.S. fisheries resources are being conserved is reflected by the fact that the foreign catch within our 200-mile zone has been reduced from 2.3 million metric tons, excluding tuna, in 1976 to about 1.6 million metric tons in 1979. The number of foreign vessels operating in the 200-mile zone has also been reduced—from a high of about 2,500 in 1976 to a low of approximately 700 in 1979.

Unfortunately, during that 4-year period the U.S. share of the total commercial harvest within the zone has increased only slightly, from about 30 percent in 1976 to 33 percent in 1979. The processing of this harvest has also increased only slightly. There is much that needs to be done to increase the U.S. harvesting and processing capacity and H.R. 7039 will greatly assist in the development of these U.S. capabilities.

Briefly explained, H.R. 7039, which was unanimously reported by the Committee on Merchant Marine and Fisheries, would rewrite the Saltonstall-Kennedy (S-K) Act to require at least 75 percent of the S-K funds to be used to support fisheries development activities carried out in cooperation with the domestic fishing industry; extend the title XI obligation guarantee program to shoreside fisheries facilities; and increase foreign fishing license fees and earmark such fees for the S-K fund, except during fiscal years 1981 and 1982, and to the extent needed, such fees would be used to provide loans to fishermen. In addition, the legislation would provide for the assigning of at least six fishery trade officers abroad to promote U.S. fishing interests; require a 100-percent observer coverage on all foreign fishing vessels operating within the U.S. fishery conservation zone; and establish a mechanism for phasing-out foreign fishing in fisheries subject to the management authority of the United States.

Mr. Speaker, unfortunately, the administration does not support H.R. 7039 as reported by the committee. In order to avoid the possibility of a Presidential veto and to seek administration support of a bill that will still meet the needs of our fishing industry, the committee staff met with representatives of the Departments of State and Commerce during the past several weeks and they have hammered out a compromise version which both the committee and the administration can now support.

In general, the compromise version, which is before the House for consideration today, is substantially the same as H.R. 7039, as reported by the committee, except for the following changes.

First. Under the S-K program, that portion of the funds earmarked for industry fisheries development projects would be reduced from 75 percent to 50 percent and the Federal cost of jointly sponsored projects would be reduced from 75 percent to 50 percent.

Second. During 1981, foreign fishing fees would be increased to a level twice that of currently prevailing fees and in future years at a level based on the foreign proportion of the total catch in the U.S. fishery zone.

Third. Foreign fishing fees would be earmarked for the fisheries loan program, to the extent needed, for a period of 2 years with the balance of such un-

used fees and the fees for future years going into the general fund of the Treasury.

Fourth. The title XI obligation guarantee program would be amended so as to exclude its extension to shoreside fisheries facilities.

Fifth. The 100-percent observer coverage would be modified to accommodate special situations in the Western Pacific and those associated with mothership operations in other areas.

Sixth. The phase-out of foreign fishing would be modified to permit any unused reserve for U.S. fishermen to be made available to foreign fishermen.

Mr. Speaker, if U.S. fishery resources are fully developed by our citizens as expected by the passage of this legislation, it is estimated that more than 40,000 jobs will be created, more than $1 billion per year will be added to the U.S. economy and the U.S. trade deficit will be reduced by almost $2 billion per year—all in a single decade. Eventually, full utilization will convert the United States from a net importer to a net exporter of fisheries products.

Mr. Speaker, I strongly support H.R. 7039, as amended by the compromise version, and urge its prompt passage.●

● Mr. ASHLEY. Mr. Speaker, historically the United States was one of the world's major producers of fishery products. Before the Second World War and until 1959, the United States ranked second only to Japan in size of catch. By 1965 we had dropped to sixth place. In 1978, we regained fourth place and remain there today.

The major part of the increase in U.S. catch, which is only modest, is due to the passage of the Fishery Conservation and Management Act of 1976. However, this act—better known as the 200-Mile Act—cannot alone restore the American fishing industry to its former position of eminence as it is designed primarily to conserve and protect the fisheries resources within 200 miles of U.S. shores.

The inadequacy of the U.S. fishing industry to meet this challenge has an overall effect on the U.S. economy. Due to an imbalance in trade, the U.S. fisheries deficit in 1979 totaled approximately $2.7 billion, roughly 10 percent of the total U.S. trade deficit.

Recognizing this potential and the present imbalance in fisheries capability, the Committee on Merchant Marine and Fisheries has reported legislation, H.R. 7039, which hopefully will be of valuable assistance in meeting the challenge facing the U.S. fishing industry.

First I woud like to emphasize that H.R. 7039 was drafted in such a way that it would result in little cost, if any, to our taxpayers and any cost that may be incurred would be offset by the anticipated increase in foreign fishing fees.

H.R. 7039 as reported by the committee, would amend a number of existing laws to promote the development of the U.S. fishing industry. One of these laws is the 1939 Saltonstall-Kennedy Act—known as the S-K Act. Currently, the S-K Act mandates that the Secretary of Commerce recieve an amount equal to 30 percent of the gross receipts from custom duties on imported fishery products and use such funds to develop and increase markets for U.S. produced fishery products. H.R. 7039 would rewrite the S-K Act to include products which relate to any aspect of the fishing industry and to require that at least 75 percent of the S-K funds be used to support fisheries development activities carried out in cooperation with the domestic fishing industry.

To assist in promoting the sale of U.S.-produced fish in foreign markets, H.R. 7039 would require the Secretary of Commerce to appoint at least six fisheries trade officers to serve overseas.

To assist in expansion of our catching and processing capability, in particular into the underutilized fisheries, H.R. 7039 would extend the existing title XI obligation guarantee program, which guarantees financing for construction and reconstruction of fishing vessels and merchant vessels, to shoreside fisheries facilities and to fishing vessels involved in high risk ventures.

Probably the most controversial section of the bill, and, as I see it the most crucial, is a provision designed to expedite the phaseout of foreign fishing in our 200-mile fisheries zone. The mechanism called for by the bill would provide for an automatic 15-percent reduction in the amount of fish that would have been allowed to be caught by foreign fishermen in 1981, except for this provision, with further reductions in increments of 10 or 15 percent in future years, depending on increased harvests by U.S. fishermen. In other words, except for the first 15-percent automatic reduction, there would be no further reductions in foreign allocations unless our fishing industry proportionately increases its harvesting capability.

Two other provisions of the bill interrelate with each other. One of these provisions would require the Secretary of Commerce to collect from foreign fishermen sufficient license fees to return to the United States an amount equal to the cost of administering and enforcing the provisions of the 200-Mile Act as such cost relates to foreign fishing versus domestic fishing. These fees, which ordinarily have been going into the general fund of the Treasury, would be earmarked for the S-K Act for fisheries promotion except during the next 2 years, such fees would be used for loans to U.S. fishermen. Priority would be given first to vessel owners who are about to default on mortgages on their vessels, and second to vessel owners who are seeking funds for operating expenses.

Mr. Speaker, although the bill was reported out of the committee unanimously, it was reported out over the objections of the administration. The Department of State expressed concern over the provisions calling for a phaseout of foreign fishing, the establishment of a 100-percent observer program, and the linking of foreign fishing allocations with removal of trade barriers to U.S. fisheries exports. The Department of Commerce expressed concern primarily over the extension of the title XI obligation guarantee program to high risk fishing vessel ventures and to shoreside fisheries facilities because of the effect such extension might have on the administration's desire to restrain Federal budget and credit risk growth.

With a view toward obtaining the support of the administration and avoiding the possibility of a Presidential veto, representatives of the Departments of State and Commerce and the committee worked hard during the past several weeks to shape a compromise version of the bill that will not only meet the concerns of the administration but at the same time meet the needs of the U.S. fishing industry.

A compromise version of the bill has been developed, which has the support of both the administration and the committee and which I also support.

The compromise version is essentially the same as H.R. 7039 except for the following changes: Only 50 percent of the S-K funds could be dedicated to fisheries development projects and any jointly carried out projects would be on a 50-50 matching fund basis; the title XI obligation guarantee program would not be extended to shoreside fisheries facilities, only to high risk venture fishing vessels; the phaseout of foreign fishing would be modified in such a way as to permit any reserve set aside for U.S. fishermen to be allocated to foreign fishermen whenever the Secretary of State determines such reserve will not be caught by U.S. fishermen; foreign fishing fees would be doubled for 1981 and in future years such fees would be based on the foreign versus domestic catch within the zone; and for a 2-year period such fees would be earmarked for fisheries loans to the extent needed, with fees for future years going into the general fund of the Treasury.

Mr. Speaker, I urge the adoption of H.R. 7039, as amended by the compromise version.●

● Mrs. BOGGS. Mr. Speaker, as a cosponsor of the American Fish Promotion Act and as a representative of one of this Nation's most active and important seafood producing areas, I urge passage of H.R. 7039.

The shrimp, crab, and oyster industries in Louisiana have historically been the State's most valuable commercial fishery. For example, since 1976 the dockside value of shrimp has exceeded $80 million. However, times are changing. A decline of 24 percent in Louisiana shrimp landings in 1979 from the previous 2-year average has prevented shrimpers from accruing an economic buffer against a disastrous year. The shortfall in revenue, when combined with the disastrous environmental conditions experienced in the spring of 1980 which reduced the usual spring shrimp harvest, resulted in a weakened profit position for shrimpers when compared to previous years. The gulf coast shrimp and fishing fleets were looking forward to 1980 as a year to service their debts and recapture some of the net income foregone due to the 1979 increases in fuel costs.

Fuel has been a real problem for our fleets in the past, but through the first 6 months of 1980 shrimpers have not experienced the skyrocketing fuel costs that burdened them in 1979. Consequently, production of shrimp was a key variable as 1980 began: A bumper crop was expected. However, in the spring of 1980, several environmental occurrences proved quite detrimental to the pending shrimp crop. At the start of the year, conditions for brown shrimp looked good. Unfortunately, an early spring cold snap moved through coastal Louisiana and the result was devastating for the new shrimp larvae. Heavy rains in March, April and May also lowered the salinity levels in the water. As reflected in the number of landings, the situation steadily declined from January through June. The result was a 51 percent lower shrimp yield for the first 6 months of 1980 as compared to the average for the previous 4 years.

This past summer I have heard from scores of individuals who are engaged in the traditional fishing and shrimping lifestyles of Louisiana: The same trades pursued by their parents and grandparents. They all tell me the same dire story. Their situation is steadily declining due to high fuel costs, higher interest rates, higher costs of ice due to increased fuel prices, and, compounding the problem, the radical increase in foreign competition in the seafood market as a result of cheap, frequently subsidized, foreign imports. Many fear they will lose their boats, on which they earn their livelihood, and go out of business.

Mr. Speaker, unless we act to pass this legislation, it is quite likely that this important industry will die or, at least, suffer permanent crippling. This legislation provides the tools necessary to assist our fishing industry in its efforts to achieve full use of our valuable fisheries resources.

I urge passage of this bill.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. BREAUX) that the House suspend the rules and pass the bill H.R. 7039, as amended.

The question was taken.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

COMMUNICATIONS CROSS-OWNERSHIP ACT OF 1980

Mr. VAN DEERLIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6228) to amend the Communications Act of 1934 to provide that the Federal Communications Commission, in considering applications for the renewal of broadcasting station licenses, shall not take into account any ownership interests of the applicant in other broadcasting stations or in other communications media, and for other purposes, as amended.

The Clerk read as follows:

H.R. 6228

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Communications Cross-Ownership Act of 1980".

SEC. 2. Section 309(a) of the Communications Act of 1934 is amended by inserting "(1)" after "SEC. 309. (a)" and by adding at the end thereof the following new paragraphs:

"(2)(A) The Commission shall not grant any initial application for, or any initial acquisition of, a commercial broadcasting station license to any applicant if—

"(i) such applicant, at the time application is made to the Commission, owns, controls, or operates any daily newspaper; and

"(ii) the station signal of the commercial broadcasting station for which such license is sought will encompass the entire community in which such daily newspaper is published.

"(B)(i) If any person who owns, controls, or operates a commercial broadcasting station which is licensed by the Commission subsequently owns, controls, or operates a daily newspaper, and the station signal of such commercial broadcasting station encompasses the entire community in which such daily newspaper is published, then such person shall transfer, assign, or otherwise dispose of such license in accordance with section 310(d), or shall transfer, assign, or otherwise dispose of any interst in such daily newspaper, not later than—

"(I) the date on which such license is due to expire; or

"(II) the end of the 1-year period following the date such person purchases, or obtains any interest in, such daily newspaper, if the end of such 1-year period occurs after the date of the expiration of such license and if the Commission defers action on any renewal application for such license in accordance with clause (ii).

"(ii) If the end of such 1-year period occurs after the date of the expiration of such license, then the Commission may defer action on any renewal application with respect to such license until the end of such 1-year period, if the Commission considers such deferral to be necessary for purposes of permitting the person who owns, controls, or operates the commercial broadcasting station involved to carry out the transfer, assignment, or other disposal of such license, or of any interest in the daily newspaper involved, in accordance with this subparagraph.

"(C)(i) Except as provided in clause (ii), the Commission shall not renew any commercial broadcasting station license for a term which is due to end after June 1, 1980, if the licensee involved—

"(I) owns, controls, or operates the only commercial aural broadcasting station or stations which encompass the entire community required to be served under the license with a city-grade signal during daytime hours, or the only commercial television broadcasting station or stations which encompass the entire community required to be served under the license with a city-grade signal;

"(II) owns, controls, or operates the only daily newspaper which is published in such community; and

"(III) owned, controlled, or operated any such station and such newspaper as of January 1, 1975.

"(ii) The provisions of clause (i) shall not apply to a commercial aural broadcasting station licensee if—

"(I) a commercial television broadcasting station is licensed to serve the community which is served by the commercial aural broadcasting station involved; and

"(II) such commercial television broadcasting station is not owned, controlled, or operated by such commercial aural broadcasting station licensee.

"(D)(i) Any licensee (other than a person subject to subparagraph (C)(i)) who, on the effective date of this paragraph—

"(I) owns, controls, or operates a daily newspaper; and

"(II) is the licensee of a commercial broadcasting station which has a station signal which encompasses the entire community in which such newspaper is published;

shall be eligible to apply for renewal of such license and shall not be required to relinquish ownership or control of such broadcasting station or such newspaper.

"(ii) Except as provided in clause (iii), no licensee specified in clause (i) may transfer, assign, or otherwise dispose of—

"(I) the commercial broadcasting station license held by such licensee; and

"(II) ownership of, or any interest in, the daily newspaper specified in clause (i)(I);

to the same person.

"(iii) The requirements of clause (ii) shall not apply to any transfer, assignment, or disposal of a commercial broadcasting station license—

"(I) if such transfer, assignment, or disposal is made in connection with the disposition of the estate of any individual, and would not result in any new encompassment of communities prohibited in subparagraph (A) or subparagraph (B) as to commonly owned, operated, or controlled broadcasting stations and daily newspapers; or

"(II) if such transfer, assignment, or disposal constitutes a technical change in ownership or control resulting from any corporate reorganization affecting the licensee, the bankruptcy of the licensee, or any other transaction which does not affect significantly the ownership or control of such commercial broadcasting station.

"(E) The Commission shall have authority to waive (either temporarily or permanently) any requirement established in this paragraph if an applicant for a commercial broadcasting station license demonstrates to the Commission that such waiver is necessary to serve the public interest, convenience, or necessity.

"(3) In any case in which the Commission is considering an application for the renewal of a commercial broadcasting station license, the Commission shall not have any authority to consider or otherwise take into account—

"(A) any ownership interest which is held by the renewal applicant involved in any other broadcasting station or in any nonbroadcasting communications medium, except that the Commission may take into account any violation of this Act or any violation of any rule prescribed by the Commission under this Act; or

"(B) the extent to which any owner of the station involved participates in the day-to-day administration and operation of the commercial broadcasting station involved, except that the Commission may take into account any violation of this Act or of any rule of the Commission which occurs in con-

nection with the administration or operation of such commercial broadcasting station.

"(4) The provisions of this subsection shall not be construed to affect in any manner the applicability or enforcement of the Federal antitrust laws.

"(5) For purposes of this subsection:

"(A) The term 'city-grade signal' means—

"(i) with respect to an amplitude modulation commercial broadcasting station, the 5 millivolt per meter contour, as specified in section 73.24(j) of title 47, Code of Federal Regulations (as in effect on the effective date of this paragraph);

"(ii) with respect to a frequency modulation commercial broadcasting station, the 3.16 millivolt per meter contour, as specified in section 73.315(a) of title 47, Code of Federal Regulations (as in effect on the effective date of this paragraph); and

"(iii) with respect to a commercial television broadcasting station, the minimum field intensity in decibels above 1 microvolt per meter which is required to be provded, over the entire principal community served, in accordance with section 73.685(a) of title 47, Code of Federal Regulations (as in effect on the effective date of this paragraph).

"(B) The term 'daily newspaper' means any newspaper which is published 4 or more days per week, which is published in the English language, and which is circulated generally in the community of publication. Such term shall not include any college newspaper.

"(C) The term 'Federal antitrust laws' means—

"(i) the Sherman Act (15 U.S.C. 1 et seq.), section 73 through section 77 of the Wilson Tariff Act (15 U.S.C. 8 et seq.), the Act entitled 'An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes"', approved February 12, 1913, the Clayton Act (15 U.S.C. 12 et seq.), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

"(ii) any law enacted after the effective date of this paragraph by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any restraint upon, or monopolization of, interstate or foreign trade or commerce.

"(D) The term 'Grade A contour' means the Grade A contour of a commercial television broadcasting station, as defined by the Commission in accordance with section 73.683 of title 47, Code of Federal Regulations (as in effect on the effective date of this paragraph). The location of each such Grade A contour shall be determined in accordance with procedures established in section 73.684 of title 47, Code of Federal Regulations (as in effect on the effective date of this paragraph).

"(E) The term 'station signal' means—

"(i) with respect to an amplitude modulation commercial broadcasting station, that signal which is computed by the Commission in accordance with section 73.35(a), and section 73.183 or section 73.186, of title 47, Code of Federal Regulations (as in effect on the effective date of this paragraph);

"(ii) with respect to a frequency modulation commercial broadcasting station, that signal which is computed by the Commission in accordance with section 73.240(a)(1) and section 73.313 of title 47, Code of Federal Regulations (as in effect on the effective date of this paragraph); and

"(iii) with respect to a commercial television broadcasting station, the Grade A contour of such station.".

SEC. 3. Section 307 of the Communications Act of 1934 (47 U.S.C. 307) is amended by adding at the end thereof the following new subsection:

"(f) To ensure the fair, efficient, and equitable distribution of high-power or full-power very high frequency television broadcasting stations to and among the several States and the District of Columbia, the Commission shall assign such stations (if such assignment is technically feasible) to any State or States which do not have at least one such station licensed as a commercial station at the time one or more stations become available as a result of any determination of the Commission to decline to renew a license for any such station, or to revoke any such license, except that (1) the requirements of this subsection shall apply to the assignment or reassignment of any such license only if such license has been denied renewal, or has been revoked, after January 1, 1980; (2) such assignment shall not be made until such determination is no longer subject to judicial review; and (3) the requirements of this subsection shall not be considered as a reason to deny or to revoke any license.".

SEC. 4. (a) Title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.) is amended by striking out section 506, and by redesignating section 507 through section 509 as section 506 through section 508, respectively.

(b)(1) Section 317(b) of the Communications Act of 1934 (47 U.S.C. 317(b)) is amended by striking out "section 508" and inserting in lieu thereof "section 507".

(2) Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended—

(A) by striking out "509(a)" and inserting in lieu thereof "508(a)"; and

(B) by striking out "section 507" and inserting in lieu thereof "section 506".

(3) Section 504(b) of the Communications Act of 1934 (47 U.S.C. 504(b)) is amended by striking out "507" and inserting in lieu thereof "506".

SEC. 5. (a) The amendments made in section 2 of this Act shall not affect the resolution of—

(1) any issue involving integration of ownership in broadcasting station management; or

(2) any issue involving concentration of media ownerhip;

which is part of any proceeding pending before the Federal Communications Commission on September 9, 1980. Orders shall be issued in such proceeding and appeals shall be taken from such proceeding as if such amendments had not been enacted.

(b) The amendments made in section 2 of this Act shall not affect the resolution of—

(1) any issue involving integration of ownership in broadcasting station management; or

(2) any issue involving concentration of media ownership;

which is part of any suit commenced before September 9, 1980. In all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if such amendments had not been enacted.

Amend the title so as to read: "A bill to amend the Communications Act of 1934 to codify the rules of the Federal Communications Commission which prohibit the cross-ownership of broadcasting stations and newspapers, to provide that the Commission shall not take into account any ownership interests of broadcasting station license renewal applicants in other broadcasting stations or in other communications media, and for other purposes.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. VAN DEERLIN) will be recognized for 20 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. VAN DEERLIN).

Mr. VAN DEERLIN. Mr. Speaker, this bill came out of our subcommittee after hearings late last year. It passed in the subcommittee by unanimous voice vote, and in full committee 2 weeks ago on a vote of 17 to 4, with one abstaining.

The trend of ownership in broadcasting in the United States was, as many of us know, greatly influenced in the early years by a reluctance among many potential independent operators to apply for broadcast licenses—and this was especially true when television licenses became available in the late 1940's and early 1950's—because of the tremendous costs involved. In the face of these conditions, the Federal Communications Commission was itself involved in persuading a good many newspaper publishers in the land to acquire licenses, so as to get stations on the air—to begin the very costly operations which, in early days, were substantially supported out of newspaper profits.

In more recent times it became far likelier that a television station, out of its profits, is supporting the newspaper that was its progenitor. What our bill does is to codify rules already adopted by the FCC to prohibit both newspaper and broadcast properties from being owned by the same entity in a community, and to require, almost immediately, divestiture in a handful of small markets where one owner controls all newspaper and broadcast voices in the community.

We would "grandfather" other crossownerships, in situations where an entire community's information and editorial opinions are not vested in a single owner. In such situations, the present licensee would be permitted to keep both properties—but he would be barred from selling or otherwise transferring the combination of properties to a new single owner.

□ 1320

The Supreme Court has upheld all of these rules already enacted by the FCC. Our legislation would offer the stability of law.

In addition, there are two amendments to the basic legislation. One would repeal the Lee Act, enacted in 1945. That law, since superseded by Taft-Hartley, bars union musicians from picketing radio stations. And there is another amendment which would offer some hope in the future to two States which presently do not have high-powered VHF television licenses—the States of New Jersey and Delaware.

Our bill would say that to the extent possible, every State of the Union should have not less than one VHF license.

I now yield 4 minutes to the prime author of the legislation, the gentleman from Washington (Mr. SWIFT).

Mr. SWIFT. Mr. Speaker, I think it is time the Congress began to establish communication policy in the United States. If one takes a close look at how much congressional legislation there has

been on communications legislation over the last 30 years you will find it is precious small. In fact what has happened is we have permitted a bureaucracy, the Federal Communications Commission, to make virtually all of the basic communications policy through its regulatory power.

This bill today is an attempt to make a first, small, very modest step toward establishing congressional policy in the broad and complex field of media concentration.

What it does, simply, is to say that from here on out, in no single market can a daily newspaper own a broadcast facility or a broadcast facility own a daily newspaper. It is a beginning at establishing congressional policy that says: From here on out you are not going to permit that kind of concentration within a given market.

Now, when we do that we raise a question: What does one do with all of those situations that currently exist? Well, you could bring a bill to the floor of this House which would say we will require all of them to divest.

Now, seriously, what chance would such legislation have in this House? Virtually none. If, in fact, we insist we must do that in order to get what is good about this bill, establishing congressional policy that henceforth we will not permit that kind of thing, what we do is prevent the House from acting at all.

It is really a question of whether the glass is half full or half empty. I see it as half full. We get something that establishes from here on into the future that is good public policy and for that we say that so long as the same people own the crossownership that exists, we are going to permit that to continue. When they sell they come under the new provisions.

This is not giving away so much when we consider that the FCC itself made a detailed study of these crossownerships and in instances where they found virtual monopoly in a market they did require divestiture, in some 11 cases, I believe. In other instances they examined very carefully and they found there was competition existing in those markets and found that it was in the public interest to let those crossownerships continue.

So, what the portion of the bill I originally introduced will do is to say, from here on out we are not going to be able to have those kinds of crossownerships anymore. Recognizing the political reality that we cannot force divestiture of the rest, we rely on a careful study of the FCC that says in those current markets there is ample reason to believe the public is being served even if those crossownerships are continued. This bill would so permit.

It is for that reason that I urge my colleagues to not fail this opportunity to assert for the first time in many years congressional policy in the area of communication and no longer leave that solely to unelected people at the FCC, however good may be their motives and not to nitpick this, yet another effort to assert congressional prerogative, to death.

Mr. FINDLEY. Mr. Speaker, will the gentleman yield?

Mr. VAN DEERLIN. I will be happy to yield to the gentleman from Illinois.

Mr. FINDLEY. Mr. Speaker, my memory goes back to a circumstance here in Washington just a few years ago in which, I believe I am correct, the Washington Post was required to divest itself of a television station interest. Now, the market was competitive in that circumstance but nevertheless a transfer in ownership came about.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BROYHILL. Mr. Speaker, I yield the gentleman 2 minutes for the purpose of allowing the gentleman from Illinois to continue his colloquy.

Mr. FINDLEY. Mr. Speaker, I am concerned that this legislation might grandfather in—that is, lock in permanently—a common ownership of publishing and broadcast interests, even though later on the circumstances of the market might change to a less competitive situation.

Can the gentleman assure me that such would not be the case?

Mr. SWIFT. If the gentlemen will yield, what I would say to the gentleman is that the likelihood of the circumstances the gentleman suggests occurring in a society that is growing, not reducing, is highly unlikely. I cannot think of an instance in which the circumstances would reduce ownership or rather reduce the population and, therefore, have the competition fall away, which is the only way in which the kind of situation that the gentleman raises could possibly exist.

Mr. FINDLEY. Let us return to the Washington situation. Until recently and perhaps even today the Washington Star was on a rather rocky course. There is no real assurance that this will continue to be a two-newspaper town.

Mr. Speaker, would this legislation, nevertheless, in a circumstance like this, lock in the possibility of publishing and broadcast ownership, even though the market became less competitive in years to come?

Mr. SWIFT. Not in this market, because there is no crossownership in this market.

I would further point out if the gentleman will continue to yield, that the Washington Star also owned a Washington television station which did a great deal to subsidize the operation of the Washington Star and one could argue, I think quite effectively, that it was because they were required to divest that we are in a situation where this city could become a one ownership town and that is not the only community in the United States where that could happen. I could cite Cleveland, Ohio, as well.

Mr. FINDLEY. Let me restate the question: Would this legislation lock in the right to common publishing and broadcasting ownership in a market which in the future lost its competitive characteristic?

Mr. SWIFT. The legislation grandfathers existing cost ownership situations until such time as they are sold.

Mr. BROYHILL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, unfortunately, I must rise in opposition to H.R. 6228, the Communications Crossownership Act of 1980. As one of the initial cosponsors of the bill, I feel that the crossownership provisions have been carefully drafted to effectively address the present state of uncertainty facing newspaper-affiliated licensees at renewal time. I strongly believe that Congress needs to establish basic ground rules affecting these combinations.

The original text of H.R. 6228 deals specifically with the continued mixed signals that the courts and the FCC have been sending about how a broadcast licensee's ownership and management structure will affect its chances for renewal, especially in cases of common ownership of newspapers and broadcast stations.

While I endorse the crossownership provisions of H.R. 6228, I regrettably cannot support passage of the bill on the House floor today due to the numerous controversial amendments adopted by the Commerce Committee.

These amendments include the reassignment of very high frequency (VHF) commercial television stations, repeal of an antifeatherbedding law, and grandfathering of certain broadcast license renewal challenges commenced before September 9, 1980. These amendments were not subject to hearings by the Communications Subcommittee. Indeed, the bill was just reported out of committee last Tuesday, affording little opportunity for executive comments or any indepth analysis.

Of particular concern is the amendment requiring the Federal Communications Commission to reassign VHF television frequencies from States with existent frequencies to States without such frequencies. The intent of this language is to address a situation in the States of New Jersey and Delaware where there presently do not exist VHF assignments.

At the outset, I want to say that I recognize the concerns of the proponents of this legislation and their desire to have better television coverage of local issues and problems. My own congressional district does not have VHF television stations. And I must say that it would be convenient to have such facilities in my district for many of the same reasons my colleagues propose. If the people of my district as well as the citizens of New Jersey and Delaware were without any kind of television service, then I probably would be more sympathetic with their cause. However, that is not the situation. The citizens of New Jersey are presently receiving both UHF and VHF television service as well as cable service.

In addition, the Commission has initiated a number of proposed rulemakings designed to provide more service to New

Jersey. These proposals included the provision of six new UHF television stations for New Jersey, the provision of two low-powered VHF dropins, requiring network affiliation with the five existing UHF television stations, and requiring the New York and Philadelphia VHF stations to establish a physical presence—for example, studio facilities—in New Jersey. As to the latter, the Commission is requiring the New York and Philadelphia stations to establish offices in New Jersey.

Moreover, the amendment as presently drafted is subject to numerous and conflicting legal interpretations which have the potential to create chaos with the existing FCC comparative license renewal process as well as the provision of new television service.

For instance, the language provides that the Commission shall assign VHF stations to any State without such broadcasting station at a time when "one or more stations become available." If, for example, an assignment becomes available from New York and such assignment is allotted to New Jersey, have the provisions of this amendment been met? Once such an assignment has been made what will occur should future assignments become available? In view of a congressional mandate as embodied in the amendment, would the FCC be compelled to reassign any and all available frequencies from New York or Philadelphia to New Jersey? At what point would the Commission be satisfied with meeting the provisions of this amendment?

Due to the vagueness of the language, it can be argued that there is no point at which such mandate would be met. Further, should the Commission feel it has met the mandate, what is to prevent differing interpretations by future Commissions which may lead to new policies over television assignments?

The language as presently drafted also has the potential to circumvent the comparative license hearing process, which normally affords all interested applicants, regardless of geographic location, a fair and equitable opportunity to own a broadcast license. Under the comparative hearing process, applications from States without VHF assignments would clearly be given a preference by the Commission over applications from States with VHF assignments. The effect is to diminish the role of the comparative hearing process and allow for preferences based on one's geographic qualifications rather than on legal, technical, financial, character, or broadcasting qualifications.

Because of these and numerous other unanswered questions, I cannot support this legislation and urge its defeat.

□ 1330

Mr. VAN DEERLIN. Mr. Speaker, I thought we might deal first with the part of the bill that requires the repeal of the Lea Act. The author of that amendment was the gentleman from Ohio (Mr. MOTTL) to whom I yield 3 minutes.

Mr. MOTTL. Mr. Speaker, I urge that the House suspend the rules and pass H.R. 6228, the Communications Cross-Ownership Act of 1980.

I would like to take a moment to comment on a section of this bill repealing section 506 of the Communications Act of 1934. Section 506 is commonly known as the Lea Act, and also as the anti-Petrillo Act.

The Lea Act, when enacted, basically stripped musicians of the right to bargain on employment matters with the broadcasting industry.

It made musicians the only labor group to face criminal sanctions for nonviolent picketing.

The Lea Act was passed at a time of exceptional tension between professional musicians and broadcasters, caused by the increased reliance of broadcasters on recorded music rather than studio musicians.

The real need for this legislation was doubtful in 1946, and is nonexistent today. The Taft-Hartley Act, which regulates labor-management relations generally, is quite adequate to cover broadcasting industry labor practices.

Repeal of the Lea Act would end the status of musicians as second-class workers with a criminal statute aimed specifically at them.

I would add that repeal of the Lea Act in no sense suggests that broadcasters must turn back the clock and hire studio bands. It would mean, however, that musicians could again raise employment issues with broadcasters for discussion, negotiation, and public expression without facing threats of Federal prosecution.

It was our good friend, the late John Slack of West Virginia, who introduced a Lea Act repeal bill in this Congress. As usual, John was on the side of justice and fair play.

The House today can offer a fitting tribute to John and HARLEY STAGGERS by passing his Lea Act repeal bill, embodied in H.R. 6228.

Mr. VAN DEERLIN. Mr. Speaker, for what could well be his swan song appearance on any legislation in this House, after 32 years of devoted efforts, I am pleased to yield such time as he may consume to the chairman of the full committee, the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Speaker, I thank the subcommittee chairman for yielding to me. I hope this is not going to be my swan song. I hope there will be other legislation that we will be talking on before the end of this session.

Mr. Speaker, this amendment would repeal the Lea Act which was adopted in 1946 and is found in section 506 of the Communications Act of 1934. The Lea Act was adopted to prohibit organized musicians of their rights to bargain on employment matters with the broadcasting licensees. The Lea Act creates criminal sanctions for nonviolent picketing; these sanctions apply to no other labor group other than musicians. The Lea Act was adopted in 1946 to counter the activities of a notorious president of the American Federation of Musicians. At the time there was a greater reliance on the part of broadcasters on studio musicians than exists today. As broadcasters increased their reliance on recorded music, turmoil began to develop. While there probably was little real need for the legislation in 1946, there is absolutely no reason for this legislative language today. Legislation adopted since the Lea Act declares it unlawful as an unfair labor practice for labor activities to create featherbedding. Taft-Hartley Act—section 158(B)(6)—and extortion is prohibited by the Hobbs Act and other antiracketeering statutes.

Recommend that the Lea Act be repealed so that we may give the same labor rights to musicians that exists for all other members of the American labor force.

I worked with the late Honorable John Slack on the repeal of the Lea Act and I would consider it a fitting tribute for this amendment to be unanimously passed by the full committee.

Mr. RAHALL. Mr. Speaker, I rise in support of H.R. 6228 and most strongly in support of provisions that repeal the "Lea Act." As an individual whose family has long been involved in the broadcasting industry, and as a broadcaster myself, I want to point out at this time, that my support of this measure is based on a much broader principal. That principal, is the right of musicians to exercise their rights as workers in negotiations with broadcast stations.

Our late colleague, John Slack, introduced H.R. 4892, to repeal section 506 of the Communications Act of 1934, better known as the Lea Act. The provisions of Mr. Slack's bill are contained in this measure, and it is in his spirit, based on his support of the workingman, that I urge the support of H.R. 6228, to repeal this unfair law that has been buried in our statutes for over 40 years.

I certainly understand the debate that has been going on with regard to the other provisions of this legislation, but Mr. Speaker, we can no longer allow the Lea Act to remain the law of the land on this particular subject. We can no longer allow musicians, as union members, as citizens, as individuals, and as Americans to be deprived their rights of job security, fair wages, and dignity.

I commend the work of the American Federation of Musicians for their constant attempts to see this measure come to the floor, and particularly like to thank my good friend, Ned Guthrie, president of the Charleston, W. Va., musicians union for his tireless efforts. Mr. Guthrie, his members and his fellow musicians have long suffered from this injustice, and it is time for us to rectify it. In the spirit of what is right and good, I urge passage of H.R. 6228.

Mr. BROYHILL. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. RINALDO), the ranking minority member of the Subcommittee on Consumer Protection and Finance.

Mr. RINALDO. Mr. Speaker, I rise in support of H.R. 6228, the Communications Cross-Ownership Act of 1980, which is before us today. I urge all

Members to vote to suspend the rules and pass this legislation.

The purposes and benefits of this legislation have been very well explained by my colleagues. Basically, the bill would codify present FCC rules governing cross-ownership of broadcast licenses and newspapers in the same communities. These rules have been upheld by the U.S. Supreme Court, and their codification would provide for greater stability of ownership of broadcast licenses. The bill would also prohibit consideration of certain factors in license renewal proceedings, so that renewal consideration would focus on the programs and performance of the licensee.

I would like to direct my remarks primarily at another provision of this bill which is of great importance to the State of New Jersey. Other Members of the New Jersey congressional delegation and I have been working for many years to achieve the purpose of this provision—to provide that each State, including our own, has at least one commercial VHF television station.

New Jersey is in the unique position of having a population of nearly 8 million people who are not served by one single commercial VHF television station within their own State. Delaware is the only other State which lacks a VHF television channel.

New York City, with approximately the same population as the State of New Jersey, has six commercial stations. Although these channels broadcast into New Jersey, and into my congressional district, their coverage focuses on the city in which they are located and licensed. Consequently, New Jersey residents are deprived of the local orientation which a commercial VHF channel in our own State would provide.

Television has become the most important mass medium in terms of the size of its audience and the impact on viewers. It can provide immediate coverage of news, timely discussion of current events, and in-depth presentation and analysis of public issues. One of the most important contributions of local programing is the coverage of local, regional, and statewide news and events. But because there is no VHF television station located in the State of New Jersey, our entire State is shortchanged and deprived of this important public function.

Instead, New Jersey residents in my congressional district receive more television coverage of events in New York City than of occurrences in their own State and community. As a result New Jersey residents are not as well informed as their New York neighbors about their government, political campaigns, and what is happening in their own communities. It takes something as compelling as the recent fire and explosion at the Chemical Control Corp. in Elizabeth before New Jersey events receive television news coverage.

For a number of years, we in New Jersey have sought relief from the Federal Communications Commission to remedy this inequitable situation. But the FCC has been unresponsive in providing New Jersey with VHF television channel allocations comparable to other States. Instead, they have directed stations in New York and Philadelphia to improve their coverage of New Jersey news and to increase their "physical presence" in New Jersey.

This policy, however, has been ineffective in improving the situation. New Jersey needs and deserves a VHF station located and licensed in our State in order to establish a legal obligation to cover State and local news and events. A New Jersey station would be required to take into account the needs and interests of local viewers, and New Jersey residents would be able to have a meaningful part in programing.

Just last week, the FCC proposed an increase in VHF television service which could provide VHF channels for New Jersey and Delaware, in addition to many other communities throughout the Nation. However, even if this proposal is finally adopted by the FCC, it is only the beginning of a very long process before such channels would actually be allotted, constructed, and could begin operation.

The provision in H.R. 6228 would have a far more immediate effect on the two States which do not presently have commercial VHF television stations. By providing for the assignment of an existing channel, if one should become available, rather than the possibility of a new channell which has not yet been allotted, this provision offers more immediate relief for the inequitable situation which exists. It would also provide a tangible expression of congressional intent that the policy of our Nation should include a commercial VHF television station for each State.

The FCC has so far failed to provide New Jersey with its own commercial VHF station. In the interests of fairness, and good broadcasting policy, it is now up to the Congress to take this action. I urge the adoption of this legislation.

Mr. THOMPSON. Mr. Speaker, will the gentleman yield?

Mr. RINALDO. I yield to my colleague from New Jersey.

Mr. THOMPSON. Mr. Speaker, I am pleased to rise in support of the Communications Crossownership Act of 1980. This bill contains a provision which, with strict safeguards for the rights of broadcasters, provides a mechanism for New Jersey and Delaware to obtain VHF stations. My State of New Jersey, with 8 million citizens; with "big league" sports teams like the New Jersey Giants, the New Jersey Nets, and the New Jersey Cosmos; and, with a thriving cultural life from the Papermill Playhouse to the Garden State Arts Centre, deserves to have its own television station.

I understand that because of objections to this specific provision some Members are actually going to oppose the entire measure. This is highly ironic. The purpose of this legislation—minus the New Jersey and pro-labor provisions—is to codify existing regulations which the FCC has pertaining to cross-ownership of broadcast stations and newspapers. We are codifying existing regulations with this bill because the FCC might change its mind and attempt to break-up the existing instances of crossownership it had previously approved. Thus, to prevent the Commission from exercising its own judgment, this legislation was introduced.

The champions of this position are critical of the New Jersey amendment by saying that Congress is invading the Commission's turf by directing the FCC to move stations to New Jersey and Delaware in an orderly fashion. Now consistency may be the hob-goblin of small minds but I would contend that the New Jersey language is utterly consistent with the thrust of the legislation. As a matter of public policy, Congress should tell the Commission to see that each State has at least one VHF station. As a New Jersey Representative, I believe it is important and urgent for Congress to do so.

□ 1340

Mr. BROYHILL. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. SCHEUER).

Mr. SCHEUER. Mr. Speaker, I rise in opposition to H.R. 6228, the Communications Crossownership Act of 1980. In the Committee on Interstate and Foreign Commerce, of which I am a member, several amendments were offered to correct the flaws in this legislation. Many of these amendments were defeated only by small margins, while others passed by similarly close votes.

Among the amendments rejected, was one offered by me which would have had the effect of substantially modifying section 3 of the bill. That section, as many of my colleagues are aware, would directly involve the Congress in allocating broadcasting frequencies.

Specifically, it would have the effect of transferring a television station from the State of New York to the State of New Jersey. It would also require the transfer of a television station from either Pennsylvania or Maryland to the State of Delaware.

I shall shortly discuss the merits, or lack thereof, of this proposal, but first I think it important to protest the format under which we today consider this bill. Many Members of the House, both on and off the Commerce Committee, wished to offer major amendments to this controversial bill. Yet, under suspension of the rules we are not afforded that opportunity.

For this reason alone I urge my colleagues to deny suspension of the rules so that we may have a chance to consider this bill in regular order and let the full House weigh the merits of various amendments to H.R. 6228, which, in its current form, is opposed by public interest groups and the broadcasting industry alike. This bill represents an inappropriate intervention by Congress with the regulatory process—the kind of intervention I have many times stood on this floor to speak out against.

H.R. 6228 seeks to determine the outcome of a specific licensing proceeding before the FCC, and it seeks to do so without the expertise and without the technical data base required for such a task. The fact is that last week, the FCC, of its own initiative, took an action which paves the way for television service in the State of New Jersey. The commission proposed a rule which would permit new VHF service for many areas of the country by relaxing a distance restriction which for years stood in the way of new frequency allocations.

While I do not necessarily endorse the FCC action, it does demonstrate the adequacy of the regulatory process to deal with specific and controversial communications issues, like this one.

H.R. 6228, by requiring the use of VHF service for New Jersey and Delaware, undermines the congressional intent of the 1962 All Channels Receiver Act. That legislation represents the view of Congress that UHF and VHF frequencies should achieve comparability. The act, and rulemakings by the FCC pursuant to it, mandated that all television sets be equipped with both UHF and VHF dials.

Testimony to the success of the act is the fact that in several parts of this Nation UHF channels have achieved comparability, if not superiority, to their VHF competitor. It would be unwise and imprudent for us today to wipe out 18 years of work toward comparability by passing a bill which contains amendments not the subject of lengthy hearings as the 1962 act was, and not at all in the public interest as the 1962 act is.

Finally, I must confess to a parochial interest in the outcome of this legislation, for, as I have mentioned, its passage will have a substantial negative impact on my home State of New York. Specifically, it will mean the loss of at least 250 jobs and tens of thousands of dollars in general tax revenue. Both of these commodities, jobs and money, are desperately needed by New York City at this time of great financial crisis.

It is pennywise and pound foolish to vote millions of dollars in aid to New York, and, at the same time, pass legislation which would take away its very means for permanent recovery and stability. Let me say in conclusion that I have enormous personal respect for the author of section 3, our distinguished colleague from New Jersey, ANDY MAGUIRE. But in this instance, I disagree with my valued friend, and so for the many reasons I have stated, I urge rejection of H.R. 6228.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Speaker, I rise to oppose the consideration of this legislation under suspension of the rules. The suspension procedure is supposed to be reserved for noncontroversial bills and for the most part, we succeed in adhering to this prerequisite. However, we are deviating in a dangerous fashion with this bill before us.

I do not stand here in opposition to the legislation per se. It has some important provisions. However there are amendments to the bill added during full committee consideration which merit additional discussion in the Committee of the Whole House.

Section 3 especially disturbs me. In essence, the section would force the transfer of WOR–TV currently operating in New York City to New Jersey because at the present time New Jersey does not have a very high frequency television station. This section sets a bad if not dangerous precedent of having the Congress for the very first time involving itself directly in the area of assigning or reassigning VHF television outlets.

Further section 3 would mean the loss of several hundred jobs and tax revenues for the city of New York which is fighting to keep its tax and employment base solid for future growth. As Mayor Ed Koch stated in the attached telegram—

On Tuesday, September 22, the House is scheduled to consider, under suspension of the rules, H.R. 6228, the communications Cross Ownership Act of 1980. The city strongly opposes section 3 of this bill which would have the likely effect of requiring the Federal Communications Commission to move the license of WOR–TV from New York to New Jersey. WOR–TV employs approximately 300 people in the city.

Section 3 was added to the bill by Rep. Maguire who argued that New Jersey news coverage suffered from the absence in that State of a commercial VHF television station. Whatever the merits of that claim, the FCC and not the Congress would be the appropriate forum in which to press it. Moreover, the entire issue may have been rendered moot by an FCC decision yesterday to propose the addition of as many as 139 new VHF stations around the Nation of which at least 2 would probably be assigned to New Jersey. Unfortunately, the phrasing of H.R. 6228 would still require the transfer of the WOR–TV license. Notwithstanding the ultimate assignment of these 2 new licenses.

By considering the bill under suspension of the rules, the House is being denied an opportunity to vote separately on this important and controversial matter. An amendment to alter this section in committee, offered by Jim Scheuer, lost by only 2 votes, 19–21.

I urge you to vote against H.R. 6228 and allow the FCC to make the determination in this matter.

Mr. VAN DEERLIN. Mr. Speaker, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from California.

Mr. VAN DEERLIN. Mr. Speaker, I hope the gentleman from New York (Mr. SCHEUER) does not wish to create the illusion that this legislation reassigns any television channels anywhere in the United States.

Mr. SCHEUER. Mr. Speaker, it is my understanding that if the current proposal as it relates to television station WOR in New York City results in a loss of the license to that station, this legislation would require the transfer of that license to New Jersey.

The SPEAKER pro tempore. The time of the gentleman from New York (Mr. SCHEUER) has expired.

Mr. BROYHILL. Mr. Speaker, I yield 3 additional minutes to the gentleman from New York (Mr. SCHEUER).

Mr. Speaker, will the gentleman yield?

Mr. SCHEUER. I am happy to yield to my colleague, the gentleman from North Carolina.

Mr. BROYHILL. Mr. Speaker, the language provides that the Commission shall assign VHF stations to any State or States without any commercial broadcasting stations at a time when—and I quote: "one or more stations become available * * *"

So if the station becomes available and the FCC has already taken that action to revoke the license up there, then that license will go over to New Jersey. But the language is very conflicting, because it says, "one or more."

What happens after such a time, in other words, 5 years from now, at a relicensing time for some station in that general area? Is the FCC under mandate by the Congress to take a license from some other community and give it to New Jersey? I think that a reasonable person could read this into the language which is contained in this amendment.

Mr. VAN DEERLIN. Mr. Speaker, will the gentleman yield?

Mr. SCHEUER. I am happy to yield to the gentleman from California.

Mr. VAN DEERLIN. Mr. Speaker, should WOR's ownership have exhausted all its appeals in the courts and the matter be left to the FCC for a new assignment, then it would be in order for the Commission to assign the license to the State of New Jersey, after which assignment the State of New York would be down to 30 VHF licenses and the State of New Jersey would have one.

Mr. SCHEUER. Mr. Speaker, what I am saying is that it would not just be in order for the FCC to do it; the FCC would have to do it. This legislation would mandate the FCC to do that.

Mr. BROYHILL. Mr. Speaker, will the gentleman yield once again?

Mr. SCHEUER. I yield to the gentleman from North Carolina.

Mr. BROYHILL. Mr. Speaker, the point we are making here is that this bill has no place on the suspension calendar. It should be defeated and brought up under a rule.

Mr. SCHEUER. I totally agree with my colleague, Mr. Speaker.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. SCHEUER. I am happy to yield to the committee chairman.

Mr. STAGGERS. Mr. Speaker, I would like to read the law as it now appears.

The law states that—

The Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

If I might just make this point, this law is supposed to be applied equally all across America.

Mr. SCHEUER. Mr. Speaker, I cannot yield further.

Mr. Speaker, I want to finish by saying that the procedure by which this legislation has come to the floor is entirely wrong. This is obviously a bill surrounded by and embedded in controversy. The Members of the House should be entitled to work their will on the floor of this House.

Secondly, the procedure by which we are mandating the FCC and intervening in the regulatory process by ordering the FCC to transfer a particular television station license from one State to another State is an egregious example, a horrifying example, of unwarranted congressional intervention in a perfectly proper regulatory process that is ongoing and that promises swift results.

Mr. BROYHILL. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. GREEN).

Mr. GREEN. Mr. Speaker, I would like to join the distinguished ranking minority member of the Committee on Interstate and Foreign Commerce in opposing this legislation.

I share the gentleman's concern that a highly controversial and precedent-setting amendment was added to this legislation in full committee. It is not uncontroversial, it is very controversial, and in my opinion it sets a very dangerous precedent, because essentially it says that we are going to start getting the location of TV stations involved in the congressional log-rolling process instead of leaving it to the quasi-judicial process in the Federal Communications Commission.

Mr. MAGUIRE. Mr. Speaker, will the gentleman yield?

Mr. GREEN. I will yield very briefly to the gentleman from New Jersey.

Mr. MAGUIRE. Mr. Speaker, the point is that the law already says that there must be equitable distribution among the States.

Mr. GREEN. Yes, Mr. Speaker, but if I may reclaim my time, that is a very different thing from saying by statute, "Let us now change the process so that a specific station that is involved in a renewal proceeding will be transferred if that proceeding comes out adversely to the licensee."

Mr. MAGUIRE. Mr. Speaker, will the gentleman yield?

Mr. GREEN. I do not yield, Mr. Speaker.

That is a very controversial situation, and I think it is a very dangerous approach to the way we assign TV licenses. It certainly does not belong in a bill that is on the suspension calendar.

So I urge all my colleagues here, before we go down this route on this bill, which has now become a "Christmas tree" for all sorts of pet projects in regard to the FCC, please, let us not do this on the suspension calendar, where we do not have a right to offer amendments and to hear the arguments on those points and to work our will on those points. We are setting a very, very dangerous precedent here. This bill does not belong on the Suspension Calendar.

Mr. Speaker, let us vote it down, let them get a rule, and then we can debate each of these controversial points on the floor the way we ought to be doing.

Mr. VAN DEERLIN. Mr. Speaker, I yield 2 minutes to the distinguished dean of the New Jersey delegation, the gentleman from New Jersey (Mr. RODINO).

□ 1350

Mr. RODINO. Mr. Speaker, I support H.R. 6228 and I urge the House to pass this important measure. The Communications Cross-Ownership Act of 1980 will rectify a terribly unjust situation with respect to New Jersey and Delaware.

New Jersey and Delaware are the only two States in the Nation that do not have any VHF television stations. The bill we are considering today designates that: First, there shall be at least one commercial VHF station in each State; and second, that if the Federal Communications Commission revokes or fails to renew the license of a broadcast station, it should assign that frequency to a State without service where it is technically feasible to do so.

Mr. Speaker, it is a national disgrace that New Jersey, the Nation's ninth most populous State, remains without a VHF station of its own. For too long the citizens of New Jersey have been deprived of adequate television coverage of New Jersey affairs. New York television stations, on which northern New Jersey citizens have to rely for news, ignore New Jersey issues and public affairs while focusing primarily on New York. New Jersey has too much industry, art, and educational activity to be so ignored by the major medium of our society. In fact, we have 30 percent of the viewing population for the New York stations and only 1 to 3 percent of the coverage.

The Federal Communications Commission has repeatedly declined to provide for a commercial VHF station in New Jersey, even though the Communications Act requires equitable television news coverage on the public airwaves.

The only way it would be possible to provide our citizens with the coverage they deserve is to pass this legislation, thereby giving New Jersey the opportunity to be treated with equity and fairness and I urge my colleagues to support it.

Mr. COURTER. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from New Jersey.

Mr. COURTER. Mr. Speaker, New Jersey and Delaware are the only two States in the Union which do not enjoy locally based VHF TV service operating within their boundaries. The Maguire amendment, with several protections for broadcasters, provides a process for the FCC to follow in order to move a station from a State which has more than one VHF station to the two States which have none.

Under the amendment, nobody loses a license. If the Commission fails to renew or revokes a license, it shall, where technically feasible, move that license to a State without VHF service. The amendment prevents the Commission from using the absence of a TV station in the affected States as an excuse to revoke or to fail to renew a license. The right to judicial review is fully protected.

The amendment, however, does give New Jersey and Delaware a mechanism for finally obtaining VHF television stations, and as such it is extremely important for these States.

Mr. EVANS of Delaware. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Delaware.

Mr. EVANS of Delaware. I thank the gentleman for yielding, and I rise in strong support of H.R. 6228, the Communications Cross-Ownership Act of 1980, and particularly support its provisions which seek to correct the present inequities facing Delaware and New Jersey.

It is ironic that Delaware, the first State to ratify the Constitution, is the last State to get a television station.

Delaware and New Jersey share the dubious distinction as the only two States in the country without any local commercial VHF television stations. Some have said that Delaware does not need a television station, that we are well-served by out-of-State stations in Pennsylvania and Maryland.

The fact of the matter is that those who say this obviously have not watched Philadelphia television from a Delaware perspective. Television stations in Pennsylvania simply do not meet the needs of our State. The overwhelming majority of the viewers are Pennsylvanians and so naturally the programing reflects this audience. It seems that Delawareians who get their news from television are more aware of what is happening in the city council in Philadelphia, than what goes on in their own State Capitol in Dover. In short, Delaware has been treated very shabbily by Philadelphia television and as a result has not benefitted from television news programs like other parts of the country.

This legislation simply seeks to correct this serious inequity. The bill before us today offers a reasonable and fair answer to the problem without creating any new television licenses, nor mandating the moving of any existing license. It simply states that if the FCC, for whatever reasons, fails to renew a station's license, that station's license will, where possible, be tranferred to a State without an existing commercial VHF station.

I emphasize to my colleagues that what we are talking about today is simple equity. Why should Delaware and New Jersey be denied television outlets? Why should Delawareans be forced to depend on the leftover scraps of air time thrown in their direction by the powerful broadcasters from Philadelphia, Baltimore, and Washington? Why should Delaware be treated as a second-class citizen in this Nation of equal States?

I urge my colleagues to end this glaring inequity and vote for this much-needed legislation.

Mr. RODINO. Mr. Speaker, I want to commend the distinguished chairman of the Interstate and Foreign Commerce Committee, the gentleman from West Virginia, together with the chairman of the subcommittee, the gentleman from

California (Mr. VAN DEERLIN) for bringing this legislation to the floor. We are in this legislation establishing a policy. It is true, we are suspending the rules in order to pass legislation which will create equitable treatment for all of the States in the Union.

All this bill does is to state that there shall be at least one commercial VHF station in each State. Under the bill when the Federal Communications Commission revokes or fails to renew the license of a broadcast station, it should assign that frequency to a State without VHF service. This is all that the bill does. I urge the membership of this House to pass this legislation.

Mr. VAN DEERLIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. AKAKA).

Mr. AKAKA. Mr. Speaker, I rise in support of this bill. Most importantly, H.R. 6228 will repeal the Lea Act which prohibits musicians from peaceful picketing, or withholding services in order to obtain job security, fair wages, or union recognition.

As a musician, I understand full well the onerous aspect of this law. As well as placing prohibitions on musicians which members of other unions are free to enjoy, this bill sets criminal penalties for violation of its provisions. The Lea Act is discriminatory since it prohibits a class of workers in one industry from engaging in acts that are legal for workers in other industries. Thus, for the musicians trade, methods of securing the legitimate goals of any worker are illegal and subject to penalty.

My support for this legislation is not without certain reservations about other parts of the bill. I feel that the manner in which the section dealing with cross-ownership has been brought to the floor is improper for a bill of this nature. The action which it seeks to make is anything but technical and uncontroversial. Nonetheless, my longstanding support for the repeal of the Lea Act weighs very heavily in my decision today.

Mr. VAN DEERLIN. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, some of the Members may remember that 4 years ago I served as chairman of a very unsuccessful effort to draft Hubert Humphrey for the Democratic nomination for President. I was asked by my friends in New Jersey to come up and aid the effort, and they said, "We ought to have a couple of press conferences." I was appalled to find out that, to reach the people of New Jersey, you had to go to New York City and Philadephia and then hope that the people in New Jersey might happen to catch one of those stations on the dial.

It just seems to me that it is fundamental in this country in this television age that the State of Delaware and the State of New Jersey ought to have the opportunity for their own television station.

So I rise in strong support of this legislation, Mr. Speaker.

Mr. KAZEN. Mr. Speaker, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Texas.

Mr. KAZEN. Why is it that FCC cannot decide this? Why do we in the Congress have to mandate these things?

Mr. SIMON. Up to this point, they have not done it and so since they have not acted, I favor our acting.

Mr. VAN DEERLIN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Louisiana (Mrs. BOGGS).

Mrs. BOGGS. Mr. Speaker, the key reason for suspending the rules and passing H.R. 6228 is the issue of "regulatory discretion."

If there is one appropriate characterization for the 96th Congress, it is that we are exceedingly skeptical about giving the regulatory agencies a free hand to do as they please.

H.R. 6228 tells the FCC two things about the way the Commission should handle license renewals: First, the existing regulations which grandfather existing instances of broadcast cross-ownership are good and they should not be changed; second, the Commission should only use the quality of a broadcaster's performance and not the extent of his media holdings as a basis for determining whether or not his license should be renewed. Congress must bind the Commission to these two policies.

There is another message to the Commission regarding the New Jersey issue. As the gentleman from New Jersey has said for 20 years, the 8 million people of New Jersey have been trying to get a television station in their State. The Commission has steadfastly refused each request. The House Commerce Committee believes that as a matter of public policy all States should have at least one VHF station. H.R. 6228 contains a mechanism to assure enactment of this policy.

I urge the passage of H.R. 6228 to insure that these messages from Congress are heard distinctly by the members of the Commission.

Mr. VAN DEERLIN. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HOWARD).

Mr. ROE. Mr. Speaker, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Speaker, I appreciate the gentleman's yielding, and I rise in strong support of this legislation. I think Congress act affirmatively. For too many years, I and my colleagues in the New Jersey congressional delegation have been fighting a long battle with the FCC to convince them of New Jersey's basic right to have its own VHF television station. The FCC, through a myriad of conflicting decisions has, in effect, told New Jersey that it would not be economically feasible to begin such an operation which is ridiculous.

Well, I say that economics is a fallacious issue. The major television stations in both New York City and Philadelphia have made it very clear, that it is their influence and power and not the voice of the people that controls FCC decision-making.

The time has come, and not a minute too soon, for the Congress to take a leading role in this issue. I am sure that my colleagues will see the deep injustice that New Jersey, with a population of more than 7 million people, does not have its own VHF station.

The people of my State are totally dependent on the whims of the major stations in both New York and Philadelphia to deliver programs and news broadcasts dealing with the issues that concern them. Studies taken by several groups have shown that coverage is minimal at best. Even the FCC agrees that New Jersey does not receive enough television coverage from the major networks, but they refuse to take any steps to correct the situation.

In 1957, the FCC had recognized New Jersey's general need for VHF television service and that the citizens of my State were "deprived of sufficient local views or public affairs programing."

But instead of assigning New Jersey a VHF channel, the FCC attempted to persuade New York and Philadelphia stations to increase their New Jersey programing, to establish a "physical presence" in the State, or to increase the number of small UHF stations. All these pallatives have been a dismal failure.

We must act now to correct the apparent refusal by the FCC to do what is right. H.R. 6228 is legislation that will, once and for all, put an end to New Jersey's treatment as a second-class citizen by the FCC.

It is truly an outrage that New Jersey and Delaware are the only States in the Nation without a VHF station.

Mr. HOWARD. Mr. Speaker, I would like to clarify what the Communications Cross-Ownership Act does and does not do to provide commercial VHF television stations for New Jersey and Delaware.

The amendment, which was accepted by the Interstate and Foreign Commerce Committee, will fully protect the rights of all broadcasters. If the FCC declines to renew, or revokes, a VHF TV license, it must move that station from a State which has more than one VHF station to a State which has none, if that is technically feasible. I would point out that H.R. 6228 gives broadcasters the right to appeal this decision. The FCC is enjoined from moving the station prior to the exhaustion of all appeals. Furthermore, the bill does not permit the Commission to use the absence of a TV station in the affected States as an excuse to deny renewal.

The bill simply provides New Jersey and Delaware a mechanism for ultimately obtaining a VHF station if and when the FCC does not renew, or revokes, another station and that station's appeals are denied.

The inequity of this situation must be remedied. States with small populations, such as Alaska and Nevada, have 10 and 8 VHF stations, respectively, while New Jersey, with 7,300,000 people, does not have a single station.

We have not been able to get the Federal Communications Commission to take action on this problem, so it is up to the Congress to provide a remedy. Over a period of years, the FCC has issued three report and orders on the New Jersey problem, and in all that time they did not deal with the issue to anyone's satisfaction.

We have turned to the Congress now to provide an equitable solution—a solution which protects the rights and interests of all States and broadcasters, a solution which is cautious in the best tradition of American judicial process. I urge my colleagues to support this provision of H.R. 6628.

Mr. BROYHILL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I want to say that all we are asking here is to have this bill brought up under regular procedure. The amendments that are presently included in this bill are subject to numerous and conflicting legal interpretations, and they are going to have a result in giving chaos, particularly to the existing comparative license renewal process.

For example, the language which is in the bill at the present time provides that the Commission shall assign a VHF station to any State that does not have such a broadcasting station at a time when one or more stations become available.

Now, if a license becomes available from, say, New York or Pennsylvania, then the FCC is under mandate to shift that license to another State.

Now, what if another license comes up at some future time? It would seem to me that the language would say that again the FCC is under mandate to shift those licenses over to this State. And if the FCC should not take that action, they may be under some problem with the States if they should enter suit with the courts.

In other words, we are going to have differing interpretations by future commissions, we are going to have different interpretations by the courts as to what this language means. And what this language does is to circumvent the comparative license hearing process. The license hearing process affords the opportunity for all interested applicants, regardless of where they are located. It gives them a fair and equitable opportunity to own a broadcast license.

Now, under this language, applications from States without VHF assignments would clearly be given a preference. In other words, the effect is to diminish the role of the comparative hearing process and permit the preferences to be based on geographic qualifications rather than on legal or technical or financial character of broadcast qualifications.

All I am asking is that this bill be defeated on suspension of the rules and brought up under the normal procedures, under a normal rule.

Mr. COURTER. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from New Jersey.

Mr. COURTER. Mr. Speaker, I would just like to emphasize to my colleagues that this bill in no way requires that anyone lose a license. It just establishes a procedure such that two States can get it through a proper procedure which does not waive judicial review and does not waive other types of safeguards. It does not create a loss to anybody.

□ 1400

Mr. VAN DEERLIN. Mr. Speaker, I yield for a unanimous-consent request from the gentleman from Texas (Mr. BROOKS).

PERMISSION FOR COMMITTEE ON GOVERNMENT OPERATIONS TO FILE REPORT

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Committee on Government Operations may have until midnight tonight to file a report.

The SPEAKER pro tempore (Mr. GUDGER). Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. VAN DEERLIN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. FLORIO).

Mr. FLORIO. Mr. Speaker, I rise in support of the bill.

Mr. Speaker, I rise in strong support of the Communications Cross-Ownership Act of 1980. This bill provides important stability to the broadcast license renewal process while maintaining broadcasters' public interest responsibilities.

H.R. 6228 concerns the Federal Communications Commission's regulation of instances where a broadcast station owns a newspaper, and it provides congressional approval of existing FCC rules on this controversial issue.

Much of the discussion on this afternoon has centered on the implications of the amendment requiring the FCC to distribute at least one VHF television license to each State. I join with the members of the New Jersey delegation in strong support of this amendment. New Jersey citizens have for too long been deprived of locally based news and public affairs programing on VHF. Appeals to the FCC for consideration in this situation have still not yielded equitable service. By amending the Communications Act to clarify that each State should have at least one VHF station, Congress can provide an opportunity for VHF license through the regular FCC channels.

This amendment wisely specifies that this new policy concerns only those situations where a license becomes available after all opportunity for judicial review. Thus, any fears that New Jersey will obtain a station from another State improperly are unfounded.

As a member of the Commerce Committee, I strongly supported the inclusion of this language in H.R. 6228, and I urge all my colleagues to vote in favor of this bill. This will allow the opportunity for a permanent and proper solution to this problem that has existed for the people of the Nation's ninth most populous State.

Mr. VAN DEERLIN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. GUARINI).

Mr. GUARINI. Mr. Speaker, I ask that the State of New Jersey, the third State to ratify the Constitution of the United States, not be forgotten and disenfranchised as Delaware was.

Mr. Speaker, H.R. 6228, the Communications Cross-Ownership Act, is an excellent piece of legislation that addresses itself to a situation that is unique to New Jersey and Delaware. These are the only two States in our Nation that are currently without a commercial VHF television station.

Residents of my State must currently rely on UHF stations, or on the commercial VHF stations in New York or Pennsylvania for their news and public affairs programing. This is an unconscionable situation for a major State, a State of 8 million people, the State that ranks 9th in both population and productivity.

This inequity denies our citizens access to television news geared to local reportage. It denies our business community a fair opportunity to advertise in the marketplace, and it inhibits the activities of our regional governing bodies, to the detriment of both challengers and incumbents alike. In a word, it deprives the citizens of New Jersey and Delaware of the social, political, and economic advantages that the rest of our Nation enjoy.

The Communications Cross-Ownership Act seeks to alleviate this unfair situation by assuring that at least one commercial VHF television station shall be assigned to each State, and by mandating as well, that in those cases involving license revocations, the FCC should assign the frequency in question to a State without any service—providing that it is technically feasible to accomplish.

The absence of a local television station can have a profound political and economic impact on a State and its citizens. In a nation where almost every State has many stations located in virtually every city or town of any size, all States are entitled to coverage from at least one television station located within its own borders. I cannot stress too strongly how deeply the residents of my State feel toward this situation, or allude to the beneficial impact that a positive response to this opportunity would engender.

The absence of a commercial television station in New Jersey has been an issue for decades. Our people know it, our State's image and economy has suffered because of it, and even the FCC has recognized it.

In 1976, the FCC publicly concluded that the State of New Jersey did not have adequate locally oriented television broadcast service. In fact, late last year, Commissioner Joseph Fogarty stated:

> We are still inclined to the same feeling. I fear that those observing the quest for the remedy may be getting the impression that they are witnessing a regulatory shell game.

Despite the FCC's efforts to increase the amount of New Jersey coverage by the New York City and Philadelphia

commercial stations, the results have been less than satisfactory. It is equally evident than an increase in the UHF stations will not adequately meet the demand of the 8-million-strong viewing market in New Jersey. It is now clear that only a statewide commercial VHF television station is capable of serving its people in a credible, comprehensive, and complete manner.

New Jersey and Delaware have long been the forgotten States in an era when television has become our national, and most essential, media. Its residents have continually sought to receive equitable broadcast representation, and are keenly aware of the absence of fair and just coverage of their respective States.

In 1978, former FCC Commissioner Glen O. Robinson stated it is "up to Congress to provide a permanent solution to problems of service inadequacy in New Jersey."

Mr. Speaker. H.R. 6228, the Communications Cross-Ownership Act is that solution. It is equitable, it is fair, it is magnanimous. I urge my colleagues to vote favorably on this viable and necessary legislation so as to assure all of our citizens of equal access to the media outlets and communication channels of our society.

Mr. VAN DEERLIN. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Speaker, I rise in strong support of this bill.

Mr. VAN DEERLIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Speaker. I think the cross-ownership provisions of this legislation are critically important to bring some sense of reason and stability to the existing license renewal process.

As a sponsor of this legislation, I strongly believe the bill addresses the intolerable state of uncertainty which exists regarding renewal of a broadcasting license if it involves a broadcaster who is also affiliated with a daily newspaper. As a result of various court decisions, broadcast licensees are threatened with denial of their license, not for having failed to meet their obligations to serve the public interest, but rather, simply because they happen to be affiliated with a newspaper. The cross-ownership provisions of H.R. 6228 help to insure that a licensee will be judged on his broadcast record as well as his compliance with FCC rules and policies, and not on whether he is affiliated with a newspaper.

I would also like to address one of the more controversial provisions of this legislation which deals with the provision of VHF television service for New Jersey and Delaware. I would like to address my concerns to the sponsor of the amendment, the gentleman from New Jersey (Mr. MAGUIRE). Basically I have two concerns:

First, there has been considerable discussion over the amendment's implications for judicial review of any FCC determination to decline to renew or revoke. As the gentleman knows, section 702 of the Administrative Procedures Act permits a party subject to an order by a Federal agency to receive full and final judicial review of that finding. However, can the gentleman be more specific as to the bill and cite precisely how the existing language will not affect final judicial review of an FCC determination?

Second, I would like to know whether this amendment would indeed, set a precedent whereby the Congress would involve itself in the individual broadcast assignment decisions. Are we not, indeed, doing just that and by our actions establishing a record that may have a bearing on future FCC regulatory proceedings regarding frequency assignments?

Mr. VAN DEERLIN. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I rise in support of this legislation.

I would like to point out to my friends in New York, as far as getting a station in New Jersey is concerned, we had 31 stations in New Jersey; none of those licenses is going to be revoked. As has been said here, all it does is give the opportunity, if a license is revoked, for New Jersey to get its first station.

It seems to me that New Jersey voted solidly, 100 percent for New York when we needed their help. We ought to help them. It is our interest to help them in this situation.

Mr. VAN DEERLIN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. MAGUIRE).

Mr. MAGUIRE. Mr. Speaker, 30 percent of the viewers of New York City's seven stations are New Jerseyans. We get about 1 or 2 percent of the news. Basic equity in the law requires fairness in distribution of the airwaves. We are saying that we want fairness.

Our proposal does not deprive anyone of a license, as several of the opponents in this debate have inaccurately said it would. Every existing license is protected unless and until a revocation occurs for other reasons and that revocation is upheld in the courts. Then and only then could a broadcast channel be reassigned—at which point any and all potential licensees could apply. The only thing that would need to change would be the obligation of the licensee to provide proper coverage to its assignment area, in which case New Jersey would finally have at least one of the seven metropolitan area stations obliged to cover New Jersey news and events. What could be more fair, more in line with existing law requiring equitable distribution of assignments among the States?

The Commerce Committee bill provides the first opportunities for the States of Delaware and New Jersey to obtain VHF commercial television stations. These two States are completely dependent upon external media markets in Philadelphia, Baltimore, and New York City, which devote inadequate coverage to the economic, social, political, and religious activities of their citizens. This provision, section 3 of the bill of which I am the author, will provide an orderly mechanism, while fully protecting broadcasters' rights, to transfer stations from States with more than one VHF station to the two which have none.

This struggle to resolve our chronic problem of inadequate service and television coverage has continued—in New Jersey's case—for nearly 20 years. I was gratified by the Commerce Committee's initial 25 to 17 vote of approval for my amendment; but somewhat mystified by the comments of its critics. They charge:

One: That this provision was never the subject of hearings. The fact is that hearings were held in 1976, 1978, and 1979, by the Subcommittee on Communications on nearly identical amendments.

Two: That this matter can be cured by technology. The FCC has admitted that low-powered V's, VHF drop-ins, and UHF stations will never supplant high-powered, big league VHF commercial stations. These alternatives are inadequate.

Three: That frequency allocation should be left to the FCC. The Commerce Committee voted, as a matter of public policy, to redress an obvious anamoly in the allocation of frequencies. New Jersey, the eighth most populous State has no TV stations. Towns in Montana, for example, with less than 12,000 in population, do. Clearly, after 20 years, action should be taken.

We are not a body that is reluctant to engage in regulatory fine-tuning when the system has obviously failed; indeed, we have an obligation to act when the intent of existing law is being frustrated, as in this case. The New Jersey situation is one crying out for congressional action.

This measure has genuine bipartisan support. Our colleagues Representative MATTHEW RINALDO, Representative SAM DEVINE, Representative NORMAN LENT, Representative WILLIAM DANNEMEYER, all supported this measure before the Commerce Committee. I would urge all Members of the House to join us in supporting H.R. 6228, AL SWIFT'S Communications Cross-Ownership Act of 1980.

● Mr. MATSUI. Mr. Speaker, I rise in support of H.R. 6228. H.R. 6228 deserves support for it provides for the repeal of an onerous labor law. H.R. 6228 repeals the Lea Act.

Section 506 of the Communications Act, or the Lea Act represents nothing more than an outdated aberration of Federal communication policy. It places unjust restrictions on the legitimate, and otherwise lawful, labor practices of this country's musicians and actors. It deserves to be repealed.

The Lea Act was originally passed in 1946 to protect broadcasters from coercive employment demands. The act provides that it is unlawful by the use of force, violence, intimidation, or duress, or by the use of other means to coerce, compel or constrain an FCC licensee: To employ or agree to employ any person in excess of the number of employees needed to perform actual services; to pay for preparing or using recordings in broadcasts, or to accede to any restriction in the use of recordings or programs in the production of broadcasts. I want to emphasize the ambiguity in the language "the use of any other means." For

it is this overly broad and unclear standard which defines criminal conduct.

The Lea Act has been construed by the courts to make activity that is lawful under the Taft-Hartley Act, if the employer is not an FCC licensee, criminal if the employer is an FCC licensee. This discriminatory standard has impaired the right of musicians and actors to engage in labor negotiations to obtain the legal goals of job security, fair wages, and recognition. This cannot be tolerated in 1980. Moreover the statute has had a significant chilling effect on musicians' and actors' freedom of expression. The courts have held that the picketing of an FCC licensee's place of business by a musicians' union violates the Lea Act and is thereby illegal.

The LEA Act is unnecessary for the protection of broadcasters. Any labor activity seeking to create featherbedding is unlawful under the Taft-Hartley Act. Anti-racketeering statutes protect against coercion. In fact, since the passage of the Act the FCC has no record of action taken pursuant to the section. In the last 5 years, the Justice Department has conducted only four criminal investigations under the statute, with prosecution being denied in each instance.

The lea Act is a labor law and a discriminatory labor law in that. It has no place in Federal communication legislation. Today we have the opportunity to strike this antiquated anomaly from the codes. Today we have the opportunity to restore to musicians and actors the right to be regulated, like all other laborers, by the Taft-Hartley Law. I ask for your support in this effort. I ask for your support of H.R. 6228.●

Mr. VAN DEERLIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. VAN DEERLIN) that the House suspend the rules and pass the bill, H.R. 6228, as amended.

The question was taken.

Mr. BROYHILL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed in the order in which that motion was entertained.

Votes will be taken in the following order: H.R. 7039 and H.R. 6228.

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that a vote by the yeas and nays on the first motion to suspend the rules and pass the bill, H.R. 5340, postponed from yesterday, be reduced to a minimum of 5 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisana?

There was no objection.

AMERICAN FISHERIES PROMOTION ACT

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 7039, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisana (Mr. BREAUX) that the House suspend the rules and pass the bill, H.R. 7039, as amended.

The question was taken.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 300, nays 97, answered "present" 1, not voting 34, as follows:

[Roll No. 573]

YEAS—300

Addabbo
Akaka
Albosta
Ambro
Andrews, N.C.
Annunzio
Anthony
Applegate
Archer
Ashley
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bellenson
Benjamin
Bennett
Bethune
Bevill
Biaggi
Blanchard
Boggs
Boland
Boiling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carr
Chappell
Chisholm
Clausen
Clay
Coelho
Coleman
Collins, Ill.
Conte
Conyers
Corman
Cotter
Courter
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Dickinson
Dicks
Dingell
Dodd
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edwards, Ala.
Emery
English
Ertel
Evans, Del.
Fary
Fascell
Fazio
Ferraro
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Ginn
Goldwater
Gonzalez
Gore
Gramm
Gray
Green
Guarini
Gudger
Guyer
Hall, Ohio
Hall, Tex.
Hammer-schmidt
Hance
Hanley
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kazen
Kelly
Kildee
Kindness
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lederer
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
McClory
McCormack
McDade
McHugh
McKay
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mattox
Mavroules
Mica
Mikulski
Miller, Calif.
Miller, Ohio
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Pepper
Perkins
Peyser
Pickle
Preyer
Price
Pritchard
Pursell
Quayle
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Russo
Sabo
Scheuer
Sensenbrenner
Shannon
Sharp
Shelby
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stark
Steed
Stenholm
Stewart
Stokes
Studds
Stump
Swift
Synar
Tauzin
Thompson
Traxler
Trible
Udall
Ullman
Vander Jagt
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Wolff
Wolpe
Wright
Wyatt
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—97

Abdnor
Alexander
Anderson, Calif.
Andrews, N.Dak.
Ashbrook
Aspin
Badham
Bereuter
Bingham
Burgener
Cheney
Cleveland
Clinger
Collins, Tex.
Conable
Corcoran
Coughlin
Crane, Daniel
Crane, Philip
Dannemeyer
Devine
Dornan
Edgar
Edwards, Okla.
Erdahl
Erlenborn
Evans, Ind.
Fenwick
Findley
Fish
Frenzel
Gilmo
Gilman
Gingrich
Glickman
Goodling
Gradison
Grassley
Grisham
Hagedorn
Hamilton
Hansen
Jacobs
Jeffords
Jeffries
Johnson, Colo.
Jones, Okla.
Kastenmeier
Kemp
Kogovsek
Kramer
Latta
Leach, Iowa
Lee
Lundine
Lungren
McCloskey
McEwen
McKinney
Madigan
Mazzoli
Michel
Moorhead, Calif.
Patterson
Paul
Pease
Petri
Porter
Quillen
Regula
Rhodes
Ritter
Rosenthal
Rousselot
Roybal
Royer
Rudd
Sawyer
Schroeder
Schulze
Sebelius
Selberling
Shumway
Shuster
Simon
Skelton
Stanton
Tauke
Thomas
Van Deerlin
Vanik
Whittaker
Wilson, Bob
Winn
Wydler
Wylie
Yates

ANSWERED "PRESENT"—1

Bedell

NOT VOTING—34

Anderson, Ill.
Bowen
Brown, Ohio
Butler
Carter
Cavanaugh
Davis, Mich.
Derwinski
Dixon
Edwards, Calif.
Evans, Ga.
Heftel
Holtzman
Ichord
Jenkins
Jenrette
Leach, La.
McDonald
Mineta
Moore
Murphy, N.Y.
Musto
Myers, Pa.
O'Brien
Santini
Satterfield
Stockman
Stratton
Symms
Taylor
Vento
Wilson, C. H.
Wirth
Young, Alaska

□ 1420

The Clerk announced the following pairs:

On this vote:

Mr. Evans of Georgia and Mr. Musto for, with Mr. McDonald against.

Mr. Jenrette and Mr. Dixon for, with Mr. Derwinski against.

Mr. Moore and Mr. Taylor for, with Mr. Symms against.

Mr. Young of Alaska and Mr. Davis of Michigan for, with Mr. O'Brien against.

Until further notice:

Mr. Satterfield with Mr. Stockman.
Mr. Santini with Mr. Leach of Louisiana.
Mr. Wirth with Mr. Brown of Ohio.
Mr. Cavanaugh with Mr. Butler.
Mr. Edwards of California with Mr. Carter.
Mr. Charles H. Wilson of California with Mr. Jenkins.
Mr. Stratton with Ms. Holtzman.
Mr. Bowen with Mr. Anderson of Illinois.
Mr. Heftel with Mr. Ichord.
Mr. Mineta with Mr. Myers of Pennsylvania.

Messrs. CHENEY, GILMAN, DORNAN, and KEMP changed their votes from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that the Committee on Merchant Marine and Fisheries be discharged from the further consideration of a similar Senate bill (S. 1656) to provide for a national program of fisheries research and development, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1656

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Fishery Development Act".

SEC. 2. It is the intention of Congress in enacting this Act that the moneys provided hereunder shall be made available for the development of all fisheries of the United States, including coastal and distant water fisheries.

SEC. 3. Section 2 of the Act of August 11, 1939 is amended to read as follows:

"SEC. 2. (a) The Secretary of Agriculture shall transfer to the Secretary of Commerce each fiscal year, beginning with the fiscal year commencing October 1, 1979, from moneys made available to carry out the provisions of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), an amount equal to 30 percent of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund and used by the Secretary of Commerce for—

"(1) financial assistance for the purpose of carrying out fisheries development projects, including any biological, technological or other research pertaining to American fisheries, approved under subsection (c) of this section; and

"(2) implementation of the national fisheries research and development program approved under subsection (d) of this section.

"(b) Any person, public or private institution, fishery development foundation, or other organization may, for the purpose of planning or implementing a fishery development project or projects, make application for moneys made available under the provisions of subsection (a) of this section. For the purposes of this section, the term 'person' means any individual who is a citizen or national of the United States or any corporation, partnership or other association organized under the laws of any State of the United States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, or any other Commonwealth territory or possession of the United States.

"(c)(1) The Secretary shall specify the information to be contained in any application for funds made available under the provisions of this section to ensure compliance with applicable Federal law and to provide for the full and proper evaluation of such applications. Prior to approval for funding, the Secretary shall evaluate each proposed project as to (A) soundness of design, (B) possibilities of securing productive results, (C) minimization of duplication among fishery development projects, (D) the organization and management of the project, (E) methods proposed for monitoring and evaluating the success or failure of the project, and (F) such other criteria as the Secretary may require.

"(2) The Secretary shall obligate funds for applications submitted under the provisions of this section pursuant to regulations adopted hereunder. Applications shall be submitted to the Secretary at such times and manner as is set forth in such regulations: *Provided*, That in no event shall the dates for submission and approval of application be less often than every 6 months, and all applications must be approved or rejected within 6 months of the deadline established for their receipt by the Secretary.

"(3) The Secretary shall require the person or organization obtaining funds under the provisions of this Act to submit periodic project status reports.

"(4) The Secretary shall submit to Congress along with the annual report required by section 9(a) of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742h(a)), a report containing an analysis and evaluation of all programs funded under this Act. Such report shall include, but not be limited to—

"(A) a list of those applications funded under this section, the amount of funding provided, and a list of those applications not approved for funding;

"(B) an assessment of the extent to which the objectives of the funded project have been obtained and the information obtained from the project;

"(C) the extent to which the funded projects have contributed to fishery development; and

"(D) the programs funded under subsection (d) of this section and the levels of such funding.

"(d)(1) The Secretary is hereby authorized to carry out a national program of fisheries research and development. The Secretary may use moneys made available under subsection (a) of this section to promote the free flow of domestically produced fishery products in domestic and international commerce by conducting fishery educational programs and fishery technological, biological, marketing, and related research programs.

"(2) The Secretary shall, 60 days in advance of the fiscal year in question, transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Merchant Marine and Fisheries a plan containing fisheries development goals and funding priorities for the approaching fiscal year. In addition, the Secretary shall submit to such committees interim status reports on each of the projects funded hereunder and an annual report on the status of each project funded hereunder, including the amount of money actually expended on each such project.

"(e)(1) Not less than 50 percent of the moneys made available under subsection (a) of this section shall annually be made available by the Secretary to fund projects or programs proposed under subsection (c) of this section.

"(2) The remainder of such moneys shall be available to implement the national fisheries research and development program established under subsection (d) of this section.

"(3) Moneys not obligated pursuant to paragraph (1) of this subsection shall remain in the fund without fiscal year limitation and shall be made available by the Secretary to fund projects or programs proposed under subsection (c) of this section. Moneys not obligated pursuant to paragraph (2) of this subsection shall remain in the fund without fiscal year limitation.".

SEC. 4. (a) To carry out export promotion and other fishery development responsibilities the Secretary shall appoint not fewer than six officers who shall, with the concurrence of the Secretary of State, serve abroad to promote United States fishing interests. Such officers shall have the designation of Regional Fisheries Attachés and shall be accorded the same status and privileges as those of other attachés in United States Embassies. Such attachés will be employees of the Department of Commerce.

(b) Upon the request of the Secretary the Secretary of State shall officially assign the officers to the diplomatic mission of the United States in the country in which such officers or employees are placed by the Secretary of Commerce, and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

(c) The Secretary of State shall provide office space, equipment, facilities, clerical services, and such other administrative support as may be required for the officers and their families affected by this section.

(d) The Secretary may make such rules and regulations as may be necessary to carry out the purposes of this section.

SEC. 5. Any balance of funds remaining in, or other assets of, the fisheries loan created by section 4(c) of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742c(c)), as of September 30, 1980, shall at the close of that date be transferred to the Federal Ship Financing Fund established under title XI of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1271–1279b), to be used for the purposes hereafter set forth. In addition to continuing to provide the normal activities specified in such title for fishing vessels, the Secretary shall thereafter also provide for the guarantee of obligations relating to fishing vessels engaged in developing fisheries which might not otherwise meet the normal economic soundness criteria of that title. The Secretary shall amend the rules and regulations relating to the fishing vessel portion of title XI to specify the conditions under which fishing vessels engaged in developing fisheries will qualify for the guarantee of obligations.

SEC. 6. For the purposes of this Act, the term "Secretary" means the Secretary of Commerce.

SEC. 7. (a) Subsection (a) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177(a)), is amended to read as follows:

"(a) AGREEMENT RULES.—Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)), or one or more fisheries facilities (as defined in subsection (k)(9)), may enter into an agreement with the Secretary of Commerce under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the 'fund') with respect to any or all of such vessels or fisheries facilities. Any agreement entered into under this section shall be for the purpose of providing—

"(1) replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States, foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States; or

"(2) replacement, additional, or reconstructed fisheries facilities and shall provide for the deposit in the fund of the amounts agreed upon, as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund and all withdrawals from the fund whether qualified or nonqualified shall be subject to such conditions and requirements as the Secretary of Commerce may by regulations prescribe or are set forth in such agreement; except that the Secretary of Commerce may not require any person to deposit in the funds for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels or fisheries facilities or from the sale or marketing of fish or fish products (as defined in paragraphs (11) and (12) of subsection (k)).".

(b) Subsection (b) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177(b)) is amended—

(1) in subparagraph (A) of paragraph (1), by inserting "or which is attributable to the operation of the agreement fisheries facilities or from the sale or marketing of fish or fish products" before the comma at the end thereof;

(2) in subparagraph (B) of paragraph (1) by inserting "or fisheries facilities" after "vessels"; and

(3) in subparagraph (C) of paragraph (1) and in paragraph (2) by inserting "or fisheries facility" after "vessel" each place it appears.

(c) Subsection (f)(1) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177(f)) is amended—

(1) in subparagraph (A) by inserting "or a fisheries facility" after "vessel"; and

(2) in subparagraph (C) by inserting ", a fisheries facility," after "reconstruction of a qualified vessel".

(d) Subsection (g) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177(g)) is amended—

(1) in paragraphs (2) and (3) by inserting "fisheries facility," after "vessel," each place it appears; and

(2) in paragraph (4) by inserting "fisheries facilities," after "vessels,".

(e) Subsection (k) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177(k)) is amended by adding at the end thereof the following new paragraphs:

"(9) The term 'fisheries facilities' means all or a portion of any new or used structure (or appurtenance thereto), located in the United States, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory or possession of the United States, which is designed or used for the landing, receiving, processing or other treatment, distribution or storage of fish or fish products, and includes any associated land, equipment, or machinery.

"(10) The term 'agreement facility' means any fisheries facility which is subject to an agreement entered into under this section.

"(11) The term 'fish' means any species of living aquatic resources excluding aquatic mammals and birds.

"(12) The term 'fish products' means any product which is made wholly or in part from any fish or portion thereof, except products which contain fish only in small proportions and which are exempted from definition as a fishery product by the Secretary.".

SEC. 8. Section 1104(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1274(a)) is amended by—

(1) redesignating paragraph (4) as paragraph (5);

(2) striking "or" at the end of paragraph (3), and adding immediately after such paragraph the following new paragraph:

"(4) financing or refinancing fisheries facilities; or"; and

(3) inserting after paragraph (5) (as redesignated by this section) the following: "For the purpose of paragraph (4) of this subsection, the term 'fisheries facilities' means all or a portion of any new or used structure (or appurtenance thereto), located in the United States, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory or possession of the United States, which is designed or used for the landing, receiving, processing or other treatment, distribution or storage of fish or fish products, and includes any associated land, equipment, or machinery.".

SEC. 9. Notwithstanding any other provisions of law, the Secretary of Commerce is authorized, within 3 years after the date of enactment of this Act, to sell, after due advertisement on a competitive-bidding basis subject to such conditions as he deems are appropriate in the national interest, the five obsolete vessels, Arcturus, Hyades, Pictor, Procyon, and Zelima, for the purpose of conversion and operation in the fisheries of the United States, and the two obsolete vessels, Private George Peters and Resolute, for the purpose of conversion and operation in the fisheries of the United States or in the domestic commerce of the United States, for not less than their scrap value in the domestic market as of the date of sale: *Provided*, That (1) any conversion work shall be performed in the United States; (2) the vessels shall be documented and operated under the laws of the United States; (3) the vessels shall be operated in conformity with all international fishery conventions to which the United States is a signatory; and (4) when the vessels are scrapped, they shall be scrapped in the domestic market.

SEC. 10. Section 10(c)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(c)(1)) is amended by inserting immediately before the semicolon at the end thereof the following: ": *Provided, however*, That no application shall be due under this provision prior to January 24, 1980".

MOTION OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BREAUX moves to strike out all after the enacting clause of the Senate bill, S. 1656, and insert in lieu thereof the provisions of the bill, H.R. 7039, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to provide for comprehensive research and development regarding United States fisheries, to expand the fishing vessel and fish processing capacity of the United States, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 7039) was laid on the table.

GENERAL LEAVE

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to today's unanimous consent order and the provisions of clause 3(b)(3) of rule XXVII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all of the additional motions to suspend the rules on which the Chair has postponed further proceedings today and yesterday.

COMMUNICATIONS CROSS-OWNERSHIP ACT OF 1980

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 6228, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. VAN DEERLIN) that the House suspend the rules and pass the bill, H.R. 6228, as amended.

The question was taken.

RECORDED VOTE

Mr. BROYHILL. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 215, noes 176, answered "present" 3, not voting 38, as follows:

[Roll No. 574]

AYES—215

Akaka	Courter	Harkin
Albosta	D'Amours	Harris
Anderson, Calif.	Danielson	Harsha
Annunzio	Dannemeyer	Hawkins
Applegate	Deckard	Heckler
AuCoin	Dellums	Hightower
Bafalis	Derrick	Hillis
Bailey	Devine	Hollenbeck
Baldus	Dicks	Holt
Barnard	Dingell	Howard
Barnes	Dodd	Huckaby
Bauman	Donnelly	Hughes
Beard, Tenn.	Dornan	Hutchinson
Bedell	Downey	Hutto
Bellenson	Drinan	Ireland
Benjamin	Duncan, Oreg.	Jacobs
Bennett	Duncan, Tenn.	Jeffords
Blanchard	Early	Johnson, Calif.
Boggs	Edgar	Jones, N.C.
Boland	Edwards, Ala.	Jones, Tenn.
Bonior	English	Kildee
Bonker	Evans, Del.	Kostmayer
Bouquard	Fary	Lagomarsino
Brademas	Fascell	Leath, Tex.
Breaux	Fazio	Lehman
Brodhead	Fenwick	Leland
Brooks	Ferraro	Lent
Brown, Calif.	Fisher	Lewis
Buchanan	Florio	Livingston
Burgener	Foley	Loeffler
Burlison	Ford, Mich.	Long, La.
Burton, John	Ford, Tenn.	Long, Md.
Burton, Phillip	Fowler	Lowry
Byron	Gaydos	Luken
Carney	Gephardt	McClory
Carr	Gialmo	McCloskey
Chappell	Gibbons	McCormack
Clausen	Ginn	McKay
Clay	Goldwater	Maguire
Cleveland	Gore	Matsui
Coelho	Gramm	Mavroules
Collins, Ill.	Grassley	Mica
Collins, Tex.	Guarini	Mikulski
Conte	Hagedorn	Miller, Calif.
Conyers	Hall, Ohio	Miller, Ohio
Corman	Hall, Tex.	Minish
Cotter	Hance	Mitchell, Md.
		Moakley

Moffett	Roberts	Stokes
Mottl	Rodino	Studds
Murphy, Ill.	Roe	Swift
Murphy, Pa.	Rose	Tauzin
Murtha	Rostenkowski	Thompson
Nedzi	Roybal	Udall
Nelson	Royer	Ullman
Nolan	Russo	Van Deerlin
Oakar	Sabo	Vanik
Oberstar	Schroeder	Volkmer
Obey	Shannon	Walgren
Ottinger	Simon	Watkins
Panetta	Skelton	Waxman
Patten	Smith, Iowa	Weaver
Patterson	Snowe	White
Pepper	Spellman	Williams, Mont
Pickle	St Germain	Williams, Ohio
Porter	Stack	Wilson, Bob
Price	Staggers	Wilson, Tex.
Pritchard	Stangeland	Wright
Rahall	Stanton	Wyatt
Ratchford	Steed	Wydler
Reuss	Stenholm	Wylie
Rinaldo	Stewart	Young, Mo.

NOES—176

Abdnor	Goodling	Nichols
Addabbo	Gradison	Pashayan
Alexander	Gray	Paul
Andrews, N.C.	Green	Pease
Andrews, N. Dak.	Grisham	Perkins
Anthony	Gudger	Petri
Archer	Guyer	Peyser
Ashbrook	Hamilton	Preyer
Ashley	Hammer-schmidt	Pursell
Aspin	Hanley	Quayle
Atkinson	Hansen	Quillen
Badham	Hinson	Railsback
Beard, R.I.	Holland	Regula
Bereuter	Hopkins	Rhodes
Bethune	Horton	Richmond
Bevill	Hubbard	Ritter
Biaggi	Jeffries	Robinson
Bingham	Johnson, Colo.	Rosenthal
Bolling	Jones, Okla.	Roth
Boner	Kastenmeier	Rousselot
Brinkley	Kazen	Rudd
Broomfield	Kelly	Sawyer
Broyhill	Kemp	Scheuer
Campbell	Kindness	Schulze
Cheney	Kogovsek	Sebelius
Chisholm	Kramer	Seiberling
Clinger	LaFalce	Sensenbrenner
Coleman	Latta	Sharp
Conable	Lederer	Shelby
Corcoran	Lee	Shumway
Coughlin	Levitas	Shuster
Crane, Daniel	Lloyd	Smith, Nebr.
Crane, Philip	Lott	Snyder
Daniel, Dan	Lujan	Solarz
Daniel, R. W.	Lungren	Solomon
Daschle	McDade	Spence
de la Garza	McDonald	Stockman
Dickinson	McEwen	Stump
Dougherty	McHugh	Synar
Eckhardt	McKinney	Tauke
Edwards, Okla.	Madigan	Thomas
Emery	Markey	Traxler
Erdahl	Marks	Trible
Erlenborn	Marlenee	Vander Jagt
Ertel	Marriott	Walker
Evans, Ind.	Martin	Wampler
Findley	Mathis	Weiss
Fish	Mattox	Whitehurst
Fithian	Mazzoli	Whitley
Flippo	Michel	Whittaker
Forsythe	Mitchell, N.Y.	Whitten
Fountain	Mollohan	Winn
Frenzel	Montgomery	Wolff
Frost	Moorhead, Calif.	Wolpe
Fuqua	Moorhead, Pa.	Yates
Garcia	Myers, Ind.	Yatron
Gilman	Natcher	Zablocki
Gingrich	Neal	Zeferetti
Glickman		

ANSWERED "PRESENT"—3

Gonzalez	Hefner	Stark

NOT VOTING—38

Ambro	Holtzman	Nowak
Anderson, Ill.	Hyde	O'Brien
Bowen	Ichord	Rangel
Brown, Ohio	Jenkins	Santini
Butler	Jenrette	Satterfield
Carter	Leach, Iowa	Stratton
Cavanaugh	Leach, La.	Symms
Davis, Mich.	Lundine	Taylor
Derwinski	Mineta	Vento
Dixon	Moore	Wilson, C. H.
Edwards, Calif.	Murphy, N.Y.	Wirth
Evans, Ga.	Musto	Young, Alaska
Heftel	Myers, Pa.	

□ 1430

The Clerk announced the following pairs:

On this vote:

Mr. Mineta and Mr. Edwards of California for, with Mr. Rangel against.

Mr. Dixon and Mr. Moore for, with Mr. Stratton against.

Until further notice:

Mr. Ambro with Mr. Brown of Ohio.
Mr. Musto with Mr. Cavanaugh.
Mr. Nowak with Mr. Hyde.
Mr. Vento with Mr. Leach of Louisiana.
Mr. Wirth with Mr. Symms.
Mr. Evans of Georgia with Mr. Taylor.
Mr. Heftel with Mr. Butler.
Mr. Bowen with Mr. Carter.
Mr. Charles H. Wilson of California with Mr. Davis of Michigan.
Mr. Ichord with Mr. Jenkins.
Mr. Myers of Pennsylvania with Mr. Derwinski.
Mr. Satterfield with Mr. O'Brien.
Ms. Holtzman with Mr. Young of Alaska.
Mr. Leach of Louisiana with Mr. Anderson of Illinois.
Mr. Murphy of New York with Mr. Santini.

Messrs. NICHOLS, SHELBY, FLIPPO, and SEBELIUS changed their votes from "aye" to "no."

So (two-thirds not having voted in favor thereof), the motion was rejected.

The result of the vote was announced as above recorded.

GENERAL LEAVE

Mr. VAN DEERLIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered, H.R. 6228.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERSONAL EXPLANATION

Mr. LUNDINE. Mr. Speaker, today the House went on record as opposing H.R. 6228, the Communications Cross-Ownership Act of 1980 (rollcall vote 574). The voting occurred under the 5-minute rule and I inadvertently missed the opportunity to cast my vote by just a few moments. Since the rules of the House did not permit me to register my vote after the 5 minutes had expired, I would like to take the opportunity to put myself on record as opposing H.R. 6228. This bill contains certain provisions that have not been adequately studied and would, if enacted, constitute an inappropriate intervention by Congress into the regulatory process.

RECOMMITTAL OF H.R. 6228 TO COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Mr. VAN DEERLIN. Mr. Speaker, after consultation with the leadership on the Republican side of the Committee on Interstate and Foreign Commerce, I ask unanimous consent that the bill, H.R. 6228, be recommitted to that committee.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed on Monday, September 22, in the order in which that motion was entertained.

Votes will be taken in the following order: H.R. 5340, H.R. 5898, H.R. 8117, H.R. 7939, and H.R. 7554.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

EXTENDING AUTHORIZATIONS FOR WATER RESOURCES RESEARCH

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill H.R. 5340, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MILLER) that the House suspend the rules and pass the bill, H.R. 5340, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 383, nays 15, not voting 34, as follows:

[Roll No. 575]

YEAS—383

Abdnor	Burton, Phillip	Fary
Addabbo	Byron	Fascell
Akaka	Campbell	Fazio
Albosta	Carney	Fenwick
Alexander	Carr	Ferraro
Ambro	Chappell	Findley
Anderson, Calif.	Cheney	Fish
	Chisholm	Fisher
Andrews, N.C.	Clausen	Fithian
Andrews, N.Dak.	Clay	Flippo
	Cleveland	Florio
Annunzio	Clinger	Foley
Anthony	Coelho	Ford, Mich.
Applegate	Coleman	Ford, Tenn.
Archer	Collins, Ill.	Forsythe
Ashbrook	Conable	Fountain
Ashley	Conte	Fowler
Aspin	Convers	Frenzel
Atkinson	Corcoran	Frost
AuCoin	Corman	Fuqua
Badham	Cotter	Garcia
Bafalis	Coughlin	Gaydos
Bailey	Courter	Gephardt
Baldus	D'Amours	Giaimo
Barnard	Daniel, Dan	Gibbons
Barnes	Daniel, R. W.	Gilman
Beard, R.I.	Danielson	Gingrich
Beard, Tenn.	Dannemeyer	Ginn
Bedell	Daschle	Glickman
Bellenson	Davis, S.C.	Goldwater
Benjamin	de la Garza	Gonzalez
Bennett	Deckard	Goodling
Bereuter	Dellums	Gore
Bethune	Derrick	Gradison
Bevill	Devine	Gramm
Biaggi	Dickinson	Grassley
Bingham	Dicks	Gray
Blanchard	Dingell	Green
Boggs	Dodd	Grisham
Boland	Donnelly	Guarini
Bolling	Dornan	Gudger
Boner	Dougherty	Guyer
Bonior	Downey	Hagedorn
Bonker	Drinan	Hall, Ohio
Bouquard	Duncan, Oreg.	Hall, Tex.
Brademas	Duncan, Tenn.	Hamilton
Breaux	Early	Hammer-schmidt
Brinkley	Eckhardt	
Brodhead	Edgar	Hance
Brooks	Edwards, Ala.	Hanley
Broomfield	Edwards, Okla.	Harkin
Brown, Calif.	Emery	Harris
Broyhill	English	Harsha
Buchanan	Erdahl	Hawkins
Burgener	Erlenborn	Heckler
Burlison	Ertel	Hefner
Burton, John	Evans, Del.	Hightower

Hillis	Mica	Schulze
Hinson	Michel	Sebelius
Holland	Mikulski	Seiberling
Hollenbeck	Miller, Calif.	Sensenbrenner
Holt	Miller, Ohio	Shannon
Hopkins	Minish	Sharp
Horton	Mitchell, Md.	Shelby
Howard	Mitchell, N.Y.	Shumway
Hubbard	Moakley	Shuster
Huckaby	Moffett	Simon
Hughes	Mollohan	Skelton
Hutchinson	Montgomery	Smith, Iowa
Hutto	Moorhead, Calif.	Smith, Nebr.
Hyde		Snowe
Ireland	Moorhead, Pa	Snyder
Jeffords	Mottl	Solarz
Johnson, Calif.	Murphy, Ill.	Solomon
Johnson, Colo.	Murphy, Pa.	Spellman
Jones, N.C.	Murtha	Spence
Jones, Okla	Myers, Ind.	St Germain
Jones, Tenn.	Natcher	Staggers
Kastenmeier	Neal	Stangeland
Kazen	Nedzi	Stanton
Kemp	Nelson	Stark
Kildee	Nichols	Steed
Kindness	Nolan	Stenholm
Kogovsek	Nowak	Stewart
Kostmayer	Oakar	Stokes
Kramer	Oberstar	Studds
LaFalce	Obey	Swift
Lagomarsino	Ottinger	Synar
Latta	Panetta	Tauke
Leach, Iowa	Pashayan	Tauzin
Leath, Tex.	Patten	Thomas
Lederer	Patterson	Thompson
Lee	Pease	Traxler
Lehman	Pepper	Trible
Leland	Perkins	Udall
Lent	Petri	Ullman
Levitas	Peyser	Van Deerlin
Lewis	Pickle	Vander Jagt
Livingston	Preyer	Vanik
Lloyd	Price	Volkmer
Loeffler	Pritchard	Walgren
Long, La.	Pursell	Walker
Long, Md.	Quayle	Wampler
Lott	Quillen	Watkins
Lowry	Rahall	Waxman
Lujan	Railsback	Weaver
Luken	Rangel	Weiss
Lundine	Ratchford	White
Lungren	Regula	Whitehurst
McClory	Reuss	Whitley
McCloskey	Rhodes	Whittaker
McCormack	Richmond	Whitten
McDade	Rinaldo	Williams, Mont
McEwen	Ritter	Williams, Ohio
McHugh	Roberts	Wilson, Bob
McKay	Robinson	Wilson, Tex.
McKinney	Rodino	Winn
Madigan	Roe	Wirth
Maguire	Rosenthal	Wolff
Markey	Rostenkowski	Wolpe
Marks	Roth	Wright
Marlenee	Rousselot	Wyatt
Marriott	Roybal	Wylie
Martin	Royer	Yates
Mathis	Russo	Yatron
Matsui	Sabo	Young, Fla
Mattox	Sawyer	Young, Mo.
Mavroules	Scheuer	Zablocki
Mazzoli	Schroeder	Zeferetti

NAYS—15

Bauman	Hansen	Paul
Collins, Tex.	Jacobs	Porter
Crane, Daniel	Jeffries	Rudd
Crane, Philip	Kelly	Stump
Evans, Ind.	McDonald	Wydler

NOT VOTING—34

Anderson, Ill.	Holtzman	Santini
Bowen	Ichord	Satterfield
Brown, Ohio	Jenkins	Stack
Butler	Jenrette	Stockman
Carter	Leach, La.	Stratton
Cavanaugh	Mineta	Symms
Davis, Mich.	Moore	Taylor
Derwinski	Murphy, N.Y.	Vento
Dixon	Musto	Wilson, C. H.
Edwards, Calif.	Myers, Pa.	Young, Alaska
Evans, Ga.	O'Brien	
Heftel	Roe	

□ 1440

The Clerk announced the following pairs:

Mr. Musto with Mr. Brown of Ohio.
Mr. Santini with Mr. Moore.
Mr. Bowen with Mr. Symms.
Mr. Edwards of California with Mr. Taylor.
Mr. Evans of Georgia with Mr. Stockman.
Mr. Mineta with Mr. Butler.
Mr. Jenrette with Mr. Carter.
Mr. Myers of Pennsylvania with Mr. Derwinski.
Mr. Roe with Mr. Leach of Louisiana.
Mr. Stratton with Mr. Davis of Michigan.
Mr. Charles H. Wilson of California with Mr. Young of Alaska.
Mr. Cavanaugh with Mr. Dixon.
Mr. Heftel with Mr. Anderson of Illinois.
Ms. Holtzman with Mr. Ichord.
Mr. Murphy of New York with Mr. Jenkins.
Mr. Stack with Mr. Vento.
Mr. Satterfield with Mr. O'Brien.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. KAZEN. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 1640) to extend certain authorities of the Secretary of the Interior with respect to water resources research and development and saline water conversion research and development programs, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1640

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled, That section 101(b)(5) of the Water Research and Development Act of 1978 (Public Law 95 467; 92 Stat. 1305), is amended to read as follows: "The Secretary is authorized to require State institutes to review grant and contract proposals originating within their respective States pursuant to any program under this Act, and such review shall be for the purpose of advising the Secretary of the relevance of such proposals to water resources research, development, and technology transfer needs and priorities within the originating State."

SEC. 2. Section 105(a) of the Water Research and Development Act of 1978 is amended by deleting all after "projects by two or more institutes" and inserting the following: "Any State or local government agency or academic institution is eligible to participate in the matching grant program activities of their State institute if in the opinion of the Secretary it has competence to participate in the program. Applications by such agencies or institutions shall be made through the State institute. Each application for a grant pursuant to this subsection shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, state the importance of the project to the Nation, region, and State concerned, its relation to other known research projects theretofore pursued or currently being pursued, and the extent to which it will provide opportunity for training in water resources. No grant shall be made under this subsection except for a project approved by the Secretary, and all grants shall be made on the basis of the merit of the project, the need for the knowledge which it is expected to produce when completed and the opportunity it provides for training in water resources.".

SEC. 3. (a) Section 401 of the Water Research and Development Act of 1978 is amended as follows:

(1) In paragraph (a)(1) following "September 30, 1980", delete the period, insert a comma and add "an amount sufficient to provide $150,000 to each participating institute, on a cost-sharing basis, for the fiscal year ending September 30, 1981, and an amount sufficient to provide $175,000 to each participating institute, on a cost-sharing basis, for the fiscal year ending September 30, 1982,";

(2) In paragraph (a)(2) following "September 30, 1980," insert: "the sum of $1,500,000 for the fiscal year ending September 30, 1981, and the sum of $1,500,000 for the fiscal year ending September 30, 1982,";

(3) In paragraph (b) following "$8,500,000," "the sum of $8,000,000 for the fiscal year ending September 30, 1981, and the sum of $10,000,000 for the fiscal year ending September 30, 1982,";

(4) In paragraph (c) following "$8,000,000" insert a comma and add "the sum of $5,200,000 for the fiscal year ending September 30, 1981, and the sum of $8,000,000 for the fiscal year ending September 30, 1982,";

(5) In paragraph (d) following "$1,000,000" insert a comma and add "for the fiscal year ending September 30, 1981, and thereafter, the sum of $1,000,000,".

(b) In section 402 of the said Act, following "$14,000,000," insert "the sum of $14,400,000, for the fiscal year ending September 30, 1981, and the sum of $17,400,000 for the fiscal year ending September 30, 1982,".

(c) In section 403, following "September 30, 1980," insert "the sum of $6,500,000 for the fiscal year ending September 30, 1981, and the sum of $8,500,000 for the fiscal year ending September 30, 1982,".

(d) In section 411, following the word "rules" strike the words "regulations" through "prescribed" and substitute "and regulations promulgated".

SEC. 4. (a) Section 2(a) of the Act of August 2, 1977 (Public Law 95–84; 91 Stat. 400) as amended, is deleted and replaced with a new section 2(a) to read as follows:

"SEC. 2. (a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided,* That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further,* That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is futher authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504, et seq., the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95–224) with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.".

(b) Section 2(b) of said Act is hereby amended by inserting after "but is not limited to," the phrase, "how the plant being proposed differs from others, if any, already constructed under this section," and further, by deleting all after "ancillary facilities" and

inserting the following: "Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 50 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall not exceed four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.".

(c) Section 2(c), as amended, of said Act, is revised to read as follows: "There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.".

SEC. 5. Section 205(c) of the Act of October 17, 1978 (Public Law 95-467) is hereby repealed.

MOTION OFFERED BY MR. KAZEN

Mr. KAZEN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KAZEN moves to strike out all after the enacting clause of the Senate bill, S. 1640, and insert in lieu thereof the provisions of the bill, H.R. 5340, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to extend certain authorities of the Secretary of the Interior with respect to water resources research and development and saline water conversion research and development programs, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5340) was laid on the table.

GENERAL LEAVE

Mr. KAZEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ESTABLISHING THE RATTLESNAKE NATIONAL EDUCATION AND RECREATION AREA AND WILDERNESS IN THE STATE OF MONTANA

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 5898, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. SEIBERLING) that the House suspend the rules and pass the bill, H.R. 5898, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1450

SAFE DRINKING WATER ACT AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 8117, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. WAXMAN) that the House suspend the rules and pass the bill, H.R. 8117, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 7939.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. SCHEUER) that the House suspend the rules and pass the bill, H.R. 7939.

The question was taken.

RECORDED VOTE

Mr. ROUSSELOT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. The Chair will announce that this will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 315, noes 83, not voting 34, as follows:

[Roll No. 576]

AYES—315

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Carney
Carr
Cheney
Chisholm
Clausen
Clay
Cleveland
Coelho
Coleman
Collins, Ill.
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
D'Amours
Danielson
Daschle
Davis, S.C.
de la Garza
Deckard
De'lums
Derrick
Dicks
Dingell
Dodd
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Ala.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Grassley
Gray
Green
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hamilton
Hanley
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Hillis
Hinson
Holland
Hollenbeck
Hopkins
Horton
Howard
Hubbard
Huckaby
Hutchinson
Hutto
Hyde
Ireland
Jeffords
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Latta
Leach, Iowa
Lederer
Lehman
Leland
Lent
Levitas
Livingston
Lloyd
Long, La.
Long, Md.
Lott
Lowry
Luken
Lundine
McClory
McCloskey
McCormack
McDade
McHugh
McKay
McKinney
Maguire
Markey
Marks
Marriott
Martin
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Motti
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Preyer
Price
Pritchard
Purselll
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
St Germain
Stack
Staggers
Stangeland
Stark
Steed
Stewart
Stokes
Studds
Swift
Synar
Tauke
Tauzin
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolf
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOES—83

Archer
Ashbrook
Ashley
Badham
Bennett
Bethune
Bouquard
Campbell
Chappell
Clinger
Collins, Tex.
Conable
Crane, Daniel
Crane, Philip
Daniel, Dan

Daniel, R. W.
Dannemeyer
Devine
Dickinson
Dornan
Duncan, Tenn.
Edwards, Okla.
Fenwick
Florio
Forsythe
Gilman
Gingrich
Gramm
Grisham
Hall, Tex.
Hammer-schmidt
Hance
Hansen
Hightower
Holt
Hughes
Jacobs
Jeffries
Johnson, Colo.
Jones, Okla.
Kelly
Kemp
Kindness
Lagomarsino
Leath, Tex.
Lee
Lewis
Loeffler
Lujan
Lungren
McDonald
McEwen
Madigan
Marlenee
Miller, Ohio
Murtha
Paul
Pease
Petri
Pickle
Quillen
Regula
Rhodes
Roberts
Robinson
Rousselot
Rudd
Schulze
Sensenbrenner
Shumway
Shuster
Spence
Stanton
Stenholm
Stockman
Stump
Vanik
Walker
Weaver
Whitehurst
Wydler
Wylie
Young, Fla.

NOT VOTING—34

Anderson, Ill.
Bowen
Brown, Ohio
Butler
Carter
Cavanaugh
Davis, Mich.
Derwinski
Dixon
Edwards, Calif.
Evans, Ga.
Heftel
Holtzman
Ichord
Jenkins
Jenrette
Leach, La.
Mineta
Moore
Murphy, Ill.
Murphy, N.Y.
Musto
Myers, Pa.
Nedzi
O'Brien
Richmond
Santini
Satterfield
Stratton
Symms
Taylor
Vento
Wilson, C. H.
Young, Alaska

The Clerk announced the following pairs:

Mr. Richmond with Mr. Brown of Ohio.
Mr. Santini with Mr. Jenkins.
Mr. Musto with Mr. O'Brien.
Mr. Murphy of Illinois with Mr. Symms.
Mr. Mineta with Mr. Taylor.
Mr. Jenrette with Mr. Young of Alaska.
Mr. Bowen with Mr. Butler.
Mr. Edwards of California with Mr. Carter.
Mr. Evans of Georgia with Mr. Davis of Michigan.
Mr. Heftel with Mr. Derwinski.
Mr. Murphy of New York with Mr. Moore.
Mr. Nedzi with Mr. Charles H. Wilson of California.
Mr. Myers of Pennsylvania with Mr. Ichord.
Mr. Dixon with Mr. Anderson of Illinois.
Mr. Cavanaugh with Ms. Holtzman.
Mr. Vento with Mr. Satterfield.

Mrs. HOLT, Messrs. GILMAN, STOCKMAN, and LEE changed their votes from "aye" to "no."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

SMALL BUSINESS INVESTMENT INCENTIVE ACT OF 1980

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 7554, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. SCHEUER) that the House suspend the rules and pass the bill, H.R. 7554, as amended.

The question was taken.

RECORDED VOTE

Mr. CHARLES WILSON of Texas. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. The Chair will caution the Members that this is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 395, noes 1, not voting 36, as follows:

[Roll No. 577]

AYES—395

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carr
Chappell
Cheney
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Devine
Dickinson
Dicks
Dingell
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Miller, Calif.
Miller, Ohio
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Motti
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Preyer
Price
Pritchard
Purselll
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stockman
Stokes
Studds
Stump
Swift
Synar
Tauke
Tauzin
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolf
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOES—1

Kelly

NOT VOTING—36

Anderson, Ill.
Bowen
Breaux
Brown, Ohio
Burlison
Butler
Carter
Cavanaugh
Davis, Mich.
Derwinski
Dixon
Edwards, Calif.
Evans, Ga.
Heftel
Holtzman
Ichord
Jenkins
Jenrette
Kogovsek
Leach, La.
Mineta
Moore
Murphy, Ill.
Murphy, N.Y.
Musto
Myers, Pa.
O'Brien
Porter
Santini
Satterfield
Stratton
Symms
Taylor
Udall
Vento
Young, Alaska

□ 1500

The Clerk announced the following pairs:

Mr. Santini with Mr. Brown of Ohio.
Mr. Breaux with Mr. Leach of Louisiana.
Mr. Musto with Mr. Moore.
Mr. Vento with Mr. Symms.
Mr. Jenrette with Mr. Taylor.
Mr. Burlison with Mr. O'Brien.
Mr. Cavanaugh with Mr. Porter.
Mr. Evans of Georgia with Mr. Butler.
Mr. Ichord with Mr. Carter.
Mr. Mineta with Mr. Davis of Michigan.
Mr. Murphy of New York with Mr. Derwinski.
Mr. Satterfield with Ms. Holtzman.
Mr. Stratton with Mr. Udall.
Mr. Heftel with Mr. Young of Alaska.
Mr. Bowen with Mr. Myers of Pennsylvania.
Mr. Kogovsek with Mr. Edwards of California.
Mr. Dixon with Mr. Anderson of Illinois.
Mr. Jenkins with Mr. Murphy of Illinois.

Mr. GIAIMO changed his vote from "no" to "aye."

So (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to amend the Federal securities laws to provide incentives for small business investment, and for other purposes."

A motion to reconsider was laid on the table.

ESTABLISHING THE U.S. HOLOCAUST MEMORIAL COUNCIL

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent for the immedi-

ate consideration of the bill (H.R. 8081) to establish the U.S. Holocaust Memorial Council.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 8081

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established the United States Holocaust Memorial Council (hereinafter in this Act referred to as the "Council"). The Council shall—

(1) provide for appropriate ways for the Nation to commemorate the Days of Remembrance, as an annual, national, civic commemoration of the holocaust, and shall encourage and sponsor appropriate observances of such Days of Remembrance throughout the United States.

(2) plan, erect, and oversee the operation of a permanent living memorial museum to the victims of the holocaust, in cooperation with the Secretary of the Interior and other Federal agencies as provided in section 5.

(3) plan for carrying out the recommendations, not otherwise provided for in this Act, of the President's Commission on the Holocaust in its report to the President of September 27, 1979.

SEC. 2. (a)(1) The Council shall consist of the sixty members appointed by the President. One ex officio nonvoting member shall be appointed each by the Attorney General, the Secretary of State, and the Secretary of Education.

(2) Each person appointed to the Council shall have a demonstrated sensitivity to the holocaust and commitment to fulfilling the recommendations of the President's Commission on the Holocaust in its report to the President of September 27, 1979.

(b)(1) Except as provided in paragraph (2) with respect to Members of Congress, Council members shall serve five-year terms. Terms shall be staggered so that terms of ten members shall terminate each year. For such purposes, the terms of ten of the present members shall end on January 15, 1986, and ten on each subsequent January 15 through 1990. The year in which the terms of present members will end shall be determined as established in the Council's bylaws. Vacancies shall be filled, as they arise, by appointment by the President.

(2) The terms of the five members of the House of Representatives and the five members of the Senate on the Council shall be coterminous with each term of Congress. Vacancies in the congressional memberships shall be filled by appointment by the President upon the recommendation of the Speaker of the House of Representatives or the President pro tempore of the Senate, for the membership from their respective Houses.

(c) Beginning January 15, 1986, and each five years thereafter, the President shall designate the Council members who shall serve as Chairperson and Vice Chairperson. Vacancies in the offices of Chairperson and Vice Chairperson shall be filled, as they arise, by appointment by the President.

(d) Members whose terms expire may be reappointed, and the Chairperson and Vice Chairperson may be reappointed to those offices.

SEC. 3. (a) One-third of the members of the Council shall constitute a quorum, and any vacancy in the Council shall not affect its powers to function.

(b) The Council shall adopt bylaws to carry out its functions under this Act.

(c) Each member, not otherwise employed by the United States, may receive compensation not greater than the daily rate prescribed for grade 18 of the General Schedule in section 5332 of title 5, United States Code, for each day, including traveltime, he or she is engaged in actual performance of the duties of the Council. All members of the Council may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in performance of their duties in accordance with section 5703 of title 5, United States Code, for each day, including traveltime, he or she is engaged in actual performance of the duties of the Council. All members of the Council may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in performance of their duties in accordance with section 5703 of title 5, United States Code.

(d) The Council may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates not to exceed the daily rate payable for grade GS-18 of the General Schedule under section 5332 of such title, for persons in Government service employed intermittently.

(e) The Council may enter into contracts and other arrangements with public agencies and with private organizations and persons and may make such payments as may be necessary to carry out its functions under this Act.

SEC. 4. (a) The Chairperson shall recommend to the President candidates to serve as Executive Director of the Council.

(b) The Executive Director may appoint and fix duties of such other officers and employees as may be necessary to carry out the functions under this Act.

SEC. 5. (a) The Council is authorized to receive, if determined by the Council to be practicable, with the approval of the Secretary of the Interior, the Commission of Fine Arts, and the National Capitol Planning Commission, a suitable site on public grounds of the United States in the District of Columbia, upon which may be erected the memorial authorized in the first section of this Act.

(b) The architectural design for such memorial shall be subject to the approval of the Secretary of the Interior, the Commission of Fine Arts, and the National Capitol Planning Commission.

(c) The authority conferred pursuant to this Act for the construction and operation of the memorial museum shall lapse unless (1) the erection or establishment of such memorial is commenced within five years from the date of enactment of this Act, and (2) prior to the commencement funds are certified available in an amount sufficient, in the judgment of the Secretary of the Interior, to ensure completion of the memorial museum.

(d) The Secretary of the Smithsonian Institution, the Library of Congress, and all executive branch departments, agencies, and establishments may assist the Council in the performance of its functions under this Act.

SEC. 6. The Secretary of the Interior may provide administrative services and support to the Council on a reimbursable basis.

SEC. 7. The Council may solicit, accept, hold, administer, and use gifts, bequests, and devises of property, both real and personal, to aid or facilitate the construction, maintenance, and operation of the memorial. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise donating such property. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

SEC. 8. There is authorized to be appropriated for fiscal year 1981 the sum of $722,000 and such amounts as may be necessary for the succeeding fiscal years, in order to carry out the provisions of this Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That there is hereby established the United States Holocaust Memorial Council (hereinafter in this Act referred to as the "Council"). The Council shall—

(1) provide for appropriate ways for the Nation to commemorate the Days of Remembrance, as an annual, national civic commemoration of the holocaust, and shall encourage and sponsor appropriate observances of such Days of Remembrance throughout the United States;

(2) plan, construct, and oversee the operation of, a permanent living memorial museum to the victims of the holocaust, in cooperation with the Secretary of the Interior and other Federal agencies as provided in section 5; and

(3) develop a plan for carrying out the recommendations of the President's Commission on the Holocaust in its report to the President of September 27, 1979, to the extent such recommendations are not otherwise provided for in this Act.

SEC. 2. (a) The Council shall consist of sixty voting members appointed by the President and the following ex officio nonvoting members:

(1) one appointed by the Secretary of the Interior;

(2) one appointed by the Secretary of State, and

(3) one appointed by the Secretary of Education.

Of the sixty voting members, five shall be appointed by the Speaker of the United States House of Representatives from among members of the United States House of Representatives and five shall be appointed by the President pro tempore of the United States Senate from among members of the United States Senate. Any vacancy in the Council shall be filled in the the same manner as the original appointment was made.

(b) The members of the United States Holocaust Memorial Council, as in effect immediately before the date of the enactment of this Act, are hereby designated as the initial members of the Council. Such initial members (other than the initial members appointed from the United States Senate or the United States House of Representatives) shall serve terms as follows:

(1) All initial members shall serve until January 15, 1986.

(2) On January 15, 1986, the terms of ten of such initial members, as designated in the bylaws of the Council, shall terminate.

(3) On January 15 of each year thereafter through 1990 the terms of ten other initial members, as designated in the bylaws by the Council, shall terminate.

The terms of the initial members appointed from the United States Senate or the United States House of Representatives shall expire upon the expiration of the term of Congress in session at the time of the enactment of this Act.

(c)(1) Except as provided in subsection (b) with respect to the initial members of the Council and except as otherwise provided in this subsection, Council members shall serve for five-year terms.

(2) The terms of the five members of the United States House of Representatives and the five members of the United States Senate appointed during any term of Congress shall each expire at the end of such term of Congress.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member, other than a Member of Congress appointed by the Speaker of the United States House of Representatives or the President pro tem of the United States Senate, may serve after the expiration of his term until his successor has taken office.

(d)(1) Except as provided in paragraph (2), the Chairperson and Vice Chairperson of the Council shall be appointed by the President from among the members of the Council and such Chairperson and Vice Chairperson shall each serve for terms of five years. Vacancies in the offices of Chairperson and Vice Chairperson shall be filled, as they arise, by appointment of the President.

(2) The Chairperson and Vice Chairperson of the United States Holocaust Memorial Council, as in effect immediately before the date of the enactment of this Act, are hereby designated respectively as the initial Chairperson and Vice Chairperson of the Council. Such initial Chairperson and Vice Chairperson shall serve until January 15, 1986.

(e) Members whose terms expire may be reappointed, and the Chairperson and Vice Chairperson may be reappointed to those offices.

SEC. 3. (a) Except as provided in subsection (b), members of the Council are each authorized to be paid the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties of the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) Members of the Council who are full-time officers or employees of the United States or Members of the Congress shall receive no additional pay by reason of their service on the Council.

SEC. 4. (a) The Council shall adopt bylaws to carry out its functions under this Act. One-third of the members of the Council shall constitute a quorum, and any vacancy in the Council shall not affect its powers to function.

(b) The Council may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates not to exceed the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(c) The Council may, in accordance with applicable law, enter into contracts and other arrangements with public agencies and with private organizations and persons and may make such payments as may be necessary to carry out its functions under this Act.

(d) The Secretary of the Smithsonian Institution, the Library of Congress, and all executive branch departments, agencies, and establishments of the United States may assist the Council in the performance of its functions under this Act.

(e) The Secretary of the Interior may provide administrative services and support to the Council on a reimbursable basis.

SEC. 5. (a) The Council shall, without regard to section 5311(b) of title 5, United States Code, have an Executive Director who shall be appointed by the President upon the recommendation of the Chairperson of the Council and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for GS-18 of the General Schedule.

(b) Without regard to section 5311(b) of title 5, United States Code, the Executive Director may appoint and fix the pay of such additional personnel as he considers appropriate. The Executive Director and staff of the Council shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. 6. (a) For purposes of establishing the memorial museum referred to in paragraph (2) of the first section of this Act, any department, agency, or instrumentality of the United States is authorized to transfer to the administrative jurisdiction of the Council, with the approval of the Secretary of the Interior in consultation with the Commission of Fine Arts and the National Capital Planning Commission, any real property in the District of Columbia which is under the administrative jurisdiction of such department, agency, or instrumentality and which is deemed suitable by the Council for such memorial. With the approval of the Secretary of the Interior, in consultation with the Commission of Fine Arts and the National Capital Planning Commission, the Council may purchase, with the consent of the owner thereof, any real property within the District of Columbia which it deems suitable for purposes of establishing such memorial museum.

(b) The architectural design for such memorial museum shall be subject to the approval of the Secretary of the Interior, in consultation with the Commission of Fine Arts and the National Capital Planning Commission.

(c) The authority conferred pursuant to this Act for the construction and operation of the memorial museum shall lapse on the date five years after the date of the enactment of this Act unless (1) the erection or establishment of such memorial is commenced within such five year period, and (2) prior to the commencement, the Secretary of the Interior certifies that funds are available in an amount sufficient, in the judgment of the Secretary, to ensure completion of the memorial museum.

SEC. 7. The Council may solicit, accept, hold, administer, and use gifts, bequests, and devises of property, both real and personal, to aid or facilitate the construction, maintenance, and operation of the memorial. Property may be accepted pursuant to this section, and the property and the proceeds thereof used as nearly as possible in accordance with the terms of the gift, bequest, or devise donating such property. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

SEC. 8. There is authorized to be appropriated to carry out the purposes of this Act $722,000 for the fiscal year 1981, $800,000 for the fiscal year 1982, and $850,000 for the fiscal year 1983; *Provided, however*, notwithstanding any other provision of this Act, none of the funds authorized herein may be available for construction. Authority to enter into contracts and to make payments under this Act, using funds authorized to be appropriated under this section, shall be effective only to the extent, and in such amounts, as provided in advance in appropriation Acts.

Mr. PHILLIP BURTON (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the committee amendment be dispensed with, and that it be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. PHILLIP BURTON) is recognized for 1 hour.

Mr. PHILLIP BURTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this matter was worked out on a bipartisan basis. The bill is coauthored by Members from every section of the country and of the entire range of philosophical points of view in the House.

This legislation has been cleared with the Committee on Post Office and Civil Service, specifically the subcommittee chair, the gentleman from New York (Mr. GARCIA) whose concern and commitment is to be applauded, and the chair of the full committee, the gentleman from New York (Mr. HANLEY). This bill, with amendment, has been cleared by the acting chairman of the Committee on House Administration, the gentleman from Michigan (Mr. NEDZI). It is further supported by the gentleman from Minnesota (Mr. FRENZEL), who is a coauthor of the bill.

Mr. Speaker, the amendment is intended to clarify the fact that there is no construction money contemplated in the authorization before the House.

Mr. Speaker, H.R. 8091 establishes the U.S. Holocaust Memorial Council. The holocaust has been recognized as the systematic act of extermination of nearly 6 million Jews in Europe before and during World War II. During this same period millions of other people suffered death and destruction at the hands of those who embraced the Nazi philosophy. The records of history fail to provide evidence of another act of genocide of this, or even approaching this magnitude.

The armies of the United States were the primary discoverers of the locations used for extermination, the records of the systematic genocide and the few survivors. Of those few survivors of the holocaust, many subsequently emigrated to the United States and they and their descendents now form an integral part of our society. The historic perspective of the Nation has been clearly affected by this event in such a way that historians generally recognize the holocaust as an occurrence of the history of the United States. The Council will provide for a focal point in the development of appropriate ways to research and display that history.

Mr. Speaker, I am most pleased to be able to bring this important and historic measure to the floor and wish to thank and commend Mr. YATES and the many colleagues who have joined me in cosponsoring the bill.

The following is a brief explanation of H.R. 8081:

Section 1 establishes the U.S. Holocaust Memorial Council and sets forth the functions and objectives of the Council.

Section 2 sets the number of voting and nonvoting members. The 60-member Council will include five members each from the U.S. House of Representatives and the U.S. Senate. The members and officers of the U.S. Holocaust Memorial Council as now established by the President and in effect at the time of enactment of the proposed legislation are designated as the members and officers of the Council. The President will fill any future vacancy by appointment except those from the U.S. House of Representatives and the U.S. Senate. The Members from the U.S. House of Representatives will be appointed by the Speaker of the House and the Members from the U.S. Senate will be appointed by the President pro tempore of

the Senate. Initial terms of the members of the Council shall be staggered as set forth in the Council bylaws. Subsequent terms shall be for 5 years except those congressional Members which shall serve terms concurrent with each Congress.

Terms of the chairperson and vice chairperson shall be for 5 years and each shall be appointed by the President.

Section 3 sets forth reimbursement rates for members of the Council.

Section 4 requires the Council to adopt bylaws and establishes the rules of quorum. The Council is given authority to contract for services. Executive and legislative branch agencies are authorized to provide assistance to the Council and the Secretary of the Interior is specifically authorized to provide full administrative support to the Council on a reimbursable basis.

Section 5 establishes the position and pay level of an Executive Director, to be appointed by the President. The Executive Director is granted authority to hire staff and set salaries within the limits established by existing law.

Section 6 authorizes the Council to accept any federally owned real property within the District of Columbia which is suitable for a memorial museum. The Council is also authorized to purchase real property within the District of Columbia, for the same purpose, but only from a willing seller. The Secretary of the Interior is granted authority to approve, (in consultation with the Commission of Fine Arts and the National Capitol Planning Commission) the recommendations of the Council for the location and design of the memorial museum. A time limitation of 5 years is placed on the Council to commence the memorial museum.

Section 7 provides authority for the Council to accept and disburse gifts.

Section 8 authorized appropriations.

Mr. Speaker, I wish to thank Mr. Mark Talisman and Mr. Monroe Freedman for the help they provided to the committee in working out the details of this bill. I also wish to commend Donald Fisher of Mr. YATES' staff for his hard work and long hours, and Dale Crane and Gary Ellsworth of the committee staff. Finally, if I may be permitted to indulge in a personal observation—my beloved wife, Sala's family was decimated by the Nazi terrorists and it has been a special honor for me to play a small role in this long overdue tangible recognition of the horror that Hitler and his legions inflicted upon the Jewish people.

GENERAL LEAVE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. PHILLIP BURTON. I yield to the gentleman from California.

Mr. DANIELSON. Mr. Speaker, I rise in support of this bill, H.R. 8081, which will establish the U.S. Holocaust Memorial Council as a permanent organism of the U.S. Government.

It is not only fitting and proper, it is imperative, that we establish this Council. Genocide, holocaust, has too long been with us. The mad killings, the murders, of genocide have too long been a part of the history of the world. Perhaps, with this permanent Council and with the Days of Remembrance which it will commemorate, and cause to be observed, and with the museums which it will create and maintain, the people of the world will remember that genocide is the most odious and repulsive of all crimes against humanity and, hopefully, we will forever put it to rest, bring an end to genocide.

People forget. People most easily forget that which is most offensive to them. That is why the history of civilization has been blackened so often with genocide.

As we all know, the first genocide of the twentieth century, and the most horrendous genocide, the first and worst holocaust of all time until then, was the genocide, the planned massacre of the Armenian nation by the government of the Ottoman Turkish Empire which caused world revulsion and made the Middle East run red with the blood of the innocent Armenian martyrs from April 24, 1915, through the year 1919.

And speaking of "forgetting," we all know that that evil man, Adolf Hitler, just before his pogrom of the Jews in Germany, answered a protest by asking, "Who, today, remembers the Armenians?"

Well, Mr. Speaker, we now can proudly shout from the rooftops, "We remember. We Americans remember the Armenians. And we will never forget."

We can place in the annals of history for all time the answer to those Ottoman butchers, Talaat Pasha and Enver Pasha, who planned and carried out the massacre of 1,500,000 innocent Armenian men, women, and children in the horrible massacres of 1915–19. Can you imagine, Mr. Speaker, 1,500,000 innocent people. One-half of all the Armenians then living on the face of this Earth. Murdered! Massacred! In the first genocide, the first holocaust, of the 20th century.

And, Mr. Speaker, the date of April 24 is by strange coincidence the most correct date for those Days of Remembrance, for on April 24, 1915, the genocide of the Armenians began, and the same date is the anniversary commemorated in the remembrance of the Jewish holocaust which was perpetrated by Hitler.

And so, Mr. Speaker, I support this bill. The Holocaust Memorial Council which we here create and establish can and will commemorate, for all time, the horrible genocide and holocaust of the Armenian and Jewish peoples and through the Days of Remembrance all people will be reminded, for all time, to rid the Earth of the horrible practice of genocide.

● Mr. DERWINSKI. Mr. Speaker, I urge my colleagues to approve H.R. 8081, the Holocaust Memorial Act. This measure, establishing a U.S. Holocaust Memorial Council to sponsor and encourage commemoration of the holocaust, certainly deserves our support.

This Holocaust Memorial Council will plan, build and supervise the operation of a memorial museum to Holocaust victims and will promote the observance of the annual Days of Remembrance in commemoration of the holocaust.

Mr. Speaker, the Days of Remembrance and the memorial museum will make significant contributions to our efforts to commemorate the holocaust which is of universal importance.

Approval by Congress of this legislation to establish the Holocaust Memorial Council will enable this important work to get underway. I urge passage of H.R. 8081.●

● Mr. WOLFF. Mr. Speaker, I rise in support of H.R. 8081, which would establish a U.S. Memorial Holocaust Council.

In 1979, the President established a Holocaust Memorial Commission study and recommended action to commemorate the holocaust. In May, by Executive action, the President appointed a 60-member Council, headed by Eli Weisel, to finish the study and begin implementing the suggestions made. I was a strong supporter of these moves, and H.R. 8081 would serve to make this a permanent, established council under the Department of the Interior, and render it eligible for private funding, where the bulk of its financing will come from. The Council will have statutory authority to, among other things, provide for annual, national observance of the Days of Remembrance, and most importantly erect a museum to the 6 million Jews who died as well as the other victims of the Nazi brutality.

This bill comes at a propitious time for the Jewish people. We have just observed Yom Kippur, the most solemn of all Jewish holidays. It is a day of fasting to atone sins committed during the past year, and a time that we pray to be inscribed in the book of life for another year. Yet, this holiday takes on a poignancy as we remember the 6 million Jews who were massacred by Hitler and the Nazis. And we spend much of the day remembering these Jews, lighting candles for their peaceful slumber, reading poems written by those in exile, and vowing never to let another holocaust happen again.

I can think of no more important commemoration of the holocaust than the erection of a national museum. Last April, I was in Israel and toured Yad Vashem, the Holocaust Memorial in Jerusalem. It is a museum filled with the horror of the war—the barbed wires and concentration camps, the anorexic inmates and the shattered lives. It filled me with a sense of identity and solidarity with my people, and with a resolve to never let it happen again.

It is vitally important that we remember the holocaust. Washington is a crossroads for the country, and the erection of such a building here takes on a certain significance as people from all over visit the city.●

● Mr. CORMAN. Mr. Speaker, I rise in strong support of H.R. 8081, the legislation to establish the U.S. Memorial Council. I am proud to have cosponsored this legislation which will be a living memorial to the 6 million Jews who perished in the holocaust during World War II.

While the Council will plan and carry out the recommendations of the President's Commission on the Holocaust, including an observance of the Days of Remembrance as an annual commemoration, and oversee the operation of a memorial museum in the District of Columbia, it is also appropriate that the Council will be dedicated to seeking the prevention of genocide directed against other people of the world. I urge my colleagues to approve this measure as a statement that history will never again bear witness to such a period of darkness.●

● Mr. VANIK. Mr. Speaker, I support the Holocaust Memorial Council to develop an appropriate memorial to the victims of the holocaust before and during World War II. European nations have taken comparable steps. It is highly important for the American people to keep alert and aware of the ideology of cruelty which resulted in the systematic extermination of nearly 6 million Jewish people.

This assault on humanity must be remembered and studied. The world must prevent a repetition of the horrors of the holocaust. They must not be forgotten.●

● Mr. LEHMAN. Mr. Speaker, I would like to thank my good friend and colleague, Congressman PHIL BURTON, for his expert assistance and expeditious handling of this important piece of legislation.

H.R. 8081, which establishes the U.S. Holocaust Memorial Council as a permanent body, has 125 cosponsors. The Council will plan and implement the recommendations of the President's Commission on the Holocaust, which was established by Executive order on November 1, 1978, to recommend a fitting memorial to all those who perished in the Nazi holocaust. The Commission recommended to the President that a museum to the victims of the holocaust be established, that an educational foundation be established, and that a Committee on Conscience be created to help provide early warning threats of genocide against any people throughout the world.

In addition, 1 week each year shall be designated as "Days of Remembrance" to be marked by a national, civic commemoration, and appropriate private and public observances. Private contributions will provide most of the funding for these projects. For this purpose, the U.S. Holocaust Remembrance Foundation, Inc., has already been established.

The holocaust has great significance for Americans and for people everywhere. Americans liberated many of the camps and were the first witnesses of what the rest of the world, including the United States, had been unwilling to acknowledge. Many of the survivors of the holocaust immigrated to the United States and are an integral part of our society. The survivors themselves have stressed the importance of studying the lessons of the holocaust, to understand the unique and universal implications of annihilating 6 million Jews as a formal state policy to eliminate Jews as Jews, not as an accidental event but, rather, as a primary goal. To comprehend the holocaust and to apply that understanding to the present and future, and to seek to prevent genocide against any people is the mission of the Educational Foundation and the Committee on Conscience.

I take pride in being an original sponsor of this legislation and urge my colleagues to support its passage today.●

● Mr. WEISS. Mr. Speaker, I wholeheartedly support passage of the Holocaust Memorial Act, H.R. 8081. Under this bill, the Holocaust Memorial Council, established by Congress last year, will have statutory authority to implement the major recommendations of the President's Commission on the Holocaust. The Council will have authority to establish and erect a memorial museum (in Washington, D.C.,) to victims of the holocaust and provide for the national observance each year of "Days of Remembrance."

Remembering the slaughter of 6 million Jews during World War II, which has come to be known as the holocaust, serves two vital functions: we are reminded both of man's capacity for cruelty to other human beings, and of the vital importance of preserving and keeping ever strong our democratic values and system of government.

"To remember the holocaust is to sensitize ourselves to its critical political lessons," the President's Commission pointed out in its September 27, 1979, report:

> Nazism was facilitated by the breakdown of democracy . . .. the erosion of faith in the political leadership and in the ability of democratic governments to function.

We need only look to the most recent history to see that mass atrocities occur in areas where democratic values have been abandoned, submerged, or ignored. In Uganda, an estimated 300,000 individuals were murdered under the Fascist regime of Idi Amin. In Kampuchea (Cambodia), more than 2.5 million persons were killed by the repressive government of Pol Pot. This number represents more than a third of the country's entire population, a profoundly shocking testament to the potential for atrocity under tyrannical rulers and during the continuous upheaval of civil war.

In its report, the President's Commission paraphrased a comment by George Santayana: "Those who forget history are condemned to repeat it."

Never again must we allow Jews to be persecuted as they were during the holocaust. Never again must any group be subjected to such horror. To keep that commitment strong, we must keep the memory of the holocaust alive. In so doing, we can have greater hope that the children of today, their children, and the generations to follow will remember, and understand, that we must maintain democratic traditions and humane concern for all who inhabit the Earth.●

● Mr. YATES. Mr. Speaker, I am extremely pleased that the House is today considering H.R. 8081, to establish the U.S. Holocaust Memorial Council as a permanent body.

The principal functions of the Holocaust Memorial Council will be to plan and oversee the construction and operation of a permanent, living memorial/museum to the victims of the holocaust; to establish and administer an Educational Foundation; and to establish a Committee on Conscience to provide early warning of threats of genocide against any people throughout the world. In addition, the Council will designate 1 week in each year, to be known as "Days of Remembrance," as a national, civic commemoration of the holocaust, and it will encourage and sponsor appropriate observation of Days of Remembrance throughout the United States.

The funding for the memorial, Mr. Speaker, is to be through private contributions. I am pleased to be able to report that, toward that end, a private foundation, The U.S. Holocaust Remembrance Foundation, Inc., has already been established. The Remembrance Foundation will receive donations and contributions from private citizens and groups.

In establishing the Holocaust Memorial Council by Executive order as a temporary body, pending this legislation, President Carter noted the reasons that the holocaust is of fundamental significance to Americans, and explained why there should be an American commemoration of its victims. It was American troops who liberated many of the death camps and exposed the horrible truth of what had been done there. Also, the United States subsequently has become the homeland of many survivors and their families.

The President noted further that Americans must bear responsibility for not having been willing to acknowledge, 40 years ago, that the tragedy was occurring. Thus, thousands of refugees were turned away from our shores, and countless thousands of lives were lost that otherwise could have been saved. In studying the systematic destruction of the Jews by the Nazis, the President added, we can seek to learn how to prevent the recurrence of genocidal threats against any national or ethnic group.

As we know, Mr. Speaker, the holocaust was the annihilation of 6 million Jews as a formal, systematic act of state, pursuant to what the Nazis referred to as the final solution of the Jewish question. The event was all the more ghastly because it was committed by a modern European country with an extraordinary history of achievement in science, the arts, and philosophy. Indeed, those very achievements, which might have been expected to provide a civilizing bulwark against beastliness, were put to work to expedite the mass slaughters, to ease the consciences of the slaughterers, and even to attempt to rationalize and to justify the evil. And, through the years of anti-Semitic race laws, persecution, and extermination, the world acquiesced in its silence and inaction.

Inevitably, the horror spread, and other people, throughout the occupied countries of Europe, were subjected to Nazi atrocities. Those victims, too, will be remembered through the work of the Holocaust Memorial Council.

In addition to commemoration, the Council will be concerned with attempting to comprehend the holocaust, to draw lessons from that experience, and to seek to prevent genocide directed against any people, anywhere in the world. Those goals are to be achieved

through the Educational Foundation and through the Committee on Conscience. Unhappily, the urgent need for such an effort has been made manifest by events since World War II, even into the present day.

For those reasons, Mr. Speaker, I take particular pride in this bill and I am pleased to join with 125 cosponsors in asking my colleagues to support the establishment of a permanent U.S. Holocaust Memorial Council.●

● Mr. CLAUSEN. Mr. Speaker, I rise in support of H.R. 8081, which establishes the U.S. Holocaust Memorial Council.

The purpose of this bill is to legislatively establish the existing President's Commission on the Holocaust (Executive Order No. 12093, November 1, 1978) as a Federal Council charged with the responsibility for constructing a permanent memorial museum commemorating the victims of the holocaust. The Council will also develop a plan for carrying out the other recommendations of the President's Commission as submitted in its final report dated September 27, 1979.

The Holocaust Memorial Museum contemplated by this bill will be built on an appropriate site within the District of Columbia with funds donated for that purpose. The location and design of the memorial are subject to the approval of the Secretary of the Interior in consultation with the Commission on Fine Arts and the National Capital Planning Commission. Private property may not be acquired under this legislation without the consent of the owner. No expenditures of Federal funds are expected beyond the moneys necessary for the administrative functions of the Council. The bill authorizes $722,000 in fiscal year 1981, $800,000 in fiscal year 1982, and $850,000 in fiscal year 1983 ($2,372,000 total) for these purposes.

Mr. Speaker, considering the significant effect on this Nation's history of the tragic acts of genocide during World War II, I believe the establishment of this Council and the Holocaust Memorial is entirely appropriate.

I urge my colleagues to join me in supporting this bill.

● Mr. GREEN. Mr. Speaker, I rise in strong support of H.R. 8081, the Holocaust Memorial Act, as one of the principal sponsors of this bill, which was introduced a few weeks ago with the support of almost one-fourth of this House.

On November 1, 1978, President Carter created the Commission on the Holocaust to make recommendations for an appropriate American Memorial "to those who perished in the holocaust." I was honored to be appointed to serve as a member of that Commission, and now serve on its successor body, the U.S. Holocaust Memorial Council. Thus, I have a special concern for the bill we are considering today.

This legislation would authorize the establishment of a permanent Holocaust Memorial Council, charged with implementing the recommendations of the Commission's September 1979 report. In fulfilling these responsibilities, the Council will make available to the people of the United States, and indeed the world, increased knowledge of the Holocaust and greater awareness of its far-reaching significance.

I am gratified that this bill is receiving swift and favorable consideration. The holocaust was a period of untold suffering and tragedy. We all have a responsibility to remember it so that we can dedicate our energies to preventing any other such atrocity. This is the importance of establishing an American memorial and through this Council we hopefully will achieve this end.●

● Mr. DODD. Mr. Speaker, today the House is considering H.R. 8081, the U.S. Holocaust Memorial Council authorization, and I would like to reiterate my support for this bill of which I am a cosponsor.

The Holocaust Memorial Council will be charged with planning the design and eventual construction of a permanent memorial to the victims of the holocaust. The memorial was originally recommended by the members of the President's Commission on the Holocaust which also requested that 1 week every year would be set aside as "Days of Remembrance" for those who died during the holocaust as well as those who were persecuted by the Nazis.

The work of the Memorial Council to establish this memorial in Washington, D.C., will provide a lasting testament to the evil of the Nazi final solution. Most importantly, the memorial will stand forever as a reminder that we must never allow ourselves to be complacent about violations of human rights or indifferent to the suffering of our fellow men and women.

I would urge my colleagues to give their support to this bill, to the work of the members of the Holocaust Memorial Council, and to the victims of unwarranted persecution: past, present, and future.●

● Mrs. HECKLER. Mr. Speaker, I would like to join in commending my distinguished colleague from Illinois on his legislative initiative.

Perhaps the most valuable lesson to be learned from the Nazi holocaust was that we must always beware of future atrocities. The death of the 6 million Jews and other innocent peoples massacred in Hitler's Europe will be less in vain if they serve to instruct us that we must always be on guard against tyrannical abuses of any portion of humankind.

The construction of a living memorial museum to the victims of the holocaust, the nationwide commemoration of the Days of Remembrance, will prod us to recall this sobering lesson well. Further, they will permanently impress on our national conscience, that persecution against any nation must necessarily constitute an offense against all nations, and so must be staunchly opposed by each and every one of them.

This memorial not only commemorates the death of the 6 million, but permanently honors the memory of their lives, in the fervent hope that this people's safety and security will forevermore be certain.●

● Mr. DELLUMS. Mr. Speaker, the systematic effort by the Nazi regime to exterminate every vestige of Jewish life and culture in the Western world is truly a landmark in the history of human depravity.

The holocaust of the Second World War compels commemoration in our historical memory, not only by those Jews who suffered and survived, but also as a commitment of conscience by all humankind that this must never be allowed to happen again—anywhere or to any segment of human society.

I strongly support the passage of H.R. 8081, the bill which would establish the U.S. Holocaust Memorial Council. It is important to all of us that this council, once created, plan, enact, and oversee the operation of a proper and fitting memorial museum to honor those dead who were so cruelly dishonored in life by a tyrannical and barbaric regime. This museum must serve as a historical reminder to us all that "Never Again * * *."●

● Mr. JOHN L. BURTON. Mr. Speaker, I strongly endorse the bill (H.R. 8081) introduced by Congressman PHILLIP BURTON to establish a U.S. Holocaust Memorial Council, which would commemorate the Days of Remembrance, erect a memorial museum, and seek the prevention of genocide. The holocaust is as much a part of our Nation, as are the Jewish survivors who sought refuge in America. The memory of 6 million Jews, who were brutally annihilated, must be kept alive. Only by recognizing the consequences of Hitler's attempt at genocide, can we prevent its repetition.

The holocaust represents a pathetic part of the history of our civilization. By allowing its memory to fade, we weaken America's foundation. If the democratic principles, upon which our Nation was founded, are to be preserved we must acknowledge the factors that contributed to the deterioration of the German democracy under Hitler's regime.

The establishment of a U.S. Holocaust Memorial Council would insure that the millions of Jews massacred during World War II did not die in vain. It will also serve as a constant reminder that the principles upon which this country is based must be upheld. The establishment of such a council and a memorial museum, would prevent us from becoming callous to the violations of human rights or indifference to the suffering of our fellow men and women. Therefore, I urge my colleagues to give their support to this bill.●

● Mr. KOSTMAYER. Mr. Speaker, I wish to reaffirm my strong support for H.R. 8081, legislation to establish the U.S. Memorial Holocaust Council.

This legislation establishes a 60-member U.S. Memorial Holocaust Council, including 5 members each from the House of Representatives and the Senate. The Council is to be appointed by the President to serve 5-year terms—except for Members of the House and Senate—and would have authority to accept and disburse gifts and donations to carry out the purpose of the act. The Council's prime objectives are the establishment of a national holocaust museum to victims of the holocaust, and to provide for the national observance each year of "Days of Remembrance."

We must insure that the memory of this tragedy never dies. As each new generation visits the memorial museum, as each "Day of Remembrance" is observed across the Nation, we take another step toward preventing its recurrence. Every visitor assumes new vigilance, every prayer becomes another voice of commitment: Never again.●

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

□ 1510

CONFERENCE REPORT ON H.R. 5164, SMALL VESSEL INSPECTION AND MANNING

Mr. BIAGGI. Mr. Speaker, I call up the conference report on the bill (H.R. 5164) to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of September 17, 1980.)

The SPEAKER pro tempore. The gentleman from New York (Mr. BIAGGI) will be recognized for 30 minutes, and the gentleman from California (Mr. MCCLOSKEY) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York (Mr. BIAGGI).

GENERAL LEAVE

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BIAGGI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring before the House the report of the committee of conference, resolving a difference between the two Houses on H.R. 5164, a bill to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes.

The bill, as reported by the two Houses, addresses various acute problems of the small commercial vessel industry, particularly the party boat fishing industry and the offshore oil and mineral supply vessel industry—and should materially assist in keeping these industries safe and viable.

It makes important changes in the law governing able seamen for the entire maritime industry.

It clarifies the law on the inspection and manning of vessels under 100 gross tons and subjects all offshore supply boats—as defined in the bill—to Coast Guard safety inspection and manning requirements.

It also modifies the requirements for licensed engineers and deck officers on vessels of under 300 gross tons.

Before discussing the difference between the Houses, I want to state that we have been and continue to be gravely concerned over this important segment of our merchant marine. It is one of our most viable industries—and, with over 3,000 vessels, it represents a good share of U.S. tonnage. We have provided numerous opportunities during this and prior congresses to hear from many diverse interests who were concerned with regulatory requirements and procedures that were being imposed upon small commercial vessels.

We have heard from representatives of the administration: Maritime labor, party boat fishermen, inland passenger vessel operators, and the offshore mineral and oil support industry. We have considered massive amounts of materials and have had repeated consultations to facilitate developing a bill that we can all live with. I think that both sides of the Congress have developed such a bill.

The only difference between the Houses concerns a provision related to prerequisite experience for able seamen on specialized offshore supply vessels. I believe that H.R. 5164—as passed by the House—with respect to the able seaman problem is a great improvement over existing law with respect to able seaman requirements. It establishes a ladder of advancement by creating various types of able seamen, based on experience levels, and provides flexibility in able seaman manning requirements for large as well as small commercial vessels.

However, the committee of conference felt that, in addition to retaining the House requirements, it could—without a diminution in safety—permit 6 months' service on deck as prerequisite experience for able seamen employed on vessels of less than 500 gross tons engaged in support of exploration, exploitation, or production of offshore mineral or energy resources.

The committee of conference, therefore, agreed to the Senate amendment. I now urge adoption of the report of the committee of conference by my colleagues in the House.

● Mr. MURPHY of New York. Mr. Speaker, the issue settled in conference committee on H.R. 5164 can be stated in simple terms, but its ramifications are far-reaching. As passed by the House, the bill would have required 12 months service on deck as a prerequisite for qualification as "able seaman-special." The Senate added a provision that would reduce the deck service requirement to a 6-month qualification as "able seaman-special" for service on small vessels engaged in support of the offshore mineral and oil industry. This is not a negligible difference in seafarer qualifications nor is it a minor accommodation to a specialized industry. I regret that the House receded to the Senate position on this matter.

In recent years, the mushrooming growth of the offshore industry has bred practices in operation of offshore supply vessels that were not contemplated when existing law was enacted. For some time, through broad interpretation of existing law, the Coast Guard was able to accommodate these practices. The situation has now evolved to the point where remedial action is required, either by altering industry practices or by amending basic maritime statutes or by a combination of the two.

H.R. 5164, as passed by the House, would change existing law by amending the inspection and manning requirements to create in effect, a special exception for the mineral and oil industry. I have previously expressed concerns about these provisions, and reiterate those concerns now. H.R. 5164 was the subject of extensive hearings before the Subcommittee on Coast Guard and Navigation and numerous consultations with members of the offshore mineral and oil support industry and representatives of the maritime labor unions. A major effort was made to come to specific terms with these two groups and to provide a bill that addresses the problems of the interests involved and offers viable solutions without sacrificing maritime safety.

I originally suggested a temporary 1-year moratorium on enforcement of existing laws with respect to the mineral and oil support industry in order to resolve the conflict between the views of the industry and organized labor. It can be argued that the reason for the manpower shortages in the Gulf of Mexico portion of the industry is the reluctance of the industry in that region to raise the level of wages and working conditions. The industry in the Northeastern United States has no such difficulty because the wages and conditions are superior to those in the gulf. It appears that the problem is not an inherent shortage of labor because of high standards, but stems from conditions that are not on a level with the nonmaritime industries in the gulf coast area.

The insistence on a permanent exemption from these laws in the Gulf of Mexico mineral and oil support industry is a continuing cause of concern. This legislation is seen by some as authorizing offshore supply vessels to navigate coastal waters with fatigued, undertrained, underexperienced, poorly qualified personnel working for substandard wages under difficult conditions.

I would have preferred the 1-year moratorium on enforcement of existing laws to this bill as passed by the House. Nonetheless, the bill has now passed both Houses of Congress, has gone before a conference committee, and is now before us again as the conference report.

That brings me to the central point: H.R. 1564, as passed by the House, already accommodates the mineral and oil industry to an extraordinary degree. I do not believe that further accommodation is necessary or justified. Any further adjustment to prevailing conditions should be through altering industry practices. In truth, I believe that endorsement of the 6 month able seaman rating is dangerous, both as precedent and as a hazard to safe operations.

I therefore oppose the adoption of the conference report on H.R. 5164, now before us.●

Mr. BIAGGI. I yield such time as he may consume to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I rise in support of the bill and also to take this opportunity to commend the chairman of the subcommittee, who has handled this legislation through the House.

While the gentleman differed in some respects on the bill, I think he was always guided by a real concern for the safety of American merchant marine seamen and the seamen who are working

on these offshore vessels. That was always his first concern, and he tried to enunciate his position throughout the committee hearings and throughout the conference and held very firm throughout the consideration of this legislation. I think that the end product he has brought to the House floor, while everyone is not in total agreement, I think we can at least agree that it is a good product that will guarantee the continued safety of the American merchant marine.

Mr. BIAGGI. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Louisiana (Mrs. BOGGS).

Mrs. BOGGS. Mr. Speaker, I would like to associate myself with the remarks of the gentleman from Louisiana (Mr. BREAUX) and to add my own commendations to the chairman and the members of the committee for bringing forth this conference report.

Mr. Speaker, I urge support of the conference report and the passage of it.

Mr. McCLOSKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased that the conference report on H.R. 5164, the small vessel manning bill, accepted the key antifeatherbedding section originally voted out by the House Merchant Marine and Fisheries Committee.

The purpose of H.R. 5164 is to modify certain inspection and manning laws primarily applicable to small vessels carrying passengers or freight for hire, recognizing the current needs and practices of industry in maintaining maritime safety. Many of these laws date from the early era of steamships.

The Committee on Merchant Marine and Fisheries bill established a new position of "able seaman-special" which would allow seamen to qualify as able seamen on offshore marine service vessels after 6 months of service on deck. This provision was included to alleviate the manning shortages in the offshore energy industry. This provision regarding the 6-month "able seaman-special" was deleted when the bill was passed by the House under suspension of the rules. The Senate, however insisted on the 6-month "able seaman-special" provision because the service time requirements seem excessive for this industry.

The committees with jurisdiction in both the House and Senate had given careful consideration to any adverse safety implications which might result from a 6-month able seaman training requirement and concluded that there was no valid basis for a requirement in excess of 6 months. This provision was supported by the industry, the Coast Guard, and the National Transportation Safety Board. The Coast Guard's testimony was explicit: At page 208 of the hearing record (serial No. 96–24) the Coast Guard witness, Admiral Bell, testified the 6-month provision would "enhance the safety."

The term able seaman as used, in the traditional seagoing sense has little meaning in today's offshore industry. A seaman in the modern offshore industry essentially is a deckhand or a machinist and oiler performing basic maintenance tasks under strict supervision by a mate or master. In addition, this type of seaman must be trained in firefighting and lifesaving techniques.

In view of the available formal training by industry, labor and Government, the limited skills required of a seaman in the offshore industry, and the inordinately long-service requirements currently prevailing in the industry, the conference committee found that an able seaman training requirement in excess of 6 months was not warranted. The conference committee concluded, as did the House and Senate committees with jurisdiction, that 6 months is enough time for an "able seaman-special" to qualify for service in the offshore industry and maintain maritime safety.

Mr. Speaker, I urge adoption of the conference report on H.R. 5164.

Mr. BIAGGI. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. BONIOR), an important member of the committee.

Mr. BONIOR of Michigan. Mr. Speaker, I rise in opposition to that portion of the House-Senate conference report on H.R. 5164 which recommends that this Congress approve the establishment of an able-bodied seaman for the mineral and oil industry with only 6 months of sea service. It is my firm belief that this provision is clearly inconsistent with the fundamental goal of safety at sea and should not be sanctioned by this House.

Mr. Speaker, H.R. 5164 is legislation which has been before this body for over 1 year. In that time, much has been said about the need to revise antiquated maritime statutes consistent with the operational realities of newly emerging sectors of the U.S. merchant marine. No one denies this need; indeed, most of the provisions of H.R. 5164 are widely supported by all interested parties. Many who appeared before the Subcommittee on Coast Guard and Navigation of the Committee on Merchant Marine and Fisheries specifically commended the chairman, Mr. BIAGGI, for his ongoing efforts to modernize American maritime law. I join in their commendations.

However, although H.R. 5164 provides needed revisions to many areas of maritime law, it attempts to alleviate the manpower shortage experienced by the Gulf of Mexico mineral and oil industry through a reduction in the sea-service requirements of able-bodied seamen. I do not believe that this course is consistent with the clear intent of recent Congresses in enacting laws which seek to strengthen the protection against marine accidents and environmental pollution. The twofold indictment of the 6-month AB provision now included in H.R. 5164 is first, that it fails to deal with the Gulf M. & O. manpower shortage in a responsible manner; and second, that it does not have as its top priority the maintenance and enhancement of the safety of life at sea.

I ask my colleagues to seriously question the argument which contends that 6 months of seatime is adequate to produce an experienced and competent AB. Consider if you will that given the other provisions of this bill which allow education to substitute for a portion of the seatime required and allows the 12-hour workday to count as 1½ days of seaservice, H.R. 5164 will establish statutorily a 100-day AB. Does anyone truly believe that 100 days of seatime qualifies one to earn the rating of able-bodied seaman? I, for one, do not; and I believe that enactment of this ill-advised provision will be tantamount to the Congress turning its back on thousands of American seamen who depend on us to maintain the safety of their working environment.

Existing laws addressing safety at sea all recognize the importance of experienced and competent crews. H.R. 5164 ignores this longstanding precedent and seeks to decrease the safety of vessel operations in the mineral and oil industry. It will transform thousands of deckhands into able-bodied seamen not by their experience at sea but by legislative fiat. This is clearly an ill-advised approach and I urge this House to reject it.

Mr. LOWRY. Mr. Speaker, will the gentleman yield?

Mr. BONIOR of Michigan. I yield to the gentleman from Washington.

Mr. LOWRY. I appreciate the comments the gentleman made about the shortening of the time for the qualifications of an able-bodied seaman. It is my understanding, from information we are given, at the present it is a 12-month practice, and we are lowering that to 6 months. Is that the gentleman's understanding?

Mr. BONIOR of Michigan. That is correct, and I guess my only comment to that would be that 6 months is certainly not a long period of time to be reclassified as an AB seaman. And given the problem we have had, in terms of safety at sea, I think we ought to seriously look at what we are doing here today.

Mr. LOWRY. I thank the gentleman for yielding, and I will necessarily have to also oppose the conference report for that reason, reluctantly, realizing the excellent work that has been done in other elements of the report.

Mr. BONIOR of Michigan. Mr. Speaker, again I commend the chairman, the gentleman from New York (Mr. BIAGGI), for his work in trying to pull this very difficult situation together.

Mr. BIAGGI. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota (Mr. OBERSTAR).

□ 1520

Mr. OBERSTAR. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the conference report on H.R. 5164, the small vessel inspection and manning bill.

The basic issue is safety: The time required for training and education for the rating of able-bodied seamen in the mineral and offshore oil industry.

My objection to the legislation is that it sets unwise and, in many respects, dangerous precedent for reductions in the education and training time.

I was a member on the conference committee. I could not sign the conference report. I respect the work that our chairman did. I thought he did a splendid job in the hearings in committee and on the floor when the bill passed the House originally, with the 1-year training requirement. We were rolled over, frankly, by the Senate in the conference report. The House bill provided for a year's training to qualify for an AB rating. In the conference committee, the

Senate insisted, in fact one Senator, insisted on the Senate provision reducing it to 6 months from the present 3 years.

If we must err, let us err on the side of safety. This bill does not do that. It does not protect seamen as adequately as I believe it should.

I cannot support something that will reduce safety for people who are engaged in one of the world's most dangerous trades.

All one has to do is read the story in this morning's Washington Post about safety in the air and about pilots who are required to work under the dangerous condition of inadequate rest.

This legislation will open the way for similar circumstances at sea and the resulting accidents.

Safe vessel operations require seamen with proper experience and training. For those who are unfamiliar with the maritime trades, I want to point out that 12-hour work days are common in this industry. The seaman receives 1½ days of sea time credit for each 12-hour work period. Coupling the 12-hour work day with the liberal education-in-lieu-of-service provisions of the bill results in a "100 day" AB rating. While the current 3-year requirement may be excessive, a 100-day AB is wholly inadequate.

Maritime labor has historically argued for increased training and education, qualification for crews aboard vessels operating in both international and domestic waters. They have worked to upgrade programs to provide for a high-quality craftsmanship among seamen.

Their concern for safety has resulted in improved operation of vessels including the big 390,000-ton deadweight mammoth vessels at sea, the tankers. The seamen are not opposing any improvements or progress in the area of safety or manning of vessels. They are concerned about the safety of the persons who risk their lives at sea. In this age of highly technological vessels where the crew size has been drastically reduced, and in many cases cut nearly in half, whether it is on the Great Lakes, or at sea in 300,000-ton vessels, the issue of safety is of paramount importance.

The time required for training seamen is an essential factor.

That Congress should reduce the time for training in the face of this practice of industry of reducing the number of persons operating those vessels is disturbing.

A 12-month minimum sea service requirement is supported by the Coast Guard's review of accidents in the offshore mineral and oil industry. A report prepared for the National Offshore Oil Industry Advisory Committee meeting in San Francisco on May 25–26, 1976, underscores the Coast Guard's concern about the high level of supply vessel losses. It points out that in the Eighth Coast Guard District alone, during 1974 and 1975, there were 197 "reportable marine casualties" involving M. & O. vessels. In light of these high accident statistics, from what amounts to only a sampling of the entire offshore oil exploration industry, I do not see how the House can accept the argument that AB sea service standards should be lowered to less than 12 months.

Further, in a Coast Guard sampling of 19 M. & O. vessel casualties, a close examination indicates that in 14 of the cases the probable contributory causes, as cited by the Coast Guard, were either failure to follow proper operating procedures, poor maintenance, questionable damage control and/or questionable seamanship.

Now, just 3 years after this report and without any signficant change in vessel operating conditions, we are being asked to accept unchallenged the claims that reduced seatime is a solution to the safety issue.

In view of the Industry Advisory Committee report and other statistics compiled by the Coast Guard on accidents in this industry, I cannot accept the argument that certification of an able seaman in 6 months is an enhancement of safety, and neither should you.

I urge the House to reject the conference report.

Mr. BIAGGI. Mr. Speaker, I think in response to the preceding speakers, it is incumbent upon me to put this body's collective mind to rest.

The question of safety has always been paramount in the committee's consideration of this legislation. The Coast Guard has stated that safety is not diminished by virtue of this legislation. The fact is the House passed a bill providing for 12-month, able seamen. I supported that.

When we went into conference, the Senate took an opposing view. For the sake of obtaining legislation that is so necessary to respond to the needs of ever-increasing offshore M. & O. vessels, we compromised. We compromised with 6 months. But we did not compromise until we were assured by the Coast Guard and the National Safety Board of Transportation that safety would not be diminished.

I would like to read from one of the union's papers:

> The U.S. House of Representatives recently passed a bill actively supported by the SIU which will provide for job responsibility for the blue-collar worker particularly the ABs, and would provide job opportunities.

That bill has a 12-month provision which I supported.

I just explained the reason why we have 6 months in the conference report. There was a question of getting legislation. It was a question of obtaining a compromise.

In a letter from the President of that international organization, to Congressman MURPHY, he stated on August 26, 1980, and I excerpt a paragraph:

> H.R. 5164 is legislation which takes several positive steps toward needed modification of the inspection and managed statutes of smaller commercial vessels, especially those in the offshore mineral and oil exploration support industry. The bill as passed by the House of Representatives is sound and reasoned legislation.

The only issue that comes up as a result of the conference is the question of time.

Under the law, you are required 36 months. As a matter of practice, it is 12 months for an ordinary seaman to qualify as an able-bodied seaman. That is what the original legislation that we passed in the House provided, but in the spirit of compromise, in order to get the legislation, we agreed to 6 months after a 5 to 4 vote.

Even though we opposed the 6-month provision in conference, we were outvoted; but this body can be assured by the Coast Guard's representation and by the National Safety Board of Transportation that safety has not been diminished.

Mr. McCLOSKEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana (Mr. LIVINGSTON).

Mr. LIVINGSTON. Mr. Speaker, I rise in support of this conference report.

□ 1530

Mr. Speaker, I would simply point out, as the gentleman from New York was just saying, that the conference met, convened, and decided that this total package was in the best interests of the maritime industry. I personally believe that to be true. In addition, it should be noted that the 6 months of training in this sector of the maritime industry is really equal to 12 months under ordinary circumstances.

Most individuals who work on small vessels, particularly in the oil patch, have to work 12 hours on and 12 hours off, or 7 days on and 7 days off, and, in effect, they take twice the time to get their maritime experience that the ordinary seaman might take, since the latter earns his certification in straight continuous periods of time. In essence, if it takes 12 months for the average seaman to get his certification, it takes 24 months for the small vessel seaman to get his certification under current law. This change simply equalizes the situation, so that a small vessel will become certified in the same length of time as the ordinary seaman.

I urge the adoption of this conference report.

Mr. McCLOSKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to speak in response to the points that were made by the gentlemen from Michigan, Minnesota, and Washington. In this piece of legislation, which is a very comprehensive piece of legislation, to try to upgrade safety requirements that were adopted over a century ago, when our committees heard testimony on this point of how much training was required for an able seaman, we were looking at a situation of laws that were adopted back in the early days of the steamboat when the individual who may have had to manage a steam boiler was dealing with a new technology, a technology which had resulted in several tragedies, particularly on the Mississippi River, where steamboats blew up. In the face of that kind of situation, the Congress enacted very rigorous laws for the training of able seamen; but today's able seamen, particularly on ships of under 500 gross tons that serve the oil rig platforms on which there is conceivably a manning shortage that was testified to before our committee, the job of the merchant seaman is a fairly simple one. He operates under the strict supervision of a mate or an officer. He is essentially a mechanic or an oiler.

I might say in my own experience I spent 19 months in the Navy trying to become a competent seaman. I can con-

ceive of none of the jobs described in our testimony which would require more than 6 months to train to be competent. You must be competent in firefighting, machinery management, the tending of the machinery on these ships of less than 500 gross tons; but I would ask any Member who went through the Navy as an able seaman or a seaman first-class or a seaman second-class if he can conceive of requiring more than 6 months for training an able seaman for the most complicated of ships in our own Navy today. I think 6 months is adequate.

Let me quote from the testimony of Admiral Bell, which was the persuasive testimony to our committee. It appears at page 208 of the hearing record.

Admiral BELL. I do not believe that adoption of this legislation will in any way lower this level of safety involved. In fact, as I think I explained before, I think it will allow to bring more vessels under certification, because it will solve a manning problem. I believe it will enhance the safety.

To those gentlemen from the Great Lakes he went on to say:

It further allows us to address a licensing scheme that provides qualifications for the class of vessels we are talking about and not the ocean vessels and the Great Lakes vessels on the Mississippi.

It seems to me, Mr. Speaker, that this is a persuasive case to adopt this conference report.

The single point we agree on, 6 months rather than 12 months, the testimony in front of both committees of jurisdiction was persuasive, both the Senate and the House committee agreed on 6 months. I think we should agree to the conference report.

Mr. BIAGGI. Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. Mr. Speaker, I represent the Third Congressional District of the State of Louisiana, formerly represented by Congressman Dave Treen of Louisiana. The gentleman from Louisiana, Mr. Treen, my predecessor, was a cosponsor of this legislation. I am rising today to ask the House to adopt the conference committee report.

I would like to associate myself in that regard with the comments of the gentleman from Louisiana (Mr. LIVINGSTON), the gentleman from Louisiana (Mr. BREAUX), and the gentlewoman from Louisiana (Mrs. BOGGS).

This legislation is vital to the Third District. The district represents about 70 percent of the merchant marine industry in Louisiana. This legislation will bring into perspective, into modern perspective, some understandings of the Coast Guard in trying to adopt some very outmoded laws in the operation of the oil and gas offshore industry in Louisiana.

The gentleman from Louisiana (Mr. LIVINGSTON) is absolutely correct. By going to 6 months for able-bodied seamen sea time training, we are adopting in effect a 12-month practical application, because it takes 12 months under the 7-day on, 7-day off workday schedule of a seaman in Louisiana to have 6 months of sea time training. So this amendment adopted by the conference committee report, in effect, codifies what is the practice and the understanding of the Coast Guard at this time.

I am also impressed by the statement of the chairman that the Coast Guard has testified that safety will not be jeopardized by the requirement of this new provision.

I would like to compliment the chairman and all the Members who worked on this legislation.

Mr. BIAGGI. Mr. Speaker, I have no further requests for time. I yield back the balance of my time.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OBERSTAR. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 279, nays 111, not voting 42, as follows:

[Roll No. 578]

YEAS—279

Abdnor
Ambro
Andrews, N.C.
Andrews, N.Dak.
Anthony
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Barnard
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bereuter
Biaggi
Bingham
Boggs
Boland
Boner
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Broyhill
Burgener
Campbell
Carney
Carr
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, S.C.
de la Garza
Dellums
Derrick
Devine
Dickinson
Dingell
Dornan
Downey
Duncan, Oreg.
Duncan, Tenn.
Early
Edwards, Ala.
Edwards, Okla.
Emery
English
Erlenborn
Ertel
Evans, Del.
Fascell
Fenwick
Findley
Fish
Fisher
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Gialmo
Gibbons
Gingrich
Ginn
Goldwater
Gonzales
Goodling
Gore
Gradison
Gramm
Grassley
Green
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harsha
Heckler
Hefner
Hightower
Hillis
Hinson
Holland
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kogovsek
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lujan
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McKay
McKinney
Madigan
Marlenee
Marriott
Martin
Mattox
Mavroules
Mazzoli
Mica
Michel
Miller, Ohio
Minish
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Pa.
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Ottinger
Panetta
Pashayan
Patten
Paul
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Quayle
Quillen
Railsback
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rosenthal
Roth
Rousselot
Royer
Rudd
Sawyer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stanton
Steed
Stenholm
Stockman
Studds
Stump
Synar
Tauke
Tauzin
Thomas
Thompson
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Walgren
Walker
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolff
Wright
Wyatt
Wydler
Yatron
Young, Fla.
Zablocki

NAYS—111

Addabbo
Akaka
Albosta
Anderson, Calif.
Annunzio
Applegate
Baldus
Barnes
Bauman
Bellenson
Benjamin
Bevill
Blanchard
Bonior
Bonker
Bouquard
Brodhead
Buchanan
Burlison
Burton, John
Burton, Phillip
Byron
Clay
Coelho
Conyers
Corman
D'Amours
Daschle
Dicks
Dixon
Dodd
Donnelly
Dougherty
Drinan
Eckhardt
Edgar
Erdahl
Evans, Ind.
Fary
Fazio
Ferraro
Fithian
Flippo
Florio
Frost
Garcia
Gaydos
Gephardt
Gilman
Gray
Hall, Ohio
Harris
Hawkins
Hollenbeck
Holt
Howard
Johnson, Calif.
Kastenmeier
Kemp
Kildee
Kindness
Kostmayer
Lederer
Leland
Lowry
Luken
Lundine
McHugh
Maguire
Markey
Marks
Matsui
Mikulski
Miller, Calif.
Mitchell, Md.
Mollohan
Murtha
Nedzi
Nolan
Oberstar
Obey
Patterson
Pease
Pursell
Rahall
Rangel
Richmond
Rodino
Rostenkowski
Roybal
Russo
Sabo
Scheuer
Shannon
Solarz
Stangeland
Stark
Stewart
Stokes
Swift
Traxler
Volkmer
Waxman
Weaver
Weiss
Williams, Mont.
Wilson, Tex.
Wolpe
Yates
Young, Mo.
Zeferetti

NOT VOTING—42

Alexander
Anderson, Ill.
Bethune
Bolling
Bowen
Brown, Ohio
Butler
Carter
Cavanaugh
Chisholm
Davis, Mich.
Deckard
Derwinski
Edwards, Calif.
Evans, Ga.
Glickman
Grisham
Heftel
Holtzman
Ichord
Jenkins
Jenrette
Leach, La.
Mathis
Mineta
Moore
Murphy, Ill.
Murphy, N.Y.
Musto
Myers, Pa.
O'Brien
Santini
Satterfield
Simon
Stratton
Symms
Taylor
Vento
Wampler
Wilson, C. H.
Wylie
Young, Alaska

□ 1550

The Clerk announced the following pairs:

On this vote:

Mr. Jenrette for, with Mr. Murphy of New York against.

Mr. Evans of Georgia for, with Mr. Murphy of Illinois against.

Until further notice:

Mr. Santini with Mr. Bethune.

Mr. Musto with Mr. Moore.

Mr. Edwards of California with Mr. Young of Alaska.

Mr. Mineta with Mr. Symms.

Mr. Vento with Mr. O'Brien.

Mr. Simon with Mr. Brown of Ohio.

Mr. Satterfield with Mr. Carter.

Mr. Jenkins with Mr. Wylie.

Mr. Bowen with Mr. Wampler.

Mrs. Chisholm with Mr. Taylor.

Mr. Mathis with Mr. Butler.

Mr. Myers of Pennsylvania with Mr. Davis of Michigan.

Mr. Charles H. Wilson of California with Mr. Derwinski.

Mr. Leach of Louisiana with Mr. Grisham.

Mr. Cavanaugh with Mr. Ichord.

Mr. Alexander with Ms. Holtzman.

Mr. Glickman with Mr. Deckard.

Mr. Heftel with Mr. Stratton.

Messrs. CLAY, HAWKINS, STOKES, DONNELLY, ROSTENKOWSKI, BEVILL, MARKS, and FLORIO, Mrs. BOUQUARD, Messrs. DIXON, MATSUI, EDGAR, BUCHANAN, AKAKA, WEAVER, BURLISON, SCHEUER, DICKS, GARCIA, MARKEY, FITHIAN, RODINO, and HARRIS changed their votes from "yea" to "nay."

Mr. KAZEN and Mr. McDONALD changed their votes from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO FILE REPORT ON S. 1798, HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

Mr. JOHNSON of California. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation have until midnight tonight to file a report on the Senate bill, S. 1798, the Household Goods Transportation Act of 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ROBERT N. GIAIMO FEDERAL BUILDING

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 7544) to designate the U.S. Federal Building in New Haven, Conn., as the "Robert N. Giaimo Federal Building."

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. McKINNEY. Mr. Speaker, reserving the right to object, it is obvious that I will not object to this bill, but I could not let this come before this House without saying how just I think this is. The gentleman from Connecticut (Mr. GIAIMO) is a member of the opposite party, but he is also my neighboring Congressman and a good friend. Both of us have received repeatedly great complaints from both of our parties about our lauding each other for our performance. My being lauded by Mr. GIAIMO was not worthy; my telling everyone how great a Congressman he has been is.

Further reserving the right to object, Mr. Speaker, I would say that Mr. GIAIMO has taken now for 4 years one of the most unpopular, unattractive jobs in the Congress of the United States, a job where there are no friends, there are no points to be won, and where he has survived, stood firm, spoken up for what he believes in, and done a job that I am sure a lot of my colleagues who are known easily as the budget-cutters of the world would not want to do. He is to me the exemplification of a man who has risen to a challenge and answered that challenge.

Mr. Speaker, I withdraw my reservation of objection.

□ 1600

Mr. BAUMAN. Mr. Speaker, reserving the right to object, would the gentleman from Georgia agree to an amendment that would add the second budget resolution to this bill, as amended?

Mr. LEVITAS. Knowing the activities of the other body, on such a harmless but important piece of legislation as this, it could be that the tax cut the gentleman has been looking for might come back when we see this bill again. I doubt that the budget bill will make it even though I would like to see it.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman.

I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The Clerk read the bill, as follows:

H.R. 7544

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the building at 150 Court Street, New Haven, Connecticut (commonly known as the Federal Building), shall hereafter be known, called, and designated as the "Robert N. Giaimo Federal Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Robert N. Giaimo Federal Building.

AMENDMENT OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: At the end of the bill add the following new section:

SEC. 2. This Act shall take effect January 15, 1981.

Mr. LEVITAS. Mr. Speaker, I rise in support of H.R. 7544, a bill which recognizes the unparalleled service given by Congressman ROBERT N. GIAIMO to his State and country, and his undiminished vigor working in the people's behalf, by paying tribute to him by naming the Federal building located at 150 Court Street in New Haven, Conn., as the "Robert N. Giaimo Federal Building."

ROBERT N. GIAIMO, U.S. Representative from the 3rd District of Connecticut, is a Democrat from the town of North Haven. He was born in New Haven on October 15, 1919, the son of the late Rose and Rosario Giaimo, a founder and first president of the Community Bank and Trust Company of New Haven. Congressman GIAIMO attended North Haven public schools, Hillhouse High School in New Haven, Fordham College, and the University of Connecticut School of Law, from which he received his LLB in 1943. He was admitted to the Connecticut bar in 1947 and practiced in the New Haven area. During World War II, he served as a commissioned officer in the U.S. Army.

First elected to the 86th Congress in 1958, Congressman GIAIMO has been reelected to each succeeding Congress. He is chairman of the House Committee on the Budget. A ranking member of the House Committee on Appropriations, he serves on its Subcommittees on the Department of Defense, the Legislative Branch (Congress), and the Treasury, Postal Service and General Government.

Congressman GIAIMO has announced he plans to retire at the end of the 96th Congress. During his almost 22 years in the U.S. House of Representatives, he has served with integrity of purpose and deep devotion to the cause of improving the lives of all citizens of our Nation and our world. His abilities as a brilliant legislator have gained the recognition of all of his colleagues.

I am honored to have had the privilege of serving with him for 6 years and urge enactment of H.R. 7544.

Mr. JOHNSON of California. Mr. Speaker, I rise in support of H.R. 7544, a bill to designate the Federal building in New Haven, Conn., as the "Robert N. Giaimo Federal Building."

Congressman GIAIMO was first elected to the U.S. House of Representatives in 1958 and is now serving his 11th consecutive term. Members on both sides of the political aisle were saddened to learn that the chairman of the House Budget Committee and a ranking member of the House Committee on Appropriations plans to retire from Congress at the end of his present term.

BOB GIAIMO served in this body with integrity of purpose and deep devotion to the cause of improving the lives of his constituents and all citizens of our Nation and the world. His effectiveness in carrying out the heavy responsibilities of his job gained him the admiration of all of his colleagues.

I urge my colleagues to support this fitting recognition of a distinguished public servant, BOB GIAIMO. In the years which I had the privilege of serving with Congressman GIAIMO, he made no promises he could not keep. His many accomplishments during his years of service will live on. This legislation will provide a proper tribute to his distinguished service.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Georgia (Mr. LEVITAS).

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

ANDREW W. BREIDENBACH ENVIRONMENTAL RESEARCH CENTER

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 7770) to name the Environmental Research Center in Cincinnati, Ohio, the "Andrew W. Breidenbach Environmental Research Center."

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. GRADISON. Mr. Speaker, reserving the right to object, I am delighted to take this opportunity to express my enthusiastic support for H.R. 7770, which will designate the U.S. EPA research facility in Cincinnati, Ohio, as the "Andrew W. Breidenbach Environmental Research Center" in honor of the late Andy Breidenbach.

Andy Breidenbach was a highly respected and internationally recognized environmental scientist who devoted most of his career to public service. A University of Cincinnati alumnus and adjunct professor, Dr. Breidenbach held several positions, including head of the Robert A. Taft Sanitary Engineering Center in Cincinnati. He also worked with HEW's Public Health Service in the local Division of Water Supply and Pollution Control. When the Environmental Protection Agency was established in 1970, Dr. Breidenbach was appointed Director of the National Environmental Research Center in Cincinnati. He then served the EPA as the Assistant Administrator for Water and Hazardous Material and was a founder of the Linking Pins Committee, composed of UC and EPA scientists and administrators which was formed to promote University-EPA cooperation. In addition, Andy was a leading consultant to the World Health Organization.

The Environmental Research Center, Cincinnati—located at 26 West St. Clair Street—houses research laboratories, training facilities, and administrative offices of the U.S. Environmental Protection Agency. The 10-story structure, occupied by a work force of over 800 employees, was dedicated by President Ford in July of 1975. It is one of the two major research facilities under EPA's Office of Research and Development. The $28 million building is located on 22 acres of land, donated to the Federal Government by the city of Cincinnati, and is adjacent to the University of Cincinnati campus and the major hospital-medical complexes of the city.

Andy Breidenbach was a superior administrator, educator, and scientist. On July 21, shortly after Andy's untimely death, I introduced H.R. 7770, which would name the Cincinnati Center in his memory. I am happy to say that several of our colleagues from both sides of the aisle are cosponsors of this bill. I would also like to express my gratitude to Representatives LEVITAS and HARSHA for their support of H.R. 7770 in the Public Buildings and Grounds Subcommittee. Since Andy was instrumental in establishing the research center, it is only fitting that this facility be named as a tribute to him, and I urge that the House give favorable consideration to this proposal.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. GRADISON. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Speaker, I rise in support of H.R. 7770, a bill to designate that the Environmental Research Center in Cincinnati, Ohio, which house research laboratories, training facilities, and administrative offices of the U.S. Environmental Protection Agency, be designated as the "Andrew W. Breidenbach Environmental Research Center."

Andrew Breidenbach was a highly respected and internationally recognized environmental scientist who devoted most of his career to public service. He held several positions working in the environmental area, most notably, his appointment as Director of the National Environmental Research Center in Cincinnati in 1970.

I urge enactment of H.R. 7770.

Mr. JOHNSON of California. Mr. Speaker, will the gentleman yield?

Mr. GRADISON. I yield to the gentleman from California.

Mr. JOHNSON of California. Mr. Speaker, I rise in support of H.R. 7770, a bill to honor a distinguished environmental scientist, a pioneer in the field of environmental issues, Andrew W. Breidenbach, by naming the Environmental Research Center in Cincinnati, Ohio, the "Andrew W. Breidenbach Environmental Research Center."

● Mr. HARSHA. Mr. Speaker, I rise in support of H.R. 7770, a bill to name the Environmental Research Center in Cincinnati, Ohio, the "Andrew W. Breidenbach Environmental Research Center."

Andrew W. Breidenbach was one of the Nation's truly great environmental pioneers and scientists. He received numerous honors and awards. Among those was a full graduate fellowship for doctoral research at the University of Florida; certificate for superior service by the Health Education and Welfare Secretary; nominated by the President of the United States and confirmed by the U.S. Senate as Assistant Administrator for Water and Hazardous Materials, U.S. Environmental Protection Agency. He served as leading consultant to the World Health Organization, was nominated by the U.S. Environmental Protection Agency for the National Civil Service League Award, the Roger W. Jones Award for Executive Leadership, was a member of the editorial board of the International Journal of the Environment, and was awarded a Distinguished Service Medal by the U.S. Environmental Protection Agency.

Andy Breidenbach was a highly respected and internationally recognized environmental scientist who devoted most of his career to public service. He held several positions, including head of the Robert A. Taft Sanitary Engineering Center in Cincinnati. He worked with HEW's Public Health Service in the local Division of Water Supply and Pollution Control. When the Environmental Protection Agency was established in 1970, he was appointed Director of the National Environmental Research Center in Cincinnati. He served the EPA as the Assistant Administrator for Water Hazardous Material and was a founder of the Linking Pins Committee, composed of University of Cincinnati and EPA scientists and administrators, which was formed to promote university and EPA cooperation.

Dr. Breidenbach died on May 21, 1980, at his home in Bethesda, Md. His wife Jean and children Barbara, Charles, David, and Scott, as well as all those who knew him will remember that he was a superior administrator, educator, and scientist. It is truly fitting that the Environmental Research Center in Cincinnati which house research laboratories, training facilities, and administrative offices of the U.S. Environmental Protection Agency, be designated as the "Andrew W. Breidenbach Environmental Research Center" in memory of this outstanding citizen.●

Mr. GRADISON. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The Clerk read the bill, as follows:

H.R. 7770

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Environmental Research Center, located at 26 West Saint Clair Street, Cincinnati, Ohio, shall hereafter be known and designated as the "Andrew W. Breidenbach Environmental Research Center". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be held to be a reference to the Andrew W. Breidenbach Environmental Research Center.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 2080, PUBLIC BUILDINGS ACT OF 1980

Mr. JOHNSON of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2080) to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes, with the House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California? The Chair hears none and, without objection, appoints the following conferees: Messrs. JOHNSON of California, LEVITAS, MCCORMACK, FLIPPO, DONNELLY, HARSHA, and STANGELAND.

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF S. 885, PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. 96–1368) on the resolution (H. Res. 791), providing for the consideration of S. 885 to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River power system to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes, which was referred to the House Calendar and ordered to be printed.

HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7020), to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. FLORIO).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7020, with Mr. NATCHER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole arose on Friday, September 19, 1980, all time for general debate had expired.

Pursuant to the rule, the substitute committee amendment recommended by the Committee on Interstate and Foreign Commerce now printed in the reported bill shall be considered as an original bill for the purpose of amendment and each section shall be considered as having been read. No amendments to the amendment recommended by the Committee on Ways and Means printed in the bill shall be in order except pro forma amendments for the purpose of debate and following amendments which shall not be amendable except by pro forma amendments: First, the amendments recommended by the Committee on Ways and Means; second, the amendment printed on page 23068 in the CONGRESSIONAL RECORD of August 25, 1980, by Representative ULLMAN of Oregon; and third, the amendment to be printed in the CONGRESSIONAL RECORD of September 5, 1980, by and if offered by, Representative FLORIO of New Jersey. Upon the adoption of the amendment recommended by the Committee on Ways and Means to the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce, and no further amendment to the bill shall be in order.

SUPERFUN GREAT DEBATE ON ALEXANDRIA FOUR MILE BASEBALL DIAMOND

(By unanimous consent, Mr. PURSELL was allowed to proceed out of order.)

Mr. PURSELL. We would like to make brief remarks on behalf of the Republican and Democratic sides regarding the superfun annual congressional baseball teams who play tomorrow night at 8 o'clock in Alexandria.

Mr. Chairman, our great debates will be continued tomorrow night on the Alexandria Four Mile baseball diamond, the triple A team, the Republicans and Democrats will be playing tomorrow night under the lights at 8 o'clock. It is really shades of November 4 because we think we have a superfun ball club. We are going to clean up some toxic waste tomorrow night and maybe some mental errors on the part of the Democratic Party and those who want to get into the lineup on the Democratic side have to face wild BILLY COHEN up in Maine and RON PAUL's big Texas bat. We have a freshman from Colgate, GARY LEE, who is Steinbrenner's Yankee new draft choice for the Yankees next year.

We have elevated BILL FRENZEL and BOB MICHEL to coaching duties this year to make room for some younger attractive great ballplayers.

The message for early November 4 is that we are ready for the Democrats and your coach, BILL CHAPPELL, tomorrow night at 8 o'clock.

May the best team win.

Mr. CHAPPELL. Will the gentleman yield?

Mr. PURSELL. I will be glad to yield.

Mr. CHAPPELL. Mr. Chairman, it is with a gerat deal of modesty that I rise to say just a few words about the rugged Democratic baseball team that is going to meet the mighty Republican tomorrow night out at Four Mile Run field. I just want them to know that they got a good licking coming up for them because we have such people on our roster—while we do not want to name any one outstanding as against another, we have such people as walloping WALTER FAUNTROY and magnificent MARTY SABO and soft hands DAVE BONIOR and troublesome TOM DOWNEY and terrible TOBY MOFFETT and hustling EARL HUTTO and stomping CHARLIE STENHOLM and romp and run RON RIEGLE and mighty mantel MIKE SYNAR, fearless VIC FAZIO, bouncing BOB DUNCAN, and rowdy RON MOTTL, the pitcher and infielder and outfielder and bopping BILL, one of the aging catchers. And then we have a secret weapon for the folks tomorrow night. We have the following people as designated runners which ought to make it a little more interesting.

□ 1610

They are designated because of their speed. So, we have jungle JIM LLOYD, speedman MENDEL DAVIS, jumping JIM WRIGHT, and marvelous MARTY RUSSO, who will be designated runners.

We are going to show you a great ball game for a great purpose. The funds will go to Children's Hospital. We hope all of you will attend, together with your staffs. We are going to have a good time and a good ball game.

The CHAIRMAN. Are there any amendments to section 1?

PARLIAMENTARY INQUIRY

Mr. STOCKMAN. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. STOCKMAN. Mr. Chairman, under the terms of the rule, would a substitute amendment to the entire bill, H.R. 7020, be in order only now, at this point for this bill?

The CHAIRMAN. The Chair would like to advise the gentleman that the gentleman's statement is correct, assuming adoption of the Ways and Means Committee amendment at the conclusion of the reading of the bill for amendment. Under the rule, no further amendments would then be in order.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STOCKMAN

Mr. STOCKMAN. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. STOCKMAN: Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980."

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective cleanup of dangerous hazardous waste sites is necessary to protect public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"PURPOSES

"SEC. 3022. (a) IN GENERAL.—The purposes of this part are to provide, through the use of Federal financial and technical assistance, for the establishment and implementation of

effective State programs to assure the cleanup and containment of inactive hazardous waste sites by—

"(1) carrying out investigation and evaluation of the inactive hazardous waste disposal sites in the State;

"(2) establishing cleanup priorities among the sites, based on the danger they present to public health and safety; and

"(3) undertaking, based upon such priorities, the necessary remedial action for the protection of public health and safety from the hazardous waste associated with such sites.

"(b) RECOVERY OF CLEANUP COSTS.—It is also a purpose of this part to assist the States in recovering, from persons liable under otherwise applicable law, the costs of State cleanup and containment activities with respect to inactive hazardous waste sites.

"DEFINITION

"SEC. 3023. For purposes of this part, the term 'inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(1) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(2) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under section 3005 (including subsection (e) thereof) is required.

"FORMULA GRANTS

"SEC. 3024. (a) STATE PLAN.—Each State may, not later than 180 days after the date of the enactment of the Hazardous Waste Containment Act of 1980, submit to the Administrator a plan—

"(1) providing for the discovery and investigation by the State of inactive hazardous waste sites;

"(2) providing for the evaluation by the State of the threat to public health and safety posed by such sites and establishing cleanup and containment priorities among those sites which present, or may present, a substantial threat to public health and safety;

"(3) containing proposed methods and criteria for determining the appropriate emergency response to, containment of, and other remedial measures to be carried out for, releases or threatened releases of hazardous waste from inactive hazardous waste sites where such releases or threatened releases pose a substantial danger to public health and safety;

"(4) setting forth appropriate roles and responsibilities for Federal, States, and local governments and for interstate and nongovernmental entities, in carrying out the plan; and

"(5) establishing an active and effective program for recovering, from persons liable under otherwise applicable law, the costs incurred by the State in the cleanup and containment of inactive hazardous waste sites.

The provisions included in the plan under paragraph (3) shall provide that the State shall have the primary responsibility for carrying out the plan. The provisions included in the plan under paragraph (5) shall insure that the State will have sufficient investigative powers, financial resources, and legal expertise to recover the maximum feasible amount of cleanup and containment expenses incurred by the State.

"(b) EPA APPROVAL.—The Administrator shall approve a State plan described in subsection (a) and submitted under this section unless he determines that the plan—

"(1) does not comply with the requirements of subsection (a) or is otherwise generally inconsistent with the purposes of this part; or

"(2) would not result in a cost-effective use of Federal funds to be made available to the State under this section.

Any State may submit to the Administrator a modification of any State plan described in subsection (a), and any such modification shall be approved by the Administrator unless he makes the determination referred to in paragraph (1) or (2) of this subsection. Each State having a plan approved under this section shall be eligible for grants under subsection (c) unless the Administrator suspends such eligibility on the basis of his determination that the State is not carrying out the plan in good faith or has not properly used prior grants under subsection (c).

"(c) GRANTS.—Upon the application of any eligible State (as determined under subsection (b)), the Administrator shall make grants to such State to assist the State in carrying out the State plan approved under this section. Such grants shall be made not more frequently than annually and shall be allocated among such States on the basis of a formula based upon population and industrial production. The Administrator shall, by rule, prescribe such formula not later than 60 days after the date of the enactment of the Hazardous Waste Containment Act of 1980. For any fiscal year after the first fiscal year in which a grant is made to a State under this section, grants shall be made by the Administrator to any State which applies for such a grant and certifies that the State plan approved under this section is being implemented.

"SUPPLEMENTARY GRANTS

"SEC. 3025. (a) GUIDELINES.—The Administrator shall promulgate guidelines for making supplemental grants to eligible States (as determined under section 3024) for purposes of assisting such States in undertaking remedial action with respect to inactive hazardous wastes sites. Such guidelines shall provide that the supplemental grants shall be made only for purposes of addressing emergency situations or for purposes of assisting States which have a disproportionate number of inactive hazardous waste sites which pose substantial threats to public health or safety. The guidelines shall provide for the allocation of supplemental grants under this section among the eligible States on the basis of the Administrator's determination as to the relative amounts required to be expended by the State for cleanup and containment of inactive hazardous waste sites, the significance of the threats to public health and safety posed by such sites, and the ability of the State to undertake remedial action without such supplemental Federal assistance.

"(b) GRANTS.—Upon the application of any eligible State (as determined under section 3024), the Administrator may make a grant to such State under this section in accordance with the guidelines prescribed under subsection (a). Any grant made to a State under this section in a fiscal year after the first fiscal year in which any grant was made to such State under this section or section 3024 shall be based upon such guidelines and on the Administrator's determination that the State has acted properly in its expenditure of funds made available to the State under this section and section 3024 in prior fiscal years.

"TECHNICAL ASSISTANCE

"SEC. 3026. The Administrator shall undertake a program of (1) research with respect to hazardous waste management and (2) providing training and technical assistance to State officers and employees engaged in hazardous waste management activities. Such program shall include research, training, and technical assistance with respect to—

"(A) the evaluation of hazardous waste associated with inactive hazardous waste sites; and

"(B) emergency response actions which may be taken with respect to releases or potential releases of hazardous waste.

For purposes of the program under this section, the Administrator shall develop equipment, manuals, and other materials which will have a wide application to State programs for cleanup and containment of inactive hazardous waste sites.

"ASSISTANCE TO STATES ATTORNEYS GENERAL

"SEC. 3027. The Administrator may make grants to State attorneys general for purposes of providing not more than 50 percent of the costs of training and technical assistance for State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States.".

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 3028. (a) GRANTS.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of making grants to the States under section 3024 and section 3025:

"(1) $75,000,000 for the fiscal year 1981;
"(2) $150,000,000 for the fiscal year 1982;
"(3) $150,000,000 for the fiscal year 1983;
"(4) $75,000,000 for the fiscal year 1984; and
"(5) $50,000,000 for the fiscal year 1985.

Not less than 80 percent of the amounts appropriated under this section for any fiscal year may be used only for grants under section 3024.

"(b) RESEARCH AND TECHNICAL ASSISTANCE.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of research and technical assistance under section 3026:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $15,000,000 for the fiscal year 1982;
"(3) $15,000,000 for the fiscal year 1983;
"(4) $5,000,000 for the fiscal year 1984; and
"(5) $5,000,000 for the fiscal year 1985.

"(c) ASSISTANCE TO STATE ATTORNEYS GENERAL.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of recovery assistance under section 3027:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $10,000,000 for the fiscal year 1982;
"(3) $10,000,000 for the fiscal year 1983;
"(4) $10,000,000 for the fiscal year 1984; and
"(5) $10,000,000 for the fiscal year 1985.".

(b) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting.

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"Sec. 3021. Coverage of part.
"Sec. 3022. Purposes.
"Sec. 3023. Definition.
"Sec. 3024. Formula grants.
"Sec. 3025. Supplemental grants.
"Sec. 3026. Technical assistance.
"Sec. 3027. Assistance to States attorneys general.
"Sec. 3028. Authorization of appropriations.".

Mr. STOCKMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. STOCKMAN. Mr. Chairman, I offer this comprehensive substitute to H.R. 7020, not because I am under any illusions that there is going to be a ground swell of support for this alternative in the House, but nevertheless I would act to impose on the time of the House just for a few minutes today to offer this substitute because I do not want to see this body stampeded into enactment of a major piece of regulatory legislation under some substantial illusions of its own. Now, as I have followed this debate, as I have read the dear colleagues, as I have watched the newspaper coverage, one would get the impression that we have before us a well-crafted bill that is targeted at and focused on a well-defined problem, and that it has been very carefully thought through and that we have a overwhelming consensus—and even industry—behind it; so why take time to debate? Why take time to examine what we are doing? Let us just move it through and enact it into law.

I would suggest to the House today that if any of my colleagues have that view of what we are doing in this major piece of legislation, I would respectfully submit that they are sadly mistaken, because we do not even have a solid policy-based statute before us at all with clear definitions as to what will be regulated; what the cost of the EPA activities will be; containing cost-benefit standards which will guide the Agency in the thousands of choices that it will have to make regarding sites that it orders to be inventoried; regarding sites it orders to be monitored; regarding sites it orders to be cleaned up at a cost of millions of dollars.

Nowhere in this bill of 74 pages will you find any specific criteria whatsoever to determine what are hazardous threats posed by inactive or abandoned sites, and what would be the defined and limited scope of EPA activities.

Instead of that, you have the same approach that we tried time and time again this past decade, which is to respond to a serious problem that has built up in the newspapers and with sensationalist publicity—not by enacting a carefully crafted statute, but by simply legislating an enabling act that delegates open-ended, unlimited, undefined powers to the administrative agency in the hopes that they can figure out the problem and that they will exercise their power prudently, given the other goals that we have as a society.

Well, I do not think that has been a very successful approach. We spent the first half of the 1970's passing these broad, sweeping enabling acts—the Clean Air Act, the Clean Water Act, the Toxic Substances Act, and so forth. Then, we spent the second half of the 1970's decrying and complaining about regulatory overkill and about the enormous power and lack of discrimination and the excess costs that were being imposed on the economy, and the lack of jobs, and the firms, and the ability of our economy to grow. But, I would suggest that the problem was not bureaucrats; the problem was not the EPA. The problem was right here in this House, because we were unwilling to write carefully crafted, carefully defined legislation in which we make the policy changes here rather than delegate them. That is what we have before us today, another trip down the same route.

We have an open-ended enabling statute that makes EPA the czar, and I say this without exaggeration, without hyperbole—makes EPA literally the czar over every hazardous waste site in the entire country, and that includes every landfill, every waste site, every junk yard, every leaching pit, every industrial lagoon on the back of an industrial property, every municipal dump, even every back yard rubbish pile that has been accumulated anywhere in the country. It empowers EPA, in the case of any of those instances that I have cited—and there are literally hundreds of thousands of sites that would qualify for one of those categories, to order the owner to undertake an inventory at a cost of $100,000 or more; in some cases, to order the owner to monitor the site periodically with very expensive procedures, hiring a contractor, and so forth, at the cost of many hundreds of thousands of dollars more; and to arbitrarily, without meeting any threshold of proof, any demonstration that hazards are present, to order the cleanup of any one of these hundreds of thousands of sites at a cost ranging anywhere from $10,000 to $10 million, depending on the nature of the site.

The point is, there are no standards at all, and the coverage, the scope of this bill, is plenary. It covers every waste site, every junk yard, every municipal dump in the country, including those on private property.

Now, why do I make that charge? The reason I make the charge is, if you read the bill and try to find out what is an inactive hazardous waste site, the whole scope, the whole focus of this bill, you will find it is defined: "An inactive hazardous waste site is a site that contains hazardous material."

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. STOCKMAN was allowed to proceed for 5 additional minutes.)

Mr. STOCKMAN. Mr. Chairman, if the powers and the scope of this bill were not so great, we might dismiss that as an act of drafting redundancy, but the point is that by defining the scope of the act in this bill in that way, what we do is incorporate the definition of hazardous material from the existing Resources Recovery and Conservation Act that defines these materials for the purpose of the current program to regulate currently generated hazardous wastes. Unfortunately, I do not believe that very many of my colleagues have looked at the list of 1,165 different materials, chemical compounds, and trade names, that are on the RCRA list, and therefore qualify as a hazardous substance, and therefore if found in any dump site in the country, bring it under the jurisdiction of the superfund and all the powers I have enumerated.

But, I would like to take a minute of the time of the House this afternoon just to read and put in the RECORD some of the materials that are considered hazardous under RCRA, and which are found in every waste site, every dump site, every municipal landfill, in the country.

First, let us start with some household names that are going to end up in any municipal landfill:

Mole Death; Mouse-Nots; Mouse-Bid; Mouse-Tox; Pied Piper Mouse Seed; Rat and Mice Bait; Rat-A-Way; Rat-B-Gon; Rat-O-Cide; Rat-Guard; Rat-Kill; Rat-Mix; and Rats-No-More.

The list goes on and on. This is household refuse, but under the definition of RCRA it is a hazardous material, and by incorporation into this act, if it is found in any site, then the superfund authorities take effect.

Let us look at some of the other hazardous materials on the RCRA list: creosote. Creosote is part of every railroad tie, every telephone pole in the country, and there are hundreds of thousands of them discarded every year. Most of them are thrown in rubbish piles and junkyards that, under the definition of this act, is hazardous material and it brings superfund into play.

□ 1620

But under the definition of this act it is a hazardous material and it brings the superfund into play.

Let us try another item on the RCRA list: Methanol. That has a chemical name, but it is rubbing alcohol. Every family uses it, and every family throws it away everyday, and, therefore, it is in every municipal dump in the country. That is another "hazardous material" that this superfund is going to take care of.

Then we have naphthalene. That is another chemical name, and what is that? It is mothballs. Every family throws that away everyday, and it is found in every municipal dump in the country.

The one that troubles me is formaldehyde. That is used in every laboratory in the country, and it is in every high school biology lab. It gets thrown away, and that brings another site under the scope of the bill before us.

The one that puzzles me the most is saccharin. That is on the list of hazardous materials under the Resource Conservation and Recovery Act. We eat it, we use it in our daily diet.

In addition to all this, everybody who throws away an empty bottle of Pepsi Cola or Diet Pepsi is contributing to the accumulation of hazardous waste in the local dump, and that creates the possibility for EPA to swing into action under the superfund. The reason I raise this point is that the scope of action is not defined. Everything is covered under this bill. The EPA has plenary power, and there is absolutely no guidance as to where all these costly activities to clean up hazardous waste will be triggered.

Another point I want to make today is that we have not defined the problem. We have heard all the wild statements and discussions, and there is a great numbers game going on as this escalates.

A while back EPA said there were 30,000 to 50,000 sites in the country that contained hazardous materials, that contained a threat to public health.

We checked on that, and it turned out that the report was made by a contractor who simply accumulated estimates from regional offices, so that estimate of 30,000 to 50,000 sites turned out to be of no value whatsoever, as the Eckhardt subcommittee indicated.

In recent days we have received a "Dear Colleague" from the gentleman from New Jersey (Mr. FLORIO) and the gentleman from Oregon (Mr. ULLMAN) which indicated that there are 7,000 sites EPA had identified on which we need to have this fund to take action.

How does a site get on that list of 7,000? Somebody picks up a phone out there and says, "I think there might be a chemical that we have nearby, and I think that somebody ought to look into it."

If we take a breakdown of those 7,000 on the list, we find out that 4,000 were not even considered worthy of investigation by EPA. That cuts this list down to about 3,000 right there. If we look at the 3,000 that were considered worthy of investigation, we find that they only did 1,500 on-site investigations because they were told that in the other cases there was no need to proceed.

In the 1,500 cases where they had done on-site investigations, they only found 397 that had hazardous materials in sufficient quantities that there might be a need for some kind of cleanup and remedial action.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. STOCKMAN) had expired.

(By unanimous consent, Mr. STOCKMAN was allowed to proceed for 1 additional minute.)

Mr. STOCKMAN. Mr. Chairman, if I may proceed, in those 357 cases, EPA has made a determination in only 65 cases that there was a need to proceed under the authorities it had or in conjunction with State law enforcement agencies.

I am not trying to minimize the problem. I am trying to put it in a proper perspective. I am trying to point out to the House that, with this substitute, State attorneys general and State EPA officers are fully capable of moving in cases where we have inactive or abandoned sites and in cases where we have landowners who are financially capable of undertaking the necessary clean-up action.

So my amendment simply creates State programs and gives them half a billion dollars in Federal money and technical assistance to allow the number of site problems that we have to be cleaned up in an effective way without creating a whole additional regulatory monster with unlimited powers to dig up every municipal dump in the country, because that is exactly what the bill does.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. STOCKMAN) has again expired.

(On request of Mr. ROUSSELOT, and by unanimous consent, Mr. STOCKMAN was allowed to proceed for 3 additional minutes.)

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. STOCKMAN. I am happy to yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague's yielding, and I appreciate his warning the House that this legislation appears to be another bureaucratic reach-out for authority, as he has suggested, in some cases unnecessarily.

Let me ask, where did this list come from? How many items are there, 1,100? Where did this list come from?

Mr. STOCKMAN. Mr. Chairman, the EPA keeps an inventory, I would say to the gentleman, of hazardous sites. There are 7,000 locations listed on that inventory.

Some Members of this body waved that list around to indicate that there is a considerable threat in every corner of the country facing us. The point is that well over 90 percent of those pose no threat whatever, after investigations have been carried out to find out the exact nature of the problem.

There are a few hundred sites that we need to address. I think the States can do that with the financial assistance that my amendment will provide.

Mr. ROUSSELOT. Mr. Chairman, let me ask, does the gentleman think that the Federal Government will do as well in this field as it has done with, say, Amtrak?

Mr. STOCKMAN. Well, that is an open question. But I would say to the gentleman that unlike the cases of air emissions, air pollution, and water pollution, where we have pollution crossing State lines and we need a Federal role so that we have equal standards in every State, here we are dealing with abandoned, inactive waste sites that were created because of improper disposal in the past. Those sites are not going to go away. They are not going to cross State lines. They are in some State's back yard or some municipality's back yard, and every State and every municipal area has ample power under the State law or the common law to move in those cases where public health is threatened.

We do not need to create a huge, additional new piece of legislation for investigations or cleanup under the operation of EPA. The authority is there, and this just gives them some help.

Mr. Chairman, let us give the States a little help, even though they do not need it, and encourage them to move a little faster.

Mr. ROUSSELOT. Mr. Chairman, the claim is often made that State governments do not act responsibly and carefully in these kinds of areas. In the case of disposal sites of this nature, do we have adequate State laws?

Mr. STOCKMAN. Mr. Chairman, I would say to the gentleman that in many cases we do. I would give a great example in my own State.

If we read the horror stories that are put out in order to drum up a case for this, they always mention Montague, Mich., and this Hooker Chemical site in which we had huge quantities of potential chemicals that were leaching down to the water supply and threatened the public health.

Two years ago the State of Michigan filed a suit in court. They sued and achieved a $15 million out-of-court consent decree for Hooker to move in and clean that up, using the most advanced measures available to insure that there would be no threat to nearby residents or to the environment. That was done without this superfund and without any Federal involvement.

The State Attorney General said that people were threatened and that we would move in. There was a financial settlement made, and it was taken care of. I would give that example to the gentleman as an example of a situation that was taken care of where horror stories were put out.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. STOCKMAN) has again expired.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute.

Mr. Chairman, let me just, before making my remarks in opposition to the amendment, point out that the gentleman from Michigan (Mr. STOCKMAN) just gave a good example where a problem occurred in his State and it took 2 years for the appropriate local agency to respond. That is part of what this legislation is all about.

Make no mistake about it, this is the most important move we will have today, and it will determine whether we will have a piece of legislation to deal with the problem of abandoned, hazardous waste sites or whether we will not. This substitute is really a preservation of the status quo. It provides a little more money for the preservation of the status quo, and the status quo is totally inadequate. The authority does not exist on the part of anyone to deal with this problem.

We can go into details, and perhaps we will give examples of where we have instances of materials that were acknowledged to be toxic being emitted into underground water supplies, into drinking water supplies of a municipality and there was not anyone who could do anything without going to court and taking 2 years worth of litigation to accomplish anything.

In my own State, in Elizabeth, N.J., this type of litigation was finally determined, and there was an order given, but the person was not around any more and there was no money. We had a situation where we had a possible and potential catastrophe.

But the legislation we are talking about today is legislation which is designed for having authority in the fund. It does not create a new bureaucracy. As a matter of fact, it is calculatedly designed to minimize bureaucracy, providing the opportunity and the requirement for local response and State response and Federal moneys to go to the States in a way that the gentleman is talking about.

Let me not go into all the details in trying to respond point by point to all the points the gentleman made. Suffice it to say that his criticism of the definitions leaves something to be desired, because he then encompasses in his amendment the definitions we have in

our bill. So he has not improved in the definitions. He has adopted them word for word, and I would suggest to him that he has done that because these are adequate definitions and because I know he would not be citing something that he thinks would be deficient.

Let me try to address briefly the problems associated with the gentleman's substitute. In essence, what he does is to establish a State assistance program for the cleanup of inactive sites. States would be required to develop inactive site response plans in their discretion, which means, of course, that they would have to start from scratch. They do not even have the ability right now in many States to do this, and in fact most States have not inventoried the inactive hazardous sites. We have that covered in this bill. But as of now, a State under this proposal would be required to go out and inventory and set up an agency for the formulation of the response plan, set up the plan, and then go forward hopefully with some money left over after they did all that to start to clean up some of these sites.

□ 1630

EPA, under this proposal, would provide formula grants to States with approved plans, after we went through all of the time necessary to get those plans formed. The formula that is provided in the gentleman's proposal is based on population and industrial output, which automatically does not have a direct correlation between needs.

I can make reference to one particular site that I have been to in the State of Kentucky, or the Commonwealth of Kentucky, which is not a large State populationwise, which is not primarily an industrialized State, and yet if you have been to the Valley of the Drums, you know of the need for the money to clean up that particular site. And, therefore, that site might not very well have the moneys necessary under this particular type of a plan.

Over and above that, the moneys that would be authorized would require a 20-percent match from the States, and it has not actually been established that the States would have the money to qualify for the moneys to start to formulate these plans.

I think it is also important to note that there is no liability provision in this bill. That is to say that after the State is given this money, formulates its plans, goes out and identifies an area where there is a need for a clean-up, and assuming we found the person who is the wrongdoer, there is no ability to go after that wrongdoer to get back the money necessary to replenish the fund. Accordingly, when the fund is expended, there is no opportunity to go after someone who is even an admitted wrongdoer under this proposal.

The arguments against the substitute are fairly obvious: Time and delay. Time is of the essence in many of these instances. The need is right now. I can point to some 397 sites.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. FLORIO) has expired.

(By unanimous consent, Mr. FLORIO was allowed to proceed for 5 additional minutes.)

Mr. FLORIO. Mr. Chairman, EPA is already involved and has identified some 397 specific sites that they are at work on. So we do not have the time to develop these programs.

Many States, quite frankly, are not interested or are not capable of going forward. And they do not want to. They want to defer to the Federal Government.

Now, we have in the bill, as I said before, the requirement that if there is local response capability and desire, the Federal Government is required to provide for contracts and grants to those States that have got the interest.

Let me bring to conclusion my remarks on this proposal that has been offered by the gentleman from Michigan. The strong liability provisions that are in our bill that are not in his proposal I believe are very important, because we want to induce those who know where these sites are to remedy the sites themselves. If there is no liability provision, they will not have any incentive whatsoever to go forward on a voluntary basis and clean up those sites.

I would also like to just point out that I have a letter from the National Association of Attorneys General which makes all of the points that I have just made in supporting our approach. That letter is as follows:

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, D.C., September 19, 1980.

MEMORANDUM

To: All Members of the 96th Congress.
Re: Superfund Legislation.

Enclosed please find the Final Report of the National Association of Attorneys General to the United States Congress on the Superfund legislation.

This Report is the result of substantial study by our Toxic Waste Committee and later by state Attorneys General representing diverse political, geographical, and ideological backgrounds. The analysis includes an examination of the major superfund proposals based upon state experience in the area.

Although the Association continues to be concerned primarily about issues affecting enforcement and liability, we address a number of other provisions in the Act that we believe will either have a direct effect on the way in which the states operate in this area or in which previous state experience may be valuable to the current Congressional consideration. We hope that you will give these views serious consideration prior to the final votes on S. 1480 and H.R. 7020.

Thank you for your time and attention.

Respectfully and sincerely,

C. RAYMOND MARVIN.

FINAL REPORT OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL TO THE UNITED STATES CONGRESS ON THE SUPERFUND LEGISLATION

I. INTRODUCTION

The problems of toxic waste disposal are exploding, in some cases literally, all around us. The U.S. Environmental Protection Agency estimates that only 10 percent of some 11 billion pounds of toxic waste generated yearly in this country is disposed of in an "environmentally sound manner." The statistics are sobering: a pound of poisonous waste generated every day for every person in the United States. Clean-up of abandoned toxic waste sites is expensive. For example, the Environmental Study Conference reports that New York State will be faced with a $23 million price tag for clean-up at Love Canal. In * * * that cleaning up abandoned hazardous waste sites and others operating under environmentally unsound conditions could cost as much as $44 billion. The impact on human health and safety and the damage inflicted on property and the environment is virtually incalculable.

Congress is now considering legislation that would establish a national superfund. Consistent with other federal environmental protection statutes, the superfund bills would place significant reliance upon the states to enforce environmental quality standards. In most states the Attorney General, as the chief legal officer, furnishes all legal services for the environmental enforcement agencies. Even where state agencies employ their own counsel, the Attorney General usually represents the agency in court and issues formal advisory opinions. In light of this unique role, the state Attorneys General have studied the superfund legislation over the past 13 months. While the views of individual Attorneys General on specific aspects of the legislation may vary, it is the consensus of the National Association of Attorneys General that the superfund legislation should be enacted in this session of Congress and should:

Provide direct funding to state Attorneys General for enforcement of toxic waste laws;

Confer specific authority to state Attorneys General to take remedial action when disposal sites pose an "imminent hazard" to public health or safety;

Establish liability for past and present owners as well as lessees for abandoned disposal sites;

Establish no statute of limitations for civil liability;

Provide a treble damage remedy for intentional violations;

Discourage use of tax dollars to finance the superfund;

Encourage establishment of regional waste disposal sites;

Require clean-up of sites before compensation is awarded for private property damage; and

Include coverage of oil spill clean-up.

An explanation of each of these points follows.

II. ENFORCEMENT

A. *Direct Funding for State Attorneys General.*—The mechanics of the superfund legislation will require litigation as a major facet of the overall program and direct involvement by state Attorneys General will significantly enhance effective enforcement. Absent direct funding, the states' ability to litigate will be severely hindered. Litigation support is expensive and state budgets are limited. These cases require well-trained lawyers, skilled investigators, and expert witnesses.

State legislatures cannot be counted upon to appropriate sufficient funds to meet these staggering costs nor can the scarce resources of the U.S. Department of Justice and the Environmental Protection Agency deal effectively with the magnitude of the problem. Thus, the Association urges the Congress to authorize EPA to disperse annually $25–$30 million to the state Attorneys General for enforcement purposes.

State Attorneys General would bring police powers, quick reaction time, and an understanding of local interests to this effort. Furthermore, the Association believes that has been true with federally sponsored programs in the medicaid fraud and antitrust areas, the amount of money recovered in damages will far exceed any federal appropriation.

B. *"Imminent Hazard" Authority.*—In 1976 in the Resource Conservation and Recovery Act (RCRA), the Congress authorized the federal government to take remedial action when a toxic waste disposal site posed an "imminent hazard" to public health or safety. We believe that this authority should

also be specifically conferred to state Attorneys General who are the officials most closely involved with environmental litigation in their states and are best able to respond to such an immediate crisis.

For the most part, state Attorneys General have been overlooked as a valuable enforcement tool in the toxic waste area. This has been true both in terms of federal expenditures and federal authority. Since litigation continues to be the most valuable method of closing sites that pose an immediate danger to the public and of recovering damages from those who have harmed the environment, the addition of state Attorneys General to the enforcement effort would significantly augment the current capabilities of EPA in this area.

Some state Attorneys General have already taken significant enforcement actions. Suits filed in Michigan, Illinois, New York, New Jersey, and California are a tribute to the ingenious use of scare resources and, often, limited statutory authority. In some cases the office of the Attorney General has had little more to work with than common law public nuisance authority. The magnitude of the problems associated with toxic waste disposal requires federal statutory support.

III. LIABILITY

The Association believes that federal standards of liability are required, notwithstanding state tort law, in order to avoid legal entanglements arising from conflicting state laws. While some states have more sophisticated toxic waste statutes than others, none has all the tools necessary to ensure the proper protection of the public. In some states, strict liability is not applicable in toxic waste cases. In others, prior owners, lessees, generators, or transporters may not be liable for the injury they may have inflicted. Other problems impeding effective enforcement include proof requirements that limit the states' ability to impose liability and inadequate statutory authority in cases of emergency clean-up.

A. *Strict Liability.*—The Association believes that strict liability should apply to all provisions in the Act. This is not a new concept. Strict liability appears in other federal statutes. The handling of toxic substances is an inherently ultrahazardous activity that involves a risk of serious harm to the public that cannot be eliminated completely even through application of the most stringent precautions. Without the inclusion of broad-based liability, proof problems with regard to proportionate liability will inevitably occur and hamper effective enforcement. Furthermore, imposition of strict liability will have significant deterrent effects for those who generate toxic waste. The Association supports an exemption from strict liability only when the unlawful disposal was specifically directed by an authorized governmental authority or was a result of an act of God or act of war.

B. *Liability for Abandoned Sites.*—The Association believes that it is necesary to hold past and present owners as well as lessees liable for damage occurring at an abandoned chemical dump site. Seeking relief against the present identifiable owner (such as the home owners at Love Canal) is not always appropriate since the present owner may be completely unrelated to the prior dumping. The only way to ensure effective enforcement is to make all potentially responsible owners and lessees liable and to allow investigations to determine which owner or lessee is responsible.

C. *Statute of Limitations for Civil Liability.*—The Association opposes the inclusion of a statute of limitations for civil liability on the basis that it would impose serious inequities. If the statute is designed to run from the initial date of release or discharge, it will preclude numerous actions due to the long time period between the release of the waste and the full discovery of damages. It is impossible to establish a distinct time period in which one can identify all the problems that occurred or will occur from improper disposal.

The serious problems associated with dumps that are 10–20 years old are just now becoming evident. Since current law varies widely from state to state, it seems only fair, both to society and to those harmed, that a federal cause of action be established. If Congress believes a statute of limitations is necessary as well, we urge that it begin to run only upon passage of the Act or the discovery that a site poses a health hazard, whichever occurs later.

D. *Treble Damages.*—The Association believes that treble damages, analogous to those in the federal antitrust laws, should be a remedy in cases of intentional violations. Treble damages will provide an effective deterrent to improper disposal and will insure that those responsible for chemical spills will pay for clean-up of the site.

IV. SUBSTANTIVE ISSUES

A. *Use of Tax Dollars.*—The Association believes that tax dollars should not be used to finance the superfund. Rather, the chemical, petroleum, or other companies that are responsible for creating the problem in the first place should pay for clean-up. Taxpayer subsidies would unfairly force those most likely to suffer personal health and property damages to bear the additional cost of removal.

B. *Disposal Sites.*—This Association believes that it is appropriate for federal, state, and local officials to establish adequate regional waste disposal sites. This will minimize the dangers posed by the long-haul transportation of these materials. The Association believes that it is unsound public policy to transport thousands of gallons of extremely toxic material across the country, with all the risks that imposes, simply because no other waste disposal site is available. As it now stands, the sites designated for disposal are being filled quickly and in a few years will no longer have the capacity to handle the waste generated in this country. Further, wastes must be transported long distances in many cases, thus increasing the risk of accidents related to the transportation of toxic material.

C. *Compensation for Personal and Property Damage.*—The Association believes that compensation for people who suffer private property damage and could otherwise seek relief through civil litigation must be deferred until adequate funds exist for both clean-up and compensation.

D. *Coverage of Oil Spills.*—The Association believes that since the oil companies will contribute the bulk of the superfund monies and since oil spills do, in fact, cause environmental damage, oil spills should be included in a single comprehensive Act.

I have a specific letter from the National Conference of State Legislatures and the National Governors' Association, which states:

Since H.R. 7020 was reported by the House Rules Committee, several amendments and substitutes for the original bill have been introduced. Some purport to provide programs more responsive to state needs than the original bill. One in particular, Congressman David Stockman's substitute for H.R. 7020, is characterized as a vehicle to help states protect their own citizens and "water supplies" in a "simple and effective manner." Given our long involvement in promoting Superfund legislation beneficial to the states, we would like to take this opportunity to comment on the deficiencies in this alternative version of H.R. 7020.

And then there are five points, spread over two pages, which, in effect, just give back details that I have just provided. The general categories are:

"There are insufficient levels of funding."

"There is no required contribution from industry."

That is a point that I did not make. In fact, all of these moneys are coming out of the taxpayer's pocket, and that is the argument we had earlier on, that not even industry accepts the responsibility for coming forward with a portion of the moneys.

The third general point: "Appropriations alone do not guarantee availability of funds." That is to say that if there is no liability provision, you cannot get back from wrongdoers moneys to supplement the funds.

"There are no liability provisions." An amplification is provided for that.

And, last: "The formula proposed in the Stockman amendment will not allocate funds where the need exists."

The entire letter reads as follows:

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, D.C., September 23, 1980.

Hon. JAMES J. FLORIO,
Chairman, Subcommittee on Transportation and Commerce, House Interstate and Foreign Commerce Committee, Washington, D.C.

DEAR CONGRESSMAN FLORIO: After more than a year of hearings, markups and negotiations by three House Committees and the Rules Committee, H.R. 7020, the Hazardous Waste Containment Act of 1980, is scheduled for floor consideration by the full House of Representatives. This bill is the result of months of negotiations involving all interested patries. It represents a careful balancing of competing interests. The National Governors' Association and the National Conference of State Legislatures have long favored legislation to assist states in addressing the problem of hazardous substances. Current policy of both organizations supports the major provisions of H.R. 7020, including the requirement that industry contribute to the fund. NGA and NCSL also strongly endorse the Ways and Means Committee amendment.

The Governors' Association and the Conference of State Legislatures have worked closely with all the committees having jurisdiction over this bill. We have sought to fashion a bill that is at once responsive to state needs and fair to all parties. We have met with sympathy and cooperation on the part of all committee members and staff, especially from the staff and the chairman of the Subcommittee where this legislation originated. Most of our concerns have been addressed in the Commerce Committee bill and the Ways and Means amendment now before the House, and we wish to reiterate our support for rapid passage of the Hazardous Waste Containment Act.

Since H.R. 7020 was reported by the House Rules Committee, several amendments and substitutes for the original bill have been introduced. Some purport to provide programs more responsive to state needs than the original bill. One in particular, Congressman David Stockman's substitute for H.R. 7020, is characterized as a vehicle to "help states protect their own citizens and water supplies" in a "simple and effective manner." Given our long involvement in promoting Superfund legislation beneficial to the states, we would like to take this opportunity to comment on the deficiencies in this alternative version of H.R. 7020.

1. *There are insufficient levels of funding.* The Stockman substitute provides only $75 million for FY 1981. This is inadequate even to begin to address the problem. The Chemical Manufacturers Association estimates that an average of $1 million is required to clean up an abandoned dump site (other estimates

run several times higher). EPA currently lists 400 sites as requiring attention. Thus the Stockman amendment would, at best, provide a response to less than four percent of known problem sites its first year. Furthermore, the cumulative funding level of the Stockman Amendment is only $600 million—a figure we find sorely inadequate. With new dangerous sites being discovered weekly, NGA and NCSL support at a minimum the $1.2 billion total contained in the Ways and Means Committee amendment.

2. *There is no required contribution from industry.* All major House and Senate versions of Superfund legislation contain provisions for a substantial industry contribution to the Superfund. Congress has recognized that the chemical industry which has benefitted from the absence of adequate disposal standards in the past, bears some responsibility to assist in cleaning up old dump sites.

The Love Canal location has thus far required tens of millions of dollars of remedial action. The State of New York has spent over $40 million, the federal government $5–10 million, and Hooker Chemical less than $1 million. The public, through federal, state, and local taxes, cannot continue to incur the full cost of cleanup. Industry must contribute significantly to the response fund for hazardous waste.

3. *Appropriations alone do not guarantee availability of funds.* Reliance solely on federal appropriations to provide the funds needed to cleanup abandoned dump sites is problematical. Competition for scarce federal dollars is likely to become even more intense in the coming years. There is no assurance that the sums necessary will be made available. States need guaranteed continuity of full funding if they are to devise a program and hire the personnel necessary for remedial action at abandoned dump sites. Assured funding at the levels necessary can only be achieved through a combination of an industry-based tax and appropriations. The legitimacy of an industry fee was previously acknowledged by the House of Representatives in its version of HR 85 which passed 388–11.

4. *There are no liability provisions.* In order to allow recovery of Superfund expenditures and to provide an incentive for proper care to all parties connected with hazardous waste, all major Superfund bills contain rigorous liability provisions. NCSL and NGA support the applications of liability schemes to all parties, including states and localities when circumstances merit. No one disputes the principle that those who contribute to the problem should share in the cost of cleanup. Imposition of a comprehensive liability provision will assure that this principle is observed.

5. *The formula proposed in the Stockman Amendment will not allocate funds where the need exists.* A formula based on population and industrial production ignores such factors as, where toxic waste is actually located and the severity of individual cases. Representative Stockman's memo which accompanied the substitute for HR 7020 acknowledged that the formula was "not an exact proxy for the location of abandoned hazardous waste sites." Given the limited resources available to address a massive problem, priorities must be established and the most threatening sites corrected first. An inflexible formula for distributing response funds will further complicate an already difficult national problem.

The National Governors' Association and the National Conference of State Legislatures have established passage of a Superfund bill as a major environmental priority for this session. We have worked with Congress, Governors' offices, State Legislatures and Local Officials to formulate effective legislation to permit a rapid and comprehensive response to the problem of hazardous waste. The legislation reported by the Commerce Committee and the amendment offered by the Ways and Means Committee represent the fruition of our efforts.

Our organizations urge all members of the House of Representatives to support adoption of this essential legislation.

Sincerely,

BENJAMIN L. CARDIN,
Chairman, NCSL State-Federal Assembly; Speaker, Maryland House of Delegates.

STEPHEN B. FARBER,
Executive Director, National Governors' Association.

Mr. MOFFETT. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Connecticut.

Mr. MOFFETT. Mr. Chairman, as a member of the full Commerce Committee, I want to applaud the work of the subcommittee chairman on this matter.

The gentleman from Michigan implied, I thought, that we had not done quite enough work on this issue. I cannot remember an issue where we have done more work. The gentleman has done the bulk of the work, he and his subcommittee; but Congressman ECKHARDT's Subcommittee on Oversight and Investigations and the subcommittee that I am privileged to chair on Government Operations, and a variety of others, have been looking into this.

As the gentleman from New Jersey indicates, we do not have a great deal of time. It is not as though we are just seeing small indications or scant evidence of this problem. My own subcommittee is about to release a report on drinking water contamination that relates directly to this, which finds that with regard to 26,000 industrial sites around the country, hazardous waste sites, 35 percent, or about 9,100 of the total impoundments are unlined, which potentially allows contaminants to infiltrate unimpeded into the subsurface; 7,800, or 30 percent, of those unlined impoundments are sitting directly on top of ground water sources with no barrier reported between the waste and the ground water, and 750 of those sites, or about 2,600, are unlined, sitting directly on top of ground water and within 1 mile of the drinking water supply well.

So it is time to move on this, and I think the gentleman is correct: This is the key vote.

I do not think there are more than 30 or 35 Members of this body, I would guess, who are planning on voting against the total measure here, and I want to say that if you are going to vote for the total measure, make sure to vote against the Stockman amendment.

Mr. DOWNEY. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from New York.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. FLORIO) has expired.

(On request of Mr. DOWNEY and by unanimous consent, Mr. FLORIO was allowed to proceed for 3 additional minutes.)

Mr. DOWNEY. Mr. Chairman, I think the gentleman has laid out very carefully that this is a national problem and, if anything, the studies that we have seen, at least in the Ways and Means Committee, indicate that the problem is probably larger not smaller, than the initial studies have pointed out; that, given the fact that this is a national problem, it is important to understand that the Federal Government can work. We can develop a body of expertise within the EPA to have a response team to do the sort of sophisticated testing that will not be done by the various State agencies.

It is important that we have one group of experts who can go out and keep an inventory across this country of the problems.

Also, some of these problems occur between State lines. How are we going to determine which State is responsible when the jurisdiction may be in doubt?

I would also like to ask the chairman of the subcommittee that if the House should vote for the Stockman amendment, is my understanding correct that this would remove the Ways and Means Committee amendment from consideration and preclude us from offering our amendment, which increases the size of the fund, which changes the share from 50–50 to 75–25?

Mr. FLORIO. That is my understanding; that if, in fact, the Stockman amendment would pass, it would preclude the offering of the Ways and Means Committee amendment.

Mr. DOWNEY. That is shocking. The thought that somehow we are only going to have $600 million to deal with that is grossly inadequate. I would hope that the membership would resoundingly reject the Stockman approach which denies the essential reality that this is a massive national problem that needs to be dealt with in a very large and expedited fashion.

Mr. LAFALCE. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from New York.

Mr. LAFALCE. Mr. Chairman, first I want to commend the gentleman from New Jersey for what I think has been a magnificent effort this past 2 years in trying to develop a superfund approach to deal with the problem of abandoned hazardous waste sites that would not only deal with the problem, but pass the Congress.

Insofar as adequate consideration of this measure is concerned, as the gentleman from Connecticut (Mr. MOFFETT) has said, I do not think any bill has ever received so much study. I think that I personally have testified at least before 12 different committees on this issue alone. This bill is probably the most important environmental bill of the past decade and probably the most important environmental bill of the next decade.

The Stockman amendment would simply gut it. It must be defeated.

Mr. FLORIO. I thank the gentleman for his remarks.

AMENDMENT OFFERED BY MR. DANNEMEYER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STOCKMAN

Mr. DANNEMEYER. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. DANNEMEYER to the amendment in the nature of a substitute offered by Mr. STOCKMAN: Page 5, after line 18, insert the following:

"(4) mandating solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by non-governmental entities, except that no proposal shall be analysed if it involves direct or indirect costs to the United States government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law."

Page 5, strike line 19 and all that follows through line 22 and insert in lieu thereof the following:

"(5) requiring recommendations, based on the findings resulting from the application of subparagraph (4) of this subsection, as to the appropriate balance (including the respective levels of funding) between public and private sector involvement in the siting, design and operation of new hazardous waste management facilities.

Page 5, line 23, strike the numeral "5" and insert in lieu thereof "6".

Page 6, line 15, strike all that follows after the word "subsection" through line 16 and insert in lieu thereof a period.

Page 6, strike line 17 and all that follows through line 19 and insert in lieu thereof "(2) is otherwise generally inconsistent with the purposes of this part."

Mr. FLORIO (during the reading). Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The gentleman from New Jersey (Mr. FLORIO) reserves a point of order.

The Clerk will continue reading the amendment.

The Clerk continued the reading of the amendment.

Mr. DANNEMEYER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. Does the gentleman from New Jersey (Mr. FLORIO) reserve a point of order?

Mr. FLORIO. Mr. Chairman, I withdraw my reservation of a point of order.

Mr. DANNEMEYER. Mr. Chairman, I shall be brief inasmuch as I have covered a good deal of the ground this amendment covers earlier today. Basically, the amendment does two things. First, it requires the States, in developing the plans they must submit to the EPA Administrator, to solicit and analyze proposals from private enterprise for the construction and operation of hazardous waste management facilities at no cost to the U.S. Government. And second, it closes what could be a major loophole that would otherwise permit the EPA Administrator to dictate to the State the exact nature of the cleanup plan the State is to develop.

With respect to requiring States to ascertain the extent to which private enterprise might go into the hazardous waste cleanup business on a profitmaking basis, a similar provision has been included in the Commerce Committee version of this bill. And with good reason. For if private enterprise is willing to do the job without taxpayer subsidy, as appears to be the case in Houston, Tex., then why should the Federal taxpayer be asked to foot the bill unless there is no other alternative? Furthermore, ascertaining the extent of private enterprise interest would not delay completion of the State plan in any way; 6 months is plenty of time for the State to solicit and analyze bids in construction and operation of hazardous waste facilities.

As for the aforementioned loophole, the difficulty lies in the definition of the term "cost-effective," or more precisely, the lack of definition. As long as the EPA Administrator interpreted the term judiciously, there would be no problem other than the amount of time it would take to make such a determination. But, if the EPA Administrator were to decide that any expenditure other than the one EPA liked best was nonreimbursable, the effect would be to give EPA the power to dictate the cleanup procedure down to the last detail. To avoid that possibility from occurring, my amendment eliminates a finding of cost-ineffectiveness as grounds for rejection of a State plan by the EPA Administrator.

Mr. Chairman, it is my feeling that both these changes are consistent with the thrust of the amendment offered by the distinguished gentleman from Michigan (Mr. STOCKMAN) and I urge that they be adopted.

Mr. Chairman, I yield back the balance of my time.

Mr. FLORIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment as I understand the amendment.

If the gentleman from California would yield for a question, is it my understanding that what the gentleman is proposing is that there be included in State plans that would be authorized under the proposal of the gentleman from Michigan (Mr. STOCKMAN), a direction that there be private disposal facilities constructed?

Mr. DANNEMEYER. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from California.

Mr. DANNEMEYER. No, not the direction that there be private disposal facilities constructed, but merely that an opinion be solicited as to whether or not private enterprise is interested in building disposal facilities in those States, that is all, just requiring them to inquire if there is an interest to build them.

Mr. FLORIO. If I may reclaim my time, I would rise in reluctant opposition to the gentleman's amendment primarily because it is an amendment to an amendment that I regard as not helpful. But the major thrust of the gentleman's concern is already included in our bill. We have proposals for research and development, and we have proposals for studying of sites for facilities and I can tell the gentleman—and it is on the record in our hearings—that I am totally committed to the idea that private enterprise should be the key on developing an appropriate disposal industry. There will be or may be other amendments this afternoon that do not agree with that thought. I hope the gentleman will help me to defeat those amendments and say we shall have a series of State-constructed facilities.

I agree with the gentleman's thrust that we should be looking to private enterprise to develop the industry of hazardous waste disposal, but I am just not sure his approach is one that is desirable at this point and certainly is not desirable as an amendment onto the Stockman amendment.

Mr. DANNEMEYER. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from California.

Mr. DANNEMEYER. It puzzles me a little, because the gentleman from New Jersey has correctly pointed out that the sense of the amendment to the Stockman amendment is in the basic bill pending before the committee, and it is my desire just to put this amendment offered by the gentleman from Michigan (Mr. STOCKMAN) into the same posture on this point that the basic bill is. It would seem to this Member from California that that is not an unreasonable request.

Mr. GORE. Mr. Chairman, I rise in opposition to the substitute amendment.

I would just say in response to my colleague from California, that if the Stockman substitute is defeated then I would hope we would feel free to vote for the bill because the thrust of the gentleman's amendment is included in the bill as it is now drafted.

Now, let me just state at the outset, Mr. Chairman, that I have the utmost respect for my colleague from California and for the gentleman from Michigan. Having served for some time on the Commerce Committee with them, I can testify that their questions often prompt us to perfect legislation, and occasionally we even find ourselves in agreement.

On this occasion, however, the substitute offered by the gentleman from Michigan would really result in gutting this legislation entirely. It has no organized support from any of the groups or parties affected by this legislation. The industry does not support it. The State governments do not support it. The attorneys general do not support it. No one that I am aware of supports it other than the gentleman from Michigan. And I think that there are reasons for that. Let me state them:

The gentleman has said that we are seeing the House stampeded into a solution for this problem.

On the Subcommittee on Oversight and Investigations not only in this Congress, but in the last Congress, we have held 18 hearings, Mr. Chairman, on this problem. We have documented this proposal so thoroughly that the case for remedial action is beyond any reasonable dispute. Three years is a long time, Mr. Chairman, to document this problem. I would not characterize it as a stampede.

Second, my colleague implies that perhaps the size of the problem has been overstated. Again, I would disagree. I think, if anything, the size of the problem has been understated.

Above and beyond those points there are some serious deficiencies with the substitute itself.

No. 1, it does not ask for any contribution whatsoever from the industry which has primarily created this problem.

It simply asks the Federal Government to give more money to the States. Second, it does not have any liability standards.

Third, I think it is ironic that the gentleman places so much faith in State governments when he has so little confidence that the Federal Government can address the problem at all.

A number of States, among them Michigan, California, New York, Kentucky, and New Jersey, have repeatedly testified before the Congress concerning the severe limitations on the ability of the States to deal with hazardous waste sites and concerning the need as they see it, for Federal legislation.

Fourth, as my colleague from New York (Mr. DOWNEY), who played such a leadership role in the Committee on Ways and Means, pointed out, many of these sites cross State lines. What would we do on such an occasion under the Stockman substitute?

I would urge my colleagues on this key and important vote to cast a resounding "no" against the substitute offered by my well-meaning colleague from Michigan. Also I would counsel a "no" vote on the amendment to the substitute offered by the gentleman from California.

The important and key vote is a "no" on the Stockman substitute

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from Michigan.

Mr. STOCKMAN. Let me say to the gentleman from Tennessee I do not discount for a minute the nature of the problem, the enormous amount of work that the gentleman himself has contributed to documenting it over the years, the fact that we have some firm idea that there are hundreds of sites and there might be additional ones beyond that.

I would submit to the gentleman and this House that there has not been any evidence offered that the State governments in most of the cases are not equipped to deal with the problems.

I read the committee report. They said, "Evidence of inadequate local and State response."

Well, what was listed in the committee report under that, I will ask the gentleman? There were three cases, one of which occurred 7 years ago; another of them which could not occur now under RCRA and the third one was Love Canal. That is the entire sum of the evidence that has been adduced that has been presented to show that under existing State law, under common law and under the fact that States have moved on this problem, the gentleman from New Jersey said the States are not ready, here is a listing compiled by the National Association of State Legislatures of every State in the Union that has a varying degree of legislative authority and funding available in this area.

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What I am asking the gentleman is for some more specific indication as to why we must move this problem.

The CHAIRMAN. The time of the gentleman from Tennessee (Mr. GORE) has expired.

(At the request of Mr. STOCKMAN, and by unanimous consent, Mr. GORE was allowed to proceed for 3 additional minutes.)

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield further?

Mr. GORE. I yield.

Mr. STOCKMAN. I would ask the gentleman for the more specific information which would indicate that this one problem, of all the problems we face in the country today, could not be handled by the States if we give them some encouragement. The gentleman will agree, we cannot do everything, referring to the Congress and the EPA.

Mr. GORE. Mr. Chairman, the gentleman himself cited the National Conference of State Legislatures, which has indicated that the States support the bill as it is written and specifically notes their opposition to the substitute of the gentleman from Michigan; but this is not the only occasion where State officials have said that. They have testified on a number of occasions before the Congress. For example, we had such testimony before the Oversight and Investigations Subcommittee.

The gentleman points out that the committee report accompanying this bill only cites a limited number of cases, but we have had 18 hearings in two Congresses before the Oversight Committee of the Commerce Committee. The evidence is overwhelming. We have had evidence taken from the State of Michigan. We have had officials from the State of Michigan talk about their inability to proceed under the current State law in a timely and adequate manner.

We have had testimony from California.

We have had testimony from Kentucky, from New Jersey State officials; from States throughout this country who have said over and over again that this is a Federal problem that must be addressed at the Federal level.

Mr. STOCKMAN. Mr. Chairman, would the gentleman yield one further time?

Mr. GORE. I would be glad to yield to the gentleman.

Mr. STOCKMAN. I understand what the gentleman is saying; but can the gentleman recall any problem in his entire service here where the State governments have not come in and said that they could use some Federal money to help them solve this problem?

Mr. GORE. I cannot remember in my service in this body a single other time when the States were presented with a choice between two bills, one of which addresses the problem at the Federal level and the second of which says the Federal Government will give money to the States and turn over the responsibility to them—like the gentleman's substitute—where the States have said, "We recognize the limitations that we have and we recognize this is such a severe problem and so national in scope that we prefer a Federal approach to this problem, even though the alternative would result in giving us money and turning over the responsibility for it."

No. I cannot recall another such occasion. There may be one, but not within my memory.

Mr. LAFALCE. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to my colleague, the gentleman from New York.

Mr. LAFALCE. I thank the gentleman for yielding.

I think another reason why this amendment must be defeated, another reason that the States cannot handle it, is that it is a problem that is nationwide in scope and is deserving of a comprehensive legal framework if it is to be attacked and met.

We cannot develop a comprehensive legal framework if we allow the States to approach it and work their own wills.

The CHAIRMAN. The time of the gentleman from Tennessee (Mr. GORE) has again expired.

(By unanimous consent, Mr. GORE was allowed to proceed for 1 additional minute.)

Mr. LAFALCE. Mr. Chairman, if the gentleman will yield further, we cannot have this comprehensive approach if we allow each State to work its own will and come up with some patchwork quilt across the entire United States of 50 differing laws, 50 differing laws dealing with the taxation of the oil and chemical companies, 50 differing sets of laws dealing with the disposal practices, 50 differing laws dealing with every single aspect of this problem.

We might as well forget about a comprehensive approach to solving it.

Mr. GORE. And again, no responsibility whatever assigned to the industry that has created the problem.

I ask for a "no" vote on the substitute amendment, Mr. Chairman.

Mr. MADIGAN. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the substitute and the amendment of the gentleman from California (Mr. DANNEMEYER).

Mr. Chairman, at the outset, to address the question as to whether or not there is a problem, I would like to quote from the first paragraph of a letter written by the vice president of the U.S. Chamber of Commerce, which says:

The business community is deeply concerned about problems resulting from certain inactive hazardous waste disposal sites. We believe that sites which present a hazard to human health or the environment should be contained or cleaned up quickly and effectively. We believe that H.R. 7020 as reported by the House Committee on Interstate and Foreign Commerce is a substantial improvement over prior legislative proposals and addresses the inactive hazardous waste sites problem and contains scope and liability provisions which would protect both public health and the environment.

If I may read the last part of that letter, it says:

The undersigned organizations strongly urge you to support H.R. 7020.

It is signed by the American Mining Congress, the American Paper Institute, the American Textile Manufacturers Institute, the Chamber of Commerce of the United States, the Chemical Manufacturers Association, the Edison Electric Institute, the National Association of Manufacturers, the National Forest Products Association, the National Painting and Coating Association.

With regard to the question of whether or not the committee bill would impose upon American industry undue and unnecessary regulations, let me just observe that that is not a list of organizations known ordinarily to be advocates of Government regulation. It is in this instance a list of American business organizations that clearly recognize that there is a serious problem and that the Congress of the United States needs to respond to that problem.

The gentleman from Michigan has artfully articulated some of the shortcomings of any legislative proposal; however, I believe that his amendment would not be helpful to dealing with the problem of hazardous waste sites. Certainly the list of chemicals that the gentleman has read here today suggests that any legislative proposal could be held up to ridicule; but we are not talking here about a single bottle of rubbing alcohol or a small 2-ounce package of rat killer that somebody is going to put behind a refrigerator. We are talking about hundreds of 55-gallon drums of these chemicals that are leaking into the underground water supplies in the United States of America. Certainly people use those chemicals, but they do not mix them in large quantities in their drinking water.

I concur that the States must play a major role in this cleanup effort. I would point out that H.R. 7020 is structured to keep the Federal role to a minimum. The States are full partners in the committee bill. EPA can step in only if the responsible party cannot be found or cannot act and only if the State or local government does not respond.

I would like to point out that Robert A. Roland, president of the Chemical Manfuacturing Association, stated in a letter in this morning's Post, and I quote:

> We believe the Federal Government should have the means to act immediately to protect the public and the environment from the clear dangers these failing sites pose.

Mr. Roland concluded by stating:

> H.R. 7020—
>
> The committee bill—
>
> comes closest to what is really needed to remedy the problems failing dumps impose.

The substitute of the gentleman from Michigan would let the irresponsible dumpers in this country off the hook completely. The issue here, the real difference between this substitute and the committee bill, is that the gentleman's substitute relieves the dumpers of any responsibility. It would become the responsibility of the taxpayers to clean up the mess of the dumpers. The result of agreeing to the substitute would be to put the House of Representatives in the position this evening of saying that they want to do less than the chemical manufacturers say is desirable, less than the chamber of commerce says is necessary and less than the National Association of Manufacturers say is both desirable and necessary. I do not want the House of Representatives to be put in that position this evening or any other time.

I would urge the defeat of the Stockman substitute and support for the committee bill.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. MOFFETT, and by unanimous consent, Mr. MADIGAN was allowed to proceed for 1 additional minute.)

Mr. MOFFETT. Mr. Chairman, would the gentleman yield?

Mr. MADIGAN. I would be happy to yield.

Mr. MOFFETT. Mr. Chairman, I simply want to congratulate the gentleman for his remarks; but I think more importantly his work on this legislation throughout.

Both of us know the gentleman from Michigan as a brilliant member of our committee. I do not use that word lightly or insincerely. Both of us know that there are times clearly when the burden of Federal intrusion and regulation is clearly so high that it outweighs any benefits that might be obtained from Federal intrusion.

The gentleman and I may disagree on when that point comes; but the fact is this is not one of those instances where the burden of federal involvement is going to be such as to outweigh the benefits. I think the gentleman knows that to adopt the substitute would be like saying that we have had a series of terrible tornadoes all over the country and we are going to let the states deal with them or have a year or two of study.

□ 1700

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words and rise to speak against the substitute.

I first want to compliment the distinguished chairman of the subcommittee and the ranking minority member for presenting a bill that seems to have such wide support. I think it has that support because it deserves it.

There never was a matter that received more thorough examination in Congress than this matter has received. My subcommittee, of which the gentleman from Connecticut (Mr. MOFFETT) is a member, as is the gentleman from Tennessee (Mr. GORE), who has really been a pioneer in this subject even before I became concerned with it when he served on that subcommittee under my predecessor, Chairman John Moss, has given this subject matter 18 days of hearings for consideration. We identified two problems.

First, we must find out the magnitude of the problem, find out where these dangers exist. The gentleman from Michigan (Mr. STOCKMAN) has very well pointed out that we have not yet determined the full magnitude of the problem. But I would suggest, contrary to his implications, that the problem is probably greater than it has been described.

For instance, when we examined where hazardous waste had been distributed by sending a questionnaire to 53 of the major chemical companies, we were only touching the tip of the iceberg. Actually, those companies were probably the most responsible disposers of hazardous waste in the country. Yet we received information that raises many serious questions.

The second thing that needs to be done is not merely to throw public funds into the cleanup of wastes distributed illegally or improperly by persons who have distributed them in the past and in the present. The second thing we must do is to create a disincentive to continue to distribute and dispose of hazardous wastes in an irresponsible way.

The gentleman from Michigan's amendment does not address this second question at all, except to admonish the Administrator to advise the attorneys general of the States as to how they might work out some kind of program to recoup some of the funds which they may have expended.

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield on that point?

Mr. ECKHARDT. Surely. I am glad to yield to the gentleman from Michigan.

Mr. STOCKMAN. The point about the disincentive, that we need to put on a fee or some kind of retroactive liability is raised over and over again. But is it not true I would ask the gentleman, that every industrial generator of hazardous wastes today, or beginning in November, will be under the very tight regulations of RCRA regarding how they dispose of wastes, whether they sell it to transport, what type of facility that it can be put in, and that this is the most powerful incentive that one could possibly impose, and that we are no longer talking about a future problem, we are only talking about abandoned sites. Current and future incentives are not relative.

Mr. ECKHARDT. No. As a matter of fact, we are talking about both abandoned sites and sites with interim permits in the section that deals with liability for releases. That section reads: "Except for a release, or threatened release, of hazardous waste * * *" resulting from "an act of God," and certain other exceptions, "where any release, or threatened release, of hazardous waste into the environment from or at an inactive site causes any costs described in subsection (b), any person who caused or contributed to the release or threatened release shall be strictly liable for such costs. Except as provided in paragraph (2), such liability shall be joint and several with any other person who caused or contributed to such release."

Subsection (B) establishes the proportionate liability of those who caused the danger. We never addressed this question in such detail in Federal law. This is precisely what we ought to do.

The gentleman from Texas, who is speaking, would have gone much further than that. I would have provided, as I did in my original draft of a bill that was introduced, and about a third of it I think was then encompassed in this bill, I would have provided for perpetual

liability on the creator of hazardous waste. This bill does not go quite so far, but it does provide for responsibility for anyone who contributes to the release, and it makes them strictly liable for the cost of cleanup.

If we follow the other approach, what we do is throw Federal money into the hands of the States.

The CHAIRMAN. The time of the gentleman from Texas has expired.

(By unanimous consent Mr. ECKHARDT was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. If we turn over funds to the States, what is the incentive of the States to recover such money if they are getting it from the Federal Government? The incentive is always to the Federal Government to keep the fund intact so that it may be available for this enormous problem of cleaning up wastes all over the Nation. If we give it to the States they may or they may not regain the funds by suing those who are really responsible.

Besides that, under the Stockman substitute, the basis of liability will be that which the State has imposed. It is not defined uniformly in State law. Yet the question we are addressing is a uniform Federal question.

In our hearings, for instance, we found about five States with reasonably good laws with respect to hazardous wastes. I think California was probably the best. I would say that Texas, because it has faced this problem for a long time, might well be second.

New Jersey also was at the top of the list of States. But even in my State of Texas we discovered that the law was not well enough drawn to trace certain extremely dangerous wastes, including cyanide, to roads where road oil contaminated with nitrobenzene and cyanide was put on the roads of an addition, and we could not find out how the provisions in the Texas law failed to trace these toxic materials through a very important and responsible waste disposal company, Browning Ferris. We could not find how that poison got to those roads. The State law was totally inadequate to solve the question.

In addition, for example, we found that where New Jersey has a strict law, it frequently results in the generators of hazardous waste dumping their waste in Pennsylvania. If there ever was a question which is national in scope and which called for a national solution, I believe this is the question.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

(At the request of Mr. STOCKMAN and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 2 additional minutes.)

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Michigan.

Mr. STOCKMAN. The gentleman makes a number of valid points that I would not argue with. But the gentleman is talking about current output of hazardous wastes. We are not addressing that here today and the gentleman knows that. The gentleman is talking about problems that will be dealt with in a very tough and effective way under RCRA.

I agree if New Jersey has a tough law for current generators of waste and Pennsylvania does not, the stuff is going to move at midnight to Pennsylvania. That is not the issue before the House. RCRA takes effect in November. It applies to every generator of industrial wastes in the country and every transporter and every receiver or disposer. The gentleman helped write that law.

Mr. ECKHARDT. Is the gentleman under the impression there is presently no Federal law with respect to the disposal of hazardous wastes?

Mr. STOCKMAN. No. That is not the point I am making.

Mr. ECKHARDT. It has been distributed illegally and we have to do something about cleaning it up and we have to do something about imposing the responsibility and the cost of cleaning up. We cannot impose those costs on the taxpayers through money generated at the Federal level and paid to the States without any requirements that the States recoup that money from those who caused the harm. That is what I am complaining about, about the gentleman's substitute, and that is what I applaud in the bill that we have before us.

Mr. LAFALCE. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I will yield to the gentleman from New York.

Mr. LAFALCE. I would like to add to the answer the gentleman gave to the gentleman from Michigan (Mr. STOCKMAN), we have had RCRA on the books from 1976, and right now they theoretically have been dealing since the promulgation of the regulations, in any event, with current disposal practices, and yet we can still find and count hundreds and thousands of instances when the law has been flagrantly violated.

That is going to create dangerous situations that we are going to have to deal with in the future.

□ 1710

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. LAFALCE, and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 1 additional minute.)

Mr. LAFALCE. If the gentleman will continue to yield, second, even when great good faith efforts are being made to comply with the law, at best it is uncertain just how safe those practices are.

Further, in the State of New York I can give personal witness to this: There are only two sites in the entire State of New York where you can presently dump hazardous wastes, sites both of which happen to be in one county in my congressional district. The people are justifiably up in arms over the relative safety conditions of those disposal practices.

Also we can say since those are the only two sites in New York State, there is a countless amount of illegal dumping taking place across New York State, and probably in every single State in the Nation, and it probably is going to continue in the future, regardless of legislation that exists and regardless of passage of the superfund. We are going to have to deal with that in the future, and this bill gives us the comprehensive framework to actually do that, to deal with it.

Mr. GRAMM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the gentleman from Michigan and I fought this issue all through the full committee, and I think it is clear his substitute is not going to pass, but I think we owe him a debt of gratitude for bringing this substitute up because I think it demonstrates clearly that there are big deficiencies in this bill. What is at issue in this debate is not whether there is a problem. Everybody knows there is a problem. Nobody denies that. What is at issue is not whether we have had 18 hearings or not. That is a matter of public record. We have had a lot of hearings. A lot of people have given a lot of speeches and have gotten a lot of press, becoming heroes in their districts, showing concern for people. That is not the issue. The issue is have we come up with an effective and equitable instrument to deal with this problem? I think the answer is no.

The gentleman from Michigan has done a very good job in showing how we really have not defined the problem. We have not yet set out what it is going to cost. We have not looked at any costs and benefits. We have written a blank check.

There is another issue. That is how are we going to pay for this cleanup? We have not chosen a mechanism of paying which has been dictated by one central issue, and that is we want to find an easy way to get it paid for, so we are going to impose an industry fee which is geared toward current production. There is only one problem with that, and that is that no one anywhere during these 18 hearings has ever demonstrated any substantial correlation between past pollution which has occurred by industry and firms as related to current production as occurring by industries and firms.

I said in committee when we debated this issue that imposing a user fee based on current production to pay for past pollution without regard to who polluted was like going into a neighborhood where there had been a riot and somebody burned down the post office and imposing a fee on everybody who lived in the neighborhood to pay for rebuilding the post office. But that is not accurate. That does not really apply to what we are doing here. What we are doing here is we are coming in 20 years after the post office has burned down, and we are imposing a fee on the people who live in this neighborhood today, so not only are we clearly imposing a fee on people who are not guilty, we may well not be imposing a fee which really reaches the guilty party.

In all of the debate which has occurred here and which occurred in the committee, we continually have references made to making industry pay. Is anybody here so naive as to believe that an industry fee which is imposed across the board is not going to be passed 100 percent on to

the American consumer? Let us not fool ourselves. This is a tax, not a fee, and the same person is going to pay this tax who pays every tax, and that person is the American consumer

There is a second issue, and that is that by making pollution no-fault, by making it an industrywide problem to the extent that that moves us away from our effort to seek out the guilty party, then we let the guilty party off the hook.

I believe we need an effective bill to trace the assets of those who have polluted and to trace those assets to the grave, if necessary, to recover the funds. We have had references made by those who support this bill, who basically say, well, the industry has polluted; the industry has benefited by past pollution. But I ask who benefited from Hooker Chemical's pollution? Did the industry benefit? No. Hooker Chemical benefited. In fact, to the extent that Hooker Chemical polluted and its competitors tried to be responsible, its competitors tried to be good citizens, they lost. They did not gain; they lost by losing a competitive edge.

So I think it is important that we try to move toward a vehicle which imposes a cost on those who pollute, which provides funds whereby the States can seek out the guilty parties and make them pay, because if Hooker Chemical pays and not the whole industry, then Hooker Chemical cannot pass the cost to the consumer where an industry fee will surely see that cost passed.

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. GRAMM. I yield to the gentleman from Michigan.

Mr. STOCKMAN. I thank the gentleman for yielding. Like I say, I appreciate the gentleman's comments. I think he has hit the nail right on the head. We are not arguing about the existence of the problem.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STOCKMAN. I ask unanimous consent that the gentleman may have 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

Mr. MADIGAN. Reserving the right to object, Mr. Chairman, under that reservation I would simply point out that we have spent almost an hour on this first amendment. I understand there are many amendments to be considered, and it is now a quarter after 5. Absent some understanding within the next few minutes about when this debate on this amendment is going to conclude, I would think that we would have to consider some sort of time limitation in the interest of the House's being able to move ahead and work its will. I will not object, but I would want to make that point.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. STOCKMAN. If the gentleman will continue to yield, Mr. Chairman, I was just suggesting the gentleman has hit the nail on the head. We have heard a number of statements this afternoon dictating you need a fee. You need some kind of club or sanction so that companies in the future will not continue to pollute or to dump waste in an improper manner.

That is not the issue here, because every one of those companies operating today is regulated by RCRA. The costs are being borne by those companies, and it is an irrelevant issue to raise. We are talking about the financial resources needed to take care of the problems in the past where some companies did a poor job or where local jurisdictions had weak laws.

To say that that burden—it is a burden—of spending money to protect the public health because we all made mistakes in the past ought to be imposed only on current generators of waste who might not even have been in business or existence at that time seems to me to be an arbitrary and total misuse of the user-fee concept that is applied here.

Mr. GRAMM. Mr. Chairman, reclaiming my time, and given the suggestion of an objection, after not having objected to numerous requests earlier, I would just like to say two things: One, we have heard references to the assertion that the gentleman's amendment guts the bill. I think it does not gut the bill. I think rather than taking out guts, it injects brains into the bill.

Second, it is important to note that with the new restrictions which are needed, and which I support, the consumer of petrol, chemicals, the consumer of mineral products, is going to pay a lot more money to meet the new standards. By imposing these fees, he is going to pay twice.

I think it is interesting when we talk about making the companies pay, do not let the company off the hook—and you can be good bait for that kind of rhetoric—I think it is important that we look back and see who is working in these industries who use the primary chemical products; who will lose the jobs as a result of this tax? Who is buying the output of these industries?

I assert if we look at who is paying and who will suffer the unemployment, we will find it is exactly the people we always hear spoken on behalf of here on the House floor—working Americans, poor people who are going to pay. Rather than dealing with this in an above-board straightforward but politically unpopular method, and that is by using general revenue funds to deal with the problem, rather than imposing a fee which in no way is related to who is guilty, I think that violates all our legal precepts, and it is an idea that I abhor.

Mr. GORE. Mr. Chairman, will the gentleman yield?

Mr. GRAMM. I yield to the gentleman from Tennessee.

Mr. GORE. I thank the gentleman for yielding. Let me just say briefly, of course, under this bill when you hold that party responsible, we hold that party responsible. We do not go and raid the fund anytime where you know the party who is responsible. So that is, I say with all due respect, a misconception about the scheme.

□ 1720

Mr. MARTIN. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980, for reasons which I stated earlier in general debate. This bill, taken together with H.R. 85 enacted last Friday will enable the Government to respond to oil, hazardous substances, and hazardous wastes that are released into the environment. This Government response would occur only where the responsible parties cannot be identified, or cannot or will not take the appropriate cleanup action themselves. Both bills establish a system of taxes on industry which will assure an adequate and equitable "up-front" cleanup fund to enable these urgently needed actions to take place. The problems of environmental emergencies are pervasive. My own State and every Member's State has a potential for damages associated with the release of these pollutants. Clearly, action must be taken now.

I also oppose the substitute amendment of the gentleman for Michigan, although he has raised some questions that are troubling. But this is not an intrastate problem. Existing governmental authorities and funding are not adequate to deal with this problem. Nor are the States capable of dealing with what is clearly a problem of interstate magnitude. Let me address in particular the problems that H.R. 7020, the Hazardous Waste Containment Act of 1980, is to remedy. The magnitude of this problem is reflected in the fact that the Environmental Protection Agency has over 7,000 sites now under investigation across the Nation where hazardous waste sites have been identified and which may cause a significant environmental problem. The contamination from these sites clearly is an interstate problem. Numerous instances exist where two or more States have been affected by surface or ground water contamination and air pollution as a result of hazardous waste incidents. Since so many aquifers cross State lines, the likelihood of discovering more is fairly high. And there are other cases of interstate transportation of hazardous waste-causing problems.

Finally, absentee owners, who may have no reachable assets anymore exacerbate the problems of site cleanup. For example, 131,000 gallons of waste oil containing PCB's were illegally discharged along 210 miles of North Carolina roadside. It was later determined that the wastes originated at the Transformer Sales Co. in Allegheny, N.Y. It was apparently supposed to go to Pennsylvania to another site already in violation.

Another example of surface water contamination occurred in Saltville, Va. Disposal of industrial waste in the North Fork of the Holston River contaminated the river as well as the Cherokee Reservoir in Tennessee. The Tennessee Health

Department has banned fishing since 1970.

Over a year ago an oil slick was reported in the Susquehanna River outside Pittston, Pa. Subsequent examination discovered not only the presence of oil, but also other organic chemicals. The source was an abandoned mineshaft where hazardous wastes were being dumped into its ventilation pipes several miles away at a truckstop, ultimately making their way into the river. In mid-1979, 500 to 1,000 gallons per day of these substances poured out of the shaft and are, to this day, still continuing at a comparable or greater rate of flow; in addition, sodium cyanide dumped into the miles reacted with waste acids to form deadly hydrogen cyanide. The Susquehanna River is a major recreational resource and downstream drinking water supply.

As an example of absentee ownership of sites, three sites near Verona, Mo., have been identified as possibly containing dioxin wastes. The dioxin was produced between 1969 and 1972 by one company which had rental equipment and space from another business which is headquartered in Connecticut. Now that the Missouri manufacturer has declared bankruptcy, the State may not have anyone to hold liable. These are the kinds of examples of interstate pollution effects for which a responsible party cannot or will not take action. Only the Federal Government has the sufficient legal authority to deal with this. H.R. 7020 will accomplish that objective.

It must be noted that these examples cite practices which are already violations of existing laws. That does not, however, mean that any party can be held liable for cleaning up the potential hazard to innocent neighbors.

It has been suggested that this problem can be dealt with adequately by giving it to the States. Aside from the fact that the States themselves are supporting this urgently needed legislation because they recognize that they have neither the capacity nor the expertise to do it, there are several other reasons why the States cannot go it alone. I have already discussed the interstate nature of the problem. We do not have the luxury to try to establish 50 separate State hazardous waste programs, nor do we have the resources to try and make this into an entitlement program where each State is asking, "What's our share?"

Our objective is to deal on a prompt and effective basis with an environmental emergency. We want the funds to go where the technical problem exists, not where a political tradeoff formula dictates. Those scarce State resources of both money and manpower should be devoted to assuming the hazardous waste management program under the Resource Conservation and Recovery Act, which will insure that these hazardous waste disposal problems are not duplicated in the future.

Mr. Chairman, for these reasons and many others, I rise in strong support for H.R. 7020, the Hazardous Waste Containment Act of 1980, and oppose the Stockman substitute.

Mr. Chairman, I do want to raise some questions with the subcommittee chairman regarding regulatory uncertainty. There is some implication here in the debate that we are contemplating digging up some 7,000, 35,000 or 15,000 sites, depending on whose scare story you prefer, all across this country with no clear idea of what we are going to do with all of that stuff once we dig it up. There has been one suggestion that we particularly have to deal with those 35 percent or so of the sites that are not lined, and there is again the same question that we are going to dig up all of the unlined sites that can be found, amounting to some 2,500 or more dumpsites.

My question, Mr. Chairman, is what is the scope of this legislation? What characteristic does the committee have in mind or do the committee members have in mind that will determine which dumps are going to get dug up in order that we might develop some legislative history in this direction?

Mr. FLORIO. If the gentleman will yield, I will be happy to respond to the gentleman's question.

There is a two-tier response that has to be made. One of course is an emergency situation where the EPA will have the authority to go to the site and direct those at the site to make the appropriate modifications, enter into agreements with the States, and they are directed to do so in those situations where there is a life-threatening situation.

Incidentally, as a parenthetical comment, this whole standard was applied from the Clean Waters Act, section 311. The gentleman may be familiar with that. There has been no example. We specifically asked industry representatives if there had been any abuse of authority by EPA under that statute. We received direct response, no there had been no such abuse of authority.

The other area the gentleman addresses is that of remedial action. As the gentleman knows, in the bill there is an inventory system set on a State-by-State basis. After those inventory on a State-by-State basis are accumulated as to the abandoned hazardous waste site, the top 100 hazardous waste sites in the Nation are singled out and those are the sites that will be dealt with in terms of remedial action.

No, we are not turning EPA people loose to go dig up everything around the country. We are providing a structure whereby the 100 worst sites in the Nation will be dealt with in a remedial way.

Mr. MARTIN. Could I question the chairman further on that point? After we have cleaned up the 100 worst sites, has the committee examined the question of what we then do about the next 100 worst sites and the next 100 and the 100 after that? Do we leave then an irresistable temptation to have to proceed 100 at a time in pork barrel fashion until all 35,000 have been cleaned up? Did the committee look at some standards of what would pose an unacceptable risk, thereby justifying cleaning up these sites and not other sites?

Mr. FLORIO. If the gentleman will yield, the expectation is that we would proceed down the list of the priority items. This is a finite problem. We are not talking about prospective sites, we are talking about sites that are in existence now. Our bill is a 4-year bill with limited funds. We hope that at the end of this 4 years the moneys and the problem will be dissipated. That is there will be no more problems created, if the Research Conservation Recovery Act regulations go forward in the way we hope they will. There will be no new Love Canal. So that there is light at the end of the tunnel and what we are trying to do is deal with those problems that currently are imminent hazards to the people's safety and to the environment in the surrounding area.

Mr. MARTIN. Mr. Chairman, I thank the chairman for that explanation.

Really what worries me is sort of a terrifying scenario. Where will we be if, after cleaning up the 100 worst sites and perhaps the next 100 after that, we end up having scared hell out of the other 34,800 or 34,900 communities where, inevitably some detectable traces of undesirable chemicals will be found.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. DANNEMEYER) to the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. STOCKMAN).

The amendment to the amendment in the nature of a substitute was rejected.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. STOCKMAN).

The amendment in the nature of a substitute was rejected.

PARLIAMENTARY INQUIRY

Mr. FLORIO. Mr. Chairman, might I inquire of the Chair what is our position with regard to the reading of the bill?

The CHAIRMAN. The Chair would advise the gentleman that we are still on section 1.

Are there further amendments to section 1.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DANNEMEYER

Mr. DANNEMEYER. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. DANNEMEYER in the nature of a substitute: Strike out all after the enacting clause and substitute:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 3. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—INACTIVE HAZARDOUS WASTE SITES

"Subpart A—General provisions

"COVERAGE OF PART

"SEC. 3021. (a) COVERAGE.—The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Release into the environment' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of applicable law.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such informaiton shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carried out at such site;

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

"(3) Where any person fails to comply with the requirements of paragraph (2) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (2) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of the Solid Waste Disposal Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (1) or such information as may be necessary to compile the information described in paragraph (1). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment of the Hazardous Waste Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment,

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the State in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the Administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the Representatives within two years of the date of enactment of the Hazardous Waste Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The reports under this subsection shall include but not be limited to—

"(1) a listing by State of the numbers of active and inactive hazardous waste sites;

"(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

"(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

"(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in paragraph (3).

"(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the Hazardous Waste Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a substantial threat to public health or the environment. The priorities shall be—

"(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

"(2) consistent with the National Hazardous Waste Response Plan.

"(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be

published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for the purpose of establishing national priorities under this subsection. The one hundred inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the 'top priority sites'.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Each person and each Federal department, agency, or instrumentality who owns any inactive hazardous waste site which poses a reasonable likelihood of harm to public health or the environment shall, in such manner and at such times as required under regulations promulgated by the Administrator—

"(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for prejury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—National Hazardous Waste Response Plan

"NATIONAL HAZARDOUS WASTE RESPONSE PLAN

"SEC. 3041. (a) PLAN.—The President, after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the 'Plan'). Following such review and public hearings, but not later than eighteen months after the date of the enactment of the Hazardous Waste Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

"(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

"(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, of hazardous wastes into the environment which pose substantial danger to the public health or to significant environmental resources;

"(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carried out;

"(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the Plan;

"(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

"(6) a method for and assignment of responsibility for reporting the existence of hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such sites.

Following publication of the revised National Hazardous Waste Response Plan, emergency assistance, the removal and containment of hazardous waste, and other actions shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

"(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

"(1) methods and procedures for the removal of released hazardous waste;

"(2) criteria for development of local and regional hazardous waste removal contingency plans; and

"(3) procedures, methods, and equipment and other requirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

"(c) PROTECTION OF EMPLOYEES.—The plan under this section shall include provisions for the establishment of a program for the protection of the health and safety of employees involved in remedial actions at hazardous waste sites. Such program shall be developed jointly by the Administrator, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. The program shall include, but not be limited to, measures for identifying hazards to which persons engaged in such remedial actions may be exposed, methods to protect such employees from such hazards, and regulatory and enforcement measures necessary to assure employee protection in connection with such remedial action. Contracts entered into with the United States under any authority of law for purposes of such remedial action shall include provisions for the protection of employees consistent with the plan provisions adopted pursuant to this subsection and with other applicable law.

"AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated for preparation and publication of the plan under this section, not more than $3,000,000, to remain available until expended.

"Subpart D—Enforcement

"ENFORCEMENT

"SEC. 3051. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, and other appropriate factors.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(b) CRIMINAL PENALTY.—Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—National Hazardous Waste Response Plan

"Sec. 3041. National Hazardous Waste Reponse Plan.

"Subpart D—Prohibitions and Enforcement

"Sec. 3051. Enforcement.".

STUDY OF HAZARDOUS WASTE SITING

SEC. 4. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(5) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(6) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States

House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than eighteen months after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $2,000,000 to carry out the study required under this section.

Mr. DANNEMEYER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANNEMEYER. Mr. Chairman, contrary to what some may believe, the purpose of this substitute is not to forestall the cleanup of abandoned hazardous waste sites. In fact, just the opposite is true. The purpose of this amendment is to permit the information necessary for the implementation of a responsible, cost-effective hazardous waste cleanup program to be gathered before, rather than after the fact, especially that information pertaining to the possibility of private enterprise undertaking the task at no cost to the Government.

Ever so briefly, Mr. Chairman, this substitute would provide for the completion of the four studies—the site inventory, the funding study, the siting study, and the national response plan—called for in the Commerce Committee version of H.R. 7020 within 18 months instead of 24. And it would authorize $40 million to complete the studies instead of the $600 million for the superfund itself. Once the studies were completed, then it would be up to the Congress to decide if EPA, private enterprise or the States should do the job, and how much should be spent on it.

In addition to not putting the cart before the horse, there are several compelling reasons why this approach makes more sense and is likely to produce both better and quicker results. The first is, we do not even know how many sites there are, much less how best to clean them up. The second flows from the first; we are just guessing—as the competing versions of this bill illustrate—on the amount of money that will be needed. And the third—which to my way of thinking is the most important—is we are by no means sure that EPA is the best Agency to play the lead role in hazardous waste cleanup. Not only does EPA's past record contradict the premise that it will be able to act swiftly, efficiently and in consonance with local interests, but, like most other Federal agencies, it seems to manage problems rather than eliminate them.

Beyond that, there is evidence, taken from testimony received by the House Commerce Committee's Oversight Subcommittee and from the recent experience of the folks down around Houston, Tex., to the effect that private enterprise is willing to undertake the task of building and operating hazardous waste facilities on a "no cost to the Government" basis. What makes this latter evidence particularly striking is that the Gulf Coast Authority (GCA), which is responsible for hazardous waste disposal in a three county area down there, contacted 28 firms around the world to see if they would be interested in bidding on a construction and operation of a comprehensive hazardous waste disposal facility including three high temperature incinerators and no less than 22 of the firms submitted bids. Eleven of these bids met all criteria, and eventually, two firms were selected to build the organic and inorganic waste disposal facilities. Under terms of the contract, these firms will finance the construction and operation of the facility and will pay the "percentage of revenue" fee to the GCA which, in turn, will make available the land. No taxpayer funds are involved so far.

Of course it is possible, in this instance, that tax moneys may have to be used to pay the cost of shipping abandoned waste to the facility but there is nothing to prevent other communities, who might choose to follow Houston's example, from requiring their successful bidder to ship those wastes as part of the contractual arrangement. And judging from the number of bidders in the Houston case there is every reason to believe that firms would be willing to do business on that basis.

As a footnote, I might also mention that the firm that will build the incinerators down around Houston is already building a similar facility which it will own outright, south of Baton Rouge, La. And it is considering a third facility in California, all of which suggests that Congress would be wise to determine how many other firms might be willing to dispose of both current and abandoned wastes on a profitmaking basis if given the opportunity. The savings, both in terms of the time and money, could be considerable.

Of course, there are those who will say this is all Pollyanna and, in the real world, what we need is not more studies but cleanup moneys now. I can understand, even sympathize with, those sentiments, but as mentioned earlier, giving EPA money and authority is not synonymous with getting quick results. Moreover, the agency tends to run rough-shod over State and local interests, as it is demonstrating in the auto emission inspection and maintenance controversy, and the last thing that we need with respect to hazardous waste cleanup is for that to happen.

Furthermore, I am reminded that EPA has been concerned about PCB's for years, yet it is two private firms that seem to have come up with a solution to that problem—converting them to common table salt. So, if it is action and ingenuity we are looking for, there are better places to look than EPA for it.

Mr. Chairman, in the hope that the Members of this body will look both ways before crossing the superfund track, I urge adoption of this substitute.

□ 1730

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment. I think the points in opposition to the amendment can be made very succinctly.

There is nothing in this bill that utilizes public moneys for the establishment of a hazardous waste disposal industry, so the gentleman's apprehensions are really not founded on any kind of Federal funds or Federal basis. As a matter of fact, as I have indicated in prior statements, I am convinced that the private sector should and will develop this industry.

What the gentleman says about what he feels should be in the bill is in the bill; the inventory, the development of the plan; all of those things are in the bill. Unfortunately, the gentleman's substitute then goes on to cut out the heart of the bill, which is the emergency response authority which is needed, as well as the funding to contain and to clean up. So, I would have to strongly argue against the gentleman's amendment, although sympathetic to what I think is his main feeling, that the Federal Government should not get into the old business of developing an industry of hazardous waste disposal. I agree with that, but this substitute certainly is not responsive to that point.

I would ask for opposition to this proposal.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from California (Mr. DANNEMEYER).

The amendment in the nature of a substitute was rejected.

The CHAIRMAN. The Clerk will designate section 2.

Section 2 reads as follows:

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

The CHAIRMAN. Are there amendments to section 2?

If not, the Clerk will designate section 3.

Section 3 reads as follows:

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of throughout the United States in a manner which has resulted in, and which may in the future result in, dangerous releases;

(2) the exact location of many such hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) releases of hazardous waste can cause harm to public health and the environment;

(5) modern disposal practices using the existing state of the art of technology permit containment of dangerous releases from hazardous waste sites; and

(6) a systematic method of funding for purposes of identifying, containing, and taking other remedial actions with respect to inactive hazardous waste sites is necessary to protect public health and the environment in a cost effective manner.

AMENDMENTS OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Chairman, I offer amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. FLORIO: Page 3, line 12, strike out "art of technology" and insert "art technology".

Page 4, line 24, strike out "(a) COVERAGE.—".

Page 4, line 25, strike out "shall apply to inactive hazardous waste sites." and insert "shall apply only to inactive hazardous waste sites, except as otherwise explicitly provided".

Page 5, strike out lines 8 and 9 and substitute "(A) where".

Page 7, beginning in line 3, strike out "inactive site" and insert in lieu thereof "inactive hazardous waste site".

Page 7, in line 17, after "(2)" and in line 23 after "subsection" insert "with respect to each such site".

Page 9, line 5, strike out "(2)" and substitute "(1) and (2)".

Page 9, line 10, strike out "of the Solid Waste Disposal Act".

Page 9, line 16, strike out "(1)" and insert in lieu thereof "(2)".

Page 9, line 18, strike out "(1)" and substitute "(2) to the extent that such information is known to or reasonably determinable by such person".

Page 17, line 3, strike out "the" and insert "a".

Page 18, line 18, strike out "the" and insert "a".

Page 19, line 13, after "may" insert ", notwithstanding section 3021,".

Page 2, strike out lines 6 through 9.

Page 22, line 24, after "risk" insert "of harm".

Page 23, line 4, after "action" insert ", or if the Administrator determines that such party will voluntarily take action,".

Page 24, beginning in line 14, strike out "pursuant to an interim permit under"; and insert in lieu thereof "under interim status pursuant to".

Page 24, line 18, after "may" insert ", notwithstanding section 3021,".

Page 24, line 24, strike out "the" and insert "a".

Page 25, beginning in line 3, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant".

Page 25, beginning in line 11, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant".

Page 26, beginning in line 21, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant to".

Page 27, line 18, after "risk" insert "of an interim permit under" and insert in lieu thereof "under interim status pursuant to".

Page 27, line 22, strike out "pursuant to an interim permit under" and insert in lieu thereof "under interim status pursuant to".

Page 27, line 18, after "risk" insert "of harm".

Page 27, line 23, after "action" insert "or if the Administrator determines that such party will voluntarily take action".

Page 28, line 20, after "environment", strike the period, insert "; or", and add the following new subparagraph:

"(C) in case of an order issued to a responsible party, the technical and financial capabilities of such party to take any action under such order and the reasonableness of such order, taking into consideration the degree to which such party may have caused or contributed to any unreasonable risk."

Page 39, line 2, strike out "(3)(E)" and insert "(2)(E)".

Page 44, line 17, strike the period at the end of the sentence and add the following: ", and prior to October 1, 1984."

Page 44, line 21, strike the words "representative of affected industries," and insert in lieu thereof the following: "representatives of affected industries, and after providing adequate notice and opportunity for public comment,".

Page 46, beginning in line 6, strike out "such release" and insert "a release or threatened release".

Page 46, line 14, after "release" insert "or threatened release".

Page 47, line 3, strike the words "violates section 3035" and insert in lieu thereof the words "willfully violates section 3033".

Page 47, line 24, strike out "inactive site" and insert "inactive hazardous waste site".

Page 49, line 17, strike out "(1)".

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. FLORIO. Mr. Chairman, these amendments are exclusively technical amendments, making clerical changes and technical changes. I would ask for support for these amendments.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I will be happy to yield.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding. We have had an opportunity to review the amendments of the gentleman from New Jersey on this side, and recognize that they are only technical, and do urge the committee to support the amendments.

Mr. FLORIO. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New Jersey (Mr. FLORIO).

The amendments were agreed to.

The CHAIRMAN. Are there other amendments to section 3?

If not, the Clerk will designate section 4.

Section 4 reads as follows:

GOALS

SEC. 4. The goals of this legislation are to—

(1) provide for a State-by-State inventory of inactive hazardous waste disposal sites and the condition of such sites;

(2) evaluate such sites, and set priorities among the sites, based on the danger they present;

(3) establish a program to assure the containment of dangerous releases from inactive hazardous waste sites;

(4) accelerate the elimination of the presence of any unsafe hazardous waste disposal sites; and

(5) provide a systematic method of funding for the identification of inactive hazardous waste disposal sites, the evaluation of such sites, and for the containment and other remedial action with respect to such sites to assure protection of the public health and the environment in a cost effective manner.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the last word.

□ 1740

Mr. Chairman, I would like to join with many of my colleagues to express great appreciation to the subcommittee and the full Committee on Interstate and Foreign Commerce for all the time and effort they have put in on this incredible subject which is so important and so national in scope.

I have testified before the committee, and I know that many of the people have brought their problems to the committee on this very difficult issue. One of these things I want to thank the committee for is that it very carefully, in the report of the Committee on Interstate and Foreign Commerce, submitted some of our problems in Denver, Colo.

We have a problem where radium tailings were dumped, and we have talked about that today. We have a chemical dump problem, and we also have a radium tailings problem. We have found these radium tailings under pancake houses, in empty lots where children were playing, by factories, and in all sorts of areas. There are over 30 some areas that have these tailings, and they are very dangerous also because of the low level of radiation in that area where the chemical sites are located.

So I want to thank the gentleman for outlining all these matters in the committee report and for listening to many of us who have been there and then coming up with a solution. To put all of these things together is very hard, and sometimes we get to one step and then another but do not get it done all the way.

Mr. Chairman, I would like to engage the gentleman from New Jersey (Mr. FLORIO) in colloquy, because I want to make it clear in the legislative language that when we are talking in the bill about hazardous waste sites and the program for appropriate environmental response, we are also including such things as the radium tailing sites we have seen listed in the report.

Mr. FLORIO. Mr. Chairman, if the gentlewoman will yield, I will be happy to respond to her question. Of course, the answer is that if the materials the gentlewoman is concerned about, any one of the materials, are covered under the Resource Conservation and Recovery Act, they would, of course, be covered and eligible for funding.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for his response, because we wanted to make sure those were included. They are included in the report, and I wanted to make sure that is a comprehensive, broad definition rather than a narrow one.

Mrs. FENWICK. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I thank my colleague for yielding, because I, too, have a question.

In my district, the Federal Government in the past stored radioactive material that is now under the Catholic rectory nearby. Actually the rectory is practically on top of the site that used to be covered with this radioactive material, and it has a very high radioactive reading.

I would like to ask, will this be covered, too, in the bill?

Mr. FLORIO. Mr. Chairman, if the gentlewoman from Colorado will yield, I will respond in the same way that I responded to the gentlewoman from Colorado.

If in fact it is covered as a hazardous waste—and I suspect it is—under the Resource Conservation and Recovery Act, it would be eligible for funding for remedial action under this bill.

Mrs. FENWICK. Whether it is the Federal Government or private, it would be the same?

Mr. FLORIO. I am sorry, but I did not hear the gentlewoman.

Mrs. FENWICK. We are dealing with waste that was left by the Federal Government. That would still be covered?

Mr. FLORIO. Yes. Mr. Chairman, if the gentlewoman from Colorado will yield further, if in fact we are talking about the Federal Government's authority on Federal Government property, the appropriate agency is required to respond.

Mrs. FENWICK. Mr. Chairman, they apparently abandoned this site and turned the land over to the town, and the Catholic rectory and a playground were built over the site.

Mr. FLORIO. Then it would be covered under the act.

Mrs. FENWICK. Mr. Chairman, I thank the gentleman from New Jersey (Mr. FLORIO).

The CHAIRMAN. Are there further amendments? If not, the Clerk will designate the next section.

Section 5 reads as follows:

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 5. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"COVERAGE OF PART

"SEC. 3021. (a) COVERAGE.—The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Petrochemical feedstock' means the following: liquid or gaseous hydrocarbons used primarily for the preparation of more complex chemicals: ethylene, propylene, butylenes, butadiene, butanes, benzene, toluene, xylenes, naphthalene, and methane other than that used to make ammonia.

"(3) 'Release into the environment' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of this part and other applicable law.

"(4)(A) 'Supply' means, with respect to petrochemical feedstocks or inorganic elements and compounds, the production, manufacture, or importation of such feedstocks or compounds.

"(B) 'Supplier', with respect to petrochemical feedstocks or inorganic elements and compounds, means any person who supplies such feedstocks or compounds and who either—

"(i) provides, through sale or any other means, the feedstocks or elements and compounds to other persons, or

"(ii) uses the feedstocks or elements and compounds himself.

"(5) 'Threatened release' means a condition or situation where there exists a substantial likelihood that a release into the environment from or at an inactive site is imminent.

For purposes of this part, the terms 'inorganic elements and compounds', 'crude oil', and 'refiner' shall have the meanings prescribed by the Administrator, by rule.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carried out at such site;

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Such forms shall not require the submission of information which is impracticable, as determined by the Administrator.

"(3) Where any person fails to comply with the requirements of paragraph (2) with respect to any inactive hazardous waste site, or where information acquired from any person under paragraph (2) with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of the Solid Waste Disposal Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (1) or such information as may be necessary to compile the information described in paragraph (1). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditures may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) REPORT TO CONGRESS.—Based upon the State inventories conducted by the States (or, if necessary, by the Administrator under subsection (c)), the Administrator shall compile a national inventory of all hazardous waste sites. The Administrator shall submit a report containing the national inventory, together with an analysis thereof, to the Committee on Environment and Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives within two years of the date of enactment of the Hazardous Waste Containment Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal. The reports under this subsection shall include but not be limited to—

"(1) a listing by State of the numbers of active and inactive hazardous waste sites;

"(2) an analysis of the numbers of various types of sites and the numbers of sites and volumes of waste contained in them by industry category;

"(3) a list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

"(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in paragraph (3).

"(e) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. (a) STATE PRIORITIES.—Within fifteen months after the date of enactment of the Hazardous Waste Containment Act of 1980, and annually thereafter, each State shall establish priorities among the inactive hazardous waste sites in that State which present, or may present, a substantial threat to public health or the environment. The priorities shall be—

"(1) established in accordance with guidelines of the Administrator establishing criteria which define the conditions that constitute such a threat, and

"(2) consistent with the National Hazardous Waste Response Plan.

"(b) NATIONAL PRIORITIES.—The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and the environment presented by such sites. The Administrator may utilize any priorities established by the States under subsection (a) for the purpose of establishing national priorities under this subsection. The one hundred inactive hazardous waste sites designated by the Administrator on the list of national priorities as having the greatest danger to public health and the environment shall be referred to in this part as the 'top priority sites'.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Each person and each Federal department, agency, or instrumentality who owns any inactive hazardous waste site which poses a reasonable likelihood of harm to public health or the environment shall, in such manner and at such times as required under regulations promulgated by the Administrator—

"(1) monitor the extent to which hazardous waste associated with such site is released into the environment and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released into the environment in a manner which presents or may present a substantial threat to public health or the environment.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Administrator, the Administrator may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part. Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—Hazardous Waste Response Authority

"EMERGENCY RESPONSE

"SEC. 3041. (a) EMERGENCY RESPONSE AUTHORITY OF ADMINISTRATOR.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at an inactive hazardous waste site presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any inactive hazardous waste site in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that an inactive hazardous waste site presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

"(A) relocation, contain, and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part. Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order and with respect to the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include (i) assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release, (ii) restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and (iii) assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 per centum of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action. This paragraph shall apply only to those sites which have been listed by the Administrator under section 3032(b) as top priority sites.

"(3)(A) Upon receipt of evidence that there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste into the environment from or at an inactive hazardous waste site which conditions present or may present an imminent and substantial endangerment to public health or the environment, and whenever the Administrator is unable to determine after an inspection of the conditions by his duly appointed representative—

"(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

"(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions,

the Administrator may provide such assistance to State and local governments, and take such emergency response actions, as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such conditions.

"(B) The Administrator may exercise the authority of this paragraph for a period expiring on the earlier of—

"(i) three months from the date on which he initiates such action, or

"(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

"(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of the Administrator other than this part,

the Administrator shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

"(4) The Administrator shall not exercise the authority of this subsection to engage in, or order, the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

"(A) less expensive than undertaking such activity onsite; or

"(B) essential to protect the public health or the environment due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

"(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accommodate the hazardous waste transferred to that facility under paragraph (1) or (2) as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

"(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal, State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

"(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to improve hazardous waste cleanup and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

"(6) Where the Administrator makes any determination under paragraph (1) or (2) with respect to any site owned or operated by a Federal department, agency, or instrumentality, the department, agency, or instrumentality shall take the action referred to in such paragraph (1) or (2) in lieu of action by the Administrator under such paragraphs.

"(7) Where the Administrator determines that a State or local government has the capability to carry out any or all of the actions required to be carried out pursuant to a determination of the Administrator under paragraph (1) or (2), and where such State or local government agrees to carry out such actions, the Administrator shall enter into—

"(A) cooperative agreements involving the expenditure of appropriated funds, or

"(B) contracts

with such State or local government to take such action. Such agreements shall be subject to the cost sharing provisions of section 3043.

"(8) Anyone ordered or authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same maner as provided for officers or employees of the Environmental Protection Agency under section 3007.

(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site, any person who—

"(1) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste, or

"(2) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or the environment.

"(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Admintrator in accordance with the same principles as are applicable under section 3071 (a) for purposes of determining liability under that section in the case of a person causing or contributing to a release or threatened release of hazardous waste.

"(d) DETERMINATION OF APPROPRIATE RESPONSE.—The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this section. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(1) the need for protection of public health and the environment at the site under consideration,

"(2) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or the environment; and

"(3) in case of an order issued to a responsible party, the technical and financial capabilities of such party to take any action under such order and the reasonableness of such order, taking into consideration the degree to which such party may have caused or contributed to any unreasonable risk.

With respect to actions under paragraphs (1) and (3) of subsection (a), the Administrator shall make such determination taking into consideration the need for immediate action.

"(e) INTERIM SITES.—(1)(A) Upon receipt of evidence that the release of any hazardous waste into the environment from or at a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an imminent and substantial endangerment to public health or the environment, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or the environment which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any hazardous waste site which is operating pursuant to an interim permit under section 3005(e) in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an unreasonable risk of harm to public health or the environment, he may, after notice and opportunity for written or oral public comment—

"(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order, including the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. Such remedial action may also include assessment of the injury to natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release, restoration, replacement, or rehabilitation of any such natural resources injured or destroyed as a result of such a release, and assistance to any State program which the Administrator deems adequate to carry out such activities. Not more than 10 per centum of the amounts available for purposes of this section in any fiscal year may be used in such fiscal year to carry out the preceding sentence with respect to the sites to which this subsection applies. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(3) When the Administrator or any State or local government has incurred costs pursuant to this subsection with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), the provisions of section 3071 shall apply for purposes of recovering such costs in the same manner as such provisions apply in the case of inactive hazardous waste sites.

"(4) As used in this subsection, notwithstanding section 3022(3)(A), the term 'release into the environment' includes the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping, or other transfer of hazardous waste to any land, air, or water at or from a hazardous waste site which is operating pursuant to a permit treated as having been issued under section 3005(e).

"(5) As used in this subsection, the term 'responsible party' means with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), any person who—

"(A) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

"(B) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or the environment.

"(6) Where there are two or more responsible parties with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined by the Administrator in accordance with the same principles as are applicable under section 3071(a) for purposes of determining liability under that section in the case of a person causing or contributing to a release or threatened release of hazardous waste.

"(7) The Administrator shall select appropriate actions determined to be necessary

to carry out the provisions of this subsection. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(A) the need for protection of public health and the environment at the site under consideration, and

"(B) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health, safety, or the environment.

With respect to actions under paragraph (1), the Administrator shall make such determination taking into consideration the need for immediate action.

"(f) WAGES.—(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Administrator shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

"(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

"NATIONAL HAZARDOUS WASTE RESPONSE PLAN

"SEC. 3042. (a) PLAN.—The President, after consultation with the States, shall propose for public review and hold public hearings on a National Hazardous Waste Response Plan (hereinafter in this section referred to as the 'Plan'). Following such review and public hearings, but not later than eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the President shall publish the Plan. The Plan may, from time to time, be revised, amended, and modified after notice and public hearing. The Plan shall include, at a minimum—

"(1) methods for discovering and investigating hazardous waste sites and establishing their danger to public health and the environment;

"(2) methods for evaluating (including cost analyses) and containing any releases, or threats of releases, of hazardous wastes into the environment which pose substantial danger to the public health or to significant environmental resources;

"(3) methods and criteria for determining the appropriate extent of removal, emergency response, containment, and other measures to be carried out under this part;

"(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effecting the Plan;

"(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

"(6) a method for and assignment of responsibility for reporting the existence of hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous wastes from such sites.

Following publication of the revised National Hazardous Waste Response Plan, emergency assistance, the removal and containment of hazardous waste, and other actions pursuant to this part shall, to the greatest extent possible, be in accordance with the provisions of the Plan.

"(b) METHODS, PROCEDURES, CRITERIA, AND EQUIPMENT.—The National Hazardous Waste Response Plan shall set forth recommended—

"(1) methods and procedures for the removal of released hazardous waste;

"(2) criteria for development of local and regional hazardous waste removal contingency plans; and

"(3) procedures, methods, and equipment and other requirements to prevent and contain releases of hazardous waste.

In developing recommendations under this subsection, the President shall consult with appropriate representatives of industries concerned.

"(c) PROTECTION OF EMPLOYEES.—The plan under this section shall include provisions for the establishment of a program for the protection of the health and safety of employees involved in remedial actions at hazardous waste sites undertaken pursuant to section 3041. Such program shall be developed jointly by the Administrator, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health. The program shall include, but not be limited to, measures for identifying hazards to which persons engaged in such remedial actions may be exposed, methods to protect such employees from such hazards, and regulatory and enforcement measures necessary to assure employee protection in connection with such remedial action. Contracts entered into for purposes of remedial action under such section 3041 shall include provisions for the protection of employees consistent with the plan provisions adopted pursuant to this subsection and with other applicable law.

"STATE CONTRIBUTION

"SEC. 3043. (a)(1) Not more than 90 per centum of the total costs of actions taken by the Administrator with respect to any site under section 3041 may be paid by the United States. At least 10 per centum of such total costs shall be paid by the participating State in which the inactive hazardous waste site concerned is located. No amount may be expended by the Administrator for any such action unless the State in which such hazardous waste is located has established assurances satisfactory to the Administrator that—

"(A) the aggregate costs of long-term maintenance associated with the hazardous waste site concerned will be funded from non-Federal sources,

"(B) a hazardous waste disposal facility which meets the requirements of part 1 of this subsection will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released,

"(C) the State share of the costs under section 3041 will be available; and

"(D) such State will provide adequate measures to protect the health and safety of employees engaged in removal, containment, and other remedial actions undertaken pursuant to section 3041.

"(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which the Administrator has taken any action under paragraph (1) or (2) of section 3041(a).

"(3) For purposes of this subsection, the term 'long-term maintenance' shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

"(4) In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the Administrator shall grant the State a credit for amounts expended or obligated by such State after January 1, 1978, and before the date of the enactment of this Act, for purposes of remedial action taken by the State with respect to any release of hazardous waste in such State. Such credit shall reduce the amount which the State would otherwise be required to pay in connection with assistance provided under this section until such time as the aggregate amount of credit granted by the Administrator to such State equals the amount required to be paid by such State. No credit shall be granted under this paragraph for any amount expended or obligated by any State for the temporary or permanent relocation of any individuals residing in the vicinity of, or otherwise affected by, the release involved.

"(b)(1) Paragraphs (1) and (2) of subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 per centum of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

"(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $500,000 with respect to any hazardous waste site.

"(3) During the period ending eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's 10 per centum share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such eighteen month period.

"Subpart D—Hazardous Waste Response Fund

"ESTABLISHMENT OF FUND

"SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the 'Fund' which shall be available as provided in appropriation Acts, only for the purposes specified in subsection (c).

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) an amount equal to all amounts collected as fees under section 3052,

"(B) an amount equal to all amounts recovered by the United States under subpart F,

"(C) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041,

"(D) any penalties assessed under this part, and

"(E) amounts authorized to be appropriated to fund under paragraph (3).

"(2) The total amount deposited in the Fund which is derived from the fees collected under section 3052 and from appropriations under paragraph (3) shall not exceed—

"(A) $100,000,000 for the fiscal year 1981,

"(B) $150,000,000 for the fiscal year 1982,

"(C) $150,000,000 for the fiscal year 1983, and

"(D) $200,000,000 for the fiscal year 1984.

"(3) There is authorized to be appropriated to the Fund for the fiscal year—

"(A) 1981, $50,000,000,

"(B) 1982, $75,000,000,

"(C) 1983, $75,000,000, and

"(D) 1984, $100,000,000.

"(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimated by the Administrator and submitted to the Congress in the annual budget submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for emergency response, removal, containment, cleanup, and other action carried out under subpart C, including reimbursement of excess costs pursuant to section 3041(c).

Any amounts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

"FEES

"SEC. 3052. (a) IMPOSITION OF FEE.—Under regulations promulgated by the Administrator, there shall be imposed on—

"(A) each supplier of petrochemical feedstocks, a fee for each pound of petrochemical feedstocks supplied to any other person or used by such supplier,

"(B) each supplier of inorganic elements and compounds, a fee for each pound of inorganic elements or compounds supplied to any other person or used by such supplier, and

"(C) the receipt by any refiner of crude oil and the export by any person of crude oil, a fee per barrel of crude oil received or exported.

Such fees shall be imposed annually and on the basis of a schedule of rates established by the Administrator at such level as he annually estimates as necessary to recover the amounts specified in subsection (b). The schedule shall be modified annually by the Administrator in accordance with this section.

"(2) The inorganic elements and compounds subject to the fee imposed under this subsection are—

"(A) arsenic and the equivalent weight of arsenic in arsenic trioxide, cadmium, chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate, lead and the equivalent weight of lead in lead oxide, mercury, the equivalent weight of barium in barium sulfide, antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide, cobalt, nickel, the equivalent weight of tin in stannic chloride and stannous chloride;

"(B) chlorine, the equivalent weight of fluorine in hydrofluoric acid and bromine;

"(C) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid;

"(D) elemental phosphorus; and

"(E) such other inorganic elements and compounds as the Administrator may by rule provide, based upon information available to him as a result of listing or characterizing hazardous wastes or of implementing this Act.

"(3) Any determination by the Administrator under paragraph (3)(E) to subject any other inorganic element or compound to the fee imposed under this subsection shall be based upon three or more of the following—

"(A) A finding by the Administrator that the raw material from which such element or compound is derived, including intermediates and products of such raw material, is hazardous in more than one form.

"(B) A finding by the Administrator that the generation of the raw material, intermediates, or products from which such element or compound is derived results in hazardous waste.

"(C) A finding by the Administrator that the raw material from which the element or compound is derived is produced in large amounts.

"(D) A finding by the Administrator that the raw material from which the element or compound is derived is capable of increasing the hazard potential of other raw materials.

"(4) No fee shall be imposed under this subsection on any quantity of feedstock or element or compound with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (A) or (B) of paragraph (1). Except for a fee imposed under such subparagraph (A) on the sale or use of petrochemical feedstocks derived from any crude oil, no fee may be imposed under paragraph (1) on any crude oil with respect to which a fee has previously been imposed, as determined by the Administrator, under subparagraph (C) of such paragraph (1).

"(5) For a period of three years after the initial date on which fees are imposed under this section, no fee shall be imposed under this section with respect to any petrochemical feedstock or inorganic elements or compound which is used in the fertilizer production industry. If the Administrator determines that the use by such industry of any such feedstock, element, or compound has required expenditures for remedial action under this part, the Administrator may, after such three year period, impose a fee under this section with respect to such feedstocks, elements, or compounds used by such industry. The amount of such fee so imposed shall bear the same ratio to the total fees imposed under this section as the expenditures for remedial action under this part resulting from the use by the fertilizer industry of such feedstocks, elements, and compounds bears to the total expenditures for remedial action under this part.

"(b) AMOUNT OF FEE.—(1) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of petrochemical feedstocks shall not exceed the lesser of—

"(A) 0.5 cent per pound of petrochemical feedstock supplied or used.

"(B) 2 per centum of the price in the case of petrochemical feedstock when sold at arms length by the supplier,

"(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $30,000,000,

"(ii) 1982, $45,000,000,

"(iii) 1983, $45,000,000, and

"(iv) 1984, $60,000,000, or

"(D) such amount as is necessary to produce revenues equal to 60 per centum of the amounts appropriated under section 3051 (b)(3) for the fiscal year concerned.

"(2) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the supply or use of inorganic elements or compounds shall not exceed the lesser of—

"(A) $5 per ton of inorganic elements or compounds supplied or used,

"(B) 2 per centum of the price in the case of inorganic elements or compounds when sold at arms length by the supplier,

"(C) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000, or

"(D) such amount as is necessary to produce revenues equal to 20 per centum of the amounts appropriated under section 3051(b)(3) for the fiscal year concerned.

"(3) The aggregate amount of the fees imposed under regulations under subsection (a) with respect to the receipt of crude oil shall not exceed the lesser of—

"(A) 3 cents per barrel of crude oil received,

"(B) such amount as is necessary to produce revenues equal to, for the fiscal year—

"(i) 1981, $10,000,000,

"(ii) 1982, $15,000,000,

"(iii) 1983, $15,000,000, and

"(iv) 1984, $20,000,000, or

"(C) such amount as is necessary to produce revenues equal to 20 per centum of the amounts appropriated under section 3051 (b)(3) for the fiscal year concerned.

"(4) In order to provide an economic incentive for the recycling and reuse of any feedstock, element, or compound referred to in subsection (a)(1)(A) or (B), the Administrator may reduce the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound in proportion to the extent that he determines any portion of that feedstock, element, or compound to be—

"(A) removed from the waste stream of a production process and recycled in such production process, reintroduced into products, or used as a source of energy, or

"(B) derived from recycled material.

No reduction under this paragraph with respect to any feedstock, element, or compound may exceed the amount of the fee which would otherwise be imposed under this section on the sale or use of such feedstock, element, or compound.

"(c) COLLECTION OF FEES.—(1) The time and manner of payment of the fee shall be specified, the reporting and submission of information necessary to collect the fee shall be required, and the collection of the fees shall be carried out, by such department or agency of the United States as the President shall designate in such manner as such department or agency shall, by rule, establish.

"(2) Any person required to pay any fee or comply with any other requirement imposed under regulations promulgated under subsection (a) who fails or refuses to pay such fee, together with interest thereon (at prevailing rates as determined by the Secretary of the Treasury) in accordance with regulations under this section shall, in addition to liability for any such fee, pay a civil penalty of $2,000 for each day during which such failure or refusal continues.

"(d) JUDICIAL REVIEW OF FEE REGULATIONS.—No regulation of the Administrator imposing any fee under this section, and no modification of any such regulation, may be stayed by any court pending completion of judicial proceedings for the review of such regulation or modification.

"(e) EFFECTIVE DATE.—The fees imposed under regulations pursuant to this section shall apply to—

"(1) petrochemical feedstocks and inorganic elements and compounds, supplied or used,

"(2) crude oil received

on or after October 1, 1980.

"(f) REPORT.—The Administrator, in consultation with the Secretary of the Treasury and other appropriate Federal departments, agencies, and instrumentalities, and with representative of affected industries, shall devise a fee schedule based upon the disposal or generation of hazardous waste. Such schedule shall, to the maximum extent practicable, be based upon—

"(1) the degree of hazard to public health and the environment posed by the various categories of hazardous wastes; and

"(2) the risk of harm to public health and the environment posed by such wastes so as to accurately and equitably reflect the costs of such risks in the production stream from which such waste is generated;

and shall minimize administrative, regulatory, and reporting burdens by relying on existing or readily obtainable information. Within one year from the date of the enactment of this subsection, the Administrator shall submit to the appropriate committees of Congress a preliminary report identifying the issues involved in carrying out this subsection. Within two years after such date of enactment, the Administrator shall submit to such committees a final report setting forth the fee schedule devised pursuant to this subsection. There is authorized to be appropriated to carry out this subsection not more than $2,000,000 to remain available until expended.

"Subpart E—Enforcement

"ENFORCEMENT

"SEC. 3061. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil penalty against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or mitigate the effects of such release, and other appropriate factors.

"(B) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Administrator or by a State or local government, or both, under section 3041 with respect to the release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(4) No civil penalty may be imposed under this section against any person for violation of an order under section 3041 unless such person is liable for costs under section 3071.

"(b) CRIMINAL PENALTY.—Any person who willfully fails to comply with the notification requirement of subsection (a) of section 3031 or who violates section 3035 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"Subpart F—Liability For Hazardous Waste Release

"LIABILITIES FOR RELEASES

"SEC. 3071. (a) LIABILITY.—(1) Except for a release, or threatened release, of hazardous waste which the defendant establishes to be caused solely by—

"(A) an act of God or an act of war,

"(B) negligence on the part of the Government of the United States,

(C) an act or omission of a third party if the defendant establishes that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste, or

"(D) any combination of the foregoing.

where any release, or threatened release, of hazardous waste into the environment from or at an inactive site causes any costs described in subsection (b), any person who caused or contributed to the release or threatened release shall be strictly liable for such costs. Except as provided in paragraph (2), such liability shall be joint and several with any other person who caused or contributed to such release.

"(2)(A) If a generator or transporter of hazardous waste establishes that only a portion of the total costs described in subsection (b) are attributable to hazardous waste generated or transported by him, such generator or transporter shall be liable under this subsection only for such portion. If the owner or operator of any inactive hazardous waste site establishes that only a portion of the total costs described in subsection (b) are attributable to hazardous waste which was treated, stored, or disposed of in a period during which he owned or operated the site, such owner or operator shall be liable under this section only for such portion.

"(B) To the extent apportionment is not established under subpargraph (A), the court shall apportion the liability, to the maximum extent practicable, among the parties based upon evidence presented by the parties as to their contributions.

"(C) Following any apportionment under this paragraph, no person shall be required to pay in excess of his apportioned share of the total costs described in subsection (b).

"(b) COSTS.—The costs for which liability is imposed under subsection (a) with respect to a release, or threatened release of hazardous waste are the costs of any removal, containment, and emergency assistance or other action provided with respect to such release, or threatened release, under section 3041 (including costs incurred by any person ordered to carry out such action under section 3041 and recovered from the Fund under section 3041(c)) and any costs incurred by a State or local government with respect to such release.

"(c) TO WHOM LIABLE.—The liability for costs described in subsection (b) shall be to the governmental entity which incurred such costs. In the case of amounts which are paid from the Fund pursuant to section 3041(c) the liability shall be to the Administrator. The Administrator, or any other such governmental entity to which a person is liable under this section for the recovery of costs referred to in subsection (b)(1), shall bring an action under this section for the recovery of such costs against the person liable promptly following his determination of the amount of any such costs.

"(d) LIABILITY UNDER OTHER AUTHORITY OF LAW.—Nothing in this section shall affect the liability of any person under any other authority of law for any release, or threatened release, of hazardous waste, except that the amount recovered by such person under any other authority of law for any costs to which this section applies shall reduce the amount which such person may recover under this section for such costs.

"(e) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability of any other person, including a guarantor, by reason of subrogation, indemnification agreement or otherwise, to a person held liable under this section.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT

immediately before the item relating to section 3001 and by adding the following at the end thereof:

PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—Hazardous Waste Response Authority

"Sec. 3041. Emergency response.
"Sec. 3042. National Hazardous Waste Reponse Plan.
"Sec. 3043. State contribution.

"Subpart D—Hazardous Waste Response Fund

"Sec. 3051. Establishment of Fund.
"Sec. 3052. Fees.

"Subpart E—Prohibitions and Enforcement

"Sec. 3061. Enforcement.

"Subpart F—Liability for Hazardous Waste Release

"Sec. 3071. Liability for releases.".

AMENDMENT OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Chairman, I offer an amendment, and I ask unanimous consent that the reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The amendment reads as follows:

Amendment offered by Mr. DINGELL: Page 5, after line 18, insert: "Where two or more noncontiguous areas meet the requirements of subparagraphs (A) and (B) and where they are reasonably related on the basis of geography or on the basis of the threat, or potential threat, to public health or the environment, the Administrator may treat such areas as a single inactive hazardous waste site for purposes of this Act.".

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment. First, let me state that the amendment is very simple. All it does is permit a number of sites, in the discretion of the administrator, to be treated as a single one for the purpose of cleanup.

I want to make the comment that I believe this is desirable by reason of the fact that a large number of these sites have been set up by the same person or groups of persons in a similar area, and the cleanup of one will lead to benefit of the area in which the problem exists.

Mr. Chairman, I would like to pay tribute to the distinguished and able chairman of the subcommittee, the members of the subcommittee, and the distinguished and able senior minority member of the subcommittee for the outstanding way in which they have processed this legislation and for the remarkable lack of controversy which they have brought to the floor.

I might observe that not too long back, when I was on the other side of a piece of legislation from my good friends whom I have just mentioned, the gentleman from New Jersey (Mr. FLORIO) and the gentleman from Illinois (Mr. MADIGAN), along with my good friend, the gentleman from Texas, I took quite a drubbing at their hands. So I have observed their ability on two occasions, and I commend them not only for the remarkable way in which they have handled this matter but for the superb job they have done in crafting a very fine and technically well done piece of legislation, one which is very important insofar as the great concerns the Nation has in this matter relate to the legislation.

I rise to offer a perfecting amendment to the bill, a bill which in every other way represents a sound and exemplary work of environmental health legislation.

The amendment, which is of a technical nature, makes explicit the scope of the Administrator's discretion when designating sites pursuant to the site definition provisions of the act. My amendment is offered in recognition of the frequent lack of correlation between a given hazardous waste threat and a single hazardous waste site. This clarification is particularly important when viewed in light of the priority site provisions of the act. The amendment is consistent with and reinforces the intent of the act, which is to expeditiously abate this Nation's most serious hazardous waste problems, regardless of their exact relationship to the number of sites involved.

I also would like to take this opportunity to express to this body my full support for this essential legislation. We can afford to delay no longer the initiation of comprehensive and concerted action to abate and prevent human and environmental exposures to hazardous wastes from abandoned and inactive sites. I credit you, Mr. Chairman, and the distinguished ranking minority member of the Transportation and Commerce Subcommittee, Mr. MADIGAN, for your tenacity and patience, and for maintaining both substance and balance in this urgent and controversial measure.

Indeed, we are dealing with one of the most pressing public health threats of today and the coming decade. This Nation is only beginning to inherit the legacy of past inadequacies and indiscretions. While attention has focused on Love Canal, the Valley of the Drums and others, these are but the headliners in a cast of thousands.

The adverse health and environmental impacts associated with individual hazardous waste sites are reprehensible and must be redressed. But, perhaps the most pervasive and enduring threat posed by hazardous waste releases is witnessed in our groundwater, a precious nonrenewable resource. Fifty percent of the U.S. population relies on groundwater for its drinking water supply. Furthermore, one-fifth of the population relies on groundwater from individual wells without the benefit of treatment. Yet, in one of the only States to have thoroughly surveyed the problem of groundwater contaminated by inplace toxics, the State of Michigan has identified over 500 known and suspected sites. As other States follow suit, the scope of groundwater contamination will undoubtedly intensify.

The severity of the hazardous waste problem is magnified even further when one examines the inadequacy of existing authority to deal with the release of hazardous wastes from inactive and abandoned sites. Under present authority, before action can be taken to abate releases of hazardous wastes from such sites, a problem must already exist, a financially responsible owner must be identified, and abatement efforts can only begin after successful judicial action has occurred. Thus, the unfortunate victims of hazardous waste releases are further victimized by protracted litigation.

The bill before us remedies these weaknesses in existing law, by providing the authority, funding and incentives to initiate and maintain the cleanup of this Nation's hazardous waste morass. At this time, there is no more important or necessary step that can be taken to affirm our resolve to abate and prevent hazardous waste exposures.

Nonetheless, it would be foolhardy to maintain that all of our hazardous waste ills will be solved with this one piece of legislation given the scope of the problem facing the Nation. The magnitude of the problems of hazardous waste siting, groundwater contamination and postclosure liability will require the resources and resolve of generations to come.

The task is large and the stakes are high, and we must commence with this first and most important step. We have no more time to delay. I urge all of my colleagues to support the passage of this bill.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I thank the gentleman for yielding, and I will say that his proposal is very desirable.

Since he has brought this to our attention, we have found that there are other areas that we think will benefit from the proposal. It is discretionary, and accordingly I am prepared to accept the amendment.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding, and I also thank him for his courtesy in providing the minority an opportunity to have an advanced look at the amendment. We have reviewed it and do intend to support it. We urge the Committee to do the same.

Mr. DOWNEY. Mr. Chairman, I rise in opposition to the amendment, but primarily I rise to address a question to the subcommittee chairman.

My understanding of the Dingell amendment is that it just provides for discretion?

Mr. FLORIO. Mr. Chairman, if the gentleman will yield, that is correct, on the part of the Administrator to treat two or more noncontiguous areas where they are reasonably related on the basis of a threat to the public health. That is what this is designed to cover.

If there are a number of individual sites in direct proximity—and they may even exist over State lines—then they could in the discretion of the Administrator be treated as a single source.

Mr. DOWNEY. Mr. Chairman, my question concerns Long Island, which has 2.8 million people who all occupy one aquifer, and I am concerned that the EPA Administrator not decide that he will designate all of Long Island as one dump site. This just allows him the discretion to determine. I never thought of Long Island as a "dump site," and I hope that EPA does not think of it as such.

Mr. Chairman, I am concerned that we not handle what I consider to be district problems in all of Long Island in the same way under this same umbrella.

Mr. FLORIO. Mr. Chairman, the gentleman is correct. This is simply discretionary.

Mr. DOWNEY. Then Mr. Chairman, I would not object or oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. DINGELL).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CLEVELAND

Mr. CLEVELAND. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CLEVELAND: Page 14 line 24 after the period, insert: "To the extent practicable, the Administrator shall include in such list of the 100 top priority sites at least one site in each State. The site so included shall be the inactive hazardous waste site designated by the State under subsection (a) as having the greatest danger to public health and the environment of all the sites in that State which are included in the inventory carried out under section 3031.".

Mr. CLEVELAND. Mr. Chairman, I would just like to say that this amendment springs from experiences in my Committee on Public Works and Transportation. When we have programs such as this, we always tried to have each State qualify for at least a part of the program.

It was called to my attention, however, by the distinguished gentleman from New Jersey (Mr. FLORIO) and my friend and colleague, the gentleman from Illinois (Mr. MADIGAN), that there might be some States that would not need help or benefit under the provisions of this act, so that is why we have added the language, "to the extent practicable."

I do know that in my own small State of New Hampshire we have specific problems, and they are not large enough or important enough perhaps to make that magic list. But I think we ought to have at least some of them taken care of. In that connection the amendment offered by the gentleman from Michigan (Mr. DINGELL) is perhaps helpful to a State like New Hampshire, because it is becoming a dumping ground for some types of waste that we do not even produce. Rather it is because we are close enough to some of the places that do.

Mr. Chairman, section 3032 of H.R. 7020, the Hazardous Waste Containment Act, requires the States to conduct an inventory of inactive hazardous waste sites within 15 months of the date of enactment. These priority lists may then be used by the Administrator to compile the top priority sites for the Nation. The sum of $35 million is to be made available to the States to carry out this program. I would like to assume that the administration will use the State list developed under H.R. 7020's mandate.

There is no requirement, however, that he do so. This creates an opportunity for

political mischief, by any administration, allowing them potentially to favor those States which have supported their program or which have supported the administration politically. I do not intend to address this problem today, however, but I think my colleagues should be on notice that this situation potentially exists with the language of H.R. 7020, as currently before the House, and I hope my colleagues will correct this problem in conference.

Now, Mr. Chairman, as we are all aware, any action by a State to list and categorize sites which may pose a threat to public health, safety and welfare is likely to raise some public concerns. Yet one of the deficiencies of H.R. 7020, in my opinion, is that it does not provide any assurance that a State will receive Federal assistance once this problem has been identified. On the one hand, we are telling people there is a problem and we are ranking that problem in terms of predetermined national criteria. Yet, on the other hand, we make no promise as to whether or not the problem will be addressed under H.R. 7020.

Additionally, Mr. Chairman, whenever a site might discharge a hazardous substance into the navigable waters, State response programs, financed by taxes or fees, would be preempted by H.R. 85, as passed by the House last Friday—if those efforts are to fund removal costs or compensation of certain economic damages. Therefore, Mr. Chairman, it is my opinion that we must provide a minimum level of assistance to the States to respond to those sites identified by a State as posing a threat to human health and welfare.

This is especially important to rural States which have become a dumping ground for the so-called midnight dumpers of hazardous substances. These States are unlikely to compete in a national program for assistance. This is because of the nature of clandestine dumping operations. A State like mine, which does not generate a large volume of toxic waste, has been victimized as a dumping ground for waste from other States. This means that we can receive a huge volume of waste which are dispersed widely in the unpopulated areas of the State but not in sufficient concentrations or volumes for any one site to qualify on anybody's national list of 100. Yet a severe problem exists.

Therefore, I am offering an amendment to require the Adiministrator of EPA to designate, at a minimum, one site per State for assistance under H.R. 7020. That site must be selected from the State priority list and must be designated by the State as the site they want to be assisted under the Federal program. Mr. Chairman, this approach is consistent with other legislative initiatives, specifically the Clean Water Act which strives to achieve some sort of equity in the disposition of Federal assistance to achieve clean water. This amendment will assure that we have a truly national program and that a minimum level of assistance is available to address the concerns of our citizens which will surely result from the identification of these sites in each State. I urge my colleagues to support this amendment.

Mr. Chairman, the distinguished managers of the bill have agreed to graciously accept this amendment with one change, which I have made to the original amendment I intended to offer. I added the phrase "to the extent practicable" at the beginning of the amendment. This was done because Mr. FLORIO indicated that he was concerned that some States have no sites needing Federal assistance and that my amendment would tie EPA's hands and unduly restrict the program. This is not my intent and therefore I accepted this improvement—with this understanding—when a State identifies a priority problem it will receive at least one designation on the national priority list.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. CLEVELAND. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and also for his coming to us in advance with this amendment.

As the gentleman from New Hampshire has mentioned, the gentleman from New Jersey (Mr. FLORIO) and I have had an opportunity to discuss the amendment with him, and we do intend to support it.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. CLEVELAND. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I would like to publicly express my appreciation to the gentleman from New Hampshire (Mr. CLEVELAND) for his willingness to discuss this problem and accept some suggestions, and on the basis of those discussions and our understanding, I am pleased to support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Hampshire (Mr. CLEVELAND).

The amendment was agreed to.

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AMENDMENTS OFFERED BY MR. GORE

Mr. GORE. Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The amendments are as follows:

Amendments offered by Mr. GORE: Page 47, line 17 after "party" insert: "other than (i) an employee or agent of the defendant, or (ii) a person whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant,".

Page 48, line 3, strike out "(2)" and substitute "(3)".

Page 48, after line 4 insert the following new paragraph:

"(2) For purposes of paragraph (1)(C) a defendant (including any person involved in the generation, transportation, treatment, storage, or disposal of hazardous waste) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of the third party and that he exercised due care in light of all relevant facts and circumstances."

Page 48, line 5, strike out "(2)" and substitute "(3)".

Page 48, line 6, after "establishes" insert "by a preponderance of the evidence".

Page 48, line 11, after "establishes" insert "by a preponderance of the evidence".

Page 48, strike out lines 16 through 20 and insert in lieu thereof:

"(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the liability among the parties where deemed appropriate based upon evidence presented by the parties as to their contribution. In apportioning liability under this subparagraph, the court may consider among other factors, the following:

"(i) the ability of the parties to demonstrate that their contribution to a discharge, release, or disposal of a hazardous waste can be distinguished;

"(ii) the amount of hazardous waste involved;

"(iii) the degree of toxicity of the hazardous waste involved;

"(iv) the degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous waste;

"(v) the degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of such hazardous waste; and

"(vi) the degree of cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment."

Page 48, line 21, strike "this paragraph" and insert "subparagraph (A)".

Mr. GORE. Mr. Chairman, these two amendments are to the liability section of the bill. They are supported by all of the parties who have looked at and are concerned with this legislation.

Mr. Chairman, today we are considering one of the most important pieces of legislation introduced in this Congress—H.R. 7020, the "superfund" bill to clean up abandoned and inactive hazardous waste sites. Over the last 3 years, I have participated in or chaired over 18 hearings on the enoromous problems associated with hazardous waste disposal, and I believe that this legislation is an effective and desirable response to those problems. It is well thought out and effectively targets the problems it is intended to address. It is a good bill and one that is sorely needed. I urge my colleagues to support it.

While I enthusiastically support this legislation, I do believe that it requires improvement. I believe the bill is particularly deficient with regard to its liability provisions. Consequently, I am today offering two amendments to H.R. 7020 that I believe will strengthen those provisions and insure that those companies and individuals who are responsible for our hazardous waste problems will bear their share of the clean-up cost burden.

The first amendment I offer is to the so-called third party defense created in section 3071(a)(1)(C) of H.R. 7020. The second amendment is to the joint and several liability provisions set forth in section 3071(a)(1). With your indulgence, Mr. Chairman, I would like to dis-

cuss my amendments. Although many of my comments have appeared previously in the RECORD, I believe that they are sufficiently important to warrant reemphasis here today. I hope my colleagues will agree with my position. I urge them all to support my amendments.

I will first discuss my amendment to the third party defense of H.R. 7020.

THIRD-PARTY DEFENSE UNDER H.R. 7020

As presently drafted, section 307(a)(1)(C) of H.R. 7020 provides that a defendant can escape liability for a release, or threatened release of hazardous waste if he/she can demonstrate that such was "caused solely by * * * an act or omission of a third party if the defendant establishes that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste." This language alters the existing common law rules of first, strict liability for abnormally dangerous/ultrahazardous activity and second and alternatively, liability for inherently dangerous activity that would otherwise be applicable to parties dealing with hazardous waste.

STRICT LIABILITY

A. HAZARDOUS WASTE DISPOSAL IS ABNORMALLY DANGEROUS/ULTRAHAZARDOUS ACTIVITY

There can be little doubt that actions involving hazardous waste would be considered by the courts as abnormally dangerous or ultrahazardous activity sufficient to subject a responsible party to strict liability. While there may at present be no decision in which an individual has been held strictly liable to damages resulting from a release of hazardous waste, this is due to the "newness" of waste problems rather than a reticence on the part of the judiciary. The common law proceeds on the basis of analogy and by extrapolation of existing doctrine to new fact situations. Absence of case law on the specific issue of strict liability for hazardous waste in no way invalidates the conclusion of the doctrine's applicability.

Strict liability for abnormally dangerous/ultrahazardous activity originated with the historic case of *Rylands* v. *Fletcher*, 159 Eng. Rep. 737 (1865), rev'd. L.R. 1 Ex. 265, aff'd, L.R. 3 H.L. 330 (1868). In the more than 100 years since Rylands the law of strict liability has progressed and expanded tremendously. Today numerous activities have been held to constitute abnormally dangerous/ultrahazardous activities for which strict liability will be imposed. Most of these are far less dangerous than the handling, generation, and disposal of hazardous waste. Such activities include the handling and shipping of explosives, blasting, quarrying, handling of nuclear materials, aerial spraying of pesticides, fumigation, sonic booms, handling oxygen, testing rocket fuels, storage of natural gas in populated areas, the operation of a gasoline station so as to affect families' wells, pile driving, and transportation of hazardous chemicals. Undoubtedly, as litigation involving hazardous waste develops, courts will add the generation and disposal of such wastes to the list of ultrahazardous activities.

Section 520 of the Restatement (Second) of Torts sets forth six factors to consider in the classification of an activity as abnormally dangerous (note: "Ultrahazardous" activity was the term used in the first Restatement; the phrase "abnormally dangerous" is used by the Restatement (Second)):

(a) Existence of a high degree of risk of some harm to the person, land or chattels of others;

(b) Likelihood that the harm that results from it will be great;

(c) Inability to eliminate the risk by the exercise of reasonable care;

(d) Extent to which the activity is not a matter of common usage;

(e) Inappropriateness of the activity to the place where it is carried on; and

(f) Extent to which its value to the community is outweighed by its dangerous attributes.

Not all these factors need be present before an activity can be said to be abnormally dangerous and strict liability imposed. Most, however, if not all of the factors are applicable to release of hazardous waste.

First, as has been demonstrated at Love Canal and elsewhere, release of hazardous waste obviously posed great harm and danger to a community. It does not matter that there may be only a slight possibility that a release might occur in a given area. As comment g to section 520 points out:

If the potential harm is sufficiently great, . . . the likelihood that it will take place may be comparatively slight and yet the activity be regarded as abnormally dangerous.

Second, releases of waste can occur despite the exercise of reasonable care. Certainly, a great deal of risk can be eliminated by the exercise of due care; however, strict liability will still attach because of the inherent potential of hazardous waste to cause harm despite proper precautions. As comment h explains:

There is probably no activity . . . from which all risks of harm could not be eliminated by the taking of all conceivable precautions, and the exercise of utmost care, particularly as to the place where it is carried on. . . . It is not necessary, for the factor stated in Clause (c) to apply, that the risk be one that no conceivable precautions or care could eliminate. What is referred to here is the unavoidable risk remaining in the activity, even though the actor has taken all reasonable precautions in advance and has exercised all reasonable care in his operation, so that he is not negligent.

Additionally, most activities that could result in a release of hazardous waste are not "customarily carried on by the great mass of mankind or by many people in the community" and so cannot be said to be a matter of common usage. Appropriateness of the activity to its surrounding and value to the community, moreover, will usually excuse only those activities that, while dangerous, can be carried on only in a particular area and/or support the economic well-being of a community to an extraordinary degree. Given the above, it is inconceivable that actions involving hazardous waste would not be considered abnormally dangerous. Strict liability would thus be imposed upon anyone responsible for a release of such waste.

B. THE IMPACT OF SECTION 307(a)(1)(C)

To understand the impact of the third-party defense provided by H.R. 7020, it is important to keep in mind the policy underlying the doctrine of strict liability. Certain activites carry with them the inherent possibility of harm to others and so, as outlined above, are deemed abnormally dangerous, or ultrahazardous, activities. Society makes a basic policy decision, however, that, despite the inherent danger, these activities are needed and so they are permitted to occur. Were it not for this value determination, the activities would be considered too dangerous to allow, and anyone engaged in any of the activities would be guilty of negligence. In other words, the activity is felt to be "of such utility that the risk which is involved in it cannot be regarded as so great or so unreasonable as to make it negligence merely to carry on the activity at all." Consequently, because of the social utility of their manufactured products, generators of hazardous wastes are not considered negligent simply because they are engaged in their business.

Having decided to permit the abnormally dangerous activity, however, society imposes certain obligations on those individuals engaged in such activities. Fundamentally, an abnormally dangerous activity must "pay for itself." The activity may be carried on, but if an innocent party is injured, he must be compensated regardless of whether the defendant was "at fault."

Thus, while the generation and disposal of hazardous waste are deemed a necessary evil in our society, "the unavoidable risk of harm that is inherent in (handling waste) requires that it be carried on at (the defendant's) peril, rather than at the expense of the innocent person who suffers harm as a result of it." The defendant, then, is basically an "insurer" against the consequences of his abnormally dangerous conduct. As Prosser stated:

He is liable although he has taken every possible precaution to prevent the harm and is not at fault in any moral or social sense.

The effect of section 3071(a)(1)(C) is thus readily apparent. By enabling a defendant to escape liability by a showing of "due care," H.R. 7020 erects a negligence standard where one of strict liability would otherwise apply. As shown above, under the common law, negligence is irrelevant to a finding of liability for abnormally dangerous/ultrahazardous activity. H.R. 7020 changes this common law rule. Under section 3071(a)(a)(C), a defendant can avoid liability, despite being engaged in ultrahazardous activity, by contracting with a third party to dispose of the hazardous waste. As long as the defendant can sustain his/her burden of proof regarding the exercise of due care in selecting a transporter or disposer, the defendant cannot be held liable and no recovery can be had from him/her.

Although it couches its language in

terms of new duties imposed on a defendant, the Commerce Committee report accompanying H.R. 7020 is quite candid in demonstrating that it imposes only a requirement of due care on defendants. Even though a defendant must show that he took a number of precautions and acted with due care in order to escape liability, the basic problem still remains. Under the common law, the defendant could not escape liability even if he did take every precaution. H.R. 7020, then, effectively destroys a rule that has been in effect for over 100 years.

In addition to interposing the negligence barrier between the plaintiff and defendant, the defense provided in section 3071a(a)(1)(C) files in the face of section 522 of the Restatement (Second) of Torts. That section provides:

One carrying on an abnormally dangerous activity is subject to strict liability for the resulting harm although it is caused by the unexpectable

(a) act, negligent or reckless conduct of a third person. . . .

As the comment to section 522 explains, the abnormally dangerous nature of an activity is the basis for the defendant's liability when the activity results in damage or injury. Just the negligence of the defendant is irrelevant when the activity is considered abnormally dangerous, acts by a third party cannot affect liability under the common law. It is the activity itself, not an individual's conduct, that determines the liability.

INHERENTLY DANGEROUS ACTIVITY

Related to the doctrine of strict liability is the rule that holds a defendant liable for injuries resulting from inherently dangerous activity even though he/she contracted with a third party for the performance of that activity. This is basically a rule of vicarious liability, whereby the employer is held liable for the negligence of the independent contractor, regardless of whether the employer himself has been at fault. As with strict liability, policy reasons dictate that the employer not be permitted to shift responsibility to the contractor. The difference between the liability here and that for abnormally dangerous activity appears to be that the defendant here has himself actually been engaged in no activity; the contractor performs all the work. This rule seems more applicable to situations involving middlemen—if such are used—in hazardous waste disposal than to the generators of waste.

Under the rule here, it does not matter that the defendant exercised due care in his selection or instructions to the contractor. The inherently dangerous nature of the activity to be performed provides the grounds for liability. As section 416 of the Restatement (Second) of Torts provides:

One who employs an independent contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the failure of the contractor to exercise reasonable care to take such precautions even though the employer has provided for such precautions in the contract or otherwise.

Under section 416 the employer remains liable for injuries resulting from dangers that he should contemplate at the time that he enters into the contract; he cannot shift to the contractor the responsibility for such dangers or for taking precautions against them. The employer will remain liable even if the contract contains express stipulations for the taking of adequate precautions and even if the contractor agrees to assume all liability for harm caused by his failure to take such precautions.

Clearly, by enabling a defendant to exonerate himself by demonstrating due care, H.R. 7020 abrogates this common law rule as well. Section 3071(a)(1)(C) enables—indeed encourages—a defendant to contract out disposal of hazardous wastes and thereby contract away liability. Because of the inherently dangerous nature of the work performed, the negligence of the contracting party is irrelevant to liability under the common law. H.R. 7020, however, alters the rule to provide a defense where, for sound policy reasons, one heretofore has not existed.

The amendment I offer represents a compromise between my original position and the wishes of Chairman FLORIO. I believe that this compromise accomplishes the necessary changes to make the responsible parties accountable and accommodates the concerns of the bill's sponsors. Indeed, my amendment strikes a middle ground between the common law rule and the process presently envisioned under H.R. 7020. My amendment moves H.R. 7020 closer to the common law in several ways. First, the amendment removes the ability of and incentive for a defendant to contract away liability.

The amendment would insure that the common law rules of both strict and vicarious liability remain intact in cases in which a defendant seeks to shift the responsibility for costs resulting from his ultrahazardous activity to others with whom he is involved in a business relationship. My amendment would restrict the application of the third party defense to situations where the third party is not an employee or agent of the defendant, or where the third party's act or omission does not occur in connection with a contractual relationship.

Second, the amendment would permit a defendant to escape liability for damages caused by the act or omission of a third party who has no connection whatsoever with the defendant and which act or omission is unforeseeable. Although this is still counter to the common law, it has a basis in reason. Finally, with regard to foreseeable acts by third parties, the amendment requires that a defendant demonstrate that he acted with due care in order to escape liability. This insures that the defendant will not escape liability if he acted negligently, even if the damage caused is the result of an act of an unrelated third party.

Mr. Chairman, as I stated at the outset, my second amendment focuses on the alleged joint and several liability provisions of the "superfund" bill I would like now to discuss that amendment.

JOINT AND SEVERAL LIABILITY UNDER H.R. 7020

Although section 3071(a)(1) of H.R. 7020 proclaims that the liability of any party found to have caused or contributed to a release of hazardous waste shall be "joint and several" with any other such person, exceptions created by the bill effectively render that term meaningless here. Joint and several liability ordinarily would mean that whenever a single, indivisible harm is sustained as a result of independent, separate, but concurring tortious acts by two or more actors, each can be held liable for the entire amount of damages incurred. The defendants in such a case would be jointly liable in that collectively they would be responsible for any damage caused; they would also be severally liable in that each is individually liable for the full amount of damage. The plaintiff could collect the total sum of damages awarded from a single defendant and could avoid the agony of multiple suits against the defendants that would otherwise be necessary to achieve full compensation.

Under the theory of contribution, the defendant from whom the plaintiff receives payment may then collect from the other defendants for that part of the damages for which each is responsible. Under the theory of satisfaction, once the plaintiff receives from one or more defendants an amount equal to the judgment awarded, he cannot collect more than that sum.

JOINT AND SEVERAL LIABILITY GENERALLY

Originally, courts were reluctant to impose joint and several liability on defendants in cases wherein the injury suffered was considered "indivisible." Because contribution was not formerly allowed among defendants, courts were reluctant to place the full burden of liability on any one defendant. On the other hand, because the injury was indivisible, the plaintiff had difficulty establishing the respective responsibility of each defendant for portions of the harm. Consequently, courts often denied recovery.

Eventually, as States enacted statutes providing for contribution among defendants, courts became more accepting of joint and several liability and permitted plaintiffs to recover the full amount of damages from a single defendant. The courts concluded that because the defendants were the ones at fault, it would be unfair to place the burden of demonstrating the apportionability of the damage on the plaintiff. The burden was thus placed on the defendants to work out for themselves who was responsible for what part of the injury under the process of contribution. The plaintiff would be allowed to recover his judgment, and the paying defendant would now be reimbursed under one of the new statutes for that portion of the payment for which he was not responsible. Joint and several liability gained its greatest acceptance early in cases involving multiple simultaneous or suc-

cessive automobile collisions when a single plaintiff was injured by the acts of several negligent drivers.

DIVISIBILITY OF HARM

As stated, the indivisibility of the harm suffered is the key to a ruling of joint and several liability. The harm must be of such a nature that it is not practicably apportionable, for where some reasonable means of apportioning the damages is evident, the courts will generally not hold the tortfeasors jointly and severally liable.

Basically, though, joint and several liability will attach whenever an injury is indivisible. The trick is to determine when an injury can in fact be considered indivisible and thereby permit employment of joint and several liability. This requisite indivisibility can be of two sorts. First, the injury can be the type that is not even theoretically divisible. Damages of this nature are such things as death or the total destruction of one's property or chattel. Most personal injury suits present damages like these. Alternatively, however, the harm can be such that, although theoretically divisible, it is indivisible in a practical sense insofar as the plaintiff's ability to apportion it among the wrongdoers is concerned. Pollution by multiple defendants would usually fall within this classification.

Courts uniformly will permit entire recovery from any or all defendants under the first type of indivisibility. There is conflict, however, regarding the second situation. As stated earlier, where there has been some rational basis for apportioning damages, courts in the past in pollution cases have denied joint and several liability. There is a growing body of case law, however, that holds that a plaintiff's right to recover for his harm should not depend on his ability to apportion the damage; instead, apportionment is seen as a problem properly left to the defendants themselves.

Along these lines, most pollution cases pose a special problem regarding the indivisible injury issue. Because the overall, and allegedly indivisible, harm is caused by a series of independent, concurrent tortfeasors, it is usually the case that some damage would have been done even had some of the defendants not contributed; the damage would not be as great, however, as that actually sustained. In other words, each polluter has contributed to produce some, but not all, of the harm. This is the sort of injury that most earlier cases held to be at least theoretically divisible and which therefore mandated apportionment of liability. For sound policy reasons, however, courts have begun to view pollution by multiple defendants as a form of indivisible harm by examining the problem from the plaintiff's perspective. Joint and several liability has thus been frequently imposed.

For example, in *Landers* v. *East Texas Salt Water Disposal Company*, 151 Tex. 251, 248 S.W.2d 731 (1952), the plaintiff sued a salt water disposal company and an oil company jointly and severally for damages caused when they independently dumped salt water in his lake. Assuming that neither defendant alone has caused the entire damages, the court nevertheless decreed that the defendants should be held jointly and severally liable.

As the court concluded:

> "Where the tortious acts of two or more wrongdoers join to produce an indivisible injury, that is, an injury which cannot be apportioned with reasonable certainty to the individual wrongdoers, all of the wrongdoers will be held jointly and severally liable for the entire damages and the injured party may proceed to judgment against any one separately or against all in one suit.

151 Tex. at 256, 248 S.W.2d at 734. Although the court also provided that a defendant could reduce his liability by demonstrating the amount of damage caused by his acts only, or that caused by other defendants, the effect of the decision was to require the defendants, rather than the plaintiff, to show that other tortfeasors contributed to the harm and in what quantities they so contributed. This incentive to locate all other responsible parties is one of the prime considerations underlying use of joint and several liability in pollution suits. In fact, in addition to shifting the burden of proving the cause of plaintiff's injury, the court placed on the sued defendants ultimate responsibility for bringing any other defendants into the suit as codefendants. Facing the prospect of either proving that other parties were also responsible for the injury or paying the full judgment themselves, defendants would henceforth have incentive to insure that no parties have been inadvertently omitted from the suit. As the court in Landers stated:

> If fewer than the whole number of wrongdoers are joined as defendants to plaintiff's suit, those joined may by proper cross action under the governing rules bring in those omitted.

Thus, any responsible parties not named as defendants initially by the plaintiff would be located by the named defendants and included by cross-claim.

The emerging rule of joint and several liability in pollution cases was also noted in *Phillips Petroleum Company* v. *Hardee*, 189 F. 2d 205 (5th Cir. 1951). In that case, a number of rice farmers sued several oil companies for damages to their crops caused by oil pollution of their irrigation water. As in Landers, each defendant's pollution alone was insufficient to cause the whole damage. Nevertheless, the court stated that:

> Where persons acting independently are guilty of negligence, and the results of their negligence combine to set up a chain of causation resulting in the complained of damage, these persons, though not acting in concert, are yet joint tortfeasors and as such, are liable for the damage caused by the conjunction of their separate negligence.

That the defendants bear the burden of proving the apportionability of harm in the new wave of pollution decisions was demonstrated well by the leading case of *Michie* v. *Great Lakes Steel Division*, 495 F. 2d 213 (6th Cir. 1974). In Michie, 37 residents of Ontario, Canada, brought suit against three Michigan corporations for damages caused by pollution emitted by the defendants into the ambient air. Rejecting the old Michigan rule denying joint and several liability in pollution cases, the sixth circuit reasoned that, in any claim for relief, there is a manifest unfairness in "putting on the injured party the impossible burden of proving the specific shares of harm done by each (defendant);" 495 F. 2d at 216. As a result, the court placed on the defendants the burden of proving "which one was responsible and to what degree" for the plaintiffs' injuries.

As one commentator has noted, after Michie a defendant cannot now escape liability merely by proving that other parties contributed to the injury in such a way as to make apportionment impracticable. See Comment, 1974 Utah L. Rev. 603, 607. The court essentially analyzed the issue as a contest between the rights of individuals and the rights and duties of industry. In the end, the court concluded that the rights of the injured party were superior.

The Michie case thus stands for the proposition that if a plaintiff in a pollution suit can show a causal connection between the defendants' acts and the plaintiff's injury, as well as the violation of some duty owed by the defendants to the plaintiff (whether under negligence or strict liability), the burden of proof will shift to the defendants to demonstrate which defendant is responsible for what portion of the injury. The rule espoused in Michie is similar to that presented in section 433B of the Restatement (Second) of Torts, which provides:

> (2) Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.

Basically, as both Prosser and the Michie court noted, if apportionability cannot be demonstrated, the acts of each defendant could then be considered a substantial factor in the plaintiff's injury, and each would be liable for the full amount of damages. Contribution among the defendants, however, would prevent one defendant from absorbing the entire loss.

THE IMPACT OF H.R. 7020

While the essence of joint and several liability is thus that multiple defendants are each liable for the full amount of damages unless the feasibility of apportionment can be demonstrated by the defendants, sections 3071(a)(2)(A), (B), and (C) effectively foreclose the possibility that any defendant will ever be held fully liable. Particularly, subsections 2(B) and (C) emasculate the effect of the indivisible injury rule by providing that a court shall apportion liability even when the defendants have not established that such is feasible or warranted.

Subsection (2)(A) appears to reflect the procedure utilized by most courts in approaching joint and several liability. That section sets up a process by which a defendant may demonstrate by a preponderance of the evidence that he is responsible for only a certain portion of the damage done. If the defendant is successful in proving the limited extent

of his responsibility, the injury is considered apportionable to that extent and that particular defendant's liability is limited. The remaining amount of the damages would then be imposed on the remaining defendants.

Ordinarily, if the remaining defendants could not establish their respective liability for the damages left after the section (2)(A) apportionment is subtracted, each would be fully liable for the remaining damages. Subsection (2)(B) changes this rule, however. That section provides that even if the defendants do not establish the apportionability of the remaining damages, the court shall itself apportion the liability. Subsection (2)(S) goes on to provide that once this apportionment has been made by the court, no defendant shall be liable for more than his apportioned share. The effect is that no one defendant can ever be held responsible for the full amount of the damages. Thus, there actually is no joint and several liability in H.R. 7020.

One obvious problem with the apportionment system erected by H.R. 7020 is that a plaintiff—the Government under the present bill would be forced to seek payment from each of the defendants based on the amount designated by the court as that which he owes. Under a scheme of joint and several liability, where the defendants cannot themselves establish their respective liabilities, each is responsible for the full amount, and the plaintiff may collect that full sum from any one of them. The paying defendant would then have the right to go against the other "nonapportioned" defendants for contribution; the defendants would bear the burden of deciding who would pay how much to whom among them.

The theory behind enabling the plaintiff to collect fully from one defendant is essentially that as wrongdoers, the defendants each bear the burden of proving that he is not liable for the full extent of the damage caused. If the defendant cannot meet this burden and show that he is not fully responsible, then he is fully liable. H.R. 7020 clearly abrogates this theory.

Like my first amendment, this second amendment represents the product of sincere and responsible compromise. Although I believe that several more changes to section 3071(a)(1) are needed to make it reflect more accurately the prevailing common law doctrines, I offer my amendment in the spirit of compromise in order to help ease the negative impact of the present provisions.

As presently written, paragraph 2(B) of section 3071 establishes a perverse incentive system for those who have caused or contributed to hazardous waste incidents. It encourages all defendants, except those who are insignificant contributors, to ignore the burden of proof requirements of paragraph (A) and to cast their lot with any other defendants under the mandated apportionment formula of 2(B). Hence, a major contributor could seek to establish the culpability of other defendants—although he would not quantify the harm contributed by each—to enlarge the pool of liable parties and thereby reduce each defendant's cost obligation.

Conversely, the bill as presently written would also enable a defendant to disregard totally any effort to locate other defendants. The mandatory apportionment provision of paragraph 2(B), when coupled with the cap placed on individual liability by paragraph 2(C), would effectively limit a single defendant's liability even in face of skimpy proof.

My amendment would move H.R. 7020 closer to the common law by insuring that to achieve apportionment under section 2(A), a defendant must prove apportionability by a preponderance of the evidence. This is the common law standard, and it should be part of any legislation like this. My amendment would also make this bill more in tune with the common law by making the apportionment under section 2(B) discretionary on the part of the court. Instead of requiring apportionment in all cases, as the present legislation does, the amendment permits a court to apportion liability when equity requires it. This would enable a court to apportion liability when sufficient evidence allows it, but to deny apportionment when there is no real basis for it. The amendment assists the court in its task by providing a list of factors specifically geared to the problems inherent in hazardous waste generation and disposal.

Mr. Chairman, I believe the two amendments that I am offering here today are needed improvements to the liability provisions of H.R. 7020. They remove the various escape hatches in the present legislation that would enable the parties who are most responsible for our hazardous waste problem to avoid liability. My amendments are simple and straightforward, and they focus on the problems inherent in H.R. 7020 as presently drafted. I again urge my colleagues to support them.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, the committee has worked very closely with Mr. GORE on his amendments since he first printed them in the RECORD on September 4. He has agreed to important modifications in both amendments, and based on these changes, I now find them acceptable.

His first amendment originally contained a provision which would have required that the intervening act or omission of a third party also be "negligent." This would have added an unnecessary and overburdensome requirement on the defendant and Mr. GORE has agreed to delete it from his amendment, and I now find his amendment acceptable.

Mr. GORE has added an additional factor to his second amendment which relates to the discretionary authority of the court to make an apportionment. It allows the court to consider the degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of the waste. I think this is a positive improvement and can accept the amendment.

Mr. GORE. I thank the gentleman.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, because we did dispense with the reading of the amendments, I do want to clarify that the amendments that are pending at the desk are the revised Gore amendments which reflect the work that has been done with the other members of the committee.

Mr. GORE That is correct.

Mr. MADIGAN. Mr. Chairman, I rise in support of the amendments offered by the gentleman from Tennessee, and want to take this opportunity to commend the gentleman for his positive contributions and his efforts to make this bill an effective response mechanism to the enormous problems associated with hazardous waste disposal.

Of particular concern to me and a number of my colleagues on the Commerce Committee during development of this legislation were the liability issues. Especially difficult were the ramifications of retroactive application of statutory liability provisions to past activities of potential defendants. The committee rejected any notion of absolute liability in this regard. While the bill does contain provisions holding defendants who caused or contributed to release resulting in incurrence of cleanup costs by the administrator strictly jointly, and severally liable for such costs, certain important defenses and safeguards were provided in the interest of due process, fundamental fairness, and avoidance of protracted litigation that would undermine the purposes of this legislation.

This hybrid liability provision was the end result of efforts to be fair and at the same time to make sure that a responsible party would pay for damages that resulted because of his actions or inaction.

I would like to reemphsize at this point, what is clearly and unambiguously set forth in the committee report, on page 33:

> The Committee intends that the usual common law principles of causation, including those of proximate causation, should govern the determination of whether a defendant "caused or contributed" to a release or threatened release. Whether a person caused or contributed to a release is a factual inquiry to be determined with reference to the particular circumstances of the case. Thus, for instance, the mere act of generation or transportation of hazardous waste, or the mere existence of a generator's or transporter's waste in a site with respect to which cleanup costs are incurred would not, in and of itself, result in liability under section 3071. The Committee intends that for liability to attach under this section, the plaintiff must demonstrate a causal or contributory nexus between the acts of the defendant and the conditions which necessitated response action under section 3041.

Of course, these same principles of proximate causation are equally applicable when a defendant, to successfully

assert the third-party defense, must demonstrate that a third party caused a release. Thus, whenever factual questions of causation arise, the committee intends that the ultimate determination of causation be made by the trier of fact with references to any supervening cause of a release.

The amendments offered by the gentleman from Tennessee do not change the intent of what was developed by the Commerce Committee. The amendments clarify and improve the language and I urge the adoption of the amendments.

Mr. GORE. I thank the gentleman for his support.

Mr. MATSUI. Mr. Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from California.

Mr. MATSUI. Mr. Chairman, I would like to commend the gentleman from Tennessee for the two amendments he has offered. It strengthens the bill and it makes the bill much more acceptable to me. I certainly hope that the Members will support it.

I would like to enter into a colloquy with the gentleman from Tennessee. This pertains to section 3071(2)(A).

Now, is it the committee's intent to insure that the Federal Government will be fully reimbursed for costs not apportioned under section 3071(2)(A) for providing the court with the necessary discretion to apportion the remaining liability of insolvent parties when the court believes that such apportionment is appropriate or by applying a rule of joint and several liability?

Mr. GORE. That is the intent of the amendment.

And, reclaiming my remaining time, Mr. Chairman, I would like to express my gratitude to the gentleman from New Jersey (Mr. GUARINI) who, in the Ways and Means Committee, made many of the arguments that I made in the Commerce Committee on the original amendments that closely resemble these, and thank him for his support in this effort.

I would again like to express my thanks, of course, to the ranking minority member and the chairman of the subcommittee.

The CHAIRMAN. The time of the gentleman from Tennessee (Mr. GORE) has expired.

(On request of Mr. LAFALCE and by unanimous consent, Mr. GORE was allowed to proceed for 1 additional minute.)

Mr. LAFALCE. If the gentleman will yield, I want to rise in support of the amendments offered by the gentleman from Tennessee (Mr. GORE). They are absolutely essential if we are to have meaningful liability provisions in superfunds.

I also want to point out that initially the gentleman from Tennessee was going to offer a third amendment, and because of the legislative realities of this body and the position taken by the administration, he has made the decision not to do so.

I want to underscore the fact, however, that at some point in the future, and perhaps very soon in the future, the Congress—and I hope the Senate when they are dealing with their superfund when they take action on it—will have to come to grips with the issue of a mechanism to give compensation to individuals who have been injured by exposure to toxic substances.

I have introduced legislation, the Federal Toxic Tort Act, which creates a Federal cause of action that is not incorporated in this superfund bill, it is not incorporated in the amendments of the gentleman from Tennessee (Mr. GORE) which, by and large, have been agreed to by all of those parties interested in this issue, but at some point in the future we must adopt a Federal Toxic Tort Act.

Mr. STOCKMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendments.

I will say to the Committee that we have had a very nice, technical and friendly discussion here, implying to someone who might be listening that these are relatively uncontroversial matters and that we simply can proceed without any further discussion.

But I would like to suggest to the Members of this House that some day down the road about a year from now they are going to receive a letter from a company in their district that has just received a $5 or $10 million liability suit from EPA that was triggered by nothing more than a decision of a GS-14 that some landfill, some disposal site somewhere, needed to be cleaned up and, as a result of an investigation that his office did, he found out that that company in your district contributed a few hundred pounds of waste to that site 30 years ago.

Now, that is what the liability section in this bill does. The liability that we are creating in H.R. 7020 has nothing to do with what some of the lawyers in this body would understand as the normal liability provisions under common law or under State law, because under that regime a plaintiff would have to go to court and a plaintiff has to demonstrate that damage has been done, a plaintiff has to demonstrate that the party accused caused that damage in a negligent way. And in the case of a very serious hazardous material, if the negligence defense is to be set aside, the plaintiff has to demonstrate to the court that the material involved is of such an ultrahazardous nature inherently that strict liability should apply.

But we do not have any of that in this bill. In this bill, strict liability occurs every time and immediately that EPA decides to clean up a site on the basis of absolutely no criteria because we did not put any in the bill.

In other parts of the bill, we give EPA plenary authority to clean up any waste site in the country, and that waste site is undefined. And once they make that decision on the basis of whatever criteria they establish, whatever kind of risk notions they may use, whatever kind of cost-benefit notions might appeal to the single-mission oriented people who may run this program in the Division of Hazardous Waste, once they move ahead and clean up, then their first action after that cleanup order or that cleanup financing if they do it directly or through the State government, will be to see if they can find some deep pocket somewhere in the vicinity who contributed, not that ran a disposal site, not that ran a transportation company, but just an industrial firm, a foundry, a plastics plant, anything that contributed waste any time in the foggy past that might be included in this list of 1,165 items that I have read.

And once they have found that deep pocket, they will immediately go to court and sue that deep pocket, and then all of the onus of the law, all of the burden will be on him to prove that he was not responsible for an outcome that occurred 30 years later as a result of this retroactive liability.

□ 1800

I think that this whole liability provision, I will say to the House, is really a terrible distortion of any kind of notions of justice or equity and any kind of practical notion of how we ought to go about paying for those sites that need to be cleaned up.

Then let me say further to this House that when you get that letter from the XYZ firm, you will receive a letter 3 weeks later and you will find that EPA has decided to sue for civil penalties 2½ times the cleanup and that, instead of paying $5 million for the cleanup costs, your firm will be paying $12½ million for the civil penalty that was sought in court by EPA because they concluded this company had contributed 30 years ago and was not cooperative in their efforts to have this site cleaned up and therefore needed to be sued.

I do not know how much damage, I do not know how much harassment we want to do to the industrial economy in this country that is literally faltering today out from under our feet, that is in recession, that has 8 million people unemployed, that is losing its productivity growth, that cannot compete in the world market today. We discuss and deal with those problems and we are here unleashing an enormous club.

Mr. BAUMAN. Mr. Chairman, I move to strike the requisite number of words.

Let me ask this question.

The gentleman from North Carolina (Mr. PREYER) has sent a letter to all of us regarding the Gore amendments in which he opposes the gentleman's amendments. Perhaps they have been changed to meet his objections. I do not see him here, but he is a member of the gentleman's committee. He makes some rather persuasive arguments, at least to my Georgetown law-trained mind, that the bill's provisions, as they are already stringent enough, and perhaps the gentleman from Michigan or the gentleman from Tennessee or both, would like to comment.

I understand some changes have been made as they are now offered that perhaps meet his objections, but it gives me some pause if they have not been made.

Mr. GORE. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Tennessee.

Mr. GORE. I thank the gentleman for yielding.

I can state categorically that the gentleman from North Carolina supports both of the amendments that we have under discussion, and if I may indulge on the gentleman's time to respond to the comment earlier, of course, under strict liability, proof of causation would first have to occur. I think the gentleman, with all due respect, stated a theory of strict liability that really is at variance wth the common law.

Second, there is only unanimous consent that strict liability would apply for these ultrahazardous substances under the common law in any event.

Mr. STOCKMAN. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Michigan.

Mr. STOCKMAN. I think the point the gentleman is trying to make and I wish the gentleman from Tennessee would respond, because he seems to be the primary advocate of these provisions, is that under the structure of this bill if EPA decides to clean up a site, that automatically creates liability for any operator of that site or any past generator who cannot come into court and demonstrate there was a third party at fault due to the negligence of that third party or an act of God caused the release or other hazards. Is that correct?

Mr. GORE. With the gentleman's indulgence, that is not the case. Proof of causation must occur. One must prove the damage was caused by the defendant. There is not an automatic trigger. But once the damage is proven to have been caused by the defendant, then a strict liability standard would apply.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from New Jersey.

Mr. FLORIO. The gentleman's point is really at two levels. One is he is talking about ability to sue for reimbursement of the funds, but he has also expressed apprehension EPA is going around to automatically start cleaning things up and suing someone. That situation is not going to occur because EPA is required not to act if the responsible party or parties will take appropriate action to clean up and contain these sites.

If, in fact, they do not do so, or do not care to do so or are not able to do so, then EPA is charged with the responsibility of going forward, and even before they go forward, they are required to make agreements with the State, if the State has the inclination to do so and the ability to do so.

So the gentleman's situation is just not realistic if he describes EPA as out cleaning things up randomly. That is not going to happen under this bill.

If I could make one other point with regard to the Gore amendment, I have a letter, and I would place it in the RECORD, from the Chemical Manufacturers Association which advocates support of this bill, H.R. 7020, and concludes moreover that they do not object to the compromise which we understand has been worked out on the Gore amendments.

The letter follows:

CHEMICAL MANUFACTURERS ASSOCIATION,
Washington, D.C. September 22, 1980.

Hon JAMES J. FLORIO,
House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. FLORIO: The Chemical Manufacturers Association believes that the House should approve effective, properly focused legislation addressing problems associated with abandoned, failing hazardous waste sites.

The Commerce Committee version of H.R. 7020 is the product of a thoughtful bi-partisan compromise. It offers workable regulatory, legal, and funding resources to address abandoned waste sites. We support its enactment.

Moreover, we do not object to the compromise which we understand has been worked out on the Gore amendments.

Sincerely,

EDMUND B. FROST,
Vice President and General Counsel.

We are talking about two different types of Gore amendments, the ones introduced and the ones modified which now have widespread support.

Mr. GORE. If the gentleman will continue to yield, I think it is also fair to add to that colloquy that the fabric of the compromise is not limited solely to the textual changes in the two versions of the amendments.

Mr. STOCKMAN. If the gentleman will yield further, I would just say in response to the gentleman that I realize causation has to be shown, but in this context the only requirement to show causation is that somebody contributed to the site.

When you have a landfill that is 30 years old and oozing with muck, it is pretty impossible to determine what particular chemical released at what date and contributed in what quantity caused the release that may have threatened public health or caused the presence of materials that encouraged EPA to act. It is a very simple burden, and EPA will have no problem proving it.

Mr. GORE. If the gentleman will yield further, one must first prove causation. If one cannot prove the defendant caused the damage which led to the suit, then the strict liability standard is never triggered.

Let me also add that is not something new. Let me just read the gentleman a list of those activities that currently invoke the strict liability standards.

Strict liability for abnormally dangerous/ultrahazardous activity originated with the historic case of *Rylands* v. *Fletcher*, 159 Eng. Rep. 737 (1865), rev'd, L.R.1 Ex. 265, aff'd. L.R.3 H.L. 330 (1868). In Rylands, the defendant was held liable without fault when a reservoir built on his land broke through the ground, and flooded an abandoned coal mine shaft. The water flowed along connecting passages and eventually flooded and damaged the adjoining mine of the plaintiff. In holding the defendant strictly liable, Lord Cairns, speaking for the House of Lords, concluded:

(I)t seems but reasonable and just that the neighbour who has brought something on his property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischevious if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there, no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. L.R. 3 H.L. 330 at 338.

In the more than 100 years since Rylands the law of strict liability has progressed and expanded tremendously. Today, numerous activities have been held to constitute abnormally dangerous-ultrahazardous activities for which strict liability will be imposed. Most of these are far less dangerous than the handling, generation, and disposal of hazardous waste. Such activities include the handling and shipping of explosives, blasting, quarrying, handling of nuclear materials, aerial spraying of pesticides, fumigation, sonic booms, handling oxygen, testing rocket fuels, storage of natural gas in populated areas, the operation of a gasoline station so as to affect families' wells, pile driving, and transportation of hazardous chemicals. See Prosser, Law of Torts 512-16 (1971). Undoubtedly, as litigation involving hazardous waste develops, court will add the generation and disposal of such wastes to the list of ultrahazardous activities. Indicative of this is the recent case of *New Jersey* v. *Ventron Corporation*, Nos. C-2996-75 and C-1110-78 (Superior Court of New Jersey, Chancery Division, Bergen County, Aug. 29, 1979), a case cited by the Justice Department in its correspondence and its testimony before the Committee on Ways and Means, in which a mercury processing operation was held strictly liable for damages caused by a release of mercury from its plant.

Mr. JEFFORDS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as a cosponsor of the Hazardous Waste Containment Act I wish to commend the fine work of Mr. GORE, Mr. FLORIO, Mr. MADIGAN, and other Members involved in the formulation of a compromise solution to the liability questions in H.R. 7020. Their work is typical of the cooperative efforts of majority and minority Members who have contributed to this legislation which addresses one of our most pressing national issues.

As recent events have indicated, the problem of abandoned hazardous waste sites is serious and widespread across our Nation. A study done for the Environmental Protection Agency (EPA) by Fred C. Hart Associates estimates there are between 1,200 and 2,000 hazardous waste sites which could pose serious health risks and environmental damage. Even in my own State of Vermont, which has a fine record of environmental protection, there are potentially serious situations which may involve abandoned hazardous waste.

Tragic instances such as Love Canal and the Valley of the Drums which threaten our public health and the environment are all too familiar. By far the most common and potentially serious damage resulting from these sites is the contamination of ground water. In examining just 128 incidents, the Congressional Research Service found over 1,300 wells had been closed, affecting the water supplies of thousands of people. These situations have radically altered

the long-held view that the earth could always be utilized as a natural filter for disposed wastes.

Few Members of this House would deny the desperate need for this and other legislation. H.R. 7020 fills a crucial gap in current law by providing the EPA with authority and resources to clean up hazardous waste sites. This legislation creates an emergency fund to locate, assess, and, where necessary, clean up abandoned hazardous waste dumpsites.

The bill would also establish liability rules for payment into the fund by those persons responsible for having improperly disposed of hazardous waste. These payments would reimburse the fund for cleanup and other costs. This legislation complements the current EPA authority under the Resource Conservation Recovery Act to control the disposal of hazardous wastes being produced, and the pending comprehensive spill cleanup authority contained in H.R. 85. Prompt action by this House and the Senate is essential if we are to adopt a responsible, comprehensive approach to this critical problem.

Although I support H.R. 7020, I believe it is imperative that the amendments being proposed by Mr. Gore to the liability provisions of this bill are necessary in order to conform the bill to prevailing State common law and the purposes of this act.

State common law generally holds that abnormally hazardous activity justifies the imposition of strict liability on the parties involved in the activity. Informaton supplied to my office by the Justice Department indicates that most recent court decisions have identified the disposal of hazardous waste as an abnormally dangerous activity and have imposed strict liability on the persons involved.

Under the prevailing common law, defendants could be relieved of strict liability if the release of hazardous waste results from an unforeseeable occurrence outside the control of the defendant. Some cases have held the defendant liable despite the intervening actions of a third party. Other cases have released the defendant from liability where the release of hazardous waste was due to the negligent actions of a third party who was not under contract or control of the defendant. The unamended version of H.R. 7020 would not follow either line of common law cases by allowing defendants to escape liability even if the release was foreseeable and within the possible control of the defendant. We must not allow a producer of hazardous materials to escape liability in instances where that producer released the waste without taking proper precautions to safeguard public health and the environment.

The amendment being offered by Congressman GORE limits the defense of intervening actions of a third party to instances where the defendant did not have a contractual relationship with the third party, and where the defendant can prove that the defendant exercised due care and that the release resulted from the negligence of a third party. This will help insure that a producer of hazardous waste is held responsible for releases of hazardous waste which that producer could have forseen and could have acted to prevent.

Although this first amendment offered by Congressman GORE does not eliminate the defense of third party intervention, it does make the liability provisions more consistent with common law. The Justice Department and the National Association of Attorneys General have both taken positions in favor of relieving liability because of acts of God, and not because of intervening actions of a third party. Fortunately, this bill does not limit the application of rules of common law which may impose strict liability regardless of the intervening actions of third parties. Thus, individuals or the affected governments may still recover costs and damages for releases of hazardous waste under the applicable State common law.

I also wish to record my support for the second amendment being offered by Congressman GORE which would affirm the discretion of courts to apportion liability among solvent parties who are held jointly and severally liable for a release of hazardous waste. While the intent of the unamended bill may have been in conformity with the prevailing common law, the language of H.R. 7020 is in need of revision.

The prevailing common law does not require courts to apportion liability among defendants who are held jointly and severally liable where the proportion of harm attributable to a particular defendant has not been established. The imposition of mandatory apportionment could result in attempts by the parties liable for a release of hazardous waste to allocate a large portion of the liability to insolvent defendants.

As the discussion on this floor will indicate, the total costs being recovered under this act are intended to be recovered from among the solvent liable parties. The adoption of the second amendment offered by Mr. GORE would eliminate mandatory apportionment of liability and clarify the intent of this House that any apportionment of liability is to be among solvent parties. The amendment would insure that those jointly and severally responsible for releases of hazardous waste are held fully liable for the full costs of the release.

These two amendments would protect the prevailing common law rules from federally established exceptions which could allow the evasion of liability by those producers and disposers responsible for releases of hazardous waste. These amendments are necessary for a cohesive and consistent treatment of this legislation and to insure that those who cause a waste problem will be required to pay for the remedy. We should not allow the responsible parties to evade the costs of cleanup at the expense of the taxpayers.

I urge the Members of this House to support the amendments being offered by Mr. GORE, and wish to thank the cosigners of my letter urging the adoption of this compromise position, Mr. SEIBERLING, Mr. ANDERSON, and Mr. GEORGE BROWN for their assistance in this matter.

Mr. GORE. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Tennessee.

Mr. GORE. The law has evolved for quite some time on this point. This is not a radical change. This is very much in keeping with the tradition of the law.

Let me just express at this point my deep thanks to my colleague from Vermont who stood up at a key moment in the development in the evolution of this legislation and these amendments and sent around a "Dear Colleague" to every Member of this House saying, "Yes, I have examined the legal theories involved here. I have taken the time to read all of the analysis associated with these amendments, and I support them. I recognize what is being done here, and I ask Members on both sides of the aisle to support this amendment." It is an example of the bipartisan support which has led to the kind of bill we have before us and the kind of amendments that have generated the support which is evident for these amendments.

I thank my colleague, the gentleman from Vermont (Mr. JEFFORDS) very deeply. With those kind remarks I have nothing more to say.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Tennessee (Mr. GORE).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT: Page 29, after line 13, insert:

"(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from releases associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

□ 1810

Mr. ECKHARDT. Mr. Chairman, this amendment is grounded on 18 days of hearings. We had looked into the question of the studies that were made with respect to the Love Canal area. We found in that case the Federal Government initiated a study to use in its litigation against the Hooker Chemical Co. There had been many other studies conducted by both the Federal Government and the State of New York and other persons, some of which disagreed with each other. They come from various sources. There was no responsibility of an agency of the Federal Government primarily dealing with the question of health which would have caused some credible examination to be made.

The result is that the studies resulted in too much delay in getting some persons out of that area where danger actually existed and perhaps to greater generation of a feeling of fear among those who were ultimately relocated.

It was during our May 22 hearing that the subcommittee carefully examined H.R. 7020 to determine if it contained adequate funds for health services. Much to our chagrin and surprise at that time, it did not so contain the provision. It was contained in an earlier Florio bill but was dropped in the draft before us.

Therefore, the gentleman from Tennessee (Mr. GORE) and myself felt that this was an extremely necessary amendment. I am offering it on behalf of myself and on behalf of the gentleman from Tennessee (Mr. GORE), as a means I think of affording a very necessary definition of responsibility.

I believe that the amendment is widely supported. I am pleased to say that our effort is being supported actively by the gentleman from New York (Mr. LENT) who is the ranking minority member on my subcommittee, and by the gentleman from Connecticut (Mr. MOFFETT), whose committee heard this matter with us. I also understand that his ranking minority member, the gentleman from California (Mr. MCCLOSKEY) favors this matter.

We have cleared this or discussed it with both the majority and the minority.

Mr. Chairman, I yield at this time to the gentleman from New Jersey (Mr. FLORIO).

Mr. FLORIO. Mr. Chairman, the gentleman is correct. We have reviewed his amendment and think it is valuable and we are prepared to accept it.

Mr. ECKHARDT. Mr. Chairman, I yield to the gentleman from Illinois (Mr. MADIGAN).

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and tell him that the gentleman from New York (Mr. LENT) has been in contact with me and has urged me to support the amendment of the gentleman from Texas. We intend to do that and urge the committees to do likewise.

Mr. LAFALCE. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, this is an extremely important amendment. I remember when I first visited the Love Canal site in the summer of 1977. I went into the basement of the people who lived on either side of the site on 97th and 99th Streets. I knew from what I saw and I knew from what I smelled that we had a serious problem there that was probably affecting the health of the people living in the nearby area.

I immediately called in representatives from the Environmental Protection Agency, from the State Department of Environmental Conservation, and so forth; but it took almost 1 year, it took until August 1978 for the State health commissioner to determine that there was a serious hazard to human health. It then took him an additional 8 months or so until February 1979 to conclude that the dangers extended beyond what had become known as Rings 1 and 2 on 97th and 99th Streets to a much larger area. Then it was only in May 1980 that the Environmental Protection Agency concluded that because of recent studies they had done pursuant to investigations by the Justice Department in connection with a lawsuit brought against the Hooker Chemical Co., that perhaps the area should be expanded still further.

In all of these endeavors, the one thing that we do know for sure is that the state of man's knowledge about the effects of human exposure to toxic substances is very limited. We have had very little research on the State level, very little research in the private sector, very little research on the Federal level.

The state of knowledge that exists in the National Institute of Environmental Health studies, the state of knowledge that exists in the National Institute of Occupational Health and Safety, within the entire Department of Health and Human Services, within EPA, is very limited. A study of this nature and this scope is absolutely imperative. I really think that everyone, regardless of their position on superfund, should join in support of it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SOLOMON

Mr. SOLOMON. Mr. Chairman, I offer an amendment, and I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The amendment is as follows:

Amendment offered by Mr. SOLOMON: Page 50, after line 11, insert the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

"ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned or State permitted facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulation shall provide for the annual allocation of grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.

"(e) USE OF FUND.—Notwithstanding any other provision of law, not more than 25 percent of the amount credited to the Fund established by the Hazardous Waste Containment Act of 1980 may be used for providing assistance under this section.".

Page 50, after line 15, insert:

"Sec. 3012. Assistance for State or regional facilities.".

Mr. SOLOMON. Mr. Chairman, this amendment does nothing to change any provision of this legislation for the first 2 years of its effectiveness, however at the end of 2 years, the amendment implements a procedure whereby up to 25 percent of these funds could be used to make 50 percent matching grants to State agencies, interstate agencies, or State permitted facilities—which could be local governments or private sector business. For the purpose of building and constructing high technology facilities that would neutralize, incinerate, or recycle hazardous waste, these grants to be issued are based on the priority needs to be determined by the Environmental Protection Agency.

Mr. Chairman, I commend the committee and particularly the committee chairman and ranking minority member for their outstanding work on this very difficult subject. But I am deeply concerned about H.R. 7020 as it is currently drafted. From an environmental perspective, this legislation is indeed shortsighted. It encourages the proliferation of new landfills and the expansion of existing landfills rather than the development of high technology facilities which would destroy or neutralize toxic wastes.

My amendment would earmark a small percentage of the fund for matching grants to States which are willing to construct total systems high technology facilities for the environmentally sound disposal of toxic waste.

The construction of high technology facilities to reclaim, incinerate, or neutralize hazardous waste is the surest way, in fact, the only way, to assure an environment protected from the future potential—hazards of chemical waste.

By failing to address the very important and necessary method for future control of such waste, Congress implies that the best way to deal with hazardous waste is to bury it in the ground.

My amendment would allow the Government to encourage the development of facilities which can completely destroy or neutralize hazardous waste. At present the only method available to most generators of hazardous waste is landfills. What Congress is proposing by enacting the superfund will result in a proliferation of landfills.

I would also like to emphasize that my amendment would take effect 2 years from the date of enactment of the superfund. In this way the primary purpose of the legislation—to provide the authorities with a way to respond to release of hazardous waste from inactive hazardous waste sites which endanger public health and the environment—the

primary purpose of the legislation would not be adversely affected by my amendment. In fact, the amendment will strengthen the bill.

I would like to comment briefly on the statement by the chairman of the New York State Senate Committee on hazardous waste. To quote the chairman:

> The Federal Government would be wiser if it took strong steps to encourage the States to immediately begin to look at the final answer to hazardous waste, and this means the destruction or neutralization, rather than the storage, of toxic and leachable chemical waste in landfills.

As I have already pointed out, this superfund legislation will actually increase the number of landfills across the country and will expand existing landfills that may already pose a threat to this Nation's drinking water. Over 50 percent of all Americans depend on ground water for their drinking water supply, and the creation of more landfills may jeopardize this vital water supply.

Evidence is growing that a possible correlation exists between the thousands of existing landfills and the health of our people. We can no longer afford the continued use of the archaic technology of landfilling to solve this serious environmental problem.

I would also like to point out that this amendment is very similar to an amendment I offered and the House unanimously accepted to H.R. 85 last week. That amendment directs the Environmental Protection Agency to insure the development and use of environmentally sound technologies to incinerate or chemically destroy dredged PCB's. I hope the House sees fit to take the same action on this amendment.

The American people can no longer afford the luxury of waiting for the proper environmental disposal of hazardous chemical waste. Acceptance of my amendment will give a positive demonstration to the people of this country that Congress is determined to solve the total problem of hazardous waste disposal, now. Thank you.

□ 1820

The CHAIRMAN. The time of the gentleman from New York has expired.

(At the request of Mr. LAFALCE and by unanimous consent, Mr. SOLOMON was allowed to proceed for 1 additional minute.)

Mr. LAFALCE. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I am happy to yield to the gentleman from New York.

Mr. LAFALCE. Mr. Chairman, I want to rise in support of the concept behind the amendment offered by the gentleman from New York (Mr. SOLOMON). I think he does point out a serious problem that must be approached.

I am not sure the amendment is the best way of approaching it. I think there are better ways. I am not sure that this bill is the appropriate bill to attach the amendment to, but because I do support the concept I am going to support the amendment.

Mr. SOLOMON. I thank the gentleman.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

I rise in reluctant opposition, I might add, because I know the gentleman is sincere in his concern as to how we are going to dispose of these wastes. Let me assure the gentleman that first of all there is no bias toward disposing of these materials in landfills but we are very sensitive to the need to develop the technology for more appropriate disposal. In fact, we have money for research and development in the bill designed to have the new technologies for cleanup and containment developed.

Furthermore, we do have a study in the bill for the development of procedures for siting.

I would just suggest the gentleman's approach is not perhaps fully appropriate because he is taking some 25 percent of the moneys that we need, and many of us feel they are inadequate, for cleanup and containment for emergency situations, and will allocate them away from emergency response and instead toward more desirable disposal technologies. I would just say that the gentleman from Illinois (Mr. MADIGAN), the gentleman from Texas (Mr. ECKHARDT), myself, and a number of other Members have requested from the OTA, the Office of Technology Assessment, a full and comprehensive study with regard to these new types of technologies and how we in the Congress can, if in fact we should, play a role in facilitating and providing incentives to move in that direction.

I would reluctantly oppose the gentleman's amendment because I am not convinced this is the appropriate place to deal with that very important problem.

Mr. SOLOMON. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I am happy to yield.

Mr. SOLOMON. If the gentleman could give me some assurances, then I certainly take the gentleman's word for it, that his committee will continue to concentrate on this and move in that direction, then I would withdraw the amendment at this point.

Mr. FLORIO. Without any difficulties I will give the gentleman those assurances.

Mr. SOLOMON. Mr. Chairman, I ask unanimous consent that the amendment be withdrawn.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. ECKHARDT: Page 13, after line 19, insert:
>
> "(f) INTERIM SITES.—Not later than six months after forms are made available for the collection of information under this section from inactive hazardous waste sites, the Administrator shall require, pursuant to his authority under part 1 of this subtitle, to the extent he determines necessary, the submission of the information referred to in subsection (a)(2) (C) and (D) with respect to hazardous waste sites operating under interim status pursuant to section 3005(c).

Mr. ECKHARDT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ECKHARDT. Mr. Chairman, this is an amendment that meets the problem that I have run into in my area, but it is not limited to my area. It happens that a great amount of the chemical industry is located along the Houston Ship Canal. There is a landfill with the poetic name "The Whispering Pines Landfill." I think that probably illustrates something of the problem. That beautiful name indicates its proximity to a suburban addition. It is under an interim permit. There are all kinds of things put into that landfill that the residents close by do not know about.

Of course, this is a class A landfill and may receive any type of waste except radioactive waste.

In a situation like that, we feel that EPA, under its existing authority regulations, should apply a rule which requires information to be submitted, just as in the case of inactive landfills.

In the amendment we have delayed the time for such action for 6 months after the original information required of inactive sites and we have given EPA flexibility to require less information with respect to these sites as opposed to inactive sites.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding and would state that this House has already gone on record in the RCRA amendments, which are presently in conference, supporting the position of the gentleman. Accordingly, I have no difficulty in supporting it now.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Illinois.

Mr. MADIGAN. I thank the gentleman for yielding. Earlier in the day the gentleman from Texas (Mr. ECKHARDT), the gentleman from North Carolina (Mr. BROYHILL), and myself had a conversation concerning a change in this amendment that would have inserted the discretionary authority for the Administrator of EPA, and I would ask the gentleman if that is the amendment we are now considering.

Mr. ECKHARDT. The gentleman is correct.

Mr. MADIGAN. I want to thank the gentleman for that information and say to the gentleman and to the House that the minority would be supporting this amendment.

The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. STOCKMAN

Mr. STOCKMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. STOCKMAN: Page 5, strike out lines 5 through 18 and insert in lieu thereof the following:

> "(1) 'Inactive hazardous waste site' shall have the meaning prescribed by the Administrator in accordance with subparagraph (1)(A) of this section.
>
> "(A) Not later than 120 days after the date of enactment of this Act, the Administrator shall promulgate a final rule establishing the definition of 'hazardous waste site' and submit such final rule to the Congress for review in accordance with subparagraph (1)(B) of this section. In developing such final rule, the Administrator shall consider—
>
> "(i) the characteristics of the sites that would be encompassed in the proposed definition;
>
> "(ii) the quantity and characteristics of the materials located at sites that would be encompassed in the proposed definition;
>
> "(iii) the magnitude of the threat to public health and safety posed by the sites that would be encompassed in the proposed definition; and
>
> "(iv) the costs and benefits to the nation as a whole of alternative definitions that encompass a larger or smaller number of sites than the proposed definition.
>
> "(B)(i) Any final rule promulgated by the Administrator under this paragraph shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such final rule shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce, respectively.
>
> "(ii) Any such final rule shall become effective unless, before the end of 30 calendar days of continuous session after the date such rule is submitted to Congress, either House passes a resolution stating in substance that such House does not approve such final rule."

Mr. STOCKMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. STOCKMAN. Mr. Chairman, I offer this amendment in order to follow up on the point that I had been trying to make this afternoon. That is within the structure of this bill we practically make the EPA the czar over every inactive site and some active sites anywhere in the country where any material has ever been deposited. The reason I say that, of course, is the definition of hazardous site or hazardous material under the RCRA regulations is so encompassing that it is up to 1,165 items now and it will continue to grow.

I gave some indication of what some of those items were a while ago. Everything is covered, practically, and certainly I do not think it is the intention of this House or either any of the Members who are sensitive to the problem, the Love Canal type problem that we are addressing here today, it is not the intention of this House to have the EPA turned loose to begin to investigate, monitor, dig up and clean up every one of the thousands, tens of thousands and hundreds of thousands of sites that would fit the very loose and vague and elastic definitions of the basic matter that we are seeking to remedy and regulate in this bill.

It seems to me it would be very difficult for this House or the committee to write a regulation or to write statutory language as to what the hazardous sites are that we need to have a program focused upon. But we could do something that would be almost as good and that is to require EPA to write such regulations, such definitions to circumscribe the universe of those sites that we are going to go after and then send it back up to the Hill for us to approve.

□ 1830

In that way we can make a determination as to whether or not this new superfund program and the vast powers that it delegates to EPA will be focused on the Love Canals or other similar sites, the Valley of the Drums and many that have been named here this afternoon, or whether it is going to be directed indiscriminately at every municipal landfill, every rubbish pile that EPA can find around the country. My amendment is very simple. It is just a legislative veto, a legislative approval over the regulations that EPA would write defining the universe of covered sites that would then trigger all of the activities under this bill.

It seems to me that that is a prudent and careful approach that should have been included in the committee bill and that this House ought to consider today because I would remind this House that we are back again in that basic dilemma of having to make cost-benefit decisions, having to spend literally billions of dollars from our national economy that would otherwise be available for other of our needs, both public and private, that might be available otherwise for investment or for job creation, that—unless we carefully subscribe the scope of this bill and unless we limit the inventory and the clean-up activities to the truly hazardous, threatening site—will be used for marginal situations, marginal sites that we simply cannot afford today to clean up as a country.

So by offering this amendment I am providing a mechanism whereby this whole superfund apparatus and the powers that are delegated to EPA could be tightly and finally targeted on the real subject of attention that Members of this House are properly concerned about. I would urge that the committee chairman and the members of the committee who have been here today and have been attentive throughout this entire debate consider this amendment because it is not designed to gut the bill, to dilute it or weaken it as some have suggested regarding other initiatives a while back, but this is a constructive effort designed to insure that we do not unleash vast undefined powers to an agency, to incur costs, to impose burdens that our economy simply cannot afford at the present time.

I would be happy to yield to the gentleman from New Jersey (Mr. FLORIO) if he has a response to the amendment.

Mr. FLORIO. I think it would be appropriate perhaps to oppose the amendment on my time as opposed to taking the gentleman's time.

Mr. Chairman, I rise in opposition to the amendment. I really have a difficult time determining what the real purpose of the amendment is. Where there is an Administrative Procedures Act that provides for the implementation of regulations, the only foreseeable consequence of the enactment of this amendment, as I can see it, is just delay. We know that the problems are there now. The fact of the matter is that this whole bill has been based on a responsible approach. There is a precedent. There is a good body of knowledge in terms of definitions. The agency will be the same implementing this law, and I just see no purpose for this amendment. Accordingly, I would ask for opposition to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. STOCKMAN).

The amendment was rejected.

The CHAIRMAN. Are there other amendments to section 5? If not, the Clerk will designate the next section.

Section 6 reads as follows:

STUDY OF HAZARDOUS WASTE SITING

> SEC. 6. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:
>
> (1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;
>
> (2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;
>
> (3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;
>
> (4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;
>
> (5) documentation of the major reasons for public opposition to new hazardous waste management facilities; and
>
> (6) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.
>
> The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than one year after the date of the enactment of this Act.
>
> (b) There is authorized to be appropriated not more than $1,000,000 to carry out the study required under this section.

The CHAIRMAN. Are there amendments to section 6? If not, the Clerk will designate the next section.

Section 7 reads as follows:

STUDY OF ADEQUACY OF FUNDING

> SEC. 7. (a) The President shall submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate within six months after the end

of each fiscal year, beginning one year after the date of the enactment of this Act, a report summarizing the receipts and disbursements during that year from the fund established pursuant to this Act. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the President may have for improvement.

(b) Before January 1, 1984, the Administrator shall conduct a study, and submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a comprehensive report on experience with the implementation of the amendments made by this Act, including, but not limited to an analysis of:

(1) whether the requirements set forth in the amendments are effective;

(2) the extent to which the fund established under the amendments is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of hazardous waste;

(3) the cost of responding to, and the potential threat to public health or the environment, posed by, hazardous waste remaining after actions taken pursuant to the amendments made by this Act;

(4) whether the fees, appropriations, and penalties established under the amendments made by this Act are sufficient and equitable; and

(5) State participation in the system of response, liability, and compensation established by such amendments.

In preparing the report under this subsection, the Administrator shall consult with appropriate Federal, State, and local agencies, affected industries and other interested parties. Based upon the analyses and consultation required by this subsection, the Administrator shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of the amendments made by this Act, including not not limited to recommendations concerning authorization levels, fees, State participation, liability and liability limits, and financial responsibility provisions.

The CHAIRMAN. Are there amendments to section 7? If not, the Clerk will designate the next section.

Section 8 reads as follows:

SUNSET PROVISIONS

SEC. 8. Unless reauthorized by Congress, the authority of the Administrator to assess and collect fees, to inventory and clean up or to order any action regarding an inactive hazardous waste disposal site, or to exercise any other authority conferred in this Act shall terminate five years after the date of enactment of this Act.

The CHAIRMAN. Are there amendments to section 8? If not, the Clerk will designate the next section.

Section 9 reads as follows:

LIMITATION ON AUTHORIZATIONS

SEC. 9. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1980. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

The CHAIRMAN. Are there amendments to section 9?

● Mr. WOLFF. Mr. Chairman, I rise to express my support for the immediate passage of H.R. 7020, the Hazardous Waste Containment Act of 1980, of which I am a cosponsor.

There is no question that enactment of such a "superfund" is a beginning in addressing the most critical environmental problem plaguing the Nation—and indeed a problem that may have been with us longer than we ever anticipated. Its passage would mark a milestone for the 96th Congress.

I would like to lend my support for the Ways and Means version of the bill. This version more realistically approaches the problem by allotting a greater sum of money to the trust fund, and better apportions the division between industry and Government as to who should "pick up the tab." I believe that the industries responsible for creation of the problem should bear the major burden for its cleanup. Witness for example, the debacle at Love Canal, whose innocent victims now bear the brunt of relocating, and the psychological questions of the effects these chemicals have had on them.

For New York, this bill takes on added priority. New York simply does not have the resources to initiate its own systematic plan for identifying and cleanup its waste sites. Where possible, the State has attempted to force owners of sites, or the responsible parties to start cleanup on their own, however the difficulties encountered in enforcing this action, and the sheer enormity of the problem in the State, has demonstrated the need for national legislation.

For my district, the results of chemical dumping in the groundwaters of Long Island has been devastating. The groundwaters are the sole source of drinking water for over 3 million residents. As was previously reported by my colleague, Mr. AMBRO, the New York Public Interest Research Group released results of an in-depth study in July reported very disturbing news. NYPIRG stated that, "as pollution spreads deeper within the island's aquifers, without sophisticated treatment, the entire underground water reserve will eventually become contaminated and unfit as a source of public water supply." NYPIRG attributed Nassau County's high cancer rate, at least in part, to the drinking of polluted water. People in Suffolk and Nassau Counties as well as in parts of Jamaica, Queens, are dependent upon this water which has become "seriously contaminated with toxic organic chemicals * * * and consequently, millions of people consume toxic contaminants in their water on a daily basis."

At recent hearings held by the Subcommittee on National Parks and Insular Affairs in Long Island, I called for congressional oversight hearings to determine how effective antipollution legislation is being implemented nationally as well as locally. Today, I reiterate this point. As important as passage of 7020 is, it is still only a drop in a very dirty bucket in the massive problem of fighting pollution.●

● Ms. OAKAR. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act. This kind of legislation is long overdue. Although we have been aware of the dangers to public health from leaking chemical dumps for years, it is only now that we are finally acting on legislation to clean up these dumps and to hold their owners strictly accountable under the law.

I am especially concerned about this problem because the Nuclear Regulatory Commission and the Environmental Protection Agency have investigated alleged leaking of uranium radiation from a chemical dump in my district. Concerned families who live near this dump in Newburgh Heights, Ohio, claim that toxic wastes stored in this dump may be responsible for an outbreak of skin rash that has occurred among many of their children.

These children have been examined by doctors who express grave concern over a possible connection between the rash and exposure to the radiation and wastes in the dump. At my urging, the EPA is looking into this situation to obtain the evidence necessary to take action against those parties responsible for the health and safety hazards posed by the dump site.

Of equal concern to me is the need to deal responsibly and effectively with the hazards involved in radioactive nuclear waste. We must develop a proven method for the safe and permanent disposal of the millions of gallons of hazardous waste produced by this country's nuclear powerplants. In spite of GAO studies that show the lack of a reliable technology for the safe and permanent containment of radioactive waste, the Department of Energy has refused to assure me and other Members of Congress that such waste will not be buried underneath one of the most heavily populated areas of the country.

I am referring specifically to areas of northern Ohio, much of Michigan, and parts of Pennsylvania, West Virginia, and New York State, where underground salt caverns are being studied by the Energy Department for possible burial of nuclear waste. To address this serious situation, I have introduced legislation that would both suspend the licensing of nuclear powerplants until an in-depth study has been done by the Office of Technology Assessment and would forbid the Energy Department from building a nuclear waste disposal site underneath, within, or near heavily populated areas.

To address this serious situation, I introduced in April 1979, a bill entitled the Nuclear Reactor Moratorium and Waste Disposal Prohibition Act, H.R. 3581. This legislation would suspend the licensing by the Nuclear Regulatory Commission of nuclear fission powerplants, until such time that the Office of Technology Assessment completes a comprehensive study on the operational safety of such plants.

Also, my bill would prohibit the Department of Energy from locating or building a nuclear waste disposal site underneath, within, or near any densely populated areas. Legislation such as mine would send a clear message to the Energy Department that the American people will not tolerate the burial of highly radioactive and potentially deadly nuclear garbage in caverns that lie underneath their homes and backyards.

We urgently need legislation to clean up active or inactive chemical waste dumps. We need as well legislation to prohibit the location of chemical dump or nuclear waste disposal sites anywhere near populated areas. It is time we have learned from the suffering of those families of the Love Canal community and other areas and enact strict laws to protect the American people against the clear and present danger of chemical and nuclear waste sites.●

● Mr. MARKEY. Mr. Chairman, I rise in strong support of the Ways and Means Committee substitute to increase the funding level of superfund to $1.2 billion.

In the Commerce Committee, I fought for doubling the $600 million figure. I also testified before the Ways and Means Committee in support of increased funding. I bring these strong feelings of support to the floor today.

Last Friday, we heard 2 hours of debate on Superfund. We heard a number of horror stories to back up the need for this legislation.

I told my colleagues of the devastating situation that my constituents in the city of Woburn, Mass. and the neighboring community of Reading are facing:

Twice the expected leukemia rate in an area populated by only 1,500 people;

Two wells needing to be closed as a result of contaminated drinking water;

A stench too powerful to be tolerated; and

A legacy of arsenic pits, chromium, and hills of rotting animal hides left from negligent chemical plants and tanneries.

The scenario that I gave was only one isolated situation. And we heard a number of others. We also heard over and over again the warning that we do not know how many undiscovered waste sites exist all across our land. We cannot take this lightly.

We seem to have arrived at the concensus that the hazardous ramifications due to irresponsible waste dumping is indeed the critical environmental issue of this decade.

But, Mr. Chairman, if this House does not agree to the Ways and Means substitute, then we will have failed to come to grips with the magnitude of this problem.

The $600 million figure in the Commerce version of superfund is barely enough to begin to address the hazardous waste sites that we already know exist—$600 million is not the original figure in the Commerce bill—that figure was $1.3 billion. As I told my colleagues on the Commerce Committee, lowering the funding level to $600 million was a political compromise which had insufficient data to support it. It was a political compromise to get the bill out of committee.

Last year, Fred C. Hart, Associates conducted a preliminary assessment of the costs of cleaning up toxic waste sites. That study estimated that the number of hazardous waste sites across the country is between 32,000 and 50,000. The study also estimated that the number of sites with significant environmental and health problems may range between 32,000 and 50,000.

More information from an EPA Task Force lends credence to the Hart projections. The task force has identified more than 4,700 sites over the past 8 months. It is adding approximately 200 sites per month to its list.

Mr. Chairman, using this information from a nonbiased source, the full scope of the problem begins to come into focus.

At my request, the EPA sent me a memorandum which states that the EPA could cleanup an additional 180 to 200 sites with additional funding, the memorandum states that the cost of remedial action will average around $3.5 million per site.

I urge my colleagues to take a good, hard look at these figures and ask yourselves if $600 million begins to come down to addressing the Woburns, the Love Canals, and the Valleys of the Drums that we know are devastating the environment and contaminating our groundwater, and also those toxic waste sites yet to be discovered.

I say that this funding is not adequate and the political compromise which was made to arrive at the $600 million figure is unacceptable. I refuse to allow the politics of expediency to weaken this bill.

My constituents in Woburn deserve better.●

● Mr. SANTINI. Mr. Chairman, I rise in support of the substitute offered by Mr. STOCKMAN. In my judgment, this amendment is a workable alternative that will deal effectively with the legitimate concerns of the public with respect to hazardous waste sites for which no responsible parties can be located.

I strongly oppose H.R. 7020 as reported from the Interstate and Foreign Commerce Committee. As we do all too often, Congress has identified a problem and then created a mechanism out of proportion to the problem we want to solve. There is no need to act so precipitously in creating another regulatory behemoth. The Stockman substitute offers a reasonable solution to resolve a specific problem. This alternative gives control of cleanup directly to the people who live in the affected States—not to a distant bureaucracy in Washington, D.C.

During this election year many of us will hear countless speeches about an overreaching Federal Government. Some of us will give such speeches. Yet with this legislation the House would be creating a new device which leaves tremendous discretion to the Administrator of EPA. Before we grant such authority I believe it is incumbent on the proponents of the legislation to assume the burden of proof to show not only that an environmental problem exists, but that H.R. 7020 is the best mechanism by which to solve it.

That burden of proof has not been met by the authors of the bill. H.R. 7020 suffers from serious infirmities which extend far beyond the question of environmental protection. At the top of the list is the precedent being set for placing "fees" on feedstocks which will go into a fund which may not be spent for cleanup of wastes caused by the person making the payment. It should be emphasized that this bill does not regulate the current disposal practices of waste generators. It is for the cleanup of problems resulting from past practices. Rather than going after the "midnight dumpers" who ought to be prosecuted, the proponents of the legislation would place a fee on companies now operating who may, in fact, have complied with all existing rules regarding waste disposal.

Are we next going to see a fee placed on current industries for the purpose of cleaning the waters which were polluted by others in the past? With a little time, I am sure some Members could come up with other solutions.

The use of fees is justified by the supporters of the bill on two grounds. First, it is alleged that the companies being assessed are probably responsible in some way for the problem because many have been in business for a long time. I do not find much credibility in that argument because little proof is offered to suggest that is, indeed, the case.

The argument loses much of its validity because of the method by which the assessment is made. Rather than place a fee on the facility generating the waste, the legislation places it on the feedstock. By doing so, the cost is being placed on inorganic elements which are not harmful in their natural state. As Mr. MOORE indicated during general debate, nickel is not regarded as particularly hazardous. Is it appropriate, then, to put the fee on a material we all carry in our pockets in our coins? Should this additional financial burden be placed on an industry which must compete with subsidized producers overseas? Our Nation is already dependent on imports for many of the most critically strategic minerals. Putting an additional fee on the elements will only exacerbate our mineral dependence on foreign nations.

The cost of this fee will be borne either by the companies involved or by the American consumer. Neither is in a position to absorb additional financial burdens.

The proponents of H.R. 7020 also argue that industry fees are necessary because of the difficulty of persuading appropriations committees to support large governmental expenditures. It seems to me that if the problem is as great as described there should be no difficulty in obtaining adequate Federal funding. Clearly, if this legislation is of such high priority the appropriations should be available. I am concerned that as fiscal constraints become tighter, superfund will serve as a precedent for funding new governmental programs out of the pockets of industry, and ultimately, the consumer. This provides an interesting method of balancing the Federal budget; lower Federal spending by placing the costs on the private sector. It will be all too easy to establish large new programs by passing the costs on to someone else. Then we can proudly point to our "balanced" budget. The taxpayer would not have the burdens but the consumer will.

That is certainly a prescription for inflation. With OMB out of the picture, Federal agencies need not feel constrained from using high-cost methods of reclaiming waste sites under this bill, or who knows what else under the future programs this legislation will spawn. The incentive to use the least cost alternatives

will be gone if industry is to foot the bill rather than the Federal Government.

I intend to vote for the Stockman substitute which has none of the infirmities I have discussed.●

● Mr. MAGUIRE. Mr. Chairman, we in the Congress are painfully aware that the problems of toxic waste and chemical waste storage and disposal are the new environmental crises of the 1980's. I say painfully because we have all witnessed the heartbreak and pain suffered by the residents of Love Canal, N.Y.; we all breathed a sigh of relief when the explosions at the Chemical Control Co. of Elizabeth, N.J., and an industrial park in Perth Amboy, N.J., did not turn into the nightmares that we all fear; and we were all stunned by the aerial photographs revealing the careless disregard that became the Valley of the Drums.

As in the past when the Congress has been forced by external events to come to grips with serious environmental crises, we have enacted several pieces of legislation that will force us to think before we leap. As the catalog of chemicals produced in this country expands by 1,000 entrants each year, the regulatory requirements imposed by the Toxic Substances Control Act, and the Resource Conservation and Recovery Act will hopefully decrease the number of Love Canals and Elizabeth, N.J.s in the future. I say decrease and not eliminate because the report on Health Effects of Toxic Pollution issued by the Surgeon General's Office concludes that we shall continue to respond to a series of environmental emergencies in the 1980's. I believe that if we are to face those emergencies in an appropriate and timely manner, we must begin today by demonstrating our support for a hazardous waste cleanup fund that foreshadows our seriousness and resolve.

I urge my colleagues to support the Ways and Means Committee amendment to H.R. 7020, the Hazardous Waste Containment Act. I say this not because I believe that the amendment makes the bill a true superfund, but because I believe that the Ways and Means amendment addresses the enormous problem facing us in a more equitable and aggressive manner.

The Ways and Means amendment places the major burden of the fund not on the public treasury, but on the chemical companies who, knowingly or not, benefited from the unsound and careless disposal practices of the past. Indeed, it might be argued that the 25 percent public contribution called for by the Ways and Means amendment is too great a burden for the public to bear. It is, however, a burden that we must bear for our negligence and lack of foresight, and will serve as a constant reminder that if we miss the opportunity to do it right from the beginning, we must pay the excessive costs of cleaning up our mistake.

The Ways and Means amendment doubles the size of the fund from $600 million to $1.2 billion. Although the magnitude of the increase appears dramatic, we know as we debate this issue today that $1.2 billion will only make the first few dents in the cleanup task that lies before us. The legislation directs EPA to establish a list of 100 "top priority sites" from among the estimated 30,000 to 50,000 inactive dump sites, 2,000 of which present a serious threat to the public health. I feel true sympathy for the Assistant Administrator at EPA who will have to implement decisions on the top 100 sites as he is hounded by 435 Representatives and 100 Senators each with his or her own priority site. It is clear that 535 requests cannot be squeezed into 100 slots. I hope that 5 years from now we reauthorize the fund at a greater amount to clear up those sites that were left behind in the sweepstakes for top priority designation.

It is also my hope that the chemical industry will act independently to clean up its past mistakes. I am sure that many of my colleagues have noticed the advertisements, placed neatly in the op-ed sections of many major newspapers, informing the public of the sound job that the chemical industry was doing to insure that its wastes were disposed of in an environmentally sound manner. I would urge our friends in the industry to turn their creative talents witnessed by these ads to the problem of cleaning up those sites that were established without the dedication and public mindedness that we are asked to believe characterize today's efforts.

Mr. Chairman, a vote for the Ways and Means amendment represents a recognition not only of the dimension of the problem that faces us today, but also of the continued commitment that we must make to cleaning up all of the 30,000–50,000 inactive and uncontrolled hazardous waste sites that poison our Earth and our water supplies and pose the threat of disease and death to countless of our citizens now and for generations to come.

Thank you.●

● Mr. LUNDINE. Mr. Chairman, I rise in support of H.R. 7020, legislation to authorize establishment of a "superfund," jointly financed by the Federal Government and private industry, to address the serious and growing problem of the cleanup of inactive and abandoned hazardous waste sites around the country. In addition, I urge adoption of the Ways and Means Committee recommendation of $1.2 billion for the fund and the accompanying allocation of financial responsibilities among industry and Government.

The Environmental Protection Agency estimates that there may be up to 50,000 abandoned hazardous waste sites around the country that will require an average per site cleanup cost of about $3 million. One only has to examine the horrors of a Love Canal, as we have in New York State, to appreciate the scope and depth of our national problem.

At the same time, I am deeply concerned that this legislation is not permitted to go far enough to establish a comprehensive and future oriented national program. The Environmental Protection Agency will shortly finalize standards promulgated in accordance with provisions of the Resource Conservation and Recovery Act of 1976. In addition to our action here today, we have an obligation to take the necessary steps to insure the successful implementation of these standards. This may include provisions for technical and financial assistance to industries and local governments to develop alternate waste disposal sites and innovative handling technologies.

It has taken EPA nearly 4 years to promulgate regulations to implement improved safety standards for disposal of our hazardous wastes. The neglect that has plagued the hazardous waste disposal business over this century cannot be reversed overnight. Early indications are that implementation of these regulations may prove excessively costly and cumbersome to our industries and local governments. Rather than attempt to cope with increased costs and responsibilities of continuing to operate county landfills, many local governments will simply close their operations and many businesses find ways to dispose of these wastes illegally.

For example, in my congressional district, Chautauqua County, N.Y., has been providing environmentally acceptable hazardous waste disposal services to industries in the area for many years. After an initial examination of the proposed EPA regulations which will begin to take effect on November 19, the county has indicated they can no longer afford the liability connected to upgrading and maintaining hazardous waste disposal facilities.

As a result, Chautauqua County businesses in search of an alternate disposal capability will be forced to truck their wastes to an industrial waste processing facility two counties away at an estimated increase in costs of $70 per ton. And, this estimate does not include the cost of transporting these wastes for disposal. Needless to say, such an increased economic burden could endanger the survival of marginal industries.

It is absolutely essential that the Federal Government provide a workable plan not only for the inactive hazardous waste disposal sites, but that we also address the critical long-term problem of developing and siting a patchwork of strategically located, convenient, and environmentally acceptable disposal facilities for future use. If such an effort is not made, the result may be chaos at the local level as existing disposal sites are forced to close and businesses are strained for methods and capacity to dispose of their wastes.

I urge your support of H.R. 7020, but also urge your acknowledgment that additional steps are necessary to insure the transition to an acceptable long-term hazardous waste disposal system for this county. Congressional consideration of this matter cannot stop with enactment of this legislation, but must be given additional and continued analysis as the EPA moves to implement their proposed regulations.●

● Mr. GRASSLEY. Mr. Chairman, I want to thank you and all the members of the House committees involved in the legislation for your sustained effort in getting this measure to the floor of the House. With so many interests and issues

to address, I think all of us owe the members of the committees a great debt in finding a middle ground.

My interest in this problem began with a problem which arose in my district many years ago. I have addressed the Members of this body on the need for this type of legislation in June of 1979. I have had the pleasure of testifying before Congressman FLORIO's subcommittee on my early efforts to solve this problem. Furthermore, I feel honored to have contributed something to the solution of this dangerous situation which will probably face most of us at some time in the near future.

With thousands of inactive hazardous waste dumpsites across the Nation, legislation is needed that provides an emergency response to this imminent danger. I fully support the House proposal and applaud the members of the committees for thoughtfully addressing these difficult issues. All the people of Third District of Iowa support your swift efforts on their behalf.●

● Mr. GOLDWATER. Mr. Chairman, I rise in support of H.R. 7020, the Hazardous Waste Containment Act of 1980. This bill would establish a sizable "superfund" which would pay for the cleanup costs of inactive or abandoned dumpsites which leak hazardous wastes and which would also pay for the cleanup costs of those future dumpsites that may pose a substantial danger to our Nation's environment and the public's health. Furthermore, H.R. 7020 authorizes $35 million for a State inventory of their inactive hazardous waste sites so that the Environmental Protection Agency will be able to assess which disposal sites require prioritized attention.

The problem of improperly stored hazardous wastes has been highly publicized. Our industrial society has long been producing significant amounts of hazardous wastes which are not always safely stored. Although Love Canal is the most publicized incident of hazardous waste storage practices gone haywire, it is certainly not the first. Questionable disposal procedures by careless transporters, inadequately prepared storage facilities, and a general lack of specific laws which pinpoint generators and transporter responsibility has left our society victimized by a quagmire of conflicting and confusing legal puzzles. H.R. 7020 is needed to assure the public that instead of more studies, we are willing to act quickly and decisively to heal this country's dumpsite sores and to respond to future hazardous emergencies. I do not mean to imply that our industry carelessly disregards safe storage procedures—that is simply not the case. The truth is that industry goes to great lengths to insure the safe transportation, disposal, and storage of hazardous wastes. New, improved procedures for the handling of chemicals and chemical wastes have been adopted by industry.

Mr. Chairman, although many of my colleagues may be just starting to familiarize themselves with the hazardous waste problem, I have long been concerned about this issue. As a matter of fact, I am sponsoring a measure which would provide for the safe and permanent disposal of nuclear wastes. Several years in its development, H.R. 7418 is coming to fruition. If we had had the foresight years ago to develop a similar disposal and storage plan for chemical wastes, we might not have had to debate this legislation today.

In my own congressional district, I have held extensive, well-publicized hearings on a hazardous waste landfill in Calabasas, Calif. The single most important lesson I learned from that hearing was the need on the part of Congress, industry, Government, and the public to immediately address the hazardous waste problem, and propose workable solutions. I believe H.R. 7020 offers just such a practicle answer.

The environmental protection agency estimates that there are hundreds of disposal sites which may pose health and environmental problems. Disconcertingly, that may just be the tip of the hazardous waste "iceberg." Like the "unsinkable" ship of over 70 years ago, our society may continue to believe in its own infallible ability until it is too late to prevent the disaster. I urge my colleagues to support H.R. 7020.●

● Mr. FISHER. Mr. Chairman, today the House completed action on two landmark proposals which create two "Superfunds": One fund to pay for the cleanup of oil and chemical spills in navigable waters; the other will cover the cleanup of abandoned hazardous waste sites.

The first bill, H.R. 85, is noteworthy particularly because it is entirely industry financed and provides funds for the Government to take action on future oil and chemical spills before they cause extensive destruction and public harm. Furthermore, the bill permits local governments, business entities, and private citizens to file claims against the fund for certain specified reasons. These include property damage, damage to natural resources, and loss of earnings due to the foregoing.

While H.R. 85 helps protect against future catastrophes, H.R. 7020 addresses problems caused by past mistakes which have left behind hazardous waste sites. The improperly disposed wastes are now seeping through the ground and are contaminating the land and water around them. According to the Environmental Protection Agency (EPA), there are over 1,000 abandoned sites across the country urgently in need of attention. The fund created by H.R. 7020 is now of sufficient size, after the House correctly approved an amendment to increase the fund, to pay for cleaning up the 250 sites characterized by the EPA as the most dangerous. Unlike its companion bill, both industry and Government would contribute to the fund in H.R. 7020. Industry contributes 75 percent with the remaining 25 percent coming from Government appropriations. Although some have argued that this 75 percent–25 percent split imposes an undue burden on industry, it is important to keep in mind that industry can take a business tax deduction for its contributions to the fund. Consequently, this contribution ratio actually results in industry bearing only 42 percent of the cost. Furthermore, the Government can try to recover its share of the costs from those identifiable parties responsible for the improper disposal.

Recent revelations about such tragedies as Love Canal in New York highlight the need for this legislation. At Love Canal, highly toxic wastes, buried in the 1950's, have now seeped through the ground into the basements of homes and businesses posing a real threat to the health of people living there. We simply cannot ignore the potential dangers from these abandoned sites. We must take steps now to make these areas of the country safe for the people who live and work there.

I have enthusiastically supported both bills and intend to urge my colleagues in the Senate to pass this clearly needed legislation before the 96th Congress adjourns.●

WAYS AND MEANS COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the Ways and Means Committee Amendment.

The Clerk read as follows:

Ways and Means Committee amendment:

TITLE II—HAZARDOUS WASTE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE—This title may be cited as the "Hazardous Waste Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes

SEC. 211. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"Subchapter A. Tax on petroleum.
"Subchapter B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.
"SEC. 4611. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax of 0.6 cents a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.6 cents a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The

tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES COTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY ONE TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.

"Sec. 4662. Definitions and special rules.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be—

"(1) $2.54 a ton in the case of specified petrochemical feedstocks, or

"(2) $2.33 a ton in the case of specified inorganic substances.

"(c) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985.

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is a specified petrochemical feedstock or a specified inorganic substance, and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) SPECIFIED PETROCHEMICAL FEEDSTOCK.—The term 'specified petrochemical feedstock' means any of the following substances from whatever source derived: Ethylene, propylene, butylene, butadiene, butane, benzene, toluene, xylene, napthalene, and methane.

"(3) SPECIFIED INORGANIC SUBSTANCE.—The term 'specified inorganic substance' means any of the following substances:

"(A) arsenic and the equivalent weight of arsenic trioxide;

"(B) cadmium;

"(C) chromium and the equivalent weight of chromium in chromite, sodium dichromate, and potassium dichromate;

"(D) lead and the equivalent weight of lead in lead oxide;

"(E) mercury;

"(F) the equivalent weight of barium in barium sulfide;

"(G) antimony and the equivalent weight of antimony in antimony trioxide and antimony sulfide;

"(H) cobalt;

"(I) nickel;

"(J) the equivalent weight of tin in stannic chloride and stannous chloride;

"(K) chlorine;

"(L) the equivalent weight of fluorine in hydrofluoric acid;

"(M) bromine;

"(N) the equivalent weight of hydrogen in phosphoric acid, sulfuric acid, hydrochloric acid, or nitric acid; and

"(O) elemental phosphorus.

"(4) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(5) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(6) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(7) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) EXCEPTION FOR USE IN PRODUCTION OF FERTILIZER.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance—

"(A) used in a qualified use by the manufacturer, producer, or importer,

"(B) sold for use by the purchaser in a qualified use, or

"(C) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(2) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) REGISTRATION.—The provisions of section 4222 (relating to registration) may be extended to, and made applicable with respect to, the exemption provided by paragraph (1) to the extent provided by regulations prescribed by the Secretary.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then he shall be liable for tax under section 4661 in the same manner as if such chemical were sold by him.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—Under regulations prescribed by the Secretary, if—

"(1) a tax under section 4661 was paid with respect to any taxable chemical, and

"(2) such chemical was used by any person in the manufacture or production of—

"(A) any other substance the sale of which by such person would be taxable under such section, or

"(B) a fertilizer,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which paragraph (2)(A) applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance so manufactured or produced."

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. ENVIRONMENT TAXES"

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

Subtitle B—Establishment of Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS WASTE RESPONSE TRUST FUND

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Waste Response Trust Fund" (hereinafter in this subtitle referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section.

(b) TRANSFERS TO TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, PENALTIES, ETC.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered by the United States under subpart F of part 2 of subtitle C of the Solid Waste Disposal Act,

(C) any amount reimbursed to the Trust Fund as provided in subsection (a)(3) of section 3041 of the Solid Waste Disposal Act, and

(D) any penalties assessed under part 2 of subtitle C of the Solid Waste Disposal Act.

(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Trust Fund for the fiscal year—

(A) 1981, $50,000,000,

(B) 1982, $75,000,000,

(C) 1983, $75,000,000,

(D) 1984, $100,000,000, and

(E) 1985, an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(c) EXPENDITURES FROM TRUST FUND.—

(1) IN GENERAL.—Amounts in the Trust Fund shall be available, to the extent provided in appropriations Acts, only for purposes of making expenditures for emergency response, removal, containment, cleanup, and other action taken under subpart C of part 2 of subtitle C of the Solid Waste Disposal Act (including reimbursement of excess costs pursuant to section 3041(c) of such Act) as in effect on the date of the enactment of this Act. No amount in the Trust Fund may be used to pay any part of the costs referred to in the preceding sentence which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

(2) LIMITATION ON AMOUNT EXPENDED OUT OF TRUST FUND FOR ANY FISCAL YEAR.—The amount expended out of the Trust Fund for any fiscal year shall not exceed 10 times the

amount appropriated to the Trust Fund for such fiscal year under the authority contained in subsection (b)(2).

(d) TERMINATION.—No amount may be paid out of the Trust Fund after September 30, 1985.

SEC. 222. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of the Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of the Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. The income on such investments shall be credited to and form a part of the Trust Fund.

(c) NO AUTHORITY TO BORROW.—Nothing in any provision of law shall be construed to authorize the Trust Fund to borrow any money from the general fund of the Treasury or from any other fund established in the Treasury.

Subtitle C—Coordination With Other Provisions of This Act

SEC. 231. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) GENERAL RULE.—Nothing in this Act (or in any amendment made by this Act) other than this title shall authorize—

(1) the establishment of any fund,

(2) the payment out of the Trust Fund created by this title, or

(3) the levy or collection of any fee.

(b) REFERENCE TO FUND.—To the extent not inconsistent with this title, any reference to a fund in this Act (or in any amendment made by this Act) other than this title shall be deemed to be a reference to the Hazardous Waste Response Trust Fund established by this title.

Subtitle D—Study

SEC. 241. STUDY.

(a) GENERAL RULE.—The Secretary of the Treasury (in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the United States Trade Representative) shall conduct a study on—

(1) the feasibility and desirability of—

(A) a schedule of taxes—

(i) which is based on the disposal or generation of hazardous waste, and

(ii) which would reflect the degree of hazard and risk of harm to the public health and the environment posed by the various hazardous wastes,

(B) taxes imposed on substances not taxed by the amendments made by this title such as coal and biomass, and

(C) taxes which are designed to promote the recycling, incineration, and neutralization of hazardous waste,

(2) an exemption from the taxes imposed by section 4661 of the Internal Revenue Code of 1954 for feedstocks when used as a fuel, and

(3) the impact of the taxes imposed by sections 4611 and 4661 of the Internal Revenue Code of 1954 on the Nation's balance of trade with other countries.

(b) REPORT.—Not later than JANUARY 1, 1985, the Secretary of the Treasury shall submit to the Congress a report on the results of the study conducted under subsection (a), together with such recommendations as he deems feasible.

Mr. ULLMAN (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of the Ways and Means Committee amendment and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

AMENDMENT OFFERED BY MR. ULLMAN TO THE WAYS AND MEANS COMMITTEE AMENDMENT

Mr. ULLMAN. Mr. Chairman, I offer an amendment to the Ways and Means Committee amendment.

The Clerk read as follows:

Amendment offered by Mr. ULLMAN to the Ways and Means Committee amendment: Insert after section 4662(a)(2) of the Internal Revenue Code of 1954, as proposed by the Committee amendment, the following:

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

Mr. ULLMAN. Mr. Chairman, the committee amendment requires the Treasury Department to issue regulations under which any petrochemical feedstock, a principal use of which is use as a fuel, will be subject to the chemical tax only when it is used other than as a fuel. For example, the committee understands that more than four-fifths of all domestic consumption of methane is for fuel purposes. Therefore, this feedstock would be a taxable petrochemical feedstock only when used for nonfuel purposes.

I urge adoption of the committee amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon (Mr. ULLMAN) to the Ways and Means Committee amendment.

The amendment to the Ways and Means Committee amendment was agreed to.

The CHAIRMAN. The question is on the Ways and Means Committee amendment, as amended.

The Ways and Means Committee amendment, as amended, was agreed to.

Mr. FLORIO. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the Chair recognizes the gentleman from New Jersey (Mr. FLORIO).

There was no objection.

Mr. FLORIO. Mr. Chairman, I have an inquiry of the Chairman of the Committee on Ways and Means, the gentleman from Oregon (Mr. ULLMAN). I would like to ask the gentleman a question concerning the Ways and Means Committee's actions on H.R. 7020, the Hazardous Waste Containment Act of 1980.

Mr. ULLMAN. Mr. Chairman, if the gentleman will yield, I will be happy to respond to any questions the distinguished gentleman from New Jersey might have. Let me first state, however, my earnest hope that he and I will be able to work together to move this very important piece of legislation—for which the gentleman from New Jersey deserves so much credit—through the Congress before adjournment.

Mr. FLORIO. I thank the gentleman for his support. Mr. Chairman, the Committee on Ways and Means would amend H.R. 7020 to impose specific excise taxes on various petrochemical feedstocks and inorganic substances in lieu of the fee system contained in the bill reported by the Committee on Interstate and Foreign Commerce. I have no objection to that portion of the amendment. However, the Ways and Means Committee also would place the revenue so raised in a "hazardous waste response trust fund." I am concerned with the scope of that provision in the amendment. Would the gentleman from Oregon explain why a trust fund is appropriate in a case such as this?

Mr. ULLMAN. It has been the custom of the Committee on Ways and Means, when we are asked to raise revenue from a narrow segment of the economy for specific purposes related to the activities of that segment of the economy, to put the revenues so raised into a trust fund. The purpose of these trust funds is to give some assurance to the particular industry that the monies taken from them will be used for the intended purposes. In the absence of a trust fund the revenues would go into the general fund and might never be spent for the purposes originally intended. In return for the guarantee offered by the trust fund mechanism, we have found industries are less opposed to the new taxes. If the purposes of a trust fund are too narrowly drawn, however, the authority of the committee having jurisdiction over the basic subject matter addressed by the trust fund is unnecessarily restricted.

On the other hand, if the purposes for which a trust fund may be used are too broadly defined, it is likely that demands upon the fund will exceed the moneys available in it. In this case the pressure upon the Ways and Means Committee and the Congress to increase taxes or invade general revenues would be very great. Thus, in creating trust funds, the Ways and Means Committee has worked very hard to strike a balance between three competing considerations.

First, the very real need to assure taxpayers that revenues collected from them will be used for the purposes intended by the Congress and that they will not re-

ceive a surprise tax increase in later years.

Second, the need to leave the maximum possible latitude and flexibility to our colleagues in the Congress who sit on committees of substantive jurisdiction and who, therefore, have the real expertise with respect to the details of the programs for which the trust funds are created.

And finally, the need to assure all our colleagues that when we promise to fund a program out of specific tax receipts, we will not be forced in later years to finance that program out of general fund revenues.

Mr. FLORIO. Would the gentleman further explain how the trust fund would function?

Mr. ULLMAN. The fund would be available for all the purposes set out in the bill reported by the Committee on Interstate and Foreign Commerce. The Ways and Means Committee has no difficulty with the purposes recommended by the Committee on Interstate and Foreign Commerce and has recommended a tax sufficient to fund those purposes.

Mr. FLORIO. The balance that has been struck appears reasonable to me. The jurisdiction of the Commerce Committee and Ways and Means Committee would be consonant with the jurisdiction that exists with respect to other trust funds. Does the distinguished gentleman from Oregon concur in my understanding?

Mr. ULLMAN. The gentleman is correct. I might also say to the gentleman that the arrangement proposed with regard to the hazardous waste response program is totally consistent with other trust fund arrangements which have worked smoothly over the years. Such funds include the airport and airway trust fund, the black lung disability trust fund, the Inland Waterways trust fund, and the highway trust fund. In the past, when the authorizing committees have sought to amend the programs supported by these trust funds, we have worked successfully with those committees. I am sure that the Ways and Means Committee and the Interstate and Foreign Commerce Committee will have no difficulty in working together to find a solution to the serious national problems posed by hazardous waste sites.

Mr. FLORIO. I thank the gentleman for his helpful explanations and am appreciative of his contributions to this legislation.

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Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Texas is recognized for 5 minutes.

There was no objection.

Mr. ECKHARDT. Mr. Chairman, we have heard that the provisions of this bill may do severe economic damage to the competitive position of the American chemical industry. I believe that such statements do a great disservice to the industry. The chemical and allied products industry had shipments valued at $152 billion in 1979, making it the fourth largest U.S. manufacturing industry. It is exceeded only by the food processing, transportation equipment, and nonelectrical machinery industries.

Moreover, chemicals continue to be one of the few bright spots in our balance of trade. In 1979, chemical exports hit a record $17.3 billion, while imports were $7.5 billion, a trade surplus of $9.8 billion, another record for the industry. The chemical industry is sound and does not need to be subsidized. In sharp contrast to motor vehicle sales to the auto industry, where foreign passenger car sales total some 20 percent of all cars sold in the United States, in 1979 imported chemicals and allied products totaled less than 5 percent of the value of U.S. shipments. It is high time that we internalized all the costs of chemicals—both production and disposal—so that they can play their appropriate role in the American marketplace.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes, pursuant to House Resolution 773, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MARTIN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently, a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 351, nays 23, not voting 58, as follows:

[Roll No. 579]

YEAS—351

Abdnor
Addabbo
Akaka
Alboeta
Ambro
Anderson, Calif.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carr
Chappell
Cheney
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Courhlin
Courter
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
de la Garza
Deckard
Dellums
Derrick
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Harkin
Harris
Harsha
Heckler
Hightower
Hinson
Holland
Hollenbeck
Holt
Holtzman
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McDade
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Minish
Moakley
Moffett
Mollohan
Montgomery
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Russo
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Stewart
Stokes
Studds
Swift
Tauke
Taustin
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—23

Archer
Ashbrook
Collins, Tex.
Crane, Daniel
Crane, Philip
Dannemeyer
Gramm
Hance
Hansen
Jacobs
Jeffries
Jones, Okla.
Kelly
Leath, Tex.
Loeffler
McDonald
Paul
Rousselot
Rudd
Stenholm
Stockman
Stump
Synar

NOT VOTING—58

Alexander
Anderson, Ill.
Andrews, N.C.
Ashley
Badham
Beard, Tenn.
Bethune
Bowen
Brown, Ohio
Butler
Carter
Cavanaugh
Davis, Mich.
Davis, S.C.
Derwinski
Dodd
Edwards, Calif.
Evans, Ga.
Evans, Ind.
Ford, Tenn.
Gingrich
Grassley
Hawkins
Hefner
Heftel
Hillis
Ichord
Jenkins
Jenrette
Leach, La.
McCormack
McEwen
McKay
Mineta
Mitchell, Md.
Mitchell, N.Y.
Moore
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Musto
Myers, Pa.
Nedzi
Nowak
Pepper
Rhodes
Santini
Selberling
Steed
Stratton
Symms
Taylor
Vento
Wilson, Bob
Wilson, C. H.
Wydler
Wylie
Young, Alaska

□ 1850

The Clerk announced the following pairs:

Mr. Jenrette with Mr. Rhodes.
Mr. Santini with Mr. Carter.
Mr. Vento with Mr. Bob Wilson.
Mr. Evans of Georgia with Mr. Wylie.
Mr. Hawkins with Mr. McEwen.
Mr. Musto with Mr. Symms.
Mr. Murphy of New York with Mr. Beard of Tennessee.
Mr. Mitchell of Maryland with Mr. Brown of Ohio.
Mr. Mineta with Mr. Butler.
Mr. Alexander with Mr. Wydler.
Mr. Ashley with Mr. Derwinski.
Mr. Hefner with Mr. Badham.
Mr. Dodd with Mr. Taylor.
Mr. Davis of South Carolina with Mr. Bethune.
Mr. Bowen with Mr. Davis of Michigan.
Mr. McCormack with Mr. Gingrich.
Mr. Pepper with Mr. Young of Alaska.
Mr. Stratton with Mr. Grassley.
Mr. Moorhead of Pennsylvania with Mr. Mitchell of New York.
Mr. Murphy of Illinois with Mr. Hillis.
Mr. Nedzi with Mr. Moore.
Mr. Nowak with Mr. Ichord.
Mr. Steed with Mr. Charles H. Wilson of California.
Mr. Jenkins with Mr. Leach of Louisiana.
Mr. Edwards of California with Mr. Andrews of North Carolina.
Mr. Cavanaugh with Mr. Ford of Tennessee.
Mr. Evans of Indiana with Mr. Heftel.
Mr. McKay with Mr. Myers of Pennsylvania.
Mr. Selberling with Mr. Anderson of Illinois.

Mr. LOEFFLER changed his vote from "yea" to "nay."

Mr. FLIPPO changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

APPOINTMENT OF ADDITIONAL CONFEREES ON S. 2080, PUBLIC BUILDINGS ACT OF 1980

Mr. JOHNSON of California. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to appoint two additional conferees on the bill S. 2080, to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California? The Chair hears none, and, without objection, appoints the following additional conferees: Mr. EDGAR and Mr. LIVINGSTON.

There was no objection.

AUTHORIZING CLERK TO MAKE TECHNICAL CORRECTIONS, IN ENGROSSMENT OF H.R. 7020, HAZARDOUS WASTE CONTAINMENT ACT OF 1980

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 7020, the Clerk be authorized to make necessary technical corrections, including section numbers, punctuation, and cross-references.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

□ 1900

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON S. 1159, MOTOR VEHICLE SAFETY AND COST SAVINGS AUTHORIZATION ACT OF 1980

Mr. RATCHFORD. Mr. Speaker, I ask unanimous consent that the managers may have until 9 p.m. tonight to file a conference report on the Senate bill (S. 1159) to authorize appropriations for the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

CONFERENCE REPORT (H. REPT. No. 96-1371)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1159) to authorize appropriations for the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Motor Vehicle Safety and Cost Savings Authorization Act of 1980".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 2. (a) Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended (1) by striking out "and" after "1977,"; and (2) by inserting after "1978" the following: ", $48,500,000 for the fiscal year ending September 30, 1980, $53,350,000 for the fiscal year ending September 30, 1981, and $61,300,000 for the fiscal year ending September 30, 1982".

(b) Section 111 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1921) is amended (1) by striking out "and" after "1977;"; and (2) by inserting after "1978" the following: "; $400,000 for the fiscal year ending September 30, 1980; $425,000 for the fiscal year ending September 30, 1981; and $450,000 for the fiscal year ending September 30, 1982".

(c) Section 309 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1949) is amended (1) by striking out "and" after "1977;"; and (2) by inserting after "1978" the following: "; $2,400,000 for the fiscal year ending September 30, 1980; $1,500,000 for the fiscal year ending September 30, 1981; and $1,650,000 for the fiscal year ending September 30, 1982".

(d) The first sentence of section 321 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1964) is amended (1) by striking out "and" after "1977;"; and (2) by inserting after "1978" the following: "; $300,000 for the fiscal year ending September 30, 1980; and $300,000 for the fiscal year ending September 30, 1981".

(e) Section 417 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990g) is amended (1) by striking out "and" after "1977;"; and (2) by inserting after "1978" the following: "; $300,000 for the fiscal year ending September 30, 1980; $300,000 for the fiscal year ending September 30, 1981; and $300,000 for the fiscal year ending September 30, 1982".

BUMPER STANDARDS

SEC. 3. Section 102 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1912) is amended by adding at the end thereof the following new subsection:

"(f)(1) Notwithstanding any other provision of this Act, and except as provided in paragraph (2) of this subsection, any impact test velocity specified in the bumper standard established in part 581 of title 49, Code of Federal Regulations, as in effect on the effective date of this subsection, shall be 2.5 miles per hour.

"(2) The Secretary shall not have any authority to establish any impact test velocity exceeding 2.5 miles per hour before September 1, 1982.

"(3) In order to provide consumers with the most cost-effective bumper system, the

Secretary shall, not later than 18 months after the close of model year 1982, promulgate a bumper standard in accordance with the requirements of subsection (b)(1). The provisions of subsection (d) shall be applicable to the promulgation of such standard.".

ANNUAL REPORT ON BUMPER STANDARDS

SEC. 4. (a) Section 112 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1922) is amended to read as follows:

"REPORTS

"SEC. 112. As a separate part of the comprehensive report submitted under section 120(a) of the National Traffic and Motor Vehicle Safety Act of 1966, the Secretary shall submit to the President for transmittal to the Congress an annual report regarding the progress made during the reporting period on carrying out the purposes of this title. Such report shall include a statement of the cost savings which have resulted from the administration of this title, and such recomendations for further legislative or other action as the Secretary considers to be appropriate.".

(b) Section 120(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1408(a)) is amended by adding at the end thereof the following new sentence: "In addition, such report shall include, as a separate part, the annual report required under section 112 of the Motor Vehicle Information and Cost Savings Act.".

ODOMETER EXEMPTIONS

SEC. 5. Section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) is amended by adding at the end thereof the following new subsection:

"(d) In prescribing rules under this section, the Secretary may exempt those classes of motor vehicles for which the Secretary finds that odometer readings have no meaningful relation to value or performance. In making such an exemption, the Secretary shall publish, together with the rule containing the exemption, the findings of fact which support the exemption and a detailed analysis of the reasons for such exemption.".

PUBLIC NOTICE OF TIRE DEFECTS; TIRE REGISTRATION

SEC. 6. (a) Section 153(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1413(c)) is amended—

(1) in paragraph (2) thereof, by striking out "or tire,", and by striking out "or tire";

(2) by redesignating paragraph (4) and paragraph (5) thereof as paragraph (5) and paragraph (6), respectively, and by inserting after paragraph (3) thereof the following new paragraph:

"(4) in the case of a tire (A) by first class mail to the most recent purchaser known to the manufacturer; and (B) by public notice in such manner as the Secretary may order after consultation with the manufacturer, if the Secretary determines that such public notice is necessary in the interest of motor vehicle safety, after considering (i) the magnitude of the risk to motor vehicle safety caused by the defect or failure to comply; and (ii) the cost of such public notice as compared to the additional number of owners who could be notified as a result of such public notice;"; and

(3) in the last sentence thereof—

(A) by striking out "(or of a motor vehicle on which such tire was installed as original equipment)";

(B) by inserting "by first class mail" after "notification" the first place it appears therein; and

(C) by striking out "(1) or (2)" and inserting in lieu thereof "(4)(A)".

(b) Section 158(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1418(b)) is amended by inserting before the last sentence thereof the following new sentence: "The Secretary shall not establish any rule which requires a dealer or distributor to complete or compile such records or information, but the Secretary shall require any such dealer or distributor to furnish the first purchaser of a tire with a form (containing the tire identification number of such tire) which such purchaser may complete and return directly to the manufacturer of the tire which he has purchased.".

NATIONAL MAXIMUM SPEED LIMIT

SEC. 7. Section 154(e) of title 23, United States Code, is amended by striking out "all vehicles or".

OCCUPANT RESTRAINT SYSTEMS

SEC. 8. Part A of title I of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391 et seq.) is amended by adding at the end thereof the following new section:

"OCCUPANT RESTRAINT SYSTEMS

"SEC. 126. (a)(1) In order to provide consumers with a choice of occupant restraint systems, the Secretary, not later than 60 days after the effective date of this section, shall amend Standard 208 so as to bring such standard into conformity with the requirements of subsection (b). Such amendment shall take effect not later than 75 days after the effective date of this section.

"(2) The amendment to Standard 208 which is required in paragraph (1) shall not be subject to the provisions of section 9 of the Motor Vehicle Safety and Cost Savings Authorization Act of 1980.

"(b) The amendment to Standard 208 required in subsection (a)(1) shall provide that—

"(1) each manufacturer which manufactures a combined total of more than 1,600,000 passenger cars in the United States and in any foreign nation in the model year beginning September 1, 1978, and which sells a total of more than 200,000 passenger cars in the United States in such model year, shall—

"(A)(i) for the model year beginning September 1, 1982, install a passive occupant restraint system which complies with the requirements of Standard 208 in each passenger car which has a wheel base which does not exceed 100 inches; and

"(ii) for the model year beginning September 1, 1983, and for each model year thereafter, install a passive occupant restraint system which complies with the requirements of Standard 208 in each passenger car;

"(B) tool for the production of automatic safety airbags for not less than 1 of the car lines manufactured by such manufacturer for not less than 3 model years which occur between September 1, 1981, and August 31, 1985; and

"(C) offer for sale automatic safety airbags on not less than 1 car line produced by such manufacturer, for not less than 3 model years which occur between September 1, 1981, and August 31, 1985;

"(2) beginning with the model year beginning September 1, 1982, each passive seatbelt assembly installed in a passenger car shall be detachable by the user in a manner which does not impair the subsequent reattachment and performance of such assembly; and

"(3) each manufacturer (other than any manufacturer specified in paragraph (1)) shall be exempt from any provision in Standard 208 which requires the installation of any passive occupant restraint system in any passenger car model which has a wheel base exceeding 100 inches but not exceeding 114 inches, if such passenger car model will cease to be produced on or before December 31, 1982.

"(c) The schedule of compliance set forth in Standard 208 shall be amended by the Secretary to the extent necessary to conform with the schedule of compliance established in subsection (b)(1)(A).

"(d)(1)(A) Any manufacturer which violates the provisions of subsection (b)(1)(B) shall be subject to a civil penalty in an amount which does not exceed the maximum civil penalty which may be imposed under section 109(a) upon any person who has committed a series of related violations.

"(B) Any manufacturer which violates the provisions of subsection (b)(1)(C) shall be subject to a civil penalty of not to exceed $1,000 for each such violation. Any such violation shall constitute a separate violation with respect to each failure or refusal to comply with the provisions of subsection (b)(1)(C), except that the maximum civil penalty shall not exceed $800,000 for any related series of violations.

"(C) The provisions of section 109(b) shall apply in the case of any civil penalty which may be imposed under this paragraph.

"(2) In any case in which—

"(A) the maximum civil penalty is assessed against a manufacturer under paragraph (1) for a particular violation of the requirements specified in subsection (b)(1)(B); and

"(B) such manufacturer also violates the requirements specified in subsection (b)(1)(C);

such manufacturer shall not be subject to any penalty under paragraph (1) for violating such requirements specified in subsection (b)(1)(C), if such violation and the violation of the requirements specified in subsection (b)(1)(B) are related violations.

"(3) For purposes of section 109(a), section 111, and part B of this title, any violation of subsection (b)(1)(B) or subsection (b)(1)(C) shall not be considered to be a violation of section 108 or of any Federal motor vehicle safety standard.

"(e) The Secretary shall submit to the Congress, not later than July 1, 1981, a plan designed to carry out an evaluation of the effectiveness of the requirements established in this section. Not later than September 1, 1983, and annually thereafter, the Secretary shall submit (as part of the comprehensive report submitted by the Secretary under section 120(a)) an evaluation pursuant to such plan to the Congress.

"(f) The Secretary, in carrying out the responsibilities of the Secretary under section 201(c) of the Motor Vehicle Information and Cost Savings Act, shall develop and disseminate information to inform the public regarding the performance of automatic safety airbags and passive safety belts.

"(g) For purposes of this section:

"(1) The term 'car line' means any name which a manufacturer applies to a family of motor vehicles, within a make, which have a degree of commonality in construction, such as body, chassis, or cab type.

"(2) The term 'make' means any name which a manufacturer applies to a group of motor vehicles.

"(3) The term 'Standard 208' means Federal Motor Vehicle Safety Standard 208 (49 Code of Federal Regulations 571.208). Any reference to such standard in this section shall be construed to include any amendment to such standard which may be made by the Secretary after the effective date of this section.".

CONGRESSIONAL VETO OF RULES

SEC. 9. (a)(1) The Secretary of Transportation, after promulgating a rule with funds authorized to be appropriated under the amendments made by this Act, or relating to the use of funds appropriated under such amendments, shall submit such rule to the Congress for review in accordance with this section. Such rule shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such rule shall be referred to the Committee on Commerce, Science, and

Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House, respectively.

(2) Any such rule shall become effective in accordance with its terms unless, before the end of the period of 90 calendar days of continuous session after the date such rule is submitted to the Congress, both Houses of the Congress adopt a concurrent resolution disapproving such rule.

(b)(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of concurrent resolutions which are subject to this section, and such provisions supersede other rules only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2)(A) Any concurrent resolution disapproving a rule of the Secretary shall, upon introduction or receipt from the other House of the Congress, be referred immediately by the presiding officer of such House to the Committee on Commerce, Science, and Transportation of the Senate or to the Committee on Interstate and Foreign Commerce of the House, as the case may be.

(B) If a committee to which a concurrent resolution is referred does not report such concurrent resolution before the end of the period of 75 calendar days of continuous session of the Congress after the referral of such resolution to the Committee on Commerce, Science, and Transportation of the Senate or to the Committee on Interstate and Foreign Commerce of the House, as the case may be, under subsection (a)(1), it shall be in order to move to discharge any such committee from further consideration of such concurrent resolution.

(C)(i) A motion to discharge in the Senate may be made only by a Member favoring the concurrent resolution (except that it may not be made after the committee has reported a concurrent resolution with respect to the same rule of the Secretary), shall be privileged, and debate on such motion shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the motion. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other concurrent resolution with respect to the same rule of the Secretary.

(ii) A motion to discharge in the House may be made by presentation in writing to the Clerk (except that it may not be made after the committee has reported a concurrent resolution of disapproval with respect to the same rule). The motion may be called up only if the motion has been signed by one-fifth of the Members of the House. The motion is highly privileged, and debate on such motion shall be limited to not more than 1 hour, the time to be divided equally between those favoring and those opposing the motion. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(3)(A) When a committee has reported, or has been discharged from further consideration of, a concurrent resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion shall be privileged in the Senate and highly privileged in the House of Representatives, and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the concurrent resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such concurrent resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the concurrent resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such concurrent resolution was agreed to or disagreed to.

(4) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a concurrent resolution shall be decided without debate.

(5) Notwithstanding any other provision of this subsection, if a House has approved a concurrent resolution with respect to any rule of the Secretary, then it shall not be in order to consider in such House any other concurrent resolution with respect to the same rule.

(c) Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the rule involved, and shall not be construed to create any presumption of validity with respect to such rule.

(d)(1) Any interested party may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this section. The district court immediately shall certify all questions of the constitutionality of this section to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(2) Notwithstanding any other provision of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought not later than 20 days after the decision of the court of appeals.

(3) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under paragraph (1).

(e)(1) For purposes of this section—

(A) continuity of session is broken only by an adjournment sine die; and

(B) days on which either House is not in session because of an adjournment of more than 5 days to a day certain are excluded in the computation of the periods specified in subsection (a)(2) and subsection (b).

(2) If an adjournment sine die of the Congress occurs after the Secretary has submitted a rule under subsection (a)(1), but such adjournment occurs—

(A) before the end of the period specified in subsection (a)(2); and

(B) before any action necessary to disapprove the rule is completed under subsection (a)(2);

then the Secretary shall be required to resubmit the rule involved at the beginning of the next regular session of the Congress. The period specified in subsection (a)(2) shall begin on the date of such resubmission.

(f) For purposes of this section:

(1) The term "concurrent resolution" means a concurrent resolution the matter after the resolving clause of which is as follows: "That the Congress disapproves the rule promulgated by the Secretary of Transportation dealing with the matter of _____, which rule was submitted to the Congress on _____". (The blank spaces shall be filled appropriately.)

(2) The term "rule" means any final rule promulgated by the Secretary with funds authorized to be appropriated under the amendments made by this Act, or relating to the use of funds appropriated under such amendments. Such term does not include the amendment to Federal Motor Vehicle Standard 208 (49 Code of Federal Regulations 571.208) which is required in section 126(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966, as added by section 8.

(3) The term "Secretary" means the Secretary of Transportation.

(g) The provisions of this section shall take effect on the date of the enactment of this Act and shall cease to have any force or effect after September 30, 1982.

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

HARLEY O. STAGGERS,
JAMES H. SCHEUER,
RICHARDSON PREYER,
RICHARD OTTINGER,
ELLIOTT H. LEVITAS
(solely for the consideration of title III of the House amendment),
MATTHEW J. RINALDO,
Managers on the Part of the House.

HOWARD W. CANNON,
WARREN G. MAGNUSON,
WENDELL H. FORD,
HARRISON H. SCHMITT,
J. WARNER,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1159) to authorize appropriations for the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

Senate bill.—The Senate bill contained no provision.

House amendment.—The House amendment provided that the bill may be cited as the "National Traffic and Motor Vehicle Information and Cost Savings Authorization Act".

Conference substitute.—The conference substitute provides that the bill may be cited as the "Motor Vehicle Safety and Cost Savings Authorization Act of 1980".

AUTHORIZATIONS OF APPROPRIATIONS

1. Motor vehicle safety standards

Senate bill.—The Senate bill amended

section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) to authorize the following appropriations for the purposes of carrying out the Act: $60,000,000 for fiscal year 1980, $70,000,000 for fiscal year 1981, and $70,000,000 for fiscal year 1982.

House amendment.—The House amendment authorized to be appropriated for the purposes of carrying out the National Traffic and Motor Vehicle Safety Act of 1966, $48,500,000 for fiscal year 1980.

Conference substitute.—The conference substitute authorizes to be appropriated for the purposes of carrying out the National Traffic and Motor Vehicle Safety Act of 1966, $48,500,000 for fiscal year 1980, $53,350,000 for fiscal year 1981, and $61,300,000 for fiscal year 1982.

2. Bumper Standards

Senate bill.—The Senate bill amended section 111 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1921) to authorize the following appropriations for the purposes of carrying out title I of the Act: $400,000 for fiscal year 1980, $450,000 for fiscal year 1981, and $450,000 for fiscal year 1982.

House amendment.—The House amendment authorized to be appropriated, for the purposes of carrying out title I, $400,000 for fiscal year 1980.

Conference substitute.—The conference substitute authorizes to be appropriated, for the purposes of carrying out title I, $400,000 for fiscal year 1980, $425,000 for fiscal year 1981, and $450,000 for fiscal year 1982.

3. Automobile consumer information study

Senate bill.—The Senate bill amended section 209 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1949) to authorize the following appropriations for the purposes of carrying out title II: $2,400,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, and $3,000,000 for fiscal year 1982.

House amendment.—The House amendment authorized to be appropriated, for the purposes of carrying out title II, $2,400,000 for fiscal year 1980.

Conference substitute.—The conference substitute authorizes to be appropriated, for the purposes of carrying out title II, $2,400,000 for fiscal year 1980, $1,500,000 for fiscal year 1981, and $1,650,000 for fiscal year 1982. The reduction in authorization levels for fiscal years 1981 and 1982 is intended to narrow the gap between the authorization and appropriation levels. Although the reduction should not be interpreted as an expression of dissatisfaction with the purpose of title II, the conferees are dissatisfied with the agency's progress in implementing title II.

4. Diagnostic inspection demonstration projects

Senate bill.—The Senate bill contained no provision.

House amendment.—The House amendment amended section 321 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1964) to authorize appropriations of $1.4 million for fiscal year 1980 for the purposes of carrying out title III of the Act.

Conference substitute.—The conference substitute authorizes to be appropriated, for the purposes of carrying out title III, $300,000 for fiscal year 1980 and $300,000 for fiscal year 1981. The authorizations for fiscal years 1980 and 1981 are sufficient to permit NHTSA to complete several reports on the future course of the diagnostic inspection/maintenance program. The conferees do not believe that additional funds should be authorized for this program until the Congress has had the opportunity to review these awaited reports.

5. Odometer requirements

Senate bill.— The Senate bill amended section 417 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990(g)) to authorize the following appropriations for the purposes of carrying out title IV: $500,000 for fiscal year 1980, $500,000 for fiscal year 1981, and $500,000 for fiscal year 1982.

House amendment.—The House amendment authorized to be appropriated, for the purposes of carrying out title IV, $300,000 for fiscal year 1980.

Conference substitute.—The conference substitute authorizes to be appropriated, for the purposes of carrying out title IV $300,000 for fiscal year 1980, $300,000 for fiscal year 1981, and $300,000 for fiscal year 1982.

BUMPERS

Senate bill.—The Senate bill reduced the current 5 mph impact test velocity specified in the Federal bumper standard (49 Code of Federal Regulations; part 581) to 2.5 mph. The Secretary of Transporation was not authorized to modify this test procedure until September 1, 1984.

House amendment.—The House amendment contained no provision.

Conference substitute.—The Conference substitute adopted the Senate provision lowering the bumper test velocity to 2.5 mph, but modifying the period of this limitation on the Secretary's authority to apply only for model years 1981 and 1982 (through September 1, 1982). The lower test velocity will allow for a two-year comparison of the 2.5 mph bumpers with 5 mph bumpers, on the basis of "real world" experience. The Secretary will then be in a position to promulgate a bumper standard within 18 months in accordance with the criteria of section 102(b)(1) of the Motor Vehicle Information and Cost Savings Act.

The conferees intend that, in applying the new 2.5 mph impact test velocity, the Secretary will utilize the proportional approach to corner testing in the manner used under the current bumper standard, i.e., 1.5 mph corner impacts for a 2.5 mph frontal impact.

ANNUAL REPORT ON BUMPER STANDARDS

Senate bill.— The Senate bill amended section 112 of the Motor Vehicle Information and Cost Savings Act. This amendment would transfer the annual report required under section 112 of the Act in regard to bumper standards to be made a part of the comprehensive report submitted under section 120(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1408(a)).

House amendment.—The House amendment contained no provision.

Conference substitute.—The conference substitute adopts the Senate provision.

ODOMETER EXEMPTIONS

Senate bill.—The Senate bill amended section 408 of the Motor Vehicle Information and Cost Savings Act to authorize the Secretary of Transportation to exempt certain classes of motor vehicles from the odometer requirements. The Secretary, under this provision, will be authorized to exempt those classes of motor vehicles for which odometer readings have no meaningful relation to value or performance.

House amendment.—The House amendment contained no provision.

Conference substitute.—The conference substitute adopts the Senate provision.

TIRE REGISTRATION; PUBLIC NOTICE OF TIRE DEFECTS

Senate bill.—The Senate bill amended section 158(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1418(b)) to exempt tire dealers and distributors from certain reporting requirements. Dealers and distributors would be required to furnish the first purchaser of a tire with a registration form including the tire identification number, which would be recorded by the dealer or distributor at the time of purchase and presented to the purchaser in a manner suitable for mailing and addressed to the tire manufacturer or his designee. The purchaser would then be encouraged to record his name and address on the form and mail it to the manufacturer or his designee.

House amendment.—The House amendment contained no provision.

Conference substitute.—The conference substitute adopts the Senate provision with an amendment which would amend section 153(c) of the National Traffic and Motor Vehicle Safety Act of 1966 dealing with the recall of defective tires. The conference substitute authorizes the Secretary of Transportation to require public notice of a recall in addition to the present authority for notice by mail. The Secretary may order public notice if such notice is determined to be in the interest of motor vehicle safety. Further, the Secretary may order public notice only after consultation with the manufacturer and after consideration of several factors. These criteria include the magnitude of the risk to motor vehicle safety caused by the defect or failure to comply as well as the cost of such public notice as compared to the additional number of owners who could be notified. The public notice provisions would apply to tires manufactured before the effective date but determined to be defective or noncomplying after the effective date of this Act. The conferees, in adopting this provision, intend that the Secretary will use care and restraint before mandating comprehensive advertising campaigns of questionable value or benefit where NHTSA announcements and news coverage have widely communicated a tire recall.

The public notice provisions described above are identical to those found in H.R. 3949, Ninety-sixth Congress, as passed the House.

NATIONAL MAXIMUM SPEED LIMIT

Senate bill.—The Senate bill amended section 154(e) of title 23, United States Code, to make it clear that in determining a State's compliance with the 55 mph speed limit, a sampling technique rather than monitoring all vehicles would meet the requirements of the law.

House amendment.—The House amendment contained no provision.

Conference substitute.—The conference substitute adopts the Senate provision.

OCCUPANT RESTRAINT SYSTEMS

Senate bill.—The Senate bill contained no provision.

House amendment.—The House amendment provided that none of the funds authorized to be appropriated under the bill may be used to enforce or otherwise administer the passive restraint standard unless such standard also permits the purchaser to select an active belt system. The House amendment defined "purchaser" to include a retail dealer purchasing new passenger cars for resale.

Conference substitute.—The conferees adopted a provision directing the Secretary to amend Standard 208 as it applies to automobile manufacturers which meet certain production and sales standards. The provision requires the Secretary to bring Standard 208 into conformity with the requirements of the conference substitute not later than 75 days after the effective date of the conference substitute. Further, it is the intent of the conferees that Standard 208 and any amendments thereto be consistent with the conference substitute.

Under the conference substitute the Secretary must amend the standard to require that affected automobile manufacturers install passive occupant restraints complying with Standard 208 in all passenger cars having wheel bases not greater than 100 inches in model year 1983 and in all passenger cars manufactured in model year 1984 and thereafter. Affected manufacturers are those that produced more than 1,600,000 passenger cars worldwide and sold more than 200,000 passenger cars in the United States in model year 1979. Specifically, these manufacturers are: General Motors, Ford Motor Company, Toyota Motor Company, Nissan Motors, and Volkswagen (including Volkswagen of America). The purpose of this provision of the conference substitute is to accelerate the date by which the passive occupant restraint provisions of Standard 208 apply to small cars.

The conferees do not intend that this provision of the conference substitute effect any changes in the performance requirements of Standard 208, except as provided for in subparagraph (B) and subparagraph (C) of section 126(b)(1) of the National Traffic and Motor Vehicle Safety Act of 1966. In crashes between small and large cars, eight people were killed in a small car for every one who died in a large car. With the anticipated increase in smaller, more fuel efficient cars on the Nation's highways, it is in the interest of public safety that passive occupant restraint protection should be required in these cars as soon as possible.

The legislative schedule set out in the conference substitute would not be applicable to certain import and domestic automobile manufacturers with low sales. These manufacturers would still be required to meet the timetable set out in the current Standard 208. The conference substitute, however, does exempt certain smaller manufacturers from having to install automatic occupant restraint systems in mid-sized passenger cars that will not be produced after December 31, 1982. Under the timetable set out in the current Standard 208, installation of these systems is required in all mid-sized passenger cars beginning September 1, 1982. This provision of the conference substitute was adopted in view of the phasing-out by some smaller manufacturers of certain mid-sized car models early in the 1983 model year. Those mid-sized cars would have to comply with the same requirements applicable to automobiles with wheel bases of 100 inches or less produced by that manufacturer in model year 1983.

The conference substitute also requires the Secretary to amend Standard 208 so that those larger volume domestic and foreign import automobile manufacturers must tool and offer for sale as an option, or, at the manufacturer's discretion, as standard equipment, automatic safety airbags on at least one car line in any three model years between September 1, 1981, and August 31, 1985. The objective of this provision is to make available to consumers a variety of passive occupant protection systems from a variety of manufacturers. The conferees intend that "tool for production" or "tooling up" means that a manufacturer must demonstrate that he has the capability for assembling cars with airbags on an assembly line in the customary fashion of the manufacturer. The conferees intend that the term "car line" shall mean a name which a manufacturer applies to a family of vehicles, within a make, which have a degree of commonality in construction, such as body, chassis, or cab type. Three examples which demonstrate what is meant by "car line" would be General Motors' Cadillac Sedan de Ville and Coupe de Ville, General Motors' Chevrolet Citation, and General Motors' Chevrolet Impala and Caprice.

The conferees do not intend that the manufacturer, when making the determination as to which car line will include automatic safety airbags, will unduly narrow the car line based solely on such features as level of decor, roof line, or the number of doors, seats, or windows, so as to defeat the policy objectives of the section. The conferees recognize that the number of seating positions available for front occupants may depend on the type of passive restraint system chosen by the purchaser. Further, it is the intent of the conferees that automatic safety airbags be made generally available and not limited to esoteric cars which are offered to a limited market for the purpose of frustrating the legislative intent. (The definition of "car line" contained in the conference substitute is substantially similar to the definition of "line" contained in section 571.115 of title 49, Code of Federal Regulations, as in effect on the effective date of this legislation, and is based upon present industry practice.)

The heart of the provision is the requirement that each affected manufacturer tool a car line for airbags and offer for sale vehicles in that car line. It is clearly the expectation of the conferees that consumers have a meaningful choice in the market between vehicles equipped with automatic safety belts and with airbags. It is the hope of the conferees that the public will be informed of such choices and that automatic safety belts and airbags be made available at reasonable cost. The conferees intend that the "offer for sale" requirement be a bona fide offer of airbag-equipped cars to the public. In order for an "offer for sale" to be a bona fide effort on the part of a manufacturer, its airbag-equipped cars must be reasonably available within the normal and customary time limit for delivery from such manufacturer of similar automobiles without airbag equipment. However, the conferees do not intend that the "offer for sale" requirement grant NHTSA any additional authority over the marketing or manufacturing practices of automobile manufacturers or dealers.

The conferees note that several automobile manufacturers have publicly assured the conferees of their intent to produce airbag automobiles.

The conferees do not intend adoption of this provision to indicate to the Department of Transportation or to the public a preference for automatic safety airbags over the automatic safety belt. Both systems provide the occupant of an automobile with a significant degree of protection. Therefore, the Department of Transportation shall not unduly favor one system of protection over another and, in fact, should inform the public of the performance of both systems.

The conference substitute also includes a requirement that, beginning with model year 1983, each seatbelt assembly installed in a passenger car must be detachable by the user in a manner which does not impair the subsequent reattachment and performance of the assembly. The conferees intend that the passive belt can be detached at any point, including one adjacent to the inboard anchor.

The conference substitute provides that the prohibitions contained in section 108 of tht National Traffic and Motor Vehicle Safety Act of 1966, and the penalties contained in section 109 of the Act, apply in the case of (1) a failure to comply with the new schedule for installing passive occupant restraints; and (2) a failure to comply with the detachable seatbelt assembly requirements.

The penalties provided in section 126(d) would apply in the case of a failure to offer automatic safety airbags for sale as required by the conference substitute.

The conference substitute establishes a new civil penalty of not more than $800,000 applicable to a violation of the "tool for production" requirement. If the maximum civil penalty of $800,000 is assessed against a manufacturer for such a violation, and the manufacturer also violates the requirement that automatic safety airbags be offered for sale, the conference substitute provides that the manufacturer will not be subject to any civil penalty in addition to the $800,000 fine if the two violations are related to each other.

The injunction provisions contained in section 110 of the Act, and all other provisions of the Act relating to motor vehicle safety standards, also would apply to the requirements added by the conference substitute, except that the provisions of section 111 (relating to certain repurchase and other requirements) and part B of title I (relating to discovery, notification, and remedy of motor vehicle defects) do not apply to "tool for production" and "offer for sale" violations. Any failure of a vehicle equipped with passive occupant restraint systems, whether automatic belts or automatic safety airbags, to meet the performance requirements of Standard 208 would constitute a violation of that standard that would be subject to all of the notification and remedy provisions of the Act.

CONGRESSIONAL VETO

Senate bill.—The Senate bill contained no provision.

House amendment.—The House provision provided that any rule promulgated by the Secretary of Transportation with or relating to the use of funds appropriated under this Act may not take effect if (1) both Houses adopt a concurrent resolution disapproving the rule within 90 days of continuous session after the date of the rule's promulgation; or (2) one House adopts such concurrent resolution within 60 days of continuous session after the date of the rule's promulgation and the other House does not disapprove it within 30 days of continuous session after the date on which it was transmitted to it. The rule may take effect at the end of 60 days of continuous session after its promulgation if no committee of either House has reported or been discharged from further consideration of a concurrent resolution disapproving the rule and neither House has adopted such a resolution. If a committee has reported or been discharged from further consideration of such resolution, or either House has adopted such resolution, then the rule may not take effect until the end of 90 days of continuous session after its promulgation if (unless it is disapproved as provided for above). The House provision provided for repeal of the congressional veto provision at the end of fiscal year 1980.

Conference substitute.—The conference substitute adopts the House provision with the following modifications:

1. a NHTSA rule could be overturned only by adoption within 90 days of a concurrent resolution disapproving the rule; and

2. expedited procedures, modeled after the procedures utilized under the Energy Policy Conservation Act of 1976 and the Federal Trade Commission Improvements Act of 1980, are included to assure a vote on the concurrent resolution in both Houses.

Under the substitute, a motion to discharge the relevant committees from further consideration of a disapproval resolution would be in order if the committees had not reported the resolution after 75 days. In the Senate, a motion to discharge could be made only by a Member favoring the resolution. In the House, a motion to discharge could be called up only if the motion had been signed by one-fifth of the Members. Thereafter, in both Houses, the motion to discharge would be privileged and debate on it would be limited to 1 hour, divided equally between proponents and opponents of the motion. An amendment to the motion would not be in order and it would not be in order to reconsider the vote on the motion.

When a committee has reported or been discharged of a concurrent resolution, it would be in order to move to proceed to the consideration of such resolution. The motion would be privileged in the Senate and highly privileged in the House and not debatable. Thereafter, debate on the concurrent resolution itself would be limited to 10 hours, divided equally between prononents and opponents of the resolution. An amendment to the resolution, or a motion to recommit it, would not be in order and it would not be in

order to move to reconsider the vote by which the resolution was agreed to or disagreed to.

The conference substitute also provides for a mechanism for expedited judicial review of the constitutionality of the legislative veto provision.

Under this provision the authority of the Secretary of Transportation to promulgate rules with funds authorized to be appropriated under the Act is conditioned on those rules being submitted to the Congress for review and possible disapproval under the procedures set out above. If the Congress does not act, the rule submitted to the Congress becomes effective. If the Congress passes a concurrent resolution of disapproval, the rule would not go into effect. By requiring that the Secretary submit a rule to Congress for review and possible disapproval, the Congress, under this provision, hereby provides a mechanism to determine whether a rule submitted to it by the Secretary becomes effective.

The amendments made by this section of the conference substitute will expire at the end of the authorization period.

HARLEY O. STAGGERS,
JAMES H. SCHEUER,
RICHARDSON PREYER,
RICHARD OTTINGER,
ELLIOTT H. LEVITAS
(solely for the consideration of title III of the House amendment),
MATTHEW J. RINALDO,
Managers on the Part of the House.

HOWARD W. CANNON,
WARREN G. MAGNUSON,
WENDELL H. FORD,
HARRISON H. SCHMITT,
J. WARNER,
Managers on the Part of the Senate.

COMMUNICATION FROM ADMINISTRATOR OF GENERAL SERVICES ADMINISTRATION

The SPEAKER pro tempore laid before the House the following communication from the Administrator of the General Services Administration:

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., September 23, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: We have submitted to the House Committee on Public Works and Transportation for its consideration the enclosed prospectus which proposes the acquisition of leased space for the Environmental Protection Agency in Washington, D.C.

A copy of this prospectus was forwarded to the Senate Committee on Environment and Public Works for its information.

Sincerely,

R. G. FREEMAN III,
Administrator.

The SPEAKER pro tempore. Without objection, the communication is referred to the Committee on Appropriations.

There was no objection.

TREASONOUS ACTIONS

(Mr. YOUNG of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

● Mr. YOUNG of Florida. Mr. Speaker, U.S. law considers the unauthorized release of secret defense information as treason. The Carter administration has knowingly jeopardized the security of the United States by revealing a highly classified military secret—the Stealth program.

An incumbent President is in a position to do many things to gain political favor, but he must not be permitted to threaten the security of our Nation by revealing important military secrets. Reelection politics must not be placed ahead of national security.

The administration said it released some plans of the Stealth program because information had leaked out. Administration spokesmen said reporters would be supplied with enough information to satisfy their curiosity about the program, but no details would be divulged. Instead of releasing information about the program, the administration should have seen to it that the secrecy of the program was protected and that the leaks were stopped.

In a telecast aired September 18, NBC News raised some serious questions about the Carter administration's role and motives in the release of information about the Stealth program. I am submitting the transcript of that broadcast for our colleagues to read:

NBC NIGHTLY NEWS, SEPTEMBER 18, 1980,
JOHN DANCY, STEALTH

The Republican Convention and Ronald Reagan was putting heavy pressure on President Carter for his record on defense spending.

Reagan: "No American should vote until he or she has asked: 'is the United States stronger and more respected now than it was three and a half years ago?'"

But then, a curious series of leaks begins. August 14th. The Washington Post says President Carter has decided to build a new, super secret "Stealth" aircraft.

August 18th. Ben Schemmer, editor of The Armed Forces Journal is given a briefing on the new plane, which would be all but invisible to enemy radar.

His source, Pentagon Research Director William Perry. Perry knew Schemmer's article would appear August 21st. But the day before, August 20th, Perry asked for a meeting of leading Senators. Some of them would say later that they felt it was an attempt to manipulate them into supporting the Administration's disclosures on Stealth.

Senator John Stennis assembled between 20 and 25 key Senators here in a room at the Capitol. They were already in Executive session, discussing classified material, but Stennis took the additional step of swearing them to secrecy.

Perry briefed them on technical aspects of Stealth. What he did not tell the Senators was that he had already briefed Schemmer and his article would be appearing the next day. Instead he said he had heard there "might" be a leak in the story. He asked them to support an administration plan to create what he called a "firebreak" around the story by divulging just enough information to satisfy reporters' curiosity, but no details.

The Senators discussed the idea and rejected it. They said they didn't want the Pentagon to say anything about Stealth and they wouldn't either. Senator Jackson warned Perry that if he talked about details of Stealth he would be accused of politicizing a defense issue. But Jackson said the decision to talk about Stealth had already been made. It was already signed, sealed and ready for delivery at a news conference. He was referring to the news conference Defense Secretary Harold Brown held two days later, against the Senators' wishes.

Secretary Brown: "By making existing air defense systems essentially ineffective, this alters the military balance significantly."

The White House has denied any role in the leaks on Stealth, but not many people on Capitol Hill believe that. Congressman Sam Stratton, a New York Democrat, is head of the subcommittee investigating the leak.

Representative Stratton: "It would have been most unlikely for Secretary Brown and Secretary Perry to make the decision to go public with this material without some approval from the Commander in Chief."

Congress will recess in a little more than two weeks. Key congressmen believe it will be impossibe in that short time to find a smoking gun which would prove conclusively that the White House was behind the leak. But it hardly matters. Most congressmen already believe it anyway.

John Dancy, NBC News, Washington.●

BLATANT POLITICAL PRESSURE FROM A PRESIDENTIAL APPOINTEE

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, I am greatly concerned over the tactics employed by a Carter appointee in using his high office to solicit political contributions on behalf of the President. M. Larry Lawrence, a Carter appointee to a public interest directorship of the Federal Home Loan Bank of San Francisco, has used that position of trust to solicit political contributions on behalf of the President and Democratic National Party from the very individuals that are governed by the bank's board of up to $20,000. Frankly, I am shocked and appalled that a public interest director of the Federal Home Loan Bank would send such a blatant letter of political solicitation to the bank's membership. It seems totally inappropriate that directors of a regulatory agency would actively seek political contributions from those that they regulate.

As a director of one of the bank boards within the Federal Home Loan Bank System, Mr. Lawrence is in the unique position of serving on various committees of that board, and of influencing the decision of that board as it relates to the bank's membership. Under these circumstances, it is possible that an officer of any member association, or the PAC of any member association, could feel that its participation, or lack of it, in making a contribution solicited by Mr. Lawrence might conceivably affect the decisions made by Mr. Lawrence as a board member in relation to that association.

Mr. Lawrence's understandable allegiance to the President has clearly and unfortunately influenced his judgment a supposedly impartial public interest director on the Federal Home Loan Bank Board of San Francisco. His decision to send a political solicitation to members of the Federal Home Loan Bank System which he regulates is most questionable.

Mr. Speaker, at this point I would like to insert a copy of Mr. Lawrence's solicitation letter in the RECORD for the enlightenment of my colleagues. This letter was provided by a savings and loan banking facility officer recipient.

SEPTEMBER 10, 1980.

DEAR FRIENDS AND ASSOCIATES OF THE SAVINGS AND LOAN INDUSTRY: As a public director of the Federal Loan Bank Board of San Francisco, I have decided to accept the advice given in the U.S. League's "Director" (May 1980), attached herewith.

Public members appointed since 1976 and many banks officers are appointees of President Carter. We believe strongly in the President. We believe he is striving to resolve the inflationary crisis he did not create, which will help housing and the savings and loan industry. Most importantly, we believe he will be re-elected. Hopefully, you do too, and would be willing to indicate your support for the President's party by sending me a check.

You can donate up to $20,000 per person with a check to the Democratic National Committee. To the same source, a P.A.C. can give $15,000. Your P.A.C., corporation or partnership, can donate an unlimited amount to the California Democratic Party.

So please support the President's party as it will help him, and I am sure he will be most grateful. You would be surprised how many of my good Republican friends have recently decided to hedge their bets!

Please send your check to me at 1500 Orange Avenue, Coronado, California 92118.

Thanks in advance.

Cordially,

M. LARRY LAWRENCE.

CIVIL DEFENSE NOW AN IMPORTANT PART OF U.S. NATIONAL STRATEGIC DETERRENCE POLICY

(Mr. SKELTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKELTON. Mr. Speaker, today, the United States has a new nuclear policy of which few people are aware.

Recently, the President signed into law a little known policy which is highly significant to U.S. national security. September 8, 1980, he signed the 1981 defense authorization bill which contained a civil defense amendment that I initiated. Senator THOMAS EAGLETON offered a like one on the Senate side. The measure is significant because it makes civil defense part of our national strategic deterrence policy. By approving my amendment, Congress is also supporting Presidential directive 41 which said basically the same thing. This is a first in American history. So, today, both the White House and the Congress are supporting policies for an improved national civil defense.

By making civil defense part of our nuclear deterrence strategy, we have taken a first major step toward protecting ourselves from nuclear coercion; this coercion could come from smaller countries with nuclear weapons or from the Soviet Union. Either could threaten us with nuclear horrors if we refused to meet political demands or refused to capitulate. A viable civil defense program will make this scenario less likely. This new policy helps our nuclear balance with other nations, especially the Soviet Union, which spends $8 per person on civil defense while we spend 50 cents per person, per year.

My civil defense amendment also provides for peacetime disasters, as well as Three Mile Island type accidents. "FEMA" says it will be "moving with dispatch" to deploy an enhanced civil defense program as ordered by the U.S. Congress. Today, FEMA is optimistic that the implementation of my amendment will be easier because of the civil defense funding picture. This would be the first real increase in civil defense funding in over a decade.

I believe it is significant to note that the fiscal year 1981 civil defense program will be concentrated in the high risk or nuclear counterforce areas of the United States. These are areas considered potential prime targets because they contain things such as intercontinental ballistic missile fields, nuclear submarine bases, or strategic bomber bases. The area in Missouri that I represent has 150 ICBM's and is considered one of the potential prime target areas. Although the initial civil defense concentration will be in these parts of the Nation, a civil defense program for larger cities is being planned. Thus, the foundation is being laid for an expanded civil defense program in 1982 and beyond.

Civil defense is no longer a remnant of the 1950's. With the passage of this amendment, and with the White House agreeing that civil defense is important to our survival in this nuclear age, today, civil defense has a new role. Our new national policy now says it is part of our national military strategic balance. The challenge is making civil defense effective.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. NELSON) is recognized for 5 minutes.

● Mr. NELSON. Mr. Speaker, due to official business, I was not recorded on two procedural motions on July 1 of this year. If I had been present, I would have voted "yes" on rollcall No. 383, to approve the House Journal for Monday, June 30, and "yes" on rollcall No. 384, the motion to table the motion to instruct House conferees to disagree with the Senate amendment included in the conference agreement on H.R. 4473, the foreign aid appropriations bill.●

A BAD BILL: H.R. 5615, THE INTELLIGENCE IDENTITIES PROTECTION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. STARK) is recognized for 10 minutes.

● Mr. STARK. Mr. Speaker, six of our colleagues serving on the House Judiciary Committee—including the chairman—make clear in House Report 96-1219, part 2 why H.R. 5615 is a bad bill, a bad piece of legislation. I agree with them that—

Officers, employees and sources that operate covertly on behalf of American foreign intelligence must be protected from harm and exposure.

But I also agree with their criticisms of H.R. 5615. I shall do whatever I can to help kill the bill.

H.R. 5615 is presently scheduled for consideration on Thursday, September 25. Should the bill reach the floor of the House anytime before the scheduled October 4 recess in its present form, I intend to introduce as an amendment in the nature of a substitute for H.R. 5615, H.R. 6588, the so-called Boland Federal Intelligence Agencies Control Act. I recognize that the Boland CIA charter bill itself is a flawed piece of legislation, but at least in respect to protection of identities it is superior to H.R. 5615.

Mr. Speaker, the issues of CIA oversight and a proposed CIA charter are reaching the floor in a confusing succession of dribs and drabs. Perhaps a careful reading of the Boland charter will be an educational experience for all of us and place what we propose to do concerning protection of identities into perspective.●

PRESS TREATMENT OF BOB GRIFFIN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 10 minutes.

● Mr. MOAKLEY. Mr. Speaker, can anyone imagine the outcry from Congress and the media if, after a lifetime of public service within an agency, a man who had risen to the post of assistant administrator, was pushed out of the way in his bid for the top job by not one but a fast paced series of two political appointees with no experience in the agency?

Can anyone imagine how much stronger would be the public outrage if this career civil servant were thrown out of the agency by one of these political appointees?

The sad fact is that this did happen; there was no public outcry. Indeed the press chose to portray the victim as the culprit.

Bob Griffin was forced out of the General Services Administration at the height of the growing GSA scandals. The greatest indecency of his dismissal from GSA was the effort of then Administrator Jay Solomon to link Griffin's departure with a scandal in which he has never then or since been implicated simply to mask the craven politics involved in Solomon's effort to rid himself of Griffin.

The current issue of the Washington Monthly carries an outstanding article about Bob Griffin and the regrettable role the press played assisting Jay Solomon. Commenting on this article, the distinguished WMAL commentator, Joe McCaffrey, said in his September 8 broadcast:

An interesting piece in the September issue of the Washington Monthly titled, "The Persecution & Assassination of Robert Grif-

fin As Performed by Members of the Washington Press Corps". . . . For years Mr. Griffin was one of the top men with the General Services Administration, and for a period of time from mid-1978 on, he was roughed up pretty badly by the news media. This article by Jeb Byrne shows how once something is started in the press, it can grow and swell like a tumor even though there is no justification for the original charges. It is something that all of us in the business should read, and it should be required reading in journalism schools.

Mr. Speaker, I agree with Mr. McCaffrey and would like to place Jeb Byrne's article in the RECORD:

THE PERSECUTION AND ASSASSINATION OF ROBERT GRIFFIN AS PERFORMED BY MEMBERS OF THE WASHINGTON PRESS CORPS

(By Jeb Byrne)

Early this year, Robert T Griffin retired from government service. The name probably sounds familiar to you. A couple of years ago, Griffin was abruptly sacked as deputy administrator of the General Services Adimnistration. That was in July 1978, at the height of the GSA corruption scandals. Jay Solomon, the man designated by Jimmy Carter to run GSA, decided he had to get rid of Griffin—a career GSA bureaucrat—because it seemed clear to Solomon that Griffin commanded the loyalties of too many people in the agency, and Solomon couldn't get control of GSA as long as Griffin was around.

That was just the beginning of a classic Washington flap, as you may recall. No sooner had Griffin hit the sidewalk than Tip O'Neill hit the ceiling. The way it was reported, Griffin and the Speaker of the House were old cronies, and O'Neill was outraged—reacting, as one reporter put it, "with the same protective tenderness that a grizzly bear might show a favorite cub." There were hasty consultations with the White House, and soon, at President Carter's personal direction, Robert Griffin was given a $50,000-a-year job as special assistant to Robert Strauss, then serving as Carter's special trade negotiator. When Strauss switched jobs, becoming Carter's special representative to the Middle East negotiations, Griffin went along. Then, when Strauss left that post to become chairman of Carter's reelection campaign, Griffin opted not to follow—choosing instead to leave government at the age of 63 for a high-paying job at Chrysler.

As reported, that's the sequence. And if you remember Robert Griffin's name now, it's because each of these developments triggered another round of news stories. Many of them, recapitulating the details of Griffin's departure from GSA, were replete with what Roger L'Estrange, a 17th-century licenser of the English press, once called "convenient Hints and Touches." The consistent impression which these stories sought to convey was clear enough: here is another chapter in the sorry tale of a political hack, probably venal, who blocked the efforts of a good guy trying to clean up corruption in the General Services Administration. It was pretty believable stuff—if you didn't know any better.

BEAT THE DOLDRUMS

I knew better, because I worked for Robert Griffin twice, first as his deputy from 1961 to 1968, when he was assistant administrator of GSA with responsibility for congressional relations, public information, and business services, and second as his executive assistant from 1977 to 1978, when he was GSA's acting administrator for a few months at the start of the Carter administration and then deputy administrator until his departure from the agency. Thus I make no claim to being a disinterested observer, but I do claim to know something about Robert Griffin. I knew him as a man of competence and integrity, and so I was startled—at first—by the image of him that began to be shaped by the news media in the aftermath of his dimissal.

My surprise began to fade when I realized that Griffin was being cast as the foil for Jay Solomon, who was remarkably accessible to certain reporters and seemed to have a knack for Hints and Touches. Griffin was at a disadvantage. In point of fact, he had launched an investigation of fraud at GSA before Solomon ever appeared on the scene. He wasn't disposed to talk to reporters about it—but even if he had been, he couldn't have done so without violating explicit requests by the Department of Justice and the FBI to keep the probe quiet while suspects were being identified and watched. Griffin honored the requests; after word of the investigation began to leak, it was Solomon who started talking about it. He talked not only of the corruption being unearthed at GSA, but also of the difficulties he said he was having with Griffin.

Griffin heard rumors that Solomon was unhappy with him, but he discounted them, because face-to-face Solomon was always pleasant enough. For his part, Griffin could be blunt and straightforward—he was never insubordinate, but he was never shy about expressing his views. If there was a real personality conflict between the two men, Griffin didn't make much of it: the firing caught him by surprise.

Given the timing, it wasn't difficult for reporters to link his departure to the emerging GSA scandal. The Bad Guy role so easily assigned to him didn't fit the man, but that seemed to be irrelevant to many of those who were pursuing—or anxious to comment upon—a story that helped relieve Washington's summer doldrums. He was, in short, a means to an end, a quick and easy way to define a story that was otherwise difficult and puzzling. Of such needs are news myths born.

The logical place to start looking for the origin of the myth is in the file of stories from The Washington Post. The Post carried the "insider" coverage that set the initial pace and tone for other media to improvise upon as best they could. This was principally through the efforts of Post reporter Ronald Kessler, who had made GSA his beat and was closer to events there than most other reporters. It's no secret that he was closer to Jay Solomon, too. They met frequently, sometimes for lunch, and it was Kessler who telephoned Griffin one afternoon with the news that Solomon was about to fire him.

In his stories, Kessler did mention that Griffin was known as "an effective and well-informed administrator," and that Griffin had alerted Solomon to the discovery of corruption in GSA. Technically, perhaps, this satisfied someone's criterion for balanced coverage—but the evenhanded words about Griffin seldom seemed to appear anywhere near the beginning of a story. They were more likely to be found somewhere back on page 14, deep in the carry-over copy where many readers never venture. In his accounts, moreover, Kessler never fully explained the role that Griffin played in starting and directing GSA's internal investigation—before it became a media extravaganza and the subject of congressional hearings, before Solomon became GSA administrator, and long before Kessler (whose first story on the GSA investigation appeared in the Post on March 3, 1978) had discovered that an investigation was in progress.

It was in late 1976 that Griffin, then a special assistant to the GSA administrator, received an internal memorandum alerting him to phony billings in the Chicago region. In that instance, as it turned out, a GSA employee had cooked up a scheme whereby he received payments made to a nonexistent building services company—he used a post office box as its address—for work never performed. Griffin launched an investigation into the possibility of similar fraud elsewhere, and followed up with special audits in all GSA regional offices.

GSA is a federal conglomerate; its procurement activities range from the purchase of paperclips and motor oil to the construction and leasing of skyscrapers. GSA houses much of the federal bureaucracy in 10,000 building locations, supplies its needs, disposes of its surplus property, paves its parking lots and fills its gas tanks. GSA's administration is as complicated as that of any *Fortune* "500" company, and that complexity offers practically endless opportunities for low-level fraud. The Chicago case was one example that came to light. There were others. Some building managers, who had authority to award contracts for routine repairs and improvements, were found to be on the take. Some managers of GSA-operated self-service stores—where other agencies came for their office supplies—were found to be in cahoots with suppliers.

Griffin knew that GSA, growing over the years along with the growth of the federal apparatus it serves, could stand much improvement in managerial controls. During the few months when he was actually in a position to do something about those controls, he peppered GSA offices with orders for special audits, reviews of disbursement records, improved procedures for monitoring purchasing, better systems of vendor identification, and coordination of procedures from region to region. He sent investigators and auditors burrowing into dark corners and personally went to the Office of Mangaement and Budget to argue—successfully—for more auditors. He shuffled officials around, sending them to areas outside their own to gather information about possible fraud, and this information was regularly passed on to the FBI, leading to the 79 indictments and cinvictions that have since resulted. He had as many as 150 people within the agency working on the investigation under his direction.

In hindsight, which is always the preferred perspective, it's possible to argue that Griffin might have been an even more aggressive administrative reformer. But the problem with that argument is that it gets all tangled up in comparative imagery. Although Jay Solomon had no prior experience in administering a large bureaucracy—he was a Chattancoga-based builder of shopping centers who was an early supporter of Jimmy Carter during the 1976 campaign—the press treated him as though he was the first person ever to walk through GSA's front door carrying a broom. The facts don't square with that.

When Solomon became administrator at the end of April 1977, Griffin told him about the malfeasance that had been discovered within the agency and explained what was being done to cope with it. Solomon, who was initially more interested in the agency's Art-in-Architecture program—which was to involve him in a heavy schedule of dedication ceremonies across the country—told Griffin to press ahead. As the summer of 1977 wore on, new revelations came to light, and Griffin kept Solomon posted on them.

It wasn't until the end of the year that Solomon began shifting his focus away from art and more in the direction of the investigations. Soon thereafter, he began telling Kessler what was happening and what he planned to do about it. Griffin, by that time, had spent more than a year thinking up

and carrying out substantive changes. When you chop your way through the media imagery, you come to the stark fact that no one, to this day, has shown that Griffin did that job inadequately or unethically, and the Justice Department has long since concluded that he was not personally involved in any way in the corruption at GSA.

But in the excitement at the end of July 1978 over Solomon's firing of Griffin and its repercussions on the relationship between Speaker O'Neill and President Carter, Griffin's proper place in the investigation was overlooked, ignored, mentioned in passing, or turned upside down in the news media. In the *Post*, for instance, in addition to the series of pieces by Kessler on the Griffin firing, there was a noteworthy editorial cartoon by Herblock. This shows Griffin being booted out of GSA by a foot and leg labeled "cleanup"—an interpretation that even Solomon had not placed on the firing.

On the following day, July 31, the *Post* ran an editorial which asserted that Griffin "personified 'business as usual' at GSA," a characterization that entirely ignored his role in the investigation. On August 4, the *Post* ran a story on Griffin's new job with Robert Strauss. The headline emphasized that the new job entailed "$50,000 Yearly for O'Neill's Friend"—ignoring the fact that this was the same salary Griffin had been making at GSA. (*The Boston Herald-American* improved on the Post with its headline: "$50,000 Plum for O'Neill Pal.")

It does not seem unreasonable to conclude that the way in which the *Post* handled the Griffin story was reflected back in a group of letters-to-the-editor published on August 9. *Post* readers perceived Griffin as an incompetent hack whose sole claim to a responsible position in government was his friendship with a powerful politician.

The *Post* didn't go out of its way to correct that impression. During his televised press conference of August 17, 1978, President Carter remarked that he knew of nothing more distorted than the press coverage of the Griffin firing. "Griffin was not fired because he was incompetent," Carter said. "He was not fired because there was any allegation about his honesty and integrity. He was moved from the General Services Administration because he was incompatible with the director. . . . I have no apology to make for having put a good man with great integrity and great knowledge in a productive job."

I was curious to find no mention of these remarks in the Post the next day. I telephoned Post editor Richard Harwood, identified myself as Griffin's former aide, and asked about the omission. He said he would look into it. The next day—a Saturday—the Post carried a four-paragraph story under the headline "Carter Says Press Distorted Removal of GSA Aide Griffin."

Television's talent for simplification adapted itself easily to the Griffin story. An NBC news team visited Griffin at his suburban Washington home on the afternoon of August 4, 1978, and he talked at length, explaining his side of the story. Almost all of his words wound up on the cutting room floor, and on the news that night, David Brinkley summarized: "Powerful politicians in Washington expect their friends to be taken care of—and certainly not fired. So the President gave Griffin another job, newly created for him at $50,000 a year." Then NBC ran an interview with David Cohen, president of Common Cause, who said, "It looks like politics as usual, buckling under to political power, saying the person's incompetent to run one major agency and then placing him in a high White House position where he's not really subject to any kind of review by legislative bodies." The accuracy of David Cohen's statement wasn't subject to any kind of review either. Griffin's competence had not been questioned, but nobody at NBC brought this to Cohen's—or the viewing public's—attention. This was the first and last time that Griffin let a TV camera into his home.

OL' TIP AND OL' BOB

The words "crony" and "cronyism" keep occurring as you thumb through the newsclips and transcripts of the Griffin story. Here it helps to understand the way the rules apply to this kind of loaded shorthand. Politicians of the old school like Tip O'Neill have cronies. John Gardner and Theodore Hesburgh have colleagues and associates. It's a distinction that's important in Washington. And the label, once applied to Griffin, stuck like epoxy. Don Campbell of the Gannett News Service, for example, was early into this easy name-calling game. His story appearing in The Nashville Banner of July 31, 1978 is typical. There is a line which says simply that Robert Griffin is "a crony of House Speaker Thomas P. O'Neill. . . ." In this, and similar declarations, there is no hint that the two men might actually have had some mutual respect for each other as old veterans of the governmental wars. True enough, they had known each other since the days of their youth in Somerville, Massachusetts. Griffin has been close to politics for a long time—he worked in John F. Kennedy's first congressional election campaign back in 1946—and knows his way around, but once upon a time that fact would not have stigmatized him. In much of the reporting, there was no indication that Griffin had performed well in every post he had held (even Jay Solomon had rated him outstanding). Nope. Just a crony. Presumably you could find Bob and Tip sitting around the local Safeway in their wool shirts, spitting into the cracker barrel. Editorial writers, too, got into the epithet game. Two days after The New York Times printed a "Man in the News" item with a complimentary assessment of Robert Griffin's federal career, an August 6, 1978 Times editorial was complaining about "cronyism" in the Griffin affair.

In the capital, The Washington Star had been trying to play catch-up ball on the Griffin story, but the Jay Solomon-Ronald Kessler link was a problem. The Star's acerbic editorial cartoonist, Pat Oliphant, got into the action with a drawing of a pudgy bureaucrat dozing at his desk while his "in" basket swelled, musing about civil service reform and concluding that "I better buy Ol' Tip O'Neill a three-martini lunch." (If the drawing was supposed to represent Griffin, ol' Ollie was off the mark. Griffin is a lean 6'4" and doesn't drink. He used to eat at his desk, but I never saw him sleeping there.)

Reporters Mary Ann Kuhn and Lyle Denniston at the Star began catching pop flies, spurned by Kessler, from a source or sources at GSA. One of the ensuing front-page stories by the Star duo had the intriguing headline: "Missing Files of Ousted GSA Official Turn Up." Beneath the head was a leaked story which was supposed to disclose that Griffin's files had been missing for seven weeks after he had left. This was an odd construction to place upon a sequence of events with which I was very familiar. Griffin had left the building without his personal papers. Members of his staff were ordered out of their offices the following week, with instructions to take all his and their records and belongings with them. A staff request that one small office be retained in which to store the records temporarily was rejected. These papers, however, were not extensive. It is standard practice that originating offices which forward correspondence and other documents to the front office keep the official files. When the Star story was published, the records were sitting in carboard boxes in the offices of former members of Griffin's staff, awaiting disposition. Missing? You could have tripped over them.

One of Solomon's aides was quoted in the Star as saying that Griffin's staff offices remained locked for two weeks, and when they were opened, "We found that his offices were just totally empty: no people, no paper, no files—zip." It's probably a good thing that no people were found in offices that allegedly had been locked for 14 days. The fact was, however, that Solomon's staff had keys to our offices; we had given them the keys.

ALTO SOLO

There was another flurry about records when Solomon decided that GSA should keep Griffin's appointment calendar and telephone logs. The agency's own lawyers and recordkeepers had informed the administrator that these were considered private property by GSA. When Solomon proposed to confiscate them anyhow, Griffin threatened suit. All this was dutifully, and ominously, chronicled in the news media. Having been subjected to strange harassments by GSA since his departure, such as the contrived stories about the "missing" records, Griffin preferred to let the Department of Justice take any part of his records which it might want. A meeting was held and this was done, without difficulty.

A news coup of a sort was achieved when a memorandum written to Solomon by Vincent Alto, the short-term special counsel Solomon hired in May 1978 to take over supervision of the investigation, began circulating and quickly reached the press. Ostensibly this was a private document, but more copies were floating around than balloons at the circus. The memo dusted off an old allegation by a personnel officer who claimed he had been harassed out of the agency by Griffin (then in a staff position) when the personnel officer would not go along with the supposed downgrading of an investigator This was a charge which had been heard and rejected by a civil service administrative judge—but it made good copy Time ran a story about it, leaving the clear impression that the allegations were fact, and reinforcing that impression with a cartoon showing a man with a small net trying to catch a big fish. This treatment met what Peter Braestrup has described in his Big Story as the criteria for news magazine writing: ". . . to avoid ambiguities and complexities [and] to fashion a clear story with a beginning, middle, and snappy close." By the date of the Time story, The Washington Star had been purchased by Time, Inc. The Star picked up the Time story for its front page.

With such doings afoot, you could expect to hear from Jack Anderson. An Anderson column appeared on December 18, 1978, characterizing Griffin as having "such high connections that when he stubs his toe, Tip O'Neil howls and President Carter applies the bandage." Anderson went on to rehash several allegations about Griffin. One was the business about the personnel officer, which did not mention the rejection of the charge by the civil service judge. Another concerned Griffin's refusal to give Solomon carte blanche with his papers. The column did not mention that Griffin let the Department of Justice review the records and papers and take what it wanted. Still another Anderson allegation was: "Griffin has been on the GSA payroll since the agency was created in 1949. He has been responsible for property

management since 1961. More than any other individual, he should have detected the long-festering corruption. The investigators want to know why he failed to take corrective action."

In fact, Griffin's one property mangement job in GSA occured in 1969–72, when he was in charge of the depots in which materials of the National Stockpile are stored. The only time he had substantive responsibility for GSA property management was when he became acting administrator and then deputy administrator in early 1977—the period during which he got the investigation rolling.

EXIT "GOOD GUY"

On January 21, 1979, there was a front-page story in the Post, written by Martin Schram, which said that the White House was seeking a replacement for Solomon. Dissatisfaction with the way Solomon was playing the media was cited, and Schram quoted one official complaining: "He wants credit for everything. And he equates spending time with him with combating corruption." Solomon was gone by the end of March.

There were two other stories in the press at about this time which did not fit the generally accepted mold, but which I have not seen referred to since. One, a March 30, 1979 story by James P. Herzog of Scripps-Howard, started out this way:

"Outgoing General Services Administrator Jay Solomon says 1,000 names have been turned over to the Justice Department for possible prosecution. But William S. Lynch, head of the Justice Department task force investigating the scandal-ridden GSA, calls the statement 'baloney . . . a figment of Mr Solomon's imagination. . . .'"

The second piece was in the April 1, 1979 "Outlook" section of the Sunday Washington Post. Written by Chuck Lewis of ABC, the report said, among other things, that "the constant hyping and ballyhooing of the Gigantic GSA Scandal makes one wonder where the real truth lies. . . .

"Despite the collective efforts of hundreds of officials, it was Solomon who received the lion's share of attention. The shrewd Chattanoogan carefully cultivated the media as no other GSA administrator—or few public officials, for that matter—ever has. . . .

"To many rank-and-file GSA employees, Solomon's headline-grabbing crusade against corruption, combined with his lack of attention to the large agency's daily management, was appalling. . . ."

Despite these reassessments of the Solomon-Griffin situation, Griffin kept on getting a bad press. In early 1979 a local Washington television reporter, Stan Bernard, was still floating dark innuendos. A Channel 4 (NBC) transcript for March 1, 1979 has Bernard ending his 6 p.m. stint with the words, "Jay Solomon is wondering who he made nervous when he fired Robert Griffin and started the investigation into the million- and billion-dollar deals that go through GSA."

The Griffin story faded during the summer of 1979. But a refurbished piece on the GSA investigation appeared in the September Reader's Digest, signed by Carl T. Rowan and David M. Mazie. "Spurred by revelations in the press, and by grand-jury investigations in Washington and Baltimore," it says, "Solomon launched an all-out inquiry." Robert Griffin is mentioned under the familiar rubric of "political cronyism."

By early 1980 the Washington dailies were no longer catching fungoes from the usual batters at GSA, but a pair of reporters from the wire services suddenly were out there shagging. In January, Bob Parry of Associated Press and Donald Lambro of United Press International had the good fortune to discover simultaneously that last fall, they said, a man who did business with GSA had alleged bribetaking by a GSA official who, as Lambro put it, was a "long-time associate" of Robert Griffin, and in Parry's various versions was "considered" at GSA to be a "close associate" and "a satellite" of Griffin. Griffin did know the man. That much was true. But the stories never explained who was doing the "considering" or how the "satellite" relationship was supposed to work between these "close associates." In due course, the stories stopped, but the connotations lingered on. I wonder how Joe McCarthy—not the old Yankees manager, but that other one—could have improved on this kind of coverage.

The next chapter in the chronicling of the life and times of Robert Griffin by the news media concerned his retirement from government. Parry and Lambro had him leaving "quietly." Parry used the occasion to recirculate the "satellite" innuendo offered by his ubiquitous but unidentified "GSA source."

In reporting that Griffin had gone to work for Chrysler, The Miami Herald referred to him as "the scandal-freighted former deputy chief of the General Services Administration." Jerry Knight, in The Washington Post's business section, wrote that Jay Solomon had claimed that Griffin "blocked investigations of corruption" at GSA. An unsigned story in The Detroit News said the same thing. I'm not aware of any statement by Solomon to that effect, although it would be hard to track down everything he ever said about the GSA investigation. Jack Anderson and The Washington Monthly didn't bother with attribution. Anderson told his Mutual Broadcasting System radio audience on March 12 that Griffin "was fired from [GSA] because he refused to cooperate with the probe into corrupt purchases by the agency." The Washington Monthly managed the neat trick of throwing Griffin a bouquet and a brickbat at the same time. In its April issue this magazine reported, correctly, that while working for Strauss, he had been "instrumental in selling the multilateral trade bill to Congress" but claimed he had done so by using "the same bureaucratic skills he had honed while covering up the GSA scandals."

Why didn't Griffin ever hold a press conference or take some other dramatic step to explain his side of the story? Well, in the early days Griffin did talk to some reporters who contacted him, including Kessler of the Post, with the results I have described. Kessler's stories, I think it is fair to say, were careful not to tie Griffin to any of the corruption at GSA. It was what he didn't write that hurt. But Griffin learned that the further reporters from other organizations were from the story, the more likely they were to accept, at face value, whatever misstatements and innuendos they heard from within GSA. Experience quickly demonstrated that responding to loaded inquiries made little sense. At first Griffin talked freely to reporters when they called him at home after his dismissal, but when he read their stories he concluded that he might as well have tried saving nice things about the Queen in an Irish bar. So he made himself unavailable to the news media. Some of us tried to speak out on his behalf, but it didn't work any better. I went to the Post and complained to Charles Seib, then the newspaper's ombudsman. We had a long talk, but nothing ever appeared in the paper about the issues I raised. And one afternoon I went with another of Griffin's aides to visit Jack Anderson's office when we learned about the impending December 1978 column. But when we got there, he told us the column was already on its way to his syndicate. We did learn that Clark Mollenhoff had been the staff reporter on the story. Recently I ran across a new book, a collection of Mollenhoff's stories. I found a section on GSA/Solomon/Griffin which is just as wrong-headed as when it was a newspaper column. But now it has cloth boards around it.

ROMANTIC FICTION

In the library the other day I ran across two old Washington hands who gave me sage advice about what to do with reports from the capital written by newsmen who are not above substituting fancy for fact to spruce up their products. Ignore such newsmongering, said Joseph Gales and William Seaton, "unless it be of too grave character to let it pass."

This counsel from co-editors Gales and Seaton appears in the April 7, 1849 edition of their *Daily National Intelligencer*, an influential Washington paper of the day. Unfortunately, the problem they addressed 131 years ago still troubles us. To me, the treatment of Robert Griffin is of very grave character. I think a congeries of news people, for reasons ranging from bad to worse, have inflicted casual mayhem on Robert Griffin's good name. It was easy, of course, to translate the complexities of maladministration at GSA into a Good Guy vs. Bad Guy story, but easiness isn't supposed to be the banner around which diligent reporters rally. There is, admittedly, nothing much more seductive than a good corruption story, but in the absence of professionalism, readers will get nothing more than—as Walter Lippmann once put it—"a species of romantic fiction which they can get much better out of the movies."

I don't claim that all is lost. Gales and Seaton of *The Daily National Intelligencer*, struggling with the same problem in 1849, managed to find a ray of hope only a few years later. In their edition of March 23, 1853 they observed:

"Washington correspondence, as a general thing, is falling into discredit, and very naturally so; but while many of the writers are too careless about accuracy, or content with mere gossip, others are better informed, or more scrupulous, and are therefore as reliable as restricted access to authentic sources of information enables them to be."

That kind of reporting is all we can hope for. On the Griffin story over the past two years, it would have sufficed.●

JOHN W. McCORMACK AWARD, SEPTEMBER 23, 1980, TO JOHN M. MARTIN, JR., WAYS AND MEANS COMMITTEE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 30 minutes.

● Mr. VANIK. Mr. Speaker, this morning in the Rayburn Room, the employees of the House of Representatives and affiliated offices presented the John W. McCormack Annual Award of Excellence for the year 1979 to John M. Martin, Jr., chief counsel and staff director of the Committee on Ways and Means.

The John W. McCormack Annual Award of Excellence Committee on August 18, 1980, adopted the following resolution:

Whereas, the employees of the House of Representatives and affiliated offices have expressed their desire to annually honor the distinguished and dedicated service of the beloved former Speaker of the House John W. McCormack, and

Whereas, this committee representing the employees received nominations for the Award of Excellence for 1979 and after considering the nominees for their outstanding achievements, do hereby

Resolve, that John M. Martin, Jr., U.S. House of Representatives, is the recipient of the John W. McCormack Annual Award of Excellence for the year 1979 and further,

Resolve, that the Chairman arrange for appropriate presentation ceremonies.

GEORGE M. WHITE,
Chairman.

JAMES T. MOLLOY,
Secretary.

The following members of the staff of the House of Representatives served as members of the Committee of House Employees:

W. Raymond Colley, Deputy Clerk of the House.

James D. Ford, Chaplain of the House.

Benjamin J. Guthrie, House Sergeant at Arms.

Gary Hymel, administrative assistant to the Speaker.

Ronald W. Lasch, minority floor assistant.

James T. Molloy, Doorkeeper of the House.

Hyde Murray, counsel to the minority leader.

Robert Rota, Postmaster of the House.

Tommy L. Winebrenner, minority floor assistant.

John Martin joined the professional staff of Ways and Means in 1956 under the chairmanship of the late Honorable Jere Cooper, later was named assistant chief counsel, and has served in his present position since 1968, when he was named chief counsel and staff director under the chairmanship of the Honorable Wilbur D. Mills. He presently serves in that position under Chairman AL ULLMAN of Oregon.

Until 1975 he was the sole professional staff member of the Democratic Committee on Committees and handled staff work for Democratic Committee assignments, working closely with Democratic committee members and the leadership. He has directed Ways and Means staff operations over the recent years, including the establishment of six permanent subcommittees and subsequent staff expansion from approximately 30 to 100.

His professional services have been directed toward all the important legislation in the fields of taxes, social security, trade, and welfare for which the committee is responsible. The Committee on Ways and Means consists of 36 members and, historically, has consistently handled one of the heaviest and most important workloads of any committee of the House.

Mr. Martin and his wife, Dorothy, live in the Mount Vernon area of Virginia. They have two children, Marshall, 23, and Mary Luella, 21. Born and reared in Martin, Tenn., he is a graduate of both the Arts and Law Schools of the University of Tennessee, and the Johns Hopkins University Graduate School, from which he earned a master of arts degree in political science and constitutional law in 1950. Prior to his committee career, he engaged in the practice of law and taught college courses, and worked for several years in the Executive branch of the Federal Government.

During World War II, he served on active duty in the Naval Reserve for 4 years, including service in the Pacific Theatre at Saipan, Guam, Iwo Jima, and Leyte Gulf. Upon discharge in February, 1946, he was a lieutenant senior grade.

Immediately preceding the actual presentation of the award, the following comments were made by leaders of the House:

COMMENTS

George White, Chairman, Award Committee:

Good morning ladies and gentlemen. Welcome to the 10th Annual Ceremony for the award of the John W. McCormack Award of Excellence. We have, as you know, this ceremony each year to honor the 45th Speaker of the House. We have some past recipients here in the audience. We have Gil Udell, Tom Iorio, and Ernie Petinand here. Will you just stand up here for a minute. And this year as you know the award was given to John Martin. We did something a little different this year in the Committee than we have done previously and that is that we invited nominations from all of the Committees—for some reason this hasn't been done before except that it might have happened by chance. We think that it is a broader base from which choices can be made and I think the result of that has been the selection of John Martin. So without further adieu let me introduce the Speaker of the House of Representatives, Tip O'Neill.

Speaker O'Neill:

Thank you George, John Rhodes and Jim Wright and all of the distinguished Members that are here. It's indeed a pleasure and an honor and to particularly have the former Chairman of the Appropriations Committee, who I understand celebrated his 80th birthday yesterday George Mahon. And I understand there is present another of our old friends whom we all loved on the Hill, Wilbur Mills. Wilbur stand up. John McCormack indeed would be honored and proud to know that there is such a huge gathering here this morning. John this is the largest crowd I've ever seen. You either have a tremendous amount of friends or a tremendous amount of relatives. The family must be indeed pleased. I would hate to be picking up a luncheon check if you're having a lunch after this. Well, here we are at the John W. McCormack 1980 Award for Excellence. It goes as you know to John M. Martin, Jr., Chief Counsel and Staff Director of the House Committee on Ways and Means. John's been here for a long time—24 years. He has epitomized competence and professionalism in guiding and directing the members of the Ways and Means Committee through their deliberate and difficult deliberations.

No Committee in Congress has greater responsibility over the lives and well being of American citizens than the Ways and Means Committee. No Committee in the House has a heavier or more important workload. No other Staff Director or General Counsel to any Committee in the House or Senate requires more professionalism or greater expertise in the legislative issues that fall within the jurisdiction of the Committee on Ways and Means than fall under the jurisdiction of John Martin. He has to be knowledgeable about taxes, health, social security, trade and welfare. His position requires a mastery of the complex rules and procedures of our great Congress. John has manifested excellence, dependability and resourcefulness in the professional services he has provided three different Chairmen during his tenure of employment in this great House. His devotion to the House of Representatives is reflected in the outstanding and exemplary performance each succeeding task to which he has been assigned.

Hardworking and attentive to the important details, John Martin has cooperated fully with the Chairman of his Committee for whom he has served in the Democratic leadership for years. His genuine love for the House of Representatives helped him to contribute in the large measure to making this House the great institution this is and the Ways and Means Committee, the integral part of the House legislative machine. He makes it function more effectively and more efficiently. Twenty-four years of dedicated service—that's it for you John the gratitude, the appreciation the personal admiration of all of us who had the privilege to know you, to work closely with you. John, you brought honor and distinction to this House, to the Ways and Means Committee, yes, and to all of America. We're all proud of you. I know this is a joyful and triumphant moment for you. John, I'm happy to be here with the leadership of the House, your friends, who are many on the Hill, and particularly your family. We honor ourselves when we honor you. Congratulations to you, John.

Mr. White: Thank you Mr. Speaker. I neglected to mention Charlie Hackney as another one of the prior recipients who stood up with the other three. Next we have the Minority Leader, John Rhodes.

Minority Leader John Rhodes: Well, thank you Mr. White, Mr. Speaker, Mr. Majority Leader, my colleagues, ladies and gentlemen. This is indeed an honor and an extremely happy occasion for many reasons. One is to see my old boss George Mahon again and that gal who for so many years the first lady of the Appropriations Committee, Helel Mahon; and Wilbur Mills—it's like old home week. And John thank you for making it possible for all of us to be here to enjoy it. It's quite a historic event in the sense that this ceremony actually marks the first time the McCormack Award has gone to someone not directly employed by the House, but employed by one of the Committees. And I believe it's most fitting that you John are the first Committee counsel to receive this honor. Your professional performance for so many years has been a great credit to yourself and to the House of Representatives.

There are many people here in the House in the staff structure and direct employees of the House who have distinguished themselves through service to their country and to the Congress. A number were nominated along with you this year. Thus, your selection is especially significant. I believe you will find that those of us who work with you, both as Members and of staff have admired your dedication to duty during times of major stress and in significant change in the way the House carries on its functions. Through the years we all knew you to do your best, and your best is why this award is being made today. Thus, let the record show that today the Speaker and I are in full accord on one thing. That may cause the Speaker to wonder if he is right or not. But that one thing is that your lovely wife, Dorothy and your children can be rightfully proud of her husband and their Dad for having done a great job for the House of Representatives. Congratulations, John.

Mr. White:

Next, the Majority Leader Jim Wright.

Majority Leader Wright:

Well, John Martin for a quarter of a century you have been a part of this family which has found its home on the Hill. You've contributed well, you have exhibited the spirit of excellence that ought to characterize this the greatest government on earth. I think it appropriate and fitting for years to come that this award should be made in the name and in the honor of John W. McCormack, our former Speaker, a man who strongly editimizes all that is good and decent and humane and kind in this government of ours. Some of you perhaps are aware that John McCormack is in the hospital and I know that your prayers join with mine for his well being.

John McCormack would be happy were he able to be here with us today and to see how this ceremony has grown. It was his idea to honor one of those who labored often in the

dim dusk beyond the glitter and glamor of applause who do their work well in order that others may often get credit for it. In any well-ordered society there have to be people like that. People, if not necessarily with a passion for anonymity, people with a willingness to work and to do their best and to turn out a quality product time and again knowing that the public media will give somebody else the major credit for the good that was done. Throughout this Hill there are those who do that, and if there weren't, we couldn't survive as a nation.

You, John, have been selected and rightly so as one who stands out for the excellence of your work, the scholarship, and the attention that you have given to the extremely professional demands of your enormously important Committee. So it is with great pride and pleasure, that I join with these my colleagues and your fellow workers in expressing to you our hearty congratulations and sincere appreciation for the contributions that you have made to the ongoing of this greatest government on earth.

Mr. White:

Next, the Minority Whip Bob Michel.

Minority Whip Michel:

Mr. Speaker and my colleagues and ladies and gentlemen, I'm happy to participate in this proceeding here today John for a number of reasons. I think the fact that we're honoring professionalism in whatever role we play in this community, as I look at the former recipients here in the front row. And now as John Rhodes indicated for the first time to move over and recognizing one in our committee structure. As one who began his career here on the Hill as a former staff member going back to the days when you just began your career here on the Hill, John.

Maybe I would just say a word for those good staff people I see here in attendance, for they maybe do or don't need a spokesman. But I think the fact that we're honoring you as we do for your high degree of professionalism gives each and every one of them encouragement and inspiration to do just that much more. And I think I go back again to that reference of so many years ago when the community on the Hill wasn't as nearly as large as it is today, there was a little bit of higher degree of comradery because there weren't as many, but even though there are as many as there are today the fact that we would take time to single out one of our number to give this John McCormack Award today I think is a fine, fine thing for all the rest of the people who serve on the Hill. So I have to congratulate you John, Dorothy and the members of your family for the very deserving tribute we're giving to you today.

Mr. White:

Next the Chairman of the Ways and Means Committee, Al Ullman.

Chairman Ullman:

Thank you, Mr. White, Mr. Speaker, Mr. Majority Leader, Minority Leader and my colleagues and friends. I want to commend the Board for moving outside of the area of House employees and I'm particularly gratified that they came to our Committee on Ways and Means to select a man that I think has no peer in judgment and experience in the House and it's been a great personal privilege to work with him through the years John. You came to the House in 1956—that's the year I was elected to the House of Representatives. I think probably people will remember that year more because Mickey Mantle won the American crown, 52 homers, than because you or I came here, but I want to say you served under three Chairmen. Three Chairmen of the Ways and Means Committee. Jerry Cooper brought you here from his native state, your native state. You came with great credentials.

You then, when Wilbur Mills took over, continued your responsibility and it was under Wilbur Mills you were elevated to Chief Counsel. Wilbur, I know that if you were here you could very eloquently describe the great abilities of John Martin. You were my tutor also, and in a sense you were John Martin's tutor. We sing praises for the leadership that you gave us here in the House of Representatives. Let me tell you that when I became Chairman we had a tremendous challenge. It was a new Committee; they expanded it from 15 to 37. We set up Subcommittees. It was a tremendous challenge, and I want to say that we couldn't have met that challenge if I had not the leadership and capabilities of John Martin to put it together. Here is a man who has great expertise in the House of Representatives. A man who has a personal relationship not only with all of the staffs, various staffs of the House itself and the other Committees, but also with the Members of the House.

I'm extremely pleased to see an old friend, George Mahon here and he wouldn't be here if he didn't have a high regard for John Martin. And so let me say that I'm proud as Chairman of the Ways and Means Committee, and I think I speak for all of the Members of the Ways and Means Committee and for the staff, and I see the Joint Committee here, who work very carefully and closely with my Committee on Ways and Means and with John Martin. They are all here because we respect the recipient, we honor him because he so much deserves this award. My relationship with John and Dorothy has been a personal one. I cherish that relationship. John, Congratulations.

Mr. White:

And now we have the Ranking Minority Member of the Ways and Means Committee, Barber Conable.

Ranking Minority Member Conable:

Mr. Speaker, distinguished friends and colleagues. John it's kind of fun to bat cleanup here and to have had a chance to sit in this benine environment and to bask in a little reflected glory. You know on the Ways and Means Committee we're not use to so much adjulation. If you want to be a skunk at a garden party you want to work at the Ways and Means Committee. If you want to be a statesman and have everybody love you, you want to spend money like, like George Meahan did all these years. Not take it away from people. Of course, the one advantage of working for Ways and Means is that you don't have to get into politics. But if I were in politics I would want somebody like John Martin on my side, because he's knowledgeable, he's tremendously industrious, he's loyal and he's supportive of the institution we all believe in, and that's the reason he's getting this award today. We're proud of you John.

We all share as I say in the reflected glory of your work. I thank you for the help you've given me. And speaking for all the Members of the Committee, the Committee over a long period of time we're glad that you're getting some tangible recognition beyond these faint words of praise and gratitude in the John McCormack award. John McCormack meant a lot to us, he was one of those institutions in the House that everybody loved also. And so to get that reward, award must be a special meaning to you. Well, thank you, thank you for giving this happy moment also in a rather tumultous season. It's nice to be able to join hands with all my colleagues in gratitude to John Martin. Thanks.

Mr. White: And now Mr. Speaker and John if you'd come up we have this plaque to present to you.

Speaker O'Neill: John it is indeed my honor as Speaker of the House to make this presentation to you. The Committee, of course, looks over the names of many many employees, and whatever manner or method or means they use, they must arrive at the man whom they think is the greatest, because the John McCormack award is Award of Excellence. And the man who is considered by this Committee to be the outstanding, the best of all. To you, John, presented by the Congressional employees, John Marshall Martin, Jr., Chief Counsel, Ways and Means, the John W. McCormack Award of Excellence, Congratulations to you.

REMARKS BY MR. MARTIN

Mr. Speaker, Mr. Rhodes, Mr. Wright, Mr. Michel, Chairman Ullman, Mr. Conable, Distinguished Leaders, Committee Chairmen and Members of the House, Officers and Employees of the House, Committee Staff and Distinguished Guests.

I am deeply grateful for this award, and the gracious and generous remarks which have been made about me.

Mr. Speaker, our beloved former senior Member of the Committee on Ways and Means, your colleague from Boston, Mr. Jim Burke, used to have a favorite expression: Something either "didn't go far enough" or "went too far." I think you have gone too far in your compliments, but I sincerely appreciate what has been said, and the time you and all the others here have taken from your busy schedules to be present.

There are so many people I would like to thank, but time prevents me from naming them all individually. First, I do particularly want to express appreciation to the members of the Award Committee for selecting me. I still wonder how I came to be selected from all the highly able House personnel.

Second, I want to express my gratitude for the privilege of working for three outstanding Committee Chairmen—men of towering ability, vision and wisdom—Mr. Ullman, Mr. Mills and the late Mr. Cooper. I am greatly indebted to them for their confidence in me, their wise advice, counsel and support, and great patience.

I want to thank the Ranking Minority Member, Mr. Conable, and his predecessors, Mr. Schneebeli, Mr. Byrne and others, for their constant cooperation and support in moving the administrative and legislative business of the Committee forward.

I want to acknowledge the many kindnesses and helpfulness of the Leadership—Majority and Minority—and the Members of the House and of the Committee—those presently serving and those who formerly served. I am especially proud of having worked these many years for the Committee on which Speaker McCormack served before he was elected Majority Leader and then Speaker. He often went out of his way to inquire of me as to the well-being of the Committee staff.

Mr. Speaker, I regard this award not as a personal award but as a recognition of the loyal and highly efficient work of all the staffs of the Committee and its subcommittees. Without their continuous cooperation and dedicated support, I could have accomplished absolutely nothing. Also, Mr. Speaker, I extend my sincere thanks to the House officers and staff for their constantly helpful assistance.

Finally, Mr. Speaker, I want to say what a rare opportunity and privilege it has been for me to have served in a staff capacity the greatest legislative body in the world—the House of Representatives. Having the opportunity to participate in staff work on many historic and monumental legislative enactments affecting all the American people has been, and is, enormously rewarding. It is a privilege few people ever have the chance to experience.

I have always been intensely proud of working for the House of Representatives, which is truly the repository of the aspirations, ideals and, in fact, the freedoms of the American people.

Thank you.

STATEMENT BY HON. FRANK J. GUARINI

Mr. Speaker, it is with great pleasure that I join my distinguished colleague, Charles Vanik, in acknowledging the achievements of one of the House's outstanding Committee counsel.

John Martin, chief counsel of the Ways & Means Committee, has served our committee with distinction for nearly 25 years. As chief counsel for the past 12 years, he, perhaps more than any other Committee counsel, has had a hand in shaping some of the most important legislation to come before the Congress.

Although I have been a member of the Committee for only two years, I have come to greatly respect the breadth of knowledge which John Martin has acquired over many years of dedicated work.

John has been of particular assistance to me, and to other new members of the Committee, who have sought him out for his advice on intricate bills, legislative strategy and committee rules.

Although often hard-pressed to meet the demands of so many Committee members, I have never known John Martin to miss a deadline or fail to keep a commitment. Somehow, he always finds time to patiently listen and counsel both members and staff.

Today, John Martin was presented the John McCormack award for excellence. For those of us who have had the privilege of working with him, we know that it is a well-deserved honor accorded a man whose performance over the years has been a benchmark of competence and professionalism against which others have measured their own performance.

For myself, and on behalf of my own legislative staff who have immensely enjoyed working with him, let me extend our sincere congratulations.

Thank you.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House the gentleman from Kentucky (Mr. MAZZOLI) is recognized for 5 minutes.

● Mr. MAZZOLI. Mr. Speaker, I was unavoidably absent on Friday, September 19, 1980. Had I been present, I would have voted:

"Aye" on rollcall No. 566, on agreeing to resolve into the Committee of the Whole House;

"Aye" on rollcall No. 567, the conference report on H.R. 3904, Multiemployer Pension Plan Act amendments;

"Aye" on rollcall No. 568, on agreeing to resolve into the Committee of the Whole House;

"Nay" on rollcall No. 570, an amendment to H.R. 85 which sought to make U.S. damages resulting from the Campeche Bay, Mexico, oil spill eligible for compensation by the oil spill trust fund; and

"Aye" on rollcall No. 571, final passage of H.R. 85, to provide a comprehensive system of liability and compensation for oilspill damage and removal costs.●

ARTHUR J. DECIO CALLS FOR "NEW PARTNERSHIP" TO REEVALUATE ROLE OF MOBILE/MANUFACTURED HOMES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BRADEMAS) is recognized for 5 minutes.

● Mr. BRADEMAS. Mr. Speaker, last week Arthur J. Decio, chairman of a manufactured housing forum in Washington sponsored by the Urban Land Institute, suggested a "new partnership" between the manufactured housing industry and Government to reevaluate the role that mobile/manufactured homes should play in meeting our growing housing needs.

Mr. Decio is the chairman and chief executive officer of the Skyline Corp., one of America's major manufacturers of mobile homes. The Skyline Corp. is located in Elkhart, Ind., which is part of the congressional district I have the honor to represent.

Mr. Speaker, there are few more distinguished and public-spirited residents of the Third District than Arthur Decio. I think my colleagues will agree that his comments are well worth our consideration.

The text of Mr. Decio's remarks follows:

REMARKS BY ARTHUR J. DECIO

Activities at all levels of government and throughout our national markets indicate that we are moving into an exciting, new era in the history of the manufactured housing industry. Restrictive land use regulations are being liberalized. More favorable loan terms are being created. The public's understanding and acceptance of our product is steadily expanding. Congressional interest in manufactured housing as a national resource is rising.

These trends indicate that we are rapidly approaching that point in time when we will all think of the manufactured housing industry as a legitimate and coequal member of the total home-building community. The conventional homebuilder, the townhouse developer, the apartment builder, the large-scale developer and the manufactured housing producer are each responding to a different segment of the same overall housing market. In the final analysis, they are all doing just one thing—building homes for American families.

Senator Proxmire, speaking before an industry group a year and a half ago, looked into the future and made the following observation:

"Manufactured housing," he said, "is the area of most promise if we're going to really do something about reducing the cost of housing in this country . . . (it) is probably the best answer free enterprise can provide for the low and moderate income market."

Last October, the Manufactured Housing Institute put three homes on display right outside on the Congressional Mall. Sitting in one of those homes, and reflecting on the fact that manufactured housing regularly accounts for more than 25 percent of the total single-family housing market, Senator Lugar drew the following conclusion:

"(Manufactured) homes are the answer to the American dream of private ownership. For many Americans they are the best answer."

HUD has also been tracking developments in our industry. A little more than a year ago, in a news release announcing improvements in various federal loan programs, Assistant Secretary Simons was quoted as saying:

"We recognize that (manufactured) homes are now quality products, due to an evolution of improvements by industry and HUD-administered national production standards. We are positive that these dwellings can easily take their places alongside of conventional homes."

INNOVATIVE USES

So, parity is coming. It will culminate years of industry efforts to find more effective ways to tell our story and to serve our customers. It will open the door to new markets and innovative uses for our products. We are ready to meet these new challenges and to overcome any obstacles which interfere with the full development of this industry's capabilities.

But let me sound a note of warning: there are pitfalls which industry leaders, consumer representatives, and government policymakers must work together to avoid. It is imperative that we examine our assumptions carefully and establish our objectives wisely before we commit ourselves to new policies and new programs. We must not pursue objectives which might unwittingly undermine the very base from which we have been operating. Our goal is to expand into new markets without losing the ability to serve our traditional ones.

To that end, I would like to identify a series of policy issues. Each needs to be fully analyzed, if we are to chart an appropriate course for the future growth and development of this industry. For convenience, we can divide these issues into three sections, corresponding to the three types of consumers we will be serving during the coming years:

1. The traditional manufactured housing owner
2. The "converted" site-built homebuyer, and
3. The government-assisted housing consumer.

I will be posing several questions regarding each of these three groups. These questions must be answered if we are to construct an equitable and coordinated system of manufactured housing policy.

TRADITIONAL USES

Let's talk first about the manufactured housing industry's traditional consumer, the fellow who has been the backbone of this industry since its inception in the 1920s, and who will continue to be the mainstay of our business for years to come.

He is typically a hard-working guy who takes care of himself and his family. With a tendency to mind his own business, he is true to many of those things which are central to the character of our great country. He is self-reliant, even after retirement. If he had to move to find employment, he would do so. While he's never had much money, he has rarely been broke. He has never looked for or received any kind of long-term government assistance and I doubt seriously whether he ever will. Most of all, he's proud of who he is and what he's done.

These characteristics of our traditional consumer have emerged as the characteristics of our industry itself. We, too, are self-reliant and independent and are proud of who we are and what we've done.

The manufactured house of today is the mobile home of yesterday, and the house trailer of yesteryear. There is no one in our industry who is ashamed of that. Nor will any one who believes in the American free enterprise system be hesitant to discuss this industry's history in an open and honest way. Like every other industry in the American tradition, we started in someone's garage and worked our way up.

AVOID VALUE JUDGMENTS

All people need a place to live. Not all people want to live in the same place. The strength of the manufactured housing industry, like the American business community in general, is that it has always avoided making unnecessary and unwarranted value judgments about someone else's tastes or lifestyle. It is the buyer, not the producer and not the government, who should deter-

mine what the product will look like and be like.

There is diversity in the marketplace because the American people are themselves diverse. We must protect this fundamental right to be different against any who might wish to institutionalize their own preconceptions. Government standards and government regulations must not be used to impose unreasonable constraints on those being regulated.

Manufactured homes, and the residential structures which preceded them, have been successful only because there have been American citizens who have wanted to buy them. They are a form of housing freely chosen, not a form of housing somehow forced onto unwilling or reluctant purchasers. Millions of American families have found this form of housing to be a satisfactory way to meet their own housing needs, and to fulfill their dream for single-family home ownership.

POLICY QUESTIONS

This leads us to our first set of policy questions:

1. If our understanding of our consumers is correct, shouldn't the rest of America be willing to let manufactured housing consumers and manufactured housing developers have equal access to land and community facilities, provided only that they act as good neighbors and pay their fair share of community costs?

2. Shouldn't government policies and programs be developed, on an equal basis with programs designed to support other forms of housing, which would, under appropriate conditions of land use planning and zoning, expand the opportunities for Americans to live in manufactured housing in environments which are attractive and suitable for residential living?

3. Shouldn't a free and competitivie business environment be maintained, to the maximum degree possible, so that the successfully functioning market system which has evolved in the manufactured housing industry can continue to develop in an orderly and natural way?

ANOTHER GROUP

Let's now look at our second group of consumers, those whom I have referred to as "converted" site-built homebuyers.

As background, let me observe that the conventional homebuilding industry and the manufactured housing industry have followed patterns of growth and evolution which have been essentially independent of each other. In the late 1940s, various government programs were created to help consumers purchase single-family residences. Considering the relative development of the two industries at that time, it is not surprising that these early government programs and related local laws were designed primarily to support conventionally constructed dwellings. Interestingly enough, these early FHA and VA homes were generally small, simple in design, and relatively plain in appearance.

The overriding goal was to make ownership of safe, decent and affordable housing available to as many Americans as possible. Prosperity and more than four decades of extensive finance, insurance, and subsidy programs have made ownership of conventional-appearing houses a reality for millions of Americans who otherwise might never have achieved it.

Throughout this period both conventional and manufactured houses were getting steadily larger and more elaborate. Consumers regularly demanded more space and more amenities. The conventional homebuilding industry and the manufactured housing industry responded to the demands of their respective markets in exactly the same way: by delivering what the consumer wanted.

TRENDS CHANGED

Then conventional housing market trends began to change. Consumers began demanding more efficient, easier-to-maintain homes, in order to have more time for other activities. In response, the building community developed impressive new concepts in apartment living, condominiums, and planned unit developments. Housing units showed, for the first time in decades, signs of getting smaller.

More recently, and far more dramatically the energy crunch and inflation have made their appearance. Consumers have been rudely awakened and forced by external circumstances to rethink what they want and what they can afford. Efficiency and compactness have become watchwords of modern, large-scale developments. The marketplace is calling out for another round of innovative product development. What is needed is a small, attractive, lower-cost house, which will be compatible with the traditional styles of conventional dwellings.

As would be expected, these pressures in the conventional market have found their way into the public policy sector through a variety of channels. Most notably, for our purposes, are the very planning disciplines and physical development options which the Urban Land Institute has prepared for consideration by the Council on Development Choices for the 80s.

Another obvious expression of these market pressures is HUD's two-year old Task Force Report on Housing Costs, which called for a complete reassessment of government policies affecting housing costs and which included more than 80 recommendations for government action, including several related directly or indirectly to the manufactured housing industry.

NEW DEVELOPMENTS

Largely coincidental to the emergence of these new pressures in the conventional market, the manufactured housing industry was just reaching an important new stage in its own development. Second and third generation manufactured housing consumers were demanding, and getting, a larger, higher-priced conventional-appearing house.

It turns out that our larger, higher-priced house is very close to the smaller, lower-priced house so desperately being sought by the conventional homebuyer. In fact, it is just this emerging capability to produce a conventional-appearing house which is now, for the first time ever, attracting the serious attention of developers, planners and government leaders. As a result, we are beginning to win converts in increasingly large numbers. No where can this be better seen than in California, Oregon and Florida, the strongholds of our double and triple section market.

Without question, we wholeheartedly welcome this new interest in our products. It is coming just in time for the baby boom buyers and expanded retirement population of the 80s. We are delighted that our larger homes (the obvious successors to the FHA and VA homes of the 40s and 50s) appear to be useful and more acceptable to private developers, community leaders, and the public at large.

NEW OPPORTUNITIES

Opportunities now exist to form many new individual and institutional relationships. Our industry, through the Manufactured Housing Institute, has responded to these new possibilities by participating in the recent expositions and annual conventions of both the National League of Cities and the National Association of Counties. We look forward to becoming even more involved in the future.

However, we must not be too anxious to become completely "acceptable," if such acceptance means a one-sided change on the part of the manufactured housing industry and a failure on the part of the larger community and our governmental institutions to come to grips with the fundamental rights and needs of this industry's traditional consumers.

We must remain on our guard against those who might be willing to "make us over" in the image of the conventional dwelling, but who are not willing to objectively consider where our smallest and least-cost homes fit into overall national housing policy.

OTHER QUESTIONS

This suggests a second series of policy questions:

1. Does the larger manufactured house of today, built under a stringent federal code and shaped by forces operating freely in the marketplace, provide a viable complement to conventional housing?

2. If so, shouldn't government policies and programs be developed to expand the opportunities conventional consumers have to purchase these larger manufactured houses in settings which have traditionally been reserved for conventionally constructed dwellings?

3. Most importantly, shouldn't the government conduct a full and objective reassessment of national housing policy in light of the general attributes of all manufactured housing, with attention being divided equally between our smaller, least-cost products and our larger, high-cost products?

GOVERNMENT SUPPORT

There remains one last important area of policy which we want to consider: the area of government support for families who, by virtue of their circumstances, are deprived of a reasonable opportunity to obtain, through normal market operations, any form of safe, decent housing.

While we can not take the time today to examine in any detail the housing, economic and social needs of our lower income citizens, we can take a cursory look at where manufactured housing might be used in partial response to this complex social problem. At this point in the history of our industry and the history of our national housing programs, we see our current products as being available for use in programs which involve a number of different settings: new communities, urban infill, neighborhood preservation, public housing, subsidized homeownership, rural development, military and temporary housing and other governmental programs.

We are ready to seriously explore these new fields, as a partner with our Federal, state and local governments. We are ready to participate in an objective reevaluation of our country's low-income housing needs and our industry's ability to meet some of those needs.

We claim no special wisdom in this field. We do know that manufactured housing is not a panacea for solving all urban and rural housing problems. On the other hand, manufactured housing has been used for decades, without requiring any direct government involvement.

This means that there are probably lessons to be learned on both sides. The industry must be willing to explore new avenues and consider new settings for its products. The government, in its turn, must be willing to understand our industry as it currently is and to reassess its own-income housing policies in light of this industry's past history.

FINAL QUESTIONS

We can now present the last of our policy questions:

1. Given the success of manufactured housing in other settings, shouldn't carefully planned demonstration programs be initiated to determine the advantages and disadvantages of using manufactured housing more

extensively to meet non-market housing objectives?

2. If so, what criteria should be used to evaluate the adequacy of manufactured housing for these new purposes, so that the needs and concerns of traditional manufactured housing consumers are not discriminated against in the process?

In conclusion, let me repeat that the manufactured housing industry is enthusiastic about its future and anxious to do its share in meeting national development objectives. We want to service any consumer who is interested in owning a manufactured house. We see the 80's as a period of expanding markets and exciting new relationships.

At the same time, we must be extremely sensitive to the needs of our traditional consumer and be constantly ready to defend his right to purchase the type of housing he wants. He is not wrong because he is different. We are wrong, if we try to exclude him from our communities. His government should be his ally, not his antagonist.

If we plan carefully, and maintain our commitment to freedom of choice, then the future of the manufactured housing industry will indeed be a great one.●

WHITE HOUSE HONORS RECIPIENTS AT SENIOR EXECUTIVE SERVICE AWARDS CEREMONY

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. HANLEY. Mr. Speaker, I was honored to be in attendance at the White House on September 9, when 49 outstanding career civil servants were awarded the highest honors possible for them to earn in Government service. It was with a great deal of personal pride that I saw our many months of labor on civil service reform legislation come to fruition, as members of the Senior Executive Service were singled out for their excellence.

Because all of my colleagues could not be present for the award ceremony, I would like to share with them now the remarks made on that occasion by my dear friend, Office of Management Personnel Director Dr. Alan Campbell, and by President Jimmy Carter:

REMARKS BY ALAN K. CAMPBELL, WHITE HOUSE SES CEREMONY, SEPTEMBER 9, 1980

Good Afternoon.

I am Alan Campbell, Director of the Office of Personnel Management, and on behalf of President Carter I welcome you to the White House. The President will be joining us shortly.

Two and one-half years ago, President Carter proposed the Civil Service Reform Act to bring the most comprehensive improvements to the Federal service in nearly a century. With this ceremony, I think all of us can truly say that civil service reform is a reality, and that the President's vision of a more efficient and effective Government is coming true—that his promise is being kept.

Being awarded today are the first Presidential Distinguished Ranks, and being announced are the Presidential Meritorious Ranks. Established by the Civil Service Reform Act these are the highest awards which may be earned by career civil servants.

The 49 recipients individually and collectively have expanded the frontiers of this country in research, management, economics, law, and human, intergovernmental, and international relations.

Also with us today are individuals from all sectors of society—Congressional leaders and professional, academic, civic, labor and business organization representatives—who, along with career civil servants, joined with President Carter to create the Civil Service Reform Act, and the Senior Executive Service which is the keystone of that legislation. To all of you, I again express the thanks of the Administration and Federal employees for your generous support and vote of confidence in Federal service.

And now, with the assistance of the Cabinet Secretaries and Agency Heads whose personal commitment to the Civil Service Reform Act has been so critical to the success of the legislation's implementation, I have the honor to present the 1980 Senior Executive Service Distinguished Presidential Rank Awards.

REMARKS OF THE PRESIDENT AT THE SENIOR EXECUTIVE SERVICE AWARDS

The PRESIDENT: Thank you very much. Scotty Campbell and fellow government employees, it is a pleasure to be with you. Also I hope all of us have long years of service in the future.

I have just come back from a very fine visit to New Jersey to see a new steel plant that is exciting for an engineer and a president to observe. This is the most modern steel plant in the world. Each employee produces 1,340 tons of steel per year, including all executive management. This is the highest productivity per steel worker in the world. They use thirty percent as much energy as the former steel plants used. They make steel rod of the highest quality, and fifty percent of it, you might be interested in knowing, is sold at this time to the People's Republic of China, successfully competing in price half the world away with the Japanese steel plants that are much closer. The dynamism and competence of our own nation and its free enterprise system, in my judgment, is equaled by the dynamism and competence of the public servants like you, who represent the American people in our Federal Government.

I come to the presidency determined to make my own administration and the government in general more responsive to the American public and at the same time more efficient in the delivery of services to those who look to us for leadership and for service. Since taking office, I have seen repeatedly that the key to more effective government, which we all desire, has been our creation of a more productive, more dynamic, and more cost-conscious federal work force.

In 1978, with the help of many of you assembled here, I was able to sign into law a bill which completely overhauled the civil service system of the Federal Government for the first time in one hundred years. It was a landmark achievement. It was Scotty Campbell's concept, which the Congress courageously passed for my signature. It was one of the most significant achievements of my own administration.

The Civil Service Reform Act gives Federal managers, like many of you, some of the same management incentives that have proved so effectively to make our private economy and its free enterprise system competitive and the pride of the entire world. It emphasizes performance, not just longevity. It lets us select individual public servants and reward them, and thereby in a positive way encourage others to excel.

Today's ceremony is unprecedented, and it is also long overdue, in my judgment. Too often we single out Federal managers only when there has been a problem. We focus attention only on the shortcomings of the Federal bureaucracy and our public servants. This is no way to run a government, nor any enterprise. Federal managers exert an enormous influence on us all. Your responsibilities are often staggering in their scope and complexity and difficulty. Some of you are the most important executives in America. Where we find excellence, we need to acknowledge and reward that excellence publicly.

I am pleased to be present today for this distinguished executive awards ceremony for the forty-nine men and women who have served our country so well. Let me say that your service to our country has been truly distinguished. You are the best of the government's senior executives; in my opinion the best of the best. I know that the awards have already been issued to you, but I would like to mention just a few who have come to my attention personally, and I think are representative of the entire group's achievements.

Harold Denton of the NRC has won wide praise for his performance following the Three Mile Island accident. I talked to Harold just a few hours after this accident occurred. When I went to the Three Mile Island plant the Sunday following the accident I went into the control room with Harold, and from then on I saw on television every night his calm, professional, reassuring voice letting the American people know that they need have no fear.

Chris Craft of NASA made space travel the safest transportation in the world. He has directed, as you know, and was principle organizer of the Mission Control Center in Houston of Mercury, Gemini and the Apollo space missions, one of the most notable technological achievements in history.

Claude Farina saved the United States Air Force 28 million dollars through better logistics management, an achievement which would ordinarily not go recognized by the American people.

Charles Swinburn of the Department of Transportation saved taxpayers 100 million dollars by restructuring the Amtrak route system.

I could go on and on. I am sure that Scotty Campbell has already recognized individually what you all have accomplished. But on behalf of 240 million Americans I want to say from the bottom of my heart, as President, thank you for what you have meant to our country. These awards today are a solid investment for our country. The millions of dollars that you forty-nine people have saved the taxpayers could fund the senior executive bonuses for many decades in the future, even generations. In honoring you I hope to encourage others, all public servants, to higher levels of accomplishment. And I also want to make your excellence known to your employers, the people of America.

Thank you very much. God bless every one of you.●

SYRACUSE UNIVERSITY OPENS NEW CARRIER DOME

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. HANLEY. Mr. Speaker, September 20, 1980, is a day that will shine in the rich history of my home community of Syracuse, N.Y. For it was on this day that Syracuse University formally opened the doors to a structure that will change the face of sports in the northeastern United States for years to come * * * the brand new Carrier Dome.

The Carrier Dome is the finest collegiate facility in the United States. The

50,000-seat enclosed midcampus stadium, completed on schedule for the fixed price of $26.85 million, is a tribute to the university, the State of New York and the local community.

I would be remiss if I failed to point specifically to the contributions of three great men. Syracuse University Chancellor Melvin Eggers is a man of action and a man of vision. It was Mel Eggers determination that was the keystone of this great success. New York Governor Hugh Carey made the dream a reality by providing $15 million from the State coffers to give an economic boost to central New York. And Melvin C. Holm, chairman of the board of Carrier Corp., spearheaded participation by the private sector with a $2.75 million contribution.

I want to congratulate the Syracuse Orangemen for inaugurating their new facility with an impressive 36 to 24 football victory over Miami of Ohio, but I hasten to add that the Carrier Dome will have uses far beyond just football. The multipurpose stadium has an eight-lane track. For basketball, a large curtain will be pulled across half the stadium, and the court will go along the width of the field, with seating for 22,000-plus spectators. The Dome will be the home of the Empire State games, an Olympic-type competition that brings together more than 5,000 youths from across the State. Next summer, the Dome will house the National Sports Festival, and there will be concerts and shows and more.

For a more detailed account of how the Carrier Dome came into being, I offer an article which appeared in the September 7 edition of the Syracuse Herald American. Completion and inauguration of the Dome are a magnificent accomplishment and a tremendous source of pride for our community. I invite all of my colleagues to come to Syracuse and visit one of the finest facilities in the Nation.

CARRIER DOME: A STORY OF CHALLENGE AND TRIUMPH

(By Jeff Rea)

That exciting new face on the block, that marvelously unique addition to the Syracuse University skyline, seems, in retrospect, to have risen like an inflatable phoenix from the ashes of ancient Archbold.

After all, Carrier Dome construction appears to have swept ahead with hardly a ripple from the time the first spade was turned, at halftime ceremonies of the last truly home game the SU football team played—the Navy game on Nov. 11, 1978.

But the apparent ease with which the cool concrete facade and sun-shimmering bubble-top went up belies the fact that a new stadium was decades in the dreaming, culminated by an intense three and a third years of study, debate, dealing and political blood-spilling.

MULTIPURPOSE PALACE

In all its air-supported glory, the multipurpose palace at the end of Irving Avenue looks as though it always belonged there; in fact, it already is a monument pointed to with civic pride.

But in the ebb and flow of plans for a new sports stadium, the idea of rebuilding on the site of 1907-vintage Archbold was shelved in the 1950s and, in the '70s, was rejected by two consecutive stadium commissions.

The development of a place, a means of funding and a design for the stadium reads like a case study of the American political system at work: More than 60 sites were proposed. The county's taxpayers very nearly were full partners in the venture. And, for a long time, it looked as though the stadium would be built without the cap that now makes is so distinctive.

AN OLD IDEA, REALLY

The improvement or replacement of the concrete Archbold bowl was a topic of discussion for almost half its life, according to news stories in The Herald-Journal's files.

In a 1976 interview, Noreda A. Rotunno, SU's landscape architect from 1942 to 1966, said drawings were made in the mid-1940s of proposals to put a new stadium near the present site of Manley Field House or on the south end of SU's Drumlins property.

"Mainly because of finances," he said, nothing came of these ideas.

GARAGE PROPOSAL

In the mid-'50s, according to Rotunno, the university considered turning Archbold into a three-level parking garage or lowering the field level of the 26,288-seat stadium to accommodate 20–25,000 more fans.

There was some talk in 1952 of putting a stadium on the west shore of Onondaga Lake, a plan which a Liverpool man resurrected during the heat of the stadium site debate in 1976.

News stories make mention of a 1968 scheme to build a 50,000-seat stadium at the State Fairgrounds. This idea, too, was reborn in the late '70s.

In 1973, two local lawmakers, Republican Common Councilor Thomas J. Cahill and Democratic County Legislator Edward R. Hutchinson, announced they would seek to form a joint city-county committee to study the sports stadium needs of the Syracuse metropolitan area.

But it was not until March 7, 1976, that the ball was to begin rolling that would lead, after years of unpredictable bounces, to the Carrier Dome's opening kickoff Saturday, Sept. 20.

On that day, John R. Searles Jr., then executive vice president of the Metropolitan Development Association, revealed that Atlanta and Los Angeles firms known as the Arena Group were beginning a preliminary investigation of "requirements for mass spectator events in the Syracuse and Onondaga County metropolitan area."

A Herald-Journal editorial, referring to SU football's 69-year home as "DOA—Decrepit Old Archbold," expressed confidence the study would show the need for a "multipurpose stadium facility."

That it did. Publicly released on May 5, 1976, the Arena Group's study said a 50,000-seat stadium could be built for $12.5–15 million.

The report went a step further and actually recommended a site for the edifice, a move which later was ripped as "the boner of the year."

When residents near the proposed site, a county-owned parcel on Hopkins Road across from General Electric in the town of Salina, heard of the recommendation, they came out with both barrels firing.

STADIUM "UNWELCOME"

The Salina Town Board took less than a week to decide the proposed stadium "would be unwelcome" to 1,000 nearby homeowners, and that there would be parking and drainage problems. Later the same month, the County Legislature's Ways and Means Committee slammed the door, voting 7 to 3 to block use of the Hopkins Road county land for a stadium.

The Arena Group report did give stadium proponents a starting point and did result in the appointment of a Municipal Stadium Commission to study alternative sites, funding possibilities and the uses to which a stadium might be put to generate revenue.

The 15-member commission met for the first time June 7, 1976. By then, other sites already had been proposed, including the State Fairgrounds and, also in the town of Geddes, the Allied Chemical wastebeds. Commission Chairman Carter B. Chase promised to consider all site proposals "with an open mind."

FRANTIC SEARCH

The fall of 1976 was a frantic one in the search for a stadium site. Searles had said he was optimistic the new federal Public Works Employment Act would provide up to $5 million for a stadium if application were made by Dec. 3.

The Municipal Stadium Commission considered 30 sites, reported six satisfactory, but revealed none. It hinted the frontrunner was a large tract along Rt. 48 in the northwest section of the county.

Meanwhile, a commission subcommittee estimated a stadium could produce $919,000 annually in gross revenues from a variety of events, including six SU football games. A stadium on a smaller scale than, but combining the best attributes of, Schaefer Stadium in Foxboro, Mass., and Rich Stadium near Buffalo, could be built with $5 million from the federal government, $7 million from a sale of bonds, $2 million from a community fund drive and $1 million from sale of the name of the stadium.

SITE OFFERED

In October, 1976, the commission revealed that Santaro-Taroson Inc. had offered to donate an 80-acre site in the town of Van Buren, near Baldwinsville. The contracting firm's only stipulation was that the stadium be named after the late Michael Santaro.

As the debate over a Van Buren site grew in intensity, other political forces were trying to draw the focus of stadium plans into the city. Mayor Lee Alexander proposed the former Sears property on South Salina Street; others pushed for a stadium at the site of the old Department of Public Works garage off Erie Boulevard East.

The Van Buren proposal died a slow, highly publicized death. First the Van Buren Town Board, then Van Buren voters in a special referendum, turned thumbs down to the plan. The Herald-Journal spoke editorially in favor of a downtown site.

DEADLINE PASSES

The apparent deadline for applying for the $5 million in federal aid came and went. A Herald-Journal story quoted federal officials as saying the deadline had merely been for the first computer run of applications. County Executive John H. Mulroy said that, in any case, he had been told the county's chances of getting the money that year were only about 2 percent.

On into early 1977, the site proposals poured in. The Stadium Commission reported rejecting more than 40, approving only five for in-depth review.

Among the rejectees were the Archbold Stadium site and the Skytop land near Drumlins—ironically, two of the sites that were to get the most attention the following year.

According to news stories, a domed stadium concept first was suggested in April 1977 in a presentation by two men responsible for building the Silverdome in Pontiac, Mich. Searles pronounced the idea a "good thing" but cautioned such a plan would add $10 million to the stadium's $15 million price tag.

CAREY HINTS AID

Another glimmer of things to come occurred the next month, when, at a luncheon to mark the opening of the Marriott Inn near Carrier Circle, Gov. Hugh Carey hinted state aid for a stadium might be forthcoming if voters that fall approved his $750 million economic development bond issue.

The County Legislature, in September, 1977, finally gave official sanction—and money—to the stadium idea. It approved the formation of the Onondaga County Stadium Commission, whose work was to be funded by $15,000 each from the county, SU and the Metropolitan Development Association.

The commission's job was to study the economic feasibility of various stadium ideas and sites. Architect David Chase was named chairman.

Shortly thereafter, the Frank Briscoe Construction Co., the firm that built the Meadowlands complex in New Jersey, made a stadium proposal that was to take a lead role in discussions for 10 months.

A NO-FRILLS PLAN

Briscoe offered to build a 50,000-seat, no-frills stadium at the Skytop site for $8.9–9.9 million. SU was to donate 120 acres it owned west and south of the Drumlins golf courses.

By January, 1978, the county Stadium Commission had reported narrowing its choices of Skytop, the town of Van Buren site and a site proposed by realtor James Kelly on Bridge Street in East Syracuse near Rt. 690.

The commission ruled out rebuilding at Archbold because of a lack of nearby parking.

The Syracuse University Board of Trustees approved a Skytop site and pledged $4.5 million in funding, an action Chase attacked as "premature."

Discussion was heated all spring as Kelly pushed for a domed, multi-purpose convention center at Bridge Street and the state put its oar in with a new proposal for a domed stadium and a garbage-burning steam plant at the State Fairgrounds.

FUNDING PROBLEM

The state would not, at first, commit any funding for the State Fair site. The word was that the state Urban Development Corporation couldn't fund the venture and the state Industrial Exhibits Authority couldn't bond for that much.

However, the idea of UDC funding the stadium slowly turned around, until it became the cornerstone of financial support for today's Carrier Dome.

In May 1978, then-County Legislature Chairman Michael J. Bragman said it all was "still in the talking stages," but there was a possibility of a gubernatorial election year trade-off—Central New York backing in the state Legislature for a UDC-funded, $257 million convention center for New York City, in exchange for $30 million worth of UDC support for a domed stadium.

Meanwhile, the fortunes of the proposal for an open stadium at Skytop were up and down. Studies showed road improvements to the tune of $3.9 million would be necessary to handle stadium traffic in the area (similar studies more than doubled that figure for Bridge Street, which effectively ended discussion of that site).

But Bragman and SU Chancellor Melvin Eggers met with the governor's special assistant and secured a promise of $3–5 million in state Department of Transportation aid for the Skytop improvements.

However, residents of areas that would be affected by stadium traffic weren't appeased. Neighborhood opposition carried with a hardening positions among some county legislators.

Finally, on July 14, 1978, Eggers proposed a $35 million complex on the site of old Archbold that would include a domed stadium, a student union and a continuing education center.

In later interviews, the chancellor said he came to realize the votes weren't there in the County Legislature for bonding the Skytop proposal, and he took another hard look at Archbold.

FORTUITOUS EVENTS

Dr. Joseph V. Julian, vice president, for public affairs at SU, recently told The Herald-Journal "a fortuitous set of circumstances came together" to prompt Eggers' proposal. Among them, he said, was that the governor, deeply involved with his "I Love New York" drive, was interested in an enclosed facility that could accommodate many more events than "the handful" that could be held at an open stadium.

To say nothing of the fact it was an election year. Political support for the idea began to fall in place with amazing rapidity. It culminated less than two weeks later with the announcement Carey and Eggers had reached agreement on the stadium. The news came the same day Carey opened his Syracuse campaign headquarters.

The governor said a bill to boost UDC borrowing capacity might be amended to include money for the dome. The UDC bill cleared the state Legislature Sept. 27, 1978, guaranteeing $15 million in financial support.

AND "THAT'S THAT"

In an editorial following passage of the measure, The Herald-Journal commented, "Well, that's that. After years of wrangling over site selection and financing, it all fell together so beautifully it seemed almost too simple."

Syracuse University became responsible for raising the other $11 million-plus the stadium would cost. Somewhere along the line, the idea of a student union and continuing education center as part of the complex was shelved.

The county, which had halted a $120,000 environmental impact study of the Skytop site soon after Eggers' dome proposal, wasn't committed financially at all for the new stadium.

Bragman recently was asked if he was disappointed the final plan did not include the county.

"To the contrary," he said. "I'm very proud of the role the County Legislature played and I played as chairman." Pointing to events that gave the idea of a stadium impetus, he said, "If we hadn't played such a positive role, bringing into focus the need for a stadium, I'm not sure this never would have happened."

Calling it "a great project," Bragman said, "I don't have any negative feelings. They're all positive."

As soon as the state Legislature and Carey made the dome a certainty, the university moved to make sure the facility would be ready for the 1980 football season.

It signed a construction manager who guaranteed the project would come in on time, at a fixed price of $26.85 million. Demolition of ancient Archbold, the university said, would begin as soon as possible after the last game of the 1978 football season, and the team would play its entire 1979 season on the road.

SU also unveiled plans to raise its share of the stadium cost: $1 million from the sale of private suites, $3 million from sale of the stadium name and the rest from a preferred-seating plan and alumni contributions.

On Feb. 15, 1979, SU announced Carrier Corp. had donated $2.75 million to what would be called the Carrier Dome.

In between the blockbuster announcements, though, all was not going as smoothly as the Teflon coating on the dome's future roof.

SOME OBSTACLES

The SU Student Association objected that the stadium wouldn't be known as the Ernie Davis Dome, after the late Heisman trophy-winning running back from Elmira. It since has been decided to dedicate a hall of fame inside the dome to Davis' memory.

The National Organization for Women's Syracuse chapter demanded equal locker room facilities for women and an all-out effort by SU to see that women's sports were encouraged in the new stadium.

And, finally, a lawsuit was started.

The suit, lodged by three university area homeowners' groups, contended UDC, the city Planning Commission and the county Planning Board had ramrodded the dome project ahead without adequate study of traffic, parking and other effects on the neighborhood during dome events.

COURT BATTLES

UDC had illegally waived preparation of an environmental impact statement, the groups said.

State Supreme Court Justice Edward F. McLaughlin, on March 27, 1979, dismissed the suit. He found, among other things, that UDC had a "rational basis" for determining an impact statement was not needed.

The neighborhood groups, led by attorney Richard Schechter, took an appeal to the state Supreme Court Appellate Division in Rochester.

In a scathing opinion July 13, 1979, the court reversed McLaughlin, saying the governmental agencies had "in an Alice-in-Wonderland manner separated and put aside the realities of the traffic and parking problems from the totality of this project."

The court added, "Like the proverbial ostrich (they) incredibly put out of sight and mind a clear environmental problem."

Fortunately for the university, the Appellate Division did not immediately enforce its order to halt construction. It granted a stay of four months for UDC to complete an impact statement and for the city and county planning agencies to prepare and hold public hearings on a traffic plan.

By November, a consulting firm had delivered a three-and-a-half-inch-thick impact statement to UDC headquarters in New York. And public hearings were held on a traffic plan that included new parking lots in the university area and a massive shuttle system from downtown lots.

The system will get its first test Saturday, Sept. 20. The dome, after a mild winter and nearly uneventful construction process, has arrived.

What will those who worked hard for its arrival be feeling that night? Jack McAuliffe, a former chairman of the original stadium commission, said, "This is the culmination of something that's been needed for so many years. It's going to be great for Syracuse."

Julian said, "That's going to have to be one of the most satisfying days that many of us have experienced." ●

HARRY GRAY OF UNITED TECHNOLOGY

(Mr. PRICE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. PRICE. Mr. Speaker, the September 22 Fortune magazine contains an interesting article on the management and plans of United Technologies Corp. The article features the direction United Technologies' chief executive, Harry Gray, has given to this major industrial organization which has and is contributing so much to both the security and general welfare of our Nation.

We are indeed fortunate to have such great leaders in the industrial and business fields of our Nation as Harry Gray. He appeared before the Armed Services Committee on September 18 to tell us of the problem this Nation faces on the availability of critical mineral resources. He pinpointed a number of minerals which are critical to our national security and which we must obtain from foreign

sources. It is obvious from his testimony that we must do more to assure dependable supplies of these materials. His testimony which we expect to print soon should be studied by all with responsibilities in national security matters.

I am including the Fortune article at the close of my remarks since it provides an excellent picture of the outstanding accomplishments and qualities of Harry Gray upon whose leadership this Nation depends in so many areas.

WHAT HATH HARRY GRAY WROUGHT? UNITED TECHNOLOGIES' MASTER PLAN

(By A. F. Ehrbar)

On a sunny Thursday morning last September, L. J. Sevin, the chairman of a thriving Texas-based semiconductor company called Mostek, climbed into the cabin of a Sabreliner jet parked on the tarmac at an airport near Dallas. He was there for a clandestine meeting with a stranger named Peter Scott, an executive vice president of United Technologies. For the next hour, Scott described the wonderful things that would happen if United acquired Mostek. Sevin, who was trying to fend off a takeover bid by Gould Inc., listened attentively, but told Scott he wasn't ready to sell to anybody yet. With that, Sevin climbed out and Scott jetted 1,500 miles back to United's Hartford, Connecticut, headquarters.

Apart from the fact that Scott flew all the way to Texas, United's "we're here if you want help" offer seemed almost half-hearted. And the possible purchase of Mostek certainly looked like small change in the affairs of United; Mostek's 1979 sales of $200 million or so would add only 2 percent to United's $10.4 billion in revenues. But Scott's mission was extremely important to Harry Gray, United's notoriously acquisitive chief executive. In many ways Gray coveted Mostek more than the much larger acquisitions he had made in the eight-year process of reshaping United Aircraft, a stagnating $2-billion jet-engine company, into United Technologies, an aggressive, rapidly expanding conglomerate.

THE KNIGHT AND THE LINCHPIN

Gray had wanted a semiconductor company since he arrived at United in 1971. But success in semiconductors depends largely on the brilliance of the manager-scientists who run most of the companies, and a hostile acquirer risks driving them away. Gray refused to go after a semiconductor company unless he could do so in the role of white knight. Gould's takeover attempt gave Gray his opening. Three weeks later, after four more meetings between Scott and Sevin, Mostek was his.

Mostek is the linchpin in the strategy behind the seemingly unrelated takeovers that preceded it. Gray has repeatedly said that he isn't building a garden-variety conglomerate—that the companies he has bought have a common ability to benefit from the enormous amount of research United must perform for its aerospace business. But few outsiders saw the link between United Aircraft's jet engines and, say, Otis elevators.

With Mostek, it suddenly became clear that the disparate acquisitions did share an important common element. Gray acquired companies that all stand to profit from the state-of-the-art expertise in electronics and controls that United's Hamilton Standard division has developed in its aerospace control-systems business. In addition to Otis, Gray's acquisitions include Carrier (air conditioning), Essex International (wire and cable, controls and switches for cars and appliances), and Ambac Industries (diesel fuel injectors, small electric motors, and scientific and medical instruments).

With an almost evangelical fervor, Gray predicts that over the next decade microelectronics will transform all those products and everything else United makes. Mostek, or a company like it, was vital to Gray's plan to cash in on that coming transformation. He believes that a semiconductor company will give United's product designers a winning edge on the competition. "In the long run, every piece of equipment we manufacture is going to be controlled by microprocessors," says Gray. "The main reason we bought Mostek is to let the designers know what it's possible to do now and what it will be possible to do, at what cost, in the next three, five, or ten years."

A second reason for buying Mostek was its phenomenal growth prospects. The company—its name stands for metal oxide semiconductor technology—is the largest maker of 16,000-bit random-access memory chips. The chips are the basic element in advanced computer memories. Gray paid $385 million for Mostek, a high price for a company that earned only $15 million last year. But an internal projection that Mostek made before the acquisition showed profits rising to $30 million this year and $72 million in 1983. Sevin says the company will hit this year's target despite a softening in the semiconductor market.

Shortly after the Mostek acquisition Gray landed another long-sought quarry when Alexander Haig became president and chief operating officer of United. Gray had been courting Haig since the late Sixties, and offered him the No. 2 job upon his resignation as supreme commander of NATO in July of last year. Haig accepted in December after he abandoned his campaign for the White House.

Haig's indoctrination at United was unexpectedly interrupted last spring when he had to undergo triple-bypass heart surgery. He was back at work just six weeks after the operation. Gray says that Haig, 55, probably will succeed him as chief executive when Gray retires in 1985.

A GIANT IN R. AND D.

Gray has assembled a strong assortment of companies, but his strategy entails considerable risks. For one thing, the cash and preferred stock he paid out for the acquired companies have leveraged United's finances to a degree normally associated with electric utilities. On June 30, the company's debt equaled 62 percent of total assets. If preferred stock is included in debt, as it should be from the perspective of the owners of common stock, the debt amounted to 75 percent of assets.

The returns on research—the foundation of all Gray's plans—are inherently uncertain. United is investing $625 million this year on a mind-numbing array of research programs. Only five companies spend more on R. and D., and none of them spends as high a percentage of sales. Gray says he undertakes only projects with a prospective rate of return of 25 percent or more, but many are based on huge gambles whose payoffs, if they come, are a long way off.

Ambac, for example, makes diesel fuel injectors for large trucks and farm and construction vehicles, and it is working on a line of superefficient electronic injectors for diesels in cars and small trucks. Ambac may not come to market with the new products until the early Nineties. When it does, it will be going up against Bosch, which now makes the injectors used in most small diesels.

Gray has succeeded brilliantly thus far. United's revenues rose from $2 billion in 1972 to $9 billion last year ($10.6 billion if Carrier's and Mostek's results are included for the full year), and profits jumped from $50.6 million to $326 million. Fully diluted earnings per share, which assumes conversion of all the preferred stock, grew at a 15.4 percent rate, from $2.09 to $5.71. Per-share earnings this year will be about $6.30 on revenues of $12 billion. United ranked 26th on this year's Fortune 500, up from 56th on the 1973 list. Counting in Carrier and Mostek, United would have been 21st on the 500 and the tenth-largest non-oil company. From 1972 through 1979 United's shareholders reaped a total return (capital gains plus reinvested dividends) of 315 percent.

Few people dared to hope for that kind of performance out of United Aircraft when Gray assumed the presidency in September 1971. Both revenues and profits had fallen after 1968 as the military reduced its Vietnam procurements. By 1970 orders for commercial engines were plummeting as well. Pratt & Whitney, which then accounted for 75 percent of United's sales and an even greater share of profits, had lost the virtual monopoly it held during the Sixties on engines for commercial jetliners. GE had won the initial engine contract for McDonnell Douglas's new DC-10, and Rolls-Royce was supplying the power for Lockheed's L-1011 TriStar. Pratt & Whitney had the contract for the only four-engine wide-body, the Boeing 747, but that was sad consolation. The plane had turned out heavier than planned, and modifications to boost the engine's power were chewing up profits. Sikorsky, United's helicopter company, had won only one large military contract since the Korean war. Hamilton Standard's sales were limited to aerospace, and the Norden subsidiary (radar and navigation equipment) was, as Gray puts it, "on a going-out-of-business curve."

William J. Gwinn, the chairman of United, was convinced that the company had a prosperous future in jet engines. But he and Arthur Smith, the president, concluded that United had to diversify in order to underwrite engine research during lean periods in aerospace. They also decided that none of United's executives could manage the diversification. Says William I. Spencer, president of Citibank and a United director since 1970: "There was a lively awareness that the only thing United had done was buy Norden, and that wasn't the most riotously successful thing in the world."

A PAY CUT FROM NIXON

Gray, then the No. 3 man at Litton Industries under Tex Thornton and Roy Ash, was precisely the kind of manager Gwinn and Smith wanted. He had the experience of a dozen acquisitions behind him and an impressive record in both operating and staff jobs. Gray found United equally appealing. It presented a unique opportunity to practice what he calls "the management of technology," as well as the chance to run a company sooner than if he waited for Thornton and Ash to retire. Smith, who was only 60, agreed to become vice chairman so Gray could start out as president. Provided he passed muster, Gray would become chief executive when Gwinn retired in 1972 and chairman when Smith retired.

The one thing United didn't offer was more money. Gwinn had agreed to match Gray's $170,000 salary at Litton, but President Nixon froze wages before Gray reported for work. Gwinn decided that the spirit of the law required United to pay Gray no more than the $150,000 Smith had been making. "Some of my colleagues thought I had a huge hole in my head," says Gray. "I took a $20,000 cut with no incentive compensation. I had to sell my house at a loss and move from sunny southern California to the cold country. Boy, was I unpopular at home. But it worked out all right." It certainly did. Gray made $1 million last year.

In his nine years at United, Gray has won the admiration of most of the company's engineer-managers—no mean feat for the first outsider to hold a top job at an inbred company. Gray will always be the new boy on the block to many of them, but they are impressed by his command of the company's

diverse and exceedingly complex projects—especially since Gray's formal training was in marketing, not engineering. Subordinates speak in awe of Gray's memory and of the way he involves himself in details of United's far-flung activities. They also are wowed by the hours he puts in. "Harry thinks a vacation is coming to work in a sports jacket," says a vice president.

Gray has a flair for attracting attention. He flies practically everywhere in a Sikorsky helicopter, to the point that choppers have become symbolic of Gray—just as Gray himself has become a symbol of the high-stakes takeover game. His angular features and mischievous grin fit the swashbuckling image. So, too, does his voice. Born in Georgia and raised in Chicago, he retains just enough of his boyhood drawl to put a round edge on his flat midwestern speech. His words come quick and easy, spicy with simile and disarmingly candid. But he rarely gives anything away unintentionally.

Gray spent most of his first year at United tending to problems at Pratt & Whitney. Just before Christmas in 1971 he discovered that United had to write off $137 million of warranty costs on the first version of the 747 engines, and he settled a $100-million dispute with Boeing over Pratt & Whitney's "underpowered" engine and Boeing's "overweight" plane.

CHANGE FOR THE DIRECTORS

With those matters behind him, Gray began searching for acquisition candidates. He had specific attributes in mind. The most important was the ability to benefit from United's research, which suggested companies that were investing too little in R. and D. themselves (Mostek is the sole exception to that rule). In addition, he wanted companies with large, preferably dominant, market shares so he could reap the greatest profits from product improvements. Another criterion was price. While Gray was earning his reputation as a voracious acquirer, he also became known around Wall Street as one of the more niggardly players in the takeover game. Gray paid hefty premiums for companies, but not as hefty as other players were offering. And he always paid less than he thought a target was worth. "Whatever the directors authorized, I always brought 'em change," he says.

The first acquisition came in November 1973, when Gray bought Essex for $320 million in preferred stock. In 1975 he concluded that the elevator business was ripe for a technology invasion and went after Otis. When Otis's managers spurned his advances, the time had come for Gray's first hostile takeover. (Gray maintains that he's never made a hostile offer, since he has always kept the target's chief executive.) He got 70 percent of the shares in a $276-million tender offer and issued preferred stock for the balance of Otis in 1976.

Two years later, in March 1978, Gray negotiated the friendly purchase of Ambac. He believes that the amount of electronic equipment in autos could rise from less than 5 percent of the average car's total value this year to as much as 20 percent by 1990; Ambac's injectors and small motors looked like a natural complement to Essex's automotive products. By last year United had built its U.S. auto-industry sales to $421 million.

The Ambac acquisition was barely completed when Gray set his sights on Carrier. That takeover developed into one of the most hotly contested ever, with the entire city of Syracuse, New York, fighting to keep its largest company independent. A cartoon in the Syracuse Herald-American depicted Gray as King Kong atop the Carrier building. "Help Carrier" banners festooned Salina Street, and the Chamber of Commerce cajoled the Small Business Administration into holding hearings on the takeover's effect on Carrier's suppliers. Gray ultimately won, but he has had to run Carrier as a separate, unsynergized entity pending the settlement of a Justice Department antitrust suit.

Carrier has seemed the most puzzling of Gray's acquisitions. While microelectronics will profoundly affect air conditioning design and efficiency, United stands to reap a large share of the profits from any innovations simply by selling motors and control systems to the industry. Gray wants to manufacture the entire product because he sees air conditioning—like automobile electronics—as one of the major growth industries over the next 20 years. With visions of refrigerating the Sunbelt dancing in his head, he predicts that virtually all factories eventually will be air conditioned. "If this country is to improve productivity," he says, "it is absolutely required that you go to computer-aided machines. And you just can't run those machines outside an air-conditioned environment."

Gray makes a persuasive case that United's know-how really has bolstered the acquired companies. Otis, for instance, last November began selling a fully electronic elevator control system that Hamilton Standard helped develop. The system—called Elevonic 101, a takeoff on Hamilton's avionic controls—can cut passenger waiting time by a third and elevator energy consumption by 40 percent. Otis had begun work on electronic controls at the time of the takeover, but it hadn't planned to have a system like Elevonic until 1985.

Bringing off all those acquisitions required the skills of a practiced boardroom politician as well as the talents of a take-over artist. Though Gray's rule is now absolute, he first had to prove himself to a contingent of staid, white-shoe Connecticut directors who dominated the board until the late Seventies. Most of the nutmeggers thought Gray's Littonesque management style was a mite impetuous and worried that he was moving too fast and too far afield.

Even so, Gray managed to persuade his gentlemanly board to commit a most ungentlemanly corporate act—the hostile takeover. Tender offers are a generally accepted practice nowadays, but they still had a bad smell about them in 1975, when Gray sought approval for the Otis take-over. The directors were reluctant—"We weren't that kind of company," says former president Arthur Smith—but Gray convinced them that the tender offer was in the shareholders' best interest. Gray says the board never rejected any of his recommendations and that he never heard a word of caution. However, others in the company say he would have moved even faster were it not for the timidity of some directors.

When he wasn't out buying companies, Gray found time to work major changes in some of United Aircraft's original operations. In addition to assisting the acquired companies, Hamilton Standard accomplished some impressive diversification of its own. It now makes systems that control energy consumption in factories, office buildings, and schools; the metering equipment that several states use to test auto emissions; and a diagnostic computer for auto-repair shops.

SCORING WITH HIGH SPIRITS

In 1975, Gray hired Peter Scott away from NCR and put him to work resuscitating Norden. Scott bought Dynell Electronics, a Long Island company that makes radar systems for the Navy, and negotiated a deal with Digital Equipment to develop military applications of its PDP-11 computers. In the last five years Norden has won contracts to develop new radar and navigation systems; before, most of its business was in making components for other companies' systems.

Sikorsky Aircraft, running in place back in 1971, covered the most distance of all. In 1976 it beat Boeing Vertol in a fly-off to win the Army's $2.5-billion contract for the "utility tactical transport aircraft system," the largest order in Sikorsky's history. Eventually the Army will buy 1,107 Sikorsky Blackhawks. In 1977 the Seahawk, a variation of the Blackhawk, beat a Boeing Vertol entry in the competition for the Navy's $750-million "light airborne multipurpose system."

Sikorsky has scored even bigger in the commercial market. Using technology from the Blackhawk, such as titanium rotor blades and Kevlar doors, it developed the Spirit, the first medium-size helicopter designed expressly for the civilian market. Sikorsky has orders for 388 Spirits, and expects to sell 1,600 in executive and 12-passenger versions.

The only major blemish on Gray's record has been Pratt & Whitney's inability to keep up with the competition from GE in the commercial market. GE has been so successful that it reclassified its commercial engines from a "venture" to a "core" business last year. In addition to making most of the engines for the DC-10, GE picked up nearly all the orders on the European Airbus A300. The sales gave it a third of the market for wide-body engines. That is a remarkable change from the Sixties, when Pratt & Whitney made the engines on just about every jetliner aloft. It still makes all the engines for Boeing's 727 and 737 and the DC-9, but it has only 50 percent or so of the wide-body market. Rolls-Royce has the rest. Once GE entered the market it was bound to make inroads, but no one, not even GE itself, expected it to do so well.

AN UNDEPENDABLE MARVEL

Pratt & Whitney also has had trouble with its largest customer, the Air Force. The company scored a major coup when its F100 engine was selected to power the F-15 and F-16 fighters. The two contracts will total about 430 engines this year at around $2.5 million a copy. The F100 proved to be a technological marvel when the first F-15s were delivered in 1974, but the engine also turned out to be somewhat undependable. (See "Pratt & Whitney's Problem Engine," Fortune, November 6, 1978.)

In Pratt & Whitney's view, the troubles with the F100 were normal growing pains for such a revolutionary engine. Though that may be true, the company had a marketing problem with the Air Force. Officers working with Pratt & Whitney engineers to solve the F100 problems bristled at what they considered brusque treatment and complained that the company wasn't finding fixes fast enough.

Gray tried to reverse the tide in Pratt & Whitney's fortunes in 1976 by splitting the enterprise into separate military and commercial divisions and stressing customer service. The changes didn't work. The Air Force continued to complain, and GE kept picking up market share. GE has captured more orders than Pratt & Whitney for engines on the new Boeing 767 wide-body and on the new Airbus A310.

Last year Gray replaced the president of Pratt & Whitney with Robert J. Carlson, a senior vice president of Deere & Co. who had run its domestic farm-equipment and consumer operations for nine years. The selection of someone who isn't an "engine man," as people in the jet business call themselves, let alone an outsider, shocked the employees at Pratt & Whitney. Gray's explanation for going outside is that Pratt & Whitney, faced with rising competition and a shrinking technological edge, needs the ministrations of a generalist. He says he failed to provide a generalist earlier because he had to "evolve" changes at Pratt & Whitney slowly. "It would have been a mistake to come in and hack it up," he says.

Soft-spoken and casually elegant, Carlson comes across as a sort of Jimmy Stewart gone corporate. But there's nothing soft or casual about the way he's run Pratt & Whitney. Carlson has already replaced the head of the government division, the Washington lobbyist, the vice president for parts support,

and a handful of other senior officers. (All the replacements came from within United.) Carlson even put Pratt & Whitney's executives on a diet; he ordered the company's chef to reduce the portions served in the dining room and eliminate the chocolate cookies and black olives.

Carlson's first real test will be his handling of a new engine, the JT-10D, that Pratt & Whitney is developing for the Boeing 757. Pratt & Whitney has spent $300 million on the engine since 1973 and will have $1 billion invested by the time it is ready for delivery late in 1984. The JT-10D represents the company's best chance to send GE back to the minors.

The stakes in the engine business are enormous. The aircraft boom since 1977 has enabled Pratt & Whitney to contribute more than its share to United's recent profit growth despite its eroding competitive position. Its sales last year came to around $3.4 billion, more than half from commercial engines and spare parts. During the Eighties, Pratt & Whitney, GE, and Rolls will be battling for total commercial engine sales, including spare parts, of more than $50 billion.

IT WAS LIKE THE GODFATHER

Just two months after he installed Carlson at Pratt & Whitney, Harry Gray finally got his semiconductor company. The deal he fashioned to land Mostek demonstrated consummate skill at the takeover game—and a readiness to roll high. He had approached several semiconductor companies back in 1975, when the recession had them on the ropes, but politely walked away when they rejected his offers. Then he sat back and waited for someone to push an attractive target onto the auction block. Patience paid off when William T. Ylvisaker, Gould's chairman, went after Mostek.

Ylvisaker made an unrequited pass at Sevin and then arranged to buy 1.2 million shares of Mostek (21 percent of the company) from Sprague Electric. Several days after his first meeting with Scott, Sevin concluded that he'd have to sell to someone, and moved to New York to bargain. "It was like 'going to the mattresses' in *The Godfather*," says Sevin, "only I was in a lawyer's office instead of a tenement."

Scott headed up the team across the table. Chief executives ordinarily handle such matters personally, but there were compelling reasons for delegating the negotiations to Scott. Like Sevin, Scott is an entrepreneur; he started two electronics companies, selling the first to Dresser Industries and the second to NCR. In addition, United was reorganizing Essex, Ambac, Hamilton Standard, and Norden into an electronics group headed by Scott. If United bought Mostek, Scott would be Sevin's immediate boss.

After a week of bargaining, Scott presented Sevin with an offer he couldn't refuse. Sevin would maintain Mostek as a wholly independent subsidiary and put up $200 million for expansion. United would honor all Mostek's outstanding stock options—even the ones that hadn't matured. Moreover, United would start a new option plan based on the performance of Mostek alone. Sevin's only quarrel was with the price. United's offer was $50 a share, $8 higher than Gould's, but Sevin wanted more. Two days later Gray raised the bid to $55. Gould then went to $61, Gray countered with $62, and Gould dropped out.

The 250 Mostek executives with options collected a total of $37 million. If Mostek's earnings keep pace with its projections, key employees will make another $34 million by 1983 on their new options from United. Says Wilfred Corrigan, the former head of Fairchild Camera who quit after Schlumberger acquired that semiconductor company: "When I read the offering statement, I was amazed that a document that creative could come out of a major corporation." To Corrigan, the new options indicate that United might be able to succeed in a business that has confounded other large companies.

GRAY IN PINK

Gray's acquisition of Mostek was worked so far, except that Sevin sees things the other way around. "We view the takeover as we took them over," says Sevin. "We acquired a brand-new tool, and that tool is capital, lots of it." Gray and the headquarters staff have left Mostek pretty much alone, though there was one incident when an outside consultant bullied Mostek's controller. Sevin complained to Gray during a meeting in Florida, and mentioned that the consultant had been wearing pink socks. Gray assured Sevin that it wouldn't happen again. That night Gray showed up at a cocktail party in pink socks.

By this summer, Gray had accomplished much of what he set out to do at United. The next step is a microelectronics research center that will be in full operation in January near a new Mostek facility in Colorado Springs. Run by Sevin, the center will design and produce custom circuits for United's other companies, and do research on computer-aided designing and manufacturing of microcircuits. Sevin hopes to have a system in a few years where a designer who isn't familiar with silicon technology can sit at a computer terminal and design circuits by punching in the features he wants.

Gray undoubtedly will add more acquisitions before he retires in 1985. He says he still wants to buy a telecommunications company and one in the energy business. For now, though, things may be quiet as United digests Carrier and Mostek and works off some of its debt. With the research center under way and Haig in place as chief operating officer, last month Gray felt justified in taking his first two-week vacation since joining United nine years ago. He sailed, golfed, and tended his tomatoes. And worked.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. RUDD (at the request of Mr. RHODES), for personal reasons to attend funeral.

Mr. THOMPSON, for September 24 and 25, on account of personal business.

Mr. MUSTO, for today, on account of official business.

Mr. YOUNG of Alaska (at the request of Mr. RHODES), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. PETRI) to revise and extend their remarks and include extraneous material:)

Mr. KEMP, for 5 minutes, today.

(The following Members (at the request of Mr. RATCHFORD) to revise and extend their remarks and include extraneous material:)

Mr. NELSON, for 5 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 15 minutes, today.
Mr. STARK, for 10 minutes, today.
Mr. MOAKLEY, for 10 minutes, today.
Mr. VANIK, for 30 minutes, today.
Mr. MAZZOLI, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. RAHALL, in support of H.R. 6228, immediately following the remarks of Mr. STAGGERS.

Mr. CLAUSEN, to revise and extend his remarks immediately following the remarks of Mr. PHILLIP BURTON, on H.R. 8081, Holocaust Memorial Act.

Mr. BIAGGI, immediately following the 1-minute speech by Mr. BINGHAM in the House today.

Mr. MOAKLEY, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,277.25.

(The following Members (at the request of Mr. PETRI) and to include extraneous matter:)

Mr. RITTER.
Mr. COLLINS of Texas in three instances.
Mr. BETHUNE.
Mr. MARTIN in two instances.
Mr. COUGHLIN.
Mr. WAMPLER.
Mr. MCKINNEY.
Mr. KEMP.
Mr. ROUSSELOT in two instances.
Mr. CONTE.
Mr. WINN.
Mr. MICHEL in two instances.

(The following Members (at the request of Mr. RATCHFORD), and to include extraneous matter:)

Mr. DODD.
Mr. STOKES.
Mr. JOHN L. BURTON.
Mr. BONKER in two instances.
Mr. MURTHA in two instances.
Mr. DIXON.
Mr. MATHIS.
Ms. MIKULSKI.
Mr. MAZZOLI.
Mr. GEPHARDT.
Mr. YOUNG of Missouri.
Mr. VANIK.
Mr. WOLFF in two instances.
Mr. DINGELL in five instances.
Mr. FISHER.
Mr. ZABLOCKI.
Mr. GAYDOS.
Mr. ROE.
Mr. VENTO.
Mr. SANTINI.
Mr. JOHNSON of California.
Mr. WEISS in two instances.
Mr. MAGUIRE.
Mr. MCDONALD in two instances.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2489. An act to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that

that committee had examined and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3904. An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes;

H.R. 7825. An act to establish the Ice Age National Scenic Trail, and for other purposes; and

H.J. Res. 551. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning October 5, 1980, as "National Port Week," and for other purposes.

ADJOURNMENT

Mr. RATCHFORD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 5 minutes p.m.), the House adjourned until tomorrow, Wednesday, September 24, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5357. A letter from the Acting Assistant Secretary of the Army (Installations, Logistics, and Financial Management), transmitting notice of the proposed conversion of the motor vehicle operation and maintenance function at Fitzsimons Army Medical Center, Colorado, to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5358. A letter from the Comptroller General of the United States, transmitting a list of reports issued or released by the General Accounting Office during August 1980, pursuant to section 234 of the Legislative Reorganization Act of 1970; to the Committee on Government Operations.

5359. A letter from the Comptroller General of the United States, transmitting a report on analytical framework for Federal policies and programs influencing capital formation in the United States (PAD-80-24, Sept. 23, 1980); to the Committee on Government Operations.

5360. A letter from the Secretary of Health and Human Services, transmitting a quarterly report on State compliance with medicaid utilization control requirements, pursuant to section 1903(g)(6) of the Social Security Act, as amended; to the Committee on Interstate and Foreign Commerce.

5361. A letter from the Acting Administrator, Energy Information Administration, transmitting reports covering the month of June 1980 on changes in market shares of refined petroleum products and of retail gasoline, pursuant to section 4(c)(2)(A) of the Emergency Petroleum Allocation Act of 1973, to the Committee on Interstate and Foreign Commerce.

5362. A letter from the Comptroller General of the United States, transmitting a report on nuclear nonproliferation policies, and the impact of such regulations on the international competitiveness of the U.S. nuclear industry (ID-80-42, Sept. 23, 1980); jointly, to the Committees on Government Operations and Foreign Affairs.

5363. A letter from the Comptroller General of the United States, transmitting a report discussing the U.S. nuclear fast breeder reactor program and possible directions to proceed in the future (EMD-80-81, Sept. 22, 1980); jointly, to the Committees on Government Operations and Science and Technology.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BROOKS: Committee on Government Operations. H.R. 6933. A bill entitled: "To amend the patent and trademark laws"; with amendments (Rept. No. 96-1307, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLLING: Committee on Rules. House Resolution 791. Resolution providing for the consideration of S. 885. A bill to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River power system to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes (Rept. No. 96-1368). Referred to the House Calendar.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 2801. A bill to designate the Indian Health Facility in Ada, Okla., the "Carl Albert Indian Health Facility" (Rept. No. 96-1369). Referred to the House Calendar.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 2126. A bill relating to certain leases involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation (Rept. No. 96-1370). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee of conference. Conference on report on S. 1159 (Rept. No. 93-1371). Ordered to be printed.

Mr. JOHNSON of California: Committee on Public Works and Transportation. S. 1798. An act to reduce regulation of and increase competition in the household goods moving industry, and for other purposes; with amendment (Rept. No. 96-1372). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GEPHARDT:

H.R. 8182. A bill to amend the Internal Revenue Code of 1954 to provide, with respect to certain trusts created before December 31, 1977, a deduction from the gross estate for a charitable remainder interest in such a trust if such remainder interest is transferred free of trust to charity; to the Committee on Ways and Means.

By Mr. ROUSSELOT:

H.R. 8183. A bill to amend the Internal Revenue Code of 1954 to provide for the annual imposition and payment of the gift tax; to the Committee on Ways and Means.

By Mr. SOLARZ:

H.R. 8184. A bill to authorize $200 million to carry out a multiyear economic support fund program for Zimbabwe; to the Committee on Foreign Affairs.

By Mr. STEED (for himself, Mr. JONES of Oklahoma, Mr. ENGLISH, Mr. WATKINS, Mr. EDWARDS of Oklahoma, and Mr. SYNAR):

H.R. 8185. A bill to remove certain lands from the Wichita Mountains Wildlife Refuge, Okla.; to the Committee on Merchant Marine and Fisheries.

By Mr. WOLPE:

H.R. 8186. A bill to establish a Federal annuity program to compensate participants in private pension plans which terminated before July 1, 1974, for nonforfeitable pension benefits which were lost by reason of the terminations, and for other purposes; jointly, to the Committees on Education and Labor and Ways and Means.

By Mr. FROST:

H.J. Res. 614. Joint resolution to authorize and request the President to proclaim November 28, 1980 as "Salvation Army Day"; to the Committee on Post Office and Civil Service.

By Mr. BONKER (for himself and Mr. PHILLIP BURTON):

H. Con. Res. 437. Concurrent resolution urging the Government of South Korea to fulfill its stated commitments to the democratization of South Korea and to commute the death sentence of Kimdae Jung; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

534. By the SPEAKER: Memorial of the Legislature of the State of California, relative to the San Diego Naval Regional Medical Center; to the Committee on Armed Forces.

535. Also, memorial of the Legislature of the State of California, relative to drug labeling; to the Committee on Interstate and Foreign Commerce.

536. Also, memorial of the Legislature of the State of Louisiana, relative to a constitutional amendment to provide for the popular election of Federal judges; to the Committee on the Judiciary.

537. Also, memorial of the Legislature of the State of California, relative to shipbuilding and shipyard facilities; jointly, to the Committees on Armed Services and Merchant Marine and Fisheries.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. HUBBARD introduced a bill (H.R. 8187) for the relief of Dr. Javad Najadfi Sani, his wife, Parvin Nahvi, and their children, Roya N. Sani and Farhad N. Sani, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 581: Mr. MURPHY of New York.
H.R. 1918: Mr. CAVANAUGH.
H.R. 2813: Mr. ATKINSON.
H.R. 4646: Mr. WRIGHT.
H.R. 5211: Mr. GUYER.
H.R. 6579: Mr. KRAMER and Mr. PORTER.
H.R. 6977: Mr. LEDERER, Mr. ADDABBO, Mr. MILLER of California, Mr. CLAY, Mr. AUCOIN, Mrs. CHISHOLM, Mr. OTTINGER, Mr. MOFFETT, Mr. DOWNEY, and Mr. MURPHY of Illinois.
H.R. 7170: Mr. HINSON.
H.R. 7313: Ms. MIKULSKI, Mr. CHARLES WILSON of Texas, Mr. OBERSTAR, and Mr. GINGRICH.
H.R. 7436: Mr. NELSON.
H.R. 7688: Mr. MCCLOSKEY, Mr. BOWEN, Mr. SAWYER, Mr. FORD of Tennessee, Mr. CON-

TERS, Mr. AKAKA, Mr. ADDABBO, Mr. RODINO, Mr. DICKS, Mr. RITTER, Mr. NELSON, Mr. MARLENEE, Mr. GEPHARDT, Mr. CHARLES WILSON of Texas, Mr. EVANS of Georgia, Mr. IRELAND, Ms. MIKULSKI, and Mr. WALGREN.

H.R. 7773: Mr. ROUSSELOT.

H.R. 7861: Mr. FORSYTHE, Mr. FUQUA, Mr. BROWN of California, Mr. BEREUTER, Mr. WHITTAKER, Mr. LEDERER, Mr. LIVINGSTON, Mr. LAGOMARSINO, Mr. WHITEHURST, Mr. MCCLORY, Mr. CAVANAUGH, Mr. HUGHES, and Mrs. SMITH of Nebraska.

H.R. 7885: Mr. VENTO, Mr. MITCHELL of New York, and Mr. NELSON.

H.R. 8027: Mr. SENSENBRENNER.

H.J. Res. 139: Mr. ROYER.

H.J. Res. 300: Mr. TRAXLER.

H.J. Res. 511: Mr. MCCLOSKEY, Mr. SOLARZ, Mr. WILLIAMS of Ohio, Mr. LAFALCE, Mr. ANNUNZIO, Mr. HOLLAND, Mr. PERKINS, Mr. DANIELSON, Mr. KAREN, Mr. GINGRICH, Mr. BENJAMIN, Mr. SHUMWAY, Mr. FOUNTAIN, Mr. FASCELL, Mr. GILMAN, Mr. MOFFETT, Mr. BARNES, Mr. BURGENER, Mr. PANETTA, Mr. BREAUX, Mr. PRICE, Mr. DAVIS of South Carolina, Mr. WATKINS, Mr. RAHALL, and Mr. HUTCHINSON.

H. Con. Res. 134: Mr. WAXMAN, Mr. MOORHEAD of California, and Mr. VANDER JAGT.

H. Con. Res. 422: Mr. COLLINS of Texas, Mr. FAZIO, Mr. STRATTON, Mr. WINN, and Mr. ANDREWS of North Carolina.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

434. By the SPEAKER: Petition of the Minister of Foreign Affairs, Provisional Military Government of Socialist Ethiopia, relative to the U.S. military bases agreement and Somalia; to the Committee on Foreign Affairs.

435. Also, petition of the State Planning Council on Radioactive Waste Management, Washington, D.C., relative to council resolutions making recommendations on the transportation, storage, and disposal of nuclear waste; jointly, to the Committees on Interior and Insular Affairs and Interstate and Foreign Commerce.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4370

By Mr. CHENEY:

—Page 45, strike lines 17 through 25, inclusive.

By Mr. MARRIOTT:

—Page 45, strike lines 17 through 25, inclusive.

H.R. 6704

By Mr. ASHBROOK:

—Page 22, beginning on line 6, strike out "is amended" and all that follows through line 8, and insert in lieu thereof the following:

is amended—

(A) by inserting "or offenses which do not constitute violations of valid court orders" after "adult"; and

(B) by striking out "juvenile detention or correctional facilities" and inserting in lieu thereof "secure detention facilities or secure correctional facilities".

H.R. 6979

By Mr. DUNCAN of Oregon:

—Following section 13, add new section:

"SEC. 14. Amendment to the Marine Mammal Protection Act.

SEC. 5(b) of the Marine Mammal Protection Act of 1972 amended (33 U.S.C. § 476 (b)), is amended:

(1) by inserting the word 'such' after the words 'terminal, dock or other';

(2) by inserting 'except the Columbia River' after the words 'east of Port Angeles'; and

(3) By striking the period at the end thereof and inserting the words 'and Oregon'."

By Mr. LIVINGSTON:

—Strike lines 23–25 on page 17.

Strike lines 1–18 on page 18.

Substitute instead the following language.

"(c)(1) The Secretary shall conduct on an annual basis a systematic review of Federal programs, other than this title, that affect coastal resources for purposes of identifying problems of coordination among such programs including conflicts between (A) the objectives and administration of such programs and (B) the purposes and policies of this title.

"(2) The Secretary shall submit annually a report to the Congress setting forth the results of the review conducted pursuant to paragraph (1). Such report may also include such recommended legislative proposals as the Secretary deems appropriate to resolve existing conflicts among Federal laws that affect the uses of coastal resources.".

H.R. 7112

By Mr. CONABLE:

—At the end of the first title strike out the last word.

At the end of the first title strike out the next to the last word.

At the end of the first title strike out the penultimate word.

At the end of title II strike out the last word.

At the end of title II strike out the next to the last word.

At the end of title II strike out the penultimate word.

By Mr. ENGLISH:

—Page 17, line 16, strike out "years" and insert in lieu thereof "year" and strike out line 22 and everything that follows through line 6 on page 18 and insert in lieu thereof the following:

(2) LIMITATION ON TOTAL AMOUNT.—The total amount which may be appropriated pursuant to this subsection for the fiscal year ending September 30, 1981, shall not exceed $1,000,000,000.

By Mr. GEPHARDT:

—Page 3, after line 21 insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ADDITIONAL ALLOCATIONS TO LOCAL GOVERNMENTS.—

"(1) IN GENERAL.—In the case of any entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $460,000,000 to make additional allocations to local governments under section 107 for such entitlement period.

"(2) ENTITLEMENT PERIODS.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983.

Page 6, line 3, strike out the close quotation marks and the following period and insert after such line the following:

"SEC. 107. ADDITIONAL ALLOCATIONS TO LOCAL GOVERNMENTS.

"From any amount appropriated pursuant to section 105(c)(1) for any entitlement period beginning on or after October 1, 1981, there shall be allocated to each unit of local government an amount which bears the same ratio to the amount so appropriated for that period as the entitlement of that unit under section 106 bears to the sum of the entitlements of all units of local government under such section.".

By Mr. LOTT:

—At the end of the first title strike out the last word.

At the end of the first title strike out the next to the last word.

At the end of the first title strike out the penultimate word.

At the end of title II strike out the last word.

At the end of title II strike out the next to the last word.

At the end of title II strike out the penultimate word.

By Mr. MICHEL:

—At the end of the first title strike out the last word.

At the end of the first title strike out the next to the last word.

At the end of the first title strike out the penultimate word.

At the end of title II strike out the last word.

At the end of title II strike out the next to the last word.

At the end of title II strike out the penultimate word.

By Mr. QUILLEN:

—Page 11, strike out line 15 and everything that follows through line 22 on page 12.

By Mr. RHODES:

—At the end of the first title strike out the last word.

At the end of the first title strike out the next to the last word.

At the end of the first title strike out the penultimate word.

At the end of title II strike out the last word.

At the end of title II strike out the next to the last word.

At the end of title II strike out the penultimate word.

By Mr. ROSENTHAL:

—Page 18, strike out line 10 and everything that follows through line 14 and insert in lieu thereof the following: "shall not exceed the product of the economic decline factor for such quarter multiplied by $10,000,000".

By Mr. STANGELAND:

—Page 8, beginning on line 15, strike out all of subsection (a) through line 4 on page 11 and insert in lieu thereof the following:

"(a) STUDY OF MULTIPLE PURPOSE GOVERNMENTAL UNITS.—The Secretary of the Treasury, in conjunction with appropriate representatives of general puropse units of government, shall conduct a study of the variety, number, and extent of services provided by local governments for their citizens and shall, not later than one year after the date of enactment of this Act, report to the President and the Congress on the results of this study.".

H.R. 7548

By Mr. GLICKMAN:

—1. Page 26, strike out line 16 and insert in lieu thereof the following: "amended by adding new sections 4.17, 4.18, 4.19, 4.20, and 4.21.".

2. Page 31, insert between lines 2 and 3 the following new section 4.21:

"SEC. 4.21. TERMINATION OF PROVISIONS.—The provisions of (1) section 2.3 authorizing the Federal intermediate credit banks to lend to or discount paper for other financial institutions, and (2) section 3.7(b) authorizing the financing of certain domestic or foreign entities in connection with the import or export activities of cooperatives which are borrowers from the banks for cooperatives, shall expire on September 30, 1985, unless extended by Act of Congress prior to that date. Any contract or agreement entered into under the authority of either provision prior to its expiration shall remain in full force and effect notwithstanding such expiration.".

S. 885

By Mr. AUCOIN:

—On page 69, after line 17, insert:

"(n)(1) The Administrator may not acquire any resource derived from a new nuclear generating facility until such time as the Nuclear Regulatory Commission has licensed the operation of a permanent storage facility for high level nuclear waste and spent fuel from commercial nuclear generating facilities.

"(2) For purposes of this subsection, the term 'new nuclear generating facility' shall not include any nuclear generating facility for which a construction permit was issued by the Nuclear Regulatory Commission before the date of enactment of this Act.".

By Mr. CARR:

—Page 1, line 1, strike all after the enacting clause and insert in lieu thereof:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of content, may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.
Sec. 4. Regional planning and participation.
Sec. 5. Sale of power.
Sec. 6. Conservation and resource acquisition.
Sec. 7. Rates.
Sec. 8. Amendments to existing law.
Sec. 9. Administrative provisions.
Sec. 10. Savings provision.
Sec. 11. Effective Date.

PURPOSES

SEC. 2. The purposes of this Act, all of which are to be consistent with applicable provisions of environmental and other laws, are—

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System, conservation and efficiency in the use of electric power and the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest an adequate, efficient, economical, and reliable power supply;

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in the development of regional plans and programs related to energy conservation, renewable resources, other resources, and in achieving the purposes of this Act to facilitate the orderly planning of the region's power system, to provide environmental quality, and to protect, mitigate, and enhance the fish and wildlife resources;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this Act—

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this Act; and

(6) to protect, mitigate, and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other facilities on the Columbia River and its tributaries.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this Act or any other law, any electric generating facility.

(2) "Administrator" means the Administrator of the Bonneville Power Administration.

(3) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) "Cost-effective", when applied to any measure or resource referred to in this Act, means that such measure or resource must be forecast—

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, decommissioning costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administration determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

(C) In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

(D) For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

(5) "Consumer" means any end user of electric power.

(6) "Council" means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established by this Act.

(7) "Customer" means anyone who contracts for the purchase of power from the Administrator pursuant to this Act.

(8) "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(9) "Electric power" means electric peaking capacity, or electric energy, or both.

(10) "Federal base system resources" means—

(A) the Federal Columbia River Power System hydroelectric projects;

(B) resources acquired by the Administrator under long-term contracts in force on the effective date of this Act; and

(C) resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B).

(11) "Indian tribe" means any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior.

(12) "Major resource" means any resource that—

(A) has a planned capability greater than fifty average megawatts, and

(B) if acquired by the Administrator, is acquired for a period of more than five years but does not mean any resource acquired pursuant to section 11(b)(6) of the Federal Columbia River Transmission System Act.

(13) "New large single load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer, as applicable prior to September 1, 1979, and

(B) which will result in an increase in power requirements of ten average megawatts or more in any consecutive twelve-month period.

(14) "Pacific Northwest", "region", or "regional" means—

(A) the area consisting of the State of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without such region.

(15) "Plan" means the Regional Electric Power and Conservation plan adopted pursuant to this Act and such plan shall apply to actions of the Administrator as specified in this Act.

(16) "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(17) "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator—

(A) from resources, or

(B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific

contract provisions, portions of the electric power supplied to customers.

(18) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electric loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.

(19) "Resource" means—

(A) electric power, including the actual or planned electric power capability of generating facilities, or

(B) actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

(20) "Secretary" means the Secretary of Energy.

REGIONAL PLANNING AND PARTICIPATION

SEC. 4. (a)(1) To facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and the United States pursuant to this Act, there is established the Pacific Northwest Electric Power and Conservation planning Council, which shall have its offices in the Pacific Northwest. The Council shall be composed of eight members, and shall be considered formed when at least six members have been appointed.

(2) The Governors of Idaho, Montana, Oregon, and Washington may appoint, subject to applicable State law, two members from their respective States to carry out the functions of Council members set forth in this Act. The applicable State authorities and appointing actions of the States shall constitute an agreement to the exercise by the Council of the functions set forth in this Act, to which the Congress hereby consents.

(3) Members of the Council appointed pursuant to section 4(a)(2) shall—

(A) serve until June 30 of the third twelve-month period following the date of their appointment, unless otherwise provided by State law;

(B) be subject to removal in accordance with the provisions of State law;

(C) be compensated according to such State law from funds available pursuant to paragraph (14); and

(D) be deemed to be officers or employees of their respective States, and not of the United States.

(4)(A) If the Governors have not appointed at least six Council members by April 30, 1981, or if, for any other reason the Council set forth in paragraph (2) is unable to be formed or is held by a United States court of appeals to be unable to perform substantially all of its functions, the Secretary shall temporarily appoint two members from each of the States of Washington, Oregon, Idaho, and Montana to serve on an interim basis until such time as Congress or the States act to cure any impediment to the appointment of Council members pursuant to paragraph (2). Any appointments by the Secretary under this paragraph shall be made in a manner designed to assure continuity of the Council's functions and to minimize any possible disruption of the Council's activities during such interim period. Unless extended by the Congress, the interim Council appointed pursuant to this paragraph shall terminate at the end of the second full Congress following the first temporary appointment.

(B) Within one year after making any such temporary appointment pursuant to this paragraph, the Secretary, in consultation with the Governors of the Pacific Northwest States, shall formally submit to the appropriate committees of Congress recommended legislation that will permit members to be appointed by the Governors in the manner set forth in paragraph (2). The Secretary shall make quarterly reports to the Governors on the progress of such legislation until its enactment and to Congress as to whether the interim Council should be extended or any other recommendations for legislation or other action which the Secretary recommends should be taken, following termination of the Council, to continue carrying out the purposes for which the Council was established.

(C) If members are appointed by the Secretary on an interim basis pursuant to this paragraph, they shall (i) receive compensation under the General Schedule at a rate equivalent to the salary of members appointed from the same State by the Governor pursuant to paragraph (2); (ii) be considered during their temporary appointments, officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.); and (iii) be allowed travel expenses, including per diem in lieu of subsistence expenses, in addition to the compensation provided in this paragraph.

(D) In the event the Congress fails to extend the interim Council or enact legislation to cure any impediment to the appointment of Council members pursuant to paragraph (2), the Administrator may not implement any proposal to acquire a major generating resource or to grant billing credits or services involving a major generating resource until the expenditure of funds for that purpose has been specifically approved by Act of Congress.

(5) A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this Act, all actions and decisions of the Council shall be by majority vote of the voting members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of (A) a majority of the members appointed to the Council, including the vote of at least one member from each State; or (B) at least six members of the Council.

(6) The members of the Council shall select from among themselves a Chairman for the Council. The Council shall meet at the call of the Chairman or upon the request of a majority of the members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views.

(7) The Council shall appoint, and may assign and delegate duties to such executive and administrative personnel as the Council deems necessary to fulfill its functions under this Act, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this Act. No person appointed by the Council shall be deemed to be an employee of the United States.

(8) Upon request of the Council, the head of any Federal agency is authorized to detail to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this Act.

(9) To obtain such information and advice as the Council determines to be necessary or appropriate to carry out the purposes of this Act, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator and from other bodies or organizations in the region with particular expertise.

(10) The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions under this Act. The Council shall make available to the public a statement of its organization, practices, and procedures, and make available to the public its annual work program budget at the time the President submits his annual budget to Congress.

(11) The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.

(12)(A) At the request of the Council, the Administrator shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this Act and as the Council determines are necessary or appropriate for the performance of its functions including financial support to those States which have appointed members to the Council pursuant to section 4(a)(2) for their participation in the Council and activities of the State related thereto. Funds for such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d). Such funds shall not exceed annually an amount equal to 0.02 mill multiplied by the kilowatt hours sold by the Administrator during the preceding calendar year. In order to assist the Council's initial organization, the Administrator after the enactment of this Act shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

(B) Notwithstanding the limitation contained in the third sentence of subparagraph (A), upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions under this Act, the Administrator may raise such limit up to any amount not in excess of 0.10 mill multiplied by the kilowatt hours sold by the Administrator during the preceding calendar year.

(b)(1) The Council shall, subject to applicable law, establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

(2) The Council may, subject to applicable law, establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions under this Act.

(c) The Council shall ensure that the membership of any advisory committee established or formed pursuant to subsection (b) of this section shall, to the greatest extent feasible, be composed of representatives of, and seek the advice of, the various Federal, State, and Indian Tribal Governments, consumer groups, and customers whose interests are or may be directly or indirectly substantially affected by the recommendations of such advisory committees.

(d) Within two years after the effective date of this Act, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, nontechnical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which

may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, United States Code and such procedures as the Council shall adopt.

(e)(1) The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost effective. Priority shall be given: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.

(2) The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 of this Act to reduce or meet the Administrator's obligations with due consideration by the Council of (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.

(3) To accomplish the priorities established by this subsection, the plan shall include the following elements which shall be set forth in such detail as the Council determines to be appropriate:

(A) an energy conservation program to be implemented under this Act including, but not limited to, model conservation standards;

(B) recommendations for research and development;

(C) a methodology for determining quantifiable environmental costs and benefits under section 3(4);

(D) a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect of the requirements of subsection (h) on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and the types of resources from which such power should be acquired;

(E) an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost;

(F) the program adopted pursuant to subsection (h); and

(G) if the Council recommends surcharges pursuant to subsection (f), a methodology for calculating such surcharges.

(4) The Council shall undertake studies of conservation measures reasonably available to direct service industrial customers and other major consumers of electric power within the region and make an analysis of the estimated reduction in energy use which would result from the implementation of such measures as rapidly as possible, consistent with sound business practices. The Council shall include in such study and analysis estimates of financial assistance to the extent such assistance might be necessary for particular conservation measures to be implemented.

(f)(1) Model conservation standards to be included in the plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers through financial assistance made available to consumers under section 6(a) of this Act. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

(2) The Council by a majority vote of the members of the Council is authorized to recommend to the Administrator a surcharge and the Administrator shall thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures applicable to such customers that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

(g) To insure widespread public involvement in the formulation of regional power policies, the Council and Administrator shall—

(1) take into account, and give due consideration to, the results of the voting in any election bearing on those policies held in those States, or subdivisions thereof, which comprise the region, as defined in section 3(14), and

(2) maintain comprehensive programs to—

(A) inform the Pacific Northwest public of major regional power issues,

(B) obtain public views concerning major regional power issues, and

(C) secure advice and consultation from the Administrator's customers and others.

(h)(1)(A) The Council shall develop and adopt, pursuant to this subsection, a program to protect, mitigate, and enhance fish and wildlife, including habitat, on the Columbia River and its tributaries. Because of the unique history, problems and opportunities presented by the development and operation of the hydroelectric facilities on the Columbia River and its tributaries, the program shall be designed to deal with that river and its tributaries as a system. As a result, this subsection shall be applicable solely to fish and wildlife, including habitat, located on the Columbia River and its tributaries. Nothing in this subsection shall alter, modify or affect in any way the laws applicable to other rivers, river systems, or electric power facilities, or affect the rights and obligations of any agency, entity, or person under such laws.

(B) The Council shall request in writing promptly after the effective date of this Act and prior to the development or review of the plan, or any major revision thereto, from the Federal and the region's State fish and wildlife agencies and the region's appropriate Indian tribes, recommendations for—

(i) measures which the Administrator, using authorities under this Act and other laws, and other Federal agencies can implement to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries;

(ii) objectives for the development and operation of projects of the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife, and

(iii) fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation and enhancement of anadromous fish at and between the region's hydroelectric dams.

(C)(i) Agencies and tribes shall have ninety days to respond to such request, unless the Council extends the time for making such recommendations. The Federal and the region's water management agencies, and the region's electric power producing agencies, customers, and public may submit recommendations of the type referred to in subparagraph (1)(B), and comments on the recommendations submitted by agencies and tribes, within such reasonable time as the Council shall provide. All recommendations shall be accompanied by detailed information and data in support of the recommendations.

(ii) The Council shall give notice of all recommendations and shall make recommendations and supporting documents available to the Administrator, to the Federal and the region's State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Upon request, notice shall also be given to members of the public, and copies of recommendations and supporting documents shall be made available at reasonable cost. The Council shall provide opportunities for public participation and comment regarding the recommendations and supporting documents by conducting hearings or by other appropriate means.

(iii) Thereafter, the Council shall develop a program on the basis of recommendations, supporting documents, and relevant additional views and information. The program shall consist of measures to protect, mitigate and enhance fish and wildlife affected by the development or operation of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent they satisfy the criteria of this subsection and are designed to achieve protection and mitigation.

(iv) Measures included in the program shall—

(1) complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes;

(2) be based on and supported by the best available scientific knowledge;

(3) achieve sound biological objectives at minimum economic cost for each objective;

(4) be consistent with the legal rights of appropriate Indian tribes in the region; and, in the case of anadromous fish;

(5) provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and

(6) provide flows of sufficient quality and quantity between such facilities to improve production, migration and survival of such fish as necessary to meet sound biological objectives.

(v) The Council shall determine whether each recommendation received is consistent

with the purposes of this Act. In the event such recommendations are inconsistent with each other, the Council, in consultation with appropriate entities, shall resolve such inconsistency in the program giving due weight to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes. If the Council does not adopt any recommendation as part of the program, it shall explain in writing, as part of the program, the basis for its finding that the adoption of such recommendation would be—

(1) inconsistent with the purposes of the Act;

(2) inconsistent with the standards for the program established in this paragraph; or

(3) less effective than the adopted recommendations for the protection, mitigation, and enhancement of fish and wildlife.

(vi) The Council shall recognize, in developing and adopting a program pursuant to this subsection, the following additional principles:

(1) enhancement measures may be used, in appropriate circumstances, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the development and operation of the hydroelectric facilities of the Columbia River and its tributaries as a system,

(2) consumers of electric power shall bear the cost of measures designed to deal with adverse impacts caused by the development and operation of electric power facilities and programs only,

(3) monetary costs and electric power losses resulting from the implementation of the program shall be allocated by the Administrator consistent with individual project impacts and system-wide objectives pursuant to paragraph (2) of this subsection, and

(4) to the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures and measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among the appropriate parties providing for the administration and funding of such additional measures.

(vii) The Council shall adopt such program within one year of the time provided for receipt of the recommendations in section 4(h)(1)(B). Such program shall also be included in the plan adopted by the Council under subsection (d). The Council's actions pursuant to this paragraph shall be subject to judicial review under the provisions of section 9(e).

(2)(A) The Administrator shall use the Bonneville Power Administration fund and appropriations, if any, and the authorities available to the Administrator under this Act and other laws administered by the Administrator, to protect, mitigate, and enhance the fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, the program adopted by the Council under section 4(h)(1), the purposes of this Act, and the provisions of other laws. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

(B) The Administrator may make expenditures from such fund for such purposes which shall have been included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than five years or an aggregate capital cost of over $1 million shall be funded as provided in the appropriation Acts from the proceeds of bonds issued by the Administrator pursuant to section 13 of the Federal Columbia River Transmission System Act or from appropriations, including appropriations to other Federal agencies for such purposes.

(C) The amounts expended by the Administrator for each activity pursuant to this subsection shall be allocated as appropriate by the Administrator, in consultation with the Corps of Engineers and the Water and Power Resources Service, among the various hydroelectric projects of the Federal Columbia River Power System. Amounts so allocated shall be further allocated to the various project purposes in accordance with existing accounting procedures for the Federal Columbia River Power System.

(3)(A) The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall—

(i) exercise such responsibilities in coordination with one another, consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated under other provisions of law;

(ii) exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under paragraph (1).

If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with paragraph (2) of this subsection.

(B) The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Assistant Administrator for the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes and affected project operators in carrying out the provisions of this paragraph.

(4) Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Interstate and Foreign Commerce and on Interior and Insular Affairs of the House of Representatives. The report shall describe the actions taken and to be taken by the Council under this section including this subsection, the effectiveness of the fish and wildlife program, and potential revisions or modifications to the program to be included in the plan. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and tribes, the Administrator and the customers a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof. The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this Act, including this subsection.

(5) If, after one year from the effective date of this Act, the Council is unable to be formed or to perform its functions under the provisions of this subsection, the Administrator shall, upon request of the region's State and Federal fish and wildlife agencies or appropriate Indian tribes, carry out the development of a program in accordance with the provisions of this subsection, until such time as the Council is formed or the Administrator determines it is able to perform its functions.

(i) In carrying out the provisions of this section, the Council and the Administrator shall—

(1) consult with the Administrator's customers;

(2) include the comments of such customers in the record of the Council's proceedings; and

(3) recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.

(j) In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in accordance with applicable law, with such agencies, entities, tribes, and subdivisions individually, in groups, or through associations thereof to (1) investigate possible measures to be included in the plan, (2) provide public involvement and information regarding a proposed plan or amendment thereto, and (3) provide services which will assist in the implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council may be incorporated as part of the plan.

SALE OF POWER

SEC. 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A) the capability of such entity's firm peaking and energy resources used in the year prior to the enactment of this Act to serve its firm load in the region, and

(B) such other resources as such entity determines, pursuant to contracts under this Act, will be used to serve its firm load in the region.

In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

(2) Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937.

(3) In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on the effective date of this Act or as subsequently revised.

(5) The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this Act, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of insufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

(6) Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall—

(A) provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

(B) not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

(C) contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of the effective date of this Act, to be used to serve its own firm loads.

The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm resources determined by such customer under paragraph (1) to be used to serve its firm load.

(c)(1) Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.

(2) The purchase and exchange sale referred to in paragraph (1) with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

(3) The cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in paragraph (1) which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

(4) An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 7(b)(3) is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

(5) Subject to the provisions of sections 4 and 6, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1), the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.

(6) Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.

(7) The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include—

(A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility;

(B) the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act; and

(C) any costs of any generating facility which is terminated prior to initial commercial operation.

(d)(1)(A) The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.

(B) After the effective date of this Act, the Administrator shall offer in accordance with subsection (g) to each existing direct service industrial customer an initial long-term contract that provides such customer an amount of power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power".

(2) The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.

(3) The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines that such proposed sale is consistent with the plan and that—

(A) additional power system reserves are required for the region's firm loads,

(B) the proposed sale would provide a cost-effective method of supplying such reserves,

(C) such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and

(D) the Administrator has or can acquire sufficient electric power to serve such loads, and

unless the Council has approved such sale by majority vote. After such determination and approval, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.

(4)(A) As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on the effective date of this Act and which has before such effective date received electric power from the Administrator pursuant to such contract.

(B) The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.

(e)(1) The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 6 may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

(A) public bodies and cooperatives;

(B) Federal agencies;

(C) direct service industrial; and

(D) investor-owned utilities.

(2) Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 6 shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 6 shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.

(3) The Administrator shall, consistent with the provisions of this Act, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) are distributed equitably throughout the region.

(f) The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsection (b), (c), and (d) of this section in accordance with this and other Acts applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837–837h).

(g)(1) As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to—

(A) existing public body and cooperative customers and investor-owned utility customers under subsection (b);

(B) Federal agency customers under subsection (b);

(C) electric utility customers under subsection (c); and

(D) direct service industrial customers under subsection (d)(1).

(2) Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.

(3) An initial contract with a public body, cooperative, or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.

(4) An initial contract with an electric utility customer pursuant to subsection (c) shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after the effective date of this Act.

(5) An initial contract with a direct service industrial customer pursuant to subsection (d)(1) shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after the effective date of this Act. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.

(6) Initial contracts offered public body, cooperative, and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.

(7) The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1) (A) through (D).

CONSERVATION AND RESOURCE ACQUISITION

SEC. 6. (a) The Administrator shall acquire such resources, through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) and, in the case of major resources, in accordance with subsection (c). Such conservation measures and such resources may include, but are not limited to—

(1) loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,

(2) technical and financial assistance to, and other cooperation with, the Administrator's customers and governmental authorities to encourage maximum cost-effective voluntary conservation and the attainment of any cost-effective conservation objectives adopted by individual States or subdivisions thereof.

(3) aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 4(f), and

(4) conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.

(b)(1) In addition to electric power acquired under subsection 5(c) or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), the Administrator, without considering restrictions which may apply pursuant to subsection 5(b), shall meet his contractual obligations and his obligations to protect, mitigate and enhance fish and wildlife under section 4(h)(2) that remain after taking into account planned savings from measures provided for in subsection (a) by acquiring sufficient resources.

(2) Except as specifically provided in this section, acquisition of resources under this Act shall be consistent with the plan or, if no plan is in effect, consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) both as determined by the Administrator, and, in the case of major resources, in accordance with subsection (c).

(3) The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this section. The Administrator shall include in the contracts for the acquisition of any such non-Federal replacement resources provisions that will enable him to ensure that such non-Federal replacement resources are developed and operated in a manner consistent with the factors specified in section 4(e)(2) of this Act.

(4) Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to acquire and implement conservation and acquire renewable resources pursuant to subsection (a).

(5) In making any payment to an investor-owned utility for the acquisition under this subsection of any resource as defined by section 3(19)(A), or for the exchange of power under section 5(c), the Administrator shall exclude the costs of construction work in progress.

(c)(1) For each proposal under subsection (a), (b), (f), (h), or (l) to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m), as appropriate—

(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or, notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

In the case of subsection (f), such decision shall be treated as satisfying the requirements of this subsection, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

(2) Within sixty days after receipt of the Administrator's decision pursuant to paragraph (1)(D), the Council may determine by a majority vote of all members of the Council, and notify the Administrator, that the proposal is either consistent or inconsistent with the plan, or, if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(2): *Provided*, That the Council's authority to make consistency determinations if no plan is in effect shall cease upon the adoption of a plan or the expiration of two years from the effective date of this Act, whichever is earlier.

(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) unless (A) the Administrator determines that the resource is needed to meet the Administrator's contractual obligations under section 5 without considering restrictions which may apply pursuant to section 5(b), and (B) the expenditure of funds for that purpose has been specifically authorized by legislation enacted by the Congress pursuant to bills reported from the committees of Congress having jurisdiction, under the applicable rules of the respective Houses of Congress, over substantive amendments to the Federal Columbia River Transmission System Act and the Bonneville Project Act.

(4) Before the Administrator implements any proposal referred to in paragraph (1), the Administrator shall—

(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.

(B) publish notice of the decision in the Federal Register, and

(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

The Administrator may not implement any such proposal until ninety days after the date of publication in the Federal Register.

(d) The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 4(e)(1) and the considerations of section 4(e)(2) but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act.

(e)(1) In order to effectuate the priority given to conservation measures and renewable resources under this Act, the Administrator shall, to the maximum extent practicable, make use of his authorities under this Act to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, expenses incurred during the investigation and preconstruction of resources, as authorized in subsection (f)).

(2) To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carying out such arrangements.

(f)(1) For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of—

(A) a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

(B) any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).

In the case of any resource referred to in subparagraph (B), such reimbursement is authorized only if—

(i) such resource is subsequently denied State siting approval or other necessary Federal or State permits, or approvals,

(ii) such investigation subsequently demonstrates, as determined by the Administrator, that such resource does not meet the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or is not acceptable because of environmental impacts, or

(iii) after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

(2) The Administrator may exercise the authority of this subsection only if he does not foresee termination of the resource. If the Administrator reasonably foresees that certain actions of the resource sponsors may lead to termination of the resource, he shall specify such actions with particularity in the agreement and shall exclude reimbursement if the resource sponsors take such actions. In no event shall the Administrator agree to reimburse expenses incurred prior to the effective date of this Act or of the agreement.

(3) Any agreement under paragraph (1) shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for the Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.

(4) The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State siting approval or after the date the Administrator determines that the resource to be inconsistent with the plan or the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(g) At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

(h)(1) If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for—

(A) conservation activities independently undertaken or continued after the effective date of this Act by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this Act, or

(B) resources constructed, completed, or acquired after the effective date of this Act by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this Act. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(2) The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.

(3) The amount of credits for conservation under this subsection shall be set to credit the customer implementing or continuing the conservation activity for which the credit is granted for the savings resulting from such activity. The rate impact on the Administrator's other customers of granting the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.

(4) For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, an entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.

(5) Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.

(6) Prior to executing a contract for any billing credit or related services pursuant to this subsection, the Administrator shall—

(A) Comply with the notice and hearing provisions of subsection (c), and include in such notice the methodology the Administrator proposes to use in determining the amount of any such credit;

(B) Include the cost of such credit in the Administrator's annual or amended budget submittal to the Congress made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838(j));

(C) Include in such contract provisions to ensure that resources in excess of a customer's reasonable load growth shall have been offered to others for ownership, participation or other sponsorship pursuant to subsection (m), except in the case of conservation, multipurpose projects uniquely suitable for development by the customer, or renewable resources; and

(D) Include in such contract provisions to ensure that the operators of any generating resource for which a billing credit is to be granted agree to operate such resource in a manner compatible with the planning and operation of the region's power system.

(i) Contracts for the acquisition of resources

and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions, applicable after the contract is entered into, as will—

(1) insure timely construction, scheduling, completion, and operation of resources,

(2) insure that the costs of any acquisition are as low as reasonably possible, consistent (A) with sound engineering, operating, and safety practices and (B) the protection, mitigation, and enhancement of fish and wildlife, including related spawning grounds and habitat, affected by the development of such resources, and

(3) insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation, including environmental protection.

Such contracts shall contain provisions assuring that the Administrator has the authority to approve all costs of and proposals for, major modifications in construction, scheduling, or operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.

(j)(1) All contractual and other obligations required to be carried out by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

(2) All contracts entered into by the Administrator for the acquisition of resources pursuant to this Act shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1). The Administrator shall monitor and enforce such requirement.

(k) In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this Act and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

(l)(1) The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advise as to the desirability of pursuing such investigations.

(2) The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges may oc-

cur. The Council shall take into consideration in formulating a plan such investigations.

(3) After the Administrator submits a report to Congress pursuant to paragraph (5), the Administrator is authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 4(e)(1) and the considerations of section 4(e)(2). Such acquisitions shall be in accordance with the provisions of this section.

(4) The Administrator shall conduct the investigations and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.

(5) No later than July 1, 1981, the Administrator shall submit to the Congress a report of the result of the investigations undertaken pursuant to this subsection, together with the prospect for obtaining additional resources under the authority granted by this subsection and for reduction in generation or generating capacity through exchanges.

(m) Except as to resources under construction on the effective date of this Act, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's regional load.

(n) The Council may authorize the Administrator to implement a proposal not subject to the provisions of section 6(c)(1) upon satisfaction of the requirements of section 6(c)(4) notwithstanding a finding by the Administrator that such proposal is inconsistent with the plan, or, if no plan is in effect, inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(o) The Council or any customer of the Administrator may request the Administrator to take action under section 6 to carry out his responsibilities under this section. Within 60 days of the receipt of such request, the Administrator shall respond in writing either that he will propose the action and will initiate the procedures of this section in order to review the action, or that he will not propose the action and the reasons why such action would not be timely or would not be consistent with the plan or with the Administrator's obligations under this Act or other provisions of law which the Administrator shall specifically identify.

RATES

SEC. 7. (a)(1) The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

(2) Rates established under this section shall become effective only upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates—

(A) are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs,

(B) are based upon the Administrator's total system costs, and

(C) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal customers utilizing such system.

(b)(1) The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources.

(2) After July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative, and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources, and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers, if the Administrator assumes that—

(A) the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are—

(i) served by the Administrator, and

(ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of the effective date of this Act (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A);

(C) no purchases or sales by the Administrator as provided in section 5(c) were made during such five-year period;

(D) all resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B)) were—

(i) purchased from such customers by the Administrator pursuant to section 6, or

(ii) not committed to load pursuant to section 5(b),

and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) the quantifiable monetary savings, during such five-year period, to public body, cooperative, and Federal agency customers resulting from—

(i) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D), and

(ii) reserve benefits as a result of the Administrator's actions under this Act were not achieved.

(3) Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by—

(A) a difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1), and

(B) an overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

(4) The term "general requirements" as used in this section means the public body, cooperative, or Federal agency customer's electric power purchased from the Administrator under section 5(b), exclusive of any new large single load.

(c)(1) The rate or rates applicable to direct service industrial customers shall be established—

(A) for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 5(c), based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and

(B) for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.

(2) The determination under paragraph (1)(B) shall be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account—

(A) the comparative size and character of the loads served,

(B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and

(C) direct and indirect overhead costs,

all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

(3) The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

(d)(1) In order to avoid adverse impacts on retail rates of the Administrator's customers with low-system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

(2) In order to avoid adverse impacts on direct service industrial customers using raw materials indigenous to the region as their primary resource, the Administrator is authorized to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region.

(e) Nothing in this Act prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.

(f) Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c), and additional resources which, in the determination of the Administrator, are applicable to such sales.

(g) Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on the effective date of this Act, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this Act, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 6, the cost of credits granted pursuant to section 6, operating services, and the sale of or inability to sell excess electric power.

(h) Notwithstanding any other provision of this section (except the provisions of subsection (a)), the Administrator shall adjust power rates to include any surcharges arising under section 4(f), and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of section 4(f).

(i) In establishing rates under this section, the Administrator shall use the following procedures:

(1) Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice shall include a date for a hearing in accordance with paragraph (2).

(2) One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written or oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing—

(A) any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and

(B) the hearing officer shall allow for cross-examination to develop information and material relevant to any such proposed rate.

(3) In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before, the close of hearings shall be made a part of the administrative record.

(4) After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.

(5) The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have ben submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.

(6) The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission pursuant to subsection (a)(2). The Commission shall have the authority, in accordance with such procedures as the Commission may establish, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection: *Provided*, That, until the Commission has established appropriate procedures for interim approval, the Secretary shall have authority to approve on an interim basis final rates submitted by the Administrator.

(j) All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate—

(1) the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

(2) the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

(k) Notwithstanding any other provision of this Act, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after the date of this Act by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Notwithstanding section 201(f) of the Federal Power Act, such rates or rate schedules shall become effective after review by the Federal Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) and this subsection. The parties to such proceedings under subsection (i) shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act.

(l) In order to further the purposes of this Act and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) shall apply. In the case of any negotiation with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than the rates established under this Act for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.

AMENDMENTS TO EXISTING LAW

SEC. 8. (a) Section 11(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 837) is amended by striking out the semicolon at the end of paragraph (6) and inserting in lieu thereof ", or (iv) on a short term basis to meet the Administrator's obligations under section 4(h)(2) of the Pacific Northwest Electric Power Planning and Conservation Act;".

(b) Section 11(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 838) is amended by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacic Northwest Electric Power Planning and Conservation Act.".

(c) Subsection (b) of section 13 of such Act is amended by striking out "and 11(b)(11)" and inserting in lieu thereof ", 11(b)(11), and 11(b)(12)."

(d)(1) The first sentence of subsection (a) of section 13 of such Act is amended by inserting "(1) after "is authorized", by inserting after the word "system," the following: "and to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from any generating facility not utilizing a renewable resource or from a generating facility utilizing a renewable resource and having a planned capability greater than fifty average megawatts),", and by inserting "(2)" before "to issue and sell bonds to refund such bonds".

(2) The fourth sentence of such subsection (a) is amended by striking out "similar bonds" and substituting "triple-A rated nongovernment utility bonds." Based on information provided by the Administrator to the Secretary of the Treasury, the interest rate determined pursuant to the immediately preceding sentence will be increased by 1 per centum thereof for each immediately preceding consecutive fiscal year, beginning with the fiscal year in which this Act becomes effective, that the applicable financial reports, including current repayment studies, of the Administrator show repayment criteria not being met".

(3) Such subsection (a) is further amended by inserting the following before the period at the end thereof: "prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional $1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds."

(e) Clause (2) of section 1(b) of the Act of August 31, 1964 (78 Stat. 756) is amended to read as follows: "(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on the effective date of the Pacific Northwest Electric Power Planning and Conservation Act which has a distribution system from which it serves both within and without said region.".

(f) Section 7 of the Federal Columbia River Transmission System Act is amended by inserting "(a)" after "7" and by adding the following new subsection at the end thereof:

"(b)(1) From amounts available to the Administrator from the fund under section 11(b)(2), the Administrator shall make annual impact aid payments to State and

local governments having within their jurisdiction the transmission facilities described in paragraph (2). The Administrator may also make impact aid payments to State and local governments with respect to transmission facilities of the Administrator other than those described in paragraph (2) where the construction of such facilities, or any substantial modification thereof, is completed after the date of enactment of the Pacific Northwest Electric Power Planning and Conservation Act and the Administrator determines that such facilities have a substantial impact on the State and local government concerned.

"(2) The transmission facilities for which payments shall be made under this subsection are any major transmission facilities—

"(A) which are owned by the Bonneville Power Administration;

"(B) which are exempt from State and local real property taxes; and

"(C) initial construction of which was completed after the date of the enactment of the Pacific Northwest Electric Power Planning and Conservation Act.

"(3)(A) The payments made under this subsection for any year shall be determined on the basis of a regionwide formula established by the Administrator by rule, after notice and opportunity for public hearing and after consultation with State and local governments in the region and the Administrator's customers in the region. Such formula shall provide for an annual payment based on (i) the amount of land and interests in land acquired by the Administrator for purposes of constructing the facility, and the value of the facilities constructed thereon, and (ii) the costs of all governmental services related to the facility and an appropriate share of the general government expenses which are ordinarily paid from State and local real property taxes. No annual payment to any such State or local government may exceed such amount as the Administrator determines would be paid to such government during that year if the transmission facilities were not exempt from State and local real property taxation.".

ADMINISTRATIVE PROVISIONS

SEC. 9. (a) Subject to the provisions of this Act and the Bonneville Project Act, the Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)).

(b) The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), sections 302(a) (2) and (3) of the Department of Energy Organization Act, and this Act. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this Act in a sound and businesslike manner.

(c) Any contract of the Administrator for the sale or exchange of electric power for outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties impose upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this Act. The Administrator shall, in making any determination, under any contract executed pursuant to section 5, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

(d) No restrictions contained in subsection (c) shall limit or interfere with the sale, exchange, or other disposition of any power by any utility or group thereof from any existing or new non-Federal resource if such sale, exchange, or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. The Administrator, in addition to the directives contained in subsections (1)(1)(B) and (1)(3), and subject to any contractual obligations of the Administrator, or any other obligations under existing law, shall (1) provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and (2) shall not discriminate on the basis of independent development of resources against any utility or group thereof in providing such services.

(e)(1) For purposes of sections 701 through 706 of title 5, United States Code, the following actions shall be final actions subject to judicial review—

(A) adoption of the plan or amendments thereto by the Council under section 4, and adoption of the program by the Council under section 4(h);

(B) sales, exchanges, and purchases of electric power under section 5;

(C) the Administrator's acquisition of resources under section 6;

(D) implementation of conservation measures under section 6;

(E) execution of contracts for assistance to sponsors under section 6(f);

(F) granting of credits under section 6(h); and

(G) establishment of regionwide formula under section 7(b)(3) of the Federal Columbia River Transmission System Act.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this Act. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706 of title 5, United States Code. The scope of review of an action under section 6(c) shall be governed by section 706 of title 5, United States Code. Nothing in this section shall be construed to require a hearing pursuant to section 554 or 557 of title 5 of the United States Code.

(3) Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.

(4) For purposes of this subsection—

(A) major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to section 6(c)(4)(B);

(B) resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;

(C) conservation measures shall be deemed to be implemented upon execution of the contract or grant therefor; and

(D) rate determinations pursuant to section 7 shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.

(5) Suits to challenge final actions and decisions taken pursuant to this Act, or the implementation of such final actions, whether brought pursuant to this Act, the Bonneville Project Act, the Act of August 31, 1964 (16 U.S.C. 837–837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the appropriate Federal court in the case of rates under section 7 and in the United States court of appeals for the region in the case of other actions or decisions subject to the provisions of this subsection. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this Act to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such courts shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan, as finally adopted or portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other action under this Act or any other law administered by the Administrator.

(f) For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provide in section 103(a)(1) of the Internal Revenue Code of 1954 shall not be affected by the Administrator's acquisition of such resources if—

(1) the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 5 of this Act are public bodies, cooperatives, and Federal agencies, unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exemot persons (as defined in section 103(b) of such Code), and

(2) based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of such Code).

The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury. For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.

(g) When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under section 5(c) or 6, the Federal Energy Regulatory Commission shall, in accordance with section 209 of the Federal Power Act (16 U.S.C. 824h)—

(1) convene a joint State board, and

(2) invest such board with such duties

and authority as will assist the Commission in its review of such rates.

(h)(1) No "company" (as defined in section 2(a)(2) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(2)), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 6 shall be deemed an "electric utility company" (as defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(3)), within the meaning of any provision or provisions of chapter 2C of title 15 of the United States Code, if at least 90 per centum of the electricity generated by such company is sold to the Administrator under section 6, and if—

(A) the organization of such company is consistent with the policies of the Public Utility Holding Company Act of 1935, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and

(B) participation in any facilities of such "company" has been offered to public bodies and cooperatives in the region pursuant to section 6(m).

(2) The Administrator shall include in any contract for the acquisition of a major resource from such "company" provisions limiting the amount of equity investment, if any, in such "company" to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource.

(3) In the case of any "company" which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all significant contracts entered into by, and between, such "company" and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policy of the Public Utility Holding Company Act of 1935 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.

(4) Paragraph (1) of this subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determine at any time that the "company" no longer operates in a manner consistent with the policy of the Public Utility Holding Company Act of 1935 and in accordance with this subsection, and (B) notify the "company" in writing of such preliminary determination. This subsection shall cease to apply to such "company" thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.

(i)(1) At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable—

(A) acquire any electric power required by (i) any customer or group of customers to enable them to replace resources determined to serve firm load under section 5(b), or (ii) direct service industrial customers to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting such power; and

(B) dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this Act and other applicable laws.

(2) In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition or disposition of electric power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial cutomer an opportunity to participate in such acquisition or disposition.

(3) The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations, or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year.

(j)(1) The Council, as soon as practicable after the enactment of this Act, shall prepare, in consultation with the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will encourage conservation and efficient use of electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.

(2) Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owner renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under section 6(h) that might be realized by such customers as a result of adopting and implementing such retail rate structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.

(k) There is hereby established within the administration an Assistant Administrator position for conservation and renewable resources. Such Assistant Administrator shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions.

SAVINGS PROVISIONS

SEC. 10. (a) Nothing in this Act shall be construed to affect or modify any right of any State or political subdivision thereof or electrical utility to—

(1) determine retail electric rates, except as provided by section 5(c)(3);

(2) develop and implement plans and programs for the conservation, development, and use of resources; or

(3) make energy facility siting decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.

(b) Nothing in this Act, shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of the effective date of this Act.

(c) Nothing in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

(d) If any provision of this Act is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reimburse investigation and preconstruction expenses pursuant to section 5, and section 6 (a), (b), (f), or (h) of this Act shall not be affected by such finding.

(e) Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

(f)(1) Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual.

(2) In the implementation of this Act, the United States, its agents, permittees, or licensees shall not appropriate, use, divert, dedicate, or claim water within any State unless such appropriation, use, diversion, dedication, or claim takes place pursuant to substantive and procedural provisions of State law, regulation, or rule of law, including the establishment, exercise or enforcement of terms or conditions, governing appropriation, use, diversion, or dedication of water.

(3) Nothing in this Act shall alter in any way any provision of State law, regulation, or rule of law or of any interstate compact governing the appropriation, use, diversion, dedication of, or claim to, water.

(4) Nothing in this Act shall be construed as altering or affecting the rights of any Indian tribe.

(g) Nothing in this Act shall obliegate the Federal Government for the performance of any new contracts executed by the Administrator or Council directly or indirectly unless specifically authorized by Congress.

(h) The reservation under law of electric power for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State, plus 50 per centum of any electric power produced at Libby Rereculating Dam if built, is hereby affirmed. Electric power so reserved shall be sold at the rate or rates set pursuant to section 7.

EFFECTIVE DATE

SEC. 11. This Act shall be effective on the date of enactment, or October 1, 1980, whichever is later. The term "date of enactment of this Act" as used in this Act shall be either such date or October 1, 1980.

DOE STUDY OF OTHER REGIONS

SEC. 12. (a) The Secretary of Energy shall undertake a study of the means by which the benefits accruing to the Pacific Northwest pursuant to the provisions of this Act may be duplicated in other regions throughout the United States through the establishment of other Federal regional electric power planning and financing agencies having authority comparable to those granted to the Administrator under this Act. Such

study shall include an examination of the means by which agencies may reduce the cost of electric power throughout the various regions of the United States by planning for electric power production and utilizing cost effective conservation measures on a regional basis and by reducing the cost of financing for new privately and publicly owned generation and transmission facilities.

(b) The Secretary of Energy shall submit a report to Congress not later than 6 months after the date of the enactment of this Act containing the results of the study carried out under this section.

—Page 85, strike lines 18 through 20 and renumber the subsections accordingly.

—Page 85, strike lines 19 and 20 and substitute: ed by striking out "similar bonds." and substituting "triple-A rated nongovernment utility bonds."

—Page 85, beginning in line 7, strike out "Beginning in" and all that follows down through "if" in line 8 and substitute "If".

Page 85, strike out line 12 and all that follows down through "the Secretary" in line 15 and substitute "Energy, the Secretary".

Page 86, line 20, strike out "1" and substitute "2 and ½".

Page 86, strike out line 25 and all that follows down through the period in line 5 and substitute: "The rates established by the Administrator as provided in section 7 of the Pacific Northwest Electric Power and Planning and Conservation Act shall include such automatic adjustment provisions (including fuel adjustment clauses and purchased power adjustment clauses) as may be necessary to insure that, to the maximum extent practicable, funds will be available to the Administrator to comply with the repayment criteria of the Secretary of Energy.".

—Page 87, after line 16, insert:

(f) Section 11 of the Federal Columbia River Transmission System Act is amended by inserting the following new subsection at the end thereof:

"(e) Nothing in this or any other Act (except subsection (b)(6)(i) and (iii)) shall be deemed to authorize or permit the Administrator to purchase electric power (or the entitlement of electric plant capability) unless such purchase is authorized by legislation enacted by the Congress pursuant to bills reported from the committees of Congress having jurisdiction, under the applicable rules of the respective Houses of Congress, over substantive amendments to the Federal Columbia River Transmission System Act and Bonneville Project Act.".

—Page 103, after line 5, insert:

DOE STUDY OF OTHER REGIONS

SEC. 13. (a) The Secretary of Energy shall undertake a study of the means by which the benefits accruing to the Pacific Northwest pursuant to the provisions of this Act may be duplicated in other regions throughout the United States through the establishment of other Federal regional electric power planning and financing agencies having authorities comparable to those granted to the Administrator under this Act. Such study shall include an examination of the means by which such agencies may reduce the cost of electric power throughout various regions of the United States by planning for electric power production and utilizing cost effective conservation measures on a regional basis and by reducing the cost of financing for new privately and publicly owned generation and transmission facilities.

(b) The Secretary of Energy shall submit a report to Congress not later than 6 months after the date of the enactment of this Act containing the results of the study carried out under this section.

Amend the table of contents on page 2 by adding the following new item at the end thereof:

"Sec. 13. DOE study of other regions.".

—Page 85, beginning in line 22, strike out "prior to" and all that follows down through line 5 of page 86 and substitute: ", as provided in annual appropriation Acts".

—Page 8, line 5, strike the word "fifty" and insert in lieu thereof the word "five".

Page 85, line 17, strike the number "50" and insert in lieu thereof the number "5".

—Page 8, line 5, strike the word "fifty" and insert in lieu thereof the word "fifteen".

Page 85, line 17, strike the number "50" and insert in lieu thereof the number "15".

—Page 8, line 5, strike the word "fifty" and insert in lieu thereof the word "twenty-five".

Page 85, line 17, strike the number "50" and insert in lieu thereof the number "25".

—Page 20, line 20, strike the comma and everything that follows and add a period after "functions".

Page 20, strike lines 21 and 22.

—Page 19, line 19, after the word "personnel" insert the following: ", not to exceed twenty individuals,".

—Page 13, line 23, strike section 4(b)(1).

Page 14, line 18, strike section 4(b)(2).

Page 15, line 18, strike section 4(b)(3).

Page 16, line 17, strike section 4(b)(4).

Page 17, line 4, strike section 4(b)(5)(A).

Page 17, line 15, strike section 4(b)(5)(B).

—Page 103, add the following section:

"At the end of each calendar year, beginning in 1981, the Bonneville Power Administration shall be treated for federal income taxation purposes in the same manner as any regulated private electric utility, and shall file all appropriate tax returns and make federal income tax payments based upon its entire system capital and operating costs and revenues."

—Page 52, line 18, strike the period and add the following: ": *Provided*, That no power may be delivered under any initial contract to any direct service industrial customer until such customer has been certified, after public hearings and a finding by the Council that it meets the best available energy conservation standards in each facility owned or operated by such customer.".

—Page 21, line 17, strike the figure "0.02" and insert in lieu thereof the figure "0.03".

By Mr. LOWRY:

(Amendment to the amendment offered in the nature of a substitute.)

—Page 10, lines 15–17, strike "(A) electric power," and all that follows and insert in lieu thereof: "electric power, electric power output of generating facilities, programs and measures to conserve electric power, renewable energy technologies, and programs and measures to utilize renewable technologies, or".

By Mr. MILLER of California.

(Amendments to the amendment in the nature of a substitute.)

—Page 58, line 19, strike from "Act" through line 18 and insert in lieu the following: "legislation reported from the Committees on Interstate and Foreign Commerce and Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.".

Page 85, line 16, strike after "facility" and through line 7 and insert in lieu the following: "not utilizing renewable resources.".

By Mr. VENTO:

(Amendment to the amendment in nature of a substitute.)

—Page 55, section 6(b)(3), line 7, after "4(e)(2) of this Act" and before the period insert the following: "except a major resource or new large single load unless authorized by Congress.".

—Page 102, section 10, after line 16, add a new subsection (I):

Nothing in this Act shall obligate the federal government for the performance of any new contracts executed by the Administrator or Council directly or indirectly unless specifically authorized by Congress.

By Mr. WEAVER:

(Amendment to the amendment in the nature of a substitute.)

—Page 6, line 3, after "quantifiable" insert "direct and indirect".

—Page 6, line 4, insert between "environmental" and "costs", "and social".

—Page 6, line 13, strike ", including" and insert "based on".

—Page 10, line 12, strike "four" and insert therefor "two".

—Page 10, lines 15–21, strike "(A) electric power", and all that follows down through page 10, line 21 and insert in lieu thereof: "electric power, electric power output of generating facilities, programs and measures to conserve electric power, renewable energy technologies, and programs and measure to utilize renewable technologies.".

—Page 11, line 24, strike "two persons from each State" and insert "four persons from Washington, three persons from Oregon, and two persons each from Idaho and Montana".

—Page 11, line 24, strike "two persons" and insert "one person".

—Page 11, lines 24–25, strike "appointed" and insert "elected".

Page 12, line 2, after "Council.", insert "All references in this Act to the appointment of the members of such Council shall be deemed to mean the election of the members of such Council under applicable state law.".

—Page 12, line 9, strike "two" and insert "three".

—Page 12, line 15, strike "three" and insert therefor "four"; and

Page 12, line 18, strike "three" and insert therefor "four".

—Page 12, line 19, after "chairman", insert "which shall rotate among the states' representatives on an annual basis".

—Page 13, line 5, strike "GS–18" and insert therefor "GS–17".

—Page 18, line 3, strike "whenever" and all that follows down through line 10 and insert therefor "all contracts executed by the Administrator pursuant to section 5 or section 6 of this Act shall be null and void".

—Page 18, line 15, strike "A majority" and insert therefor "Six".

—Page 18, line 22, strike "(A) a majority" and all that follows down through "(B)" on page 18 line 25.

—Page 18, line 22, strike "(A) a majority" and all that follows down through "Council" on page 18 line 25 and insert therefor "all members of the Council".

—Page 19, line 2, strike "three" and insert therefor "four".

—Page 21, line 17, strike "0.02" and insert therefor "0.019".

—Page 22, line 4, strike "0.10" and insert therefor "0.09".

—Page 23, line 5, strike "five" and insert therefor "four".

—Page 23, line 15, strike "section 553" and insert therefor "section 554".

—Page 25, line 17, strike "may" and insert "shall".

—Page 26, line 6, strike ", taking" and all that follows down through "section," on line 8.

—Page 27, line 10, strike "may" and insert therefor "shall".

—Page 29, line 10, strike the first comma and insert "and".

Page 29, line 10, strike ", fish and wildlife".

Page 29, line 13, strike the first comma and insert "and" and strike ", and fish and wildlife".

—Page 30, line 5, delete "tributaries." and insert "tributaries and on other rivers and their tributaries in the region. All references in this Act to the Columbia River and its tributaries shall be deemed to include other rivers and tributaries in the region.".

Page 4, line 16, after "tributaries" insert "and of other rivers and tributaries in the region".

—Page 32, line 3, strike "at reasonable cost".

—Page 32, line 16, strike "while" and all that follows down through "supply" on page 32, line 18.

—Page 33, line 6, strike "(C) utilize" and all that follows down through "cost;" on page 33, line 8, and renumber accordingly.

—Page 34, line 17, strike "may" and insert therefor "shall".

—Page 37, line 18, strike "to the fullest extent practicable".

—Page 38, line 14, strike "Committees on Interstate and Foreign Commerce and" and insert therefor "Committee".

—Page 39, line 14, strike "To the greatest extent practicable, within" and insert therefor "Within".

—Page 40, line 4, strike "(k)(1) Not" and all that follows down through page 41, line 2.

—Page 41, line 12, strike "and to each requesting investor-owned utility".

Page 41, line 13, strike the comma and insert in lieu thereof: "or".

Page 41, line 14, strike "or investor-owned utility".

Page 42, line 5, strike "(2) Contracts" and all that follows down through page 42, line 8, renumbering accordingly.

Page 42, line 13, after "cooperative" strike the comma and insert in lieu thereof "or".

Page 42, line 13–14, strike "or investor-owned utility".

—Page 43, line 3, after "imposed" insert ", but not less than five years".

—Page 44, line 12, strike "(2) The" and all that follows down through page 44, line 18.

—Page 45, line 11, after "subsection" insert ", so long as such termination results in a decrease in the rates charged pursuant to section 7(b)(1) in the amount necessary to prevent the exceeding of the limit established by section 7(b)(2)".

—Page 46, line 17, after "sales" insert ", in their entirety, notwithstanding the provisions of subparagraph (B) of this paragraph relating to the provisions of any contract dated January or April 1975,".

—Page 47, line 4, after "directly" insert "or indirectly".

—Page 48, line 23, after "customer" insert "and, notwithstanding any provision of section 7, such electric power shall be sold at a price that reflects the full cost of acquiring such power plus the appropriate administrative costs of the Administrator".

—Page 50, line 6, strike "(C) direct service industrial and renumber accordingly.

—Page 51, line 10, after "and" insert ", within twenty-four months,".

—Page 51, line 10, after "and" insert ", as soon as the Plan is adopted pursuant to section (4d),".

—Page 53, line 3, strike "(7) The" and all that follows down through page 53, line 5.

—Page 54, line 20, after "Act.", insert "(b) The Administrator shall require in utility customer contracts that those utilities shall purchase excess electricity at appropriate prices offered for sale by individuals owning and operating renewable energy equipment.", renumbering accordingly.

—Page 54, line 20, after "Act." insert a new subsection, renumbering accordingly "(b) In making any payment to a utility for the acquisition of a resource under section 6(a)(2) or for the exchange of power under section 5(C), the Administrator shall exclude the costs of construction work in progress."

—Page 58, line 9, after "(1)" insert "when no plan is in effect or" and on page 58, line 11, strike "or, if" and all that follows down through "section 4(e)(2)" on page 58, line 13.

—Page 58, line 19, after "Congress" insert "pursuant to bills reported from the Committees of Congress having jurisdiction, under the applicable rules of the respective Houses of Congress, over substantive amendments to the Bonneville Project Act and the Federal Columbia River Transmission System Act,".

—Page 59, line 19, after "Congress" insert "(d) Prior to the acquisition of a specific major resource, any utility may notify the Administrator of its determination not to participate in such resource if such utility has determined by a referendum or a vote by its governing body not to participate in such resource.

In the event of such notification, the Administrator shall not include costs from such resource in the rates charged such utility, and the Administrator, in allocating power among the utilities, shall not allocate to nonparticipating utilities any power from such resource. Such allocation shall be adjusted from time to time to take into account the historical operating experience of the resource.".

—Page 60, line 20, strike "(f)(1) For" and all that follows down through page 62, line 18.

Page 55, line 22, strike "(f),".

Page 55, line 25, strike "to" and all that follows down through "resource," on page 56, line 2.

Page 52, line 2, strike "(f),".

Page 57, line 15, strike "In the case" and all that follows down through page 57, line 22.

Page 60, line 11, strike "(including" and all that follows down through page 60, line 14, and insert in lieu thereof a period.

Page 91, line 7, strike "(E)" and all that follows down through page 91, line 8, and renumber accordingly.

—Page 68, line 19, after "subsection" insert "and the Congress by concurrent resolution, approves such report".

—Page 69, line 17, after "load.", insert new subsections:

"(n)(1) In each case of major resource acquisition, the Administrator shall resource asquisition, the Administrator shall promptly transmit to the Attorney General a copy of any resource acquisition proposal provided for in subsections (a), (b), (f), (h) or (i); and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such proposal, render such advice to the Administrator as he determines to be appropriate in regard to the finding to be made by the Administrator pursuant to paragraph (3) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

"(2) Upon the request of the Attorney General, the Administrator shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

"(3) Promptly upon receipt of the Attorney General's advice, the Administrator shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Administrator in connection with the subject matter or his advice. The Administrator shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the proposal would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a of the Atomic Energy Act of 1954 (42 USC 2135).

"(4) In the event the Administrator's finding under paragraph (3) is in the affirmative, the Administrator shall terminate such proposal, notwithstanding other provisions of this Act.

—Page 71, line 1, after "(1)" insert "(A)";

—Page 71, line 1, strike out "a rate or";

—Page 71, line 5, strike out "Such rate or rates shall" and all that follows down through page 71, line 12 and substitute:

"(b) The rates of general application established under this paragraph for electric power sold to meet such general requirements and loads under section 5(c) shall consist of the following separate rates—

(i) A rate which shall recover both (I) the costs of that portion of the Federal base system resources needed to serve such general requirements and loads and (II) the costs of the electric power acquired by the Administrator under section 5(c) to serve such general requirements and loads.

(ii) Separate rates which shall recover the costs of any additional electric power acquired by the Administrator from sources other than the sources referred to in clause (i) in order to serve such general requirements and loads under section 5(c).

(C) The rates under clause (ii) of paragraph (B) shall consist of the following separate rates—

(i) A rate for that amount of additional electric power referred to in clause (ii) of subparagraph (B) which is initially purchased by the Administrator in the first ten year period during which any such additional electric power is purchased by the Administrator for purposes of sales referred to in such clause (ii).

(ii) Separate rates for that amount of additional electric power referred to in clause (ii) of subparagraph (B) which is initially purchased in each succeeding ten year period during which any such additional electric power is purchased by the Administrator for purposes of sales referred to in such clause (ii).

(D) The rates established pursuant to subparagraph (B)(ii) for any electric power acquired by the Administrator from a new resource shall recover the full costs of such new resource over its useful life.

(E)(i) The Administrator shall annually allocate the electric power sold at the rate established under clause (i) of subparagraph (B) to the customers referred to in subparagraph (A), including public bodies and cooperatives formed after the date of the enactment of this Act which initially become customers of the Administrator after such date.

(ii) In the case of the public body, cooperative, and Federal agency customers, such allocation shall be in proportion to general requirements of each such customer, except that the allocation shall be adjusted to give equitable consideration to differing rates of population growth, employment, and irrigated acreage.

(iii) In the case of the customers acquiring electric power pursuant to section 5(c), such allocation shall be adjusted on the basis of population growth and irrigated acreage.

(F) Each separate rate required pursuant to this subpargraph shall be separately stated on a billing provided to the customer for purposes of periodically notifying the customer of the charges for electric power purchased subject to each such rate.

(G) Whenever the rates charged to public body, cooperative, and Federal agency customers are modified by reason of the limitation contained in paragraph (2), such modified rates shall be established, where practicable, as separate rates charged according to the rate structure described in subparagraphs (B) and (C), and where not practicable, according to a rate structure which the Administrator determines will maintain the effects of such separate rates and will carry out the purposes of subparagraphs (B) and (C).".

Page 80, strike "(1) All" and all that follows down through line 4 on page 81.

—Page 56, line 17, strike "to assist in evaluating the".

Page 56, line 18, strike "proposal".

Page 56, line 24, after "decision" insert

"based on the record developed pursuant to subparagraph (c) of this paragraph".

Page 91, line 22, after "Code" insert including sections 706(2)(E) and 706(2)(F) thereof".

—Page 76, line 12, after "customers." insert "(4) Notwithstanding any other provision of this subsection, the rates established by this subsection for that portion of the direct service industrial load that is not subject to interruption by the Administrator for the purpose of providing reserves shall in no event be less than the average cost to the Administrator of acquiring new resources pursuant to section 6 in the year previous to the sale of power to any direct service industrial customer to which this subsection applies.".

—Page 77, line 8, after "time-of-day" insert "rates, conservation rates, inverted rates, multi-tier rates".

—Page 80, line 24, strike the second "and";

Page 81, line 4, strike the period; insert therefor ", and (3) a statement by the Administrator, rationalizing why the rates established pursuant to this section for resources required to meet load growth within the region are less than the actual costs of acquiring such resources."

—Page 91, line 22, strike "Nothing" and all that follows down through page 91, line 24.

—Page 92, line 25 and page 93, line 3, strike "ninety" and insert therefor "one hundred twenty".

—Page 93, line 5, strike "sixty" and insert therefor "ninety".

—Page 95, line 4, strike "(h)(1) No" and all that follows down through page 97, line 9.

—Page 98, line 17, strike "The" and all that follows down through page 98, line 24.

—Page 100, line 7, strike "Such" and all that follows down through page 100, line 10.

—Page 100, line 10, after "positions." insert:

"(1) The authorities granted and the programs established by this Act, insofar as they exceed those existing the day before the date of enactment of this Act, shall cease to be effective on the date five years after the date of enactment of this Act, unless the Congress by Joint Resolution reauthorizes such authorities and programs before such date."

—Page 100, line 10, after "positions." insert:

"(1) No rule and regulation promulgated by the Administrator or the Council pursuant to this Act shall become effective until the Congress, by concurrent resolution, has approved such rule and regulation: *Provided*, That, any such rule or regulation shall be considered approved by the Congress if no action has been taken by the Congress regarding such rule or regulation within 60 days after such rule or regulation has been promulgated. For the purpose of determining the 60 days referred to in the previous sentence, only days on which both Houses of Congress are in session shall be included."

—Page 101, line 8, strike "(d) If" and all that follows down through page 101, line 14.

—Page 101, line 24, after "Act" insert ", including section 10(a)(1),".

—Page 102, line 4, strike "(h)" and all that follows down through page 102, line 16.

—Page 102, line 24, strike "Sec. 12" and all that follows down through page 103, line 5.

—Page 46, line 20, strike "(B) After" and all that follows down through page 47, line 2 and insert therefor "(B) After the effective date of this Act, the Administrator shall auction to any and all direct service industrial customers the rights to electric power service pursuant to subparagraph (A) of this paragraph. Such auction sales shall be executed in increments of megawatt-hours and for periods of five years and shall be limited to such total amount of power as the Administrator can assure delivery. The Administrator shall not sell any power under this subsection except to the highest bidders in the auction held pursuant to this subparagraph.".

—Page 1, strike all after the enacting clause and insert therefor "That this Act may be cited as the "Northwest Renewable Resources, Conservation, and Energy Planning Act."

FINDINGS

SEC. 2. The Congress finds that—

(a) The Federal Columbia River power system offers a unique opportunity to encourage policies of conservation and efficiency in the use of electric power within the Pacific Northwest region and to demonstrate the effectiveness of such policies to the Nation at large.

(b) The participation and consultation of the States, local communities, ratepayers, fishery agencies, and the public at large are essential in development of regional plans and programs related to energy conservation, renewable resources, and other generating resources and orderly planning of the Federal Columbia River power system.

(c) The ratepayers of the Pacific Northwest should continue to pay all costs necessary to produce, transmit, and conserve electric power to meet the region's electric power requirements, including the amortization of the Federal investment in the Federal Columbia River power system.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrator" means Administrator, Bonneville Power Administration.

(b) "Conservation" means any improvement in the efficiency of energy production or use or any reduction in energy use.

(c) A conservation measure or program, a renewable resource application or program, or any other resource is "cost-effective" for purposes of this Act if it meets the end-use energy demand at a cost below the cost of generating and distributing electricity from the next least-cost alternative program or resource. For purposes of determining the cost of resources under this subsection, the term "cost" shall include, but not be limited to, the costs of the full fuel cycle, including prospective cost escalation, availability of fuel and plant decommissioning and waste disposal, the appropriate historical capacity and availability factors, the appropriate and actual financing costs, and the direct and indirect social and environmental costs (including the impact on the affected region's fisheries that acompanies the addition of new resources) to the extent such costs can be identified and quantified. Such costs shall be based on the full life-cycle of such resources.

(d) "Electric power" means electric peaking capacity or electric energy or both.

(e) "Federal base system resources" means the Federal Columbia River power system hydroelectric projects which on the effective date of this Act are in operation or are scheduled for operation on or before June 30, 1983, electric power resources acquired by the Administrator under long-term contracts which are in effect on the effective date of this Act and new resources acquired by the Administrator at the least possible cost to replace reductions in capability of the foregoing resources.

(f) "New resources" means all electric power resources acquired by the Administrator, except resources which are Federal base system resources or resources acquired at average cost from the investor-owned utilities pursuant to section 5(b)(2) of this Act.

(g) "Pacific Northwest, region, or regional" means—

(1) the region consisting of the States of Oregon, Washington, and Idaho, the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without said region.

(h) "Renewable resource" means a source of energy relying on a naturally replenishable fuel, including, but not limited to, solar, wind, hydro, geothermal, and biomass, which is used for electrical generation or which will reduce the electrical requirements of a consumer by direct application.

(i) "Residential use or load" means all usual residential, apartment, seasonal dwelling and farm building, electrical loads or uses, and not to exceed a total of one hundred horsepower of farm irrigation and pumping loads for any farm.

(j) "Resources" means electric power, electric power output of generating facilities, programs and measures to conserve electric power, renewable energy technologies, and programs and measures to utilize renewable technologies.

(k) "Plan" means the regional power planning and conservation plan required by section 4.

(l) "Commission" means the Pacific Northwest Electric Energy Planning Commission established under section 4.

(m) "Evidentiary hearing" means a proceeding conducted as provided in sections 554, 556, and 557 of title V of the United States Code.

(n) "Reserves" as used in connection with power sold to the direct-service industrial customers means the energy and/or capacity available to the Administrator through contract rights to interrupt, curtail, or otherwise withdraw, for the benefit of firm loads within the Pacific Northwest, any or all of the energy and/or capacity supplied such customers when needed to avert particular planning and/or operating contingencies specified in his contracts with such customers.

REGIONAL PARTICIPATION

SEC. 4. (a) In order to insure regional accountability for energy decisions, there is established a Pacific Northwest Electric Energy Planning Commission, composed one representative each from the States of Idaho and Montana, and two representatives each from the States of Oregon and Washington, elected under applicable laws of each State.

The Administrator shall include in his annual budgets submitted pursuant to Public Law 93-454 the amount requested by the Commission, but not to exceed an amount equal to 0.02 mills per kilowatt hour sold by the Administrator in the preceding calendar year, for equal distribution to the States of Idaho, Oregon, Montana, and Washington, in support of the States participation in the business of the council and related electrical energy planning activities.

The Commission shall select a chairman from among its State members. Five members of the Commission shall constitute a quorum for conducting business and decisions of the council shall be by majority vote: *Provided*, That the plan required by subsection (b) of this section, or any element thereof or revisions thereto must be approved by at least five members.

(b) Within two years of enactment of this Act, the Commission shall prepare and adopt as a rule a regional power planning and conservation plan ("the plan"). Such plan shall be revised by the Commission as it deems necessary, but not less frequently than every five years. Within one year of the effective date of this Act, and at least twelve months before adoption of any new plan, the Commission shall identify the elements of the plan. The Commission shall give notice and opportunity for public hearing and comment in each State, on—

(1) identification of the elements of the plan; and

(2) adoption of the plan.

The Commission shall take action under this subsection pursuant to section 553 of title 5, United States Code.

(c) The plan shall include—

(1) a twenty-year regional load and resource forecast for the Administrator, including an assessment of the impact of the conservation standards promulgated pursuant to section 7 and a description of the methodology used in the preparation of the forecast;

(2) conservation, waste-recovery, and renewable resource programs required by section 7;

(3) model conservation standards required by section 7;

(4) a research and development program;

(5) a program to carry out the fisheries conservation requirements of section 8;

(6) criteria and standards for resources acquisitions pursuant to section 6 of this Act;

(7) a mix of resource types and an analysis of potential resources to be acquired pursuant to section 6 of this Act, this cost, feasibility, and reliability;

(8) major transmission system additions; and

(9) such other programs as are appropriate.

Any proposed action under paragraphs (2) and (7) shall be cost-effective. Such plan shall set forth in detail the findings upon which such determination of cost-effectiveness is based.

(d) No action may be taken by the Administrator under section 6 or under any other provision of law to which the plan applies unless such action conforms to the plan adopted under this section, except as specifically provided for in section 6.

(e) In order to further insure widespread and representative public involvement in formulation of regional power programs and policies, the Administrator and the Commission shall establish and maintain comprehensive programs designed to inform the Pacific Northwest public of major regional electric power issues, to obtain public views and reactions concerning those issues, and to secure as he deems appropriate, advice and consultation from his customers and others, including groups organized for such purpose.

SALE OF POWER

SEC. 5. Subject at all times to the preference and priority accorded public bodies and cooperatives under the Bonneville Project Act of 1937, Public Law 75-329, and, in particular, sections 4 and 5 thereof:

(a) The Administrator shall offer to sell electric power to each Publicly-owned utility or cooperative in the Pacific Northwest, at rates established pursuant to section 9, to meet its firm power load in the region which is in excess of the capability of such utility's firm resources which the utility as of December 31, 1976, had determined or which the utility shall after the effective date of this Act, determine to use to serve its firm load, subject to the provisions of subsection (b)(2) of this section:

Provided, That (1) such resources used to serve firm loads shall, except with the consent of the Administrator, continue to be used to meet the utility's firm load except for obsolescence, retirement, or loss of resource or contract rights; (2) the Administrator shall include provisions in contracts executed in accordance with this section to enable him to restrict his obligations to meet such loads in the event he determines he cannot acquire sufficient resources pursuant to section 6 to meet such loads; but no such restrictions shall be imposed against the Administrator's public body, cooperative and Federal agency customers until the Federal base system resources are fully allocated to such customers; and (3) sales to a utility pursuant to this section 5(a) shall not be restricted below the amount of resources acquired by the Administrator from such utility pursuant to section 6. The Administrator shall not reduce or restrict his sales of power to any utility customer as a result of a reduction in such utility's load due to energy conservation savings or development of renewable or waste-recovery resources by the utility.

(b) Additionally, (1) the Administrator is authorized to sell electric power to Federal agencies located in the Pacific Northwest and (2) if the Administrator acquires electric power either from a Pacific Northwest utility at the average system cost of resources then available to that utility, or from other resources at a cost equal to or less than the average system cost of resources then available to that utility, then the Administrator shall offer to sell to such utility for resale to meet the load of its residential customers in the region an equivalent amount of electric power: *Provided*, That the Administrator shall insure, by contract or otherwise, that rates charged residential customers of utilities as a result of this subsection shall directly reflect the unmelded rate benefits provided to that utility by this subsection: *And provided further*, That the sales of power to utilities made pursuant to this subsection shall be subject to the separate, new-resource rate or rates required by section 9(b), when such separate rate or rates are established. Such electric power shall be sold at rates established pursuant to section 9. Average system cost of resources as used in this subsection shall not include: (1) the cost of resources acquired by a utility to meet any large new industrial load that was not contracted for or committed to by October 1, 1978; or (2) the cost of resources acquired to meet any firm power sales to ultimate consumers outside the region.

(c) Within one hundred and twenty days of the effective date of this Act, and as necessary thereafter, the Commission shall adopt by rule a methodology for determining average system cost of power to be obtained by the Administrator under section 5(b)(2) of this Act. In determining appropriate rates for sale of power to the Administrator under sections 5(b)(2) and 6(b) from an investor-owned utility, the Federal Energy Regulatory Commission ("FERC") shall convene a board, pursuant to section 209 of the Federal Power Act, section 824h of title 16, United States Code, with such power as the Federal Energy Regulatory Commission shall direct, to assist the Federal Energy Regulatory Commission in its consideration of the sale.

(d) The Administrator is authorized to sell to direct-service industrial customers receiving electric power from the Federal Columbia River power system as of the date of this Act electric power to meet their load requirements so long as such sales provide a portion of the planning and operating reserves for the Federal Columbia River power system. The Administrator shall offer to such customers new power sales contracts with terms of five years or less. Such offer shall expire one year from the date it is tendered by the Administrator. Such electric power shall be sold at rates established pursuant to section 9.

(e) The Administrator is further authorized to sell or otherwise dispose of electric power that is surplus to his obligations incurred pursuant to subsections (a), (b), and (c) of this section in accordance with other statutes related to disposition of power from the Federal Columbia River power system. Such electric power shall be sold at rates established pursuant to section 9.

RESOURCE ACQUISITION

SEC. 6. (a) The Administrator shall implement all cost-effective conservation and renewable resource programs in conformance with the plan and as provided for in section 7. The Administrator shall proceed with any and all specific cost-effective programs mandated by this subsection prior to adoption of the initial plan: *Provided*, That any such programs shall be reevaluated and modified to conform with the initial plan.

(b) If the plan determines that resources, in addition to conservation savings and renewable energy utilization implemented pursuant to section 6(a), will be necessary to enable him to meet obligations incurred under subsections (a), (b), and (d) of section 5, the Administrator shall acquire such additional resources without, however, reducing his efforts to achieve conservation savings and renewable energy utilization pursuant to subsection (a) of this section. Resources so acquired—

(1) shall be consistent with the plan adopted pursuant to section 4;

(2) shall be constructed and operated to provide efficient, economic, and reliable service;

(3) shall be obtained first from feasible and cost-effective sources relying on renewable fuels, waste heat or cogeneration and, then from other feasible and cost-effective sources, with priority given to resources of high fuel efficiency and high labor intensity; and

(4) may be obtained from Federal or non-Federal, utility or nonutility entities.

Contracts for acquisition of resources entered into pursuant to this subsection shall contain such terms and conditions as the Administrator finds necessary or proper to ensure timely construction, scheduling, and completion of new generating facilities to be constructed to supply such resources; to ensure that the costs of any acquisitions are as low as reasonably possible, consistent with sound business practices; to ensure that obligations incurred under such contracts for non-renewable resources shall not become obligations of the United States; and to provide the means for the Administrator to exercise effective oversight, audit and review of all aspects of such construction. Size and location of such resources shall not be considered as factors except as they relate to the relative cost per unit of energy produced.

(c) The Administrator shall require in utility customer contracts that those utilities shall purchase excess electricity at appropriate prices offered for sale by individuals owning and operating renewable energy equipment.

(d) The Administrator is authorized to construct and operate conservation and renewable resource demonstrations for the purpose of assessing cost and feasibility.

(e) The Administrator is authorized to pay for the investigation and preconstruction development of renewable resources that may potentially be offered to him for ultimate acquisition: *Provided*, That the Administrator shall take no such action without first providing opportunity for public review and comment as required by section 4: *Provided further*, That if he makes any payment under this subsection the Administrator shall obtain the option to acquire such resources.

(f) No contract for the acquisition of resources pursuant to subsection (b) of this section involving a single facility costing more than $100,000,000 may be entered into by the Administrator unless he determines after evidentiary hearing that the proposed resource acquisition is necessary and in conformance with the plan. No financial commitment shall be incurred under the authority of subsection (b) until it has been noted in the Administrator's budget submittal made pursuant to section 11 of Pub-

lic Law 93-454. With written notice, any utility customer may inform the Administrator that it chooses not to participate in any resource covered by this subsection. Thereafter, such utility shall not receive power from such facility or be charged for power produced at such facility. The Administrator shall condition his financial commitment in any contract for acquisition of resources upon the receipt of all approvals and permits from the applicable State siting authorities.

(g) The Administrator, at the request and expense of a Pacific Northwest customer, shall acquire, to the extent practicable, any electric power which is required by such customer to replace electric power curtailed or interrupted by the Administrator: *Provided*, That such customer may elect to acquire independently replacement power under terms and conditions as prescribed by the Administrator.

CONSERVATION AND RENEWABLE RESOURCES

SEC. 7. (a) As required by section 6 and consistent with the plan, the Administrator shall establish a conservation and renewable resource loan and grant fund, the moneys of which shall be raised as needed and dispensed to and through the region's utilities. The fund shall be established at $1,250,000,000, and may be adjusted by the Commission as necessary according to the projected use of the fund, for the following purposes:

(1) investment by individual utilities in cost-effective conservation measures and programs and in small-scale renewable and waste-recovery resources;

(2) provision of loans and grants to customers of the region's utilities for investment in conservation, waste-recovery, and renewable energy measures;

(3) technical and other assistance to utilities to carry out the provisions of this section; and

(4) other appropriate programs.

(b) The Administrator shall require in contracts that his utility customers (1) provide detailed accurate information to their customers on the relative life-cycle costs of various resources, including, but not limited to, conservation measures, dispersed renewable energy applications, and conventional utility-provided electricity, and (2) make the maximum practicable effort to conserve energy and promote renewable energy use among their customers, as is cost-effective.

(c) The Administrator shall—

(1) establish, as required by section 4, model regional conservation standards for efficient use of power (hereinafter "model standards"). Model standards shall be periodically reviewed and amended as necessary and shall be set for new and existing residential, commercial, industrial, and agricultural structures; commercial, industrial, and agricultural processes; and utility and other customer programs for achieving conservation of energy and the utilization of renewable resources. The model standards shall include those appropriate for passive solar design. Model standards shall reflect climatic differences within the region, be designed to accomplish all reasonable and practical conservation and renewable resource use and be set at the cost-effective level;

(2) apply a 50 per centum surcharge to rates for power sales to those utilities or other customers in States which have not enacted or are not implementing within one year of adoption by the Administrator the model standards and revisions developed pursuant to this subsection: *Provided*, That the Administrator may grant exemptions from the surcharge to utilities in jurisdictions where equivalent standards have been developed and implemented locally; and

(3) if within three years of adoption of the model standards or revisions by the Administrator, a State or States have not implemented such standards or revisions, the Administrator, without regard to any other provision of this Act or other Act of law, shall preferentially allocate power to those customers located in States which have implemented such standards or revisions.

FISHERIES CONSERVATION

SEC. 8. (a) In addition to duties established by any other provision of law, the Administrator shall—

(1) implement such mitigation and enhancement measures as may be necessary to restore fisheries, to the maximum extent practicable, which have been damaged by the development and operation of the Federal Columbia River power system; and

(2) maintain the minimum instream flow in the Columbia River necessary to preserve the existing stocks of fish, and to preserve increased stocks of fish which result from mitigation and enchancement measures implemented pursuant to paragraph (1) or by any other agency, and structural modifications made pursuant to subsection (b).

(b) The Administrator shall effect, in coordination with the necessary agencies, (1) the modification of existing structures of the Federal Columbia River power system, to the extent practicable, (2) the construction of any structure of such system for which no contract has been made and no construction has begun on the date of the enactment of this Act, and (3) the construction or modification, to the extent practicable, of any structure of such system which has not been completed, but for which a contract has been made or construction has begun, on the date of the enactment of this Act, in a manner which will minimize damage to fisheries from the operation of such system.

(c) (1) In any case in which actions taken under subsection (a) or (b) cause a decrease in the production of electric power in the Federal Columbia River power system, the Administrator shall reduce the amount of power sold to customers outside the Pacific Northwest, on an equitable basis, by an amount equal to such decrease.

(2) If the amount of the decrease described in paragraph (1) is greater than the amount of electric power sold outside the Pacific Northwest, the Administrator shall reduce the amount of power sold to customers within the Pacific Northwest on an equitable basis. The Administrator shall provide compensation to each customer within the Pacific Northwest with which he has a long-term contract for the supply of electric power, which is subject to such a reduction. The amount of such compensation shall be equal to the customer's cost of replacing any electric power which the Administrator is obligated to supply under such contract, but which is not supplied because of such reduction.

(d) In any contract made after the date of the enactment of this Act to supply electric power to customers in the Pacific Northwest, the Administrator shall agree to supply electric power only to an extent consistent with maintaining the minimum instream flow required by subsection (a)(2).

(e) In any case in which an action of the Administrator may affect fisheries in the Columbia River system, the Administrator shall consult, and coordinate his actions, with the National Marine Fisheries Service and the appropriate State fish and game agencies in order to carry out his duties under this section.

(f) Any license which is issued or renewed under the Federal Power Act after the date of the enactment of this Act for the operation of a facility in the Federal Columbia River power system shall be issued or renewed on the condition that the licensee comply with the requirements of subsection (a) and on such other conditions as the Federal Energy Regulatory Commission may prescribe to achieve the purposes of this section.

RATE DIRECTIVES

SEC. 9. (a) The Administrator shall establish and periodically modify rates for the sale and disposition of electric power to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power and renewable resources including the amortization of the Federal investment in the Federal Columbia River power system over a reasonable period of years and other costs and expenses incurred by the Administrator pursuant to law. Such rates shall become effective upon confirmation and approval by the Federal Energy Regulatory Commission and shall be established in accordance with sections, 9 and 10 of Public Law 93-454 and the provisions of this Act on the finding that such rates (1) are sufficient to assure repayment of the Federal investment after first meeting the Administrator's other costs; (2) are based upon the Administrator's total costs of service, including contingencies; and (3) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal users.

(b) The Administrator shall establish a rate or rates applicable to the electric power sold for the general requirements of public body, cooperative and Federal customers, and to the electric power sold under section 5(b)(2) for the requirements of residential customers in the region. Such rate or rates shall recover the costs of that portion of the Federal base system resources needed until such requirements exceed the Federal base system resources. Thereafter, such rate or rates shall also recover the costs of additional electric power as purchased by the Administrator under section 5(b). In addition, the Administrator shall establish a separate schedule applicable to sales of the electric power he acquires from new resources in each successive ten year period following the passage of this Act. These separate rates will be set to recover the full life-cycle cost of the new resources.

The Administrator shall set rates and schedule charges for all utilities receiving power from the pool of Federal base system resources and power acquired pursuant to section 5(b), based on the following considerations:

(1) The estimated amounts charged for firm power under rates applicable to the general requirements of public bodies, cooperative, and Federal agency customers of the Administrator under this Act, including sales from new resources acquired by the Administrator, but excluding costs for conservation or uncontrollable events which have been included as part of such rates, in no event shall exceed in any five-year period beginning July 1, 1985 an amount equal to the estimated cost for such customers that would have obtained if: (A) the public body and cooperative customers' general requirements had included the direct service industrial customers' loads located within or adjacent to the geographic service boundaries of such public bodies and cooperatives during the applicable period: (B) public body, cooperative, and Federal agency customers had been served with Federal base system resources, less firm power contractual commitments as the date of this Act to direct service industrial customers not located within or adjacent to the service area of a public body or cooperative customer of the Administrator; (C) no purchase or sale as provided in section 5(b)(2) had been made; (D) all resources that would have been required to meet the general requirements of the public body, cooperative, and Federal agency customers in excess of Federal base system resources were from resources owned or purchased by public bodies and cooperatives after the effective date of this Act; and (E) the monetary savings to the public body,

cooperative and Federal agency customers that resulted from actions of the Administrator under section 6 were not achieved. Any amounts not charged to such public body, cooperative, and Federal agency customers pursuant to this section 9(b) shall be recovered from the rates applicable to all other power sold.

(2) Rates charged to individual utilities, pursuant to section 9(b)(1), to recover the cost of Federal base system resources and resources acquired pursuant to section 5(b)(2) shall be prescheduled. The prescheduled charges to individual utilities will be in proportion to their projected general requirements or to requirements for power pursuant to section 5(b)(2), as determined by the regional forecast developed pursuant to section 4.

(3) Projected charges to all individual utilities to recover costs of new resource pools will be scheduled in proportion to their projected net requirements from Bonneville Power Administration: *Provided*, That to the extent their actual requirements deviate from projected levels, their charges will be reduced or increased by the amount their load falls short of or exceeds projections, valued at the rate for power from the newest resource pool.

(4) The schedule of charges for the first five years of the Act will be set in conformance with the 1978 long-term forecasts of each utility and Federal agency customer of Bonneville Power Administration, with schedules for charges for each subsequent ten-year period determined from the uniformly applied regional forecast model developed pursuant to section 4 and announced two years before the schedules are to take effect. The Administrator may grant exceptions for the total rates charged to individual utilities with requirements of less than 25 megawatts, in the event of new single large loads which could not have reasonably been anticipated in the regional forecast.

General requirements as used in this section shall be that portion of a public body's, cooperative's or Federal agency's directly served electric powerload in excess of its own resources that are dedicated to meet such load and exclusive of any large new industrial load that was not contracted for or committed to by the public bodies or cooperatives by October 1, 1978.

(c) The Administrator shall require by contract or otherwise that the resale rates of his utility customers directly reflect the two unmelded rates established pursuant to subsection (b).

(d) The rate or rates applicable to direct-service industrial customers shall be established at a level which the Administrator determines is equitable in relation to the rates charged by the region's electric utilities to their major industrial customers, taking into account the value of power system reserves made available to the Administrator through his rights to curtail or interrupt service to such direct-service industrial customers; the comparative size and character of the loads served; the relative costs of electric capacity, energy, transmission, and related delivery facilities provided, and other service provisions, all as related to the delivery of power to such customers; *Provided*, That prior to July 1, 1985, the rate or rates applicable to direct-service industrial customers shall be established to recover the costs incurred by the Administrator pursuant to section 5(b)(2) and not recovered through rates applicable for other classes of power sold by the Administrator: *Provided further*, That for the period prior to July 1, 1981, such rate or rates may be in the form of a surcharge on rates then applicable to direct-service industrial customers: *Provided further*, That notwithstanding any other provision of this section, the rates established by this subsection for that portion of the direct service industrial load that is not subject to interruption by the Administrator for the purpose of providing reserves shall in no event be less than the average cost to the Administrator of acquiring new resources pursuant to section 6 in the year previous to the sale of power to any direct service industrial customer to which this subsection applies.

(e) In establishing rate schedules of general application, the Administrator may establish a uniform rate or rates for sale of capacity.

(f) Rates for all other firm power sold by the Administrator shall be based upon the cost of the portions of Federal base system resources and additional resources, including new resources, which the Administrator determines are required to support such sales.

(g) The Administrator shall allocate to power rates, as he may determine appropriate, all other costs and benefits including, but not limited to, conservation, uncontrollable events, reserves, operating services, and the sale of excess electric power.

ADMINISTRATIVE PROVISIONS

SEC. 10. (a) In carrying out the provisions of this Act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary

(b) Except as specifically provided herein, the authority and duties of the Secretary of Energy and the Administrator shall not be affected by this Act.

(c) No later than ninety days after enactment of this Act, the Administrator shall offer to enter into power sales and purchase contracts to be effective ninety days thereafter with utilities pursuant to section 5(b)(2).

(d) For the purpose of enabling the Administrator to acquire resources from State and local governmental units at a cost no greater than the cost which would be applicable in the absence of such acquisition, the debt obligations described in section 103(a)(1) of title 26 of the United States Code shall not be affected by any contract or agreement regarding the Administrator's acquisition of resources constructed by a State or local governmental unit and for which the Secretary of the Treasury in consultation with the Administrator determines at the time the commitment for such acquisition is made will not be utilized over the life of the project in whole or in major part by a person who is not an exempt person, as defined in section 103(c)(3) of title 26 of the United States Code.

AMENDMENTS TO EXISTING LEGISLATION

SEC. 11. (a) Section 11(b) of Public Law 93-454 is amended by adding a new subparagraph (12) as follows:

"(12) making such payments as shall be required to carry out the purposes of the Northwest Conservation, Renewable Resource, and Energy Planning Act.".

(b) Public Law 93-454 is amended by striking subsections 13 (a) and (b) and substituting the following new subsections:

"SEC. 13. (a) The Administrator is authorized to issue and sell to the Secretary of the Treasury from time to time in the name of, and on behalf of the Bonneville Power Administration, bonds, notes, and other evidences of indebtedness (in this Act collectively referred to as 'bonds') to assist in financing the constructing, acquisition, and replacement of the transmission system, to implement the Administrator's authority pursuant to the Northwest Renewable Resource, Conservation and Energy Planning Act, and to issue and sell bonds to refund such bonds. Such bonds shall be in such forms and denominations, bear such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account terms and conditions prevailing in the market for similar bonds, the useful life of the facilities for which the bonds are issued, and financing practices of the utility industry. Refunding provisions may be prescribed by the Administrator. Such bonds shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, plus an amount in the judgment of the Secretary of the Treasury to provide for a rate comparable to the rates prevailing in the market for similar bonds issued by Government corporations. The aggregate principal amount of any such bonds outstanding at any one time shall not exceed $3,500,000,000.

"(b) The principal of, premiums, if any, and interest on such bonds shall be payable solely from the Administrator's net proceeds as hereinafter defined. 'Net proceeds' shall mean for the purposes of this section the remainder of the Administrator's gross receipts from all sources after first deducting trust funds and the costs listed in section 11(b)(2) through 11(b)(7), 11(b)(11) and 11(b)(12), and shall include reserve or other funds created from such receipts.".

(c) Public Law 88-552 is amended by striking subsection 1(b) and inserting a new subsection (b) as follows:

"(b) Pacific Northwest means (1) the region consisting of the States of Oregon, Washington, and Idaho, the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin and (2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of distribution cooperative served by the Administrator on the effective date of this Act which has a distribution system from which it services both within and without said region.".

(d) Public Law 88-552 is amended by adding a new section 10 as follows:

"SEC. 10. All references in sections 1, 2, 3, 5, and 7 of this Act to 'plants,' 'energy,' 'peaking capacity,' and 'generating facilities' shall be applicable to all types of generation and not solely to hydroelectric generation.".

MISCELLANEOUS

SEC. 12. (a) Neither the provisions of this Act empowering the Administrator to market resources to entities other than public bodies and cooperatives nor the implementation of these provisions shall affect, alter or diminish the provisions of other Federal laws in which preferential entitlement to purchase Federally generated power and energy is accorded to public bodies and cooperatives.

(b) Nothing in this Act shall in any way diminish or abridge the right of any State to determine retail electric rates (except as provided in section 9(c)), to develop its own plans for conservation, development and use of electrical energy resources, or to make energy facility siting decisions including, but not limited to, determination of the need for a particular facility, evaluation of alternative sites, and consideration of alternative methods of meeting the determined need.

S. 1280

By Mr. WYDLER:

—Amend the table of contents to include the following new section:

SEC. 2. FINDINGS.

Renumber the following SEC. 2 as SEC. 3.

Immediately following section 1, add the following new section:

SEC. 2. FINDINGS.

Congress finds and declares that—

(a) the achievement of energy security for the United States is vital to the national economy, vital to the well-being of its citizens, and vital to the maintenance of national security;

(b) the most rapid and economical method for reducing domestic dependence on insecure supplies of high-cost foreign petroleum is to increase the efficiency with which energy is used and to increase the production and use of domestic energy resources;

(c) the Nation's States and units of local government have unique opportunities to achieve energy savings, to increase the percentage of energy supply derived from domestic energy sources, and to increase the use of renewable energy resources, because of their ability to make effective use of available human and economic resources, and their capacity to accommodate a high degree of direct citizen involvement in the planning, implementation, and demonstration of new energy programs; and

(d) such States and units of local government should be provided with financial resources and flexibility to develop their own program measures for energy conservation, domestic energy production and use, and promotion of renewable resources.

Renumber SEC. 2 as SEC. 3.

Amend the new section 3 by inserting the following new paragraph immediately following paragraph 2:

(3) the term "domestic energy" means energy from any source within the United States including fossil, geothermal, hydroelectric, nuclear fission, nuclear fusion, renewable resource, and urban waste sources.

Renumber paragraph 3 as paragraph 4 and insert immediately thereafter the following paragraph:

(5) the term "production" means all activities in the fuel cycle leading to the development of a specification fuel including mining, milling, drilling, processing, preparation, upgrading, refining, reprocessing, and enrichment.

Renumber the following paragraphs.

Amend paragraph 301(b)(1)(B) by striking "renewable resource" and inserting in lieu thereof "domestic energy".

Amend paragraph 301(b)(1)(C) by striking "renewable resource" and inserting in lieu thereof "domestic energy".

Strike paragraph 301(b)(2) and insert in lieu thereof the following substitute:

(2) In developing a long-range energy plan, each State shall consider as appropriate—

(A) programs by natural gas utilities and by electric utilities regulated by the State to promote energy conservation and the use of domestic energy resources, including the efficient use of electricity through utilization of devices such as electric heat pumps;

(B) State tax measures or other financial incentives to encourage energy conservation and the production, transportation, and use of domestic energy resources;

(C) measures designed to conserve energy used for transportation;

(D) other programs to promote energy conservation and the use of domestic energy resources;

(E) measures to mitigate barriers to the transportation of domestic energy resources and fuels of domestic origin; and

(F) measures to mitigate barriers to siting, construction, operation, decontamination, decommissioning, or dismantling of facilities which will be or have been used to produce domestic energy;

and shall make recommendations for Federal legislative and administrative actions that would help States remove technical, economic, and institutional barriers to the increased use of domestic energy resources.

Amend paragraph 301(b)(3) by inserting after the word "use", ", production,".

Amend paragraph 301(1)(B) by striking "renewable resources through technologies which are commercially available" and inserting in lieu thereof "domestic energy resources".

Strike section 304(C).

SENATE—*Tuesday, September 23, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. DAVID L. BOREN, a Senator from the State of Oklahoma.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Eternal God, we thank Thee for the world within us, that deep unfathomed world of integrity, virtue, morality, character—the world of the spirit. We thank Thee for the world about us in which we live and move and have our being—the world of action. We thank Thee for the world above us, higher than we have yet attained, more perfect than anything on this Earth—the world of Thy kingdom. Give us grace and wisdom, we beseech Thee, to keep the world of the inner spirit in harmony with the world of Thy spirit, that we may hasten the coming of Thy higher kingdom on Earth. Help us then to work as though everything depended upon us and to trust as though everything depended upon Thee. Keep us and guide us in the service of this Nation and of Thy kingdom.

In the Redeemer's name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 23, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID L. BOREN, a Senator from the State of Oklahoma, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. BOREN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

SENATOR DANIEL K. INOUYE

Mr. ROBERT C. BYRD. Mr. President, when Hawaii was granted statehood in 1959, DANIEL KEN INOUYE became the first U.S. Representative from the 50th State and the first American of Japanese ancestry to serve in Congress. He has served the people of Hawaii here in the Senate since January 1963.

While growing up, this grandson of immigrants knew hardship and poverty. He also learned compassion.

Senator INOUYE had not always planned on a career in politics. As a student he intended to pursue a career as a surgeon and worked as a first aid volunteer.

At the beginning of World War II, Japanese Americans were prohibited from enlisting in or being drafted into the active military. Then in early 1943, a military unit composed exclusively of Japanese Americans was established, and DAN enlisted in this outstanding group, the 442d Infantry regimental combat team.

He served with the 442d in campaigns throughout France and Italy. In April 1945, while leading an attack of his platoon against several fortified positions on Mount Marchiaso in northern Italy, Lieutenant INOUYE was seriously wounded by a rifle grenade. He lost his right arm, and, with it, his hopes of becoming the best surgeon in Hawaii. While serving in the Army, he was awarded the Distinguished Service Cross, the Bronze Star, the Purple Heart with clusters, five Battle Stars, four Distinguished Unit Citations and other decorations. He brought great honor upon himself and the people of Hawaii.

After returning to civilian life, DAN INOUYE was graduated from the University of Hawaii in 1950, and 2 years later George Washington University conferred upon him a Juris Doctor degree.

In 1953 he was appointed an assistant public prosecutor for the city of Honolulu. Together with other local Democrats, he helped forge the famous "revolution of the ballot box" of 1954. That election saw the emergence of a new politics in Hawaii—progressive and multiracial.

DAN INOUYE served as majority leader in the Territorial House of Representatives until his election to the Territorial Senate in 1958. A year later, he was on his way to Congress.

Senator INOUYE's leadership qualities were formally acknowledged by his colleagues on this side of the aisle when he was elected secretary of the Democratic Conference, the third highest majority leadership position in the Senate. It is my honor to work closely with the senior Senator from Hawaii, and in working with him I have seen how ably he represents the people of Hawaii.

DANIEL INOUYE is a member of the Appropriations Committee and serves as chairman of its Subcommittee on Foreign Operations. In this position, he has the difficult and vital task of overseeing this Nation's economic and military aid programs abroad. He has demonstrated wisdom in balancing the Nation's international responsibilities with the need for fiscal prudence.

He also serves on the Commerce, Science, and Transportation Committee and is chairman of the Subcommittee on Merchant Marine and Tourism. Maritime affairs are of great concern to Hawaii, our only island State. But, in a larger sense, they are a serious concern for the United States. The U.S. merchant fleet now ranks 10th in the world, having dropped in three decades from 1st place. My friend from Hawaii has authored several major laws designed to improve the state of the American merchant fleet, which is so critical to Hawaii's and the Nation's security and economic vitality.

As the acknowledged Senate authority on tourism, Senator INOUYE and his subcommittee in 1978 completed an exhaustive 5-year study of the Nation's tourism industry. They found that Federal efforts to promote travel are diffused among 100 different programs, with no coordination. Senator INOUYE authored and guided through the Senate legislation to establish a single Federal planning agency for tourism. He has led the fight against attempts to eliminate U.S. Travel Service promotion offices abroad.

In 1976 and 1977 Senator INOUYE served as the first chairman of the Select Committee on Intelligence. During that time he began the work of defining the proper role of our intelligence agencies. He voluntarily stepped down as chairman of the full committee and is now chairman of its Budget Authorizations Subcommittee.

Senator INOUYE is also a member of the Senate Select Committee on Indian Affairs. Native Hawaiians, the most socially and economically troubled ethnic group in Hawaii, have received special Federal attention through Senator INOUYE's work. Like other native Americans, they are now eligible for job training, temporary federally subsidized jobs, and grants for small businesses.

In large measure because of Senator INOUYE's efforts, Hawaii is internationally recognized as a bridge to Asia—the site of the East-West Center, which trains future leaders of Asia, and the University of Hawaii, which exports modern tropical agricultural technology to South Asia and trains health professionals for the entire Pacific Basin.

The Hawaiian Islands are dependent on imported petroleum to meet present energy needs. But Senator INOUYE and the people of Hawaii, looking toward the

future, are seeking to develop alternative energy sources, particularly ocean thermal energy conversion (OTEC). An amendment sponsored by Senator INOUYE added $5 million for OTEC programs to the fiscal year 1980 appropriation, to bring total OTEC research and demonstration funds to $28.6 million. President Carter recently signed into law a measure by Senator INOUYE which provides Federal construction loans and regulation of OTEC plantships.

The senior Senator from Hawaii also has a special interest in health care and has sought to lower expenses by spearheading the increased use of health professionals—nurses, midwives, social workers, psychologists and optometrists—to make their services more widely available at reasonable costs.

Senator INOUYE is known as a leader in a wide range of areas of importance, both to his State and the Nation. I am proud to serve in the Senate with him.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of Mr. BIDEN first be reversed, without prejudice to him, and that Mr. HATCH and Mr. DANFORTH may proceed in whatever order they would like when the time for the special orders arrives.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, does the distinguished minority whip wish to have any of my time?

Mr. STEVENS. Mr. President, I might say to my good friend that it was my intention to yield our leadership time to Senator DANFORTH and Senator HATCH. I have no need for the time personally.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may reserve the remainder of my time and that I may yield it to any Senators who wish to have it during the special orders.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the acting minority leader, the Senator from Alaska (Mr. STEVENS), is recognized.

Mr. STEVENS. Mr. President, I yield one-half of the time allocated to our leadership to Senator DANFORTH and the other one-half to Senator HATCH.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR DANFORTH

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Missouri (Mr. DANFORTH) is recognized.

BILINGUAL EDUCATION

Mr. DANFORTH. Mr. President, last Thursday, President Carter addressed the third annual dinner of the Congressional Hispanic Caucus at the Washington Hilton Hotel. Speaking from a prepared text before 1,500 Hispanic Americans, President Carter stated that legislation to prevent the implementation of the Department of Education's proposed bilingual education regulations "is a disgraceful attempt to play politics with the civil rights of our children."

As one who opposes the implementation of the Department of Education's bilingual education regulations, I would like to set the record straight. I do not consider myself callous to "the civil rights of our children"; nor am I "playing politics."

I oppose the regulations because they violate section 103 of Public Law 96-88, the Department of Education Organization Act. That section, which I cosponsored with Senator ROTH, prohibits the Department of Education from controlling the curriculum of local schools.

In his address, the President also said that "the Supreme Court of the United States has ruled that children have a right" to education taught in both English and the primary language. That is not true. The Supreme Court in *Lau* v. *Nichols*, 414 U.S. 563 (1974), held that school boards must take affirmative steps to educate children who do not speak English, but the precise method was left to the local board of education.

I am not arguing—and I do not believe anyone is arguing—that any child should be denied access to full participation in our schools because of limited proficiency in English. That is not the issue.

The issue is whether basic educational policies concerning curriculum, class size, teacher qualifications, and textbooks should be controlled by Washington through the Department of Education or by each local school board. This same issue would have been raised had the Department of Education proposed regulations relating to the teaching of math or American history, rather than bilingual education.

Congress spoke very clearly and loudly in favor of local control of curriculum when the Department of Education was created. The proposed regulations fly in the face of the very clear congressional intent.

When I first considered whether to support or oppose the formation of a new Department of Education, I was concerned that a Department of Education had the potential of becoming a national school board, creating a national educational policy, and stifling diversity among our local schools.

When I became convinced that the intent behind the new Department not to take over local responsibility for education, but rather to streamline the bureaucracy—to institute, in effect, one-stop shopping for Federal programs—I joined as a cosponsor of the legislation creating the Department of Education.

To insure that the intent of Congress was made absolutely clear that the new Department was not to involve itself in areas of curriculum and other traditionally local concerns, Senator ROTH and I offered an amendment to the Department of Education legislation, which became section 103 of Public Law 96-88.

Section 103(b) provides:

> No provision of a program administered by the Secretary of Education or by any other officer of the Department of Education shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school or school system . . . except to the extent authorized by law.

In an effort to clarify any ambiguity in the statutory language, the point about local control was emphasized in hearings, committee reports, and two colloquies on the floor.

On September 28, 1978, for example, Senators ROTH and RIBICOFF had the following exchange on the Senate floor:

> Mr. ROTH. And finally, in the establishment of a separate Cabinet-level Department of Education we are in no way suggesting, condoning, or implementing an entity to exercise Federal influence over the formulation of policies, choice of curricula, administration of programs, choice of education objectives and program content, or anything which could be construed as the establishment of a national educational policy.
>
> Mr. RIBICOFF. Yes, that is correct. I agree with the Senator that education is a state and local matter.

A very similar statement was included in a Senate floor colloquy on April 5, 1979.

(The complete colloquies appear at 32209 to 32211 of the CONGRESSIONAL RECORD for September 28, 1978, and 7562 to 7563 of the CONGRESSIONAL RECORD for April 5, 1979. For further background on this issue, I encourage anyone interested to check the committee reports and hearings with respect to S. 210 and its predecessor, S. 991.)

In direct contravention of section 103 of Public Law 96-88 and of the clear congressional intent, the Department of Education published proposed regulations on August 5, 1980, in the Federal Register with respect to students with limited proficiency in English.

The regulations are detailed and specific. The regulations and description appear in the August 5, 1980, Federal Register at 52052 and run for 23 pages to 52075. Notwithstanding section 103(b), the proposed regulations would give the Department control over curriculum, programs of instruction, personnel, and textbooks. For example, the regulations mandate that students with limited English must be taught required subjects in both English and their primary language. The instruction must be comparable in content, quality, objective, and instructional materials to courses taught only in English. The teacher must be a qualified, bilingual instructor and the pupil-teacher ratio must be comparable to the pupil-teacher ratios in courses taught only in English. The regulations specify under that circumstances schools may stop providing a particular student with bilingual instruction, when and how the language skills of students must be assessed, which students must receive intensive English instruction and for how long, and so on.

Mr. President, I have consistently opposed a legislative veto over regulations. It has struck me that if Congress were more careful in drafting statutes that were narrow in scope and clear, a legislative veto would be unnecessary.

I am not sure I can continue to believe and argue that careful drafting is the answer. I believe Congress spoke clearly when the Department of Education was established. Nevertheless, the proposed regulations provide Federal control over curriculum, notwithstanding the clear language and intent of section 103.

Mr. President, although President Carter accuses those who oppose the proposed regulations as "playing politics with the civil rights of our children," that is just not true. Many impartial observers have expressed concern about the wisdom of the regulations. Both the Washington Post and the Washington Star, among others, have carried editorials critical of the proposed regulations. I ask unanimous consent that the editorials be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 7, 1980]

THE FEDS AND BILINGUALISM

There is no doubt that there is a problem in some school districts in this country with the way children who do not speak English are helped (or not helped) to adjust to English-speaking schools. And there is no doubt that those problems multiply when some school officials take a callous attitude toward the problems of immigrant students who must fight to learn English while also fighting to learn alegbra from a teacher who speaks only English. But the solution to that problem must be a locally devised remedy, not a nationwide prescription from Washington.

By requiring that the schools teach basic courses in other languages, the Education Department discourages alternative solutions. For example, it may be that in the southwestern United States, the large regular flow of Spanish-speaking immigrants necessitates a school that teaches courses in both English and Spanish. But what of a Washington, D.C., school where it may be cheaper and more effective to offer students who speak only Spanish an intensive course in English and then to integrate them into regular school classes taught in English? Or what about special schools for students who don't speak English, schools where they can study in their native language as they undergo the transition from one language to another?

The point is that while the troubles of such students in American schools may represent a nationwide problem, the problem is one that varies widely in size and nature from one area of the country to another. There should not be any one compelled solution. Under the rule proposed by the Education Department, schools can get "waivers" exempting them from the federal requirement if they have some other method of helping students who do not speak English well enough to function in an English-speaking school. But the "waivers" system should not be for exceptions to the rule. It should be the rule.

The federal government has a role to play in the hot controversy over bilingual teaching. That role is to require that children who do not speak English not be ignored by insensitive local school officials and thus denied an education. But how the school district solves the problem should be the school district's business. The federal government does not and should not ever seek to require that schools throughout the nation teach reading and writing in one way, and it should not require that students who don't speak English be dealt with in any one way.

As the Supreme Court said in the 1974 case brought by Chinese-speaking students, who felt they were not being effectively helped to adjust to English-speaking schools, there is a national interest in ensuring that equal educational opportunities are provided to all children. But the court did not prescribe any one remedy for the problem. The Education Department should not try to do that now.

[From the Washington Star, Sept. 22, 1980]

THE FEDS' WAY—OR ELSE

Comments on the bilingual education regulations proposed by the newest federal mastodon, the Department of Education, must be submitted by October 6. The department should be deluged by opposition to its scheme. The proposal is so appalling—in depth, breadth and potential result—that opposition becomes a moral and intellectual obligation.

The department's regs, as we said when they were first proposed, are a blatant aggression against local control of local schools. They represent a bureaucratic repudiation of that historic principle, one we were assured and reassured the new federal agency would meticulously respect.

The regulations would impose a nightmare of reporting requirements, assessments and evaluations, with failure to keep step penalized by a cutoff of federal funds. The regulations presuppose a pool of teachers qualified in scores of foreign languages and sufficiently competent as well in academic subjects to be accredited by the states—which is a fantasy. Or, worse, students not competent in English being taught academic subjects in their primary languages by tutors and school aides, by parents and audio-visual gimmickry.

The regulations also could result, in fact if not entirely by intent, in de facto dual school systems, particularly in areas of high ethnic concentrations. This could easily produce high-school graduates little more competent in English than when they entered, having satisfied course requirements through instruction in native languages. Could someone tell us how that will qualify them to function in an English-speaking society?

Rep. William Whitehurst, R-Va., one of many public figures who so far has entered the lists against the regulations, fears that the proposal would promote a further "fragmenting" of a society that is increasingly Balkanized. Virginia Attorney General Marshall Coleman has said the state may go to court to try to block the bilingual proposals.

How in six short years have we gone from the Supreme Court's *Lau* vs. *Nichols* decision, which quite rightly held that school districts must provide special instruction in English for non-English-speaking students, to a rigid federal mandate prescribing a single method of acomplishing that laudable objective, to be used always and everywhere? That great leap is, purely and simply, an authoritarian exercise.

One might find some justification for so sweeping a federal edict had the court's decision been disregarded. The contrary has been the case. School districts, with those in the Washington area as a good example, have established successful language programs under the so-called Lau Remedies. Most of these efforts involve concentrated instruction in English to enable students as quickly as possible to participate in the opportunities of the system's full curriculum. Montgomery and Prince George's Counties in Maryland, Fairfax and Arlington in Virginia have done admirable jobs, adapting their programs to their special needs. In Prince George's, for example, 8,000 foreign-born students represent as many as 60 languages.

Mrs. Esther Eisenhower, director of Fairfax's English as a Second Language program, puts her finger on the essence, and arrogance, of the federal approach: "There isn't any research we know of that shows bilingualism works better than any other method. The federal government is mandating one method while the jury on it is still out. It is the height of absurdity—'my way or the highway.'"

Opponents are requesting that a full "regulatory analysis" be conducted, as President Carter pledged would be done on massive federal mandates. This case certainly requires one, involving as it does great political as well as pedagogical content. A thorough impact analysis would blow the bilingual scheme out of the water.

Mr. DANFORTH. Finally, Mr. President, the concern about the proposed regulations is bipartisan in nature. The bilingual education regulations were discussed at a Governmental Affairs executive session on September 10, 1980. At that meeting, several members expressed concern about the proposed regulations. I ask unanimous consent that the transcript of the September 10 meeting be printed in the RECORD.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

EXCERPT FROM GOVERNMENTAL AFFAIRS EXECUTIVE SESSION

Chairman RIBICOFF. Senator Roth, you have a problem that you would like to present to the committee as a whole.

Senator ROTH. Thank you, Mr. Chairman.

I think this is an extraordinarily important matter because it involves the oversight of this committee on legislation we earlier adopted.

As you recall, we less than a year ago created a Department of Education, with a clear understanding that in no way was this instrumentality to interfere with state and local control of schools.

Recently the Department issued for consideration some bilingual regulations which set forth in very great detail how the states and local schools would have to provide bilingual education.

Now I want to make very clear from the outset that I am in no way quarreling with the need or desire to make access to our schools available to all children, irrespective of language differences or background. That is not the issue.

The issue is that the Department, in direct violation I believe of our legislation, is becoming concerned or involved in local control of education. I would point out that a number of our educational groups have written the Secretary of Education in a letter dated July 24th raising their deep concern. This letter has been signed by Robert Goss, the Director of State-Federal Relations, the National Conference of State Legislators, the President, Ann Campbell, the Council of Chief State School Officers, the President, Mr. Griffith, the National Association of State Boards of Education, the Executive Director of the National Association of State Boards of Education, Albert Shenker, President of the American Federation of Teachers. I could add a number of others.

In their letter they point out, as I said earlier, that the issue at stake raise "the most fundamental question about the federal role in our diverse education system: Does Washington seek to impose national requirements requiring how the schools shall teach.

In a long letter they ended up by saying, "Far more important are the critical legal and educational principles that are at stake; specifically, the possibility that the proposed LAU regulation might set a dangerous precedent that the federal officials might claim the power to regulate how and what schools teach."

I might point out also, Mr. Chairman, that grave concern has been expressed by much of

our media. For example, on August 7th, the Washington Post has an editorial on this saying that, "The solution to bilingual education must be a locally devised remedy, not a nation-wide prescription from Washington." The same thing is spelled out in an editorial in my Wilmington papers, which basically supported the Department of Education when it was created. But as they point out, "It is this kind of action, the Secretary's attempt to give the Nation's public schools specific instructions on how to carry out bilingual programs, that has raised fear of central headquarters in Washington that would result in trying to standardize education in the United States."

Mr. Chairman, as you recall, you very graciously helped those of us who were concerned about this issue. We adopted a number of specific amendments. You and Jack Danforth and myself had a long colloquy on the Floor spelling out very clearly that it was intended that the Department of Education not intrude upon local control.

Yet here we are less than a year later when the Secretary has issued proposed regulations that will become, in my judgment, a very serious, significant issue.

I would suggest, Mr. Chairman, this matter is of such grave importance that our committee should call for hearings at which the Secretary of the Department, as well as others, have the opportunity to testify. I think if we permit this to go on unchallenged, then it shows the Executive Branch can totally ignore what we legislate here.

Chairman RIBICOFF. Senator Danforth?

Senator DANFORTH. Mr. Chairman, for the purposes of discussion, I think that we should really ignore the question of whether or not bilingual education programs are a good idea or a bad idea. That really is not the point.

Assuming that they are a very good idea, just for the sake of discussion, the fact of the matter is that the Department of Education does not have authority to promulgate regulations relating to the school curriculum. It is a question of power and where the power resides in government.

During the very extended hearings over a period of a couple of years, and I think two different mark-ups, and we went to the Floor of the Senate twice on this question, the argument that was made for the Department of Education was that it was one-stop shopping, that it was an administrative convenience, that instead of having the educational enterprise of the Federal Government spread all over the place, we would try to consolidate federal activity in one department.

The problem that was raised by a number of people who had concerns about the Department of Education, myself included, the problem was well, will this get the Federal Government in the business of making decisions which heretofore have been made at the local level by local school boards or by state governments? And we were assured during the consideration of this bill that it would not get the Federal Government in the business of establishing a curriculum.

And on that basis many of us, including myself and Senator Roth, voted for the bill on that representation. As a matter of fact, we offered an amendment, and the amendment provides "No provision of a program administered by the Secretary or by any other officer of the Department"—and that is the Department of Education—"shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision or control over the curriculum, program of instruction, administration, or personnel of any educational installation, school or school system except to the extent authorized by law."

Now we weren't content just to have this express provision in the law. We also went out of our way to engage in discussion to form legislative history, both in this committee and on the Floor of the Senate.

Now, Mr. Chairman, during consideration of the FTC authorization bill, I managed that bill for the minority on the Floor of the Senate, and I opposed the idea of legislative veto. One of my arguments for opposing the legislative veto is so that Congress should do a better job and a more precise job of drafting legislation in the first place, rather than to do a fuzzy job and then be consoled with the fact that we can get away with fuzzy legislation and come back after the fact and clean it up by legislative veto.

I wonder how I can continue making such an argument on the legislative veto question if when we are quite specific and when we do everything we can possibly say to the Department of Education, "You can't do it," when we tell them expressly, "You cannot get involved in the business of establishing a curriculum for local schools, no matter how wise you might think you are or no matter how good the particular idea is," and then the Department of Education goes right ahead and gets involved in questions of bilingual education, including requirements that all schools assess their students to determine each student's primary language, requiring that students whose stronger language is not English receive bilingual instruction, it requires subjects, requiring the classes must be similar in size content, quality, objectives and instructional materials to subjects taught exclusively in English, providing for intensive English classes taught for at least five years.

Mr. Chairman, that is a supervision or control over curriculum, over program of instruction, over administration, personnel, educational installations and so on. That is exactly what this is, whether it is a good idea or a bad idea. And when the Congress of the United States says to a Department, "You can't do it," then it seems to me that the Department simply can't do it.

Now I intend to do everything I can to ensure that an amendment to the appropriations bill that was included in the House, providing that no appropriation can be used for this purpose, is retained in the Senate. But beyond that, it seems to me that we had better get pretty quickly to the fundamental question of what the Department of Education is up to, and that the suggestion that Senator Roth has that at the very least we hold hearings into this question is one that makes very good sense.

Chairman RIBICOFF. Senator Cohen and then Senator Nunn.

Senator NUNN. I just want to say briefly I agree with everything Senator Roth and Senator Danforth said. I remember when we set up the Department. I remember the hearings. I remember asking the questions. I remember the amendment that you put in and I co-sponsored. Jack had some amendments. We were very specific on this point.

I think you are absolutely right. I think from a bipartisan point of view the word should go out that we will not sit by and tolerate this.

I don't know if hearings are the strongest thing we can do in this respect, but whatever is the strongest, I intend to support it, and I intend to support the hearings.

Senator COHEN. Mr. Chairman, I can only recall, on the legislation creating the Department of Education, I felt in the words of Dr. Johnson on the remarriage of his daughter, it was the climate of hope over all past experience.

I felt there was a similar attitude here that was going to create a brand new Department and say they are not going to get into the business of regulations. That really was the climate of hope over all past experience.

I was also interested in hearing Senator Danforth was saying he might be less enthusiastic in defending opposition of the congressional veto. I would respectfully submit to my friend it probably won't make any difference whether you defend or oppose the congressional veto in this case because I would remind my colleagues that the Secretary of Education was the very first department head that I can recall who more or less thumbed his nose at the congressional veto carrying any weight.

That was a matter of some controversy last spring, as I recall, where he was instructed by the Justice Department to ignore any language so in effect Congress retained the right to veto regulations that they had promulgated.

So I think the Department of Education, in particular, starting from the very inception, has indicated its intent to do certain things with or without the consent of Congress, that it was told to ignore congressional sentiment on any particular issue as far as this regulation is concerned.

So I think the case can be made out that this is one agency or department that would bear very close scrutiny.

Senator NUNN. I don't think we ought to ignore the fact that before the Department of Education was created, there were other attempts by people in the great organization known as HEW who did similar things. This is not a new innovation that came about only with the creation of that department. I would suspect that the same people, if we had had the HEW as it originally was, would have probably done the same thing.

Senator ROTH. It is my understanding on that point that much of these regulations were in the making even prior to the creation of a new department.

But as I say, Mr. Chairman, my concern is this: It is my understanding that the Senate will continue to be in session for another three or four weeks and then possibly come back after the election, although I guess that is not necessarily so. But I do not feel that we can permit this action to go unchallenged.

I agree with what the Senator from Missouri said, that hearings are the least we can do, but I think the purpose of those hearings would be an attempt to stop this action and, if necessary, to take appropriate action beyond that to prevent it, because there is no question in my mind if they get away with this, then they are going to continue to act accordingly. I think that would be most unfortunate, because I think that is going to give the opposition to the Department of Education—and there is much of that abroad—great force. If Congress does not have the power to set policy, it is a sad day indeed for this historic——

Chairman RIBICOFF. The thought occurs to me, we do have limited time. The first I was aware of this problem was when Senator Roth called me this morning. There is no question, as I have listened to the presentation, that it was definitely the intention that the Department of Education would have no jurisdiction over curriculum.

I recall specifically the amendment sponsored by Senator Danforth and Senator Roth. And I believe we had very lengthy colloquy on the floor covering this exact point.

Now I am trying to figure out, Senator Nunn, Senator Danforth, Senator Cohen and Senator Roth, if a hearing was set down, would you attend, because I don't want to set a hearing these closing days and find that you are not there. Could you preside in case I can't be there? What have we got, about three weeks left?

We have some reconciliation problems involving this committee and the Budget Conference. Could you preside over these hearings?

Senator NUNN. I will do my best. It just depends on when they would be set. I have all sorts of matters in conference, so I can't guarantee it.

Chairman RIBICOFF. Intergovernmental Relations, Senator Sasser, could you participate? This would really be the Intergovernmental Relations Subcommittee. Could you preside over it?

Senator ROTH. May I just make one suggestion?

Senator SASSER. Mr. Chairman—if I can respond to the Chairman—I would try to help, yes. I don't know what my schedule is. I would help as much as I could.

Senator NUNN. Could we pass a resolution on this in the committee as a temporary measure, at least expressing grave concern, perhaps not coming to conclusions until we have had a hearing. We don't have a quorum right now.

Chairman RIBICOFF. The problem that we have here is some of us, including myself, haven't even looked at this problem. We don't have a quorum to pass a resolution. The concern is worthwhile and should be considered. I don't know what they are doing, but the complaints that have been made are justified if this is what they are up to.

I am not quarreling with you, Senator Roth, or Senator Danforth, or you, Senator Nunn. The staff tells me, which I was not aware of—well, let me read this memorandum. The staff had a meeting on this matter last week with the members of the National School Boards Association and the National Association of State Boards of Education. Senator Roth's staff member, Nancy Anderson, was present at this meeting. She subsequently contacted my staff after the meeting to say that it was agreeable to have the Congressional Research Service do a legal analysis to evaluate whether the proposed bilingual regulations go beyond the intent of Section 103 of the Department of Education law. The staff says CRS is doing this analysis. I am making no comment on it. I am reading this memorandum.

Senator ROTH. Mr. Chairman, that is correct. I think that would be helpful. My real concern is that these regulations are not issued while the Congress is either in recess or adjournment.

Let me raise this possibility, if the Chairman could do this: I wonder if it would be possible to get a meeting, an informal meeting, with the Secretary and at least get an understanding that these regulations would be delayed until, I would suggest, the new year, since there is so many imponderables about the remainder of the year, so Congress can work its will, whatever that may be, next year.

That would seem to me to reserve what they may think are their prerogatives and at the same time give the Congress a chance to act responsibly.

Chairman RIBICOFF. Senator Roth is interested, Senator Danforth, Senator Nunn and Senator Cohen. Are there any other Senators who are interested in this matter?

Senator SASSER. I am, Mr. Chairman.

Senator NUNN. I think Senator Chiles is.

Chairman RIBICOFF. Senator Pryor is. We have interest here. I will have the staff contact you gentlemen to see if we can find a time at which you would all be available to come to my own personal office and call the Secretary and we would have an informal conference on this matter.

I don't know my schedule. I don't know yours. But we will try to find a date that most of you will be available. We can meet like at 9:00 in the morning before the day begins.

Senator ROTH. I think that would be very helpful.

Chairman RIBICOFF. I do want to commend you, Senator Roth, for calling my attention and the committee's attention to this matter. There is no question, as you presented it, if this is the case, it does definitely violate the intention of this committee and I believe of the Senate in passing this legislation.

We will try to find a date and call the Senators and the Secretary.

Senator ROTH. I appreciate your interest, Mr. Chairman.

Mr. DANFORTH. Mr. President, what is at stake in this issue is not civil rights. No one is attempting to block the civil rights of students with limited English. Rather, what is at issue is power—whether local schools or the Federal Government are to establish educational policy, and whether, when Congress expresses its intent on an issue in clear statutory language, the administration is free to ignore the law.

RECOGNITION OF SENATOR HATCH

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Utah (Mr. HATCH) is recognized for not to exceed 15 minutes.

THE COST OF THE DEMOCRATIC PLATFORM

Mr. HATCH. Mr. President, we have much talk from the Democratic administration and others about the "cost" of the Republican tax reduction proposals. This "cost," however, pales in comparison to the cost of the Democratic platform, which President Carter supports. This platform, which by my count contains 70 separate items to expand or initiate spending, in fiscal year 1981 would commit us to $83 billion in spending and produce $37 billion in outlays. Over the next 5 years, the Democratic platform would commit us to $609 billion in spending and cost $431 billion in outlays. In comparison to the second budget resolution reported by the Senate Budget Committee for fiscal year 1981, the Democratic platform would add $30 billion in outlays in fiscal year 1981 and $389 billion over the fiscal year 1981 to 1985 period. Over the 5-year-year period, this level of spending and current law revenues adjusted for the President's tax cut would create a $261 billion deficit. It would raise outlays to 24.7 percent of GNP in fiscal year 1982, and would raise revenues to a new high of 23.5 percent of GNP in fiscal year 1985, the highest percentage of GNP in the history of our country.

It is hard for me to understand how proponents of the Democratic platform can call the Republican tax cuts too expensive. But one should bear in mind the major difference in the costs of the two platforms. The Democratic platform would cost the taxpayers $431 billion while the cost of the Republican tax cuts would be borne by the bloated Federal Government.

The Democratic platform contains 70 items which I have determined would create new spending. These items range from an expensive national health insurance plan that would cost, using the administration's own estimates, $102.6 billion over the next 5 years if begun in fiscal year 1982, to federally funded union halls for teachers. It would double the funding for public housing, committing us to an additional $170 billion in spending over the 5 years. It would enact a sham called "welfare reform," which would actually add millions of people to the welfare rolls, over and above those who are on those rolls today. It would allow people to keep assets such as a house and lot, regardless of value, a car whose market value does not exceed $4,500, and all personal effects, clothes, and household items, again no matter what the value, and still qualify for welfare handouts. The estimated cost of this program is $24.4 billion over the 5 years, although Chairman RUSSELL LONG of the Senate Finance Committee has said that the additional cost could exceed $60 billion per year.

I might add, parenthetically, that the estimates I used are very conservative estimates, and they presume in some cases only one-shot, 1-year programs, which we know tend to become lifetime programs at the expense of the taxpayers.

The Democratic platform also calls for the Federal Government to assume all local and most State welfare costs, at a cost to the Federal Government of $21 billion a year when fully implemented. It calls for expensive expansions of Federal education programs to the tune of $50 billion over the 5 years, and would enact an expensive new Federal jobs program on top of the almost $10 billion a year the Federal Government now spends on training and employment programs. In its quest to throw away taxpayer dollars, the Democratic platform has even turned to proposals, such as taxpayer financing of congressional campaigns, which have been repeatedly defeated by the Congress. In short, there is something for everyone in the Democratic platform, including a big bill for the American taxpayer.

Most of the cost estimates I have used in my analysis come from CBO or options presented before the Senate Budget Committee during its deliberations on recent budget resolutions. There are a few potentially expensive items for which I have been unable to obtain a cost estimate. These items include: Programs to retrain farmworkers displaced by mechanized farming; making medicare available to Americans living abroad who are eligible for social security; and funding for environmental agencies sufficient to carry out their mandates.

My estimates also include only the additional costs to society that would show up as Federal expenditures. They do not include the additional cost that would be borne by the economy through further Federal intervention in the economy, such as through legislation making it expensive for plants to relocate for which the Democratic platform calls. My estimates also do not take account of the inflationary impact of this much additional spending, which would in turn increase Federal spending even more. And these estimates take no account of the

additional interest on the debt that the larger deficits resulting from this spending would necessitate.

Mr. President, our economy cannot withstand an additional $566 billion of spending over the next 5 years. Again, I hasten to say, that is a conservative estimate. That is $566 billion over and above the second proposed budget resolution.

President Carter has lost no time in following Governor Reagan's lead with tax cut initiatives, but he is still turning a blind eye to the importance of restraining Government spending. As Governor Reagan has pointed out, we need a balanced program of spending restraint, productivity-oriented tax cuts, a stable monetary policy, and elimination of burdensome Federal regulations to encourage economic growth and reduce inflation. We must restore incentives to invest, work, and produce in our private economy, and we cannot do that by allowing the Federal Government to take a larger and larger share of our production to pass out to special interest groups for political gains. If we are serious about restoring our country to its former economic strength, we must take a long-range and all-encompassing approach to solving our economic ills. The simplistic approach of spending our way out of runaway inflation, high unemployment, and declining productivity will not work. The Democratic platform is tangible proof of the big-spending "business as usual" approach of the Democratic administration and Congress.

Mr. President, I ask unanimous consent that the tables I have prepared showing the 70 spending items of the Democratic platform and how much they cost be printed in the RECORD at this point.

There are two tables. One is entitled "Impact of Democratic Platform and Carter Tax Cuts on Budget," which is basically a summary, and the other is a cost analysis of the Democratic platform from fiscal year 1981 through 1985.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

IMPACT OF DEMOCRATIC PLATFORM AND CARTER TAX CUTS ON BUDGET

	Fiscal year—				
	1981	1982	1983	1984	1985
Spending in Senate Second Budget Resolution	633	710	778	845	920
Additional spending in platform	30	70	79	96	114
Total spending level	663	780	857	941	1,034
Revenues in Senate Second Budget Resolution	610	712	828	951	1,102
Deficit/surplus (without tax cut)	−53	−68	−29	+10	+68

	Fiscal year—				
	1981	1982	1983	1984	1985
Carter tax cut	−7	−38	−41	−48	−55
Deficit/surplus (with tax cut)	−60	−106	−70	−38	+13
Total spending as percent of GNP	23.7	24.7	24.1	23.6	23.3
Revenues (with tax cut) as percent of GNP	21.6	21.4	22.1	22.7	23.5

COST ANALYSIS OF THE DEMOCRATIC PLATFORM

	Fiscal year 1981		Fiscal year 1982		Fiscal year 1983		Fiscal year 1984		Fiscal year 1985		Fiscal years 1981–85	
	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay
Solving economic problems:												
1. Antirecession jobs program	11.0	6.75	0	4.15	0	0	0	0	0	0	10.9	10.9
2. Railroad renewal program	1.0	.5	0	.5	0	0	0	0	0	0	1.0	1.0
3. Implementation of Brooke-Cranston	4.9	.7	1.4	.4	0	—.3	0	.35	.1	.1	6.4	1.25
Worker protection:												
4. Continue to enforce Davis-Bacon	.7	.7	.77	.77	.84	.84	.91	.91	.98	.98	4.2	4.2
5. Improve and strengthen trade adjustment assistance programs	1.3	1.3	.5	.5	.3	.3	.3	.3	.3	.3	2.7	2.7
6. Expand unemployment benefits to all wage and salary workers		.3		.3		.3		.3		.3		1.5
7. Extend unemployment benefits for long-term unemployed		1.3										1.3
Women and the economy:												
8. Expand vocational programs for women	.02	.002	.02	.016	.02	.020	.02	.020	.02	.020	.1	.078
Consumer protection:												
9. Establish Consumer Protection Agency	.022	.022	.028	.028	.034	.034	.04	.04	.046	.046	.17	.17
10. Expand the WIC program	.2	.1	.3	.2	.2	.3	.4	.3	.5	.4	1.6	1.3
Antitrust enforcement:												
11. Financial support for antitrust enforcement activities of the States	.01	.01	.01	.01	.01	.01	.01	.01	.01	.01	.05	.05
Health:												
12. National health insurance program			21.0	21.0	24.1	24.1	27.1	27.1	30.4	30.4	102.6	102.6
13. Expand medicaid program to additional 5,000,000 low-income children and 200,000 low-income pregnant women (CHAP)	.5	.5	.9	.9	1.4	1.4	1.9	1.9	2.2	2.2	6.9	6.9
14. Increase funding for training mental health personnel and develop community based mental health services (S. 1177, Carter bill)	.1	.03	.5	.2	.6	.5	.5	.5	.6	.6	2.3	1.8
15. Expand home health care services	.1	.1	.1	.2	.1	.2	.1	.2	.2	.3	.6	1.0
16. Increase funding for training health professionals	.2	.1	.2	.2	.1	.1	.1	.1	.1	.1	.7	.6
17. Financial assistance to public service hospitals	.3	.3	.4	.4	.5	.5	.6	.6	.7	.7	2.5	2.5
Older Americans:												
18. Expand senior centers, nutrition services, home attendants, programs under ACTION, Administration on Aging, and Community Services Administration	.9	.9	.95	.95	1.0	1.0	1.1	1.1	1.2	1.2	5.15	5.15
19. Increase number of meals on wheels served to cover ¼ of all elderly at or near poverty level	4.6	4.6	6.5	6.5	7.2	7.2	8.9	8.9	9.8	9.8	37.0	37.0
20. Expand funding for sec. 202 housing for elderly	.3	.1	.3	.1	.3	.1	.4	.2	.4	.2	1.7	.7
Welfare reform:												
21. Expand social services to fill existing gaps	2.9	2.9	3.1	3.1	3.3	3.3	3.5	3.5	3.8	3.8	16.6	16.6
22. Full funding for food stamps	1.3	1.3	1.5	1.5	1.8	1.8	2.0	2.0	1.5	1.6	8.1	8.2
23. Carter welfare reform proposal (Work and Training Opportunities Act and the Social Welfare Reform Amendments Act)	1.5	1.5	5.5	5.5	5.7	5.7	5.7	5.7	6.0	6.0	24.4	24.4
24. Federal Government assume local governments' share of welfare costs and a greater percentage of State share			9.2	9.2	12.8	12.8	16.8	16.8	21.2	21.2	60.0	60.0
Low income energy assistance:												
25. Expand low income energy assistance	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8	4.0	4.0
Education:												
26. Steady increase in Federal support for elementary and secondary with an emphasis on reducing inter- and intra-state disparities in ability to support quality education	.7	.1	1.3	.5	2.0	1.2	2.6	1.9	3.2	1.5	9.8	5.2
27. Full funding of concentration grants	3.13	.31	3.38	3.15	3.65	3.41	3.94	3.68	4.26	3.97	18.36	14.53

	Fiscal year 1981		Fiscal year 1982		Fiscal year 1983		Fiscal year 1984		Fiscal year 1985		Fiscal years 1981–85	
	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay	Budget authority	Outlay
28. Expand Headstart	.2	.2	.3	.2	.5	.14	.6	.5	.7	.6	2.3	1.9
29. Expand Follow Through	.02	.01	.02	.02	.03	.02	.03	.03	.04	.04	.14	.12
30. An effective bilingual program to reach all limited English-proficiency people who need assistance	1.0	.1	1.1	1.0	1.2	1.1	1.3	1.2	1.4	1.3	6.0	4.7
31. Increased Federal support for vocational and technical education teacher training and equipment and facilities	.2	.02	.214	.159	.227	.210	.245	.25	.262	.241	1.15	.855
32. Increase the Federal share of the costs of education for the handicapped	.2	.02	.3	.1	.4	.3	.5	.3	.6	.4	2.0	1.1
33. Fund BEOG's grants at full payment schedule	1.0	.1	1.4	1.04	1.7	1.43	2.2	1.75	2.7	2.25	9.0	6.57
34. Expand funding for black institutions	.07	.008	.08	.051	.09	.078	.10	.088	.11	.098	.45	.323
35. Strengthen graduate education	.006	.001	.007	.004	.008	.007	.009	.008	.010	.009	.040	.029
36. Strengthen support for libraries, teacher training, and R. & D.	.1	.01	.1	.06	.1	.08	.1	.1	.1	.1	.5	.35
37. Federally financed teacher centers in every State	.010	.010	.011	.011	.012	.012	.013	.013	.014	.014	.060	.060
38. Restore fair eligibility requirements for school nutrition programs with fair fees	.3	.3	.3	.3	.3	.3	.3	.3	.4	.4	1.6	1.6
Child care:												
39. Enact an adequately funded comprehensive quality child-care program	1.7	1.25	1.8	1.77	1.9	1.87	2.1	2.05	2.2	2.17	9.7	9.11
40. Revise child care tax credit to benefit low and moderate income families	.05	.05	.05	.05	.06	.06	.06	.06	.07	.07	.29	.29
Housing:												
41. A substantial increase for public housing and sec. 8 rental housing assistance	27.1		35.1	.5	34.6	2.5	35.9	5.3	37.0	10.3	169.7	18.6
42. Expand urban homestead and rehab programs	.012	.012	.013	.013	.014	.014	.015	.015	.016	.016	.07	.07
43. Finance moderate income housing at below-market interest rates	2.4					.08		.16		.16	2.4	.40
Transportation:												
44. Increased Federal funds for mass transit operating and capital subsidies	1.4	.1	1.7	.1	2.2	.7	2.4	1.2	2.	1.9	10.3	4.0
Urban policy:												
45. Enactment of Carter administration proposal to expand the economic development initiative programs of the Department of Commerce	.5	.06	.7	.29	.8	.50	.8	.76	.8	.69	3.6	2.30
46. Transitional aid program to local governments	.5	.5	.5	.5							1.0	1.0
The arts and the humanities:												
47. Grants for the arts in low-income neighborhoods	.01	.01	.005	.005	.005	.005	.005	.005	.005	.005	.03	.03
Civil rights:												
48. Strengthen the Office of Civil Rights in the Department of Education and in the Department of Health and Human Services	.011	.013	.012	.014	.013	.015	.014	.016	.015	.017	.065	.075
ivacy:												
49. Federal funding of abortions under medicaid	.09	.09	.10	.10	.11	.11	.12	.12	.13	.13	.55	.55
Handicapped:												
50. Make Federal facilities fully accessible to handicapped	.5	.5	.54	.54	.58	.58	.62	.62	.66	.66	2.9	2.9
51. Expand job opportunities and training for the handicapped												
Domestic violence:												
52. Support passage of H.R. 2977 to provide direct assistance to victims of domestic violence	.015	.005	.02	.02	.03	.03		.01			.065	.055
American Indians:												
53. Redouble Federal government efforts to improve housing, health, education, and general welfare of Indians	.8	.7	.9	.8	.9	.8	1.0	.9	1.0	.9	4.6	4.1
Americans living abroad:												
54. Make medicare available to Americans living abroad who are eligible for social security												
Law enforcement:												
55. Enactment of the Criminal Code including Federal assistance to victims of crime	.016	.007	.017	.011	.017	.013	.019	.016	.019	.017	.09	.06
Election reform:												
56. Public financing of congressional campaigns	.1	.1	.2	.04	.1	.3	.6	.7	.6	.7	1.6	1.8
Energy:												
57. Major new efforts to develop synthetic and alternative renewable energy sources	.6	.4	.6	.6	.7	.7	1.3	1.0	1.6	1.3	4.8	4.0
58. Assist utilities in coal conversion	.3	.1	.9	.4	.6	.6	.2	.5	.2	.4	2.2	2.0
59. Establish a massive residential energy conservation grant program	.13	.03	1.1	.6	2.5	1.3	2.5	1.9	2.5	2.2	8.7	6.0
60. Substantial funding for construction of an engineering test facility for fusion technology	.44	.2		.2		.01					.5	.41
61. Intensify efforts to develop a nuclear waste disposal plan	.3	.01		.2		.1	.1		.1	.1	.5	.41
Environment:												
62. Funds for EPA and environmental agencies sufficient to carry out their mandates	.3	.04	.4	.5	.5	.6	.5	.5	.5	.4	2.2	2.0
63. Super-fund law												
Agriculture:												
64. Increase the level of support for farm prices and income by increasing target prices to cover the cost of production		1.9		2.2	1.9	2.5	2.2	2.8	2.5	3.3	6.6	12.7
65. Retraining programs for farmworkers displaced by mechanized farming												
Refugees and migration:												
66. Special assistance to State and local communities for Cuban and Haitian refugees	.2	.1	.2	.2	.2	.2		.1			.6	.6
The Middle East:												
67. Assistance to Israel and Mideast neighbors engaged in the peace process for refugee resettlement, agricultural development, water development, health and medical facilities, and productivity and trade	3.8	3.6	4.0	3.9	4.3	4.1	4.3	4.1	4.3	4.1	20.7	19.8
68. Commitment to fill SPRO	2.3	.9	0.2	1.5	.1	1.4	.3	.6	.6	.3	3.5	4.7
The developing world:												
69. Increase U.S. and multilateral assistance to oil-importing nations for development of energy resources	.1	.05	.05	.05	.05	.05	.05	.05	.05	.05	.3	.25
Africa:												
70. Aid to Zimbabwe to help with reconstruction			.07	.035		.035					.07	.07
Total	83.26	36.64	111.71	79.13	123.50	88.72	138.22	105.21	152.10	121.91	608.64	431.45

RECOGNITION OF SENATOR BIDEN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Delaware (Mr. BIDEN) is recognised.

Mr. BIDEN. Mr. President, I ask unanimous consent that I may have the 8 minutes remaining on the majority leader's time for morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BIDEN. I thank the majority leader.

REPUBLICANS PROPOSE NO NEW IDEAS TO SOLVE URBAN ILLS

Mr. BIDEN. Mr. President, I noted with interest the responses of both Governor Reagan and Representative ANDERSON on how they would improve the plight of distressed urban areas in America as I listened to their debate on the League of Women Voters' forum on Sunday night. I have noted with some interest the comments this morning of my distinguished colleague from Utah outlining the pitfalls, as he sees them, of the Democratic platform. Mr. President, it seems to me that most of what I heard, whether it be on the Senate floor or in the campaign forum Sunday night, demonstrated either a willingness to disregard what has already been accomplished or a lack of knowledge about existing Federal programs designed to aid distressed urban areas.

For example, on Sunday night, I was particularly struck by the comment made by Governor Reagan as to what he was going to do to take care of the distressed urban areas of America if, in fact, he were elected President. He said that one of the cornerstones of his urban program would be a thing called urban homesteading. He said that homesteading would be one of the first things that he would do, and I sat there with a sense of awe as I watched Governor Reagan tell us about urban homesteading. And he said in that very, very persuasive manner of his, and I am paraphrasing now—"Why can't we turn America around?"—and reinitiate the spirit that founded America. Let Americans go in and, for $1, buy an old house that is presently abandoned—provided they agree to fix it up and live in it." I sat there, and my mother, Jean Finnegan Biden, said, "God bless him, Joe, he is a good man, isn't he?"

And she said, "But Joey, isn't that the thing you introduced 6 years ago in 1974, and is now the law?"

Someone should tell the Governor that, 6 years ago, this body came along and said, "We think it is a good idea that we revitalize the cities of America, and so we passed the urban homesteading program." That was in 1974, and now today Governor Reagan has found the answer to our urban ills; that is, the urban homesteading program.

I want to compliment him. I think it is a very good idea. I should note that, under the bill that was passed into law, and that law has been expanded and upgraded by the Carter administration, the Federal Government turns federally owned homes back to local governments at nominal cost. The individuals within those communities then go out and, for a token payment of $1, the home is theirs, provided that they agree to restore the property and live in that property.

That program was originated in the city of Wilmington, Del., by an innovative young Democratic mayor, Tom Maloney, in 1973. At his suggestion, I introduced a bill to create a national homesteading program. This bill passed Congress and became law of the land.

Perhaps more importantly, it is an extremely successful Federal program. In Delaware since 1973, 118 properties have been awarded; 29 have been occupied for more than 3 years and are paying property taxes to the city. Another 75 are currently occupied and well on their way to being returned to the tax rolls. Fourteen units are in the process of being rehabilitated. Only 10 of the homesteaders failed to meet the program's requirements and those properties have been recycled back into the program.

That is less than 10 percent failure rate in my city and nationally, since 1974, almost 5,500 federally owned homes have been turned back to local governments for eventual transfer to private individuals. The Carter administration has proposed turning back another 1,500 homes to communities for homesteading during the year 1981. And the number of cities now participating in this innovative program has increased from 20 in 1975 to 85 in 1981.

The expansion of this program is due in large measure to the commitment made by the Carter administration to the urban homesteading idea.

I do welcome Governor Reagan's interest in urban homesteading, but as a new idea, he is already 6 years too late.

Mr. Reagan also said Sunday night, "I think one of the problems today with the cities is Federal aid. The mayors that I have talked to in some of our leading cities tell me that the Federal grants that come for a specific cause or a specific objective come with such redtape, such priorities established by a bureaucracy in Washington, that the local government's hands are tied with regard to using that money as they feel it could best be used and for what they think might be their top priority."

Yesterday afternoon, right here on this floor, Mr. President, the U.S. Senate voted on whether or not to reduce the community development block grant program by $200 million a year below its authorization level.

Some people may read this RECORD and say, What do community development block grants have to do with what was just quoted about Governor Reagan?

There is a strange similarity.

What Governor Reagan has been asking for is embodied in the community development block grant program. It says that we are not going to have any strings attached. We are going to send that money to the cities because they know best what their needs are and we will let them use it that way.

I do not know what the mayors were telling Mr. Reagan about this program but I do know that they were lobbying very strongly against any cuts in the community development block grant program. The mayors are in favor of the program for a good reason. Local governments can spend block grant funds on many different activities including land acquisition, construction of public facilities, rehabilitation of public facilities, senior centers, recreation centers, parks, street lights, parking facilities, solid waste facilities, housing, fire protection, housing code enforcement, slum clearance, planning, and historic preservation.

In effect, mayors can spend this money on just about any public purpose they wish to fund.

The community development block grant program is funded at $3.75 billion each year. For many cities this means hundreds of thousands if not millions of dollars to make improvements in the physical plant of their municipality. But it is the local communities which decide where these funds are used.

Governor Reagan says what we ought to do is to create urban enterprise zones where industries will not be taxed if they relocate in such zones. What Governor Reagan fails to realize is that State and local governments have been attempting to stimulate economic development within their boundaries for many years now.

In my city of Wilmington, and in Philadelphia and almost every city in America, that has been useful. I commend him for recognizing its usefulness. That has been a means and a measure which cities have used to attract business back into their areas. It is an attempt to stimulate economic development.

According to Site Selection Handbook of 1977 published by Conway Publications, State and local governments have a great variety of financing tools available to them to encourage industrial development. These include industrial revenue bonds, tax exemptions and moratoria on increased property tax valuations.

At this point, I ask unanimous consent that these four tables from the Site Selection Handbook of 1977 showing the various State and local tax incentives for industrial expansion be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SPECIAL SERVICES FOR INDUSTRIAL DEVELOPMENT

	State financed speculative building	City and/or county financed speculative building	State provides free land for industry	Cities and/or counties provide free land for industry	State-owned industrial park sites	City and/or county-owned industrial park sites	State funds for city and/or county development-related public works projects	State funds for city and/or county master plans	State funds for city and/or county recreational projects	State funds for private recreational projects	State program to promote research and development	State program to increase export of products	University R. & D. facilities available to industry	State and/or universities conduct feasibility studies to attract or assist new industry	State recruiting, screening of industrial employees	State supported training of industrial employees	State re-training of industrial employees	State supported training of "hard-core" unemployed	State incentive to industry to train "hard-core" unemployed	State help in bidding on federal procurement contracts	State science and/or technology advisory council
Alabama		●		●65		●	●	●	●		●	●	●	●	●	●	●	●			●
Alaska						●				●	●	●	●		●	●	●	●	●		●
Arizona						●	●	●	●		●	●	●	●	●	●	●	●			●
Arkansas				●65		●							●		●	●	●				●
California				●65		●	●		●				●		●	●	●	●			●
Colorado		●65		●65		●	●	●				●	●		●	●	●				●
Connecticut						●	●			●	●		●		●	●	●				●
Delaware						●	●	●66	●		●		●		●	●	●	●	●	●	●
Florida						●					●		●67		●	●68	●68	●68	●68		●
Georgia		●				●	●	●	●	●	●	●	●		●	●	●	●	●	●	●
Hawaii					●			●	●		●	●	●		●	●	●	●	●	●	●
Idaho						●	●		●		●	●	●		●	●	●				●
Illinois						●	●	●	●	●	●	●	●		●	●	●	●	●	●	●
Indiana				●65		●	●	●	●		●	●	●		●	●	●	●			●
Iowa												●	●70		●						●
Kansas		●69		●65		●						●	●		●						●
Kentucky						●	●	●	●		●	●	●67		●			●			●
Louisiana				●		●				●72		●	●67		●			●			●
Maine	●			●71		●			●	73		●			●			●	●		●
Maryland	●	●				●	●	●	●		●	●			●			●	●	●	●
Massachusetts		●				●		●		●		●			●			●	●	●	●
Michigan						●	●	●	●		●	●			●			●	●	●	●
Minnesota		●		●74	●	●					●	●			●			●	●		●
Mississippi						●						●			●			●			●
Missouri						●		●78	●78			●			●			●			●
Montana						●			●		●	●			●			●			●
Nebraska						●				●		●			●				●		●
Nevada	●				●	●	●	●	●	●	●	●			●						●
New Hampshire	●				●	●	●	●	●		●	●			●			●	●	●	●
New Jersey		●				●					●	●			●						●
New Mexico		●				●	●	●	●		●	●			●			●12			●
New York						●					●	●			●						●
North Carolina		●		●		●					●	●			●			●	●	●	●
North Dakota						●	●	●	●		●	●			●			●	●	●	●
Ohio		●		●	●	●					●	●			●			●	●	●	●
Oklahoma						●	●	●	●		●	●			●			●	●		●
Oregon		●				●					●	●			●			●	●		●
Pennsylvania					●	●				●	●	●			●					●	●
Rhode Island				●65		●					●	●			●			●			●
South Carolina		●		●74		●	●80	●81			●	●			●			●	●		●
South Dakota		●			●	●					●	●			●			●			●
Tennessee						●						●			●			●			●
Texas						●						●			●			●			●
Utah						●						●			●			●			●
Vermont	●					●	●69	●	●			●			●			●			●
Virginia		●69				●	●79	●	●			●			●			●			●
Washington						●				●		●			●			●			●
West Virginia		●				●		●	●		●	●			●			●		●	●
Wisconsin						●						●			●			●			●
Wyoming						●						●			●			●			●
State total	5	16	0	13	7	47	31	32	36	10	31	47	49	49	50	49	48	36	22	28	43
Puerto Rico	●				●		●	●	●	●	●	●	●	●	●	●	●	●	●	●	●

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TAX INCENTIVES FOR INDUSTRY—OTHER LAWS

	Corporate income tax exemption	Personal income tax exemption	Excise tax exemption	Tax exemption or moratorium on land, capital improvements	Tax exemption or moratorium on equipment, machinery	Inventory tax exemption on goods in transit (Freeport)	Tax exemption on manufacturers' inventories	Sales/use tax exemption on new equipment	Tax exemption on raw materials used in manufacturing	Tax credits for use of specified State products	Tax stabilization agreements for specified industries	Tax exemption to encourage research and development	Accelerated depreciation of industrial equipment	State right-to-work law	State minimum wage law	State fair employment practice code	Statewide uniform property tax evaluation law	Statewide air pollution control law	Statewide water pollution control	Statewide industrial noise abatement law
Alabama	●		●	●	●	●	●	●	●					●	●	●	●	●	●	
Alaska						●		●	●		●					●	●	●	●	
Arizona	●	●				●			●				●	●	●			●	●	
Arkansas						●	●20	●	●						●			●	●	●
California							●18	●19	●18				●10		●			●	●	●
Colorado						●21	●21		●21						●				●	●
Connecticut	●	22			●23	●	●		●						●				●	
Delaware			●24		●	●	●	●	●				●		●				●	
Florida	●					●	●26		●26	●57				●			●		●	
Georgia		●25				●	●		●				●59		●	●		●	●	●
Hawaii		●	●		●	●	●	●					●		●	●	●	●	●	●

TAX INCENTIVES FOR INDUSTRY—OTHER LAWS—Continued

	Corporate income tax exemption	Personal income tax exemption	Excise tax exemption	Tax exemption or moratorium on land, capital improvements	Tax exemption or moratorium on equipment, machinery	Inventory tax exemption on goods in transit (Freeport)	Tax exemption on manufacturers' inventories	Sales/use tax exemption on new equipment	Tax exemption on raw materials used in manufacturing	Tax credits for use of specified State products	Tax stabilization agreements for specified industries	Tax exemption to encourage research and development	Accelerated depreciation of industrial equipment	State right-to-work law	State minimum wage law	State fair employment practice code	Statewide uniform property tax evaluation law	Statewide air pollution control law	Statewide water pollution control law	Statewide industrial noise abatement law
Idaho						●	●	●	●				●		●		●	●	●	
Illinois						●			●				●59		●	●	●	●	●	●
Indiana					●				●				●			●	●	●	●	
Iowa	●	27				●	●28	●	●29				●59	●			●	●	●	●
Kansas	●	75		●30	●30	●		●30	●				●59	●			●	●	●	
Kentucky				●31	●31		●	●	●31				●		●		●	●	●	
Louisiana	●	32		●33	●	●			●	●			●10	●				●	●	
Maine							●	●	●34			●	●59		●	●		●	●	●
Maryland				●31	●		●	●36	●			●37			●	●	●	●	●	●
Massachusetts	●	38	●		●		●								●	●	●	●	●	●
Michigan			●	●38	●			●							●	●	●	●	●	
Minnesota			●	●10	●	●		●40	●		●	●	●59		●	●	●	●	●	●
Mississippi			●	●	●	●		●	●				●59	●				●	●	
Missouri	●		●			●		●	●							●	●	●	●	
Montana	●	35		●	●	●	●39	●41							●	●	●	●	●	
Nebraska						●	●42		●42						●	●	●	●	●	
Nevada	●	25	●25			●	●							●	●	●	●	●	●	
New Hampshire			●25		●	●		●41	●						●	●	●	●	●	●
New Jersey				●	●44	●43	●		●				●44		●	●	●	●	●	●45
New Mexico						●			●				59		●	●	●	●	●	●
New York	●12, 46, 47	●47	●24	●12	●48	●48	●48	●	●48			●46			●	●	●	●	●	●
North Carolina						●43		●49	●50					●	●	●	●	●	●	
North Dakota	●		●	●51	●48	●48	●48					●		●	●	●	●	●	●	●
Ohio				●		●		●	●						●	●	●	●	●	
Oklahoma	●			●	●	●		●	●				●59		●	●	●	●	●	
Oregon		●	●52	●53		●	●		●						●	●	●	●	●	●
Pennsylvania					●54	●55	●55	●54	●54			●			●	●	●	●	●	
Rhode Island				●31	●31		●	●56	●		●	●			●	●		●	●	
South Carolina				●	●	●		●	●			●		●	●	●	●	●	●	
South Dakota	●	●	●	●	●	●			●					●	●	●	●	●	●	
Tennessee		●		●31	●31	●	●	●64	●76	●57			●	●				●	●	
Texas	●	25	●25	●58	●58	●								●	●			●	●	
Utah		77				●	●		●					●	●			●	●	
Vermont						●		●	●		●		●58		●	●	●	●	●	
Virginia				●31	●31	●		●	●60			61	●59	●	●			●	●	
Washington	●	25	●25	●	●		●		●						●	●	●	●	●	●
West Virginia	●					●		●	●						●	●	●	●	●	
Wisconsin	●	62			●		●63	●	●				●		●	●	●	●	●	
Wyoming	●	25	●25	●		●	●		●					●	●	●	●	●	●	●
State total		20	17	10	22	28	39	37	32	44	3	4	8	21	20	41	41	42	50	50	18
Puerto Rico	●		●	●	●	●	●	●	●	●			●	●	●						●

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FINANCIAL ASSISTANCE FOR INDUSTRY

	State sponsored industrial development authority	Privately sponsored development credit corporation	State authority or agency revenue bond financing	State authority or agency general obligation bond financing	City and/or county revenue bond financing	City and/or county general obligation bond financing	State loans for building construction	State loans for equipment, machinery	City and/or county loans for building construction	City and/or county loans for equipment, machinery	State loan guarantees for building construction	State loan guarantees for equipment, machinery	City and/or county loan guarantees for building construction	City and/or county loan guarantees for equipment, machinery	State financing aid for existing plant expansions	State matching funds for city and/or county industrial financing programs	State incentive for establishing industrial plants in areas of high unemployment	City and/or county incentive for establishing industrial plants in areas of high unemployment
Alabama	●	●			●	● 1									● 2			
Alaska	4	●	4	●	● 3	● 3	●	●							●			
Arizona		●			●													
Arkansas	●	●			●	●					●	●						
California		● 5															● 6	
Colorado		●			●													
Connecticut	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●		
Delaware	●		●	●			●	●	●		●	●			●			
Florida		●			●													
Georgia		●	3		●													
Hawaii	●	●			●	●		●	●						●	●	●	
Idaho		4																
Illinois	●	●	●		●			●	●						●			
Indiana	●		●		●	●					●	●			●	●		
Iowa		●			●													
Kansas		●			●	●												
Kentucky	●	●			●		●	●							●			
Louisiana	●	4			●	●												
Maine					●													
Maryland	●	●			●	●		●			●	●			●	● 7	●	

FINANCIAL ASSISTANCE FOR INDUSTRY—Continued

	State sponsored industrial development authority	Privately sponsored development credit corporation	State authority or agency revenue bond financing	State authority or agency general obligation bond financing	City and/or county revenue bond financing	City and/or county general obligation bond financing	State loans for building construction	State loans for equipment, machinery	City and/or county loans for building construction	City and/or county loans for equipment, machinery	State financing aid for existing plant expansions	State matching funds for city and/or county industrial financing programs	State incentive for establishing industrial plants in areas of high unemployment	City and/or county incentive for establishing industrial plants in areas of high unemployment
Massachusetts	●	●			●	●			●	●	●		●	●
Michigan	●	4		●							●	●	●	
Minnesota		●		●			●	●	●8	●9	●		●	
Mississippi	●	●				●					●2			●
Missouri		●				●		●8			●			
Montana		●							●17					
Nebraska		●									●2			
Nevada						●							●	●
New Hampshire	●	●		●			●				●			
New Jersey	●		●	●		●10					●	●	●	●
New Mexico	●	4				●								
New York	●		●	●	●			●	●11	●	●		●12	●12
North Carolina		●			●									
North Dakota	●	●	●	●		●		●	●		●		●	
Ohio	●	●	●	●							●		●	●
Oklahoma	●	●	●	●		●		●	●	●	●			
Oregon		●	●	●		●10								
Pennsylvania	●	●	●	●				●14		●14	●		●	●
Rhode Island	●	●	●	●										
South Carolina	●	●	●	●										
South Dakota														
Tennessee	●				●		●				●			
Texas	●					13		●	●		●			
Utah	●	●	●	●										
Vermont	●	●	●	●				●	●		●		●	●
Virginia	●	●												
Washington	●	●				3								
West Virginia	●	●		●			●	●	●	●3			●	●
Wisconsin	●	●					●16							
Wyoming		●												
State total	11	35	21	8	45	21	17	13	8	7	15	13	1	1	28	8	15	9
Puerto Rico	●	●	●	●	●	●	●	●			●	●			●	●	●	●

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INDUSTRIAL FINANCING FACTS—STATE AND POLITICAL SUBDIVISION FINANCING

[Dollar amounts in millions]

	Permitted?	By general obligation bonds?	By revenue bonds?	Bond financing to date	Financing agency?	Type***	Maximum amount of transaction	Maximum percent of project cost covered by transaction (percent)	Current rate of interest (percent)	Total number of transactions to date	Total amount of transactions to date	Aggregate of funds for financing	Total funds currently available for financing
Alabama	Yes	Yes [1]	Yes		No								
Alaska	Yes	No	Yes	$0.2	Yes	A,B	$0.75	90					
Arizona	Yes	No	Yes		Yes	A							
Arkansas	Yes	Yes	Yes	1,295.2	No		Open	100	Varies	441.0	$1,295.0		
California	No	No	No		No								
Colorado	Yes	No	Yes	170.0	No								
Connecticut	Yes	No	Yes	150.0	Yes	B,C,D	Varies	100	Varies	261.0	203	[3] $172	[3] $80.
Delaware	Yes	Yes	Yes	206.7	Yes	D	$5	100	Varies	87.0	206.7	[4] 50.5	[4] 18.
Florida	Yes	No	Yes		Yes	B [5]		100	Varies				
Georgia	Yes	No	Yes		No								
Hawaii	Yes	Yes	Yes		Yes	B	$0.05	10	5.5	24.6		6.9	0.3.
Idaho	No	No	No		No								
Illinois	Yes	No	Yes	372.0	Yes	B	No limit	100	Varies	79.0	372		
Indiana*	Yes	No	Yes	1,000.0	Yes	C,D	C:$1.0	C:100		C:25.0	C:3.5	C:2.0	C:12.
Iowa	Yes	No	Yes	357.8	No	A	$0.30	100	Varies	82.0	11.7	5.5	1.3.
Kansas	Yes	Yes	Yes	630.0	Yes	A	$0.25	100	Varies	496.0	66.1	39.0	12.0.
Kentucky	Yes	Yes	Yes	952.5	Yes	B		(6)	8	75.0	9.1	6.0	7.9.
Louisiana	Yes	Yes	Yes	1,200.0	No								
Maine	Yes	No	Yes	78.0	Yes	B,C	$2.5	Varies	Varies	113.0		57.0	
Maryland**	Yes	Yes [1]	Yes	365.0	Yes	A,C	A:15 C:$5.	100	Varies	47.0	30.3	60.0	29.7.
Massachusetts	Yes	Yes	Yes	112.6	Yes	B	$5	100	Varies	52.0	112.6		
Michigan	Yes	No	Yes	746.1	Yes	B	No limit	90	Varies	7.0	7	200.0	200.0.
Minnesota	Yes	No	Yes	629.7	Yes	A	$5	100	Varies	225.0			
Mississippi	Yes	Yes	Yes	950.0	Yes	A				940.0			
Missouri	Yes	Yes	Yes	340.3	Yes	D [8]	No limit	50	Varies	7.0	1.3	15.0	15.0.
Montana	Yes	No	Yes	176.0	Yes	A			Varies				
Nebraska	Yes	No	Yes	223.7	Yes	A	$5	100	Varies	192.0	223.7		
Nevada	Yes	No	Yes						Varies	5.0			
New Hampshire**	Yes	No	Yes	51.5	Yes	A,B	$5	100		107.0	7.2	38	30.
New Jersey*	Yes	No	Yes		Yes	B	$5	100	5.5–9	19.0	16.4		
New Mexico**	Yes	No	Yes	39.0	Yes	A	Open	100	Varies	27.0			
New York	Yes	No	Yes	154.8	Yes	A,B,D [9]	A:$0.5 B:$1.0 D:No limit	A:No limit B:40 D:No limit	A:2.5 over prime B:7.0–7.75 D:Varies	A:524.0 B:756.0 D:129.0	A:926 B:100.8 D:305.8	A:25 B:150	A:14. B:90.
North Carolina**	Yes	No	Yes		No								
North Dakota	Yes	Yes	Yes	111.8	Yes	A,D [10]		A:100 D:Varies	D:Varies	A:24.0 D:49.0	A:2.6 D:108.4	A:2.0	A:.25.
Ohio	Yes	No	Yes	899.1	Yes	C	$5	90	Varies	40.0	27.5		
Oklahoma	Yes	Yes	Yes		Yes	B	No limit	100	Varies	158.0	21	20	2.0.
Oregon**	Yes	Yes	Yes		Yes	A,C		100		3.0			

Footnotes at end of table.

INDUSTRIAL FINANCING FACTS—STATE AND POLITICAL SUBDIVISION FINANCING—Continued

[Dollar amounts in millions]

	Permitted?	By general obligation bonds?	By revenue bonds?	Bond financing to date	Financing agency?	Type***	Maximum amount of transaction	Maximum percent of project cost covered by transaction (percent)	Current rate of interest (percent)	Total number of transactions to date	Total amount of transactions to date	Aggregate of funds for financing	Total funds currently available for financing
Pennsylvania**	Yes	No	Yes	$4,480.0	Yes	B,D [11]	Varies	100	Varies	E: 314.0 D: 2,861.0	B$351 D: 5,181		
Rhode Island	Yes	No	Yes	11.0	Yes	A,C	$5	80–100	Varies	119.0	50.7	$80	$37.
South Carolina	Yes	No	Yes	375.5	No								
South Dakota*	Yes	No	Yes	33.9	No								
Tennessee	Yes	Yes	Yes	667.0	Yes	B,C	$0.25	50	Varies	2.0	.14	3.3	3.1.
Texas**	Yes	No	No		Yes	(12)		40	5.5	5.0	.6	.6	0.
Utah	Yes	No	Yes		No								
Vermont	Yes	No	Yes	14.8	Yes	A,B,C	C: 5 [13]	C: 80				C: 35	
Virginia	Yes	No	Yes	602.0	Yes	A	$0.5	100	2+	73.0	16.8	9.3	5.
Washington	Yes [14]	Yes	Yes		No								
West Virginia	Yes	No	Yes	600.0	Yes	B	No limit	30	5.5	90.0			
Wisconsin	Yes	Yes	Yes	1,224.4	No								
Wyoming**	Yes	No	Yes	75.0	Yes	A	No limit	Varies	Varies				

*Data are for 1974.
**Data are for 1975.
***Type of financing organization—A: Development Credit Corp.; B: Development Authority; C: Mortgage Insurance Agency; D: Other.
[1] Permitted only in specified municipalities.
[2] Excludes self-sustaining program.
[3] For revenue bonds only. No limit under self-sustaining portion of financing program.
[4] No limit under self-sustaining portion of revenue bond program.
[5] At local government level.
[6] Transaction may cover 40 percent of buildings, 50 percent of industrial subdivisions.
[7] Michigan Job Development Authority to be operational in 1977.
[8] Industrial development time deposits.
[9] A: New York Business Development Corp.; B: New York Job Development Authority; D: Local industrial development agencies.
[10] Participation loans, Bank of North Dakota.
[11] Industrial revenue bonds and mortgages.
[12] Texas Rural Development Act.
[13] $3,000,000 secured by land and buildings; $2,000,000 secured by equipment and machinery.
[14] Authorized for public port authorities.

Source: Conway Publications survey of the State development agencies.

Mr. BIDEN. Mr. President, what Governor Reagan fails to recognize is that a firm's location or expansion decisions are often based on factors other than tax incentives. Firms need a ready line of credit, public services, accessible transportation, a ready outlet or demand for their goods and services. These factors cannot be addressed by simply lowering the property tax rate or offering advantageous depreciation formulas.

Furthermore, it would take an army of accountants to take advantage of all of the tax incentives, exemptions, and allowances provided for in the Urban Jobs and Enterprise Zone Act that Governor Reagan supports. As research by David Birch and others have shown, it is the small- and medium-sized firms which account for most of the new jobs created in our economy.

It seems to be the impression here that only large multinationals employ people. But most new jobs are created by these smaller and medium-sized firms. These firms cannot afford to waste scarce capital by hiring batteries of accountants and tax lawyers to take advantage of the loopholes provided under these well-meaning provisions of the Urban Jobs and Enterprise Zone Act of 1980, although some of these may be desirable.

If I was disappointed in Governor Reagan's proposed urban package, I was equally disappointed by Congressman ANDERSON's proposals. Perhaps the only novel thing about the Anderson urban package is using the Federal excise revenues from tobacco and alcohol sales to finance his proposal.

Mr. ANDERSON calls for a $4 billion urban reinvestment trust fund to rebuild the leaky water mains and crumbling streets of this country's cities. I am not sure whether this would replace or be in addition to the existing community development block grant program. But the details of the Anderson proposal suggest that the urban reinvestment trust fund is really the old community development block grant program in disguise. The Anderson allocation formula is the same allocation formula used in the existing community development grant program. The urban redevelopment trust funds may be used for the same purposes as the block grants.

Cities would be required to use funds in the most severely decayed neighborhoods; they would have to adequately consult neighborhood organizations and not supplant existing local contributions for capital replacement. These provisions exist under current law, so despite the fancy new name and new source of funding, the Urban Reinvestment Trust Fund seems to be a repackaging of an old product.

Congressman ANDERSON also calls for an expanded youth employment program at a time when Congress is completing action on the President's youth employment initiatives. So there is really nothing new in this proposal either.

When one considers the Carter record, it is a record filled with significant accomplishments. Since 1977, the following urban initiatives have been proposed by the Carter administration and passed by a Democratic Congress.

He created the urban development action grant program to encourage private investment and jobs in our Nation's major cities. This program has grown to $675 million a year and has already leveraged $7 billion of private investment and created more than 200,000 jobs. This is the very thing that Congressman ANDERSON and Governor Reagan say they are keenly concerned about doing, and I commend them for it.

Carter has targeted Federal Government procurement and facility location policies toward urban centers.

That simply means that when the Federal Government spends the money it has to spend, whether it is to refurbish an aircraft carrier, or to locate a warehouse where they store the supplies for the GSA, that we have a sensible policy about where we locate Federal facilities, and that the Federal Government spend its money where it does the most good.

The Carter administration created the private sectors initiatives program to encourage industry and business to become more involved in employing disadvantaged citizens in their communities.

It created the Office of Neighborhoods, voluntary associations and consumer protection within the Department of Housing and Urban Development to encourage neighborhood activities. Things that Mr. Reagan and Mr. ANDERSON have talked so much about.

Carter has continued efforts to eliminate redlining and other discriminatory financing practices which hurt many cit'es today.

Big banks do not want to lend the money in the areas most troubled by urban problems.

In addition to these policies and programs which have already been enacted, the Carter administration continues to work with Congress to enact an expanded program of economic development loans and guarantees for distressed areas. The House of Representatives has passed the Youth Act of 1980 and the Senate Labor and Human Resources Committee has begun action to report youth employment legislation in the Senate. When we talk about ways of restoring our urban areas to health, I think we must recognize that the process of revitalization and rejuvenation is an ongoing process.

Certainly our cities did not decay overnight. Rather, it took decades of decline for them to reach the point where they were during the 1960's. When viewed in this context, I think the Carter record is impressive. Again, I should like to take Wilmington as a case in point. In 1968, Wilmington was wracked by the same riots that ruined so many other American cities.

Retailers and industry left the city by the dozens. Much of Wilmington's housing was dilapidated and abandoned. But in Wilmington, as in many other cities, there were a few individuals who believed the city was a living thing. In 1973, the city began its urban homesteading program—a small but critically important first step. Then the infusion of community development block grant funds allowed the city to pump capital into neighborhoods which were declining but could be saved.

Plans were made for a new downtown mall. By 1976, Wilmington was making real progress in restoring its downtown area and revitalizing several neighborhoods. However, the real renaissance of Wilmington has occurred within the last 4 or 5 years. The city received an urban development action grant to build a new hotel/convention center downtown.

The Radisson Hotel has proved to be an immense success and has attracted considerable convention business—in an area that essentially was a wasteland before.

The Department of Housing and Urban Development has made commitments to substantially rehabilitate or build new housing in the riot-torn West Center city area of Wilmington. The restoration of the grand opera house has been completed with considerable Federal assistance. The city just recently received a substantial boost when the Department of Housing and Urban Development announced a second grant for the city in order to keep the Hercules Co. in Wilmington.

Several thousand jobs are staying in the city because of that program, a program initiated by the Carter administration.

Hercules, one of the largest employers in Wilmington, was going to move its headquarters out of the city and into the suburbs until this Federal grant came through. Now the company will remain in the city and will build a large new office complex at the north end of the central business district. Plans are also underway for a renovation of the old post office building in Rodney Square, where a new high-rise office tower will house a major bank. And the list of activities goes on.

I am proud of my city. Those who have been to my city know that it truly has been revitalized. People are staying downtown to have dinner after they finish work. People are going to the opera. People my age are moving into the city. Wilmington has a good attitude about itself, as hundreds of thousands of other people have about it and other cities around the Nation. As a Delawarean, I am proud of the people of my State who believed in the city and who have worked long and hard to see Wilmington reborn.

However, I am also a realist—many of these projects were built with Federal funds. They would have never been completed without Federal financial assistance. It is because of programs like the urban development action grant program—the section 8 assisted housing program and the urban homesteading program—that Wilmington has prospered.

These programs were either created or were significantly expanded by the Carter administration—because the Carter administration has been committed to seeing cities helped. That is why I find it hard to believe Governor Reagan and Congressman ANDERSON when they say that they have a better answer to the problems of the cities. No serious student of the problems of our cities will argue that we can turn our cities around in just a few years.

No one, including this administration, suggests that merely by throwing tens of millions of dollars or billions of dollars at cities, you will cure the deep, abiding problems that exist within the cities.

At best, ANDERSON's and Reagan's ideas are simply a rehash of existing programs. On the one hand, you have Governor Reagan calling for an urban homesteading act, a program which has been in existence for a long time and with growing success. On the other hand, ANDERSON is calling for an urban reinvestment trust fund which, for all practical purposes, duplicates the community development block grant program.

Mr. President, in the final analysis, we must recognize that to have viable urban centers we must have an effective urban policy. To have an effective urban policy, I believe that we must not be afraid to commit the resources to programs which will make a demonstrable difference in our cities. That is why I have great difficulty believing that any candidate can do more for our cities than the present administration.

Mr. President, I have been a little tough on Governor Reagan and a little tough on JOHN ANDERSON here this morning. I might not have been so tough had I not heard the characterization of the Democratic platform by my colleague from Utah just a few moments before.

I realize that it is hard to run for the Presidency of the United States. I believe that someone who is not an incumbent, whether he be a Democrat, a Republican, or an Independent, is at a disadvantage vis-a-vis and incumbent because that person has not worked with the programs and the issues for the past 4 years.

However, it should not go unstated that, at least in the area of the urban policy, neither of the other candidates have offered anything substantially new. Not only has nothing new been offered, but what has been offered by both candidates is substantially in place.

I can understand that they might not be aware of that. Governor Reagan is learning about everything from SS–18 missiles to urban homesteading, and there is a great deal in between. I am not sure that if I were running for President and an aide put something in front of me and said, "Talk about the urban homesteading plan," I would have any idea that the program already existed.

The point I wish to make is that because of the mood of the Nation, because of the difficult times, the Carter administration is not getting the credit it deserves.

I have been in the Senate 8 years, and this is the first time I have come to the floor to speak in a partisan way about an issue. It is the first time I have mentioned on this floor the name of any Presidential candiate and characterized his comments. However, I could not let go unstated what seems to be the impression that there is no program in place and that what has been offered is something new and innovative.

It has not gone unnoticed by me and others that my colleagues on the Republican side of the aisle have learned to use this forum very well in the morning, particularly when they discuss the platforms of the Democratic Party.

In the interest of fairness, if one takes away all the rhetoric and leaves just the facts, we have an urban policy. UDAG exists, urban homesteading exists, the private sector initiatives exist.

I hope if, in fact, either Governor Reagan or Mr. ANDERSON is elected President that he will continue to be as supportive of those programs and the cities in the same way that President Carter has been.

Mr. President, it has been pointed out to me by two distinguished Delawareans who work in the Senate that I omitted the names of two prominent persons when discussing the revitalization of the city of Wilmington. It is true the city of Wilmington began to be revitalized under a Republican mayor named Harry Haskell. The revitalization further progressed under a Democratic mayor named Thomas Maloney and is now in full flower under the present Democratic mayor, William McLaughlin.

I apologize to Mayor Haskell who has had a long and continuing commitment to the city of Wilmington for not including his name earlier in my remarks.

I thank my colleagues for their indulgence, and I yield the floor.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 11:30 a.m. today and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

HON. DAVID E. SATTERFIELD III

Mr. HARRY F. BYRD, JR. Mr. President, last week the Virginia congressional delegation entertained a dinner in honor of Congressman DAVID E. SATTERFIELD III, of the Third Congressional District.

Congressman SATTERFIELD some months ago announced his voluntary retirement from Congress.

DAVE SATTERFIELD came to the House of Representative in 1965. He was elected in 1964 and took office in 1965.

During the 16-year period Congressman SATTERFIELD, in my judgment has been one of the finest, one of the ablest, and one of the most courageous Members of Congress.

I am proud to have served with him in Congress. We have worked closely together on many issues. He represents and has consistently represented the thinking of the overwhelming majority of the people of the Third Congressional District. The Third Congressional District is the Richmond area, Richmond, Henrico, and Chesterfield Counties.

DAVE SATTERFIELD, from every indication could easily have been reelected to Congress. He chose, however, to retire at the end of this session.

DAVE SATTERFIELD was elected each of the eight times as a Democrat. Yet he consistently voted independent of party lines in assessing legislation before the House of Representatives.

DAVE SATTERFIELD will be greatly missed. His judgment and his courage will be missed by his Virginia colleagues. His judgment and his courage will be missed also, I feel, by the citizens of the Third Congressional District.

As DAVE SATTERFIELD prepares to leave the Halls of Congress, I am pleased today to stand in the Senate and salute a dear friend and an outstanding Member of Congress.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NUCLEAR POWER: ITS PROMISES—ITS PROBLEMS

Mr. PROXMIRE. Mr. President, Mr. Richard Potts, of Milwaukee, has sent me a copy of the excellent Presidents' Newsletter of the Milwaukee School of Engineering. Issue 138 contains an article by Prof. Pepe Rodriguez of the Department of Architectural and Building Construction Engineering Technology entitled "Nuclear Power; Its Promises—Its Problems," which I would like to share with my colleagues.

The Milwaukee School of Engineering is a private, independent school with over 2,500 students which was founded in 1903. It grants bachelor and associate degrees in a wide variety of scientific and technical disciplines, many of which are concerned with energy production and distribution. Therefore, it should come as no surprise that the school would devote an entire issue of its newsletter to nuclear power and its alternatives.

Professor Rodriguez carefully analyzes the various sources of energy available to Americans and compares them on the basis of cost and safety. She concludes that nuclear power has an important role to play in the future.

Mr. President, I ask unanimous consent that the newsletter be printed in its entirety in the RECORD.

There being no objection, the newsletter was ordered to be printed in the RECORD, as follows:

NUCLEAR POWER: ITS PROMISES—ITS PROBLEMS

(By Pepe Rodriguez)

Nuclear power—its advocates claim nuclear power offers the world a virtually unlimited source of nonatmospheric polluting, economical source of energy. Its opponents claim nuclear power is unsafe environmentally dangerous, and a threat to world stability. Its advocates see it as essential in the next 25 years to make the transition from gas and oil to other alternatives. Its opponents contend that conservation, with development of solar energy and other types of energy, will get us through the next 25 years.

To be sure, nuclear power has had a stormy history. Conceived in secrecy, it has been controversial since the tragic Hiroshima in 1945. Many people react irrationally to the words "nuclear" and "radiation." Because radiation is invisible, intangible, tasteless, odorless, and silent, and because it is measured in unfamiliar units (rems) that are themselves not easy for the layman to understand, many people see it as mysterious and something to avoid at all costs.

But, as a matter of fact, radiation is not mysterious. We know a good deal more about it than, say, the carcinogens in coal smoke, because we have studied it longer and more intensively. And, we can measure it with great precision and extraordinary sensitivity. For example, we can detect radiodine in milk at concentrations of ten trillionths of a curie per litre which is 1/20th of the concentration the Food and Drug Administration treats as noteworthy for precautions.

Nuclear power has its place and definitely has potential as an energy supply if we intend not only to continue our present life style but technologically to improve it. Did you know that the United States makes up 6 percent of the world's population but uses 35 percent of the world's energy?

SOURCES OF ENERGY

Nuclear power is one—but only one—source of the electric energy people need for lighting, heating and cooling, and performing work that otherwise would require exhausting labor. Any form of energy can be converted into electricity. Some forms, however, are not used because the electricity they produce would be prohibitively expensive. Let's look at a few of them:

Solar energy is manifested in several forms other than direct radiation from the sun—wind, waves, biomass, ocean thermal gradients. All are technically possible but at tremendous cost.

Wind machines are being developed which would lead to limited energy contributions in regions where suitable wind conditions exist.

Ocean wave energy is in its infancy and is being studied by the United Kingdom but requires the users to have a large coastline-to-land ratio.

Biomass (fuel conversion from special "energy crops," forestry and agricultural wastes and urban refuse) is presently being studied. However, much land area is needed for the biomass crops, and estimates for the year 2000 indicate most reasonably productive land will be needed for food production.

Ocean thermal gradient systems utilize the small temperature difference existing between the sun-warmed ocean surface and lower, cooler levels. The contribution of such systems to United States energy needs seems extremely remote.

There is also geothermal energy which is the energy of the earth's core. In the U.S., promise exists primarily in the western and gulf coast states for geothermal energy as an energy supplement. On the negative side, substantially more cooling water is required per kilowatt hour than for nuclear plants and this could present an important obstacle in much of the southwest where water is already at a premium.

Note that all of the above alternative energy sources have geographic limitations and are not yet economically feasible. Some people talk about solar power as the ultimate energy solution to everything, but the sun's most significant contribution is to space heating and water heating.

Solar heating, while technically feasible, is neither economical nor viable in all parts of the country. Cloud cover must be considered, and an optimized system would probably meet no more than 50 percent of a home's heating requirements during a typical heating season. This necessitates a backup energy supply and equipment.

Even if the solar industry captured 100 percent of the new construction space heating after 1985, this would represent only about 6½ percent of the total primary energy requirement by the year 2000. Even an unbelievably successful solar program does not obviate the need to increase our utilization of coal and nuclear energy sources.

MAJOR FEASIBLE SOURCES

These two feasible major sources of energy must be developed to provide the vast quantities of electricity needed. There are problems and advantages to each. Coal is abundant but potentially polluting and emits radiation when burned. "The Uranium People," a book by Leona M. Libbey, states that more radioactivity has come out of the fossil-fueled plants than has been emitted from all the nuclear power plants in the world.

Nuclear technology is proven but has caused some concern among the public. The problems can be solved, in both cases. A balanced electric energy production system—relying mostly on nuclear power and coal—is necessary to meet the people's needs now, and for the foreseeable future.

Today's work force is about 85 million. By the year 2000, it will be 113 million. Think of the electricity that will be needed for the jobs, housing, material goods, and services these people will need. These are not mere forecasts. Most of these people have already been born. Nuclear power and coal can meet their energy needs until new technologies are developed.

COAL FOR TWO HUNDRED YEARS

All accept the fact that oil and gas are diminishing rapidly. Coal is our other most abundant fuel with identified reserves to meet our nation's needs for approximately 200 years. Note again, however, the time limit. The impact of coal mining and burning could have an undesirable effect on public health and the environment if not done properly. Mining techniques will be costly if the countryside and wildlife are to be protected. And, although coal produces electricity more economically than gas or oil, it is more costly than nuclear power. Yet it is one of the energy sources we must develop. (1979 Wisconsin Electric Power Company cost per kilowatt hour: oil—5.1 cents; coal—1.4 cents; and nuclear—0.5 cents).

Nuclear energy is our only other acceptable alternative, economically and environmentally. We know we can produce several thousand years of energy from known uranium reserves if the government would allow us to develop breeder reactors. (A breeder reactor is one that produces as much or more fuel than it uses.)

Presently, U.S. reactors are the converter type. In other words, a less efficient reactor and one that produces more radioactive waste. France, Britain, Japan and Russia are ahead of the U.S. in nuclear technology.

America—the world's technological leader—wouldn't it be ironic to end up importing first generation technology to develop breeder reactors? I believe that, instead of criticizing our present nuclear progam, let us develop a positive attitude—encourage breeder reactor development. This also would help reduce the waste problem which has been the Achilles heel of the nuclear program.

HOW A REACTOR WORKS

Before considering health problems and waste concerns, let's look at how a reactor works. Uranium does not burn like coal or oil. Heat is produced in the reactor by splitting uranium atoms, a process called fission. A tiny particle called a neutron strikes the center or nucleus of the uranium atom, splitting it into fragments and releasing heat and more neutrons. These free neutrons then collide with and split other uranium atoms, releasing more heat and neutrons, and so on. This is called a chain reaction. From this point on the process is much the same as in a conventional fossil fuel electric plant. The heat from fission turns water into steam, the steam spins the turbine generators, and electricity is produced.

There are four primary parts in a nuclear reactor:

1. A core which houses the nuclear fuel;
2. A control system which regulates the rate of fission;
3. A water cooling system which carries heat from the core;
4. Additional cooling systems and protection barriers.

It is interesting to note that in the hullabaloo over Three Mile Island, lost is the fact that the emergency core cooling system, even with evidence of human error, did what it was supposed to do—cool down the core and prevent any melt down.

In addition, the Nuclear Regulatory Commission has recommended improved emergency core cooling systems designs and the use of additional back-up cooling systems. A nuclear power plant has so many overlapping safety features that, if for some unknown reason, a disproportionate number would fail, there would still be sufficient additional barriers to provide safety. In addition to these barriers and devices, there are several systems built into a nuclear reactor power plant to trap any potentially harmful amounts of radioactive material and prevent them from being released to the outside environment.

INHERENTLY SAFE

A nuclear reactor is inherently safe with automatic safety devices ready to shut it down at the first sign of abnormal operation. A three-year, $4 million study released by the U.S. Nuclear Regulatory Commission concluded that:

"Nuclear power reactors are about 10,000 times less likely to produce fatal radiation-related accidents than non-nuclear activities. Non-nuclear accidents involving comparable large dollar-value damage are about 1,000 times more likely than nuclear power plant accidents."

The chance that a person living in the general vicinity of a nuclear power plant will be fatally injured in a reactor accident is one in five billion per year compared with one in 4,000 for car accidents, and one in 10,000 for a fall. No member of the public has ever been harmed by a commercial nuclear power plant in the 20 plus years they have been in operation in this country. No member of the public has been exposed to radiation in excess of internationally approved standards as a result of the operation of any U.S. commercial nuclear power plant, including support activities.

Admittedly, nuclear power plants are susceptible to accidents just as any other industrial facility, but few industrial plants have been designed with the sensitivity to safety that nuclear power plants have.

WHAT ABOUT RADIATION-INDUCED CANCER?

You may be asking yourself at this point: "What about radiation-induced cancer?

The average American annually absorbs about 150 to 200 millirems of radiation due to everyday activities. The normal risk for a normal individual for developing cancer due to smoking, ingesting nitrates in bacon, ingesting saccharin, inhaling asbestos, etc., is one in 500.

So, what is a safe dose of radiation? This depends on the dose amount and the time in which it is received. If we are asking what is absolutely safe, there is no answer, because what is absolutely safe about anything we do?

What is the absolutely safe distance to travel in an automobile, in an airplane, in a wheelbarrow? What is the absolutely safe amount of bacon to eat or aspirin to take or cigarettes to smoke? There are so many risks in life, but so many arguments about radiation are presented that I call it to your attention.

WHAT DOSE OF RADIATION IS REASONABLY SAFE?

However, we may ask the question: what dose of radiation is reasonably safe? Although the International Commission on Radiological Protection has established the maximum permissible radiation dose for the whole body exposure, annually, at 500 millirems, the limit of 175 millirems per year per person for members of the general public seems reasonably safe based on an average person's exposure to background and man-made radiation. Persons can decrease their radiation exposure in various ways, by refusing to accept repetitive X-rays, by living in a tent instead of a brick, stone, or concrete residence, by avoiding high altitude cities. All of these choices would cut annual radiation absorption more significantly than by refusing to live in the vicinity of a nuclear power plant.

THREE MILE ISLAND

The average dose to any individual of the two million population residing within 50 miles of the Three Mile Island nuclear station monitored from the accident of March 28, 1979 until April 7, 1979 was about 1½ millirem. There was one individual who was identified as being 1.1 miles from the plant during the period of highest exposure and he was determined to have registered a dose of 37 millirems. The Three Mile Island accident should give us serious pause but it should not paralyze us.

NUCLEAR WASTE

New nuclear fuel is not very radioactive. It's even safe to touch directly with gloves. Fuel that has been in the reactor for a while is highly radioactive. The fission of the nuclear fuel in the reactor leaves spent fuel with some wastes with high degrees of radioactivity.

These fission products remain locked inside fuel assemblies until they can be taken to a reprocessing plant and treated. Because no commercial reprocessing plant is in operation in this country at this time, spent fuel from nuclear power plants is stored temporarily in deep water pools at plant sites. The disposal of wastes by burying them in deep salt beds is the method recommended by the National Academy of Sciences because these salt formations have not been disrupted by earthquakes for millions of years and statistically will remain geologically undisturbed for the next million years. The salt formations are also free from circulating groundwater. The radioactive waste could continue to decay, undisturbed, until it became inert.

This country was the pioneer in nuclear power. Yet today because of excessive government regulation, it takes up to 14 years to build a nuclear power plant in the U.S. while it takes only 4½ years in Europe or Japan.

The necessity to "get moving" and allocate funds for further research in all areas of nuclear power can not be overstressed. We need breeder reactors, because they can produce 50 times more energy with one pound of uranium than can be produced in the current converter reactors. Every day of power reactor operation in a non-breeder economy loses forever the neutrons that could create a rare and valuable fuel.

GENOCIDE: THE DISGRACE OF DIVISION

Mr. PROXMIRE. Mr. President, the objective of the Nazis was to create firm local loyalty in each occupied territory. Only through the recruitment of local support could the ultimate conquest of Europe be achieved. Thus, many underground groups realized that division of their forces was a great danger to their cause. While the Nazis aimed to splinter and destroy underground movements, the leaders of these movements struggled to unify.

In 1940, the Nazis drove millions of Polish Jews into walled and guarded ghettos. Knowing their plan to exterminate the Jews depended on local acquiescence, the Nazis counted on little resistance from the Polish population. But their expectations were not completely fulfilled. The major groups in the Polish labor movement declared their common view that:

> There are no degrees in slavery and there are no better or worse categories of slaves. The Polish people . . . reject with contempt the Hitlerian notion that they become a superior type of slave due to the fact that they are not enclosed in a ghetto. In the face of the savagery unleashed by the invaders, the Polish people recognise only two categories: those who submit and compromise with the oppressors, and those who oppose them.

With these words, the groups hoped to consolidate their opposition to the Nazis.

Unfortunately, a year passed and these words were not accompanied by action. At a 1941 conference of the Polish Socialist Party, a majority refused to support any active opposition to the Nazis. Immediately, the two Jewish Socialist parties withdrew their representatives from the conference. Individuals and local organizations were left to aid on their own the Jews imprisoned in the ghettos.

Despite the minimal support available from the outside, the Jews in the Warsaw ghetto prepared for a final desperate uprising. Perishing in large numbers by the fifth day of their revolt, the Jews conveyed to the Poles beyond the ghetto wall a striking message:

> This is a fight for your freedom as well as ours, for your dignity and honor, as well as ours!

Mr. President, I call attention to the efforts made by Jews and non-Jews alike to unify in opposition to the Nazis. I call attention to the Nazis' persistent exploitation of any division in the resistance. Division is also the sad state of this body. Our division has prevented a strong denouncement of inhumane policies. I urge my colleagues to unify behind the worthy cause of the Genocide Convention.

KIM DAE JUNG AND THE FUTURE OF DEMOCRACY IN SOUTH KOREA

Mr. CRANSTON. Mr. President, last week, a South Korean military court, acting at the behest of the newly instated Chun regime, sentenced to death one of the principal champions of South Korean democracy, Kim Dae Jung. The trial of Kim, on what the U.S. State Department has termed "far-fetched" charges, was a mockery of South Korean justice, involving as it did forced confessions, lack of adequate legal assistance, and a truly absurd indictment.

I wish to add my voice to the international outcry against Kim's sentence raised by other Senators on both sides of the aisle, by Members of the House, by the executive branch and by a number of foreign governments. I call upon the South Korean authorities to reverse this sentence and to set Kim free.

The sentencing of Kim and 23 fellow opposition leaders is but another in a continuing series of abuses of democracy perpetrated by the new regime of Chun Doo Hawn. These include: The government-ordered firing of more than 400 journalists from Seoul-based newspapers and broadcasting stations, the indefinite postponement of free elections, the abandonment of efforts to achieve genuine constitutional reform, and the imposition of martial law last spring.

As a friend of South Korea and a supporter of our military presence in that crucial region of the globe, I am deeply concerned about the direction of recent events in South Korea. The United States is committed to the defense of the South Korean people and to their democratic development. But we are not committed to the support of a military dictatorship in that country.

The present ruler of South Korea has already violated agreements with the United States by using South Korean forces under U.N. command to aid in his seizure of power. I believe there is a danger that continued abuse of democratic principles by the Chun regime could add to present instability in South Korea and compromise U.S. national security interests. In the absence of political stability, South Korea can only weaken U.S. security interests in East Asia. And as we have learned so painfully in other areas of the globe, political stability cannot be achieved by U.S. support for military rulers who frustrate the will of their own people for democratic reforms. Support for democratic development abroad is not simply a U.S. human rights endeavor, but a national security goal as well.

There are finite limits as to how far the United States can and will go in protesting abuse of human rights in South Korea and in seeking the commutation of Kim's sentence. I do not believe we should cut off military aid because we need to keep South Korea militarily strong to deter possible aggression from the North and to protect the 39,000 American troops now stationed there.

But we should take a hard look at the U.S. policy of underwriting hundreds and millions of dollars in new concessionary loans to the South Korean Government. South Korea presently is the U.S. Export-Import Bank's biggest customer, already owing the Bank $3.3 billion. It may become necessary to halt all Bank lending to South Korea as this lever may represent the best means of registering our concern over the course of events in Seoul and their implications for regional security without endangering the security of that nation or the American troops stationed there.

Further, I think it is critical for the U.S. position on the abuses perpetrated against Kim and other South Koreans to be made clear to the South Korean people. One of the more treacherous moves by the Chun group has been to use its absolute control over the South Korean press to tell the South Korean people that the U.S. Government is in full accord with the moves taken by the new regime. I believe the United States should combat this falsehood, both in public diplomatic protests and through the use of Korean language broadcasts over the U.S. Armed Forces Network.

Mr. President, the trial of members of the loyal democratic opposition in South Korea and the sentencing to death of Kim Dae Jung are an affront to the dignity of the South Korean people. The bonds of friendship between the peoples of our two countries and the mutual security interests of our two nations compel concerned citizens to speak out against such abuses. I join other colleagues in this body in calling upon the South Korean authorities to release Kim Dae Jung and to steer a course toward the genuine democratic reforms for which the vast majority of South Koreans hunger.

RECESS UNTIL 11:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand recessed until 11:30 a.m. today.

There being no objection, the Senate, at 11:17 a.m., recessed until 11:30 a.m.; whereupon, the Senate reassembled when called to order by the Acting President pro tempore (Mr. BOREN).

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATION, 1981

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will now resume consideration of the pending business, H.R. 7631, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate continued with consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The Clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, yesterday, we had two votes that related to revenue sharing. One was the Bellmon amendment, which eliminated Veterans' Administration programs and all entitlement programs from the 2-percent cut. The second was a vote on an amendment to exempt from the 2-percent cut, specifically, research and development programs and general revenue sharing. The latter amendment did not prevail.

It is my understanding, Mr. President, that as a result of the Bellmon amendment, if revenue sharing is reauthorized by the Senate as an entitlement program, it is not subject to the 2-percent cut or the discretion of OMB to cut up to 5 percent. Is that correct?

Mr. PROXMIRE. Mr. President, let me say to my good friend from New Jersey that that is entirely within the discretion of the Finance Committee and ultimately of the Senate. I presume they would make revenue sharing an entitlement program. If they prescribe that the payments are obligated by law, which they have every right to do, and the Senate does that, the Congress does that, that is it, that is the ball game. There is no question about it.

There is no way that this Senator, of course, or anybody else, can predict that. I would assume that is it; it has been viewed as an entitlement program. Congress might very well do that this time. If they do, as I say, that is it. There is no question that it will be exempt.

Mr. BRADLEY. So that if it is reauthorized as an entitlement program, where the funds are assured by rule of law, it would be exempt from the 2-percent cut?

Mr. PROXMIRE. That is certainly my understanding, yes, Mr. President.

Mr. BRADLEY. I thank the Senator, very much.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SCHMITT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHMITT. Mr. President, on behalf of Senator MATHIAS, the ranking minority member on the HUD and Independent Agencies Subcommittee of the Appropriations Committee, I will first make a short statement on the 20-percent limitation contained on page 9,

lines 2 through 8, of the bill as it relates to the activities of the Department of Housing and Urban Development.

It is our understanding that the Department is concerned with this 20-percent limitation on administration costs and that currently there are certain activities that are considered to be primarily administrative under the current HUD definition of "administrative."

These activities include housing counseling, technical assistance for planning and innovative programs, and information and outreach.

Evidently, the 20-percent administrative cost limitation which now exists presents problems to local communities which are undertaking these important activities. I would, therefore, urge the Department to formally request a legislative change to modify the provision. I certainly believe that the committee would act expeditiously on such a request, if it is received.

Senator MATHIAS and I urge them to make a request to that effect.

AMENDMENT NO. 2371

(Purpose: To require that 15 percent of the amounts available for the procurement of consultant services be withheld from obligation or expenditure)

Mr. SCHMITT. Mr. President, I call up an amendment on behalf of Senator MATHIAS and myself, amendment No. 2371.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The bill clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT), for Mr. MATHIAS, proposes an amendment numbered 2371:

On page 51, beginning with "Notwithstanding" in line 20, strike out through the period in line 24 and insert the following: "Of the budget authority available under this Act for each appropriation account, activity, or project for the procurement of consultant services, as determined by the Director of the Office of Management and Budget, 15 percent shall be withheld from obligation or expenditure.".

Mr. SCHMITT. Mr. President, before discussing this amendment, I should like to take the opportunity to compliment our subcommittee and committee in their efforts, through the appropriations process, to control and reduce fraud, abuse, waste, and error within the Federal agencies that come under this bill and generally within the Federal agencies dealt with during the appropriations process.

The efforts of the committee have resulted in the inclusion in the bill and committee report language measures and instructions which tighten up the planning, contracting, and reporting requirements under which these agencies live. These changes, in particular, are incorporated in sections 414 through 417 of the bill before the Senate at this time. It is our belief that these changes generally should result in better management of our tax dollars.

Section 417 of the bill, on page 51, line 20, presently states—and this is the section to which the amendment is directed:

SEC. 417. (a) Notwithstanding any other provision of this Act, the amounts otherwise available to agencies under this Act for the procurement of consultant services shall be reduced by the following amounts: HUD, $2,387,000; EPA, $11,868,000; and NASA, $14,042,000.

Mr. President, there has been considerable controversy over the actual amount of consulting work being funded by each of the three agencies mentioned above. The agencies, the Office of Management and Budget, and the Appropriations Committee investigations staff have arrived at numbers that differ greatly from each other. The differences arise mainly because of the difficulty in defining the term "consultant."

I believe that we could best accomplish the objectives of the Appropriations Committees in the reduction of the abuse of consulting activities—that objective being to cut consultant appropriations by 15 percent—if we allowed the Office of Management and Budget to review carefully the spending of each agency and determine, as they already are doing on a contract-by-contract basis, the dollar amounts being spent on such consultant contracts.

The amendment, therefore, suggests that we redraft the existing provision to permit the OMB to identify our estimates and mandate them to make the 15-percent reduction in the actual consulting fees and not those that generally have been reported and used in the drafting of the language currently in the bill.

As I understand it, the figures commonly in the bill in section 417 are derived from Commerce Business Daily. Those figures do not jibe very closely at all with the actual figures that the OMB and the agencies believe they can document as being true consulting costs.

Mr. President, I ask unanimous consent to have printed in the RECORD letters from the National Aeronautics and Space Administration and the Environmental Protection Agency, which describe their internal accounting with respect to the definition of consultants and provide the Senate with a better understanding of just what a consultant is with respect to the activities of these two Agencies.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., September 11, 1980.

Hon. CHARLES McC. MATHIAS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: I want to express my concern over the reduction of $14.042 million for NASA contracts for consulting services in Section 417 of H.R. 7631 as reported by the Senate Committee on Appropriations on September 4. Such a reduction, if carried out, would have a damaging effect upon our ability to manage the Nation's civilian space program.

The data collected by the Committee staff and used to determine the $14.042 million reduction, suggests that NASA during CY 1979 spent $93.6 million on contracts for consulting services. This is incorrect. During CY 1979 NASA spent only about $4.3 million in these types of contracts, not the $93.6 million cited. We conducted a detailed review of all contractual efforts to arrive at the $4.3 million, an amount we reported to the OMB. An outline of the steps used in this review is enclosed.

Moreover, we have continually controlled and carefully managed our use of consultant services, and we share the Committee's concern over excessive and improper use of such services. Our efforts to monitor the use of consulting services have been recognized by the Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget (OMB) as an example of good management. These efforts began several years ago.

In 1978 a comprehensive analysis was conducted in accordance with the OMB Bulletin 78-11. As changes to that policy have evolved through Bulletin 80-9, Circular A-120 and Bulletin 80-13, we again examined our contractual efforts. Consultant services contract data recently submitted to the OMB and to the Staff Director of the House Subcommittee on Space Science and Applications were developed in a most careful manner to assure accuracy.

Here, briefly is a recap of the procedure followed, identifying the data bases used: We are required to submit data on our contracts to the OMB's Federal Procurement Data Center (FPDC) using the coding structure prescribed in the Federal Procurement Data System (FPDS). A listing of contracts reported to the FPDC as contracts for consulting services was extracted from the FPDC data bank. This listing was then verified against NASA's own internal files. Concurrently, our field centers were directed to review their contracts and verify that the data submitted to the FPDC were accurate and in accord with the OMB definition of consulting services. The centers then supplied their verified listings to my headquarters staff for a further check against the records in the agency files.

An additional check of contract descriptions was made to ascertain if any contract not reported as a consultant service, might possibly be interpreted as belonging in this category. For any contract so identified, a detailed check of the contract file was made to assure proper coding. The result of this careful review was the identification of approximately $4.3 million in contracts for consulting services. After the issuance of OMB Circular A-120 a further check was made and the only change to the previous data was to add $50 thousand for consultant services at the Jet Propulsion Laboratory. The net total of $4.3 million with a 15 percent reduction of $650 thousand was reported to and apparently agreed with by the OMB.

In my opinion, the use of data contained in the Commerce Business Daily (CBD) is not valid for ascertaining the amount of consultant services obtained by NASA. First, in our discussions with personnel at the CBD, we were informed that they feel that such use was not appropriate because the CBD is intended only to supply information to the public relative to pending opportunities to sell to the Government and to announce awards and contracts made. The CBD coding structure has been used for nearly 30 years and their customers are familiar with their application of codes.

Thus, the CBD staff changes codes submitted by an agency whenever, in their judgment, it is necessary to achieve clarify for their customers by maintaining consistency with past practices. Second, there are some areas of confusion relative to the coding structure. The codes prescribed by the CBD are not defined beyond the title. Explanations as to what is specifically meant by the codes do not exist. Additionally, the CBD codes are not compatible with the FPDS codes.

Third and most important, the CBD often publishes contract data with category codes different from those we submit. NASA has no control over this practice. For example we have reexamined all of NASA's contractual actions reported in the CBD in 1979 as Expert and Consultant Services. I am enclosing a list of twelve NASA contracts reported in the CBD during 1979 under their Section H entitled: "Expert and Consultant Services." These twelve contracts total $58.9 million or

63 percent of the $93.6 million identified in the committee's report. All of these contracts were submitted to the CBD in categories other than expert and consultant services. All were reclassified by the CBD staff. The files on each of these contracts have been re-reviewed and none are for consulting services.

I am deeply concerned over the reduction of funds in the bill as reported. I believe it is based on invalid data, and request that you exert whatever effort is necessary to correct this action. Since a reduction of 15 percent in funds for consulting services is already being imposed by the OMB, I do not believe that a further reduction is required. However, if in the judgment of the Congress, this reduction must be legislatively imposed, then it properly should be applied to those values contained in correct data, the data submitted to the OMB.

Very truly yours,

ROBERT A. FROSCH,
Administrator.

STEPS TAKEN BY NASA TO COMPLY WITH OMB BULLETIN 80-9: REDUCTION IN THE USE OF CONSULTING SERVICES, DATED APRIL 14, 1980

Reviewed contracts listed as consultants services in OMB's Federal procurement Data Center (FPDC) data bank.

Centers directed to review their total contracts:

Verify accuracy of coding of data provided to FPDC.

Provide verified listing of consultant contracts to Headquarters.

Data from centers and from FPDC reviewed against NASA contract data bank.

Reviewed contract descriptions against OMB definitions.

For any contract for which description might be interpreted as consultant services—contract file was checked to assure correct coding.

This careful review resulted in identification of $4,283K (plus 600K for personnel appointments) for FY 1981.

After issuance of OMB Circular A-120, which added ". . . any contract task for consulting tasks given to a federally funded Research and Development Center." (JPL for NASA).

FY 1981 estimate revised to $4,333K (plus 600K for personnel appointments) reported to OMB on September 5, 1980.

OMB has had these data and apparently agrees with them.

All tasks in force on the JPL contract as of July 28, 1980 were reviewed.

Two of those from NASA (as opposed to those from other agencies) were for services (about $50K for FY 1980).

FY 1981 estimated to be the same.

Staff of House Subcommittee on Space Science and Applications (Darrell Branscome) apprised of the $4,283K FY 1981 estimate on July 21, 1980.

1979 CONTRACTS CLASSIFIED AS EXPERT AND CONSULTANT SERVICES (CODE II) IN COMMERCE BUSINESS DAILY

CBD date	Contract No.	Value (thousands)	Description	Coding submitted by procuring office [1]
June 14, 1979	NAS10-9130	$12,738	Communications and instrumentation	N
June 29, 1979	NAS10-8993	2,555	Component refurbishment and chemical analysis	X
June 4, 1979	NAS1-14824	2,494	National transonic facility fixed contraction test and model support services fixed-price supply contract.	Z/99
July 16, 1979	NAS5-25537	2,005	Systems launch services	A
Sept. 21, 1979	NAS13-50	6,867	Technical support (NSTL)	S
Oct. 9, 1979	NAS8-32000	4,800	Checkout refurbishment for Shuttle operations flights	99
Oct. 19, 1979	NAS9-15555	1,300	Engineering support	R
Oct. 22, 1979	NAS2-9741	7,578	Scientific and technical support of simulation computer facilities	X
Jan. 16, 1979	NAS8-32000	3,600	Support of solid rocket booster assembly flight 7-27	99
Jan. 24, 1979	NAS9-14522	5,653	Safety and reliability and quality engineering support	X
May 9, 1979	NAS10-8965	1,401	Standards and calibration support	N
Oct. 24, 1979	NAS8-31640 [2]	7,942	Computational support	X
Total		58,933		

[1] Codes explained on next page. [2] Contract number not shown.

EXPLANATION OF CODES USED IN CLASSIFYING CONTRACT AWARDS IN THE COMMERCE BUSINESS DAILY

Code and type of effort:

A—Experimental, Development Test & Research Work.

N—Installation of Equipment.

R—Architect and Engineer Service.

S—Housekeeping Services.

X—Miscellaneous.

Z—Maintenance and Repair of Real Property.

99—Miscellaneous Supply Equipment and Material.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., September 18, 1980.

Senator CHARLES MCC. MATHIAS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: I wish to express my deep concern over the reduction to the Environmental Protection Agency's FY 1981 budget based on an erroneous assumption of the Agency's consulting services contract base.

My staff has reviewed the information used by the Senate Investigative Staff and feel it is critically deficient in two primary ways:

The information base—Section H of the Commerce Business Daily—includes a multitude of contracts which have nothing to do with any definition of consultant services. Listed in that section are contracts for technical analysis of effluent limitations specifically required by law as well as maintenance and operation of Automatic Data Processing systems for the Agency. Other contracts involve auditing of grants and contracts as well as enforcement compliance monitoring. Certainly these are not the type of contracts the Senate wants to eliminate.

Furthermore, we have provided to the Office of Management and Budget specific numbers for consultant services of $13M based on their guidance provided to all Agencies. That process was an iterative one in which OMB required us to treble our estimates by requiring us to use a much broader definition of consulting than we had originally used. They then scrutinized our estimates carefully. If a reduction in consultant services is made in FY 1981, the reduction should be made on the basis of analytical work more involved than adding up amounts in a publication which have very little relationship to consulting services.

I cannot emphasize enough the fact that a reduction of the magnitude envisioned based on these erroneous numbers extracted from the Commerce Business Daily will decrease our ability to implement our statutory responsibilities. Finally, I would like to give you some basic reasons why this Agency must continue to utilize contracts of all types to implement its statutory responsibilities.

We often find it difficult to hire people with some skills because government salary schedules are too low (e.g., certain science and engineering specialities);

Changing needs, particularly in EPA where the regulatory approaches mandated by the Congress change from year to year, require more flexibility (i.e., if EPA hires a foundry expert for regulation now, the expert many encumber a position needed for chemicals regulation in a few months);

The use of contractors provides access to highly specialized outstanding expertise for short periods of time. It would be impossible and uneconomical to maintain diverse and infrequently utilized special capabilities on the Federal payroll in order to carry out either statutory or organization and policy requirements.

We will continue to rely upon contractors as well as Federal personnel to ensure we have a balanced and flexible response capability. An example would be contracting for toxicologists or other scientific work at sites such as Love Canal where our need is for relatively short term expertise.

If reductions are made to our consulting base in addition to the $4.5M reduction to the Salaries and Expense Account, the Senate should use the OMB base of $13M.

Sincerely yours,

DOUGLAS M. COSTLE.

Mr. SCHMITT. Mr. President, we have no specific information as yet from the Department of Housing and Urban Development. However, it is our understanding that they also have some difficulties with this figure, although not to the magnitude of these two R. & D. agencies.

There have been allegations of gross underreporting of consultants' costs by the various agencies, and I am sure that the other Members of this body would join me in directing the OMB to review its data in order to correct the situation before applying the 15-percent reduction.

It may very well be that the estimates of the agencies are flawed, although the discrepancy is so great and my own personal experience in the agencies is such that I cannot in any way see how the higher figures reported in Commerce Business Daily and used to draft the present section 417 of the bill can hold up under objective and close scrutiny.

Mr. President, Senator MATHIAS, I, and others obviously are concerned about

this and are concerned about the effect that an excessive and ill-conceived cut in these kinds of funds could have on the ongoing and future programs of the agencies concerned with this amendment.

Mr. President, it is my understanding that other Senators wish to speak on this matter, and at this point I yield the floor.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. SCHMITT. I am happy to yield to the Senator.

Mr. PROXMIRE. Mr. President, I want to make sure that we understand what this amendment does, in the first place.

The bill contains a substantial reduction in consultant spending. That reduction totals about $28.3 million and amounts to about 15 percent of what the agencies, themselves, said they spent on consultants during 1979.

The amendment offered on behalf of the Senator from Maryland by the Senator from New Mexico says:

Of the budget authority available under this act for each appropriation account, activity, or project for the procurement of consultant services, as determined by the Director of the Office of Management and Budget, 15 percent shall be withheld.

It is my understanding that the amendment the Senator from New Mexico is discussing would only reduce the consultants' fees by about $7 million or so, instead of the $28 million in the bill. Is that right?

Mr. SCHMITT. Obviously, we would not have referred this to the OMB if we knew the exact number. The problem has been, of course, controversy in the definition of what is a consultant and what is not.

The Senator, as I am aware, would much prefer to be precise in the law and have the Senate and Congress say exactly what they mean. But that is not apparently possible in the timeframe available to us. We do not know exactly what the reduction would be. However, it obviously would be less than that contained in the bill at the present time.

Mr. PROXMIRE. Would it be fair to make a statement that the reduction would be in the neighborhood of $7 million, the difference would be perhaps $20 million?

Mr. SCHMITT. I wish I could satisfy the Senator. The problem, of course, is that there is great disagreement in the definition of the term "consultant" and the amounts being expended. That is one reason why we have inserted into the RECORD the statements of NASA and EPA.

NASA, if the Senator will bear with me, believes that their expenditures for consulting types of contracts were only $4.3 million in calendar year 1979. That has been verified by OMB.

The committee's investigative staff suggested that NASA's expenditures for these kinds of contracts were $93.6 million and all I can do is say that is the level of disagreement, and I tend to think that the committee's investigative staff, I am sure with all good intentions, has gone way beyond the normal definition of a consultant in an R. & D. endeavor such as EPA or NASA.

Mr. PROXMIRE. The difficulty is that it is very hard for Senators to decide how to vote on an amendment when they do not know what the amendment is. They do not know whether the amount is $7 million that the Senator from Maryland would take out and, thus restore about $21 million to the bill, or whether it would be $15 million or whether it would be $20 million. I think that how Senators would vote might at least to some extent be dependent on what their estimate of the amount of money involved is.

This is an appropriation bill and unfortunately we have to make up our mind at least in part on the basis of the savings involved.

As I understand it, the Senator from New Mexico is saying that the difference really is because of the difference in definition between what the Office of Management and Budget determines and what the committee investigative staff found.

The committee investigative staff relied on what the agencies themselves had reported, based on the total amount of consultant spending as reported by each agency in Commerce Business Daily during calendar 1979. The agencies themselves reported the amount they spent on consultant contracts.

So it is not just an arbitrary figure that a staff man took out of the air because he did not like consultants. It is a figure that the agencies themselves reported when they told Commerce Business Daily what their consultant fees were.

Mr. SCHMITT. Mr. President, if the Senator will yield, that is not quite accurate. What the agencies gave to Commerce Business Daily, which the investigative staff for some reason based their conclusions on, were changed by Commerce Business Daily and were reclassified as consultants. For example, the types of activities NASA reported which were changed by Commerce Business Daily to consultants are experimental development test and research work, installation of equipment, architects' and engineers' services, housekeeping services, a variety of miscellaneous categories such as maintenance and repair of real property, miscellaneous supplies, equipment, and material. NASA's definitions that were given to Commerce Business Daily were not defined as consultant and are not in fact consultant activities. It was Commerce Business Daily that redefined them and the investigative staff unfortunately took that redefinition uncritically.

I have had other run ins with the investigative staff of the Appropriations Committee, and I know that they are sincere and trying to do a job, but they have been uncritical about some of the things that they pulled out of the literature on this and other items. It certainly should not be the Appropriations Committee's place or the Senate's place to take an investigative staff's recommendations uncritically if they do have a record of changing the facts as they have been reported by the mission agencies.

Mr. PROXMIRE. May I respond that this is the amendment of the chairman of the committee, Chairman MAGNUSON. This is his amendment that is placed in the bill, and as the Senator knows, he is a very careful Senator and a very responsible Senator. He based this estimate not only on an investigation by his staff but also by an inquiry of the Department of Commerce.

I have a letter, dated September 18, to the chairman of the committee, signed by Mr. J. Raymond DePaulo, Deputy Assistant Secretary, U.S. Commercial Service, and I will read part of that:

As stated in every issue of the CBD, the U.S. Department of Commerce is responsible for compilation and editing only. In regard to categorization, that is, properly identifying the goods or service to be acquired under any one of the 97 categories on which the CBD is based, the Federal Procurement Regulations for the civilian agencies, and the Defense Acquisitions Regulations for the Defense agencies, clearly lay that responsibility on the agencies concerned as an intrinsic part of the substantive content of the synopsis.

What they did is they secured the figures from the agencies that have the responsibility. They simply requested the agencies to give them the figures, and they reported those figures. The letter goes on to say:

It is a fact that the Editorial Office of the CBD finds it necessary to change agency category designations due to obvious contradictions in the text or, in the case of omissions, to designate them, possibly 30-40 times per day out of about 1,000 submissions. We presently have no estimate of the number of necessary changes by agency or particular categories as "H". Expert and Consultant. Generally speaking we check with agencies when time permits. It is also true that our records reflect no history of agency complaints in this area.

In other words, they not only confirmed that the figures that they received were from the agencies, they confirmed the particular category. They say that they checked them several times a day. They stay on top of them as precisely as they can, and it would seem to me that, whereas the President's arm of the budget, the Office of Management and Budget, is a very fine agency, run by an outstanding man in Mr. McIntyre, there certainly is no reason why the Commerce Department should exaggerate or overstate the amount of money going for consultants. They would be the agency, it seems to me, that has the authority, the expertise, the responsibility and the competence to determine what these figures are, and this was their conclusion.

Mr. STEVENSON. Mr. President, will the Senator yield?

Mr. SCHMITT. Mr. President, if the Senator will yield for just a minute, I will then yield to the Senator from Illinois, but by their definition they could include bananas, and they come under consultants, to paraphrase our friend Alfred Kahn. Some of the bananas they have included in Commerce Business Daily, and apparently the Commerce Department has included under expert and consultant services a specific category labeled H. are computer output, microfilm, the keypunching, verifying cards. It is a hodgepodge, a bunch of bananas

and apples and oranges, and what we have to get to and what the investigative staff did not get to is just what is consulting. What is actually happening within these agencies with respect to consulting? And let us cut 15 percent from that.

But if you start to put all of the various fruits under this, then we are going to have a major problem in these agencies in terms of carrying out their appropriate activities.

I yield now to the Senator from Illinois for his comment.

Mr. STEVENSON. Mr. President, I thank the Senator for yielding.

This is a question that might be better directed to the distinguished Senator from Wisconsin.

I think I heard him on several occasions refer to a committee staff investigation which resulted in the figures for consulting services. Was there such an investigation? If so, could we see it?

(Mr. EXON assumed the chair.)

Mr. PROXMIRE. Well, may I say to my good friend from Illinois there was an investigation conducted in behalf of the chairman of the committee, Senator MAGNUSON. It was his amendment. The investigation was based on the information they received from Commerce Business Daily, and I have cited the letter that confirmed their position.

Mr. STEVENSON. Well, that confirms my impression, which is that there was no investigation, there has been no analysis by the staff and, in fact, just a blind reliance by the staff on these Commerce Business Daily figures.

With respect to the Commerce Business Daily figures, it is my understanding that they shift and change almost daily. This is procedure which has been going on for years, and everybody has over the years realized that they include many nonconsulting services.

The reference to consulting services is to a word of art. It is not a descriptive phrase.

Mr. PROXMIRE. If I could say to my good friend from Illinois, my problem is, as I say, this was an amendment which my good friend and our good friend from Washington, the chairman of the Appropriations Committee, offered.

Our expert, in my judgment, in this area is the Senator from Arkansas (Mr. PRYOR), who has done a great deal of work on this, and I think he is in a far better position than I am to respond to the Senator from Illinois.

Mr. STEVENSON. I would be happy to get clarification from anyone. But first let me say that as a member of the authorizing committee for one of the agencies involved, there are others who have some familiarity with some of these figures, too, and in the case of NASA, they have been gone into in great depth during the authorization process and, more recently, since the Appropriations Committee took this action. I do not know to what extent the experience with NASA is typical of the experience of other agencies, but in this case we, in cooperation with NASA, did investigate. We do have an investigation, and that investigation has identified relative to the total of $93.6 million in contracts that were classified by the Commerce Business Daily as consultant services, a tabulation of 12 contracts comprising $59 million of the $93.6 million which can by no stretch of the imagination be called contracts for consultant services.

It is ironic to me that the Congress year after year, at least since the mid and early seventies, has insisted that more and more work be contracted out by agencies, and now that they are doing it we, in effect, are telling them they cannot do it.

There are included among the proscribed consultant services contracts a wide variety of services which, in the case of NASA, have nothing to do with consultants and everything to do with the support of the civil space program, including the development and production of the Space Shuttle.

The distinguished Senator from Wisconsin said we ought to know what we are doing. Well, I quite agree. One of the things that we are doing without knowing it is to dismantle the civil space program.

If that is what Congress wants to do, that is one thing. But that is not what it is intending to do in this case with an across-the-board 2-percent cut, and by voting against efforts to protect R. & D., and yet that is the unintended effect or certainly could be of these actions.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. STEVENSON. First, I ask unanimous consent that this tabulation of 12 contracts totaling almost $59 million of the $93.6 million in so-called contracts for consultant services for NASA be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

1979 CONTRACTS CLASSIFIED AS EXPERT AND CONSULTANT SERVICES (CODE H) IN COMMERCE BUSINESS DAILY

Contract No., description, and code designated by NASA:

NAS10-9130—Maintain and operate communications equipment and instrumentation for shuttle launch equipment and for other Kennedy Space Center equipment, N.

NAS10-8993—Clean, repair, and refurbish Shuttle launch components such as valves, X.

NAS1-14824—Fabrication of test model support section for use in the national transonic facility, Z/99.

NAS5-25537—Contract with Rockwell to support Rockwell built engine during test and prelaunch activities, A.

NAS13-50—Support services including instruction calibration, data management, systems engineering analysis in support of shuttle testing program and earth resources laboratory, S.

NAS8-32000—Space shuttle solid rocket booster assembly, checkout, refurbishment and launch operations, 99.

NAS9-15955—Facility engineering support, equipment design, and systems engineering at the Johnson Space Center, R.

NAS2-9741—Computer operations and software support for simulation computer facility used for aeronautical research, X.

NAS8-3200—Space Shuttle solid rocket booster assembly, checkout, refurbishment and launch operations, 99.

NAS9-14522—Safety, reliability and quality assurance analyses and data management for assessment of spacecraft flight readiness, X.

NAS10-8965—Calibrate test equipment and instrumentation for shuttle launch equipment, N.

NAS8-31640—Operation and maintenance of Huntsville computer complex, X.

Total dollar value of above—$58,933,000.

EXPLANATION OF CODES

Code and type of effort:

A—Experimental, Development Test & Research Work.

N—Installation of Equipment.

R—Architect & Engineer Service.

S—Housekeeping Services.

X—Miscellaneous.

Z—Maintenance and Repair of Real Property.

99—Miscellaneous Supply Equipment and Material.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. STEVENSON. Finally, let me just point out, as I already have by implication, that in this case at least it is possible to be very precise about the effect of this amendment. I think the unintended effect of the committee is to classify $93.6 million in consultant service contracts, of which very few, if any, have anything to do with consultant services, and that the effect of the amendment would be to restore all but about $645,000 worth of contracts for services that would otherwise be cut.

The total amount that would be cut in the NASA contracts for such services by the bill as it now stands is about $14 million, a little over $14 million, as I recall.

The effect of this amendment would be to restore all but $645,000 of those contracts.

The amendment would have the effect of doing what the committee intended to do, namely, hit the contracts for consultants.

Therefore, I hope the Senate approves the amendment, carries out the intent of the committee, and does not take any more liberties with a budget, the budget for NASA, which is the one with which I am most familiar, which has already been cut very severely, and with dangerous implications not only for the civil space program but for the defense and intelligence missions that must be conducted through the space program, including the Space Shuttle.

Mr. SCHMITT. Mr. President, will the Senator yield for a brief addition?

Mr. STEVENSON. Yes, of course.

Mr. SCHMITT. I think this would be the appropriate place to provide equivalent information from an investigation of the Environmental Protection Agency and their consulting services where they have been able to identify about $13 million worth of consulting activities as defined by categories determined by OMB and have been able to point out what appears to be $25 million to $30 million of activities that had been classified in Commerce Business Daily as consulting activities, which clearly are not.

I ask unanimous consent that the analysis provided to the Appropriations Subcommittee be printed in the RECORD in order to be consistent with the material that the Senator from Illinois has included relative to NASA. I ask unanimous consent that that be done.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Draft]

EPA CONSULTING SERVICES ANALYSIS

EPA's submission to OMB of projected FY 1981 consulting service requirements was derived by extracting contracts from categories determined by OMB:

Operations Research Services	$12,913
Program Evaluation Services	578,213
Program Management and Support Services	25,500
Cost Benefit Analysis	2,740,529
Economic Studies and Analysis	3,393,933
Other Management Services	1,476,105
Consultant Personnel Appointments	2,890,000
Total Consultant Services (with OMB reduction of 15 percent included)	11,117,193

Upon review of the contracts within these categories, EPA determined that only about $1,770,000 actually are consultant services (i.e., of a purely advisory nature). The OMB guidelines tend to include all economic and cost benefit analyses, even those related to development of regulatory standards. The Senate Subcommittee and Committee explicitly decided not to reduce economic, statistical, or energy contracts in the Program Evaluation area. EPA would not apply any reduction to these contracts under any definition.

However, if there is to be an across-the-board reduction, it should be determined from the OMB-based numbers ($11M) rather than the consulting services totals generated by using the Commerce Business Daily. The Daily's numbers are highly unreliable since the categorization is extremely subjective, includes some repetitive listings and includes EPA contracts that have nothing to do with anyone's definition of waste, fraud, or abuse in government contracting.

The attachment provides a significant sample of all EPA listings in the Daily from July 1, 1979 to June 30, 1980. It indicates the types of contracts improperly miscoded into the Commerce Business Daily's Category H—"Expert and Consultant Services".

It should also be noted that for EPA, the Senate Subcommittee already reduced the OMB-generated list by —$4.5M or 41 percent.

EXAMPLES OF EPA CONTRACTS WHICH COMMERCE BUSINESS DAILY LISTED AS EXPERT CONSULTANT SERVICES

ATTACHMENT 2

ADP services (i.e., Maintenance, operation, software development, etc.)	$2,584,420
Auditing services (i.e., Auditing of grants and contracts)	5,229,826
Enforcement proceedings and compliance monitoring	2,062,083
Technical Analysis of effluent limitations for specific industries	6,839,826
Scientific and technical efforts:	
Completion of EPA index to pesticides chemicals	3,309,163
Technical support for oil and hazardous material spill prevention and emergency response program	4,517,919
Technical analysis to determine the presence and effects of toxic pollutants in publicly owned treatment plants	1,437,077
Consolidation, review and assessment of scientific data in support of pesticide evaluations	5,816,493
Evaluation and review of environmental exposure data on pesticides and regulatory recommendations resulting therefrom	1,147,976
Review and evaluation of histopathological and toxicological results of testing	1,175,932
Selected annotated bibliography of chemical and chemical substances that have potential environmental and health hazards	365,867
Production, consumption and environmental distribution of selected toxic pollutants	557,498
Economic analysis of Toxic Substances Control Act regulations	357,670
Identify and compile a list of current commercial chemicals in U.S.	609,857
Limnological studies of the nearshore zone of Lake Erie	455,488
Ohio River Basin study—quality assurance and technical support	438,998
Operating and design manuals for hazardous waste treatment and storage facilities	280,799
Economic analysis of Toxic Substances Control Act, section 6	303,639
Analysis to measure the volatile and semivolatile components from appendix A through GC/MS	834,539
Use analysis of pesticides as a component of benefit analysis in support of rebuttal presumptions against registration	1,100,038
Analysis to measure priority organic pollutants in industrial waste water samples	665,560
Assessment of publicly owned treatment works secondary treatment marine discharge	2,401,589

Mr. SCHMITT. This is, I would say, also not a complete list. It is a beginning of a list that covers about a third of the so-called consulting services that Commerce Business Daily reported, and was the basis of the so-called investigation by the committee staff.

Mr. STEVENSON. Mr. President, if the Senator will yeld further——

Mr. SCHMITT. I would be happy to yield.

Mr. STEVENSON (continuing). I now understand that the 12 contracts of NASA in the tabulation which I have just entered into the RECORD totaling a value of $59 million were reclassified as consultant services by the Commerce Business Daily. In other words, they are acknowledged not to be contracts for consultant services.

Mr. President, I ask unanimous consent that a statement by the chairman of the Commerce Committee, Senator CANNON, be printed in the RECORD at this point in support of this amendment as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. I thank the Senator for yielding.

● Mr. CANNON. Mr. President, I have read the committee's report and I have a letter discussing this matter from Dr. Frosch, the adminstrator of NASA. Dr. Frosch says that NASA spent $4.3 million in fiscal year 1979 for the procurement of consultant services. The committee's report says $93.6 million was spent—a very large discrepancy.

The committee believes the major reason for this vast discrepancy is the "narrowness of the definition of consulting services in OMB circular A-120," which, according to the committee's report, states that "consultant services are those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management."

I see nothing wrong with that definition. To consult means to seek the advice of another, and a consultant is one who gives professional advice or service.

The committee's report offers no alternative definition of consulting services. It relies solely on the Commerce Business Daily listing under a category that even the Commerce Business Daily personnel say is not appropriate for ascertaining the amount of consultant services obtained by NASA.

NASA has conscientiously examined its procurement of consultant services. NASA has continually controlled and carefully managed its use of consultant services. Indeed NASA's efforts in this area have been recognized by the Office of Federal Procurement Policy as an example of good management.

Dr. Frosch in his letter states clearly that the reduction proposed by the committee would have a damaging effect on NASA's ability to manage the Nation's aeronautical and space program—a program vital to our national security and economic interests.

I hope that does not happen.

Mr. President, I applaud the distinguished Senator from Washington for his efforts to control and reduce waste in the departments and agencies of the Federal Government. But with respect to NASA's procurement of consultant services, there is a vast discrepancy in the numbers submitted by the Committee and those we have gotten from NASA. It seems clear that the discrepancy has arisen from a difference in defining the term "consultant." Therefore, I must support the suggestion of the Senator from Maryland that section 417 of the bill be redrafted to permit the Office of Management and Budget to refine the estimates on the procurement of consultant services and then mandate them to make a 15-percent reduction.

Mr. President, I ask that Dr. Frosch's letter to me on this matter be printed at this point in the RECORD.

The letter follows:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., September 16, 1980.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I want to express my concern over the reduction of $14.042 million for NASA contracts for consulting services in Section 417 of H.R. 7631 as reported by the Senate Committee on Appropriations on September 4. Such a reduction, if carried out, would have a damaging effect upon our ability to manage the Nation's civilian space program.

The data collected by the Committee staff and used to determine the $14.042 million reduction, suggests that NASA during CY 1979 spent $93.6 million on contracts for consulting services. This is incorrect. During CY 1979 NASA spent only about $4.3 million in these types of contracts, not the $93.6 million cited. We conducted a detailed review of all

contractual efforts to arrive at the $4.3 million, an amount we reported to the OMB.

Moreover, we have continually controlled and carefully managed our use of consultant services, and we share the Committee's concern over excessive and improper use of such services. Our efforts to monitor the use of consulting services have been recognized by the Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget (OMB) as an example of good management. These efforts began several years ago.

In 1978 a comprehensive analysis was conducted in accordance with the OMB Bulletin 78-11. As changes to that policy have evolved through Bulletin 80-9, Circular A-120 and Bulletin 80-13, we again examined our contractual efforts. Consultant services contract data recently submitted to the OMB and to the Staff Director of the House Subcommittee on Space Science and Applications were developed in a most careful manner to assure accuracy.

Here, briefly is a recap of the procedure followed, identifying the data bases used: We are required to submit data on our contracts to the OMB's Federal Procurement Data Center (FPDC) using the coding structure prescribed in the Federal Procurement Data System (FPDS). A listing of contracts reported to the FPDC as contracts for consulting services was extracted from the FPDC data bank. This listing was then verified against NASA's own internal files. Concurrently, our field centers were directed to review their contracts and verify that the data submitted to the FPDC were accurate and in accord with the OMB definition of consulting services. The centers then supplied their verified listings to my headquarters staff for a further check against the records in the agency files. An additional check of contract descriptions was made to ascertain if any contract not reported as a consultant service, might possibly be interpreted as belonging in this category. For any contract so identified, a detailed check of the contract file was made to assure proper coding. The result of this careful review was the identification of approximately $4.3 million in contracts for consulting services. After the issuance of OMB Circular A-120 a further check was made and the only change to the previous data was to add $50 thousand for consulttant services at the Jet Propulsion Laboratory. The net total of $4.3 million with a 15 percent reduction of $650 thousand was reported to and apparently agreed with by the OMB.

In my opinion, the use of data contained in the Commerce Business Daily (CBD) is not valid for ascertaining the amount of consultant services obtained by NASA. First, in our discussions with personnel at the CBD, we were informed that they feel that such use was not appropriate because the CBD is intended only to supply information to the public relative to pending opportunities to sell to the Government and to announce awards and contracts made. The CBD coding structure has been used for nearly 30 years and their customers are familiar with their application of codes. Thus, the CBD staff changes codes submitted by an agency whenever, in their judgment, it is necessary to achieve clarity for their customers by maintaining consistency with past practices. Second, there are some areas of confusion relative to the coding structure. The codes prescribed by the CBD are not defined beyond the title. Explanations as to what is specifically meant by the codes do not exist. Additionally, the CBD codes are not compatible with the FPDS codes. Third and most important, the CBD often publishes contract data with category codes different from those we submit. NASA has no control over this practice.

I am deeply concerned over the reduction of funds in the bill as reported. I believe it is based on invalid data, and request that you exert whatever effort is necessary to correct this action. Since a reduction of 15 percent in funds for consulting services is already being imposed by the OMB, I do not believe that a further reduction is required. However, if in the judgment of the Congress, this reduction must be legislatively imposed, then it properly should be applied to those values contained in correct data, the data submitted to the OMB.

Very truly yours,

ROBERT A. FROSCH,
Administrator.●

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I would like to respond just for a few moments to some of the statements made on the floor. I do this at the request of Senator MAGNUSON, the very distinguished chairman of the Appropriations Committee, who could not be in the Chamber at this time.

I do not have a detailed knowledge of what the Appropriations Committee has done as to the specific dollars-and-cents amendment that is before the Senate at this time, but I would like to make some general observations, if I might, as a result of some of the work that our subcommittee of the Governmental Affairs Committee has done in the past year with regard to contracting out of services that I have contended should be performed within the Federal Government and, more specifically, about some of the services that are performed by so-called consultants.

I would like to be the first to admit to my very good friends the Senator from New Mexico and the Senator from Illinois, that we do not have today what I consider to be a good definition of what a consultant is.

When I started out this series of hearings about a year ago in our subcommittee, I said then that this is going to be like nailing jello to the wall; this subject is going to be like fighting a bear with a switch, and made other comments to try to describe the complexity of this subject.

I do appreciate my friend from Wisconsin, Senator PROXMIRE, stating that I had some knowledge in this area. I really do not have much knowledge in this area. In fact, I do not think that anyone today in the Federal Government knows much about consultants and how consultant contracts are given out and exactly what they do.

In fact, the GAO stated several times that 37 percent of the consulting contract reports that are done are not even used.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. PRYOR. Mr. President, I am happy to yield.

Mr. PROXMIRE. Mr. President, I might say that in the land of the blind, the one-eyed man is king. The Senator from Arkansas has held these hearings. He sat patiently for a year and, undoubtedly, knows more about the consulting business than anybody in this Chamber right now or anybody in the Senate. The Senator is a man of intelligence, integrity, and honesty, and I think he can enlighten us.

Mr. PRYOR. Mr. President, I say to my friend, the Senator from Wisconsin, that he is very nice to say those things.

As the Senator was talking about eyesight, if I have learned anything about this issue—I might just say that down in our home State of Arkansas, we have a saying that even the blind hog picks up an acorn once in a while. Maybe if I have picked up an acorn on this issue, it has been by mistake.

Let us just look a moment and see what the General Accounting Office has stated about the Office of Management and Budget and how they have dealt with the issue of consultants.

This is the June 5, 1980 report. I would like to quote from this report, Mr. President.

During the past 20 years, Federal agencies have failed to make satisfactory progress to improve their management of consulting services. During this period, GAO has issued over 30 audit reports identifying the need for practically every major Federal agency to better manage the services. Many of the same problems that existed as far back as 1961 still exist today.

Still quoting from the GAO report:

Although executive branch agencies reported $278 million in consulting service contracts during fiscal year 1979, actual expenditures could approximate $2 billion.

In fact, Mr. President, the Washington Post did a series of articles a few months back. I thought it was an excellent series. They may have overstated the issue a little bit when they stated the Federal Government today was spending as much as $9 billion for consulting services.

I will just continue to read a subheading here on the GAO report basically indicting OMB and its efforts not only to define but also to manage consulting services.

It states:

OMB's efforts to improve agency's management of consulting services have not been effective.

Then, Mr. President, we go over into another section of this GAO report. What is the definition by the Office of Management and Budget as of April 14, 1980, of a consultant or consulting services? Reading from page 63 of this report:

As used for administrative direction in this circular, consulting services means those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management.

Mr. President, that is a definition that leaves a hole so wide and so large that we could run a Mack truck through it or, coming from Arkansas, we could shoot a Titan missile through it, as that is certainly fresh on my mind.

But, seriously, Mr. President, this definition of a consultant allows agencies to literally get by with murder when it comes to reporting how many dollars they are spending each year for these particular services.

I yield to my friend from Wisconsin.

Mr. PROXMIRE. Mr. President, the Senator then is saying that the $412 million which OMB reports as consultant expenditures is based on a definition of consulting expenditures that uses the term "purely advisory in nature."

Mr. PRYOR. The Senator is correct.

Mr. PROXMIRE. And, therefore, it excludes many consulting expenditures which would not be purely advisory but might fall into another category, and that is about a half a billion dollars. As the Senator pointed out, as I understand it, the GAO says that it could be as high as $2.3 billion and at the beginning of their statement they say it is between $1 billion and $2 billion.

So no matter how we take it, it is clear that OMB's definition is far below what our premier investigating staff, the General Accounting Office, found. Is that not right?

Mr. PRYOR. The Senator is absolutely right.

Mr. SCHMITT. Will the Senator yield?

Mr. PRYOR. Mr. President, I am proud to yield to my friend from New Mexico.

Mr. SCHMITT. Mr. President, I think, again, there is no disagreement in the fact, one, that there has been abuse of various kinds of contracting services and including consulting even with the definition that OMB gave but, two, our problem is not with the type of consulting services that are advisory in nature, it is the problem with bananas; it is other things that are going on where the bananas are occurring that are not consulting. And the Commerce Business Daily definition includes all of those bananas, and with the actual consulting activity a very narrow part of the problem.

So what I think the Senator from Illinois and I are saying, and the Senator from Maryland, if he were here, would be saying, is that the investigative staff is on the right scent, but they have to get into the problem more deeply than just saying consulting services. Because an Agency like NASA and an Agency like EPA are generally using consulting services in the narrow definition of the OMB, which I think is correct. These other abuses generally do not appear to be there, based on our investigation in those agencies.

But it does not mean that there are not abuses somewhere and that we have to get to the bottom of it. But we do not have the information before the Senate now. The investigating staff does not have the information before them to make an intelligent decision.

Mr. PRYOR. If I may respond to my friend from New Mexico, I think that is exactly the point of what I would like to say here in this debate this afternoon, that we have made some progress in two areas. One in oversight, of looking at consultants, looking at the abuse that consultants are visiting upon the Federal Government, and looking at the lackadaisical attitude that the Federal agencies have about farming out major policy decisions that should be made in the Federal Government to what I call the shadow government. I have referred to them as the beltway bandits. I will not call them that today.

I say to my friend from New Mexico, in the area of congressional oversight we have made a tremendous step forward.

Second, we are trying to make another step forward which is going to be equally important. That is in the area of the power of the purse. We are never going to bring this abuse under control unless we exercise the power of the purse. That is where I think we have brought about this major problem, this abuse, by failing in oversight, failing to cut these funds off and cut them back, to force them to prioritize, and make them spend this money for what is truly important.

This cut is not going to hurt any of these agencies that the Appropriations Committee has cut back on. I think it is an abdication, I say to my friend from New Mexico, of congressional and legislative responsibility to say to OMB, "OK, we cannot make this decision in the Congress; we do not have that ability. Our staff people are not smart enough. We do not know enough about this issue. What we want you to do, Office of Management and Budget, is to do it. We do not want to take that heat."

Finally, we are saying to the OMB, "You go back and make these cuts," when OMB, with all due respect to them, has been discredited for 20 years through their inability to deal with this issue. I yield to my friend from Alabama.

Mr. HEFLIN. As my friend, the Senator from Arkansas knows, I am cosponsor with him on his legislation which would try to eliminate consultant abuses. I have listened to this debate and I see basically two differences. First there is a dollarmark amount; take NASA, section 417 says NASA shall reduce the procurement of consultant services by $14 million.

It says in regard to the Environmental Protection Agency a certain figure, and it says as to the other agency a certain figure.

I ask the Senator from Arkansas, is there any specific language dealing with the definition of "Consultant services" for NASA in our existing statutes which differs from the definition for the Environmental Protection Agency, which may differ from the National Science Foundation, or from HUD? Is there a a uniform definition of consultant? Are there in the statutes varying descriptions and varying definitions of consultant services? Does the Senator have the answer to that?

Basically, what I am saying is this: We are dealing with the definition of consultant services. Have we reviewed the statutes under NASA to see whether or not in the existing statutes consultant services are defined, or are there any indications which would connect it to something else which would define it? Is there a definition of consultant services for the Environmental Protection Agency? Is there a definition under existing law for HUD? Each agency under the authorizing statutes may have a difference in the definition under existing law as to what consultants are.

Mr. PRYOR. I think the distinguished Senator from Alabama has posed very good questions.

First, I would like to state that it is my opinion at this point, and I do not want to be too critical of all agencies, that the various agencies of the Federal Government make a day-by-day definition of what a consultant is in order to generally suit their purposes. In other words, they get by with as much as they can.

For example, as an analogy, if we adopt the definition of the Office of Management and Budget and give the mandate to Federal agencies to give us back 15 percent of what their consulting services are, that is like coming up to my friend from Alabama and saying, "Senator HEFLIN, you have a gun in your ribs and I want 15 percent of all the money you have in your pocket." The Senator would say, "Wait a minute, I do not have anything but a few pennies and dimes."

But when we look at the definition, not necessarily at NASA——

Mr. HEFLIN. My question is have we researched? Do we know whether or not there are varying definitions in existing law as to consulting services? If we do not know, are we just guessing? Is it a matter of regulation? Is it something we do or do not know?

Mr. PRYOR. It is a matter not necessarily of statute or regulation but it is a matter today of simple perceptions, the perceptions of those various agencies.

Mr. HEFLIN. Then we do not know whether there are statutes that define consultant service from one agency to another agency. We do not know whether there are regulations in which there are varying interpretations. Therefore, we are attempting to pick out of the air what we consider is a definition of consultant services and apply it across the board.

This may well have been what this publication—the Commerce Business Daily—did.

The point I am reaching is that we do not know. You cannot have varying interpretations of what consultant services are. Therefore, as I look at this, we have two distinct differences. Everybody is agreeing that consultant services and consultant services abuses ought to be reduced.

In approaching it, we are approaching it from a dollar mark basis. Suppose under existing law in NASA they have only $4 million that fall into the category of consultant services. You have selected to cut it $14 million. Really, if you do not know the definition, you may be involved in an act in futility. If there are no more than $4 million overall in consultants in NASA, as NASA has reported to the chairman of the subcommittee, then you are saying that we are cutting $10 million that they do not have, Mr. President.

Is this a responsible way to deal with this matter by the appropriations staff and by the Appropriations Committee?

It seems to me that if we are trying to cut abuses in consultant services under a situation where we do not know what the statute says, where we do not know what existing regulations say, we either have to approach it first by adopting a uniform definition that would be applicable to all of them, or, on the other hand, designate some agency that will

look at the law, the statutes, and the regulations, and then have a percentage cut. Otherwise, we are grabbing in the air. We are not acting intelligently. We are not approaching it in a logical manner.

No one who is on the floor today wants to see a continuation of consultant services abuses. What is the mechanism that we try to follow to achieve the reduction of consultant services? What is the mechanism that we are going to follow in order to see that these abuses are cut?

If OMB is not the proper authority, is there another authority or some other person we can designate? As I see here, we do not know what the definitions are. If we are going to approach it in a logical manner, let us get some sort of mechanism that is logical and makes sense.

Then the way to do it, it seems to me, is to have a percentage reduction that is applicable and then designate some agency, whether it be OMB or some other agency, that will have the authority to go into this and apply the existing law.

Mr. PROXMIRE. Will the Senator yield?

Mr. HEFLIN. Yes.

Mr. PROXMIRE. The Senator, as the Senator from Arkansas said, does make a very, very good point. We do not have any reliable, precise definition here, but I think we have something that is the best we can possibly get under the circumstances. Let me read once again, and read very carefully, and I ask the Senator to listen to this, what the Commerce Business Daily does. This is a letter from the Deputy Assistant Secretary for United States Commercial Service to Senator MAGNUSON.

> The editorial office of the CBD finds it necessary to change agency category designation due to obvious contradictions in the text or, in the case of omissions, to designate them possibly 30 to 40 times per day out of about a thousand submissions. We presently have no estimates of the number of necessary changes by agency or particular categories such as H, expert and consultant. Generally speaking, we check with agencies when time permits. It is also true that our records reflect no history of agency complaints in this area.

In other words, they have been taking from the agency what the agency says are consultant expenditures and they have not been, they have no record of the agency complaining that what they provided in their record, what they reported as consultant services, were inaccurate. They did not get that from NASA, they did not get it from other agencies.

So, admitting that this is not the best information that, perhaps, we could conceive of, nevertheless, it is the best we can get.

Mr. SCHMITT. Will the Senator yield?

Mr. PROXMIRE. Yes.

Mr. SCHMITT. There is a very good explanation of why the agencies never complain. It is that those definitions, which have really just been lists and no definition at all, have never been used for any substantive purpose except for publication. The Commerce Business Daily codes, from discussions with the staff personnel of that publication, were developed over a coding structure, or the coding structure was developed over about 30 years. There really is no definition that they use.

They have changed the code submitted by the agencies in order to achieve clarity for their customers. They are not defined beyond the titles that are found in the Commerce Business Daily. The explanation as to what specifically is meant by the codes does not exist. And they are not compatible with any kind of Federal procurement policy that is in effect.

Again, I say the OMB has a definition of consultants. That is a definition of a certain type of consultant, the advisory. Then there are the bananas—what most of the Senators here are talking about and where most of the abuses are in contract services of various kinds. If we have a problem with contract services, let us say that, and let us go to work in cooperation with Senator PRYOR's committee and the Appropriations Subcommittee and get a definition of those contract services where the abuses occur and let us cut that. But let us not lump everything into one big basket and have a cut without any conception of what we are doing. That is the complaint that I think the Senators from Illinois and Alabama and I have, that there is really no definition.

Mr. PROXMIRE. Is the Senator saying that when the Commerce Business Daily solicits from the agency what their expert and consultant service costs, expenditures, are, the agency itself deliberately bloats it, they deliberately overstate it?

Mr. SCHMITT. That is not what they solicit. They were asked to give——

Mr. STEVENSON. Expert and consultant services.

Mr. PROXMIRE. That is right.

Mr. STEVENSON. Will the Senator yield?

Mr. SCHMITT. What I have said earlier, if the Senator will continue to yield, is that the Commerce Business Daily asks NASA, EPA, and all the agencies to provide the kinds of contracts that are classified as expert and consultant services as the Commerce Business Daily has previously been listing those. What has been offered and then changed to the category are a large number of activities I have already mentioned in this debate, which the agencies themselves would never have classified as consultant services.

That is the problem, that nobody ever thought Commerce Business Daily would be the basis of an "investigation" into——

Mr. PROXMIRE. So they gave them inaccurate information?

Mr. SCHMITT. No, they gave them the information that was generally acceptable over the last 30 years.

Mr. PROXMIRE. And published?

Mr. SCHMITT. And published it, yes. It has never been used as a basis for definition of services that are going to be cut by 15 percent.

Mr. PROXMIRE. If you ask an agency to provide you with expert and consultant services, it seems to me that you have every right to expect that they are accurate unless the agency then comes back and corrects it, modifies it. They did not do that.

Mr. STEVENSON. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield.

Mr. STEVENSON. The basic question, first, before we act to eliminate these abuses, is, What are they? Does the Senator have any evidence or even a suspicion of any abuse with respect to any contract, including any contract for consultant services, of NASA, or does the Senator from Arkansas, before we strike $14 million?

Mr. SCHMITT. Let me see if I can clarify some previous remarks I have made.

Mr. STEVENSON. In a moment, Mr. President. I have a question pending that I would like to get an answer to.

I would feel derelict as an overseer of this agency if I had not already uncovered such abuses. I am not aware of any and it seems to me that, before we strike $14 million worth of abuses, we ought to be told what they are, what the evidence of such abuses is. I have not heard of any so far.

Mr. PRYOR. May I respond to that? I do not think we are here today to pick on NASA.

Mr. SCHMITT. Well, the Senators are doing it.

Mr. PRYOR. This is not an anti-NASA amendment, as I understand the Appropriations Committee. This amendment relates to the Department of Housing and Urban Development, EPA, NASA—and those are the only ones I have knowledge of at this time where the cuts will occur. I do not know of any necessarily found abuses in NASA contracting. I am sure we could research the record and probably, out of the billions of dollars they spend, find some abuses. What I am talking about is the principle.

Mr. PROXMIRE. Let me respond to the Senator from Illinois specifically.

On page 6 of the GAO report dated June 8, 1980, the following abuses are listed:

> The major issues identified in over 30 audit reports issued during the last 20 years include the:
>
> Failure to maintain adequate information on the number and cost of consulting services.

That seems to be something we have documented this morning. Nobody seems to know how much they are spending.

> Failure to obtain adequate competition in awarding procurement contracts for consulting services.
>
> Inconsistent, improper, or excessive rates of pay for consulting services.
>
> Use of consulting services to perform work that should be performed by regular Government employees.

That is something that the Senator from Arkansas, in his hearings, has documented.

> Possible duplication of consultant studies.
>
> Potential conflicts of interest between consultants' advice and their outside interests.
>
> Disproportionate number of contracts awarded at the end of the fiscal year.

Those are just some of the abuses. As I say, the GAO is an agency whose judgment, I have found, is pretty accurate.

Mr. STEVENSON. Mr. President, that

is not an answer to my question. I do not know much, certainly not much as an overseer, about the other agencies. My question was, before we cut $14 million worth of abuses in contracts for consulting services from NASA, whether there is any evidence of any abuses at all in any contracts of NASA for consultant services? I do not think there is. I have not heard of any.

Let me ask my good friend from Arkansas whether he would consider certain of these contracts for consultant services. These are the kinds of contracts that are included in this classification of "expert and consultant" services. They do call for the services of experts, which, I assume, is why they are included.

Is a contract to maintain and operate communications equipment and instrumentation for shuttle launch equipment and for other Kennedy Space Center equipment a contract for consultant services? That is a contract. We have detailed information about these contracts—classified for the installation of equipment. Is it a contract for consultants services? It is classified as such and will be subject to cuts of up to $14 million. Is that a contract for consultants services?

Mr. PRYOR. The Department of Commerce and I understand the Commerce Business Daily is an organ of the Department of Commerce, has defined the contract the Senator just read to the Members of the Senate as a consulting contract.

Mr. SCHMITT. Will the Senator yield?

Mr. STEVENSON. If the Senator will withhold for just one moment, my good friend, the distinguished Senator from Arkansas, who has done heroic work on this subject, which does cry out for reform, said we should exercise the power of the purse.

That is what the Congress did. It exercised the power of the purse. The power of the purse now includes the approval of personnel levels in agencies throughout Government. It is a power exercised in cooperation with OMB, and as part of the exercise of that power over the purse and a determination to keep personnel levels down in Government, we have forced agencies to do their work outside of Government.

That is an example of what happens. I do not know whether it is best to have it done outside or inside, but it is done outside as a result of the Congress.

Another example of consultant service with respect to NASA is a contract with Rockwell, to support Rockwell-built engines during test and prelaunch activities for the Space Shuttle.

Another is for Space Shuttle solid rocket booster assembly, refurbishment, and launch operations.

That is the way the Government operates. That is the way NASA operates. It does so, including its development and production of the Space Shuttle, out of house frequently because the Congress insists.

If we are to cut $14 million in consultant services, when in fact only $645,000 is for consultant services, the overall effect is going to be on the one hand, to prevent NASA from performing these services in-house and on the other, out of house.

To prevent it from contracting with Rockwell, or whoever it is, for the services necessary to maintain communications and instrumentation for Shuttle launches at the Kennedy Space Center, or how about this, safety, reliability, and quality assurance analyses and data for spacecraft flight readiness, is now what the committee intended to do, or what the Senate wants to do.

In this instance, at least, we have the information. We can classify these contracts. OMB can classify these contracts. It is just unfortunate that the Appropriations Committee did not do so before reporting this bill which, without this amendment, and if approved and following all the other cuts, will have some unintended and very adverse effects on the space program.

Mr. SCHMITT. Will the Senator yield?

Mr. STEVENSON. Of course.

Mr. SCHMITT. I concur completely, of course, with the Senator's remarks, having served with him in a very enjoyable way as the ranking minority member of the subcommittee that overseas the NASA budget.

I also do not know of any abuses in this area. We have extensive oversight hearings on an annual basis and additional hearings as required.

I think it is important that the Senate understand how the Commerce Business Daily operates in putting together these lists. They ask all agencies to submit their contracts that they have with individuals and businesses throughout the country. Also, they ask to submit their recommendation for the coding, that is, the classification, of the particular contract.

At a minimum, $58,933,000 worth of contracts that the Commerce Business Daily includes under code H, that is expert and consultant services, were recommended, and when one looks at the list, appropriately recommended by NASA, he is coming up with a different category.

It was the Daily that took these from different categories, such as those that specifically were mentioned by the Senator from Illinois and, for some unknown reason, called them consultant services.

It was not the Senate that did it, or an investigative committee of the Appropriations Committee that did it. It was OMB, or anybody, it was this bunch of people putting together the Commerce Business Daily for their own purposes. It had nothing to do with the purposes of this committee, the Appropriations Committee, or the Senate, in trying to get at the heart of the problem the Senator from Arkansas so carefully outlined and has done such great work in uncovering.

All we ask is that we exercise some commonsense, not go with the investigative staff of the Appropriations Committee, who just took blindly this information from the Commerce Business Daily under a particular classification that has no definition controlling it and saying, "Let us cut it."

Let us cut the bananas. It has nothing to do with consulting services or abuses. It just has to do with a cut, and let us admit it.

It has a little bit to do with the well identified abuses going on in Government contracting—abuses we are not aware have been looked into, not occurring, to my knowledge, in NASA, or extensively in EPA.

We are just trying to cut. I am all for that, but, for crying out loud, let us use some commonsense.

Mr. PRYOR. Will the Senator yield?

Mr. SCHMITT. Yes.

Mr. PRYOR. I know my friend from Alabama stated he wants to make a statement and ask a question. But I will respond to my friend from New Mexico, and I know the Senator from Maryland (Mr. MATHIAS) is a cosponsor of the Senator from New Mexico's amendment, but I am going to be against the Senator's amendment. I am going to vote against the amendment.

But I want to compliment the Senator for bringing this to the floor because of the opportunity to engage in a debate that, for too long, has been overdue and too long needed as we look at one of the major expenditures of the Federal Government and one of the major contradictions we are forced to face every day in running the Federal system.

For example, it is my opinion, I say to my friend from New Mexico, that the agencies today under the OMB definition are not telling OMB that they are using consultants.

The Senator from Illinois just described a couple of so-called consultant contracts which may be questionable.

Mr. SCHMITT. If the Senator will yield, those are consultant contracts defined by the Commerce Business Daily, not by NASA, OMB, or anything else.

Mr. PRYOR. But we know about the Commerce Business Daily definitions. In my opinion, it is the best of all definitions we have.

Mr. HEFLIN. Will the Senator yield?

Mr. PRYOR. In just a moment.

It is better than the OMB because what the OMB definition allows and even encourages the agencies of Government to do is to keep two sets of books. OMB is given one set of figures by the agencies but agencies keep another set of figures which more truly indicate what consulting services and for expert services outside the realm of Government.

I feel very strongly that even using a stricter definition, Commerce Business Daily still does not include millions and millions of dollars that we are expending on consulting contracts.

For example, the Department of Defense, by statute, is not even required to publish any contract under $100,000.

No agency of Government is required to publish any contract under $25,000. We are talking about millions and millions of dollars in consulting contracts that probably are given sole source, without any competition whatever, to consulting firms that are cozy with the Federal agencies and which are not even reported or covered under any definition.

Mr. SCHMITT. We are talking about three agencies.

Mr. PRYOR. I yield to the Senator from Alabama.

Mr. HEFLIN. Mr. President, I want to get our thinking down to what we are trying to do to get this matter in better perspective between the Schmitt amendment and what is attempted to be done by section 417 of this act.

We start with the premise that we want to cut consultant services by 15 percent. That is what is to be achieved.

So they looked to HUD and said, "Let's find out how much is in consultants' services." Rather than going to HUD or EPA or NASA—NASA is my major interest that I am dealing with here—they go out and find a publication that has its own definition and used the figures in that publication as a base to find out that NASA had some $93 million in what the publication said were expert and consultant contracts. So they used that as the basis for the 15-percent cut.

The Schmitt amendment does not accept the Commerce Business Daily as gospel—and I am sure that it is not cloaked with any gospel. To me, the meaning of the words "consultant services" has to come out of law.

Mr. SCHMITT. There is no definition.

Mr. HEFLIN. In the earliest political science course I recall, I learned that laws come basically from three sources: one, the Constitution; two, the statutes; three, the regulations. I should like someone to point out to me where in the Constitution, in the statutes, or in the regulations the Commerce Business Daily's definition lies.

If we are going to pluck out of the air somebody's definition, we can go to the Wall Street Journal, we can go to the publication of the "Voice of Morality," we can go to the publication of the "Committee for an Effective Congress," we can go anywhere we wish. However, we are a body that is making law. We have to make laws that stand up in the courts. Therefore, let us approach this 15-percent cut with a logical mechanism.

Let us say that all consultant services will be cut 15 percent if there are regulations defining consultant services. If there are statutes that define consultant services, they have to be followed. That is the basis of the law. If we want to change it, let us write in the law what we mean by "consultant services."

Are we going to follow the rule of law or the rule of the Commerce Business Daily Journal, or whatever its name is?

It seems to me that what we are trying to do is to cut consultants' services by 15 percent. Let us have a mechanism that says 15 percent. If we do not have the time and cannot understand what the various definitions are, we should delegate that to some agency to do so. If OMB is not a satisfactory agency, let us give it to GAO. We can give it to any agency, but give it to one that can do it.

The Schmitt amendment agrees that we want to cut consultant services by 15 percent. What we really are arguing about is what constitutes the amounts spent on consultant services. The only way one can figure out what constitutes those amounts 100 percent is to go to the regulations and the statutes and ascertain the definition of "consultant services." It seems to me that this is a complex matter of ascertaining the true figures. Let us do it in a logical, lawful, constitutional manner. I believe that by doing it in that manner, we will accomplish what we set out to do here, rather than just pick up a figure that appears in some publication.

Mr. SCHMITT. That is exactly the basis for my amendment, in that OMB has its regulations and the definition of what a consulting service is. It is narrow, and the problem is that the abuses that the Senator from Arkansas is concerned about and we all are concerned about are not occurring within that narrow definition. They are occurring outside of it, in the contract services and others. That is not what this amendment deals with, particularly as the Senator from Alabama says we do not know what the 100 percent is and we must define it. At least, we have a definition of consulting services.

Mr. STEVENSON. Mr. President, will the Senator yield for a question?

Mr. PRYOR. I yield.

Mr. STEVENSON. OMB does have a definition, as the Senator from New Mexico has mentioned. We also have been debating the definition of consultants' services of the Commerce Business Daily. The distinguished Senator from Arkansas applauded the definition of the Commerce Business Daily.

My question to the distinguished Senator, or perhaps the Senator from Arkansas, is this: What is the definition of "consultant services" of the Commerce Business Daily?

Mr. PRYOR. I respond to the distinguished Senator from Illinois by saying that, to the best of my knowledge, the Commerce Business Daily does not have a definition, per se, of "consultants' services" or what a consultant is or what a consultant is not. As I understand it, Commerce Business Daily puts things in categories. It requires the agencies to stipulate categories, to put each contract into a particular slot, and to make the agencies define, for procurement purposes, consultants' services and expert services outside the Government.

As an end result, we see the number of dollars being expended and reported in the Commerce Business Daily; and it is a definition, to an extent—not one written, but one in practice and one of custom.

Mr. STEVENSON. I thank the Senator.

That is the point. The Commerce Business Daily definition does not exist. Therefore, the agencies have no guidelines with which to comply. All they have is a category heading, and that category heading goes beyond consultants' services. It includes "experts".

Mr. SCHMITT. Mr. President, if the Senator will yield, as I said earlier, the Commerce Business Daily asked the agencies for their recommendations as to what category it should go in; and those recommendations are based on 30 years of historical use of the Commerce Business Daily.

There are no definitions. They just look at them and say, "Well, it sort of looks like it fits there." Then Commerce Business Daily comes in and changes the agency's recommendations.

That is what I inserted in the RECORD earlier for NASA, and we also have a recommendation for EPA, that there have been some arbitrary changes. The Senator is exactly right.

Mr. STEVENSON. The Senator's amendment would have the advantage for the first time of establishing in the law a definition. It would be a definition of OMB.

Mr. SCHMITT. It would be of OMB, and I should insert at this point, if the Senator will yield further, that is OMB circular A120 where that definition exists, and it is a legally constituted definition.

Mr. STEVENSON. I thank the Senator.

Mr. PRYOR. Mr. President, does the Senator from New Mexico have the floor?

Mr. SCHMITT. The Senator from New Mexico yields the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, we are engaged here in a most complex, complicated area, one that has long been over my head. It is one that I worked on for about a year trying to bring some of these matters to the attention of the Senate, and I am so proud that we are having a good discussion of this matter at this time.

I applaud what the Senator from Alabama has said, and I associate myself with his remarks about an attempt to bring this matter under control while at the same time attempting to legislate forthrightly, but also in keeping in mind that we are a government of laws and not of men and we should regulate under the statutes and keep in mind constitutional concepts. I applaud the Senator from Alabama for making that statement. I thank him for being one of the coauthors of my legislation which would be probably a rather major piece of legislation if ever passed by Congress. I do not think it will get through this year. It concerns consultants and the use of the consultants and we call it the consultants' sunshine bill. It would bring some sunshine into this area for the first time.

But this legislation, even if it passes, the next Congress or the Congress after that, is not going to solve all the problems unless we can come forward with an acceptable and a realistic definition of what a consultant is and how a consultant is actually defined.

As I have read to my colleagues, OMB does have a definition of consultants and, EPA, for example, which is going to be affected by this particular amendment, whether it passes or fails, is covered by the definition. However, according to the Comptroller General in an August 19, 1980, report, and I read from page 5 of this report:

> EPA procurement officials who monitor the classification of service contracts made by program officials told us—

That is the General Accounting Office——

> that they were aware that OMB's definition includes program analysis.

This is the key sentence, Mr. President.

> They explained that they prefer to define consulting services as providing advice only and that consulting services resulting in deliverable products such as reports are excluded from EPA's definition.

So truly we do have contradictions on the face of the present definition used by OMB. We have concerns and questions about the definition and the practices, I would say, of the Commerce Business Daily publication.

So we are, as the Senator from Alabama has so eloquently stated, acting and legislating, I think he said, legislating in a vacuum or maybe even legislating in the dark, but all I can say to the Senator from New Mexico is this, that I prefer to believe that the Senate and the Appropriations Committee staff have a responsibility in exercising power of the purse and certainly a responsibility in exercising oversight and certainly a responsibility not to abdicate this authority and this opportunity to the Office of Management and Budget for them to go out and continue multiplying the mistakes that they have made in the past in attempting to bring under control the abuse in consultants that all of us have agreed exists.

I think that the amendment offered by the Senator from New Mexico is once again going to put us right back where we were. It is going to make us demonstrate once again that we are not willing to take this issue by the horns and to legislate on it effectively in this Chamber and hopefully in the other body, and it is certainly an amendment, I think, that is going to take us a step backward as we attempt to bring this matter under control.

I pledge to the Senator that I will work with him and with his colleagues in attempting to better define "consultants," and bring this matter under control. But until that time, I say that we should defeat the amendment offered by the Senator from New Mexico and the Senator from Maryland and that we should say that we have the opportunity here to go forward by accepting what the Appropriations Committee has recommended.

Mr. SCHMITT and Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER (Mr. BURDICK). The Senator from New Mexico is recognized.

Mr. SCHMITT. Mr. President, the Senator from Arkansas knows that I am sympathetic with his desires. Unfortunately, I come from a previous profession and discipline that requires some commonsense. To put it another way, you should not go around killing the sire when the colt does something bad.

Unfortunately, in the absence of any understanding of whether, one, there is any abuse in these three agencies in this area or, two, just what we are talking about, we are going to just meat-ax 15 percent of the budget. I just cannot go along with that. I just think it is a wrong way to legislate. The Senator from Alabama appears to feel the same way. It is not good law. It is lousy law. That is what it is.

Let us face it. With all due respect, the investigative staff of the Commerce Committee is not the Appropriations Committee and it is not the Senate. They did not look into this in an investigative way. They took the Commerce Business Daily category H called "expert and consultant services." Section 417 addresses only consultant services. What are expert services? I do not know. There are all sorts of things that have been lumped under category H and in NASA and EPA and to some degree in HUD it means that some major beneficial important programs in which there have been no abuse are going to be damaged.

So let us take the narrow view, initially, which is take an existing legal definition of "consultants," and say "All of you can clean up your house. There is obviously some fat in there. Cut that 15 percent." Meanwhile, let us get our committees working together and come up with how we can get to the real problem which is somewhere out there in expert services and contracts and all sorts of other things that are going on where there clearly is the kind of abuse that the Senator from Arkansas has done so well to begin investigation of.

I certainly hope our colleagues will recognize that this is not a vote against cleaning up fraud and abuse, for crying out loud. It is a vote for commonsense and for doing what is legislatively possible to do and what is legislatively responsible to do.

Mr. HEFLIN. Mr. President, the distinguished Senator from New Mexico has raised a question of what is an expert, and it recalls to my mind a definition that I heard once of an expert, that he was a man that carried a briefcase, lived 50 miles from your hometown, and came to your hometown.

So I think there are all sorts of questions about definitions. I wish to look at this from a judicial viewpoint. Section 417 says, "For the procurement of consultant services." If a court were looking at this, the court would then look to the statutes. The court would look to the regulations, and they could vary. The consultant services law for HUD may be entirely different from the consultant services law for EPA and those may be entirely different from that of NASA.

You cannot look to the definition of the Commerce Business Daily. No court would recognize that in any regard. But here we have used that as the basis for trying to calculate the percentage cuts.

The amendment offered by the distinguished Senator from New Mexico, in my judgment, provides a much better mechanism for bringing about this 15-percent reduction in consultant services. But if it were to fail then I think it ought to be clear that the existing law, the existing definition, pertains to consultant services, and if OMB has a duly promulgated legal regulation, then OMB's definition is going to apply.

All that my distinguished friend from Arkansas and the distinguished Senator from Wisconsin may feel about and may not like about OMB's definition as it is written may be correct, but it will stand So I challenge you, if you do not like the definition of OMB or the definition that may exist in the statutes or may exist in the regulations, then you should rewrite it. Otherwise we are dealing with an act of futility.

The existing law and regulation defining consultant services are going to be applicable if they go to court or if someone is studying them. They are going to have to apply the existing regulation or law to it.

All right. When they get to NASA, it is $14 million plus. NASA's definition—and they have reported that they only spent something like $4.3 million on consultants last year—the mechanism you use here is a mechanism in which you are not achieving your 15-percent reduction. What you will achieve will be a reduction of $4.3 million instead of $14 million as you have it in the bill, but you will be achieving a 100-percent reduction in consultant services for NASA.

I do not know the details of the $4.3 million consulting work, but there may be a scientist whose name might be Rickover or whose name might be von Braun, who is dealing with a very sensitive matter pertaining to intelligence and pertaining to military applications of space. You are not, therefore, by using a dollar mark figure saying to NASA, "All right, you select some consultant." What you are saying is "You can have no consultant."

The smartest space scientist in the world by this act may be eliminated from doing his work. I think we ought to think a long time before we just have a meat-ax cut. A surgical knife with a proper mechanism of 15 percent can be effective. It can achieve the very laudable goal that the Senator from Arkansas wants to achieve. It can achieve the 15-percent cut in consultant services. I daresay that the Appropriations Committee did not evaluate each and every thing but they said, "Let us cut 15 percent," and they tried to have a mechanism. I think it is clear their mechanism is not the proper mechanism.

I do not want to see the U.S. Senate act hastily and unintelligently by canceling a consultant contract with one of the possible great minds of space, and thus put us into a situation where we may be another year behind in some important matter.

I have been vitally interested in lasers. To me the laser is the scientific frontier of the 1980's. Today there are scientists who say that if we use proper engineering standards and concepts and make the funds available to do it that we can bring about some high energy laser developments in something like 10 years.

Many people feel that Russia is already ahead of us in laser development. NASA has laser activities going on. I do not know whether or not a consultant is working on a very important aspect of laser development today. But I do not want the U.S. Senate to act in haste and in ignorance.

It seems to me that we are all trying to reach the same goal, a 15-percent reduction in consultant services. Let us use a mechanism to achieve that which follows logic, which follows the law and will not result in some disaster to this Nation.

I feel that we ought to follow the mechanism proposed by the Senator from New Mexico. You may not like OMB and, if so, come up with a substitute. If you do not come up with a substitute let us go along with that. That

is a far better mechanism. It has within it the principle of a 15-percent reduction, and it has the principle of following the law.

Mr. SCHMITT. Mr. President, if there are no other Senators who wish to speak at this time on the issue, I intend to suggest the absence of a quorum so that we can move——

Mr. PRYOR. Mr. President, if the Senator will wait just one moment on that——

Mr. SCHMITT. I will withhold.

Mr. PRYOR. I would like to make one point in a very brief reply to my friend from Alabama.

What the Schmitt amendment is all about is not just about NASA. It is a much broader amendment. We are talking about HUD, we are talking about EPA, we are talking about NASA.

What the Schmitt amendment is really all about is saying that Congress is not going to exercise jurisdiction at this time on this matter but we want the Office of Management and Budget to do it. I do think this is an abdication.

Second, the Schmitt amendment would have the effect of restoring, I think from my calculations, some $27 million to $30 million in the appropriation bill that the Appropriations Committee took out. That is the second point I want to make.

Third, I sincerely say to my friend from New Mexico, who is a very, very distinguished Member of this body, and who came here as a distinguished astronaut, one who had been deeply involved in the space program, and one who had been committed to it, and one who still is, and you can see this by his words and actions today, and my friend from Alabama who has space installations in the great State of Alabama, I just applaud the feeling that both of my colleagues have. But I would like to just say, Mr. President, if we are talking about taking a little $14 million from the space program, a few million dollars from EPA, and a few from HUD, that this is minuscule as compared to the overall dollars that these various agencies expend for consultants and studies.

For example, $237 million last year, 1979, was spent on studies by NASA. So we are not talking about crippling any agency. We are talking simply about forcing agencies to better expend and to prioritize the dollars we do appropriate to them through our process.

Until the time when we can come up with a better system I think, Mr. President, with all due respect to my friend from New Mexico, that his amendment should be defeated, and I certainly hope my colleagues will go with the Appropriations Committee and support the committee at this time.

Mr. SCHMITT. Mr. President, if I thought that we knew what we were doing in the 15-percent cut as presently in the bill, then I would never have offered this amendment. This amendment is just to bring some sanity into this particular issue.

We are not ready to make the kind of cut in these three agencies that the Senator from Arkansas (Mr. PRYOR) and the Senator from Washington (Mr. MAGNUSON) have proposed.

I would be happy to do it if I knew where we were cutting out fraud and abuse, but I do not know where we are cutting it in these agencies because nobody has provided that kind of information. We have not seen it in our committee.

I would say to my good friend from Arkansas that I have been fighting this amendment on every bill. I am not fighting it because of NASA, EPA, or HUD. I am fighting it because it does not make any sense.

I think we can work out amendments of this kind that make sense. But to take an arbitrary definition by a bunch of people, who have been nameless here today that run Commerce Daily, and say that is going to be the guidance the Congress uses in order to cut some funds from this budget is wrong. It is just irresponsible. That is what we are doing.

If we want to cut the budget, let us cut the budget. Let us have another amendment and cut another percentage out or something. We cut 2 percent out yesterday. But let us not be ridiculous about this business of trying to make law. This is not law. Unfortunately, it will be law by definition, but it certainly is not good law.

The amendment of the Senator from New Mexico, offered on behalf of the Senator from Maryland (Mr. MATHIAS) is merely to try to add some commonsense to this process. The debate has focused our attention on a problem and I think in the next Congress we can clearly do far better than we are doing today.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BRADLEY). Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the amendment of the Senator from Maryland (Mr. MATHIAS) submitted by the Senator from New Mexico (Mr. SCHMITT) be laid aside for the purpose of bringing up other amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1641

(Purpose: To limit the obligation or expenditure of funds for contracts for consultant services)

(Purpose: To require the provision of information concerning the contractor who prepared a report and the contract under which the report was prepared)

Mr. PRYOR. Mr. President, I have two amendments. I send both amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that they be considered en bloc?

Mr. PRYOR. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Is there objection? Without objections, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. PRYOR) proposes two unprinted amendments en bloc numbering 1641.

Mr. PRYOR. Mr. President, I ask unanimous consent that further reading of the amendment be disposed with.

Mr. PROXMIRE. Mr. President, we have to follow the procedure on this bill of having the amendments read, so I have to object.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

On page 48, strike out lines 17 through 23 and insert the following:

SEC. 411. Except as otherwise provided under existing law or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are (1) a matter of public record and available for public inspection, and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

On page 49, strike out lines 7 through 14 and insert the following:

SEC. 413. Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) for a contract for services unless such executive agency (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning (A) the contract pursuant to which the report was prepared and (B) the contractor who prepared the report pursuant to such contract.

Mr. PRYOR. Mr. President, these two amendments that I am attempting to attach today to the legislation before the Senate are the identical amendments that I attached by unanimous consent last week to the Department of Transportation bill.

It is also my understanding that these amendments have been accepted by both of the individuals who are handling the bill at this time, that they have been accepted by the Members and also by the staff.

Basically what they do is they are assuring to the public that the public will know the contract information in such a manner that the public can determine where the money is being spent and for what purposes, as it relates to consulting contracts spent by the agencies covered under this bill.

Mr. President, my amendment is just a small step toward making the public aware of the pervasive use of consultants by not only these agencies but all Government agencies. This is the basis of the need for a contract list as I have

proposed. Such a list should contain at a minimum the basic information concerning the contract, such as:

The contractor's name.

The contract identification number assigned by the agency;

The date of award and the estimated completion date;

The original and current amount of the contract award; and

Whether the award was competitively bid.

It is the basic, minimal information which is required if we are to bring any sunshine into this area. It is the minimum of information that can be provided if we are to allow the taxpayers to know where their hard-earned tax moneys are being spent.

Mr. President, the purpose of the second amendment that I am proposing is to require basic information on all reports prepared by contractors and on agency reports prepared substantially from these contractor-prepared reports.

This is in keeping, Mr. President, with our spirit and desire to have a greater degree of sunshine as to outside contracting and outside consulting work.

Also, Mr. President, I feel that this once again makes terribly good sense when it comes to full disclosure of what the contracts are attempting to do and what purpose they are attempting to serve for the Federal Government.

The need for this amendment was made crystal clear in a GAO report issued just last month. GAO's review of seven agencies found that consultants were used to meet over 40 percent of their congressionally mandated reporting requirements during fiscal years 1977–79. Consulting services accounted for almost two-thirds of the total costs thus incurred. Undoubtedly, the most disturbing finding in the GAO report was the fact that approximately 60 percent of the reports either did not disclose or inadequately disclosed consultants' involvement in their preparation.

Mr. President, each year the Congress received hundreds if not thousands of reports from agencies that were prepared entirely or substantially by contractors. As the GAO found, oftentimes we do not know who actually wrote the reports because the agencies simply do not disclose that information. This cannot be permitted to continue. The Congress needs to know who prepares the reports sent to us by the agencies. Three of the seven agencies included in the GAO report were HUD, NASA, and EPA. The basic attribution information called for in my amendment will provide the necessary information for Members of Congress to decide how much reliance to place on the conclusions and recommendations contained in these reports. Such information that would be required to be disclosed includes:

The name of the contractor who prepared or contributed to the report;

The total dollar value of the contract;

The contract identification number assigned by the agency;

Whether the contract was awarded competitively or noncompetitively; and

In any case in which a contractor used a subcontractor to prepare any portion of the report, the name of the subcontractor and the amount paid to the subcontractor.

Mr. President, I submit that the Government's policy and decisionmaking activities must be performed by accountable Federal employees. Although the amendment I offer today will not prevent contractors from doing this important work, it will at least provide a mechanism for disclosing when contractors are used by the agencies in preparing reports. I think this a very modest amendment and I urge my colleagues to support it.

Mr. PROXMIRE. Will the Senator yield?

Mr. PRYOR. I yield.

Mr. PROXMIRE. Mr. President, I congratulate the distinguished Senator from Arkansas on these amendments. I think they are excellent amendments, requiring exactly the kind of information the Senate does not have and apparently the administration does not have. At least, they have not been able to give us any of the information we have requested along this line. It would require, as I understand it, to make these a matter of public record available for inspection and included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public relating to consultants and consulting services.

As I say, this is the kind of information which is essential if we are going to be able to fully understand this situation.

Also, the Senator would require:

Any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning (A) the contract pursuant to which the report was prepared and (B) the contractor who prepared the report pursuant to such contract.

This is, as I say, essential if we are going to legislate intelligently with full information. I congratulate the Senator from Arkansas.

Mr. PRYOR. I appreciate the remarks of the Senator from Wisconsin and the help he has given me.

Mr. SCHMITT. Mr. President, I certainly concur with the intent of the amendments as explained by the Senator from Arkansas. I would ask him only if my understanding is correct, if I could have his attention, that the information required by these amendments is information that is available within the agency, that if they are following any kind of reasonable management scheme the lists and information exist within the agency and would normally be available to the Congress on request or available under the Freedom of Information Act procedures.

Mr. PRYOR. In answer to the Senator from New Mexico, I would answer by saying it is generally true that this is information that an agency might have, but I would say that these agencies have a tendency not to go out and aggressively obtain this information, these facts, and details from consultants unless it is mandated and unless we keep a very close oversight on the agencies.

Mr. SCHMITT. My experience is only with one of the agencies concerned. I would assure the Senate that unless things have changed in the last few years, procurement lists, lists of contractors, and the nature of the contracts do exist internally within NASA. I do not see these amendments creating, at least for that agency, and I suspect from my understanding of the EPA for that agency, any increase in paperwork other than potentially compiling them in another report format.

These agencies are aging very fast. They are getting hardening of the arteries just like businesses' in this country paperwork and other regulatory burdens, but in this case I would be willing to accept the amendments offered by the Senator from Arkansas.

It is my understanding that this represents no new information being gathered but merely a recasting of information which already exists under normal procurement practices which exists within one of the agencies, and I would hope within the others. If there is a benefit in the amendments, perhaps the greatest benefit is if those practices are not occurring as they should be, under law, as I believe then they should be prepared.

Mr. PRYOR. I appreciate the Senator's comments and his support.

Mr. PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment (UP No. 1641) was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SCHMITT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Maryland.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the amendment be laid aside temporarily while the Senator from North Carolina offers four amendments.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

UP AMENDMENT NO. 1642

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1642:

At the bottom of page 13, add the following:

None of the funds appropriated by this Act for annual contributions for assisted housing may be committed for any newly assisted section 8 project which has a projected gross rent in excess of published fair market rentals for the area in which the project is located, except as otherwise required by law.

Mr. HELMS. Mr. President, would the clerk read the last several words of the amendment?

The PRESIDING OFFICER. The clerk will read the last several words.

The legislative clerk read as follows:

In which the project is located except as otherwise required by law.

UP AMENDMENT NO. 1642, AS MODIFIED

Mr. HELMS. Mr. President, I would like to modify the amendment to change the word "require" to "provide."

The PRESIDING OFFICER. The Senator can modify the amendment. The amendment is so modified.

The amendment, as modified, is as follows:

At the bottom of page 13, add the following:

None of the funds appropriated by this Act for annual contributions for assisted housing may be committed for any newly assisted section 8 project which has a projected gross rent in excess of published fair market rentals for the area in which the project is located, except as otherwise provided by law.

Mr. HELMS. Mr. President, this amendment would require that the Secretary of Housing subsidize only those section 8 housing projects with prospective gross rents which do not exceed the area fair market rents. The manner in which this subsidy is now being applied is an outrageous rip-off of American taxpayers. We have all heard of the cost of housing under this program. In fact, the General Accounting Office has recently completed a study addressing this problem, a study in which the GAO reports that the section 8 housing program has become "a program which is costly and serves only a fraction of the households in need."

In addition, Mr. President, the GAO notes that Government-subsidized rents have "risen at rates and levels which could in the future provoke serious challenges to the very existence of the program."

Mr. President, this GAO report cites subsidized rent increases of 121 percent in San Francisco, 95 percent in Cincinnati, and 72 percent in Atlanta over the 4 years evaluated. Figures published in the Federal Register indicate rents authorized by HUD for a two-bedroom apartment in Los Angeles at $854 a month, in Washington at $600 a month, and in New York City at $1,022 a month.

These are subsidized rents which the working taxpayers of this country are required to furnish the money to subsidize.

While these figures concern me, it is the GAO discovery that—although HUD is authorized only to subsidize rents in housing units which have rents equal to or less than the "fair market rents" for the area, except in "special circumstances"—rents were found to be higher in 68 percent of the projects it examined. Certainly these "special circumstances" cannot be occurring 68 percent of the time. Now, it is important to note that these so-called fair market rents are more than fair. They are defined as "rents, including utilities, ranges, and refrigerators; and all maintenance, management, and other services which would be required to be paid to obtain—privately developed—housing of modest (nonluxury) nature." These proposed fair market rents are published in the Federal Register for public comment before they are final.

It seems to me that, with such a lenient mandate as that just described, HUD could stay within the limits they established. Yet, as I have said, they violated their own standards 68 percent of the time—sometimes by as much as 20 percent.

Mr. President, it is this discretionary power to abuse this program by authorizing subsidies in excess of the fair market rents which my amendment addresses. It would forbid HUD from agreeing to subsidize any rents in a project which has gross rents in excess of the established fair market rents. Such discretionary authority is unnecessary in light of the methods HUD uses to determine the standard in the first place.

Congress must get a handle on this program. My amendment would bring some reason to this fiscal madness. It would not put a cap on the rents—which may be a good idea—but would only eliminate HUD's discretion to violate its own standards.

Mr. PROXMIRE. Mr. President, I have had an opportunity to discuss this amendment with the Senator from North Carolina. This amendment would preserve the flexibility and discretion of the Secretary of HUD but it would, as the Senator from North Carolina has indicated, prevent exorbitant rents being charged far above the fair market value in any particular community. I think that is a good safeguard. It is based, as the Senator says, on the GAO report, which exposed a series of abuses in this respect. I am happy to support the amendment.

Mr. President, it is my understanding that the distinguished ranking minority member also approves the amendment of the Senator from North Carolina.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment as modified.

The amendment (UP No. 1642), as modified, was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1643

(Purpose: To restrict the growth of paperwork)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1643:

On page 52, line 20, add the following:

None of the funds in this Act shall be used to create paperwork flowing from profit or nonprofit businesses, private persons, or State or local governments, to any agency covered by this appropriation in fiscal year 1981, in excess of paperwork requirements for the previous fiscal year.

For the purposes of this provision "paperwork" means reports, applications, forms, or other written presentations that any agency "covered by this Act", under statutory authority requires to be submitted to the local, State, or Federal government.

Mr. HELMS. Mr. President, the Senate Governmental Affairs Committee recently issued a report on the costs of the paperwork required by the Federal Government. It is a rather appalling report, but it comes as no surprise to the small businessman. Indeed, the average American citizen would be crushed by the avalanche of paperwork required by the Federal bureaucracy, and condoned, it must be said, by the Congress of the United States. Let me read just a part of that report from the Senate Governmental Affairs Committee.

The Federal Paperwork Commission estimated 3 years ago that the cost of federal paperwork requirements amounted to $100 billion a year—some $500 for every man, woman, and child in this country.

Therefore, Mr. President, a family of four is taxed $2,000 just for redtape, Federal paperwork.

To return to the report from the Senate Governmental Affairs Committee:

Much of that cost does not show up as an expenditure in the federal budget. Instead, the public spends the time, money, and effort in "hidden taxes" at home, in their businesses, or by way of higher consumer prices.

The report continues:

Federal paperwork requirements, whether they are tax forms, medicare forms, financial loans, job applications, or compliance reports, are something each individual touches, feels, and works on. The cumulative impact is excessive. Too many paperwork requirements are unnecessary and wasteful. It is important to recognize that every one percent reduction achieved is a billion dollar effort saved.

Mr. President, those are not the words of the Senator from North Carolina; those are the words of the Senate Committee on Governmental Affairs. So, obviously, Mr. President, the need for Congress to address the problem of excessive Federal paperwork requirements has never been more acute than it is today. That is why I am offering an amendment that would direct each agency covered by this appropriations bill to hold its paperwork requirements at or below their fiscal year 1980 level.

This is a straightforward amendment. It does not require a reduction in paperwork. It simply says to stop adding to it.

Already, the Senate has passed an amendment to the fiscal year 1981 Department of Transportation appropriations bill that is identical to the one I am offering today. In addition, a similar measure prevailed in this body by an overwhelming 84 to 9 vote during consideration of the Urban Mass Transit Authority authorization.

Mr. President, I look forward to the Senate's vote on this amendment. This is an opportunity for Senators to record their opposition to excessive Government paperwork requirements.

To be perfectly candid about it, Mr. President, the Senator from North Carolina would like to go much further than this and cut the living daylights out of the waste that is involved in all of this paperwork. But, recognizing reality, I know we have to take it a step at a time; therefore, this amendment proposes only that the expenditures for this purpose be limited, for the coming fiscal year, to what it was for the immediate past fiscal year.

Mr. PROXMIRE. Will the Senator yield?

Mr. HELMS. I yield, Mr. President.

Mr. PROXMIRE. I think what the Senator from North Carolina is proposing is something that all Senators should heartily approve. I think all of us have talked to our constituents and found an overwhelming complaint about the amount of paperwork and the enormous cost imposed on the private sector—as the Senator rightly said, particularly on small business. Big business can take care of this. They can hire people, and, of course, they have tax advantages; they can write it off on their taxes and so forth. It is annoying to them, it is expensive, and it increases the cost of living; but for small business, it is just plain murder. They cannot hire the kind of people who are expert in the complicated paperwork in all areas that the Federal Government requires.

It is a good amendment but, as I say, there is a limited problem involved here with respect to two areas—one with respect to health and the other with respect to court orders. For that reason, I ask the distinguished Senator from North Carolina if he will accept an additional proviso to be added at the end of the amendment, which would specify as follows:

Provided, That nothing in this provision shall be construed as obstructing or impeding implementation of programs designed to protect the health of the American people from the dangers resulting from the possible exposure to toxic or hazardous pollutants or to comply with the terms of any court order or decision.

Obviously, we do not know what the technology is. Of course, it is changing all the time. We do get developments in chemistry and in all kinds of commercial technology that do increase pollution and it is necessary, for that reason, to require perhaps additional paperwork—unfortunately—to comply with it. We also never know when the courts may act, and that may also require paperwork. For that reason, I ask the Senator if he will take this limited modification as an addition to his amendment.

Mr. HELMS. Mr. President, I thank my friend from Wisconsin. I certainly will accept the modification, because it makes sense and it clarifies some points that need to be made clear. I send to the desk the modification.

The PRESIDING OFFICER. The clerk will state the modification.

Mr. HELMS. I ask unanimous consent that reading of the modification be dispensed with, Mr. President, inasmuch as it has been read by the Senator from Wisconsin.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair is unclear as to where the Senator wants the modification placed.

Mr. HELMS. It would go at the end, Mr. President.

The amendment was modified.

The amendment, as modified, is as follows:

On page 52, line 20, add the following:

None of the funds in this Act shall be used to create paperwork flowing from profit or nonprofit businesses, private persons, or State or local governments, to any agency covered by this appropriation in fiscal year 1981, in excess of paperwork requirements for the previous fiscal year.

For the purposes of this provision "paperwork" means reports, applications, forms, or other written presentations that any agency "covered by this Act", under statutory authority requires to be submitted to the local, State, or Federal government.

Provided, That nothing in this provision shall be construed as obstructing or impeding implementation of programs designed to protect the health of the American people from the dangers resulting from the possible exposure to toxic or hazardous pollutants or to comply with the terms of any court order or decision.

Mr. HELMS. Mr. President, I am ready for a vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment as modified.

The amendment (UP No. 1643), as modified, was agreed to.

Mr. PROXMIRE. I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1644

Mr. HELMS. Mr. President, I send an unprinted amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1644.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. PROXMIRE. Mr. President, I object.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 16, line 15, strike out "$541,647,000" and insert in lieu thereof "$516,119,000".

On page 16, line 22, strike out "$251,276,000" and insert in lieu thereof "$237,568,000".

On page 16, line 25, strike out "$543,338,000" and insert in lieu thereof "$512,892,000".

On page 17, line 14, strike out "$4,115,000" and insert in lieu thereof "$1,425,000".

On page 17, line 21, strike out "$1,700,000,000" and insert in lieu thereof "$1,500,000,000".

On page 18, line 11, strike out "$3,000,000" and insert in lieu thereof "$2,538,000".

Mr. HELMS. Mr. President, this amendment would keep the EPA budget at the 1980 appropriation level. It does not single out any particular program for a serious cut in funding, but merely keeps funds for salaries and expenses, research and development; abatement, control and compliance; buildings and facilities; construction grants; scientific activities overseas; and the U.S. Regulatory Council at their present levels of funding.

I dare say, Mr. President, if we would poll the American people on this amendment, it would be almost unanimous that they would find this is a fair proposition.

Obviously, everybody's mind is on the Nation's economic crisis, but the question is whether the will to do something about this crisis is in our hearts here in Congress. When I say "our hearts," I refer primarily to the distinguished Members of the U.S. Senate and to our counterparts in the House of Representatives. It boils down to this: It is up to us to recognize the part each of us plays in the inflation that is plaguing this Nation.

The plain, unvarnished fact is that inflation starts right here in Congress. Here is where the deficits have been approved year after year. Here is where the bloated, big spending bills are rushed through year after year.

I am reminded of an excellent book I read a few weeks ago, written by the distinguished Senator from Wisconsin (Mr. PROXMIRE). I thought so much of it that I bought several copies and sent them to my friends.

This is the point that BILL PROXMIRE made over and over and over again in his book. I commend Senator PROXMIRE's book to the consideration of not only Members of the Senate, but the American people, as well.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I am very grateful to my good friend from North Carolina for his statement, especially for the last part of it. I am in his debt. He has been so gracious about my book. He wrote me a very nice note about it. He has recommended it to a number of other people. I am referring to "The Fleecing Of America" which anyone can obtain from Hoten Mifiin. It is a great buy.

Mr. SCHMITT. I think that is an abuse of power.

Mr. HELMS. An official book review.

Mr. PROXMIRE. An official book review. That is right. From an unbiased source.

Mr. SCHMITT. I hope nobody will insert it in the RECORD.

Mr. HELMS. Mr. President, every time Congress authorizes and appropriates extravagant amounts for Federal spending programs, inflation grows higher. When I say "extravagant," I mean any amount in excess of the money taken in by the Federal Government. Excessive Federal spending and excessive Federal borrowing have virtually destroyed the dollar and in the process have made credit in the private section unavailable.

That is why we have a Federal debt approaching $850 billion—almost a trillion.

Small wonder that the Nation's economy is on the brink of chaos. At the present time, the United States is devoting a larger share of the GNP to Government programs than at any period except at the height of World War II.

Despite the political rhetoric calling for a balanced budget next year, the fact

is that the administration's proposals will actually increase spending. These proposals will actually raise taxes because of the growth in inflation in the past several weeks.

It gets around to this, Mr. President: What are we and Members of Congress going to do about this? We can talk, we can say, "We favor a balanced budget." I doubt that there is one Senator who has not been home in the last few weeks and held up his hands and said, "I favor a balanced budget," and the people believe him. But it is not what he says when he is home that counts. It is how he votes when he is here that counts.

So I think it is time for us to demonstrate that Members of Congress personally understand the hardships facing the American people. We must demonstrate that when we talk about making cuts in the Federal Government we are ready to demonstrate this.

Mr. President, we have got to be serious about our ever-expanding bureaucracy in light of our budget crisis. Enactment of my amendment to keep EPA's funding at the 1980 level will signal our determination to balance our budget by cutting Federal expenditures across the board.

Mr. PROXMIRE. Mr. President, in view of that fine statement by my good friend from North Carolina, I am very hesitant to oppose what Senator Helms has proposed. I am especially hesitant to oppose it because it would cut back the funds the Federal Government would spend.

Heaven knows that is what we should do. It should be one of our top priorities.

However, Mr. President, the Environmental Protection Agency is confronting a great number of serious and expanding problems. Two examples are hazardous waste dumps and toxic substances.

We know about what happened in New York at the Love Canal, and that these things develop in ways that are heartbreaking for the people involved. Even if they do not suffer from the terrible ravages of ill health, they have to give up their property, they have to move from the community they love, in which they grew up. It is something which all of us recognize. I think we should take every step we possibly can to prevent it.

In addition, like every other agency of the Federal Government EPA has to live with inflation.

This would hold the level of spending at the 1980 level. We all know we have an inflation rate now of around 12 percent or 13 percent. In real terms, it would cut the EPA by about 12 percent.

I think in view of the additional duties of that Agency, in view of the overwhelming importance to the American people of health, and protection against environmental pollution, in a technological and industrial society, it would be a mistake to make this cut.

I point out, it is not as if we came to the Senate with a bloated bill. We did not. It is very lean, particularly in this respect.

Despite these pressures, the committee has cut EPA's budget request by $340,941,000 and I must resist further cuts.

I think to make the additional cuts, which my good friend from North Carolina has recommended, would be going too far, would constitute a danger to health. I must, unfortunately, resist.

Mr. SCHMITT. Mr. President, I think the Senator from Wisconsin understates the work that was done in committee, some of which I even opposed, for reducing this budget.

We did reduce the Presidential request by the $340 million he mentioned. The increase of something, I believe, like $73 million over the 1980 budget is principally in salaries and expenses, and abatement control and compliance, and is principally, as I understand it, the increased work that has been demanded in the area of toxic substances waste by identification and control.

I think that is a modest increase considering the recent identification of the scope of the problem of abandoned waste dumps, toxic waste dumps, and other problems of this kind.

So, in view of the work of the subcommittee, which has been extensive, to reduce the expenditures of this agency, to provide some inflationary increase, and to continue the very necessary work of the control of toxic substances, I must regretfully oppose the amendment of the Senator from North Carolina.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, first, the distinguished Senator from New Jersey would like to speak on this matter. I understand he is getting his material for it.

But while we are waiting for that, I would like to ask the Senator about one part of his amendment.

On page 17, lines 16 through 21, under construction grants, the bill provides:

> For necessary expenses to carry out title II of the Federal Water Pollution Control Act, as amended, other than sections 206, 208, and 209, $3,400,000,000, to remain available until expended, and for liquidation of obligations incurred pursuant to authority contained in section 203, $1,700,000,000, to remain available until expended.

The Senator would, as I understand it, make a cut from $1.7 billion to $1.5 billion.

It is my understanding that this is entitlement money, that it is designed to pay contracts already agreed to, and that, therefore, to make this reduction would put the Federal Government in the position of failing to honor its obligation.

I am sure the Senator from North Carolina would not want to do that.

Mr. HELMS. Of course not. But the fact is that this is not money that will be expended in the next fiscal year beginning October 1. This is money that will be in the pipeline, and I do not believe it can be demonstrated that the Federal Government would have to renege on any contract as a result of my amendment.

Mr. PROXMIRE. I appreciate that. But I am advised by the staff—who may or may not be correct, but they usually are—that this would be liquidation of obligations pursuant to authority. So the contract already has been incurred. It is their judgment that this very well might put the Federal Government in a position in which it cannot pay the contract or pay it on time.

Mr. HELMS. I respectfully differ with the staff if they say that all this $1.7 billion will be paid out this year. I am sure they are sincere in what they are saying, but I believe them to be sincerely wrong.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, the amendments before the Senate are very serious. They would cut significant dollars from EPA precisely at a time when there are very real and present dangers across this country in toxic waste dumps and in spills.

I know that the amendment does not specifically state that the cuts will come out of funds that are used to clean up toxic wastes, but they could. I believe that this is too great a risk to bear at this time, when we have toxic waste dumps across this country.

In my State of New Jersey we had the example of a fire of 40,000 drums of unknown toxic substances. We have ground water that has been contaminated in New Jersey, and there are examples of this kind of pollution across this country.

There are 6,000 toxic waste dumps across this country. In the State of the Senator who proposes the amendment, the distinguished Senator from North Carolina, I will mention just two. In Mecklenburg County, N.C., 255-gallon drums of toxic wastes are leaking into a landfill. In New Hanover County, N.C., there is ground water contamination from the dumping of toxic industrial wastes, not dissimilar to my own case in New Jersey in Jackson Township, where the ground water has been polluted by the dumping of these toxic wastes.

So, Mr. President, I urge the Senate to reject this amendment. I hope that the Senator from North Carolina is aware that what we are talking about here is not simply administrative costs but something which could deal with issues of very real concern and represent a grave and present danger to constituents in both our States.

I support the chairman, and I hope that the Senate will reject the amendment of the Senator from North Carolina.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 25, nays 66, as follows:

[Rollcall Vote No. 436 Leg.]

YEAS—25

Armstrong	Hayakawa	McClure
Boren	Heflin	Simpson
Byrd, Harry F., Jr.	Helms	Talmadge
DeConcini	Hollings	Thurmond
Dole	Humphrey	Tower
Exon	Jepsen	Warner
Garn	Laxalt	Young
Hatch	Long	Zorinsky
	Lugar	

NAYS—66

Baker	Ford	Packwood
Baucus	Glenn	Pell
Bellmon	Gravel	Percy
Biden	Hart	Pressler
Boschwitz	Hatfield	Proxmire
Bradley	Heinz	Pryor
Bumpers	Huddleston	Randolph
Burdick	Inouye	Ribicoff
Byrd, Robert C.	Jackson	Riegle
Cannon	Javits	Roth
Chafee	Johnston	Sarbanes
Chiles	Kassebaum	Sasser
Church	Leahy	Schmitt
Cochran	Levin	Schweiker
Cohen	Magnuson	Stafford
Cranston	Matsunaga	Stennis
Culver	Melcher	Stevens
Danforth	Metzenbaum	Stevenson
Domenici	Mitchell	Tsongas
Durenberger	Moynihan	Wallop
Durkin	Nelson	Weicker
Eagleton	Nunn	Williams

NOT VOTING—9

Bayh	Kennedy	Morgan
Bentsen	Mathias	Stewart
Goldwater	McGovern	Stone

So Mr. HELMS' amendment (UP No. 1644) was rejected.

UP AMENDMENT NO. 1645

Mr. HELMS. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The Senate will be in order. Will the Senate be in order.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

> The Senator from North Carolina (Mr. HELMS) for himself and Mr. DURENBERGER proposes an unprinted amendment numbered 1645:
>
> At the bottom of page 13, add the following:
>
> None of the funds or authority provided by this title shall be made available to any local public agency administrating housing and community development programs where such funds will be used to provide housing subsidies to any person who is not a United States citizen nor a lawful, permanent resident of the United States.

Mr. HELMS. Mr. President, I ask that the distinguished Senator from Minnesota (Mr. DURENBERGER) be listed as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, this amendment speaks for itself. It would require that federally subsidized and assisted housing be available only to persons who are either U.S. citizens or resident aliens. Demand for federally assisted housing has skyrocketed in recent years, partly because of our program expansions to help lower middle-income citizens. For example, to qualify for section 8 housing, a household's income can be up to 80 percent of the area median income. In fact, the GAO has estimated that approximately 40 percent of our population, or 30 million people, are eligible for assisted housing.

I do not know about others, Mr. President, but these are staggering figures to me. It is simply impossible to provide aid to such a large number of families. We cannot begin to afford the new housing units necessary to assist 40 percent of our population.

While our own demand escalates, HUD has failed to respond to a growing problem—that of illegal aliens and aliens here on temporary visas obtaining assisted housing, that is to say subsidized housing, while U.S. citizens and permanent U.S. residents wait in lines. HUD has stated that it has no authority to require proof of citizenship or permanent resident status. Some local housing authorities say they attempt to report illegal aliens to the Immigration and Naturalization Services, but have no firm policy in that regard. In fact, HUD regulations prohibit local residency requirements and discourage the application of any sort of residency preference. HUD merely considers the economic requirements for qualification for the various programs without consideration of any sort of legal residency status.

Mr. President, I am not unaware of the needs of persons from other countries, however, we have expanded our housing programs to the point that we simply cannot adequately provide for our own truly needy—citizens to whom we have a greater responsibility. I would have much less objection to giving assistance to the temporary class of aliens who are legally in our country if a surplus of housing or funds existed. We all know that is not the case. I do have strong objections to our subsidizing the existence of aliens who illegally enter our country. They take jobs away from our own citizens, and then, receive housing assistance to the detriment of those legally in the United States.

My amendment would limit public assistance to those who have complied with our immigration laws and have the intent to stay in this country, or, of course, who are citizens of the United States. We must take care of our own folks first.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. HELMS. Yes.

Mr. PROXMIRE. Mr. President, I am going to have to resist this amendment. I will explain why in a minute. But I think the Senator from North Carolina deserves credit for this amendment. Few people realize that the overwhelming majority of our poor people are eligible for public housing but do not receive any public housing benefits at all. None.

More than 90 percent of the people who are in the poverty category in this country, in terms of income, receive no housing assistance whatsoever. Theoretically, they are eligible, but their chances of getting it are zip.

Each year, we provide assistance for about 1 percent of the poverty stricken, so the chances are only 1 in a hundred each year that any poor person will qualify for admission to a public housing unit or any kind of public housing assistance.

What the Senator from North Carolina is offering is something that many of us would resist as a matter of conscience, because we certainly do not like to offend or hurt people who are good people, hard-working people, but who just happen not to be citizens. They may have applied for citizenship and maybe they will be citizens in a few years.

Mr. President, I have to resist this amendment, however, because it is clearly a matter for the authorizing committee. It is matter of policy. It is a matter that should be determined by the Banking, Housing, and Urban Affairs Committee in the House and in the Senate.

I have had an opportunity to discuss this with the Parliamentarian. I make the point of order, Mr. President, that this is legislation on an appropriations bill and, therefore, the amendment is not in order.

Mr. HELMS. Mr. President, will the Senator withhold his point of order just a moment?

Mr. PROXMIRE. Yes, I withhold it.

Mr. HELMS. I thank the Senator.

Mr. President, regardless of any mechanics of the Senate or any point of order that may or may not lie, the fact is that we have an absurd situation in this country.

A few weeks ago I was traveling and I stopped at the Minneapolis-St. Paul Airport. While I was waiting to change planes, I bought a copy of the July 12 issue of the Minneapolis Tribune.

Mr. President, I was shocked at a story that I read, which was headlined: "Should Foreign Students Get Housing Subsidies?"

The newspaper headlines told of the countless foreign students in that area alone who are receiving housing subsidies from the U.S. Government.

The newspaper had investigated the situation and discovered that the U.S. Government (the Department of Housing and Urban Development) did not have even the remotest idea about how much Federal money was being spent for housing subsidies for foreign students.

When I returned to Washington, I learned that HUD acknowledges that it is paying housing subsidies to Iranian students who have been protesting against the U.S. Government in the streets of our cities.

Mr. President, it is incredible that American taxpayers are subsidizing the living expenses of foreign students in this country who are protesting against the policies of our Government.

I do not want to be hard-hearted, but I think of the families in our own country

who work like dogs to pay their taxes, and to send their own children to school, and then have to subsidize foreigners' educational expenses. In fact, I suspect that many American young people are denied enrollement in the college of their choice so that foreign students can be accepted.

Mr. President, each foreign student who receives nonimmigrant student status under 8 U.S.C. 1101 (a)(15)(F) is required as a condition of receiving that status to sign an affidavit certifying that he is financially able to support himself for his entire period of study. And yet an undetermined number of these students are receiving subsidies paid for by the American taxpayer.

The Immigration and Naturalization Service claims it cannot bring sanctions against these students because it is not illegal for them to request and receive this assistance. When the Minneapolis HUD area office tried to prohibit these handouts, they were told by HUD officials in Washington that there is no statutory basis for eliminating foreign students from housing subsidy programs.

Now I understand that when the House recently considered the HUD appropriations bill, they included in the bill, an amendment to prohibit the Department of Housing and Urban Development from giving housing subsidies to nonimmigrant student aliens. But the Senate Appropriations Committee decided to strike that amendment, citing as justification that "such a provision could require HUD to amend literally thousands of annual assistance contracts at great cost to the Department." Mr. President, I do not think this rationalization will bear scrutiny.

As I said, HUD officials acknowledge that they have no idea how much of the taxpayers' money is spent for housing subsidies for foreign students. I would be willing to bet that the money saved by cutting off these subsidies will more than offset the cost of amending the contracts. But we will never know unless Congress tells HUD to stop these payments.

Mr. President, I hear a lot of talk from Senators about cutting Government spending. But I am afraid that is all it is—just talk. Here we have a Government agency using American taxpayers' money in an improper fashion. This is exactly the type of spending Congress should eliminate.

I encourage the Senate conferees on the HUD appropriations bill to include in the final verson of this bill a provision prohibiting HUD from paying housing subsidies to nonimmigrant student aliens.

Mr. President, I ask unanimous consent that the article from the July 12, 1980, Minneapolis Tribune be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SHOULD FOREIGN STUDENTS GET HOUSING SUBSIDIES?

(By John Kostouros)

When Mark Stoffer and Reed Bible separately but coincidentally discovered that many—probably hundreds—of foreign students living in the Twin Cities are receiving federal rent subsidies that can amount to hundreds of dollars a month, they were shocked.

So, apparently, were officials of the Department of Housing and Urban Development (HUD), which administers the rent subsidy programs for low-income people. Foreign students must pledge that they can support themselves and that they will not become charges of the government in order to get permission to study in the United States.

Ever since, HUD has been scrambling—so far unsuccessfully—to find a way to stop the subsidy payments, according to department officials.

Even though officials from both agencies say the students should not be allowed to receive the subsidies, that payment of any public monies to foreign students violates the spirit if not the letter of the laws governing student visas, officials say current immigration and housing guidelines are unclear about how they can stop foreign students from receiving the subsidies.

"I think the students are really enjoying a loophole in our laws and regulations," said Gerald Coyle, director of the Twin Cities immigration office.

Stoffer, a criminal investigator for the immigration service, found out about the rent subsidies while he was investigating charges that a student and his wife were employed, a violation of their student status. His investigation convinced him that foreign students have been collecting housing subsidies for years and that the payments are widespread. Stoffer has been working with HUD to try to stop the payments.

Bible, the coordinator for assisted housing at the Cedar Square West apartments, discovered the same thing last year soon after he began working at the complex.

A list of tenants receiving subsidies at the complex shows that as many as 200 foreign students living there are receiving rent subsidies. Some are paying as little as $48 for apartments that normally rent for $280 to $400.

When Bible, a law student, complained to HUD about the situation, HUD officials first told him to stop putting foreign students on the subsidy program. But in mid-June, just six weeks later, HUD official Doug Strandness retracted the suggestion, telling Bible that HUD's central office had ruled that the subsidies could not be denied just because the applicants were not American citizens.

That ruling effectively tied Bible's hands. He was forced to resume placing foreign students in subsidized apartments. Meanwhile, the waiting list for the 600 subsidized apartments at the 1300-unit complex remains long, from five to eight months. The three subsidy programs being offered at Cedar Square West are supposed to aid low- and moderate-income families.

(Rent subsidies, which are parceled out to cities on the basis of need, have always been in short supply in the Twin Cities. Housing officials say that the demand for housing assistance now is very high because of a shortage of affordable rental housing and the impact of the recession on family earning power and unemployment.)

The subsidies, which vary according to the program and the applicant's family size and stated income, can be substantial. One Taiwanese student is paying $107 a month for a one-bedroom apartment that normally rents for more than twice that much.

An Iranian student with a wife and two children pays $46 a month for a two-bedroom apartment that normally rents for more than $300. Iranians make up the largest group of foreign students living at Cedar Square West, according to documentation provided by the management. Forty-one subsidized apartments are rented to Iranians. Korean students account for 36 units, more than twice as many as the third largest group.

Nobody disputes that many of the students need help, although everyone contacted had heard stories about foreign students living affluently while receiving the rent subsidies. And Bible has known of students who have put the names of other foreign students on the waiting lists for subsidies, even before the student has arrived in the United States.

"That way when the student arrives, he doesn't have to wait long to get an apartment," Bible said. Applicants can register by mail.

But the real issue, according to Bible and the government, is whether the government should be subsidizing the housing of foreign students when it cannot provide for the needs of American families.

HUD officials say no, but protest that federal law prevents them from withholding housing subsidies on the basis of citizenship. Congress must change the housing laws before the department can act, they say.

Immigration officials say no, but admit that they have yet to try to take action against a foreign student who has applied for and is receiving a rent subsidy.

"But we intend to," Coyle said. The only action the department can take against a student is deportation, he said, and that cannot be accomplished without taking the student before a special immigration judge.

And immigration officials say they are not even sure what will happen if they try to deport a student for getting subsidies. The laws that govern entry into the United States clearly state that a student must intend to support himself when he gets here, according to Coyle. But once the student has arrived, the laws governing deportation are less clear.

"If we can get them to publish federal regulations stating that it will be a violation of student status to accept subsidies, then we would have them on a violation of status," Coyle said. Not everyone agrees that the students should be prohibited from getting subsidies.

"During their stay in the United States a small number of students have something happen that prevents them from supporting themselves," said Wadad Alsuwayeh, president of the Minnesota International Students Association (M'SA).

Students who come to the country fully intending to support themselves sometimes find themselves in a bind because of political changes back home, or changes in family situations that prevent family members from continuing to support the student, he said.

"I can't think of one example of a student who gets assistance who does not need it," Alsuwayeh said. "I don't see anything wrong with a student getting financial assistance if it is needed."

American students studying abroad often get help from the governments of their host country, Alsuwayeh said. "I think the same standards should apply here."

Mr. HELMS. Mr. President, the point is this, I say to my friend from Wisconsin—and I know he is just as appalled by this as I am—the newspaper reported and HUD confirmed that they know that many of these students come from wealthy families overseas and yet we have our citizens waiting in line, as the Senator himself has said.

Mr. PROXMIRE. The Senator is correct.

Mr. HELMS. I respect the orderly procedure of the Senate, but the Senator from North Carolina does not know how to tackle a problem except to tackle it.

Mr. PROXMIRE. Mr. President, let me suggest to the Senator that I am the

chairman of the Banking, Housing, and Urban Affairs Committee and the Senator from New Mexico is a former member. I will be very happy to refer the legislation that the distinguished Senator wants to introduce and I promise him we will have very prompt hearings on it. I think he will get a great deal of support in the committee. I see no reason why a bill should not be sent to the floor to accomplish this.

Mr. HELMS. This year?

Mr. PROXMIRE. Not this year. There is no way we can do it this year.

Mr. HELMS. That is my point, I say to the Senator.

Mr. PROXMIRE. As the Senator knows, by the time we got it through the committee, had a markup, got it to the floor, over to the House, got the House to act, and it went to conference—there is no way.

Mr. HELMS. I understand.

Mr. PROXMIRE. Certainly we could do it early next year.

Mr. HELMS. Mr. President, I do not want to offend the Senator, but I think we ought to act now. We ought to speak now on this sort of thing one way or the other. If the amendment is voted down, fine. But I think the Senate ought to take a position on this and send a signal on it. If the Senator wants to kick it out in conference if, by any chance, it is approved, fine.

But I will take the Senator up on his proposition.

Mr. PROXMIRE. I say to my friend, as happens so often, the Senator from Wisconsin spoke in ignorance. I am told that this has already passed the Senate. It is in conference now. It is in our bill. The House conferees are going to take it.

For that reason, I think we can accomplish what the Senator from North Carolina is very ably suggesting here. So I suggest that the Senator permit us to make a point of order against his amendment and then, as the chairman of the conference—I am chairman of that conference—I will do all I can to see that we take it.

As a matter of fact, it passed the House. It is not in the Senate bill. It passed the House, and in conference, the conferees have accepted it.

Mr. HELMS. Mr. President, I thank the Senator. He knows of my admiration for him. I am not being critical of him in any sense, and he knows that, does he not?

Mr. PROXMIRE. Yes, indeed.

Mr. HELMS. But the fact is that the amendment that the Senator is talking about addresses itself only to students, foreign students. I ask the Senator to consult with his staff and see if that is not correct.

Mr. PROXMIRE. Mr. President, the Senator is right. But that is precisely the point the Senator from North Carolina brought up. In reading from the Minnesota paper, the Senator pointed out that foreign students are able to get housing and that is something that disturbed him, and rightly so, when the overwhelming majority of the poor Americans cannot get it.

What we are doing in conference is to correct that situation.

If the Senator wants to go further than that, and I understand he does, I will be very happy as chairman of the committee to schedule hearings and to lend my support to a measure which would not permit aliens to be eligible for housing when the overwhelming majority of American citizens do not have an opportunity to enjoy that privilege.

Mr. SCHMITT. Will the Senator yield?

Mr. HELMS. Certainly.

Mr. SCHMITT. As the Senator from North Carolina is aware, the whole issue of undocumented workers, illegal aliens, and immigration is a subject in which the Senator from New Mexico has been and is very actively involved. I sponsored and introduced with numerous colleagues S. 1427 which is an attempt to get to part of the basic problem, that is, the Mexican migrant worker who enters this country now illegally.

My concern is that the Senate has so far avoided coming to grips with this whole problem of the legal status of various individuals who are in our country, whether they are political refugees or economic refugees, and I think that is an important distinction to make, or whether in some cases they are students who are here either illegally or who have overstayed their assigned time.

My concern, and the reason that I think the suggestion of the Senator from Wisconsin is a good one, is that this amendment is very valuable because it helps to increase that pressure on this body to do something about this issue. We cannot get the Judiciary Committee to hold hearings on that particular bill or subject. Hopefully, that is going to change. But if we do not come to grips with it, we really do not know how to handle this particular problem.

The Senator mentioned the student issue, and that is part of it. But let me mention the Cubans who are here in some quasi-legal status, many of them in the most recent migration wave, and I do not know how they fit into it. There is the issue of the Mexican legal worker who is here filling jobs which, in most instances, U.S. workers are no longer willing to take. They are contributing a great deal to our society in their production and the taxes paid on that production.

Mr. PROXMIRE. And they would qualify under the amendment, I believe.

Mr. SCHMITT. They would qualify if they became legal residents or legal migrant workers in this country. They would become qualified.

Mr. PROXMIRE. That is correct.

Mr. SCHMITT. The only reason I take the floor at this point is to illustrate how broad an issue this is, and how important it is, I think, for the Banking Committee and the Judiciary Committee to deal with this, maybe through joint hearings. It is a very pervasive issue because of the different categories of legal and illegal migrants and immigrants who exist in this country.

I would hope that the Senator would take the assurances of the Senator from Wisconsin and whatever assurances I can back up that I would make, since I am trying to exert as much pressure as possible on the Senate to take these issues into account and get legislation, policy legislation that deals with the overall situation. The administration has been extremely reluctant to deal with this realistically. They have made proposals, but they are totally unrealistic proposals. The Congress is going to have to make policy guidance in this area. I hope the Senator will accept the assurances of the Senator from Wisconsin, the distinguished chairman of the Banking Committee, upon which I wish I still served. I am sorry I do not. I have been missing all the meetings because I do not serve on the committee, but at any rate I have been working closely on banking and housing problems.

Mr. PROXMIRE. The Senator from New Mexico is so active I thought he was still on the committee. He was a dominant member when he was on the committee.

Mr. SCHMITT. I appreciate the Senator's remarks. I think it is an important assurance that he has given.

Since I am a de facto member of the Banking Committee I will put all the pressure I can on the Senator from Wisconsin to live up to his promise. I hope the Senator will withdraw the amendment with these kinds of assurances.

Mr. HELMS. Mr. President, how could anyone resist such persuasiveness as this? The reaction, I must say, from the distinguished Senator from Wisconsin and the distinguished Senator from New Mexico is precisely what I hoped I would get. In fact, the distinguished Senator from New Mexico has made the very point that I was going to make: that it is time for this Senate to get off its hindside and do something about this issue. Too much time and too many millions of dollars have gone down the drain.

I thank both my friend Senator PROXMIRE and my friend Senator SCHMITT for being so clear in the understanding of what I was trying to accomplish. With that in mind, Mr. President, and with my gratitude to my two colleagues, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. SCHMITT. Mr. President, I congratulate the Senator from North Carolina on his action and I renew my commitment. It is unfortunate that there has been in the past so much misinformation on the issue he has raised and other related issues. Fortunately, at this time, the Select Commission on Immigration and Naturalization has conducted a nationwide set of very useful hearings, though I am not absolutely sure that the conclusion they are going to come to really reflects the facts in those hearings, if the newspaper accounts are accurate.

I also think it is important to note the increased interest just in the last year, maybe stimulated by the action of the Government but probably stimulated by the realization that our relationships particularly with Latin America, the

source of so many of the illegal aliens who are in our country, are dependent on us coming up with a coherent policy.

There have been numerous fine research efforts by academic persons as well as by reporters of great common sense. I am at the present time introducing into the RECORD a series of articles that appeared in the San Diego Union about the broad problem of dealing with the Mexican migrant labor force. I commend those articles to my colleague, the Senator from North Carolina. He is obviously showing great leadership in this area and I will enjoy working with him further.

Mr. HELMS. I thank the Senator.

AMENDMENT NO. 2371

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from New Mexico.

Mr. SCHMITT. Mr. President, I request the yeas and nays on that amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

● Mr. MAGNUSON. Mr. President, this bill contains a substantial reduction in consultant spending, as most Members know. That reduction totals about $34 million and amounts to about 15 percent of what the agencies themselves said they spent on consultants during 1979.

Let me emphasize that these reductions are based on the total amount of consultant spending as reported by each agency in Commerce Business Daily during calendar 1979. This is where the agencies themselves reported the amount they spent on consultant contracts. So we just are not making these cuts arbitrarily. We are basing them on what the agencies themselves reported.

We chose those figures for one very simple reason. The figures for consultant spending that were submitted by the Office of Management and Budget were unrealistically low. OMB claims that only $414 million is spent on consultants throughout Government. That is hard to believe when we cut more than $150 million in two agencies alone last year. And the General Accounting Office estimates consultant costs at more than $2 billion. And the figures from Commerce Business Daily put the figures at almost $2.5 billion.

It appears that the bottom line of this controversy boils down to the narrow definition OMB uses for the term "consultant." We have been pushing OMB to come up with a better definition for months, but we have not had much success. So we have gone to one of the only other sources of information on consultant spending—Commerce Business Daily. Based upon those figures, we made about a 15-percent reduction.

We have a choice. Either we stand around here and argue about definitions forever and take no action to deal with this problem. Or we use the best figures we have—the figures the agencies themselves reported—and make a reduction in consultant spending based upon that.

Mr. President, every day we hear about the size of fraud and waste in the Federal Government. On the steps of the Capitol, some have claimed that there is something like $50 billion worth of waste and fraud in Government. And every politician in this country says we have got to stop these problems.

But when we try to cut spending in an area that is clearly plagued by excessive waste and abuse, we hear all of these cries about making cuts that are too big.

I would say to my colleagues that we cannot have it both ways.

We cannot stand on the steps of the Capitol and talk about cutting Government waste and then turn around, change our tune, and oppose cuts in waste because they look too big.

May I remind all of my colleagues that even after the cuts I am proposing in this bill, each of these agencies will still have billions—that is billions—not millions of dollars left. So I do not think these agencies are going to do any suffering from these cuts.

It seems to me that 20 years worth of GAO reports on consultant abuses should be enough to convince any Senator that cuts are needed and are needed now.

Let me conclude with a statement by Adm. Hyman Rickover, who is a leader in science and defense, from just 3 weeks ago. He said, in his opinion:

> Vast sums are being wasted through consulting contracts. Moreover, in terms of delay and inefficiency the true cost to the Government of useless studies and excessive use of consultants far exceeds the contract amounts. The use of consultants often impedes, rather than facilitates, action by government agencies.

I believe, Mr. President, that these reductions in consultant spending are necessary, warranted, and totally sound. It is time for Congress to send a clear message to agencies that we are tired of these abuses and waste in consultants and that we expect the agencies to do something about it.

I urge my colleagues to allow this reduction to remain in the bill—and reject increases for consultants.●

● Mr. SASSER. Mr. President, I support the reductions in consultant spending that are included in this bill and want to speak in opposition to efforts by some Members to add extra funds for consultants.

Senator MAGNUSON is to be commended for making these consultant spending cuts and for taking the lead in this area that has been plagued by excessive waste and misuse in the past.

The reductions in consultant spending in this bill are more than justified. Twenty years worth of reports by the General Accounting Office point to the need for agencies to put an end to the abuses in the use of consultants. Senator MAGNUSON is leading the way in cutting this waste by making spending reductions in this and other appropriations bills.

I would like to point out that these reductions certainly are not going to harm any program, Mr. President. There will be plenty of money left in each of these agencies—in fact, there will be billions of dollars available. These cuts in consultant spending are designed to get the agencies moving on cleaning up the waste and inefficiency that is taking place.

Some say that these reductions are too high. But I want to emphasize that they are based on figures reported to Commerce Business Daily by the agencies themselves. They were not gathered for the purpose of a spending cut as were those from OMB. These figures are sound and the reductions that are based upon them should remain in this bill.

Mr. President, I do not think there can be any question in any Senator's mind that we have seen many too many problems and abuses in consultant spending—duplication, waste, conflict of interest and more. If we are really serious about trying to cut waste from Government—which everyone on both sides of the aisle is talking about these days—then let us cut waste in the use of consultants.

In good conscience, I simply could not lambast Government programs for the fraud and waste that often exist within them and then turn around and cast a vote that would mean millions of dollars more for consultant spending in the Federal Government.

So I support Chairman MAGNUSON on this reduction and I urge my colleagues to do the same.●

Mr. SCHMITT. Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

The PRESIDING OFFICER (Mr. PRYOR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 25, nays 67, as follows:

[Rollcall Vote No. 437 Leg.]

YEAS—25

Baker	Humphrey	Schmitt
Boren	Javits	Stafford
Cannon	Kassebaum	Stevens
Cochran	Laxalt	Stevenson
Cranston	Long	Tower
Glenn	Lugar	Wallop
Hatfield	Packwood	Warner
Hayakawa	Pressler	
Heflin	Sarbanes	

NAYS—67

Armstrong	Byrd, Harry F., Jr.	DeConcini
Baucus	Byrd, Robert C	Dole
Bellmon	Chafee	Domenici
Bentsen	Chiles	Durenberger
Biden	Church	Durkin
Boschwitz	Cohen	Eagleton
Bradley	Culver	Exon
Bumpers	Danforth	Ford
Burdick		Garn

Gravel	Matsunaga	Riegle
Hart	McClure	Roth
Hatch	Metcher	Sasser
Heinz	Metzenbaum	Schweiker
Helms	Mitchell	Simpson
Hollings	Moynihan	Stennis
Huddleston	Nelson	Talmadge
Inouye	Nunn	Thurmond
Jackson	Pell	Tsongas
Jepsen	Percy	Weicker
Johnston	Proxmire	Williams
Leahy	Pryor	Young
Levin	Randolph	Zorinsky
Magnuson	Ribicoff	

NOT VOTING—8

Bayh	Mathias	Stewart
Goldwater	McGovern	Stone
Kennedy	Morgan	

So Mr. SCHMITT's amendment (No. 2371) was rejected.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1646

(Purpose: To exempt projects and programs that use solar energy from reductions in Act)

Mr. HEFLIN. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Alabama (Mr. HEFLIN) proposes an unprinted amendment numbered 1646:
>
> On page 52 after line 19 add:
>
> "SEC. 418. Notwithstanding any other provision of this Act, the total budget authority for any project or program that uses or will use solar energy as a source of energy shall be exempt from any or all reductions which may be levied by other sections of this Act or on the overall Act."

Mr. HEFLIN. Mr. President, this amendment is very simple. It involves very little money, approximately $8 million or $10 million and it deals with solar energy.

There are some efforts going on in NASA and in other agencies dealing with solar energy. One is the solar electrical propulsion system. This is a very important new development for space travel, but the spinoff of that development will be important to the use of solar energy in other applications.

It is my understanding that this has been discussed with the floor managers and there probably is no opposition to it.

Mr. PROXMIRE. I say to my good friend from Alabama that I have discussed this matter further with other members of the committee. I was inclined to consider taking this to conference. The difficulty, as I am sure the Senator appreciates, is that it is very, very hard to justify an exception.

Every item in this bill, it seems to me, can be justified, one way or the other. I do not believe there is an item here that most Senators would not support. That is why they are in the bill.

As I have said, we did cut this bill. We cut it further than anyone would have liked.

While I believe that solar energy, in the long run, is probably the most rewarding kind of technology we have for energy, it is inexhaustible and clean. I have consistently supported proposals to increase solar energy research. I believe that to make an exception and to say that only solar energy in this bill is going to be exempt from the cut makes it hard for Members to justify. Perhaps Members in some cases, in good faith, voted for no exceptions before; and to find now that the committee has accepted an amendment for solar energy, it seems to me, is very hard to justify.

Mr. HEFLIN. I appreciate the position of the Senator from Wisconsin, but here we are dealing with a great number of subjects. Energy happens to be one of the most important problems we have today. National security and energy particularly are important.

I know that the Senator has been very conscientious in his approach to these problems that we have.

Every general rule has exceptions. Whether this is an exception to the status quo of the bill, I believe it is an exception to which we should give some thought. Merely because it has not been thought of before does not mean that it should not be excepted. As we endeavor to deal with figures and with principles, things become complicated and we overlook things.

Any time you have an across-the-board reduction, which in this instance is 2 percent, it is like Ivory Soap—99 percent pure. It is a good approach, but there is that last element we should think about. I believe we should think about the advancements which are taking place in energy, the potential of solar energy, particularly in regard to its importance in space; the fact that we can develop a solar electric propulsion system.

Because so little is involved in this and because it can be absorbed easily, I pray that the Senator from Wisconsin will look at this matter carefully and will not say that just because there is a general rule, there should not be exceptions.

There are exceptions to everything, and we all know it. Things are not black and white; they are gray. In this instance, if the Senator will think about it carefully, this is something that, deep down in his conscience, he wants to support.

Mr. PROXMIRE. With respect to the Senator's proposition that every general rule has its exception, that is a general rule. What is the exception to the general rule that every general rule has its exception? The rule in which there is no exception, and that is what we are trying to do in this bill.

Mr. HEFLIN. The Senator already has excepted it in one instance here and supported it. That was with respect to the Veterans' Administration.

Mr. PROXMIRE. Not on the floor of the Senate.

Mr. HEFLIN. Senator BELLMON's amendment did that.

Mr. PROXMIRE. No, Senator BELLMON's amendment did not do that. We did that in committee. That was in the bill as it came to the floor.

The bill provides exceptions for the Veterans' Administration and for entitlement programs.

After all, we have refused to adopt amendments before the Senate for research and development being excepted. We knocked that out. We refused to adopt the amendment exempting revenue sharing from the cut.

In this bill, we have funds for hazardous waste, for housing, for basic research, for housing for the elderly, for the Space Shuttle—all of which would be cut 2 percent. We leave in 98 percent of those accounts. We have the same treatment for solar energy. We leave 98 percent for it.

Mr. HEFLIN. The Senator's position is, "This is good. It is an enlightened movement. It is a needed movement. But we did not think of it in committee; and because we did not think of it in committee, we ought not adopt it."

Mr. PROXMIRE. No. We thought of a number of possibilities in committee, obviously. What we did in committee was to take the House language. We took the House language. I should have gone back further. It was the House that made that decision.

Mr. HEFLIN. Then the logic is that because the House did not think of it, we should not adopt it.

Mr. PROXMIRE. No. We could have thought of all kinds of exceptions.

Mr. HEFLIN. What is the reason for it?

Mr. PROXMIRE. If the Senator from Alabama is successful in this, I can see Senators rising and saying that we should exempt housing for the elderly.

Mr. HEFLIN. I believe that at this late stage of the game, the Senator can except it; and by that logic, he will be doing the budget and appropriations committees a service; then we will go to final passage.

Mr. PROXMIRE. The Senator says that this is not much money, but it is $8 million to $10 million.

Mr. HEFLIN. Eight million dollars to ten million dollars puts us on a start toward a project that can mean great dividends to this country. The dividends can pay off thousands to one.

Mr. PROXMIRE. Eight million dollars to ten million dollars means that we still have in the bill $400 million to $500 million for solar research. So, really, we are cutting only a tiny fraction. If they cannot find, in that whole program of $400 to $500 million, $8 to $10 million of low priority items that they cannot postpone for a year or so, I will be surprised, and I believe the Senator from Alabama will be, too.

Mr. HEFLIN. I want to be sure that it starts. I believe we realize more than the agencies the importance of solar.

This is something about which the Senator from Wisconsin should think. At one time, I thought we had him convinced. Somebody has changed his mind.

Mr. PROXMIRE. The Senator almost did have me convinced, but I talked to other Senators; and upon sober reconsideration, I simply have to resist the protestations of my good friend.

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I have had an opportunity to reread the amendment carefully and discuss this with the staff. My initial understanding of the amendment was wrong. I initially understood the amendment to provide, in effect, that there would be an additional $8 to $10 million added to the bill because we would not be reducing the solar energy account by 2 percent. That was wrong. It is my understanding that there would be nothing added to the bill, that there would be the same reduction in the bill as before, and that the $8 to $10 million would have to be taken out of some other part of the bill.

Mr. HEFLIN. That is right.

Mr. PROXMIRE. Is that the understanding of the author of the amendment?

Mr. HEFLIN. Yes, that is true because under section 412 we authorize a 2-percent cut but we authorize OMB to take as much as 5 percent.

Mr. PROXMIRE. We amended that with the Bellmon amendment which provided for a 2 percent across-the-board cut.

Mr. HEFLIN. What this would mean is it would be absorbed. It would not be additional money.

Mr. PROXMIRE. I think that is correct.

● Mr. MAGNUSON. Mr. President, the purpose of this amendment is to permit the solar energy projects and programs, both new and ongoing, funded by this act to proceed without interruption.

Solar energy is essentially an unlimited source of energy. It is a clean source, and not subject to interruption by foreign events. It is important that we continue to advance the technology for the use of solar energy. Projects funded in this bill, which are the subject of this amendment, will contribute to this advancement.

A very important project funded by the new budget authority in this bill is the initiation of the development of the solar electric propulsion system (SEPS). Not only will this new kind of propulsion system use solar energy, thereby advancing the technology for all applications, but it will also provide a unique capability for spacecraft propulsion. This project should move forward during fiscal year 1981 as authorized and supported by the Appropriations Committee.●

Mr. SCHMITT. Mr. President, if the Senator will yield, I think, though, it should be clear that based on the amendment to section 412 the cut would be absorbed by NASA, not by any other agency.

Mr. HEFLIN. That is right.

Mr. SCHMITT. That is unless there is some solar energy provision in other agencies that would fall under the amendment, and I doubt if there are. I think the HUD solar energy is a reimbursable program. EPA I do not believe has any solar energy R. & D. underway. NSF may have to absorb some cuts in other programs besides their solar programs, but I am not sure what they are doing in solar energy right now. So basically it sounds like a NASA cut of about $8 million.

Mr. PROXMIRE. With that understanding I am willing to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment (UP No. 1646) was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEFLIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

● Mr. DOMENICI. Mr. President, I am in complete sympathy with the views expressed by my colleagues that low- and moderate-income subsidized housing is desperately needed by a large segment of this Nation's population—a segment which can no longer afford decent and livable housing. I am also convinced that the section 8 program is responsible for new construction of a great deal of the multifamily units undertaken in the last few years—construction that employs thousands of otherwise idle workers. It is imperative, therefore, that the subsidized housing program must be effective, targeted and efficient to adequately achieve this diversity of goals.

Nevertheless, Mr. President, I intend to vote for the Exon amendment, cutting $3.4 billion of budget authority from the $28.9 billion specified for assisted housing in the HUD bill, but keeping the number of assisted units at the 1980 level—240,000 units. Now is not the time for expansion. It is my belief that the existing program does not, in fact, accomplish the objectives it seeks to serve. Both the construction industry and those households so badly in need of subsidized housing can be better served by a HUD program which targets its aid more carefully and times its construction starts in a way to accomplish countercyclical objectives. Multifamily starts occur about 18 months after the budget authority commitment is made.

I am concerned that 70 percent of the subsidized housing commitments are made in the last month of the fiscal year. How selective can the process be when such a large number of decisions are made in a single month?

I am concerned that the General Accounting Office has found that public housing, various forms of pass-through securities and other housing programs are, dollar-for-dollar, more cost effective than the section 8 program.

I am concerned that the program is not targeted closely enough. Forty percent of the Nation's 60 million households are eligible for some form of housing assistance—and, 30 percent of these are eligible for section 8.

I am concerned that GAO has found evidence of excessive increases in fair market rents. In 17 cities surveyed the average HUD fair market rent increased 53 percent while the rent component of the CPI had increased 23 percent.

For all these reasons, Mr. President, I am concerned about the state of our subsidized housing program. It desperately needs strong oversight and redesign to help—not hurt—both low income renters and the construction industry. Therefore, Mr. President, I support the Exon amendment in the hope that it will trigger such a reexamination. It is long overdue.●

Mr. MOYNIHAN. Mr. President, I am voting for this appropriation because it contains funding for many programs that are important to the Nation and important to New York: general revenue sharing, community development block grants, various housing subsidies, and more.

I wish to note, however, that I strongly oppose the provision in this bill that limits New York City's access to the loan guarantees that have previously been authorized. I engaged in a lengthy discussion of this issue in the Senate on Tuesday, September 16—it appears on pages S12614 to S12617 of the RECORD—and indicated my strong hope and expectation that when the Senate goes to conference with the House on the differing versions of this legislation, the result will be a bill shorn of that particular restriction. That is my wish. It is President Carter's wish. It is Vice President MONDALE's wish. It is Secretary Miller's wish. Should that not be the outcome of conference, I would be unable to support the legislation and would expect to vote against it.

Mr. ROBERT C. BYRD. Mr. President, today the Senate completes its consideration of H.R. 7631, the Department of Housing and Urban Development-independent agencies appropriation bill for fiscal year 1981.

The members of the HUD-Independent Agencies Subcommittee and the full Appropriations Committee have labored long and hard to report a fiscally responsible bill to the Senate in a timely manner. The distinguished Senator from Wisconsin (Mr. PROXMIRE), chairman of the HUD-Independent Agencies Subcommittee of the Appropriations Committee, and its ranking minority member, Mr. MATHIAS, have provided exceptionally good leadership in guiding the legislation through 20 days of hearings, subcommittee markup, and full committee markup.

The appropriations bill before the Senate is a lean bill. Appropriations for many programs are reduced or held at current law levels. It is clear that some painful decisions have been made, on everyone's part, in an effort to hold the line on the budgets of the agencies and offices funded.

The bill provides adequate funding to maintain our commitment to improve rural and urban housing conditions, with particular attention paid to the economically disadvantaged, the elderly and the handicapped. In addition to housing and community development, this bill continues the effort to reverse or prevent air and water pollution. It provides funding for our veteran's programs, and the research operations of the National Science Foundation and the National Aeronautics and Space Administration.

The legislation includes four new provisions requiring agencies to take steps to curb fraud, abuse, and waste in their programs. These steps are: limits on the end of fiscal year spending, constraints on spending for outside consulting services, improved methods of debt collection, and the resolution of unresolved audits.

The recommendations of the HUD-Independent Agencies Subcommittee and the full Appropriations Committee make it very clear that more is not always best. The activities and needs of the agencies and offices funded in the bill and the constraints of the budget resolution have been carefully studied and weighed.

I believe that there has been a healthy process of give and take in determining specific budget cuts as well as selective increases in certain programs. We have seen part of that process in the last few days when Senators PROXMIRE and MATHIAS have found themselves, as they frequently did in committee, on opposing sides of important amendments. Both Senators have brought a great deal of concern and knowledge to the debate, and their discussions have served to inform the Senate.

We owe thanks to Senators PROXMIRE and MATHIAS, who have so ably presented their arguments, and to members of the HUD-Independent Agencies Subcommittee and of the full Appropriations Committee, for the time and effort they have devoted to this legislation.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. SCHMITT. Mr. President, the distinguished Senator from Wisconsin deserves the compliments of myself and I am sure Senator MATHIAS if he were here would also compliment him on his diligent stewardship of this bill in subcommittee and subsequently.

We have not always agreed on various provisions, but I think on balance the bill that has come out, except for a couple of provisions, is a good bill, and I think it is one that the Senate can take to conference with a great deal of confidence. I think we have to recognize, though, it will not be an easy conference. The House of Representatives has somewhat different ideas on a number of provisions than we have here, and it is important that the Senate conferees stick together as much as possible but also be as imaginative as possible in order to see that the conference is successfully carried out in the best interests of the country, not that the House of Representatives does not have those interests in mind, but sometimes there are differing opinions.

I remind the Senator from Wisconsin of the discussion that we had at the subcommittee markup, and I reemphasize this today with respect to the section 8 housing programs, the difficulties that we all see in those programs and the desire, as I recall, of both the Senator from Wisconsin and the Senator from New Mexico and many others in the subcommittee in the next few months of this Congress or the next Congress to really take an in depth review of the section 8 housing program to see where in the world we really have failed that program.

We are failing to meet the true needs of persons who require that type of assistance, and we are seeing a great deal of waste in the section 8 program.

The Senator from Wisconsin, I know, is extremely interested in this effort, and I am looking forward to working with him on it as I am sure Senator MATHIAS, Senator BELLMON, and others are also.

With that again, I compliment him on his stewardship of the bill and hope that the Senate will support it.

Mr. PROXMIRE. Mr. President, I thank my good friend from New Mexico. He was kind of drafted into action here. The distinguished Senator from Maryland, who always does a superb job on this bill, could not be here during much of the handling of the bill, and Senator SCHMITT, I think, did an outstanding job. He is extraordinarily intelligent and very cooperative. He is a real pleasure to work with, and he did a fine job on this as he does on all matters before the Senate.

Mr. President, I agree wholeheartedly, of course, with the Senator from New Mexico on section 8. It is, I think, a disaster. It is going to get worse as time goes on. There are literally hundreds and hundreds of billions of dollars involved in this program. They are building up every year. We are confronted with this, and on the Appropriations Committee most of it is uncontrollable spending. I think the Senator from New Mexico is right. We should have hearings to see what we can do at the appropriations level, and I think that the authorizing committee, the Banking Committee, should also get involved. I promise the Senator from New Mexico that we will do that also because this is something that is a fiscal time bomb waiting to blow up.

I also want to congratulate the distinguished Senator from Arkansas, the present occupant of the chair, for a really remarkable triumph. He has worked for a long, long time to explore the very puzzling and complicated issue of consultants.

I think what the Appropriations Committee has done today is largely because of his urging. He did that in his committee, and the Senator defended that position on the floor very ably. I think this action will serve the taxpayers extremely well as time goes on and save literally hundreds of millions of dollars as the years pass.

Mr. President, I might point out that the committee still faces very difficult budget resolution problems in conference. We will do our best to reconcile those problems, but it is going to be extremely hard for us to stay within the first budget resolution or the second budget resolution, as it is developing.

I might finally add I think the Senator from South Carolina and the Senator from Oklahoma, Senators HOLLINGS and BELLMON, really made a great difference on this bill. Without their assistance, without their work on the floor and off the floor, there is no way we would have been able to bring this bill in at the level we did, and I think undoubtedly they have saved the taxpayers hundreds of millions of dollars.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will now call the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I also announce that the Senator from Montana (Mr. MELCHER) is absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) and the Senator from Montana (Mr. MELCHER) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 81, nays 10, as follows:

[Rollcall Vote No. 438 Leg.]

YEAS—81

Baker	Gravel	Percy
Baucus	Hart	Pressler
Bellmon	Hatfield	Proxmire
Bentsen	Hayakawa	Pryor
Biden	Heflin	Randolph
Boren	Heinz	Ribicoff
Boschwitz	Hollings	Riegle
Bradley	Huddleston	Roth
Bumpers	Inouye	Sarbanes
Burdick	Jackson	Sasser
Byrd, Robert C.	Javits	Schmitt
Cannon	Jepsen	Schweiker
Chafee	Johnston	Simpson
Chiles	Kassebaum	Stafford
Church	Leahy	Stennis
Cochran	Levin	Stevens
Cohen	Long	Stevenson
Cranston	Lugar	Talmadge
Culver	Magnuson	Thurmond
Danforth	Matsunaga	Tower
DeConcini	Metzenbaum	Tsongas
Dole	Mitchell	Wallop
Durenberger	Moynihan	Warner
Durkin	Nelson	Weicker
Eagleton	Nunn	Williams
Ford	Packwood	Young
Glenn	Pell	Zorinsky

NAYS—10

Armstrong	Exon	Humphrey
Byrd, Harry F., Jr.	Garn	Laxalt
Domenici	Hatch	McClure
	Helms	

NOT VOTING—9

Bayh	Mathias	Morgan
Goldwater	McGovern	Stewart
Kennedy	Melcher	Stone

So the bill (H.R. 7631), as amended, was passed.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE. Mr. President, I move that the Senate insist on its amendments, request a conference with the House of Representatives thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Chair appointed Mr. PROXMIRE, Mr. STENNIS, Mr. BAYH, Mr. HUDDLESTON, Mr. LEAHY, Mr. SASSER, Mr. DURKIN, Mr. MAGNUSON, Mr. MATHIAS, Mr. BELLMON, Mr. WEICKER, Mr. LAXALT, Mr. SCHMITT, and Mr. YOUNG conferees on the part of the Senate.

DISAPPROVAL OF ENRICHED URANIUM TO INDIA

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate Concurrent Resolution 109, which the clerk will state by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 109) disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. PROXMIRE. To be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I believe under the legislation that has been enacted, time for debate on the disapproval resolution will be equally divided between the opponents and the proponents.

Mr. President, I ask unanimous consent that the time be equally divided between the majority leader and the minority leader, and that they, in turn, allocate the time on their respective sides equally between the opponents and the proponents.

Mr. STEVENS. Mr. President, reserving the right to object, and I shall not object, will the majority consider making that the majority leader and minority leader or their designees?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask that the time not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS OF THE SENATE UNTIL WEDNESDAY, NOVEMBER 12, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, notwithstanding the order of yesterday, I be permitted to call up the recess resolution and that no nongermane amendment be in order.

Mr. BAKER. Mr. President, there is no objection to that procedure on this side.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader. I send the resolution to the desk and ask that it be stated.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A Senate concurrent resolution (S. Con. Res. 126) providing for a recess of the Senate and an adjournment of the House of Representatives until Wednesday, November 12, 1980.

Mr. BAKER. Mr. President, I ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

I also announce that the Senator from Montana (Mr. MELCHER) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) would each vote "nay."

The PRESIDING OFFICER (Mr. MITCHELL). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 51, nays 39, as follows:

[Rollcall Vote No. 439 Leg.]

YEAS—51

Baucus	Exon	Nelson
Bentsen	Ford	Nunn
Biden	Glenn	Pell
Boren	Gravel	Proxmire
Bradley	Hart	Pryor
Bumpers	Heflin	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Huddleston	Riegle
Byrd, Robert C.	Inouye	Sarbanes
Cannon	Jackson	Sasser
Chiles	Johnston	Stennis
Church	Leahy	Stevenson
Cranston	Levin	Talmadge
Culver	Long	Tsongas
DeConcini	Magnuson	Williams
Durkin	Metzenbaum	Zorinsky
Eagleton	Mitchell	
	Moynihan	

NAYS—39

Armstrong	Hatfield	Pressler
Baker	Hayakawa	Roth
Bellmon	Heinz	Schmitt
Boschwitz	Helms	Schweiker
Chafee	Humphrey	Simpson
Cochran	Javits	Stafford
Cohen	Jepsen	Stevens
Danforth	Kassebaum	Thurmond
Dole	Laxalt	Tower
Domenici	Lugar	Wallop
Durenberger	McClure	Warner
Garn	Packwood	Weicker
Hatch	Percy	Young

NOT VOTING—10

Bayh	Matsunaga	Stewart
Goldwater	McGovern	Stone
Kennedy	Melcher	
Mathias	Morgan	

So the concurrent resolution (S. Con. Res. 126) was agreed to, as follows:

S. CON. RES. 126

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses on any day beginning with Tuesday, September 30, 1980, but no later than Thursday, October 2, 1980, as determined by the Majority Leader, and consultation with the Minority Leader, and as so moved by the Majority Leader in accordance with this resolution, it stand in recess until 11:30 a.m. on Wednesday, November 12, 1980, and that when the House of Representatives adjourns on Thursday, October 2, 1980, it stand adjourned until 12:00 meridian on Wednesday, November 12, 1980.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISAPPROVAL OF ENRICHED URANIUM TO INDIA

The Senate continued with the consideration of Senate Concurrent Resolution 109.

Mr. ROBERT C. BYRD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is Senate Concurrent Resolution 109.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, under the order previously entered, I designate Mr. GLENN to handle half of the time allocated to this side of the aisle, as a proponent of the disapproval resolution, and Mr. CHURCH to control the other half of the

time on this side of the aisle, as an opponent of the disapproval resolution.

Mr. BAKER. Mr. President, it is my understanding that under the provisions of the unanimous-consent order previously entered, I now have an opportunity to designate those managers on this side of the aisle, for the resolution and against the resolution. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. I designate the senior Senator from New York (Mr. JAVITS) for the opponents to the resolution, and I designate the Senator from North Carolina (Mr. HELMS) for the proponents of the resolution.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time not be charged against anybody.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time consumed in connection with the following morning business not be charged against either side on the pending measure.

The PRESIDING OFFICER (Mr. TSONGAS). Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 1031, 1034, 1035, 1044, 1084, 1086, and 1087.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I will not, the reservation is for the purpose of advising the majority leader that all seven calendar items identified by him are cleared on our calendar and we have no objection to their consideration and passage.

The PRESIDING OFFICER. Without objection, it is so ordered.

MAGNETIC FUSION ENERGY ENGINEERING ACT OF 1980

The Senate proceeded to consider the bill (S. 2926) to provide for an accelerated research, development, and demonstration program to achieve confirmation of the engineering feasibility of magnetic confinement fusion, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 3, line 15, strike "inflation", and insert in lieu thereof the following:

"inflation and a 25 per centum increase in funding each of fiscal years 1982 and 1983";

On page 4, line 12, strike "by the year 2005", and insert in lieu thereof the following:

"at the turn of the twenty-first century;";

On page 7, line 6, strike "by the year 2005", and insert in lieu thereof the following:

"at the turn of the twenty-first century";

On page 7, line 11, strike "of", and insert in lieu thereof "relative to other";

On page 7, line 14, strike "limitation", and insert in lieu thereof "limitations";

On page 7, line 17, strike "precious", and insert in lieu thereof "special";

On page 8, line 5, after "research", insert the following "and development";

On page 10, line 6, strike "advise the Secretary", and insert in lieu thereof "review";

On page 11, line 14, strike "an annual", and insert in lieu thereof "a triennial";

On page 11, strike line 22, through and including line 7 on page 13, and insert in lieu thereof the following:

SEC. 8. The Secretary may direct the director of each laboratory or installation at which a major magnetic fusion facility is operated for, or funded primarily by, the Federal Government to establish, for the sole purpose of providing advice to such a director, a program advisory committee composed of persons with expertise in magnetic fusion from such domestic industry, universities, government laboratories, and other scientific and technical organizations as such director deems appropriate.

On page 15, line 1, strike "two years", and insert in lieu thereof "one year";

On page 15, line 5, strike "the", and insert in lieu thereof "such";

On page 16, line 9, strike "state", and insert in lieu thereof "status";

On page 16, line 12, strike "annual", and insert in lieu thereof "any";

On page 16, after line 24, insert the following:

(b) In carrying out the provisions of this Act, the Secretary is authorized to enter into contracts only to such extent or in such amounts as may be provided in advance in appropriations Acts.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Magnetic Fusion Energy Engineering Act of 1980".

FINDINGS AND POLICY

SEC. 2. (a) The Congress hereby finds that—

(1) the United States must formulate an energy policy designed to meet an impending worldwide shortage of many exhaustible, conventional energy resources in the next few decades;

(2) the energy policy of the United States must be designed to insure that energy technologies using essentially inexhaustible resources are commercially available at a time prior to serious depletion of conventional resources;

(3) fusion energy is one of the few known energy sources which are essentially inexhaustible, and thus constitutes a long-term energy option;

(4) major progress in all aspects of magnetic fusion energy technology during the past decade instills confidence that power production from fusion energy systems is achievable;

(5) the United States must aggressively pursue research and development programs in magnetic fusion designed to foster advanced concepts and advanced technology and to develop efficient, reliable components and subsystems;

(6) to insure the timely commercialization of magnetic fusion energy systems, the United States must demonstrate at an early date the engineering feasibility of magnetic fusion energy systems;

(7) progress in magnetic fusion energy systems is currently limited by the funds made available rather than technical barriers;

(8) it is a proper role for the Federal Government to accelerate research, development, and demonstration programs in magnetic fusion energy technologies; and

(9) acceleration of the current magnetic fusion program will require a doubling within seven years of the present funding level without consideration of inflation and a 25 per centum increase in funding each of fiscal years 1982 and 1983.

(b) It is therefore declared to be the policy of the United States and the purpose of this Act to accelerate the national effort in research, development, and demonstration activities related to magnetic fusion energy systems. Further, it is declared to be the policy of the United States and the purpose of this Act that the objectives of such program shall be—

(1) to promote an orderly transition from the current research and development program through commercial development;

(2) to establish a national goal of demonstrating the engineering feasibility of magnetic fusion by the early 1990's;

(3) to achieve at the earliest practicable time, but not later than the year 1990, operation of a magnetic fusion engineering device based on the best available confinement concept;

(4) to establish as a national goal the operation of a magnetic fusion demonstration plant at the turn of the twenty-first century;

(5) to foster cooperation in magnetic fusion research and development among government, universities, industry, and national laboratories;

(6) to promote the broad participation of domestic industry in the national magnetic fusion program;

(7) to continue international cooperation in magnetic fusion research for the benefit of all nations;

(8) to promote greater public understanding of magnetic fusion; and

(9) to maintain the United States as the world leader in magnetic fusion.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) "fusion" means a process whereby two light nuclei, such as deuterium and tritium, collide at high velocity, forming a compound nucleus, which subsequently separates into constituents which are different from the original colliding nuclei, and which carry away the accompanying energy release;

(2) "magnetic fusion" means the use of magnetic fields to confine a very hot, fully ionized gas of light nuclei, so that the fusion process can occur;

(3) "energy system" means a facility designed to utilize energy released in the magnetic fusion process for the generation of electricity and the production of hydrogen or other fuels;

(4) "fusion engineering device" means a magnetic fusion facility which achieves at least a burning plasma and serves to test components for engineering purposes;

(5) "demonstration plant" means a prototype energy system which is of sufficient size to provide safety, environmental reliability, availability, and ready engineering extrapolation of all components to commercial size but which system need not be economically competitive with then alternative energy sources; and

(6) "Secretary" means Secretary of Energy.

PROGRAM ACTIVITIES

SEC. 4. (a) The Secretary shall initiate activities or accelerate existing activities in research areas in which the lack of knowledge

limits magnetic fusion energy systems in order to ensure the achievement of the purposes of this Act.

(b)(1) The Secretary shall maintain an aggressive plasma confinement research program on the current lead concept to provide a full measure of support for the design, construction, and operation of the fusion engineering devices.

(2) The Secretary shall maintain a broadly based research program on alternate confinement concepts and on advanced fuels at a sufficient level of funding to achieve optimal design of each successive magnetic fusion facility using the then best available confinement and fuel concept.

(3) The Secretary shall ensure that research on properties of materials likely to be required for the construction of fusion engineering devices is adequate to provide timely information for the design of such devices.

(c)(1) The Secretary shall initiate design activities on a fusion engineering device using the best available confinement concept to ensure operation of such a device at the earliest practicable time, but not later than the year 1990.

(2) The Secretary shall develop and test the adequacy of the engineering design of components to be utilized in the fusion engineering device.

(d) The Secretary shall initiate at the earliest practical time each activity which he deems necessary to achieve the national goal for operation of a demonstration plant at the turn of the twenty-first century.

(e) The Secretary shall continue efforts to assess factors which will determine the commercial introduction of magnetic fusion energy systems including, but not limited to—

(1) projected costs relative to other alternative energy sources;

(2) projected growth rates in energy demand;

(3) safety-related design limitations;

(4) environmental impacts; and

(5) limitations on the availability of strategic elements, such as helium, lithium, and special metals.

COMPREHENSIVE PROGRAM MANAGEMENT PLAN

SEC. 5. (a) The Secretary shall prepare a comprehensive program management plan for the conduct of the research, development, and demonstration activities under this Act. Such plan shall include at a minimum—

(1) a presentation of the program strategy which will be used to achieve the purposes of this Act;

(2) a five-year program implementation schedule, including identification of detailed milestone goals, with associated budget and program resources requirements;

(3) risk assessments;

(4) supporting research and development needed to solve problems which may inhibit or limit development of magnetic fusion energy systems; and

(5) an analysis of institutional, environmental, and economic considerations which are limiting the national magnetic fusion program.

(b) The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than January 1, 1982.

MAGNETIC FUSION ENGINEERING CENTER

SEC. 6. (a) The Secretary shall develop a plan for the creation of a national magnetic fusion engineering center for the purpose of accelerating fusion technology development via the concentration and coordination of major magnetic fusion engineering devices and associated activities at such a national center.

(b) In developing the plan, the Secretary shall include relevant factors including, but not limited to—

(1) means of saving cost and time through the establishment of the national center relative to the cost and schedule currently projected for the program;

(2) means of providing common facilities to be shared by many magnetic fusion concepts;

(3) assessment of the environmental and safety-related aspects of the national center;

(4) provisions for international cooperation in magnetic fusion activities at the national center;

(5) provision of access to facilities for the broader technical involvement of domestic industry and universities in the magnetic fusion energy program;

(6) siting criteria for the national center including a list of potential sites;

(7) the advisability of establishing such a center considering all factors, including the alternative means and associated costs of pursuing such technology; and

(8) changes in the management structure of the magnetic fusion program to allow more effective direction of activities related to the national center.

(c) The Secretary shall submit not later than July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the plan and setting forth the steps necessary for implementation of the plan, including any steps already implemented.

TECHNICAL PANEL ON MAGNETIC FUSION

SEC. 7. (a) A technical panel on magnetic fusion of the Energy Research Advisory Board shall be established to review the conduct of the national magnetic fusion energy program.

(b)(1) The technical panel shall be comprised of such representatives from domestic industry, universities, government laboratories, and other scientific and technical organizations as the Chairman of the Energy Research Advisory Board deems appropriate based on his assessment of the technical qualifications of each such representative.

(2) Members of the technical panel need not be members of the Full Energy Research Advisory Board.

(c) The activities of the technical panel shall be in compliance with any laws and regulations guiding the activities of technical and fact-finding groups reporting to the Energy Research Advisory Board.

(d) The technical panel shall review and may make recommendations on the following items, among others:

(1) the preparation of the five-year program plan prepared pursuant to section 5;

(2) the type of future facilities needed to meet the goals of this Act along with their projected completion dates;

(3) the adequacy of participation by universities and industry in the program;

(4) the adequacy of international cooperation in magnetic fusion and any problems associated therewith; and

(5) institutional, environmental, and economic factors limiting, or prospectively limiting, efforts to achieve commercial application of magnetic fusion energy systems.

(e) The technical board shall submit to the Energy Research Advisory Board on at least a triennial basis a written report of its findings and recommendations with regard to the magnetic fusion program.

(f) After consideration of the technical panel report, the Energy Research Advisory Board shall submit such report, together with any comments such Board deems appropriate, to the Secretary.

PROGRAM ADVISORY COMMITTEES

SEC. 8. The Secretary may direct the director of each laboratory or installation at which a major magnetic fusion facility is operated for, or funded primarily by, the Federal Government to establish, for the sole purpose of providing advice to such director, a program advisory committee composed of persons with expertise in magnetic fusion from such domestic industry, universities, government laboratories, and other scientific and technical organizations as such director deems appropriate.

INTERNATIONAL COOPERATION

SEC. 9. (a)(1) The Secretary in consultation with the Secretary of State shall actively seek to enter into or to strengthen existing international cooperative agreements in magnetic fusion research and development activities of mutual benefit to all parties.

(2) The Secretary shall seek to achieve equitable exchange of information, data, scientific personnel, and other considerations in the conduct of cooperative efforts with technologically advanced nations.

(b)(1) The Secretary shall examine the potential impacts on the national magnetic fusion program of United States participation in an international effort to construct fusion engineering devices.

(2) The Secretary shall explore, to the extent feasible, the prospects for joint financial participation by other nations with the United States in the construction of a fusion engineering device.

(3) Within two years of the enactment of this Act the Secretary shall transmit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources the results of such examinations and explorations with his recommendations for construction of a national or international fusion engineering device: *Provided, however,* That such examinations and explorations shall not have the effect of delaying design activities related to a national fusion engineering device.

TECHNICAL MANPOWER REQUIREMENTS

SEC. 10. (a) The Secretary shall assess the adequacy of the projected United States supply of manpower in the engineering and scientific disciplines required to achieve the purposes of this Act taking cognizance of the other demands likely to be placed on such manpower supply.

(b) The Secretary shall within one year of the date of enactment of this Act submit a report to the President and to the Congress setting forth his assessment along with his recommendations regarding the need for increased support for education in such engineering and scientific disciplines.

INFORMATION DISSEMINATION

SEC. 11. (a) The Secretary shall take all necessary steps to assure that technical information relevant to the status and progress of the national magnetic fusion program is made readily available to interested persons in domestic industry and universities in the United States: *Provided, however,* That upon a showing to the Secretary by any person that any information or portion thereof provided to the Secretary directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

(b) The Secretary shall maintain an aggressive program in the United States for the provision of public information and educational materials to promote widespread knowledge of magnetic fusion among educational, community, business, environmental, labor, and governmental entities and the public at large.

REPORTS

SEC. 12. As a separate part of the annual report submitted pursuant to section 801 of the Department of Energy Organization Act (Public Law 95-91), the Secretary shall submit to Congress an annual report of activities pursuant to this Act. Such report shall include—

(a) modifications to the comprehensive program management plan for implementing this Act;

(b) an evaluation of the status of national magnetic fusion energy program in the United States;

(c) a summary of the findings and recommendations of any report of the Energy Research Advisory Board on magnetic fusion;

(d) an analysis of the progress made in commercializing magnetic fusion technology; and

(e) suggestions for improvements in the national magnetic fusion program, including recommendations for legislation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. (a) There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1981, such sums as are provided in the annual authorization Act pursuant to section 660 of Public Law 95-91.

(b) In carrying out the provisions of this Act, the Secretary is authorized to enter into contracts only to such extent or in such amounts as may be provided in advance in appropriations Acts.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

The amendments were agreed to en bloc.

Mr. TSONGAS. Mr. President, the Magnetic Fusion Engineering Act of 1980 has developed widespread, bipartisan support. Its passage by the Senate represents a consensus—that fusion energy is a significant component of our national energy program and one of our major efforts to insure our long-term energy security.

Fusion holds great promise as an inexhaustible resource and has the potential for achieving a high degree of safety with an acceptable level of social and environmental impact. Its fuel is low-cost and abundant. It does not have the accident potential nor the nuclear waste problem associated with nuclear fission. Major progress in all aspects of magnetic fusion technology during the past decade has instilled confidence that power production from fusion is achievable. It is a flexible energy source as well—capable of generating high temperature heat, electricity, hydrogen, and synthetic fuels. With advanced fusion fuels, electricity may be produced through direct conversion which is 70-percent efficient. While the ultimate economic size of fusion powerplants cannot be estimated with any certainty, fusion could complement decentralized renewable energy sources, providing centralized power where appropriate and substituting for coal and nuclear fission plants.

Fusion is the fundamental energy process that powers the sun. It involves combining isotopes of hydrogen, which can be extracted from water, to form helium. To make this energy releasing reaction occur, it is necessary to heat the hydrogen gas to hundreds of millions of degrees and confine it with a very strong magnetic field.

During the 1970's, American's magnetic fusion program resolved many of the questions about establishing these physical conditions needed to sustain the fusion process. The program has been well managed, the personnel are top-notch, and the results have been very impressive. We are now ready to shift the program from one focused on scientific feasibility to one focused on engineering feasibility. While continuing to maintain a broad basic R. & D. program, it is time to start resolving the engineering questions involved in an operating fusion reactor.

The bill does not suggest that fusion is the ultimate energy source. It will not be a cheap source of power. If we cannot solve the many engineering challenges that exist, fusion may never become an economic energy source. There will be some radioactive materials used in the fusion plant, and they must be handled carefully. Some parts of the fusion device may become radioactive and will have to be disposed of. All of these issues need to be resolved through an accelerated program of research, development and demonstration so that the commercial potential and the social and environmental issues can be assessed.

But thus far, compared to fission, fusion appears likely to result in less long-lived radioactive waste, much smaller accident potential, no risk of a meltdown and significantly reduced nuclear proliferation risk. Compared to coal, fusion produces no CO_2, SO_x, or NO_x. This does not mean that we can afford to devote less attention or fewer resources to near term energy options. Nor should we launch a crash program that ignores engineering reality and results in less than adequate attention to potential problems. The Magnetic Fusion Engineering Act establishes a program that may ultimately cost $20 billion but sets a realistic pace and is aimed at determing whether fusion is a viable option, whether it is competitive with alternative energy sources, and what role it will play in our energy mix.

This bill is principally a statement of national policy and program direction to provide for an accelerated research, development, and demonstration program to achieve confirmation of the engineering feasibility of magnet fusion and to move us closer to commercial development. It does not include new spending authority for fiscal year 1981, but it does call for a doubling of funding in real terms over the next 7 years and 25-percent increases in fiscal year 1982 and fiscal year 1983. It calls for the operation of a magnet fusion engineering device based on the best available confinement concept—not later than 1990. Operation of a commercial demonstration plant is sought by 2000. A comprehensive management plan for research, development, and demonstration will be devised. Participation by industry in the fusion program is promoted. The bill requires DOE to prepare a plan to develop a national magnetic fusion engineering center to consolidate and coordinate major magnetic fusion engineering devices and associated activities. International cooperative agreements will be strengthened. Technical manpower requirements will be assessed.

Mr. President, the list of cosponsors of this bill span the entire political spectrum. Its broad support is evidence that this issue is not polarized as in the case of nuclear fission. Even though a demonstration plant is 20 years away, this energy source is being taken seriously because we recognize the need to invest in our energy future today. The Magnetic Fusion Engineering Act of 1980 will help mobilize national resources to overcome the obstacles to fusion and to speed its commercial use. It is a direct step forward toward developing an energy policy that addresses our long-term energy future.

● Mr. CHURCH. Mr. President, I am pleased to be one of the original cosponsors of S. 2926. This legislation is intended to promote the engineering development phase of the magnetic fusion program. After 28 years of scientific research on the magnetic fusion concept, the successes in the program in the last few years have now rendered us into the position where the scientific feasibility of magnetic fusion is at hand. We must now try to prove that practical fusion energy devices can be developed using magnetic confinement approaches by attacking the engineering problems, which are large but not seemingly insurmountable.

One of the important features of this bill is section 6, which calls for a plan for creation of a national magnetic fusion engineering center. Last year in S. 688, the fiscal year 1980 DOE Authorization Act, I offered an amendment calling for a feasibility study for creating such a center. When it became apparent that bill might not become law, I sent a letter to the Department of Energy requesting that such a feasibility study be initiated in any case.

The technical panel on magnetic fusion, established as a working group of the Energy Research Advisory Board, evaluated the feasibility of such an engineering center and, in their draft report to the Energy Research Advisory Board, recommended the creation of such a center. I was pleased that my original suggestion bore fruit in formulating the future of the magnetic fusion program. Section 6 of S. 2926 will now move us forward toward a detailed plan for this important new national facility.

In my opinion, the engineering center for the magnetic fusion program is entirely analogous to the reactor testing center that we have had in Idaho for more than 30 years. The work of the professional team at the Idaho National Engineering Laboratory has been of exceptional value to the Nation. I want to go on record now as saying that INEL would be an excellent site for this magnetic fusion engineering center, and I intend to work in the next Congress to promote the selection of INEL as the site for this center. We have the blessings of exceptionally qualified technical people, sufficient space, and community support for such a national facility. Already INEL has been designated as the lead laboratory for fusion safety work.

Mr. President, I believe that S. 2926 is a bill that strikes a proper balance between promoting the magnetic fusion energy program and maintaining realism about how fast one can move technology from the laboratory into commercial reality. Even with continued success at each stage in the program, economic commercial power from magnetic fusion energy will not be possible until well into the 21st century. We must not disband our national efforts on nuclear fission options in the hope that magnetic fusion will supplant the need for them. In all likelihood, Mr. President, we will need both energy forms in the long run.●

FUSION: A PROMISING ENERGY SOURCE

● Mr. DOLE. Mr. President. The seriousness of this country's energy crisis makes it necessary to employ every opportunity for energy self-sufficiency. No single option is adequate in and of itself in bringing about energy independence and neither should any single option be discounted. The Magnetic Fusion Energy Engineering Act of 1980 presents our Nation an opportunity that must be utilized for its value as a tool for energy self-sufficiency.

Conservation efforts are a course which should be pursued with vigor, but conservation alone cannot assure adequate security. Expansion of our total complement of energy resources is an essential means to energy security. The Senate has spoken to the issue of alternative energy sources in the past and today we are once again presented with an option we must not let slip.

Mr. President. Today I am proud to state my strong support for a bill which I believe is in the best interests of the United States. This legislation provides legitimate recognition of the many successes incurred over recent years by the magnetic fusion program and provides additional funds to not only initiate the engineering phase of magnetic fusion but also funds for a well-deserved research and development program.

The strategic importance of fusion is that it is derived from a limitless and easily accessible energy source—water, and its importance as a fuel supply that has the potential for achieving a high degree of safety with an acceptable level of social and environmental impact. Of all the inexhaustible fuel supplies, fusion promises the greatest long-term contribution at the least overall environmental and social cost. I believe it imperative that the Congress move forward now to provide the needed funding for fiscal year 1981 to ensure that our Nation's overall energy policy, geared toward energy independence, has as one of its component parts this wholly worthwhile program. I strongly urge my colleagues to join with me in lending their full support for this promising energy initiative.●

Mr. BAKER. Mr. President, it gives me great pleasure to see the Senate act so expeditiously and with such unanimity on a measure that is a statement of confidence in American technology, and an affirmation of our belief that, despite our short-term energy problems, the future is bright with the promise of unlimited energy derived from abundant, inexpensive, readily available fuels. Fusion energy holds out that promise. And Mr. President, 15 years ago, I would have been among the first to admit that the road to harnessing the energy of the stars here on earth was strewn with obstacles, and might ultimately lead nowhere.

But the fusion energy research program has in recent years advanced through a series of successes that all but the most ardent enthusiasts would have considered unlikely. The results obtained at the several lead laboratories in the fusion research program have been most encouraging, and I am proud to note that the Oak Ridge National Laboratory in Tennessee has been in the vanguard of the advances in magnetic confinement fusion research, with an innovative device bearing the intriguing name "ELMO Bumby Torus."

Mr. President, the results of experiments at Oak Ridge, MIT, Princeton, Livermore's Tandem Mirror Experiment, and the Doublet III device at General Atomic support the conclusion that the time has come to move forward with an aggressive program designed to produce a demonstration fusion powerplant by the turn of the century. Simply put, that is the goal of this bill, and I was pleased to join with the distinguished junior Senator from the State of Massachusetts (Mr. TSONGAS) as one of the original cosponsors of S. 2926, the measure before us. I wish to commend the chairman of the Energy Committee (Mr. JACKSON) and the ranking Republican member of that committee (Mr. HATFIELD) for insuring that this statement of commitment to advanced energy technology could reach the floor of the Senate for action before the end of the 96th Congress. Our colleagues in the House of Representatives acted with near unanimity to pass their companion measure, so that with the action of the Senate today, the Congress has spoken decisively and with clarity in support of an accelerated research, development, and demonstration program to achieve confirmation of the engineering feasibility of a magnetic fusion reactor.

Mr. President, I want to make it clear that fusion energy will not contribute to the solution of our serious short-term energy supply problem. We cannot even be certain that this development program will culminate in a successful fusion energy power plant, or that fusion will be the energy source of the 21st century and beyond. But we must find out whether we shall have that new option before us as we enter the next century. And, Mr. President, we must investigate, we must explore, we must develop all possible energy options if we are to insure that our children will not live in a world of peril because energy is running out.

Mr. President, the country cannot afford to be timid and cautious in our quest for new energy sources. In a time when we are spending almost $100 billion a year for foreign oil, we must be willing to make the commitment and take the chances that are necessary if this Nation is ever again to achieve energy independence. I believe we will achieve that independence, and I am proud to cosponsor the Magnetic Fusion Energy Engineering Act as an important element in providing a secure energy future for America.

● Mr. HAYAKAWA. Mr. President, I am pleased to cosponsor and strongly support the passage of S. 2926, the Magnetic Fusion Energy Engineering Act of 1980. This legislation would provide for an accelerated program of research and development of fusion technology. It will seek to demonstrate the engineering feasibility of magnetic confinement fusion by at least 1990, and the operation of a magnetic fusion demonstration plant by the year 2005. The bill encourages full participation by industry in the fusion program, and reinforces international cooperation in fusion research.

Mr. President, fusion is a vital part of our overall energy supply picture. We must recognize this, and adopt a policy commensurate with fusion's potential as a major energy source. Fusion has the promise of being a relatively safe and environmentally sound option. In addition, the primary fuels used in the fusion reaction can be extracted from seawater, therefore making it a virtually inexhaustible energy source.

There have been highly successful achievements in the fusion field in the last several years. I am especially proud of the extensive fusion research efforts in California through the Lawrence Livermore Laboratory and General Atomics. This bill will formulate goals and establish a national commitment to support these exciting successes, and bring us closer to the ultimate goal of commercial development of fusion power.●

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Later the following occurred:)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate action taken with regard to Calendar Order No. 1031 (S. 2926) from third reading forward be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 2926 be taken to third reading, that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 6308, that the Senate proceed to its immediate consideration, that all after the enacting clause of H.R. 6308 be stricken, that the text of S. 2926, as advanced to third reading be inserted in lieu thereof, that the bill H.R. 6308 be passed, that a motion to reconsider be laid on the table, and that S. 2926 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, the requests are so ordered.

PRINTING OF "PROGRESS IN THE PREVENTION AND CONTROL OF AIR POLLUTION IN 1978 AND 1979"

The resolution (S. Res. 494) authorizing the printing of the report entitled "Progress in the Prevention and Control of Air Pollution in 1978 and 1979" as a Senate document, was considered and agreed to, as follows:

Resolved, That the annual report of the Administrator of the Environmental Protection Agency to the Congress of the United States in compliance with sections 127(d), 202, 306(e), and 313 of Public Law 91-604, the Clean Air Act, as amended, entitled, "Progress in the Prevention and Control of Air Pollution in 1978 and 1979" be printed as a Senate document.

SEC. 2. There shall be printed five hundred additional copies of such document for the use of the Committee on Environment and Public Works.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PURCHASE OF CALENDARS

The resolution (S. Res. 520) relating to the purchase of calendars, was considered and agreed to, as follows:

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, upon vouchers approved by the chairman of that committee, not to exceed $55,120 for the purchase of one hundred and four thousand calendars. The calendars shall be distributed as prescribed by the committee.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MOAPA INDIAN RESERVATION LANDS

The Senate proceeded to consider the bill (S. 1135) to add certain lands to the Moapa Indian Reservation, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with an amendment:

On page 7, strike line 16 through and including line 20 and insert the following:

SEC. 2. (a) Nothing in this Act shall—

(1) deprive any person of any valid existing right-of-way, mining claim, water right, or other interest which such person may have in any land described in the first section of this Act; or

(2) deprive any person of the rights provided under the Act entitled "An Act to provide for the sale of desert lands in certain States and Territories", approved March 3, 1877 (43 U.S.C. 321 et seq.), commonly referred to as the Desert Land Act, with respect to desert lands regarding which such person has filed a declaration, before the date of the enactment of this Act, under the first section of the Desert Land Act stating his intention to reclaim such lands.

(b) Lands transferred under the first section of this Act are hereby made subject to the reservation to the United States of a right-of-way, which shall extend one thousand five hundred feet easterly of the present right-of-way of the Navajo-McCullough transmission line and one thousand five hundred feet westerly beyond the limits of the present right-of-way of the Reid Gardner Pecos transmission lines, and also subject to the authority of the Secretary to grant rights-of-way as provided in this subsection. This reservation of a right-of-way also continues in the Secretary the right to grant rights-of-way over, upon, under or through this area for such transportation or other systems or facilities pursuant to any law relating to rights-of-way on the public land, including but not limited to: The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1761) and section 28 of the Mineral Leasing Act, as amended (30 U.S.C. 185) and to enforce all or any terms and conditions of the right-of-way upon its termination and to set and collect all rental charges.

(c) Any payments for the use of the right-of-way in the corridor (as described in 2(b) of this Act) after the date of this Act shall be made to the Secretary of Interior for the benefit of the Moapa Band of Palutes.

(d) Lands transferred under the first section of this Act shall be subject to a reservation to the United States of all minerals subject to the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181) together with the right to enter upon the land and mine and remove such minerals. Any such reservation shall include the right to collect and deposit all fees, rentals, royalties, and other revenues in accordance with the Mineral Leasing Act.

SEC. 3. The second sentence of subsection (a) of the first section of the Act entitled "An Act to authorize the leasing of restricted Indian Lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (69 Stat. 539; 25 U.S.C. 415), as amended, is further amended by inserting "the Moapa Indian Reservation," after "the Dania Reservation,".

SEC. 4. The lands held in trust under section 1 of this Act shall not be considered "lands within the exterior boundaries of reservation" for the purposes of subsection (c) of section 164 of the Act of July 14, 1955 (69 Stat. 322), as amended (42 U.S.C. 7474), commonly referred to as the Clean Air Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subject to all valid existing rights of way, mining claims, grazing rights, and applications under the desert land entry laws of the United States, the following described lands shall, on and after the date of the enactment of this Act, be considered to be a part of the Moapa Indian Reservation, Moapa, Nevada, and shall be held in trust by the United States for the benefit and use of the Moapa Band of Palutes:

Township 15 south, Range 65 east, Mount Diablo Meridian, Nevada

Section 1: Lot 1; south half northwest quarter, south half 439.89 acres.
Section 2: All 639.56 acres.
Section 3: All 639.28 acres.
Section 4: All 638.48 acres.
Section 5: All 638.44 acres.
Section 6: All 638.41 acres.
Section 7: All 640.16 acres.
Section 8: All 640.00 acres.
Section 9: All 640.00 acres.
Section 10: All 640.00 acres.
Section 11: All 640.00 acres.
Section 12: All 640.00 acres.
Section 13: All 640.00 acres.
Section 14: All 640.00 acres.
Section 15: All 640.00 acres.
Section 16: All 640.00 acres.
Section 17: All 640.00 acres.
Section 18: All 640.28 acres.
Section 19: All 640.24 acres.
Section 20: All 640.00 acres.
Section 21: All 640.00 acres.
Section 22: All 640.00 acres.
Section 23: All 640.00 acres.
Section 24: All 640.00 acres.
Section 25: All 640.00 acres.
Section 26: All 640.00 acres.
Section 27: All 640.00 acres.
Section 28: All 640.00 acres.
Section 29: All 640.00 acres.
Section 30: All 640.12 acres.
Section 31: All 640.80 acres.
Section 32: All 640.00 acres.
Section 33: All 640.00 acres.
Section 34: All 640.00 acres.
Section 35: All 640.00 acres.
Section 36: All 640.00 acres.
Total acreage 22,835.66.

Township 16 south, Range 65 east, Mount Diablo Meridian, Nevada

Section 1: All 640.36 acres.
Section 2: All 640.76 acres.
Section 3: All 640.86 acres.
Section 4: All 640.96 acres.
Section 5: All 641.02 acres.
Section 6: All 640.74 acres.
Section 7: All 639.24 acres.
Section 8: All 640.00 acres.
Section 9: All 640.00 acres.
Section 10: All 640.00 acres.
Section 11: All 640.00 acres.
Section 12: All 640.00 acres.
Section 13: All 640.00 acres.
Section 14: All 640.00 acres.
Section 15: All 640.00 acres.
Section 16: All 640.00 acres.
Section 17: All 640.00 acres.
Section 18: All 639.26 acres.
Section 19: All 639.20 acres.
Section 20: All 640.00 acres.
Section 21: All 640.00 acres.
Section 22: All 640.00 acres.
Section 23: All 640.00 acres.
Section 24: All 640.00 acres.
Section 25: All 640.00 acres.
Section 26: All 640.00 acres.
Section 27: All 640.00 acres.
Section 28: All 640.00 acres.
Section 29: All 640.00 acres.
Section 30: All 639.32 acres.
Section 31: Lots 3, 4; east half west half, east half 559.93 acres.
Section 32: All 640.00 acres.
Section 33: All 640.00 acres.
Section 34: All 640.00 acres.
Section 35: All 640.00 acres.
Section 36: All 640.00 acres.
Total acreage 22,961.65.

Township 16 south, Range 64 east, Mount Diablo Meridian, Nevada

Section 1: All 640.48 acres.
Section 2: All 641.00 acres.
Section 3: All 641.10 acres.
Section 4: All 641.26 acres.
Section 5: All 641.52 acres.
Section 6: All 642.52 acres.
Section 7: All 641.40 acres.
Section 8: All 640.00 acres.
Section 9: All 640.00 acres.
Section 10: All 640.00 acres.
Section 11: All 640.00 acres.
Section 12: All 640.00 acres.
Section 13: All 640.00 acres.
Section 14: All 640.00 acres.
Section 15: All 640.00 acres.
Section 16: All 640.00 acres.
Section 17: All 640.00 acres.
Section 18: Lots 1, 2, 3, 4; north half northeast quarter, northeast quarter southeast quarter northeast quarter, northwest

quarter southwest quarter northeast quarter, east half west half, southwest quarter northwest quarter southeast quarter, southwest quarter southeast quarter 471.16 acres.

Section 19: All 640.94 acres.
Section 20: All 640.00 acres.
Section 21: All 640.00 acres.
Section 22: All 640.00 acres.
Section 23: All 640.00 acres.
Section 24: All 640.00 acres.
Section 25: All 640.00 acres.
Section 26: All 640.00 acres.
Section 27: All 640.00 acres.
Section 28: All 640.00 acres.
Section 29: All 640.00 acres.
Section 30: All 640.78 acres.
Section 31: All 640.36 acres.
Section 32: All 640.00 acres.
Section 33: All 640.00 acres.
Section 35: All 640.00 acres.
Section 36: All 640.00 acres.
Total acreage 22,882.52.

Township 14 south, Range 66 east, Mount Diablo Meridian, Nevada

Section 29: West half 320.00 acres.
Section 30: All 630.38 acres.
Section 31: East half of Lot 1; east half, east half northwest quarter, southwest quarter northwest quarter, northeast quarter northeast quarter southwest quarter 499.99 acres.
Section 32: West half 320.00 acres.
Total acreage 1,769.87.

Township 17 south, Range 64 east, Mount Diablo Meridian, Nevada

Section 7: Lots 5 and 6; south half northeast quarter 115.76 acres.

SEC. 2. (a) Nothing in this Act shall—

(1) deprive any person of any valid existing right-of-way, mining claim, water right, or other interest which such person may have in any land described in the first section of this Act; or

(2) deprive any person of the rights provided under the Act entitled "An Act to provide for the sale of desert lands in certain States and Territories", approved March 3, 1877 (43 U.S.C. 321 et seq.), commonly referred to as the Desert Land Act, with respect to desert lands regarding which such person has filed a declaration, before the date of the enactment of this Act, under the first section of the Desert Land Act stating his intention to reclaim such lands.

(b) Lands transferred under the first section of this Act are hereby made subject to the reservation to the United States of a right-of-way, which shall extend one thousand five hundred feet easterly of the present right-of-way of the Navajo-McCullough transmission line and one thousand five hundred feet westerly beyond the limits of the present right-of-way of the Reid Gardner Pecos transmission lines, and also subject to the authority of the Secretary to grant rights-of-way as provided in this subsection. This reservation of a right-of-way also continues in the Secretary the right to grant rights-of-way over, upon, under or through this area for such transportation or other systems or facilities pursuant to any law relating to rights-of-way on the public land, including but not limited to: The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1761) and section 28 of the Mineral Leasing Act, as amended (30 U.S.C. 185) and to enforce all or any terms and conditions of the right-of-way upon its termination and to set and collect all rental charges.

(c) Any payments for the use of the right-of-way in the corridor (as described in 2(b) of this Act) after the date of this Act shall be made to the Secretary of Interior for the benefit of the Moapa Bank of Paiutes.

(d) Lands transferred under the first section of this Act shall be subject to a reservation to the United States of all minerals subject to the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181) together with the right to enter upon the land and mine and remove such minerals. Any such reservation shall include the right to collect and deposit all fees, rentals, royalties, and other revenues in accordance with the Mineral Leasing Act.

SEC. 3. The second sentence of subsection (a) of the first section of the Act entitled "An Act to authorize the leasing of restricted Indian Lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (69 Stat. 539; 25 U.S.C. 415), as amended, is further amended by inserting "the Moapa Indian Reservation," after "the Dania Reservation,".

SEC. 4. The lands held in trust under section 1 of this Act shall not be considered "lands within the exterior boundaries of reservations" for the purposes of subsection (c) of section 164 of the Act of July 14, 1955 (69 Stat. 322), as amended (42 U.S.C. 7474), commonly referred to as the Clean Air Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MARITIME TORT DAMAGE CLAIMS

The Senate proceeded to consider the bill (H.R. 3748) to provide for a uniform national 3-year statute of limitations in actions to recover damages for personal injury or death arising out of a maritime tort, and for other purposes.

● Mr. CANNON. H.R. 3748, which passed the House on the Suspension Calendar, has been reported by the Senate Committee on Commerce, Science, and Transportation. The legislation would establish a uniform 3-year statute of limitations for a suit for recovery of damages for personal injury or death arising out of a maritime tort.

Currently, the statute of limitations for a cause of action brought under the Death on the High Seas Act is 2 years and the statute of limitations for a cause of action brought under the Jones Act is 3 years. Causes of action brought under the general admiralty concept of "unseaworthiness" are not governed by any specific statute of limitations but instead are governed by the doctrine of laches which permits each court to determine for itself whether a particular suit has been filed timely.

As matters now stand, therefore, no one can offer a prediction as to the outcome of a "laches" dispute, and this unpredictability lends itself to the mischief of forum shopping.

The uncertainty arising out of this lack of consistency and uniformity regarding the laches issues is illustrated by the fact that during the period from 1940 to 1977, out of the personal injury and death cases reported in American maritime cases, some 35 cases were dismissed for laches where a suit was commenced within 3 years. At the same time, 41 cases commenced within 3 years were allowed to proceed and 48 cases were dismissed when commenced after 3 years.

By establishing a uniform 3-year statute of limitation for personal injury or death arising out of a maritime tort, H.R. 3748 would eliminate the "laches" issue, and therefore end existing confusion.

By public notice the Commerce Committee requested comments on H.R. 3748. With two exceptions, comments from the maritime industry favored enactment.

The committee recommends that the Senate pass H.R. 3748.●

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 3748) was ordered to a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TOWING SAFETY ADVISORY COMMITTEE

The Senate proceeded to consider the bill (H.R. 6242) to establish a Towing Safety Advisory Committee in the Department of Transportation.

● Mr. CANNON. Mr. President, the purpose of H.R. 6242 is to establish a Towing Safety Advisory Committee in the Department of Transportation.

For a number of years prior to 1977 the Towing Industry Advisory Committee aided Coast Guard decisionmaking on navigation safety. But in 1977 the Department of Transportation terminated the TIAC as a result of its review of advisory committees. Since then, the Coast Guard has not had a formal system for regular consultation with mariners regarding significant regulatory and operational matters affecting the safety of shallow-draft navigation. In the meantime casualties on the inland and coastal waterways of the United States are occurring with greater frequency, and waterborne transportation of hazardous materials is on the increase.

H.R. 6242 would create a new advisory committee, the Towing Safety Advisory Committee, to consult with, advise, and make recommendations to the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

The advisory committee would consist of 16 members, balanced with representatives from the barge and towing industry; the offshore oil and mineral supply vessel industry; port districts, authorities or terminal operators; maritime labor; shippers; and the general public.

Consistent with the Federal Advisory

Committee Act, the bill provides that the advisory committee's proceedings shall be open to the public. The bill allows for no compensation, travel, or per diem to committee members, and authorizes Government funds only for necessary administrative services provided by the Coast Guard in support of the committee's business. H.R. 6242 also provides that the committee will terminate after 5 years unless statutorily extended.

Mr. President, I urge prompt passage of this legislation. I also ask that the text of the Congressional Budget Office's cost estimate of the bill be printed in the RECORD.

The letter follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 19, 1980.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6242, a bill to establish a Towing Safety Advisory Committee in the Department of Transportation, as ordered reported by the Senate Committee on Commerce, Science and Transportation, September 19, 1980.

The bill establishes a 16-member Towing Safety Advisory Committee to advise the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. Expenses of this Committee are expected to total approximately $13,000 per year, but could be as high as $50,000 a year depending on where and how frequently the Advisory Committee meets.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.●

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 6242) was ordered to a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ACT TO PREVENT POLLUTION FROM SHIPS

The Senate proceeded to consider the bill (H.R. 6665) to implement the protocol of 1978 relating to the International Convention for the Prevention of Pollution From Ships, 1973, and for other purposes, which had been reported from the Committee on Commerce, Science, and Transportation with amendments, as follows:

On page 4, line 18, strike "subsection" through and including "(b)" on line 19, and insert in lieu thereof "subsection";

On page 5, line 1, strike "administering and enforcing" and insert in lieu thereof "the administration and enforcement of";

On page 6, line 17, strike "the condition of its equipment", and insert in lieu thereof "whose equipment's condition";

On page 10, line 14, strike "subpoenas", and insert in lieu thereof "subpenas";

On page 10, line 16, strike "subpoena", and insert in lieu thereof "subpena";

On page 12, line 8, strike "five", and insert in lieu thereof "5";

On page 12, line 15, strike "$10,000", and insert in lieu thereof "$25,000";

On page 12, line 21, strike "$1,000", and insert in lieu thereof "$5,000";

On page 15, line 9, strike "thirty", and insert in lieu thereof "30";

On page 16, line 8, strike "sixty", and insert in lieu thereof "60";

On page 18, line 15, strike "subsection", and insert in lieu thereof "section";

On page 18, line 16, strike "use", and insert in lieu thereof "case";

On page 19, line 5, strike "subsections", and insert in lieu thereof "sections";

On page 19, line 7, strike "subsections", and insert in lieu thereof "sections";

On page 19, after line 14, insert the following:

SEC. 15. Nothing in this Act shall be construed as limiting, diminishing, or otherwise restricting any of the authority of the Secretary under the Port and Tanker Safety Act of 1978 (Public Law 95-474).

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments considered en bloc were agreed to.

● Mr. CANNON. Mr. President, the purpose of H.R. 6665 is to implement the 1978 protocol relating to the International Convention for the Prevention of Pollution from Ships, 1973.

The protocol, a treaty commonly known as the "Marpol Protocol," received the advice and consent of the Senate on July 2, 1980. It is the product of a 62-nation conference convened at the request of the United States following 16 tanker accidents in and around U.S. waters during the winter of 1976-77.

The "Marpol Protocol" prescribes design, construction, and equipment standards aimed at pollution prevention and spells out new procedures for vessel inspection and certification. The protocol's terms applicable to vessel construction and equipment have already been implemented by the Port and Tanker Safety Act of 1978 in particular that act's requirements that tankers over a certain size be equipped with segregated ballast tanks and crude oil washing systems. However, a number of other elements of the Marpol Protocol are still in need of implementation.

H.R. 6665 implements the portions of the "Marpol Protocol" applicable to vessel inspection and certification and to reception facilities for oil and chemical wastes. It applies to any vessel of U.S. registry or nationality, or operated under the authority of the United States, wherever located, including fixed or floating platforms. It also applies to foreign vessels while they are in the navigable waters of the United States.

H.R. 6665 provides for the Secretary of Transportation to issue "Marpol Protocol" certificates to vessels complying with pollution standards and authorizes the detention of vessels that have no "Marpol Protocol" certificate or that are not in compliance with their certificate. The bill requires the Secretary to issue regulations to ensure that the vessels of nations not party to the "Marpol Protocol" are treated no more favorably than those of parties.

The bill also requires the Secretary to issue regulations for determining the adequacy of waste reception facilities at a U.S. port or terminal. It calls for issuance of a certificate whenever a port's facilities are adequate under the "Marpol Protocol" for receiving waste liquids from seagoing vessels. With a few exceptions, the Secretary must bar entry to any U.S. port required under the "Marpol Protocol" to have adequate reception facilities, unless the port has been issued the necessary certificate.

Provision is made in the bill for criminal and civil penalties in the case of violations of the act, the protocol, or implementing regulations.

The version of the bill we consider today includes a few minor amendments, adopted by the Commerce Committee after close consultation with the House Merchant Marine Committee.

Mr. President, I urge the expeditious passage of H.R. 6665. This will complete the legislative framework for the implementation of the "Marpol Protocol" and will serve as a signal to the rest of the world that we are serious about putting the protocol's terms into effect as soon as possible. I also ask, Mr. President, that the text of the Congressional Budget Office's cost estimate of the bill be printed in the RECORD.

The letter follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 19, 1980.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6665, an Act to Prevent Pollution from Ships, as ordered reported by the Senate Committee on Commerce, Science and Transportation, September 19, 1980.

This bill would implement the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, concerning the final element of regulation, reception facilities. In order to implement this Protocol, the Coast Guard must survey existing terminals that handle hazardous substances. The Coast Guard in consultation with the Environmental Protection Agency would issue certification of compliance to terminals that meet the Protocol's requirements.

Based on information provided by the Coast Guard, it is estimated that approximately fourteen people would be required to carry out the necessary functions. Costs of these duties are estimated to be approximately $350,000 in fiscal year 1981, rising to approximately $499,000 in fiscal year 1985.

Sincerely,

ALICE M. RIVLIN,
Director.●

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 6665) was ordered to a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MAINE INDIAN LAND CLAIMS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House on H.R. 7919.

The Presiding Officer laid before the Senate H.R. 7919, an act to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask that the bill be considered as having been read for the first and second time and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the bill.

Mr. COHEN. Mr. President, I rise today to speak in support of S. 2829, the Maine Indian Claims Settlement Act. This legislation would resolve the claims raised by three Maine tribes the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that lands over which they once exercised aboriginal rights of exclusive use and occupancy passed from their control without the approval of the Government of the United States as required by the nonintercourse statute of the Trade and Intercourse Act.

The settlement contained in this is a complex solution to an exceedingly difficult legal dispute. Before discussing the details of the bill, however, I would like to take a moment to describe the basis of these claims and the events which brought forth this proposed resolution.

The genesis of the problem is found in the years immediately following the Revolutionary War. With peace with Britain and independence a reality, the 13 Original States turned their attention to domestic issues of common concern. Chief among these was the formulation of a uniform policy toward American Indians and Indian lands.

Relations between the Indians and the new country were strained at that time by the unregulated entry of settlers onto Indian lands and the acquisition of those lands by unscrupulous land speculators. During that period, however, the States were held together only by the slender bonds of the Articles of Confederation and the authority over Indian affairs which the States had delegated to the Confederation Government in article IX proved insufficient to effectively deal with the problem. Accordingly when the Constitution of the United States was drafted it contained an unqualified grant of authority to Congress to "regulate Commerce * * * with the Indian Tribes."

By the time the Constitution had been approved, the problems posed by the haphazard appropriation and settlement of Indian lands had grown quite serious indeed. In July of 1789, Henry Knox, who was Secretary of War during the latter part of the Confederation period and in the first few years following the adoption of the Constitution wrote to President Washington that the United States must institute a comprehensive policy toward the acquisition and settlement of Indian lands under which the Indians would be treated fairly or risk the outbreak of a general war.

This Federal policy, Knox recommended, should be embodied in a "a declarative law" enacted by Congress providing that "the Indian tribes possess the right of the soil of all lands within their limits" and that those lands may be transferred only with the approval of the Federal Government.

The legislative solution which Knox recommended was enacted by Congress in its first session along with several other laws regulating a wide variety of activities between the Indians and the citizens of the new country. Together, these laws were known as the Trade and Intercourse Act. The Knox provision regulating land acquisition has come to be known as the nonintercourse statute.

In the years which immediately followed, the Trade and Intercourse Act received the continuing attention of Congress. Between 1790 and 1802, it was reenacted four times in varying forms. The nonintercourse statute, itself, was modified in 1793 to provide criminal sanctions for its violation of up to 1 year in prison and a fine of up to $1,000.

In 1834, the nonintercourse statute was enacted in its present form and it is currently codified at section 177 of title 25 of the United States Code. As the United States expanded westward, the nonintercourse statute assumed ever-increasing importance and was consistently applied in the acquisition of Indian lands. It occupies a crucial position in Federal Indian policy and is generally acknowledged to be the cornerstone of Federal Indian law.

After the enactment of the nonintercourse statute, the State of Massachusetts, of which Maine was then a district, entered into a series of agreements with the Penobscot and Passamaquoddy Tribes which did not receive the express approval of the Federal Government and which form the basis of the tribes' claims.

The first of these agreements was reached in 1794 with the Passamaquoddy Tribe. By it terms, the Passamaquoddy Tribe relinquished whatever claims it might have had to lands within the district of Maine and, in turn, was granted the secure possession of certain specified lands.

In 1796 and again in 1818, Massachusetts effected agreements with the Penobscot Tribe in which that tribe relinquished any claim it might have retained to lands within the district and received confirmation of its rights to certain lands in return. Finally, in 1833, the State of Maine purchased four townships from the Penobscot Tribe.

There is no evidence that the Houlton Band of Maliseet Indians ever entered into agreements with either the State of Massachusetts or the State of Maine. In this respect, its claim differs significantly from those raised by the other two tribes. The band contends simply that it held aboriginal title to certain lands and that those lands are now manifestly no longer in its control and that there is no indication that the Federal Government ever approved the transfer of those lands.

It bears emphasis that both the State of Massachusetts and its successor in interest, the State of Maine, entered into these agreements with the Indians in good faith and they have always been considered legally binding on all the parties to them. In fact, the validity of the agreements was not seriously questioned until, in 1972, the Passamaquoddy Tribe petitioned the Department of the Interior to bring suit against the State of Maine on the ground that the 1794 compact under which it had relinquished its lands was invalid because it had never been approved by the Federal Government.

When the Interior Department refused, the tribe brought suit against it contending that the nonintercourse statute applied to it and had always applied to it and that the statute created a trust relationship between the tribe and the Federal Government.

The tribe first sought an order from the U.S. District Court for the District of Maine compelling the Federal Government to file suit on its behalf. The court granted the request because the statute of limitations authorizing the United States to bring suit on behalf of Indian tribes for money damages was about to expire. The United States complied with the court order by filing "protective suits" for both the Passamaquoddy and Penobscot Tribes. These cases are still on the court's docket, although, to date, the State of Maine is the only named defendant.

Once the protective suits were filed, the Passamaquoddy Tribe pressed its case against the United States and, in January 1975, the court held in Joint Tribal Council of the Passamaquoddy Tribe against Morton that the nonintercourse statute did apply to the Passamaquoddy Tribe and that the statute created a trust relationship between the tribe and the Federal Government.

Later that year, the First Circuit Court of Appeals affirmed the district court's decision but expressly withheld determination of whether the nonintercourse statute applied to those land transactions contained in the compacts between the tribes and the States of Massachusetts and Maine. None of the parties petitioned the U.S. Supreme Court for certiorari and the court of appeals remains the highest court to rule on the question.

Several court decisions which followed the Passamaquoddy case have supported the tribes' position in various respects. Nevertheless, in the absence of a decision by the Supreme Court, the Maine case remains problematical. To begin with, as the district court noted in

Passamaquoddy, there is little legislative history on the nonintercourse statute to indicate the geographic area over which it was intended to apply or the nature of the Indian tribes it was intended to reach.

Although the meaning of the nonintercourse statute appears plain on its face, its jurisdictional history in the State of Maine would give it an entirely opposite meaning. Moreover, even though the Federal Government vigorously, though not always successfully, asserted that land transactions between Indian tribes and certain States on Western frontier of the country were subject to the nonintercourse statute, there is no indication that it ever attempted to apply the statue to the land transactions in Maine. On he contrary, it took the position that it did not apply to Maine.

Finally, the Maine case is made more perplexing still because Henry Knox, the acknowledged father of the nonintercourse statute, retired to Maine in 1794 and yet never protested these agreements which have now been called into question.

After the decision of the first circuit in Passamaquoddy became final, the Justice Department undertook an analysis of the merits of the case. Its conclusions were summarized in a memo written in 1979 which described the case as being "potentially the most complex litigation ever brought in the Federal courts with social costs and economic impacts without precedent and incredible litigation costs to all parties."

The complexity of the case was derived in part from the tribes' assertion that it still held aboriginal rights to up to 60 percent of the lands of the State of Maine on which more than 350,000 people now reside. The case was also certain to be difficult because it involved a field of Indian law in which little litigation had taken place.

Given the magnitude of the issue, all court rulings were certain to be appealed and estimates of the time it would take to bring such a case to its conclusion range from 5 to 15 years. In the meantime, title to the lands included in the suit would be clouded, land would become difficult—if not impossible—to transfer, and municipal and State bonds would not be welcome in the marketplace.

In recognition of this problem, President Carter personally chose retired Georgia Supreme Court Justice William Gunter to examine the case and to recommend a solution. Justice Gunter submitted his recommendation in July of 1977 and, although his solution was not accepted by all the parties, one important point was: that the case must be settled rather than litigated.

Since Justice Gunter completed his work, the parties to the case have worked long and hard to reach a solution. Several other settlements have been proposed but, until the present proposal was reached, none gained the acceptance of all the parties. The legislation before the Senate today is the product of those negotiations. It is a painstakingly constructed resolution born of practical compromises by all the parties to it.

In brief, the settlement consists of two pieces of legislation. The first, the Maine Implementing Act, was passed by the Maine State Legislature on April 2 of this year and signed into law by the Governor. It embodies the jurisdictional relationship which the Tribes and the State will assume if the settlement is made final.

By its terms, the State of Maine will exercise broad civil and criminal authority over the land to be acquired by the Indian tribes. The tribes will be considered "municipalities" under State law and will have the right to regulate hunting and fishing within the "Indian territory" described in the Maine act. Land acquired for the tribes which falls within Indian territory cannot be taken in satisfaction of court judgments or for failure to pay taxes, but the tribes will be obligated to make "payments in lieu of taxes" to the State for the value of the lands. The Secretary of the Interior is authorized to satisfy valid court judgments against either the Passamaquoddy or Penobscot Tribe, but only as to obligations incurred after the enactment of this act.

The Maine act is complemented by the provisions of this act. In short, S. 2829 extinguishes all claims the tribes might have based on aboriginal title and, in turn, establishes a trust fund of $27 million for the benefit of the Passamaquoddy and Penobscot Tribes. It also provides for a land acquisition fund of $54.5 million to purchase 300,000 acres of land for all three tribes.

Before closing, I would like to turn to one more point: The extent of Federal responsibility for creating this problem and for resolving it.

In his analysis of the Maine Indian claims case, Justice Gunter concluded that primary responsibility for the problem lay with the Federal Government. This conclusion has remained constant throughout the attempts to resolve the case.

In order to understand how deep and compelling Federal responsibility for this matter is, however, we must look to theory of the operation of the Nonintercourse Act. If the proposition that the Nonintercourse Act applies to the Maine Indian Tribes is accepted—and the Federal Government does accept it—then the Federal Government has and always has had a trust responsibility toward the Maine Tribes.

As trustee for the tribes, the United States owed them the highest order of duty. Yet, in Maine, the Federal Government not only failed to observe its fiduciary duties, it actively violated them in countless ways. The Federal Government itself, for example, entered onto lands allegedly subject to the possessory rights of its beneficiaries and materially altered those lands by building military installations, Post Offices, and other Federal buildings.

Furthermore, through Federal agencies and departments such as the Economic Development Administration, the Department of Transportation, the Farmers Home Administration, and so forth, the Federal Government actively encouraged and even supplied private citizens and the State with the means to develop the same lands it was now asserting belonged to the Indians all along.

Finally, it permitted the State of Maine to assume the trustee obligations which the Federal Government properly owed the tribes and to expend literally millions of dollars over the last 150 years for their benefit which, under its new view of the nonintercourse statute, Maine was never obligated to pay.

The distastefulness of permitting the Federal Government to sue innocent private parties and the State of Maine and other Eastern States for actions which occurred only because the Federal Government had failed to observe its trustee responsibilities troubled many, including former Attorney General Griffin Bell.

On June 30, 1978, Attorney General Bell addressed his concerns to Secretary of the Interior Andrus in a letter in which he explained his decision not to sue private landowners in several of the land claims suits. His decision, he said, was based on his conclusion that the private landowners were "completely innocent of wrongdoing."

In the same letter, he raised the possibility of resolving all the nonintercourse statute claims in comprehensive "omnibus" legislation. In its recent extension of the statute of limitations for suits brought by the United States on behalf of Indian tribes for actions sounding in tort or contract for money damages, the Congress provided that the Secretary of the Interior submit his recommendations for legislative solutions to Indian claims which are now arising on a wide variety of legal theories.

I raise these approaches to the problems posed by the Indian claims only by way of illustrating this point: That Congress has plenary power over this issue and only Congress can resolve it.

The parties to this claim, then, have come to the proper forum. They have arrived after participating in a negotiating process which was instituted and encouraged by the administration and the administration supports their proposed solution. It is the right and responsibility of Congress to act pursuant to its constitutional authority over Indian affairs to resolve this matter once and for all and to free the people and the State of Maine from the uncertainty under which they now live. I believe this legislation is in the best interests of people of the State of Maine and in the best interests of this country and I urge the Senate to pass it.

Mr. MITCHELL. Mr. President, I rise to join Senator COHEN in urging the Senate to act favorably on H.R. 7919, the Maine Indian Settlement Act of 1980, and to do so without amendment or delay.

The legislation before us is the product of an extensive review by officials at the Federal and State levels over several years, and more immediately, intensive negotiations between representatives of the Passamaquoddy and Penobscot Tribes, the Attorney General of Maine, and major landholders in Maine. The legislation is a companion measure with,

and references extensively, legislation which was approved by the Maine Legislature and signed by our Governor earlier this year.

The legislation is a compromise, agreed to after careful consideration by the State, the landowners and the tribes. None of those parties obtained everything they sought, but all are convinced that it is a fair compromise and urge its enactment.

The land claims which this legislation will resolve are based on the Indian Nonintercourse Act in the first Congress and rewritten in subsequent Congresses. Court decisions in the last decade suggest for the first time that the Nonintercourse Act applies to early land transactions in Maine between Indian tribes and the State of Maine and the Commonwealth of Massachusetts, of which Maine was a part until 1820. Such an application of the Nonintercourse Act would invalidate land treaties and sales which took place early in the 19th century, and underline title to millions of acres of land in Maine.

Litigation relating to claims in Maine has not progressed beyond the early stages. But it is already clear that the issues involved will not be easily resolved in court, and there is substantial risk that title to those millions of acres in Maine will be clouded during a prolonged court battle, the outcome of which cannot be predicted with certainty by anyone.

It is clear to me from my experience with this issue as U.S. Attorney, and from the concerns expressed by State officials and individual citizens, that settlement of these claims is in the best interest of Maine and the country.

I was not involved in the development of the compromise embodied in the legislation before us. But I know that the State of Maine, the landowners in Maine and the Indian tribes were all represented ably and vigorously, and I am confident that the proposal before us represents their best and honest judgment regarding the resolution of this difficult matter.

The legislation extinguishes all claims to land in Maine based on aboriginal title and abolishes actions for damages related to those claims. In exchange, the legislation provides for two funds established by the Federal Government for the benefit of Maine Indians. The first fund, in the amount of $27 million, would provide annual benefits to the tribes and the second fund, in the amount of $54.5 million, would be available to purchase up to 300,000 acres of forest land for the tribes.

The legislation also ratifies a carefully developed and comprehensive structure for the sharing of criminal and civil jurisdiction between the State and the tribes, which will, in large measure, return to the State authority which has been successfully challenged in recent related litigation.

The legislation before us was reported from the Select Committee on Indian Affairs last week after 2 full days of formal hearings, followed by painstaking review and rewrites in committee working sessions throughout the summer months.

At the formal committee hearings in June, testimony was heard from State officials, including Governor Brennan and Attorney General Cohen and legislators; the attorney for the major landowners in the claims area; tribal leaders and their counsel; and Secretary Andrus, speaking for the administration. It was clear at those hearings that the legislation embodied a workable scheme for resolving the claims in Maine acceptable to all parties. It was also clear that this complex scheme required very careful consideration and some redrafting to assure a comfortable fit with ongoing Federal Indian programs and existing Federal laws in the many areas involved in the settlement scheme.

At the working sessions, which took place in July and August, involving committee staff, State and Federal officials and attorneys for the tribes and landowners, this legislation was very carefully reviewed and tailored to fit the concerns of Federal administrators and State officials. The final markup of the bill last week resolved the last outstanding issues and produced a bill I am confident to join in recommending to my colleagues.

Some may take issue with parts, or even all of, the settlement package embodied in the bill. Anyone who does has had full opportunity to raise questions and challenge any provision. No one can argue that all interests were not heard and considered, and no one has come forward with a practical alternative.

It is important that the Senate now act promptly on this authorizing legislation, and I commend the leadership for bringing it before the Senate today. This authorizing legislation is contingent upon appropriations of the sums required to create the income trust fund and the land acquisition trust fund. The Interior appropriations bill is, I believe, scheduled for full committee action tomorrow.

Time is critical, Mr. President, to assure the authorization is in place so that the implementation of the settlement can begin right away. Land to be conveyed under this settlement is committed under options for specific times which run out over the coming months. Delay could mean the loss of those options and the necessity to restructure the settlement to deal with a different body of land.

In a more general sense, timely action is necessary to restore certainty to those involved in this settlement or threatened by the pending claims. Personal and business decisions involving lands in the claim area have been saved for over 4 years. And businesses directly involved in the settlement have committed major resources to its resolution. Delay would frustrate their ability to plan and jeopardize their commitment to this settlement.

In short, we have nothing to gain and potentially much to lose from delay. I urge your prompt approval.

Mr. President, I have a letter from Secretary of the Interior Cecil Andrus in support of this legislation. I ask unanimous consent that his letter to me be made a part of the RECORD.

Secretary Andrus and other officials of the Carter administration have been extraordinarily responsive in the negotiations which produced this legislation. I am grateful for their help.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF THE INTERIOR,
Washington, D.C., September 23, 1980.

Hon. GEORGE J. MITCHELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MITCHELL: When I became Secretary of the Interior in 1977, I was faced with a series of Indian land claims in the Eastern United States. These claims stemmed from alleged violations of the nonIntercourse Act of 1790 and they presented extremely complicated legal and policy issues to the Federal government. The largest and most complex of these claims is in the State of Maine. This Administration has pursued a policy of negotiated settlement of these claims.

As I indicated in my testimony to the Senate Committee on Indian Affairs in July, the settlement agreement worked out between the parties in Maine over the past few months is a fair and reasonable solution to this problem. Unlike previous settlement proposals, it enjoys the full support of all of the parties in Maine affected by the claim and is the product of hard bargaining and good faith negotiation. It is the only avenue of resolution to this problem without extensive and disruptive litigation.

I have enclosed copies of my comments to the House Interior Committee and the Senate Select Committee on the legislation as reported. I would like to reiterate for you that the Administration urges enactment of this legislation by this Congress.

Sincerely,

CECIL D. ANDRUS.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 22, 1980.

Hon. JOHN MELCHER,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is to provide you with our views on S. 2829 as reported by the Committee, a bill to settle Indian land claims in the State of Maine.

We urge enactment by this Congress of S. 2829 as reported, with the clarifying amendments which we discuss below. We believe the bill represents a reasonable and workable settlement of the Maine Indian land claims.

We believe that several provisions of the bill need minor clarifying amendments. Section 5(e) should be amended so as to read, in part, as follows: "in order to perfect title, satisfactory to the Attorney General, in the United States". In section 6(a), the words "section 5(d)(4) and" should be inserted immediately before "section 8, subsection (e)". In section 6(c), "1162, 1163," should be deleted. In section 12, the word "Indian" should be deleted the first place it appears in the section. We also have no objection to a proposed amendment to section 6(h) which would insert after "civil, criminal, or regulatory jurisdiction of the State of Maine," the following: "including, without limitation, laws of the State relating to land use or environmental matters.".

We note that the Committee's report, in its discussion of section 5 of the bill in the section entitled "Summary of Major Provisions", indicates that the provision of Federal services and benefits to the Passamaquoddy Tribe and Penobscot Nation was a result of a 1978 agreement. At that time, however, the tribes were already eligible for such services and benefits. Thus, these services and benefits are not an element of the Maine Indian land claims settlement itself.

Section 5(b)(3) provides for quarterly payments to the Passamaquoddy Tribe and the Penobscot Nation of "any income received from the investment of the Settlement Fund". The Committee's report states that—

The term "income" as used in Section 5 means the return in money or property derived from the use of the assets in the Settlement Fund, including net appreciation, both realized and unrealized.

We do not interpret the above report language as suggesting that the quarterly payments must include "unrealized" income.

We also note that section 5(i)(3) of the bill provides that the State of Maine shall have initial jurisdiction over condemnation proceedings. The United States is authorized to seek review in Federal courts and is given an absolute right of removal over any such action commenced in the courts of the State. We have agreed to this provision with the understanding that it contemplates that service of process on the United States in any such proceeding is to be pursuant to the Federal Rules of Civil Procedure.

The discussion in the Committee's report respecting the fifth issue in the section entitled "Special Issues" states that certain payments in lieu of taxes to be made by the tribes "will most likely be paid with funds to be provided to the tribes by the Federal Government." Although such payments may be possible as an incident of contracting or other assistance provided to the tribe by the Federal Government, we believe it is clear, as indicated in the Committee's further discussion of section 6(b)(1) in its report, that the United States has no obligation to make such payments, except as they are authorized by section 6(d)(2) of the bill to be paid out of the Settlement Fund income. The tribes could only use Federal funds for such payments when such use is consistent with the terms under which such funds are provided to the tribe by the Federal agency involved.

It is our understanding that it is not the intent of section 6(b)(1) to allow taxation, encumbrance, or alienation of lands held by the United States in trust. This interpretation is consistent with the language in the Committee's report that the application of Maine law cannot jeopardize or impair the clear title of the United States or obligate the United States, as titleholder, to pay taxes or fees. This subsection parallels existing Federal law in which jurisdiction is granted to States. This is also fully consistent with the tribes' agreement to make payments in lieu of real property taxes and their agreement to pay other taxes and fees as do other persons or entities in the State of Maine. The application of the laws of the State of Maine regulating land use and environmental matters, which the tribes agreed to allow to apply to themselves and which the bill ratifies, is consistent with existing law without obligating the United States or impairing title in the United States.

We also wish to reiterate our understanding of section 6(b)(2) of the bill, relating to the use of Federal funds "consistent with the purposes for which they are appropriated" and section 6211(1) of the Maine Implementing Act which provides that "[t]o the extent that any . . . program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through *any source of revenue available*" (emphasis added). We believe it is clear from the language of the State Act itself that regardless of whether certain funding sources may be prohibited by Federal law or regulation from supplanting State funds under section 6211(2) or (4) of the Maine Implementing Act, such funds may be used to provide the local share for matching purposes when such use is consistent with the purposes for which such funds are appropriated.

Finally, we note a typographical error in the excerpt from Attorney General Richard Cohen's August 22, 1980 letter, printed at page 42 of the report. In the sentence beginning "It was understood", the words "Federal law" should read "Federal statutes or regulations", as shown in the complete text of the letter beginning on page 49 of the report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CECIL D. ANDRUS,
Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 22, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior, and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is to provide you with our views on H.R. 7919 as reported by the Committee, a bill to settle Indian land claims in the State of Maine.

We urge enactment by this Congress of H.R. 7919 as reported. We believe the bill represents a reasonable and workable settlement of the Maine Indian land claims.

We note that the Committee's report, in its discussion of section 5 of the bill in the section entitled "Summary of Major Provisions", indicates that the provision of Federal services and benefits to the Passamaquoddy Tribe and Penobscot Nation was a result of a 1978 agreement. At that time, however, the tribes were already eligible for such services and benefits. Thus, these services and benefits are not an element of the Maine Indian land claims settlement itself.

Section 5(b)(3) provides for quarterly payments to the Passamaquoddy Tribe and the Penobscot Nation of "any income received from the investment of the Settlement Fund". The Committee's report states that—

The term "income" as used in Section 5 means the return in money or property derived from the use of the assets in the Settlement Fund, including net appreciation, both realized and unrealized.

We do not interpret the above report language as suggesting that the quarterly payments must include "unrealized" income.

We also note that section 5(i)(3) of the bill provides that the State of Maine shall have initial jurisdiction over condemnation proceedings. The United States is authorized to seek review in Federal courts and is given an absolute right of removal over any such action commenced in the courts of the State. We have agreed to this provision with the understanding that it contemplates that service of process on the United States in any such proceeding is to be pursuant to the Federal Rules of Civil Procedure.

The discussion in the Committee's report respecting the fifth issue in the section entitled "Special Issues" states that certain payments in lieu of taxes to be made by the tribes "will most likely be paid with funds to be provided to the tribes by the Federal Government. Although such payments may be possible as an incident of contracting or other assistance provided to the tribe by the Federal Government, we believe it is clear, as indicated in the Committee's further discussion of section 6(b)(1) in its report, that the United States has no obligation to make such payments, except as they are authorized by section 6(d)(2) of the bill to be paid out of the Settlement Fund income. The tribes could only use Federal funds for such payments when such use is consistent with the terms under which such funds are provided to the tribe by the Federal agency involved.

It is our understanding that it is not the intent of section 6(b)(1) to allow taxation, encumbrance, or alienation of lands held by the United States in trust. This interpretation is consistent with the language in the Committee's report that the application of Maine law cannot jeopardize or impair the clear title of the United States or obligate the United States, as titleholder, to pay taxes or fees. This subsection parallels existing Federal law in which jurisdiction is granted to States. This is also fully consistent with the tribes' agreement to make payments in lieu of real property taxes and their agreement to pay other taxes and fees as do other persons or entities in the State of Maine. The application of the laws of the State of Maine regulating land use and environmental matters, which the tribes agreed to allow to apply to themselves and which the bill ratifies, is consistent with existing law without obligating the United States or impairing title in the United States.

We also wish to reiterate our understanding of section 6(b)(2) of the bill, relating to the use of Federal funds "consistent with the purposes for which they are appropriated" and section 6211(1) of the Maine Implementing Act which provides that "[t]o the extent that any . . . program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through *any source of revenue available*" (emphasis added). We believe it is clear from the language of the State Act itself that regardless of whether certain funding sources may be prohibited by Federal law or regulation from supplanting State funds under section 6211(2) or (4) of the Maine Implementing Act, such funds may be used to provide the local share for matching purposes when such use is consistent with the purposes for which such funds are appropriated.

Finally, we note a typographical error in the excerpt from Attorney General Richard Cohen's August 22, 1980 letter, printed in the report. In the sentence beginning "It was understood", the words "Federal law" should read "Federal statutes or regulations", as shown in the complete text of the letter later in the report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CECIL D. ANDRUS,
Secretary.

Mr. MITCHELL. Mr. President, I ask also that a letter from James McIntyre, Director of the Office of Management and Budget, supporting this legislation and the appropriations funding it, be made a part of the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., September 23, 1980.

Hon. GEORGE MITCHELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MITCHELL: As you know, the Administration supports S. 2829, a bill to settle the land claims of Indian tribes in Maine. We have worked closely with your office and the relevant Congressional committees in the development of a fair, workable bill.

As you know, the House has passed this bill, and Senate action appears imminent. We are pleased that the Senate Appropriations Interior Subcommittee has recommended an appropriation of $81.5 million for the Eastern Land Claims Settlement Fund, administered

under the Department of the Interior. I urge that this funding remain in the final version of the Department of the Interior and Related Agencies FY 1981 Appropriations bill.

Sincerely,

JAMES T. MCINTYRE, Jr.,
Director.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 7919) was ordered to a third reading, was read the third time, and passed.

Mr. COHEN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MITCHELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER THAT CALENDAR NOS. 1050, S. 2829, AND 1077, SENATE RESOLUTION 522 BE INDEFINITELY POSTPONED

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Orders Nos. 1050 and 1077 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ABRAHAM A. RIBICOFF FEDERAL BUILDING

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of S. 3044, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3044) to designate the United States Federal Building in Hartford, Connecticut, as the "Abraham A. Ribicoff Federal Building."

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 1647

(Purpose: To provide an effective date for the authorization)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), on behalf of Mr. RANDOLPH, proposes an unprinted amendment numbered 1647.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, after line 9, insert the following:

"SEC. 2. The authorization contained in section 1 of this Act shall become effective on January 15, 1981."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP. No. 1647) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 3044) was passed, as follows:

S. 3044

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the building at 450 Main Street, Hartford, Connecticut (commonly known as the Federal Building), shall hereinafter be known, called, and designated as the "Abraham A. Ribicoff Federal Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Abraham A. Ribicoff Federal Building.

SEC. 2. The authorization contained in section 1 of this Act shall become effective on January 15, 1981.

EDITH GREEN FEDERAL BUILDING

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 7039 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7309) to designate the Federal building in Portland, Oregon, the "Edith Green Federal Building."

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 1648

(Purpose: To honor Wendell Wyatt by authorizing the building to be named the Green-Wyatt Federal Building)

Mr. BAKER. Mr. President, on behalf of the Senator from Oregon, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), on behalf of Mr. HATFIELD, proposes an unprinted amendment numbered 1648:

On page 1, line 4, after "Green" add the folowing: Wendell Wyatt.

And on page 1, line 5, insert the following new sentence: "Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Edith Green-Wendell Wyatt Federal Building."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1648) was agreed to.

The PRESIDING OFFICER. If there be no further amendments to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 7309) was passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, for once I get to turn the table on Mr. BAKER.

Mr. President, I move to lay that motion on the table.

Mr. BAKER. Mr. President, that leaves me 7,399 times when I have been in that position.

The motion to lay on the table was agreed to.

INCREASE IN U.S. QUOTA IN THE INTERNATIONAL MONETARY FUND

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CHURCH, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2271.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2271) entitled "An Act to amend the Bretton Woods Agreements Act to authorize consent to an increase in the United States quota in the International Monetary Fund" do pass with the following amendments:

Strike out all after the enacting clause, and insert:

INCREASE IN UNITED STATES QUOTA

SECTION 1. The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 32. The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 4,202.5 million Special Drawing Rights, to such extent or in such amounts as are provided in appropriation Acts.".

BASIC HUMAN NEEDS

SEC. 2. (a) The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 33. (a) The President shall instruct the Secretary of the Treasury, the Secretary of State, and other appropriate Federal officials to use all appropriate means to encourage countries, in formulating economic adjustment programs to deal with their balance of payments difficulties, to design those programs so as to safeguard, to the maximum feasible extent, jobs, investment, real per capita income, policies to reduce the gap in wealth between rich and poor, and social programs such as health, housing, and education.

"(b) To ensure the effectiveness of economic adjustment programs supported by Fund resources and the reinforcement of those programs by longer term efforts to promote sustained growth and improved living conditions—

"(1) United States representatives to the Fund shall recommend and shall work for changes in Fund guidelines, policies, and decisions that would—

"(A) permit standby arrangements to the extended beyond three years, as necessary to enable Fund members to implement their economic adjustment programs successfully;

"(B) provide that in approving any economic adjustment program the Fund shall take into account the effect such program will have on jobs, investment, real per capita income, the gap in wealth between the rich and poor, and social programs such as health, housing, and education, in order to seek to minimize the adverse impact of those adjustment programs on basic human needs; and

"(C) provide that letters of intent submitted to the Fund in support of an economic adjustment program reflect that the member country has taken into account the effect such program will have on the factors listed in subparagraph (B);

"(2)(A) before voting on the approval of any standby arrangement with respect to any economic adjustment program, the United States Executive Director shall review—

"(i) any analysis of factors prepared by the Fund or the member country in accordance with subparagraphs (B) and (C) of paragraph (1), or

"(ii) if no such analysis is prepared and available for such review, an analysis which shall be prepared by the United States Governor of the Fund which examines the effect of the program on the factors listed in subparagraph (B) of paragraph (1); and

"(B) the United States Executive Director of the Fund shall take into account the analysis reviewed pursuant to subparagraph (A) of this paragraph in voting on approval of that standby arrangement;

"(3) United States representatives to the Fund, to the Bank, and to other appropriate institutions shall work toward improving coordination among these institutions, and, in particular, shall work toward formulation of programs in association with economic adjustment programs supported by Fund resources which (A) will, among other things, promote employment, investment, real income per capita, improvements in income distribution, and the objectives of social programs such as health, housing, and education, and (B) will, to the maximum extent feasible and consistent with the borrowing country's need to improve its balance of payments position within a reasonable period, ameliorate any adverse effects of economic adjustment programs on the poor;

"(4) United States representatives to the Fund and the Bank shall seek amendments to decisions on policies on the use of Fund and Bank resources to provide that, where countries are seeking Extended Fund Facility or upper credit tranche drawings from the Fund and are eligible to receive financing from the Bank, the Fund and Bank will coordinate their financing activities in order—

"(A) to take into account the effects of economic adjustment programs on the areas listed in clause (A) of paragraph (3),

"(B) to provide, to the extent feasible, Bank project loans designed to safeguard and further basic human needs in countries adopting economic adjustment programs supported by Fund resources, and

"(C) to provide, as appropriate, Bank financing for programs of structural adjustment that will facilitate development of a productive economic base and greater attainment of basic human needs objectives over the longer term; and

"(5) United States representatives to the Fund and the Bank shall request the Fund and the Bank to provide periodic analyses of the effects of economic adjustment programs supported by Fund or Bank financing on jobs, investment, real income per capita, income distribution, and social programs such as health, housing, and education.

"(c) The National Advisory Council on International Monetary and Financial Policies shall include in each of its annual reports to the Congress a statement detailing the actions and progress made in carrying out the requirements of subsections (a) and (b) of this section.".

(b) Section 30 of the Bretton Woods Agreements Act (22 U.S.C. 285e-9) is amended—

(1) in subsection (a) by striking out "entered into pursuant to loans from the Supplementary Financing Facility";

(2) in the first sentence of subsection (b) by striking out "entered into pursuant to loans from the Supplementary Financing Facility"; and

(3) in the second sentence of subsection (b) by striking out "by the Supplementary Financing Facility".

SEC. 3. Strike section 7 of P.L. 95-435, the Bretton Woods Agreements Act Amendments of 1978, which reads: "Beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.", and insert in lieu thereof: "The Congress reaffirms its commitment that beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.".

RECYCLING BALANCE-OF-PAYMENTS SURPLUSES

SEC. 4. (a) It is the sense of the Congress that (1) the interests of the United States and those of other member countries require an effective International Monetary Fund equipped with resources adequate to facilitate orderly balance-of-payments adjustments; (2) persistent balance-of-payments surpluses in oil exporting countries have placed, and will continue to place, severe strains on the resources of oil importing countries and on the liquidity of the Fund; (3) these strains can only be relieved if the oil exporting countries assume a greater burden for financing balance-of-payments deficits through direct methods of recycling their surpluses and through proportionally greater contributions to the Fund and to the international lending institutions; and (4) the Fund must explore innovative proposals to encourage more direct recycling of oil surpluses and to increase its own liquidity.

(b) The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new sections:

"SEC. 34. The Secretary of the Treasury, in consultation with the United States Executive Director of the Fund, shall study and, following consultations with member countries, shall report to the Congress prior to May 15, 1981, with respect to—

"(1) the current adequacy of Fund resources, together with projected needs of the Fund over the next five years;

"(2) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow directly from the governments of oil exporting countries;

"(3) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow in private capital markets through the issuance of securities backed by Fund resources;

"(4) the feasibility of an offer by the Fund of incentives to oil exporting countries, including financial guarantees by the Fund for government-to-government loans to countries with balance-of-payments deficits, in order to promote more direct recycling of oil surpluses; and

"(5) methods to enhance cooperation between commercial banks and the Fund to promote the availability of adequate resources for balance-of-payments financing.

"SEC. 35. It is the sense of the Congress that the Secretary of the Treasury and the United States Executive Director of the Fund shall encourage member countries of the Fund to negotiate a dollar-Special Drawing Rights substitution account in which equitable burden sharing would exist among participants in the account, and shall report to the Congress prior to May 15, 1981, with respect to progress toward achieving this goal.".

DEBT RESCHEDULING COMPARABILITY

SEC. 5. Section 29 of the Bretton Woods Agreements Act is amended by striking out "on the use of the facility".

TAIWAN

SEC. 6. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 36. It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China) shall be granted appropriate membership in the Fund and that the United States Executive Director of the Fund shall so notify the Fund.".

PALESTINE LIBERATION ORGANIZATION

SEC. 7. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 37. It is the policy of the United States that the Palestine Liberation Organization should not be given membership in the Fund or be given observer status or any other official status at any meeting sponsored by or associated with the Fund. The United States Executive Director of the Fund shall promptly notify the Fund of such policy.

"In the event that the Fund provides either membership, observer status, or any other official status to the Palestine Liberation Organization, such action would result in a serious diminution of U.S. support. Upon review of such action, the President would be required to report his recommendations to the Congress with regard to any further U.S participation in the Fund.".

ASSISTANCE TO THE PRIVATE SECTOR OF EL SALVADOR AND OTHER NATIONS

SEC. 8. The Bretton Woods Agreements Act is further amended by adding at the end thereof the following new section:

"SEC. 38. It is the sense of the Congress that in providing assistance through loans or other means to any nation, in particular El Salvador and Nicaragua, the Fund and the Bank should encourage programs which assist the private sector to create an environment which will stabilize the economy of the nation; and that the United States representatives to the Fund and the Bank shall promote the use of assistance by the Fund and the Bank to encourage such programs.".

SEC. 9. The United States Executive Director to the Fund shall seek to insure (a) that Fund salaries do not exceed those levels endorsed by the Fund Bank Joint Committee on Staff Compensation Issues; and (b) that travel costs are minimized by limiting first class and supersonic travel to instances where no reasonable alternative exists.

ROLE OF GOLD IN INTERNATIONAL MONETARY SYSTEMS

SEC. 10. (a) The Secretary of the Treasury shall establish and chair a commission consisting of—

(1) three members of the Board of Governors of the Federal Reserve System and two members of the Council of Economic Advisers, all of whom shall be designated by the Secretary of the Treasury;

(2) one majority and one minority member each from (A) the Joint Economic Committee of the Congress, (B) the Committee on Banking, Housing, and Urban Affairs of the Senate, and (C) the Committee on

Banking, Finance and Urban Affairs of the House of Representatives, who shall be designated by the Speaker of the House of Representatives and the President of the Senate, respectively, upon the recommendations of the majority and minority leaders of the respective Houses; and

(3) four distinguished private citizens with business, finance, or academic backgrounds who shall be designated by the Secretary.

(b) The commission shall conduct a study to assess and make recommendations with regard to the policy of the United States Government concerning the role of gold in domestic and international monetary systems, and shall transmit to the Congress a report containing its findings and recommendations not later than one year after the date of enactment of this Act.

(c) Sums appropriated pursuant to section 5 of Public Law 95-612 shall be available to the commission to carry out its functions.

FULL APPROPRIATIONS REQUIRED

SEC. 11. Section 32 of the Bretton Woods Agreements Act, as added by section 1 of this Act, is amended by striking "to such extent or in such amounts as are provided in appropriations Acts" and inserting in lieu thereof "limited to such amounts as are appropriated in advance in appropriation Acts."

EFFECTIVE DATE

SEC. 12. This Act shall take effect on its date of enactment, except that funds may not be appropriated under any authorization contained in this Act for any period prior to October 1, 1980.

Amend the title so as to read: "An Act to amend the Bretton Woods Agreements Act to authorize consent to an increase in the United States quota in the International Monetary Fund, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a statement by Senator CHURCH be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR CHURCH

On Thursday, September 18, the House of Representatives completed action on Senate bill S. 2271—a bill the Senate has passed by a vote of 55-25 on June 21. S. 2271 would authorize the U.S. to participate in a $5.5 billion increase in our quota as part of an overall 50% increase in all members' quotas.

The House has added a number of amendments to the Senate bill. Let me describe them briefly:

The first amendment concerns PLO observer status at the upcoming IMF/IBRD annual meeting. This amendment states that the policy of the U.S. is to oppose the granting of any official status to the PLO. Further, should the PLO be given such status, the amendment would require the President to make a report with recommendations to Congress on what he intends to do.

A second amendment is a sense of the Congress amendment that the IMF and World Bank in making loans to El Salvador, Nicaragua, and the rest of the world should encourage those programs which assist the private sectors.

A third amendment instructs the U.S. Executive Director to monitor Fund staff salaries to ensure that they are in compliance with levels recommended by an internal Fund/Bank Committee Report on salaries which drew up specific guidelines to bring them more into line with other civil service salaries.

A fourth amendment is a sense of the Congress amendment with respect to Taiwan's relationship to the Fund. This amendment states that it is the policy of the U.S. that Taiwan be granted "appropriate membership" in the Fund.

A fifth amendment is a sense of the Congress amendment pointing out the problems for the world economy of the current petrodollar recycling requirements, and urging the Fund to actively encourage direct recycling by OPEC through new and innovative methods.

A sixth amendment instructs the Secretary of the Treasury to report to the Congress by May 15, 1981, on the adequacy of Fund resources, the feasibility of IMF direct borrowing and the possibility of the IMF playing a role in direct government-to-government lending for balance of payments purposes.

A seventh amendment is a sense of the Congress amendment that the U.S. and other IMF members should negotiate a so-called Substitution Account within the IMF to assist in the removal of unwanted dollars from the world financial system in an orderly way.

An eighth amendment encourages the IMF to be more sensitive to basic human needs when formulating its stabilization programs. This amendment also contains a number of recommendations as to how this might be accomplished and instructs the U.S. Executive Director to recommend and work for changes in Fund policy to this end.

The final two amendments are amendments which were already enacted into law as part of the 1978 IMF Witteveen Facility legislation. They were added to S. 2271 to make them applicable to the IMF in general. The first of these reaffirms the Congress' commitment to a balanced budget in 1981. The second simply extends the requirement from the so-called Witteveen Facility to the entire operation of the Fund that the U.S. Secretary of the Treasury seek to assure that IMF actions are consistent with current U.S. policy that public and private creditors are comparably treated in cases of debt rescheduling.

None of these amendments cause serious problems for continued U.S. participation in the Fund. For this reason, Mr. President, I recommend that the Senate concur in the House amendments.

Let me add one closing note. As my colleagues will, I am sure, recall while S. 2271 authorizes the appropriation of $5.5 billion, this contribution will in no way affect the U.S. federal deficit as the U.S. receives an offsetting receipt upon making its outlay to the Fund, and therefore no net outlays are involved.

● Mr. STEVENSON. Mr. President, S. 2271 authorizes a 50-percent increase in the U.S. quota in the International Monetary Fund. All members of the Fund are increasing their quotas proportionately.

Larger quotas will provide all members, including the United States, with additional monetary reserves which can be used to meet temporary payments imbalances. The Fund's resources constitute an important safety valve for the world economy. They enable countries to respond to economic shocks with deliberate adjustment policies rather than desperate measures of deflation and protectionism.

Another OPEC-induced recession threatens to undermine economies already strained by heavy international indebtedness. Adjustments, sometimes painful, will be required. The IMF can smooth the process by permitting members to draw from the Fund subject to the condition that members present and pursue an effective program of economic recovery.

The Fund's ability to play a major, constructive role in rectifying payments imbalances depends on the adequacy of Fund resources. The Fund has not grown apace with world trade nor with growth of other reserve assets. Fund quotas equalled 14 percent of total world imports in 1950; now they equal 3 percent of imports. The decline in quotas compared to other reserve assets, such as gold and foreign exchange holdings, has been similar.

The 50-percent quota increase will provide enough resources for the Fund to offer significant assistance to members with balance of payments problems. The quota increase will help to offset a decrease in total Fund resources as the temporary Witteveen Facility is terminated next year.

Fund programs have sometimes been criticized for imposing economic conditions on members which fall disproportionately on the poor. S. 2271 includes language which will encourage the Fund to give greater attention to the effects of its actions on the achievement of basic human needs. The provisions are consistent with actions the Fund has already begun to take.

Mr. President, I shall submit for the RECORD the Fund's guidelines on conditionality.

Mr. President, S. 2271 will benefit the United States and the world economy. The IMF alone cannot solve the petrodollar recycling problem, but it is an essential player in the process. The bill calls upon OPEC to take a larger share of the responsibility. This legislation can help set the stage.

The material follows:

GUIDELINES ON CONDITIONALITY [1]

The Executive Board agrees to the text of the guidelines on conditionality for the use of the Fund's resources and for stand-by arrangements as set forth [below].

DECISION NO. 6056-(79/38), MARCH 2, 1979

Use of fund's general resources and stand-by arrangements

1. Members should be encouraged to adopt corrective measures, which could be supported by use of the Fund's general resources in accordance with the Fund's policies, at an early stage of their balance of payments difficulties or as a precaution against the emergence of such difficulties. The Article IV consultations are among the occasions on which the Fund would be able to discuss with members adjustment programs, including corrective measures, that would enable the Fund to approve a stand-by arangement.

2. The normal period for a stand-by arrangement will be one year. If, however, a longer period is requested by a member and considered necessary by the Fund to enable the member to implement its adjustment program successfully, the stand-by arrangement may extend beyond the period of one year. This period in appropriate cases may extend up to but not beyond three years.

3. Stand-by arrangements are not international agreements and therefore language having a contractual connotation will be avoided in stand-by arrangements and letters of intent.

4. In helping members to devise adjustment programs, the Fund will pay due regard to the domestic social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems.

5. Appropriate consultation clauses will be incorporated in all stand-by arrangements. Such clauses will include provision for consultation from time to time during the whole period in which the member has outstanding purchases in the upper credit tranches. This provision will apply whether the outstanding purchases were made under a stand-by arrangement or in other transactions in the upper credit tranches.

[1] 1979 Annual Report of the International Monetary Fund, pp. 135-137.

6. Phasing and performance clauses will be omitted in stand-by arrangements that do not go beyond the first credit tranche. They will be included in all other stand-by arrangements but these clauses will be applicable only to purchases beyond the first credit tranche.

7. The Managing Director will recommend that the Executive Board approve a member's request for the use of the Fund's general resources in the credit tranches when it is his judgment that the program is consistent with the Fund's provisions and policies and that it will be carried out. A member may be expected to adopt some corrective measures before a stand-by arrangement is approved by the Fund, but only if necessary to enable the member to adopt and carry out a program consistent with the Fund's provisions and policies. In these cases the Managing Director will keep Executive Directors informed in an appropriate manner of the progress of discussions with the member.

8. The Managing Director will ensure adequate coordination in the application of policies relating to the use of the Fund's general resources with a view to maintaining the nondiscriminatory treatment of members.

9. The number and content of performance criteria may vary because of the diversity of problems and institutional arrangements of members. Performance criteria will be limited to those that are necessary to evaluate implementation of the program with a view to ensuring the achievement of its objectives. Performance criteria will normally be confined to (i) macroeconomic variables, and (ii) those necessary to implement specific provisions of the Articles or policies adopted under them. Performance criteria may relate to other variables only in exceptional cases when they are essential for the effectiveness of the member's program because of their macroeconomic impact.

10. In programs extending beyond one year, or in circumstances where a member is unable to establish in advance one or more performance criteria for all or part of the program period, provision will be made for a review in order to reach the necessary understandings with the member for the remaining period. In addition, in those exceptional cases in which an essential feature of a program cannot be formulated as a performance criterion at the beginning of a program year because of substantial uncertainties concerning major economic trends, provision will be made for a review by the Fund to evaluate the current macroeconomic policies of the member, and to reach new understandings if necessary. In these exceptional cases the Managing Director will inform Executive Directors in an appropriate manner of the subject matter of a review.

11. The staff will prepare an analysis and assessment of the performance under programs supported by use of the Fund's general resources in the credit tranches in connection with Article IV consultations and as appropriate in connection with further requests for use of the Fund's resources.

12. The staff will from time to time prepare, for review by the Executive Board, studies of programs supported by stand-by arrangements in order to evaluate and compare the appropriateness of the programs, the effectiveness of the policy instruments, the observance of the programs, and the results achieved. Such reviews will enable the Executive Board to determine when it may be appropriate to have the next comprehensive review of conditionality.●

● Mr. JAVITS. Mr. President, I rise in support of S. 2271 as amended by the House and urge my colleagues to support passage of this bill with the House amendments.

As my colleagues may recall, the Senate passed S. 2271, which authorizes a 50-percent increase in the quota of the United States in the International Monetary Fund (IMF) of $4,202.5 million Special Drawing Rights (SDR's), or about $5.5 billion, on June 16. Only last week did the House pass the bill, and it is important that we conclude expeditiously congressional action on this bill without further delay.

Next week the IMF and the International Bank for Reconstruction and Development (IBRD) will be holding their annual meetings here in Washington, and the primary concern facing these international bankers, civil servants, and economists will be whether the international monetary and economic system will be able to cope successfully with the severe strains resulting from the oil price increases of the last 18 months and the slowing of the economies of the industrialized countries.

To help meet these strains, the IMF voted last year on a 50-percent increase in all members' quotas. The latest increase, the fifth in the 3-year history of the IMF, will expand the Fund's quota resources to approximately $76 billion, of which the new U.S. quota will be approximately $16.3 billion. The United States quota equals 21.5 percent of the total IMF subscription. The proposed 50 percent would leave the relative share of the United States unchanged. Almost 68 percent of all quotas are held by industrial countries, while OPEC members as a group hold 10 percent and the nonoil developing countries hold the remaining 22 percent.

Final congressional action on the U.S. quota increase before next week's meetings will provide a better climate for these meetings and will permit the international economic leaders to focus their energy and resources on the critical substantive issues facing the international economy. While the House-passed bill contains some amendments that, had we gone to conference I would have preferred to have seen dropped or modified, in general the House amendments are Constructive; none irreparably harms the institution; and, therefore, I believe that we can accept our bill as modified by the House amendments.

The House-passed bill contains the two Senate amendments; one proposed by Senator HELMS would establish a commission, under the chairmanship of the Secretary of the Treasury, to conduct a study to assess the policy of the U.S. Government concerning the role of gold in domestic and international monetary systems. While I question very strongly whether gold can have or should have the role of being the basis for the international monetary system, I welcome the commission and look to its deliberations and findings to put to rest this debate.

In addition, the House bill contains an amendment proposed by the Senate Banking Committee which would require the appropriation of the full amount of the U.S. quota. I understand that the appropriations bill is scheduled for House floor consideration today, and I strongly urge my colleagues to consider expeditiously the bill when it comes to the floor later this week. Successful consideration of both the authorization and appropriations bills would be an especially strong signal to the IMF of our continued support of the institution and its role in the international monetary system.

I would like especially to express my support for the House amendment stating that it is U.S. policy that the Palestine Liberation Organization (PLO) should not be given observer status at Fund meetings and warning that, in the event that the fund would provide any official status to the PLO, "such action would result in a serious diminution of U.S. support." I approve of the administration's successful effort to block the granting to the PLO of observer status for this year's annual meetings and commend the administration for its tact in handling this issue. The administration has sought to avoid a confrontation with some of the OPEC surplus countries over the issue. The IMF and the World Bank have been technical institutions serving the best economic interests of the international community and have avoided the extensive politicization that has plagued the U.N. and its constituent organizations. The effectiveness of the IMF and the World Bank to have been in large part due to their apolitical approach to the issues. No loan or economic stabilization program has been affected by the Arab-Israeli, South African, or North-South issues.

As one of the earliest and staunchest supporters of the IMF and the World Bank in this body, I strongly urge the administration to insist that such clearly political issues, such as PLO participation, not infringe on the apolitical character of these institutions. Any inclusion of the PLO into these organizations should immediately lead to a serious review of our relationship with these organizations. This is the message contained in the House amendment, which I support.

Mr. President, for the above reasons, I urge my colleagues to pass S. 2271 with the House amendments.●

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CHURCH, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO HOLD H.R. 7554 AND H.R. 7939 AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 7554 and H.R. 7939 arrive in the Senate Chamber, that they be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank Mr. GLENN and the distinguished minority leader.

THE LOOMING RESOURCE CONFLICT

Mr. WARNER. Mr. President, the American people are constantly subjected to warnings, and I hesitate to bring to the attention of my colleagues a matter which contains foreboding truths—but truths that we can ignore only at our peril.

Mr. J. William Middendorf, a distinguished American and former Secretary of the Navy, recently presented a paper to the Leeds Castle Conference in Kent, England, which addressed the matter of the tremendous vulnerability of the United States and its Western allies to an interruption in the supply of vital natural resources.

Mr. Middendorf, in a cautious and thoughtful manner, points to the dangers inherent in such overdependence on foreign sources of raw materials and prescribes a natural resources strategy which would serve to minimize U.S. and allied dependence and thus enhance Western security.

For years, experts have pointed to the growing dependence of America on foreign supplies of natural resources. However, even the 1973 oil embargo with its widespread effects on our economy and on our lives has not led to an adequate realization of the problem of resource dependence. Prospective shortages of such obscure materials as cobalt and zinc are even less likely to bring about a strong reaction on the part of America.

But recognize these problems we must, if we as a nation are to avoid crippling hardships and perhaps even war in the not too distant future.

Mr. Middendorf and I served together in the Navy Secretariat, and his views reflect his extensive experience in matters relating to national security.

I ask unanimous consent that Mr. Middendorf's paper be printed in the RECORD.

There being no objection, the paper was ordered to be printed in the RECORD, as follows:

A STRATEGY FOR THE COMING RESOURCE WAR

(By J. William Middendorf)

Previous participants in this conference have addressed some of the military aspects of the problems we face in attempting to develop a grand strategy for global freedom. As the Secretary of the Navy in my country's defense establishment, I was intimately familiar with these elements, particularly with respect to the need to protect the sea lanes that are the world's principal channels of transport and commerce.

In my former capacity and today, I am convinced as you are that only a strong defense capability on the part of our countries will deter military adventures by those who would extend their hegemony over us and the third world.

However, I join your deliberations today as a banker. And in this capacity I would like to address myself to the threat which I see as fully as ominous as the military. I refer to the danger of our dependence for vital natural resources on areas of the world vulnerable to Communist or revolutionary subversion which could deny us access to the very resources on which we depend for our economic well-being and very survival.

Admiral Isaac Kidd, Jr., former Commander-in-Chief of the U.S. Atlantic Fleet, warned last year that "there is no nation in recorded history which has invested in sea power at the ongoing Soviet rate that has not used it as a national bludgeon to force a decision, often without the necessity of firing a shot."

My concern is that the Soviet and its followers are moving inexorably to position themselves to force that decision—to force it simply through the ability to deny the free world access to the vital natural resources in southern Africa and third world countries upon which we rely for most of our critical natural resources.

As Dr. Bill van Rensburg, Director of the Texas Mining and Mineral Resources Research Institute noted in a recent speech, developments in the world during the past five years reflect a realization by the Soviets that they are not yet in a position to force a direct confrontation with the West, either in the United States or Western Europe. Nor, I submit, do they want such a confrontation. Rather, they are following a policy of resource diplomacy or resource blackmail, which is aimed at denying the increasingly import-dependent West the resources it needs for survival—starting with oil and proceeding to other strategic raw materials.

My concern, then, is that the war for survival probably has started and could progress without big power military confrontation. And we cannot forget Dr. Henry Kissinger's reminder when he was Secretary of State that nations have gone to war in the past over access to raw materials.

As a banker, a former civilian military official and a former diplomat in Western Europe, I should not have been surprised—but I was—at the stark and blunt realism of an article which appeared almost two years ago in the staid and non-sensational Christian Science Monitor. It was written by Dr. Constantine Menges, an international relations and U.S. foreign policy analyst, who has been a university professor, a government official and a staff member of the highly respected Hudson Institute and Rand Corporation.

"The tide of history," he wrote, "is moving against the survival of the democratic nations. Few Americans seem aware that several converging trends will pose a serious threat to their freedoms in the early 1980's. Prudent action can still be taken."

He then cited growing Soviet military power, Soviet intimidation of democracies (the Afghanistan takeover hadn't happened yet) and Communist support of violent insurrections aimed at gaining control of the Near Eastern oil countries by the early 1980's.

Well, it is two years since he wrote that article. The 1980's are here. Violent insurrection has progressed as prophesied in the Middle East and Africa. And nothing has changed except for the worse.

For a century, the northern industrial nations of the free world have prospered by being converters of cheap, accessible raw materials and energy from other parts of the world, mostly the southern hemisphere. In the past decade all that has changed. The giant hinge of history has swung.

My country now depends on foreign sources for 22 of the 74 non-fuel raw materials essential to a modern industrial economy, and nine of the most critical materials are 90 percent or more dependent on foreign sources. Among these nine are those crucial to defense production. Cobalt, used for high-temperature applications in advanced jet engines, is almost entirely derived from Zaire and Zambia. Bauxite, used for virtually all modern aircraft, and essential minerals used in steel manufacture (manganese and chromium in particular) are almost completely absent in recoverable quantities in the United States. Our Department of Interior estimates that, by the mid-1980's, the U.S. will import half of its basic raw materials.

Iron ore, bauxite, zinc, copper and lead are five of the most important metals in world trade. They are among the ten most important metals that have major applications in the engineering industry. The 1977 ratios of net import to total supply of these metals indicate the status of self-sufficiency of the major Free World nations.

For West Germany, these ratios were: bauxite, 100 percent; mine copper, 100 percent; mine lead, 82 percent; mine zinc, 64 percent; iron ore, 93 percent.

For the United Kingdom, the corresponding ratios were: bauxite, 100 percent; copper (blister), 100 percent; lead, 94 percent; zinc, 100 percent; iron ore, 83 percent.

For France, the respective ratios of import dependence for these commodities in 1977 were 80 percent for copper, 75 percent for lead and 85 percent for zinc, with considerably less dependence on imports of bauxite and iron ore.

In the Far East, Japan's levels of dependence on imports were: bauxite, 100 percent; copper, 90 percent; lead, 71 percent; zinc, 65 percent; and iron ore, 96 percent.

In summary, all four of these major countries are highly dependent upon imports for their supply of these important metallic ores.

By way of contrast, the Soviet Union normally is selfsufficient in all but six major minerals—bauxite, barites, antimony, fluorspar, tin and tungsten. Even for these six, Russia is believed to produce at least half its internal requirements.

J. Allen Overton, Jr., president of the American Mining Congress, recently reminded that minerals have truly been called the bedrock of civilization and the stepping stones of destiny. "Ultimately," he said, "all jobs and functions of modern society can be traced in some way to a viable minerals base."

Interesting observations, considering that in five major minerals—chrome ore, platinum metals, manganese ore, asbestos and gold—Russia and southern Africa together account for most world production and trade. This helps to explain Russian and Cuban involvement in African affairs.

While I assert today that my country is vulnerable to resource blackmail, I daresay that the evidence is clear that most, if not all, of your countries are equally at risk.

The Soviet makes every effort to attain

self-sufficiency in mineral supply. Economic cost is only a secondary consideration in undertaking or expanding production. No areas within the Soviet Union are off-limits to mineral exploration.

A major Soviet objective in southern Africa is to obtain access to its enormous reserves of raw materials, or preferably control over these resources. While the USSR is well-endowed with most vital raw materials, it is increasingly attempting to conserve those resources and buy elsewhere to preserve its self-sufficiency in times of crisis.

Further, the Soviets have shown a far greater knowledge of raw material geography than we in the free world. We often prattle on about the evils of not 100 percent "pure democracies" in the undeveloped world, especially among those who wish to be our friends. Sometimes our policy has been that a dictator who is AGAINST us is somehow more moral than a dictator who is FOR us. It seems the Soviets have no such view of perfection. Instead, they delight in exploiting our differences with our friends, and actively work to subvert any leadership likely to be friendly to us, especially if they are a source of raw materials.

While political and military factors often are cited to account for Soviet and Cuban involvement in Africa, I submit that the Soviet Union has not lost sight of the strategic economic and industrial implications of its adventures. Civil disorder in South Africa and Rhodesia on a scale that would interfere with mineral production would enormously expand the value of Soviet exports and ultimately threaten free world supply. Left-wing governments in South Africa and Zimbabwe Rhodesia with leanings toward the Soviet Union could combine with the Soviet Union to create pricing situations in chrome ore, platinum metals and perhaps manganese fully as effectively as the OPEC cartel is in oil. Even more important, they could create the capability of embargo.

Meanwhile, despite Russia's professed interest in helping the developing nations, the USSR is unwilling to depend—as we do—on distant and possibly politically unstable sources for essential raw materials.

By accident of geography, the transit of much of the world's foreign energy and raw materials resources goes by sea adjacent to southern Africa. Petroleum is shipped from Persian Gulf ports through the Indian Ocean via a narrow sea lane off the southern tip of Africa. The limited U.S. naval deployment in the Indian Ocean is insufficient to prevent attacks on shipping in the region. The lack of basing rights in southern Africa (in contrast to the facilities available to the Soviets in Mozambique and Angola) makes it difficult to prevent the operation of hostile submarines in the area in the event of conflict.

The lack of sufficient Free World military resources either based in the region or deployable to the area is underscored when one reviews the scope of Soviet activity in the region. The Soviets now have the option to engage in a "resource war" in the area either through direct military action against shipping, an unlikely event at this time, or indirectly through the subversion of independent nations in Africa and the Middle East that would enable the Soviets to deny access to the energy and raw materials of the area.

The scope of Soviet activity, both directly through the intervention of their own support or combat forces (as in Ethiopia and Afghanistan) or indirectly through the use of proxy forces (mainly Cuban and East German troops) makes it clear that they have both the interest and the capability to influence events in Africa and the Middle East.

Meanwhile, continued internal instability in many of the countries of the region heightens the tensions. As the Washington Post reported just two days ago from Salisbury, the formation of a unified national Zimbabwe army from three separate and antagonistic forces is proving to be the most difficult and sensitive task of Prime Minister Mugabe's postwar reconstruction program.

The restlessness in Africa and the Middle East makes it imperative that the Free World countries sharpen their vigilance against activities triggered either by the Soviets or resulting from the instability of many of the nations of the region that could seriously damage Free World interests. To date, the Free World has not developed a credible response that would enable it to defend its interests in the region to assure unimpeded resource access.

Surely as we drastically need a coordinated defense and preparedness strategy, so we also require a natural resources strategy to assure that the Free World will never be brought to its knees because of the inaccessibility of minerals and metals needed for our economic survival and military preparedness. The West's oil supply itself is threatened by the increasing presence of Soviet proxies in the Horn of Africa, Yemen, and the proximity of the Soviets themselves in Afghanistan.

But unlike imported fossil-fuels, which in the long term can be replaced by substitutes or alternate domestic sources, many of the most vital minerals and metals have no substitutes—at least not within our present technological capabilities.

The irreplaceability of supply—or put another way, the criticality of access to vital minerals and metals—suggests some of the prime elements of a Free World natural resources strategy.

First and foremost, I suggest, is the need for enlightened interrelationships between the industrialized or consumer countries of the Free World and the supplier countries of the Third World. The object must be to prevent producing countries from becoming fertile ground for subversion, revolution or military takeover. We must do this not in the interest of their personal freedoms or human rights or the color of their skins—although, this, too, is important—but in our own vital self-interest.

Zaire is a case in point. It provides most of the Free World's supplies of cobalt, which, as I have previously noted, is crucial to the aerospace industry. Zaire's political structure and economy have been in a perilous state. It is clearly urgent that the industrialized nations of the Free World do all in their power to stabilize its economy. A partial effort in this regard is now being made through the International Monetary Fund.

Second, we must be alert to the development of a mineral and metals cartel fashioned after OPEC. Not that we can prevent it, but there is nothing we should do to expedite such an awesome development. If we can prevent it, at all costs we should.

Third, we must increase supplies through an array of strategies. We must develop access to the seabed resources in areas not vulnerable to enemy interdiction.

The Law of the Sea Conference so far has failed to produce an agreement adequate to our interests. Although it would be best to establish an internationally agreed upon set of guidelines for the exploitation of the seabed, we cannot allow ourselves to be denied access to the seabed by a coalition of nations that lack the technical expertise to exploit it. Failing to win an agreement acceptable to our interest, we should begin to exploit the seabed of the continental shelf where several forms of ocean mining appear to be economically feasible. It may be possible to develop a satisfactory international climate for full-scale exploitation in the future when significant seabed mining has been initiated.

As you know, the delay in working out agreement on a Law of the Sea treaty has been the North/South problem. To what extent the undeveloped and less developed countries have been influenced by other considerations must be left to conjecture.

My own country, meanwhile, has just written into law a Deep Sea Mining Bill which will permit U.S. exploration of the earth's seabeds under strict control provisions. This legislation had been pending for nine years. Under it, the United States will issue licenses to its nationals for exploration for manganese nodules. Commercial recovery cannot start before January 1, 1988. This, to me, seems to be an unconscionably long period from this date. The reason given was to provide time for the Law of the Sea treaty to be completed and ratified—and for the United States in the interim to enter into bilateral agreements with other countries, which, it seems to me, could be accomplished in a far shorter time. These agreements would establish reciprocal arrangements under which the signing countries would respect each other's permits and licenses for commercial recovery.

In view of the criticality of the non-fuel resource problem, these are very significant developments.

We must rapidly develop new technologies to seek substitutes, where possible, for politically vulnerable imports. We must develop technologies to eke out more from less. In my country, and in some of yours, we must reconsider policies closing vast Federal lands to exploration. Indeed, we must reassess policies which might provide vast wilderness areas in which our people could starve for lack of a viable national economy and minerals and metals policy. We must recycle wastes to recover vital resources which are just as valuable the second or third time around.

And finally, to increase available supplies, we must redouble our stockpiling efforts while being careful not to disrupt existing markets, thus driving up prices and unnecessarily aggravating hard currency outflow.

In the United States, strategic stockpiling has long been an important element of U.S. mineral policy. Our Strategic and Critical Materials Stockpiling Revision Act of 1979 reaffirmed the need for stockpiling, conservation and the development of domestic sources. It specifies that "the purpose of the stockpile is to serve the interest of national defense only and is not to be used for economic or budgetary purposes." It also requires that "the quantities of the materials stockpiled should be sufficient to sustain the United States for a period of not less than three years in the event of a national emergency." Our stockpiled materials are now valued at more than $12 billion, the greatest part attributable to metals and minerals. Some of the strictures in our law preventing greater flexibility in purchasing from Third World suppliers, particularly in response to their economic needs at particular times, probably could stand re-examination, as could our three-year national emergency.

In the United States and possibly in some of your countries, we should consider the possible use of low-grade, presently noncommercial, domestic mineral deposits. And to do this in the United States at least, tax and other incentives must be provided to make the effort commercially feasible.

I return now to the first element in my proposed Free World natural resources strategy—the need for enlightened Third World relationships and policies. Deep undercurrents related to color and religion cause ferment today in much of Africa and the Middle East. Equally ominous, however, is the unsettling effect of tremendous currency outflows from the poorer Third World nations to the OPEC countries.

Just as the U.S. and the West lost control of energy in the 1970's, so too is there now a

real and present danger that the banking and financial systems of the Free World will not be able to cope with the world's flow of capital and wealth in the 1980's as the oil-consuming nations go deeper and deeper into debt, in the aftermath of OPEC's latest price hikes.

As the decade of the 1980's begins to unfold, the system of financial markets and the international banking system that underpins the market are literally trembling from multiple shocks inflicted as a consequence of the greatest transfer of wealth the world has ever seen.

I fear for its survival unless we collectively surrender the apathy that now afflicts us and move rapidly toward energy self-sufficiency and a more predictable petrodollar recycling process.

In 1980, OPEC's surplus of oil revenues may exceed $110 billion. This is a sum which is double the surplus in 1979 and nearly 20 times the 1978 figure. Unless those staggering sums can be recycled back to OPEC consumers—rich and poor alike—that cash can't be transformed into real economic activity and growth, so employment and living standards must perforce decline around the world. If the task of recycling isn't successful, the more immediate peril is that the U.S., the industrial world and the majority of developing countries must learn to live with chronic, global stagflation or worse. In the poorer nations of the third world, those that supply non-fuel resources or are strategically astride access routes, this could degenerate into conditions inviting revolution, subversion or military takeover. With these our vital mineral resource sources are thrown into jeopardy.

I proposed earlier this year, and do so again today, that the economic and banking leaders of all nations desiring to participate, including OPEC countries, convene at the earliest possible date to discuss the petrodollar recycling problem and appoint a commission to recommend solutions. The auspices under which such a conference is convened are not as critical as the timing. It should be done with minimum delay and I, for one, am convinced that major OPEC members will cooperate once equitable solutions are identified. But such cooperation will not be forthcoming unless all major participants, particularly the industrialized nations that are the major contributors to petrodollar surpluses, join in a common solution rather than act individually and separately.

How we address the strategy of the coming resource war will determine the whole course of Western civilization from here on out. If successful, the flickering flame of freedom will burn brighter. By maintaining our industrial and military might we may enjoy peace through strength. If unsuccessful, we will with certainty approach the Great Nightfall.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DISAPPROVAL OF ENRICHED URANIUM TO INDIA

The PRESIDING OFFICER. The Senate will resume consideration of Senate Concurrent Resolution 109.

The Senate resumed the consideration of Senate Concurrent Resolution 109.

Mr. GLENN. Mr. President, I have a statement I would like to make, but the distinguished Senator from Virginia has been very helpful on this resolution, and he has a shorter statement. I yield such time to him as he needs to make his statement before I proceed.

Mr. HARRY F. BYRD, JR. I thank the distinguished Senator from Ohio. I am pleased indeed to join with Senator GLENN in supporting Senate Concurrent Resolution 109. I commend the able Senator from Ohio for his leadership in this matter and his successful effort in the Foreign Relations Committee to have this resolution of disapproval reported to the Senate. I was glad to cosponsor this resolution by Senator GLENN. I think it is an extremely important issue which is involved in the matter before the Senate today.

Senate Concurrent Resolution 109 disapproves President Carter's proposal to export enriched uranium to India.

As I see it, the Senate, in considering this matter, will make a critical decision of far-reaching consequence.

The Carter administration proposes to sell 38 tons of nuclear fuel to India, notwithstanding the contrary decision of the Nuclear Regulatory Commission based on the prohibitions of the Nuclear Nonproliferation Act of 1978.

On June 20, I introduced Senate Concurrent Resolution 103 to disapprove the President's proposal to ship enriched uranium to India. The Committee on Foreign Relations has favorably reported Senate Concurrent Resolution 109, which is in substance identical to the resolution I initially proposed.

The House of Representatives, by an overwhelming vote, has already approved similar legislation.

The vote was 298 to 98. That is nearly a 3-to-1 margin. The issue now rests squarely with the Senate.

The Senate decision will, in effect, determine whether the United States is serious in its intention to curtail the proliferation of nuclear materials or whether passage of the Nuclear Nonproliferation Act was, in reality, an empty gesture.

If an exception is made today for the shipment of 38 tons of enriched uranium to India, the world will see the nonproliferation policy of the United States as a hollow shell. This administration and administrations to come will be encouraged to disregard nonproliferation policy when it suits the perceived political conveniences of the moment.

The Carter administration has attempted to assert that the Nuclear Nonproliferation Act was not intended to block the proposed shipment to India. I find that assertion totally unjustified either in the terms of the statute or in its legislative history. I agree with the finding of the Nuclear Regulatory Commission that the statute was intended to come into full effect in connection with any nuclear fuel export occurring 2 years after the enactment of the law on March 10, 1978.

Moreover, I find exceptionally nonpersuasive the argument advanced by the Carter administration that India has consistently acted in good faith in connection with our prior agreements with India regarding nuclear materials.

It is an accepted fact that India exploded a nuclear device in 1974. It is also accepted that India used heavy water supplied by the United States under an agreement during the 1950's which specified that the materials provided would be used only for peaceful purposes.

To my astonishment, the Carter administration, in a point paper dated September 17, states that "It is legally ambiguous as to whether India broke its obligations" under the 1956 agreement to use materials only for peaceful purposes. If the administration accepts the assertion of India that the 1974 nuclear blast was a peaceful atom bomb, what is to prevent any nation in the future from carrying out a nuclear weapons buildup under a false cloak of peace?

The central point of the issue, as I see it, is this: In this highly dangerous nuclear age, we must do everything possible to prevent the spread of nuclear weaponry. The Carter proposal would put in jeopardy the containment of the spread of nuclear weapons. In 1974, India exploded a nuclear weapon in open defiance of an agreement with the United States. Since then, India has consistently refused to permit nuclear safeguards or international inspection.

The U.S. Nuclear Regulatory Commission determined that the proposed export of 38 tons of enriched uranium to India did not satisfy the requirements of the Nuclear Nonproliferation Act.

The President declined to abide by the Nuclear Regulatory Commission decision; therefore, Congress should act to block the sale. The House, as I mentioned earlier, already has done so by an overwhelming vote of 298 to 98.

The alleged justification for shipping nuclear material to India is to seek improved relations with that nation. But the United States has been seeking improved relations with India for decades and has nothing to show for its efforts but the expenditure of more than $10 billion in aid.

Again, I say, that President Carter's proposal would put in jeopardy the containment of the spread of nuclear weapons.

Again, I urge the Senate to disapprove the Carter administration's proposal to sell nuclear fuel to India.

Again, I thank my distinguished colleague and friend from Ohio for yielding to me at this point.

Mr. GLENN. Mr. President, I thank the distinguished Senator from Virginia for his excellent statement.

Mr. President, if anyone had told me 2 years ago that I would be standing here arguing against a position taken by the Carter administration on nuclear nonproliferation, I would have, indeed, found that hard to believe. I would have found it even harder to believe that the issue would concern an administration decision to continue sending nuclear fuel to India, the first country in the history of the nuclear age to divert nuclear materials from a civilian program for the purpose of conducting nuclear explosions.

Mr. President, I was with the President for the ceremony on March 10, 1978, when the Nuclear Nonproliferation Act,

the NNPA, was signed into law. At the time, the President said:

> The Nuclear Nonproliferation Act sets the conditions and criteria which will govern U.S. cooperation with other nations in our efforts to develop the peaceful use of nuclear energy. The encouragement of universal ratification of the Nonproliferation Treaty, (the NPT) is central to the act, as is the establishment of a comprehensive set of controls, including the application of IAEA safeguards and provision of a stable framework for international nuclear cooperation and commerce.

The President has always been a strong advocate of the NPT, as I have been. When I introduced Senate Concurrent Resolution 109 on July 25, of this year, I quoted some statements from one of the President's speeches, when he was a candidate in 1976, concerning the NPT. In May of that same year, before a U.N. sponsored conference on Nuclear Energy and World Order, the President made an even more direct supportive statement concerning the NPT. He said at the time:

> There are still a dozen or more important countries with active nuclear power programs which have not joined the Treaty. Hopefully, some of these nations may decide to become members, but in the case of several of them, this is unlikely until the underlying tensions behind their decision to maintain a nuclear weapons option are resolved. . . . The advanced countries have not done nearly enough in providing (nuclear power benefits) to convince the member states that they are better off inside the Treaty than outside. In fact, recent commercial transactions by some of the supplier countries have conferred special benefits on non-Treaty members, thereby largely removing any incentive for such recipients to join the Treaty. They consider themselves better off outside. Furthermore, while individual facilities in these non-treaty countries may be subject to international safeguards, others may not be and India has demonstrated that such facilities may provide the capability to produce nuclear weapons.

Now, if I add to that the statement that the President made later in 1976, that the State Department had become India's "chief advocate and apologist," one can understand my surprise at standing here today and having to oppose a Presidential Executive order that overturned a unanimous NRC decision to the effect that India was not in compliance with a cornerstone provision of the Nuclear nonproliferation Act—an act that was passed with the wholehearted support of the President.

Let me say, I tried very hard to get the President not to send his Executive order up here, at least not now, not yet.

I sent a letter to Secretary Muskie, which I understand he did discuss personally with the President, setting out a number of reasons why it would have been better to have waited until next year and have reviewed the issue at that time.

The situation on the South Asian subcontinent would have been much more clear and we would have had the benefit of a 3-year review by the GAO of our entire nonproliferation policy and the working of the NNPA.

We wrote that into the individual bill, that at the end of the 2 years an examination of the effectiveness of that legislation would start and be presented at the end of the third year so we could see if any changes were necessary in the NNPA, so we could improve it, make it more effective.

That study will not be available until—it was deadlined for next March 15. But we could have had it around the first of the year, probably; we could have speeded it up some. But the President did not wait.

Now we must make our decision. Despite my efforts, the President made his. Now we must make ours. The issues involved in the Tarapur fuel export controversy fall naturally into three categories. They are issues involving nonproliferation, issues involving general foreign policy, and issues involving legal considerations. I would like to say a few words about each one of them.

NONPROLIFERATION ISSUES

It is very difficult Mr. President, to discuss the nonproliferation questions raised by the pending fuel shipments to India without getting into a little bit of history. India exploded a nuclear device in 1974 using U.S. heavy water in a Canadian reactor.

This was a violation of the sales agreement because our agreement said that everything that we sent to India under it would be used only for peaceful purposes.

In 1970, 4 years before that explosion, 4 years before that bomb was built, we had some indication that something was going on in India that we considered a misuse of the material we had sent. So we sent an aide memoire to the Indian Atomic Energy Commission in Bombay on November 16, 1970.

This was classified secret until last Friday when I asked it be declassified, which it was. It spells out in very certain terms what our view of our 1956 contract with Indian concerning the sale of heavy water was. It states as follows:

> The United States Government has noted various affirmations of Indian interest in developing the technology of peaceful nuclear explosions, as well as statements that the Government of India is not planning for a nuclear explosion.
>
> Occasionally, in the public debate on the nuclear issue, the question has been raised as to whether, under extant agreements, the Government of India could legitimately use foreign-supplied nuclear technology or materials to manufacture an explosive device to be used in detonating a peaceful nuclear explosion.
>
> We believe the Government of India is aware of the American interpretation of agreements under which the United States has assisted India's development in the field of atomic energy. However, we would like to reiterate the American view in the interest of clarity and to obviate any misunderstanding.
>
> The American position, reflected in the Non-Proliferation Treaty, is that the technology of nuclear explosives for peaceful uses is indistinguishable from that of nuclear weapons, and that any nuclear explosive device, though it be intended for benign economic purposes, could also be used for destructive purposes. The development of such explosives, therefore, is tantamount to the development of nuclear weapons. Any other position would be inconsistent with United States obligations under the Non-Proliferation Treaty and the United States Atomic Energy Act.
>
> Consequently, the United States would consider it incompatible with existing United States-Indian agreements for American nuclear assistance to be employed in the development of peaceful nuclear explosive devices. Specifically, for example, the use, for the development of peaceful nuclear explosive devices of plutonium produced therefrom, would be considered by the United States a contravention of the terms under which the American materials were made available.
>
> The United States interprets the safeguards and guarantees provisions of the Tarapur agreement as prohibiting the use of American materials and equipment, or materials produced from such materials and equipment, for research on or development of any nuclear explosive devices, regardless of stated applications.
>
> The contract of March 16, 1960, under which the United States sold heavy water to India for the CIRUS Reactor states: "The heavy water sold hereunder shall be for use only in India by the Government in connection with research into and the use of atomic energy for peaceful purposes. . . ." The United States would not consider the use of plutonium produced in CIRUS for peaceful nuclear explosives intended for any purpose to be "research into and use of atomic energy for peaceful purposes."

That was delivered to the Indian Atomic Energy Commission in 1970, 4 years before they went ahead and used our material to make the nuclear explosion.

Besides being a violation of the sales agreement with the United States under which the heavy water was supplied, the Indian explosion was a shock to the foundations of the entire international nonproliferation regime—a shock that is still causing reverberations today. The Canadians, much to their credit, tried further negotiations then terminated nuclear cooperation with India following the 1974 explosion—and I should add that the Canadians today and the Australians as well, will not engage in nuclear trade with any country that does not accept safeguards on all its nuclear facilities, so-called full-scope safeguards. In contrast, the United States continued nuclear trade with India, continuing negotiations but we did pass the NNPA 2 years ago which said that after March 10, 1980, no nuclear exports would go from the United States to any country that did not accept full-scope safeguards, which was passed largely because of the situation that had developed in India.

That provided a 2-year negotiating period from March 10, 1978 to March 10, 1980. In these 2 years, there has been not one whit of progress in the negotiations with India. She has adamantly refused to even entertain the notion of full-scope safeguards, and the unsafeguarded facilities that she is presently constructing will provide her with the capability of obtaining thousands of kilograms of plutonium by the end of this decade that can be translated into hundreds of nuclear warheads.

Mr. PERCY. Will the distinguished Senator yield for a unanimous-consent request?

Mr. GLENN. Yes.

Mr. PERCY. Mr. President, in the absence of Senator JAVITS, I ask unanimous consent that the distinguished Senator

from Idaho (Mr. McCLURE) be yielded, at the conclusion of the Senator from Ohio's comments, 10 minutes, or such time as he may desire to speak in opposition to the resolution of disapproval.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, India of course, is not a member of the NPT, a treaty signed by 114 nations. All 111 nonweapons states in the NPT must accept full-scope safeguards and foreswear nuclear weapons if they want nuclear trade and assistance. I think we should ask ourselves why a nation would want to join or remain a member of the NPT, and make the political commitment to subject themselves to full-scope safeguards in return for nuclear assistance, when countries like India can obtain nuclear assistance without making a similar commitment. It is supposed to be U.S. policy to strengthen the NPT. Does the President's decision regarding the Tarapur export support U.S. policy? I do not believe so. I believe the decision undermines the NPT.

Another point to be made is that by continuing trade with India under these conditions, we are also undermining our own effort to try to get other nuclear supplier nations to accept full-scope safeguards as a requirement for their own nuclear trade. As I mentioned earlier, Australia and Canada already require full-scope safeguards as a condition for exports. If we are to get other suppliers such as France and West Germany to do the same, how can we take the position that in the case of the worlds first nuclear violator we will ignore our own advice?

Let us recall that we passed the NNPA only 2 short years ago by a vote of 88 to 3. The pending fuel exports to Tarapur constitute a first landmark test of whether the U.S. Senate was serious about enacting the full-scope safeguards requirement into law. If we back down at the first test, especially in the case of India, the country with the worst history of any of our trading partners, what does that do to the credibility of our nonproliferation policy? What, in particular, will that do to our present goal of curbing the spread of sensitive facilities capable of producing weapons—usable high-enriched uranium and plutonium? Why should our nuclear trading partners, many of whom have strong nonproliferation credentials, acquiesce in restrictions on their nuclear activities for the sake of nonproliferation when we are unwilling to enforce our most basic standards against India?

FOREIGN POLICY ISSUES

I am aware that nonproliferation is not the be-all and end-all of foreign policy. I am realistic enough to know that there may be times when it is necessary to take a step backward temporarily in our nonproliferation effort in order to advance a broader foreign policy objective. Like the President, I, too, would like India to be more sympathetic to our national security concerns stemming from events in that part of the world. But where is the evidence that nuclear trade has had or will have a positive impact on Indian foreign policy? What kind of foreign policy line did India take following the President's promise to Mrs. Gandhi to send the fuel? Was she sympathetic to our concerns in the last few months? Here is the record of Indian decisions after the President's promise to send the fuel. India concluded a $1.6 billion arms deal with the Soviet Union, a deal that had been, to be sure, in the mill for some time but which India then went ahead with, anyway.

India then became the only non-Communist country to recognize the pro-Soviet regime in Kampuchea, after we requested them not to do so.

India abstained from the U.N. resolution condemning the Soviet invasion of Afghanistan; and, finally, to add injury to insult, she negotiated a long-term trade agreement with Iran that undercuts our ability to apply pressure for the release of our hostages. The Iran agreement was announced on June 14, 1980, by the well-known New Delhi newspaper, The Statesman, with a headline, "India to Help Iran Beat U.S. Sanctions." (Copy at end of remarks). If that is not enough to make every American unhappy, I do not know what is: "India to Help Iran Beat U.S. Sanctions."

FROM OUR SPECIAL REPRESENTATIVE

NEW DELHI, Friday.—India is to send grain and a number of other industrial products believed to be worth several hundred million dollars to Iran to enable her to meet shortages arising out of the sanctions imposed by the USA and the EEC.

After a couple of other paragraphs, it says:

What remains to be finalized is the financing of the deals since India wants assurances on payments. . . .

In effect, the result of the talks is that India has agreed to help Iran to beat the U.S. and ECC sanctions imposed because of the hostages issue. Iran presented a long shopping lists to India of items that she needs urgently and much of her needs are to be met.

So much for the foreign policy implications of shipping nuclear fuel to India.

The State Department argument that sending nuclear fuel to India improves United States-Indian relations simply has no substance. That is not to say that there is nothing the United States can do to improve Indo-United States relations. We are presently engaged in $2 billion worth of trade with India. We are providing hundreds of millions of dollars in various forms of economic assistance and we recently completed arrangements for sending India 3,700 TOW antitank missiles. Our relations with India could be far more positively affected by changes in our policy on countervailing duties—affecting textile sales—than by the sale of nuclear fuel, but the administration is not proposing anything along that line, quite the contrary.

Much has been made about the fact that if we do not send fuel for Tarapur the Indians may turn to the French or the Soviets. The administration has provided no evidence that India's nonalined status or the orientation of her present foreign policy would be significantly altered by such a move. There is no reason to believe that India's drive toward nuclear independence will falter as a result of receiving Soviet fuel in addition to the Soviet heavy water she has imported in the past. From a nonproliferation point of view, even if the Soviets were to step in as an alternate fuel supplier the Soviets have invariably required strict safeguards and other nonproliferation controls on nuclear projects they have aided.

According to the respected trade journal, Nucleonics Week, there is debate going on in India about whether to place heavy water in one of the Indian reactors—with arguments being made by some Indian scientists urging that India hold off because, if the Russian heavy water is not used in the reactor, the reactor would not have to be safeguarded. In other words, they believe Soviet nuclear fuel restrictions are "tough." Should we, therefore, take a backward step in our nonproliferation policy in order to prevent the Indians from buying 38 tons of nuclear fuel from the Russians? I believe not.

There are other foreign policy issues involved here as well. The Washington Post ran two front-page stories, regarding Swiss nuclear aid to Pakistan that will enable the Pakistanis to obtain high-enriched uranium, a weapons-usable material. The Carter administration has been unsuccessful in trying to get the Swiss to turn off the spigot of supplies to Pakistan. We ourselves have cut off Pakistan from economic and military assistance as a result of Pakistan's efforts to obtain the facilities needed to make a nuclear weapon.

We have tried to get the Pakistanis to accept full-scope safeguards on all her nuclear facilities. How likely is it that we will succeed in our effort with the Pakistanis if we continue to send nuclear materials to India without the same requirement? How likely is it that we can convince the Swiss not to send nuclear materials to Pakistan if we do not set an example of not trading with countries that are deliberately keeping a nuclear weapons option open?

Mr. President, the administration has not made a convincing case that providing nuclear fuel to India is indispensable toward achieving our foreign policy objectives in South Asia. On the contrary, I am convinced that the achievement of our goals in that region and elsewhere will be enhanced by resoluteness on the part of the United States. Not changing direction again. Our action on this issue will be carefully noted in every capitol in the world, not just for what it says about our nonproliferation policy, but for what it says about the ability of the United States to prevent itself from being bullied by other nations. To send this fuel because of veiled Indian threats regarding what they might do with previous shipments makes a mockery of our position as a world power. Those who are concerned about the Indians buying nuclear fuel from the Soviets ought to worry about the signal being sent to the Soviets by a lack of American resolve to follow a justifiably tough policy on nonproliferation.

LEGAL ISSUES

Mr. President, I beileve the administration knows that it has no case in favor of these shipments on foreign policy grounds and it has no case in favor of these shipments on nonproliferation grounds, especially when one looks at the impact on countries outside of India. The administration has therefore chosen to make its case on the basis of a very weak legal argument that the United States might be in violation of the 1963 Agreement for Cooperation with India and the fuel contract written pursuant to it. The administration argues that if the Indians see the cutoff as a breach of the agreement they will feel free to disregard their obligations under the agreement which are to retain safeguards on the Tarapur reactor and the U.S.-origin spent fuel emanating from it.

First of all, the agreement says that the United States will supply uranium fuel "as needed" for Tarapur pursuant to the "terms, conditions, and delivery schedule set forth in a contract to be made between the parties." The contract, when it was signed in 1966, said that the United States will make this material available "subject to such conditions and licenses as the seller (the United States) may require." In 1971 this part of the contract was amended and amplified and India agreed to "procure all necessary licenses or permits and comply with all applicable laws, regulations, and ordinances of the United States and of any State, territory, or political subdivision" in conjunction with the export of nuclear fuel.

All these were commitments to abide by what were to be quite clearly future regulations that the U.S. Government would define.

The American Law Division of the Congressional Research Service was asked to analyze the agreement and the fuel contract and after a detailed analysis they wrote a report which contains the following conclusion:

> India's refusal to submit to the adoption of full-scope safeguards and inspections for all nuclear facilities is not in conformance with its 1971 undertaking to comply with all applicable U.S. laws. As a consequence, congressional rejection of the pending export may be regarded not as a violation of the agreement, but rather as an appropriate action proximately caused by India's refusal to live up to its undertaking to comply with applicable U.S. legal requirements. As such, India may be the party in actual or potential breach of the agreement and in ordinary circumstances cannot walk away from the bargain previously struck. Generally, the election to abandon a contractual obligation upon the occassion of material breach is available only to the injured party. There is no obligation on the injured party to make such an election and it may waive the breach and accept or insist on performance after such breach of the contract. The United States, accordingly, may continue to regard the existing agreement and contract as effective and seek to persuade India that it stands ready and willing to meet its obligation to supply India's fuel requirements when the latter indicates its willingness to stand by its contractual obligation to comply with U.S. legal requirements including the NNPA's provision for the adoption of full-scope safeguards and inspection of its nuclear facilities.

In other words, Mr. President, the United States will not be in violation of the agreement or the fuel contract by refusing the present shipments. Undaunted by this, the administration then argues as follows: Suppose the Indians go ahead and act as if we violated the agreement, seizing the spent fuel and reprocessing it without our permission. Is not that something we should be concerned about? The answer to that, of course, is yes—we should be concerned about it. But we need to look at the larger picture. The U.S. spent fuel at Tarapur is soon going to be a very small part of the materials that India will have available to her for the production of weapons.

By the end of this decade, according to a Congressional Research Service calculation, India's unsafeguarded facilities—these are facilities other than Tarapur (which is under safeguards)—will produce thousands of kilograms of plutonium that will make the amount of plutonium in the U.S.-origin spent fuel look small by comparison.

The administration is trying to convince us that keeping control of the U.S.-origin spent fuel is worth the demise of our nonproliferation policy around the globe. Does that sound like a reasonable tradeoff? It certainly does not to me.

Mr. President, the administration has not looked carefully at the implications of its own argument on this issue. They are saying, in effect, "keep sending the Indians nuclear fuel, because if you do not, you risk the possibility of their making weapons with the plutonium from past fuel shipments." The implication of this argument is that the State Department is as suspicious of the Indian nuclear program as I am. And well they should be, considering India's history in this area. The question is: If they are so suspicious of Indian intentions, why are they advocating continued shipments of nuclear fuel?

Mr. President, not only is the present State Department position on this issue illogical, it is not even consistent with their past stated policy on Tarapur. Two years ago, when the issue of the first Tarapur shipments following the passage of the NNPA came up, the State Department said that it was their intention to ship fuel up until the NNPA deadline unless there were "materially changed circumstances" in India. This was said during the Desai regime. Since then, India has had two governments, and is now headed by the same Mrs. Gandhi who produced the policy that led to the 1974 explosion, and who says that further explosions will be produced whenever India deems them in that country's national interest. That certainly sounds like "materially changed circumstances" to me. Even the Indians say that a change has occurred. Yet, the State Department, despite its own written policy, pretends that everything is the same as before, and we should send the fuel.

I will say only one more word about the logic of the administration's argument in this case. The administration claims that fullscope safeguards should not apply to these shipments, but they will be glad to apply it to future shipments. But their argument about the breach of contract also applies to future shipments. If the administration seeks to convince us that we should send the fuel in order to prevent the Indians from claiming a breach of contract they are in effect arguing that no matter when fullscope safeguards would apply, we should ignore the criterion and send the fuel because otherwise the Indians will do all those terrible things they have threatened. That is a policy of supply without end, a policy of appeasement, a policy of caving in to extortion. If we follow this policy, Mr. President, I submit that the United States will have take another giant step down the road of erosion of its power and influence around the world, a step with the gravest implications for our future national security.

Mr. President, not since the efforts with regard to SALT have we seen such a lobbying effort as the administration has mounted on undecided Senators in the last few days. I have talked to a number of Senators today who have talked about getting calls from *Air Force One* flying around the country, from ACDA, from the State Department, and from the Secretary of Defense.

And that is fair enough to lobby on this, although I must admit with the manpower I have out of my office and the committee we are somewhat outgunned in this area. It is very impressive to receive a call from *Air Force One* to be lobbied on this particular subject.

Mr. President, let me talk a moment about past intent, the past intent of those who have spoken on this subject, and I ask the question in advance, did they really mean what they said?

For example, 4 years ago the President said:

> We have done little to encourage the dozen or more non-NPT countries with active nuclear programs to join. In fact, we have given more assistance to those countries who have not signed the treaty than we have to those who have. For example, in recent hearings before the Nuclear Regulatory Commission on continuation of nuclear aid to India, the State Department has become that country's chief advocate and apologist, even though India, not an NPT party, used our past aid to explode a nuclear device—and even though there are no safeguards to prevent this from happening again.

Did the President mean what he said?

Did the State Department mean what it said 2 years ago when it indicated that it would reconsider support for continued supply for Tarapur if there were materially changed circumstances in India?

This was said during the regime of Prime Minister Desai, who stated there would be no explosion of any kind of whatever type as long as he was the Prime Minister. But since then Mrs. Ghandi has been reelected and has clearly stated if it is in India's interests, India will produce further nuclear explosions. That certainly seems like a change and even the Indians believe this and say a significant change has occurred. But the question is did the State Department mean what it said? Mr. President, did the Senate mean what it said 2 years ago at the time of the examination of the first Tarapur explosions following the passage of the Nuclear Nonproliferation Act? The vote on this particular resolution of disapproval that I propose to the Senate in the Sen-

ate Foreign Relations Committee, though, was 8 to 7.

So we did act in committee to support our previous view on this. At that time, after our expression of opinion had taken place, after we had voted for the Nuclear Nonproliferation Act, we felt concerned enough about what was going to happen that the committee asked our chairman at that time, Senator Sparkman, to send a letter to the President expressing our view of what should happen in the future, and I quote from that letter which Senator Sparkman signed and sent to the President:

> The committee requested that I write to you to communicate the following views of the committee:
>
> Substantial progress at an early date for placing all peaceful nuclear activities in India under international safeguards is of critical importance. The executive branch should make a vigorous effort to secure Indian agreement to full-scope safeguards within 18 months of the enactment of the Nuclear Nonproliferation Act of 1978.
>
> The executive branch and the Indian Government should base their discussions on the anticipation that if full-scope safeguards are not achieved, it is highly unlikely that a waiver allowing continued exports would be acceptable.

I think the members of the committee were correct in voicing that concern about whether we would allow exports to Tarapur after 2 years of fruitless negotiations, and that is our position today on it, that we still do not have one shred of indication of any progress toward the safeguards that we wrote about at that time.

Mr. President, it is important to understand what we are dealing with here. The State Department would have us believe we are dealing with a situation that is not precedent setting. By means of a narrowly drawn legalistic argument they seek to convince us that the full-scope safeguards criteria of the NNPA will be preserved somehow despite sending these shipments to India.

But their argument immediately runs up against two severe problems. The first is that we, they, and virtually every foreign government around the world did, in fact, view the 24-month hiatus from the date of enactment as leading to, in fact, a hard and fast cutoff point. There was a State Department cable sent out to all U.S. diplomatic posts just after the Nonproliferation Act was passed so that our embassy officials could explain the act to foreign governments, and it stated:

> IAEA safeguards on all peaceful activities in nonnuclear weapons states will be required, after 24 months following enactment, as a condition of continued U.S. exports.

So the State Department believed in what we had passed, believed what I believed in, what the committee believed in, what the Senate, everyone, believed in, including the President at that time. So if the first major problem is that people inside the Government who have read past State Department explanations of the NNPA are unconvinced of State's latest reinterpretation, the second major problem is that people outside the Government are also unconvinced.

Mr. President, comments from across the country would be of interest. We have identified 90 editorials that have appeared on the subject of Tarapur, all opposing the exports.

I asked the staff, after they came up with that, to go back and find somebody who was in, editorially commenting in, favor of the exports. They said they would try again. So they found four, I believe is the grand total, that had editorialized in favor of this shipment. But every major paper in the country in every major city, almost without exception, has editorialized against this shipment.

Mr. President, just a few days ago the New York Times, as one example, ran an editorial against the shipments which put the problem in a nutshell. The Times stated that Mr. Carter's dilemma was either alienating the Government of India or undermining his own policies against nuclear proliferation. The Times said that, "In June he chose the latter course."

Mr. President, I view this as a step backward in the pursuit of nonproliferation goals in order to achieve a broader foreign policy objective.

The State Department has made only assertions, without evidence, that providing the uranium for India will enhance the achievement of broad foreign policy objectives in that area of the world or elsewhere.

Let us examine the evidence. President Carter has told Mrs. Ghandi apparently last winter that he would send the fuel for Tarapur. Foreign policy decisions since then have been, Indian foreign policy decisions have been, recorded in the chronology which we have distributed on the floor here to all Senators. This shows that Mrs. Ghandi announced her government will not hesitate in carrying out nuclear explosions in the national interest.

As I said before, India, at the same time, has closed a $1.6 billion arms sale with the Soviet Union; is in the process of coming to a major trade agreement with Iran, undercutting our U.S. embargo on exports to Iran; recognized the pro-Soviet government in Kampuchea, and abstained in the U.N. condemnation vote.

In the end, Mr. President, we all know the issue before us is not just United States-India relations. These relations are going to evolve and either prosper or deteriorate because of factors which have little to do with the nuclear trade.

We have $2 billion in trade with India, we have several hundred million dollars in economic aid; we recently completed the deal sending them 3,700 antitank missiles. Surely these elements are much more important to the question of United States-Indian relations than the question of uranium for Tarapur.

But in the end the issue is what signal will the United States be sending to the rest of the world and, particularly, to potential proliferators elsewhere by taking this manifestly backward step in nonproliferation policy?

I believe the answer is self-evident. We will have undermined the policy. We will have removed the standard that we worked so hard to establish 2 years ago that made our policy a model for others to follow. I might add we worked very hard on that in tandem, Senator PERCY and myself, and we find ourselves on opposite ends of the log at this time, and I am sorry that this is the case. But we see this particular situation in a different light.

Mr. President, if we are to ship this fuel, then I would submit that we are in fact changing our nuclear policy.

To say that the NNPA, the Nuclear Nonproliferation Act, will go ahead as always in spite of this fuel shipment to India would be nothing but a charade, and I will not be party to that.

This will not leave us with a policy, if we make this shipment, that says unequivocally, "Here we stand," and for what we stand. As I see it, it will be but a chameleon policy changing color against every new background that happens to come along.

Mr. President, in my remarks here today I have dealt with foreign policy. I have dealt with contract questions. I have dealt with being a reliable supplier, and I would say my major bottom line concern, Mr. President, is this:

The most important reason for barring these exports is that a U.S. capitulation to India could eviscerate our nonproliferation efforts around the world. The 111 nations, nonnuclear weapons nations which have already signed the NPT, and agreed to full scope safeguards would very validly question the value of continued adherence if India receives nuclear assistance without a similar commitment.

Second, current negotiations with non-NPT countries on the full scope safeguards question would be undermined if we continue business as usual with the world's first nuclear violator.

Third, nuclear supplier nations, some of whom now require full scope safeguards as a precondition to sales, such as Australia and Canada and others who may be moving in that direction, perhaps, and West Germany and France, might reassess their conditions as they become convinced that the United States is reversing itself on this vital issue.

Finally, if America is to demonstrate its ability to conduct consistent foreign and national security policies, it is imperative that we shun even the appearance of appeasement. In his testimony, congressional testimony, 2 years ago, Joseph Nye, then a State Department official, stated that in the absence of progress in the full scope safeguard issue it was "highly unlikely" that the United States would supply India with nuclear materials after the NNPA deadline.

Mr. President, I want to see us retain leadership in trying to get the nations of the world to sign up under NPT. I think we meant what we said 2 years ago. I meant what I said, and I think at that time, at least, the President meant what he said. I know Senator PERCY meant what he said, the Senate Foreign Relations Committee meant what its vote said. In fact, that was our policy, and we thought that it was going to last. Now we find ourselves at

this first test saying that the policy may not be valid.

I do not think it is time for us to lay down this policy. I think we must meet the policy's first test.

Mr. President, I ask unanimous consent that two letters in support of my position on this—one from the National Council of the Churches of Christ and one from Adrian S. Fisher of Georgetown University Law Center, who was one of those who negotiated the Nonproliferation Treaty who feels very strongly that we not send these shipments to India—be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

GEORGETOWN UNIVERSITY
LAW CENTER,
Washington, D.C., September 22, 1980.

Hon. JOHN H. GLENN,
204 Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR GLENN: This letter is for the purpose of expressing my personal strong support for S. Con. Res. 109 under which the Congress states that it does not favor the proposed export of low-enriched uranium to India pursuant to export license applications XSNM-1379 and 1569.

I was one of the principal negotiators of the Non-Proliferation Treaty and a strong supporter of the Non-Proliferation Act, which introduced the concept of fullscope safeguards as a requirement for U.S. exports to countries which, for a variety of reasons, have refused to become parties to the Non-Proliferation Treaty.

Action on these exports is the first test as to whether the United States meant what it said in the Treaty and in the Act. If we were to permit the exports in this first test, I have grave doubt whether our commitment to a non-proliferation regime would ever again be taken seriously.

Yours truly,

ADRIAN S. FISHER.

NATIONAL COUNCIL
OF THE CHURCHES OF CHRIST,
Washington, D.C. September 16, 1980.

DEAR SENATOR: In the near future the Senate will be considering Senate Concurrent Resolution 124 which will disapprove the sale of nuclear reactor fuel to India. We urge you to support this resolution. We do so because of our commitment to the present nuclear non-proliferation policy of the United States, and our fear that by allowing the sale to be completed, that policy including full scope safeguards will be gravely undermined.

India is not a signatory to the Nuclear Non-Proliferation Treaty, nor has she placed her nuclear facilities under full-scope safeguards. India illegally built and exploded a nuclear device using Canadian and U.S. supplied materials. India has not renounced the use of nuclear weapons. For the United States to sell presently unneeded nuclear fuel to India would make a mockery of the U.S. commitment to non-proliferation which dates back to the Eisenhower administration and is now embodied in U.S. law. Such a sale would be a signal to the rest of the world that the U.S. is not serious about nuclear nonproliferation.

We agree with the American Law Division of the Congressional Research Service and the Nuclear Regulatory Commission that the United States is not committed to the sale under our treaties with India. We further argue that under policy established in the Nuclear Non-Proliferation Act of 1978, the U.S. is mandated to refrain from selling reactor fuel to India, and other countries with similar policies.

The churches we represent have a long and respected tradition of service to the Third World and to India. That relationship is only part of the wide range of relationships between India and the U.S. It is because we are aware of the breadth of these relationships that we reject the Administration's arguments concerning the importance of this sale to the overall fabric of U.S.-Indian relations. Those relations are based on a broad front of mutual and common interests which our two countries share. Those interests are not solely dependent upon the sale of nuclear fuel, as both Indian and U.S. actions in recent months demonstrate.

It is for these reasons that we support the concurrent resolution, and urge you to disapprove the sale of uranium to India.

Respectfully yours,

Jane C. Leiper, Associate Director, Washington Office, National Council of Churches; Herman Will, Associate General Secretary, United Methodist Board of Christ and Society; Frances Neely, Legislative Secretary, Friends Committee on National Legislation; Merle Nolde, O.S.P., Mary O'Keefe, O.P., Co-Chairs, National Assembly, Women Religious; Bob Alpern, Unitarian Universalist Association, Washington Office; Mary Jane Patterson, Director, Washington Office, United Presbyterian Church, U.S.A.; Zelle Andrews, Director, Peace Advocacy Program, United Church of Christ, Office for Church and Society.

Mr. GLENN. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the Washington Post, a statement I prepared entitled "No Fuel for Tarapur," a Tarapur summary sheet, a copy of the Statesman of Delhi, India, an excerpt from that paper, and also an aide memoire which was secret until last Friday and now has been declassified, presented to the Indian Atomic Energy Commission in Bombay, November 16, 1970.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 22, 1980]

CLEAR SIGNALS ON NUCLEAR FUEL

By a three-to-one margin, the House last week rejected the president's proposal that the United States send another shipment of nuclear fuel to India even though India has refused to accept international safeguards on its nuclear facilities or to renounce further nuclear weapons tests. The vote echoed the earlier judgment of both the House and Senate foreign relations committees and the unanimous decision of the usually divided Nuclear Regulatory Commission. The final fate of the fuel shipment now rests with the Senate, which must also reject the proposal in order to override the president's override of the NRC.

For more than two years, the United States has been trying to negotiate some kind of compromise safeguards agreement with India. It has met with no success and no indication of even the slighest interest on India's part. If anything, the Indian government has underscored the wide gap between the two countries by regularly reasserting its right to perform additional nuclear tests if it chooses.

The two-year grace period provided by the U.S. Nuclear Non-Proliferation Act, during which nuclear exports could continue to countries that had not accepted full international safeguards, expired last spring. The hard choice now is whether to stop the fuel shipments as the law requires or to set a precedent by waiving the law on the first test of its central provision, in the hope that the United States will thereby retain "leverage" over future Indian policy.

The vote therefore has a double-barreled significance. A decision to ship the fuel would signal that the United States didn't really mean what it said in the 1978 law and would make it much harder to reach acceptable agreements with the many other potential weapons builders around the world. Moreover, the waiver would be for India—the country whose 1974 nuclear test was largely responsible for U.S. non-proliferation policy in the first place. The message sent to other nations would be unmistakable: the United States is not only unlikely to react to countries that explode nuclear bombs, but may not even suspend its nuclear assistance.

The administration is pulling out all the stops in its efforts to convince undecided senators. It surprised nearly everyone by circulating a letter claiming that India didn't violate its agreement with the United States when it used materials supplied by this country to make the bomb exploded in 1974. In response, Sen. John Glenn (who writes about this question on the opposite page today) requested the immediate declassification of a secret aide memories sent by the U.S. government to India in 1970. The administration released the document, which had made it unmistakably plain to the government of India four years before the nuclear explosion that the United States considered what India was doing to be "tantamount to the development of nuclear weapons" and a "contravention of the terms under which the American [nuclear] materials were made available." So much for the leverage bought by continuing nuclear supply.

The administration is arguing that since India didn't accept the U.S. position stated in that document, it never violated an agreement. This is pure Alice in Wonderland: to defend its position now, the U.S. government accepts India's rejection of its earlier position. So much for consistency and firmness of purpose.

The decision to halt nuclear fuel shipments to India is unpleasant, but critical. Any other choice would make a mockery of a decade of efforts to halt the spread of nuclear weapons and to guarantee that peaceful-purpose nuclear projects can be assisted—without danger of the materials' being diverted to make bombs.

[From the Washington Post, Sept. 22, 1980]

NO FUEL FOR TARAPUR

(By JOHN H. GLENN, JR.)

Tomorrow, in a crucial action, the U.S. Senate will decide whether to override a presidential executive order and disapprove the sale to India of 38 tons of low-enriched uranium for use at the Tarapur Atomic Power Station. The essential issue is whether we are going to keep faith with the 111 signatories to the Non-Proliferation Treaty, who have promised not to develop nuclear weapons and have opened all their nucelar facilities to comprehensive international inspection (so-called "full-scope" safeguards). If we are to retain our leadership in this vital area, we dare not fail the first significant test of the Nuclear Non-Proliferation Act, passed just two years ago with the active support of the same administration that now seeks to gut its most critical provision. The NNPA prohibits U.S. shipments of nuclear materials, after March 10, 1980, to any non-weapons state refusing to accept full-scope safeguards. India has obstinately refused to accept these international controls and has expressly proclaimed its intention of conducting further nuclear explosions whenever it deems them to be in its national interest.

In 1974, using American-supplied heavy water and a Canadian reactor, India detonated an atomic explosion and thus became the first nation to divert civilian nuclear materials to potential weapons use. Though

the State Department now claims the 1974 test violated no commitments, a diplomatic note, recently declassified at my request and delivered to India four years before the atomic test, unequivocally declares that the use of U.S. heavy water for nuclear explosions would be "a contravention of the terms under which the American materials were made available." Since the 1974 explosion, India has developed both an intermediate-range missile capability and an indigenous nuclear program that could soon enable it to produce and deliver large numbers of nuclear warheads.

In my view, permitting the uranium exports to go forward would deal a grievous blow to U.S. nonproliferation efforts around the world. First, the NPT nations that have agreed to full-scope safeguards might well question the value of their pledge if India receives nuclear assistance without a similar commitment. Second, current negotiations with non-NPT countries (Pakistan, Argentina, Brazil, Israel and South Africa) on the full-scope safeguards question would be undermined if we were to continue business-as-usual with the world's first nuclear violator. Third, nuclear-supplier nations that now require or are moving toward requiring full-scope safeguards as a condition for exports might reassess their positions if the United States reverses itself on this vital issue.

In a stunning display of self-deception, the administration refuses to acknowledge the adverse impact the uranium sale would have on our nonproliferation objectives. Instead, it chooses to focus on India's claim that halting the shipments would place the United States in breach of a 1963 agreement (and subsequent fuel contract) wherein we promised, under specified conditions, to supply fuel to the Tarapur reactors until 1993. Since India has warned that any interruption of fuel supplies would free her from other clauses of the contract—including those placing the Tarapur plant under safeguards and requiring U.S. approval before India can extract weapons-grade plutonium from the spent fuel now stored there—the administration argues that preserving these limited nonproliferation controls requires us to continue exporting fuel.

This argument, besides leading to a policy of supply without end, ignores the fact that the contract language requires India to "comply with all applicable laws, regulations and ordinances of the United States." Therefore, according to the American Law Division of the Congressional Research Service, the United States may legally refuse to send fuel so long as India fails to satisfy the provisions of the NNPA. In any event, it is hollow to try to convert India's threat into a nonproliferation argument. Acceding to extortion rarely buys protection—that is especially true in this case. Whether or not India retains safeguards over spent Tarapur fuel, it still will have access to thousands of kilograms of unsafeguarded plutonium (potentially representing hundreds of bombs) that will be produced at its other nuclear facilities in the next few years.

Thus, the real Indian threat is not the removal of safeguards from Tarapur; it is the lack of safeguards at its other facilities. Does it then make sense for the United States to continue nuclear trade with a country that is so blatantly keeping a weapons option open? I submit the answer is no.

The administration also has argued that the sale is important on foreign policy grounds, since we must not aggravate U.S.-India bilateral relations in the wake of the Soviet invasion of Afghanistan. But where is the evidence that nuclear trade has had or will have a positive impact on Indian foreign policy? Following the president's decision to send the fuel, India concluded a $1.6 billion arms deal with the Soviet Union, became the only noncommunist country to recognize the pro-Soviet regime in Kampuchea and signed a long-term trade agreement with Iran that undercuts our ability to apply pressure for the release of our hostages. Significantly, all these actions were taken after India received President Carter's assurance that he would support the pending fuel shipments. Clearly, where Indian foreign policy is concerned, Tarapur fuel is a bargaining chip of dubious value.

If we wish to improve India-U.S. bilateral relations, there are other levers available to us. We are currently engaged in $2 billion worth of trade with India, are providing hundreds of millions of dollars in various forms of economic assistance and recently completed arrangements for sending India 3,700 anti-tank missiles. Our relations with India could be far more positively affected by changes in our textile import laws than by the sale of nuclear fuel.

In sum, the case for sending uranium to India rests upon weak suppositions concerning the state of India-U.S. relations, a weak legal case concerning a past nuclear supply agreement and a weak-kneed fear of Indian threats to abroagate past contractual pledges. Obviously, whatever limited benefits might result from exporting 38 tons of fuel to India would be far outweighed by the damage such action would visit upon both America's non-proliferation goals and our perceived willingness to conduct consistent foreign and national security policies.

TARAPUR SUMMARY SHEET

Key Reasons for Approving S. Con. Res. 109 (to stop exports):

1. Prevents Weakening of N.P.T. 111 nations signed the Non-proliferation Treaty (N.P.T.) and subjected themselves to full-scope safeguards in order to receive nuclear assistance. A U.S. decision to send exports without requiring this commitment undermines the value of becoming or remaining a treaty member. President Carter took this point of view in two 1976 speeches, one of them before a U.N. body.

2. Upholds Commitment to Full-Scope Safeguards as Standard for Nuclear Trade. Disapproving the shipments provides Congressional reaffirmation of the cornerstone provision of the NNPA and removes any doubt regarding U.S. commitment.

3. Avoids Erosion of U.S. Leadership Caused by Failure to Enforce Safeguards Policy Against Worst Offender. India whose safeguards/nuclear explosives history is the worst of all our trading partners, is the only nation to have diverted civilian nuclear facilities to produce nuclear explosives (the 1974 test). Mrs. Gandhi has stated her intention to conduct further nuclear explosions whenever deemed in India's national interest. India's unsafeguarded indigenous facilities, over which the U.S. has no control whether we ship fuel to Tarapur or not, will produce thousands of kilograms of plutonium (potentially representing hundreds of bombs) by the end of this decade. Failure to enforce U.S. policy against India, the most egregious case, would seriously undermine U.S. negotiating position in other instances.

4. Does Not Violate U.S. Contractual Commitments. American Law Division of CRS states that, under the 1963 Nuclear Agreement with the U.S. and the subsequent fuel contract, India is required to "comply with all applicable laws, regulations and ordinances of the United States" including the NNPA. Subsequent legal research has produced further substantial evidence of the correctness of the conclusion.

Administration Arguments Favoring Exports:

1. "Approval of the Exports Will Favorably Impact India-U.S. Relations while Disapproval 'Would deal us out of the game'". There is no evidence that our nuclear trade with India has had or will have any significant lasting impact on Indo-U.S. relations one way or the other. It should be remembered that after President Carter promised Mrs. Gandhi the fuel, the Indians:

Closed a $1.6 billion arms deals with the Soviets.

Became the only non-Communist nation to recognize the pro-Soviet government in Kampuchea.

Negotiated a major trade pact with Iran undercutting our ability to apply pressure for the release of our hostages. The Statesman of New Dehli announced the trade agreement with the headline: "India to Help Iran Beat U.S. Sanctions."

U.S. Indian relations are much more likely to be affected by such matters as the laws governing the $2 billion in annual trade between the two countries; the hundreds of millions of dollars in economic assistance provided annually by the United States; and security assistance arrangements such as the recent sale of 3700 anti-tank missiles.

2. "Shipping the Fuel is Consistent with U.S. Non-Proliferation Policy". It is not. The legislative history and State Department cables explaining the NNPA in 1978 testify that the law contemplated an absolute 24 month deadline for applying the full-scope safeguards standard. Allowing the exports amounts to a waiver of the standard and will be universally viewed in these terms.

3. "The Exports Should be Shipped to Avoid Losing Control of Past Shipments". This is an argument favoring supply without end, and a capitulation to Indian threats. It should be remembered that after Canada broke off nuclear trade with India in 1974, India retained safeguards on Canada's reactor because of her sensitivity to international criticism. But even in the worst event, the amount of plutonium available to India from Tarapur is dwarfed by the large amount of unsafeguarded plutonium India will have by the end of the decade through her indigenous facilities. The real proliferation threat is not past U.S. shipments, but India's unsafeguarded facilities.

4. "India Has Never Violated a Nuclear Agreement with the U.S." In a secret aide-memoire (recently declassified) sent by the U.S. to the Indians in 1970, four years before India's nuclear test, the United States unequivocally declared that the use of U.S. heavy water for nuclear explosions would be "a contravention of the terms under which the American materials were made available". India did, in fact, go on to use our heavy water for her 1974 explosion.

[From the Statesman (Delhi), June 14, 1980]

INDIA TO HELP IRAN BEAT U.S. SANCTIONS

NEW DELHI, Friday.—India is to send grain and a number of other industrial products believed to be worth several hundred million dollars to Iran to enable her to meet shortages arising out of the sanctions imposed by the USA and the EEC.

But a 17-member Iranian delegation led by Mr. Reza Sadr has been told that it would be difficult to supply cement, sugar and steel because of domestic shortages. It is possible, however, that these items will also become part of Indo-Iranian trade in future.

Prospects of substantially increased trade and economic contacts which will extend to management of plants in Iran, completion of contracts terminated by Western companies and establishment of new plants have emerged following the talks between the Iranian delegation and an Indian team led by Mr. Praneb Mukberjet, Minister of Commerce.

Further delegations are to be exchanged to study the possibilities opened up in the past few days and Indian business men are to be registered in Iran as both prime contractors and subcontractors. If all the deals

discussed materialize, Iran will become a major trading partner of this country.

What remains to be finalized is the financing of the deals since India wants assurances on payments. This is presumably in the context of the default to the extent of nearly $400 million by Iran on the Kudremukh iron ore project which was also discussed in the current round. Mr. Sadr promised to convey India's position to his Government.

In effect, the result of the talks is that India has offered to help Iran to beat the U.S. and EEC sanctions imposed because of the hostages issue. Iran presented a long shopping list to India of items that she needs urgently and much of needs are to be met.

While he was here, Mr. Sadr promised that Iran would consider supplying India oil on a long-term, rather than annual, basis. This is an important outcome of the talks, as is the possibility of greatly increased exports to pay for the oil in the ministerial-level talks that ended today. India and Iran agreed that bilateral cooperation could be further expanded in the sectors of food and agriculture, drugs and pharmaceuticals, supply of engineering goods, provision of consultancy services and training of managerial personnel.

The Iranian side has expressed interest in purchasing from India items like iron and steel products including pipes, textiles, sugar, industrial raw materials, paper and agricultural products like wheat, barley, rice, maize, sugar and animal food.

The Indian side noted Iran's interests in these commodities, and provided immediate information in areas of surpluses. The Iranian delegation was assured that subject to its own domestic requirements India would make effort to meet the needs of Iran.

During the talks, both sides were on agreement on the desirability of strengthening bilateral commercial and economic links for their mutual benefit. It was decided in course of the discussions that a committee on trade, in terms of the Trade Agreement of 1974, would be constituted and it would meet at appropriate levels alternatively at Teheran and New Delhi.

It was also agreed to exchange delegations comprising various sectors of industry and commerce of the two countries for further discussions with their counterparts and identification of specific areas of cooperation and trade exchanges. There would also be close collaboration between industrial units and Export Promotion Councils in India and the Nationalized Industries Organization of Iran.

The Indian side referred to the experience acquired by India in the development and application of technology and application of technology and emphasized the scope for expanding cooperation between the two countries through transfer of appropriate technologies. It was pointed out that India could supply a wide range of engineering equipment and machinery for various industrial products ranging from the small-scale sector to the heavy capital goods sector.

The Indian side offered to transfer technology to Iran accompanied by comprehensive assistance that would include training of Iranian technical personnel in Iran as well as in India, and consultancy and management services. The Iranian side stated that technology was required not only for new projects but also for existing industrial plants in Iran.

Both sides identified several areas of industrial cooperation, such as the automotive and commercial vehicles industry, automotive ancillaries, tyres and tubes, refrigeration systems, oil refineries and petrochemicals, machine tools and electrical equipment, power plants the construction industry and establisment of industrial estates.

Cooperation was offered by India in the small-scale sector and for the establishment of industrial estates in Iran to cover a wide range of products. The Iranian side expressed great interest in collaborating with India in this field and stated that Iran attached priority to the setting up of industries in the small-scale sector.

The two sides identified broad areas for widening bilateral cooperation in the field of shipping. Iran sought Indian assistance in the manufacture and supply of a variety of dredgers, barges, launches and other port equipment, as well as spare parts for vessels of different makes, repair facilities, port development, training of port personnel and consultancy services. The Indian side agreed to extend necessary assistance, wherever possible.

Both sides agreed to strengthen the Irano-Hind Shipping Company. The Iranian side recommended that priority should be given by the company to transportation of cargoes between the two countries. It further stated that Iran-o-Hind were in need of suitable additional ships and suggested that India could assist by providing appropriate vessels on charter basis.

The Iranian side took note of the capability of the Indian Roads Construction Corporation and the Dredging Corporation of India to undertaken consultancy in specific fields.

In the railways sector, both sides agreed that cooperation would be developed between the two countries in supplies by India to Iran of railway equipment and spares, services and maintenance, and training of personnel. A specific list of requirements of the Iranian State Railways was made available to the Indian side, including rehabilitation of tracks, repair of damaged locomotives and supplies of locomotive parts. The Indian side assured immediate examination of these proposals.

The Iranian side expressed interest in cooperation with India in the fields of agricultural machinery, such as, power tillers, ploughs, threshers, combines and plant protection machinery, animal husbandry and cattle upgrading, veterinary health services, including measures adopted in India to control animal disease and sheep breeding. Iran also showed interest in cooperation in fisheries, including education and training of personnel, fish processing, fisheries survey and fisheries craft and gear.

AIDE MEMOIRE PRESENTED TO INDIAN ATOMIC ENERGY COMMISSION IN BOMBAY, NOVEMBER 16, 1970

The United States Government has noted various affirmations of Indian interest in developing the technology of peaceful nuclear explosions, as well as statements that the Government of India is not planning for a nuclear explosion.

Occasionally, in the public debate on the nuclear issue, the question has been raised as to whether, under extant agreements, the Government of India could legitimately use foreign-supplied nuclear technology or materials to manufacture an explosive device to be used in detonating a peaceful nuclear explosion.

We believe the Government of India is aware of the American interpretation of agreements under which the United States has assisted India's development in the field of atomic energy. However, we would like to reiterate the American view in the interest of clarity and to obviate any misunderstanding.

The American position, reflected in the Non-Proliferation Treaty, is that the technology of nuclear explosives for peaceful uses is indistinguishable from that of nuclear weapons, and that any nuclear explosive device, though it be intended for benign economic purposes, could also be used for destructive purposes. The development of such explosives, therefore, is tantamount to the development of nuclear weapons. Any other position would be inconsistent with United States obligations under the Non-Proliferation Treaty and the United States Atomic Energy Act.

Consequently, the United States would consider it incompatible with existing United States-Indian agreements for American nuclear assistance to be employed in the development of peaceful nuclear explosive devices. Specifically, for example, the use, for the development of peaceful nuclear explosive devices of plutonium produced therefrom, would be considered by the United States a contravention of the terms under which the American materials were made available.

The United States interprets the safeguards and guarantees provisions of the Tarapur agreement as prohibiting the use of American materials and equipment, or materials produced from such materials and equipment, for research on or development of any nuclear explosive devices, regardless of stated applications.

The contract of March 16, 1960, under which the United States sold heavy water to India for the CIRUS Reactor states: "The heavy water sold hereunder shall be for use only in India by the Government in connection with research into and the use of atomic energy for peaceful purposes . . ." The United States would not consider the use of plutonium produced in CIRUS for peaceful nuclear explosives intended for any purpose to be "research into and use of atomic energy for peaceful purposes."

Mr. GLENN. Mr. President, I reserve the remainder of my time.

Mr. PERCY. Mr. President, I ask unanimous consent that the previous unanimous consent that I received be modified so that I would be yielded such time as I need, estimated at approximately 10 minutes, to reply to my distinguished colleague from Ohio and that immediately following my comments the distinguished Senator from Idaho, Senator MCCLURE, be yielded such time as he may need, estimated to be 10 minutes, to respond.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Will the Senator yield?

Mr. PERCY. Yes.

Mr. MOYNIHAN. Would it be possible to include me in this lineup, as it were?

Mr. PERCY. Yes, of course.

Mr. President, I ask unanimous consent—on what side is the Senator speaking?

Mr. MOYNIHAN. Mr. President, I believe that I am speaking on the Senator's side.

Mr. PERCY. Mr. President, I ask unanimous consent that immediately following the remarks of the distinguished Senator from Idaho, the distinguished Senator from New York be yielded such time as he requires. His comments will be absolutely pertinent because he has served as U.S. Ambassador to India.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, first, I would like to say to my dear friend—and certainly a friend that I have valued as a colleague as well for some years—that it is a remarkable institution when we can so strongly disagree on a subject of such crucial importance to the United States and still the Senator from Illinois retains the deep respect, affection, and friend-

ship that he feels for his colleague from Ohio, Senator GLENN.

Mr. President, on April 15, 1975, the Senator from Illinois introduced a bill, the precursor of the Nuclear Nonproliferation Act, with the principal cosponsorship of the Senator from Ohio and joined by Senator RIBICOFF as the chairman of what was then called the Government Operations Committee. We have worked for well over 5 years on this issue.

I remember in the final days of the Ford administration almost reaching accord.

As a Republican, I was very disturbed that I could not deliver a satisfactory compromise from the State Department, which was under the authority and orders of a beloved friend, former colleague, and then President of the United States, President Ford.

But we went right back to work in 1977 with a new Congress and a new President and worked intimately with President Jimmy Carter and the State Department to finally reach an accord.

I would say we also worked intimately with the Senator from Idaho, sometimes to our almost utter exasperation, but always quelled, because we recognized that he is a true expert and knows a tremendous amount about the nuclear field. He proposed amendment after amendment after amendment. I think we accepted 40 amendments. In the end, really, his amendments strengthened this bill, even though at the time the managers of the bill were not too happy about accepting that proliferation of amendments. But, in the end, the procedure really worked.

This became a bill that we really believed in. The administration believed in it, the Senate of the United States believed in it, the House of Representatives believed in it. We launched on a program toward certain goals, none of which we now disagree with.

We are all in accord with the goals. We are all deeply concerned about what is happening in the world today, the chance that there could be some accident, the chance that terrorists could get their hands on plutonium and convert it to a bomb and hold hostage the city of New York or the city of Chicago. Even worse, that some nation, with some demented leader, could somehow get their hands on this material. This concerns the staff of the Senate, many of whom are on the floor tonight, who were deeply concerned, whose devotion to this cause made possible the work of a number of Senators. We are still deeply concerned, in fact, terrified at this awesome problem that the world faces.

And here we learn again, reaffirmed by stories blaring in the headlines today, that Pakistan may be heading down this nuclear course. We are hearing tonight interpretations and statements about the intentions of other countries.

I know that this is an emotional issue and we are all trying to reason it through. But I know the distinguished Senator from Ohio does get exercised, as he was a few moments ago, about the President of the United States calling Senators from Air Force One to urge that they support the shipment to India and about the Secretary of State, Ed Muskie, our former colleague, lobbying heavily.

Secretary Muskie is the only Democrat I know who has invaded the inner sanctum of the Republican Policy Committee and he urged this one issue. Ed Muskie is a respected colleague. No objection was raised by even those on Senator GLENN's side of this issue, because it is truly a bipartisan matter. His arguments were eloquent. But emotions are high and administration representatives feel deeply. They would not make those unusual moves unless they felt we were making a tragic foreign policy and nonproliferation mistake.

Senator GLENN and I do not disagree on goals. We disagree on how we can achieve those goals. Having together written this law, we now interpret the act in a different way; both of us from our own conscience that we have sought guidance from and from counsel that we have sought from many, many other areas.

I read Senator GLENN's article in yesterday's Washington Post. It was an eloquent article, beautifully written. I noted the timing of it. It was published the day before the expected vote. A vote was originally to have been taken today.

There also appeared yesterday as the leading editorial of the Washington Post an article on the same issue, on the same side as the distinguished Senator from Ohio, opposing the shipments. I thought: What perfect timing.

I had previously noticed an article or so in support of the shipments. But that was a while back—no one can remember when those appeared or even who wrote the articles. The timing was brilliant.

I contacted the Washington Post and offered my services to prepare an answer to Senator GLENN.

I was informed that no response would be published because the Washington Post had printed a number of articles in the past on this subject.

The Senator from Illinois has learned, having worked with past managements and editors of the Chicago Tribune early in my political career that only a politically endangered species would take on the leading newspaper in his State, one of the leading newspapers in his country. But I had disagreements with them for many, many years as a matter of conscience.

I have been reminded many times not to ever fight with a newspaper unless you intend to buy it. I do not intend to buy the Washington Post.

I have a lot of respected friends there, but I must take the floor of the Senate tonight to be certain that we get a little equal time, not on the editorial page but maybe in the news pages—the first page, the second page or the third page. We must get this story out.

It is not a usual thing that the Senator from Illinois would be defending the position of a Democratic President in possibly his final months in office and of a Secretary of State with whom I have sometimes disagreed. But I think their arguments are sound and their decision is in the best interest of the United States of America.

So it is little wonder that Air Force One telephones are buzzing and a little lobbying is being done. This is a crucial matter.

It may be one of the most important single decisions we have made on the floor of the Senate in many, many years.

The one thing that is fortunate about it is that we will have indications fairly soon, within a year or so, as to which side has been right because we will be able to see the progression of events that will follow.

I am really honored indeed to be joined by Senator MCCLURE on this. His contribution was so immense to this effort. We will be joined by Senator JAVITS in the morning who worked intimately on this particular measure and is the ranking member of the Foreign Relations Committee who, together with the chairman of the committee, Senator CHURCH, will argue against the resolution of disapproval; and also the minority leader of the Senate, Senator BAKER, who voted for the shipment in committee, and who I trust and hope will be speaking on this issue tomorrow.

We feel a tragic mistake could be made by the Senate which would be very much against the national interest of the United States of America and would frustrate our nonproliferation efforts.

I urge my colleagues to vote against this resolution and to allow these shipments to India to go forward. These shipments of fuel for the Tarapur reactor fulfill continuing obligations of the United States under an international agreement with India. They are consistent with the provisions of the Nuclear Nonproliferation Act of 1978 and with the overall goals of nonproliferation and they will continue a longstanding relationship with India on nuclear matters which, if we abruptly end it by denying these licenses, will only drive the Indians further away from the objectives we all seek.

I am going to leave to my distinguished colleague, Senator MOYNIHAN, a former distinguished Ambassador to India, to describe what he believes will be the reaction in India, both of the Government and the people.

My own experience in India has been fairly extensive, as my distinguished colleague knows. We have taken family vacations and holidays there for years, 25 years. We spent a holiday there last August and went into new, remote areas of India, to an island where most Indians have never gone—a penal colony. We have been to almost every area of that country.

I did take a few days from the holiday to discuss this issue with Indian officials. This was last August a year ago, not this August.

I sat and met for hours with my friend the chairman of the Indian Atomic Energy Commission. I think he is a great friend of the United States and I think he would really level with me as to what the reactions would be.

I understand that the Washington Post and 90 newspapers have editorialized against the shipment. I really do not know who the others are who have taken an opposite view, but I will give them a distinguished plaque for having reasoned

through this matter and for not having done what was emotionally easy to do. It is always easy to whack at India, because as friends who speak frankly they do not hesitate one iota to tell us any time they feel we are wrong. They do so with spirit but always hoping in the end to continue to be friends. I appreciate their dignity and their self-respect, which I know Ambassador-Senator MOYNIHAN also appreciates. He has had his tussles with them as I have had with previous prime ministers, including Mrs. Gandhi. There have been sharp differences of opinion, sharp differences when they illegally held war prisoners, for example.

I pictured for Mrs. Gandhi the reaction I had in Pakistan when 400 prisoners of war were being held I believed illegally according to international law.

What I had to say about the detonation of a so-called peaceful nuclear explosion in India to Mrs. Gandhi shortly after it occurred I would not want to repeat here, because as friends we spoke very candidly.

I would like to briefly describe what I think will be the reaction in India as I saw it a year ago August in discussions with my friends there.

We should understand that when we say no on this fuel shipment, I do not know what the Russian word is for yes, though I do know nyet——

Mr. MOYNIHAN. Da.

Mr. PERCY. They will say it as they step into the breach. We will be in the position of having a nation of 640 million people know the Soviets said yes. That population is three times the size of the United States of America, it is 50 percent greater than the combined population of the Soviet Union and the United States. Those 640 million people will know that when the United States of America said no, the Soviet Union said yes.

What are we saying no to? By supplying this enriched uranium we are in no way helping India to make a nuclear bomb even if they wanted to and had a program to do so.

In fact, many believe they are not embarked on such a program at all, after having shown that they had the technology and know-how to detonate a so-called peaceful nuclear explosion, which I felt at the time was a mistake. There is no evidence to indicate they intend to do it a second time.

But what we will do if we disapprove these shipments is remove the safeguards from all the fuel we have over there. That, I think, would be a tragedy. It could relieve them from the legal obligation they have now to safeguard all of the fuel and all of the spent fuel that they have at Tarapur. They will have enough spent fuel to reprocess, and they are under agreement with us not to reprocess. Once we give them justification to argue that we have unilaterally breached our contract they will argue they are relieved of their responsibility. They can reprocess, and in desperation they might do it.

If they do reprocess, they will get some 1,000 kilograms of plutonium, which would be enough to make about 200 Hiroshima bombs if they wanted to make them.

I do not think they want to make them. I do not think they have a program to do so. But when we dim the lights in Bombay, when we test our will against their policy position, and when the Congress of the United States overrides its own President, then I think we are going to have some consequences to pay.

Mr. President, I just ask what it would be like if, in all of the United States of America east of the Mississippi River, all the lights dimmed. Or there was a brownout and we slowed down our plants and we closed down our industry operation and we could not operate our hospitals and our schools at full energy capacity. What would happen? That is exactly what is going to happen and will happen, if we do not make this shipment, in Bombay and in that region.

The Tarapur reactor supplies some 10 to 12 percent of the electricity needs for the Bombay region, an area inhabited by 91 million people. It consumes some 25 percent of the country's available electricity. They are now running at less than 70-percent efficiency, because of the delay in our shipments and the uncertainty we have caused. Industries have had to cut back work hours and, in some cases, entire shifts have had to be eliminated. Consumers have experienced 10-percent cuts in their electricity supply already.

Mr. President, if these fuel shipments are rejected tomorrow, India will undoubtedly stretch out its supply more thinly, and consumers and industry will feel an even greater pinch.

According to the best estimates that I can get, a quick supply of Soviet fuel to replace our denial could bring up the Tarapur facility to 100 percent in a little over a year.

Do we want to dim the lights of Bombay and let the Soviets turn them back on? What impact would this have on Indian public opinion and on United States-Indian relations? And what impact would it have on every nation of the world that is a customer of the United States of America? Would they look upon us as a reliable supplier if we were to commit harakiri in this fashion?

The Senator from Illinois strongly, and I guess emotionally, disagrees.

Mr. GLENN. Will the Senator yield for a question?

Mr. PERCY. I am happy to yield for a question.

Mr. GLENN. Mr. President, I submit that the comment regarding Pakistan, setting Pakistan on a nuclear course, was in the news today. Would the Senator not agree that that is because India initially exploded a bomb in 1974? And was it not because of India's action that Pakistan embarked on their nuclear course? That was the reason stated, at least, by Prime Minister Bhutto.

Mr. PERCY. The Senator from Illinois has no way of knowing that. All he knows is that in his judgment, at the time of the peaceful nuclear explosion, I sat down with the Foreign Minister of India and the Prime Minister of India, Mrs. Gandhi, and said that if I were in the Pakistani military I would go to the highest authority in Pakistan to get a go-ahead for our program. I can remember vividly saying that. India has a very, very sophisticated economy, brilliant people. It is the fourth largest and strongest economy, I think, in the world. Certainly, India could do it. They did not have to do it to prove it.

In the judgment of the Senator from Illinois, what India really did was undercut their own defense. I have traveled with their army, their navy, their air force, and their tank corps. I am a member of the Black Hat Brigade in India. I have traveled with them up in the Himalayas. They are tough, able soldiers. They have a mighty defense establishment. What they have done is take all the advantage they had and then put themselves on an equal basis with others, in a sense.

If there is a nuclear exchange, heaven forbid, a nuclear bomb is a nuclear bomb. It does not matter how small the country is that has it. For this reason, I agree with the Senator that this was brought about, possibly, and accelerated because of India's past action which I looked upon as a mistake. I made that very, very clear to the Indian Government.

Mr. GLENN. If the Senator will yield for a further question, if we got word within the hour that India had set off another nuclear explosion—and let us say this is an air explosion; it is going to drift around the world—would the Senator then vote to prevent this sale?

Mr. PERCY. What the Senator has been saying is that there is no relationship between this shipment and their ability to build a bomb. The ability to build a bomb might be accelerated by our nonshipment, because it would remove all of their spent fuel from safeguards. They would argue we have breached the agreement and, legally, they would no longer feel bound by it.

Mr. GLENN. The Senator did not answer my question. Would he vote for this shipment if we got word that India set off——

Mr. PERCY. No; an explosion would actually violate the act and there is no equivocation about that. There is a divided opinion as to whether or not these particular shipments would in any way come under the act.

The Senator from Ohio thinks it would. The Senator from Illinois, the President of the United States, the Secretary of State, the distinguished Senator from Idaho, and the distinguished Senator from New York feel that sending these shipments would not violate the act.

I want to yield 1 minute to the Senator from Idaho.

Mr. GLENN. Let me respond first.

Mr. PERCY. To respond to this question.

Mr. MCCLURE. I wanted to respond to the Senator from Illinois exactly as he has responded to the Senator from Ohio: There is no discretion to be exercised under the Nuclear Nonproliferation Act. An explosion of any kind, under section 307, automatically terminates any further cooperation under the act.

Mr. GLENN. Then so much for the

argument that we are under a contractual arrangement, which the administration makes and the opponents of this resolution make. Because if the contractual arrangements are supposed to be valid up to this time and we would invalidate them by another explosion, so much for that argument.

Mr. McCLURE. The Senator from Ohio is confusing apples and oranges. He is talking about some events that have occurred in the past, contrasted to some events that may occur in the future. And they are clearly different events.

Mr. GLENN. No; I am talking about events in the future.

Mr. PERCY. Mr. President, out of consideration for my distinguished colleagues from Idaho and New York, the Senator from Illinois will complete his statement and I ask the indulgence of my colleagues. I wanted to interrupt several times during the Senator from Ohio's statement but I felt it best to get the statements on the record tonight. Then tomorrow, we can have debate.

Mr. GLENN. Let me apologize, Mr. President, because I thought the Senator had wound down and I rose to ask a question.

Mr. PERCY. Mr. President, I think it is quite apparent that Senator GLENN and I, all of us, are deeply concerned about the dangers posed by the proliferation of nuclear weapons in the world. As the Senator said, we coauthored the Nuclear Nonproliferation Act. I share with him the ultimate objective of assuring that international safeguards will apply to all nuclear facilities in the countries which purchase fuel from the United States. We must pursue this policy with steadiness and resolution, for we have an obligation to future generations to prevent a world in which nuclear arms become commonplace in the arsenals of nations. But we also must pursue it in a manner reasonably calculated to achieve the result. This is a debate about how that obligation can best be fulfilled.

As I have said, there is no disagreement about goals. We all share the same goal. It is how to achieve it that causes the difficulty. The 1963 U.S. Agreement for Cooperation with India on civil uses of atomic energy is an important element in the framework of existing international safeguards. In that agreement we insisted on and India accepted a system of inspections by the International Atomic Energy Agency on the Tarapur nuclear facilities.

International inspection of Tarapur was again required in a further agreement concluded in 1971. India has abided by both of those safeguards agreements and expects to continue to do so in the future. In 1974 we were able to convince India to agree to a further clarification that all fuel supplied for Tarapur, or used, or produced there, would be devoted exclusively to the needs of that facility. Without these safeguards, India would have free access to the plutonium from about 200 tons of spent fuel enough to build 200 Hiroshima-size bombs.

We in turn have an obligation under the 1963 agreement to supply the fuel needs of the Tarapur reactors. The license applications before us have been made in accordance with a reasonable schedule for such supplies. If we intend to change our obligations under this agreement, we must renegotiate this arrangement in a reasonable manner. Otherwise, India could consider the contract breached and there is no question that they would have a strong legal argument.

How can we then in any reasonable way rationalize or argue that their interpretation is wrong when our Government has said their argument is not insubstantial.

In addition, we will jeopardize the existing safeguards we do now have on Tarapur and call into question the reliability of our commitments as a whole.

Mr. President, I have personally discussed this issue with the representatives of a number of different countries, particularly during a visit this summer to the Geneva meeting of the UN Committee on Disarmament. In addition, the Foreign Relations Committee discussed with Secretary Muskie last week the views of our principal allies and other countries with a particular concern for nonproliferation. All of them agree with the President's decision to authorize these shipments in accordance with our supply agreement with India. Many of these countries support the goal of full-scope safeguards as a condition for future fuel supplies, just as we endorsed it in the Nuclear Nonproliferation Act. Indeed, the possibility of a declaration on this subject was discussed at the recent Geneva Review Conference of the Nonproliferation Treaty partners, although it never was formalized. However, the idea being discussed was to require such a condition in future supply agreements, not to insist upon it as an immediate amendment to all existing supply agreements. It is clear from our dealings with many countries on these questions that their willingness to accept safeguards and other conditions relating to nonproliferation is related directly to their perception of the United States as a reliable supplier prepared to live up to its side of a bargain.

This is where our distinguished colleague from Idaho contributed so immensely to the creation of this act and the background for it. It was his desire to see we maintained our program, we strengthened our nonproliferation posture in the world, but that we also, at the same time, became a realiable and stayed a reliable supplier.

That is what we would be destroying in this process of not making these particular shipments.

We may wish in the future to end our nuclear supply relationship with the Indian Government, according to the provisions of Nuclear Nonproliferation Act. But our continued credibility and effectiveness on these matters, as well as our continued ability to influence India's nuclear choices, depend upon our doing so in a reasonable and deliberate manner, not in the impassioned atmosphere which denial of these shipments will create. The Nuclear Nonproliferation Act anticipated the need for such an adjustment period. We must not now act as though it did not.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. PERCY. I am happy to yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I have cleared this request with the distinguished minority leader, with the distinguished Senator from Ohio (Mr. GLENN), and with other Senators on this side of the aisle.

I understand the distinguished minority leader has cleared this with the Senators on his side of the aisle, and he is here to speak for himself.

ORDER OF PROCEDURE TOMORROW

Mr. President, I ask unanimous consent that the Senate resume its consideration of this measure tomorrow morning at 10 a.m., with the Senate coming in at 9:45 a.m., and that the vote occur on the adoption of the resolution at 2:45 p.m. tomorrow, and with the time on tomorrow equally divided among the four principals as designated today.

Mr. BAKER. Mr. President, reserving the right to object, I thank the majority leader for adding the clarification on the allocation of time on tomorrow. That, of course, accords exactly with the proposition we placed before the interested Senators on this side.

I find it to be an eminently satisfactory arrangement. I express my appreciation to the majority leader for putting the request and, indeed, I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Illinois for yielding.

Mr. PERCY. Mr. President, the Nuclear Nonproliferation Act prescribed a grace period in section 128 during which the supply relationship of the United States and India was to continue without the requirement of full-scope safeguards. The resulting confusion in interpreting section 128 results from the inclusion of two different dates in that section. The first is clear enough; there is an 18-month deadline for applications to be filed. If a country does not meet this deadline, its applications will not even be considered unless the full-scope safeguards requirement is met.

But I simply cannot agree with those who interpret the second date as an absolute cut-off, regardless of a country's compliance with the first deadline. Under this interpretation, the grace period of the act magically disappears. India complied with the only deadline over which it had any control, in accordance with a reasonable schedule of shipments to supply the needs of Tarapur. The first application in question was filed nearly a year in advance of the deadline. How can we reasonably interpret the law so that such an application does not fall well within the grace period we intended to create? Senator GLENN argues that the legislative history of the act supports his interpretation of an absolute, 2-year deadline—a guillotine-style cut-off. I have considered his arguments and the evidence he supplies, and I simply do not think he is correct, nor does the President of the United States, nor does the

Secretary of State, nor do their respective legal authorities and advisers, nor do many of my distinguished colleagues on the floor of the Senate, the distinguished minority leader, the distinguished junior Senator from New York and former Ambassador to India, and the Senator from Idaho who was so much a part of making this act into law.

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today.

Mr. PERCY. I thank the majority leader.

By Senator GLENN's interpretation there would be no justification for having the first application deadline at all.

If I had ever thought that would be the interpretation put in, I would have gone right back to my distinguished friend (Mr. GLENN) and reasoned with him as to why we put two dates in there if we really did not mean the first date.

It would serve no purpose if the 2-year cutoff date for all fuel shipments was to apply regardless of the time of application or the circumstances for shipping delay.

Instead, I think the purpose of the second date is clear from reading the best source of legislative history there is—the Senate committee report itself. Senator GLENN quotes the report to support his own interpretation, but in my judgment it actually supports the opposite conclusion.

I would like the attention for a moment of my distinguished colleague from Ohio (Mr. GLENN). I would like to read the section of the report which both of us approved and supported at the time, because this report became then an interpretation of the law. The report simply interprets the significance of the second date, which is crucial. I quote from the report:

> In defining what exports will be covered by the additional criterion, the bill refers to an application which was filed after 18 months from enactment, and to any application filed prior to that date for an export which would occur at least 24 months after enactment. The reason for this provision is to ensure that a large number of applications covering future exports will not be filed in the 18th month to avoid this requirement. However, the 6-month lagtime is allowed for licenses legitimately filed prior to the 19th month where the actual shipping process is a lengthy one. The NRC should also not permit any other highly unusual proposals which are intended to circumvent this statutory provision.

In short, Mr. President, the purpose of having a second date at all was to prevent unreasonable circumvention of the first deadline, not to render the first deadline itself totally meaningless, as we are trying to do by cutting off this shipment.

I do not believe that the Senator from Ohio's interpretation is fully consistent with the legislative history of the NNPA as it finally passed Congress.

I believe very strongly that we must test this act at some time in the future. We must prove that we have the will and the determination to put it into force. But I dislike and will fight any effort to wage our battleground where we have such a weak argument.

Why would we want to wage battle on such weak ground? This is no place to draw the line. We will not have sympathy from anyone, other than perhaps the Soviet Union, which might, at this particular time, like to step into the breach. If we say "No" to the Indian people and the Indian Government, the Soviets will say, "Yes," and they will move heaven and Earth to see that the electricity shortage and inconvenience that might result are eradicated as quickly as possible, even if it has to come out of the hides of their own energy program. Whatever they have to do, they will do, to prove that they are reliable when we are not.

That is the tragedy of it, and that is why the President of the United States is using the telephone on *Air Force One*, when he has other things on his mind. This bill and this debate are on his mind. He sees the power of the opposition he has against him in the editorial pages, and he wishes others would understand it as he feels he understands it and the State Department understands it. The Arms Control and Disarmament Agency is in strong disagreement with this resolution of disapproval that is before us and supports the shipment.

Mr. President, this issue of deadlines is not merely a contest of contending legalisms or an esoteric debate among lawyers. I am not a lawyer, nor is JOHN GLENN and no one is more impatient than I with legalistic arguments. This issue, however, goes to the credibility and consistency of our policy as a whole. Either we created a grace period which other countries can count on or we did not. Retroactive interpretations which revoke such a time period are simply not defendable—in law or in diplomacy or in commonsense.

Finally, Mr. President, I see no justification for denying these shipments on grounds of foreign policy. Much has been made of India's independent views and of actions taken in recent months with which we do not agree. I do not minimize the significance of such differences. But I cannot accept the conclusion that these differences justify us in writing off the Indians as beyond the pale, oblivious to our interests, or inaccessible to our influence. As the world's largest democracy and a major Asian power, India is a friend with whom we share many values and interests. It is also a complex and varied country where the balance of political power and public opinion is capable of large and fluid changes. Our actions may have much to do with India's own choices in the future.

It is in our best interests that India continue to be nonalined and independent.

The Soviet Union is trying by every means, including military force in Afghanistan, to increase its power over nations in that region. In this period following the invasion of Afghanistan, we cannot afford a major prolonged irritant in our relations with the largest and most powerful nation in South Asia, particularly if that can be avoided by the opportunity for more careful discussion.

I leave to the Senator from New York (Mr. MOYNIHAN), a former Ambassador to India, to interpret the feelings as he believes they would exist in India.

Even after a huge arms sale in concessional terms was made between the Soviet Union and India, India stood its ground and abhorred the action of the Soviet Union in Afghanistan.

What kind of test are we putting them to? What kind of position are we forcing them into, when they are on the same side of the Afghanistan issue as we are? They are acting in their own interest, because they do not want to see the Soviet Union intervene militarily in Afghanistan, any more than they wanted to see the People's Republic of China intervene as it did years ago in their own area.

So I believe that we are putting them in a terrible position, and needlessly so, because in the end it frustrates the safeguards we now have with our agreements with India; because it will make them null and void by our own unilateral action.

In pursuit of our nonproliferation goals, we must not be blind to the Indian view that India has fulfilled her side of the 1963 contract and has met the deadline for the grace period established in the Nuclear Nonproliferation Act.

We msut not be blind to the consequences of a denial of fuel shipments, which include possible Indian dependence on the Soviet Union for nuclear fuel as well as a serious rupture in the United States-Indian relations.

I urge my colleagues to vote against the resolution of disapproval, in our own national interest and in the interests of preserving and protecting the Nuclear Nonproliferation Act and everything we are doing to make that policy a sound policy as we move toward implementing its various provisions.

To fail to live up to our contract, to wage battle on this very weak ground, I believe would be a tragic mistake, the consequences of which we will be paying dearly time and time again. We may never erase what can happen, what might happen, in the judgment of those who know India best.

They are rightfully a proud people. Because they are sophisticated, they are the managers of the largest democracy on Earth. For us, at this particular stage, to have a Communist country step up and be the friend of India, when the greatest democracy on Earth, the most powerful democracy on Earth, turns its back on its friends in India, I believe the consequences would be tragic.

Mr. President, I am delighted at this time to have the floor taken, in his own right, by the distinguished Senator from Idaho (Mr. MCCLURE).

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. MCCLURE. I thank the Senator from Illinois for yielding this time.

Mr. President, I intend to be relatively brief tonight, but I do want to make some comments for the record and to put in the RECORD some materials to supplement the remarks I am about to make.

Mr. President, I strongly oppose Sen-

ate Concurrent Resolution 109, which would disapprove the President's decision under the Nuclear Nonproliferation Act to export nuclear fuel to India. My strong opposition to the resolution is a result of my conclusion, after a good deal of review and analysis, that the administration has made the right decision pursuant to—and I emphasize "pursuant to"—the Nuclear Nonproliferation Act in approving the nuclear fuel exports to India.

I am convinced that any objective review and analysis of the decision by my Senate colleagues will lead to the same conclusion—we simply must proceed in the national interest of the United States to export this nuclear fuel to India.

Let me state categorically at the outset of this discussion that approval of these exports by the administration, and hopefully by the Senate, does not, I repeat does not, constitute a dismantling of the Nuclear Nonproliferation Act. It does not waive or override the Nuclear Nonproliferation Act. It does not override the Nuclear Regulatory Commission. It does not gut the Nuclear Nonproliferation Act. And, it does not reverse our past positions under the act with India or any other country. All of these assertions have been made or suggested by the Washington Post and other supporters of disapproval. And, all of these assertions are flat wrong. Approval of these exports is completely consistent with the letter and the spirit of the Nuclear Nonproliferation Act and we should approach this debate with that thought squarely in mind.

Let me amplify this point for a moment, before addressing the export decision directly. As many of my colleagues know, the Senate passed the nuclear nonproliferation bill in February 1978, and that bill was passed by the House without amendment several days later. The Senate-passed bill thus was enacted without change as the Nuclear Nonproliferation Act. In fashioning that final Senate bill, over 40 of my amendments were adopted on the floor. Senator JOHN GLENN, Senator CHARLES PERCY, and I spent many long hours and Senator PERCY has made reference to the number of hours that we spent in the amending process, but before that in the discussions concerning the act—in excess of a dozen hours—personally negotiating the final form of the bill prior to Senate passage. Consequently, I am completely comfortable in declaring that such assertions by the Post and other supporters of disapproval are flat wrong.

The Senate bill enacted into the NNPA clearly mandated a multistep process, whereby the executive branch considers an export and, if it approves, sends it to the NRC. The NRC then reviews the license against a set of specific statutory criteria. If all the criteria are satisfied, the NRC approves the license. If, however, the NRC is unable to determine that all the criteria are satisfied, the President makes the decision on the statutory basis of whether stopping the export "Would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security" of the United States. The President's decision to approve an export on that basis is subject to congressional veto by concurrent resolution. Beyond that, the NNPA even makes specific provision for subsequent periodic reviews (annually, or less often in some cases) of such Presidential approvals, when Congress does not disapprove.

All of us who were involved in the negotiations on the Senate bill anticipated that that specific process in the bill would be applied to negotiations with India over "full scope" safeguards, as well as to our European allies in Euratom, and other allies. In fact, the same process was triggered unnecessarily for an export to India in the summer of 1978 by an unfortunate 2 to 2 deadlock on the NRC over interpretation of the bill, right after passage. All of the Senators involved in the negotiations on the bill, including Senator GLENN, supported the President's approval of that export to India. It was quite clear to us, as well as to the administration negotiators on the bill, Ambassador Gerard Smith and then-Deputy Under Secretary of State Joseph Nye, that we would have to negotiate over the long term with India and other nations on the issue of full scope safeguards, and we provided the process for such negotiations.

We understood then quite well that the United States unilaterally was imposing by domestic law new requirements for exports under existing agreements for cooperation and contracts with other nations. The Presidential approval mechanism was and is the key to a continuing negotiation over time for the several criteria in the bill, including full scope safeguards. The President, consequently, has exercised his authority exactly as the law envisioned and the principal Senate negotiators fully anticipated. That is why I feel so strongly that assertions of waiving the act, or overriding the act of the NRC, or gutting the act, or reversing past policies are just flat wrong and every Senator should know that fact.

Let me now review briefly how the process I have described brought us to this debate today. The United States and India have been engaged in nuclear cooperation for several decades. One of the cornerstones of that cooperation is a 1963 agreement for cooperation and a 1966 contract whereby the United States agreed to supply fuel for the Indian nuclear power reactor located at Tarapur, which provides electricity for Bombay. Under the agreement and contract, the United States sells the fuel which is fabricated by the Indians into fuel rods for the reactor, and India applies international safeguards to the reactor and facilities involved in the fuel use.

Since the 1974 explosion of a so-called peaceful nuclear device by the Indians, the United States-Indian fuel supply relationship has been the subject of continuing administrative and legislative attention. To date, however, the United States has never denied a requested export of fuel destined for the Tarapur reactor under that agreement and that contract, although there have been some significant delays in actually scheduling certain specific exports.

The enactment of the Nuclear Nonproliferation Act in March 1978 rigidly codified a series of statutory export criteria and a procedure centered around independent regulatory review of those criteria by the Nuclear Regulatory Commission, as I discussed earlier. The 1978 act included an initial series of export criteria, which were effective upon enactment and which largely codified, or expanded somewhat, the administrative criteria then used by the executive branch and the NRC under a less legally formalized export procedure. The approval or disapproval procedure I discussed earlier applies to these export criteria in the NRC, the White House and the Congress. One of those export criteria requires assurances from the importing nation of the application of international safeguards to the imported fuel and in its use thereafter.

A serious and unfortunate misinterpretation of this requirement in the summer of 1978 by two NRC Commissioners led to a 2-to-2 tie on the NRC and the resulting need for the Presidential approval of the then pending export to India which I mentioned earlier. Both the House and Senate, the House by record vote, supported the President's decision to approve that export. That was a clear case where the NRC mistakenly did not determine the criteria as satisfied and the President pursuant to the law applied the statutory test to approve the exports. Last year, under the same criteria, but after strong congressional criticism in 1978, the NRC approved a subsequent fuel export to India.

Under the act, an additional export criterion, the "full scope" safeguards criterion, became effective for all applications filed 18 months after enactment. This criterion is applied procedurally exactly as the other, already effective criteria are applied. The executive branch presents its judgment on the criterion in supporting approval of an export. The NRC independently must review the criterion and, if it is met, approves the license. If the NRC determines it is not met, then the President reviews the export to determine if "failure to approve the export * * * would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security."

If the President determines that failure to approve the export would have that effect, he is authorized by the act to approve the export. It is important to note that this is the same test applied by the act for Presidential approvals of exports which the NRC does not approve because of the other criteria effective upon enactment.

The two pending licenses for India were timely filed under the act before the full-scope safeguards criterion was effective. The NRC in another curious legal interpretation of the act concluded that the full-scope safeguards criterion had to apply to the two exports, and since full-scope safeguards quite clearly are not now in place in India, determined that it could not approve the exports. The State Department argues persuasively that the NRC again was wrong in its interpretation of the act. I am persuaded that the State Department is correct, since the Congress—particularly the Senate—had agreed after a great deal of consideration and debate to provide a full, so-called grace period to all of the nations, including India, who did not then have full-scope safeguards.

We similarly provided a full grace period for our European allies in Euratom under the immediately effective export criteria. And, of course, as mentioned earlier, we all realized fully then that the application of full-scope safeguards would take serious and tough negotiations over an extended period of time. That is exactly why we did not want to trigger the full-scope safeguards criterion prematurely.

The President, based on the State Department legal opinion, decided that full-scope safeguards did not apply and proceeded to approve the export licenses on the basis that failure to do so would be seriously prejudicial to our nonproliferation objectives and would jeopardize the common defense and security. Supporters of the disapproval resolution assert that the full-scope safeguards do apply, and consequently that the President has made a serious error in approving the export in the absence of India's agreement to apply full-scope safeguards. They apparently argue that the Senate should disapprove the President's action primarily on that basis. I must disagree on both points.

The State Department legal opinion sets out the clear intent of the Senate and the Nuclear Nonproliferation Act, as I discussed earlier. The President's approval of the exports under the immediately effective export criteria, using the statutory test in the law, deserves the support of the Senate. It is consistent with the intent of this body in the act, and it is consistent with the 1978 Presidential approval and interestingly the NRC's approval of exports to India last year. In short, the NRC should not have bucked these exports to the President, but should have approved them as they did last year. These exports should not be triggering the full scope safeguards debate at this time and they should be approved.

The key decision of the Senate is and should be, as the law itself provides, whether stopping the export "would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security" of the United States.

I am convinced that the President has made the correct decision on that basis. Stopping the export will unilaterally breach our contract and our agreement for cooperation, raising again questions about our position as a reliable supplier. It will free India from continued application of international safeguards on U.S.-supplied fuel, undoubtedly leading to reprocessing of the weapons-grade plutonium in our spent fuel. It will end the dialog with India on any extension of safeguards to other facilities or other advances of nonproliferation policy. It will seriously alienate a major regional power on a most sensitive issue at a critical time for the region. It will probably end any hope of obtaining Pakistan's restraint in its advanced nuclear efforts in enrichment and reprocessing. And, in return, it will gain little for U.S. policies or positions with other nuclear suppliers or consuming nations.

Even if the full-scope safeguards criterion was triggered for these exports—which I am convinced it clearly is not—the President and the Senate would be faced with the same statutory test. We also would be faced with an almost identical record. And, speaking candidly, I am convinced that today we would be faced with an identical analysis in terms of the prejudice to the achievement of U.S. nonproliferation objectives and jeopardy to the common defense and security. That does not mean that we never will attempt to obtain full-scope safeguards from India under this act or under U.S. policy otherwise. But it does mean that at this point in the evolution of the Nuclear Nonproliferation Act—at this point in September 1980—the application of the full-scope safeguards criterion as a guillotine, cutting off nuclear cooperation with India, would categorically prejudice achievement of our nonproliferation objectives, and would seriously jeopardize the common defense and security of this Nation. We simply must continue the dialog with India in the context of continued cooperation for all the reasons stated earlier. We cannot and must not allow that guillotine to fall on cooperation with India, on the act itself and on the vital interests of the United States.

Mr. President, I urge the defeat of the resolution.

Mr. President, some reference was made earlier by the proponents of the resolution of disapproval concerning the widespread editorial support for the resolution of disapproval.

Mr. President, since the issue of so-called grassroots support for denying this export of nuclear fuel to India has been raised by supporters of the disapproval resolution, I think it is important to examine the nature of that grassroots support. I have had staff review the editorials that have occurred throughout the Nation, and we find some very interesting facts.

Without having been able to do a thorough examination of all the editorials, we have discovered that four separate editorials have appeared in two newspapers each in widely separated parts of the country, with no common ownership of the two newspapers printing a particular editorial. No credit was given by either paper to the other for having printed the editorial first. In fact, in some cases the editorial appeared in both newspapers on the same day.

Many other editorials have a common thread of organization and phraseology, even though they are not word-for-word repetitions of each other. All of this evidence points to the distinct prospect that a small cadre of individuals have worked very hard at developing suggested editorial pieces and at trying to secure their publication in the newspapers across the country.

This can hardly be characterized as a public outcry based on soul-searching by the editorial writers of America after having thoroughly reviewed the arguments on both sides of the issue. Rather, it takes on the appearance of a carefully orchestrated effort by one side of this debate to influence the political opinion of the Congress through hometown newspaper editorials.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. McCLURE. I am happy to yield to my friend from Ohio.

Mr. GLENN. Is the Senator implying that was done by us? I had nothing to do with anything like that.

Mr. McCLURE. Mr. President, I do not make any implication. I do not know who did it. I know the Senator from Ohio does not fly *Air Force One* although he is capable of doing it. Nor does he make phone calls from *Air Force One*, at least not during this current flight of *Air Force One*.

So I do not know who did it, I say to my friend from Ohio.

Mr. GLENN. Mr. President, I think the implications of what the Senator has said would suggest there was some small group working around the Senate hearing or someplace that has been sending out identical editorials. I suggest that perhaps the second paper to publish was guilty of copyright infringement more than any organized effort.

This is the first I ever heard of anything like this in any shape or form whatsoever, and to my knowledge no one in any way involved with this has sent out any editorial comment except 2 op-ed pieces that I wrote myself, one in the Baltimore Sun a couple of weeks ago and one in the Washington Post yesterday.

Mr. McCLURE. I will accept the Senator's profession of innocence concerning complicity in any intent of telling the editorial writers of various newspapers to do what editorial writers of various newspapers did.

But for the Senator to suggest that maybe one of them repeated the editorial of another one flies in the face of possibility when they both appear on the same day. I think the Senator would stipulate to that.

Mr. GLENN. If the Senator will yield a moment, there once was a sign on top of someone's desk in an editorial office that I remember that said, "Literary genius is really selected plagerism at work." Perhaps that might be applicable in this instance.

Mr. McCLURE. I do not know whether it was plagiarized or not or how it got there. I am only pointing to the facts and I am pointing toward the possible conclusion that can be drawn from the facts.

The Senator from Ohio says he does not know of any organized activity. I suggest that he does not know of any organized activity. If he wants to plead innocent he can plead innocent. I make no accusations to the Senator from Ohio. It would be improper for me to do so. I would not do so personally. I certainly do not know who did it. I can only look at what was done and make certain inferences from it.

The Senator knows the old story. If it walks like a duck, swims like a duck, lays

duck eggs and quacks like a duck, it may be a duck.

I just have to believe that there is more coincidence involved in the events to which I have referred.

These can hardly be characterized, however, as a public outcry based on soul searching of the editorial writers of America, after having thoroughly reviewed the arguments on both sides of the issue.

Mr. GLENN. Mr. President, will the Senator yield for another question?

Mr. McCLURE. I yield.

Mr. GLENN. Is the Senator inferring that the people who published the editorials did not believe what they were publishing, that they lied in their editorials?

Mr. McCLURE. The Senator from Ohio has used those terms. The Senator from Idaho did not.

Mr. GLENN. What is the point then? The point, I suppose, is there was some organized effort of which I know nothing, of course, to send this information around the countryside.

But I would not question the motivation of the people who published this in any event, wherever it came from. If they published it apparently they believed it, and they are entitled to.

Mr. McCLURE. The Senator can put whatever inference on the facts he may wish to put on it. As I tried to say before, I cannot interpret the events for the Senator from Ohio. If he professes ignorance, he is ignorant. I will not quarrel with him on that subject. I do not know what he knows or does not know how it happened.

All I am trying to say is if editorials appear on the same day in widely spread newspapers across the country and which use the same kind of phraseology and the same kind of arguments, there must have been some common thread that tied the two together, other than mere coincidence. That is all the Senator from Idaho has said, and that is all I intended to say, and I, as a matter of fact, do not know who it might have been who may have done that.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. McCLURE. I would be happy to yield to my friend from Ohio.

Mr. GLENN. Tomorrow morning could I be provided with copies of examples where they appeared the same day in different places, because I would like to follow up?

Mr. McCLURE. The Senator has all the editorials. The Senator made the allegation. He had, what was it, 90 newspapers? I would suggest that the Senator look at his own files.

Mr. GLENN. We will have staff work on this.

Mr. McCLURE. The Senator does not mean to be uncooperative.

Mr. GLENN. I thought the Senator was making a point and I was only seeking his assistance to pursue his point because he thinks this is a big deal.

Mr. McCLURE. Let me say to my friend if he does not think it is a big deal, he certainly is saving a lot about it.

Mr. GLENN. The allegations implied by the Senator from Idaho are very serious, that we were involved in skulduggery that nobody knew about. It is preposterous. It is not true.

Mr. McCLURE. The Senator is too sensitive. I did not give the Senator that much credit.

Mr. GLENN. I am sensitive when the Senator implies that we had some motives we did not have.

Mr. McCLURE. I did not, the Senator from Ohio had done it. I did not. He jumped to that conclusion. If, as a matter of fact, he is as pure as the driven snow——

Mr. GLENN. As pure as the driven snow.

Mr. McCLURE. I am glad to accept his word. He professed ignorance of anything about it. I accept that he is ignorant of anything about it.

I would suggest if he wants to corroborate or dispute any of these things——

Mr. GLENN. We will check it ourselves.

Mr. McCLURE. That he look at his own files and determine whether or not what I have said is true or is not true. If, as a matter of fact, it is no big deal, I suggest that the Senator from Ohio leave it as no big deal.

If, as a matter of fact, the Senator from Ohio thinks it is a big deal, then we will make a big deal of it. But if, as a matter of fact, it is not, then I suspect it will be dropped at this point. If not, we will hear more about it tomorrow.

Mr. GLENN. I would not be surprised.

Mr. McCLURE. Mr. President, I do have to conclude, however, on the basis of the limited research we have been able to do, and I do not have any more staff to do that than does the Senator from Ohio, and he was earlier remarking about the inequality of firepower between *Air Force One* and the chair that he flies here in the Senate, but I do believe that any analysis of the evolution of editorial commentary suggests the appearance of a carefully orchestrated effort by one side of this debate to influence the political opinion of the Congress through hometown newspaper editorials.

Mr. President, I ask unanimous consent that a memorandum which I had prepared that analyzes some of the arguments of the Senator from Ohio in a factsheet prepared and distributed to Members of the Senate be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEMORANDUM

Mr. President, my colleagues have been recipients of a fact sheet prepared by Senator Glenn regarding the uranium shipments to India. While there are many facts in this document, I must point out to my colleagues that the facts are selective, that they are in some cases misleading, and that they by no means constitute a balanced set of facts that both sides in this debate could agree upon. Rather, my good friend, the Senator from Ohio, has tried to make a case, in the best tradition of the legal profession, to win independent of the merits of the arguments. I have prepared a rebutting comment which should be weighed in considering many of the arguments put forth by Senator Glenn in his fact sheet. They are detailed below:

"India used U.S. heavy water in manufacturing materials for her nuclear explosion in 1974, despite U.S. formal communication 4 years earlier, that such use would violate U.S. understanding of sales contract."

The Indian use of the U.S.-supplied heavy water has nothing to do with the Tarapur reactor, which is under international safeguards. The heavy water was purchased by India under a totally separate cooperative agreement and contract. The facility using the heavy water was supplied by Canada and was not under international inspection.

"India has refused, during two years of negotiations, to put her indigenous nuclear facilities under safeguards and still intends to pursue nuclear explosive development when in her 'national interest.'"

During much of the last two years there has been turmoil in the Indian government with Desai, an interim government, and now Mrs. Gandhi being successively in power. To cut off the fuel for the Tarapur reactor while there is still an opportunity to negotiate a full-scope safeguards amendment is shortsighted The Indian government is not the only foreign government which has been reluctant to renegotiate cooperative agreements due to the unilateral requirements of the Nuclear Non-Proliferation Act (NNPA). The Congress was warned in enacting this law that it would meet with wide resistance due to its retroactive applications to existing agreements and contracts.

"India recently demonstrated the capability of developing an intermediate range ballistic missile. In a parliamentary debate on the Indian defense program, some members argued in favor of moving ahead to develop nuclear warheads."

The Indian efforts in launching satellites are civilian in nature with no military support or involvement. It is the opinion of experts that it would not be easy to convert the satellite-launching rocket into an intermediate range ballistic missile. The fact that some members of any parliamentary body advocate any bizarre action should not be construed as likely to be the prevailing mood of the body.

"NRC refused to approve fuel licenses by unanimous vote because U.S. law requires India to accept full-scope safeguards in absence of Presidential waiver or override."

The NNPA requirement for full-scope safeguards became applicable to these exports only because slow processing of the export licenses caused a new statutory criterion to become effective.

"India has stockpiled enough fuel to last her until at least February, 1982. The present shipments are not needed to fulfill U.S. obligation under Agreement for Cooperation to provide only enough fuel for the "efficient and continuous operation" of the reactors at Tarapur."

The 18 months remaining for fuel supply will be consumed if the current two-year period for processing of the export application filed in September, 1978, is indicative of our expedited procedures. The fuel fabrication facility in India is nearly out of fuel to manufacture, and the work force will have to be laid off. The agreement by Ambassador Saxby in 1976 established a schedule for shipment of fuel based on the needs of the Tarapur reactors.

"Fuel contract pursuant to Agreement provides for all exports to be subject to 'applicable laws, regulations, and ordinances of the United States.'"

The meaning of the contract language was the subject of an exchange of letters between the U.S. and India for clarification. It was not intended by our government to encompass a sweeping new law, like the NNPA.

"American Law Division of CRS agrees that U.S. would not be in breach of Agreement if these fuel shipments are withheld."

The CRS opinion was the work of only one lawyer and does not represent the collective thought of the American Law Division.

"India is attempting to force the U.S. into sending shipments by threatening to reprocess spent fuel from previous shipments to obtain weapons-usable material (plutonium) and possibly to abrogate safeguards on previous shipments. (Both acts would be violations under Agreement.)"

The Indian government would view a U.S. failure to approve the exports as a breach of the Agreement, and thus any subsequent actions by them to use the spent fuel could not be, in their view, a violation of a vitiated Agreement.

"India's foreign policy orientation will not be significantly altered by withholding shipments at this time. India has signed a $1.6 billion arms deal with the USSR; did not support the U.N. resolution on the Soviet invasion of Afghanistan; has signed a trade pact with Iran that helps render our boycott ineffective; has recognized the Soviet-backed regime in Kampuchea. (See attached article on India-Iran agreement from the Statesman (Delhi)).."

These statements imply that the Indian Government is irretrievably aligned with the Soviet Union. However, the following point from the fact sheet shows the efforts of the Indian Government to maintain a balanced, nonaligned foreign policy as they have for many years.

"U.S. and Western European ties to India go far beyond nuclear trade. For example, the U.S. will send 3,720 TOW anti-tank missiles to India and is providing more than $130 million in economic aid."

"Sending fuel to India at this time will undermine the Nonproliferation Treaty (whose non-weapon state signatories receive nuclear assistance only under full-scope safeguards) and will further damage efforts to dissuade Pakistan from pursuing its own nuclear explosive program."

The Indian export issue was not a source of concern to nonweapon state signatories at the recent Nonproliferation Treaty meeting in Geneva. The U.S. has already severed all nuclear aid to Pakistan, which only uses the nuclear technology for research purposes. India uses the Tarapur reactors as a major source of electricity in the Bombay area.

"Public opinion in the U.S., including overwhelming editorial opinion, is strongly opposed to these shipments. (See attached editorials from New York Times, Washington Post, and Wall Street Journal)."

The extensive set of editorials provided to the Members shows some clear patterns indicating a substantial effort at initiating editorials was made by the opponents of the uranium shipments. The Washington Post refused to print a guest opinion or a letter-to-the-editor expressing the views of supporters of the export.

"Cut off shipments at this time will demonstrate U.S. seriousness concerning nonproliferation, and will show good faith with those other nations which have cooperated with our nonproliferation policy."

The U.S. has badly wounded its relationships with other countries due to its unilateral, retroactive nonproliferation policy. If we deny these exports, it will in all likelihood be highly counterproductive to our nonproliferation objectives in India and elsewhere.

"U.S. nonproliferation policy will be reviewed next year in a massive GAO report capping a 3-year study. The President and Congress can review the Indian situation again in that context, if Congress disapproves the present shipments."

The GAO study was commissioned by the NNPA and may not provide any great enlightenment on the impacts of the NNPA on foreign policy and proliferation.

The PRESIDING OFFICER. The Senator from New York.

Mr. McCLURE. I wonder if my friend from New York would yield for a moment. The Senator from Ohio has asked for some of the editorial comment as an example.

I have two editorials in my hand which I ask unanimous consent to be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Pittsburgh Press, May 12, 1980]

BOMBS FOR INDIRA

President Carter is terribly mistaken to send fresh shipments of enriched uranium to India despite Prime Minister Indira Ghandi's haughty refusal to pledge not to test more atomic bombs.

India diverted Canadian uranium and American heavy water into its first test of a nuclear device in 1974, which it lyingly described as a "peaceful nuclear explosion."

To its credit, Canada promptly stopped supplying India with uranium, a proper act that Washington lacked and still lacks the courage to take.

Carter has made nonproliferation of nuclear weapons a keystone of his foreign policy. He has negotiated for years with India, seeking international inspection of its reactors to guard against uranium being used for military purposes.

Recently Mrs. Ghandi declined to rule out further nuclear explosions, and Carter folded. Last week he decided to ship India 40 tons of reactor fuel which, if misused, could practice quite an atomic arsenal.

The administration says it acted to prevent a "political breakdown" with India in the wake of the Soviet invasion of Afghanistan. The argument is full of holes.

First, Mrs. Ghandi acted as an apologist for the invasion and isn't going to do anything against it. Second, Pakistan and China are the administration's hopes of stopping further Soviet expansion of Southwest Asia—and both are upset by India's growing nuclear potential.

Carter's mistake also will heighten the determination of Pakistan, India's traditional enemy, to proceed with its bomb building, something Washington has been trying to head off for years. Hello, nuclear proliferation.

In addition to fostering an atomic arms race on the subcontinent, Carter has shown the world an example of appeasement. Mrs. Ghandi looked him in the eye, uttered the diplomatic equivalent of "bug off" and got what she wanted.

Others will take note. This kind of foreign policy helps explain why American embassies are sacked, American diplomats are kidnapped and murdered and America is the laughing stock of foes and the despair of allies.

Mr. McCLURE. Mr. President, I would just refer to two editorials, one appearing in the Pittsburgh Press on May 12 entitled "Bombs for Indira," starting out with the words "President Carter is terribly mistaken to send fresh shipments of enriched uranium to India," and so on. Also an editorial in the Cincinnati Post dated the same date entitled "Bombs for Indira," starting out with the words " President Carter is terribly mistaken to send fresh shipments of enriched uranium to India," and so on.

Mr. GLENN. Mr. President, will the Senator from New York yield briefly?

Mr. MOYNIHAN. I will yield briefly. I have been here for an hour and a half patiently waiting to talk about the issue.

Mr. GLENN. I will be very brief. I will check this between now and tomorrow morning, but I believe the Pittsburgh Press is a Scripps-Howard newspaper. I am not certain of that, but I will check it in the morning. I just came across this when I started to look at this. I think they are both in the same newspaper chain, but I will check it.

Mr. MOYNIHAN. Mr. President, the hour is late and the Chamber all but empty. I would like it recorded that this is not evidence of any lack of interest in our body on the issue before us but of the fact that a dear colleague who will soon be departing is being honored. Understandably that has drawn away some who might otherwise be here.

Whilst my friend, the distinguished Senator from Ohio, is here, let me take this opportunity that his unfailing courtesy and attentiveness always provide just to respond to the point he made toward the end of his marvelously comprehensive and persuasive opening statement.

The distinguished Senator from Ohio said that our decision on Senate Con-

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[From the Cincinnati Post and Times-Star, May 12, 1980]

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current Resolution 109 would be a test of whether our nonproliferation policy is valid.

I would wish to offer him the thought that to my way of thinking—and it can only be that—the real question about our nonproliferation policy is whether it is possible. In particular, whether it is possible with respect to the Republic of India.

I am going to offer you the contention, which is not capable of proof but no more than a contention, that no, it is not. I will present the argument that this was just as clear when we adopted this legislation as it is today. It was clear on April 7, 1977, when the President spoke about the policy in his press conference. At that time it was the institutional duty of his advisers to tell him, "this will not work; in three and a half years you will be in Air Force One calling persons, asking them to vote in a way that clearly is not anticipated by those who will vote in favor of the legislation you are proposing. That difficulty will go on until the 1990s, unless there is a rupture with India on this matter. If that rupture is not desirable in the future, it is not desirable now. Therefore, you should not be advocating this policy."

The Senator suggested there were matters that the Indians would think more important than this. He mentioned trade, he mentioned some arms shipments, and on other occasions he has mentioned a trickle of aid.

I would have to say to him that this is in no sense what will appear to be at issue with the Government of India and the Indian people. In no sense will the issue of nuclear power appear to be what is at issue.

Instead it will appear to the Indians as a question of whether or not the Republic of India is sovereign; whether or not statutes enacted in Westminster still are to be enforced in the subcontinent of India, with this body as a successor legislature to that of Westminster.

The Senator from Idaho has put it very clearly that by adopting the Nonproliferation Act (and I quote him from memory, but I think sufficiently accurately) "the United States imposed unilaterally and by domestic law" new conditions on our understanding with India.

Now, for the Indians, in the aftermath of their experience, to accept the possibility that some other country could impose unilaterally and by domestic law conditions on their conduct is something they will not do. They will not do it.

By this statute, we impose upon our foreign policy a condition impossible to obtain. That is not the mark of mature statesmanship and the consequences will be with us a long time.

Unless I am mistaken, Mr. President—and it would hardly be the first time—the Nonproliferation Treaty represents the first conscious effort in the history of international law to impose a regime of inequality among nations in the world. It had been, by contrast, the first principle of international law as it emerged in the 17th century that nations are equal, equal in sovereignty and in rights at law.

We find this principle embodied today in the arrangements by which small island nations are admitted to the U.N. General Assembly as equals with the larger and more populous nations. Equality of nations is the first principle of international law. The idea of nonproliferation imposes an inequality. It says some may do and some may not do.

Now reality is such that we get this principle accepted with some nations. West Germany and Japan have, for example, accepted it. The largest and most important nations yet to have done it.

But it is not possible, in my judgment, that India will ever accept it. They will not.

All we do by this act is break our contract with them.

The United States and India in 1963 negotiated an agreement governing operation of the Tarapur reactors and in 1966 a contract governing the supply of fuel. Article XI of the 1966 contract stipulates that the United States and Indian Governments will consult to take account of changes in U.S. laws. Consult. It is that simple: Nations do not grant to others the right to unilaterally redefine the terms of international agreements. India did not agree to do so in 1963 or 1966, and that they agreed in 1971 to comply with relevant American laws on the handling of nuclear materials cannot change that fact. The United States is perfectly within its rights to pursue renegotation, and within its rights to be disagreeable if the Indians do not agree, but we may not claim that they have breached the 1963 agreement merely because in the interim we have passed new laws.

This will not work. In no way will it affect the future conduct of the Government of India at all, except on the margin. It will not make them more hostile to us, although they will be deeply offended by it. It will not make them less hostile to us. They simply will not do it.

In the process, we will have almost certainly impaired our capacity to negotiate as equals with them some regime of understanding as to how they, as a nuclear power, will conduct themselves with respect to nonnuclear power, just as we negotiate and legislate such behavior ourselves.

India is a nuclear power. On another occasion, I will be happy to discuss the unwisdom, as I thought it, of their having become such. As I was able to say to the Government of India at the time, they had ruined their position in South Asia. They were incomparably the preeminent power in South Asia so long as there were no nuclear weapons. Nuclear weapons, like gunpowder, are great equalizers.

In 1974, as Ambassador, I called on officials of the Government of India and I said: "Just wait 5 years in time. There may be a general in power in Islamabad and he will have four bombs. He will say, 'I want the Kashmir back tomorrow or I will drop them on Bombay and New Delhi and Calcutta and Madras the day after tomorrow. We can meet in heaven, if that is the case, on Friday.' What will you do? You let that happen and now you must live with it."

But it did happen. And any thought we have of getting the Indians to behave differently can only come about from negotiating with them as equals. A person who thinks otherwise is not suited for the work of nuclear diplomacy. The person who thinks otherwise has no experience of this part of the world and little understanding of statecraft. It is a commentary on us all, perhaps, that we have chosen to think otherwise. It is interesting that some of the most enthusiastic supporters of this particular program are exactly those people who have asserted that the United States has less power in the world than it ever had, that it should withdraw its commitments and contain its undertakings. Simultaneously they espouse a doctrine that requires power which no nation probably ever has had and certainly influence we do not now have.

Some of my colleagues will say to my recitation of these facts about India that they too have no expectation that India will ever yield. They too recognize the special circumstances that govern the Indian case. They are committed, however, to make a demonstration that all the same we will not cooperate; we will insist on our view and abrogate the Tarapur agreement so as to show that we mean business about nuclear nonproliferation.

However quixotic, the sponsors of this resolution would be more persuasive if at the very least the full-scope safeguards that they desire were a real solution to the Indian problem. But there is this extra absurdity to our dispute with India: the value of full-scope safeguards would in fact be slight. We are thus in the position of rupturing our ties with India in the name of what would be no solution at all.

Full-scope safeguards can in some cases be extremely valuable. Apart from the mere fact of accepting an international obligation, they can provide three separate benefits. First, they allow the international community to monitor the inventory of fissile materials in a country's possession. Second, they give an extra measure of warning time, between a government's decision to renounce safeguards and the completion of a weapon ready for use. The length of the warning time will vary: It depends on the time needed to reprocess spent fuel and extract the weapons-grade material, on the construction of a fabrication plant for the weapon, and so forth. But—and this is the third point—safeguards can reassure neighboring countries about a state's intentions.

These are real benefits but merely to describe them shows why they are less important in the case of India than in others. India has such a diverse nuclear program, several of whose facilities have been unsafeguarded over many years. It has indigenous uranium and thorium supplies. We would in these circumstances have much less confidence than

would normally be the case that all materials were in fact under safeguards. One may say of course that we expect India to observe its obligations, but it would be irresponsible not to ask how easy it would be to circumvent the safeguards. Any honest member of our government or the International Atomic Energy Agency would tell you that they would have great difficulty saying whether India had fully complied. The IAEA has never before undertaken to impose safeguards on a system of previously unsafeguarded facilities, and the inventory problems of the Indian case would be enormous. This is an unavoidable fact of life. Yet we treat safeguards as though they were some key to international stability.

When a state does comply fully, the second benefit of safeguards is that they increase our warning time. Again, however, in the case of India they do not. Other countries might have to spend some time reprocessing their fuel; not India. India not only has a research reprocessing facility, but it is building a breeder reactor.

Under these circumstances, weapons-grade material itself might be under safeguards, but hardly any warning time at all would be left between removal of safeguards and fabrication of a weapon. As to the task of fabrication shall we say that this is not a large mystery for the Indians? In fact India might even be able to maintain a weapons fabrication plant in existence—unsafeguarded—while full-scope safeguards were applied to all peaceful facilities. For the International Atomic Energy Agency safeguards apply only to a civil nuclear power program.

Moreover, even if, as might very well be the case, we understood that the site at which the Indian bomb was built no longer existed, what confidence would we have that a new one had not been built? Little, I am afraid. And if a new one were built, our warning time would shrink still further. Some of my colleagues might hope that our intelligence would be able to discover it, but I ask them, whether we had discovered the one used in 1974 before the explosion. The answer is no.

In light of all this, the third benefit of safeguards—the stability they symbolize to neighbors—is also lost. For all these reasons, Pakistan is hardly likely to be wholly reassured by safeguards in India. This is understandable—we ourselves would not accept such assurances from a country that we regarded as an enemy. In fact, this is precisely why the Baruch Plan failed over three decades ago. And it is why Indian acceptance of full scope safeguards would not be the key to a stabilization on the subcontinent.

All the same, we find ourselves in this confrontation with India because we are told that full-scope safeguards are the key to nuclear nonproliferation.

If full-scope safeguards have marginal value in the Indian case, then what is it that the opponents of the fuel shipment want us to do? For the sake of standards that would only be of marginal value, they wish to abrogate a formal agreement undertaken by the United States, the first such abrogation in the history of our nuclear policy.

For the sake of standards that are of marginal value they wish to risk that, for the first time in history, international safeguards will be taken off a facility where they have been in place for years. For the sake of full-scope safeguards, they wish to make more likely an acceleration of Indian reprocessing, a step with very unfortunate symbolism in our non-proliferation efforts.

It seems to me that the sponsors of this resolution are obliged to show that what is to be gained from this demonstration of American unilateralism will be enough to balance these very real losses. Will other countries really be impressed by such dedication to symbolism? Will we signal that we have a serious understanding of the problems of other countries? Will we gain by pretending to ignore the differences among them? Will this seem like sound policy? Or fairness?

I hope that my colleagues will see that, despite its refusal of full-scope safeguards, we have a stake in continuing to negotiate with India. The ultimate prize—an effective reversal of its nuclear history—will always be out of reach but this does not make the other issues of our nuclear relationship trivial. We retain an interest in incremental extension of safeguards, we retain an interest in keeping U.S. materials from nonpeaceful purposes, we retain an interest in slowing the emergence of commercial reprocessing in the Third World, and we must do what we can—it will be little, I fear—to promote some stability among the states of the subcontinent.

In this effort, as in our nonproliferation policy as a whole, we need to proceed carefully. We should see that results will often be achieved only at excruciating length. For this, the deadlines of our legislation may prove a hindrance.

We need to be able to insulate our policy, as best we can, from changing diplomatic interests and objectives. For if other states come to regard nonproliferation policy as a stick with which to beat those who have angered us, the stability of expectations that must support a nonproliferation regime will be lost.

And finally, we should see that success will be measured by a different standard in different cases. For this the single standard of the Nuclear Non-Proliferation Act may blind us to other kinds of progress.

I ask my colleagues to remember how gloomy our predictions were in 1974 when India shocked us with her nuclear blast. Should we not be comforted by the thought that not one of them has come true? India has not conducted another test, though we all expected it. She has not built a nuclear arsenal, though we all feared it. She has not brandished her nuclear capability in dealing with other states, has not pursued an irresponsible export policy making it easier for other states to acquire nuclear weapons, and has not refused safeguards on new nuclear installations. If India can continue on this course, the United States can continue to do business with her. Our abrogation of the Tarapur agreement now would be out of proportion to any good it might achieve.

Tomorrow I will take the occasion to speak to the meaning to the United States of the democratic nature of the Indian regime. I think that to be something of the highest consequences. I think one of the greatest possible ironies of the Soviet invasion of Afghanistan is that it has drawn the United States into a near military alliance with the totalitarian power of China while in response, the democratic Republic of India has drawn yet closer to the totalitarian power of the Soviet Union.

But I do not want to complicate tonight's argument with ideological questions. The question I simply wish to draw attention to is: Have we the influence to change Indian behavior in this respect through legislation?

I say to the Senator from Ohio, we have not. And, as we have not, it seems to me folly to attempt to do so.

The President's position gives us as much as a 2-year interval, in which we can reconsider these relationships. I hope the Senate might do it, might provide the President with that possibility.

And I hope if it were provided, he would make use of it.

Mr. GLENN. Mr. President, I will not prolong this evening's session unduly, but I would like to reply for a moment to the distinguished Senator from New York because he did make a couple of very valid and very important points that I think we need to address.

He started off with questioning whether the policy is possible, and I think the jury is still out on that. I really do. I think that is a very good question to ask.

I would like for him to clarify, when he says the policy will not work, does he refer to the whole Nuclear Nonproliferation Act and the whole policy or just this particular issue?

Mr. MOYNIHAN. I say a policy which of necessity requires that some nations be more equal than others. It in fact imposes a range of inequality. It probably can work with nations which will recognize that condition. That is not the condition of India. They are not unequal in those terms. They will never submit to a regime of inequality. They will not.

Mr. GLENN. At the risk of stating something that the Senator from New York already recalls, he may recall that during our debate on the NNPA here on Senate floor, we talked about whether there would be better influence exerted around the world with regard to nuclear nonproliferation if we permitted American business to just go out and go to all these nations' sales, that we would have a better influence overall in the long term if we just tried to get involved in every place in the world where there was interest in nuclear energy; or whether a better method was to try to work out some channels of Government control to prevent the further spread of nuclear weaponry while the big powers, the superpowers, that already had mammoth arsenals of nuclear weaponry, tried to

work out their own differences through SALT and other processes. And would the Chinese be willing to come into SALT at some point, if we get it worked out with the Russians?

I have done some things on that myself, even going beyond SALT, because I thought that is what we had to do in this country if we are ever to get control of superpowers and existing weapons states around the world and have any validity, as the Senator points out, in asking other nations to refrain from developing nuclear weapons.

That is the tack that this Senate, this Government, this administration, and everyone took, that we would go that second route, that we would try to work out government-to-government arrangements, recognizing it is unfair. Who am I, who is the Senator from New York, to ask any nation if they want a nuclear weapon? Do they have a right to develop that nuclear capability? I cannot say they cannot. Who am I to say what they can or cannot do?

What we asked for in the Nuclear Nonproliferation Act and its colleague, the Nonproliferation Treaty, was that nations accept equally with us a fear of what was going to happen if we just went on with the further and further spread of nuclear weaponry around the world until every nation had a bomb. I guess we would really have a mutual destructive capability. It would surely be a mad, mad world for mutual destruction for border disputes which perhaps would have gone on with much less weaponry. So while we are trying to somehow work out with our colleague superpowers some reduction of nuclear weaponry, the idea was that we would not see the spread to smaller and smaller nations. We asked that kind of understanding from these other nations, not necessarily smaller because India, as the Senator very correctly points out, is the world's largest and most populous democracy.

That is sort of the problem. It is very difficult.

We had lunch with Prime Minister Desai at that time in the Foreign Relations Committee room, and he expressed views almost identical to what the Senator expressed, that it was their right to do what they wanted to do. Why should we as big powers over here think that we had some right built into us to tell them what they should do? They were prepared to develop as they saw fit.

I told him at that time pretty much the same thing I am saying right here, that our hope was not to impose this as an inequality, as the Senator says—and he is right. We are not trying to impose this as an inequality, but we are trying to do it in a spirit of understanding, as I implored him to do, to take the lead in Third World nations, to try to prevent the spread. India could be our partner in preventing this spread. That is rather than insisting that they will develop as they see fit to develop.

If we follow down that track until smaller and smaller nations, far less populace than India, have the bomb, then it seems to me we just open this up for some small nuclear exchanges which will develop into big ones.

I think it is good to remember this perspective, that we considered this business versus Government. We opted as a Government, as a Senate, and I believe the Senator voted for the nonproliferation Treaty, so I guess he felt it was worthwhile even with the inequality expressed. The inequality is admittedly there. But what we said was we did not declare other nations unequal; we just said if we are to cooperate in the development of nuclear power, then it is up to us as a possessor of that technology to set the terms of that cooperation. That is, in effect, what we did.

I do not look at India as any unequal partner in this regard. I look at India as a sovereign nation capable of taking care of her own affairs.

I think we need to remember that we have had 111 other nations which have accepted this cooperative assistance with us in trying to prevent the spread of nuclear weapons to more and more nations, at the same time expressing their concern, as they do most vocally on many occasions, that the superpowers should be more forceful in getting control of these superpower weapons supplies—and I agree with that. That is sort of where we are right now.

So I do not see it as any unequal status that we consider India a subnormal nation. I certainly do not.

Mr. MOYNIHAN. Could I respond briefly? The Senator has been so generous and thoughtful in his response.

First, in talking about equality and inequality, I was referring to the regime in law established by the Nonproliferation Treaty itself. It says some nations may have this weapon—our most important weapons—and other nations may not. That is a regime of inequality. It is the first time in the history of mankind that anything of this kind has been attempted.

The point I would like to make to my friend is I am not pleading any virtue in the Indians. That they do very well by themselves. I am simply saying that the Senator referred to our colleague superpowers. I simply offer the experience of one Senator and the judgment of one that with respect to nuclear matters, India is a major power. It has exploded a weapon. As I said, at the time it was a peaceful nuclear explosion in the desert. In New Delhi at the time it was universely referred to as the bomb. It has happened. It is beyond recall. The Chinese are admitted to this superpower condition, and so are the British and French, tiny France, and India will insist. If we want our policy to work, we are going to have to deal with that reality.

The Senator did not achieve what he has done and what his colleagues did in space by ignoring reality. Neither, on the other hand, did the Senator achieve it by saying certain difficult things just cannot be done. So you have both possibilities to argue.

Last, if I may make a point about my voting for this, I did vote for it. At the time, I thought this meant that the administration had decided to have this rupture with India, with whatever other consequences it would bring about. I realize now that it had not made a decision. That is not really very good work on their part. If they had not made the decision to have the rupture, there should not have been the legislation that came about.

I have learned with some gratification that they are still trying to work something out. I would give them the 2 years. And I recognize it is a very close decision. I do not in the least—I find it altogether understandable that the Senator should disagree. I think our disagreement, if we have any at all, is to this other question of what is possible. I am prepared to let the President try once again, or let President Reagan or President Anderson.

Mr. GLENN. Will the Senator yield?

Mr. MOYNIHAN. I am happy to yield.

Mr. GLENN. I would say, as to what is possible, when we were going into this, we questioned whether there should not be an analysis, after it had been in for a period of time, to see what had been possible after the act, whether it should be changed, should we modify it, could it be made more effective, should we do away with it and go back to the business concept where we encourage American businessmen to give bargain rates and get business all over the world, should we throw this whole thing out?

In determining how effective it will be, we wrote into that a requirement for a GAO study, a very complete study—I do not know how many people they have involved with it now, but at one time, they had 20-some people involved looking into this: How effective the Nuclear Nonproliferation Act had been since it was put into effect; did it need to be changed; should we do away with it entirely? They are to assess the effectiveness of the whole thing and come back to us by next March 15.

India, on this fuel shipment now, does not need the fuel for 2 years. So I asked Secretary Muskie and the President by letter to put off this decision until we had the benefit of this study by GAO. I was not necessarily trying to get beyond the political season here, the Presidential election. But I think this transcends the political elections that we are undergoing right now.

What I wanted to do was, if we are to make a shipment that many of us view as being out of context with what we hoped would occur under NNPA, then if we are to make that change in NNPA, it should be made in the light of the best study we have available. I looked at the GAO study as being done with that kind of thoroughness.

Since India did not have to have the fuel for 2 years, the only reason to put forward for making the shipment now is that their own fuel fabrication plant that this would go into at Hyderabad would be left with nothing to run through it and they would have to shut down, at least temporarily, until this shipment is made.

I should add there that we had no contractual arrangement and no commitment to be responsible for keeping that particular facility open. Our requirement under the contract was to ship "as needed"; to keep Tarapur operating.

That shipment could be made as long as a year and a half or so from now, at

least, and still fulfill that commitment. The President, the administration, chose to go ahead and send this up now, trying to cooperate with India in keeping their fuel fabricating plant open. But it put us in a very difficult spot here.

I regret that we do not have the benefit of the study, to come full circle to where this consideration started, so if we are to go this route, we can make any necessary changes in NNPA that might make the program work, which is what the comment of the distinguished Senator from New York was, starting out.

I want to make it work, Mr. President. If it is not working, I shall be the first to lead the charge to go to the other route and say NNPA has failed, it is unfair, it is not working, and we shall go the other business route. I think perhaps that is the direction we are headed in with this particular sale.

That is one reason I am so concerned about it and feel that it is critical if we are to maintain an NNPA and give this concept of government-to-government agreements a chance to work, give the NPT a chance to work for those 111 nations that have agreed with us to hold down their desires for nuclear weaponry while we try to get the big powers under control and scale down that route.

Mr. MOYNIHAN. Will the Senator agree that whatever is the outcome of this vote, that question does remain before us? I hope we do not so spend our energies on this one position that we act like the whole question has been resolved. It is very much ahead of us.

Mr. GLENN. I agree with the distinguished Senator that I still want to see the results of that study from GAO, which I think is very, very important. I do not think we should make major changes in the law until we have that opportunity. In the argument I made earlier, when I made my remarks, I believe before the distinguished Senator was on the floor, I did state that I felt if this were breached this time in as clear-cut a situation as I can see, I did not feel we could ever really refuse many other nations a similar shipment under similar reasons.

Mr. MOYNIHAN. I was not thinking to obtain an admission from the Senator which would circle around and undermine his argument. Not in the least.

Mr. President, I observe that the majority leader's keys are out. When the majority leader's keys are out, that is often the semi-subtle suggestion that maybe the day's talk has about completed its probable potential.

Mr. GLENN. I would concur with that, strongly.

Mr. MOYNIHAN. With that, Mr. President, I yield the floor, and I thank the Chair.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MOYNIHAN). Without objection, it is so ordered.

ORDER FOR VOTE AT 2:45 P.M. TOMORROW TO RUN UNTIL 4 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the rollcall vote on the disapproval resolution tomorrow, which is already set by order of the Senate to begin at 2:45 p.m., run until 4 p.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have been reluctant to set a vote that requires 1 hour and 15 minutes. I want to emphasize for the record that I hope Senators will not seize upon this as a precedent to be used again and again. I also must say that when the order for setting the vote at 2:45 was entered into, both Mr. STEVENS and Mr. HUDDLESTON were in the Committee on Appropriations, where they have been all day, working to report out the continuing resolution and, later, the Interior appropriation bill. They were discommoded by the order. Neither of them would have an opportunity to cast a vote on this disapproval resolution. Therefore, what I have said heretofore about my reluctance is not directed toward them. It simply was an inadvertence, a misunderstanding, and the order was gotten without clearing the voting time with them.

So I think that extending the order is something which they are entitled to. I think they deserve this consideration. I just think the joint leadership in the future needs to be a bit more careful in setting the time for a vote to be doubly sure that while the Senate will be accommodating some Senators, it will not be disappointing others.

Along that line, it is not possible, of course, to accommodate every Senator at all times. But in this instance, it was clearly an inadvertence on the part of some of us, and I think that the order that is now entered will rectify that inadvertence and will make it possible to accommodate those Senators who had to leave early and those who will be coming in at a later hour.

I am glad to change the order. I express appreciation to Mr. GLENN, to the minority leader, the minority whip, and will apologize to the minority whip.

Mr. GLENN. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. GLENN. I wish to apologize for, perhaps, contributing to some of that misunderstanding.

I had misread some of those in my conversation to the majority leader, and inadvertently misrepresented some of the people who would be here.

However, I offer my thanks to the majority leader for setting this time period for quite another reason that has not been brought up. That is, I think our vote tomorrow is a very important vote. I think it will perhaps set the precedent for what our nuclear export policy will be for many years hence. It may have a very different impact on our nonproliferation role in the world.

I think if there is one subject that merits getting every single Senator's vote we believe we can muster here tomorrow, I think it should be that, so that we express the will of the Senate will be as clear cut as possible.

I think that the time period that has been set forth here will permit people on both sides of the issue to have as many people here tomorrow as we possibly can have.

I think that is constructive because whatever we go forward with out of the Senate on this crucial vote, since the House already acted on it, it will have as great representation on both sides and will be as clear-cut as possible.

I commend the majority leader for his wisdom in establishing an hour and 15 minutes. I, for one, certainly never consider a precedent to be used in another case.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Ohio.

I fully agree with him as to the importance of the vote.

Mr. STEVENS. Mr. President, I am deeply grateful to the majority leader. The Senator from Kentucky and I were involved in reporting out a bill from the Appropriations Committee. Both of us had made plans on the impression we had that the vote would take place later. This will enable us to get back and vote. I am grateful. I understand it is not a precedent.

I have discussed it with the minority leader. He has indicated there is no objection to this long vote, under the circumstances.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Alaska.

MESSAGES FROM THE HOUSE

At 11:03 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks announced that the House has disagreed to the amendments of the Senate to the bill (H.R. 7831) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. DUNCAN of Oregon, Mr. BENJAMIN, Mr. LEHMAN, Mr. SABO, Mr. STEWART, Mr. FAZIO, Mr. YATES, Mr. WHITTEN, Mr. CONTE, Mr. EDWARDS of Alabama, Mr. MILLER of Ohio, and Mr. COUGHLIN were appointed as managers of the conference on the part of the House.

The message also announced that the House has disagreed to the amendment of the Senate to the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. PRICE, Mr. NEDZI, Mr. CHARLES H. WILSON of California, Mr. BRINKLEY, Mr. DAVIS, Mr. WON PAT, Mrs. BYRON, Mr. BOB WILSON, Mr. WHITEHURST, Mr. BEARD of Tennessee, Mr. MITCHELL of New York, and Mr. DICKINSON were appointed as managers of the conference on the part of the House.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 7919. An act to provide for the settlement of land claims of Indians, Indian nations, and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

ENROLLED MEASURES SIGNED

At 1:31 p.m., a message from the House of Representatives delivered by Mr. Berry announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 7825. An act to establish the Ice Age Scenic Trail, and for other purposes; and

H.J. Res. 551. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning October 5, 1980, as "National Port Week", and for other purposes.

The enrolled bill and joint resolution were subsequently signed by the President pro tempore (Mr. MAGNUSON).

ENROLLED BILLS SIGNED

At 3:41 p.m., a message from the House of Representatives delivered by Mr. Berry announced that the Speaker has signed the following enrolled bills:

S. 2489. An act to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes; and

H.R. 3904. An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 7:50 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has disagreed to the amendment of the Senate to the amendment of the House to the bill (S. 1946) to reform the economic regulation of railroads, and for other purposes; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. FLORIO, Mr. SANTINI, Ms. MIKULSKI, Mr. MURPHY of New York, Mr. MATSUI, Mr. ECKHARDT, Mr. BROYHILL, Mr. MADIGAN, Mr. LEE, and Mr. LOEFFLER were appointed managers of the conference on the part of the House; and Mr. LEVITAS, solely for the consideration of section 707 of the House amendment and modifications committed to conference.

The message also announced that the House insists upon its amendments to the bill (S. 2080) to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes; disagreed to by the Senate; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. JOHNSON of California, Mr. LEVITAS, Mr. MCCORMACK, Mr. FLIPPO, Mr. DONNELLY, Mr. HARSHA, and Mr. STANGELAND were appointed as managers of the conference on the part of the House.

The message further announced that the House has disagreed to the amendments of the Senate to the bill (H.R. 7592) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1981; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. MCKAY, Mr. GINN, Mr. STEED, Mr. ADDABBO, Mr. LONG of Maryland, Mr. WHITTEN, Mr. MCEWEN, Mr. REGULA, and Mr. CONTE were appointed as managers of the conference on the part of the House.

The message also announced that the House insists upon its amendments to the bill (S. 2475) to amend title V of the Motor Vehicle Information and Cost Savings Act, "Improve Automobile Efficiency," to exempt very low volume automobile manufacturers from certain requirements of the act, to encourage increase of the domestic value added content in labor and materials of foreign automobiles sold in the United States, to extend the time available to all manufacturers to carry forward or carry back of credits earned under the act, and for other purposes, disagreed to by the Senate; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. DINGELL, Mr. OTTINGER, Mr. SHARP, Mr. MOFFETT, Mr. BROYHILL, Mr. BROWN of Ohio, and Mr. STOCKMAN as managers of the conference on the part of the House.

The message further announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5164) to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 7878. An act to authorize the transfer of certain naval vessels;

H.R. 8087. An act to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes; and

H.R. 8096. An act to amend the Wild and Scenic Rivers Act to provide for the study of certain river segments for potential inclusion in the National Wild and Scenic Rivers System and to designate certain river segments for inclusion in such system, and for other purposes.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 7878. An act to authorize the transfer of certain naval vessels; to the Committee on Armed Services.

H.R. 8087. An act to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 8096. An act to amend the Wild and Scenic Rivers Act to provide for the study of certain river segments for potential inclusion in the National Wild and Scenic Rivers System and to designate certain river segments for inclusion in such system, and for other purposes; to the Committee on Energy and Natural Resources.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, September 23, 1980, he had presented to the President of the United States the following enrolled bill:

S. 2489. An act to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Labor and Human Resources, without amendment, and without recommendation:

H.R. 6711. An act to extend the authorization of youth training and employment programs and improve such programs, to authorize intensive and remedial education programs for youth, and for other purposes.

By Mr. WILLIAMS, from the Committee on Labor and Human Resources, without amendment:

S. Res. 526. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2385. Referred to the Committee on the Budget.

S. Res. 527. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 7859. Referred to the Committee on the Budget.

MENTAL HEALTH SYSTEMS ACT—CONFERENCE REPORT

Mr. ROBERT C. BYRD (for Mr. KENNEDY), from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes (Rept. No. 96-980).

By Mr. RIBICOFF, from the Committee on Governmental Affairs, with an amendment (in the nature of a substitute) and an amendment to the title:

S. 2327. A bill to provide that certain employees of the Drug Enforcement Administration be entitled to pay and benefits similar to pay and benefits granted to members of the Senior Executive Service under the Civil Service Reform Act of 1978 (Rept. No. 96-981).

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment (in the nature of a substitute):

S. 2705. A bill to amend chapter 207 of title 18, United States Code, relating to pretrial services (Rept. No. 96-982).

By Mr. PELL, from the Committee on Labor and Human Resources, with amendments:

H.R. 7859. An act to provide general assistance to local educational agencies for the education of Cuban and Haitian refugee children, and to provide special impact aid to such agencies for the education of Cuban and Haitian refugee children and Indochinese refugee children, and to provide assistance to State educational agencies for the education of Cuban and Haitian refugee adults.

By Mr. DOLE, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

H.R. 5546. An act to amend the U.S. Grain Standards Act to permit grain delivered to export elevators by any means of conveyance other than barge to be transferred into such export elevators without official weighing, and for other purposes (Rept. No. 96-983).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, with an amendment (in the nature of a substitute) and an amendment to the title:

H.R. 6152. An act to facilitate the ability of product sellers to establish product liability risk retention groups, to facilitate the ability of such sellers to purchase product liability insurance on a group basis, and for other purposes (Rept. No. 96-984).

By Mr. ROBERT C. BYRD, from the Committee on Appropriations, with amendments:

H.R. 7724. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 31, 1981, and for other purposes (Rept. No. 96-985).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following executive reports of nominations were submitted:

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation:

The following-named persons to be members of the U.S. Metric Board:

Marcus B. Crotts, of North Carolina; and

Alfredo A. Cantu, of Colorado.

Thomas R. Donahue, of the District of Columbia, to be a member of the Board of Directors of the Communications Satellite Corporation.

Rear Adm. Herbert R. Lippold, Jr. NOAA, to be Director of the National Ocean Survey, National Oceanic and Atmospheric Administration.

The following-named persons to be members of the Advisory Board of the Saint Lawrence Seaway Development Corporation:

Conrad M. Fredlin, of Minnesota; and

Francis Albert Kornegay, of Michigan.

(The above nominations from the Committee on Commerce, Science, and Transportation were reported with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. RIEGLE:

S. 3136. A bill for the relief of William Vojislav Rankovic, Stanislava Rankovic, husband and wife; and William Rankovic, Jr. and Natalie Rankovic, their children; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 3137. A bill to assist State and local Transportation agencies; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BENTSEN:

S. 3138. A bill to prohibit the use of campaign contributions in the repayment of a loan made by a candidate to his campaign; to the Committee on Rules and Administration.

By Mr. TOWER:

S. 3139. A bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such Act the liability of owners, operators, or charterers of vessels engaged in activities on the Outer Continental Shelf shall be limited to damages attributable to their negligence; to the committee on Labor and Human Resorces.

By Mr. BAUCUS:

S. 3140. A bill to amend title 28 of the United States Code with respect to the litigation authority of the Attorney General, to amend title 28 of the United States Code, to require the Attorney General to report on Federal case management, to require the Attorney General to provide status reports on certain cases referred to the Department of Justice, and for other purposes; to the Committee on the Judiciary.

S. 3141. A bill to reform certain practices relating to Government contracts; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOYNIHAN:

S. 3137. A bill to assist State and local transportation agencies; to the Committee on Banking, Housing, and Urban Affairs.

MASS TRANSIT ACCESS AND ASSISTANCE ACT

● Mr. MOYNIHAN. Mr. President, I am today introducing the Mass Transit Access and Assistance Act of 1980.

With this measure, I am attempting to link two worthy Federal policy objectives that have often been perceived to be in conflict with one another. David Riesman has written:

It is an all too American belief, that all reforms are compatible.

These two reforms are compatible, but only if we are prepared to pay the price. My bill makes clear that we are prepared.

It is an established policy of the Federal Government to expand and maintain mass transit. The reasons for this policy are too well known to bear repeating, other than to note that fundamental issues of energy conservation, environmental protection and the quality of urban life are inextricably associated with it.

It is also an established policy of the Federal Government to remove the barriers that otherwise impede the access of handicapped persons to full participation in every aspect of contemporary American life. This includes access to mass transportation facilities of every kind.

These two policies are compatible, but sizable dollar costs are associated with carrying them out. The Congressional Budget Office has estimated that the costs of compliance with the Department of Transportation's regulations implementing the mandate of section 504 of the Rehabilitation Act of 1973 with respect to mass transit would be approximately $7.1 billion. Very likely, the costs will be even larger.

The New York Metropolitan Transportation Authority, which operates the largest mass transit system in the Nation, with one-third the transit ridership in the United States, estimates that its initial cost of compliance with these regulations would be at least $1.5 billion.

This is, quite simply, a cost that New York cannot bear. It does not have the money. It has no means of obtaining the money.

Save from Washington. And that is the purpose of my bill which would require the Secretary of Transportation to reimburse State and local agencies for all costs associated with compliance with these regulations.

He is not now so required. To be sure, the Department of Transportation provides some operating assistance to mass transit agencies such as New York's MTA, and limited assistance with capital costs is available as well. But the time has come to face up to the inadequacy of current forms and levels of assistance, and to accept a simple but fundamental principle: When the Federal Government imposes mandates on State and local governments to act in certain ways that result in costs they would not otherwise incur, the Federal Government has an obligation to pay those costs.

It is well known that the costs of Federal legislation are often not visible until the regulations implementing the legislation are drafted. Certainly this has been the experience with section 504: A straightforward and, in my view, altogether desirable addition to the civil rights legislation of the Federal Government, but one that is so straightforward in conception, and so simply stated in statutory language, that the huge costs mandated by it were not adequately foreseen.

Now they are visible. The regulations are taking effect. The Metropolitan Transportation Authority, and transit agencies in other cities small and large, are realizing that they cannot meet those costs without additional Federal assistance.

I submit that such assistance must be provided if section 504 is not to turn into an empty promise to the millions of disabled and handicapped persons in the United States who today lack adequate access to appropriate transit facilities. This must not be allowed to happen. Handicapped citizens have the right to full access to mobility in the modern city. They have a right to work, to visit friends and family, and to move freely throughout the metropolis.

Yet our mass transit agencies also have a right: The right to be held harmless from costs that they cannot meet in the course of complying with Federal mandates. This is a fundamental principle of fiscal federalism, and a solemn responsibility that must be assumed by the National Government.

I would emphasize that it is the intent of my bill to create an entitlement to such assistance on the part of State

and local transit agencies. This is not conventional authorization legislation, the fate of which is in practice determined through the appropriations process. My bill is meant to establish an entitlement to aid to transit agencies so that they can fully comply with a mandate that has been imposed upon them by the National Government. A mandate that I support. But a mandate that cannot in practice be honored unless the Federal Government now accepts the full consequences of the responsibility that it assumed in 1973.●

By Mr. TOWER:

S. 3139. A bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such Act the liability of owners, operators, or charterers of vessels engaged in activities on the Outer Continental Shelf shall be limited to damages attributable to their negligence; to the Committee on Labor and Human Resources.

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

● Mr. TOWER. Mr. President, I am introducing today a bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such act the liability of owners, operators, or charterers shall be limited to damages attributable to their negligence.

This bill is required due to an unintended combination of circumstances. In 1972 extensive amendments to the act were passed which, among other things, first, limited the liability exposure of employers of longshoremen to benefits payable under the amendments, and second, abolished longshoremen claims against shipowners for "unseaworthiness"—a species of liability without fault—while establishing a negligence standard of fault as a predicate of shipowner liability. Unfortunately, court interpretations have indicated that the language of the 1972 amendments to the act permit shipowners to be exposed to 100 percent liability if there is any shipowner negligence, despite any contributory negligence on the part of the employers.

I believe that result is unfair and unintended. The courts have indicated that any relief from this inequity must come from Congress. This bill, the counterpart of which has been introduced in the House by Mr. IRELAND, will provide the necessary relief.●

By Mr. BAUCUS:

S. 3140. A bill to amend title 28 of the United States Code with respect to the litigation authority of the Attorney General, to amend title 18 of the United States Code, to require the Attorney General to report on Federal case management, to require the Attorney General to provide status reports on certain cases referred to the Department of Justice, and for other purposes; to the Committee on the Judiciary.

S. 3141. A bill to reform certain practices relating to Government contracts; to the Committee on Governmental Affairs.

DEPARTMENT OF JUSTICE LITIGATION IMPROVEMENT ACT AND PUBLIC CONTRACT ACCOUNTABILITY ACT

● Mr. BAUCUS. Mr. President, for the past several months, various oversight subcommittees of the House and Senate and the General Accounting Office have been looking into how Federal agencies use outside contractors and consultants. The general outline of this story is well known. Increasingly, Federal agencies have been going outside their operations to the private sector for a substantial part of their work product. Billions of dollars in public funds are spent annually by Federal agencies for these services.

This by itself is not wrong. Most contractors and consultants providing assistance to Federal agencies are legitimate firms seeking to make a fair profit by fulfilling specific Government needs that may not or cannot be fulfilled inhouse by Federal agencies. However, as has been amply shown in recent months, there is a small percentage of contractors who approach the possibility of Government contracting without good faith and without the ability to produce an acceptable work product; motivated solely by a desire to make as big and fast a dollar as possible while producing as little in return as possible.

A series of specific problems has been discovered by the Judiciary subcommittee I chair as well as by Senator PRYOR of Arkansas and his Governmental Affairs Subcommittee. What emerges is a picture of abuse that is Government-wide, cumulative and out of control. In effect, certain contractors have become a de facto fourth level of Government. Some have been found making policy and supervising career Federal workers. Others have been found making substantial sums of money from contracts due to the lack of competitive bidding—even though competition is required by statute.

One of the most common afflictions involves the free passage of people from agencies to the private sector. Often a high-level Federal employee with power to enter into or approve contracts will leave the Federal service and reappear promptly in the employ of a private contractor performing work he had approved while a Federal employee. There are a number of variations on this theme, but that is the basic story of what is known as the revolving door. Current conflict of interest laws either allow for this revolving door to continue or simply are not enforced.

Some such abuses go beyond mere waste, inefficiency and the "buddy" system, entering into the realm of civil and criminal fraud. What is required is vigorous oversight by Congress, tough laws and regulations governing such misbehavior and a single standard of enforcement. While many existing laws address some of these problems additional legislation is essential. The pattern of abuse is extensive and no one knows what may be uncovered in the future.

To this end, I have drafted two pieces of legislation. The first is designed to insure that the Department of Justice is capable of monitoring and reporting back to Congress on the status of both criminal and civil fraud cases as well as all other cases referred to the Department by its client agencies. My past oversight activities in this area have convinced me it is essential that the Department of Justice closely monitor referrals from client agencies so the investigative ball is not dropped when passed on to Justice.

Such tracking capability is not only essential for Congress as it performs its oversight responsibility, but will be important to each agency so that if judicial action is not warranted, the case can be returned promptly to the agency for possible administrative action. All too often nothing is done with a case because too much time has lapsed between opening the investigation and final determination of action. My legislation would:

First. Assure that Congress is notified of all written agreements between Department of Justice and other agencies affecting litigation authority;

Second. Determine functional, informational, and data service requirements for Department of Justice, U.S. attorneys, and Federal agencies;

Third. Determine status of all criminal and civil fraud cases; and

Fourth. Allow for access to this information by Senate and House Judiciary Committees and Subcommittees.

Enactment of this measure will not mean any interference whatsoever in actual handling of cases. It will mean there will be a new capability on the part of appropriate committees of Congress and agencies to monitor enforcement of laws and regulations governing civil and criminal fraud, false claims against Government and other violations of agreements between the Federal Government and private contractors.

This bill also contains one additional critical reform. Presently, section 207 of title 18 of the United States Code prohibits a former Federal employee from acting as an agent or attorney for any other person besides the United States in connection with any proceeding, including contract matters before the United States, that he substantially participated in while a Federal employee.

My amendment would prohibit Federal employees from accepting outside employment for a period of 5 years that involves personal participation on a grant or contract with which the employee was substantially involved while a Federal officer. This amendment will help prevent the unscrupulous Government contract or project officer from giving a contract to a specific company in exchange for employment.

This first bill will enhance and make more efficient the role of the Department of Justice, while insuring that Congress will be able to perform more effective oversight of how abuses are being addressed.

My second bill will be referred to the Governmental Affairs Committee. It addresses a series of loopholes in the way Federal procurements are handled. These loopholes have allowed today's situation to come into being. Federal procurement is often sloppy and noncompetitive. Exceptions are often the order of the day

when it comes to scrupulous adherence to bidding laws and regulations. By simply tightening up the way bids and procurements are handled, many evils can be curbed or substantially reduced.

One area of concern involves advertising for bids on Government contracts. Presently, there need be no public advertisement for bids if the contract is under $10,000; if work must be done in an emergency situation; when only one source of supply or service is available and when the services are to be performed by the contractor in person, and are either of technical nature or are under Government supervision and paid for on a time basis. The latter exemption would be eliminated under my bill.

Another area of concern deals with lack of competition in letting Federal contracts. Large numbers of Federal contracts are let noncompetitively on a sole-source basis; one of the worst abuses we have found. Some agencies let a majority of outside contracts on this basis. I propose in this second bill to eliminate the exception from competition for all personal or professional services, for services to be rendered by any educational institution, and for developmental or research work.

Substantial numbers of contracts involve advance payments or full payment before an acceptable work product is delivered and approved by the Federal agency. My bill provides for no payment on any Federal contract worth more than $100,000 that will amount to more than two-thirds of the total contract price, until the Federal Government has received an acceptable work product at an agreed-to price.

Many agencies contract out work they are able to perform in-house with career Federal workers. It is too easy to bypass a hiring freeze by contracting out work. My legislation would require all agencies to conduct a survey in-house to definitely determine that the task cannot be performed within the Federal organization.

Still another widespread abuse is the vague contract that does not adequately specify what goods and services are to be provided. The bill requires specificity in contract agreements.

Finally, there is the question of line items in agency budgets for outside contractors. Because there is no current requirement to delineate beforehand what an agency proposes to spend on outside contracting and consulting, many Federal organizations have been able to operate in such a manner as to compound abuses already described. This bill would make it mandatory for all agencies to devote a line item in budget submissions to proposed expenditures for outside work.

I do not believe in overutilizing the legislative process. These measures are the product of significant amounts of oversight and investigative work. Each specific reform outlined in these bills address well-documented abuses. Each would save the taxpayers substantial sums of money. No element in the contracting or consulting industry can or should quarrel with them. Competition would be enhanced, efficiency would be increased, oversight would protect the public interest and many abuses would almost certainly be reduced. These two bills are intended to complement the already well-advanced, excellent initiatives commenced by Senator PRYOR and Congressman HARRIS. Both are overdue for enactment. I offer them for my colleagues' consideration.

I do not expect this legislation to pass this Congress. I offer it for discussion purposes and to serve as a backdrop for contracting hearings I will chair this Thursday. Through these and subsequent hearings I expect to test the viability and utility of this legislative proposal. Hopefully, this legislation can be tested and improved and be ready for enactment by the 97th Congress.

Mr. President, I ask unanimous consent that both bills be printed in the RECORD at this point.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 3140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Department of Justice Litigation Improvement Act".

LITIGATION AUTHORITY OF THE ATTORNEY GENERAL

SEC. 2. (a) Section 516 of title 28, United States Code, is amended by inserting "(a)" immediately before "Except as otherwise authorized".

(b) Section 516 of such title is amended by adding at the end thereof the following new subsections:

"(b) The Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a copy of each written agreement between the Department of Justice and another agency affecting the litigation authority of the Department for particular categories of cases. Each agreement shall be submitted no later than thirty days before the agreement is effective.

"(c) Unless specific statutory authority for litigation responsibility is otherwise provided, the Attorney General shall be the exclusive arbiter for the resolution of any legal dispute between two or more executive agencies or departments, including a dispute as to which agency or department shall litigate an action, administer a particular program, or regulate a particular activity.

"(d) The Attorney General shall report, at the beginning of each Congress, to the Committees on the Judiciary of the Senate and of the House of Representatives on—

"(1) bills or resolutions affecting the litigation authority of the Department of Justice, of which the Attorney General is aware, that were introduced in the previous Congress but were not enacted;

"(2) the status of litigation authority in the Federal Government, including the extent to which agencies other than the Department of Justice are authorized to litigate and whether such agencies are conducting litigation by formal or informal agreement with the Department of Justice;

"(3) the Attorney General's assessment of each agreement between the Department of Justice and another agency affecting the litigation authority of the Department for particular categories of cases, including—

"(A) a description of any problems relating to such agreement;

"(B) the steps the Attorney General intends to take to remedy those problems; and

"(C) any legislative recommendations the Department of Justice may have to improve the coordination of legal activities between the Department of Justice and its client agencies; and

"(4) the efforts the Attorney General has undertaken in the preceding two years and the efforts the Attorney General expects to undertake during the forthcoming years to coordinate activities and resolve conflicts between the Department of Justice and other Federal agencies, and to increase the efficient and effective operation of Federal litigation resources.".

AMENDMENT TO SECTION 207 OF TITLE 18 OF THE UNITED STATES CODE

SEC. 3. Section 207 of title 18, United States Code, is amended—

(1) by striking out the dash at the end of paragraph (3) of subsection (c) and inserting in lieu thereof a semicolon and "or";

(2) by inserting immediately after paragraph (3) of subsection (c) the following new subsection:

"(d) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, knowingly accepts employment with a business or firm that has a grant or contract in effect, or had a grant or contract in effect within the last five years, with which the officer or employee was involved in any manner, including involvement in the design, preparation, review, award, audit, or evaluation of such grant or contract, and such employment involves personal participation by such officer or employee with respect to such grant or contract during the five-year period immediately following termination of Government employment—";

(3) by redesignating subsections (d) through (j) as subsections (e) through (k), respectively;

(4) in subsections (b) and (c), by striking out "as specified in subsection (d) of this section" and inserting in lieu thereof "as specified in subsection (e) of this section"; and

(5) in subsection (j), by striking out "subsection (a), (b), or (c) of this section" and inserting in lieu thereof "subsection (a), (b), (c), or (d) of this section".

DEPARTMENT OF JUSTICE REPORT ON FEDERAL CASE MANAGEMENT

SEC. 4. (a) The Attorney General shall prepare and submit to the Committees on the Judiciary of the Senate and House of Representatives a systems development plan for the activation and coordination, within the Department of Justice, of compatible, comprehensive case management information and tracking systems for each of the judicial districts of the United States as described in chapter 5 of title 28 of the United States Code and for each of the divisions of the Department of Justice.

(b) The plan shall—

(1) determine the functional, informational, and data service requirements of each of the legal divisions of the Department, the United States Attorneys Offices, and a representative sampling of key client agencies;

(2) from the requirements determined under paragraph (1), identify data that should be uniformly collected for purposes of inclusion in the systems, how such data should be defined for purposes of inclusion in and access to the systems;

(3) evaluate existing case management information and tracking systems to determine the responsiveness of such systems to the requirements determined under paragraphs (1) and (2);

(4) assess what data are required to be collected to improve the effectiveness and responsiveness of the existing systems and develop the policies and procedures for the collection and generation of such data;

(5) have as its goal, maximum service and data quality, retrievability, and utility to the users; and

(6) include a timetable for the implementation of such plan, and an assessment of the costs for implementation of such plan.

(c) There are authorized to be appropriated for the fiscal year ending September 30, 1981, $300,000 for the purposes of development and implementation of a systems development plan as described in this section.

STATUS OF CASES REFERRED TO THE DEPARTMENT OF JUSTICE

Sec. 5. (a) Until completion of the planned systems under section 4, the Attorney General shall include in his authorization request to the Committees on the Judiciary of the Senate and the House of Representatives a report on the status of cases referred to the Department of Justice by any Inspector General of an agency.

(b) The report required under subsection (a) shall include—

(1) the name of the referring agency and the agency program involved;

(2) a brief description of the nature of the case, including a citation of the alleged violation;

(3) the name of the division within the Department of Justice or the United States Attorney responsible for the handling of the case;

(4) the current status of the case, including any action taken with respect to the prosecution of the case, and if no action has been taken, an explanation of why such case was not prosecuted and any administrative action recommended; and

(5) the result of any court action, if any, including any sentence of imprisonment or fine imposed as a result of such court action and the amount of any restitution awarded, if any, and the amount, if any, collected.

(c)(1) Except as provided in paragraph (2), the file of any case described in subsection (a), with respect to which further action by the Department of Justice is terminated, shall be available for review by Members of the Committees on the Judiciary of the Senate and the House of Representatives, and the staff of such committees, after removal from such files of the names and identifiers of any sources or informants, if any, and all grand jury material under an obligation of secrecy required by Rule 6 (e) of the Federal Rules of Criminal Procedure.

(2) The provisions of paragraph (1) shall not apply to any case relating to national security.

S. 3141

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Public Contract Accountability Act of 1980".

ADVERTISEMENTS FOR PROPOSALS FOR PURCHASES AND CONTRACTS

Sec. 2. (a) Section 3709 of the Revised Statutes (41 U.S.C. 5) is amended by striking out "so certified, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under government supervision and paid for on a time basis" and insert in lieu thereof "so certify".

(b) Section 302(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(a); 63 Stat. 393) is amended—

(1) by striking out paragraphs (4) and (5);

(2) by redesignating paragraphs (6) through (9) as paragraphs (4) through (7), respectively;

(3) by striking out paragraphs (10) and (11); and

(4) by redesignating paragraphs (12) through (15) as paragraphs (8) through (11), respectively.

(c) Section 2304(a) of title 10 of the United States Code is amended—

(1) by striking out paragraphs (4) and (5);

(2) by redesignating paragraphs (6) through (10) as paragraphs (4) through (8), respectively;

(3) by striking out paragraph (11);

(4) by redesignating paragraphs (12) and (13) as paragraphs (9) and (10) respectively;

(5) by striking out paragraph (14); and

(6) by redesignating paragraphs (15), (16) and (17) as paragraphs (11), (12) and (13), respectively.

RESTRICTIONS AND CONDITIONS WITH RESPECT TO ADVANCE PAYMENTS

Sec. 3. (a) Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255; 63 Stat. 396) is amended—

(1) in subsection (b), by striking out "the unpaid contract price" and inserting in lieu thereof "the unpaid contract price or, for a contract in an amount in excess of $100,000, two-thirds of the total contract price";

(2) by adding at the end thereof the following new subsection:

"(d)(1) Prior to making any progress payments under a contract in an amount in excess of $100,000 which would cause the total amount of progress payments made under such contract to exceed 65 percent of the contract price, the agency which is a party to the contract shall conduct an audit of the funds expended and the work performed under the contract. The agency shall examine the expenditure of funds to determine if the amount of funds expended is reasonable in relation to the work performed, and shall examine the work performed under the contract to determine if such work meets the specifications included in the contract and is satisfactory to the agency.

"(2) In the case of an agency in which there is an Inspector General, the Inspector General shall perform the audit required by this section. In the case of an agency in which there is not an Inspector General, the agency shall employ an independent auditor to carry out the audit required by this section.

"(3) Notwithstanding any other provision of law, an agency may not make any progress payments under a contract subject to paragraph (1) which would cause the total amount of progress payments made under such contract to exceed 65 percent of the contract price if the agency determines, as a result of the audit conducted under paragraph (1), that—

"(A) the expenditure of funds under the contract is unreasonable in relation to the work performed;

"(B) the work performed pursuant to the contract does not meet the contract specifications; or

"(C) the work performed pursuant to the contract is not satisfactory to the agency.".

(b) Section 2307 of title 10 of the United States Code is amended—

(1) in subsection (b), by striking out "the unpaid contract price" and inserting in lieu thereof "the unpaid contract price or, for a contract in an amount in excess of $100,000, two-thirds of the total contract price";

(2) in subsection (d), by striking out "Payments" and inserting in lieu thereof "Subject to the limitations provided under subsection (b), payments";

(3) by adding at the end thereof the following new subsection:

"(e)(1) Prior to making any progress payments under a contract in an amount in excess of $100,000 which would cause the total amount of progress payments made under such contract to exceed 65 percent of the contract price, the agency which is a party to the contract shall conduct an audit of the funds expended and the work performed under the contract. The agency shall examine the expenditure of funds to determine if the amount of funds expended is reasonable in relation to the work performed, and shall examine the work performed under the contract to determine if such work meets the specifications included in the contract and is satisfactory to the agency.

"(2) In the case of an agency in which there is an Inspector General, the Inspector General shall perform the audit required by this section. In the case of any agency in which there is not an Inspector General, the agency shall employ an independent auditor to carry out the audit required by this section.

"(3) Notwithstanding any other provision of law, an agency may not make any progress payments under a contract subject to paragraph (1) which would cause the total amount of progress payments made under such contract to exceed 65 percent of the contract price if the agency determines, as a result of the audit conducted under paragraph (1), that—

"(A) the expenditure of funds under the contract is unreasonable in relation to the work performed;

"(B) the work performed pursuant to the contract does not meet the contract specifications; or

"(C) the work performed pursuant to the contract is not satisfactory to the agency.".

(c) Section 2355 of title 10 of the United States Code is amended by striking out "Notwithstanding any law" and inserting in lieu thereof "Subject to section 2307(b) of this title and notwithstanding any law".

GENERAL LIMITATION ON CONTRACTS FOR SERVICES WHICH ARE READILY AVAILABLE WITHIN THE AGENCY

Sec. 4. (a)(1) Chapter 137 of title 10 of the United States Code is amended by adding immediately after section 2314 the following new section:

"§ 2315. Contracts for services readily available

"Notwithstanding any other provision of law, an agency may not enter into any contract for services unless, during the 30-day period prior to the date on which the agency intends to enter into the contract, the agency has conducted a survey within the agency and has determined that such services are not readily available within the agency.".

(2) The table of sections for such chapter is amended by adding at the end thereof the following new item:

"2315. Contracts for services readily available.".

(b)(1) The Federal Property and Administrative Services Act of 1949 (41 U.S.C. 471 et seq.) is amended by adding at the end of title III the following new section:

"CONTRACTS FOR SERVICES READILY AVAILABLE

"Sec. 311. Notwithstanding any other provision of law, an agency may not enter into any contract for services unless, during the 30-day period prior to the date on which the agency intends to enter into the contract, the agency has conducted a survey within the agency and has determined that such services are not readily available within the agency.".

(2) The table of contents for title III of such Act is amended by adding at the end thereof the following new item: "Sec. 311. Contracts for services readily available".●

ADDITIONAL COSPONSORS

S. 1078

At the request of Mr. JAVITS, the Senator from Connecticut (Mr. RIBICOFF) and the Senator from Ohio (Mr. METZENBAUM) were added as cosponsors of S. 1078, a bill to amend the Internal Revenue Code of 1954 to provide for the taxation of artists' income and estates.

S. 2926

At the request of Mr. TSONGAS, the Senator from Missouri (Mr. DANFORTH), the Senator from New York (Mr. JAVITS), the Senator from Utah (Mr. GARN), the Senator from Idaho (Mr. MCCLURE), the Senator from Wyoming (Mr. SIMPSON), the Senator from Rhode Island (Mr. PELL), and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 2926, a bill to provide for an accelerated research, development, and demonstration program to achieve confirmation of the engineering feasibility of magnetic confinement fusion, and for other purposes.

S. 3007

At the request of Mr. HOLLINGS, the Senator from Colorado (Mr. HART) was added as a cosponsor of S. 3007, a bill entitled the "Methane Transportation Research, Development, and Demonstration Act of 1980."

AMENEDMENT NO. 2368

At the request of Mr. CRANSTON, the Senator from Wisconsin (Mr. PROXMIRE) was added as a cosponsor of amendment No. 2368 proposed to H.R. 4155, a bill to amend the Internal Revenue Code of 1954 to allow the Internal Revenue Service to disclose the mailing addresses of individuals who have defaulted on student loans made under the Migration and Refugee Assistance Act of 1962.

SENATE RESOLUTION 526—ORIGINAL RESOLUTION REPORTED TO WAIVE THE BUDGET ACT

Mr. WILLIAMS, from the Committee on Labor and Human Resources, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 526

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 2385. Such waiver is necessary to authorize training, employment, basic skill and vocational educational programs for youth.

SENATE RESOLUTION 527—ORIGINAL RESOLUTION REPORTED TO WAIVE THE BUDGET ACT

Mr. WILLIAMS, from the Committee on Labor and Human Resources, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 527

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of H.R. 7859. Such waiver is necessary to permit emergency assistance to Cuban and Haitian refugee children.

AMENDMENTS SUBMITTED FOR PRINTING

CRIMINAL CODE REFORM ACT

AMENDMENT NO. 2327

Mr. ROBERT C. BYRD submitted an amendment intended to be proposed by Mr. KENNEDY (for himself, Mr. HATCH, and Mr. THURMOND) to the bill (S. 1772) to codify, revise, and reform title 18 of the United States Code, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I submit an amendment for Mr. KENNEDY (for himself and others) which he intends to propose to S. 1772, the Criminal Code Reform Act.

I ask unanimous consent that a statement and other materials be printed in the RECORD.

There being no objection, the statement and material were ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR EDWARD M. KENNEDY

I am submitting an amendment to subchapter B of Chapter 32 of S. 1722 (relating to international extradition) developed over the past year in close cooperation with the Department of Justice and Department of State. The bill as reported made numerous improvements in current extradition law. Further study by those departments of the government most affected resulted in identification of additional improvements now presented for consideration by the Senate in this amendment. To summarize some of the changes proposed, the amendment would:

Require the Attorney General to serve as complainant in extradition matters, thereby eliminating the possibility of a foreign government (or someone acting for a foreign government) instituting unjustified extradition proceedings.

Permit an arrest warrant to be issued when the location of the fugitive is not known, thereby facilitating law enforcement authorities' efforts in locating international fugitives (including territories, et seq.).

Permit extradition proceedings to be commenced by means of a summons rather than an arrest warrant where the fugitive's location is known and flight is unlikely.

Set standards and conditions for the release of the alleged fugitive in any stage of the proceeding (not just prior to the extradition hearing).

Place responsibility for deciding whether extradition is sought for a "political offense" in the hands of the Secretary of State, thereby permitting this determination to be made in the same manner as asylum applications.

Permit fugitives to be temporarily extradited to the United States for trial or sentencing.

Authorize the Attorney General to make all arrangements to take custody of fugitives found extraditable to the United States by foreign countries.

To further assist my colleagues in evaluating the merits of this amendment, I ask that letters from Attorney General Civiletti and Deputy Secretary of State Christopher, as well as an extensive explanation of the amendment in the format used in the Judiciary Committee report on the bill, be inserted in the RECORD, together with the amendment.

AMENDMENT NO. 2373

On page 10, strike out all between lines 1 and 2 and insert the following:

"Sec.
"3211. Extradition Authority in General.
"3212. Initial Procedure.
"3213. Waiver of Extradition Hearing and Consent to Removal.
"3214. Extradition Hearing.
"3215. Appeal.
"3216. Surrender of a Person to a Foreign State.
"3217. Receipt of a Person from a Foreign State.
"3218. General Provisions for Subchapter B."

On page 220, beginning with line 39, strike out all through line 39 on page 227 and insert in lieu thereof the following:

"SUBCHAPTER B.—EXTRADITION

"Sec.
"3211. Extradition Authority in General.
"3212. Initial Procedure.
"3213. Waiver of Extradition Hearing and Consent to Removal.
"3214. Extradition Hearing.
"3215. Appeal.
"3216. Surrender of a Person to a Foreign State.
"3217. Receipt of a Person from a Foreign State.
"3218. General Provisions for Subchapter B.

"§ 3211. Extradition Authority in General.

"The United States may extradite a person to a foreign state pursuant to this subchapter only if—

"(a) there is a treaty concerning extradition between the United States and the foreign state; and

"(b) the foreign state requests extradition within the terms of the applicable treaty.

"§ 3212. Initial procedure.

"(a) IN GENERAL.—The Attorney General may file a complaint charging that a person is extraditable. The Attorney General shall file the complaint in the United States district court—

"(1) for the district in which the person may be found; or

"(2) for the District of Columbia, if the Attorney General does not know where the person may be found.

"(b) COMPLAINT.—The complaint shall be made under oath or affirmation, and shall specify the offense for which extradition is sought. The complaint—

"(1) shall be accompanied by a copy of the request for extradition and by the evidence and documents required by the applicable treaty; or

"(2) if not accompanied by the materials specified in paragraph (1)—

"(A) shall contain—

"(i) information sufficient to identify the person sought;

"(ii) a statement of the essential facts constituting the offense that the person is believed to have committed, or a statement that an arrest warrant for the person is outstanding in the foreign state; and

"(iii) a description of the circumstances that justify the person's arrest; or

"(B) shall contain such other information as is required by the applicable treaty;

and shall be supplemented before the extradition hearing by the materials specified in paragraph (1).

"(c) ARREST OR SUMMONS.—Upon receipt of a complaint, the court shall issue a warrant for the arrest of the person sought, or, if the Attorney General so requests, a summons to the person to appear at an extradition hearing. The warrant or summons shall be executed in the manner prescribed by Rule 4(d) of the Federal Rules of Criminal Procedure. A person arrested pursuant to this section shall be taken without unnecessary delay before the nearest available court for an extradition hearing.

(d) DETENTION OR RELEASE OF ARRESTED PERSON.—

"(1) The court shall order that a person arrested under this section be held in official detention pending the extradition hearing unless the person establishes to the satisfaction of the court that special circumstances require his release.

"(2) Unless otherwise provided by the applicable treaty, if a person is detained pur-

suant to paragraph (1) in a proceeding in which the complaint is filed under subsection (b)(2), and if, within sixty days of the person's arrest, the court has not received—

(A) the evidence or documents required by the applicable treaty; or

(B) notice that the evidence or documents have been received by the Department of State and will promptly be transmitted to the court;

the court may order that the person be released from official detention pending the extradition hearing.

"(3) If the court orders the release of the person pending the extradition hearing, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

"§ 3213. Waiver of extradition hearing and consent to removal

"(a) INFORMING THE COURT OF WAIVER AND CONSENT.—A person against whom a complaint is filed may waive the requirements of formal extradition proceedings, including an order of surrender, by informing the court that he consents to removal to the foreign state.

"(b) INQUIRY BY THE COURT.—The court, upon being informed of the person's consent to removal, shall—

"(1) inform the person that he has a right to consult with counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3401; and

"(2) address the person to determine whether his consent is—

"(A) voluntary, and not the result of a threat or other improper inducement; and

"(B) given with full knowledge of its consequences, including the fact that it may not be revoked after the court has accepted it.

"(c) FINDING OF CONSENT AND ORDER OF REMOVAL.—If the court finds that the person's consent to removal is voluntary and given with full knowledge of its consequences, it shall, unless the Attorney General notifies the court that the foreign state or the United States objects to such removal, order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition. The court shall order that the person be held in official detention until surrendered.

"(d) LIMITATION ON DETENTION PENDING REMOVAL.—A person who the court orders surrendered pursuant to subsection (c) may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings, the person is not removed from the United States within thirty days after the court ordered the person's surrender. The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

"(a) IN GENERAL.—The court shall hold a hearing to determine whether the person against whom a complaint is filed is extraditable, unless the hearing is waived pursuant to section 3213. The purpose of the hearing is limited; the court does not have jurisdiction to determine the merits of the charge against the person by the foreign state, and does not have jurisdiction to determine whether the foreign state is seeking the extradition of the person for a political offense or an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions. The hearing shall be held as soon as practicable after the arrest of the person or issuance of the summons.

"(b) RIGHTS OF THE PERSON SOUGHT.—The court shall inform the person of the limited purpose of the hearing, and shall inform him that—

"(1) he has the right to be represented by counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3401; and

"(2) he may cross-examine witnesses who appear against him and may introduce evidence in his own behalf with respect to the matters set forth in subsection (d).

"(c) EVIDENCE.—

"(1) A deposition, warrant, or other document, or a copy thereof, is admissible in evidence in the hearing if—

"(A) it is authenticated in accordance with the provisions of an applicable treaty or law of the United States;

"(B) it is authenticated in accordance with the applicable law of the foreign state, and such authentication may be established conclusively by a showing that—

"(i) a judge, magistrate, or other appropriate officer of the foreign state has signed a certification to that effect; and

"(ii) a diplomatic or consular officer of the United States who is assigned or accredited to the foreign state, or a diplomatic or consular officer of the foreign state who is assigned or accredited to the United States, has certified the signature and position of the judge, magistrate, or other officer, or

"(C) other evidence is sufficient to enable the court to conclude that the document is authentic.

"(2) A certificate or affidavit by an appropriate official of the Department of State is admissible as evidence of the existence of a treaty or its interpretation.

"(3) If the applicable treaty requires that such evidence be presented on behalf of the foreign state as would justify ordering a trial of the person if the offense had been committed in the United States, the requirement is satisfied if the evidence establishes probable cause to believe that an offense was committed and that the person sought committed it.

"(d) FINDINGS.—The court shall find that the person is extraditable if it finds that—

"(1) there is probable cause to believe that the person arrested or summoned to appear is the person sought in the foreign state;

"(2) the evidence presented is sufficient to support the complaint under the provisions of the applicable treaty;

"(3) no defense to extradition specified in the applicable treaty, and within the jurisdiction of the court, exists; and

"(4) the act upon which the request for extradition is based would constitute an offense punishable under the laws of:

"(A) the United States;

"(B) the State where the fugitive is found; or

"(C) a majority of the States.

The court may base a finding that a person is extraditable upon evidence consisting, in whole or in part, of hearsay or of properly certified documents.

"(e) CERTIFICATION OF FINDINGS TO THE SECRETARY OF STATE.—

"(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of State declines to order the person's surrender.

"(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the court considers appropriate, to the Secretary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.

"§ 3215. Appeal.

"(a) IN GENERAL.—Either party may appeal, to the appropriate United States court of appeals, the finding by the district court on a complaint for extradition. The appeal shall be taken in the manner prescribed by Rules 3 and 4(b) of the Federal Rules of Appellate Procedure, and shall be heard as soon as practicable after the filing of the notice of appeal. Pending determination of the appeal, the district court shall stay the extradition of a person found extraditable.

"(b) DETENTION OR RELEASE PENDING APPEAL.—If the district court found that the person sought is—

"(1) extraditable, it shall order that the person be held in official detention pending determination of the appeal, or pending a finding by the court of appeals that the person has established that special circumstances require his release;

"(2) not extraditable, it may order that the person be released pending determination of an appeal unless the Attorney General establishes to its satisfaction that the person is likely to flee or to endanger the safety of any other person or the community.

If the court orders the release of a person pending determination of an appeal, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

"(c) SUBSEQUENT REVIEW.—No court has jurisdiction to review a finding that a person is extraditable unless the person has exhausted his remedies under subsection (a). If the person files a petition for habeas corpus or for other review, he shall specify whether the finding that he is extraditable has been upheld by a court, and, if so, shall specify the court, the date, and the nature of each such proceeding. A court does not have jurisdiction to entertain a person's petition for habeas corpus or for other review if his commitment has previously been upheld, unless the court finds that the grounds for the petition or appeal could not previously have been presented.

"§ 3216. Surrender of a person to a foreign state.

"(a) RESPONSIBILITY OF THE SECRETARY OF STATE.—If a person is found extraditable pursuant to section 3214, the Secretary of State, upon consideration of the provisions of the applicable treaty and this subchapter, may—

"(1) order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition;

"(2) order such surrender of the person contingent on the acceptance by the foreign state of such conditions as the Secretary considers necessary to effectuate the purposes of the treaty or the interest of justice; or

"(3) decline to order the surrender of the person if the Secretary is persuaded, by written evidence and argument submitted to him by the person sought, that the foreign state is seeking the person's extradition for a political offense or an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions.

The Secretary may order the surrender of a person who is a national of the United States unless such surrender is expressly forbidden by the applicable treaty or by the laws of the United States.

"(b) NOTICE OF DECISION.—The Secretary of State, upon ordering a person's surrender or denying a request for extradition in whole or in part, shall notify the person sought, the diplomatic representative of the foreign state, the Attorney General, and the court that found the person extraditable. If the Secretary orders the person's surrender, he also shall notify the diplomatic representative of the foreign state of the time limitation on the person's detention that is provided by subsection (c)(2).

"(c) LIMITATION ON DETENTION PENDING DECISION OR REMOVAL.—A person who is found extraditable pursuant to section 3214 may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings—

"(1) the Secretary does not order the person's surrender, or decline to order the person's surrender, within forty-five days after his receipt of the court's findings and the transcript of the proceedings; or

"(2) the person is not removed from the United States within thirty days after the Secretary ordered the person's surrender.

The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

"§ 3217. Receipt of a person from a foreign State.

"(a) APPOINTMENT AND AUTHORITY OF RECEIVING AGENT.—The Attorney General shall appoint an agent to receive, from a foreign state, custody of a person accused of a federal, State, or local offense. The agent shall have the authority of a United States Marshal. The agent shall convey the person directly to the federal or State jurisdiction that sought his return.

"(b) TEMPORARY EXTRADITION TO THE UNITED STATES.—If a foreign state delivers custody of a person accused of a federal, State, or local offense to an agent of the United States on the condition that the person be returned to the foreign state at the conclusion of criminal proceedings in the United States, the Bureau of Prisons shall hold the person in custody pending the conclusion of the proceedings, and shall then surrender the person to a duly appointed agent of the foreign state. The return of the person to the foreign state is not subject to the requirements of this subchapter.

"§ 3218. General provisions for subchapter B.

"(a) DEFINITIONS.—As used in this subchapter—

"(1) 'warrant', as used with reference to a foreign state, means any judicial document authorizing the arrest or detention of a person accused or convicted of a crime;

"(2) 'court' means—

"(A) a United States district court established pursuant to 28 U.S.C. 132, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands; or

"(B) a United States magistrate authorized to conduct an extradition proceeding;

"(3) 'foreign state', when used in other than a geographic sense, means the government of a foreign state;

"(4) 'foreign state', when used in a geographic sense, includes all territory under the jurisdiction of a foreign state, including a colony, dependency, and constituent part of the state; its air space and territorial waters; and vessels or aircraft registered in the state;

"(5) 'treaty' includes a treaty, convention, or international agreement, bilateral or multilateral, that is in force after advice and consent by the Senate.

"(b) PAYMENT OF FEES AND COSTS.—Unless otherwise specified by treaty, all transportation costs, subsistence expenses, and translation costs incurred in connection with the extradition or return of a person at the request of—

"(1) a foreign state, shall be borne by the foreign state unless the Secretary of State directs otherwise;

"(2) a State, shall be borne by the State; and

"(3) the United States, shall be borne by the United States.".

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 1, 1980.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: This letter is in response to your letter of June 4, 1980, requesting the views of the Department of Justice on the proposed amendment to S. 1722 designed to modernize and improve United States extradition laws. It is our understanding that this amendment, developed jointly by the staffs of the Committee, the Department of Justice and the Department of State, will be introduced during the floor consideration of S. 1722 in the near future. The Department of Justice strongly supports this amendment.

The present United States extradition statutes were enacted in the 1840's and 1890's. They have not been materially changed since their enactment. They were designed to cope with international extradition problems in the world of the horse and buggy and the steamship, not in the world of commercial jet air transportation and high-speed telecommunications.

The present extradition provisions in S. 1722, which were originally drafted more than five years ago, made significant strides toward tailoring United States extradition laws to today's world. These improvements in the present S. 1722 provisions, such as providing for direct appeal from findings for or against extraditability and an expedited procedure for the removal of fugitives wishing to waive formal extradition proceedings, have been carried forward into the proposed amendment to S. 1722.

In the past five years, however, there have been three major developments in the area of extradition which should be reflected in the extradition subchapter of the new Code. First, during that period, new extradition treaties with sixteen countries either have entered into force, have been negotiated, or are in the process of being negotiated. Some of the newer treaties contain provisions which require implementing legislation not contemplated when the present S. 1722 provisions were drafted.

Second, numerous court decisions materially affecting extradition and many of the provisions of the present S. 1722 have been handed down since 1975. The impact of these decisions has been taken into account in the proposed amendment.

Third, there has been a tremendous increase in the number of extradition requests by foreign countries and by the United States and the individual states over that period which has increased the importance of developing a streamlined system of laws and procedures to handle them. For example, in the late 1960's and early 1970's extradition requests were being received at the rate of approximately twenty per year. Today, they are being received at the rate of more than 250 per year and the number of fugitives whose extradition is being sought is running at the rate of more than 350 per year.

These developments required a complete reexamination of the present S. 1722 provisions by the staffs of your Committee, the Department of Justice and the Department of State. This reexamination, which only recently has been completed, resulted in the proposed amendment to the extradition provisions of S. 1722. We believe this amendment will complete the task of converting our present horse-and-buggy era extradition laws into ones capable of effectively dealing with international fugitives in today's world. For that reason, we believe it is important that it be adopted.

Yours truly,

BENJAMIN R. CIVILETTI,
Attorney General.

THE DEPUTY SECRETARY OF STATE,
Washington, D.C., July 2, 1980.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: I have been asked by Secretary Muskie to convey, in response to your letter to him of June 4, the views of the Department of State on a proposed amendment to S. 1722 relating to international extradition. As Deputy Secretary, I have been delegated authority to act for the Secretary of State on matters involving extradition to and from the United States.

Your letter notes that the proposed amendment has been jointly worked out by the staffs of your Committee, the Department of Justice and the Department of State. I have been following these efforts to modernize and improve United States extradition law, and I approve of the results. Those efforts have drawn heavily on court decisions and recent treaty developments, as well as on practical experience with the ever-increasing number of extradition cases.

The Department of State is particularly pleased with the provisions of the bill which provide more effective federal control over filing of extradition requests in this country (section 3212); which, for the first time, permit appeal from a district court's decision on an extradition request (section 3215); and which place in the Secretary of State the determination whether extradition should be refused on political offense grounds (section 3216(a)(3)). Taken together, these provisions should reduce the risk of adverse foreign policy consequences which flow from extradition either improperly initiated or improperly refused. At the same time, every effort has been made to preserve the protection of individual rights.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

WARREN CHRISTOPHER.

SUBCHAPTER B—EXTRADITION

(SECTIONS 3211–3218)

1. In General:

This subchapter deals with the subject of international extradition, which is the process by which a person located in one nation is arrested and turned over to another nation for trial or punishment. Sections 3211–3216 deal primarily with requests made to the United States by foreign governments, and set forth the procedure for determining whether a person located in this country should be delivered up to a foreign power. Section 3217 deals with the return of a fugitive extradited to the United States from a foreign nation. Section 3218 contains definitions and a provision on payment of the expenses incident to extradition. The proposed subchapter replaces 18 U.S.C. 3181 and 3184–3195.[1]

The provisions of the proposed subchapter substantially alter the present statutory law, and the provisions originally reported by the Committee, for several reasons.

First, many of the statutes on extradition have been in force without major alteration since 1882. Several have not been significantly changed since 1848. These antiquated provisions have proven increasingly inadequate in dealing with the modern problems in the international control of crime.

Second, there has been a marked increase in the number of extradition requests received and made by the United States in the four years since the drafting of the extradition subchapter reported by the Committee. Those requests have revealed problems in the extradition process which were not anticipated when the reported subchapter was drafted. Moreover, these requests have

Footnotes at end of article.

generated a number of published court decisions on constitutional and legal issues involved in international extradition. The judicial interpretation of the law contained in these court decisions fills important gaps in the present statutory law, and should be reflected in any new extradition legislation.

Third, the United States has concluded new extradition treaties with many foreign countries in the past few years. The language of the present law, and of the reported subchapter on extradition, is not adequate to fully implement some of the provisions of the newer treaties, and therefore would impede fulfillment by the United States of its international obligations.

SECTION 3211: EXTRADITION AUTHORITY IN GENERAL

1. Present Federal law:

18 U.S.C. 3181 states that the present federal laws authorizing the extradition of persons from the United States shall continue in force only if there is a treaty in force with the foreign nation requesting extradition. 18 U.S.C. 3184 requires that an extradition treaty be in force before any court can conclude that a person may lawfully be extradited to the foreign country involved.[3] These provisions, read together, permit the United States to surrender a person to a foreign country only in accordance with an applicable treaty in force between the United States and the foreign country involved.[3] This principle has become a settled aspect of the United States practice in international extradition.

2. Provisions of the Proposed Subchapter:

Section 3211 of the proposed subchapter on extradition carries forward the basic principle of the present law. The provision specifies that the United States may extradite a person in this country pursuant to the subchapter only if there is a treaty concerning extradition in force with the country requesting extradition, and only if the request falls within the terms of that treaty. This section refers to a treaty "concerning extradition" rather than an "extradition treaty" because an obligation to extradite a particular class of offenders is sometimes included in international agreements other than extradition treaties.[4] However, the limitation established by this section applies only to the surrender of fugitives pursuant to the subchapter, and does not apply to any other legal process which may result in a person facing trial or punishment in another country. Thus, the surrender of a United States serviceman to foreign authorities for trial in accordance with the reciprocal criminal jurisdiction provisions of a Status of Forces Agreement,[5] or the deportation of an alien who happens to face criminal charges abroad,[6] remain governed by the treaty provisions and statutes relating to those processes, and not by this subchapter.

Section 3211 of the proposed subchapter is essentially identical to section 3211(a) in S. 1722, as reported. Section 3211(b) in S. 1722, as reported, which required that the legal provisions relating to the surrender of persons "shall continue in force only during the existence in force of a treaty [on extradition]", does not appear in the proposed subchapter because the concept is adequately covered by the language in proposed section 3211. The other portions of section 3211 in S. 1722 have been rewritten somewhat and moved to other locations in the proposed subchapter. Thus, the essence of section 3211 (c) in S. 1722 is located in section 3216(a)(2) of the proposed subchapter, and the essence of section 3211(d) in S. 1722 can be found in section 3216(a) of the proposed subchapter.

SECTION 3212: INITIAL PROCEDURE

This section sets forth the steps to be followed in instituting court proceedings necessary for extradition.

Footnotes at end of article.

1. Present Federal Law:

Extradition proceedings under 18 U.S.C. 3184 commence when a complaint is filed, under oath, charging that a person has committed, within the jurisdiction of a foreign government, any of the crimes for which extradition is provided under the treaty on extradition in force between the United States and that foreign government. There is no requirement under present law that a formal diplomatic request for extradition be made before the complaint is filed.

18 U.S.C. 3184 permits any federal judge or justice, or duly authorized federal magistrate, or any judge of a state court of record of general jurisdiction to receive complaints and issue warrants of arrest in international extradition matters. In practice, however, such cases are almost invariably filed in the federal courts.

The present statutory scheme does not specify who may file complaints in extradition matters. The rule developed by the courts appears to be that any person acting under the authority of the demanding government may file a complaint for extradition.[7] Thus, international extradition cases have been instituted by foreign diplomatic or consular representatives,[8] foreign police officers,[9] and even private citizens who claim to be acting on behalf of a foreign government.[10] This situation has required the courts to determine, in each case, whether the person filing the complaint is "authorized" to act on behalf of the foreign government.[11] However, in recent years, the United States Department of Justice has become the complainant in the overwhelming majority of extradition cases. The Department of Justice takes this action either pursuant to provisions in the applicable extradition treaty requiring the government of the requested state to provide assistance to the government seeking extradition,[12] or pursuant to informal international agreement for reciprocal legal representation.

The complaint must be filed in a federal or state court in whose jurisdiction the fugitive may be found. Unfortunately, in many cases the international fugitive's location in the United States is unknown. Therefore, no complaint can be filed and no arrest warrant can be issued. The ability of United States law enforcement agencies to locate and apprehend international fugitives is greatly hampered by the lack of an outstanding arrest warrant or other judicial process in such cases.[13]

The present statutory scheme contains no provision for the release of an alleged fugitive on bail pending the extradition hearing.[14] However, the courts have claimed the inherent right to release an alleged fugitive on bail pending the extradition hearing in cases where "special circumstances" require such release.[15]

2. Provisions of the Proposed Subchapter:

Subsection (a) permits the Attorney General to file a complaint charging that a fugitive is extraditable in the United States District Court for the district in which the fugitive may be found. The subsection also permits a complaint to be filed in the United States District Court for the District of Columbia if the fugitive's location is not known. Under this provision, a complaint could be filed, and an arrest warrant issued, when the whereabouts of the fugitive in the United States are still being ascertained, or when it is believed that the fugitive has not yet entered the United States but may be about to do so. The word "found" is intended to have its usual, non-technical meaning, and permits extradition proceedings to be initiated in any district in which the fugitive can be physically apprehended, without regard to the manner in which the fugitive entered the district.[16]

Subsection (b) prescribes the contents of a complaint for extradition. Since all United States extradition treaties specify the documents and quantum of evidence necessary for surrender, subsection (b)(1) states that an extradition complaint is sufficient if it is accompanied by the evidence specified in the treaty and a copy of the formal request for extradition. Subsection (b)(2) deals with the documentation necessary to support a "provisional arrest," the process by which a fugitive from justice is arrested to prevent further flight while the foreign government seeking extradition assembles the necessary documents and evidence.[17] Subsection (b)(2)(A) provides that a complaint will support an arrest under subsection (c) if it contains information sufficient to identify the fugitive, explains the circumstances necessitating provisional arrest, and either indicates that a warrant for the fugitive's arrest is outstanding in the foreign state,[18] or outlines the essential facts indicating that an extraditable crime has been committed and that the fugitive committed it. Since many of the extradition treaties contain articles which expressly set out requirements for obtaining the arrest of fugitives, subsection (b)(2)(B) permits the complaint to be filed if it contains the information required by the provisions of the applicable treaty.

Subsection (c) obliges the court to issue a warrant for the arrest of the fugitive upon receipt of the complaint unless the Attorney General requests that a summons to appear at the extradition hearing be issued instead. The subsection requires that the warrant of arrest be executed in accordance with Rule 4(d) of the Federal Rules of Criminal Procedure. This means that the warrant may be executed anywhere in the United States in the same manner as an ordinary federal warrant of arrest.

The subsection also requires that the person arrested be taken without unnecessary delay before the nearest available federal court[19] for an extradition hearing. The language is similar to that of Rule 5 of the Federal Rules or Criminal Procedure, and is intended to insure that the person arrested under this section is speedily informed by a judicial officer of the reason for the arrest and of his rights to counsel, to cross-examine witnesses, and to introduce evidence on his behalf. It is not intended to require the dismissal of extradition proceedings solely on the ground that the fugitive arrested for extradition was taken without unnecessary delay before a judge or magistrate later determined not to be the "nearest" one. There is no requirement that the extradition hearing take place in the state in which the fugitive is found,[20] so long as there has been compliance with the provisions of this subchapter.

Subsection (d)(1) provides that a fugitive arrested for extradition may be released on bail pending the extradition hearing only if he can demonstrate that "special circumstances" warrant his release. The provision continues the approach which has been followed by United States courts[21] in setting the standards for release on bail pending an extradition hearing considerably higher than the standards for release on bail pending trial on federal charges in the United States. This approach is necessary to assure that the United States continues to carry out its treaty obligation to surrender extraditable fugitives. It is anticipated that the courts will find the "special circumstances" test satisfied "only in the most pressing circumstances and only when the requirements of justice are absolutely peremptory."[22] Such special circumstances might be found, for instance, where the incarceration of the fugitive would seriously damage his health,[23] or would endanger the welfare of a third party who is wholly dependent upon the fugitive for care.[24] It is anticipated that these circumstances would rarely be encountered.

Subsection (d)(3) provides that even if special circumstances are found, the release of the fugitive shall be permitted only upon

such conditions as will reasonably assure his appearance at future proceedings, and assure the safety of other persons and the community. Such conditions might include surrender by the fugitive of any passport or travel documents, posting of a substantial bond, and the requirement that the fugitive maintain contact with appropriate federal agencies, such as the United States Marshals Service.

Subsection (d)(2) gives the court the discretion to release the fugitive provisionally arrested pursuant to this section if the evidence or documents required by the applicable treaty are not received within sixty days of the arrest (unless a longer period of detention is specified in the applicable treaty). The subsection resolves an ambiguity perceived by the courts with respect to the commencement and conclusion of the time period for provisional arrest by providing that this period should be calculated from the date on which the fugitive is taken into custody for extradition[25] to the date on which the documents are received by either the court or the Department of State.[26] If the court is notified that the documents have been received by the Department of State by the expiration of the 60-day period, the court is directed to defer release of the fugitive for a reasonable time pending the prompt transmission of the documents to the court by the Department of State. If a court does release the fugitive from custody due to the nonreceipt of the documents within the applicable time period, subsection (d)(3) requires that the court frame conditions of release reasonably calculated to assure that person's appearance for future proceedings and the safety of other persons and the community. Release of the fugitive under subsection (d) does not terminate the proceedings, which can resume once appropriate documentation arrives.[27]

This section does not carry forward 18 U.S.C. 3184's little used authorization for extradition proceedings to be commenced before state judges. The section also specifies that extradition proceedings must be initiated by the Attorney General, rather than by a foreign government or one acting on behalf of a foreign government.[28] These changes reflect the fact that international extradition is strictly a function of the federal government[29] and determining when and how to perform that function is properly the business of federal officials and federal courts.

Section 3212 of the proposed subchapter contains many of the same concepts found in section 3212 (a) through (c) of S. 1722, as reported. However, the proposed subchapter differs from S. 1722, as reported, in the following respects:

(1) Section 3212 of S. 1722, as reported, permits the Department of Justice to initiate extradition proceedings only "pursuant to the provisions of an applicable treaty or other international agreement or at the request of the demanding government." The proposed subchapter expands the authority of the Department of Justice to all extradition proceedings in the United States. It is the view of the Department of Justice and the Department of State that the United States Government has a sufficient interest in the vigorous enforcement of the laws (including the extradition law and treaties) to justify the participation of its legal counsel, the Department of Justice, in all court proceedings aimed at determining whether extradition can take place. Indeed, this is the approach which has been adopted in most foreign countries, many of which do not permit the United States to argue in court during proceedings in connection with a United States extradition request.

(2) S. 1722, as reported, expressly permits a complaint for extradition to be filed by "persons authorized by an appropriate official of the demanding government to act on behalf of that government." This language does not appear in the proposed subchapter, which directs the Department of Justice to act as complainant in extradition matters. Thus, the proposed subchapter frees United States courts from any need to determine whether a private person is "authorized" by an "appropriate" foreign authority to initiate extradition proceedings. It should also significantly reduce the likelihood of extradition proceedings being used by private individuals as a tool for harassment, debt collection, or other improper purposes.

(3) Section 3212(a) in S. 1722, as reported, requires that the extradition complaint be accompanied by "an acknowledgement from the Department of State of the diplomatic note requesting extradition." This requirement has been omitted from the revised subchapter as unnecessary.[30] The same subchapter of S. 1722, as reported, requires that an extradition complaint be accompanied by a copy of the applicable treaty. This requirement has been deleted from the proposed subchapter because it is unnecessary, since the courts have adequate access through legal libraries to the extradition treaties in force.

(4) Section 3212(a)(3) in S. 1722, as reported, states that a fugitive arrested for extradition can be taken either to the court issuing the warrant or arrest or the nearest federal district court for the extradition hearing. The proposed subchapter requires that the hearing be held by the nearest available federal court, thereby eliminating a potential source of unfairness and delay.

(5) Section 3212(c)(2) in S. 1722, as reported, permits a person provisionally arrested for extradition to remain in custody awaiting presentation of the necessary documents "for the period, if any, specified in the applicable treaty or other international agreement, or for 90 days, whichever is less." The proposed subchapter reduces the maximum period of detention to 60 days "unless otherwise provided by the applicable treaty." The proposed subchapter's shorter period of time for detention after provisional arrest is more consistent with the actual language of the extradition treaties than the time period in S. 1722, as reported.

(6) Section 3212(c)(2) in S. 1722, as reported, provides that the fugitive who was provisionally arrested can be released on bail only if "unusual cause" is shown, and section 3212(c)(1) in the bill, as reported, requires that a fugitive who is not provisionally arrested show "good cause" before release on bail is permitted. The proposed subchapter follows present case law by using the "special circumstances" test as a guide for release regardless of whether provisional arrest was obtained.[31]

SECTION 3213: WAIVER OF EXTRADITION HEARING AND CONSENT TO REMOVAL

1. Present Federal Law:

Present Federal law provides no specific procedure by which a person arrested for extradition may waive the formalities and voluntarily return to the foreign country requesting surrender. This is especially unfortunate since a significant number of the fugitives arrested under 18 U.S.C. 3184 choose not to challenge the request for extradition and wish to expedite removal to the foreign country. Moreover, many of the newer extradition treaties to which the United States is a party contain provisions obligating the requested state to expedite the return of a fugitive who has waived a hearing or other procedures.[32]

2. Provisions of the Proposed Subchapter:

Section 3213 of the proposed extradition subchapter clarifies the method by which the fugitive who does not contest extradition can expedite his surrender. The provisions of this section are based on federal statutory provisions governing a closely analogous situation: the verification of a prisoner's voluntary consent to transfer to his country of nationality under treaties on the execution of penal sanction.[33] The subsection states that the court which would have handled the extradition proceedings shall verify that the fugitive's consent to be removed to a foreign country has been given voluntarily and with full knowledge of the consequences. It also provides that the fugitive shall be informed of his right to consult with counsel before making a decision in the matter.

Under some circumstances, the foreign government may not be willing to accept custody of a fugitive who has offered to waive extradition.[34] There also may be situations in which the United States Government would consider waiver inappropriate.[35] Therefore, the provision does not permit removal of the fugitive if the Attorney General notifies the court that the United States or the foreign state objects to the proposed waiver.

Section 3214 in S. 1722, as reported, also would amend present law by offering an opportunity for the person arrested for extradition to a foreign country to waive the requirements of formal extradition proceedings. However, section 3214 in S. 1722 differs from section 3213 of the proposed subchapter on extradition in several respects. For example, section 3214 of S. 1722 requires that the person arrested irrevocably waive "all rights guaranteed by the applicable treaty . . . and by this subchapter" in order to dispense with the requirements of an extradition hearing and the issuance of a warrant of surrender by the Secretary of State.[36] The revised extradition subchapter permits the person arrested to waive only the necessity for a hearing and order of surrender, leaving intact any other right available to him under the applicable treaty. Section 3214 in S. 1722 also requires that the foreign state involved take custody of the person within fifteen days of the waiver, and contains no provision for the foreign government involved to show any "good cause" it may have for being unable to remove the fugitive within this deadline, or that removal of a fugitive was frustrated by the fugitive's own actions. Under the revised subchapter, the person waiving extradition and the person ordered extradited by the Secretary of State are placed on the same footing.[37] The revised section also specifies, unlike current law or S. 1722, as reported, the right of the United States to refuse to consent to waiver by the fugitive,[38] and the right of the fugitive to consult counsel and to have counsel appointed for him if he is unable to afford counsel.

SECTION 3214: EXTRADITION HEARING

1. Present Federal Law:

Under 18 U.S.C. 3184, an alleged fugitive is entitled to a hearing at which a judicial officer determines whether extradition is lawful. 18 U.S.C. 3189 specifies that the hearing must be held "on land, publicly, and in a room or office easily accessible to the public."

At the extradition hearing, the judicial officer must determine whether the offense for which extradition is sought falls within the terms of the treaty. He must also determine whether the acts for which the fugitive is sought by the foreign country would constitute a crime had they been committed in this country. This rule, known as "dual criminality" or "double criminality," is generally considered a basic principle of international extradition law,[39] and is expressly required by many of the extradition treaties to which the United States is a party.[40] The courts have held that the double criminality requirement is satisfied whenever the acts which the fugitive is charged with having committed in the foreign country would be punishable under federal law, the law of the state where the fugitive is found, or the laws of a majority of the states, had those acts been committed in this country.[41]

A judicial officer must also determine whether there is sufficient proof that an extraditable offense in fact has been committed. Most of the treaties to which the United States is a party require that an extradition request be supported by "such evidence of criminality as, according to the laws of the place where the fugitive shall be found, would justify his commitment for trial had the crime or offense been there committed." Many years ago, the courts viewed the words "place where the fugitive shall be found" as requiring the federal court to determine if the foreign government's evidence is sufficient to justify a trial under the state laws of the state in which the fugitive is apprehended.[42]

This approach was a reasonable one eight decades ago, because at that time federal courts had no uniform rules of criminal procedure and routinely followed the procedural rules of the courts of the state in which they were located. However, the adoption of the Federal Rules of Criminal Procedure has made it generally unnecessary for federal courts to refer to state law in these matters.[43] Moreover, extradition is a national act,[44] and the quantum of evidence necessary for extradition is precisely the kind of issue which should be determined by uniform national law, rather than by various state laws. For these reasons, all of the more recent extradition treaties contain language essentially requiring that the federal law standard of commitment for trial—probable cause—be applied in weighing the sufficiency of the evidence for international extradition.[45]

The Federal Rules of Evidence do not apply in extradition proceedings,[46] where unique rules of wide latitude govern the reception of evidence on behalf of the foreign government.[47] It is settled law that hearsay is admissible, and the foreign government usually presents its case by submitting affidavits, depositions and other written statements in order to satisfy the requirements of the applicable treaty.[48]

Eighteen U.S.C. 3190 provides that originals or copies of depositions, warrants, or other papers are admissible in evidence at the extradition hearing if authenticated so as to be admissible for similar purposes according to the laws of the requesting country. The statute also provides that the certificate of the principle diplomatic or consular officer of the United States resident in the requesting country shall be proof that the documents are authenticated in the manner required. In essence, the documents need only be genuine and authentic—requirements that are deemed fulfilled once it is shown that under similar circumstances the requesting country's own courts would accept them as authentic.

The courts have held that extradition documents bearing a certificate which is couched in language of 18 U.S.C. 3190, and signed by one of the specified officials, are conclusively admissible.[49] As a result of these decisions, foreign governments routinely submit the documentation in support of extradition requests to the appropriate United States Embassy abroad for certification and transmission to the United States. This practice imposes undesirable burdens on the United States Foreign Service officers who must fill out the certification.[50]

The present statutory scheme offers little guidance with respect to the evidence which can be introduced on behalf of the alleged fugitive in an extradition hearing. Many cases emphasize that whether such evidence should be admitted is a decision for the court, in its discretion, to make.[51]

The alleged fugitive is ordinarily permitted to testify on his own behalf[52] or to have witnesses testify for him.[53] However, it is clear from the case law that the alleged fugitive may offer to explain ambiguities in the evidence submitted against him, but may not offer evidence which merely contradicts that submitted by the requesting country, or which poses a question of credibility, or which raises an affirmative defense to conviction on the charges, or which is incompetent by the terms of the extradition treaty under which surrender is sought.[54] This restrictive approach is appropriate because the issue before the court at an extradition hearing is probable cause, not the ultimate guilt or innocence of the accused.

Finally, the judicial officer must determine whether the treaty contains a defense to extradition which would preclude surrender in the case before him. Extradition treaties frequently bar surrender if a statute of limitations has foreclosed prosecution or punishment for the offense in question,[55] or if the fugitive has been tried or punished in the requested state for the same offense,[56] or if any of several other legal considerations are present.

Virtually every extradition treaty contains a provision barring extradition for a political offense, and many treaties also preclude extradition if the requesting country has political motives for seeking the return of the fugitive. Under the present case law, the courts decide whether the crime for which extradition has been requested is a political offense,[57] but traditionally have declined to consider whether the requesting country's motives in seeking extradition are political.[58] Since these issues are usually intertwined, the result under the current case law has been that the court decides the applicability of the "political offense" exception in some cases, and the executive branch decides the applicability in other cases. The possibility for inconsistent results is obvious.

If the judicial officer is persuaded that the crime charged falls within the treaty, that the acts involved would constitute an offense in this country, that the evidence submitted is sufficient to sustain the charge under the treaty, and that no legal defense to extradition is applicable, it is his duty to certify these conclusions to the Secretary of State. The judicial officer also must send the Secretary of State a copy of all the oral testimony taken at the hearing. 18 U.S.C. 3184 obliges the judicial officer to order the commitment of the accused to jail pending surrender, and there is no provision for release on bail at this stage of the proceedings. If the judicial officer finds that the fugitive is not extraditable, the proceedings are terminated, and the fugitive is released from custody.

2. Provisions of the Proposed Subchapter:

Section 3214(a) requires that a judicial hearing be held to determine whether the person sought is extraditable (unless such a hearing has been waived under section 3213) and sets out the procedure for the hearing.

Section 3214(a) provides that the court does not have jurisdiction to determine whether extradition is sought for a political offense or because of the person's political beliefs, while section 3216(a)(3) specifies that the Secretary of State has the authority to decline to order surrender of a person if he is persuaded that his extradition is sought for one of these reasons. The provisions together effectively state that the Secretary of State alone shall have jurisdiction to decide the applicability of the "political offense" exception to extradition contained in most extradition treaties. This approach is a desirable one for several reasons.

First, the most modern United States extradition treaties specify that the executive branch of the requested country shall decide the applicability of the political offense exception.[59] Moreover, under present case law the courts generally shun deciding whether the foreign government's extradition request is politically motivated, preferring to leave that decision to the executive branch.[60] Thus, the approach adopted in the proposed subchapter is not a radical departure from present law. It should be noted that the political offense decisions are made exclusively by the executive branch of government in several foreign countries, including Canada and the Netherlands.

Second, the decision to shield a criminal from extradition on the ground that his offense was "political" is not the kind of issue which lends itself to resolution through the judicial process. There are few truly objective criteria by which a comprehensive definition of the term "political offense" can be based,[61] and a public court proceeding is not an appropriate or desirable forum for careful analysis of a friendly foreign state's intentions or political system. Rather, a decision on the "political offense" exception is (as the name suggests) inescapably political in nature, and inextricably intertwined with the conduct of foreign relations. It is an issue best left to the executive branch to decide, much as the decision to offer political asylum is an executive decision.

Third, a decision on the political offense exception can have a devastating impact on United States relations with the requesting country. The potentially crippling effect of such decisions on foreign affairs is particularly great where it could compromise United States efforts to combat international terrorism.[62] The present law exacerbates this situation, because frequently the United States government, through the Departments of State and Justice, must take a position on the applicability of the political offense exception while the case is before the court. Moreover, the government must take this position publicly, before all the evidence and arguments are in, and despite the fact that the court or the Secretary of State may subsequently decide against extradition on other grounds. By contrast, the approach taken by the proposed subchapter permits a more informed decision on extradition to be made in a manner less likely to be offensive to the friendly foreign government involved in the case.

Subsection (b) supplements present law by expressly providing that the fugitive be informed of his right to be represented by counsel at the extradition hearing. Indigent fugitives will be provided with counsel pursuant to the provisions of section 3401 relating to court-appointed counsel. The provision also requires that the fugitive be informed of his right to introduce evidence in his own behalf on matters within the jurisdiction of the court. The subsection thereby leaves intact the extensive case law on this point.[63]

Subsection (c) contains several provisions relating to admissibility and sufficiency of evidence.

Subsection (c)(1) is designed to clarify the circumstances under which documentary evidence will be admissible on behalf of either party in an extradition hearing.

Many treaties specifically set out the manner in which extradition documents must be authenticated,[64] and subsection (c)(1)(A) provides that documents so authenticated shall be admissible. It also provides that documents authenticated in accordance with the provisions of United States law shall be deemed appropriate. Thus, documents which comply with the requirements of Article IX of the Federal Rules of Evidence would be admissible in extradition proceedings. However, subsection (c)(1) does not require the exclusion from the hearing of evidence which fails to satisfy the Federal Rules of Evidence. Rather, the subsection merely underscores the common sense proposition that evidence which satisfies the high standards set out in the Rules, and which would be admissible in civil or criminal proceedings in this country should likewise be acceptable in extradition proceedings.

Footnotes at end of article.

Subsection (c)(1)(B) is based on 18 U.S.C. 3190, and provides that a document authenticated in accordance with the applicable laws of the foreign country requesting extradition shall be admissible if it is accompanied by an attestation to this effect from a judge, magistrate or other appropriate officer of the foreign state. The phrase "other appropriate officer" would include an official of the foreign State's equivalent of the Department of Justice, or any other government official likely to be familiar with legal matters in the foreign country. It further requires that the signature and position of the person so attesting be certified by a diplomatic or consular officer of the United States posted in the foreign country, or by a diplomatic or consular officer of the foreign state assigned to this country.[65] The provision thus brings the essential requirements of 18 U.S.C. 3190 more into line with Rule 902(3) of the Federal Rules of Evidence.

Subsection (c)(1)(C) permits the court handling an extradition matter to accept as evidence any documents which it is persuaded are in fact authentic, regardless of compliance with either of the previous two provisions. This rule is similar to Rule 901 (a) of the Federal Rules of Evidence, and is in accord with established case law permitting the authenticity of documents presented in extradition proceedings to be established by the testimony from expert witnesses or by other evidence.[66]

Subsection (c)(2) provides that a certificate or affidavit by an appropriate State Department official as to the existence or interpretation of a treaty is admissible as evidence of that treaty or its interpretation.

The overwhelming majority of extradition treaties require that the requesting country present such evidence of criminality as would justify commitment for trial had the crime or offense been committed in the place where the fugitive has been found. Under subsection (c)(2) such a treaty provision may be satisfied by evidence establishing probable cause to believe that a crime was committed and that the person sought committed it. This is the usual standard for commitment for trial in federal criminal cases.[67] This approach permits the federal courts to apply the standard for commitment with which they are most familiar, and establishes a single, uniform standard by which the sufficiency of evidence in extradition proceedings may be measured. It is also consistent with the views expressed in several recent court decisions pointing out the advantages of dealing with the quantum of evidence for extradition in a manner consistent with federal law.[68]

Subsection (d) carries forward the requirements of 18 U.S.C. 3184 that instruct the court to find the fugitive extraditable if the evidence presented is sufficient to sustain the complaint under the provisions of the applicable treaty. The subsection also requires that the court find probable cause that the person before it is the person sought in the foreign state, and that none of the defenses to extradition which the court is empowered to consider are applicable. Subsection (d)(4) bars extradition unless the acts for which the fugitive's surrender is requested would constitute a crime punishable under state or federal law in the United States. Finally, the subsection states that the findings required for extradition may be established by hearsay evidence or certified documents alone. This rule is similar to Rule 5.1, of the Federal Rules of Criminal Procedure, which permits a finding of probable cause to commit for trial to be based on hearsay evidence. It is also in accord with several recent court decisions which point out that the kind of evidence necessary for extradition is an issue which should be determined by uniform national law.[69]

Footnotes at end of article.

SECTION 3215: APPEAL

1. Present Federal Law:

Under present Federal law, there is no direct appeal from a judicial officer's finding in an extradition hearing.[70] A person found extraditable may only seek collateral review of the finding, usually through an application for a writ of habeas corpus.[71] The foreign government that is dissatisfied with the results of the hearing must institute a new request for extradition.[72] The lack of direct appeal in extradition matters adds undesirable delay, expense and complication to a process which should be simple and expeditious.

2. Provisions of the Proposed Subchapter:

Section 3215 of the proposed subchapter on extradition permits either party in an extradition case to appeal directly to the appropriate United States court of appeals from a judge or magistrate's decision. It is anticipated that review on appeal will be very narrow, and that any findings of fact by the lower court will be affirmed unless they are clearly erroneous.

Subsection (a) specifies that the appeal shall be filed within the time limits set out in Rules 3 and 4(b) of the Federal Rules of Appellate Procedure, i.e., 10 days for the person sought and 30 days for the government. These are the same deadlines for filing a notice of appeal in criminal cases, and while an extradition hearing is not a trial,[73] or even strictly a criminal proceeding,[74] these deadlines adequately balance the competing interests of fairness and expedition. It is anticipated that other aspects of the appeal process (such as the preparation and submission of the record, briefing, argument and decision) will be governed by the applicable provisions of the Federal Rules of Appellate Procedure.

If the fugitive has been found extraditable, subsection (a) requires that surrender to the foreign government be stayed pending determination of the appeal by the court of appeals.[75] This provisions prevents the government from mooting the appeal by spiriting the petitioner out of the country while the matter is *sub judice*. The provision is designed to maintain the *status quo* with repeal. It is anticipated that the district court will not ordinarily stay or delay any other element of the extradition process, such as the certification of its findings to the Secretary of State under section 3214(e).

Subsection (b) provides that a person found extraditable must remain in official detention pending the appeal unless the court of appeals finds that special circumstances require release. This is a slight amelioration of present law, which does not permit the release of a fugitive on bail after he has been found extraditable.[76] The change is desirable because the same kind of pressing, unusual situation which might require that the person sought be released from custody on bail pending the extradition hearing[77] could conceivably arise after the extradition hearing. However, it is anticipated that this authority to release a fugitive on bail will be utilized even more sparingly than the power to grant bail before the extradition hearing, and only after the most thorough and searching examination of the claimed need for release. It is expected that the courts of appeals will keep in mind that "no amount of money could answer the damage that would be sustained by the United States if [the fugitive] were to be released on bond, flee the jurisdiction, and be unavailable to surrender . . .". *Jimenez* v. *Aristequieta*, 314 F.2d 649 (5th Cir. 1963).

If the person was found not extraditable, subsection (b)(2) permits the district court to order that the person be released pending an appeal by the government. Release may not be ordered if the government satisfies the district court that the appellee is likely to flee before the appeal is decided, or endanger the safety of any other person or the community.

A major purpose of section 3215 is to simplify, and thereby expedite, the extradition process by providing for a direct appeal from a contested decision on extradition. The direct appeal provided by this section largely eliminates the present need for *habeas corpus* proceedings in order to obtain judicial review of the initial finding that a person is extraditable. This purpose would be frustrated if a fugitive bent on dilatory tactics were permitted to pursue an appeal under this section, petition for *certiorari* to the Supreme Court upon defeat in the court of appeals, and then begin one or more rounds of *habeas corpus* proceedings. Such a course of action would lengthen the extradition process rather than shorten it. Therefore, subsection (c) forbids any court from reviewing a finding that a fugitive is extraditable under this subchapter unless the fugitive has exhausted the appellate remedies available to him by right in this section. It also forecloses an appeal, petition for *habeas corpus*, or declaratory judgment action if the validity of the fugitive's commitment for extradition has been ruled upon in prior proceedings, unless grounds are offered which could not have been presented previously.

The resolution of challenges to judicial action in international extradition cases must be especially prompt for several reasons. Extradition cases are quasi-criminal in nature. Moreover, in such cases our government's timely and ungrudging execution of its solemn treaty obligations to a friendly nation is in question.[78] Therefore, this section requires that courts of appeals decide cases arising under this subchapter expeditiously.

Section 3215 in S. 1722, as reported, also provides for a direct appeal in extradition cases. However, section 3215 of the proposed subchapter and section 3215 in S. 1722 differ in several ways. First, S. 1722 requires that the notice of appeal be filed within seven days after the district court decision regarding extradition; the proposed subchapter prescribes the same time limits that apply in ordinary criminal cases. Second, section 3215 in S. 1722 requires that briefs for both parties be filed within 20 days, while the revised subchapter permits this matter to be covered by the usual requirements of the Federal Rules of Appellate Procedure. Third, section 3215 of the proposed subchapter provides for an automatic stay of extradition pending appeal, while section 3215 in S. 1722 forbids the appellate courts from staying the extradition of a fugitive pending appeal unless "good cause" is shown. Fourth, section 3215 in S. 1722 does not explain whether the alleged fugitive must remain incarcerated pending appeal, or set out under what circumstances he may be released, while section 3215(b) of the proposed subchapter thoroughly covers these matters. Fifth, section 3215 in S. 1722 permits only a court of appeals to stay a lower court's certification of its findings as to extradition to the Secretary of State, and forbids any court to stay the incarceration of the fugitive pending appeal. These requirements do not appear in the proposed subchapter.

SECTION 3216: SURRENDER OF A PERSON TO A FOREIGN STATE

1. Present Federal Law:

Under 18 U.S.C. 3186, the Secretary of State may order that any person found extraditable by a court under 18 U.S.C. 3184 be delivered to an authorized agent of the government seeking extradition. Although it is generally agreed that the Secretary's decision in this matter is discretionary,[81] present law provides no indication of the parameters of the Secretary's discretion.

18 U.S.C. 3188 states that if a fugitive found extraditable under 18 U.S.C. 3184 is

not removed from the United States within "two calendar months" of the court's commitment order, he may be released from custody unless there is "sufficient cause" why release should not be ordered.[42] The courts have held that if the fugitive institutes litigation challenging his extradition, the two-month period commences when the claims are finally adjudicated rather than when the commitment order was issued.[43]

2. Provisions of the Proposed Subchapter:

Subsection (a) carries forward the essence of 18 U.S.C. 3186 by providing that the Secretary of State shall make the final decision as to extradition. The subsection requires that the Secretary's decision be made in accordance with the subchapter and the applicable treaty, and lists the actions that the Secretary may take.

Subsection (a)(1) simply permits the Secretary to order the surrender of a person the court has found to be extraditable to a duly appointed agent of the foreign state.

Subsection (a)(2) permits the Secretary to condition the surrender of a fugitive upon the acceptance by the foreign state of restrictions or conditions he considers necessary in the interest of justice or to effectuate the purposes of the treaty. This provision underscores the Department of State's authority to impose such restrictions where humanitarian concerns[44] or questions concerning trial procedures in the requesting state exist.[45] It would also perimt the imposition of restrictions expressly contemplated in the provisions of some newer treaties.[46]

As noted, most extradition treaties preclude extradition for an offense of a political character, and many treaties also bar extradition where the request is motivated by political considerations. Subsection (a)(3) specifies that the Secretary of State may deny extradition where he concludes that a treaty clause of this kind is applicable. The subsection is designed to give the Secretary of State the same broad discretion in addressing this issue which he possesses in determining whether to extend political asylum to refugees. The Secretary's decision in this matter, which frequently involves a question of foreign policy, is discretionary and will not be reviewable by the courts.

The subsection also provides that any evidence or arguments the fugitive wishes to present shall be in writing. The Secretary is not obliged to provide a formal hearing for a fugitive who claims the benefit of the "political offense" exception,[47] but it is expected that the Secretary will utilize the resources of the State Department for gathering evidence and dressing the fugitive's claim.

Subsection (a) expressly authorizes surrender of United States nationals unless surrender is expressly prohibited by the applicable treaty.[48] This subsection is necessary in light of *Valentine* v. *United States ex rel. Neidecker*, 299 U.S. 5 (1936), in which the Supreme Court held that language contained in many of the older extradition treaties to which the United States is a party does not permit the surrender of United States citizens absent explicit statutory authority for such surrender. The result of the *Neidecker* decision has been to effectively immunize United States citizens from extradition in many cases—a result never intended by the negotiators of the treaties involved. It is the policy of the United States to treat its citizens and aliens within its borders equally in extradition matters,[49] and this subsection permits that policy to operate effectively.

Subsection (b) requires that the Secretary of State notify all interested parties of his decision on extradition.

Subsection (c)(1) provides that the fugitive shall be released from custody if the Secretary of State does not order, or declines to order, the person's surrender within forty-five days after receiving the record of proceedings from the court. Of course, if the Secretary of State decides within forty-five days to refuse to order extradition, the authority for holding the person sought in custody under section 3214(c)(1) immediately expires, and the person should be released from detention at once.

Subsection (c)(2) is based on the provisions of 18 U.S.C. 3188, and provides that when the Secretary of State has ordered a person's extradition, the foreign country involved must take custody of the person and remove him from the United States within 30 days. This 30-day time period does not begin until all litigation challenging extradition has been completed. The subsection expressly excludes from consideration the time during which surrender has been stayed pending litigation.

Subsection (c) requires that the Secretary of State be given reasonable notice of the proposed release of the fugitive because of expiration of a time limitation set forth in subsection (c)(1) or (c)(2), and forbids release if good cause is shown for the delay in effecting surrender.

The revised subchapter on extradition contains many of the concepts suggested in section 3213 in S. 1722, but also contains elements drawn from other portions of S. 1722. For instance, section 3216(a)(3) is essentially a rewording of section 3211(d) in S. 1722, and section 3216(b) of the revised subchapter reflects the gist of 3211(c) in S. 1722. Section 3216(a)(3) is new, however, and reflects the view of the Departments of Justice and State that the decision to deny extradition because the offense is political or the request is politically motivated should be handled in much the same way as a decision to extend political asylum.

SECTION 3217: RECEIPT OF A PERSON FROM A FOREIGN STATE

1. Present Federal Law:

18 U.S.C. 3192 authorizes the President to "take all necessary measures for the transportation and safekeeping" of a person extradited to the United States from a foreign country. At one time the President relied upon this statute to issue a warrant designating an agent to receive custody of a fugitive from a foreign government. 18 U.S.C. 3193 authorizes such an agent to convey the fugitive directly to the place of trial, and grants to the agent "all the powers of a Marshal of the United States, in the several federal districts through which it may be necessary for him to pass with [the] prisoner . . ." The authority to issue warrants and appoint agents under these sections has now been delegated to the Secretary of State.[50] However, the Department of State wishes to transfer to the Department of Justice the authority to appoint agents and issue warrants in these matters.

2. Provisions of the Proposed Subchapter:

Section 3217 of the proposed subchapter carries forward the provisions of 18 U.S.C. 3192 and 3193, with minor modifications reflecting present United States practice.

Subsection (a) authorizes the Attorney General to designate an agent to receive custody of a fugitive surrendered by a foreign government, and permits the agent to convey the fugitive to the place of trial in the United States. The final sentence of the subsection permits the extradited fugitive to be taken directly to the federal district or state jurisdiction in which charges are outstanding, without removal proceedings under Rule 40 of the Federal Rules of Criminal Procedure or interstate rendition proceedings.

Section 3217(b) is new, and is designed to implement provisions found in some of the most recent United States extradition treaties. The laws in many foreign countries require that extradition be postponed until the person has satisfied any outstanding criminal charges in that country.[51] Frequently, a person sought by the United States has already been tried and convicted of other charges in the requested country and has a sentence to serve there. If the sentence abroad is a long one, the postponement of surrender could compromise the possibility of a speedy and fair trial in this country.[52] Some extradition treaties contain provisions which deal with this problem by permitting "temporary extradition". Under these treaty provisions, a fugitive convicted abroad would be surrendered to the United States solely for the purpose of trial and sentencing here, then returned to the foreign country involved to finish the sentence previously imposed there.[53] This process balances our government's interest in adjudicating the charges while the evidence is fresh with the foreign country's desire to fully enforce its laws. It also works to a fugitive's benefit by enabling him to answer the charges in this country while evidence for his defense is still available and by creating the possibility that the sentence imposed upon conviction in this country could run concurrently with that the fugitive must serve abroad.

Section 3217(b) provides implementing legislation for treaty provisions of this type. It provides that when a foreign state has delivered a person to the United States on the condition that the person be returned at the conclusion of the criminal trial or sentencing, the Bureau of Prisons shall keep the person in custody until the judicial proceedings are concluded, and thereafter surrender the person to a duly appointed agent of the foreign country. It also provides that the return to the foreign state of the person is not subject to the requirements of the subchapter, such as an extradition hearing or an order of surrender by the Secretary of State.

Section 3216 in S. 1722 essentially carries forward the present law by stating that when a person is extradited by a foreign nation "the President has the power to take all necessary measures for the transportation of safekeeping" of the person. Section 3216 in S. 1722 contains no counterpart to section 3217(b) of the proposed subchapter, since the treaty language that the latter is designed to implement was not developed until after S. 1722 was drafted.

SECTION 3218: GENERAL PROVISIONS FOR SUBCHAPTER B

1. In General:

This section contains the definitions and general provisions applicable to the extradition subchapter.

2. Present Federal Law:

18 U.S.C. 3195 requires that the foreign government which sought extradition pay all costs and fees resulting from the request. The costs resulting from extradition requests here frequently are so small that it is uneconomical—and diplomatically embarrassing—to attempt to enforce this statute. Moreover, many of the extradition treaties to which the United States is a party contain provisions which modify this statutory rule.[54] Also, the United States has entered into informal arrangements with some countries whereby each country bears most of the cost of the other's extradition request. In short, the present statute does not adequately reflect government policy in extradition matters.

Present statutory law offers no guidance as to who must pay the costs associated with United States requests to foreign countries for the extradition of fugitives. The Department of State requests extradition on behalf of either the state within the United States in which the fugitive is charged, or, if federal charges are involved, on behalf of the United States. Therefore, the long-standing policy of the Department of State has been that the state jurisdiction which sought the fugitive's return must pay any expenses incurred in

Footnotes at end of article.

connection with the extradition request, and the Department of Justice must pay the expenses incurred in obtaining the extradition of a fugitive federal offender.

2. Provisions of the Proposed Subchapter:

Subsection (b)(1) of proposed section 3218 states that in general a foreign state which has requested the extradition of a fugitive located in the United States must bear all costs and expenses incurred in connection with the request. Since many of the extradition treaties contain provisions specifically dealing with costs in extradition matters, the subsection authorizes the Secretary of State to direct that this matter be handled in accordance with terms of the applicable treaty or agreement. Subsection (b) also requires that all costs and expenses incurred in connection with the execution of a request by a state of the United States for the return of a fugitive located in another country must be paid by that state. When the request for extradition is made to secure the return of a fugitive wanted for a federal offense, the expenses must be borne by the United States. It is anticipated that when the fugitive involved is sought for both federal and state offenses, the costs incurred abroad will be allocated accordingly.

Section 3217 in S. 1722, as reported, is also entitled "General Provisions for Subchapter B." However, that section does not contain definitions of the key terms used elsewhere in the subchapter. Subsection (a) of S. 1722's section 3217 deals with the transit through the United States of persons extradited from one foreign country to another. No provisions on this topic are contained in the proposed subchapter because the matter is adequately covered by provisions in the extradition treaties themselves. Subsection (b) of section 3217 in S. 1722 deals with the payment of costs and expenses in much the same manner as subsection (b) of section 3218 of the proposed subchapter. The only significant difference between the two provisions is that S. 1722's provisions oblige the United States, rather than the foreign state, to pay most of the costs of extradition proceedings "if the demanding government is represented by the Attorney General." This language has been deleted as unnecessary in the proposed subchapter, which permits the Secretary of State to prescribe how the costs shall be paid.[55]

FOOTNOTES

[1] The essence of the other federal statutes on extradition, which include 18 U.S.C. 751, 752 and 1502, are carried forward in sections 401, 1001, 1311 and 1313 of S. 1722, and are discussed in S. REP. No. 96-553, 96th Cong., 2d Sess. (1979).

[2] Moreover, 18 U.S.C. 3188 requires that a Court find that the person sought is extraditable before the Secretary of State may order surrender to the foreign state.

[3] *Valentine* v. *U.S. ex. rel. Neidecker*, 299 U.S. 5 (1936); *Argento* v. *Horn*, 241, F. 2d 258, 259 (6th Cir. 1957), *cert. denied* 355 U.S. 818 (1957); *Ivancevic* v. *Artukovic*, 211 F.2d 565, 566 (9th Cir. 1954), *cert. denied*, 348 U.S. 818 (1954); Evans, *Legal Basis for Extradition in the United States*, 16 New York Law Forum 525, 529-530 (1980); 6 Whiteman, Digest of International Law 727 (1968).

[4] See e.g., Art. 14, Amending Protocol to the 1961 Single Convention on Narcotic Drugs, done at Geneva, March 24, 1972, 26 U.S.T. 1439, T.I.A.S. 8118 (entered into force for the United States August 8, 1975); Art. 8, Convention on Suppression of Unlawful Seizures of Aircraft, done at the Hague, December 16, 1970, 22 U.S.T. 1641, T.I.A.S. 7192 (entered into force for the United States October 14, 1971); Art. 8, Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, done at New York, December 14, 1973, 28 U.S.T. 1975, T.I.A.S. 8532 (entered into force for the United States February 20, 1977).

[5] See, e.g., *Holmes* v. *Laird*, 459 F.2d 1211, 148 U.S. App. D.C. 187 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 869 (1972); *Williams* v. *Rogers*, 449 F.2d 513 (8th Cir. 1971), *cert. denied*, 405 U.S. 926 (1972).

[6] See, e.g., *Kalatijis* v. *Rosenberg*, 305 F.2d 249 (9th Cir. 1962).

[7] 6 WHITEMAN, *supra* note 3, at 935.

[8] *United States ex rel Caputo* v. *Kelley*, 92 F.2d 03 (2nd Cir. 1937), *cert. denied*, 303 U.S. 635 (1938); *Ornelas* v. *Ruiz*, 161 U.S. 502 (1896); *Castro* v. *DeUriarte*, 12 Fed. 250 (S.D. N.Y. 1882). See, generally, 6 WHITEMAN, *supra* note 3, at 935; Note, *United States Extradition Proceedings*, 16 New York Law Forum 420, 432 (1980).

[9] 1 Moore, A treatise on Extradition and Interstate Rendition, 410-415, (1891).

[10] See, e.g., *Schoebrun* v. *Drieband*, 268 F. Supp. 332 (E.D. N.Y. 1937).

[11] See, e.g., *United States ex rel. Caputo* v. *Kelley*, *supra*, note 8.

[12] *In re David*, 395 F. Supp. 803, 807 (E.D. Ill. 1975); *United States ex rel. Petruschansky* v. *Marasco*, 215 F. Supp. 953, 957 (E.D. N.Y. 1963) *aff.* 325 F.2d 562 (2nd Cir. 1963), *cert. denied*, 376 U.S. 952 (1964).

[13] For example, many federal, state and local law enforcement agencies rely on the FBI's National Crime Information Center—"NCIC"—in determining whether an individual is wanted for arrest in another jurisdiction. Since no complaint for extradition can be filed against a fugitive whose location is unknown, there can be no federal arrest warrant issued, and no information on the person will appear in NCIC. Thus, law enforcement officers may have no way to learn that a particular person is an international fugitive sought for extradition.

[14] In *Wright* v. *Henkel*, 190 U.S. 40 (1903), the Supreme Court reviewed former section 596 of title 18 (now 18 U.S.C. 314) in conjunction with former section 591 (now 18 U.S.C. 3041), and concluded that there was no statute providing for admission to bail in cases of foreign extradition. The Bail Reform Act (which amended Sections 3041, 3141-3143, and 3568, and enacted 18 U.S.C. 3147-3152) did not alter this result. The Act liberalized access to bail in those cases to which the bail statutes apply, but did not broaden the availability of bail generally. Both the previous sections of the law and the provisions of the Bail Reform Act apply only to "person(s) charged with an offense," and the term "offense" is expressly defined in 18 U.S.C. 3156 as "any federal criminal offense which is in violation of any act of Congress and is triable by a court established by act of Congress . . .". Since fugitives facing extradition to a foreign country are not accused of any Federal criminal offense, and will not be tried in any federal court, the bail statute's provisions do not apply to them. *Cf. Kelley* v. *Springette*, 527 F.2d 1090, 1093 (9th Cir. 1975); *Beaulieu* v. *Comm'r of Massachusetts*, 382 F.2d 290 (1st Cir. 1967).

[15] *United States* v. *Williams*, 611 F.2d 914 (1st Cir. 1979); *Beaulieu* v. *Hertigan*, 574 F.2d 1 (1st Cir. 1977); *Wright* v. *Henkel*, 190 U.S. 40 (1903).

[16] See, *In re Chan Kam-Shu*, 477 F.2d 333 (5th Cir. 1973), *cert. denied*, 414 U.S. 847 (1973); *Vardy* v. *United States*, 529 F.2d 404 (5th Cir. 1976), *rehearing denied*, 533 F.2d 310 (5th Cir. 1976); *In re David*, 390 F. Supp. 521 and 395 F. Supp. 903 (E.D. Ill. 1975).

[17] Provisional arrest is a well-recognized aspect of international extradition procedure, and is specifically provided for in most of the extradition treaties to which the United States is a party. See, *e.g.* Art. 11, Extradition Treaty, United States-Canada, signed Dec. 31, 1971, 27 U.S.T. 983, T.I.A.S. 8237 (entered into force March 27, 1976). See generally, Reuschlein, *Provisional Arrest and Detention in International Extradition*, 23 Georgetown Law Journal 37 (1934); Note, 16 New York Law Forum 420, 429-430 (1970).

[18] See, 6 WHITEMAN, *supra* note 3, at 931; *Whitely* v. *Warden, Wyoming State Penitentiary*, 401 U.S. 560, 566 (1970); *United States* v. *McCray*, 468 F.2d 848 (5th Cir. 1967).

[19] "Court" is defined in section 3218(a)(2) to mean a United States district court established pursuant to 28 U.S.C. 132, or the District Court of Guam, the Virgin Islands, or the Northern Mariana Islands, or a United States magistrate authorized to conduct an extradition proceeding.

[20] Thus, the section eliminates the arbitrary rule created by the Supreme Court in *Pettit* v. *Walshe*, 194 U.S. 205 (1904). See note 42, *infra*, and accompanying text. This rule is unnecessary in light of section 3214 (c)(3) of the proposed subchapter.

[21] See note 15 above.

[22] *In re Mitchell*, 171 Fed. 289, 290 (S.D. N.Y. 1909).

[23] See, e.g., *In re Kaplan*, Civ. No. 79-2219 RF (C.D. Cal. July 29, 1979).

[24] See, e.g., *In re Itoka*, Misc. No. 79-1536-M (D. N.M. Dec. 17, 1979).

[25] See, *In re Chan Kam-Shu*, 477 F.2d 333, 339-340 (5th Cir. 1973), *cert. denied*, 414 U.S. 847 (1973).

[26] *United States* v. *Clarke*, 470 F. Supp. 976, 979 (D. Vermont 1979).

[27] E.g., Art. 13(2), Extradition Treaty, United States-Norway, signed June 9, 1977, — U.S.T. —, T.I.A.S. 9679 (entered into force March 6, 1980).

[28] It is anticipated that in most cases the Attorney General will act through the United States Attorney for the district in which the fugitive is located. If the foreign government involved feels the need to participate in the judicial proceedings, it can retain counsel and seek to enter the case as *amicus curie*.

[29] *Valentine* v. *United States ex rel. Neidecker*, 299 U.S. 5, 9 (1933); *United States* v. *Rauscher*, 119 U.S. 407, 414 (1886).

[30] During the nineteenth century some courts did require proof that the Department of State had received a formal request for extradition before an extradiction case could go forward. This proof was called a "preliminary mandate." See 1 MOORE, *supra* note 9, 360-394. In *Grin* v. *Shine*, 178 U.S. 181 (1902), the Supreme Court concluded that the "sounder view" was that a preliminary mandate is unnecessary in extradition matters. Since then, the practice of issuing such mandates has been largely discontinued. 6 WHITEMAN, *supra* note 3, 916-919.

[31] See *United States* v. *Williams*, *supra* note 15.

[32] See e.g., Art. 10, Extradition Treaty, United States-Japan, signed March 3, 1978, — U.S.T. —, T.I.A.S. 9625 (entered into force March 25, 1980); Art. 18, Extradition Treaty, United States-Mexico, signed May 4, 1978, — U.S.T. —, T.I.A.S. 9556 (entered into force January 24, 1980).

[33] See 18 U.S.C. 4107-4108.

[34] For example, a fugitive might wish to waive extradition on only one of many outstanding charges against him in the requesting state. Under these circumstances, that foreign state might conceivably prefer to have extraditability determined as to all of the charges.

[35] For example, many extradition treaties permit the requested state to postpone extradition until the person sought has been tried and punished for criminal charges outstanding in that state. A person facing criminal charges of imprisonment in this country might well attempt to expedite his extradition to a foreign country where less serious charges are pending, in order to avoid prosecution or punishment here. In such circumstances, it would not be appropriate for the United States to permit expedited surrender, at least not until the charges in this country have been resolved or the sentence served.

[38] However, the section also states that all rights available to a person extradited under the applicable treaty remain available to the person waiving extradition—even though that person must irrevocably waive those rights.

[39] See section 3216(c).

[40] See note 35, *supra*.

[41] Shearer, Extradition in International Law 137–141 (1971); 6 Whiteman, *supra* note 3, 773–779, *Freedman* v. *United States*, 437 F. Supp. 1252, 1263 (N.D. Ga. 1977).

[42] See, e.g., Art. 2(1). Extradition Treaty, United States-Japan, signed March 3, 1978, —— U.S.T. ——, T.I.A.S. 9325 (entered into force March 25, 1980).

[43] *Brauch* v. *Raiche*, —— F.2d ——, No. 79–1606 (1st Cir. March 5, 1980); *Freedman* v. *United States*, 437 F. Supp. 1252, 1263 (N.D. Ga. 1977).

[44] *Pettit* v. *Walshe*, 194 U.S. 205 (1904); see e.g., *U.S. ex rel. LoPizzo* v. *Mathews*, 36 F.2d 565 (3rd Cir. 1929); U.S. ex rel. *Rauch* v. *Stockinger*, 170 F. Supp. 506, 506 (E.D. N.Y. 1959), *aff'd*, 269 F.2d 681 (2nd Cir. 1959), *cert. denied*, 361 U.S. 913 (1959); *O'Brien* v. *Rozmann*, 554 F.2d 780 (6th Cir. 1977).

[45] *Greci* v. *Birkness*, 527 F.2d 956, 958 at note 3 (1st Cir. 1976); *Application of D'Amico*, 185 F. Supp. 925, 930 at note 6 (S.D. N.Y. 1960), *appeal dismissed* 283 F.2d 320 (2nd Cir. 1960), *cert. denied*, 366 U.S. 963 (1962).

[46] 6 Whiteman, *supra* note 3.

[47] *Greci* v. *Birkness*, 527 F.2d 956, 958 (1st Cir. 1976); *Sindona* v. *Grant*, 461 F. Supp. 199 (S.D. N.Y. 1978); *Brauch* v. *Raiche*, —— F.2d ——, No. 79–1606 (1st Cir. March 5, 1980).

[48] Rule 1101, Federal Rules of Evidence.

[49] *Sayne* v. *Shipley*, 418 F.2d 679, 685 (5th Cir. 1969), *cert. denied*, 390 U.S. 903 (1970).

[50] The Supreme Court has indicated that requiring the foreign state to produce live witnesses in extradition hearings would tend to "defeat the whole object of the treaty." *Bingham* v. *Bradley*, 241 U.S. 511, 517 (1916); see also, *Collins* v. *Loisel*, 259 U.S. 309, 317 (1922); *Sayne* v. *Shipley*, *supra* note 44; *In re David*, 395 F. Supp. 803, 806 (E.D. Ill. 1975); *O'Brien* v. *Rozmann*, 554 F. 2d 780 (6th Cir. 1977).

[51] *United States* v. *Galanis*, 429 F. 2d 1215, 1225–1229 (D. Conn. 1977), *rev'd on other grounds*, 568 F. 2d 234, 240 (2nd Cir. 1977); *Shapiro* v. *Ferrandina*, 478 F. 2d 894, 903 (2nd Cir. 1973); *In re Edmondson, et al.* 352 F. Supp. 22, 24 (D. Minn. 1972).

[52] Frequently, the consular and diplomatic officers who must sign the certificate are not lawyers, and it is difficult for them to know whether the documents presented to them are in fact acceptable "for similar purposes" in the courts of the requesting state.

[53] *Freedman* v. *United States*, 437 F. Supp. 1252, 1266–1267 (N.D. Ga. 1977); *U.S. ex rel. Petrushansky* v. *Marasco*, 215 F. Supp. 953, 954 (S.D. N.Y. 1963), *aff'd*, 325 F. 2d 562 (2nd Cir. 1963), *cert. denied*, 376 U.S. 952 (1964).

[54] Kopelman, *Extradition and Rendition: History-Law-Recommendations*, 14 Boston Law Review 591, 614 (1934).

[55] 18 U.S.C. 3191 provides for compulsory process to secure the attendance at extradition hearings of witnesses on behalf of indigent fugitives. However, the statute applies only to witnesses who are resident in the United States. *Merino* v. *United States Marshal*, 326 F. 2d 5, 11 (9th Cir. 1964), *cert. denied*, 377 U.S. 997 (1964).

[56] *Matter of Sindona*, 450 F. Supp. 672 (S.D. N.Y. 1978); *Shapiro* v. *Ferrandina*, 478 F.2d 894, 904–905 (2nd Cir. 1976); *Freedman* v. *United States*, 437 F. Supp. 1252, 1266–1267 (D. Ga. 1977); *Sayne* v. *Shipley*, 418 F.2d 219, 226 (2nd Cir. 1960); *Desmond* v. *Eggers*, 18 F.2d 503, 505–506 (9th Cir. 1927); *Collins* v. *Loisel*, 259 U.S. 309, 315–317 (1922); *Charlton* v. *Kelly*, 229 U.S. 447, 458 (1913).

[57] See, generally, 6 WHITEMAN, *supra* note 3, 859–865; Note, *Statute of Limitations in International Extradition*, 48 Yale Law Journal 701 (1939).

[58] See, e.g., *Galanis* v. *Pallanck*, 568 F.2d 234 (2nd Cir. 1976.)

[59] *In re Ezeta et al.*, 62 Fed. 972 (N.D. Cal. 1894). Basically, a political offense is one "committed in the course of or furthering civil war, insurrection or political commotion." Id.; *Karadzole* v. *Artukovic*, 242 F.2d 198 (9th Cir. 1957) *rev'd on other grounds* 344 U.S. 393 (1957); *United States ex rel Karadzole* v. *Artukovic*, 170 F. Supp. 383 (S.D. Cal. 1959); *Ramos* v. *Diaz*, 179 F. Supp. 459 (S.D. Fla. 1959).

[60] *In Re Lincoln*, 228 Fed. 70 (E.D. N.Y. 1915) *aff'd per curium*, 241 U.S. 651 (1916); *In Re Gonzalez*, 217 F.2d 717, 722 (S.D. N.Y. 1963); *Garcia-Guillerin* v. *United States*, 450 F.2d 1192 (5th Cir. 1971); *In re Locatelli*, 468 F. Supp. 558, 575 (S.D. N.Y. 1979); *Sindona* v. *Grant*, 461 F. Supp. 199, 207 (S.D. N.Y. 1978).

[61] See, e.g., Art. 5(1), Extradition Treaty, United States-Mexico, signed May 4, 1978, — U.S.T. —, T.I.A.S. 9656 (entered into force January 25, 1980).

[62] See note 58, *supra*.

[63] Levy, Contemporary International Law: A Concise Introduction, 190 (1979). The courts in various countries differ widely on what kinds of offenses are covered by the term, and legal scholars here and abroad have proposed a host of different—and frequently contradictory—proposals on the topic. See, generally, Carbonneau, *The Political Offense Exception to Extradition and Transnational Terrorists: Old Doctrine Reformulated and New Norms Created*, 1 ASILS International Law Journal 1 (1977).

[64] For instance, in *In re McMullen*, No. 3–78–1099MG (N.D. Cal. May 11, 1979), a federal magistrate in San Francisco barred the extradition to England of an admitted IRA bomber, holding that the fugitive's action (blowing up an army barracks in England) was an offense of a political character. This decision was a considerable setback for United States efforts to control international terrorism, and could make the United States a more attractive refuge for members of the IRA, the PLO, the Beider-Meinhoff gang, the Italian Red Brigade and other terrorists.

[65] See note 54, above, and accompanying text.

[66] See, e.g., Art. 10(6), Extradition Treaty, United States-Mexico, signed May 4, 1978, — U.S.T. —, T.I.A.S. 9656 (entered into force January 25, 1980). The United States will also be a party to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, done at the Hague, October 26, 1960, 527 U.N.T.S. 189 (ratified by the Senate Nov. 28, 1979). This Convention will eliminate a substantial portion of the authentication requirement with respect to extradition documents submitted by one signatory country to another.

[67] It is anticipated that in most cases the foreign state's diplomatic or consular personnel assigned to the United States will make the certification required by the section, thereby relieving U.S. diplomatic and consular officers abroad of this chore.

[68] See, generally, *United States* v. *Galanis*, *supra* at note 56.

[69] See Rule 5.1, Federal Rules Criminal Procedure.

[70] Greci v. Birkness, 527 F.2d 956, 958 (1st Cir. 1977); *Brauch* v. *Raiche*, — F. 2d —, No. 79–1606 (1st Cir. March 5, 1980).

[71] *U.S. ex rel. Sakaguchi* v. *Kauluvukui*, 520 F.2d 726, 728 (9th Cir. 1975); *Shapiro* v. *Ferrandina*, 478 F. 2d 894, 902 (2nd Cir. 1973)

[72] *Collins* v. *Loisel*, 262 U.S. 426 (1923).

[73] See, eg., *Sindona* v. *Grant*, 461 F. Supp. 199 (S.D. N.Y. 1978).

[74] *Hooker* v. *Klein*, 573 F.2d 1360 (9th Cir. 1978).

[75] *Glucksman* v. *Henkel*, 221 U.S. 508, 512 (1911).

[76] *United States ex rel Oppenheim* v. *Hecht*, 16 F2d 955, 956 (2nd Cir. 1927); *United States ex rel Klein* v. *Mulligan*, 1 F. Supp. 635, 636 (S.D. N.Y. 1922).

[77] The automatic stay of extradition expires when the court of appeals issues its mandate in the matter. Thus, the automatic stay would not ordinarily protect a fugitive seeking further, discretionary review, such as an applicant for a writ of certiorari from the Supreme Court. Of course, the fugitive whose case merits further review is free to request that either the court of appeals or the Supreme Court exercise its discretion by saying surrender while *certiorari* or other relief is considered.

[78] In fact, 18 U.S.C. 3184 specifically provides that a person found extraditable must be committed "to the proper jail, there to remain until . . . surrender shall be made."

[79] See notes 23 and 24, above, and accompanying text.

[80] *Magisano* v. *Locke*, 545 F.2d 1228, 1230 (9th Cir. 1976).

[81] See, generally, Note, *Executive Discretion in Extradition*, 62 Columbia Law Review 1313 (1962).

[82] *In re Factor's Extradition*, 75 F.2d 10 (7th Cir. 1934); *In re Normano*, 7 F. Supp. 329 (D. Mass. 1934); 6 WHITEMAN, *supra* note 3, 1061–1069.

[83] *Jimenez* v. *United States District Court for the Southern District of Florida*, 84 S. Ct. 14, 11 L. Ed. 2nd 30 (1963); *Barrett* v. *United States*, 590 F.2d 624 (6th Cir. 1978).

[84] See, e.g., *Peroff v. Hylton*, 542 F.2d 1247, 1249 (4th Cir. 1976), *cert.* denied, 429 U.S. 1062 (1977); *Sindona* v. *Grant*, 461 F. Supp. 199, 207 (S.D. N.Y. 1978); see Note, Columbia Law Review, *supra* note 81.

[85] For example, the Department of State has frequently conditioned surrender of a fugitive convicted in absentia upon a promise by the foreign country involved to permit a retrial. See, 6 WHITEMAN, *supra*, 1051, 1117–1122.

[86] For example, some treaties permit the requested state to condition extradition upon satisfactory assurances that the death penalty will not be imposed. See e.g., Art. 6, Extradition Treaty, Canada-United States, signed December 31, 1971, 27 U.S.T. 983, T.I.A.S. 8237 (entered into force March 27, 1976).

[87] *Peroff* v. *Hylton*, 563 F.2d 1099, 1102–1103 (4th Cir. 1977).

[88] At present, no extradition treaty with the United States is a party expressly prohibits surrender of citizens of the requested state.

[89] Many foreign countries do not extradite their citizens, because those countries have the ability to prosecute and punish their citizens for extraterritorial crimes. 6 WHITEMAN, *supra* note 3, 876–878. As a general rule, the United States has no such ability.

[90] Executive Order 11517, 35 Fed. Reg. 4937 (1970), *reprinted in* 1970 U.S. Code Cong. & Ad. News 6232.

[91] See, e.g., Extradition Act, R.S.C. 1952, c. 322 (Canada); s. 24, Iey de Extradition (Dec. 29, 1975), Art. 11 (Mexico).

[92] *United States* v. *Rowbotham*, 430 F. Supp. 1254 (D. Mass. 1977); *United States* v. *Dolack*, 484 F.2d 527 (7th Cir. 1973).

It is well to remember that both the prosecution and the defense suffer when a criminal trial is delayed too long. Indeed, as the Court of Appeals trenchantly remarked in *United States* v. *Judice*, 457 F.2d 418, 418 (5th Cir. 1972):

". . . all practiced trial lawyers are well aware that attrition from . . . delay is more damaging to the prosecutor's case than to that of the defense. This will be so as long as the prosecution has the burden of proof."

[93] Cf. 6 WHITEMAN, *supra* note 3, 1052–1053.

[94] For example, Art. 21, Extradition Treaty, United States-Mexico, signed May 4, 1978, — U.S.T. —, T.I.A.S. 9656 (entered into force January 25, 1980) requires that the requested state bear all of the expenses of extradition except those incurred for the translation of the documents or the transportation of the fugitive.

Extradition treaties are considered self-executing, BASSIOUNI, International Extradition and World Public Order 30–31 (1976), and supercede the provisions of prior inconsistent federal legislation, RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, § 141, Comment (b) at 433 (1965). Therefore, whether 18 U.S.C. 3195 or a differing treaty provision is applicable in a particular extradition case depends on when the treaty entered into force.

[95] It is anticipated that the Secretary will key requests for reimbursement or payment to reciprocity by the foreign government, rather than to whether or not the Justice Department was involved in the case. Moreover, under the proposed subchapter, the Attorney General will be a party in all extradition cases.

NOTICE OF HEARINGS

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. SASSER. Mr. President, I would like to announce that the Subcommittee on Intergovernmental Relations will hold 2 days of hearings on the subject of volunteer organization participation in Federal programs.

The first day of hearings will be held on October 15, at the Holiday Inn downtown in Minneapolis, Minn., at 2:30 p.m. and the second day will be held in Washington on October 20 at 10 a.m. in 3302 Dirksen Senate Office Building. For further information on the hearings please call Terry Jolly at 224–4718 or Susan Fritschler at 224–3244.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, the Senate Committee on Energy and Natural Resources will hold a briefing on the current conflict between Iraq and Iran and the implications for U.S. energy policy on Tuesday, September 30, at 9 a.m. in room S–406 of the Capitol. The briefing will be part of the committee's continuing study of the Geopolitics of Oil. Witnesses at the briefing will include representatives from the Central Intelligence Agency, the State Department, and the Department of Energy. The briefing will be closed to the public.

For further information concerning the briefing please contact James Z. Pugash, staff counsel at (202) 224–0611.

ADDITIONAL STATEMENTS

ADMINISTRATION RESPONSE TO SENATE LETTER ON EMIGRATION OF SOVIET JEWS

• Mr. CRANSTON. Mr. President, earlier this month, I joined with 56 Senate colleagues to write President Carter to express our deep concern regarding the sharp drop in emigration of Soviet Jews. Today, I am submitting for my colleagues' attention a copy of the Carter administration's response to our letter.

I ask that the full text of these two letters be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, D.C., September 4, 1980.

Hon. JIMMY CARTER,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT, we are writing to express our deep concern over the fate of the many people seeking to leave the Soviet Union, especially Soviet Jews. Emigration of Soviet Jews, which reached a record high of more than 51,000 in 1979, has fallen drastically throughout the first seven months of this year and has slowed to a trickle this month. Where an average of more than 4,000 Jews were granted emigration rights each month last year, only 1,205 exited in July 1980 and projections for August based upon half-month figures suggest that less than 700 will leave this month. This would mark the lowest monthly total since the signing of the Helsinki accords in 1975. Harassment of emigration activists by Soviet authorities has also increased—as have officially sanctioned anti-Semitic campaigns within the U.S.S.R. And a number of would-be emigration applicants have been arrested and subject to criminal prosecution on trumped-up charges in recent months.

We, as citizens of a free and democratic society, view these current trends with deep concern and a sense of renewed commitment to the rights of Soviet Union Jews to emigrate freely. The leadership of the Soviet Union must know that the United States will not shrink from its commitment to the principles of the Helsinki accords.

In view of your immutable commitment to human rights, and in light of the upcoming meeting in Madrid to review implementation of the Helsinki Final Act, we urge you to condemn publicly Soviet violations of internationally agreed upon human rights protocols and that you instruct the United States delegation to the Madrid conference to press the emigration issue forcefully, both at the September preparatory session and in the November conference itself.

The United States made significant concessions to the Soviet Union in the Helsinki accords. In Basket I, our agreement to the principle of the inviolability of frontiers permitted the Soviets to represent that the post-World War II changes in Eastern European boundaries were legitimate. In Basket II, we agreed to increase trade with COMECON countries, greatly improving their access to modern Western technology. The human rights commitments made by the Soviet Union in Basket III were in exchange for these concessions. Thus, U.S. efforts to raise the emigration issue now do not constitute unwarranted interference in Soviet internal affairs. The Soviet government signed these international accords and made a commitment to implement the human rights provisions, thereby accepting international monitoring of the accords and registration of complaints regarding the failure of the Soviet Union to respect certain emigration and other rights.

We believe a White House statement would do much to focus world attention on the Soviets' flagrant abuse of international human rights charters. Additionally, such a statement would serve to renew the spirits of those at the forefront of the effort to protect the emigration rights of Soviet Jews in these days of darkness.

Sincerely,

Alan Cranston, Claiborne Pell, Daniel Patrick Moynihan, Harrison A. Williams, Jr., Rudy Boschwitz, Howell Heflin, John C. Danforth, Lloyd Bentsen, Richard S. Schweiker, Howard W. Cannon, Birch Bayh, David L. Boren, Max Baucus, Larry S. Pressler, Paul S. Sarbanes, Jacob K. Javits, Howard M. Metzenbaum, Lawton Chiles, Gaylord Nelson.

Ernest F. Hollings, Herman E. Talmadge, Malcolm Wallop, John Heinz, Edward Zorinsky, William S. Cohen, Donald W. Riegle, Jr., Bob Packwood, Charles McC. Mathias, Jr., J. James Exon, Dennis DeConcini, John A. Durkin, Gary Hart, John C. Culver, Thomas F. Eagleton, Paul E. Tsongas, Frank Church, Carl Levin, S. I. Hayakawa.

Robert Dole, Joseph R. Biden, Jr., Donald W. Stewart, Richard G. Lugar, Bill Bradley, David Durenburger, David Pryor, George J. Mitchell, Walter D. Huddleston, Abe Ribicoff, Alan K. Simpson, Jake Garn, Howard H. Baker, Jr., Charles H. Percy, Richard Stone, Lowell P. Weicker, Jr., Gordon J. Humphrey, Roger W. Jepsen, John Tower.

DEPARTMENT OF STATE,
Washington, D.C., September 19, 1980.

Hon. ALAN CRANSTON,
U.S. Senate.

DEAR SENATOR CRANSTON: I have been asked to respond to your letter of September 8 to President Carter, signed by fifty-six other members of the Senate in addition to yourself, concerning the flow of Jewish emigrants from the Soviet Union. The President and the Department of State are proud of the stance the United States has taken around the world in defense of human rights. The record-high number of Jewish emigrants from the Soviet Union in 1979 is a credit to our continued commitment to the principles of the Helsinki accords. We are deeply concerned, like you, at the drop-off in the number of Jews permitted to leave the Soviet Union in recent months and we have taken every opportunity to deplore Soviet violations of human rights protocols.

In his July 29 speech, President Carter characterized the Madrid CSCE Meeting as an "opportunity to look carefully backward and also to permit us to push forward vigorously." He stated that his and the United States' commitment to human rights remains immutable and that we will seek an explanation from the Soviet Union for the decline in Jewish emigration and a commitment from the Soviets to reverse that decline. He also described the hardships experienced by those in the Soviet Union working to promote implementation of the Helsinki principles inside the Soviet Union and stressed that their cause cannot be silenced. Finally, the President condemned the actions of the Soviet Government, stating "the behavior of the Soviet Union, in particular, has dishonored the principles of the Helsinki Accords, both inside and outside its own borders."

As these statements make clear, President Carter shares your concerns and intends that a full review of human rights issues take place at Madrid. Please be assured that the United States delegation to the Madrid Conference will take every appropriate action to implement the President's words. The emigration rights of Soviet Jews will receive particular attention in this effort. And please

be assured that the President and the Department of State will continue to pursue our commitment to Human Rights at every available opportunity.

Thank you for sharing your views and thank you for spelling out your commitment to the cause of Human Rights.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.●

THE SALT TREATY

● Mr. HUMPHREY. Mr. President, there are recurrent rumors the administration might push for Senate ratification of the SALT treaty. I find this incredible, if true, since the Armed Services Committee has by formal report found the treaty to be against the interest of our Nation with respect to maintaining an adequate defense.

Equally disturbing are the repeated allegations of Soviet cheating on the various arms control treaties. An excellent article on this subject was published in Aviation Week recently, which I wish to share with my colleagues.

The article follows:

SOVIET SALT VIOLATIONS FEARED

(By Clarence A. Robinson, Jr.)

WASHINGTON.—U.S. intelligence officials are expressing deep concern over Soviet strategic nuclear weapons activities they believe overtly violate the Strategic Arms Limitation Treaty (SALT). Even beyond what appear to be clear-cut violations are other Russian activities that border on treaty violations, or take advantage of loopholes in the agreement.

The recent Soviet strategic nuclear weapons activities include:

Testing in the past few weeks of the SA-10 surface-to-air missile acquisition and tracking radars against Russian reentry vehicles in an antiballistic missile mode. The phased-array radar was used as a battle management system for low-altitude defense of ICBM silos. The Soviets have developed and tested a hypersonic interceptor missile known as the SH-8 to destroy U.S. reentry vehicles within the atmosphere. Testing of an air defense system in an antiballistic missile mode is a clear violation of the ABM treaty, according to U.S. officials.

Testing in a ballistic missile defense scenario against reentry vehicles of the SA-5 Gammon air defense radars on at least one occasion. SA-5s are operated from fixed, hardened sites in the USSR and use a target tracking radar known as the Square Pair, and the Back Net acquisition radar along with the Side Net height-finding radar. The SA-5 has a range of 100 naut. mi. and a maximum altitude of about 100,000 ft. The Soviets conducted earlier tests with the SA-5 in the ABM mode (AWASR Oct. 21, 1974, p. 14), and the U.S. brought up the tests to the Standing Consultative Commission as a possible violation. Those tests were halted then and only recently resumed.

Tests during recent Soviet and Warsaw Pact war games of a reload capability for the SS-18 ICBM. During the tests in early September, the Soviets simulated firing SS-18s from their silos (launchers), removed the missiles and replaced them with other SS-18s, demonstrating a reload capability. It took the Russians 2-5 days to accomplish the reload procedure.

Tests of the new submarine-launched ballistic missile from Nenoksa on the White Sea with encrypted telemetry, preventing U.S. vertification of missile performance. The new missile is designed for use with the Typhoon-class submarine. At least 80 percent of the telemetry data was encrypted during the most recent test, according to U.S. intelligence officials.

Tests of a new Soviet air-launched cruise missile from the Tupolev Tu-26 Backfire bomber with a missile range greater than 600 km. (372 mi.). The successful testing of the Soviet version of the USAF/Boeing ALCM should require that the Backfire be counted under the heavy bomber category in the unratified SALT 2 agreement, according to U.S. arms control officials.

The demonstrated reload capability with the SS-18 is causing more concern among U.S. intelligence and arms control communities than any of the other Soviet strategic weapons activities, according to Carter Administration officials, "because it goes to the very heart of SALT; that launchers are counted and not missiles."

Information on Soviet nuclear weapons activities taking advantage of the U.S. in using the SALT agreement to screen testing, or of violations, is emerging just as the U.S. is preparing for meetings in early October by Secretary of State Edmund Muskie with Soviet Foreign Minister Andrei A. Gromyko on arms control agreements for theater nuclear forces in Europe.

The U.S. also is moving toward comprehensive nuclear test ban negotiations in Geneva in October despite what U.S. officials call the most flagrant Soviet violation of the existing threshold test ban treaty that limits both sides to underground nuclear testing at the 150-kiloton level.

The test being described by the arms control community as the "hardest violation yet of the threshold test ban" took place in recent weeks at Semipalatinsk. The U.S. received seismic data from 17 locations providing information that the yield of the nuclear device tested was as high as 640 kilotons, with the lowest possible yield 150 kilotons. U.S. officials said they are 95% certain that the yield of the device was between 300 and 400 kilotons, making it a clear violation of the existing test ban treaty.

"We've never had better data than this," one arms control expert said, "and there is no doubt the Russians have violated the treaty. They've gone over the 150-kiloton limit before but not like this with the evidence so clear. At the same time, the U.S. nuclear weapons laboratories are being hamstrung by having to test below a yield of 90 kilotons to make sure we honor the agreement."

Not only are violations alarming the U.S. one Administration official said, "but there is activity which falls outside the SALT agreement, and there appears no way to negotiate an agreement with the Soviet Union which can cover all eventualities. It all boils down to the fact that we got no limit off the Soviets from SALT, especially with this demonstrated SS-18 reload capability. Either this is a vindication of SALT critics or a violation of the agreement."

The Soviet Union, some U.S. intelligence officials believe, has been using spacecraft to survey U.S. ICBM silo locations. One official said there is evidence the USSR has used a beam splitter mirror on its spacecraft to photograph U.S. missile fields in laser light while it simultaneously photographs the satellite against the star background to pinpoint the location of the spacecraft in relation to each U.S. silo.

As the Soviet spacecraft passes over the USSR, it also photographs Soviet missile silos with the star background. This enables Soviet rocket force officers to "hook the arrs together for precision that could enable CEPs (circular error probable) of 50 to 100 ft."

The USSR already has deployed 248 SS-18s in four models. The ICBM has a hard target capability against Minuteman silos. One version has a yield of 24 megatons and a CEP of 0.23 naut. mi. Another version carries 8-10 reentry vehicles, each with a 0.55-megaton yield with the same CEP.

A third version has a CEP of 0.19 naut. mi. and carries a single 20-megaton warhead. The fourth version has 10 MIRVs, each with a 0.50-megaton yield and CEP of 0.14 naut. mi.

Recent U.S. intelligence analysis has determined that the SS-18 is clearly designed to carry 12-14 reentry vehicles in the post boost vehicle, not the 10 limited by SALT 2.

Soviet actions in recent weeks place the arms control community in a position of having to apologize for the Russians, one community member said. "It forces the community to rationalize the Soviet behavior as compatible with treaty language or of having to apologize for the treaty's sloppy language."

The arms control expert added that this defeats any argument against the point that SALT agreements are meaningless by seeking to limit launchers. "The Central Intelligence Agency is arguing that this SS-18 reload is no violation of the SALT agreement because from two to five days is not a rapid reload capability," he explained.

In the SALT 2 treaty signed by the U.S. and USSR but withdrawn from Senate ratification when the Soviets invaded Afghanistan, each party undertakes:

Not to supply ICBM launcher deployment areas with intercontinental ballistic missiles in excess of a number consistent with normal deployment, maintenance, training and replacement requirements.

Not to provide storage facilities for or to store ICBMs in excess of normal deployment requirements at launch sites of ICBM launchers.

Not to develop, test or deploy systems for rapid reload of ICBM launchers.

The treaty further specifies that the term normal "means the deployment of one missile at each ICBM launcher."

"It's not any one thing that leaps out at us from all this Soviet nuclear weapons effort," one strategic weapons expert said, "but rather a picture of a very dedicated kind of an effort in the USSR to achieve a clear superiority over the U.S. at the earliest possible date."

Another official explained that while the intelligence agencies argue over what constitutes a rapid reload capability, the SS-18 exercises contravene SALT. "The whole idea of the treaty is one missile per silo. The U.S., however, must take the rap for this because the Soviets have never said one missile, one silo, and they have never said how many ICBMs they have stockpiled for reloading silos"

"There is something much more important here than merely a Soviet SALT violation," one high-level U.S. official said. "The USSR is behaving in a way calculated to give it a clear advantage over the U.S., which is completely enmeshed in mental or legal constraints of its own making."

The Soviet Union is building a new phased-array ballistic missile defense radar 60 mi. north of Moscow. This is completely within the rules in the ABM treaty, according to U.S. arms control officials.

"But it lends great credibility to NIE [National Intelligence Estimate]-11-38, which states that the USSR is capable of deploying a high-quality thick bank of ballistic missile defense systems within one year from the time the U.S. could detect that the deployment was unmistakable," the official said.

The Soviets have designed the SH-4 interceptor missile much like the U.S. Spartan ABM missile designed by the U.S. Army for intercepts of reentry vehicles in the upper atmosphere. It would be used in an overlay mode by the Soviets as the first line of defense, with the SH-8 for terminal phase intercepts of reentry vehicles.

"With the deployment of the flat twin movable ABM radar system, the new missiles tested against RVs [reentry vehicles] and the battle management radar around Moscow, the Soviets are building toward a capability to break out of the ABM agreement with a clear-cut capability and leave the U.S. behind," one arms control expert said.

A high-level Administration official last week sought to play down the reload capability of the SS-18 ICBMs in response to Aviation Week & Space Technology. He said Soviet textbooks have for years openly discussed the possibility of reloading ICBM silos, and that the Carter Administration position has been that the reload possibility is well known; but that it was agreed not to store missiles in ICBM fields for this purpose, there is no indication this has been done, and it avoids a rapid reload capability.

"In strategic nuclear force balances by Defense Secretary Harold Brown, reloads have not been taken into account," according to the official. He added: "The U.S. already looks so bad in these calculations, why make it look worse? SALT negotiators better wake up. The USSR is obviously thinking in terms of a protracted nuclear war or they wouldn't be testing reloads of four or five days, and the balance is in their favor." ●

SOUTHWIND: THE PILGRIMS FROM SAN JERONIMO

● Mr. SCHMITT. Mr. President, the San Diego Union has printed a series entitled "Southwind" on the subject of Mexican migration. In the second article "The Pilgrims of San Jeronimo," Richard Louv has analyzed one small village which has contributed to the migratory flow of undocumented workers. The median age of the village, which is located in Oaxaca province, is 15. The land cannot sustain the people. Over the generations migration has been the only way to survive; sometimes to Mexico City, sometimes they go north.

The article demonstrates that the flow will stop only when satisfactory jobs exist in these migrant home areas. In the meantime, the United States must have a temporary worker program similar to that proposed in S. 1427—the United States-Mexico Good Neighbor Act. Both the United States and Mexico need such a program, as this article shows quite clearly, for stability while economic development in Mexico proceeds.

Mr. President, I ask that this article be printed in the RECORD.

The article follows:

THE PILGRIMS FROM SAN JERONIMO

From where he stands, Enrique Alvarado can see the entire squatter's canyon known as Colonia Obrera: the haphazard assemblage of tar paper and plywood shacks; the retaining walls made of discarded automobile tires; the steep foot-path winding from a washed-out road far below. He can hear chickens and children and a music box playing "Yankee Doodle."

A few feet away, Enrique's wife and sister are on their knees scrubbing clothes in a tub. They wear their hair in long braids to their waists. Their children poke at the cool embers of a cooking fire: three rocks assembled in a pre-Columbian pattern.

Enrique is talking quietly to Dr. Michael Kearney, an anthropologist from UC Riverside.

"It would be good to go home," Enrique says, looking away.

Enrique and his family are Mixtec Indians from the village of San Jeronimo in the state of Oaxaca. They are 2,000 miles from home.

On a high ridge in Tijuana they have established a satellite community, an island in the migrant stream. For years, the Mixtecs have used Colonia Obrera as a resting place on the way to work in the United States, and as a refuge on the way back.

There are several satellite communities in this canyon, each with its corresponding village deep in Mexico.

"If we did not have each other," says Enrique, "we would be lost. I am lucky to speak Spanish. Those who speak only Mixtec go north with much suffering. Some don't even know how to ask for a drink of water."

Enrique came north to Tijuana 10 years ago. He returns to San Jeronimo now and then, but when the harvest there is used up, the overplanted plot of land starved, he takes a bus north again.

Most of his family is with him in Tijuana now, including his grandfather, who squats on a tiny bench nearby. His grandfather, who cannot read or write and speaks only Mixtec, was recruited to pick cucumbers in Michigan during the 1940s, the early days of the bracero program. He is too old to work now. He came north with his grandson because he did not want to be left alone.

Once or twice a year, Enrique crosses the border east of Tijuana; at Tecate—thus avoiding the border bandits and smuggler fees—and crosses the mountains on foot, sometimes in the snow. He walks from three to 10 days to the orange groves of Riverside, where he sleeps between the trees, under plastic sheets when it rains.

Enrique is tired of working in the United States, of the lonelines, of running from the *migra*—a non-derogatory term for the Border Patrol. All of this was an adventure when he was 20, but now he is 30 and he feels trapped in a kind of limbo.

"I would like to live in the U.S.," he says, "but there is too much suffering if you are illegal. Maybe someday, but . . ."

Most of all, Enrique is sick of Tijuana; it has a coin purse for a soul. He is homesick for his mountains, for the way the air smells and the gentleness of life.

When he goes on his trips into the United States, his wife and sister and children, in order to survive, climb down the path, catch a bus into downtown Tijuana and stand in the soot and fumes on street corners and sell packages of gum. The children have learned to chase after tourists and chirp:

"Mooney, mooney, mooney . . ."

The women make 50 cents a day hawking gum. Often they are harassed by the police, thrown into jail, and let back out onto the dark streets after the buses have quit running.

"I am saving my money, says Enrique. "I am going to take all of us home soon. We will buy some land. When I have saved enough money, then we will go home."

Enrique may not have a home to return to.

The migration is quickly remaking the face of San Jeronimo. Ten years ago, the village could not be reached by wheeled vehicles, now there are cars everywhere, many with Baja and U.S. license plates. Trucks, bought with migrant earnings, bring in all sorts of consumer goods.

Villagers who a few years ago were still wearing traditional Mixtec garb now wear Levi's jeans, Penney work shirts and high-top leather boots. Most of the families now buy their clothing in Tijuana or the United States.

Twenty years ago, the entire village was made of sticks. Now most of the houses are made of adobe or masonry.

Refined wheat flour has entered the diet. So have beer and soft drinks. While some of the dietary changes have caused health problems, others have been beneficial. Tropical fruits and vegetables brought in from outside the village have added important vitamins to the diet.

"All of these changes are paid for with earnings made outside San Jeronimo, by migratory workers," says anthropologist Kearney, who has been studying both San Jeronimo and its satellite community in Tijuana for several years.

Like many rural Mexicans in Oaxaca and the central highlands, the Mixtecs have little choice but to migrate for at least part of every year. Deforested, overplanted, overgrazed, the land is dying, weighted down with a population it can no longer support.

The median age of San Jeronimo's 1,450 people is 15. The birth rate is high, partly because the families count on their children to support them in their old age—by migrating.

"What productive land there is, is owned by a handful of people," says Kearney. "Even if this land were redistributed, it still could not support the population."

The Mixtecs do the best they can with their small plots of land, but half of the families run out of food six months after harvest. They can earn extra money through hat-weaving or collecting firewood, but the only real alternative to migration is starvation.

"The choice is not whether to go, but where to go," says Kearney.

A few of the families have moved permanently to the slums of Mexico City, soon to be the largest city in the world.

Especially for an Indian, work there is increasingly difficult to find. Most households send one or more members on the migrant circuit to cut cane in Veracrus or pick tomatoes in the Culiacan Valley of Sinaloa for $4.50 a day. Often entire families work the fields of Culiacan, living in swollen, disease-ridden labor camps.

A third alternative is to borrow money at 10 percent interest from a local lender, pack part or all of the family onto a bus and travel three or four days to Tijuana. There the women and the elders set up housekeeping while the men slip into California for work.

While the trip to the border is more dangerous, and more of a financial risk, the payoff can be considerable—four or five times what they can make in Veracruz or the Culiacan Valley.

Over several generations, migration has become a way of life. In San Jeronimo, Kearney found that more than 80 percent of the men—and over half the women—15 or over, have migrated at least once. Other studies have shown similar figures in many parts of rural Mexico.

Even priests migrate—making annual pilgrimages to the satellite communities in Tijuana. There they take up collections among the migrants for civic projects back home, such as refurbishing local plazas or reroofing the church.

About 40 percent of what the migrants earn in the United States is sent home, usually by mail order to family members.

This system has been called "the purest form of foreign aid" by former U.S. Immigration and Naturalization Service director Leonel Castillo. The money gets to the people who need it most, instead of being filtered through government agencies.

The trouble with this system, though, is that the money is usually spent immediately on consumer goods, instead of being invested in job-producing enterprises.

"There's virtually no land to buy," says Kearney. "Stores and trucks are monopolized by a few individuals. So the Mixtecs buy the food they need to stay alive, then spend the rest of their earnings fixing up their

houses and buying things they probably don't need. Meanwhile, the cost of living in San Jeronimo continues to rise."

All of this could be turned around, insists Kearney.

"If the United States and Mexico were to set up some mechanism for rechanneling some of the migrant earnings into local industries, the people eventually wouldn't have as much need to migrate," he says. "They could stay home and work. Most of them I talk with would definitely prefer staying home."

Some villages have already moved in this direction on their own, according to Dr. Wayne Cornelius, a UCSD authority on the migration.

One community in the state of Jalisco, for example, decided to invest money earned in the United States in machinery for more than 200 small textile factories. A local economic boom resulted.

"Migration from Mexico seems concentrated in particular regions, counties and localities," Cornelius pointed out. These areas, he suggested, could be targeted for economic aid.

If such assistance came to San Jeronimo, Enrique Alvarado and his family might not have a recognizable Mixtec culture to return to, but at least he would have a job.

Homesickness tugs at the Mixtecs living in Tijuana's Colonia Obrera, but dreams pull them north.

Indeed, the most popular magazines in Mexico are Cosmopolitan and Good Housekeeping, and seven of the 10 biggest advertising agencies in Mexico City are subsidiaries of Madison Avenue firms. Pages of magazines decorate the plywood walls of the colonias: pictures of Maytag washing machines, Chevrolet Monte Carlos and Gucci fashions.

In Colonia Obera, there are more television sets than refrigerators.

While most anthropologists try not to introduce anything new and foreign into a culture, Micheal Kearney knows that such professional purity is impossible among the Mixtecs. Each time he drives down to Tijuana, he brings with him sacks of discarded clothing that he distributes.

After leaving Enrique's home, his next stop is a three-room shack on the other side of a ravine, where five or six people live. As Kearney approaches, 17-year-old Arturo Lopez turns the sound down on an old black-and-white television.

Kearney sits on a cot in the dark room with Arturo and puts a sack of clothing down on the dirt floor. They talk for a while about his trips north.

Kearney has brought a letter to Arturo from his father, working in the orange groves of Riverside County. Arturo reads it eagerly.

"What are your plans, Arturo?" asks Kearney.

"I don't have an opinion because I don't know what the possibilities are." Arturo says. "Maybe look for a job in the garment factories here—except they hire mainly women. Or in construction. Or go to the U.S. to stay."

One option is the Mexican army:

"I am just a backward Indian. In the army I can obtain important papers, I can better myself."

As he talks, his eyes keep flicking to the silent TV images: a 1948 Mexican-made movie in which everyone wears gowns and tuxedoes and glides across a ballroom floor. There are no hooked noses or dark-skinned people in the movie—certainly no Mixtec Indians.

"Right now I am finishing school," Arturo announces proudly. "I am in the ninth grade!"

He leads Kearney into the back room of the shack, where he has assembled an immaculate study: a card table with a tiny Royal typewriter sitting on it. His school papers are neatly stacked, pencils and papers in a a jar. A single light bulb hanging from the ceiling is attached to an extension cord that snakes throughout the house. Showing off his study fills him with pride.

Kearney takes two more bags of clothing to a woman whose husband has been in the United States too long, whose children are sick. As he asks the woman to distribute the clothing to other families, an old man watches, leaning on a cane, visibly moved.

His face is the texture of the hill. He is wearing a straw cowboy hat stamped with the insignia of the San Diego Chargers. He touches Kearney's arm:

"Come to San Jeronimo," he says expansively, "I will show you what it is like there. We will take horses into the mountains."

"Do you work in the U.S.?" asks Kearney.

"No, no my grandson does. I have never been there. I am too afraid."

He touches his face.

"Black! I am pure Indian. We are afraid of white, blond people. If even a child jumps out, we are afraid of that child."

He is slightly drunk. He speaks feverishly of home and of the plot of land he has worked for 70 years. He lists the types of maize. He pumps his arms up and down, demonstrating how he uses the *tlacolole*, a primitive hoe.

He has been here three months. Like Enrique Alvarado, he yearns for his land, even though his land can no longer support him

"The thing that puzzles me the most," Kearney said later, caught in a traffic jam on the way back to Riverside, "is that not only do the rich blame the poor for being poor, but the poor blame the poor. When that old man was describing his skin, he really believed he was inferior.

"That's true for most of them—they think they deserve this lot in life. They have no idea that they're being pushed around by economic forces out of their control. They have no sense of—outrage."

Then again, there is a hardness in Enrique's eyes, and Arturo has his study and his TV. The migrants are absorbing from the United States more than the minimum wage.

They are bringing back intangible, almost terrifying powerful new values. Nothing at home or in their hearts will ever be the same again.●

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to go into executive session to consider the following nominations only: Reuben B. Robertson, under Administrative Conference of the United States, on page 2 of the calendar; the two nominations under Department of Justice on page 3; the one nomination under Commission on Civil Rights on page 3; the nominations under National Science Foundation on page 4; all nominations on page 5, which include the one nomination under National Science Foundation and the nominations under National Council on the Humanities; all nominations on page 6, which include National Council on the Arts, and National Commission on Library and Information Science; and all nominations on page 7, which include the National Consumer Cooperative Bank, National Council on the Humanities, and Uniformed Services University of the Health Sciences; and one nomination on page 8, that being under National Council on the Handicapped.

Mr. STEVENS. There is no objection to those items for confirmation, Mr. President.

There being no objection, the Senate proceeded to the consideration of executive business.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominees be confirmed en bloc, that the motions to reconsider en bloc be laid on the table, that the President be immediately notified of the confirmation of the nominees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I concur in that position.

The nominations considered and confirmed en bloc are as follows:

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Reuben B. Robertson, of the District of Columbia, to be Chairman of the Administrative Conference of the United States.

DEPARTMENT OF JUSTICE

Brian P. Joffrion, of Louisiana, to be U.S. marshal for the western district of Louisiana.

Harry Alan Scarr, of Virginia, to be Director of the Bureau of Justice Statistics.

COMMISSION ON CIVIL RIGHTS

Blandina Cárdenas Ramirez, of Texas, to be a member of the Commission on Civil Rights.

NATIONAL SCIENCE FOUNDATION

Mary Jane Osborn, of Connecticut, to be a member of the National Science Board, National Science Foundation.

Peter T. Flawn, of Texas, to be a member of the National Science Board, National Science Foundation.

Peter David Lax, of New York, to be a member of the National Science Board, National Science Foundation.

Homer A. Neal, of Indiana, to be a member of the National Science Board, National Science Foundation.

Mary Lowe Good, of Louisiana, to be a member of the National Science Board, National Science Foundation.

Donald B. Rice, of California, to be a member of the National Science Board, National Science Foundation.

Stuart A. Rice, of Illinois, to be a member of the National Science Board, National Science Foundation.

John Brooks Slaughter, of Washington, to be Director of the National Science Foundation.

NATIONAL COUNCIL ON THE HUMANITIES

Marcus Cohn, of Maryland, to be a member of the National Council on the Humanities.

Samuel DuBois Cook, of Louisiana, to be a member of the National Council on the Humanities.

Roland Paul Dille, of Minnesota, to be a member of the National Council on the Humanities.

A. Bartlett Giamatti, of Connecticut, to be a member of the National Council on the Humanities.

George Alexander Kennedy, of North Carolina, to be a member of the National Council on the Humanities.

Louise Ano Nuevo Kerr, of Illinois, to be a member of the National Council on the Humanities.

Frances Dodson Rhome, of Indiana, to be a member of the National Council on the Humanities.

Philip Aaron Schaefer, of California, to be a member of the National Council on the Humanities.

Anita Silvers, of California, to be a member of the National Council on the Humanities.

NATIONAL COUNCIL ON THE ARTS

Kurt Herbert Adler, of California, to be a member of the National Council on the Arts.

Margo Albert, of California, to be a member of the National Council on the Arts.

Robert Joffrey, of New York, to be a member of the National Council on the Arts.

Toni Morrison, of New York, to be a member of the National Council on the Arts.

Ioeh Ming Pei, of New York, to be a member of the National Council on the Arts.

Lida Rogers, of Mississippi, to be a member of the National Council on the Arts.

Erich Leinsdorf, of Massachusetts, to be a member of the National Council on the Arts.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Charles William Benton, of Illinois, to be a member of the National Commission on Libraries and Information Science.

Gordon M. Ambach, of New York, to be a member of the National Commission on Libraries and Information Science.

Paulettee H. Holahan, of Louisiana, to be a member of the National Commission on Libraries and Information Science.

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Robert Higgins Ebert, of New York, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences.

Eugene M. Farber, of California, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences.

Lauro F. Cavazos, of Texas, to be a member of the Uniformed Services University of the Health Sciences.

Caro Elise Luhrs, of the District of Columbia, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences.

William R. Roy, of Kansas, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences.

NATIONAL CONSUMER COOPERATIVE BANK

Wayman D. Palmer, of Ohio, to be Director of the Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

NATIONAL COUNCIL ON THE HUMANITIES

Marian B. Javits, of New York, to be a member of the National Council on the Humanities.

NATIONAL COUNCIL ON THE HANDICAPPED

Odessa Komer, of Michigan, to be a member of the National Council on the Handicapped.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

FUTURE DEMOCRATIC GOALS

Mr. ROBERT C. BYRD. Mr. President, the distinguished national columnist, David Broder, has recently observed that this election year will mark the emergence of a new generation of national leaders. These men and women, who will assume the mantle of leadership by the end of this decade, were born in the post-Depression era and achieved adulthood during the 1960's—an era of incalculable social tumult and change. The ideas and actions of this new generation will shape the future of America as we move toward the 21st century and beyond.

The distinguished senior Senator from Colorado, GARY HART, has already compiled a record of significant achievement. He has been an articulate advocate of the interests of the Nation and of the State of Colorado. He has tackled a broad range of national issues—including defense policy, Federal spending, energy development and environmental protection, offering a host of creative and constructive initiatives. He has sought a fresh approach to American politics, one that will provide answers to today's problems.

In today's Washington Post, Senator HART offers his prescription for the Democratic Party of the future. He offers some constructive suggestions for ordering our national priorities which I commend to all my colleagues. With young leaders such as GARY HART I am assured that the future of the Democratic Party and the Nation are in safe hands.

I ask unanimous consent that the article entitled "Democrats: A New Path to Old Goals" be inserted in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 23, 1980]

DEMOCRATS: A NEW PATH TO OLD GOALS

(By Gary Hart)

In 1832, addressing the emerging factionalism in America, President Andrew Jackson said: "It is time to pause in our career to review our principles" and "revive that devoted patriotism and spirit of compromise" that distinguished the revolutionary founders.

The same imperative applies today.

The major political parties are dormant because they have so few new ideas and because changing conditions have made the historic quarrels between them largely irrelevant. The Democratic Party thus has an extraordinary opportunity to produce fresh ideas. But it must root new economic concepts—designed to fulfill a compassionate, unfinished social agenda—in the market rather than the bureaucracy. And it must reclaim responsibility for reform of our military leading to an innovative and more effective national defense.

Those of us who are Democrats believe our historic principles uniquely qualify our party to articulate the national agenda, propose creative and equitable solutions and rekindle the spirit of compromise and consensus around the common good.

Among the Democratic Party's historic principles: the Jeffersonian principle of a free, competitive private economy; the Jacksonian principle of the protection of the individual from the power of concentrated wealth; the Rooseveltian principle of economic stability wed to social conscience. Thus, from the early principles—economic opportunity; from the later principles—economic and social justice.

By reclaiming these principles, the Democratic Party can form a new consensus composed of middle-income people concerned about economic stability and national security, workers who hope for better opportunities for their children, the elderly, the unemployed, minorities and the young.

America's agenda for the 1980s and 1990s is long and varied. But it has a unifying link. Our nation's ability to provide stable prosperity and economic opportunity for its young people, to ensure the national security, to promote our interest and those of our allies abroad and to achieve social justice—all depend on the health of our economy. Clearly, the renewal of the Democratic Party must be structured on a new economic keel.

And that, in turn, results from a clear statement of the national economic agenda, an agenda based on the following concepts:

National and personal priorities must be shifted toward production and away from consumption.

Market forces, rather than government allocation formulas, should dictate personal economic choices.

Our definition of "standard of living" should reflect fundamental values such as shelter, nutrition, health, education and employment, not unnecessary luxuries.

The elderly and disadvantaged must be buffered against the shortfalls in a leaner society, not through government handouts but, for example, by non-bureaucratic instruments such as "lifeline" utility rates.

Our commitment to racial justice must be restored—specifically through employment—by creating incentives for minority job training in private industry and by making new energy projects and urban modernization high-priority minority employment sectors.

Urban rebuilding can be financed by a "21st Century Cities Bank" capitalized by state budget surpluses and public employee pension funds.

Increased domestic energy production must be balanced with health and safety protection through publicly financed pollution control equipment on coal-burning industrial facilities, increased safety measures on a nuclear plants and impact assistance to communities producing synthetic fuels.

Social goals, such as moderate wage and price increases and legitimate environmental standards, should be induced, where possible, through economic incentives rather than rigid, complex regulations.

Workers should be encouraged to share in the ownership of production facilities through employee stock ownership plans or similar proposals.

These illustrative ideas suggest a new consensus can be formed if we pursue historic Democratic goals—economic opportunities for the young and the unemployed, social justice for the disadvantaged, restoration of fundamental social goals and values, growth and equity—achieved not through programmatic solutions that Democrats reflexively propose, but through the natural mechanisms of the marketplace.

And consensus—Jackson's "spirit of compromise"—will be necessary, for difficult economic questions, testing the political implementation of these goals, are taking shape on the horizon:

Should U.S. industries be both subsidized and permitted to become more concentrated to encourage competition with foreign counterparts—when both trends frustrate a true domestic free market economy?

Given that the tools for capital formation are well known and relatively simple (e.g., tax incentives for investment, accelerated depreciation), how should we choose *which* industries to stimulate or "reindustrialize"?

How do we achieve regionally balanced growth, in a nation of a half-dozen or more disparate regional economies?

Can the tax system—the benchmark of a just society—itself be made simple, just and equitable, at a time when it represents the most effective alternative set of fiscal tools to the traditional bureaucratic-programmatic approach to achieving social and economic goals?

Can private industry be induced to undertake risk—as in the production of synthetic fuels and renewable energy—when public policy (and perhaps national security) requires

it, but when profits are plentiful from conventional technologies?

Can outdated, burdensome economic regulations be reduced without sacrificing necessary regulatory protection for public health and safety?

Can massive capital be accumulated to rebuild older cities and restore our national infrastructure, particularly our transportation systems, and provide jobs for the structurally unemployed?

These complex questions must be addressed over the next two decades within the context of the national agenda suggested above. But aside from their basic economic character, these issues are noteworthy for their resistance to traditional ideological orthodoxy. The profound differences between Republican and Democratic philosophy and principles remain. And so they should. But the world and its problems change, and outmoded programs and dogmas must give way if answers are to be found.

The Democratic Party offers the best chance for consensus—through economic opportunity and social equity—and thus the best chance for resolution of the economic agenda. And that consensus can be extended to defense and foreign policy, as well as energy development and resource management.

Kant said: "A democracy . . . is the most complex of all the forms of state, for it has to begin by uniting the will of all so as to form a people; and then it has to appoint a sovereign over this common union, which sovereign is no other than the united will itself."

It is complex to unite the American will. But the Democrats of the future must do it and, once it is done, our national will is invincible.

FOREIGN SERVICE ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CHURCH, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 6790.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. On behalf of Mr. CHURCH, I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

Mr. STEVENS. There is no objection.

The motion was agreed to; and the Presiding Officer appointed Mr. CHURCH, Mr. PELL, Mr. BIDEN, Mr. TSONGAS, Mr. JAVITS, Mr. PERCY, and Mr. HELMS conferees on the part of the Senate.

RECESS UNTIL 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move that the Senate stand in recess until 9:45 tomorrow morning.

The motion was agreed to; and at 7:59 p.m. the Senate recessed until tomorrow, Wednesday, September 24, 1980, at 9:45 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 23, 1980:

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Reuben B. Robertson, of the District of Columbia, to be Chairman of the Administrative Conference of the United States for a term of 5 years.

DEPARTMENT OF JUSTICE

Brian P. Joffrion, of Louisiana, to be U.S. marshal for the western district of Louisiana for the term of 4 years.

Harry Alan Scarr, of Virginia, to be Director of the Bureau of Justice Statistics.

COMMISSION ON CIVIL RIGHTS

Blandina Cárdenas Ramirez, of Texas, to be a Member of the Commission on Civil Rights.

NATIONAL SCIENCE FOUNDATION

The following-named persons to be Members of the National Science Board, National Science Foundation, for terms expiring May 10, 1986:

Mary Lowe Good, of Louisiana.
Peter T. Flawn, of Texas.
Peter David Lax, of New York.
Homer A. Neal, of Indiana.
Mary Jane Osborn, of Connecticut.
Donald B. Rice, of California.
Stuart A. Rice, of Illinois.

John Brooks Slaughter, of Washington, to be Director of the National Science Foundation for a term of 6 years.

NATIONAL COUNCIL ON THE HUMANITIES

The following-named persons to be Members of the National Council on the Humanities for terms expiring January 26, 1986:

Marcus Cohn, of Maryland.
Samuel DuBois Cook, of Louisiana.
Roland Paul Dille, of Minnesota.
A. Bartlett Giamatti, of Connecticut.
George Alexander Kennedy, of North Carolina.
Louise Ano Nuevo Kerr, of Illinois.
Frances Dodson Rhome, of Indiana.
Philip Aaron Schaefer, of California.
Anita Silvers, of California.

NATIONAL COUNCIL ON THE ARTS

The following-named persons to be Members of the National Council on the Arts for terms expiring September 3, 1986:

Kurt Herbert Adler, of California.
Margo Albert, of California.
Robert Joffrey, of New York.
Toni Morrison, of New York.
Ieoh Ming Pei, of New York.
Lida Rogers, of Mississippi.

Erich Leinsdorf, of Massachusetts, to be a Member of the National Council on the Arts for the term expiring September 3, 1986.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The following-named persons to be Members of the National Commission on Libraries and Information Science for terms expiring July 19, 1985:

Charles William Benton, of Illinois.
Gordon M. Ambach, of New York.
Paulette H. Holahan, of Louisana.

NATIONAL CONSUMER COOPERATIVE BANK

Wayman D. Palmer, of Ohio, to be Director of the Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

NATIONAL COUNCIL ON THE HUMANITIES

Marian B. Javits, of New York, to be a Member of the National Council on the Humanities for the remainder of the term expiring January 26, 1982.

NATIONAL COUNCIL ON THE HANDICAPPED

Odessa Komer, of Michigan, to be a Member of the National Council on the Handicapped for a term of 1 year.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

The following-named persons to be Members of the Board of Regents of the Uniformed Services University of the Health Sciences for the terms indicated:

For terms expiring June 20, 1983:
Robert Higgins Ebert, of New York.
Eugene M. Farber, of California.
For terms expiring June 20, 1985:
Lauro F. Cavazos, of Texas.
Caro Elise Luhrs, of the District of Columbia.
William R. Roy, of Kansas.

EXTENSIONS OF REMARKS

POLITICS AND RELIGION

HON. DON BONKER
OF WASHINGTON
IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. BONKER. Mr. Speaker, among people who want to stay on good terms, the two topics to be avoided are politics and religion. When politics and religion are combined, the result is even more volatile. Religion is the realm of absolutes; politics the art of compromise. Thus, the Founding Fathers wisely put some constitutional distance between church and state, religion and politics.

But the two cannot—and should not—be separated completely. Religion shapes our view of the world and our notions of right and wrong. Politics is the process by which these values are translated into public policy. So it should not be surprising that we have seen a recent surge in political involvement by Christian groups seeking to reestablish moral values in government and society.

I commend fellow evangelicals who are attempting to bring biblical principles to political problems. But I have been troubled that some groups, claiming to speak for all evangelicals, have presented a political agenda that represents neither the majority of Christians, nor a balanced view of biblical truth.

Both liberal theologians and right wing fundamentalists declare they have the Christian mandate on a whole spectrum of specific issues, ranging from ERA to defense spending. While church liberals tend to emphasize corporate morality and social consciousness, conservatives focus narrowly on issues related to personal piety.

As noted by the editors of Christianity Today:

Some evangelical lobbies on the political right, as well as lobbies on the left, want us to believe that theirs is the only truly Christian position on all the issues.

Both extremes conveniently ignore major biblical teachings. They also make judgmental proclamations that do not tolerate diversity—even on secondary issues or those to which the Bible does not speak clearly.

Jesus Christ had to deal with extremists in his day—the powerful Saducees and the nationalistic and pious Pharisees. Both groups were missing the mark, and Christ's life and teaching was intended to give us some direction on these matters. The Christianity Today editorial reminds us that what America needs is not shrill emotional cries, even from religious leaders of the right or the left, for this or that panacea or cure for our national and international problems. America needs thoughtful, prayerful Christian citizens who choose to vote responsibly for leaders of moral integrity and sheer honesty, leaders who love justice, have the courage to do the right even at the cost of popularity, understand complex domestic and foreign issues, and appreciate the significance of underlying moral and spiritual values.

The following editorial from the September 19, 1980, issue of Christianity Today is timely, relevant reading as we approach the upcoming elections:

GETTING GOD'S KINGDOM INTO POLITICS

CHRISTIANITY TODAY PRESENTS A REFERENDUM THAT SHOULD HELP CHRISTIANS CLARIFY THEIR STAND ON MANY ISSUES

Remember 1976, the "year of the evangelical"? That was the year evangelicals exulted in born-again Jimmy Carter's election to the presidency, the year they put up their feet and said, "Well, it's about time the world took notice of us." They basked in all the exposure they were getting.

Now it is 1980, another election year. All three presidential candidates claim some sort of born-again status. Evangelicals generally have higher visibility in the news media, though commentators still scratch their heads at their "fundamentalist" zeal, and some continue to stereotype the evangelical as one who is unconcerned about social and political issues.

Evangelicals certainly are not all cut from the same cookie cutter. They are committed to the final infallible authority of the Bible. They profess absolute allegiance to the lordship of Jesus Christ. They believe in righteousness and justice. Many of them believe that the U.S. has traveled far down the primrose path to moral and social decadence. They trumpet a clarion call to repentance and renewed dedication to the good. But they don't agree on what path will take us most readily there.

1980 could well be called the year of the right-wing religious lobby. Best known are Moral Majority, headed by Jerry Falwell, and Christian Voice, headed by Robert Grant, with their millions of followers. Their mission? To clean up America by getting moral values back into government, schools, and families—a lofty goal, one that evangelicals heartily espouse.

We support the vigorous stand these lobbies take for what is right and their deep commitment to social and political change. As Christians, they are involved; they refuse to opt out of the human race. They recognize that evangelicals, too, have an earthly citizenship with responsibilities to take social and political action for the welfare of their fellow citizens. They take seriously the causes of national righteousness and justice.

This flurry of evangelical political activity, particularly by these lobbies, has provoked us to ask a number of questions pertaining to Christian faith and politics. The Christianity Today editors put together a little referendum and we give readers our results. Compare them with yours.

Do Christians really care about the moral decline in our society—the breakdown of the family, the rise of secular humanism, dishonesty in government, the onslaught of pornography, homosexual practice, free and easy abortion, social injustice, the exploitation of minorities and the poor, televised sex and violence, increasing drug usage and addiction, and government intrusion into the affairs of private schools and churches? Yes.

Unanimity among Christians is hard to find, either in politics or theology. But we think all Christians can agree with this list of moral concerns and many more. We stand together, too, in solid support of Evangelicals for Social Action in their call for evangelicals to take a biblically informed approach to politics. The ESA statement published in this issue reminds us of certain Christian givens: The family is a divinely willed institution. Every human life is sacred. Religious and political freedom are God-given inalienable rights. God and his obedient people have a special concern for the poor. He requires just economic patterns in society. He requires Christians to be peacemakers. He requires stewardship of the earth's resources. Sin really is both personal and social. Personal integrity is vital.

Moral Majority and Christian Voice appear to emphasize the first three of these ESA principles more than the others. The Bible deals with all of them. In fact, probably more space in the Bible is devoted to calls for justice and the care for the poor than to the fact that human life is sacred, though none can deny that both are biblical mandates. The concerns of the religious lobbies will appeal to a broader range of Christians to the extent that they emphasize these other equally biblical principles of justice, peace, stewardship of our resources, and care for the poor, as well as profamily and prolife issues. It is a case of "these ye ought to do but not to leave the others undone." Too narrow a front in battling for a moral crusade, or for a truly biblical involvement in politics, could be disastrous. It could lead to the election of a moron who holds the right view on abortion.

Do evangelicals and religious lobbies have the right to organize? Yes.

Of course, they do. And it's about time evangelicals exercised that right. For too many years they have shied away from political activity, while National Council of Churches lobbyists and liberals in mainstream denominations pressed for their own humanistic platforms. No one should be surprised at or disturbed by the formation and increasing influence of conservative religious lobbies. It's not the ones who complain about moral decadence who have influence in Congress, it's the ones who do something about it. Politically active evangelicals are simply striving for the good of their fellow citizens.

Are all evangelicals necessarily politically conservative? No.

Ask Mark Hatfield that question. Or Jimmy Carter. Or John Anderson. Or anyone who reads Sojourners, The Other Side, the Wittenburg Door, the Church Herald, or the Christian Leader. "All evangelicals" agree on very few things, but at least they agree on the most important things: in one God who in Christ chose to invade our planet in order to redeem men from sin and its consequences; the substitutionary death of Jesus Christ on the cross as the means by which God himself completely settled the score of man's sin; his own sovereign role as the Supreme Judge of all the universe; the need for a personal relationship with God through faith in Christ; and

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

the call of every Christian to discipleship and a life of sacrificial love in service to God and our fellow men. Everything else is application and secondary—even politics. Differences among Christians over fine points of theology or politics should be welcomed as a sign of breadth and vitality, not of weakness.

But there are differences in viewpoints. We insist that it is possible for an evangelical who believes in the inerrant authority of Scripture to be a political moderate, or even a liberal.

Is there only one "Christian" position to take on each of today's complex issues?

We get the impression that some evangelical lobbies on the political right, as well as liberal lobbies on the left, want us to believe that theirs is the only truly Christian position on all issues. How can a policy board of evangelical Christians, without access to vast amounts of intricate political data, emerge from a meeting and announce that it has arrived at the Christian or moral position on lifting sanctions against Zimbabwe, for example? Or how can its opposite number, a body of liberal theologians, demand the reverse as the Christian position?

Surely it is possible for people to arrive at what they feel is a biblical position on Zimbabwe, or disarmament, or the Panama Canal. While the Bible was never intended to be an economics textbook or a foreign policy manual, it still gives clear principles that we can apply to the issues of the world around us. But even if we all see these principles with scintillating clarity and accuracy, they must be applied to the present world situations—the complex personal and institutional life as it is organized and lived on planet earth.

The Bible isn't always explicitly clear on how its principles are to be understood and applied to every specific issue. These applications are not always divinely given in the Word of God. Our best efforts to be biblical and moral on current political, social, and economic issues are still limited, very fallible human applications of the infallible Scripture. We must be prepared to recognize, therefore, that sincere and conscientious Christians may apply these principles in different and sometimes opposite ways. Recognizing the diversity in the body of Christ, Christians must allow for these differences in application of God's truth.

The political presence and influence of contemporary evangelicals is good and must be commented: first, because they are concerned about moral issues and national righteousness and justice; second, because they are concerned about social and political choices and recognize the responsibility of Christians to be informed, to hold opinions, and to express openly their viewpoint; and third, because they are doing something about their convictions so as to get action and work for man's good. All this is not only consistent with biblical and evangelical Christianity, it is demanded if we are to be guided by the clear instructions of Holy Scripture. As good disciples we must take seriously the lordship of Jesus Christ over every aspect of human thought and life, including man's political life, and we must function as Christian citizens of the state.

But we must also warn the new evangelical activities of serious dangers that beset their path as leaders of the people. It will not do, for example, to focus upon a single issue, or even two or three so-called moral issues. In today's world, not one issue, but many, are important to the welfare of our society. It is more important to secure responsible political leaders of intelligence, deep moral commitment, political wisdom, and administrative skills than those who simply vote "right" on one or two, or even fourteen favorite issues. For the good of our nation, we must exercise a broader vision.

Likewise, we must warn against what often appear as simple solutions to the problems of America. We live in a terribly complex society. Rarely are neat, pat answers the best solutions to the intricate social, political, and economic problems of the world. It is all too easy to shut our eyes to the complexities of a problem, opt for superficial slogans, and join a noisy but unthinking crowd following a popular religious crusade.

Thoughtful Christians will be wary of such Pied Pipers. Uncritical support is unworthy of the Christian citizen who seeks righteousness and justice, for it is destructive of the good of society. Something that appears to be an easy answer for a complex problem of society often brings untold harm.

America today does not need shrill emotional cries, even from religious leaders of the right or the left, for this or that panacea or cure for all our national and international problems. America needs thoughtful, prayerful Christian citizens who choose to vote responsibly for leaders of moral integrity and sheer honesty, leaders who love justice, have the courage to do the right even at the cost of popularity, understand complex domestic and foreign issues, and appreciate the significance of underlying moral and spiritual values. We must find such leaders, work to get them elected, and then trust them and pray for them. Remember the ancient wisdom; people generally get the government they demand and deserve.●

V.S.O.P.

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. GEPHARDT. Mr. Speaker, like good wine, legislative proposals should speak for themselves. But since President Carter included the social security payroll tax credit, H.R. 7046, in his economic renewal program, some experts on our economy and consumer affairs have had some interesting things to say about my idea:

WALTER W. HELLER, DEPARTMENT OF ECONOMICS, UNIVERSITY OF MINNESOTA, AUGUST 29, 1980

I am pleased that the White House has adopted your approach to relieving both employers and employees of some of the burden of the payroll tax. While I would prefer to see this relief in the form of a direct reduction of the payroll tax rate itself, I am aware of the difficulties of doing that at the present time. Your bill is an excellent second best.

It is distinctly superior to an adjustment of tax rates as a rough-and-ready compensation for some of the payroll tax increase. Your approach makes it crystal clear to the employee that he is getting an increase in take-home pay without a wage increase and, even more important, to the employer that he is getting an effective reduction in the cost of his labor. That reduction should pass through to lower prices than one would have without your tax credit.

OTTO ECKSTEIN, PRESIDENT, DATA RESOURCES, INC., AUGUST 1, 1980

A two-year, 10 percent tax credit against Social Security taxes would be a personal income tax cut with a good pattern of benefit distribution. The 10 percent credit against Social Security taxes, especially now that the base for Social Security is so dramatically enlarged, would be desirable. If it is politically impossible to produce a rate schedule which focuses the benefits in the brackets identified, then I would prefer the credit proposal to broad across-the-board rate reductions.

The Social Security tax credit could also be applied to corporate income taxation. As a temporary credit it also would be a convenient way of achieving a good split between corporate and personal cuts: most of the depreciation reform proposals cost very little in the first year but become very costly later on. If it is desired to provide 40-50 percent of the tax package to corporations, then some form of rate reduction or tax credit becomes necessary on a temporary basis until the depreciation reform becomes costly. While I would prefer a change in the rate schedules to an investment credit, if that possibility is ruled out I would give this credit second place.

ROBERT J. SAMUELSON, THE NATIONAL JOURNAL, REPRINTED IN THE WASHINGTON POST, SEPTEMBER 2, 1980

Government isn't powerless. Aside from shunning favors for specific constituencies, it can fashion its tax cut with monetary policy in mind. Specifically, the next tax cut ought to be modest, ought to repeal the 1981 Social Security tax increase (which tends to get built into labor costs and passed along in prices) and ought to concentrate relief on business taxes (which would limit pressure to restore profit margins by raising prices).

This orientation would diminish upward pressures on interest rates, which is good for three reasons: (1) it would concentrate the recovery on the depressed housing and auto industries, which are dependent on credit and sensitive to rates; (2) it would tend to hold down inflation both because mortgage interest rates are built into the consumer price index and because shortages of housing and fuel-efficient cars (read: demand for foreign oil) exert independent inflationary pressure; and (3) it would tend to push money out of short-term investments into the stock market, and the economy needs more "risk" capital.

TAX REFORM RESEARCH GROUP, PEOPLE AND TAXES, SEPTEMBER 1980

If one were laying out the criteria for a "perfect" tax cut, the list would probably include the following:

It should be equitably distributed.

It should stimulate lagging demand to help us out of the recession and put people back to work, but should not add to the rate of inflation.

Insofar as it goes to business, it should be as economically neutral as possible and should not favor big companies over small ones.

It should be easy for taxpayers and the IRS to deal with, not adding any more complexity to the tax laws.

Although it seems almost too good to be true, there is one kind of tax cut which has all these advantages: a reduction in social security tax rates. Even more amazing, a proposal with most of these benefits is gaining popularity in Congress, and has a reasonable chance to be included in any tax legislation which is finally approved.

Representative Richard Gephardt (D-Mo) and Senator Bill Bradley (D-N.J.) are sponsoring a measure to give employers and employees a refundable 10 percent income tax credit for social security taxes paid. The key economic advantage of this approach over a straightforward cut in income tax rates is that employers are likely to perceive their share of the cut as a reduction in wage costs—and therefore cost pressures on prices are likely to be reduced.●

CONGRESSMAN MOFFETT SUPPORTS H.R. 7554, SMALL BUSINESS INVESTMENT INCENTIVE ACT

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. BROYHILL. Mr. Speaker, today we will be voting on a very important piece of legislation, the Small Business Investment Incentive Act, H.R. 7554. The goal of this legislation is simple: to update our securities laws to remove those barriers to capital formation which have restricted investment in small and developing companies.

This legislation represents a significant change in the law for a number of reasons. In the past decade, we have seen small, developing companies become the primary supplier of new jobs. We have seen them develop much of our new technology. And we have seen these smaller businesses become the spark to further community development. In short, small business has had an immeasurable impact on our country and its economy and it behooves the Congress to foster the development of smaller enterprises.

H.R. 7554 is the result of extensive hearings by the Consumer Protection and Finance Subcommittee. It was developed through consultation with a number of Members of Congress and affected industries.

After studying the hearing record on H.R. 7554 and its predecessor bill, H.R. 3991, my esteemed colleague from Connecticut, TOBY MOFFETT, contacted me to indicate his support for the goals embodied in the proposal and to indicate that he wished to cosponsor the bill. Unfortunately, H.R. 7554 was not reintroduced subsequent to Congressman MOFFETT's call to me.

Thus, I would like to take this opportunity to thank Congressman MOFFETT for his endorsement of this legislation and to alert my colleagues to his support for the bill. I appreciate his efforts in behalf of H.R. 7554 and sincerely regret that his name was not added to the bill prior to its passage.●

THE SPIRIT OF AMERICA

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. MURTHA. Mr. Speaker, I have often commented that we find the real spirit of our great country in the individual lives and examples of people across this great Nation.

A couple of weeks ago in Somerset, I had the opportunity to talk with one such person, Mrs. Julia Andrews. I would like to insert into the CONGRESSIONAL RECORD a newspaper article from the Somerset Daily American that shows the life of hard work and dedication that Mrs. Andrews has set as an example. I think her attitude is an important part of the spirit of American citizens that makes our Nation great.

The article follows:

JULIA ANDREWS HATES TO MISS WORK

(By Mary Ream)

Julia Andrews of Stoystown RD 2 rarely misses a day of work. And she doesn't believe in being late, either.

At 84, she still works fulltime as a seamstress for So-Neet Inc., on the Shanksville Road, where she's put in the past 13 years at her Singer machine. Her career in the garment industry spans 64 years.

"I won't miss work unless I really have to," she said. Mrs. Andrews says she is "never disgusted" in the mornings when she gets ready for work. She enjoys her work and brags shamelessly about how well she is treated by her employers, the Guy Sproerleins. "They don't breathe down my neck pushing production all the time like at other factories," she says.

Until a recent bout with the flu that knocked her literally off her feet and kept her out of work for two weeks, Mrs. Andrews hadn't even been to see a doctor for seven years and one day. It was so bad, she concedes, that she compared it to the deadly flu of 1918: "I thought I was a goner."

64-YEAR CAREER

Her 64-year career in the garment factories started when she quit school during her senior year and went to work as a weaver. Over the years, she's been employed at seven different factories, including ones in Hollsopple, Windber and Johnstown.

Besides keeping up with a fulltime job and taking care of her house, she also crochets and quilts, making her own designs, and creates gifts with foam craft.

She's first soprano in the choir at Holy Cross National Catholic Church in Johnstown, and drives the 46 miles round-trip every Sunday, picking up passengers enroute. She also trims the walls and tables in the church hall.

HAS A SLOGAN

Mrs. Andrews also regularly drives to visit her three sisters in Yonkers, N.Y., and three nieces in Toledo, Ohio. On the front plate of her car is a slogan: "It's exciting to be Polish."

Her daughter, Ruth Lavely, lives in Orlando, Fla., and her foster daughter, Stella Fiak Lee, in Johnstown. Mrs. Andrews has three granddaughters, five foster grandsons, one great-granddaughter and five foster-great-grandsons. A widow, Mrs. Andrews' husband, John, died just 10 months before their 50th wedding anniversary.

"I never think I'm old," confides this octogenarian. A sign hanging on her sewing machine warns: "I may be old but I still get hot," and includes a drawing of a Model-T with its radiator boiling over.

Mrs. Andrews really boils over when she talks about welfare. "I can't stand freeloaders," she says. "We should make them work if they're healthy . . . they could work on our highways." She's glad that Gov. Thornburgh is taking action to get able-bodied people off the welfare rolls.

NEVER MISSES WORK

Julia never misses work unless she has to, and she usually goes over her production level, surpassing what is expected of her.

She sums up her philosophy on life this way: "If you live a clean and honest life and do the right things with people, they'll always return it to you the same way you give to them . . . If you really take time out and ask the One above to watch and guide you, He always does." She begins and ends each day with a short prayer.

As to why she still works, Mrs. Andrews says simply, "Who's going to keep me?" She says she plans to keep working until she's 90—at least.●

CONGRESSMAN LENT SUPPORTS H.R. 7554, SMALL BUSINESS INVESTMENT INCENTIVE ACT

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. BROYHILL. Mr. Speaker, as my colleagues are all aware, H.R. 7554 is a carefully crafted measure which was drafted after extensive hearings by the Consumer Protection and Finance Subcommittee. It was developed and refined through consultation with the Securities and Exchange Commission, business groups, and concerned Members of Congress.

What we are attempting to do with this legislation is to knock down the artificial barriers to capital formation which have been hurting small business for years. The Small Business Investment Incentive Act modernizes the Investment Company Act of 1940 to remove those barriers which restrict the investment of venture capital companies in small and developing enterprises.

Shortly after I introduced H.R. 7554, my distinguished colleague from New York (Mr. LENT), contacted me to urge his support for the measure and to indicate that he wished to cosponsor the bill. Congressman LENT, as with many in this body, expressed his concern over the need to foster the growth of small business in our country. It is important to note, in this regard, that he was a cosponsor of the forerunner of this legislation, H.R. 3991, which I believe indicates his support for this goal.

Unfortunately, H.R. 7554 was not reintroduced subsequent to its original introduction. I would like to take this opportunity to alert my colleagues to the fact that Congressman LENT has indicated his endorsement of H.R. 7554. I appreciate his assistance in furthering the development of small business in this Nation, and I sincerely regret that his name was not added to the bill prior to its passage.●

DEDICATION OF THE TEMPLE

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. MAZZOLI. Mr. Speaker, on Sunday August 24, 1980, along with

other dignitaries, I had the privilege to speak at the dedication of The Temple, a beautiful new structure built to serve the merged congregations of Adath Israel and Brith Sholom.

The spirit of unity which I experienced at this dedication, evidenced by the attendance of community and church leaders of all denominations, made all of us in Louisville aware that The Temple will make enormous contributions to the community in the future just as its predecessors made in the past.

I am thankful to the members of the congregation of The Temple for their hard work and dedication. And, I wish Rabbi Emeritus Herbert S. Waller and co-Rabbis Leonard H. Devine and Chester B. Diamond all health, happiness, and success in the years ahead.●

MSGR. ROBERT J. COLL EPITOMIZES THE SPIRIT OF RELIGION

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. RITTER. Mr. Speaker, Msgr. Robert J. Coll, pastor of St. Thomas More Catholic Church of Allentown, epitomizes the spirit of religion.

He will bid farewell to his parish and community next week to become assistance executive director of the Catholic Relief Service.

Monsignor Coll has touched thousands of lives in the Lehigh Valley and far beyond. He will continue to touch countless thousands of others as he serves God by ministering to the needs of the poor, the starving and the dying throughout the world.

His departure will leave a deep void. He will be missed by his parish, by his community and by his diocese of Allentown.

I feel honored to have worked closely with this humble and compassionate priest, whose greying hair betrays the many heavy burdens he carries quietly and bravely.

His record of service to God and man speaks for itself:

Here is a priest who lived and spread the message of ecumenism before people even knew how to pronounce it or what it meant.

Here is a priest who donned jeans and sweatshirt to work alongside fellow parishioners in 1972 as they helped flood victims devastated by Hurricane Agnes in Wilkes-Barre.

Here is a priest whose church was chosen in 1973 by Dr. Norman Vincent Peale's Guidepost magazine as the most outstanding church in America.

Here is a priest who helped found operation rice bowl in the Lehigh Valley with other religious leaders in 1974. That ecumenical lenten sacrificial program, since adopted by the Eucharistic Congress, has raised $15 million to help feed the starving in the Third World.

Here is a priest who moderates a TV series, "Church in Challenge," dealing with major social problems faced by man and church.

Here is a priest whose community involvement is too varied to detail.

Here is a priest who in 14 years has built a parish complex unparalleled in many dioceses.

Monsignor Coll has seen his parish grow from 500 families in 1966 to 1,200 families. He has never been too busy to minister to the needs of the young or old, the sick or dying, or to share in the joys of his parishioners. His sense of humility, his soothing, calm voice and ever-present smile nourished a pride of deep involvement by parishioners as he unfolded his visions for betterment of the church and its members.

Much more could be written about this man of God, but Monsignor Coll perhaps best summarizes himself in two simple quotes:

Last February, while touring the Howrah, one of Calcutta's worst slums, on a fact-finding mission in the Third World, he was approached by a mother who begged him to bless her dying daughter. Monsignor Coll recalls:

> My hand touched her burning face. I prayed over her, asking God to call her quickly. Our eyes met * * * a mother's simple faith was answered. A Catholic priest has visited her dying child and that might well be her only consolation in the empty years ahead. * * * I would never be the same person again * * * my prayers and efforts would always be with the poor.

When asked his thoughts on a model for the church in the 1980's, he quickly responded:

> The parish belongs to the people of God. It's not the instrument of the pastor.

Monsignor Coll has left his imprint on the Lehigh Valley. He will leave similar imprints wherever his service to God calls him.●

A TRIBUTE TO JIMMY BRYANT, FASTEST GUITAR IN THE COUNTRY

HON. DAWSON MATHIS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. MATHIS. Mr. Speaker, the United States lost a part of her musical heritage with the death of Ivy J. "Jimmy" Bryant on Monday, September 22, 1980. Jimmy Bryant, well known nationwide as a country-western musician and songwriter, died after a battle with cancer. He was 55.

He made the Second District in Georgia his home.

Jimmy Bryant, a former member of the Sons of the Pioneers and a costar with western movie hero Roy Rogers, was a native of Norman Park, Ga.

He and his wife, the former Patricia Murphy of Mission Hills, Calif., had been residing in Colquitt County, Ga. since April.

As a songwriter, he was best known for his hit "Only Daddy That'll Walk The Line," recorded originally by Waylon Jennings and later by numerous stars including Willie Nelson.

As a musician, his abilities with the guitar and fiddle won him much acclaim in the studios of Hollywood and Nashville where he was a man behind the scenes.

He recorded some 65 instrumental singles and several albums. In the 1950's, Jimmy Bryant teamed his instrumental efforts with steel guitarist "Speedy" West.

Jimmy Bryant helped establish the Academy of Country Music in California and has won numerous awards for his expertise with the guitar. Among those honors were "Best Lead Guitarist" for 3 years by the Academy of Country Music. He also won a songwriter's award from Broadcast Music, Inc.

In his early career, Jimmy Bryant played in 12 movies with Roy Rogers.

And before they went on to become superstars, Jimmy played with Hank Williams and once hired Glen Campbell as one of his band members.

Jimmy Bryant's musical career started at an early age in Colquitt County where he played the fiddle on the courthouse square, at tobacco warehouses, and during community gatherings.

He was known as Junior Bryant—little fiddlin' boy at the age of 9.

In Nashville and Hollywood he was known for his little talkin' fiddle and acclaimed in those circles as the fastest guitar in the country.

He has appeared on the Grand Ole Opry in Nashville and was the fiddler for the theme music to the televison show, "The Beverly Hillbillies."

Country and western music lovers in southwest Georgia and all across America will sorely miss his immense talents.●

THE CHECKS AND BALANCE SYSTEM OF GOVERNMENT IS STILL WORKING

HON. WILLIAM C. WAMPLER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. WAMPLER. Mr. Speaker, it is my belief that one of the best ways to preserve and enhance our American way of life and its institutions is to maintain the checks and balance system established by our forefathers to prevent excesses in the various branches of our Government.

A perfect example of this system in action has been taking place over the past several years. I refer in this instance to a battle, to explain the dispute in its most graphic sense, that has been waged between various Members of the Congress and several regulatory agencies of the executive branch over whether nitrites should be banned as a risk to health.

If our Constitution had not provided for such an adversarial arrangement the regulators of our executive branch would have been literally free to have taken action to phase out or ban nitrites from our food supply. If there had been no provision for contesting this action, there would have been no requirement to have first established creditable scientific evidence that the use of this substance in foods would in fact be harmful to humans.

The checks and balances system worked in this case. A proposal was instigated by the regulatory agencies to ban the substance, nitrite, and the proposal was contested by Members of another branch, the Congress.

An excellent discussion of this controversy and its current status appeared earlier this month in an article by Mr. R. Jeffrey Smith, a writer for the magazine Science, volume 209, September 5, 1980. I include his article following my remarks, for the benefit of my colleagues:

NITRITES: FDA BEATS A SURPRISING RETREAT

(By R. Jeffrey Smith)

(In 1978 the FDA said nitrites posed a risk to health; the basis for this major conclusion has now crumbled.)

Consumers may have been surprised last month when the Food and Drug Administration (FDA) abruptly told them to forget its warning of 2 years ago that nitrites, the widely used preservative in meats, posed a risk of cancer to humans. They would be even more surprised if they looked behind the scenes at the decision-making within the FDA on the nitrites issue.

Nitrites have long been a target of the consumer movement, which has argued that the preservative's role in preventing botulism is marginal and does not outweigh its possible risks. Nitrite is known to be mutagenic in test animals, for example.

Consumers' efforts to have nitrites removed from food have been unsuccessful because of opposition by the meat industry, and because the scientific case against it was not overwhelming.

All that seemed to change, however, when the FDA learned the results of a nitrite feeding study undertaken by Paul Newberne of the Massachusetts Institute of Technology. Newberne's results were apparently conclusive: nearly twice as many rats fed nitrite developed lymphomas as did the controls.

Armed with this evidence, the then-FDA Commissioner Donald Kennedy decided to move decisively against nitrites in August 1978. In a joint announcement with USDA Assistant Secretary Carol Foreman, he stated that nitrites had been found to pose a risk of human cancer, and that the agency would take steps to phase out their use.

Almost immediately after the initial announcement, doubts about the study surfaced among toxicologists. Half of the scientists to whom the FDA sent the report for comment declared that it lacked enough data to permit proper review; others said it had a number of flaws, including improper statistical calculations and a failure to check for exposure to nitrosamines, a known carcinogen that might have formed inside the rats by a combination of nitrites and amines in the diet. An FDA inspection of Newberne's laboratory while the experiment was in progress raised questions about his procedures for animal handling. And even before the 1978 announcement, pathologists at the National Cancer Institute and within FDA had raised questions about Newberne's diagnoses of rat lymphomas.

None of these doubts were revealed to the public when FDA and USDA released their proposal for a nitrite phaseout on 11 August 1978, even though an internal FDA group had been formed just 3 days earlier to look into them. The reason is that Commissioner Kennedy and a special task force of a dozen FDA lawyers and scientists were confident that Newberne's study would hold up under attack.

Kennedy voiced this confidence in a memo to then-Secretary of Health, Education, and Welfare Joseph Califano on 11 September 1978. "We know more than enough about the Newberne study to be convinced that it is well done and strongly supports the hypothesis that nitrites are carcinogenic per se."

Kennedy went on to discuss how the public might react to criticism of the Newberne study: "Even in the unlikely event of a successful challenge of the study, the outcome would not be clear: it would appear to the public as such things inevitably appear—as rather arcane, confusing debates among the cognoscenti. Thus the possibility for real embarrassment even given the worst possible outcome of our evaluation is very slight, simply because outcomes are never that clear in a matter so complex." He even put his job on the line. "You have a politically expendable regulator who is prepared to take the blame," Kennedy told Califano, "if the outcome proves more disastrous than this argument predicts."

It almost did prove more disastrous. Califano found Kennedy's argument resistible for a combination of political and legal reasons, and FDA was never given the go-ahead to officially propose a nitrite phaseout. Califano's reluctance to do so was a lasting source of friction between Kennedy and himself. That reluctance has been vindicated: the FDA's intensive review of Newberne's study has now shown that in fact the rats fed nitrite had the same incidence of lymphomas as those not fed nitrite. Newberne, in the reviewers' opinion, had misdiagnosed as lymphomas a rare cancer that cannot be related to nitrites. The reviewers also disagree with his diagnosis of certain lesions as precursors of cancer. The review was conducted by FDA's working group on nitrites, which included scientists from three other federal agencies and a committee of pathologists from a dozen members of Universities Associated for Research and Education in Pathology. In response to earlier criticism of his study Newberne has said that "I have no apologies and no doubt that the implications my diagnoses delineated are indeed correct." In a statement prepared last week Newberne describes the differences in diagnosis as subjective but says that "In principle, I agree that [the FDA working group] did an excellent job with a difficult task."

The effect of FDA's reversal is to vindicate the congressional and scientific critics of its phaseout proposal and to validate the argument of the meat and poultry industry, that no regulation of nitrite should proceed unless the results of an animal test have been duplicated. C. Manly Molpus, president of the American Meat Institute, says that "certainly the government's attempt . . . to halt the use of nitrite was ill-advised, and the need for peer review of studies of this type should be an essential element of the process."

Several FDA scientists claim that if Kennedy had followed ordinary procedures for the in-house review of a study such as Newberne's that the flaws would have been caught before the agency stuck its neck out. Albert Kolbye, associate director for toxicology in the Bureau of Foods, has complained to the General Accounting Office and the Congressional Research Service that he and other employees in the bureau were excluded from decision-making before the first public announcement.

Kennedy, now president of Stanford University, insists that "the procedure for review we followed was correct. In the first place, there is no ordinary procedure, and I was perfectly satisfied that the people on that task force were competent." Asked if it would have been better to withhold a regulatory proposal until after a more lengthy scientific review had been completed, Kennedy replied, "You can't simply analyze the results and then say no option suggests itself when in fact one does."

Top officials at FDA say they are inclined to act more deliberately and seek more review in light of the nitrite reversal. "You can't handle an issue like this privately," says one official, "even though you pay a price for handling it publicly."

Where does this leave the consumer of hams, hot dogs, and bacon? The FDA says it has asked the National Academy of Sciences to search the literature on nitrite and investigate alternative ways of preserving meats. Privately, FDA officials see the study as a device for getting both Congress and consumer activist groups off the backs of both FDA and USDA.

William Lijinsky, an expert in cancer-causing nitrosamines at the Frederick (Md.) Cancer Research Center, says that nitrites still pose a risk of cancer because they might combine with amines after consumption to form nitrosamines. "Even though we've been given the impression that nitrites are now safe, this risk remains." Jere Goyan, current FDA Commissioner, agrees that "nitrites are not home-free by any means. There are still questions, and I'm sure they will eventually be phased out of the food supply because of the nitrosamine problem."●

PERSONAL EXPLANATION

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. DIXON. Mr. Speaker, my vote on House Concurrent Resolution 367, the Bingham resolution disapproving the proposed sale of nuclear fuel to India, was erroneously recorded. As a cosponsor of House Concurrent Resolution 372, a similar resolution offered by Mr. MARKEY, I have previously placed myself on record as opposed to this sale, which I feel is inconsistent and incompatible with the Nation's goal of nuclear nonproliferation.

I appreciate the opportunity to clarify my position on this issue.●

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION: AN ANALYSIS

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. ROUSSELOT. Mr. Speaker, at the end of this month the National Commission on Unemployment Compensation will go out of business. The long-awaited report of the Commission has been issued and the recommendations deserve careful study.

Recently, the American Legislative Exchange Council issued a brief analysis of the Commission's recommendations. The American Legislative Exchange Council was founded in 1973 and serves as a forum for exchanging innovative, constructive ideas for reducing and controlling the bureaucracy, promoting fiscal responsibility, lowering the tax burden, and safeguarding individual liberties.

The ALEC is a nonprofit, nonpartisan organization made up of State legislators across the Nation. The primary purpose of ALEC is to help elected representatives share ideas and legislative proposals in all areas of public policy. The emphasis is on strengthening "grassroots" government as an alternative to the large, centralized Government in Washington.

Because the unemployment compensation system is a Federal-State partnership, the ALEC is vitally interested in the proposals of the national commission. Estimates have been made that if the Commission's recommendations are implemented, the cost of the program will increase dramatically. The ALEC analysis of the Commission's recommendations has been mailed to over 3,000 State legislators. It is brief, well documented, and informative.

I urge my colleagues to give this analysis and the recommended alternatives full attention. Many of these proposals are likely to appear before us in legislative form during the 97th Congress:

THE NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION: AN ANALYSIS OF THE RECOMMENDATIONS

BACKGROUND

On August 26 of this year, the National Commission on Unemployment Compensation proposed fundamental changes in the federal-state unemployment compensation (UC) laws. If passed by Congress, the Commission proposals would require changes in the purpose, scope, and cost of every state's UC program.

Currently, unemployment compensation is basically a state-run system, financed by payroll taxes levied on employers. The state has primary responsibility for setting tax rates, benefit levels, and eligibility standards for claimants. Ever since the system was created in 1935, the federal government has been restricted to two roles: (1) giving final approval to the UC budgets in the states, and (2) providing loans to states unable to fully pay for unemployment benefits. Since the enactment of the federal-state extended benefits (EB) program, the federal government has paid 50% of the EB cost.

IMPORTANCE TO STATES

The National Commission's proposals could affect state and local discretion regarding the coverage, duration, and eligibility for unemployment compensation. Nearly all states would be required by law to pay higher benefits to UC recipients, financed in turn by a higher taxable wage base imposed on businesses. By easing the burdens of unemployment, the Commission's recommendations may stimulate work disincentives in local economies, thereby causing a drain of revenues generated within states and localities.

The potential effect of a federal; standardised system was described by three members of the Commission in a Dissenting Report. The Commissioners stated: "(T)he report lacks balance. Many of the program 'reforms' contained in this report result in substantial cost increases. Few result in reducing costs . . . (T)he report contains no overall estimate of the balance or imbalance between additional costs and added revenues."

STATUS

The National Commission's study was a federally-funded project costing $8.4 million. The final version of the Commission's Report will not be released until September 28. The 13-member panel has already disbanded, although the Commission staff is still writing additional chapters—none of which will be seen or voted on by the Commission's panel.

Although the Report will not have the effect of law, what the Report contains may affect the voting decisions of Congress. Congress will adjourn on October 4 for the November elections, causing various election-year pressures and a deadline for congressional action. Moreover, Congress is now considering proposals that include elements of the Commission recommendations. These include a proposal by the Carter Administration that would force states to pay up to 52 weeks (instead of the current maximum of 39 weeks) of UC benefits.

The alternative to the Commission Report and Carter Administration proposal is a set of "Cost-Savers" devised by U.S. Senator David Boren (D-OK). As noted on page 4, the Boren proposals would reduce UC expenses by over one billion dollars.

DETAILS OF COMMISSION PROPOSALS

Upon first look, the recommendations of the National Commission present positive reforms that favor businesses, labor groups, and state treasuries. As Commission Chairman Wilbur Cohen stated in an August 26 press conference, the proposals seek to enhance "incentives, productivity, labor and capital mobility, and the alleviation of the hardships of jobless workers." Upon closer examination, however, the proposals may also be seen as an impetus for bigger, broader, and more expensive systems.

1. Federal standards for state programs

Although the particulars are technical and wordy, the Commission recommendations are united by the concept of binding national standards. They were written on the premise that state UC programs should be governed by arbitrary, mandatory controls devised at the federal level.

The most immediate control concerns the people who would be eligible to draw benefits. Today, the state legislatures are allowed to write UC eligibility guidelines. Under the Commission's plan, the states would have to allow payments to workers who had a job for only 14 to 39 weeks. Additionally, the following heretofore ineligible groups would be allowed to draw benefits: undocumented alien workers, professional athletes, certain agriculture workers, and household workers who were paid a minimum of $50 in a given quarter.

The Commission also recommended that the weekly benefit amount be not less than 50 percent of the individual's average weekly earnings. The Commission specifically "urge(d) that states proceed . . . to a weekly benefit amount of 60 percent below the state maximum." The payments would be exempt from state or federal income taxes. The Commission suggested that Congress repeal a federal law that allows states to reduce UC benefits by any pension payments received by claimants.

According to the U.S. Chamber of Commerce, the proposed increase in benefit payments "read like a throw-back to the free-spending ways of 1960s-style social legislation." The Chamber supports its contention with the following data:

PROPOSED INCREASE IN BENEFIT PAYMENTS

State	Current maximum	Proposed maximum	Percentage increase (in percent)
Alabama	$90	$140	56
Alaska	90	263	119
Arizona	90	146	62
Arkansas	124	125	1
California	120	165	38
Colorado	142	152	7
Connecticut	134	161	20
Delaware	150	167	11
District of Columbia	181	207	14
Florida	95	136	43
Georgia	90	139	55
Hawaii	144	149	4
Idaho	121	137	13
Illinois	133	176	32
Indiana	74	159	115
Iowa	131	141	8
Kansas	123	139	13
Kentucky	120	147	23
Louisiana	149	150	1
Maine	96	125	30
Maryland	106	155	46
Massachusetts	131	150	15
Michigan	97	187	93
Minnesota	150	151	1
Mississippi	90	123	37
Missouri	105	149	42
Montana	119	137	15
Nebraska	106	133	26
Nevada	115	155	35
New Hampshire	114	134	18
New Jersey	123	166	35
New Mexico	106	139	31
New York	125	172	38
North Carolina	130	130	0
North Dakota	131	132	1
Ohio	128	167	30
Oklahoma	132	144	9
Oregon	127	156	23
Pennsylvania	162	157	—
Rhode Island	120	135	13
South Carolina	111	129	16
South Dakota	109	120	10
Tennessee	100	137	37
Texas	105	153	46
Utah	137	144	5
Vermont	90	130	45
Virginia	122	144	18
Washington	115	169	47
West Virginia	166	156	—
Wisconsin	122	150	23
Wyoming	137	159	16

Beyond the controls on eligibility standards and payment levels, the Commission proposed a new program that could require states to pay UC benefits for 15 months. This proposal merely adds to a system that does respond to high levels of unemployment. Currently, states pay an additional 13 weeks of extended benefits whenever state unemployment passes a "trigger level" set by federal law. For those states where the unemployment trigger is not activated, an additional 13 weeks must be paid when the national unemployment rate for workers covered by jobless insurance exceeds 4.5 percent of the work force.

2. Increased business expenses

The Commission Report does not indicate the potential cost of the prospective UC program. Chairman Cohen told an August 26 press conference that the expenses could run as high as $35 billion—assuming that all its recommendations were adopted immediately. Currently, the estimated cost for the fiscal year 1981 UC program is only $22 billion.

Clearly, the principal source of funding for the new system would be employers. The taxable wage base (i.e., the salary level upon which state and federal payroll taxes are computed) is now $6,000. The Commission recommended that the wage base be increased to $7,800 in 1983. The Commission suggested that Congress adopt the following timetable for additional increases:

TIMETABLE FOR ADDITIONAL INCREASES

Year	Proposed tax rate (in percent)	Proposed wage base	Wage base paid claimant (in percent)	Taxes per employee
1983	0.6	$7,863	50	$47.18
1984	.6	8,571	50	51.43
1985	.6	10,277	55	61.66
1986	.6	11,202	55	67.21
1987	.6	13,320	60	79.92
1988	.6	14,519	60	87.11
1989	.6	17,144	65	102.86
1990	.6	18,687	65	112.12

Source: Data prepared by U.S. Chamber of Commerce. All figures assume annual inflation rate of 9 percent.

In addition to increased business expenses, the Commission suggested that states should study a new possibility—using Medicaid or Medicare to pay continued health insurance for workers who were covered before their lay-off. This proposal is not included in the Commission's Outline of Major Recommendations, however it is mentioned in two independent accounts of what the Final Report will contain.

Since the proposed increases represent a drain on business revenues, employers may finance the new expenses through higher prices of goods and services. More simply stated, the business community may compensate for increased payroll costs by raising prices, an obvious burden on state and local economies.

ALTERNATIVES

1. The Carter administration proposal

The most recent alternative to the Commission proposals is a plan put forward by the Carter Administration. The details of the plan are not available, since the Administration was not prepared for the September 10 hearings offered by the Public Assistance Subcommittee of the House Committee on Ways and Means. News stories in the Washington Post and Washington Star state that the Administration's plan will require "high unemployment states" to pay an additional 13 weeks of UC benefits (beyond the 26 "regular" and 13 "extended" weeks). This would bring the maximum EB duration to 52 weeks. The Administration will ask Congress to finance the extension with $744 million from general revenue funds in the FY 1981 budget.

It is worth noting that the Administration opposed a similar proposal last June. At that time, the Administration criticized as inflationary a bill to provide a maximum of up to 52 weeks of UC benefits.

2. The Boren amendments

A completely different option is provided by a series of "Cost-Savers," introduced by Senator David Boren (D-OK). The Cost-Savers are designed to save the states UC expenses by tightening eligibility requirements, eliminating the federal requirement that states pay extended benefits on certain occasions, and require a short "waiting period" before a claimant may draw UC benefits.

Collectively, the proposals would save state and federal treasuries an estimated billion and one-half dollars. They are modeled after reforms, authored by then-Governor Boren, that saved Oklahoma's Unemployment Trust Fund from projected $10 million deficit and potential bankruptcy.

The following are summaries of five of the major Boren Cost-Savers:

Eliminate the national "trigger" requiring states to pay extended benefits. Allow states to establish higher state trigger thresholds than currently provided by federal law. Projected savings: $1 billion in fiscal year 1981.

Prohibit the payment of extended benefits to individuals who worked less than 20 weeks. Projected savings: $120 million in fiscal year 1981.

Allow the federal government to withhold the first week of EB payments from those states that do not require individuals to wait one week. Projected savings: $25 million in fiscal year 1981.

Prohibit the payment of extended benefits to persons who refuse reasonable job offers. Projected savings: $94 million in fiscal year 1981.

Prohibit the payment of extended benefits to persons who leave jobs voluntarily or for misconduct. Projected savings: $32 million in fiscal year 1981.

It should be noted that the Boren Cost-Savers impact only upon the federal share (50 percent) of extended benefits. They do not impose additional restrictions on the states' spending. (In contrast, the Commission does propose changes in the way state UC programs are run.)

Boren's proposals passed the Senate (89 to 0) as amendments to the Senate's Budget Reconciliation Bill (S. 2885). The reforms will not be considered by the House unless they are approved by House-Senate Budget Conferees. It is unclear whether the House Conferees will consent to the Cost-Savers, since the House Committee on Ways and Means will mark-up the Administration's proposal on September 17.

SUMMARY

The goals of the National Commission on Unemployment Compensation are laudable. Compassion for the unemployed and solvency for state treasuries are matters that command respect from all segments of society. The Commission's specific proposals, however, may detract from incentives for work, fiscal restraint, and capital formation. They contravene the original purpose of unemployment compensation, as well as the public preference for less government spending.

The Boren Cost-Savers and the Carter Administration's proposal merit the serious attention of both Congress and the State Legislatures. The three plans provide lawmakers with a clear choice regarding the future of the nation's system of unemployment compensation.

BIBLIOGRAPHY

"Comparison of State Unemployment Insurance Laws," Comparison Revision Number 4, 6 January 1980, U.S. Department of Labor, Employment and Training Administration (pub.), Washington, D.C.

"Hearings Before the Public Assistance Subcommittee of the House Committee on Ways and Means." 26 June 1980. U.S. Government Printing Office: Washington, D.C.

"Significant Provisions of State Unemployment Insurance Law," 6 July 1980. U.S. Department of Labor, Employment and Training Administration (pub.): Washington, D.C.

"Unemployment Compensation Policy Decisions (Preliminary)," The National Commission on Unemployment Compensation, 30 June 1980.

This information has been provided as background material. Nothing written here is to be construed as necessarily reflecting the views of the American Legislative Exchange Council or as an attempt to aid or hinder passage of any bill before Congress or the State Legislatures.●

JOHN MARTIN (NO RELATION)

HON. JAMES G. MARTIN

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. MARTIN. Mr. Speaker, it is a pleasure to join today in this tribute to John Martin, chief counsel to our Committee on Ways and Means, on the occasion of the presentation to him of the John W. McCormack Award of Excellence.

For a quarter century, John Martin has served and guided the committee. He has been there longer than any present member of the committee and longer than any but nine present Members of the House have been in Congress. In my own 6 years as a member of Ways and Means, during a period of dramatic change in that committee and a period of considerable partisanship that has seen a virtual revolution in tax philosophy, I have seen John Martin as a pillar of order and calm professionalism in a frequently choppy sea. We cannot charge John with blind nonpartisanship, but we of the current minority do not have anything but praise for his fairness, his cooperativeness, and his highly professional approach to his job as counsel and staff director.

An event like the presentation of the McCormack Award can easily have us sounding as if we are writing obituaries, or hail and farewell speeches. Let us recognize this is not the former and hope this does not appear to be the latter. Our committee has some tough work cut out for it for the rest of the year and in the future, and let us hope that John Martin remains with us for years to come.

Let us also admit to ourselves a tough fact of life about the competent and professional staff we all work with day in and day out. There should be a greater purpose to today's tributes than mere tributes to one individual. The fact of political life is that for political purposes we cannot and do not pay the men and women of the professional staff what their experience and outrageously long hours are worth to us and we certainly do not pay them what they could make out there in private practice. We know what the tabloids would say if we did. Neither can we provide the tax-free perks—club dues, company cars, and expense accounts—enjoyed by so many in the private sector. We do know how they would react if we did. So we reward how we can, and hope for all those honorable men and women so well rep-

resented by John Martin, citizens who will come here and stay here to serve the Congress and the people in conditions, under circumstances, and at levels of compensation that cannot match what they would get if they jumped ship. It takes a rare level of dedication and patriotism exemplified in our chief counsel, John Martin, and we thank him for it.●

FINANCIAL REPORT OF THE CONGRESSIONAL STEEL CAUCUS—QUARTERLY STATEMENT OF EXPENSES AND FUND BALANCE STATEMENT FOR THE PERIOD ENDING JUNE 30, 1980

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Ms. MIKULSKI. Mr. Speaker, in accordance with Executive Committee Order No. 1, I am respectfully submitting herewith the quarterly financial report of the Congressional Steel Caucus for insertion into the RECORD. The report is as follows:

CUMULATIVE STATEMENT OF EXPENSES

Item	Amount
Salaries	$17,215.24
Travel	0
Stationery	220.34
Postage	60.00
Telephone	281.00
Publications	98.80
Equipment	1,010.35
Printing	218.10
Miscellaneous	3,363.21
Total expenses as of June 30, 1980	22,467.04

FUND BALANCE STATEMENT

	Amount
Balance remaining (as of Mar. 31, 1980)	$9,029.54
Total revenues (Clerk fees and membership dues)	9,499.94
Subtotal	18,529.48
Less expenses:	
April 1980	3,277.11
May 1980	3,530.15
June 1980	6,758.30
Subtotal	13,565.56
Remainder	4,963.92
Plus interest deposit	87.51
Total unexpended revenues (as of June 30, 1980)	5,051.43

CONGRESSIONAL STEEL CAUCUS DUES PAID AS OF JUNE 30, 1980

Bob Edgar, Allen Ertel, Robert Mollohan, E. Thomas Coleman, Robert Roe, Dan Quayle, Elwood Hillis, Melvin Price, Charles Wilson, Douglas Applegate, Ralph Regula, Clarence Miller, Henry Nowak, William Natcher, Austin Murphy, Louis Stokes, Richard White, Ray Kogovsek, William Moorhead, John Duncan, William Clinger, Joseph McDade, John Seiberling, George O'Brien, William Ford, James Santini, John Jenrette, James Oberstar, Paul Simon, Gene Taylor, Leo Zeferetti, Richard Shelby, Jim Lloyd, Christopher Dodd.

Robert Giaimo, Gary Lee, Ronald Mottl, Joseph Addabbo, Robert Walker, James Hanley, Robert Michel, George Brown, Clement Zablocki, Clarence Long, J. William Stanton, William Clay, George Miller, Donald Bailey, James Quillen, Mary Rose Oakar, Vic Fazio, Samuel Stratton, Eugene Atkinson, Marc Marks, Dan Marriott, Sam B. Hall, James Scheuer, E. G. Shuster, Martin Russo, Doug Walgren, Robert Duncan, Jerry Lewis, John Conyers, Stanley Lundine, Adam Benjamin, Jr., J. M. Murphy, William Brodhead, Lawrence Coughlin.

Robert Davis, Gunn McKay, Carl Pursell, Don Ritter, John Murtha, Thomas Kindness, Edward Patten, Tom Bevill, John Buchanan, Ray Lederer, Thomas Luken, David Evans, Morgan Murphy, Michael Myers, G. V. Montgomery, Thomas P. O'Neill, William Harsha, Barbara Mikulski, James Martin, Don Clausen, Benjamin Gilman, Bill Nichols, Richard Ichord, John Dingell, Gus Yatron, Peter Kostmayer, Bruce Vento, Lyle Williams, Robert McEwen, Donald Mitchell, Joseph Gaydos, Clarence J. Brown, Nick Joe Rahall.●

BUREAU OF MINES CITED FOR INNOVATIVE RESEARCH

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. MURTHA. Mr. Speaker, I want to insert into the CONGRESSIONAL RECORD a recent news release from the Department of the Interior, showing that the Bureau of Mines has been honored by the publishers of Industrial Research/Development magazine for four research projects developed by the agency.

This is the kind of creative work and positive developments that are essential to progress in the mining industry, and that shows the kind of skill and talent that can be found in much of the Federal bureaucracy.

The news release follows:

MINES BUREAU CITED FOR OUTSTANDING RESEARCH PRODUCTS

Four research developments by the Bureau of Mines are among this year's 100 "most significant" new technical products, the Interior Department said today.

The developments are:

A two-stage oxygen-supply system for miners to use in underground emergencies.

Individually worn air samplers that determine a worker's exposure to potentially harmful oxides of nitrogen.

A new mine roofbolt cement, and a new way to mix it.

A mining tool that is operated through a borehole from the surface to extract ore without placing men underground.

For the third year in a row, the Bureau of Mines has been among the recipients of the annual prizes awarded by the publishers of "Industrial Research/Development" magazine to the developers of the 100 most outstanding new technical products. this year's "I-R 100" prizes will be presented by the magazine publishers in Chicago, Ill., on September 18.

The bureau developed oxygen-supply system is a lifesaver for the trapped miner. The two-stage device includes a small unit, worn on the miner's belt, containing a ten minute supply of oxygen for protection in toxic and oxygen-deficient atmospheres. Ten minutes of oxygen enables the worker to reach an area where larger sixty-minute units are stored. The larger units interlock with the smaller ones to give trapped miners time to find their way to safety. With the two-unit system, the miner is assured a long lasting emergency supply of oxygen without having to carry a heavy or bulky safety device while on the job.

Inexpensive and again lightweight safety devices measure a worker's average exposure to the toxic nitrogen oxide and nitrogen dioxide gases created by diesel engines and certain explosives used in underground mines. The air sampling devices are acrylic tubes that measure about three inches in length and one-half inch in diameter. One end of the tube contains a series of stainless steel screens coated with a chemical "collector." The collector reacts with the toxic gases, creating a material that can be chemically removed from the screens and measured. The sampling tubes are clipped on the worker's clothes or equipment at the beginning of his shift. When he leaves the mine, the sampler can be sent to a laboratory or analyzed at the mine site with a portable analysis kit. The day's exposure is then compared to the level considered hazardous. The sampler is accurate, and can reveal exposures that would require corrective action to protect the worker from possible harm. One of the sampler's greatest virtues is its production cost—about a dollar.

The key to the inexpensive grouting method developed by the Bureau for anchoring underground mine roofbolts is a unique mixing system which prevents the grouting cement from hardening until the moment the roofbolt is put in place. Inorganic cement powder, which is considerably less expensive than the organic kind, is encased in tiny, wax-like bubbles and put, along with wax-encased water droplets, in a sausage-shaped bag. The bag is inserted in a hole drilled for the roofbolt in the mine roof. The bolt, a long, steel rod, is then pushed up into the bag and turned, crushing the waxy bubbles and allowing the dry cement to mix with the water. The mixture hardens in a few seconds, and reaches full strength in a matter of minutes. The secure bolts bind the mine's overhead strata together, preventing roof collapse.

A mining tool that recovers uranium ore from deposits too small to be mined conventionally works without sending men underground. The remote mining device is installed in a borehole drilled from the surface to an underground deposit of uranium-bearing sandstone. A water jet under 2,000 pounds of pressure is "fired" from the tube to erode the sandstone, and the resulting mixture of sand and water is drawn to the surface through another opening on the tool. After the uranium has been extracted, the remaining waste sand can be pumped back underground to help prevent subsidence over the surface of the mined-out voids. The method not only allows for safe disposal of radioactive waste, but also avoids the exposure of miners to radiation. The borehole miner currently is being tested on small phosphate rock deposits in Florida.

The Department noted that the Bureau received an I-R 100 award last year and one the year before, both for research developments in mine health and safety.●

JOHN L. BURTON PRAISES THE STUDY ON INFLATION AND THE ELDERLY

HON. JOHN L. BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. JOHN L. BURTON. Mr. Speaker, with our pressing national need for

restraint in Government spending, balancing the Federal budget is one of our primary concerns. However, I am alarmed at a trend that I see forming which has been alleging that despite inflation, the elderly are making substantial gains in their economic status. There is the implication that the elderly can now afford to make sacrifices such as giving up some of the cost-of-living protection provided by the social security system.

Because this theme—the elderly are doing well in an inflationary environment—seems to distort what I am personally witnessing and what my elderly constituents are reporting to me, I am very pleased that the National Retired Teachers Association/American Association of Retired Persons (NRTA/AARP) commissioned a report, "Inflation and the Elderly," which has recently become available. Data Resources Inc., (DRI) has conducted a thorough study on how inflation has affected the elderly's income, wealth/assets, and expenditure patterns over the past decade. DRI also forecasts how the future economic environment will affect the status of the elderly.

Because the recently released results of the study are important to us as legislators, I am printing a summary of this report in the CONGRESSIONAL RECORD. I commend it to the attention of my colleagues.

SUMMARY OF THE DATA RESOURCES INC. STUDY ON INFLATION AND THE ELDERLY COMMISSIONED BY THE NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS

INCOME: PAST DECADE

During the period 1967 through 1976, average elderly income managed to keep pace with and slightly exceed the inflation rate. Average elderly income rose at an annual rate greater than the Consumer Price Index (CPI), 7.7 percent versus 6.1 percent. This was in large part due to the significant growth and expansion of federal programs, especially social security, and the creation of new programs such as Medicare and the Supplemental Security Income (SSI) program. Much of the impetus for these positive changes came from the extremely adverse economic status which the elderly experienced in the mid 1960's when one-third of them were living below the poverty line.

Additionally, whereas in 1955, the average income of those over age 65 was about 55 percent of the average income of the non-elderly, this figure had dropped to 48 percent by 1965, largely because of the decline in elderly labor force participation. Generally, the increases made in the public income programs have helped to raise many elderly over the poverty threshold. In 1976, the percentage of elderly in poverty was about 14 percent and the average income of the elderly relative to the non-elderly was about 52 percent—about where it was in the mid 1950's.

INCOME: FUTURE DECADE

Although discernible gains in the incomes of the elderly have been made during the last decade, this trend is not likely to continue in the future because we are not likely to witness the dramatic growth in government programs benefiting the elderly nor the creation of new and costly programs. But inflation is expected to continue with its attendant erosive effects on the elderly's standard of living. It is projected that the real incomes of the elderly will grow, but at a much slower rate than previously and that the elderly will again lose ground relative to the non-elderly population.

ASSETS/WEALTH: PAST DECADE

For the 1967-76 period, the elderly fared very poorly when one considers the effect of inflation on their assets: savings stocks/bonds, private pensions, and home ownership. According to the DRI Study, inflation clearly eroded the assets of the elderly. Interest rates for small savers did not keep pace with inflation. Similarly, the rate of return on stock and bond investments often fell below the rate of inflation. Inflation has also wreaked havoc with private pensions because most plans do not provide automatic or full cost of living adjustments. The non-indexed pension of a 1970 retiree is now worth about one-half of what it was in 1970.

Finally with regard to assets, the one hedge against inflation for the elderly is commonly considered to be home ownership, an appreciating asset. In 1968, over 60 percent of persons aged 58-63 did own homes. But, although the value (equity) of a home increases during periods of inflation, the only way to realize this gain is to sell the home. Moreover, although equity is being accrued through ownership, the immediate costs of owning a home, particularly fuel and utility costs, property insurance and property taxes, continue to rise at a rate faster than that of the general CPI.

ASSETS/WEALTH: FUTURE DECADE

As long as high rates of inflation continue and the elderly continue to hold dollar denominated assets which are extremely vulnerable to inflation, the future looks bleak. As inflation confiscates the assets and wealth of the elderly, more and more persons will find themselves less able to depend on their own assets and savings for income and instead, will be increasingly dependent on public programs for income support.

EXPENDITURE PATTERNS: PAST DECADE

Since 1970, the cost of living for the elderly has risen faster than the cost of living for non-elderly consumers, increasing at an annual rate of 8.4 percent for the elderly compared to 7.2 percent for the non-elderly. Since the average income of an elderly person is only about one-half that of a non-elderly person, the elderly concentrate their expenditures on the core necessities such as fuel and utilities, medical care and food at home. Over the last decade, rises in prices of these commodities have exceeded the general CPI.

EXPENDITURE PATTERNS: FUTURE DECADE

Again, the future does not look bright for elderly consumers. It appears that rapid price increases in the core necessities will continue to make it difficult for the aged to make ends meet, particularly since energy and health care costs are expected to keep escalating.

POLICY IMPLICATIONS

With this concrete data in hand, we find that a number of policy implications become evident. First, in the current economic environment of high rates of inflation and low economic growth, we cannot expect that public programs will be expanded or new programs will be initiated as occurred in the 1960's and 1970's. The social security system, which is the cornerstone of the elderly's income, is already facing financial difficulties due to adverse economic conditions. In this atmosphere, then, it is essential that present programs at least be maintained at their current levels and protected from action which would result in cutbacks of benefits to the elderly. Any cutbacks, combined with the continuing erosive effect of inflation on the aged's income, would prompt a rapid deterioration in the elderly's standard of living as well as a resurgence of poverty. For this reason, our Associations would oppose any proposed cutbacks, especially federal taxation of social security benefits or tampering with the cost of living adjustment in social security benefits.

Second, because benefit increases are not likely and inflation threatens to continue to erode the elderly's assets and private savings, we believe that employment offers both the current and future elderly the best—and perhaps the only—means to provide an improvement or prevent a deterioration in their income status. Therefore, it is crucial that the trend of declining elderly labor force participation be reversed. Government must remove existing disincentives to elderly employment and replace them with rewards for continued work effort. To this end, we support the elimination of the social security earnings limitation and advocate the introduction of an actuarially computed increase in social security benefits for those elderly persons who elect to postpone their retirement until after age 65. We also advocate total elimination of mandatory retirement practices along with more vigorous enforcement of the Age Discrimination in Employment Act.

With respect to the assets and private savings of the elderly, we will seek to provide the elderly with a greater return on their savings and investments so that their real value may be preserved. The elimination of Regulation Q, the federal regulation which places a ceiling on the interest earned on passbook savings, has long been a goal of the Associations. Legislation was recently passed which will gradually phase out Regulation Q over a period of 6 years. We will be carefully monitoring the phase-out process and will continue to press for a rapid raising of the interest ceiling.

More attention must also be given to the major appreciating asset of the elderly, home ownership. The appreciating value of an elderly person's home must be realized without requiring the sale of that home. We believe that the reverse annuity mortgage (RAM) is one means for turning the appreciating value of one's home into current income. RAM's have been newly authorized at the federal level and they may well need authorizing legislation in many states.

With regard to the expenditure patterns of the elderly, a special Consumer Price Index (CPI) for the elderly ought to be developed and used to index the major income support programs which benefit older persons. The special CPI would be constructed to reflect the aged's specific expenditure patterns which are concentrated on core necessities—food, fuel and medical care. Also, as discussed earlier, medical care, with its escalating costs, is one of the areas in which elderly expenditures are concentrated. The costs of medical care must be contained. As you know, we strongly supported the administration's hospital cost containment legislation, and we are continuing to pursue legislative remedies in this regard. Additionally, changes in Medicare reimbursement practices are sorely needed in order to reduce the out-of-pocket expenditures of the elderly, and the long-term care needs of the elderly must be addressed by the Medicare program.

As has been shown, the elderly are not inflation-proof. If all of these policy changes are made, the elderly of this nation would be substantially aided. However, the mainly compensatory measures do not directly address the root of the problem—the high rate

of inflation. In order to better guarantee a secure economic position for the elderly, the rate of inflation must be reduced and not merely by a point or two, but rather reduced substantially to a maximum rate of 3 percent and kept there. (The July 11, 1980 Legislative Alert which you recently received details the comprehensive strategy which needs to be followed in order to achieve this reduction in the inflation rate.)

If the high rate of inflation is not reduced, it will wipe away the gains made in the 1960's and 1970's and, at the same time, undermine funding for present government programs—partcularly threatening the financing of the social security program. In this atmosphere, moves to make cuts in government programs benefiting the elderly may well attract support in Congress. Such action will cause the elderly to become increasingly concentrated in the lower reaches of the income scale. We must continue to be involved in the legislative process at both the Federal and State levels to help ensure that inflation control remains the top priority on the policy agenda of legislators.●

DEFENSE READINESS

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. FISHER. Mr. Speaker, with the passage of H.R. 8105, the Defense appropriations bill for fiscal year 1981, which I voted for, Congress has made some good progress toward improving U.S. defense readiness. The reduction in the share of the Federal budget going to defense spending in the years since the Vietnam war has gone on long enough, and now needs to be reversed.

We have taken strong action this year on what I consider the first priority for increased defense spending—increased pay and benefits for military personnel. The defense authorization bill for fiscal year 1981 contains an 11.7-percent pay increase for active duty personnel, higher enlistment bonuses, greater per diem travel allowances, and new procedures for retired pay compensation and adjustments. The military personnel and compensation amendments increase both flight and sea pay rates, and provide for variable housing allowances to take into account high housing costs in certain areas of the country. Both bills contain other provisions, but these are the major improvements in pay and benefits. I believe these improvements are necessary to retain trained people already in the military and to attract qualified people in the future.

It is impossible to underestimate the importance that these personnel-related measures have for our national defense. Anyone who has seriously studied warfare knows that it is the military intangibles—leadership, experience, tactical ingenuity, morale, and skill of the troops—that can dominate in a wartime situation. No matter how sophisticated the weaponry, how innovative the technological gadgetry, nothing can substitute for these unmeasurable but vital human qualities. Unless we can attract, train, and keep top quality people at all levels of our Armed Forces, we will always be deficient in this aspect of our national defense. I believe that the benefit and pay measures in the defense appropriations bill are a good move in this direction, although much more needs to be done.

Congress has also taken strong action this year on the second priority for increased defense spending—better and more efficient hardware and weapons. We have increased our defense procurement and research and development authorization by more than 20 percent over last year. We have passed legislation authorizing the cruise missile, the strategic weapons launcher, and the MX missile. Recent disclosure of the Stealth bomber research shows that soon we may have a manned bomber capable of eluding the most sophisticated radar and detection equipment. The fascination with material devices is apparent all through our latest weapons authorizations bills. Yet, in the midst of all this, I want to raise a word of caution: Let us not be misled by this fascination with technology or induced by fear of our potential enemies into demanding huge and expensive new weapons systems which may make us feel more secure, but which do not strategically contribute to our security.

An example of where I think this caution should have been exercised is in the MX basing mode, which recently passed the House and which I voted to delay. There is no doubt but that we need a new, MIRV'able, cold-launch missile such as the MX. We have not designed a new missile system since the mid-1960's. Both our Titan and Minuteman missiles are becoming increasingly vulnerable.

But, while it seems clear that we need the MX missile, a real controversy still exists on the most effective and strategic means of deploying it.

There are many reasons to be cautious about the current cluster deployment concept: The huge area of land needed; the dangers involved in constant overland transportation of live nuclear missiles; the great amount of water needed to construct and maintain the 4,600 cluster deployment shelters in the already arid States where the missile would be based; the volume of fuel needed just to rotate the missiles and travel the miles of interlocking roadways. Other systems of deployment are possible—split basing, deployment at sea, and others—and studies are now underway which would shed more light on basing modes for the MX. Former Secretary of Defense, Melvin R. Laird, writing in the September 1980 Reader's Digest made the point effectively:

One thing seems obvious: we ought to conduct a thorough-going examination of the possibility of alternatives before any more funds are spent on the hugely expensive deployment of the MX system planned for the Western United States.

In spite of this, the House voted to appropriate the money for construction of the cluster basing system, rejecting an amendment that would have delayed such funding until the studies I have mentioned, already nearing completion, were finished. This is what I mean by the necessity for wisdom and caution. The wise course would have been to wait until we had the results of the studies before making the commitment to fund the cluster system, which could run to $20 billion or more before it is finished.

The purchase of defense readiness is expensive and, in these times, inflationary. We need to be convinced we are getting our money's worth. So I applaud my colleagues at the same time that I caution them. I applaud them for their commitment to improving the compensation for military personnel. I caution them against thinking that the hasty purchase of whatever huge new weapons system is the sure way to achieve an invincible defense; that kind of thinking can lead to an illusionary national security. Precious defense effort, time, and dollars must be utilitzed with maximum effectiveness.●

INTELLIGENCE PROTECTION ACT

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. STOKES. Mr. Speaker, the House of Representatives will soon consider the Intelligence Protection Act, H.R. 5615, which would establish penalties for intentional disclosure to unauthorized persons of any information identifying a covert agent. In the opinion of many notable students of the Constitution, as well as six members of the Judiciary Subcommittee on Civil and Constitutional Rights, section 501(c) of this legislation is unconstitutional. The following letter, signed by 52 professors of law from this Nation's most distinguished and reputable universities, is an expression of this concern.

SEPTEMBER 10, 1980.

MEMBERS OF THE JUDICIARY COMMITTEE,
U.S. Senate,
Washington, D.C.

DEAR SENATORS KENNEDY, BAYH, BYRD, BIDEN, CULVER, METZENBAUM, DECONCINI, LEAHY, BAUCUS, HEFLIN, THURMOND, MATHIAS, LAXALT, HATCH, DOLE, COCHRAN, and SIMPSON: We believe that Section 501(c) of S. 2216 and H.R. 5615, which would punish disclosure of the identity of covert CIA and FBI agents derived solely from unclassified information, violates the First Amendment and urge that it be deleted as recommended by the House Judiciary Subcommittee on Civil and Constitutional Rights.

Chuck Abernathy, Georgetown University Law School; George Alexander, University of Santa Clara Law School; David Anderson, University of Texas Law School; Judith Areen, Georgetown University Law School; Charles E. Ares, University of Arizona, College of Law; Frank Askin, Rutgers University School of Law; Barbara Babcock, Stanford University School of Law; Elizabeth Bartholet, Harvard University Law School; Paul Bender, University of Pennsylvania Law School; Ralph S. Brown, Jr., Yale University Law School; Vern Countryman, Harvard University Law School; Alan Dershowitz, Harvard University Law School; Norman Dorsen, New York University School of Law; Steven Duke, Yale University Law School; Thomas I. Emerson, Yale University Law School; David B. Filvarff, University of Texas Law School; Jack Getman, Yale University Law School; Steve Gillers, New York University School of Law; Carole E. Goldberg-Ambrose, University of California at Los Angeles Law School; David Goldberger, Ohio State University College of Law; Lawrence Herman, Ohio State University College of Law; Morton J. Horwitz, Harvard University Law School; Louis A. Jacobs, Ohio State University College of Law; Arthur Kinoy, Rutgers University School of Law; John R. Kramer, Georgetown University Law School; Sanford Levinson, University of Texas Law School; Lance Liebman, Harvard University Law School; Jeffrey Meldman, Massachusetts Institute of Technology; Louis Menand, Massachusetts Institute of Technology; Frank Micheiman, Harvard University Law School; Arvil Morris, University of Washington-Seattle Law School; Charles Nesson, Harvard University Law School; Richard Parker, Harvard University Law School; Daniel Partan, Boston University Law School; Willard H. Pedrick, Arizona; Leroy Pernell, Ohio State University College of Law; Michael Perry, Ohio State University College of Law; Daniel H. Pollitt, University of North Carolina Law School; Scot Powe, University of Texas Law School; John Quigley, Ohio State University College of Law; Douglas Rendleman, College of William and Mary, Marshall-Wythe School of Law; Rhonda R. Rivera, Ohio State University College of Law; Lawrence Sager, New York University School of Law; Louis Michael Seidman, Georgetown University Law School; Ed Sherman, University of Texas Law School; Ed Sparer, University of Pennsylvania Law School; Charles Thompson, Ohio State University College of Law; Lawrence Tribe, Harvard University Law School; Pete Wales, Georgetown University Law School; Burton D. Wechsler, American University Law School; Bernard Wolfman, Harvard University Law School.●

COLA: SYMPTOM OF INFLATION

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. McKINNEY. Mr. Speaker, in a recent vote, the House of Representatives adopted an amendment, offered by Representative ROBERT E. BAUMAN, Republican of Maryland, to retain a semiannual cost-of-living adjustment (COLA) for Federal retirees in 1981. Although the amendment passed by a substantial 309-72 margin, I voted against it. My vote was cast in keeping with the intent of the necessary budget reconciliation process which this Congress has chosen to pursue. However, I must voice my concern over our continuing efforts to temporarily mask the real impact of inflation—through modifications in COLA's and the use of the Consumer Price Index (CPI) or other indexing methods—without a comparable effort to attack the underlying causes of inflation. While we persist in adjusting and manipulating these indexes of inflation, the basic problem continues unabated.

When the House considered the first budget resolution, House Concurrent Resolution 307, June 12, I supported the unprecedented implementation of reconciliation as a necessary tool for the enforcement of limits on congressional spending. Now that the committees have reported their legislative savings pursuant to that process, I continue to support its implementation. Despite the administration's recent announcement that the balanced budget will not be a reality in 1981—rather, the recession and other factors will likely result in a $30 billion Federal deficit—Congress is not discharged from its responsibility to control Federal spending and make the budget process work. However, even the debate over COLA's is just one more example of Congress focusing on the effects of inflation rather than its causes. Let me explain.

COLA's mitigate the effects of inflationary price increases on the average consumer. In addition, they never truly keep pace with inflation. Because COLA's are based on the previous 6 months' rise in consumer prices—as measured by the Consumer Price Index, or CPI—there is an equivalent lag before retirement benefits are actually increased. As a result, COLA's never quite catch up to ever-worsening inflation. Furthermore, not all of a retired person's income may be in the form of Civil Service annuities. Private savings, returns on investments, and income from jobs held after retirement are examples of income which, unlike annuities, may not be indexed for inflation. Thus COLA's cannot hope to account for the effect of inflation on a person's overall purchasing power. In these cases, an overall loss may often be the result, regardless of COLA's. Because all types of income cannot realistically be adjusted for inflation, efforts must be redirected from compensating for inflation, to controlling it. COLA's create little incentive to fight inflation. They are a short-term remedy for a problem which demands intensive, long-term treatment. Personal wealth and the incomes of Federal retirees would be better protected in a stable economy with lowered inflation than they are during periods of rampant inflation and perpetual COLA's.

Further, indexation of wages or retirement benefits may itself be a flawed concept, which contributes to, rather than merely keeps pace with, inflation. In the working sector, as salaries rise through indexation to meet higher prices, firms in turn are forced to raise their prices to meet those higher wages. As a result, in addition to dulling the effect of inflation-fueled higher prices, indexation masks the fact that it, in itself, perpetuates the inflationary cycle. Furthermore, Federal retirees receive adjustments in their benefits based on the current cost of living, although the original goal in indexing benefits was to permit beneficiaries to enjoy the same standard of living that their salaries allowed at the time of retirement. A large number of Federal retirees now enjoy a standard of living that exceeds that of their working years. They may continue to purchase products which have risen dramatically in price, such as beef, while most other Americans witness a drastic reduction in their purchasing power. For example, a person retiring in 1971 at a salary of $36,000 now receives $46,032 in retirement pay, due to indexing. Although this situation is not pervasive, the causes for its occurrence indicate a need to reexamine the entire concept of indexation, and its effects on inflation.

A more interesting example is that of a person retiring in 1970, after 25 years of service, at a salary of $12,000. The original annuity paid to this Federal retiree would be $463 per month. After the most recent COLA—7.7 percent in September 1980—that person's retirement benefits would equal $1,130 monthly, or an amount greater than the worker's salary at the time of retirement.

The index most often used as a measure of the impact of inflation on consumers is the CPI. Many economists have expressed serious doubt about the reliability of the CPI as an indicator of the effects of inflation on a large portion of consumers, particularly retired citizens. For example, the monthly CPI includes the cost of purchasing a new home. As a result, it may overstate the increase in consumer prices for those retired persons who already own their own homes. In addition, housing costs and mortgage rates within the CPI reflect current high levels, while many owners may have bought their homes years ago at much lower prices, and are repaying mortgages at significantly lower interest rates. I believe that such an important facet of the economy must operate as fairly and efficiently as possible. The problems associated with the use of the CPI therefore prompted me to support a provision in the Food Stamp Act Amendments of 1980, requiring the Congressional Budget Office to study the accuracy of the CPI as the basis for indexation of food stamp

benefits. It is my hope that the findings of this study will lead to a reexamination of the use of the CPI to index all types of benefits and wages.

However, even without the benefit of that study, most economists agree that an index other than the CPI could more reliably be used to calculate wages and benefits increases. Such an alternative might be the Gross National Product (GNP) deflator, a more broadly based index which measures overall price increases for the general economy, not just those for consumer products. Still, regardless of the index used, the underlying problem which remains to be solved is inflation. COLA's and indexing methods such as the CPI are merely symptoms of our inflationary disease, and until we take the necessary steps to combat the disease, the self-perpetuating cycle of inflation and indexation will remain.

There are several inflation-fighting initiatives that could be implemented now. One of the essential components in that fight would be a reduction in Federal spending through a balanced budget. At this point, Congress has achieved a balanced budget, but many difficult decisions lie ahead, lest that goal escape us by the predicted $30 billion. In addition, better congressional oversight of the monetary policies of the Federal Reserve Board becomes increasingly necessary in our fight. The practice of merely printing more dollars to cover the Federal Government's debt and loan obligations must stop. A swift, responsible overhaul of our Nation's business depreciation allowance schedules is necessary as well. I have long supported the Capital Cost Recovery Act—and have filed a discharge petition in the House in an attempt to force early consideration of this measure—which would allow a 10-year depreciation period for buildings and structures, a 5-year depreciation period for capital equipment, and a 3-year depreciation period for rolling stock. Clearly, however, the primary focus of our battle against inflation must be a halt to the hemorrhage of U.S. dollars to foreign nations in payment for petroleum. In 1980, the United States will spend $90 billion dollars for foreign oil. This drain is irrefutably the most enduring force in increasing inflation and reducing the purchasing power of the U.S. dollar. Consequently, our anti-inflation effort must include conservation and weatherization programs, as well as the rapid commercialization of every available alternative energy source in the country. Only with a concerted, aggressive attack on inflation in these areas will the issue of COLA's and the need for indexation be resolved. The financial security of our retired citizens depends on and demands that effort.●

AN END TO THE "SNOWBELT" MYTH

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. KEMP. Mr. Speaker, I believe that one of the great obstacles to opportunity and advancement that we face as a Nation today is static thinking: the idea that life is a zero-sum game. According to this view, there are only so many jobs to go around, only so much energy to go around, a fixed amount of prosperity, and a fixed amount of poverty. And so it is Government's job to divide up these fixed amounts until, say, the sum of prosperity—a plus—and poverty—a negative—come to zero.

Nowhere is this more apparent than in struggles among regions of this Nation. Bumper stickers in the Southwest say "Freeze a Yankee," while some Northeastern politicians kid themselves into thinking that the stagnation in their States is caused by too much economic growth and prosperity in the South and West.

As this morning's lead Wall Street Journal editorial points out, the experience of New England is flying in the face of "those who think in terms of Sunbelt versus Frostbelt." At a time of nationwide recession the State of Massachusetts is facing a labor shortage. Its unemployment rate is tied with Texas.

Why has the snowiest part of the Snowbelt begun to boom? According to the Journal, the leaders of Massachusetts new industrial boom credit tax policy with turning the State around. Reduced capital gains taxes, in particular, have increased the incentives for risk-taking in Massachusetts by restoring the rewards for success.

I commend this editorial to the attention of my colleagues, and urge them to join me in considering how we can restore incentives for employment, production, saving, investment, and individual initiative throughout the Nation, by reducing the tax wedge between individual effort and reward.

The editorial follows:

NEW ENGLAND REVIVAL

Surprising as it is to those who think in terms of Sunbelt versus Frostbelt, the economic success story of this recession is unfolding in New England. After decades of notoriety for stagnation and declining industry, the company towns of Massachusetts have discovered that their main problem in this slump is a labor shortage. The state's August unemployment rate is tied with Texas. (It's 5.5%, more than two percentage points under the national average.) In the first quarter, the six-state region had the highest personal income growth rate in the country.

The recession hasn't entirely passed over the region, of course. The second quarter will look much rougher when the figures are out. The six states vary sharply in the impact of the business cycle. (High-growth New Hampshire has built itself into the boom-bust cycle; it has moved from the middle ranks of previous decades to become the second most "cyclically sensitive" state in the nation.) Small business is being squeezed, and auto dealers are hurting as badly as in the rest of the country.

Yet the overall strength of this energy-poor "declining" region should make us sit bolt upright and ask why. One ready answer is that New England has completed its transition from dependence on the decaying textile and leather industries. High technology now dominates employment, particularly in Massachusetts, and it's riding the boom in microcomputers. The region has always excelled in research and invention. Some analysts detect a cycle in which innovative centers like Boston benefit from the R&D phase of a new technology, but the mass production moves elsewhere.

The high technology leaders themselves give a different story, however. The key, they say, is tax policy. They don't mean the increasingly discredited industrial inducement package that gives a specific write-down here and a specific abatement there. They mean general reductions in the personal tax burden.

New Hampshire started it back in the '50s when the state's political opinion solidified against imposing broad-based sales or income taxes. As the only Northeast state with neither, it was also the only New England state to grow significantly during the troubled '70s. Maine and Vermont caught on next, while Massachusetts struggled with an accumulated deficit and massive tax hikes. But in the last two years, the Bay State has learned the lesson well.

An incipient tax revolt brought in a governor committed to reducing property taxes, and if the promise wasn't fully kept, it was kept enough to make a difference. A bold and skillful high tech lobby persuaded the liberal, 80% Democratic legislature to slash the capital gains tax by 60%. In a ballyhooed "social contract" a year ago, the Massachusetts High Technology Council secured a pledge from Governor Edward J. King to lower the state tax burden to the average of 17 competing states by 1982.

The high-tech industry was serving its well defined self-interest. Its main asset is the highly skilled scientist and engineer, who are in a seller's market. To live in high-tax, high-cost Massachusetts, these people demand high salaries, so the personal tax burden quickly translates into a high business cost.

But the high-tech lobby has a broader vision. Supply-side economics has found champions in the Boston area who are probably pound for pound more articulate and effective than anywhere else in the country. The high-tech leaders were among the first to see the importance of studies linking the rate of change of a state's tax burden to the rate of its relative income growth. They know from their own constituency that tax cuts would allow them to expand within the state, and thus promise as their side of the "social contract" to create 60,000 new jobs by 1983. But they expect a general economic revival, as the tax burden recedes.

This vision still outruns public policy. After the first spate of tax cutting (done mainly by cities and towns under a state-imposed 4% spending cap), Governor King has been consolidating his finances, raising fees and the gasoline tax. (Both measures are under the national average, however, and Governor King can be excused for them if he continues to cut the broader taxes which run well above the national rate.) The entire Democratic political leadership has turned to high-handed means to contain the "Proposition 2½" movement, which in spite of all has managed to place a legislative property tax cut referendum on the November ballot.

But, as Governor King surveys his state's economic health and his higher-than-projected tax receipts, he is a long way from repudiating the "Laffer Curve." The Carter-Mondale ticket can denounce it as "make-believe," but the governor, an early Carter supporter, is unmoved. "Well, it's working for me," he says.●

TRIBUTE TO THERESA WILHELM

HON. ROBERT A. YOUNG

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. YOUNG of Missouri. Mr. Speaker, I wish to congratulate Theresa Wilhelm, a wonderful St. Louisan who will be honored on her 80th birthday on October 5 at the clubhouse of Mark Twain Village Apartments in St. Louis County, Mo.

In these days of honorary degrees and special awards, we seldom take the time to honor men and women who have succeeded in one of the most difficult tasks—being good parents and spouses. With her two children, Robert Wilhelm of Ellisville, Mo., and Dorothy Pohl of Florida, and three grandchildren, Barbara Irwin and Robert Wilhelm, Jr. of Ballwin, Mo., and Patti Fitzpatrick of California, and four great-grandchildren, Joseph Irwin, John Daniel Irwin, and Paul James Irwin of Ballwin, Mo., and Robert Ryan Fitzpatrick of California, Theresa Wilhelm has all of the qualifications for honors in parenthood. Theresa was an exemplary wife to her husband, Frank A. Wilhelm, who died on November 13, 1965, after 49 years of marriage. They were good citizens, and contributed greatly to the community.

Theresa was born in Stalberg, Germany, in 1900, and came to the United States at an early age with her parents. Her father was a glassblower and settled in Valley Park, near St. Louis, where he worked at his trade. She married and spent her life in St. Louis County, raising her children, and participating in church and other activities that served the community. I can attest to her accomplishments because Theresa has been a lifelong friend of mine and my family.

Congratulations to Theresa, and may she have many more happy birthdays.●

KEEPING THE PLO OUT OF THE IMF

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. WEISS. Mr. Speaker, I strongly support Mr. GILMAN's amendment to oppose the presence of the Palestine Liberation Organization as an observer, or in any other capacity, at any meeting of the International Monetary Fund.

Admission of the PLO to a Fund meeting would violate clear precedents that correctly restrict such status to financial organizations only. It would also give legitimacy to a terrorist group that deserves no official recognition of any sort.

We must insist on keeping financial institutions such as the IMF apart from the political controversies certain to accompany any group such as the PLO. The IMF was founded to help stabilize the world's monetary system and assist economically troubled nations to regain a healthy position. Its efforts can only be jeopardized by this attempt to include the PLO, which can neither qualify for an IMF loan nor claim interest as a financial organization. Let us remember: The PLO is not a nation, nor a group of nations. It is a terrorist movement, nothing more and nothing less.

The Third World nations who borrow funds under the IMF's auspices stand to lose the most from this controversy. Perhaps they will see that it is not in their interest to support the PLO as an instrument of politicization, especially in the financial sphere. The Arab threat to withhold funds from the IMF, therefore, imperils only the nonalined nations with whom the Arabs have in the past proclaimed a common front.

We must make clear our refusal to honor or recognize the heinous terrorism that the PLO represents, and resist the Arab threat even if we must propose withholding funds in return. The difference between financial organizations and self-styled "liberation" movements must be underlined.

I commend the gentleman from New York (Mr. GILMAN) for his amendment.●

JAPANESE PRIME MINISTER ZENKO SUZUKI'S STATEMENT ON KOREA

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. WOLFF. Mr. Speaker, today I present for the RECORD news accounts of the very strong, public statements on the situation in South Korea issued in recent days by the Government of Japan.

The Prime Minister of Japan, Hon. Zenko Suzuki, announced yesterday that his government would consider cutting economic aid to South Korea in the event that the death sentence is carried out against Kim Dae Jung.

From long contact with the Japanese people and Government, I can assure the House that the recent Japanese statements on Kim Dae Jung would only have been made after full consideration of the importance of the situation, and the pros and cons of making such statements.

As some of my colleagues know, I have of late been engaged in sensitive efforts with the Department of State regarding its handling of South Korean policy. I will report on these activities, and on my recommendations, at the appropriate time.

For the present, I present for the RECORD the story in today's Washington Post detailing the statements of the Government of Japan:

JAPAN MAY CUT AID IF SEOUL EXECUTES KIM

(By William Chapman)

TOKYO, Sept. 22—Japanese Prime Minister Zenko Suzuki warned today that economic aid to South Korea might be restricted if that country's main opposition leader, Kim Dae Jung, is executed.

He said there could be "serious restraints" on assistance programs sought by South Korea and emphasized that this message has been conveyed to the South Korean government.

It amounted to the Japanese government's most forceful representation on the case since Kim was sentenced to death last week by a military court for plotting a rebellion and forming an antistate organization in the early 1970s.

It also reflected the Suzuki government's concern over rising opposition within Japan to the trial and conviction of Kim, who was kidnaped from Tokyo in 1973 in a case that has never been settled to the liking of Japan's left-wing opposition.

Opposition critics contend that Kim did not receive a fair trial and was convicted partly on evidence that violates the spirit of a political settlement reached by the two countries after the kidnaping. They have insisted that Japan apply strong economic pressures and postpone an important ministerial-level meeting with South Korea in an effort to save Kim's life.

The Japanese government has expressed grave concern about Kim's fate and has suggested that relations between the two countries would suffer if the death sentence is carried out. Suzuki's comments today, however, were the first public warnings that the execution of Kim would provoke economic retaliation from Japan.

Government officials said later that no concrete plans had been made for cutting off aid and technical assistance. South Korea looks to Japan for significant amounts of technical assistance and government loans and is hoping for substantial help in pulling its economy out of a deep recession.

This year, the Japanese government has promised to extend yen credits of nearly $100 million to South Korea and has more than 20 experts in that country providing technical assistance on subjects ranging from industrial standards to high-technology products.

Kim was sentenced to death by a military tribunal that found him guilty of plotting insurrection last spring when the country was hit by massive student protests. A second charge accused him of having formed an antistate organization, called Hanmintong, while he was in exile in Japan in the early 1970's.

The political settlement reached after his kidnaping by South Korean agents is said to have stipulated that Kim would not be brought to trial for actions and speeches he made while in Japan. The military court's indictment of Kim appeared to most observers to violate that agreement because it listed several examples of Kim's involve-

ment in Japan with persons active in Hanmintong.

However, the Japanese government apparently has accepted the South Korean contention that those charges are only presented in the indictment as background material, not as offenses bringing the death penalty.

Suzuki's comments today came in an interview with the Japan Broadcasting Co. in a special program nationally televised tonight.

He said that Japan, as a friendly neighbor, hoped for stability and economic progress in South Korea and pointedly referred to existing programs of economic and technical cooperation.

He said that if Kim's case develops in such a way as to cause more worry in Japan there would be "serious restraints" on those economic cooperation projects, even though Japan wishes to continue extending a helping hand to Seoul.

"I would like to clearly state that," the prime minister added.

In answer to another question, he emphasized that the government's position has been clearly explained to representatives of the South Korean government. He also said Japan is appealing to international public opinion in the Kim case.

In the past week South Korean officials have sternly objected to expressions of concern in Kim's case by foreign governments, calling them examples of outside interference in their internal affairs.

Kim's sentence has been confirmed, as expected, by the country's martial-law commander. It can be appealed to a higher military court and to the Supreme Court. If both of them uphold the conviction and death penalty his life could be spared only by intercession of the new president, Chun Doo Hwan.

The issue is likely to become more heated in Japan when the parliament convenes next Monday, with opposition parties expected to demand a revision of the political settlement reached in 1973.

However, Suzuki said today the government has no present plans for seeking a revision of that settlement.●

GOVERNMENT MUST GIVE SMALL TOWNS MORE FLEXIBILITY

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. FISHER. Mr. Speaker, last week I introduced a bill, which is the outgrowth of a problem that was originally presented to me by the mayor of Hillsboro, Va.

Hillsboro, a town located in my congressional district, has been battling with the State of Virginia over the notification requirements contained in the Safe Drinking Water Act. Apparently, Hillsboro was required by the State to take out and pay for advertisements in the county newspaper to announce the results of the State's water quality test of the town's water supply. However, Hillsboro has fewer than 130 people living there and, quite frankly, many of them might not even subscribe to the newspaper. Furthermore, an inordinate portion of Hillsboro's under-$10,000 annual budget would have to be spent on ads of this kind.

The mayor of Hillsboro, Byron Farwell, offered the State an alternative plan. He would post the results of the State's tests on the post office bulletin board. You see, virtually everyone in the town has a post office box and this seemed to be a more effective and far less costly way to accomplish the same goal. Unfortunately, the mayor was threatened with a substantial fine if he did not follow the letter of the law.

I suspect this is another case of laws and regulations that are designed for large cities without due regard for the special needs of small communities. The bill that I have introduced, H.R. 8160, will provide small towns, such as Hillsboro and Round Hill in my congressional district, with additional flexibility when faced with future notification requirements.

I recognize that there might not be sufficient time in which to act on this bill before the 96th Congress adjourns. If this is the case, I plan to reintroduce the bill in the next Congress and will do what I can to insure that this issue is taken up when the Safe Drinking Water Act is next reauthorized.

Text of the bill follows:

H.R. 8160

A bill to amend the Safe Drinking Water Act to permit small communities to comply with certain notice provisions by an appropriate means other than through publication in a newspaper of general circulation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1414 of title XIV of the Public Health Service Act is amended by inserting the following after the third sentence of subsection (c): "In the case of a public water system operated by a political subdivision having a population of less than 1,000 persons, as determined on the basis of the most recent census data available, the regulations of the Administrator under this subsection shall provide that in lieu of notice by publication in a newspaper of general circulation, such notice may be provided in another appropriate manner.".

Sec. 2. The amendment made by the first section of this Act shall take effect on the date of the enactment of this Act, and any regulations of the Administrator of the Environmental Protection Agency which are inconsistent with such amendment are hereby deemed amended accordingly.●

BUFFALO AMVETS PUSH FOR MIA PROBE

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. KEMP. Mr. Speaker, today, our hostages in Iran are a subject of international concern. But these are not the only American hostages thought to be captive in foreign lands. There are nearly 2,500 servicemen and civilians who disappeared in the war in Vietnam. The State Department believes that information is probably available on over half of these.

The Amvets of Western New York Post 45 are now spearheading a national drive to revive interest in these 2,500 American citizens still listed as "missing in action" from the conflict in Southeast Asia. The Buffalo Amvets are particularly concerned about three area servicemen from our area whose families believe they may still be alive—Staff Sgt. James M. Rozo of the town of Tonawanda; Lt. Col. Robert Dyczkowski, who grew up in Buffalo; and Lt. Col. Robert J. DiTommaso of Lackawanna. Buffalo Amvets leader Aloysius Bartel put it succinctly: "We feel a great injustice has been done to these 2,500 men who served their country with honor." I agree, Mr. Speaker, and salute those dedicated Americans who resolve not to forget our missing in action.

Mr. Speaker, I enter into the RECORD at this time an article from the Buffalo Courier Express by Richard Schroeder which details the efforts of the Buffalo Amvets post on behalf of our brave soldiers. I ask all my colleagues to help in this vital cause.

The article follows:

AMVETS POST PUSHES FOR MIA PROBE

An east side Amvets post this week is spearheading a national drive to revive interest in the 2,500 servicemen still listed as missing in Southeast Asia.

Three of those missing servicemen are from the Buffalo area. Their families believe they may still be alive and held prisoner in Southeast Asia.

Members of the Hank Nowak Post 45 of 1210 Broadway are at a national Amvets convention in Dallas to distribute information packets developed in Buffalo and designed to help public service organizations throughout the country begin a coordinated public relations campaign to revive interest in the missing servicemen.

The ultimate aim is to force the federal government to get an accounting of the missing men.

"We'd like to give this a multi-media campaign the likes of which has never been seen before because we feel a great injustice has been done to these 2,500 men who served their country with honor," said Aloysius Bartel, a local Amvets national service officer and a member of the Hank Nowak post.

Bartel said the slickly-designed packet will be distributed to the thousands of delegates at the convention and will be used in adopting a political platform that seeks to have the three major presidential candidates address the issue.

After the convention ends, Bartel will travel to Washington, D.C., to speak to area congressmen about the issue.

He said he hopes to speak to Rep. Jack F. Kemp, R-Hamburg, so that Kemp in turn can use his influence with Republican presidential candidate Ronald Reagan to have the issue brought up during the campaign.

Bartel said he will also try to make contact with Illinois Rep. John Anderson, who is waging an independent campaign for the presidency.

Bartel does not plan to attempt contacting President Jimmy Carter while in Washington.

He said many persons concerned about the fate of the missing servicemen have written Carter off as an ally, since they claim he has not carried through on a 1976 campaign promise he made in Buffalo to seek a full accounting of the missing.

The information packet on prisoners of war (POWs) and servicemen missing in action (MIAs) was developed in Buffalo over a six-month period at a cost of $2,000, which was paid by the Nowak Post and its auxiliary.

The packet contains sample letters to be sent to public officials and newspapers, television and radio public service announcements, proclamations for local government officials, cartoons, sample magazine articles, a prayer, information on how to influence politicians and plans for POW/MIA observances.

The packet has been approved by the National League of Families of Missing and Captured in Southeast Asia, a Washington, D.C., based organization that has lobbied for information on missing relatives.

As reported July 4 in the Courier Express, three local families that are members of the National League of Families believe their relatives may still be alive in Southeast Asian prison camps.

The missing include Staff Sgt. James M. Rozo of the Town of Tonawanda, Lt. Col. Robert Dyczkowski, who grew up in Buffalo, and Lt. Col. Robert J. DiTommaso of Lackawanna.

DiTommaso and Dyczkowski were shot down in separate actions while flying over battle zones, and Rozo was reported captured while riding in a jeep on a supply mission.

The men's fates have remained a mystery, since no evidence has ever been uncovered to indicate they were killed, and they did not return to the U.S. in 1973 when Vietnam released the last large group of prisoners.

But reports of sightings and bits and pieces of other tantalizing information from refugees and Vietnamese "boat people" have fueled hopes that some missing servicemen may still be alive.

Other information, some of it relayed by refugees to U.S. senators and representatives, indicates that the governments of Vietnam, Laos and Cambodia may be withholding information of the fates of missing servicemen, and may even be storing their bodies away as bargaining chips for foreign aid and as guarantees of non-interference in their affairs by the U.S.

Although the Pentagon maintains there is no credible evidence that missing servicemen, other than two possible deserters, are still alive in Southeast Asia, it does say there is information that many missing servicemen can still be accounted for by Southeast Asian governments through physical remains and eyewitness testimony.●

COMMERCE COMMITTEE'S DISCUSSION OF "DRY HOLE" ISSUE IN PACIFIC NORTHWEST BILL

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. DINGELL. Mr. Speaker, the following is an excerpt from the May 15, 1980, report of the Interstate and Foreign Commerce Committee on S. 885, the Pacific Northwest bill. It applies to the substitute, H.R. 8157. The report states:

CAPABILITY VERSUS OUTPUT—DRY HOLE

BPA has no authority to own or construct power resources and the proposed legislation does not grant that authority; it does, however, permit BPA to purchase the output or capacity of power resources that are owned or constructed by other entities. The priority for resources eligible for such purchase are specified in the legislation as, first, conservation, second, renewable resources and, finally (as the least-preferred alternative), conventional thermal resources.

Concern has been expressed that authorizing BPA to purchase capacity—as distinct from mere output—will be harmful to the region's ratepayers, and that it will lead to overbuilding of conventional power resources in the Pacific Northwest and unnecessary cost overruns.

An entity (such as BPA) purchasing power from the owner of a power resource (such as a utility) may do so in two basic ways. First, if the resource is already in existence and a certain amount of power appears to be surplus to the needs of the owner for some period of time, the purchasing entity may simply buy that amount of power from the resource on the utility system. This type of purchase is most common in cases of temporary surpluses and deficits among interconnected power suppliers, and generally involves only short-term purchases and sales.

A second type of purchase arrangement is generally used when the power resource in question is not yet constructed. The owner planning to build such a resource may offer to sell an ownership share in the project or, alternatively, a share of the resource's planned capability. In either event, the purchaser is obligated to pay its percentage share of the project's construction and operating costs and is allowed to exercise ownership operating rights for its share, just as if the purchaser were a part owner. This type of arrangement was extensively used in developing the non-Federal mid-Columbia hydro facilities and is now used generally throughout the United States. The legislation would permit BPA to enter into this type of arrangement.

Since the purchase of resource capability carries with it the risks of unexpected cost overruns and operating problems (including the risk of a so-called "dry hole"), it might appear that capability purchases are imprudent, even if traditional. The reasons that support creation of purchase agreements as follows:

(1) The risk of cost overruns and operating problems are inherent in constructing any power resource (including conservation investment programs such as regionwide home insulation). These risk are ordinarily borne by ratepayers that will obtain the benefits. An individual utility owner of a power resource will not agree to an arrangement that leaves all the risks on the shoulders of its own ratepayers yet shares the benefits (the power produced at cost) with the ratepayers of the purchasing entity.

(2) The long-term purchaser is really equivalent to a part owner of the resource, since the purchaser will receive the right to a certain percentage of the power for the life of the resource and will pay only the actual costs of the resource. It is fair that the purchaser assume its percentage share of the risks.

(3) In many cases, the resource is being built or undertaken by a group of utilities primarily to satisfy the regional power needs. If BPA did not agree to purchase capability as its share of the project, the project would simply be undertaken by a group of utilities on their own, with each utility meeting its own load growth requirements through its own projects and with no help to BPA. Such action would in turn decrease the integration and efficiency of the regional power system and would probably lead to overbuilding of power resources, with added costs to consumers. There would be no regional program under these circumstances.

(4) Purchase of capability reduces costs to consumers by reducing financing costs of the new resource, whether that bond-financed resource is conservation or a generating facility. Financing costs—a very substantial portion of total power costs—are reduced because bond buyers are willing to accept lower interest rates on lower-risk bonds, the wider the risks can be spread, the more secure the bonds. As discussed in (3) above, without purchase of capability the utilities must look to themselves to absorb the risk and would consequently lose access to over half the region's power supply over which they could otherwise spread the risk.

(5) Purchase of capability, by placing the purchaser in a quasi-ownership status, also permits the purchase to exercise effective oversight on resource management, construction and operation. A mere purchase of power would have no such opportunity. Yet the cost of power to the purchaser is based in both cases on the actual construction and operating costs of the power resource. The Committee amendment strengthens the BPA in this regard and requires BPA to oversee such construction and operation.

If the bill limited BPA purchase of resources to actual output only, BPA, in order to have available power to sell, would have to find utilities who would be willing to develop new resources at risk to their customers and, at the same time, also be willing to provide to BPA the benefits of an operating plant. The testimony shows that no utility would prudently agree to such an arrangement. One may contend that such testimony is self-serving and that if Congress authorized acquisition of actual output only, the utilities would, in fact, enter into such agreements because of the advantages of hooking up to the BPA system. The Committee recognizes this possibility, but believes it is too speculative and is inconsistent with longstanding utility practice. The General Accounting Office confirmed that this practice exists in a September 4, 1979 response to questions posed by Subcommittee Chairman Dingell. The GAO said:

"Our review indicated that it is common practice for electric utilities purchasing the output of major thermal plants to agree to repay construction bonds whether the plant operates or not. Generally, plant output is not guaranteed by any one entity because the risks of cost overruns and operating problems—particularly on nuclear power plants—are too great to be safely assumed by a single owner or builder. It is therefore natural for several utilities to share the risk of a "dry hole". By doing so they can limit their respective risks and collectively provide a large enough revenue base to withstand a major loss.

With respect to the reasonableness of BPA's purchasing the capability of WPPSS nuclear plants, two other questions emerge. The first question is whether BPA should limit its customers' exposure to financial risks by committing them to large thermal power plants more cautiously or with more diversity. BPA's present commitments include 100 percent of the output of two WPPSS plants, WNP-1, and WNP-2, and 70 percent of a third plant, WNP-3. The aggressiveness of BPA's commitment has its drawbacks. There is virtually no sharing of the considerable financial risks with other utilities—BPA has not taken on sufficient partners in construction. In this respect, we noted that the region's investor-owned utilities have never committed themselves to as much as 70 percent of a regional nuclear plant. Of the five nuclear plants constructed or planned for construction by investor-owned utilities, the average participation

for each utility is about 30 percent of any one plant."

The Committee shares the GAO concern about the "aggressiveness of BPA's commitment". Sharing of financial risks among several entities is prudent and should certainly be given careful consideration by BPA and the council in administering this program. The Committee did not want to limit BPA's exposure because this might not have proved wise, particularly in light of concerns discussed later in this report about exempting utilities from the requirements of the Public Utility Holding Company Act. However, the Committee strongly believes that the BPA should act conservatively in entering into these commitments and expects that all such proposals will be fully justified and carefully scrutinized in the review process for acquiring resources set forth in the Committee amendment.●

THE ACHIEVEMENTS OF FRIEDA LEWIS

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. WOLFF. Mr. Speaker, I wish to take this opportunity to commend a very close and dear friend of mine, Ms. Frieda Lewis of Great Neck, N.Y., upon her election to the prestigious post of president of National Hadassah.

Ms. Lewis has served Hadassah, her community, and her region with distinction for close to 30 years. In 1950, she assumed the post of vice president of the Ziona group of Great Neck. Her rise following that point was nothing short of spectacular; within 10 years, she had become president of the entire Nassau-Suffolk regional Hadassah, one of the largest in the country.

Frieda's drive and dedication did not permit her to stop there. Her great talents were recognized when she was called to serve on the national board of Hadassah in 1962. She proceeded to serve as a national vice president, as well as national treasurer.

During her years of active service, Frieda has compiled a list of enviable accomplishments. She has served as a member of the Conference of Presidents of Major Jewish Organizations, and has been summoned to the White House numerous times to lend her most thoughtful and cogent advice on a variety of national and international issues. She represents Hadassah in Israel, a task which leaves her responsible for the direction of one of the largest employers in Israel. Indeed, not many are more capable to fill the task than is Ms. Lewis.

It has been nothing less than a privilege to have known Frieda for all these years. I am sure that her superb skill and wisdom will continue to be an asset to us all.●

THE FITNESS OF OUR ARMY TO FIGHT

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. McDONALD. Mr. Speaker, ever since the days of Secretary McNamara, the U.S. Army has been increasingly made a giant lab for sociologists. We spend our time teaching soldiers to read, to write, to have racial awareness, to learn how to vote, to learn about sex, and nearly everything except how to fight and win a war. On top of this, as military pay scales have fallen behind, and experienced men have left the service, we do not have the proper personnel with which to man today's Volunteer Army. To further compound the Army's problems, the Congress and executive branch have stretched out development and purchase of new weapons so that even if we had enough men, it would be difficult to win a war with our obsolete weapons. It will take gigantic steps to remedy these deficiencies. The results of these misguided policies recently came to the fore in articles which appeared in the Orlando Sentinel-Star on September 8, 1980, and the Washington Star for September 9, 1980, which are inserted into the RECORD at this point for the edification of my colleagues.

MILITARY BATTLES MANPOWER CRISIS

FORT HOOD, TEXAS.—Lt. Col Billy C. Brown, commander of a mechanized infantry battalion in the Army's 1st Cavalry Division, is supposed to have 877 soldiers in his outfit.

He has 650.

Brown says that the lack of manpower is made more worrisome and serious by the fact that he has a shortage of experienced non-commissioned officers, including staff sergeants and others who are the backbone of the Army.

Lt. Col. Richard Sones, who commands a 1st Cavalry tank battalion, has 505 of the 532 soldiers he is authorized to lead, making him relatively well off in numbers.

But Sones is able to operate only 31 of the 54 tanks he would lead into war; the others are on "standby" status. The reason is that Sones' soldiers don't have the training and experience to fill all the four-man crews he is supposed to oversee.

Brown's and Sones' battalions illustrate the greatest problem facing the U.S. armed forces: they are not getting or keeping the kinds of people they need.

And the military manpower crisis, in terms of quality of recruits and retention of skilled specialists and experienced leaders, is creating serious concern about this country's readiness to go to war.

Tanks stand idle, airplanes can't fly and ships get stuck in port because the Army, Air Force and Navy don't have the people to keep them in working order or the staff to man them when they do work.

"The American people today do not believe that the Army is able to defend this nation," Rep. Claude Leach, D-La., bluntly told Secretary of the Army Clifford Alexander and Gen. Edward C. Meyer, the chief of staff, at a recent House of Representatives committee hearing on manpower.

With a boost from the current economic recession, which is making civilian jobs harder to find, the military services are getting all or nearly all of the new recruits they need for the "all-volunteer force."

But they are losing their skilled and experienced people in a talent and leadership drain that is approaching flood level.

And the quality of the recruits they are getting—in terms of intelligence, education and general trainability—is raising serious questions about the ability of the Army and, to a lesser extent, the Navy, to do their jobs.

The Army has a shortage of about 45,000 non-commissioned officers. This includes about 10,000 of its authorized strength of 262,000 officers who hold the rank of sergeant or above as well as 35,000 of its authorized 202,000 corporals.

The shortages are in specialized skills, combat leadership and experience, and they cannot be solved simply by promoting more people in order to adjust the ratio of non-commissioned officers to privates.

Meyer acknowledges that the present 16-division Army is becoming a "hollow" force, with U.S.-based divisions such as the 1st Cavalry being cannibalized for manpower in order to keep front-line units in Europe up to wartime strength.

The reserves are in even more alarming shape. The Army's organized reserve force has a shortage of more than 60,000 people; the National Guard has a shortage of more than 70,000; and the Individual Ready Reserve lacks nearly 200,000 people.

The Navy has a shortage of 21,000 petty officers and more than 1,300 pilots.

The Air Force lacks more than 2,000 pilots and 1,200 engineers, and the experience level of maintenance crews who keep planes flying is slipping so low that officials are worried about losing more planes in crashes.

What most concerns the Pentagon's civilian officials and the top military leadership is the retention problem: soldiers, sailors and airmen are leaving the service in droves, even after eight and 12 years in uniform.

The Air Force says it needs to retain 59 of every 100 pilots after they have 12 years of service; it is managing to keep only 27. The Army figures it needs to retain 38 percent of its recruits for at least 10 years; it is keeping 30 percent. The Navy needs to keep 41.3 percent of its sailors for a second enlistment; it is keeping 37.5 percent.

But what members of Congress and many in the military outside the highest echelon find even more shocking and alarming is the quality of the men joining the services, especially the Army.

Under fierce pressure from the administration and Alexander to defend the all-volunteer concept and to avoid pushing for a new military draft, the top military leadership takes the public position that quality is not really a serious problem.

It plainly is, however.

Rep. Robin Beard, Jr., R-Tenn., for example, a strongly pro-defense member of the House Armed Services Committee, has dug up evidence that more than 90 percent of the soldiers in some combat jobs have failed the Army's Basic Skills Qualification Test.

The failure rate was 90 percent for nuclear weapons maintenance men, 98 percent for tank turret repairmen, 82 percent for Hawk missile crewmen, 86 percent for cannon fire direction men, 89 percent for tracked vehicle mechanics, 81 percent for ammunition specialists and 77 percent for computer programmers.

According to the results of an Army training study obtained by Beard, 28 percent of the tank gunners based in the United States and 21 percent of those with units in Europe did not even "know where to aim when using the (M-60 tank) battle sight."

That study found that tank crews averaged 40 percent to 50 percent below the skill level required for combat readiness. And, in one sample of 52 tanks tested, everyone failed the gunnery test.

More recently, Sen. Sam Nunn, D-Ga., one of the more respected defense experts on Capitol Hill, and four of his Armed Forces Committee colleagues bluntly accused the Army's civilian leadership of covering up Skills Qualification Test failure rates in order to salvage the all-volunteer force concept and make it appear to be working.

Nunn and his colleagues, all strong supporters of the military, said such tests administered by the Army last year showed a 91 percent failure rate in aviation maintenance, 83 percent in transportation, 74 percent in administration, 69 percent in communications, 51 percent in military intelligence, 49 percent in combat engineering, 43 percent in artillery and 39 percent in missile maintenance.

Civilian leaders, Nunn said in a blast aimed most obviously at Alexander, "appeared to want to keep the facts about the serious deterioration of quality cloaked from public scrutiny."

As many as 45 percent of all Army recruits now are termed Category IVs, the lowest acceptable scorers on the military's qualifications test, which has been used for 40 years and which generally has been considered a measure of intelligence. Alexander argued to the House Armed Services Committee recently that the qualifications test, which measures recruits on reading, mathematics and spatial perception, is not really an intelligence test and that it is "careless and improper" to classify the results into "mental categories."

Such categories, he said, are "fundamentally irrelevant and not a useful device" in determining whether a person is fit for the Army.

Alexander said the Army is trying to develop a better test.

He emphasized his view this month by ordering Army personnel officers to remove qualification test scores from the field records of all soldiers so the scores could not be used in judging a soldier's intelligence or competence.

The qualification test still is being administered and the scores still will be on file in the Pentagon. Commanders, however, no longer will know into which mental categories their soldiers have been placed.

To Alexander's considerable consternation, Gen. Bernard Rogers, former Army chief of staff and now NATO commander in Europe, told a Senate subcommittee that new soldiers now "take longer to train, and the forgetting curve is more precipitous than in the past."

As one officer put it. "You train them on Monday and then you have to train them all over again on Wednesday because they forget everything on Tuesday."

Reading levels in the Army have dropped so low that training manuals have been rewritten to a seventh-grade level. "They've turned them into comic books," an officer said. Even so, some soldiers can't read them.

Manpower is not the only problem facing the U.S. military.

Sen. Henry Jackson, D-Wash., one of the leading defense experts on Capitol Hill, described the situation graphically. He said, "The Soviets lead the United States in tanks by five to one; in armored personnel carriers by four to one; in artillery pieces by eight to one; in tactical aircraft by two to one; in submarines by more than three to one; in naval surface combatants by 1.5 to one. And the throw-weight of the Soviet intercontinental ballistic missile force now exceeds that of the United States by at least 300 percent."

In addition, the administration concedes that this country's Minuteman intercontinental ballistic missile force will become vulnerable to Soviet attack in the early 1980s.

Meantime, as the Senate withholds ratification of the SALT II treaty and as further efforts to curb the nuclear arms race are in doubt, the Soviets steadily are building tactical nuclear forces in Europe, adding one intermediate range SS-20 missile a week to their arsenal.

There also are crucial shortages of such basic items as ammunition. There are grievous maintenance and training deficiencies resulting from what the Pentagon calls "O and M" (operations and maintenance) funds. And there is confusion, delay and disarray on a wide variety of topics, including priorities, procurement and strategy.

These are some of the problems contributing to the deepening concern about U.S. readiness:

With his public commitment to defend the Persian Gulf region, President Carter has greatly increased the strategic demands on the U.S. Navy. But the size of the Navy has declined from about 900 ships 10 years ago to about 465 now

With the Navy's added responsibility in the Indian Ocean, Adm. Thomas Hayward, chief of naval operations, has noted that the Navy "is trying to meet a three-ocean requirement with a one-and-a-half ocean Navy."

Even with Carter's proposed defense budget increase, this year the Navy, for the seventh straight year, will be getting fewer new airplanes than it loses annually through crashes and obsolesence.

The shortage of ships kept the aircraft carrier USS Nimitz at sea for a peacetime record of 144 days this spring.

The Air Force holds an edge over the Soviet Union in numbers and technological quality of tactical fighter aircraft.

But due to a shortage of replacement jet engines and other spare parts and because they are losing many of their skilled mechanics, the Air Force and the Navy are having a hard time keeping planes flying.

Rep. Jack Edwards, R-Ala., found in a spot check of 60 F-15 Eagles, the Air Force's newest and best fighters based at Langley Air Force Base, Va., that only 20 were "mission capable."

Even "off-the-shelf" items, such as fuel and ammunition, are in short supply. The Army still has not replaced all the supplies diverted from Europe to Israel in the 1973 war.

An investigation by Rep. Samuel Stratton, D-N.Y., revealed that during most of last year the armed services were using war reserve stocks of oil to carry out normal peacetime training and that, at one point, the supply of jet aircraft fuel was more than 8 million barrels short.

Marine Lt. Gen. Paul X. Kelley has been appointed as commander of the Rapid Deployment Force, and a skeleton headquarters for it has been opened in Tampa, Fla. As many as 300,000 soldiers are supposed to be available to the deployment force in times of crisis.

But the Pentagon has no way to get any sizable number of soldiers delivered quickly to a combat zone. Carter's budget calls for building a new CX cargo plane to deliver the deployment force's men and materials. It also calls for the construction of 14 cargo ships that would be loaded with supplies, with the ships prepositioned in potential hot spots. But neither the plane nor the ships would be built before the mid-1980s.

ONLY ONE U.S. DIVISION FIT FOR COMBAT, REPORT SAYS

A confidential Army report shows that six of the Army's 10 combat divisions stationed in the continental United States were rated unfit to fight as of last December, and Pentagon officials said yesterday that the most recent ratings were about the same.

The report also shows that three divisions were rated combat ready but with major deficiencies. Another division, the elite 82nd Airborne, was rated as being ready for combat but with minor deficiencies.

None of the divisions, each of which comprises 16,500 to 18,000 soldiers, was rated fully ready for combat. Officials explained that divisions deployed in Europe and South Korea, plus the priority needs for recruiters, training cadre, and headquarters staff, had drained off manpower and resources from the divisions at home.

The report vividly underscored the "hollow army" description that the chief of staff, Gen. Edward C. Meyer, had provided in testimony before Congress, pointing to shortages in personnel, training, weapons and equipment and maintenance.

That "hollow army" at home was among the main reasons Meyer announced last week that he has ordered 6,000 sergeants in Europe and 900 in South Korea to be reassigned to units within the United States. Army officers called that sharing the shortages.

The low ratings in readiness applied to two of the three divisions that have been designated as potential components of the new Rapid Deployment Force, whose mission is to move swiftly and credibly to protect United States interests in remote regions, primarily the Middle East.

The 101st Airborne Division, whose speciality is air assault by helicopter, was rated unready for combat, as was the 24th Infantry Division (Mechanized), which is the armored end of the deployment force. Only the 82nd Airborne was rated as combat ready.

Other services have a similar lack of readiness, the Navy having postponed the sailing of a ship because it lacked enough skilled sailors to go safely to sea and the Air Force having flunked a tactical fighter squadron on a mobilization test.

A spokesman for the Army said he could not confirm or deny the figures in the report because they came from a confidential document. He also said he could not comment on the state of unit readiness today for the same reason.

Other officials, however, said that the figures reflected an accurate assessment of the various divisions' state of readiness. But they cautioned that the rating system only counted people and things and did not take into account materiel in storage or positioned overseas waiting for the unit, the quality of weaponry, and intangible elements such as leadership.

Pentagon officials also said that the downward trend of the Army, which started in the 1970s, had leveled off. But they said that a turnaround and real improvement would have to await decisions and votes on the 1982 military budget, which is being prepared now for submission to Congress in January.

Meyer and the secretary of the army, Clifford L. Alexander Jr., have already protested to Secretary of Defense Harold Brown over cuts in recruiting and training that Brown has said he intends to make in the Army's 1982 budget.●

BOY SCOUT TROOP 16 MARKS 55TH ANNIVERSARY

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. GAYDOS. Mr. Speaker, I recently had the privilege of attending a Court of Honor ceremony held by Boy Scout Troop 16 in the 20th Congressional District of Pennsylvania. What made the event unique was the fact troop 16 also was marking its 55th anniversary in Scouting, a distinction enjoyed by only a few troops throughout the Nation.

Troop 16 was organized in 1925 and since then it has provided nonstop Scouting activities for youths in the areas of the city of McKeesport and White Oak Borough.

I read with considerable interest a brief history of the troop which was compiled by a former Scout and leader of troop 16, Mr. Adolph Franc. Mr. Franc's work was not merely a chronological list of names, places and dates but a warm, frequently humorous, account of what Scouting was like in days gone by.

There were few, if any, of the well-equipped, well-organized Scout camps so common today. Instead, camping took place in remote wooded areas in the neighborhood. Troop meetings consisted mostly of cooking, first aid practice, signalling, pacing, map, and so forth. Troop inspections were based on the old Army traditions and outdoor cooking was done by wrapping food in wet newspapers and burying the bundle beneath hot coals.

Troop 16 practiced its signalling by flashing signs to the scoreboard at the local high school football game. The troop also was active in spreading the word about the 1936 flood in the McKeesport area. News reports were picked up by the Scouts on their crystal set radios and the messages relayed by runners throughout the area.

As far back as 1935, troop 16 formed a Sea Scout ship. Troop members built a 21-foot sailboat and named it the Monongahela. Later, the troop acquired a whaleboat from the U.S. Navy and christened it the Don Carlson in honor of the unit's first skipper. Years later the sailboat was stolen from its dock and never seen on the river again. The whaleboat also was given to another troop and later burned at a dock while being refueled.

Mr. Franc's journal traces the growth, decline and rebirth of interest in Scouting in the McKeesport area. He cites the various changes in meeting places for the troop and the difficulties it encountered. Despite setbacks, however, troop 16 survived and under the leadership of the various scoutmasters and assistants the troop produced its share of religious leaders, company executives, doctors, lawyers as well as civic and political officials.

Mr. Speaker, the history of troop 16, I believe, reflects the story of the Scouting movement. The stories of its past are humorous, serious and sometimes sad but as Mr. Franc emphasizes in his narrative that is what life and Scouting are all about.

On behalf of my colleagues in the Congress of the United States I would like to commend the members and leaders of troop 16, past and present, for their contribution to Scouting and with the troop the greatest of success in the future.●

RESOLUTION ON SOUTH KOREA

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. BONKER. Mr. Speaker, for myself and for my distinguished colleague, PHILLIP BURTON, I am introducing a sense of Congress resolution urging the Government of South Korea to fulfill its stated commitments to the democratization of South Korea and to commute the death sentence of Kim Dae Jung.

We would like General Chun to clearly understand that if the sentence of Kim Dae Jung and the sentence of other Government critics are not commuted and they are not released, the people of the United States will not allow their Government to have a business-as-usual attitude toward his military regime.

Surely, General Chun must know that brutal violations of human rights only weakens his government. In order to protect Korea's territorial integrity and economic progress there must be domestic tranquility and a government that enjoys broad popular support.

It is not too late to gain that support. All political prisoners should be released, the military should return to their barracks, and the people should be given free access to information and the right to freely choose their own government.

The resolution follows:

H. CON. RES. —

Concurrent resolution urging the Government of South Korea to fulfill its stated commitments to the democratization of South Korea and to commute the death sentence of Kim Dae Jung.

Whereas for 35 years the United States has supported South Korea, not only with our national treasure but with the lives of American soldiers, in order to establish and protect a nation in which democracy and freedom could flourish; and

Whereas today the United States contributes to the defense and social welfare of South Korea; and

Whereas the United States has allowed itself to become a great market for South Korean products, contributing to our balance of trade deficit; and

Whereas the present leaders of that country have shown a flagrant disregard for democratic processes and for the civil and political rights of their citizens; and

Whereas that disregard has most recently been expressed in the imposition of a death sentence on opposition leader Kim Dae Jung, whose views represent the aspiration of millions of Koreans for a real role in their country's political process, and the imposition of harsh prison sentences for 23 other intellectual, political, and religious leaders; and

Whereas Kim Dae Jung and the others have been tried on charges which the Department of State has termed "far-fetched" and in a trial which has been totally devoid of internationally recognized standards of fairness; and

Whereas the judicial review process to which they are now subject lacks most of the characteristics of an independent and impartial judiciary; and

Whereas, if the sentence of execution of Kim Dae Jung and harsh sentence of other critics is carried out, it will only help to facilitate the present Government's alienation from the Korean people, and will make it increasingly difficult to justify to the American people the continuation of our close relationship: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), that it is the sense of the Congress—

(1) to urge the Government of South Korea to fulfill its stated commitments to the democratization of the country's political life;

(2) to urge the Government of South Korea to reconsider the process pursuant to which Kim Dae Jung and other critics of the Government have been tried and convicted; and

(3) that, in the event these harsh sentences are carried out, the Congress will review the present terms of the relationship between the United States and South Korea.●

COMMERCE COMMITTEE'S DISCUSSION OF PROTECTION OF THE PREFERENCE CLAUSE IN PACIFIC NORTHWEST BILL

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. DINGELL. Mr. Speaker, the following is an excerpt from the May 15, 1980, report of the Interstate and Foreign Commerce Committee on S. 885, the Pacific Northwest bill. It applies to the substitute, H.R. 8157. The report states:

PROTECTION OF THE PREFERENCE CLAUSE

Preference means the statutory priority to purchase Federally-generated electricity which has, generally been provided to public bodies and rural electric cooperatives in over 32 Federal power marketing laws. These preference provisions date back to 1902 and were enacted to insure that Federal hydroelectric generating facilities would be operated for the benefit of the general public. As noted earlier in this report, the principal preference clause applicable to the Pacific Northwest is included in the Bonneville Project Act. Although similar to other statutes, this Act also contains additional language indicating that the "general public", especially domestic and rural customers, should benefit from the sale of Federal power.

Concerns have been expressed that S. 885 might be construed to change the meaning or application of preference in the Northwest, and by precedent, nationally. However, the intention of this Committee is clear.

The Committee does not want to undo nearly 80 years of history or establish any precedent. Specific provisions incorporated in the Committee amendment are designed to protect the entitlement of both existing and new preference customers to the full Federal base system. These provisions seek to protect preference as to both supply and price.

One of the basic provisions of the Committee amendment is section 5(a). It states:

SEC. 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

The purpose of this provision is clear. The Committee wants to insure that all preference customer contract requirements will continue to have a priority over sale to other customers and other sales would be, in effect, subordinate to preference provisions of the Bonneville Project Act, including the five-year withdrawal features for contracts with nonpreference customers and the 20-year limitation on the terms of the contract.

Section 5(b)(6) also assures preference customers' right to purchase power from the equivalent Federal base system before BPA can restrict its obligation to deliver power to those customers.

In addition, section 7(b) reserves for preference customers the price benefits of Federal power that they would have enjoyed in the absence of this legislation. This is accomplished by a "rate ceiling" which governs preference customer general requirements rates. Under this provision, the Northwest preference customers could pay less—but not more—for power under the legislation than they would have in any 5-year period.

The "rate ceiling" is essentially that preference customers' cost of power from BPA will not exceed the costs they would have paid for power if:

(1) preference customers were served from available Federal base system resources and, after these were exhausted, from such customers' own new resources:

(2) preference customers served direct-service industrial customers located in or adjacent to their geographic service boundaries; and

(3) no IOU exchanges for residential customers were made.

Lastly, section 10(c) of the bill contains a disclaimer which flatly states that the bill does not "alter, diminish, abridge, or otherwise affect", either directly or indirectly, the preference provisions of other Federal laws. The Committee clearly intends no such construction of this Act by a court, Federal agency, or others that could affect in any way such provisions of law.

The Committee believes that these and other safeguards adequately protect the preference clause and the long-held rights of preference customers in the Pacific Northwest and elsewhere.●

MUSKIE REAFFIRMS U.S. MILITARY AND FOREIGN POLICY STRENGTHS

HON. CLEMENT J. ZABLOCKI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. ZABLOCKI. Mr. Speaker, citing facts, not conjecture, Secretary Muskie eloquently responded last week to recent alarmists' charges that America is waning as a major world power.

Secretary Muskie emphatically stated: "I am here today to take sharp issue with the evangelists of American weakness—to affirm that America today is strong and growing stronger."

In substantiating our many foreign policy and military strengths, Secretary Muskie observed that: Our allies are stronger, our alliances sturdier than those of the Soviet Union; our alliances have the added dependability that is derived when values and purposes are truly shared unlike the Warsaw Pact; our security is also advanced by the concept of our foreign policy which is premised on the international principles of national independence and global human freedom; and our defense spending has increased by 10 percent after inflation over the past 4 years.

In addition to these strengths, Secretary Muskie also reflected on the many important contributions that arms control can make toward improving U.S. national security and defense interests. He noted that approval of SALT II would: Knock out about a fourth of all long-range Soviet missiles and bombers that we project for 1985; eliminate thousands of individual warheads and bombs that the Soviet arsenal could otherwise have aimed at our country; improve our surveillance capabilities over Soviet forces and programs; enable all our strategic nuclear programs to go ahead as planned; and save the American taxpayer billions of dollars in military expenditures.

In this respect, Mr. Speaker, the Subcommittee on International Security and Scientific Affairs, which I chair, will be holding hearings this Thursday on the foreign policy implications of the U.S. strategic doctrine. This hearing will hopefully help the Congress to objectively develop and pursue the best U.S. foreign policy and defense responses to the Soviet challenge. Continued declarations of unfounded weaknesses in our foreign policy and defense posture erode our very formidable strengths, invite adventurism by our adversaries, and unnecessarily raise doubts among our closest allies and friends. Such a development, Mr. Speaker, would be anathema to the very preservation of our country's international security interests now and in the future.

As we in Congress continue to consider and act upon these and other programs preserving and enhancing our national security interest, it is my sincere hope that my colleagues will carefully review and consider the cogent case that Secretary of State Muskie made last Thursday before the World Affairs Council of Pittsburgh.

The speech follows:

ADDRESS BY SECRETARY OF STATE EDMUND S. MUSKIE

During this season of charges and counter-charges, it's useful to recall a story Abraham Lincoln used to tell.

When discussions in his Oval Office began to boil over, he would interrupt to tell of the hunter who got lost in the forest when a fierce storm broke. The hard rain made it almost impossible for him to see where he was going. Night soon fell, and he had to fight the darkness as well as the rain to find his way. The thunder was deafening. Only occasional flashes of lightning showed him the trail.

Finally, wet and tired, he fell to his knees in prayer.

"If it's all the same to You Lord," he said, "I'd appreciate a little less noise and a lot more light.".

It's in that spirit that I address you today.

In recent months the atmosphere has been unusually thick with pronouncements about an American military decline.

We cannot let such funereal forecasts go unanswered. They are wrong on the facts. And they can be dangerous in their effect.

I am here today to take sharp issue with the evangelists of American weakness—to affirm that America today is strong and growing stronger.

If our nation truly were neglecting its defenses, it would be the duty of all informed people to sound the alarm. But false declarations of weakness only intensify the dangers we face. They can cause our friends to doubt us and our enemies to discount us. They can distract us from other work necessary to make our society stronger and our world more secure.

So let us evaluate the defense record, but let us evaluate it fairly. Let us weigh the East-West balance realistically. And let us give due regard to our own strength as well as that of our opposition.

Our allies are stronger, our alliances sturdier than those of the Soviet Union. In economic power, the United States and our NATO allies outstrip the Warsaw Pact more than two to one. Taken together, we devote more to defense than the Warsaw Pact, including the Soviet Union.

Our alliances have the added dependability that is derived when values and purposes are truly shared. Unlike the Warsaw Pact, NATO members and Japan are allies by choice. The purpose of our alliances is not to camouflage the ambitions of one member, but to defend the freedom of all.

At least one-fourth of the Soviet Union's ground combat forces are tied down on the long common border with China. The nations on our borders are friends.

Technology is another American advantage. "Faster," "more accurate," "more advanced,"—these generally are terms that apply to American weapons and American systems. Soviet technology has lagged behind.

And our security is also advanced by the content of our foreign policy—by the international principles we support.

On a global basis, we stand for essential precepts of national sovereignty and human rights. Certainly we live in a tumultuous world, characterized by the unremitting nationalism and surging human aspirations of more than 100 new nations. But if such an environment is unsettling to us, it will prove to be even more perilous for nations seeking to dominate others and dictate their systems. Such imperial concepts are the wave of the past. They collide head-on with the historic trends now underway virtually everywhere in the world—from the patriots in Afghanistan to the nationalists in every nation of the Third World, from the democratic forces in Zimbabwe to the gallant workers of Poland who have inspired us all.

In sum, our technology, our solid security partnerships, our identification with national independence and human freedom . . . all of these assets should strength-

en our confidence as we assess the sufficiency of our defenses.

They do not, however, give us cause for complacency.

Our military posture continues to require our diligent attention.

In the Soviet Union, we face a rival that has engaged for more than a generation in a steady buildup of its military forces, both conventional and strategic.

In strategic nuclear forces the Soviets have attained a rough equivalence. In the conventional area they have increased the danger to our Asian and European allies. They have aimed for the status of global power—the capacity for direct involvement even in distant regions. And now in Afghanistan, they have shown no hesitancy in applying their power, in a brutal attempt to crush a sovereign neighbor.

The question facing Americans is not whether we should respond to these developments. All agree that we must.

The real question is whether we will continue with a well-conceived and measured response tailored to the actual threats we face—or whether we will run off wildly in all directions at once, spending vastly greater sums to little, if any, effect.

Let me briefly survey what the response thus far has been.

In overall terms our arms spending is no longer dropping. It is growing.

Our defense spending declined in seven of the eight years just before President Carter took office—a total drop of more than 37 percent.

Since President Carter's inauguration, however, defense spending has increased four years in a row—for overall growth of 10 percent, after inflation. And if the President's five year plan is carried out, the increase by 1985 will exceed 27 percent.

To make it absolutely clear that we are not proposing to squeeze our armed forces, let me just note here that this five year defense program calls for appropriations of over one trillion dollars between now and 1985.

Even so, there are those who pronounce that effort insufficient. They insist upon a still larger arms budget.

They will not tell us what it would contain. They leave those decisions for later. They simply want "more"—of whatever, as if shoveling out the taxpayer's money is a desirable end in itself.

That is a formula not for greater security, but for guaranteed waste—a failing to avoid in defense just as much as in any other part of the budget.

Instead we need a carefully structured defense program that responds effectively to specific dangers. And that is what we have.

In conventional forces, the Carter Administration began promptly in 1977 to address the military deficiencies of NATO—matters which previously had received abundant discussion . . . and precious little concrete attention.

Today the NATO Long Term Defense Program, an American initiative, is in its third year. Problems ranging from readiness and prompt reinforcement to integrating air defenses are no longer simply being studied; they are being solved.

These NATO improvements are underwritten by an Alliance agreement to increase defense spending by at least 3 percent each year—another initiative of the United States.

We are engaged in a broad modernization of the Army's weapons and equipment. We have begun the first full-scale modernization of tactical air forces since the Vietnam War. And our shipbuilding program will produce 97 new ships over the next five years, building toward a newer and more capable fleet of 550 ships, in contrast to 476 in 1977.

With these programs moving forward, we have also begun bolstering our ability to respond to emergencies outside the major alliance regions—including the vital Middle East-Persian Gulf area. Our naval presence there today is the strongest ever. We have negotiated new agreements for access to ports and airfields. We are prepositioning equipment and supplies in the Indian Ocean area. A new cargo aircraft is being developed. The elements of a Rapid Deployment Force have been designated and exercises are underway.

Our programs in the area of nuclear weapons reflect this same commitment to the deterrence of war through the assurance of strength.

Last year, NATO adopted our recommendations for modernizing theater nuclear forces in Europe.

On intercontinental or strategic nuclear forces, the hard decisions have been made. A sweeping modernization of all three parts of our nuclear triad—land, sea and air—is moving ahead.

—For the strategic bomber forces, President Carter took the soundest course, even though it meant also taking some political heat. Instead of sinking billions of dollars in a B-1 bomber with a doubtful future, he decided to equip our existing bombers with air launched cruise missiles. In place of an old concept highly vulnerable to Soviet countermoves, he selected an array of advanced technologies that can surmount foreseeable Soviet defenses.

—At sea, the Trident submarine program was put back on track. The first of those modern submarines will join the fleet next year. Portions of the existing fleet already have the Trident I missile, with major improvements in range and power.

—And on the land, the new MX missile, with mobile basing, will overcome the chief source of potential nuclear instability—the growing vulnerability of missiles fixed in silos. As with our bomber forces, President Carter rejected second best suggestions and made sure we had the best plan before construction began—so we would not have to waste time and money later fixing the mistakes.

Along with these programs—cruise missiles, Trident, the MX—there is a fourth program I want to mention . . . a "secret weapon", if you will. Let me list some of its capabilities.

By itself, this secret weapon would knock out about a fourth of all long range Soviet missiles and bombers that we project for 1985. It would do that without launching a nuclear war; indeed, without even firing a shot.

In the process, it would eliminate thousands of individual warheads and bombs that the Soviet arsenal could otherwise have aimed at our country.

The secret weapon has surveillance capabilities. With it, we will be able to keep better track of Soviet forces and programs.

For all of its military effectiveness, there is no incompatibility whatsoever between this secret weapon and our other strategic programs. M-X, Trident and air launched cruise missiles can all go ahead as planned.

Adding this weapon will not require massive new appropriations. In fact, in the long run, money will be saved.

Nor does it worry our allies. On the contrary, they know about it and they strongly support it. Their only concern is that we might not adopt it.

Of course the weapon I am referring to is not a weapon at all. It is an agreement—the SALT II Treaty.

But it nonetheless will make all the contributions to our security I have just described. There is nothing soft or innocent about it. It is an integral part of a hard-headed strategy of American defense. And it should be recognized as such.

Indeed, it may well be that some of those who oppose SALT II would support it—even insist on it—if it were a defense expenditure that could buy the same results.

The contribution of SALT to our defense underscores the second of two messages I want to leave here today.

The first, as I have suggested, is that our defenses—alone and in combination with our allies—are second to none. We are determined to see that they remain so. That determination is not just stated in words; it is backed up in the budget.

The second message is that simply spending more money and building more arms—even accumulating vast military power—will not be enough to assure our security in today's world.

Even our defense posture itself depends upon other international assets and skills. Recall NATO's Long Term Defense Program . . . its agreement on greater defense efforts . . . the decision on theater nuclear forces . . . our access to facilities in the Indian Ocean. Actions such as these cannot be manufactured out of either unilateral announcements or unspecified new spending. They are the products of careful negotiation and steady leadership—endeavors every bit as vital to our defense as arms.

And those endeavors have other applications indispensable to our security.

True security in a nuclear age demands steps that lessen the risk that war will happen. That is the mandate of arms control—in combination with a strong defense, to help achieve a stable balance, and to avoid miscalculation by either side. For we know that nuclear war would mean catastrophe for every side. In such times it would only jeopardize our security to reject arms control and embrace doctrines—including the chimera of nuclear superiority—that invite a nuclear arms race.

Our security is also advanced by a vigorous diplomacy—fashioning a mature, stable basis of cooperation even with countries, such as China, that have different systems from ours. We must not retreat from those efforts—confuse them—or be confused by them.

Our security has been enhanced by the success of peace-making in Zimbabwe. That effort deprived our adversaries of a conflict to exploit. Some Americans wanted to disrupt the peace process by prematurely ending our participation in international sanctions. We can all be grateful they did not prevail.

Our security is still more deeply involved in the Middle East, where the Camp David process has produced the first real peace agreement since Israel came into being. Only patient, persistent and imaginative diplomacy can reconcile the remaining issues—the same kind of diplomacy that hammered out the accords at Camp David. Bellicose pronouncements . . . or assaults on the negotiating process that offer no concrete alternatives . . . neither advance that enterprise nor serve the cause of peace.

And our security is affected by a broad range of economic issues that arms cannot touch. We could never have blasted a new trade agreement into being. We cannot threaten stagnating economies to make them prosper or intimidate hungry people into health.

Yet our fate ultimately turns on such questions, even as it rests on the balance of power. If we neglect such challenges, our fate may be to slide into oblivion, rather than being blown there. But we will get there all the same.

In short, our security in the future requires the same priorities that have marked our foreign policy in the recent past.

On defense, we must continue the steady, prudent improvement of our armed forces. We must specifically repudiate the false message that ours is a frail nation.

And our security requires something more. It requires a realistic understanding of the nature of the world we share . . . a commitment to peace as well as power . . . a capacity to work constructively with others to advance common purposes and meet the full range of challenges ahead.

I am convinced that the American people understand the need for such a balanced American approach to the world.

I believe they support a defense posture of strength and confidence—and a foreign policy of construction and hope.●

A FRESH LOOK AT REPUBLICANISM

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. MICHEL. Mr. Speaker, there is a new view of Republicanism emerging across the country. Republicans have a new image and Republican philosophy has a new design. Republican programs offer a new approach and Republican ideals offer a new hope for our Nation.

We were once thought of as a staid, traditional, and even old-fashioned political party. We are no longer.

I think what Republicans stand for in this election year is neither staid nor conservative nor old fashioned. I think what we stand for is more aptly described as rebellious and radical. Yes, we are rebellious, and we are radical in our approach to government. The state of our economy, the condition of our people and the manner in which we are perceived by the nations of the world all demand a peaceful rebellion in thought, purpose, and direction.

My good friend and colleague, JACK KEMP of New York, recently enunciated our beliefs and contrasted them with those of the other party very eloquently in an article published by the Washington Post today. I commend it to the Members of this House and all of those people across the country who have not yet taken a good, fresh look at the Republican Party:

[From the Washington Post, Sept. 23, 1980]

THE PARTY OF THE FUTURE

(By JACK KEMP)

The Democrats are staking their electoral fortunes on an effort to depict the Republican platform as "radical."

President Carter's strategists seem to have overlooked the possibility that Americans actually seek a "radical" vision of the future, in both precise meanings of the word. Radical means "departing from the usual or traditional." Departure from the usual and traditional makes sense when the usual and traditional policies result in double-digit inflation and chronic recession. Radical also means "relating to a root or origin." Most of us still believe in the principles of freedom and justice on which our country was founded. Older Americans remember when these principles were practiced with rather remarkable success. Younger Americans have witnessed what happens when we begin to neglect them.

In both of these senses, I believe, the Republican Partly is indeed offering the beginnings of a "radical" vision for the 1980s.

For years, Republicans and Democrats have squabbled over the size of government. Democrats argued for more spending and government, and Republicans argued for less spending and government. And no one, it seems, devoted much attention to economic growth. The two parties offered Americans a choice, in effect, between lower inflation with higher unemployment or higher inflation with lower unemployment. The inevitable outcome of this process has been reached under President Carter and the Democratic-controlled Congress: high inflation, high unemployment and chronic stagnation.

After a quarter-century as the minority party in Congress, Republicans have learned that it's not enough to be against bigger government and big spenders, even if most Americans agree. To compete effectively for national leadership, a party has to offer a new vision and spell out its consequences for Americans and their families.

Walter Lippmann wrote in 1913: "It is perfectly true that that government is best which governs least. It is equally true that that government is best which provides most. . . . Neither [truth] can be neglected in our attitude toward the state." Human freedom is not a state of nature. It must be hard won, and it can be maintained only by establishing enduring institutions.

The Founding Fathers did not believe that freedom and prosperity would automatically result from limiting the national government, or even that the behavior of free individuals would go unregulated. They believed that individuals would be guided by Judeo-Christian values, instilled by family and religion. They believed that state and local governments would enact laws to affect the consequences of certain individual behavior.

In economic matters, they believed the price mechanism, by accounting for everyone's tastes and means, would set costs and rewards to encourage people to act independently in ways that would maximize the general welfare. The Founding Fathers also believed in growth. Expanding opportunity would not only give people a chance to fulfill their individual potential; it would also give them a stake in the system, ties to the community and a respect for its laws.

The federal government had to provide the external and internal security without which there can be no freedom or prosperity. It would undertake additional duties approved by the people. But it had to finance its budget without obstructing the industry and thrift of the people with taxation, on the one hand, and without cheapening the nation's monetary standard and distorting the price system, on the other.

The Republican Party's "radical" idea is that this vision of society can still work, that it is as progressive and forward-looking at the beginning of the 1980s as at any time in our history.

The most striking feature of the Democratic Party's view of society, in contrast, is its insistence that nearly every aspect of American life be allocated, subsidized, taxed, regulated or adjudicated by the federal government. But the obvious failure of this vision is only half the story of the failure of Democratic Party leadership. Under the Democrats, the federal government has seriously neglected those duties it ought to perform.

Taxation so discourages initiative that the government chronically fails to raise enough revenue to balance its budget. To finance ambitious spending programs—many prompted by economic stagnation—the government prints and spends money it has neither taxed nor borrowed. While cheapening the dollar, our monetary standard, Democratic Party government imposes controls that subject the price mechanism to narrow private interests instead of the public good. And the government has failed to maintain an adequate defense.

The Republican Party is committed to full employment without inflation. It rejects unemployment as the answer to inflation and inflation as the answer to unemployment. It proposes across-the-board tax and regulatory reform to restore individual and business incentives for economic growth and opportunity. It proposes tax incentives and job training to revive the country's depressed areas. It proposes to pay for the government expenditures necessary to meet our foreign and domestic challenges through a long-term expansion of the tax base. In a climate of economic growth, we can spend less on programs to alleviate the symptoms of contraction. And the Republican Party proposes to stop cheapening the dollar, to finance the federal budget or for any other reason. We would restore a monetary policy whose sole aim is to maintain a dollar of constant purchasing power. Under such policies, our families, neighborhoods and cities can flourish.

In embracing these ideas, Republicans have changed their behavior as a political party. It's not enough, we decided, to have a strategy to win elections, which can be done by luring just enough voters to piece together a coalition of 50 percent plus one, while writing off the rest. A party that plans to be the governing party must have an agenda that addresses the needs of all Americans—even those who may not vote for your party.

Ronald Reagan expressed this attitude in his Detroit acceptance speech, when he said, "We must all move ahead, but we are not going to leave anyone behind." President Kennedy had the same idea: "A rising tide lifts all boats." Americans seem willing to accept either a "liberal" or a "conservative" president, as long as that president plans to be the president of all the people.

At the Democratic convention in New York, President Carter and his party has the opportunity to rethink the failure of the Democratic vision in practice and to devise new policies. Instead, they adopted the functional equivalent of The Emperor's New Clothes. The Democratic platform pledges to "continue to" reduce inflation and unemployment to "continue to" restrain federal spending, to "continue to" pursue a credible foreign policy. In short, as President Carter's official spokesman Jody Powell, as confessed, "Another term probably wouldn't be markedly different from the first."

At the same time, the administration's rhetoric has reached outlandish proportions. The Republican cut in personal income tax rates was first described as a $280 billion, then a $1 trillion, tax cut. President Carter is apparently unaware that even the lower of these figures implies that he would nearly quadruple income taxes during a second term in office. Sooner or later, the press and the public will be forced to discount the administration's inflated rhetoric in making political judgments, just as they must discount the administration's depreciated dollars in making economic judgments.

Without a positive vision, without a credible critique of the Republicans, where will President Carter and the Democratic Party be on Nov. 4? Taking refuge behind the ghost of Franklin Roosevelt, presumably. It will do them about as much good as Republican appeals in 1932 to the memory of Abraham Lincoln.

This November, I believe, millions of Americans are going to surprise themselves by voting Republican.●

WILD AND SCENIC RIVERS BILL

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. FAZIO. Mr. Speaker, I would like to congratulate my colleague from Sacramento, Representative BOB MATSUI, and the chairman of the Interior Subcommittee on Parks and Territories, Representative PHILLIP BURTON, for the fine job they have done on the wild and scenic rivers bill, H.R. 8096, and in particular for that provision in the bill which designates the Lower American River in Sacramento wild and scenic.

The Lower American River is a prime recreational resource for literally thousands of rafters and swimmers in the Greater Sacramento area. It is simultaneously a prime salmon spawning grounds, contributing an estimated 10 percent of the salmon population in California's Pacific Coast waters. The river has many other values, as well, not the least of which is the esthetic impact of its presence through the heart of the Sacramento urban area. The city and county of Sacramento have adopted comprehensive plans to preserve the values of the river for their jurisdictions. It is entirely appropriate and constructive for the Federal Government to participate in the effort.

The authors of the bill had to deal with several difficult issues in bringing it to the point of passage on the House floor. Most importantly, they had to provide flexibility for the American River Flood Control District to continue its important work. They also had to avoid a potential political conflict over the flows necessary in the river to maintain its recreational and fish values while not conflicting with the operation of the Auburn Dam, Folsom-South complex.

The Interior Committee has resolved those problems satisfactorily in my view. First, the flood control district is free to carry on its vital work basically without restrictions within the levees running parallel to both banks of the river. Second, the bill intends to stay clear of possible but at this point conjectural conflicts between the river's recreational values and the authorizations for the Auburn-Folsom-South projects. I would like to mention that by staying clear the committee's report language effectively certifies the existing agreement between the Department of the Interior and the California Water Resources Control Board that certain flows are to be maintained in the Lower American for fish and recreational purposes if the Auburn Dam is constructed. These flows are set forth in the CWRCB's decision 1400, which the board attached to its permit to the Department for the Auburn Dam's use of the water. The agreement between the board and the Department is expressed by that condition.

Further, I welcome this bill because its constitutes a strong congressional statement that there are other values for the water in the Lower American besides its agricultural uses. The flow reductions allowed by the Auburn authorization would in fact be unacceptably low. However, other steps can be taken to avoid such a drastic reduction in the Lower American without curtailing the irrigation yield of Auburn or Folsom-South. Those steps were not contemplated at the time of Auburn's original authorization. By saying that the Lower American has crucial recreational and fishery values in addition to irrigation values, I believe Congress is firmly directing the Department to implement the solution that will eliminate this conflict. I do not believe there is any disagreement among all the parties to this legislation that this message has been sent.

Thank you, Mr. Chairman, and my appreciation again to the head author and the subcommittee chairman for the work they have done and the opportunity they have afforded me personally to participate in it.●

COMMERCE COMMITTEE'S DISCUSSION OF BPA FINANCING AND FEDERAL GUARANTEES REGARDING THE PACIFIC NORTHWEST BILL

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. DINGELL. Mr. Speaker, the following is an excerpt from the May 15, 1980, report of the Interstate and Foreign Commerce Committee on S. 885, the Pacific Northwest bill. It applies to the substitute, H.R. 8157. The report states:

BPA Financing and Federal Guarantees

The Bonneville Power Administration is self-financed. Pursuant to the Federal Columbia River Transmission Act, BPA must meet all its costs, including the cost of the Federal investment in the Columbia River system, from the power sale revenues. General tax revenues are not used to support BPA programs. The Committee amendment continues this financial independence while maintaining the current practice of Congressional review of BPA activities as part of the normal budget review process.

However, issues were raised concerning Federal backup or "guarantee" of the Administrator's acquisition of resources. Although section (8)(i) makes clear that Federal monies could not be used to support acquisitions or other activities, BPA would remain a Federal agency and it was argued by some that a Federal backup might be provided when the Administrator assumes an obligation to pay project expenses including debt obligations issued in connection with an acquired resource. The Department of Treasury was asked to address this concern and to make recommendations for necessary changes. Treasury defined as a possible guarantee the use of BPA bond authority in connection with many resource acquisition. Assistant Secretary of Treasury Roger Altman, in September 25, 1979 testimony before the House Committee on Interior and Insular Affairs, was principally concerned with what he says in S. 885, as it passed the Senate, as a "granting of tax-exempt interest coupled with the backup of a Federal agency's . . . credit".

To meet this problem, Secretary Altman recommended that section 8 of S. 885 be amended to only "extend the borrowing authority for financing conservation programs and small, renewable resource projects".

Section 8(c)(1) of the Committee amendment generally carries out the Secretary's recommendation in its amendment to section 13(a) of the Federal Columbia River Transmission System Act. The amendment permits use of BPA's authority to issue bonds to be extended to this legislation, but precludes such use in acquiring under section 6 of the Committee amendment "electric power from a generating facility having a planned capability greater than 50 average megawatts".

Lastly, in order to make clear that all contracts and other obligations required of the Administrator will be secured solely by BPA revenues and not by the Federal government, the Committee included section 6(j)(2) which requires that, in the sale of any obligation, all offerings and promotional material shall contain language indicating that such obligations are "not intended to be, nor are they, secured by the full faith and credit of the United States".●

WHY YOU SHOULD VOTE DEMOCRATIC

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. BRADEMAS. Mr. Speaker, the distinguished majority leader, Hon. JIM WRIGHT of Texas, is the author of an article in the September 1980 issue of Reader's Digest magazine on "Why You Should Vote Democratic." The article is a clear and perceptive exposition of the reasons why the Nation's well-being is better served by the Democratic Party.

Mr. Speaker, I ask that the text of Mr. WRIGHT's article be printed so that all of my colleagues will have an opportunity to read it. The text of the article follows:

WHY YOU SHOULD VOTE DEMOCRATIC

(By JIM WRIGHT)

Some people will tell you we should elect a Republican Congress because the country has problems—inflation, unemployment, energy, international crises. But that is the very reason we need a Democratic Congress. For the past 50 years Americans have known instinctively that a Democratic Congress is their best hope in difficult times.

Looking back, I think I must have become a Democrat when I was nine years old. The year was 1932. Twelve million Americans were out of work. Nearly every day some young man would come to our back door and ask if there was any job he could perform. There hardly ever was, but my mother always offered these men something to eat.

It was in that year that my grandfather lost his job. Granddad was 63, a proud man. He had worked 23 years for a nationwide company. Two more years and he would have qualified for a retirement annuity. That year, the company arbitrarily fired every employee with as much as 20 years' seniority.

There was no Social Security in those days, no unemployment compensation. A worker had no vested interest in the company retirement plan. There was nothing—not even an FHA to insure home payments—to fall back on.

That is why I am a Democrat.

What a difference these five decades have made! In 1932, our country teetered on the brink of collapse. Today, the economic shock absorbers created by Democratic Congresses have insured against a return to those days of foreclosures, soup lines and bank failures. Things may get tough from time to time, but they'll never be that desperate—thanks to the fact that Democrats care about people and about people's problems.

What is the fundamental difference between the average Democrat and the average Republican? The Republican wants to keep what he's got. The Democrat wants to make things better for those who haven't got enough. I risk overstatement. But that is essentially it.

Republicans in general believe in a "trickle down" theory—that if you shower enough blessings on those at the top of the economic pyramid, some of the benefit is bound to trickle down to those at the bottom. Democrats, on the other hand, adhere to a "percolate up" theory. We believe the best way to strengthen our capitalistic society is by broadening the base—by making more people capitalists. Former Sen. Ralph Yarborough of Texas said it fairly well. He said we want to "put the jam on a lower shelf so the little guy can reach it."

That is our aspiration—whether we define "jam" as economic opportunity, the right to a first-class education, the availability of a job, a piece of real estate, a secure old age, or the right to participate along with everybody else in the political process. That is the central thread that runs through the tapestry of our party. From Thomas Jefferson to Jimmy Carter, we've been trying to give more people a piece of the action.

And, yes, sometimes we've made things so good that folks become Republicans. Well, that's all right. We need some Republicans around. But no one should ever forget that it was Democratic policies that fixed things so folks could afford to be Republicans.

People should also remember that the Republicans have a consistent record in the U.S. House of Representatives. It is a record of voting "no." At the critical turning points of our history—when Social Security was being created, when housing guarantees were inaugurated, when Congress launched Medicare, hospital programs, the Interstate Highway System, school construction, mass transit, flood insurance and economic-development programs—a majority of the House Republicans has consistently voted "no."

For years the Republicans have cried out for a "balanced budget." Recently they've been calling for more defense dollars. In June we presented the first balanced budget in 12 years, and included the biggest annual dollar increase for military readiness since World War II. How did the Republicans vote? They voted "no."

We also presented a plan to cut red tape on key energy projects. Despite having voted 107 to 43 for this bipartisan plan last year, the GOP House membership, in an election year, voted against it, 125 to 9, stopping a bill important to America's future.

Two years ago, House Republicans were peddling something called Kemp-Roth. The idea was to cut everybody's taxes radically and to tell ourselves that this wouldn't unbalance the budget. Most of the nation's economists were appalled at the self-deception. Democrats resisted it, superficially tempting though it was. And the public saw through it. The good common sense of the American people recognized that you can't reduce the government's income without first reducing outgo, unless you want a big deficit.

Maybe that is the most exalted mission for the Democratic Congress—not to tease the public with unrealistic expectations, but, as Adlai Stevenson said, to "talk sense to the American people."

America has problems. The most serious are the energy shortage and persistent inflation; they are, in fact, largely the same problem. The dollar drain for foreign oil has skyrocketed from $8 billion in 1973 to at least $85 billion this year. Our economy's dependence on this ever more costly foreign oil has nearly doubled our inflation. To reverse the inflation rate, we have to reduce substantially our dependence on imported oil. The problem has been decades in developing. It won't be cured overnight.

But Congress is moving in the right direction. During the past two years, we have approved (1) a dramatic synthetic-fuels initiative, (2) a comprehensive package of conservation incentives, (3) a solar-energy bank, (4) a gasohol program, (5) new stimuli for the exploration and recovery of more American oil and (6) an Energy Security Fund of some $227 billion, from excess-profits taxes, to help make America energy-independent by 1990.

Some criticism of this Democratic Congress no doubt is justified. We make no claim to perfection. We just hope, when the history of our times is written, that it can be said of us, in the words of Harry Truman's favorite epitaph:

"Here lies Jack Williams. He done his damnedest."●

NICARAGUAN INVOLVEMENT IN ASSASSINATION OF SOMOZA

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. McDONALD. Mr. Speaker, to date there has been a studied lack of suggestion that Nicaragua was involved in the assassination of President Somoza last week in Paraguay. However, the evidence is there. As the American Security Council pointed out in its Radio Free Americas broadcast/column for the week of September 17, 1980, two so-called Nicaraguan diplomats had been in Asuncion preparing the way for Somoza's demise. Incidentally, this column had been prepared on September 8, 1980, and mailed to the media on September 10, 1980. At any rate, further information discloses that the same group of Argentine leftwing terrorists may have been stopped trying to cross into Paraguay from Brazil in the first days in September. Evidently, they later crossed in via Argentina and succeeded in their grisly mission. The Radio Free Americas item, entitled "Reason Enough," follows:

REASON ENOUGH

Once Paraguay granted political asylum to the deposed Nicaraguan General Anastasio Somoza, Jr. while his country was in the hands of the communists it might be expected that the new Nicaraguan regime would cut off diplomatic relations with Paraguay.

Strange as it may seem, this was not the case. The Managua junta insisted on keeping the diplomatic relations between Paraguay and Nicaragua intact, although the diplomat who had represented the Somoza regime at Asuncion had been fired.

It was a surprise for the Paraguayans to learn that the leftist Junta de Gobierno in Managua had appointed Alberto Nunez-Rodriguez as "charge d'Affaires" in Asuncion. In fact, the novel diplomat was already in Asuncion, accompanied by a young lady named Nidia Escobar, the new "attache" of the Nicaraguan Embassy there. The embassy is but 200 miles from the ranch bought by Somoza, whose tenants spend some weekends in Asuncion.

It was not difficult for the Paraguayan government to learn of the antecedents of the two Nicaraguan "diplomats" sent to Asuncion. They have been well known among leftist Nicaraguans as trained guerrilla fighters, experts in political kidnappings for ransom, trained in the schools of Communist Cuba for several months.

It was quite evident that they had a mission to fulfill in Paraguay, where Somoza and his relatives had found political asylum. The Nicaraguan leftists knew very well that they would not be able to get Somoza's extradition from Paraguay, but they wanted to harm and punish him.

The two alleged Nicaraguan diplomats had to watch Somoza and report to their bosses in Managua everything the man did. But the training they received in Communist Cuba was not for gathering and supplying information; it was for terrorist activities. Somoza's life was in danger even if he was in a country far away from his own. The communists who killed Mella, Trotsky, and other enemies abroad were on the trail of revenge against Somoza in Paraguay.

It was reason enough for the two Nicaraguan terrorists disguised as diplomats to be expelled from Paraguay on August 25.●

CENTENNIAL OF THE KANSAS CITY STAR

HON. LARRY WINN, JR.

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. WINN. Mr. Speaker, it is with a great deal of pride that I call my colleagues' attention to the celebration this week of the centennial of one of this Nation's truly great institutions of daily newspaper journalism—the Kansas City Star. Founded on September 18, 1880, by William Rockhill Nelson, the Star—as an active force for progress, economic growth, and incorruptible city government—has grown and prospered, its development linked inextricably with that of the

city itself, both becoming over the years institutions of great national influence. Their parallel development was not, I think, accidental. This Nation has flourished in large part because of a vital, vigorous press—which we today acknowledge to be a crucial component of democracy.

From its beginnings, Nelson said the Star would "spare no labor or expense" to create a first-rate newspaper, and he succeeded, perhaps beyond his wildest imaginings. A civic-minded crusader, Nelson was the first in a long line of men of distinction who guided the newpaper's destiny and, by their influence, that of Kansas City itself. Roy Roberts, president and publisher from 1938 to 1956, carried on this tradition by his role in the Republican Presidential campaigns of Alf Landon and Dwight Eisenhower—influence that attests to the growing national stature of the Star. He fought valiantly against the Pendergast machine and is credited by many with ridding Kansas City of their corrupt influence.

To this day the Star continues to be as reputable an editorial voice as this Nation can claim. But it should not be assumed that it has been burdened with dull respectability. Quite the contrary is true. The Star's history has been colorful as well—high spirited and irrepressible in the best traditions of the first amendment. This is a newspaper after all that employed in the years before World War I a young reporter named Ernest Hemingway. William Allen White, later to become nationally known as the publisher of the Emporia Gazette, wrote editorials—acknowledging that while pay back then was low, "to work for the Star was such an honor that mercenary motives should not soil the relationship." Even Harry Truman worked there for a time, wrapping newspapers in the mailroom. It is a measure of its national influence that he fired off from the White House in 1950 a letter telling Roberts that he wanted "no mention from your lousy sheet," a communication cooler heads kept from reaching its intended victim.

I am proud to serve a congressional district that is served as well by the Kansas City Star—proud to be a reader of such a distinguished newspaper, and encouraged to know that our elected representatives and our Government generally is being watched over by such courageous and high-minded institutions of the press. We can rest assured, I think, that the democracy will not be allowed to go too far astray as long as the press remains as vigilant in its defense as the Kansas City Star has been. Indeed, we can all take seriously the warning sounded back when Mr. Nelson founded the paper, pledging to its readers that it would "wage warfare upon corrupt and extravagant tax eaters of all parties."

Thus warned, my colleagues are asked to join me today in extending congratulations to the men and women who have made the Kansas City Star what it is today, a newspaper that has never wavered in its 100-year history from upholding the highest duties of the press in America.●

INTELLIGENCE IDENTITIES BILL: CIVIL LIBERTIES THREAT

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. WEISS. Mr. Speaker, I would like to share with my colleagues another document concerning H.R. 5615, the Intelligence Identities Protection Act, that is scheduled to be considered by the full House this week.

Concern over the chilling effect of this legislation on crucial news coverage and other protected first amendment activities has greatly increased in the past several weeks, as more and more groups learn about H.R. 5615. This letter, from seven organizations representing journalists, newspaper publishers and editors, and broadcasters, is illustrative of the fear being generated by this bill, especially section 501(c). This section would penalize the disclosure of identities of covert CIA and FBI agents, as well as sources of assistance and informants, even when disclosure is based entirely on unclassified information and other information already in the public domain. Never in the history of this country has the Government enacted legislation to punish the republication of information and the publication of information derived completely from public sources, nor penalized disclosure of information where the intent of the disclosure is not to injure the United States or to give advantage to a foreign nation.

I believe this bill is unconstitutional and urge my colleagues to study H.R. 5615 closely before it comes to a vote. The following letter raises some of the constitutional problems with the legislation and I insert it into the RECORD in its entirety:

NATIONAL NEWSPAPER ASSOCIATION,
Washington, D.C., September 5, 1980.

Hon. THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: The members of our respective organizations are fundamentally concerned with section 501(c) of H.R. 5615, the Intelligence Identities Protection Act, as reported out by the House Judiciary Committee on September 3. In our view, this provision raises serious constitutional questions, representing an unprecedentedly sharp limit upon First Amendment rights. We believe this provision calls for a great deal of additional careful deliberation by the House, and should be opposed as it stands.

Mr. Speaker, the members of the media neither support nor condone the practice of methodically exposing the names of American intelligence agents. But we believe that constitutional principles cannot be sacrificed along the way toward legislatively dealing with the situation. Americans believe in a higher standard, however much they may recoil at a seeming abuse of a right.

Our specific problem remains the one that has plagued this particular legislative effort since its outset: section 501(c)'s current wording does not solve First Amendment difficulties. Regardless of intent, this language could well reach distribution of news and other constitutionally protected forms of speech, including books. And, ominously, it does not distinguish between classified and unclassified information as a source for exposing identities. This would establish an extremely grave precedent by criminalizing the dissemination of information which is already in the public domain. In our view, the proper approach is to improve the security of information bearing on agents' identities from within the government, by better regulating classification and access.

We recognize that there has been a continuing effort by many Members and staff to safeguard American intelligence and intelligence agents while not intruding, in any way, upon First Amendment rights. While section 501(c) represents an improvement over earlier versions, it still appears to be fatally flawed from a First Amendment standpoint. Perhaps reconciling these two imperatives legislatively cannot be done, but certainly it is worthy of further consideration.

Therefore, we respectfully, but strongly, urge that there be no rush to judgment on this section of H.R. 5615. Preserving the First Amendment in the face of the need to protect our intelligence agents is a truly difficult task, but one which can only be done by trying further.

Sincerely,

William C. Rogers, Sr., President, National Newspaper Association; Richard P. Kleeman, Vice President—Washington, Association of American Publishers; Jerry W. Friedheim, Executive Vice President, American Newspaper Publishers Association; Charles W. Bailey, Chairman, Freedom of Information Committee, American Society of Newspaper Editors; Curtis J. Beckmann, President, Radio Television News Directors Association; Jack C. Landau, Director, The Reporters Committee for Freedom of the Press; Robert D. G. Lewis, Chairman, Freedom of Information Committee, Society of Professional Journalists.●

JAMES KENNEDY CARR

HON. HAROLD T. JOHNSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. JOHNSON of California. Mr. Speaker, my colleagues in the House of Representatives know that it is not often that I rise for the purpose of paying tribute to an individual, as I am doing today. But my mission today is a special one, because I rise to pay tribute to an old and dear friend, to a great citizen of this Nation, of his native State of California, and of the areas around Redding, Sacramento, and Chico, Calif. I am referring to James Kennedy Carr, who passed away on September 4 after a lifetime of distinguished public service.

At the conclusion of my remarks I am going to share with my colleagues editorials from two fine newspapers located in the area of our Nation where Jim Carr and his many contributions and high standards were best known. These editorials about Jim Carr and his life of achievement communicate very well the magnitude of his service and the faithfulness to the people with which he rendered that service. These editorials spell out some of the details of his life and times.

Let me add, however, a few thoughts. I knew Jim Carr for 30 years. We worked very closely together at the local, State, and Federal levels in many capacities and situations. This involvement at all levels of government gave him a rare grasp and understanding of the workings of government. He knew how to get things done, and he used his knowledge and experience skillfully to influence events far beyond what one man can normally accomplish.

John D. Rockefeller once said, "I will pay more for the ability to deal with people than any other ability under the Sun." Had this criterion been used, James Carr would have been paid a fortune every day of his life, because he had a unique ability to deal with people effectively, honestly, and with kindness and understanding.

I never worked with a finer person, and it was a pleasure to be associated with Jim Carr over these many years. He was always working for the improvement of his Nation, his State, and his local area. All are better places because he lived and worked there.

I am deeply saddened by Jim's sudden death. He will be missed as an adviser and friend as I carry on without him, using his example as a beacon to light the way for greater accomplishments for the part of the country he knew and loved best, the upper Sacramento River Valley and the surrounding area.

The editorials follow:

[From the Redding (Calif.) Record Searchlight, Sept. 9, 1980]

(By Robert W. Edkin)

Jimmy Carr will long be remembered as a public servant in the very truest and very best sense of the word.

He was a friend of presidents and would-be presidents, he hobnobbed with people in the very highest councils of government, not only of this nation, but of many nations; he was a man who looked equally at home in an audience with a pontiff or walking the hills surrounding his hometown of Redding.

He enjoyed a career that presented a wide array of special challenges—and he invariably took up the challenge, sometimes at considerable career risk.

We can't think of too many men who would give up a perquisite-filled sub-Cabinet post in Washington to enter the sometimes byzantine political world of San Francisco to take the helm of a complex and troubled public utilities system.

Yet that is what Jimmy did in 1964 when he gave up his prestigious post as Under Secretary of the Department of Interior to serve as manager of municipal utilities in San Francisco in the administration of Mayor Jack Shelley.

The reasons for the move were simple and straightforward—Jimmy disliked the time away from his wife and family that his position demanded, and he wanted to return to Northern California, where his roots and his family were.

The "official" list of Jimmy's positions and accomplishments is long and impressive, ranging from survey crew chief and then project manager of the Shasta Dam project to his Washington post and a host of other major responsibilities in San Francisco and Sacramento.

But the official list only scratches the surface in detailing an even longer list of personal and professional accomplishments for which Jimmy Carr never sought acclaim, but in which he took great pride.

Residents of the Keswick area have Carr to thank for the pine and fir trees that grow today on hillsides once denuded by the fumes from copper smelters. Carr got more than 2 million of them planted in the late 40s when he was district manager for the Bureau of Reclamation. Later on, when he had moved on to Washington, he and Paul Stathem, then-supervisor of the Shasta-Trinity National Forest, engineered the planting of another million trees—some of them around Shasta Lake.

Nearly 30 years ago, the San Francisco Chronicle described Jimmy as "an engineer, but an engineer with a conscience for protecting values which are too often ignored."

It was that conscience, no doubt, that made that tree-planting project so important to Jimmy. It was the same conscience that prompted him to rescue San Francisco's cable cars from the ravages of bureaucratic neglect and to order the refurbishing and restoration of the car barns and cable wheelhouses to their original condition.

Devotion to family and community were other values that Jimmy prized and protected. No matter what his job, no matter where his home was for the moment, he maintained close relationships with his brothers and sisters—and with his home town of Redding.

Just about every local government leader has at least one example of a case in which Jimmy "went to bat" for Redding or Shasta County in their dealings with federal agencies.

That "going to bat" for his hometown continued when Jimmy retired from public employment and launched a consulting business of his own in Sacramento. Indeed, he played a major role in the bringing of a second major airline—Frontier—to Redding in 1978.

For Redding, Jimmy's death last week meant not only the passing of a famous son, but even more the loss of a good and loyal friend.

[From the Chico (Calif.) Enterprise-Record, Sept. 10, 1980]

JAMES K. CARR

Decades before he died at his home in Sacramento late last week, James K. Carr had ensured that his name would be long remembered in the fields of water development, natural resources conservation, politics and the preservation of historical landmarks.

A professional engineer whose superior talents and skills were recognized in Washington as well as in California, Carr's gentle, down-to-earth personality enabled him to get along well with people of all walks of life and made him an exceptionally effective public servant in realms of politics where harsh differences of opinion often created vicious rivalries and made productive compromises difficult to achieve.

Jim Carr had a host of friends and admirers in Chico and the Mid-Valley area dating back to the late 1940s and early 1950s when he served as district manager for the Federal Bureau of Reclamation.

During Carr's time in Chico, he and his wife and four daughters made lasting friendships here. A deeply religious man, Jim Carr attended mass at St. John the Baptist Catholic Church.

Those were the years after his performance as an engineer on the Shasta Dam project had started him upward in his chosen field. With the dam completed, Carr's district bureau office in Chico was the scene of planning future steps in area water development and conservation.

It was during those years that Carr worked closely with Butte-Glenn-Tehama leaders interested in the agricultural future of the region. These leaders included the late A. W. Bramwell and A. H. Weibel, then publisher and general manager, respectively, of the Enterprise-Record. They were among the founders of the Sacramento Valley Canals Project, the system which now delivers water to thirsty acres down the west side of our valley.

At that time, Carr was a valuable link with the late Clair Engle, then our congressman and later a U.S. Senator. Engle valued Carr's knowledge to such an extent that he later urged Carr to come to Washington and serve as top consultant with the House Interior Committee.

Engle once told the E-R that Carr was the Interior Committee's most important staffer. "Whenever my brash and muscular procedures can't win a political battle," said Engle, "I call on Jim Carr—with his tremendous know-how and great personality, he always gets the job done for me."

We found that to be a Carr trademark: Jim Carr was one politician who had no enemies. He was a lifelong Democrat, but Republicans respected him as a man they could trust and count on for an honest job for the people. He made the term "bureaucrat" respectable.

Jim Carr did so well in his Washington task that President Kennedy in 1961 named him to the post of Under Secretary of the Interior.

At the request of President Lyndon B. Johnson, Carr stayed on for a time in Washington following President Kennedy's assassination. But with Kennedy gone, Carr returned to his native California after helping the LBJ administration get underway. He took the post of general manager of public utilities and the airport in San Francisco.

During his time in San Francisco, Carr played a leadership role in restoration of the 19th century cable car barn. Subsequently, he put his Washington connections to good use when he led a successful campaign to have the entire cable car system declared a national monument. This endeavor earned him special awards from the Conference of California Historical Societies.

On all projects in which he played a leadership role, Jim Carr insisted upon careful attention to environmental protection factors. In this regard, he was honored by having a fish named after him when a new species was discovered in the Caribbean in 1967. Marine biologists who discovered the fish (in the shark family) named it "Neoharriotta carri," which they translated into "Carr's long-snouted ratfish." Jim Carr always chuckled over this environmental accolade.

A native of Redding, Carr was born into a pioneer Shasta County family. His grandfather had come from Ireland and had served as a school principal before starting a practice of law.

Jim Carr lived in many places during his career. And he cherished the political and engineering experiences of Washington, San Francisco and Sacramento. But he once told

us that he would always have a soft spot in his heart for the Mid-Valley and Northern California.

Needless to say, that affection was reciprocated. Mid-Valley and Northern California hearts over the years have had the same sort of "soft spot" for Jim Carr.●

VIOLENCE IN OUR SCHOOLS IS STILL A REALITY

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. BIAGGI. Mr. Speaker, I would like to bring to the attention of my colleagues an article which appeared in the Sunday edition of the New York Daily News on the continuing problem of violence in the hallways and classrooms of our Nation's schools. The unfortunate victims of this violence are not only students, but teachers as well, who are senselessly attacked in their classrooms while doing their job.

As New York's senior member of the House Education and Labor Committee, I was the author of the "special grants for safe schools" program in title IX of the Elementary and Secondary Education Act Amendments of 1978, Public Law 95-561. This program authorizes $15 million in grant aid to 15 local school districts chosen by the Secretary. Authorized activities with funds provided by this program include training and employment of staff skilled in crime control, minor alteration of school facilities with security equipment and development and dissemination of a safe school plan to parents and the community.

While this program has never been funded, the need for such a program is greater than ever. Just this past week, a young student from this area was shot by another student during school hours. Reports of vandalism and even arson are also not uncommon if you read the daily papers. Acts of violence committed against teachers are estimated at 5,000 per year in New York City alone and an astonishing 70,000 per year nationwide. This is specifically why I wrote into this program a provision which mandates that school administrators report all such crimes to local law enforcement authorities as a condition of eligibility for funds.

I urge my colleagues to read the aforementioned article which provides telling evidence that schools need our help to reduce crime now more than ever.

OVER 5,000 NEW YORK CITY TEACHERS ARE ATTACKED EVERY YEAR—THEIR ASSAILANTS ARE THEIR STUDENTS

(By Mark Liff)

The arm shot out, curling around Mary S.'s neck as she stretched agonizingly toward the safety of the brown, paint-peeled school doors. Quickly pulling her away, the arm drew her against the ominously warm and large body of the man who had followed her into the school entrance.

"I didn't realize it until he was maybe four feet from the main gate," Mary recalls. "I sensed somebody was behind me, but I didn't think anything of it. But I felt his presence the entire way up the steps. I crossed over toward the open door and he followed. By then I knew. I was just hoping to get into the building before he did."

She never got inside. "He pulled me out and the door slammed shut. I never saw his face." She only sensed the size of the man, heard his heavy breathing and the words, "Money . . . I want money."

Mary S. was a 35-year-old junior high school teacher at the time she was attacked last spring. Mary had dedicated 15 years to teaching ghetto kids to read in a special program at the aging junior high. She loved teaching, often spent her own money on books and treats for her students. Now she has 10 stitches on her face and will never return to the classroom.

Each year, more than 5,000 New York City teachers are beaten, robbed, raped or assaulted (70,000 nationwide, which is 4% of all U.S. teachers). They are attacked in their classrooms, in hallways, bathrooms. They lie awake at night, reliving their horrifying experience. Many are unable to cope with the reality that their private world has been violated. Many will not allow their names to be used. Fear of reprisal is constant.

Their stories are different, yet there is a chilling sameness about them—in the overreaction by the students to real or fancied slights, or, perhaps more frighteningly, in the total lack of motive. Among those attacked:

A 24-year-old teacher at a Bronx junior high school whose students doused her with lighter fluid, set her ablaze and giggled "hot pants" as the teacher frantically attempted to extinguish the flames with her hands.

A 32-year-old, 6-foot, 200-pound male gym teacher at a Brooklyn junior high school who was stabbed and punched by four youths for tossing one of them out of class after he repeatedly disrupted the session.

A 25-year-old teacher at a Brooklyn elementary school who suffered such a savage beating by two pipe-wielding youths that she needed white plaster patches to cover the gaping holes in her skull.

A Highlands, N.J. high school math teacher whose nose was broken by a 16-year-old who walked into the teachers' room and, when told to leave, floored the teacher with one punch, then kicked him in the face.

An assistant principal of a Bronx intermediate school who suffered a broken thumb and was kicked in the groin by an angry parent after the administrator interceded in a fight between two students.

Many teachers and administrators are unable to return to the classroom. Some cannot even walk in the street without recalling their ordeal. But even those who go back realize that nothing is the same.

The United Federation of Teachers compiles annual lists of "incidents." However, Edward Muir, chairman of the union's school safety committee—and himself the victim of six attacks—points out that the majority go unreported. The UFT distributes a safety handbook to its members. It warns them never to walk alone in the school and to leave the building immediately when school is over. It also notes:

"While serious sex crimes are rare, when they do happen they occur in classrooms, faculty rooms and workrooms when the teacher is alone.

Most common are assaults and robberies. There have been fires, bomb threats and burglaries in schools as well. But the crime against individuals—like the sudden attack on Mary S.—is the most frightening.

Mary had chosen what had been until that moment a glorious spring day to venture out of the school building to buy lunch. She took only a $10 bill, hidden in a pocket, walked confidently along crowded Brooklyn streets to the luncheonette, made her purchase, then returned with her brown paper bag.

The bag fell to the ground at the entrance as she was attacked. Frantically, she gasped for air. "But he choked me so hard that I couldn't scream. He kept waving a piece of rope. I thought he was going to strangle me with it. I thought he was going to rape me when he had me on the ground." Instead, he savagely punched Mary in the right eye and searched her for jewelry. Finding her few dollars, he scooped up the money and fled. Bloodied and hurt, Mary crawled to the school doors and began pounding to alert those inside.

Today, Mary is seeing a psychologist. "I have been sleeping and sleeping and sleeping," she says. "The psychologist tells me that sleeping is anxiety being repressed. We'll see. He said it was natural for me to have these fears. He says it will take time for me to pull myself together again."

But Mary is trapped; teaching is the only way she knows how to make a living. "I dread the thought of ever going back," she says. "It is just something that shattered me. It made me resentful and hurt. To me it is an absolute horror. I can just remember the whole incident as it happened. I can remember the punch; it felt like a brass knuckle—that's how hard it was."

But the physical pain has been dwarfed by the anguish. "I don't go out in the evenings and I won't even wait for a bus. It frightens me if anyone walks near me in the street."

Mary is most upset over what she perceives is the unsympathetic attitude of her peers and supervisors—not an uncommon reaction on the part of a victim. Psychiatrist Martin Symonds, a counsel to the Police Department's crime victim program, calls this the "I am stupid" phase, or the "second injury." This, he says, is more damaging than the original incident. "The second injury is longer-lasting," he notes. "Many times, a person is going back to work, but feels he's been treated shabbily."

The teacher needs to blame someone, and the supervisor often is the recipient of this anger. Mary S., for example, says that her principal "was absolutely indifferent." He asked her if she wanted to go to a hospital emergency room. "I said I did and then I wanted to go home. I am single and I didn't want to go home by myself. He said, 'But you live in Manhattan,' as if, 'Who will drive you home?' "

Statistics show that women are the most frequent targets, but even large male teachers are not immune. "I was fighting for my life, just swinging back and punching," recalls Fred, the 34-year-old gym teacher who was beaten last fall in his Brooklyn junior high school. "I was stabbed in the back, yeah, cut in the back. I never saw the knife, but I felt it. I only saw it after the fight was over. There were four of them, with garrison belts."

Like Mary, Fred had always wanted to teach. "And now I am leaving it," he says bitterly. "I knew that the money would never be great, but I wanted to teach. I liked working with children—and now I don't. Even with nice kids, I don't like it anymore. I'm just biding my time, waiting to go into my next profession, which has nothing to do with teaching or children."

Fred is 6-2 and 200 pounds and more than able to take care of himself. Until that fight, he never once wavered when he thought he had to intervene. "Now my whole profile in the school building is different. I don't stick out my neck anymore.

Maybe it is better sometimes to not do your job."

Fred had tossed a raucous student out of his gym class. Twenty minutes later, the student returned with his brother and two friends. "I didn't realize it when they came in that this was the kid," Fred says. "Finally he walked over to where I was sitting and he took a swing and hit me. So I got up and I punched him back. A brawl started. But there were four of them and one of me."

Other teachers ran to help. But by then, Fred was on the floor, beaten and bloody. He went to the hospital, telling his wife that he was accompanying a student who had been injured. "That was a horror show," he says. "Teachers were calling my house to find out how I was. My wife couldn't get in touch with me and became hysterical. This all put big changes in my family life. It took its toll."

Now, there is only a small scar on Fred's back from the knife wound. The real scar is psychological. "I never, never wanted to go back there," he says. He left all his personal belongings in the old school. "I couldn't care less about them. Some people were mad at me, but they didn't understand."

Finally, after three agonizing months, Ed Muir and the UFT were able to secure a transfer to another school. Fred says he couldn't sleep the night before he returned to the classroom. In his new school, Fred adds: "I just blended right in. I brought none of my teaching experiences."

But unlike many victims, Fred went to court. "That was the worst part—I had to relive the fight over and over again," he says angrily. "I made 22 different court appearances. One of them (his assailants) was tried in Family Court and one went to Criminal Court."

The youngest was removed from the school, an administrative game of musical chairs that seldom proves a solution. "I went to court from Nov. 20, 1978, through September of last year," Fred says. "It was almost a full year. I think that anyone who goes to court is a fool."

Following a series of reports in the Daily News a few years ago, Albert Shanker, president of the UFT, suggested the creation of special assistant district attorneys to prosecute assailants of teachers. It never happened.

And a much-celebrated move by the city's Law Department three years ago to begin prosecuting youths under 16 accused of attacking teachers has been a dismal failure. At the time, the UFT frowned on this experiment, noting: "It really doesn't make any difference in a case, since it's the judges who will make the decisions. The courts have to shape up." Shanker himself blasted "revolving-door justice" that enabled teacher-batterers to return to the streets.

One teacher is still afraid to return to the Brooklyn community where she was beaten senseless by a student. She never prosecuted those who attacked her. "They made the mistake of beating a nurse and an off-duty housing officer with knives and they were caught," she says. "The police told me that those cases were stronger and I shouldn't prosecute."

But she is still petrified that those who beat her might recognize her and attack again. "Or maybe they told their friends that I was an easy target," she says.

The definitive study on teacher stress was done by the Chicago Teachers Union in cooperation with the Roosevelt University College of Education. Chicago had more than 1,500 reported "incidents" last year. The survey drew more than 4,000 valid responses. "Approximately 50% of the respondents indicated that they had experienced physical illness as a result of their on-the-job life," the study reported. "Teachers reported experiences of physical assault, confrontations with colleagues and administrators, horrendous working conditions and various stress-related physical illness such as colitis, hypertension, sleeplessness and ulcers."

In New York State, 41% of the teachers answering a similar survey reported "symptoms ranging from headache, stomach problems, fatigue and high blood pressure to anxiety, tension, depression and insomnia." These were attributed by the teachers to stress they felt in the classroom.

Teachers have different ways of dealing with their stress: the majority discuss their problems with friends and colleagues. Some say they "do the best" they can to cope. Others cry.

Barbara D. is an elementary teacher in Brooklyn's Brownsville section who was attacked last year when two youths wearing black berets darted from the bushes outside the school entrance. "One of them had a broken bottle and the other had a pipe," Barbara recalls. "I ran like hell, figuring that if I got to the sidewalk, I would be all right. But there were four more waiting outside."

Barbara's skull was cracked by the force of blows from the metal pipe. It was almost two months before she could return to work.

"I was nauseous for about two weeks afterward and I was vomiting," she says. "I had severe lacerations all over my head and a concussion from the pipe blows. But I would say that my greatest trauma was psychological. Up until that point, I felt I could go anywhere. I never had any fear at all."

The January beating changed all that, although Barbara still teaches. She laughs as she recounts: "I became very fleet of foot after that for awhile. And I looked at people suspiciously. But that, too, passes with time—as long as you are lucky and it doesn't happen again."

Sadly, there are many other "repeaters" like Barbara, who was first attacked five year ago when she broke up a fight between two boys. But she says she was lucky, although one of the youngsters bit her on the breast and forearm while the smaller boy pummelled her with a metal chair. She was out of school for only two days.

"It doesn't go away as fast the second time," she says. Five or six weeks after the latest attack, Barbara was anxious to get back to work. "I felt that the longer you stayed home and dwelt on it, the harder going back would be."

Barbara first spoke with Ed Muir in the UFT office at 260 Park Ave. South. Again, Muir worked his therapeutic magic: a transfer to Sheepshead Bay. "I knew that I wanted to teach children," she says. "But I wanted to get the hell out of there (her old school). I guess I felt that my number was up, you know? I also knew that I didn't want to travel in a wolfpack to protect me. It never occurred to me not to go back." Now she teaches kindergarten classes in a middle-class community for the first time, "and it is a real joy," she says.

After 14 years, Barbara still finds teaching fun, despite her ordeal. "Oh it isn't forgotten," she adds. "But I consider myself extremely lucky."

It is easiest for those victimized to blame their colleagues for not rescuing them. "Everyone who is injured, everyone—without exception—has a feeling that they are powerless, that they are helpless and in a rage," Symonds, the psychiatrist, says.

Even those who attempt to hide from the problem by sleeping—as does Mary—are not immune. "This does not prevent them from having nightmares, daydreams and other reactions," he points out. "When you keep it inside yourself, it is a poor sign. I want them to go out again."

The problem has reached such severe proportions that the National Institute for Mental Health is considering a proposal from New York's UFT to study the 100 most violent schools in the city. Compiling the list was easy. What will be difficult is the analysis of teacher stress caused by beatings, threats and attacks.

Recently, the National Institute of Education awarded a two-year, $150,000 grant to the 550,000-member American Federation of Teachers. Its two major locals—New York and Chicago—will each study three schools to determine teacher stress. "All evidence indicates that occupational stress among teachers is a serious and growing problem in rural and suburban as well as urban schools," Albert Shanker says. "We are concerned not only with the conditions that cause stress in the schools but with the effects these conditions are having on teachers' health and student learning."

Foremost, to the teacher, is the concern about one's health. "If I ever complained to my husband about the kids, he'd say, 'Look, you can go out and do anything,' " says Barbara, who returned after two separate attacks. "I'd tell him, 'This is what I enjoy doing—but they won't let me do it.' "●

NATIONAL CYSTIC FIBROSIS WEEK

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. CONTE. Mr. Speaker, as the sponsor of House Joint Resolution 445, it gives me great pleasure to observe the week of September 21-27 as National Cystic Fibrosis Week. It was almost 1 year ago that I introduced the proposal to set aside this week as the public education focus of the Cystic Fibrosis Foundation's 25th anniversary year. I did this because I see cystic fibrosis as one of the most critical child health problems facing our country.

Cystic fibrosis kills more young people in this country than any other genetic disease. In many children's hospitals, more bed-days are allocated to children with cystic fibrosis than to children with any other illness. Young people with CF can require hours of chest therapy each day to allow them to breathe—time that weighs heavily on other activities a family might pursue. Cystic fibrosis costs this country over $100 million per year in direct medical costs, and many times that much in years of productive life lost from the deaths of children and young adults.

The bottom line in talking about CF always returns to people's lives. The Cystic Fibrosis Foundation's poster representative program started in 1960, and over the years I have met with many of these children—boys and girls in grade school or a little older. I have heard the comment made that these children are not effective as poster representatives because they do not look sick. They may not have

looked sick when they were smiling with us, but the fact is that almost half of them are no longer alive.

I have invited my colleagues to see a film about cystic fibrosis, produced by the National Institutes of Health. In the course of the film, four young people with CF in their teens or twenties are featured. The filming was done only last December, but one of the four has already died, and another is very seriously ill.

These are the cruel facts about cystic fibrosis. A beautiful, smiling 8-year-old girl who was featured in the Cystic Fibrosis Foundation's public service announcements in 1979 died early this year. A young girl who had been selected to be a 1981 national poster representative died before she even had the opportunity to speak on behalf of the thousands of young people who share her disease. Every day, more names are added to the list.

I think the time has come to redouble our efforts to conquer cystic fibrosis. The tale of progress in the past quarter century is one of good news and bad news. The good news is that the median survival age of children born with CF has risen from less than 1 year in the 1950's to 21 years today, and a growing number of adults are living productive lives into their twenties and even early thirties. The bad news is that CF is still fatal; there is still no cure or long-term control, there is still only one ultimate outcome to CF—premature death of bright, courageous young people.

There can be hope for the future if we persevere. Researchers are hard at work trying to unravel the genetics of CF, trying to understand the basic defect that so disrupts the lungs and digestive system, trying to discover the key to the lung infections that are the most serious single manifestation of CF. The National Institutes of Health and the Cystic Fibrosis Foundation are working together to coordinate the attack on these and other scientific puzzles.

Until the answer is found, the Cystic Fibrosis Foundation will continue its support of 125 cystic fibrosis centers throughout the country to insure that all affected children and adults have access to quality care. The foundation will continue its public education efforts so that parents will have children tested for CF and the public will allow adults with CF to fully participate in society for as long as they are able. Programs to expand the availability of financial aid for families hit by CF will be supported; the problems of a chronic disease should not include financial catastrophe as well.

And until the answer is found, I hope that Congress will not forget these young people. We must continue to support health research and provide for other programs which will make their lives a little easier now while we build for tomorrow.

In 1955, a small group of parents formed the Cystic Fibrosis Foundation, united in the common fight against this disease that no one understood. They have come a long way in 25 years, but there is still a long way to go before the battle is won. I hope that National Fibrosis Week will serve as both a moment of recognition for this organization and a rallying point for our renewed efforts.

Mr. Speaker, I insert the Presidential proclamation of National Cystic Fibrosis Week at this point in the RECORD, followed by a fact sheet on cystic fibrosis prepared by the Cystic Fibrosis Foundation.

A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

Cystic fibrosis is the most common fatal genetic disease afflicting American children today. An inherited disorder of unknown cause, cystic fibrosis affects approximately 20,000 to 30,000 infants, children, and young adults. While the cost of medical treatment reaches into the millions of dollars, the costs of cystic fibrosis in terms of human suffering are inestimable.

Through biomedical research, the outlook for cystic fibrosis patients has become brighter over the years. Long considered fatal in childhood, cystic fibrosis has begun to yield to the efforts of science. The life expectancy of cystic fibrosis victims has increased well into the teens, twenties and beyond. Moreover, improved methods of treatment have enhanced the quality of patients' lives. Despite this progress, however, the basic cause of cystic fibrosis, as well as its cure, continues to elude investigators.

The Department of Health and Human Services, in cooperation with private, voluntary agencies, is meeting the challenge of cystic fibrosis with an intensified research program. Through the National Institutes of Health, the Department's biomedical research arm, studies are now under way to identify the causes—and consequences—of the disease, and to develop improved methods of detection, treatment, and, eventually, prevention.

In recognition of the progress that has been made, and of the many research questions that still remain to be answered, the Congress has by House Joint Resolution 445 designated the week of September 21, 1980, "National Cystic Fibrosis Week", a time to highlight the hope for the future that this Nation shares with cystic fibrosis victims and their families.

Now, therefore, I, Jimmy Carter, President of the United States of America, do hereby proclaim the week beginning September 21, 1980, as "National Cystic Fibrosis Week."

In witness whereof, I have hereunto set my hand this twenty-second day of July, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.

QUESTIONS AND FACTS ABOUT CYSTIC FIBROSIS

WHAT IS CYSTIC FIBROSIS?

Cystic fibrosis (CF) is an inherited disease of children, adolescents and young adults. In the United States, CF is the number one genetic killer of children and young adults. CF affects the exocrine, or externally secreting glands, of the body. These glands produce secretions which enter organs of the body such as the lungs, and intestines, and skin through special ducts. The majority of the exocrine glands are mucus-producing; others include the sweat and salivary glands. The exocrine glands and their secretions are important for maintaining normal functions of the body.

In CF, mucus-producing glands fail to produce normal, free-flowing fluid. Instead, they secrete thick sticky mucus which tends to block ducts and other passageways in the body. This abnormal mucus accumulates in various parts of the body, particularly in the lungs and intestines, and interferes with the vital body functions such as breathing and digestion. As a result of CF, the secretions of the sweat glands contain an excessive amount of salt, which can present problems such as dehydration during periods of increased sweating.

HOW DOES ONE GET CF?

Cystic fibrosis is not contagious. It is a genetic or inherited (hereditary) disease, beginning at the moment of conception and resulting from a defect or abnormality of a gene. Genes are the basic unit of heredity and determine physical and chemical characteristics such as eye color, stature, facial features, and many health conditions. Genes are carried on chromosomes, which are thread-like structures found in the nucleus of every cell in the body. Each chromosome carries thousands of different genes. The specific gene responsible for CF and the chromosome which carries this gene have not yet been identified.

Each parent of a child with CF is a "carrier" of a single CF gene. In the United States, an estimated one of every 20 persons (about 10 million people) carries a gene for CF. Inheriting a single gene for CF causes no special health problems, and a person's carrier status often isn't recognized until he or she becomes a parent of a child with CF.

An individual with CF has inherited a pair of chromosomes, each containing a CF gene. One chromosome of this pair came from the father and the other chromosome from the mother. However, when both parents are carriers of the CF gene, their children will not automatically have CF. Each time a woman carrier of the CF gene and a man who is also a carrier of the gene conceive a baby, there is a 25 percent chance that the child will inherit CF; a 75 percent chance that the child will not have CF; and a 50 percent chance that the infant also will be a carrier. These odds apply to each pregnancy. A pregnancy which resulted in a child with CF doesn't guarantee that the next pregnancies will escape CF.

CAN CF CARRIERS BE IDENTIFIED?

At present, there is no reliable method for identifying the symptom-free carriers of cystic fibrosis. Research is underway to develop safe and effective tests for detecting the CF gene. The development of such a test will be of great assistance in predicting the likelihood of CF for prospective parents.

HOW COMMON IS CF?

CF affects approximately one in every 1,800 newborns, making it the most common, fatal genetic disease in the United States.

WHAT ARE THE SYMPTOMS OF CF?

Generally, three major symptoms are associated with CF:

Respiratory Problems: At some time during their lives, most patients with CF develop lung disease. The thick mucus produced in CF obstructs the airways of the lungs and respiratory system. This interferes with the normal breathing process, and eventually leads to damage of the lung tissue. Respiratory complications cause over 90 percent of all deaths of patients with CF. CF patients are also very susceptible to certain types of lung infections, particularly those caused by *Staphylococcus aureus* and *Pseudomonas aeruginosa* bacteria. These lung infections are often difficult to treat with drugs that are currently available.

Digestive Problems: The pancreas and other organs of the digestive system secrete enzymes into the intestine where they help to break down food into the components which the body uses for energy, growth, and maintenance. In CF, thick, sticky mucus blocks the passageways that carry these enzymes to the intestine. This results in improper digestion so that much of the food consumed cannot be utilized by the body and is excreted. Because of the increased metabolic demands on the body by respiratory disease, coupled with malabsorption of food, the individual with CF often has a large appetite but still may appear malnourished.

Excessive Salt Loss: The effect of CF on the sweat glands results in a high concentration of salt in the perspiration of individuals with CF. In periods of increased sweating, such as during exercise, hot weather, or during febrile states (fever), this salt loss can place the patient at risk of heat exhaustion or dehydration. This potential exists in all CF patients. Excessive amounts of salt in the sweat can result in infants tasting salty when kissed—often one of the first indications that a child may have CF.

The symptoms and effects of CF vary from patient to patient, and are sometimes similar to symptoms of other childhood disorders. This often complicates quick and accurate diagnosis of the disease.

WHEN (AT WHAT AGE) DO THE SYMPTOMS OF CF APPEAR?

In approximately 10 to 15 percent of the cases, the earliest symptom of CF appears at birth, in the form of an intestinal blockage known as meconium ileus. Meconium is a mixture of intestinal secretions which is passed by an infant within a few hours after birth. In some infants with CF, however, the meconium is a thick, putty-like substance which blocks the intestines and may have to be removed surgically. In many individuals with CF, the symptoms of the disease appear within the first few months of life. In these cases, the thick mucus secretions hamper the infant's breathing and digestion, and the child fails to grow properly. Other patients with CF do not develop symptoms until later in childhood or adolescence.

HOW IS CF DETECTED?

Presently, the simplest and most reliable method for diagnosing CF is determination of abnormally high salt content in the sweat. The "sweat test" is a laboratory procedure based on the defect in the sweat glands, which occurs in CF. The sweat test includes specific technical procedures which must be done by recognized laboratories with experts trained in performing the procedure and interpreting the results. Other clues which provide a basis for diagnosing CF include: frequent respiratory infections; malnutrition or failure to grow; frequent, bulky bowel movements; rectal prolapse; and nasal polyps. Identification of any of these symptoms should be followed by a medical check-up and laboratory tests. Because of the genetic nature of CF, brothers/sisters and first cousins of a child with CF should also be screened for the disease, using the sweat test procedure.

HOW IS CF TREATED?

Patients with CF receive comprehensive treatment which is based on their condition. Treatment generally includes:

Bronchial Drainage (postural drainage)—a form of chest physical therapy which helps loosen mucus from the lungs and keep lung passages open;

Antibiotic Therapy—drugs which help fight respiratory infections;

Dietary Management—which include vitamins, enzyme replacements and nutritional supplements, in addition to a well-balanced diet with extra quantities of food.

Some CF patients take as many as 40 to 60 pills a day. The individual cost of CF treatment and care can range from $6,000 to $12,000 per year.

WHAT IS THE OUTLOOK FOR THE CF PATIENT?

Presently, there is no cure for CF. The basic cause of the disease is not known, and CF continues to be the number one genetic killer of children and young adults. However, the outlook for the CF patient has improved over the last two decades. Fifteen years ago, few children with CF lived beyond six years of age. Today, with improvements in diagnosis and medical treatment, half of the CF patients born today will live past 20 years of age. Improvement in the current outlook for CF patients has largely come from scientific/medical research. However, there remain many unanswered questions regarding the cause, cure, and prevention of CF. For answers to these questions, we must continue to look to biomedical research.

WHAT IS THE CYSTIC FIBROSIS FOUNDATION?

The Cystic Fibrosis Foundation (CFF), established in 1955, is a nonprofit, voluntary health organization, dedicated to improving the outlook for the CF patient and ultimately finding the answer to the cause of CF. The Foundation, through its National Headquarters and network of 84 local chapters across the United States, supports programs in:

Scientific/Medical Research—which may provide new clues to understanding the cause, treatment, and cure of CF;

CF Medical Centers—a network of treatment-centers nationwide which provide medical care for CF patients and services for CF families;

Public and Professional Education—which provides information and training to health professionals, as well as educational materials for patients, families, and the general public regarding CF.

The Foundation's programs are supported through contributions from the public.●

PERSONAL EXPLANATION

HON. ED BETHUNE

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. BETHUNE. Mr. Speaker, I truly regret that I am not able to take part in the vote today on H.R. 7020, as I feel very strongly about the need for this abandoned hazardous waste bill. As I indicated to you last Friday, I am keenly aware of the seriousness of the hazardous chemical problem. The community of Jacksonville in my district has had firsthand experience with dioxins—one of the deadliest chemical compounds known to man—from the Vertac Corp. plant, and I sincerely hope that this legislation will protect other towns from the health risks, anxiety, and costs caused by abandoned chemical waste.

Unfortunately, another pressing problem in my district requires my attention, and at the invitation of the Secretary of the Air Force, I was called to inspect the Titan II installation in Damascus, Ark., where a massive explosion occurred late last week.

Had I been in attendance for the vote on H.R. 7020, I would have voted "aye."●

COMMERCE COMMITTEE'S DISCUSSION OF PUBLIC UTILITY HOLDING COMPANY ACT CONCERNING PACIFIC NORTHWEST BILL

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. DINGELL. Mr. Speaker, the following is an excerpt from the May 15, 1980, report of the Interstate and Foreign Commerce Committee on S. 885, the Pacific Northwest bill. It applies to the substitute, H.R. 8157. The report states:

PUBLIC UTILITY HOLDING COMPANY ACT

One controversial provision concerning this legislation has been the proposal to exempt from the provisions of the Public Utility Holding Company Act of 1937 persons and companies in the Northwest that are organized for the primary purpose of financing, constructing, and managing electric generation facilities wherein 75 percent or more of the power is, or will be, sold to BPA. Mr. Robert Short, President of Portland General Electric Co., testified that the "reason for creating generating subsidiaries is to reduce the financing cost of building plants". He said:

"The purpose of section 9(b) is to allow the eight investor owned utilities in the Pacific Northwest to create jointly owned corporations to finance, construct, and operate plants to sell power to BPA under this bill. The reason for creating generating subsidiaries is to reduce the financing cost of plants.

"A generating subsidiary would not be subject to most utility indentures restrictions and could have a higher debt ratio. BPA's contract to purchase the output of the plant will strengthen the generating subsidiary's credit rating, thereby allowing a higher debt ratio; thus, lower interest rates.

"The Public Utility Holding Company Act exemption is needed because, as the SEC pointed out in its September 25, 1978, letter to Chairman Dingell, formation of a generating subsidiary would cause us to be deemed 'holding companies' under the Public Utility Holding Company Act. The Holding Company Act puts us to a choice—either accept holding company status or stay out of a generating subsidiary. Holding company status could require several of the Pacific Northwest utilities to divest themselves of nonelectric utilities and one of them to divest itself of the part of its electric system not in contiguous states, as well as raise questions about the status of nonutility properties. The cost of holding company status would be too high, so that the benefits of the generating subsidiaries would be foregone."

Exemption from the Public Utility Holding Company Act is not an escape from regulation. Every private utility is subject to complete regulation—either by States, the FERC, or in most cases, both. A generating subsidiary would be subject to the same system of regulation.

However, Mr. Alex Radin, Executive Director of the American Public Power Associ-

ation, objected to a "blanket exemption" by legislation. He said:

"We have been informed by the SEC that no similar statutory exemption has even been granted, and we do not believe that such a legislative exemption is necessary or desirable in this instance. It should be noted that procedures are contained in the Public Utility Holding Company Act itself for exempting companies from the Act's requirements. It is therefore possible that exemptions, if necessary, could be secured through available administrative procedures. The administrative exemption route would permit the SEC to review the types of actions to be undertaken. This review would be preferable to the unreviewable exemption to be conferred by the legislation."

The Federal Trade Commission and many members of this Committee also doubted that a legislative exemption was necessary or desirable. Chairman Dingell and Congressman Gore particularly noted that the SEC has been somewhat lax in its enforcement of the Act, but doubted that was sufficient reason for eliminating SEC's role entirely. The FTC, in a July 26, 1979 letter to Congressman Weaver said:

"I disagree that a legislative exemption is more suitable than an administrative one. In section 3(d) Congress has conferred broad rulemaking authority upon the SEC, which has developed more than 40 years of expertise in administering the Act. More important, the SEC could revoke an administrative exemption if the conduct of the companies involved so warranted, where as a legislative exemption could not be altered except by further Congessional action. I believe that competition and consumer protection would be better served under an administrative exemption—and the SEC's continuous monitoring which such an exemption would entail—than by a legislative one."

However, the SEC, which administers the Act, disagreed and supported the legislative exemption act. Indeed, the SEC, in a January 14, 1980 letter to the Subcommittee, said:

"* * * it does not appear that there is any substantial need to subject the sponsoring parent companies of the proposed generating company to regulation under the Act. All of these companies, and the proposed generation company will qualify for exemption only as long as it serves the purposes of the bill. The impact of regulation under the Act would relate to matters having little to do with the purpose for which the generation company is to be organized."

The SEC also expressed reservations about certain proposed monitoring responsibilities delegated to the Commission.

The Committee was convinced that leaving the matter to a subsequent administrative determination under existing law, particularly if Congress rejected a statutory exemption, would not be sound. Similarly, the Committee did not believe it sound to establish a legislative exemption subject only to approval by the BPA, which has no expertise under the Act. Also, the Committee did not share the SEC's view that monitoring was unnecessary. Thus, the Committee amendment authorizes an exemption where both the BPA and the SEC concur that the organization of the new company is consistent with the policies of the 1937 Act. The exemption is not automatic.

The Committee also required that at least 90 percent of the electricity generated by such company be sold to the Administrator. Despite the SEC view that administrative difficulties exist with respect to a percentage limit, the Committee included this provision in order to narrow opportunities for abuse.

In addition, the company must show the BPA and the SEC that participation in the company's facilities must be offered to the region's public bodies and cooperatives. Also, BPA must include in contracts with such companies provisions limiting the equity investment in such company. BPA, with the SEC's concurrence, must approve certain contracts between the company and any sponsor company or subsidiary.

Most importantly, the Committee requires that the SEC and BPA monitor the exempted company. If either SEC or BPA determines that it is not operating in a manner consistent with the 1937 Act, a preliminary determination will be issued and made public. A hearing will then be held if the consistent conduct is not remedied and a final determination will be issued.

The Committee expects both agencies, particularly the SEC, to act prudently and with vigilance in administering this first exemption from the 1937 Act. This provision is not to be considered a precedent for future exemptions.●

THE HONORABLE. CLAUDE PEPPER

HON. TOM BEVILL

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BEVILL. Mr. Speaker, I am especially proud to extend my best wishes to my good friend and colleague, CLAUDE PEPPER, on the occasion of his 80th birthday. CLAUDE PEPPER is one of the most distinguished native Alabamians, and all of us in his home State take pride in his tremendous record of accomplishments and we are proud of his Alabama heritage.

In his youth, he labored long and hard with another great Alabamian, who also went on to serve his Nation in elective office, former Senator John Sparkman.

Both of these men worked together at the University of Alabama, in Tuscaloosa, where they attended school. They fired boilers for the university in the 1920's. Judging by their remarkable careers and their excellent health, I would say that the hard work which they did those many years ago in Alabama certainly must have been beneficial.

CLAUDE PEPPER is to be congratulated for the admirable work he has done for older Americans, making sure that they receive the proper medical care, comfortable housing, improved social security benefits, and most importantly, the dignity which they so richly deserve.

Through his Select Committee on Aging, CLAUDE PEPPER has done this Nation a great service. He has pointed out, so well, on the floor of the House, in his committee hearings, and across the country, that our older Americans are one of this Nation's richest assets. Our fellow citizens who have been fortunate enough to enjoy a long life have much to offer this Nation, and CLAUDE PEPPER is determined to see that they be allowed that chance.

I salute CLAUDE PEPPER for his skill and determination in seeing that this Nation recognizes the potential which exists in our older Americans, and that it provides viable methods of tapping the rich treasures of knowledge and abilities which they hold for improving our great land.●

COMMERCE COMMITTEE'S DISCUSSION OF BPA'S PURCHASE OF POWER UNDER PACIFIC NORTHWEST LEGISLATION

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1980

● Mr. DINGELL. Mr. Speaker, the following is an excerpt from the May 15, 1980, report of the Interstate and Foreign Commerce Committee on S. 885, the Pacific Northwest bill. It applies to the substitute, H.R. 8157. The report states:

REMOVAL OF BPA RESTRICTION ON ACQUISITION OR PURCHASE OF POWER TO MEET NEEDS

One of the most controversial issues surrounding this legislation has been the concern that the grant of authority of BPA to "purchase" power as a supplement to its hydro base was too broad. A number of witnesses at the Energy and Power Subcommittee hearings voiced their concern that this authority would be misused, would make the BPA Administrator a "Czar", that BPA would undertake an expansive and expensive construction program in competition with public and private utilities, and that BPA would become a nuclear power agency. The Committee amendment addresses all of these charges and concerns.

The BPA Administrator lacks adequate authority under existing law to purchase additional power on a long-term basis. The net billing scheme discussed earlier in this report represented an attempt to provide this additional authority, but it is no longer an adequate means for resource acquisition.

BPA and others believe new authority for resource acquisition is an essential piece of this legislative solution. Without such authority, BPA asserts that the amount of power available to BPA is fixed. BPA, in a May 20, 1979 document outlining issues relative to this legislation, said:

"Under the preference clause, this fixed quantity of BPA power must eventually be offered solely to the public bodies and cooperatives, since the projected needs of these preference customers will in future years exceed the total BPA supply. Given its limited power supply, BPA cannot execute new firm power sales contracts with nonpreference customers such as investor-owned utilities (IOU's) and direct service industries (DSI's) as proposed in the legislation. These facts have set the stage for an imminent and protracted legal battle within the Northwest over the meaning and application of the preference clause, the formation of new preference utilities or other entities claiming preference status, and the fate of the DSI's and the vital power reserves that

BPA's contracts with the DSI's provide for the region.

"This regional legal battle can be laid to rest if (1) the DSI's are able to trade in their existing low-cost power contracts for new contracts at higher rates; (2) the low-cost power released by the DSI's can be made available to residential and small farm customers of regional IOU's; and (3) the preference rights of publicly-owned and cooperative utility systems can be preserved. Such an allocation system is the heart of the proposed regional power legislation. It would permit the Northwest to put aside its battles over low-cost power and to work cooperatively again in planning to meet the region's future needs for conservation and renewable resources, as well as conventional resources, as part of an efficient, economical, and environmentally sound regional power system.

"The proposed allocation system can be carried out only through new contracts between BPA on the one hand and preference customers, IOU's and DSI's on the other. But under present law, BPA cannot execute such contracts. The fixed supply of BPA power is too small to meet even the full future requirements of preference customers in the future, and therefore contracts with the nonpreference IOU's and DSI's are legally precluded. This is true even though the total supply of Federal plus non-Federal power in the region is, and can remain, sufficient to meet the region's total loads. BPA simply cannot obtain the non-Federal power under present law."

The Committee amendment seeks to address the allocation issue by directing in section 5(g) that BPA commence, within nine months after enactment, negotiations and offer initial long-term, not to exceed 20 years, contracts to each of the following types of customers:

(A) existing public body and cooperative customers and investor-owned utility customers;

(B) Federal agency customers;

(C) electric utility customers; and

(D) direct service industrial customers.

Crucial to the legal authority to enter into these contracts is section 5(g)(7) which provides that BPA "shall be deemed to have sufficient resources" for the purposes of entering into such initial contracts. In order to fulfill its statutory commitments, the BPA must have adequate authority to acquire resources on a short-term and long-term basis.

As recognized in the Committee amendment, section 3(12) and section 6(a)(3), BPA now has authority in accordance with section 11(b)(6) of the Federal Columbia River Transmission System Act to use funds from the BPA fund to purchase electric power for periods of five years or less to meet its commitments. The Committee amendment does not alter that authority.

For the long term, section 6 authorizes the BPA to acquire "resources" to meet these contractual obligations. However, in providing this authority, the Committee was mindful of the concerns by some that this authority not provide a "blank check" to BPA to acquire whatever resources it deems appropriate. The Committee limited that authority and set priorities. For example, the Committee amendment defines the term "acquire" and "acquisition" in section 3(1) to make clear that BPA is not authorized to construct or "have ownership of" any "electric generating facility". Further, the Committee amendment provides that BPA must first "take into account planned savings from conservation and conservation measures". In addition, all acquisitions, except where specifically provided, must be consistent with the Regional Electric Power and Conservation Plan which the regional planning Council will adopt. If no plan is adopted, the criteria and considerations of section 4(e) will apply. As an added safeguard, the Council established by this bill is empowered to review many of the acquisitions. A demonstrated need for the resource will be required. In the case of "major resources" which have a planned capability of greater than 50 average megawatts, the BPA must go through a lengthy procedure, including hearings.

The Committee believes that this purchase authority is needed. However, the Committee also believes that the above provisions, as well as others, should meet the concerns expressed by the Committee and others. Most importantly, it is the Committee's intention to conduct periodic oversight over the BPA's use of this authority.●

SENATE—*Wednesday, September 24, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by Hon. DENNIS DECONCINI, a Senator from the State of Arizona.

PRAYER

The Reverend Laman H. Bruner, Jr., D.D., rector, St. Peter's Episcopal Church of Albany and chaplain of the New York State Assembly, Albany, N.Y., offered the following prayer:

Almighty and Everlasting God, we praise Thee for all that Thou has done for us as a nation. Deepen this root of our national life in Thy everlasting righteousness. Make us equal to our high trusts, reverent in the use of freedom, just in the exercise of power, and generous in the protection and care of weakness. Inspire the persons who direct our land that they may guide us wisely and well. Help us to be instruments of Thy will, thus enabling us to see Thy glory in happier personal lives. May our deepest faith ever be in Thee as we as a great people fulfill our rightful and lawful purpose as a force for justice and peace with honor among the nations of the world. In Thy holy name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 24, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DENNIS DECONCINI, a Senator from the State of Arizona, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. DECONCINI thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

THE JOURNAL

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I have no need for the time of the majority leader, and I reserve the time allotted to him.

RECOGNITION OF THE MINORITY LEADER

Mr. BAKER. Mr. President, I have no need for my time and no request for time, and I yield it back.

Mr. BAUCUS. Mr. President, since we will not proceed to the disapproval resolution until 10 o'clock, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DISAPPROVAL OF ENRICHED URANIUM TO INDIA

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now resume consideration of Senate Concurrent Resolution 109, which the clerk will state by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 109) disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569.

The Senate resumed consideration of the concurrent resolution.

Mr. GLENN. Mr. President, I suggest the absence of a quorum with the time equally divided among the four parties having time distribution under the previous order.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I speak in opposition to the resolution of disapproval.

Mr. President, I favor the requested shipment of nuclear fuel respecting Tarapur. Preventing these sales would, in my judgment, not only be seriously destructive of U.S. foreign policy and security interests but also self-defeating in terms of the very nonproliferation objectives which the opponents of the shipments intend to serve.

There are three basic aspects of this issue on which I am in fundamental disagreement with the proponents of this resolution:

First, their interpretation of the legal issues surrounding these shipments both with respect to U.S. obligations under the 1963 agreement with India and to the requirements of the Nuclear Nonproliferation Act.

Second, the assumption about the impact of these shipments upon the long-term objective of reducing the spread of nuclear weapons.

Finally, the views of the proponents concerning the effect on United States-Indian relations in enacting this resolution to disapprove further nuclear fuel shipments to India.

Mr. President, the principal legal issues are the nature of our obligations under the 1963 agreement with India—an international agreement—and the nature of the grace period under the Nuclear Nonproliferation Act—a U.S. statute. Overriding everything else, of course, is the word and the credibility of the United States as embodied in law. That is the foundation of our diplomacy and influence and, therefore, ultimately of our very security.

I think we could all agree that the word of the United States should not be given lightly or changed lightly if it is going to mean something in the world.

We concluded an international agreement with India 17 years ago which still has 13 years to run, and we agreed to supply fuel for the Tarapur reactors. They agreed to certain safeguards on the facilities and the fuel related to them.

Whatever else we may now wish we had said in that agreement, that is what we did say, and if we want to revise those obligations or forego the whole bargain, as we ultimately may decide to do, we should do so only recognizing that this is a serious course in diplomacy and one that could prove very costly. Because it is not just a matter of what we get out of the agreement itself, but also of how well we live up to what we agreed to, not only as far as the other party is concerned, in this case India, but also because of all the other partners-in-agreement we may have and those we may want to have in the future. We want them to feel that the word and the agreement of the United States can be surely relied upon.

This is not to say, Mr. President, that countries should never change the agreements they have or even end them completely if there are powerful reasons for doing so. Indeed, other countries will understand this necessity where these greater interests are clear, but they must indeed be important and they must indeed be overriding.

The same thing is true of the Nonproliferation Act.

At this point, I would like to pay my tribute to both of my good friends, Senator GLENN and Senator PERCY, for the extraordinary work they did on that law, and for its historic nature as far as our country is concerned, and also to pay my

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

tribute to Senator GLENN, my colleague on the Foreign Relations Committee, for his unique expertise in respect, for example, of verification in the case of the SALT II treaty, and also for his keeping himself so thoroughly abreast of nuclear and other weapons matters, which gives us, I think, a very important historic opportunity, I might say to the Senator.

I believe very deeply in the control, civilian control, of the military. But flying blind can hardly help us to effectuate that purpose.

So with a guide and a pilot like Senator GLENN with us it becomes a very, very feasible task. I think that was shown, to me at least, when we considered the alternatives to the B-1 bomber. I think that was one of the most expert performances I have seen here on the floor by any Senator in the knowledge and the great specificity with which we evaluated the question where, I think, in giving us three options, we came to a very sensible conclusion so far as our country was concerned.

So I do not want anything I say—where we might differ in a diplomatic view or even a legal view on this particular matter—to derogate in the slightest way from the excellence of the service, the sincerity, and the great helpfulness which this particular Senator has brought to the Foreign Relations Committee and to the country.

Mr. President, the Nonproliferation Act was a major U.S. initiative in which a great many of us, including myself, have had a hand. We knew when we passed it that we were dealing in an area of critical importance and that what we were doing was taking a chance for peace where there were great risks.

We also knew that a number of countries with whom we had close cooperation on nuclear matters would be greatly affected by the legislation and not always in ways they would find congenial. So we took pains to accomplish what we intended.

One of those intentions was to write in a period of adjustment to the new law, a grace period, as it has come to be called, during which the tougher standards we set in the law on full-scope safeguards would not apply. This was a kind of assurance to our friends and our customers who buy the raw materials from us that we would have a chance to work things out for a time, and that our cooperation would not just come to an end immediately.

They took us at our word and relied on it. So it becomes very important that we live up to the full scope of that grace period, as we defined it in the act; that it not be made any shorter than we led other countries to believe it would be.

Otherwise, we would look again like someone who cannot be relied upon to do what we said we were going to do. And this is just as true as the conditions which we laid down in the Nuclear Nonproliferation Act, as it is with the obligations we undertook in the international agreement with India. If we want to change either one in midstream, we had better be sure that it is for right and sufficient reasons.

Now let me turn to the merits of the issues themselves. In the first place, it has been argued that the United States would not be violating its obligations under the international agreement with India if we denied these shipments because of our enactment of the Nuclear Nonproliferation Act. For this proposition, we are directed by the proponents of this resolution to an analysis prepared by the American Law Division of the Congressional Research Service.

The argument is based upon a construction of the international agreement and of the subsidiary contract of sale concluded several years later which, in my judgment, is simply not tenable. I will do my best to remain true to its logic, even if I have trouble conveying its sense.

The 1963 Agreement for Cooperation in article II, paragraph C, says that the nuclear fuel for Tarapur "will be made available in accordance with the terms, conditions, and delivery schedules set forth in a contract to be made between the parties."

The contract itself was concluded at the end of 1965 between the Government of India and our own Atomic Energy Commission, which then administered these arrangements for the United States. It set forth the terms and conditions relating to purchase and delivery contemplated in the agreement. It also restated in article II the basic obligations of the international agreement itself and also provided as a routine proviso in article XV that, and I quote:

This contract shall be in all respects subject to and in accordance with all of the terms, conditions, and provisions of the Agreement for Cooperation and any amendments or revisions thereto.

In case there was any doubt on this score, article XV concluded with the phrase, and I am quoting, "In the event of incompatibility between this contract and the Agreement for Cooperation, the latter shall govern," to wit, the Agreement for Cooperation shall govern.

All of this seems plain enough. We had an international agreement that was implemented in part, but only in part, by a subsidiary contract of sale which is made explicitly subordinate to the agreement. But here the argument of the proponents gets a little trickier.

After the conclusion of the 1963 agreement, but before the execution of the contract of sale, we passed an act relating to the private ownership of nuclear materials act. That legislation provided for an end to the U.S. Government's monopoly of ownership over special nuclear material within the United States and an end to the leasing authority of the Atomic Energy Commission as of December 31, 1970.

Therefore, it gave rise to the prospect that, as of 1971, foreign governments would take title to the nuclear fuel purchased within the United States rather than at the port of export. As a result, it became necessary to assure that such governments would agree to abide by all the rules and regulations with respect to the handling of nuclear material which applied in this country.

Anticipating this change in the law, a contract of sale with India recognized in article XI that during the term of the contract there might be changes in the laws of the United States, and I quote, "With respect to ownership and supply of special nuclear material for use by the sellers"—to wit, the United States—"domestic distributees." In such event, read the contract, the parties "agree to consult with each other to determine the modifications, if any, required to this contract."

But those possible modifications were specifically described as "relating to ownership and responsibility for special nuclear material distributed by the seller domestically."

This is important to understand, in view of the tremendous significance attached to the plain meaning of this article of the contract by those who develop the arguments further. Most importantly, however, article XII goes on to stipulate that nothing in it "shall affect the obligation of the seller to sell * * * all of the purchaser's enriched uranium requirements for Tarapur Atomic Power Station as provided in article II."

In other words, Mr. President, even if this contract had the same legal status as an international agreement, which it does not, and even if it purported to amend that agreement, which it cannot, this article of the contract makes clear by its terms that it does not mean to affect the basic obligations of the United States under the agreement to supply the needs of Tarapur. It was meant to deal, as it says, with a specific set of problems relating to the prospective change in time that title to the fuel passed from the seller—the United States—to the purchaser—India.

Therefore, Mr. President, when this contract was amended in 1971 to adjust to that particular change in U.S. law, the preamble to the amendment referred again to the specific purpose of article XII of the basic contract as it related to, and again I quote, "ownership and supply of special nuclear material for use by the seller's domestic distributees."

Here, however, the arguments of the proponents of this resolution reaches the real breaking point. For in the amendment, article III paragraph IIID, it says that "The purchaser shall procure all necessary permits or licenses (including any special nuclear material license) and comply with all applicable laws, regulations and ordinances of the United States," and so forth, "in connection with the material delivered to the purchaser pursuant to article IIIA," and so forth.

By the way, that paragraph is found at page 67 of the committee report on this resolution.

Mr. President, this seems to be innocuous language, but it is nonetheless used by virtually all of those who sponsor the resolution of disapproval to find a

commitment by India to abide in advance with all the provisions of the Nuclear Nonproliferation Act, full-scope safeguards and all.

This is an amendment to a contract which was subordinate to the international agreement. Nonetheless it is said that India agreed 3 years before its nuclear explosion and 7 years before the passage of the Nuclear Nonproliferation Act to abide by whatever conditions the United States might one day place upon its obligations in that agreement.

And in case anyone thinks I am exaggerating the argument, let me quote the Congressional Research Service analysis, which is cited with approval in the committee's majority views:

> India's refusal to submit to adopt full-scale safeguards and inspections for all nuclear facilities is not in conformance with its 1971 undertaking to comply with all applicable U.S. laws. As a consequence, congressional rejection of the pending export may be regarded not as a violation of the agreement, but rather as an appropriate action proximately caused by India's refusal to live up to its undertaking to comply with applicable U.S. legal requirements. As such, India may be the Party in actual or potential breach of the agreement and in ordinary circumstances cannot walk away from the bargain previously struck.

Such an interpretation is no less untenable when the committee majority argues that India should have been on notice of an Atomic Energy Commission regulation which forbids exports "inimical to the interests of the United States." Do we honestly want to argue that an all-inclusive standard like that somehow affects the validity of a specific international commitment?

Mr. President, we may well vote to disapprove this sale on other grounds, but let us not delude ourselves into thinking that an important international agreement can be fundamentally revised by the circular reconstruction of subsidiary documents. I am not conceding that our failure to approve these shipments would give India a right to consider the entire 30-year agreement null and void. It is a long way to arriving at that argument. But I do not think a great nation can afford to be so casual about its important commitments as to interpret them out of existence.

Mr. SARBANES. Will the Senator yield?

Mr. JAVITS. I yield.

Mr. SARBANES. I want to say that I agree fully with the Senator's legal analysis of this matter. It is an extraordinarily fine analysis.

I think it is very important that the Members of the Senate, in reaching a judgment on this issue, ought not to proceed on the assumption that the legal argument is such that, if they vote not to send the fuel, they can still assert that India is bound by the 1963 agreement. They must at least face the consequences that the Indians will be able to make a legal case, and a strong one, that they are free of the constraints of the 1963 agreement, with all the consequences that would follow from that position, including important consequences with regard to nonproliferation policy. I think the Senator from New York has made a very cogent legal analysis of the situation.

The argument being made here on the other side does not fully set forth the consequences that will occur. I think that argument is based on a faulty legal position; I think the analysis made by the Senator from New York is a much better analysis from a legal point of view.

Mr. JAVITS. I thank my colleague.

Mr. President I would like to conclude in just a moment. Mr. President, it is highly unlikely in any way that there will be a juridical decision on this matter.

We are dealing with the second largest country, population wise, in all of Asia, a country which is a democracy, albeit with faults, but, of course, there are faults with our own. It has, on occasion, had lapses, but nonetheless it is a functioning democracy, a parliamentary democracy, and there has been an orderly succession in terms of the legislature and the executive, of those who rule it, which, considering the diverse nature of the population, is very broad and free public participation, with courts and other safeguards for the individual.

A difference of interpretation respecting agreements made between the United States and India will only result in our insisting on our legal point of view and their insisting on their legal point of view, which, at the moment, is diametrically opposed if we adopt this resolution and make that point of view the point of view of the United States, notwithstanding the President's expression the other way.

But looking over the horizon, Mr. President, they are going to stick by what they say, and we will then have an official position requiring us to stick by what we say. Mr. President, I think that famous expression, never the twain shall meet, is a very valid one.

While I have explained a view on the law, because I think it is important that we make the right decision on the law, the fact is that the point I am making is that we cannot be all that richer and we cannot be all that sure. Unless we were very sure and felt that some great compromise was involved respecting this matter—and that is what the proponents argue—which will color everything we do down the road for decades, we certainly would have no right to go this route.

Mr. President, because of the issues which are at stake in terms of the peace of the Asian Continent, in terms of the relationship of United States-India relations, to United States-People's Republic of China relations, in terms of the overriding fears in India respecting Pakistan and its developing of a nuclear weapon, which are reciprocated by Pakistan, I thought it could prove to be a grave reverse and could lead to a major watershed change in the relationship between ourselves and India which could have a very profound effect, Mr. President, upon the future of peace between our nations.

In addition, as has been pointed out, of course, by continuing these shipments we cause the safeguards to apply to a vast store of material which, if the Indians simply use their interpretation, would otherwise become free.

So, Mr. President, coupling the legal argument with the policy argument, it seems to me that the weight of judgment on the part of our Senate, with the greatest respect, and I have already expressed that very genuinely, and I mean every word of it, comes down on the side of our disapproval of this resolution.

Mr. GLENN. Will the Senator yield for a question?

Mr. JAVITS. Yes.

Mr. GLENN. Mr. President, before asking my question, I would like to state that I do not know of anyone in this Senate who has given longer and better service on the Foreign Relations Committee and in all aspects of our foreign relations policy than the distinguished Senator from New York. He truly is one on the committee to whom we refer and ask for his expert guidance and leadership in these matters. I have availed myself of that expertise of the Senator from New York on many, many occasions. So it is with particular regret that I find ourselves at opposite ends on this particular log we are on.

Mr. JAVITS. I would say it is unusual, too.

Mr. GLENN. Yes, because we have agreed on so many things in the past. Nevertheless, here we are.

I shall reply later on today in more detail to the legal case after others have spoken on it. I know Senator SARBANES wishes to speak on that, also.

I ask one question at this point: If we have an ironclad duty to supply India as long as she complies with the agreement, as the Senator's interpretation seems to indicate, how, then, would we go about cutting off India if she detonated another nuclear test? What if we had word come into the Chamber right now that India had set off another bomb. Assuming that our material from Tarapur was not used, would not India be able to claim that a cutoff for this reason was a breach of the agreement?

The way I believe the opposition is expressing its view of our contractual arrangements, which I shall track through later today, this condition was not there in 1963. But it seems to me that their view puts us in an open-ended situation with India where, regardless of what she does, we would never fail to make our shipments. That would follow from the interpretation on this that the distinguished Senator from New York indicates.

Mr. JAVITS. As I understand it, in the event of a nuclear explosion, there is automaticity in termination. I think that the way in which that would work would be, undoubtedly, by a declaration of the executive. But I do not consider it a closed-end proposition. I never contemplated, in the things I said, that there are no circumstances in which we could

end our supply of fuel. Of course we could.

Mr. GLENN. Would not the Senator agree that the President, in that situation, could also waive the requirements of the law, as he has done in this case?

Mr. JAVITS. And we could reverse it, as we propose to do here. After all, the President here is about to make the shipment and we stop it. We can do the same there. We always have the legislative power. We have done that many, many times.

Mr. GLENN. It would be difficult for me to see why he would want to enforce the law in that case any more than in this case, after all they have already used our material in one explosion, when we had told them, 4 years in advance, our view that this would not be a peaceful use of the material, that any explosion is an explosion. That is what is forbidden by the NPT and NNPA and it was clearly against our view of what we wanted them to do.

Mr. JAVITS. I think that the Senator picks up where I just spoke, because it is a fact, and we all know it is a fact, that between countries, the policy question is also important. I do not say that this is an unmixed issue. I have the greatest respect for his view, as I know the Senator would have for our view. But, given at least the cloudiness of the legal argument and, to my mind, the persuasiveness of the substantive argument, I think that it would be an unwise action on our part not to ship it.

Mr. GLENN. I am glad the Senator brought up the point of policy. That is a very important point here. What happens in the policy, quite apart from the legal argument, is that we are going to be living with it for a very long period of time. The policy matter is one I am concerned with. I am glad the Senator brought it up.

I think the legal arguments are admittedly, on both sdies, perhaps a gray area. I can track through the legalities where we always, in every step along the way, put some qualification in, that requires some future action to take place, some future negotiation, and which the Indians agreed to all the way through. I shall do that later today.

The interpretation put on by the Senator from New York, of course, also has its validity. So we are in a rather gray area in law here. With me, the important matter is coming back to the fact of whether we still retain our leadership with regard to NPT and the 111 other nations involved with us. That, I think, is the major consideration here.

Mr. JAVITS. It is a little bit analogous to the rigidity which has been so costly to us in respect of our human rights laws. We were so right; we are so right. In some cases, like the alienation of all the people of Brazil, a little too right. The fact is that a country can persist in its legal interpretation and we can persist in ours. And what this argument, which I summed up in "Never the twain shall meet," demonstrates, it seems to me, is that it is not worth being caught in that griddle, considering all of the circumstances and our relations with India.

I thank the Senator.

Mr. SARBANES. Will the Senator yield?

Mr. JAVITS. I am afraid I am using too much time.

Mr. SARBANES. I shall use my time.

Mr. JAVITS. If the Senator would, please, why does he not just get the floor?

Mr. President, I shall yield such time as he may require.

Mr. SARBANES. Mr. President, the Senator from Idaho asked me to manage the time on our side and I shall use that time. I think that would be fairer all around.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. SARBANES. Mr. President, I should like to engage the Senator from Ohio in a colloquy on the basis of the questioning on the legal argument that he has just directed toward the Senator from New York.

The point I sought to make earlier, which I think is extremely important, is now the assertion being made by the supporters of this disapproval resolution that the agreement with India will still be binding upon India even if we do not proceed with this shipment is highly questionable. There is language in the Congressional Research Service legal opinion to that effect and I believe that analysis to be faulty.

I am very frank to say to the Senator that I think they are trying to have their cake and eat it, too. They may make the judgment not to send the shipment; but if they are going to make that judgment, it ought to be made with full recognition of all the consequences that would follow from it. It should not be made on the premise that we can refuse to make the shipment and still expect India to be bound by the 1963 agreement, whether that is argued on legal grounds or, if one wants to contend that a legal argument can be made either way, whether given the strength of the legal argument India will be able to make, that they will choose to be bound as a practical matter by the constraints in the 1963 agreement. Does the Senator differ with that?

Mr. GLENN. My view of it is that this was not directly covered by CRS argument; they didn't address India's likely actions. It was not a major issue for them, as I read it. As I see it, however that whole argument becomes a considerably academic exercise for this reason: The unsafeguarded facilities that India already has available to them, over which we have no control whatsoever, will produce so much spent fuel by 1987, that they would have available thousands of kilograms of plutonium for weapons manufacture.

Come back to Tarapur, where we have some control. At Tarapur, even if that comes out from under safeguards, that would add, maybe, the capability for the manufacture of somewhere around 70 to 80 bombs if they use all the spent fuel over which we have control. So what we are talking about is, even if India interpreted this to be a breach of contract and took control of all that fuel we have there now that is our spent fuel, (over which we now exercise control) it would add maybe 10 or 15 percent to their overall bomb-making capabilities. So I feel that whether or not that part of the contract would be interpreted by India as a breach would, as far as the spread of nuclear weaponry in India goes or the manufacture of nuclear weaponry in India, be somewhat academic. We would be adding a comparatively small amount to the overall Indian total.

Mr. SARBANES. I understand that, Mr. President, but with all due respect to the Senator from Ohio, he is sliding off the question I put to him.

In the majority report from the committee, the only language quoted out of the CRS report is the legal language on pages 19 and 20 of the committee report, which suggests that even if we did not send this shipment, India would still be bound by the agreement. All I want to clarify is whether the Senator at least concedes that, in making the judgment and evaluating the factors, we would have to recognize, contrary to the argument being asserted here, that we are not going to continue to have the benefits of the 1963 agreement with respect to the limitations and the restrictions it places upon India.

One can make the other argument; I recognize that as something we shall have to weigh, too, that they have these other facilities which are under no agreement at all and which they have not been prepared to place under a full-scope safeguard. But with respect to this facility and the limitations there, I should think the Senator, upon analysis, would have to concede that those limitations and restrictions upon the Indians will no longer be available to the United States if this disapproval resolution is approved by the Congress.

Mr. GLENN. No, I would not agree with the distinguished Senator from Maryland. I do agree with the CRS report, for this reason, if the Senator will follow: We signed an agreement for cooperation in 1963. The Senator from New York elaborated on exactly the provisions of that, which said that the terms and conditions and delivery schedules would be set forth in a later contract. That is in the future.

The words say the conditions "would be set forth" in a contract to be made between the parties.

So that agreement said that we were going to have some future agreement on how our fuel was to be exported.

Let us go to the contract in 1966, on page 53 of the committee report, under commitments to sell and to purchase.

It says:

> The Seller shall sell to the Purchaser and the Purchaser shall purchase from the Seller, as needed, all of the Purchaser's requirements of enriched uranium for use as fuel for the Tarapur Atomic Power Station up to

a net amount of 14,500 kilograms of U-235 contained in the enriched uranium sold hereunder.

But the following page 54, down about nine lines, says:

Subject to such conditions and licenses as the Seller may require.

Once again we put a qualification on this. That is in 1966, when the license was signed, when we came up with the contract.

Going to page 63, page 63, at bottom of the page:

The sale which is the subject of this Contract shall be in all respects subject to and in accordance with all of the terms, conditions, and provisions of the Agreement for Cooperation and any amendments or revisions thereto.

It says that in the event of incompatibility, the agreement for cooperation shall govern.

But to go back to the agreement I started with, we find written into that language that it will be subject to future conditions to be set forth.

So all through this, we always were aware of a right to impose added conditions.

I can follow through on this——

Mr. SARBANES. Let me respond at point.

The Senator's argument is a very ingenious one. But the bottom line of the argument is, to say, in effect, that we can rewrite the agreement to say anything we want it to say.

The fact is that the supply contracts are subsidiary to the agreement.

The language referred to by the Senator with respect to prospective laws is in the supply contracts, and was meant at the time, as the Senator from New York has pointed out, to deal with the question of this transfer of title.

The rationale the Senator has just set out, in effect, makes this an utterly one-sided agreement that can be completely rewritten by one of the parties.

Mr. GLENN. If the Senator will yield, that is absolutely correct. I agree absolutely.

That was the interpretation the CRS put on through the American Law Division, that at each step through this in the agreement, the contract, and the amendment India had signed it leaving this open.

That was the basis for the conclusion that India would be in breach, not the United States, even if we refused this shipment, that we are completely in our rights to stop it, and that legally, from a strict legal interpretation of contract law, they would be in breach if they then took Tarapur spent fuel out from under the agreement they had with this country.

It is a narrow legal interpretation. I agree. But that is the basis for the interpretation we have put on.

If we want this whole thing to stand on legalisms, or not stand on legalisms, it seems to me that interpretation we follow through the contracts, each statement along the way, the conclusion has to be that India would be in breach.

I agree with the Service.

Mr. SARBANES. I think the Senator from New York was absolutely right in his analysis.

If we contend to the opposite party that the agreement they entered into could be completely written anyway we choose, at any time, then we really had no agreement.

So I think the better posture for the Senator to take, is at least to concede the consequences that will flow from the agreement coming to an end. India will be able to make a strong legal argument that it is no longer bound by the agreement and we will have to take the consequences of that.

The Senator may say, even accepting those consequences, that he still does not think the shipment should be made. In other words, bring the agreement to an end.

But I think it strains one's credulity to contend, as is being asserted by the supporters of the resolution of disapproval, that we can refuse to send the shipment and still continue to assert that India is bound by the limitations and restrictions in the agreement.

That does not make sense on its face. I think it is a faulty legal argument.

So, at a minimum, to help clarify the issues in this debate and the judgment we must make, the proponents of the resolution of disapproval ought at least to concede that, if we do not make this shipment, we will lose the benefit of whatever limitations or restrictions are contained in the agreement.

The Senator may say, even losing those limitations, that he does not want to make the shipment. All right. At least we have clarified something. But to make the contention we can withhold the shipment and still hold India to the limitations and restrictions written in the 1963 agreement, flies both in the face of legal analysis and, certainly, in the face of any sensible, practical analysis.

Mr. GLENN. If the Senator will yield, the language is there. I read it to him. The agreement is there, and that is what India signed.

If it was a faulty agreement from the Indian standpoint, I guess that is the fault of the Indian negotiators.

But we have available the agreement, signed by India. It is what our people negotiated. I agree it was a very feasible agreement all the way through.

But as I pointed out, at each step, from the first agreement of cooperation to the 1966 contract which was provided, to the 1971 amendment, at each step we kept options open. I say that India understood we were keeping options open, because we were switching over from a time period of strict government-to-government control to a time which allowed private ownership, but with strict licensing provisions where private ownership was involved. India, thereafter, had to get a license to ship it out of the country. This requirement to submit to licensing was part of the agreement.

There is some argument on the other side that nobody could ever have foreseen that leaving that loophole in there would have included such a thing as NNPA coming along. I cannot quarrel with that. I think it is probably right. I think in retrospect, in reading this, India probably agrees they wish they had not signed that. But they did.

That is the kind of legalistic argument the Senator from Maryland is making; if we want to track through the language from one document to another, as interpreted by the Congressional Research Service, the American Law Division, there is a legal argument I think is correct. I do not see any other interpretation can be put on it.

I will add one additional thing, that, once again, I think whether this argument, the legalistic argument, is true or not, whichever way we come down on that, on our opposing sides of this, the fact remains that we sent material to India. They misused it against our wishes, even after we told them this would violate our 1956 contract. It was sold for peaceful purposes. We sent them, 4 years before their explosion, a note which interpreted what we meant by peaceful purposes; that was the view that an explosion is an explosion is an explosion, and that it is warlike, not "peaceful," whether it is declared to be so or not by one party. They went ahead anyway, against our interpretation and used our material in a way we said would be a misuse of our fuel.

Now, we stand before 111 other Nonproliferation Treaty signers around the world that have agreed they will not build nuclear weapons, in return for our cooperation, and we stand now to give cooperation to the most flagrant violator in the history of atomic energy, in the history of our nuclear program—India. That is the way this will be interpreted around the world.

I know that some of the administration representatives have been coming over here and have been saying that other nations are not objecting to this shipment. That, I believe, is a misrepresentation of fact. Because no check of other government's official positions has been made. These governments will tell you that if you question them properly. I resent the fact that, in effect, the administration has been misrepresenting the facts in this case.

I have checked with five Embassies so far, and they have said that their governments are taking no action, taking no stand, on this particular issue. Those are the Governments of France, West Germany, the United Kingdom, Japan, and Canada. We have not yet heard back from Japan. Canada has indicated that they stand by their original commitment to cut off their supplies to India. West Germany, France, and the United Kingdom have said they have taken no position.

So I say to Senators and their staffs who are listening in their offices that when there is indication by administration representatives that there is agreement among NPT signers that this is a good sale, that is flat out not true. I do not believe that can be substantiated in fact by the official pronouncements of any government, because we have checked with those five Embassies.

Whether the legalistic argument the Senator makes or my interpretation is correct, the fact is that India misused the material we previously sent them. It was to be used only for peaceful purposes. We interpreted that to rule out nuclear explosives of any kind. They went ahead and used our material for a so-called peaceful explosive. Now in considering these exports to such nation we have to stand before 100 NPT nations. How can we show them that we meant what we said when we signed this act in 1978, that we would not ship to countries not accepting full-scope safeguards like NPT signers, if we approve these exports.

Mr. SARBANES. Mr. President, how much time remains on our side?

The ACTING PRESIDENT pro tempore. The Senator from Idaho has 54 minutes remaining.

Mr. SARBANES. I will yield the floor soon. The Senator from Idaho is here, and I know that he is prepared to make his statement.

I am glad to see the Senator from Ohio moving, in the course of his argument, away from the point I sought to refine here.

In the Senate's consideration of this issue, it is very important that no Member of the Senate proceed to make a judgment, on the basis of the weak legal argument that the United States can stop sending these shipments and still expect India to be bound by the limitations and the restrictions of the 1963 agreement. One may recognize that they will not be, and nonetheless be prepared to accept those consequences and still argue for the position of the Senator from Ohio. But at least there should be no effort to bolster that argument by adding to it the notion that somehow the spent fuel there will still be governed by the limitations in the 1963 agreement and that the United States will continue to have the benefit of those limitations and restrictions with respect to nonproliferation.

First of all, as I have argued, I believe that the legal case for doing that is not valid. Second, even if one contends that there is some legal argument on both sides, clearly, with the strong legal argument they will be able to make, the Government of India is not going to remain bound by the restrictions and the limitations.

The Senator from Ohio can use his other arguments, but not that one, as it is being used in some of the arguments.

Mr. GLENN. If the Senator will yield, I agree that, in all practicality, that probably would be the action India would take. But the Senator started off with the legalistic argument of interpreting the law.

Mr. SARBANES. That is right.

I say to the Senator that if he went into a court of law and were to hand out two briefs—one brief arguing that India is free of the restrictions if the shipment is not made, and the other brief that if the shipment is not made, India will still have to continue to abide by the limitations and the restrictions of the 1963 agreement—and I were asked which brief would be more likely to prevail before the court, I would say the brief that argues that the other limitations and restrictions cease to apply under the agreement if the shipment is not sent.

To argue on the other side is to make a tenuous legal argument. That argument has been used. It has been argued here that we are going to continue to have the benefit of those limitations and restrictions, and we are not going to. Earlier, the Senator from New York analyzed this faulty proposition very carefully and very thoroughly, and I have great respect for his legal ability.

Mr. GLENN. Will the Senator tell me what India did after Canada cut her off in 1974, after the explosion?

Mr. SARBANES. With respect to the United States?

Mr. GLENN. No, with respect to the agreement with Canada—the safeguards and all the restrictions that were on India at that time, under the Canadian agreement.

Mr. SARBANES. I am not certain. Did they continue to adhere?

Mr. GLENN. They continued safeguards on the Canadian-built facilities.

Mr. SARBANES. And the Senator from Ohio expects them to continue them here?

Mr. GLENN. I do not know, but——

Mr. SARBANES. In making the judgment before us today, would the Senator argue that a prudent and reasonable Member of the U.S. Senate should proceed on the view that the safeguards of the 1963 agreement will be maintained by India, or on the view that there is a very high probability that they will not be maintained?

Mr. GLENN. I will be glad to respond to that. My view is that it is comparatively immaterial whether they do or do not. The Senator was the one who made the legal argument, and I responded to that by going through a step-by-step procedure of how the Congressional Research Service arrived at their conclusion, and I believe it holds together. It is good from a legalistic standpoint, whether or not the Senator agrees with it.

However, quite apart from the legal argument is the fact of whether we are going to continue to try to provide leadership with 100 NPT nations around the world on a legalistic argument.

Mr. SARBANES. That is the argument the Senator should be making.

Mr. GLENN. I am.

Mr. SARBANES. The only argument I do not want the Senator to make, because I believe it befuddles the issue, is the assertion made to Members that they can support the Senator's position and still expect to continue to have the benefit of the limitations and restrictions of the 1963 agreement on Indian action. The Senator is not going to have those, and he should concede it.

Mr. GLENN. I believe that we can expect that we will have the legal aspects on our side, as the Congressional Research Service has said.

However, from a practical standpoint, whether India does or does not go along with that is immaterial; because the bomb material they would have released to them from our safeguarded Tarapur facilities, compared to the overall unsafeguarded facilities that they have available for spent fuel between now and 1993, is so great that it makes our little ones on control look small by comparison. If India wants bombs, they are going to have bombs, whatever we do. There is no question about that, and they will have them from facilities over which we have no control, in this or any other agreement.

That was the point I was making earlier—that while the legalistic argument can be made, the practicality is that India is going to be able to have bombs. But, are we going to cooperate with them, after they have misused our material? That is the point to be made today.

Mr. SARBANES. With respect to the Senator's argument—which shifts constantly — from a legal perspective, I would prefer the brief that says, "You are free of the restrictions." I believe that legal argument is the far stronger argument.

Given the strength of that legal argument, India obviously has clear legal grounds on which not to be bound by the limitations and restrictions, quite aside from the practical arguments for not being bound.

So it is inaccurate to argue, as has been argued both in the course of writing about this question and in this debate, that somehow we can withhold the shipment and still continue to reap all the benefits of the limitations and the restrictions contained in the 1963 agreement with respect to the Tarapur facilities. We are not going to have the benefit of those limitations and restrictions.

Mr. President, I yield the floor.

Mr. CHURCH. Mr. President, will the Chair be kind enough to inform me how much time remains to me?

The ACTING PRESIDENT pro tempore. The Senator from Idaho has 46 minutes remaining.

Mr. CHURCH. I thank the Chair.

Mr. President, I support the export of this nuclear fuel to India and I oppose the resolution of disapproval which would overturn the President's Executive order. As the 8 to 7 committee vote in favor of disapproving the two fuel exports to India indicates, this is a close question.

The seven members of the Foreign Relations Committee who voted in the minority, believe that a final decision must reflect a careful balancing of the complex U.S. foreign policy, security, and nonproliferation interests which are involved

in this question. Unlike opponents of this export, we do not believe that a decision as important as this one is for overall United States-Indian relations should hang on a single string, the alleged credibility of a stringent U.S. nonproliferation policy. That, in fact, is not the issue that is at stake here, and it is harmful to attempt to make this vote a referendum on the credibility of our nonproliferation policy.

I am convinced that permitting these exports to be approved is in U.S. interests both with respect to nonproliferation and foreign policy grounds. Let me enumerate why I believe this is so:

First, the central goal of full-scope safeguards and the viability of the Nuclear Nonproliferation Act will be preserved. In an exchange of letters between the Secretary of State and myself, the administration agrees that these exports will not set a precedent for treatment of future Indian applications. The administration agrees that the full scope safeguards provisions of the NNPA will apply to any future nuclear application. Further, the administration has committed itself not to ship the second export to India until late next year, and to consult with Congress well in advance on progress being made in discussions with India on our overall nonproliferation objectives.

I shall read the commitments given by Secretary Muskie in response to my letter:

I wish to assure the Congress that, while the first shipment of Tarapur fuel should leave the United States as promptly as possible after the Executive Order becomes effective, the Administration will not permit the second shipment to leave the United States until it is needed to assure continuity of operations at the Hyderabad fuel fabrication plant, which has consistently been considered by both India and the United States as necessary for the efficient and continuous operation of the Tarapur Atomic Power Station. We will consult with Congress well in advance of the date of the export of the second shipment on the progress that is being made in discussions with India on safeguards and other non-proliferation objectives.

I want to further assure the Congress that export of the second fuel shipment will not be permitted to occur at all if the President finds that India has exploded a nuclear device, is preparing to explode a nuclear device, or is engaging in other activities that would require termination of exports under Section 129 of the Atomic Energy Act. The President will not propose to Congress that these provisions be waived in order to permit the second fuel shipment.

I agree that approval of these exports will not constitute a precedent for the treatment of future export license applications. The fullscope safeguards export licensing criterion as set forth in Section 128a(1) of the Atomic Energy Act will apply to any future license applications for the export of nuclear fuel to Tarapur.

Now I move from the letter of the Secretary of State back again to the text of my own argument.

Mr. SARBANES. Mr. President, will the Senator yield for a question?

Mr. CHURCH. I am happy to yield to the able Senator from Maryland.

Mr. SARBANES. I think it is extremely important for Members of the Senate to review in the committee report the exchange of letters between the chairman of the Foreign Relations Committee and the Secretary of State on this issue because in the course of that exchange the chairman has, in effect, modified in a very important and constructive way, the perspective that people should bring to this question. The Members should recognize that the agreements on this issue which he has elicited from the administration in this correspondence constitute a basis for proceeding which I think preserves the objective the overwhelming majority of the Members of this body would wish to achieve.

Mr. CHURCH. I thank the Senator very much for this observation and pursuant to his suggestion, Mr. President, I ask unanimous consent to have printed in the RECORD the full text of my letter together with the full text of the Secretary's reply.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

Hon. EDMUND S. MUSKIE,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: The Foreign Relations Committee will consider on September 10 what recommendation it wishes to make to the Senate regarding Executive Order 12218 of June 19 authorizing nuclear exports to India. This is an extremely difficult issue that has caused me personal concern. I would like to support the President on this matter of national security significance. I recognize the nuclear non-proliferation and foreign policy benefits of the course of action taken by the President.

I am concerned, however, that a less than adequate case has been made by the Administration that both fuel shipments really are needed by India at this time. In this regard, as you know, during the past weeks our staffs have discussed in depth the non-proliferation and foreign policy issues related to the President's June 19 decision. In those discussions, several matters were identified on which I believe further Administration assurances would make it easier for the Committee and the Senate to support the President's decision.

First, I would like to request your assurance that the Administration will not permit the second fuel shipment to be exported before it is needed to ensure the efficient and continuous operation of the Tarapur Power Station. I understand the time period involved is about a year. This will provide additional time for the Administration to continue to seek to narrow U.S. non-proliferation differences with India.

Second, I would appreciate your commitment to consult with Congress well in advance of permitting the second shipment to be made. We would expect to review with you the progress that is being made in discussions with India on safeguards and other non-proliferation objectives at that time. This will help Congress to determine whether India is willing to strengthen its non-proliferation policies and commitments.

Third, I would like your assurance that the second fuel shipment will not be permitted to occur at all if the President finds India has exploded a nuclear device, is preparing to explode a nuclear device, or is engaging in other activities that would require termination of exports under section 129 of the Atomic Energy Act. In other words, I seek a commitment that, if these sanctions become applicable, the President will not propose to the Congress that these particular provisions be waived in order to permit the second fuel shipment.

I think both the Administration and the Congress must agree that approval of these exports will not constitute a precedent for treatment of future export license applications. Therefore, I request that you provide me your assurance that the Administration will regard the full-scope safeguards licensing criterion as set forth in section 128a(1) of the Atomic Energy Act as applicable to any future license applications for the export of fuel to Tarapur.

It is my belief that the Administration should provide the Committee these commitments in writing. This will demonstrate our seriousness of purpose in working together to find a solution to this difficult issue, a solution that will serve the national interest and be widely supported.

Sincerely,

FRANK CHURCH,
Chairman.

DEAR MR. CHAIRMAN: Thank you for your letter of September 9 concerning the Foreign Relations Committee's consideration of the President's Executive Order authorizing the export of two nuclear fuel shipments to India. I understand the concerns you raised in your letter and appreciate your desire to find a mutually acceptable solution. The course you propose is acceptable to the Administration.

During the past weeks we have discussed in depth with the members of Congress the non-proliferation and foreign policy benefits we see in proceeding with these exports. As you point out, questions have been raised as to whether the two fuel shipments are both needed in India at this time. In this regard, the Hyderabad fuel fabrication plant in India, which fabricates fuel for Tarapur, is currently out of fresh fuel and urgently needs the first shipment. Once the first export is received the fuel fabrication plant will be able to operate for approximately one year before it is ready to begin work on the second shipment. Since air transport of the fuel is much more expensive than the normal surface transportation, the second shipment should be released in sufficient time to allow India to arrange for surface shipment of the second export (although it will certainly need to air ship the first).

In this light, I wish to assure the Congress that, while the first shipment of Tarapur fuel should leave the United States as promptly as possible after Executive Order becomes effective, the Administration will not permit the second shipment to leave the United States until it is needed to assure continuity of operations at the Hyderabad fuel fabrication plant, which has consistently been considered by both India and the United States as necessary for the efficient and continuous operation of the Tarapur Atomic Power Station. We will consult with Congress well in advance of the date of the export of the second shipment on the progress that is being made in discussions with India on safeguards and other non-proliferation objectives.

I want to further assure the Congress that export of the second fuel shipment will not be permitted to occur at all if the President finds that India has exploded a nuclear device, is preparing to explode a nuclear device, or is engaging in other activities that would require termination of exports under Section 129 of the Atomic Energy Act. The President

will not propose to Congress that these provisions be waived in order to permit the second fuel shipment.

I agree that approval of these exports will not constitute a precedent for the treatment of future export license applications. The full-scope safeguards export licensing criterion as set forth in Section 128a(1) of the Atomic Energy Act will apply to any future license applications for the export of nuclear fuel to Tarapur.

The foregoing conditions are intended to demonstrate the continued strong commitment of the United States to the policy of nuclear non-proliferation. I hope you will agree that these conditions will ensure that the exports here at issue will be carried out in a manner that is fully consistent with that commitment.

The proposed exports will assure the continuation in force of important safeguards applicable to Tarapur. We will use the time gained by these exports to seek to reduce our non-proliferation differences with India. I believe it is essential that the Congress not deprive the President of the opportunity to pursue constructive negotiations on this subject.

With best wishes, I am

Sincerely,

EDMUND S. MUSKIE.

Mr. GLENN. Mr. President, will the Senator yield for a question on that letter?

Mr. CHURCH. I yield.

Mr. GLENN. That letter says we are going to make the first shipment because the Hyderabad fuel fabrication plant needs it. This is a facility where we have no supply commitment. Leaving that aside, it seems to me that the latter part of the letter says that the only restrictions on that second shipment are: that it will not be sent until it is needed and that the President will consult with Congress well in advance of the date of the export of the second shipment on the progress that is being made in discussions with India on safeguards and other proliferation objectives. Then it goes ahead and says that the shipment will not be permitted to occur at all if the President finds India has exploded a nuclear device, is preparing to explode a nuclear device, or is engaging in other activities that will require termination of exports.

That is no restriction at all, as I see it, because we did not even know when India was going to make the first explosion. How are we going to know whether India is preparing to make a second one?

That would be the only basis for cut-off provided by this letter.

So I see that the letter does very, very little with regard to our nonproliferation objective.

It would say we would make that second shipment unless we knew they had exploded a device or were preparing to do one, something that in the past, we have been unable to determine in advance. So I do not see that that letter really amounts to anything at all.

Does the Senator care to comment on that?

Mr. CHURCH. No, I see no reason to do so. I have already heard the Senator's opinion of the two letters. But I disagree with his interpretation.

Mr. GLENN. My question, I guess, was to ask for a comment of those specific items.

Mr. CHURCH. In the first place we were certainly aware of the detonation of the Indian device when it occurred in 1974. The fact that we may not have known in advance that preparations were being made to explode such a device at that time does not necessarily mean the United States will not know if such an explosion were to be planned in the future. Having been forewarned, I think we are alerted to the possibility, and the likelihood of our discovering that the Indian Government has launched upon such a ventore is much improved.

So I do not dismiss this assurance as being meaningless at all. I think it is significant.

Furthermore, this exchange of letters and the assurances that have been given the Senate by the Secretary of State clearly put India on notice that these will be the last two shipments of enriched uranium for use at the Tarapur plant to which the full-scope safeguards provisions of the NNPA will not apply. The provisions of the Atomic Energy Act and the Nonproliferation Act will clearly apply to any future applications by India for enriched uranium.

If we were to put ourselves in the place of India, I think it would make a very great difference to us whether we were supplied in accordance with terms of an agreement entered into in 1963 with these two proposed shipments of fuel, and had received reasonable notice that all further shipments would be subject to the full-scope inspections provisions of U.S. law.

(Mr. ZORINSKY assumed the chair.)

Mr. CHURCH. The 2 years that are involved here constitute an opportunity for India to make one of two decisions: First, to accept full-scope inspection on all of their nuclear plants, which we would hope very much for and which we would pursue in our negotiations with India or, on the other hand, either to make arrangements with the Soviet Union or other countries for future shipments of enriched uranium, or to build the necesary facilities in India itself.

But the abrupt denial of these two quantities of enriched uranium, to be shipped pursuant to our solemn agreement to furnish the fuel, will be very disruptive to India and cannot help but have the most adverse consequences on Indian attitudes toward the United States.

Is it worth the price? I think it is not, and the reasons why I believe this are contained in the argument I now return to.

Approving the licenses will advance, not retard, U.S. nonproliferation interests, in my view, because it will preserve the existing controls at the Tarapur atomic power station, thereby preventing India from taking measures severely disadvantageous to the international nonproliferation regime, such as terminating the IAEA's safeguards for reprocessing the large quantities of spent fuel presently at Tarapur.

Third, the United States standing as a nuclear trading partner that sticks by its pledged word, that keeps its end of a bargain, will be improved.

As Senators know, the recently completed International Nuclear Fuel Cycle Evaluation Conference made clear the direct link between reliability of nuclear supply, on the one hand, and the willingness of States to accept strict international controls on their nuclear activities, on the other.

Unless nonnuclear-weapons states see that the nuclear-weapons states honor their side of the bargain to share the benefits of peaceful nuclear technology, they are going to resist further restrictions on their own nuclear activities in the name of nonproliferation.

Finally, the U.S. voice in New Delhi will not be drowned out by a strident anti-American outcry in India which could drive the Indian Government further away from U.S. policies.

There is every possibility that India would turn to the Soviet Union to replace us at the Tarapur; Soviet influence will thus grow as our own diminishes. At this time of Soviet challenge in Southwest Asia the United States needs to preserve such influence as it may have in New Delhi.

Mr. President, as I have tried to make clear, I believe that approving these exports will help advance U.S. interests in Southwest Asia, including our nonproliferation objectives.

But opponents of the exports argue that our nonproliferation policy would be undermined while U.S. ability to talk to India about foreign policy issues of mutual concern will be largely unaffected. In effect they argue that denying India the shipments will be largely cost-free. I would like to examine their arguments in further detail.

Opponents of the exports characterize this as a landmark test of U.S. nonproliferation policy. They say, in particular, that the U.S. Nuclear Nonproliferation Act, which requires the termination of U.S. exports to countries which have not accepted full-scope safeguards after the transition period, will be violated.

Opponents argue that the entire international nonproliferation regime, including the viability of the Nonproliferation Treaty, would be threatened if we approved the shipments.

These apocalyptic assertions are simply wrong. It is unfortunate, even tragic, that India refuses to follow a comprehensive nonproliferation policy. In the long run it is India which is going to suffer most by the harm it is doing to its own nonproliferation credentials and by the sense of insecurity it is stimulating in Pakistan. It may well be that in the end if India refuses to see reason on full-scope safeguards, the United States will have no choice but to negotiate an orderly termination of the 1963 agreement.

But we are not at that point yet, and I strongly believe that this is not a test of the NNPA, and I am convinced it is harmful to U.S. interests to insist that it is.

First, if the Senate made clear that it is permitting these licenses to be approved only by virtue of the fact that they fall within the intent of the grace period of the NNPA, and that the full-scope safeguards criterion will have to apply to all future licenses, there can be no question of the continued credibility of the act or of the full-scope safeguards requirement as it would apply to all future export applications.

The grace period of the act was clearly designed to avoid circumvention of the September 10, 1979 cutoff for filing of export applications, which would not have to be subject to the full-scope safeguard criterion, by preventing the mass filing of applications at the last moment. India filed these two applications, one in September 1978, and the second in August 1979, at times consistent with the normal schedule which had been worked out in 1976 with the help of U.S. fuel experts.

Therefore, it is clear that these applications are not subject to the section 128 full-scope safeguards requirement of the Atomic Energy Act as amended by the NNPA; that the President is not required to waive section 128; and that in approving these licenses we will be acting in conformity with the NNPA.

Mr. President, the United States has highly important controls at Tarapur by virtue of the 1963 cooperation agreement. India agreed to permit safeguards at Tarapur, to use only U.S. fuel at Tarapur, not to reprocess the spent fuel without U.S. consent, and not to use U.S.-supplied material for any purpose other than to fuel the electric power generators at Tarapur.

India has kept that agreement. Strangely, opponents of the exports give little attention to the devastating impact that the loss of these controls and safeguards at Tarapur could have for U.S. nonproliferation policy. They argue illogically that inasmuch as India is obtaining plutonium from other unsafeguarded indigenous sources, it does not make any real difference if India is released from the 1963 agreement, terminates safeguards that it contains, and then reprocesses the spent fuel at Tarapur for the plutonium content.

Now, this may not happen, but we have no reason to believe it will not if we breach the agreement with India.

Mr. President, how can U.S. nonproliferation objectives, particularly the effort to slow the spread of plutonium, be served by allowing India to remove the Tarapur spent fuel from safeguards, extract its plutonium by reprocessing, and add its unsafeguarded plutonium to its other sources? It is in our nonproliferation interests to deter India from commencing large-scale reprocessing until adequate international safeguards and controls can be developed.

The opponents of the exports, in what seems to me to be an overdrawn argument, paint a picture of an India subservient to Soviet interests and opposed to U.S. policies. They assert that the decision on these exports will have no impact on India's foreign policy orientation, or Indian attitudes toward the United States.

The truth of the matter is that India is the key power in Southwest Asia, it is concerned about the Soviet presence in Afghanistan and has said so, and its own aspirations to great power status and leadership of the Third World are well known. These concerns will cause India to continue to play the same role as in the past, in which it seeks to find a balance between the superpowers, tilting now one way, now another. India has taken many actions contrary to U.S. desires, and it has opposed numerous Soviet initiatives, as well. With its colonial legacy, India is hypersensitive to any perception that it is being pressured by a foreign power, or that it is the client of either of the superpowers.

But at the same time, India is open to U.S. influence: India has called for the withdrawal of Soviet troops from Afghanistan; India is seeking arms and support from the West as well as from the U.S.S.R.; India has moderated her antagonism toward Pakistan; India has publicly deplored the holding of the American hostages in Iran; India has exercised a moderating influence in the North-South dialog. Our voice is presently heard in New Delhi.

But what will happen if the United States refuses these exports in clear violation of our own agreement to supply the fuel as contained in the 1963 compact? Well, Mr. President, in my view, anti-American elements throughout the Indian political spectrum will rise up and add new pressure upon the Government. Those who say the United States cannot be depended on as a counterbalance to the Soviet Union will become stronger. The moderates, concerned about the Soviet presence in Afghanistan, who want to hold back the jingoists, the pro-Soviets, the hawks who want the bomb, will be weakened. None of these outcomes serves U.S. interests.

The situation in Southeast Asia is unstable. The United States has great political and security interests there. We want and we need to retain our position in India, to retain the opportunity to persuade India to play a stabilizing role and to serve as a barrier to further Soviet advances toward the Indian Ocean and the Persian Gulf. Approving these exports will retain that opportunity for us. Can anyone honestly contend that alienating India will make it easier to counter Soviet expansionism?

That is the basic question. And clearly it argues against the breach of this agreement and the peremptory refusal on our part, without reasonable notice to India, to send further fuel to the Tarapur plant.

Mr. President, others, including the able Senator from Maryland, Mr. SARBANES, and my Republican colleague on the committee, the ranking member, Senator JAVITS, have addressed themselves to the legal aspects of this question. And I see no reason to reiterate those arguments.

For myself, I think that, both from the standpoint of the overall interests of our nonproliferation objectives and from the standpoint of preserving such influence as we have in New Delhi, these exports should go forward and the President's decision should be upheld.

I hope very much that the Senate vote will support the President in this case. I am not unmindful that there are arguments on the other side of this question, nor do I scorn them. But everyone involved on one side or the other has said at one time or another that it is a very close question. Well, if that is so, then is not the President entitled to the benefit of the doubt?

There have been times when I have opposed the President of the United States, even Presidents of my own party, on matters as grave as a foreign war. And I am prepared to oppose the President whenever I believe that the decisions he makes in the field of foreign policy are contrary to the best interests of my country.

But here is such a close question that I see no reason for the Congress to rise up and veto the President's decision. It weakens his hand in dealing with the entire situation that confronts us in Southwest Asia. And for no convincing purpose.

This is the reason that it seems to me highly unwise for the Senate to refuse these exports. I cannot help but conclude that the reason that so many wish to do it—and here I exclude the distinguished Senator from Ohio (Mr. GLENN) because of his close connection with the passage of the NNPA and his interest in that legislation—is because of our underlying disapproval of India and its foreign policy. Here is a chance to get even.

Well, Mr. President, that is like cutting off our nose to spite our face. We will weaken our own influence, desert our own interests, and accomplish nothing of consequence in the doing.

I cannot for the life of me see the wisdom of pursuing such a course.

Mr. GLENN. Will the Senator yield?

Mr. CHURCH. Let me check the time.

Mr. GLENN. I will use my time.

Mr. CHURCH. May I just explain to the Senator that we have three more Senators who wish to speak and we are now limited to less than 30 minutes.

Mr. GLENN. I realize the time problem here. I yield myself such time as I might need.

The PRESIDING OFFICER (Mr. EXON). The Senator from Ohio.

Mr. GLENN. Mr. President, I will comment on the Senator's remarks. The Senator has taken a tremendous interest in this whole thing, as I know from working with him when we were considering the NNPA. I am sorry that we find ourselves, especially with my committee chairman, on opposite sides of this particular issue, but we have some disagreements in this area.

In the Senator's remarks, he commented forcefully about the importance of the exchange of letters with Senator Muskie. But I would say this: the letter from Senator Muskie proposes absolutely nothing new, because the President is already required by law to stop exports to nations developing nuclear weapons or testing the explosives. So

there is absolutely nothing new that the Secretary of State has offered us in that exchange of letters that is not already in law.

That was a throwaway.

Mr. CHURCH. Mr. President, will the Senator yield on that point?

Mr. GLENN. Briefly, in the interests of time.

Mr. CHURCH. My remarks will be brief.

I disagree with the Senator's conclusion because there is a waiver in the law regarding section 129 of the Atomic Energy Act that is open for the President to use. He promises in this exchange of letters that he will not use it with respect to the second shipment, which is to be delayed until next year. So the Senate can be assured, if his hand is upheld in connection with these two shipments, that the waiver authority will not be used to permit the second shipment to occur if the President concludes that India is taking actions in violation to section 129.

Mr. GLENN. Let me move on to the second point. That was that there would not be an abrupt cutoff.

I would hardly consider it abrupt when we have had the NPT in existence since 1968. We have encouraged India to adhere since that time. That is over 12 years. We tried very forcefully, beginning in 1976, to convince India to accept full-scope safeguards. Since 1978 they have had full knowledge, since the passage of the NNPA, that there would be a cutoff of fuel if they did not come around in that period of time. I hardly think this is an abrupt cutoff.

As far as our nuclear trading partnerships being reliable, which was somehow being called into question here, we decided in the NNPA, and it was the thought of all of us here—in fact, this Senate voted 88 to 3—that our policy would be that we were through being soft on these issues, that we were going to cooperate with those who would cooperate with us in the nonproliferation area. This is at the heart of NNPA, that we will work with those who cooperate with us.

Another point was made concerning Indian foreign policy flowing in our direction.

But let me point out the headline from the Statesman in New Delhi, "India to help Iran beat U.S. Sanctions" in trade.

So this has not all been a favorable move toward our side so far as foreign policy.

For the last point, so far as getting even with India for her unwillingness to agree with us on other foreign policy issues, I would disagree most strongly with that. I think there is abhorrence of India, but the vote that I hope will occur today is an indication of our abhorrence at India's use of our material in their first bomb, material which was never intended by us to be used in this fashion; that material was sent for peaceful purposes only. There is no indication of getting even with India. I consider myself a friend of India. I am sure that those covering these debates for the Indian press will find that hard to believe today. I have been to India on several occasions. I want to cooperate in every way with India but not in this instance where they took advantage of us and where we have so much to lose in our leadership with other NPT nations, 111 of them which have signed this treaty and foresworn the development of nuclear weaponry.

Mr. President, I reserve the remainder of my time.

Mr. CHURCH. Mr. President, I yield 7 minutes to the Senator from Washington.

Mr. JACKSON. Mr. President, today the Senate is faced with a decision which may have profound implications for the foreign policy of the United States. My colleagues and I will be voting on whether to overturn a Presidential Executive order which approved exports of nuclear fuel for the Tarapur nuclear power station near Bombay, India. Some of my colleagues have, in my view, taken a rather one-dimensional look at this issue. I hope in my remarks today to broaden the perspective of this debate to insure that the full potential ramifications of our actions are exposed.

I would first like to try to clarify a muddled situation with regard to the Tarapur export and the concerns about Indian nuclear explosive activities. As part of a 1956 cooperative agreement, the U.S. agreed to supply heavy water to India for peaceful purposes. Using a Canadian-supplied CANDU reactor with some U.S.-supplied heavy water, the Indian Government succeeded in producing weapons-grade plutonium and detonated what they termed to be a peaceful nuclear explosive in 1974. In my view this was an extremely regrettable act on the part of the Indian Government and was the clear event which triggered a heightened concern about proliferation of nuclear explosives in the Third World nations. The Nuclear Nonproliferation Act of 1978 was enacted in no small measure because of the Indian Government's decision to construct and explode a nuclear explosive device.

However, I think it is important to separate in our minds the need for nuclear fuel for the Tarapur reactors from the current Indian reluctance to forsake any future development and testing of nuclear explosives. I do not believe that we can successfully use the pending export of Tarapur fuel as a hostage to achieve the Indian Government's agreement to apply full-scope safeguards to all of the other nuclear activities in that country. Instead we must continue negotiations in an attempt to convince the Indian Government to apply comprehensive international safeguards to all of their nuclear activities. The export of the Tarapur fuel keeps the door open for these continuing talks.

In 1963 the United States and India signed a cooperative agreement for civilian uses of atomic energy. The agreement provided for, as needed, U.S. supply of all of the enriched uranium to fuel two 210-megawatt nuclear reactors at the Tarapur Atomic Power Station during the expected lifetime of the reactors of 30 years. In return, India agreed that it would only purchase U.S.-supplied fuel for use at Tarapur, that safeguards would be maintained on the fuel, that it would not be reprocessed or retransferred without prior U.S. approval, and that the supplied material and equipment would only be used for peaceful purposes. To date India has observed all commitments under this 1963 agreement, including upgraded requirements in 1971 and 1974, with no abuse of Tarapur spent fuel for nuclear explosive purposes.

The Nuclear Nonproliferation Act of 1978 (NNPA) placed criteria on exports of nuclear fuel which must be met in order for the Nuclear Regulatory Commission to license an export, with all of the criteria having been encompassed in the 1963 agreement except for one key new criterion in the law. The NNPA required that applications for nuclear exports made after September 10, 1979, meet the additional requirement that all peaceful nuclear activities of a recipient country be subjected to full-scope safeguards through IAEA inspections in order for the export license to be approved. The Indian Government's applications for the two pending exports were made respectively in September 1978, and August 1979, clearly prior to the application deadline.

The NNPA also required that the export of the fuel be approved prior to March 10, 1980, in order to precede the applicability of the full-scope safeguard criterion to the export. A further requirement of the NNPA was that the Secretary of State establish orderly and expeditious procedures to insure that executive branch judgments—as to whether the export was or was not inimical to the common defense and security of the United States—would be completed within 60 days of receipt of an application. The executive branch analysis was sent to the Nuclear Regulatory Commission on March 28, 1980, 18 months after the first Indian Government application, rather than 6 months, and after the March 10 statutory date for applicability of the full-scope safeguard criterion by the Nuclear Regulatory Commission.

Thus, the Nuclear Regulatory Commission could not find that the full-scope safeguards criterion was not applicable to this export. Without completion of renegotiations of the 1963 agreement by the Indian Government to apply full-scope safeguards to all of its peaceful nuclear activities, the Commission could not legally approve the export license.

However, the NNPA permits, in spite of the actions of the Nuclear Regulatory Commission, the President to approve an export by an Executive order if he determines that withholding the proposed export would seriously prejudice the achievement of the U.S. nonproliferation objectives or would otherwise jeopardize the common defense and security. This Executive order must lie before the Congress for 60 days of continuous session and is approved unless both Houses of Congress adopt a resolution stating that they do not favor the proposed export. A congressional decision to permit the export constitutes a

recognition that the Indian Government has, in good faith, met all the requirements of the 1963 agreement as amended and met all the requirements of the NNPA at the time of their applications for nuclear exports.

The fact that the Indian Government has not yet agreed in negotiations to revise the 1963 agreement to include full-scope safeguards as required by the unilateral and retroactive provisions of the NNPA should have no impact on these pending export licenses because the executive branch failed to meet the 6 months period for submitting its judgment on the exports. Any future Indian applications for exports would clearly fall under the additional criterion of full-scope safeguards, and thus these exports do not constitute a retreat by the Congress or the administration from the NNPA.

In the Indian view, failure by the United States to approve the exports when the Indian Government has lived up to the letter of the 1963 agreement would constitute a breach of contract and free the Indian Government from continuing to adhere to the existing safeguards of spent U.S.-supplied fuel at Tarapur. The Indian Government is very likely to be able to find a new supplier of the enriched uranium, probably the Soviet Union, should the United States fail to meet the need. The failure of the Indian Government to find a replacement supplier would have severe economic consequences to the Bombay metropolitan area, which receives a major portion of its electricity from the Tarapur reactors. If we breach the agreement signed in 1963, India may reprocess the U.S.-origin spent fuel in its possession and use it to fuel the Tarapur reactors, thereby undercutting a key U.S. nonproliferation goal.

The Indian Government has for many years been a leader among the nonalined nations of the world, and a U.S. failure to meet the conditions of the 1963 agreement would not only permit a Russian fuel supply initiative to create a greater dependence of India on the Soviet Union but also a further erosion of confidence by nonalined countries that the United States will act in a responsible manner.

I hope my colleagues will keep in mind the precarious nature of the Asian subcontinent in today's world. With the Soviet Union's adventurism and invasion into Afghanistan, the tattered political fabric of Iran with its many ethnic and nationalistic subgroups, the Iraqi/Iranian border war, and some instability in the Pakistani Government, we need to insure that the largest democracy in the world, India, is not alienated to such an extent that the Soviet Union can gain major new leverage in the course of Indian Government policies. While I have desired for many years that the Indian Government be more responsive to Western interests, their own perceptions have been that the best course for the Indian people would be a nonalined posture. I believe that the nuclear fuel export that we are considering today may very well be a bellweather in the future direction of United States-Indian relations.

One of my concerns regarding the NNPA when it was enacted by the Congress in 1978 was that there was too little carrot and too much stick in the rigid framework that the act established for reviewing nuclear exports. This act, in conjunction with the administration's nonproliferation policies, has shaken our relations with every country in the world with which we have engaged in nuclear commerce. The Euratom countries—Japan, Korea, India, and now Switzerland, to name just a few—have viewed the U.S. approach to be unilateral and without regard to their own national interest and, specifically, their energy needs as they perceive them. The most troubling aspects of the NNPA to our foreign nuclear trading partners is its retroactive applicability to contracts and cooperative agreements which were negotiated in a period of much greater appreciation of our common interests, as opposed to strictly U.S. interests.

I, too, am annoyed that the Indian Government has been reluctant to apply full-scope safeguards to all of its nuclear activities. I am very concerned about the prospects of a Pakistani effort to develop nuclear explosives. The allegations of clandestine efforts to develop nuclear explosives in other countries are equally of grave concern to all reasoning men.

However, the United States has no monopoly on nuclear technology in the world today. We cannot dictate on our own the nature of the domestic nuclear activities of other countries. A unilateral action on our part will only succeed in reducing our influence in limiting the nature of those domestic nuclear activities to truly peaceful purposes. If we are successfully to limit the spread of nuclear explosive technology, we must return to a posture of working closely with other industrialized nations which export nuclear technology to insure that, to the maximum extent possible, a commonality of approach is used for meeting legitimate nuclear energy requirements of Third World nations without permitting nuclear explosive programs. Unfortunately, our approach to date has led to mistrust of our intentions with regard to the domestic energy programs of countries which export nuclear technology. We must step back from the appearance of national self-righteousness if we are to succeed in meaningful attempts to limit the spread of nuclear explosives.

In summary, Mr. President, the opponents of this export are trying to punish India for not having agreed to full-scope safeguards on its other nuclear activities by denying fuel for the Tarapur reactors. The Indian Government met all of our legal requirements in its application for the exports. While denial of the exports may work some hardship on the Indian people, the Indian Government is not without recourse in obtaining fuel. Failure to export constitutes a breach of contract and of the agreement and frees the Indians from continued application of IAEA safeguards on the Tarapur reactors' spent fuel. I believe that it is in our national interest to permit the export of this fuel and to continue negotiations to achieve our nonproliferation objectives prior to the time that another application for fuel for the Tarapur reactor is submitted by the Indian Government. I hope reason will prevail in the vote of my colleagues on this pivotal issue in United States-Indian relations.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. Mr. President, I yield 15 minutes to the distinguished Senator from California (Mr. HAYAKAWA).

Mr. HAYAKAWA. I thank the distinguished Senator.

Mr. President, today, the Senate is called upon to make a decision which will have far-reaching consequences for America's image abroad. Today, we are to decide whether or not to sell uranium to India to be used for the nuclear reactors at the Tarapur powerplants.

Understandably, the press is also extensively focusing on the issue. From the speech of the distinguished Senator from Illinois (Mr. PERCY) I learned that over 90 editorials have appeared on the subject in American newspapers opposing the sale. I, myself, have read the editorials from the Washington Star, another one from the Los Angeles Times, a third one from the Washington Post, and another one from the Wall Street Journal. Therefore, I ask unanimous consent that these four editorials be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HAYAKAWA. Mr. President, the proponents of the sale assert that, by our refusal to provide the fuel, we are not living up to the terms of our original agreement with the Indian Government. This will further damage our relations with the "nonalined" Indians, pushing them—they say—into the Soviet camp. Also, our agreement calls for safeguards on the Tarapur facilities as well as on those facilities that use fuel purchased from other countries. Therefore, the administration argues that the objectives of the nonproliferation treaty are being served even though India has not yet signed the Nuclear Nonproliferation Treaty.

If they are so keen on nonproliferation, I still want to know why they have not signed it.

Mr. President, these arguments on the part of the administration are persuasive, but I believe they are mistaken. After careful consideration, I have decided to oppose the sale of uranium to India because I see this policy decision as another failure of the Carter administration in providing the leadership and the consistent diplomacy which is essential in forging effective international safeguards.

In the short term, it appears that our cooperation with the Indian Government might lead to positive results. But I must respectfully differ from my colleagues, who are my seniors in service here, including the distinguished Senator from Idaho, the chairman of the Committee on Foreign Relations, and the ranking

minority member of the Committee on Foreign Relations (Mr. JAVITS).

Our unsuccessful efforts to secure an agreement for full-scope safeguards on all Indian nuclear facilities, combined with Indira Gandhi's statements about future nuclear material in the past and the misuse of U.S.-supplied nuclear material in the past, do not support the proposition that we can influence India's nuclear decisions.

Moreover, the supply of nuclear fuel to India by the United States will lead other countries to believe that we are not serious about our commitment for nuclear nonproliferation.

We have taken, Mr. President, world leadership in insisting upon nuclear nonproliferation. We have managed to persuade 111 nations, in addition to the nuclear powers, to sign that Nonproliferation Treaty. To sell nuclear materials to India, in direct violation—in direct ignoring—of what India has already done in exploding nuclear materials seems to me to make a mockery of our own position about nuclear nonproliferation, in which I am deeply interested. In my judgment, this is a credibility gap the United States can ill afford.

Mr. President, I am particularly concerned about India's current foreign policy which in many areas is distinct from, if not in opposition to, U.S. objectives. For example, India has entered into a major trade agreement with Iran characterized by a New Delhi headline, "India Helps Iran Beat U.S. Sanctions." India has also recognized the pro-Soviet regime—that incredibly cruel regime—in Kampuchea and, in the United Nations, India abstained on the resolution condemning the Soviet invasion of Afghanistan. In addition, the Indians have recently signed a $1.6 billion arms deal with the Soviet Government.

India does not need to be thrown into the arms of the Soviet Union by our decision not to sell nuclear fuel. India is already more than halfway there.

All of these highly visible events of considerable political importance to the region occurred after President Carter had promised Mrs. Gandhi to ship the Tarapur fuel. These are discouraging signs of what we might expect in our long-term relationship with that country.

How good are India's promises and assurances? Proliferation scholar Robert A. Wohlstetter reported how Canadian Prime Minister Trudeau insisted to Mrs. Ghandi that the Canadian-donated CIRUS reactor was not to be used for making bombs. This is a quotation from the Washington Star. Trudeau interpreted her silence as acceptance, and she was satisfied that she had not agreed. After the Indian nuclear explosion of 1974, Canada ceased its nuclear aid.

There is a moral dimension, also, Mr. President. Nonnuclear proliferation is called in the U.S. interest because the United States is its leader, but it is not merely the U.S. interest. If the bomb spreads, the consequences will likely fall, at first, on the peoples of the Third World. Those governments threaten each other rather than the United States. Their insensitivity to proliferation does not justify our "malign neglect."

Mr. President, I am fully aware of the central role played by India in insuring the stability of South Asia and I could support appropriate actions which would in fact demonstrate effective diplomacy.

But I believe that approving the pending export represents a grave risk to our global nonproliferation policy.

Do we mean nonproliferation, or do we not?

Moreover, it is unlikely to affect the course of India's actions. Conversely, disapproval of the export is unlikely to alter to any significant extent the balance in India's relations with the United States and the Soviet Union respectively.

In sum, Mr. President, the sale of nuclear fuel to India smacks of appeasement and once again reflects the erratic, inconsistent foreign policies of the United States.

I will add, finally, a short quote about the technology of nuclear explosives from an aide memoire recently released and presented in 1970 to the Indian Atomic Energy Commission:

> The technology of nuclear explosives for peaceful uses is indistinguishable from that of nuclear weapons, and that any nuclear explosive device, though it be intended for benign economic purposes, could also be used for destructive purposes. The development of such explosives, therefore, is tantamount to the development of nuclear weapons.

Consequently, the United States would consider it incompatible with existing United States-Indian agreements for American nuclear assistance to be employed in the development of peaceful nuclear explosive devices.

As these documents make clear, India did violate its commitments to the United States when it exploded its 1974 device.

EXHIBIT 1

[From the Wall Street Journal, Sept. 24, 1980]

NUCLEAR HYPOCRISY

The Carter administration is pulling out all the stops in its bid to gain Senate acceptance of its decision to sell additional nuclear fuel to India despite that nation's refusal to permit international inspection of its nuclear facilities. Secretary of State Muskie has been rallying his ex-colleagues to support the President's decision. Ex-Senators and ex-ambassadors have been employed in the campaign. President Carter himself has been phoning Senators from his campaign plane to enlist support.

The pro-sale campaign has now reached the point of deceit. Ambassador at Large Gerald Smith sent a letter to the Senate last week in which he notes that it is claimed the Indian use of U.S. heavy water to produce India's 1974 explosion of a "peaceful nuclear device" was a violation of a commitment to the U.S. "There was no such commitment," Mr. Smith responds. "And the U.S. continued its Tarapur (reactor) supply for six years after the Indian explosion. It seems quite irrelevant, as well as incorrect, to cite this explosion to now support a decision to cut off India's energy supplies."

Aside from the fundamental fact that there is nothing peaceful about India's bomb, as far back as 1960 the U.S. made clear it was supplying heavy water and other nuclear materials for peaceful purposes, not including explosions. The Indians took the material and doublecrossed us on these provisions.

Moreover, an aide memoire presented to the Indian Atomic Energy Commission in Bombay, Nov. 16, 1970 (and declassified only last week), reiterated the U.S. position. It says that "the technology of nuclear explosives for peaceful uses is indistinguishable from that of nuclear weapons, and that any nuclear explosive device, though it be intended for benign economic purposes, could also be used for destructive purposes. The development of such explosives, therefore, is tantamount to the development of nuclear weapons. . . .

"Consequently, the United States would consider it incompatible with existing United States-Indian agreements for American nuclear assistance to be employed in the development of peaceful nuclear explosive devices."

As both documents make clear, India did violate its commitments to the U.S. when it exploded its 1974 device. Recognizing this, and in the absence of any subsequent safeguard agreement, the House last week overwhelmingly voted to veto the sale. In the Senate, where the administration has concentrated its lobbying efforts, the vote comes up today, two days after Indian Prime Minister Indira Ghandi again gave herself powers to lock up any Indian for a year without trial. The Senate outcome is expected to be close.

The facts here are clear: The U.S. supplied these materials saying they should not be used for nuclear explosives. They were used for nuclear explosives. We are now asked to decide whether to give more nuclear materials to the people who used the first ones in ways we prohibited. Any President or Senator who has the gall to approve this sale and still say he is opposed to nuclear proliferation should be called to account by the voters in the next election for recklessness, but even more for hypocrisy.

[From the Washington Star, Sept. 22, 1980]

NUCLEAR FUEL FOR INDIA?

(By Thomas Blau)

The administration wants Congress to override its committees and approve new shipments of nuclear fuel to India. The real decision for Congress is whether enforcing a strong nonproliferation policy is worth the diplomatic costs.

By a simple reading of U.S. policy and law, Congress should not approve shipment. The Nuclear Non-proliferation Act of March 10, 1978, requires that India accept international safeguards on all its nuclear facilities within two years of the act's passage.

India refuses. Even worse, Prime Minister Gandhi said last March 13, three days after the deadline, "We remain committed to the uses of atomic energy, whether for peaceful purposes . . . or explosions or implosions." That's within India's sovereign rights, but may not allow the U.S. to ship India uranium.

The State Department doesn't want the law applied. Assistant Secretary Pickering says that State's "lawyers are quite confident that the proposed exports fall within the grace period because they were planned for before March 10, 1980. Yet when the department wanted the law passed, a high official told Congress that March 10, 1980, was a "guillotine—in other words, if you haven't achieved agreement on safeguards by then, a uranium embargo would begin."

Without the NNPA "guillotine," potential proliferators will see U.S. policy diminished, despite U.S. legal arguments, because it suits their aims to do so. "If India does not need to satisfy the full-scope safeguards requirement," says Nuclear Regulatory Commissioner Victor Gilinsky, other countries will be quick to seek similar exemptions."

It's an old story. Proliferation scholar Rob-

ert A. Wohlstetter reported how Canadian Prime Minister Trudeau insisted to Mrs. Gandhi that the Canadian-donated CIRUS reactor was not to be used for making bombs. Trudeau interpreted her silence as acceptance, she was satisfied that she had not agreed. After the Indian nuclear explosion of 1974, Canada ceased its nuclear aid.

Yet since 1974 many policy and legal experts have defended the Indian explosion because India sees things differently and is a sovereign country. This "defense" sidesteps the issue. Instead, it serves up a red herring popular in international affairs—namely, that not to take foreign claims (e.g., this bomb is peaceful) at face value is to demean foreign sovereignty.

India, however, pursues and sometimes uses military power. She has long studied nuclear weapons and has large conventional forces. She feels a Chinese threat. Many members of the Indian elite would enjoy big-power status. Nuclear weapons are big-power status symbols.

What happens if Congress approves the shipment? First, U.S. nonproliferation policy loses credibility. In addition, the U.S. would lose influence again on not only the nuclear but the general foreign policies of states such as Pakistan.

Clearly, there are deeper problems here than just a reactor reload for Bombay. First, the strategic decline of the U.S., real or perceived, reduces the impact of U.S. support or U.S. alienation. U.S. wishes count less.

Second, at home, the U.S. hardly thinks about nonproliferation's place among other U.S. goals. We don't know what we think it's worth. Nonproliferation issues tend to be reviewed in narrow nuclear and legalistic terms. But if proliferation is so important we should be able to find a range of incentives to influence foreign choices, and to choose where nonproliferation fits in among our strategic needs.

Finally, choosing our needs can help U.S. policy makers to hold onto U.S. goals. While it is most unfortunate that the Indian government disagrees with the U.S., that doesn't mean that the U.S. must renounce its views. But without strategic coherence, the pressure to bend before each diplomatic furor is hard to resist.

We could rethink our open-ended encouragement of traditional national aspirations around the globe. These aspirations historically have included the "right" to glorious military power. Pretending that everyone is an equally great power may encourage many to try for that apotheosis. World peace may well be the cost of upward social mobility.

There is a moral dimension. Nonproliferation is called a U.S. interest because the U.S. is its leader. But if the bomb spreads, the consequences will likely fall (at first) on the peoples of the "Third World," whose governments threaten each other, rather than on the U.S. Their insensitivity to proliferation does not justify our malign neglect.

[From the Los Angeles Times, Sept. 12, 1980]

REWARDING INDIA FOR NONCOOPERATION

The Carter Administration, stunned by House and Senate committee decisions to block a proposed sale of nuclear fuel to India, is lobbying vigorously to have the committee actions reversed on the floor of one house or the other. This is a fight that we hope the Administration loses.

The White House proposes to ship 38 tons of enriched uranium fuel to India for use in the Tarapur atomic power station. The transaction was disapproved by the Nuclear Regulatory Commission for the very good reason that it would violate the clear intent of the Nuclear Nonproliferation Act of 1978.

That law prohibits the transfer of nuclear materials to nations that do not accept international inspection of all their atomic facilities to prevent a diversion into nuclear bomb-making.

India exploded a nuclear device in 1974, using American and Canadian materials in violation of the supply agreements with both nations. To this day, the government of Indira Gandhi refuses either to accept international inspection or to promise that more nuclear devices won't be exploded. India is also among the holdouts that have never signed the multinational Nonproliferation Treaty of 1970, aimed at preventing the spread of nuclear weapons.

President Carter used the authority provided by the 1978 antiproliferation law to override the regulatory commission's finding. But his decision in turn can be overridden by a vote of both houses. The deadline for such a congressional veto is Sept. 27.

The State Department argues that, especially in the wake of the Soviet invasion of Afghanistan, the United States shouldn't be in the business of irritating India and possibly nudging that country into an even chummier relationship with the Soviet Union.

This is an appealing argument as far as it goes. But it overlooks the fact that rewarding India for its flat refusal to accept international safeguards could have even worse consequences.

Such action might, to begin with, virtually eliminate any prospect of dissuading Pakistan from pursuing its own nuclear bomb-making program. Even more important, it would deal a heavy blow to the credibility of the Administration's entire antiproliferation effort.

If the United States is prepared to overlook India's calculated noncooperation with the nonproliferation effort, other countries are justified in assuming that they can get away with the same sort of behavior without suffering any serious consequences.

We urge the House and Senate to back their committees and pass resolutions disapproving of the nuclear fuel deliveries.

[From the Washington Post, Sept. 22, 1980]

CLEAR SIGNALS ON NUCLEAR FUEL

By a three-to-one margin, the House last week rejected the president's proposal that the United States send another shipment of nuclear fuel to India even though India has refused to accept international safeguards on its nuclear facilities or to renounce further weapons tests. The vote echoed the earlier judgment of both the House and Senate foreign relations committees and the unanimous decision of the usually divided Nuclear Regulatory Commission. The final fate of the fuel shipment now rests with the Senate, which must also reject the proposal in order to override the president's override of the NRC.

For more than two years, the United States has been trying to negotiate some kind of compromise safeguards agreement with India. It has met with no success and no indication of even the slightest interest on India's part. If anything, the Indian government has underscored the wide gap between the two countries by regularly reasserting its right to perform additional nuclear tests if it chooses.

The two-year grace period provided by the U.S. Nuclear Non-Proliferation Act, during which nuclear exports could continue to countries that had not accepted full international safeguards, expired last spring. The hard choice now is whether to stop the fuel shipments as the law requires or to set a precedent by waiving the law on the first test of its central provision, in the hope that the United States will thereby retain "leverage" over future Indian policy.

The vote therefore has a double-barreled significance. A decision to ship the fuel would signal that the United States didn't really mean what it said in the 1978 law and would make it much harder to reach acceptable agreements with the many other potential weapons builders around the world. Moreover, the waiver would be for India—the country whose 1974 nuclear test was largely responsible for U.S. non-proliferation policy in the first place. The message sent to other nations would be unmistakable: the United States is not only unlikely to react to countries that explode nuclear bombs, but may not even suspend its nuclear assistance.

The administration is pulling out all the stops in its efforts to convince undecided senators. It surprised nearly everyone by circulating a letter claiming that India didn't violate its agreement with the United States when it used materials supplied by this country to make the bomb exploded in 1974. In response, Sen. John Glenn (who writes about this question on the opposite page today) requested the immediate declassification of a secret *aide memoire* sent by the U.S. government to India in 1970. The administration released the document, which had made it unmistakably plain to the government of India *four years before the nuclear explosion* that the United States considered what India was doing to be "tantamount to the development of nuclear weapons" and a "contravention of the terms under which the American [nuclear] materials were made available." So much for the leverage bought by continuing nuclear supply.

The administration is arguing that since India didn't accept the U.S. position stated in that document, it never violated an agreement. This is pure Alice in Wonderland: to defend its position now, the U.S. government accepts India's rejection of its earlier position. So much for consistency and firmness of purpose.

The decision to halt nuclear fuel shipments to India is unpleasant, but critical. Any other choice would make a mockery of a decade of efforts to halt the spread of nuclear weapons and to guarantee that peaceful-purpose nuclear projects can be assisted—without danger of the materials' being diverted to make bombs.

Mr. HAYAKAWA. I thank the Chair. I yield to the distinguished Senator.

The PRESIDING OFFICER. Who yields time?

Mr. PERCY. Will the Senator yield for a question and a unanimous consent?

Mr. GLENN. On Senator PERCY's time.

Mr. PERCY. Yes.

The PRESIDING OFFICER. The Chair has to interrupt. The Senator from Illinois has no time.

Now, the Chair will be glad to recognize the Senator from Illinois when and if he is yielded time under the time agreement.

Who yields time?

Mr. PERCY. As I understand it, the Republicans——

Mr. GLENN addressed the Chair.

Mr. PERCY. Those in opposition have time.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PERCY. How much time does the Republican side, in opposition to the resolution of disagreement, have?

The PRESIDING OFFICER. Senator JAVITS has 40 minutes remaining.

Mr. PERCY. On behalf of Senator JAVITS, I ask time from his side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, I ask unanimous consent that out of that time also the Senator from Mississippi (Mr. STENNIS) be given 5 minutes, at a time of his own choosing.

Mr. GLENN. Reserving the right to object, Mr. President, would the Senator repeat that?

Mr. PERCY. That Senator STENNIS asked for 5 minutes. As I understand it, there is very limited time on the Democratic side in opposition to the resolution of disapproval. Therefore, Senator JAVITS, in the time he controls, will yield 5 minutes to Senator STENNIS at his request.

The PRESIDING OFFICER. The Chair advises at this juncture the Senator from Illinois, who is controlling the time allotted to the Senator from New York——

Mr. PERCY. That is correct.

The PRESIDING OFFICER (continuing). May yield time if he sees fit.

Mr. PERCY. Then I make that unanimous-consent request for 5 minutes for Senator STENNIS.

The PRESIDING OFFICER. The Chair advises the Senator from Illinois that under unanimous consent he has the right to yield time as he so desires.

Mr. GLENN. I have no objection to any time controlled in any such way, but not necessarily at this moment. We have Senators here waiting in the Chamber.

Mr. PERCY. Mr. President, he is not prepared to come for at least 30 minutes. He will not speak for at least 30 minutes. So, anytime after 12:30.

Mr. GLENN. Mr. President, no unanimous consent is needed to yield time under a time agreement, as I understand it.

The PRESIDING OFFICER. The Senator is correct.

Mr. GLENN. As I understand it, the Senator is controlling Senator JAVIT's time. He is in the Chamber. When Senator STENNIS is on the floor, I suggest at that time, without any unanimous consent required, he yield the time.

Mr. PERCY. That is perfectly all right.

I would like to ask a question of Senator HAYAKAWA.

As I understand it, Senator HAYAKAWA has just said Iran and India have signed a trade agreement.

According to the Foreign Relations Committee staff, which discussed this matter with the State Department as recently as last Friday, contrary to earlier indications, India has not signed a new trade agreement with Iran which would help the latter circumvent U.S. sanctions. An Iranian trade delegation did visit India in June for talks on expanded trade possibilities, but no agreement was reached.

While India has been publicly critical of Iran for holding the hostages, it has not supported economic sanctions. Therefore, it may at some point agree to expanded trade relations with Iran, but has not yet done so.

I wanted to clarify the point made by my distinguished colleague from California.

Mr. HAYAKAWA. If I may reply, Mr. President——

Mr. PERCY. On the Senator's own time.

Mr. GLENN. I yield such time as the Senator from California may need to reply.

Mr. HAYAKAWA. I am quoting from the Statesman from Delhi that agreement has been met:

> What remains to be finalised is the financing of the deals since India wants assurances on payments.
>
> In effect, the result of the talks is that India has agreed to help Iran to beat the U.S. and EEC sanctions imposed because of the hostages issue. Iran presented a long shopping list to India of items that she needs urgently and much of her needs are to be met.

In fact, in other words, the deal has gone through except for financing.

Mr. GLENN. If the Senator will yield, and on my time, I concede the point in the fact sheet, is not quite accurate and I corrected that yesterday. We said India has signed the deal that it was fully consummated which is the report we had had.

But we learned later the financing was to be worked out.

The Senator is correct. The absolute signed operative deal is not there yet. India's foreign policy intent in negotiating this, and she is now only haggling over the price, is absolutely clear.

Mr. PERCY. I appreciate very much the Senator clarifying that.

We all agree there is no such agreement. The Senator from Illinois understands there are no negotiations now.

However, again, the action of the Senate in this case could push India, possibly, one way or another. There is no way of telling.

But, as of now, the indications would appear to the Senator from Illinois to be negative so far as their going ahead with a trade agreement.

Mr. GLENN. On my time, Mr. President, as I understand it, negotiations were underway. The only thing that fell apart was the financing. As I understand it, they are still working on that, but the intent of India was obvious in this regard.

Mr. President, I yield 8 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I wish to speak in support of my colleague from Ohio.

This country has a policy of promoting nuclear nonproliferation. This policy is incorporated in our law in the form of the Nuclear Nonproliferation Act of 1978. Perhaps more significantly, it has been one of the prominent features of our foreign policy during this administration. At times we have placed great stress on our alliance system as when we have complained of transactions involving nuclear materials between, most recently Swiss, and also French and West German suppliers and Iraqi, Pakistani, Argentinian, and Brazilian recipients. We have committed ourselves so strongly and vocally on this matter that, for this and other reasons, Pakistan was sufficiently annoyed at us to reject a $400 million arms pact earlier this year. Thus, to turn around and violate our policy—and our law—in order to ship nuclear materials to Indira Gandhi's India undoubtedly will invoke cries by our European allies that we are at best inconsistent, and perhaps would drive the Pakistanis still further away from us.

India is not now led by Desai or Singh, but rather by Mrs. Gandhi. This is the woman who was responsible for the August 1971 Treaty of Peace, Friendship and Cooperation between the U.S.S.R. and India, and a period of very close cooperation with the U.S.S.R. did indeed ensue. In 1974, Mrs. Gandhi appears to have used American-supplied heavy water—despite American formal communications 4 years previously specifying that such use would constitute violation of the American understanding of our sales contract—in the manufacture of India's bomb, its so-called peaceful nuclear explosion. In 1977, she was deposed in reaction to her imposition on what had been the world's largest democracy, of the so-called emergency period, which witnessed the suspension of all democracy and political freedom in the country.

From reports in today's newspapers, it appears that, once again, Mrs. Ghandi is headed in that direction. It appears that she is reimposing those sanctions.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from today's New York Times on this subject.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NEW LAW GIVES GANDHI REGIME POWER TO IMPRISON WITHOUT TRIAL

NEW DELHI, September 23.—A new national security law went into effect today arming Prime Minister Indira Gandhi's Government with powers to jail anyone for a year without trial. The law has raised fears of a return to the wholesale detentions carried out during Mrs. Gandhi's 1975–77 emergency rule, but the Government insists it has provided safeguards against abuse.

The ordinance, proclaimed as an executive fiat late last night by President Sanjiva Reddy, was officially said to be needed to contain the spreading violence between Hindus and Moslems and to deal with persons "acting in any manner prejudicial to the defense of India or the security of India."

Opposition parties condemned the move as a revival of the Maintenance of Internal Security Act, which was widely used by Mrs. Gandhi's Government during her emergency rule preceding her election defeat in 1977. The law was revoked by the Janata Party Government that succeeded Mrs. Gandhi. She returned to power in January this year.

The Chief Minister of West Bengal, Jyoti Basu, a Communist, said he was strongly opposed to the new ordinance.

"We would not need it at all," he said when asked whether he would use it in his state. "Let those who have the need for the ordinance implement it."

Madhu Limaye, the leader of the largest opposition party, Lok Dal, said the new law would be used against the opposition as had been the case in the late 1970's when over 150,000 opposition leaders and political workers were imprisoned without recourse to the courts.

However, the ordinance stipulates that the state or federal authority ordering the detention should communicate to the detainee

the reasons for his or her arrest within five days. The maximum term of imprisonment, according to the ordinance, will be 12 months, and a board of judges will review each case.

Officials said that various state governments had enacted laws for preventive detention to deal with specific situations and that the federal government "thought that it would be better to have a central legislation for the whole country."

They also pointed out that the opposition party governments of Morarji R. Desai and Charan Singh that ruled the country while Mrs. Gandhi was out of power also favored preventive detention measures but were unable to get one through Parliament. The ordinance will be formalized at the session of Parliament beginning in November, an official said.

"COMMUNAL DISHARMONY" NOTED

"The need for the ordinance has arisen," said an official statement, "looking to the prevailing situation of communal disharmony, caste conflicts, social tensions, extremist activities, atrocities on minorities and other weaker sections of society, and the increasing tendency of interested parties to engineer agitation of different issues."

"Secessionist activities and regional movements have reared their ugly head in some parts of the country," the statement added. "These are the elements who pose a grave challenge to the lawful authority and some times even hold the society to ransom.

"It is, therefore, felt necessary that the Government arms itself with sufficient preventive powers to deal effectively and sternly with these antinational and antisocial elements."

The opposition leaders were not impressed by the explanations. Subramania Swamy, a leader of the Janata Party, which successfully fought Mrs. Gandhi's emergency rule, said his party would agitate throughout the nation for the removal of the "obnoxious" ordinance. "Any Government which cannot rule with the existing laws does not deserve to exist," he declared.

Mr. BOSCHWITZ. Mr. President, Mrs. Gandhi's new law grants the regime the right to imprison people up to 12 months without trial. No one who treasures freedom and democracy can look favorably upon this new development, and the present administration has talked at great lengths about human rights with respect to its foreign policy.

Yes, Mrs. Gandhi is back now; and upon returning, she immediately reestablished intimate ties with the Soviet Union, and at this point she is reimposing what seems to be severe human rights violations. Among the first actions she took was to sign an enormous arms deal with the U.S.S.R. for some $1.6 billion. She refuses to preclude further "peaceful nuclear explosions" and has recently developed a rocket with at least intermediate range and possibly intercontinental range. Moreover, lest we question whether her arms link to the U.S.S.R. has greater implications, India has recognized the Soviet- and Vietnamese-backed Heng Samrin regime in Cambodia and cooperated in helping Iran circumvent our sanctions against that country, as the distinguished Senators from Ohio and California have just pointed out. If that treaty has not been signed, surely the intent of India has been made clear.

If Mrs. Gandhi were willing to sign the Nuclear Nonproliferation Treaty, or at least to accept full-scope safeguards and renounce further nuclear explosions, it might still be worth considering dispatch of further fissionable materials to India. However, she has taken none of these steps. While there are 114 signatories to the nuclear nonproliferation treaty, India is not among them. As the distinguished Senator from Ohio has pointed out, other countries—Australia and Canada—have decided not to deal with the Indians because of that and because India will not accept full-scope safeguards.

The Nuclear Regulatory Commission voted unanimously to suspend shipments to India. The House of Representatives voted by a margin of 298 to 98 to uphold that decision of the NRC and our own Foreign Relations Committee voted the same way, if by a narrower margin.

The nuclear card is not the only card in our hands with respect to India. In addition to $2 billion in Indo-American trade this year, the United States maintains a modest conventional arms relationship with India, having recently sold her $32 million worth of TOW antitank missiles while $281 million in economic assistance is requested by the administration this year. Certainly this constitutes significant leverage. However, there must be limits on the degree to which the United States will subsidize regimes which have not operated in our interest. Our generosity is legion. However, it is not in our interest to continue these shipments, thereby depriving India, and by example other potential nuclear powers, of any incentive to join in the nuclear nonproliferation process.

What we preach to our allies, we should practice ourselves.

In this context, I point out that there is no small degree of irony involved in our current, almost acrimonious, dispute with Switzerland over its nuclear relationship with Pakistan, occurring at the same time that the administration is battling the Nuclear Regulatory Commission, the House of Representatives and the Senate Foreign Relations Committee over our shipments of fissionable materials to India. Yet, simultaneously we dispute Switzerland over its nuclear relationship with Pakistan.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator has used 8 minutes.

Mr. BOSCHWITZ. I ask unanimous consent for another half-minute.

Mr. GLENN. I yield 2 minutes to the Senator.

Mr. BOSCHWITZ. Mr. President, I find it totally inconsistent and contradictory when an administration dedicated not only to human rights but also to a nuclear nonproliferation treaty asks us, on the same day we are criticizing Switzerland, to vote to send enriched uranium to India.

I ask my colleagues to join me and the Senator from Ohio.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

Mr. CHURCH. Mr. President, I ask unanimous consent that the time for the quorum call not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I yield 2 minutes to the able Senator from Michigan.

Mr. PERCY. I yield 3 minutes to the Senator.

Mr. CHURCH. That is a total of 5 minutes.

Mr. LEVIN. I thank my friends.

Mr. President, I very much oppose the proliferation of nuclear weapons. My service on the Armed Services Committee has driven home the horrors of these weapons and the peril in which they place the survival of life on Earth. But while I support efforts to reduce the proliferation of nuclear weapons I also oppose the proliferation of the dishonoring of commitments that have been freely made by one nation to another. We should take our commitments as seriously as we should want other nations to keep their commitments. Just as a community depends for its survival on its members keeping their obligations to each other, so does the community of nations depend on its members keeping commitments if we are to ever make this planet a saner and more rational place on which to live.

If there were a conflict between keeping a commitment to India to supply clear fuel for her Tarapur plant and endangering world peace and safety we would no doubt choose to violate our commitment and take the consequences.

But after studying all the materials in this matter, I am not convinced that the nonproliferation cause would be assisted by rejection of this sale, and thereby going back on our commitment. No one can tell with reasonable certainty whether there will be more or less nuclear arms in the world if we reject this shipment and thereby provide justification to India to walk away from her side of the bargain, which is to sell us the byproduct of the Tarapur reactor and not to sell it to other countries who could reprocess it into the plutonium necessary for nuclear bombs.

In summary, I don't think the rejection of this sale enhances nonproliferation more than would the approval of this sale.

But a basic question remains: Whether there was a commitment to sell fuel to India for the Tarapur reactor or was the commitment subsequently modified to make it conditional on whatever law Congress might later wish to adopt.

In 1963, we signed an agreement with India. It provided that the United States "will sell to the government of India and the government of India will purchase from the United States" enriched uranium for the Tarapur atomic power station as needed. The agreement also provided that the United States shall have the first option to purchase the spent fuel at Tarapur. In 1966, the supply contract was entered into. Article 15 of the contract said that, in the event of the incompatibility beween the contract and the 1963 agreement, the 1963 agreement would govern. The supply contract also provided that it was possible that applicable domestic laws of the United States with respect to ownership and supply of nuclear material might be changed and that, in such an event, the parties would agree to consult with each other to determine what modifications might be required, if any, to make actions to be performed under the supply agreement consistent with the implementation of the U.S. laws as modified but that "nothing in this Article XI shall affect the obligation of the seller (U.S.) to sell * * * and that of the purchaser (India) to purchase all of the purchaser's enriched uranium requirements for Tarapur as provided in Article II."

An amendment to the 1966 supply contract was needed because the Atomic Energy Commission had gone out of existence and private suppliers had to be authorized to take title to the fuel inside the United States and to arrange for the export of same.

Mr. President, the key to this debate is the 1971 amendment. No conditions were attached to the sale in 1966. The 1974 blast which has been referred to by the Senator from Ohio is not relevant to this debate, for two reasons. First, it has nothing to do with the contract between ourselves and India on Tarapur in 1963. The heavy water used in the explosion was not heavy water which was supplied under the contract at issue.

Second, there have been many sales of nuclear material since that blast.

My research indicates there have been at least four sales of nuclear material to India since that blast by India in 1974.

So the question comes down to the 1971 amendment. That amendment should be read in its entirety. It does not say that India is going to be bound by the applicable laws of the United States. It says that India will be bound by the applicable laws of the United States in connection with material delivered to India, and this is a critical distinction.

Senator JAVITS has covered the legal analysis of this matter. He has shown, extremely effectively, that the context of this amendment is clear, that it was boilerplate, that it resulted from a changed situation in the United States where instead of the U.S. Government being the shipper there was going to be a private shipper starting in 1971. That is the purpose of the 1971 amendment.

But even beyond that, by the terms of the 1971 amendment itself the so-called phase 2 full-scope safeguards of 1978 do not even apply. They do not apply because the amendment of 1971 says that the laws of the United States will only govern as to material delivered to India, and the phase 2 full-scope safeguards do not relate to material delivered to India under our supply contract but relate to other nuclear facilities of India.

The phase 1 requirements in the 1978 act have all been met. I do not understand the Senator from Ohio to indicate that they have not been met.

The No. 1 safeguard in phase 1 is that the International Atomic Agency safeguards must be applied to all materials exported by the United States. The second part of phase 1 is no exported materials may be used for any nuclear explosive device. No. 3, adequate physical security measures are to be maintained with regard to exported materials. No. 4, no exported materials may be reexported. And No. 5 also applies to exported materials.

All of that is part of phase 1 of our 1978 act. All of that has been met as far as I know, and I do not think there is any dispute as to that by the Senator from Ohio.

It is the phase 2 "full scope" safeguards which are at issue. They do not apply to delivered material. Again they only apply to all the other facilities of India which we do not supply.

Finally, Mr. President, at the very worst this language is ambiguous. The legal situation here is arguably ambiguous. If it is, you look at the surrounding circumstances to ascertain the intention of the parties. The intention of the parties from looking at the documents which surrounded this 1971 modification seems very clear.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Mr. Dixon B. Hoyle, director of international nuclear energy affairs for Westinghouse Corp., dated May 15, 1980, and it is addressed to a member of the Nuclear Regulatory Commission.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WESTINGHOUSE ELECTRIC CORP.,
Washington, D.C., May 15, 1980.

Commissioner VICTOR GILINSKY,
Nuclear Regulatory Commission,
Washington, D.C.

DEAR VICTOR: I have recently read with interest your speech of February 5, 1980, before the India Council of Washington, D.C. on U.S.-Indian Nuclear Relations. Although Westinghouse is in no way involved in this question, I have continued to follow the Tarapur situation closely, among other things, because of my long association with the fuel supply contract, which I helped to negotiate and subsequently administered in the AEC.

I was particularly interested, therefore, in the rationale which you make in the third paragraph of page 3 for the right of the U.S. to impose the full-scope safeguard condition on India. A key to this rationale is the provision of the fuel contract which requires that India procure all necessary permits or licenses and comply with all applicable laws, regulations and ordinances of the United States. I thought you might like to know how the amendment to the original contract—which did not contain this provision—came about.

My memory may fail me in small details and I no longer have access to the relevant files (if, indeed, they still exist), but the substance of the amendment was as follows. At the time the contract was signed, AEC could legally sell only enriched uranium (not enrichment services) and the sale (passage of title) was consummated at the port of export. At that time, as I recall, the export was still on a government-to-government basis and did not require an export license. When fuel was fabricated in the U.S., as GE was doing for Tarapur, the AEC-licensed fabricator leased the enriched uranium from the AEC; at the time the sale was made at the port the licensee's lease account was credited with the equivalent value of the enriched uranium sold.

With the advent of uranium enrichment in the United States in 1956, the AEC acted to terminate its domestic leasing arrangements in favor of private ownership. (India was offered an enrichment services contract for Tarapur as a replacement for the enriched uranium sale contract, but declined). This created a dilemma. The enriched uranium sale contract called for title to pass to India at the port of export and GE could no longer lease the material during the United States fabrication period. We went to the Indians and explained this, asking them to take title at the AEC enrichment plant, to which they ultimately but reluctantly agreed (among other things, it meant earlier payment to AEC). We then had to clarify in the sale contract which party was responsible for meeting domestic U.S. regulations, health and safety requirements, etc. since India would now "own" the material in the United States. The amendment was the result and represents "boiler-plate" contract language developed by AEC's lawyers to cover this issue for all foreign and domestic contracts. (Incidentally, it is one of the fuel supply contract provisions which historically has most often been contested by foreign customers).

My real point is that at no time during our negotiation of the amendment did either party have any intention or understanding that the provision could be used as a rationale for the United States to deny the export of low enriched uranium as a result of a law which the latter subsequently might pass was intended solely to clarify a relatively minor legal point and this is how it was "sold" to India, who was under no obligation to accept it. Although my long exposure to lawyers does not qualify me to make legal judgments, I have a strong suspicion that the negotiating history of a contract amendment of this nature would be very relevant if it were to become an issue in the courts. Of course, this is highly unlikely to occur, but I feel there is a certain injustice in rationalizing a U.S. position on such a questionable interpretation.

If you are interested in looking into this further, I would suggest that you ask the DOE (International Affairs) to search its Tarapur fuel supply contract files for the period 1969–70 to substantiate this background. You might also wish to consider making this background information available to the other Commissioners.

Sincerely,

DIXON B. HOYLE,
Director,
International Nuclear Energy Affairs.

Mr. LEVIN. Mr. President, it states—and this is from the gentleman who negotiated the 1971 amendment, and I ask my friend from Ohio if he might listen to this because I do not think this document had been made part of the RECORD before now. This is from Mr. Hoyle, our 1971 negotiator.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEVIN. Mr. President, I wonder if I could get an additional 1 minute from the Senator controlling time on this side of the issue.

I ask unanimous consent that my opponent yield me time if he has any.

Mr. GLENN. I yield 1 minute of the other side on this, but I would not want to yield much more than that.

Mr. LEVIN. I thank my friend and shall take 1 minute.

Mr. GLENN. I yield 2 minutes.

Mr. LEVIN. I thank my friend.

Mr. Hoyle, who was the negotiator for the United States in the 1971 amendment, said the following in this letter dated May 15, 1980:

My real point is that at no time during our negotiation of the amendment did either party have any intention or understanding that the provision could be used as a rationale for the United States to deny the export of low enriched uranium as a result of a law which the latter subsequently might pass. It was intended solely to clarify a relatively minor legal point and this is how it was "sold" to India, who was under no obligation to accept it. Although my long exposure to lawyers does not qualify me to make legal judgements, I have a strong suspicion that the negotiating history of a contract amendment of this nature would be very relevant if it were to become an issue in the courts. Of course, this is highly unlikely to occur, but I feel there is a certain injustice in rationalising a U.S. position on such a questionable interpretation.

Mr. President, I particularly thank my friend from Ohio for yielding to me although I am in the opposition on this matter. I commend him on his sensitivity both to the time needs of his colleagues in the Senate as well as to the nuclear nonproliferation issues which he so eloquently debated.

Mr. GLENN. Mr. President, I thank the distinguished Senator from Michigan very much, and I wish to reply to his remarks.

I yield myself such time as I might need on this. I think Mr. Hoyle is telling only a part of the story and the part he leaves out is the legal part. He even says he is not a lawyer, as a disclaimer on this score. Yet he also points out the AEC's lawyers required this language in all our contracts of the period and that it was often contested, suggesting that it was not mere "boilerplate" but was viewed by a lot of our trading partners as having some significance. And what was the legal background?

As I pointed out in my opening remarks, the Atomic Energy Act at the time said that the AEC could not issue any export licenses if these would be "inimical to the common defense and security" and the AEC regulations were even broader: they said the AEC could not issue a license if this would be "inimical to the interests of the United States."

There is no question the AEC lawyers had to have this legal background in mind when they drafted the 1971 amendment to the 1966 contract stating that India had to procure all licenses—and this included export licenses as we made clear to the Indians in a cable replying to their inquiry on the subject—and comply with all applicable laws. In other words, the AEC lawyers put this language in to make sure that the AEC would have the authority to deny licenses on "inimicality" grounds—which basically was a discretionary standard. The Indians had legal notice of this standard. The standard we are imposing today fits within that standard, as the House report that I quoted from earlier states.

We do not have to argue that the Indians were agreeing to the NNPA as such; they were agreeing to a very broad, discretionary standard, which the AEC lawyers, at least, had in mind.

And let me ask you about the implications of your position; are you not really saying that we can never apply the full-scope safeguards standard in India's case? And are you not saying that we could never apply the cutoff provision of the NNPA if India detonated a weapon which did not involve the Tarapur fuel? That is why I think we are much better off with the more flexible interpretation I've been advocating.

But let me add one more point. It is that we are not in breach by not exporting today, by any view of the contract because India has enough fuel on hand that she does not need the first shipment until February 1982. The agreement forbids her from stockpiling fuel this way. And it is not a result of operating her powerplants at reduced output; the average annual output from these plants has been just about constant over the past decade. We can use this additional time for negotiations and I think we should; but I do not believe we need to give Mrs. Gandhi another 3-year stockpile just to keep negotiations going.

I hope that replies to Mr. Hoyle's comments.

Mr. LEVIN. Mr. President, will the Senator from Ohio yield for a question on that?

Mr. GLENN. I yield for a question.

Mr. LEVIN. Is it the Senator's argument that in the absence of the 1971 amendment the 1978 act would still apply to this sale?

Mr. GLENN. Yes, I believe that, and I think the 1966 contract covered that also.

The Senator from California is waiting. I might be able to reply later on that.

Mr. President, Senator HELMS indicated I could control his time on this. I yield such time as the Senator from California might need out of Senator HELMS' time.

Mr. CRANSTON. I thank my colleague, and I express my admiration for his effective, dedicated, and informed position on this vitally important issue that relates to not only security but to survival.

Mr. President, I urge my colleagues to support the pending resolution, disapproving the export of nuclear fuel to India. Adoption of th's resolution by the Senate would be an important step forward in our vital effort to combat nuclear weapons proliferation.

I believe it is important for us not to lose sight of the fact that as we debate the legalisms surrounding amendments to fuel contracts and the propriety of testing "peaceful" nuclear devices what we are discussing here today is one of our most critical national security objectives—stopping the spread of nuclear bombs.

Some believe that the effort to slow the spread of nuclear weapons cannot succeed. And yet during this past decade, nuclear nonproliferation has achieved a number of significant accomplishments.

Ten years ago there were dire predictions that more than a dozen nations would have nuclear weapons before the decade of the 1970's was out. But thanks in large measure to the coordinated nonproliferation efforts of both nuclear supplier and consumer nations, thus far only one country—India—has diverted civil nuclear power technology and used this technology to test a nuclear bomb.

One hundred fourteen nations have signed the Nuclear Nonproliferation Treaty, committing nonweapons-states to international inspection of all their nuclear facilities. Key uranium suppliers such as Canada and Australia have adopted full-scope safeguards as a condition of export. The spread of plutonium and uranium fuel plants capable of producing nuclear bombs has been slowed by the cancellation of sales to South Korea, Taiwan, and Pakistan. Nuclear supplier nations have agreed on important safeguards designed to reinforce bilateral antiproliferation guidelines. And the U.S. Government has adopted comprehensive legislation—approved by the Congress with but three dissenting votes and strongly supported by the Carter administration—which requires full scope safeguards as a condition of export and which assures access to U.S. nuclear energy production technology only to nations supporting global nonproliferation efforts.

Today in this body the cornerstone of the international nonproliferation regime is being put to the test. Inherent in the international Nonproliferation Treaty and the 1978 Nuclear Nonproliferation Act, is recognition of the basic fact that partial safeguards against diversion of the peaceful atom into bomb production are no good. For international safeguards to be effective, they must be comprehensive. The issue before the Senate today, in its simplest distillation, is thus: Will we defend the nonproliferation regime and uphold the central provision of the 1978 act which requires full scope safeguards as a condition for nuclear exports? I believe it is incumbent upon us to do so and therefore to block the pending sale to India.

Mr. President, it has been argued that the United States has a contractual obligation to fuel the Tarapur reactor and that we should continue shipping fuel to India indefinitely. This argument—which was addressed and dismissed during congressional consideration of the 1978 act—would completely vitiate the full scope safeguards requirements of the Nonproliferation Act and would commit the U.S. to fueling the Indians' nuclear program even if they exploded another nuclear bomb.

I would note the CRS analysis which concludes the United States can insist on Indian adherence to U.S. nuclear export law without violating our fuel supply contract. And I would suggest that the Indians' contravention of a previous nuclear supply agreement with their 1974 bomb test also gives us grounds for withholding supply to Tarapur.

Still more important, I believe, is the basic point that when we are talking about the spread of the greatest threat to human existence—nuclear weapons—we cannot simply adopt a busines-as-usual approach and blindly proceed to fulfill alleged contractual obligations. The United States has successfully pressured other nuclear suppliers to amend or cancel contracts—such as the proposed French sale of a reprocessing plant to Pakistan. We should be willing to show similar restraints ourselves given the critical importance of such controls to our national interests and international security.

I am reluctant to see this body take any action which might offend the sensibilities of the people of India, the world's most populous democracy and a key nonalined power. India is asserting its rights and principles in the current fuel supply dispute. But we in the United States, too, should not be reluctant to stand up for our rights and principles.

The time has come for us to exercise our sovereign rights under the fuel supply contract to require Indian compliance with the basic U.S. nuclear export law. And the time has come for us to defend the principle that we cannot in good conscience support the nuclear program of a country which has diverted—and will not rule out the possibility in the future of again diverting—peaceful nuclear materials into a nuclear bomb program.

I understand the concern some Senators have expressed regarding the potential effect of this sale on United States-Indian relations. But there is no evidence that approval of this export will gain greater Indian support for U.S. international objectives. In the wake of the Carter administration's offer to send India more nuclear fuel, the Gandhi government signed a new $1.6 billion arms deal with the Soviet Union, entered into negotiations for a far-reaching trade pact with Iran designed to circumvent the U.S. embargo and became the first nonalined government to recognize the puppet regime of Heng Samrin in Cambodia.

The administration's offer of nuclear fuel has not won any new Indian sensitivity to American interests. To the contrary, this offer has highlighted the danger and the futility of using nuclear exports to achieve other foreign policy objectives. Congress has found that one of the principal causes of proliferation is the fact that the United States and other governments have frequently given in to the temptation to use nuclear exports as carrots to improve specific bilateral relationships. It was to address this problem—and to insure that long-term U.S. national security concerns will take priority over transitory bilateral interests—that Congress enacted comprehensive legislation establishing clear standards and licensing procedures for nuclear exports in 1978. We should not reject this accumulated experience in our consideration of the pending Indian export application.

Mr. President, in 1974, after India used American and Canadian nuclear materials to fabricate a nuclear bomb—in defiance of a specific U.S. protest that such use would violate our 1956 nuclear supply agreement—the United States failed to join Canada in terminating nuclear exports to India and insisting on full scope safeguards. Again in 1978, the United States showed flexibility in our nuclear relationship with India, deferring for 2 years our insistence that India adopt full scope safeguards as a condition of continued U.S. supply.

Congress acquiesced in further nuclear sales to India during this 2-year grace period for three principal reasons. First, it was hoped that 2 years would provide time for meaningful negotiations with the Indians to gain their acceptance of full scope safeguards. Second, because the authoritarian, pro-Soviet regime of Mrs. Gandhi had been replaced by that of the more democratic Mr. Desai, the United States hoped for progress through negotiations. And third, Desai ruled out any additional nuclear bomb explosions by India.

Today, as we meet to consider the Indians' latest export application, none of these conditions obtain. There are no safeguards negotiations whatsoever underway with India. Gandhi is in power once again, tilting toward the Soviets and curbing democratic freedoms. And under her leadership the Indians now will not rule out further nuclear tests.

We are left with the choice of defending our policy or of capitulating to Indian pressure and consenting to supply the Indian nuclear program in perpetuity—even if India detonates more nuclear explosives or threatens to throw off the limited safeguards it now has on U.S.-supplied material once our uranium contract expires in 1993.

I believe the time has come for us to stand by our principles and assert our rights in furtherance of nonproliferation and national security goals. I urge a "yea" vote on the Glenn resolution.

Mr. GLENN. Mr. President, I yield such time as the distinguished Senator from Pennsylvania may need.

Mr. HEINZ. Mr. President, the issue before us is a difficult decision, I am sure, for all Senators, but one that is surrounded by complex legal and policy questions and one which will in all likelihood have serious implications for the success of our nonproliferation policy. After considerable study and discussion, with both opponents and proponents of this resolution, I have concluded that our law and our interests are best served by adopting the resolution and thereby blocking this sale of nuclear fuel to India.

It is ironic, in view of the administration's determined lobbying against the resolution, that the dilemma this decision poses was created by the President's own insistence 2 years ago on rigid and inflexible nonproliferation legislation—the Nuclear Nonproliferation Act of 1978. I had serious reservations about that legislation at the time, some of which were the subject of correspondence I had with administration officials, and it is the rigid deadline in the bill for other nations to accept full scope safeguards that has gotten us into the present situation.

I must say it is typical of this administration that, having put itself into a straitjacket, it now seeks to get out of it by changing its policy in midcourse and then reinterpreting the law to justify its about-face. This is reminiscent of last year's strong stand on Soviet troops in Cuba, followed by backing down and covering up when it became obvious the Soviets were not going to leave just because President Carter said they should. This administration has little credibility left in the rest of the world, and it is distressing to see it once again thrown away in a reversal of direction.

The administration has developed a complex legal argument to make the case that the fuel sales in question fall within the 2-year grace period provided in the NNPA, which expired in March 1980. Those who are familiar with the NNPA and the legislative history behind it reject these arguments and recognize them as those of convenience, designed to justify an administration decision made for other reasons. The Nuclear Regulatory Commission did not support this contention by the administration, and there is no reason for us to do so now.

Rather, we should turn our attention to the more important policy issues surrounding this decision. These issues are the impact the sales would have on the credibility of our nonproliferation policy and the impact they would have on the likelihood of actual proliferation of nuclear weapons.

With respect to our own nonproliferation policy, the issue seems clear. The Nuclear Nonproliferation Act of 1978 imposed on us a determined and rigorous commitment that our nuclear resources not be used to meet the needs of countries not accepting full-scope safeguards. Though India has accepted IAEA safeguards at Tarapur, it has regularly refused to accept them on its CIRUS research reactor—material from which was apparently used for India's nuclear explosion in 1974—or on its reactors that are presently under construction. Neither has India made any commitments to refrain from further nuclear tests. In short, India has clearly failed to comply with the terms of the NNPA. Therefore, not to act pursuant to the NNPA and restrict fuel deliveries would equally clearly undermine the credibility of our nuclear nonproliferation policy at the very time it is already under considerable stress. It seems to me to do so would send a message loud and clear to all nations, including those we do not supply with nuclear fuel, that this country is not serious about nonproliferation and safeguards, and that this country is not serious about the laws it passes.

There are, of course, questions on the other side of our status as a reliable supplier of fuel and of our having changed the rules of the game, so to speak, long after our 1963 agreement with India. The facts remain, however, that other nations we supply do not have India's attitude about safeguards, and that our 1963 agreement with its 1971 amendment make a compelling case that India is obligated to accept the terms of the NNPA.

Even if one accepts these arguments of opponents of the resolution, however, the question nonetheless remains whether it is better for us to be perceived a reliable supplier or perceived to mean what we say in laws and pol-

ices we adopt. Even under those circumstances—which I do not believe are the case here—we should opt for the latter course and seek to preserve the credibility of our policy and the worldwide understanding and perception that the United States means what it says—a perception increasingly lacking over the past 3½ years as the Carter administration has flipped and flopped its way through one foreign policy crisis after another.

The second issue is how our decision on these applications will affect the nuclear policies of other nations, particularly India, Pakistan, and China.

In that regard, the most likely conclusion is simply that our action on this resolution will not affect the policies of those countries in any significant way, whether or not we pass the resolution. Pakistan is clearly determined to pursue the development of its own nuclear capability, despite our efforts to block them. News reports over the past week, for example, have contained reports that Switzerland has been helping Pakistan obtain needed equipment, and that construction on a small test facility near Rawalpindi, thought abandoned a few years ago, in fact resumed clandestinely and will probably give Pakistan the ability to explode its first bomb 2 years earlier than expected. Obviously our leverage here is minimal; our past efforts have been unsuccessful. If anything, a decision on our part to continue supplying India with nuclear fuel will only strengthen the Pakistani commitment to their own nuclear program.

In my judgment the situation in India is much the same. India exploded a nuclear device in 1974 and has refused to accept safeguards except where necessary to obtain fuel supplies. Few observers doubt that India's nuclear program is continuing at full speed, especially now that Indira Gandhi has returned to the office of Prime Minister, or that it is likely to change because of our action on this resolution. The argument that by continuing to sell the fuel we maintain some sort of policy control cannot be sustained by the facts and our experience. The Indians have been somewhat ambiguous about what they would do if this resolution is adopted. Beyond saying they would regard the 1963 agreement as broken, releasing them from their obligations, it is not clear what action they would, in fact, take, although there has been considerable discussion of what actions they could take. In fact, an examination of the possible consequences, notably the availability of substantial quantities of spent fuel released from safeguards and the possibility the Indians would begin reprocessing, suggests that they are not a great deal different than what will happen anyway.

With the further development of their indigenous facilities, the Indians will have ample quantities of unsafeguarded plutonium available, and they already have plans for a plutonium recycling facility. At worst, adopting this resolution could slightly speed up the inevitable.

The Chinese case, of course, has some similarities to that of Pakistan. Already a great power in every sense of the word, a U.S. decision to continue supplying nuclear fuel to India is likely only to encourage the Chinese to continue their own nuclear plans, given the growing threat they may perceive to the south.

In conclusion, Mr. President, it seems to me that our decision on these sales one way or the other is unlikely to have a significant impact on the nuclear plans of the states in the region, while it is likely to have a damaging effect on the overall credibility of our policy and its impact elsewhere. For those reasons, Mr. President, I intend to support this resolution and oppose the President's decision to approve these sales.

Mr. GLENN addressed the Chair.

Mr. PERCY. Mr. President, with the indulgence of my colleague, I yield 5 minutes to the Senator from Wyoming.

Mr. SIMPSON. Mr. President, I rise to oppose Senate Concurrent Resolution 109 and I support the President's decision to export nuclear fuel to India for the Tarapur Atomic Power Station. That is a tough decision for me. I have taken this position because I believe that on balance, our overall nonproliferation objectives are better served by proceeding with these two export licenses than by blocking them. Specifically, I believe that proceeding with these exports will preserve important safeguards on the Tarapur reactors and the fuel the United States has provided for them—safeguards I feel that would otherwise very likely be lost. Export approval will prevent India from simply turning to other countries for sources of supply, countries that may not insist on the safeguards already applicable to the Tarapur reactors and fuel. Finally, I believe that approval will provide an opportunity either to build international support for our position on requiring "full-scope" safeguards sufficient to convince India and the few other nonweapons states that have not yet done so to accept full-scope safeguards, or in the alternative, to negotiate arrangements for the return or transfer of U.S.-supplied materials to assure that U.S. exported material is not used by India to make nuclear explosives.

Mr. President, I would like to start with a few general observations. First, I think there is probably a widespread agreement among the Members of this body on what our overall nonproliferation objectives should be. Those are to assure that U.S. exports of nuclear materials, equipment and technology are not used by nonweapons states to make nuclear explosives—bombs—and ultimately, to assure that all nonweapons states place all of their nuclear activities under full-scope international safeguards so as to prevent the use of these activities for nuclear explosive purposes. The question before us today is not whether to abandon these objectives. Rather, it is whether these objectives will be further advanced by allowing these two exports to proceed or by blocking them. This is particularly true for the objective of obtaining full-scope safeguards. I think we all might agree that the full-scope safeguards requirement—the commitment by a nonweapons state to make all of its nuclear activities subject to the international safeguards and inspection regime of the International Atomic Energy Agency—is the very key link in international efforts to prevent the further spread of nuclear explosives. Full-scope safeguards should always continue to be a central objective of U.S. nonproliferation policy, and a most critical factor in our decision today should be whether these exports will assist or detract from our efforts to convince India and the few other countries that have not yet done so, to accept IAEA safeguards on all of their nuclear activities.

Second, Mr. President, I believe it is important to hold in mind the role of the Nuclear Regulatory Commission and how that rule differs from the decision we must make today. That is being lost in the debate. Much has been made of the fact that the NRC unanimously rejected these export license applications, and some argue that a decision today to allow these exports would amount to a reversal of the Commission's judgment on nonproliferation issues. I do not believe that is the case. Under the Nuclear Nonproliferation Act of 1978, the Commission must determine, in the case of each proposed export, whether the statutory criteria are met. In the case of these two exports, the Commission determined that it could not find that the statutory criteria were met. In particular, the Commission determined that the full-scope safeguards criteria should apply to these exports and that these criteria were not satisfied by India.

Although the President's decision to proceed with the exports, which we must approve or disapprove today, questions the legal interpretation of one aspect of the statute by the Commission—the limits, and that is the issue, of the grace period for the full-scope safeguards criteria—it also raises the much broader issue of whether withholding these exports would be seriously prejudicial to the achievement of U.S. nonproliferation objectives and would otherwise jeopardize the common defense and security. On this issue, which I believe we must also decide, the Commission took no position. Thus, this debate is not simply a matter of deciding whether to uphold or reject the Commission's narrower determination in this matter. We must face the broader issue too.

Mr. President, with those general observations in mind, I turn to the reasons why I have decided to support the President's decision to proceed with these two export licenses. First, I believe that a decision not to proceed with these exports would very likely result in the loss of important safeguards that we now have over the Tarapur reactors and the fuel supplied by the United States for those reactors. Up to this time, India has fulfilled its obligations to accept safeguards and controls over the Tarapur reactors and spent fuel; agreed not to reprocess or retransfer the spent fuel at Tarapur without prior U.S. consent; and committed to use only U.S.-supplied fuel and equipment at Tarapur. Also, we have the opportunity to repurchase all spent fuel originally furnished. In addition, India has pledged that it will use nuclear materials supplied for Tarapur

only for that facility, and not for any other purpose, including nuclear explosives. I feel that India will view a decision by the Congress to disapprove these exports as a breach of our agreement for cooperation, and that they will no longer feel bound by any of their obligations and commitments under that agreement. Such a result would seriously damage our nonproliferation interests in India and would create the very real possibility that India will use these U.S.-supplied materials and equipment for unsafeguarded activities. We have already shipped about 200 tons of nuclear fuel to India, and more than 100 tons of this material are now stored at Tarapur as spent fuel. Disapproval of these exports would almost certainly result in the loss of our right of approval to any reprocessing of this spent fuel and of any U.S. control over the plutonium that would be obtained if India decides to reprocess the fuel. This reprocessing would result in substantial quantities of unsafeguarded plutonium being produced, which then easily could be diverted to use in nuclear explosives. In addition, the Indians might well terminate international safeguards that now apply to the Tarapur reactors.

The reprocessing of Tarapur spent fuel, the potential diversion of unsafeguarded plutonium, and the potential loss of IAEA safeguards for the Tarapur facility would be very serious nonproliferation consequences, both from the standpoint of assuring that U.S. exports are not used for explosive purposes, and from the standpoint of deterring the expansion of unsafeguarded sensitive nuclear activities such as reprocessing by nonweapons states.

Mr. President, I recognize that India's past activities—including the use of the Canadian CIRUS reactor and the probable use of U.S.-supplied heavy water to make the bomb detonated in 1974—raise serious concerns about the present and future intentions of that nation with regard to the production and use of nuclear weapons. But I think it is also fair to say that with regard to the Tarapur reactors and the U.S.-supplied materials for it, India has always abided by its safeguards obligations and commitments. It is nothing more than reality to recognize that we can no longer expect that cooperation if we terminate the sole supply of fuel for these reactors under the existing agreement for cooperation.

Second, I believe that if the Congress decides not to proceed with these exports, India will be able to obtain readily available alternate sources of supply—with the most likely source being the Soviet Union. Although the Soviet Union might well require safeguards on the fuel it supplies and probably on the Tarapur reactors as well, it is doubtful that the Soviets would require either safeguards or other controls over the U.S.-supplied spent fuel at Tarapur or full-scope safeguards over all of India's nuclear activities as a condition of its supply commitments. Quite apart from the foreign policy consequences this new Soviet supply arrangement might have, it would surely end any influence we could expect to have over India in encouraging further commitments to international safeguards requirements for its nuclear activities.

Third, I believe that a decision by the Congress not to proceed with these exports would weaken important opportunities that would otherwise be available to build international support for our position on requiring full-scope safeguards sufficient to convince India and the few other nations that have not yet done so to accept these safeguards, in the alternative, to negotiate the return or transfer of U.S.-supplied materials.

As the distinguished Senator from Ohio has pointed out, an important consideration is how our decision will affect other nations, including the many nations that have already agreed to accept full-scope safeguards. I believe it is particularly important, for example, to gage the likely reaction of the 114 nations that have become parties to the Treaty on the Nonproliferation of Nuclear Weapons. These nations, together with France, which has made clear that it will act as if it were a party to the Treaty, constitute a powerful force for encouraging, or even demanding, that the few nonweapons states that have not yet done so accept full-scope safeguards. Together, these 115 nations represent 98 percent of the world's installed nuclear capacity; 95 percent of nuclear power capacity under construction; all of the world's exporters of nuclear power reactors and all major exporters of key components and materials for these reactors; all of the world's exporters of enriched uranium; and all of the world's exporters of heavy water. Those nations that have not yet agreed to accept full-scope safeguards must largely depend upon the assistance of nations within this group to develop a nuclear power program. If this group were agreed to join us in demanding that all nonweapons states accept full-scope safeguards, this would generate substantial pressure on India and the other recalcitrant states to comply.

Unfortunately, the recently completed Nonproliferation Treaty Review Conference indicates that strong support among these nations for the U.S. policy of requiring full-scope safeguards has not as yet been developed, with 38 of the 75 participants at the Conference vigorously opposed requiring a commitment to full-scope safeguards as a condition to nuclear exports. In addition, no other supplier nation at the conference supported the U.S. position that such commitments should be a condition of further nuclear exports under existing as well as new supply commitments. Two other supplier nations, Canada and Australia, do require full-scope safeguards commitments, but they impose this requirement only for new supply commitments as a matter of stated policy. Thus, they have not as yet endorsed the U.S. policy for existing commitments.

According to participants at the Conference, the principal reason for the lack of support for the U.S. position seems to be objections to the process adopted by the United States—that is, the unilateral imposition of the full-scope safeguards requirement as a condition to further nuclear exports from this country under both new and existing supply commitments. Apparently, these nations believe strongly that such a requirement should be the subject of negotiation among nuclear supplier and importing nations alike.

I would add that these nations, by ratifying the Nonproliferation Treaty, have accepted full-scope safeguards themselves and have demonstrated their commitment to the overall objective that all other nonweapons states should do so as well. Mr. President, I believe the recent news reports regarding the Swiss nuclear assistance to Pakistan graphically demonstrate the need to achieve the support of these other nuclear supplier and importing nations for the U.S. position on full-scope safeguards if we are to achieve our objective of making the nuclear activities of all nonweapons states subject to IAEA safeguards.

Mr. President, I believe there are as yet unexplored opportunities to build strong support within this group of nations for the U.S. full-scope safeguards position. These opportunities will exist, among other places, in the Committee on Assurance of Supply of the International Atomic Energy Agency, which will hold its first meeting later this month. Of course, there is no assurance that we can convince these nations to support our position on imposing the full-scope safeguards requirement as a condition of supply. But it is clear that at the present time, without some additional support among these nations, India will have little difficulty in obtaining alternate sources of supply. It is also clear that a strong consensus among these nations to require full-scope safeguards as a condition of further exports would leave nations such as India with the alternatives of either complying or suffering serious disruptions of their nuclear power programs.

Mr. President, I do not believe that the decision in favor of these two exports today foretells an open-ended commitment to send further fuel shipments to India—even without real progress on the full-scope safeguards question. In fact, I would argue that if the international initiatives I have mentioned are unsuccessful, we should immediately negotiate for the return or transfer of U.S.-supplied spent fuel at Tarapur to assure that at the time of future exports, we are not faced with the possibility that a cutoff of U.S. supply will result in the unsafeguarded use of U.S.-supplied materials. I believe that proceeding now with these exports would at least preserve the opportunity to arrange for the return or transfer of this material.

Mr. President, for the foregoing reasons, I believe that our overall nonproliferation objectives are best served by proceeding with these two exports at this time. I therefore oppose Senate Concurrent Resolution 109.

Mr. GLENN. Mr. President, I yield myself 2 minutes.

Mr. President, I will reply only very briefly to the distinguished Senator's remarks. I think the important thing to me is whether we do or do not have an effect on nuclear nonproliferation around

the world with what we are doing here today.

The administration has argued on foreign policy grounds. I think we have discussed that thoroughly here on the floor this morning, as well as yesterday, in extended debate.

The second administration argument is the breach of agreement. I think we have taken care of the legal aspects of that today and have discussed those at considerable length.

Third, the matter that we will have our image tarnished as a reliable supplier. And that one we also have discussed.

But it boils down to this: What is going to happen to those 111 nonweapon states that have signed the NPT and we have worked with since back in 1968?

Are we to say now that we will continue trade with a country that has used our heavy water to make a bomb over our objections. We told them specifically in 1974 that we considered that peaceful purposes clause in the original agreement to mean no bomb, of any kind, this also ruled out what some call a PNE, peaceful nuclear explosion. It is a bomb. You can set it off so it does not kill anybody, but it is a bomb. We indicated that view 4 years before they used our material to set that weapon off.

That to me is the important thing: whether we are still going to keep the leadership of those 111 other nations, whether we can convince other non-NPT countries to sign up while the big powers try to negotiate weaponry limits, and whether we can keep the nuclear supplier nations continuing to export under safeguards and move towards requiring full-scope safeguards.

Mr. President, I yield such time as he may need to the distinguished Senator from Connecticut.

Before I do that, let me just add that I do not think there has been anyone in the Congress or the Senate who has taken a more personal interest in this, who has been more cooperative in our work on the committee, in the Governmental Affairs Committee. He could not have been more helpful in working out the problems that we had originally with the details of the Nuclear Nonproliferation Act. He has expressed on the floor of the Senate as well as personally to me and in committee over and over and over again his concerns in this regard. He has become a real student of this particular matter. I particularly welcome today the comments that Senator RIBICOFF will make on behalf of our position on this because I think he has become a real expert in this area. He has taken such a long interest in it and he is thoroughly familiar with it. We welcome his comments.

Mr. BOSCHWITZ. Will the Senator from Ohio yield for a question?

Mr. GLENN. I will yield.

Mr. BOSCHWITZ. I did not hear the beginning of the statement of the Senator from Wyoming, but I understood his position was that we would retain control over the spent fuel from the reactors. Would the Senator respond to that?

Mr. GLENN. I will be happy to respond to that briefly. I yield myself such time as I may need to do so.

The opponents of this resolution would have you believe that if we do not send this shipment, then India will take out from under safeguards and repossess a huge mass of material they would not otherwise have available to them. That is not the case. True, we control a considerable amount of spent fuel at Tarapur, but it is estimated, by the best estimates we have, that that material would be on the order of enough to make about 70 to 80 bombs. If India breached the treaty, which I think they legally would be doing even though we blocked the shipment, they would have 70 to 80 bombs' worth of plutonium they could extract from that material.

How does this compare with their overall capability? With their overall capability on other facilities in India over which we have no control and will not, whether we have this shipment or not—we have no control over all their other indigenous facilities—our experts estimate that there will be several thousand kilograms of plutonium available to India no matter what we do, and enough that they estimate we probably can have India making 700 to 800 bombs out of that other material over which we are not going to have any control one way or the other.

So what we would be adding to this overall proliferation picture is we would be adding maybe 10 percent or maybe 15 percent to the weapons-building capability that they have at the present time.

It is true, if they decided that they wanted to breach the agreement and they wanted to take that fuel, they could in fact build some bombs with that material. But it is only going to be about 10 or 15 percent of the total bomb building capability that they will have anyway. So it is a fairly small matter.

Mr. PERCY. Mr. President, Senator GLENN argues that the Indians will have access to literally thousands of kilograms of unsafeguarded plutonium from the operation of numerous nuclear facilities other than Tarapur. The spent fuel at Tarapur is small in comparison.

Our Government experts dispute these facts. India will not have thousands of kilograms of unsafeguarded plutonium in the near future. The only reactor currently operating, in Rajastan, is under safeguards because the Soviets are supplying it with heavy water and they require safeguards. The second Rajastan reactor which is scheduled to come on this year will also probably be using Soviet heavy water. The other indigenous facilities at Madras and Narora are way behind schedule and will not come on for 3 to 5 years. The exception is one facility at Madras which is scheduled to come on in 1981. Even if it does come on as scheduled, which our experts doubt, it will still be 1 or 2 years before it begins producing spent fuel from which significant amounts of plutonium could be derived. The upshot is that India will not have large amounts of unsafeguarded plutonium in the very near future, but may have in the next 3 to 6 years.

This makes our continued communication on nonproliferation even more important. Moreover, it does not lessen at all our own concern about the plutonium which could be derived from spent fuel from our own shipments.

Mr. GLENN. Mr. President, I yield such time to the Senator from Connecticut as he requires.

Mr. RIBICOFF. Mr. President, I want to thank my distinguished colleague for his gracious remarks.

Before making my statement on this most important issue, I point out that the interest of the Governmental Affairs Committee in nonproliferation arose out of the Energy Reorganization Act of 1974 establishing the NRC and ERDA. During the hearings, we found that there were inadequate international safeguards in the field of nuclear proliferation.

Out of that concern there developed the Nonproliferation Act.

I want to pay special tribute to the distinguished Senator from Ohio. It became apparent during those hearings, and the work that was being done in this most important field that by background and training there was no Member of the Senate more suitable to take the leadership role in this issue of life and death and whether this world would survive than the distinguished Senator from Ohio. Not only his deep concern as a humanitarian, but his training in the military and scientific fields gave him a perspective such as no other Member of this body could possibly have.

I want to pay special tribute to Senator GLENN. There is no one in this body or the executive branch, including the President of the United States, who knows more about this subject than the distinguished Senator from Ohio, Senator GLENN.

Mr. President, I rise in support of the resolution to disapprove the nuclear fuel shipments to India.

Mr. President, the decision on these exports constitutes a landmark test of the Nuclear Nonproliferation Act. The decision on this issue must take into account many factors: The likely reaction of other nations; the effect on the political situation on the South Asian subcontinent; the effect on our overall relationship with India and most importantly, the effect on world peace.

I do not believe, Mr. President, that the decision on how to vote on this issue is difficult. Looking at the issue from a historical or current perspective, I believe that other Senators must come to the same conclusion. To send this fuel to India would undermine United States and world nonproliferation efforts. By agreeing to send fuel we would potentially gain very little, and if past experience can teach us anything, we would gain nothing.

The cornerstone of U.S. nonproliferation policy, and effectively the world's nonproliferation standard is the U.S. Nuclear Nonproliferation Act. The act provides a firm cutoff of exports to

countries not meeting certain criteria, including the application of full-scope safeguards. The act provides for a 24-month grace period, which has now expired. As a key cosponsor of that legislation and active participant in and drafter of the legislative history, I know, and I believe the rest of the Senate knows, that we intended a firm cutoff to countries not accepting the criteria at the end of that 24-month period. With due respect to the administration's legal opinions, the "guillotine" was to fall. The act gave 2 years for negotiations to be successful. In the case of India, they have not been. The Nuclear Regulatory Commission, in a rare unanimous decision, found that the issuance of such licenses was prohibited by the law, and I trust the opinion and the judgment of the Nuclear Regulatory Commission.

Mr. President, let us look at India's nuclear history and its nuclear relationship with us. India's past policies with respect to its nuclear activities have been contrary to United States and world nonproliferation efforts. Especially troublesome are: The 1974 explosion of a peaceful nuclear device; the refusal to accept and apply full-scope safeguards, and indeed, breaking off negotiations on the subject; lack of cooperation on safeguard inspections conducted under international auspices; lack of assurances for future use of U.S.-supplied heavy water.

Mrs. Ghandi has recently reasserted India's right to "have explosions or implosions, whatever is necessary, for our development and other peaceful purposes." In April 1976, the Committee on Governmental Affairs disclosed that U.S.-exported heavy water was used in India's 1974 nuclear explosion. This extraordinary breach of contract should put doubts in the minds of any Senators who are still undecided on the issue before us.

The United States has previously made two major concessions to the Indians as part of our effort to gain their compliance with basic international safeguard norms. We failed to actively protest their use of our heavy water in the 1974 explosion. We continued nuclear fuel shipments to encourage negotiations with Mr. Desai after passage of the Nonproliferation Act. Neither of these concessions resulted in any progress in discussions with the Indians. It is clear to date that there have been no meaningful negotiations between the United States and India on the basic questions of Indian acceptance of IAEA safeguards. It is clear that India has no intention of accepting full-scope safeguards in the foreseeable future. No additional U.S. concessions—short of unilateral disarmament—can change this fact.

The administration has charged that if we do not make these shipments the United States will be labeled an "unreliable supplier." Yet, history reflects that India is the unreliable partner in the relationship between the two countries. The very essence of the Nonproliferation Act is that nuclear cooperation is to be a two-way street. A careful examination of the record amply demonstrates which country in this partnership is "unreliable."

To be fair, we might look to see what else we might get from India if we make further concessions in the nuclear area. Let me suggest that the Senators still undecided on this issue look at India's recent record with respect to support of U.S. foreign policy. Since these fuel shipments have been pending, the Government of India has taken four separate steps which undercut U.S. foreign policy initiatives. India has signed a trade agreement with Iran, undercutting our boycott. India has recognized the Vietnamese-backed government in Cambodia. India has signed a $1.6 billion arms package with Moscow. India abstained on the U.N. resolution condemning the Soviet invasion of Afghanistan. Should we, for this kind of support, continue to ship to New Delhi the wherewithal to make more bombs?

The nonproliferation situation for the world today is bleak. The prospects of other nations obtaining and using nuclear weapons is very real. Other supplier nations continue selling equipment, material and technology to countries which have not renounced a nuclear explosives capability, which have refused to sign a nonproliferation pledge, and which have refused to accept full-scope safeguards on their nuclear facilities. We must consider the impact on other nations as they examine U.S. response to this first test of the Nuclear Nonproliferation Act. I ask any Senators who are undecided on this issue to answer this question: If this shipment is made to India, do not other nations have the right to ask for exemptions to our policy? Is not continuing fuel shipments to India opening the Pandora's box we thought we closed by passing the Nuclear Nonproliferation Act?

The United States has led the world in a strong nonproliferation policy. To issue the pending Indian licenses would undercut our own policy and demonstrate lack of commitment to it. Since the 1974 Indian explosion, U.S. efforts to gain worldwide adherence to full-scope safeguards and to avert the danger of a nuclear arms race in the Middle East and Southern Asia have proceeded, with India usually being the test case. U.S. failure to comply with its own basic law would critically weaken our carrot-and-stick approach to nonproliferation, abandoning the stick and demonstrating that the United States is unwilling to exercise its leverage. An about-face on something as fundamental as full-scope safeguards would call into question the credibility and tenacity of all American nonproliferation efforts.

Mr. President, I profoundly hope that the Senate supports the resolution of disapproval of the nuclear fuel shipments to India.

Mr. PERCY. Mr. President, I yield 7 minutes to my distinguished colleague from Mississippi (Mr. STENNIS).

Mr. STENNIS. I thank the Senator very much indeed.

Mr. President, I support the decision to export the two shipments of this nuclear fuel to India for use in the nuclear reactors at Tarapur. In evaluating this issue—and it is a grave and serious matter—the U.S. contract with India, signed in 1963, to provide all the enriched uranium needed to operate the Tarapur reactors is a most important consideration. If we now disapprove the two requested shipments, the United States will breach this valid contract.

India so far, lived up to its part of the 1963 bargain. They have agreed to full-scope safeguards for all nuclear fuels of U.S. origin, including onsite inspection.

Mr. President, that is so desirable, so much more than we have been able to obtain as a general proposition in other areas.

None of the nuclear materials provided by the United States under this contract were used in India's nuclear explosion in 1974. Breach of this contract will have a series of unfavorable results in India and will raise the question around the globe of the reliability of the United States as a contracting party.

While opponents of these shipments have argued otherwise, export of these nuclear materials is also consistent with U.S. nonproliferation policies. If the United States breaches its contract, spent nuclear fuel of U.S. origin in India—totaling 200 tons—will no longer be under bilateral and international safeguards. While India currently has enough unsafeguarded weapons grade nuclear materials to make several bombs, 300 bombs could be made from U.S. spent material. For this reason, continuing to safeguard nuclear materials of U.S. origin is most important and consistent with U.S. policies. Continued safeguarding of these materials is only possible if the United States lives up to the 1963 agreement and approves export of the two fuel shipments in question.

To simplify the argument as to whether these shipments are consistent or inconsistent with U.S. nonproliferation policy, one needs only to consider what it is that we hope to gain and what it is that we are placing at risk. The Nuclear Nonproliferation Act of 1978 requires that after the grace period countries to receive nuclear fuel from the United States must provide for international safeguard of all nuclear materials, whatever their origin. India has already rejected these new safeguards and has said they will reject the safeguards of the old contract if the United States does not ship this 30 tons of nuclear fuel.

Currently 60 percent of the nuclear fuels in India are of U.S. origin; the vast majority of the remainder provided by other countries is also under international safeguards. Less than 5 percent of potential weapons grade nuclear materials in India is unsafeguarded. Should U.S. spent fuels become unsafeguarded, there would be a 20-fold increase in nuclear materials that India could use to make weapons. Simply, by seeking to extend the new safeguards to the small amount of Indian nuclear fuel not covered, the United States is risking the loss of safeguards on 200 tons of nuclear material. Given the current situation, this risk is not worth taking.

There are other negative aspects to disapproving these fuel shipments. First

of all, India is likely to turn to the Soviet Union as a supplier for nuclear material. This will increase Soviet influence in South Asia's largest and most powerful state. Second, India is likely to reprocess U.S. spent fuel in their possession and use the resulting plutonium as fuel for the Tarapur reactors. Preventing such reprocessing is a key goal of our nonproliferation policies.

Approval of these two shipments is also consistent with the grace period provided in the Nuclear Nonproliferation Act of 1978. Both of the license applications for these nuclear fuel shipments were received prior to the September 1979 expiration of the grace period for such applications. Failure to actually export these shipments by the March 1980 cutoff resulted primarily from the lengthy U.S. review process. Attempts to claim that these shipments are outside the grace period is inconsistent with the intent of the Nuclear Nonproliferation Act of 1978.

In sum, the United States should approve the two shipments of nuclear fuel to India. By doing so, we would uphold our valid contract with India and at the same time would enhance our nonproliferation goals. Moreover, such shipments fall within the grace period of the Nuclear Nonproliferation Act of 1978 and thus do not establish an unfavorable precedent on waiver of the provisions of that act.

I urge my Senate colleagues to support the President's decision and to vote against the resolution blocking shipments of nuclear fuel to India.

There is nothing happy about this entire situation.

I am impressed with the deep concern that is expressed by every Member. But by doing so we would uphold our valid contract with India and, at the same time, enhance our nonproliferation goals.

Moreover, such shipments fall within the grace period of the Nuclear Nonproliferation Act of 1978 and thus do not establish an unfavorable precedent or waiver of the provisions of that act or waiver.

Mr. President, that is a major point. For this reason, I urge my colleagues to support the sending of the material.

In summary, the basic fact, and this is controlling with me, is that we are under a solemn contract to supply this material. This puts our word at stake. We must live up to our agreement and thus keep our word. Further, if we decline, we release all material already sent from valuable and effective safeguards of the contract.

Mr. President, I yield back such time as I may have remaining.

Mr. GLENN. Mr. President, I yield such time as the Senator from Alabama may need.

The PRESIDING OFFICER (Mr. MITCHELL). The Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise in support of Senate Concurrent Resolution 109, which disapproves the President's proposed shipment of 38 tons of enriched uranium to the Tarapur nuclear power facility near Bombay, India.

The argument has been made that if we fail to ship this enriched uranium to India, we will be violating a 1963 agreement with her. Under the terms of that agreement, we agreed to supply enriched uranium as needed to Tarapur for 30 years. India agreed to use only American uranium at Tarapur and to accept nonproliferation safeguards on that facility when it uses American fuel. India also promised to get our consent before reprocessing spent nuclear fuel from Tarapur.

Mr. President, it is undisputed that the 1974 India explosion of a nuclear device using plutonium was the primary reason that Congress passed the Nuclear Nonproliferation Act of 1978. That act requires any nation which receives U.S. nuclear fuel to accept full-scope International Atomic Energy Agency safeguards on all its nuclear facilities. The fundamental thrust of this law was the precondition of full safeguards for all future American exports without regard to previous treaties.

The question arises, which is legally controlling, the 1963 treaty or the act of 1978. I say that the act of 1978 repealed by repugnancy the 1963 treaty. Repealed by repugnancy is an accepted concept in statutory construction. It also applies to treaties.

Mr. President, article VI of the U.S. Constitution vests treaties and international agreements with the same domestic status as Federal statutes. Federal courts disregard treaty or international provisions if they are expressly repealed or insofar as they are inconsistent or repugnant to later acts of Congress. Thus, under article VI of the U.S. Constitution, Congress can, in effect, by a subsequent act, terminate a treaty or international agreement so far as its effect on our domestic law is concerned.

That is exactly what Congress did to our 1963 agreement with India when it passed the Nuclear Nonproliferation Act of 1978. It terminated the Tarapur safeguards and mandated India to accept comprehensive safeguards on all its nuclear facilities when it receives U.S. nuclear fuel. A later act of Congress repeals by repugnancy provisions of an earlier treaty without signatory approval from the foreign nation.

Moreover, Mr. President, Congress should support the unanimous ruling of the Nuclear Regulatory Commission that the shipment of any nuclear fuel to India after March 10, 1980, is subject to full-scope safeguards, as required by the Nuclear Nonproliferation Act of 1978. The Nuclear Regulatory Commission weighed and evaluated all the evidence and correctly interpreted the act.

Even the State Department testified in 1978 that it is the actual date of shipment—not the intended date—that governs the export of American nuclear fuel. The grace period that Congress allowed to permit exports to countries that did not meet the safeguard requirement expired on March 10, 1980. This was more than 3 months prior to the President's announcement to ship nuclear fuel to India.

Repeal by repugnancy and the expiration of the grace period now makes it illegal to ship the uranium to India.

Mr. GLENN. Mr. President, I suggest the absence of a quorum, with the time to be charged equally against all parties.

Mr. LEVIN. Mr. President, I object to that, because Senator CHURCH has only 5 minutes remaining. Will the Senator agree to having the time charged to his time?

Mr. GLENN. No, I would not want it charged against my time. I will not agree to that. I would agree not to charge it to anybody's time, but that will pose a difficulty when we start the vote at 2:45. However, perhaps it would be better to follow the Senator's suggestion.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged to no one.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, I had planned to deliver this statement in response to some of the remarks made last night by Senator PERCY and Senator MCCLURE. I had planned to do it a bit earlier, but I am afraid that if I delay any longer, we are liable to get into such a short time period that it will be impossible for me to make this statement, and I will deliver it now.

I am sorry that both my colleagues are not in the Chamber at this time. If they are listening in the cloakroom or anywhere else, I should like their presence, because I do not like to respond to their remarks of last night without their being here.

Mr. President, last night, during the debate, I listened very carefully to what my colleagues had to say about this proposed shipment of fuel to Tarapur. I have to confess that I have never heard so many contradictions being uttered in such a short period of time. I am afraid that that characterizes the essence of the arguments in favor of sending this fuel, they are full of contradictions. Let me be specific.

Both Senator PERCY and Senator MCCLURE said last night that the United States has a binding legal commitment to send this fuel and that we must not do anything to violate our commitment, and that if we do not do so, our reputation as a reliable supplier will suffer. I then asked Senators PERCY and MCCLURE what they would do if the Indians exploded another nuclear device from materials which were not obtained from Tarapur. I believe both answered that, of course, in that case we should cut off the shipment of fuel. There is nothing in the Agreement for Cooperation or the fuel contract for Tarapur which makes it illegal for the Indians to set off a nuclear explosion using materials from their indigenous facilities, over which we have no control.

If we take the interpretation of the agreement and contract that was given

by Senators PERCY and MCCLURE yesterday, a U.S. cutoff following such an Indian explosion would be a U.S. abrogation of the agreement. Would we not, under such an interpretation, also be considered an unreliable supplier for having unilaterally abrogated an agreement? Of course, one could say a nuclear explosion is a very serious event and abrogation of agreements is OK in that circumstance. That is simply another way of saying that the United States should only be a reliable supplier to nations that follow effective nonproliferation policies. In fact, that is precisely U.S. policy under the NNPA.

Where I differ from Senators PERCY and MCCLURE is that I do not believe it is necessary to wait for a country to explode a nuclear device in order to conclude that they are not following an effective nonproliferation policy. In my view, if a country with the abominable nuclear history of India does not accept full-scope safeguards, that is sufficient reason for discontinuing nuclear trade. Happily, there is no need to consider the question of abrogation of agreements in this particular case, because the American Law Division of the Congressional Research Service has shown, very convincingly in my view, that it is perfectly legal as well as perfectly proper for the United States to discontinue nuclear trade with India as a result of her failure to satisfy the provisions of the NNPA, such as full-scope safeguards.

The administration has based most of their argument on the very legalism that I believe we effectively refuted here in some of the opening discussions on the floor this morning. I showed in the debate this morning that, at each step along the way, whether it was the agreement for cooperation, whether it was in the 1966 contract, or whether, later in 1971, it was in the amendment to the contract, the United States very properly—because it was a changing situation—kept qualifiers in the contract. India accepted these and as a result we kept the right to add these later provisions. This right to add conditions continues up to the present day.

Last night, Senator PERCY talked about the "lights going out in Bombay" if we do not send this fuel. That is very graphic. Everyone, in his mind's eye, can see the lights of Bombay going out and the lanterns going up and industry shutting down. It is a horrible spectacle. However, I suggest to Senator PERCY that he read the NRC analysis of the amount of Tarapur fuel that India has stockpiled, in contravention of the terms of the agreement for cooperation. That analysis shows that there is enough fuel on hand until sometime in 1982. That gives the Indians plenty of time to do whatever they are going to do, whether we make this shipment or not, because our shipment is not really needed until 1982. So the United States can continue its position on full-scope safeguards and the insistence that that be adhered to before we make this shipment.

Senator PERCY also made some reference to the fact that the reason why the Indians may have some fuel on hand is because they have cut back on the output of the reactors at Tarapur. I have tried very hard to examine the issue of output reduction for the Tarapur reactors. I asked the Congressional Research Service to obtain the best figures available for the annual capacity factors of the reactors at Tarapur from the year 1969, when they went into operation, until this year. I have those figures; they are figures which are publicly available, and they are very interesting—because they show no discernible pattern of reduction of output of those reactors over the last few years as claimed.

The capacity factors, which represent the ratio of the number of megawatts produced by the reactors divided by the number of megawatts available, vary up and down within a certain range. It is higher in some years and lower in others. It is affected by such considerations as whether the Indians want to slow down the production of spent fuel because of lack of storage space, or whether they are having some problems with the technical operation of the reactors.

In any case, it simply is not true, as the Senator from Illinois claimed last night, that if this fuel were sent the capacity factors of these reactors would suddenly go to 100 percent. It is not going to happen. It never has been 100 percent. It never has been even close to 100 percent in any year since the operation of those reactors began.

I wish to correct some other figures that were tossed around last night. It was said here in the Chamber that 2,000 kilograms of plutonium are in spent fuel at Tarapur. The Foreign Relations Committee report shows a figure of approximately 360 kilograms in the 100 tons of spent fuel presently stored at Tarapur.

I am not here today to stand on the floor and say that 360 kilograms of fuel is a trifling amount. It is not, because it takes somewhere around 5 to 8 or 9 kilograms of fuel of plutonium to make an atomic weapon, a nuclear bomb. So 360 kilograms is no trifling amount, but that comes out to some 70 or 80 bombs' worth of material, a significant amount; but it is certainly a good deal smaller than the figure of 2,000 kilograms that was tossed around here last evening.

It is important in one respect, because I asked the Congressional Research Service to go ahead and estimate the amount of plutonium that could be available to India through the year 1989 from her other unsafeguarded facilities, facilities over which the United States has no control, no safeguards. We have nothing to do with those other facilities. Yet what happens to the spent fuel from these other reactors?

That figure for the unsafeguarded facilities over which we have no control turns out to be approximately 2,900 kilograms of plutonium.

Mr. President, I welcome the Senator from Illinois back to Chamber here. I am sorry that I went ahead with this without him present. If I had known he would be back this soon I would not have gone ahead with this. I wished to make certain I have it in before the time ran out.

I was replying to the Senator's comments of last evening and those of Senator MCCLURE.

That figure turns out to be approximately 2,900 kilograms of plutonium available to India from facilities over which we have no control whatsoever.

That is an amount greater by a factor of more than seven than the plutonium that would be available to India from the present stockpile of spent fuel at Tarapur.

That is, the real threat in terms of future proliferation is not the amount of plutonium in the spent fuel; it is the amount of plutonium that will be available to India from her other spent fuel in other nonsafeguarded, unsafeguarded facilities.

Last night my distinguished colleague from Illinois, Senator PERCY, talked about the fact that the possible cutoff of fuel for Tarapur has created an "impassioned atmosphere" in India, an atmosphere which presumably is not conducive to good United States-Indian bilateral relations.

I wish to point out that the same impassioned atmosphere, if that is in fact what it is, would occur no matter when the United States were to take this action, including 3 years down the road, if the Indians did not satisfy the Nonproliferation Act then. This impassioned atmosphere would also exist, I suspect, if the United States were to cut off the fuel for Tarapur as a result of another Indian nuclear explosion.

I have no doubt that the Indians will react with some strong statements to a cutoff of fuel for Tarapur, but let us examine just how impassioned the atmosphere is and what the impact would be on United States-Indian bilateral relations.

I have a recent editorial in the Statesman of Delhi dated September 12, 1980, just a few days ago. The editorial proceeds from the assumption that because the House Foreign Affairs Committee and the Senate Foreign Relations Committee had voted to block the fuel shipments that the House of Representatives and the Senate as a whole would follow suit. In discussing this the editorial says:

> The realities about Indo-U.S. nuclear cooperation will not change even in the event of a reversal to permit the two fuel shipments in question. The decision has clearly been influenced by political considerations as was the one on countervailing duties on certain Indian exports. This is deeply to be regretted, one must also hope for a better understanding on the political issues which may have specially figured in U.S. thinking on trade and nuclear ties. Resentment should not obscure from Indian view an identity of more important interests and values and hence the need for repairing to the extent possible the damage lately done. This, however, has nothing to do with American fuel for Tarapur or with Indo-U.S. nuclear cooperation. It should have been clear long ago that there would be no accord on nuclear policy and both countries should have accepted the consequences. By keeping the Tarapur issue alive they succeeded merely in exacerbating feelings. Tarapur has been allowed to sour Indo-U.S. relations to an extent quite out of proportion to its importance.

That is the end of the quote from the editorial.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the editorial to which I have made reference.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GLENN. The editorial points out quite correctly that Indo-U.S. relations are not dependent on the decision regarding Tarapur.

As I have tried to make clear in the debate, the nonproliferation aspects of this decision in terms of the impact outside India outweigh the concerns produced by possible Indian action stemming from their own abrogation of the agreements. There has been an impassioned atmosphere in India regarding the Tarapur issue from the moment that the United States began reconsidering its position with respect to nuclear supply under its nonproliferation policy. The editorial suggests, and I agree with it, that cutting off supplies to Tarapur will not cause a significant rupture of Indo-U.S. relations because of the many other ties that exist between the two countries. It is, in fact, conceivable that by removing this sore point between the two countries relations might very well improve.

Finally, our distinguished colleagues, Senator PERCY and Senator MCCLURE, said last night that shipping this fuel should be done in the name of protecting the NNPA, that the export is consistent with the letter and the spirit of the NNPA. Senator PERCY said in addition that he "never thought there was a guillotine" in the act. I am sorry to disagree with both of them but I believe their interpretation of the act is wrong and that they are ignoring the legislative history of the act as well as the clearly expressed perceptions of the act in the minds of many of the people who were responsible not only for negotiating certain of its provisions but for implementing it as well.

I add that the State Department went out with cables around the world, which are part of the record we laid before the Senate, stating that in a 24-month time period from the date of signing there would be, in fact, no more export of materials. Certainly it was the State Department's understanding at that time, then, that there would, in fact, be a cutoff and that it would be a guillotine, and every recollection I have of those debates and of that time period is that there was in fact an intent that we set up the 18 months to give a time period, a deadline for the applications. We set up an actual 24-month time period. That was a guillotine beyond which there would be no shipment of materials if there had not been an agreement reached on safeguards in whatever country we were trying to deal with at that time.

Mr. President, I am glad to try and set straight some of the remarks made in the Chamber last night. I am happy to give my statement first to Senator PERCY if he wishes to go through it so he can see the remarks I made earlier, if he would wish to go through it and make any refutation of those remarks. But I reserve the remainder of my time.

EXHIBIT 1

KNOWING WHERE WE STAND

Now that the Foreign Relations Committees of both the U.S. Senate and House of Representatives have voted to stop any further supply of U.S. fuel for the Tarapur nuclear power plant, an increasingly tiresome and distracting debate should come to an end. The decision will not be final until a vote in the two Houses of Congress, but the committee decision is unlikely to be reversed. (The realities about Indo-U.S. nuclear cooperation will not change even in the event of a reversal to permit the two fuel shipments in question.) The decision has clearly been influenced by political considerations, as was the one on countervailing duties on certain Indian exports. This is deeply to be regretted: one must also hope for a better understanding on the political issues which may have specially figured in U.S. thinking on trade and nuclear ties. Resentment should not obscure from Indian view an identity of more important interests and values and hence the need for repairing, to the extent possible, the damage lately done.

This, however, has nothing to do with American fuel for Tarapur, or with Indo-U.S. nuclear cooperation. It should have been clear long ago that there would be no accord on nuclear policy, and both countries should have accepted the consequences. By keeping the Tarapur issue alive, they succeeded merely in exacerbating feelings. Tarapur has been allowed to sour Indo-U.S. relations to an extent quite out of proportion to its importance. From the way Americans spoke about the fuel, and Indians reacted to U.S. failure to fulfill supply commitments, it might have appeared that India's atomic future depended on this single plant. Approval of a fuel shipment, even consideration of an application as prescribed by the relevant agreement, was advertised by the Americans almost as a favour—and regarded by many Indians as a special gesture. President Carter's recent approval of two pending applications received the same treatment. His aides suggested that by allowing the shipments the USA might persuade India "to act in ways consistent with our interests"—not only in the nuclear field but also in foreign policy. A compromise formula, requiring good probationary behaviour by India, was proposed even in the final stages.

Consideration in such humiliating terms was eagerly watched from India, with an interest that would be natural only to supplicants who cannot afford much self-esteem. It would have been far more honourable for India to say that it would rather do without American fuel than be treated in this manner, or to take whatever action was possible for breach of contract. A more mature course—for both India and the USA—would have been to recognize that attempts to find any common ground between their positions on acceptable nuclear aims and restraints were bound to fail and had better be discarded. The Americans would have avoided a series of angry Indian reactions. India would have avoided much suspense and final disappointment. However disagreeable the American decision, though on a matter whose importance has been blown out of all proportion, it is a relief that India has at last been made to realize where it stands. A distraction is gone, or should go soon; it is time more attention was paid to alternative methods of fueling Tarapur—and to other, more important, nuclear projects.

Mr. PERCY. Mr. President, I yield myself 5 minutes so that I might respond to my distinguished colleague.

First, a very quick item on the amount of plutonium: I originally did say that there is enough spent fuel to yield 2,000 kilograms of plutonium. This figure was obtained from Ambassador Gerard Smith. Subsequently, Ambassador Smith and other administration officials have revised that figure, but they stand by this figure of 1,000 kilograms; therefore, the 360 kilograms that we mentioned in our own report would be revised upward.

Needless to say it is enough to wreak havoc and create tremendous disruption, and we all certainly know that.

Second, Senator GLENN has said that I did talk about the lights going out in Bombay and referred to the NRC study of how much fuel India has stockpiled. He indicates that they have enough fuel until 1982.

I did talk about the lights in Bombay dimming. I did talk about the fact that there could be power shortages in that period of time that would cause unemployment.

We all know what happens in any area when there is a cutback in electrical power.

Senator GLENN has also indicated we do not have to supply the fuel now. The Hyderabad fuel fabrication facility is not part of the Tarapur facility and is not covered by the 1963 agreement. We have no obligation, therefore, with respect to Hyderabad, according to Senator GLENN.

The reply to that simply is that the Indians are already operating the Hyderabad fuel fabrication plant on scrap.

The reactors themselves are working at much less than capacity in order to conserve fuel. The Hyderabad facility is the only one in the world which can fabricate the fuel rods for the Tarapur reactor. Continued delay in providing fuel will inevitably in time lead to further reductions, if not actual shutdowns, in power output from Tarapur reactors to an already power-starved region.

So I think we would simply be able to look forward to the fact that we would have brought about a condition of considerable havoc, and done so under conditions where, in the judgment of many, we would be unilaterally breaching our agreement.

Senator GLENN has argued that the legislative history shows that Congress intended that the March 1980 deadline be a total cutoff. The 18-month deadline is less important, he maintains.

It is quite clear from some statements of Senator GLENN himself that he shared my judgment about the primacy of the 18-month deadline for the filing of applications.

To support his case the Senator from Ohio has cited the testimony of Joe Nye at the Foreign Relations Committee hearings on May 24, 1978, shortly after the Nuclear Nonproliferation Act came into force. But let me read the statement of Senator GLENN himself as the chairman of those hearings, and I quote:

> We carefully wrote in this Act an 18-month period in which to try to negotiate some of these things out. People on the international nuclear scene, I think, all understand this.

Indeed, Mr. President, I think people on the international scene did understand this 18-month deadline as the key provision in the bill.

A few sentences later in these hearings the Senator from Ohio again said:

> I think there is a general understanding that we put in this 18-month period to try to work out the problems that we did and not intend to disrupt the flow of nuclear materials going abroad in this interim period.

There is no question that India filed its applications within the grace period time, in fact, one of them a year ahead of that time. Therefore, that, in the interpretation of the Senator from Illinois, the President of the United States and the Secretary of State, is why this 18-month period was provided.

In fact, Mr. President, throughout these hearings 2 years ago, the Senator from Ohio repeatedly refers to an 18-month deadline as the key provision of the bill, and not to the 24-month deadline, which I would argue was only added as a qualification upon the first date. That 18-month deadline is clearly a deadline for applications and not for actual shipments, so long as those applications are not highly unusual efforts to get around the filing deadline.

No one of us at any time ever appreciated or took into account the fact that we might be faced with a situation where applications were filed within our deadline dates, well within those dates, and then we unilateraly would refuse to make that shipment. That was not contemplated at the time.

Mr. GLENN. Mr. President, will the Senator yield on my time?

Mr. PERCY. I would be happy to yield on his time.

Mr. GLENN. I agree with everything the Senator has said, strangely enough, at this point. He is talking about the 18-month period in which applications have to be submitted, and I agree with everything he said. I stand by the statement I made at the time.

But he has not addressed the 24-month period which was the guillotine, and that is the point beyond which, if the material had not been approved and was shipped, the guillotine went down if we had not been able to get safeguards from these countries, and that I will stand by, that was our position on the 24 months.

It was the position of the Senator from Illinois at that time, as I recall from discussions then. There never was any indication of going beyond that 24-month period.

The legislative history is replete with example after example where the guillotine went down at 24 months. The State Department went out with their statements that that was exactly the fact, and 24 months was to be a guillotine beyond which we did not ship.

I reserve the remainder of my time.

Mr. PERCY. Mr. President, one final comment on my time on the question of an explosion.

A second nuclear explosion by India would drastically change the situation, and we would be fully justified in holding up further shipments.

The point to be made is that sending the current shipments does not come under the NNPA cutoff provisions. A nuclear explosion would trigger an automatic cutoff, according to the act. I answer that, in that way, on behalf of both Senator MCCLURE and myself because the question was directed to the two of us.

I am delighted to yield at this time 5 minutes to my distinguished colleague from Minnesota (Mr. DURENBURGER).

Mr. DURENBURGER. I thank the Senator from Illinois.

Mr. President, the background on the issue before us today is well known to everyone. In 1963 the United States and India signed an Agreement of Cooperation which requires us to supply nuclear fuel for a powerplant in Tarapur, India. The fuel is shipped in small quantities every 2 or 3 years to assure continuous operation of the reactor.

Since 1974, when India exploded a nuclear device, the periodic export of nuclear materials to India has caused the United States, committed as we are to nonproliferation, deep embarrassment. Today, the U.S. Senate takes under consideration the most recent export licenses for a 38-ton shipment to Tarapur. Although it appears that opposition may finally put an end to nuclear trade with India, I intend to vote for the sale this afternoon, and would like to take a few moments of my colleagues' time to outline my thoughts on this most difficult vote.

Mr. President, I will begin this talk by reviewing the history of U.S. nuclear nonproliferation policy. In 1963, when we signed the Tarapur agreement with India, U.S. policy was based on a virtual monopoly of nuclear power reactor technology. The light water reactor which requires slightly enriched uranium became the dominant technology in international nuclear trade. The U.S. Government, to support an aggressive export effort, promised a continuous supply of enriched uranium to those nations purchasing U.S. manufactured reactors.

At this stage in the history of our nonproliferation efforts, we took it upon ourselves to guarantee that the fuel supplied would not be diverted to nuclear weapons production. The Tarapur Agreement of Cooperation is a good example of that policy. The agreement gives the United States power to veto the transfer of the fuel to any third party, to veto reprocessing of the fuel by the Indians and to require that the spent fuel be returned to the United States.

International nuclear trade did not remain limited to U.S. manufactured power reactors, however. Several nations began exporting small reactors and other materials for research purposes. As international nuclear trade grew, the world community became seriously concerned with the possibility that nuclear materials supplied for power reactors or research purposes would be diverted to the production of nuclear weapons.

We made a great step forward in 1968 with the signing of the Nuclear Nonproliferation Treaty by most nations of the world. The treaty was based on a twofold classification of nations—those already possessing nuclear weapons and those without. Signatories to NPT who did not already have nuclear weapons agreed to international inspection and safeguards on all nuclear research and power facilities within their borders.

In practice, however, the NPT classification is threefold, for a group of nations without weapons technology have refused to sign the treaty. This group includes India and other developing nations who have agreements with the United States which, if honored, require us to supply nuclear materials for power and research purposes.

Although the legal and institutional instruments necessary to stop the spread of nuclear weapons are contained in the Nonproliferation Treaty, achieving this purpose has remained beyond our grasp. The value of inspection and safeguards depends not only on our diplomatic efforts to bring nonsigners into compliance, but also upon our commitment to the international agencies which must carry out the specifics of the agreement. Material safeguards is not solely a diplomatic problem. The technical difficulties in preventing or detecting diversion are also significant.

The ability of nations and nonnation groups to divert small quantities of nuclear material even where safeguards are present, to reprocess and fabricate those materials quickly, and to use the resulting weapons—however imperfect—for terrorism and blackmail has thus brought the world and the U.S. Government into a new phase of the proliferation problem.

This phase was begun by the Ford administration in October 1976, with a decision to slow the spread of reprocessing and enrichment technology. In April 1977, President Carter announced a complete termination of U.S. commercial reprocessing programs and began a search for fuels resistant to easy and quick diversion. The Nuclear Nonproliferation Act of 1978 was part of this new effort to once and for all stop the spread of nuclear weapons.

NNPA sought to revive the twofold distinction—those with weapons and those without—contemplated by the Nonproliferation Treaty by restricting U.S. exports to nations which accepted international safeguards. It was well known that some nations with whom we had supply agreements would not easily accept the conditions of NNPA. The Congress was apparently convinced that with 1 or 2 years of persistent diplomatic effort these nations could be persuaded. A grace period through March 1980 was therefore added to the law to give the State Department time to apply the necessary diplomatic leverage.

I do not know how I would have voted had I been in the Senate in 1978. But, in retrospect, I would argue that like any policy which seeks to be both comprehensive and inflexible, the language of this act has occasionally proved insufficient to its goals. Given the resistance of India and other nations to the terms of the Nonproliferation Treaty, it is hardly surprising that the NNPA would be resisted as another instance of the United States holding to a position based on "safeguards or else." Regrettable as this may be, it is nonetheless reality.

And since 1968 the fuel supply situation in the world has changed dramatically. To many nations nuclear power

is a necessary replacement for ever more expensive imported oil. And as to nuclear fuel, it is no longer necessary to depend on enriched uranium from the U.S. Government. In the near future many nations will be in the business of enriching and selling light water fuel. India itself may soon have this capacity.

I am sure it was not the intent of Congress to summarily abolish our Agreements of Cooperation with nuclear trading partners, but rather to convince India and perhaps Brazil to accept inspection and safeguards. It is clear that India will not accept safeguards at all facilities and no one to my knowledge is arguing that by denying this sale we will convince India or any other nation to do so. Everyone recognizes that these nations will simply look for supplies elsewhere.

Perhaps we could not foresee this outcome in 1978 when the law was passed. Perhaps it was possible to believe that NNPA would be an effective instrument in persuading these nations to join others in the community under the Nonproliferation Treaty. But, today the implications of the law and our decisions under its authority should be quite apparent.

Therefore, we must ask whether a rigid adherence to the terms of the NNPA in this instance will advance or retard our nonproliferation goals. We must ask whether the aims of our policy are better served by holding to language which seeks to be comprehensive or by taking account of a unique context. At issue here are existing agreements with India which provide effective safeguards against the diversion of stockpiles of spent fuel now in existence.

If we disapprove this sale, we will retain unilateral control over 38 tons of fuel destined for India. We can thus insure ourselves of the ultimate safeguard by not selling these 38 tons at all. However, we will provide India with both the legal pretext and the political stimulus to do as she wishes with some 200 tons of spent fuel now on her territory. Moreover, we will not prevent India from obtaining 38 tons or more of new fuel from other sources.

As we are reminded by the old aphorism, "hard cases make bad law." This case clearly represents a difficult decision. On balance, however, I believe that we are better off, and that our arms control goals are better served, by noting the unique circumstances of this case, consenting to the sale, and retaining our control over the disposal of 200 tons of spent fuel. This, of course, is the point made by Ambassador Gerard Smith, a noted proponent of arms control and nonproliferation, in his letter to each of us in the Senate. I therefore ask unanimous consent that Ambassador Smith's letter be printed in the RECORD.

There being no objecion, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
AMBASSADOR AT LARGE,
Washington, D.C., September 17, 1980.

Hon. DAVID F. DURENBERGER,
U.S. Senate.

DEAR SENATOR DURENBERGER: My job is to try to contain the cancerous spread of nuclear weapons around the world. I have been trying to do this for the last 30 years.

If our country terminates its uranium supply to India under an agreement that the Congress reviewed 17 years ago, I think our non-proliferation program will receive a sharp setback.

In effect we risk losing our present control over large quantities of U.S. origin spent fuel now in India. Those favoring the termination of supply seem to believe that since we have failed to persuade India to accept international controls over all its nuclear activities it makes sense to accept an end to present controls over all of India's U.S. supplied nuclear material. Better, I think, to keep existing controls as long as possible. Better, I think, to put off as long as possible this proposed termination of supply under a solemn American commitment of 17 years' standing and try to find ways to narrow our non-proliferation differences.

It is claimed that Indian use of U.S. heavy water to produce its 1974 explosion was a violation of a commitment to the U.S. There was no such commitment. And the U.S. continued its Tarapur supply for 6 years after the Indian explosion. It seems quite irrelevant, as well as incorrect, to cite this explosion to now support a decision to cut off India's energy supplies.

My information is that all our major allies support the President's Tarapur decision. I think a failure to supply will not serve our non-proliferation interests—in India or globally—and will be taken abroad as yet another sign of U.S.-non-reliability as an energy supplier.

I trust the Senate will not repudiate America's word and thus open the way to decontrol of some 200 bombs' worth of plutonium.

Sincerely,

GERARD SMITH.

Mr. DURENBERGER. Of course, the Carter administration argues that the license is technically legal under the law. And they also hold out the promise that approving the sale will continue the dialog on safeguards. Neither of these arguments is persuasive.

The Nuclear Regulatory Commission as the agency responsible for nuclear exports found by unanimous vote that the export license violates sections 109, 127 and 128 of the act. They are correct in that view.

As to United States-India relations and the promise of future progress on the safeguards question, the time to hope that India will accept international inspection and safeguards on all nuclear facilities has long since expired.

Many of my colleagues, unpersuaded by the administration position, therefore fall back on the law. NNPA passed the Congress by a big margin. It must, therefore, be a reasonable policy. Opponents refer to it as the centerpiece of our nonproliferation efforts. The Nuclear Regulatory Commission by unanimous vote found the export in violation of the law. The easy conclusion is to vote for disapproval. Based on a count of newspaper editorials this is popular position, as well.

By upholding NNPA, what do we gain that is adequate compensation for the loss of the agreement which safeguards the fuel at Tarapur? Will denying this license stabilize the situation in South Asia and cool the arms race between India and Pakistan? I think not. India will acquire the fuel whether we supply it or not. To Pakistan the issue is not who supplied the fuel, but its presence in India. I would think that Pakistan would feel somewhat better if we continued supply knowing that the 200 tons already at the reactor are protected by our agreement.

Some would have us wait to study the issue further—to get the results of the nonproliferation review conference and the GAO research on the value of NNPA policy. They point to a legal analysis by the Library of Congress arguing that we will not violate the conditions of the agreement by refusing the sale now. That the fuel is not needed now. I would say that we have studied enough.

Waiting for GAO may be sufficient to guarantee a negative result for their study. It is not the view of India which counts in this instance. And they have made it clear that disapproval of this license will be interpreted as abrogation of the agreement.

The final benefit of disapproval claimed by those opposing the sale is higher esteem in world opinion. It is argued that by upholding NNPA, the world will be convinced that our commitment to nuclear nonproliferation is to be seriously regarded. And world opinion has reason to doubt the course, if not the commitment, of U.S. nuclear nonproliferation policy. Over the past decade our efforts to prevent the spread of nuclear weapons are most notable for false starts, failed attempts and forgotten promises.

We need to establish a sensible and consistent nonproliferation policy across the range of issues from nuclear exports to reprocessing to uranium enrichment capacity to return of spent fuel. But that is not to say that the Nuclear Nonproliferation Act of 1978 is a firm foundation for that policy.

Our 1963 decision to ship nuclear materials to India before we fully understood the proliferation implications of nuclear exports was a mistake. We will not make this error again. But we will not recover from past folly by blindly abandoning our agreement and allowing India to do as they choose with 200 tons of spent fuel. No less an authority than Ambassador Gerard Smith recognizes that this is the case.

How do we convince the world that our commitment to nonproliferation is to be seriously regarded while at the same time overturning the so-called centerpiece of current policy? The answer is to be found in the conditions of the agreement itself. We have the right to require that all fuel supplied to Tarapur under the agreement be returned to the United States after its capacity to produce electricity is spent. If we do not exercise that right by 1993, India will be able to dispose of—to reprocess, to sell, to divert—the fuel we have supplied in any way they desire.

It seems to me that we can only prove our commitment to nonproliferation by assuring that no fuel exported by the United States is ever available for diversion to weapons production. In the case of Tarapur that means returning the spent fuel to the United States. Under the conditions as they now exist, taking any other course can only mean failure to

act on our commitment to nonproliferation. It will be an expensive proposition. Making the original agreement will prove an expensive mistake. But recovering our error by recovering our fuel will be the most convincing—is the only convincing demonstration that our commitment is tangible and can be relied upon by the world community.

I know that many oppose U.S. acquisition of foreign spent fuel. And it is not a policy that I would favor in general. But in this case we cannot uphold the nonproliferation commitment and avoid that responsibility. In this most difficult instance and for this small amount of fuel, requiring return is the only policy that positively demonstrates and tangibly implements our nonproliferation objective.

Mr. President, if I had my choice on these export licenses, I would vote to approve the first—fulfilling our obligation under the agreement—and disapprove the second with language that would make it clear that the Senate would approve no further exports until arrangements had been made to assure return of all material supplied before the agreement expires in 1993. But that is not the choice presented to the Senate, today.

So I will vote to export 38 tons of nuclear fuel to India to keep the agreement and preserve the safeguards it contains. But I want it to be clear that this is my last vote for exports until such time as we have a policy in place that guarantees return of all material supplied since 1963. I believe this to be the only reasonable course that upholds our commitment to nuclear nonproliferation.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, will the Senator from Ohio yield for a question at this time?

Mr. GLENN. Mr. President, I will yield a total of 3 minutes. I would not want to go beyond that. We have some people coming to speak. I yield 3 minutes on my time for a question.

Mr. SARBANES. Mr. President, I say to the Senator that I think the time in opposition to his resolution adding up on both sides is down to about 10 minutes or so. Therefore, most of the time remaining to be used up before the vote is in control of the supporters of the Senator's disapproval resolution.

Mr. LEVIN. Mr. President, I thank my colleague from Ohio.

A few minutes ago I asked the Senator whether or not, in the absence of the 1971 amendment, he would be arguing that the 1978 law applies. The Senator's answer was yes, as I remember, because of the 1966 language itself.

I wonder if the Senator could identify what language in the 1966 contract he is relying on.

Mr. GLENN. Yes. If the Senator would get a copy of the committee report, I could run through that and show the legal paper path we go through on this thing.

Mr. LEVIN. Mr. President, I wonder if the Senator could identify the language in the 1966 agreement, because I did follow all the rest of his argument.

Mr. GLENN. Yes. On page 53, under the 1966 contract, it states, as was stated earlier:

> The seller shall sell to the purchaser and the purchaser shall purchase from the seller, as needed, as of the purchaser's requirements of enriched uranium for use as fuel for the Tarapur Atomic Power Station up to a net amount of—

And the rest of that sentence right there.

But that is qualified over on the following page. If the Senator will go to page 54, down to line 9, where it says:

> Subject to such conditions and licenses as the seller may require.

So there was still to be a future requirement there to be put in.

It was further clarified then in 1971, which is covered over on the beginning of page 67. The amendment in 1971 covered that time period where we, in fact, were switching from government-to-government provision of sales to commercial sales. So we put in additional requirements at that time in 1971 which India accepted. At the bottom of the page, under D, it says:

> The purchaser shall procure all necessary permits or licenses (including any special nuclear material license) and comply with all applicable laws—

And so on.

So the paper trail through there of what was intended by our Government was very clear. India signed each one of these along the way and thereby agreed to them.

Now, what was the question?

Mr. LEVIN. I thought that was the representation that the Senator from Ohio made. I have read and reread the Congressional Research opinion. For the reasons that Senator JAVITS, Senator SARBANES, and I gave, I do not think it is of any legal weight whatsoever. But I will not get into that now, because I am on the Senator's time.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. GLENN. Mr. President, this will be charged to my time and I will yield 2 more minutes to the Senator.

Mr. LEVIN. I thank my friend from Ohio.

Even the Congressional Research Service opinion, which I think pulls out all stops to reach the conclusion it did, did not cite that language that the Senator now cites in support of his conclusion, because it obviously refers to the words "or to a transporter engaged by the purchaser, subject to such conditions and licenses as the seller may require."

My question of the Senator from Ohio is this. Am I not accurate when I say that even the congressional research opinion that the Senator from Ohio relies on for his legal position here makes no reference to those words "subject to such conditions and licenses as the seller may require" in support of the conclusion that it reaches?

Mr. GLENN. I do not recall. I guess I should, but I do not recall whether they did or not. I will have to go back and reread the whole thing.

Mr. LEVIN. I thank the Senator.

Mr. GLENN. The 1971 amendment expanded those very words in the 1971 amendment that applied to earlier treaties.

Mr. LEVIN. My question is whether there was any reference whatsoever in the opinion about the phrase "subject to such conditions of licenses" in article III, section A of the 1966 agreement.

Mr. GLENN. I will have the staff look it up now. Perhaps we can cover it before the debate ends.

Mr. LEVIN. I thank the Senator from Ohio.

Mr. GLENN. Let me say that regardless of what the legality is, this is a gray area between the State Department and the Congressional Research Service, legal scholars on the staff here, and so on. I think we are right in going with the American Law Division of the Congressional Research Service and their interpretation, because the language does, from agreement to agreement and contract to contract, and so on, track perfectly with what was the intent of our Government, which was to keep future options open as to requirements we might put on.

But regardless of the legality question, it seems to me we come back to the fact that there are three major reasons why the administration has proposed this shipment. That is on the foreign policy grounds, which I think we have addressed. Second, the administration as far as the breach of agreement problem, which we have talked about, and we will still be talking about it, obviously, because it is an area of uncertainty; and the next area being the third administration argument, whether it will tarnish our image as a reliable supplier. I think it will enhance our image as a reliable supplier which has qualifications on what we want to see the agreements be.

Most significantly, there are 111 Nonproliferation Treaty signers around the world who signed full-scope safeguards, who foreswore the development of nuclear weapons, in return for the nuclear assistance that we could give.

Second, we have current negotiations with non-NPT countries on full scope safeguards which would be undermined if we continued business as usual with the world's first nuclear violator.

Third, the nuclear supplier nations, some of whom now require full scope safeguards as a condition for exports, Australia and Canada, and others that may be moving in that direction, France and West Germany, might reassess their positions if they became convinced the United States is reversing itself on this vital issue.

Finally, if America is to demonstrate its ability to conduct consistent foreign and national security policies it is apparent that we shun even the appearance of appeasement. Joe Nye, then a State Department official 2 years ago, stated in the absence of progress on the full scope safeguards issue it was "highly unlikely" that the United States would supply India with nuclear materials after the NNPA deadline.

I want to see us be consistent in our foreign policy, Mr. President. I think

there is no other way to go but to approve this resolution.

Mr. President, I yield 1 minute to the distinguished Senator from North Carolina.

Mr. MORGAN. Mr. President, I intend to vote against the resolution of disapproval. I am doing so reluctantly because I am fully aware that the issue of exporting two additional shipments of low-enriched uranium fuel to India for use at its Tarapur Atomic Power Station is complex and can easily attract adherents on both sides of the decision.

The issue, Mr. President, is simply beset by many uncertainties and ambiguities. Are we contravening our own Nuclear Nonproliferation Act of 1978 or should India merely adhere to the restrictions contained in the original bilateral agreement of 1963? Is India's peaceful nuclear explosion of 1974 a breach of the 1963 agreement or just a legal ambiguity which needed further interpretation? Will our uranium exports to India encourage Pakistan in its own nuclear ambitions or are Pakistan's imports from Switzerland independent of anything being done at Tarapur? Are our relations with India best served by breaking the 1963 agreement or could our future dialog be conducted in a more favorable atmosphere if the shipment is completed?

I have carefully considered the implications of these questions, Mr. President, and have reached the conlusion that our Nation's security interests in South and Southwest Asia can best be served by supporting the Executive order which authorizes the shipment. I am glad to say that individuals intimately acquainted with nuclear controls and disarmament reached the same conclusion.

Secretary Muskie wrote to me that:

> It is impossible to predict whether we will be successful in convincing India to continue to forego nuclear explosive activity . . . I am sure . . . that our chances of achieving this objective is enhanced by going ahead with these two licenses . . . If we do not, we will have lost whatever leverage we now have over the situation.

In another letter, Ralph Earle II. Director of the U.S. Arms Control and Disarmament Agency tells me that:

> If the U.S.-India agreement . . . is breached in a material fashion . . . India is released from its obligations thereunder. The results would be serious and could lead to the reprocessing of U.S. fuel in India without U.S. consent . . . In addition, it could have the effect of ending the Indian safeguards agreement now in effect with the International Atomic Energy Agency.

Ambassador Gerard Smith, now overseeing our interests in nuclear control arrangement, writes that:

> If our country terminates its uranium supply to India . . . we risk losing our present control over large quantities of U.S. origin spent fuel now in India . . . All our major allies support the President's Tarapur decision. I think a failure to supply . . . will be taken abroad as yet another sign of U.S. non-reliability as an energy supplier.

Mr. President, it appears to me that the key elements in all three letters regarding the approval of the shipment are that we retain leverage to negotiate further, that we do not release India of its own obligations, and that we will retain our credibility as a treaty partner.

In the light of present world developments, and particularly the Iraqi-Iranian conflict, we cannot afford to antagonize a large country in the region without further damaging our bargaining position in the area. India may have differed with us in the past on some key issues and its present policies may not be entirely to our liking. Yet if we respect the fact that India is independent and sovereign, the largest popular democracy in the world and a major nonalined power, should we not also accept an occasional variance in the results of its decisionmaking processes?

Some other more technical arguments in this debate should be briefly reviewed. Under an agreement of cooperation with the Indian Government reached in 1963, the United States agreed to supply the necessary amount of low-enriched uranium needed to fuel the Tarapur reactors during their estimated 30-year lifetime. In return, India committed itself to terms conditioning the use, reprocessing, and safeguarding of the supplied fuel and not to use the supplied material for "atomic weapons or for any other military purpose."

It is the contention of the State Department that thus far India has met all of its reciprocal obligations under the 1963 agreement.

The Nuclear Nonproliferation Act of 1978 provides that after a specified grace period, a recipient of U.S. nuclear exports must have its nuclear facilities under international safeguards as a condition of continued export. With regard to Tarapur and other Indian facilities containing nuclear materials that have been supplied from outside of India, international safeguards have been accepted. It is in the case of other indigenously developed facilities that compliance with international safeguards is still lacking.

Upon review of the license applications covering the proposed exports to Tarapur, the Nuclear Regulatory Commission found that the applications did not meet full-scope international criteria. The Commission's decision to refer the applications to the President was grounded in large part on its interpretation of the grace period established in the Nuclear Nonproliferation Act.

The record will show that the license applications at issue today were filed before the filing deadline of September 10, 1979. The expiration date of the much debated grace period was March 10, 1980. The Commission judged that since the exports would not occur before March 10, 1980, the license applications were not exempt from the full-scope safeguard criteria. It is my belief that the Commission's interpretation is much too narrow in light of our existing relationship with India.

We are at a time when we need more than ever to maintain our nonproliferation dialog with India. If we vote today to deny to India these export applications, we vote to deny to the United States the opportunity to discuss its differences with India on nuclear issues in an atmosphere conducive to progress. It is imperative that we maintain a viable diplomatic relationship with India in order that the negotiating process we now have will be maintained. Only through this channel can we bring India into full-scope compliance with international safeguards.

The issue must ultimately be viewed in context with our nonproliferation objectives: Will nuclear restraint better be served by shipping the nuclear fuel or not? It is my contention that it will; and that if we fail to ship the fuel, our measure will serve only to strengthen the forces already working against nuclear restraint in this region of the world.

Although there is much to be desired in the achievement of our nonproliferation goals, a vote today by the Senate disapproving of the President's Order will weaken not only our basis for continued discussion and negotiation, but also any hope of achieving those goals. The Tarapur issue has become an indicator of our commitment to maintain good relations and stability in this troubled part of the world.

I ask my colleagues to join me in opposing this resolution of disapproval.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Since Senator CHURCH is not here, I will take the liberty of using 1 minute of his remaining time.

Commenting on Senator GLENN's last remarks relative to the 111 nations, not one of them has a supply contract with the United States similar to the one India has; second, everyone of those 111 nations can understand a commitment. We had a commitment, an unambiguous, unconditional commitment to India, and not one of the 111 nations had such a contract. They ought to understand our carrying out our own commitments.

Finally, relative to the claim of "appeasement," one of the worst things in terms of world order is for countries not to keep their commitments to each other. We have to keep commitments and not unilaterally change them substantively, unless our security needs clearly so require.

I yield the floor.

Mr. GLENN. Mr. President, I yield 5 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, there is no doubt that the approval of the nuclear fuel sale to India has become a highly controversial issue. It has become so because this sale deals with conflicting principles of foreign policy, nuclear nonproliferation, and commercial obligation. The controversy is not a partisan one however. Some of my distinguished colleagues from both sides of the aisle have come down on opposite sides of this question. To a certain extent we are dealing in speculation here, about consequences of our continued approval or disapproval of the nuclear shipments to India, and our perceptions of the effects on future United States-India relations and, most importantly, the spread of nuclear weapons capabilities.

The administration has made its decision in favor of the proposed sale. In doing so Mr. Carter overruled the unanimous decision of the Nuclear Regulatory Commission (NRC) that the shipment would violate U.S. interests by breaking the Nonproliferation Act. In doing so the administration has overruled the will of the people and the Congress who passed the 1978 Nuclear Nonproliferation Act. In doing so Mr. Carter has breached the enforcement of the Nonproliferation Act which the House of Representatives upheld Thursday in a nonpartisan, 3-to-1 vote of 298 to 98, which disapproved the President's decision to override the NRC. Today's vote in the Senate will be the final decision on this important issue. With our vote today, the fate of the Nuclear Nonproliferation Act and its goals will be decided, along with the destiny of that fuel for India.

DISAPPROVAL MORE PERSUASIVE

There is no doubt this is a complicated issue. There is a case that can be made that furthering our nonproliferation goals can be accomplished by either approving or disapproving the sale of the fuel. There is a legal case based on our prior contracts with India both for and against continuing the shipments. It has been argued that denying India the fuel will ultimately do more or less damage to our foreign policy interests. It is the belief of the Senator from Kansas and the other cosponsors of this resolution that the case against the sale to India is ultimately more persuasive, and of more importance to U.S. long-term security goals.

It seems clear to me that if the Senate approves the sale we will be undercutting the Nuclear nonproliferation Act of 1978, and will be placing the United States in contravention of our own laws. We will be aiding and abetting India's drive to acquire a nuclear military capability. We will be making a sham of our exhortations to other emerging nuclear powers to join the Nonproliferation Pact.

This is not to say that it is not necessary and important to continue our long-standing friendship with the people of India. We would like to develop closer relations of mutual benefit to the Government of India. India, one of the most populous countries in the world, has a tradition of democratic institutions which has recently been tested, and it has emerged still free. As a leader of the nonalined movement and the Third World, India is vital to our efforts to maintain good relations with that increasingly important bloc. Yet the administration's stand on the export of additional nuclear fuel to India is not in the American interest, nor ultimately in India's.

SELLING FUEL OR SELLING OUT?

What do we hope to gain by selling India this nuclear fuel? The administration argues for a lever over future Indian foreign policy. Yet there is nothing in the past record to indicate approving this sale would even earn us the thanks or appreciation of India, let alone its future cooperation. Should this sale occur, it would be in direct contradiction to the stated foreign policy objectives of the United States over the past three administrations; namely, worldwide nonproliferation.

The decision whether to export additional fuel for use in the operation of the Tarapur nuclear powerplant is a true first test of the 1978 Nuclear Nonproliferation Act. If it fails the test, we may find the act virtually vitiated as an instrument of foreign policy. As many of my colleagues who participated will recall, that act was passed by an overwhelming 88-to-3 vote. According to its provisions, all non-nuclear-weapons states requesting a supply of nuclear fuel must accept international safeguards on their nuclear programs. If we continue to export this fuel to India, which has constantly rejected the Nonproliferation Treaty and safeguards, our policy of nonproliferation will become discredited. It will become difficult, if not impossible, to prevent nuclear proliferation, with all the risks that entails of nuclear warfare, to such developing countries as Argentina, Brazil, South Africa, Indonesia, Pakistan and others.

With the invasion of Afghanistan, the administration has been lately forced into the realization that our relations with Pakistan must be strengthened, that its strategic position is even more important now than before. American opposition to Pakistan's nuclear-capable program has been a major thorn in our mutual relations. Our Nonproliferation Act codifies the principle and policy the United States has worked hard for other states like Pakistan to accept. It is one of the few means available to discourage the pursuit of nuclear capabilities by threshold nations.

INDIA'S LOYALTY: PRICE TOO DEAR

It is just not clear to the Senator from Kansas how the administration can accept a policy which, reduced to its essentials, is an attempt to buy the loyalty of India by caving in to its uncompromising stand. If it can be bought, India's price is too high. The principle of nonproliferation is too dear a price, and too essential to our long-term national security, to be the questionably effective quid pro quo for India's friendship.

Recently, India signed a $1.6 billion arms agreement with the Soviet Union, an impressive display of friendship and cooperation. If we allow the export of U.S. uranium, we cannot realistically expect that it will result in any significant change in India's foreign policy. It is clear that, after the Soviet invasion of Afghanistan, the Indians have greater reason to fear for their security and yet, of all the Third World, India protested the least. They have accepted the Vietnamese invasion of Cambodia and the puppet regime installed there. It is quite apparent that India will make its security decisions on the basis of much larger geopolitical concerns than our shipment of nuclear fuel.

The Senator from Kansas agrees that it is best to do what we can to improve relations with India. To enhance their security, for instance, the United States just recently indicated its willingness to sell 3,700 TOW antitank missiles to India. This is a more straightforward and a much less harmful method of continuing our good relations with the Indians. However, the United States cannot, in good faith, continue to supply the nuclear program of India when the Indian Government has violated its "peaceful use" assurances made to the United States under the agreement for nuclear cooperation made in 1963. India's use of U.S.-supplied heavy water during their so-called peaceful nuclear explosion in May of 1974 is a direct breach of our agreement.

How can the United States continue to export fuel to a nation which has not foreclosed future "peaceful explosions" and constantly threatens to breach again the 1963 agreement by extracting nuclear explosive material? Such use of U.S.-supplied fuel for the production of plutonium is a major threat to world stability. We cannot allow ourselves to be blackmailed on this issue, or the United States and the rest of the world will be subject to a far worse blackmail by nuclear terror in the future.

It is the administration's view that to avoid the "possible" harm to our nonproliferation efforts, a breach should not be made in our agreement to supply fuel to India. What kind of reasoning is this? If any breach has been made, it has not been by this country. In the sometimes complex and contradictory milieu of statecraft, where policies and motives are occasionally obscure and working at cross-purposes, the proper course is sometimes hard to see. I, too, continue to support strong and peaceful relations with India.

COMPROMISE POSSIBLE

The administration, however, has not exhausted all avenues of possible compromise that might lead to a diplomatic solution acceptable to both sides. Stanford Professor Henry Rowen, an expert in nonproliferation issues, has pointed out that despite the added costs, the United States could make the return of spent fuel a condition for the future shipment of uranium. This is the usual practice for the Soviet Union when it acts as a supplier to third countries. Evidently, India wants all or nothing and has indicated no interest in this effort to bridge the differences between our two countries.

The prospects for friendlier relations between India and the United States, never very certain, will no doubt be clouded for the short term by this issue. But, it is also certain that to cave in to a nation that has consistently opposed U.S. foreign policy goals without achieving a commitment on nonproliferation cannot be construed to be even remotely in the interests of the United States. The Congress must be concerned about long-term effects of foreign policy decisions. We have learned that decisions made today about our future national security will have ramifications far beyond the next election. The Carter administration has overruled the unanimous decision of the Nuclear Regulatory Commission that the shipment would violate the Nonproliferation Act. It is up to the Senate to veto the President's decision and uphold the law, and

to further the cause of nonproliferation.

(Mr. BRADLEY assumed the chair.)

Mr. GLENN. Mr. President, I thank the distinguished Senator.

I yield myself 20 minutes.

Mr. President, we have made the best case I know in favor of this resolution to block the shipment of uranium. The case can be summed up: First, if we send the exports, we shall weaken the Nonproliferation Treaty. One hundred and eleven nations around this world have signed the NPT and subjected themselves to full-scope safeguards—meaning they have forsworn the development of nuclear weapons. For that agreement and to encourage them into the Nonnuclear Proliferation Treaty, they are to receive nuclear assistance.

And we have carried out the technological and material help in that regard to all these nations—or to many of them.

A U.S. decision to send the exports without requiring this commitment undermines the value of becoming or remaining a treaty member. Second, a vote to approve Senate Concurrent Resolution 109 to stop the exports upholds our commitment to full-scope safeguards as a standard for nuclear trade. Disapproving the shipments provides congressional affirmation of the cornerstone provision of the NNPA and removes any doubt regarding the U.S. commitment.

Third, passage of Senate Concurrent Resolution 109 would avoid the erosion of U. S. leadership caused by failure to enforce our safeguards policy against the worst nuclear offender. India is the only nation to have diverted civilian nuclear facilities to produce nuclear explosives—despite a letter sent by the Atomic Energy Commission to Bombay 4 years before the explosion warning India that the heavy water sent there was to be used only for peaceful purposes, and our definition of peaceful purposes meant no bomb, no explosion, whatever the title was that was given it that explosion.

Mrs. Gandhi has stated her intention to conduct further explosions whenever deemed in India's national interest. India's unsafeguarded indigenous facilities over which the United States has no control whatsoever—no control whether we ship fuel to Tarapur, no control of any kind by the United States. These other facilities over which we have no control are capable of producing thousands of kilograms of plutonium, potentially representing hundreds of bombs by the end of this decade. That is quite apart from any control we have over Tarapur or anything Tarapur does. Those thousands of kilograms of plutonium, if the fuel from Tarapur were used to add to that, would provide only some additional 360 kilograms—an important amount, but small compared to what India will be able to do whether or not we ship this fuel.

Failure to enforce U.S. policy against India would seriously undermine our negotiating position in other instances. And, finally, the passage of Senate Concurrent Resolution 109 would not violate U.S. contractual commitments. We shall go through that in greater detail later. The Foreign Relations Committee, in its report on the resolution, agreed with the American Law Division of CRS that under the 1963 nuclear agreement and the subsequent fuel contract, India is required to "comply with all applicable laws, regulations, and ordinances of the United States" including the NNPA. Let me examine now the arguments on the other side.

The other side says that approval of the exports will favorably impact Indian-United States relations, while disapproval would deal us out of the game with India. I believe that the opposition has failed to make a case that nuclear trade with India has had or will have any significant lasting impact on Indian-United States relations one way or the other. It should be remembered that, after President Carter promised Mrs. Gandhi the fuel, the Indians closed a $1.6 billion arms deal with the Soviets—I repeat, after President Carter promised Mrs. Gandhi the fuel.

We could say that was under negotiation for a while and we could not have expected otherwise. I probably agree with that. But I can hardly agree when India became the only non-Communist nation to recognize the pro-Soviet government in Kampuchea, and abstained on the U.N. resolution condemning the Soviet invasion of Afghanistan at a time when we needed their vote.

The other side says, and rightly so, that they finally came around and said the Soviets had done wrong, and they did. But, at the first go-around in the United Nations, they went against us.

Also, once we set up an economic boycott of Iran as a result of the hostage situation, India went ahead and is now negotiating a major trade pact with Iran undercutting our ability to apply pressure for the release of our hostages. The Statesman of New Delhi announced the trade agreement with the headline: "India To Help Iran Beat U.S. Sanctions."

United States-Indian relations are much more likely to be affected by such matters as the laws governing the $2 billion in annual trade between the two countries, the hundreds of millions of dollars in economic assistance provided annually by the United States—economic assistance that I have supported in our Foreign Relations Committee and undoubtedly will continue to support, because I think it is very important that we give India aid in this area—as well as security assistance arrangements such as the recent sale of 3,700 TOW antitank missiles.

I add, Mr. President, that on the floor just this morning, I was given some figures on India's total arms purchases between 1960 and 1980. From non-Communist countries, it has been about $3.5 billion; from Communist countries, about $5 billion in that period. So it does not look like anything we do or do not do here is going to be a determining factor.

Also, we have notice of proposed issuance of Letter of Offer pursuant to the Arms Export Control Act, where we are in the process now—a report delivered to Congress shows we are in the process of a major defense equipment sale to India on the order of $111 million for 230 M-1, 98 155-millimeter towed howitzers with spare parts, support equipment, mobile training team, and so on.

We have another order in the mill which we have been notified on the 12th of September. Another major defense equipment buy totaling $28.7 million for 155-millimeter projectiles and component charges with primers.

We are dealing with India in many different respects and this nuclear fuel sale is but one of many connections we have with India.

A second argument of the opposition is that "shipping the fuel is consistent with U.S. nonproliferation policy." It is not. The legislative history and State Department cables explaining the NNPA in 1978 show that the law contemplated an absolute 24-month deadline for applying the full-scope safeguards standard.

Senator PERCY and I discussed that a few moments ago. I hope everyone was listening because he stressed the 18-month period in which applications had to occur, and I concur with everything he said in that regard. But he did not address the 24-month cutoff, which was a guillotine cutoff if agreement had not been reached.

We described it that way. The State Department, following enactment of that, interpreted it as a guillotine cutoff and sent cables to every diplomatic mission around this world.

To come back and say it was not intended as a guillotine cutoff is not right.

Allowing the exports amounts to a waiver of the standard and will be universally viewed in these terms.

The third argument of the opponents of the resolution is that "the exports should be shipped to avoid losing control of past shipments."

There would be a never-ending supply to India, no matter what request in the future or what happened if we agreed with that.

This is an argument favoring supply without end and a capitulation to Indian threats. It should be remembered that after Canada broke nuclear trade with India in 1974, India retained safeguards on Canada's reactor because of her sensitivity to international criticism. But even in the worst case, the amount of plutonium available to India from Tarapur is dwarfed by the large amount of unsafeguarded plutonium India will have by the end of the decade through her indigenous facilities, over which we, in this arrangement and contract with India, have absolutely no control.

The real proliferation threat is not past U.S. shipments, but India's unsafeguarded facilities.

Finally, the opposition says that "India has never violated a nuclear agreement with the United States." I have already discussed the aide memoire sent by the United States to the Indians in 1970, 4 years before India's nuclear test, stating unequivocally, that the use of U.S. heavy water for nuclear explosions would be a "contravention of the terms under which the American materials were made available."

That diplomatic message, that aide memoire, was a secret document until last Friday. We asked it be declassified. I appreciate very much the cooperation of the administration in declassifying it promptly to become a part of this debate. I thought it was a very important part. It indicated well in advance of any explosion our intent with regard to how that material was to be used and our interpretation of whether the original cooperation for agreements language that said it was to be used for "peaceful purposes" was being carried out.

We told India in no uncertain terms that if there was an explosion of any kind, whatever they called it, that we would interpret that as being a contravention of the terms under which the materials were made available.

Mr. President, we have heard a great deal of discussion from a great many people yesterday and today on this issue. Senator PERCY has argued eloquently in favor of these shipments, claiming that the shipments are consistent with the letter and the spirit of the policy and the law that was adopted 2 years ago. I respect Senator PERCY as a colleague and as a friend.

We work together on the Foreign Relations Committee and usually vote together on most matters. I am sorry we find ourselves coming apart on this particular issue.

I hope if Senator PERCY is listening at a speaker somewhere that he would come to the floor because I want to quote some of his words back to him in a moment.

I do not want to do it behind his back, although we can hardly do that on this floor with everybody listening.

But Senator PERCY has talked eloquently in favor of the shipments, claiming they are consistent with the letter and spirit of policy and law adopted 2 years ago.

I respect him as a colleague and friend. There is no one in this body who has worked harder to shape U.S. nonproliferation policy than he has. It was an inspiration to work with him on the NNPA over a period of a number of years, and to work to get it into law. Because of this background I felt it instructive and important to go back into the record to see what Senator PERCY had said in connection with the development of our policy and of the NNPA. On February 7, 1978, in a debate regarding an amendment to the NNPA that had been proposed by Senator DOMENICI, Senator PERCY who opposed the amendment said the following:

> I merely feel that this amendment goes really a little farther than we are able to go because it now starts to invade our ability to keep the nonproliferators in charge rather than the nuclear salesmen.
>
> Look at the ludicrous position we would be in as a nation. Right in India today we are negotiating with India at the highest level—the President of the United States has just left India. We are all alarmed that we have a developing country that used technology and know-how from Canada and from the United States under the Atoms-for-Peace program to develop a nuclear bomb. This has destabilized the whole condition in the subcontinent. Pakistan is now pressing France to fulfill its commitment to give them a full cycle which would give them by anyone's admission the capability of developing nuclear explosives. . . . Under the amendment of the Senator . . . the NRC would be required to continue to supply enriched uranium to India. What we have and what we have admitted from the start is time. We are the principle suppliers, we have clout and [illegible] the world expects us to use that clout as a bargaining chip. We want to be able to keep it.
>
> Under this amendment exports would simply have to go out if there were no changed circumstances.
>
> We want changed circumstances in India. We want India to sign the Nonproliferation Treaty just as we want South Africa to sign the Nonproliferation Treaty. Virtually every nation on earth wants that and we want to bring about that change through the leverage and the persuasive powers of the United States of America. We do not want to undercut the President in his bargaining power.

I agreed with that statement of Senator PERCY at the time and I still agree with it. I am sorry he is on the other side of this particular argument. I believe it is pertinent to this particular case that we are discussing today and I believe it supports my position. That is not the only statement that Senator PERCY has made on nonproliferation that supports my position in the present case. On July 14, 1978, in connection with the first Tarapur fuel case following the passage of the NNPA, Senator PERCY insert a statement in the RECORD supporting sending the fuel at that time, and commenting on a relatively close House vote that failed to reject the Executive order at that time to send the fuel, his statement says that—

> The final vote of 181 to 227 is a graphic demonstration of the deep concern which many of us share about the inadequacy of nonproliferation controls in India. It is clear that if India has not accepted full-scope safeguards within the 18-month period provided under the Nuclear Nonproliferation Act of 1978, it is highly unlikely that a waiver allowing continued exports would be approved by the Congress.

I submit that this statement shows that Senator PERCY at that time felt that the Indians had a limited amount of time to accept full-scope safeguards before an absolute cutoff of exports to them would occur. That is precisely the position I have taken in connection with the present export. Mr. President, I see no reason to change my mind about the importance of giving our present policy a chance to work. The policy of unlimited nuclear trade without requiring full-scope safeguards was a policy that we followed for years after Atoms for Peace. That was the policy that got us into our present nonproliferation problems. That was why we decided to change that policy when we passed the NNPA. The previous policy was in existence for 20 years, while the present policy has been in existence for 2 years.

There may well be some places where adjustment of this policy should occur, but I believe that the basic thrust of the policy points in the right direction, that we should give it a chance to work. I believe we will be taking that chance away if we do not approve the resolution on Tarapur.

I have discussed the substance of the case against the shipments. I should like to say a little about the lobbying efforts again in connection with this issue.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I yield myself the remaining time, which I understand to be 4 minutes, to summarize the case for those of us who oppose this resolution of disapproval.

The thing to remember, whatever any Member of the Senate may feel about India, is that the Government of that country has not broken any agreement with us. India did not break an agreement with the United States when it detonated a nuclear device. The position of the State Department on that question is that there was no breach of the original agreement relating to the establishment of the experimental facility which was used in connection with the building of the bomb.

India has kept the agreement as it relates to our obligation to furnish fuel for the Tarapur plant. The adoption of this resolution will be a material breach of that agreement on the part of the United States. I believe that is wrong, because we should keep our word. A solemn pledge made should be kept.

We at least should extend to India the courtesy of putting her on notice that under the new law of the United States, all future applications for further enriched uranium for Tarapur after these two shipments are made will be subject to the full rigors of the 1978 Nuclear Nonproliferation Act, including the section 128 full-scope safeguards criterion. That will give India an opportunity to make any new arrangements she sees fit or decide to agree to a comprehensive nonproliferation policy that will subject all her nuclear plants to the full-scope safeguards.

To break this agreement peremptorily is going to have the most serious repercussions. It will gain us little or nothing in terms of advancing our nonproliferation objectives, but it will cost us dearly in influence that we need in New Delhi. It will cost us dearly in added Russian influence and growing Russian power in this troubled region of the world.

We cannot balance all the complex consequences of this act and reasonably conclude that the interests of the United States are advanced by breaking our agreement with India. Too much is at stake. It extends far beyond the question of nonproliferation alone. It is not the course of wisdom, and it is not the course of honor, in my judgment.

For this reason, I hope very much that the Senate will not approve the resolution of disapproval brought before it by a Foreign Relations Committee that was divided 8 to 7 on the question.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, may we know the condition of the time?

The PRESIDING OFFICER. The Senator from Idaho has no time remaining. The Senator from New York has 6 minutes. The Senator from Ohio has 6 minutes. The Senator from North Carolina has 5 minutes.

Mr. GLENN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I discussed the subject of the case against the shipments a little earlier, and now I should like to speak about some of the things that have been said.

Lobbying efforts have been very heavy on both sides. Secretary Muskie has played a leading role in the effort and has carried out his responsibility in this connection with honor and fairness. His letter on this issue and his statements indicate that he is somewhat troubled by some aspects. In a letter he sent to all Senators, he says, "It is admittedly a close call." I agree with that.

There are other aspects of the lobbying which have troubled me somewhat. For one thing, some of the administration officials who have been lobbying Senators on this issue are saying things with which I do not agree.

They are very misleading.

Let me give the Senate an example: Some of the people who have been lobbying the last few days have said that all our major allies support the President's Tarapur decision. I have heard that back from a number of Senators.

I am not certain as to exactly who they mean when they say this, and the only quote I have heard is, "There was no real big decision of this at the Geneva conference in August." But that does not mean approval by these different governments. I can guarantee Senators that. So we took it upon ourselves, with my staff, to make inquiries of the embassies here in Washington to find out whether there were official positions taken by these governments, which is what has been intimated by the Ambassador that has been around making those statements.

Word has come back unanimously that the governments of those countries have taken no position on this issue and are not likely to take a position on it. It did produce some interesting information besides that. The Canadian Embassy responded to the inquiry by saying that although they have no official position on the U.S. sale of fuel for Tarapur, they cut off the Indians in 1974 as a result of the Indian misuse of a Canadian reactor to produce the material for a nuclear explosion and that nothing has occurred in the Indian nuclear situation in the past 6 years to cause them to alter their policy.

The Australian Embassy answered that they have no official position, but that it should be noted that they require full-scope safeguards for nuclear trade.

I will mention some other statements which we obtained from some of the embassies of our major allies. One embassy official, while saying that his government had no official position one way or the other on the shipment of fuel to Tarapur and said that opinion among embassy officials was divided, but that everyone agreed that the decision to send or not send the fuel would determine the credibility of U.S. nonproliferation policy. At another embassy of one of our major allies, we were told again that that government had made no statement and taken no position on the shipment of fuel to Tarapur. This embassy official indicated, however, that the NPT was considered very important to his government and that it was the opinion of embassy officials that sending the fuel weakens the nonproliferation regime.

Mr. President, I reiterate that there is only one conclusion that can be made on the basis of these inquiries and on the basis of the statements that have been made by some high officials of our Government. It is just not true, it is just not the truth. They have been going around to Senators saying that "All our major allies support the President's Tarapur decision." It is a misrepresentation of the facts from the embassies that we have talked to and there is no one they have pointed to so far as far as I know; no one has been given any information about specifically what countries have indicated this great support that the administration claims. In fact, it is not there.

That is not the only instance where the Senate has not been told the truth about the Tarapur issue. Administration officials who have claimed that India did not violate its heavy water sales agreement with the United States when it exploded its nuclear device in 1974 are also, I think, very much mislead or deliberately misrepresenting the truth, because we did send India a diplomatic message, an aide-memoire in 1970, 4 years before the Indian explosion, concerning the heavy water sales agreement.

Let me quote from a little bit of this. I will not read the whole thing in the interest of keeping time short. I will allow myself 2 minutes.

The PRESIDING OFFICER. The Senator only has 1 more minute.

Mr. GLENN. I allot myself 2 additional minutes of Senator HELMS' time which I am controlling.

Mr. President, as part of this statement, the American position, we explained what our view was and then we said that: "The development of such explosives"—any kind of explosives is what it referred to earlier—"therefore, is tantamount to the development of nuclear weapons. Any other position would be inconsistent with U.S. obligations under the Nonproliferation Treaty and the U.S. Atomic Energy Act."

In another paragraph:

> Specifically, for example, the use, for the development of peaceful nuclear explosive devices, of plutonium produced therefrom would be considered by the United States a contravention of the terms under which the American materials were made available. . .

That cannot be much more specific, and we went ahead in another paragraph and said:

> The heavy water sold hereunder shall be for use only in India by the government in connection with research into and the use of atomic energy for peaceful purposes.
>
> The United States would not consider the use of plutonium in CIRUS for peaceful nuclear explosives intended for any purpose to be research into and use of atomic energy for peaceful purposes.

So India was on notice, Mr. President, about what we meant and to say now that they have violated nothing after all of that, even though it is true that that language was not part of the agreement for cooperation, to me just flies in the face of logic.

Mr. President, I reserve the remainder of my time.

Mr. NUNN. Mr. President, will the Senator yield for a question? I will try not to take too much time.

Mr. GLENN. Mr. President, how much time do I have remaining on my time and Senator HELMS' time?

The PRESIDING OFFICER. The Senator has a total of 4 minutes and 20 seconds remaining.

Mr. GLENN. Mr. President, can the Senator do it in a minute? Or I will yield him 2 minutes.

Mr. NUNN. Mr. President, one brief question. The question I have is whether India has broken the contract we had with India in terms of their use of American heavy water or other material, whether they have indeed broken that contract, or whether we are in a position now of breaking the contract with them. I get different answers depending on whom I talk to on that question. So my precise question is, Did they indeed use American plants or material to produce the explosive material that they later used?

Mr. GLENN. In the original sales contract India pledged that anything done pursuant to it would be for "peaceful purposes," only. Later on, then, when we heard India was probably involved in making a bomb or explosive device of some kind, we then sent them the aide memoire to explain what we meant with regard to peaceful purposes.

It is true that that was not part of that original agreement for cooperation.

Later on, then, we signed a separate agreement of cooperation with the Indian Government and later, pursuant to that first agreement for cooperation, a supply contract, in 1966 which spelled out the terms of the Tarapur deal. This was further revised in 1971. These also limited India to using our material for peaceful purposes and our interpretation of this term, indicated by the note to India, was that any nuclear explosion of any kind would not be a peaceful use. It would be a contravention of the agreement we entered into.

Mr. NUNN. Did India ever agree to our interpretation? Did they ever explicitly or implicitly agree?

Mr. GLENN. They came back and said they did not agree with our interpretation of that, since this language had not been included in the original language. It was up to them to make an interpretation of what "peaceful" was.

Mr. President, I reserve the remainder of my time.

Mr. JAVITS. Mr. President, I yield 2 minutes to the Senator from Illinois, Senator PERCY, 2 minutes to the Senator from Tennessee, the minority leader, and 2 minutes to myself.

Mr. PERCY. Mr. President, I address my comments to Senator GLENN because of the very thoughtful comments he made about me a few moments ago in the Chamber. I would just like to return the compliment. There is no one in this body who has worked harder to shape

nonproliferation policy than he has. If anyone has worked hard, Senator GLENN has. We are in accord with the goals, and I admire him for what he has done.

He did quote what I said on February 7, 1978, and I stand behind what I said at that time.

I did want our ability to keep the nonproliferators in charge rather than the nuclear salesmen.

I did say we have clout and I think the world expects us to use that clout as a bargaining chip. We want to be able to keep it. And that is exactly what we want to do.

We want changed circumstances in India. We want India to sign the Nonproliferation Treaty just as we want South Africa to sign the Nonproliferation Treaty. Virtually every nation on Earth wants that, and we want to bring about that change through the leverage and then persuasive powers of the United States of America. We do not want to undercut the President in his bargaining power.

I repeat what I said then. We do not want to undercut the President in his bargaining power.

Mr. President, I cannot think of anything that would undercut the President of the United States more and the Secretary of State than for this resolution of disapproval to be agreed to by the Senate. We would lose all contact with India on nuclear matters.

If we make these two shipments, we will allow another year for the President to use the bargaining power that he has to bring us closer together, and we are coming closer together. India has laid down certain conditions. We have laid down certain conditions. We are in that process. The State Department wants to continue that dialog, not end it. The dialog would be over if we end our supplier relationship with India on this weak ground.

I thank my distinguished colleague.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Chair, and I thank the distinguished Senator from New York for agreeing to yield me this brief time to speak in opposition to the resolution of disapproval.

Mr. President, our consideration today of a resolution to disapprove the sale of nuclear fuel to India for the supply of India's Tarapur reactor raises a number of difficult questions. There are questions of law and fact about which reasonable men of good faith have honest differences; there are questions of differing interests of the United States that may or may not be competing. In my judgment, Mr. President, the questions of law have been resolved in favor of this sale; moreover, I believe that the various interests of the United States, far from being competing, are parallel and mutually support the Tarapur sale.

If the questions of law were clearly on one side or the other, Mr. President, this issue would not be nearly so troublesome. If it were clear, for instance, that the United States had the right to withhold these shipments of fuel without breaching the 1963 agreement for cooperation, our task would be easier. Or, if it were clear that the Nuclear Nonproliferation Act prohibited shipments of nuclear fuel after the March 10, 1980 cutoff to countries that have not accepted full-scope safeguards on all their nuclear activities, that might be dispository of the issue. At the very least we would be considering the question from an entirely different perspective.

In neither instance, Mr. President, does the law clearly argue against this sale. In fact, I am persuaded that the legal arguments favoring the sale far outweigh those opposing it. India filed the license applications for both shipments within the NNPA deadline of September 10, 1979. Moreover, both applications were for shipments of fuel well within the reasonable and rational contemplation of the supply arrangements concluded in the 1963 agreement for the Tarapur program. The Indian applications are thus in compliance with both the law and the agreement, and India would likely consider our refusal to make these shipments now an arbitrary and unjustified breach of the 1963 agreement.

From the standpoint of policy, the consistent and persistent pursuit of the interests of the United States, the arguments are even more persuasive. It has been argued that the interest of the United States in nonproliferation and the interest of the United States in expanding its influence in the region of Southwest Asia are competing. I am convinced, Mr. President, that these interests are not competing, but are in fact, mutually supportive of this sale.

I have long held the view that the proliferation of nuclear weapons is one of the great, indeed one of the paramount, concerns that should face great nations and small alike. I have said previously, and I believe, there is a moral imperative that should require the nations of the world to try to reduce the risk of nuclear war.

But I have also held the view that our attempt to prevent proliferation has been too narrowly focused on the potentials for proliferation through nuclear power programs, and we fail to deal with the threat of proliferation through new technologies, technologies that, in my judgment, are far more likely to be the source of the proliferation of nuclear weapons than nuclear powerplants might ever be.

In the process, we have severely diminished our credibility as a reliable supplier of fuel for peaceful nuclear power programs; to the benefit of our competitors, we have taken our own domestic nuclear industry out of the world market; we have alienated friends; and, we have diminished our ability to influence positively the peaceful development of nuclear power.

Mr. President, no matter how regretful we may be about it, we need to recognize the fact that the nuclear genie is out of the bottle—Pakistan proves that, and there are at least fifty private corporations that could have supplied Pakistan that technology; we need also to recognize that our only hope of controlling that genie is to seek to expand, not diminish, our influence in the nuclear power programs of other countries, and to control, wherever possible, the technologies capable of producing weapons materials independently of nuclear power programs; and if we are to avoid the risk of nuclear war, it cannot be by sharply circumscribing our only practical alternative, by maintaining some control over the supply of nuclear power, nuclear fuel for power reactors.

The refusal now to make this sale to India would represent the classic example of a shortsighted policy. If we refuse this sale, the Indians will turn to the Soviet Union as their next best source of supply. Moreover, India will likely consider our refusal to this sale a breach of the 1963 Agreement for Cooperation which would free them to terminate the safeguards on the Tarapur reactors and to reprocess the spent fuels already at Tarapur. Finally, with respect to Pakistan, I will concede that it would be a natural reaction for India to respond with similar intent and I would certainly concede that even if we make this sale, we may not be able to dissuade the Government of India from pursuing this course. I would remind my colleagues, however, that if we fail to make this sale we can be virtually certain that we will be unable to influence India's decision to respond in kind to the threat of nuclear weapons in Pakistan.

Mr. President, we have a deep and abiding interest in seeking to expand our influence in the subcontinent of Southwest Asia. Neither we nor India can at this point discern the final implications of the Soviet invasion of Afghanistan, but we would be most ill-advised to write off India as a "captured" client of the Soviets. Although it is true that the Soviets have gained a position of significant influence in India and the recently concluded $1.5 billion arms package is abundant evidence of that influence, we have virtually overlooked the fact that India has also recently entered into an agreement with the United Kingdom, totaling $1.2 billion, for the purchase of military aircraft. We should be willing to compete with the Soviets, not forfeit to them, particularly in Southwest Asia, and we should be most reluctant to abrogate any channels of communication and cooperation with the world's largest democracy.

Mr. President, I believe our interest in nonproliferation and our interest in expanding our influence in the region are not competing but mutually reinforcing. The sale of nuclear materials to India for use in her Tarapur reactor program will serve both interests, and I would ask my colleagues to consider carefully whether the long-term interests of the United States are well served by so narrow a focus on disputed legal interpretations. I think, on reflection, that a majority of my colleagues will agree with me that the balance of our interests are served by making this sale.

I thank the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, the plain issue in this debate upon which we on our side ask Members to vote "no" on this resolution is whether we wish to

push India again, as we did in connection with the Pakistan-India war, into the arms of the Soviet Union.

India has not signed the Nonproliferation Treaty, and she will not sign it under these conditions, and the question which faces us, therefore, is that some of us interpret our agreement with India one way, and some of us interpret it another way arguing that 13 years after we made the agreement they think we have the right to impose certain conditions on India incorporated in a statute passed in 1978.

That is never going to come to trial, as such, but it is going to come to trial on the question of whether or not India will be with us or whether we are really going to alienate her for a long time.

Considering this war that is pending right in the Persian Gulf, it seems to me unbelievable that we would consider such a move now.

Last, Mr. President, it is no precedent because the grace period of the Nuclear Nonproliferation Act had not expired.

If we disapprove these shipments, however, the only precedent set is that we are so stiffnecked that we have alienated a critical power in the world struggle today just because we are trying and straining by unilateral U.S. law to make them liable under a contract we made 13 years before that law was passed. Mr. President, it makes no sense at all, and I hope the Senate votes on the side of "no."

Mr. GLENN. Mr. President, I yield myself such time as I may require until our vote begins in just a couple of minutes.

This boils down to, Mr. President, a foreign policy decision that the administration has brought up, number one. I think we have taken care of a lot of those arguments on other aspects of our relationship with India where we have far more leverage than we have in this.

India has used our materials in ways in which we figured were not proper. We warned them in advance of that. We passed, largely as a result of their action, a 1978 Nuclear Nonproliferation Act that very carefully spelled out our views on what we expected to be the norm in return for our, technical assistance, equipment, and material help around the world, and that was very carefully spelled out.

A second administration argument is if we halt these exports, we will be in breach of the 1963 agreement. I think we have talked the legalisms of that over and over here this morning. I disagree with that strongly. The American Law Division of the Congressional Research Service disagrees with that.

A third area of administration disagreement is that of being the reliable supplier. But we have agreed with anyone who cooperates with us in the nonproliferation area, with signing the NPT, in agreeing to safeguards, that we cooperate to the fullest.

Mr. President, it comes down to this: The most important reason for barring these exports is that a U.S. capitulation to India could eviscerate our nonproliferation efforts around the world: 111 nonweapons states have already signed the NPT, and agreed to full-scope safeguards, and they certainly would very validly question the value of continued adherence if India received nuclear assistance without a similar commitment.

Second, current negotiations with non-NPT countries on the full-scope safeguards question would be undermined if we continued business as usual with the world's first nuclear violator.

Third, nuclear supplier nations, some of which require full-scope safeguards as a condition for exports, Australia, Canada, and others that may be moving in that direction, such as France and West Germany, may reassess their position.

Mr. President, for all these reasons, and for the reason we voted to support this resolution in committee, I urge my colleagues to support this committee.

I yield the floor.

● Mr. KENNEDY. Mr. President, I want to add my support for Senate Concurrent Resolution 109, the resolution to disapprove the proposed export of low-enriched uranium to India. I recognize that serious arguments have been made on both sides of this issue. I have considered them carefully, and have concluded that the further shipment of nuclear fuel to India, in light of that country's refusal to accept international safeguards on all its nuclear facilities, would set back significantly U.S. nonproliferation and foreign policy interests.

Throughout my Senate career, I have supported efforts to curb the spread of nuclear weapons. I am proud to have cosponsored the 1978 Nuclear Nonproliferation Act, which for the first time set forth specific criteria to govern U.S. nuclear trade. Under the terms of this act, the United States is now required to deny shipments of nuclear fuel to India and other countries that refuse to adhere to full-scope safeguards.

The 1978 act provided a 2-year "grace period" during which India could bring its facilities under safeguards; in the interim it was hoped that negotiations with the Indians would yield positive results. The election of Prime Minister Desai, who had explicitly decided against any nuclear explosions, gave additional reason to hope that progress could be achieved.

But today that hopeful atmosphere is receding. Negotiations with India have unfortunately proven fruitless over the past 2 years. The current Indian government favors neither comprehensive safeguards over all its nuclear facilities nor even assurances against nuclear explosions. In fact, Prime Minister Gandhi told the Indian Parliament just this past spring that India intended to conduct further nuclear explosions if such tests were determined to be India's national interest. This position has been repeated by an official in the Indian External Affairs Ministry, who stated that while India has a "commitment to peaceful uses of nuclear energy," it will reserve the right to carry out test explosions, if necessary, for the development of its "peaceful" nuclear program.

The current situation becomes an important test case of our overall nonproliferation policy. The inadequate safeguards over India's nuclear facilities in the past—and India's detonation of a nuclear device in 1974—were major factors leading to the strong nonproliferation criteria embodied in the 1978 act. Other nations, including our other nuclear customers who have accepted every requirement of the act, are therefore likely to view the eventual export decision as a fundamental test of our consistency, fairness, and resolve.

Victor Gilinsky, a member of the Nuclear Regulatory Commission, warned that approval of the Tarapur shipments could gravely damage U.S. credibility: "If India does not need to satisfy the full-scope safeguards requirement, other countries will be quick to seek similar exemptions, with the inevitable erosion of the law's effectiveness." For example, in two countries where negotiations have been particularly troublesome, Pakistan and South Africa, there is already substantial resentment that the United States has been more lenient toward India than toward them.

I am concerned that congressional approval of the pending exports could eliminate our last chance to dissuade Pakistan from pursuing its own nuclear weapons program, and our last opportunity to avert a nuclear arms race in the region. We could thwart our efforts to improve relations with Pakistan, an important nation in the future of Southwest Asia.

The requirement of full-scope safeguards is the "cornerstone" of the 1978 act. To waive this provision with respect to India would greatly hinder our efforts to encourage other nations to accept the 1968 Nonproliferation Treaty and would raise doubts in the minds of those nations that have already signed that treaty. By contrast, a cut-off of the shipments to India will underscore the seriousness of the U.S. commitment to nonproliferation and provide greater incentive to nations that have been cooperating with our nonproliferation laws.

Together with Canada, Great Britain, the Soviet Union and other nuclear suppliers, we have pressed for the adoption of full-scope safeguards as a condition of future nuclear exports. If we abandon the full-scope safeguards criteria which we ourselves adopted only 2 years ago, we will set back the prospects for enhanced supplier cooperation on this vital issue.

Proponents of the sale to India argue that the Indians will perceive a fuel cut-off as a breach of the 1963 United States-Indian Agreement on Nuclear Cooperation, and may use this as a pretext to withdraw the Tarapur facility from its existing safeguards and to begin reprocessing the spent fuel at Tarapur without U.S. consent.

Although I recognize the seriousness of these concerns, a thorough legal analysis conducted by the American Law Division of the Congressional Research Service has reached the conclusion that the United States is presently under no legal obligation to supply the requested fuel to India and that withholding the fuel exports at this time would not constitute a breach of the 1963 agreement. Under the 1964 fuel supply contract, which implements the 1963 agreement, and a 1971 amendment to the agreement, India has assumed an explicit legal commitment to comply with U.S. licensing laws and regulations.

Although the Indian Government does not accept these legal arguments, I hope it will recognize the importance of maintaining existing safeguards and preventing additional proliferation. In any event, damage to our nonproliferation objectives would clearly outweigh the adverse consequences of a possible Indian withdrawal from the 1963 agreement. It would be extremely unwise for the United States to continue to acquiesce in the lack of safeguards in India's nuclear program at the expense of our broader nonproliferation concerns.

In addition, other major foreign policy concerns are involved in this issue. Those supporting the sale maintain that U.S. strategic interests in the Indian subcontinent will be undermined by a cutoff of the fuel exports. I recognize the strategic importance of India and strongly support improved United States-Indian relations, and I have done so throughout my service in the U.S. Senate. However, I do not agree that we should permit the decision on this sale to undermine essential ties with India.

First, I do not believe that our relationship with India depends critically on the Tarapur issue. A much broader framework of political, economic, and military ties binds our two countries. For example, this past June, the United States agreed to supply India with 3,720 TOW antitank missiles. In addition, we have maintained strong bilateral relations with India, and we currently provide India with more than $130 million in economic aid and $160 million in development loans and food for peace grants. All of these activities will continue, regardless of whether the pending exports are approved.

Second, withholding the shipments at this time will not significantly influence India's foreign policy orientation. India will continue to pursue a foreign policy that promotes its own national interests even when these interests run contrary to those of the United States. In recent months, India has recognized the Palestine Liberation Organization, signed a $1.6 billion arms deal with the Soviet Union, failed to support the U.N. resolution condemning the Soviet invasion of Afghanistan, concluded a trade agreement with Iran that effectively undercuts our boycott, and recognized the Vietnamese-imposed regime in Kampuchea. It is clear that the Tarapur issue is only one aspect of India's overall foreign policy.

Finally, some proponents of the sale assert that a cutoff of fuel shipments to India will reinforce perceptions of the United States as an "unreliable supplier." Under the 1978 act, the United States is required to provide steady supplies of fuel "to nations which adhere to effective nonproliferation policies." Few of us are prepared to agree that India's nuclear policies effectively contribute to nonproliferation. The vast majority of our export recipients, who adhere to full-scope safeguards as signatories of the Nonproliferation Treaty, are aware that India has refused to cooperate. Our actions with respect to India will in no way diminish our position as a reliable supplier to others. The key to their perceptions will be whether we continue to supply fuel on a regular basis to nations that accept the conditions in the 1978 act—not whether we permit India or other states to escape these conditions indefinitely.

Mr. President, there are legitimate arguments on both sides of this issue. I believe, however, that both nonproliferation and broader foreign policy considerations weigh heavily in favor of a fuel cutoff, and I urge my colleagues to support the resolution of disapproval.●

● Mr. LEAHY. Mr. President, I wish to outline the reasons for my opposition to the proposed export of nuclear fuel to India.

I am convinced that export of additional nuclear fuel to India would undermine both the nuclear nonproliferation and foreign policy goals of the United States. My conviction is based on India's failure to comply with international safeguards on nuclear programs and her pursuit of a nuclear weapons capability.

Would approval of this export discourage the Indians or the Pakistanis from their pursuit of a nuclear weapons capability? It would not. It would have precisely the opposite affect.

The Nucelar Nonproliferation Act, passed by the Senate by a vote of 88 to 3, requires all nonnuclear weapons states to accept international safeguards on their nuclear programs as a precondition of obtaining nuclear material from this country. If this country continues to export fuel to India while that country rejects such safeguards, our own commitment to nonproliferation must be questioned.

Our commitment should be questioned if we provide nuclear fuel to any country which has violated its assurances to us—and our own laws—by using materials we supplied in a nuclear weapons program.

The proposed sale before the Senate today is precisely what this country's nonproliferation policies are designed to prevent. Approval of this export will undoubtedly compromise U.S. nuclear proliferation policy. Countries unwilling to comply with international controls and inspections to insure that nuclear programs remain peaceful should be denied the shipment of nuclear fuel. India is such a country.

Mr. President, under the 1978 Nuclear Nonproliferation Act, the United States has grounds for terminating our supply of nuclear weapons to India. India used this material to build a nuclear device which was detonated in 1974. Some years earlier, the United States notified the Indian Government that a military use of the nuclear material we supplied would violate the assurances of India to us. In 1974, the United States sought Indian assurances that American-supplied material would not be used to construct nuclear weapons. This was rejected.

Mr. President, I will only take a few more moments of the Senate's time to say something I said in July 1978. The question was different—the Turkish arms embargo. The stakes here are far higher. However, the options remain the same. There are three: The United States must cease selling nuclear material altogether, sell it without restriction, or enforce the terms of our own laws and international agreements that seek to control nuclear weapons proliferation. This last course is the only satisfactory one open to us. That which holds true for conventional arms surely must hold true in the serious area of nuclear weapons.

I urge my colleagues in the Senate to prohibit additional nuclear exports to India until this country is confident that India will comply with accepted international safeguards and assurances for the peaceful use of any nuclear fuel supplied by the United States. If this can be done, we stand ready to continue exporting to India and to honor our nuclear export agreements with that country.●

● Mr. CHILES. Mr. President, the decision before the Senate to approve or disapprove the granting of two export licenses for the shipment of nuclear fuel to India has to be one of the most important votes we will cast this year. My decision to vote in opposition to the resolution of disapproval was made only after a careful weighing of all the legal, foreign policy and nonproliferation arguments which have been advanced on both sides. After a careful review of the issues involved, I believe that our nuclear nonproliferation interests would best be advanced by the granting of these particular licenses.

Under the 1963 United States-Indian Agreement for Cooperation, the United States agreed to supply all of the enriched uranium needed to fuel the reactors at the Tarapur Atomic Power Station, and, in return, the Indian Government agreed to use only U.S.-supplied nuclear fuel and equipment at Tarapur, to accept safeguards and controls over the Tarapur reactors and spent fuel, and not to reprocess or retransfer the spent fuel without prior U.S. consent.

These safeguards and controls are extremely important to our nonproliferation interests in India, and to date, both countries have kept their commitments under the agreement. Should the licenses under consideration not be granted, India would consider itself not bound by its obligations under the 1963 agreement and therefore would be free to terminate existing safeguards at Tarapur, to process the spent fuel, and to turn to the Soviet Union for its nuclear needs. So if we prohibit the fuel shipment, we may be causing existing nuclear safeguards to be removed.

I firmly believe that U.S. nonproliferation efforts would be better served by keeping the safeguards and controls over the Tarapur reactors in place while we continue our efforts to have India place all of its nuclear activities under international inspection. It seems to me that it is in our own best interest to continue negotiating with India, rather than removing ourselves completely from the picture.●

Mr. HATFIELD. Mr. President, I support the resolution of disapproval with

regard to the sale of nuclear reactor fuel to India. A consideration which has been of paramount concern to me is the contractual relationship between the United States and India. However much I may wish to see this country stand firm on nuclear nonproliferation, I also understand the place in our society and in our world which agreements, whether it be the handshake or the contract, play in our ability to live peacefully with one another.

I have thus examined the contractual question carefully. I have concluded that if there is any debate, it must be over the "spirit" of our reliability as a supplier and not over our contractual obligation. Our 1963 fuel supply agreement with India obligates us to supply amounts of uranium sufficient for the "efficient and continuous operation of the Tarapur reactors until 1993" in accordance with the terms, conditions and delivery schedules set forth in a contract to be made between the parties.

That contract, written in 1966, states clearly that India must "comply with all applicable laws, regulations, and ordinances of the United States." According to a legal brief prepared by the Congressional Research Service, the "Nuclear Nonproliferation Act and its full-scope requirements," and that requirement, Mr. President, states that India must submit all of her nuclear facilities to international safeguards, "is such a law and by prior mutual consent of the parties becomes a material element of the contract between them."

The CRS legal brief further points out that:

> The parties of the 1966 contract made allowances for changed U.S. laws and policies in the matter of ownership and supply of enriched uranium.

The Congressional Research Service concludes that:

> As a consequence, Congressional rejection of the pending export may be regarded, not as a violation of the agreement, but rather as an appropriate action proximately caused by India's refusal to live up to its undertaking to comply with applicable U.S. legal requirements. As such, India may be the party in actual or potential breach of the agreement. . . .

Mr. President, the 1978 Nuclear Nonproliferation Act purposefully gave America's nuclear customers a 2-year grace period in order to find ways and means for them to comply with this law. Negotiations have failed to reach agreement with India and, indeed, their statements have demonstrated flagrant disregard for the principles of nonproliferation.

As for the question of "spirit of reliability," I would point out that the vast majority of recipients of American nuclear supplies are now in compliance with the Nuclear Nonproliferation Treaty. They understand that India is an exceptional case and that our behaviour with respect to the Indians does not reflect on our reliability as a supplier to them.

I would further submit, again in assessing the spirit of our nuclear relationship with India, she has clearly and unequivocally proven herself an unreliable customer and has shown no indication of changing her attitude in the future.

Mr. President, the CRS brief also points out that the United States "may continue to regard the existing agreement and contract as effective and seek to persuade India that it stands ready and willing to meet its obligations to supply India's fuel requirements when the latter indicates its willingness to stand by its contractual obligation to comply with U.S. legal requirements, including the NNPS provision for the adoption of full-scope safeguards and inspection of its nuclear facilities." Therefore, Mr. President, refusal of this Congress to ship uranium to India does not close the door on our ability to seek agreement with them in the future.

It is possible that the day when the spread of nuclear weapons could be controlled has passed. But if even the slimmest hope exists that we have not crossed the threshold of no return, it is a solemn responsibility of this Senate to avert its arrival. But in a spirit contrary to the implicit direction this goal suggests, the United States has been consistently undermining one of the central pillars of the nonproliferation effort.

It has flagrantly refused to begin meaningful reductions in its own nuclear arsenal even though its capabilities far exceed their utility as a deterrent to attack. By the end of this decade, 30 nonnuclear countries who today have no nuclear capability are expected to possess the necessary technology for developing nuclear weapons. It is illusory to expect that nonnuclear nations will forever continue to forego the nuclear option while the world's two most powerful nations continue to zealously accumulate more sophisticated and provocative nuclear weapons.

Experience, Mr. President, tells us that it will not be stable, secure and democratic societies which will choose to exercise the nuclear option. No, it will be the deranged—the Idi Amins of this world. It will be those who are looking for a quick fix—a means of elevating their otherwise desperate societies to positions of international clout. And in a series of regional action/reaction plays, as with the picture we now see emerging on the Indian subcontinent, the perceived need to possess nuclear weapons threatens to spread like cancer.

Nuclear weapons and peaceful nuclear technology follow the same fuel cycle. Today, over 500 nuclear power reactors are either operating or being constructed in 39 nations. Uranium mining, enrichment, fuel fabrication and spent fuel disposal or reprocessing are essential to both offensive and peaceful functions of nuclear technology. Both technologies are based on the fissioning of uranium. Reactors produce immense quantities of plutonium from which nuclear weapons can be produced. A nuclear power facility can produce 500 pounds of plutonium in a year. Yet a nuclear bomb requires only 20 pounds of this substance. In the countries that now possess the bomb and in the countries that will possess it in the future, the responsibility to determine if and when it will be unleashed lies in the hands of one, or a few, political leaders.

The prevailing mood with regard to the prospects for halting the proliferation of nuclear weapons is cynical. We have allowed this cynicism to undercut our grasp of the critical questions. There are those who argue that the best way to prohibit India from proliferating is to give them the means with which to proliferate. The arguments are many: We have a commitment; a uranium cut-off would violate the spirit of our nuclear relationship; and that shipment of the uranium poses the only prospect left to maintain communication with the Indians. It is my view that they can all be challenged on solid grounds.

But when you disperse the fog of technicalities and secondary considerations, Mr. President, it becomes clear that there are two central considerations: First, we risk creating a more intimate relationship between India and the Soviet Union if the nuclear tie is severed; and, second, if we do not sever the nuclear tie we are sending an unambivalant message to the rest of the world that when the chips are down, international agreements aimed at controlling the spread of nuclear weapons do not really mean very much to us.

We would be propagating an illusion, Mr. President, to suggest falsity in the assumption that we have very little influence over the decisions which other nations make with regard to nuclear weapons.

But, we must also acknowledge, if we were to accept the President's request, that we are content to relinquish the minimal influence we now have. We would also be turning our backs against the hope that a consensus may someday be forged in this Nation on the paramount urgency of halting the proliferation of nuclear weapons.

And I think it is clear, Mr. President, that while India has disregarded the voluntary restraint exercised by its peers in the international community, they are far more likely to yield to international political pressure than they are to pressure emanating from the United States. This is significant because the prospect of effective international political pressure will erode perhaps irreversibly, if we submit to the administration's request. This shifting of sands is not new to the Carter administration. We have seen it occur repeatedly in the areas of arms control and human rights—when the going gets tough this administration abandons policies and principles as though they had suddenly become diseased.

So the essence of the message the administration sends us today is that while nonproliferation is a noble goal, it should not be permitted to interfere with geopolitical reality. Geopolitical reality, as interpreted by the Carter administration, is that if we refuse to sell to India, we will drive them into the arms of the Soviet Union. But India is already reliant on the Soviet Union for weapons and a variety of other items.

There is irrefutable evidence which demonstrates that the uranium "carrot" is a useless lever as a means of inducing India to lean away from the Soviets. On May 8, President Carter announced his

decision to send uranium to India. Twenty-one days later, the Indians closed a $1.6 billion arms deal with the Soviets. On June 19 the President overruled the unanimous NRC decision to disallow the shipment, on July 8 India recognized the pro-Soviet Heng Samrin government in Kampuchea. And the list goes on. Over and over again the Carter administration has attempted to dangle this carrot over India's head and it has failed.

Every student of the Indian political system knows that a nonalined status is fundamental to that nation's political goals. Its relations with the superpowers are likely to remain essentially balanced. I will be the first to state that this balance has been skewed in favor of the Soviets. And we must be prepared to accept the possibility that it will tilt further still toward the Soviet Union if we refuse to ship the Indians uranium. There are no easy answers. We are taking a risk either way. Neither a uranium cutoff nor going along with India poses a desirable state of affairs.

We should engage ourselves in two efforts simultaneously. First, we must seriously move to control ourselves and our nuclear adversary, the Soviet Union. This entails a deadly serious commitment to cease further testing and deployment of new types of nuclear weapons. Without a solid commitment to this goal, we will forever lack the influence necessary to provide leadership in the nonproliferation effort. But the objective is sabotaged in increments as we build weapons whose characteristics are provocative and conducive, not to deterrence, but to a first strike, and espouse directives which suggest that nuclear war is winnable.

Finally, Mr. President, we must move forthrightly to stem the ever-increasing cycle of nuclear fear which builds daily on the Indian subcontinent. A serious diplomatic initiative aimed at building the confidence of the present and potental nuclear actors in that area should begin immediately.

Perhaps this could be initiated through another "Camp David" type of regional negotiation in which the United States would play a subsidiary role. The Federation of American Scientists, a distinguished group of scientists dedicated to a rational and peaceful application of technology, has suggested that the United States ask the Indians and the Pakistanis what terms might allow them to forego nuclear weapons and then offer to help guarantee those terms.

Today's decision may well be the turning point for the future of nonproliferation. The only serious hope left for progress, or at least the avoidance of regression, lies with the Nuclear Nonproliferation Treaty to which 113 nations are signatories. This fragile arrangement is already seriously threatened by the resentment of less-developed nations over the continuing escalation of the arms race by nations already in possession of nuclear weapons. There is no doubt that the present signatories will question the logic of their membership when India receives nuclear trade and assistance without the restraints they have voluntarily imposed upon themselves.

Mr. President, the day when the spread of nuclear weapons might be controlled may have already passed. If it has, let us disengage from this hypocritical charade and acknowledge it. But if there is even the slimmest hope that it has not, we must not abandon the goal with short-sighted responses to temporary disruptions in the strategic balance.

Mr. THURMOND. Mr. President, I rise today to express my support of Senate Concurrent Resolution 109, of which I am pleased to be a cosponsor. This resolution wisely disapproves the proposed export of 38 tons of low-enriched uranium to India for use at the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569.

Mr. President, on June 19, despite the unanimous decision of the Nuclear Regulatory Commission to disapprove licensing of the sale, President Carter overruled the decision of the Commission and authorized the sale. I believe that the Commission was correct in its decision to disapprove licensing of this sale and that President Carter's decision to override the Commission exemplifies his poor judgment in foreign policy matters.

Mr. President, India is the only nation that has ever used civilian nuclear facilities for the production of nuclear weapons. In May 1974, using heavy water from the United States and plutonium from a Canadian-supplied research reactor, India exploded a nuclear device. Subsequently, Canada cut off its nuclear exports to India. Since that time, despite U.S. efforts to obtain assurances that India will conduct no further nuclear tests, Mrs. Gandhi has announced that her government will not hesitate to carry out future nuclear tests in the national interest.

The implications of this announcement are even more serious, now that India has orbited a satellite, utilizing a rocket whose guidance system can be adapted to an intermediate range ballistic missile or intercontinental ballistic missile. Furthermore, a number of members of the Indian Parliament have called for the development of nuclear warheads.

Mr. President, during the course of debate regarding this resolution, there is one very important fact that we must keep in mind, and that is the close ties that India has developed with the Soviet Union. India recently signed a $1.6 billion arms deal with the Soviet Union that contains terms extremely favorable to India. India abstained on the U.N. resolution condemning the Soviet invasion of Afghanistan and has recognized the pro-Soviet Heng Samrin regime in Kampuchea. In addition to the relationship that has developed between India and the Soviet Union, India recently signed a trade agreement with Iran, despite our call for an economic boycott.

Furthermore, under the provisions of Nuclear Nonproliferation Act of 1978, any exports occurring subsequent to March 10, 1980, may occur only if IAEA safeguards have already been accepted. Contrary to President Carter's argument that it is the intended date of shipment that governs, State Department testimony before Congress in 1978 stipulated that it is the actual date rather than the intended date of a shipment that governs. The fact that the material could have been exported prior to March 10, thus does not change the fact that the actual export would take place after the deadline.

Mr. President, to allow 38 tons of uranium to be exported to India would not be in the best interest of the United States nor conducive to the maintenance of world peace. I sincerely hope that my colleagues in the Senate will join me in condemning the recent anti-U.S. actions of the Indian Government and President Carter's weak foreign policy, by adopting this resolution.

Mr. MITCHELL. The danger facing the world today from the proliferation of nuclear weapons goes far beyond the arms race between the United States and the Soviet Union. It includes the need to restrain the development of nuclear weapons capability by states which are not part of the so-called nuclear club.

A direct result of both the nuclear proliferation problem and the American effort to curtail proliferation faces us in the conflict over the sale of low-enriched uranium to India today. The question is whether this sale is consistent with the responsibilites we assumed in our 1963 contract with India and the responsibilities we assumed as a leader of the nonproliferation movement with the passage of the 1977 Nuclear Nonproliferation Act.

In 1963, we signed a concessional agreement with India to build an electricty-generating nuclear facility at Tarapur, in India, and to supply the necessary fuel to operate that facility for 30 years. The terms of our agreement were specific and detailed: They bound India to use only American fuel in that facility; they bound India to obtain our consent before reprocessing spent fuel into weapons-grade material; they prohibited Indian transfer of the fuel to any other nation; and they required the acceptance by India of what are called full-scope safeguards on the Tarapur facility.

Full-scope safeguards commit a country to permitting the International Atomic Energy Agency to inspect its nuclear facilities to make certain no explosives are being manufactured.

Indian acceptance of full-scope safeguards on the American-supplied Tarapur reactor and the American fuel provided to operate it represent the only international inspection of any nuclear facility in India. Thus, they are an important first step in gaining Indian acceptance of the need for full-scope safeguards on all her facilities in the future.

In return, the United States committed itself to supply the fuel as needed, and so scheduled as to permit the continuous operation of the Tarapur facility throughout the life of the contract: until 1993.

In 1971, the supply contract was amended to require that India comply with all applicable American laws in obtaining licenses for the shipment of this fuel. This amendment imposed interna-

tional full-scope safeguards on the Tarapur facility.

In 1974, India exploded a nuclear device. Although the use of American-supplied fuel was denied by India, it was subsequently established that heavy water provided by our country, separately from the fuel supply for Tarapur, was used in a Canadian research reactor. The Canadians promptly withdrew from their nuclear supply relationship with India and have remained adamant that until India accepts full-scope safeguards on all her nuclear facilities, no further Canadian assistance will be provided.

The Indian Government argued that the materials used had not been subject to the provisions of the 1963 India-United States agreement. The Indian Government further maintained that since the explosion had been developed for "peaceful" purposes, no objections to it were warranted. India has maintained that until and unless all the nuclear-weapons states—including our own—accept international inspection of all their nuclear facilities, she sees no reason to accept them for herself.

Following the worldwide shock that the Indian explosion caused, Congress enacted the 1977 Nuclear Nonproliferation Act, which requires that no American fuel or facilities may be provided to any nation unless it accepts full-scope safeguards on all its facilities. The law contained a grace period to permit pending and anticipated license requests under existing contracts to be filled. The grace period for export licenses expired in September 1979, and for shipments, March 1980.

India filed an export license application for a further shipment of fuel in September 1978, a year before the grace period expired, and a second application in mid-August 1979, almost a month before expiration. Delays by our Government—combined with the caretaker government in India, which could not respond to a number of questions until Mrs. Ghandi was reelected in January this year—delayed the Nuclear Regulatory Commission's action on the export license requests until March.

The Commission unanimously voted against permitting the exports, arguing principally that the grace period's expiration prevented legal approval of the licenses. The extremely serious situation that arose in the region following the Soviet invasion of Afghanistan emphasized the need to maintain our influence in this part of the world. The President assured Mrs. Ghandi that the American commitment to provide fuel for Tarapur would be kept. American offers of economic and military aid to Pakistan, India's enemy, had alarmed the Indian Government, and although those offers were ultimately rejected, the recent news of Pakistan's clandestine nuclear weapons development program with the aid of Swiss technology, gave grounds for Indian fears of her neighbor's intentions.

This situation requires Congress to act either to support the President's policy determination that the contract should be honored at this time, or to reaffirm the clearly expressed statement of congressional and administration intent contained in the Nuclear Nonproliferation Act to cease supply relationships with countries that do not adhere to international nuclear inspection requirements.

Neither course is without its hazards. Nor can we be certain that either decision will have favorable results, either for our interests in the South Asian region or for the international goal of nonproliferation.

However, it seems to me that certain aspects of the issue cannot be ignored.

The resolution to disapprove this shipment of fuel would retroactively eliminate the grace period specifically provided in the Nuclear Nonproliferation Act, during which India applied for nuclear fuel export licenses.

India submitted her license requests well within the 18-month grace period provided, in good faith. India's request called for the shipments to be made within the 24-month grace period. A delay caused in part by actions of our own Government should not be the basis for denying an application that was submitted in a timely fashion, in accordance with the terms of our agreement with India, and the language of the law itself.

Our nonproliferation goals are essential. They have the support of 111 nations who are signatories to the Nonproliferation Treaty. And they will continue to form the basis for the future exploitation of peaceful uses of nuclear power.

But our nonproliferation policy is not at stake today.

Paradoxically, our nonproliferation goals would be set back—not advanced—by rejecting this export request.

The Government of India has steadfastly refused to accept the imposition of full-scope safeguards on all Indian nuclear facilities until similar safeguards are accepted by all nations—including the nuclear weapons nations, such as ourselves. India has voluntarily renounced the option of developing nuclear armaments, a position emphasized as recently as 1979 by former Prime Minister Desai.

Whether we agree with this position or not, so long as the Government of India holds to it, the only safeguarded nuclear facilities in that country are the ones for which we supply the fuel, at Tarapur.

We should not underestimate the importance of retaining safeguards on these reactors. They constitute important controls which serve U.S. nonproliferation goals. India now accepts full International Atomic Energy Agency safeguards over all Tarapur fuel, including 200 tons of spent fuel stored there. This is 80 percent of India's spent fuel supply.

If we lose these international inspection controls on this facility—and India has made it clear that nonsupply at this time will free her from all obligations under the 1963 agreement—it will set a damaging precedent to international control of nuclear fuel and to the goal of nonproliferation. We can avoid that damage by adhering to the terms of our own Nonproliferation Act, which provides a grace period for existing supply contracts.

If India decided to remove the Tarapur facilities from international safeguards, this would be the first such withdrawal from safeguards in the world. It would seriously undermine the credibility of international controls and international nonproliferation efforts.

India would, in all probability, begin immediate reprocessing of the spent fuel at Tarapur without adequate safeguards. Preventing such reprocessing has been and remains a central U.S. nonproliferation policy goal.

There is no question that if the United States-Indian supply relationship is terminated, the Soviet Union will become the principal supplier of India. The Soviet Union would be unlikely to try to curtail Indian reprocessing of spent U.S. fuel. Nor are the Soviets likely to insist on full-scope safeguards as a condition of receiving Soviet fuel. Most importantly, the emergence of the Soviet Union as the principal nuclear supplier to India will further exacerbate tensions between India, Pakistan, and China in an extremely volatile part of the world.

Full-scope safeguards are an important goal of our nonproliferation policy. But they are not the only goal. The Nonproliferation Act contains other goals, such as guidelines for new U.S. nuclear agreements, and initiatives to strengthen the international nonproliferation regime.

To cite this single case as a gutting of the act, or a complete reversal of our nonproliferation policy, seriously distorts and overstates the case.

In fact, export of this fuel simply fulfills a contractual obligation with India. The export application was received within the grace period expressly permitted in the act. The decision to permit the export would be fully consistent with the intent of the act, which was to give notice of U.S. intention to require full-scope safeguards, not to impose immediate new requirements on trading partners.

Moreover, just as full-scope safeguards are only one goal of the nonproliferation policy, so nonproliferation is only one goal of our foreign policy. It is unwise to jettison so many other concerns on the basis of a single issue, albeit an important one.

Negotiations with India on safeguards have not been successful in the 2 years since the Nonproliferation Act was signed. But other components of our relationship with India have continued, including the recent sale of 3700 TOW missiles. Refusal to provide this fuel—refusal to honor a contract and a commitment made by our President—will almost certainly end the nonproliferation dialog with India immediately and completely. And it cannot help but adversely affect the other components of our relationship: Our extensive trade and our joint security concerns.

U.S. refusal to ship this fuel would undercut the moderate voices in India which have argued against the testing of nuclear explosives, and which have championed the American-Indian relationship. It will strengthen those elements in the country which insist that the Soviet Union is the only ally on which India can rely.

Apart from perceptions by India, our Nation's reliability as a supplier will be noted by other countries around the world.

The leader of the U.S. delegation to the Geneva Nonproliferation Conference in July, Director Ralph Earle of the Arms Control and Disarmament Agency, and observers like Senator PERCY, all report that the assembled nations at the conference viewed the issue of this fuel shipment, not as a test of our commitment to nonproliferation, but as a unilateral effort by a supplier nation to impose retroactive conditions on an existing agreement. The view of these nations—parties to the Nonproliferation Treaty—is that the goals of nonproliferation rest on progress in curbing nuclear arms buildups by the weapons-holding nations, not on the shipment of fuel for electric power generators.

The domestic fear that this shipment will undermine support for our nonproliferation goals is unsupported. In addition, it is largely unfounded.

Those countries which have accepted full-scope safeguards did so without consulting the United States-Indian relationship. Those countries now considering full-scope safeguards will make their judgments based on their own best interests, not on the very muddy and confused record that would be established by rejecting these exports. And the supplier nations have agreed that this case falls within the grace period allowed in U.S. law and does not affect the separate question of requiring full-scope safeguards on new agreements.

The administration has no intention of using this single instance as a precedent for ignoring the requirement for full-scope safeguards that will attend any future Indian request for fuel. Indeed, because the applications were filed in a timely fashion during the grace period, they set no precedent whatever for future adherence to the terms of the Nonproliferation Act.

The administration has also made it clear that it has no intention of providing an immediate full shipment of all the fuel requested at one time. The first shipment, urgently needed at the Hyderabad fuel fabrication facility, will be released immediately. But the second shipment will not be released until it is needed to provide continuity of operations at Hyderabad, next year. Furthermore, if the administration finds that India has taken any actions—exploding a device, preparing to do so, transferring materials, helping other nations reprocess fuel, receiving enrichment equipment—prohibited under section 129 of the Atomic Energy Act, the second shipment will not be made.

The administration has made a commitment that future Indian fuel requests will be subject to the full-scope safeguard requirements of the Nonproliferation Act.

Permitting this export of fuel sets no precedent for the enforcement of the act. It keeps faith with an important country in a turbulent region of the world. And it maintains the opportunity to continue a dialog with India toward the goal of nonproliferation.

Under these circumstances, I believe the export should be permitted to go through.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

HOUSE CONCURRENT RESOLUTION 432

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, without debate, motion, amendment, or point of order, of House Concurrent Resolution 432, which is precisely in verbiage like the disapproval resolution before the Senate, and that the vote which was ordered on the adoption of Senate Concurrent Resolution 109 occur on House Concurrent Resolution 432, Calendar No. 1080.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object—and I will not—might I have just a minute?

Mr. JAVITS. I did not quite get the unanimous-consent request.

Mr. BAKER. Mr. President, if I might inquire of the Chair as to the practical effect of the unanimous-consent request just propounded by the majority leader, it was to change the issue from the Senate language to the language submitted to us by the House of Representatives?

Mr. ROBERT C. BYRD. Was the Senator asking the Chair?

Mr. BAKER. I might ask the majority leader.

Mr. ROBERT C. BYRD. The House language is precisely like the Senate disapproval resolution, so instead of voting on the Senate resolution, since the House has already acted on the disapproval resolution, I am simply suggesting that we bring up the House resolution and that the order that was entered to vote on the Senate resolution be transferred to the House resolution.

Mr. JAVITS. Will the vote then be if you wanted to vote "yea," you would then vote "yea" on the substitute?

Mr. ROBERT C. BYRD. Yes.

Mr. GLENN. The vote would be identical.

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. That is important.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the House concurrent resolution by title.

The legislative clerk read as follows:

House Concurrent Resolution 432 disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569.

The Senate proceeded to consider the House concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

Mr. BAKER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. PELL. Mr. President, on this vote I have a pair with the distinguished Senator from North Carolina (Mr. MORGAN). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. TOWER. Mr. President, on this vote, I have a live pair with the Senator from Arizona (Mr. GOLDWATER). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

The PRESIDING OFFICER (Mr. MOYNIHAN). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 46, nays 48, as follows:

[Rollcall Vote No. 440 Leg.]

YEAS—46

Armstrong	Glenn	Metzenbaum
Bayh	Hart	Nelson
Boschwitz	Hatch	Pressler
Bumpers	Hatfield	Proxmire
Burdick	Hayakawa	Pryor
Byrd, Harry F., Jr.	Heflin	Ribicoff
Cannon	Heinz	Riegle
Chafee	Helms	Schmitt
Cohen	Humphrey	Schweiker
Cranston	Jepsen	Stone
Culver	Kassebaum	Thurmond
Danforth	Kennedy	Tsongas
Dole	Laxalt	Warner
Durkin	Leahy	Weicker
Ford	Lugar	Williams
	Matsunaga	

NAYS—48

Baker	Garn	Nunn
Baucus	Gravel	Packwood
Bellmon	Hollings	Percy
Bentsen	Huddleston	Randolph
Biden	Inouye	Roth
Boren	Jackson	Sarbanes
Bradley	Javits	Sasser
Byrd, Robert C.	Johnston	Simpson
Chiles	Levin	Stafford
Church	Long	Stennis
Cochran	Magnuson	Stevens
DeConcini	Mathias	Stevenson
Domenici	McClure	Talmadge
Durenberger	Melcher	Wallop
Eagleton	Mitchell	Young
Exon	Moynihan	Zorinsky

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Mr. Pell, for.
Mr. Tower, against.

NOT VOTING—4

Goldwater	Morgan	Stewart
McGovern		

So the resolution (H. Con. Res. 432) was not agreed to.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may proceed for not to exceed 5 minutes on a message from the House on H.R. 7511, with the understanding that Mr. DOLE be permitted, within that 5 minutes, to call up a bill in which he is interested; with the further understanding that no amendment be in order to the bill which he wishes to present and that no further motions be in order in relation to the

bill, other than votes to reconsider the vote thereon.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the proposal just put by the majority leader is satisfactory on this side. It was necessary for me to object to the consideration of the message from the House on H.R. 7511 on yesterday, but the arrangement suggested by the majority leader removes the necessity for that objection and we have no problem with that procedure. I do not object.

Mr. ROBERT C. BYRD. Mr. President, with the further proviso that the bill which Mr. DOLE will offer will be for the purpose of naming a hospital in Topeka, Kans.

The PRESIDING OFFICER. Without objection, it is so ordered.

VETERANS' DISABILITY COMPENSATION AND HOUSING BENEFITS AMENDMENTS OF 1980

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CRANSTON, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 7511.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the text of the bill (H.R. 7511) entitled "An Act to amend title 38, United States Code, to provide a cost-of-living increase in the rates of disability compensation for disabled veterans and in the rates of dependency and indemnity compensation for survivors of disabled veterans, and for other purposes", with the following amendments:

In lieu of the matter inserted by said amendment, insert: That (a) this Act may be cited as the "Veterans' Disability Compensation and Housing Benefits Amendments of 1980".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS' DISABILITY COMPENSATION BENEFITS

RATES OF DISABILITY COMPENSATION

SEC. 101. (a) Section 314 is amended—

(1) by striking out "$48" in subsection (a) and inserting in lieu thereof "$54";

(2) by striking out "$88" in subsection (b) and inserting in lieu thereof "$99";

(3) by striking out "$133" in subsection (c) and inserting in lieu thereof "$150";

(4) by striking out "$182" in subsection (d) and inserting in lieu thereof "$206";

(5) by striking out "$255" in subsection (e) and inserting in lieu thereof "$291";

(6) by striking out "$321" in subsection (f) and inserting in lieu thereof "$367";

(7) by striking out "$380" in subsection (g) inserting in lieu thereof "$434";

(8) by striking out "$440" in subsection (h) and inserting in lieu thereof "$503";

(9) by striking out "$495" in subsection (i) and inserting in lieu thereof "$566";

(10) by striking out "$889" in subsection (j) and inserting in lieu thereof "$1,016";

(11) by striking out "$1,104" and "$1,547" in subsection (k) and inserting in lieu thereof "$1,262" and "$1,768", respectively;

(12) by striking out "$1,104" in subsection (l) and inserting in lieu thereof "$1,262";

(13) by striking out "$1,217" in subsection (m) and inserting in lieu thereof "$1,391";

(14) by striking out "$1,383" in subsection (n) and inserting in lieu thereof "$1,581";

(15) by striking out "$1,547" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$1,768";

(16) by striking out "$664" and "$989" in subsection (r) and inserting in lieu thereof "$759" and "$1,130", respectively;

(17) by striking out "$995" in subsection (s) and inserting in lieu thereof "$1,137"; and

(18) by striking out "$192" in subsection (t) and inserting in lieu thereof "$219".

(b) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

RATES OF ADDITIONAL COMPENSATION FOR DEPENDENTS

SEC. 102. Section 315(1) is amended—

(1) by striking out "$54" in clause (A) and inserting in lieu thereof "$62";

(2) by striking out "$91" in clause (B) and inserting in lieu thereof "$104";

(3) by striking out "$121" in clause (C) and inserting in lieu thereof "$138";

(4) by striking out "$151" and "$30" in clause (D) and inserting in lieu thereof "$173" and "$34", respectively;

(5) by striking out "$37" in clause (E) and inserting in lieu thereof "$42";

(6) by striking out "$67" in clause (F) and inserting in lieu thereof "$77";

(7) by striking out "$97" and "$30" in clause (G) and inserting in lieu therof "$111" and "$34", respectively;

(8) by striking out "$44" in clause (H) and inserting in lieu thereof "$50";

(9) by striking out "$98" in clause (H) and inserting in lieu thereof "$112"; and

(10 by striking out "$82" in clause (J) and inserting in lieu thereof "$94".

CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS

SEC. 103. Section 362 is amended by striking out "$240" and inserting in lieu thereof "$274".

TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES

SEC. 201. (a) Subsection (a) of section 411 is amended to read as follows:

"(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

"Pay grade	Monthly rate
E-1	$373
E-2	385
E-3	394
E-4	419
E-5	431
E-6	441
E-7	462
E-8	487
E-9	[1] 510
W-1	472
W-2	491
W-3	505
W-4	536
O-1	472
O-2	487
O-3	522
O-4	551
O-5	608
O-6	684
O-7	741
O-8	812
O-9	872
O-10	[2] 954

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $549.

"[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,023.".

(b) Subsection (b) of such section is amended by striking out "$38" and inserting in lieu thereof "$43".

(c) Subsection (c) of such section is amended by striking out "$98" and inserting in lieu thereof "$112".

(d) Subsection (d) of such section is amended by striking out "$49" and inserting in lieu thereof "$56".

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 202. Section 413 is amended—

(1) by striking out "$165" in clause (1) and inserting in lieu thereof "$189";

(2) by striking out "$237" in clause (2) and inserting in lieu thereof "$271";

(3) by striking out "$306" in clause (3) and inserting in lieu thereof "$350"; and

(4) by striking out "$306" and "$62" in clause (4) and inserting in lieu thereof "$350" and "$71", respectively.

RATES OF SUPPLEMENTAL DELINQUENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 203. Section 414 is amended—

(1) by striking out "$98" in subsection (a) and inserting in lieu thereof "$112";

(2) by striking out "$165" in subsection (b) and inserting in lieu thereof "189"; and

(3) by striking out "$84" in subsection (c) and inserting in lieu thereof "$96".

TITLE III—SPECIAL HOME ADAPTATION GRANTS FOR CERTAIN SEVERELY DISABLED VETERANS

EXTENSION OF SPECIALLY ADAPTED HOUSING GRANT PROGRAM

SEC. 301. (a) Section 801 is amended by inserting "(a)" before "The Administrator" and by adding at the end the following new subsection:

"(b)(1) Subject to paragraph (2) of this subsection, the Administrator, under regulations which the Administrator shall prescribe, shall assist any veteran (other than a veteran who is eligible for assistance under subsection (a) of this section) who is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability which—

"(A) is due to blindness in both eyes with 5/200 visual acuity or less; or

"(B) includes the anatomical loss or loss of use of both hands;

in acquiring such adaptations to such veteran's residence as are determined by the Administrator to be reasonably necessary because of such disability.

"(2) Assistance under paragraph (1) of this subsection may be provided only to a veteran who the Administrator determines is residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family or, if the veteran's residence is to be constructed or purchased, will be residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family.".

(b) Section 802 is amended—

(1) by inserting "(a)" before "The assistance";

(2) by striking out "section 801" and inserting in lieu thereof "section 801(a)"; and

(3) by adding at the end the following new subsection:

"(b) Except as provided in section 804(b)(2) of this title, the assistance authorized by section 801(b) of this title shall be limited to the lesser of—

"(1) the actual cost of the adaptations determined by the Administrator under such section 801(b) to be reasonably necessary, or

"(2) $5,000.".

(c) Section 804 is amended—

(1) by inserting "(a)" before "Any veteran";

(2) by striking out "the assistance authorized by this chapter" and inserting in lieu thereof "except as provided in subsection (b) of this section, the assistance authorized by section 801 of this title"; and

(3) by adding at the end the following new subsection:

"(b) A veteran eligible for assistance under section 801(b) of this title shall not by reason of such eligibility be denied benefits for which such veteran becomes eligible under section 801(a) of this title or benefits relating to home health services under section 612(a) of this title. However, no particular type of adaptation, improvement, or structural alteration provided to a veteran under section 612(a) or this title may be provided to such veteran under section 801(b) of this title.".

(d) Section 805 is amended by striking out "unit, or necessary land therefor," and inserting in lieu thereof "unit, or necessary land therefor, or adaptation".

TITLE IV—VETERANS' ADMINISTRATION HOME-LOAN PROGRAM AMENDMENTS

REFINANCING OF VETERANS' ADMINISTRATION HOME LOANS

SEC. 401. (a) Section 1810 is amended—

(1) by inserting after clause (7) of subsection (a) the following new clause:

"(8) To refinance in accordance with subsection (e) of this section an existing loan guaranteed, insured, or made under this chapter."; and

(2) by adding at the end the following new subsection:

"(e)(1) For a loan to be guaranteed for the purpose specified in subsection (a)(8) of this section—

"(A) the interest rate of the loan must be less than the interest rate of the loan being refinanced;

"(B) the loan must be secured by the same dwelling or farm residence as was the loan being refinanced and such dwelling or residence must be owned and occupied by the veteran as such veteran's home;

"(C) the amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount permitted pursuant to section 1803(c)(3)(A) of this title) as may be authorized by the Administrator, under regulations which the Administrator shall prescribe, to be included in such loan:

"(D) the amount of the guaranty of the loan may not exceed the original guaranty amount of the loan being refinanced; and

"(E) the term of the loan may not exceed the original term of the loan being refinanced.

"(2) A loan to a veteran may be guaranteed by the Veterans' Administration under this chapter for the purpose specified in clause (8) of subsection (a) of this section without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such purpose. For purposes of section 1802(b) of this title, such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

"(3) If a veteran is deceased and if such veteran's surviving spouse was a co-obligor under an existing loan guaranteed, insured, or made under this chapter, such surviving spouse shall, only for the purpose specified in subsection (a)(8) of this section, be deemed to be a veteran eligible for benefits under this chapter.".

(b) Section 1819(a) is amended—

(1) by adding at the end of paragraph (1) the following new clause:

"(F) To refinance in accordance with paragraph (4) of this subsection an existing loan guaranteed, insured, or made under this section."; and

(2) by adding at the end the following new paragraph:

"(4)(A) For a loan to be guaranteed for the purpose specified in clause (F) of paragraph (1) of this subsection—

"(i) the interest rate of the loan must be less than the interest rate of the loan being refinanced;

"(ii) the loan must be secured by the same mobile home or mobile-home lot, or mobile home and mobile-home lot, as was the loan being refinanced and such mobile home (or a mobile home on such lot) must be owned and occupied by the veteran as such veteran's home;

"(iii) the amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount permitted pursuant to section 1803(c)(3)(A) of this title) as may be authorized by the Administrator, under regulations which the Administrator shall prescribe, to be included in such loan;

"(iv) the amount of the guaranty of the loan may not exceed the original guaranty amount of the loan being refinanced; and

"(v) the term of the loan may not exceed the original term of the loan being refinanced.

"(B) A loan to a veteran may be guaranteed by the Veterans' Administration under this chapter for the purpose specified in clause (F) of paragraph (1) of this subsection without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such purpose. For purposes of section 1802(b) of this title, such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

"(C) If a veteran is deceased and if such veteran's surviving spouse was a co-obligor under an existing loan previously guaranteed, insured, or made under this section, such surviving spouse shall, only for the purpose specified in clause (F) of paragraph (1) of this subsection, be deemed to be a veteran eligible for benefits under this chapter.".

(c)(1) Section 1803(c)(3)(A) is amended by striking out "section 1810(a)(5)" and inserting in lieu thereof "clause (5) or (8) of section 1810(a) of this title or section 1819(a)(1)(F) of this title".

(2) The second sentence of section 1811(b) is amended by inserting "(other than the refinancing of a loan under section 1810(a)(8) or 1819(a)(1)(F))" after "section 1810(a) or 1819 of this title".

INCREASES IN MAXIMUM AMOUNTS OF VETERANS' HOME-LOAN GUARANTIES

SEC. 402. (a) Section 1810(c) is amended by striking out "$25,000" and inserting in lieu thereof "$27,500".

(b) Section 1811(d)(2) is amended—

(1) by striking out "$25,000" both places it appears in subparagraph (A) and inserting in lieu thereof "$27,500"; and

(2) by striking out "$17,500" both places it appears in subparagraph (B) and inserting in lieu thereof "$20,000".

(c) Section 1819(c) is amended by striking out "$17,500" each place it appears and inserting in lieu thereof "$20,000".

TITLE V—MISCELLANEOUS PROVISIONS

EXTENSION OF AUTHORITY FOR VETERANS' ADMINISTRATION OFFICE IN THE REPUBLIC OF THE PHILIPPINES

SEC. 501. Section 230(b) is amended by striking out "1981" and inserting in lieu thereof "1985".

HEADSTONES AND MARKERS IN CERTAIN CASES

SEC. 502. Section 906(a) is amended by adding at the end of such section the following new paragraph:

"(4) Any individual described in section 1002(5) of this title who is buried in a veterans' cemetery owned by a State.".

PAYMENT OF PENSION IN CERTAIN CASES

SEC. 503. (a) Section 3104(a) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end of such subsection the following new paragraph:

"(2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 3105 of this title, pension under section 521 or 541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 3105 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.".

(b) Section 3203(a)(1)(C) is amended by striking out "of not less than two full calendar months" and inserting in lieu thereof "in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph".

LIMITATION ON PAYMENT OF COMPENSATION FOR SERVICE-CONNECTED DISABILITIES OR DEATH AND OF DEPENDENCY AND INDEMNITY COMPENSATION FOR INCARCERATION FOR FELONY CONVICTION

SEC. 504. (a) Chapter 53 is amended by adding at the end the following new section:

"§ 3113. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony

"(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, or local penal institution for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or depend-

ency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

"(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 314(a) of this title; or

"(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 314(a) of this title.

"(2) The provisions of paragraph (1) of this section shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

"(b)(1) All or any part of the compensation not paid to a veteran by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 3107 of this title.

"(2) All or any part of the dependency and indemnity compensation not paid to a surviving spouse or child by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned as follows:

"(A) In the case of dependency and indemnity compensation not paid to a surviving spouse, any apportionment shall be to the surviving child or children.

"(B) In the case of dependency and indemnity compensation not paid to a surviving child, any apportionment shall be to the surviving spouse or other surviving children, as applicable.

"(3) No apportionment may be made under this subsection to or on behalf of any person who is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

"(c) The Administrator shall not assign to any veteran a rating of total disability based on the individual unemployability of the veteran resulting from a service-connected disability during any period during which the veteran is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

"(d) The provisions of subsection (a) of this section shall apply (1) with respect to any period of incarceration of a person for conviction of a felony committed after the the date of the enactment of this section, and (2) with respect to any period of incarceration on or after October 1, 1980, for conviction of a felony of a person who on October 1, 1980, is incarcerated for conviction of such felony and with respect to whom the action granting an award of compensation or dependency and indemnity compensation is taken on or after such date.

"(e) For purposes of this section—

"(1) The term 'compensation' includes disability compensation payable under section 351 of this title.

"(2) The term 'dependency and indemnity compensation' means death compensation payable under section 321 or 341 of this title, death compensation and dependency and indemnity compensation payable under section 351 of this title, and any benefit payable under chapter 13 of this title.".

(b) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3113. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony.".

CONFIDENTIALITY OF MEDICAL QUALITY-ASSURANCE RECORDS

SEC. 505. (a) Subchapter I of chapter 57 is amended by adding at the end the following new section:

"§ 3305. Confidentiality of medical quality-assurance records

"(a) Records and documents created by the Veterans' Administration as part of a medical quality-assurance program are confidential and privileged and may not be disclosed to any person or entity except as provided in subsection (b) of this section.

"(b)(1) Subject to paragraph (2) of this subsection, a record or document described in subsection (a) of this section shall, upon request, be disclosed as follows:

"(A) To a Federal agency or private organization, if such record or document is needed by such agency or organization to perform licensing or accreditation functions related to Veterans' Administration health-care facilities or to perform monitoring; required by statute; of Veterans' Administration health-care facilities.

"(B) To a Federal executive agency or provider of health-care services, if such record or document is required by such agency or provider for participation by the Veterans' Administration in a health-care program with such agency or provider

"(C) To a criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or document be provided for a purpose authorized by law.

"(D) To health-care personnel, to the extent necessary to meet a medical emergency affecting the health or safety of any individual.

"(2) The name of and other identifying information regarding any individual Veterans' Administration patient or employee, or any other individual associated with the Veterans' Administration for purposes of a medical quality-assurance program, contained in a record or document described in subsection (a) of this section shall be deleted from any record or document before any disclosure made under this subsection if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

"(3) No person or entity to whom a record or document has been disclosed under this subsection shall make further disclosure of such record or document except for a purpose provided in this subsection.

"(4) Nothing in this section shall be construed as authority to withhold any record or document from a committee of either House of Congress or any joint committee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

"(5) Nothing in this section shall be construed as limiting the use of records and documents described in subsection (a) of this section within the Veterans' Administration (including contractors and consultants of the Veterans' Administration).

"(c) For the purpose of this section, the term 'medical quality-assurance program' means—

"(1) with respect to any activity carried out before the date of the enactment of this section, a Veterans' Administration systematic health-care review activity carried out by or for the Veterans' Administration for the purpose of improving the quality of medical care or improving the utilization of health-care resources in Veterans' Administration health-care facilities; and

"(2) with respect to any activity carried out on or after the date of the enactment of this section, a Veterans' Administration systematic health-care review activity designated by the Administrator to be carried out by or for the Veterans' Administration for either such purpose.

"(d)(1) Not later than 180 days after the date of the enactment of this section, the Administrator shall prescribe regulations to carry out this section. In prescribing such regulations, the Administrator shall specify those activities carried out before such enactment date which the Administrator determines meet the definition of medical quality-assurance program in subsection (c)(1) of this section and those activities which the Administrator has designated under subsection (c)(2) of this section. The Administrator shall, to the extent appropriate, incorporate into such regulations the provisions of the existing administrative guidelines and procedures governing such programs.

"(2) After the date on which such regulations are first prescribed, no activity shall be considered as having been designated as a medical quality-assurance program for the purposes of subsection (c)(2) of this section unless the designation has been specified in such regulations.

"(e) Any person who, knowing that a document or record is a document or record described in subsection (a) of this section, willfully discloses such record or document except as provided for in subsection (b) of this section shall be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.".

(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3304 the following new item:

"3305. Confidentiality of medical quality-assurance records.".

MINIMUM NUMBER OF EMPLOYEES OF AMERICAN BATTLE MONUMENTS COMMISSION

SEC. 506. The third paragraph of the first section of the Act entitled "An Act for the creation of an American Battle Monuments Commission to erect suitable memorials commemorating the services of the American soldier in Europe, and for other purposes", approved March 4, 1923 (36 U.S.C. 121), is amended by inserting after the second sentence thereof the following new sentence: "To ensure adequate care and maintenance of the cemeteries, monuments, and memorials under the jurisdiction of the Commission, the Commission, subject to the availability of appropriations, shall employ (1) not less than 50 personnel in the competitive service (as defined in section 2102 of title 5, United States Code), of whom not less than 43 shall be assigned to duty in foreign countries in which such cemeteries, monuments, and memorials are located, and (2) not less than 348 individuals who are citizens of the countries in which such cemeteries, monuments, and memorials are located, who shall be hired for local employment relating to the care and maintenance of such cemeteries, monuments, and memorials.".

LAND TRANSFER, CHEYENNE, WYOMING

SEC. 507. (a) Subject to subsection (b), the Administrator of Veterans' Affairs is authorized to execute such instruments as may be necessary to permit the city of Cheyenne, Wyoming, to use for public roadway purposes a tract of land consisting of four acres, more or less, which is a portion of a larger tract of land previously conveyed by the United States to such city under the authority of the Act entitled "An Act authorizing the Administrator of Veterans' Affairs to convey certain property to the city of Cheyenne, Wyoming", approved November 8, 1965 (Public Law 89-345; 79 Stat. 1304), for use by such city for park and recreational purposes only.

(b) Any instrument executed by the Administrator of Veterans' Affairs under this section shall—

(1) provide that the four-acre tract of land referred to in subsection (a) may be used only for park and recreational purposes or for public roadway purposes, or both, and only in a manner that will not, in the judgment of the Administrator of Veterans' Affairs interfere in any manner with the care and treatment of patients in the Veterans' Administration Center, Cheyenne, Wyoming;

(2) contain such additional terms, conditions, and restrictions as may be determined by the Administrator of Veterans' Affairs to be necessary to protect the interest of the United States; and

(3) provide that, if the Administrator of Veterans' Affairs determines that the city of Cheyenne has violated any provision of any such instrument, title to the tract of land conveyed under the authority of such Act shall revert to the United States as provided in the deed of conveyance executed pursuant to such Act.

(c) The legal description of the four-acre tract of land referred to in subsection (a) shall be determined by the Administrator of Veterans' Affairs. If a survey is required in order to make such determination, the city of Cheyenne shall bear the expenses of the survey.

TECHNICAL AMENDMENTS TO PUBLIC LAW 96-330

SEC. 508. (a) Section 4107(c)(3) is amended by striking out "section 4507" and inserting in lieu thereof "sections 4507 and 5384".

(b) Section 4109(b) is amended—

(1) by inserting "after August 25, 1980," after "any period of service"; and

(2) by inserting "after such date" after "such service".

TITLE VI—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 601. (a) The amendments made by titles I and II shall apply only to payments for months beginning after September 30, 1980.

(b) The amendments made by title III and by sections 402, 501, 503, and 506 shall take effect on October 1, 1980.

(c) The amendments made by section 502 shall apply only with respect to individuals who die after September 30, 1980.

(d) The amendments made by sections 401, 504, 505, and 507 shall take effect on the date of the enactment of this Act.

(e) The amendments made by section 508 shall take effect as of August 26, 1980.

Resolved, That the House agree to the amendment of the Senate to the title of the bill with the following amendment:

In lieu of the matter inserted by the said amendment, insert: "An Act to amend title 38, United States Code, to provide cost-of-living increases in the rates of compensation for veterans with service-connected disabilities and in the rates of dependency and indemnity compensation for surviving spouses and children of veterans, to provide for limited grants for special home adaptations for certain severely disabled veterans, to provide for Veterans' Administration guaranties for loans to refinance certain existing veterans' home loans and to increase the maximum loan guaranties for home loans made to veterans, and to provide for the confidentiality of certain Veterans' Administration medical quality assurance records; and for other purposes.".

Mr. CRANSTON. Mr. President, this is the measure I sought on Friday and Monday to have taken up by unanimous consent—under the order governing H.R. 7631, the HUD Appropriations Act. It is before the Senate now as a privileged matter in lieu of the formal conference report.

SUMMARY

This measure embodies a compromise agreement between the Committees on Veterans' Affairs. It is, I believe, a fair and reasonable compromise that was worked out after extensive discussions and negotiations. It would provide for a much-needed cost-of-living increase in the rates of compensation for 2¼ million service-connected disabled veterans and dependency and indemnity compensation for 360,000 survivors of veterans who have died from service-connected causes. It would also make improvements in Veterans' Administration housing assistance programs.

Mr. President, as chairman of the Veterans' Affairs Committee, I urge concurrence in the House amendments to the Senate amendments to H.R. 7511, the proposed "Veterans' Disability Compensation and Housing Benefits Amendments of 1980," so that this important measure may be sent to the President.

Mr. President, the House amendments incorporate a compromise agreement achieved by the two Veterans' Affairs Committees after extensive discussions and negotiations. Our committee and the House Veterans' Affairs Committee worked very hard to reach agreement on the differences between H.R. 7511 as passed by the House on July 21, 1980, H.R. 7458 as passed by the House on July 28, and the Senate amendment to the provisions of H.R. 7511, passed by the Senate on August 6. The Senate amendment to H.R. 7511 contained the provisions of S. 2649 as reported by our committee on July 30, 1980, and included provisions comparable to those contained in H.R. 7458.

Although the major purposes of the House bills were similar to those of the Senate amendment, there were a number of substantive differences in the various provisions. I am very pleased that we have achieved a fair and reasonable resolution of the differences, and I would like to highlight the major provisions of the compromise agreement.

COST-OF-LIVING INCREASE IN COMPENSATION AND DIC RATES

Mr. President, the House bill provided for an increase of 13 percent, effective October 1, 1980, in the rates of compensation for our Nation's service-connected disabled veterans and dependency and indemnity compensation—DIC—for the survivors of those who died in the service of our country. The Senate amendment provided for a 14.3-percent increase in those rates; this reflected our committee's view that the increase for this most deserving group of individuals should not be less than the indexed increases, effective June 1, 1980, for social security and VA pension beneficiaries. The compromise agreement provides, effective October 1, 1980, for a 14.3-percent increase for veterans rated as 50 percent or more disabled and for surviving spouses and children receiving DIC and a 13-percent increase for veterans rated from 10- through 40-percent disabled.

The increases in the compromise agreement would have a fiscal year 1981 cost of $1,056.1 million in budget authority and $971.6 million in outlays—$28.9 million in outlays less than the Senate amendment and $70.1 million more than the House bill.

The rate increases provided for in the compromise agreement are designed to insure that, as a result of the costs of this bill and of a forthcoming compromise agreement on H.R. 7394 regarding a 10-percent increase in GI bill educational assistance allowances, the Veterans' Affairs Committees do not exceed their budget allocations under the first concurrent resolution on the budget for fiscal year 1981. With respect to the second budget resolution—Senate Concurrent Resolution 119—reported by the Budget Committee on August 27, I would like to note that the Budget Committee has indicated in its report—Senate Report No. 96-921, page 80—that it has assumed a compensation-DIC increase of 14.3 percent in the resolution it has recommended. I am very gratified by this action by the Budget Committee.

Mr. President, the Senate position on VA compensation rate increases is that those increases should not be less than the indexed increases—14.3 percent effective June 1, 1980—provided to social security and VA pension beneficiaries this year. Our committee contended very strongly for this position in negotiations with the House Committee. However, in light of the budgetary constraints under which both Veterans' Affairs Committees must operate under the allocations under the first budget resolution—which provided inadequate levels that I fought hard, but not successfully, to have increased—it was ultimately not possible to maintain our position in its entirety.

In this connection, I would note that our committee's effort to sustain the Senate position included a September 17 meeting attended by the distinguished Senator from South Carolina (Mr. THURMOND), myself, and the very able chairman (Mr. MONTGOMERY) and ranking minority member (Mr. WYLIE) of the House Veterans' Affairs Committee Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs.

In that meeting, we presented our concerns for a 14.3-percent increase for all compensation and DIC recipients during fiscal year 1981. We also argued strongly against the House provisions in H.R. 7511 limiting the payments of disability compensation and DIC to veterans and survivors during their incarceration for criminal convictions. However, much to our regret, we were unable to convince our House colleagues to accept our position, but I do appreciate their thorough consideration of our arguments on this point. Although they would not yield entirely from the House position, they were willing to make substantial concessions on the provision itself.

Mr. President, we have been advised by the VA that our prompt action on this bill would mean that there would be sufficient time to adjust the amounts of the October compensation and DIC checks—mailed on November 1 to over 2.6 million beneficiaries—to include this increase.

SPECIAL HOME ADAPTATION GRANTS FOR CERTAIN SEVERELY DISABLED VETERANS

Mr. President, I am especially pleased that the compromise agreement contains provisions—derived from the Senate amendment—to establish a program of limited specially adapted housing grants, up to a maximum of $5,000, for veterans who, as a result of service-connected disability, are totally blind or have lost or lost the use of both hands. This new pro-

gram would entail a fiscal year 1981 cost of $1 million in budget authority and outlays and would be effective on October 1, 1980.

REFINANCING OF VA-GUARANTEED LOANS

Mr. President, both H.R. 7458 as passed by the House and the Senate amendment to H.R. 7511 contained provisions to enable the VA to guarantee loans made to veterans for the purpose of refinancing, at lower interest rates, their VA home loans. As my colleagues are well aware, home-loan interest rates rose earlier this year to extremely high levels. However, under current law, those veterans who obtained VA-guaranteed home loans during that period of extremely high interest rates cannot refinance their loans with a VA guaranty at lower interest rates. Under the compromise agreement, these veterans would be able to reuse their VA loan-guaranty entitlement for a refinancing loan with a lower interest rate.

INCREASES IN LOAN-GUARANTY MAXIMUMS

Mr. President, the Senate amendment provided for increases in the maximum amounts of loan-guaranty entitlement provided to veterans—from $25,000 to $30,000 in the case of conventional homes, condominiums, and home improvements, and from $17,500 to $20,000 in the case of mobile homes and lots. The House bill did not contain comparable provisions. Under the compromise agreement, an increase of $2,500 would be provided for each loan-guaranty maximum.

PAYMENT OF PENSION TO MILITARY RETIREES

Mr. President, the House bill, but not the Senate amendment, would remove the prohibition on the concurrent receipt of military retired pay and VA need-based pension benefits in order to enable the VA to pay pensions to disabled and elderly military retirees whose incomes are below the applicable pension standard in the same way that pensions may be paid to persons who receive income from social security or any other source. The compromise agreement contains this very equitable provision.

LIMITATION OF COMPENSATION AND DIC FOR INCARCERATED PERSONS

Mr. President, the House bill, but not the Senate amendment, would have limited the amount of compensation and DIC benefits payable to persons who are incarcerated in penal institutions for felony or misdemeanor convictions. Under the House bill, compensation or DIC, after the first 60 days of incarceration, could not exceed $60 per month.

At the present time, compensation payable to a veteran rated as 10-percent disabled is less than $60 per month; thus, this provision as passed by the House would have applied at the present time only to veterans rated 20 percent or more disabled and those whose rating is zero percent but who receive the rate provided under section 314(k) of title 38. Under the House bill, a similar limitation would apply to incarcerated DIC recipients, and amounts not paid to the veteran or DIC recipient could be apportioned to the veterans' dependents and survivors.

The compromise agreement provides for a limitation that would apply only to those who are convicted of felonies and only in situations where the offense is committed after the date of the enactment of this section or, if before, to those who are incarcerated on October 1, 1980, and awarded compensation or DIC after that date while incarcerated. The limitation would not apply at all to a person while he or she is participating in a work-release program or residing in a halfway house.

With respect to veterans, the monthly amount of compensation payable to veterans rated 20 percent or more disabled would be limited to the 10-percent rate—$54 under the compromise agreement—and to veterans rated zero or 10-percent disabled, to half of the 10-percent rate—$27. The limitation would apply to all veterans rated as 10 percent or more disabled and to those whose rating is zero percent but who receive the rate provided under section 314(k) of title 38. With respect to DIC and death compensation recipients, the monthly amount payable would be limited to half of the 10-percent rate.

Most importantly, apportionments to dependents of incarcerated veterans would be paid under the same terms and conditions as are apportionments made pursuant to section 3107 of title 38, which governs apportionments in the cases of nonincarcerated compensation beneficiaries. Apportionments of DIC would be paid in a similar manner. However, no apportionment of the compensation or DIC of a person to whom the limitation applies could be made to a dependent who is incarcerated for conviction of a felony.

Finally, under these provisions, no adjudications of total disability based on individual unemployability would be permissible during the period of the veteran's incarceration.

Mr. President, in my view and in the view of other committee members, the House-passed provision not only raised questions of fundamental fairness but also threatened basic principles underlying the service-connected compensation programs. However, with the utmost reluctance and recognizing the depth of the feelings in the other body with regard to the issues involved—and, as I previously noted, Senator THURMOND and I personally met with Representatives MONTGOMERY and WYLIE—we have reached an accord on the provisions in the compromise agreement, provisions that I believe are consistent with notions of fundamental fairness.

I would like to emphasize that the limitation would apply only prospectively. It would apply generally only to those who commit felonies after the date of enactment, and no person who is currently serving a period of incarceration would, as a result thereof, lose any compensation benefits which he or she has been awarded prior to October 1.

Under the provisions regarding apportionments, there would be absolutely no discretion on the part of the Administrator to deny or reduce apportionment—because of the felony conviction—on any factors other than those applicable generally to compensation and DIC apportionments. We believe it is very important to provide for the legitimate needs of the family of an incarcerated compensation or DIC recipient.

I also stress both committees' intention that the VA notify any affected veteran or DIC recipient of the apportionment provisions and that the VA also notify each prospective apportionee. It is important to note the committees' intentions in this regard because a dependent or other prospective apportionee may request an apportionment.

In my view, the various modifications of the House provisions reflected in the compromise agreement go far to overcome many of our committee's objections to this part of the House bill, and I appreciate the cooperation of the House Members in working out these provisions with us.

MINIMUM NUMBER OF EMPLOYEES OF AMERICAN BATTLE MONUMENTS COMMISSION

Mr. President, the House bill, but not the Senate amendment, provided, subject to appropriations, for certain minimum numbers of American Battle Monuments Commission—ABMC—employees to assist the ABMC to carry out its mission of maintaining and preserving the overseas cemeteries in which so many of our Nation's honored dead lie buried and the monuments and memorials dedicated to them. The compromise agreement contains this provision.

CONFIDENTIALITY OF MEDICAL QUALITY-ASSURANCE DOCUMENTS

Mr. President, the Senate amendment, but not the House bill, provided for the establishment of a statutory scheme that would significantly limit the disclosure of VA medical quality-assurance documents—those documents generated by the VA through the agency's medical quality-assurance program—including disclosure pursuant to the Freedom of Information Act. The compromise agreement includes this provision with certain technical amendments.

Mr. President, at the time the Senate amendment was before the Senate, I included in the RECORD—daily edition, August 6, 1980, page 21436—a detailed discussion of the reasons for this change. Thus, I will not go into detail on this provision at this time.

However, I want to make two brief points with reference to the technical modifications we have made in this provision. First, most of the changes were made to insure that it is clear that Congress intends that the confidentiality protection be applied to all of the documents developed as part of the VA's medical quality-assurance program since that program began in 1974. I believe that it is important to provide confidentiality for all documents already developed, those under development, and those to be developed in the future under the VA's quality-assurance program, so as to insure that those health professionals participating in that program—which relies on peer review—are able to do so without hesitation and with the understanding that the comments, evaluations, and criticisms that they make in the review will generally not be available outside of the VA.

As indicated, these concerns are equally applicable to documents created under the quality-assurance program prior to the date of enactment of this provision. To allow such material to be made public would not only have a possible adverse effect on the reviewers' willingness to participate in the program in the future and thereby compromise the attempts to keep the quality-assurance program operating effectively, but would also constitute a serious breach of faith with those who have participated in the program up to now.

Mr. President, the second point on the technical amendments that I want to make concerns the modification to clarify that none of the prohibitions on disclosure is intended to limit the use of the medical quality-assurance documents within the VA itself. There was some concern that, without such a clarification, the provision could be construed as barring the use of such documents by VA employees with a need for them who did not participate in the particular review or evaluation involved.

In removing any such ambiguity on this score, VA use has been defined to include VA "contractors and consultants" in recognition of the fact that the VA employs many such individuals in its health-care system.

However, I want to note that this provision does not authorize the release of copies of the medical quality-assurance documents to such individuals but rather limits their access to one of "use." The access is limited in this manner so that a contractor or a consultant who needs to see such a document—and I note that I do not anticipate much demand of this sort—would not be able to acquire the documents in question through a disclosure but would be limited to using such documents in a VA facility, either in the VA's Central Office or a VA medical center, under VA control and direction. In this way, the material in question would remain within the control of the VA and there should be no opportunity for inadvertent disclosure beyond the agency.

Mr. President, I believe these provisions relating to medical quality-assurance documents are very important, and I am pleased that the House agreed to include them in the compromise agreement.

Mr. President, in order that all Senators and the public may have a full understanding of the provisions of the compromise agreement, I ask unanimous consent that there be printed in the RECORD at this point, in lieu of a joint explanatory statement accompanying a conference report, a document, also inserted during consideration in the other body on September 18, entitled "H.R. 7511, Veterans' Disability Compensation and Housing Benefits Amendments of 1980—Explanatory Statement of House Bill, Senate Amendment, and Compromise Agreement," followed by a brief discussion of provisions not contained in the compromise agreement; a table comparing the fiscal year 1981 costs of the House bill, Senate amendment, and compromise agreement; and the Congressional Budget Office estimate of the fiscal year 1981 costs of the provisions of the compromise agreement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 7511, "VETERANS' DISABILITY COMPENSATION AND HOUSING BENEFITS AMENDMENTS OF 1980"—EXPLANATORY STATEMENT OF HOUSE BILL, SENATE AMENDMENT, AND COMPROMISE AGREEMENT

TITLE I—VETERANS' DISABILITY COMPENSATION BENEFITS

RATE INCREASE

SECTIONS 101, 102, and 103. The House bill and the Senate amendment would amend chapter 11 of title 38, United States Code, effective October 1, 1980, to increase the basic rates of service-connected disability compensation for veterans, the rates payable for certain severe disabilities, the annual clothing allowance for certain severely disabled veterans, and the dependents' allowances payable to veterans rated 30-percent or more disabled. The House bill would increase those rates by 13 percent; the Senate amendment, by 14.3 percent.

The compromise agreement provides increases, effective October 1, 1980, of 14.3 percent in the rates for veterans rated 50-percent or more disabled and for veterans more severely disabled, the annual clothing allowance, and dependents' allowances and of 13 percent in the rates for veterans rated from 10- through 40-percent disabled.

TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS

RATE INCREASES

SECS. 201, 202, and 203. The House bill and the Senate amendment would amend chapter 13 of title 38, United States Code, to provide, effective October 1, 1980, an increase of 13 percent and 14.3 percent, respectively, in the rates of dependency and indemnity compensation (DIC) payable to the surviving spouses and children of veterans whose deaths were service connected.

The compromise agreement provides a 14.3-percent increase in DIC rates effective October 1, 1980.

TITLE III—SPECIAL HOME ADAPTATION GRANTS FOR CERTAIN SEVERELY DISABLED VETERANS

SEC. 301. The Senate amendment would amend chapter 21 of title 38, United States Code, to provide, effective October 1, 1980, for limited specially adapted housing grants, up to a maximum of $5,000, to veterans who, as a result of service-connected disability, are totally blind or have lost or lost the use of both upper extremities to a specified extent. The House bill does not contain a comparable provision.

The House recedes with amendments clarifying that veterans who have lost or lost the use of both hands would be eligible and modifying a limitation provided for under the Senate amendment. This limitation would have precluded the VA from providing to any veteran who is eligible for home health services—which may include home improvements and structural alterations—under section 612(a) of title 38, United States Code, and also eligible under the new limited specially adapted housing grant program, any particular type of adaptation, improvement, or structural alteration more than once. This limitation would be modified under the compromise agreement to clarify that the VA may not furnish to a veteran under the new program a particular type of adaptation, improvement, or structural alteration that has been provided to the veteran under section 612(a) and to avoid any implication that the limitation applies to assistance under section 612(a). The Committees note that veterans eligible for grants under the new program would be eligible—as are veterans now eligible for specially adapted housing grants under chapter 21—for mortgage protection life insurance under section 806 of title 38 and direct home loans under section 1811(1) of such title. As in the Senate amendment, this section would become effective October 1, 1980.

TITLE IV—VETERANS' ADMINISTRATION HOME-LOAN PROGRAM AMENDMENTS

REFINANCING LOANS

SEC. 401 (a), (b)(1), and (d)(1). The Senate amendment and H.R. 7458, passed by the House on July 28, 1980, would amend chapter 37 of title 38, United States Code, to authorize the VA to guarantee a refinancing loan made to a veteran who has previously used his or her loan-guaranty or direct-loan entitlement to purchase a conventional home or condominium. Under the Senate amendment, but not H.R. 7458 a refinancing loan guaranty could be provided only in the case of a refinancing loan with an interest rate that is lower than the interest rate on the previous loan; such a guaranty would be available for a loan to refinance a previous VA-guaranteed loan used to purchase a mobile home or mobile home lot, or both; and, in cases where the veteran is deceased and the veteran's surviving spouse was a co-obligor under the loan to be refinanced, the surviving spouse would be able to obtain a VA loan guaranty for a refinancing loan with a lower interest rate. Under H.R. 7458, but not the Senate amendment, the amount of guaranty on the refinancing loan would be limited to the amount of guaranty on the loan to be refinanced; and the use of a direct loan for refinancing purposes would be permitted.

The House would recede with technical and clarifying amendments and an amendment that would limit the amount of guaranty of the refinancing loan to the amount of guaranty on the loan to be refinanced. As in H.R. 7458 and the Senate amendment to H.R. 7511, this provision would be effective upon the enactment of the compromise agreement.

INCREASES IN LOAN GUARANTY MAXIMUMS

SEC. 402. The Senate amendment would amend chapter 37 of title 38, United States Code, to increase, effective October 1, 1980, the maximum amounts of VA loan guaranty entitlement provided to veterans—from $25,000 to $30,000 for conventional homes, condominiums, and home improvements, and from $17,500 to $20,000, for mobile homes and lots. The House bill does not contain a comparable provision.

The House recedes with an amendment, effective October 1, 1980, providing a $2,500 increase in both maximum loan guaranty amounts.

TITLE V—MISCELLANEOUS PROVISIONS

EXTENSION OF AUTHORITY FOR VETERANS' ADMINISTRATION OFFICE IN THE REPUBLIC OF THE PHILIPPINES

SEC. 501. The House bill would amend section 230(b) of title 38, United States Code, to extend from September 30, 1981, to September 30, 1985, the VA's authority to maintain a regional office in the Republic of the Philippines. The Senate amendment does not contain a comparable provision.

The Senate recedes.

HEADSTONES AND MARKERS IN CERTAIN CASES

SEC. 502. The House bill would amend section 906(a) of title 38 to provide that an appropriate headstone or marker may be furnished, upon request, for the grave of a veteran's spouse, surviving spouse, minor child, or, in the Administrator's discretion, unmarried adult child, if such person is buried in a State veterans' cemetery and the veteran is or was eligible, under chapter 24 of title 38, for interment in a National Cemetery. The Senate amendment does not contain a comparable provision.

The Senate recedes with a technical amendment. As in the House bill, this section would become effective with respect to persons who die after September 30, 1980.

PAYMENT OF PENSION IN CERTAIN CASES

SEC. 503(a). The House bill would amend section 3104(a) of title 38 to remove, effective October 1, 1980, the prohibition on the concurrent receipt of military retired pay and VA need-based pension benefits under section 521 or 541 of title 38. This would enable the VA to pay pension to persons who receive military retired pay in the same way that pension may be paid to persons who receive income from the social security program or any other source. The Senate amendment does not contain a comparable provision.

The Senate recedes with a clarifying amendment. This subsection would become effective, as in the House bill, on October 1, 1980.

SEC. 503(b). The House bill would amend section 3203(a)(1)(C) of title 38 to provide, effective October 1, 1980, that the reduction of pension required when a veteran without dependents is readmitted for care in a VA domiciliary, hospital, or nursing home facility within 6 months of a previous period of care will not be made unless a reduction was made under section 3203(a)(1) (A) or (B) in connection with the previous period of care. The Senate amendment does not contain a comparable provision.

The Senate recedes with a clarifying amendment. This subsection would become effective, as in the House bill, on October 1, 1980.

LIMITATION OF COMPENSATION AND DIC FOR INCARCERATED PERSONS

SEC. 504. The House bill would amend chapter 55 of title 38, United States Code, to provide that, during a service-connected disabled veteran's confinement in a Federal, State, or local penal institution as the result of the veteran's conviction of a felony or misdemeanor, the veteran's compensation may not exceed $60 per month after the first 60 days. Under this provision, the reduction after 60 days of incarceration would apply only to veterans rated 20 percent or more disabled, as long as the 10-percent rate is less than $60 per month. Amounts not paid to the veteran could be apportioned to the veteran's dependents. A similar limitation would apply to incarcerated recipients of DIC and death compensation payments. This provision would be effective with regard to payments for months after September 30, 1980. The Senate amendment does not contain a comparable provision.

The compromise agreement provides for a limitation along the lines of the House bill with the following provisions:

(1) The limitation would apply only to persons incarcerated for a felony conviction.

(2) The limitation would apply only to those whose offense is committed after the date of the enactment of this section and to those who are incarcerated on October 1, 1980, and awarded compensation or DIC after that date.

(3) The limitation would not apply to a person while he or she is participating in a work-release program or residing in a half-way house.

(4) Apportionments to dependents of veterans would be provided for under the same terms and conditions as are apportionments made pursuant to section 3107 of title 38, which governs apportionments in the cases of non-incarcerated compensation beneficiaries. Apportionments of DIC would be provided for in a similar manner. However, no apportionment of the compensation, DIC, or death compensation of a person to whom the limitation applies could be made to a dependent who is incarcerated for conviction of a felony.

(5) With respect to veterans, the compromise agreement would limit the monthly amount of compensation payable to veterans rate 20 percent or more disabled to the 10-percent rate ($54 under the compromise agreement) and, to veterans rated zero or 10 percent disabled, to half of the 10-percent rate ($27). The limitation would thus apply to all veterans rated as 10 percent or more disabled and to those whose rating is zero percent but who receive the rate provided under section 314(k) of title 38. With respect to DIC and death compensation recipients, the monthly amount payable would be limited to half of the 10-percent rate.

(6) No adjudications of total disability based on individual unemployability would be permissible during the period of the veteran's incarceration.

Under the compromise agreement, this section would be effective on the date of enactment.

The Committees note that it is their intention that the limitations provided for under the compromise agreement apply to persons convicted of felonies and sentenced to imprisonment while they are institutionalized in a hospital facility on transfer from (but not on parole from) a penal institution. In cases of prison-to-hospital transfer, the Committees consider that the hospital is serving as an agent of the penal institution. As has been noted, the limitation would not apply during a period during which the individual is participating in a work-release program even though, under such program, he or she returns to confinement during evenings or weekends. Restoration to the full rate would occur upon the person's release from incarceration, including release on parole. At such times, of course, any amount apportioned to dependents would be appropriately adjusted.

The Committees intend that, at the time action is taken to reduce an incarcerated veteran's or survivor's benefits under this section, the VA provide such veteran or survivor and those to whom apportionments may be made with notice of these apportionment provisions.

CONFIDENTIALITY OF MEDICAL QUALITY-ASSURANCE DOCUMENTS

SEC. 505. The Senate amendment would amend chapter 57 of title 38, United States Code, to provide for the confidentiality of Veterans' Administration medical quality-assurance documents. The House bill does not contain a comparable provision.

The House recedes with technical amendments. The provision would be effective to protect the confidentiality of medical quality-assurance documents created before or after the date of enactment.

MINIMUM NUMBER OF EMPLOYEES OF AMERICAN BATTLE MONUMENTS COMMISSION

SEC. 506. The House bill would amend the Act creating the American Battle Monuments Commission (ABMC), which was approved March 4, 1923 (36 U.S.C. 121) to provide that, subject to the availability of appropriations, the ABMC shall employ at least (1) 50 Federal civil-service employees, of whom not fewer than 43 shall be assigned to duty in ccuntries where cemeteries, monuments, and memorials under ABMC jurisdiction are located, and (2) 348 citizens of such countries to maintain and care for such cemeteries, monuments, and memorials. The Senate amendment does not contain a comparable provision.

The Senate recedes. As in the House bill, this provision would be effective October 1, 1980.

LAND TRANSFER

SEC. 507. The Senate amendment would amend Public Law 89-345 (79 Stat. 1304)—which authorized the conveyance, subject to certain restrictions, of a tract of land adjoining the VA Center located in Cheyenne, Wyoming, from the VA to the city of Cheyenne—in order to remove the restriction relating to park and recreational use with regard to a certain 4-acre tract of the land so conveyed in order to permit the city to use the 4-acre tract to expand and improve a certain roadway. The park-and-recreational-use restriction would be removed by a second deed that would be authorized by the Senate amendment and would be required to impose a new restriction limiting the use of the 4-acre tract to public roadway purposes. The House bill does not contain a comparable provision.

The House recedes with technical amendments authorizing the VA to execute appropriate instruments to permit the 4-acre tract to be used for public roadway purposes and requiring that any such instrument provide that the 4-acre tract may be used only for park and recreational purposes or for public roadway purposes or both.

As in the Senate amendment, this section would be effective on the date of enactment.

TECHNICAL AMENDMENTS

SEC. 508 (a) and (b). The compromise agreement contains two technical amendments relating to Public Law 96-330, enacted on September 4, 1980, that are not contained in either the House bill or the Senate amendment. The first provision, contained in section 612 of S. 1188, the proposed "Disabled Veterans' Rehabilitation Act of 1980", passed by the Senate on September 4, 1980, would amend paragraph (3) of section 4107(c) of title 38, as added by Public Law 96-330, which allows VA nonphysician hospital directors to be considered for bonuses as part of the Senior Executive Service (SES), in order to add a cross-reference, inadvertently not included in the text of Public Law 96-330, to a title 5 SES bonus provision (section 5384). Second, the compromise agreement would amend subsection (b) of section 4109, as added by Public Law 96-330, to correct a drafting error and thus clarify that that subsection, which changes the way in which retirement credit is awarded for the part-time service of certain VA health-care personnel, applies only to part-time-employment periods served after the enactment of that law.

Both provisions would take effect as of August 25, 1980, the date of the enactment of Public Law 96-330.

PROVISIONS NOT INCLUDED IN COMPROMISE AGREEMENT

HOUSE BILL PROVISIONS

The House bill contained three provisions not included in this compromise agreement, as follows:

CERTAIN RETROACTIVE DIC PAYMENTS.—The House bill would provide for a limitation on the amount of retroactive DIC benefits payable to a veteran's surviving child whose eligibility for DIC benefits becomes established at a time later than the eligibility of the veteran's other surviving child or children was established.

REDUCTION OF CERTAIN DIC BENEFITS.—The House bill would provide that, where a surviving spouse is a DIC recipient receiving a dependent's allowance for a child and the child becomes entitled to DIC when he or she has reached age 18 and is attending school, the DIC benefit payable to the surviving child for the month in which he or she reaches age 18 is to be reduced by the amount of the dependent's allowance.

LIMITATION DURING FISCAL YEAR 1981 OF CERTAIN BURIAL BENEFITS.—The House bill would eliminate the payment of burial benefits in cases in which the veteran's death occurs during fiscal year 1981 from nonservice-connected causes and the veteran's income, together with the veteran's spouse's income, exceeded $20,000 during the 12 months prior to the veteran's death.

SENATE BILL PROVISIONS

The Senate amendment contained various provisions not included in this compromise agreement, as follows:

SUPPLY FUND AUTHORITIES.—The Senate amendment would modify certain VA supply fund authorities. This provision was enacted as section 402 of Public Law 96-330.

LOAN GUARANTY DISCLOSURE AUTHORITY.—The Senate amendment would authorize the VA to make certain disclosures of veterans' names and addresses to facilitate the management of the VA loan-guaranty program. This provision was passed by the House as section 603(b) in H.R. 7394 on July 21, 1980, and is being considered in the context of a compromise agreement on that bill and certain other measures.

VEAP AND GI BILL AMENDMENTS.—The Senate amendment would make certain modifications in the Post Vietnam-Era Veterans Educational Assistance Program (VEAP) and the GI Bill program. These provisions were passed by the Senate as sections 213 and 214 in S. 1188 on September 4, 1980, and are being considered in the context of a compromise agreement on that bill and certain other measures.

EXPANSION OF CATEGORIES OF VA LIFE-INSURANCE ASSIGNEES.—The Senate amendment would expand the categories of persons to whom assignments of VA life insurance proceeds may be made.

COMPARISON OF FISCAL YEAR 1981 BUDGET AUTHORITY COSTS OF H.R. 7511 AS PASSED BY THE HOUSE AND SENATE AND COMPROMISE AGREEMENT

[In millions]

Provisions of compromise agreement	As passed by House	Senate amendment	Compromise agreement
Titles I and II	$979.8	$1,087.5	$1,056.1
Title III		1.0	1.0
Title IV:			
Sec. 401	(1)[2]	(1)	(1)
Sec. 402		(1)	(1)
Title V:			
Sec. 501	(1)		(1)
Sec. 502	(1)		(1)
Sec. 503	1.0		1.0
Sec. 504	−3.0		(1)
Sec. 505		(1)	(1)
Sec. 506	(1)		(1)
Sec. 507		(1)	(1)
Sec. 508			(1)
Total	[3] 977.8	1,088.5	1,058.1

[1] Less than $500,000.
[2] H.R. 7458.
[3] Provisions in the House bill not included in the compromise agreement would reduce this amount to $894,300,000.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 18, 1980.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 7511 the Veterans' Disability Compensation and Housing Benefits Amendments of 1980.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 18, 1980.

1. Bill number: H.R. 7511.
2. Bill title: Veterans' Disability Compensation and Housing Benefits Amendments of 1980.
3. Bill status: As passed by the House of Representatives on September 18, 1980.
4. Bill purpose: To amend title 38, U.S.C., to provide a cost-of-living increase in the rates of disability compensation and of dependency and indemnity compensation, and for other purposes.
5. Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Title I:					
Required budget authority	858.8	870.5	880.0	889.4	898.8
Outlays	790.1	869.6	879.2	888.6	898.0
Title II:					
Required budget authority	197.3	199.7	201.4	203.1	204.3
Outlays	181.5	199.5	201.2	202.9	204.2
Title III:					
Required budget authority	1.0	.7	.5	(1)	(1)
Outlays	1.0	.7	.5	(1)	(1)
Title V:					
Sec. 501:					
Estimated authorization level	0	1.1	1.1	1.2	1.2
Outlays	0	1.1	1.1	1.2	1.2
Sec. 503(b):					
Required budget authority	1.0	1.0	1.0	1.0	1.0
Outlays	1.0	1.0	1.0	1.0	1.0
Sec. 504:					
Required budget authority	(1)	−1.5	−2.5	−3.0	−3.0
Outlays	(1)	−1.5	−2.5	−3.0	−3.0
Total:					
Estimated authorization level	0	1.1	1.1	1.2	1.2
Required budget authority	1,058.1	1,070.4	1,080.4	1,090.5	1,101.1
Outlays	973.6	1,080.4	1,080.5	1,090.7	1,101.0

[1] Less than $500,000.

6. Basis for estimate:

Title I: This title would increase by 13 percent monthly disability compensation benefits for veterans with disabilities rated at 40 percent or less. All other monthly benefit rates would be increased by 14.3 percent, with the exception of the rate paid under section 314(k) (title 38, U.S.C.) which would not be increased at all. These increases would be effective October 1, 1980.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	858.8	870.5	880.0	889.4	898.8
Outlays	790.1	869.6	879.2	888.6	998.0

The cost of this title was estimated by multiplying the current rate for each schedular level of disability by the amount of the proposed increase. This increase in monthly payment rates was then multiplied by the number of veterans receiving compensation for that level of disability, as of December 1979. This produced the cost for the increase in schedular payment rates. The cost of the 14.3 percent increase in all non-schedular payment categories was estimated by calculating the cost of an across-the-board 14.3 percent rate increase, then subtracting out the portion applying to schedular rates. The two pieces were then combined to arrive at the total estimated increase in disability compensation costs.

Title II: This title would increase all monthly dependency and indemnity compensation (DIC) rates by 14.3 percent, effective October 1, 1980.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	197.3	199.7	201.4	203.1	204.3
Outlays	181.5	199.5	201.2	202.9	204.2

Note: The cost of this title was estimated by multiplying the projected average cost in each year for all DIC cases by 14.3 percent, then multiplying the resulting average increase in cost by the estimated number of cases in each year.

Title III—This title would provide for a new program of grants for special housing adaptations for certain disabled veterans. Veterans with blindness in both eyes or with the loss or loss of use of both upper extremities at or above the wrist would be eligible for grants equal to the actual cost of such adaptations, but not to exceed $5,000. The provision would be effective October 1, 1980.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	1	0.7	0.5	(1)	(1)
Outlays	1	.7	.5	(1)	(1)

[1] Less than $500,000.

According to the VA, there are currently 125 veterans receiving compensation for the anatomical loss of both upper extremities, 542 for the loss of use of both upper extremities, and 1,016 for total bilateral blindness. If all eligible veterans received the maximum grant available, the total cost of the new program would be $4.2 million. This estimate assumes that some eligible veterans have already made necessary adaptations with section 612(a) (title 38, U.S.C.) grants, that some otherwise eligible veterans would be ineligible because they do not own their homes, and that some veterans would find special adaptations undesirable.

Title IV:

Section 401: This section would permit veterans to refinance loans guaranteed under section 1810 or 1819 of title 38, U.S.C., in order to obtain a lower rate of interest, as long as the refinanced loan is secured by the same property as the originally guaranteed loan, the principal balance of the refinanced loan does not exceed the outstanding balance of the original loan plus closing costs, and the term of the refinanced loan does not exceed the term of the original loan. This provision is not expected to result in any significant cost to the federal government. The refinancing of loans at lower rates of interest would make it easier for veterans to make their monthly mortgage payments and, thereby, preclude some defaults. The administrative cost of processing the applications for refinancing would not be expected to be significant.

Section 402: This section would increase the maximum loan guaranty amount from $25,000 to $27,500 for houses and from $17,500 to $20,000 for mobile homes. Significant costs in the loan guaranty program are only incurred in the case of foreclosures. The VA's new program of financial counseling for veterans who are having difficulty making the payments on their guaranteed loans has been quite successful in substantially reducing the number of loans going into foreclosure.

The increased cost for those loans which would result in foreclosure should be offset by the proceeds from the sale of the property involved.

Title V:

Section 501: This section would extend the authority of the Administration of Veterans' Affairs to maintain a regional office in the Philippines through September 30, 1985. The current authority expires at the end of fiscal year 1981.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Estimated authorization level	0	1.1	1.1	1.2	1.2
Estimated outlays	0	1.1	1.1	1.2	1.2

This estimate is based on information from VA on the projected cost of operating the Manila regional office.

Section 502: This section would extend eligibility for government headstones or grave markers to the spouses and certain children of veterans who are buried in state veterans' cemeteries. Since there are few state veterans' cemeteries, and since the average cost of a government headstone or marker is aproximately $50, the cost of this provision should not be significant.

Section 503(a): This section would provide that pension benefits may be paid concurrently with military retired pay. According to the VA and the House Committee on Veterans Affairs, there are only a handful of individuals whose military retired pay is low enough for them to qualify for pension. This section is, therefore, not expected to have a significant cost.

Section 503(b): This section eliminates a discrepancy in the provisions to reduce pension benefits during hospital stays. According to VA sources, the provision would result in benefit costs of approximately $1 million a year.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	1	1	1	1	1
Outlays	1	1	1	1	1

Section 504: This section would limit the amount of disability compensation and DIC benefits that could be paid to individuals who are incarcerated for more than 60 days for commission of a felony. In the case of veterans with no dependents, the maximum allowable benefit would be limited to the 10 percent disabled rate ($54 after October 1, 1980) for those veterans with ratings of 20 percent or higher. Incarcerated veterans not rated 20 percent or more and DIC recipients would have their benefits reduced to one-half the 10 percent rate. Incarcerated veterans and DIC recipients with dependents may have the withheld portion of their benefits paid to their dependents. This provision would be effective only with regard to incarcerated individuals whose offense was committed after the date of enactment.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	(1)	−1.5	−2.5	−3	−3
Outlays	(1)	−1.5	−2.5	−3	−3

[1] Less than $500,000.

There is no data available on the number of service-disabled veterans or DIC recipients in prison, nor on the level of compensation benefits such individuals receive. A study of inmates of Pennsylvania state prisons (Kehrer and Mittra, Characteristics and Needs of Veteran Inmates in Pennsylvania State Correctional Institutions, Office of Equal Opportunity, Pennsylvania Department of Education, in conjunction with the Bureau of Correction, Pennsylvania Department of Justice, May 1975) determined that 25 percent of the inmates of that prison system were veterans. According to the Bureau of the Census, on December 31, 1979 there were 314,083 inmates in federal and state prisons. If 25 percent of these inmates are veterans, there would be approximately 78,500 veterans. Of Vietnam era veterans, 5.4 percent are receiving disability compensation. One would expect that disabled veterans would be less likely to commit crimes than the rest of the veteran population since their compensation benefits would provide them with at least some guaranteed income. On this basis, it was assumed that 2,000 recipients of disability compensation and 200 recipients of DIC would ultimately have their benefits reduced as a result of this provision. Since the provision is only effective for individuals whose crime was committed after enactment, a three-year phase-in period is assumed before the bulk of incarcerated veterans would be affected. The estimate further assumes that such individuals currently receive one-half the average benefit level of all recipients of the respective program. Since there is little hard data to back-up these assumptions, this estimate should be viewed only as a rough approximation of the savings that would result from this provision.

Section 506: This section would establish a minimum number of employees for the American Battle Monuments Commission (ABMC). The Commission is directed to employ not less than 50 individuals in competitive service and not less than 348 individuals who are citizens of the countries in which ABMC cemeteries, monuments and memorials are located, subject to the availability of appropriations. According to the fiscal year 1981 budget, the ABMC currently employs 45 general schedule employees and 339 unscheduled employees. The cost of the additional personnel mandated by this section would be less than $500,000 a year.

7. Estimate comparison: None.

8. Previous CBO estimate:

On June 12, 1980 CBO transmitted an estimate of H.R. 7511, as originally ordered reported by the House Committee on Veterans' Affairs. That version of the bill contained a 13 percent compensation rate increase among other provisions and was estimated at a fiscal year 1981 required budget authority of $994.3 million and outlays of $816.2 million. These figures were later reestimated to $902.8 million and $823.9 million, respectively, for CBO July reestimates.

On July 30, 1980 CBO submitted a cost estimate of S. 2649, the Senate version of the Veterans' Disability Compensation and Survivors' Benefits Amendments of 1980. That bill contained a 14.3 percent compensation rate increase and other provisions. It was estimated to require fiscal year 1981 budget authority of $1,088.5 million and result in outlays of $1,000.4 million.

This current version of H.R. 7511 contains a 13 percent rate increase for veterans rated 40 percent disabled or less and a 14.3 percent increase in all other compensation and DIC rates. Of the other provisions, some were taken from the House bill and some from the Senate bill resulting in a total cost greater than that estimate for the House bill, but less than of S. 2649.

9. Estimate prepared by: K. W. Shepherd (225-7766).

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

CONCLUSION

Mr. CRANSTON. Mr. President, in closing, I want to express my deep appreciation to the chairman of the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs of the House Committee on Veterans' Affairs (Mr. MONTGOMERY) and the chairman of the full Committee (Mr. ROBERTS), as well as the ranking minority members of the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs (Mr. WYLIE) and of the full Committee (Mr. HAMMERSCHMIDT), for their cooperative spirit and open-mindedness in fashioning this compromise agreement dealing with several difficult and complex matters. I am also very grateful to my distinguished colleagues, the ranking minority member of the Senate Committee on Veterans' Affairs, the Senator from Wyoming (Mr. SIMPSON), and the Senator from Georgia (Mr. TALMADGE), for their work on this legislation.

In addition, I would like to congratulate several members of the House Committee staff whose expertise and diligence were invaluable in the development of this measure—Mack Fleming, Lou Townsend, Arnold Moon, and Chuck Wright—as well as the members of our committee staff who participated so importantly in this effort—Mary Sears, Ed Scott, Jon Steinberg, Bill Brew, Janice Orr, Julie Susman, and Harold Carter. We also are very much indebted to our legislative counsels, Hugh Evans of the Senate and Bob Cover of the House, and to the VA for technical assistance.

I believe that the reasons I have expressed in support of the compromise agreement make a strong case for this legislation, and I urge my colleagues to support it.

Mr. DOLE. Mr. President, I am pleased to support H.R. 7511, the Veterans' Disability Compensation and Housing Benefits Amendments of 1980.

Among other important provisions, this bill will authorize cost-of-living increases in the compensation for disabled veterans and survivors. This legislation represents a special and continuing obligation of the U.S. Government to provide for those who have become disabled in the service of our country.

I am happy to support this bill and urge my colleagues to give it their support.

Mr. THURMOND. Mr. President, I rise in support of H.R. 7511, the Veterans' Disability Compensation and Housing Benefits Amendments of 1980, as reported by the House.

Mr. President, this bill will provide a cost-of-living increase for those veterans in receipt of Veterans' Administration compensation which is due to disabling injuries received while in military service. The rate of this increase will result in veterans rated 10 to 40 percent disabled receiving a 13-percent increase, and those rated 50 percent or more disabled receiving a 14.3-percent increase in their monthly payments. Further, widows in receipt of dependency and indemnity compensation (DIC) on October 1 will receive a 14.3-percent increase. The differing rates are required to insure that the Veterans' Affairs Committees of the House and Senate do not exceed their budget allocations under the first concurrent budget resolution (H. Con. Res. 307).

Mr. President, H.R. 7511 contains several provisions that will assist certain severely disabled veterans in their efforts to obtain suitable housing. For instance, veterans who are totally blind or have lost the use of both upper extremities will become eligible for a $5,000 housing grant to install in their homes the necessary adaptive equipment to make their homes more livable. Also, this legislation will authorize the VA to guarantee a home loan that was refinanced with an interest rate that is lower than the interest rate acquired during the most recent period of high inflation. I believe this provision is very meritorious and it will assist veterans who, for reasons beyond their control, were subjected to high home interest rates and soaring inflation. In addition, the maximum amount of a VA home loan guaranty would also be increased by $2,500.

Mr. President, the original legislation by the House contained a provision that would deny compensation benefits to a veteran once that veteran became incarcerated, and upon release these benefits would be reinstated. The Senate bill did not address this issue. However, during consideration of this matter by the members of both Veterans' Committees, to reach a suitable resolution, the very theory and purpose of service-connected compensation was discussed. The compromise agreement, Mr. President, is not what I wanted nor was it the position of the Senate; yet, the House felt strongly on this matter and I believe this compromise is the best that could have been achieved under the circumstances.

Mr. President, VA compensation is paid to a veteran for his service-connected disability. The rate of payment reflects the average impairment of earning capacity as a result of this disability. It is my opinion that the economic or social status of the veteran should not determine his receipt of compensation. If a veteran's status in life was considered to be a factor in the receipt of compensation, then the argument could be made that a veteran who has a certain income level should have his compensation reduced. Thus, receipt of compensation would be need-based and not totally related to a disability incurred while in service.

Mr. President, attending to the needs of the service-connected disabled must always remain the first order of priority in the scheme of a veteran's benefits. Although H.R. 7511, as reported, contains several provisions that reflect the House position rather than the Senate, I believe it is a meritorious bill overall, and I urge my colleagues to support it.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CRANSTON, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the Senate concurred in the House amendment.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Kansas (Mr. DOLE) for the purpose stated.

COLMERY-O'NEIL VA HOSPITAL

Mr. DOLE. Mr. President, on behalf of myself and Mrs. KASSEBAUM, I send a bill to the desk and ask unanimous consent that it be considered as having been read twice and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill to rename the Veterans' Administration Medical Center in Topeka, Kans., as the "Colmery-O'Neil Veterans' Administration Medical Center."

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceded to consider the bill (S. 3147), which was read the first time by title and the second time at length.

Mr. DOLE. Mr. President, the provision of this bill was agreed to by the Senate on August 26 as unprinted amendment No. 1540, to S. 1188, the Disabled Veteran Rehabilitation Act of 1980, and was included in S. 1188 as passed by the Senate on September 4, 1980.

During negotiations between House and Senate Committees on Veterans' Affairs to work out the differences between S. 1188 and the House version of H.R. 5288 and H.R. 7394. The House objected to the amendment on the grounds that it was not germane to any House-passed provisions in those measures.

Therefore, I am today, with the agreement of the chairman and ranking minority member of the Senate Veterans' Affairs Committee, Senators CRANSTON and SIMPSON, offering the text of that amendment as a separate bill.

Mr. President, I urge this measure be agreed to.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 3147) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3147

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Veterans' Administration Medical Center in Topeka, Kansas, on and after the date of enactment of this Act, shall be known and designated as the "Colmery-O'Neil Veterans' Administration Medical Center", in honor of the late Harry W. Colmery and Ralph T. O'Neil. Any reference to such center in any law, regulation, map, document, record, or other paper of the United States shall after such date be deemed a reference to the Colmery-O'Neil Veterans' Administration Medical Center.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, what is the order previously entered?

The PRESIDING OFFICER. The order is to proceed to H.R. 7584, the appropriations for State, Justice, and Commerce.

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 1981

Mr. ROBERT C. BYRD. Mr. President, I ask that the Senate proceed under the order and then I would like to be recognized.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7584) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be not to exceed 1 hour for the purpose only of allowing Senators to make statements in reference to the disapproval resolution which was acted upon earlier, or statements on any other matters, but with the understanding that no motions be in order and that any motion to proceed to the consideration of any other matter during this hour not be in order.

The PRESIDING OFFICER (Mr. HUDDLESTON). Is there objection? Without objection, it is so ordered.

NUCLEAR FUEL SHIPMENTS TO INDIA

Mr. ROBERT C. BYRD. Mr. President, the fuel export licenses for the reactors at Tarapur have presented the Senate with an arcane puzzle. I am convinced, nevertheless, that both sides are dedicated to the same goal: Keeping the brakes on the proliferation of nuclear weapons.

The poet Robert Browning wrote:

White shall not neutraline black,
nor good
Compensate bad in man, absolve
him so:
Life's business being just
the terrible choice.

What was at issue here was not good over bad, but the means to best achieve a desired, common goal. Senators on

each side presented compelling arguments for their respective positions. And, now, the Senate has made its difficult choice.

It is, I think, the proper choice. It will give the administration time to negotiate with the Indians full-scope safeguards over all peaceful nuclear activities in India. Many of us in the Senate will watch the progress of those talks with great interest.

I wish to thank the very able floor managers, Messrs. CHURCH, GLENN, and JAVITS. I want to commend the other members of the Committee on Foreign Relations for the work done to clarify this issue. Finally, I would like to thank all of my colleagues in the Senate for grappling with this difficult issue in an appropriate and nonpartisan manner.

Mr. MOYNIHAN. Mr. President, I rise in the immediate aftermath of the decision the U.S. Senate has made to support the President and not to agree with the House of Representatives in the matter of providing fuel for the Tarapur reactor in Maharashtra, India.

Mr. President, this request involves the closest of decisions. It involved the most difficult assessment of the requirements of the statute that we imposed upon ourselves, and of a fundamental question for American foreign policy, that is to say, our relations with the Republic of India.

That these relations have not been good is clearly and painfully established by the debate that was held first in the House and which has now been held and concluded in the Senate. It is surely anomalous, and it will surely come to the attention of friends, of commentators, of men and women in public life in the subcontinent itself, that here in the legislature of the oldest constitutional democracy in the world, one which from the outset felt the closest kinship with the Indian democracy, there has been such an estrangement, such differences of understanding, different perspectives. We have spoken of a sister nation and, in all its essentials, a fellow democracy, in terms that 20 years ago would I think have astonished us and the citizens of India.

And yet we have judged. By the narrowest of margins we have judged that we did not want to disrupt a relationship that is sorely strained and clearly less than satisfactory to either of us. Our friends in the subcontinent will have noticed the overwhelming judgment of our press and public alike. To many, our relations with India appear so unsatisfactory, the bonds of trust so frayed, and the expectation of future relationships so minimal, that they were ready for such a disruption.

We were not, by a margin of 2 votes—no more.

And so we now have, with respect to the Government of India, a period of at most 2 years in which to reverse the trend of our relations of at least the past decade, that this experience may not be repeated. If it were to be repeated, clearly the President or his successor, should he take the same position, would not prevail. Two years, Mr. President, no more.

Mr. President, the argument offered against the concurrent resolution was based on the technical view presented by the administration, and now narrowly sustained by the Senate, that the two shipments of low-enriched uranium that we were considering came under a grace period provided by the Nuclear Nonproliferation Act. It was arguable that they did. Persons equally competent with respect to the legislation took different sides. In the end, by the narrowest of margins, the administration's view prevailed.

There can be no possibility of such an argument being made about the next shipments to Tarapur, and they will come along in the regular sequence that has been observed, with some delays, since the 1963 agreement.

Therefore, we have not resolved the question of our relationships with India in respect to nuclear matters; we have only put it off for 2 years. It is devoutly to be hoped that those 2 years will be used well, not only by our Government but by the Government of India as well, to recognize that this Congress will not approve future shipments if the conditions of our legislation are not met. These are conditions we imposed upon ourselves, not upon India, but which India can seek to modify or seek to comply with by negotiations with the United States.

Such negotiations as have taken place in the past 2 years did not succeed. India, no doubt, has been distracted, as have we. Both nations have more than enough concerns. But this matter, which goes to the center of our relationship, ought not to be put on the periphery of our Government's activities. It would be a great failing of statecraft, equivalent, if I may say so, to the failing of statecraft in 1971, when neither the Government of India nor the Government of the United States fully understood their purposes with respect to the issues of Bangladesh. At that time we made a military feint at the subcontinent in the Bay of Bengal. The Indian response was as arbitrary and as based upon a mistrust of the United States as was our conduct on mistrust of them. The result was a lost decade in our relations. Relationships were disrupted that had been exemplary and that were seen in the previous decade and the one before that as integral to the national interest of both republics.

There has been a lost decade. If we are to recover it, we have 2 years. I have learned today that the Government of India has, at last, appointed an Ambassador to succeed Mr. Palkhivala, a most distinguished and remarkable envoy, who served here in the early years of the present administration and has not been replaced until now. Surely, this break in representation was a signal that the Government of New Delhi ought not to continue to give. I welcome the news, if it is correct, that an emissary has now been designated.

Mr. President, I hope that our own Embassy in New Delhi will take heart from this event today, but will also impress upon the government there the closeness of this decision, the narrowly technical reasoning that seems to have persuaded most of those who voted to support the President, and the impossibility of any such technical argument being advanced successfully in the years to come.

Mr. President, one of the aspects of American foreign policy that I have viewed with a good deal of dismay in recent years has been the degree to which we have been willing to associate our purposes, in parallel actions, with the totalitarian Government of China. That has seemed to me, at times, to be an expression of our weakness vis-a-vis the Soviets. It is a weakness which may be manifest, but which ought never to lead to a willingness to let China set the conditions and terms of our relationship. This, in our dealings with a totalitarian power opposed to all that we stand for, is surely inappropriate. I have been equally dismayed by the widespread feeling that, however, the Indians might react, however the Government of India might judge our conduct in Peking, this was a matter of relatively little concern to us. At the least, it does not seem to be of sufficient concern as to dissuade us from our activities on mainland China. If this continues, it does not bode well for a minimal solidarity of democratic societies in our time.

Now I do not wish to stand here and present India as simply exemplary in its internal conduct. To the contrary, we have learned with great concern that preventive detention once more appears as an aspect of the civil regime in the subcontinent. The last time that happened, during the so-called emergency, a large number of democratic political figures found themselves imprisoned for no greater reason than their legitimate and lawful opposition to the party in power.

We are told that the present measures arise out of concern at the recent communal disturbances in India. Perhaps nothing more than that may be intended. Yet it is a sweeping action, and is opposed by men who have proven themselves in the struggle to sustain democracy in that country. I think particularly of Mr. Subramaniyan Swamy, one who was mentioned in our own press this morning, a man to whom the democratic world owes more than a little tribute for his conduct during the previous emergency.

It is in some measure unavoidable that we shall judge our relationship with the Indians in terms of how successfully they maintain the regime of freedom that they received in 1947–48, and have, in the main, remarkably sustained. It is an extraordinary performance. There is no equivalent in the developing world, save that of Sri Lanka, its neighbor to the south.

It is simply the fact, Mr. President, that throughout the former colonial world, nations which, when they came to independence, thought that a free society, a democratic society, was as integral an aspect of freedom, of independence, as the technical fact of independence itself, have abandoned those convictions. With but few exceptions, democratic societies—even liberal societies—have disappeared. They have not in India, which is in comparably the largest of these nations.

As we will judge our relationship with India by the democratic character of its regime, so do we hope that they would judge it in the same fashion. Yet instead we receive from India the impression that it sees its own interests as more closely attached to the nondemocratic societies of the world than to the democratic ones. I think those who have studied the subcontinent, know its history, its long history of domination by outsiders—a history which, for 1,000 years preceding the British, consisted of domination by a succession of Islamic invaders—understand their sensitivity to these matters. But, surely, history—the past—is one thing. The future is a more important thing. Surely, that future, from the point of view of India, ought to be seen as having its fundamental interest in an alliance of the world's democracies—not a military alliance or a political alliance, but an alliance of a shared understanding of what matters, a shared set of values, and a shared set of procedures, and a vast common interest.

I hope, Mr. President, that these facts, as I see them and have presented them in these brief remarks, will be heard in New Delhi and that we shall hear from them some early and positive response to the action which the Senate took with such great distress—affirmatively with respect to the President, but hesitantly withal. It is an action which we took fundamentally in the hope that we would not rupture this relationship. We also knew that, unless it improves dramatically in the years immediately ahead, the rupture will become inevitable, however much one would wish it should never come to pass.

We have acted today and New Delhi will respond, if not tomorrow, then in the very near future.

Mr. President, I thank the Chair and I thank the Senate for its patience and deference in allowing me to discourse in this manner at a time when other business urgently presses itself upon us.

I take it as a mark of the concern of the majority leader, the minority leader, our distinguished leadership, that they should interrupt the schedule of the Senate in these closing days of the Congress to provide time for these remarks.

I cannot in any way suggest they associate themselves with them, but they knew the purpose for which I would rise and they provided the occasion. I hope that this might not pass unnoticed in New Delhi. One may dare hope this same message will be heard in the executive branch, by the Secretary of State, whose personal intervention is responsible for the outcome today. Only he could have brought this about. I hope that he will take this as a mandate from his former colleagues to press in the diplomatic directions that I have suggested are now not only appropriate, but possible, and altogether necessary.

Mr. President, again I thank the Chair and I thank the Senate for providing this occasion.

I yield the floor.

SEVENTY JOBS IN BALTIMORE

Mr. METZENBAUM. Mr. President, I rise to address myself to a matter that has been of concern to me for some time and has to do with the claim and the concern that people in this Nation do not want to work, that people want to be on welfare, that people want to be on unemployment compensation.

I rise because, Mr. President, something happened last week in the city of Baltimore that should put to rest forever some of the vicious myths that have been repeated time and again about the causes of unemployment.

We are all familiar with these myths. We have heard time and again that social programs are a cause of, rather than a response to, unemployment.

"Those people," we hear, "are living the good life on their unemployment benefits, welfare checks and food stamp allotments."

"They're lazy," we hear.

"They're loafers and bums and chiselers. And they won't take the jobs that are available."

All of this, and more, is said about the unemployed.

Last week in Baltimore, 26,000 of "those people" showed up to apply for 70 jobs with the Social Security Administration.

Those are not high level jobs. All of them are entry level, requiring few skills.

The openings were not widely publicized in the newspapers and television. They were posted in State unemployment offices—the news spread by word-of-mouth.

It spread like wildfire. There were some jobs available. Not great jobs, but an opportunity to earn a day's wages, an annual wage. It was not very great.

They are not well paid jobs—annual wage levels are between $7,210 and $11,555 in a city in which the Bureau of Labor Statistics estimates that a family of four needs an income of $12,772 a year to meet what BLS defines as a lower income family budget.

Those jobs do not carry with them the security of civil service employment. They were not advertised as permanent—in fact, they are designated as "worker trainee" positions—which indicates that the employee may be laid off at any time during the first 3 years of employment without cause or compensation.

Seventy applicants—not 700, 70 applicants—will get jobs with the Social Security Administration, the ones we call "those people" in so many of the hearings, in so many of the speeches.

And 26,000 of "those people" in Baltimore will still be unemployed after the 70 jobs are filled.

Twenty-six thousand people, Mr. President, in a city the size of Baltimore.

Twenty-six thousand men and women who are willing, who are eager, who are desperate for jobs.

We hear that "these people" are lazy. And we have even heard from one who aspires to this Nation's highest office that "unemployment insurance is a prepaid vacation plan for freeloaders."

Let him say that to the 26,000 who applied for the 70 jobs.

Mr. President, to anyone who believes these lies and slanders about our people, I say go to Baltimore and take another look.

I say to them visit Ohio and talk with the thousands upon thousands of people in cities like Cleveland and Youngstown and Dayton and Cincinnati and Columbus who seek work, but cannot find it. Ask the unemployed, and you will learn something of the bitterness, the frustration and the despair that have become a part of the day-to-day lives of millions of Americans who want nothing more than decent jobs.

I do not know what it is that causes so many of us to blame the poor for their poverty and the unemployed for their joblessness.

But whatever it is, I say that it is time to reject this meanness of spirit. And it is time that we as a nation turn our resources, our energies, to providing employment to all who want to work. When that happens, Mr. President, I believe that those who seek to cripple our humane social programs will be astonished at the tiny number of Americans who truly deserve the scurrilous labels that have been indiscriminately pinned upon so many of our people.

Mr. President, I ask unanimous consent that a Washington Post article by Dale Russakoff describing the first wave of Baltimore job applicants be printed in the RECORD.

This was published at a point when only 15,000 had applied for those 70 jobs. It later developed to the point of 26,000.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 16, 1980]

15,000 APPLY FOR 70 FEDERAL JOBS IN BALTIMORE

(By Dale Russakoff)

BALTIMORE, September 16.—Beatrice West, a housewife, heard something in her Southwest Baltimore neighborhood that sounded too good to be true: the federal government had 70 job openings for unskilled workers. She rushed to tell her daughter, who told a friend, Wayne Fields.

Fields jumped in his car yesterday and headed downtown to apply. On the way, he saw his brother and a friend, both of them jobless, hanging out on a corner. He told them. They decided to come along.

About 15,000 people had the same idea. Almost all of them are black, most are unemployed, many are on welfare. All day yesterday and early today, they lined up for blocks and waited for hours to pick up applications for the 70 clerical and manual labor jobs coming open in January at the Social Security Administration here.

Local officials and welfare rights leaders called it an "astounding" and "unprecedented" demonstraiton of the severity of unemployment here, particularly at the lowest level of the economic ladder.

About 40,500 people in Baltimore are unemployed, according to the Department of Labor. That represents 9.9 percent of the work force, 2 percent above the national unemployment rate. The jobs being offered here

are at the lowest level of the federal pay scale, paying from $7,210 ot $11,555 per year. They are classified as worker trainee jobs, meaning that those who are hired will not become permanent federal employes in less than three years.

Despite the low pay and the potential job security problem many Baltimoreans standing in the lines to apply for the jobs said they knew of no better opportunities.

Serena White, 45, an unemployed mother of two who is now on welfare, took a bus downtown and hobbled on a crutch for the two blocks between the bus stop and the Garmats Federal Office Building, one of the job application sites.

She was injured in a bus accident, she explained, pointing to broken toes on both feet and her mouth, which was missing several teeth.

"Whatever job there would be I would take," she said. "They say there are jobs in this city. I've called all the want ads. I've visited all the offices. There aren't even jobs that I don't want, much less jobs that I want.

"I might as well become a criminal. They do more for convicts and ex-convicts than they do for the people who are trying to walk a halfway straight line."

Social Security officials said they intentionally avoided publicising the openings except to notify the state unemployment office and the federal jobs information center. "We knew we'd get a lot more people than we had hoped to use. You always do with entry-level jobs," one official said.

The speed with which the information spread, mainly by word of mouth, shows the desperation of Baltimore's poor to enter the work force, said Robert Cheeks, executive director of the city's Welfare Rights Organization.

Ministers announced the openings in church services over the weekend, and current Social Security Administration employes told their neighbors and friends. Serena White said she read about the openings in a Democratic women's club flyer.

"Everyone seems to be trying to do something to help people get jobs, but what it does is heighten the frustration," Cheek said. "Every time one person hears about a job, 25 or 50 people hear about it."

Cheek said his own organization recently had 1,100 applicants for 400 jobs in a work incentive program, "and that was before we could even advertise."

Wayne Fields said he could have picked up "a busload" of jobless people to bring to the application site yesterday instead of bringing only his brother and a friend. They call their southwest Baltimore neighborhood "The Valley," because so many people are out of work. He and his brother, Marvin, 20, and their friend Wayne Webster, 21, said they were discouraged to find that so many others had applied for the jobs.

"It's just danged hard," Wayne Fields said. Marvin Fields and Webster chimed in in a sort of chorus: "This place is tight," Marvin added. "There's no opportunity," said Webster.

Social Security officials said it will take three months to process the applications. They said they expect to fill 68 to 75 jobs in the Baltimore Social Security offices, and place the names of all other eligible applicants on federal job registers.

The lines at the Garmats building Monday were the longest that formed at any of the three application sites. An estimated 5,500 people picked up applications Monday at the federal building, which stands about a block from Baltimore's glistening new harbor front developments. Cheeks called the juxtaposition of the nationally renowned harbor and the job application lines ironic.

Marvin Fields put it this way: "They's putting up warehouses and buildings and all kinds of stuff, but there still ain't no work."

SPEECH BY VIRGINIA ATTORNEY GENERAL J. MARSHALL COLEMAN AT GEORGE MASON UNIVERSITY LAW SCHOOL DEDICATION

Mr. THURMOND. Mr. President, at the recent dedication of the George Mason University Law School, Virginia Attorney General J. Marshall Coleman delivered an outstanding address. In his speech, Attorney General Coleman discussed the importance of this fine, new school and the unique opportunities it offers its students.

Mr. President, in order to share this speech with my colleagues, I ask unanimous consent to have it printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

REMARKS BY VIRGINIA ATTORNEY GENERAL J. MARSHALL COLEMAN

I am delighted to bring greetings on behalf of the legal community—a significant force in America, some 450,000 lawyers strong. Our ratio of lawyers to population is three times gerater than Great Britain's and 21 times greater than Japan's. Forty thousand lawyers work in Washington, D.C. across the river. Many of them live in Virginia. I know firsthand something about the numbers in this State. When I took office I inherited 91 lawyers on my staff, and 140 in the Virginia General Assembly—not all of whose membership is licensed but all of whom practice.

We seem to the world a nation of lawyers. Alain Clement writing in Le Monde recently sought to explain to France the preeminent role of lawyers in America. He concluded that the exceptional position of American lawyers derives from the power of judges. Their power springs in turn from their role in interpreting the Constitution. He observed what we all know to be true, that the American judiciary intervenes at all levels and at all times.

What has made America different from so many otherwise great nations has been its dedication to the rule and force of law; to the supremacy of the courts as the final arbiters of public policy. This dedication has provided the enduring and resilient strength of our political system. We are a country of laws, not men.

Our greatest lawyers have always combined idealism with the natural pragmatism inherent in the study and the practice of law—and America has been well served by them. Their names are legion and engraved in the hearts of their countrymen. From Jefferson and Madison to Lincoln, from Marshall to Holmes, their names read like an honor roll of American patriots. Take the great lawyers and their work out of American history and there isn't much left.

But our country changes and with it the law and the way we practice it changes. The lawyers who came to this country in it's infancy easily shed their powered wigs and flowing robes, the trappings of their power and prestige in a different world. They replaced them with a professional dignity that required few enhancements. And they enjoyed a natural position of stature in their communities. But the times are changing still.

We have contemporary needs not met.

In our other traditional Virginia law schools, we don't have the ability to establish the clinical programs you can: to help train the paralegals we need so much.

This school is uniquely situated to draw on the strengths of Northern Virginia, and the Nation's Capital, to mobilize its assets to help solve the problems we confront, problems which are as varied and fundamental as those facing the patriot George Mason two centuries ago.

George Mason Law School is in the midst of the most vibrant and exciting community in the world, with a unique blend of the urban and suburban.

Close by are all the great courts from traffic court to the United States Supreme Court.

And George Mason need not set out simply to imitiate our other law schools. Here we can focus on the future as well as the contemporary in special ways. One great challenge for the law of the future is to cope with urban planning and land use. Where better to do it than here. Every case on these subjects reaching our Virginia Supreme Court has come from Northern Virginia—and til hazel hasn't lost one of them yet.

Here is a school that can draw on the greatly talented local bar, that can serve as a laboratory of problem solving in the field of energy and mass transit and all the great problems that will characterize the last decades of this century. George Mason Law School can be a national leader in the development of innovative programs designed to solve the increasingly complex problems of urban America.

Who could construct a hypothetical legal problem more challenging than Metro financing, which involves every layer of Government from the White House to City Hall, from State constitutional restrictions to revenue sharing?

We are a litigious people and if legal problems are to be found they will indeed be found here. Clearly this is a "made for lawyers" community.

And this law school can draw on the community, just as the community can draw on the law school.

Two centuries ago George Mason was a pathfinder; I am certain today's George Mason will be remembered for special things as well.

George Mason was unique and controversial in his time. He wrote the Virginia constitution and his bill of rights—not Jefferson's—became a model for all the other States. He was an original. And it is fitting that this school should bear his name.

SENATOR GAYLORD NELSON

Mr. ROBERT C. BYRD. Mr. President, Senator GAYLORD NELSON came to the U.S. Senate in 1963 after compiling an outstanding record as Governor of Wisconsin for 4 years. In Madison, he headed an administration described in the Wisconsin Story as "the most impressive of any in roughly a half-century of the State's history."

Senator NELSON continued his efforts in the areas of conservation and the environment, tax reform, energy, and raw materials when he came to the Senate. Born and reared in Clear Lake, a small town in northern Wisconsin, he carried—first to Madison and then to Washington—a deep respect for the unspoiled beauties of nature, and a passionate commitment to preserving these beauties for future generations of Americans.

On the day he left the Governor's office, GAYLORD NELSON told the Christian Science Monitor that:

The most important challenge facing America today—both at the State and Federal level—is the conservation of our precious natural resources.

Soon after he arrived in the Senate, he wrote to President Kennedy urging him to launch a national effort to preserve the wilderness and clean up the environment.

Over the years, GAYLORD became a leading environmentalist in the Senate. From his role as the founder of Earth Day and Earth Week in the early 1970's to his current efforts to monitor the impact of acid rain, he has devoted his efforts to the cause of saving our natural resources and protecting the environment.

Back in 1965, Senator NELSON delivered a prophetic speech on the floor of the Senate, a speech in which he said, in part:

The great resources of America—the soil, the timber, the minerals, the wildlife—have sustained us for hundreds of years. But now we have to think about sustaining them. The frontier is gone. If we destroy these rivers and lakes, if we plunder these forests and rip up these mountainsides and foul this air and water, there will be no new green paradise awaiting us over the horizon. If we don't save the America we have today, I don't think we will have another chance.

The conservation effort spearheaded by GAYLORD NELSON flourished in the 1970's; today, conservation and environmental awareness are deeply ingrained in the minds of all Americans. Through his efforts, much of America's wild and scenic beauty has been set aside and preserved for future generations. Wisconsin, in particular, has benefited from his efforts.

For more than a half-century, the people of Wisconsin had been working to create a national park in the beautiful Apostle Islands off the Bayfield Peninsula in Lake Superior. Soon after he arrived in the Senate, GAYLORD NELSON began working to make this dream come true. His legislation to create an Apostle Islands National Lakeshore was enacted in 1970. Senator NELSON was also instrumental in winning Wild and Scenic River designation for the St. Croix River and in preserving thousands of acres of woodland in the Nicolet National Forest.

Closely related to his work in conservation and the environment have been GAYLORD NELSON'S efforts to awaken America to the threat of raw materials shortages and an energy crisis. In a 1963 letter to President Kennedy, he warned that the continuing exploitation and overconsumption of our limited natural resources would lead us someday into a serious economic crisis. He warned that as a nation, America had become too accustomed to cheap and plentiful supplies of energy, and that someday soon the Nation would have to pay the price for its shortsightedness.

A decade later, of course, GAYLORD NELSON'S prediction came true. Tragically, though, as a nation we had not heeded his warnings. Early in 1973, on the eve of the first Arab oil embargo, he gave another prophetic speech, this time to the people of Burlington, Wis.:

The evidence overwhelmingly shows that we had better start coming to grips with the energy issue quickly, or else the situation is going to go from bad to worse. This country must immediately launch a crash effort to bring order and planning to the present chaos in our energy affairs; to develop massive new, clean supplies of energy and to conserve the tremendous amounts of energy we now waste.

Long before there was any public awareness of an energy crisis, GAYLORD NELSON worked to develop measures to conserve energy and to expand research and development of alternative energy sources such as gasohol and synthetic fuels, and wind, water, and solar power. He sponsored the legislation that required automakers, for the first time, to improve the fuel efficiency of their cars and trucks. He successfully fought for the establishment of a program to assist elderly and low-income Americans to weatherize their homes in order to cut energy costs. Senator NELSON has worked for the expansion of this country's strategic petroleum reserves. Today he is drawing up the plans for a natural resource information system to monitor the supply and demand of all our critical resources and raw materials in the years ahead.

GAYLORD NELSON has been a man ahead of his time. He was one of a few Senators who warned, as early as 1964 and 1965, that America was pursuing a dangerous and potentially disastrous course of action in Vietnam. In 1965, when the Senate debated the first supplemental appropriations bill containing the funds to step up the war, Senator NELSON spoke forcefully against it.

GAYLORD NELSON has left his mark on many areas of American life. For more than a decade, he conducted hearings into the manufacturing, marketing, prescribing and pricing practices of the drug industry. His efforts produced heightened public awareness of the need to provide safe, effective, low-cost drugs and other health and medical products and led to the marketing of generic drugs.

Since 1975, GAYLORD NELSON has been chairman of the Senate Small Business Committee and has led legislative efforts to reduce the burden of taxes and rules and regulations on this Nation's independent entrepreneurs. Four years ago, he proposed a White House Conference on Small Business. His proposal led to the conference held in Washington earlier this year, which attracted more than 1,500 delegates representing 14 million small businessmen and women. Early this year, Senator NELSON agreed to chair a special Senate Task Force on Small Business, responsible for insuring that the major recommendations of the White House Conference be addressed by the Congress.

As a member of the Senate Finance Committee, GAYLORD NELSON has been deeply involved in efforts to reduce the tax burdens on individuals and businesses and to make the entire tax system more equitable. He presently is playing an active and valuable role as a member of the Senate Democratic Task Force on the Economy, which is developing a new set of national policies to reduce inflation, boost employment, and spur economic activity.

As chairman of the Senate Subcommittee on Employment, Poverty and Migratory Labor, GAYLORD NELSON has authored much of the legislation designed to improve educational and economic opportunities for all Americans.

GAYLORD NELSON continues to play a key role in developing the legislation that will guide this Nation in the years ahead. He is one of the hardest-working, most respected, and most effective Members of this body. I consider it a privilege to have served with him during the past 18 years.

PROPOSED REGULATIONS OF THE U.S. DEPARTMENT OF EDUCATION ON BILINGUAL EDUCATION

Mr. THURMOND. Mr. President, the recently proposed regulations of the U.S. Department of Education to require a nationwide bilingual education program in our public schools amount to one of the gravest threats to the integrity and local control of these schools in recent years. They run counter to the law establishing the Department and to our understanding of the Department's role at the time this body voted to create it.

Those who supported the enactment of Public Law 96-88 certainly did not intend the Department of Education to involve itself in any way in the making of a national education policy, in the prescribing of programs, curricula or textbooks or in deciding any other matters that have been regarded traditionally as local in nature. I recall very well the assurances we were given that this was not the purpose of the bill in question. In fact, the Danforth-Roth amendment was very precise in wording and intent.

I concur with Senator DANFORTH, my distinguished colleague from Missouri, that the decision of the U.S. Supreme Court in Lau against Nichols is not nearly as broad as President Carter would have us believe. I do agree that local school boards must make every effort to insure that those children who do not possess an English proficiency are given additional instruction to shore up their deficiencies—but with the local school boards determining the most effective way of accomplishing this. These officials and our teachers are the most appropriate persons to make such decisions, not some distant Federal agency in Washington. They are closest to the problems in the classroom and are in a far better position to make these judgments. The record shows that they have been very effective in this regard in the past.

Mr. President, I find it hard to believe that, at a time when our local school systems already are overburdened by costs and underfunded in so many instances, the Federal Government would add still more requirements and even greater costs of the kind these regulations would entail. Beyond that, I am not convinced that officials in the Department of Education really understand how difficult it will be for the majority of our local school boards to find and recruit teachers qualified to offer courses in so many different languages while their students catch up in English.

Recently, Dr. S. John Davis, Superintendent of Public Education for the

State of Virginia, stated that meeting these requirements would cost that State as much as $10 million in additional State and local funds, and that may be only the beginning. How much will this program cost other States?

Mr. Carter's statement to the effect that opposition to this program amounts to violation of "the civil rights of our children" is completely irresponsible. His "politics of the moment" seem to have displaced commonsense and the rule of law in this matter.

Mr. President, those who voted to establish the Department of Education did so in the belief that the Department would facilitate learning and the improvement of public education, not impede it. If these regulations are put into effect, there will be drastic consequences for our schools. I therefore call upon my colleagues in this body to join me in resisting this action of the Department of Education. Should these regulations be allowed to take effect, then I shall call upon my colleagues to join me in offering legislation to invalidate the regulations in their entirety and thereby protect the authority that the people in our local communities have vested in their school boards for the management and control of their schools.

PUBLIC BENEFITS FROM AIRLINE DEREGULATION ACT

Mr. CANNON. Mr. President, I ask unanimous consent to have printed in the RECORD the attached editorial, which appeared in the Omaha World Herald on September 9, 1980. The Airline Deregulation Act of 1978 went far to eliminate the cumbersome regulatory obstacles that restricted the functioning of the airline marketplace. This editorial describes one example of the public benefits that have resulted.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

AIR SERVICE WILL MEET DEMAND

The abrupt decision by American Airlines to take leave of the Midlands came as a surprise.

In retrospect, it really shouldn't have. American had been sending up signals for some time.

It started off in Omaho and Des Moines 4½ years ago in a big way with flights to the West Coast as well as to Chicago and points east.

American, it seemed, was fully determined to compete vigorously with United Airlines, which had all but dominated Midlands air travel for half a century.

American found the going to be rough. It retreated. From a high of eight departing flights from Eppley Airfield each day, it had been operating just two this summer.

Along the way, American terminated its service from the Midlands to San Francisco and Los Angeles.

Those two remaining Chicago flights were ill-timed because they coincided with United flights to the same destination. And the United fare was lower.

American recognized the problem and, effective Sept. 3, it realigned its Omaha schedule to fill wide gaps in United's Omaha timetable. But then, on Sept. 4, American announced that it was pulling out. The new schedule wasn't given a chance to work.

Omaha spent nearly 10 years (and about $200,000) trying to get American, or another airline that would compete effectively with United.

The time and money expended for the Service to Omaha and Des Moines case certainly weren't wasted.

That Civil Aeronautics Board proceeding brought Eastern Airlines to Omaha, and Eastern has served the Midlands well. Its nonstop flights to Atlanta and the resumption of nonstop service to the Pacific Northwest, both planned for December, will be valuable additions to the Omaha air transportation pattern.

There is a natural tendency to blame deregulation for the loss of American. Under tight regulation, it took so long to win American. In the environment of little regulation, it requires little more than American's unilateral decision for it to pull out.

But deregulation has another side. It enabled Texas International and Trans World Airlines to enter the Omaha market at will.

The same absence of tight route regulation that makes it possible for American to depart quickly, can enable another airline to replace it in the busy Omaha-Chicago market without having to take the tortuous, 10-year path American had to follow.

The airport Authority has already begun shopping for a replacement carrier. Several lean, aggressive airlines indicate interest. Omaha-Chicago has a money-making potential.

American is leaving. We wish it well. And we look forward to greeting its successor.

ONLY 6 DAYS LEFT

Mr. CANNON. Mr. President, I am pleased to inform my distinguished colleagues that there are only 6 days left before air fares are reduced by 3 percent. For example, this means that Senator MAGNUSON can save up to $22 on his next trip to Seattle.

NOMINATION OF JOHN C. TRUESDALE FOR REAPPOINTMENT TO THE NATIONAL LABOR RELATIONS BOARD

Mr. PERCY. Mr. President, I would like to advise my colleagues that should the nomination of John C. Truesdale for reappointment to the NLRB come before the Senate for a vote, I will oppose him.

After reviewing the testimony presented at the committee hearing on his reappointment, I feel that a convincing case has been made against him on two points: His lack of experience in the private sector and the decline in the rate of Federal court affirmance of Board decisions since he was appointed and became the third member of the current voting majority.

Lack of experience in the private sector was a criticism raised against both William Lubers and, to a lesser extent, Don Zimmerman. While I supported both of these men because I felt other qualifying factors overrode that objection in their particular cases, I am deeply concerned that the President has again nominated someone for service on the NLRB who has had no significant private sector experience.

In my judgment, the credibility of the National Labor Relations Board, the protection of the American worker, and the promotion of peace in the workplace all depend on a healthy, diverse Board membership. Practical experience in day-to-day labor-management relations is as important as technical knowledge of the law. We need people on the Board with technical knowledge, practical experience, an impeccable sense of fairness, and an understanding and appreciation of the dynamics of our collective-bargaining system. If all, or most Board nominees and members are cut from the same cloth, our system is ill served.

Mr. President, I am even more troubled by the figures cited during the committee hearings concerning the affirmance rate of Board decisions by the Federal courts in the last few years. The full affirmance rate has declined from 74 percent in 1976 to 64.5 percent in 1979. A little more than one-third of all decisions rendered by the Board in one of the most important areas of law in this country, are found unacceptable when reviewed by the Federal courts. The implications of these figures raise serious questions about the current composition of the NLRB.

Continuing respect for the Board, and for our labor laws in general, require that both business and labor perceive that they can receive a fair deal when their cases are heard by the Board. The 1-out-of-3 chance for court reversal of a Board decision increases not only the workload for the courts and the Board itself, and the costs for both management and labor, but also calls into question the fundamental ability of the Board to make judgments that will stick and its interpretation of the law itself.

If and when this nomination reaches the floor, Mr. President, I intend to speak more about both of these points. I doubt however that it will be considered by this Congress, and Mr. Truesdale has not participated in Board cases since his term expired on August 27, 1980.

In the meantime, I wanted to give notice to the leadership and other interested persons of the conclusions I have drawn, based on my present assessment of Mr. Truesdale's nomination.

TRIBUTE TO JAMES H. WISHART

Mr. PERCY. Mr. President, James Wishart, the long-time research director of the Amalgamated Meat Cutters and Butcher Workmen died in the Evanston, Ill., hospital on July 25. Mr. Wishart devoted his life to helping workers and low income families. He was an unusually dedicated man.

On August 1, 1980, a memorial service was held in the Jeanne Vail Chapel of Northwestern University in Evanston, Ill., for Mr. Wishart. A moving and well-deserved tribute was published for that service. Mr. President, I ask unanimous consent that this tribute be printed in the RECORD.

There being no objection, the tribute was ordered to be printed in the RECORD, as follows:

IN MEMORIAM: JAMES H. WISHART, 1908–1980

James Hunt Wishart was born on March 19, 1908, in Pittsburgh, Pa., the first child of Charles and Josephine Long Wishart. Through his father, a Presbyterian minister, he belonged to a long line of Scots Presbyterians whose early motto was "Resistance to tyranny is service to God." Through his mother he belonged to a line which included immigrants on the Mayflower and pioneers who walked the Oregon Trail.

He spent his childhood in Chicago and Wooster, Oh., where in 1919 his father accepted the presidency of the College of Wooster. He attended the Wooster schools and the college, graduating in 1929. His love of a good fight led him in college to be a debater, a tackle on the football team (tough but not mean), and, with friends, the founder and editor of *The Unicorn*, a literary magazine which both intentionally and unintentionally shook the placid community. In 1933, armed with a growing knowledge of economic and political theory and with an M.A. in English literature from Princeton University, he moved out into the world of the Depression.

After a year's teaching assistantship at Western Reserve University, he went to teach at the University of North Carolina. In nearby Durham, the textile workers were on strike and in 1934 Jim shuttled between classroom and strike headquarters beginning what was to be a lifetime devoted to the union cause.

From North Carolina, he went to the University of Akron. There, until 1937, he continued to live in two worlds. He was from beginning to end a teacher, and in Akron he got as much of a kick out of teaching students as he did out of writing leaflets and pamphlets for the Goodyear strikers. In 1937 he debated all too effectively with a judge (who happened to be on the board of the University) on the Spanish Civil War; shortly thereafter he was urged to leave the University and complete his work for a Ph. D. "I won the debate but lost my job," he said.

Leaving the university then to become Education Director (later Director of Research) for the United Rubber Workers, he merged his two worlds. Gifted teacher, economist, writer, speaker, and fighter, for the rest of his life he used his talents in the service of the union movement.

In 1939 Jim went to Detroit to become Research Director of the United Auto Workers. In the Ford organizing drive of 1941 he helped establish the strategy which turned the initial sitdown into the first strike in the history of the Rouge plant, resulting in an NLRB victory and the first Ford contract. He provided the research materials for the 1940 pamphlet "50,000 Planes a Year" and for other documents arguing the convertibility of auto plants to all types of war production. He developed the key 1942 GM wage case and argued the major aircraft wage cases before wartime boards. His research department was a model for all others. His stewards' manual, "How to Win for the Union," was distributed to more than a half a million workers in his own and other labor organizations.

In 1947, 250 UAW staff members were dismissed by Walter Reuther, among them Jim and Patricia Crozier. Jim came to Chicago, first as Research Director for the Farm Equipment Workers, then in 1948 for the Illinois Progressive Party. He and Pat, equals in devotion to the union movement and in political and social awareness, were married in 1950. Their daughter, Anne Crozier Wishart, was born in 1958.

In 1949 Jim joined the Fur, Leather and Luggage Workers as Research Director and when that union merged with the Amalgamated Meatcutters in 1955 he headed the new organization's research activities until his retirement in January of 1980. He served on the Packinghouse Workers National Negotiating Committee, represented the Union on the Armour Automation Committee and worked in major strikes in Iowa and California.

His grasp of economics, his powers of analysis, and his mastery of research undergirded his union's activities for years and provided a model for other unions. He thought well and he talked well. A deadly negotiator, a charming speaker, and always the teacher, he participated in countless contract negotiations, arbitration proceedings, talk shows, Congressional hearings, and union workshops. Sometimes during his long life a rebel, he was most notably a man of conviction, purpose, and integrity. And from beginning to end a fighter. He told a recent interviewer, "It's dangerous to mess around with Wisharts."

He loved equally his job, football, Shakespeare, bridge, Milton, cats, people, family, Pat and Anne.

THE NATIONAL FEDERATION OF MUSIC CLUBS—S. 2111

Mr. DOLE. Mr. President, legislation has been introduced that would grant a charter for the National Federation of Music Clubs.

THE PROMOTION OF FINE ARTS

The National Federation of Music Clubs is an organization, with more than 500,000 members across the United States. The federation has made a significant contribution to the promotion of fine arts in the United States and the world. Last year alone, 56,198 children entered the junior festivals which the federation sponsors annually. This outstanding organization promotes music therapy with monetary awards. Additionally, the federation has 3,087 volunteers who work in hospitals which use their musical skills to benefit the patients.

MUSIC EDUCATION

The federation encourages activities between music organizations and individuals who are directly or indirectly associated with music for the purpose of developing and maintaining high musical standards. In this regard, the federation has been a primary catalyst in the advancement of music education. Thousands of dollars are given by the federation throughout the year to students in all fields of music. In April of 1981, $25,000 will be awarded to the five winners in the federation-sponsored young artist auditions.

PRESERVATION OF AMERICA'S MUSICAL HERITAGE

In every State across this land federation members are working to preserve our rich American musical heritage. In my own State of Kansas there are over 3,000 active members of the National Federation of Music Clubs. By promoting American music and American artists throughout our Nation and the world the federation performs an invaluable service. Through their tireless efforts this organization has involved people in hospitals, small towns, the military, and in countless other walks of life with music.

Mr. President, the Senator from Kansas applauds the tremendous contribution that the National Federation of Music Clubs has made to the cultural enrichment of our land. In light of this contribution, I have decided to cosponsor this bill. I urge my colleagues to support this worthy piece of legislation.

GREATER WILMINGTON CHAMBER OF COMMERCE SPEAKS OUT ON NATIONAL DEFENSE

Mr. HELMS. Mr. President, occasionally I find myself wondering if the American people are fully aware of the perils confronting our Nation. They are constantly deluged with contradictory statements, opinions and political declarations—such as, for example, when President Carter and Congress gave away the Panama Canal, cancelled the B-1 bomber; and when the President signed the dangerous SALT II treaty. At least, thus far, the Senate has refused to consider SALT II.

But, Mr. President, the American people are a great deal more perceptive than some politicians give them credit for being. For example, I would call the Senate's attention to a resolution adopted by the Greater Wilmington Chamber of Commerce on September 18.

During World War II the Navy stationed me for a while at Wilmington, which is a lovely city on the southeastern coast of North Carolina. No finer people can be found anywhere than in Wilmington.

I will not discuss the contents of the resolution to which I refer. It speaks eloquently and intelligently for itself. It is a forthright and enlightened assessment of what clearly is the No. 1 priority of America today.

I commend Bill Graves, president of the Greater Wilmington Chamber of Commerce; Joe Augustine, executive vice president of the chamber; and young Paul Laird who, I understand, did a great deal of work in drafting the resolution which I want now to share with my fellow Senators.

With that in mind, Mr. President, I ask unanimous consent that the text of the resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION ON NATIONAL DEFENSE

Whereas, recent events in the Persian Gulf region have served to underscore the inadequacy of American forces to deal with crises in distant parts of the world, and

Whereas, vulnerability of America's forces of land-based Minuteman missiles to a Soviet first-strike attack by 1983 compounded by Russia's superiority in medium-range nuclear forces in Europe both signal a shift in nuclear superiority from the United States to the Soviet Union, and

Whereas, the all volunteer services are falling short in the quality and quantity of recruits and even more in the strength of the reserves and potentially more dangerous is the loss of thousands of experienced officers and non-commissioned officers and technicians due to dissatisfaction over compensation—housing and travel allowances and other fringe benefits, as well as salaries, and

Whereas, the Soviet Union has dramatically expanded its Navy while the U.S. Navy has retired more ships than added new ones to its fleet, now

Therefore, be it resolved, that the Greater Wilmington Chamber of Commerce supports

whatever level of defense spending is clearly necessary and fiscally prudent to offset the continued threat of communist aggression to our national security, and further

Be it resolved that Congressional support for large-scale increases in defense outlays is encouraged to improve U.S. nuclear capabilities, weapons systems, manpower shortages and compensation, mobilization capabilities and expansion of our Navy to adequately provide enough ships for a three-ocean fleet, and further.

Be it resolved that the long range planning and programs designed to re-establish U.S. defense/military superiority be designated top national priority and paid for on a pay-as-we-go basis with no increase to the national debt when cuts in programs and agencies can be effected elsewhere.

TRIBUTE TO U.S. AIR FORCE TEAM AT TITAN II MISSILE SITE—SENATE RESOLUTION 529

Mr. BUMPERS. Mr. President, on behalf of myself, Mr. PRYOR, Mr. DOLE, Mr. THURMOND, Mr. LEVIN, Mrs. KASSEBAUM, Mr. MITCHELL, Mr. COHEN, Mr. HUDDLESTON, Mr. EXON, Mr. HELMS, Mr. STONE, and Mr. KENNEDY, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 529) to pay tribute to the U.S. Air Force team at the Titan II missile site near Damascus, Arkansas.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I shall not object, I ask unanimous consent that in connection with the request no motion or amendment be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BUMPERS. Mr. President, I am proud to introduce a resolution honoring the heroism of the U.S. Air Force missile hazard team members and security policemen who risked their lives during the Titan II ICBM accident near Damascus, Ark., last week.

I join and urge all Members of this body to join our Air Force officials who have been unanimous in praising the efforts of these brave servicemen. The commander of the 308th Strategic Missile Wing at Little Rock, Col. John Moser, recently stated:

> People just do not realize what those men went through. We had some real heroes out there and I'm proud to be associated with them.

So am I, Mr. President. I met a number of these courageous Air Force personnel last weekend, and determined that we ought to pay tribute to these servicemen who have brought honor to both the U.S. Air Force and this Nation.

Let me elaborate a bit on Colonel Moser's accurate statement that "people just do not realize what those men went through." In this regard, I contacted the Air Force in an effort to reconstruct the efforts of this team.

As we all know, the Titan II missile near Damascus had been undergoing maintenance when a heavy wrench socket fell about 70 feet and bounced into the side of the missile, puncturing the first stage fuel tank at approximately 6:30 p.m. central daylight time, Thursday, September 18, 1980.

The maintenance men working on the Titan II evacuated immediately to the launch control center where they and the four-man combat crew stayed for more than 2 hours monitoring instruments and keeping in touch with the missile wing command post. Then it became clear that the 100,000 gallons of water released automatically into the silo to dilute the fuel had not solved the problem. Instead, the vapor readings increased and they—the crew—were ordered to evacuate through the 80-foot high emergency escape hatch. Following the crew's evacuation and after a period of assessment, a plan of action was developed which called for action by the missile hazard team. This team readied itself to enter the silo to repair the damage.

Two propellant transfer specialists, Senior Airman John Devlin of Cincinnatti, Ohio and Senior Airman Rex Hukle of Mulvan, Kans., volunteered to enter the missile facility personnel access point to assess the damage and hopefully provide more information on how to control and alleviate the potentially disastrous situation. In protective suits, they carefully entered the stairwell taking readings on portable vapor detectors. Slowly advancing down four flights of steps, they found limited traces of fuel vapor.

Their oxygen supply nearing exhaustion, the two men returned to the control point to report what they found to a back-up crew.

After the first two propellant transfer specialists reported their findings, S. Sgt. David Livingston of Health, Ohio, and Sgt. Jeff Kennedy of Portland, Maine, volunteered to continue the investigation to retrace the men's steps, and proceed further.

As Livingston and Heath opened the second blast door in the entrance stairwell, some 40-feet below the surface, their fuel vapor detectors indicated a maximum reading with these high vapors, an explosion was a distinct possibility. They were ordered to retreat by the senior official on the scene. Just as they exited the access portal area leading to the surface, the explosion jarred the area tossing them some 40 feet into the air. Just a minute or two more and everyone would have been clear, according to Air Force officials.

T. Sgt. Donald Green, a Florida native, and T. Sgt. Jimmy Roberts of San Antonio, Tex., were part of the team of Air Force security police then engaged in evacuating civilians from a 2-mile radius of the site. Green described the explosion in this manner: "The explosion lit up the sky and our radio went dead. The silence was awesome. We thought we were the only two left alive." Roberts described the experience similarly: "I instinctively put on my gas mask, but I thought everyone around was dead."

They sped to the silo in their security police truck to see if anyone was alive.

Roberts said he thought there might be additional explosions but he "knew there was a man on the complex that needed us. We heard Kennedy cry for help on the radio. He was still alive and had managed to get to a truck and I was going after him. Nothing else was on my mind."

As Roberts and Green arrived on the missile complex, they rammed their truck into a fence to make a hole so they could search for survivors, using the lights of their vehicles. "The area looked like the surface of the Moon, the visibility was terrible," Green added. "We decided to split up to find the missing sergeant."

Roberts began a zigzag pattern across the complex and soon could not even see his partner. "I thought he had dropped into the hole. I was about out of breath, but I kept going. I just had to find him," explained Roberts. "I was looking for the truck to get Kennedy when I found Livingston. I told him I would carry him out. He was alive, conscious and hurt. I picked him up like I was cradling a baby but it was hard to breath with the gas mask. I carried him about 100 yards and nearly stumbled, I was exhausted. I put him in a fireman's carriage over my shoulder and finally made it to the edge of the complex where others helped me." According to Air Force officials, Roberts at this point in his report paused to regain his composure: "Telling this story is too hard to do," he said later.

When Roberts reached safety with Livingston, he learned that Kennedy had been rescued by others.

Mr. President, by adopting this resolution, this body can pay tribute to the heroism and patriotism of Sergeant Livingston, who died of the injuries sustained during the explosion, and the other servicemen involved in the tragic incident. The unselfish sacrifices of Air Force personnel like Livingston, Roberts, Devlin, Huckle, Kennedy, Green and the other members of the missile hazard team listed in the resolution constitute a team effort which should be a source of pride and comfort to us all.

Mr. President, 3 weeks ago I went home for the Labor Day weekend. I had been reading the book by Herman Wouk titled "War and Remembrance." It is a fascinating book which I recommend to everybody. Because I had forgotten to bring it back with me to Arkansas, and I wanted something to read, I went to the little library in my home town, which has 757 people, and I found a book there which was nothing more or less than just a compilation of all the front pages of the New York Times from 1914 to 1920.

So I spent the weekend looking at that compilation and studying the history of the beginning and the end of World War I. It was an interesting thing that back in 1914 to 1920 periodically on the front page of the Times there would be a front-page story by some politician or some military man saying that this country had lost its way, that patriotism was dead, that bravery was no longer a characteristic of this country.

It was not true then and is not true now. We have fought four wars since then, and we have seen millions, literally millions, of instances of unbelievable heroism and bravery.

When and if this country is ever called on again to fight, for whatever reason, there will be other thousands of instances just as there was this last Thursday night and Friday morning in Arkansas by these very fine men of the U.S. Air Force. We should take pride in that knowledge.

Mr. President, I offer this resolution on behalf of myself, my distinguished colleague from Arkansas (Mr. PRYOR), Mr. DOLE of Kansas, Mr. THURMOND of South Carolina, Mr. LEVIN of Michigan, Mrs. KASSEBAUM of Kansas, Mr. MITCHELL of Maine, Mr. COHEN of Maine, Mr. HUDDLESTON of Kentucky, Mr. EXON of Nebraska, Mr. HELMS of North Carolina, and Mr. STONE of Florida.

I ask unanimous consent that the RECORD be held open for the remainder of this day for any other Senators who wish to join as cosponsors.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I would like to join my distinguished colleague, the senior Senator from Arkansas, in offering this resolution and in requesting our colleagues to memorialize these very brave and courageous men by adopting this resolution.

I think it is proper and timely for the U.S. Senate to show its appreciation, its recognition, and its sensitivity to the bravery and to the gallantry demonstrated in our State last Thursday evening and Friday morning.

Mr. President, extraordinarily courageous acts were performed by the Air Force servicemen and security policemen on duty near Damascus, Ark., and, I can say without reservation and with the support of many individuals in our State who have been closely associated with their tragic accident that some of the bravest and most unselfish acts in the service of our country were performed by these men.

We pay sincere tribute to Sgt. David Livingston who gave his life for his country that early morning. We also pay tribute to the Air Force missile hazard team and the security policemen on duty for the unselfish and courageous acts they performed in the name of this country. I am sure my colleagues join me in expressing the wish for the recovery of Sgt. Jeff Kennedy who accompanied Sergeant Livingston into the missile silo area and the others who were injured following the explosion.

Mr. President, I applaud the senior Senator for bringing this matter to the attention of the Senate, and I hope our colleagues will act upon this resolution favorably.

Mr. DOLE. Mr. President, I commend my distinguished colleagues, Senator BUMPERS and Senator PRYOR for their initiative in preparing the resolution and permitting those of us who have an interest to cosponsor the resolution.

I ask unanimous consent that my colleague, Senator KASSEBAUM, be made a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Let me just add that I have had an opportunity to talk with T. Sgt. Michael A. Hanson of Wichita, Kans., and with Airman Rex Hukle of Wichita, Kans., who was quite seriously injured last Thursday.

I certainly share the views expressed by both my colleagues, and I can report that both Airman Hukle and Sergeant Hanson are not only in good spirits but they have the feeling that someone must have been watching over them because apparently the enormity of the explosion has not yet really impacted on the general public, including the Senator from Kansas.

Mr. President, in recent years the Titan II has become a "problem" missile in our ICBM arsenal, and this tragic accident is just one in a series of mishaps which have recently befallen the Titan system. Because of the destructive power latent within each Titan, it is truly incredible that the Damascus explosion did not take a larger toll. For that we should be thankful.

I commend the bravery of these crewmen and Titan crews around the country who must work with a missile system that is outdated and hazardous. I am only sorry that it has taken another accident to focus the attention of the country on the very real need for reevaluation of this missile system.

Mr. President, Congress should make certain that adequate safety measures are built into each Titan silo to assure that crewmen are afforded maximum protection in maintenance procedures and other routine duties. Additionally, we must be sure that in case of an accident both the crew and citizens living in areas surrounding the silos receive ample time to clear the area.

But the broader question is whether the Titan II system is in 1980 an effective and safe strategic weapon. This is a matter which the Congress must undertake with diligence at once. We cannot afford more injuries like those which occurred at Damascus, nor can we afford to support an outdated missile. The Congress must determine the limits on this missile's effectiveness, and begin now to correct any defects or make plans for their replacement.

The men who were injured in this accident can testify to the serious nature of our task. I commend them for their service and give them my word that I will work to see that the Titan II system receives a vigorous and fair evaluation in Congress.

So I suggest that there have been some bad experiences with the Titan II, one in Rock, Kans., 2 years ago which claimed the lives of two airmen, and I believe this is a most appropriate resolution.

I would say finally, Mr. President, that I think in addition to the tribute, we should recognize our responsibility in the Congress of the United States, and I want to commend my colleague, Senator STENNIS, from Mississippi, who has promised as chairman of the Armed Services Committee to take a thorough look at the Titan II system to make certain and to reassure the people in the States of Arkansas, Kansas, and Arizona that the Titan II missile is not only effective but is safe and that it is not more of a threat to those people who reside in those three States than it might be to some foreign power.

I am pleased that we have had the reassurance from Senator STENNIS that there will be a thorough investigation—in fact, the Senate Armed Services Committee is now in the process of collecting information which may or may not lead to hearings.

At least we have been promised there will be a complete, thorough, and objective investigation so that the people in the States of Kansas, Arkansas, and Arizona, who may live in the proximity of the Titan II sites, will have the reassurance they deserve.

I thank my colleagues.

Mr. THURMOND. Mr. President, I was very pleased to join as a cosponsor on this amendment offered by the distinguished Senator from Arkansas (Mr. BUMPERS) and his colleague, Mr. PRYOR, and which was joined in by Senator DOLE from Kansas and myself.

Mr. President, I just want to associate myself with the remarks of the distinguished Senators from Arkansas and the distinguished Senator from Kansas.

This is a very unfortunate situation. But I want to say that the family of the injured airman certainly has my deepest sympathy, and I want to say further that he has served his country in such a fine manner, which is a very patriotic step, and he is to be highly commended, and I think the whole country feels a sense of sadness when an accident of this kind occurs.

I commend all those who served in that capacity and some others who were injured. I express the hope that they will soon recover from their injuries and let them know that this great Nation of ours deeply appreciates their service to their Nation.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, I commend the Senator from Arkansas for calling to the attention of the Senate and the Nation the bravery of the young servicemen involved in this tragic situation.

I have a particular concern, because one of the young servicemen who was seriously injured and remains on the critical list is Air Force Sgt. Jeffrey Kennedy, who is a resident of my hometown of South Portland, Maine.

On behalf of myself and Senator COHEN, I ask unanimous consent that we be added as cosponsors to the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the senior Senator from Kentucky, Mr. HUDDLESTON, the distinguished Senator from Nebraska, Mr. EXON, the distinguished Senator from North Carolina, Mr. HELMS, and the distinguished Senator from Michigan, Mr. LEVIN, be added as cosponsors to the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolution offered by the Senator from Arkansas.

The resolution (S. Res. 529) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. Res. 529

Whereas, the Members of the United States Senate were deeply saddened by the death of the U.S. Air Force Sergeant David Livingston of Heath, Ohio, and of the serious injuries to USAF Sergeant Jeff Kennedy of Portland, Maine, USAF Senior Airman Rex W. Hukle of Wichita, Kansas, and USAF Senior Airman John G. Devlin of Cincinnati, Ohio, on September 19, 1980 while they were on an official but voluntary mission for the U.S. Air Force at a Titan II intercontinental ballistic missile site near Damascus, Arkansas; and

Whereas, USAF Technical Sergeant Jimmy Roberts of San Antonio, Texas, and USAF Technical Sergeant Donald Green of Old Town, Florida, promptly returned to the missile complex following the explosion of the Titan II missile at 3:02 a.m. on September 19, 1980 to locate and hopefully rescue Sergeants Livingston and Kennedy; and

Whereas, USAF Colonel James L. Morris of Marietta, Georgia, USAF Master Sergeant Ronald Christal of Birmingham, Alabama, USAF Staff Sergeant Archie G. James of Coward, South Carolina, Technical Sergeant Michael A. Hanson of Wichita, Kansas, Technical Sergeant Davis Rossborough of Groveland, New York, USAF Lt. Col. Jimmie D. Gray of Kokomo, Indiana, USAF Major Wayne L. Wallace of Wyandotte, Oklahoma, Captain George H. Short of Chattanooga, Tennessee, USAF Captain Michael T. Mazzaro, USAF Staff Sergeant Silas L. Spann, Jr., of Jackson, Mississippi, USAF Senior Airman James R. Sandaker of Evansville, Minnesota, USAF Sergeant Stephen L. Riva of East Alton, Illinois, USAF Airman First Class J. P. Tallman, Jr. of San Antonio, Texas, USAF Airman Patrick C. Roylan of Bridgefield, Connecticut, USAF Airman First Class Gene M. Schneider of Wilmington, Delaware, and civilian Richard L. English of Sartell, Minnesota were also bravely attempting to determine the status of the leaking and clearly dangerous Titan II missile at that site; and

Whereas the exemplary and brave actions of all members of this U.S. Air Force team brought honor to the United States Air Force and this Nation;

Now Be It Resolved that the Members of the U.S. Senate here assembled, by this Resolution, pay tribute and respect to the heroism of these courageous and patriotic men.

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY AND RELATED AGENCIES APPROPRIATIONS, 1981

The PRESIDING OFFICER. The Senate will now resume consideration of H.R. 7584.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981—CONFERENCE REPORT

Mr. JOHNSTON. Mr. President, I submit a report of the committee of conference on H.R. 7590 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 24, 1980.)

Mr. JOHNSTON. Mr. President, we are very pleased to present this conference report on the bill H.R. 7590 making appropriations for energy and water development for the fiscal year 1981. This is the first of the annual appropriation bills to be acted on and completed by the Congress, with the new fiscal year beginning just 1 week from today. The conferees resolved the differences between the House and Senate on this bill and filed this conference report on Monday, September 22. The conference report and statement of the managers has been printed as House Report 96–1366 and has been printed also in the CONGRESSIONAL RECORD. Therefore, I will not elaborate on all the items which were in disagreement.

Mr. President, this conference report was today approved in the House of Representatives by a vote of 273 to 117. We are very pleased and proud of this bill, Mr. President.

Mr. President, this is an excellent conference report. The conference agreement provides for a total of $12,080,831,663 in new budget obligational authority, including $41,982,000 in reappropriations. This total amount is $16.5 million over the level as approved by the Senate. So the agreement is almost the same, dollarwise, as the bill passed by the Senate. I want to emphasize that the conference agreement is under the amounts allocated for energy and water development appropriations by both House and Senate Appropriations Committees from the amounts allocated to the committees under the first budget resolution.

Considering the level by which the House exceeded our Senate-passed appropriation bill in many areas, this was a real victory for fiscal austerity.

Mr. President, the conference report and statement of the managers is self-explanatory and we know of no difficulties or problems requiring further explanation. I will summarize by title the appropriations for fiscal year 1981 as provided for in the conference agreement.

For the Department of Energy activities, title I of the bill, the total agreed to is $7,220,572,000. This is $36.8 million less than the Senate allowance and $276.8 million more than the House allowance. It is $83.4 million less than the budget request.

One item in this conference agreement under title I deserves special mention; that is the $10 million provided to initiate preliminary activities in connection with acquisition or construction of capacity for away-from-reactor storage of spent fuel from civilian nuclear powerplants. These funds and the bill language will enable the Department of Energy to take the necessary preliminary steps, including negotiations for acquisition, for AFR capacity which is urgently needed by 1983. This will get the Department started and avoid the delay of another year without anything being done.

These funds are to be used for the necessary preliminary steps; but no final contracts, arrangements, or agreements can be consummated without further expressed congressional approval. We hope and believe that the provision and funds will enable the Department to bring before the next Congress, hopefully by late spring, a proposal and plan for AFR capacity acquisition.

Appropriations for the U.S. Army Corps of Engineers' civil works program, which is title II of the bill total $2,984,134,000, an increase of $57.4 million over the Senate allowance and $124.5 million less than the House bill.

For the Department of the Interior, Water and Power Resources Service, title III, the agreement provides $771,461,000, $18.4 million less than the Senate allowance and $43.2 million less than the House bill. This is $35 million less than the budget request.

For independent agencies, title IV, the agreement provides appropriations of $1.1 billion, a decrease of $3 million from the Senate allowance. $339.3 million is for the Appalachian regional development programs; $447.5 million is for the Nuclear Regulatory Commission; and $287.5 million is for the Tennessee Valley Authority.

Mr. President, I want to say a word of thanks and appreciation for our distinguished colleagues in the House who served as conferees on this bill for their wonderful cooperation and for the spirit of harmony and bipartisanship displayed in resolving these differences. Special recognition, thanks and appreciation is due the gentleman from Alabama (Mr. BEVILL), who was chairman of the House conferees and chairman of the conference. He is tremendously knowledgeable in this area, very skilled, and succeeded with us in putting together this most excellent bill.

Also, I want to especially thank all the members of our fine Subcommittee on Energy and Water Development for their hard work and cooperation in preparing and taking this highly important appropriation bill through each step of the process beginning with the hearings and

now through the conference stage. Of all the subcommittee meetings and all the subcommittee markups, I do not know of any other subcommittee that had attendance as consistently high as did this subcommittee in its markups and indeed in its days and days of consideration of this bill.

We had a full quorum of our committee, in fact, something like two-thirds of the total number of our committee, present during the entire markup. In fact, the number of those who participated from our subcommittee in the markup constituted a quorum of the full committee.

Mr. President, I especially want to commend the distinguished ranking minority member the Senator from Oregon (Mr. HATFIELD).

Mr. President, I know of no one in the Senate who is more capable than is Mr. HATFIELD. I might add a personal note, that I know of no one in the Senate with whom it is a greater pleasure to work. Without exception, Mr. President, Mr. HATFIELD is reasonable. He approaches every issue with the national interest in mind. I think the work product of our committee shows the cooperation we have had. I extend my personal thanks to him.

Finally, Mr. President, the staff, both the majority and minority staff, of this committee comes in for special commendation. Proctor Jones, our chief staff member, our assistant staff member, David Gwaltney, Gloria Butland, and on the minority side, of course, Keith Kennedy, worked day and night on this bill.

When I say day and night, Mr. President, I mean at least 2 nights back to back where they stayed all night, and a number of other nights where they stayed until something like 4 a.m. I do not know how they kept their wits about them through these long hours. The fact of the matter is, Mr. President, that the bill that is put out is, so far as I know, without a single flaw from the standpoint of mechanics. I think they are especially to be commended.

And we thank our leaders on the full Appropriations Committee, our chairman, the distinguished Senator from Washington (Mr. MAGNUSON) and the beloved Senator from North Dakota (Mr. YOUNG), who is the dean of the committee and the subcommittee.

So, Mr. President, I think this is an excellent conference report. I commend it to the Senate.

Mr. HATFIELD. Mr. President, as always, I want to congratulate and commend our chairman, Senator JOHNSTON, for shepherding this bill through the Senate and the conference with the House, and promptly bringing the conference report to the floor after House passage.

I might say that Senator JOHNSTON is an excellent shepherd and I am always happy to be in his flock.

I also want to thank the House managers of the bill, Representative TOM BEVILL and Representative JOHN MYERS, for their leadership in taking up the conference report in the House today and securing House approval.

As Senator JOHNSTON already indicated, we feel a deep gratitude toward our staff, both the majority and minority staff, for their outstanding performance in this particular bill.

This bill has not been an easy one, Mr. President. It has been a very difficult bill. I think the leadership demonstrated by the chairman is again evidence of his outstanding role in the Senate.

Mr. President, as the chairman said the other day in the Appropriations Committee, this bill meets all the rules. It meets the budget resolution requirements, it provides funds for urgently needed energy supply, research and development activities so important to our national security and the security of the world, and it continues the development of water resources, our most precious natural resource, for navigation, flood control, water supply, irrigation, and recreation. This bill is critically important to our Nation, Mr. President, and I urge its prompt and favorable consideration by the Senate.

If I could ask the chairman of the committee for just one moment further, I would like to reiterate for the record the understanding that the chairman and I, the Senate, and the conferees have on the away-from-reactor spent fuel storage facility.

I would like to read from the conference report just three or four lines which I think more or less summarizes our understanding. I would like to gain the assent and confirmation from the chairman that this is the understanding as he has it, too. I quote from page 23 of the conference report:

The conferees direct that final contracts, transfer arrangements, or agreements in accordance with the provisions of S. 2189, or other legislation enacted by Congress, cannot be consummated without further, expressed congressional approval. The conferees have taken this action in compliance with the spirit and intent of recent action on DOE authorization measures.

Is this a correct statement of our intent?

Mr. JOHNSTON. The Senator is correct. I might further add that the amount of money involved here—$10 million—is really sufficient only to do those activities which I described—that is, the preliminary activities in connection with the acquisition or construction of this capacity. This further language in the report, which the Senator has just quoted, makes it more clear that Congress will have to come back and act further before this matter can be consummated—all as previously discussed, as set forth in the report, and as reflected in the history on the floor.

Mr. HATFIELD. I thank the Senator from Louisiana.

Mr. President, the Senator and I had a rather extensive legislative record on this subject and I wish to say again that it was very rewarding to find someone to work out the difficulty with, because we had a very thorny question here. After a number of votes on the floor of the Senate, it was through the accommodating spirit of the Senator from Louisiana and his grasp of the subject that we were able to work out and resolve this problem. I think this is befitting the tradition of the Senate and I take this opportunity to thank him for that consideration.

Mr. JOHNSTON. I thank the Senator from Oregon.

Mr. President, this AFR amendment was only one matter that we dealt with. Indeed, we had before the conference committee some 58 amendments and over 400 items in disagreement. All of those have been resolved and, as I say, approved by the House by a margin of 2 to 1.

So, Mr. President, if there are no further questions, I shall move the adoption.

Mr. HATFIELD. Mr. President, the Senator from New Mexico (Mr. DOMENICI) is making one brief inquiry about a matter he would like to nail down a little on this bill. I shall be happy to yield to the Senator from Mississippi in the meantime.

HEARTFELT THANKS FOR A GOOD JOB

Mr. STENNIS. Mr. President, it has given me the utmost satisfaction to hear the Senators relate what has been done in connection with this piece of legislation. Mr. President, it is a legislative masterpiece. The work that has gone into this bill by the staff members, the witnesses, the members of the subcommittee—led, of course, by the Senator from Louisiana and the Senator from Oregon. Virtually every member has contributed not just a half day but days of work to this project. It is amazing work that has been done on the bills, after they have been before the House and the Senate, by the staff members. They worked at night two nights, I understand, two other times until 4 o'clock in the morning.

I would not even bring this up except that people of America listen to the trash that comes over television and in these cheap books by somebody who has worked around here and made a fortune out of selling smut after he has left. Contrast the stories they tell with what actually goes on here, what people, these staff members to which we have been referring and the membership of this body, do. I am in a position to judge it because I have watched the thing happen. I am glad of the chance not only to thank these gentlemen, and the ladies, too—and I know every one of these staff members personally—but to say I am proud of what they mean to the Senate and to America. I am grateful all the way.

The Senator from Louisiana has made one remark about the Senator from Oregon. He said he just did not know of anyone among the membership here who was any better in working on a bill. I shall put it this way: There is not anyone around here who can beat him in working constantly, diligently, and effectively, day in and day out, with his fine judgment.

I say to the Senators, you are appreciated by a lot of people. America appreciates you, too, and the taxpayers.

Mr. JOHNSTON. Mr. President, I thank the Senator.

Mr. HATFIELD. I thank the Senator, Mr. President.

Mr. President, I think those of us who come here as freshmen obviously have to strike certain goals, and we look to certain models on which we would like to pattern ourselves.

I must say that whatever skills—and they are very limited—that I may have acquired in the legislative process have been because I have used as my model the Senator from Mississippi (Mr. STENNIS), who served as the very able predecessor to the present chairman of the subcommittee, the Senator from Louisiana (Mr. JOHNSTON).

As ranking member of that subcommittee under the tutelage and under the inspiration of the leadership of the Senator from Mississippi, I gained some of my deepest understanding and perception of the legislative process.

I am very grateful to be able to make these remarks, but I can only say they are remarks I make as a student of the master teacher.

Mr. JOHNSTON. Mr. President, I share the sentiment of the distinguished Senator from Oregon.

Senator STENNIS has served as a role-model for more than one Senator, and continues to do so, not only for the two of us here on the floor but, I know from expressed comments, for a large number of other Senators.

Mr. HELMS. Mr. President, will the distinguished managers of the bill answer two questions for me?

Mr. JOHNSTON. Yes, indeed.

Mr. HELMS. Is my understanding correct that this conference report involves the expenditure of $12,080,000,000?

Mr. JOHNSTON. The Senator is correct.

Mr. HELMS. And this is an increase of $16 million over what the Senate approved?

Mr. JOHNSTON. The Senator is correct.

Mr. HELMS. I thank the Senator.

Mr. DOMENICI. Mr. President, I wonder if I could engage in a brief discussion with the chairman and the ranking members regarding the uranium enrichment import limitation amendment that the Senate adopted, offered by the Senator from New Mexico, which is referred to on page 13 of the conference report as amendment No. 4 of the conference.

The conference deleted that amendment. First, I ask my good friend from Louisiana and my friend from Oregon, is the Senator from New Mexico correct in assuming that that amendment was dropped without prejudice, that the House had not had an opportunity to consider it? We brought it up very late and the Senate went along with the Senator from New Mexico in his concern, but am I correct that it was not prejudicially dropped in conference?

Mr. JOHNSTON. Mr. President, the Senator is correct. This is a most complicated matter, the question of importation of foreign feed material for nuclear fuel. Frankly, the House Members felt that, at the late hour of the conference, it was simply too late to consider it, so they did, indeed, ask that it be dropped without prejudice and, indeed, without forming an opinion other than by virtue of the lateness of the hour and the fact that they would have liked the advice of the authorizing committee.

Mr. HATFIELD. Mr. President, I should like to respond, too.

I say to the Senator from New Mexico that we did drop this after some discussion with the House conferees, certainly without prejudice. I assure the Senator from New Mexico that it would be my pleasure to join him and others to have this considered in an authorizing committee hearing or in some other committee action that would give more of a base, a foundation, either on the Senate or the House side, to go to conference next time. I should be very happy to join him in any effort he would like to make to secure that kind of consideration in the authorizing committee, upon which all three of us sit, or in the appropriations program next year.

Because the Senator has indicated that this was an amendment offered on the floor, we did not have an opportunity to view it with any great detail or understanding; therefore, we did drop it in the committee upon the House's insistence, but without prejudice.

Mr. DOMENICI. Mr. President, I might add one additional fact and ask my two distinguished colleagues for their help on the matter.

It is my understanding that, on tomorrow, the Senator from New Mexico will receive a letter from the Department of Energy, indicating that they are going to proceed to do an analysis of the status of the domestic uranium mining industry. That analysis is a forerunner to any decision to do additional rulemaking with reference to the fact that is in the law. That is that our importation program has to take into consideration the viability of the American domestic uranium mining industry. I merely ask my two friends, upon receipt of that letter, would the Senators assist me in vigorously pursuing the commitment of the Department of Energy so that they will do that quickly?

The industry, as the Senators know, based upon my discussions on the floor, is in very serious economic condition today. Many of us want the Department of Energy to proceed with vigor to do this analysis to see if rulemaking for allowables in the future would be in order.

Mr. JOHNSTON. Mr. President, I believe I have made that commitment to the Senator in the past. I reiterate it here. I think it is most important that the Department of Energy proceed with all due haste in this matter, because it is extremely important for the domestic nuclear industry.

Mr. DOMENICI. I thank my good friend from Louisiana.

Mr. HATFIELD. I also assure the Senator from New Mexico of the same commitment to pursue it vigorously once that is in the possession of the Senator and he transmits it to the other Members.

Mr. DOMENICI. I thank my two colleagues, not only for what we have just accomplished here together, but for their excellent work on this appropriation measure.

Mr. ROBERT C. BYRD. Mr. President, the adoption of this conference report has a special meaning to the people of the Tug Fork Valley of West Virginia.

In April 1977, heavy rains brought what the U.S. Corps of Engineers later described as a flood which would only strike this valley once in every 500 years.

However, the fact is that the Tug Fork Valley has been struck by heavy flooding 13 times in 66 years. Only 9 months after the so-called 500-year flood, the waters came again causing $9 million in damage.

I have tried, as has my colleague Senator RANDOLPH, to obtain a measure of flood protection for these people who live and work in this energy-rich valley.

Up until now, each effort has been sidetracked at various stages. Three times the legislation died in the House of Representatives.

So, one can see why my people, who have tried to sustain a quality of life deserved by us all, have been so frustrated over the years.

Their homes have been flooded, their businesses destroyed, and their livelihoods disrupted by natural disasters which a technologically advanced Nation has the means to prevent and overcome.

After the great flood of 1977, I made a pledge to the people of the Tug Fork Valley. I said I would do my best to see that the Nation realizes the problems they face.

I said I would do everything within my power to see to it that this valley was provided with protection from rising waters of the Tug Fork.

Every time a cloud darkens the sky over Washington, I have wondered if it were raining at Williamson and Matewan and other towns along the Tug Fork.

This is why the adoption of this conference report means so much to me.

Actually, the signing into law of this bill will mean a great deal to the Nation as a whole. It is estimated that 5 percent of this country's recoverable coal will come from the Tug Fork Valley area.

I consider the $284 million authorization, contained in this conference report for flood protection on the banks of the Tug Fork, an installment on an insurance policy for our energy future.

I commend Senator JOHNSTON and Senator HATFIELD and the Senate and House conferees for their action. They can be assured they have the gratitude of the people of the Tug Fork Valley, and they have the gratitude of mine.

● Mr. DOLE. Mr. President, I thank the water and energy conferees for their restoration of funds to the small community solar demonstration project.

The objective of this project is to build and operate an experimental modular solar thermal powerplant in a small community and local utility environment. This experiment is particularly important, as it will be the first opportunity to gain electrical generating experience with parabolic dish technology under actual operating conditions, and

represents the focus of the current research and development program.

This project was initiated as a result of the fiscal year 1977 authorization for the Energy Research and Development Administration (ERDA), the predecessor of DOE, and the fiscal year 1977 ERDA appropriation provided for a "solar thermal demonstration plant for a small community, electric cooperative, or municipal ultility." In the past 2 years, the project has progressed to the point where six candidate sites were selected in June 1980, and design of the parabolic dish concentrator and engine has been completed. Detailed design is now underway and about to begin.

The six sites which are currently finalists in the small community solar energy site selection are Wickenburg, Ariz.; Molokai, Hawaii; Osage City, Kans.; Harbison, S.C.; Burke, S. Dak.; and Cheney, Wash. The modular nature and flexibility inherent in this technology are an excellent match for dispersed or remote markets such as islands, small towns, rural or military communities where energy prices are relatively high. The rising cost of fuel has, in many cases, forced these communities to abandon their own energy self-sufficiency and to purchase outside sources. Adopting this solar technology may offer them a more acceptable alternative. The enthusiasm for this alternative was demonstrated by the response to the site participation solicitation. Forty-four responses from twenty-four States were evaluated in selecting the six State sites.

Again, I wish to commend my colleagues on the Appropriations Committee who saw fit to insure that this important solar energy amendment be made part of the conference report.●

Mr. JOHNSTON. Mr. President, if there is nothing further, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask that the amendments in disagreement be laid before the Senate.

The PRESIDING OFFICER. The clerk will state the amendments in disagreement.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

OFFICE OF THE SECRETARY

For salaries and expenses for the Office of the Secretary of Energy necessary for administering the Department in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), and for official reception and representation expenses (not to exceed $35,000), $4,892,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: $373,287,000 and in addition, $10,000,000 for the construction or acquisition by the Secretary of Energy of capacity for the away from reactor storage of spent nuclear fuel from electric powerplants licensed under the Atomic Energy Act of 1954, all

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 22 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: *Provided*, That none of the funds made available in this paragraph shall be obligated or expended for the study of Diversion of Lake Michigan at Chicago, if such study would result in adverse diminution of generation at hydroelectric facilities on the Niagara or St. Lawrence Rivers

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 39 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: "$570,641,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 42 to the aforesaid bill, and concur therewith an amendment as follows:

In lieu of the matter proposed by said amendment, insert: *Provided further*, That of the amount herein appropriated not to exceed $10,000 shall be available to initiate a rehabilitation and betterment program with the Fremont-Madison Irrigation District to rehabilitate the facilities of the Marysville, Farmer's Own, Yellowstone, Squirrel Creek, and Silky Canal Companies under the act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full by the lands served and under conditions satisfactory to the Secretary of Interior

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 43 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: "$101,117,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 52 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

WATER RESOURCES COUNCIL

WATER RESOURCES PLANNING

For the Water Resources Council for expenses necessary in carrying out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a–4(5), and hire of passenger motor vehicles (42 U.S.C. 1962a–4 (6)), $24,777,000 to remain available until expended, including $4,748,000 for expenses in administering the Act (42 U.S.C. 1962d (b)), $4,186,000 for preparation of assessments and plans (42 U.S.C. 1962d(c)), $3,443,000 for expenses of river basin commissions under title II of the Act (42 U.S.C. 1962d(a)), $10,000,000 for grants to States under title III of the Act (42 U.S.C. 1962c (a)), and $2,400,000 for Upper Mississippi Comprehensive Management Plan (42 U.S.C. 1962b–3).

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 53 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

Sec. 504. There is appropriated, out of any money in the Treasury not otherwise appropriated, for payment to Dorothy Runnels, widow of Harold Runnels, late a Representative from the State of New Mexico, $60,663.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order to consider the amendments in disagreement en bloc, and that a motion to concur in the amendments of the House to the amendments of the Senate en bloc be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I move that the Senate concur in the amendments of the House to the amendments of the Senate numbered 7, 12, 22, 39, 42, 43, 52, and 53.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana.

The motion was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I wish to state that there will be no more votes today.

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY AND RELATED AGENCIES APPROPRIATIONS, 1981

The Senate continued with the consideration of H.R. 7584.

Mr. ROBERT C. BYRD. Mr. President, I would like to get the opening statements completed on the State, Justice appropriation bill. Senator HOLLINGS is present, Senator WEICKER is present. So that with that understanding, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank the distinguished majority leader for the accommodation in this regard.

Mr. WEICKER. Will the Senator yield?

Mr. HOLLINGS. Yes.

Mr. WEICKER. Mr. President, I ask unanimous consent that floor privileges be granted for the following members of my staff during the consideration of H.R. 7584:

Bob Santy, Steve Moore, Bob Wicklund, and Geof Baker.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, the committee recommends $9,053,168,000 in new budget authority for the Departments of State, Justice, and Commerce, the judiciary, and the 21 related agen-

cies funded by this bill. It is estimated that the outlays in 1981 will be $9,893,000,000.

After reserving $442,000,000 for the October 1980 pay raise, and the disaster money included in the first concurrent budget resolution, we are $4,832,000 under our budget authority allocation of $9,500,000,000.

With few exceptions the committee reduced the budget requests so that we are $613,219,000 under the administration's estimates. We are $333,790,000 over the House bill because the committee believes that we should move forward with the Economic Development Administration and the Regional Planning Commissions appropriations that were deferred by the House.

The authorizing legislation for EDA and the regional commissions passed the Senate late August and has been in conference since December. We believe that it is time to get EDA off the continuing resolution and create the jobs the Nation needs. There was no movement on the authorizing legislation until we indicated that we were going to move forward with the appropriations and it now appears that we will have an adequate authorization bill before Congress adjourns.

In order to stay within the bill the committee took advantage of the windfall created by the new legislation that substantially reduces the interest SBA pays the Treasury on the outstanding business and disaster loans. In the business loan area the windfall amounts to $134,000,000, of which the committee has retained $34,500,000 to provide for unfunded and underfunded direct loans for energy, 502 local development companies, and the minority investment companies. In the disaster loan fund these savings amount to $266,000,000, so the whole $180,000,000 requested by the President was deleted.

However, the President has transmitted a budget amendment calling for $1,480,000,000 in borrowing authority due to the drought in 22 States, as well as the damage of Hurricane Allen in Texas. There was no way this amount could be accommodated within our present allocation under the first concurrent budget resolution.

Incidentally, it was not provided by the Budget Committee in the second concurrent resolution because it was not presented at that particular time, even though the record of consideration of the Budget Committee shows that it was imminent. The Budget Committee did not have any request from the administration before we reported the second concurrent resolution.

The Appropriations Committee voted to defer action on this matter until the bill was before the Senate. We had a hearing on this request last Thursday and SBA Administrator Weaver testified that the balance they will carry over into 1981, plus the principal and interest payments, will take them over until December—I would say around December 15.

Yesterday, the committee approved the appropriation in the continuing resolution (H.J. Res. 610) of the $174,000,000 we had in our budget allocation for disasters. That will provide a margin of safety over the next 90 days and allow the Senate to take the necessary action with regard to the budget allocation. As chairman of the Committee on the Budget, I am ready to move whatever is the necessary increase for disaster assistance in the second concurrent budget resolution when the resolution is considered by the Senate.

Our other principal recommendations are highlighted on a statement that I ask unanimous consent to have printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HOLLINGS. Mr. President, I want to acknowledge the valuable assistance of the ranking minority member, Senator WEICKER. In developing this bill, Senator WEICKER and I have tried to be sensitive to the many requests of the Members within the limited amount allocated to the subcommittee. We have tried to maintain the broad national interest in making a fair set of recommendations that adequately maintains the various departments and agencies and allows for program growth in a few critical areas.

I emphasize my gratitude to Senator WEICKER. It is always a privilege and a pleasure to work with him.

We probably have more individual agencies and departments under the State-Justice-Commerce-Judiciary and related agencies bill than any other, except perhaps the itemized defense appropriations bill.

Senator WEICKER has striven to help—perhaps rather than "help," I should emphasize that he has led the way toward fiscal responsibility in holding the line and yet providing for research and development in connection with the development of our oceans.

I yield to Senator WEICKER at this time, with my appreciation for his help on this measure.

EXHIBIT 1

HIGHLIGHTS OF COMMITTEE RECOMMENDATIONS

Full provision for our assessed contributions to the International Labor Organizations.

Continuation of the base level of The Asia Foundation.

$7,500,000 to maintain and expand the state and local drug intelligence organizations.

The full $629,720,000 budget for the FBI.

Necessary funds to maintain the 1980 congressionally approved level for the Border Patrol.

No new grant funds are provided the Office of Justice Assistance, Research and Statistics (formerly LEAA) as requested by the President. The amount for Research and Statistics is reduced to the $19,000,000 ceiling approved by the Senate in the authorization act.

The U.S. Travel Service is maintained for another year pending approval of legislation establishing a travel Corporation.

The funding of the National Oceanic and Atmospheric Administration has been increased by more than $18,000,000, chiefly by using $15,000,000 in surplus Saltonstall-Kennedy funds.

The public telecommunications facilities planning and construction grants have been increased by $6,000,000.

The recommendations for the Judiciary includes the $4,200,000 requested to continue the Pre-Trial Services Agencies;

We recommend $1,000,000 to establish the newly authorized Commission on Wartime Relocation and Interment of Civilians.

We have added $3,000,000 to the House allowance to the FCC to meet the workload of the recent Clear Channel decision.

Virtually the full budget of the International Communication Agency has been approved. The additional $2,100,000 approved by the House for expansion of Voice of America broadcasts to the Muslim parts of Russia is to be accomplished within the ICA budget.

The request of the Legal Services Corporation was reduced by $53,000,000, but the $300,000,000 recommended is the same as last year.

Virtually the full request for the Salaries and Expenses of the Small Business Administration is recommended. Within that amount $5,000,000 is provided to assist women business entrepreneurs. The budget proposed $13,600,000 for a separate Women's Business Enterprise program, but the Subcommittee believes that this assistance should be mainstreamed through SBA's regular programs of management and procurement assistance and the Small Business Development Centers.

Mr. WEICKER. I thank the distinguished chairman of the committee.

Mr. President, I am pleased to join with Senator HOLLINGS in presenting a bill which I believe responds remarkably well to the needs of the Departments of State, Justice, Commerce, the Judiciary, and 21 related agencies, and at the same time remains within our budget allocation. The $9,053,168,000 in budget authority in 1981 places the subcommittee's recommendation $613,219,000 below the administration's budget request.

Senator HOLLINGS has sketched out the significant items in this complex package. However, there are a few items which warrant further comment. As you well know, Mr. President, the National Oceanic and Atmospheric Administration is charged with the responsibility to study, protect, and develop the oceans and weather systems. I am pleased to report to the Senate that besides restoring funds for numerous programs cut by the House including the National Oceanic Satellite System, the Hydrolab undersea program, ship restoration funding, ocean pulse and marine sanctuary programs, the subcommittee has added funds for several important programs including anadromous fish studies, Campeche Bay oil spill studies, the construction of an undersea habitat, and various aquaculture studies.

Another item which I should like to highlight briefly is the Small Business Administration. The subcommittee in its recommendation for the Small Business Administration continued the previous practice of "line-item" appropriations for certain SBA loan and business development programs which have been priorities of the Congress.

The Business Loan and Investment Fund (BLIF) provides funding for all SBA's regular business loan programs. The administration's request would have combined separate statutorily created loan programs into a consolidated fund. The subcommittee rejected this proposal, as did the House, because the necessary authorizing legislation has not been approved.

As the chairman mentioned, the subcommittee was able to take advantage of a windfall in BLIF due to a change in SBA's accounting procedures. Additions above the administration's request were made to the local development company, handicapped assistance, energy and minority enterprise small business investment company programs. As ranking member of the Small Business Committee, I can assure you that these increases are necessary and justified.

In the salary and expense account, the committee recommendation is the same as the budget request and the amount allowed by the House. However, certain programs of particular interest to the Senate were increased, including small business development centers, management assistance, advocacy and economic research and minority small business. Commensurate decreases in other programs were required to stay within the President's request.

One last item, I would like to clarify a survey discussed under the Commission on Civil Rights. As the original sponsor of the effort, I am most familiar with it. The committee intended to direct the Commission on Civil Rights to develop a plan for a follow-up survey on extending equal opportunity laws to the legislative branch of Government rather than to conduct the survey itself. There has been $50,000 allocated to develop this plan.

Mr. President, I should like to pay tribute to the chairman of the subcommittee. I believe most of my colleagues know that there are times when I become exasperated with the inconsistency that has developed on this floor and in the various committees relative to the income and outgo of Government moneys. I can say this about the chairman: He is consistent. I might add that it is a consistency that sometimes draws us into disagreement.

There is no hypocrisy here at all. He has applied the same rules to himself and the subcommittee, when he speaks from the Budget Committee podium, as he applies to the rest of the U.S. Senate, and I admire that.

It is one thing to be in disagreement. That is what we are all here for, to some degree or other. But the fact is that on the broad principles on which we differ, there should be a consistency and something called true to form, and that FRITZ HOLLINGS is.

So I pay special tribute to him in his capacity as chairman of the subcommittee and say to him, as part of my praise of his efforts, that, agree or not, I admire intellectual integrity and consistency, and that he has.

Mr. HOLLINGS. I thank my distinguished colleague very much.

Mr. President, I have the usual unanimous-consent request. I do not believe it has been cleared with the distinguished minority leader on this bill.

Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and that the bill as thus amended be regarded for the purpose of amendment as original text, provided that no point of order shall be waived by reason of the agreement to this request.

The PRESIDING OFFICER. Is there objection?

Mr. WEICKER. Mr. President, reserving the right to object, I have just had placed in my hands exceptions to that request. I wonder whether I might make those exceptions or have them excluded at this time, in the hope that these matters can be worked out by the time we get together tomorrow.

Mr. HOLLINGS. Yes.

Mr. WEICKER. Mr. President, I agree to the unanimous-consent request, with the following exceptions:

Page 5, line 10, $16,973,000, increase for expenses of membership in international organizations.

Page 18, line 16, $1,500,000, increase in general administration of Department of Commerce.

Page 21, line 15, $20,300,000, increase in salaries and expenses for Small Business Administration.

Page 23, lines 10–20, $8,000,000, increase for U.S. Travel Service.

Page 24, line 5, $41,605,000, increase for National Oceanic and Atmospheric Administration.

Page 43, line 21, $300,000, increase for Marine Mammal Commission.

Page 43, lines 1–4, Legal Services Corporation.

Page 50, lines 8–14, busing.

Page 50, lines 15–19, legislative veto.

Page 50, lines 20–23, Refugee Act.

I will agree to the unanimous-consent request, with the exception of the aforementioned line items in the bill.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Very good. As I understand, Mr. President, the distinguished Senator from Connecticut has objected——

Mr. WEICKER. At the request of the minority.

Mr. HOLLINGS (continuing). To these particular items.

I ask unanimous consent that those items not objected to—that is, those committee amendments not objected to—be agreed to en bloc and that the bill as thus amended be regarded for the purpose of amendment as original text, provided that no point of order shall be waived by reason of the agreement to this request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HOLLINGS. I thank my distinguished colleague. We will take those up at his discretion.

The amendments agreed to en bloc are as follows:

On page 3, strike line 22 through and including page 4, line 19;

On page 8, after line 7, insert the following:

THE ASIA FOUNDATION

For a grant to the Asia Foundation, $4,100,000, to remain available until expended.

On page 9, strike line 17 through and including line 20;

On page 10, line 5, strike "$30,333,000", and insert in lieu thereof "$38,833,000";

On page 10, line 6, strike "$1,700,000", and insert in lieu thereof "$1,400,000";

On page 10, line 19, strike "$113,250,000", and insert in lieu thereof "$114,043,000";

On page 11, line 24, strike "$45,662,000", and insert in lieu thereof "$44,862,000";

On page 12, line 4, after the semicolon, insert the following: "including acquisition, lease, maintenance, and operation of aircraft,";

On page 12, line 6, strike "$271,250,000", and insert in lieu thereof "$268,537,000";

On page 13, line 9, after "including", insert the following: "payment of allowances (at a rate not in excess of $4 per day) to aliens, while held in custody under the immigration laws, for work performed";

On page 13, line 16, after "exceed", insert the following: "five hundred ten of which";

On page 13, line 20, strike "$370,073,000", and insert in lieu thereof "$351,000,000";

On page 13, line 22, after "pended", insert the following: ": *Provided*, That none of the funds available to the Immigration and Naturalization Service shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of $20,000, except in such instances when the Commissioner makes a determination that this restriction is impossible to implement.";

On page 17, line 16, strike "$44,881,000", and inserting in lieu thereof "$19,000,000";

On page 18, line 23, strike "$54,600,000", and insert in lieu thereof "$55,600,000";

On page 19, line 25, after the colon, insert the following: "*Provided further*, That notwithstanding any other provision of law, when the President determines that a State, county, or local unit of general purpose government is significantly affected by a major population change due to a large number of legal immigrants within six months of a regular decennial census date, he may order a special census, pursuant to section 196 of title XIII of the U.S. Code, or other method of obtaining a revised estimate of the population, of such jurisdiction or subsections of that jurisdiction in which the immigrants are concentrated. Any such special census or revised estimate shall be conducted solely at Federal expense. Such special census or revised estimate shall be conducted no later than twelve months after the regular census date and shall be designated the official census statistics and may be used in the manner provided by applicable law.".

On page 20, line 19, strike "$24,600,000", and insert in lieu thereof "$24,970,000";

On page 20, after line 21, insert the following:

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For economic development and adjustment assistance as authorized by the Public Works and Economic Development Act of 1965, as amended, and title II of the Trade Act of 1974, $624,650,000: *Provided*, That during 1981 and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $116,430,000: *Provided further*, That during 1981, total commitments to guarantee loans shall not exceed $425,000,000 of contingent liability for loan principal: *Provided further*, That such amounts as may be necessary, are appropriated for the repayment of principal, interest, and reasonable liquidation costs on loans guaranteed under title II of the Public Works and Economic Development Act and any subsequent amendments thereto.

On page 21, line 20, after "1976", insert the following: "and the Community Emergency Draught Relief Act of 1977";

On page 21, after line 21, insert the following:

REGIONAL DEVELOPMENT PROGRAM

REGIONAL DEVELOPMENT PROGRAMS

For necessary expenses to carry out the programs authorized by title V of the Public Works and Economic Development Act of 1965, as amended, $44,338,000, to remain available until expended.

On page 22, line 20, strike "$115,000,000", and insert in lieu thereof "$107,500,000".

On page 24, line 8, strike "$10,000,000", and insert in lieu thereof "$15,000,000";

On page 24, line 15, strike "$51,085,000", and insert in lieu thereof "$52,335,000";

On page 25, line 5, strike "$3,000,000", and insert in lieu thereof "$3,500,000";

On page 25, line 9, strike "$500,000", and insert in lieu thereof "$600,000";

On page 25, line 16, strike "$112,000,000", and insert in lieu thereof "$113,100,000";

On page 25, line 23, strike "$113,100,000", and insert in lieu thereof "$115,000,000";

On page 26, line 16, strike "$5,200,000", and insert in lieu thereof "$7,100,000";

On page 26, line 17, strike the following: "co-operative generic technology centers under"

On page 27, line 10, strike "$23,705,000", and insert in lieu thereof "27,705,000";

On page 28, line 13, strike "$66,400,000", and insert in lieu thereof "$64,726,000";

On page 32, line 20, after "officers.", insert the following: "pre-trial service officers";

On page 33, line 22, strike "$212,000,000", and insert in lieu thereof "$215,981,000";

On page 34, line 4, strike "$41,350,000", and insert in lieu thereof "$41,827,000";

On page 34 line 13, strike "$62,000,000", and insert in lieu thereof "$864,410,000";

On page 34, line 24, strike "$120,000,000", and insert in lieu thereof $120,627,000";

On page 37, line 5, strike $11,968,000", and insert in lieu thereof "$11,719,000";

On page 37, after line 13, insert the following:

COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

SALARIES AND EXPENSES

For necessary expenses of the Commission on Wartime Relocation and Internment of Civilians, as authorized by Public Law 96-317, $1,000,000.

On page 38, line 11, strike "$141,454,000", and insert in lieu thereof "$140,000,000";

On page 38, line 20, strike "$3,000", and insert in lieu thereof "$9,500";

On page 38, line 25, strike "$76,000,000", and insert in lieu thereof "$79,000,000";

On page 40, line 19, strike "$421,100,000", and insert in lieu thereof "$419,000,000";

On page 41, line 14, strike "$15,400,000", and insert in lieu thereof "$15,750,000";

On page 42, line 5, strike "$16,715,000", and insert in lieu thereof "$16,863,000";

On page 42, line 23, strike "$321,300,000", and insert in lieu thereof "$300,000,000";

On page 43, strike lines 5 through 16.

On page 44, line 7, strike "$9,100,000", and insert in lieu thereof "$9,170,000";

On page 44, line 14, after "3109,", insert the following: "the rental space in the District of Columbia and elsewhere";

On page 44, line 23, strike "$427,000 to remain available until expended", and insert in lieu thereof "$550,000";

On page 45, line 6, strike "$222,645,000", and insert in lieu thereof "$222,388,000";

On page 45, line 24, strike "$678,000,000", and insert in lieu thereof "$588,500,000";

On page 46, strike line 1 through and including line 18;

On page 47, line 10, strike "$2,800,000", and insert in lieu thereof "$2,616,000";

On page 48, line 13, strike "No" through and including the period on line 18, and insert in lieu thereof the following:

(a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment (as defined in section 2 of the Budget and Accounting Act, 1921) or any major administrative subdivision thereof during the fiscal year ending September 30, 1981, to exceed 30 percent for the last quarter of such fiscal year or 15 percent for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than 45 days after the end of each quarter of the fiscal year, the head of each department and establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(c) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department and establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

On page 50, insert the following:

SEC. 607. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving questioned expenditures, arising after the enactment of this Act shall be resolved within six months of completing the initial audit report.

SEC. 608. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

SEC. 609. (a) Notwithstanding any other provision of this Act, the amounts otherwise available to agencies under this Act for the procurement of consultant services shall be reduced by the following amounts: Department of Commerce, $1,560,000; International Communications Agency, $68,000; Department of Justice, $1,880,000; Department of State, $284,000; and Small Business Administration, $1,043,000.

(b) For fiscal year 1982 and thereafter, a department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which such funds are located; and a brief description of the need for consulting services, including a list of major programs that require consulting services.

(c) For fiscal year 1982 and thereafter, the Inspector General of such department or establishment, or comparable official, or if there is no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

SEC. 610. Where appropriations in this Act are expendable for travel expenses of employees and no specific limitation has been placed thereon, the expenditures for such travel expenses may not exceed the amounts set forth therefor in the budget estimates submitted for the appropriations: *Provided*, That sums appropriated by this Act for the Department of Justice may be used for expenses for travel and transportation of persons, and for transportation of things, as may be necessary for the investigation and prosecution of cases, the apprehension and retention of prisoners, and deportation activities, without regard to any restriction or limitation on the availability of sums for such expenses, unless legislation containing such a restriction or limitation is enacted after the date of enactment of this Act which specifically refers to this section.

SEC. 611. None of the funds appropriated or made available by this Act may be used to enforce or give effect to the quantitative restrictions required to be imposed by subsection 7(i)(1) of the Export Administration Act of 1979 (Public Law 96-72) in any way which would make such restrictions applicable to the export of: (a) up to ninety million board feet (computed without regard to exports or export authorizations made prior to the effective date of this Act) of unprocessed western red cedar harvested from State or Federal lands pursuant to a harvesting contract entered into prior to October 1, 1979, or any extension thereof; or (b) lumber of American Lumber Standards Grades of Number 3 dimensions or better, of Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better.

TITLE VII—SUPPLEMENTAL APPROPRIATIONS, 1980

For additional amounts and other purposes for the fiscal year 1980 to be immediately available, as follows:

DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS AND MARSHALS

Not to exceed $2,600,000 of appropriations under this head for fiscal year 1980 made for the processing and detention of Cuban nationals entering the United States shall remain available for the same purpose until September 30, 1981.

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

Funds earmarked for the investigation and prosecution of Nazi war criminals in the Department of Justice Appropriation Authorization Act, fiscal year 1979 that remains unobligated are restored for the purposes of liquidating obligations chargeable to 1979 and prior years.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

TRANSFER OF FUNDS

For an additional amount for "Fees of Jurors and Commissioners", $9,000,000, which shall remain available until expended, to be derived by transfer from "Salaries of Judges", $1,000,000, "Salaries of Supporting Personnel", $3,000,000, and "Space and Facilities", $5,000,000.

UP AMENDMENT NO. 1649

(Purpose: To provide funds for disaster assistance)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will not be in order until the committee amendments have been agreed to.

Mr. BUMPERS. I ask unanimous consent that this amendment be ruled in order pending the adoption of the committee amendments.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, I do not know what it is. May we have a moment?

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I renew my unanimous-consent request that the amendment be ruled in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 1649.

Mr. BUMPERS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 46, insert the following between lines 18 and 19:

DISASTER LOAN FUND

For the purpose of making loans through the "Disaster Loan Fund," authorized by the Small Business Act, the Small Business Administration may borrow from the Secretary of the Treasury up to $1,480,000,000 as authorized by section 4(c)(5)(a) of the Small Business Act.

Mr. BUMPERS. Mr. President, many times in our Nation's history disasters have occurred which have devastated many parts of the country and caused extraordinary harm and suffering for many of our citizens. Recently, Mount St. Helens in the State of Washington erupted, virtually destroying hundreds of thousands of acres of timber and causing an enormous financial loss to those in the Northwestern United States. The eruption during May of this year was, although extremely dreadful, a very clear example of how devastating a natural disaster can be and the extraordinary demands which are placed on our Federal agencies. In other years, hurricanes, floods, and other disasters have hit many areas and each time Congress has provided Federal aid to assist those injured.

Today, Mr. President, another disaster has occurred which has devastated many parts of this country and, while not as spectacular as the eruption of Mount St. Helens, it is every bit as damaging and has virtually destroyed millions of acres of crops. The drought which most of the South and Midwest is currently experiencing is the worst agricultural disaster I can remember and if action is not taken to alleviate its harsh impact on many sections of the country, many of our farmers will go under. Twenty-three States are significantly affected and the losses will inevitably run into the billions of dollars. The strains on our existing disaster aid programs will be tremendous.

This summer's intense heat and lack of rainfall has caused the most severe drought in Arkansas in my lifetime. By August 26, 1980, 95% of the farms in my State were severely affected by the drought. From June 2 to July 20, Arkansas received only 0.7 inches of rain. To further complicate matters, between June 26, 1980 and August 26, 1980, Arkansas had 56 days on which temperatures exceeded 100 degrees. The New York Times edition of Friday September 12, 1980, stated "Crop weather specialists say Arkansas is now suffering the worst damage."

Mr. President, the figures from my State of Arkansas show how devastating this drought has been on many parts of this country. In Arkansas in 1979, approximately $3 billion in agricultural products were produced. One-third of this amount, about $1 billion, was soybeans. Another billion was poultry and the remainder was cotton, rice and other commodities. This summer's drought has virtually wiped out the soybean crop and, out of the roughly 4.8 million acres planted this year, at least 60 percent of the crop will be lost. The estimated loss will be close to $500 million on soybeans alone.

Cotton is also severely affected. This year, the farmers in my State planted some 472,000 acres of cotton, an increase of 142,000 acres from 1979. The USDA's Agriculture Stabilization and Conservation Service has estimated that Arkansas's cotton crop is a 40-percent loss or about $110 million. When all commodities produced by my State are added, Mr. President, the losses will exceed $850 million. The State of Missouri will lose in excess of $1 billion and other States in the South and Midwest will also lose many millions of dollars. Therefore, Mr. President, in light of these projected losses, the demand on our existing agricultural lending agencies will be tremendous.

For the last few years, Mr. President, the Small Business Administration has been involved in making agricultural disaster loans. Although many people will argue about the propriety and efficiency of SBA in making agricultural loans, this agency has helped our farmers, particularly after the 1977 drought. Under the law which was in effect prior to Public Law 96-302, a farmer could receive an FmHA disaster loan only if he could not obtain sufficient credit elsewhere. The disaster loan carried an interest rate of 5 percent. However, if the farmer could obtain credit elsewhere, he was ineligible for FmHA disaster assistance, but could go to the Small Business Administration and obtain a disaster loan with an 8¼-percent rate of interest. The same 5-percent interest rate also was available for noncredit worthy farmers at SBA.

However, changes were made in Public Law 96-302, the SBA authorization bill which I supported, which will greatly diminish SBA's activity in agricultural disaster lending. Under the changes, any farmer can obtain a disaster loan from FmHA. The only issue is the credit worthiness of the borrower and the interest rate on the disaster loan is either 5 percent or the cost of the money to the Federal Government. The same interest rates will apply at SBA under the disaster assistance program, but after Public Law 96-302, farmers are not eligible for disaster assistance, unless they have been refused, or would have been refused, a disaster loan from the FmHA at substantially similar rates of interest.

However, Mr. President, the important section in Public Law 96-302 is section 119(d) which provides:

The amendments made by this section to Sections 7(c)(3)(C) and 18 of the Small Business Act shall not apply to any disaster which commenced on or before the effective date of this Act.

The effective date of Public Law 96-302 was July 2, 1980, but the drought in most States commenced prior to that date. Therefore, the changes made by Public Law 96-302 are inapplicable to this disaster situation and only those farmers who are not credit worthy will be seeking FmHA disaster loans. All of the other farmers must go to SBA or seek other financial sources for disaster money. If no money is put into the SBA disaster loan fund, these remaining farmers will be completely cut off from any governmental assistance.

Mr. President, I know the problems which many Members have in allowing SBA to make agricultural disaster loans. The law has been changed and, in the future, SBA will not be involved in agricultural lending. However, this drought began prior to these changes and it devastated my State and many others. A decision to not fund this program of the SBA will further complicate the problems of our Nation's farmers. Even with all of these programs in effect, it is likely that many farmers will not be in business next year.

An additional reason for the necessity of this amendment is that the sheer weight of the caseload that will occur this fall mandates that both the SBA and FmHA be totally involved in the expeditious handling of all applications. Otherwise, many farmers will go under simply because their applications were not acted upon.

Therefore, we are offering this amendment of $1.48 billion, the amount requested by the administration, to deal with the drought, Hurricane Allen, Mount St. Helens and other disasters which have occurred. I believe it is important to note that, although this money will be used primarily for agricultural disaster loans, it will also be used to provide disaster loans to businesses injured by Mount St. Helens, floods in Louisiana and Wisconsin, Hurricane Allen, and others.

Mr. President, the farmers of this country are encountering tremendous problems. Soaring increases in fuel,

equipment and chemicals have caused the cost of production to increase very rapidly. Further, during the first part of this year when most farmers got their current operating loans, interest rates were at record highs. These factors, coupled with declining prices early in the year will cause net farm income to drop about 20–25 percent for the current year.

I know prices have been rising lately, Mr. President, but many farmers in my State have been plowing crops under and will have virtually nothing to sell this fall. This amendment is necessary to offset the extreme effects of the drought and I hope my colleagues will join us in this effort.

Mr. President, this amendment provides the administration's request for $1,484,000,000 to be appropriated to the Small Business Administration for disaster relief.

The Small Business Administration would use all of the funds for agricultural disasters, Mount St. Helens, for the little community in Wisconsin that was washed away last week, or for any other disasters that might have occurred or occur during the year 1980–81.

The Small Business Administration is very actively involved in the making of our agricultural loans, and considering the magnitude of the disaster this year I think that it is going to be very difficult for the Farmers Home Administration, without the active total involvement of the Small Business Administration, to get all these loans taken care of and, therefore, the reason for this amendment.

Mr. HOLLINGS. Mr. President, I thank my colleague, the senior Senator from Arkansas, Senator BUMPERS, for bringing this matter to the attention of the Senate. It is a very, very important issue, one that needs to be addressed in order to insure that the farmers receive the disaster loans that they need.

As I pointed out in the opening statement, the $174 million included in the Senate version of the continuing resolution, which I fully support and I will support in the conference with the House of Representatives, will be adequate to fund the program through December 15, the expiration date of the resolution.

I am fully committed to examining the balance of the budget estimate and any other factors that might bear on this and will personally support amendments to both the second budget resolution and appropriations bills during this session of Congress that provide whatever authority is needed for SBA disaster loans to farmers.

But I assure my colleagues from Arkansas and other States that I understand the need and I fully support maintaining the integrity of the fund. We just cannot accept the amendment at this point because of the budget allocations, under the budget resolution assumed no disaster of this nature would occur. I will support additional amounts in November and December of this year because they have occurred and that is when we get to the second budget resolution, and that is where obviously we are going to have to receive higher allocations.

I remind our colleagues that under the Budget Act we cannot adjourn sine die until we get a second budget resolution, so there is little chance of not completing action.

This is not a delay really but a deliberate withholding of judgment on the amendment of the Senator from Arkansas.

I support that amendment, and there is no doubt I am going to be voting for it. I think some $90 million in disaster loans will be allocated for my own State of South Carolina. But we are into this particular situation where the second resolution has not passed and until we do, we just do not feel like we can hold the line or really pass this bill in an orderly fashion by accepting this amendment. By not accepting it we are certainly not rejecting disaster loans for farmers. We are going to have to take care of that when we get back after the election.

Mr. PRYOR. Mr. President, it is now official. Meteorologists in Arkansas report that the summer just ended was the hottest, driest on record with just over one inch of rain falling the entire summer. Although it will be weeks before the total impact is determined, losses to Arkansas farmers already approach the billion dollar mark. This figure has multiplied into billions of dollars of lost production as the drought has swept through the farm belt.

Farmers already caught in a vicious cost/price squeeze now find their survival in question. This year's costs of production must be refinanced as farmers attempt to regroup and continue to supply this Nation with food and fiber. It is essential that the Federal Government lend every possible resource to aid drought-stricken farmers.

As farmers meet credit deadlines and attempt to obtain funds for continuing operations, the credit programs of the Federal Government must respond quickly to assure adequate supplies of credit are available for agriculture. We simply do not have the luxury of time as farmers must harvest crops and market livestock within very limited time frames.

In July the Small Business Administration responded quickly to our disaster in Arkansas by declaring the entire State a disaster area. Mr. President, the farmers of our State and many others are relying on this emergency credit resource to overcome this disaster. Now they find that this is an empty promise because there is no money currently in the committee bill for the SBA disaster loan program. This makes a mockery of our commitment to aid an ailing agriculture.

The survival of thousands of farmers and the assurance of an abundant food supply hinges upon the acceptance of this amendment. I urge the support of my colleagues for funding of this most urgent request on behalf of the SBA disaster loan program.

Mr. BUMPERS. Mr. President, I thank the distinguished Senator from South Carolina (Mr. HOLLINGS) for his remarks. I know he is just as concerned as I am about the plight of our farmers.

With his assurance concerning the second budget resolution and subequent appropriations, I feel certain that our farmers will receive the assistance they need and receive it promptly.

I also appreciate the actions of the full Appropriations Committee on yesterday including $174 million in the disaster loan fund in the continuing resolution for fiscal year 1981 to insure that the fund can operate at full administrative capacity until December 15, 1980.

Mr. President, in light of that I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HOLLINGS. I thank my distinguished colleague from Arkansas.

I believe the Senator from Maine has an amendment.

UP AMENDMENT NO. 1650

(Purpose: To place limitations on year-end spending for contracts)

Mr. COHEN. Mr. President, I send an unprinted amendment to the desk and ask unanimous consent that it be considered this evening.

The PRESIDING OFFICER. The amendment will not be in order until we accept the committee amendments or the Senator receives unanimous consent that we set aside the committee amendments.

Mr. COHEN. Mr. President, I so make that unanimous-consent request to set aside the committee amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. COHEN) proposes an unprinted amendment numbered 1650.

Mr. COHEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 50, between lines 7 and 8, insert the following:

(d) No funds appropriated under this Act may be obligated or expended during the last two months of the fiscal year ending September 30, 1981, by a department or agency for the award of a contract, or for a modification of a contract increasing the obligations or expenditures under the contract in excess of 10 percent, unless the department or agency issues a solicitation for or notification of the proposed award or modification at least 60 days before the date on which the award or modification is made. The preceding sentence does not apply to any obligation or expenditure for an emergency affecting human safety, property, or national security, or to any obligation or expenditure if the head of the department or agency determines, on a case by case basis, that the obligation or expenditure is necessitated by another type of emergency and reports such determination to the Committees on Appropriations of the Senate and the House of Representatives.

Mr. COHEN. Mr. President, this is an amendment to H.R. 7584, the legislation

appropriating funds for the Departments of State, Justice, and Commerce, and related agencies.

This amendment is identical to the one adopted by the Senate last week as an addition to the HUD appropriations bill.

This proposal, which Senator LEVIN, Senator HART, and I have coauthored, would strengthen the year-end spending provisions contained in H.R. 7584. It would impose strict new limits on contracts awarded in the final 2 months of the fiscal year to insure that agencies do not rush to deplete their appropriations, regardless of need or time constraints.

Our amendment would prohibit any department or agency from obligating contract funds in the final 2 months of the fiscal year unless the solicitation or notification for the contract is issued at least 60 days before its award. This provision would insure that agencies do not obligate funds simply to prevent them from lapsing and that adequate time for preparation and evaluation of the contract is available. To prevent agencies from avoiding the prohibition by simply enlarging existing contracts, the amendment would also apply to significant modifications of outstanding contracts.

Of course, there may be cases where contracts must be awarded more quickly for emergencies affecting human safety, property, or national security. Our amendment permits the executive department secretaries and agency heads to authorize exceptions to the 60-day rule on a case-by-case basis to cover such exigencies. These exceptions would have to be reported to the House and Senate Appropriations Committees.

Mr. President, two of the departments funded by this legislation, the Department of Commerce and the Justice Department, were among the 10 agencies examined by the Government Affairs Oversight Subcommittee during the course of its investigation into the causes and consequences of "hurry-up spending." I would like to share with my colleagues some of our findings about wasteful year-end spending in these departments.

According to testimony from Department of Commerce officials, that Department has had perennial problems in year-end procurement. For example, the Department incurred more than one-third of its annual procurement-related overtime costs in the last month of fiscal 1979. The number of contracts awarded in September 1979 was more than twice that awarded in any other month except October 1978, the first month of the fiscal year, during which contracts left over from the previous fiscal year had been awarded.

A Commerce Department official told the subcommittee that year-end spending in his department was characterized by hasty and poorly conceived project formulation, poor contracting practices, and decreased competition.

The Commerce Department has now taken steps to improve procurement planning in order to avoid the year-end rush. I believe that my amendment would strengthen and complement these efforts.

The subcommittee also investigated year-end spending by the Law Enforcement Assistance Administration within the Justice Department.

While other agencies' top management had at least recognized that year-end contracting was producing undesirable results, LEAA's senior financial and legal officers maintained that hurry-up spending was not a problem in their agency.

The subcommittee's investigation showed that quite the opposite was the case. In fiscal year 1979, LEAA incurred 59 percent of its contract obligations in the final quarter.

Joe Pate, who was the chief of the contracts branch at LEAA, testified that the lack of contract planning in LEAA resulted in the contract officer being in a position of awarding sole-source contracts, waiving audit reviews, and allowing a greater profit for the contractor than would occur if more time were available to handle the transactions—all practices that waste tax dollars.

At the end of my remarks I will insert in the RECORD a recent Newsweek article on year-end spending and on LEAA's treatment of Joe Pate subsequent to his testifying before the subcommittee.

Mr. President, the problem of rushed and unnecessary year-end spending is serious, widespread, and complex. It results from failures at every level of Government, from contracting officers to program people, from the Office of Management and Budget to the Congress.

It involves the failures of audit mechanisms and of procurement regulations that grant so much discretion that millions of dollars can be wasted in the final weeks of the fiscal year.

It is exacerbated by the late enactment of appropriations, the use of continuing resolutions, and the passage of huge supplementals.

It results from a system that rewards spending and discourages thrift because an agency that manages to save tax dollars is a likely candidate to have its budget cut in the following year.

Hundreds of thousands of contracts are awarded in the final weeks of the fiscal year simply to prevent the return of unused appropriations to the Treasury or to forestall future budget reductions by Congress.

Operating under the "use it or lose it" philosophy, some Federal agencies purchase unneeded goods or services in order to deplete their appropriations. For example, a Young Adult Conservation Corps camp bought 1,000 pairs of horseback riding chaps for fewer than 300 enrollees in response to a memorandum instructing that "all moneys be obligated at the end of fiscal year 1978."

The more significant and costly waste, however, results from the shortcuts taken in the procurement process at the end of the fiscal year. Time constraints encourage the awarding of contracts with limited or no competition, such as sole-source procurements. Noncompetitive practices increase costs because they decrease the probability that the Federal Government will obtain the lowest possible prices for its purchases.

Another common shortcut taken at the end of the fiscal year, in order to speed up the award of the contract, is to waive the pre-award audit. Accurate audit information on a firm bidding for a Government contracts permits the Government to dispute overly optimistic cost projections which can lead to cost overruns. The subcommittee found that agencies were much more likely to waive the audit requirement at the end of the year. With virtually every Federal agency awarding a disproportionate share of its contracts in September, the pressure to waive the audit increases.

Still another procurement problem caused by the year-end rush is the compression of bidder response time. Shortening the amount of time allowed for private firms to respond to Government bids is a classic technique for awarding contracts before the close of the year. Consequently, the proposals submitted tend to be of poorer quality.

Surges in procurement spending also cause unnecessary administrative expenses. In fiscal year 1979 alone, the Federal Government needlessly spent millions of dollars merely to keep procurement personnel working overtime to process the year-end flood of contract requests.

These year-end spending problems that I have discussed permitted HEW to award $135 million worth of contracts during the last 3 days of fiscal year 1979. And those days were a Friday, Saturday, and Sunday.

But HEW was by no means alone in its year-end spending abuses. In fact, none of the 10 Federal agencies and departments examined by the Oversight Subcommittee were found free of hurry-up spending problems.

The amendment that I have sponsored directly attacks the year-end spending spree. The requirement that a contract could not be awarded in August and September, unless the solicitation for it has been issued 60 days in advance, will make it much more difficult for agencies to spend wastefully.

The 60-day rule will insure that adequate time is allowed for obtaining competition for contracts, for performing important pre-award audits, and for allowing private companies enough time to prepare their bids.

It will insure that agencies plan their purchases. In those agencies where procurement planning already has been implemented, there has been a marked decline in year-end buying.

Mr. President, I urge adoption of this amendment.

The article follows:

AGAIN, A FEDERAL SPLURGE

If Ronald Reagan becomes President and wants to curtail waste in government spending, he would probably do well to dampen the Christmas spirit that seems to sweep the Federal bureaucracy each September—the last month of Uncle Sam's fiscal year. On Sept. 29, 1978, for example, the Pentagon spread $187,631 worth of holiday cheer when it contracted for construction work on a base that the Army had already decided to close. About the same time, civil servants at the Youth Conservation Corps were on a last-minute spending spree to obtain 1,000 pairs of riding chaps, 4,000 pairs of gloves and 181 chain saws for a YCC camp with only 300 enrollees. And one year later the Department of the Interior hired a consult-

ant to discover why its officials seemed to be spending so much money at the end of each fiscal year.

Interior needn't have asked. Ever since the early 1920s, Federal budget directors have been complaining about the "use it or lose it" syndrome: a curious disease that causes government agencies—worried about the implications of a surplus at year-end—to go to enormous and creative lengths to make sure that every nickel of the taxpayers' money is spent. "If the agencies plan effectively, budget prudently, spend less and manage to return tax dollars to the Federal Treasury, they face the prospect of having their budgets slashed for the next year," says Republican Sen. William S. Cohen of Maine. "There is simply no incentive for prudent management, no regard for the saving of tax dollars."

In July a Senate subcommittee completed an eleven-month study of eleventh-hour spending and concluded that wasteful purchases total at least $2 billion a year. The panel found that the last-minute spending rush resulted in "the purchase of millions of dollars of goods and services for which there is not current need." Examples abound. On Sept. 11, 1978, for instance, officers at Fort Riley, Kans., ordered 80 television sets for $32,264—and nine months later 50 were still in their crates In other cases, new furniture and Oriental rugs were ordered, even though the need for them was questionable. Even when the purchases are necessary, government procurement officers testified that in their haste to strike a deal before the fiscal year expired, they often pay contractors up to 20 per cent more than they would under calmer circumstances. Potential bidders frequently do not have enough time to come up with proposals, the subcommittee concluded, and contractors admit that when they do come up with bids, the proposals are often "inferior to those they had submitted at other times during the year."

MEMOS

Although Federal purchasing agents are well aware that haste makes waste, they often face intense pressure from their bosses to accelerate spending. Joseph Pate, a former procurement officer for the Law Enforcement Assistance Administration, says that his efforts to halt two especially wasteful year-end contracts were actively discouraged. "You can go in only so many times and get your hand slapped," he told Senate staffers. Following his testimony, Pate found his staff cut and his office moved three times. Eventually, says Senator Cohen, Pate felt obliged to accept an LEAA retirement offer, at age 44.

In the face of the pressure to spend, the White House has given little more than lip service to reducing year-end waste. Every year since 1965 the Office of Management and Budget has issued memos stressing that agencies must not "spend or obligate funds for the sole or even primary purpose of keeping them from lapsing." But Senate investigators found that agency reform efforts receive "virtually no management support, coordination, guidance or oversight" from OMB. In 1975 and 1976, for instance, the Environmental Protection Agency decreed that any procurement request that is not filed within the first seven months of a fiscal year will not be accepted at all, except in cases of real emergency. EPA officials estimate that the procedure, still in force, saves nearly $1 million in fourth-quarter overtime expenses. Yet despite the success of the EPA program, White House budget officials were unaware of its existence until earlier this year.

There are some moves afoot to attack the September spending splurge through formal legislation. Cohen, for one, is sponsoring a bill that would require all agencies to submit procurement schedules to OMB by Aug. 1 of the preceding fiscal year. And Washington Democrat Warren G. Magnuson, chairman of the Senate Appropriations Committee, has vowed to saddle every new appropriations bill with a provision that no agency can spend more than 20 per cent of its annual budget in the final two months of this year. But OMB director James T. McIntyre Jr. believes such measures would ultimately fail: the agencies would simply shift their procurement orders to June and July. The real problem, in fact, may be the sheer size of the Federal bureaucracy—and the vested interest the players have in nurturing it.

Mr. HOLLINGS. Mr. President, the committee will gladly accept this amendment. We have a human factor in the handling of Government financing. It is very understandable. Necessarily the Departments come and make demands and prove their case. Congress appropriates. Then they are getting down to the end of the fiscal year, and it is only human that they are trying to maintain the needs for the following year so that they do not vitiate their own cases. They prove that really they are not extravagant in a particular request made for that fiscal year. So human tendency is to just spend it. There are going to be needs and they cannot be cutting their own budget if they are going to run a bureaucracy.

Unfortunately this happens to all governmental budgets, and I think the amendment of the Senator from Maine is a wise one and it helps us not just in State, Justice, and Commerce, but in all the budgets of the Government.

So I have supported this particular initiative and I am confident the distinguished Senator from Connecticut will go along. Then the committee will gladly accept the amendment.

Mr. LEVIN. Mr. President, the amendment offered by my colleague from Maine (Mr. COHEN) is an important step in a series of needed incentives for reducing wasteful spending in the Federal bureaucracy. The amendment clearly states Congress intent to improve the Federal procurement system by concentrating on the nature of the illness rather than by attacking its most visible symptoms.

I am referring specifically to the need to reduce noncompetitive contract procedures that underlie the excessive increases in expenditures during the fourth quarter of the fiscal year in virtually every Federal agency.

The Governmental Affairs Subcommittee on Oversight of Government Management, which I chair, estimates that at least $2 billion are wasted by Federal agencies each year because of the rush to obligate funds during the fourth quarter. Much of the waste associated with such "hurry-up spending" is due to agency failure to insure adequate competition for contract awards during the final quarter.

Examples of rushed spending at the end of the fiscal year abound throughout the executive branch. These are just two of the many examples cited by the subcommittee's recently issued report entitled "Hurry-up Spending":

In fiscal years 1969 and 1970, the Community Services Administration, and its predecessor, the Office of Economic Opportunity, awarded 45 and 56 percent of its contracts in the final month of the fiscal years.

In fiscal year 1975, the Commerce Department's Maritime Administration, the Environmental Protection Agency, and selected agencies within the Department of Transportation spent 65 percent of their research and development contract funds in the last month of the fiscal year, implying "that funds are obligated to prevent the authority from lapsing or to avoid reductions in future appropriations."

The question is not whether hurry-up spending is wrong, it is; or whether it's costing a tremendous amount of tax dollars, it does. The question is how Congress should act to solve this complex problem. This amendment requires executive agencies and departments to issue bid solicitations, and public notice 60 days prior to the awarding of contracts that are to be let during the final 2 months of the fiscal year. The measure will assure sufficient time for solicitation and negotiation of bids to insure increased competition for fourth quarter contracts. Those actions are the keys to the solution to the problem of hurry-up spending.

This amendment avoids the artificial fourth quarter spending limitations on total agency contract authority, because they may well backfire.

As Senator COHEN has pointed out, statutory spending limitations on agency spending, such as that imposed on the Department of Defense, have failed to reduce rushed contracting or the acquisition of goods and services that are not needed. The Deputy Under Secretary for Defense, Dale W. Church, testified that the "limitation, by itself," does "not improve the quality or timeliness of purchases. Proper planning and management is the key."

The Office of Management and Budget recently informed the subcommittee that an arbitrary fourth quarter spending limitation will not solve the problem, and that:

Because agencies would have to obligate annual funds on an arbitrary schedule that is even shorter than the current schedule, the limitation is more likely to contribute to the mentality of spending funds merely to prevent losing it.

In other words, Mr. President, in the absence of a carefully developed and carefully monitored agency spending plan, which will result from our amendment, the surge in spending could just be advanced to the third quarter.

OMB also noted that the limitation would impose arbitrary limits on some programs which have uncontrollable workloads, such as disaster relief and other emergencies, seasonal programs, and benefit payments—for example, for food stamps—required by other laws.

OMB cited programs in which activity peaks in August and September that would be adversely affected by a spending limitation:

August and September are two months in which high fire severity occurs in portions of the western half of the U.S., where 85 percent of the forest fire protection budget is used;

The main reason for high obligations for the fourth quarter in Agricultural Marketing Service activities is the seasonality of the cotton and tobacco grading programs;

In food programs, such as the Elderly Feeding, Summer Feeding, and Food Donations programs, many commodity purchases are made when price and supply are most favor-

able. Because the harvest season occurs during the fourth quarter, sizeable obligation of funds usually occurs at this time.

The Environmental Protection Agency (EPA) informed the subcommittee that:

The use of obligation limits will introduce unnecessary and undesirable additional constraints on the federal acquisition processes and create many new problems without positively impacting the present problem.

Also, the agency cited particular adverse effects of a spending limitation on the construction grants program because of the time needed to negotiate these large contracts with the States and contractors:

The proposed limitation will apply to all types of procurement actions. We anticipate problems in applying the limit to our construction grants program. EPA wastewater treatment construction grants must be planned well in advance of award. Each state develops a priority list of projects to be funded from each fiscal year's appropriations. The grants themselves must be awarded within two years, or funds will be reallotted to another state. Each state, working with EPA, must plan and manage the progress of each project over the two-year period. One of the cumulative effects of this work is the award of a great number of these projects toward the end of each fiscal year. If the limit were imposed on the last quarter of the year, many large construction projects would have to be held up for several months, with a possibility of needed funds being lost altogether. In such a case, not only will the physical construction not take place, but two years of time and effort spent by state and local governments, and EPA staffs may have been wasted . . . The imposition of a limit on spending during the final quarter of the fiscal year would not help this program.

The purpose of this amendment, again, is to encourage increased competition for agency procurement actions during the fourth quarter of fiscal year 1981 by increasing the time for solicitation and negotiation prior to the award of fourth quarter contracts. Current procurement regulations offer guidelines as to what length of time constitutes a reasonable solicitation period in the awarding of contracts. However, no lower limit is set on the amount of time that agencies may permit contractors to formulate their proposals. My subcommittee found during its 11-month inquiry into fourth quarter spending abuses, that it was typical for agencies to compress the contractor response time, effectively reducing the desired level of competition for contracts. In addition, the subcommittee found that agencies rushed their contract negotiation procedures during the final quarter, an activity that results in a diminution of the agency's ability to evaluate proposals, engage in oral discussions to resolve disputed prices or estimates, and insure that basic contract questions not be left for later agreement.

The subcommittee found that the rush to obligate funds at year's end prompted agencies to waive preaward audits of cost projections in contract proposals, and to award a greater number of sole-source contracts in lieu of soliciting a wide array of proposals to insure an adequate level of competition for major contracts. All of these activities also tend to increase agency expenditures for overtime payments to personnel involved in the award of such contracts.

The pending amendment will address all of these fundamental weaknesses generated by inadequate procurement regulations by allowing sufficient time to each agency to solicit an adequate number of proposals, perform preaward contract audits, thoroughly negotiate all contract proposals, reduce the number of sole-source contracts offered, and reduce excessive overtime payments to procurement personnel.

The 60-day rule imposed by this amendment aims at the problem-avoidance of bad procurement practices in the rush to use appropriations or lose them. The measure does not impose an artificial limitation on total budget authority but seeks to improve agency procurement practices in the area where spending is highly discretionary—in the awarding of contracts. The amendment permits agencies to spend funds for legitimate purposes while imposing meaningful requirements against noncompetitive contracting procedures. OMB supports the finding of my subcommittee that a statutory arbitrary limitation on the timing of obligations will inhibit Congress efforts by shifting the spotlight away from the essential problem—that of inadequate budget planning and management and noncompetitive fourth quarter procurement practices.

In view of the importance of imposing meaningful contracting requirements on Federal agencies, I urge my colleagues to support this amendment and again I commend Senator COHEN for his leadership in this matter.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment (UP No. 1650) was agreed to.

Mr. COHEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, during subcommittee markup of the State, Justice, Commerce Appropriations bill, I offered an amendment to add $2 million for research under the Anadromous Fish Conservation Act, Public Law 89-304. I have in hand a copy of my letter containing that request, and a copy of the material which accompanied the request.

In the course of reducing my request to report language, there was a misunderstanding, and the money was entered into the wrong account. Neither my staff nor the committee caught the mistake, and indeed, the program names are very similar.

However, at this time, I would like to point out this error to the managers of the bill, and ask if they agree with me that the money allotted to "the National Marine Fisheries Service Northwest and Alaska Fisheries Center in addressing the Northwest's anadromous fish programs, "$2,000,000" should actually be allotted for "research under the Anadromous Fish Conservation Act of 1965; Public Law 89-304, as amended, $2,000,000."

Mr. HOLLINGS. That is understood on this side of the aisle, Mr. President. There was an inadvertent printing error so that a line is missing from the report indicating that both the Senator's request as well as the other item were approved.

Mr. WEICKER. I understand that this should be the correct language also, Mr. President.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to exceed 30 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATION, 1981

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Alabama (Mr. STEWART), in connection with the bill relating to appropriations for the Department of Housing and Urban Development, which was passed by the Senate yesterday.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR STEWART

I rise to express my strong support for the measure which I have cosponsored with Senator Williams. This bill will allow HUD to use up to $125 million in recaptured funds for the Section 235 Homeownership Assistance Program during fiscal year 1981. All of the money involved has been previously authorized and can be made available without new budget authority. However, HUD cannot use the recaptured funds without first receiving legislative direction to do so.

The recaptured monies are urgently needed because of the extremely rapid draw-down in the 235 program which has occurred during the past year. At the start of this fiscal year, there was approximately $195 million of contract authority in the program available, an amount which HUD estimated could fund a total of 50,000 units during fiscal 1980 and 1981. However, due to the harsh economic circumstances of the past year, almost 58,000 units have been reserved in this year alone—an amount more than four times the level of activity in fiscal 79. As a result, HUD now estimates that it has only $40 million left in the 235 budget.

This extraordinary use of the 235 program has been a direct result of high interest rates—rates which reached a shocking 16 percent during the spring and have now creeped back up to 13½ percent in most areas of the nation. At these interest rates, only a tiny fraction of the American public can afford the monthly payments necessary to purchase a home. The 235 program has become so attractive because it represents the only opportunity for homeownership for thousands of lower income American families. And for many builders, the activity generated by the 235 program has provided them with their only source of income, enabling them to avert bankruptcy.

The measure I have cosponsored will insure that the 235 program can continue operating beyond the middle of fiscal 1981, when its present funds are likely to run out. With the money available, HUD will be able to provide assistance to approximately 10,-

000 lower and middle income families, using the guidelines under which the program has been operating for the past four years.

Just as important, the measure will guarantee sufficient funding for the emergency 235 stimulus program. Approximately ¾ of the moneys in the 235 budget will be allocated for the stimulus program, a program which was overwhelmingly approved by the Senate this spring in response to the severe decline in housing production which occurred during the first months of 1980.

Unfortunately, Mr. President, the need for this stimulus program, almost five months later, remains substantial. While the housing industry has shown signs of modest recovery in recent months, it is still far from being healthy. Even with the growth in activity during the past three months, the number of yearly starts is predicted to only reach a level of 1.4 million units, far below last year's level of 2 million units. And I believe this estimate is overly optimistic. All indications are that the recent jump in mortgage rates is likely to put a major crimp in housing's recovery and that we will experience a downturn in production once again.

I think it is essential that we act now to provide some meaningful aid to the housing industry, and the measure we have introduced would stimulate the construction of an estimated 50,000 new units. Housing is simply too important a part of our economy to allow a sharp downturn in production to continue for an extended period. In 1979, new building constituted 5.5% of our overall GNP, added $200 billion to our economy, was responsible for 2.5 million jobs, and added $8 billion in federal, state and local tax revenues. On the reverse side, a crippled housing sector has enormous ripple effects that are felt throughout the economy, ultimately leading to an increase in unemployment related expenditures and a growth in the federal deficit—hardly a way to reduce inflationary pressures in the economy.

A decline in housing production contributes to inflation in another important way. All estimates are that the demand for housing in the 1980's, due to demographic factors and the strong preference of Americans for homeownership, will be at unprecendented levels. Conservative predictions are that 2 million units per year will have to be produced to keep pace with this demand. So long as this demand goes unmet—as it has during most of 1980—the pressure on housing prices becomes even greater, as thousands of families compete for the limited supply of units which are available.

And just as disturbing as these economic consequences is the fact that millions of Americans are being denied a basic part of the American dream—the opportunity to own their own home. Ten years ago, close to one-half of all families could afford to purchase their own home. For most of 1980, this figure has been in the range of 5 percent. We simply must do what we can to increase housing opportunities for millions of young and first-time buyers.

I think that the arguments for this measure are simple, but quite powerful, and I urge that the bill be swiftly approved by the full Senate.

SENATOR PATRICK LEAHY

Mr. ROBERT C. BYRD. Mr. President, PATRICK LEAHY was the first Democratic Senator ever elected from Vermont.

The Vermont Senator has been a hard-working, "do your homework" legislator who has fought vigorously for both the interests of his native State and the Nation.

Senator LEAHY has served on the Agriculture Committee, the Armed Services Committee, the Appropriations Committee, the Judiciary Committee and the Select Committee on Intelligence. In addition, he has served on the President's Commission on World Hunger, the Helsinki Commission to review international human rights violations and the Canadian-United States Intra-Parliamentary Union. Throughout these assignments, he has shown himself to be one who studies the issues closely, listens to all sides with an open mind, and takes a stand no matter how controversial it might be.

When he first arrived in Washington, Senator LEAHY was asked on which three committees he wished to serve. His answer helps to understand his legislative priorities. His selection—"the Agriculture Committee. The Agriculture Committee. The Agriculture Committee."

As a member of the full Senate Agriculture Committee and as chairman of the Subcommittee on Rural Development, PATRICK LEAHY has already left his mark. He sponsored legislation designed to insure a fair milk price support program for the dairy farmers in his State and throughout the country. He wrote the law which allowed many rural health clinics to receive medicare and medicaid payments for the first time.

Senator LEAHY identified what he called an "urban bias" in many Federal programs developed in Washington. Whether through ignorance, neglect or indifference, many Federal programs were so tailored to meet the needs of our Nation's urban areas that when offered in rural areas, they failed to meet the needs or solve the problems of rural America.

Using his position both as chairman of the Rural Development Subcommittee and as the first Vermonter to serve on the Appropriations Committee in over half a century, PAT LEAHY has an impressive record of reversing that urban bias.

He insured funding for rural transportation programs and led the effort to dramatically increase funding for rural buslines. But for his action, several buslines in his own State would have gone bankrupt.

PAT LEAHY made sure that the housing needs of rural America were not ignored. He supported increased funding for programs specifically modified to meet rural housing needs.

Alarmed by the unannounced withdrawals of several major oil companies from rural markets, PATRICK LEAHY did something about it. Rather than allow the rural States to lose their petroleum supplies to more lucrative urban markets, he helped write the law which requires that companies give notice of their intention to abandon a market so that replacement supplies can be secured from another company.

PAT LEAHY has also used his position on the powerful Senate Appropriations Committee to secure sufficient funding for fuel assistance and weatherization programs—programs which insure that our Nation's elderly and poor will be protected from the severity of the weather or potentially ruinous fuel bills.

As the seriousness of the national energy crisis grew during the seventies, PAT LEAHY worked in the Senate to reduce this country's dependence on foreign oil, to tax the windfall profits of the oil companies and to expand Federal support for renewable energy sources and energy conservation incentives and programs.

As a former member of the Senate Armed Services Committee, and as a current member of the Department of Defense Appropriations Subcommittee, PATRICK LEAHY has studied this country's defense needs and foreign policy. He has consistently backed levels of defense spending to enhance our conventional military forces as well as the pay increases and other incentives so necessary to the successful operation of the All Volunteer Force. He has supported a modern and effective strategic force for the United States.

In 1978, Senator LEAHY was asked to serve on the Senate Intelligence Committee. He is entrusted with this country's most classified information, and with oversight responsibility for the operation of the Central Intelligence Agency and the other members of the "intelligence community."

Also in 1978, PAT LEAHY initiated the successful congressional effort to establish a Presidential Commission on World Hunger. This group spent more than a year analvzing the problem of malnutrition and sought to identify steps to alleviate world hunger.

During his first campaign, PAT LEAHY promised the people of Vermont that he would bring some Vermont commonsense to the operation of the Federal Government. He has backed his campaign commitments with action.

He established a "Bureaucracy Task Force" as part of his Washington office and initiated investigations into parts of the bureaucracy. His report on the use and abuse of Federal advisory committees helped to eliminate hundreds of these committees at an annual savings to the American taxpayer of $50 million. This year Senator LEAHY has been working with his investigators to study the Department of Energy's abuse of consultants and contractors. He is supporting legislation to eliminate loopholes which allow billions of dollars to be wasted each year.

PATRICK LEAHY has been making the Federal Government accessible to his constituents. He was the first Senator to install a toll-free "800" telephone line to allow all Vermonters to call him free of charge. He has spent an average of 2 days a week in Vermont while still maintaining a 93-percent voting record.

Small businesses and towns in Vermont have discovered they have a real friend in their junior Senator. PAT LEAHY has sponsored several Main Street conferences in Vermont where Federal agencies and local businesses and interests study and resolve local economic problems. He has sponsored export legislation and conferences in an effort to open up international markets for Vermont products and services. He has committed himself to the revitalization of many of Vermont's towns and then backed that commitment by bringing Federal dollars and programs into his State.

In the Senate PAT LEAHY has shown that although the Government has a responsibility to provide programs and services to the American people, it must be prudent with its expenditures. In Vermont he has been applauded for "a commonsense Vermont fiscal attitude in the big-spending capital of the world."

Senator LEAHY has already left a very definite mark in the affairs of this Nation. I look forward to his continued service in the Senate which will, without doubt, be to the advantage of Vermont, the Nation, and the Congress.

A BANK IN WEST VIRGINIA REOPENS—SENATOR RANDOLPH RECALLS PASSAGE OF FEDERAL DEPOSIT INSURANCE ACT OF 1933

Mr. RANDOLPH. Mr. President, on Friday, September 12, the community of Huntington in my home State of West Virginia saw the failure of one of its banks. By the following Monday morning, the failed bank had been replaced by a healthy new bank at the same location, accepting deposits and loan payments, cashing checks and generally conducting business as usual.

The failed bank's 12,200 depositors automatically became depositors in the new bank and their accounts were fully assumed, providing protection even for those whose accounts exceeded the Federal insurance limit of $100,000.

This transfer of deposits from an insolvent to a sound institution with almost no interruption of service to the public was accomplished with little fanfare and amazing speed by a small but vital Government agency—the Federal Deposit Insurance Corporation (FDIC).

Many Americans still carry searing memories of what a bank failure meant in the pre-FDIC era. In 1933, the year that I first served in Congress, the Nation was struggling with the worst effects of the Great Depression. There was no more dramatic manifestation of the country's economic troubles than the suspension that year of more than 4,000 of the Nation's banks, including 49 in West Virginia.

In the first 4 years of that decade, 9,100 U.S. banks suspended operations—an average of 43 per week—and depositors lost $1.3 billion. The result was financial disaster for thousands of individuals and businesses and serious erosion of the Nation's money supply.

Congress established the FDIC in 1933 with the objective of stemming the tide of failures and thus protecting depositors' accounts and the money supply. This was to be accomplished by bringing stability to the banking system through complementary programs of deposit insurance and bank supervision.

Today, nearly a half-century later, it is clear that the FDIC has succeeded to an extent far beyond what we envisioned in those dark days. Since the FDIC opened for business on January 1, 1934, the failure rate of American banks has been sharply curtailed. Indeed, the failure of the bank in Huntington was West Virginia's first bank insolvency since 1939 and only its fourth since the establishment of the FDIC. In the last four decades, failures nationwide have averaged about six per year and insurance has protected all accounts up to the statutory limit.

In many cases full protection of all deposit accounts occurs because the FDIC is able to arrange for the deposit liabilities of the failed bank to be assumed by a new or existing healthy bank, as it did in Huntington.

The FDIC's record of accomplishment testifies to the foresight of those who sought its establishment; the Agency's achievements reflect Government at its best, ministering effectively and efficiently to a bona fide national need.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following Calendar Orders Nos. 1043, 1047, 1049, 1054, 1055, 1056, 1061, 1062, and 1066.

Mr. BAKER. Mr. President, reserving the right to object—and I will not—I will advise the majority leader that the nine calendar orders identified by him are cleared on our calendar and we have no objection to their consideration and passage.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHESAPEAKE BAY RESEARCH COORDINATION ACT OF 1980

The Senate proceeded to consider the bill (H.R. 4417) to provide for the coordination of federally supported and conducted research efforts regarding the Chesapeake Bay, and for other purposes, which had been reported from the Committee on Governmental Affairs with an amendment to strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Chesapeake Bay Research Coordination Act of 1980".

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) The Congress finds that—

(1) the Chesapeake Bay area is one of the greatest national resources in the United States of America, serving as an abundant source of seafood, recreation, beauty, and enjoyment, as well as providing habitat for a wide variety of fish, waterfowl, flora, and fauna;

(2) the Chesapeake Bay area serves as one of the world's major waterways, each year carrying millions of tons of waterborne shipping to and from all parts of the globe;

(3) the productivity and beauty of the Chesapeake Bay area in recent years has been diminished and threatened by water pollution, shoreline erosion, excessive sedimentation, and other injuries;

(4) numerous Federal agencies have initiated and supported research to study, manage, enhance, protect, preserve, or restore the resources of the Chesapeake Bay area; and

(5) the various research relating to the Chesapeake Bay area could be more effectively coordinated in order to obtain maximum benefits.

(b) The purposes of this Act are—

(1) to provide for the rational and effective coordination of federally conducted and supported research aimed at increasing fundamental knowledge in support of wise management of the Chesapeake Bay area;

(2) to identify key management information needs and specify a coherent program of research that will respond to those needs;

(3) to identify the needs and priorities for such additional research as are required for the improvement of fundamental knowledge about the Chesapeake Bay area;

(4) to assure a comprehensive and balanced approach to federally conducted and supported research on the Chesapeake Bay area;

(5) to encourage the utilization of the results and findings of research, and of other relevant information, in the management decisionmaking processes which have an impact on the Chesapeake Bay area; and

(6) to foster public understanding of the role of the Chesapeake Bay area as a unique national resource, the greatest natural ecological entity of its kind in the United States.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "Chesapeake Bay area" means the waters of the Chesapeake Bay (including the tributaries to the extent of Chesapeake Bay tidal action), the lands within and under such waters, and the wetlands adjacent to such waters.

(2) The term "research" means the endeavor to discover, develop, and verify knowledge and a careful and critical inquiry or examination in seeking facts or principles.

(3) The term "research project" means any research related to the Chesapeake Bay area for the purpose of promoting the understanding, the improved management, and the protection of the marine or coastal related resources (including those relating to water quality, coastal zone management, navigation, shoreline erosion, wetlands, fisheries, shellfish, and wildlife) which is funded in whole or in part by any department, agency, or independent establishment of the Federal Government.

(4) The term "research program" means any aggregate of related individual research projects.

(5) The term "Secretary" means the Secretary of Commerce.

SEC. 4. OFFICE FOR CHESAPEAKE RESEARCH COORDINATION.

(a)(1) The Secretary shall establish in the Department of Commerce a separate office known as the Office for Chesapeake Bay Research Coordination (hereafter referred to in this Act as the "Office"). The Office shall serve as the staff of the Chesapeake Bay Research Board established under section 5 of this Act.

(2)(A) The Office shall be headed by a Director who by reason of his knowledge and experience in research efforts on the Chesapeake Bay area, is qualified to serve as an adviser with respect to research, and who shall be appointed by the Secretary in consultation with the Administrator of the Environmental Protection Agency, the Secretary of the Army, the Secretary of the Interior, and the Secretary of the Smithsonian Institution.

(B) Before making any appointment under subparagraph (A), the Secretary shall seek the recommendations of the Governor of Maryland and the Governor of Virginia with respect to individuals who are qualified to serve as the Director.

(3) The Director may appoint such personnel for the Office as he deems desirable, and as is provided for under this Act.

(b) The Office, when directed to do so by the Chesapeake Bay Research Board, shall—

(1) identify Federal and State research programs relating to the Chesapeake Bay area and annually update that inventory;

(2) establish a Chesapeake Bay Research Exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning all research projects which are ongoing completed, or for which funds have been requested, and which are conducted in or affect the Chesapeake Bay area;

(3) make recommendations to the Chesapeake Bay Research Board on the relationship of Federal programs to the Chesapeake Bay Research Plan; and

(4) make recommendations to the Chesapeake Bay Research Board on possible revisions to such Research Plan.

(c) The Office shall work with the Chesapeake Bay Research Board to—

(1) identify the need for, and the priority of, research programs which could benefit the management of the resources of the Chesapeake Bay area;

(2) promote optimum utilization of available funds and resources to benefit the Chesapeake Bay area;

(3) remain cognizant of ongoing research programs and assist in the dissemination of the results and findings of research programs;

(4) conduct periodic meetings with representatives of the departments, agencies, and independent establishments of the Federal Government having responsibility for the administration of research programs in the Chesapeake Bay area, representatives of appropriate State, regional, and local agencies, and representatives of the scientific community, in order to obtain and exchange information relating to such programs;

(5) review proposed Federal legislation which may affect the Chesapeake Bay area and comment to the appropriate entities on the relation of the proposed legislation to the Chesapeake Bay Research Plan;

(6) determine existing Federal and State programs relating to the Chesapeake Bay area and annually update this inventory;

(7) plan and conduct a conference on Chesapeake Bay area affairs at least once every two years;

(8) prepare for the Board an annual report on research programs, current and planned, pertaining to the Chesapeake Bay area; and

(9) perform such other activities as are consistent with the purposes of this Act.

(d)(1) The Secretary shall make available to the Office such administrative services and temporary staff as may be reasonably required by the Office to enable it to carry out its functions under this Act.

(2) The Office may request from any department, agency, or independent establishment of the Federal Government (A) information concerning grants made by such department, agency, or establishment for research in the Chesapeake Bay area, and (B) other assistance or information which the Office deems necessary to enable it to carry out its functions under this Act. Each such department, agency, or independent establishment shall furnish, with or without reimbursement, to the Office such assistance or information so requested consistent with other Federal law.

SEC. 5. CHESAPEAKE BAY RESEARCH BOARD.

(a) There is established a Chesapeake Bay Research Board (hereafter referred to in this section as the "Board").

(b)(1) The Board shall consist of—

(A) four members selected by the Governor of Virginia;

(B) four members selected by the Governor of Maryland; and

(C) seven members selected by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of the Army, the Secretary of the Interior, and the Secretary of the Smithsonian Institution.

(2) The Secretary, the Governor of Maryland, and the Governor of Virginia shall ensure that the Board is comprised of individuals who are qualified to perform the functions of the Board and who represent the interests of Federal, State, and local government, industry, the public, and the scientific and environmental communities.

(c) The Chairman of the Board shall be elected annually by the membership of such Board.

(d) The Board shall—

(1) develop a Chesapeake Bay Research Plan consistent with the missions and interests of appropriate agencies and States, and update this plan biennially to reflect changing priorities in Federal and State management needs as well as the need for fundamental research;

(2) review and evaluate, on a periodic basis, Federal research programs pertaining to the Chesapeake Bay area, and ascertain the extent to which the research programs are consistent with the Chesapeake Bay Research Plan; and

(3) submit an annual report to the Congress and the Governors of Maryland and Virginia on research programs, current and planned, pertaining to the Chesapeake Bay area and their relationship to the Chesapeake Bay Research Plan, together with any recommendations for improving the coordination of such research.

(e) Members of the Board (other than those who are employees of the Federal or State governments) may, while engaged in business for the Board, receive compensation for travel expenses and per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703 of title 5, United States Code, for persons employed intermittently in Government service.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Office to carry out the purposes of this Act the sum of $500,000 for each of the three fiscal years ending on September 30, 1982, September 30, 1983, and September 30, 1984.

SEC. 7. RELATIONSHIP OF ACT TO EXISTING FEDERAL, STATE, AND LOCAL POWERS.

(a) Nothing contained in this Act shall be construed to affect the jurisdiction, powers, or prerogatives of any existing department, agency, or officer of the Federal Government or of any State or local government.

(b) For purposes of administering this Act (including the preparation of an annual report pursuant to section 4(c)(8)) the Board shall solicit from the appropriate Federal departments and agencies and the Governors, recommendations that may be appropriate with respect to any existing law which may affect or be involved in research programs.

SEC. 8. TERMINATION.

This Act and the authority conferred by this Act shall terminate on September 30, 1984. At such time the General Accounting Office shall submit to the Congress an evaluation of the effectiveness of the Board, Office, and of this Act. In the preparation of such report, comments shall be solicited from Federal agencies, the Governors of Maryland and Virginia, and the research institutions, industries, and environmental and citizen's groups concerned with the Chesapeake Bay area.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-950), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The purpose of H.R. 4417, as amended, is to protect and preserve Chesapeake Bay and its surrounding area by coordinating research conducted by a number of federal agencies.

The bill seeks to accomplish this objective by establishing a Chesapeake Bay Research Board composed of fifteen members: four appointed by the Governor of Maryland; four appointed by the Governor of Virginia; and seven members appointed by the Secretary of Commerce, in consultation with the EPA Administrator, the Secretary of the Army, the Secretary of the Interior, and the Secretary of the Smithsonian Institution.

The Board is charged with preparing a plan of research for Chesapeake Bay and reviewing, evaluating, and commenting upon to the appropriate federal agencies the consistency of those federal research programs with the research plan.

The Board is to be staffed by an office within the Department of Commerce and shall exist for a period of three years, at which time the GAO shall report to the Congress on the effectiveness of the Board and Office.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COCONIO NATIONAL FOREST LAND CONVEYANCE

The Senate proceeded to consider the bill (S. 1985) to authorize the Secretary of Agriculture to convey certain lands in the State of Arizona, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 3, line 18, strike "deposited", and insert in lieu thereof the following: "received shall be deposited into a special fund in the Treasury which when appropriated";

On page 4, line 4, strike "value" through and including "Arizona" on line 7, and insert in lieu thereof "value";

So as to make the bill read:

S. 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Agriculture (hereafter in this Act referred to as the "Secretary") is authorized to convey by quitclaim deed, subject to the provisions of subsections (b) and (c) of this Act, all right, title, and interest of the United States in and to the following described tract of lands and improvements thereon:

GILA AND SALT RIVER MERIDIAN

(Coconino County, Arizona)

Township 21 North, Range 7 East

Section 15:

North half northeast quarter,

Northeast quarter northwest quarter,

Northeast quarter southeast quarter northwest quarter northwest quarter,

North half southeast quarter southeast quarter northwest quarter northwest quarter.

Section 16:

South half northeast quarter northeast quarter northwest quarter,

Northwest quarter northeast quarter northwest quarter,

South half northeast quarter northwest quarter,

Northwest quarter northwest quarter,

North half northeast quarter southwest quarter northwest quarter,

Southeast quarter northeast quarter southwest quarter northwest quarter,

North half northwest quarter southwest quarter northwest quarter,

East half southeast quarter southwest quarter northwest quarter,

Southeast quarter northwest quarter.

The area described contains 256.25 acres more or less.

(b)(1) Any conveyances pursuant to subsection (a) of this Act shall be conditioned upon the Secretary entering into agreements or land exchanges, sufficient to assure the Secretary that any party with whom such agreements or land exchanges are to be made will construct on a site to be determined by the Secretary, administrative improvements equal in value to the lands and improvements authorized to be conveyed by subsection (a). The lands and improvements may be conveyed by a series of transactions or land exchanges.

(2) Each party to whom conveyances are to be made may, in the discretion of the Secretary, deposit cash in an amount not less than the fair market value, to be determined at the time of conveyance, of the lands and improvements conveyed. The cash so received shall be deposited into a special fund in the Treasury which when appropriated is authorized to remain available until expended by the Secretary for the purposes of constructing administrative improvements as described in this Act. If the value of any land and improvements thereon authorized to be conveyed by subsection (a) exceeds the value of administrative improvements determined to be necessary by the Secretary to be constructed with respect to such land under this Act, the party to whom such conveyance is to be made shall make a cash payment to the United States in an amount equal to such difference in value.

(c)(1) Of the tract of land described in subsection (a), the Secretary shall offer to sell at the fair market value, as determined on the date of enactment of this Act, to the Flagstaff Medical Regional Center, Flagstaff, Arizona, not to exceed 18.25 acres immediately adjacent to said Flagstaff Medical Regional Center and to the city of Flagstaff, Arizona, not to exceed 132.5 acres, under special use permit in effect on the date of enactment of this Act to the city of Flagstaff. Such offers to sell to the Flagstaff Medical Regional Center and to the city of Flagstaff shall remain in effect for periods of not to exceed 3 years and 10 years, respectively. Subject to the limitations contained in this paragraph, the city of Flagstaff and the Flagstaff Medical Regional Center may identify any specific tracts of land they want to purchase.

(2) Except for any land to be conveyed to the Flagstaff Medical Regional Center and the city of Flagstaff, the Secretary shall solicit public offers for the remaining lands and improvements authorized under subsection (a). All offers shall be publicly opened at the time and place stated in the solicitation in accordance with the administrative requirements of the Secretary. The Secretary shall consider price and land values before entering into agreements or land exchanges with any party whose offer conforming to the solicitation notice is determined by the Secretary to be most advantageous to the Government. Notwithstanding any other provision of this Act, the Secretary may reject any offer if the Secretary determines that such rejection is in the public interest.

The amendments were agreed to.

The bill was ordered to be engrossed and to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-954), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The first tract authorized to be conveyed by S. 1985 contains about 124 acres and is the Knob Hill Administrative Site of the Coconino National Forest. The Flagstaff Regional Medical Center, immediately adjacent to the tract, currently uses a portion of the site as a parking lot under a special use permit. The Medical Center needs to expand its facilities to meet long-term community needs. This need can be met by conveyance of about 18 acres of the Administrative Site, that contains the existing Forest Service facilities. The Medical Center would have three years in which to complete the purchase. The balance of the 124-acre site would no longer be appropriate for National Forest purposes and would be made available for sale or exchange to private parties on a competitive basis. The second tract contains about 132.5 acres and has been since 1917 under continuous special use permit to the city of Flagstaff for public park purposes. Under the provisions of S. 1985, the offer to sell this tract to the city government would remain open for 10 years.

The bill requires that the parties who receive the conveyed land shall construct administrative improvements equal in value to the lands and improvements sold. This could be accomplished, at the discretion of the Secretary, by a deposit of cash into a special fund which would be available upon appropriation for the construction of replacement facilities for the Knob Hill Administrative Site. A suitable site is available on National Forest land several miles east of the city. The purchaser would pay any difference between the cost of constructing the new administrative facilities and the amount of the lands and improvements sold into the General Treasury.

UNDERGROUND COAL GASIFICATION AND UNCONVENTIONAL GAS RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT

The Senate proceeded to consider the bill (S. 2774) to authorize an accelerated, research, development, and demonstration program to advance in situ technologies for energy production from underground coal deposits and unconventional gas resources, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Underground Coal Gasification and Unconventional Gas Research, Development, and Demonstration Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the United States is faced with a finite and diminishing resource base of domestic petroleum and natural gas;

(2) the current imbalance between supply and demand for fuels and energy in the United States is likely to worsen over the next decade even with strong energy conservation efforts;

(3) the national security and economic well-being of the United States is endangered by its dependence on imported energy supplies which are subject to source limitations, artificial pricing mechanisms, and supply interruptions;

(4) the United States possesses abundant resources of coal and unconventional natural gas which can be utilized by underground coal gasification and unconventional natural gas recovery, respectively;

(5) underground coal gasification techniques and unconventional natural gas recovery techniques can produce clean fuels, including synthetic or natural gas, gasoline, and methanol, and generate electricity;

(6) the domestic resource base for underground coal gasification and unconventional gas resources equals more than one trillion tons of coal and one thousand trillion cubic feet of natural gas, which is equivalent to twice the world's supply of recoverable oil;

(7) the technical obstacles to widespread commercial production of gas from underground coal and unconventional natural gas resources can be defined and solved;

(8) projected product costs of gas from underground coal gasification and unconventional natural gas recovery are estimated to be competitive with expected world energy prices;

(9) environmental consequences of underground coal gasification and unconventional natural gas recovery could be significantly less than those of conventional or synthetic fuels coal utilization; and

(10) it is contemplated that the ten year program established by this Act may require the expenditure of $200,000,000 for underground coal gasification facilities and $400,000,000 for unconventional natural gas recovery projects.

(b) It is the purpose of this Act to—

(1) establish as a national goal the demonstration of a production capacity equivalent to at least fifteen million cubic feet per day of synthetic natural gas or energy product equivalent from underground coal gasification by 1987;

(2) establish as a national goal the construction and operation of at least one commercial underground coal gasification plant by 1992;

(3) establish as a national goal a production capacity equialent to two trillion cubic feet per year of natural gas from underground coal gasification by the year 2000; and

(4) establish as a national goal production of three trillion cubic feet of unconventional natural gas by 1990 and six trillion cubic feet by the year 2000.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "underground coal gasification" means a method whereby coal in place is partially oxidized with oxygen or air and steam producing a medium- or low-heating value gas;

(2) "unconventional natural gas" means natural gas produced from geopressured brines, occluded natural gas produced from coal seams, natural gas produced from Devonian shale, and natural gas produced from tight formations;

(3) "energy product equivalent" means the energy equivalent, in British thermal units of the stated amount of natural gas or other energy product. Such products may include, but need not be limited to synthetic natural gas, methanol, gasoline, electricity, or chemicals; and

(4) "Secretary" means the Secretary of Energy.

COMPREHENSIVE PROGRAM MANAGEMENT PLAN

SEC. 4. (a) The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct of the research, development, and demonstration activities under sections 4, 5, and 6 of this Act. Such plan shall include at a minimum—

(1) a detailed description of the functional organization for program management;

(2) a program strategy, including identification of milestones and critical paths, which will be used to achieve the purposes of this Act;

(3) a five-year and ten-year program implementation schedule with associated budget and program management resources requirements; and

(4) supporting research needed to solve problems which may inhibit or limit development of underground coal gasification and unconventional gas production.

(b) The Secretary shall transmit the comprehensive program management plan developed pursuant to subsection (a) to the Congress not later than January 30, 1981.

RESEARCH AND DEVELOPMENT

SEC. 5. (a) The Secretary is authorized and directed to establish research and development activities incorporating presently existing efforts in these areas, as may be necessary to meet the goals of this Act as set forth in section 2. Such activities shall include evaluations, field tests, supporting research, and collection of information, data, criteria, and specifications necessary to support the design efforts undertaken pursuant to section 6.

(b) The Secretary shall, for the purpose of performing his responsibilities pursuant to this Act, solicit proposals and evaluate any reasonable new or improved technology, submitted thereunder, a description of which is submitted to the Secretary in writing, which could lead or contribute to the development of underground coal gasification and unconventional natural gas recovery technology.

(c) The Secretary shall work closely with the appropriate research and technical organizations and industry representatives in order to assure the best possible use of available expertise in carrying out the provisions of this Act, consistent with existing law.

DEMONSTRATION

SEC. 6. (a) The Secretary is authorized and directed to solicit proposals for the design of underground coal gasification and enhanced gas recovery facilities of sufficient size to demonstrate the technical and economic feasibility of producing synthetic and unconventional natural gas.

(b) Subject to subsection (c) of this section, the Secretary is authorized to enter into agreements to construct the following facilities:

(1) a field demonstration facility with a production capacity equivalent to at least fifteen million standard cubic feet per day of synthetic natural gas by the year 1987 from underground coal gasification;

(2) a field demonstration facility with a significant gas production on a continuous basis for a sufficient period of time to collect and analyze system performance and reliability data to determine the commercial viability of the underground coal gasification technology utilized;

(3) no more than six field tests of increased gas production from unconventional gas formations through the use of advanced fracturing technology;

(4) no more than two field tests for the demonstration of unconventional natural gas production from geopressure reservoirs; and

(5) no more than three coordinated field demonstrations of the production of unconventional natural gas from coal seams.

(c) No funds appropriated pursuant to the authorization made in subsection (b) of this section may be expended until the Secretary submits the plans and justification for any underground coal gasification facility or unconventional natural gas recovery facility to be built pursuant to this section, to the appropriate committees of Congress, and waits thirty legislative days. The Secretary shall include the total cost of the facility, proposed participants in the project, and other relevant information.

COMMERCIALIZATION

SEC. 7. (a) The Secretary is authorized and directed to prepare a comprehensive commercialization plan that will permit realization of the national goals stated in section 2 for underground coal gasification and unconventional natural gas production. Such a plan will include—

(1) an analysis of the existing industrial infrastructure and identification of modifications in Government policy necessary to establish a sufficient industrial infrastructure to meet the national goals;

(2) the analysis of any legal and institutional barriers, specifically including—

(i) an analysis of the legal ownership of free methane in coal seams; and

(ii) an analysis of the effect of the inclusion of underground coal gasification in land use planning and coal activity planning; and

(3) an assessment of the necessary Government actions to assist in eliminating economic uncertainties through financial incentives, such as loan guarantees, price supports, pricing policy, or other inducements.

(b) As part of the initiatives for design of the underground coal gasification and unconventional natural gas demonstration projects authorized pursuant to section 6, each respondent shall include in its proposal (1) a plan leading to a full-scale, commercial facility based on the technology used in the proposed demonstration system; and (2) a commercialization strategy which includes the respondent's plans for future participation toward meeting the national goal.

(c) The Secretary shall transmit such comprehensive commercialization plan to the Congress within two years after the enactment of this Act.

REPORTS

SEC. 8. As a separate part of the annual report submitted pursuant to section 801 of the Department of Energy Organization Act (Public Law 95–91), the Secretary shall submit to Congress an annual report of activities pursuant to this Act. Such report shall include—

(1) modifications to the comprehensive plans and programs for implementing this Act;

(2) an evaluation of the state of underground coal gasification and unconventional natural gas recovery research and development in the United States;

(3) a description of the contracts and grants made under this Act;

(4) an analysis of the progress made in commercializing underground coal gasification and unconventional natural gas recovery technology; and

(5) suggestions for improvements in underground coal gasification and unconventional natural gas recovery research and development, including recommendations for legislation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. (a) The Secretary may use during the fiscal year ending September 30, 1981, such sums as may be provided for such purposes in appropriation Acts pursuant to the authority in S. 2332 (a bill to authorize appropriations to the Department of Energy for civilian programs for fiscal year 1981, and for other purposes and reported by the Senate Committee on Energy and Natural Resources on May 8, 1980).

(b) There is authorized to be appropriated, for the fiscal year ending September 30, 1982, $100,000,000, including not less than $25,000,000 for underground coal gasification activities, inclusive of any funds authorized by any other Act, to carry out the functions vested in the Secretary by this Act.

● Mr. PERCY. Mr. President, this 96th Congress has had the difficult task of making some of the hardest long-term decisions concerning the energy future of the United States that any Congress has ever faced. The windfall profit tax, the Energy Mobilization Board, the gasoline ration plan, the Energy Security Act, and others, all were issues surrounded by significant controversy throughout their consideration here on the floor. Our debates were important ones; they highlighted the very real and legitimate differences the Members of this body have had regarding development of an optimum path toward energy self-sufficiency.

How refreshing and encouraging it is, however, to see the Senate unite behind the in situ coal gasification bill we are considering today, S. 2774. The "Underground Coal Gasification and Unconventional Gas Research, Development and Demonstration Act" truly represents a decisive breakthrough in our exploration of new and promising methods to utilize our abundant domestic energy reserves. I have had the privilege of cosponsoring S. 2774 from the start; I urge the House of Representatives to follow the Senate's lead and pass this legislation as quickly as possible.

Mr. President, over 90 percent of our Nation's vast coal reserves are not technically or economically recoverable through conventional underground or surface mining. Similarly, great oil shale reserves in the eastern half of the United States—stretching from Michigan to Mississippi, from Illinois to Pennsylvania—are available for recovery. Because of a lower oil content than western shale, usually below 15 barrels per ton oil equivalent, these reserves may never be tapped. It has long been known that underground gasification of these minerals offered a viable, and an environmentally sound method for utilization. So far, however, private industry has not been able to make the necessary capital investment to begin this work.

S. 2774 represents a definitive statement by the Senate that in situ gasification can and must begin now. The bill authorizes an accelerated research, development, and demonstration program to advance in situ technologies for coal and for other unconventional gas resources.

Its goals are simple: By 1987, there would be a demonstration plant producing at least 15 million cubic feet daily of synthetic gas from underground gasification. By 1992, at least one commercial

plant would be in operation. Within 10 years, the Nation would be receiving 3 trillion cubic feet of unconventional gas, 6 trillion feet would be available by 2000.

To be sure, we cannot rest lightly with the passage of S. 2774, Mr. President. We are hereby establishing a comprehensive management plan, to be completed by the Secretary of Energy next year. That plan will spell out the questions still to be raised, and a process for answering them, before this Nation embarks upon a massive in situ gasification program. The 1980 Department of Energy authorization bill approves a total of $88.4 million to begin the research and development for in situ work on coal and other nonconventional gas resources.

More money will be required in future years, however, to assure the development of this promising technology. We must be ready to provide it. In situ gasification can be cheaper than other fossil fuel gasification options, for its capital requirements are fewer. The process is as environmentally benign, if not more benign, than conventional conversion methods. Coupled with the obvious value of being able to utilize energy resources which might not be otherwise available to us, these attractions make the in situ process a worthwhile, and an essential one for our Nation.

I am proud to cosponsor this legislation, and I urge its quick passage into law.●

UP AMENDMENT NO. 1651

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MATSUNAGA I send to the desk two technical amendments to the reported committee substitute amendment, and I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The Senator from West Virginia (Mr. ROBERT C. BYRD) on behalf of Mr. MATSUNAGA proposes an unprinted amendment numbered 1651.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the technical amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

On page 16, line 20, insert the following after "authorized to enter into agreements": ", as provided for in advance in appropriation Acts,".

On page 13, line 24, and line 25, after "cubic feet" insert the following in both places: "per year".

Mr. MATSUNAGA. Mr. President, I rise in strong support of the bill S. 2774, the Underground Coal Gasification and Unconventional Gas Research, Development and Demonstration Act, which I introduced on May 30 of this year with 27 cosponsors. This bill would establish an aggressive program to encourage the use of two vast domestic energy resources which have not been adequately considered by the Congress.

In July 1979, the President called for a national program which would significantly reduce our dependence on imported oil. One of the suggested ways was to encourage increased production of unconventional natural gas by providing various Government incentives. In order to encourage private industry to assume the great risks involved in applying new technologies to relatively unknown geological structures, the President had proposed that the Energy Security Corporation provide financial incentives for such projects. However, when the legislation establishing the Synthetic Fuels Corporation was passed, there was no mention of any assistance for the development of this vast potential resource.

Similarly, there was very little mention of help to those who wish to explore the technology for underground coal gasification. Most of the funding provided was for assisting the development of surface gasification and liquefaction, which are much more capital intensive, and potentially more damaging to the environment.

Both of the new energy resources which my bill seeks to develop could slip through the crack, and never fully realize their vast potential. During the hearings held on the bill witnesses expressed this fear and urged enactment of S. 2774.

The bill S. 2774 would authorize an accelerated research, development, and demonstration program to advance in situ technologies for energy production from underground coal deposits and unconventional gas resources. It would, for the first time, establish in this country an aggressive policy during the next decade to research, develop, and demonstrate these technologies and to assure significant production of synthetic natural gas and unconventional natural gas resources.

The goals established by this Act are significant. By 1987 there will be a demonstration plant producing, at least, 15 million cubic feet per day of synthetic natural gas from underground coal gasification leading to the construction and operation of at least one commercial underground coal gasification plant by 1992. In addition, by 1990, the Nation will be producing 3 trillion cubic feet of unconventional gas. Then, by the year 2000, we will be producing 2 trillion cubic feet of gas per year from underground coal gasification and 6 trillion cubic feet per year of gas from unconventional gas resources. By way of comparison we used 19.5 trillion cubic feet of natural gas in 1979 in this country.

The potential for underground coal gasification in the United States is tremendous. The Western Plain States have over 920 billion tons of coal which could be reached by this technology. Alaska alone has over 640 billion tons of coal which could be similarly reached. Nationwide we have over 1.8 trillion tons of coal available for underground coal gasification; this represents 28 percent of the entire coal resource.

Domestic production and reserves of natural gas—209 Tcf in 1978—dominated by conventional gas resources, have declined steadily over the past few years. In contrast, the potential for production from unconventional gas reserves is tremendous, with reserve estimates of 50 to 600 Tcf for Western tight sands, 75 to 700 Tcf for Eastern Devonian shales, 72 to 860 Tcf for methane from coal seams, and 3,100 to 50,000 Tcf from geopressured aquifers. The recently issued National Petroleum Council report on unconventional gas reserves estimates that up to [illegible] Tcf could be produced if favorable pricing and technology development occur, especially advanced hydraulic fracturing.

Mr. President, it is time that we recognize these resources and establish an aggressive new national policy that will fully utilize them. I urge the Senate to consider and pass the bill S. 2774, in order to accomplish this.

The PRESIDING OFFICER. The question is on agreeing to the amendment (UP No. 1651).

The amendment was agreed to.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

M. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, the next three calendar numbers are without amendment. I ask unanimous consent that they, including the two on page 26, without amendment, Calendar Orders Nos. 1061 and 1062, be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

SANDRA REYES PELLECER

The bill (S. 2373) for the relief of Sandra Reyes Pellecer, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2373

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Sandra Reyes Pellecer shall be classified as a child within the meaning of section 101(b)(1)(F) of such Act, upon approval of a petition filed on her behalf by Mrs. Greta J. Pellecer, citizen of the United States, pursuant to section 204 of such Act. No natural parent, brother, or sister if any, of Sandra Reyes Pellecer shall, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96–960), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The beneficiary, a native and citizen of Guatemala, was born on March 3, 1962, and resides in Battleground, Washington with her guardians, the George Pifer, Sr. family. She is a student at the Columbia Adventist Academy, and her tuition and support are provided by her adoptive parents, Mr. and Mrs. Samuel Pellecer.

MERCHANTS NATIONAL BANK OF MOBILE

The resolution (S. Res. 291) to refer the bill S. 2052 entitled "A bill for the relief of the Merchants National Bank of Mobile" to the Court of Claims was considered and agreed to as follows:

Resolved, That the bill (S. 2052 entitled "A bill for the relief of The Merchants National Bank of Mobile", now pending in the Senate, together with all the accompanying papers, is referred to the Chief Commissioner of the United States Court of Claims, and the Chief Commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2508 of title 28, United States Code, notwithstanding the bar of any statute of limitation, laches, or bar of sovereign immunity, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusion thereon as shall be sufficient to inform the Congress of the nature and character of the demand of the claim, legal or equitable, against the United States, or a gratuity in the amount, if any, legally or equitably due from the United States to the claimant.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-961), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

S. 2052 would authorize payment to The Merchants National Bank of Mobile (Bank) of up to $809,699 as compensation for losses because of Defense Logistics Agency (DLA) actions (and those of DLA's fiscal agent, the Federal Reserve Bank of Atlanta) in mistakenly issuing a V-Loan guarantee, subsequently cancelling that guarantee, and issuing a reduced replacement guarantee. S. Res. 291 would refer the matter to the Court of Claims.

CADDO LAKE COMPACT

The bill (S. 2228) to grant the consent of the United States to the Caddo Lake compact between the States of Louisiana and Texas, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2228

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The consent of Congress is hereby given to the Caddo Lake Compact between the States of Louisiana and Texas, of January 26, 1979, as ratified by the States of Louisiana and Texas, as follows:

CADDO LAKE COMPACT

PREAMBLE

The States of Louisiana and Texas, by acts of their respective governors and based upon previous acts of their legislatures, have appointed representatives, including their respective Red River Compact Commissioners, to negotiate, in the interest of interstate comity and equitable apportionment and use of water, a Compact on Caddo Lake to augment and amplify the provisions of the Red River Compact dealing with Caddo Lake.

The Act of Congress, Public Law No. 346 (84th Congress, First Session), grants consent of federal government to the negotiation of this Compact; pursuant to that act, the President has designated the representative of the United States.

Because the water and water rights of the States of Oklahoma and Arkansas under the Red River Compact are completely unaffected by this compact, Oklahoma and Arkansas have no objection to this compact and did not participate in the negotiation of this compact.

In order to resolve current controversies regarding the use of Caddo Lake water, controversies not adequately dealt with in the Red River Compact, the States of Texas and Louisiana, acting through their authorized representatives, have agreed to an equitable apportionment and use of the water of Caddo Lake and do hereby submit this Compact to amplify the Red River Compact and recommend that it be adopted by their respective legislatures and approved by Congress as hereinafter set forth:

SECTION 1. PURPOSES

In addition to the purposes specified in the Red River Compact, this compact is intended to preserve and protect Caddo Lake as a valuable environmental, cultural, and natural resource and enhance water resource and recreational potentials, while allowing its utilization for water needs of adjacent portions of Louisiana and Texas. A primary means of accomplishing these purposes is to raise the spillway elevation of Caddo Lake to an elevation of 170.5 feet above mean sea level.

Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States or those claiming under its authority in, over, and to water of Caddo Lake; nor shall this Compact be construed as interfering with the application of the National Environmental Policy Act of 1969.

SECTION 2. RELATION TO THE RED RIVER COMPACT

(a) This Compact augments and amplifies the Red River Compact. It shall be construed harmoniously with the Red River Compact; it is not intended to amend, replace, or supersede any provisions of the Red River Compact, nor are any of the provisions of the Red River Compact intended to prevent the effective implementation of this Compact.

(b) In the event the Red River Compact is not enacted by all concerned states and ratified by Congress, or in the event that such action occurs after the effective date of this Compact, this compact shall be fully effective pursuant to the provisions of Section 9.

SECTION 3. DEDICATION

The States of Louisiana and Texas hereby dedicate the water of Caddo Lake below 167.5 feet above mean sea level to serve as a recreation and navigation pool. Neither Louisiana nor Texas shall allow the diversion or consumptive use of the water of Caddo Lake below that level except as authorized in this Compact.

SECTION 4. DIVERSION OF DEDICATED WATER

(a) In order to divert water when the level of Caddo Lake is below 167.5 feet above mean sea level, any water user diverting more than one thousand gallons per day from Caddo Lake must submit water plans to the Caddo Lake Commission providing for conservation and efficient use of water.

(b) The Caddo Lake Commission shall authorize users with approved water use plans to divert water from Caddo Lake when the level of water is below 167.5 feet above mean sea level, at times and under conditions authorized by the Caddo Lake Commission. The Caddo Lake Commission shall give priority to domestic users, municipalities, or municipal use by political subdivisions and industries, in that order.

(c) In the event any user of water from Caddo Lake shall purchase water which is delivered into Caddo Lake from another source, that user making the purchase shall have the use of such purchased water, minus transportation or storage losses, if any, as determined by the commission, free from the regulation of the Caddo Lake Commission.

SECTION 5. OPERATING RULES

As provided in Section 7, the Caddo Lake Commission shall have the power to establish criteria to govern the diversion and use of water from Caddo Lake. Unless modified, supplemented or changed by the Caddo Lake Commission, the following rules shall govern the diversion and use of water from Caddo Lake.

(a) The following operating rules shall be in effect until Caddo Lake is enlarged by raising the spillway level as provided in Section 8.

(1) Whenever water is spilling over the existing spillway at 168.5 feet above mean sea level, each state may withdraw or divert water from Caddo Lake without restriction.

(2) Whenever Caddo Lake is not spilling over the existing spillway at 168.5 feet above mean sea level the total consumptive use by each State shall not exceed 8,400 acre-feet during the drawdown period; provided that neither state shall divert more than 3,600 acre-feet during any one month or 4,800 acre-feet during any two consecutive months.

(3) In addition to the requirements of Section 5(a)(2), when the lake level of Caddo Lake is at or below 167.5 feet mean sea level,

(a) Any diversion by either state must be approved by the Caddo Lake Commission, as provided in Section 4; and,

(b) The total consumptive use by each state shall not exceed an average of 1,000 acre-feet per month, or more than 3,000 acre-feet during any two consecutive months; however,

(c) The limitations above shall not apply to a municipality or political subdivision during an emergency caused by the destruction or contamination of the municipality's or political subdivision's other water source.

(b) The following operating rules shall be in effect after Caddo Lake is enlarged by raising the spillway level as provided in Section 8.

(1) Whenever water is spilling over the raised spillway level, each state may withdraw or divert water from Caddo Lake without restriction.

(2) Whenever Caddo Lake is not spilling over the raised spillway, and the lake surface elevation is above 167.5 feet above mean sea level.

(a) If each state obtains fifty percent of the water above 168.5 feet above mean sea level as authorized in Section 8, each state shall be entitled to divert 16,800 acre-feet during the drawdown period.

(b) If each state does not obtain fifty percent of the water above 168.5 feet above mean sea level as authorized in Section 8, the total consumptive use by that state shall not be reduced below the amount of water to which it was entitled under Section 5(a).

(3) Whenever Caddo Lake is at or below 167.5 feet above mean sea level, no diversions from Caddo Lake may be made except in the case of a catastrophic event (such as destruction of a municipality or political subdivision's other water supply source or a drawdown which is more severe than the critical drawdown of record). Any emergency withdrawal or diversion must be specifically authorized by the Caddo Lake Commission, as provided in Section 4.

(c) The term "drawdown", as used herein, means that period commencing on the first day water ceases spilling over the existing spillway (or the raised spillway, if Caddo Lake is enlarged as authorized in Section 8) and continuing so long as the Caddo Lake surface elevation continues to fall, until the day when appreciable inflow reaches Caddo Lake, causing the Caddo Lake surface elevation to rise, leading to a spill from Caddo Lake.

SECTION 6. ADMINISTRATION

(a) There is hereby created an interstate administrative agency to be known as the "Caddo Lake Commission", hereinafter called the "Commission." It shall be composed of the commissioners of Louisiana and Texas who serve as Red River Compact Commissioners and an appointed commissioner of each state who resides within one of the

parishes or counties in which Caddo Lake is located. The commissioners shall choose one member of the commission to serve as a voting chairman. In the event this compact becomes effective prior to, or without, the Red River Compact, the governors of Texas and Louisiana shall appoint three commissioners to serve as Caddo Lake Commissioners. These commissioners, or their successors, shall serve until the Red River Compact becomes effective and the offices of the non-local commissioners are assumed by the states' Red River Compact Commissioners.

(b) The Commission shall meet and organize within sixty days after the effective date of this compact. Thereafter, meetings shall be held at such time and places as the Commission shall decide.

(c) Each commissioner shall have one vote; however, if one or more commissioner(s) from a state is absent, the commissioner(s) in attendance from that state is authorized to vote on behalf of the absent commissioner from that state. Any action concerning the administration of this compact shall require four votes.

(d) The salaries and personal expenses of each state's commissioners shall be paid by that state.

(e) All expenses incurred by the Commission shall be borne equally by the states of Louisiana and Texas and shall be paid by the Commission out of the "Caddo Lake Commission Fund." Such fund shall be initiated and maintained by equal payments of each state into the fund. Disbursements shall be made from the fund in such a manner as may be authorized by the Commission. Such fund shall not be subject to audit and accounting procedures of either state; however, all receipts and disbursements of the fund by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audits shall be included in and become part of the annual report of the Commission. Each state shall have the right to make its own audit of the accounts of the Commission at any reasonable time.

SECTION 7. DUTIES AND POWERS

(a) The Commission shall have the power to:

(1) Adopt rules and regulations governing its operation and enforcement of the terms of the compact;

(2) Establish and maintain an office for [illegible] of its affairs and, if desirable, from time to change its location;

[illegible] with such engineering, legal, clerical and other personnel as it may determine necessary for the exercise of its functions under this compact without regard to the Civil Service Laws of Louisiana and Texas; provided that such employees shall be paid by and be responsible to the commission and shall not be considered employees of any state;

(4) Acquire, use, and dispose of such real and personal property as it may consider necessary;

(5) Enter into contracts with appropriate state or federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records and for the preparation of reports;

(6) Secure from the head of any department or agency of the federal or state government such information as it may need or deem to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed; provided such information is not privileged and the department or agency is not precluded by law from releasing same;

(7) Make findings, recommendations, or reports in, connection with carrying out the purposes of this compact, including, but not limited to, a finding that Louisiana or Texas is or is not in violation of any of the provisions of this compact. The Commission is authorized to make such investigations and studies and to hold such hearings as it may deem necessary for said purposes. It is authorized to make and file official certified copies of any of its findings, recommendations, or reports with such officers or agencies of Louisiana or Texas or the United States as may have any interest in or jurisdiction over the subject matter. The makings of findings, recommendations, or reports by the Commission shall not be a condition precedent to the instituting or maintaining of any action or proceeding of any kind by Louisiana or Texas, in any court or tribunal, or before any agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions; and

(8) Print or otherwise reproduce and distribute its proceedings and reports.

(b) The commission shall:

(1) Cause to be established, maintained, and operated such stream, reservoir, and other gaging stations as are necessary for the proper administration of the compact;

(2) Cause to be collected, analyzed, and reported such information on stream flows, water quality, water storage and such other data as are necessary for the proper administration of the Compact;

(3) Adopt reasonable standards and criteria for the approval of water use plans required by Section 4, and procedures for the submission thereof;

(4) Establish operating criteria to govern the diversion and use of water from Caddo Lake;

(5) Perform all other functions required of it by the compact and do all things necessary, proper and convenient in the performance of its duties thereunder;

(6) Prepare and submit to the Governors of Louisiana and Texas a budget covering the anticipated expenses of the Commission for the following fiscal year or biennium;

(7) Prepare and submit an annual report to the Governors of Louisiana and Texas and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

(8) Make available to the governor or to any official agency of Louisiana or Texas or to any authorized representative of the United States, upon request, any information within its possession;

(9) Not incur any obligation in excess of the unencumbered balance of its funds, nor pledge the credit of Louisiana or Texas; and

(10) Make available to Louisiana or Texas or the United States in any action arising under this compact, without subpoena, the testimony of any officer or employee of the Commission having knowledge of any relevant facts.

SECTION 8. ENLARGEMENT OF CADDO LAKE

(a) It is the intention of Louisiana and Texas to enlarge Caddo Lake by raising the spillway level two feet. Each state has the guaranteed right to obtain fifty percent of the water above 168.5 feet above mean sea level made available from such an enlargement, subject to paying one-half of the total costs. Total costs of enlargement are equal to the sum of the cost of spillway construction, the cost of land and flowage easements in Texas, the current market value of land and flowage easements in Louisiana, as well as the administrative expenses incurred for each of the above listed items.

(b) Each state may obtain a proportionately larger share of the water resulting from the enlargement by paying the portion of the cost which would otherwise be paid by the other state under Section 8(a).

(c) Should Louisiana, or one of its political subdivisions, unilaterally raise the Caddo Lake spillway level without obtaining flowage easements in Texas, Louisiana would have the right to all water made available by the enlargement: *Provided, however*, this provision constitutes an express waiver of any sovereign immunity or Eleventh Amendment defenses which might otherwise be available to the State of Louisiana in an action for damages by a Caddo Lake property owner in Texas for damage resulting from such action.

(d) This Section does not prevent the enlargement of Caddo Lake by raising the spillway level some amount less than two feet, nor does it prevent a subsequent enlargement of Caddo Lake which might ultimately raise the level of Caddo Lake's spillway more than two feet.

SECTION 9. RATIFICATION AND EFFECTIVE DATE OF COMPACT

(a) Notice of ratification of this Compact by the Legislatures of Louisiana and Texas shall be given by the Governor thereof to the Governor of the other state and to the President of the United States. The President is hereby requested to give notice to the Governors of Texas and Louisiana of the consent to this Compact by the Congress of the United States.

(b) This compact shall become effective, binding, and obligatory when, and only when:

(1) It has been duly ratified by Louisiana and Texas;

(2) The Red River Compact has been duly ratified by the State of Texas; and

(3) It has been consented to by any Act of the Congress of the United States, which Act provides that:

Any other statute of the United States, to the contrary notwithstanding, in any case or controversy: Which involves the construction or application of this Compact; in which Louisiana or Texas is a plaintiff; and which is within the judicial power of the United States as set forth in the Constitution of the United States;

and without any requirement, limitation, or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character, or legal status of any of the other proper parties plaintiff or defendant in such case or controversy:

The consent of Congress is given to name and join the United States as a party defendant or otherwise in any such case or controversy in the Supreme Court of the United States if the United States is an indispensable party thereof.

(c) The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or State court, in matters in which the Supreme Court or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include but not be limited to suits between Louisiana and Texas, and that the venue of such case or controversy may be brought in any judicial district in which the acts complained of, or any portion thereof, occur.

Signed and Approved This Twenty-sixth Day of January, 1979.

Fred Parkey, Wichita Falls, Texas.
Arthur Theis, Baton Rouge, Louisiana.
William M. Huffman, Marshall, Texas.
Senator Don Williamson, Shreveport, Louisiana.
Senator Ed Howard, Texarkana, Texas.
Calhoun Allen, Shreveport, Louisiana.

SEC. 2. In order to carry out the purposes of this Act, and the purposes of section 9 of this compact consented to by Congress by this Act, the congressional consent to this compact includes and expressly gives the consent of Congress to have the United States of America named and joined as a

party defendant or otherwise in the United States Supreme Court or other court of concurrent jurisdiction in any case or controversy, and if such case or controversy involving the construction or application of this compact, in which one or more of the signatory States to this compact is a plaintiff, and which is within the judicial power of the United States as set forth in the Constitution of the United States, if the United States of America is an indispensable party; and without any requirement, limitation, or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character, or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy.

SEC. 3. The right to alter, amend, or repeal this Act is expressly reserved.

SEC. 4. The United States district courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or State court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application of construction of this compact; that said jurisdiction shall include, but not be limited to, suits between signatory States; and that the venue of such case or controversy may be in any judicial district in which the acts comolained of, or any portion thereof, occur.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-962), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The purpose of this compact is to resolve controversies over the distribution and use of water from Caddo Lake. This compact augments and amplifies the provisions of the Red River Compact dealing with Caddo Lake. It will apportion water on an equal basis between the compacting states. It will promote interstate comity and allows utilization of Caddo Lake water for the needs of adjacent portions of Louisiana and Texas. The compact will also preserve and protect Caddo Lake as a valuable environmental, cultural, and natural resource and enhance recreational potentials.

RED RIVER COMPACT

The bill (S. 2227) to grant the consent of the United States to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The consent of Congress is hereby given to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas, of May 12, 1978, as ratified by the States of Arkansas, Louisiana, Oklahoma, and Texas, as follows:

PREAMBLE

The States of Arkansas, Louisiana, Oklahoma, and Texas, pursuant to the acts of their respective Governors or legislatures, or both, being moved by considerations of interstate comity, have resolved to compact with respect to the water of the Red River and its tributaries. By Act of Congress, Public Law No. 346 (84th Congress, First Session), the consent of the United States has been granted for said States to negotiate and enter into a compact providing for an equitable apportionment of such water; and pursuant to that Act the President has designated the representative of the United States.

Further, the consent of Congress has been given for two or more States to negotiate and enter into agreements relating to water pollution control by the provisions of the Federal Water Pollution Control Act (Public Law 92-500, 33 U.S.C. 1251 et seq.).

The Signatory States acting through their duly authorized Compact Commissioners, after several years of negotiations, have agreed to an equitable apportionment of the water of the Red River and its tributaries and do hereby submit and recommend that this compact be adopted by the respective legislatures and approved by Congress as hereinafter set forth:

ARTICLE I

PURPOSES

SECTION 1.01. The principal purposes of this Compact are:

(a) To promote interstate comity and remove causes of controversy between each of the affected states by governing the use, control and distribution of the interstate water of the Red River and its tributaries;

(b) To provide an equitable apportionment among the Signatory States of the water of the Red River and its tributaries;

(c) To promote an active program for the control and alleviation of natural deterioration and pollution of the water of the Red River Basin and to provide for enforcement of the laws related thereto;

(d) To provide the means for an active program for the conservation of water, protection of lives and property from floods, improvement of water quality, development of navigation and regulation of flows in the Red River Basin; and

(e) To provide a basis for state or joint state planning and action by ascertaining and identifying each state's share in the interstate water of the Red River Basin and the apportionment thereof.

ARTICLE II

GENERAL PROVISIONS

SECTION 2.01. Each Signatory State may use the water allocated to it by this Compact in any manner deemed beneficial by that state. Each state may freely administer water rights and uses in accordance with the laws of that state, but such uses shall be subject to the availability of water in accordance with the apportionments made by this Compact.

SECTION 2.02. The use of water by the United States in connection with any individual Federal project shall be in accordance with the Act of Congress authorizing the project and the water shall be charged to the state or states receiving the benefit therefrom.

SECTION 2.03. Any Signatory State using the channel of Red River or its tributaries to convey stored water shall be subject to an appropriate reduction in the amount which may be withdrawn at the point of removal to account for transmission losses.

SECTION 2.04. The failure of any state to use any portion of the water allocated to it shall not constitute relinquishment or forfeiture of the right to such use.

SECTION 2.05. Each Signatory State shall have the right to:

(a) Construct conservation storage capacity for the impoundment of water allocated by this Compact;

(b) Replace within the same area any storage capacity recognized or authorized by this Compact made unusable by any cause, including losses due to sediment storage;

(c) Construct reservoir storage capacity for the purposes of flood and sediment control as well as storage of water which is either imported or is to be exported if such storage does not adversely affect the delivery of water apportioned to any other Signatory State; and

(d) Use the bed and banks of the Red River and its tributaries to convey stored water, imported or exported water, and water apportioned according to this Compact.

SECTION 2.06. Signatory States may cooperate to obtain construction of facilities of joint benefits to such states.

SECTION 2.07. Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority, in, over and to water of the Red River Basin.

SECTION 2.08. Nothing in this Compact shall be construed to include within the water apportioned by this Compact any water consumed in each state by livestock or for domestic purposes; *Provided, however,* the storage of such water is in accordance with the laws of the respective states but any such impoundment shall not exceed 200 acre-feet, or such smaller quantity as may be provided for by the laws of each state.

SECTION 2.09. In the event any state shall import water into the Red River Basin from any other river basin, the Signatory State making the importation shall have the use of such imported water.

SECTION 2.10. Nothing in this Compact shall be deemed to:

(a) Interfere with or impair the right or power of any Signatory State to regulate within its boundaries the appropriation, use, and control of water, or quality of water, not inconsistent with its obligations under this Compact;

(b) Repeal or prevent the enactment of any legislation or the enforcement of any requirement by any Signatory State imposing any additional conditions or restrictions to further lessen or prevent the pollution or natural deterioration of water within its jurisdiction: provided nothing contained in this paragraph shall alter any provision of this Compact dealing with the apportionment of water or the rights thereto; or

(c) Waive any state's immunity under the Eleventh Amendment of the Constitution of the United States, or as constituting the consent of any state to be sued by its own citizens.

SECTION 2.11. Accounting for apportionment purposes on interstate streams shall not be mandatory under the terms of the Compact until one or more affected states deem the accounting necessary.

SECTION 2.12. For the purposes of apportionment of the water among the Signatory States, the Red River is hereby divided into the following major subdivision:

(a) Reach I—the Red River and tributaries from the New Mexico-Texas State boundary to Denison Dam;

(b) Reach II—the Red River from Denison Dam to the point where it crosses the Arkansas-Louisiana state boundary and all tributaries which contribute to the flow of the River within this reach;

(c) Reach III—the tributaries west of the Red River which cross the Texas-Louisiana state boundary, the Arkansas-Louisiana state boundary, and those which cross both the Texas-Arkansas state boundary and the Arkansas-Louisiana state boundary;

(d) Reach IV—the tributaries east of the Red River in Arkansas which cross the Arkansas-Louisiana state boundary; and

(e) Reach V—that portion of the Red River and tributaries in Louisiana not included in Reach III or in Reach IV.

SECTION 2.13. If any part or application of this Compact shall be declared invalid by a court of competent jurisdiction, all other severable provisions and applications of this Compact shall remain in full force and effect.

SECTION 2.14. Subject to the availability of water in accordance with this Compact, nothing in this Compact shall be held or construed to alter, impair, or increase, validate,

or prejudice any existing water right or right of water use that is legally recognized on the effective date of this Compact by either statutes or courts of the Signatory State within which it is located.

ARTICLE III

DEFINITIONS

SECTION 3.01. In this Compact:

(a) The States of Arkansas, Louisiana, Oklahoma, and Texas are referred to as "Arkansas," "Louisiana," "Oklahoma," and "Texas," respectively, or individually as "State" or "Signatory State," or collectively as "States" or "Signatory States."

(b) The term "Red River" means the stream below the crossing of the Texas-Oklahoma state boundary at longitude 100 degrees west.

(c) The term "Red River Basin" means all of the natural drainage area of the Red River and its tributaries east of the New Mexico-Texas state boundary and above its junction with Atchafalaya and Old Rivers.

(d) The term "water of the Red River Basin" means the water originating in any part of the Red River Basin and flowing to or in the Red River or any of its tributaries.

(e) The term "tributary" means any stream which contributes to the flow of the Red River.

(f) The term "interstate tributary" means a tributary of the Red River, the drainage area of which includes portions of two or more Signatory States.

(g) The term "intrastate tributary" means a tributary of the Red River, the drainage area of which is entirely within a single Signatory State.

(h) The term "Commission" means the agency created by Article IX of this Compact for the administration thereof.

(i) The term "pollution" means the alteration of the physical, chemical or biological characteristics of water by the acts or instrumentalities of man which create or are likely to result in a material and adverse effect upon human beings, domestic or wild animals, fish and other aquatic life, or adversely affect any other lawful use of such water; provided, that for the purpose of this Compact, "pollution" shall not mean or include "natural deterioration."

(j) The term "natural deterioration" means the material reduction in the quality of water resulting from the leaching of solubles from the soils and rocks through or over which the water flows naturally.

(k) The term "designated water" means water released from storage, paid for by non-Federal interests, for delivery to a specific point of use or diversion.

(l) The term "undesignated water" means all water released from storage other than "designated water."

(m) The term "conservation storage capacity" means that portion of the active capacity of reservoirs available for the storage of water for subsequent beneficial use, and it excludes any portion of the capacity of reservoirs allocated solely to flood control and sediment control, or either of them.

(n) The term "runoff" means both the portion of precipitation which runs off the surface of a drainage area and that portion of the precipitation that enters the streams after passing through the portions of the earth.

ARTICLE IV

APPORTIONMENT OF WATER—REACH I

OKLAHOMA—TEXAS

Subdivision of Reach I and Apportionment of Water Therein

Reach I of the Red River is divided into topographical subbasins, with the water therein allocated as follows:

SECTION 4.01. Subbasin 1—Interstate streams—Texas.

(a) This includes the Texas portion of Buck Creek, Sand (lebos) Creek, Salt Fork Red River, Elm Creek, North Fork Red River, Sweetwater Creek, and Washita River, together with all their tributaries in Texas which lie west of the 100th Meridian.

(b) The annual flow within this subbasin is hereby apportioned sixty (60) percent to Texas and forty (40) percent to Oklahoma.

SECTION 4.02. Subbasin 2—Intrastate and Interstate streams—Oklahoma.

(a) This subbasin is composed of all tributaries of the Red River in Oklahoma and portions thereof upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west, beginning from Denison Dam and upstream to and including Buck Creek.

(b) The State of Oklahoma shall have free and unrestricted use of the water of this subbasin.

SECTION 4.03. Subbasin—Intrastate streams—Texas.

(a) This includes the tributaries of the Red River in Texas, beginning from Denison Dam and upstream to and including Prairie Dog Town Fork, Red River.

(b) The State of Texas shall have free and unrestricted use of the water in this subbasin.

SECTION 4.04. Subbasin 4—Mainstem of the Red River and Lake Texoma.

(a) This subbasin includes all of Lake Texoma and the Red River beginning at Denison Dam and continuing up-stream to the Texas-Oklahoma state boundary at longitude 100 degrees west.

(b) The storage of Lake Texoma and flow from the mainstem of the Red River into Lake Texoma is apportioned as follows:

(1) Oklahoma 200,000 acre-feet and Texas 200,000 acre-feet, which quantities shall include existing allocations and uses; and

(2) Additional quantities in a ratio of fifty (50) percent to Oklahoma and fifty (50) percent to Texas.

SECTION 4.05. Special Provisions.

(a) Texas and Oklahoma may construct, jointly or in cooperation with the United States, storage or other facilities for the conservation and use of water; provided that any facilities constructed on the Red River boundary between the two states shall not be inconsistent with the Federal legislation authorizing Denison Dam and Reservoir project.

(b) Texas shall not accept for filing, or grant a permit for the construction of a dam to impound water solely for irrigation, flood control, soil conservation, mining and recovery of minerals, hydroelectric power, navigation, recreation and pleasure, or for any other purpose other than for domestic, municipal, and industrial water supply, on the mainstem of the North Fork Red River or any of its tributaries within Texas above Lugert-Altus Reservior until the date that imported water, sufficient to meet the municipal and irrigation needs of Western Oklahoma is provided, or until January 1, 2000, whichever occurs first.

ARTICLE V

APPORTIONMENT OF WATER—REACH II

ARKANSAS, OKLAHOMA, TEXAS, AND LOUISIANA

Subdivision of Reach II and Allocation of Water Therein Reach II of the Red River is divided into topographic subbasins, and the water therein is allocated as follows:

SECTION 5.01. Subbasin 1—Intrastate streams—Oklahoma.

(a) This subbasin includes those streams and their tributaries above existing, authorized or proposed last downstream major damsites, wholly in Oklahoma and flowing into Red River below Dension Dam and above the Oklahoma-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream and site	Acre-feet	Location	
		Latitude	Longitude
Island-Bayou, Albany	85, 200	33°51.5' N	96°11.6' W.
Blue River, Durant	147, 000	33°55.5' N	96°04.2' W.
Boggy River, Boswell	1, 243, 800	34°01.6' N	95°45.0' W.
Kiamichi River, Hugo	240, 700	34°01.0' N	95°22.8' W.

(b) Oklahoma is apportioned the water of this subbasin and shall have unrestricted use thereof.

SECTION. 5.02. Subbasin 2—Intrastate streams—Texas.

(a) This subbasin includes those streams and their tributaries above existing authorized or proposed last downstream major damsites, wholly in Texas and flowing into Red River below Denison Dam and above the Texas-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream and site	Acre-feet	Location	
		Latitude	Longitude
Shawnee Creek, Randall Lake.	5, 400	33°48.1' N	96°34.8' W.
Brushy Creek, Valley Lake.	15, 000	33°38.7' N	96°21.5' W.
Bois d'Arc Creek, New Bonham Reservoir.	130, 600	33°42.9' N	95°58.2' W.
Coffee Mill Creek, Coffee Mill Lake.	8, 000	33°44.1' N	95°58.0' W.
Sandy Creek, Lake Crockett.	3, 900	33°44.5' N	95°55.5' W.
Sanders Creek, Pat Mayse.	124, 500	33°51.2' N	95°32.9' W.
Pine Creek, Lake Crook	11, 011	33°43.7' N	95°34.0' W.
Big Pine Creek, Big Pine Lake.	138, 600	33°52.0' N	95°11.7' W.
Pecan Bayou, Pecan Bayou.	625, 000	33°41.1' N	94°58.7' W.
Mud Creek, Liberty Hill	97, 700	33°33.0' N	94°29.3' W.
Mud Creek, VW Ranch Lakes (3).	3, 440	33°34.8' N	94°27.3' W.

(b) Texas is apportioned the water of this subbasin and shall have unrestricted use thereof.

SECTION 5.03. Subbasin 3—Interstate Streams—Oklahoma and Arkansas.

(a) This subbasin includes Little River and its tributaries above Millwood Dam.

(b) The States of Oklahoma and Arkansas shall have free and unrestricted use of the water of this subbasin within their respective states, subject, however, to the limitation, that Oklahoma shall allow a quantity of water equal to 40 percent of the total runoff originating below the following existing, authorized or proposed last downstream major damsites in Oklahoma to flow into Arkansas:

Stream and site	Acre-feet	Location	
		Latitude	Longitude
Little River, Pine Creek	70, 500	34°06.8'N	95°04.9'W.
Glover Creek, Lukfata	258, 600	34°08.5'N	94°55.4'W.
Mountain Fork River, Broken Bow	470, 100	34°08.9'N	94°41.2'W.

(c) Accounting will be on an annual basis unless otherwise deemed necessary by the States of Arkansas and Oklahoma.

SECTION 5.04 Subbasin 4—Interstate streams—Texas and Arkansas.

(a) This subbasin shall consist of those streams and their tributaries above existing, authorized or proposed last downstream major damsites, originating in Texas and crossing the Texas-Arkansas state boundary before flowing into the Red River in Arkansas. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream and site	Acre-feet	Location	
		Latitude	Longitude
McKinney Bayou Trib, Bringle Lake	3,052	33°30.6'N	94°06.2'W.
Barkman Creek, Barkman Reservoir	15,900	33°29.7'N	94°10.3'W.
Sulphur River, Texarkana	386,900	33°18.3'N	94°09.6'W.

(b) The State of Texas shall have the free and unrestricted use of the water of this subbasin.

SECTION 5.05. Subbasin 5—Mainstem of the Red River and tributaries.

(a) This subbasin includes that portion of the Red River, together with its tributaries, from Denison Dam down to the Arkansas-Louisiana state boundary, excluding all tributaries included in the other four subbasins of Reach II.

(b) Water within this subbasin is allocated as follows:

(1) The Signatory States shall have equal rights to the use of runoff originating in subbasin 5 and undesignated water flowing into subbasin 5, so long as the flow of the Red River at the Arkansas-Louisiana state boundary is 3,000 cubic feet per second or more, provided no state is entitled to more than 25 percent of the water in excess of 3,000 cubic feet per second.

(2) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary is less than 3,000 cubic feet per second, but more than 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow to flow into the Red River for delivery to the State of Louisiana a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 and 40 percent of undesignated water flowing into subbasin 5; provided, however, that this requirement shall not be interpreted to require any state to release stored water.

(3) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary falls below 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow a quantity of water equal to all the weekly runoff originating in subbasin 5 and all undesignated water flowing into subbasin 5 within their respective states to flow into the Red River as required to maintain a 1,000 cubic foot per second flow at the Arkansas-Louisiana state boundary.

(c) Whenever the flow at Index, Arkansas, is less than 526 c.f.s., the states of Oklahoma and Texas shall each allow a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 within their respective states to flow into the Red River; provided, however, this provision shall be invoked only at the request of Arkansas, only after Arkansas has ceased all diversions from the Red River itself in Arkansas above Index, and only if the provisions of Subsections 5.05(b) (2) and (3) have not caused a limitation of diversions in subbasin 5.

(d) No state guarantees to maintain a minimum low flow to a downstream state.

SECTION 5.06. Special Provisions.

(a) Reservoirs within the limits of Reach II, subbasin 5, with a conservation storage capacity of 1,000 acre feet or less in existence or authorized on the date of the Compact pursuant to the rights and privileges granted by a Signatory State authorizing such reservoirs, shall be exempt from the provisions of Section 5.05; provided, if any right to store water in, or use water from, an existing exempt reservoir expires or is cancelled after the effective date of the Compact the exemption for such rights provided by this section shall be lost.

(b) A Signatory State may authorize a change in the purpose or place of use of water from a reservoir exempted by subparagraph (a) of this section without losing that exemption, if the quantity of authorized use and storage is not increased.

(c) Additionally, exemptions from the provisions of Section 5.05 shall not apply to direct diversions from Red River to off-channel reservoirs or lands.

ARTICLE VI

APPORTIONMENT OF WATER—REACH III

ARKANSAS, LOUISIANA, AND TEXAS

Subdivision of Reach III and Allocation of Water Therein Reach III of the Red River is divided into topographic subbasins, and the water therein allocated, as follows:

SECTION 6.01. Subbasin 1—Interstate streams—Arkansas and Texas.

(a) This subbasin includes the Texas portion of those streams crossing the Arkansas-Texas state boundary one or more times and flowing through Arkansas into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

(b) Texas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Arkansas is entitled to forty (40) percent of the runoff of this subbasin.

SECTION 6.02. Subbasin 2—Interstate streams—Arkansas and Louisiana.

(a) This subbasin includes the Arkansas portion of those streams flowing from Subbasin 1 into Arkansas, as well as other streams in Arkansas which cross the Arkansas-Louisiana state boundary one or more times and flow into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

(b) Arkansas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Louisiana is entitled to forty (40) percent of the runoff of this subbasin.

SECTION 6.03. Subbasin 3—Interstate streams—Texas and Louisiana.

(a) This subbasin includes the Texas portion of all tributaries crossing the Texas-Louisiana state boundary one or more times and flowing into Caddo Lake, Cypress Creek-Twelve Mile Bayou or Cross Lake, as well as the Louisiana portion of such tributaries.

(b) Texas and Louisiana within their respective boundaries shall each have the unrestricted use of the water of this subbasin subject to the following allocation:

(1) Texas shall have the unrestricted right to all water above Marshall, Lake O' the Pines, and Black Cypress damsites; however, Texas shall not cause runoff to be depleted to a quantity less than that which would have occurred with the full operation of Franklin County, Titus County, Ellison Creek, Johnson Creek, Lake O' the Pines, Marshall, and Black Cypress Reservoirs constructed, and those other impoundments and diversions existing on the effective date of this Compact. Any depletions of runoff in excess of the depletions described above shall be charged against Texas' apportionment of the water in Caddo Reservoir.

(2) Texas and Louisiana shall each have the unrestricted right to use fifty (50) percent of the conservation storage capacity in the present Caddo Lake for the impoundment of water for state use, subject to the provision that supplies for existing uses of water from Caddo Lake, on date of Compact, are not reduced.

(3) Texas and Louisiana shall each have the unrestricted right to fifty (50) percent of the conservation storage capacity of any future enlargement of Caddo Lake, provided, the two states may negotiate for the release of each state's share of the storage space on terms mutually agreed upon by the two states after the effective date of this Compact.

(4) Inflow to Caddo Lake from its drainage area downstream from Marshall, Lake O' the Pines, and Black Cypress damsites and downstream from other last downstream dams in existence on the date of the signing of the Compact document by the Compact Commissioners, will be allowed to continue flowing into Caddo Lake except that any man-made depletions to this inflow by Texas will be subtracted from the Texas share of the water in Caddo Lake.

(c) In regard to the water of interstate streams which do not contribute to the inflow to Cross Lake or Caddo Lake, Texas shall have the unrestricted right to divert and use this water on the basis of a division of runoff above the state boundary of sixty (60) percent to Texas and forty (40) percent to Louisiana.

(d) Texas and Louisiana will not construct improvements on the Cross Lake watershed in either state that will affect the yield of Cross Lake: *Provided, however*, This subsection shall be subject to the provisions of section 2.08.

SECTION 6.04. Subbasin 4—Intrastate streams—Louisiana.

(a) This subbasin includes that area of Louisiana in Reach III not included within any other subbasin.

(b) Louisiana shall have free and unrestricted use of the water of this subbasin.

ARTICLE VII

APPORTIONMENT OF WATER—REACH IV

ARKANSAS AND LOUISIANA

Subdivision of Reach IV and Allocation of Water Therein.

Reach IV of the Red River is divided into topographic subbasins, and the water therein allocated as follows:

SECTION 7.01. Subbasin 1—Intrastate streams—Arkansas.

(a) This subbasin includes those streams and their tributaries above last downstream major damsites originating in Arkansas and crossing the Arkansas-Louisiana state boundary before flowing into the Red River in Louisiana. Those major last downstream damsites are as follows:

Steam and site	Acre-feet	Location	
		Latitude	Longitude
Ouachita River Lake Catherine	19,000	34°26.6'N	93°01.6'W.
Caddo River, DeGray Lake	1,377,000	34°13.2'N	93°06.6'W.
Little Missouri River, Lake Greeson	600,000	34°08.9'N	93°43.9'W.
Alum Fork, Saline River, Lake Winona	63,264	32°47.8'N	92°51.0'W.

(b) Arkansas is apportioned the waters of this subbasin and shall have unrestricted use thereof.

SECTION 7.02. Subbasin 2—Interstate Streams—Arkansas and Louisiana.

(a) This subbasin shall consist of Reach IV less subbasin 1 as defined in Section 7.01 (a) above.

(b) The State of Arkansas shall have free and unrestricted use of the water of this reach subject to the limitations that Arkansas shall allow a quantity of water equal to forty (40) percent of the weekly runoff originating below or flowing from the last downstream major damsite to flow into Louisiana. Where there are no designated last downstream damsites, Arkansas shall allow a quantity of water equal to forty (40) percent of the total weekly runoff originating above the State boundary to flow into Louisiana. Use of water in this subbasin is subject to flow provisions of subparagraph 7.03(b).

SECTION 7.03. Special Provisions.

(a) Arkansas may use the beds and banks of segments of Reach IV for the purpose of conveying its share of water to designated downstream diversions.

(b) The State of Arkansas does not guarantee to maintain a minimum low flow for Louisiana in Reach IV. However, on the following streams when the use of water in Arkansas reduces the flow at the Arkansas-Louisiana State boundary to the following amounts:

(1) Ouachita—780 cfs.
(2) Bayou Bartholomew—80 cfs.
(3) Boeuf River—40 cfs.
(4) Bayou Macon—40 cfs.

the State of Arkansas pledges to take affirmative steps to regulate the diversions of runoff originating or flowing into Reach IV in such a manner as to permit an equitable apportionment of the runoff as set out herein to flow into the State of Louisiana. In its control and regulation of the water of Reach IV any adjudication or order rendered by the State of Arkansas or any of its instrumentalities or agencies affecting the terms of this Compact shall not be effective against the State of Louisiana nor any of its citizens or inhabitants until approved by the Commission.

ARTICLE VIII

APPORTIONMENT OF WATER—REACH V

SECTION 8.01. Reach V of the Red River consists of the mainstem Red River and all of its tributaries lying wholly within the State of Louisiana. The State of Louisiana shall have free and unrestricted use of the water of this subbasin.

ARTICLE IX

ADMINISTRATION OF THE COMPACT

SECTION 9.01. There is hereby created an interstate administrative agency to be known as the "Red River Compact Commission," hereinafter called the "Commission." The Commission shall be composed of two representatives from each Signatory State who shall be designated or appointed in accordance with the laws of each state, and one Commissioner representing the United States, who shall be appointed by the President. The Federal Commissioner shall be the Chairman of the Commission but shall not have the right to vote. The failure of the President to appoint a Federal Commissioner will not prevent the operation or effect of this Compact, and the eight representatives from the Signatory States will elect a Chairman for the Commission.

SECTION. 9.02. The Commission shall meet and organize within 60 days after the effective date of this Compact. Thereafter, meetings shall be held at such times and places as the Commission shall decide.

SECTION 9.03. Each of the two Commissioners from each state shall have one vote; provided, however, that if only one representative from a state attends he is authorized to vote on behalf of the absent Commissioner from that state. Representatives from three states shall constitute a quorum. Any action concerned with administration of this Compact or any action requiring compliance with specific terms of this Compact shall require six concurring votes. If a proposed action of the Commission affects existing water rights in a state, and that action is not expressly provided for in this Compact, eight concurring votes shall be required.

SECTION 9.04.

(a) The salaries and personal expenses of each state's representative shall be paid by the government that it represents, and the salaries and personal expenses of the Federal Commissioner will be paid for by the United States.

(b) The Commission's expenses for any additional stream flow gauging stations shall be equitably apportioned among the states involved in the reach in which the stream flow gaging stations are located.

(c) All other expenses incurred by the Commission shall be borne equally by the Signatory States and shall be paid by the Commission out of the "Red River Compact Commission Fund." Such Fund shall be initiated and maintained by equal payments of each state into fund. Disbursement shall be made from the fund in such manner as may be authorized by the Commission. Such fund shall not be subject to audit and accounting procedures of the State; however, all receipts and disbursements of the fund by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audits shall be included in and become a part of the annual report of the Commission. Each State shall have the right to make its own audit of the accounts of the Commission at any reasonable time.

ARTICLE X

POWERS AND DUTIES OF THE COMMISSION

SECTION 10.01. The Commission shall have the power to:

(a) Adopt rules and regulations governing its operation and enforcement of the terms of the Compact;

(b) Establish and maintain an office for the conduct of its affairs and, if desirable, from time to time, change its location;

(c) Employ or contract with such engineering, legal, clerical and other personnel as it may determine necessary for the exercise of its functions under this Compact without regard to the Civil Service Laws of any Signatory State; provided that such employees shall be paid by and be responsible to the Commission and shall not be considered employees of any Signatory State;

(d) Acquire, use and dispose of such real and personal property as it may consider necessary;

(e) Enter into contracts with appropriate State or Federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records and for the preparation of reports;

(f) Secure from the head of any department or agency of the Federal or State government such information as it may need or deem to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed; provided such information is not privileged and the department or agency is not precluded by law from releasing same;

(g) Make findings, recommendations or reports in connection with carrying out the purposes of this compact, including, but not limited to, a finding that a Signatory State is or is not in violation of any of the provisions of this Compact. The Commission is authorized to make such investigations and studies, and to hold such hearings as it may deem necessary for said purposes. It is authorized to make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of any Signatory State, or the United States, as may have any interest in or jurisdiction over the subject matter. The making of finds, recommendations, or reports by the Commission shall not be a condition precedent to the instituting or maintaining of any action or proceeding of any kind by a Signatory State in any court or tribunal, or before any agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions; and

(h) Print or otherwise reproduce and distribute its proceedings and reports.

SECTION 10.02. The Commission shall:

(a) Cause to be established, maintained, and operated such stream, reservoir and other gaging stations as are necessary for the proper administration of the Compact;

(b) Cause to be collected, analyzed and reported such information on stream flows, water quality, water storage and such other data as are necessary for the proper administration of the Compact;

(c) Perform all other functions required of it by the Compact and do all things necessary, proper and convenient in the performance of its duties thereunder;

(d) Prepare and submit to the governor of each of the Signatory States a budget covering the anticipated expenses of the Commission for the following fiscal biennium;

(e) Prepare and submit an annual report to the governor of each Signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

(f) Make available to the governor or to any official agency of the Signatory State or to any authorized representative of the United States, upon request, any information within its possession;

(g) Not incur any obligation in excess of the unencumbered balance of its funds, nor pledge the credit of any of the Signatory States; and

(h) Make available to a Signatory State or the United States in any action arising under this Compact; without subpoena, the testimony of any officer or employee of the Commission having knowledge of any relevant facts.

ARTICLE XI

POLLUTION

SECTION 11.01. The Signatory States recognize that the increase in population and the growth of industrial, agricultural, mining and other activities combined with natural pollution sources may lead to a diminution of the quality of water in the Red River Basin which may render the water harmful or injurious to the health and welfare of the people and impair the usefulness or public enjoyment of the water for beneficial purposes, thereby resulting in adverse social, economic, and environmental impacts.

SECTION 11.02. Although affirming the primary duty and responsibility of each Signatory State to take appropriate action under its own laws to prevent, diminish, and regulate all pollution sources within its boundaries which adversely affect the water of the Red River Basin, the states recognize that the control and abatement of the naturally-occurring salinity sources as well as, under certain circumstances, the maintenance and enhancement of the quality of water in the Red River Basin may require the cooperative action of all states.

SECTION 11.03. The Signatory States agree to cooperate with agencies of the United States to devise and effectuate means of alleviating the natural deterioration of the water of the Red River Basin.

SECTION 11.04. The Commission shall have the power to cooperate with the United States, the Signatory States and other entities in programs for abating and controlling pollution and natural deterioration of the water of the Red River Basin, and to recommend reasonable water quality objectives to the states.

SECTION 11.05. Each Signatory State agrees to maintain current records of waste discharges into the Red River Basin and the type and quality of such discharges, which records shall be furnished to the Commission upon request.

SECTION 11.06. Upon receipt of a complaint from the governor of a Signatory State that the interstate water of the Red River Basin in which it has an interest are being materially and adversely affected by pollution and that the state in which the pollution originates has failed after reasonable notice to take appropriate abatement measures, the Commission shall make such findings as are appropriate and thereafter provide such findings to the governor of the state in which such pollution originates and request appropriate corrective action. The Commission, however, shall not take any action with respect to pollution which adversely affects only the state in which such pollution originates.

SECTION 11.07. In addition to its other

powers set forth under this Article, the Commission shall have the authority, upon receipt of six concurring votes, to utilize applicable Federal statutes to institute legal action in its own name against the person or entity responsible for interstate pollution problems; provided, however, sixty (60) days before initiating legal action the Commission shall notify the Governor of the state in which the pollution source is located to allow that state an opportunity to initiate action in its own name.

SECTION 11.08. Without prejudice to any other remedy available to the Commission, or any Signatory State, any state which is materially and adversely affected by the pollution of the water of the Red River Basin by pollution originating in another Signatory State may institute a suit against any individual, corporation, partnership, or association, or against any Signatory State or political or governmental subdivision thereof, or against any officer, agency, department, bureau, district or instrumentality of or in any Signatory State contributing to such pollution in accordance with applicable Federal statutes. Nothing herein shall be construed as depriving any persons of any rights of action relating to pollution which such person would have if this Compact had not been made.

ARTICLE XII

TERMINATION AND AMENDMENT OF COMPACT

SECTION 12.01. This Compact may be terminated at any time by appropriate action of the legislatures of all of the four Signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

SECTION 12.02. This Compact may be amended at any time by appropriate action of the legislatures of all Signatory States that are affected by such amendment. The consent of the United States Congress must be obtained before any such amendment is effective.

ARTICLE XIII

RATIFICATION AND EFFECTIVE DATE OF COMPACT

SECTION 13.01. Notice of ratification of this Compact by the legislature of each Signatory State shall be given by the governor thereof to the governors of each of the other Signatory States and to the President of the United States. The President is hereby requested to give notice to the governors of each of the Signatory States of the consent to this Compact by the Congress of the United States.

SECTION 13.02. This Compact shall become effective, binding and obligatory when, and only when:

(a) It has been duly ratified by each of the Signatory States; and

(b) It has been consented to by an Act of the Congress of the United States,

which Act provides that:

Any other statute of the United States to the contrary notwithstanding, in any case or controversy:

Which involves the construction or application of this Compact; in which one or more of the Signatory States to this Compact is a plaintiff or plaintiffs; and

Which is within the judicial power of the United States as set forth in the Constitution of the United States;

and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy:

The consent of Congress is given to name and join the United States as a party defendant or otherwise in any such case or controversy in the Supreme Court of the United States if the United States is an indispensable party thereto.

SECTION. 13.03. The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between Signatory States; and that the venue of such case or controversy may be brought in any judicial district in which the acts complained of (or any portion thereof) occur.

Signed and approved on the 12th day of May, 1978 at Denison Dam.

For Arkansas: John P. Saxton, Commissioner.

For Oklahoma: Orville B. Saunders, Commissioner.

For Louisiana: Arthur R. Thels, Commissioner.

For Texas: Fred Parkey, Commissioner.

For United States of America: R. C. Marshall, Major General, Representative.

SECTION 2. In order to carry out the purposes of this Act, and the purposes of article XIII of this compact consented to by Congress by this Act, the congressional consent to this compact includes and expressly gives the consent of Congress to have the United States of America named and joined as a party defendant or otherwise in the United States Supreme Court or other court of concurrent jurisdiction, in any case or controversy involving the construction or application of this Compact in which one or more of the Signatory States to this Compact is a plaintiff, and which is within the judicial power of the United States as set forth in the Constitution of the United States, if the United States of America is an indispensable party and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy.

SECTION 3. The right to alter, amend, or repeal this Act is expressly reserved.

SECTION 4. The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between Signatory States; and that the venue of such case or controversy may be in any judicial district in which the acts complained of (or any portion thereof) occur.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-964), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The principal purposes of the Red River Compact are to promote interstate comity and remove causes of controversy between each of the affected States by governing the use, control and distribution of the interstate water; provide an equitable apportionment among the signatory States; promote an active program for the control and alleviation of natural deterioration and pollution of the water of the Red River Basin and to provide for enforcement of the laws related thereto; provide the means for an active program for the conservation of water, protection of lives and property from floods, improvement of water quality, development of navigation and regulation of flows; and provide a basis for State or joint State planning and action by ascertaining and identifying each State's share in the interstate water and the apportionment thereof.

MODIFICATION OF CERTAIN POST EMPLOYMENT RESTRICTIONS CONCERNING EMPLOYEES OF CONSUMER PRODUCT SAFETY COMMISSION

The bill (H.R. 6395) to amend the Consumer Product Safety Act to modify certain post-employment restrictions applicable to officers and employees of the Consumer Product Safety Commission, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider en bloc the votes by which the bills were passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-965), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

H.R. 6395 is designed to eliminate certain unnecessary, ineffective and inequitable postemployment restrictions applicable to personnel of the Consumer Product Safety Commission (CPSC).

IRINA ASTAKHOVA McCLELLAN

The concurrent resolution (S. Con. Res. 62) urging the Soviet Union to allow Irina Astakhova McClellan to emigrate to the United States, and for other purposes.

The resolution (S. Con. Res. 62) was agreed to.

The preamble was agreed to.

The resolution, together with the preamble, is as follows:

S. CON. RES. 62

Whereas the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee to all people the right to emigrate; and

Whereas the Final Act of the Conference on Security and Cooperation in Europe commits signatory countries to "deal in a positive and humanitarian spirit" with the applications of persons wishing to emigrate to rejoin relatives; and

Whereas the Final Act of the Conference on Security and Cooperation in Europe commits signatory countries in the cases of marriage between citizens of different states to "apply the provisions accepted for family reunification."; and

Whereas the Soviet Union signed the Final Act of the Conference on Security and Cooperation in Europe, is a party to the Universal Declaration of Human Rights, and has ratified the International Covenant on Civil and Political Rights; and

Whereas Irina Astakhova McClellan first applied to emigrate from the Soviet Union to the United States in 1974 to rejoin her husband, Woodford McClellan, a citizen of the United States; and

Whereas the marriage of Irina Astakhova McClellan and Woodford McClellan was duly recognized by Soviet authorities; and

Whereas Irina Astakhova McClellan has repeatedly applied for permission to emigrate from the Soviet Union for the past six years; and

Whereas Irina Astakhova McClellan has been subjected to periodic harassment owing to her lawful efforts to emigrate to the United States; and

Whereas Irina Astakhova McClellan has experienced severe mental and physical strain during her efforts to secure permission to emigrate to the United States; and

Whereas several Members of the United States Senate and House of Representatives have individually and collectively expressed support for Irina Astakhova McClellan's efforts over the past several years; and

Whereas the continuing refusal of the Soviet authorities to grant Mrs. McClellan permission to emigrate is a source of great concern to the American people, United States Government and Congress; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that, in accordance with the Final Act of the Conference on Security and Cooperation in Europe, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, the Union of Soviet Socialist Republics should permit Irina Astakhova McClellan to emigrate to the United States so that she can be reunited with her husband and favorably consider any request by members of her family to join her in the United States at a future date.

SEC. 2. The Congress urges the President, acting directly or through the Secretary of State or other appropriate executive branch officials—

(1) to continue to express at every suitable opportunity and in the strongest and most constructive terms, the support of the people of the United States on behalf of Irina Astakhova McClellan's efforts to rejoin her husband, and

(2) to inform the Soviet Union that the United States, in evaluating its relations with other countries, will take into account the extent to which those countries honor their commitments under international law, particularly with respect to the protection and promotion of human rights.

SEC. 3. The Secretary of the Senate shall transmit copies of this resolution to the Soviet Ambassador to the United States and to the Chairman of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the votes by which the resolution and the preamble were agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO INDEFINITELY POSTPONE CALENDAR ORDERS NOS. 1027, 1028, 1078, AND 1079

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Orders Nos. 1027, 1028, 1078, and 1079 be indefinitely postponed.

Mr. BAKER. Mr. President, there is no objection on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

MILLE LACS BAND OF THE MINNESOTA CHIPPEWA INDIANS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1464.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1464) entitled "An Act to direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That the Act of November 2, 1978 (92 Stat. 2452; Public Law 95-571) is amended to read as follows:

"That (a) the Secretary of the Interior is authorized and directed to enter into an agreement to acquire the interest of the fee title holders of the record in and to the following described land located in township 43 north, range 27 west, fourth principal meridian, Mille Lacs County, Minnesota—

(1) Government Lot 4, section 28;

(2) southwest quarter southwest quarter, section 29; and

(3) southeast quarter southeast quarter, section 29, containing 105.51 acres, more or less.

(b) Title to such land shall be held by the United States in trust for the Mille Lacs Band of Chippewa Indians as a part of their reservation, subject to any valid existing rights-of-way or other easements.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WATER RESOURCES RESEARCH AND DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1640.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1640) entitled "An Act to extend certain authorities of the Secretary of the Interior with respect to water resources research and development and saline water conversion research and development programs, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That (a) Section 401 of the Water Research and Development Act of 1978 (Public Law 95-467); 92 Stat. 1305), is amended as follows:

(1) In paragraph (a)(1), delete all after "institute, on a cost-sharing basis, for" and insert in lieu thereof "each of the fiscal years 1981 and 1982.".

(2) In paragraph (a)(2), delete all after "this Act" and insert in lieu thereof "the sum of $1,000,000 for each of the fiscal years 1981 and 1982, all to remain available until expended.".

(3) In paragraph (b), delete "for the fiscal year ending September 30, 1979, the sum of $6,000,000, and for the fiscal year ending September 30, 1980, the sum of $8,500,000," and insert in lieu thereof "the sum of $8,500,000" for each of the fiscal years 1981 and 1982,".

(4) In paragraph (c), delete "for the fiscal year ending September 30, 1979, the sum of $5,200,000, and for the fiscal year ending September 30, 1980, the sum of $8,000,000" and insert in lieu thereof "the sum of $8,000,000 for each of the fiscal years 1981 and 1982,".

(5) In paragraph (d), delete "for the fiscal year ending September 30, 1980," and insert in lieu thereof "fiscal years 1981 and 1982,".

(b) In section 402 of the Water Research and Development Act of 1978, delete "the fiscal year ending September 30, 1979, the sum of $12,000,000, and for the fiscal year ending September 30, 1980, the sum of $14,000,000," and insert in lieu thereof "each of the fiscal years 1981 and 1982, the sum of $14,000,000,".

(c) In section 403 of the Water Research and Development Act of 1978, delete "$4,464,000 for the fiscal year ending September 30, 1979, and the sum of $5,100,000 and for the fiscal year ending September 30, 1980," and insert in lieu thereof "$6,000,000 for each of the fiscal years 1981 and 1982,".

(d) In section 411 of the Water Research and Development Act of 1978, delete "rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed" and insert in lieu thereof "rules and regulations promulgated".

SEC. 2. (a) Section 2(a) of the Act of August 2, 1977 (Public Law 95-84; 91 Stat. 400) is deleted and replaced with a new section 2(a) to read as follows:

"SEC. 2. (a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be no larger than necessary to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504, et seq., the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95-244) with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.".

(b) Section 2(b) of said Act is hereby amended by inserting after "but is not limited to," the phrase, "how the plant being proposed differs from others already con-

structed under this section," and further, by deleting all after "ancillary facilities." and inserting the following: "Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be inkind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The Secretary shall participate in the operation and maintenance of any such demonstration for a period of four years in accordance with the operation and maintenance cost sharing provisions of this section. The Secretary is authorized to include in the proposed contract a provision for conveying as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.".

(c) Section 2(c) of said Act, is revised to read as follows: "There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs." Section 205(c) of the Act of October 17, 1978 (Public Law 95–467) is hereby repealed.

SEC. 3. Authority to enter into contracts or cooperative agreements under this Act shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

UP AMENDMENT NO. 1652

(Purpose: to fund the activities of the Office of Water Research and Technology)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I move that the Senate concur in the amendment of the House with an amendment on behalf of Mr. RANDOLPH, which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), on behalf of Mr. RANDOLPH proposes an unprinted amendment numbered 1652.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That section 401(a) of the Water Research and Development Act of 1978 (Public Law 95–467; 92 Stat. 1305) is amended as follows:

"(a) In paragraph (1) following 'September 30, 1980', delete the period, insert a comma, and add 'an amount sufficient to provide $150,000 to each participating institute, on a cost-sharing basis, for the fiscal year ending September 30, 1981, and an amount sufficient to provide $160,000 to each participating institute, on a cost-sharing basis, for the fiscal year ending September 30, 1982.';

"(b) In paragraph (2) following 'September 30, 1980', insert 'the sum of $1,000,000 for the fiscal year ending September 30, 1981, and the sum of $1,000,000 for the fiscal year ending September 30, 1982.'".

SEC. 2. (a) Section 401 of the Water Research and Development Act of 1978 (Public Law 95–467; 92 Stat. 1305) is further amended as follows:

"(1) In subsection (b) following '$8,500,000,' insert 'the sum $8,000,000 for the fiscal year ending September 30, 1981, and the sum of $9,000,000 for the fiscal year ending September 30, 1982,' and

"(2) In subsection (c) following '$8,000,000' insert a comma and add 'the sum of $5,200,000 for the fiscal year ending September 30, 1981, and the sum of $8,000,000 for the fiscal year ending

* * * * *

"(3) In subsection (d) following '$1,000,000' insert a comma and add 'for the fiscal year ending September 30, 1981, and thereafter, the sum of $1,000,000,'.

"(b) The Water Research and Development Act of 1978 (Public Law 95–467; 92 Stat. 1305) is further amended as follows:

"(1) In section 402, following '$14,000,000,' insert 'the sum of $14,000,000, for the fiscal year ending September 30, 1981, and the sum of $17,400,000 for the fiscal year ending September 30, 1982,';

"(2) In section 403, following 'September 30, 1980,' insert 'the sum of $6,500,000 for the fiscal year ending September 30, 1981, and the sum of $8,500,000 for the fiscal year ending September 30, 1982,'; and

"(3) In section 411, following the word 'rules' strike from the word 'regulations' through the word 'prescribed' and substitute 'and regulations promulgated.'.

SEC. 3. Subsection 2(a) of the Act of August 2, 1977 (Public Law 95–84; 91 Stat. 400), as amended, is amended to read as follows:

"(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504, et seq., (the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95–224)) with duly authorized non-Federal public entities Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.".

"(b) Subsection 2(b) of the Act of August 2, 1977 (Public Law 95–84; 91 Stat. 400), as amended, is amended by inserting after 'but is not limited to,' the phrase, 'how the plant being proposed differs from others, if any, already constructed under this section,' and further, by deleting all after 'ancillary facilities' and inserting the following: 'Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be inkind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.'.

"(c) Subsection 2(c) of the Act of August 2, 1977 (Public Law 95–84, 91 Stat. 400), is amended to read as follows:

"'(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.'

"(d) At the end of section 2 of the Act of August 2, 1977 (Public Law 95–84, 91 Stat. 400), as amended, add the following new subsection:

"'(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plan authorized under this Act, the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor.'"

SEC. 4. Section 205(c) of the Water Research and Development Act of 1978 (Public Law 95–467; 92 Stat. 1305) is hereby repealed.

● Mr. DOMENICI. Mr. President, I wish to state my strong support for this compromise amendment to S. 1640. The language of the amendment, I understand, should be acceptable to the House of Representatives and will save us the need to hold a conference on the bill.

The amendment essentially accepts most of the changes offered by the House of Representatives to S. 1640, except that the dollar figures are, in total, about halfway between the original Senate-passed bill, and the lower House figures.

In addition, this amendment provides a new subsection (d) that will be added to Public Law 95–84. That new subsection, suggested by the administration, is necessary to insure that funds appropriated toward the desalting demonstration program in one year can be expended toward construction of a project without the necessity of having the full project cost appropriated prior to construction.

S. 1640, as it was introduced and passed by the Senate, was an administration proposal. The administration urged passage of this bill to clarify the cost-sharing arrangements between the Department of Interior's Office of Water Research and Technology and the local governmental sponsor of any of the authorized desalting demonstration plants.

While I was satisfied with the original law, as it was enacted in 1977 and amended in 1978, I recognize that we had to win administration support for funding of the demonstration program, and that this support would only come if we adopted more precise language on cost-sharing. It was for that reason that I urged adoption of this bill. Enactment of this legislation means that the administration will fund construction of these desalting demonstration plants in the near future.

The OWRT has two desalting demonstration projects near the construction stage. One of them is at Virginia Beach, Va.; the other at Alamogordo, N. Mex. The strong local support in Alamogordo for this project was shown just last week when the citizens of that fine city voted, by nearly 3 to 1 in a referendum, to agree to finance their 15-percent share of the cost of the demonstration. I am very pleased that the citizens of Alamogordo see the great opportunity in developing our salt water resources, not only for the people of New Mexico but for the entire United States.

Vast underground reserves of brackish water exist in the West. The demonstration of new and improved desalting techniques—converting such water to fresh water for municipal and industrial and even agricultural purposes—should go far toward solving many of the water resources problems of this country.

The passage of this bill, and its enactment into law, thus represents a major step toward a strong water resources program for America. I applaud the fine work by the Committee on Environment and Public Works, and, in particular, that of our distinguished Chairman (Mr. RANDOLPH), our subcommittee chairman (Mr. MOYNIHAN), the committee's ranking minority member (Mr. STAFFORD), and the work of the Members of the House, in particular that of my colleague from New Mexico (Mr. LUJAN). In addition, I want to thank those officials at the Department of Interior who have worked so hard and so effectively on this issue: the Director of the Office of Water Research and Technology, Gary Cobb, and his associate, Doris Ullman.

Mr. President, I urge the adoption of the amendment and passage of the bill.●

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia (Mr. ROBERT C. BYRD).

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL RAILROAD SAFETY AUTHORIZATION ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2730.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2730) entitled "An Act to amend the Federal Railroad Safety Act of 1970 and other rail safety Acts to extend authorization for appropriations, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Federal Railroad Safety Authorization Act of 1980".

AUTHORIZATION FOR APPROPRIATIONS

SEC. 2. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by striking out section 212 and by adding at the end thereof the following new section:

"SEC. 214. AUTHORIZATION FOR APPROPRIATIONS.

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed $38,000,000 for the fiscal year ending September 30, 1981, and not to exceed $40,000,000 for the fiscal year ending September 30, 1982.

"(b) The amounts appropriated under subsection (a) of this section for a fiscal year shall be available for expenditure in such fiscal year as follows:

"(1) For the Office of Safety, including salaries and expenses for not more than (A) six hundred safety inspectors, (B) forty-five signal and train control inspectors, and (C) one hundred and twenty-five clerical personnel, not to exceed $22,500,000 for the fiscal year ending September 30, 1981, and not to exceed $24,000,000 for the fiscal year ending September 30, 1982. Such funds shall be available for travel expenses of safety inspectors for not less than twenty days per month.

"(2) To carry out the provisions of section 206(d) of this Act, relating to State safety programs, not to exceed $2,000,000 for the fiscal year ending September 30, 1981, and not to exceed $2,500,000 for the fiscal year ending September 30, 1982.

"(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed $3,500,000.

"(4) For conducting safety research and development activities under this Act, not to exceed $10,000,000, of which not less than $500,000 shall be available for assisting in the treatment of alcohol and drug abuse problems of railroad employees.

"(c) Sums appropriated under this section for research and development, automated track inspection, and the State safety grant program are authorized to remain available until expended.".

EMERGENCY SAFETY ORDERS

SEC. 3. Section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) is amended to read as follows:

"SEC. 203. EMERGENCY POWERS.

"(a) If the Secretary determines, on the basis of testing, inspection, investigation, or research carried out pursuant to this title, that an unsafe condition or practice, or a combination of unsafe conditions or practices, or both, create an emergency situation involving a hazard of death or injury to persons, the Secretary may immediately issue an order, without regard to the provisions of section 202(b) of this title, imposing such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation.

"(b) After the issuance of an order under this section, opportunity for review of such order shall be provided in accordance with section 554 of title 5, United States Code.

"(c) If a petition for review of an order has been filed under subsection (b) of this section but administrative review of such order has not been completed by the end of the thirty-day period beginning on the date such order was issued, such order shall cease to be effective at the end of such period unless the Secretary determines in writing that the emergency situation remains in existence.

"(d) In issuing any order under this section, the Secretary shall describe the conditions or practices which create an emergency situation (as determined by the Secretary), and shall establish standards and procedures under which relief from such order may be obtained. Nothing in this subsection shall be construed to affect the discretion of the Secretary under this section to maintain an order in effect until the emergency situation has been abated.

"(e) Any employee of a common carrier by railroad engaged in interstate or foreign commerce who may be exposed to imminent physical injury in the course of his employment because of the Secretary's failure, without any reasonable basis, to seek relief under subsection (a) of this section, or the authorized representative of such an employee, shall have the right to bring an action against the Secretary in the United States district court for the judicial district in which the emergency situation is alleged to exist or in which the employer has its principal executive office, or for the District of Columbia, to compel the Secretary to issue an order under this section. The failure of the Secretary to seek relief under subsection (a) of this section shall be received solely under the standards of section 706 of title 5, United States Code.".

SCOPE OF STATE PARTICIPATION

SEC. 4. (a) Section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435) is amended by adding at the end thereof the following new subsection:

"(g) In addition to the provisions for State participation set forth in subsections (a) and (c) of this section, the Secretary may enter into agreements with any State to provide investigative and surveillance activities with respect to those functions transferred to the Secretary by section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A)).".

(b) Section 206(d) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435(d)) is amended by inserting "or (g)" immediately after "subsection (c)".

STATE ENFORCEMENT POWER

SEC. 5. Section 207 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 436) is amended to read as follows:

"SEC. 207. ENFORCING COMPLIANCE WITH FEDERAL RAILROAD SAFETY RULES, REGULATIONS, ORDERS, AND STANDARDS.

"(a)(1) In any case in which the Secretary has failed to assess the civil penalty applicable under section 209 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title or under any law transferred by section 6 (e)(1), (e)(2), (e)(6)(A) of the Department of Transportation Act, within sixty days after the date on which notification was received by the Secretary from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for the assessment and collection of the civil penalty included in or made applicable to such rule, regulation, order, or standard.

"(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that no violation has occurred.

"(b)(1) In any case in which the Secretary has not commenced an action for injunctive relief under section 210 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title or under any law transferred by section 6(e)(1), (e)(2), or (e)(6)(A) of the Department of Transportation Act, within 15 days after the date on which the Secretary received notification of the violation, together with a request that an injunctive action be instituted, from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for injunctive relief to restrain further violation of such rule, regulation, order, or standard.

"(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that (A) no violation has occurred, or (B) an action for injunctive relief is not necessary because of other enforcement action undertaken by the Secretary with respect to the subject violation.

"(c) A State agency may not bring an action under this section in any United States district court located outside the boundaries of the State.".

CONSOLIDATION OF ADMINISTRATIVE POWERS

SEC. 6. (a) Section 208(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437 (b)) is amended by inserting "and under the functions transferred by section 6(e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A))" immediately after "this title".

(b) Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) is amended by adding at the end thereof the following new subsection:

"(d)(1) In carrying out the functions formerly vested in the Interstate Commerce Commission and transferred to the Secretary by section 6(e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655(e)(1), (e)(2), and (e)(6)(A)), the Secretary is authorized to perform any act authorized in subsection (a) of this section that he considers necessary to carry out such transferred functions, including, but not limited to, conducting investigations, making reports, issuing subpenas, requiring production of documents, taking depositions, and prescribing recordkeeping and reporting requirements. The Secretary is further authorized to issue orders directing compliance with the laws transferred by section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act or with any regulation or order issued thereunder.

"(2) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce by appropriate means any order issued by the Secretary under paragraph (1) of this subsection.".

CRIMINAL PENALTY FOR FALSE REPORTING

SEC. 7. Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) is amended by adding at the end thereof the following new subsection:

"(e) Any person who knowingly and willfully—

"(1) makes a false entry in any record or report required under this title to be made, prepared, or preserved;

"(2) destroys, mutilates, changes, or by another means falsifies any such record or report;

"(3) does not enter required specified facts and transactions in any such record or report;

"(4) makes, prepares, or preserves any such record or report in violation of a regulation or order issued under this title; or

"(5) files a false record or report with the Secretary,

shall be fined not more than $5,000, or imprisoned for not more than two years, or both.".

VENUE

SEC. 8. (a) Section 209(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438 (c)) is amended by striking out "having jurisdiction in the locality where such violation occurred" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(b) Section 6 of the Act of March 2, 1893 (45 U.S.C. 6), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(c) Section 9 of the Act of February 17, 1911 (45 U.S.C. 34), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(d) Section 25(h) of the Act of February 4, 1887 (49 U.S.C. 26(h)), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

INJUNCTIVE RELIEF

SEC. 9. (a) Section 210(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439 (a)) is amended by inserting "and to restrain violations of or to enforce rules, regulations, orders, or standards established under any statute transferred to the Secretary under section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A))" immediately before the period at the end thereof.

(b) Section 210 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439) is amended by adding at the end thereof the following new subsection:

"(c) Subject to section 207(d) of this title, any action under subsection (a) of this section may be brought in the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office.

PROTECTION AND RIGHTS OF EMPLOYEES

SEC. 10. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by inserting after section 211 the following new section:

"SEC. 212. PROTECTION AND RIGHTS OF EMPLOYEES.

"(a) A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee because such employee, whether acting in his own behalf or in a representative capacity, has—

"(1) filed any complaint or instituted or caused to be instituted any proceeding under or related to the enforcement of the Federal railroad safety laws; or

"(2) testified or is about to testify in any such proceeding.

"(b)(1) A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if—

"(A) the refusal is made in good faith and no reasonable alternative to such refusal is available to the employee;

"(B) the hazardous condition is of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that—

"(i) the condition presents an imminent danger of death or serious injury; and

"(ii) there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory channels; and

"(C) the employee, where possible, has notified his employer of his apprehension of such hazardous condition and of his intention not to perform further work unless such condition is corrected immediately.

"(2) The provisions of this subsection shall not apply to security personnel employed by a railroad to protect persons and property transported by such railroad.

"(c)(1) Any dispute, grievance, or claim arising under this section shall be subject to resolution in accordance with the procedures set forth in section 3 of the Railway Labor Act (45 U.S.C. 153).

"(2) In the case of any violation of subsection (a) and (b) of this section, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 3 of the Railway Labor Act shall, where appropriate, award backpay to the aggrieved employee and order such employee reinstated to his position.

"(d) Whenever an employee of a railroad is afforded protection under this section and under any other provision of law in connection with the same allegedly unlawful act of an employer, if such employee seeks protection he must elect either to seek relief pursuant to this section or pursuant to such other provision of law.

"(e) As used in this section, the term 'Federal railroad safety laws' means this Act, the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), and those laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e) (1), (2), and (6) (A) of section 6 of the Department of Transportation Act (49 U.S.C. 1655(e) (1), (2), and (6)(A)).".

PAY CLASSIFICATIONS

SEC. 11. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by inserting after section 212, as added by section 10 of this Act, the following new section:

"SEC. 213. PAY CLASSIFICATIONS.

"Notwithstanding any other provision of law—

"(1) the position held by a fully experienced and qualified railroad safety inspector employed by the Department of Transportation shall be classified in accordance with chapter 51 of title 5, United States Code, but not lower than Grade GS-12 of the General Schedule; and

"(2) the position held by a railroad safety specialist employed by the Department of Transportation shall be classified in accordance with chapter 51 of title 5, United States Code, but not lower than Grade GS-13 of the General Schedule.".

HOURS OF SERVICE ACT AMENDMENT

SEC. 12. Section 5(a) of the Act of March 4, 1907 (45 U.S.C. 64a(a)), commonly known as the Hours of Service Act, is amended to read as follows:

"SEC. 5. (a)(1) Any common carrier subject to this Act, or any officer or agent thereof, that requires or permits any employee to go, be, or remain on duty in violation of section 2, section 3, or section 3A of this Act, or that violates any other provision of this Act, shall be liable for a penalty of $500 for each violation, to be recovered in an action to be brought by the United States attorney in the district court of the United States for the judicial district in which such violation occurred or in which the defendant has its principal executive office. It shall be the duty of the United States attorney to bring such an action upon satisfactory information being lodged wih him. In the case of violation of section 2 (a)(3) or (a)(4) of this Act, each day a facility is in noncompliance shall constitute a separate offense.

"(2) No action may be brought under this section after the expiration of the two-year period beginning on the date the violation occurred unless administrative notification pursuant to the Federal Claims Collection Act (31 U.S.C. 951-953) has been provided to the common carrier within such two-year period, but in no event may any such action be brought after the expiration of the period specified in section 2462 of title 28, United States Code.".

LOCOMOTIVE INSPECTION ACT AMENDMENT

SEC. 13. Section 6 of the Act of February 17, 1911 (45 U.S.C. 29), is amended by striking out the fourth and fifth sentences and inserting in lieu thereof the following: "Each carrier subject to such sections shall keep on file the report of each inspection required by such rules and regulations and the report showing the repair of the defects disclosed by the inspection. The rules and regulations referred to in this section shall prescribe the manner in which such reports shall be kept.".

SAFETY OF RAILROAD PASSENGER EQUIPMENT

SEC. 14. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following new subsection:

"(h)(1) The Secretary shall, within two years after the date of enactment of this subsection, issue such initial rules, regulations, orders, and standards as may be necessary to insure the safe construction, maintenance, and operation of railroad passenger equipment. The Secretary shall periodically review such rules, regulations, orders, and standards and shall, after a hearing in accordance with subsection (b) of this section, make such revisions in such rules, regulations, orders, and standards as may be necessary.

"(2) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary shall—

"(A) concentrate on those areas which, in the judgment of the Secretary, present the greatest opportunity for enhancing the safety of railroad passenger equipment; and

"(B) give significant weight to the expenditures that would be necessary to retrofit existing equipment and to alter specifications for equipment on order;

"(3) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary may consult with the National Railroad Passenger Corporation, public authorities tht operate passenger service, other rail carriers that transport passengers, organizations of passengers, and organizations of employees. Such consultations shall not be subject to the Federal Advisory Committee Act, but minutes of such consultations shall be placed in the public docket of the rulemaking proceeding.

"(4) As used in this subsection, the term 'railroad passenger equipment' means all railroad equipment used for the transportation of passengers, whether in commuter or intercity service.".

ALASKA RAILROAD ACT AMENDMENT

SEC. 15. The first section of the Act of March 12, 1914 (43 U.S.C. 975), is amended by inserting immediately after the first undesignated paragraph the following new paragraph:

"Any security officer employed to protect life and property on the railroad is authorized to maintain law and order, to carry firearms, and to make arrests on railroad property with a warrant for any offense committed against the laws of the United States, and to make arrests without a warrant for any offense committed upon property of the railroad if there is reasonable ground to believe that the offense constitutes a felony under the laws of the United States and the person to be arrested has committed or is committing the felony.".

STUDIES AND REPORTS

SEC. 16. (a) The Secretary of Transportation shall conduct a study regarding employee training in the railroad industry as it affects railroad safety. Among other factors, such study shall consider the appropriate Federal role, if any in such training, and the adequacy of such training. The results of such study, together with recommendations for any necessary legislation, shall be submitted to the Congress by December 31, 1980.

(b)(1) The Secretary of Transportation shall make every possible effort to expedite promulgation of a final rule regarding the retrofitting of Department of Transportation specification one hundred and five tank cars with shelf couplers. In the event that such rule is not promulgated prior to December 31, 1980 the Secretary of Transportation shall submit to the Congress a status report with respect to such rule, indicating the Federal Railroad Administration's activities to such date, the current status of such rule, and an estimate as to when a final rule will be promulgated.

(2) Whenever the Secretary of Transportation submits a status report pursuant to the provisions of paragraph (1) of this subsection, or when the Federal Railroad Administration promulgates a final rule with respect to the retrofitting of Department of Transportation specification one hundred and five tank cars with shelf couplers, the Secretary shall transmit to the Congress any other recommendations and anticipated action by the Department of Transportation with respect to the retrofitting of such tank cars.

(c)(1) The Secretary of Transportation shall submit to the Congress a systems safety plan relating to the activities of the Department of Transportation in carrying out rail safety laws. The Secretary shall complete such plan at the earliest possible date, but in no event shall the study be submitted later than January 31, 1981.

(2) As part of the plan submitted to the Congress under paragraph (1) of this subsection, the Secretary of Transportation shall develop a methodology to determine frequency and schedules of safety inspections, giving appropriate priority to track and equipment involved with passenger trains and hazardous cargos. Such methodology shall further take into consideration safety records of the rail carriers, location of track and equipment in population centers, volume of usage of track and equipment, and any other factors that the Secretary considers relevant to railroad safety.

EFFECTIVE DATE

SEC. 17. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect on the date of enactment of this Act.

(b) Section 11 of this Act shall take effect on October 1, 1980, or on the date of enactment of this Act, whichever is later.

Amend the title so as to read: "An Act to amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes.".

● Mr. CANNON. Mr. President, the House has transmitted to the Senate for its consideration S. 2730, the Federal Railroad Safety Authorization Act of 1980, as amended by the House. This bill represents a compromise worked out between the Senate and the House Commerce Committees. While this bill contains certain provisions which were not included in the Senate bill as originally passed, I rise in support of this legislation.

The bill as passed by the House provides a 2-year authorization for the rail safety activities of the Federal Railroad Administration (FRA): A $38 million for fiscal year 1982 and $40 million for fiscal year 1981. In addition, it includes a provision which would expand the Secretary of Transportation's emergency order authority, with appropriate protection for the carriers. State participation in rail safety inspection programs would be broadened, and State enforcement authority would be expanded. In addition, there are provisions in the bill which relate to the protection of employees presented with hazardous working conditions involving imminent physical harm. Certain other provisions mandate important safety studies and regulations.

The Senate bill as originally passed provided for only a 1-year authorization in light of an ongoing review by FRA of its safety activities, the results of which are to be compiled into a systems safety plan. The Senate committee wanted to be in a position to review the results of this study as part of the committee's overall review of FRA's safety authorization for fiscal year 1982. While the Senate committee has agreed to a 2-year authorization, it is still committed to carefully examining this systems safety plan upon completion.

As part of the authorization levels compromised with the House committee, the Senate committee has agreed to a specific authorization of $10 million for safety research and development, of which $500,000 is to be used in alcohol and drug abuse treatment programs for rail employees. The Senate did not originally authorize any such specific amount because it was assured that all safety research would be adequately funded pursuant to the Department of Transportation's general research appropriations. The Senate committee is likewise concerned that safety research is adequately funded and supports this specific

authorization as an earmarking of funds, which would have been otherwise appropriated, for rail safety research.

Both of the original House and Senate rail safety bills contained provisions which would provide the Secretary of Transportation with the authority to issue an order to abate an emergency situation created by an unsafe condition or practice, and would provide appropriate review of such order. Currently the Secretary has the authority to issue such an order only if an unsafe piece of equipment or facility is found to create the emergency. The bill as passed by the House would expand this authority to insure that the Secretary can respond to all safety emergencies.

However, the Senate bill as originally passed included a provision which would require that the emergency order identify the conditions or practices against which the order is directed and describe the standards under which relief from such order might be obtained. This provision was important to the Senate committee, and the House has accepted it in substantial part.

In supporting such specificity accompanying an emergency order, it is not intended that, given the emergency nature of the order, the Secretary must detail each and every condition with each and every corresponding remedy. Nevertheless, due process does require that the carriers have notice of the basis for the order and the corrective result which is being sought. The Senate committee believes that an order incorporating such notice will be more effective in abating the emergency.

The bill as passed by the House yesterday also includes a House committee provision which gives a rail employee the right to bring action to compel the Secretary of Transportation to issue an emergency order where the employee shows that the Secretary has failed, "without any reasonable basis," to issue such an order, the direct result of which is exposure of the employee to "imminent physical injury." The Senate bill as originally passed did not contain a similar provision. In accepting this provision, the Senate committee intends that this provision be applicable in those egregious cases in which the Secretary has completely ignored a hazardous situation.

Sections 4 and 5 of S. 2730, as amended by the House, relate to the expansion of State participation in the rail safety programs and of State enforcement authority. In this area, while the Senate committee is not completely opposed to State participation in the safety program or to an expansion thereof, it has expressed its concern about the potential for inconsistent enforcement of safety regulations where both the States and the Federal Government are bringing enforcement actions. In addition, the committee has stated its desire to insure that the State inspection programs have adequate resources to make a positive contribution to the rail safety program.

The Senate bill, as amended on the Senate floor, granted DOT the discretion, as appropriate, to enter into agreements with States for the purposes of establishing State inspection programs to enforce certain other rail safety laws beyond those pursuant to which they currently have track and freight car programs. Such discretion and oversight would insure that State programs are fully developed with sufficient funds and resources. This Senate provision was adopted by the House.

In addition, the Senate bill as amended on the Senate floor provided that the States could bring action to seek injunctive relief against a carrier for a safety violation within 15 days after receipt by DOT of notification from the State of such violation. However, to insure that State action would not duplicate or be inconsistent with DOT action, a State could not act if DOT determined in writing either that no violation has occurred or that DOT had taken other action in response to the violation. The 90-day waiting period prior to State action to assess a civil fine, which is in current law, remained unchanged. The House adopted the Senate provisions with one change: the 90-day waiting period prior to State action for civil penalties would be decreased to 60 days. It is intended that States will have such enforcement rights with regard to statutes pursuant to which they have inspection programs.

With regard to protection and rights of employees, the Senate committee agreed in substantial part to a House provision included in section 10 of S. 2730, as amended by the House. This provision would forbid a carrier from discharging or discriminating against an employee for filing a complaint, instituting a proceeding, or testifying in a proceeding relating to safety violations.

Subsection (b) of this section would prevent a carrier from discharging or discriminating against any employee for refusing to work under hazardous conditions presenting an imminent danger of death or serious injury to such employee. A refusal to work would be valid once three specific criteria are met: First, the refusal is made in good faith, and no reasonable alternative to such refusal is available; second, a reasonable person, under such circumstances, would conclude that there is a danger of death or serious injury and that there is insufficient time to eliminate the danger through regulatory channels; and third, the employee, where possible, has notified his employer of his fear and his intent to stop working. The applicable remedy for this section is back pay and/or reinstatement, where appropriate. A House provision allowing exemplary damages was opposed by the Senate committee and is not included in this bill.

Section 10(b) is based on a regulation promulgated under the Occupational Safety and Health Act (OSHA) and recently upheld by the Supreme Court in *Whirlpool Corp.* v. *Marshall*, ——— U.S. ———, 48 U.S.L.W. 4189 (1980). The Senate committee recognizes that under current law rail employees who are not covered by OSHA can seek similar protection through normal grievance procedures established under section 3 of the Railway Labor Act. This subsection is intended to codify the protection granted pursuant to these procedures by the law boards and panels. It is important to note in this regard that any grievance under this section is subject to the procedures set forth in section 3 of the Railway Labor Act.

It is not intended that such a provision would allow an employee simply to refuse to work without just cause. A refusal must be made "in good faith." For example, many jobs in the rail industry involve inherently hazardous activities. Assuming appropriate protection is provided to the employee by the employer for such activities, this provision is not to be available merely because of the inherent hazardous nature of a job.

Section 11 of S. 2730, as amended by the House, would provide that safety specialist inspectors employed by DOT would receive a GS-13 rating and regular safety inspectors a GS-12 rating. This provision is in reaction to a recent downgrading of such inspector positions to GS-12 and GS-11 ratings respectively. While this provision was not in the original Senate bill as passed, the Senate committee wants to insure that there is adequate incentive to obtain rail safety inspectors. It remains concerned about reports of recruiting and morale problems in the FRA inspection program and the effect that such problems can have on the strength of the rail safety program. However, this provision is not intended to set a precedent for repeated legislative action with regard to adjustment of pay classifications.

The Senate committee has agreed to a House provision which would mandate DOT to issue within 2 years regulations, as appropriate and necessary, to insure the safe construction, maintenance, and operation of passenger equipment. While this provision does not expand DOT's current safety authority, it appropriately mandates action in an important safety area.

The bill also includes several other provisions, identical in both the Senate and the House bills, which clarify and consolidate the administrative and enforcement powers of DOT. In addition, certain studies originally included in the Senate bill relating to employee training, DOT specification 105 tank cars, and DOT's systems safety plan are included in the bill as passed by the House.

Mr. President, I urge quick action on this legislation. It is my hope that this legislation will insure a strengthened rail safety program.●

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate concur in the amendments of the House.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CUSTOMS COURT ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. DECONCINI, I ask the Chair to lay before the Senate a message

from the House of Representatives on S. 1654.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1654) entitled "An Act to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Customs Courts Act of 1980".

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

COMPOSITION OF COURT

SEC. 101. Section 251 of title 28, United States Code, is amended to read as follows:

"§ 251. Appointment and number of judges; offices

"(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.

"(b) The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge will continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge, by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.

"(c) The offices of the Court of International Trade shall be located in New York, New York.",

ASSIGNMENT OF JUDGES

SEC. 102. (a) Section 293(b) of title 28, United States Code, is amended by striking out "Customs Court" and all that follows through "need arises" and inserting in lieu thereof "Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises".

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims.".

TITLE II—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

JURISDICTION OF THE COURT

SEC. 201. Chapter 95 of title 28, United States Code, is amended to read as follows:

"CHAPTER 95—COURT OF INTERNATIONAL TRADE

"Sec.
"1581. Civil actions against the United States and agencies and officers thereof.
"1582. Civil actions commenced by the United States.
"1583. Counterclaims, cross-claims, and third-party actions.
"1584. Cure of defects.
"1585. Powers in law and equity.

"§ 1581. Civil actions against the United States and agencies and officers thereof

"(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

"(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

"(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

"(2) any final determination of the Secretary of Commerce under section 451 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and

"(3) any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930; and

"(2) any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930.

"(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

"(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

"(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

"(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

"(4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

"(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

"§ 1582. Civil actions commenced by the United States

"The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

"(1) to recover a civil penalty under section 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

"(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or

"(3) to recover customs duties.

"§ 1583. Counterclaims, cross-claims, and third-party actions

"In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court of the United States, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where such action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Customs and Patent Appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals or to the Court of Customs and Patent Appeals where such action shall proceed as if it had been commenced in such court in the first instance.

"§ 1585. Powers in law and equity

"The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.".

TITLE III—COURT OF INTERNATIONAL TRADE PROCEDURE

COURT PROCEDURE

SEC. 301. Chapter 169 of title 28, United States Code, is amended to read as follows:

"CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

"Sec.
"2631. Persons entitled to commence a civil action.
"2632. Commencement of a civil action.
"2633. Procedure and fees.
"2634. Notice.
"2635. Filing of official documents.
"2636. Time for commencement of action.
"2637. Exhaustion of administrative remedies.
"2638. New grounds in support of a civil action.
"2639. Burden of proof; evidence of value.
"2640. Scope and standard of review.
"2641. Witnesses; inspection of documents.
"2642. Analysis of imported merchandise.
"2643. Relief.
"2644. Interest.
"2645. Decisions.
"2646. Retrial or rehearing.
"2647. Precedence of cases.

"§2631. Persons entitled to commence a civil action

"(a) A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

"(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

(d)(1) A civil action to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act may be commenced in the Court of International Trade by a worker, group of workers, certified or recognized union, or authorized representative of such worker or group that applies for assistance under such Act and is aggrieved by such final determination.

"(2) A civil action to review any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act may be commenced in the Court of International Trade by a firm or its representative that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

"(3) A civil action to review any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act may be commenced in the Court of International Trade by a community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

"(e) A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

"(f) A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.

"(g)(1) A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.

"(2) A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended.

"(h) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part under section 515 of the Tariff Act of 1930.

"(i) Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

"(j)(1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

"(A) no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;

"(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

"(C) in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

"(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

"(k) In this section—

"(1) 'interested party' has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

"(2) 'party-at-interest' means—

"(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

(B) a manufacturer, producer, or wholesaler in the United States of a like product;

"(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and

"(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

"§ 2632. Commencement of a civil action

"(a) Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

"(b) A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

"(c) A civil action in the Court of International Trade under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

"(d) The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

"§ 2633. Procedure and fees

"(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than $5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

"(b) The Court of International Trade shall prescribe rules governing the summons, pleadings, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

"(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

"§ 2634. Notice

"Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

"§ 2635. Filing of official documents

"(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

"(A) the consumption or other entry and the entry summary;

"(B) the commercial invoice;

"(C) the special customs invoice;

"(D) a copy of the protest or petition;

"(E) a copy of the denial, in whole or in part, of the protest or petition;

"(F) the importer's exhibits;

"(G) the official and other representative samples;

"(H) any official laboratory reports; and

"(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

"(b)(1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

"(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

"(B)(i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

"(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, comment, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions as the court may order.

"(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

"(d)(1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which such determination was based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

"(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

"(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

"(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

"(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(d)(1) A civil action contesting a determination by the administering authority under section 703(c) or 733(c) of the Tariff Act of 1930 that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(2) A civil action contesting a negative determination by the administering authority under section 703(b) or 733(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(e) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

"(f) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(g) A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

"(h) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

"(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

"(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

"(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the rule, may consider any new ground in support of the civil action if such new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

"(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

"§ 2640. Scope and standard of review

"(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516 of the Tariff Act of 1930.

"(3) Civil actions commenced to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

"(4) Civil actions commenced under section 777(c)(2) of the Tariff Act of 1930.

"(5) Civil actions commenced to review

any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930.

"(c) Civil actions commenced under section 1582 of this title.

"(b) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

"(c) In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act, the court shall review the matter as specified in section 284 of such Act.

"(d) In any civil action not specified in this section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) The Court of International Trade may enter a money judgment—

"(1) for or against the United States in any civil action commenced under section 1581 or 1582 of this title; and

"(2) for or against the United States or any other party in any counterclaim, cross-claim, or third-party action under section 1583 of this title.

"(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision.

"(c)(1) Except as provided in paragraph (2), (3), and (4) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

"(2) The Court of International Trade may not grant an injuction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974, or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

"(3) In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

"(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

"(d) If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges, or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

"§ 2644. Interest

"If, in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930, the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

"§ 2645. Decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law; or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) After the Court of International Trade has rendered a judgment, the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and in the manner provided in section 2601 of this title.

"§ 2646. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

"§ 2647. Precedence of cases

"The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a)(1)(B)(i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.".

JURY TRIALS

SEC. 302. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1876. Trial by jury in the Court of International Trade

"(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

"(b) Whenever the Court of International Trade conducts a jury trial—

"(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

"(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

"(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

"(4) jurors shall be compensated in accordance with section 1871 of this title.".

(b) The section analysis for chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1876. Trial by jury in the Court of International Trade.".

(c) Section 1862 of title 28, United States Code, is amended by inserting "or in the Court of International Trade" immediately after "United States".

TITLE IV—COURT OF CUSTOMS AND PATENT APPEALS

JURISDICTION OF THE COURT

SEC. 401. (a)(1) Section 1541(a) of title 28, United States Code, is amended to read as follows:

"(a) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from all final decisions of the Court of International Trade.".

(2) Section 1541 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from interlocutory orders of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions.".

(b)(1) Section 1543 of title 28, United States Code, is amended to read as follows:

"§ 1543. International Trade Commission determinations

"The Court of Customs and Patent Appeals shall have jurisdiction to review the final determination of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade.".

(2) The item relating to section 1543 in the section analysis of chapter 93 of title 28, United States Code, is amended to read as follows:

"1543. International Trade Commission determinations.".

POWERS OF THE COURT

SEC. 402. (a) Chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new section:

"§ 1546. Powers in law and equity

"The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, a court of appeals of the United States.".

(b) The section analysis of chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new item:

"§ 1546. Powers in law and equity.".

COURT OF CUSTOMS AND PATENT APPEALS

SEC. 403. (a) Section 2601(a) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed.".

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" immediately after "appeal" each place it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of".

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code, is amended by inserting immediately after the first sentence the following new sentences: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether the findings of fact are clearly erroneous, whether or not the party raising such question made an objection to such findings in the Court of International Trade or made a motion to amend such findings.".

(e)(1) Section 2602 of title 28, United States Code, is amended to read as follows:

"§ 2602. Precedence of cases

"The following civil action in the Court of Customs and Patent Appeals shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a)(1)(B)(i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.

"(5) Fifth, an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202).".

(2) The item relating to section 2602 in the section analysis of chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases.".

RULES OF EVIDENCE

SEC. 404. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Rules of evidence

"Except as provided in section 2639 or 2641(b) of this title or in the rules prescribed by the court, the Federal Rules of Evidence shall apply in the Court of Customs and Patent Appeals in any appeal from the Court of International Trade.".

(b) The section analysis of chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2603. Rules of evidence.".

JUDICIAL CONFERENCE

SEC. 405. (a) Chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new section:

"§ 2604. Judicial conference

"The chief judge of the Court of Customs and Patent Appeals is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.".

(b) The section analysis of chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new item:

"2604. Judicial conference.".

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28

SEC. 501. The following provisions of title 28, United States Code, are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

(1) The item relating to chapter 11 in the chapter analysis of part I.

(2) The chapter heading of chapter 11.

(3) Section 253(a).

(4) Section 254.

(5) Section 255(a).

(6) Section 257.

(7) Section 292(e).

(8) Section 293(c).

(9) Section 372 (a) and (b).

(10) Section 451 (including that section as it will become effective on April 1, 1984).

(11) Section 456.

(12) Section 569(a) (including that section as it will become effective on April 1, 1984).

(13) The item relating to chapter 55 in the chapter analysis of part III.

(14) Section 605.

(15) Section 610.

(16) The chapter heading of chapter 55.

(17) Section 871.

(18) Section 872.

(19) Section 873.

(20) The item relating to chapter 95 in the chapter analysis of part IV.

(21) Section 1340.

(22) The item relating to section 1541 in the section analysis of chapter 93.

(23) The section heading for section 1541.

(24) Section 1541(b).

(25) The item relating to chapter 169 in the chapter analysis of part VI.

(26) The item relating to section 2601 in the section analysis of chapter 167.

(27) The section heading for section 2601.

(28) Section 2601 (a), (b), and (c).

SEC. 502. Section 252 of title 28, United States Code, is amended by striking out "Judge of the Customs Court" and inserting in lieu thereof "Judges of the Court of International Trade".

SEC. 503. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

SEC. 504. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court.".

SEC. 505. Section 1337 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.".

SEC. 506. Section 1352 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 507. Section 1355 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 508. Section 1356 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 509. The second paragraph of section 1491 of title 28, United States Code, is amended by striking out "in suits" and inserting in lieu thereof "of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action".

SEC. 510. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" the first place it appears.

SEC. 511. (a) Chapter 125 of title 28, United States Code, is amended by inserting immediately after section 1963 the following new section:

"§ 1963A. Registration of judgments of the Court of International Trade

"(a) A judgment in any civil action for the recovery of money or property entered by the Court of International Trade which has become final by appeal or expiration of time for appeal may be registered in any judicial district by filing a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

"(b) A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.".

(b) The section analysis of chapter 125 of title 28, United States Code, is amended by inserting immediately after the item relating to section 1963 the following new item:

"1963A. Registration of judgments of the Court of International Trade.".

SEC. 512. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" in the first sentence.

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS

SEC. 601. The following provisions of law are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

(1) Section 6001 of title 18, United States Code.

(2) Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305).

(3) Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)).

(4) Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503).

(5) Section 514 (a) and (b) of the Tariff Act of 1930 (19 U.S.C. 1514 (a) and (b)).

(6) Section 516 (d), (e), and (f) of the Tariff Act of 1930 (19 U.S.C. 1516 (d), (e), and (f)).

(7) Section 516A (a)(2), (c), (d), and (e) of the Tariff Act of 1930 (19 U.S.C. 1516a (a)(2), (c), (d), and (e)).

(8) Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528).

(9) Section 308(9) of the Ethics in Government Act (28 U.S.C. app.).

(10) Section 7443(d) of the Internal Revenue Code of 1954.

(11) Section 906 of title 44, United States Code.

SEC. 602. Section 103(h) of the Act of March 27, 1978 (92 Stat. 170; 16 U.S.C. 791 (h)) is amended by striking out "section 250 of the Trade Act of 1974 (88 Stat. 2029)" and inserting in lieu thereof "section 284 of the Trade Act of 1974, except that such review shall be in the appropriate court of appeals of the United States, and the judgment of such court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.".

SEC. 603. The first section of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall be known" approved May 28, 1926 (19 U.S.C. 405a), is repealed.

SEC. 604. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended—

(1) by inserting "for review in accordance with chapter 7 of title 5, United States Code" immediately before the period at the end of the fourth sentence; and

(2) by striking out the last sentence and inserting in lieu thereof the following new sentence: "Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 to title 5, United States Code.".

SEC. 605. (a) Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1514(a)(4)) is amended to read as follows:

"(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;".

(b) Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is further amended by striking out "section 2632 of title 28 of the United States Code within the time prescribed by section 2631" and inserting in lieu thereof "chapter 169 of title 28 of the United States Code within the time prescribed by section 2636".

SEC. 606. Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) is amended by striking out "section 1582" and inserting in lieu thereof "section 1581".

SEC. 607. (a) Section 516(a) of the Tariff Act of 1930 is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by striking out "(as defined in section 771(9) (C), (D), and (E) of this Act)";

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(4) by inserting at the end thereof the following new paragraph:

"(2) As used in this section, the term 'interested party' means a person who is—

"(A) a manufacturer, producer, or wholesaler in the United States;

"(B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or

"(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States, of goods of the same class or kind as the designated imported merchandise.".

(b) Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

SEC. 608. (a) Section 516A(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(1)) is amended to read as follows:

"(1) REVIEW OF CERTAIN DETERMINATIONS.—

"(A) THIRTY-DAY REVIEW.—Within 30 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

"(ii) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or

"(iii) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

"(B) TEN-DAY REVIEW.—Within 10 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the administering authority, under section 703(c) or 733(c) of this Act, that a case is extraordinarily complicated, or

"(ii) a negative determination by the administering authority under section 703(b) or 733(b) of this Act,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.".

(b) Section 516A(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(3)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

(c) Section 516A(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1516a(c)(2)) is amended by striking out the second sentence.

(d) The second sentence of section 516A (d) of the Tariff Act of 1930 (19 U.S.C. 1516a (d)) is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.".

SEC. 609. Section 592(e) of the Tariff Act of 1930 (19 U.S.C. 1592(e)) is amended by striking out "(e) DISTRICT COURT PROCEEDINGS.—" and all that follows through "under this section—" and inserting in lieu thereof the following:

"(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—".

SEC. 610. Section 604 of the Tariff Act of 1930 (19 U.S.C. 1604) is amended—

(1) by striking out "every United States district attorney" and inserting in lieu thereof "the Attorney General of the United States";

(2) by inserting "or the Court of International Trade" immediately after "district court"; and

(3) by striking out "such district attorney" and in inserting in lieu thereof "the Attorney General".

SEC. 611. (a) The second sentence of the the second paragraph of section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out "in the circuit court" and all that follows through "District of Columbia" and inserting in lieu thereof "in the Court of International Trade".

(b) Section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out the next to last sentence of the second paragraph.

SEC. 612. Section 250 of the Trade Act of 1974 (19 U.S.C. 2322), and the item relating to such section in the table of contents of such Act, are repealed.

SEC. 613. (a) Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.) is amended by redesignating section 284 as section 285 and by inserting immediately after section 283 the following new section:

"SEC. 284. JUDICIAL REVIEW.

"(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

"(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The Judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals as prescribed by the rules of such court. The judgment of the Court of Customs and Patent Appeals shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.".

(b) The table of contents of the Trade Act of 1974 (19 U.S.C. 2101 et seq.) is amended by striking out the item relating to section 284 and inserting in lieu thereof the following new items:

"Sec. 284. Judicial review.
"Sec. 285. Effective date.".

TITLE VII—EFFECTIVE DATES AND MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 701. (a) Except as provided in subsection (b) of this section, the provisions of and amendments made by this Act shall take effect on November 1, 1980.

(b)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the 90th day after the effective date of this Act:

(A) Sections 1582, 2639(a)(2), and 2640 (a)(6), as amended by sections 201 and 301 of this Act.

(B) Sections 1352, 1355, and 1356, as amended by sections 506, 507, and 508 of this Act.

(2) Section 592(e) of the Tariff Act of 1930, as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after 90th day after the effective date of this Act.

TREATMENT OF REFERENCES

SEC. 702. Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade.

EFFECT ON CUSTOMS COURT JUDGES

SEC. 703. (a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act shall not affect the status of any individual serving as judge or chief judge of the Customs Court on the date of enactment of this Act.

(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act, shall apply to any individual serving as chief judge on or after the date of enactment of this Act.

EFFECT ON PENDING CASES

SEC. 704. Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment of this Act under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment.

TVA LEGAL REPRESENTATION

SEC. 705. Nothing in this Act affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 to represent itself by attorneys of its choosing.

● Mr. DECONCINI. Mr. President, I am pleased to initiate discussion of S. 1654, the Customs Courts Act of 1980, a bill to improve the laws governing the jurisdiction, powers and procedures of the U.S. Customs Court. S. 1654 unanimously passed the U.S. Senate on December 18, 1979. H.R. 7540, a similar bill, recently unanimously passed the House of Representatives on Monday, September 22, 1980. Subsequently, the House of Representatives called up S. 1654 and inserted the provisions of H.R. 7540. It is this language to S. 1654 which we will consider today.

Enactment of the proposed Customs Courts Act will bring necessary clarification and improvement to the laws governing the jurisdiction, powers and procedures of the U.S. Customs Court. As a result of modification to the Customs Court, certain adjustments to the appellate court, the Court of Customs and Patent Appeals were also necessary.

Over the years, complex questions have arisen concerning the jurisdiction of the Customs Court, its scope of review, and the type of relief the court may award. Periodically, Congress has addressed these issues and has altered the court's status, jurisdiction and powers to solve a specific problem or to meet a specific need at a particular time. The result is a patchwork of laws that does not always serve the public interest.

The Customs Court had its genesis in 1890 as the board of general appraisers, an administrative unit within the Department of the Treasury, which was responsible for the review of decisions by Customs officials as to the rate and amount of duty imposed on imported merchandise, as well as the value of such merchandise. In 1926, legislation sought to provide greater judicial review and uniformity in the decisionmaking process, but it did not make any essential changes in the functions, duties or jurisdiction of the newly created court. In the following 30-year period the court gradually became an integral part of the Federal judicial system. In 1956, Congress declared the Customs Court to be a court "established under article III of the Constitution of the United States" (28 U.S.C. § 251).

In 1970 Congress recognized that the court's procedures and jurisdiction were in need of significant revision. At the time, Congress focused its legislative efforts on the Customs Courts Act of 1970, which made sweeping procedural reforms in the workings of the Customs Court. The 1970 legislation, however, still left the substantive issues regarding the jurisdiction and powers of the court unresolved.

Recently, with the completion of the Tokyo round of the multilateral trade negotiations and the President's signing of the Trade Agreements Act of 1979, the committee realized more than ever the need for additional legislation regarding the Customs Court. The Trade Agreements Act substantially expanded the opportunity for judicial review of antidumping and countervailing duty determinations. The act also, for the first time, authorized the Customs Court to grant injunctive relief in limited circumstances.

The primary statutes governing the U.S. Customs Court have not kept pace with the increasing complexities of modern day international trade litigation. The majority of cases before the Customs Court traditionally involved classification and valuation issues. In almost all of these cases, the court could only agree or disagree with the decision of the administrative agency. The court could not issue money judgments, nor, until 1980, could it provide equitable relief. The process which began in 1890 has resulted in "a jigsaw puzzle with enough missing pieces to make it difficult for any but the closest observer to discover what the completed puzzle was intended to depict."

The jurisdictional statutes of the Customs Court were drafted at a time when tariff rates were an essential factor in international trade. Congress was most sensitive to this and thus was primarily concerned with establishing methods for the judicial review of administrative determinations pertaining to the classification and valuation of imported merchandise. While these statutes did not always recognize the principle of having a decisive impact on the rate of duty ultimately assessed, the overall statutory scheme was constructed to facilitate challenges to classification and valuation determinations.

Multilateral negotiations have led to a significant decrease in tariff duties and consequently a diminishing importance in classification and valuation cases in the overall spectrum of international trade litigation. In their place other measures, such as antidumping and countervailing duty statutes, have assumed a greater importance. The net result has been a significant increase in the number of suits challenging governmental determinations in these areas.

Many suits involving international trade issues are and have been instituted in the Federal district courts rather than the U.S. Customs Court. One reason is that often it is difficult to determine in advance whether or not a particular case falls within the jurisdictional scheme of the Customs Court. In addition, because of the limited powers of Customs Court, litigants often choose another forum, for example, the Federal district courts, where they can gain the appropriate relief for their alleged injuries. Many district courts have refused to entertain such suits, citing the constitutional mandate requiring uniformity in decisions relating to imports. (See U.S. Const. art. I, § 8.) In so doing, the district courts sought to preserve the congressional grant of exclusive jurisdiction to the U.S. Customs Court for judicial review of all matters relating to imports.

The result has been inconsistent judicial decisions with litigants proceeding cautiously when choosing a forum for judicial review. If an improper forum is chosen, that may well result in a holding that the plaintiff is before the wrong court. A dismissal for want of jurisdiction can effectively preclude a judicial determination of the case on its merits. Furthermore, the type of relief available depends greatly upon a plaintiff's ability to persuade a court that it possesses jurisdiction over a particular case. Thus, some individuals will obtain relief which is denied others, who by chance select an improper forum to institute suit.

It is our view that clarification of jurisdiction possesses substantial advantages in terms of our ability to conduct our trade policy. This would enable us to maintain judicial review, while simultaneously increasing its availability, and assuring our trading partners that administrative determinations in this area will be subject to judicial review only by a limited number of courts which are in a position to render expeditious decisions. The clarification and expansion of the customs courts jurisdiction is warranted not only because it will eliminate the considerable jurisdictional confusion which now exists, but because of two other important considerations: Considerations of judicial economy, and the need to increase the availability of judicial review in the field of international trade in a manner which results in uniformity without sacrificing the expeditious resolution of import-related disputes.

It has become commonplace to refer to our district courts and courts of appeals as overburdened and overworked. The enormous increase in litigation instituted in the Federal courts has led to considerable delays in the resolution of these disputes due to calendar congestion. The comparatively recent increase in litigation involving the field of international trade has only compounded

this problem by adding a new category of cases to those which are already instituted in the district courts.

Under these circumstances, it makes good sense in terms of the availability of judicial resources to transfer some of the cases now instituted in the crowded district courts to the underutilized customs courts.

Another existing defect is that the court is hamstrung in exercising its responsibilities because, as a matter of settled law, it lacks critical equitable powers; it may only entertain cases and controversies which have often reached a degree of ripeness that could make equitable relief too late to be useful, and it cannot fashion equitable remedies when appropriate. The proposed Customs Courts Act of 1980 resolves this long-standing problem by granting the court full equitable powers. This provision will provide a forum for litigants seeking immediate relief in matters arising from import transactions. At present, litigants can only hope the district court will find subject matter jurisdiction and grant an equitable remedy.

In conclusion, S. 1654 would make it clear that the Customs Court—renamed the U.S. Court of International Trade—possesses broad jurisdiction to entertain certain civil actions arising out of import transactions. In addition, the Customs Courts Act of 1980 would make it clear that, in those civil actions within its jurisdiction, the court possesses the authority to grant the appropriate relief when required to remedy an injury. These provisions, when coupled with those contained in the Trade Agreements Act of 1979, make it clear to those who suffer an alleged injury in this area, that they may seek redress in a court with confidence that their case will be heard on the merits—not decided upon jurisdictional grounds and that, if they are successful, the Court of International Trade will be able to afford them the relief which is appropriate and necessary to make them whole.

This legislation will offer the international trade community, as well as domestic interests, consumer groups, labor unions and other concerned citizens, a vastly improved forum for judicial review of administrative actions of the U.S. Customs Service and other Government agencies dealing with imported merchandise.

The language under consideration at this time is largley an improvement over the original provisions of S. 1654. However, the one glaring exception is the political affiliation requirement. This provision, which is also current law, states that no more than five of the nine members of the court may be from the same political party. I am strongly opposed to this measure, but I am willing to accept passage of the bill with it intact, in light of the imminent end of the session.

I view this legislation as too important to risk a time-consuming conference over the single provision provoking disagreement between the House and Senate. As you may be aware, the Customs Court Act of 1980 complements the Trade Agreements Act of 1979, which took effect January 1, 1980, so its expedited passage is of great importance. If however, this bill is passed without deletion of the political affiliation requirement, I will seriously consider sponsoring legislation next session to correct what I consider to be an inappropriate requirement on a court established under article III.

It is inappropriate to have a political affiliation requirment for Customs Court's judges for several reasons. First of all, the Customs Court is and would continue to be unique among article III courts in being subject to such a requirement. The requirement is a vestige of a provision originally applied to the board of general appraisers—the precursor for the Customs Court—established in 1890 as a quasi-administrative, quasi-judicial body to review classification and evaluation of imports.

A political affiliation balancing requirement may make sense in the context of appointees to regulatory boards and commissions, since such officials have relatively short terms, and are charged with making policy decisions often heavily tinged with political considerations. But article III judges appointed for life, who make decisions on the basis of assessment of facts and interpretation of law, should be appointed on the basis of merit alone, and without regard to any political considerations.

I believe that the retention of the political affiliation requirement will only tend to politicize the court—a result at odds with the bill's laudable goals of enhancing the importance and effectiveness of the court.

In addition, I would like the record to clearly indicate that the elimination of this requirement is supported by the Administrative Conference of the United States, the American Bar Association, the Association of the Customs Bar, the Committee on Customs Laws of the New York County Lawyers' Association, and the U.S. Customs Court.

At the request of the Senate Finance Committee, I would like to add one point of clarification regarding section 604 of the act. That section is not intended to imply that the so-called substantial evidence test applies to public interest determinations of the U.S. International Trade Commission in section 337 cases.

I would now like to take this opportunity to pay special tribute to those individuals who, through their untiring efforts, have helped make this bill a reality so it could come to the floor today.

Michael Altier, counsel of the subcommittee which I chair, deserves a great deal of the credit for the immense amount of work he put in. Also, Romano Romani, my staff director, deserves credit for his work on this proposal. In addition, I would like to thank Ann Woodley for all of her recent technical contributions to the legislation.

Before closing, I would also like to formally thank David Cohen, director of the commercial litigation branch of the Department of Justice. Mr. Cohen has been instrumental in assisting us in the development of this legislation.

This legislation is supported by the administration, specifically the Justice Department and the Commerce Department, the American Bar Association, the Association of the Customs Bar, the Administrative Conference of the United States, the American Importers' Association, the New York County Lawyers' Association, the U.S. Customs Court and the U.S. Court of Customs and Patent Appeals. In addition we have received helpful suggestions from the U.S. International Trade Commission.

In conclusion, I would like to urge my colleagues to support S. 1654, the Customs Courts Act of 1980. It is a long overdue and very necessary piece of legislation.●

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. DECONCINI, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DOCUMENTARY MATERIALS PRIVACY PROTECTION ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1790.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1790) entitled "An Act entitled the 'Privacy Protection Act of 1980' ", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Documentary Materials Privacy Protection Act of 1980".

UNLAWFUL ACTS

SEC. 2. (a) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize materials described in subsection 2(a) under the provisions of this aragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797, 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42 U.S.C. 2277, or 50 U.S.C. 783); or

(2) there is reason to believe that the immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being.

(b) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize materials described in subsection 2(b) under the provisions of this paragraph if the offense to which the materials relate consist of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797, 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42 U.S.C. 2277, or 50 U.S.C. 783); or

(2) there is reason to believe that the immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being; or

(3) there is reason to believe that the giving of notice pursuant to a subpena duces tecum would result in the destruction, alteration, or concealment of the materials; or

(4) the materials have not been produced in response to a court order directing compliance with a subpena duces tecum, and

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpena would threaten the interests of justice.

In the event a search warrant is sought pursuant to this subparagraph, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

INAPPLICABILITY OF THIS ACT TO SEARCHES AND SEIZURES CONDUCTED TO ENFORCE THE CUSTOMS LAWS OF THE UNITED STATES

SEC. 3. This Act shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of or at international points of entry into the United States in order to enforce the customs laws of the United States.

REMEDIES

SEC. 4. For violations of this Act by an officer or employee of the United States, there shall be a cause of action against the United States as provided by section 1346(b) and chapter 171 of title 28, United States Code. Remedies against the United States provided by this section shall be the exclusive remedy or sanction, including the Exclusionary Rule.

DEFINITIONS

SEC. 5. (a) "Documentary materials", as used in this Act, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magnetically, or electronically recorded cards, tapes, or discs, but does not mean contraband, the fruits of a crime, or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(b) "Work product", as used in this Act, means any documentary materials created by or for a person in connection with his plans, or the plans of the person creating such materials, to communicate to the public, except such work product as constitutes contraband or the fruits or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(c) "Any other governmental unit", as used in this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

TITLE II—ATTORNEY GENERAL GUIDELINES

SEC. 201. (a) The Attorney General shall, within six months of date of enactment of this Act, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of an offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained;

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between clergyman and parishioner; lawyer and client; or doctor and patient; and

(4) a requirement that an application for a warrant to conduct a search governed by this title be approved by an attorney for the Government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within twenty-four hours of such emergency the appropriate United States attorney is notified.

(b) The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on the use of search warrants by Federal officers and employees for documentary materials described in subsection (a)(3).

SEC. 202. Guidelines issued by the Attorney General under this title shall have the full force and effect of Department of Justice regulations and any violation of these guidelines shall make the employee or officer involved subject to appropriate administrative disciplinary action. However, an issue relating to the compliance, or the failure to comply, with guidelines issued pursuant to this title may not be litigated, and a court may not entertain such a issue as the basis for the suppression or exclusion of evidence.

Amend the title so as to read: "An Act to limit governmental search and seizure of documentary materials possessed by persons, to provide a remedy for persons aggrieved by violations of the provisions of this Act, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I move that the Senate insist on its amendments and agree to the conference requested by the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. LEVIN) appointed Mr. KENNEDY, Mr. BAYH, Mr. DECONCINI, Mr. HEFLIN, Mr. METZENBAUM, Mr. THURMOND, Mr. HATCH, Mr. SIMPSON, and Mr. MATHIAS conferees on the part of the Senate.

CLASSIFIED INFORMATION CRIMINAL TRIAL PROCEDURES ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1482.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1482) entitled "An Act to provide certain pretrial, trial, and appellate procedures for criminal cases involving classified information", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Classified Information Criminal Trial Procedures Act".

TITLE I—PROCEDURES FOR DISCLOSURE OF CLASSIFIED INFORMATION IN CRIMINAL CASES

PRETRIAL CONFERENCES

SEC. 101. At any time after the filing by the United States or an indictment or information in a United States district court, any party to the case may request a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution. Upon such a request, the court shall promptly hold a pretrial conference to establish a schedule for any request for discovery of classified information and for the implementation of the procedures established by this title. In addition, at such a pretrial conference the court may consider any other matter which may promote a fair and expeditious trial. No admission made by the defendant or by any attorney for the defendant at such a conference may be used against the defendant unless the admission is in writing and is signed by the defendant and by the attorney for the defendant.

PROCEDURES FOR DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 102. (a)(1) Whenever a defendant in any Federal prosecution intends to take any action to disclose or cause the disclosure of classified information in any manner in connection with such prosecution, the defendant shall, before such disclosure and before the trial or any pretrial hearing, notify the court and the attorney for the United States of such intention and shall not disclose or cause the disclosure of such information unless authorized to do so by the court in accordance with this title. Such notice shall include a brief description of the classified information that is the subject of such notice.

(2)(A) Within ten days of receiving a notification under paragraph (1), the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of the classified information at issue

that would otherwise be made during the trial or a pretrial hearing. Upon such a request, the court shall conduct such a proceeding.

(B) Any proceeding held pursuant to a request under subparagraph (A) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(C) If a request for a proceeding under this subsection is not made within ten days or if, at the close of such a proceeding, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or at any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided.

(b)(1) Whenever a defendant in a Federal prosecution intends to take any action to disclose or cause the disclosure, during the trial or any pretrial hearing, of any classified information and the defendant has not given notice under subsection (a)(1) with respect to such disclosure because the interest of the defendant in such disclosure reasonably could not have been anticipated before the expiration of the time for giving such notice, the defendant shall, before taking such action, notify the court and the attorney for the United States of such intention and shall not disclose or cause the disclosure of such information unless authorized by the court to do so in accordance with this title. Such notice shall include a brief description of the classified information that is the subject of such notice.

(2)(A) Within forty-eight hours of the receipt of a notification under paragraph (1), the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of the classified information at issue. Upon such a request, the court shall conduct such a proceeding.

(B) Any proceeding held pursuant to a request under subparagraph (A) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(C) If a request for a proceeding under this subsection is not made within forty-eight hours or if, at the close of such a proceeding, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court, subject to the provisions of section 106, shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided. In any order of the court under this subsection that is favorable to the defendant, the court shall specify the time to be allowed the United States to appeal such order under section 108.

(c)(1) At any time before or during trial the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of classified information which has not been the subject of notice under subsection (a)(1) or (b)(1). Upon such a request, the court shall conduct such a proceeding.

(2) Any proceeding held pursuant to a request under paragraph (1) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(3) If, at the close of a proceeding held pursuant to this subsection, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court, subject to the provisions of section 106, shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or at any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided. In any order of the court under this subsection that is favorable to the defendant, the court shall specify the time to be allowed the United States to appeal such order under section 108.

(d) Upon receiving a request from the United States for a proceeding under subsection (a)(2), (b)(2), or (c)(1) the court shall issue an order prohibiting the defendant from disclosing or causing the disclosure of the classified information at issue pending conclusion of the proceeding.

(e) Before any proceeding is conducted pursuant to a request by the United States under subsection (a)(2), (b)(2), or (c)(1), the United States shall provide the defendant with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States. When the United States has not previously made the information available to the defendant, the information may be described by generic category, in such form as the court may approve, rather than by identification of the specific information of concern to the United States.

(f) During the examination of a witness by a defendant in any criminal proceeding, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible in accordance with the procedures established by this title. Upon such an objection, the court shall take such action to determine whether the response is admissible as will safeguard against the disclosure of any classified information. Such action may include requiring the United States to provide the court with a proffer of the response of the witness to the question or line of inquiry anticipated by the United States and requiring the defendant to provide the court with a proffer of the nature of the information sought to be elicited.

ALTERNATIVE PROCEDURE FOR DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 103. (a) Upon any determination by the court authorizing the disclosure of specific classified information under the procedures established by section 102, the United States may move that, in lieu of the disclosure of such specific classified information, the court order—

(1) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove; or

(2) the substitution for such classified information of a summary of the specific classified information.

The court shall grant such a motion of the United States if it finds that the statement or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information. The court shall hold a hearing on any motion under this section. Any such hearing shall be held in camera at the request of the Attorney General.

(b) The United States may, in connection with a motion under subsection (a), submit to the court an affidavit of the Attorney General certifying that disclosure of the classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the United States, the court shall examine such affidavit in camera and ex parte.

SEALING OF RECORDS OF IN CAMERA PROCEEDINGS

SEC. 104. If at the close of an in camera proceeding under this title (or any portion of a proceeding under this title that is held in camera) the court determines that the classified information at issue may not be disclosed or elicited at the trial or any pretrial hearing, the record of such in camera proceeding shall be sealed and preserved by the court for use in the event of an appeal.

PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMATION BY DEFENDANT, RELIEF FOR DEFENDANT WHEN UNITED STATES OPPOSES DISCLOSURE

SEC. 105. (a) Whenever the court denies a motion by the United States that it issue an order under section 103(a) and the United States files with the court an affidavit of the Attorney General objecting to disclosure of the classified information at issue, the court shall order that the defendant not disclose or cause the disclosure of such information.

(b) Whenever a defendant is prevented by an order under subsection (a) from disclosing or causing the disclosure of classified information, the court shall dismiss the indictment or information; except that, when the court determines that the interests of justice would not be served by dismissal of the indictment or information, the court shall order such other action, in lieu of dismissing the indictment or information, as the court determines is appropriate. Such action may include—

(1) dismissing specified counts of the indictment or information;

(2) finding against the United States on any issue as to which the excluded classified information relates; or

(3) striking or precluding all or part of the testimony of a witness.

FAILURE OF DEFENDANT TO PROVIDE PRETRIAL NOTICE

SEC. 106. If a defendant fails to comply with the notice requirements of subsection (a) or (b) of section 102 and the court finds that the defendant's need to disclose or cause the disclosure of the classified information at issue reasonably could have been anticipated before the expiration of the time for giving such notice under such subsection, the court may prohibit the defendant from disclosing or causing the disclosure of such classified information during trial and may prohibit the examination by the defendant of any witness with respect to any such information.

RECIPROCITY; DISCLOSURE BY THE UNITED STATES OF REBUTTAL EVIDENCE

SEC. 107. (a) Whenever the court determines, in accordance with the procedures prescribed in section 102, that classified information may be disclosed in connection with a criminal trial or pretrial hearing or issues an order pursuant to section 103(a), the court shall—

(1) order the United States to provide the defendant with the information it expects to use to rebut the particular classified information at issue; and

(2) order the United States to provide the defendant with the name and address of any witness it expects to use to rebut the particular classified information at issue if, taking into account the nature and extent of the defendant's disclosures, the probability of harm to or intimidation or bribery of a witness, and the probability of identifiable harm to the national security, the court determines that such order is appropriate.

(b) If the United States fails to comply with an order under subsection (a), the court, unless it finds that the use at trial of information or a witness reasonably could not have been anticipated, may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the United States of any witness with respect to such information.

(c) Whenever the United States requests a pretrial proceeding under section 102, the United States, upon request of the defendant, shall provide the defendant with a bill of particulars as to the portions of the indictment or information which the defendant identifies as related to the classified information at issue in the pretrial proceeding. The bill of particulars shall be provided before such proceeding.

(d) The provisions of this section shall not apply to classified information provided by the United States to the defendant pursuant to a discovery request, unless the court determines that the interests of fairness so require.

APPEALS BY THE UNITED STATES

SEC. 108 (a) The United States may appeal to a court of appeals before or during trial from any decision or order of a district court in a criminal case requiring or authorizing the production, disclosure, or use of classified information, imposing sanctions for nondisclosure of classified information, or denying the issuance of a protective order sought by the United States to prevent the disclosure of classified information, if the Attorney General certifies to the district court that the appeal is not taken for purpose of delay.

(b)(1) If an appeal under this section is taken before the trial has begun, the appeal shall be taken within ten days after the date of the decision or order appealed from, and the trial shall not commence until the appeal is decided.

(2) If an appeal under this section is taken during the trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals (A) shall hear argument on such appeal within four days of the adjournment of the trial, (B) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (C) shall render its decision within four days of argument on appeal, and (D) may dispense with the issuance of a written opinion in rendering its decision.

(c) Any appeal and decision under this section shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

PROTECTIVE ORDERS; DISCOVERY; INTRODUCTION OF EVIDENCE

SEC. 109. (a) Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.

(b) Whenever the court determines pursuant to rule 16 of the Federal Rules of Criminal Procedure that the defendant is entitled to discover or inspect documents or materials containing classified information, the court shall authorize the United States to delete classified information from the documents or materials to be made available to the defendant, to substitute a summary of the classified information, or to substitute a statement admitting relevant facts that the classified information would tend to prove, if the court finds that such action will provide the defendant with substantially the same ability to prepare for trial or make his defense as would disclosure of the specific classified information. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(c) Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(d) When a writing or recorded statement (or a part thereof) is introduced into evidence by the United States, the court, upon motion of the defendant, may require the United States at that time to introduce any other writing or recorded statement (or any other part of the statement introduced) which ought in fairness to be considered contemporaneously with the statement introduced and which is relevant to the defendant's case. If such other writing or recorded statement, or such other part, contains classified information, the court, at the request of the United States, shall conduct the hearing on the defendant's motion in camera. If, at the conclusion of such hearing, the court requires the United States to introduce classified information, the procedures of section 103 shall apply.

(e) The United States may notify the court and the defendant before trial if it intends to introduce during the trial only a part of a writing or recorded statement containing classified information. Upon such notification, the court shall conduct, before the trial, an in camera proceeding to make the determinations required by section 109(d).

SECURITY PROCEDURES

SEC. 110. (a) Within one hundred and twenty days of the date of the enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General and the Director of Central Intelligence, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeals, or Supreme Court. Such rules, and any changes in such rules, shall be submitted to the appropriate committees of Congress and shall become effective forty-five days after such submission.

(b) Until such time as rules under subsection (a) first become effective, the Federal courts shall in each case involving classified information adopt procedures to protect against the unauthorized disclosure of such information.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL DEFENSE

SEC. 111. In any prosecution in which the United States must establish as an element of the offense that material relates to the national defense or constitutes classified information, the United States shall notify the defendant, at the time of the pretrial conference or, if no such conference is held, at a time before trial specified by the court, of the portions of the material that it reasonably expects to rely upon to establish such element of the offense.

FUNCTIONS OF ATTORNEY GENERAL MAY BE EXERCISED BY DEPUTY ATTORNEY GENERAL AND A DESIGNATED ASSISTANT ATTORNEY GENERAL

SEC. 112. The functions and duties of the Attorney General under this title may be exercised by the Deputy Attorney General and by an Assistant Attorney General designated by the Attorney General for such purpose and may not be delegated to any other official.

DEFINITION

SEC. 113. As used in this title, the term "classified information" means information or material that is designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security or any Restricted Data, as defined in section 11 v. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

TITLE II—GUIDELINES AND REPORTS

GUIDELINES PRESCRIBED BY THE ATTORNEY GENERAL

SEC. 201. Within ninety days of the date of the enactment of this Act, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in deciding whether to prosecute a violation of Federal law in which there is a possibility that classified information will be disclosed. Such guidelines shall be promptly transmitted to the appropriate committees of the Congress.

ANNUAL REPORT TO CONGRESS BY THE ATTORNEY GENERAL

SEC. 202. The Attorney General shall report to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the chairmen and ranking minority members of the Committees on the Judiciary of the Senate and the House of Representatives once each year concerning the operation and effectiveness of this Act. Such report shall include summaries of those cases in which a decision not to prosecute or not to continue a prosecution was made because of the possibility that classified information would be disclosed.

TITLE III—EFFECTIVE DATE

SEC. 301. The provisions of this Act shall become effective upon the date of the enactment of this Act, but shall not apply to any prosecution in which an indictment or information was filed before such date.

Amend the title so as to read: "An Act to establish certain pretrial and trial procedures for the use of classified information in connection with Federal criminal cases, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I move that the Senate insist on its amendments and agree to the conference requested by the House on the disagreeing votes of the two Houses and the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. LEVIN) appointed Mr. KENNEDY, Mr. BAYH, Mr. BIDEN, Mr. LEAHY, Mr. THURMOND, Mr. DOLE, and Mr. COCHRAN conferees on the part of the Senate.

UNITED STATES CAPITOL GROUNDS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 6331.

The PRESIDING OFFICER laid before the Senate H.R. 6331, an act to amend the act of July 31, 1946, as amended, relating to the United States Capitol grounds, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second time, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 6331) was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMPROVEMENT OF MENTAL HEALTH SERVICES—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I submit a report of the committee of conference on S. 1177 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings in the RECORD.)

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTIONS IN THE ENROLLMENT OF S. 1177

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I send to the desk a concurrent resolution and ask for its immediate consideration, the purpose being to make technical and grammatical corrections in the conference report.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 128) directing the Secretary of the Senate to make corrections in the enrollment of the bill S. 1177.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. 128) was agreed to, as follows:

S. CON. RES. 128

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 1177) to improve the provision of mental health services and otherwise promote mental health throughout the United States, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 101(c)(3) of the bill (A) strike out "Paragraph (1) does" and insert in lieu thereof "Paragraphs (1) and (2) do", and (B) strike out "migrant center which" and insert in lieu thereof "migrant center and which".

(2) In section 107(a)(8) of the bill strike out "patients rights" and insert in lieu thereof "patients' rights".

(3) Strike out the period at the end of section 201(b) of the bill and insert in lieu thereof a comma and the following: "except that if at the end of such period a center has not obligated all the funds received by it under a grant, the center may use the unobligated funds under the grant in the succeeding year for the same purposes for which such grant was made but only if the center is eligible to receive a grant under subsection (a) for such succeeding year."

(4) In section 201(c)(2)(B) of the bill strike out "or entity".

(5) In section 201(c)(2)(ii) of the bill strike out "eligible to receive services from such a center".

(6) In section 201(c) of the bill, redesignate paragraph (2) as paragraph (3) and insert after paragraph (1) the following new paragraph:

"(2) The amount of a grant prescribed by paragraph (1) for a community mental health center for any year shall be reduced by the amount of unobligated funds from the preceding year which the center is authorized, under subsection (b)(1), to use in the year for which the grant is to be made."

(7) Amend paragraph (3) of section 201 (d) of the bill to read as follows:

"(3) Of the total amount appropriated under paragraphs (1) and (2) for any fiscal year, the Secretary may not obligate more than 5 percent for grants under subsection (a) to community mental health centers which are operated by hospitals and which have advisory committees as prescribed by section 101(c)(2).".

(8) In section 202(b)(2) of the bill strike out "Social Security Act," and insert in lieu thereof "Social Security Act and under".

(9) In section 202(c)(2)(ii) of the bill strike out "eligible to receive services from such a entity".

(10) In section 203(b) of the bill strike out "Social Security Act," and insert in lieu thereof "Social Security Act and under".

(11) In section 203(c)(3)(ii) of the bill strike out "eligible to receive services from such a entity".

(12) In section 204(a)(2) of the bill (A) strike out the comma after "provision of" in subparagraph (A), and (B) strike out "Social Security Act," in subparagraph (B) and insert in lieu thereof "Social Security Act and under".

(13) In section 204(a)(3)(C)(II) of the bill strike out "eligible to receive services from such a entity".

(14) In section 204(b)(3)(D)(II) of the bill strike out "eligible to receive services from such a entity".

(15) In section 206(c)(3)(B) of the bill strike out "or entity" and insert in lieu thereof "or other entity".

(16) In section 206(c)(3)(ii) of the bill strike out "eligible to receive services from such a center or entity".

(17) In section 207(b)(2) of the bill strike out "any grant" and insert in lieu thereof "any grant or contract".

(18) Insert after section 208 of the bill the following:

"TITLE III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS"

(19) In section 301 of the bill strike out "receive a grant" and insert in lieu thereof "receive a grant or contract".

(20) In section 302(2)(K) of the bill strike out "Social Security Act," and insert in lieu thereof "Social Security Act and under".

(21) In section 326 of the bill insert a comma after "short-term training".

(22) Strike out section 329 of the bill.

(23) In section 401(b) of the bill, strike out "1981" and insert in lieu thereof "1980".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF AUTHORIZATION FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT AND APPALACHIAN REGIONAL DEVELOPMENT ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I submit legislation to authorize an extension of the Public Works and Economic Development Act of 1965 and the Appalachian Regional Development Act of 1965 for fiscal years 1980 and 1981. This extension is necessary since S. 914, a bill reauthorizing both of these acts, has not cleared conference after nearly 10 months.

Mr. President, I ask unanimous consent that the bill, as introduced, be considered as having been read twice and ask that it be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE HELD AT DESK—H.R. 7544

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 7544 be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ESTABLISHMENT OF THE U.S. HOLOCAUST MEMORIAL COUNCIL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House on H.R. 8081.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 8081) to establish the United States Holocaust Memorial Council.

UP AMENDMENT NO. 1653

(Purpose: Relating to appointment of Council members by the President pro tempore of the Senate)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAKER and myself, I send an amendment to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself and Mr. BAKER, proposes an unprinted amendment numbered 1653.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 14, insert "(except as otherwise provided in this section)" immediately after "appointed".

On page 2, line 23, insert "upon the recommendation of the Majority and Minority Leaders".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

● Mr. DANFORTH. Mr. President, I am pleased that H.R. 8081, a bill to establish the U.S. Holocaust Memorial Council, has been passed by the Senate. The Council now has statutory authority to perform two important functions: Plan, construct, and oversee the operation of a museum to the victims of the holocaust, and encourage and sponsor annual observances of Days of Remembrances to victims of the holocaust.

As the sponsor of the first congressional joint resolution establishing the Days of Remembrance observation 2 years ago, I am pleased that the Days of Remembrance will continue as a time of national reflection and prayer. I believe all Americans should set aside these few days each year to confront the memory of the holocaust and to search our individual consciences for any weaknesses that may encourage or permit hatred or apathy in the face of evil.

In the last 2 years, the Days of Remembrance occurred over a Saturday and Sunday, and the President's Commission on the Holocaust specifies that the Days of Remembrance continue to include a weekend. I believe inclusion of a weekend is crucial so that those who are members of churches, synagogues, or other places of worship may observe the Days of Remembrance on their sabbath. Both last year and the year before, many churches, synagogues, and other places of worship recognized the Days of Remembrance and planned special services. I hope, under the leadership of the Council, this practice continues.

I ask that the portion of the Report of the President's Commission on the Holocaust discussing the "Days of Remembrance" be printed in the RECORD.

The report follows:

EXCERPT FROM THE REPORT TO THE PRESIDENT OF THE PRESIDENT'S COMMISSION ON THE HOLOCAUST, SEPTEMBER 27, 1979

4. DAYS OF REMEMBRANCE

The Commission recommends that the Days of Remembrance of Victims of the Holocaust be proclaimed in perpetuity to be held annually, commencing on the Sunday of (or preceding) the internationally recognized Holocaust Commemoration Day.

The Commission further recommends that the Holocaust Memorial be charged in its charter with the continuing responsibility to develop means of commemorating the Days of Remembrance. This mandate is integral to the work of the proposed Holocaust Memorial.

The President charged the Commission to implement the Congressional resolution calling for the observance of April 28 and 29, 1979, as "Days of Remembrance." The authors wanted the observance "to occur on days when Americans worship in the churches and synagogues of the nation, to coincide with the internationally recognized Holocaust Commemoration Day, and to mark the anniversary of a significant American involvement in the Holocaust, namely, the liberation of Dachau by American troops." Mindful of the legislative intent and the task of commemorating events so shattering as to defy description, the Commission extended the commemoration to a week-long period so as to include the internationally recognized Holocaust Commemoration Day.

The programs initiated by the Commission were built on the foundation of two decades of commemoration activities, intensified this year by governmental involvement. Given the limited resources of the Commission, the number of activities were restricted to those capable of providing models for future years. Working on its own and in cooperation with several states, communities, and national organizations, the Commission organized the following activities:

1. National Civic Holocaust Commemoration Service in the Capitol Rotunda. President Carter led the leaders of the nation and invited guests in a memorial service that included music from the Holocaust sung by the Atlanta Boy Choir, a Presidential address, remarks by the Vice President, an address by the Chairman of the Commission, a candle-lighting ceremony, and appropriate prayers.

2. In the State of Minnesota, a model for state observances, with the help of the local community and the state leaders, programs included:

a. An exhibit of Holocaust art in the Interchurch Center of Minnesota.

b. A conference and teacher workshop, featuring Professor Raul Hilberg as the keynote speaker and scholar in residence, on "The Implications of the Holocaust for Western Society."

c. A state civic ceremony similar to the national ceremony, held in the state capitol with an address by the Governor and a Commissioner.

d. An ecumenical Christian service of commemoration with the participation of all major Christian churches.

e. A Jewish service of commemoration with the participation of all the local synagogues of Minneapolis-St. Paul.

f. A series of documentaries and Holocaust films shown statewide on public and network television.

3. Other Activities: Similar statewide activities were held in Connecticut and New Jersey with a member of the Commission or its Advisory Board participating in the services at the state capitols.

The Commission also participated in the largest Holocaust commemoration service in North America held annually in New York City, organized by the Warsaw Ghetto Resistance Organization and sponsored by other survivors' organizations. Over 25,000 people attended.

The Commission also joined in a Holocaust commemoration service at the National Cathedral in Washington, D.C., at which Senator John Danforth, an ordained Episcopal minister, was the guest preacher. A special liturgy and litany were composed for the occasion which was shared with all Episcopal ministers throughout the United States.

As a model for future observances, the Commission has worked with the City of Sommerville, Massachusetts, on a series of commemorative and educational assemblies in its high schools, featuring films and talks by survivors. The Commission also assisted the National Educational Television network with the selection of appropriate documentary films related to the Holocaust for broadcast throughout the commemorative week.

The Commission's views regarding the Days of Remembrance directly reflect this year's experience. Foremost among its proposals is that these days become a part of the national calendar. The international Holocaust commemoration day falls on the 27th of Nisan by the lunar calendar, a date that never conflicts with either Easter or Passover; the week of Remembrance should begin on the preceding Sabbath.●

ADDITION OF GRANDFATHER CLAUSE TO HAWAII PREPAID HEALTH CARE ACT

Mr. MATSUNAGA. Mr. President, I am today introducing a legislative proposal, S. 3151, which is familiar to all Members. This bill adds a grandfather clause to the Employee Retirement Income Security Act (ERISA) for the Hawaii Prepaid Health Care Act. The Senate has twice before approved this grandfather provision—on July 29 and August 26, 1980—as part of the Multiemployer Pension Plan Amendments Act of 1980, H.R. 3904.

As I have stated before on this floor, the Hawaii State Legislature began consideration of the Prepaid Health Care Act legislation in 1971, about the time Congress began its review of private pension programs. The Hawaii State Legislature passed the Prepaid Health Care Act in April 1974, prior to the passage of ERISA by the Congress.

The Hawaii law requires employers in my State to provide their workers with medical insurance coverage; the coverage is similar to the medical insurance program the Federal Government provides for civil service employees. Since the Hawaii Prepaid Health Care Act concerned only basic comprehensive health insurance protection for employees, and since the Federal Government had not yet taken any formal action on national

health insurance legislation, the Hawaii State Legislature did not envision a conflict with any existing or immediately anticipated Federal laws when it passed the Prepaid Health Care Act legislation in April 1974. Indeed, the State legislature rightfully felt that it was pioneering a uniquely innovative area of State law when it passed the legislation.

In November 1977, a Federal district court in San Francisco ruled that ERISA preempted the Hawaii health care statute. The court found no indication whatever from the legislative history that Congress intended ERISA to preempt State health insurance laws. But following traditional statutory construction, the court noted specific congressional exemptions for State unemployment compensation, worker's compensation, and disability insurance laws; since ERISA did not similarly exempt the Hawaii Health Insurance Act, the court concluded with considerable trepidation that ERISA's general preemption language invalidated the Hawaii law. The statutory ambiguity was created by the Congress; and correction of that ambiguity, the court stated rests with Congress.

The court's decision was rendered in a suit filed by Standard Oil Co. of California. This is the only formal complaint ever received by the State from any employer doing business in Hawaii over the health insurance requirements of the act. But the effect of this decision is to invalidate the entire statute and to deny workers the health insurance protection which State law had previously mandated.

During the 95th Congress, with the cosponsorship of Senator INOUYE, I introduced legislation which would clarify this intent of Congress with respect to the preemption of the Hawaii Prepaid Health Care Act. Over the past 3 years, the hearing records of both the Committee on Labor and Human Resources and the Committee on Finance have explicitly and conclusively indicated that the preemption of the Hawaii health insurance law was never envisioned or intended by Congress. In fact, both committees have acknowledged the need to correct this serious ambiguity in ERISA preemption authority through the approval of the Matsunaga amendment to S. 1076, the Senate companion bill to H.R. 3904.

As a result of the passage of the Prepaid Health Care Act, Hawaii has the most comprehensive basic health insurance protection for its residents in the entire country. The Hawaii Act is based on a community standard of outpatient and prevention-oriented health insurance protection which was established by the private sector over a period of 40 years; the mandated health insurance coverage thus does not include any inefficient, inappropriate, or uneconomical benefits.

Over the past 4 years, several nationally recognized health economists have made a close and analytical study of Hawaii's health care delivery system and have all concluded that the system is a model of free market competition, in which the consumer is the greatest beneficiary, and that it is a very practical, economical approach to the provision of basic comprehensive health insurance protection for the State's residents.

The passage of this narrow waiver of ERISA preemption for the Hawaii Prepaid Health Care Act would permit the continuation of this exemplary health care delivery system for all of Hawaii's residents and this waiver is therefore vitally important to the State of Hawaii. It is strongly supported by the U.S. Department of Labor, the State of Hawaii, the Hawaii State Federation of Labor AFL-CIO, and the International Longshoremen's and Warehousemen's Union.

In light of the Hawaii Legislature's passage of the Prepaid Health Care Act prior to ERISA and in view of the absence of congressional intention to invalidate this law, both the Senate Labor Committee and the Senate Finance Committee as well as the Senate itself, supported my proposal. However, to secure passage of the Multiemployer Pension Plan Amendments Act of 1980, I agreed to the deletion of my amendment in the House-Senate conference on the bill.

The distinguished chairman of the House Task Force on Welfare and Pension Plans, acting for the House Labor Committee chairman, said that he had no problems with the substance of my amendment, but opposed it as a rider on the multiemployer bill, H.R. 3904, because it threatened to split the business-labor coalition which had been formed in support of that bill. The acting chairman of the House Subcommittee of Jurisdiction assured me of early consideration of my amendment if it were passed by the Senate as part of another appropriate bill or as a separate bill.

To reach that objective, I am today introducing my proposal as a clean bill. Inasmuch as the provisions of the bill have already been approved by both the Committee on Finance and the Committee on Labor and Human Resources, the chairman of the latter committee has agreed to waive the latter committee's jurisdiction over the newly introduced bill, with the understanding that such waiver is strictly limited to S. 3151 and is in no way to set a precedent.

Mr. President, I am grateful for the assistance and cooperation which have been accorded me by the distinguished chairmen and members of both parties of the two committees of jurisdiction, and look forward to an early passage of S. 3157.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

A message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 3, 15, 27, 28, 31, 33, 34, 35, 36, 40, 41, and 49, and concurs therein; and it recedes from its disagreement to the amendments of the Senate numbered 7, 12, 22, 39, 42, 43, 52, and 53, and concurs therein, each with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 1482) to provide certain pretrial, trial, and appelate procedures for criminal cases involving classified information; insists upon its amendments to the bill; asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. BOLAND, Mr. MAZZOLI, Mr. EDWARDS of California, Mr. DRINAN, Mr. MCCLORY, and Mr. HYDE be managers of the conference on the part of the House.

The message further announced that the House has passed the bill (S. 1790) entitled the "Privacy Protection Act of 1980," with amendments; it insists upon its amendments to the bill; asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. KASTENMEIER, Mr. DANIELSON, Mr. MAZZOLI, Mr. HARRIS, Mr. GUDGER, Mr. CARR, Mr. RAILSBACK, Mr. SAWYER, and Mr. MOORHEAD of California be the managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, each with an amendment, in which it requests the concurrence of the Senate:

S. 91. An act to amend title 10, United States Code, to remove certain inequities in the survivor benefit plan provided for under chapter 73 of such title, and for other purposes.

S. 658. An act to correct certain technical errors, clarify and make minor substantive changes to Public Law 95-598

S. 1464. An act to direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians;

S. 1640. An act to extend certain authorities of the Secretary of the Interior with respect to water resources research and development programs, and for other purposes; and

S. 1654. An act to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes.

The message further announced that the House has passed the bill (S. 2370) to amend the Federal Railroad Safety Act of 1970 and other rail safety acts to extend authorization for appropriations, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has agreed to the amendments of the Senate to the bill (H.R. 5278) to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resources developments, and for other purposes.

The message also announced that the Speaker has appointed Mr. EDGAR and Mr. LIVINGSTON as additional managers in the conference on the part of the House on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2080) to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes.

The message further announced that the House has agreed to the amendment of the Senate to the bill (S. 1123) to amend section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations for title II of such act for fiscal year 1980.

The message also announced that the House has agreed to the amendments of the Senate to the amendments of the House to the bill (S. 1442) to authorize the documentation of the vessel *Sara*, as a vessel of the United States with coastwise privileges.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6331. An act to amend the act of July 31, 1946, as amended, relating to the U.S. Capitol Grounds, and for other purposes;

H.R. 7544. An act to designate the U.S. Federal Building in New Haven, Conn., as the "Robert N. Giaimo Federal Building";

H.R. 7770. An act to name the Environmental Research Center in Cincinnati, Ohio, the "Andrew W. Breidenbach Environmental Research Center";

H.R. 7939. An act to amend the Securities Investor Protection Act to increase the amount of protection available under such act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission;

H.R. 8081. An act to establish the U.S. Holocaust Memorial Council; and

H.R. 8117. An act to amend the Safe Drinking Water Act, and for other purposes.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 5164. An act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. DECONCINI).

ENROLLED BILLS SIGNED

At 5:18 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 3748. An act to provide for a uniform national 3-year statute of limitations in actions to recover damages for personal injury or death arising out of a maritime tort, and for other purposes; and

H.R. 6242. An act to establish a Towing Safety Commission Advisory Committee in the Department of Transportation.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. DECONCINI).

HOUSE BILLS REFERRED

The following bills were read twice by their title and referred as indicated:

H.R. 7770. An act to name the Environmental Research Center in Cincinnati, Ohio, the "Andrew W. Breidenbach Environmental Research Center"; to the Committee on Environment and Public Works.

H.R. 8117. An act to amend the Safe Drinking Water Act, and for other purposes; to the Committee on Environment and Public Works.

HOUSE BILLS HELD AT THE DESK

The following bills were ordered held at the desk by unanimous consent:

H.R. 7544. An act to designate the U.S. Federal Building in New Haven, Connecticut, as the "Robert N. Giaimo Federal Building."

H.R. 7939. An act to amend the Securities Investor Protection Act to increase the amount of protection available under such act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4648. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Flexible Management: A Must For Effective Armed Services Recruiting"; to the Committee on Armed Services.

EC-4649. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on loan, guarantee, and insurance transactions supported by Eximbank during July 1980 to Communist countries; to the Committee on Banking, Housing, and Urban Affairs.

EC-4650. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the Department of Commerce for fiscal year 1979; to the Committee on Commerce, Science, and Transportation.

EC-4651. A communication from the Secretary of Health and Human Services, transmitting a request for an extension of time to file a report required by the "Act to require a Study of the Desirability of Mandatory Age Retirement for Certain Pilots, and for other purposes" from December 29, 1980 to September 31, 1981; to the Committee on Commerce, Science, and Transportation.

EC-4652. A communication from the Acting Administrator of the Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report on sales of refined petroleum products and sales of retail gasoline for June 1980; to the Committee on Energy and Natural Resources.

EC-4653. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a proposed prospectus for a lease consolidation for the Federal Labor Relations Authority in Washington, D.C.; to the Committee on Environment and Public Works.

EC-4654. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports of the General Accounting Office for the month of August 1980; to the Committee on Governmental Affairs.

EC-4655. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Electronic Fund Transfer—Its Potential For Improving Cash Management In Government"; to the Committee on Governmental Affairs.

EC-4656. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty days prior to September 18, 1980; to the Committee on Foreign Relations.

EC-4657. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled Rising Hospital Costs Can Be Restrained By Regulating Payments and Improving Management"; to the Committee on Labor and Human Resources.

EC-4658. A communication from the Chairman, National Advisory Council on International Monetary and Financial Policies, transmitting, pursuant to law, the Councils special report on United States membership in the African Development Bank (AFDC); to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LONG, from the Committee on Finance:

Special Report entitled "Budget Allocations of the Committee on Finance" (Rept. No. 96-986).

By Mr. LONG, from the Committee on Finance, with an amendment (in the nature of a substitute) and an amendment to the title:

H.R. 5295. An act to amend title II of the Social Security Act to make the monthly earnings test available in limited circumstances in the case of certain beneficiaries, to amend the technical requirements for entitlement to medicare, and to provide that income attributable to services performed before an individual first becomes entitled to old-age insurance benefits shall not be taken into account (after 1977) in determining his or her gross income for purposes of the earnings test (Rept. No. 96-987).

By Mr. LONG, from the Committee on Finance, without amendment:

S. Con. Res. 127. An original concurrent resolution expressing the sense of the Congress with respect to consideration of the Tax Reduction Act of 1980.

By Mr. LONG, from the Committee on Finance, without amendment:

S. Res. 528. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2574. Referred to the Committee on the Budget.

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

H.R. 3956. An Act granting the consent of the Congress to Hewson A. Ryan to accept the office and title of Honorary Consul of Honduras (Rept. No. 96-988).

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

S. Con. Res. 73. A concurrent resolution expressing the sense of the Congress with respect to implementing the objectives of the International Year of Disabled Persons (1981).

By Mr. CHURCH, from the Committee on Foreign Relations, with amendments, and amendments to the preamble:

S. Con. Res. 60. Concurrent resolution expressing the sense of the Congress with respect to the treatment of Christians by the Union of Soviet Socialist Republics, and for other purposes.

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute), an amendment to the preamble (in the nature of a substitute), and an amendment to the title:

S. Res. 460. Resolution to express the sense of the Senate that the Secretary of Energy should take all necessary actions to promote energy efficient cooling (Rept. No. 96–989).

By Mr. MAGNUSON, from the Committee on Appropriations, with amendments:

H.J. Res. 610. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes.

By Mr. KENNEDY, from the Committee on the Judiciary, with amendments:

S. 2216. A bill to improve the intelligence system of the United States, and for other purposes (Rept. No. 96–990).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports were submitted:

TREATY

By Mr. CHURCH, from the Committee on Foreign Relations, without reservation:

Executive M, 95–1. Revise Customs Convention on the International Transport of Goods Under Cover of Transport International Routier Carnets (TIR Convention), done at Geneva on November 14, 1975 (Executive Rept. 96–52).

By Mr. KENNEDY, from the Committee on the Judiciary:

Mack A. Backhaus, of Nebraska, to be a U.S. marshall for the district of Nebraska.

(The above nomination reported from the Committee on the Judiciary was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate).

By Mr. HEFLIN, from the Committee on the Judiciary:

Myron H. Thompson, of Alabama, to be U.S. district judge for the middle district of Alabama.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. RIBICOFF:

S. 3142. A bill for the relief of the estate of Dorothy Meserve Kunhardt; to the Committee on Finance.

By Mr. CHURCH:

S. 3143. A bill to provide for the conveyance of certain federal lands adjacent to Lake Shore Drive, Lake Lowell, Boise Project, Idaho; to the Committee on Energy and Natural Resources.

By Mr. LEVIN:

S. 3144. A bill to amend title IV of the Social Security Act to require States to make AFDC shelter payments in the form of vendor payments where an AFDC recipient has failed to make two consecutive rent payments, and for other purposes; to the Committee on Finance.

By Mr. WILLIAMS (for himself, Mr. CRANSTON, Mr. STONE, and Mr. STEWART):

S. 3145. A bill to provide Homeownership Assistance; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BAUCUS:

S. 3146. A bill to allow an income tax deduction for certain motor carrier operating authorities to offset the impact of the Motor Carrier Reform Act of 1980; to the Committee on Finance.

By Mr. DOLE (for himself and Mrs. KASSEBAUM):

S. 3147. A bill to rename the Veterans' Administration Medical Center in Topeka, Kansas, as the Colmery-O'Neil Veterans' Administration Medical Center; considered and passed.

S. 3148. A bill to name the Federal building located at 444 Southeast Quincy, Topeka, Kansas, the "Frank Carlson Federal Building"; to the Committee on Environment and Public Works.

By Mr. CHURCH:

S. 3149. A bill to provide for the resolution of land title questions and assure protection of significant historic properties within Silver City, Idaho; to the Committee on Energy and Natural Resources.

By Mr. TALMADGE:

S. 3150. A bill to amend title IV of the Social Security Act to provide for the establishment of a quality control system for programs of aid to families with dependent children; to the Committee on Finance.

By Mr. MATSUNAGA:

S. 3151. A bill to amend the Employee Retirement Income Security Act of 1974, for the purpose of waiving preemption in the case of the Hawaii Prepaid Health Care Act; to the Committee on Finance.

By Mr. RANDOLPH (for himself, Mr. BURDICK, Mr. CHAFEE, Mr. DOMENICI, Mr. GRAVEL, Mr. MOYNIHAN, and Mr. STAFFORD):

S. 3152. A bill to amend the Public Works and Economic Development Act of 1965 and the Appalachian Regional Development Act of 1965 to extend the authorization for such acts for 2 additional years; placed on the calendar.

By Mr. MAGNUSON (for himself and Mr. JACKSON):

S. 3153. A bill to provide for the removal of Jones Island in the State of Washington from the National Wildlife Refuge System; to the Committee on Energy and Natural Resouces.

By Mr. TALMADGE:

S. 3154. A bill to make technical corrections in certain provisions of Public Law 96–249 and Public Law 96–265 which relate to information by the Commissioner of Social Security; to the Committee on Finance.

S. 3155. A bill to amend the Adoption Assistance and Child Welfare Act of 1980 to extend the postponement of certain penalties relating to child support requirements; to the Committee on Finance.

By Mr. TALMADGE (for himself, Mr. HELMS, Mr. PRYOR, Mr. STEWART, Mr. HUDDLESTON, Mr. MELCHER, Mr. NUNN, Mr. DOLE, Mr. MORGAN, Mr. SASSER, Mr. MCGOVERN, Mr. HOLLINGS, Mr. ZORINSKY, Mr. HEFLIN, Mr. THURMOND, Mr. STONE, Mr. BOREN, Mr. YOUNG, Mr. LUGAR, Mr. COCHRAN, Mr. BOSCHWITZ, Mr. JEPSEN, Mr. GARN, Mr. HARRY F. BYRD, JR., Mr. WARNER, Mr. GOLDWATER, Mr. HAYAKAWA, and Mr. ARMSTRONG):

S.J. Res. 205. Joint resolution to proclaim March 19, 1981, as "National Agriculture Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHURCH:

S. 3143. A bill to provide for the conveyance of certain Federal lands adjacent to Lake Shore Drive, Lake Lowell, Boise project, Idaho; to the Committee on Energy and Natural Resources.

LAKE LOWELL LAND CONVEYANCES

● Mr. CHURCH. Mr. President, I am today introducing legislation to authorize the Secretary of the Interior to sell to adjacent landowners, at a fair market value, certain surplus public lands along Lake Lowell in southwestern Idaho.

At the turn of this century, the Federal Reclamation Service acquired private lands south of Nampa, Idaho, for the construction of a water storage reservoir on a canal fed by the Boise River. The Lake Lowell dam was constructed in 1909, and the reservoir subsequently filled to its 170,000 acre-feet capacity. In 1937, President Franklin Roosevelt by Executive order created the Deer Flat National Wildlife Refuge on the lands surrounding Lake Lowell.

When Lake Shore Drive was subsequently constructed around the south side of the lake, it did not follow the precise boundary of the property which had been acquired by the Government for the reservoir. Consequently, some 29 small parcels of land, ranging in size from a fraction of an acre to 12 acres, lying south of Lake Shore Drive were isolated from the Deer Flat Wildlife Refuge. Over the years, these parcels were largely incorporated into the adjoining farm operations. Occupancy of these lands—because of the small acreages involved and their rural character—was not contested by the Government over the years, although the question of the precise location of boundary lines did surface on several occasions.

In the early 1970's when a construction loan application on one of the parcels was being reviewed by a title insurance company, legal questions arose as to who actually owned the land immediately adjacent to Lake Shore Drive. Consequently, the Boise Office of the Bureau of Reclamation commenced a retracement boundary survey in 1975. The 29 isolated strips of public land were formally removed from the National Wildlife Refuge, and the Boise office is now in the process of preparing the individual plats and legal descriptions necessary to dispose of the tracts of land.

The project superintendent of the Central Snake Projects Office said in recent letters to the landowners that, "the lands are narrow tracts lying between private ownership and the county road. It has been determined that these tracts of land are not needed for project purposes and therefore should be sold."

The problem which my bill seeks to address is that under current Federal regulations, property of an assessed value in excess of $1,000 must be sold by the General Services Administration on a sealed bid basis, to the highest bidder. This process will not assure that the local landowners—the people who have cared for, cultivated, built upon, and paid taxes for the small strips of land—will have the first right of refusal to buy the lands when they are put up for sale by the Government.

Mr. President, all my bill does is allow the Secretary of the Interior to sell the lands to adjacent landowners at the fair market value of the lands less any improvements the landowners may have made. The Water and Power Resources Service—the old Bureau of Reclamation—is in support of this measure, as is the Department of the Interior. It is only right that the landowners have the first crack at purchasing these tracts. After all, the Government has acted as if they were in private lands for 70 years.

Mr. President, I ask unanimous consent that a letter to me from Mr. Gary Catron, Assistant to the Secretary of the Interior and Director of Congressional and Legislative Affairs for the Department of the Interior, dated September 16, 1980, and the text of the bill, be printed in the RECORD.

There being no objection, the bill and the letter were ordered to be printed in the RECORD, as follows:

S. 3143

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That—

SEC. (1) The Secretary of the Interior (hereinafter referred to as "the Secretary") is hereby authorized to convey all right, title, and interest, except as reserved herein, to certain small tracts of federal lands located adjacent to Lake Shore Drive, Lake Lowell, Boise Project, Idaho, to the adjacent landowners.

SEC. (2) Such conveyances shall be made by the Secretary only to the adjacent landowners, and shall be made within one year from the date of his receipt of a proper application from said landowners. Applicants for such conveyances must pay the fair market value of the lands as of the date of the conveyance, including administrative costs, but excluding the costs to the government of conducting the necessary land surveys and preparing the legal descriptions of the lands to be conveyed. In determining the fair market value of the lands, the Secretary shall not include the value of any improvements made to the lands by the adjacent landowners or their predecessors.

SEC. (3) All conveyances made pursuant to this Act shall reserve to the United States all mineral deposits in the lands and shall assure that the right to mine and remove such minerals is subservient to the surface rights granted in the conveyances.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., Sept. 16, 1980.

Hon. FRANK CHURCH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHURCH: Thank you for your letter of July 28, 1980, on behalf of property owners south of Lake Lowell (Deer Flat Reservoir) along Lake Shore Drive, Idaho.

The Department agrees with the contention that the narrow strip of land south of the reservoir along Lake Shore Drive should be sold to the adjacent private landowners; however, the Water and Power Resources Service (Water and Power) does not have the authority to sell this property to the adjacent landowners. The currently authorized method of disposing of this unneeded property is by reporting it to the General Services Administration (GSA) for disposal under the Federal Property Act of 1949. Sale to the adjacent owners could not be assured under that Act.

Please do not hesitate to contact me if I can be of any further assistance to you.

Sincerely,

GARY R. CATRON,
Assistant to the Secretary and Director of Congressional and Legislative Affairs.●

By Mr. WILLIAMS (for himself, Mr. CRANSTON, Mr. STONE, and Mr. STEWART):

S. 3145. A bill to provide homeownership assistance; to the Committee on Banking, Housing, and Urban Affairs.

HOMEOWNERSHIP ASSISTANCE

● Mr. WILLIAMS. Mr. President, I am introducing legislation designed to assure that a badly needed stimulus program for the depressed housing industry which each House of Congress has approved will in fact be effective. The legislation would free for use $125 million for mortgage subsidies from funds previously approved in appropriations acts for the section 235 homeownership assistance program. This contract authority was recaptured when contracts under the program were canceled for those whose rising incomes made them ineligible for the program.

This contract authority is now blocked by a provision in the 1974 Housing Act preventing the Secretary from entering into contracts under the program after August 22, 1975, using contract authority approved before July 1, 1974. It is my intention to offer this legislation as an amendment to an appropriate authorization bill before the session ends.

Mr. President, I want to emphasize that this contract authority needs only to be freed up for use—it does not require any new appropriation; and I strongly believe that there is no need to score any new budget authority for the money released.

These funds are essential to assure that the housing stimulus program based on the current section 235 program, and approved by the Senate last April is effective, and to cushion the industry from another sharp dip in housing starts likely to occur as interest rates climb again. I am delighted to be joined in this measure by my distinguished colleagues on the Senate Banking Committee, the Senators from California and Alabama (Messrs. CRANSTON and STEWART, respectively), and my distinguished colleague from Florida (Mr. STONE).

Last April, the Senate moved rapidly to respond to a deepening crisis in the housing industry, approving a stimulus program modeled on the existing section 235 homeownership assistance program. Under the existing program, home buyers earning no more than 95 percent of their median area income pay at least 3 percent down, and then pay at least 20 percent of their income toward their mortgage. The Federal Government subsidizes the mortgage down to 4-percent interest.

Under the Senate-passed stimulus program, home buyers in the moderate- to middle-income range would also make a downpayment, and pay at least 20 percent of their income toward their mortgage. The Federal Government, however, would subsidize the mortgage down to 11 percent and would provide that in most circumstances the subsidy would be recaptured upon sale of the house. The funds for this effort, up to $135 million, were to come from $165 million on previously appropriated, uncommitted funds already available for the existing program because of a court decree which ordered the money spent following an attempted impoundment by the Nixon administration. Because the existing program was using these funds at a very slow pace, it was felt that we could telescope $135 million into a housing stimulus program without diminishing the capacity of the existing program to accomplish what was expected of it through fiscal year 1981. It was anticipated that up to 100,000 mortgages, insured as well as conventional, could be subsidized under the stimulus program. It was also anticipated that the program would come on line during the summer and would actually begin making payments during October 1980.

Unfortunately, the House failed to pass our measure, and decided instead to add their own version of the program to the slower moving S. 2719, the 1980 housing authorization bill. The Senate had no choice but to do the same, in order to assure maximum flexibility in conference. It is virtually certain that some form of section 235 stimulus program will emerge from the conference, most likely with a deeper interest subsidy, and larger home buyer contributions toward their monthly mortgages.

In the meantime, however, the existing program has begun to draw down funds at a much more rapid rate than expected. Now, instead of there being $135 million available for the stimulus program, there is only about $40 million, which is sufficient to support only about 18,000 units, if all the money were used for the stimulus program. Ordinarily, the rapid draw-down of funds by the existing section 235 program would be welcome news. But because of the program's very low mortgage limits, it is not being used in many areas of the country, particularly those with high costs. Thus, the existing program is doing nothing to speed a recovery of the ailing industry in many hard-hit communities. The use of existing program funds in a few places in the country cannot be considered a substitute for action on a broad basis against a crisis that is national in scope and consequence.

And let no one mistake that this crisis is over, or that recovery for the housing industry lies just around the corner. The housing industry continues to suffer from its worst depression in more than a generation. Housing starts for August, 1980, stood at 1.4 million, a decline of 21.8 percent from August, 1979. For all of 1980, it is estimated that only 1.3 million or less housing starts will occur, fully 700,000 units below the 2 million starts a year that housing economists generally agree is a minimum to handle growing family formation and to replace losses to the stock. This shortfall in production takes a heavy economic toll. It means a loss of 1.4 million jobs in construction and related industries, and the loss of literally billions of dollars in Federal, State, and local tax revenues. It also means deep financial trouble, even bankruptcy, for thousands of homebuilders,

the overwhelming number of whom operate small businesses.

Since May of this year, the trend of housing starts has been up, reflecting dropping interest rates that occurred in the late spring and early summer. But with interest rates once again on the rise, the outlook for real and sustained recovery is bleak. The National Association of Homebuilders recently completed a survey of the 83 largest housing markets to determine the level of starts we can expect in these places during 1980. The survey projects that by the end of this year, housing starts will have declined by 33 percent in these communities. Mr. President, I ask unanimous consent that at this point in the RECORD there be printed a table showing the projected number of housing starts for 1980 in the top 20 housing markets, along with an article on the housing recession written by Michael Sumichrast, chief economist of the National Association of Homebuilders.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the table and the article were ordered to be printed in the RECORD, as follows:

HOUSING STARTS—HOW THE TOP 20 WILL FARE

City	Starts 1979	Starts 1980	Percent decline
1. Houston	47,940	36,730	23.4
2. Dallas-Fort Worth	47,779	32,900	28.1
3. Los Angeles-Long Beach	36,082	27,500	23.8
4. West Palm Beach-Boca Raton	32,846	31,480	34.6
5. Phoenix	34,665	20,500	40.8
6. Riverside-San Bernardino	27,805	17,100	38.5
7. Miami	21,402	15,880	26.8
8. Fort Lauderdale-Hollywood	23,022	15,375	33.2
9. Atlanta	21,295	15,200	28.6
10. Tampa-St. Petersburg	19,665	14,885	25.3
11. Washington, D.C.	20,257	14,150	30.1
12. Detroit	19,900	13,500	32.2
13. Seattle-Everett	24,300	12,540	48.4
14. Chicago	31,556	12,500	60.4
15. Portland	16,132	12,400	23.1
16. Minneapolis-St. Paul	16,500	12,000	27.3
17. Denver-Boulder	20,910	11,390	45.5
18. San Francisco-Oakland	17,700	10,900	38.4
19. Anaheim-Santa Ana-Garden Grove	17,558	10,500	40.2
20. New York City	13,550	10,500	22.5

Source: NAHB Metropolitan Forecasting Program.

NO TOP HOUSING AREA IS ESCAPING RECESSION

(By Michael Sumichrast)

Housing starts will be off 33.5 percent this year in the 83 largest housing markets, with not one of them escaping unscathed from the recession that has gripped housing since the latter part of 1979.

Based on a quarterly forecast by the National Association of Home Builders, housing starts are expected to total only 564,828 this year in the 83 cities. Last year, 848,863 houses were started in the same markets.

(On a national basis, the NAHB projects housing starts to slump 32 percent to 1.175 million this year from 1.742 million in 1979.)

CHICAGO HARDEST HIT

The market hit hardest by the recession is Chicago, which traditionally is among the top five or six cities in housing production. This year, however, the forecast puts the Windy City in 14th position, with starts plummeting 60.4 percent from 31,556 starts last year to just 12,500.

No other city in the top 20 will see their starts cut in half, but Seattle and Denver will come close. No. 13 Seattle will get 12,540 starts this year, down 48.4 percent from the 24,300 units started in 1979. And starts will decline 45.5 percent in No. 17 Denver from 20,910 in 1979 to 11,390 this year.

Two other markets—No. 5 Phoenix and No. 19 Anaheim-Santa Ana-Garden Grove—will experience declines of 40 percent or more. Starts will drop 40.9 percent in Phoenix from 34,665 to 20,500 and 40.2 percent in Anaheim from 17,558 to 10,500.

The top three spots this year will again be manned by Houston, No. 1; Dallas-Fort Worth, No. 2, and Los Angeles-Long Beach, No. 3. But that doesn't mean these markets aren't suffering right along with everyone else.

Starts will be off 23.4 percent in Houston from 47,940 to 36,730; 28.1 percent in Dallas-Fort Worth, 47,779 to 32,900, and 23.8 percent in Los Angeles, 36,082 to 27,500.

The West Palm Beach-Boca Raton market, meanwhile, will slip ahead of Phoenix into the No. 4 position with 21,480 starts. But even moving up, production will be off 34.6 percent in West Palm Beach from the 32,846 units started last year.

The rest of the top 10 are expected to run like this:

Riverside-San Bernardino, sixth with 17,100 starts, declining 38.5 percent; Miami, seventh with 15,660, down 26.8 percent; Fort Lauderdale-Hollywood, eighth with 15,375 starts, with a 33.2 percent decline; Atlanta, ninth with 15,200, a 28.6 percent decline, and Tampa-St. Petersburg, 10th with 14,685 starts, down 25.3 percent.

Of the top 10 markets, seven are in the south, and four of those are in Florida. The Washington area, the eighth southern city in the top 20, will rank 11th with 14,150 starts, a decline of 32.2 percent from the 19,900 units started in 1979.

Only one of the top 20—New York at No. 20—is in the Northeast, and just three are in the North Central region. These are Detroit, No. 12; Chicago, No. 14, and Minneapolis-St. Paul, No. 16.

The other eight all are in the Western region, which is projected for a 40 percent decline in overall starts this year.

Nationally, the single-family sector is taking the brunt of the downturn in the 83 cities studied. Single-family starts will be off 35.2 percent this year, the NAHB predicts, while multi-family starts will slide 31 percent.

The sharpest decline—45.2 percent—in single-family starts will be in the Western region. That's mainly because they'll be off 64.6 percent in Seattle, 61.3 percent in San Diego, 56.7 percent in Sacramento and 53.4 percent in Phoenix.

But the hardest hit of all will still be Chicago, where single-family starts will dip 68.5 percent from 14,368 last year to 4,532 this year. Just two years ago, nearly six times as many single units—27,043—were started in Chicago.

Mr. WILLIAMS. Mr. President, failure to relieve the hardships of the housing industry will worsen an already severe housing shortage, placing inflationary pressures on housing prices, and denying millions of Americans their opportunity for an affordable home.

The legislation I am offering would accomplish the following: It would release $125 million in contract authority for use with both the revised and the existing section 235 programs. The authorization bill, now in conference, would make up to three-quarters of the current funds available for use with the new stimulus program, the balance going for the existing section 235 program. The funds released by my bill would also be divided in that manner.

The net result is that the existing program could continue to be used in the areas where it is now working, while these areas and the rest of the country would be able to benefit from the assistance provided under the stimulus program. Assuming that the money provided by my bill, combined with the remaining uncommitted section 235 program funds, were divided so that 75 percent of the money went for the new stimulus program, approximately 42,000 mortgages could be assisted under that program, if the interest subsidy were no more than 3½ percent, while approximately 8,000 would be aided by the existing program. Combined with the $40 million currently uncommitted, my legislation would allow for a stimulus effort totaling about 70,000 units.

The money provided by my bill would create approximately 70,000 jobs, and would generate about $3.5 billion in tax revenues for Federal, State, and local governments, assuming 50 percent of the funds would go for new construction.

Because the new stimulus program, as well as the existing program, features a provision requiring the recapture of the entire subsidy, or 50 percent of the net appreciation of the house, whichever is less upon sale, the net cost of this legislation is comparatively small. A prior Congressional Budget Office estimate of a similar program indicated that as much as 75 percent of the Federal subsidy would be recaptured.

Mr. President, this measure is meant to help stimulate a sector of our economy reeling from depression. While economists and newspaper articles may claim that the Nation is emerging from this year's recession, housing faces continued trouble in the months ahead. The promise of aid that we made in April remains unfulfilled, and both the industry and those denied access to homeownership have suffered as a result and they have suffered unnecessarily. The additional funding released by my proposal is a reasonable, fiscally prudent means of providing essential relief to an industry that offers so much to our economy and so much to our way of life.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3145

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, of the authority to enter into contracts under section 235 of the National Housing Act which was previously approved in appropriations Acts, $125,000,000 shall be available for contracts to make periodic assistance payments entered into on or after October 1, 1980.●

By Mr. DOLE (for himself and Mrs. KASSEBAUM):

S. 3148. A bill to name the Federal building located at 444 Southeast Quincy, Topeka, Kans., the "Frank Carlson Federal Building;" to the Committee on Environment and Public Works.

FRANK CARLSON FEDERAL BUILDING

Mr. DOLE. Mr. President, the Senator from Kansas is pleased that the Senate Committee on Environment and Public Works has agreed to give immediate consideration to my bill. This bill will designate the Federal building located at 444 Southeast Quincy, in Topeka, Kans., as the Frank Carlson Federal Building.

I originally introduced this as an amendment to S. 2080. It is now in bill form because of the likelihood that S. 2080 will not be considered before the end of this session of Congress, and the importance of acting on this issue immediately.

SENATOR FRANK CARLSON

Once again, Mr. President, I would like to share with you the accomplishments of Senator Frank Carlson, and why he should be honored by having the Federal building in Topeka named after him.

Senator Frank Carlson was born on a Concordia, Kans., farm on January 23, 1893. He attended the public schools, Concordia Normal and Business College and Kansas State College at Manhattan, Kans.

Senator Carlson's life and political career has been a long, unique and distinguished one. After serving in the Army during the First World War, Frank Carlson was elected to the Kansas House of Representatives in 1929. From 1932 to 1934 he was State chairman of the Republican Party, and in 1935 he was elected to the U.S. Congress. Carlson served 5 successive terms in Washington as Representative from Kansas, but in 1946 he was not a candidate for reelection. Instead he was elected Governor of Kansas in that year.

Frank Carlson served as Governor of the State of Kansas until his election to the U.S. Senate in 1950 to fill the unexpired term of Senator Clyde M. Reed.

Carlson was then elected to the U.S. Senate for a full term in 1951 and continued to be reelected until his decision not to be a candidate in 1968.

DISTINGUISHED CAREER

Mr. President, there are many in this body who will agree with me that there have been few Members of the Congress who have exceeded my friend and colleague's dedication in serving the people of this Nation.

Senator Frank Carlson has a solid record of accomplishment and achievement. Patiently, quietly, but sure of step and sure of himself, Frank Carlson has both represented the interests of Kansas and the Nation and established a definite place for himself among American statesmen.

Frank Carlson's career of service additionally extended beyond elected office. He served as Chairman of both the Interstate Oil Compact Commission and Vice Chairman of the President's National Safety Conference. He also found time to become a leader and active participant in the Senate prayer breakfast meetings.

Mr. President, whether an issue concerned the farmer, the businessman, the blue-collar worker, or the consumer, Frank Carlson was there to provide his service as well as friendship. An individual highly concerned with people from all walks of life, he was always willing to devote his time on any level to anyone.

Mr. President, Frank Carlson, whose record of dedicated public service has been at almost every level of Government spanning over four decades, has resulted in high respect and praise from every circle.

FITTING TRIBUTE

Mr. President, in view of Frank Carlson's dedicated career of service to the people of his community, the State of Kansas and the Nation, it is only appropriate that this body name the Federal building in Topeka, Kans. in honor of Frank Carlson, a truly great American from the State of Kansas.

By Mr. TALMADGE:

S. 3150. A bill to amend title IV of the Social Security Act to provide for the establishment of a quality control system for programs of aid to families with dependent children; to the Committee on Finance.

QUALITY CONTROL SYSTEM FOR PROGRAMS OF AID TO FAMILIES WITH DEPENDENT CHILDREN

● Mr. TALMADGE. Mr. President, in recent years quality control has become an integral aspect of our major welfare programs. There is general agreement that quality control efforts by both the States and the Federal Government have contributed in a major way to lower error rates in the program of aid to families with dependent children.

There is also considerable agreement, however, that the AFDC quality control program should be further strengthened and improved. Testimony to support this has been heard in hearings in both the House and the Senate. In addition, on July 18 of this year the General Accounting Office issued a report recommending a number of improvements in the quality control system to make it a more effective instrument for reducing errors.

An amendment to improve the AFDC quality control program was approved by the Finance Committee in the 95th Congress as part of H.R. 7200. Unfortunately, because of scheduling problems, that bill never got to the Senate floor, and the provision died as a result. I have used that previous amendment as the basis for my new bill, but I have also taken into account information and insights which we have acquired more recently. I believe enactment of this bill will result in more uniform measurement of errors by the States, and will also result in more vigorous efforts by the States and the Federal Government to develop appropriate corrective actions. I also intend that there will be more timely reporting by the States of their error rate findings, as well as reporting of national findings by the Federal Government.

For example, on September 18, the Department of Health and Human Services issued a press release on national quality control error rates for the period April–September 1979. This means that almost a year after the end of a quality control measurement period, we still do not have State information as to case and payment error rates.

Briefly, my bill would establish a modified version of the current AFDC quality control program as a requirement of law to determine the level of case and dollar error rates with respect to eligibility, overpayment, and underpayment of aid paid under the approved State plan and case error rate with respect to incorrect denials and terminations of aid.

Findings of the quality control program would have to be reported by the States on a timely basis to the Secretary with a copy to the Inspector General of HHS. Federal reviewers would review a subsample of the State sample. They would also examine cases in the State's review of the previous 6-month period to determine whether appropriate corrective action was taken. All analyses and reports of case error rates would have to include negative case actions and cases involving underpayments as well as overpayments and payments to ineligibles.

Under the bill the Secretary would be required to provide technical assistance to State administering units to assist them in planning and operating their quality control programs, and in taking followup corrective actions as necessary. The Inspector General would closely monitor the operation and findings made under the quality control program, the incidence and extent of fraud and abuse in the State AFDC programs, and as appropriate, recommend improvements in—or alternatives to—the methods used. The medicaid quality control program would also be monitored by the Inspector General.

At least twice a year, to coincide with the 6-month quality control review periods, the Secretary would be required to submit a report to the Congress which would include a detailed analysis of the quality control samples, errors, corrective actions taken, and a description of kinds and classes of errors from any prior period which have not been corrected.

Mr. President, I ask unanimous consent to insert in the RECORD at this point a detailed analysis of the bill, of the background of the quality control program, and a copy of the bill.

There being no objection, the bill and the analysis were ordered to be printed in the RECORD, as follows:

S. 3150

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ESTABLISHMENT OF QUALITY CONTROL SYSTEM FOR AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAMS

SECTION 1. (a) Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (29),

(2) by striking out the period at the end of paragraph (30) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following new paragraph:

"(31) provide that, not later than September 30, 1981, the State shall establish and put in operation a quality control system which is approved by the Secretary as a plan which meets the standards and conditions prescribed under section 414 and which conforms to any regulations of the Secretary prescribed thereunder.". (b) Section 403 of such Act is amended by adding after subsection (j) the following new subsection:

"(k) Notwithstanding any other provision of this Act, the amount otherwise payable

for any quarter (as determined without regard to the provisions of section 414) shall be reduced in accordance with the provisions of such section.".

(c) Part A of title IV of the Social Security Act is amended by adding at the end thereof the following new section:

"QUALITY CONTROL SYSTEM

"CONDITIONS OF APPROVAL

"SEC. 414. (a) (1) The Secretary shall, subject to paragraph (2), approve the quality control system of a State, to be utilized in connection with the administration of the State's plan approved under this part, if he finds that such system will effectively promote the efficient and proper operation of such plan by assuring that aid and services under the plan are not provided to individuals who are ineligible therefor, that such aid and services will not be denied to applicants who are eligible and make proper application therefor, and that aid in the form of money payments furnished to any individual or family under such plan will not be greater or less than the amount correctly determined under such plan to be payable to such individual or family.

"(2) The Secretary shall not approve the quality control system, referred to in paragraph (1), of any State unless he is satisfied that, under the plans for and in the operation of, such system—

"(A) during each six-month period which begins on October 1 or April 1 (commencing with the six-month period which begins October 1, 1981) there will be conducted by the State, in order to obtain data with respect to the functioning of the State's plan approved under this part, such sampling of the caseload under such plan as the Secretary shall by regulations prescribe, which sampling shall involve a sufficient number of cases and be of acceptable statistical reliability clearly to indicate the incidence, kind, and class of errors occurring within the State (and in order to assure the accuracy and effectiveness of such sampling the Secretary shall under regulations: require the States to establish and administer a special performance evaluation and corrective action system that shall, using data already available from prior quality control reviews, identify operating units, as defined by regulations prescribed by the Secretary, within the State with excessive payment error rates in comparison with the statewide payment error rate; require the States to make analyses to indicate the incidence, kind, and class of errors within each such operating unit and to prescribe corrective action affecting those operating units; and require that such analyses be made in every six-month period until error rates are substantially reduced), and which sampling shall (i) provide sufficient coding identification to identify each individual case and the line of responsibility for that case from the case worker who made the last determination or redetermination of eligibility, the current case worker, if different, up through the supervisor, local and higher level offices, the State quality control reviewer and supervisor as well as the date of last approval, the date on which each redetermination was due to be made, and the date on which each redetermination was made since the date of such last approval or, if later, within the preceding twenty-four-month period, (ii) employ such methods, schedules, and instructions, and be designed to elicit such data, as shall be prescribed by the Secretary, (iii) be designed to disclose (as of the time any case was selected to be included in the sample) error rates with respect to (I) eligibility for aid under such approved State plan (after application of all requirements imposed by or pursuant to Federal law with respect to the approval of State plans under this part), (II) overpayment and underpayment of aid under such approved State plan (with error rates with respect to ineligibles, overpayments, and underpayments being stated both on the basis of case error rates and on the basis of payment error rates), and (III) incorrect denials and terminations of aid on the basis of case error only, and (iv) be designed to disclose (as of the time any case was selected to be included in the sample) case and dollar amounts due to management disregards or techniques variances.

"(B) in connection with the conduct of such sampling with respect to any such six-month period, there will be conducted a field investigation (including personal interviews) of all cases (other than those involving incorrect denials or terminations of aid) included in the samples taken under the State's quality control during such period independently to establish and verify each element of eligibility and payment as of the review date, except that the requirements of this subparagraph shall be phased in in accordance with the provisions of the second sentence of subsection (c)(1),

"(C) there are review procedures employed under which, in determining whether payment errors or management disregards or techniques variances have been made in any case—

"(i) the reviewer is required to check the case record data against the State Aid to Families with Dependent Children computerized data file and computerized payment file and record any errors found under whichever of the following categories is appropriate: case record errors or computerized data file or computerized payment file errors;

"(ii) the reviewer will, if the case involves the alleged absence of a parent from the home, make a visit to the home and will make inquiries as to such parent's whereabouts from appropriate sources such as the State division of motor vehicles, the telephone company, telephone directories, employment offices, and the appropriate agency conducting the State's parent locator services under part D;

"(iii) the reviewer may make unannounced home visits to the recipient's home at any time between the hours of 8:00 a.m. and 6:00 p.m. (and, the general recipient authorization statement which is a part of an applicant's original application for aid to families with dependent children shall be deemed to confer authority on the reviewer to make such visits);

"(iv) claims by a recipient that he has no funds deposited in financial institutions will be subjected to verification by the making of inquiries to appropriate sources such as credit bureaus or a similar type agency, and large centralized banks;

"(v) the amount (if any) of a recipient's (or other appropriate person's) earned income will be subjected to verification by the making of inquiries with respect to employment and other benefit information to appropriate sources such as agencies concerned with unemployment insurance, employment security, and taxation (including Federal, State, and local agencies involved with income, unemployment, or Social Security taxes);

"(vi) a recipient of aid who is visited at his home by a reviewer will (if there is not on file in the State agency, the Social Security Account number or numbers of such recipient or any other family member for whom such recipient or any other family member for whom such recipient is receiving aid) furnish to the reviewer physical evidence of his, and all other such family members' Social Security Account number (or numbers), or if he or any other such family member does not have such a number (or numbers), physical evidence that he and all other such family members have filed application for such a number (or numbers);

"(vii) involving a recipient of aid who cannot be located, the reviewer will make inquiry as to the recipient's whereabouts from appropriate sources such as the post office, schools attended by dependent children in the recipient's family, the recipient's landlord, his neighbors, and known friends and relatives;

"(viii) amounts of money, which are earned or otherwise received by a recipient of aid and the aggregate of which exceeds the benefit payment level but does not exceed the standard of need limits, will be reported as a management disregards or techniques variance;

"(ix) all cases and amounts which are (or are required to be) classified as management disregards and techniques variances will be so reported as such, separately from case and payment errors;

"(x) the cause of any amount to be considered a management disregards or techniques variance must be reported as such; and if there is more than one cause for such consideration it must be reported;

"(xi) the cause of any payment error must be reported, and if there is more than one cause for a payment error, each such cause must be reported;

"(xii) when a case has amounts which are classified as management disregards or techniques variances and other amounts which are classified as case or payment errors, each such amount shall be reported separately in its respective classification; and

"(xiii) all case and payment errors shall be classified into one of the two following categories: (I) approved State plan, and (II) case record error or computerized data file or computerized payment file error,

"(D) not later than 90 days following each month of any such six-month period, there will be submitted to the Secretary (in such form and manner, and containing such information as the Secretary may require; except that the Secretary may not require that identifying information on State and local employees be submitted to or maintained by the Secretary or any other officer or employee of the Department of Health and Human Services) the data obtained from or in connection with each sample taken in such month, together with the individual findings with respect to each case included in any such sample (and a copy of the material so submitted shall promptly be furnished to the Inspector General).

"(E) not later than one hundred and twenty days following any such six-month period, there will be submitted to the Secretary a corrective action plan (a copy of which shall promptly be furnished to the Inspector General) which (i) is based on analyses of the information disclosed by the combined findings of the State reviews and the Federal reviews conducted (as required pursuant to this paragraph) during such period as to the nature and cause of payment errors, and (ii) meets such specifications as the Secretary deems necessary to assure the effectiveness of the State's quality control system,

"(F) there will be provided to the Secretary, the Inspector General, Department of Health and Human Services, quality control personnel, and State and local quality control personnel involved with the State's plan approved under this part, access to State and local records with respect to the State plan approved under this part, with respect to applicants and recipients of aid or services under such plan, and with respect to individuals receiving payments of or from such aid in behalf of an aid recipient, and with respect to third parties,

"(G) the public will be notified (through news releases and otherwise) (i) of error rate and management disregards and techniques variances findings (I) with respect to errors described in subparagraph (A)(iii)(I) and (II) (as disclosed by the combined findings of the State reviews and the Federal reviews conducted during each six-month period referred to in subparagraph (A)), (II) with respect to errors described in subparagraph (A)(iii)(III) as disclosed by the combined findings of the State and Federal reviews of the sample conducted during each such six-month period, (III) with respect to errors described in subsection (c) as disclosed by the Federal review of cases previously found in error in the preceding six-month period, and (VI) with respect to case and dollar amounts due to management disregards and techniques variances describe in subparagraph (A)(iv), (ii) of corrective action measures taken or to be taken, and (iii) of measures taken or to be taken with respect to discontinued aid and services to individuals ineligible therefor (including corrective action plans submitted to the Secretary pursuant to subparagraph (E)), and

"(H) there will be submitted to the Secretary a report, copies of which will be made available to the public, by the State agency in connection with each six-month period referred to in subparagraph (A) describing any changes in the State plan which affect the payment error rate of aid thereunder.

"MONITORING BY INSPECTOR GENERAL

"(b)(1) The Secretary shall utilize the services of the Inspector General to monitor closely, through such procedures as may be necessary, the operation of, and State and Federal findings made under, the quality control systems established pursuant to this section, to monitor the incidence and extent of fraud and abuse in the State programs with respect to which such systems are established, and to make recommendations for improvements in or alternatives to such systems or portions thereof. The Secretary shall also utilize the services of the Inspector General to monitor closely the quality control systems established for the State programs approved under title XIX of this Act, and the Inspector General shall have the same duties, authority, and responsibilities with respect to the monitoring of the quality control systems of such title as he does in the case of the monitoring of the quality control provisions established with respect to this part.

"(2) The Inspector General shall use appropriate resources including specialists in computer systems analysis and welfare administration and management to develop, through the use of Federal and State quality control findings, recommendations for improvements in, or alternatives to, methods for determining fraud and abuse, for determining cases with large dollar errors, for ascertaining the localities and local offices with the greatest number of such errors, and for reducing high erroneous expenditures.

"FEDERAL REVIEW OF STATE SAMPLES

"(c)(1) The Secretary shall conduct a full field review (including personal interviews) of all cases (other than those involving incorrect denials or terminations of aid) (A) of a representative subsample of each State's sample, and (B) of all cases in each State's sample which were found to be dropped (except that only verification is necessary when the recipient died or moved out of State) or erroneously excluded from the State's investigation required by subparagraph (a)(2)(C), after examining all such cases excluded (except that the Secretary may specify by regulation categories of cases which will not require full field investigation), submitted to him with respect to each six-month period, as provided in conformity with the requirements imposed by subsection (a). Notwithstanding the requirements of the preceding sentence, the number of cases to be reviewed prior to fiscal year 1983 need not be increased to a higher number than the number reviewed in fiscal year 1979, and thereafter the number of cases to be reviewed may be phased in over a four-year period. Such review of a subsample of a State's sample, submitted with respect to any month of the six-month period (and of cases not investigated by the State) shall be conducted with a view further to assuring the validity of the data and information resulting from the sample from which the subsample is taken and shall be completed and a copy of the data obtained from and in connection with each sample taken in such month together with the individual findings with respect to each case included in the subsample shall be submitted to the Inspector General not later than 120 days after such period. In checking and verifying each element of eligibility persons conducting reviews of any region must follow the same uniform and consistent procedures (including those respecting the making of home visits and necessary collateral checks) applicable in the case of all regions.

"(2) The Secretary shall also conduct a case record review of cases (including computerized data files and computerized payment files) previously found to be in error in the preceding six-month period to ascertain whether corrective action has been taken in such cases which review shall be completed and a copy of the data obtained from and in connection with each case on which no action was taken to correct the payment error or the action taken to terminate or adjust the payment error was erroneous together with the individual findings with respect to each case shall be submitted to the Inspector General not later than 120 days after such preceding six-month period.

"(3) The findings of each case reviewed pursuant to this subsection shall include coding identification to identify the Federal quality control reviewer who made the review and his or her supervisor.

"(4) Any State which disagrees with any findings made on the basis of the Federal review authorized under this subsection shall be entitled to a hearing by the Secretary with respect to such findings, and the Secretary, if such a hearing is held, shall, on the basis of evidence adduced at such hearing, affirm, modify, or reverse such findings. A final decision of the Secretary under this subsection shall not be subject to judicial review.

"TECHNICAL ASSISTANCE

"(d) The Secretary shall provide such expert technical assistance, directly or by contract, to States and local administrative units utilized in the administration of any State's plan approved under this part as he determines necessary to assist States to plan, design, develop, and operate a quality control system meeting the conditions for approval, by the Secretary, set forth or referred to in subsection (a). The Secretary shall utilize appropriate technical and management specialists to provide expert technical assistance in developing the method or methods best suited to the needs of particular States, and local administrative units within States, designed quickly and effectively to reduce high error rates and erroneous expenditures.

"PENALTY FOR FAILURE OF STATE TO FURNISH SAMPLES

"(e) If any State fails, with respect to any six-month period referred to in subsection (a), to take in the manner required by such subsection or regulations promulgated pursuant thereto the samples referred to therein and timely to submit (subject to the discretion of the Secretary) to the Secretary all information required pursuant to such subsection, then the Secretary shall conduct such sample and to do all things with respect thereto that the State is, pursuant to subsection (a), required to do, but has either failed to do or unreasonably delayed doing, except that in lieu of developing a corrective action plan, the findings will be reported to the Governor and the legislature of the State. The amount which would be payable to any such State with respect to administrative expenditures made during such six-month period in carrying out its State plan (approved under this part), as determined by all provisions of law other than this subsection, shall be reduced by an amount equal to twice the cost incurred by the Federal Government in conducting such sample and in doing such things with respect thereto.

"DEFINITIONS AND PROCEDURES

"(f)(1) The dollar error rate of excess payments of aid shall be determined, for any six-month period, on the basis of the State quality control data and Federal quality control subsample data taken pursuant to the preceding provisions of this section with respect to such period.

"(2) In determining the dollar error rate of excess payments, there shall be included all payments of aid under the State plan which are (A) made to individuals or families who are ineligible therefor, or (B) made to individuals or families who are eligible therefor, but in an amount in excess of the correct and proper amount of aid which should have been furnished to such individuals under the State plan.

"(3) In computing ineligibility and overpayment case and dollar error rates for purposes of this section, the Secretary shall use the point estimate at the 95 percent confidence level of a statistical regression formula applied to case and dollar error rates obtained from both the State and Federal data. For purposes of computing case and dollar error rates, the Secretary shall utilize the figures derived from the State's full sample, adjusted by the regression formula for differences found in the Federal subsample. The regression formula methodology to be applied shall be described in detail by the Secretary and the description thereof shall be made available to all States eligible to establish State plans approvable under this part.

"(4) (A) Subject to subparagraph (B), the term 'case error' means a payment of aid to an ineligible person, an overpayment or underpayment of such aid, or an incorrect denial or termination of such aid, to an individual or family who is eligible for aid under the State plan approved under this part, and which plan is administered and operated in accordance with the provisions of such plan, and the requirements imposed with respect to such plan and its operation by or pursuant to this part or regulations of the Secretary promulgated hereunder. In a negative case action (as defined in paragraph (11)) there shall be counted as error only those cases where the reason asserted by the State agency for such action was incorrect. An error shall be considered to exist in any case in which a change in circumstances which affects eligibility for or amount of aid payable under such State plan is not correctly reflected in a terminated or adjusted payment by the second month following the month in which the change occurred.

"(B) (i) An overpayment, underpayment, or payment to ineligibles that is related to a change in circumstances shall not be counted as a case or dollar error if:

"(I) the payment continues unadjusted because a hearing was requested, or

"(II) the change occurred in the review month.

"(ii) For purposes of this subparagraph—

"(I) a hearing decision is considered to be a change in circumstances, and

"(II) the fact that the State agency has complied with the requirements for redetermination of eligibility has no bearing.

"(C) An overpayment, underpayment, or

payment to ineligibles that is related to a change in circumstances shall be counted as a management disregards or techniques variance.

"(D) When the overpayment, underpayment, or payment to ineligibles is the result of several changes in circumstances, each change shall be evaluated as to its impact on the final determination of case or dollar error.

"(5) The term 'assistance unit' means all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, an aid payment for which Federal financial participation is claimed under this part.

"(6) The term 'payment to ineligibles' means a financial assistance payment received by or for an assistance unit, for the review month, for which that unit was totally ineligible under the approved State plan in effect on the first day of the review month.

"(7) The term 'overpayment' means a financial assistance payment received by or for an assistance unit for the review month, which exceeds by at least $1.00 the amount for which that unit was eligible under the approved State plan in effect on the first day of the review month.

"(8) The term 'underpayment' means a financial assistance payment received by or for an assistance unit for the review month, which is at least $1.00 less than the amount for which that assistance unit was eligible under the approved State plan in effect on the first day of the review month.

"(9) The term 'review month' means the specific calendar or fiscal month for which the assistance payment under review was received.

"(10) The term 'assistance payment' means a single payment (or two successive payments, in States that pay on a semimonthly basis), received for a specific calendar or fiscal month.

"(11) The term 'negative case action' means an action to deny an application for assistance or otherwise to dispose of such an application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or an action to terminate assistance.

"(12) The term 'management disregards and techniques variances' means all cases and amounts which are not to be considered as a case or payment error. They are designed to provide additional information for management to better control the program. Such term includes—

"(A) payments or nonpayments which are greater or less than the correct amount but which are not considered to be errors because the State Plan allows such variances on account of the de minimus nature of the variance;

"(B) payments made pursuant to a permissible State practice which is not in the approved State plan; and

"(C) income received or any other change in circumstances, which affects the amount of the financial benefit, of which the State agency is aware in the month preceding a review month but which was not considered in computing the financial benefit paid in the review month due to the time allowed for issuing the benefit check.

"(13) The term 'Inspector General' means the Inspector General of the Department of Health and Human Services established by section 201 of Public Law 94-505.

"REPORT TO CONGRESS

"(e)(1) Not later than six months following each six-month period referred to in subsection (a), the Secretary shall submit to the Congress a full and complete report with respect to the samples taken with respect to each State during such period which shall contain a detailed analysis of such samples taken from each State, and shall include a description of the rates of error in the payments and caseloads of each State and of operating units within the State with excessive payment error rates, as indicated by such samples and by Federal subsamples thereof, the number and dollar amounts in cases classified as management disregards and techniques variances, a description of corrective action measures taken or planned to be taken by States to reduce their error rates (and the error rates of operating units, within States, having excessive payment error rates) and otherwise improve the economical and efficient administration of their State plan approved under this part, a description of kinds and classes of error cases from a previous six month period in which there were no actions taken to correct the error or the actions taken to terminate or adjust the payment error were erroneous and such other matters as may be necessary or useful in enabling the Congress to gain a complete understanding of the degree to which the goal of effective, efficient, and economical administration of such approved State plans is being met. The Secretary shall also report to the Congress on the actions of the Inspector General with respect to fraud and abuse in the aid to families with dependent children programs, with respect to the monitoring of the quality control systems, and with respect to developing recommendations to, or alternates for, methods for determining cases with large dollar errors and ascertaining the locality or local administrative units in which such errors are most serious.

"(2) The Secretary shall make available first to the Congress and then to the public through national news media, the results of samples and error reduction efforts taken, undertaken, or planned, pursuant to the requirements of this section. Public notice of the information referred to in the preceding sentence may be made prior to submission of the periodic reports to the Congress required under paragraph (1), but shall not be earlier than ten days after the States have been furnished notice of their final error rates with respect to any six-month period.".

(d)(1) The last sentence of section 403 (j) of such Act is amended—

(A) by inserting "and" immediately after "assistance;" at the end of clause (II), and

(B) by striking out "and (IV) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials,".

(2) The amendments made by paragraph (1) shall be effective in the case of determinations of dollar error rates of aid under section 403(j) of the Social Security Act with respect to periods beginning after March 31, 1981.

SEC. 2. (a) The Secretary, in carrying out assessments of a State's quality control activities under its quality control system established and put in operation pursuant to section 402(a)(31) of the Social Security Act shall, in the conduct of any such assessment in any region, include on-site visits to the State's quality control offices in the region to ascertain whether the State is complying with the quality control requirements and guidelines established by law or under regulations of the Secretary.

(b) The Secretary, in carrying out such assessments, shall establish a uniform monitoring system for each regional office of the Department of Health and Human Services to insure compliance with the uniform verification procedures and uniform and systematic monitoring activities to be employed in the conduct of such assessments. The Secretary shall periodically assess compliance with the foregoing requirement by the various regional offices of the Department of Health and Human Services.

SEC. 3. (a) The amendments made by subsections (a) through (c) of the first section of this Act shall, subject to subsection (b), take effect on September 30, 1981.

(b) If the Governor of a State certifies to the Secretary of Health and Human Services, and such Secretary finds, that in order for the State to comply with any provision of part A of title IV of the Social Security Act which is included therein by reason of the amendments made by subsections (a) through (c) of the first section of this Act a change in State law will be required, the Secretary shall waive such provision with respect to such State until the first day of the first month which begins more than 30 days after the adjournment of the first regular session of the State legislature of such State which commences after the date of enactment of this Act.

(c)(1) The Secretary of Health and Human Services shall issue any regulations required to implement the foregoing provisions of this Act within ninety days after the date of enactment of this Act.

(2)(A) The Secretary of Health and Human Services shall submit to the Congress any final regulations issued with respect to the implementation of the amendments made by this Act. Such regulations shall take effect at the end of the sixty-day period immediately following the day on which such regulations are submitted unless, within such period, either House of the Congress adopts a resolution of disapproval.

(B) In determining the sixty-day period for purposes of subparagraph (A), the following days shall not be counted:

(i) Any day on which either House of Congress is not in session.

(ii) The first thirty calendar days of a session of Congress.

(iii) The last thirty days of a session of Congress.

(C) For purposes of this paragraph, the term "resolution" means only—

(i) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the regulations relating to quality control under part A of title IV of the Social Security Act transmitted to the Congress on _____.", with the blank space being filled with the appropriate date: or

(ii) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the _____ does not approve of the regulations relating to quality control under part A of title IV of the Social Security Act transmitted to the Congress on _____.", with the first blank space being filled with the name of the resolving House, and the second blank space being filled with the appropriate date.

(D) Except as otherwise provided in this paragraph, the provisions of subsections (b), (c), (d), (e), and (f) of section 152 of the Trade Act of 1974 shall be applicable to resolutions under this paragraph, except that—

(i) the "20 hours" referred to in subsections (d)(2) and (e)(2) of such section shall be deemed to read "4 hours"; and

(ii) the "30 days" referred to in subsection (c) of such section shall not include any day not counted under subparagraph (B) of this paragraph.

QUALITY CONTROL

For at least the last 25 years there has been recognition at the Federal level of the need for a program to reduce errors in the Federal-State public assistance programs. "Quality control" techniques were first used on a limited basis in 1952. However, at that time they were limited to periodic Federal reviews of samples of case records. No verification was made of the information in the case file, and full field investigations were not part of the systetm. As a result of a nationwide study in the early 1960's that indicated widespread ineligibility in some States, the Department of Health, Education, and Welfare developed a new and expanded quality control system to be implemented by January 1964 in all States for all public assistance programs. However, this new system produced little in the way of results, and the quality control program underwent major revision again in 1970. Basic changes made at that time included the use of field investigations, requirements on States for reporting of results, the establishment of acceptable error levels, and implementation of corrective actions. The 1970 revision in fact set into place most of the features that are part of the current quality control program. They did not include any provision for fiscal sanctions or penalties for States which failed to meet the designated tolerance level error rates. Only corrective action was required.

Both the States and the Department of Health, Education, and Welfare showed a lack of initiative in implementing the new system. The Department delayed in hiring a Federal quality control staff, and there was a parallel delay in the development of State staffs. The reason most frequently cited for the delay in the implementation of the 1970 quality control system has been that, at the Federal level at least, interest was concentrated on "welfare reform" efforts, with the view that a new system would make quality control obsolete. However, in 1973 HEW issued a new set of quality control regulations for AFDC. They differed from the 1970 rules in one major aspect—they set forth a procedure by which the Department would not match portions of State claims for AFDC payments based on the extent to which the State's error rates exceeded the acceptable Federal tolerance levels. These levls were set at 3 percent for ineligible cases, 5 percent for overpaid cases, and 5 percent for underpaid cases.

The legislative authority cited by the Department for its quality control program is in sections 402(a)(5), 403(a)(1) and 1102 of the Social Security Act:

"Sec. 402. (a) A State plan for aid and services to needy families with children must—

"(5) provide such methods of administration . . . as are found by the Secretary (of Health, Education, and Welfare) to be necessary for the proper and efficient operation of the plan.

"Sec. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children. . . .

"(1) . . . an amount equal to (specific proportions) of the total amounts expended . . . as aid to families with dependent children under the State plan.

"Sec. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act."

The error measurement and corrective action components of the quality control program which rest on the above authority have not been questioned. As was stated in the May 1976 Federal district court decision (Maryland v. Mathews), "plaintiffs assert that they do not question HEW's right to set quality controls." However, the legality of the "disallowance" or "fiscal sanction" provision for limiting Federal matching with respect to State claims has been challenged. In the above cited case the judge ruled that "under the Secretary's rulemaking power to assure the efficient administration of the (Social Security Act), it can be concluded that a regulation establishing a withholding of Federal financial participation in a specified amount set by a tolerance level is consistent with the Act." However, the remainder of the decision invalidated the disallowance regulations based on the unreasonableness of the "tolerance level" used in determining the extent of any disallowance. As a result of the court decision, fiscal sanctions have never been applied and are no longer a part of the Federal quality control regulations.

Despite the controversy that has existed in the last few years over the penalty aspects of the quality control program, the program has been responsible for significant reductions in State AFDC error rates since 1973. The national average has fallen from a 42.6 percent case error rate and a 16.5 percent payment error rate for the period April–September 1973 to a case error rate of 26.0 percent and a payment error rate of 10.4 percent for October 1978–March 1979.

This progress can not only be continued, but also be speeded up and that with proper incentives and an appropriate legislative base, the States can be encouraged to decrease the number of errors in their AFDC caseload to more acceptable levels.

My bill would establish a modified version of the current AFDC quality control program as a requirement of law to determine the level of case and dollar error rates with respect to eligibility, overpayment, and underpayment of aid paid under the approved State plan and case error rate with respect to incorrect denials and terminations of aid. My bill would also provide additional information for management by classifying certain types of cases and amounts as management disregards and techniques variances.

The Secretary would by regulations require the States, beginning September 30, 1981, to establish and administer a special performance evaluation and corrective action system that would, using data already available, identify operating units below the State level with excessive error rates. The States would be required to make analyses and to prescribe corrective action affecting those operating units. Such analyses would be made every 6 months until error rates were substantially reduced. Cases in the samples are to be coded in such a way as to enable analyzers to identify where and by whom the cases were handled and the date the redetermination of eligibility was due to be made and was made. These measures are necessary to enable the administering agencies to determine the specific sources, causes, and reasons for errors. (However, the Secretary could not require that identifying information about State or local employees be forwarded or maintained at the Federal level.) Where such information is maintained at the State or local levels, it would be used as a management tool for improving program performance and not as a means of applying pressure on individual employees.

Full field investigations, including face-to-face interviews, are to be conducted for each case in the State samples (except for negative case actions) to independently establish and verify each element of eligibility and payment as of the review date.

Under the provisions of my bill, the reviewer would be required to check the case record data against the State AFDC computerized data and payment files and record any errors found. If the case involves the alleged absence of a parent from the home, the reviewer would be required to make a home visit at specified times and to make inquiries about the parent's whereabouts from appropriate sources such as the State division of motor vehicles, the telephone company, telephone directories, employment offices, and the agency conducting the State's parent locator services under the child support program. The reviewer would be required to verify claims that an individual has no funds deposited in financial institutions with appropriate sources such as credit bureaus and large centralized banks. Earnings would also have to be verified, as would social security account numbers. Income, both earned and unearned, received by the recipient which exceeds the benefit payment level but does not exceed the standard of need limits would have to be reported as a management disregard or techniques variances. The cause of any payment error would be required to be reported, and if there is more than one cause for a payment error, each cause would have to be reported.

In addition, States would be required to have corrective action plans and to take corrective action on incorrect assistance determinations. There would have to be public notice of error rates (including an analysis of causes and sources of errors), and of actions taken or planned to be taken to correct system weaknesses. Reviewers, including State reviewers, reviewers acting as agents of the Secretary or agents of the HHS Inspector General shall, in order to assure the validity and integrity of the quality control system, have access at the State and local levels to all State and local records relating to public assistance, to recipients, and to third parties.

Findings of the quality control program would have to be reported by the States on a timely basis to the Secretary, with a copy to the Inspector General. If a State failed to submit its quality control findings on a timely basis (subject to the discretion of the Secretary) the quality control review would be conducted by the Secretary with double the cost of the review to be borne by the State.

Federal reviewers would review a subsample of the State sample, and would be required to conduct a full field investigation of all cases in the subsample (except that the Secretary may specify by regulations categories of cases which will not require full field investigation). They would also examine cases in the State's review of the previous 6-month period to determine whether appropriate corrective action was taken. In computing payment error rates for purposes of State quality control incentive payments the Secretary would use the point estimate at the 95-percent confidence level of a statistical regression formula applied to error rates obtained from both Federal and State data. Errors for this purpose would include errors involving ineligibility and overpayments. All analyses and reports of case error rates, however, would have to include negative case actions and cases involving underpayments.

Under my bill, the Secretary would be required to provide technical assistance to State administering units to assist them in planning and operating their quality control programs, and in taking follow-up corrective actions as necessary. The bill also provides for appeal by the States to the Secretary of findings of the Federal subsample review.

Under my bill, the Inspector General would closely monitor the operation and findings made under the quality control program, the incidence and extent of fraud and abuse in the State AFDC programs, and as appropriate, recommend improvements in (or alternatives to) the methods of identifying and determining fraud and abuse, methods for identifying cases involving large dollar errors, and methods of ascertaining those administrative units which have high dollar errors. The medicaid quality control program would also be monitored by the Inspector General.

At least twice a year, to coincide with the 6-month quality control review periods, the Secretary would be required to submit a report to the Congress which would include a detailed analysis of the quality control samples, errors, corrective actions taken, and a

description of kinds and classes of errors from any prior period which have not been corrected. Error rate findings and cost avoidance measures to be taken are to be described in the quality control reports of the Secretary to the Congress. The Secretary would also submit a report on the actions of the Inspector General with respect to AFDC fraud and abuse and with respect to his recommendations for improvements in the system.

In an effort to promote greater national uniformity in measurement procedures, my bill would direct the Secretary, in conducting assessments of regional quality control activities, to include on-site visits to State quality control offices to ascertain whether the State is complying with quality control requirements. The Secretary would also be required to establish a uniform monitoring system for each regional office of the Department of Health and Human Services to insure compliance with the uniform verification procedures and uniform monitoring activities which are to be used in the conduct of assessments.

Beginning with quality control measurement periods after March 31, 1981, determinations of amounts to be paid to States as incentives for achieving low error rates would be determined without regard to nonpayments to eligible families not receiving assistance due to erroneous terminations or denials. This change would increase the possibility that States will actually receive some financial benefit from the incentive provisions that were added to the law by the Social Security Amendments of 1977.

The bill also includes a provision specifying that any final regulations issued pursuant to the provisions of this bill would go into effect 60 days after being submitted to the Congress unless either House of the Congress adopts a resolution of disapproval.●

By Mr. MAGNUSON (for himself and Mr. JACKSON):

S. 3153. A bill to provide for the removal of Jones Island in the State of Washington from the National Wildlife Refuge System; to the Committee on Energy and Natural Resources.

TRANSFER OF JONES ISLAND NATIONAL WILDLIFE REFUGE TO THE STATE OF WASHINGTON

● Mr. MAGNUSON. Mr. President, Senator JACKSON and I are introducing legislation today which would facilitate transfer of Jones Island National Wildlife Refuge to the State of Washington.

The recreational use of the San Juan Islands in Puget Sound by visitors and residents of Washington State continues to grow each year. A particularly popular destination for Puget Sound boaters is Jones Island, located 6 miles north of Friday Harbor between Orcas and San Juan Islands.

Jones Island was officially designated as a National Wildlife Refuge in 1937 by Executive Order No. 7594. Between 1959 and 1969, the island was administered for recreational use by the Washington State Parks and Recreation Commission under the terms of a 10-year agreement. The commission continued to manage the island after the agreement expired while efforts were underway to sell the island to the commission pursuant to the terms of the Recreation and Public Purposes Act of 1926. In January of 1974 the Bureau of Land Management, with the concurrence of the Bureau of Outdoor Recreation and the Bureau of Sport Fisheries and Wildlife, accepted the petition for classification of the island for sale under the Recreation and Public Purposes Act.

After several avenues for selling the island to the commission were pursued, it was determined that the National Wildlife Refuge Systems Administration Act of 1976 prevented transfer of Jones Island out of Federal ownership until the island was removed from National Wildlife Refuge classification. The only way the status of Jones Island, or any other National Wildlife Refuge, may be changed under the present law is through an act of Congress.

Mr. President, Jones Island has been managed for recreation and conservation uses for some 21 years by the Washington State Parks and Recreation Commission. The Fish and Wildlife Service has expressed its support for transfer of the island from Federal to State ownership. Our bill will make this long sought after transaction possible. I urge my colleagues to act promptly on this legislation.●

● Mr. JACKSON. Mr. President, Senator MAGNUSON and I are introducing this legislation in an attempt to clean up a problem in the management of the San Juan National Wildlife Refuge that has existed for 20 years. The island is managed for recreation by the Washington State Parks and the Recreation Commission through an agreement, first signed in 1959, between the Fish and Wildlife Service and the Commission. Neither party to the agreement believes that the recurring necessity to renegotiate the agreement is beneficial to the wildlife refuge. Both parties would like to see the island transferred to the State of Washington outright. This bill seeks to accomplish this goal.

In support of this legislation and in an effort to encourage my colleagues to look favorably upon it, I ask unanimous consent that a letter I have received from Mr. Lynn A. Greenwalt, director of the Fish and Wildlife Service, about Jones Island be printed in the RECORD. In the letter, Mr. Greenwalt expresses the support of the Fish and Wildlife Service for this legislation.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Washington, D.C., November 19, 1979.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: Thank you for your letter of November 1, 1979, regarding Jones Island in the San Juan Islands National Wildlife Refuge.

The Service's position on Jones Island has not changed and we continue to support a transfer of the island to the Washington State Parks and Recreation Commission. However, our Regional Solicitor has advised that P.L. 94-223 (16 U.S.C. 668dd) prevents an administrative transfer of Jones Island. Under the present set of circumstances, congressional approval is required in order for us to complete the transfer.

We will support congressional action to accomplish this. If we can be of further assistance, please feel free to call on us.

Sincerely yours,

LYNN A. GREENWALT,
Director.●

By Mr. TALMADGE:

S. 3154. A bill to make technical corrections in certain provisions of Public Law 96-249 and Public Law 96-265 which relate to information by the Commissioner of Social Security; to the Committee on Finance.

TECHNICAL CORRECTIONS TO CERTAIN FOOD STAMP LAWS

● Mr. TALMADGE. Mr. President, my bill would make purely technical amendments to rectify errors which occurred as the result of the enactment of Public Law 96-249, the Food Stamp Amendments of 1980, and Public Law 96-265, the Social Security Disability Amendments of 1980.

In drafting the final changes in disability amendments agreed to by the conferees everyone failed to take into account the provisions of the Food Stamp Act which was being acted upon by Congress at the same time. Provisions of both bills amended the Internal Revenue Code with respect to disclosure of information provisions.

As a result, there are section designations which need to be corrected. My bill does nothing more than make the necessary corrections.

Mr. President, I ask unanimous consent to insert the bill in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3154

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 127(a)(1) of the Food Stamp Act Amendments of 1980 (Public Law 96-249) is amended by striking out "Subsection (1) of section 6103" and inserting in lieu thereof "Subsection (1) of section 6103".

(b)(1) Section 408(a)(1) of the Social Security Disability Amendments of 1980 (Public Law 96-265) is amended by striking out (in the new paragraph added thereby to subsection (1) of section 6103 of the Internal Revenue Code of 1954) "(7) DISCLOSURE" and inserting in lieu thereof "(8) DISCLOSURE".

(2) Section 408(a)(2) of the Social Security Disability Amendments of 1980 is amended—

(A) in subparagraph (A), by—

(i) striking out "(1)(1) or (4)(B) or (5)" and inserting in lieu thereof "(1)(1), (4)(B), (5), or (7)", and

(ii) striking out "(1)(1), (4)(B), (5), or (7)" and inserting in lieu thereof "(1)(1), (4)(B), (5), (7), or (8)";

(B) in subparagraph (B), by—

(i) striking out "(1) (3) or (6)" and inserting in lieu thereof "(1) (3), (6), or (7)", and

(ii) striking out "(1) (3), (6), or (7)" and inserting in lieu thereof "(1) (3), (6), (7), or (8)";

(C) in subparagraph (C), by—

(i) striking out "(1) (6)" and inserting in lieu thereof "(1) (6) or (7)", and

(ii) striking out "(1) (6) or (7)" and inserting in lieu thereof "(1) (6), (7), or (8)"; and

(D) in subparagraph (D), by—

(i) striking out "subsection (d), (1) (6) or (m) (4) (B)" and inserting in lieu thereof "subsection (d), (1) (6) or (7), or (m) (4) (B)", and

(ii) striking out "subsection (d), (1) (6) or (7), or (m) (4) (B)" and inserting in lieu thereof "subsection (d), (1) (6), (7) or (8), or (m) (4) (B)".

(3) Section 408(b) of the Social Security Disability Amendments of 1980 is amended—

(A) in paragraph (1), by striking out (in the new subsection added thereby to section 303 of the Social Security Act) "(d) (1) The State agency" and inserting in lieu thereof "(e) (1) The State agency", and

(B) in paragraph (2)—

(i) by striking out "subsection (b) or (c)" and inserting in lieu thereof "subsection (b), (c), or (d)", and

(ii) by striking out "subsection (b), (c), or (d)" and inserting in lieu thereof "subsection (b), (c), (d), or (e)".

(c) The amendment made by subsection (a) shall take effect on May 26, 1980; the amendments made by paragraphs (1) and (2) of subsection (b) shall take effect on June 9, 1980; and the amendments made by paragraph (3) of subsection (b) shall take effect on July 1, 1980.●

By Mr. TALMADGE:

S. 3155. A bill to amend the Adoption Assistance and Child Welfare Act of 1980 to extend the postponement of certain penalties relating to child support requirements; to the Committee on Finance.

POSTPONEMENT OF CERTAIN PENALTIES RELATING TO CHILD SUPPORT

● Mr. TALMADGE. Mr. President, present law provides that if a State is found by an annual audit not to have an effective child support enforcement program which meets the requirements of title IV-D, the State's AFDC reimbursement must be reduced by 5 percent. Earlier this year, the conferees on H.R. 3434 agreed to include a provision which prohibited the imposition of this penalty before October 1, 1980. This bill became Public Law 96-272. The purpose was to give the Department of Health and Human Services time to review its audit and penalty procedures to assure that they could be equitably interpreted and applied and to allow time for the Subcommittee on Unemployment and Public Assistance of the Ways and Means Committee to hold hearings on the penalty provision in current law.

More time is needed to accomplish this, and my bill therefore would simply provide for an additional delay of 2 years, to October 1, 1982, before any penalty could be imposed. As we noted in the conference report on H.R. 3434—now Public Law 96-272—this provision should not be considered to prejudice in any way the ultimate disposition of penalties for prior years.

This bill has no budgetary effect.

Mr. President, I ask unanimous consent that the bill be inserted in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3155

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 309 of the Adoption Assistance and Child Welfare Act of 1980 is amended by striking out "fiscal year 1977 or fiscal year 1978 shall be made prior to October 1, 1980" and inserting in lieu thereof "any of the fiscal years 1977 through 1980 shall be made prior to October 1, 1982".●

By Mr. TALMADGE (for himself, Mr. HELMS, Mr. PRYOR, Mr. STEWART, Mr. HUDDLESTON, Mr. MELCHER, Mr. NUNN, Mr. DOLE, Mr. MORGAN, Mr. SASSER, Mr. MCGOVERN, Mr. HOLLINGS, Mr. ZORINSKY, Mr. HEFLIN, Mr. THURMOND, Mr. STONE, Mr. BOREN, Mr. YOUNG, Mr. LUGAR, Mr. COCHRAN, Mr. BOSCHWITZ, Mr. JEPSEN, Mr. GARN, Mr. HARRY F. BYRD, JR., Mr. WARNER, Mr. GOLDWATER, Mr. HAYAKAWA, and Mr. ARMSTRONG):

S.J. Res. 205. Joint resolution to proclaim March 19, 1981, as "National Agriculture Day"; to the Committee on the Judiciary.

NATIONAL AGRICULTURE DAY

● Mr. TALMADGE. Mr. President, today I am introducing a joint resolution, identical to House Joint Resolution 560 which would proclaim March 19, 1980, as "National Agriculture Day."

This legislation unanimously passed the House recently where it was introduced with more than 230 cosponsors including Members from both political parties and Members from every part of the country.

It is important to point out that this would be the first such official recognition of "National Agriculture Day." It would authorize and request the President to issue a proclamation calling on all Americans to observe next March 19 with ceremonies and activities emphasizing the interdependence of rural and urban people. Considering that the day has been celebrated on a nationwide basis for the past 7 years, I think passage of this resolution is long overdue.

It is true that farmers today comprise a smaller number of our total population than ever before. Nonetheless, agriculture is still the backbone and basic strength of our economy. Consider these facts:

Agriculture is our Nation's No. 1 industry with assets at an incredible $927 billion.

Agriculture is our Nation's No. 1 employer—some 14 to 17 million people—when you count all the people engaged in getting food to the consumer's table.

Agriculture is our Nation's No. 1 exporter—$40 billion for 1980—at a time when we desperately need export earnings.

Let us keep in mind that despite inflation, food is still a bargain in this country. Over the past year, food prices increased far less than any other major necessity. And we Americans spend less of our disposable income—16 percent—on food than any other people in the world.

It is a record that every American can and should be proud of.

Taking time to recognize and salute the vital role agriculture plays in the U.S. economy is the basic purpose of the "Agriculture Day" project.

Under the leadership of the Agriculture Day Foundation, companies, organizations, and individuals from throughout the United States can join together to tell this story with a unified voice. The effort is administered and staffed by the Agriculture Council of America as part of its overall program to communicate what modern agriculture means to America.

The theme for this year's program is—"Agriculture: It's Your Heartbeat, America!" It is visually depicted by an electrocardiogram with a mirror farm image. I cannot think of a more appropriate message.

This message will be presented by grassroots volunteers in every State to top decisionmakers, the news media, and urban audiences. In doing so, they will be showing pride in their industry, and they will be showing pride in their country.

I would like to commend the efforts of the Agriculture Day Foundation. I would like to personally recognize the board of directors of this fine group: Robert Lanphier III, president, Dickey-John, Auburn, Ill.; John Davies, treasurer, International Harvester, Chicago, Ill.; Connie Townsend, secretary, American National Cowbells, White Sulfer Springs, Mont.; Gene Akins, Catalytic Generators, Inc., Norfolk, Va.; Dave Bennett, Miller Publishing Co., Minneapolis, Minn.; C. W. Blodgett, Hunt-Wesson Foods, Fullerton, Calif.; Rod Brannen, Ad/Creation De Kalb Ag Research, De Kalb, Ill.; Dr. Kent Christensen, Food Marketing Institute, Washington, D.C.; Roger Coleman, National Food Processors Association, Washington, D.C.; Noah Perry, West Virginia Department of Agriculture, Charleston, W. Va.; and Don Tindall, Southern States Cooperative, Inc., Richmond, Va.

The Agriculture Day Foundation and thousands of grassroots volunteers are helping the American public understand that their economic future is tied directly to the health of our agricultural production and distribution system. This is a job that I believe is essential to the economic future of this country. Enactment into law of this resolution—without involving any cost to taxpayers—will bring the added support of formal Government recognition to this most worthwhile effort.

As chairman of the Senate Agriculture, Nutrition, and Forestry Committee, I encourage my colleagues to support this resolution.●

● Mr. HELMS. Mr. President, I wholeheartedly support this joint resolution proclaiming March 19, 1981, as National Agriculture Day.

If there is one segment of the American endeavor that should be recognized, should be honored, it is agriculture, the very backbone of this great Nation. It is fitting indeed, that we set aside a day for special tribute to this country's farmers, who produce more than food and fiber; their efforts have nurtured a spirit of strong individualism, and have woven high moral principles for this land. Farmers are the bedrock upon which the national character is built.

It is fitting we pay tribute to our

farmers by adopting a resolution setting aside as National Agriculture Day that 1 day next March, and 1 day a year thereafter. While I stress the importance of this recognition, I also tell you and tell the Nation, that we have got to do more than pay lipservice to our farmers.

Many of our farmers are on the brink of disaster.

This year, farmers are experiencing their worst crisis since the Great Depression. As many as 25 percent of the Nation's farmers could go bankrupt this year, devastated largely by inflation that has been brought on by big Government and reckless spending by Congress. It is especially cruel that farmers must struggle not only against the whims of nature but the whims of excessively burdensome Federal regulations and arbitrary bureaucracies.

We must see that our farmers survive. Agriculture is responsible, or one out of every five jobs in the free enterprise system of this country. If agriculture does not survive, this country does not survive.

The biggest thing we can do to help this vital segment of our economy is to halt the Government-spawned inflation that erodes farmers' profits. What many do not realize is that the farmer is the ultimate consumer. The farmer must purchase all of his seed, fertilizer, fuel, equipment, and all the rest, at retail. He must then sell his crops at wholesale. He cannot pass on his increased costs—making profitability increasingly impossible for farmers everywhere.

Yes, let us pay tribute to our farmers.

But let us not forget that there will not be as many farmers to whom we may pay tribute if we do not get the economy under control and stop the inflation that makes it impossible for farmers to earn a living.

I have had the chance to participate in past "Agriculture Day" programs, and know personally of the excellent results that are being achieved in bringing the farmers and nonfarm consumers of this Nation closer together.

Like Senator TALMADGE, I would like to commend the Agriculture Day Foundation for their outstanding leadership. They provide an effective outlet for concerned people across the country to present their views in a nationally coordinated program.

We have the opportunity here to provide this program with a much-deserved lift. It is time for us to officially recognize American agriculture for its amazing record of progress and achievement. In the interest of a stronger agriculture and a stronger America, I urge the immediate passage of this joint resolution to proclaim March 19, 1981, as "National Agriculture Day."●

ADDITIONAL COSPONSORS

S. 2111

At the request of Mr. TALMADGE, the Senator from Kansas (Mr. DOLE) was added as a cosponsor of S. 2111, a bill to incorporate the National Federation of Music Clubs.

S. 2924

At the request of Mr. CRANSTON, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of S. 2924, a bill to amend the Internal Revenue Code of 1954 to provide for increased investment by individuals through a tax-deferred rollover account.

S. 3006

At the request of Mr. WALLOP, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 3006, a bill to amend the Internal Revenue Code of 1954 to provide a nonrefundable tax credit for investment in qualified industrial energy efficiency and fuel conversion projects.

S. 3007

At the request of Mr. HOLLINGS, the Senator from West Virgina (Mr. RANDOLPH) was added as a cosponsor of S. 3007, a bill entitled the "Methane Transportation Research, Development, and Demonstration Act of 1980."

S. 3049

At the request of Mr. MCCLURE, the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Nebraska (Mr. ZORINSKY), and the Senator from Montana (Mr. MELCHER) were added as cosponsors of S. 3049, a bill entitled "The Local Schools Option Protection Act."

S. 3087

At the request of Mr. SASSER, the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

SENATE JOINT RESOLUTION 199

At the request of Mr. DOLE, the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from New Jersey (Mr. BRADLEY), the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Mississippi (Mr. COCHRAN), the Senator from Missouri (Mr. DANFORTH), the Senator from Arizona (Mr. DECONCINI), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Alabama (Mr. HEFLIN), the Senator from North Carolina (Mr. HELMS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from New York (Mr. JAVITS), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Nevada (Mr. LAXALT), the Senator from Michigan (Mr. LEVIN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. MELCHER), the Senator from North Carolina (Mr. MORGAN), the Senator from Wisconsin (Mr. NELSON), the Senator from Arkansas (Mr. PRYOR), the Senator from Delaware (Mr. ROTH), the Senator from South Carolina (Mr. THURMOND), the Senator from North Dakota (Mr. YOUNG), and the Senator from Montana (Mr. BAUCUS), were added as cosponsors of Senate Joint Resolution 199, a joint resolution designating the week of September 28 to October 4, 1980, as "National High School Activities Week".

SENATE CONCURRENT RESOLUTION 73

At the request of Mr. DOLE, the Senator from California, (Mr. HAYAKAWA), the Senator from Illinois (Mr. PERCY), and the Senator from Minnesota (Mr. DURENBERGER) were added as cosponsors of Senate Concurrent Resolution 73, a concurrent resolution expressing the sense of the Congress with respect to implementing the objectives of the International Year of Disabled Persons.

SENATE CONCURRENT RESOLUTION 116

At the request of Mr. THURMOND, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of Senate Concurrent Resolution 116, a concurrent resolution expressing the sense of the Congress on the Baltic States question.

SENATE CONCURRENT RESOLUTION 120

At the request of Mr. HEINZ, the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of Senate Concurrent Resolution 120, a concurrent resolution congratulating the people of Poland on the successful conclusion of the strike.

AMENDMENT NO. 2368

At the request of Mr. CRANSTON, the Senator from Georgia (Mr. TALMADGE) was added as a cosponsor of amendment No. 2368 proposed to H.R. 4155, a bill to amend the Internal Revenue Code of 1954 to allow the Internal Revenue Service to disclose the mailing addresses of individuals who have defaulted on student loans made under the Migration and Refugee Assistance Act of 1962.

SENATE CONCURRENT RESOLUTION 127—ORIGINAL CONCURRENT RESOLUTION REPORTED RELATING TO CONSIDERATION OF THE TAX REDUCTION ACT OF 1980

Mr. LONG, from the Committee on Finance, reported the following original concurrent resolution; which was placed on the calendar:

S. CON. RES. 127

Resolved, It is the sense of the Congress that the Congress should proceed to the consideration of the Tax Reduction Act of 1980 (H.R. 5829; Senate Report 96-940) prior to the recess, which is scheduled to begin no sooner than September 30 and no later than October 2, 1980.

SENATE RESOLUTION 528—ORIGINAL RESOLUTION REPORTED TO WAIVE THE BUDGET ACT

Mr. LONG, from the Committee on Finance, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 528

Resolved, That (a) pursuant to section 402(c) of the Congressional Budget Act of 1974, section 402(a) of such Act shall not apply with respect to the consideration in the Senate of the bill S. 2574 to authorize an extension and amendment of the revenue sharing program to provide general purpose fiscal assistance to local governments, and for other purposes; and

(b) That waiver of such section 402(a) is necessary in order to enable the Senate to consider legislation which will extend the general revenue sharing program and reestablish a program of countercyclical fiscal assistance; and

(c) That it was infeasible to complete action on this legislation within the usual time limits. The program provided for in this legislation is particularly related to economic conditions, and, under the economic conditions prevailing at the time of the usual May 15 deadline for authorizing legislation, it appeared unlikely that this legislation could be enacted in view of the failure to reach agreement with the House of Representatives on a similar renewal of the countercyclical assistance program passed by the Senate earlier in this Congress (S. 566). However, the economic situation has changed markedly. The assumptions of the Senate Budget Committee as to the fiscal year 1981 unemployment rate have increased by more than a full percentage point since it reported the First Concurrent Budget Resolution on April 9, 1980; and further

(d) That, in view of the changed economic conditions, the Senate should have the opportunity to consider legislation to restore a program of countercyclical fiscal assistance.

SENATE RESOLUTION 530—RESOLUTION TO WAIVE THE BUDGET ACT

Mr. RANDOLPH submitted the following resolution; which was referred to the Committee on the Budget.

S. RES. 530

Resolved, That section 402(a) of the Congressional Budget Act of 1974 is waived with respect to the consideration of an original bill authorizing a two year extension through fiscal year 1981 of the Public Works and Economic Development Act of 1965 and the Appalachian Regional Development Act of 1965.

On August 1, 1979, the Senate passed S. 914, reauthorizing the Economic Development and Appalachian Regional Commission Acts. This bill provided a four year extension of these programs and provided an expanded business development program for the Economic Development Administration. The authorizing level contained in that bill was $1.6 billion.

The conference committee on S. 914 has been meeting for more than 9 months and has been unable to resolve a lot of the differences. The main issues have been an authorization for a continuation of the Local Public Works Program and the high funding levels proposed by the House of Representatives.

The conferees, at their last meeting, could not agree on authorization levels and therefore agreed the best alternative is a simple two year extension of the Act. The authorization level provided will be $1.65 billion. This is broken down as $1.3 billion for EDA and the Title V Commissions and $350 million for the Appalachian Regional Commission.

The Committee on Environment and Public Works, therefore, requests a waiver of Section 402(a) so that the Senate can consider a bill authorized by the Environment and Public Works Committee to provide an authorization for fiscal years 1980 and 1981 of $1.65 billion per fiscal year since the conferees have been unable to resolve the differences on S. 914, the reauthorization legislation.

AMENDMENTS SUBMITTED FOR PRINTING

LIABILITY FOR CLEANUP OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES

AMENDMENTS NOS. 2374 THROUGH 2388

(Ordered to be printed and to lie on the table.)

Mr. CANNON submitted 15 amendments intended to be proposed by him to the bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Mr. CANNON. Mr. President, today I am submitting a number of amendments to S. 1480, the "superfund" bill. Last Thursday, I made a statement on the floor which discussed some of the problems in S. 1480, particularly as they relate to the jurisdiction of the Senate Committee on Commerce, Science, and Transportation. At that time, I asked that certain letters be included in the RECORD which would further explain some of these problems (printed in the RECORD for September 18, at p. 26056). The amendments which I am submitting today respond to some of the concerns of the Commerce Committee developed as a result of its hearings and review of this important legislation.

Due to the extremely tight time frame within which the committee has examined S. 1480, we have not had an opportunity to consider the bill or these amendments formally in committee session. However, the amendments do respond to many of the concerns with the bill that were raised at our hearings, and I am submitting them today in the interest of expeditious consideration of S. 1480 prior to adjournment. The committee welcomes any specific comments on the amendments from interested persons.

S. 1480 as presently drafted is unnecessarily broad and unclear as to its coverage. In this regard, one of my amendments would define the scope of the applicability of this act to insure that jurisdiction over foreign vessels and nationals is not inappropriately allowed.

Another amendment would modify the definition of "hazardous substances" so as not to include any substance which might cause harm, no matter how significant, to any organism under any circumstances, and would limit that definition to substances that have been designated as hazardous. The term "pollutant or contaminant," undefined in the bill, would be clarified by an amendment to relate the term to the clean-up authority of the President. The requirement that records be retained in perpetuity would be modified to grant the President authority to issue more practical regulations in this area.

Also, there is an amendment to clarify that the limitations on liability already mandated under the Price-Anderson Act for nuclear incidents will not be modified by S. 1480.

I am particularly concerned about the broad application of certain provisions to transportation and commerce and the burdens which such application would impose. Accordingly, one of my amendments would exclude consumer products from the definition of "facility," thus precluding any unintended application of notification requirements and liability provisions to consumers. Another amendment would define transportation for the purposes of this act so as not to impose unnecessary and duplicative information-gathering requirements on the transportation sector. Furthermore, emissions from the exhaust of all transportation facilities would be excluded from the definition of "release," not just emissions from motor vehicles. This amendment would assure equal treatment of all transportation modes and avoid the overly broad notification and other requirements for releases.

To avoid imposition on transportation modes of liability without appropriate notice of the hazard associated with a shipment, I am submitting an amendment which would coordinate the designation of materials as hazardous under the Hazardous Materials Transportation Act with the corresponding designation of hazardous substances under S. 1480.

One area of primary concern to me is the virtually unlimited liability in S. 1480 and the effect that this would have on the insurability of carriers. The insurance industry has stated that as presently drafted S. 1480 is uninsurable. As one important step to avoid the risks of uninsurability, one of my amendments would establish a monetary limit on liability. Another amendment would clarify that transporters are not to be liable for releases of "pollutants or contaminants," which are not designated substances, and of which carriers would have no notice of the potentially hazardous nature of the cargo. To introduce more certainty into the liability scheme, I am submitting an amendment to clarify that recoverable damages are those expressly enumerated in S. 1480, and to limit the damages recoverable for the loss of use of property or natural resources.

Another amendment would require the President to do a study on financial responsibility and the availability of insurance and would insure that any financial responsibility requirements for motor carriers under S. 1480 coordinate with those set forth in the Motor Carrier Act of 1980.

S. 1480 would declare a broad category of manufacturing, transporting, disposing, and handling activities as "ultrahazardous." This finding is unnecessary to carry out the purposes of the act and might adversely affect these activities and their insurability. Therefore, I am submitting an amendment to eliminate this unnecessary provision.

One area of extreme concern to insurance groups and their insureds is to have an idea of the extent of their liability exposure under S. 1480. In order to assist in clarifying this question, these amendments would assure preemption of claims that can be asserted under S.

1480 so that they may not be asserted under other laws. In light of the broad liability and compensation scheme of S. 1480, this would avoid onerous, duplicative, and overlapping claims. The amendment would expressly not affect the States or public's right to assert their common law or other claims not assertable under S. 1480.

Another amendment woud reinstate the existing allocation of agency responsibilities for damage assessment activities.

I am hopeful that these amendments will facilitate the passage of a sound piece of legislation in this area during the 96th Congress. Mr. President, I ask unanimous consent that all of my amendments be printed at this point in the RECORD with their accompanying explanations.

There being no objection, the amendments and explanations were ordered to be printed in the RECORD, as follows:

AMENDMENT No. 2374

On page 2, strike lines 5 through 11, and insert in lieu thereof the following:

"APPLICABILITY AND DEFINITIONS

"SEC. 2. (a) This Act shall apply to—

"(1) hazardous substance disposal sites, facilities, and areas within the United States;

"(2) releases or threats of releases of hazardous substances from vessels, public vessel, transportation facilities, and facilities into the navigable waters and waters of the contiguous zone, into ground water, public water supplies and air within the United States, and onto the land within the United States;

"(3) releases or threats of releases of hazardous substances into the waters seaward of the contiguous zone—

(A) from vessels which are or, where the context so provides, whose person in charge is otherwise subject to the jurisdiction of the United States at the time of the release where the release may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States; and

(B) from activities subject to regulation under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974; and

"(4) removal costs incurred under the Intervention on the High Seas Act respecting releases or threatened releases of substances other than convention oil, as defined in that Act.".

On page 2, line 16, insert "otherwise subject to the jurisdiction of the United States" after "'onshore facility'".

On page 12, line 2, strike "and", and on page 13, line 22, strike "amended.", and insert in lieu thereof the following: "amended; and

"(19) the term 'environment' shall mean the environment to which this Act applies, in accordance with subsection (a) of this section.".

On page 9, line 5, insert "or" before "any", and on line 6, strike ", or any Foreign government;" and insert in lieu thereof a semicolon.

EXPLANATION

S. 1480 appears not to contain any limitation on the geographical scope of its coverage. This amendment clarifies the term "environment" in the Act and assures that it does not apply to foreign vessels or nationals outside the appropriate jurisdiction of the Act.

In addition, S. 1480 defines natural resources to include any natural resources of a foreign government. This definition is too broad and all inclusive. This amendment would clarify that S. 1480 will not create recovery for damages to any natural resources of a foreign government unless such coverage is in conformance with the limitations of Section 2(a) as amended herein.

AMENDMENT No. 2375

On page 12, line 2, strike the "and" immediately following "1974;" and on page 12, line 3, insert the following new paragraph and redesignate succeeding paragraphs accordingly:

"(18) the term 'transport' or 'transportation' means the movement of a hazardous substance by any mode, including pipeline, and, incidental to such movement, any loading, unloading, handling or storage.".

On page 23, line 20, strike "transportation".

On page 24, line 4, strike "actions." and insert in lieu thereof "actions: *Provided, however*, That this subsection shall not apply not apply to the transportation of any hazardous substance.".

EXPLANATION

This amendment clarifies the meaning of "transport" and "transportation" as used in this Act, and it eliminates the applicability to transportation of the new information gathering provision in Section 3(d). The new authority granted to the Environmental Protection Agency and the states under section 3(d) is duplicative of and inconsistent with the current authority of the Department of Transportation in regulating hazardous materials transportation.

AMENDMENT No. 2376

On page 8, line 9, strike all after "this" through the end of line 23 and insert in lieu thereof the following:

"Act."; and on line 7 of such page, insert "and" immediately before "(F)" therein.

On page 15, lines 11 and 12 and lines 18 and 19; page 16, lines 4 and 5 and lines 22 and 23; page 18, lines 7 and 8; and page 83, line 3, strike the words "(other than as defined in section 2(b)(13)(G) of this Act)".

On page 38, strike lines 1 through 12 and on line 13 redesignate subsection "(n)" as subsection "(m)".

On page 12, line 2, strike "and", and on page 13, line 22, strike "amended.", and insert in lieu thereof the following: "amended; and

"(19) the term 'pollutant or contaminant' means any substance with respect to which the President exercises authority under section 3(c)(1) of this Act, other than a hazardous substance.".

EXPLANATION

S. 1480 in Section 2(b)(13) contains a two-tier definition of hazardous substances. The first tier, Sections 2(b)13(A)-(F), would define a hazardous substance as any substance designated under certain specified lists. Section 2(b)(13)(G) is a "catch-all" which would define a hazardous substance to include virtually any substance that could cause damage, however slight, to any organism under any circumstances. This extreme breadth of definition is unnecessary for any of the purposes of the Act, since section 3(c)(1)(B) of S. 1480 provides that the President is generally authorized to respond to a release of a "pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare." Accordingly, this amendment would strike Section 2(b)(13)(G) and all references thereto. This amendment also clarifies that for purposes of this Act, a "pollutant or contaminant" is any substance, other than a defined hazardous substance, with respect to which the President decides to exercise his response authority under Section 3(c)(1)(B).

AMENDMENT No. 2377

On page 26, line 8, strike "all" and insert in lieu thereof "the following".

On page 26, line 10, strike "disposal, including—" and insert in lieu thereof "disposal:".

On page 26, strike lines 14-15 and lines 19-21.

On page 27, line 2, strike "resources;" and insert in lieu thereof "resources if the claimant derives at least 25% of his earnings from activities which utilize such property or resources;".

EXPLANATION

Section 4(a)(2) of S. 1480 provides for recovery of damages, which result from a release under the Act, "including" seven specified types of damages. The specified damages in the Act are not to be treated as an inclusive list, and unspecified damages are potentially recoverable. Given the joint, several, and strict liability scheme established in the bill, it is essential that the types of damages recoverable be specified in order to provide a degree of certainty and predictability. Without such predictability, insurers have indicated that the risks created by the bill would be uninsurable. This amendment would limit the damages recoverable to those specifically enumerated in the Act.

In addition, section 4(a)(2) of S. 1480 currently would impose liability for the loss of use of any property or natural resources and for any loss of income from such use resulting from a release of hazardous substances. These provisions vastly expand the number of potential claimants under the bill and would place claimants with relatively insignificant claims on a par with claimants with urgent need for recovery. For example, under the current provision, a sports fisherman using a pond that has been polluted would be entitled to compensation on the same basis as a claimant needing compensation for medical expenses. This amendment would eliminate these less significant claims from the scope of the bill and focus the liability scheme on the claimants with the most serious claims. In addition, the amendment would permit compensation for loss of income from the use of property or resources only if 25 percent of the claimant's income is derived from such use. This amendment would not affect the common law rights of those affected by this amendment. This amendment is consistent with the approach to damages taken by the Outer Continental Shelf Lands Act Amendments of 1978.

AMENDMENT No. 2378

On page 7, line 4, immediately before the semi-colon therein, insert the following: ", but such term does not include consumer products.".

On page 13, line 22, insert the following new paragraph:

"(19) the term 'facility' as used in the phrase 'facility or site at which hazardous substances are stored or disposed of', or any similar phrase, shall not include any motor vehicle, rolling stock, pipeline or aircraft engaged in transportation.".

EXPLANATION

S. 1480 defines the term "facility" broadly to include such things as "any equipment" and "any storage container," which could easily include consumer products. Such an interpretation of this term would lead to excessive notification and liability coverage by the Act. This amendment would explicitly clarify that the term "facility" does not include consumer products for the purposes of this Act.

In addition, this amendment will clarify that transportation facilities shall not be treated as facilities storing hazardous substances, which would trigger the notification

provisions of S. 1480, if they are holding hazardous substances as part of the transportation process.

AMENDMENT No. 2379

On page 91, after line 21, add the following new section:

"TRANSPORTATION

SEC. 13. (a) Each hazardous substance which is listed or designated as provided in section 2(b)(13) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act.".

(b) A common or contract carrier shall not be liable under Section 4 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the designation under Subsection (a) of this section.

EXPLANATION

The problem of identification of hazardous substances is a very real one for carriers. Although they are subject to the liability provisions and clean-up responsibilities under S. 1480, unless the hazardous substance is required to be identified as such on shipping documents, a carrier may not even know that he is transporting a hazardous substance. Tariff publication of safety requirements is based on DOT regulations and the best way to ensure that hazardous substances are identified as such when offered for transportation is to have them listed in the Hazardous Materials Table and certain entries required on shipping papers. This problem existed with regard to the Environmental Protection Agency's (EPA) regulation of the transportation of Section 311 hazardous substances, and hazardous wastes, and the solution involved listing of these materials by DOT.

Since identification via some indication of shipping documents is the key to a carrier knowing he is transporting hazardous substances, there may be some delay after publication, prior to the effective date of the designation, to allow the ADP equipment to be reprogrammed. The determination of whether a delay in effective date was necessary would be made by the Secretary of Transportation. It is envisioned that DOT rulemaking would coincide exactly with any EPA rulemaking. The (13)(a) provision would mean that notice and comment rulemaking procedures would not have to be followed by DOT, although they would be, of course, by the agency making the § 2(b) designation.

Section 13(b) would remove liability for damages and remedial action prior to the effective date of the designation.

AMENDMENT No. 2380

On page 25, line 20, insert the following after "Act": "(except where such a release of a pollutant or contaminant occurs during the transportation thereof by a common or contract carrier).".

EXPLANATION

This amendment clarifies that common or contract carriers would not be liable pursuant to section 3(c)(1) for releases of "pollutants or contaminants". "Pollutants or contaminants" are not listed as hazardous substances. There is no statutory requirement that common or contract carriers be notified of the substance which they are carrying unless it is designated as a hazardous substance. Therefore, it would be inappropriate to subject such carriers to the increased liability exposure of this section. They would have no way to assess the risks associated with the carriage of such unlisted substances and could not insure against these risks.

AMENDMENT No. 2381

On page 11, line 4, delete "vehicle;" and insert "vehicle, rolling stock, pipe or pipeline, aircraft, or vessel or public vessel;".

EXPLANATION

S. 1480 presently excludes from the definition of release "emissions from the exhaust of a motor vehicle". S. 1480, however, appears to continue to cover the emissions from the exhaust of airplanes, trains, pipeline facilities, and vessels. There is no apparent rationale for this disparate treatment of the various transportation modes. This amendment would assure that all of the transportation modes are treated equally with respect to this exclusion under S. 1480.

AMENDMENT No. 2382

On page 10, lines 17 through 19 strike "to the extent such release is covered by financial protection required" and insert in lieu thereof "if such release is subject to requirements with respect to financial protection mandated".

EXPLANATION

The Price-Anderson Act provides a $560 million limitation on public liability arising out of specified nuclear incidents. Section 2(b)(16)(ii) excludes such incidents from the definition of release "to the extent such release is covered by financial protection required by" the Price-Anderson Act. This provision could be interpreted to mean that once the Price-Anderson limits have been reached, unlimited recovery would be permitted under S. 1480. Such an interpretation would raise serious insurability questions for the nuclear industry. This amendment clarifies that S. 1480 does not alter the liability limits set forth in the Price-Anderson Act.

AMENDMENT No. 2383

On page 25, line 25, insert immediately after "liable", the following:

", subject to the limitations set forth in subsection (b) of this section,".

On page 27, immediately after line 9, insert the following subsection and redesignate the subsequent subsections (and all cross-references thereto) accordingly:

"(b)(1) Except when the release or disposal is caused in whole or in part by willful misconduct or gross negligence, within the privity and knowledge of the liable person, or in whole or in part by a violation, within the privity and knowledge of the liable person, of applicable public health, safety, construction or operating standards or regulations of the Federal Government; or except where the liable person is subject to criminal penalties for failure to furnish any notice of a release required by section 3(a)(3)(B) of this Act or of a facility required by section 3(a)(4)(A) or fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of removal, the total of liability shall be limited to—

(A) in the case of a vessel which does not carry hazardous substances in bulk as cargo or residue $150 per gross registered ton or $250,000, whichever is greater;

(B) in the case of a vessel which carries hazardous substances in bulk as cargo or residue, $250,000 or $300 per gross registered ton (up to a maximum of $30,000,000), whichever is greater; or

(C) in the case of a facility, $50,000,000 unless a lesser limit is established by the President under paragraph (2) of this subsection.

"(2) The President may issue regulations establishing limits of liability of no less than $5,000,000 and no more than $50,000,000 for various classes of onshore facilities and offshore facilities. Any such regulations shall take into account the size, type, location, storage and handling capacity and other matters relating to the likelihood of discharge or release in each such class and to the economic impact of such limits on each such class.".

EXPLANATION

This amendment establishes monetary limitations on liability for persons who are liable for releases of hazardous substances under the provisions of this bill. Concern has been expressed that without such liability limitations, it would be difficult, if not impossible, for potentially liable persons to obtain insurance to cover their operations. The liability limitations would not be effective in instances where the release results from the liable person's gross negligence, willful misconduct, or knowing violation of relevant Federal regulations or where the liable party has failed to provide notification of a release or of a facility or has failed to cooperate in removal activities.

While the Committee has not had a full opportunity to review the limitations set forth in this amendment, the proposed limits are similar to provisions in bills proposed by the Administration and passed by the House.

AMENDMENT No. 2384

On page 64, line 11, strike all from Responsibility" through line 16; and strike the period on line 11 and insert in lieu thereof a semicolon.

On page 79, lines 7-22, strike section 6(e)(2) and redesignate the following paragraph accordingly.

EXPLANATION

Under the current National Contingency Plan, agency responsibilities for performing damage assessment activities are allocated so that the National Oceanic and Atmospheric Administration is responsible for performing such assessments of oil spills in coastal waters and seaward, and the Environmental Protection Agency is responsible for other assessments. Section 6(e)(2) would alter this existing allocation by allowing that the division of responsibilities be made at the baseline of the territorial sea, a legal boundary which has no relevance to the allocation of scientific responsibilities and expertise. Since the existing allocation is highly effective, and there is no need to change it, this amendment would strike the allocation as set forth in S. 1480. If, in the future, the agencies determine that a different allocation is appropriate, they can modify the existing allocation by amending the National Contingency Plan.

AMENDMENT No. 2385

On page 83, immediately after line 13, insert the following, and redesignate subsequent subsections (and all cross-references thereto) accordingly:

"(b) Financial responsibility requirements for transportation of hazardous substances by motor vehicle under this Act shall be those requirements established by the Secretary of Transportation pursuant to section 30 of the Motor Carrier Act of 1980 (49 U.S.C. 10927).

"(c)(1) The President shall conduct a study to determine (A) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of facilities subject to liability under section 4 of this Act (other than motor vehicles); (B) whether the market for such insurance is sufficiently competitive to assure purchasers of features such

as a reasonable range of deductibles, co-insurance provisions and exclusions; and (C) the extent to which operators and owners of particular categories of facilities may be able to establish financial responsibility through means other than commercial insurance.

"(2) The President shall submit the results of the study, together with recommendations for initial financial responsibility standards for various classes of facilities, within two years after the date of enactment of this Act. The President shall submit an interim report on the study within one year of the date of enactment of this Act. In formulating recommendations for financial responsibility standards, the President shall consider the small business impacts of such standards and propose means by which those impacts might be eliminated or mitigated.".

On page 83, insert at the end of line 25, ", where appropriate pursuant to the study mandated in subsection (c),".

On page 84, strike all from "Financial" on line 14 through "section." on line 17.

EXPLANATION

This amendment would conform the financial responsibility provisions in Section 7 of S. 1480 in relation to motor vehicles to the requirements recently enacted in the Motor Carrier Act of 1980 (P.L. 96-296). Also, this amendment would require the President to carry out a two-year study and report to Congress on the financial responsibility requirements of other facilities covered by S. 1480. This study would make determinations with respect to whether the private insurance protection available to owners and operators of facilities subject to liability under Section 4 of S. 1480 would be adequate and whether the insurance market is sufficiently competitive to assure adequate types and conditions of insurance. The study is also to examine the extent to which operators and owners of particular categories of facilities may be able to establish financial responsibility through means other than commercial insurance. The results of this study are to serve as the basis for the financial responsibility regulations to be issued by the President, where appropriate, pursuant to this section.

AMENDMENT No. 2386

On pages 13, line 24, strike all after "(a)" through line 2 on page 14, and redesignate subsequent paragraphs (and all cross-references thereto) accordingly.

EXPLANATION

S. 1480 as presently drafted would include a congressional declaration and finding that an enormously broad category of manufacture, use, transportation, treatment, storage, and disposal are ultrahazardous activities. Such a finding is not necessary for the purposes of the Act and would cover activities that in fact may not deserve such a designation. Therefore, this amendment would drop this overly broad designation.

AMENDMENT No. 2387

On page 85, delete lines 12 through 25 and insert in lieu thereof the following:

"RELATIONSHIP TO OTHER LAWS

"SEC. 8(a) Except as provided in this Act and subject to the provisions of subsection (b) of this section—

"(1) No action may be brought in any court of the United States, or of any State or political subdivision thereof, for costs or damages for which a claim may be asserted under this Act, and

"(2) no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for such costs or damages, nor to establish or maintain financial responsibility relating to the satisfaction of a claim for such costs or damages: provided, however, that nothing in this subsection shall preclude any State from imposing a tax or fee upon any person or upon any hazardous substance in order to finance the purchase or prepositioning of hazardous substance release cleanup equipment or other preparations for the cleanup of a release of hazardous substances which affects such State.

"(b) Nothing in subsection (a) shall preclude or be interpreted to preempt any State from establishing liability funds, establishing limits of liability, setting financial responsibility requirements, or imposing any taxes upon any person, or upon oil or hazardous substances for the purpose of establishing liability and compensation schemes for losses and costs associated with releases of hazardous substances at any closed hazardous waste disposal facility.

"(c) Regardless of any State statutory or common law to the contrary, no person who asserts a claim for damages pursuant to this Act shall be deemed or held to have waived any other claim for damages not covered or assertable under this Act arising from the same incident, transaction or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim pursuant to this Act shall as a result of any determination of a question of fact or law be made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable under this title arising from the same incident, transaction or set of circumstances."

EXPLANATION

Section 8 of S. 1480 provides that nothing in the bill shall be construed as preempting any State from imposing additional liability or other requirements. In light of the comprehensiveness of the liability and compensation scheme established by S. 1480, the effect of this provision is to allow states to establish their own overlapping and duplicative systems, with the costs of these systems to be borne ultimately by the public. Without a showing of need for such duplication, the states should not be allowed to impose these costs. Furthermore, if states retain this authority, a whole new level of uncertainty will be created for interstate transporters since they may be subject to different requirements in each state. This would severely aggravate the serious insurability problems which they would encounter under S. 1480.

This amendment provides that claims may be asserted under this act (other than claims relating to closed hazardous waste disposal facilities) may not be asserted under other laws and that the states are preempted from establishing funds or imposing financial responsibility requirements for such claims. The amendment would expressly not prevent the states from providing remedies for damages not covered by S. 1480. In addition, states would specifically retain their authority to impose taxes or fees for the purchase of cleanup equipment. This amendment is consistent with both S. 1341, the administration's proposal, and H.R. 85, the House companion bill which passed the House on September 19, 1980.

AMENDMENT No. 2388

On page 17, strike lines 18 through "or" on line 24, and insert in lieu thereof the following:

"(B)(i) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

"(I) the location, title, or condition of a facility or site, or

"(II) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility or site; the records which shall be retained by any person required to provide the notification of a facility or site set out in subparagraph (A) of this paragraph. Such specification shall be in accordance with the provisions of this subparagraph.

"(ii) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at such earlier time as a waiver is obtained under clause (iii) of this subparagraph, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in clause (i) of this subparagraph. Any person who violates this subparagraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"(iii) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under clause (i) of this subparagraph may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of clause (ii) of this subparagraph. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

"(iv) Notwithstanding the provisions of this subparagraph, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to clause (i) of this subparagraph for such a time-period in excess of the periods specified in clause (ii) of this subparagraph as the Administrator determines to be necessary to protect the public health or welfare.".

EXPLANATION

This amendment would modify the record-keeping requirements of Section 3(a)(4)(B) of S. 1480, which presently provide that all records required under this provision, however irrelevant they might be or become over time, would have to be kept in perpetuity. Such a provision could place a serious economic burden on the public as well as on those covered by the provision. Accordingly, this amendment would provide EPA with authority to develop regulations with respect to record-keeping. In addition, the amendment provides that records are to be kept for 50 years unless the Administrator determines that a longer or shorter period is appropriate.

ADDITIONAL STATEMENTS

HMO'S—A NEW STUDY

● Mr. DURENBERGER. Mr. President, I have taken the opportunity on many occasions to express my strong support for competition and consumer choice in the delivery of health care. If we are to control costs and truly assure every American of adequate and affordable health care, then we must look to competition and consumer choice for the answers.

Some people, while agreeing that competition is the solution for the problem of rising health care costs in urban areas, have expressed concern for rural areas. My answer has always been that competition and consumer choice can be designed to work in any area.

It is one thing for a U.S. Senator to make that claim. It is quite another matter for a respected medical spokesperson to recognize the need for a competitive health care delivery system.

Robert T. Kelly, M.D., a member of the board of trustees of the American Medical Association, is a recognized expert in the health care needs of rural America. Dr. Kelly, who practices medicine in a city of about 8,000 people, is a pioneer in promoting competitive health care systems in rural areas. His firsthand experiences provide the demonstrative evidence that competitive health care systems do work in rural areas.

Along with his leadership roles in the AMA, Dr. Kelly has received numerous awards for his work. His most recent was the prestigious Shotwell Award from the Metropolitan Medical Center in Minneapolis. This award is granted yearly to the Minnesota physician making the greatest contribution to medicine. Dr. Kelly is the first nonmetropolitan recipient.

Recently, Dr. Kelly delivered an outstanding speech to the regional meeting of Blue Cross/Blue Shield in Minneapolis. He concluded by saying that:

The AMA policy and actions on HMO's I've outlined for you demonstrate that we are sincere in our commitment to a free market, competitive health care delivery system.

Mr. President, I believe Dr. Kelly's speech is significant and I ask that it be included in today's RECORD.

The speech follows:

SPEECH BY ROBERT T. KELLY, M.D.

I'm gratified at this opportunity to discuss, "HMOs . . . A New Study," and I say that in all sincerity.

As a practicing physician here in Minnesota, I've been involved with HMOs in one way or another ever since I graduated from medical school.

And having just stepped down as Chairman of the AMA's Council on Medical Service, I have more than a passing acquaintance with recent HMO developments, and AMA responses thereto.

Of course it was this Council that did compile the "new AMA study on HMOs" submitted to our House of Delegates at our Annual Meeting in July.

We regard that report, and the subsequent House action, as the definitive culmination of a series of AMA policy actions on HMOs, and as a reaffirmation of that policy.

In short, while the study serves to expand the wheel of our HMO policy, it does not constitute a reinvention of that wheel.

I underscore these facts at the outset because there still is considerable misunderstanding over what our policy is, and almost no understanding at all of how it evolved over a span of years.

So let's examine the "hows" and the "whys" of our policy, in that order.

And let's begin by defining some terms.

For example, what is an HMO, really?

And what does it do that alternative delivery mechanisms do not do?

The significant differences that exist in the prepaid group health plans right here in the Minneapolis-St. Paul area demonstrate that the concept is not easily defined.

We can talk about prepaid group practices, or PGPs, Individual Practice Associations, or IPAs, staff and group model HMOs, contract or fee-for-service IPAs, network IPAs, and so on and so forth.

For discussion purposes, then, let's use the following definition devised by Harold S. Luft in 1978, and I quote:

". . . an organization will be considered an HMO if it assumes a contractual responsibility to provide or assure the delivery of health services to a voluntarily enrolled population that pays a fixed premium that is the HMO's major source of revenue."

Which leads to my second question, namely what services does this organizational structure provide that other delivery mechanisms do not provide?

Do HMOs really maintain the health of subscribers?

It's generally agreed, I think, even by Dr. Ellwood, that the phrase is a misnomer to some extent. Because no method of health care delivery, solo, partnership or group practice, closed or open panel, prepaid or fee-for-service, can actually maintain health to any significant degree . . .

. . . except through clinical therapy, and to a much lesser extent, through preventive care. And of course HMOs are relatively new in name only. Prepaid group practices date back to the late 1920s, while the term "health maintenance organization" was not coined by Dr. Ellwood until 1971, as this audience knows full well. The point is that in generic terms, HMOs have been around for decades now. And their basic function has been exactly the same as other delivery mechanisms, namely the delivery of patient care. Certainly more conventional group practice programs have provided services as comprehensive as those of HMOs, and to far more patients.

But during the 1970s, when the rising costs of health care became a dominant public issue, a great deal of interest centered on HMOs . . .

. . . primarily on their potential to reduce hospitalization, the costliest aspect of health care by far. And it has been within this context that the AMA's current HMO policy, including our new study, have evolved. In March of 1976 the National Commission on the Cost of Medical Care held its first meeting. Although sponsored by the AMA, this Commission was an independent body with 27 members recruited from business and industry, labor, the health care delivery sector, academia, consumers, and government. AMA sponsorship of this Commission reflected our conviction that changes had to be made to restrain health care cost increases . . .

. . . and that changes of the magnitude necessary were best developed through the combined efforts of decision-makers from the areas where health care is purchased and used, as well as delivered.

And following an intensive 18-month study, the National Cost Commission in the Winter of 1977 made public 48 impartial recommendations on how to restrain costs.

Among other things, the recommendations called for a balance between producer-consumer initiative, plus producer self-regulation, in modifying the health-care delivery system and containing costs. The Commission also emphasized the need for greater marketplace choice on the part of the consumer. This means greater latitude in the patterns and thus the cost of benefits offered by insurers, with employees given the opportunity to choose among health-care plans in terms the premium price. Another application of the marketplace idea was the recommendation calling for fair market competition between HMOs and other insurance and provider systems. All of the Commission's recommendations have been submitted to the AMA's House of Delegates, and have been adopted in whole or in part.

More specifically, with respect to the HMO recommendations, AMA Delegates at our 1978 Annual Meeting approved "the concept of neutral public policy and fair market competition among all systems of health care delivery."

The House also directed the AMA Board of Trustees to: "Seek an objective assessment of HMOs, including IPAs and other group arrangements, with respect to their impact on access, quality, and cost of health care."

So it was that the Board, in turn, immediately directed the AMA's Council on Medical Service to undertake the new HMO study on an ad hoc basis.

And we did conduct an in-depth, two-part study.

First, we conducted an extensive review of 15 existing HMOs, including the Physician Health Plan of Greater Minneapolis, an IPA model.

Utilizing detailed questionnaires and on-site visits, we were able to compare long-term HMO performance data with our own study data.

And in fact, the second part of our study was a comprehensive review of the scientific literature on HMOs which has accumulated over the past 20 years.

To make a long and laborious story short, the Council eventually compiled what we believe is a thorough and objective assessment of HMOs.

And the study, our summary report, and eight recommendations on HMOs, were submitted to AMA Delegates in July.

And the House approved seven of the eight Council recommendations.

One recommendation, that pertaining to the cost-saving potential of HMOs, was referred back to the Board of Trustees for reasons I will discuss a bit later on.

A summary of the more important recommendations that were approved by the House, however, is as follows:

That AMA policy should continue to support neutral public policy and fair market competition among all health care delivery systems, and that the growth potential of HMOs be determined by the people preference rather than government preference. . . .

That the AMA continue to recognize that no single pattern of health care delivery is necessarily suited to all patients and all physicians, and that alternative delivery systems enable both to secure true choice. . . .

That individual physicians and groups of physicians become better informed about the pros and cons of establishing or participating in an HMO if their community is interested. . . .

And that the AMA continue to provide information on HMOs to medical societies and physicians.

Please note that recurring word "continue" which properly indicates that these recommendations serve to reaffirm previous AMA policy and actions on HMOs.

Our support for neutral public policy and fair market competition, for example, stem directly from the HMO policy adopted at our 1978 Annual Meeting, policy which stemmed, in turn, from the recommendations of the National Cost Commission.

And the words "neutral public policy" mean now, as they did in 1978, that government should be neutral in its public policy treatment of all forms of health care delivery.

That is, it should not provide preferential benefits for one form of health care delivery over another. . . .

. . . whether the preferential benefits are special loans or grants or advertising campaigns. . . .

. . . and whether the form of health care delivery happens to be through HMOs or non-HMOs, solo or partnership practice, or whatever.

Because it is only through neutral public policy that fair market competition can, in fact, be fair.

That policy recommendation leads to another one approved by the House, namely our recognition that "no single pattern of health care delivery is necessarily suited to all patients and all physicians, and that alternative delivery systems enable both to secure true choice."

And that, too, means just what it says.

Some physicians and some patients will continue to prefer various settings for the delivery of health care, whether that setting happens to be in a solo practitioner's office, or in various kinds of group practice settings.

In short, let all forms of health care delivery compete in the marketplace, and let people preference, rather than government preference, determine the eventual growth of each.

Parenthetically, we do believe that HMOs have a place in the market system, and that some physicians and patients do prefer HMOs.

Hence we believe they should be one of the options offered to the people, along with various other alternatives in the financing and delivery of health care.

And hence the House in July also directed the AMA to continue to provide information on HMOs to medical societies and physicians. . .

. . . along with the recommendation that physicians become better informed about the pros and cons of establishing or participating in an HMO if their community is interested.

Furthermore, the AMA has such informational materials on hand for HMOs, including the IPA model, and for other health care delivery methods as well.

These materials emphasize that when physicians set up practice, or change their practices, they had better know what they're doing lest the practices fail as many have done in the past.

Which brings us to the Council recommendation relative to the cost-effectiveness of HMOs, and the reasons AMA Delegates in July decided to refer, rather than approve, the recommendation.

The Council's study, and the report to the House, did conclude that HMO care seems to be less costly than that in alternative settings, largely because of a reduction in the number of hospital days, with fewer admissions a precipitating factor.

In the "overview" section of the report, however, the Council also expressed concern about the possible cost implications of such relevant factors as underutilization of services, the degree of reliance on services provided by non-physicians, or the tendency of some members to secure and pay for care outside the HMO.

And the Council concluded that the impact of at least some of these factors has not been conclusively determined.

This reflects a larger uncertainty regarding existing HMO performance literature, namely that it has been far more descriptive than analytic.

And, in fact, our own new study states at the outset,

". . . the study is exploratory, suggesting potential hypotheses for future investigation."

Given these uncertainties, it should not be surprising that the House chose to refer rather than approve the pertinent recommendation.

But I should emphasize that another recommendation approved by the House specifically directs the AMA to encourage additional research into all those areas of HMO performance in need of further study, including, and I quote:

". . . whether factors leading to apparent HMO cost-effectiveness are unique to the HMO pattern or whether they may be applicable to other forms of practice."

Please keep in mind that recommendation is in keeping with another cost containment effort that has created a great deal of interest of late. . . .

. . . the Voluntary Effort to Contain Health Care Costs, or the VE.

Like the Cost Commission, the VE also represents a coalition of private sector forces spearheaded by the AMA, the nation's two largest hospital associations, and the "Blues."

Launched in the Winter of 1977, the VE has since saved the American people an estimated $3.5 billion in hospital expenditures, and that's not hay by anyone's standards.

In closing these remarks, please keep in mind, too, that our Council Report on HMOs approved by AMA Delegates in July points out that the quality of care in HMOs seems to be high. . . .

. . . that patients seem to be generally satisfied with the care they receive regardless of setting. . . .

. . . and that for some patients, HMOs enhance access to care by eliminating financial barriers, and through the provision of after-hours ambulatory care.

And to all of that I might add that a very substantial number of AMA members do, in fact, practice in HMO settings.

In any case, I think you'll agree that the AMA policy and actions on HMOs I've outlined for you demonstrate that we are sincere in our commitment to a free market, competitive health care delivery system. . . .

. . . and that we do recognize that HMOs have a place in that system.

Be assured that the AMA will continue to monitor developments in alternative forms of health care financing and delivery, including HMOs. . . .

. . . and act fairly and accordingly.

In such ways, and acting together, we can advance towards the mutual goal of providing the kind of health care our society wants in terms of access and quality. . . .

. . . at a price our society can afford.●

TAX REDUCTION LEGISLATION PROPOSED BY SENATE FINANCE COMMITTEE

● Mr. BAUCUS. Mr. President, the Senate Finance Committee has reported legislation to reduce individual and business taxes. This legislation is important to reduce the tax burden on individuals who have been especially hard hit by "taxflation" and as a start for revitalizing the U.S. economy.

The bill is especially important because of its provisions for capital cost recovery. The committee has included a "2-4-7-10" depreciation system to help encourage investment that will increase national productivity.

Mr. President, the staff of the Joint Committee on Taxation has prepared an excellent summary of the tax cut provisions. I submit for the RECORD an excerpt of the print for the information of my colleagues.

The material follows:

SUMMARY OF TAX CUT PROVISIONS OF H.R. 5829

INTRODUCTION

This pamphlet provides a summary of the tax cut provisions of H.R. 5829, as ordered reported by the Senate Finance Committee on August 21, 1980. The pamphlet also includes the estimated revenue effects of the tax cut provisions. The tax cut provisions were added as an amendment to a House-passed bill, H.R. 5829 (a tariff bill providing for the duty-free entry of bronze bells for the Foundry United Methodist Church of Washington, D.C.).

This document is intended to be a brief summary of the decisions made by the Finance Committee. The Finance Committee report and reported bill will provide the official legislative history of the provisions.

I. SUMMARY OF TAX CUT PROVISIONS

A. Individual income tax cuts

1. Reductions in tax rates:

Under the committee bill, individual income tax rates in every tax bracket will be reduced by 1 to 3 percentage points, as shown for married couples in table 1. The rate in the lowest bracket will be reduced to 12 percent from the current 14 percent, and the rate in the highest bracket will be reduced to 67 percent from the current 70 percent. Some brackets will be narrowed in size.

2. Personal exemption:

The present $1,000 personal exemption for each taxpayer and dependent and the extra exemptions for taxpayers who are age 65 and over and taxpayers who are blind will be increased to $1,100.

3. Zero bracket amount:

The zero bracket amount, presently $3,400 for married couples and $2,300 for single persons and heads of households, will be increased to $3,600 and $2,400, respectively. The zero bracket amount (formerly the standard deduction) establishes both an amount of taxable income which is exempt from tax and an amount of taxable income which is subtracted from itemized deductions to determine the amount which actually may be deducted.

4. Earned income credit:

The earned income credit, a refundable credit for families with children, will be increased from 10 percent of the first $5,000 of earnings to 11 percent of the same amount. Thus, the maximum credit will be increased to $550 from the present $500. The credit will be phased out as earned income increases from $7,000 to $11,000, rather than from $6,000 to $10,000 as under present law.

5. Deduction for two-earner couples:

Under the committee bill, a new deduction will be allowed for couples in which both spouses have earned income. For 1981, the deduction will be 5 percent of the first $30,000 of earnings of the spouse with the lower earnings (maximum of $1,500). For 1982 and after, the rate of the deduction will be 10 percent (maximum of $3,000). This will partially offset the additional tax, commonly referred to as the "marriage penalty," which often results when two persons with earnings marry.

6. Effective date:

The above individual income tax reduction provisions are effective for taxable years beginning after December 31, 1980. Reductions in income tax withholding to reflect the tax cuts (other than the second-earner deduction) will begin on January 1, 1981.

TABLE 1.—TAX RATES FOR MARRIED COUPLES FILING JOINT RETURNS: COMPARISON OF COMMITTEE BILL AND PRESENT LAW [1]

Committee bill		Present law tax rate in equivalent bracket
If taxable income is:	The tax is:	
Not over $3,600	No tax.	
Over $3,600 but not over $5,600	0 plus 12.0% of excess over $3,600	14
Over $5,600 but not over $7,600	$240 plus 14.0% of excess over $5,600	16
Over $7,600 but not over $11,600	$520 plus 17.0% of excess over $7,600	18
Over $11,600 but not over $15,600	$1,200 plus 20.0% of excess over $11,600	21
Over $15,600 but not over $20,000	$2,000 plus 23.0% of excess over $15,600	24
Over $20,000 but not over $24,400	$3,012 plus 27.0% of excess over $20,000	28
Over $24,400 but not over $29,700	$4,200 plus 29.0% of excess over $24,400	32
Over $29,700 but not over $35,000	$5,737 plus 35.0% of excess over $29,700	37
Over $35,000 but not over $45,600	$7,592 plus 41.0% of excess over $35,000	43
Over $45,600 but not over $59,800	$11,938 plus 48.0% of excess over $45,600	49
Over $59,800 but not over $85,400	$18,754 plus 53.0% of excess over $59,800	54
Over $85,400 but not over $109,200	$32,322 plus 58.0% of excess over $85,400	59
Over $109,200 but not over $162,200	$46,126 plus 63.0% of excess over $109,200	64
Over $162,200	$79,516 plus 67.0% of excess over $162,200	68 or [2] 70

[1] Comparable tax rate reductions and bracket changes also are made for single and head-of-household tax schedules.

[2] The bill collapses the present 68- and 70-percent tax brackets into a 67-percent bracket.

B. Capital formation and productivity tax reductions

1. Depreciation and investment credit revisions:

a. Changes in the depreciation of personal property:

Under the committee bill, a new method of depreciating most personal property will be substituted for the present law depreciation methods, including the Asset Depreciation Range (ADR) system. Public utility property will continue to use present law except that the ADR variance will be increased to 30 percent rather than 20 percent.

Under the committee's "2-4-7-10" system, the depreciable basis of tangible personal property will be placed in one of four open-ended recovery accounts.[1] The entire cost of the property is added to the account without reduction for the property's estimated salvage value. Thus, the new system will eliminate all disputes as to the salvage value of the property. Progress payments made toward the acquisition of assets which have a normal construction period of 2 years or more also will be added to the appropriate asset account rather than waiting until the asset actually is placed in service. The system utilizes a half-year convention[2] for all asset costs (including progress payments).

The four recovery accounts correspond to depreciation terms of 2, 4, 7 and 10 years. The bill requires that property be assigned to a recovery account which utilizes a life that is at least 40 percent shorter than its current midpoint useful life (under the present ADR system), except that no recovery period shall be reduced below 2 years. Assets will be assigned to recovery periods in accordance with the following schedule:

ADR midpoint life:	*Recovery period (years)*
6.5 years or less	2
7.0 years to 11.5 years	4
12.0 years to 16.5 years	7
More than 16.5 years	10

For example, assets used to manufacture clothing currently have a mid-point life of 9 years, which under this bill, would be reduced to 4 years. Equipment placed in the 7-year class would include the following assets which now have a mid-point life of 12 years; manufacturing of metal working machinery, electrical equipment, motor vehicles, ships and railroad cars. The Treasury Department would be required to publish simplified tables which incorporate these shortened lives and to establish lives for those types of tangible personal property not covered by the ADR system.

A declining balance method (200 percent, 150 percent or 100 percent) will be used to compute the year's deduction for all assets within a recovery account. (The taxpayer may make an annual election as to which of these rates is to apply to any account for the taxable year.) The amount of the depreciation for the year is then subtracted from the account to establish the balance of the account on which next year's deduction is computed. For example, assume the cost of assets in the 4-year recovery account equals $1,000. The taxpayer would choose one of the three fixed percentages for this account, 50 percent, 37.5 percent, or 25 percent) and multiply this percentage by $1,000 in order to determine the amount of his deduction. If the taxpayer is elected to apply 50 percent (i.e., the percentage representing 200 percent of the straight-line rate for the 4-year recovery period), the depreciation deduction would be $500. The balance in the account used to determine the depreciation in the next year would be $500, increased or decreased by any additions or subtractions to the account.

Generally, no gains or losses will be recognized on the disposition of assets. Instead, the amount realized on the disposition will reduce the balance of the account which, in turn, will reduce the amount of depreciation deductions in subsequent years. If the amount realized from the disposition of assets reduces the balance of the account to a negative figure, the amount of the negative balance will be recaptured as ordinary income.

A taxpayer will be permitted to elect to "expense" (take an immediate deduction) up to $25,000 of expenditures each year for tangible personal property (new or used) during a year.

b. Investment credit modifications:

The investment tax credit for assets in the 7- or 10-year accounts will remain at 10 percent. Assets in the 4-year account will be eligible for a 6-percent investment tax credit. Assets in the 2-year account will be eligible for a 2.5-percent investment tax credit.

No investment tax credit will be allowed for those assets for which an immediate deduction is taken under the $25,000 "expensing" provision.

c. Optional approaches to depreciating real property:

The committee bill provides several new elective approaches to depreciation of real property (without eliminating the present law methods). First, a taxpayer may elect to depreciate structures over a period of 20 years using the straight line method and composite depreciation. (Under composite depreciation, the entire structure must be depreciated over a single life; by contract, under component depreciation, different parts of the structure are depreciated over different lives.) Second, a taxpayer may elect to depreciate low-income rental housing over 15 years using a straight line method and composite depreciation. Third, certain owner-occupied business structures can be depreciated over a period of 15 years using the 150-percent declining balance method. However, if this latter election is made, the recapture rules currently applicable to depreciable personal property will apply. Under these personal property recapture rules, the sale of depreciable property results in recapture (i.e., ordinary income treatment) for an amount equal to the lesser of the amount of gain recognized or the amount of depreciation deductions allowable. These lives will be audit-proof; i.e., if the taxpayer were to make one of these elections, the useful life could not be challenged by the Internal Revenue Service.

d. Rehabilitation tax credit changes:

The present 10-percent rehabilitation tax credit for industrial and commercial structures will be increased to 25 percent for amounts paid or incurred after December 31, 1980. Under present law and under the bill, costs which qualify for the credit are depreciable rehabilitation costs incurred in connection with a building which has been in use for at least 20 years for the interior or exterior renovation, restoration or reconstruction of the building.

e. Effective dates:

These provisions generally apply to assets placed in service after December 31, 1980. In addition, property placed in service prior to that time can become subject to the system, at the election of the taxpayer, in taxable years beginning after December 31, 1984. However, a taxpayer with a fiscal year which begins in 1980 may elect not to apply the 2-4-7-10 system to assets placed in service prior to his first fiscal year beginning in 1981.

2. Corporate income tax:

Under the committee bill, the corporate income tax structure will be modified in 1981 and again in 1982. The effect of the modifications will be to reduce the rates and broaden the brackets generally for small businesses and to reduce the top rate over a 2-year period. Among the rate changes, the lowest rate will decrease from 17 percent to 15 percent, and the highest rate will decrease from 46 percent to 45 percent in 1981 and to 44 percent in 1982. The brackets are also revised, as set forth below.

Present law corporate tax brackets and rates are as follows:

[1] Under the system of open-ended accounts, the costs of all eligible property with the same recovery period are placed in the same open-ended account. This system applies in lieu of vintage accounts under the ADR system and item accounts under other depreciation systems. Under item accounts and vintage accounts, a taxpayer must keep separate accounts for property placed in service in different years.

[2] Under the half-year convention, one-half of the asset's cost is placed in the account in the year that the asset is placed in service. The other half of the asset's cost is added to the account in the next subsequent year.

Taxable income	Tax rate (percent)
$0 to $25,000	17
$25,000 to $50,000	20
$50,000 to $75,000	30
$75,000 to $100,000	40
Over $100,000	46

For 1981, the brackets and rates will be as follows:

Taxable income	Tax rate (percent)
$0 to $25,000	16
$25,000 to $50,000	20
$50,000 to $100,000	30
$100,000 to $150,000	40
Over $150,000	45

Beginning in 1982, the brackets and rates will be as follows:

Taxable income	Tax rate (percent)
$0 to $25,000	15
$25,000 to $50,000	20
$50,000 to $75,000	25
$75,000 to $100,000	30
$100,000 to $150,000	35
$150,000 to $200,000	40
Over $200,000	44

3. Other provisions affecting small business:

In addition to the corporate rate cuts described above which apply to corporations generally, as well as small business, the committee bill includes other small business provisions outlined below.

a. Increase in minimum accumulated earnings credit:

In addition to the regular corporate income tax, present law imposes an accumulated earnings tax of 27½ percent to 38½ percent on improperly accumulated corporate earnings where the accumulation occurs in an attempt to avoid the individual income tax. In computing the base on which this tax is imposed, there is excluded an amount equal to the earnings and profits of the taxable year which are retained for the reasonable needs of the business. This is known as the accumulated earnings credit. Present law provides a minimum credit of $150,000 of earnings which may be accumulated before any accumulated earnings are subject to this tax.

The committee bill increases the minimum accumulated earnings credit to $250,000. However, this increase will not apply to specified service corporations whose principal business consists of the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

b. Investment credit for used property:

Present law provides a 10-percent regular investment credit. A taxpayer may claim this regular investment credit for the cost of up to $100,000 of used qualifying property acquired by purchase each taxable year.

The committee bill increases the annual cost ceiling on used property for purposes of the 10-percent regular investment credit from $100,000 to $150,000.

c. Time for furnishing Form W-2 to terminated employees:

The Internal Revenue Code requires an employer to furnish to an employee who has terminated employment prior to the close of a calendar year a Form W-2 on the day the employee receives his or her last salary payment.

The Internal Revenue Service recently has published regulations which provide that the employer may furnish a Form W-2 to an employee whose emoloyment terminates prior to the close of the calendar year at any time after the termination but no later than January 31 of the following year. However, if an employee who terminates emplovment prior to the close of the calendar year requests earlier receipt of a Form W-2, and if there is no reasonable expectation on the part of the employer and emplovee of further emplovment during the calendar year, then the employee must be given a Form W-2 on or before the later of the 30th day after the request or the 30th day after the last salary payment.

The committee bill codifies the general approach of these regulations.

d. Deferred application of Revenue Procedure 80-5 and Revenue Ruling 80-60 relating to inventory writedowns:

In Revenue Procedure 80-5 and Revenue Ruling 80-60, the Internal Revenue Service provided rules which require taxpayers to conform their method of inventory accounting to that method of inventory accounting approved by the Supreme Court in *Thor Power Tool v. Commissioner*, 439 U.S. 522 (1979). For taxpayers with excess inventories (inventories in excess of foreseeable demand) that have been erroneously written down for tax purposes, these pronouncements require that the writedowns be taken into income.

These Internal Revenue Service pronouncements, which were issued on February 8, 1980, are applicable to 1979 taxable years.

The committee bill delays the implementation of Revenue Procedure 80-5 and Revenue Ruling 80-60 to taxable years beginning after 1979, in order to give taxpayers the opportunity to take mitigating action under the Treasury regulations.

e. Increase in maximum number of subchapter S shareholders:

Under present law, one of the requirements that a corporation must meet in order to be eligible to elect to be treated as a subchapter S corporation is that it have no more than 15 shareholders.

The committee bill provides for an increase in the maximum number of shareholders in a subchapter S corporation from 15 to 25.

f. Refund of excise taxes for certain fuels used in intercity, local, and school buses:

Present law imposes a manufacturer's excise tax of 4 cents per gallon on gasoline and a retailers excise tax of 4 cents per gallon on diesel fuel and other special motor fuels used or sold for use in a highway motor vehicle. The Energy Tax Act of 1978 provided that a credit or refund of these taxes could be obtained if these fuels were used in a bus while engaged in (1) the furnishing (for compensation) of certain passenger land transportation available to the general public, or (2) the transportation of students or employees of schools. However, that Act did not permit the owners or operators of buses to purchase fuel tax-free even if the fuel was to be used in a qualifying activity, and the Code requires that refunds of these taxes can be obtained quarterly only if the amount attributable to the quarter is at least $1,000. If not, the credit or refund is available annually.

The committee bill allows the present law refund of the taxes on fuels used by these buses to be available on a quarterly basis (rather than on an annual basis) if the amount of the refund is at least $50.

g. Reserves for market-making activities:

Under present law, a securities dealer must recognize any gain on the sale of equity securities, even if he is making a market for the securities. Generally, this gain will be treated as ordinary income.

The committee bill allows certain dealers in corporate securities to defer for 5 years the net gain (up to $1 million) from the sale of small business equity securities where the dealer is making a market in the securities.

Under the committee bill, a corporation which is engaged in market-making activities during the taxable year will be allowed to establish a deductible loss reserve equal to the net gains for that year from the sale of certain small business equity securities in which it makes a market. The deduction would be equal to the addition to the taxpayer's reserve. However, the reserve could not exceed $1 million. Moreover, the deduction could not exceed the taxpayer's taxable income for the year nor could it exceed 30 percent of the fair market value of the taxpayer's average monthly inventory positions in over-the-counter equity securities carried for market-making activities for the year.

This provision will apply to equity securities held by the taxpayer for sale in the ordinary course of its trade or business which are not traded on a registered security exchange and which are of corporations that had $25 million or less of debt and equity outstanding on the last day of the preceding taxable year.

Under the provision, the amount of an addition to the reserve for a taxable year would not be taken back into income until the earlier of (1) the fifth year following the year of the addition, or (2) the year the amount is withdrawn from the reserve. (A withdrawal is deemed to be from the earliest remaining addition to the reserve.)

h. Incentive stock options:

Generally, under present law, an employee is taxed, at ordinary income rates on earned income, on a compensatory stock option at the time the option is received, or, if the option does not have a readily ascertainable fair market value, at the time it is exercised. The employer has a corresponding deduction as a business expense.

Under the committee bill, an incentive stock option which is granted to an employee will be taxed at capital gains rates when the employee sells the stock. The employer will receive no deduction.

For an option to qualify as an "incentive stock option": (1) the exercise price must be not less than fair market value of the stock at the time the option is granted (in the case of a variable option, determined as if the option had been exercised when granted); (2) the option must be exercised within 10 years of the date granted; (3) shareholder approval is required; (4) the individual may not be an employee owning more than 10 percent of the value or voting power of stock of the company (unless the option price is at least 110 percent of the stock's fair market value); (5) the optionee must be an emoloyee continuously from grant of the option to 3 months prior to exercise; (6) the option may be transferred only at death; and (7) the stock must be held for at least 2 years after the date of the granting of the option and for at least one year after the option is exercised.

This provision will apply to options exercised after December 31, 1980.

i. Effective dates:

These small business provisions generally apply to taxable years beginning after December 31, 1980.

4. Research and development tax credit:

Under present law, a taxpayer may elect to deduct currently, or to amortize over 60 months or more, certain "research or experimental expenditures" incurred in the taxpayer's trade or business which otherwise would have to be capitalized.

Under the committee bill, a nonrefundable income tax credit also will be allowed for research expenditures to the extent they exceed the average of such expenditures in the base period. The rate of the new credit will be 25 percent of the incremental research expenditure amount. In the case of individuals, the amount of the present law deduction for research expenditures also eligible for the credit will be reduced by the amount of credit allowable for those expenditures.

For 1981, the credit will apply to incremental research expenditures in excess of those for 1980. For 1982, it will apply to the excess over the average of such expenditures for 1980 and 1981. For 1983 and later years, the credit will apply to the excess over the average of such expenditures for the three preceding taxable years.

The credit will be provided to the taxpayer which conducts or bears the cost of the research for use in its trade or business. The credit will not be available to a research and development business which conducts research for the taxpayer.

The provision redefines research expenditures for purposes of both the existing section 174 election and the new credit. The definition, which is intended to be substantially the same as the definition of "research and development" used for certain accounting purposes (Financial Accounting Standards Board, Statement No. 2), will cover all expenditures incurred incident to either:

(1) a planned search or critical investigation aimed at discovery of new knowledge with the intent that such knowledge will be useful in developing a new product or service, or a new process or technique, or in bringing about a significant improvement to an existing product or process, or

(2) a translation of research findings or other knowledge into a plan or design for a new product or process, or for a significant improvement to an existing product or process to the point that the product or process meets specific functional and economic requirements, and is ready for manufacture, sale, or use.

The amount of the credit for a particular taxable year will be limited to the taxpayer's income tax liability reduced by other tax credits (other than the investment tax credit, the credit for certain fuel uses, and the earned income credit). Any excess over this limit can be carried over to apply against tax liability for the three preceding and seven succeeding years. In the case of an individual taxpayer, the allowable deduction will be reduced by the amount of the credit.

The provision includes rules for determining whether there has been a true increase in qualifying research expenditures or merely a shifting of research expenditures among different persons. Thus, for credit computation purposes, research expenditures by the taxpayer will be aggregated with research expenditures of commonly controlled persons and of entities in which the taxpayer has an economic interest or the right to benefits of the research.

Effective date:

The provision is effective for taxable years beginning after December 31, 1980.

5. Employee stock ownership plan tax credit:

A tax credit employee stock ownership plan (generally called an ESOP) is an employer-maintained tax-exempt trust under which employees share in stock ownership of the employer.

Beginning with the Tax Reduction Act of 1975, employers making qualified investments were allowed an additional one-percent investment tax credit for contributions of stock to an ESOP meeting special requirements.

The additional investment tax credit for ESOP contributions was expanded by the Tax Reform Act of 1976. Under the 1976 Act, an employer was allowed an extra investment tax credit of up to one-half of one-percent for stock contributions to an ESOP if the contributions were matched by equal employee contributions. Thus, an employer could get a total additional investment tax credit of up to one and one-half percent after the 1976 Act.

The committee bill will permit an employer to claim a tax credit based on a percentage of payroll for contributions to an ESOP. A sponsoring corporation will have the option of claiming either the tax credit based on payroll of employees covered by the plan or the additional investment tax credit provided under existing law. The percentage of payroll eligible for this credit will be as follows:

(In percent)

1981	½ of 1
1982	¾ of 1
1983	1

The wage-based credit, like the additional investment tax credit, will expire December 31, 1983.

The provision is effective for periods beginning after December 31, 1980.

6. Deduction for individual retirement savings:

Under present law an employee generally is entitled to deduct the amount contributed to an individual retirement account or individual retirement annuity or used to purchase retirement bonds (referred to collectively as "IRAs"). The limitation on the deduction for a taxable year is generally the lesser of 15 percent of compensation for the year or $1,500. The deduction limit for a spousal IRA is $1,750. No IRA deduction is allowed to an individual who is an active participant in a tax-qualified plan, a tax-sheltered annuity, or a governmental plan in a taxable year. Also, employee contributions to retirement plans are not deductible.

a. Limited employee retirement accounts (LERAs):

The committee bill provides that an active participant in a tax-qualified retirement plan or tax-sheltered annuity will be allowed a deduction for an amount contributed to the plan or to an IRA. The maximum deduction will be the lesser of 15 percent of compensation or $1,000. Where mandatory employee contributions to an employer sponsored retirement plan are made, only $100 of such contribution will be eligible for this deduction. No deduction will be allowed to an individual covered by a plan if the individual owns more than 10 percent of the employer maintaining the plan. Also, employees covered by governmental plans will generally not be eligible to make deductible contributions to LERAs.

b. Individual retirement accounts (IRAs):

In addition, for individuals who are not active participants in tax-qualified plans, etc., the contribution limit for an individual retirement account (IRA) will be increased from $1,500 to $1,750. The limit for spousal IRAs will be increased from $1,750 to $2,000.

Effective date:

The LERA and IRA provisions are effective for taxable years beginning after December 31, 1980.

7. Capital gains tax cut:

Under present law, noncorporate taxpayers may deduct from gross income 60 percent of the amount of any net capital gain for the taxable year. The remaining 40 percent of the net capital gain is included in gross income and taxed at the otherwise applicable regular income tax rates. As a result, the highest tax rate applicable to a taxpayer's entire net capital gain is 28 percent (70 percent top tax rate on the 40-percent includable capital gain). An alternative capital gains tax rate of 28 percent applies to a corporation's net capital gain (in lieu of any capital gains deduction) if that rate is lower than the corporation's regular tax rate. Otherwise, a corporation may pay a tax on the entire gain at its lower regular tax rate.

The committee bill increases the net capital gain deduction for noncorporate taxpayers from 60 to 70 percent, *i.e.*, 30 percent will be included in gross income and taxed at the otherwise applicable regular income tax rates. As a result, the highest tax rate applicable to a taxpayer's entire net capital gain will be 20.1 percent (67 percent top tax rate under the bill times the 30 percent of the net capital gain includable). The committee bill does not change the present law treatment of capital losses.

In the case of corporations, the alternative capital gain tax rate will be reduced from 28 to 20 percent.

Effective date:

The lower rates will apply in the case of gains and losses properly attributable to periods after August 20, 1980. Special rules are provided to determine the period to which gains and losses are properly attributable in the case of pass-through entities.

8. Foreign earned income exclusion:

Under present law, Americans working abroad generally are eligible for deductions intended to reflect the excess costs of living abroad if they were a bona fide resident of a foreign country for an entire taxable year or if they were physically present in a foreign country for 510 days (approximately 17 months) out of 18 consecutive months.[a] Taxpayers residing in hardship area camps may claim a $20,000 annual earned income exclusion in lieu of the excess living cost deductions.

The committee bill liberalizes the rules governing the taxation of income earned abroad. The liberalized rules apply to individuals working in developing countries (other than tax havens), regardless of the nature of the services they perform. In addition, the revised rules also apply to individuals working in other foreign countries if those individuals perform charitable, export-related, or natural resource-related services.

For those individuals described above, the committee bill will replace the present system of excess foreign living cost deductions with an exclusion of foreign earned income of $50,000 a year, increasing to $65,000 for individuals residing abroad for more than 2 years. In addition, the exclusion will be increased by the excess of the individual's housing costs over 16 percent of the salary of a Government employee at step 1 of grade GS-14 (the 16-percent figure is currently $5,554). The eligibility requirement of present law will be modified to allow the exclusion for individuals overseas for 11 out of 12 months (or a shorter period where forced to leave because of civil unrest).

Income received for the performance abroad of export-related services, or compensation for employment abroad with an employer (including a branch) substantially all of whose income is derived from the export of U.S. goods or the performance of export-related services. These services include:

(1) construction, architectural, engineering, or repair services performed in connection with agricultural, construction, or engineering projects located in a foreign country,

(2) services associated with the export of U.S. products (including marketing and marketing analysis, advertising and promotional activities, sales and distribution services, packaging and assembly, warehousing, documentation and customs clearing, and financing), and

(3) any other services performed overseas which are designated by the Secretary of Treasury (after consultation with the Special Trade Representative and the Secretary of Commerce) as contributing significantly to U.S. exports.

Income received for services performed abroad in the exploration for or extraction of petroleum or other natural resources, or compensation for employment abroad with an employer (including a branch) substantially all of whose income is derived from those activities, will qualify for the exclusion as natural resource-related services. Services performed abroad by an employee for an employer which meet the requirements of section 501(c)(3) will qualify for the exclusion as charitable services.

Effective date:

The provisions are generally applicable beginning in 1980. (The provisions previously approved by the Committee dealing with individuals forced to leave because of civil unrest—S. 873—will be effective beginning in 1978; and the provisions with respect to charitable employees—S. 1703—will be effective beginning in 1979.

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[a] The excess foreign living cost deduction consists of separate excess housing, education, home leave, and general cost of living elements. An additional $5,000 hardship allowance is allowed to taxpayers working in hardship areas.

II. REVENUE EFFECTS

ESTIMATED REVENUE EFFECTS OF TAX CUT DECISIONS AS REPORTED BY SENATE FINANCE COMMITTEE, FISCAL YEARS 1981–1985 AND CALENDAR YEAR 1981 (PRELIMINARY)

[Billions of dollars]

Item	Fiscal year— 1981	1982	1983	1984	1985	Calendar year 1981
A. Individual tax cut provisions:						
1. Increase in personal exemption	−1.7	−4.9	−5.1	−5.4	−5.6	−4.8
2. Increase in zero bracket amount	−1.0	−1.6	−1.6	−1.7	−1.8	−1.5
3. Increase in earned income credit [1]	−.1	−.6	−.5	−.5	−.5	−.6
4. Deduction for 2-earner couples	−.3	−3.4	−6.8	−8.3	−9.7	−2.7
5. Rate reductions	−7.9	−14.3	−17.2	−20.9	−25.0	−12.8
Total, individual tax cuts	−11.0	−24.6	−31.3	−36.8	−42.6	−22.3
B. Capital formation and productivity tax reductions:						
1. Depreciation—investment credit revisions	−4.3	−13.3	−18.0	−18.7	−19.6	−9.9
2. Corporate rate reduction and small business provisions:						
a. Corporate rate reductions from 46 percent to 45 percent in 1981 and to 44 percent in later years	−.7	−2.4	−3.7	−4.2	−4.8	−1.5
b. Corporate rate reductions on income below $150,000 in 1981 and below $200,000 in 1982 and later years	−.3	−1.1	−1.8	−2.1	−2.3	−.7
c. Increase in accumulated earnings credit	(2)	(2)	(2)	(2)	(2)	(2)
d. Increase in used equipment eligible for investment credit to $150,000	−.1	−.2	−.2	−.2	−.2	−.2
e. Elimination of certain W-2 filing requirements	(3)	(3)	(3)	(3)	(3)	(3)
f. Deferral of application of revenue ruling on inventory writedowns	(4)	(4)	(4)	(4)	(4)	(4)
g. Increase in number of subchapter S shareholders to 25	(3)	(3)	(3)	(3)	(3)	
h. Refund of excise tax on certain fuels used in intercity, local and school buses	(3)	−.1	−.1	(3)	(3)	−.1
i. Reserves for market making activities	(3)	(4)	(4)	(4)	(4)	(4)
j. Incentive stock options						
Subtotal, small business (b. through j.)	−.4	−1.4	−2.0	−2.3	−2.5	−.9
3. Research and development tax credit	−.2	−.5	−.6	−.7	−.8	−.5
4. Savings incentives (LERA's and IRA's)	−.3	−.7	−.9	−1.1	−1.2	−.6
5. Payroll-based ESOP credit	−.3	−1.0	−2.0	−1.6	−.3	−.6
6. Capital gains tax cut	−.8	−2.7	−3.0	−3.2	−3.6	−2.7
7. Foreign earned income exclusion	−.2	−.4	−.4	−.4	−.5	−.3
Total, capital formation and productivity tax reductions	−7.2	−22.3	−30.6	−32.3	−33.2	−17.0
Grand total	−18.2	−46.9	−61.9	−69.1	−75.8	−39.4

[1] These figures include both the reduction in revenues and the increase in outlays from the changes in the earned income credit.
[2] Indeterminate with respect to both amount and timing but could be substantial.
[3] Negligible loss.
Loss of less than $5,000,000.
[5] Loss of less than $50,000,000.
[6] Gain of less than $50,000,000.

Note: Detail may not add to total because of rounding.

CYSTIC FIBROSIS WEEK

● Mr. SCHWEIKER. Mr. President, this week, September 21–27, 1980, is National Cystic Fibrosis Week.

Cystic fibrosis is a hereditary metabolic disease affecting primarily the lungs and digestive system, where an abnormal accumulation of glue-like mucus suffocates and starves the body. Each day in the United States, five infants are born with CF. Each day, three Americans die of it. CF is the leading genetic killer of young Americans.

Children with cystic fibrosis require lengthy and painful treatments just to breathe. It is not unusual for those afflicted to take 60 or more pills daily, and hospitalization is frequent. Medical costs per patient are conservatively estimated at $10,500 per year, adding crushing economic burdens to families already devastated by the pressures and pain of living with a chronic, degenerative, incurable disease.

For there is no cure. There is no test to determine which of us carry the CF gene, although the laws of heredity tell us that 1 in 20 Americans is a symptom-free carrier.

Public awareness of cystic fibrosis is critical. Observance of National Cystic Fibrosis Week will focus that awareness, and it will prolong lives; 25-years ago, children with CF were not expected to reach school age. Few lived beyond 3 years of age. Today, half will live into their twenties, thanks to advances in diagnostic techniques and techniques for managing the day-to-day treatment of the disease. Early diagnosis can definitely prolong lives.

Supported by the National Institutes of Health and Research funds provided by the Cystic Fibrosis Foundation and its sister foundations in other countries, researchers all over the world are working toward a better understanding of how to treat, prevent, and eventually cure cystic fibrosis. As I mentioned, some life-sustaining advances have been made, but progress remains agonizingly slow for victims and their families. NIH funding totals approximately $11 million per year, primarily through the programs of the National Institute of Arthritis, Metabolism and Digestive Diseases, the National Heart, Lung and Blood Institute, and the National Institute of Allergy and Infectious Diseases.

The work of the NIH has led to new hope for the development of carrier tests and the elucidation of the genetic basis of CF. Other promising research leads may one day enable doctors to find means of preventing and treating the repeated pseudomonas bacteria infections which are so deadly to CF patients, whose weakened lungs are unable to combat the bacteria. Much of the work done in the CF field will have important ramifications for those who suffer from other genetic respiratory and metabolic diseases.

The main function of Cystic Fibrosis Week is to enhance public understanding of CF and its symptoms. The establishment of CF Week by Congress and the President signifies our recognition of CF as a serious health problem and our desire to provide new impetus for research. Most importantly in the short term, through the programs developed by groups like the Cystic Fibrosis Foundation to commemorate this week, cases of CF may be diagnosed and treated at an early stage, allowing patients to live longer, more productive lives. For all these reasons, I hope all Americans will join me in observing September 21–27 as National Cystic Fibrosis Week.●

WORK AFTER 65: OPTIONS FOR THE EIGHTIES

● Mr. CHILES. Mr. President, a new era for America's older workers began 2 years ago when Congress passed the 1978 amendments to the Age Discrimination in Employment Act. The mandatory retirement age for Federal employees was completely eliminated, and the age in the private sector was raised from 65 to 70. The potential impact of greater employment of the older worker is dramatic not only for today's older worker, but for the future of this Nation. With the post-World War II baby boom soon to become the senior boom at the beginning of the next century, I believe it is essential for us to begin now to explore new ways to stimulate continued employment for older workers both before and after age 65.

In an effort to shed light on this issue of growing social and economic importance, the Senate Special Committee on Aging initiated a new series of hearings on "Work After 65: Options for the 80's."

Despite sweeping changes in the mandatory retirement law in 1978, there is no hard evidence yet to indicate that substantial numbers of older workers are delaying retirement and working longer. I want to make it clear that in raising this issue, in no way am I suggesting that we should eliminate opportunities for early retirement. For many, early retirement is necessary and viable. What concerns me is that there are so few alternatives.

The purpose of our new series of hearings is to learn as much as possible about the problems facing older persons who want to continue working. We are concerned about the future implications of current trends and present policies. It is my firm belief that new efforts to encourage greater opportunities for continued employment for older workers will be both human effective and cost effective.

By human effective I mean that we must provide better opportunities for older workers, both before and after age 65, to follow their own desires and preferences, to use their skills, experience, and learning in pursuit of their own financial and psychological independence.

There is a great deal of evidence to indicate that many older citizens want to continue working. What I hear from my constituents in Florida is accurately mirrored in several national public opinion surveys: Some prefer full-time work, others prefer part-time employment to supplement their pension and social security benefits, and some, of course, are perfectly happy with full retirement, which is their right. But the general preference for expanded work opportunities is strikingly clear.

The costs of retirement systems are becoming more and more obvious every day. Concern over the financing of the social security system and the threatened collapse of various pension funds are but two examples of the cost problem. Over the past several decades, fewer and fewer older workers have stayed in the active labor force. According to a Department of Labor study, in 1947 48 percent of male workers age 65 and older were in the labor force, a percentage which declined to only 22 percent by 1974. Estimates made prior to the 1978 amendments projected that such participation would drop to 19 percent by 1990.

A growing older population, combined with increased longevity and less and less labor force participation means an escalating reliance on social security and pension systems, systems which are already under great financial pressure. What better way is there to ease this problem than by recognizing that millions of older persons prefer to work, and by encouraging job opportunities for them?

In the first two hearings in our new series, the committee heard first from a panel of distinguished experts concerning the economics and the psychology of the older worker. In the second hearing we heard from an equally distinguished panel of corporation presidents and vice-presidents whose companies have had successful experiences with older worker policies.

While no brief summary would do justice to the valuable and detailed contributions made by our witnesses, I would like to indicate some of the highlights. There are two general themes which run throughout the testimony, two general conclusions which appear to have the support of all the witnesses.

First, there is great value both to the worker and to the employer in encouraging employment opportunities for the older worker. While older employees obviously gain from increased income, there is a substantial psychological benefit that is also produced. The older person who desires to work and finds a suitable job has a much more positive feeling about himself and a stronger sense of contribution to his employer and to his community.

Employers who have been on the forefront on this issue, which include the four companies that testified at our second hearing, report no great problems or ill effects from allowing older employees to remain on the job. On the contrary, our witnesses consistently remarked that their older employees were among their most loyal and productive workers. Companies such as Polaroid and Bankers Life & Casualty, which have never had mandatory retirement, are not overrun by thousands of old workers of declining competence. In fact, our corporate witnesses report just the opposite: A self-selection process has evolved in which the less healthy and less motivated employees are typically the first to want to retire, and the competent, motivated employees are the ones who often choose to stay on.

The second major conclusion to emerge from hearings is that older workers are the victims of false myths and stereotypes. Dr. K. Warner Schaie, a psychologist who is director of the Andrus Gerontology Research Institute at the University of Southern California, reported results from his 21-year longitudinal study of age changes in competence and learning ability. He concluded that there is no evidence of systematic, across-the-board poor health, higher accident rates, lower productivity, reduction in learning ability, or lowered value of retraining as a consequence of normal aging.

To be sure, there are some age-related differences between young and old. Yet contrary to those negative stereotypes, some differences are to the advantage of the older worker. Older workers actually have fewer accidents of certain types; older workers typically have lower absentee rates; and for certain kinds of skills, older workers may benefit from retraining more quickly, because of their experience, than younger workers.

Ironically, our four corporate witnesses stated unanimously that a major obstacle to the employment of the older worker is the persistence of the very myths that the scientific research has shown to be false. Mr. Harold Page, vice president for personnel of Polaroid, stated bluntly that "our observation is that the story that older workers have poor attendance is purely a myth." As to accidents, Mr. Gerald Maguire, vice president of corporate services for Bankers Life and Casualty of Chicago, said that "our compensable time lost is about somewhere between a third and a fifth for the older worker as opposed to the regular worker." It is relevant to again note in this context that neither Polaroid nor Bankers has ever had a policy of mandatory retirement.

Why do such myths persist? One answer is that the phenomenon of the older worker on a large scale is relatively new, and is getting growing attention as the legal barriers to older employment have diminished. Another, perhaps more direct answer was given by Mr. C. Peter McColough, chief executive office of Xerox, and Chairman of the President's Commission on Pension Policy. He said that for many corporate executives there has been a reluctance to look at the entire problem. "It is like a lot of things in our society—until you really focus in on something, you don't understand it."

As I see it, one of our big tasks is to inform the public, as well as private and public employers, about these negative myths which serve as obstacles to the employment of older workers. But I wish to emphasize once again that in focusing upon employment options for the older worker, the committee is in no way suggesting that normal retirement, or even early retirement should be withheld from those workers who so choose it. But, for those millions of older persons who have expressed a desire not to retire, or to combine partial retirement with partial employment, it is imperative that we begin to encourage more opportunity.

Furthermore, we must begin to design and encourage such policies now. As Mr. Karl Kunze, chairman of the National Institute on Age, Work, and Retirement of the National Council on the Aging, said in our first hearing, "stereotypes about older people and their capabilities took decades to work themselves into our consciousness and they will not be excised overnight."

The creation of work opportunities, as witnesses pointed out, often requires an innovative examination of the older worker within the work situation. As Dr. Schaie noted, the particular strengths of the older worker can be maximized, and weaknesses minimized, when employers make some effort to match the worker with the job.

That such is possible was described to us by Mr. Jerome Rosow, president of Work in America Institute, Inc., and a former Assistant Secretary of Labor. Mr. Rosow described a study by his institute which surveyed 170 organizations, and which produced case studies of 69 innovative older-worker programs in organizations representing over 2.5 million employees. He described six general types of innovative approaches to older worker employment which were identified in organizations including employers in both the public and private sectors. The six types are: part-time work, phased retirement, second career training, job re-design, reentry workers, and older-worker-oriented job-finder organizations.

Therefore, Mr. President, our hearings thus far have indicated that one of the primary obstacles to the employment of the older worker is a set of negative myths and stereotypes denigrating the

older worker's ability to function effectively. As several of our witnesses said, one major response would be a program of education and incentives aimed at employers to encourage the development of options for the older worker.

The general answer, as I see it, must be in cooperation between Government and employers. In today's world of inflation where budget balancing is a major congressional goal, there is simply no room for new costly Government employment programs, or large increases in existing programs. Therefore, if we are to reverse or slow down the current trend toward early retirement, if we are to promote and make available options for a longer work life for the older persons, the major thrust will have to be in the form of a partnership between Government and private industry. The contours of such a cooperative arrangement will be a continuing focus for the Special Committee on Aging, as we continue this important set of hearings.

In conclusion, our hearings suggest that Congress has a responsibility to follow up on its success in limiting the discriminatory practices of mandatory retirement. Even if all age-based mandatory retirement becomes legally prohibited, as I hope will be considered in the next Congress, we still have the responsibility of encouraging a social and economic environment in which employers hire the older worker. In short, to paraphrase Pension Commission Chairman McColough, encouraging increased work force participation by older persons through more availability of full-time and part-time employment opportunities must become a matter of National policy.●

DEATH OF JACK POULSON

● Mr. DURENBERGER. Mr. President, Minnesota and the Nation recently lost a great patriot. Jack Poulson, known to thousands of Americans for his "Fly the Flag Crusade," passed away in August. His spirit, though, will long be remembered by those of us who admired him.

On numerous occasions, I had the opportunity to share a stage with Jack. What always struck me was his uncontained enthusiasm for his country. Jack believed in America and in our people. No matter how gloomy things appeared, you could not help but feel good about America after spending even a few minutes with Jack.

Mr. President, since June of this year my office has received more than 400 requests for flags that have flown over the Capitol. I cannot help but believe that Jack Poulson is, in part, responsible for the pride Minnesotans take in flying the flag.

Kent Bolsta, a friend and fellow admirer of Jack Poulson, wrote a tribute to this great American. I want to share it with my colleagues and I submit it for today's RECORD.

The tribute follows:

A MODERN AMERICAN LEGEND

(Jack Poulson, the Johnny Appleseed of Patriotism)

In the early 19th Century, until his death in 1847, John Chapman became famous as the legendary "Johnny Appleseed." Chapman waundered through what was then the "United States", planting apple trees from the east coast through Ohio.

Eighty years after Chapman's death, Jack Poulson was born in Chicago, destined to planting the seeds of another kind through his establishment of the National Fly the Flag Crusade. Poulson, a World War II Veteran and fierce patriot, became very upset during the Viet Nam War period when he saw the flag desecrated and blasphemed. Jack decided to do something about it and obtained thousands of bumper stickers reading "Your Flag—Fly It Proudly" which he and others like him began to distribute in shopping centers.

When people began to ask where they could get the flags so they could display them proudly, the ideas of the "Fly the Flag Crusade" was born.

With the help of friends, Jack formed the nonprofit organization and a midwest radio station provided public service time every Saturday morning for Jack to promote the organization and the flag. Jack, an over-the-road truck driver, spent every year's vacation from then on traveling throughout the country. In each state he visited, he immediately called on the governor, state senators, local officials and presented them with a flag. He stood on street corners passing out flags to passers-by.

His automobile, decorated with flags and the emblem of the National Fly the Flag Crusade, was soon seen on television and newspapers throughout the country. He was called to Washington for consultation with leading legislators. Senator David Durenberger of Minnesota called him "a great American."

Every waking moment not devoted to his trucking duties was spent promoting the flying of the flag, praising America and planning his future flag distributing plans.

Meanwhile, flags of all styles and sizes, brackets, steel poles and commercial aluminum poles began to flower throughout the Upper Midwest as the National Fly the Flag Crusade obtained the flags, sold them and installed them on a nonprofit basis.

In August of 1980, while on his regular trucking delivery route to International Falls, Minnesota, Jack suffered a fatal heart attack, through the combinations of the rigor of over-the-road driving and his indefatigable efforts toward the crusade.

Thus, Jack's voice was stilled, but his efforts continue as his widow and friends carry on the dedication and the works of the program. Jack's loss is felt by thousands, not because of who he was, but what he was. To all those in the Upper Midwest within the reach of the Saturday radio report, Jack was a symbol of America. He planted the patriotic seed throughout the area that persuaded so many to invite Jack to install a flag in their yard. Throughout other areas of the country, Jack's surprise visits and street corner flag distribution drove home the importance of the flag and the pride it represented. The continuation of the work of the Fly the Flag Crusade, the proliferation of flags flying over businesses and private homes, and the rebirth of patriotism is tribute to Jack's work—Jack Poulson, a dedicated patriot, a great American.●

THE PLIGHT OF SALVADORAN REFUGEES

● Mr. KENNEDY. Mr. President, I am deeply concerned by reports of increasing hardship and often death that face innocent men, women and children who try to escape the escalating violence in El Salvador. These are people whose only offense is to seek refuge from the terrorism and repression which have become a tragic part of the daily life of their small Central American country.

Earlier this month I received reports of incidents in which Salvadoran civilians have been prevented from seeking refuge in neighboring Honduras and have been killed or otherwise mistreated after being turned over to Salvadoran military units. Last May several hundred Salvadoran refugees were reported to have been killed by Salvadoran troops after being expelled from Honduras.

Following hearings on September 19 by the Judiciary Committee, I have asked the administration to comment not only on this reported killing but on the overall human tragedy of refugees and displaced persons in Honduras and El Salvador. I have asked the administration to indicate what steps it is taking with these countries and international organizations—particularly the U.N. High Commissioner for Refugees, the International Committee on the Red Cross, and the Inter-American Commission on Human Rights—to respond to this situation.

The Washington Office on Latin America has prepared a memorandum on this problem, which I have forwarded to the administration with a communique received from the Diocese of Santa Rosa de Copan and reports from Amnesty International. I request that these materials be inserted in the RECORD at the conclusion of my remarks, and I take this opportunity to renew my call upon the Government of El Salvador to end these gross abuses of human rights. Finally, I urge the Government of Honduras to insure that its security forces understand and abide by the Geneva Protocol on Refugees and its obligations to respect fundamental human rights. It is particularly distressing to see the evil of "refoulement" practiced in Latin America, where the tradition of political asylum has been proudly maintained for nearly two centuries.

The material referred to in Senator KENNEDY's statement follows:

STATEMENT BY SENATOR KENNEDY

1. What situations have provoked the exodus of Salvadoreans from their homes and/or country?

In Disaster Bulletin No. 496C status report of July 8, 1980, Church World Service executive director Paul McCleary states that:

"The Roman Catholic Archdiocese in San Salvador reports 2,065 civilians dead this year up to 1 June: peasants, workers, students, professionals, including medical personnel, killed in widespread repression of the popular organizations by Government security forces. Grave concern is expressed over the escalating armed struggle in the countryside. Impending civil insurrection accompanies strengthening political opposition.

"Large numbers of peasants flee their farms seeking protection. Some attempt to cross into Honduras. Several hundred men, women and children were massacred last week in Jicaro, in the Chalatenango "war zone," while fleeing the National Guard. Security of peasant families under the care of the church refugee centers is precarious."

Since January 1980, the Salvadorean Catholic Church has reported a sharp increase in killings, arrests, torture and forced displacement of rural inhabitants. The Legal Aid office of the San Salvador archdiocese (Socorro Juridico) reported that between 1 January and 13 March 1980, 171 military

operations took place in different farming communities, resulting in the deaths of many peasants.

According to Amnesty International, during June and July 1980, "Salvadorean security forces appear to have intensified and fear of repression is now forcing peasants to flee their homes or take refuge in the mountains . . . . In the first six months of 1980, over 2000 Salvadoreans have been killed without provocation by the Salvadorean government forces while they were in detention or defenceless. Based on reports from governmental, church, press and other sources, this estimate does not include guerrillas or government forces killed in action. Many villages near the Honduran border were, in the first days of August, reported by the international press to have been destroyed by fire and by bombing as a force of some 3500 troops carried out counterinsurgency operations."

Former Minister of Economy and member of the Executive Committee of the Salvadorean Christian Democratic Party, Oscar Menjivar, in a July 9 letter expanding on the reasons for his 26 March resignation from the Salvadorean government said that: "barely three weeks after the Agrarian Reform and the Nationalization of the Banking System, the violence and repression by the military and paramilitary organizations against the popular organizations reached the highest levels since the 15 October coup and in the following months has reached proportions never seen in recent Salvadorean history. In this way, it became evident that the social reforms, as well as not achieving the political aim of pacifying the country, were also incapable of achieving their objectives in the socio-economic area. Specifically, it was impossible for the Agrarian Reform to gain significant improvements in the standard of living of the peasants at a time when there was a general situation of terror which constantly threatened the lives of the rural workers and families."

In a 4 July 1980 statement on repression against the educational sector in El Salvador, the Governing Board of the Catholic University (Jose Simeon Canas Central American University) stated that: "The repression against the Salvadorean people by the Security Forces and paramilitary groups, which act with total impunity, follows a premeditated and implacable course. So far this year, that is, since the coalition of the military with the Christian Democrats took power, there have been no fewer than 4000 victims of repression among the people, leaving aside those victims of armed 'confrontations' and 'rendering justice.' In various occasions, we have analyzed, denounced and condemned this repression, which is unlike anything that has happened before in El Salvador."

2. What has been the situation of those Salvadoreans forced to leave their homes, through fear or threats to their lives?

There are currently 8–9 refugee centers in El Salvador operating under the auspices of the Salvadorean Catholic Church. CES and CEAH, two local humanitarian assistance groups, are active in providing organization and services and in channeling financial and material assistance from religious organizations and service groups outside El Salvador. According to Church World Service, "health, food and drinking water scarcity severely tax the resources of the churches . . . (The) need for cash assistance for these refugees is increasing. Medical supplies are practically unavailable on the local market."

On July 9, 1980, the Minister of International Relations of Belize stated that their country will not take in any more Salvadorean refugees and requested assistance from UN High Commissioner for Refugees, Phillip Sargissen, in providing for the Salvadoreans already in Belize. As of July 1980, 35 Salvadorean refugees were entering Costa Rica daily. Some Salvadorean refugees traveling by land are returned to Nicaragua at the Costa Rican border town Pena Blancas for not having the proper papers. While the Costa Rican government knows that the Salvadoreans are refugees fleeing violence, government officials give the Salvadoreans tourist rather than refugee status, asking them to present round-trip passages.

The government of Honduras authorized the United Nations to attend to more than 3000 Salvadorean refugees in towns near the border with El Salvador. On 6 June 1980, Honduran government officials indicated that 3500 Salvadorean refugees were in such camps. Nicaragua is also assisting Salvadorean refugees. Two thousand are being assisted in Leon and Chinandega. The Nicaraguan Red Cross expects 200,000 more Salvadorean refugees. Both the United Nations and the Red Cross are assisting these local efforts.

3. A case study: the mass killing at the Rio Sumpul River.

Amnesty International, the Priests' Senate and Religious of the Santa Rosa diocese of Copan (Honduras), the Honduran press and the Bishops' Conference of Honduras report the killing of over 300 Salvadorean refugees near the Salvadorean-Honduran border on 13, 14 May 1980 in the northern department of Chalatenango. According to Amnesty International, "the peasants allegedly tried to cross the river Sumpul and take refuge in Honduras to escape from an attack by National Guardsmen, soldiers and members of the paramilitary group ORDEN. They were reportedly sent back by Honduran troops, only to be shot by Salvadorean troops on their return to Salvadorean territory. . . . The initial report of the killings, from the clergy of Santa Rosa de Copan, Honduras, has been accepted as true by the Conferencia Episcopal de Honduras, the Honduran Conference of Bishops. In a statement on 1 July, Bishop Jaime Brufau, Bishop of San Pedro Sula, an Executive of the Episcopal Conference, said 'Yes, there was a massacre,' and expressed his concern at the 'attempt by the military authorities of Honduras to silence or obscure everything related to this massacre.' "

4. Foreign policy issues for the United States.

In November 1979, the U.S. government reaumed military aid to El Salvador, sending $205,000 in equipment and a six-man U.S. military team for a week. Reporting misuse by the Salvadorean military of this equipment, Mgr. Oscar Romero in February 1980 sent a letter to President Carter, requesting that military assistance to El Salvador be stopped. In December 1980, the U.S. had approved $300,000 in military training credits, the original plan being to send U.S. military advisors to El Salvador. In April 1980, the U.S. government approved an additional $5.7 million in credits for military equipment, such as trucks and communications equipment. The equipment already having reached El Salvador to date of this allotted $5.7 million includes radios, night vision devices and image intensifiers, the latter two having been perfected for use in Vietnam. The Archdiocese Legal Aid Office of San Salvador (Socorro Juridico) has reported on numerous occasions the use of air-to-ground radios, personnel trucks and helicopters in the large scale military operations by the Salvadorean military, particularly in the northern region near the border with Honduras. The U.S. administration has projected $5.5 million in military assistance for El Salvador in FY 81. According to the Congressional Presentation Document, the Salvadorean government is likely to request patrol boats, helicopters, spare parts, vehicles and communications equipment.

a. According to most accounts, violence has led to the exodus of Salvadoreans from their homes and oftentimes from their country. Church sources indicate that Salvadorean troops continue to be involved in perpetuating such violence. U.S. military assistance to El Salvador is based on the assumption that our country will be providing leverage to the more moderate elements within the military. Given the recent struggle between the two colonels in the junta, what indications could you give us of a pattern of more moderate action by the Salvadorean army and security forces, and thus adequate control over the use of military equipment sent in the future by the United States to El Salvador?

b. It is reported that two helicopters were used in the Sumpul River killings. Has the U.S. government been able to identify which helicopters were used? What assurances could you give us that helicopters given by the United States would not be used improperly in military operations, particularly those leading to the exodus of Salvadoreans from their homes and country?

c. The statement by the Priests and Religious of Santa Rosa de Copan raises questions as to the role of the OAS peace-keeping forces in the border area. Have you been able to determine the scope and location of their activities at the time of the Sumpul River killings and whether they are carrying out an independent investigation?

COMMUNIQUE FROM THE PRESBYTERY OF THE COPAN DIOCESE ON THE LATEST EVENTS ALONG THE BORDER OF EL SALVADOR

The Presbytery and the nuns of the Santa Rosa diocese of Copan, in view of the unfortunate situation of our Salvadoran brothers, refugees in the zone of Guarita, belonging to this diocese, and impelled by our faith in God and Truth and Life, state the following publicly:

1. THE EVENTS

Last January, a good number of Salvadorans, mostly children, women and elderly sought refuge in our country. In their exodus they were systematically harassed by the Salvadoran National Guard.

The most evident example of this harassment and cruelty happened last May 14. The day before, several trucks and vehicles of the Honduran Army arrived filled with soldiers. Without stopping, they went 14 kilometers further down, to near the Sumpul River, the border between Honduras and El Salvador, near the Honduran towns of Santa Lucia and San Jose. The megaphones directed to Salvadoran territory shouted out the prohibition against crossing the border.

On the opposite side, at around 7 a.m., in the Salvadoran village La Arada and its surrounding area, the massacre began. A minimum of two helicopters, the Salvadoran National Guard, soldiers and the paramilitary organization ORDEN, opened fire on the defenseless people. Women tortured before the finishing shot, infants thrown into the air for target practice, were some of the scenes of the criminal slaughter. The Salvadorans who crossed the river were returned by the Honduran soldiers to the area of the massacre. In mid-afternoon the genocide ended, leaving a minimum number of 600 corpses.

Days before, according to the Honduran press, in the city of Ocotepeque, bordering Guatemala and El Salvador, there was a secret meeting of high military commanders of the three countries. The news was officially denied shortly afterwards.

A minimum of 600 unburied bodies were the prey of dogs and vultures for several days. Others were lost in the waters of the river. A Honduran fisherman found five small bodies of children in his fishtrap. The Sumpul River was contaminated from the village of Santa Lucia.

The OAS, financed by the two governments for ten years, ignored the deed.

Since that tragic May 14, the number of refugees has increased noticeably and so in

the border zone of the Diocese there are some 1,500 Salvadorans with the most absolute personal insecurity. They get rumors and confusing orders that they are to go to their country, or that the Salvadoran National Guard is going to enter to finish them off. In fact, in the zone "Corozal" the Salvadoran Guard entered our country and intimidated our nationals. A Salvadoran helicopter also flew over the Honduran towns of Talquinte and San Jose.

The Hondurans of this poor area, who shared what they had with the refugees from the beginning, are bothered, taken to court, with files on them. Some of those who lend animals to cart the food from the Caritas warehouses are threatened.

This situation is becoming more grave in view of the constant coincidence that whenever some international organization or foreign newsmen ask to come to the place of the refugees, they are intimidated so that they will leave the houses and hide in the mountains. The sad reality of the refugees thus has not been realized by the public.

Dysentery, malaria, mumps and skin infections, above all in children, are threatening the population. Caritas sent medicines and asked for the assistance of a medical brigade refused by the government. The last food supplies divided equally among the 3,000 refugees and needy Hondurans will last about 10 days.

2. CHRISTIAN REFLECTION

It is not our place to enter into political discussions. Our duty is to interpret the voice of God that says "I have seen the affliction of my people in Egypt, I have heard their cry by reason of their taskmasters; for I know their sorrows: And I am come to deliver them. (Exodus 3:7)

That is why we feel we are strongly obligated to protest that situation, impelled by our Christian concept of a God of Life and not death who proclaims: "The thief cometh not but for to steal and to kill and destroy. I am come that they might have life and that they might have it more abundantly. (John 10:10)

Illuminated by the Word of God and by the teachings of the Church, we feel that both the massacre of Salvadorans, as well as the situation of the refugees of that country in our territory is anti-human and anti-christian.

1. The most fundamental rights of humans are being violated, such as the right to life, health, security, etc.

2. The christian commandment of Love, basic for those of us who want to follow the steps of our Savior Jesus Christ, is being violated.

3. The traditional teaching of the Church is being violated, about which Mons. Romero left us with a prophetic summary when he said: "Before the order to kill that a man gives, the law of God that says: 'Do not kill' must prevail."

4. The call of the Latin American bishops who gathered in Puebla and which said the following, has been ignored: "The Church makes an urgent call to the conscience of the peoples and humanitarian organizations, so that the right of asylum will be strengthened and generalized. . . . The countries will increase their quotas for receiving refugees." (No. 1292)

5. The degradation brought about by the situation of institutionalized sin in which our Central American peoples live is shown.

For these reasons we consider ourselves obligated to denounce as oppressors and collaborators in the massacre of Sumpul River.

1. The oligarchy and the Salvadoran Army, executors of an entire people.

2. The OAS, which by closing its eyes to to the event, has collaborated in the massacre.

3. The Honduran government, accomplice in the acts and their later coverup.

4. The political parties and other institutions that remain quiet with respect to the tragedy.

In view of this situation of sin and brutality, we make a call on the conversion of our people. God our Father will judge us for the concrete love that we have had for our brothers (Mt. 25, 31ss). We will only be able to attain true peace by defending life.

3. DEMANDS OF THE CURRENT MOMENT

1. We encourage our christian communities to make the present problem the source of their contemplations and actions.

2. We ask our sister dioceses to help us to more exactly carry out our Christian duty with the poor.

3. We demand from our government the immediate application of the International Statute on Refugees for Salvadorans who are in our country.

4. We urge the sending of a medical brigade.

5. We invite political, union, student and social groups to become aware of the situation and contribute to the resolution of the problem.

6. If the government, because of a lack of means, is unable to accept the refugees, we demand that they officially seek countries that can receive them. This does not prevent, while our brother Salvadorans remain in this country, their being treated in conformity with human dignity.

We in turn have created a committee that will be present in the Guarita sector. Another committee, with its headquarters in Caritas of Santa Rosa de Copan, to receive and give information and to coordinate with any other organization while the government and other more qualified institutions still refuse to assume responsibility in the situation.

The concretion of these points and other appropriate ones will testify to the existence of a true christian conscience and a policy of neutrality in our country.

May the God of Peace and Life be with you all. (Rom 15, 33)

Santa Rosa de Copan, June 19.

AUGUST 11, 1980.

EL SALVADOR

Update on the "Sumpul River Massacre" (see AI Index AMR29/28/80 and AMR29/34/80). The article from the Honduran newspaper *Le Tribuna* (9 July 1980), reproduced here in translation, tends to confirm earlier local church accounts of the 14 May 1980 massacre at the Sumpul river when Salvadorian troops fired on peasant refugees. Only the precise number of Salvadorians killed there is in question. Roman Catholic priest Alberto Gallagher and teacher Jesé Léon Ayala, who live in Guarita, Honduras, near the scene of the killings, told the press that 320 bodies were found on the river banks, and that 80 Salvadorians had reached safety on the Honduran side of the river on 14 May.

The initial report of the killings, from the clergy of Santa Rosa de Copán, Honduras has been accepted as true by the *Conferencia Episcopal de Honduras*, the Honduran Conference of Bishops. In a statement on 1 July, Bishop Jaime Brufau, Bishop of San Pedro Sula, an Executive of the Episcopal Conference, said "Yes, there was a massacre", and expressed his concern at the "attempt by the military authorities of Honduras to silence or obscure everything related to this massacre."

The Episcopal Conference of Honduras in its statement on the massacre declared that "The Church cannot abandon its defence of the poor and the oppressed . . . and that is why the priests of Santa Rosa de Copán have denounced the massacre of 600 Salvadorians on the border of Honduras and El Salvador."

Amnesty International estimate that in the first six months of 1980 over 2,000 Salvadorians have been killed without provocation by the Salvadorian government forces while they were in detention or defenceless. Based on reports from governmental, church, press and other sources, this estimate does not include guerrillas or government forces killed in action. Many villages near the Honduran border were, in the first days of August, reported by the international press to have been destroyed by fire and by bombing as a force of some 3,500 troops carried out counterinsurgency operations.

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Translation of the article in *Le Tribuna* (9 July 1980).

"Was there really a massacre of people? . . . There certainly was. This river is a mute witness to what happened that Wednesday", said Antonia Guardado, a Honduran woman who lives in Copalchio, a village of Guarita county in Lempira Department near the Sumpul river.

Testimonies from residents of the El Salvador-Honduras border area have described the execution of the massacre on the morning of 14 May. National Guard troops of El Salvador, assisted by two helicopters, moved to "flush" the peasants from the "Las Aradas" area where they had camped on the Salvadorian side of the river.

THE MASSACRE

Some of the Salvadorian survivors have said they were warned at about eight o'clock that morning that the National Guard would carry out a military operation sweeping down through the mountains to their campsites. Consequently, they said, they tried to cross to the other side of the river, but with the misfortune that "a great majority were finished off by bullets, falling into the waters of the Sumpul".

These events, it should be recalled, were denounced nationally and internationally by the Diocese of Santa Rose de Copan, but the government of Honduras denied categorically the compicity attributed to its troops and said the accusation was "irresponsible and untrue".

On this question, *La Tribuna* has established that one day before—according to the versions of the people of Guarita—three truck loads of National Army troops had passed through the region. And according to Antonia Guardado, resident of Copalchio, the Honduran Army had arrived at the border to "establish a cordon", and that "one could see the soldiers stretched out horizontally on the (Honduran) side of the river at the edge of the river bank."

Mrs. Guardado, who by last weekend had still not recovered from shock, added to her statement in the following terms: "I cannot give evidence that these soldiers killed people, because this would be a lie, but what I can insist on is that beforehand they did call out for people to stop trying to cross the river."

She also said that 15 days before these events, a Honduran military contingent had gone to tell the refugees that they should leave Honduran territory, an action justified by Chancellor Eliseo Pérez Cadalso when he said that "they could stay in the country for humanitarian reasons", but that there were no agreements signed by Honduras to make this arrangement permanent.

"That is why they were forced to go and suffer in their huts on the river bank", said Mrs. Guardado, who dramatically told how many people died "who tried to reach this bank of the river, but were killed by the bullets of the Salvadorian troops coming down from the mountain . . . and those who could not cross because of the fire from the two helicopters that arrived to bottle up the hundreds of *campesinos*, women, old people and children".

She despaired at the barbarity of the National Guard. "The victims came covered with mud. . . . I still have one of their blankets

covered with blood . . . we gave them what we could."

TORTILLAS WITH SALT

"Now . . . this child you see there without any clothes, just in underpants, I cured him. You should have seen him. Some people came to my house without any clothes and with empty stomachs. By pure luck I happened to have a sack of rough maize that was for the cows and we even ate that to be able to feed these people, since they came without even a cent", said Mrs. Guardado. In this region, where there are about 500 refugees concentrated, we were able to confirm a grave crisis of hunger. The diet is one tortilla with salt. "If they can't tighten their belts, they will die of pure necessity, because there is nothing left to give them", said the Honduran residents.

LOST HER CHILDREN

A refugee of about 60 years of age, sobbing, told how she had lost two of her children. "Do you think that is little?", she asked. "But I am already growing accustomed to the idea . . . I can't go on grieving all of my life".

She told of having witnessed National Guard troops raping a woman and then cutting her throat, leaving a great pool of blood. "And they were not satisfied with that, but they also hung her body on a barbed wire fence, and warned that no one go near her. That was shameful as we could not even cover her private parts with a *petate* (a rush mat)."

The old woman, who never ceased lamenting the death of her sons, said that many of the persons killed could not cross the river "because on this side (Honduras), the army had posted troops. Although their intentions were to protect the land on this side, they terrified the Salvadorian people who thought they were going to shoot at them".

FACING THE OPTIONS

Many people that wanted to cross to this side of the river died half way across, others on the little beach, according to survivors, because "if they returned they ran the risk of execution by the National Guard". Even so, some managed to cross the fateful river.

The most dramatic part of the tragedy, said Salvadorian Paula Guardado, another of the survivors, is that "the Guardsmen threw the children into the water, and boasting of their marksmanship, shot them with their machineguns. Others were thrown into the air and shot. I saw them cut off the *palomita* ("dove", slang for penis) of a little boy . . . and they shot at that too", she said.

STILL SHOOTING

The people of the border area still live with tremendous tension, as each morning they hear the stuttering of machineguns and the dispersed firing of the carbines of the National Guard. "They are surely doing so to frighten us so that we never return. And that is unnecessary, because if it is up to me, I won't return", said Julián López, a Salvadorian refugee in El Corozal village.

Antonio Guardado, another refugee, 25 years old, was the victim at the weekend of an armed attacking by National Guardsmen who found him fishing in the river. "They fired about eight times . . . I don't know how I managed to escape running. I didn't feel any pain, but once I had climbed the hill I realized I had lost two fingers on my left hand."

According to some refugees, who we consulted for their explanation for the massacre, they said that "the National Guard has been following the track of a *foco* of guerrillas, but this does not justify them to kill so many innocent people, especially old people, women and children. There is no reason for them to suffer this kind of treatment."

JULY 15, 1980.

EL SALVADOR

Translation of Testimonies by Peasants of Incidents which Occurred Near the Salvador/Honduras Border on 13th and 14th May 1980.

SUMMARY

The attached testimonies were published in Spanish in the 22nd June issue of *Solidaridad*, international bulletin of *Socorro Jurídico*, Legal Aid Office of the Archbishopric of San Salvador. They give a personal account of incidents which are alleged to have taken place near the Salvador/Honduras border on 13th and 14th May 1980 in the northern department of Chalatenango. A group of priests from Santa Rosa de Copán, Honduras, recently alleged that several hundred peasants, including children, from El Salvador died in one incident on the border on 14th May 1980. The peasants allegedly tried to cross the river Sumpul and take refuge in Honduras to escape from an attack by National Guardsmen, soldiers and members of the paramilitary group ORDEN. They were reportedly sent back by Honduran troops, only to be shot by Salvadorean troops on their return to Salvadorean territory.

Although the Salvadorean and Honduran authorities have denied that the massacre took place, reports from several other sources would seem to indicate that many defenseless peasants and their children were wounded or shot dead during military operations by security forces in the area in mid-May 1980.

EL SALVADOR

Translation of Testimonies by Peasants of Incidents which Occurred near the Salvador/Honduras Border on 13th and 14th May 1980.

FIRST TESTIMONY

". . . I live in Jícaro, near Las Minas, Chalatenango Department. On Tuesday 13th May, as I was beginning to prepare a small plot of land for planting corn, I realised that an armed helicopter had been flying over the area since the early hours of the morning. A few minutes later, I saw about nine hundred National Guardsmen, soldiers and members of ORDEN coming into Jicaro. They were coming from three sides, Las Minas, Llano Grande and the village of Los Beltrán, about three hundred in each group.

A peasant named Salomon Alas was sowing corn. When they saw him, they shot him; then they killed José Melgar and his wife Josefina Guardado, Salvador Alas, Jesus Mena and two others. People began to flee towards the mountains in the direction of the valley of Los Brizuela. There the soldiers dragged Adrian Brizuela from his home and shot him in the street. They also took out his brother Hermenegildo, brutally beat him up and, thinking he was dead, left him lying in the street. There were about five hundred of us fleeing, including old people, women and children, but as we went along peasants from the villages of Corral Falso, Las Vueltas and Los Naranjos joined us, for they too were being repressed by the National Guard and the army.

That day, in the village of El Cacao Concepcion Quezaltepeque, they shot dead José Bruno Alas, 35 years old, Alfonso Mejia, 30 years old, his brother Juan Mejia, 28 years old, and José Israel Orellano, 25 years old.

In the village of Los Calles, they shot Sebastian Ortiz, an old man of 84, and Antonio Palma, 35. We arrived at the village of El Potrero at about two o'clock in the afternoon and from there we saw the guards pushing rocks down El Pajal hill in order to kill some women and children who were down below. Amongst our group, Amadeo Mejia and three children of eleven, seven and five years old were shot. We did not go on because we were afraid they were waiting for us so we decided to spend the night in the Jocote Redondo mountain, putting up with the cold, hunger and the heavy storm that broke out that night. A three-month old baby died from the cold.

At dawn, we carried on in the direction of Los Naranjos, but a helicopter, the army and National Guard were following us closely. We passed through the village of Los Amates, where they had assassinated two old men, Carlos Calderon and Juan Lopez.

When we arrived at El Zapotal, we heard heavy shooting coming from the direction of the Sumpul river and saw several helicopters flying over the area, so we again went up into the mountains and spent the night there. At dawn the next day, we realised we had been surrounded by another large contingent of guards and soldiers who were blocking our way to Los Naranjos. Fear, hunger and thirst made some of us break away from the group and go our own way. I returned to El Cacao but other peasants stayed to sleep in the mountains. . . ."

SECOND TESTIMONY

". . . I live in Jicaro, Las Minas, Chalatenango Department. On Tuesday 13th May at about seven in the morning, I went down from my refuge, which is up in the mountains because we are constantly being pursued by members of the Guard, ORDEN, and soldiers, to have breakfast and realised that an olive-green helicopter was flying over the village. A few minutes later, about nine hundred National Guardsmen, soldiers and members of ORDEN entered the village, about three hundred from each side, and started shooting. They killed seven peasants. About five hundred of us, mainly old people, women and children, fled in groups into the mountains. My group, made up of about three hundred people, set off towards El Amatillo, next to Las Vueltas.

From there we went to Portillo del Amate where we stayed until eleven o'clock that night. As the children could no longer stand the hunger, rain and thirst, we decided to go down to Yurique, where we stayed until five o'clock the next morning. There we met up with another five hundred peasants who spent their time cultivating unused land.

Yurique is on the Sumpul river on the border of El Salvador and Honduras. We had been there for about an hour when we were attacked from all sides. Two olive-green helicopters attacked us from the air and more than five hundred National Guardsmen blocked all exits. The only way we could escape was by crossing the river Sumpul in the direction of Honduras.

During this attack, more than twenty-five people were machine-gunned. When I entered the swollen river, I saw seven children who had drowned being dragged by the strong current. One of them was about six or seven months old. Some children stayed on the Salvadorean side and the mothers watched from the Honduran side as a National Guard from our country threw several little children into the river, threatening to throw more if we did not return to the Salvadorean side.

A Honduran soldier shot at the National Guard and said that what was happening was not the children's fault; that it was the fault of the National Guardsmen because they were provoking the peasants. About half an hour later, the Honduran authorities told us to swim back across the river to our country. When we returned, we were tied up by the thumbs and made to lie face down. We were kicked and beaten with rifles for eight hours.

At about half past five in the afternoon we were told that the old people and some women and children would be set free. Those of us who were set free, about seventeen of us, went up into the mountains leaving

about twenty-five people still captured. We had been up in the mountains for about fifteen minutes when we heard heavy shooting near the river.

Without doubt the Guardsmen and soldiers assassinated those we had left behind. We carried on walking and arrived at a place calle El Portillo del Amate at nine o'clock Thursday morning after walking all night without food. We heard more shooting nearby so we decided to flee to the highest mountain, the name of which I can't remember at the moment, and spent Thursday night and all of Friday.

On Saturday morning we decided to go down because the children were dying of hunger and cold. We returned to Jicaro, after being taken the same afternoon to San Salvador by social services. Thousands of peasant families are fleeing to the mountains in the department of Chalatenango, fleeing from the National Guard and the army . . ."

MAY 19, 1980.

JUNE 27, 1980.

[El Salvador]

CASA ACTION: MASSACRE OF PEASANTS ON THE SALVADOR/HONDURAS BORDER

On 14th May, according to a statement issued by priests from Santa Rosa de Copán in Honduras on 24th June, several hundred peasants, including women, children and old people were massacred in El Salvador as they tried to flee into Honduras away from repressive operations by the Salvadorean security forces. The statement alleged that helicopters, soldiers and members of the paramilitary force, ORDEN, opened fire on peasants at the village of Las Arados on the Salvador/Honduras border. It also said that women were tortured before being killed, babies thrown into the air and the bodies of those killed left on the ground to be ravaged by dogs.

The day before, Honduran troops had taken up positions on the edge of the Sumpul river which forms part of the border near the village and shouted instructions at peasants trying to leave El Salvador not to cross. Those who did were sent back. During the massacre the following day, which lasted from seven o'clock in the morning until mid-afternoon. The Honduran troops are reported to have sent fleeing peasants back toward the shooting. Immediately after the priests' statement was issued the Honduran government denied any involvement in the massacre.

Press reports on 15th May in the Salvadorean media referred to a massive anti-guerrilla operation by combined security forces and members of the army in the area known as *El Triñnito* along the borders of El Salvador, Guatemala and Honduras, including the department of Chalatenango where the massacre is alleged to have occurred. Shortly before this, a secret meeting is reported to have taken place in Ocotepeque, Honduras, between high-ranking officials from the three countries.

Rural areas like Chalatenango have witnessed increasing incidents of violence as security forces attempt to root out members of popular organizations and guerrilla groups. The Legal Aid office of the Salvadorean Archbishopric, *Socorro Juridico*, reported that between 1st January and 13th March 1980, 171 military operations took place in different farming communities, resulting in the deaths of many peasants. In a press release on 17th March, Amnesty International protested at the killing of peasants in El Salvador and called on the government of the country to halt the campaign of murder and abduction against them. The organization received reports that in Chalatenango Department, a circle of fire was lit around a village to prevent the local people from escaping. Troops then entered the village and killed about 40 people and abducted many others.

During the last two months security operations appear to have intensified and fear of repression is now forcing the peasants to flee their homes and take refuge in the mountains or in San Salvador.●

SARA LITTLE TURNBULL

● Mr. HATFIELD. Mr. President, today I would like to recognize a woman whose creativity, spunk, and determination have allowed her to touch millions of lives. While her professional contributions have recently earned her a prestigious award in the field of industrial and commercial design, it is her vitality, her commitment, and her vision which deserve recognition, as well.

Sara Little Turnbull is perhaps best described as a universal woman. As one of the country's leading designers, she has brought together disparate ideas from space age technology, and created common and necessary tools for living. Her designs have included products ranging from the face masks which were worn shortly after the Mount St. Helens eruption, to nutritious soybean rope candy for kids, to the fashionable Corning dishware which can be handled in everyday use. She is a generalist with wide experience. And a catalyst of society's best ideas.

Mr. President, I submit for the RECORD an article which appeared in the Seattle Times on this outstanding woman.

The article follows:

SARA LITTLE TURNBULL

If you happen to walk by the bus station some day and see a short, well-dressed woman with her hair up in a bun getting off the bus from Ellensburg looking as if she knew everyone on board, you've probably seen Sara Little Turnbull on one of her commutes from Vantage en route to New York.

Vantage? To New York?

That's right, but that kind of long-distance commute is only one of the little things that's interesting about this tiny woman—she stands comfortably under five feet—who is one of the country's leading industrial and commercial designers.

That may not sound too interesting—industrial and commercial design. But when you hear Sara Little Turnbull talk about it, it becomes fascinating. I remember having dinner several years ago with a group of Englishmen and Irishmen who always seem to tell stories better than anyone else.

One man, an English priest, told a hilarious story about a naked woman in a holy water font and the poor young cleric who had to deal with the situation. It was, he said, the kind of story on which one could dine for a week.

That's the way Ms. Turnbull can tell a story. And she has enough of them to tell from the days she helped Lever Brothers design a jar for co'd cream to figuring a way for an English toffee manufacturer to market its candy in the United States.

Ms. Turnbull is one of those Northwest people you run into with increasing frequency. They have national, even international, reputations and live in various towns and cities around here, largely unknown except by their neighbors and friends.

For example, earlier this year Ms. Turnbull won the Trailblazer Award for 1980 from the National Home Fashion League. That might not sound like much to you, but the group has plenty of clout in the design world. She is the first woman from the Pacific Northwest to win the award.

Sara Turnbull probably has touched your life at one time or another because of her design work. She likes to refer to her job as simply creating tools for living. Behind that casual, offhand description is a career that has touched millions of lives and, in the process, added to the wealth of those manufacturers who sought her ideas.

Take those face masks people downwind from Mount St. Helens are wearing. Ms. Turnbull helped design those masks some years ago when she worked for Minnesota Mining and Manufacturing Co. (The 3M Co.) The mask is a good example of how she works.

Her assignment at 3M at that time was just to read the chemical and industrial specifications of what was then a new product—non-woven fibers. She said she read the same things the scientists read, but with an eye for different uses.

"I usually start with someone who has a need for overview," she said. "I don't want to get involved in what they make as much as what people need."

A couple of things came together for her when she was reading the characteristics of the new fibers on such things as porosity. Her mother was in the hospital at the time, suffering from a postoperative infection. As a result Ms. Turnbull had to wear a surgical mask when she visited, and it was one of the flat, gauze masks used at the time.

"I hated the mask," she said. "So when I was reading the specs about porosity and the fibers and a way to lock them together, one of the things I thought of was a mask.

"I assumed several different roles (in working at 3M)," she said. "I asked questions in the laboratory, questions colored by my experience. I acted as a catalyst, bringing together the most current technology on nonwoven fabrics. I took direction, gave directions and expressed concerns.

"My role in a project ranges from coach, to player, to statistician, concerned spectator and referee—sometimes all within the same assignment. A lot of people are involved in moving an idea from the laboratory to the marketplace—the win belongs to the team, and the most valuable player may never be determined."

Despite the recognition from her peers and the business community, Sara Little Turnbull's name is hardly a household word. But some other products she has helped develop are instantly recognizable—such as Corning's white, flat-top ceramic stove or rope candy for kids (the kind that gives them soybean protein in treat form) or fashionable dishes and cooking ware designed to be mass produced so they can be handled in every-day use.

One of her gifts as a designer is the ability to bring disparate ideas together to create something new and usable. For example, Corning's stove is manufactured from a material designed to resist the extreme temperatures of outer space and bringing spacecraft back to earth. Ms. Turnbull, and the team of technologists and designers with whom she worked, were able to relate that bit of high technology to the all-too-familiar human desire for a stove-top that was easy to clean.

The rest is marketing history.

"In some situations," she said, "decision making and product development take more than an understanding of numbers. There are complex relationships involved, and a generalist with wide experience may be better equipped to deal with the opportunity than the most accomplished specialist."

Ms. Turnbull has used her generalist talents—plus an ability to ask some astute questions—over the years for a surprising variety of clients. In addition to Corning and 3M, her list of clients includes General Mills, Procter & Gamble, Scott Paper, American Can, Revlon, Columbia Broadcasting Co., Lever Brothers and Ford Motor.

In between the corporate clients, Ms. Turnbull was in advertising as an art director and an editor of House Beautiful magazine from 1941 to 1958, when she set up her own consulting business.

Her life had its beginnings as a gifted underprivileged child in New York City. She says Brooklyn but she actually was born in Manhattan and moved with her family to Brooklyn a few years later. "Once you can claim Brooklyn as your own it's too good not to use it," she said.

She married James R. Turnbull, a forest-products-industry executive, and that eventually brought her to Tacoma. Her husband is former executive vice president of the National Forest Products Association. They live now in Vantage on the banks of the Columbia River.

If you think Ms. Turnbull's life has been glamorous with all the companies she worked for and the travel, consider the odds of making it in her field. In a typical year, more than 17,000 new products will be brought to market and only a handful will be successful enough to pay their own way. What keeps the flow coming is the enormous potential of those few products that make it big. New-product development is a field in which there are few experts and high stakes.

The Trailblazer Award Ms. Turnbull received for her long record of achievement in such a demanding arena has been presented to executives of manufacturing companies, weavers, educators and designers in all areas of specialization. They have in common what the sponsors call "a significant influence on the quality of life."

That's what a design career—Sara Little Turnbull's career—is all about. She has dedicated herself not only to designing but also to communicating to others the role of design in our society. Her Sara Little Design Center, which she donated to the Tacoma Art Museum in 1974, is a combination exhibit of her private collection and a research and learning center for students.

"One of the negative aspects of our present era of name designers," she said, "is that it projects the image of the designer as a curious person who creates by magic and whose signature on a belt or a scarf or a building makes it valuable. Although it heightened the awareness of design, it has created a misconception about design.

"A signature on a belt or a scarf doesn't make it valuable the design makes it valuable."

Ms. Turnbull has some very definite ideas about how to operate in the corporate world.

"If management starts getting too clubby with me or if management leans on me," she said, "I know my life is short with that company. I usually go with the troops, I let the troops go to the top with the brownie points."

How would she describe herself?

"I'm like a PT boat in a naval formation," she said. "I'm small, fast and accurate. I drop my bomb and run like an s.o.b. and move out of the way to let the battleships move in. You have to know when to get in and when to get out.

Incidentally, she say:

"In 20 years in the business world I have written two memos."

She said her "kicks" come when things start to happen and even then its more a private excursion, a knowledge that she's done her job and something creatively useful is beginning. She's mostly part of the stories that don't make the papers, because by the time the hoopla begins and the cheering starts, her job is over .

Ms. Turnbull is trimming back her practice a bit these days as she moves on to other things. She's a candidate for the boards of directors of several companies, where she plans to ask the right questions.

Asked about the fact that some companies are putting "token" women on their boards to avoid questions from shareholders, Ms. Turnbull said it would bother her a lot if she thought she were a token.

"I'm not a token lady," she said. "I don't think of myself as a woman breaking into the business world. "I've been there—I belong there."

EPA AND OIL IMPORTS

● Mr. McCLURE. Mr. President, I am certain we would all agree that freedom from foreign oil is a fundamental goal of our Nation. We as Senators have the responsibility to examine Federal policy and decide where adjustments can be made in order to meet this goal as soon as possible.

The EPA, October 1, plans to reduce further the amount of lead allowed in gasoline. The three-point drop in grams per gallon permitted will require the use of upward of an additional 100,000 barrels of oil per day, costing Americans upward of an additional billion dollars per year.

There continues to be no evidence that any segment of the population will be harmed in any way if these lead standards remain the same. As a matter of fact, when this issue was addressed in 1979 during the gasoline shortage, the EPA itself substantiated this claim. The President, alarmed by our import quota, directed the EPA to postpone implementation and after much delay the EPA did so stating:

EPA believes that this short-term relaxation of the lead standards from 0.5 gpg to 0.8 gpg will not have a substantial effect on the public health and welfare.

While the relaxation may reduce the margin of safety related to health effects of lead emissions, it represents, nevertheless, a continued decrease in airborne lead from gasoline.

The purpose of the lead regulations, first set in 1973, is a part of the Clean Air Act to reduce airborne lead and any possible harmful effects of air pollution. In 1978, the Agency set an ambient air quality standard (AAQS) for lead of 1.5 micrograms per cubic meter over a 90-day average. When EPA set this standard its own data showed that 194 of the 247 air quality regions in the United States already were meeting the standards. The average lead content of gasoline being sold in this period was between about 1.7 gpg and 1.9 gpg. Thus, 194 regions were already meeting the air standard even with an average gasoline lead content of no less than 1.7 gpg.

It was obviously not necessary to reduce further the lead content of gasoline in those 194 regions. Nevertheless, since January of 1978, except in California, the national lead limit for gasoline has been 0.8 gpg. Today, 90 percent of the Nation's air quality control regions are meeting the AAQS.

Studies have indicated that unleaded gasoline is used to a much greater extent in major metropolitan areas—areas where EPA has expressed concern about possible effects in young children—meaning that at a nationwide 0.8 gpg the lead content in metropolitan areas would be significantly lower. In fact, for the first half of 1980 the best estimates of pool-lead levels in Chicago and New York City are at or below 0.5 gpg. The natural phase-down, the increased use of catalyst-equipped automobiles, continues to occur regardless of further EPA reduction.

In order to meet the new EPA standard but yet manufacture gasoline with a high enough octane rating sufficient to satisfy modern engines, extra refining process are required using more crude oil and energy. The higher the octane quality of the material resulting from the reforming process, the less its volume. This material is also highly valuable as raw materials, or feedstock, for petrochemical manufacture into the varied products the petroleum industry produces. Therefore, refiners forced to reduce lead additives essentially are faced with tough decisions. They may process more crude oil, which necessarily will be from foreign sources at extremely high prices to maintain their current gasoline production. They may decide to reduce necessary feedstocks for their petrochemical operations. Or, they may elect to reduce the amount of gasoline or other products they presently manufacture.

Therefore, EPA's insistence that it will press forward with its phase-down is wasteful, unnecessary, and inconsistent with stated administration policy enunciated in 1979 by President Carter.

In the introduction to the White House factsheet of April 5, 1979, in which he directed the EPA to defer the 0.5 gpg lead limit for 1 year, the President of the United States said:

In both the short and long term, conservation remains a cornerstone of U.S. energy policy. It is still cheaper in most instances to save a barrel of oil than to buy one, either from foreign or domestic sources.

I call on the President to renew this directive.●

IMMIGRANTS ARE NOT A BURDEN

● Mr. SCHMITT. Mr. President, the New York Times has recently reported on a study by Professors T. Paul Schultz of Yale University and Julian L. Simon of the University of Illinois. The study was prepared for the Select Commission on Immigration and Refugee Policy in an effort to determine whether immigrants are a "tax burden" on this country. The data base consisted of 150,000 families from a 1976 Census Bureau survey.

Their findings tend to confirm an earlier study using 1970 census information by Dr. Barry R. Chiswick of the University of Chicago. The study found that nonrefugee immigrants who have come to this country start earning more, on the average, than native-born Americans after approximately 10 years in the country. The study also found that these immigrant families tend to emphasize education for their children to a larger extent than do native-born families.

Immigrants also contribute substantially more in taxes than they take in social services. Professor Simon stated

that in 2 to 6 years, immigrants pay roughly the same in taxes that native Americans do while taking less from the public coffers than they paid in.

I think that this study will be of great importance to the Commissioners as they deliberate on their policy recommendations. It will certainly enable the Commissioners to refute the arguments made by some that aliens are using up an inordinate amount of social welfare services.

As many of my colleagues know, I have introduced S. 1427 (the United States-Mexico Good Neighbor Act) which would create a temporary worker program with Mexico. Solidly based on modern research, such a progam only makes commonsense, yet some critics have made these claims about immigrant usage of social services in an effort to block or halt such needed programs from going forward. It is my sincere hope that when the Commission finally acts it does so on the basis of studies such as this one which appear to be factual and not on the basis of unsubstantiated claims or unwarranted fears.

Mr. President, I request that the article I referred to be printed in the RECORD.

The article follows:

FEDERAL STUDY FINDS IMMIGRANTS ARE NOT A BURDEN ON TAXPAYERS

(By Robert Pear)

WASHINGTON, September 21.—Immigrant families start earning more than native-born American families, on the average, within 10 years after arriving in the United States. Further, according to research done for a Federal study commission, from the time of their arrival, they contribute more in taxes than they take in public services.

The studies also show that children of immigrants, after an initial disadvantage, tend to overtake the children of native-born families in academic performance, as measured by years of schooling and percentage of children completing college.

Prof. T. Paul Schultz, an economist and demographer at Yale University, sought to explain the scholastic achievement of immigrant children by suggesting that immigrants were "selectively drawn from their country of birth" and "more strongly inclined to invest in their children's schooling than are native American parents." Professor Schultz said in an interview last week that "years of schooling completed is a powerful predictor of lifetime earnings."

Professor Schultz and Prof. Julian L. Simon, an economist at the University of Illinois at Urbana-Champaign, studied the schooling and earnings of immigrant families at the request of the Select Commission on Immigration and Refugee Policy, which was created by Congress to recommend changes in immigration law.

The studies did not distinguish between legal and illegal immigrants, although the researchers said other studies had shown that there was generally not much difference in the economic progress of legal and illegal immigrants from the same country.

Their findings are likely to add fuel to the controversy between those who see immigration as a potential boon to the nation's economy and those who say that immigrants will take jobs and scarce resources from those who are already here.

Professor Simon concluded that "the average immigrant is a remarkably good investment for taxpayers." He found that immigrants were "not heavily on welfare or unemployment compensation rolls, as the popular wisdom has it."

Professor Schultz said, "We tend to attribute more problems to immigrant groups than is warranted from what we have seen in their rapid upward mobility in our society."

The studies by Professor Schultz and Professor Simon, based on a computer analysis of data from a 1976 Census Bureau survey of 150,000 families, represent a sophisticated attempt to measure the economic costs and benefits of immigration. Their research tends to confirm and extend the findings of Prof. Barry R. Chiswick, an economist at the Chicago Circle campus of the University of Illinois, who demonstrated the upward mobility of immigrants with 1970 census data.

Refugees were included with other immigrants in the 1976 survey, but the sample likely did not include many Indochinese or other recent refugees. Professor Chiswick has suggested that refugees take somewhat longer than other immigrants to achieve economic parity with native-born Americans, apparently because the refugees are driven by political forces and are not "self-selected" for innate ability and work motivation.

Although the researchers noted that there had been large numbers of refugees in the last five years, they said they believed the influx would not fundamentally change their findings in the long run.

Professor Chiswick found substantial differences in the economic progress of immigrants, depending on where they came from. Non-Hispanic whites, Japanese and second-generation Chinese fared better than Mexicans and Filipinos, he said.

"Somewhere between two to six years after entry," Professor Simon reported, "the average immigrant family comes to earn about as much as the average native family, and after that earns more. The rapid approach to equality is heavily influenced, of course, by age and education composition, and especially the absence of retired family heads among the immigrants."

"Many native families are retired and get Social Security," Professor Simon observed, "whereas the immigrants tend to be young people of working age with few children when they arrive."

The available data, he said, suggest that "it takes perhaps 10 years for the average immigrant working family to attain the same income as the average native working family."

Professor Simon also found that immigrants in their first 12 years in the United States, "use substantially less public services, largely due to less use of Social Security because of youth, than do native families." After 12 years, he said, the levels of use are "roughly equal."

On a related subject, Mr. Simon said that "after about two to six years, immigrant families come to pay as much in taxes" as native families, and "after that they pay substantially more." The financial "net balance" every year is in favor of natives, he said; "that is, immigrants contribute more to the public coffers than they take from them."

Roger Conner, executive director of the Federation for American Immigration Reform, a nonprofit group that wants to end illegal immigration and reduce legal immigration, said that such calculations were misleading because they did not count the full costs of providing government services to immigrants. The costs, he said, include not only welfare and "income transfer" programs, but also a share of the costs for national defense, road construction, schools, police and fire protection, and other community services.

Professor Simon said that immigrants were paying for their share of community services through taxes.●

FCC DEREGULATION OF CABLE TELEVISION

● Mr. MAGNUSON. Mr. President, I would like to bring to the attention of my colleagues the decision of the Federal Communications Commission this summer to eliminate the syndicated exclusivity and distant signal rules.

The FCC's action comes at a time when cable television is rapidly expanding. Today, more than 20 percent of the households in the United States subscribe to a cable service. New systems offer an increasingly wide range of programing, including sporting events, movies and news services. Cable television is no longer a mom and pop operation designed primarily to enhance viewers' capacity to receive broadcast signals.

It is only reasonable to expect that the laws and regulations affecting cable will be revised to reflect the changes the industry has undergone. However, it must be noted that the legal framework governing cable has evolved in such a manner that the actions of Congress, the regulatory agencies and the courts are inextricably related. This body of law also affects those who supply much of cable's programing—local broadcasters and owners of syndicated programing. As a result of the FCC's deregulation of cable, we can expect local broadcasters and program owners to seek revisions in the Copyright Act of 1976 in the 97th Congress.

By a narrow 4-to-3 vote, the Commission abolished two controls on cable television which have been in effect since 1972. The syndicated exclusivity rule repealed by the FCC allowed local broadcasters to license on an exclusive basis syndicated programing. If a broadcaster purchased the rights to old episodes of a particular series, he was permitted to demand that a cable system black out those episodes for a 24-hour period or replace them with nonduplicative programing. The Commission's action will now allow cable systems to have their choice of syndicated programing without interference from local broadcasters.

The FCC also repealed the so-called distant rules. Prior to the Commission's ruling, cable systems were strictly limited in the number of "distant signals" they were able to bring into a market from another city. Cable systems may now import an unlimited number of distant signals.

Congress established a legal framework for television carried to distant markets by cable systems when it approved the Copyright Act of 1976. The Copyright Act for the first time statutorily recognized the FCC's jurisdiction over cable. The act also addressed the concerns of broadcasters and copyright owners regarding the retransmission of their programs by cable systems by setting out a formula determining the license fee in return for the right of retransmission.

A cable system's license fee for retransmission of distant signals is paid in a lump sum to the Register of Copyrights each year, rather than directly to program owners. The fee is based on a formula taking into account the revenues of cable systems and the number of distant signals they import. The Copyright Royalty Tribunal, a five-member board appointed by the President, is responsible for dividing those fees equitably among the owners of programing shown on cable. In 1978, cable systems, which reported revenues of $1.5 billion paid, paid $14 million in fees for this programing. The Copyright Tribunal may also adjust the fees in response to FCC changes in the distant signal and syndicated exclusivity rules, although Congress did not anticipate the Commission would abolish the rules altogether.

Mr. President, a system of laws and regulations has yet to be devised which is satisfactory to cable operators, local broadcasters and the owners of syndicated programing. Local broadcasters and program owners can be expected to appeal the FCC's decision to deregulate cable in the courts and request the Copyright Tribunal revise the rates cable systems pay for use of syndicated programing. I also believe it will be necessary for Congress to review the Copyright Act in light of the Commission's action in order to assure that the best interests of the viewing public are protected.●

THE NUMBERS GAME

● Mr. SCHMITT. Mr. President, I have been inserting various articles in the RECORD concerning the problems of the undocumented workers from Mexico. To assist in solving this problem I have introduced S. 1427 (the U.S.-Mexico Good Neighbor Act) which would create a temporary workers program.

One of the most difficult aspects of this problem is deciding how many illegal aliens are in the United States and how long they stay. Immigration and Naturalization Service apprehensions (which exceeded 1 million last year), while including many repeaters, do lend a base to the numbers. Due to the historical ebb and flow of migrants across the border it has not been until recently that valid research has been conducted in this area. The data gathered by these newer studies has led me and other legislators in the House and Senate to believe that a temporary workers program makes good sense.

The San Diego Union has printed a series entitled "Southwind" by Richard Louv and in his third article "The Numbers Game" he has addressed this problem. The article discusses not only the number who have migrated (whether temporarily or permanently) but also highlights their impact on our society.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

THE NUMBERS GAME

For 70 years, the migrants worked more or less legally in the United States. They were recruited to build the skeleton to which the Southwest's economic flesh is now attached: the railroads, the irrigation systems. Some of the migrants returned to Mexico and some remained in the railroad camps of the north, which gradually grew into barrios. And there the culture slept, invisible.

Jobs and hope might be found in the United States, but the migrants' souls remained in Mexico. Unlike the Italian, Irish or Polish immigrants, the Mexicans could easily return home, driving south along the Pacific Coast Highway, or west along Interstate 40 or 10 and then south. The highway system was a cultural bloodline; along it flowed language, customs and family. And north came the new migrants, in stake-trucks and broken-down Fords. Some of them stayed, and some returned to Mexico, and always the bloodline pumped, refreshing the ethnic culture and language.

In the 1940s, the coming of the bracero program strengthened the bloodline. Recruiters went deeper into Mexico than ever before; radio announcements lured workers from mountain villages unreachable by road. Contracted to work in seasonal agricultural jobs, the braceros travelled back and forth between the two countries. A hundred thousand a year were contracted by U.S. employers during the 1940s, up to 400,000 a year in the late 1950s.

Along Highway 99, from the Imperial Valley in the South to the Sacramento Valley in the North, bracero camps formed what critics of the program called "the longest slum in the world." The braceros could be shuttled from one place to another when labor disputes arose; their presence helped keep farm labor from organizing and made minimum wage legislation difficult to pass. So the bracero program was phased out in the early 1960s. Congress went further: legal immigration quotas were drastically reduced.

By this time, though, the circulatory nature of the bloodline had grown strong, economically as well as culturally. The growers of California and Texas were hooked to it, hungered for it; and the families of Jalisco, Oaxaca and Michoacan hungered without it. With no real choice, other than starvation, the migrants continued to come north during picking seasons. And while they once had been prized by the U.S. government, now they were considered criminals.

Like Viet Cong crossing the demilitarized zone, the migrants were tracked and counted by electronic sensors. Curious, crude technology, the little boxes (some were hand-made) were hidden in the chaparral, mesquite and along the rocky ridges. Throughout the early 1970s, the sensors counted the migrants as they slipped across the border. But not only did the sensors count illegal aliens, but also cows, goats, coyotes and small wild animals.

The Immigration and Naturalization Service (INS) used other counting methods, however.

The agency guessed how many illegals it had not caught and added that to the number of apprehensions. And since there was no way of measuring the return flow, the INS guessed. It assumed that only 2 percent returned. Astonishingly, it based this estimate on how many legal European immigrants to the U.S. subsequently returned to Europe. According to several recent studies, however, the real return rate for Mexican migrants is closer to 90 percent.

In 1975, INS Commissioner General Leonard Chapman reported a "vast and silent invasion of illegal aliens." Chapman, a former commandant of the Marine Corps, announced that 12 million illegal aliens were in this country, at least 8 million of them Mexican. A flurry of headlines resulted. "Invisible Invasion," they screamed, and "Illegal Aliens Flooding the U.S."

Chapman called for a Border Patrol of more than 200,000 officers, equal to the Marine Corps. Like-minded politicians demanded stricter immigration laws, a beefed-up INS, with more officers, more technology, more sensors. Former CIA Director William Colby echoed Chapman's warning: the Mexican "invasion," he asserted, was a greater threat to national security than the Soviet Union.

Barely two months after Chapman released his estimate, at the urging of his own department experts, he revised the estimate from 8 million Mexican illegals to 6 million.

Today it appears the general's original figures may have been two to five times the actual number.

As of 1977, the CIA estimates 4 million Mexican illegals are in the United States at any one time.

A major University of Texas Study came up with 1.5 to 3 million.

And the lowest estimate to date is 1.4 million, recently announced by the University of Southern California's (USC) Population Research Laboratory.

The key to the new estimates is the peculiar nature of the Mexican migration, the back and forth movement of the migrants between the two nations. Now some experts are asserting that a shift is occurring from seasonal agricultural jobs to service industries and construction.

"Since most of these jobs are not seasonal, the migrants have less incentive to return home," says Dr. Vernon Briggs Jr., a labor economist at Cornell University and a leading proponent of a tougher border policy.

"What I maintain," says Briggs, "is that, though the original figures were too high, the shift to non-agricultural jobs is going to mean more and more illegals will remain in the United States. It may only be 3 million now, but in a few years it may be 8 million."

Among the workers studied by UCSD's Dr. Wayne Cornelius, however, even the skilled Mexican illegals working in service or construction industries wanted to return to Mexico. They disliked the United States: they thought it was a poor place to raise children; they were here only out of economic necessity; and they planned to return to their home villages as soon as they saved enough money for land, a house or to educate a child.

As Cornelius sees it, a gradual tightening of the border, through increased manpower and hardware, may turn what is now a largely floating population into one more permanently anchored in the United States.

The more the Border Patrol cracks down, he maintains, the more the migrants would actually be discouraged from returning to Mexico. For many of them, the constant hardship and growing expense could make the back-and-forth trek no longer bearable. Especially for the unskilled, rural migrants, the only option—other than starving in Mexico—would be to settle permanently in the United States, and gradually bring their families north.

According to Cornelius, any new policy (a guest worker program, for instance) should facilitate the back-and-forth movement, rather than encourage permanent immigration.

Such ideas are only now beginning to surface in the press. In the political climate created by Chapman's announcement, there was little room for discussing a worker program or similar proposals. A year after his report of the "invisible invasion" the Gallup Poll revealed that more than half of the American people were in favor of mass roundups and deportations to rid the country of illegals. Illegal aliens were thought to be contributing to the rising crime rate; they were considered "welfare cheats" and "taxpayer rip-offs", even though later studies proved these assumptions wrong.

By then, a new wind was rising, an ethnic awakening among Mexican Americans, a flexing of cultural power. While the politicians and academicians had been arguing over the exact number of illegal aliens, something far more profound and powerful was happening. For a century, the bloodline, the back-and-forth movement between Mexico and the United States, had been strengthening the Mexican-American culture. The effect was more than numbers; it was the sum of language, custom, family.

With the Chicano movement, Hispanics begin to stand up. "America's best kept secret," as one Chicano activist called it, suddenly became visible. In a period of consciousness-raising similar to that achieved by blacks, Mexican-Americans became proud of their culture and language. Hispanic children in public schools were no longer discouraged from speaking Spanish. In effect, the bloodline was exposed.

The message was not lost on the business world. A unique market was revealed, one which demanded special linguistic and cultural marketing. Spanish billboards, Spanish commercials; warranties in Spanish, sales seminars in Spanish. Thirty-four television stations, 430 radio stations broadcasting some or all of the time in Spanish, all aimed at the newly discovered market, the 7 million Mexican Americans and 5 million other Hispanics.

Under this media barrage, it is understandable that so many people believe the U.S. is being invaded by Hispanics. But, because of the special nature of the Mexican migration, the "invasion" may be more cultural than numerical. The illusion may be greater than the fact.

Experts as disparate in their views as Wayne Cornelius and Vernon Briggs agree that the original figures disseminated by the INS were bloated. They also agree that contrary to the headlines which claim the migration is "out of control," an "unsolvable problem," it is probably still a manageable size. And thirdly, they agree that something quickly has to be done, for the sake of migrants as well as the U.S.

What precisely that should be, is another question.

THE RISING HISPANIC MARKET

Frito Bandito is dead. After decades of neglect, U.S. corporations are suddenly recognizing the purchasing power of the huge Hispanic market. 60 percent of which is Mexican-American. The newly discovered market, concentrated in ten major cities (including New York, Chicago, El Paso, Los Angeles and San Diego) is estimated at $15-$50 billion annually.

In reaching this market, stereotypes don't work.

"You can't reach the Hispanic consumer if you debase him. And you can't reach him if you treat him no differently from the rest of the market, if you ignore his cultural and linguistic uniqueness," says Loretta Adams-Esquivel, president of Market Development, a new San Diego company helping businesses adjust to the rising Hispanic market.

"Corporations are having to learn a lot about the Latin culture in a very short time," she says. Ironically, the recognition of this market may stimulate more cultural interchange between Anglos and Hispanics than at any other time in our history.

Realizing that the United States is fast becoming a bilingual nation, corporations such as Coca Cola and McDonald's have established Spanish advertising campaigns. Whirlpool Corporation, maker of large home appliances, is now providing warranties written in Spanish. Johnston's Yogurt company is test-marketing its products, with Spanish labels, in Spanish-speaking communities. (A spokesman for Johnston's admits that the cross-cultural chasm may be too wide for yogurt to breach.)

Spanish billboards are springing up all over cities with large Hispanic populations. The explosion is so new, in fact, that many of the billboards and advertisements contain Spanish misspellings and sexual double-entendres. According to the trade publication Advertising Age, one cigarette company advertising "low tar" cigarettes used a phrase which translated: "low-asphalt." Slight mispronunciations in Spanish commercials for the Chevrolet Nova changed "Nova" to "doesn't go." And one company considered marketing a drug called "Vidi," until it discovered a slightly different Spanish inflection changed the word's meaning to: "I died."

"The Hispanic group-orientation—their concept of the extended family—is going to challenge our basic advertising techniques, which are focused on the individual. They're bringing more than money and labor, they're bringing cultural aspects lost to Anglos," says Adams-Esquivel.

"For example, you don't market liquor to the lone Mexican drinker. One liquor company I consult for wondered if Hispanics drink at a bar, alone. But Mexican-Americans don't drink that way; alcohol is associated not with bars, but with big family and social gatherings.

"I'll never forget one Mexican-American woman's comment. I was exploring which commercial approach would be best for coffee: the richness of the coffee bean, or the social setting. I asked this woman if she associated coffee with relaxing, alone. She looked surprised. 'No, no,' she replied, 'we're never alone.' "

Why is the Hispanic market receiving so much attention?

"Basically, because they're not melting into the pot, they're not assimilating like other immigrant groups have," says Marcelino Miyares, president of OMAR, a Chicago-based research and advertising company that has been focusing on the Hispanic market for 10 years.

"The back-and-forth movement of Mexican laborers between the U.S. and Mexico continually refreshes and strengthens the Latin culture here," he says.

Miyares estimates that half of Chicago's Hispanic population cannot read or speak English.

In addition to the back-and-forth movement, is the migrant population that stays permanently in the United States, bringing with it Hispanic culture and language.

Eight years ago, Mexican food was sixth on the list of ten favorite foods in the U.S. It is now second, separated from Italian food by only a few percentage points—and catching up quickly.

"The sudden surge of popularity of Mexican food is indirectly linked to the migration," says Dr. Ricardo Romo, associate professor of history at UCSD:

"Good, low-wage Mexican cooking talent is always coming north, always available."

Another reason for the corporate excitement is the staggering Hispanic growth rate. The U.S. Census Bureau registers a 23-percent increase in Hispanic population between 1970 and 1976, compared with only 6 percent for the total U.S. population.

"We don't know how much of this increase is due to illegal aliens," says Dr. Michael Conroy, an economist at the University of Texas. "Most of the increase probably results from the high birth rate among Hispanic-Americans, and not because of a 'flood' of illegals."

In fact, some experts contend the birth rate for illegals living in the U.S. is much lower than for Hispanic-Americans, and about equal to that of middle-class, Anglo couples.

Illegal aliens, do, however, spend in the United States about 70 percent of what they earn—a significant addition to the Hispanic market.

"The whole thing—the Hispanic market, legal Mexican immigration, the undocumented workers—everything is entwined in people's minds," says Marcelino Miyares.

"Advertisers and corporations hear about Mexican oil funds and about millions of new consumers supposedly 'flooding' the U.S., and they suddenly realize there a a big market out there. People start seeing Spanish billboards and Spanish TV commercials and they become convinced the U.S. is being overwhelmed.

"The truth is, though, by virtue of being different, in this electronic media-oriented system, our impact is likely to be greater than our numbers."●

ORDER FOR RECESS TODAY UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, is there an order for the convening of the Senate on tomorrow?

The PRESIDING OFFICER. There is not.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR REDUCTION OF TIME FOR TWO LEADERS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders be reduced to 5 minutes, to be equally divided, on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS UNTIL TOMORROW AT 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered that the Senate stand in recess until the hour of 11 a.m. tomorrow.

The motion was agreed to and, at 6:40 p.m., the Senate recessed until tomorrow, Thursday, September 25, 1980, at 11 a.m.

HOUSE OF REPRESENTATIVES—*Wednesday, September 24, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God, we give thanks that people from all parts of this world can know Your presence and come to You in prayer, in spite of our weakness or failure or lack of faith or whatever our background or condition, You still hear all people who earnestly seek Your pardon and reach out for strength. We rejoice, O God, that we can call upon You whatever our need.

Speak to us in this our prayer that we will know Your will and become the people You would have us be. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 3748. An act to provide for a uniform national 3-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes;

H.R. 6242. An act to establish a Towing Safety Advisory Committee in the Department of Transportation; and

H.R. 7919. An act to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

The message also announced that the Senate agree to the amendments of the House to a bill of the Senate of the following title:

S. 2271. An act to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund.

The message also announced that the Senate insist upon its amendment to the bill (H.R. 6790) entitled "An act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes," disagreed to by the House; agree to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoint Mr. CHURCH, Mr. PELL, Mr. BIDEN, Mr. TSONGAS, Mr. JAVITS, Mr. PERCY, and Mr. HELMS to be the conferees on the part of the Senate.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 6308. An act to provide for an accelerated program of research and development of magnetic fusion energy technologies leading to the construction and successful operation of a magnetic fusion demonstration plant in the United States before the end of the 20th century to be carried out by the Department of Energy;

H.R. 6665. An act to implement the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and for other purposes;

H.R. 7203. An act to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such act for the education of health professions personnel, and other purposes; and

H.R. 7309. An act to designate the Federal building in Portland, Oreg., the "Edith Green Federal Building."

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1135. An act to add certain lands to the Moapa Indian Reservation, and for other purposes; and

S. 3044. An act to designate the U.S. Federal Building in Hartford, Conn., as the "Abraham A. Ribicoff Federal Building."

The message also announced that the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 2724) entitled "An act to extend authorization for law enforcement assistance at Corps of Engineers projects."

THE LATE HONORABLE ROBERT WINTHROP KEAN

(Mr. RODINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, yesterday I was saddened to learn of the death of a former colleague, Robert Kean. When I entered Congress in 1949 Robert Kean was the Dean of the New Jersey delegation and I remember his dedicated work for the people of New Jersey. In the 20 years that Robert Kean served in Congress from 1938 to 1958 he made quite a record. As the ranking Republican member of the Ways and Means Committee he became a leading force behind the enactment of social security. In fact, his expertise and commitment to fight for the social security system earned him the title "Mr. Social Security" in the House.

It was a privilege for me to serve with Robert Kean, and I know New Jersey was fortunate to have him in Congress. But public service and patriotism were not new to the Kean family. His great-great-great grandfather was a member of the Continental Congress and his great-great-great uncle, William Livingston, was the first Governor of the State of New Jersey. Another of his uncles was a Congressman and U.S. Senator from our State.

And only recently I learned of his kinship with the distinguished gentleman from New York, my colleague and friend, HAMILTON FISH, JR.

Robert Kean carried on this outstanding family tradition and the State of New Jersey is better off for it. He was a well respected man, a decent man. I join with the citizens of New Jersey and the country in mourning the loss of one of our most prominent citizens and a fine public servant.

Mr. RHODES. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the distinguished minority leader, the gentleman from Arizona.

Mr. RHODES. I thank the gentleman for yielding.

Mr. Speaker, I would like to associate myself with the remarks that the gentleman from New Jersey has made.

Bob Kean was here when I got here, and he was a distinguished Member of the House in every way. As the gentleman has stated, he was truly one of the experts on social security.

I remember when I was a freshman being a little bit mystified about some of the fine points of social security, and Bob Kean was always available to help to straighten me out when I needed it.

So I join with my friend in mourning the loss of Bob Kean and in extending sympathy to his family.

Mr. RODINO. I thank the gentleman for his remarks.

Mr. FISH. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from New York.

Mr. FISH. I thank my distinguished chairman (Mr. RODINO) for his kind remarks, and join with him in expressing my deep sympathy to the family of our distinguished former colleague, Robert Winthrop Kean, of New Jersey.

Robert Kean graduated from Harvard College in 1915. He served with Squadron A in the New York National Guard on the Mexican border in 1916. In World

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

War I he was a first lieutenant with the Second Division of the American Expeditionary Force in France. He was awarded the Distinguished Service Cross and the Silver Star for gallantry in action.

First elected to Congress in 1938 from the 12th Congressional District, Robert W. Kean served on the Banking and Currency Committee. He was to become the ranking Republican on the House Ways and Means Committee.

During his 20 years in the House, Congressman Kean earned a reputation as a leading authority on social security, taxation, and veterans' affairs. He was the author of comprehensive bills dealing with the extension of social security.

During the Truman administration, he headed an investigation of the Internal Revenue Service. The inquiry led to changes in the Service's structure and policies.

Again, my sympathy to the family of this exemplary public servant.

● Mrs. FENWICK. Mr. Speaker, I would like to join my colleagues in this tribute to the memory of Robert Winthrop Kean, distinguished public servant and former Member of this House, by repeating the remarks I made yesterday in the House, when first I heard the sad news of his death.

He served in this House, as many of us may remember, in nine succeeding Congresses from January 3, 1939, to January 3, 1959. He served on the Mexican front. He was decorated in the First World War with a Silver Star Medal and the Distinguished Service Cross. Much more than this he was respected and loved in every place where he served, at home, in his hometown and State, and here in Congress. He was a man of integrity and honor and those qualities marked his service. He came of a family which served in this House in the 19th century as well as in this century. His uncle served as Congressman and Senator. Theirs is one of the most distinguished families in New Jersey from the point of view of honorable public service. I thought his memory should be brought to the House this day, the day after the day he died.●

GENERAL LEAVE

Mr. FISH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the life, character, and public service of the late Honorable Robert Winthrop Kean.

The SPEAKER. Is there objection to the request of the gentleman from New York.

There was no objection.

SUPPORT OF NUCLEAR ENERGY IN MAINE

(Mr. PRICE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

● Mr. PRICE. Mr. Speaker, the results of the referendum in Maine yesterday supporting the utilization of nuclear energy is an example of citizens activity in the highest sense of public responsibility. The issue concerned the continued operation of a nuclear generating plant in Maine which has an equivalent generating capacity of nearly a million barrels of oil per month. Such units provide our most significant contribution to the solution of our critical energy problem.

The thanks of all of us is due to the citizens of Maine for their action yesterday in support of the national security and welfare of this Nation.

It is truly difficult to understand continued opposition by a significant minority in our Nation to nuclear energy. This is particularly true at this time when the dreaded shutdown of the Persian Gulf petroleum supplies is taking place.

We had planned to have sufficient nuclear and coal energy generating capacity in existence before this dreaded time.

It is indeed unfortunate that we were thwarted in this goal, but still the nuclear and coal route remain as our only practical solution to our energy problem and therefore we must continue to press for its accelerated utilization.●

TUG FORK, W. VA., PROJECT VIOLATES RULES OF THE HOUSE

(Mr. ROBERTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROBERTS. Mr. Speaker, the House is in the process of considering H.R. 7590 this afternoon. I rise because I am deeply upset by a specific action taken in this legislation. Numbered amendment 36 in this particular bill is an authorization of some $284 million for the Tug Fork project in West Virginia.

Neither this amendment nor any language pertaining to this project belongs in this bill at this particular time. This is a straight authorization in an appropriation bill. It is a direct violation of the rules of the House. It bypasses the authority of a standing committee of this body and makes a mockery of the committee system. The Committee on Public Works and Transportation has already passed a water bill containing an authorization for Tug Fork. A somewhat smaller bill passed the Senate containing an authorization for Tug Fork and now totally out of order we have this project with us once again today.

While I sympathize with the need for the Tug Fork project, while I sympathize with the people who are affected by the operations of the Tug Fork in the States of West Virginia, Virginia, and North Carolina and while I stand second to none in support of needed projects, I say to this body that without proper order this House will soon fall into chaos. This temporary victory gained today by those who would authorize Tug Fork will in the long run turn into ashes for if we continue to move this way the committee system as structured will collapse and the legislative process as we know it will be no longer. Let us show restraint in these matters and leave to the proper authorizing committee the authority to move programs under their jurisdiction.

CONCERN ABOUT TUG FORK, W.VA., PROJECT

(Mr. PERKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PERKINS. Mr. Speaker, I want to assure the gentleman from Texas (Mr. ROBERTS) that I share his concern, the gentleman being chairman of the Subcommittee on Water Resources of the Committee on Public Works and Transportation. The gentleman in the well knows that an authorization for the Tug Fork and Levisa and other areas of eastern Kentucky was passed in 1977, and in the omnibus bill in the Senate the authorization was removed in committee if I remember correctly. Am I correct in that? The gentleman and I went over to see the majority leader after midnight.

□ 1010

Mr. ROBERTS. The gentleman is correct.

Mr. PERKINS. Later, the omnibus bill came over, the day that we adjourned in the House, December of 1978, without the Tug Fork and Levisa Fork authorization, and was attached to another bill other than the omnibus bill when there was no majority in the House of Representatives. Am I correct, later that afternoon after the omnibus bill had already passed?

Mr. ROBERTS. The gentleman is correct.

Mr. PERKINS. Inasmuch as this bill, the authorization in question, passed the House and over in the Senate committee, and the Senate committee had not reported the omnibus bill from committee, it was a very unusual procedure to attach an authorization to the appropriation bill and then appropriate $5 million, but nevertheless, that has been done.

The people down there in my area do not know who to blame for the delay, delay, delay.

I am delighted that the gentleman from Texas (Mr. ROBERTS), since this is unusual procedure, is not objecting, so that we can get some relief down there regardless of the past.

Mr. ROBERTS. If the gentleman will yield further, I am going to vote for the bill. I would vote for anything that the gentleman from Alabama (Mr. BEVILL) and the gentleman from Mississippi (Mr. WHITTEN) bring out on this floor. But I think we ought to look very carefully and guard ourselves from this thing happening in the future.

One other thing, Mr. Speaker, this morning, the Senate refused to accept one of the last bills we sent over. I do not know what is happening over there. Maybe we need to realize that there are two bodies.

Mr. PERKINS. I thank my friend from Texas.

PRESIDENT SHOULD REJECT LICENSING OF JET ENGINES FOR IRAQ

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Speaker, I support the President's call yesterday for strict neutrality among the nations of the world in the war between Iran and Iraq.

The escalating danger to the world's oil supply and the safety of our 52 hostages makes that the only responsible course.

In view of the gravity of the situation, I would hope that the majority party in Congress would heed the President's words and reject the administration's request for export licenses for the sale of gas turbine engines for the Iraqi Navy.

Iraq's opposition to U.S. foreign policy and its support of international terrorism provided ample reasons for rejecting this transaction even before the outbreak of war in the Persian Gulf.

The current threat to world peace makes that sale unthinkable.

Mr. Speaker, the conferees are scheduled to meet today on the foreign aid bill. I hope they will consider the President's own words and reject the licensing of jet engines for Iraq.

ELECTION TACTICS UNBECOMING TO PRESIDENT

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, in any Presidential year many unusual things happen. But perhaps not as unusual as this year. I think we should recall that during the primaries President Carter initially said he would debate Senator KENNEDY. That was when he was behind Senator KENNEDY in the polls.

Later, when President Carter began to run ahead of him, he refused to debate and suggested there was something unpatriotic about the Senator even deciding to run against him.

Then we see that President Carter told JOHN ANDERSON at the opening of the Washington bureau headquarters of the Los Angeles Times, about 2 months ago, that he would meet him in the debates. Of course, that is when President Carter was not doing very well. He also told the League of Women Voters he would be very willing to debate Ronald Reagan. That of course was when he was behind in the polls. As he has come up in the polls, he has now suggested he will not do that.

He has called JOHN ANDERSON insignificant, and he suggested last week that somehow Governor Reagan was a racist and yesterday that somehow Governor Reagan was warlike.

Mr. Speaker, this is not the way to run the election of any President of any junior high school student body, and certainly is unbecoming for the President of the United States to act in this manner.

DEPRESSED HOMEBUILDING INDUSTRY NEEDS OUR ATTENTION

(Mr. WINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WINN. Mr. Speaker, this week FHA-VA mortgage ceiling rates were raised a full point, from 12 to 13 percent. As a former homebuilder, I built a lot of homes in the Kansas City area, and I know what a rise in interest rates does to the homebuilding industry. For every 1 percent rise, about 1½ million households are shut out of the market—they cannot afford to buy their own home.

This has been a very difficult period for the housing industry—down 34 percent for the first 8 months of this year. The interest rate ceiling has bounced up and down—seven changes this year. I was hoping that the time of high rates had passed.

I know that the FHA-VA ceiling has to stay in touch with the marketplace, and the conventional loan rate is now 13¾ percent and higher. But the general problem of high interest rates and a depressed homebuilding industry needs our attention. And certainly the fact that the administration is backing these raises in the ceiling does not jibe with promises that recovery is already here.

PRESIDENT'S COMMENTS MAY HAVE DAMAGED HOSTAGE SITUATION

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, I heard on the radio this morning that President Carter has publicly commented on the Iran-Iraq hostilities, especially with regard to its effects on the hostages. The report on WRC said the Iranians reacted with rage to what they apparently interpreted as an offer by the President to swap the hostages for spare parts for Iran's armed forces.

While this no doubt was well-intentioned, it demonstrates once again the shortsightedness of many administration actions. He should have foreseen that any such statement would simply confirm the suspicion among many in Iran that the United States is behind the hostilities; thus, by his statement, he may have played into the hands of propagandists, both in Iran and the Soviet Union, as well as complicating the hostage situation.

While Mr. Carter has an understandable anxiety with regard to the hostages, it would be far better if he had stayed with his original position of not commenting on the war.

PRESIDENT CARTER HAS STATED HE WILL DEBATE GOVERNOR REAGAN

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, time after time some of our colleagues take this rostrum and address themselves to the question of the Presidential debate. Many things have been said about it, but I think the inescapable fact is that the President of the United States has very clearly stated time and time again that he will debate Governor Reagan, head to head, any place, any time.

It recalls to mind a line of poetry that I remembered as a child: "Come out, come out, wherever you are," Governor Reagan.

A NATIONAL DISGRACE

(Mr. BAUMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAUMAN. Mr. Speaker, the man who said Soviet troops in Cuba were a threat to the United States and then quickly shoved the issue under the rug; the man who wanted to send hundreds of millions of dollars of military aid to Pakistan, which was rejected; the man who certified $75 million to Nicaragua, which will undoubtedly aid in the spread of communism in Latin America; the man who wants to expand the nuclear power of India, that is building its own bombs; the man who has cut U.S. defenses and weapons systems by billions of dollars, the man who says he wants SALT II and near unilateral disarmament, the man who embraced and kissed the cheek of Leonid Brezhnev, says he will bring us peace and Governor Reagan will get us into war.

Mr. Speaker, national weakness invites war, and the unrestrained desire to win an election for President, regardless of truth or decency, is more than unforgivable. It is a national disgrace.

AUTHORIZING SECRETARY OF INTERIOR TO ENGAGE IN FEASIBILITY INVESTIGATIONS OF CERTAIN WATER RESOURCE DEVELOPMENTS

Mr. KAZEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5278) to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 3, after line 13, insert:

(14) To determine the cause and extent of the high groundwater levels which developed in and adjacent to the town of Moses Lake, Washington, following the initiation of irrigation of the lands in and adjacent to the town and determine by the studies authorized herein measures to resolve the problems caused by the high water levels in the area.

(15) The Cle Elum Dam and Tieton Dam powerplants, Yakima Project, Washington.

(16) The Owyhee Dam powerplant, Owyhee Project, Oregon.

(17) The Wickiup Dam powerplant, Deschutes Project, Oregon.

(18) The Tiber Dam powerplant, Lower Marias Unit, Marias Division, Pick-Sloan Missouri Basin Program, Montana.

(19) The New Siphon Drop powerplant, Yuma Project, Arizona-California.

(20) The Guernsey Dam powerplant enlargement, North Platte Project, Wyoming.

(21) Increasing the height of the Theodore Roosevelt Dam, Salt River Project, Arizona.

(22) The Sly Park Extension Unit, Amer-

ican River Division, Central Valley Project, California.

(23) The Prineville Dam powerplant, Crooked River Project, Oregon.

Page 4, strike out all after line 20 over to and including line 11 on page 5 and insert:

SEC. 5. (a) Notwithstanding any other provision of law, the Secretary of the Interior is authorized to enter into new negotiated concession agreements with the present concessionaires at Lake Berryessa, California. Such agreements shall be for a term ending not later than May 26, 1989, and may be renewed at the request of the concessionaire with the consent of the Secretary of the Interior for no more than two consecutive terms of 10 years each. Concession agreements may be renegotiated preceding renewal. Such agreements must comply with the 1959 National Park Service Public Use Plan for Lake Berryessa, as amended, and with the Water and Power Resources Service Reservoir Area Management Plan: *Provided*, That the authority to enter into contracts or agreements to incur obligations or to make payments under this section shall be effective only to the extent and in such amounts as are provided in advance in appropriation Acts.

(b) Notwithstanding any other laws to the contrary, all permanent facilities placed by the concessionaires in the seven resorts at Lake Berryessa shall be considered the property of the respective current concessionaires. Further, any permanent additions or modifications to these facilities shall remain the property of said concessionaires: *Provided*, That at the option of the Secretary of the Interior, the United States may require that the permanent facilities mentioned herein not be removed from the concession areas, and instead, pay fair value for the permanent facilities or, if a new concessionaire assumes operation of the concession, require that new concessionaire to pay fair value for the permanent facilities to the existing concessionaire.

Page 5, after line 11, insert:

SEC. 6. The Reclamation Project Authorization Act of 1972 (Public Law 92-514, 86 Stat. 964) is amended—

(a) by inserting in section 101 of such Act, following "on this project", "as modified by the plans shown in the Definite Plan Report of the Water and Power Resources Service, dated November 1979";

(b) by inserting in section 102(b) of such Act, following "domestic wells in existence", "outside the project boundary"; and

(c) by striking in section 109 of such Act $18,246,000 (April 1972 prices)" and inserting in lieu thereof "$57,139,000 (October 1979 prices)".

SEC. 7. The Curecanti Storage Unit of the Colorado River Storage Project constructed under the authority of the Act of April 11, 1956 (70 Stat. 106) is hereby designated and hereafter shall be known as the Wayne N. Aspinall Storage Unit of the Colorado River Storage Project. Any law, regulation, record, map, or other document of the United States referring to the Curecanti Storage Unit shall be held to refer to the Wayne N. Aspinall Storage Unit.

Page 5, after line 11, insert:

SEC. 8. Section 1(5) of the Act of July 2, 1956 (70 Stat. 483), is hereby amended to read as follows: "(5) Provide for payment of rates under any contract entered into pursuant to said subsection (e) in advance of delivery of water on an annual, semiannual, bimonthly, or monthly basis as specified in the contract.".

Page 5, after line 11, insert:

SEC. 9. The Secretary of the Interior in coordination with the Secretary of Energy shall conduct a three-year study of the feasibility of integrating a solar powerplant in Arizona, Nevada, and California into the Federal hydroelectric system, including but not limited to consideration of the applicable solar technology, the operation of the Federal hydroelectric system and the integration of electric power generated by such a powerplant in the Federal system. The study shall specifically consider operations of Department of Energy Project 76-2-b, 10 MW Solar Thermal Power and related technology development. The Secretary shall complete the study by January 1, 1984 and submit a report to the President and the Congress.

(6) Page 5, after line 11, insert:

SEC. 10. That the proviso contained in section 201 of the Colorado River Basin Project Act (43 U.S.C. 1511) is amended by striking out "the Secretary" and inserting in lieu thereof "any Federal official".

Page 5, after line 11, insert:

SEC. 11. Section 206 of Public Law 92-514 is amended to read as follows: "There is hereby authorized to be appropriated for construction of the Brantley project the sum of $172,728,000 (based on April 1979 prices), plus or minus such amounts, if any, as may be justified by reason of changes in the construction costs as indicated by engineering cost indexes applicable to the types of construction involved and, in addition thereto, sums as may be required for operation and maintenance of the project.".

Page 5, after line 11, insert:

SEC. 12. The Secretary of Interior is hereby authorized to engage in feasibility studies of the following salinity control proposals:

(1) Lower Gunnison Basin unit, located in Delta, Montrose, and Ouray Counties, Colorado.

(2) Glenwood-Dotsero Springs unit, located in Garfield and Eagle Counties, Colorado.

(3) Meeker Dome unit, located in Rio Blanco County, Colorado.

(4) McElmo Creek unit, located in Montezuma County, Colorado.

(5) Uintah Basin unit, located in Duschesne and Uintah Counties, Utah.

(6) Dirty Devil River unit, located in Sanpete, Sevier, Emery, and Wayne Counties, Utah.

(7) Price-San Rafael Rivers unit, located in Carbon, Emery, and Sanpete Counties, Utah.

(8) La Verkin Springs unit, located in Washington County, Utah.

(9) Lower Virgin River unit, located in Clark County, Nevada, and Mohave County, Arizona.

(10) Big Sandy River unit, located in Sweetwater County, Wyoming.

Page 5, after line 11, insert:

SEC. 13. Nothing in this Act shall be interpreted to preclude or delay issuance of a license by the Federal Energy Regulatory Commission.

Mr. KAZEN (during the reading.) Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. KAZEN. Mr. Speaker, H.R. 5278 authorizes the Secretary of the Interior to engage in feasibility investigations of certain water resource development projects. The bill passed the House, amended, under a suspension of the rules on February 5, 1980.

The Senate amended the bill in several respects.

The House had previously passed a bill, H.R. 552, authorizing a study of high ground water conditions at Moses Lake, Wash. The Senate added this provision as an amendment to H.R. 5278.

The Senate amendment added feasibility study authorizations for nine proposed powerplants at existing dams, or projects, studies of 10 salinity control proposals in the upper Colorado River Basin and a study for integrating a solar powerplant in Arizona, Nevada, and California into the Federal hydroelectric system.

The authorized studies are necessary before a determination is made as to the feasibility of project construction. They do not authorize any actual construction. That must be done by further act of Congress.

The Senate amendments do update the authorizations for appropriations for two projects which have been previously authorized by Congress. These are the Closed Basin Division, San Luis project in Colorado and the Brantley project in New Mexico.

The Senate amendments also honor a former distinguished Member of this body who was for many years the chairman of the Committee on Interior and Insular Affairs by designating the Curecanti storage unit in Colorado as the "Wayne N. Aspinall Storage Unit of the Colorado River Storage Project."

Another Senate amendment provides that the feasibility study process shall not preclude or delay the issuance of a license by the Federal Energy Regulatory Commission for any of the power projects for which studies are authorized in the bill.

The Senate amendment also extends an existing statutory moratorium on any studies by the Secretary of the Interior to import water into the Colorado Basin to all Federal agencies.

● Mr. CLAUSEN. Mr. Speaker, I support the motion to concur in the Senate amendments to H.R. 5278, clearing this proposal for the President's signature.

The bill authorizes the Secretary of the Interior to conduct feasibility investigations of numerous potential water resource projects. The projects are to be studied for a variety of reasons, including hydroelectric energy production, waste water management, water quality, salinity control, water storage, and wind-hydro development.

Of particular interest of those of us on the north coast of California is the enlargement of Shasta Dam. If as a result of the feasibility study, the project proves beneficial from an economic, environmental, and engineering perspective, it could set the stage for meeting a number of water requirements in California. Enlargement of Shasta Lake, possibly up to three or four times its present size, is one of the possibilities available for increasing future water and hydroelectric power supplies including possible increased flows down the Trinity River for enhancement of the fishery resources and habitat in both the Trinity and Klamath Rivers.

Just yesterday, the House passed the Salmon and Steelhead Resources Conservation Act, H.R. 6959, which contains a provision for establishment of a Klamath River Committee to develop a salmon and steelhead management and enhancement plan for the Klamath River drainage. Authorization of the enlargement of Shasta Dam would be yet one more step in our efforts to address the serious fishery and water supply problems in this area.

The legislation also authorizes the Secretary of the Interior to enter into new negotiated concession agreements with present concessionaires at Lake Berryessa and directs that all permanent facilities placed by the concessionaires in the seven resorts at Lake Berryessa shall be considered the property of the respective current concessionaires. Further, any permanent additions or modifications to these facilities by the concessionaires shall remain the property of said concessionaires; however, at the option of the Secretary of the Interior, the United States may require that the permanent facilities not be removed from the concession areas, and instead, pay fair value for the permanent facilities or, if the new concessionaire assumes operation of the concession, require that new concessionaire to pay fair value for the permanent facilities.

Enactment of the Lake Berryessa provisions are the final step in a series of efforts which began with our inclusion of the initial language in the legislation by the Interior and Insular Affairs Committee, and approval by the House; followed by final perfecting of the provisions in the Senate Energy and Natural Resources Committee at our request, and adoption by the Senate.

The new statutory language is necessary due to the unique history of the project and the unusual circumstances which have developed there. Responsibility for management of the recreational facilities at the lake have changed hands several times, leaving the concessionaires in a tenuous position with respect to their property rights and contract obligations. This language, once enacted, will clarify the powers of the Water and Power Resources Service—the old Bureau of Reclamation—as well as the role of the concessionaires.

I commend my colleagues for their willingness to expedite final action on our bill. The shortage of time prior to our adjournment has made it particularly important that we act promptly on the measure and clear it for the President's signature.●

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

□ 1020

GENERAL LEAVE

Mr. KAZEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

AUTHORIZING APPROPRIATIONS FOR TITLE II OF MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT FOR FISCAL YEAR 1980

Mr. STUDDS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1123) to amend section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations for title II of such act for fiscal year 1980, with a Senate amendment to the House amendment thereto, and concur in the Senate amendment to the House amendment.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendment, as follows:

Page 3, of the House engrossed amendment, after line 2, insert:

SEC. 3. Section 202(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1442(a)) is amended by inserting the following immediately after the first sentence thereof: "These responsibilities shall include the scientific assessment of damages to the natural resources from spills of petroleum or petroleum products.".

Mr. STUDDS (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment to the House amendment be dispensed with, and it be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. PRITCHARD. Mr. Speaker, reserving the right to object, I will not object, but I wonder if the committee chairman could explain what we are doing here.

Mr. STUDDS. Mr. Speaker, will the gentleman yield?

Mr. PRITCHARD. I do yield.

Mr. STUDDS. Mr. Speaker, I say to the gentleman that the House amended and passed S. 1123 on May 13, 1980. The Senate concurred with the House amendments and offered an additional amendment which passed on September 9, 1980. S. 1123 contains provisions that amend title II of the Marine Protection, Research, and Sanctuaries Act, more commonly known as the Ocean Dumping Act.

Title II primarily authorizes appropriations for the programs of the National Oceanic and Atmospheric Administration (NOAA) which determines the effects of pollution in the marine environment. Within this title, the Secretary of Commerce is specifically directed to conduct research into long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. The Senate-passed amendment expands those responsibilities to include scientific assessment of damages to the marine ecosystems from oil spills.

The Senate Commerce, Science, and Transportation Committee recommended the amendment to relieve confusion and delays in assessing oil spill damage that was evident during the Campeche spill of last summer. The committee intended that NOAA coordinate this effort and establish a mechanism to incorporate damage assessment as a routine part of the Government's response to major spills.

I urge my colleagues to support S. 1123 and the vital Senate amendment which provides further protection for our coastal and marine environments.

Mr. PRITCHARD. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts (Mr. STUDDS) that the reading of the Senate amendment to the House amendment be dispensed with, and that it be printed in the RECORD?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Massachusetts?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. STUDDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

CONFERENCE REPORT ON H.R. 7590, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

Mr. BEVILL. Mr. Speaker, pursuant to the unanimous-consent agreement of Tuesday, September 23, 1980, I call up the conference report on the bill (H.R. 7590) making appropriations for Energy and Water Development for the fiscal year ending September 30, 1981, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The SPEAKER. The Clerk will read the statement.

(For conference report and statement, see proceedings of the House of September 22, 1980.)

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The SPEAKER. The gentleman from Alabama (Mr. BEVILL) will be recognized for 30 minutes, and the gentleman from Indiana (Mr. MYERS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. BEVILL).

Mr. BEVILL. Mr. Speaker, I yield myself such time as I may use.

Mr. Speaker, I am pleased to present the conference report on the fiscal year 1981 energy and water development appropriation bill for your favorable consideration. Our colleagues will recall that debate on this bill occurred in the House on June 24 and 25. The bill was passed by substantial margins in both Houses: 334 to 87 in the House on June 25 and 83 to 9 in the other body on September 10.

Mr. Speaker, our conference committee meeting was held last Monday. I wish to compliment our friends from the other body, particularly the Senator from Louisiana, Mr. JOHNSTON, the chairman of the Senate Subcommittee, and the Senator from Oregon, Mr. HATFIELD, the ranking minority member, for the fine spirit of compromise displayed in the conference meeting. I also wish to thank my colleagues, the House conferees, for their support and their valuable contributions during the conference deliberations.

Now I would like to comment on various aspects of the conference agreement.

Mr. Speaker, the bill passed by the House contained $11,955,113,000 in new budget obligational authority. As the bill passed the Senate, it contained $12,064,270,163.

For the various agencies and program under the jurisdiction of the Energy and Water Development Subcommittee, the committee of conference recommends $12,080,831,663 in new budget authority. This amount is $92,720,663 over the President's budget. The conference agreement is $400,157,663 more than 1980 appropriations to date, $125,718,663 more than the House-passed bill and $16,561,500 more than the Senate-passed bill.

Because of the ceilings imposed by the budget resolution and the budget amendments submitted by the administration after House consideration of the bill, the Senate made more changes to the House bill than they had in many years. Your House conferees did their best to maintain the House position. However, to bring back a conference report that is within the budget target for the energy and water development programs, a great many items had to be compromised.

We would like more money for energy, for the weapons program, and for the water projects. But, if we have to stay under the budget allocation, as required by the reconciliation provision of the budget resolution, we could not provide all of the funds for all of the programs and projects to the extent we would have liked.

Mr. Speaker, I am pleased to advise the House that the conference agreement is $3,168,337 under the House budget allocation of $12,084,000,000.

The conference agreement will provide $7,220,572,000 to the Department of Energy for various research programs and other activities, including $3,225,529,000 for various energy supply, research and development programs; $504,415,000 is for general science and research activities; and $3,490,628,000 is for atomic energy defense activities.

The energy accounts include $598,836,000 for solar energy development and applications, nearly the same as the House-passed bill. In addition the bill includes $108,158,000 in solar related development and demonstrations in other activities and accounts. Altogether, the bill provides $706,994,000 for solar energy programs, which along with funds for hydroelectric construction and other Federal programs would direct nearly $1,800,000,000 in Federal funding to the development and use of solar energy in 1981.

The bill also includes $156,021,000 for geothermal energy; $469,300,000 for the breeder reactors program and $394,117,000 for magnetic fusion energy.

Mr. Speaker, I think the compromises reached with the Senate clearly preserved the priorities and directions of the bill as passed by the House. In fact, substantially all of the House committee's recommendations and the actions that were taken on the floor amendments to title I were sustained in the conference.

Mr. Speaker, we are bringing back in technical disagreement a Senate amendment to provide $10,000,000 for preliminary activities relating to the construction or acquisition of away from reactor spent fuel storage. The Senate passed a nuclear waste bill on July 30 which authorized this program. There are three nuclear waste measures currently pending before the House, along with the several fiscal year 1981 authorization measures for the Department of Energy. On the other hand, there appears to be some urgency to initiate this program. Thus, in the agreement with the Senate, we sought to preserve the House legislative options by directing that these funds be confined to preliminary activities and that no final contracts or agreements be entered into without further expressed congressional approval.

Mr. Speaker, the conference agreement contains $2,984,134,000 in title II for the Army Corps of Engineers. This is $124,537,000 less than the bill as passed by the House and $57,442,000 more than the Senate-passed bill. These funds will finance 10 new and 237 continuing studies, 5 new and 57 continuing planning items and 243 continuing construction projects. The bill contains no new construction starts for either the Corps of Engineers or the Water and Power Resources Service.

For title III, the Water and Power Resources Service, the conferees recommend a total of $771,461,000, which is $43,229,000 less than the House-passed bill and $18,417,000 less than the Senate-passed bill. This will fund 7 new and 44 continuing studies, 3 continuing planning items and 79 continuing construction projects; 3 new loans and 12 continuing loans are included in the bill.

In my view, the conference agreement provides for a financially prudent and environmentally sound water resources development program.

Mr. Speaker, the conference agreement includes $1,104,604,000 for eight independent agencies and commissions in title IV, including $342,492,000 for the Appalachian regional development program, $447,520,000 for the Nuclear Regulatory Commission, $287,563,000 for the Tennessee Valley Authority, and $24,777,000 for the Water Resources Council.

Mr. Speaker, with regard to the Water Resources Council, I should remind the Members that this bill contained no funds for the Council when it was considered by the House as no legislation had been reported in the House authorizing Council activities in fiscal year 1981. The other body has now reported legislation (S. 1639) authorizing the Council programs for fiscal year 1981.

Mr. Speaker, title V of the bill contains $60,663 for payment to the widow of our deceased colleague, Harold Runnels of New Mexico.

I will insert a table in the RECORD at this point which summarizes the financial aspects of the conference agreement:

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY

[Fiscal years]

	New budget authority					Conference compared with—			
	1980 enacted	1981 estimates	House, 1981	Senate, 1981	Conference, 1981	1980 enacted	1981 estimate	House bill	Senate bill
TITLE I—DEPARTMENT OF ENERGY									
Operating Expenses									
Energy supply, research and development activities	$2,233,923,000	$2,249,904,000	$2,268,754,000	$2,262,575,000	$2,268,754,000	+$34,831,000	+$18,850,000		+$6,179,000
Rescission	−44,350,000					+44,350,000			
Solar energy research and development				6,000,000					−6,000,000
Uranium supply and enrichment activities	246,123,000	27,455,000	27,455,000	29,455,000	29,455,000	−216,668,000	+2,000,000	+$2,000,000	
Reclassification of revenues		−61,515,000					+61,515,000		
Rescission	−4,000,000					+4,000,000			

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY—Continued

[Fiscal years]

	New budget authority					Conference compared with—			
	1980 enacted	1981 estimates	House, 1981	Senate, 1981	Conference, 1981	1980 enacted	1981 estimate	House bill	Senate bill
General science and research activities	336,900,000	376,695,000	357,515,000	382,015,000	378,015,000	+41,115,000	+1,320,000	+10,500,000	−4,0000,000
Rescission	−2,000,000					+2,000,000			
Atomic energy defense activities	2,402,547,000	2,895,123,000	2,756,023,000	2,890,623,500	2,890,623,000	+488,076,000	−4,500,000	+134,600,000	−500
Rescission	−6,400,000					+6,400,000			
Departmental administration:									
Office of the Secretary	3,705,000	4,892,000	4,872,000		4,892,000	+1,187,000		+20,000	+4,892,000
General administration	224,574,000	280,664,000	204,305,000	213,176,000	206,057,000	−18,517,000	−74,607,000	+1,752,000	−7,119,000
Rescission	−31,725,000					+31,725,000			
Plant and Capital Equipment									
Energy supply, research and development activities	448,478,000	409,547,000	330,837,000	386,337,000	383,287,000	−65,191,000	−26,260,000	+54,450,000	−3,050,000
Rescission	−5,150,000					+5,150,000			
Small community solar demonstration project				3,750,000					−3,750,000
Uranium supply and enrichment activities	4,000,000	1,300,000	1,300,000	2,300,000	2,300,000	−1,700,000	+1,000,000	+1,000,000	
General science and research activities	135,000,000	138,200,000	120,100,000	132,200,000	126,400,000	−8,600,000	−11,800,000	+6,300,000	−5,800,000
Atomic energy defense activities	594,849,000	619,905,000	533,205,000	618,205,000	600,005,000	+5,156,000	−19,900,000	+66,800,000	−18,200,000
Departmental administration	37,565,000	67,165,000	38,065,000	38,065,000	38,065,000	+500,000	−29,100,000		
Power Marketing Administrations									
Operation and maintenance:									
Alaska Power Administration	2,660,000	3,069,000	3,069,000	3,069,000	3,069,000	+409,000			
Southeastern Power Administration	1,400,000	1,552,000	1,552,000	1,552,000	1,552,000	+152,000			
Southwestern Power Administration	32,180,000	28,208,000	28,208,000	28,208,000	28,208,000	−3,972,000			
Construction, rehabilitation, operation, and maintenance, Western Area Power Administration	122,800,000	138,502,000	138,502,000	138,502,000	138,502,000	+15,702,000			
Colorado River Basins power marketing fund, Western Area Power Administration	5,152,000	3,548,000	3,548,000	3,548,000	3,548,000	−1,604,000			
Emergency fund, Western Area Power Administration	200,000	200,000	200,000	200,000	200,000				
Federal Energy Regulatory Commission	68,387,000	76,374,000	72,949,000	74,374,000	74,374,000	+5,987,000	−2,000,000	+1,425,000	
Geothermal resources development fund	181,000	1,284,000	1,284,000	1,284,000	1,284,000	+1,103,000			
Reappropriation		41,982,000	41,982,000	41,982,000	41,982,000	+41,982,000			
Total, title I, new budget (obligational) authority, Department of Energy	6,806,999,000	7,304,054,000	6,943,725,000	7,257,420,500	7,220,572,500	+413,573,000	−83,482,000	+276,847,000	−36,848,500
TITLE II—DEPARTMENT OF DEFENSE—CIVIL									
DEPARTMENT OF THE ARMY									
Corps of Engineers—Civil									
General investigations	142,145,000	127,518,000	140,238,000	133,367,000	134,013,000	−8,132,000	+6,495,000	−6,225,000	+646,000
Construction, general	1,660,966,000	1,522,726,000	1,657,095,000	1,534,703,000	1,585,742,000	−75,224,000	+63,016,000	−71,353,000	+51,039,000
Flood control, Mississippi River and tributaries	210,515,000	223,536,000	239,324,000	228,970,000	232,519,000	+22,004,000	+8,983,000	−6,805,000	+3,549,000
Operation and maintenance, general	942,100,000	878,379,000	951,259,000	900,397,000	902,605,000	−39,495,000	+24,226,000	−48,654,000	+2,208,000
Revolving fund	50,000,000	34,725,000	34,725,000	43,225,000	43,225,000	−6,775,000	+8,500,000	+8,500,000	
General expenses	76,800,000	81,030,000	81,030,000	81,030,000	81,030,000	+4,230,000			
Special recreation use fees	4,000,000	5,000,000	5,000,000	5,000,000	5,000,000	+1,000,000			
Flood control and coastal emergencies	170,000,000					−170,000,000			
Alaska hydroelectric power development fund (rescission)	−5,450,000					+5,450,000			
Total, title II, new budget (obligational) authority, Department of Defense—Civil	3,251,076,000	2,872,914,000	3,108,671,000	2,926,692,000	2,984,134,000	−266,942,000	+111,220,000	−124,537,000	+57,442,000
TITLE III—DEPARTMENT OF THE INTERIOR									
Water and Power Resources Service									
General investigations	34,451,000	37,825,000	40,079,000	36,946,000	38,629,000	+4,178,000	+804,000	−1,450,000	+1,683,000
Construction program	424,934,000	580,532,000	596,216,000	580,741,000	570,641,000	+145,707,000	−19,891,000	−25,575,000	−10,100,000
Operation and maintenance	101,353,000	114,117,000	114,117,000	111,117,000	101,117,000	−236,000	−13,000,000	−13,000,000	−10,000,000
Loan program	29,603,000	26,128,000	26,128,000	22,924,000	22,924,000	−6,679,000	−3,204,000	−3,204,000	
Rescission	−3,000,000					+3,000,000			
General administrative expenses	28,600,000	38,150,000	38,150,000	38,150,000	38,150,000	+9,550,000			
Total, title III, new budget (obligational) authority, Department of the Interior	615,941,000	806,752,000	814,690,000	789,878,000	771,461,000	+155,520,000	−35,291,000	−43,229,000	−18,417,000
TITLE IV—INDEPENDENT AGENCIES									
Appalachian Regional Commission: Salaries and expenses	3,105,000	3,192,000	3,192,000	3,192,000	3,192,000	+87,000			
Appalachian regional development programs (funds appropriated to the President)	356,500,000	354,460,000	339,300,000	329,300,000	339,300,000	−17,200,000	−15,160,000		+10,000,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY—Continued

[Fiscal years]

	New budget authority					Conference compared with—			
	1980 enacted	1981 estimates	House, 1981	Senate, 1981	Conference, 1981	1980 enacted	1981 estimate	House bill	Senate bill
Delaware River Basin Commission:									
Salaries and expenses	111,000	116,000	116,000	116,000	116,000	+5,000			
Contribution to Delaware River Basin Commission	257,000	269,000	269,000	269,000	269,000	+12,000			
Total, Delaware River Basin Commission	368,000	385,000	385,000	385,000	385,000	+17,000			
Interstate Commission on the Potomac River Basin: Contribution to Interstate Commission on the Potomac River Basin	55,000	55,000	55,000	55,000	55,000				
Nuclear Regulatory Commission: Salaries and expenses	400,100,000	466,235,000	437,220,000	452,520,000	447,520,000	+47,420,000	−18,715,000	+10,300,000	−5,000,000
Nuclear Safety Oversight Commission		1,500,000		1,500,000	1,500,000	+1,500,000		+1,500,000	
Energy Mobilization Board		9,500,000					−9,500,000		
Susquehanna River Basin Commission:									
Salaries and expenses	107,000	112,000	112,000	112,000	112,000	+5,000			
Contribution to Susquehanna River Basin Commission	210,000	200,000	200,000	200,000	200,000	−10,000			
Total, Susquehanna River Basin Commission	317,000	312,000	312,000	312,000	312,000	−5,000			
Tennessee Valley Authority:									
Payment to TVA fund	223,030,000	132,500,000	290,563,000	269,563,000	269,563,000	+46,533,000	+137,063,000	−21,000,000	
Columbia Dam and Reservoir			17,000,000	18,000,000	18,000,000	+18,000,000	+18,000,000	+1,000,000	
Total, Tennessee Valley Authority	223,030,000	132,500,000	307,563,000	287,563,000	287,563,000	+64,533,000	+155,063,000	−20,000,000	
Water Resources Council: Water resources planning	34,614,000	36,252,000		32,777,000	24,777,000	−9,837,000	−11,475,000	+24,777,000	−8,000,000
Rescission	−11,431,000					+11,431,000			
Total, title IV, new budget (obligational) authority, Independent Agencies	1,006,658,000	1,004,391,000	1,088,027,000	1,107,604,000	1,104,604,000	+97,946,000	+100,213,000	+16,577,000	−3,000,000
TITLE V—GENERAL PROVISIONS									
Sec. 507—Reduction for consultant services				−17,385,000					+17,385,000
Sec. 508—Legislative Branch; House of Representatives payments to widows of deceased Members				60,663	60,663	+60,663	+60,663	+60,663	
Total, titles I, II, III, IV and V:									
New budget (obligational) authority	11,680,674,000	11,988,111,000	11,955,113,000	12,064,720,163	12,080,831,663	+40,157,663	+92,720,663	+125,718,663	+16,561,500
Appropriations	11,794,180,000	11,946,129,000	11,913,131,000	12,022,288,163	12,038,849,663	+244,669,663	+92,720,663	+125,718,663	+16,561,500
Reappropriations		41,982,000	41,982,000	41,982,000	41,982,000	+41,982,000			
Rescissions	−113,506,000					+113,506,000			

Mr. FAZIO. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. Yes; I would be pleased to yield to my good friend and member of the subcommittee, the gentleman from California (Mr. FAZIO). He played a very important role in the conference in restoring money for solar energy. The gentleman led the fight to get it restored. I commend the gentleman and I will yield to him.

Mr. FAZIO. Mr. Speaker, I thank my chairman for yielding.

I am here simply to thank the gentleman from Alabama (Mr. BEVILL) and the gentleman from Indiana (Mr. MYERS) for their acquiescence and support of the House position on this item.

I think the fairness of the gentleman from Alabama and his equity should be remembered. I think the Members of the House in general should be aware of it, because when we vote on this conference report I hope those who were so strongly in support of the Fuqua-Markey amendment will be in strong support of this conference report, because the gentleman has, I think, fairly upheld the House position.

I am very pleased to see the additional $20.2 million for biomass, alcohol fuels, both passive and active solar photovoltaics and these other approaches, one of many, I realize, but I think a significant approach to energy independence.

I simply want to congratulate the gentleman from Alabama for his fair and objective approach in the way he handled this in the conference report. I am personally very gratified.

□ 1030

Mr. BEVILL. I thank the gentleman. We on the committee certainly appreciate the good work the gentleman is doing and his dedication to resolving our energy crisis.

At this time I would like to yield to my colleague from Indiana (Mr. MYERS) to make his opening statement.

Mr. MYERS of Indiana. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the chairman of the subcommittee, the gentleman from Alabama (Mr. BEVILL) has presented the bill and the conference report very accurately.

It has some highlights. In title I, the Department of Energy, the conference report is $276,847,000 higher than the House bill but $200 million of this is for the defense requirements which have come along since we offered the bill in the House. An increase of $52,450,000 is in plant and capital equipment for the energy supply and research and development activities.

In title II, which is the Corps of Engineers section of our bill, this conference report is $124,537,000 less than the House bill.

In title III, which is the water and power resources service, the conference report again is $43,229,000 less than the House bill. The total water resource development funding in the conference report is $167,766,000 less than the House bill, and $97 million of the decrease is in construction money.

In the independent agencies in title IV, the Nuclear Regulatory Commission, the conference report is $10,300,000 higher than the House bill and provides some additional people for investigations and licensing. In the TVA we reduced from the House bill in the conference report by $21 million.

All of these moneys could have been spent this year possibly, but in an effort to slow down the expenditures somewhat and try to slow down inflation, we did in the conference reduce it this much.

Although the bill is larger, as the chairman has said, than when it left the House, there have been some changes in the meantime and we are not over the House budget. We are within the limits.

Everything in here is sound. There are a few projects which we in the House felt were appropriate to be funded this year. We did fund them, but there were differences in judgment with the other body necessitating that we do make some compromises. We did struggle to keep some projects in that we felt were most worthy of support. But naturally a conference is a compromise.

There is one exception that three of us excepted on, and this is the project which has been around for as long as many of us have been in this body, and that is the Dickey-Lincoln Reservoir in Maine. We did take exception, because there seems to be a loss of interest from the membership in this body. The two Members from Maine both are opposed to it. In the other body, the two Members from Maine are split. The local government vacillates; administration seems to be for it and the next one is not.

But we did put language in the bill that while we are appropriating $795,000 again for more study and planning, we expect the Corps of Engineers to use this money as a final appropriation and make some recommendation so that we can make a final decision in this body either up or down early next year.

Mr. EDGAR. Mr. Speaker, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. Mr. Speaker, I have a couple of questions that I would like to ask the gentleman in reference to something he mentioned, so I can understand what was done in conference. The gentleman states the reluctantly he supported some funds for the Dickey-Lincoln Dam in Maine. I wonder if the gentleman is aware that in the House authorization bill this year that project was deauthorized because of the strong feeling that we have lost interest in that project.

Mr. MYERS of Indiana. The committee was very much aware of that and, of course, as the gentleman will remember, the money was not in the House bill when it left here. The other body disagreed, they had a vote on it, and they did put the money back in, $795,000. They were very adamant in the conference that they did want the money in and so it was a compromise. Yes, the committee was very much aware that the deauthorization had passed the House, but it was not passed in the other body.

Mr. EDGAR. If the gentleman will yield further, moving to another subject, does the gentleman know how much is in this bill for the Tennessee-Tombigbee Waterway for fiscal year 1981?

Mr. MYERS of Indiana. I think we should yield to the chairman of the subcommittee to answer that.

Mr. BEVILL. Mr. Speaker, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman.

Mr. BEVILL. Mr. Speaker, the House bill included $225 million for the Tennessee-Tombigbee project. The Senate reduced the amount to $208 million. We agreed in conference to $212 million.

Mr. EDGAR. The $212 million figure for the Tennessee-Tombigbee Waterway is a reduction over what the House had indicated but compared with other projects, it is a significant amount of money, nonetheless. I think it is the only project that is funded above $100 million.

I was interested in the fact that $212 million is going to be spent in construction but, as I study the conference report, and the gentleman can help me on this, I was struck by the fact that there is money also included in the bill for a Warrior-Tombigbee River study, which is $841,000. Is that correct?

Mr. MYERS of Indiana. I believe that is accurate, yes.

Mr. EDGAR. If I am correct, the administration requested $391,000 for this study. I also understand that this study is to be done on the Lower Tombigbee River south of Demopolis. Is that correct?

Mr. MYERS of Indiana. This was, of course, debated considerably when we considered the bill in the House originally, if the gentleman will recall. I think the gentleman can go back to the RECORD and find what was debated at that time.

□ 1040

I cannot commit what the corps and this particular study will do.

Mr. EDGAR. If the gentleman will yield just for one more point. My point is that on the House floor, chairman after chairman, Member after Member have said that they had little or no intention of moving below Demopolis, Ala. Yet here in the conference report not only are we including in a study the Lower Tombigbee, but we are accelerating it by twice as much as the administration has requested, and I just wanted to point that out to the House.

Mr. MYERS of Indiana. I thank the gentleman for his observations.

Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. I thank the gentleman for yielding. I want to express my appreciation to the gentleman from Alabama (Mr. BEVILL), the chairman of the subcommittee, and the gentleman from Indiana (Mr. MYERS), our ranking minority member, for the consideration given to a number of projects included in the First District of Maryland. I also wanted to confirm my understanding as expressed to me by staff that in the deliberations in the conference committee the $700,000 which were included in the House bill, and I believe the other body's bill, for the Rock Hall, Md., project still remain as part of the funding in this bill; is that correct?

Mr. MYERS of Indiana. If the gentleman will yield, that is correct, and I want to say something about the gentleman from Maryland (Mr. BAUMAN). He has been a strong advocate of this for the last 3 years. Because of his insistence, we have put this very worthy project both in the House as well as in the Senate bill. It is in the bill, yes.

Mr. BAUMAN. I want to thank the gentleman for that. I want to congratulate both of the gentlemen for having achieved a feat that may stand alone in this session of the Congress and that is leading a Subcommittee on Appropriations that has actually had appropriations bills enacted into law in this session. That may stand alone itself in the annals of current history, and the two gentlemen deserve some credit for achieving that. I thank the gentleman.

Mr. BEVILL. I now yield as much time as he may consume to the distinguished chairman of the House Committee on Appropriations, the gentleman from Mississippi (Mr. WHITTEN).

Mr. WHITTEN. Mr. Speaker, I wish to commend the gentleman from Alabama (Mr. BEVILL), the gentleman from Indiana (Mr. MYERS), and all members of the subcommittee for their efforts in bringing forth this conference report. They have listened to witnesses for week after week with an open mind and with a desire to be helpful. I am particularly pleased to have been on this subcommittee and to have seen the many changes that have taken place.

As we look around the world at countries like China, India, and other underdeveloped countries they do not have a chance to get their economy straightened out because they did not have the foresight to protect and develop their own country's natural resources. It is hard for me to understand the attitude of some of our people who think that we can go back to conditions that existed many years ago, that we can afford to risk the dust bowls, that we can afford to let our rivers and harbors go in disrepair. Truly I believe that with all the problems we have today it becomes more imperative that we develop and protect the land, which is our real wealth.

I deplore to see many elements of the news media attack any efforts to spend money productively where you end up with a richer country, while at the same time advocate programs for which we get no continuing returns. But I think the whole country is indebted to the gentleman from Alabama (Mr. BEVILL), the gentleman from Indiana (Mr. MYERS), and each member of this subcommittee, because under very trying circumstances they are trying to make the American people look after themselves and their country.

PROTECT OUR NATION'S RESOURCES

Mr. Speaker, the conference report before us today provides funding to look after the welfare of the whole country, recognizing the fact that development of our natural resources is in our national interest.

Mr. Speaker, I am proud to have had a part in protecting and developing our country over the years. Twenty-eight times out of 28, we have overridden Presidential recommendations that would have hindered our efforts to guarantee the protection of our soil, for forestry, for flood control, for rivers and harbors, including harbor projects for watershed protection and flood protection, for water and sewer and housing loans in rural areas and cities under 20,000 population.

I have frequently said, the greater our financial problems, the more imperative it is that we look after our own country's natural resources.

PROJECTS INCLUDED

My able colleagues and friends, Congressman TOM BEVILL of Alabama and Congressman JOHN MYERS of Indiana, have covered many of the projects of interest to the Nation. I would therefore like to point out the benefits to my area, which in most cases are to help the people of my State benefit from projects which were authorized many years ago. The report before you provides the following:

TWENTY MILE CREEK

Provision was made for slowing down the flow of water in Twenty Mile Creek which is resulting in bank caving in Tishomingo, Prentiss, and Itawamba Counties.

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES

The sum of $232,519,000 for flood control, repair, and maintenance.

The conference report provides the following language:

There is an urgent need to provide flood protection from the runoffs into the rivers and tributaries from the hill lands in the delta foothills area, Mississippi Recent floods have had a devastating impact on this area. Authority exists in the Yazoo Basin comprehensive study for the Corps of Engineers in cooperation with the Soil Conservation Service, the soil conservation districts, and the ASCS to investigate the feasibility of cooperatively storing floodwaters in the tributary basins above the foothills. Within available funds, the corps is directed to utilize such funds as are necessary to initiate such investigation.

The committee understands that the Corps of Engineers has studied a serious bank erosion problem on the Sunflower River at mile 175.8 in Coahoma County, Miss. However, the results of this study did not take cognizance of the serious effects of disruption of traffic, difficulty in obtaining suitable routes for mail delivery and school buses, and general disruption of the long standing social and economic makeup of the area. Accordingly, the corps is directed to proceed with an appropriate solution for correction of the erosion problem up to the maximum amount allowed within the section 14 emergency streambank program.

SARDIS LAKE

Clearing out rock and gravel in a 9-mile stretch below the reservoir so that water may be let out during nonfarming season.

GRENADA LAKE

Provides for protection of the town of Coffeeville during high water stages, and to assure a safe and healthy environment conducive to further growth of the town of Coffeeville.

Nonconnah Creek, Horn Lake Creek, including Cow Pen Creek, Mississippi and Tennessee, to complete the phase 1 study and submission of alternative plans.

Other Mississippi projects are Biloxi Bay in Harrison County; Mississippi Sound; Pascagoula Harbor; Pearl River Basin; Pascagoula River Basin; Sowashee Creek; and Tallahala Creek Lake.

Appalachian regional development programs a total of $339,300,000. For counties in my district this will fund highways; access roads; area development; health and child development; housing; natural resources and environment; and other special development programs.

Goodman Road, approximately $5,900,000 in Federal funds remain available with additional State funds for completion across Marshall County to intersect Highway 7.

TENNESSEE VALLEY AUTHORITY

For water resources development, $46,167,000.

For land, forest, and recreation resources development, $13,248,000.

For coal gasification demonstration plant, $150,000,000.

SOLAR TECHNOLOGY

The report provides the following language:

Solar development and demonstration projects—within the funds provided the committee expects the department's continued support of the cost-effective demonstration funds in previous appropriations to extend the benefits from these projects for the over-all development and use of solar energy in practical applications.

ADDITIONAL PROJECTS

Mr. Speaker, the conference report has made funds available for the Pearl River basin in the amount of $2,015,000 to complete the Pearl River basin, Mississippi study.

Under general construction, $660,000 is provided for the Belzoni Bridge—advance participation—and $450,000 for planning in Issaquena County.

Mr. Speaker, under permission to revise and extend my remarks, I would like to insert the following excerpts from the CONGRESSIONAL RECORD of June 18, 1980, made during the consideration of the supplemental appropriations bill, 1980:

Mr. WHITTEN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I hope I may have the attention of my colleague from the State of Washington. Our subcommittee had already reported the supplemental appropriation bill when a terrible tragedy hit the gentleman's State of Washington. We reintroduced the bill to try to meet the gentleman's needs out there. That is right and fair play.

Back through the years we realize that this is a big Nation that we have. I took part of the heat when the Bonneville Power Administration was authorized which made the Northwest one of the great sections of this country. It was federally built. It is a great asset.

I supported the St. Lawrence Seaway.

Let me say this. The argument for this amendment, if you will analyze it, actually works against the amendment. The proponents say they are not stopping the project. They are delaying it. We all know that the longer you delay any project, the more expensive it becomes. Not only if you delay it do you add to the cost, because of what is happening to the dollar, but you postpone the benefits derived from the use of coal.

I heard my colleague from Pennsylvania refer to interest rates. The administration a few years ago wanted to charge the current interest rates on cost but not use the same interest rate in determining the benefits in the same proportion in view of the change in the dollar value. Of course, that is ridiculous. If the costs increase, the benefits must increase also.

We are not talking about a rule of thumb by some technical person. Some 70 percent of the funds needed for the project have been committed, and if I accept the gentleman's figures, you have got to match the benefits of completing it against the cost of completing it; and the benefit-cost ratio is 2.5 to 1.

Let me repeat, it is stated here that what is being sought is delay, but not stoppage, which increases cost and postpones the day when the project will be available and will yield benefits. But let me tell you why this $58 million is in here. And I might add at this point that this bill is within the budget resolution adopted by the Congress. The contractors made firm contracts with the Government in which they estimated the cost of their fuel. The cost of fuel has gone up so fast that to keep from going broke they have to work as fast as they can before fuel goes up more. So the contractors are working rapidly. They are tied to a firm figure. If they do not work rapidly before costs go up more they will go out of business. All of us know that inflation was rampant early this year.

Let us see, if the gentleman has his way about delaying this project further, you not only put out of work some 3,200 employees now working, who will go under unemployment compensation, but many others who are not working on-site will also be affected.

So I say to you, I think that we should reject this amendment. Do not vote to delay the project. If anything, let us speed it up, keep it from costing more and start getting the benefits.

Let us keep in mind that what is involved here, is a slack water route north. When you go north, you go into the heart of the coal fields, and goodness knows, with all due deference to nuclear power, I wish we could all turn to coal. Let us not delay the time when that coal will be easier to get out of that biggest coal section in the United States.

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. WHITTEN. I yield to my colleague, the gentleman from Pennsylvania.

Mr. EDGAR Mr. Chairman, I thank the gentleman for yielding.

The gentleman in the well knows a great deal about this project; I just have two questions to ask the gentleman.

The CHAIRMAN pro tempore. The time of the gentleman from Mississippi has expired.

(At the request of Mr. Edgar, and by unanimous consent, Mr. Whitten was allowed to proceed for 2 additional minutes.)

Mr. EDGAR. Mr. Chairman, if the gentleman will yield further, just two quick questions.

Would the gentleman in the well agree that the construction of the Tennessee-Tombigbee Waterway north of Demopolis will give you a north-south corridor for moving eight tow barges; but that, in fact, if the Tennessee-Tombigbee Waterway is to be used below Demopolis, the green section of the map, that the corps will have to, as it has indicated in its aerial photographs, straighten out the lower Tennessee-Tombigbee Waterway in order to use the waterway for the kind of commerce that the gentleman has suggested.

Mr. WHITTEN. That could well be true, but that lower portion is not authorized, we are not seeking authorization, and we are not proposing funds for that. This bill provides funds to continue ongoing contracts to keep people working and to bring project benefits on line as scheduled, but may I say this, and I am trying to be frank about it. The Pacific Northwest area had more power than they needed for many, many years, but the area is actually short of power now.

I am sure that traffic patterns are not going to change overnight when you get the Tenn-Tom completed. It takes time for industry to rearrange that.

I am also convinced, seeing the development in the Pacific Northwest and seeing it

in the Northeast, that despite what some of the railroads may think, waterways do bring industry. We have a big FMC plant north of Tupelo that came there because of this waterway use that they could see in the future. It is going to generate activity where everybody will prosper, including the rest of the United States. Now, that has been the history of other projects we have constructed in this country, notably the McClellan-Kerr navigation project in Oklahoma and Arkansas, and the central Arizona project.

I would like to say here that at my request the committee appropriated the first $500,000 to start this project.

I would like to say to the gentleman about the bridges he referred to earlier, I would like to point out to him that under present conditions if it was being authorized today, you would provide for crossings. The bridges now require safety features and all these things that were not required earlier. If we have a water project initiated as of now, all these other things will be included to start with; so we did nothing except give fair treatment to these areas.

I say again, that while the gentleman did appear before the committee; but living as far away as the gentleman does, he does not have the viewpoint that I think is essential here.

The CHAIRMAN pro tempore. The time of the gentleman from Mississippi has again expired.

(At the request of Mr. BEVILL, and by unanimous consent, Mr. WHITTEN was allowed to proceed for 2 additional minutes.)

Mr. WHITTEN. Mr. Chairman, may I say again, everybody agrees that we are going to complete the project that is spoken of here today. If we are going to complete the Tennessee-Tombigbee Waterway, is it not wise to go ahead and get through with it as quickly as possible and get the benefits from it?

Is it not wise to reject this amendment in order to obtain the means of transporting this coal just as fast as we can?

Is it not wise to avoid the payment of unemployment compensation benefits to people who want to work?

So I say again, since we are committed and since construction has been underway for 8 or 9 years and since it has been approved by the Congress and most everybody agrees it should be completed, let us go ahead and complete it and not delay it further and create the very situation about which you complain.

Mr. EDGAR. Mr. Chairman, if the gentleman would yield further, I just have one additional question. I am not sure the gentleman answered my first question: but the second question is relating to the contractors. We committed in November last year $165 million for the project. Because the contractors wanted to accelerate their activity, we have administratively moved over almost $30 million more. Does not the gentleman in the well think that $194 million this year is sufficient money for those contractors to complete the significant section, so that we can at least stay within our budgetary constraints?

If the amendment is not adopted, does not the gentleman agree that almost $81 million more will be spent on this project than was authorized and appropriated by the gentleman from Alabama (Mr. BEVILL)?

Mr. WHITTEN. Mr. Chairman, may I say to the gentleman, he is right in his viewpoint, except that the money is within the ceilings established by the budget resolution. The project will provide jobs and it will prevent money from being spent on unemployment compensation. The project will cost more the longer you delay it and the benefits are going to be postponed the longer you delay it.

So I do not see any sound reason for slowing down the project.

The CHAIRMAN pro tempore. The time of the gentleman from Mississippi has again expired.

(By unanimous consent, Mr. WHITTEN was allowed to proceed for 1 additional minute.)

Mr. WHITTEN. Mr. Chairman, may I conclude by saying that the funds in the bill is the estimate given to us by the corps as to the minimum needed to fund ongoing contracts. Let us not delay this project which we all agree is going to be completed. Let us do it now and defeat the amendment.

* * * * *

Mr. WHITTEN. Mr. Chairman, will the gentleman yield?

Mr. FITHIAN. I certainly yield to my friend from Mississippi.

Mr. WHITTEN. May I say the act was passed in 1946, and at the time this came up, at my instance, if I may say so, I was a spokesman for quite a group. This is not a local project. The testimony shows that 23 States will be benefitted.

Mr. FITHIAN. I understand that.

Mr. WHITTEN. So while in 1946 there was one set of circumstances to qualify the project, by the time construction was started we were dealing with other projects in an entirely different way. As you know national projects such as the St. Lawrence Seaway, the Bonneville Power Administration, and others that served big areas were looked at under different criteria. What we did in this instance was to treat this project like we would treat another project under modern conditions.

The CHAIRMAN pro tempore. The time of the gentleman from Indiana has again expired.

(By unanimous consent, Mr. FITHIAN was allowed to proceed for 5 additional minutes.)

Mr. FITHIAN. I yield to the gentleman.

Mr. WHITTEN. What this did was to broaden this authority under the discretion given in the original act. The size of the canal was greatly changed. The bridges that are built now have to meet EPA standards, at the time Tenn-Tom was authorized they did not.

Mr. FITHIAN. I understand that.

Mr. WHITTEN. So in view of all of the different requirements which we have today and which we provide for in new projects, we had to provide for those requirements in this project to make it equal to those projects currently being authorized. That is the reason for this.

Mr. FITHIAN. I understand the gentleman's presentation. But the fundamental question still goes unanswered. The fundamental question is will the States of Mississippi and Alabama be able to meet their local share requirement. That is the fundamental question.

Mr. WHITTEN. Right now it is my understanding that the Mississippi State Highway Department has expended $58.8 million to date and committed itself to an additional $48 million for relocations to complete these bridges in the last year. But may I point out to the gentleman—and he is a very able Member of Congress—are we not talking about what ought to be done in his judgment? In my judgment, what we did is in line. But now we are talking about $58 million for the project. If the gentleman is right about this, and I do not think he is, but if he is right, is it not true that it would cost us more money by postponing the date of project completion? The amendment before us would slow the project down when costs are going up. That is what has happened to every project under construction.

Mr. FITHIAN. I respect the gentleman for his comments. I have no doubt about the outcome of this amendment. I have no doubt about the building of the Tombigbee. My concern here, as I said at the outset, is the principle involved, and that is when we go into a particular project, will the States or will not the States be required under the law to meet their legal responsibility for their share? That ought to be applied, I say to the gentleman from Mississippi (Mr. WHITTEN) to all aspects of government. We cannot just willy-nilly overlook that.

Mr. WHITTEN. I cannot argue with the gentleman about what he might wish to do to change the law in the future. I would suggest that is not a reason to postpone completion of this project and make it cost more and delay the project benefits.

Mr. FITHIAN. Let me quote for my good friend a report that was never issued—a report that was never issued—dealing with this. This report is from the Army Audit Agency—that is getting right down home—to the Corps of Engineers, where the Army Audit Agency said the projected non-Federal participation may not materialize. This was their judgment based on the latest data available. The States' participation may fall short as much as $170 million.

I come back to that point. Either we are or we are not going to require local sponsoring agencies to meet their legal responsibilities in this case. It seems to me that we are not going to require them to meet their legal responsibilities. In point of fact, if my figures are correct, the State of Mississippi has spent only $8 million to carry out its legally required duties. The gentleman says that they are going to spend another $40 million.

Mr. WHITTEN. They have spent far more than that as of now.

Mr. FITHIAN. Not $40 million or $50 million, but if the Army Audit Agency is correct, $170 million. That still leaves us far short.

I just would urge my friend, the gentleman from Alabama, and my friend the gentleman from Mississippi, and all members of the Committee on Appropriations, to give very, very careful attention to the fundamental principle that I believe is at stake—not in this amendment. I only speak to this amendment casually. I speak to the principle seriously, and that is to give serious consideration to the question of whether or not we should move forward on a project, accelerate it or do anything else, until and unless the States meet their legal responsibility. A local cosponsor of a bill meets his.

Mr. BEVILL. Mr. Chairman, will the gentleman yield?

Mr. FITHIAN. I yield to the gentleman from Alabama.

Mr. BEVILL. I thank the gentleman for yielding. I will answer his question right now. He asked whether there is presently a failure of local sponsors to meet the requirements of local cooperation on the Tennessee-Tombigbee project. The answer is no. There is no failure on the part of the local sponsors to meet their requirements.

I appreciate the gentleman is on a fishing expedition here, but the answer to his question is no.

Mr. FITHIAN. No, I am not on a fishing expedition. I reject that; I do not resent it, but I reject it for this reason. Let us be reasonable men and women here. If you have a project and you are going to appropriate Federal money to pay for the project, and then there was some one Federal program—and this is done so much through the Government: that is the reason we cannot balance the budget not just here but everywhere throughout the Government——

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. FITHIAN was allowed to proceed for 2 additional minutes.)

Mr. FITHIAN. If we say we are going to spend x number of Federal dollars on any project, and if we say under the law a State or local sponsor, whatever it is, a county,

is supposed to come up with 3 percent or 5 percent of that money, if that county then is allowed to take another Federal funding program, through whatever means, and divert it to meet the local responsibility, then reasonable men and women, whatever party or persuasion, would reject the notion that the State has met its responsibility.

So perhaps the gentleman from Alabama is correct that technically they have met their current rate of responsibility, erroneously—I think illegally. But beyond that the Army audit section says it is highly unlikely they will meet it.

What I would like to know from either of the gentlemen is, is it their best judgment—I am postulating the question—that the States involved, the local sponsors involved, will in fact under the law meet their requirement for local funding?

Mr. WHITTEN. If the gentleman will yield, I will give him some figures. As of June 1, 1980, the Alabama sponsor, the Tombigbee Valley Development Authority has spent approximately $17.5 million for relocations; $5,445,000 additionally has been committed by the local sponsor. In addition, the Tombigbee River Valley Waterway Management District, the local sponsor in the State of Mississippi expended approximately $58,800,000 and has committed an additional $47,946,000 for relocations in connection with the waterway. This is 78 percent of the total non-Federal cost estimate of $165 million for relocations. But the balance of the local share will be paid, I will tell the gentleman. I will say again, whatever we may work out regarding this matter—and I agree we have to—does not justify delaying its completion.

Mr. FITHIAN. I am not arguing that case. I am just saying all the information I have is that they have not met their responsibility.

Mr. WHITTEN. I do not want the gentleman to build up some reason to vote for this amendment.

Mr. MYERS of Indiana. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. CORCORAN).

Mr. CORCORAN. Mr. Speaker, I thank my colleague for yielding this time. The reason that I requested the time is in order to learn from the managers of the bill what the intent of the conferees is on the section dealing with interim spent fuel storage. I refer the chairman of the subcommittee and the ranking minority member of the subcommittee to page 23 of this conference report on H.R. 7590. In that particular section of the report the language reads:

Domestic Spent Fuel Storage: Acquisition of AFR Capacity. The conference allowance provides $10,000,000 to initiate preliminary activities and allow negotiations for acquisition of AFR's pursuant to the Nuclear Waste Policy Act (S. 2189) as passed by the Senate on July 30, 1980, or similar legislation as it may be enacted by the Congress.

My concern is in analyzing that particular sentence it would appear to me that the intent of the conferees is that in the event that the Senate bill S. 2189, or some comparable legislation here in the House would go from the stage of having passed the Senate to the stage of having passed the House, and then perhaps there might be some differences, and a conference committee would be organized to iron out those differences, and then ultimately after approval by both Houses of Congress the measure would find its way to the President and receive his approval, then the $10 million, to which there is reference here and for which there is authority, would be available to finance the provisions of that authorization measure. Am I correct in that understanding? Is this simply money that is there so that in the event the Congress and the President would agree on a nuclear waste policy measure, this money would be there to carry out the provisions of that legislation with reference to AFR's?

Mr. BEVILL. Mr. Speaker, will the gentleman yield?

Mr. CORCORAN. I will be happy to yield to the gentleman.

Mr. BEVILL. The gentleman is essentially correct. This $10 million is to start the preliminary work, to initiate negotiations, to start the environmental impact statements, to select a site, but no construction can be started until this Congress gives the permission to start it.

Mr. CORCORAN. Right, and that, furthermore, with respect even to the preliminary activities and the allowance of negotiations, that could only be undertaken in the event that the Congress would pass something like S. 2189 which, of course, as the gentleman well knows, has not been done yet.

Mr. BEVILL. This House has pending three pieces of legislation on this.

Mr. CORCORAN. Yes.

Mr. BEVILL. The Senate has acted on one measure. When the authorization is completed, then we will have some better guidance from the Congress. This subcommittee will support, of course, the legislation as approved by the Congress.

Mr. CORCORAN. I just want to say I congratulate the chairman of the subcommittee and the ranking minority member of the subcommittee who have worked with me on this point. As we started out, the House Appropriations measure allowed for "discussions" of this particular program that has been requested by the Department of Energy and President Carter. The Senate appropriations bill allowed for "negotiations." I think this particular compromise which ties it to the authorizing legislation which is yet to come from the Congress—and to receive hopefully this year the approval of the President—is the proper course to take. I want to congratulate and express my appreciation to both of these gentlemen for their consideration in this particular matter.

Mr. MYERS of Indiana. Will the gentleman yield?

Mr. CORCORAN. I yield to the gentleman.

Mr. MYERS of Indiana. I thank the gentleman for his comments. He has worked very closely with the committee, and the committee has tried to work very closely with him in his recommendations.

The second paragraph on page 23 on the interim spent fuel storage was put in at the gentleman's insistence. The gentleman did insist that we have this type of language to protect any interest he might have, and we did provide that it cannot be consummated without further expressed congressional approval. We put it at the gentleman's insistence, so I think this answers the question in the second paragraph.

Mr. CORCORAN. It certainly does. I want to reiterate my appreciation to the gentleman.

Mr. LUNDINE. Mr. Speaker, will the gentleman yield?

Mr. CORCORAN. I yield to the gentleman from New York.

Mr. LUNDINE. I appreciate the comments of the gentleman. I share them, and I think that I understand and have been assured here that unless there is an authorization for an AFR—away from reactor—storage program, this money cannot be used by the Department of Energy toward that objective. Is that the understanding of the gentleman?

Mr. CORCORAN. That is my understanding, and it has been confirmed here this morning.

Mr. LUNDINE. I thank the gentleman.

□ 1050

Mr. BEVILL. Mr. Speaker, I yield to my distinguished colleague and friend, the gentleman from North Carolina (Mr. MARTIN).

Mr. MARTIN. Mr. Speaker, I thank the gentleman for yielding.

I do have a question which I think will clarify remarks that the chairman of the subcommittee made earlier.

There were previous reports that there were a number of new unbudgeted construction projects. It is with pleasure that I understand the gentleman from Alabama has said there would be no new unbudgeted construction projects in this bill. I would be pleased if the gentleman would clarify the specific items so we could have that information with regard to the Tug Fork project in West Virginia. Would this mean this would not be new construction started on that project?

Mr. BEVILL. The gentleman is correct. I stated there are no new construction starts in this conference report. We had no new construction starts in our bill when it passed the House. There are no new construction starts added by the Senate.

The Tug Fork is not a new construction start.

The 1979 Appropriation Act contained $10 million for the Corps of Engineers for the Big Sandy River, Tug, and Levisa Forks for snagging, clearing, and so forth.

This was started in 1979 as I have pointed out to the gentleman, it is not a new construction start.

Mr. MARTIN. It is not new or is not construction?

Mr. BEVILL. It is not new.

Mr. MARTIN. There is $6 million, however, for that project in construction.

Mr. BEVILL. That is correct, but it is not new.

Mr. MARTIN. What about the Fall River Harbor project in Massachusetts, is that not construction? It is listed as $300,000 for construction that was not shown in the budget.

Mr. BEVILL. That is in the same category. That is a resumption. It is not new.

Mr. MARTIN. Would the same apply to the Placer Creek project in Idaho?

Mr. BEVILL. The gentleman is correct. There are no new construction starts in this bill. The projects the gentleman has named have been previously under construction.

Mr. MARTIN. I wanted to clarify that with the chairman.

There are two others if I may try the gentleman's patience a bit further. The

Freeport Harbor project in Texas and the Liberty Island project in New Jersey.

Mr. BEVILL. That is rather unique in that it allows them to use their own money. It was up to $10 million on one project and up to $1.5 million on another that they are allowed the use of their own money, but there is no assurance that Congress will ever fund it. I expect it will but there is no assurance of that and I have no way of knowing, of course.

Mr. MARTIN. We would have no objection to their using their own money for this project, certainly.

If the Congress were to later on authorize these projects, would there be a precedent for reimbursing them the money that had put into it locally? Would that be the intention of the committee?

Mr. BEVILL. If the Congress decides to do that, we would do it but we have no plans to do that.

Mr. MARTIN. Then the gentleman from Alabama has no intention of reimbursing them for their own money?

Mr. BEVILL. The gentleman is correct. That would be the will of the Congress, if that came before the Congress we would, of course, abide by what the Congress decides.

Mr. MARTIN. Mr. Speaker, I thank the gentleman for yielding on these points.

Mr. BEVILL. Mr. Speaker, I yield to the distinguished gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. I thank my colleague for yielding.

I am afraid I missed some of the dialog about the Tug Fork project in West Virginia.

As I understand it, this has not been authorized by the House; is that correct?

Mr. BEVILL. It has been passed as I understand it, by both Houses but no authorization bill has been signed. We appropriated money for this in 1979 and I would like to yield to the distinguished gentleman from Kentucky (Mr. PERKINS) who could comment on this, he is very interested in this project.

Mr. PERKINS. I thank the distinguished subcommittee chairman for yielding.

Mr. Speaker, may I say to the gentlewoman from New Jersey we have spent several million dollars on the Tug Fork, following the 1957 flood and the 1963 flood when Williamson, W. Va., and South Williamson, Ky., were practically destroyed. All of the communities on the Kentucky side were virtually destroyed, to the extent of several millions of dollars, we built some flood walls around Williamson and South Williamson. I do not recall the actual construction costs, but I think it was in the neighborhood of $1½ million.

Recently, Mr. Speaker, in the 1977 flood, again this whole area suffered damage running up to $50 million to $60 million.

Mr. Speaker, it is time that the Congress do something about this situation. We passed authorization legislation here in 1977 in the omnibus bill. It went over to the Senate in 1978 and they passed the bill late in the session of 1978. They sent it over here at a time when we did not have a quorum present. That is the necessity for another authorization now.

Mrs. FENWICK. I understand. I have a particular reason for these questions. As I understand it, the cost/benefit ratio is not in favor of this project.

Mr. Speaker, I have in my district a stream that repeatedly floods also and more important even than the property losses we lost six lives in 1973. I really think that if we are going to begin as we have in the House, I am happy to say, to allow the Corps of Engineers to take into account loss of life as well as damage to property, it is time we begin to consider this and not just rest these decisions on questions of property. The Greenbrook has flooded repeatedly. As my colleague knows, we have been trying to get some protection for that area. In the last flood which occurred in 1973, we lost six lives.

Mr. CLAUSEN. On the basis of the gentlewoman's persuasion, we incorporated into the authorization bill now pending in the Senate a provision that would permit the Corps of Engineers to start to address loss of life as a factor, an incremental factor in their methodology for evaluating projects and the development of an updated benefit-to-cost ratio criteria.

Mrs. FENWICK. I am sure that is true but here we are; we have property damage which is repeated, according to my distinguished colleague from Kentucky, who has given us a very clear picture of what those people have suffered repeatedly. My people, too, have suffered.

Mr. PERKINS. Mr. Speaker, will the gentlewoman yield?

Mrs. FENWICK. I yield to the gentleman from Kentucky.

Mr. PERKINS. Let me say to the gentlewoman that I know the gentleman from Alabama (Mr. BEVILL) and the gentleman from Mississippi (Mr. WHITTEN) and all of the Members of this Chamber would certainly like to come to the aid of the gentlewoman from New Jersey. We will help the gentlewoman in every way we possibly can in connection with the gentlewoman's project. We know it is a sound project and we would all like to help.

Mrs. FENWICK. I thank the gentleman for his remarks.

Mr. BEVILL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Pennsylvania (Mr. EDGAR).

Mr. EDGAR. My colleagues, most of the comments made about this particular conference report have been very positive and very complimentary. I, too, want to compliment the chairman for his effort to put as few new starts in this legislation as possible. We can quibble over the language on whether or not some of them are, in fact, restarts after long periods of delay and inactivity, but I think this bill does demonstrate a reduction of the new-start mania that we have had in previous bills.

I still have some major concerns in this legislation which I would like to share with the House so that for the record we can at least all understand what is happening here on a number of projects.

As I indicated earlier, the House authorizing committee wants to deauthorize the Dickey-Lincoln Dam in Maine and yet moneys are provided to complete a study on that particular project.

Second, after a great debate, the House came within 20 votes to terminate the funding for the Tennessee-Tombigbee Waterway. There has been great discussion over the last 6 months as to whether it makes sense to spend $1.9 billion to construct from Pickwick, Tenn., to Demopolis, Ala., a six-tow barge waterway paralleling the Mississippi River.

There were great assurances on the House floor that there was no intention by Members on both sides to have an additional $1 billion spent below Demopolis, even though I held up pictures of a snakelike lower Tombigbee River that would need extensive modifications and renovation.

□ 1100

If we do complete the Upper Tombigbee Waterway and bring those six tow barges down to Demopolis, there would be the necessity, as discussed by the Army Corps of Engineers when they appeared before the committee last January, to spend an additional billion dollars below Demopolis. Time after time people assured us that there would be no effort made to put that money into this legislation. And yet, when I look at the details, I discover that we have not only put money in for the Warrior-Tombigbee River study, but we have accelerated that funding from an administration request of $391,000 to $841,000.

Why do we have to accelerate the funding for the study? Why do we have to spend $212 million at a time of balancing the budget and fiscal conservatism in this country on one project? I searched this conference report, and I found that there was one project that was $99 million; all the rest were far below that figure. Yet here in this one project, not only are we spending $212 million of the taxpayers' money on a project that I believe is unworthy of our consideration, but we are also putting our toe in the water to spend an additional billion dollars of the taxpayers' money from Demopolis, Ala., to Mobile.

I think this conference report raises a number of questions. One other project in the bill that causes me great concern is the Columbia Dam. We freely and willingly accepted the Senate's provision of $18 million on the Columbia Dam, even though the benefit cost ratio was 0.8 to 1, even though the dam will produce no hydroelectric power, and even though construction work is not currently taking place on the site. There have been a number of reports and analyses that leave little merit for this kind of funding. Yet in a time of tight budgets we are willing to spend $18 million on the Columbia Dam, almost a million dollars on an accelerated study on the Lower Tombigbee, and $212 million on the regular Tombigbee Waterway construction.

I think there are flaws that I have not yet had the time to find within this conference report. I support the energy provisions in this bill. I support the chairman's acceptance of the solar en-

ergy parts, but I would hope that this House might study more carefully each of the water projects and develop a water policy based on merit.

Mr. MYERS of Indiana. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. CLAUSEN), a very important member of the authorizing committee.

Mr. CLAUSEN. Mr. Speaker, the Appropriations Committee of the House has done an exceptionally good job under the most difficult circumstances in attempting to advance this compromise conference report through the conference committee work with the Senate. I think that which they have presented deserves the support of the House.

There are some matters that I believe should be included, but in particular I want to compliment the chairman and the Members for their full-fledged and irrevocable commitment to the solar energy development program. They clearly have made history with their efforts, and they are deserving of all the recognition and commendation the House can give them.

I applaud the conference committee recommendation of increased funding for solar energy development and demonstration projects over previous years. I firmly believe that solar energy is one of the best budget investments we can make today. In addition to its well documented abilities, it is clear that expanded use of solar energy can make a significant contribution to our success in coping with the energy crisis which we now face.

I am very pleased and gratified with the conference agreement on the Senate report language regarding geothermal commercialization plans and small-scale hydroelectric development. If there is one energy resource—as of today yet underutilized—that could free us in part from our dependence on imported oil, it is geothermal. Most experts believe that within the next 20 years, there is the geological opportunity to supply 20,000 megawatts of generating capacity. That is equal to 700,000 barrels of oil a day or 8.5 percent of today's crude oil production in the United States.

Clearly the Nation faces some hard choices regarding its energy future. Without a deliberate and long-range energy policy based on facts and sound decisions, we could be facing an increased dependence on foreign oil and gas, skyrocketing electrical bills for the consumer, and serious repercussions to the national economy, including increased unemployment and spiraling inflation.

In this bill, the conference committee has continued and extended efforts toward a balanced budget and the need for fiscal restraint during the coming year. The changes which the committee has made to reestablish priorities which we in the Congress believe represent a sound investment in our natural resources are commendable and emphasize this Nation's most serious energy supply problem—imported petroleum. Dollars spent wisely and cautiously today to develop alternative energy technologies will increase the strength and wealth of our Nation.

The committee has given careful consideration to all the facts and details made available to them and I believe that the end product of their work is a balanced and responsive bill. I urge my colleagues to support its passage.

Mr. MYERS of Indiana. Mr. Speaker, I yield 3 minutes to the gentlewoman from Maine (Mrs. SNOWE).

Mrs. SNOWE. I thank the gentleman for yielding.

Mr. Speaker, I rise today to express my strong disappointment over the conferees' decision to reinstate $795,000 for the Dickey-Lincoln project. Apparently, it reflects acquiscence to the same old refrain, "Let's do some more studies."

Mr. Speaker, this project has been studied for the last 16 years here in the Congress. And what are the results of those studies? More studies.

And what are the results of those studies? The fact is that it produced an unfavorable benefit-cost ratio. It just appears to me in determining the water policy in the Congress, that we are determined to fund some of these programs in perpetuity. In addition, as the gentleman from Pennsylvania (Mr. EDGAR) mentioned, the Public Works Committee did, earlier this year, deauthorize the Dickey-Lincoln project.

It seems to me that if we are going to continue to bypass the jurisdictional committees on these very important matters, then we must totally disregard our entire efforts in trying to authorize or deauthorize these water projects. The consumption of taxpayers' money in this way, it seems to me, indicates total disregard and insensitivity of the manner in which we spend hard-earned taxpayers' money.

I am looking forward to the day that the Congress will desist in this approach, because the studies have been done continuously on the Dickey-Lincoln Dam and it has cost the taxpayers in excess of $10 million. I would like to add one more point. The fact is that in this Congress in the last 16 years, since the time the Dickey-Lincoln Dam was authorized here in the Congress, the Maine delegation in the past has been unanimous in its support until a number of studies produced unfavorable benefit-cost ratios.

I would like to at least indicate some of the points as to why I believe this project will have an adverse impact on the State of Maine, because this project is located in the northern part of my district.

Let us examine the benefit-cost ratio. As computed by the Corps of Engineers, it is 1.2–1, based on a discount rate of 6⅞ percent. This does not include the proposed wildlife mitigation plan, which will require the Federal Government to purchase an additional 112,000 acres to mitigate the effects of the impact on fish and wildlife in that area. In a recent economic analysis conducted by a professor at Dartmouth College, it showed that at an 8.5-percent discount rate, the American taxpayer would lose 33 cents out of every dollar invested in the project.

There exist energy alternatives in Maine, and I support them wholeheartedly. I am a great proponent of hydro potential in Maine. In fact, Maine certainly displays the strongest potential in that area in New England and for various alternatives. In fact, there are 1,400 existing dams in Maine that could be refurbished and retrofitted, that could supply more energy than the output of energy produced by Dickey-Lincoln. In terms of jobs, let us look at the employment benefit of the project. It would only create 68 permanent jobs. The earliest date, in fact, that this project could come on line if we started tomorrow would be 1988, and I doubt that it would be 1988 when we could complete this project at the minimal cost of a billion dollars, regardless of what the Corps of Engineers has estimated.

The SPEAKER pro tempore. The time of the gentlewoman from Maine has expired.

Mr. MYERS of Indiana. Mr. Speaker, I yield 2 additional minutes to the gentlewoman from Maine.

Mrs. SNOWE. The project, in addition to that, would destroy 278 miles of free-flowing rivers and streams and lakes. It would also displace 500,000 acres of land in northern Maine, of very valuable timberland and that is another subject in terms of wood as an alternative in Maine. In fact, if we continue to use wood as we are doing at this rate, by the year 1985 we could seven times displace the amount of oil displaced by the construction of the Dickey-Lincoln project.

The Dickey-Lincoln project, as I said, was authorized in 1964, and is continually being studied. In fact, I was visiting a newspaper office in the northern part of my region which would be affected by this dam, and they were indicating that their basement is full of reports of studies done on Dickey-Lincoln. It appears to me that the Congress has got to decide once and for all on this project and any other projects that seem to be lingering without final decision. Somehow, the Dickey-Lincoln Dam has political buoyancy. Maybe we will be funding it into oblivion; I do not know, but I know one thing, the facts speak for themselves. That is why I have reached the conclusion—the other Congressman from Maine, DAVID EMERY, has reached the conclusion; the other Senator has reached the conclusion, and many others have decided that we should abandon this project in favor of existing alternatives that are more timely and less costly and more productive.

Mr. EDGAR. Mr. Speaker, will the gentlewoman yield?

Mrs. SNOWE. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. Mr. Speaker, I would like to commend the gentlewoman on her statement on the Dickey-Lincoln project, and add that there was a majority vote recorded in the House authorizing committee that the Dickey-Lincoln Dam should be deauthorized and we should use that money for more worthy projects, perhaps throughout that region.

□ 1110

Mrs. SNOWE. Mr. Speaker, I want to thank the gentleman from Pennsylvania

(Mr. EDGAR) for his efforts in attempting to discontinue the Dickey-Lincoln project, and I am hopeful that the Congress will really give this serious consideration instead of spending a million dollars here and a million dollars there and continuing to fund this project and fund more and more studies of the project.

The SPEAKER pro tempore. The time of the gentlewoman from Maine (Mrs. SNOWE) has expired.

Mr. MYERS of Indiana. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the gentlewoman from Maine (Mrs. SNOWE) has been a very powerful spokesman against Dickey-Lincoln in this body. She, along with the other Member, the gentleman from Maine (Mr. EMERY), persuaded the committee to take the funds out before the bill passed the House. However, the other body was just as adamant and just as strongly in favor of placing the funds in. As I said earlier, we made every attempt in the conference committee to try to take these funds out.

If the Members will turn to page 51 of the conference report, they will find that we have language in there that, I hope, will finally resolve this Dickey-Lincoln Reservoir. I have been in this body for 14 years, and every year this project comes up for debate. Right in the middle of page 51 of the conference report, under the heading, "Construction, General," we find this language:

> The Committee of Conference has agreed that the Corps of Engineers should finish planning for the Dickey-Lincoln School Lakes, Maine project in fiscal year 1981.

Mr. Speaker, with that language, we can have another vote up or down in the future. I completely understand why the gentlewoman from Maine is concerned about this, since it did pass this body to be deauthorized earlier this year, but I think the gentlewoman is aware that the legislation is still in the Senate and has not been acted on.

Mr. Speaker, I yield 5 minutes to the ranking minority member of the committee, the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I am severely disappointed that this conference report on the energy and water appropriations bill for fiscal year 1981 includes further funding for the Dickey-Lincoln School Lakes Dam project in Maine.

I had hoped that the House position eliminating the $795,000 requested by the administration for further planning might prevail. I want to thank the ranking minority member of the subcommittee (Mr. MYERS) and the gentlelady from Nebraska (Mrs. SMITH) for the support they gave me in the unsuccessful effort to sustain the House position.

Mr. Speaker, on February 5 of this year the House approved H.R. 4788, the omnibus water resources authorization bill which included a provision to deauthorize the Dickey-Lincoln project. On June 25, the House gave its approval to H.R. 7590 making appropriations for energy and water development in fiscal year 1981 which did not provide any funds for this project in fiscal year 1981. Nothing has changed since these House actions to warrant the expenditure of any additional taxpayer dollars on this project.

The proposed Dickey-Lincoln project is an example of how not to go about meeting our energy needs. The severe and irreversible environmental consequences of this project more than offset its marginal economic and energy value.

Mr. Speaker, this project would cost in excess of $1 billion and flood 55 miles of the largest remaining free flowing wilderness river in the Northeast—the St. Johns—in the process destroying over 89,000 acres of virgin timberland and endangering hundreds of fish and animal species.

And all this destruction to allow construction of a dam to provide 2½ hours of peak power generation a day.

Yes, the American people are looking to us, their elected Representatives, to find solutions to our energy needs. And yes, this proposed dam project would produce energy. But the fact that this is an energy project is not sufficient in my mind to justify it regardless of cost, and environmental impact. I believe that they will consume more energy in building this dam than it will produce.

Reasonable energy-producing alternatives to the proposed Dickey-Lincoln project exist—alternatives that promise to produce as much power without the irreversible damages to the land that construction of the proposed Dickey-Lincoln Dam would cause. These alternatives which include a combination of solar, wood, resource recovery, and smaller site hydropower are not as dramatic as a dam that would be as large as Egypt's famous Answan Dam but their potential has been studied and agreed on and they can be employed at far less expense to the taxpayer.

Mr. Speaker, we cannot afford to further waste taxpayers' dollars on such an undeserving project as the proposed Dickey-Lincoln School Lakes project.

Mrs. SNOWE. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentlewoman from Maine.

Mrs. SNOWE. Mr. Speaker, I want to acknowledge the efforts the gentleman from Massachusetts (Mr. CONTE) has made on behalf of our position on the Dickey-Lincoln project in order to abandon the project.

The gentleman has outlined very well the problems that face us if we do construct that project, and he has pointed out in fact that it is not a suitable energy alternative. If we look at it regionally, we find that this would only increase New England's capacity by 1.1 percent. It is certainly not worthy or justifiable of construction from the standpoint of spending the taxpayers' money. This is a project costing many millions of dollars, as the gentleman has mentioned, and also there is the irreversible damage that would be done to the environment in that area.

Mr. Speaker, we have other alternatives that we can use that would produce more energy and accomplish the objective much quicker and for less money.

Mr. CONTE. Mr. Speaker, I want to thank the gentlewoman from Maine (Mrs. SNOWE) for her statement.

The SPEAKER pro tempore. The Chair will inform the Members that the gentleman from Indiana (Mr. MYERS) has 4 minutes remaining, and the gentleman from Alabama (Mr. BEVILL) has 5 minutes remaining.

The Chair recognizes the gentleman from Indiana (Mr. MYERS).

Mr. MYERS of Indiana. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, as has been said, this is a good conference report. I think it justifies an aye vote from all Members here.

There are some questions, of course, about the dollar figures, but I think it has been explained adequately why our bill is larger than it was when it passed the House originally. The conference figure is larger now, but much of that increase is in weapons, and I think most people recognize that we do have to improve our weapons system in this country.

We did significantly reduce the amount of money in the water projects. But this is a compromise, and that is really what a conference is all about.

Mr. Speaker, I strongly urge an aye vote for this conference report, and I yield back the balance of my time.

Mr. BEVILL. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, regarding the Dickey-Lincoln project, in response to the gentlewoman from Maine (Mrs. SNOWE) and the gentleman from Massachusetts (Mr. CONTE), I would like to point out that the House did not put any money in this appropriation bill for this project. The Senate not only put the money in but they had a recorded vote on the floor of the Senate. This was added by the Senate, and the Senate insisted on its position that this planning money be included.

There is no construction money in here. We are not talking about constructing the Dickey-Lincoln project; we are talking about planning money. The feeling of the conference committee, as expressed by the Senators, was very strong that this planning money for next year should give us a signal on what should be done about this project that has been discussed all these years.

I just wanted the gentlewoman to be aware of the fact that the Senate was very insistent on its position, and that they had a vote in the Senate, so we in the conference had no other choice.

This is a good conference report.

One of the Members mentioned some of the arguments that were used about the Tenn-Tom project. I am not going to go into that because we have discussed this for 2 days here on the floor. One thing that the gentleman was talking about is something that we have not even asked the House to authorize money for. We have not included new construction south of Demopolis, and there is no use talking about that.

Mr. Speaker, I urge the Members to

support this conference report. It is a good conference report.

Mr. BEVILL. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WYDLER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 273, nays 117, not voting 42, as follows:

[Roll No. 580]

YEAS—273

Abdnor
Addabbo
Akaka
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashbrook
Ashley
Aspin
AuCoin
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, Tenn.
Benjamin
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonker
Bouquard
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burgener
Burton, Phillip
Byron
Carney
Cheney
Clausen
Clinger
Coelho
Coleman
Corcoran
Corman
Cotter
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, S.C.
de la Garza
Deckard
Derrick
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Dougherty
Duncan, Oreg.
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Fary
Fascell
Fazio
Ferraro
Findley
Fisher
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Goldwater
Gonzalez
Gore
Gramm
Grassley
Gray
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hamilton
Hammer-schmidt
Hanley
Hansen
Harkin
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Horton
Howard
Hubbard
Huckaby
Hutchinson
Hutto
Hyde
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kemp
Kogovsek
Kramer
Lagomarsino
Leach, Iowa
Leach, La.
Lederer
Lehman
Livingston
Lloyd
Long, La.
Long, Md.
Lott
Lowry
Lujan
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Marks
Marlenee
Marriott
Mathis
Matsui
Mica
Mikulski
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nichols
Nowak
Oakar
Oberstar
Ottinger
Panetta
Pashayan
Patten
Patterson
Perkins
Peyser
Pickle
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Regula
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Rousselot
Royer
Sabo
Santini
Satterfield
Scheuer
Schroeder
Schulze
Sebelius
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snyder
Solars
St Germain
Stack
Staggers
Stangeland
Stanton
Steed
Stewart
Stokes
Swift
Synar
Tauzin
Thomas
Trible
Udall
Ullman
Van Deerlin
Volkmer
Walgren
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—117

Applegate
Archer
Atkinson
Barnes
Bedell
Bellenson
Bennett
Bonior
Brodhead
Broyhill
Burton, John
Campbell
Carr
Cleveland
Collins, Tex.
Conable
Conte
Conyers
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Dannemeyer
Dellums
Devine
Downey
Drinan
Early
Edgar
Edwards, Calif.
Emery
Erlenborn
Evans, Ind.
Fenwick
Fish
Fithian
Florio
Forsythe
Fowler
Frenzel
Glickman
Goodling
Gradison
Green
Grisham
Hall, Tex.
Hance
Holtzman
Hopkins
Hughes
Jacobs
Jeffords
Kastenmeier
Kelly
Kildee
Kindness
Kostmayer
LaFalce
Latta
Leath, Tex.
Lee
Leland
Lent
Levitas
Loeffler
Luken
Lundine
McDonald
Maguire
Markey
Martin
Mattox
Mavroules
Mazzoli
Michel
Miller, Calif.
Miller, Ohio
Moffett
Mottl
Nelson
O'Brien
Obey
Paul
Pease
Petri
Porter
Pritchard
Ratchford
Reuss
Richmond
Ritter
Rosenthal
Roth
Roybal
Russo
Sawyer
Selberling
Sensenbrenner
Snowe
Solomon
Spence
Stark
Stenholm
Stockman
Studds
Stump
Tauke
Vander Jagt
Vento
Walker
Waxman
Weaver
Weiss
Williams, Mont.
Wolpe
Young, Fla.

NOT VOTING—42

Albosta
Alexander
Anderson, Ill.
Badham
Beard, R.I.
Bethune
Bowen
Brademas
Burlison
Butler
Carter
Cavanaugh
Chappell
Chisholm
Clay
Collins, Ill.
Davis, Mich.
Derwinski
Dodd
Eckhardt
Hawkins
Holt
Ichord
Ireland
Jenrette
Lewis
Murphy, Ill.
Musto
Myers, Pa.
Nedzi
Nolan
Pepper
Rudd
Skelton
Spellman
Stratton
Symms
Taylor
Thompson
Traxler
Vanik
Young, Alaska

□ 1130

The Clerk announced the following pairs:

Mr. Musto with Mr. Badham.
Mrs. Spellman with Mr. Butler.
Mr. Thompson with Mrs. Holt.
Mr. Chappell with Mr. Davis of Michigan.
Mr. Pepper with Mr. Carter.
Mr. Alexander with Mr. Derwinski.
Mr. Jenrette with Mr. Rudd.
Mr. Traxler with Mr. Symms.
Mr. Hawkins with Mr. Young of Alaska.
Mr. Dodd with Mr. Lewis.
Mrs. Collins of Illinois with Mr. Bethune.
Mr. Bowen with Mr. Taylor.
Mrs. Chisholm with Mr. Myers of Pennsylvania.
Mr. Murphy of Illinois with Mr. Eckhardt.
Mr. Clay with Mr. Ichord.
Mr. Beard of Rhode Island with Mr. Cavanaugh.
Mr. Vanik with Mr. Skelton.
Mr. Nolan with Mr. Nedzi.
Mr. Ireland with Mr. Albosta.

Messrs. CARR, COUGHLIN, LELAND, DOWNEY, SAWYER, RICHMOND, LAFALCE, LENT, CONTE, HALL of Texas, STENHOLM, and HUGHES changed their votes from "yea" to "nay."

Ms. MIKULSKI, Mr. BAFALIS, and Mr. STENHOLM changed their votes from "nay" to "yea".

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1140

The SPEAKER. At this time, without objection, the Chair will recognize the gentleman from California (Mr. VAN DEERLIN).

There was no objection.

CONGRESSMAN NATCHER NOTCHES HIS 12,000TH

Mr. VAN DEERLIN. Mr. Speaker, the rollcall to which we have just responded seemed fairly routine to most of us. But for one House Member—WILLIAM H. NATCHER—it marked a milestone.

This was the 12,000th consecutive rollcall our Kentucky colleague has answered since being sworn into office more than a quarter century ago.

It constitutes an alltime record for any Member of the House or Senate. Without fear of successful challenge, I would proclaim it a record for any parliamentary body in the world.

An old saying in competitive sports holds that "records are meant to be broken." But what realistic observer of the congressional scene can imagine any among us who might ever come close to breaking this one?

BILL NATCHER was sworn in as a Member on January 6, 1954. He had been chosen in a special election on August 1, 1953. Because Congress was in adjournment, he could not be sworn in until the January following. From then to the present day, BILL NATCHER has cast 8,105 rollcall votes. In addition to having never missed a rollcall vote, he has answered 3,895 quorum calls. When you add the quorum calls together with his perfect record on rollcall votes, you have a total of 12,000.

Other than BILL NATCHER, no Member since the beginning of the U.S. Congress has ever served in the House of Representatives or in the Senate for 17 consecutive years or longer from the time of their swearing in without missing one or more votes. Mr. NATCHER has now completed 27 years. Beginning on January 6, 1954, the Clerk of the House has certified Mr. NATCHER's voting record each year, and has regularly directed a letter to BILL NATCHER stating that he has not missed a vote.

Mr. Speaker, BILL NATCHER knows full well that the voting record of a Member of Congress is not the sole criterion for judging a Member. But he believes, as we all do, that every Member should

"stand up and be counted." BILL NATCHER's voting record has been cited in the "Guinness Book of World Records" as the world record for parliaments and legislative bodies.

BILL will tell you that he has had a number of close calls, but has nonetheless managed to be present every time there was a vote, from the day he was sworn in.

Mr. Speaker, it is an honor for me to call the attention of Members to this alltime record established by our friend BILL NATCHER.

Mr. WRIGHT. Mr. Speaker, will the gentleman yield?

Mr. VAN DEERLIN. I yield to the majority leader.

Mr. WRIGHT. I thank the gentleman for making this announcement. I think this is one of the most inspiring announcements that has been made or could be made. The record established by BILL NATCHER in continuous attendance upon the floor of the House, never having missed a single day's session since the day he was sworn in on the 6th of January, 1954, and never having missed a vote or a quorum call in all those intervening 27 years is, without question, the most complete record of dedication since the beginning of this Republic for any legislator.

As my friend, the gentleman from California clearly prophesies, it is unlikely that this record ever will be broken. It is an exemplary record an exemplary Member who reflects credit and honor and distinction upon this body by his demeanor and his constancy. BILL NATCHER richly deserves the gratitude and respect in which he is held by all of us.

Mr. BEVILL. Mr. Speaker, would the gentleman yield?

Mr. VAN DEERLIN. I yield to the gentleman from Alabama.

Mr. BEVILL. I thank the gentleman for yielding.

I would like to say, of course, BILL NATCHER has made a record in many ways and of those 12,000 votes, he has cast many good votes, but this was also the best vote he has ever cast.

Mr. PERKINS. Mr. Speaker, will the gentleman yield to me?

Mr. VAN DEERLIN. Of course, I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Speaker, I would be derelict in responsibility if I failed to compliment my distinguished colleague from Kentucky. Naturally, I want to say that all the citizenry throughout the State of Kentucky are very proud of BILL NATCHER and very proud of this outstanding record.

I share the views of the gentleman in the well and the majority leader, the gentleman from Texas (Mr. WRIGHT) that this record never will be broken in my judgment.

In conclusion, Mr. Speaker, the people in Kentucky feel that BILL NATCHER is one of our greatest citizens, and has contributed as much to good government as any other individual in the Nation.

Mr. BAUMAN. Would the gentleman from California yield?

Mr. VAN DEERLIN. I yield to the gentleman from Maryland.

Mr. BAUMAN. I just want to say as one who has probably contributed greatly to allowing many of the 12,000 rollcalls to which the gentleman has responded, that despite the fact that for these many years he has spent so much time here on the floor, as some few of us do, he has managed to maintain not only his magnificent parliamentary expertise and control when he presides, but also the total and perfect demeanor of a Kentucky gentleman. That alone, I think, speaks for itself, and I congratulate my good friend from Kentucky.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. VAN DEERLIN. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. The 12,000 votes is a record in itself, but when you have them consecutively without a miss, that really makes a record that will never be broken; but this is important and one we are all proud of for our good friend, BILL NATCHER; but even more important than that record, is the gentleman that he is, as the gentleman from Maryland just said.

I do not think there is anyone here who is more patient, more understanding and kinder to his colleagues. Not only his district in Kentucky is proud of him, but all of us are proud of BILL NATCHER and his accomplishments today.

We congratulate you for that, BILL.

Mr. PASHAYAN. Mr. Speaker, will the gentleman yield?

Mr. VAN DEERLIN. I yield to the gentleman from California.

Mr. PASHAYAN. I should like to wish the gentleman a long continuation of the good health that has necessarily underlaid his ability to achieve 12,000 consecutive votes.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. VAN DEERLIN. I yield to my colleague.

Mr. ROUSSELOT. I appreciate my colleague yielding.

I, too, as one who spends a great deal of time here in the House Chamber wish to compliment our colleague, not only for his perfect record of votes, but his perfect record in conducting himself as a true Member of the House of Representatives. Additionally, my colleague Mr. NATCHER is an excellent Chairman of the Committee of the Whole.

We do appreciate his service in this Chamber and the achievement of his 12,000th vote.

Mr. VAN DEERLIN. We did not intend this to get out of hand, but I yield to the gentleman from Mississippi (Mr. WHITTEN).

Mr. WHITTEN. Mr. Speaker, I would like to add my voice to those who have spoken here about the fine record of our colleague from Kentucky, BILL NATCHER.

I would like to say that it is a great tribute to him to have been consistently on the floor tending to the legislative business.

I would like for the record to show that he also has applied himself to the job at hand. He is just as conscientious about performing his duties as he is about voting on the issues. He is a great credit to our Committee on Appropriations and a great asset to this body. It is a privilege for the Nation and for the Congress to have a man of his caliber.

I say again, his outstanding attendance is only exceeded by his able legislative ability.

Mr. NATCHER. Mr. Speaker, would the gentleman yield to me?

Mr. VAN DEERLIN. I yield to the distinguished gentleman from Kentucky.

Mr. NATCHER. Mr. Speaker, I want to thank the gentleman from California (Mr. VAN DEERLIN) for his statement and for his friendship all down through the years.

I want to thank my friend, JIM WRIGHT, the majority leader, and all of those who have spoken concerning my voting record.

Mr. Speaker, one of the nicest things that has happened to me during my lifetime is the honor and distinction that I have had in serving with all of the ladies and gentlemen in the House of Representatives.

To me, Mr. Speaker, the House of Representatives is the greatest legislative body in the world.

The SPEAKER. The Chair, too, would like to congratulate the gentleman from Kentucky on his great record, and at this time would advise the "Guinness Book of Records" to keep its page available, because we know that this record is going to continue through many years to come.

Good luck to the gentleman.

The Chair recognizes the gentleman from Missouri (Mr. BOLLING).

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 7548, FARM CREDIT ACT AMENDMENTS OF 1980

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 96–1373) on the resolution (H. Res. 792) providing for consideration of the bill (H.R. 7548) to amend the Farm Credit Act of 1971 to permit Farm Credit system institutions to improve their services to borrowers, and for other purposes, which was referred to the House Calendar and ordered to be printed.

□ 1150

CONFERENCE REPORT ON H.R. 7590, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

AMENDMENTS IN DISAGREEMENT

The SPEAKER pro tempore (Mr. BOLLING). The Clerk will report the first amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 3. Page 2, line 17, after "collections" insert ": *Provided further*, That this appropriation as well as all prior year balances are merged with the Uranium Supply and Enrichment Activities Plant and Capital Equipment Appropriation".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 3 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 7: Page 3, strike out lines 8 to 14 inclusive, as follows:

OFFICE OF THE SECRETARY

For salaries and expenses for the Office of the Secretary of Energy necessary for administering the Department in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), and for official reception and representation expenses (not to exceed $15,000), $4,872,000.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 7 and concur therein with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows:

OFFICE OF THE SECRETARY

For salaries and expenses for the Office of the Secretary of Energy necessary for administering the Department in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), and for official reception and representation expenses (not to exceed $35,000), $4,892,000.

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 12: Page 4, line 16, strike out "$330,837,000" and insert "$376,337,000 and in addition, $10,000,000 for the construction or acquisition by the Secretary of Energy of capacity for the away from reactor storage of spent nuclear fuel from electric powerplants licensed under the Atomic Energy Act of 1954, pursuant to the Nuclear Waste Policy Act (S. 2189) as passed by the Senate on July 30, 1980, all".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 12 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following: "$373,287,000 and in addition, $10,000,000 for the construction or acquisition by the Secretary of Energy of capacity for the away from reactor storage of spent nuclear fuel from electric powerplants licensed under the Atomic Energy Act of 1954, all".

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 15: Page 5, line 11, after "collections" insert ": *Provided further*, That this appropriation as well as all prior balances are merged with the Uranium Supply and Enrichment Activities Operating Expenses Appropriation.".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 15 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 22: Page 13, line 16, after "expended" insert ": *Provided further*, That none of the funds made available in this paragraph shall be obligated or expended for the study of Diversion of Lake Michigan at Chicago, if such study would result in any diminution of generation at hydroelectric facilities on the Niagara or St. Lawrence Rivers.".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 22 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following: ": *Provided*, That none of the funds made available in this paragraph shall be obligated or expended for the study of Diversion of Lake Michigan at Chicago, if such study would result in adverse diminution of generation at hydroelectric facilities on the Niagara or St. Lawrence Rivers".

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 27: Page 14, line 17, after "expended" insert: ": *Provided further*, That fund appropriated for the Siuslaw River and Bar, Oregon navigation project, authorized by the Rivers and Harbors Act of 1910, as amended and modified, shall be used to design and construct further modifications to that project in accordance with the Report of the Division Engineer, North Pacific Division, dated 16 June 1976.".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 27 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 28: Page 14, line 17, after "expended" insert ": *Provided further*, That the Chief of Engineers is directed to spend not more than $3,000,000 to provide beach nourishment to replenish the authorized project for beach erosion control at Oceanside, San Diego County, California, to its previous configuration from any materials that he may reasonably obtain for that purpose.".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 28 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 31: Page 15, line 17, after "officials" insert ": *Provided further*, That funds in this Act for the Tensas Basin Red River Backwater Area, Louisiana project are to be used to construct features for flood control and allied purposes for Sicily Island and Below Red River including pumping stations and such other modifications of these or existing features in this area as the Chief of Engineers determines advisable, subject to non-Federal cooperation for each separable feature of such work at the time of construction as is required for work pursuant to the August 18, 1941, authorization".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 31 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 33: Page 16, line 4, after "expended" insert ": *Provided*, That not to exceed $1,000,000 shall be available to reimburse non-Federal public interests for the costs of diking dredged disposal areas at Federal projects provided by non-Federal public interests and for funds contributed or advanced to the Secretary of the Army by non-Federal public interests for diking of dredged disposal areas at Federal projects, during the period October 1, 1978, to December 3, 1979, where the Secretary of the Army, acting through the Chief of Engineers, determines that such costs of diking or funds contributed or advanced and expended were not specifically required of such non-Federal public interests by project authorization".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 33 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 34: Page 16, line 4, after "expended" insert ": *Provided further*, That the authorized project dimensions for East Pass Channel, Florida, are hereby modified to provide a channel length of approximately 3,800 feet in lieu of 2,000 feet from the East Pass Channel into Old Pass Lagoon, with no changes in width and depth".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 34 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 35: Page 16, strike out lines 6 and 7, and insert:

For design and construction of hopper dredges, and for the purchase of one aircraft, $43,225,000, to remain available until expended: *Provided*, That approximately $8,500,000 of this amount shall be used for the purchase of one aircraft for replacement of the existing aircraft of the Chief of Engineers.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 35 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 36: page 17, after line 19, insert:

FLOOD CONTROL PROJECTS

SEC. 202. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to design and construct, at full Federal expense, such flood control measures at or in the vicinity of—

(1) Pikesville, Kentucky, and of Grundy, Virginia, on the Levisa Fork of the Big Sandy River,

(2) Pineville, Kentucky, on the Cumberland River, and

(3) Williamson and Matewan, West Virginia, on the Tug Fork of the Big Sandy River,

as the Chief of Engineers determines necessary and advisable to afford these communities and other flood damaged localities and their immediate environs on both the Levisa and Tug Fork of the Big Sandy River and Cumberland River a level of protection against flooding at least sufficient to prevent any future losses to these communities from the likelihood of flooding such as occurred in April 1977, at an estimated cost of $284,000,000. Non-Federal interests shall hold and save the United States free from damages due to construction works referred to in this section, and maintain and operate all such works after their completion in accordance with regulations prescribed by the Secretary of the Army.

(b) There are authorized to be appropriated such sum as may be necessary to carry out the provisions of this section.

(c) The Congress finds that the benefits attributable to the objectives set forth in section 209 of the Flood Control Act of 1970 exceed the cost of the flood control measures authorized by this section.

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

Mr. EDGAR. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Clerk will continue to read the amendment.

The Clerk concluded the reading of the amendment.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 36 and concur therein.

The SPEAKER pro tempore. The gentleman from Alabama (Mr. BEVILL) will be recognized for 30 minutes, and the gentleman from Indiana (Mr. MYERS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. BEVILL).

Mr. BEVILL. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. EDGAR).

Mr. EDGAR. Mr. Speaker, I rise in opposition to the motion to recede and concur in amendment 36, the Senate language carrying an authorization, I repeat, an authorization for the Tug Fork flood control project in West Virginia and Kentucky. The dangerous practice of legislating on an appropriation bill is carried here to a new extreme with a costly, controversial water project being authorized without a report from the Army Corps of Engineers, without any fixed cost ceiling, and without any requirement for State or local governments to match these Federal funds with a penny of local revenue.

I might point out to the House that the chairman of the House authorizing committee, the gentleman from Texas, the Honorable RAY ROBERTS, took the well in a 1-minute speech and condemned the practice of authorizing in an appropriation bill. I believe the chairman of the authorizing committee agrees with me that this should not be a part of this conference report at this time.

Mr. Speaker, many Members will recall from our earlier debate on the omnibus water resources authorization bill that the river valleys affected by this project are subject to recurring flooding. A serious problem does indeed exist and this body responded with a provision for the Tug Fork in H.R. 4788, the omnibus authorization bill.

I might point out that the estimated cost of the project as passed by the House in February was $100 million, while the estimated cost before us now is $284 million. Clearly we are groping at numbers here in the absence of a report from the Chief of Engineers, and the expense of the Federal taxpayer is likely to rise further if we agree to accept the language of the other body here today.

Mr. Speaker, as a member of the Public Works and Transportation Committee, the authorizing committee, I must object to the appropriation committee in either the House or the other body rummaging through our authorization bill and selecting one project to receive favorable treatment within an appropriation bill. By what criteria was this particular project selected? Other pending projects are needed to prevent loss of life, protect property, increase energy production, and other desirable benefits.

□ 1200

Yet only one project, a costly and controversial project, is before us today for special treatment. Mr. Speaker, this process is unfair, unpredictable, and indefensible. I urge my colleagues to reject the Senate amendment and vote "no" on the motion to recede and concur.

I yield back the remainder of my time.

Mr. BEVILL. Mr. Speaker, I yield as much time as the gentleman desires to the distinguished chairman, the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. Mr. Speaker, first let me state that I can understand the concern of the gentleman from Pennsylvania (Mr. EDGAR). I, likewise, heard the statement of the gentleman from Texas (Mr. ROBERTS), chairman of the Public Works and Transportation Subcommittee, this morning. But I do not think there is any section of the United States of America that has suffered so much from floods as eastern Kentucky and West Virginia along both the Tug and the Levisa Forks. For several years we have been trying to do something about the flooding in the Tug and Levisa Forks. We have tried to build the Lower Knox Creek Reservoir, and we have been unsuccessful. In the meantime, more than $400 million in damage has been done to this area in question here.

The 1977 flood, the most recent one following the tremendous flood that exceeded the 100-year mark in 1957 and the one in 1963, was the largest of all the floods in that whole area. We have tried to do something about it. We passed an authorization in the House in 1977. It went over to the Senate, but it was deleted from the omnibus bill in 1978 shortly before we adjourned, and when it did come over here, we were ready to break up and go home and there was no quorum in the House of Representatives so we did not get an authorization.

But we started last year dredging, spending some money, a million or two dollars, maybe $5 million, deepening and widening certain areas on the Tug and Levisa Forks. But this Senate amendment is necessary, even though it is unusual, because there are local flood control projects that are ready for construction. Also flood walls involved to protect the people in Williamson, W. Va., and on my side South Williamson, Ky. We have a hospital in that area. We have numerous communities on up the Tug Fork, and on below extending through Martin County. I would hope that all of the Members of this House would go along with the Senate amendment, because hearings have been conducted at least a dozen times before the authorizing com-

mittees both in the House and the Senate.

The area has been thoroughly studied. If the Members will go back and get those hearings over a period of years, the hearing records, the Corps of Engineers has recommended that certain projects be built, but even though we do not now have the money, we are ready to move. They are out of funds even for the dredging of the Tug Fork and the Levisa Fork or practically out, and they need some money now. We have only appropriated, even though we have authorized more money, $6 million, and I hope that this body would not hold up that $6 million that we need now. If the position of the gentleman from Pennsylvania (Mr. EDGAR) to delete the Senate amendment prevailed, we would not have sufficient money at all for the dredging.

Mr. HUTCHINSON. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from West Virginia.

Mr. HUTCHINSON. I thank the gentleman for yielding. I would like to congratulate my colleague, the gentleman from Kentucky, on his remarks, and I would like to associate myself with him.

Mr. EDGAR. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. I appreciate the gentleman's statement. I recognize the dilemma we are in. It is my understanding that, first of all, the Army Corps of Engineers has not completed its study and, second, that there has been a suggestion by the Army Corps of Engineers that nonstructural alternatives would in fact make better sense at less cost in this particular area. Is the gentleman in the well familiar with the latest observations of the Army Corps of Engineers?

Mr. PERKINS. I am, and I do want to state for the benefit of the distinguished gentleman from Pennsylvania that the Corps of Engineers has studied the Tug Fork almost continuously since 1957, and they have recommended certain structures. They have recommended deepening and widening and clearing, but your position would cut off the funding for the clearing at the present time and the deepening and widening. That is the reason I say that the membership of this body should vote for the motion of the gentleman from Alabama (Mr. BEVILL) to concur with the Senate amendment.

Mr. EDGAR. Will the gentleman yield further?

Mr. PERKINS. I yield again.

Mr. EDGAR. I thank the gentleman. There has been a cost analysis made in the region. The gentleman knows that to complete the Tug Fork projects there are estimates ranging as high as $1 billion to complete it. Some calculation was made that that would amount to $76 923 per person of the people who live in that community, if we go to the structural alternatives as opposed to the nonstructural alternatives. Is that a correct figure?

Mr. PERKINS. Let me say I do not think that figure is correct. It will be very costly, but it is our duty and responsibility to protect the people from this type of flooding. Many of our big businesses in that area have moved out, for instance, Sears Roebuck and numerous others, because of the flooding situation, and here we are not throwing away any money. The Corps of Engineers has already approved deepening and widening of the Tug Fork, and they are fixing to start over on the Levisa Fork where they have already approved projects.

If we knock this out, even though it was unusual, we will slow down our efforts to control flooding. I do not know what was in the mind of Senator BYRD, the majority leader, but I would think that he thought the corps was running out of money and that this was the most feasible way to do it considering all the circumstances. That is just my judgment.

Mr. EDGAR. I appreciate the gentleman's comments. I just want to make clear for the House that comments I made are based on some information that appears in the CONGRESSIONAL RECORD of September 9, 1980. The Senator from New York, Mr. MOYNIHAN, who has a staff that deals with water resource issues, has analyzed some of the cost factors, and his comment is that Tug Fork should in fact move forward, but we should wait until the Army Corps of Engineers has analyzed a most appropriate, a most feasible, and most economical alternative for this particular project.

Mr. PERKINS. I think I can comment on that. Senator MOYNIHAN is one of our great Senators in the other body. He has stated that he will be going down there in the foreseeable future. He wants to look the situation over himself. But I am sure that neither Senator MOYNIHAN nor any other Senator would want to stop the dredging and deepening and widening of both the Levisa and the Tug Forks, and unless we concur in the Senate amendment that will be the result.

The people down there cannot understand why we have delayed so long about giving them some relief. They live in fear all the time of being washed away during the night. I would hope even though I can see the gentleman's viewpoint—the Membership of this body would hold fast to the Senate amendment. There is only $6 million appropriated here. They need that money immediately, and let us go forward and do something for flood control. I am sure that there will be no money thrown away down there in the future. If there had been $50 to $75 million appropriated instead of $6 million, I could have really understood why the gentleman was so concerned that we may go ahead and waste money, but we are not about to do that down there. Another study will be completed within 18 months, and undoubtedly the gentleman from Pennsylvania will have other opportunities to study those recommendations.

I yield back the remainder of my time.

Mr. BEVILL. Mr. Speaker, I would like to reemphasize that, in support of my motion that is now pending to accept the amendment No. 36, the House has passed authorization in the past, the Senate has passed authorization legislation in the past. In 1979 we appropriated money for this project, so there is no real problem so I urge an "aye" vote for my pending motion.

Mr. MYERS of Indiana. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BEVILL. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Alabama (Mr. BEVILL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. EDGAR. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 230, nays 164, not voting 38, as follows:

[Roll No. 561]

YEAS—230

Abdnor	Fary	Lujan
Addabbo	Fascell	Luken
Akaka	Fazio	McCloskey
Albosta	Fisher	McCormack
Anderson, Calif.	Florio	McDade
Andrews, N.Dak.	Foley	McEwen
Annunzio	Ford, Mich.	McKay
Anthony	Ford, Tenn.	Marlenee
Archer	Frost	Marriott
Ashbrook	Fuqua	Matsui
Ashley	Gaydos	Mazzoli
Aspin	Giaimo	Mica
AuCoin	Gibbons	Miller, Calif.
Bafalis	Gilman	Mineta
Bailey	Ginn	Moakley
Baldus	Goldwater	Mollohan
Barnard	Gonzalez	Montgomery
Bauman	Gore	Moore
Beard, R.I.	Gramm	Moorhead, Calif.
Beard, Tenn.	Gray	Moorhead, Pa.
Benjamin	Guarini	Murphy, N.Y.
Bennett	Guyer	Murtha
Bevill	Hagedorn	Myers, Ind
Biaggi	Hall, Tex.	Natcher
Blanchard	Hammer-schmidt	Nelson
Bogges	Hance	Nichols
Bolling	Hanley	O'Brien
Boner	Harsha	Oakar
Bonker	Hefner	Oberstar
Bouquard	Hightower	Obey
Breaux	Hillis	Panetta
Brodhead	Hinson	Pashayan
Brooks	Holland	Patten
Brown, Calif.	Hopkins	Patterson
Buchanan	Horton	Perkins
Burgener	Howard	Peyser
Burton, Phillip	Hubbard	Pickle
Carney	Huckaby	Prever
Chappell	Hutchinson	Price
Cheney	Hutto	Quayle
Clausen	Ireland	Quillen
Clinger	Jeffords	Rahall
Coelho	Johnson, Calif.	Rangel
Coleman	Johnson, Colo.	Regula
Conyers	Jones, N.C.	Rhodes
Corcoran	Jones, Okla.	Rinaldo
Corman	Jones, Tenn.	Roberts
Crane, Philip	Kazen	Robinson
Daniel, Dan	Kazensek	Rodino
Daniel, R. W.	Kramer	Roe
Danielson	Lagomarsino	Rose
de la Garza	Latta	Rostenkowski
Dickinson	Leach, La.	Rousselot
Dincell	Leath, Tex.	Royer
Dixon	Lehman	Sabo
Donnelly	Lewis	Santini
Duncan, Tenn.	Livingston	Satterfield
Eckhardt	Lloyd	Schulze
Edwards, Ala.	Loeffler	Shelby
Edwards, Okla.	Long, La.	Shumway
English	Long, Md.	Shuster
Erdahl	Lott	Simon
Evans, Ga.	Lowry	Smith, Iowa
Snyder	Thomas	Williams, Ohio
Spellman	Traxler	Wilson, Bob
Stack	Trible	Wilson, Tex.
Staggers	Ullman	Winn
Stangeland	Van Deerlin	Wolff
Stanton	Vanik	Wright
Steed	Volkmer	Wyatt
Stenholm	Wampler	Wylie
Stewart	Watkins	Young, Alaska
Stump	White	Young, Fla.
Synar	Whitehurst	Young, Mo.
Tauzin	Whitley	Zablocki
Taylor	Whitten	Zeferetti

NAYS—164

Ambro	Frenzel	Mottl
Applegate	Garcia	Murphy, Pa.
Atkinson	Gephardt	Neal
Barnes	Glickman	Nolan
Bedell	Goodling	Nowak
Bellenson	Gradison	Ottinger
Bereuter	Grassley	Pease
Bingham	Green	Petri
Boland	Grisham	Porter
Bonior	Gudger	Pritchard
Brinkley	Hamilton	Pursell
Broomfield	Harkin	Railsback
Brown, Ohio	Harris	Ratchford
Broyhill	Hawkins	Reuss
Burton, John	Heckler	Richmond
Byron	Heftel	Ritter
Campbell	Hollenbeck	Rosenthal
Carr	Holtzman	Roth
Clay	Hughes	Roybal
Cleveland	Hyde	Russo
Collins, Ill.	Jacobs	Sawyer
Collins, Tex.	Jeffries	Scheuer
Conable	Jenkins	Schroeder
Conte	Kastenmeier	Sebelius
Cotter	Kelly	Seiberling
Coughlin	Kemp	Senenbrenner
Courter	Kildee	Shannon
Crane, Daniel	Kindness	Sharp
D'Amours	Kostmayer	Snowe
Dannemeyer	LaFalce	Solarz
Deckard	Leach, Iowa	Solomon
Dellums	Lederer	Spence
Derrick	Lee	St Germain
Devine	Leland	Stark
Dicks	Lent	Stockman
Dornan	Levitas	Stokes
Dougherty	Lundine	Studds
Downey	Lungren	Swift
Drinan	McClory	Tauke
Early	McDonald	Udall
Edgar	McHugh	Vander Jagt
Edwards, Calif.	McKinney	Vento
Emery	Madigan	Walgren
Erlenborn	Maguire	Walker
Ertel	Markey	Waxman
Evans, Del.	Marks	Weaver
Evans, Ind.	Martin	Weiss
Fenwick	Mattox	Whittaker
Ferraro	Mavroules	Williams, Mont.
Findley	Michel	Wirth
Fish	Mikulski	Wolpe
Fithian	Miller, Ohio	Wydler
Forsythe	Minish	Yates
Fountain	Mitchell, N.Y.	Yatron
Fowler	Moffett	

NOT VOTING—38

Alexander	Davis, Mich.	Murphy, Ill.
Anderson, Ill.	Davis, S.C.	Musto
Andrews, N.C.	Derwinski	Myers, Pa.
Badham	Dodd	Nedzi
Bethune	Duncan, Oreg.	Paul
Bowen	Flippo	Pepper
Brademas	Hall, Ohio	Rudd
Burlison	Hansen	Skelton
Butler	Holt	Stratton
Carter	Ichord	Symms
Cavanaugh	Jenrette	Thompson
Chisholm	Mathis	Wilson, C. H.
Daschle	Mitchell, Md.	

□ 1220

The Clerk announced the following pairs:

On this vote:

Mr. Musto for, with Mr. Jenrette against.

Mr. Pepper for, with Mr. Davis of Michigan against.

Mr. Murphy of Illinois for, with Mr. Derwinski against.

Until further notice:

Mr. Thompson with Mr. Badham.

Mrs. Chisholm with Mr. Hall of Ohio.

Mr. Alexander with Mr. Bethune.

Mr. Davis of South Carolina with Mr. Hansen.

Mr. Nedzi with Mr. Paul.

Mr. Skelton with Mr. Rudd.

Mr. Stratton with Mr. Symms.

Mr. Flippo with Mrs. Holt.

Mr. Dodd with Mr. Andrews of North Carolina.

Mr. Burlison with Mr. Butler.

Mr. Bowen with Mr. Carter.

Mr. Duncan of Oregon with Mr. Ichord.

Mr. Cavanaugh with Mr. Daschle.

Mr. Mitchell of Maryland with Mr. Mathis.

Mr. Myers of Pennsylvania with Mr. Charles H. Wilson of California.

Messrs. RITTER, SEBELIUS, HARRIS, STOKES, McCLORY, GUDGER, DOUGHERTY, and KASTENMEIER changed their votes from "yea" to "nay."

Messrs. BRODHEAD, FLORIO, RANGEL, DINGELL, and ECKHARDT changed their votes from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

□ 1230

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 39: Page 18, line 16, strike out "$596,216,000" and insert "$580,741,000,".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 39 and concur therein with an amendment, as follows: In lieu of the sum named in said amendment, insert the following: "$570,641,000".

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 40: Page 19, line 25, after "safety" insert ": *Provided further*, That no part of the funds herein approved shall be available for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 40 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 41: Page 19, line 25, after "safety" insert ": *Provided further*, That of the amount herein appropriated not to exceed $6,000,000 for the Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona, shall be available for improvement of the Gila River Channel to facilitate drainage of lands within the District under a repayment obligation heretofore established by existing contract between the Secretary of the Interior and the District".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 41 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 42: Page 19, line 25, after "safety" insert ": *Provided further*, That of the amount herein appropriated not to exceed $10,000 shall be available to the Fremont-Madison Irrigation District to initiate a rehabilitation and betterment program under the Act of October 7, 1919, (63 Stat. 724), as amended, to be repaid in full under conditions satisfactory to the Secretary of the Interior.".

MOTION OFFERED BY BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 42 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following ": *Provided further*, That of the amount herein appropriated not to exceed $10,000 shall be available to initiate a rehabilitation and betterment program with the Fremont-Madison Irrigation District to rehabilitate the facilities of the Marysville, Farmer's Own, Yellowstone, Squirrel Creek, and Silky Canal Companies under the act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full by the lands served and under conditions satisfactory to the Secretary of Interior.".

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The clerk read as follows:

Senate amendment No. 43: Page 20, line 7, strike out "$114,117,000" and insert "$111,117,000,".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 43 and concur therein with an amendment, as follows: In lieu of the sum named in said amendment, insert the following: "$101,117,000".

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 49: Page 28, after line 21, insert:

NUCLEAR SAFETY OVERSIGHT COMMITTEE

For expenses necessary for the Nuclear Safety Oversight Committee, $1,500,000, to remain available until expended.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 49 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 52: Page 30, after line 2, insert:

WATER RESOURCES COUNCIL

WATER RESOURCES PLANNING

For the Water Resources Council for expenses necessary in carrying out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a–4(5), and hire of passenger motor vehicles (42 U.S.C. 1962a–4(6)), $32,777,000 to remain available until expended, including $4,748,000 for expenses in administering the Act (42 U.S.C. 1962d(b)), $4,186,000 for preparation of assessments and plans (42 U.S.C. 1962d(c)), $3,443,000 for expenses of river basin commissions under title II of the Act (42 U.S.C. 1962d(a)), $18,000,000 for grants to States under title III of the Act (42 U.S.C. 1962c(a)), and $2,400,000 for Upper Mississippi Comprehensive Management Plan (42 U.S.C. 1962b–3).

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 52 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

WATER RESOURCES COUNCIL

WATER RESOURCES PLANNING

For the Water Resources Council for expenses necessary in carrying out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a–4(5), and hire of passenger motor vehicles (42 U.S.C. 1962a–4(6)), $24,777,000 to remain available until expended, including $4,748,000 for expenses in administering the Act (42 U.S.C. 1962d(b)), $4,186,000 for preparation of assessments and plans (42 U.S.C. 1962d(c)), $3,443,000 for expenses of river basin commissions under title II of the Act (42 U.S.C. 1962d(a)), $10,000,000 for grants to States under title III of the Act (42 U.S.C. 1962c(a)), and $2,400,000 for Upper Mississippi Comprehensive Management Plan (42 U.S.C. 1962b–3).

Mr. BEVILL (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the last amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 53: Page 30, strike out lines 18 to 23, inclusive, as follows:

SEC. 504. Of the total budget authority provided in this Act, for payments not required by law, 2 per centum shall be withheld from obligation and expenditure: *Provided*. That of the amount provided in this Act for each appropriation account, activity, and project, for payments not required by law, the amount withheld shall not exceed 5 per centum.

And insert:

SEC. 504. (a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—or any major administrative subdivision thereof, during the fiscal year ending September 30, 1981, to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than 45 days after the end of each quarter of the fiscal year, the head of each department and establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(c) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department and establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 53 and concur therein with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following:

"SEC. 504. There is appropriated, out of my money in the Treasury not otherwise appropriated, for payment to Dorothy Runnels, widow of Harold Runnels, late a Representative from the State of New Mexico, $60,663."

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the conference report and on the several motions was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 7203, HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE AND NURSE TRAINING AMENDMENTS OF 1980

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7203) to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such act for the education of health professions personnel, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, will the gentleman from West Virginia (Mr. STAGGERS) tell us what this is all about?

Mr. STAGGERS. Mr. Speaker, if the gentleman will yield, this is the Nurse Training and Health Professions Educational Assistance Amendments of 1980.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, are there a lot of other items in here that we did not consider in the House?

Mr. STAGGERS. No, Mr. Speaker. That is all there is in it.

Mr. ROUSSELOT. And this does not vary much from our version?

Mr. STAGGERS. That is true.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia? The Chair hears none and, without objection, appoints the following conferees: Messrs. STAGGERS, WAXMAN, SATTERFIELD, PREYER, BROYHILL, and CARTER.

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON S. 1946, RAILROAD TRANSPORTATION POLICY ACT OF 1980

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the Senate bill (S. 1946) to reform the economic regulation of railroads, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

Mr. MADIGAN. Mr. Speaker, reserving the right to object, I would yield under my reservation to the gentleman from West Virginia for the purpose of explaining what the bill is and what the need for this request is.

Mr. STAGGERS. Mr. Speaker, if the gentleman will yield, this is the rail bill which just recently passed the House. The time element is the reason why we are asking for permission until tonight so that we can get the bill expedited and get it back on the floor and get it passed.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, if I understand what the gentleman from West Virginia has said, he is asking that we expedite the procedure by a minor amount so that we might have the opportunity to act on this bill finally before the House adjourns for the recess?

Mr. STAGGERS. The gentleman is correct.

Mr. MADIGAN. Mr. Speaker, I want to thank the gentleman from West Virginia (Mr. STAGGERS), and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

□ 1240

TREATMENT OF PUBLIC UTILITY PROPERTY UNDER SECTION 46(f) AND 167(l) OF THE INTERNAL REVENUE CODE OF 1954

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 770 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 770

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6806) to amend sections 46(f) and 167(l) of the Internal Revenue Code of 1954 regarding the treatment of public utility property and to provide a transitional rule with respect thereto, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and said substitute shall be considered as having been read for amendment. No amendment to the bill or to said amendment shall be in order except amendments recommended by the Committee on Ways and Means, which shall not be subject to amendment. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from California (Mr. BEILENSON) is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield the usual 30 minutes for purposes of debate only to the gentleman from Mississippi (Mr. LOTT) pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 770 is the rule providing for the consideration of H.R. 6806, a bill clarifying the treatment of public utility property under sections 46(f) and 167(l) of the Internal Revenue Code. It is a modified closed rule allowing only nonamendable Ways and Means Committee amendments. The rule provides that the committee amendment in the nature of a substitute printed in the bill shall be considered as original language for the purposes of amendment and shall be considered as having been read. Finally, the rule provides for one motion to recommit with or without instructions.

Mr. Speaker, H.R. 6806, introduced by Mr. CORMAN and Mr. ROUSSELOT, both of California, has bipartisan support. It addresses a problem that has arisen in California concerning the interpretation of Federal law governing the use of accelerated depreciation and the investment tax credit by utility companies.

The Internal Revenue Code requires that utility companies treat these tax benefits as investment capital. It prohibits their treating these benefits as a reduction in the cost of service which can be passed through to consumers by rate reductions. Following protracted litigation, the California Public Utilities Commission issued rulings requiring utility company accounting systems which, in effect, mandate the use of the tax benefits for both investment and consumer rate reduction. Private IRS rulings take the position that the California accounting system does not comply with Federal law. If these were to be enforced, the utility companies in question would be liable for $1.74 billion in tax benefits received prior to March 1980.

H.R. 6806 exempts these companies—Pacific Telephone & Telegraph, General Telephone of California, and Southern California Gas—from this tax liability. It is an equitable resolution to a problem caused by conflicting State and Federal mandates. Furthermore, the bill revises Federal law to make clear that the California accounting system and similar systems in other States do not comply with the requirements of the Internal Revenue Code. Which should insure that the special tax rule contained in the bill, and the interpretative problem which necessitated it, are not repeated.

Mr. Speaker, I urge my colleagues to support both the rule and the bill.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a relatively simple modified, closed rule as we so often have with legislation reported from the Ways and Means Committee. The rule allows 1 hour of debate and makes in order the committee amendment in the nature of a substitute to be considered as an original bill for the purpose of amendment. Only Ways and Means Committee amendments are allowed and these are not amendable. There is a motion to recommit with or without instructions.

There is nothing particularly complicated about this rule which befits a bill which is noncontroversial, as is H.R. 6806. The bill is designed to meet a specific, one-time problem which has arisen as a result of a misapplication of the normalization rules for public utility property in certain California cases. The bill was reported from the committee by a voice vote and was sponsored by the ranking minority member of the committee. There seems to be no opposition to the bill.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. BEILENSON. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. CORMAN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6806) to amend sections 46(f) and 167(l) of the Internal Revenue Code of 1954 regarding the treatment of public utility property and to provide a transitional rule with respect thereto.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. CORMAN).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 6806, with Mr. TRAXLER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California (Mr. CORMAN) will be recognized for 30 minutes, and the gentleman from California (Mr. ROUSSELOT) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. CORMAN).

Mr. CORMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bill, H.R. 6806, clarifies the Federal income tax rules relating to the normalization requirements for public utility property eligible for the investment tax credit and accelerated depreciation. The bill also provides a special rule which, in general, excuses violations of these requirements for certain periods ending prior to March 1, 1980, where such violations were a result of certain orders entered by a public utility commission prior to March 13, 1980.

With certain exceptions for companies that are grandfathered, public utilities are eligible to use the investment credit and to elect accelerated depreciation for tax purposes only if the tax benefits from accelerated depreciation and the investment credit—or, in some cases, a portion of the credit—are normalized for ratemaking purposes. Normalization generally requires that the tax benefits of accelerated depreciation and the investment credit not be treated for ratemaking purposes as a reduction in current Federal income tax expenses, which

is an element of a utility's cost of service, since that treatment would generally result in a direct reduction in the utility's revenues.

Instead, the tax benefits are to be treated as investment capital that is supplied, in effect, by the Federal Government to the utility through the tax system. The normalization rules for accelerated depreciation require that the utility retain the use of the deferred taxes but permit the deferred taxes to be treated as zero-cost capital on which the utility need not be allowed to earn an investment return; the normalization rules for the investment credit require a similar allocation of benefits between utility shareholders and utility customers. The normalization rules relating to accelerated depreciation were imposed in 1969, and the normalization rules relating to the investment credit, for the most part, were imposed in 1971 and 1975.

The bill provides that violations of the normalization requirements of present law—and of the bill—will not result in a public utility's loss of eligibility for the investment tax credit or accelerated depreciation if such violations involved the use of estimates, projections, or rate of return adjustment: First, that applied for any period ending prior to March 1, 1980 and second, that were included in certain orders of a public utility commission which were entered prior to March 13, 1980.

This special rule is designed to benefit the customers of Pacific Telephone & Telegraph Co. (a subsidiary of A.T. & T.), General Telephone Co. of California (a subsidiary of General Telephone & Electronics), and Southern California Gas Co. and the companies themselves. If an order is covered by this special rule and does not violate the normalization requirements for any period ending after February 29, 1980, the order will not be considered a "bad" order for purposes of those provisions which provide for loss of eligibility for the investment credit as soon as a second bad order is put into effect (see code section 46(f)(4)).

The bill amends the present normalization rules relating to accelerated depreciation and the investment tax credit to make it clear for the future that certain ratemaking procedures, such as the so-called AA and AAA methods which have been used in California, involving the use of inconsistent estimates or projections do not comply with such rules. It also gives the Treasury Department specific authority to provide regulations setting forth conditions under which ratemaking adjustments are inconsistent with normalization. The amendments to the normalization rules generally apply to taxable years beginning after December 31, 1979. This effective date is not intended to affect in any way the retroactive period for which the investment credit may be disallowed under the provision of code section 46(f)(4).

No revenue effect is anticipated for the permanent changes in the bill. Under the special rule, a claim for refund of $110 million, which was paid by one of the companies, may be made at any time through February 1982. To preclude any concern that repayment of this amount would be considered a revenue loss in fiscal year 1981, a committee amendment would prevent the payment of a refund with respect to this claim during fiscal year 1981.

Mr. Chairman, I urge the House to adopt the committee amendment and approve the bill as amended.

Mr. Chairman, I reserve the balance of my time.

Mr. ROUSSELOT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I support H.R. 6806, a bill dealing with the treatment of public utility property under section 46(f) and 167(l) of the Internal Revenue Code.

Public utility tax accounting is one of the most complex areas in the Internal Revenue Code. While the details may be difficult to understand, the broad policy goals in this area are clear. The policy is to treat the tax benefits of accelerated depreciation and the investment tax credit as a capital investment incentive which is to be reflected in the utility's rate base over the projected lifetime of the utility's capital investments. Normalization is the accounting method which reflects this decision.

The alternative to normalization accounting would be a system which immediately reduces a utility's rate base by the amount of its accelerated depreciation and investment tax credit. This is the result of flowthrough accounting. It was so nicknamed because it flows through immediately to the customers the tax reductions associated with accelerated depreciation and the investment tax credit.

Thus, flowthrough accounting passes the Federal tax benefits directly to the utility customers. This results in lower, near-term utility rates but it deprives the utility of the capital investment incentive necessary to develop long-range utility capacity.

Enforcement of the Federal policy in this area is complicated because the taxpayer utilities are regulated by State commissions which are not under Federal jurisdiction. The tax law addresses the enforcement issue by language which requires a utility to use normalization accounting for ratemaking purposes, or else it is not eligible for the benefits of accelerated depreciation and the investment tax credit.

H.R. 6806 reinforces and clarifies the existing tax policy that public utilities must use normalization accounting for ratemaking purposes in order to be eligible for the special capital investment tax incentives. It also waives certain past violations. The waived violations are for those occurring before March 1, 1980, which were the result of public utility commission orders entered prior to March 13, 1980. The waiving of past violations will enable several California utilities which have been caught up in a three-sided dispute involving themselves, the Internal Revenue Service, and the California Public Utility Commission to be relieved of an unfair tax burden.

Mr. Chairman, H.R. 6806 should bring better understanding to a complicated area of the tax law. I support its passage.

□ 1250

Mr. Chairman, I yield back the balance of my time.

Mr. CORMAN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the committee amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the reported bill as an original bill for the purpose of amendment shall be considered as having been read for amendment. No amendments are in order except the amendments recommended by the Committee on Ways and Means, which shall not be subject to amendment.

The text of the bill is as follows:

H.R. 6806

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NORMALIZATION METHOD FOR PURPOSES OF DEPRECIATION.

Paragraph (3) of section 167(l) of the Internal Revenue Code of 1954 (relating to definitions for purposes of depreciation in the base of utilities) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC.—

"(i) IN GENERAL.—One way in which the requirements of subparagraph (G) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (G).

"(ii) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.—The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (G)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

"(iii) REGULATORY AUTHORITY.—The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i)."

SEC. 2. COMPUTATIONS FOR PURPOSES OF INVESTMENT CREDIT.

Subsection (f) of section 46 of such Code (relating to limitation in case of certain regulated companies) is amended by adding at the end thereof the following new paragraph:

"(10) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC., FOR PURPOSES OF PARAGRAPHS (1) AND (2).—

"(A) IN GENERAL.—One way in which the requirements of paragraph (1) or (2) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of paragraph (1) or paragraph (2), as the case may be.

"(B) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.—The procedures and adjustments which are to be treated as inconsistent for purposes of subparagraph (A) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's qualified investment for purposes of the credit allowable by section 38 unless such estimate or projection is consistent with the estimates and projections of property which are used, for ratemaking purposes, with respect to the

tax payer's depreciation expense and rate base.

"(C) REGULATORY AUTHORITY.—The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in subparagraph (B)) which are to be treated as inconsistent for purposes of subparagraph (A)."

SEC. 3. EFFECTIVE DATES.

(a) GENERAL RULE.—The amendments made by sections 1 and 2 shall apply to taxable years beginning after December 31, 1979.

(b) SPECIAL RULE FOR PERIODS BEFORE MARCH 1, 1980.—

(1) IN GENERAL.—Notwithstanding the provisions of sections 167(l) and 46(f) of the Internal Revenue Code of 1954 and of any regulations prescribed by the Secretary of the Treasury (or his delegate) under such sections, the use for ratemaking purposes or for reflecting operating results in the taxpayer's regulated books of account, for any period before March 1, 1980, of—

(A) any estimates or projections relating to the amounts of the taxpayer's tax expense, depreciation expense, deferred tax reserve, credit allowable under section 38 of such Code, or rate base, or

(B) any adjustments to the taxpayer's rate of return,

shall not be treated as inconsistent with the requirements of subparagraph (G) of such section 167(l)(3) nor inconsistent with the requirements of paragraph (1) or (2) of such section 46(f), where such estimates or projections, or such rate of return adjustments, were included in a qualified order.

(2) QUALIFIED ORDER DEFINED.—For purposes of paragraph (1), the term "qualified order" means an order—

(A) by a public utility commission which was entered before March 13, 1980.

(B) which used the estimates, projections, or rate of return adjustments referred to in paragraph (1) to determine the amount of the rates to be collected by the taxpayer or the amount of a refund with respect to rates previously collected, and

(C) which ordered such rates to be collected or refunds to be made (whether or not such order actually was implemented or enforced).

(c) NO INFERENCE.—The application of subparagraph (G) of section 167(l)(3) of the Internal Revenue Code of 1954, and the application of paragraphs (1) and (2) of section 46(f) of such Code, to taxable years beginning before January 1, 1980, shall be determined without any inference drawn from the amendments made by sections 1 and 2 of this Act or from the rules contained in subsection (b) of this section. Nothing in the preceding sentence shall be construed to limit the relief provided by subsection (b).

AMENDMENT OFFERED BY MR. CORMAN

Mr. CORMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CORMAN: Page 6, after line 20, insert the following:

(d) DELAY IN MAKING REFUNDS OR CREDITS.—No refund or credit of any overpayment of tax attributable to the amendments made by this Act shall be made or allowed before October 1, 1981.

Mr. CORMAN. Mr. Chairman, the committee amendment would provide that no refund or credit of any overpayment of tax attributable to the provisions of this bill shall be paid or allowed before October 1, 1981.

This amendment is needed because one of the companies involved has paid $110 million in disputed tax liability. This amount may be the subject of a claim for refund at any time through February 1981. This amendment precludes any budgetary concern and any concern that this refund would be considered a revenue loss in fiscal year 1981.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. CORMAN).

The amendment was agreed to.

The CHAIRMAN. Are there any further amendments?

If there are no further amendments, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. TRAXLER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6806) to amend sections 46(f) and 167(l) of the Internal Revenue Code of 1954 regarding the treatment of public utility property and to provide a transitional rule with respect thereto, pursuant to House Resolution 770, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend sections 46(f) and 167 (l) of the Internal Revenue Code of 1954 with respect to the treatment of public utility property.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CORMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill (H.R. 6806) just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 6777, COUNCIL ON WAGE AND PRICE STABILITY EXTENSION

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 780 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 780

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6777) to increase the authorization for the Council on Wage and Price Stability, to extend the duration of such Council, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to equally divide and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment recommended by the Committee on Banking, Finance and Urban Affairs now printed on page 1, line 3 through page 2, line 14 of the bill, and all points of order against said amendment for failure to comply with the provisions of clause 7, rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from South Carolina is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, I yield the usual 30 minutes, for purposes of debate only, to the gentleman from Maryland (Mr. BAUMAN), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 780 provides for the consideration of H.R. 6777, to increase the authorization and extend the duration of the Council on Wage and Price Stability, and for other purposes. This is an open rule with 1 hour of general debate to be equally divided and controlled by the chairman and the ranking minority member of the Committee on Banking, Finance and Urban Affairs. The rule makes in order the consideration of the amendment recommended by the Committee on Banking, Finance and Urban Affairs now printed on page 1, line 3 through page 2, line 14 of the bill, and waives points of order against the committee amendment for failure to comply with clause 7, rule XVI, the germaneness rule. This waiver is needed because the committee amendment expands the mandate of the Council to include in its activities analysis of problems related to productivity in the U.S. economy and the bill, as introduced, does not contain this authority.

The rule also waives points of order against the bill for failure to comply with section 402a of the Budget Act. Section 402a requires that any bill which provides new budget authority be reported by May 15 preceding the fiscal year in which it is to take effect. This waiver is provided because the bill as reported last May contains a supplemental fiscal year 1980 authorization of $980,000. The Committee on Banking, Finance and Urban Affairs, however, has subsequently decided to offer an amendment during floor consideration of the bill to delete

the supplemental authorization, and therefore, the waiver is of a technical nature.

Upon completion of the consideration of the bill, one motion to recommit is in order.

Mr. Speaker, H.R. 6777 extends the statutory life of the Council on Wage and Price Stability through fiscal year 1981, and thus authorizes continuation of the program of voluntary wage and price guidelines. It authorizes $9.77 million for its operation in fiscal year 1981 and maintains the staff level essentially unchanged, while retaining the present staff ceiling of 237 persons. Further, it directs the Council to create a unit of personnel to analyze problems related to productivity in our economy and to advise the public and private sectors of their findings.

Mr. Speaker, the Committee on Banking, Finance and Urban Affairs has concluded that the voluntary wage and price guidelines program has made a modest contribution in holding the rate of inflation below where it might otherwise have been in those sectors where the program was applicable. I urge my colleagues to adopt House Resolution 780 so that we may proceed to the consideration of H.R. 6777, Council on Wage and Price Stability extension.

□ 1300

Mr. BAUMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from South Carolina has adequately described the rule before us. I would only make some brief comments on the legislation which reauthorizes the Council on Wage and Price Stability at the level of $9,770,000 for the operation of that council for the next fiscal year, as well as a supplemental appropriation of $980,000 for this fiscal year.

This is much less than the President had originally requested. I commend the authorizing banking committee for not falling prey to the administration's spending habits in this regard; however, I did want to comment more on the legislation than on the rule. As many people remember, President Carter back in 1978 imposed voluntary price and wage guidelines on the private sector, or sought to impose them.

In 1979, against my objection and that of many Members of the Congress, the staff of this council was increased from 40 to 233. Almost immediately inflation went up from about 7 or 8 percent to almost 20 percent on an annualized rate. There may well be a correlation between these two facts, that as we have increased the size of the Government agency commissioned to stop inflation, inflation immediately went up. If that is so, it is an argument in favor of my thesis that we do not need this rule and we do not need this bill or this council.

I would hope that once and for all we might realize that the blame for inflation deserves to be placed here in Congress and on the executive acting together to spend money that we do not have. This is one council that is an example of that kind of spending.

Mr. Speaker, I yield back the balance of my time.

Mr. DERRICK. Mr. Speaker, I move the previous questions on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LEVITAS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 291, nays 97, not voting 44, as follows:

[Roll No. 582]

YEAS—291

Addabbo
Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bouquard
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Buchanan
Burton, Phillip
Byron
Carr
Chappell
Chisholm
Coelho
Conte
Convers
Corcoran
Corman
Cotter
D'Amours
Daniel, Dan
Danielson
Daschle
de la Garza
Deckard
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Emery
English
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Gramm
Gray
Green
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hamilton
Hance
Hanley
Harkin
Harris
Heckler
Hefner
Hightower
Hillis
Hinson
Holland
Hollenbeck
Hopkins
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Leach, La.
Leath, Tex.
Lederer
Lehman
Leland
Lent
Lewis
Lloyd
Long, La.
Long, Md.
Lowry
Lujan
Luken
Lundine
McCloskey
McCormack
McDade
McEwen
McKay
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, N.Y.
Murphy, Pa.
Murtha
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Pease
Perkins
Peyser
Pickle
Porter
Price
Pritchard
Pursell
Rahall
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Shannon
Sharp
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Spellman
Spence
St Germain
Stack
Stanton
Stark
Steed
Stewart
Stokes
Studds
Swift
Synar
Tauzin
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Wampler
Watkins
Waxman
Weaver
Weiss
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolf
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—97

Abdnor
Applegate
Archer
Ashbrook
Atkinson
Bafalis
Bauman
Beard, Tenn.
Bereuter
Brown, Ohio
Burgener
Burton, John
Campbell
Carney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, R. W.
Dannemeyer
Davis, Mich.
Devine
Dickinson
Dornan
Duncan, Tenn.
Edwards, Okla.
Erdahl
Evans, Ga.
Fenwick
Forsythe
Frenzel
Gingrich
Goodling
Grassley
Grisham
Guyer
Hagedorn
Hammer-schmidt
Hansen
Harsha
Hawkins
Hubbard
Jeffords
Jeffries
Johnson, Colo.
Kemp
Lagomarsino
Latta
Leach, Iowa
Lee
Levitas
Livingston
Lott
Lungren
McClory
McDonald
McHugh
Madigan
Marriott
Michel
Myers, Ind.
Paul
Petri
Quayle
Quillen
Railsback
Rhodes
Ritter
Roberts
Roth
Rousselot
Royer
Santini
Satterfield
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Solomon
Stangeland
Stenholm
Stockman
Stump
Tauke
Taylor
Thomas
Walker
White
Young, Alaska
Young, Fla.

NOT VOTING—44

Alexander
Anderson, Ill.
Badham
Bethune
Bonker
Bowen
Brademas
Broyhill
Burlison
Butler
Carter
Cavanaugh
Cheney
Clay
Collins, Ill.
Davis, S.C.
Derwinski
Dodd
Florio
Gibbons
Heftel
Holt
Holtzman
Horton
Ichord
Jenrette
Kindness
Loeffler
McKinney
Mathis
Moffett
Murphy, Ill.
Musto
Myers, Pa.
Nolan
Pepper
Preyer
Rudd
Skelton
Staggers
Stratton
Symms
Thompson
Wilson, C. H.

□ 1310

The Clerk announced the following pairs:

Mr. Musto with Mr. Bethune.
Mr. Thompson with Mr. Derwinski.
Mr. Florio with Mr. Rudd.
Mr. Pepper with Mr. Symms.
Mr. Jenrette with Mr. McKinney.
Mr. Mathis with Mr. Horton.
Mr. Alexander with Mr. Cheney.
Mr. Bowen with Mr. Carter.
Mr. Burlison with Mrs. Holt.
Mr. Ichord with Mr. Kindness.
Mr. Heftel with Mr. Loeffler.
Mr. Dodd with Mr. Badham.
Mr. Davis of South Carolina with Mr. Broyhill.
Mr. Myers of Pennsylvania with Mr. Butler.
Mr. Murphy of Illinois with Mr. Charles H. Wilson of California.
Mr. Stratton with Mr. Staggers.
Mr. Moffett with Mr. Gibbons.
Mr. Skelton with Ms. Holtzman.
Mr. Bonker with Mr. Cavanaugh.
Mrs. Collins of Illinois with Mr. Nolan.
Mr. Preyer with Mr. Clay.

Mr. BEREUTER and Mr. DUNCAN of Tennessee changed their votes from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1320

PERSONAL EXPLANATION

(Mr. SEIBERLING asked and was given permission to address the House for 1 minute.)

Mr. SEIBERLING. Mr. Speaker, I was unable to make the vote yesterday on H.R. 7020, the Hazardous Waste Containment Act, on final passage. Had I voted, I would have voted for final passage.

COUNCIL ON WAGE AND PRICE STABILITY EXTENSION

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6777) to increase the authorization for the Council on Wage and Price Stability, to extend the duration of such Council, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. MOORHEAD).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 6777, with Mr. DERRICK in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Pennsylvania (Mr. MOORHEAD) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. STANTON) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 5 minutes to the distinguished chairman of the Committee on Banking, Finance and Urban Affairs, the gentleman from Wisconsin (Mr. REUSS) who has helped in the very fine reporting and passage of this legislation.

Mr. REUSS. Mr. Chairman, I thank the distinguished subcommittee chairman, the gentleman from Pennsylvania (Mr. MOORHEAD), for yielding and congratulate him on his diligence in bringing this important measure to the floor today.

Mr. Chairman, this reauthorization of the Council on Wage and Price Stability, H.R. 6777, is a good bill that prolongs the life of a useful agency. The bill was reported from the Banking Committee with strong bipartisan support by a vote of 35 to 6.

The COWPS program has helped restrain wage and price increases, though admittedly on a modest scale, and COWPS has done valuable work monitoring Federal regulations for inflationary impacts. COWPS has its detractors, in this body and elsewhere, but for a small agency it has done some important work, despite having to grapple with an extremely complicated economic situation in the last few years.

The bill reported by the Banking Committee is a simple, straightforward bill that basically would extend COWPS' life for another year. There may be an effort to amend the bill to add a provision to sunset the Credit Control Act. I believe this effort should be resisted very strongly. In the first place, addressing the future of the Credit Control Act goes well beyond the limited scope of H.R. 6777. I also see no justification for tampering with a law whose usefulness continues to exist today.

In the Senate, the COWPS bill emerged not only with a Credit Control Act sunset but with other nongermane amendments attached to it. We should not accept such a haphazard approach in the House. I suggest we pass the bill reported by the Banking Committee with the committee amendment, and send that bill to the Senate for them to decide whether to accept it.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, the bill before us is essentially a routine reauthorization of the Council on Wage and Price Stability, which is one of the smaller agencies of the Government. I do not see any reason why the bill should be very controversial and I would hope we can dispose of it quickly.

For a while there was some controversy over this year's COWPS reauthorization after the President, last March, asked for a large increase in funds for the agency, from roughly $10 million to $25 million. However, the Banking Committee rejected that request and approved only the amount in the Presidential's original budget—specifically $9,770,000. The committee approved the bill, with the lower figure, by a vote of 35 to 6.

It is true, of course, that the program of nonmandatory standards or guidelines for prices and wages, which COWPS put into effect almost 2 years ago, has been a source of some dispute though the criticism has come from two opposite directions. One school has alleged that the guidelines did no good in holding back inflation, while the other school said they had many of the elements—and therefore the drawbacks—of mandatory controls. A good majority of the committee felt, as our report said, that the guidelines definitely held back the rate of inflation somewhat in that part of the economy that was covered by them, but in any case this debate is now largely academic. While the guidelines are still in place through the end of this calendar year, the President has clearly signaled his intention of proposing something different for the future, following the election. Whatever that something is, I can assure the Members it will not be mandatory controls because the President has no authority for controls unless and until Congress grants it.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I will be glad to yield to the gentleman from California.

Mr. ROUSSELOT. I appreciate my colleague's yielding. Since we have had all these signals from the White House that they may eventually disband this thing, and many other people have said it really is not doing that much good, why do we not just let it expire?

Mr. MOORHEAD of Pennsylvania. If the gentleman would permit me, I would say one thing that I am sure the gentleman from California approves of. That is it is very important that this Council carry one and monitor Government regulations for their inflationary impact. When the people in OSHA or EPA get too zealous in their desire to carry out and even do more than carry out the intention of the Congress and impose regulations that are unnecessarily expensive, this Council and this Council alone is the body that checks on it. So, for heaven's sake, let us continue for that purpose, which I am sure the gentleman from California shares with me.

Mr. ROUSSELOT. Will the gentleman yield further?

Mr. MOORHEAD of Pennsylvania. Of course, I would be glad to yield.

Mr. ROUSSELOT. I appreciate my colleague's yielding. I am sure that there are many other vehicles and/or machinery available to the White House to monitor prices and wages, et cetera, and they would be far more effective than this agency has been.

□ 1330

Of course the gentleman knows I have never favored continuing this thing. I think we should have let it expire 4 years ago. However, since there are some clear signals now that even the White House is having doubts about how valuable this thing is, there may be some trade-offs for other things.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, if I may reclaim my time, I did not say there were doubts in the White House or in the administration about continuing this. There are signals that the wage price guidelines, which is only part of the function of this Council, may be altered.

Mr. ROUSSELOT. Mr. Chairman, if the gentleman will yield further, I hear what the gentleman is saying but I have read the article in the Washington Post this morning by Mr. Art Pine and I think there are clear signals in there that the White House is beginning to have real doubts as to how effective this agency is. I think we really ought to just help accommodate them and let it expire on the 30th of this month.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield myself 4 additional minutes.

I yield further to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. I think we ought to accommodate them and let it expire on the 30th of this month. We could save all kinds of money and I know there are many other groups within the White House staff and others who are monitoring the regulatory process and I am sure Congress is doing its job on that issue. I just think this is unnecessary bureaucracy.

Mr. MOORHEAD of Pennsylvania. I would hope that the gentleman would listen to the debate and consider whether a very modest investment of $9 million in this agency, if it only reduces the rate of inflation by 1 percent, it has paid for itself a thousand, a million times over, and I hope the gentleman will consider keeping this, with the understanding that even a person for whom I think both the gentleman from California and I share a high regard, that is Arthur Burns, has urged the continuation of the Council.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield at that point?

Mr. MOORHEAD of Pennsylvania. I do yield to the gentleman from California.

Mr. ROUSSELOT. Is there any proof that the group has reduced the inflation by 1 percent?

Mr. MOORHEAD of Pennsylvania. The testimony before our subcommittee indicates that the influence of the Council has had an effect of between 1 percent and 1½ percent reduction in the rate of inflation.

Mr. ROUSSELOT. They have documented all of them?

Mr. MOORHEAD of Pennsylvania. They have, before the committee.

Mr. ROUSSELOT. I certainly look forward to seeing that information. I have not seen it. I did go through the testimony of the gentleman's fine committee. I cannot find any reason for continuing this thing but we have a tendency around here to continue things we do not need. I will, however, listen carefully.

Mr. MOORHEAD of Pennsylvania. I thank the gentleman.

In any case, guidelines or no guidelines, there is a need for this agency. It is the only agency of the Government with an exclusive responsibility to monitor the inflation problem and recommend what to do about it. Equally important, from its very beginning in 1974 COWPS has been given the task of examining and commenting on new Government regulations that might have the effect of raising costs and prices in the economy. This has not just been a gesture. In a number of cases COWPS analysis has led the agencies concerned to modify proposed regulations in the direction of placing less costly burdens on industry without sacrificing underlying goals such as a cleaner environment and safer working places. I understand, Mr. Chairman, that the Senate Appropriations Committee, in approving full funding for COWPS, has mandated that more of its resources be used in this function, and that may well make good sense with the probable phasing out of the guidelines.

Finally, the Banking Committee added an amendment to this legislation sponsored by my friend from Minnesota (Mr. VENTO) that would require COWPS to establish a new unit devoted exclusively to the Nation's increasingly serious productivity problem. As we all know, higher productivity permits higher wages without raising unit costs and hence prices, and a lot of our problems would look much easier if we could turn around the dismal productivity performance of the past few years.

In any case, Mr. Chairman, there is important and useful work for this small agency regardless of the future of the guidelines. It should be authorized at the modest level of less than $10 million approved by the Banking Committee, and I can see no valid reason to cut it back, much less abolish it.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio (Mr. STANTON).

Mr. STANTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in qualified support of H.R. 6777, a bill to extend the life of the Council on Wage and Price Stability until September 30, 1981. I am forced to say that my support is qualified for several reasons, not the least of which is that I do not wish my support to be construed as support for the Carter administration's wage/price guidelines policy.

More importantly, I have no desire to have COWPS or any other governmental unit impose artificial economic controls on our Nation's economy. I feel strongly that COWPS should pay more attention to its statutory responsibility to monitor the Government process and to focus public attention on those Federal actions it considers inflationary.

Were it not for the following advice from former Federal Reserve Board Chairman Arthur Burns, I think I would prefer to see COWPS expire. In a letter to my good friend and the ranking minority member on the Economic Stabilization Subcommittee, STEWART MCKINNEY, Dr. Burns offered these words of wisdom:

> In my judgment, COWPS has accomplished very little. The only reason for extending it is that its discontinuance at this time may be interpreted by the general public as an indication of lack of concern over inflation by the Congress

Mr. Chairman, in all honesty I personally am more concerned with a potentially more damaging and not unrelated issue regarding our Nation's economic health. I am referring to the sweeping credit controls imposed by President Carter on March 14 of this year. As I am sure all of my colleagues are aware, the President is empowered to invoke these credit controls by the Credit Control Act of 1969. Once the President alone determines that such action is necessary to curb inflation, that act grants the Federal Reserve Board almost dictatorial power to regulate and control any or all extensions of credit.

The Senate version of the COWPS legislation contains a provision which would sunset the Credit Control Act on July 31, 1981. The beauty of such a requirement is that it forces the Congress to review the continuing need for this type of extraordinary power before a date certain. Moreover, this approach allows the current credit control program, which fully expires on October 30, ample time to achieve its intended purpose of controlling that portion of inflation which may or may not be generated by the excessive extension of credit. A sunset provision in no way impedes or undermines the President's current attempts to control inflation. It is my intention to use every available parliamentary option to insure that this nongermane Senate amendment reaches a vote on the floor of the House of Representatives.

NEED FOR CREDIT CONTROL ACT IN LIGHT OF THE MONETARY CONTROL ACT OF 1980

Mr. Chairman, any casual observer of our economic policymaking can wonder about the continuing need for the Credit Control Act in light of the Monetary Control Act of 1980, which passed both Houses of Congress by overwhelming majorities earlier this year. You will recall that the Credit Control Act was invoked by President Carter on March 14, just 16 days before the President signed the Monetary Control Act of 1980 into law. Had the Monetary Control Act been in place longer and fully implemented in March, I seriously doubt that President Carter would have needed to burden us with the Credit Control Act.

In line with the fundamental shift in the Federal Reserve's actions last October 6 to focus more on the control of bank reserves to control monetary growth and less on the manipulation of interest rates, the Monetary Control Act of 1980 is designed to improve the effectiveness of monetary policy by applying new reserve requirements set by the Federal Reserve Board to all depository institutions. In addition, the Monetary Control Act grants the Federal Reserve Board the power to impose emergency and supplemental reserves if they are determined to be essential for the conduct of monetary policy. Already, the Federal Reserve Board has implemented regulations regarding reserve requirements and access to the Fed's discount window.

CHAIRMAN VOLCKER'S CRITICISM OF THE CREDIT CONTROL ACT

Mr. Chairman, ever since I have been in Congress, I have respected the judgment of the financial regulators who are responsible for implementing and enforcing our laws. In this particular case, we should rely heavily upon the advice and counsel of Paul Volcker, Chairman of the Board of Governors of the Federal Reserve System, who has had the responsibility for administering the Credit Control Act.

Ony July 23, 1980, in the so-called Humphrey-Hawkins hearings before the Banking Committee, Chairman Volcker had this to say about the need for credit controls:

> The special restraints are inevitably cumbersome and arbitrary in specific application. They involve the kind of intrusion into private decision-making and competitive markets that should not be part of the continuing armory of monetary policy

More importantly, Chairman Volcker cited the perfect justification for doing away with the Credit Control Act.

> Our normal and traditional tools of control, which in fact have been solidified by the Monetary Control Act passed earlier this year, are intact and fully adequate to deal with foreseeable needs

During the question and answer period, I asked Chairman Volcker about the need to continue this act, especially in light of its disproportionate impact upon the average consumer and the poorer people in our country. Chairman Volcker, the man who has had to live with the administration of the credit control program, gave the committee this advice:

> My personal feeling about that act is that it is indeed a very sweeping piece of legislation with rather broad criteria to its use, to put it kindly.
>
> It is not really appropriate to have that sweeping grant of power, in this case to the President and the Federal Reserve combined . . .
>
> When one looks at the language of that legislation on its face, I share the feeling that it is extremely sweeping. It would permit, in the last analysis, control of almost all transactions in the economy. It makes me uneasy.

I would submit that if Chairman Volcker is "uneasy" about the ramification of the Credit Control Act, then all of us in Congress should be equally uneasy.

CREDIT CONTROL ACT IMPOSES SOCIAL COSTS, WITHOUT ANY SOCIAL BENEFITS

In reviewing all of the available data that I have been able to find, I must conclude that the imposition of credit controls has imposed heavy social costs on the U.S. economy without any of the corresponding social benefits. It is my opinion that the Credit Control Act as imposed places an unfair burden upon consumer credit and hurts the average American in an inequitable manner. One tangible result of the March 14 program is that the average consumer has been affected visibly, while the more affluent investor or the larger corporation can find ways to circumvent these controls.

While many banks and credit card companies have implemented policies which have a relatively greater impact on the average consumer—such as raising monthly credit card payments, adding new annual service fees, or curtailing the issuance of credit cards—wealthier individuals and businesses still have access to other forms of financial services. Thus, credit controls invariably hurt the average consumer and small businesses because they have fewer, alternative sources of funds.

I am particularly intrigued by a recent study of the U.S. Chamber of Commerce entitled "A Review of the March 14, 1980 Implementation of the Credit Control Act of 1969." As far as I know, the Chamber's study is the most comprehensive review of the credit restraint program that I have seen.

Some of the chamber of commerce report's findings will be of interest to my colleagues. For example, you will recall that in October of 1979, the Federal Reserve announced a major change in the technique for implementing monetary policy that focused on bank reserves rather than the Federal funds rate. Although there were some initial shocks throughout the financial markets, the chamber study shows that these new Fed actions were having a moderating effect on financial markets and economic activity. More importantly, however, the chamber study reveals that—

> A substantial portion of this early 1980 credit expansion was the result of necessary defensive measures by business firms and financial institutions attempting to recover from the credit policies implemented in October.

The chamber's study also correctly states:

> Such credit expansions tend to be short-lived and have little or no influence on the future course of inflation.

In order to get an alternative perspective on the impact of the controls and to better estimate their expected long-term effects, the chamber of commerce commissioned Data Resources, Inc., to do a study of the quantitative economic impact of the credit restraint program. Although these findings must be viewed as preliminary, they are startling nonetheless. DRI's own conclusion based on the data from its economic model is that—

> It is obvious from this analysis that the March 14 credit controls had a negative impact on the economy in the second quarter . . . In sum, although a turndown in the economy in the quarter was considered to be quite likely before the controls, the model illustrates that the credit controls did make the falloff in economic growth more severe. The negative impact seems to persist during the weak recovery that is forecast for 1981.

Let me just take a moment to read some of the more pertinent excerpts from the Chamber's report:

> According to the simulation, the effect of the CRP (credit restraint program) during the second and third quarters of this year was exclusively one of reducing real economic activity, not the price level. The observed decline in the rate of inflation during these quarters was evidently due to other factors . . . (T)he simulation shows no demonstrable benefit in reducing inflation during these two quarters or in succeeding quarters through 1982.
>
> The major, and perhaps surprising, result of the simulation, however, is the expected impact of the CRP on the weak recovery forecast for 1981. The negative impact in calendar and FY 1981 is expected to be greater than the impact during the short period from March through July that the program was in effect. What was expected to be a sluggish recovery in real GNP growth of 1.1% in 1981 without controls is now expected to be much weaker. As a result of the CRP, growth in real GNP in 1981 is expected to be only 0.8%, 35% less than what would have occurred without controls.
>
> Although the program had no demonstrable effects in reducing inflation, the simulation estimates that it will entail substantial social costs by the time it runs its course through the end of 1982. The DRI simulation suggests, albeit tentatively, that some of the social costs (and net loss to the economy as a whole) will have been the following:
>
> GNP loss: $23 billion.
>
> Employment loss: 300,000 man years.
>
> Federal Tax Receipt loss: $7.0 billion.
>
> New Car Sales loss (domestic): 500,000 units.
>
> Loss in total consumption: $19 billion.
>
> Loss in housing starts: 50,000 units.

In sum, Mr. Chairman, the Chamber report finds that the March 14 credit restraint program has had no demonstrable impact on inflation, while it has had a negative impact on our country's economic growth. The loss in GNP, the loss in employment, the loss in housing starts and in domestic new car sales, and the loss of Federal tax receipts—all argue in favor of sunsetting the Credit Control Act.

CREDIT CONTROLS ARE A FORM OF ALLOCATION OF CREDIT

Moreover, no matter in what light such programs are cast, credit controls are a form of allocating credit. Invariably, the result of allocating credit through government programs is a less efficient and less productive allocation than would be determined by market forces. Just 3 months after the present controls were enacted, Gov. Henry Wallich of the Federal Reserve System had this to say about the Fed's brief experience in administering the credit controls:

> They involve credit allocation to competing groups of borrowers. This is a political decision that should not be required to be made by the central bank. But when made by the political process, credit is likely to be allocated not where it produces the most goods and services, but where it produces the most votes. Any rationing of credit other than through the price, i.e., the interest rate, is bound to be arbitrary and probably in many instances unfair. Unrealistic decisions have to be made as to what type of loans are "productive" and "unproductive." The productivity performance of the American economy, already very inferior, would become further depressed.

A look at market innovations that have been a direct response to other forms of financial controls—for example, the growth of the Eurodollar market, the growth of the commercial paper market, or the growth of money market funds—will show the frustration and futility of imposing such controls. If the present credit control program had gone on much longer, I would guess that the marketplace would have found legitimate ways to circumvent these types of controls as well.

In closing, Mr. Chairman, let me say that it is indeed unfortunate that instead of sensible economic changes involving cutbacks in Government spending—an option that must have been considered and then rejected as politically impracticable—the Carter administration choose the path of credit controls. It is particularly disturbing since these controls came at a time when, according to the Federal Reserve's own interim findings, by the second half of last year expansion in total consumer installment credit had fallen to an 11-percent annual rate, down from a 20-percent rate during 1977 and 1978. Furthermore, this expansion of total consumer installment credit eased to a 7-percent pace in the first

quarter of 1980. Based on these kind of statistics, one can wonder what truly motivated the imposition of such controls.

The placement of burdensome credit restrictions on an economy that was already 2 months into a recession can be viewed only as an overreaction to 1 or 2 months of admittedly bad reports on credit growth and prices, some of what were related to the earlier actions of the Federal Reserve and the growing fear that further controls would be adopted. We have seen that by all reports, there has been little in the way of social benefits arising from the imposition of these credit controls. Unfortunately, there have been and will continue to be too much in the way of social costs. Such controls seen particularly ill-conceived in light of the Nation's problems of inadequate capital formation and meager productivity growth.

I am pleased to say that this effort to sunset the Credit Control Act has the support of such diverse groups as the American Bankers Association, the American Retail Federation, the Credit Union National Association, the Independent Bankers Association of America, the Investment Company Institute, the National Association of Manufacturers, the National Consumer Finance Association, the National Federal of Independent Businesses, the National Retail Merchants Association, the U.S. Chamber of Commerce, and many, many other groups. I hope that all Members can join in this bipartisan effort to sunset the Credit Control Act.

□ 1340

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. STANTON. I yield to the gentleman from Georgia.

Mr. BARNARD. Mr. Chairman, I want to commend the gentleman for bringing this particular aspect of the Senate-passed version to our attention today, because it does have extreme importance to us in considering this legislation.

Mr. Chairman, I support the extension of the Council on Wage and Price Stability—up to a point. I believe that they have done some excellent work in coordinating the various anti-inflation programs of the administration, and that their guidelines are one of the few measures that a business can use to judge their part of the anti-inflation fight. Without these guidelines, there would have been no real standard that anyone could use to restrain future price increases, or to measure wage increase against.

This program has not worked as well as most of us have wished, and prices and wages are still climbing at a far higher than acceptable rate. During the full Banking Committee consideration of this bill, there were proposals that would have trioled the size of COWPS, reflecting the belief that it could work if only it was larger. I cannot agree with this contention, because the Council's figures have far too often been ignored or altered to avoid upsetting one or another powerful group.

If the program were allowed to work as it was intended, free of the need to alter economic needs to the desires of those who should be restrained by it, COWPS could operate on less money than it gets now. For this reason, I urge my colleagues to support an amendment that will be offered here today to cut the authorization by $1.3 million. There is no reason why COWPS cannot carry out its functions effectively and efficiently at this level if it is only allowed to fulfill its mandate without interference.

There is another, and equally important reason to support, this amendment, for it is the only way to eliminate one of the most extreme legislative excesses now in existence.

The Senate has already passed an amendment to their version of this bill that would repeal the Credit Control Act of 1969 late next year. This amendment would force a careful examination of the act, and if it is found to be as damaging as I believe it is, would repeal it without any further action being required.

Unfortunately, the rules of the House prohibit us from introducing it as an amendment to H.R. 6777 today, and the only way that we can deal with it is to amend the House bill, and to instruct the conferees to accept it. Passing this amendment to reduce COWPS by $1.3 million is the first step toward doing this. These are the reasons why the Credit Control Act needs to be examined and repealed.

In 1969, Congress passed the Credit Control Act. It has only been used once—in March of this year—but it has proved itself to be one of the most sweeping grants of power ever passed. Under it, the Federal Reserve System can take control of the credit structure of the economy, and impose whatever controls on it it desires. These can be changes in the repayment terms, executive decisions on what types of credit can be offered, or severe limits on those who do lending, no matter who.

The one application of it earlier this year, resulted in the reduction of the GNP by $23 billion. In addition, an estimated 500,000 cars were never sold that would have been otherwise; 50,000 housing starts were never made; and 300,000 man-years of employment were lost when unemployment was already far higher than acceptable. Finally, in a year when we are trying to balance the budget, an estimated $7 billion in tax revenue was lost.

If there had been any effect on inflation, I would be glad to pay this price, but recent economic studies indicate that there was no effect on inflation at all. According to Data Resources, the total effect was to reduce real economic activity, while prices were not affected. In an economy already in a recession, the effect was to drive it farther down, and to make any recovery harder than before.

Mr. Chairman, if this were likely to be an isolated instance, I would still be uneasy about this law. Unfortunately, studies indicate that any future use of these controls may be even worse, and any prolonged use of them could change basic relationships in our economy to the point of altering the economy beyond recovery.

There is only one way to eliminate this law, and that is to support a motion to reduce the authorization for COWPS, and to force the bill into conference. The Senate has already passed an amendment that would sunset the Credit Control Act in September 1981. Due to the rules of the House it cannot be brought up today, but House conferees can be instructed to support it during a conference.

Mr. Chairman, I urge my colleagues to support Mr. STANTON's amendment to reduce the authorization for COWPS not only because it is a good and logical move, but also because it is the first step to eliminating future credit controls.

Mr. STANTON. Mr. Chairman, I yield 6 minutes to the gentleman from Utah (Mr. MARRIOTT).

Mr. MARRIOTT. Mr. Chairman, if I could have a colloquy with the chairman of the committee——

Mr. MOORHEAD of Pennsylvania. I would be delighted.

Mr. MARRIOTT. I have tried to be objective on the bill. I have no preconceived notions on how to vote, but I tend to be leaning against it. I have heard here today that the Council on Wage and Price Stability has basically been a failure. It has not solved the inflation problems, and I just want to ask a couple of questions.

Some of the experts have told us that the major causes of inflation would be: First, Federal deficit; second, Federal regulations, excessive regulations; third, oil imports; and fourth, our low productivity.

On the Federal regulation side, I think I remember a year ago hearing Alfred Kahn get up in the White House and blame the private sector for the problems of inflation. Could the gentleman just enlighten me now, as one who would like to vote for this bill but finds it difficult to do, exactly what has this Council done? If those are in fact the major causes of inflation that I have pointed out, what has this Council actually done, or are we just keeping 240 bureaucrats off the unemployment rolls?

Mr. MOORHEAD of Pennsylvania. If the gentleman from Utah would yield, I appreciate somebody raising questions and saying that they want enlightenment and are considering their vote.

If we say that this little Council is the only thing we have working against inflation, if that is the concept, yes, of course it has failed. But, I would suggest to the gentleman that it is one very small but very important element in our fight against inflation. Even if we should—and the committee has voted against it—if we should impose mandatory price and wage controls, we would not cover imported oil. We could not. We could not cover food prices. We could not cover a lot of things, but if we look at the areas where the Council has some influence, the rate of inflation has been lower. So, I think it has contributed a little bit, and what I am suggesting, and what I hope the gentleman will consider, is that even if it contributes just a little bit to this tremendous cost of inflation it will be worth it, and I think that the record established before our committee is that

this $9 million investment has paid for itself over and over and over again.

Mr. MARRIOTT. What is that little bit that it has contributed? Has it contributed by recommending that we impose monetary constraints? Is that the little bit? What is the little bit that it has contributed to solving inflation?

Mr. MOORHEAD of Pennsylvania. The testimony before our committee indicated that the rate of inflation would be from 1 percent to 1.5 percent higher were it not for the actions of the Council in two respects: First, the price-wage guidelines have had an effect of reducing what might have been excessive prices, excessive wages; and second, in the matter of Government regulations, we have had testimony before our committee of what they did.

I think of one chemical product where OSHA proposed a particular way they had to reduce the hazards of this chemical. The Council came in and said, "No, you can achieve the same thing at a reduced cost."

If my memory is correct, it was $300 million less. In the field of EPA regulations over fiscal fuel, EPA had a regulation, and the Council on Wage and Price Stability came in and said, "You can achieve the same thing at a much lower cost to industry."

These are examples that could be repeated over and over and over again, that do have a material effect on inflation.

Mr. MARRIOTT. The point is, if that is what they are doing, are they basically serving as advisers? What are the 230 employees doing? Are they gathering data? Are they doing research? Why could not a small group of intelligent people, say a half a dozen economists consulting with the President come up with the solutions?

What I am saying is, and I am no economist, that I can come up with the same solutions they are coming up with. What I am trying to find out is, is it just an itty-bitty little dent in the woodwork? Or, are they really paying for what they are costing this country?

It seems to me that if all we can say is that it is just making a little dent, maybe this is the kind of agency the American people would like to see us do away with, and at least start the trend toward reducing Government.

Mr. MOORHEAD of Pennsylvania. When I said a little dent in percentages, we are dealing with a trillion dollar economy, and 1 percent of a trillion dollars is one heck of a sight more than the $9 million we have here. We have a tremendous economy, and to monitor it requires at least the number of people we have here. The administration actually requested of our committee an increase in the funding to $25 million. The committee, sharing some of the gentleman's points of view, reduced that to $9,700,000, and actually imposed additional duties with respect to productivity, so that the question before this House really should be, should we increase the funding rather than decrease it?

I thank the gentleman.

Mr. MARRIOTT. I thank the gentleman.

□ 1350

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 3 minutes to the distinguished chairman of the full committee.

Mr. REUSS. Mr. Chairman, I thank the gentleman for yielding me this time. I had not intended to get on my feet again, but the gentleman from Utah (Mr. MARRIOTT) has asked a very important question and he put it very well.

I think the answer is good, but because the gentleman from Utah said he started out leaning against us on this, I want to take just a minute to go into the gentleman's question. I am glad he is on his feet because I would like to yield to him in just a moment.

The gentleman from Utah named four causes of inflation. Of those four, two, imported oil and Federal deficits, are indeed causes of inflation, and COWPS does not make any meaningful contact with them. If that were all COWPS was doing, I would not take the time here trying to press the cause of COWPS.

The gentleman has mentioned two other causes of inflation, low productivity and wasteful regulation, and there COWPS does make a real contribution. As far as regulation is concerned, it does take personnel for them to evaluate the various regulations from the administration to make sure that they are free of inflationary effect.

The gentleman from Ohio (Mr. BROWN), whom I do not see here on the floor, has presented an amendment which, speaking for myself, I hope can be accepted, because I think it is a good one. The amendment would further strengthen COWPS's function in looking into these regulations, and I think the gentleman from Utah (Mr. MARRIOTT) would agree with that.

The fourth cause mentioned by the gentleman from Utah, productivity, is really the meat of the coconut, and there COWPS has done some good things in getting worker-management cooperation and innovation. Those are the ways in which we are really going to lick inflation in the long run.

Our bill today carries an amendment, the so-called Vento amendment, which specifically lays it on COWPS to do an even better job on productivity.

So I would say to the gentleman from Utah (Mr. MARRIOTT) that he has asked a good question, but really in these two fields, productivity and regulation, he has an answer which I hope will enable him to vote for the bill.

Mr. MARRIOTT. Mr. Chairman, will the gentleman yield?

Mr. REUSS. I yield to the gentleman from Utah.

Mr. MARRIOTT. Mr. Chairman, I appreciate the gentleman's taking his time to answer this question, and I just want to ask this further question:

Can the gentleman assure us on this side that in fact the Council on Wage and Price Stability has made recommendations to the administration to substantially increase productivity and to substantially reduce regulations? Are they actually making the types of recommendations that we are going to be called upon to initiate in legislation?

What I am trying to see is the end of the rainbow here. It is nice to have them out there doing all this research but what is the bottom line? What is their contribution?

The CHAIRMAN. The time of the gentleman from Wisconsin (Mr. REUSS) has expired.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 1 additional minute to the gentleman from Wisconsin (Mr. REUSS).

Mr. REUSS. Mr. Chairman, the gentleman has asked his question, and I will answer it.

Mr. MARRIOTT. Mr. Chairman, if the gentleman will yield further, I will just complete the question and ask this:

Do we have assurances that in fact, rather than just researching and keeping these people informed, they will give us the recommendations in those two areas the gentleman mentioned that will have an effect on inflation?

Mr. REUSS. Mr. Chairman, the answer is yes. I can give the gentleman such assurance, particularly in light of the Vento amendment and the Brown of Ohio amendment, because we are going to insure that COWPS, without taking on one additional person or getting one additional dollar over that which is put in the bill, accelerates its action in those two areas of regulation and productivity. So I think we will get value received for the $9 million, which is not "peanuts."

Mr. MARRIOTT. Mr. Chairman, I thank the gentleman for his resopnse.

Mr. STANTON. Mr. Chairman, I now yield 2 minutes to the gentleman from California (Mr. GOLDWATER).

Mr. GOLDWATER. Mr. Chairman, I rise today in opposition to the bill currently before the House, H.R. 6777. Beyond that, I rise in opposition to the entire concept behind this legislation.

If this bill purports to indicate real concern for the skyrocketing inflation which is daily eating at the real buying power of the American taxpayer, it is a feeble attempt. The Council on Wage and Price Stability has contributed absolutely nothing to "controlling inflation." It merely spends money while demanding bigger budgets and more staff to further harass the Nation's businesses which are beleaguered enough as it is with excess Government regulation. "Voluntary wage and price controls" are an economic joke and we all know it.

I have heard that we "have to pass this bill to show the general public our concern for the rate of inflation." I suggest to my colleagues that we could really show we care if we balanced the budget and passed a substantial tax cut to put the taxpayer's money back where it belongs—in their pockets. Appropriating even the reduced amount provided in H.R. 6777 is acceding to another hollow, symbolic demand of a do-nothing administration.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from New York (Mr. LUNDINE), a member of the subcommittee and of the full committee.

Mr. LUNDINE. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I wish to compliment the gentleman from Pennsylvania (Mr.

MOORHEAD), as well as our committee chairman, the gentleman from Wisconsin (Mr. REUSS), on their handling of this bill.

We face an issue in this bill that continues to be the most critical problem facing this country: persistent high rates of inflation. But there is a more fundamental issue underlying that problem which is slowly gaining recognition in this country, and that is our declining productivity growth.

My respected colleague, the gentleman from Minnesota (Mr. VENTO), has added an amendment, which I support, to identify a productivity unit within the Council on Wage and Price Stability. I do not, however, want anyone to labor under the delusion that simply identifying two or three staff people in the Council on Wage and Price Stability is going to be an overwhelmingly significant step in solving our Nation's productivity problems.

I hope that we will not hear the same argument from this administration about this unit within COWPS as we have about their so-called Productivity Council, coordinated by OMB with its anemic staff support and symbolic efforts, because I fear that is what this unit will end up also being, that this unit is their answer to improving American productivity.

Under the leadership of the gentleman from Pennsylvania (Mr. MOORHEAD), the Subcommittee on Economic Stabilization has recently completed 4 days of hearings on America's lagging productivity problem. It has received testimony from business, labor, professional economists, and representatives of foreign countries. Lester Thurow, one of the distinguished economists in this country, said that this problem is not like 1 major wound; it is like 100 little cuts, and we need the kind of focused attention that will deal with the healing of 100 little injuries if we are going to really come to a commitment and a common strategy between not only Government and business, but labor and business and others in the private sector in dealing with our productivity problem.

I commend the gentleman from Minnesota (Mr. VENTO), with the caveat that we must move and build upon his efforts in addressing this fundamental, underlying problem of productivity.

Mr. Chairman, I would point out that this COWPS bill before us authorizes 235 employees—the same level that agency now has. That is 235 people addressing the most important problem facing this country.

I have taken a little time and found out that the Federal Crop Insurance Corporation has 560 employees, the National Telecommunications and Information Administration has 361 employees, the International Boundary and Water Commission between the United States and Mexico has 298, the American Battle Monuments Commission has 384, and even the Federal Election Commission has more than we are devoting to the fight on inflation; it has 251 employees.

Now, in point of fact, what happened in the Committee on Banking, Finance and Urban Affairs is that the gentleman from Ohio (Mr. STRATTON) offered an amendment to cut this number down. I offered a substitute committee amendment which raised the level—the "muscle" behind the Council on Wage and Price Stability—to about 650 people.

□ 1400

That amendment passed in the Banking Committee by one or two votes. I do not recall; it was close, I remember that. And 2 days later, we came back in the committee and there was a gentleman's agreement that had been reached, and that gentleman's agreement would preserve the Council on Wage and Price Stability at this level, the authorized staff.

I can only say that I hope that we will abide by that gentleman's agreement here this afternoon and at least give this agency the kind of support, the kind of authorization that it has had in past years. As the chairman of the full committee and the chairman of the subcommittee have so incisively and so eloquently stated, this is not the whole answer to our Nation's productivity problem, but it is the one agency that has single focus, that its whole mission is on improving our performance on inflation.

I commend the members of this committee the passage of this, unadorned by amendments that are designed to cripple or destroy it.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 6 minutes to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Chairman, I rise in enthusiastic opposition to this bill. The best that can be said about the Council on Wage and Price Stability is that it is a joke. At the other end it can be said that COWPS is an invidious fraud on the American public.

The Council on Wage and Price Stability has had some of the ablest and most dedicated professional people working for it over the years, men and women of great knowledge and caring. But they should have been working somewhere else. The problem is that the Council on Wage and Price Stability was created as a deception of the public and has been extended year after year, based on the same deception.

The gentleman from Ohio, in his remarks, in reluctant support of this legislation, said the reason that he is supporting this bill was based upon the testimony of Dr. Burns, who said that if this agency were abolished, it might indicate to the public that Congress is not concerned about inflation.

The fact of the matter is the agency was created on that same thesis in 1974 when, just prior to election, inflation was high, when the then President, President Ford, proposed this legislation in order to give the Members of Congress an opportunity to go back and campaign on the basis that they were doing something about inflation. And when the legislation came up for extension 2 years later, the same argument was made in 1976, and the same argument was made in 1978, and the same today.

There is nothing in this Council on Wage and Price Stability except its name that has any impact on inflation. It has not done anything about inflation. It has merely provided employment for these talented people about whom I have previously made reference.

The fact of the matter is that this legislation has been kept in place as a means of letting public officials tell the American people they are doing something about inflation rather than actually doing something about it. The only thing that this agency has done that even remotely gets close to the subject matter is to file comments on regulations that they feel are inflationary. That is commendable. However, there are at least three other agencies in Government today that perform that identical function and could take over any operation of the Council on Wage and Price Stability to that end. The Regulatory Advisory Review Group, the Council of Economic Advisers, the Office of Management and Budget, and possibly even the U.S. Regulatory Council all have that function. So this is not anything needed in COWPS. It is duplication.

There is also the possibility that because this particular agency exists in place with this name, it will become the vehicle for mandatory wage and price controls, which I hope no one in this House would believe could solve the problems of inflation in this country but, rather, exacerbate the problems of bureaucracy.

This agency is one which should be given a merciful death today. Let this Congress face the substantive problems of inflation. Productivity is the root of fighting inflation. That is what we need to deal with. Balancing the budget is what we ought to be about. Getting regulations cut back in a meaningful way by this Congress is something we ought to do, and increasing our self-sufficiency in oil and gas so that we do not have to import the OPEC petroleum.

Those are the things we ought to be doing, not deceiving the public through a title of an agency that has done nothing and will do nothing.

I remember back in 1976, when I first spoke against this particular agency, it had that year, if I remember correctly, a proposed authorization of approximately $2 million. It had about 20 to 30 professional employees. And today we are looking at a bill, in 1980, just 2 years later, with 240 employees and $9 million. And it is still doing nothing.

I think the responsible thing for this Congress to do, if we really want to send a message to the American people that we are concerned about inflation, is to abolish this agency of Government, and others, and let us deal with the bedrock causes of inflation and not continue this deception, this joke, this fraud, which is all the Council on Wage and Price Stability amounts to.

Mr. McKINNEY. Mr. Chairman, I have no further requests for time.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Minnesota (Mr. VENTO), a member of the subcommittee, a member of the full committee, and the author of one of the very significant amendments to this legislation.

Mr. VENTO. Mr. Chairman, the Council on Wage and Price Stability has played an important role in controlling inflation and maintaining stability in many sectors of our Nation's economy.

In late 1979, the Pay and Price Advisory Committee completed an extensive review of the COWPS program and determined that inflation in the sectors covered by COWPS was in the neighborhood of about 7.5 percent as compared to an overall inflation rate of 13 percent.

Although it is impossible to determine precisely what contribution COWPS made in holding down inflation in those sectors, both the Council of Economic Advisers and COWPS have determined through the use of sophisticated econometric modeling the prices in parts of our economy covered by the COWPS program had risen 1.1 to 1.5 percentage points less than they otherwise would have risen. Therefore, I think it is a reasonable conclusion that the COWPS program of voluntary wage and price standards has had an important anti-inflationary effect.

It is interesting, to me, to listen to some of the critics of this bill and hear what type of economy they think we have. It is obviously a free enterprise economy, even though it does not exactly follow the Adam Smith model of free enterprise. But nevertheless, we are constantly compared with other economies and what is happening in Germany and Japan in terms of some of their economic indices. Yet we are so reluctant to let the Federal Government maintain information and provide the guidelines in terms of the private sector. Not even when they are voluntary guidelines, can we simply review and file the information. That is really what some of the attack here today is aimed at; that somewhere down the line they might do something that the private sector would not agree with.

I disagree with this type of thinking. I think we have to have the opportunity to assemble information and monitor our free enterprise economy. I think the administration has to have it. COWPS has a significant responsibility. It is one of the only places at the national level where we get that kind of coordination that is so desirable in the economy between the disparate parts of the Federal bureaucracy as it exists today.

In fact, I am personally disappointed that we are not considering a bill here today that increases funding for COWPS and authorizes them to have significantly expanded functions both in staff and in their wage and price monitoring program. I think increased funding would be helpful. I think that they are effective in terms of fighting inflation. I believe an extensive program of wage and price constraints is important.

One aspect of the reauthorization bill which I would like to pay particular attention to today is the productivity provision which I introduced as an amendment during the Subcommittee on Economic Stabilization's consideration of this bill. Certainly, I would be remiss if I did not give credit and commend my colleague, the gentleman from New York (Mr. LUNDINE), for his leadership on the topic of productivity.

□ 1410

I am pleased to note his remarks today and pledge my cooperation to work with him as we continue to tackle this problem.

I have offered this amendment because of my deep concern about the declining rate of U.S. productivity growth in recent years. Our declining growth rate and productivity raises serious questions about our economy and our economic environment. It also is making a significant contribution to inflation and hindering the competitiveness of American industry internationally. Economists throughout the country view productivity as a special area of concern for America in the 1980's.

The productivity language I have introduced creates a special sector within the Council that would focus on this problem. The Council already has a responsibility to study productivity, and address a number of concerns as they relate to productivity.

I am optimistic that with the strength of the congressional concern expressed in this particular bill that we will have a better focus on that and will address some of the serious problems of our declining rate of productivity.

The CHAIRMAN. The time of the gentleman from Minnesota (Mr. VENTO) has expired.

Mr. VENTO. Mr. Chairman, I ask for 1 additional minute.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. MOORHEAD) has only 30 seconds remaining.

Mr. McKINNEY. Mr. Chairman, I would be delighted to yield 3 additional minutes to the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. MOORHEAD of Pennsylvania. I thank the gentleman from Connecticut, and I yield 1 additional minute to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. I thank the gentleman for yielding.

Mr. Chairman, COWPS' responsibility to coordinate the administration's economy policy and anti-inflation activities is fundamental. Therefore, I believe this productivity charge is a logical focus for COWPS. The administration, whichever party is in the White House, must address productivity in its policies and actions. The role of COWPS should be to summarize and analyze the actions of each department or agency and predict their consequences for the benefit of the public and private sectors. This is precisely what the productivity provision contained in this bill has the potential to achieve.

Once again, I urge my colleagues to support the COWPS reauthorization bill, H.R. 6777. COWPS is the only body in the U.S. Government which has been engaged specifically to help focus on inflation. I believe we must give COWPS the support that it needs to do an effective job.

I yield back the balance of my time.

Mr. McKINNEY. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. PORTER).

Mr. PORTER. Mr. Chairman, I rise in very reluctant support of this authorization.

Mr. Chairman, the Council on Wage and Price Stability claims that inflation would have been one-half to three-quarters percent higher over the period October 1978 to March 1980, if they had not been in existence. While any help in combating inflation is obviously welcome, the fact that inflation during this period rose on the Consumer Price Index from 6.8 to 18.2 percent is evidence enough of the ineffectiveness of their work.

Now we are asked to increase their spending authority substantially. Totally apart from the concept of rewarding absolutely abysmal performance, it seems beyond understanding how anyone can believe more money and more staff will make the Council more effective.

In my judgment, it will not. In fact, the increases proposed are themselves inflationary, particularly in view of the real lack of productivity of COWPS evidenced to date.

The only justification of a continuation of COWPS and its funding is psychological, based on the grounds that the American people, seeing its demise, might well believe, and I think correctly believe, that Government would then be doing absolutely nothing to combat inflation.

On that ground and on that ground alone rests the only justification for voting for this authorization.

Apart from this psychological justification, however, there is no doubt whatsoever that attempting to treat the symp- living expenses, the businessman's need for more income to keep up with higher living expenses, the businessman's need to raise prices to keep up with the rising cost of doing business—is destined to fail.

Inflation may be somewhat pushed ahead by psychological responses to it—anticipations that it will be worse in the future—but the basic cause is the devaluation of money by excessively increasing its supply. This is a function of Government and Government alone, and to the extent—and it is substantial—that Congress, by failing year after year to keep expenditures in line with revenue, is the impetus for excessive Federal Reserve money creation to monetize this enormous debt, the responsibility and blame for inflation fall directly on the Congress.

Only by Congress placing its fiscal house in order and taking the pressure off the credit markets and off the Federal Reserve will inflation ever be brought under control. Until this basic foundation of fiscal and monetary responsibility is achieved, COWPS' existence—except as a psychological crutch—is really irrelevant. When it is achieved, COWPS will be unnecessary.

The argument was made, and very well, I thought, in the subcommittee in reference to an amendment attempting to give the President standby authority for mandatory wage and price controls, that there is not enough money and manpower in existence for Government to control the price of every commodity and the wage of every worker. But this argument applies in my mind with equal force to the monitoring of every price and wage decision. Congress can throw more and more money and manpower into COWPS' efforts year after year, and the

result will be the same—abysmal—until Congress takes a tack opposite to the one it has been following for so long and curbs excessive Federal spending.

In the past few months it has been increasingly evident that Congress is not yet ready to follow this responsible course. A vote for COWPS today may assuage some consciences and may be justified on the psychological ground, but it is not a substitute for doing what must be done and no real solution to inflation.

I yield back the balance of my time.

Mr. McKINNEY. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. BLANCHARD).

Mr. BLANCHARD. Mr. Chairman, I rise in support of this legislation.

It is a simple renewal, a 1-year renewal of COWPS. I think everyone agrees that there are many causes for inflation, and the sooner we recognize that and work on a number of fronts to fight inflation, the better off we are going to be. There is no easy, quick answer to stopping inflation, and an agency like COWPS brings focus on the problem and helps us understand that there are numerous causes for inflation and ways to fight inflation.

Certainly one of those components of inflation is the whole wage-price mix and how prices could or could not be transferred throughout our economy either by psychological factors, anticipatory and administered prices or other sources, including OPEC.

I think a reasonable case can be made, my colleagues, that the enormous energy price increases of the past years were prevented from being transferred into the other sectors of our economy because of the work of COWPS, because of its price and pay standards.

If for that reason alone this agency deserves a renewal. I regret it is only for 1 year. If I had my druthers, I would give them more power. But the fact is our committee very overwhelmingly and very strongly rejected expanding the power of the Council. I think that is a proper response to any of those who fear this Council may intrude too much in our economy.

I want to commend our subcommittee chairman, the gentleman from Pennsylvania (Mr. MOORHEAD), his staff and the ranking member STEWART MCKINNEY on his staff for having worked in a bipartisan fashion on this subject, this legislation and so many others.

● Mr. HINSON. Mr. Chairman, I was prepared to offer an amendment to H.R. 6777 which would have prohibited the Council on Wage and Price Stability from requiring prenotification of price increases by American businesses as a part of its program to monitor wage/price increases.

COWPS, as you know, operates under Executive Order 12092, but exists totally without legislative authority to exercise mandatory wage and price controls. The House Banking Committee, when it considered this authorizing legislation, overwhelmingly rejected a motion to grant the President standby authority to impose mandatory wage and price controls. The question might properly then be asked why we should allow COWPS to construct the machinery for mandatory controls piecemeal?

My reason for offering the amendment was to prohibit what I considered to be the first step toward mandatory wage and price controls. For COWPS to have required notification of price increases by American businesses before these increases took place, would have been to further burden these businesses with enormous costs and excessive regulation—and would, in fact, have contributed to the very problem it is professing to solve—inflation and a weakened U.S. economy.

Another reason I planned to offer my amendment was to halt the substantial increase in COWPS staff and funding which would result from implementation of a prenotification program. We have quadrupled the budget for COWPS in the past 2 years and added substantially to its staffing. By inaction, the Congress could actually create a situation whereby COWPS could expand its authority, establish a major new Federal policy, and coerce the creation of the new jobs required to run it.

I believe that the President ought to have a mechanism to fight inflation. But granting COWPS full agency powers, evermore money and authority would be an enormous administrative error from the standpoint of Government policy. COWPS exists by Executive order and its processes are not fully responsive to congressional authority. This Congress ought not to allow the exercise of extra-legal authority by COWPS without specific legislative mandate—to do so would violate the fundamental constitutional concept of separation of powers, and it could eventually imperil the country's entire inflation-fighting program.

In view of the administration's recently announced plan to abandon the current wage/price guideline program next year in favor of a restraint plan based on tax incentives, I decided not to offer my amendment. We must now wait to see if President Carter follows through on his agreement to change the present policies of the Wage and Price Council and actually adopts a policy that would encourage economic growth, instead of the growth of another arm of the bureaucracy.●

□ 1420

Mr. McKINNEY. Mr. Chairman, I have no further requests for time.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

H.R. 6777

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Council on Wage and Price Stability Act is amended by striking out "on a quarterly basis and not later than thirty days after the close of each calendar quarter" and by inserting "on an annual basis".

SEC. 2. (a) Section 6 of such Act is amended by striking out "(1) $6,952,000 for the fiscal year ending September 30, 1979; and (2) $8,483,000 for the fiscal year ending September 30, 1980." and by inserting "(1) $9,463,000 for the fiscal year ending September 30, 1980, and (2) $9,770,000 for the fiscal year ending September 30, 1981."

SEC. 3. Section 7 of such Act is amended by striking out "1980" and inserting in lieu thereof "1981".

Mr. MOORHEAD of Pennsylvania (during the reading). Mr. Chairman, I ask unanimous consent that this two-page bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: On the first page, strike out line 3 and all that follows through line 3, page 2.

On the second page, insert the following after line 3:

That section 2 of the Council on Wage and Price Stability Act (12 U.S.C. 1904 note) is amended by adding at the end thereof the following new subsection:

"(h) The Director of the Council shall initiate the formation within its administrative structure of a unit of personnel who shall have as their primary responsibility problems related to productivity in the economy of the United States. Such productivity unit shall advise the public and private sectors of the economy relative to their actions and shall report on the impact of productivity on consumers, workers, business, economic growth, and inflation.".

On line 15 of the second page, insert "(a)" after "Sec. 2.".

Page 2, line 19, strike out the semicolon after "1980" and insert in lieu thereof a comma.

Page 2, after line 20, insert the following:

(b) Section 6 of such Act is amended by striking out the dash after "not to exceed".

The Committee amendments were agreed to.

AMENDMENT OFFERED BY MR. MOORHEAD OF PENNSYLVANIA

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MOORHEAD of Pennsylvania: Page 2, beginning on line 18, strike out "(1) $9,463,000 for the fiscal year ending September 30, 1980; 1980, and (2).".

Page 2, line 16, insert a dash before "(1)".

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, This is a technical amendment to bring the bill into conformity with the Budget Act. It will strike from the bill an authorization for supplemental appropriations for fiscal year 1980.

As you can see, this is an entirely academic question because the fiscal year has less than a week to go. But the amendment is necessary for Budget Act reasons.

This authorization for fiscal 1980 was not reported by the committee prior to May 15, 1979, and therefore involves a technical Budget Act violation. To repeat, the substance is entirely academic and I urge the adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. MOORHEAD).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BROWN OF OHIO

Mr. BROWN of Ohio. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BROWN of Ohio: On page 2 after line 14, insert the following:

SEC. 3. (a) Section 2 of the Council on Wage and Price Stability Act is amended by adding at the end thereof the following:

"(i) For the fiscal year ending September 30, 1981, the Council shall increase the number of positions which involve the review of proposed and existing Federal regulations by 50 per centum, over the number of positions allocated for such purpose for the fiscal year 1980. In conducting such review, the Council shall identify those regulations which have the greatest inflationary impact on the economy or on specific industry sectors, consistent with Section 3(a)(8)."

(b) Section 5 of such Act is amended by adding at the end thereof the following: "The annual report shall also contain an evaluation of the inflationary impact reviews undertaken by the Council in the previous year pursuant to section 2(i), including a listing and description of all regulatory proceedings in which the Council participated, the Council's recommended action, the projected cost of each such regulation, the cumulative inflationary impact of such regulations and the final disposition of each such regulatory proceeding.".

And redesignate the subsequent sections accordingly.

Mr. BROWN of Ohio (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BROWN of Ohio. Mr. Chairman, the large and growing relationship between Government regulation and inflation has been widely documented. In a study performed for the Joint Economic Committee, Murray Weidenbaum of the Center for the Study of American Business at Washington University, St. Louis, found that Government regulation required nearly $100 billion in private sector compliance costs in fiscal year 1979. We all know who paid that $100 billion—the American consumer in higher costs of products and services purchased.

All regulatory cost increases are passed on to the consumer, adding significantly to inflation.

A new congressional study performed for the Joint Economic Committee and the Senate Commerce Committee by the Office of Technology Assessment and released last week concluded that at least 8 to 12 percent, and possibly as much as 15 percent, of the slowdown in U.S. productivity growth is due to environmental, safety and health regulations alone.

Yet the Council on Wage and Price stability has devoted most of its resources to monitoring wage and price increases by labor and business, downplaying the role of Federal regulations in causing those wage and price increases.

My amendment directs the Council to increase by 50 percent its regulatory review program personnel. In fiscal year 1979, the Council's regulatory review unit, the Division of Government Programs and Regulation, had 19 staff members, or about 13 percent of the total Council staff of 233.

In fiscal year 1980, after the Congress directed the Council to increase its regulatory review programs, the staff went up by only 3 to 22. Because of a huge increase in the pay and price monitoring staffs, the regulatory review staff dropped to only 9 percent of total staff.

This amendment seeks only to reverse this trend, returning the regulatory review staff to 14 percent of the total. Considering the huge impact of Government regulations on inflation, this is not unreasonable.

The second part of my amendment directs the President, in his annual report to Congress, to evaluate the inflationary impact reviews undertaken by the Council, so that we may review the effectiveness of the regulatory review activity and, hopefully, change regulatory policies which have an excessive impact on inflation.

Mr. Chairman, this is a modest amendment which will not increase the cost to the taxpayers for operation of the Council on Wage and Price Stability. Its sole intent is to direct more of the Council's attention to one of the biggest components of inflation—Government regulations.

Mr. McKINNEY. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. I would be happy to yield to the gentleman from Connecticut.

Mr. McKINNEY. Mr. Chairman, I would just like to say to the gentleman that I could not be more delighted with his amendment. This follows and makes more complete the original McKinney amendment on COWPS by allowing COWPS to go in front of regulatory agencies and testifying to the inflationary impact of the proposed regulations.

I think the gentleman has gone a step further, which is good. It could do nothing more than complement what I was trying to approach when I put my amendment in a couple years ago.

The minority will accept the amendment.

Mr. BROWN of Ohio. I appreciate the gentleman's support and his leadership.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Pennsylvania.

Mr. MOORHEAD of Pennsylvania. I thank the gentleman for yielding.

We on this side of the aisle have had an opportunity to review the amendment. While we might think that it might be well to add to the amendment some more money to be sure that we have these positions, I think that the amendment is a good one. It stresses that part of the activities of the Council which I think are extremely important. I commend the gentleman for his amendment and I hope that it will be adopted promptly.

Mr. BROWN of Ohio. I am very flattered at the support of the gentleman from Pennsylvania.

Mr. McKINNEY. Mr. Chairman, would the gentleman yield further?

Mr. BROWN of Ohio. Yes, of course.

Mr. McKINNEY. Following my chairman's statement, it is my understanding that the Senate Appropriations Committee required in their appropriations full funding, no extra money, that 100 percent more money be spent on this particular function than is presently being spent; so evidently the gentleman has reached an idea whose popularity spreads even to the other body at both the authorization and appropriation stage.

Mr. BROWN of Ohio. With that kind of enthusiastic support for my amendment from both sides of the aisle—and both sides of the Capitol—it is best for me to yield back the balance of my time, Mr. Chairman, and ask for a vote on my amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. BROWN).

The amendment was agreed to.

Mr. WEISS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, last year I reluctantly supported the reauthorization of the Council on Wage and Price Stability, after an effort to amend that reauthorization to give the President standby authority to impose mandatory wage and price controls was defeated. Even at that time some of my colleagues, most prominently the gentleman from New York (Mr. STRATTON), voted against the reauthorization on the ground that just reauthorizing the Council as it was as a voluntary wage and price guideline body was asking for a continuation of the same ineffectual do-nothing kind of effort that was being made.

In the course of the past year, our worst fears have become reality. Without taking anything away from the wisdom and knowledge of the distinguished members of the subcommittee and the chairmanship of my distinguished friend and colleague, the gentleman from Pennsylvania (Mr. MOORHEAD), the fact is that the Council on Wage and Price Stability shoots with a water pistol and has absolutely no impact at all on reducing the rate of inflation.

Indeed, the administration finally came to the conclusion that the only way it could fight inflation is by inducing a severe recession. That recession has now resulted in an unemployment rate which is approximately 7.6 percent, which means there are somewhere around 8 million Americans who are unemployed.

Of course, the irony of it is that we have thrown more and more people out of work in order to fight inflation, but we have not affected the underlying rate of inflation at all.

As a matter of fact, we have a statement in this morning's Wall Street Journal from Robert Russell, who says:

> The basic cost trends haven't been markedly affected by this recession.

Barry Bosworth, Russell's predecessor, said:

> This recession, unless you think it headed off a major explosion in prices, had amazingly little effect at slowing inflation down.

□ 1430

Lest anyone think that mine is a partisan criticism of my President, that is a Democratic President, and of the Democratic administration, I want to quickly indicate that I do not consider the position of the minority party to be any better. As a matter of fact, the opposition to the reauthorization of the Council on Wage and Price Stability coming from that side has been that as little as the Council does it is too much.

The American people are continuing to suffer the ravages of inflation. Con-

gress and the Government have done absolutely nothing to allay their concern, to reduce the tremendous impact that inflation is having on the quality of life in this country.

I think that perhaps last year we were justified in the hope that the administration and the leadership of the House and the other body and the administration itself would recognize that something more serious had to be done and steps would be taken other than forcing millions of Americans out of work. That has not happened.

For me at this point to support this reauthorization would be, in essence, to say go ahead, fight inflation by throwing some more millions of Americans out of work. Apparently we have been so brainwashed, that we would, under no circumstances, consider the adoption of mandatory wage and price and profit controls, which historically are the only measures that have worked to reduce and cut back on the rate of inflation.

Mr. Chairman, last year I reluctantly supported reauthorization of the Council on Wage and Price Stability (COWPS) Extension. I cannot do so this year.

This measure, H.R. 6777, provides a 1-year extension for COWPS and authorizes $9.7 million for its function during that time. It leaves the level of staff unchanged at 237 people, and directs COWPS to establish a staff unit to advise the public and private sector on improving productivity.

Perhaps, Mr. Chairman, more important than what the bill contains is what the bill does not contain. I am referring to the absence of authority for the President to instruct COWPS to institute mandatory across-the-board wage and price controls.

Standby authority for wage and price controls is needed now more than ever. The national papers today are reporting the single largest 1-month food price increase in 5 years. With this increase factored into the overall increase in consumer prices the consumer price index rose 0.7 percent last month.

In dollar and cents terms this rate of inflation means that what cost $10 in 1976 would cost nearly $25 last month. In the metropolitan area where my district is located—New York—the inflation rate was reported to be much higher at 11.8 percent. The suffering and level of sacrifice in this country is at a point which cannot be tolerated much longer.

It is apparent that the recessionary approach to curing the inflationary spiral is having little or no effect. The Director of COWPS, Robert Russell, has conceded this, as reported today by the Wall Street Journal: "The basic cost trends haven't been markedly affected by this recession," he said. Barry Bosworth, Russell's predecessor and one of the first economists to advocate the use of wage and price controls this year reinforced this point in the same article. He is quoted as saying that—

> This recession, unless you think it headed off a major explosion in prices, had amazingly little effect at slowing inflation down.

These pronouncements only make the case for wage and price controls more convincing. The existing wage and price restraint program—the so-called wage and price guidelines—are a farce. They are basically being ignored. In fact, today's Washington Post reports that the administration is considering dumping the whole program entirely. COWPS director Russell is quoted as saying that the program would have to be strengthened, or "a viable alternative" located in its place.

I had the opportunity last March to testify before the House Banking Subcommittee on Economic Stabilization when it was considering H.R. 6777. At that time we were looking back at a 1979 inflation rate of over 18 percent. I pointed out then that the recessionary approach would entail a high level of unemployment. Thus far unemployment is at 7.6 percent. Economic forcasters are generally saying that we will be experiencing at least 10-percent inflation close to the upcoming election. Economists also acknowledge that to reduce inflation to 3 or 4 percent will require greater unemployment if we continue to follow a recessionary cure. Obviously this is not a prudent or fair solution. We must not cause, as the price for lower inflation, devestatingly high unemployment.

During the markup of H.R. 6777, both in subcommittee and later in full committee, an amendment was offered to give the President authority to impose wage and price controls.

On neither occasion was the amendment approved. Mr. Chairman, I expect that this issue will continue to be ignored until the economic situation worsens even more drastically. I urge my colleagues to make a serious evaluation of our current economic crisis, and to realize that mandatory wage and price controls are desperately needed, today. Authority to implement them is a necessary first step.

I do not believe that COWPS has helped make a significant improvement in our economic condition, and I do not wish to support the minimal effort it is able to make. To do so would be to lend myself to the charade which keeps us from dealing realistically with this most serious economic problem facing our Nation.

Mr. BLANCHARD. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I am happy to yield to the gentleman.

Mr. BLANCHARD. I would like to express to some degree my sympathy with the gentleman's point of view, but not entirely because I think the people at the Council, Director Bosworth and now Director Russell have quite honestly taken an enlightened view as to how to fight inflation. The policies the gentleman alluded to I believe are ones that have been determined elsewhere within the administration, quite regrettably.

I happened to have been the one on the subcommittee who offered the amendment which would have strengthened the Council's power to include standby controls.

Mr. WEISS. I appreciate that and I want to give the gentleman full credit for having done that.

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent Mr. WEISS was allowed to proceed for 2 additional minutes.)

Mr. BLANCHARD. Will the gentleman yield further?

Mr. WEISS. Of course I yield.

Mr. BLANCHARD. Unfortunately, the subcommittee very strongly and in a bipartisan manner rejected that amendment. My own conclusion, having looked at the issue and having looked at the history of wage and price controls, is that the controls of the early 1970's and the way they were used or misused has so poisoned the attitude about their effectiveness and their fairness that the public, and the Congress representing the public, are not able to see fit to seriously consider them. That is one of the major problems we face in trying to deal with inflation rather than COWPS itself. I think COWPS itself has made a modest contribution to restraining prices and wages and deserves to be renewed.

I would hope the gentleman would reconsider his support of COWPS.

Mr. WEISS. I thank the gentleman for his comments and, indeed, I want to reemphasize the fact that he has been one of the few lone voices who have urged a more direct and mandatory program.

The fact is that it is not the public that has been scared off. The public in every poll that has been done over the course of the last couple of years has indicated overwhelming support for mandatory wage and price and profit controls. It is really we in public life, we in the Congress who have been scared off by Republican rhetoric. The Republicans themselves in 1972 and 1973 scuttled the wage and price control program that President Nixon himself had put in for the purpose of his own reelection campaign. It is too bad we cannot separate out what was real and what was not real and what worked and what did not work. But in the meantime it is not just we who are suffering, it is everyone in the country.

I think for myself to vote for the reauthorization is to submit myself to a charade which I do not think stands well for the country or for us.

AMENDMENT OFFERED BY MR. WOLPE

Mr. WOLPE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. WOLPE: Page 2, after line 14, insert the following:
>
> SEC. 2. Section 2 of the Council on Wage and Price Stability Act (12 U.S.C. 1904 note) is amended by adding at the end thereof the following:
>
> "(1) Not later than 60 days after the effective date of this subsection, the anti-inflationary pay and price standards administered by the Council shall be made applicable to producers of oil and natural gas.".
>
> And redesignate the subsequent sections accordingly.

Mr. WOLPE. Mr. Chairman, what this amendment does very simply is to put the oil and gas producers within the wage and price guidelines administered by the President's Council on Wage and Price Stability.

For some background on this amendment we need only to take a look at what is happening with the rate of inflation in this country. During the first 6 months of this year we experienced a 14.8-percent inflation rate. All of us within this body have constantly decried the devastating impact of that rate of inflation, its impact on the declining standard of living of all Americans. We have addressed ourselves in this Congress to a number of factors that have contributed to that rate of inflation: Wasteful spending, overregulation, poor productivity. But we continue to ignore one of the major contributors to the rate of inflation, the rising cost of energy.

In the first half of this year energy prices in this country soared at an annual rate of 33.4 percent and the profits of the 20 largest oil companies increased by 68 percent over that same period of time in 1979. And 1979 was itself a very good year for the major oil companies. The combined profits of the top 20 oil companies in that year were up 64 percent over their 1978 profits. Indeed, it is estimated that approximately 50 percent of the acceleration of the inflation rate in recent years is directly attributable to the rising cost of energy.

So what this amendment is really all about is simply a statement that enough is enough. We are asking workers in this country to accept limitations on wage demands. We ask business and industry to accept limitations on the prices that they charge. We tell our farmers that they should be patient when the prices they receive do not even return their cost of production. But somehow the oil and gas industry is exempt from any such demands for restraint.

The basic issue is fairness. I am convinced that Americans are prepared to sacrifice, they are prepared to accept some difficult decisions that have to be made if we are going to come to terms with the economic problems this country is facing. But they want to be certain that the burdens that they are being asked to carry are being borne equitably. And when it comes to the energy industry that is simply not happening.

There is a second issue in addition to that of fairness and that is the necessity to insure some moderation in energy price increases. I think we all recognize the need for gradually rising energy cost increases to encourage the development of new and alternative sources of energy. I think we recognize that this country got itself into difficulty over the years because of artificially low domestic energy prices, the emergence of which has been the development of a very energy inefficient economic system.

But we also need to be attentive to the major negative economic impacts of precipitous uncontrolled price increases. Rapidly accelerating domestic energy costs have not only fueled inflation, but have also produced major economic dislocations, hampered productivity, and caused severe unemployment. What this amendment seeks is to focus attention upon the importance of continued monitoring of energy price increases. The Council on Wage and Price Stability's guidelines should be no less applicable to the oil and gas producers than to other segments of the energy industry. The refineries now fall within those guidelines, the retailers do, but not the oil and gas producers themselves.

The approach being taken is very modest. It is not a reimposition of oil and and gas controls. We are talking about a voluntary mechanism administered by the Council on Wage and Price Stability. But it is an effort to reach out and, in effect, say to the oil and gas producers: "We welcome your participation in the fight against inflation. We expect the oil and gas industry to join in a cooperative way to accept some of the burden of the fight against inflation."

I would urge support for this amendment to bring the oil and gas producers within the Council on Wage and Price Stability guidelines.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the amendment of the gentleman from Michigan (Mr. WOLPE), while well intentioned, amounts to a back-door effort to change the Nation's whole energy policy. By making crude oil and natural gas subject to the price guidelines, the amendment would amount to a recontrol of oil and gas prices. This is a matter that has been fought out in other pieces of legislation and decontrol has been firmly fixed as a vital component of the Nation's energy policy. We cannot and should not reverse that policy by an amendment to this bill.

I would like to mention two other points in connection with this amendment.

First, even if it should be adopted and—even more unlikely, accepted by the Senate—it might wind up having no effect at all. The reason is that the present guidelines for wages and prices are quite likely to be abandoned at the end of this calendar year. As I said in my opening remarks, I do not know what will replace them, but in any event, there is no assurance that this amendment would have the intended effect of rolling back the prices of domestic oil and gas.

Second, the Members should remember that a massive component of our revenues is now dependent upon the crude oil windfall profit tax. A part of this is going toward our major new effort to start a synthetic fuels industry in this country, and another part to help the poor to heat their homes. If we foolishly sought to roll back oil prices, there would be no revenues from this tax and, therefore, other major components of the national energy policy would be thrown off track.

I think it is clear that an amendment to this bill is no way to deal with crude oil prices and reverse the Nation's energy policy.

The amendment should be soundly defeated.

□ 1440

Mr. McKINNEY. Mr. Chairman, I move to strike the requisite number of words, and I rise to speak in opposition to the amendment.

Mr. Chairman, I find myself in somewhat a dilemma fighting my good friend, the gentleman from Michigan, on his amendment. When we worked so well and hard together over the subject of exportation of Alaskan oil. But I think the chairman of the committee has covered every aspect of the argument and there is not really much point in my being redundant.

The energy situation is caused by the gluttony and the dependency of the United States on $90-odd billion worth of foreign oil. I find it impossible, Mr. Chairman, to understand how you control what you do not control. The price of oil in essence, because of its international market, is what the Japanese or the world market, or the Rotterdam spot market, is going to pay and to put it under some kind of an artificial restraint simply means in the real world you do not get it because nobody sells for less dollars than the product will bring.

To put it into the purview of the Council on Wage and Price Stability, which already has a reputation as somewhat of a weak agency is to be even a little more ridiculous. There is only one way that your constituents in the southern part of the Nation and mine in the northern part of the Nation, and Mr. WOLPE's in the north Middle West are going to get control over the price of energy, and that is to free ourselves once and for all from the foreign supplier through the synthetic fuel process, through conservation, through solar, through wood, through thermal springs, through low-head hydro, through whatever means it takes to displace every one of those barrels of foreign oil, because we are not simply talking about price, we are talking about survival as well as price.

The cost of a cutoff in the Iranian-Iraqian situation right now, I would suggest for my neighboring city, New York City, would be social chaos. We already see our foreign policy whipsawed. We see the very future of Israel in danger because of our dependency. So I think to hold up to the American people that the Council on Wage and Price Stability is going to do anything about the cost of oil is to do only what we know how to do too well in this body, and that is to lift up hope, paint the balloon with promises and then very carefully shoot it down with a well-aimed bullet.

Mr. WOLPE. Mr. Chairman, will the gentleman yield?

Mr. McKINNEY. I yield to the gentleman from Michigan.

Mr. WOLPE. I thank the gentleman for yielding. There are just two or three points I think that need some clarification in response to the gentleman's remarks and in response to the earlier remarks of the gentleman from Pennsylvania. It needs to be restated that any amendment would not repudiate the decontrol decision; the guidelines administered by the Council on Wage and Price Stability are voluntary, not mandatory. But my amendment does attempt to assert the responsibility of the Government to monitor and to exercise some oversight of oil industry prices. It says, in effect, that the oil and gas producers should be part of the national effort to keep prices under control in the fight against inflation. I would note that the refineries and retailers both fall within the scope of the wage and price guidelines currently.

The notion that taking off all controls on energy prices is in our national self-interest is, in my view, mistaken. I agree with the notion that there ought to be

some gradual rise in energy prices over time; but I disagree with the notion that oil industry pricing should be exempt from all oversight.

Mr. McKINNEY. If the gentleman will yield back, I think I am going to stand rather clear on my record of not turning over to the oil industry anything, including the right to export Alaskan oil. I voted for the windfall profit tax. But if you have an oil well in your backyard and Uncle Sam says you are going to get only so much for it, and you see that same product selling in the rest of the world for $15 a barrel more, if you are smart, if you have got any brains, you are going to get a big round plug and put it on top of that pipe and turn it off until the price rises.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. McKINNEY was allowed to proceed for 2 additional minutes.)

Mr. McKINNEY. I think we are spending around $12.7 billion on the Department of Energy. The Department of Commerce monitors the oil. We monitor oil of every type and fashion. The fact of the matter is we are just kidding the people of this country if we tell them we have any control over the true price situation, because the fact of the matter is it is an international market, and oil is going to go where the money is, and we are caught in that trap because we, the Congress of the United States, way back in 1974 by one vote failed to start to do anything about the energy situation, and only now have we finally done something.

Mr. WOLPE. Will the gentleman yield further?

Mr. McKINNEY. I will yield for another 30 seconds.

Mr. WOLPE. I would just like to reemphasize that I think we have fallen into a trap by allowing an industry which is one of the most concentrated, to assume total control over pricing. It is no accident that every time OPEC prices increase the profits of oil companies in this country soar dramatically. In 1973, 1974, and 1979—that was the time of the greatest increase in profits and profit margins for the domestic oil companies. I think the only issue here, and it is a very simple one, is whether or not the oil and gas producers should be the one major industry that is exempt from the wage and price guidelines.

□ 1450

I hold no brief for the way in which those guidelines have been administered. I share the critique that is made of those guidelines in many respects. But the question before us now is why only the oil and gas producers should be exempt from the operation of those guidelines.

Mr. McKINNEY. I would suggest to the gentleman if we ever let some of the people in the southwestern part of this country—if we may pardon the expression—know through this type mechanism, what they are paying in entitlement reallocation and distributions so Fairfield, Conn., New York City, and Michigan can get oil at the price they get it for, that we would have more problems in this area than we already have. I think the windfall profit tax has taken care of the gentleman's problem.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. WOLPE).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. WOLPE. Mr. Chairman, on that I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

□ 1500

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

Pursuant to the provisions of clause 2, rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 583]

Abdnor
Addabbo
Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Boner
Bonior
Bonker
Bouquard
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carr
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginqrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Goro
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holtzman
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nelson
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rahall
Rallsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Russo
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solars
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stokes
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thomas
Traxler
Trible
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

□ 1520

The CHAIRMAN. Three hundred and eighty-four members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Michigan (Mr. WOLPE) for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Five minutes will be allowed for this vote.

The vote was taken by electronic device, and there were—ayes 155, noes 240, not voting 37, as follows:

[Roll No. 584]

AYES—155

Abdnor
Addabbo
Akaka
Ambro
Andrews, N.Dak.
Annunzio
Applegate
Atkinson
Bailey
Baldus
Barnes
Bauman
Beard, R.I.
Bedell
Benjamin
Bennett
Biaggi
Bingham
Boland
Bolling
Boner
Bonior
Bonker
Brodhead
Burton, John
Burton, Phillip
Byron
Carr
Clay
Conte
Conyers
Corman
Cotter
D'Amours
Davis, Mich.
Dellums
Derrick
Dixon
Donnelly
Downey
Drinan
Early
Eckhardt
Edgar
Edwards, Calif.
Ertel
Fary
Fascell
Ferraro
Fithian
Florio
Ford, Tenn.
Garcia
Gaydos
Gephardt
Giaimo
Gilman
Gore
Grassley
Gray
Guarini
Hall, Ohio
Harkin
Harris
Hawkins
Heckler
Heftel
Hillis
Hollenbeck
Holtzman
Hopkins
Howard
Hughes
Jacobs
Jeffords
Johnson, Calif.
Jones, N.C.
Kastenmeier
Kildee
Kostmayer
LaFalce
Leach, Iowa
Lederer
Leland
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
McCormack
McHugh
Maguire
Markey
Matsui
Mavroules
Mikulski
Miller, Calif.
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mottl
Murphy, Pa.
Nowak
Oakar
Oberstar
Ober
Ottinger
Panetta
Patterson
Perkins
Petri
Peyser
Price
Pursell
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Seiberling
Shannon
Simon
Smith, Iowa
Snyder
Solars
Solomon
Spellman
St Germain
Stack
Stangeland
Stark
Stewart
Stokes
Studds
Tauke
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Waxman
Weaver
Weiss
Williams, Ohio
Wolff
Wolpe
Yates
Yatron
Young, Mo.
Zeferetti

NOES—240

Albosta
Anderson, Calif.
Anthony
Archer
Ashley
Aspin
AuCoin
Bafalis
Barnard
Beard, Tenn.
Bellenson
Bereuter
Bevill
Blanchard
Boggs
Bouquard
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Campbell
Carney
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
de la Garza
Deckard
Devine
Dickinson
Dicks
Dingell
Dornan
Duncan, Oreg.
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Evans, Del.
Evans, Ga.
Evans, Ind.
Fazio
Fenwick
Findley
Fish
Fisher
Flippo
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gibbons
Ginqrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gradison
Gramm
Green
Grisham
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harsha
Hefner
Hightower
Hinson
Holland
Horton
Hubbard
Huckaby
Hutchinson
Hutto
Hyde
Ireland
Jeffries
Jenkins
Johnson, Colo.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kindness
Kogovsek
Kramer
Lagomarsino
Latta
Leach, La.
Leath, Tex.
Lee
Lehman
Lent
Levitas
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McKay
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Mattox
Mazzoli
Mica
Michel
Miller, Ohio
Mineta
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Murphy, N.Y.
Murtha
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
O'Brien
Pashayan
Patten
Paul
Pease
Pickle
Porter
Pritchard
Quillen
Rahall
Rallsback
Regula
Rhodes
Richmond
Rinaldo
Robinson
Roberts
Roemer
Rousselot
Royer
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Smith, Nebr.
Snowe
Spence
Staggers
Stanton
Steed
Stenholm
Stockman
Stump
Swift
Synar
Tauzin
Taylor
Thomas
Traxler
Trible
Ullman
Vander Jagt
Walker
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wright
Wyatt
Wydler
Wylie
Young, Alaska
Young, Fla.
Zablocki

NOT VOTING—37

Alexander
Anderson, Ill.
Andrews, N.C.
Ashbrook
Badham
Bethune
Bowen
Brademas
Burlison
Butler
Carter
Cavanaugh
Chisholm
Collins, Ill.
Daschle
Davis, S.C.
Derwinski
Dodd
Dougherty
Holt
Ichord
Jenrette
Murphy, Ill.
Musto
Myers, Pa.
Nolan
Pepper
Preyer
Quayle
Ritter
Rudd
Skelton
Stratton
Symms
Thompson
Udall
Wilson, C. H.

□ 1530

The Clerk announced the following pairs:

On this vote:

Mr. Thompson for, with Mr. Ashbrook against.

Mr. Pepper for, with Mr. Badham against.

Mr. Musto for, with Mr. Bethune against.

Mr. Jenrette for, with Mr. Butler against.

Mr. Murphy of Illinois for, with Mr. Derwinski against.

Mrs. Chisholm for, with Mr. Quayle against.

Mrs. Collins of Illinois for, with Mr. Ritter against.

Mr. Carter for, with Mr. Symms against.

Mr. ABDNOR changed his vote from "no" to "aye."

Mr. SCHEUER and Mr. TRAXLER changed their votes from "aye" to "no."

Mr. NEAL changed his vote from "present" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there any further amendments?

If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DERRICK, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6777) to increase the authorization for the Council on Wage and Price Stability, to extend the duration of such Council, and for other purposes, pursuant to House Resolution 780, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. ROUSSELOT

Mr. ROUSSELOT. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ROUSSELOT. I am, Mr. Speaker, in its present form.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ROUSSELOT moves to recommit the bill, H.R. 6777, to the Committee on Banking, Finance and Urban Affairs, with instructions to report the same back to the House forthwith with the following amendment:

On page 2, line 20, strike "$9,770,000" and insert in lieu thereof the following: "$6,952,000".

The SPEAKER. The gentleman from California (Mr. ROUSSELOT) is recognized for 5 minutes.

Mr. ROUSSELOT. Mr. Speaker, my motion to recommit is simple, but necessary. It would freeze fiscal year 1981 appropriations for the Council at fiscal year 1979 levels, or $6,952,000.

My reason for doing this is simple. By far COWPS' largest expenditure goes for wage-price guideline development and monitoring. The future of these functions are in doubt.

New guidelines were to have been issued by the Council by September 30. These guidelines were to have been based upon recommendations made by the pay and price panels by midmonth. However, these recommendations were not forthcoming.

Instead, the majority of the pay advisory panel is reported to favor either the postponement of guideline tightening or scrapping the program altogether. The price committee is reportedly split on the issue. If it is to be eliminated, the guideline program would be phased out, beginning in 1981.

As a result of these recommendations, the administration has announced that it will continue to use the current wage-price guidelines until the end of this year.

Thus, the future of the wage-price guideline program is in doubt.

There is no reason that this body should appropriate funds in excess of the fiscal year 1980 appropriations in the current situation. To automatically increase appropriations, without any assurances from the administration as to the direction that program will take, would set a dangerous precedent.

Although I have long been an opponent of all forms of economic controls, I can assure everyone that I am not out to kill the Council now. If these programs are viable in 1981, supplemental appropriations will always be available. I simply

do not believe that we as a body should act blindly.

I would remind everyone that in the first 4 years of its existence, the Council did not promulgate voluntary wage-price standards. These are a relatively recent development, first begun in October of 1978. From that time the appropriations for the Council have quadrupled, from a little over $2 million to nearly $9 million. These increases coincide and are largely due to activities in the wage-price guideline area.

That program has been, to say the least, ineffective in fighting inflation. This is necessarily the case, since inflation is caused by the irresponsible monetary and fiscal policies of the Federal Government, not by the activities of private individuals and businesses.

"Guideline mathematics" is becoming legendary. Given the flexibility of both the standards and the measuring stick, compliance has become largely a question of prosecutorial discretion.

In the past year, "guideline math" has given the stamp of approval to wage settlements which provided for increases of as much as 14.4 percent per year over a 3-year period—International Brotherhood of Teamsters. The wage rate jumped 8.6 percent in 1979, despite a wage guideline of 7 percent.

The current wage standard of 7.5 to 9.5 percent was based on the assumption that wage settlements would average 8.5 percent. The 9.1-percent Federal pay raise is testimony to the inaccuracy of that assumption. Moreover, it has been determined that a 3-year settlement of 15.6 percent per year would comply with the 1980 standard applying "guideline math."

I point out these discrepancies to illustrate the weaknesses in the current guidelines. Unfortunately, the only practical alternative to weak or ineffective controls is likely to be intolerably oppressive controls. I can only assume that the recommendations of the advisory panel is based on a consideration of the general ineffectiveness of the program.

Until the future of the most costly of the Council's programs is determined, there is no reason why we should be increasing either the authorization or the appropriations.

When the administration and the Council have determined what the future of these programs, if there is to be a future, is to be, they can come up with facts and figures to justify an appropriate supplemental appropriation.

I believe that my amendment, which keeps the 1981 authorization at the 1979 levels, is a good one. I offer it with no malice. To approprate moneys without assurances of the future of the programs to be funded is irresponsible. We cannot, in good conscience, guarantee the growth of bureaucracy in our Government in instances where the validity of the programs involved is questioned by the panels responsible for guideline development.

□ 1540

I urge my colleagues to vote for this motion to recommit. We do not need any more money. As a matter of fact, this agency's life is in grave doubt. I urge my colleagues to support the motion.

Mr. STANTON. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I would be glad to yield to my colleague, the ranking Republican member from this fine committee.

Mr. STANTON. It is obvious in the debate, we took this up in the committee last spring.

Mr. ROUSSELOT. The gentleman took this very issue up?

Mr. STANTON. Back and forth. The administration does not seem to care or like it at the moment.

The AFL–CIO, the chamber of commerce, are all opposed to it.

Mr. ROUSSELOT. The AFL–CIO is opposed to it?

Mr. STANTON. Is opposed to the entire Council.

Mr. ROUSSELOT. To this very agency?

Mr. STANTON. Yes.

Mr. ROUSSELOT. Incredible.

Mr. STANTON. So the motion to recommit of the gentleman, I think, is probably a good compromise and I support it.

Mr. ROUSSELOT. Well, I appreciate the support of my colleague.

Does the chairman want to support this motion to recommit?

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to my colleague, the gentleman from Georgia.

Mr. LEVITAS. I thank my colleague for yielding. I support the gentleman's motion.

Mr. ROUSSELOT. I appreciate that.

Mr. LEVITAS. I would like to point out that the reason the AFL–CIO opposes this bill is they know that when you have wage and price guidelines of this sort or wage and price controls, it is the working man who pays the price. They get controlled but their expenses go uncontrolled. They have to pay the price, and we ought to adopt this motion.

Mr. ROUSSELOT. I thank my colleague for his support. Well, as my colleague (Mr. Russo), the gentleman from Illinois says, everybody knows I am for the working man; so I certainly support this motion to recommit.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I rise in opposition to the motion to recommit.

The first thing to be said and to reemphasize is that the committee bill has already reduced the President's request for COWPS from $25 million to just under $10 million. That is a huge cut of 60 percent. There is no need to cut this small agency any further.

The committee bill does not increase COWPS' personnel or money, except to pay for a Government-wide pay increase.

Mr. ANNUNZIO. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to my distinguished colleague, the gentleman from Illinois.

Mr. ANNUNZIO. Mr. Speaker, I thank the distinguished chairman of the subcommittee for yielding. I want to join him in opposing the motion to recommit.

The gentleman from California whom I respect greatly, is opposed to the Credit Control Act of 1969 and he wants to establish a sunset provision. Such a provision is contained in the Senate-passed version of this legislation but not in the House bill because of the germaneness requirement. By reducing the authorization, the plan is to make the House bill so unacceptable that we will have to accept the Senate bill which, of course, contains the sunset provision for the Credit Control Act.

And why, you would ask, is there a move to kill the Credit Control Act? And the answer is quite simple. It is politically motivated in an election year to turn the spotlight away from the outstanding job that the Carter administration did in bringing part of an inflationary economy under control.

As chairman of the Consumer Affairs Subcommittee, I have watched consumer credit fuel our economy at alarming speed. I knew that we could not get consumer credit under control unless the Credit Control Act was invoked. It was indeed harsh medicine and it was a bitter pill to swallow but the bottom line is this—it worked and had President Carter not had the use of the Credit Control Act of 1969, our country would be in an inflation of such magnitude today that we might never recover.

The business community publicly was upset with the Credit Control Act, but in private many businessmen will tell you that something had to be done. We were mortgaging our future through credit cards and easy payment credit terms. You will also hear that if the Credit Control Act had been invoked the economy would have cooled down on its own. Let me point out that nothing suggests that that statement is true and if we had depended on a voluntary slowdown, we might never have seen a recovery.

We do not have enough tools in this country to fight inflation. Why should we try to take away one of the useful tools that is available?

This Nation is on the road to economic recovery. We are on the way toward beating inflation. And a large measure of the credit belongs to the Credit Control Act and to the courage of President Carter to use that act.

The Credit Control Act worked. And there are those among us who cannot stand to admit that not only did it work, but it worked under a Democratic President. They would try to turn this into a political issue and it just so happens that they are doing it during a Presidential election year. The American people want inflation brought under control, and I have sat in this House and listened to the 1-minute speeches for the past year complaining that the present administration is not doing enough to control inflation. But I ask you, is it the present

administration that stands before you today and tries to kill a method of controlling inflation?

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I reclaim my time just to make two points: First, in the committee we adopted the Vento amendment which added new duties in the field of productivity to the Council on Wage and Price Stability without adding any money to carry out those duties.

On the floor of the House today we adopted the amendment of the gentleman from Ohio (Mr. BROWN) which directs that the agency increase its activity in examining Federal regulations by 50 percent without any increase in money. We have increased the duties. We have not increased the money.

This bill is a bare bones bill. The motion of the gentleman from California would gut it. It would cut by 25 percent the personnel of this very small agency. This agency, though small, is the major focus of the administration on monitoring inflation, informing the Congress, informing the President. I think while we cannot say it has cured the situation, it has certainly been of help. Do not gut this agency.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman from Minnesota.

Mr. VENTO. Well, I think the point is not surprising to find major labor and business organizations in our society opposed to the ability to the agency that has at least a potential to do a very effective job in terms of dealing with inflation. I do not find it very surprising. I think that we would be remiss if we caved in to that type of pressure, in this instance dealing on a voluntary basis.

They have been effective. The Council on Wage and Price Stability has on an econometric model reduced the rate of inflation from 1 to 1½ percent. I think that is a pretty significant contribution. It is a very small appropriation. It is a very small authorization.

We ought not to defeat the one tool we have, as modest as it might be, and we have weighed upon it a very heavy burden.

This Council is the only game in town that we have that is working effectively in some sectors. It is working effectively in business and labor dealing with inflation. We ought to leave it in place. We ought to at least maintain the type of authorization and appropriation that this particular agency has so well utilized in the last 2 years.

I thank the chairman for yielding.

Mr. MOORHEAD of Pennsylvania. The gentleman, as a very valued member of the subcommittee and the full committee, authored the amendment which directs the Council to focus on productivity. This is an important new duty. That together with the duties imposed by the amendment of the gentleman from Ohio (Mr. BROWN) means that, if anything, we should be thinking about increasing the funding for this very small agency.

We should defeat the motion to recommit.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The question was taken; and the Speaker announced that the noes appeared to have it.

RECORDED VOTE

Mr. ROUSSELOT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER. Pursuant to the provisions of clause 5, rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of the final passage of the bill, following the vote on the motion to recommit. Members will record their presence by electronic device.

The vote was taken by electronic device, and there were—ayes 238, noes 161, not voting 33, as follows:

[Roll No. 585]

AYES—238

Abdnor
Albosta
Andrews, N.Dak.
Anthony
Applegate
Archer
Bafalis
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Boland
Boner
Bouquard
Breaux
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burton, John
Byron
Campbell
Carney
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Devine
Dickinson
Dornan
Duncan, Tenn.
Early
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fenwick
Findley
Fish
Fithian
Flippo
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Goodling
Gradison
Gramm
Grassley
Green
Grisham
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hansen
Harsha
Hefner
Hightower
Hillis
Hinson
Holland
Hopkins
Horton
Hubbard
Huckaby
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kazen
Kelly
Kemp
Kindness
Kozlovek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Loeffler
Lott
Lujan
Luken
Lungren
McClory
McCloskey
McDade
McDonald
McEwen
McKay
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Mattox
Mavroules
Mazzoli
Mica
Michel
Miller, Ohio
Mitchell, N.Y.
Montgomery
Moore
Moorhead, Calif.
Motti
Murphy, N.Y.
Myers, Ind.
Natcher
Neal
Nelson
Nichols
O'Brien
Panetta
Pashayan
Paul
Perkins
Petri
Pickle
Porter
Pritchard
Pursell
Quillen
Railsback
Regula
Rhodes
Roberts
Robinson
Roth
Rousselot
Royer
Russo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spence
Stangeland
Stanton
Stenholm
Stockman
Stump
Tauke
Tauzin
Taylor
Thomas
Trible
Udall
Vander Jagt
Volkmer
Walker
Wampler
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolf
Wright
Wyatt
Wydler
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.

NOES—161

Addabbo
Akaka
Ambro
Anderson, Calif.
Andrews, N.C.
Annunzio
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Barnes
Bellenson
Bevill
Biaggi
Bingham
Blanchard
Boggs
Bolling
Bonior
Bonker
Brodhead
Brown, Calif.
Burton, Phillip
Carr
Chisholm
Clay
Coelho
Collins, Ill.
Conyers
Corman
Cotter
D'Amours
Danielson
Daschle
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Downey
Drinan
Duncan, Oreg.
Eckhardt
Edgar
Fary
Fascell
Fazio
Ferraro
Fisher
Florio
Foley
Ford, Mich.
Ford, Tenn.
Frost
Garcia
Gaydos
Gephardt
Giaimo
Gonzalez
Gore
Gray
Guarini
Hall, Ohio
Hanley
Harkin
Harris
Hawkins
Heckler
Heftel
Hollenbeck
Holtzman
Howard
Hughes
Johnson, Calif.
Jones, Tenn.
Kastenmeier
Kildee
LaFalce
Lederer
Lehman
Lloyd
Long, La.
Long, Md.
Lowry
Lundine
McCormack
McHugh
McKinney
Maguire
Markey
Matsui
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Murphy, Pa.
Murtha
Nedzi
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Patten
Patterson
Pease
Peyser
Price
Rahall
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Sabo
Scheuer
Seiberling
Shannon
Simon
Solarz
Spellman
St Germain
Stack
Staggers
Stark
Steed
Stewart
Stokes
Studds
Swift
Synar
Traxler
Ullman
Van Deerlin
Vanik
Vento
Walgren
Watkins
Waxman
Weaver
Weiss
Wilson, Tex.
Wolpe
Yates
Zablocki
Zeferetti

NOT VOTING—33

Alexander
Anderson, Ill.
Ashbrook
Badham
Bethune
Bowen
Brademas
Burlison
Butler
Carter
Cavanaugh
Davis, S.C.
Derwinski
Dodd
Dougherty
Edwards, Calif.
Holt
Ichord
Jenrette
Leland
Murphy, Ill.
Musto
Myers, Pa.
Pepper
Preyer
Quayle
Ritter
Rudd
Skelton
Stratton
Symms
Thompson
Wilson, C. H.

□ 1600

The Clerk announced the following pairs:

On this vote:

Mr. Carter for, with Mr. Musto against.

Mrs. Holt for, with Mr. Pepper against.

Mr. Symms for, with Mr. Jenrette against.

Mr. Rudd for, with Mr. Murphy of Illinois against.

Mr. Quayle for, with Mr. Edwards of California against.

Mr. Butler for, with Mr. Leland against.

Mr. Ashbrook for, with Mr. Myers of Pennsylvania against.

Mr. Derwinski for, with Mr. Thompson against.

Mr. Stratton for, with Mr. Charles Wilson of California against.

Mr. Bethune for, with Mr. Cavanaugh against.

Until further notice:

Mr. Alexander with Mr. Badham.

Mr. Bowen with Mr. Anderson of Illinois.
Mr. Dodd with Mr. Ritter.
Mr. Burlison with Mr. Davis of South Carolina.
Mr. Skelton with Mr. Dougherty.
Mr. Ichord with Mr. Preyer.

Messrs. GORE, MURPHY of Pennsylvania, and DERRICK changed their votes from "aye" to "no."

Messrs. ALBOSTA, LUJAN, HUTCHINSON, and BOLAND changed their votes from "no" to "aye."

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, pursuant to the instructions of the House in the motion to recommit, I report the bill, H.R. 6777, back to the House with an amendment.

The SPEAKER pro tempore (Mr. MURTHA). The Clerk will report the amendment.

The Clerk read as follows:

Amendment: On page 2, line 20, strike "$9,770,000" and insert in lieu thereof the following: "$6,953,000".

The SPEAKER pro tempore. Without objection, the amendment is agreed to.

There was no objection.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 229, nays 165, not voting 38, as follows:

[Roll No. 586]

YEAS—229

Addabbo, Akaka, Alboeta, Ambro, Anderson, Calif., Andrews, N.C., Annunzio, Anthony, Ashley, Aspin, Atkinson, AuCoin, Bailey, Baldus, Barnard, Barnes, Beard, R.I., Bedell, Bellenson, Benjamin, Bennett, Bereuter, Bevill, Biaggi, Bingham, Blanchard, Boggs, Boland, Bolling, Boner, Bonior, Bonker, Breaux, Brinkley, Brooks, Brown, Calif., Buchanan, Carr, Chisholm, Clausen, Clay, Coelho, Conte, Corman, Cotter, Coughlin, Danielson, Daschle, Davis, Mich., Derrick, Dicks, Dingell, Dixon, Donnelly, Downey, Drinan, Duncan, Oreg., Early, Eckhardt, Edgar, Edwards, Ala., Ertel, Evans, Del., Evans, Ind., Fary, Fascell, Fazio, Fenwick, Ferraro, Findley, Fish, Fisher, Fithian, Flippo, Florio, Foley, Ford, Mich., Ford, Tenn., Fountain, Fowler, Frost, Fuqua, Garcia, Gaydos, Gephardt, Giaimo, Gilman, Glickman, Gonzales, Goodling, Gore, Gradison, Gray, Green, Gudger, Hall, Ohio, Hamilton, Hanley, Harkin, Harris, Hawkins, Heckler, Hefner, Heftel, Hillis, Hollenbeck, Holtzman, Howard, Huckaby, Hughes, Hutchinson, Jenkins, Johnson, Calif., Jones, N.C., Jones, Okla., Jones, Tenn., Kastenmeier, Kazen, Kildee, Kogovsek, LaFalce, Lederer, Lehman, Lloyd, Long, La., Long, Md., Lowry, Luken, Lundine, McCormack, McDade, McHugh, McKinney, Maguire, Markey, Marks, Matsui, Mattox, Mavroules, Mazzoli, Mikulski, Mineta, Minish, Mitchell, Md., Mitchell, N.Y., Moakley, Moffett, Mollohan, Moorhead, Pa., Mottl, Murphy, N.Y., Murphy, Pa., Murtha, Neal, Nedzi, Nelson, Nichols, Nowak, Oakar, Oberstar, Obey, Ottinger, Panetta, Patten, Patterson, Pease, Perkins, Petri, Peyser, Pickle, Porter, Price, Rahall, Rangel, Ratchford, Regula, Reuss, Richmond, Rinaldo, Rodino, Roe, Rose, Rosenthal, Rostenkowski, Royer, Russo, Sabo, Scheuer, Seiberling, Shannon, Sharp, Simon, Snowe, Solarz, Solomon, Spellman, St Germain, Stack, Staggers, Stanton, Stark, Steed, Stewart, Stokes, Studds, Swift, Synar, Traxler, Udall, Ullman, Van Deerlin, Vanik, Vento, Walgren, Watkins, Waxman, White, Whitley, Wilson, Bob, Wilson, Tex., Wirth, Wolff, Wolpe, Wright, Wylie, Yates, Yatron, Zablocki, Zeferetti

NAYS—165

Abdnor, Andrews, N.Dak., Applegate, Archer, Bafalis, Bauman, Beard, Tenn., Bouquard, Brocmfield, Brown, Ohio, Broyhill, Burgener, Burton, John, Byron, Campbell, Carney, Chappell, Cheney, Cleveland, Clinger, Coleman, Collins, Ill., Collins, Tex., Conable, Conyers, Corcoran, Courter, Crane, Daniel, Crane, Philip, D'Amours, Daniel, Dan, Daniel, R. W., Dannemeyer, de la Garza, Deckard, Dellums, Devine, Dickinson, Dornan, Duncan, Tenn., Edwards, Okla., Emery, English, Erdahl, Erlenborn, Evans, Ga., Forsythe, Frenzel, Gibbons, Gingrich, Ginn, Goldwater, Gramm, Grassley, Grisham, Guyer, Hagedorn, Hall, Tex., Hammerschmidt, Hance, Hansen, Harsha, Hightower, Hinson, Holland, Hopkins, Horton, Hubbard, Hutto, Hyde, Ireland, Jacobs, Jeffords, Jeffries, Johnson, Colo., Kelly, Kemp, Kindness, Kostmayer, Kramer, Lagomarsino, Latta, Leach, Iowa, Leach, La., Leath, Tex., Lee, Leland, Lent, Levitas, Lewis, Livingston, Loeffler, Lott, Lujan, Lungren, McClory, McCloskey, McDonald, McEwen, McKay, Madigan, Marlenee, Marriott, Martin, Michel, M'Iler, Calif., Miller, Ohio, Montgomery, Moore, Moorhead, Calif., Myers, Ind., Natcher, Nolan, Pashayan, Paul, Pritchard, Pursell, Quillen, Railsback, Rhodes, Roberts, Robinson, Roth, Rousselot, Roybal, Santini, Satterfield, Sawyer, Schroeder, Schulze, Sebelius, Sensenbrenner, Shelby, Shumway, Shuster, Smith, Iowa, Smith, Nebr., Snyder, Spence, Stangeland, Stenholm, Stockman, Stump, Tauke, Tauzin, Taylor, Thomas, Trible, Vander Jagt, Volkmer, Walker, Wampler, Weaver, Weiss, Whitehurst, Whittaker, Whitten, Williams, Mont., Williams, Ohio, Winn, Wyatt, Wydler, Young, Alaska, Young, Fla., Young, Mo.

NOT VOTING—38

Alexander, Anderson, Ill., Ashbrook, Badham, Bethune, Bowen, Brademas, Brodhead, Burlison, Burton, Phillip, Butler, Carter, Cavanaugh, Davis, S.C., Derwinski, Dodd, Dougherty, Edwards, Calif., Guarini, Holt, Ichord, Jenrette, Mathis, Mica, Murphy, Ill., Musto, Myers, Pa., O'Brien, Pepper, Preyer, Quayle, Ritter, Rudd, Skelton, Stratton, Symms, Thompson, Wilson, C. H.

□ 1610

The Clerk announced the following pairs:

On this vote:

Mr. Musto for, with Mr. Butler against.
Mr. Pepper for, with Mr. Ashbrook against.
Mr. Jenrette for, with Mr. Badham against.
Mr. Murphy of Illinois for, with Mr. Bethune against.
Mr. Edwards of California for, with Mr. Derwinski against.
Mr. Guarini for, with Mrs. Holt against.
Mr. Thompson for, with Mr. Quayle against.
Mr. Cavanaugh for, with Mr. Rudd against.
Mr. Myers of Pennsylvania for, with Mr. Symms against.
Mr. Charles H. Wilson of California for, with Mr. Stratton against.

Until further notice:

Mr. Alexander with Mrs. Carter.
Mr. Bowen with Mr. Ritter.
Mr. Brodhead with Mr. Phillip Burton.
Mr. Burlison with Mr. Mica.
Mr. Dodd with Mr. Dougherty.
Mr. Mathis with Mr. Ichord.
Mr. Skelton with Mr. Davis of South Carolina.
Mr. Preyer with Mr. O'Brien.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE CLERICAL AND CONFORMING CHANGES IN THE ENGROSSMENT OF H.R. 6777, COUNCIL ON WAGE AND PRICE STABILITY EXTENSION

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill the Clerk be authorized to correct section numbers, punctuation, cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill, H.R. 6777.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, could the gentleman tell us what he means by technical amendments? Are changes in substance involved?

Mr. MOORHEAD of Pennsylvania. There are no changes in substance. We did adopt the Brown amendment. That action may require some renumbering of sections, changes and cross-references. These are the usual technical changes approval for which I ask unanimous consent.

Mr. ROUSSELOT. The gentleman assures us there are no major changes?

Mr. MOORHEAD of Pennsylvania. I can assure the gentleman that is not the intention.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Speaker, I ask the gentleman from Pennsylvania what would happen should I object.

Mr. MOORHEAD of Pennsylvania. We might pass a technically defective bill which would cause a field day for the lawyers in trying to construe what we meant when we referred to a section number that we changed in the process of amending the bill.

Mr. ROUSSELOT. Further reserving the right to object, I am really tempted to object just to keep the lawyers busy. They hardly ever have anything to do around here.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania (Mr. MOORHEAD)?

There was no objection.

GENERAL LEAVE

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

FUSION ENERGY RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1980

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 6308) to provide for an accelerated program of research and development of magnetic fusion energy technologies leading to the construction and successful operation of a magnetic fusion demonstration plant in the United States before the end of the 20th century, to be carried out by the Department of Energy, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Magnetic Fusion Energy Engineering Act of 1980".

FINDINGS AND POLICY

SEC. 2. (a) The Congress hereby finds that—

(1) the United States must formulate an energy policy designed to meet an impending worldwide shortage of many exhaustible, conventional energy resources in the next few decades;

(2) the energy policy of the United States must be designed to ensure that energy technologies using essentially inexhaustible resources are commercially available at a time prior to serious depletion of conventional resources;

(3) fusion energy is one of the few known energy sources which are essentially inexhaustible, and thus constitutes a long-term energy option;

(4) major progress in all aspects of magnetic fusion energy technology during the past decade instills confidence that power production from fusion energy systems is achievable;

(5) the United States must aggressively pursue research and development programs in magnetic fusion designed to foster advanced concepts and advanced technology and to develop efficient, reliable components and subsystems;

(6) to ensure the timely commercialization of magnetic fusion energy systems, the United States must demonstrate at an early date the engineering feasibility of magnetic fusion energy systems;

(7) progress in magnetic fusion energy systems is currently limited by the funds made available rather than technical barriers;

(8) it is a proper role for the Federal Government to accelerate research, development, and demonstration programs in magnetic fusion energy technologies: and

(9) acceleration of the current magnetic fusion program will require a doubling within seven years of the present funding level without consideration of inflation and a 25 per centum increase in funding each of fiscal years 1982 and 1983.

(b) It is therefore declared to be the policy of the United States and the purpose of this Act to accelerate the national effort in research, development, and demonstration activities related to magnetic fusion energy systems. Further, it is declared to be the policy of the United States and the purpose of this Act that the objectives of such program shall be—

(1) to promote an orderly transition from the current research and development program through commercial development;

(2) to establish a national goal of demonstrating the engineering feasibility of magnetic fusion by the early 1990's;

(3) to achieve at the earliest practicable time, but not later than the year 1990, operation of a magnetic fusion engineering device based on the best available confinement concept;

(4) to establish as a national goal the operation of a magnetic fusion demonstration plant at the turn of the twenty-first century;

(5) to foster cooperation in magnetic fusion research and development among government, universities, industry, and national laboratories;

(6) to promote the broad participation of domestic industry in the national magnetic fusion program;

(7) to continue international cooperation in magnetic fusion research for the benefit of all nations;

(8) to promote greater public understanding of magnetic fusion; and

(9) to maintain the United States as the world leader in magnetic fusion.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) "fusion" means a process whereby two light nuclei, such as deuterium and tritium, collide at high velocity, forming a compound nucleus, which subsequently separates into constituents which are different from the original colliding nuclei, and which carry away the accompanying energy release;

(2) "magnetic fusion" means the use of magnetic fields to confine a very hot, fully ionized gas of light nuclei, so that the fusion process can occur;

(3) "energy system" means a facility designed to utilize energy released in the magnetic fusion process for the generation of electricity and the production of hydrogen or other fuels;

(4) "fusion engineering device" means a magnetic fusion facility which achieves at least a burning plasma and serves to test components for engineering purposes;

(5) "demonstration plant" means a prototype energy system which is of sufficient size to provide safety, environmental reliability, availability, and ready engineering extrapolation of all components to commercial size but which system need not be economically competitive with then alternative energy sources; and

(6) "Secretary" means Secretary of Energy.

PROGRAM ACTIVITIES

SEC. 4. (a) The Secretary shall initiate activities or accelerate existing activities in research areas in which the lack of knowledge limits magnetic fusion energy systems in order to ensure the achievement of the purposes of this Act.

(b)(1) The Secretary shall maintain an aggressive plasma confinement research program on the current lead concept to provide a full measure of support for the design, construction, and operation of the fusion engineering devices.

(2) The Secretary shall maintain a broadly based research program on alternate confinement concepts and on advanced fuels at a sufficient level of funding to achieve optimal design of each successive magnetic fusion facility using the then best available confinement and fuel concept.

(3) The Secretary shall ensure that research on properties of materials likely to be required for the construction of fusion engineering devices is adequate to provide timely information for the design of such devices.

(c)(1) The Secretary shall initiate design activities on a fusion engineering device using the best available confinement concept to ensure operation of such a device at the earliest practicable time, but not later than the year 1990.

(2) The Secretary shall develop and test the adequacy of the engineering design of components to be utilized in the fusion engineering device.

(d) The Secretary shall initiate at the earliest practical time each activity which he deems necessary to achieve the national goal for operation of a demonstration plant at the turn of the twenty-first century.

(e) The Secretary shall continue efforts to assess factors which will determine the commercial introduction of magnetic fusion energy systems including, but not limited to—

(1) projected costs relative to other alternative energy sources;

(2) projected growth rates in energy demand;

(3) safety-related design limitations;

(4) environmental impacts; and

(5) limitations on the availability of strategic elements, such as helium, lithium, and special metals.

COMPREHENSIVE PROGRAM MANAGEMENT PLAN

SEC. 5. (a) The Secretary shall prepare a comprehensive program management plan for the conduct of the research, development, and demonstration activities under this Act. Such plan shall include at a minimum—

(1) a presentation of the program strategy which will be used to achieve the purposes of this Act;

(2) a five-year program implementation schedule, including identification of detailed milestone goals, with associated budget and program resources requirements;

(3) risk assessments;

(4) supporting research and development needed to solve problems which may inhibit or limit development of magnetic fusion energy systems; and

(5) an analysis of institutional, environmental, and economic considerations which are limiting the national magnetic fusion program.

(b) The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than January 1, 1982.

MAGNETIC FUSION ENGINEERING CENTER

SEC. 6. (a) The Secretary shall develop a plan for the creation of a national magnetic fusion engineering center for the purpose of accelerating fusion technology development via the concentration and coordination of major magnetic fusion engineering devices and associated activities at such a national center.

(b) In developing the plan, the Secretary shall include relevant factors including, but not limited to—

(1) means of saving cost and time through the establishment of the national center relative to the cost and schedule currently projected for the program;

(2) means of providing common facilities to be shared by many magnetic fusion concepts;

(3) assessment of the environmental and safety-related aspects of the national center;

(4) provisions for international cooperation in magnetic fusion activities at the national center;

(5) provision of access to facilities for the broader technical involvement of domestic industry and universities in the magnetic fusion energy program;

(6) siting criteria for the national center including a list of potential sites;

(7) the advisability of establishing such a center considering all factors, including the alternative means and associated costs of pursuing such technology; and

(8) changes in the management structure of the magnetic fusion program to allow more effective direction of activities related to the national center.

(c) The Secretary shall submit not later than July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the plan and setting forth the steps necessary for implementation of the plan, including any steps already implemented.

TECHNICAL PANEL ON MAGNETIC FUSION

SEC. 7. (a) A technical panel on magnetic fusion of the Energy Research Advisory Board shall be established to review the conduct of the national magnetic fusion energy program.

(b)(1) The technical panel shall be comprised of such representatives from domestic industry, universities, government laboratories, and other scientific and technical organizations as the Chairman of the Energy Research Advisory Board deems appropriate based on his assessment of the technical qualifications of each such representative.

(2) Members of the technical panel need not be members of the full Energy Research Advisory Board.

(c) The activities of the technical panel shall be in compliance with any laws and regulations guiding the activities of technical and fact-finding groups reporting to the Energy Research Advisory Board.

(d) The technical panel shall review and may make recommendations on the following items, among others:

(1) the preparation of the five-year program plan prepared pursuant to section 5;

(2) the type of future facilities needed to meet the goals of this Act along with their projected completion dates;

(3) the adequacy of participation by universities and industry in the program;

(4) the adequacy of international cooperation in magnetic fusion and any problems associated therewith; and

(5) institutional, environmental, and economic factors limiting, or prospectively limiting, efforts to achieve commercial application of magnetic fusion energy systems.

(e) The technical board shall submit to the Energy Research Advisory Board on at least a triennial basis a written report of its findings and recommendations with regard to the magnetic fusion program.

(f) After consideration of the technical panel report, the Energy Research Advisory Board shall submit such report, together with any comments such Board deems appropriate, to the Secretary.

SEC. 8. The Secretary may direct the director of each laboratory or installation at which a major magnetic fusion facility is operated for, or funded primarily by, the Federal Government to establish, for the sole purpose of providing advice to such director, a program advisory committee composed of persons with expertise in magnetic fusion from such domestic industry, universities, government laboratories, and other scientific and technical organizations as such director deems appropriate.

INTERNATIONAL COOPERATION

SEC. 9. (a)(1) The Secretary in consultation with the Secretary of State shall actively seek to enter into or to strengthen existing international cooperative agreements in magnetic fusion research and development activities of mutual benefit to all parties.

(2) The Secretary shall seek to achieve equitable exchange of information, data, scientific personnel, and other consideration in the conduct of cooperative efforts with technologically advanced nations.

(b)(1) The Secretary shall examine the potential impacts on the national magnetic fusion program of United States participation in an international effort to construct fusion engineering devices.

(2) The Secretary shall explore, to the extent feasible, the prospects for joint financial participation by other nations with the United States in the construction of a fusion engineering device.

(3) Within two years of the enactment of this Act the Secretary shall transmit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources the results of such examinations and explorations with his recommendations for construction of a national or international fusion engineering device: *Provided, however,* That such examinations and explorations shall not have the effect of delaying design activities related to a national fusion engineering device.

TECHNICAL MANPOWER REQUIREMENTS

SEC. 10. (a) The Secretary shall assess the adequacy of the projected United States supply of manpower in the engineering and scientific disciplines required to achieve the purposes of this Act taking cognizance of the other demands likely to be placed on such manpower supply.

(b) The Secretary shall within one year of the date of enactment of this Act submit a report to the President and to the Congress setting forth his assessment along with his recommendations regarding the need for increased support for education in such engineering and scientific disciplines.

INFORMATION DISSEMINATION

SEC. 11. (a) The Secretary shall take all necessary steps to assure that technical information relevant to the status and progress of the national magnetic fusion program is made readily available to interested persons in domestic industry and universities in the United States: *Provided, however,* That upon a showing to the Secretary by any person that any information or portion thereof provided to the Secretary directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

(b) The Secretary shall maintain an aggressive program in the United States for the provision of public information and educational materials to promote widespread knowledge of magnetic fusion among educational, community, business, environmental, labor, and governmental entities and the public at large.

REPORTS

SEC. 12. As a separate part of the annual report submitted pursuant to section 801 of the Department of Energy Organization Act (Public Law 95-91), the Secretary shall submit to Congress an annual report of activities pursuant to this Act. Such report shall include—

(a) modifications to the comprehensive program management plan for implementing this Act;

(b) an evaluation of the status of national magnetic fusion energy program in the United States;

(c) a summary of the findings and recommendations of any report of the Energy Research Advisory Board on magnetic fusion;

(d) an analysis of the progress made in commercializing magnetic fusion technology; and

(e) suggestions for improvements in the national magnetic fusion program, including recommendations for legislation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. (a) There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1981, such sums as are provided in the annual authorization Act pursuant to section 660 of Public Law 95-91.

(b) In carrying out the provisions of this Act, the Secretary is authorized to enter into contracts only to such extent or in such amounts as may be provided in advance in appropriations Acts.

Mr. WYDLER (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, may I inquire whether or not all of the Senate amendments are germane to the bill.

Mr. McCORMACK. Will the gentleman yield?

Mr. BAUMAN. I will yield to the gentleman.

Mr. McCORMACK. The Senate amendments are quite germane to the bill.

Mr. WYDLER. Mr. Speaker, this bill is a major effort which passed the House and it was a major effort on the part of the House.

Mr. BAUMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York to dispense with the reading of the Senate amendments?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Washington (Mr. McCORMACK).

Mr. WYDLER. Reserving the right to object, Mr. Speaker, this legislation is the most important piece of legislation in the attempt to develop an energy policy for our Nation, particularly, as it occurs in this case, referring to the usefulness of the fusion energy option. This bill has passed the House and might truly be called the McCormack bill because of the work that has been done on it by the gentleman from the State of Washington (Mr. McCORMACK). I think the House should know, however, before it considers this matter, what is in the bill as it will finally be presented to the House as a result of the gentleman's unanimous-consent request.

I yield to the gentleman for that purpose.

Mr. McCORMACK. I thank the gentleman from New York. The fundamental differences between the Senate version of the bill and the House version of the

bill are that in compromising out the date for the goals for the two major steps in the bill, the House version calls for the engineering test facility be on the line by 1987. We agreed to move that back to 1990 which the Senate felt was a more realistic figure. On the other hand, they had set the year 2005 for the ultimate demonstration machine. We thought that was too conservative and they agreed to bring that back to the year 2000.

The final draft to which we have agreed with the Senate calls for the engineering test facility which they call the fusion engineering device to be on the line by 1990 and the demonstration machine by the year 2000.

Another change which is very slight was a deletion by the Senate of our stated estimate that this program would cost $20 billion over the next 20 years. Instead they made recommendations for a 25-percent increase for fiscal year 1982 over 1981 and another 25-percent increase for 1983 over 1982 and the doubling of the program should occur within no less than 7 years.

Finally, they made one addition to the bill which creates a specific creation of a center for fusion engineering. Our bill assumed the creation of such a center. The Senate bill called it out specifically. This, aside from details in wording which have no legal significance and no programmatic significance, are the only differences in the bill.

Mr. WYDLER. Mr. Speaker, I thank the gentleman and, again, I thank the gentleman for the leadership he has provided from the very beginning, seeing that the Nation has a very sound and progressive fusion program and that H.R. 6308, the gentleman is really the father of that legislation which should hereafter be known as the McCormack bill.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Washington?

Mr. GOLDWATER. I reserve the right to object, Mr. Speaker. I do so to ask the gentleman from Washington (Mr. McCORMACK) about some of the details on this. What is the funding level on this?

Mr. McCORMACK. The funding for this year, in the bill, is the same as the authorization and the appropriation has been made. The authorization in the authorization bill is $435 million. The funding level, in fact, will be $394 million which was appropriated, which appropriation has already passed the House. It was passed in final conference report today.

□ 1620

Mr. GOLDWATER. How much is the appropriation?

Mr. McCORMACK. The appropriation in the bill passed today is $394 million.

Mr. GOLDWATER. Now, another concern that is expressed by some is, I think there is no question that there needs to be an accelerated program in fusion energy and research. Will this program, however, preclude or tend to narrow the focus of fusion devices? As the gentleman well knows, there are a number of concepts and candidates for continued research. Specifically, I am referring to the Lawrence Livermore's mirror fusion program. Would this program tend to eliminate such candidates as the mirror fusion, or the one that is being worked on by the Doublet III and some of these others?

Mr. McCORMACK. I thank the gentleman for his question. The answer is no, this bill, this program that we are starting, this 20-year Apollo-like program is to move us into the engineering and development stage, and demonstration for magnetic fusion. It starts off with the Tokamak Device, which is the most advanced device today. Therefore, we expect to have demonstration on scientific feasibility by 1983, but we still will carry out our research in the tandem mirror machines such as are now being constructed by Livermore, and also in the ELMO Bumpy Torus, which was just recently authorized for Oak Ridge, which is going to be under construction.

We do not know what device we will use ultimately in the first demonstration machine. It will be a magnetic machine. It may well be a blend of the best of both the Tokamak and the mirror machines and it might be an ELMO Bumpy Torus. But, we will not preclude any parallel research. We must have a lot of parallel research not only in plasmaphysics, but also other materials, and this is the important thing we are getting into now.

Mr. GOLDWATER. So in other words, what we are doing here is, this authorization passed the House by voice vote on June 4, 1980, as I understand it, and what we are doing here, in essence, is accepting the Senate language which is basically the House language with just some minor revisions.

Mr. McCORMACK. The Senate has their own version of the bill which is extremely close to the House version. Substantially, it is the same piece of legislation, and it is the same program.

It is the same Apollo-type program, to have a fusion magnetic demonstration machine on the line by the year 2000. That is the important thing.

Mr. GOLDWATER. Further reserving the right to object, I would not only conclude by saying that fusion energy looks very attractive because of the limitless supply of fuel for these devices, and it is potentially safe and environmentally acceptable. I think it has been acknowledged by the scientific community as well as the appropriate committees of the Congress that if we are going to ever achieve any kind of semblance of energy independence, that we need to accelerate the research, development and demonstration in the area of fusion energy. I would only compliment the gentleman for pursuing to completion this legislative effort.

Mr. McCORMACK. I thank the gentleman, and I only would say in conclusion, in response, that I think this bill, launching this country in this Apollo-type program for magnetic fusion, is probably the most important program this or any other country has ever undertaken, and in this one bill, when we step across that line into that area of magnetic fusion in the year 2000, we will be entering an era of absolutely unlimited supplies of energy for all humankind for all time. It is certainly going to be no less than the second most important energy-related event in human history, second only to the discovery of fire.

Mr. GOLDWATER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

A motion to reconsider was laid on the table.

REQUEST FOR PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO HAVE UNTIL MIDNIGHT FRIDAY, SEPTEMBER 26, 1980, TO FILE REPORT, ALONG WITH MINORITY OR SEPARATE VIEWS, ON H.R. 8146

Mr. JACOBS. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means may have until midnight, Friday, September 26, 1980, to file a report on the bill, H.R. 8146, to provide a program of Federal supplemental unemployment compensation, along with any minority or separate views.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, the gentleman from California (Mr. ROUSSELOT), who does not appear to be here at the moment, earlier discussed this matter with me. I believe he expressed some desire on the part of the minority members to have the full 3 days to file the report, which I understand would carry the time until Monday.

Is the gentleman aware of that?

Mr. JACOBS. I am not aware of Mr. ROUSSELOT's question.

Mr. BAUMAN. I wonder if the gentleman could withdraw his request at this point so that we could clear that up?

Mr. JACOBS. That will be fine.

Mr. BAUMAN. I thank the gentleman.

Mr. JACOBS. Mr. Speaker, I ask unanimous consent to withdraw my request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

PERSONAL EXPLANATION

Mr. WEISS. Mr. Speaker, because of unavoidable absence at the end of the day on Thursday, September 18, 1980, I was unable to be present for rollcall votes Nos. 562, 563, 564, and 565. The following is an explanation of how I would have voted if I had been present. I request that this explanation be printed in the permanent RECORD.

Rollcall No. 562: A vote on the motion to recommit to change the expiration date of House Joint Resolution 610 from December 15, 1980, to October 18, 1980, offered by Representative CONTE. The measure failed by a vote of 228 to 153. If I had been present I would have voted against the measure.

Rollcall No. 563: A vote on the final passage of House Joint Resolution 610 to provide for continuing appropriations. The measure passed by a vote of 223 to 153. If I had been present I would have voted in favor of the measure.

Rollcall No. 564: A vote on the final passage of H.R. 7244, a bill to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund. The measure was passed by a vote of 199 to 151. If I had been present I would have voted in favor of the measure.

Rollcall No. 565: A vote on the motion offered by Representative NEAL to lay on the table the House bill and accept in lieu thereof the language of the Senate bill. The measure was passed by a vote of 184 to 129. If I had been present I would have voted in favor of the measure.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

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Mr. JACOBS. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means have until midnight Friday, September 26, 1980, to file a report on H.R. 8146, to provide a program of Federal supplemental unemployment compensation, along with any minority or separate views.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, I hope the gentleman will not ask for that unanimous consent, because a substantial number of us have minority views that we think it is important for the Rules Committee to have. As the gentleman knows, I was not allowed to offer an amendment that I felt was rather important in the committee. The claim was that it was a tax measure that would have bad effect, as the gentleman knows, so I will be constrained to object unless the gentleman cares to withdraw it.

Mr. JACOBS. The unanimous-consent request has been made.

Mr. ROUSSELOT. Then, Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

PROVIDING FOR CONSIDERATION OF H.R. 7112, STATE AND LOCAL FISCAL ASSISTANCE AMENDMENTS

Mr. ZEFERETTI. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 787 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 787

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7112) to authorize an extension and amendment of the revenue sharing program to provide general purpose fiscal assistance to local governments, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Government Operations now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered for amendment by titles instead of by sections and each title shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived. No amendment to the bill or to said substitute shall be in order except amendments printed in the Congressional Record. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1630

The SPEAKER pro tempore (Mr. MURTHA). The gentleman from New York (Mr. ZEFERETTI) is recognized for 1 hour.

Mr. ZEFERETTI. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Tennessee (Mr. QUILLEN), pending which I yield myself such time as I may consume.

The measure was passed by a vote of

Mr. Speaker, House Resolution 787 provides for the consideration of H.R. 7112, State and Local Fiscal Assistance Act Amendments of 1980. The resolution allows for a modified open rule with 2 hours of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations. Further, the introduced bill will require a waiver of section 402(a) of the Congressional Budget Act which requires new budget authority to be reported by May 15, preceding the beginning of the fiscal year for which it becomes effective.

After general debate, the rule makes in order a committee amendment in the nature of a substitute as original text for purposes of amendment and said substitute shall be read by titles instead of by sections, with each title considered as having been read. Clause 7, of rule XVI, germaneness, will be waived against the substitute due to the addition of a new title that was not contained in the introduced bill.

In addition, no amendment to the bill or to the substitute will be in order with the exception of those printed in the CONGRESSIONAL RECORD prior to consideration of the bill.

At the conclusion of the amendment process the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. Speaker, H.R. 7112 extends and amends the State and Local Fiscal Assistance Act of 1972, and adds a new title IV to the act authorizing a program of special assistance payments to State and local governments during periods of economic recession. The reported bill continues revenue-sharing entitlements to local governments for an additional 3 years at a funding level of approximately $4.6 billion a year. This is the same amount of funding governments are presently receiving.

The new title the committee has added authorizes a program of special assistance payments to State and local governments during periods of economic recession. This title provides for fiscal assistance during periods of recession by making payments to State governments and units of local government for each eligible calendar quarter determined by two consecutive quarterly declines in real wages, salaries, and real GNP. Appropriations for this new title will be limited to $1 billion per year.

Mr. Speaker, I would like to commend Chairman BROOKS and the Committee on Government Operations for the time and effort put into what I believe is an important piece of legislation.

However, I do believe it was a mistake to delete States from participation in the general revenue program and would argue there are many good reasons to continue some form of State program.

I am particularly pleased by the wisdom shown in the committee through the addition of a countercyclical assistance program. We are all aware State and local governments suffer extreme revenue declines during recessionary times, putting great strain on their ability to maintain jobs and deliver services.

A countercyclical program will help reduce the need for State and local governments to cut back services and at the same time prevent these governments from having to increase taxes. The serious economic uncertainties that we are facing in the country at present requires this type of safety valve and the way in which this program is crafted insures that the assistance is targeted effectively to those areas that need it the most.

There are many of my colleagues here today who will argue that the countercyclical program is a program only for cities and should not be a national program. I would respond to these arguments by stating that when literally thousands of men and women are out of work, no matter where they might reside, it is a problem for all of America and one that needs to be addressed and given the help and assistance of the Federal Government.

Mr. Speaker, as a long-time supporter of this type of legislation it just makes good sense to provide a standby program

or insurance policy for the areas of our country that would be hardest hit by a sudden downturn in our economy.

I urge my colleagues to support House Resolution 787 so we may proceed to the consideration of H.R. 7112, State and Local Fiscal Assistance Act Amendments of 1980.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the resolution itself has been, I believe, thoroughly analyzed and reported. This is a simple extension of revenue sharing for local governments, as amended. It is a necessary piece of legislation.

I hated to see revenue sharing for our States discontinued, and as the Members of the House will remember, I fought on this floor to keep revenue sharing going to our States by reducing our foreign aid program and the soft science program, but I was unsuccessful in keeping that portion of revenue sharing.

This bill is for local governments, but there is one problem in here which is very glaring, and that will be apparent as we discuss the bill when it comes up for amendment. Some 268 resort areas throughout the country are penalized because the formula has been changed, taking away from those areas funds because they are popular areas in the United States, taking away from them dollars that should go to them. I intend to offer an amendment, or if I am not on the floor of the House, the gentleman from Delaware, Mr. TOM EVANS, will offer the amendment, to let the formula remain as it is today.

Mr. Speaker, I urge the adoption of the resolution. I support revenue sharing, and I am for the measure.

Mr. Speaker, I reserve the balance of my time.

Mr. ZEFERETTI. Mr. Speaker, I yield 1 minute to the distinguished chairman of the Committee on Government Operations, the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Speaker, I want to thank my distinguished friend, the gentleman from New York (Mr. ZEFERETTI), and let me say that I want to commend the members of the Committee on Rules for acting so promptly on our request for a rule and for granting this rule that will permit the House to have a full and open debate on the revenue sharing bill, as we requested.

As a matter of fact, I like the rule a whole lot better than I like the bill. But that is a matter to be dealt with when the bill comes up. In the meanwhile, we have a good rule. I think it is a fair rule, and it should be adopted.

Mr. QUILLEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I just wanted to ask a question of the gentleman from Texas (Mr. BROOKS).

Last year the gentleman attended a meeting in the Rose Garden regarding this countercyclical aid matter. Has he been in the Rose Garden again this year? Or is there a snake in the bill again this year as he has said in the past. Or is the bill an acceptable blossom to which he will lend his support?

I am sure the gentleman remembers the discussions we have had on this issue of countercyclical aid over the years.

Mr. BROOKS. Mr. Speaker, if the gentleman will yield, this button that I wear says that I want to treat the hostages right. What does that one say that the gentleman is wearing over there? Is that a rose the gentleman is wearing?

Mr. BAUMAN. Yes, this is a rose in honor of a new cause, "Free the American 240 million." It has to do with the 1980 elections.

Mr. BROOKS. Mr. Speaker, in answer to the gentleman's question, no, I have not been in the Rose Garden. But during this next week they are going to have a party for little children there in the Rose Garden, and they will be teaching them to conserve energy. My daughter Kim will be there, and she and President Carter will celebrate their October 1 birthdays.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. WYDLER).

Mr. WYDLER. Mr Speaker, I would like to take this conversation out of the sweet smell of flowers into some matters which are going to affect the Members during the next day.

Mr. Speaker, I rise in support of House Resolution 787, making in order H.R. 7112, a bill to extend the general revenue-sharing program. I applaud the Committee on Rules for their speedy handling of this legislation, and I urge all Members of the House to support the rule.

Others have adequately described what is contained in this rule, and there is no reason for me to expand upon that further. However, I would like to point out to Members of the House that while I have no problems with the rule, I have one small disagreement with the legislation as reported. This disagreement concerns the issue of whether State governments should participate in the revenue-sharing program. I believe they should, and I intend to offer an amendment along with Mr. CONABLE, Mr. MITCHELL of Maryland, Mr. RODINO, and Mr. WEISS, which would restore the State governments for fiscal years 1982 and 1983. Our amendment would not provide funds to State governments in fiscal 1981 in deference to the fact that no money was provided in the budget resolution for a State share. However, I do not think that we should permanently foreclose the option of further State funding.

In addition, my amendment, should it be adopted, would make any future State share contingent upon the annual appropriations process. I think this is a reasonable compromise and I hope Members will support it.

Once again, I urge a favorable vote on the rule, and I congratulate the Rules Committee for their prompt handling of this legislation.

Mr. Speaker, let me say that I do support the rule. I think the rule is a good one, and I hope it will be passed. However, I understand now that this bill has been put over for action until tomorrow, and that was done mainly to allow the addition of certain amendments to be printed in the RECORD tomorrow. This would make those amendments in order tomorrow.

One of those amendments would take away the entitlement of the local governments for revenue sharing, and a major effort is going to be made to pass that amendment. That amendment would truly qualify as a gutting amendment. It would literally gut the entire revenue sharing program.

I think this reveals in a very dramatic way to the Members of this House who feel that the revenue-sharing program is important just what is behind the opposition by certain Members and what is involved in certain amendments to this bill. Those Members truly do not want revenue sharing, whether it is for the State government or for the local government or for anybody at all.

□ 1640

I want to point out to the Members something tonight that they might see tomorrow, because I have been given something, a so-called factsheet on the general revenue-sharing program—although nobody says who printed it—and this so-called factsheet is an attempt to tie together without any logical or sound sense in some fashion the amendment that I am going to offer, which is an attempt to put the State governments back into the program not as an entitlement but as an authorization in fiscal year 1982 and 1983, trying to tie that together with a vote against the countercyclical title of the bill.

Now, there is no connection between these two amendments whatsoever except in the mind of the person, whoever he may be, who wrote this so-called factsheet. And I warn the Members that this is the kind of tactics they are going to be exposed to in the course of the debate and the amendment process, and I ask them to be alert to these attempts to in effect undermine and destroy the revenue-sharing program. And obviously I am speaking to those Members who believe in it, who want it, who want it to continue, but hear these rumors and stories—and false stories—about what the amendment process is doing to the program.

Now, I have no objection to certain amendments, obviously, that are offered, because Members feel that those improve their particular localities' share of the revenue-sharing program. That is an understandable amendment, and in those Members' eyes, those amendments improve the bill. But a lot of these amendments have one aim only, to destroy the program, and nothing could be clearer than the amendment that would take away the entitlement of local governments to the revenue-sharing funds. I hope all the Members will be alert to these tactics during the debate and during the amendment process on this bill.

Mr. ZEFERETTI. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WYDLER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 385, nays 8, not voting 39, as follows:

[Roll No. 567]

YEAS—385

Abdnor
Addabbo
Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Bogges
Boland
Boling
Boner
Bonior
Bonker
Bouquard
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burton, John
Burton, Phillip
Byron
Campbell
Carney
Carr
Chappell
Cheney
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Devine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fasio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Holtzman
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Jacobs
Jeffords
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McEwen
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Royer
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stockman
Stokes
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thomas
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—8

Archer
Dannemeyer
Jeffries
Kindness
McDonald
McKay
Roberts
Rousselot

NOT VOTING—39

Alexander
Anderson, Ill.
Ashbrook
Badham
Beard, R.I.
Bethune
Bowen
Brademas
Burlison
Butler
Carter
Cavanaugh
Davis, S.C.
Derwinski
Dodd
Dougherty
Gore
Holt
Ichord
Ireland
Jenrette
McDade
Mathis
Murphy, Ill.
Musto
Myers, Pa.
Nedzi
Pepper
Preyer
Quayle
Ritter
Rudd
Satterfield
Skelton
Stratton
Symms
Thompson
Wilson, C. H.
Wolff

□ 1650

The Clerk announced the following pairs:

Mr. Thompson with Mr. Ashbrook.

Mr. Musto with Mrs. Holt.

Mr. Pepper with Mr. McDade.

Mr. Satterfield with Mr. Quayle.

Mr. Gore with Mr. Rudd.

Mr. Jenrette with Mr. Badham.

Mr. Bowen with Mr. Bethune.

Mr. Burlison with Mr. Ritter.

Mr. Dodd with Mr. Symms.

Mr. Cavanaugh with Mr. Derwinski.

Mr. Davis of South Carolina with Mr. Carter.

Mr. Preyer with Mr. Butler.

Mr. Stratton with Mr. Anderson of Illinois.

Mr. Wolff with Mr. Ichord.

Mr. Alexander with Mr. Nedzi.

Mr. Skelton with Mr. Charles H. Wilson of California.

Mr. Murphy of Illinois with Mr. Myers of Pennsylvania.

Mr. Ireland with Mr. Dougherty.

Mr. Mathis with Mr. Beard of Rhode Island.

Mr. GUYER changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1700

PERMISSION FOR COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO FILE A PRIVILEGED REPORT AND ACCOMPANYING RESOLUTION IN THE MATTER OF REPRESENTATIVE MICHAEL J. MYERS

Mr. BENNETT. Mr. Speaker, I would like to advise my colleagues that it is my intention to call up the privileged resolution in the matter of Representative MICHAEL J. MYERS after the committee's report in this matter has been available to the Members for no less than 3 legislative days.

Mr. Speaker, I ask unanimous consent that the Committee on Standards of Official Conduct may have until midnight tonight, Wednesday, September 24, 1980, to file a privileged report and accompanying resolution in the matter of Representative MICHAEL J. MYERS for printing under the rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

RULE TO BE REQUESTED ON H.R. 8146, TO PROVIDE A PROGRAM OF FEDERAL SUPPLEMENTAL UNEMPLOYMENT COMPENSATION

(Mr. CORMAN asked and was given permission to address the House for 1 minute.)

Mr. CORMAN. Mr. Speaker, on September 23, 1980, the Committee on Ways and Means ordered favorably reported to the House H.R. 8146, to provide a program of Federal supplemental unemployment compensation. H.R. 8146 would provide additional weeks of unemployment compensation benefits to individuals who have exhausted their State benefits and Federal-State extended unemployment compensation benefits.

Pursuant to the rules of the Democratic Caucus, I take this occasion to advise my colleagues as to the nature of the rule that I will request for the consideration of H.R. 8146 on the floor of the House. The Committee on Ways and Means has specifically instructed me to request the Committee on Rules to grant a closed rule which would only provide for:

First. Committee amendments, which would not be subject to amendment;

Second. One hour of general debate, to be equally divided;

Third. Waiving all necessary points of order; and

Fourth. One motion to recommit.

We will request to be heard before the Committee on Rules.

PROVIDING FOR CONSIDERATION OF S. 885, PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules,

I call up House Resolution 791 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 791

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 885) to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. In lieu of the amendments recommended by the Committees on Interior and Insular Affairs and Interstate and Foreign Commerce now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text of the bill H.R. 8157 as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as an original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instruction. After the passage of S. 885, it shall be in order in the House to insist on the House amendment to S. 885 and to request a conference with the Senate thereon.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. LOTT). I yield myself such time as I may consume.

Mr. Speaker, there was some controversy before the Rules Committee on this rule, but after hearing the testimony of both the proponents and the opponents, as I remember it, the Rules Committee voted by voice vote without objection for this rule.

It is a simple rule. It provides for two hours of general debate. It makes in order an agreed upon bill as a substitute for consideration. There will be adequate opportunity for amendment.

I really know of no vigorous opposition of substantial numbers to this rule. There are one or two people who are violently opposed, and I have agreed to yield 15 minutes to one of the opponents, so there will be full debate on the opposite side.

In the meantime, I reserve the balance of my time.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is an open rule allowing 2 hours of general debate which is to be divided between the two committees which considered the bill in the House—the Interior Committee and the Commerce Committee. Instead of considering the amendments adopted separately by these two committees, a substitute amendment containing the text of H.R. 8157 is to be considered as an original bill for the purpose of amendment.

Clause 5 of rule 21 dealing with appropriations in a legislative bill is waived against the substitute.

There is one motion to recommit with or without instructions.

After passage of the Senate bill, there is to be a motion to insist on the House amendment and to request a conference with the Senate.

Mr. Speaker, this is a measure which is of great interest particularly to our colleagues from the Northwestern United States and to their constituents. It attempts to peaceably allocate electricity which is supplied to the Pacific Northwest by the Bonneville Power Administration. The Northwest faces the possibility of a regional war over the distribution of low-cost energy supplies and this bill has been dubbed a sort of "peace treaty" to unite the region and prepare for rebuilding of energy supplies.

As we are all painfully aware, the abundance of cheap energy in this Nation has come to an end and our energy future is beginning to arrive. What is happening in the Northwest is symbolic of the problems of electricity supply which are certain to eventually face other regions without our providing the proper incentives for energy production. Developments here should provide some warning to us of the energy demands which are prevalent throughout the rest of the country. And we should be prepared to face the challenge which is being thrust upon us.

Apparently there are divisions among the ranks of those involved in the proposed shortage solution, but after almost 4 years this House is to consider a plan to make the most of what the Northwest region has in the way of power. I have no opposition to the open rule we are considering but because this is an extremely complex and emotional issue, I urge my colleagues to carefully consider the measure, and I intend to do the same. The worst thing we could do right now would be to hastily consider such a serious measure in the closing days of a session without adequately acknowledging the ramifications to the Pacific Northwest and its energy consumers.

Mr. Speaker, I yield 3 minutes to the gentleman from New Mexico (Mr. LUJAN).

Mr. LUJAN. Mr. Speaker, I thank my friend for yielding.

Mr. Speaker, I rise in support of this rule, not because I think it is the best possible way to handle the situation in the Northwest, but because I really do not know of any other way that it could be done. I participated in the formulating of this legislation for perhaps the last 2 or 3 years. I think we have tried to take care of all of the interests in the Northwest with the bill that we came up with. We have a little bit in there for those that are interested in conservation of resources. We have something in there for the protection of fish and wildlife. We have power exchange control. We have taken care that the preference clause among preference customers is still intact.

□ 1710

It has been a long, long row to hoe on this legislation.

I am not particularly crazy about the rule. Normally I would support an open rule. But it seems to me like in having granted an open rule that it leaves us open to a minifilibuster, especially in these last few days of our session.

So reluctantly I do support the rule but I would ask those that have the inclination to offer amendments, I notice there are 26 which are listed, and within those 26 one of them says Mr. So-and-So will offer several amendments to this particular question, so we could be looking at 30, 40, or 50 amendments, and they are probably more dilatory than of substance—I do not want to cast aspersions on any one of my colleagues on the committee—but these amendments, these same amendments that have been offered here have been offered in subcommittee and full committee and some of them have been accepted. A lot of them have been turned down. Most of the ones I see listed on here have already been turned down. So I would ask my friends in these closing hours if they do not think those amendments are really going to add anything to the bill, then just control the urge to offer so many amendments to this bill.

So, Mr. Speaker, as I said before, I very reluctantly will go along with this rule but still would ask my friends that they refrain from offering so many amendments that they know will not pass.

Mr. LOTT. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. I am a little confused as a result of the comments of my colleague from New Mexico (Mr. LUJAN). This is a partially closed rule or what?

Mr. LOTT. If the gentleman will yield, it is a wide-open rule. The gentleman from New Mexico came to the Rules Committee and made his point there. I understand his concern that this could be a protracted thing with a lot of amendments being offered.

I just do not see how we could have done anything but report an open rule, certainly on a bill like this. It is out of an authorization committee and, since we are basically constitutionally opposed to a closed rule anyway, I think we certainly had to do this.

Mr. ROUSSELOT. But we did not have any points of order waived on the budget or anything?

Mr. LOTT. No, not on the budget.

Mr. ROUSSELOT. Like we did on the last rule?

Mr. LOTT. No, not at all.

Mr. ROUSSELOT. So we can be assured that people who have legitimate amendments will be able to offer them?

Mr. LOTT. Some legitimate and some otherwise, I am sure.

Mr. ROUSSELOT. Oh, really? That gives a little cause for pause. But the gentleman can assure me that there is no waiver of the budget here?

Mr. LOTT. No waiver of the budget. We do waive clause 5, rule XXI, appropriation in a legislative bill. That is waived.

Mr. ROUSSELOT. We have waived the appropriation? Could the gentleman explain that a little better?

Mr. LOTT. I am glad to yield to the gentleman from New Mexico.

Mr. LUJAN. There is no appropriation under this bill. Bonneville conducts its own business. The revenues come from the rates that are charged to the power users and none of the gentleman's hard-earned money that he pays in taxes goes into this at all.

Mr. LOTT. If I can take up my time again, there is some language on page 35 of the bill dealing with this which states the Administrator shall use the Bonneville Power Administration fund, and there is language where we had to have the waiver. It is not dealing with a specific amount, it is no taxpayer's money. But since this language is in there, that point had to be waived.

Mr. Speaker, I have no further requests for time and I reserve the balance of my time.

Mr. BOLLING. Mr. Speaker, I yield 15 minutes to the gentleman from Oregon (Mr. WEAVER).

Mr. WEAVER. Mr. Speaker, I would like to thank very much the chairman of the Rules Committee and all the members of the Rules Committee for bringing out what I consider to be a very fair rule. I will support the rule. I appreciate this very much. I think it was done in the interests of fairness.

I wanted to tell the Members of the House why if the bill must come to the floor, which I believe it should not, but nevertheless, once it comes to the floor we have a very good rule and the reason necessary for an open rule is that this bill is so badly flawed, so deeply and pervasively a bad bill, that it will take extensive amending to possibly remedy the defects. I am not sure that even such extensive amendments can do that.

I would say that not a single one of my amendments will be dilatory. Not a single amendment that I have or will offer to this bill will be dilatory.

I would like to tell the membership that the largest public utility in Oregon, the Eugene Water & Electric Board, my home utility, is adamantly opposed to this bill. Its chairman is an arch Republican conservative, pronuclear, and he is adamantly opposed to this bill. All five board members are opposed to this bill because, and they have analyzed the bill probably more carefully than anyone else other than the Members that have been working on it themselves, because they believe it will destroy local control, it will destroy initiative, it will eventually destroy their utility.

The Eugene Water & Electric Board is one of the most aggressive, vigorous utilities in the Northwest in developing its energy sources. It has compiled a great record both in large nuclear plants as well as projects such as geothermal, wood wastes, and other energy sources, along with hydroelectric. They are now to be penalized, they are now to be told no, your efforts, we do not want them; we are going to put all energy decisions in the hands of one Federal bureaucracy, the Bonneville Power Administration. They are going to make the decisions and any initiative you take, any vigor that you show in developing energy sources that are cheaper will be penalized, not rewarded.

So, therefore, among the amendments that I am compelled to offer to this bill, and the reason I support the rule and an open rule, because I wish to offer such amendments as this, is one, the bill mandates the Bonneville Power Administration to provide all of the energy needs for all private utilities in the Northwest. Now, I will repeat that. The bill requires a Federal agency to provide all of the power needs, under long-term contract, all of the power needs of all of the private utilities in the Northwest. This is the first time in the history of this Nation that such a situation has been set up.

We could say that the TVA has some similarities. This bill, in effect, is a TVA, but all of the bad parts of the TVA, all of the bad aspects of the TVA, and very little of the good parts of the TVA.

Again, the bill mandates a Federal agency to provide all of the power needs for private utilities in the Northwest. Think of what a precedent this is setting for the rest of the Nation. Will your utilities then go in and ask a Government agency to provide all of their power needs until the entire utility industry of this country is nationalized?

□ 1720

This is not an obscure reading of the bill. This is one of its most important provisions. One of its most important provisions is mandating a Federal agency to provide all the power needs of the private utilities. All they have to do is come and ask, and Bonneville is forced to give them a 20-year contract to meet all their power needs. Is this sort of provision going to give us the initiative to develop our energy? No. Everybody can sit back and rest and say, the Federal Government is going to take care of us. Very frankly, this is what has happened among many of the small public utilities in the Northwest. They have sat back, done nothing, and let Bonneville feed them the electricity. Now we are going to do the same thing with the private utilities.

I have urged the small publics to go out and develop their own energy in the Northwest. I was proud when finally one Blachley-Lane Electric Co-op, instead of buying extremely expensive power through the Bonneville that has been put on the market, went out and developed its low-head hydro projects in its own back yard within its own district and got the electricity they need until the year 2000 for one-half the cost. But we are going to destroy with this bill the initiative, because the Federal Government is going to take care of everybody. What a precedent for the rest of the Nation. But it is a big power grab.

Why are we passing this bill? I will tell you why. It is a nice, big power grab. A handful of people who are very powerful in the Northwest utilities, executives and others, are making its power grab and pushing this bill through.

Another one of my amendments is the freedom-of-choice amendment. It is a very simple amendment. Right now the bill would force on every utility in the Northwest any project Bonneville and the Federal agency desire to put into effect. Bonneville signs on the dotted line, and every utility in the Northwest is going to pay. Some of these projects will bankrupt some of the utilities. There is no question of this. There are a number of utilities now in the Northwest on the verge of bankruptcy, and some of these projects will bankrupt these utilities. So my amendment, which I call the freedom-of-choice amendment, simply allows any utility to say to Bonneville, No, we cannot afford that project, or, No, we are meeting our own energy needs here at home. We will not participate. They will not get the benefits either. They do not get the benefits either, but they will not participate.

I offered this, yes, in subcommittee, I offered this in full committee, but the utility industry crushed it. The Bonneville Power Administration lobbyists crushed it. I said "Bonneville Power Administration lobbyists." It is against the law for a Federal agency to lobby; is it not? I can tell you the Bonneville Power people are constantly lobbying. As a matter of fact, they wrote this bill. It is also against the law for a Federal agency to write a bill like this, but they did. They wrote the bill.

So the Bonneville Power lobby, this Federal agency lobby, crushed the freedom-of-choice amendment. Why? Why? There is a very simple reason why—because they want every single citizen of the Northwest, every business, every small business, every resident, every farmer to be required to pay for whatever they desire to do in the Northwest. With my freedom-of-choice amendment they could put together huge consortiums to build all the plants they want. They could put together any group. They would have all the opportunity.

I just ask that if a utility says, no, we fear bankruptcy, or, no, we cannot afford it, or, no, we want to develop our own energy choices, we get knocked out and not get the benefits, but we will not pay for it either—let them. No, that amendment was crushed. That is one of the amendments I will have offered.

Mr. CARR. Mr. Speaker, will the gentleman yield?

Mr. WEAVER. I yield to the gentleman from Michigan.

Mr. CARR. I thank the gentleman for yielding.

Mr. Speaker, I want to commend the gentleman for a very lonely task that he has undertaken, one of a few Members of that particular region, and I know how sometimes politically difficult it has been for the gentleman to be the most outspoken opponent of this legislation from that region of the country. While we have not always agreed on some of the amendments and we have not always agreed on the methods of opposition to the bill, I think the House deserves to know what fine work he had done. In the time that the gentleman would yield further, I would like to inform the House that I will be opposing the rule and for one simple reason. This bill is a product of a joint referral.

We have all had our sad experiences with joint referrals around the House. In this particular instance the Commerce Committee passed out its version. The Interior Committee passed out its version, and unlike other occasions when we have had two different committee versions, the bill before us is not a product of either committee.

Rather, as I said, with Alaska Lands and a variety of other cases where one committee bill was made a vehicle and another committee bill was made a substitute, and the House was allowed to work its will, the House is entitled to know that the bill before you today was not passed out of either committee and that what we are voting on is the result of a smashed-together version of the House Interior and Commerce Committee bills. It was written largely by the staff, largely by the staff at least in the experience of this Member with a respect to amendments that I had on the Interior Committee version. I was not consulted on the final outcome.

I think we have enough trouble with staff writing legislation around here not to sanction by an official rule of the House a bill written by the staff of the two committees. It would not be so bad if they confined themselves to the brackets between which permissible conferees might make a compromise, but in some instances this particular bill goes entirely outside the brackets and writes whole new legislation, upon which neither committee had any hearings but, rather, is the supposition and the assumption of the staff. I think that this rule establishes a very bad precedent. I think the Committee on Rules in its infinite wisdom acted hastily. Rather, we should have had one of the two bills made in order and the other committee bill made in order as a substitute and proceeded in regular order. I would urge a vote against the rule on the Northwest power bill.

Mr. WEAVER. I want to thank very much the gentleman from Michigan (Mr. CARR) who impressed me and members of the Interior Committee constantly with his grasp of the bill. He was obviously one of the keenest minds on the bill in grasping what was really in the bill. When other members were unable to explain sometimes their own amendments, the gentleman from Michigan was able to untangle them.

I would like to point out to those again who asked why I am going to offer 72 amendments—again, not a single one is dilatory—let me point out that the gentleman from Michigan said that the two staffs smashed together the bill. No, that is the one thing he said that was incorrect. What they did was pull it apart. The bill started 4 years ago as 10 pages, then became 40 pages, then became 85 pages. It is now 104 pages. It is not my fault. The substitute that I will offer is just 31 pages. It is a good, clean substitute; but 104 pages, with the staff having written most of it without the approval of either committee for many of the changes, means that these amendments that we must offer and work our will on in the House are critical—are critical in perfecting this bill.

So I want to thank again the Committee on Rules for the open rule. Albeit, I agree with my friend, the gentleman from Michigan (Mr. CARR) that the process was not a good one in arriving at a final bill. I would say again my thanks.

Mr. LOTT. Mr. Speaker, I yield back the remainder of my time.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 378, nays 5, answered "present" 1, not voting 48, as follows:

[Roll No. 588]

YEAS—378

Abdnor
Addabbo
Akaka
Alboata
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonker
Bouquard
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Byron
Campbell
Carney
Chappell
Cheney
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Dellums
Derrick
Devine
Dickinson
Dicks
Donnelly
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holland
Hollenbeck
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Meica
Michel
Mikulski
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Simon
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stockman
Stokes
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Thomas
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—5

Burton, Phillip
Carr
Edgar
Miller, Calif.
Seiberling

ANSWERED "PRESENT"—1

Satterfield

NOT VOTING—48

Alexander	Davis, S.C.	Murphy, N.Y.
Anderson, Ill.	Deckard	Musto
Applegate	Derwinski	Myers, Pa.
Ashbrook	Dingell	Nedzi
Badham	Dixon	Pepper
Beard, R.I.	Dodd	Preyer
Beard, Tenn.	Dougherty	Quayle
Bethune	Holt	Ritter
Bonior	Holtzman	Rudd
Bowen	Ichord	Stewart
Brademas	Ireland	Stratton
Butler	Jenrette	Symms
Carter	Jones, Okla	Thompson
Cavanaugh	LaFalce	Wilson, C. H.
Coughlin	McDade	Wolff
Daniel, Dan	Murphy, Ill.	Wydler

□ 1740

The Clerk announced the following pairs:

Mr. Thompson with Mr. Ashbrook.
Mr. Musto with Mr. Badham.
Mr. Murphy of New York with Mr. Beard of Tennessee.
Mr. Pepper with Mr. Eckhardt.
Mr. Stratton with Mr. Dougherty.
Mr. Wolff with Mr. Bethune.
Mr. LaFalce with Mr. Butler.
Mr. Jenrette with Mr. McDade.
Mr. Dodd with Mr. Quayle.
Mr. Dingell with Mr. Carter.
Mr. Dan Daniel with Mr. Rudd.
Mr. Bowen with Mr. Coughlin.
Mr. Bonior of Michigan with Mr. Symms.
Mr. Applegate with Mr. Dixon.
Mr. Alexander with Mrs. Holt.
Mr. Davis of South Carolina with Mr. Derwinski.
Mr. Nedzi with Mr. Wydler.
Mr. Myers of Pennsylvania with Mr. Ritter.
Mr. Stewart with Mr. Beard of Rhode Island.
Mr. Charles H. Wilson of California with Ms. Holtzman.
Mr. Ichord with Mr. Cavanaugh.
Mr. Ireland with Mr. Jones of Oklahoma.
Mr. Preyer with Mr. Murphy of Illinois.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

WILLIAM S. MOORHEAD FEDERAL BUILDING

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 8161) to designate the U.S. Federal Building in Pittsburgh, Pa., as the "William S. Moorhead Building."

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. WEAVER. Mr. Speaker, reserving the right to object, I do so to ask the Speaker what the schedule will be for the balance of the day.

The SPEAKER pro tempore. Is the conference chairman prepared to answer the question as to what the schedule is for the balance of the day?

Mr. WEAVER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Washington (Mr. FOLEY).

Mr. FOLEY. Mr. Speaker, the intention of the leadership is that there would be no matters brought before the House tonight after 6 o'clock which would require any consideration of amendments or other substantive votes. The intention was to schedule the only remaining matter, which would be general debate for not to exceed 2 hours, on the Pacific Northwest power bill.

Mr. WEAVER. Further reserving the right to object, does the gentleman say that we will go into the Northwest power bill, the general debate, immediately following this matter?

Mr. FOLEY. The next matter that the leadership had scheduled was to go into the Committee of the Whole House on the State of the Union for the consideration of general debate only, not to exceed 2 hours, on the Northwest power bill.

Mr. WEAVER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The Clerk read the bill, as follows:

H.R. 8161

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Federal Building located at 1000 Liberty Avenue, Pittsburgh, Pennsylvania, shall hereafter be known and designated as the "William S. Moorhead Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to that building shall be held and considered to be a reference to the "William S. Moorhead Building".

AMENDMENT OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: On line 5 and line 9 after the name Moorhead, insert the word "Federal".

Add a new section 2 to read as follows:

This Act shall take effect January 15, 1981.

□ 1750

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Georgia (Mr. LEVITAS).

The amendment was agreed to.

Mr. LEVITAS. Mr. Speaker, I rise in support of H.R. 8161, a bill to designate the U.S. Federal Building in Pittsburgh, Pa., as the "William S. Moorhead Federal Building."

Representative WILLIAM S. MOORHEAD, Democrat, of the 14th Congressional District of Pennsylvania, whose constituency is located in the heart of the Pittsburgh area, is a native of the city. He was born there on April 8, 1923, the son of the late William S. and Constance Barr Moorhead. He is an attorney and was a partner in the law firm of Moorhead and Knox, founded by his father.

During World War II, he was commissioner Lieutenant (j.g.) and served in the Navy aboard a destroyer in a Pacific task force.

Mr. MOORHEAD attended Shadyside Academy in Pittsburgh, Phillips Andover Academy, and received his BA from Yale University in 1944. In 1949 following war service, he was graduated cum laude from Harvard Law School. He was awarded an honorary degree of LLD from Duquesne University in 1965.

He is married to the former Lucy Galpin and they have three sons and one daughter.

Congressman MOORHEAD served as an assistant city solicitor of the city of Pittsburgh from 1954 to 1957 and was a member of the Allegheny County Housing Authority from 1956 to 1958. He has served as a trustee of the Pittsburgh Child Guidance Center, the Pittsburgh Park and Playground Society, the Tuberculosis League of Pittsburgh, the Shadyside Hospital, the Negro Emergency Education Drive, the Western Pennsylvania Conservancy and the Board of Visitors of the University of Pittsburgh Faculty of Arts and Sciences. He is a member of the American Legion, AMVETS, and Veterans of Foreign Wars.

Mr. MOORHEAD was elected to the 86th Congress on November 4, 1958, and reelected to subsequent Congresses. He is a member of the Committee on Banking, Finance and Urban Affairs (serving on its Subcommittee on Housing, Subcommittee on International Development Institutions and Finance and is chairman of its Subcommittee on Economic Stabilization); the Committee on Government Operations (serving on its Subcommittee on Legislation and National Security and the Subcommittee on Environment Energy and Natural Resources); and the Joint Economic Committee (serving on its Subcommittee on International Economics and is chairman of its Subcommittee on Fiscal and Intergovernmental Policy).

Congressman MOORHEAD, an assistant whip for the House of Representatives since 1969, served as a regional coordinator for the Democratic Congressional Platform Committee in 1968, cochairman of the Democratic State Platform Committee in 1966 and 1970, and a member of the Speaker's Task Force on the Platform in 1976.

Mr. Speaker, Congressman MOORHEAD has announced that he plans to retire at the end of the 96th Congress and his departure from the House will be felt by all of his colleagues. During the past 6 years, I had the privilege of serving with him on the Government Operations Committee. I have found he is one of the friendliest, kindest, and most gentlemanly people I have had the opportunity to work with in these years. He is known for his dedication and determination in bringing about meaningful legislation and I strongly support enactment of H.R. 8161.

● Mr. JOHNSON of California. Mr. Speaker, I rise in support of H.R. 8161, a bill to designate the U.S. Federal Building in Pittsburgh, Pa., as the "William S. Moorhead Federal Building."

Mr. Speaker, the end of the 96th Congress will mark the retirement on one of our esteemed colleagues from the House, Representative BILL MOORHEAD, of the 14th District of Pennsylvania. BILL and I were both elected to the 86th Congress and I have had the honor and privilege of serving in the House with him for 22 years. His dedication to his country is to be admired. He is hard working and has served admirably on numerous committees of the House. As a member of the House Banking, Finance and Urban Affairs Committee, he serves as chairman of the Economic Stabilization Subcommittee. During his years in the House, his qualities of leadership and effectiveness are known by all. Mr. Speaker, I strongly urge enactment of this legislation.●

● Mr. HARSHA. Mr. Speaker, I rise in support of H.R. 8161, a bill designating the Federal building in Pittsburgh as the William S. Moorhead Building.

As a hard-working and conscientious Member, BILL MOORHEAD has served his Nation, as well as his fellow Pennsylvanians, in an outstanding manner. He was elected to the 86th Congress on November 4, 1958, and reelected to subsequent Congresses. He has served admirably as a member of the Committee on Banking, Finance, and Urban Affairs, the Committee on Government Operations, and the Joint Economic Committee, serving as chairman of the Subcommittee on Fiscal and Intergovernmental Policy. He has provided effective leadership as assistant whip for the House since 1969.

Designating the Federal building in Pittsburgh in honor of WILLIAM S. MOORHEAD is a well-deserved tribute.

I ask my colleagues to join me in supporting passage of this legislation.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to designate the United States Federal Building in Pittsburgh, Pennsylvania, as the 'William S. Moorhead Federal Building'."

A motion to reconsider was laid on the table.

JAMES C. CLEVELAND FEDERAL BUILDING

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 7588) to designate the U.S. Post Office and Courthouse Building in Concord, N.H., as the "James C. Cleveland Building."

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. D'AMOURS. Mr. Speaker, reserving the right to object, I, of course, will not object, but I do want to take this opportunity to express my strong support for H.R. 7588.

Mr. Speaker, it is an honor to join with the gentleman from Georgia (Mr. LEVITAS) in paying tribute to our distinguished colleague from New Hampshire, JIM CLEVELAND.

For 18 years JIM CLEVELAND has represented the people of New Hampshire's Second Congressional District with diligence and distinction in the U.S. House of Representatives. Prior to his service in Congress he represented the people of the New London area for 12 years in the New Hampshire State Senate.

During his tenure in public life JIM CLEVELAND has set the standard for constituent service against which all other public officials from New Hampshire have been measured. JIM has always gone that extra mile for his constituents and his special efforts have usually resulted in success.

As a longstanding, highly respected member of the House Public Works Committee JIM CLEVELAND has developed a great deal of expertise in the fields of transportation, water resources and economic development. His expertise has been extremely beneficial to the State of New Hampshire on numerous occasions.

JIM led the effort in 1973 to develop a compromise parkway solution to the highway through the Notch problem which met both transportation and environmental needs. JIM was instrumental in working out similar differences over the RARE II proposal for New Hampshire's White Mountain region.

As the Representative of New Hampshire's First Congressional District I was grateful for JIM's help in my efforts to secure funds to upgrade parts of route 101 between Manchester and the seacoast.

On a personal level, JIM CLEVELAND was very helpful to me when I first arrived in Congress and I have deeply enjoyed working with him over the past 6 years on a wide variety of matters of importance to the State of New Hampshire.

I will miss his friendship and cooperation, and want to wish both JIM and Hilary the best of luck in the years to come.

Mr. Speaker, in honor of his 30 years of public service on behalf of the people of New Hampshire, it is indeed appropriate that the Concord, N.H., Federal Building be renamed the "James C. Cleveland Federal Building." As a sponsor of H.R. 7588 I would like to share with my colleagues a resolution passed by unanimous vote of the Concord, N.H., city council endorsing this legislation to rename the Concord Federal Building after JIM CLEVELAND.

RESOLUTION OF THE CITY OF CONCORD

In the year of our Lord one thousand nine hundred and eighty.

Resolution Honoring United States Representative, James C. Cleveland, "The Constituent Congressman".

The City of Concord resolves as follows:

Whereas, James C. Cleveland has served the people of New Hampshire for 30 years, first as a State Senator from New London (1951–1963), and then as a United States Representative for New Hampshire's second Congressional District in the United States House of Representatives (1963–1981), and

Whereas, James C. Cleveland's strong emphasis on constituent service to both individuals and communities in New Hampshire is a model to his colleagues in the Congress and to those who aspire to public office and

Whereas, James C. Cleveland, as a ranking member of the House Public Works and Transporation Committee, has been instrumental over the years in assuring the development of New Hampshire's interstate highway system and water pollution control projects, and

And whereas, United States Senator John Durkin, United States Senator Gordon Humphrey, and United States Representative Norman D'Amours are co-sponsoring resolutions (H.R. 7588 and S. 2803) before the Congress to name Concord's Post Office and Federal Court Building the "James C. Cleveland Building", in honor of his 30 years of public service.

Therefore, the Concord City Council joins with New Hampshire's Congressional Delegation in urging Congress to approve the naming of the building and expresses its appreciation to Congressman Cleveland for his years of constituent service to Concord and its citizens.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I just want to ask the gentleman from Georgia (Mr. LEVITAS) this question:

As a general policy matter, it used to be that we were to wait until an esteemed leader of the Nation died before we honored him. More recently we have been naming public edifices after individuals, it seems to me, who are alive or who are perhaps alive for at least a period after their retirement.

Do I understand the policy of the gentleman's committee is not to name Federal buildings after anyone at least until they have left public office or presumably retired from the Congress of the United States?

Mr. Speaker, I say this without reference to the pending matter or any other matters of this type that the gentleman brings up.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. Of course, I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Speaker, the guidelines under which public buildings or other facilities are named do require that the person has left office or the position prior to that occurring, and that is the reason for the offering of the amendment by the gentleman from Georgia making this last bill that we considered effective on January 15 of next year.

But it is not unprecedented at all that Members of this body who are retiring after a certain number of years, 14 years of service in the House, are eligible to have public buildings named for them. They cannot, however, receive that honor until after they have left office. Indeed, in the next few days there will be some bills coming over from the other body with respect to retiring Members of that body as well, and we have tried to establish certain criteria in addition to the criteria which have been effective for a number of years.

Mr. BAUMAN. Mr. Speaker, do I understand there are other criteria, not only retirement from service after at least 14 years in the Congress, if they are to be honored for that purpose?

Mr. LEVITAS. Mr. Speaker, that is correct. There are criteria, among other things, if the gentleman will yield further. It is not just retirement; there has to be a certain number of years of service in this body as a prerequisite for consideration, and not all such proposals are approved by the committee.

Mr. BAUMAN. Mr. Speaker, may I ask, is there any attention paid to the quality or type of service rendered during the years of service?

Mr. LEVITAS. There is by the gentleman from Georgia. I cannot speak for other members of the committee.

Mr. BAUMAN. Mr. Speaker, the only other question I have is this:

Is there any danger of our running out of Federal buildings to name after Members of Congress who are retiring? Has there been any inventory of that made? We would not want to have that happen, I assume.

Mr. LEVITAS. Mr. Speaker, if the gentleman will yield further, I can set the gentleman's mind at ease. There are some 10,000 unnamed Federal buildings, and that should take care of the next few years.

Mr. BAUMAN. As many as there are lights on Broadway, I assume.

Mr. LEVITAS. I believe the gentleman is correct.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for his explanation, and I certainly support the pending measure, in view of the fact that it involves my good friend, the gentleman from New Hampshire (Mr. CLEVELAND).

Mr. LEVITAS. Mr. Speaker, if the gentleman will yield, let me state to him that we will save and reserve a Federal building to be named for the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, I would perhaps suggest that we might want to remove some of the Federal buildings from my district. That might make some of my constituents happier, depending on the buildings selected.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the gentleman from Georgia?

There was no objection.

The Clerk read the bill, as follows:

H.R. 7588

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Post Office and Courthouse Building located at 55 Pleasant Street, Concord, New Hampshire, shall hereafter be known and designated as the "James C. Cleveland Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to that building shall be held and considered to be a reference to the "James C. Cleveland Building".

COMMITTEE AMENDMENTS

The SPEAKER pro tempore. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 2, line 4, after "Cleveland" insert "Federal".

Page 2, line 7, after "Cleveland" insert "Federal".

The SPEAKER pro tempore. The question is on the committee amendments.

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: Add a new section 2 to read as follows:

This Act shall take effect January 15, 1981.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Georgia (Mr. LEVITAS).

The amendment was agreed to.

Mr. LEVITAS. Mr. Speaker, I rise in support of H.R. 7588, a bill to designate the U.S. Post Office and Courthouse Building in Concord, N.H. as the "James C. Cleveland Federal Building." It has been my distinct privilege and very great honor to have served with JIM CLEVELAND over the past 6 years. I have had the opportunity to observe firsthand JIM's dedication to our Nation while serving with him on the House Committee on Public Works and Transportation. His dedication to the interests of the working men and women of this country is greatly admired and in behalf of the Committee on Public Works and Transportation I insert the text of the committee report which further elaborates on JIM's great accomplishments while serving in the U.S. House of Representatives:

The purpose of this measure is to recognize the distinguished Congressional service of James C. Cleveland of New Hampshire, an outstanding member of the Committee on Public Works and Transportation for the past 18 years.

On this Committee, Jim Cleveland has been particularly active in the fields of transportation, water resources and economic development. He was personally involved in every highway bill to emerge from the Committee during his tenure and authored a number of significant improvements. These include advance acquisition of right-of-way, four-laning of all Interstate highways and the access control demonstration program. In water resources, he emerged as an acknowledged leader in water pollution control, co-authoring the Cleveland-Wright provision to delegate construction of wastewater treatment facilities to the states and contributing substantially to wetlands protection. Also in water resources, he authored the provision for deauthorization of dam projects long-authorized but dormant and no longer deemed in the public interest, and a provision mandating consideration of nonstructural alternatives in the development of flood control projects. In economic development, his principal interest has been in strengthening the ability of government programs to stimulate employment in the private sector. A strong believer in the use of public works projects to combat unemployment, he was impatient with bureaucratic inertia and sought to reduce red tape across the board to speed up and expand construction projects under the many programs within the Committee's jurisdiction.

Jim Cleveland served on both the Transportation and Economic Development Subcommittees, but chose to exert his leadership role as ranking minority member on the Subcommittee on Oversight and Review in keeping with his firm conviction of the importance of the investigative function and his dedication to its responsible exercise. He became known as a well-informed and probing questioner of witnesses regardless of party, at times exhibiting a humor most often reserved to informal occasions. For years, he and then-Chairman Jim Wright, now Majority Leader of the House, were a formidable bipartisan team in selecting areas of inquiry, building an investigative record and then following through to see their findings reflected in the work of the legislative subcommittees.

Although less well-known, Jim Cleveland's long record of service to the House as an institution may be of equal significance. As a member of the Joint Committee on the Organization of Congress, he contributed directly to the landmark Legislative Reorganization Act of 1970. As a member of the Joint Committee on Congressional Operations, he strongly asserted the prerogatives of the Congress. As a member of the House Commission on Information and Facilities, he helped shape such developments as the televising of House Floor proceedings. And as ranking minority member of the Select Committee on Committees during the present Congress, he led the fight for such institutional reforms as limitations on the number of subcommittees and subcommittee assignments.

For more than a decade, Jim Cleveland fought for and ultimately succeeded in obtaining equity in minority staffing, not in the interests of partisanship but, on the contrary, in the conviction that partisan competition is most constructively channeled into the development and refinement of legislation to the point where it merits bipartisan support.

He also served on the Committee on House Administration, on which he was active in the area of campaign reforms and authored an amendment to the Presidential Materials and Recordings Preservation Act in 1974 which contributed to that statute's being ultimately upheld as constitutional.

Throughout it all, Jim Cleveland has been tireless on behalf of the interests of his constituents in their dealings with government. He chose to regard this work not as an irritating distraction from Committee and floor work but rather, like the findings of oversight, as the raw material of the legislative process.

There are many instances of Jim Cleveland's emphasis on service to constituents. He returned to his district every weekend for working sessions. In recent years he successfully shifted an increasing amount of his office workload, along with the staff including his principal assistant, to his Concord office.

One notable success of his career, in fact, combined legislative work with home-district staff work. Years ago, when it became evident that the only feasible route for an Interstate highway in his state lay through the particularly scenic Franconia Notch State Park, one of the Nation's most intractable highway versus environment controversies ensued. In 1973, Jim Cleveland authored legislation which laid the groundwork for a compromise solution accommodating both transportation and environmental considerations. Yet the compromise failed to emerge for several years until he detailed his New Hampshire staff to launch negotiations with all parties until a resolution was reached. Also testimony to his work on behalf of his State, though not within the jurisdiction of the Committee, was his success in preserving New Hampshire's storied Sandwich Notch through acquisition as part of the White Mountain Mountains National Forest.

James Colgate Cleveland, a resident of New London, N.H., was born on June 13, 1920, to Dr. and Mrs. Mather Cleveland. He attended public schools and Deerfield Academy, and in 1941 graduated magna cum laude from Colgate University where he was elected to membership in Phi Beta Kappa.

He enlisted in the Army in 1941, received a commission in Field Artillery, and served overseas for 40 months as a forward observer, air observer and battery commander, receiving a Bronze Star for valor in the Philippines.

In 1948, he graduated from Yale Law School and opened law offices in Concord and New London in the spring of 1949. On December 9, 1950, he wed Hilary Paterson of Andover, N.H. They have five children, Cotton Mather, James Colby, David Paterson, Lincoln Mather and Susan Sclater.

Also in 1950, he served as Merrimack County Republican Chairman, and was elected to the New Hampshire State Senate. During his twelve years as State Senator, he served as a member of the Committees on Agriculture, Education, Fish and Game, Labor, Public Welfare, Military and Veterans Affairs, Rules, and Ways and Means, and as Chairman of the Judiciary Committee and Majority Floor Leader.

On November 6, 1962, he was elected to the 88th Congress and was reelected to the 89th and each succeeding Congress.

We have come to know Jim Cleveland as a valued friend, something of a loner at times, often direct to the point of bluntness, with an integrity making him a formidable adversary and unwavering ally; a truly learned student of the legislative process; exponent of common sense, a balance end of programs that work, and of responsive and responsible government; a dedicated member of this Committee. It is typical of Jim Cleveland that, before agreeing to accept the honor of having the Concord Federal Building bear his name, he sought the reaction of the Concord City Council, which responded with the unanimous resolution reproduced below.

RESOLUTION OF THE CITY OF CONCORD

In the year of our Lord one thousand nine hundred and eighty

Resolution Honoring United States Representative, James C. Cleveland, "The Constituent Congressman".

The City of Concord resolves as follows:

Whereas, James C. Cleveland has served the people of New Hampshire for 30 years, first as a State Senator from New London (1951-1963), and then as a United States Representative from New Hampshire's second Congressional District in the United States House of Representatives (1963-1981), and

Whereas, James C. Cleveland's strong emphasis on constituent service to both individuals and communities in New Hampshire is a model to his colleagues in the Congress and to those who aspire to public office, and

Whereas, James C. Cleveland, as a ranking member of the House Public Works and Transporation Committee, has been instrumental over the years in assuring the development of New Hampshire's interstate highway system and water pollution control projects, and

And whereas, United States Senator John Durkin, United States Senator Gordon Humphrey, and United States Representative Norman D'Amours are co-sponsoring resolutions (H.R. 7588 and S. 2803) before the Congress to name Concord's Post Office and Federal Court Building the "James C. Cleveland Building", in honor of his 30 years of public service,

Therefore, the Concord City Council joins with New Hampshire's Congressional Delegation in urging Congress to approve the naming of the building and expresses its appreciation to Congressman Cleveland for his year of constituent service to Concord and its citizens.

It is therefore entirely fitting that we dedicate the James C. Cleveland Federal Building to a man who has served his country, his constituents, the Congress and this Committee so well.

I urge enactment of H.R. 7588.

● Mr. JOHNSON of California. Mr. Speaker, I rise in support of the bill, H.R. 7588 to name the U.S. Post Office and Courthouse Building in Concord, N.H., as the "James C. Cleveland Federal Building."

Congressman CLEVELAND has served with distinction as a member of the House Committee on Public Works and Transportation for the past 18 years. As ranking minority of the Subcommittee on Oversight and Review, he has been extremely instrumental in the fields of transportation, water resources, economic development, aviation, and public buildings and grounds. His knowledge in these areas have greatly assisted the committee in developing meaningful legislation which ultimately has benefited all citizens of this country. His leadership abilities are admired by his colleagues on both sides of the aisle.

I urge my colleagues to support this fitting recognition of a distinguished public servant, JIM CLEVELAND. His many accomplishments during his years of service will live on. This legislation will provide a proper tribute to his distinguished service.●

● Mr. HARSHA. Mr. Speaker, I rise in support of H.R. 7588, a bill designating the Federal Building in Concord, N.H., in honor of my good friend and colleague, JAMES C. CLEVELAND.

JAMES COLGATE CLEVELAND, a resident of New London, N.H., was born on June 13, 1920, to Dr. and Mrs. Mather Cleveland. He attended public schools and Deerfield Academy, and in 1941 graduated magna cum laude from Colgate University where he was also a member of Phi Beta Kappa Society.

JIM CLEVELAND enlisted in the Army in 1941 and served overseas for 40 months with the 40th Infantry Division as field artillery forward observer, air observer, and battery commander. He received a bronze star for valor as forward observer at Fort Stotsenberg, Philippine Islands. He was later recalled to overseas duty during the Korean war.

In 1948, he finished his formal education at the Yale Law School and opened law offices in Concord and New London in the spring of 1949. On December 9, 1950, he wed the former Hilary Paterson of Andover, N.H. They have five children: Cotton Mather, James Colby, David Paterson, Lincoln Mather, and Susan Sclater.

Later in 1950, JIM CLEVELAND served as Merrimack County Republican Chairman, and was elected to the New Hampshire State Senate. During his 12 years as State senator, he served as majority floor leader, chairman of the judiciary committee, as well as on the committees of agriculture, education, fish and game, labor, public welfare, military and veterans affairs, rules, and ways and means.

On November 6, 1962, JIM CLEVELAND was elected to the 88th Congress and reelected to the 89th and each succeeding Congress.

While representing New Hampshire's Second Congressional District during the last 18 years, his principal committee assignments have included Public Works and Transportation and House Administration.

During his service in the Congress, JIM CLEVELAND has devoted much of his time and effort to legislation that has come before the Public Works and Transportation Committee. He has been very active in the fields of transportation, clean water, and economic development. He has been personally involved in every highway bill to come out of the committee during his 18 years of service and has offered a number of significant amendments. Among them are advance acquisition of right-of-way, four laning of all interstate highways and the access control demonstration program. In another public works field, clean water, he has been recognized as an authority in the House and has been actively involved in working for a stronger State role in the clean water program.

JIM CLEVELAND is one of the finest public servants to have ever represented New Hampshire. His leadership and guidance have been a model for the Nation and he has gained the respect and admiration of his constituents for his diligent work in their behalf.

It is truly a fitting tribute to designate the James C. Cleveland Federal Building in the honor of a man who has served his country so well.

In closing, Mr. Speaker, I urge my colleagues to join me in supporting passage of this legislation.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to redesignate the U.S. Post Office and Courthouse Building in Concord, N.H., as the 'James C. Cleveland Federal Building'.".

A motion to reconsider was laid on the table.

RAY ROBERTS LAKE

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 8024) to change the name of Aubrey Lake, Tex., to Ray Roberts Lake.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. CLAUSEN. Mr. Speaker, reserving the right to object, I will not object, of course, but I just want to take this opportunity to comment on the pending legislation.

Mr. Speaker, I rise in strong and unqualified support of H.R. 8024, a bill to change the name of Aubrey Lake, Tex., to Ray Roberts Lake.

What good things can I say that have not already been said about the gentleman from Texas (Mr. ROBERTS)? He has been a close personal friend as well as a dedicated professional colleague for all of the 18 years during which I have been privileged to serve with him.

In peace and war RAY ROBERTS has devoted his life unsparingly to the service of our country. In World War II he served in both Pacific and European theaters, building in the process one of the most remarkable and distinguished war records of any Member of Congress. Later, as chairman of the Veterans' Affairs Committee, RAY has continued—in more ways than I could begin to describe here today—to attempt to protect and advance the cause of so many of our country's men and women who served in the military.

Mr. Speaker, I have been especially privileged when it comes to knowing RAY ROBERTS. For years I have had the

honor to serve in the Public Works Committee as ranking minority member of the Subcommittee on Water Resources, the subcommittee which has been chaired by RAY. I do not think that it is possible for anyone to have been more cooperative, more dedicated, more committed to pursuing the public interest than RAY has been as our chairman. He has been, perhaps more than anyone else in the past 20 years, the leader in the fight to protect and upgrade our irreplacable water supplies, to clean up our ravaged rivers and lakes, and to restore them for the benefit of future generations. His foresight has contributed substantially to the development of a progressive national water program. The legislation adopted under his aegis will stand as a lasting tribute to him and his recognition of the Nation's need for balanced development and conservation of our water resources.

To name this lake after RAY ROBERTS is only a small gesture, Mr. Speaker, and is only the first of what I believe and hope will be many instances of recognition that are properly RAY's for being the incredibly fine public servant that he has been. But it is a start and, as such, I could not more heartily add my support.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The Clerk read the bill, as follows:

H.R. 8024

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Aubrey Lake project, Elm Fork of the Trinity River, Texas, authorized by the River and Harbor Act of 1965 (79 Stat. 1073), shall hereafter be known as Ray Roberts Lake. Any law, regulation, map, document, or record of the United States in which such lake is referred to shall be held and considered to refer to such lake as "Ray Roberts Lake".

COMMITTEE AMENDMENT

The SPEAKER pro tempore. The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: Page 2, line 9, after the period insert the following new sentence: "This Act shall take effect on January 4, 1981."

The SPEAKER pro tempore. Without objection, the committee amendment is agreed to.

Mr. WEAVER. Mr. Speaker, reserving the right to object, I take this time to inquire further, were there not two other bills to be scheduled tonight, both the fiscal assistance bill for general debate and the IMF bill for general debate? I wonder what happened to those two bills.

The SPEAKER pro tempore. As the Chair understands it, those bills will not be taken up today. There will be general debate on the Pacific Northwest power bill following the consideration of these bills.

Mr. WEAVER. Mr. Speaker, further reserving the right to object, we are going to go immediately then into general debate on the Northwest energy bill; is that correct?

The SPEAKER pro tempore. The gentleman is correct, after one more bill to be considered by unanimous consent.

Mr. WEAVER. Then, Mr. Speaker, after one more bill, we will go into general debate, and that general debate would last then until around 8 o'clock; would that be correct? That is 2 hours.

The SPEAKER pro tempore. The Chair has no control over the length of time the debate would take.

Mr. WEAVER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. The question is on the committee amendment.

The committee amendment was agreed to.

Mr. LEVITAS. Mr. Speaker, H.R. 8024 names the Aubrey Lake project in Texas, Ray Roberts Lake.

Aubrey Lake was authorized by the River and Harbor Act of 1965. It is located on the Elm Fork of the Trinity River and will provide flood control, recreational opportunities for residents in the Trinity River Basin, and 749,200 acre-feet of water supply storage for the region of Denton and Dallas, Tex.

Congressman RAY ROBERTS has had a long and distinguished career in public service. From 1935 to 1940 he was district director of the National Youth Administration under Lyndon B. Johnson. He later served from 1940 to 1942 as the senior staff member to Speaker Sam Rayburn. His career includes naval service in World War II as commanding officer and division commander. He was subsequently recalled to active duty during the Korean conflict and served in the Office of the Chief of Naval Operations. From 1955 to 1962 he served as a member of the Texas State Senate. He was elected to Congress in 1962 and has served continuously up to the present. He has announced his retirement at the end of the 96th Congress.

As a member of the Committee on Public Works and Transportation and as chairman of its Subcommittee on Water Resources, Congressman ROBERTS has worked long and effectively for the development of our Nation's water resources. He has played a vital role in the development of legislation to utilize these resources in the interests of flood control, water supply, navigation, hydroelectric power, and recreation. In addition, his efforts have contributed greatly to the development and implementation of legislation to improve the quality of our Nation's waters.

Naming the Aubrey Lake project, to which he has given his tireless support, in his honor is a fitting and deserved tribute to his long and distinguished career of public service.

Mr. Speaker, I urge passage of the bill.

● Mr. JOHNSON of California. Mr. Speaker, I rise in support of the bill H.R. 8024 to name the Aubrey Lake project in Texas, Ray Roberts Lake.

Congressman ROBERTS has served with distinction as chairman of our Subcommittee on Water Resources. Under his leadership the subcommittee has developed legislation in the areas of water resources development and water pollution control which greatly benefit the lives of all of the people of our great Nation.

RAY ROBERTS' career in public service began in 1935 when he was district director of the National Youth Administration under Lyndon B. Johnson. He later served as senior staff assistant to Speaker Sam Rayburn. In addition, he served our Nation in World War II and in the Korean conflict. His career in Congress began in 1962 and has been marked by his well-known qualities of outstanding leadership and dedication. He has long been an effective advocate of the development of our Nation's water resources which is so vitally needed to insure the continuation and improvement of our quality of life.

The naming of the Aubrey Lake project in his honor is a fitting and appropriate tribute to a man who has served our Nation so long and so well. I urge passage of the bill.●

● Mr. ANDERSON of California. Mr. Speaker, we have before us a bill naming a lake after our good friend and dear colleague, RAY ROBERTS.

It is difficult to know where to begin in speaking about RAY. Do I speak about him as the man who replaced Sam Rayburn in representing the Red River Valley and Texas' Fourth Congressional District? Or as chairman of the House Committee on Veterans' Affairs and a champion of the rights of veterans? Should I speak about him as I best knew him; as a senior and hardworking member of the House Public Works and Transportation Committee; a man who I have sat with through many long committee hearings and markup sessions.

RAY has left an imprint on virtually every major piece of legislation that has come out of the Public Works Committee since at least the time that I was elected and joined him on that panel. But his presence has been felt the strongest on the Water Resources Subcommittee, which he chairs.

Through his work on the Veterans' Affairs Committee, he has seen to it that many Americans, those who struggled in the defense of their Nation, were not forgotten. In this capacity, he has strengthened America by strengthening its people.

But it was through his work on water resources that he has really been able to strengthen America directly. By rebuilding river channels, by constructing breakwaters and dams that allow us to maximize the natural resources that God gave our Nation, he has strengthened the Nation from its very core. In so doing, jobs have been created—real work, not make-work—meat and potatoes have been put on dinner tables across the country.

These projects permit the United States to run more efficiently and effectively.

Mr. Speaker, RAY ROBERTS took office after replacing one of your predecessors, Speaker Sam Rayburn. And it seems to me that RAY has many of those same qualities that made Speaker Rayburn so great. Perhaps he learned them as a staff assistant to the man whom one of our House office buildings is named after. He

learned how to get along with other people; to respect the rights of all Members and work out compromises that satisfy all. He knows how to "think on his feet." And he knows how to lead.

These qualities are all important. But added to this list are the qualities that have made him an outstanding chairman and colleague; his honesty, helpfulness, and craving for hard work. Chairman RAY ROBERTS has these qualities, and so because he is retiring, his constituents, his colleagues, and his country will all miss him.

Mr. Speaker, it is entirely appropriate that we take this action today to name a lake in his beloved Texas for RAY ROBERTS.

I might just add that Lee and I wish him well in all he chooses to do after he leaves us behind; even if it is just fishing at his lake.●

Mr. CARR. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore. The Chair will state to the gentleman that there is no question pending, and the Chair cannot entertain that motion.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. Without objection, the bill is passed, and a motion to reconsider is laid on the table.

Mr. CARR. Mr. Speaker, I ask for a call of the House.

The SPEAKER pro tempore. Does the gentleman from Michigan (Mr. CARR) object to the vote on the ground that a quorum is not present?

Mr. CARR. Yes, Mr. Speaker, I do. I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. The Chair will count.

Seventy-one Members are present, not a quorum.

The Sergeant at Arms will notify absent Members.

PARLIAMENTARY INQUIRY

Mr. LEVITAS. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. LEVITAS. May I inquire, Mr. Speaker, what is the question, or what is the vote?

The SPEAKER pro tempore. The vote is on the passage of the bill, H.R. 8024.

Mr. LEVITAS. Mr. Speaker, a further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. LEVITAS. Did not the gentleman from Georgia ask unanimous consent?

The SPEAKER pro tempore. The gentleman is correct. Then there was a committee amendment pending, and the committee amendment was agreed to. This vote is on final passage of the bill.

The vote was taken by electronic device, and there were—yeas 366, nays 1, not voting 65, as follows:

[Roll No. 589]

YEAS—366

Abdnor
Addabbo
Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, Phillip
Byron
Campbell
Carney
Carr
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Devine
Dicks
Donnelly
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammer-schmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Hinson
Holland
Hollenbeck
Hopkins
Horton
Howard
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Leath, Tex.
Lederer
Lee
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCormack
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marlenee
Marriott
Martin
Matsui
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Price
Pritchard
Purselll
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—1

Wyatt

NOT VOTING—65

Alexander
Anderson, Ill.
Ashbrook
Badham
Beard, R.I.
Bethune
Bowen
Brademas
Brown, Calif.
Burton, John
Butler
Carter
Cavanaugh
Chisholm
Clay
Coughlin
Davis, S.C.
Derwinski
Dickinson
Dingell
Dixon
Dodd
Dougherty
Early
Evans, Ga.
Garcia
Giaimo
Hightower
Holt
Holtzman
Huckaby
Ichord
Jenkins
Jenrette
Jones, Okla.
Kindness
Lehman
McCloskey
McDade
Marks
Mathis
Moffett
Murphy, Ill.
Musto
Myers, Pa.
Nedzi
Nolan
Pepper
Peyser
Preyer
Quayle
Ritter
Roberts
Rudd
Satterfield
Steed
Stratton
Symms
Thomas
Thompson
Vander Jagt
Wilson, Bob
Wilson, C. H.
Wolff
Wydler

□ 1810

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and to include extraneous matter on H.R. 8161, H.R. 7588, and H.R. 8024, the bills just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

PERMISSION TO PRINT REPORT ON HOUSE RESOLUTION 794 IN THE MATTER OF REPRESENTATIVE MICHAEL J. MYERS

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that the report on the resolution (H. Res. 794) in the matter of Representative MICHAEL J. MYERS, be printed in two volumes, and that volume 2 be limited to 600 copies.

The SPEAKER pro tempore (Mr. ROSTENKOWSKI). Is there objection to the request of the gentleman from Florida?

There was no objection.

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

Mr. KAZEN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 885) to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. KAZEN).

The motion was agreed to.

The SPEAKER pro tempore. The Chair designates the gentleman from New York (Mr. MCHUGH) as Chairman of the Committee of the Whole and requests the gentleman from California (Mr. DANIELSON) to assume the chair temporarily.

□ 1820

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 885, with Mr. DANIELSON (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Texas (Mr. KAZEN) will be recognized for 30 minutes; the gentleman from New Mexico (Mr. LUJAN) will be recognized for 30 minutes; the gentleman from Washington (Mr. SWIFT) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. BROWN) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from Texas (Mr. KAZEN).

Mr. KAZEN. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. ROSTENKOWSKI) having assumed the chair, Mr. DANIELSON, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate bill (S. 885) to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River power system to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes, had come to no resolution thereon.

PERSONAL EXPLANATION

Mr. WAMPLER. On September 19, 1980, I am recorded as absent on rollcall No. 570 and rollcall No. 571. My absence occurred because of a need to depart Washington early enough to drive to Blacksburg, Va., in order to honor a prior commitment to address an evening meeting of the Association of Government Accountants.

Had I been present, I would have voted "nay" on rollcall No. 570, and "aye" on rollcall No. 571.

MESSAGE FROM THE SENATE

The SPEAKER pro tempore laid before the House the following message from the Senate:

In the Senate of the United States, ordered that the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 2724) entitled "An act to extend authorization for law enforcement assistance at Corps of Engineers projects."

The SPEAKER pro tempore. Without objection, the request is agreed to.

There was no objection.

COMMUNICATION FROM CHAIRMAN OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER pro tempore laid before the House the following communication from the chairman of the Committee on Public Works and Transportation, which was read and, without objection, referred to the Committee on Appropriations:

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, D.C., September 24, 1980.

Hon. THOMAS P. O'NEILL,
The Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Pursuant to the provisions of the Public Buildings Act of 1959, as amended, the House Committee on Public Works and Transportation approved the following projects on September 16, 1980:

CONSTRUCTION

Omaha, Nebraska: Federal Office Building, Parking Facility & Vehicle Maintenance Facility.

LEASES

Washington, D.C.: Railway Labor Building, 400 First Street, N.W.

Washington, D.C.: Reporters Building, 300 7th Street, S.W.

Washington, D.C.: Executive Building, 1030 15th Street, N.W.

Washington, D.C.: Tamol Building, 4228 Wisconsin Avenue, N.W.

Washington, D.C.: 1325 G Street, N.W.

Washington, D.C.: Shoreham Building, 15th & H Streets, N.W.

Washington, D.C.: 1310 L Street, N.W.

Arlington, Virginia: Key Building, 1200 Wilson Boulevard.

Arlington, Virginia: Arlington Center Building, 4600 Fairfax Drive.

Arlington, Virginia: Magazine Building, 1815 North Lynn Street.

Arlington, Virginia: Crystal Square 5, 1755 Jefferson Davis Highway.

Arlington, Virginia: Crystal Plaza No. 5, 2211 Jefferson Davis Highway.

Hillcrest Heights, Maryland: World Weather Building, 5200 Auth Road.

San Francisco, California: Embarcadero Center, Department of Housing and Urban Development.

Seattle, Washington: Park Place Building, 1200 Sixth Avenue.

Lakewood, Colorado: Department of Energy and Western Area Power Administration.

Chicago, Illinois: Railroad Retirement Board.

Los Angeles, California: Defense Contract Administration.

The original and one copy of the authorizing resolutions are enclosed.

Sincerely,

HAROLD T. (BIZE) JOHNSON,
Chairman.

There was no objection.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. NELSON) is recognized for 5 minutes.

● Mr. NELSON. Mr. Speaker, due to official business in my district, I was not recorded on rollcall No. 571 on Friday, September 19. If I had been present, I would have voted "yes" on final passage of H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act.●

PRESIDENT CARTER'S REMARKS AT 100TH ANNIVERSARY DINNER OF POLISH NATIONAL ALLIANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois is recognized for 5 minutes.

Mr. ROSTENKOWSKI. Mr. Speaker, last Saturday evening I was present at the House of the White Eagle in Niles, Ill., where President Carter delivered a moving address to the 100th anniversary dinner of the Polish National Alliance. I am proud to be a longtime member of the alliance which is the largest ethnic fraternal organization in the United States. The 100-year history of the PNA is a story of enriching American life with enduring values of Polish culture, history, and tradition. The organization has never been more productive than it is now, which is no doubt due to the outstanding leadership qualities of its president, Aloysius A. Mazewski. President Carter's remarks were not only timely but, more important, were a powerful reaffirmation of his human rights policy. I would commend the President's address to my colleagues:

REMARKS OF THE PRESIDENT TO THE 100TH ANNIVERSARY DINNER OF THE POLISH NATIONAL ALLIANCE

Thank you. President Mazewski, Mayor Byrne, Mayor Blaise, Congressman Dan Rostenkowski, John Berry, former Congressman Roman Pucinski, Francis Meehan, our new American Ambassador to Poland, ladies and gentlemen. I knew that when I welcomed the Pope to the White House for the first time in America's history and spoke Polish in my welcome that everybody was going to do what I did and take the glory away from me as being the only one to welcome someone in Polish language. It was easy for me to understand what he said. I could get the words very clear—Taft, Carter, Brzezinski—and I know that many of you were in about the same shape I was.

I do want to thank your great president,

Al Mazewski for that fine introduction. In his capacity as president of both the Polish National Alliance and the Polish American Congress, Al is a frequent visitor at the White House. He knows how to get things done, he knows how to get re-elected.

So far he's in his fourth term—I'll settle for two. And I might say it is good to see him again, and also so many other leaders of the Polish-American community. I cannot recognize you all but there are a few that mean a lot to me and to this nation and I would like to recognize their presence.

I may repeat some of the things that the Governor and the Mayor have said but I come here in a unique role as President of our great country, representing almost 240 million Americans and I want to say those things because they're important to me, to our nation and perhaps to you.

I want to recognize the national president of the Polish Roman Catholic Union, Joseph Drobot—the president of the Falcons, Bernard Rogalski—the chairman of the board of Alliance College, Hilary Czaplicki—and the vice president in charge of the women's division of the Polish National Alliance, Mrs. Helen Szymanowicz. And also the president of the Polish Women's Alliance, Mrs. Helen Zielinski. The motto of her organization is, as you know, "The ideals of her women are the strength of a nation," and I agree with that statement. And someone else who would agree with that statement is the mayor of the world's second largest Polish city, Mayor Jane Byrne.

As you know, Chicago is also known as "the city of the big shoulders", and during the early years of Chicago and of our nation, the tough years of building, those were Polish shoulders, here and in many other cities in our country. And it would be a mistake for us to forget the tremendous contributions of artists and thinkers such as Nobel Laureates Henryk Sienkiewics—right on, is that right?—and Madame Curie and Joseph Conrad, Arthur Rubenstein, Ignacy Paderewski—one that I can pronounce very easily, Hyman Rickover—who I might add, was my old boss, and of course, we already have mentioned Secretary of State Ed Muskie and Zbigniew Brzezinski, who are so close to me.

As you know, with Zbig in the White House and Ed Muskie in the State Department, I'm getting used to hearing jokes about the "bipolar" foreign policy. As a matter of fact, with Clem Zablocki, Chairman of the House Foreign Affairs Committee, what we actually have is a "tri-polar" foreign policy—and other nations know that when we speak around the world, we speak with a deep commitment that's been characteristic of the Polish people down through the centuries, which is also the character of America—and I'm proud of that.

Danny Rostenkowski, as you know, is one of the great leaders of the Congress. I meet with him regularly as one of the small elite, extremely influential group, who has been elected by his own peer group, the other members of Congress, as their leaders. What we have in Washington now is a Polish-American contribution, unprecedented in modern history at least, which is a benefit to all Americans. It's been estimated that about 30 percent of all Americans can trace at least one of their ancestral lines back to Poland. And for generations, the Polish National Alliance has been the mortar that has held the Polish-American community together.

Your first meeting was held in Chicago 100 years ago and I'm honored as President, to join you in celebrating your 100th birthday—and I'm sure the second century will be just as successful as the first one.

As I've mentioned, I'm only the second President in history to appear before you. The first—William Howard Taft, as Al mentioned in passing, was a Republican. And I'm proud to be the Democrat who's evened the score.

I'm not going to talk politics tonight but I can't help noticing an interesting coincidence. When President Taft spoke to you, it was also an election year, 1912. It was also one Democratic candidate and two Republican candidates, just like this year and here's the coincidence that I particularly like—the Democrat won.

I'm sure you know your history but I'd like to point out this other part—The winner of that election—President Woodrow Wilson—played a decisive role in the history of Poland. He made Poland's freedom one of his Fourteen Points—and because of Woodrow Wilson's deep commitment, and because he accurately expressed the sentiments of that time and now of America, after more than a century of foreign oppression, Poland's existence as a state was restored.

I have a special feeling for the sons and daughters of Poland. Poland was the first foreign country that I ever visited as President of the United States. And I've been inspired by the fact that the Polish people have been among the earliest and most consistent fighters for human rights—not just for a year, not just for a hundred years, but for a thousand years.

The entire world was reminded of this fine heritage last year—when Pope John Paul II visited our country.

When Pope John Paul II came to the White House, it was the most exciting and gratifying day of my life. It was a beautiful occasion in our country.

What a tremendous impact this good and holy man had on all our people. His spirit, his kindness, his personal warmth, his radiance, conquered our hearts. That was a proud and special moment for all Americans. It was doubly so, I know, for Polish-Americans. Pope John Paul II, a faithful son of his nation and of his church, became a living symbol of Polish contributions toward our common values. The Pope is only the latest of the millions of Poles who have come to America—as visitors and as immigrants—bringing with them a love of human rights.

My second daughter-in-law lives in Pulaski County, Georgia—named after Count Casimir Pulaski, and everyone in my state and indeed the entire nation knows Thaddeus Kosciuszko was also—there with courage and commitment and the deepest sense of freedom to help America win our independence. What most people do not know is that Kosciuszko did a noble thing when he left this country. Just before he returned to Poland to fight for freedom in his own home land, he had a large sum of money coming to him from the Continental Congress. He left that money with Thomas Jefferson—with instructions to Jefferson to purchase the freedom of as many black slaves as possible. That great Polish general very simply believed that slavery was as repugnant here in America as in his own country.

Let me remind you of one more incident in the long history of Polish-Americans and human rights. Mayor Jane Byrne mentioned it in passing but I'd like to elaborate just for a moment. This goes back a long time—more than 350 years, but it's just as fresh as today's newspaper. In 1608, in what is now Virginia, Captain John Smith brought a small group of Polish glassmakers to Jamestown to set up his first factory in America. But the Polonians, as they were then called, were denied the rights of free citizens.

These proud people endured these indignities for eleven years. Then, finally in 1619, they staged the first sitdown strike in American history—not for money—not for money, but for freedom and for human rights.

Because of that the House of Burgesses, the first legislature in America, passed a bill giving the Polonians the right to vote and the other rights of free people. Think of that three and a half centuries ago and then think of the Gdansk workers of 1980. The spirit of the Jamestown Polonians is very much alive here in this room and also across the ocean and I'm thankful for it.

I was reviewing my notes on the way here early this evening from Camp David, and I thought about my being a Southerner and as a Southerner, knowing what it means to be the butt of jokes. It's especially revolting among great and proud people and I know you share my disgust with this ill-considered habit. For such remarks to be made about the home of the Pope, the home of modern and ancient freedom-fighters, the home of Nobel scientists, the home of the world's greatest musicians, the home of great statesmen there and here in our country, and of heroes who helped give birth to our nation is especially incomprensible to me as President of this country. The joke is on those who are crude and ignorant enough to indulge in such slander and as an American and a Southerner and an admirer of the Polish-American people and the Polish people, I resent it very much.

The events of recent weeks in Poland have indeed inspired the world. During this period of exciting change in Poland the United States Government, advised very carefully by your own president here, has pursued a careful policy, a policy based on the need for a calm atmosphere, free from outside interference. We will not interfere in Poland's affairs and we expect that others will similarly respect the right of the Polish nation to make its own decisions and to resolve its problems on its own. It appears, and we pray God that it will be, on its way to a peaceful and a constructive resolution, but Poland's economic problems remain very severe. Besides the dislocations there have been terrible floods. Poland needs food. That's why I ordered quick approval of Poland's full request of $670 million in new credit guarantees for four million tons of American grain and other farm products. This is the largest such guarantee we have ever made.

And also, as you know, we have also, as you know, substantially increased Pacific Coast allocations of fish to Poland. These steps, urged by many of you here tonight, are intended to meet an urgent and a basic need for food. They are also intended to show our admiration for the dignified manner in which the entire Polish nation is conducting itself in this time of wrenching and positive change. And they are intended to demonstrate to the new leadership of Poland our desire for better relations. We want to strengthen even further the human ties of blood, kinship, and friendship that tie our two nations together.

The shipyard workers in Gdansk, the coal miners in Silesia, the store clerks and workers in Warsaw, and the authorities in Poland who responded to them have sent a powerful message around the world. Poland has reminded us that the desire for human rights and human dignity is universal. Freedom of thought and expression, freedom from arbitrary violence, freedom from violations of personal integrity, due process, participation in government, civil and political and economic rights, these are the very stuff of human rights.

And tonight I pledge to you this: As long as I am President this nation will stand for its beliefs, will stand for its ideals, will stand

for its values. We will stand up for human rights.

For those who criticise our human rights policy and say it is not in our national interest, who say it hampers American foreign policy, I say, how can we—as free people—be indifferent to the fate of freedom elsewhere? How can we, as people with the most abundant economy on earth, be indifferent to the suffering of those elsewhere who lack food and health care and shelter? We cannot be indifferent. And we will not retreat one step from our human rights policy because human rights is the very soul of the identity of this nation.

We support human rights—yes—because our conscience demands it. But the fact is that our human rights policy—specifically and in general—also pragmatically serves our national interest.

Both our nation and the world are more secure when basic human rights are respected.

Our words and our actions have left their mark in many places on earth.

Governments have released political prisoners, lessened political repression, eased economic misery. Hundreds of thousands of people have emigrated to freedom from the Soviet Union, from Cuba and elsewhere.

Increased trade with African and Third World nations has resulted in part from the growing trust generated by America's human rights policy.

The Soviet Union may not like our human rights policy. Some generals and colonels and dictators in other countries may not like it. Those who tyrannize others will always fear the ideas of freedom and human dignity. But the people in the villages, the factory workers, those who farm the land and who populate the cities—they care and they applaud and they pray that Americans will never abandon them.

Here at home, our nation's commitment to fundamental values is strengthened by advancing human rights. When we advance human rights overseas and stand firmly for the principles on which our nation was founded, we help to guarantee quality, freedom and the respect for individual human beings here in the United States—the rights of all Americans, regardless of color or national origin or language or sex must be preserved. That commitment makes us proud to be Americans. And it makes us realize that America's foreign policy in the 1980's will always emanate from those basic values which do not change.

We cannot return to the days when we too often gave unquestioning support to repressive regimes.

We cannot return to the days when secrecy in foreign policy was used to hide policies and acts which the American people would never have supported had they known what was going on. We must continue to strengthen our defenses. Our military might must be unquestioned in order for us to keep our nation at peace.

We have had a steady increase in our commitment to a national defense every year since I became President and we will continue to do the same in the future. But we cannot sap our strength by returning to the days when some would advocate a military solution to every international disturbance. We've learned too much from the last 20 years. Too many American families have made too many sacrifices for their leaders to have their vision blurred by nostalgia for a world that no longer exists. I say to you that America's military might should be used to seek peace and to avoid war. The best weapons are those so formidable that they need never be fired in anger and the best soldier is one that's not killed in battle.

And I also say to you that America's human rights policy should be used to pierce the curtain of oppression, to throw the searchlight of the world's conscience on those who would smother the winds of freedom.

The cause of human rights is a slow process. Results are not always immediately evident. Progress is often painfully slow. Sometimes there are delays, sometimes disappointments, sometimes reverses. But when the cause finally triumphs and the winds of freedom blow, no power on earth can withstand their force.

We will stand up for human rights in Madrid at the European security conference and Al Mazewski will be there as a member of the American delegation to make sure my promise to you is kept.

I pledge to you that as long as America stands true to itself and as long as I'm President, our voice of liberty will not be stilled.

In closing let me say this: America is human rights. That's what America was meant to be. That's what America has meant to the rural people of Poland, to the potato farmers of Ireland, to the Jews of Eastern Europe, to all who were oppressed or seeking a better life, who built and peopled our country. Those inalienable human rights of life, liberty, and the pursuit of happiness, so eloquently written by Thomas Jefferson and honored by Kosciuszko and Pulaski so profoundly demonstrated by the Polish workers, they will endure. They will endure for a thousand years. Thank you very much.

TRIBUTE TO THE LATE HONORABLE JOSEPH EDWARD CASEY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. O'NEILL) is recognized for 5 minutes.

● Mr. O'NEILL. Mr. Speaker, I join the many friends of former Congressman Joseph Casey, both in Washington and Massachusetts, who lament his untimely passing.

The Honorable Joseph Casey, a Representative from Massachusetts, graduated from the Law Department of Boston University, became a delegate to the Democratic National Convention, and then, was elected to the 74th Congress and to three succeeding Congresses. He was not a candidate for renomination in 1942 to the 78th Congress. Following his 4-year tenure of public service in the House of Representatives, Joseph Casey practiced law in Washington, D.C.

All of his colleagues in the House of Representatives on both sides of the aisle regarded Congressman Casey as a decent and honorable man of high moral character, who represented fully the interests of his constituents. The citizens of Massachusetts' Third Congressional District and the Nation were fortunate to have had such a distinguished and dedicated person in their service. He was a committed, honorable, and top-quality Member who was admired and well-respected by his colleagues.

Congressman Joseph Casey always practiced the principles of honor and decency; and he was always fair and just. Supportive of FDR's New Deal program, the legend Lend-Lease Act of 1941, Representative Casey worked hard on the rural electrification program, the minimum wage and hour law, social security, public housing, and other social welfare legislation.

I extend my sincere condolences to Joseph Casey's wife, Constance, and to the entire Casey family on his passing.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House the gentleman from Rhode Island (Mr. BEARD) is recognized for 5 minutes.

● Mr. BEARD of Rhode Island. Mr. Speaker, on rollcall 380, for the adoption of the conference report on H.R. 7590, energy and water appropriations, I was unable to vote due to indisposition. But, had I been present, I would have voted for its passage.●

A TRIBUTE TO FORMER CONGRESSMAN ROBERT WINTHROP KEAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. ULLMAN) is recognized for 5 minutes.

● Mr. ULLMAN. Mr. Speaker, it is with deep regret that we note the passing of one of our former colleagues in the House, who served with distinction on the Committee on Ways and Means for so many years. Robert Winthrop Kean of New Jersey was a Republican member of the committee in the 78th through the 85th Congresses. It was my privilege to serve with Mr. Kean in the House. While he preceded me in service on the Committee on Ways and Means, I am aware of his significant contributions to the tax, trade, and social security laws of this country during his long tenure on the committee.

Those of us who knew Robert Winthrop Kean join in mourning the loss of a dear friend and extend deepest sympathy to his family.●

REAGAN MISSTATED FACTS ON INFLATION FORECAST

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, in the Sunday night TV "debate" between Ronald Reagan and JOHN ANDERSON, one of the six journalists, Jane Bryant Quinn, asked each candidate whether he would publish a full 5-year economic projection showing what his various proposals really mean for inflation through 1985. ANDERSON agreed to do so. Reagan asserted that he had already put out all that information in a factsheet released 2 weeks before.

In an article in yesterday's Washington Post on page D-6 of the business section, Ms. Quinn reveals the astonishing fact that Mr. Reagan's statement was absolutely untrue. The factsheet does not contain an inflation forecast and, indeed, is silent on the subject of inflation.

Ms. Quinn points out that the format of the program prevented her from asking Mr. Reagan another question about this. As she says, "He was able to misspeak himself, and get away with it."

Ms. Quinn goes on to say in her article that Mr. Reagan did assert on Sunday that his factsheet assumed an inflation rate of 7.5 percent, which is the same projection for 1985 used by the Senate Budget Committee in its forecast. She then observes:

> If Reagan is right about the inflation projection, it means that his program will make no difference to inflation. He will do no better than the present policies being followed in Congress.

She also points out that one economist estimates that Reagan's proposal is more inflationary than Carter's, while another thinks it differs little from Carter's.

Ms. Quinn further points out that Alan Greenspan, himself one of Reagan's economic advisers, has described Reagan's economic factsheet as "not a forecast." Given the highly inflationary character of the so-called Reagan-Kemp-Roth tax-cut proposals, even as recently modified to respond to widespread criticism by economists, it is quite clear why Mr. Reagan has not supplied an inflation forecast. Any responsible forecast will have to show that the effect of such proposals is highly inflationary.

In any event, Mr. Reagan owes the country not only such a forecast but the supporting data that it is based on, so that it can be analyzed objectively.

He also owes the country an apology for misstating the facts in the TV debate.

The full text of Ms. Quinn's article follows these remarks:

[From the Washington Post, Sept. 23, 1980]

REAGAN ERRED IN DEBATE: NO 5-YEAR INFLATION FORECAST YET

(By Jane Bryant Quinn)

BALTIMORE.—Sunday night, I was one of six journalists asked to question two presidential candidates during the first debate. At least one of them got away with murder.

Under an agreement worked out between the League of Women Voters (which sponsored the debate) and the two candidates, we were each allowed one question with no follow-up.

This column is my follow-up.

I asked each candidate the same question.

Many economists worry that both their economic programs are inflationary, on the grounds that tax cuts—business or personal—will add to the budget deficit and raise interest rates. I asked each candidate whether he would publish a full, five-year economic projection showing what his various proposals really mean for inflation through 1985.

I asked for the projections within two weeks so that voters would have time to think about them and make a judgment before the election.

One candidate—John Anderson—agreed to "take up the challenge." I'll be letting you know what he says, and whether his proposals add up.

One candidate—Ronald Reagan—is, unfortunately, another story.

Reagan asserted that he already had put out all the information that I requested in a fact sheet released after his speech in Chicago two weeks ago. He said specifically that he had included the five-year inflation forecast that I've been missing.

That's not true. The fact sheet does not contain an inflation forecast. It predicts high economic growth, but is silent on inflation.

I couldn't help but shake my head negatively as he was answering. So he repeated his assertion: Yes, he said, the inflation forecast was there.

Either Reagan does not know what is in the almost unintelligibly brief economic projection that his people published two weeks ago, or he decided to misstate its contents under a questioning format that did not allow reporters to follow up on the candidates' answers.

Reagan's fact sheet also does not contain the real-life spending and budget forecasts I asked for—and which I think are essential in trying to judge whether his blend of big tax cuts, defense spending increases and unchanged government entitlement programs really combine with a balanced budget and less inflation.

He did assert on Sunday that his fact sheet assumed an inflation rate of 7.5 percent. That is the same inflation projection for 1985 used by the Senate Budget Committee, in its complete budget forecast.

If Reagan is right about that inflation projection, it means that his program will make no difference to inflation. He will do no better than the present policies being followed in Congress.

Michael Evans of Evans Economics Inc. recently put Reagan's tax-cut plan on his own computers and concluded that its average annual inflation effect from 1981 to 1985 would be 11.6 percent. But how do you test how Reagan gets from there back to 7.5 percent inflation if he won't publish the supporting numbers that he says he is using?

Evans put the probable inflation rate of Carter's tax-cut proposals a little higher—12 percent a year. But there's not a great deal of difference.

Otto Eckstein of Data Resources Inc., in Lexington, Mass., thinks that Reagan's program is actually more inflationary than Carter's—chiefly because Eckstein measures the effect of personal-income tax cuts in a different way than Evans. But Eckstein has not actually put Reagan's proposals on his computers because, in his opinion, there isn't enough data available to publish a good analysis.

Alan Greenspan, one of Reagan's economic advisers and head of the Council of Economic Advisers during the Ford administration, has described Reagan's economic fact sheet as "not a forecast." He said last week that the sheet was intended merely to show that Reagan's economic programs were "reducible to conventional budget procedures."

Exactly. Despite his claim in the debate Sunday that he has published the data I asked for, Reagan has not done so. The format of the program prevented my asking him another question about all this. He was able to misspeak himself, and get away with it.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mrs. HOLT (at the request of Mr. RHODES), for September 24 and 25, 1980, on account of official business.

Mr. MUSTO (at the request of Mr. WRIGHT), for September 24 and 25, 1980, on account of illness.

Mr. PEPPER (at the request of Mr. WRIGHT), for today, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. PURSELL) to revise and extend their remarks and include extraneous material:)

Mr. COLLINS of Texas, for 15 minutes, today.

(The following Members (at the request of Mr. BONKER) to revise and extend their remarks and include extraneous material:)

Mr. NELSON, for 5 minutes, today.

Mr. ROSTENKOWSKI, for 5 minutes, today.

Mr. GONZALEZ, for 15 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. O'NEILL, for 5 minutes, today.

Mr. BEARD of Rhode Island, for 5 minutes, today.

Mr. ULLMAN, for 5 minutes, today.

Ms. HOLTZMAN, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. PURSELL), and to include extraneous matter:)

Mr. RHODES.
Mr. WYDLER.
Mr. GINGRICH in three instances.
Mr. BURGENER.
Mr. BOB WILSON.
Mr. SHUSTER.
Mr. DANIEL B. CRANE.
Mr. COLLINS of Texas.
Mr. DORNAN.
Mr. YOUNG of Alaska in two instances.

(The following Members (at the request of Mr. BONKER) and to include extraneous matter:)

Mr. CONYERS.
Mr. ROE.
Mr. ROYBAL.
Mr. OTTINGER.
Mr. HAMILTON.
Mr. RATCHFORD.
Mr. BEDELL.
Mr. PEPPER.
Mr. MINETA.
Mr. PATTERSON.
Mr. HARKIN.
Mr. BARNARD.
Mr. MINISH.
Mr. BRINKLEY.
Mr. EDWARDS of California.
Mr. SANTINI.
Mr. GIBBONS.
Mr. CHAPPELL.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's

table and, under the rule, referred as follows:

S. 1135. An act to add certain lands to the Moapa Indian Reservation, and for other purposes; to the Committee on Interior and Insular Affairs; and

S. 3044. An act to designate the U.S. Federal Building in Hartford, Conn., as the "Abraham A. Ribicoff Federal Building"; to the Committee on Public Works and Transportation.

ENROLLED BILLS SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3748. An act to provide for a uniform national 3 year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes;

H.R. 5164. An act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes; and

H.R. 5242. An act to establish a Towing Safety Advisory Committee in the Department of Transportation.

BILLS AND A JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. NEDZI, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, bills and a joint resolution of the House of the following titles:

H.R. 3904. An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes;

H.R. 7825. An act to establish the Ice Age National Scenic Trail, and for other purposes; and

H.J. Res. 551. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week," and for other purposes.

ADJOURNMENT

Mr. BONKER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 27 minutes p.m.), the House adjourned until tomorrow, Thursday, September 25, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5364. A letter from the Acting Assistant Secretary of Defense (Comptroller), transmitting a list of contract award dates for the period September 15 through December 15, 1980, pursuant to 10 U.S.C. 139; to the Committee on Armed Services.

5365. A letter from the Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice of the proposed conversion to contractor performance of the military housing maintenance function at Lowry Air Force Base, Colo., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5366. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of certain defense equipment to the Philippines (transmittal No. 80-112), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5367. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of certain defense equipment to Thailand (transmittal No. 80-113), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5368. A letter from the President of the United States, transmitting a report on progress toward the conclusion of a negotiated solution of the Cyprus problem, pursuant to section 620C(c) of the Foreign Assistance Act of 1961, as amended (H. Doc. No. 96-371); to the Committee on Foreign Affairs and ordered to be printed.

5369. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Dr. Robert A. Fresch, rank of Ambassador during his tenure as head of the U.S. delegation to both the preparatory meetings and the subsequent United Nations Outer Space Conference and related meetings, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5370. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Kenya (Transmittal No. 80-111), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5371. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment to the Philippines (Transmittal No 80-112), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5372. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment to Thailand (Transmittal No. 80-113), pursuant to section 36(b) of the Arms Export Control Act; to the Commi ee on Foreign Affairs.

5373. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment and services to Sweden (Transmittal No. 80-114), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5374. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Kuwait (Transmittal No. 80-116), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5375. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment and services to Oman (Transmittal No. 80-117), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5376. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment to Turkey (Transmittal No. 80-120), pursuant to section 36(d) of the Arms Export Control Act, together with certification that the sale is consistent with the principles contained in section 620C (b) of the Foreign Assistance Act of 1961, as amended, pursuant to section 620C(d) of the act; to the Committee on Foreign Affairs.

5377. A letter from the Secretary of Health and Human Services, transmitting a report on the implementation and effectiveness of title XX of the Social Security Act, as amended, pursuant to section 4 of Public Law 93-647; to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BOLLING: Committee on Rules. House Resolution 792. Resolution providing for the consideration of H.R. 7548. A bill to amend the Farm Credit Act of 1971 to permit farm credit system institutions to improve their services to borrowers, and for other purposes (Rept. No. 96-1373). Referred to the House Calendar.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce, H.R. 4892. A bill to repeal section 506 of the Communications Act of 1934; with amendment (Rept. No. 96-1378). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 6228. A bill to amend the Communications Act of 1934 to provide that the Federal Communications Commission, in considering applications for the renewal of broadcasting station licenses, shall not take into account any ownership interests of the applicant in other broadcasting stations or in other communications media, and for other purposes; with amendment (Rept. No. 96-1379). Referred to the Committee of the Whole House on the State of the Union.

Mr. WOLFF: Select Committee on Narcotics Abuse and Control. Recommendation for continued House oversight of drug-abuse problems (Rept. No. 96-1380). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. H.R. 7757. A bill to provide grants to the 1890 land-grant colleges, including Tuskegee Institute, in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings to strengthen their capacity to conduct food and agricultural research; with amendments (Rept. No. 96-1381). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 6390. A bill to amend the Atomic Energy Act of 1954, and for other purposes; with amendments (Rept. No. 96-1382, pt. 1). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 6390. A bill to amend the Atomic Energy Act of 1954, and for other purposes; with amendments (Rept. No. 96-1382, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. H.R. 6593. A bill to regulate the feeding of garbage to swine; with amendment (Rept. No. 96-1383). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. S. 2043. A bill to provide for research and coordination of research in the diagnosis, prevention, and control of malignant tumors in domestic animals, poultry, and wildlife; with amendment (Rept. No. 96-1384). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. H.R. 5326. A bill to authorize the Secretary of Agriculture to convey certain Government-owned property in the Louisiana National Forest to the State of Louisiana in exchange for certain property at Camp Livingston, La.; with amendments (Rept. No. 96-1385). Referred to the Committee of the Whole House on the State of the Union.

Mr. FOLEY: Committee on Agriculture. H.R. 6257. A bill to authorize the Secretary of Agriculture to convey certain national forest system lands, and for other purposes; with amendment (Rept. No. 96-1386, pt. 1). Referred to the Committee of the Whole House on the State of the Union.

Mr. BENNETT: Committee on Standards of Official Conduct. House Resolution 794. Resolution to expel Representative MICHAEL O. MYERS (Rept. No. 96-1387). Referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DANIELSON: Committee on the Judiciary. H.R. 4032. A bill for the relief of Mahmud Ali Khan alias Fazal Dad (Rept. No. 96-1374). Referred to the Committee of the Whole House.

Mr. DANIELSON: Committee on the Judiciary. H.R. 5067. A bill for the relief of Dr. Toomas Eisler and Carmen Elizabeth Eisler (Rept. No. 96-1375). Referred to the Committee of the Whole House.

Mr. DANIELSON: Committee on the Judiciary. H.R. 927. A bill for the relief of Dr. Ka Chun Wong, and his wife, Marilyn Wong (Rept. No. 96-1376). Referred to the Committee of the Whole House.

Mr. DANIELSON: Committee on the Judiciary. H.R. 7764. A bill for the relief of Dr. Eric George Six, Ann Elizabeth Six, and Karen Elizabeth Mary Six; with amendments (Rept. No. 96-1377). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WHITE (for himself, Mrs. HOLT, Mr. PRICE, Mr. NEDZI, Mr. WON PAT, and Mr. KASTENMEIER):

H.R. 8188. A bill to amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to revise the laws governing the U.S. Court of Military Appeals, to provide for review of decisions of such court by the Supreme Court, and for other purposes; to the Committee on Armed Services.

By Mr. WHITE (for himself, Mrs. HOLT, Mr. MONTGOMERY, Mr. KAZEN, Mr. WON PAT, Mr. NICHOLS, and Mr. HILLIS):

H.R. 8189. A bill to amend chapter 55 of title 10, United States Code, to authorize the provision of full dental care benefits to dependents of members of the uniformed services on active duty under the civilian health and medical program of the uniformed services and in facilities of the uniformed services; to the Committee on Armed Services.

By Mr. ANNUNZIO:

H.R. 8190. A bill to amend the Truth in Lending Act to encourage cash discounts, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. BENNETT:

H.R. 8191. A bill to amend the urban development action grant program with respect to determining the level of physical and economic distress of certain urban counties; to the Committee on Banking, Finance and Urban Affairs.

By Mr. BRODHEAD:

H.R. 8192. A bill to amend the Internal Revenue Code of 1954 to make the investment tax credit for motor vehicle manufacturing property refundable; to the Committee on Ways and Means.

By Mr. DORNAN:

H.R. 8193. A bill to promote the more effective use and development of the Nation's renewable energy resources by broadening and extending the Solar Heating and Cooling Demonstration Act of 1974, by improving the administration of Federal energy-related activities, and by encouraging geothermal energy development and energy conservation; jointly, to the Committee on Science and Technology and Ways and Means.

By Mr. EDWARDS of Oklahoma:

H.R. 8194. A bill to amend the Internal Revenue Code of 1954 to repeal the crude oil windfall profit tax on tier 2 oil and tier 3 oil, to phase out the tax beginning October 1, 1981, and to provide that royalty owners shall be exempt from the tax; to the Committee on Ways and Means.

By Mr. FLORIO (for himself, Mr. STAGGERS, Mr. MADIGAN, Ms. MIKULSKI, Mr. MATSUI, Mr. MURPHY of New York, and Mr. LEE):

H.R. 8195. A bill to amend the Railroad Retirement Act of 1974 to extend certain cost-of-living increases and to place financial interchange on current basis; to the Committee on Interstate and Foreign Commerce.

By Mr. GINN:

H.R. 8196. A bill to provide compensation for certain facilities on Cumberland Island National Seashore; to the Committee on Interior and Insular Affairs.

By Mr. HEFTEL (for himself, Mr. JEFFORDS, and Mr. GLICKMAN):

H.R. 8197. A bill to provide assistance including, but not limited to, technical and financial support to domestic manufacturers of solar photovoltaic energy systems to facilitate the development and demonstration of such systems in foreign countries, and for other purposes; jointly, to the Committees on Foreign Affairs and Science and Technology.

By Mr. MARTIN:

H.R. 8198. A bill to amend section 355 of the Revised Statutes of the United States to authorize the head of any agency of the United States to retrocede to a State concurrent jurisdiction over any lands or interests therein over which the United States has previously acquired exclusive jurisdiction; jointly, to the Committees on Interior and Insular Affairs and Public Works and Transportation.

By Mr. MATTOX:

H.R. 8199. A bill to amend the Internal Revenue Code of 1954 to provide a 4-percent refundable income tax credit for individuals, a permanent refundable income tax credit for social security taxes, relief from the marriage penalty, and a capital cost recovery system for investment in plant and equipment; to the Committee on Ways and Means.

By Mr. MINISH:

H.R. 8200. A bill to require the Secretary of the Interior to conduct a study to examine measures for the protection of the resources of the Hackensack Meadowlands District in the State of New Jersey and to determine whether such area should be designated as a unit of the national park system; to the Committee on Interior and Insular Affairs.

By Mr. MOORE:

H.R. 8201. A bill to amend the Internal Revenue Code of 1954 to increase the allowable contributions to individual retirement plans and to allow employees a deduction for savings contributions to employer retirement plans or to individual retirement accounts; to the Committee on Ways and Means.

By Mr. RODINO (for himself and Mr. MCCLORY):

H.R. 8202. A bill to continue in effect any authority provided under the Department of Justice Appropriation Authorization Act, Fiscal Year 1980, for a certain period; to the Committee on the Judiciary.

By Mr. ROE:

H.R. 8203. A bill to provide for the establishment of the Tallgrass Prairie National Reserve in the States of Kansas and Oklahoma, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. ROSE (for himself, Mr. FOUNTAIN, Mr. JONES of North Carolina, Mr. WHITLEY, and Mr. ANDREWS of North Carolina.

H.R. 8204. A bill to amend the U.S. Grain Standards Act; to the Committee on Agriculture.

By Mrs. SNOWE:

H.R. 8205. A bill to encourage public participation in rulemaking by Federal agencies; to the Committee on the Judiciary.

By Mr. STAGGERS:

H.R. 8206. A bill to amend the Communications Act of 1934 to establish certain limitations relating to the ownership of cable television franchises; to the Committee on Interstate and Foreign Commerce.

By Mr. STAGGERS (for himself, Mr. DINGELL, Mr. OTTINGER, Mr. MOORHEAD, Mr. WIRTH, Mr. MARKEY, Mr. SWIFT, Mr. MAGUIRE, Mr. GORE, Ms. MIKULSKI, Mr. ECKHARDT, and Mr. ULLMAN):

H.R. 8207. A bill to authorize appropriations for the energy conservation program for schools and hospitals and for the energy conservation program for buildings owned by units of local government and public care institutions, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. VOLKMER:

H.R. 8208. A bill to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; to the Committee on Public Works and Transportation.

By Mr. THOMPSON (for himself, Mr. MINETA, and Mr. CONTE):

H.J. Res. 615. Joint resolution providing for appointment of David C. Acheson as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on House Administration.

By Mrs. HECKLER:

H.J. Res. 616. Joint resolution designating November 26, 1980 as "National Lifeliner Day"; to the Committee on Post Office and Civil Service.

By Mr. BOLLING:

H. Res. 792. Resolution providing for the consideration of the bill H.R. 7548 to amend the Farm Credit Act of 1971 to permit farm credit system institutions to improve their services to borrowers, and for other purposes (House Calendar No. 413).

By Mr. MOTTL:

H. Res. 793. Resolution expressing the sense of the House of Representatives that the Secretary of Health and Human Services should not approve certain portions of the proposed model State adoption legislation prepared under the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978; to the Committee on Education and Labor.

By Mr. BENNETT:

H. Res. 794. Resolution to expel Representative MICHAEL O. MYERS (House Calendar No. 414).

PETITIONS

Under clause 4 of rule XXII,

436. The SPEAKER presented a petition of the Board of Trustees, Montana Legal Services Association, Helena, Mont., relative to continuation of the Legal Services Corporation, which was referred to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. AKAKA presented a bill (H.R. 8209) for the relief of John Liuaki Botelho, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 54: Mr. BURGENER.
H.R. 4653: Mr. ALBOSTA.
H.R. 5062: Mr. HAWKINS.
H.R. 5225: Mr. HEFNER.
H.R. 6617: Mr. LOWRY.
H.R. 6722: Mr. FOWLER and Mr. STANGELAND.
H.R. 7050: Mr. KINDNESS and Mr. OBERSTAR.
H.R. 7287: Mr. GUARINI.
H.R. 7445: Mr. JEFFRIES and Mr. SPENCE.
H.R. 7533: Mr. VANDER JAGT.
H.R. 7793: Mr. OTTINGER.
H.R. 7796: Mr. SPENCE.
H.R. 7959: Mr. LAGOMARSINO, Mr. DERWINSKI, Mr. CLAUSEN, Mr. FRENZEL, and Mr. LUNGREN.
H.R. 8080: Mr. PEASE, Mr. LEHMAN, Mr. BARNES, Mr. BEDELL, and Mr. WOLPE.
H.R. 8148: Mr. HOLLAND.
H.R. 8169: Mr. BURGENER, Mr. WHITEHURST, Mr. RAHALL, and Mr. KOGOVSEK.
H.J. Res. 488: Mr. MCDADE and Mr. FORSYTHE.
H.J. Res. 511: Mr. D'AMOURS, Mr. SOLOMON, Mr. ROYBAL, Mr. PRITCHARD, Mr. BARNARD, Mr. BEARD of Tennessee, Mr. PURSELL, Mr. RODINO, Mr. LOEFFLER, Mr. MOORE, Mr. PREYER, Mr. NOWAK, Mr. NOLAN, Mr. PICKLE, Mr. GRAMM, Mr. BLANCHARD, Mr. STENHOLM, Mr. ANDREWS of North Dakota, Mr. JOHN L. BURTON, Mr. MAGUIRE, Mr. JEFFORDS, Mr. CLAUSEN, Mr. NATCHER, Mr. ABDNOR, Mr. LOWRY, Ms. FERRARO, Mr. SNYDER, Mr. LEVITAS, Mr. STAGGERS, Mr. ROBERTS, Mr. BEILENSON, Mr. ULLMAN, and Mr. CORMAN.
H.J. Res. 596: Mr. ST GERMAIN, Mr. RHODES, Mr. LLOYD, Mr. ROUSSELOT, Mr. CORCORAN, Mr. SEIBERLING, Mr. FORSYTHE, Mr. SOLOMON, Mr. CLINGER, Mr. SPENCE, Mr. JEFFORDS, Mr. GUARINI, Mr. SIMON, Mr. BOWEN, Mr. STEWART, Mr. STACK, Mr. LEDERER, Mr. WALGREN, Mr. WILLIAMS of Ohio, Mr. PEPPER, Mr. NOWAK, Mr. THOMAS, Mr. STENHOLM, Mr. MONTGOMERY, Mr. YATRON, Mr. WIRTH, Mr. ALBOSTA, Mr. LAFALCE, Mr. WON PAT, Mr. ABDNOR, Mr. MARRIOTT, Mr. ROTH, Mr. VENTO, Mr. MOLLOHAN, Mr. WALKER, Mr. ASHLEY, Mr. ALEXANDER, Mr. MCHUGH, Mr. ADDABBO, and Mr. ANDREWS of North Carolina.
H. Con. Res. 409: Mr. NEAL, Mr. MOFFETT, Mr. KRAMER, Mr. PEASE, Mr. STRATTON, and Mr. BEDELL.
H. Con. Res. 434: Mr. OBERSTAR, Mr. WAXMAN, Mr. HANLEY, Mr. WEAVER, Mr. PEPPER, Mr. HOLLENBECK, Mr. MAGUIRE, Mr. AUCOIN, Mr. HORTON, Mr. LEHMAN, Mr. DRINAN, Mr. HUGHES, Mrs. FENWICK, Mr. DORNAN, Mr. FISH, Mr. STACK, Mr. OTTINGER, Mr. RATCHFORD, Mr. LENT, Mr. FROST, Mr. ERTEL, Mr. EDGAR, Mr. DOWNEY, Mr. MURPHY of Pennsylvania, Mr. BLANCHARD, Mr. WIRTH, Mr. FORSYTHE, Mr. KEMP, Mr. MAVROULES, Mr. PORTER, Mr. DOUGHERTY, Mr. FAZIO, Mr. WHITEHURST, Mr. CORMAN, Mr. BEILENSON, Mr. EDWARDS of California, Mr. RICHMOND, Mr. BIAGGI, Mr. STARK, Mr. RODINO, Mr. CLEVELAND, Mr. LUNGREN, Mr. PEYSER, Mr. CONYERS, Mr. ATKINSON, Mr. COTTER, Mr. GREEN, Mr. MURPHY of New York, Mr. PHILLIP BURTON, Mr. KILDEE, Ms. MIKULSKI, Mr. GUARINI, Mr. SCHEUER, Mr. FORD of Tennessee, Mr. MATSUI, Mr. GARCIA, and Mr. GRADISON.

PETITIONS, ETC.

Under clause 1 of rule XXII,

538. The SPEAKER presented a memorial of the Legislature of the State of California, relative to commercial whaling, which was referred to the Committee on Foreign Affairs.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4370

By Mr. AMBRO:

—Page 11, after line 17, insert the following new subsection:

(h) No person may be issued a certificate under this section for construction or extension of a coal pipeline unless, before the issuance of the certificate, each State which has a legal interest in the ground water to be used and beneath whose lands any part of the ground water aquifer constituting any part of the source of the ground water to be used lies shall consent in writing to the use of its water before the issuance of the certificate.

Redesignate the subsequent subsection of section 101 accordingly.

H.R. 5615

By Mr. WEISS:

—On page 3, strike out lines 11 through 22, inclusive.

H.R. 6979

By Mr. AKAKA:

—On page 5, line 7, after Islands, insert subsection:

(4) Immediately after paragraph (5) insert the following new paragraph:

"(iv) Any transportation, conversion, treatment, transfer, or storage of alternative energy resources, including but not limited to those for ocean thermal and wind energy conversion systems, biomass, municipal waste, geothermal power, and solar energy."

—On page 11, line 23, after "coal." insert "or alternative energy sources.".

On page 12, line 14 after "storage;" insert "the number, capacity, and generated employment of alternative energy facilities and activities; and such other relevant factors deemed appropriate by the Secretary.".

H.R. 7112

By Mr. BOLAND:

—Page 3, line 13, immediately before the period insert "and, notwithstanding any other provision of this title, no unit of local government shall be entitled to an allocation calculated on the basis of a funding level in excess of the amount appropriated for the applicable entitlement period".

Page 4, line 7, strike "authorized" and insert in lieu thereof "appropriated".

Page 4, line 9, strike "authorized" and insert in lieu thereof "appropriated".

—Page 3, strike out line 6 and everything that follows through line 21 and insert in lieu thereof the following:

"(b) AUTHORIZATION OF APPROPRIATIONS FOR PAYMENTS TO LOCAL GOVERNMENTS.—

"(1) AUTHORIZATION FOR ENTITLEMENTS.—There are authorized to be appropriated to the Trust Fund $4,566,700,000 to pay the entitlements of units of local government hereinafter provided for the entitlement period beginning October 1, 1980, and ending September 30, 1981.

"(2) AUTHORIZATION FOR ALLOCATIONS.—There are authorized to be appropriated to the Trust Fund $4,566,700,000 to make allocations to units of local government as hereinafter provided for each of the entitlement periods—

"(A) beginning October 1, 1981, and ending September 30, 1982; and

"(B) beginning October 1, 1982, and ending September 30, 1983.

Page 4, strike out line 3 and everything that follows through line 12 and insert in lieu thereof the following:

SEC. 106. ALLOCATION AMONG STATES OF FUNDS FOR LOCAL GOVERNMENT.

"(a) IN GENERAL.—

"(1) ENTITLEMENTS BASED ON AUTHORIZATION.—There shall be allocated an entitlement to each State for the entitlement period beginning on October 1, 1980, and ending on September 30, 1981, out of amounts authorized under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount authorized under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

"(2) ALLOCATION BASED ON APPROPRIATION.—There shall be allocated an amount to each State for the entitlement period beginning on or after October 1, 1981, out of amounts appropriated under section 105(b)(2) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

By Mr. ENGLISH:

—Page 4, after line 2, insert the following new subsection:

"(d) PROHIBITION ON USE OF FUNDS FOR ABORTIONS.—None of the funds appropriated pursuant to this section shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

By Mr. GRAMM:

—Page 16, immediately before line 1 insert the following new section (and redesignate the succeeding sections accordingly):

SEC. 104. EXCLUSION OF CERTAIN TAXES FROM TAX EFFORT COMPUTATIONS.

Section 109(c)(2)(A) of the State and Local Fiscal Assistance Act of 1972 is amended to read as follows:

"(A) TAXES TAKEN INTO ACCOUNT.—The State and local taxes taken into account under paragraph (1) are—

"(i) the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems and other special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

"(ii) adjusted, to the extent practicable (under regulations prescribed by the Secretary), by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to the fraction of any tax the burden of which is not borne by the residents of such State.".

By Mr. LEVITAS:

(Amendment to the amendment offered by Mr. WYDLER.)

—Immediately before the period at the end of section 107 as proposed to be inserted on page 6, after line 3, by the amendment of the gentleman from New York, insert the following: ", except that (1) no payment of any such allocation shall be made to any State unless the Secretary determines (in accordance with regulations prescribed by the Secretary) that such State has declined to receive or has refunded to the United States, from funds otherwise available to such State under any Federal categorical grant program (as identified in such regulations), an amount equal to such allocation, and (2) any funds which would otherwise be paid to a State but for clause (1) shall be transferred by the Secretary from the Trust Fund to the general fund of the Treasury in accordance with section 105(d)".

By Mr. PANETTA:

—Page 35, after line 22 insert the following new subsection:

"(d) NO PAYMENTS TO STATES RECEIVING GENERAL REVENUE SHARING PAYMENTS.—Notwithstanding subsection (a)(1), no payment shall be made to any State government with respect to any eligible calendar quarter which falls within an entitlement period (as defined in section 141(b) of this Act) for which there has been an appropriation of funds for payments to State governments under title I of this Act. Any funds which would, but for the preceding sentence, he paid o State governments shall be transferred to the general fund of the Treasury.

By Mr. ROSENTHAL:

—Page 18, strike out line 10 and everything that follows through line 14 and insert in lieu thereof the following: "shall not exceed the product of the economic decline factor for such quarter multiplied by $10,000,000.".

S. 885

By Mr. CARR:

(Amendment to the amendment in the nature of a substitute.)

—Page 53, line 15, strike the period, add a colon and the following: "*Provided*, That the acquisition of a major resource as defined in section 3(12) shall be limited to 25 per centum of planned project capability.".

—Page 53, line 15, strike the period, add a colon and the following: "*Provided*, That the acquisition of a major resource as defined in section 3(12) shall be limited to 30 per centum of planned project capability.".

—Page 53, line 15, strike the period, add a colon and the following: "*Provided*, That the acquisition of a major resource as defined in section 3(12) shall be limited to 40 per centum of planned project capability.".

—Page 47, line 2, strike the period, add a colon and the following: "*Provided*, That the Administrator shall no longer offer his direct service industrial customers availability credits for electric power interruptions.".

By Mr. MILLER of California:

(Amendment to the amendment in the nature of a substitute.)

—Page 58, line 19, strike from "Act" through line 20 and insert in lieu the following: "legislation reported from the Committees on Interstate and Foreign Commerce and Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.".

—Page 85, line 16, strike after "facility" and through line 17 and insert in lieu the following: "not utilizing renewable resources.".

EXTENSIONS OF REMARKS

BLUNT TALK ABOUT WAR, THE MILITARY, AND NATIONAL SURVIVAL

HON. NEWT GINGRICH
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. GINGRICH. Mr. Speaker, one of the weaknesses of both those of us who favor preparedness and of conservatives in general is that we are so trapped in concern about defense and so dedicated to convincing the country that it needs to do and spend more on defense that, as a result, we tend to have a very blind approach to the dialog. We tend to say that anyone who raises fundamental questions about the Pentagon or the Army is either not on our side or not concerned about our survival or is a liberal or—whatever.

However, we must be more openminded.

Around 500 B.C., Sun Tzu said, "Know the enemy and the battle is half won. Know yourself and the battle is yours." Clausewitz, 2,300 years later, said, "War is an extension of politics by other means." One of the major problems in this country is that we are not sure about either the enemy or ourself. Let me suggest, to start with, that the enemy is not communism or the Soviet Union. Rather, the enemy is chaos, violence, and the danger of outside forces imposing their will on the United States.

We have to be much broader in our thinking about the nature of human activity on this planet. There is no reason to presume that this month's alliance is going to be next year's alliance. When it comes to world politics, the only constant is change. For example, in 1903-04, there was a dramatic shift in the relationship between Germany, France, Russia, Britain, and Japan. And from 1939 through 1950 we saw the Chinese-American alliance against Japan become the Japanese-American alliance against China.

In a space of less than 2 years, 1939-41, we saw the Russians switch twice: once to side with the Nazis and second to fight them. We saw France go through a whole series of dances, first being a strong supporter of the Eastern states in Europe, then abandoning most of them, and finally fighting the Germans. We then saw France as an ally of the Germans in terms of Vichy and as an enemy of the Germans in terms of overseas and underground resistance forces.

We are currently allied with the People's Republic of China—not officially but in effect—against the Soviet Union. Our allies are Japan and Germany against the Russians. There is no reason to believe that by 1990 that will be true. We assume it will be true. We assume that we and the Common Market will continue to have joint interests, but that is not necessarily so. We are in fact in a dangerous and unpredictable world. There is no reason for us to assume that the history we have yet to make will be markedly different from what has gone before.

I would suggest to you that our long-range foreign policy goals are very simple. They are ultimately to create a pax humanica, or a human peace. We cannot impose an American peace, nor permit a Soviet peace. We must find ways for the people of this planet to live together. In the interim—and that may be a very long interim, of 200 to 500 years—our primary goal in foreign policy is very simple: It is our intention to survive no matter what the level of chaos on the rest of this planet. We have to state that, as a necessarily selfish and explicit American goal, and then proceed from that to other foreign policy objectives. I think that, at a military level, that broad goal breaks down into these specific goals:

First, avoid strategic nuclear war if possible. That seems fairly obvious, but there are times we tend to forget it.

Second, survive a strategic nuclear war if it occurs. We are rapidly becoming a nonsurvivable society in the event of a strategic nuclear war. The Soviet Union is slowly becoming a survivable society in a nuclear war. That has implications for us that are horrendous. It means that we need, for example, a massive increase in civil defense, a rethinking of the Army's role in domestic survival, deciding how to restore order in a postnuclear environment, and it may conceivably mean universal military training. I am not suggesting those as immediate policies, but they are questions that we have rigorously avoided thinking about for most of my lifetime.

Third, below the strategic level, we need to have the option to fight either a tactical, nuclear or chemical war at the theater level of our choice. We also need the ability to survive a tactical, nuclear, or chemical war should the Soviets or any other power decide to begin one. A tactical nuclear war, as the French indicated by their July announcement of intent to build a neutron bomb, is not a Soviet-American monopoly.

We specifically must drop the concept of spasm wars and drop the concept of a firebreak, meaning the notion that you can fight big conventional wars up to the magical point beyond which you are in a nuclear environment. It is very clear that Soviet doctrine involves a nonfirebreak concept, and that they will use whatever level of force is necessary in that theater to achieve their goals. We are severely crippled by our refusal, intellectually, to recognize that that reality, and I would suggest to you that technology has outrun our thinking.

Fourth, our fourth goal, should we not engage in chemical or tactical nuclear war, is to win any large conventional war in two stages: First, survive an initial surge; and, second, through planned mobilization, win a general conventional war. We are incapable of surviving a surge at the present time and we are even more incapable of undertaking a general mobilization.

Fifth, we must have adequate professional forces to impose our will on the Third World. Let me repeat that, because it is a very unfashionable thing to say. We must have adequate professional forces to impose our will on the Third World. I am willing to say that, as a matter of American doctrine, that there are those moments in life when we are going to disagree with other people, and it is my belief that when we fundamentally disagree with somebody we should win.

Sixth, we need to develop a paramilitary capability to contain terrorism, whether it is the Irish Republican Army, the PLO, hijacking, or Qadafi's sending of Libyan assassins into a country to kill political refugees. There is nothing new in terrorist activities and there is nothing new in random lawlessness. In some ways, the British suppression of piracy in the 1720's is a model of appropriate behavior. In other words, to use an American example, so is sending the marines to Tripoli. I am not suggesting random interventionism. I am suggesting that lawlessness is best met with adequate force to insure that people get the message that one should not act lawlessly.

Seventh, it is a reality of this planet that the Soviet Union has mounted the largest systematic penetration of Western society that I am aware of in history. That penetration also goes on in the Third World. We are currently incapable of either monitoring or matching that penetration. We are in a cold war and, unfortunately, it does not have very many James Bonds, and it does not have very many beautiful women. It has an awful lot of drudgery, a fair amount of random violence, and a great deal of systematic effort. We are, frankly, not even competitive in that zone.

Everything I just said has nothing new to it. That list of priorities could be developed using different words in different ways throughout history. In fact, I would suggest to you that nothing new has happened in military affairs in terms of the art of war since

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Genghis Khan invented the theater-wide blitzkrieg in the 13th century starting in north China. I would suggest to you that not until 1941, when the Germans invaded Russia, did we see any operation whose scale of complexity matched the Mongol invasion of Europe.

The Mongols threw 150,000 men organized into units of 10,000 who were organized into single units of 1,000, who were broken down into units of hundreds, and who maneuvered in squads of tens. They used three columns. One invaded Poland, one invaded Hungary, and one invaded Yugoslavia. This was done simultaneously. They maintained messenger service across the entire continent. They maneuvered during the daytime by banner and during the nighttime by rocket and lancer. They won as far as they wanted to and then left, largely because Genghis Khan's son died and they had a political upheaval at home.

I would suggest to you that—and I am quoting in part from a very interesting study of the Mongol Army entitled "The Doubled Horseman," which was a term used by the Europeans to describe them—there was nothing significant in Wehrmacht doctrine in World War II that any Mongol general would have found to be unusual.

The greatest single weakness in the U.S. Army today is lack of knowledge of the art of war as a historical field and the lack of adequate doctrine. It is a greater danger and a greater weakness than our current manpower or equipment problems. You can ultimately acquire equipment and you can ultimately acquire manpower at nonsenior officer levels if you have a trained officer and NCO cadre and if you have an adequate doctrine to train those people into.

The greatest single mobilization, I think, in the history of the world is the 1939-1944 mobilization of the U.S. Army. It is no wonder that Peter Drucker, the management consultant, says the greatest manager on the planet in the 20th century was George Marshall. The key to that mobilization was that trained leaders and doctrine were available.

MacArthur, as the Chief of Staff, fought throughout the Depression to preserve the cadre, he gave up tanks, he gave up guns, he gave up equipment, and he deliberately argued over and over with the Congress that he had to keep a hard core of officers and NCO's if the institutional knowledge was going to survive.

The officers who were field grade in 1939 had been trained constantly. I am not talking about the 1½ years at Leavenworth. I am talking about an Army that trusted its professional cadres to take their spare time to do professional things and thereby gave them spare time deliberately, instead of making phony work or paperwork or creating a large managerial staff that did not have time to think. Those officers, and I will cite the example of Dwight Eisenhower, were rather thoroughly trained.

People wondered in later years why a genial staff officer, who smiled a lot and was referred to as "Ike," was successful. Well, not only did he run, in 1917 and 1918, the U.S. Army's first armor training camp, Camp Cole at Gettysburg, but in 1920 and 1921 he and a man named George Patton authored essays in armored warfare which were published in the infantry journal. Later on Eisenhower wrote a section in the Chief of Staff's report for 1935 that is as good a description of the blitzkrieg and mobile warfare as you will find in American literature. That was about the same time DeGaulle, Guderian, and others were writing the same thing.

Eisenhower, on going to the Philippines with MacArthur, learned to fly and became a pilot because he understood that aircraft would be important in the next war. His good friend, George Patton was taking his vacations in France and Belgium in order to tour the area that he presumed he would some day fight on. When the war came, they were ready. They had the time, they were disciplined, they had educated themselves.

Today we have a largely bureaucratic peacetime Army with a doctrine that, in many ways, avoids key questions and violates the basic rules of the art of war. This is not in any sense an attack on the Army. It is a very tough thing to say but I think it is something the Army has to face up to. I say it lovingly. I grew up in the Army. I think the Army is absolutely essential to the survival of this society and I think these issues have got to be confronted.

I think we suffer from having won World War II and then from being able to avoid the consequences of errors in the period since World War II. All of you who have been associated with the Army are familiar with problems such as getting your ticket punched in Vietnam, such as avoiding real responsibility and the rise of staff officers who may or may not have ever had any significant responsibilities for which they were punished when they failed. There is no comparison between the so-called staff officers of World War II, all of whom comprised a very thin Army, which was very undermanned, where all had massive responsibilities. In fact, back in 1941 and 1942 George Marshall retired a great number of men that he felt could not make it.

I think you have to confront the possibility that we face a different set of problems and that we are in some ways crippled by our own successes. The greatest Soviet advantage today is not manpower or equipment. It is that their doctrine is in many ways intellectually more sophisticated, it is better grounded and better adapted to modern technology, and it is more realistic than ours. I will simply raise some doctrinal suggestions and challenge some current assumptions. Let me emphasize that these are ideas; these are not policy proposals and I am raising them primarily to be thought provoking. After all, in my precongressional life I was a college teacher and college teachers have sort of a habit of trying to be provocative.

The defensive attitude of the FM 100-5 is a disaster. I do not know of any example in modern history where you can have a military that is trained primarily to fight a defensive war and not end up with the end result of a football team that decides to play four quarters of defense. If you are real lucky, what happens is that you end up with a tie. There are no enemies that I know of worth fighting today who are going to be that unlucky against us.

Our assumptions—and some of these are political and I am not necessarily blaming the military for them—our assumptions about fighting a defensive war in Europe are fundamentally as wrong as it is possible to be in designing any kind of military posture.

Our initial policy should be that we will counterattack as rapidly as possible, that we will position ourselves to do so, and it is our intention to fight an entire war in Europe in Eastern Germany, Czechoslovakia, and Poland. We should make that our explicit policy and we should say publicly that within 48 hours of any major Soviet incursion, we will be using tactical nuclear weapons on the supply lines. Period.

That is a political decision and not one the military can make. I think it changes the whole context and I think it is the duty of professional soldiers to say unequivocally that a defensive strategy based on falling back to the Rhine is going to be a disaster. There is no reason to believe that a peacetime American Army is any more capable of a retrograde movement in the face of continuous enemy pressure than the South Vietnamese were. We will, in fact, fall apart and so will the Germans, and I think that anybody who thinks we will not ought to go over and try to walk through 5 days of the kind of pressures the Soviets could bring to bear.

I do not think we would make it. I think we will wear out mentally because we are asking our crews to fight too long without replacement and even if they do not get killed, they are going to wear down. When they wear down, things are going to break apart. If you look at the Soviets' doctrine, they understand that. They do not think their front line units are going to be there. That is why they replace them. They do not need a very long tail because they are all going to die. That is the essence of their doctrine. I suspect in the kind of war we are talking about they are more right than we are.

Any serious policy of defending West Germany, and this has consequences that Helmut Schmidt would

not want to talk about, means that you would immediately be fighting in built-up areas. You move in to the existing concrete buildings, you plan to make a wasteland out of 50 miles of West Germany, and you can do that. You can build a hedgehog system.

When the Mongols invaded far enough into Europe, the Emperor Frederick II sent them a message saying that they should stop, because it was his intention to provide every peasant in his kingdom with a crossbow, that his kingdom had no open spaces, and they would fight from behind trees and the Mongols might win but it would cost them 100,000 men. For political reasons they never quite got around to testing them.

The Mongols did get that far in Vietnam in the 1200's and they were stopped. They could not invade the jungles because once they got into that kind of country they could not take out defensive forces. The cost was too great. You can design a defensive war for Hamburg that works that way. But it also annihilates Hamburg, ultimately. That is the only kind of defensive battle you can fight in Western Europe with conventional forces. To say anything else is to deny the reality of the situation.

On another issue, I have real questions about the concept of paratrooper divisions in their current form. You can make a case for enough paratroopers to land rapidly, to take over an airfield, five airfields, or seven airfields, but they don't know what to do after they have done that. Against any kind of modern enemy, they are in real trouble very, very quickly. I say that with all respect to a tradition that is very long and is very deep in the elite units of the Army.

Similarly, I would suggest that the mechanized infantry combat vehicle program is an absolute disgrace. We have our troops right now mounted in M-113's. The Congress has to take as much blame for this as anyone. This is a joint political-military failure. In terms of fighting a modern mechanized war this country faces a disaster. We would have been better off 10 years ago to have simply bought German equipment.

It is a crime to tell American soldiers they must go into battle with the M-113's in the current environment and the kind of equipment the Soviets have. The BMP—the Soviets' armored fighting vehicle—is a far superior weapon system; the Marder—the Federal Republic of Germany's armored fighting vehicle—is a far superior weapon system; the M-113 is totally obsolete and that is all we have got. We are, frankly, not close to changing it. By the time we have a fully MICV-equipped mechanized infantry force we will see a new generation of Soviet equipment and we will be once again 10 years behind the R. & D. eight ball.

We also have inadequate preparations for the violence, shock, information overload, and sheer attrition of modern war. Again, professionals have to come back and say that the lesson of the Yom Kippur war when projected into Europe is a level of violence so unbelievable, a level of complications so overwhelming that we need to rethink how we intend to fight it. We need to simplify our techniques for fighting because we are not going to be able to handle the information that is available the first 3 days. It is simply going to swamp us.

One of the reasons we are going to be in trouble, if we end up in a war, is that we are unwilling to believe Soviet doctrine. Let me give one example. When I was in Europe getting off-the-record briefings, I saw a gentleman who was very deeply involved in chemical warfare. I told him I was interested in doing a book on a Soviet attack in Western Europe. He suggested instead that I do a Reader's Digest article that begins with a Soviet chemical attack and ends with our defeat an hour later.

That is not totally false. The Soviets are consciously and explicitly designing a capability for chemical warfare. We do not believe them or at least if you look at our equipment we do not appear to believe them. I think that is a real disaster because I would suggest to you that a typical President, surrounded with liberal advisers, would not respond to a chemical attack, aimed at military installations, with nuclear weapons. He would instead negotiate. Chemical weapons do not have any sense of horror. It does not break the so-called threshold.

Finally, what may be the greatest danger for us in the long run is our lack of the transportation and industrial base for a general war.

There is a myth in this country that we could mobilize as we did in 1941. The United States, beginning in the midthirties under Franklin Roosevelt as part of the New Deal, consciously created an industrial base and went a long way on planning done by Douglas MacArthur, Dwight Eisenhower, George Marshall, and a lot of other people.

An entire generation of officers who retired just before the war—men like Fox Conner—went out and created, with the help of industry, an industrial base capable of mobilizing. They clearly thought through the problems of mobilization. They also had 2 years, from 1939 to 1941, to use British and French orders to build up our production capacity for aircraft, tanks, and ammunition. By the time we got in the war, we were able to build equipment.

We are, at the present time, due to our tax policies, doing just the opposite. We are dismantling our steel industry; we are crippling our automobile industry. We do not have subcontractors available in the aircraft industry for a surge capability. In a real war we would, in fact, run out of equipment even if we did not run out of manpower. We do not have the surge capability.

We need to look at out industrial policy not as a matter of "Do you want to help the rich?" or "Do you want to help corporations?" but as a matter of national survival. If, in fact, we want the ability to wage conventional war on this planet, what size industrial base do we have to have? If it is a matter of national survival, I suspect you can ultimately put together the kind of political coalition necessary to change the tax laws and to create an opportunity for this country to survive. We are not talking fun and games. Survival is, after all, what we are talking about.

Sometimes men and women who spend their lives in uniform recognize that the minute they enter into a discussion they are suspect. So we end up in a debate in which a general in the Army, who has spent his entire career trying to serve his Nation and save freedom, says something and is less respected then Jane Fonda because she is seemingly disinterested. Somehow any random kook—and I do not necessarily associate that with Jane Fonda nor do I necessarily not associate that with Jane Fonda—is capable of dominating a debate even if what they are saying is nonsense. For some reason our professionals, whether they are professionals in business or professionals in uniform, feel reticent about telling the truth as they know it.

Whether it is through retired military, through the association of the U.S. Army, or however, we have got to find a way in a free society to raise the tenor of the debate. I think we need to create some sort of system and I am not sure what it should be—maybe an institute of military assessment and war analysis, or something—but something which is outside the hierarchy, something which is somehow able to attract the best minds and the professionals, the career minds, and get them to talk in objective ways without being constrained by the Joint Chiefs and the traditional system.

I am looking for an answer. I do not necessarily have one. But I can tell you that right now it is very hard to get nonpoliticized assessments of our military needs and capabilities.

Another thing I think we need at the Army level is to seriously think about cutting out one-third of all work that is not combat related. I think it is time to go back and trust your senior NCO's, trust your career officers, give them the time to grow, give them the time to think. A third of them are not going to take advantage of it. They are going to go and waste their time. That is the cost in the long run of the other two-thirds developing.

I think we have got to slow down the pace of peacetime life in the Army. We have got to give the officers corps a chance to grow, to think, to reflect and to argue with itself. We have got to get out of a cycle which is increasingly producing a managerial Army rather than the combat Army we need. I think that is a real crisis and I

frankly realize that if we start doing that we are going to get all sorts of liberals jumping all over the Army for wasting time. We have got to learn to have the guts to stand up and say, "Hey, if you really want, in the long run, the survival of this country, this is what it costs. You cannot survive on the cheap."

Let me close by talking briefly about this country. I got into this game of politics because in 1958, when my dad was stationed at Stuttgart, he took us to the battlefield of Verdun, the largest battlefield of World War I. We spent three nights with a friend of his who was on the Bataan Death March.

As a teenager, I spent all day touring this incredible battlefield and all evening listening to unbelievable stories. On the Sunday of that trip, we went to the ossuary, which is a large building. The entire basement is enclosed in glass and contains the bones of 100,000 German and French soldiers that could not be identified after the war, the bits and pieces laying around the battlefield. The battle lasted 9 months.

I looked at that and I went back to Stuttgart and in August of that summer, between my freshman and sophomore years in high school, I reflected on the possibility that we might not make it in this society. History has a way of being very tough with people and the margin of difference probably was not my dad. It was not the career soldiers, because ultimately the career soldiers do what the career politicians tell them to.

I think that has been true in my lifetime over and over again. We won World War II because we were allowed to. We lost in Vietnam because we were forced to. We could have militarily won the Korean war at any time we were really serious about it. We could have militarily won in Vietnam at any time we were willing to take the political risk. We did not.

I have a passionate belief in the central principle this country was founded upon. I think that those of us who are conservative and those of us who care about the survival of this country have failed that belief. It is a very simple belief. You should never underestimate the intelligence of the American people nor overestimate the amount of information they have.

For generations we have been too timid. We have not been willing to stand toe-to-toe with the Ralph Naders and the Jane Fondas, with the people willing to destroy the military, the people who assume with a sneer that if you do it in uniform it is bad but if you do it in welfare it is good. We have not been willing to stand there and say, "Look, this is too important to play games with."

The survival of this country demands nothing less than the finest level of integrity, the toughest intellectual rigor, and a willingness to brave any political arena to fight it out, to stand up and say, "Look, what is at stake is simple. Your grandchildren can be free and prosperous and safe, or they can live in a place that resembles Cambodia. What is it worth to you to insure that they are free and prosperous and safe?"

When we have the guts to communicate that message to every American and to talk about it with a technical competence that is not confusing but that is honest, I have little doubt that the people of this country will opt for survival over disaster, and that we will create the political, intellectual, and military framework that allows us to turn the 21st century into a major step toward pax humanica.●

EXPLANATION OF ABSENCE

HON. WILLIAM R. RATCHFORD

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. RATCHFORD. Mr. Speaker, on Friday, September 19, 1980, I had the honor of accompanying Mrs. Joan Mondale, wife of the Vice President, on a tour of parts of the Fifth District of Connecticut. For this reason, I was necessarily absent for rollcall votes conducted on the evening of Thursday, September 18 and on Friday, September 19.

If I had been able to be present for these recorded votes, I would have cast my vote as follows:

Motion to substitute the text of H.R. 7244, as passed, for the text of S. 2271, to amend the Bretton Woods Agreements Act to authorize consent to an increase in the U.S. quota in the International Monetary Fund—"yea."

Conference report on H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1979—"yea."

Amendment to H.R. 85 to make U.S. damages resulting from the Campeche Bay, Mexico, oil spill eligible for compensation by the oil spill trust fund—"no."

Final passage of H.R. 85, the Comprehensive Oil Pollution Liability and Compensation Act—"yea."●

WORKSHARING AND A SHORTER WORKWEEK: CREATING MORE JOBS

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. CONYERS. Mr. Speaker, a major new policy statement, recently issued by the U.S. Equal Employment Opportunity Commission (EEOC), calls attention to the growing concern for finding solutions to the massive unemployment and job layoffs that exist in the Nation today.

EEOC is calling on employers and labor unions to step up their efforts to create alternatives to job layoffs, that demoralize workers and injure disproportionately women, minorities, and younger workers who tend to be laid off first. EEOC is recommending a worksharing approach as a means to avert layoffs. Under worksharing a firm that is experiencing a business slowdown could reduce the working hours of its entire work force a few hours a week, or else schedule additional vacation leave, rather than have to lay off some of its work force. The worksharing system operates today successfully in the State of California, where a new State law permits workers, who are laid off, to collect unemployment insurance on a daily basis. As a result, employees who work only 4 days a week are eligibile for unemployment insurance for the fifth day, and are able to maintain their medical and pension benefits intact.

The worksharing recommendation of EEOC makes eminent sense. Numerous studies have shown that measures that enhance a worker's sense of worth on the job and his job security also enhance workplace productivity. Further, measures that minimize the layoff of certain groups of workers who happen to be lowest on the seniority ladder and that provide greater equity among members of a work force also are found to promote job satisfaction and productivity.

Worksharing, flexitime, voluntary overtime, and a shorter workweek all are tested methods for saving existing jobs, raising productivity, and creating new jobs. For example, in industries that already have shortened the workweek—for example, involving telephone operators, printers, electricians, and clothing workers—the evidence shows increased productivity, lower absenteeism, and fewer jobs lost.

Support for new worktime arrangements is also found in a recent Department of Labor study entitled, "Exchanging Earnings for Leisure." The study found that an overwhelming majority of American workers would be willing to forgo a large part of their future pay raises in exchange for more free time, provided that they can choose the form their work reduction takes. This finding also reinforces the argument for eliminating compulsory overtime, an issue of growing concern among working people. As a result of the changes that have occurred in the work force, the growing number of two-earner households, and reduced family size, the Labor Department study indicates why the value of leisure time and flexible working time has become so prominent.

My colleague, Representative PATRICIA SCHROEDER of Colorado, has introduced the Short-Time Compensation Act (H.R. 7529) to make possible a worksharing program on a national scale. A slightly different approach, with similar goals, is embodied in the fair labor standards amendments (H.R. 1784), that I introduced 2 years ago, which would gradually reduce the workweek to 35 hours, replace compul-

sory overtime with voluntary overtime, and raise the overtime rate of pay to double time. The last major reduction in working time, which led to the 40-hour week in 1938, made possible substantial gains in new employment. A similar measure today, it is estimated, would create several million new jobs.

Not only do we have to find new ways to improve the products of American industry, we also desperately need to find new methods for better utilizing the existing work force and creating a full employment economy for all Americans. We have to break out of the rigid patterns that govern working life and innovate with new methods of employment that promise enormous dividends in productivity, economic security, and full employment. This is reflected in the EEOC announcement on worksharing, that follows, which I recommend for consideration by my colleagues.

EEOC SEEKING ALTERNATIVE APPROACHES TO LAYOFFS

WASHINGTON, D.C.—The U.S. Equal Employment Opportunity Commission (EEOC) issued a policy statement published today for comment in the Federal Register urging employers and labor unions to make serious voluntary efforts to find alternatives to layoffs that may have a disproportionately harsh impact on minorities, women and older workers during recessionary periods.

In suggesting alternatives to layoffs that may be used by employers, the Commission focused special attention on "worksharing," where the workweek is usually reduced to four days, and indicated that unemployment insurance has been used to subsidize this arrangement.

The Commission said that it is greatly concerned that the routine use of "layoffs on a last-hired, first-fired basis" that usually has an adverse effect on minorities, women and older workers may eradicate many recent affirmative gains made in the workplace.

In its statement, the Commission asked employers, who have developed "sensitivity and mechanisms" to avoid discriminatory layoffs, and others familiar with the problem to submit comments and information for the EEOC's consideration.

The Commission noted that almost one-third of all union contracts provide for worksharing as an alternative to layoffs. It said that this alternative becomes particularly attractive where state law, as in California, allows the payment of unemployment insurance to workers who work a partial workweek. For example, if an employer has to reduce its normal workforce by one-fifth, the California law permits affected workers to work four days each week and collect unemployment insurance benefits for one day layoff each week. The Commission urged employers and unions to seek similar modifications to unemployment insurance laws through their own state legislatures in order to make worksharing an attractive alternative.

The Commission also urged governors and state legislators to make the minor changes in state unemployment compensation laws that would allow unemployment insurance to be used to subsidize shortened workweeks to reduce unemployment.

The Commission warned of potential liability employers may face if they routinely resort to layoffs. "Even where a particular layoff may not be violative of Title VII, an employer may find itself vulnerable to private litigation or enforcement action by the EEOC or other governmental agencies, such as the Office of Federal Contract Compliance Programs, at a later date when the employer is in a new hiring phase. The employer may then be confronted with a situation where it has to institute or reinstitute affirmative action plans because its earlier efforts to correct past discrimination were largely nullified by intervening layoffs."

There also are substantial incentives for employers to consider alternatives to layoffs, the Commission said. "As the economy has become increasingly dependent on technology, the cost of training new employees has become a much greater part of the employers' investment, as compared to prior periods when the economy was dominated by unskilled and semi-skilled manufacturing jobs and workers. When an employer lays off a worker today the employer often loses the considerable investment that an experienced and trained workforce represents. Therefore, in today's economy, it is to the employer's advantage to explore alternative means of reducing labor costs which to the greatest extent possible avoid laying off workers."

The EEOC said that there are substantial incentives for labor organizations as well. "Some alternative approaches would result in most workers, not only the minority and female workers, keeping their jobs and thus affording protection against layoffs to all union members generally. For example, if worksharing were the selected alternative, greater job security would also be afforded to the less senior white workers who might otherwise be subject to being laid off. Furthermore, any approach that would keep most of its members employed, would also provide the union with the strength that an active dues paying membership provides."

In addition to worksharing supplemented by unemployment insurance, the Commission recommended that in circumstances where to resort to layoffs is the only viable option, they should be made according to plantwide rather than departmental seniority because this method usually has a less adverse impact on minorities and women.

Pending further development of alternative approaches to layoffs, the EEOC said that it will "continue its vigorous enforcement of Title VII as to employment practices that have an adverse impact on minorities and women" and that it will "similarly vigorously enforce" the Age Discrimination in Employment Act wherever there is evidence of discriminatory layoffs of workers protected under that Act.

Comments will be received by the Commission for the next 90 days. They should be addressed to: Executive Secretariat, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

The EEOC is responsible for enforcing Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on race, sex color, religion or national origin; the Age Discrimination in Employment Act; the Equal Pay Act; and in the Federal sector only, prohibitions against discrimination because of handicap.●

THE PRESIDENTIAL DEBATES

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for Wednesday, September 24, 1980, into the CONGRESSIONAL RECORD:

THE PRESIDENTIAL DEBATES

The League of Women Voters has laid the groundwork and issued the invitations, but it is not at all clear that the three presidential candidates will meet one another in televised debates. Differences of opinion as to the participants and format seem to have blocked the possibility that three-way debates will take place. However, voters should not be misled by the candidates' disagreements on formal arrangements. More important matters are at stake.

Mr. Carter wants to debate Mr. Reagan as often as he can without Mr. Anderson's being present, at least during the first debate. He knows that the first debate is the most critical one, and he believes that Mr. Anderson's appearance would add legitimacy to the campaign of a man who does not have much chance to be President. In Mr. Carter's view, Mr. Anderson will only siphon votes away from him and perhaps tip the election to Mr. Reagan. Because he thinks that he does better in an informal atmosphere of give and take, the President also wants the format to be one in which the candidates answer questions put to them by a panel.

Mr. Reagan wants Mr. Anderson included in the debates because he believes that the presence of the independent challenger would hurt the President. He also wants fewer debates, starting later in the year, with as little participation as possible by reporters or moderators. The former Governor of California thinks that his practiced skills on television will make him look better than his opponents.

Mr. Anderson wants to debate both his rivals, or either one, at every opportunity. He regards debate as a way to give his campaign credibility. The debates can help him firm up his presidential image. The question for the Illinois Congressman is not whether he will win or lose in the exchange, but whether he can improve his standing with the voters by being on the same platform with his better-known adversaries.

All the pushing and shoving and the maneuvering for position demonstrate that the debates have become a kind of political game. There is more debate about the debates than there is about the substantive issues of the campaign. I do not think that the voters are fooled by the candidates' posturing. They know that each candidate is trying for a confrontation which will put him in the most favorable light. They realize that the decisions being made are tactical ones, pure and simple. Voters with whom I have spoken understand that the candidates are merely jockeying for political advantage. They also understand that in an election as close as this one, the stakes are high and every edge, no matter how small, is sought.

Over the past few years, I have come to have some doubts about presidential debates. It seems to me that much of the activity surrounding them misses the point. The true purpose of the debates is to bring to the fore and clarify the issues, and the candidates' positions on the issues, so that the voters will go to the polls with the knowledge to make better choices. The debates, however, have not encouraged lively and extended interaction among candidates. With journalists asking questions on a wide variety of topics, it is difficult to focus on any issue in depth. Vague and noncommittal responses to questions are frequent. More often than not, the voters get no more than a fleeting glimpse of the candidates' views. The format that has been used in the recent past is more like a press conference than a real discussion of ideas and proposals. My own view is that the debates should be positive events for enlightening the voters. They should be made to serve the interests of the voters, not those of the candidates. They are an aspect of a campaign which the candidates should not control.

In spite of my doubts, I do look on the debates as important events in the campaign. They are potentially useful devices in that they may offer the voter firsthand information on the candidates and their opinions. Moreover, the voter gets to see the candidates under pressure as they reply to questions, and he may get a valuable impression of them as they stand side by side in a setting they themselves do not control. On the basis of conversations I have had with Ninth District residents, I am convinced that the debates are taken to be major happenings in the campaign. Indeed, I am a bit disturbed by the importance the debates have assumed in the minds of some voters. Surely one should not reach final conclusions about a candidate solely because of what one sees of him during the course of a few brief debates on television. The voters should be seeking good judgment above all else in a presidential candidate, and I am not persuaded that televised debates highlight that quality to the fullest extent possible.

For what it is worth, I think that Mr. Carter should join in a three-way presidential debate. I know that he believes it better to reject a three-way debate and take the inevitable criticism than to meet his two opponents head-on and elevate Mr. Anderson. His refusal to take on his two challengers together, however, makes him appear unwilling to defend his record against all comers. Although it is highly unlikely that Mr. Anderson will be the next President, he is a factor in the election and he is entitled to participate in the debates.●

RUSSIAN NUCLEAR PLANS BECOME REALITY FOR EASTERN BLOC NATIONS

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. WYDLER. Mr. Speaker, recently the Soviets announced the progress they are making in building nuclear plants in Russia and Eastern Europe. I noted in a report to the Congress over 2 years ago that the U.S.S.R. was on the verge of accomplishing an atomic Sputnik in terms of their nuclear development progress versus the United States.

On May 12, a Soviet official, A. Obortov, wrote an article in the Moscow Gazette entitled "CEMA: Intergration in Action—Collaboration Among Power Industry Workers." The following excerpts from the article are strong confirmation of the major milestones the Soviets have achieved in building nuclear powerplants throughout Eastern Europe, as well as their steps toward a more widely dispersed electrical grid in the eastern bloc. I should remind my colleagues that Russia is more blessed with oil and gas than the United States and also has considerable coal, and yet, they see the real need for strong pursuit of the nuclear option for electrical power generation. It is tragic that this administration has chosen to stifle this option.

The excerpts follow:

Improving the work of the integrated electric power systems is regarded as one of the most important directions in the development of the CEMA countries' fuel and energy complex. With the help of the integrated electric power systems it is planned to create the conditions for the fuller incorporation in economic circulation of countries' own existing hydroelectric power resources and fuel reserves, the intensive development of nuclear power, the formation of the optimum structure of generating capacities and the fuller realization of the technical and economic advantages of parallel working by state power systems. On the agenda are questions of erecting various energy projects by the joint efforts of interested countries, particularly main electric power supply systems with a tension of 750 kilovolts, and of carrying out joint research and design work with a view to further refitting the sector on a modern technical basis.

THE CONSTRUCTION OF NEW NUCLEAR POWER STATIONS

In many CEMA countries nearly all the growth in electric power consumption up to 1990 is to be provided for in the main from the development of the nuclear power industry. Herein lies, in essence, the meaning and major national economic significance of the program for the construction of nuclear power stations in the fraternal countries with a total capacity of 37 million kilowatts, which amounts to one-third of their entire electric power potential at present. This will yield an annual saving of 75 million tons of fossil fuel (in standard terms).

At present the capacity of nuclear power installations which have been created in the fraternal states totals more than 3.7 million kilowatts. Last year the construction of the second phase of the Nord atomic power station was completed in the GDR. Its planned capacity reached 1.76 million kilowatts. A second Vver-440 unit has recently been switched on to join the power system at the Bohunice atomic power station in Czechoslovakia. The construction of the Paks atomic power station in Hungary has entered the final stage, and it is planned to commission the first phase this year. New capacities are being created at the Kozloduy atomic power station in Bulgaria. Preparatory work is taking place for the construction of nuclear power stations in Cuba and Poland.

The Soviet Union gives technical assistance to the socialist community countries in the construction of nuclear power stations. At the same time our country is opening up new paths for the nuclear power industry. The creation of the main Vver-1000 unit, with a unit capacity of 1 million kilowatts, is being completed at the Novovoronezhskaya AES, one of the biggest in the country. In a few years' time such units will find wide application in the European CEMA countries. A powerful experimental and commercial fast neutron reactor has been launched at the Beloyarsk nuclear power station.

The Soviet Union has embarked on the construction of the Khmelnitskaya AES, together with interested countries. A multilateral agreement on its construction was signed last summer. Talks are also under way on the joint construction of the Konstantinovskaya AES in the USSR. By 1990 the volume of electric power supplies from the two stations to the European socialist countries taking part in the construction work could amount to 20-22 billion kilowatt-hours a year.

Special significance is attached to the production of equipment for nuclear power stations under construction. In 1977 the CEMA session approved a program for the maximum possible development of nuclear power machine building. Unique in terms of its scale and the complexity of the problems being resolved is the agreement on international specialization and production sharing and reciprocal deliveries of equipment for nuclear power stations for the period 1981-1990, signed in Moscow during the 33d CEMA session. Its implementation of the program for developing the nuclear power industry in the community. On the basis of the international socialist division of labor, about 50 industrial associations and enterprises in Bulgaria, Hungary, the GDR, Poland, Romania, Czechoslovakia, the USSR and Yugoslavia are to be involved in cooperation, being allocated a certain range of production and volume of deliveries of equipment for nuclear power stations. An intergovernmental commission at the level of deputy heads of government has been set up to coordinate work in fulfilling that agreement.

INTERSTATE ELECTRIC POWER TRANSMISSION LINES

An important aspect of the long-term development of the integrated electric power systems is the erection of new interstate electric power transmission lines. Calculations show that the optimum version for the integrated electric power systems is the creation of a main electricity grid with a tension of 750 kilovolts, which must be supplemented by grids with different classes of tension.

Two powerful interconnected cycles of power transmission lines with a tension of 750 kilovolts—the Northern and the Southern—with a total length of more than 7,400 km are to be formed on the territory of the European socialist countries and the USSR.

They will make it possible to ensure highly reliable parallel work by the integrated electric power systems, to carry out exchanges of tremendous flows of electric power, to offer an intersystem capacity of 4,400 megawatts and give the countries a real saving in capital investments to the extent of about R400 million (at 1975 prices) and to create the conditions for the commissioning of power units with a unit capacity of 1,000 megawatts and more and for providing mutual emergency assistance on a significant scale.

The first important step toward the formation of the main grid of the intergrated electric power systems was the introduction into commercial operation in early 1979 of the 750-kilovolt power transmission line from Vinnitsa (USSR) to Albertirsa (Hungary), which was constructed by the joint efforts of Bulgaria, Hungary, the GDR, Poland, the Soviet Union and Czechoslovakia. The fundamental significance of this power transmission line lies in the fact that it laid the foundations for parallel work by the Mir power system and the USSR's unified power system. The world's biggest international power association was formed.

In the current 5-year plan another four 400-kilovolt power transmission lines have been constructed, namely the lines from Hradec (Czechoslovakia) to Releradorf (GDR), Gydr (Hungary) to Podunajske Biskarice (Czechoslovakia), Albertirsa (Hungary) to Levice (Czechoslovakia), and Rybnik (Poland) to Nosovice (Czechoslovakia) and Albrechtice (Czechoslovakia). Another major project will be the 750-kilovolt power transmission line from the USSR to Poland. An agreement was concluded on its joint construction by Hungary, Poland, the GDR, the USSR and Czechoslovakia in March

1978. The line will make it possible to transmit 12 billion kilowatt-hours of electricity from the Khmelnitskaya AES to the countries concerned.

Also under examination is the question of the construction of a 750-kilovolt power transmission line linking the USSR, Romania and Bulgaria, which will make it possible not only to ensure deliveries of electric power from the Konstantinovskaya AES to Bulgaria and Romania, but also the significantly increase the reliability of the working of the southeast section of the integrated electric power systems.

The CEMA member countries are waging a struggle for the rational and economical expenditure of energy resources in all sectors of the national economy, including in the electric power industry itself. The proportional expenditure of fuel is being reduced at thermal power stations, the electric power expenditure of thermal and nuclear power stations for their own needs is being reduced, and also losses in electricity grids are being cut. Targets in this sphere are included in economic and social development plans. Their fulfillment has become an important state affair. The planned nature of work in saving fuel and energy resources is yet another advantage of the socialist economic system. This work has taken on great scope in the GDR. For instance, the task set for the current 5-year plan (1976–1980) of an annual reduction in power-intensiveness in industry of 4.7–5.0 percent and of 1.8–3.0 percent in electricity-intensiveness is being successfully resolved in the republic. That means that in the current 5-year plan a saving of 40 million tons of fuel in terms of run-of-the-mine brown coal will be achieved. However, there are still tremendous reserves in this sphere in the CEMA countries. At present comprehensive measures are being elaborated in the council's organs aimed at increasing the efficiency of fuel utilization in the electric power sphere.

The results achieved in the implementation of the general plan in recent years are convincing evidence of the accelerating process of socialist economic integration in a key sector of material production.●

W. CLEMENT STONE

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. RHODES. Mr. Speaker, there has been much discussion about the younger generation in America, what it is doing, and where it is headed. It has been said that as a nation we should spend our efforts in preparing youth for the path, more than in preparing the path for youth.

In accordance with that preceptive idea, the congressional award program was established by the Congress in 1979. It is aimed at stimulating young people to achieve, to learn the discipline of applied effort, to seek physical fitness, to innovate and persevere. Truly, this is basic survival training for our complex and bewildering times.

The program is noncompetitive. It matches the individual against his or her goals, with guidelines for procedure and a record of progress, congressional medals are awarded to those who stay the course. I believe this is a most worthwhile program, and congratulate the Senator from Wyoming, Mr. WALLOP, who introduced and pushed this legislation. There are 37 million people between the ages of 14 and 23, who are in the difficult period that marks transition from childhood to the adult world. This congressional award program is aimed at helping them establish a mode of life, an approach to problems and to be recognized for dedication and diligence. This program is entirely supported by private funding.

The board that will administer this program has had its first meeting and has chosen as its chairman a distinguished American, W. Clement Stone. Certainly, Mr. Stone is representative of the American story. From a small beginning, applying his personal philosophy of study, think, plan, act, he has built an insurance business that is international in scope.

The congressional awards program is but one of the many service type of programs that Mr. Stone has graced with his energy, backing, and enthusiasm. He shares his zest for life by helping others, by working with organizations devoted to the betterment of mankind. It was my great pleasure to have the opportunity to appoint Mr. Stone to this board. Its membership of outstanding Americans have chosen a fitting symbol, and an active and energetic chairman. I am sure that under Mr. Stone's guidance, the congressional awards program will soon be in full swing, and will serve its admirable purpose of stimulating young people to work and achieve.

In these times of challenge and turmoil, it is refreshing to know that this kind of program has been started by the Congress, and is being carried forward by Mr. Stone and the other members of the board. It is proper that the Congress be a part of this effort, for our youth are our most precious national resource.●

VOLCKER LETTER ON COUNTRY LENDING EXPOSURE SURVEY

HON. BERKLEY BEDELL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BEDELL. Mr. Speaker, during last week's debate on H.R. 7244, increasing the U.S. quota in the International Monetary Fund, I brought to the attention of the House a valuable survey on lending by American banks to foreign banks and governments. This report is known as the "Country Lending Exposure Survey" and is prepared twice a year by the Federal Reserve Board.

I believe that Congress should be concerned with the issue of overseas loans because many of the governments involved are LDC's who are having difficulty repaying the loans. Conversely, by promoting risky, short-term ventures, the banks involved may be overextending themselves. The danger arises in that the taxpayer is insuring these risks and that, as a result, our tax money could be wasted on financing the defaults on large loans.

For this reason, I have requested that the Federal Reserve Board begin making a copy of each Country Lending Exposure Survey available to Congress on a formal basis. In response, Mr. Paul Volcker, Chairman of the Fed, has written me to say that he also believes it is highly desirable for Congress to receive this information and further assured me that he would formally forward the survey on a regular basis to the chairmen of the relevant committees of Congress. I wish to thank Mr. Volcker for his cooperation and insert his letter as follows:

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., September 15, 1980.

Hon. BERKLEY BEDELL,
House of Representatives,
Washington, D.C.

DEAR MR. BEDELL: I understand that members of your staff have been in contact with the Board's staff about a possible amendment to H.R. 7244 which would require the Federal Reserve to transmit copies of the Country Exposure Lending Survey to the Senate Foreign Relations Committee and the House Banking, Finance and Urban Affairs Committee.

I believe that, especially during a period where increasing attention is being focused on international bank lending generally, it is highly desirable to provide the relevant Congressional Committees and the public with available information on the foreign exposure of U.S. banks. For this reason, the agencies responsible for conducting the semi-annual survey of foreign lending by large U.S. banks have regularly released to the public the results of that survey since it was inaugurated on a permanent basis in December 1977. On several occasions the Board's staff has also made available to Congressional Committees and individual Members of Congress supplementary disaggregated information and analysis. I believe that these procedures have worked well to date.

In view of this satisfactory record, it does not seem necessary to me to embody a request to supply such information in legislation. Requiring such a statistical report via legislation would reduce the flexibility of the Federal Reserve and other agencies to modify our statistical practices if circumstances were to change in the future. We are always mindful of the reporting burdens that are imposed on banks, and regularly consider ways of reducing that burden consistent with informational needs. If this survey were required by legislation, and if circumstances change such that only an annual survey was felt to be necessary, then we would need legislative action to make such a change.

In view of the interests of the various Committees in this information, I would plan to make it a practice to formally forward the survey on a regular basis to the Chairmen of the relevant Committees of Congress. I think that this approach would provide the Committees with the required information in a flexible manner without the need to embody the arrangement in a statute.

I hope this approach will meet your objectives.

Sincerely,

PAUL A. VOLCKER.●

THE 75TH ANNIVERSARY OF THE NORTHEAST NEWSPAPERS OF LOS ANGELES

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. ROYBAL. Mr. Speaker, today the Northeast Newspapers of Los Angeles are celebrating their diamond jubilee commemorating 75 years of continuous service to the communities of northeast Los Angeles. This represents 3,900 weeks of publication, making this newspaper chain the oldest community newspaper concern still publishing in the city of Los Angeles.

Beginning in 1905 with the Highland Park Herald, the Northeast Newspapers today serve some 90,000 households in the communities of Highland Park, Eagle Rock, Mount Washington, Lincoln Heights, El Sereno, Boyle Heights, Belvedere, and South Pasadena. Under the leadership of founder and publisher Oran W. Asa and his wife Jean, the Northeast Newspaper chain is characterized by active community involvement and a neighborhood focus much needed within the urban environment.

Through his long and distinguished publishing career, Mr. Asa has been a community activist in the finest tradition. As an advocate for viable and safe inner-city neighborhoods, prosperous community business districts, and the rights of the poor and Hispanic residents of the city, he has used the Northeast Newspapers as a vehicle to focus public attention on the problems and attributes of northeast Los Angeles. Construction of the first expressway in California, the Pasadena Freeway, provided the battleground for the paper's efforts on behalf of the displaced residents whose homes were in its intended path; with the construction of Dodger Stadium in the Chavez Ravine section of Los Angeles, Northeast Newspapers came to bat for the rights of the poor who were resettled to make way for the development; and currently, the paper has taken a strong and leading role in the drive to revitalize the northeast communities, Los Angeles' first suburbs.

These are but a few examples of the vigorous and commendable community involvement of the Northeast Newspapers reflecting the concern and dedication of its publisher, Mr. Asa, for the vitality of this section of Los Angeles. A long-time resident and businessman in the area, Mr. Asa is no stranger to the needs and concerns of the community. He began his newspaper career with the Highland Park News-Herald in 1933, where he served as editor for 8 years. In 1946, with the purchase of the Lincoln Heights Bulletin-News, Mr. Asa was well on his way to establishing the eight-paper chain as it exists today.

It is most fitting that we, in the Congress of the United States, join Mr. and Mrs. Oran Asa and the staff of the Northeast Newspapers of Los Angeles in commemorating 75 years of distinguished public service.●

INTERNATIONAL CONFERENCE ON POPULATION AND THE URBAN FUTURE

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. OTTINGER. Mr. Speaker, earlier this month, more than 200 mayors and representatives of the 41 cities of the world projected to have populations of 5 million or more by the year 2000 met in Rome. This conference, sponsored by the U.N. Fund for Population Activities, considered the present condition and future trends of population growth and the problems generated by rapid urbanization in various parts of the world.

Out of this conference came the "Rome Declaration for Population and the Urban Future." I believe this declaration deserves the consideration of my colleagues and I am including the text of the declaration in the RECORD.

One of the recommendations of the conference was that all countries which do not yet have comprehensive population policies and programs should formulate them. These policies should be fully integrated into the process of development planning, particular emphasis being given to health, education, housing, nutrition, employment, and environmental conditions.

In August 1979, I introduced legislation to declare a national policy of population stabilization and to establish a White House Office on Population Policy. This legislation is cosponsored by 24 of my colleagues: Representatives DANIEL AKAKA, BERKLEY BEDELL, TONY BEILENSON, JONATHAN BINGHAM, JOHN BURTON, TONY COELHO, JOHN CONYERS, RON DELLUMS, THOMAS DOWNEY, ROBERT EDGAR, VIC FAZIO, WILLIAM FRENZEL, ROBERT KASTENMEIER, PETER KOSTMAYER, PAUL MCCLOSKEY, STEWART MCKINNEY, NORMAN MINETA, TOBY MOFFETT, LEON PANETTA, BENJAMIN ROSENTHAL, STEPHEN SOLARZ, PETE STARK, HENRY WAXMAN, and TED WEISS.

In addition, this legislation has been endorsed by various organizations, including American Public Health Association, Concern, Conservation Foundation, Defenders of Wildlife, Environmental Action, Environmental Fund, Hawaii State Commission on Population and the Hawaiian Future, Izaak Walton League of America, Los Angeles Regional Family Planning Council, Massachusetts Conservation Council, National Alliance for Optional Parenthood, National Audubon Society, National Family Planning and Reproductive Health Association, National Parks and Conservation Association, National Wildlife Federation, Natural Resources Defense Council, Population Action Council, Population Crisis Committee, Population Institute, Population Reference Bureau, Sierra Club, Texas Family Planning Association, World Population Society, and Zero Population Growth.

Although no action has been taken on this legislation to date, I plan to reintroduce similar legislation when Congress reconvenes in January. We need to face up to the population realities of today and tomorrow—to debate them, understand them, and commit ourselves to influencing them to the benefit of all Americans and the world. The time is right for Congress to act by passing this legislation.

The text of the Rome declaration follows:

ROME DECLARATION FOR POPULATION AND THE URBAN FUTURE

PREAMBLE

1. We, the participants of the International Conference on Population and the Urban Future:

Having assembled in Rome from September 1 through September 4, 1980 at the invitation of the United Nations Fund for Population Activities (UNFPA).

Grateful for the warm and generous hospitality extended to us by the City of Rome and the Government of Italy.

Having considered the present conditions and future trends of population growth and the problems generated by rapid urbanization in various parts of the world, hereby issue this declaration:

2. We believe that the objectives, and the measures set out in this declaration will contribute towards the achievement of the goals of the World Population Plan of Action, the Colombo Declaration on Population and Development, the New International Economic Order, the recommendations of the Vancouver Conference on Human Settlements, the Action Plan of the Stockholm Conference on the Human Environment, and of other international strategies for improving the living conditions of people all over the world.

THE NEED

3. It is estimated that around the year 1800 less than 3 per cent of the population of the world lived in urban areas. By 1920, the figure had risen to fourteen per cent. By 1950, urban populations formed a quarter of total world population. By the end of this century, over half of the world's population will be urban. In the next two decades, the world will undergo, as a result of the urbanization process, the most radical changes ever in social, economic and political life.

4. The impact of urbanization will differ in the different regions of the world. In 1980 the total world population is estimated at 4.2 billion and is projected to increase to 6.2 billion by the year 2000. Urban population will increase from 1.8 billion to 3.2 billion during the same period. Over two billion of this total urban population will be in the developing countries. Today, the number of cities with populations of 5 million or more is 26 with a combined population of 252 million. It is projected that by

the year 2000, there will be 60 such cities with a population of 650 million. Approximately 45 of these "supercities" will be in the developing world.

5. We recognise that, historically, the city has been the engine of development and the forge of human creative energies. In fact, the city has often been the place in which civilisation has blossomed. We believe that the process of urbanisation can be harnessed to achieve mankind's goal of just, peaceful and lasting development. But if this is to happen, urbanisation must take place under planned and orderly conditions.

6. Today, as we review the situation around the world, we find that these planned and orderly conditions for urbanisation for the most part do not exist. We find that the problems confronting urban settlements are in fact already acute in many parts of the world. They include shortages in virtually every service, amenity and support required for tolerable urban living. Housing and shelter, basic health services, sanitation, clean air and potable water, education, transport, energy supplies, open spaces and recreational facilities—all these are lacking in many parts of the world. Moreover, under conditions of unplanned urbanisation, the situation is becoming worse rather than better.

7. Economic problems—such as unemployment, underemployment, lack of means of livelihood, poverty and deprivation—loom large. Social problems—crime, delinquency, social segregation and the exploitation of certain groups, e.g., migrants and urban squatters—are becoming increasingly acute, as are environmental problems such as congestion and pollution. These questions are not confined to the developing countries. In the more developed countries, the inability of cities to cope with the problems which they face has become one of the dominant characteristics of the late 20th century.

8. Unplanned urbanisation may generate tension between groups and classes within the city itself; it may also generate tension between urban and rural areas within national boundaries. Peace itself, which is the precondition for development, may be put in jeopardy. For, as the Colombo Declaration on Population and Development stated, one of the principal threats to peace is the social unrest caused by the accumulation of human fear and hopelessness. Fear and hopelessness can accumulate both quickly and enduringly in the hearts of the urban poor when their aspirations are not realised.

9. We believe that the pace and pattern of urbanisation, and the nature of the social and economic development that takes place, are crucially influenced by demographic trends. In the less developed countries, migration from rural areas formerly contributed the major part of urban growth. Now, natural increase—the excess of births over deaths—generally contributes 60 per cent of urban growth. In the more developed countries, 60 per cent of urban growth is accounted for by migration. We believe that the process of urbanization can only be managed where the demographic factors contributing to this process are themselves managed through economic, social, political and cultural measures. We must seek to match population with resources in cities, in regions, in countries and—ultimately—in the world itself.

OBJECTIVES

10. To improve and enrich the quality of life for these increasing numbers of urban dwellers—all of them individuals needing food, shelter, clean water, work, education and medical care, as well as a decent physical and social environment to live in—and to avoid a continued aggravation of the urban situation over the next decades, a fairer distribution of wealth between nations is necessary. At the same time internal changes are necessary to ensure an equitable distribution of resources and a fair and just society within each nation. The objective of managed population growth and planned urbanization must be to achieve a balanced allocation of resources and development opportunities and of the economic and social benefits resulting from them.

RECOMMENDATIONS

11. In order to achieve these objectives, it is vital that countries develop a strategy for national planning for the urban future. Such strategies, supported by appropriate legislation and funding should include, among others, three important elements, namely:

(a) the formulation of comprehensive national population policies,

(b) policies for balanced development, and

(c) policies for improvement of urban areas.

12. The formulation of comprehensive national population policies.—All countries which do not yet have comprehensive population policies and programmes should formulate them. A comprehensive national population policy should, among other things, specify national and sub-national goals on the rate of growth of population, on levels of fertility and mortality and on the distribution of population between urban and rural areas. It will need to be fully integrated into the process of development planning, particular emphasis being given to health, education, housing, nutrition, employment and environmental conditions. We urge that such policies be formulated in all countries by 1985.

13. Policies for balanced development.—Plans for the redistribution of population, as part of a comprehensive national population policy, will only succeed if they form part of a strategy for balanced development. Such a strategy should be aimed at encouraging a balanced pattern of urban settlements, i.e. small, intermediate and large cities, and at the economic development of rural areas. The elimination of glaring inequalities and disparities in the quality of life and opportunity between urban and rural areas should reduce the flow of migration from the countryside to the cities. Similarly, the provisions of better information to rural populations about economic opportunities and social amenities—or the lack of them—available in the cities should permit potential migrants to have a clearer vision of the future that awaits them.

14. Policies for the improvement of urban areas.—The shanty towns and slum areas of the cities are mainly populated by migrants from the rural areas and the urban poor. Most of the urban services, such as educational and health facilities, potable water and urban sanitation are beyond the reach of these people. It is important that cities pay special attention to problems of these vulnerable groups, and that the sub-cultures of such groups be studied. The object should be to identify the values and dynamics of vulnerable groups. Special programmes should be developed aimed at facilitating the adaptation and integration into urban living of disadvantaged population groups such as new migrants, poor families, children and youth, the homeless and elderly. Such programmes should also be aimed at transmitting suitable skills to improve job opportunities.

15. The economic opportunities, in the context of national, regional and local development policies, offered by judicious "upgrading" of shanty towns and other marginal settlements should be recognized and exploited wherever possible. Policies and programmes should be developed to recognize and strengthen the role of the transitional or informal sector in the economy.

16. High land value is often one of the principal limits to the implementation of urban plans. Therefore, rules and regulations should be taken into account to control the real estate market in order to avoid an unbalanced land use and to let local administrations carry out fair urban planning for the different social groups.

17. More generally, it is necessary to achieve a revitalization of the cities as centres of intense social activity and communication, culture, heritage and civilisation.

18. Some measures are common to all three aspects of the above strategy. They will need to be adopted as appropriate at the national, regional, metropolitan and local levels. The most important are:

(a) Creation or strengthening of the necessary institutions needed to formulate and implement policies for integrating and coordinating urban development within the process of economic, social and physical development itself.

(b) Improvement of collection of population and related data required for policies and programmes for development and integration or urban planning in accordance with national objectives, and promotion of related research.

(c) Encouraging the full participation of the population at large and their community organizations in the urban development process both at the planning and the implementation stage of policy and programme development.

(d) Establishing or strengthening measures to enable all couples and individuals to have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so.

(e) Building up of an institutional framework for exchange of experience, views and ideas on population and urban development between planners, policy makers and administrators within and between countries. This should permit the effective monitoring of urbanization trends and of the implementation of the policies and measures suggested above.

COMMITMENT TO ACTION

19. The measures proposed in this Declaration require action primarily at the national, regional, metropolitan or local levels. International cooperation and assistance is, however, urgently needed if these measures are to be successfully carried out. The various international bodies concerned, including nongovernmental organizations, are called upon to take the necessary steps within their mandates to help cities and nations to deal effectively with present and future urbanization problems. Governments of developed countries and others able to contribute to international assistance should intensify their support, both in bilateral assistance programmes and through contributions to multilateral agencies, for the activities in the field of population and urbanization covered by this Declaration. In this connection, we welcome the initiative of the United Nations Fund for Population Activities in convening this Conference and urge governments to increase their support of UNFPA so that it may, within the framework of its mandate, devote increasing attention to the problems of urbanization, including monitoring the implementation of this Declaration in collaboration with United Nations and other international bodies.

20. Finally, we dedicate ourselves to devote our best endeavours towards the attainment of the objectives and recommendations of the Declaration, consistent with other national priorities and development goals. We believe that the present decade, the decade of the 1980's, is the time for intensive effort and for the necessary reorientation of the response of peoples and governments to the urbanization problem. In the past the development of the city and of urban living has greatly expanded mankind's horizons. It has permitted the enrichment of life, as exemplified by the contributions of science, the arts and education; by tremendously expanded options for goods and services; and by the provision of a better level of living for all. We ask no less for the future.●

JOHN RHODES DISCUSSES WHAT A NEW CONGRESS WILL MEAN FOR AMERICA

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. GINGRICH. Mr. Speaker, our distinguished colleague and leader of my party, JOHN RHODES, has been traveling the country telling Americans what a Republican 97th Congress would be like. He has given it a lot of thought and I fervently hope he will be putting his plans into action on January 5, 1981.

New Orleans Times-Picayune reporter Charles Bartlett has been listening to JOHN RHODES and was impressed by what he heard. Mr. Bartlett wrote an excellent column about it that appeared in the Times-Picayune on September 16, and I commend it to my colleagues.

The column follows:

WHAT GOP CONTROL WOULD DO FOR CONGRESS

(By Charles Barlett)

"The House Republican leader is a soft-spoken realist and he's been around since 1953. So he knows how the game goes. He draws cheers when he plumps around the country for a Republican House, but when he explains this can only be done if the local Democratic incumbent is beaten, his audiences tend to go soft.

"People come up and say, 'I know you're right. I know these Democrats have done a really bad job. But our good old Joe here in this district is different.' They describe how 'good old Joe' comes home weekends, makes conservative speeches, plays golf with the president of the Chamber of Commerce. They describe how he answers his mail promptly, retrieves missing VA checks, keeps Social Security payments coming and sends out surveys to learn what people think.

"This has always sufficed to keep old Joe in his seat. But the Democrats captured the House in 1932 because the voters thought they would do better with the economy. Now there is a perception that the Democratic Congress has done its share to mess up the economy. People are blaming Congress more than the president for inflation, and a majority is telling pollsters that the Republicans might manager the economy better.

"The big risk to old Joe is that the voters will grasp the urgency of giving the Republicans a chance to tidy up the place. Popular government has always flourished best under popular pressure to 'throw the rascals out,' and in giving non-stop control of Congress to the Democrats, the voters have sorely tested the political purification process.

"A clean-up job would be Rhodes' priority undertaking as speaker. He has in mind a swift move against the entrenched Democratic fiefdom where the power games are played, and immediate action by his committee chairman to cut their staffs by at least 20 percent. This will save some $100 million and ensure that plans go no further for the construction of a fourth House office building.

"'The whole thing cries out for reform,' Rhodes says, pointing particularly to the proliferation of committees and committee staff aides. In 1947, when the Republicans controlled the House, all the staffs of all the House committees added up to 181 employees. There are now over 2,000 on the payroll. The Democrats have divided the action into 168 subcommittees so that everyone can have a piece of it. 'They have really gone crazy,' Rhodes maintains.

"When the Republicans gained control of the House in 1947 and 1953, they seated as committee chairmen a group of old-fashioned Republicans with little skill at projecting their virtues beyond the Rotary Clubs. But in the same way that Rhodes reflects the times better than his predecessors, Joe Martin and Charlie Halleck, the team of chairmen who would follow him into control is composed with few exceptions of able, modern politicians capable of whittling away at government without assuming the look of butchers.

"There would be plenty for this team to do. The chairmen would be prodded by Rhodes to get quickly at the Herculean task of tightening up the federal system, reviving the budget resolution process to control spending, establishing procedures to review agency regulations and doing battle with those agencies intoxicated by the expansive spirit of the Democratic years.

"It has not always been possible to contemplate Republican control of the House with enthusiasm. They had a way of dividing among themselves and hashing things up. Many really were bent on repealing the 20th century.

"But there is a new breed of Republicans on the scene, and some offer attractive alternatives to old Joe. They are as responsible as the Democrats and considerably more original in their approach to government. They have learned to compromise with the welfare state, but they don't have the Democrats' bad habit of milking it for political advantage.

"Old Joe has been slightly drugged by prolonged immersion in the hot tub of power. His glazed eyes have lost the gleam of idealism that made Democrats appealing in an earlier day. This is why he may be closer to being dumped than [suspected] . . ."●

NEED YANKEE INGENUITY

HON. TOM HARKIN

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. HARKIN. Mr. Speaker, I wish to call to the attention of my colleagues a recent broadcast editorial written by Mike Harris, of the Iowa Farm Bureau Federation.

Mr. Harris offers some particularly sound advice as we watch the Japanese automakers meet the challenge to innovate, create, and increase efficiency, while at the same time we witness serious problems in our own auto industry here at home.

Mr. Harris' editorial follows:

THE END OF AN AMERICAN DREAM

The Old American dream of a giant luxury car is tarnished and faded.

During the next few weeks we'll be watching many car showings as the auto makers bring out their various models. But this year not as many people will be looking towards Detroit, but instead, towards Japan. 1980 will be the year Japan will displace the United States as the world's leading producer of automobiles. Japan is expected to build about ten and a half million vehicles while the U.S. will probably only build about ten and a quarter million.

The Japanese have been quite successful marketing their cars in the U.S. Currently one out of five cars bought in America comes from Japan.

One Japanese manufacturer has already announced plans to build an assembly plant in the United States. Others are also considering U.S. plants. That move should increase competition in the domestic automobile industry.

But building assembly plants here worries some Japanese manufacturers. They don't think American workers will be able to achieve the high standards of quality control Japanese workers routinely achieve. That's ironic because quality control was invented by American industry.

Now is not the time to point accusing fingers of blame for the current automobile slump. Now is the time to quit . . . quit complaining, quit being outproduced, outdesigned, outperformed and outhustled. Now is the time to reapply our Yankee ingenuity. It's time for us to achieve our earlier stature and again become producers of quality merchandise.●

MIDDLE INCOME WAGE EARNER TAX RELIEF ACT OF 1980

HON. JIM MATTOX

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. MATTOX. Mr. Speaker, today I have introduced a bill to provide a comprehensive and balanced reduction in taxes paid by individuals and businesses. The Republicans have introduced a tax-cut plan, the Kemp-Roth bill, which provides most of its tax relief to upper-income individuals. My plan, the Middle Income Wage Earner Tax Relief Act of 1980, provides much more tax relief to working- and middle-class families.

The Republican plan anticipates a net reduction of $36 billion in individual and business taxes in calendar year 1981. The Republican plan is sometimes perceived as reducing individual income taxes by 10 percent. But this is very misleading. The Republican Kemp-Roth bill does not cut taxes by 10 percent; rather, it cuts tax rates by 10 percent. This very Republican approach to the issue gives the greatest tax relief to people in the upper-income brackets, but provides precious little relief to middle-class taxpayers.

My plan reflects a much more balanced and equitable approach. It provides the same amount of total tax relief in 1981—$36 billion—as the Republican plan. The major difference between my plan and the Republican plan is that my plan provides much more tax relief to the lower- and middle-income groups.

My package contains four major components. The first element of the tax-cut package is a tax credit of 4 percent of the income taxes owed, up to a limit of $500 per joint return and $250 per single return. By providing a credit against individual income taxes owed and by placing a limit on the total amount of the credit, this provision concentrates the relief on middle-income taxpayers. This component will provide about $9.5 billion in tax relief.

The second element of my tax cut provides relief from the so-called marriage penalty by providing a tax credit equal to 6 percent of the first $10,000 of the lesser earning spouse's income. This provision is expected to provide the most relief for the tax burdened working-class and middle-class families. This provision is expected to provide $9 billion in tax relief for families.

A third element of the tax package provides a tax credit equal to 10 percent of the social security taxes owed by individuals or employers. This provision will help offset the increase in social security taxes that is scheduled to take effect January 1, 1981. But by providing a tax credit against income taxes, this provision preserves the integrity of the social security trust fund. Employees and the self-employed would receive about $7 billion in tax relief and employers would receive about $6.7 billion in tax relief. The total amount of tax relief due to the 10 percent tax credit would be $13.7 billion.

The fourth feature of my tax plan will provide a $4 billion reduction in business taxes. This will be accomplished by changing the rules on depreciation and adopting the so-called 10-5-3 approach.

I have provided a table that summarizes the provisions of my tax-cut package.

The staff of the bipartisan Joint Committee on Taxation has analyzed both of these proposals. A comparison of these analyses shows that my tax package will focus tax relief on the middle-income families while the Republican plan focuses its relief on the upper income groups. For example, a family of four with an annual family income of $10,000 would receive tax relief of $282 under my plan, but only $52 under the Republican plan. A family whose annual income was $30,000 would receive $957 tax relief under my plan, but only $405 tax relief under the Republican plan. The Republican plan provides $2,190 in tax relief to the family with $100,000 in annual income, compared to the $1,495 in tax relief under my plan. The accompanying table comparing the tax relief provided by the two plans at various levels of income clearly shows that my plan gives greater tax relief to the middle class.

The burdens of taxation and inflation have hit the middle-income families the hardest. They are the ones who are most hard pressed to make ends meet. Any tax cut that Congress enacts should include the middle class among its beneficiaries.

Tax relief should not go primarily to the wealthy. It should go to all Americans.

Tables follow:

AGGREGATE TAX RELIEF PROVIDED BY COMPONENTS OF MATTOX TAX CUT PLAN FOR CALENDAR YEAR 1980

[In billions of dollars]

	Amount
4 percent individual income tax cut (tax credit of 4 percent of taxes owed, up to a limit of $500 per joint return or $250 per single return)	9.5
Marriage tax relief (tax credit equal to 6 percent of the first $10,000 of the lesser earning spouse's income)	9.0
10 percent social security tax credit (tax credit equal to 10 percent of the social security taxes paid by employees and employers. Employees and the self-employed would receive about $7 billion in relief. Employers would receive about $6.7 billion in relief)	13.7
Business tax cut (provides accelerated depreciation under the 10-5-3 approach)	4.0
Total tax relief	36.2

COMPARISON OF TAX RELIEF FOR FAMILY OF FOUR[1]

The Republican Simplistic Tax-Cut Plan Versus the Mattox Comprehensive Tax-Cut Plan

Annual income	Tax relief under Republican tax-cut plan	Tax relief under Mattox tax-cut plan
$10,000	$52	$282
$15,000	151	449
$20,000	228	614
$25,000	305	782
$30,000	405	957
$40,000	692	1,118
$60,000	1,308	1,431
$80,000	2,036	1,475
$100,000	2,190	1,495

[1] Assumes a 2 wage earner family of 4, a 1/3-2/3 split of income between the 2 spouses, and deductible personal expenses of 23 percent of income.

Source: Staff of Congressional Joint Committee on Taxation.●

NATIONAL TRAILS SYSTEM ACT AMENDMENTS OF 1980

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. MINETA. Mr. Speaker, I am pleased that on Monday, September 22, 1980, my colleagues voted to pass H.R. 8087, the National Trails System Act Amendments of 1980.

The bill contains a provision that my distinguished colleague from California, Mr. LAGOMARSINO, and I introduced as H.R. 4587 and H.R. 4276, respectively. This provision directs the Secretary of the Interior to conduct a study to determine the feasibility of establishing the Juan Bautista de Anza National Historic Trail.

Much of the region the proposed trail traverses is land that has been developed for urban, industrial, and agricultural use; therefore, a study is needed, prior to designation, to determine the possibility of linking many of the cities of California by such a trail. The provision authorizes an appropriation of $150,000 for the study and mandates its completion within 18 months following enactment of this legislation.

The passage of this bill has been particularly timely, as the Department of the Interior's Heritage Conservation and Recreation Service renews its efforts to expand the National Trails System. President Carter, in his 1979 environmental message to the Congress, directed that the National Trails System be expanded to provide more high quality trails that are close to residential areas, where they can be used by both recreationalists and commuters. Additionally, in recent years we have witnessed an increased awareness of the need to preserve evidence of our diverse cultural heritage.

Although the Spanish had previously made land and sea forays into California and established some settlements, it was Juan Bautista de Anza, commander of the outpost at Tubac, Mexico, who established an overland route that was suitable for transporting settlers, soldiers, and supplies. The State of California's Recreational Trails Committee, the director of the department of parks and recreation, the city of San Jose, the city of Los Angeles, and many other Californians have expressed support for the national historic designation of the de Anza expedition routes of 1775 and 1776, which resulted in the founding of the city of San Francisco.

I thank my colleagues for their support of H.R. 8087, which falls within the directives of the President's environmental message and the desire of the Nation to preserve its diverse cultural history for the enjoyment of present and future generations.●

DEMOCRATIC CAUCUS SPECIAL STUDY COMMITTEE

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. EDWARDS of California. Mr. Speaker, as many of my colleagues know, in January of 1979 the House Democratic Caucus formed a six-member special committee to study the entire range of problems related to our constitutional authority to sanction offending Members and to report back at the earliest possible date with recommendations, including appropriate procedures to implement our authority.

I was designated by the caucus to chair the committee, and my colleagues ELIZABETH HOLTZMAN, CHARLES ROSE, WYCHE FOWLER, DAN GLICKMAN, and PATRICIA SCHROEDER were chosen to serve with me.

Since formation of the committee, we have been studying the historic precedents for handling cases of misconduct here in the House of Representatives and in the Senate. In recent weeks we have invited testimony from individuals who have closely observed current House ethics procedures. In a hearing which our committee held on September 18, 1980, we received recommendations from our colleagues, the gentleman from North Carolina, RICHARDSON PREYER, and the gentleman from Indiana, LEE HAMILTON—both of whom serve on the Committee on Standards of Official Conduct. We also heard from a number of lawyers who have represented House Members in disciplinary proceeding taken up by the House. Recommendations were also made by Mr. Fred Wertheimer of Common Cause. All of the testimony was interesting and informative, and will be of tremendous value to us in completing our work.

Mr. Speaker, I would like to share with my colleagues the list of questions which were posed to the witnesses at the committee's September 18 hearing. So that we might have as much input as possible into the process of developing our recommendations to the caucus, the committee would like to invite Members to submit their responses to these questions as well as their recommendations on any changes that should be made in current House ethics procedures:

1. Should the House investigate and take cognizance of the situation when a Member is convicted of a moral or related offense, such as the solicitation of prostitution, or being drunk and disorderly in public?

2. Should the House investigate and take cognizance of the situation when a Member is convicted of a serious crime unrelated to his official duties and obligations such as an income tax violation?

3. Should the House take action of any sort upon "indictment" by a grand jury, or should the presumption of innocence preclude any action by the House at this stage of the proceedings?

4. Should the House continue to require a Member to abstain from participation in the formal life of the House (everything except constituent service) after conviction but pending appeal?

5. Should the House expel a Member who is sentenced to a term in prison for a term of 6 months or more if the Member refuses to resign?

6. Should the House establish a Citizens Oversight Panel (composed of former Members and retired judges) to hear complaints and recommend further investigations by the House Committee on Standards of Official Conduct?

7. Should the House establish a Court on Ethics (composed of eight Members chosen by lot with a senior judge presiding) to decide the cases investigated by the House Committee on Standards of Official Conduct?

8. Should the House prescribe a series of definite and tougher penalities; i.e. fines when the Member has cheated on the House or its employees; loss of five years seniority when a Member is censured, three years upon a reprimand?

9. Should the House take jurisdiction over offenses committed in prior terms of Congress, or by the Member prior to the time of his election? If so, should there be a statute of limitations?

10. Who has the burden of proof, and what should be its quality and nature? Should the prosecution carry the burden of proof beyond a reasonable doubt, or is "clear and convincing" evidence sufficient?

11. Should the Member accused of wrongdoing have the right to counsel on the floor of the House during the House debate? Should the House create a Legal Defense Fund to assist a Member who does not have the personal financial resources to pay substantial legal expenses?

12. Should the House adopt the rules of evidence and procedure applicable in the United States District Court for the District of Columbia?

13. Should the House impose a quorum requirement of all Members on the body which hears the evidence and makes the recommendations? Should the Members attending these sessions be counted as present for purposes of rollcall votes?

Mr. Speaker, the hearing record will be held open for an additional 30 days, and any comments we receive from our colleagues will be added to the offical hearing record.●

ROD MOORE—AN EXAMPLE IN EDUCATION

HON. CLAIR W. BURGENER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BURGENER. Mr. Speaker, one of the premier educators in all of California has recently announced that he will step down after the end of this school year, and I know he will be deeply missed by not only the institution, but also the thousands of students he served for so long.

Roderic V. "Rod" Moore is the only superintendent of schools that the Oceanside, Calif., Unified School District has ever had and the senior superintendent of any unified or high school district in San Diego County.

His 14 years as superintendent in Oceanside will cap a dedicated 38-year career in public education which began in 1942.

During Rod Moore's tenure at Oceanside Unified, the district has added two new high schools, four new elementary schools, and a school for the handicapped, and the growth was accomplished within a framework of financial stability which eludes many districts.

Rod Moore's dedication was not only to the district he served, but to the well-being of public education for all children. He served 2 years as president of the San Diego section of the California Interscholastic Federation, and chaired the San Diego/Imperial County Superintendency Committee of the Association of California School Administrators.

Rod Moore's contributions to his community have never been limited to his vocation, however, upon his retirement next June, Rod will assume the presidency of the Oceanside Rotary Club, to which he has belonged and for which he has worked actively for 13 years.

I am proud, Mr. Speaker, to have known and worked with Rod Moore, and the city of Oceanside has been indeed fortunate to have had his special blend of administrative excellence and an understanding of our youth for these past 14 years.

In my opinion, Rod Moore is one of the exemplary public educators in California, and foremost, a fine man. His service, when it ends next June, will be deeply missed, but I know that Rod and his wife Norma will continue to make their mark in Oceanside long after his retirement.●

THE PUBLIC SCHOOL PRAYER QUESTION

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. PATTERSON. Mr. Speaker, I rise in support of House Concurrent Resolution 106 sponsored by my distinguished colleague from North Carolina, STEVE NEAL. This important legislation, Mr. Speaker, seeks to resolve the bitter debate that currently exists over the restriction of prayer in the public schools.

House Concurrent Resolution 106 would express the sense of Congress that the Constitution of the United States does not preclude students in public schools from having periods of established time for quiet and private prayer. Furthermore this resolution states that public school authorities should recognize the historic importance of religion to our civilization by encouraging such periods of silence.

Prayer in the public schools raises one of our most enduring and fundamental questions—that of the proper relationship between religion and government. Our forefathers believed strongly in God and in the freedom to worship. They fiercely fought to keep the State government from dominating the church—religion—and that is one of the major purposes of the first amendment to the U.S. Constitution.

Our Government supports a belief in God through such symbols as "In God We Trust" on our coins and "One nation, under God" in our Pledge of Allegiance. Surely we ought to allow time for free and unrestricted, but private prayer.

Thomas Jefferson argued passionately for the clearest possible separation between church and state. It was his belief and that of the framers of our Constitution that the Government should never be allowed to establish a state religion nor should any religion be allowed to run our Government. The Soviet Union is a current example of what can happen if the state controls religion and, conversely, Iran is a

current example of what can happen if religion controls the state.

Today's debate over the issue of whether or not prayer should be allowed in public schools strikes at the heart of the issue of separation of church and state. There are those in Congress who have offered legislation which would remove the ability of the court to strike down State or local laws establishing a religion or prayer to be recited in public schools. This would open the door to a state religion to be established by a political majority or a powerful few.

Alternatively, there are those who would like to prohibit the setting aside of time during the school hours for any prayer, silent or otherwise. Congressman NEAL in his testimony before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice distinguished the views of these two groups and those supporting his resolution by stating:

> There is a third approach wherein we may find an accommodation of the other two—that is, those who say we cannot, and those who say we must pray in the public schools. The answer, contained in my resolution (H. Con. Res. 106) is that we can if we want to.

This legislative approach, Mr. Speaker, would reaffirm the belief established in our Constitution that religious freedom is a fundamental right of our people.

The American people clearly favor the position that children should be allowed to pray during their school day. House Concurrent Resolution 106 would allow children, irrespective of what religion they follow or beliefs they hold, to have that opportunity.

I am proud, Mr. Speaker, to be a cosponsor of House Concurrent Resolution 106 which is reproduced after this statement, and would urge my colleagues to join Congressman NEAL in ending this debate and preserving our religious liberty:

H. CON. RES. 106

Concurrent resolution declaring the sense of Congress regarding periods of silence in the public schools

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress—

(1) that the Constitution of the United States does not preclude periods of silence to be used, solely at the discretion of the individual student in public schools, for quiet and private prayer, meditation, contemplation, or introspection, even if these moments are supervised by a school official; and

(2) that public school authorities should recognize the historic importance of religion to our civilization by encouraging such periods of silence.●

ANGIE PAPADAKIS: SAN PEDRO WOMAN OF THE YEAR

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. ANDERSON of California. Mr. Speaker, only very rarely does an individual come along whom we instinctively and instantly recognize as being special. Such a person has an aura about them. Most certainly, Angie Papadakis is one of these. Accordingly, Angie has been chosen by the Los Angeles Area Council of the Boy Scouts of America as "San Pedro Woman of the Year," and a dinner in her honor will be held this Saturday evening.

It has been an ongoing pleasure for my wife Lee, and I, to be associated with such dear friends as Angie and her family. We have known each other for so long that the word "friends" hardly seems appropriate. So I would like to take a few minutes of my colleagues' time in order to chronicle for them just a few of Angie's achievements.

Blessed with having been born on Chrismas Day—I hesitate to reveal the year—one of Angie's first honors was being high school valedictorian. From that time on, Angie used her speaking and writing abilities to carve out a very impressive career. She honed those abilities with writing courses at four area colleges, and her final degree, in her own words, was an MRS—Married, Raised Sons. Angie taught a "Writing for Laughs" class at Harbor College, all the while maintaining her own writing career with articles for such widely read magazines as Reader's Digest and Good Housekeeping. Her gags have been used by many columnists and comedians. Angie's particular style of wit is so well known that Earl Wilson, the nationally syndicated columnist, has said of her, "She may look like Helen of Troy, but she writes like Aristophanes." Wherever Angie goes, a trail of laughter is left behind.

Yet besides speaking and writing on numerous events of the day, Angie Papadakis successfully runs her own advertising agency in San Pedro. And since community service is no less a part of her life, it is not surprising that her achievements in this area are equally impressive.

Angie serves on both the attorney general's and the district attorney's advisory councils. Her directorships include service to the Los Angeles County Lung Association, as well as the Harbor Area Chapter of the Salvation Army. Angie is also past commissioner of the Los Angeles County Department of Public Social Services, a position she held for 3 years. To cap off these feats, Angie is a board member of the Los Angeles County Board of Education, and an active committee member of the Explorers and Boy Scouts Clubs in the Los Angeles area.

Mr. Speaker, such extensive involvment in the betterment of one's community is bound to reap award after award. Here too, Angie Papadakis excels. In 1974, Angie was the recipient of the Arkansas Traveler Award, bestowed by Gov. Dale Bumpers. The next year saw Angie receive the Woman and Boy Award of the San Pedro Boys' Club. And in 1979, receipt of the William Spurgeon Award for service to Exploring, bestowed by the Boy Scouts of America, made Angie the first woman to be recognized with this honor. So why should 1980 be any different? Angie Papadakis was recently awarded the Amicus Collegii Medal by Harbor College, in recognition of her outstanding community leadership. And on Saturday night, she will become San Pedro's Woman of the Year.

Mr. Speaker, the entire South Bay area knows Angie Papadakis as an exceptional and wonderful woman. Always giving of her time, energy, and wit, Angie is one individual who nurtures not only our hearts and minds, but our funnybones as well. My wife, Lee, and I, are delighted to have this opportunity to pay just tribute to Angie and all she has done for our community. I am certain that her husband, Tom, and their sons, Nick, John, and Tom, are as happy for her as we are, and we congratulate them all on this most happy occasion. Furthermore, we want to extend the appreciation of the entire South Bay for her continuous and untiring efforts, and wish Angie and her family continued success and happiness.●

INDEXATION OF THE TAX SYSTEM WOULD BE A BOON TO THE FARMERS OF AMERICA

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. GINGRICH. Mr. Speaker, a new study by researchers at Oklahoma State University shows that indexing the tax rate scale is the single most effective step Congress could take to preserve the family farm.

Inflation pushes up everyone's nominal income levels and land values. For farmers with their larger-than-average acreage the effects of inflation are all the more devastating. Farmers are climbing up the progressive income tax scale even as most of their income gains are inflation generated and therefore do not translate into new wealth or purchasing power.

The Oklahoma State study took a hypothetical four-member full-time farm family, started them off in 1979 with zero cash flow and only $12,600 for living expenses, and traced their path through the next 30 years with an estimated 6 percent annual inflation rate. The results were frightening: The family's effective tax rate increased by 112 percent.

Since this family started off barely making ends meet, they would either have to sell their farm or make huge gains in nominal income just to survive. In other words, they have a choice between running twice as fast just to stand still or simply dropping out of the race. That is the future our present income tax system holds out to the family farmer.

But indexing the tax rate scale, so that only the real income gains of farmers merit higher tax burdens, offers a way out of the present chain of events. The study reveals that the same family would face a far less threatening rise in its tax burden if the tax system were indexed to the inflation rate.

I have been a supporter of indexing the tax system for many years, just as I have fought for preservation of the family farm. Some politicians claim to be for the family farm but not for indexing. Yet the results of the Oklahoma State study, which were summarized in the August 15, 1980, edition of Farmland News, tell me that the best thing Congress can do to help farmers is to remove the inflationary bias from a tax system that is driving them out of business.

The Farmland News article follows, and I commend it to those of my colleagues who want to do justice to working Americans in general and to our farm families in particular:

INDEXED TAX MORE EFFECTIVE THAN PARITY IN SAVING FARMS

INFLATION KILLING FAMILY FARMS, OSU STUDY SAYS

If farmers really want to help themselves, they should be pushing for indexed income taxes rather than for 100 percent parity.

That's the final word coming out of a study underway at Oklahoma State University, according to agricultural economist Charles Eginton. Eginton is not for or against parity, his primary concern was only to conduct a study examining the effects of inflation on farm size. But as the work progressed, he and his associates began to see data that supported what many of today's farmers already know and feel.

Things like the fact that a young would-be farmer, lacking large amounts of investment capital, would not be able to control a full-time farming operation.

And the fact that inflation has resulted in ever-increasing farm size that will eventually force the ideal of a working farm family out of existence, replacing them with "super farms."

And that current tax concessions given to farm firms encourage the substitution of capital for labor, also resulting in fewer and larger farms, since established farmers are more likely to have the working capital and thus are best able to benefit from those concessions.

Indexing would be a solution to the problem, but it would take the cooperation of the U.S. government and a major switch in our tax policies or a limiting of inflation to a 6 percent rate which would also remedy the problem. Admittedly, these goals are difficult to achieve, but they are not impossible and would benefit all taxpayers, not just farmers.

Eginton defines indexing simply as set rates of income taxes to be paid by various economical classes of taxpayers. For instance, a farmer (or plumber, businessman, etc.) making $15,000 several years ago was taxed at a specific rate—say, 20 percent as an example.

Today, in order to make ends meet at exactly the same living level of several years ago, this person will have to make $20,000 or more. But due to our present taxing methods, he will be paying a 25 percent income tax rate. Indexing would keep his rate at 20 percent, which is fair because his style of living hasn't increased, only the number of inflated dollars he handles to maintain that level.

"Where farmers get into financial hot water with our tax system is when they have to handle large volumes of capital just to make an average living," Eginton points out.

Eginton's studies show that if farmers don't take advantage of available tax concessions, they will face tremendous tax burdens or very little to leave their heirs, or both.

To get a clearer picture of how modern tax policies are affecting today's farmers, Eginton turned to OSU agricultural economics professor Luther Tweeten for guidance. Tweeten has conducted several studies examining the economical standing of the modern family farm.

The researchers initiated an Oklahoma Agricultural Experiment Station study using a computer to create simulated models of six typical family farm situations operating over a 30-year period. The study employed data gathered by USDA from actual farm situations in different areas of the country.

The farms were defined as units requiring the full-time efforts of a man, his wife and two children—about 2,600 hours of labor per year. Allowing a tight $12,600 for living expenses, each model was started in year 1 (1979) with a zero cash flow situation. That is, they lived on the farm and broke even, with no income tax that year. They were kind to inflation in the model, setting it at only 6 percent per year.

"Early in the study we noted that inflation at 6 percent did not really affect farm size," Eginton says. "However, as inflation rates went over 6 percent, tax rates needed to be indexed to preserve the structure of family farms."

How much did indexing help a given farmer's income tax situation over a 30-year period? Ironically (though perhaps not accidentally), one of the farms studied was a Georgia peanut farm.

At the start and end of the period, this particular farmer was paying 48.1 percent income tax rate on an indexed tax payment system. But when the model was placed under our current non-indexed system his effective tax rate increased by 112 percent by the end of the 30-year period.

An important phase of the study was to learn what effect the withholding of current major tax concessions would have on the farm over the 30-year period.

"Tax concessions we examined were interest payments, depreciation allowances and investment tax credits. These are tax benefits that require high income and/or wealth available for investment before they can help the farmer. For this reason, full-owner or established farmers are more able to compete for land purchases, thus gradually increasing overall farm size," Eginton explains.

Because this was only an initial project, Eginton says he used major concessions, which served to cut down the bulk of material handled in the study.

Land-based farming operations, such as row-crop farming, benefit more from the interest write-off concessions than do high equipment type farms, such as confinement type hog operations. The latter type of farm firm benefits more from depreciation allowances and investment tax credits.●

TRIBUTE TO CARL PERINA

HON. JOSEPH G. MINISH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. MINISH. Mr. Speaker, last Thursday evening, a man who has dedicated his life to serving the community in which he lives was honored by those who know and love him. A lifelong resident of Irvington, N.J., in my district, Carl, J. Perina spent 45 years as an employee of his community. He retires now from his post as director of department of parks and recreation, but his commitment to his work and his town will long be remembered.

Carl Perina was an all-State football player and was the leading man in a movie called "Irvington Romance." A graduate of the University of Pennsylvania, he was a member of the Philadelphia Opera Co. and received honorable mention by the United Press as an All-American football player.

After college, Carl Perina was a professional football player for the Montreal Wheelers. He later went to work as a property assessor for the department of revenue and finance in Irvington and worked for the New Jersey Highway Department and the Essex County Park Commission. He began his career with Irvington's Park Department in 1935.

Mr. Perina was the first town employee to enlist in service during World War II. His Air Force duty took him to England, France, Belgium, Luxembourg, and Germany, where he held the rank of captain.

Mr. Perina is a member of the American Legion, Post 16, the Masonic Lodge, the national recreation association, the Irvington Historical Society, a trustee of the Irvington Symphony Orchestra and an honorary member of the Irvington Art Associates. He has also served as treasurer and president of the New Jersey Parks and Recreation Society. Mr. Perina and his wife, Wilma, who is a guidance counselor at Irvington High School, have three children and two grandchildren.

Mr. Speaker, I would like to join these who have paid tribute to the contributions made by this extraordinary man.●

THE AGRICULTURAL CONSERVATION PROGRAM

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. MURPHY of Pennsylvania. Mr. Speaker, since the agricultural conservation program was created under the Soil Conservation and Domestic Allotment Act of 1936, it has been a consistent and effective program throughout its 40 years of existence. Despite the necessity of imposing responsible con-

trols on Federal spending in this and future years, it is imperative that we continue to support effective programs such as this. With approximately 400,000 farmers and ranchers participating in ACP activities and sharing 50 percent of the cost of the programs we should support and approve the requested funding of $190 million so that the good conservation practices in rural communities throughout the country will continue. Because of this program, not only our farmers benefit. All Americans who enjoy clean water and unpolluted streams share in the benefits of this admirable program.

In considering this program we should also consider the fact that it is administered by nonpartisan farmer elected committees well qualified to make the necessary decisions on needed conservation practices in their respective counties. Because of the regimentation imposed on the county organizations over the years we should now make this program more responsive to the local needs of county ASC committees. Because they live and work in their individual counties they know far better what each local need is and the best ways for serving those individual counties. The proper stewardship of the land is critical to this Nation's capability of producing more food than any other nation in the world. We cannot afford to fail in supporting those men and women who grow that food on our farms and ranches. I hope that the support of this body in funding the ACP will reflect not only its concern for the rural beauty of the country but will serve as a platform for continued support throughout the years and additional funding to preserve rural America.●

THE FEASIBILITY OF A RETURN TO THE GOLD STANDARD

HON. JIM SANTINI

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. SANTINI. Mr. Speaker, the time for serious, critical discussion on the feasibility of a return to the gold standard has arrived. This issue is gaining support among Members of Congress, business leaders, and top economists, who are promoting reform of the monetary system by returning dollar to gold convertibility.

As chairman of the Subcommittee on Mines and Mining of the House Interior and Insular Affairs Committee, I am concerned about the possible ramifications of remonetizing gold. Gold is a vital strategic metal with myriad industrial applications, for the most part without substitutes. Furthermore, there is currently a resurgence in U.S. gold mining activity. How a return to the gold standard would affect the mining sector and the availability of gold supplies to defense and industry is uncertain.

In spite of calls for a return to the gold standard from numerous fronts, it is not clear just what the clamoring is about. There are numerous variants of the international gold coin standard the new monetary system could take, and the feasibility of these hybrids is a matter of debate.

On October 2, 1980, at 10 a.m. in 1324 Longworth, the Subcommittee on Mines and Mining will conduct a hearing entitled: "The Feasibility of a Return to the Gold Standard." The hearing will follow a panel format and will provide a forum for experts to debate the merits of returning to the gold standard and how it can be done. It will initiate congressional dialog on a major political and economic issue and clarify some of its ambiguities.●

MILITARY CONSTRUCTION AUTHORIZATION ACT

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. WEISS. Mr. Speaker, I oppose the provision in H.R. 7301, the Military Construction Authorization Act, for the construction of a binary munitions plant in Pine Bluff, Ark. The decision to build this nerve gas production facility is a serious departure from our existing policy of a ban on use of chemical weapons. For more than a decade, the United States has regarded biological and chemical warfare as repugnant and unacceptable. In fact, we unilaterally halted any production of chemical weapons in 1969, and the Soviet Union did the same that very year. Since that time, the United States and the Soviet Union have begun negotiating a formal agreement to limit the use and development of such weapons. Our resumed production of binary chemical weapons would seriously jeopardize the preliminary agreements that have been reached, including the recent, pathbreaking agreement regarding onsite verification.

There is no firm evidence that the Soviet Union has reversed its policy banning the use or production of chemical weapons. There have been allegations that the Soviet Union has used lethal chemical weapons in Afghanistan, but no documentation has been offered by the U.S. intelligence community to that effect. Neither can we be sure that the Soviets have increased their nerve gas stockpiles since 1969, or begun to produce such weapons again. The inhumane, horrible nature of chemical warfare alone should deter us from producing them, at least until we can be certain that the Soviet Union has again begun production.

Production of binary munitions will not give the United States any significant military advantage over the Soviet Union. The U.S.S.R. possesses the world's best defenses against chemical weapons: Our weapons would kill more civilians than soldiers. We would be wiser to invest in conventional weapons, which would have greater impact against the Soviet Union's defenses, and in protective clothing, antidotes, and training for our own soldiers.

Another major obstacle to utilization of chemical weapons is the position of our NATO Allies. They remain opposed to stockpiling chemical weapons in Europe, and West Germany has declared its refusal to train its soldiers to use them. Such a position renders our weapons useless as they would require prepositioning on European soil.

Even if our NATO Allies reversed their position, there is no immediate need to replace the current U.S. nerve gas stockpiles. The United States currently possesses a large stockpile of chemical weapons that can easily be made combat-ready and will remain operable at least into the late 1980's and probably into the 1990's.

A decision by the United States at this time to proceed with construction of a binary munitions facility would represent a drastic retreat from the policy of the current administration and its two predecessors. This decision by the world's most prominent democracy and defender of human rights would only encourage worldwide proliferation of chemical weapons. America's resumption of production of chemical weapons would make it easier for terrorist groups and poorer nations to justify producing them. It is my belief that action on this issue should be delayed until we have an opportunity to study it fully and reach agreement with out NATO Allies on a sensible, consistent course of action.●

CRISIS IN AGRICULTURE

HON. JACK BRINKLEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BRINKLEY. Mr. Speaker, the agricultural situation in my district and throughout the State of Georgia has reached crisis proportions as a result of another, more devastating drought accompanied by extreme temperatures more severe than any in my lifetime.

I have recently received a letter from the American Agricultural Movement of Georgia, Inc., headquartered in my district, which I want to share with my colleagues. It underscores the critical economic situation facing not only farmers but also the many small businessmen who serve the farming industry.

The recommendations made by the organization to deal with the farm crisis deserve the thoughtful consideration and prompt study of all of us because the plight of the farmer grows worse each day and the fate of all consumers is tied inexorably to the farmers' worsening status.

AMERICAN AGRICULTURE MOVEMENT OF GEORGIA, INC.,
Unadilla, Georgia.

GENTLEMEN: Agriculture in the United States is facing its severest test. After six years of gut wrenching inflation, we are now faced with a drought of gigantic proportions. Farmers throughout the U.S. who have been hardest hit by the weather, will have little or no crop to sell. The USDA is already predicting a decline in corn production of 14 percent, grain sorghum 32 percent, and cotton 13 percent, and since this report the crop has continued to deteriorate.

In past droughts farmers have bounced back with bumper crops. But with the financial stress that most farmers are in, it is doubtful that they will be able to obtain financing unless some drastic steps are taken, with little or no crops to sell, the increase we are seeing in prices will not keep farmers from bankruptcy.

As of June 30th, the following amounts were delinquent on FmHA and SBA loans.

FmHA AND SBA LOANS

	Loans	Amount
FmHA operating	21,271	$213,271,000
FmHA disaster	20,201	467,237,000
SBA direct/guarantee	9,497	483,900,000
SBA disaster	35,681	360,200,000

With farmers already delinquent on over one and a half billion, this figure will surely double by January 1, 1981. Farmers must have some relief from their pressing financial problems, if they are to recover.

If farmers are not refinanced after this disasterous drought we will see our agricultural reserves drawn down to the lowest levels in memory, we have just witnessed during the month of July a wholesale food price increase of 3.8 percent which is only the beginning. We will see over the next 2 months as the crops are gathered that each report from the USDA will show a further decline in production, we are facing runaway commodity prices the same as we have seen petroleum prices over the past few years, the U.S. is not prepared for food prices to triple in one year.

The problem is large but I believe the solution can be relatively easy to accomplish. I think the number one item that we should establish is that the fault of the problem does not lie in the farm sector, this problem started in 1972 with the beginning of petroleum increases in the OPEC countries and we have tried to avoid coming face to face with it each year. The Government just like any other business realized that all of its programs were running over budget and rather than face up to their problem in the farming sector have, because of the huge outlays in their food stamp program and not wanting to see them increase more than they already were, figured it was easier to liberalize FmHA lending to agriculture rather than help increase prices. This has brought on problems that must be faced in the FmHA, farmers cannot continue to farm under FmHA and I would like to give you some of the reasons.

1. Time frame involved in getting loan approval and obtaining funds:

In many instances we see it takes from 30 to 120 days per loan approval and after approval we sometimes see 4 to 8 weeks delay in receiving a check. No one can or should be expected to operate under this system. In many instances there are personality problems involved on the community level. The local man in charge does not want to loan a farmer $50,000 to $250,000 to make a crop on when he can not, in most instances, go to a lending institution and borrow $5,000. These people are not professional in their approach to these problems and we are seeing open conflict in some instances. No matter how incompetent a person may be on the local level he cannot or will not be replaced. These people are capable of making loans on houses which require no judgment decisions at all, but if they are called on to make judgment decisions the problems become worse. (If need be we will be glad to furnish examples of their business decisions that have cost farmers thousands and thousands of dollars.)

2. Inadequate financing:

FmHA policy is to loan a farmer a percentage of what he actually needs. If the local lending officer feels that he needs $150,000 to farm on for the year he will make him a loan for $115,000 and tell him when he spends this money to start running open accounts at his various suppliers and FmHA will allow him to pay these accounts in the fall when he harvests his crop. The farmer who in times past when told to do this by a banker, would be allowed to pay this debt even if he had a crop failure, but the FmHA works quite differently, if the farmer makes a short crop will not be given money to pay these debts by FmHA.

3. FmHA policy hinders local market competition:

When the local merchant realized that the FmHA was not going to allow the farmer to pay his bill knew that he had only one way to recoup. (most country suppliers also buy the farmers goods after harvest) He had to keep the local price just as cheap as possible, in times past when the farmer would come in to sell his crop and pay his debts the merchant would push the price as far as possible because he knew he was going to get his bill paid but on the other hand when he realized that he wasn't he did just the opposite, he kept the price as cheap as possible.

4. FmHA office under staffed and poorly managed:

In most offices the farm loans are treated secondary to any other business that the office might have, most offices will only see farmers one afternoon a week and usually only for three hours on that afternoon. This makes it almost impossible for farmers to conduct their business properly. There are many instances where the loan officers will try to intimidate the applicant and because the farmer does not understand the procedure and he never has it explained to him properly can some times have his loan application delayed indefinitely because he does not realize that as long as the officer does not give him a refusal in writing that his application can remain in that office for months and there is no one that will say or do anything in his behalf. There are many different programs that are available to farmers but he will never be briefed on them or made aware that they exist by his local office.

We could continue to give reasons for farm lending to be taken out of the hands of FmHA for hours on end but let us sum up one of the most telling problems. In 1970 their loan portfolio was 1.7 billion, in 1979 it was 42 billion during that time they have had a 5 percent increase in staff they simply are not adequately staffed to handle farm lending.

In light of the above we ask that the following steps be taken to remedy the problem, we do not think that it will cause any undue hardship on anyone but possibly some people will be offended by the simplicity of the solution.

A. Take farm lending out of the hands of the FmHA and put it in the hands of the rural agriculture banks through the already existing 90 percent guaranteed loan program. This program with a little refinement in paper work will be suitable as it already is. By putting farm lending on a guaranteed basis this will not cause big budget outlays which as you now have in your direct lending program.

B. Three year moratorium on all FmHA and SBA agricultural loans. These loans will be rolled over for three years and the farmers will be allowed to keep the money from this year's crop to help catch up on old past due accounts and to renew and improve his equipment and to give him some cash liquidity which should help him in his decision making.

C. Farmers that are borrowing money from PCA's or local banks would be able to cover their shortfall in their operating loan by being able to apply for a disaster loan through their local bank or PCA (in other words if they borrowed $200,000 from a bank and after harvesting their crop they only had $100,000 to pay against their loan they would be eligible for a disaster loan through their bank to cover the $100,000 shortfall but he would not have to start making payments on this loan for three years). This could be a guaranteed loan the same as the other loan.

It is possible that we have oversimplified this proposal, but I think that this task can be accomplished in a straightforward simple manner, I would like to close with one thought. If these steps are not taken we could see land values decline 30 to 50 percent. This would put every rural bank in financial trouble; we would see land taken out of the hands of the producers and put in the hands of people that would not try to raise crops and goods to feed the nation but would only be interested in profits, when this happens we will all be the losers. The decision rests in the hands of the Senate and Congress of the U.S. I trust that you will act responsibly.

Sincerely yours,

TOMMY KERSEY, *President.*●

CYSTIC FIBROSIS FOUNDATION

HON. DOUG BARNARD, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BARNARD. Mr. Speaker, this week, September 21-27, is "National Cystic Fibrosis Week." It is an opportune time to extend a message of appreciation to the organization that has fought for a quarter of a century to provide a future for people with this tragic disease. The Cystic Fibrosis Foundation, which is observing its 25th anniversary this year, provides a shining example of how a voluntary health agency can provide innovative leadership and work in close partnership with Federal efforts to improve health care for all Americans.

The origin of the Cystic Fibrosis Foundation can be traced to 1955 with the creation and organization of the National Cystic Fibrosis Research Foundation. Parents and families of CF patients, located in six areas of the

country, had already organized locally to publicize the plight of those with the disease, to raise funds usually for the support of local clinics, and to share personal experiences about their afflicted children.

A group comprised of representatives from the six geographic areas met in New York City in 1955 to consider the possibility of forming a national foundation committed to finding a cure or preventive measures for CF. What emerged from that meeting was an organization dedicated primarily to research and education, as the charter members realized that embracing care at that time would have limited funds available for the research which all hoped would result in the control of the disease.

Since that time, the foundation has grown and developed into one of the Nation's leading voluntary health organizations. Although its program structure and administration have changed significantly over time, its goals have remained essentially the same. The mission of the CFF is directed toward ultimately achieving a cure or control for CF by means of basic biological research and clinical studies, and for improving care for those with the disease through support of a network of over 120 centers across the country. The foundation promotes and supports education programs designed to alleviate the suffering of CF patients, while implementing courses of action concerned with the personal and societal impact of the disease. Although the primary target is cystic fibrosis, the foundation activities embrace a concern for other diseases as they relate to cystic fibrosis.

Through the diligent efforts of the thousands of people who have become involved in the foundation since its inception, the fight against cystic fibrosis is gaining attention and support from both Government and private sectors. The best measure of the organization's success has been the doubling of life expectancy of children born with CF during the last decade. Even with this progress, a child born today with CF cannot expect to live much past the age of 20. CF remains the No. 1 genetic killer of children and young people in the United States and a mystery of science.

Toward realizing its mission—to find a means to cure, control, or prevent cystic fibrosis—the CF Foundation will devote more than $6.6 million during the 1980-81 fiscal year for research, professional training, and health care delivery. Without this support, much of the progress achieved through CF research would not have been possible.

Two new medical programs exemplify the innovative role of the foundation. Progress in research has been hampered by the limited number of researchers in the field and the shortage of strong institutional programs with a focus on cystic fibrosis. In order to address these problems, the foundation is devoting a growing part of its research program to the support of new investigators, research trainees, and pilot and feasibility funding—the kinds of awards that allow scientists to develop new ideas, and provide data for grant applications to the NIH and other funding sources.

In addition, the foundation is planning a new kind of institutional support for universities that will make a commitment to CF research. While this program is still in the development stage, it is based on the proven record of several cystic fibrosis centers that an integrated program of patient care, interdisciplinary research, and funding flexibility is a very productive way to promote research progress. Since this kind of institutional support is rarely available from the National Institutes of Health in their current austere funding environment, the Cystic Fibrosis Foundation is stepping in to fill the gap itself with private funds.

As a result of a pair of 1978 studies into the state of the art of cystic fibrosis research, we are now aware of the importance of this medical problem and of the need for close cooperation between the Government and the private sector in dealing with it. I am pleased that the Cystic Fibrosis Foundation has not simply chosen to rely on the National Institutes of Health to do the entire job, but has instead tripled its own research budget between 1978 and what they project for the coming year. In addition, the foundation leadership has developed a good working relationship with the leadership of the National Institutes of Health, and NIH support of CF research has been growing as well. I am optimistic that the result of this innovative partnership between the Cystic Fibrosis Foundation and the NIH will accelerate the search for the answers to cystic fibrosis.

I would like to add a personal note. For the past several years it has been my privilege to work with the Cystic Fibrosis Foundation in arranging for the visits of their national poster representatives to Washington. These young people have been really inspirational to me. This year, for example, 15-year-old Todd Gibbs spent several days here as the foundation's spokesman, and I know that those of my colleagues who met him will remember him for a long time. I was very happy to learn that Todd was recently named 1 of the 10 outstanding young men in Kentucky by the Kentucky Jaycees.

So because of people like Todd Gibbs and the thousands of volunteers who work with the Cystic Fibrosis Foundation, I am happy to join in the observance of National Cystic Fibrosis Week, and I wish the Foundation rapid success in reaching their goal of conquering cystic fibrosis.●

OIL IMPORTS TO BE INTERRUPTED

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BOB WILSON. Mr. Speaker, once again, with the current conflict between Iran and Iraq, we see a potentiality for an interruption of a part of our oil imports from the Middle East. And once again I wonder just how many crises do we have to face before we realize just how tenuous our position is in reliance on foreign oil when we have the capacity right now to increase our own energy output through use of nuclear powerplants.

Former University of California at San Diego chancellor, Dr. William McElroy has long been an advocate of the use of nuclear energy, and from his present position as a director of San Diego Gas & Electric, he is able to view the whole spectrum of our energy situation.

In an interview with a San Diego Union Board of Editors, Dr. McElroy reiterates his strong support of nuclear energy and I recommend his thoughts to my colleagues:

THE PROBLEM IS OIL, NOT A LACK OF ENERGY SOURCES, MCELROY SAYS

The United States should move promptly to get coal and nuclear technology on line to replace oil in the national energy market, Dr. William McElroy, a biologist, former chancellor of the University of California, San Diego, and a director of San Diego Gas & Electric Company, told editors of The San Diego Union recently. He said soft national and state leadership is the primary reason the U.S. energy problem is not being solved. Here is the interview.

Question. Dr. McElroy, there is a great flood of liquid energy in the world today. Why should we be concerned about energy?

A. I don't think we have an energy problem to begin with. Quite frankly, we have an oil problem and an oil import problem, but we don't have an energy problem. Either in the United States or in the world. In 1979, the latest figures I have, show about a $50 billion deficit on oil imports. But if you look at the other international trade activities we were a plus $20 billion, so the net was a minus $30 billion.

Q. But if we burn coal or something else, wouldn't those trade figures be even worse,?

A. We've got coal coming out of our ears, and we've got shale oil in Colorado and the Western United States—it's enough to last us over 300 years at the same energy level we're talking about right now.

Q. People tell me that we have three problems with coal. You can't mine it, you can't transport it and you can't burn it. Is that roughly correct?

A. No. We have the technology for burning it, and with reasonable environmental controls. There are areas for improvement, but we've cleaned it up tremendously. We know how to gasify it, we know how to liquefy it. The technology is there; it's just not being used.

Q. In light of what you're saying, why are we talking about an energy problem?

A. I think the reason we are talking about it is the lack of leadership at the federal and state levels toward using nuclear energy and coal.

Q. Hasn't the Carter administration addressed our energy needs with its synthetic fuel program?

A. Yes, but the synthetic fuel program isn't enough, nor is solar. The move toward synthetic fuels is good, but I think liquid fuel should not be the only synthetic fuel approach. I think gas is very important, too.

Q. For all practical purposes, the Germans ran their war machines on methynol during World War II—I guess coal liquefaction is the major source of it. What is keeping us from doing that?

A. I don't think we have to go to methynol. I think we can liquefy shale and coal and use that as a reasonable middle-level hydrocarbon.

Q. Would that be less expensive?

A. Yes. We have the technology. As a matter of fact, we have machines out there standing still right now that could do this. Look at California; we're in a mess. We can't burn coal, we can't really expand nuclear. All we can do is burn gas and oil. Congress, in all its wisdom, decided that $10 billion was too much to spend to convert from oil and gas to coal and appropriated only $3.6 million this last time. We should be investing probably close to 1 percent of our gross national product in transferring over to coal and nuclear right now.

Q. Is much of the opposition to the use of coal and other related hydrocarbons led by the oil industry?

A. I can't imagine, since it is so interlocking that it would make that much difference to them. Groups that I am familiar with, like Conoco, have an interlocking interest with coal people. I sit on the San Diego Gas and Electric board and I'll tell you, it's as frustrating as it can be. We're afraid to build a coal-burning instrument for making electricity because it would not be allowed to come on line. Now we're going over to Arizona and New Mexico to buy electricity from them—they are burning coal. Within two or three years they are going to refuse to sell to us.

Q. How do the costs compare for oil-fired electricity and coal fired electricity?

A. It would be about a factor of five right now at the market value. For example, right now San Onofre 1 is supplying electricity at about one-tenth the cost of what San Diego Gas & Electric is generating with oil and gas. Coal would be about one-fifth the oil and gas cost.

Q. What kind of technology should we use for combustion of coal?

A. I happen to think that with the present instruments we have, coal liquefaction is probably one of the better ways, because coming up out of that you would also get the middle chain hydrocarbons which can be substituted for gasoline.

Q. And this eliminates the acid rain and carbon dioxide problems?

A. Yes, we can do that. The carbon dioxide level is a global problem. Right now we are running around 340 parts per million of carbon dioxide in the atmosphere. If you go up to about 1,000 parts per million, you start affecting photosynthesis, so 500 parts per million is about the maximum you could go to in terms of the biological productivity in the earth. Now, the data has been accumulated and analyzed that if you went over completely to coal to supply our present energy needs, it would take to about the year 2020 before you would even possibly approach 500 parts per million. So, you've got 20 or 30 years to make the next decision on coal, along with a lot of other interesting possibilities—nuclear fission and fusion and breeder reactors—that could substitute. But a lot of research needs to be done on where to shut off for the sake of plant life productivity, earth temperature, and so on.

Q. Do you think that, in the light of the Three Mile Island accident and the delay in a waste disposal program, it will be politically possible to increase the amount of nuclear power significantly in the next few years?

A. I think that somebody had better get politically responsible in this country and do it. It may be very tough, but if Three Mile Island told us anything, it told us we can go to almost a catastrophe in a nuclear plant without really hurting anybody. France by 1985 will be 95 percent nuclear as far as electrical generation is concerned, and other countries are moving ahead very rapidly. We're sitting here spending $50 billion for importing oil. That's ridiculous.

Q. How do you solve the nuclear waste problem?

A. We've got places to store the waste. Geologists have been saying this for years now. There are a lot of places where we can put this stuff into concrete and store it in geological formations that we know haven't been disturbed for 100 years.

Q. What happens if you live at a site selected?

A. I think you could pick sites where there is nobody living.

Q. But after Three Mile Island, isn't there a problem convincing the American people that that kind of risk is worth it?

A. I don't know what the vote would be today, but I'll just remind you that California voted not too long ago almost 3 to 1 in favor of nuclear energy.

Q. Wasn't this before Three Mile Island?

A. Yes, but my impression on the campus is that the majority of students would vote pro-nuclear. You've got a minority group that would make some more noise, but I really believe that once the people got the facts, they would go pro-nuclear, particularly as their electric bills keep going up like they are. And they are going to double again this next year.

Q. We've been talking about fusion since almost the end of World War II. What is the time table for that?

A. The first real demonstration project at a commercial level probably won't take place until about 2010. The Princeton and the Russian experiments have gotten almost to the break-even point where you're getting about the amount of energy out that you are putting in, so that's good progress. The people at Oak Ridge and the Department of Energy say that we should start building a demonstration plant now. It would probably take 10 to 15 years to build the magnets and the other things you need to contain the plasma. But it would be unrealistic to expect anything from fusion until about 2010.

Q. What is your view of biomass?

A. I'm a great enthusiast for biology and using biomass, but one has to be very careful. Economically it's just not there. If you try to, for example, raise corn, wheat or beets and things like that as a cheap source of sugar for biomass, using present agricultural techniques, you put in $3 and get back out $2.

Q. What about using timber waste? I know there are places in Maine and California where there is diseased wood just sitting around the ground. Does that have possibilities?

A. Temporarily. You could use it up; then you could go to Carolina and places like that where you can grow trees very fast. But you've got to remember that when you start taking things that would go into the soil and using them this way, you are depleting the soil. You cannot keep soil active just by putting on nitrogen, phosphorous and potassium. The structure of the soil is changed, its ability to hold onto nutrients changes and you tend to go from a nice tilling soil to, essentially, concrete. It is a very damaging approach. And that's one of the things a lot of the people who are talking about biomass have forgotten about. Now, maybe you could go to the ocean and start collecting seaweed and algae growths and things like that, but it would be microscopic in terms of our energy needs.●

CONGRESSIONAL SALUTE TO FOUR DISTINGUISHED CITIZENS AND COMMUNITY LEADERS OF THE BOROUGH OF BLOOMINGDALE, STATE OF NEW JERSEY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. ROE. Mr. Speaker, on Friday, September 26, the residents of the borough of Bloomingdale, my congressional district, and State of New Jersey will assemble at a testimonial dinner in tribute and deep appreciation to four public administrators of the community: the Honorable Josephine Bennett, tax collector-treasurer; Laurence Bennett, member and secretary, board of assessors; Kenneth Mathews, member, board of assessors (former mayor and councilman), and Sebastian C. Sehulster, member, board of assessors, whose combined services of over a century plus almost three decades dedicated to the administration of good government on behalf of the people of Bloomingdale have truly enriched our community, State, and Nation.

Mr. Speaker, as these distinguished citizens and community leaders retire from their public administration careers I am pleased to join with their many, many friends in deep appreciation of all of their good works and share with their families great pride in the success of their achievements.

With your permission I would like to insert at this point in our historic Journal of Congress a brief chronology of their service to the borough in each instance with devotion and sincerity of purpose in their daily pursuits in the interest of our people, as follows:

JOSEPHINE "JO" BENNETT, TAX COLLECTOR-TREASURER

Jo started assisting in the Tax Office in 1957. In November, 1962, she was elected Tax Collector and took office January, 1963; also, served as Treasurer, Tax Search Officer and Custodian of School Funds, until her retirement September 1, 1980. Jo is Past President of the Passaic County Collector-Treasurers Association. Past President of the Bloomingdale Firemen's Ladies Auxiliary and Past President of the Passaic County Firemen's Ladies Auxiliary.

LAURENCE "BUD" BENNETT, MEMBER AND SECRETARY, BOARD OF ASSESSORS

Bud was employed as Assessor in the Fall of 1948, appointed Assessor and Secretary-Board of Assessors January 1949, and served

in that capacity until retiring August 1, 1980. Bud was elected Borough Fireman March 8, 1946 and served until February 1977, when he retired as Captain. He served as Treasurer of the Passaic County Assessors Association for sixteen years.

KENNETH "KEN" MATHEWS, MEMBER, BOARD OF ASSESSORS (FORMER MAYOR AND COUNCILMAN)

Ken was appointed Assessor September 22, 1966 and served in that capacity until retiring August 1, 1980. He was Borough Councilman from 1948 through 1962 and was Mayor of the Borough of Bloomingdale in 1963 and 1964. Ken was one of the original members of the Planning Board organized in 1957, and served as a member until resigning March 23, 1967; also was Special Representative to the Board of Health for eight years. Ken served the Borough as Fireman from date of approval March 20, 1931 and retired as 1st Deputy Chief February 10, 1977, after having served as Captain and 1st Deputy Chief for a total of twenty-five years.

SEBASTIAN C. "CLAYT" SEHULSTER, MEMBER, BOARD OF ASSESSORS

Clayt was appointed Assessor February 14, 1957 and served until retiring August 1, 1980. He also served as Building Inspector from April 12, 1962 through January, 1967. During that time, he was Sewer Inspector and Zoning Officer. Clayt was a Past Treasurer of the Passaic County Assessors Association and was a member of the Bloomingdale Lions Club.

Mr. Speaker, it is indeed appropriate that we reflect on the deeds and achievements of our people who have contributed to the quality of our way of life here in America and I am honored and privileged to call your attention to the lifetime of outstanding public service provided by these exemplary citizens.

As they retire from the high office of public trust that they have attained by their personal commitment and hard work, I know that you and our colleagues here in the Congress will want to join with me in extending our warmest greetings and felicitations to them for their standards of excellence and record of achievements. We do indeed salute the Honorable Josephine Bennett, the Honorable Laurence Bennett, and Honorable Kenneth Mathews, and the Honorable Sebastian C. Sehulster, distinguished citizens and community leaders, for their contributions to the quality of life for the people of Bloomingdale, our State, and Nation.●

REPUBLICANS OPPOSE CARTEROMICS

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. SHUSTER. Mr. Speaker, I rise today to bring to the attention of my colleagues the dismal consequences of Carteromics—the so called economic policy of the Carter administration. Carteromics is that strange mixture of inflation, high taxes, increased Government spending, and high unemployment that passes for economic policy under President Carter. What it really is is a prescription for disaster.

Yesterday, the House Republican Policy Committee adopted a formal policy statement detailing the impact of 4 more years of Carter economics. So that my colleagues may more fully understand these impacts, I am including the full policy statement for their perusal:

CARTEROMICS: PRESCRIPTION FOR DISASTER

On behalf of the American taxpayer, the House Republican Policy Committee strongly opposes the policy of Carteromics. Carteromics—that strange mixture of inflation, high taxes, increased government spending, and high unemployment—is what passes for economic policy under President Carter.

During the past 3½ years, the American people have learned all too well the definition of Carteromics:

*An inflation rate that has soared from 4.5 percent in 1976 to 18 percent in 1980;

*An unemployment rate that has thrown 8 million people out of work.

*Prime interest rates that have almost tripled, from a high of 7.25 percent in 1976 to a high of 20 percent in 1980.

*An increase of 50 percent in the tax burden on the American people—rising from $400 billion to over $600 billion;

*A bloated federal bureaucracy that now takes almost 22 percent of the Gross National Product out of the productive private sector to feed itself.

But as bad as the past 3½ years have been, a second term under Jimmy Carter would be even worse—it would, in fact, be a Prescription for Disaster!

Congressman Dave Stockman (R-Mich.) has performed an exhaustive, detailed cost analysis of the new spending programs endorsed by the Democrat platforms and of the re-estimate of the five-year economic and budget forecasts issued by the White House in July. This analysis indicates the following dismal outlook through 1980.

1. Democrat spending promises would result in a 16 percent annual growth in federal outlays through fiscal year 1985. Fifty-three major platform proposals alone would add $444 billion in new outlays over the period and total $130 billion per year by fiscal year 1985. Overall, current Democratic policies and future pledges would escalate federal spending from $575 billion in fiscal year 1980 to over $1.2 trillion in fiscal year 1985—an increase of 105 percent. The Democrats plan to spend the staggering sum of 4.7 trillion during the next five budget years.

2. The federal deficit will increase to $92 billion in fiscal year 1981, with the deficit figure steadily rising to $134 billion by fiscal year 1983 and $201 billion by fiscal year 1985. The five year red ink total will exceed $713 billion, increasing the national debt by 66 percent.

3. The federal tax share of GNP will rise from 20.6 percent in fiscal year 1980 to an historic high of 23.2 percent in fiscal year 1985. Nominal revenues will increase from $518 billion in fiscal year 1980 to $1,022 billion in fiscal year 1985, a 98 percent jump, under current tax law. Yet revenues would have to rise to nearly $1.2 trillion or 27 percent of GNP to actually balance the budget in fiscal year 1985.

4. The anemic 2.5 percent annual real GNP growth during the first Carter Administration would decline further to an average of 1.8 percent per year through 1985.

And what do these policies mean to the American people? Simply this:

(A) The U.S. labor force will grow by nearly 7 million workers between now and 1985, but the sluggish real growth resulting from Democratic tax, spending and regulatory policies will make it impossible to generate new jobs fast enough. Consequently, unemployment will remain above 8 million through early 1984, and nearly 7.5 million Americans will still be looking for work in 1985.

(B) By 1985 inflation rates will be in the 12 percent range or higher. A thousand dollars saved in 1976 will be worth only $460 after a second Carter term.

And what does President Carter propose to ease these burdens? A tax rebate that is a pittance.

Under present law, a $25,000 per year family will experience a $3,704 increase in federal taxes between 1980 and 1985 if its earnings keep up with the inflation rate. The Carter proposed 8 percent Social Security rebate will offset only $230, or 6.2 percent, of this increase. This staggering increase is primarily due to the fact that the family's marginal tax rate will rise from 28 to 43 percent over the five years due to bracket creep.

Thus, despite promises to the contrary by Jimmy Carter, the impact of Carteromics is clear. The American people cannot afford four more years of Democrat economic policies.

This is the 267th day of the 26th consecutive year of Democrat control of the House of Representatives.●

19TH ANNUAL CONGRESSIONAL BASEBALL GAME

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. CHAPPELL. Mr. Speaker, as one of the coaches of the Democratic baseball team, it is with a feeling of both admiration and sadness that I accept the challenge to the 19th annual congressional baseball game issued by our colleagues SILVIO CONTE and CARL PURSELL.

My admiration is real. Like all Americans I feel heartened by the spectacle of men bravely facing hopeless odds: The Spartans defeat at Thermopylae, Davy Crockett and Jim Bowie at the Alamo—those images stir the blood of any patriot.

Of course, one thing about such scenes—to those who participate in them—is the fact that while odds may seem hopeless—no one can know the outcome in advance.

As John Paul Jones proved: A refusal to surrender can lead to victory.

If this were the present situation of the Republican baseball team my admiration would be unmixed. After their defeat we would honor their last stand. Perhaps building a trophy to their bravery out of the bats and gloves fallen from their helpless hands.

The present situation of the Republicans ball team, however, is not like the battle of John Paul Jones against the British.

It is more like the attempt of the medieval English King Canute to stop the oncoming tide by lashing the waves.

And this is the cause of my sadness.

It is sad to see a once-worthy opponent fallen—not in battle—but in the mind.

But can it be but madness to challenge the very tide.

There is a difference, after all, between jumping in front of a runaway horse in an attempt to save its rider and jumping in front of an avalanche.

The first is heroism. The second suicide.

And so I am sad to see my Republican colleagues come to such a pass.

But wait. It occurs to me the reason King Canute ordered the tide to halt is not in any expectation that it would stop.

In fact, he purposely took up this futile contest in order to prove his limitations to his subjects.

Some things, he said, I can oppose. Others, I cannot.

It is possible—no, it is most likely—some such lesson is what my Republican colleagues intend.

Some things undoubtedly they can do. But there are other things they should not be expected to do—such as defeating Democrats.

Ladies and gentlemen, the Democratic ball team will be happy to assist in this demonstration by overwhelming the opposing team with a tide of scoring. Then the Republicans can be seen for what they really are—all wet.●

THE AMERICAN FISHERIES PROMOTION ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. YOUNG of Alaska. Mr. Speaker, yesterday, due to conflict with other business, I was unable to be present in the House Chamber when H.R. 7039, the "American Fisheries Promotion Act," was debated. I therefore wish to insert in the RECORD my views on this significant piece of legislation.

To begin with, I would like to express my gratitude to the chairman and ranking member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment. They and their staffs have spent countless hours in writing this legislation, listening to testimony, and guiding the bill to final passage in committee and the House. Their sincere efforts will long be remembered and appreciated by Alaskans.

As was stated during the debate, H.R. 7039 represents an attempt to correct certain deficiencies in the Fisheries Conservation and Management Act and, more importantly, to provide a mechanism for the successful development of the U.S. fishing industry. As a Representative of a State with 35 percent of the Nation's coastline and two of the top three fishing ports in the country, I share this laudable goal. I joined with Mr. BREAUX, Mr. FORSYTHE, and a number of our other colleagues in sponsoring H.R. 7039 and have tried to work in cooperation with them in getting a good bill passed.

American fishermen have long recognized that extension of U.S. jurisdiction over aquatic resources to 200 miles was only the first step in re-establishing a strong fishing industry. Once conservation and management controls were put in place, an effort had to be made to provide the economic and political structure to allow U.S. fishermen to take advantage of these conservation and management measures. This would include such things as changing the Saltonstall-Kennedy Act to provide funding for fisheries development projects, with the money to come from tariffs collected on fish imports; providing a mechanism to rebuild our processing facilities; engaging in a coordinated marketing effort, both domestically and overseas; and insuring that foreign fishing in our 200-mile zone is treated as a privilege, rather than a right. H.R. 7039 was introduced to promote such development. In addition, certain problems with existing law that have been discovered were also addressed in this legislation.

Unfortunately, as often happens with legislation, a number of changes had to be made in the bill. Some of these were made in committee markup sessions, in which I participated. However, following the passage of H.R. 7039 in the Merchant Marine and Fisheries Committee, the administration, which had gone on record in opposition to the bill, indicated that H.R. 7039 would be vetoed if sent to the President in its existing form. As a result, negotiations ensued between the committee staff and administration representatives, resulting in the bill that was passed yesterday.

After reading the compromise bill, I must regretfully state that some concerns of Alaskan fishermen and processors have not been addressed and that new areas of concern have been found in the legislation. This is not to say that H.R. 7039 is a bad bill; on the contrary, there are a number of excellent provisions that have been retained and that will be helpful to the fishing industry. I would also like to point out, and emphasize, that the committee intent, as expressed by Mr. BREAUX and Mr. FORSYTHE in their statements yesterday, will certainly help to alleviate some of the problems found in the bill. On balance, however, I do feel that further work needs to be done if we are to have the sort of fisheries development legislation that we envisioned when H.R. 7039 was introduced.

If a conference is held with the Senate on this bill, I will work with my colleagues in trying to address these concerns in the appropriate fashion. I am sure that some Alaskan fishermen will be contacting our Senators to express their opinions on this bill. If, due to the shortness of the session, no conference is held, I would hope that the chairman and ranking member of the subcommittee will agree to look again at these problems in the next session.

Again, I think that the chairman and the ranking member should be congratulated for their efforts and I look forward to working with them in the future to insure that we retain a strong U.S. fishing industry.●

LEST WE FORGET: THE STRUGGLE OF ANATOLY SHCHARANSKY

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. DORNAN. Mr. Speaker, with the passage of time, it is easy to lose sight of the sacrifices that are still being made by those brave men and women in the U.S.S.R. who stand tall for freedom. Lost in the great debates on arms control agreements, the grain embargos on the Soviet Union, the strikes in Poland, and the Soviet invasion of Afghanistan, is the continuing, silent, desolate struggle of Anatoly Shcharansky and the brave Soviet Jewish activists in Soviet labor camps.

Shcharansky's lawyer, Harvard law professor Alan Dershowitz, was forbidden by the Soviet court from making an oral agreement in Shcharansky's defense. So he submitted a written closing argument to the Soviet court on behalf of his brave client.

Lest we forget the bravery and the determination of the Soviet Jewish activists struggling for freedom and survival in the face of a tyrannical Soviet police state, I submit, for the RECORD, Professor Dershowitz's remarkable defense of Anatoly Shcharansky, a defense which is also an indictment of the Soviet system of justice.

THE CLOSING ARGUMENT BY ANATOLY SHCHARANSKY'S LAWYER IN ABSENTIA

Shortly after the arrest of Anatoly Shcharansky, his wife—Avital—asked me to serve as his American lawyer. I accepted with a profound sense of responsibility but with little hope of affecting the outcome of the case. Shortly thereafter, Shcharansky's mother, Ida Milgrom, sent me a written message from the Soviet Union asking me to try to represent Shcharansky at his Moscow trial. I agreed to try, but again without much hope. My pessimism, it turns out, was well founded: repeated requests to attend Shcharansky's trial and appeal have been rebuked. I have decided, however, to submit to the Soviet Court the following closing argument that I would have made on Shcharansky's behalf had I been allowed to represent him. I have also submitted the argument to the court that has jurisdiction to hear an appeal from Shcharansky's conviction. (A more detailed and technical legal brief will be submitted as well.)

HONORABLE JUDGES: I am here to speak on behalf of a man who has already been de-

cleared guilty by the official Soviet press and by numerous high ranking officials of the Soviet Communist Party and Government. But under Soviet law, Anatoly Shcharansky is entitled to a fair trial and an unbiased verdict from Your Honors. I am acutely aware of the burden under which you labor: I know—as you know only too well—that no judge in the half century of this nation's history has ever voted to acquit a defendant charged with a politicial crime such as treason. But I ask you to throw off your yokes and to act as honorable members of the legal profession: by rendering a true and honest judgment.

Who was the defendant, Anatoly Shcharansky, before his arrest on April 15, 1977?

Anatoly Shcharansky was the voice of the Jewish Emigration movement. It was he who served as the public communication link between the Jewish refusniks—those whose requests to emigrate from the Soviet Union has not been granted—and the outside world. His every act was out in the open; it was his purpose to let the Soviet authorities know that his voice—which, in reality, was the articulate translation of thousands of other refusnik voices—was being listened to in Europe and in the United States. He did nothing in secret: that was neither his method nor his purpose.

The Soviet authorities now claim that this open, public spokesperson was, in reality, a secret operative of the American Central Intelligence Agency, that he was stealing Soviet military secrets and covertly passing them on to American agents, diplomats and reporters.

If the charges were not so serious, they would be comic indeed. Imagine how incompetent an American intelligence agency would have to be to have engaged someone like Shcharansky as a spy. His phone obviously tapped, his every movement openly surveilled, his roommate a KGB plant, Schcharansky was the worst possible candidate for the espionage game. Imagine how incompetent the Soviet counterespionage apparatus would have to be to have let someone like Shcharansky—a man who had publicly declared his allegiance to Israel and who had demanded the right to emigrate there—have access to military secrets.

Shcharansky was not a spy. United States President Carter did not lie when he publicly assured the world that he had inquired deeply within the C.I.A. and the State Department and had determined that Shcharansky never had any connection with the C.I.A. Shcharansky did not work for the C.I.A., nor did he have access to any military secrets.

The only information to which he had any access at all was computer technology, since that was the field in which he had worked several years prior to his arrest. But the Soviet Union imports virtually all of its computer technology from the United States, under an assurance—made binding by American law—that this technology will never be put to any direct or indirect military use. For the Soviet Union now to claim that Shcharansky had access to military secrets is for that nation's leaders to boast that they are defying the express conditions under which they have been allowed to import computer technology. If this prosecution succeeds, it cannot be long before the Amelcan Congress revokes the Soviet Union's privilege to import American technology for military uses expressly forbidden by American law.

The prosecutor has made much of the information that Shcharansky gave to Robert Toth, the reporter for the Los Angeles Times. But there is nothing secret either about the information or about the fact that Shcharansky turned it over to Toth. Shcharansky never gave background or off-the-record interviews to the press; he was always identified by name in the press reports as the source of the information. Indeed, on one occasion when an American newsman came to pick him up for an interview in a small family car, Shcharansky insisted that the reporter return in the large American car which was clearly identified as belonging to an American newspaper. Are these the actions of a secret spy trying to conceal his relationship to the press?

And what was the nature of the information he turned over to Toth and others? It was simply the names and places of employment of refusniks whose emigration requests had been turned down by the Soviet emigration authorities on the ground that they had worked in jobs involving state secrets. Each such refusnik had received a notification from the Soviet authorities and each was free to communicate that fact to the press—as many did. All Shcharansky did was to collate this public information and transmit it—in convenient form—to the American press in order to demonstrate that no state secrets were involved, that the Soviet, excuses for denying exit visas were pretextual. This was his right under Soviet law and under the Helsinki Accords, the irony is that if any Soviet secrets were revealed at all—and Toth denies that any were—they were revealed by the Soviet emigration authorities themselves when they sent public notices to refusniks declaring that the factories, research ships, and laboratories in which these refusniks had worked were involved in "state secrets." Shcharansky cannot legally be convicted of revealing "secrets" that had already been revealed by the Soviet authorities.

But what of Anatoly Shcharansky, the man, the husband, the son? We do not know what remains of the 29 year old smiling man who was carried away to a KGB prison on March 15, 1977. Between that date and July 10, 1978—a period of nearly 16 months—Anatoly Shcharansky was a nonperson in the Soviet Union. Nobody—not his mother, not his lawyer, not his wife—was allowed to communicate with him in any way; nobody knew his physical or mental condition; nobody knew what his captors were doing to him in the secrecy of this KGB fortress. Nobody knew, for sure, whether he was alive or dead.

Then, on July 10, 1978, he was taken to a courtroom for his trial—a trial which under Soviet law must be open to the public. But who has been allowed to attend this public trial? Not the American or western press, though Shcharansky has become a household word through much of the world. Not American diplomats, though that country is charged with being the recipient of Shcharansky's espionage. Not any of Shcharansky's friends or supporters, though they are willing to testify on his behalf. Not even his mother—who had not laid eyes on him for 16 months—was allowed to enter the courtroom during the trial. The pretense for excluding his mother was that the prosecution claimed that it intended to call her as a witness, needless to say, it never called her nor allowed her to see her son. Indeed, the prosecutor—and the court—have been unwilling to call as witnesses those people who have most direct knowledge of the alleged "crimes" of Anatoly Shcharansky. Where was Robert Toth, the jounalist to whom Shcharansky allegedly passed secrets? He has declared his willingness to come to the Soviet Union to state under oath what he has already written in the American press, namely that none of the material given to him by Shcharansky was classified as secret under the Soviet regulations. Where was the testimony of Professor Vitaly Rubin, who allegedly recruited Shcharansky's KGB roommate into the C.I.A.? Efforts to submit the deposition of Rubin and other crucial witnesses who are now outside the Soviet Union have been rebuffed. Shcharansky has also been denied the right to call witnesses who are in the Soviet Union in his defense.

Why are the prosecutors so afraid of these witnesses? Why are they so afraid of the western press? Why are they so afraid of the numerous distingushed lawyers from around the world who have requested permission to observe the trial? Why are they so afraid of allowing Shcharansky to be defended by a Soviet lawyer of his choice? Why are they so afraid of letting the truth come out? The answer, Honorable Judges, is as obvious to you as it is to the rest of the world: the truth is that these charges of treason against Anatoly Shcharansky are wholly false; Anatoly Shcharansky is an innocent man.

You know that, and the world knows that you know it. It is you who are on trial. Will you follow the orders of your party and government? Will you do what every Soviet judge before you has done? Or will you act so as to merit the truly honorable title of "judge"?

When your country and mine brought the Nazi judges to trial at Nuremberg, one German judge—in defense of his decision to allow an innocent Jew to be executed—argued in defense of his judicial misconduct that he had believed that by following the party's orders in one case he could slow down the process of genocide. The Nuremberg judges—from your country and mine—rejected his defense and jointly proclaimed that on the day that justice was perverted by the deliberate conviction of the initial innocent victim, the irreversible first step toward judicial genocide and holocaust had been taken. I implore you to search your consciences before you take a similar tragic first step here.

The fate of one human being is in your hands, but much more is at stake: the future of civilization may hang in the balance.●

RETIRING ATHLETIC DIRECTOR REED LAUGHLIN

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BONIOR of Michigan. Mr. Speaker, I would like to take this opportunity to share with my colleagues the accomplishments of Reed Laughlin, who is retiring as athletic director of Port Huron High School.

During his 40 years of involvement in education and athletics, Mr. Laughlin has helped to build a record of accomplishment at Port Huron High that will stand for a very long time.

Hired to coach the Big Reds in 1947, Mr. Laughlin went on to become the athletic director in 1966. Under his leadership, the Big Reds won many games, but it will be for his dedication to the students' needs that he will be most remembered. Facilities at the high school have improved and they now have the kind of equipment that can help to mold top athletes. He also

aided the advancement of girl's sports during the early 1950's.

Mr. Laughlin, a member of the Michigan Coaches Hall of Fame, received his B.S. in physical education from Western Michigan University. From Western he served at several schools before beginning his long career at Port Huron High.

Although he is retiring from his job of athletic director, Mr. Laughlin plans to remain active in Port Huron community activities. This is not unexpected from a man who has given of his time and talents to thousands of young people.

The students, teachers, and people of Port Huron owe a great deal to this dedicated and talented man and I am pleased that I can be a part of the tribute to Reed Laughlin.●

INTERNATIONAL TRADE

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. GIBBONS. Mr. Speaker, international trade has a powerful influence upon the U.S. economy. Yesterday, Mr. Robert J. Samuelson, a noted authority on economic matters, wrote in the column entitled "Economic Focus" of the Washington Post a definitive essay on the subject of international trade.

Mr. Speaker, all Members who did not have an opportunity to read Mr. Samuelson's article should take the time to do so. For their convenience, I am attaching a copy of it:

[From the Washington Post, Sept. 23, 1980]

HARD TO IMAGINE BETTER U.S. TRADE STRUCTURE

(By Robert J. Samuelson)

One of the arts of political life today is defining the "national interest." In policies, parochial interests always will triumph if broader interests can't be coalesced into understandable themes and workable coalitions. It is simply a matter of knowing and caring. There is too much going on for everyone to know all the details of everything. If broader interests cannot be identified from the morass of details, then those who command the details will shape government policy.

You can apply this rule of thumb to dozens of areas of political life, but nowhere is it more relevant today than in trade policy. Time was, of course, that "free trade" was accepted automatically as part of the national interest. No more. When a recent New York Times-CBS News poll asked respondents whether they would choose jobs over lower-priced imports, 70 percent picked jobs.

Times change and, if free trade no longer furthers the national interest, it ought to be abandoned. But the overwhelming evidence is otherwise and, if the public disagrees, we face a self-destructive political failure in which popular attitudes diverge significantly from concrete interests.

Overwhelming evidence? Start with a recent report—"Study of U.S. Competitiveness"—submitted by the Carter administration (the work was largely done by the Labor Department) to Congress. You undoubtedly have heard much about the deterioration of the U.S. trade balance, but once you remove oil imports, the trade balance remains remarkably strong.

Put in simplest terms, America today is a massive exporter of capital-intensive and technology-intensive goods (from computers to heavy power equipment), a massive exporter of food and a large importer of consumer goods. The amounts are immense: in 1979, a surplus of $17.9 billion in agricultural exports, a $32.6 billion surplus in capital goods and a $30.2 billion deficit in consumer goods.

It's difficult to imagine a more favorable trade structure. With the exception of oil and some minerals—most of which can be stockpiled—we are not dependent on imports for strategic goods. Japanese automobiles and stereos may be conspicuous, but if they stopped coming tomorrow the nation's physical survival wouldn't be in jeopardy. The same cannot be said for the import patterns of Europe and Japan, which depend heavily on overseas food and raw materials.

Our trade mix also corresponds with emerging national and global social realities. Advanced societies such as the United States gradually are becoming areas of relative labor scarcity, while other parts of the world—especially the developing countries—have huge labor surpluses. Even in the recession, the U.S. unemployment rate remains near 8 percent; that's a far cry from the 15 percent to 30 percent of some developing nations. As the average age of the U.S. population increases, the labor pool will grow even more slowly.

What better division of labor, then, than to have more of our basic labor-intensive goods produced elsewhere while devoting domestic resources to more productive higher-technology industries? The nature of work in advanced societies makes this approach especially compelling. As the labor force becomes more educated, it is less willing (and able?) to suffer the indignities and low wages inherent in many regimented manufacturing processes.

To cite these trends is not to deny the intense pressures—both in popular attitudes and in the grievances of specific industries—for protectionism. Part of this is simply the temper of the times; Americans feel particularly annoyed and angry at foreigners. But part of it also reflects misinformation and basic changes in the world economy.

The same competitiveness report documents some of those changes. America's once unquestioned technological superiority is increasingly thin. The report found that with two exceptions, aircraft and power generators, America's top 20 manufacturing exports' shares of world exports declined between 1963 and 1977. Although some drops were slight, others were severe: U.S. farm equipment slid from 40 percent of world exports to 25 percent.

In short, some of the self-confidence is gone. Industries that once enthusiastically boosted free trade now fear imports and are a little less active. And there's the additional suspicion that U.S. products are always the victims of "unfair" practices. When auto companies and workers urge import restrictions, for example, they correctly argue that the United States is the only major country without some limitations.

Against this background, practical politicians have continued to pay lip service to free trade while becoming increasingly protectionist in practice. What's missed in this drift are the huge, largely invisible, costs. A recent staff study by the Federal Trade Commission found, for example, that restrictions usually resulted in costs to consumers at least five times as great as benefits to workers and producers.

Sometimes arguments are misused. Does anyone really believe that the U.S. auto industry's problems are not home-grown? It may be true that the Europeans restrict Japanese imports, but it's also true that European car manufacturers are more numerous and competitive among themselves than are American companies. Imports in Britain have skyrocketed to about 60 percent of the market, with Japanese cars accounting for less than one-third of that total.

And so the greatest cost is self-deception. U.S. economic power, both at home and abroad, lies heavily in the vitality of our producing enterprises. We cannot insulate ourselves from the reality that our technological and management advantages over the rest of the world have narrowed. Nor can we protect ourselves into rejuvenation. Many high-technology firms rely on exports for between 20 percent and 30 percent of their sales. They need the opportunity of new markets abroad and the stimulus—the fear and excitement—of worthy competitors. Other countries' trading policies may not be as open as they ought to be. But the national interest lies in striving to make them better, not allowing ours to get worse.●

AMERICA THE ENEMY?

HON. DANIEL B. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. DANIEL B. CRANE. Mr. Speaker, syndicated columnist Anthony Harrigan has performed a service for the American people by blowing the whistle on an organization shrouded in mystery: the Institute for Policy Studies.

As those familiar with this organization can attest, the goals of the IPS might shock those who have not kept up with the recent machinations of the radical left.

I urge my colleagues to carefully consider Mr. Harrigan's September 11 column, which follows.

REVOLUTIONARY THINK TANK

The Ethics and Public Policy Center in Washington has performed a major public service in reporting on the insidious work of the Institute for Policy Studies in the nation's capital.

Americans who have never heard of the IPS have been profoundly affected by its efforts to influence decision making in the United States.

Dr. Ernest Lefever, director of the Center, accurately described the IPS as "the hub of a revolutionary political network." The declared aim of the IPS is, in his words, "the radical transformation of America's basic intellectual, religious, economic and political institutions."

The IPS seeks the unilateral disarmament of the United States, the breakup of America's intelligence services, and the dismantlement of its capitalist economic system.

Dr. Rael Jean Isaac, who has taught at Brooklyn College, is the author of the report entitled "America The Enemy: Profile of a Revolutionary Think Tank" which has been published by the Center.

According to Dr. Isaac, the IPS represents an unprecedented success story—"the achievement of the New Left after its supposed demise, in shaping United States

policy." The new novel, The Spike is widely assumed to be based on the IPS. "In the novel, Dr. Isaac says, "it is the channel through which the Soviet Union hopes to take over the United States."

IPS writers have produced, in Dr. Isaac's words, "a veritable avalanche of publications." She notes that the "IPS has practically become an institutional columnist for The New York Times," with numerous IPS articles used on the opposite editorial page.

The IPS has established cooperative programs with various colleges, including Antioch College. It has a joint program on "militarism" with the Cato Institute, a libertarian organization that opposes national defense efforts. It has supporters on Capitol Hill, such as Rep. John Conyers of Detroit. It made films designed to discredit U.S. intelligence agencies. It has been very active on behalf of the Palestine Liberation Organization, a terrorist group. The former head of its Transnational Institute unit, a Chilean radical, was in the pay of Cuba's intelligence service. The new head of that IPS unit is Tariq Ali, a leader of the British section of the Trotskyite Fourth International.

Most significantly, says Dr. Isaac, under the Carter administration, there has been a movement of IPS-linked people "into the National Security Council and the Department of State."

The Ethics and Public Policy Center report is packed with facts and extensively foot-noted. It points out, for example, that the Rubin Foundation has poured millions of dollars into the IPS. Another $2 million came from the now defunct DJB Foundation whose founder said the chief enemy of mankind was "the injustice of governments and of the United States Government in particular."

Despite this ugly record, the IPS is still identified by The New York Times simply as "a research organization in Washington, D.C."

The full report on the Institute For Policy Studies is available from the Ethics and Public Policy Center for $1. It is a dollar well spent for Americans who want to un-

national character and fiber today. We owe them our great respect and gratitude for their sacrifices.

This coming weekend, September 27 and 28, 1980, the 7th Regiment Armory, which has become a national landmark, located at 643 Park Avenue, New York City, N.Y., will celebrate the centennial of their building, for it was 100 years ago that the armory was completed, and this great institution launched in original ribbon cutting ceremonies officiated by President Rutherford B. Hayes. In festivities this Saturday and Sunday, the men and women of the 7th, their families and friends, public officials, and many who appreciate their legacy of commitment in sacrificing life for the welfare of their fellow man and the betterment of their country, will gather to honor and pay tribute to these heroic men and their deeds, and the great institution which houses their traditions and legacy.

To offer my own personal appreciation of this occasion, I would like to present a story of the development and contribution of this great regiment toward the history of our Nation. As we reflect on their efforts and achievements, we too can take from their example and inspiration of leadership and the voluntary spirit.

The 7th is a regiment of the National Guard of the State of New York and, as such, is a part of the U.S. Army. In the very beginning the regiment belonged to what was called the Volunteer Militia. This is of importance, since a National Guardsman of today is just what a Volunteer was in 1806—an amateur soldier in the best sense of the word. The Volunteer was, and still is, a man who enjoyed mili-

came. Years later, in 1903, the name was adopted for the Volunteers, all over the country.

Military corps are always born of necessity. What is now the 7th came into being in 1806 as a result of the herculean struggle in Europe between France, under Napolean Bonaparte, and the allies, headed by Great Britain. When the firing of a British warship killed the helmsman of a little coasting vessel in the New York Harbor area, men clamored to enlist in New York volunteer companies. Four of these were the ancestors of the 7th. On July 25, 1806, the four companies were assigned to the Battalion of Artillery, one of the best Volunteer units in the city. The 7th thus began as artillery. The New Yorkers who headed the first four companies were men of substance. Much the same is true with the members who have, through the decades, followed in their footsteps.

Volunteers of this period met twice a month, but also participated in parades, inspections, and civil meetings. Drills were usually held on Saturday in open fields near the city. On the whole, discipline and training in these earlier days were of a high order considering the lack of facilities.

The years from 1824 to 1826 were momentous for the 7th. Largely they coincided with the visit to America of the Marquis de Lafayette, beloved hero of our Revolution, in whose memory, in fact, the 7th was named. It was a battalion officer who, awaiting the landing of Lafeyette, exclaimed, "Why not call our new corps the National Guards," after the celebrated National Guard of Paris, formed and first commanded by Lafayette. The name was unanimously adopted on

the police had been utterly routed. With riots occurring during the next few years, in every case where the guard participated order was restored rapidly without loss of life. The regiment of 1824-47 consisted at formation of about 400 men who drilled twice a month with individual marksmanship encouraged, participated in summer encampments, out of town excursions, and attended nonmilitary meetings, frequently held at Shakespeare Tavern, Fulton and Nassau Streets, which served many of the functions of the modern armory.

In the 1840's the old enrolled militia system, degenerated into utter farce, was wiped off the books in New York and in most other States. What we have called the Volunteers remained as the only military reserve, and henceforth they were known as the Organized Militia. One product of the new system was the renumbering of the 27th Regiment as the 7th Regiment, New York State Militia on July 27, 1847. Another was the creation of the 1st Division comprising the regiments of New York City, 12 in all, numbered 1st through 12th. Only five of these survive in the National Guard of today.

The 7th now entered upon an era of remarkable prosperity, distinguished by regimental loyalty and a marked increase in strength. The election of Abram Duryee as colonel in 1849 was the first of a series of four outstanding regimental commanders that spanned 67 years. It is to this unbroken train of inspired leadership that is attributed in large measure the unusual strength and reputation the regiment has enjoyed thereafter. The resolute and steady performance of the 7th in the

of intense political struggle, the 7th maintained its time-honored practice of avoiding religious and political affiliation, which held it just above criticism. During the Orange Riot of 1871, it was recognized for conspicuous coolness and discipline, when under difficult conditions the 7th remained in control of its position in the parade. In 1872 we saw a renewed interest in rifle marksmanship which ever since has been so marked a part of training in the 7th. Modern field training did not commence until 1882 when the camp at Peekskill was opened. Prior to that time, out of town trips remained an important part of regimental life.

When the Tompkins Market Armory proved to be inadequate for the regiment in 1876, a campaign began to raise the funds for a new armory. The cornerstone of that armory at 66th Street and Park Avenue was laid in October 1877 and on April 26, 1880, the regiment with great ceremony marched in.

With solid-filled ranks and rolls with names that were bywords in the city, the 7th was called silk stocking when in actuality the stockings it wore remained largely cotton.

The opening years of the 20th century were as full of change for the 7th as they were for the Nation. When the regiment celebrated its centennial in 1906, it was evident that it had graduated from the status of a private military club into a carefully regulated part of a complex national military machine.

With the start of war against Germany, the 7th had to transfer men to another regiment, realizing that it could no longer function independent-

aircraft artillery on August 1, 1940, a change not only in weapons but in the structure of its companies as well. It was now the 207th Coast Artillery Regiment.

The 7th regiment, New York Guard, was formed to take the place of the 207th when it would enter Federal service. This latter organization occupied the armory until 1947, and throughout the war trained thousands of men for active duty in the Armed Forces.

Pearl Harbor came when the regiment was in Georgia and Battery A (Searchlight) was immediately detached and sent to the Pacific coast. In April 1943 the regiment was broken up into an AAA group headquarters and headquarters company, and three battalions. The 207th AAA Group shipped to England in 1944, fighting its way across Europe to Germany. The 7th AAA Battalion served for 1½ years in Guam with the 77th Infantry Division. The 771st Battalion served in the Pacific. The 247th AAA remained in the United States to train AAA personnel.

Since October 15, 1957, 107th Infantry Regiment has been assigned to the 42d Infantry Division (Rainbow) NYARNG, an association which has continued to date. In 1958, the infantry regiment became battle group, and the first battalion group, 107th Infantry, was commanded by Colonel Stewart. Then the brigade structure was introduced, resulting in the 7th's consisting of the headquarters and headquarters company, 2d Brigade and 1st and 2d Battalions, 107th Infantry.

During his tenure as brigade commander, Col. John J. Bellew was in-

in that capacity until retiring August 1, 1980. Bud was elected Borough Fireman March 8, 1946 and served until February 1977, when he retired as Captain. He served as Treasurer of the Passaic County Assessors Association for sixteen years.

KENNETH "KEN" MATHEWS, MEMBER, BOARD OF ASSESSORS (FORMER MAYOR AND COUNCILMAN)

Ken was appointed Assessor September 22, 1966 and served in that capacity until retiring August 1, 1980. He was Borough Councilman from 1948 through 1962 and was Mayor of the Borough of Bloomingdale in 1963 and 1964. Ken was one of the original members of the Planning Board organized in 1957, and served as a member until resigning March 23, 1967; also was Special Representative to the Board of Health for eight years. Ken served the Borough as Fireman from date of approval March 20, 1931 and retired as 1st Deputy Chief February 10, 1977, after having served as Captain and 1st Deputy Chief for a total of twenty-five years.

SEBASTIAN C. "CLAYT" SEHULSTER, MEMBER, BOARD OF ASSESSORS

Clayt was appointed Assessor February 14, 1957 and served until retiring August 1, 1980. He also served as Building Inspector from April 12, 1962 through January, 1967. During that time, he was Sewer Inspector and Zoning Officer. Clayt was a Past Treasurer of the Passaic County Assessors Association and was a member of the Bloomingdale Lions Club.

Mr. Speaker, it is indeed appropriate that we reflect on the deeds and achievements of our people who have contributed to the quality of our way of life here in America and I am honored and privileged to call your attention to the lifetime of outstanding public service provided by these exemplary citizens.

As they retire from the high office of public trust that they have attained by their personal commitment and hard work, I know that you and our colleagues here in the Congress will want to join with me in extending our warmest greetings and felicitations to them for their standards of excellence and record of achievements. We do indeed salute the Honorable Josephine Bennett, the Honorable Laurence Bennett, and Honorable Kenneth Mathews, and the Honorable Sebastian C. Sehulster, distinguished citizens and community leaders, for their contributions to the quality of life for the people of Bloomingdale, our State, and Nation.●

REPUBLICANS OPPOSE CARTEROMICS

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. SHUSTER. Mr. Speaker, I rise today to bring to the attention of my colleagues the dismal consequences of Carteromics—the so called economic policy of the Carter administration. Carteromics is that strange mixture of inflation, high taxes, increased Government spending, and high unemployment that passes for economic policy under President Carter. What it really is is a prescription for disaster.

Yesterday, the House Republican Policy Committee adopted a formal policy statement detailing the impact of 4 more years of Carter economics. So that my colleagues may more fully understand these impacts, I am including the full policy statement for their perusal:

CARTEROMICS: PRESCRIPTION FOR DISASTER

On behalf of the American taxpayer, the House Republican Policy Committee strongly opposes the policy of Carteromics. Carteromics—that strange mixture of inflation, high taxes, increased government spending, and high unemployment—is what passes for economic policy under President Carter.

During the past 3½ years, the American people have learned all too well the definition of Carteromics:

*An inflation rate that has soared from 4.5 percent in 1976 to 18 percent in 1980;

*An unemployment rate that has thrown 8 million people out of work.

*Prime interest rates that have almost tripled, from a high of 7.25 percent in 1976 to a high of 20 percent in 1980.

*An increase of 50 percent in the tax burden on the American people—rising from $400 billion to over $600 billion;

*A bloated federal bureaucracy that now takes almost 22 percent of the Gross National Product out of the productive private sector to feed itself.

But as bad as the past 3½ years have been, a second term under Jimmy Carter would be even worse—it would, in fact, be a Prescription for Disaster!

Congressman Dave Stockman (R-Mich.) has performed an exhaustive, detailed cost analysis of the new spending programs endorsed by the Democrat platforms and of the re-estimate of the five-year economic and budget forecasts issued by the White House in July. This analysis indicates the following dismal outlook through 1980.

1. Democrat spending promises would result in a 16 percent annual growth in federal outlays through fiscal year 1985. Fifty-three major platform proposals alone would add $444 billion in new outlays over the period and total $130 billion per year by fiscal year 1985. Overall, current Democratic policies and future pledges would escalate federal spending from $575 billion in fiscal year 1980 to over $1.2 trillion in fiscal year 1985—an increase of 105 percent. The Democrats plan to spend the staggering sum of 4.7 trillion during the next five budget years.

2. The federal deficit will increase to $92 billion in fiscal year 1981, with the deficit figure steadily rising to $134 billion by fiscal year 1983 and $201 billion by fiscal year 1985. The five year red ink total will exceed $713 billion, increasing the national debt by 66 percent.

3. The federal tax share of GNP will rise from 20.6 percent in fiscal year 1980 to an historic high of 23.2 percent in fiscal year 1985. Nominal revenues will increase from $518 billion in fiscal year 1980 to $1,022 billion in fiscal year 1985, a 98 percent jump, under current tax law. Yet revenues would have to rise to nearly $1.2 trillion or 27 percent of GNP to actually balance the budget in fiscal year 1985.

4. The anemic 2.5 percent annual real GNP growth during the first Carter Administration would decline further to an average of 1.8 percent per year through 1985.

And what do these policies mean to the American people? Simply this:

(A) The U.S. labor force will grow by nearly 7 million workers between now and 1985, but the sluggish real growth resulting from Democratic tax, spending and regulatory policies will make it impossible to generate new jobs fast enough. Consequently, unemployment will remain above 8 million through early 1984, and nearly 7.5 million Americans will still be looking for work in 1985.

(B) By 1985 inflation rates will be in the 12 percent range or higher. A thousand dollars saved in 1976 will be worth only $460 after a second Carter term.

And what does President Carter propose to ease these burdens? A tax rebate that is a pittance.

Under present law, a $25,000 per year family will experience a $3,704 increase in federal taxes between 1980 and 1985 if its earnings keep up with the inflation rate. The Carter proposed 8 percent Social Security rebate will offset only $230, or 6.2 percent, of this increase. This staggering increase is primarily due to the fact that the family's marginal tax rate will rise from 28 to 43 percent over the five years due to bracket creep.

Thus, despite promises to the contrary by Jimmy Carter, the impact of Carteromics is clear. The American people cannot afford four more years of Democrat economic policies.

This is the 267th day of the 26th consecutive year of Democrat control of the House of Representatives.●

19TH ANNUAL CONGRESSIONAL BASEBALL GAME

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. CHAPPELL. Mr. Speaker, as one of the coaches of the Democratic baseball team, it is with a feeling of both admiration and sadness that I accept the challenge to the 19th annual congressional baseball game issued by our colleagues SILVIO CONTE and CARL PURSELL.

My admiration is real. Like all Americans I feel heartened by the spectacle of men bravely facing hopeless odds: The Spartans defeat at Thermopylae, Davy Crockett and Jim Bowie at the Alamo—those images stir the blood of any patriot.

Of course, one thing about such scenes—to those who participate in them—is the fact that while odds may seem hopeless—no one can know the outcome in advance.

As John Paul Jones proved: A refusal to surrender can lead to victory.

If this were the present situation of the Republican baseball team my admiration would be unmixed. After their defeat we would honor their last stand. Perhaps building a trophy to their bravery out of the bats and gloves fallen from their helpless hands.

The present situation of the Republicans ball team, however, is not like the battle of John Paul Jones against the British.

It is more like the attempt of the medieval English King Canute to stop the oncoming tide by lashing the waves.

And this is the cause of my sadness.

It is sad to see a once-worthy opponent fallen—not in battle—but in the mind.

But can it be but madness to challenge the very tide.

There is a difference, after all, between jumping in front of a runaway horse in an attempt to save its rider and jumping in front of an avalanche.

The first is heroism. The second suicide.

And so I am sad to see my Republican colleagues come to such a pass.

But wait. It occurs to me the reason King Canute ordered the tide to halt is not in any expectation that it would stop.

In fact, he purposely took up this futile contest in order to prove his limitations to his subjects.

Some things, he said, I can oppose. Others, I cannot.

It is possible—no, it is most likely—some such lesson is what my Republican colleagues intend.

Some things undoubtedly they can do. But there are other things they should not be expected to do—such as defeating Democrats.

Ladies and gentlemen, the Democratic ball team will be happy to assist in this demonstration by overwhelming the opposing team with a tide of scoring. Then the Republicans can be seen for what they really are—all wet.●

THE AMERICAN FISHERIES PROMOTION ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. YOUNG of Alaska. Mr. Speaker, yesterday, due to conflict with other business, I was unable to be present in the House Chamber when H.R. 7039, the "American Fisheries Promotion Act," was debated. I therefore wish to insert in the RECORD my views on this significant piece of legislation.

To begin with, I would like to express my gratitude to the chairman and ranking member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment. They and their staffs have spent countless hours in writing this legislation, listening to testimony, and guiding the bill to final passage in committee and the House. Their sincere efforts will long be remembered and appreciated by Alaskans.

As was stated during the debate, H.R. 7039 represents an attempt to correct certain deficiencies in the Fisheries Conservation and Management Act and, more importantly, to provide a mechanism for the successful development of the U.S. fishing industry. As a Representative of a State with 35 percent of the Nation's coastline and two of the top three fishing ports in the country, I share this laudable goal. I joined with Mr. BREAUX, Mr. FORSYTHE, and a number of our other colleagues in sponsoring H.R. 7039 and have tried to work in cooperation with them in getting a good bill passed.

American fishermen have long recognized that extension of U.S. jurisdiction over aquatic resources to 200 miles was only the first step in re-establishing a strong fishing industry. Once conservation and management controls were put in place, an effort had to be made to provide the economic and political structure to allow U.S. fishermen to take advantage of these conservation and management measures. This would include such things as changing the Saltonstall-Kennedy Act to provide funding for fisheries development projects, with the money to come from tariffs collected on fish imports; providing a mechanism to rebuild our processing facilities; engaging in a coordinated marketing effort, both domestically and overseas; and insuring that foreign fishing in our 200-mile zone is treated as a privilege, rather than a right. H.R. 7039 was introduced to promote such development. In addition, certain problems with existing law that have been discovered were also addressed in this legislation.

Unfortunately, as often happens with legislation, a number of changes had to be made in the bill. Some of these were made in committee markup sessions, in which I participated. However, following the passage of H.R. 7039 in the Merchant Marine and Fisheries Committee, the administration, which had gone on record in opposition to the bill, indicated that H.R. 7039 would be vetoed if sent to the President in its existing form. As a result, negotiations ensued between the committee staff and administration representatives, resulting in the bill that was passed yesterday.

After reading the compromise bill, I must regretfully state that some concerns of Alaskan fishermen and processors have not been addressed and that new areas of concern have been found in the legislation. This is not to say that H.R. 7039 is a bad bill; on the contrary, there are a number of excellent provisions that have been retained and that will be helpful to the fishing industry. I would also like to point out, and emphasize, that the committee intent, as expressed by Mr. BREAUX and Mr. FORSYTHE in their statements yesterday, will certainly help to alleviate some of the problems found in the bill. On balance, however, I do feel that further work needs to be done if we are to have the sort of fisheries development legislation that we envisioned when H.R. 7039 was introduced.

If a conference is held with the Senate on this bill, I will work with my colleagues in trying to address these concerns in the appropriate fashion. I am sure that some Alaskan fishermen will be contacting our Senators to express their opinions on this bill. If, due to the shortness of the session, no conference is held, I would hope that the chairman and ranking member of the subcommittee will agree to look again at these problems in the next session.

Again, I think that the chairman and the ranking member should be congratulated for their efforts and I look forward to working with them in the future to insure that we retain a strong U.S. fishing industry.●

LEST WE FORGET: THE STRUGGLE OF ANATOLY SHCHARANSKY

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. DORNAN. Mr. Speaker, with the passage of time, it is easy to lose sight of the sacrifices that are still being made by those brave men and women in the U.S.S.R. who stand tall for freedom. Lost in the great debates on arms control agreements, the grain embargos on the Soviet Union, the strikes in Poland, and the Soviet invasion of Afghanistan, is the continuing, silent, desolate struggle of Anatoly Shcharansky and the brave Soviet Jewish activists in Soviet labor camps.

Shcharansky's lawyer, Harvard law professor Alan Dershowitz, was forbidden by the Soviet court from making an oral agreement in Shcharansky's defense. So he submitted a written closing argument to the Soviet court on behalf of his brave client.

Lest we forget the bravery and the determination of the Soviet Jewish activists struggling for freedom and survival in the face of a tyrannical Soviet police state, I submit, for the RECORD, Professor Dershowitz's remarkable defense of Anatoly Shcharansky, a defense which is also an indictment of the Soviet system of justice.

THE CLOSING ARGUMENT BY ANATOLY SHCHARANSKY'S LAWYER IN ABSENTIA

Shortly after the arrest of Anatoly Shcharansky, his wife—Avital—asked me to serve as his American lawyer. I accepted with a profound sense of responsibility but with little hope of affecting the outcome of the case. Shortly thereafter, Shcharansky's mother, Ida Milgrom, sent me a written message from the Soviet Union asking me to try to represent Shcharansky at his Moscow trial. I agreed to try, but again without much hope. My pessimism, it turns out, was well founded: repeated requests to attend Shcharansky's trial and appeal have been rebuked. I have decided, however, to submit to the Soviet Court the following closing argument that I would have made on Shcharansky's behalf had I been allowed to represent him. I have also submitted the argument to the court that has jurisdiction to hear an appeal from Shcharansky's conviction. (A more detailed and technical legal brief will be submitted as well.)

HONORABLE JUDGES: I am here to speak on behalf of a man who has already been de-

cleared guilty by the official Soviet press and by numerous high ranking officials of the Soviet Communist Party and Government. But under Soviet law, Anatoly Shcharansky is entitled to a fair trial and an unbiased verdict from Your Honors. I am acutely aware of the burden under which you labor: I know—as you know only too well—that no judge in the half century of this nation's history has ever voted to acquit a defendant charged with a political crime such as treason. But I ask you to throw off your yokes and to act as honorable members of the legal profession: by rendering a true and honest judgment.

Who was the defendant, Anatoly Shcharansky, before his arrest on April 15, 1977?

Anatoly Shcharansky was the voice of the Jewish Emigration movement. It was he who served as the public communication link between the Jewish refusniks—those whose requests to emigrate from the Soviet Union has not been granted—and the outside world. His every act was out in the open; it was his purpose to let the Soviet authorities know that his voice—which, in reality, was the articulate translation of thousands of other refusnik voices—was being listened to in Europe and in the United States. He did nothing in secret: that was neither his method nor his purpose.

The Soviet authorities now claim that this open, public spokesperson was, in reality, a secret operative of the American Central Intelligence Agency, that he was stealing Soviet military secrets and covertly passing them on to American agents, diplomats and reporters.

If the charges were not so serious, they would be comic indeed. Imagine how incompetent an American intelligence agency would have to be to have engaged someone like Shcharansky as a spy. His phone obviously tapped, his every movement openly surveilled, his roommate a KGB plant, Schcharansky was the worst possible candidate for the espionage game. Imagine how incompetent the Soviet counterespionage apparatus would have to be to have let someone like Shcharansky—a man who had publicly declared his allegiance to Israel and who had demanded the right to emigrate there—have access to military secrets.

Shcharansky was not a spy. United States President Carter did not lie when he publicly assured the world that he had inquired deeply within the C.I.A. and the State Department and had determined that Shcharansky never had any connection with the C.I.A. Shcharansky did not work for the C.I.A., nor did he have access to any military secrets.

The only information to which he had any access at all was computer technology, since that was the field in which he had worked several years prior to his arrest. But the Soviet Union imports virtually all of its computer technology from the United States, under an assurance—made binding by American law—that this technology will never be put to any direct or indirect military use. For the Soviet Union now to claim that Shcharansky had access to military secrets is for that nation's leaders to boast that they are defying the express conditions under which they have been allowed to import computer technology. If this prosecution succeeds, it cannot be long before the Amelcan Congress revokes the Soviet Union's privilege to import American technology for military uses expressly forbidden by American law.

The prosecutor has made much of the information that Shcharansky gave to Robert Toth, the reporter for the Los Angeles Times. But there is nothing secret either about the information or about the fact that Shcharansky turned it over to Toth. Shcharansky never gave background or off-the-record interviews to the press; he was always identified by name in the press reports as the source of the information. Indeed, on one occasion when an American newsman came to pick him up for an interview in a small family car, Shcharansky insisted that the reporter return in the large American car which was clearly identified as belonging to an American newspaper. Are these the actions of a secret spy trying to conceal his relationship to the press?

And what was the nature of the information he turned over to Toth and others? It was simply the names and places of employment of refusniks whose emigration requests had been turned down by the Soviet emigration authorities on the ground that they had worked in jobs involving state secrets. Each such refusnik had received a notification from the Soviet authorities and each was free to communicate that fact to the press—as many did. All Shcharansky did was to collate this public information and transmit it—in convenient form—to the American press in order to demonstrate that no state secrets were involved, that the Soviet, excuses for denying exit visas were pretextual. This was his right under Soviet law and under the Helsinki Accords, the irony is that if any Soviet secrets were revealed at all—and Toth denies that any were—they were revealed by the Soviet emigration authorities themselves when they sent public notices to refusniks declaring that the factories, research ships, and laboratories in which these refusniks had worked were involved in "state secrets." Shcharansky cannot legally be convicted of revealing "secrets" that had already been revealed by the Soviet authorities.

But what of Anatoly Shcharansky, the man, the husband, the son? We do not know what remains of the 29 year old smiling man who was carried away to a KGB prison on March 15, 1977. Between that date and July 10, 1978—a period of nearly 16 months—Anatoly Shcharansky was a nonperson in the Soviet Union. Nobody—not his mother, not his lawyer, not his wife—was allowed to communicate with him in any way; nobody knew his physical or mental condition; nobody knew what his captors were doing to him in the secrecy of this KGB fortress. Nobody knew, for sure, whether he was alive or dead.

Then, on July 10, 1978, he was taken to a courtroom for his trial—a trial which under Soviet law must be open to the public. But who has been allowed to attend this public trial? Not the American or western press, though Shcharansky has become a household word through much of the world. Not American diplomats, though that country is charged with being the recipient of Shcharansky's espionage. Not any of Shcharansky's friends or supporters, though they are willing to testify on his behalf. Not even his mother—who had not laid eyes on him for 16 months—was allowed to enter the courtroom during the trial. The pretense for excluding his mother was that the prosecution claimed that it intended to call her as a witness, needless to say, it never called her nor allowed her to see her son. Indeed, the prosecutor—and the court—have been unwilling to call as witnesses those people who have most direct knowledge of the alleged "crimes" of Anatoly Shcharansky. Where was Robert Toth, the jounalist to whom Shcharansky allegedly passed secrets? He has declared his willingness to come to the Soviet Union to state under oath what he has already written in the American press, namely that none of the material given to him by Shcharansky was classified as secret under the Soviet regulations. Where was the testimony of Professor Vitaly Rubin, who allegedly recruited Shcharansky's KGB roommate into the C.I.A.? Efforts to submit the deposition of Rubin and other crucial witnesses who are now outside the Soviet Union have been rebuffed. Shcharansky has also been denied the right to call witnesses who are in the Soviet Union in his defense.

Why are the prosecutors so afraid of these witnesses? Why are they so afraid of the western press? Why are they so afraid of the numerous distingushed lawyers from around the world who have requested permission to observe the trial? Why are they so afraid of allowing Shcharansky to be defended by a Soviet lawyer of his choice? Why are they so afraid of letting the truth come out? The answer, Honorable Judges, is as obvious to you as it is to the rest of the world: the truth is that these charges of treason against Anatoly Shcharansky are wholly false; Anatoly Shcharansky is an innocent man.

You know that, and the world knows that you know it. It is you who are on trial. Will you follow the orders of your party and government? Will you do what every Soviet judge before you has done? Or will you act so as to merit the truly honorable title of "judge"?

When your country and mine brought the Nazi judges to trial at Nuremberg, one German judge—in defense of his decision to allow an innocent Jew to be executed—argued in defense of his judicial misconduct that he had believed that by following the party's orders in one case he could slow down the process of genocide. The Nuremberg judges—from your country and mine—rejected his defense and jointly proclaimed that on the day that justice was perverted by the deliberate conviction of the initial innocent victim, the irreversible first step toward judicial genocide and holocaust had been taken. I implore you to search your consciences before you take a similar tragic first step here.

The fate of one human being is in your hands, but much more is at stake: the future of civilization may hang in the balance.●

RETIRING ATHLETIC DIRECTOR REED LAUGHLIN

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BONIOR of Michigan. Mr. Speaker, I would like to take this opportunity to share with my colleagues the accomplishments of Reed Laughlin, who is retiring as athletic director of Port Huron High School.

During his 40 years of involvement in education and athletics, Mr. Laughlin has helped to build a record of accomplishment at Port Huron High that will stand for a very long time.

Hired to coach the Big Reds in 1947, Mr. Laughlin went on to become the athletic director in 1966. Under his leadership, the Big Reds won many games, but it will be for his dedication to the students' needs that he will be most remembered. Facilities at the high school have improved and they now have the kind of equipment that can help to mold top athletes. He also

aided the advancement of girl's sports during the early 1950's.

Mr. Laughlin, a member of the Michigan Coaches Hall of Fame, received his B.S. in physical education from Western Michigan University. From Western he served at several schools before beginning his long career at Port Huron High.

Although he is retiring from his job of athletic director, Mr. Laughlin plans to remain active in Port Huron community activities. This is not unexpected from a man who has given of his time and talents to thousands of young people.

The students, teachers, and people of Port Huron owe a great deal to this dedicated and talented man and I am pleased that I can be a part of the tribute to Reed Laughlin.●

INTERNATIONAL TRADE

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. GIBBONS. Mr. Speaker, international trade has a powerful influence upon the U.S. economy. Yesterday, Mr. Robert J. Samuelson, a noted authority on economic matters, wrote in the column entitled "Economic Focus" of the Washington Post a definitive essay on the subject of international trade.

Mr. Speaker, all Members who did not have an opportunity to read Mr. Samuelson's article should take the time to do so. For their convenience, I am attaching a copy of it:

[From the Washington Post, Sept. 23, 1980]

HARD TO IMAGINE BETTER U.S. TRADE STRUCTURE

(By Robert J. Samuelson)

One of the arts of political life today is defining the "national interest." In policies, parochial interests always will triumph if broader interests can't be coalesced into understandable themes and workable coalitions. It is simply a matter of knowing and caring. There is too much going on for everyone to know all the details of everything. If broader interests cannot be identified from the morass of details, then those who command the details will shape government policy.

You can apply this rule of thumb to dozens of areas of political life, but nowhere is it more relevant today than in trade policy. Time was, of course, that "free trade" was accepted automatically as part of the national interest. No more. When a recent New York Times-CBS News poll asked respondents whether they would choose jobs over lower-priced imports, 70 percent picked jobs.

Times change and, if free trade no longer furthers the national interest, it ought to be abandoned. But the overwhelming evidence is otherwise and, if the public disagrees, we face a self-destructive political failure in which popular attitudes diverge significantly from concrete interests.

Overwhelming evidence? Start with a recent report—"Study of U.S. Competitiveness"—submitted by the Carter administration (the work was largely done by the Labor Department) to Congress. You undoubtedly have heard much about the deterioration of the U.S. trade balance, but once you remove oil imports, the trade balance remains remarkably strong.

Put in simplest terms, America today is a massive exporter of capital-intensive and technology-intensive goods (from computers to heavy power equipment), a massive exporter of food and a large importer of consumer goods. The amounts are immense: in 1979, a surplus of $17.9 billion in agricultural exports, a $32.6 billion surplus in capital goods and a $30.2 billion deficit in consumer goods.

It's difficult to imagine a more favorable trade structure. With the exception of oil and some minerals—most of which can be stockpiled—we are not dependent on imports for strategic goods. Japanese automobiles and stereos may be conspicuous, but if they stopped coming tomorrow the nation's physical survival wouldn't be in jeopardy. The same cannot be said for the import patterns of Europe and Japan, which depend heavily on overseas food and raw materials.

Our trade mix also corresponds with emerging national and global social realities. Advanced societies such as the United States gradually are becoming areas of relative labor scarcity, while other parts of the world—especially the developing countries—have huge labor surpluses. Even in the recession, the U.S. unemployment rate remains near 8 percent; that's a far cry from the 15 percent to 30 percent of some developing nations. As the average age of the U.S. population increases, the labor pool will grow even more slowly.

What better division of labor, then, than to have more of our basic labor-intensive goods produced elsewhere while devoting domestic resources to more productive higher-technology industries? The nature of work in advanced societies makes this approach especially compelling. As the labor force becomes more educated, it is less willing (and able?) to suffer the indignities and low wages inherent in many regimented manufacturing processes.

To cite these trends is not to deny the intense pressures—both in popular attitudes and in the grievances of specific industries—for protectionism. Part of this is simply the temper of the times; Americans feel particularly annoyed and angry at foreigners. But part of it also reflects misinformation and basic changes in the world economy.

The same competitiveness report documents some of those changes. America's once unquestioned technological superiority is increasingly thin. The report found that with two exceptions, aircraft and power generators, America's top 20 manufacturing exports' shares of world exports declined between 1963 and 1977. Although some drops were slight, others were severe: U.S. farm equipment slid from 40 percent of world exports to 25 percent.

In short, some of the self-confidence is gone. Industries that once enthusiastically boosted free trade now fear imports and are a little less active. And there's the additional suspicion that U.S. products are always the victims of "unfair" practices. When auto companies and workers urge import restrictions, for example, they correctly argue that the United States is the only major country without some limitations.

Against this background, practical politicians have continued to pay lip service to free trade while becoming increasingly protectionist in practice. What's missed in this drift are the huge, largely invisible, costs. A recent staff study by the Federal Trade Commission found, for example, that restrictions usually resulted in costs to consumers at least five times as great as benefits to workers and producers.

Sometimes arguments are misused. Does anyone really believe that the U.S. auto industry's problems are not home-grown? It may be true that the Europeans restrict Japanese imports, but it's also true that European car manufacturers are more numerous and competitive among themselves than are American companies. Imports in Britain have skyrocketed to about 60 percent of the market, with Japanese cars accounting for less than one-third of that total.

And so the greatest cost is self-deception. U.S. economic power, both at home and abroad, lies heavily in the vitality of our producing enterprises. We cannot insulate ourselves from the reality that our technological and management advantages over the rest of the world have narrowed. Nor can we protect ourselves into rejuvenation. Many high-technology firms rely on exports for between 20 percent and 30 percent of their sales. They need the opportunity of new markets abroad and the stimulus—the fear and excitement—of worthy competitors. Other countries' trading policies may not be as open as they ought to be. But the national interest lies in striving to make them better, not allowing ours to get worse.●

AMERICA THE ENEMY?

HON. DANIEL B. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. DANIEL B. CRANE. Mr. Speaker, syndicated columnist Anthony Harrigan has performed a service for the American people by blowing the whistle on an organization shrouded in mystery: the Institute for Policy Studies.

As those familiar with this organization can attest, the goals of the IPS might shock those who have not kept up with the recent machinations of the radical left.

I urge my colleagues to carefully consider Mr. Harrigan's September 11 column, which follows.

REVOLUTIONARY THINK TANK

The Ethics and Public Policy Center in Washington has performed a major public service in reporting on the insidious work of the Institute for Policy Studies in the nation's capital.

Americans who have never heard of the IPS have been profoundly affected by its efforts to influence decision making in the United States.

Dr. Ernest Lefever, director of the Center, accurately described the IPS as "the hub of a revolutionary political network." The declared aim of the IPS is, in his words, "the radical transformation of America's basic intellectual, religious, economic and political institutions."

The IPS seeks the unilateral disarmament of the United States, the breakup of America's intelligence services, and the dismantlement of its capitalist economic system.

Dr. Rael Jean Isaac, who has taught at Brooklyn College, is the author of the report entitled "America The Enemy: Profile of a Revolutionary Think Tank" which has been published by the Center.

According to Dr. Isaac, the IPS represents an unprecedented success story—"the achievement of the New Left after its supposed demise, in shaping United States

policy." The new novel, The Spike is widely assumed to be based on the IPS. "In the novel, Dr. Isaac says, "it is the channel through which the Soviet Union hopes to take over the United States."

IPS writers have produced, in Dr. Isaac's words, "a veritable avalanche of publications." She notes that the "IPS has practically become an institutional columnist for The New York Times," with numerous IPS articles used on the opposite editorial page.

The IPS has established cooperative programs with various colleges, including Antioch College. It has a joint program on "militarism" with the Cato Institute, a libertarian organization that opposes national defense efforts. It has supporters on Capitol Hill, such as Rep. John Conyers of Detroit. It made films designed to discredit U.S. intelligence agencies. It has been very active on behalf of the Palestine Liberation Organization, a terrorist group. The former head of its Transnational Institute unit, a Chilean radical, was in the pay of Cuba's intelligence service. The new head of that IPS unit is Tariq Ali, a leader of the British section of the Trotskyite Fourth International.

Most significantly, says Dr. Isaac, under the Carter administration, there has been a movement of IPS-linked people "into the National Security Council and the Department of State."

The Ethics and Public Policy Center report is packed with facts and extensively foot-noted. It points out, for example, that the Rubin Foundation has poured millions of dollars into the IPS. Another $2 million came from the now defunct DJB Foundation whose founder said the chief enemy of mankind was "the injustice of governments and of the United States Government in particular."

Despite this ugly record, the IPS is still identified by The New York Times simply as "a research organization in Washington, D.C."

The full report on the Institute For Policy Studies is available from the Ethics and Public Policy Center for $1. It is a dollar well spent for Americans who want to understand why the country has adopted left-leaning positions in recent years. Indeed, this report is an enormously important public document in this presidential election year.●

PRO PATRIA ET GLORIA, THE STORY OF THE 7TH REGIMENT OF NEW YORK, ON THE CENTENNIAL CELEBRATION OF THE 7TH REGIMENT ARMORY, A NATIONAL LANDMARK

HON. MARIO BIAGGI
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1980

● Mr. BIAGGI. Mr. Speaker, they are called the 7th Regiment of New York, the 107th Infantry Regiment, New York Army Reserve National Guard. They have dedicated their lives in the service of their country so that the American way of life might endure.

Their history is as rich as their wealth of men of courage and their legendary deeds. They have embodied as tradition the best in leadership and the American spirit of voluntarism to meet the historical challenges of our young Nation so that we can enjoy our basic freedoms today. Their contribution to our heritage is engrained in our national character and fiber today. We owe them our great respect and gratitude for their sacrifices.

This coming weekend, September 27 and 28, 1980, the 7th Regiment Armory, which has become a national landmark, located at 643 Park Avenue, New York City, N.Y., will celebrate the centennial of their building, for it was 100 years ago that the armory was completed, and this great institution launched in original ribbon cutting ceremonies officiated by President Rutherford B. Hayes. In festivities this Saturday and Sunday, the men and women of the 7th, their families and friends, public officials, and many who appreciate their legacy of commitment in sacrificing life for the welfare of their fellow man and the betterment of their country, will gather to honor and pay tribute to these heroic men and their deeds, and the great institution which houses their traditions and legacy.

To offer my own personal appreciation of this occasion, I would like to present a story of the development and contribution of this great regiment toward the history of our Nation. As we reflect on their efforts and achievements, we too can take from their example and inspiration of leadership and the voluntary spirit.

The 7th is a regiment of the National Guard of the State of New York and, as such, is a part of the U.S. Army. In the very beginning the regiment belonged to what was called the Volunteer Militia. This is of importance, since a National Guardsman of today is just what a Volunteer was in 1806—an amateur soldier in the best sense of the word. The Volunteer was, and still is, a man who enjoyed military life enough to join with others to practice it in his spare time. Only the Volunteer can testify to what sacrifice this often entails.

Volunteers, too, were usually men of some means and education. Their companies were independent corps and proud of it. They were, indeed, incorporated military societies available to the States for emergencies of all kinds. Another task was that of training officiers for larger emergencies. Probably the most signal contribution made by the 7th Regiment during the Civil War lay in the more than 600 men it furnished as officers for the Union Army. Something like 2,000 officers came out of the regiment in World War I, and its record in World War II is just as impressive. Volunteers selected their officers from their own ranks and this is a tradition the 7th has closely adhered to. But sound men must be recruited in the first place if sound officers are so to be selected, and careful selection of new members is another unbroken tradition in the regiment.

It was into this family of Volunteers that the 7th was born in 1806. In 1862 the Volunteer Militia of New York was given the name "National Guard" and it was from the 7th that the title came. Years later, in 1903, the name was adopted for the Volunteers, all over the country.

Military corps are always born of necessity. What is now the 7th came into being in 1806 as a result of the herculean struggle in Europe between France, under Napolean Bonaparte, and the allies, headed by Great Britain. When the firing of a British warship killed the helmsman of a little coasting vessel in the New York Harbor area, men clamored to enlist in New York volunteer companies. Four of these were the ancestors of the 7th. On July 25, 1806, the four companies were assigned to the Battalion of Artillery, one of the best Volunteer units in the city. The 7th thus began as artillery. The New Yorkers who headed the first four companies were men of substance. Much the same is true with the members who have, through the decades, followed in their footsteps.

Volunteers of this period met twice a month, but also participated in parades, inspections, and civil meetings. Drills were usually held on Saturday in open fields near the city. On the whole, discipline and training in these earlier days were of a high order considering the lack of facilities.

The years from 1824 to 1826 were momentous for the 7th. Largely they coincided with the visit to America of the Marquis de Lafayette, beloved hero of our Revolution, in whose memory, in fact, the 7th was named. It was a battalion officer who, awaiting the landing of Lafeyette, exclaimed, "Why not call our new corps the National Guards," after the celebrated National Guard of Paris, formed and first commanded by Lafayette. The name was unanimously adopted on August 25, 1824. The story is also told that a year later Lafayette, when passing the new gray battalion that bore his name "National Guards," stopped his carriage, and with tears in his eyes, took each officer by hand. In the armory hangs a portrait of Lafayette to remind all of this proud day in the regiment's history. The 7th was made a separate battalion on October 1, 1825.

It was reorganized as the 27th Regiment, New York State Artillery, on May 6 of the following year. Its future henceforth was in its own hands and the new motto it had adopted in 1824, "Pro Patria et Gloria," was the direction in which it aimed. In 1832 the "s" was dropped from National Guards.

In the quarter century that followed, the 7th held its own despite new social conditions that changed the character of New York and its Volunteer corps. By stressing regimental loyalty and keeping out of the political conflicts of the day, it held on to its strength and reputation. The year 1834 saw the regiment called out for the election riot, its first real experience with this most unpleasant kind of duty, which was, however, to be its lot for many years to come. In a few hours it quelled a serious riot in which

the police had been utterly routed. With riots occurring during the next few years, in every case where the guard participated order was restored rapidly without loss of life. The regiment of 1824–47 consisted at formation of about 400 men who drilled twice a month with individual marksmanship encouraged, participated in summer encampments, out of town excursions, and attended nonmilitary meetings, frequently held at Shakespeare Tavern, Fulton and Nassau Streets, which served many of the functions of the modern armory.

In the 1840's the old enrolled militia system, degenerated into utter farce, was wiped off the books in New York and in most other States. What we have called the Volunteers remained as the only military reserve, and henceforth they were known as the Organized Militia. One product of the new system was the renumbering of the 27th Regiment as the 7th Regiment, New York State Militia on July 27, 1847. Another was the creation of the 1st Division comprising the regiments of New York City, 12 in all, numbered 1st through 12th. Only five of these survive in the National Guard of today.

The 7th now entered upon an era of remarkable prosperity, distinguished by regimental loyalty and a marked increase in strength. The election of Abram Duryee as colonel in 1849 was the first of a series of four outstanding regimental commanders that spanned 67 years. It is to this unbroken train of inspired leadership that is attributed in large measure the unusual strength and reputation the regiment has enjoyed thereafter. The resolute and steady performance of the 7th in the Astor Place riot earned it a reputation and popularity among responsible citizens. Yearly excursions had brought it a national renown, and the 7th "held deservedly in the highest respect", according to Commanding General of the Army Winfield Scott.

The great Civil War broke in April, 1861. The 7th's services were tendered to the Governor and 2 days later the 7th was ordered to leave for Washington—the first regiment selected from New York. On April 19, the regiment formed in Lafayette Place and begin its celebrated march down Broadway. They were afforded an ovation exceeding anything yet seen on that avenue of ovations—a sendoff to war long remembered by the 7th. They knew then "that our great city was with us as one man, utterly united in the great cause we were marching to sustain." The 7th never was to serve in battle, but its contribution of officers for the new regiments continued throughout the war. It was said that the presence of the 7th in Washington, as "the corps d'elite of the whole Union", seemed to change fate by bringing spirit and the power of liberty to the Nation's Capital.

The decades which followed were ones of steady growth. During an era of intense political struggle, the 7th maintained its time-honored practice of avoiding religious and political affiliation, which held it just above criticism. During the Orange Riot of 1871, it was recognized for conspicuous coolness and discipline, when under difficult conditions the 7th remained in control of its position in the parade. In 1872 we saw a renewed interest in rifle marksmanship which ever since has been so marked a part of training in the 7th. Modern field training did not commence until 1882 when the camp at Peekskill was opened. Prior to that time, out of town trips remained an important part of regimental life.

When the Tompkins Market Armory proved to be inadequate for the regiment in 1876, a campaign began to raise the funds for a new armory. The cornerstone of that armory at 66th Street and Park Avenue was laid in October 1877 and on April 26, 1880, the regiment with great ceremony marched in.

With solid-filled ranks and rolls with names that were bywords in the city, the 7th was called silk stocking when in actuality the stockings it wore remained largely cotton.

The opening years of the 20th century were as full of change for the 7th as they were for the Nation. When the regiment celebrated its centennial in 1906, it was evident that it had graduated from the status of a private military club into a carefully regulated part of a complex national military machine.

With the start of war against Germany, the 7th had to transfer men to another regiment, realizing that it could no longer function independently of higher authority. The 7th went to France as a regiment of the 27th Division. It was assigned to the 2d, and later 4th British Armies. Entering combat on August 10, 1918, the 7th together with the rest of the division broke the Hindenburg line and captured 1,799 Germans. On March 25, 1919, the regiment marched proudly up Fifth Avenue with the most tremendous ovation ever accorded it. By that time, 2,000 of its members had been commissioned as officers in the armed services.

After the war, the regiment was a more businesslike outfit with its new weapons and hard-won battle experience. Summer camps were regular events; carefully prepared training schedules became the rule; Regular Army officers were assigned permanently for instruction and inspection, and each year saw 7th men at various U.S. Army schools. Extensive improvements to the armory increased its fund of lore as well as its efficiency.

The 1920's and 1930's saw the regiment broaden considerably its base of membership. The German invasion of Poland in September 1939, beginning World War II, highlighted the need for antiaircraft defense of all types. And so the 7th was converted to antiaircraft artillery on August 1, 1940, a change not only in weapons but in the structure of its companies as well. It was now the 207th Coast Artillery Regiment.

The 7th regiment, New York Guard, was formed to take the place of the 207th when it would enter Federal service. This latter organization occupied the armory until 1947, and throughout the war trained thousands of men for active duty in the Armed Forces.

Pearl Harbor came when the regiment was in Georgia and Battery A (Searchlight) was immediately detached and sent to the Pacific coast. In April 1943 the regiment was broken up into an AAA group headquarters and headquarters company, and three battalions. The 207th AAA Group shipped to England in 1944, fighting its way across Europe to Germany. The 7th AAA Battalion served for 1½ years in Guam with the 77th Infantry Division. The 771st Battalion served in the Pacific. The 247th AAA remained in the United States to train AAA personnel.

Since October 15, 1957, 107th Infantry Regiment has been assigned to the 42d Infantry Division (Rainbow) NYARNG, an association which has continued to date. In 1958, the infantry regiment became battle group, and the first battalion group, 107th Infantry, was commanded by Colonel Stewart. Then the brigade structure was introduced, resulting in the 7th's consisting of the headquarters and headquarters company, 2d Brigade and 1st and 2d Battalions, 107th Infantry.

During his tenure as brigade commander, Col. John J. Bellew was instrumental in acquiring recognition of the 7th Regiment Armory as a national landmark to be preserved for posterity.

The present-day brigade has technical specialists, and also relys on subordinate leadership. As commanding officer, Col. Dominic A. Pellicio pointed out, the brigade, in meeting the Guard's missions in modern times, is aware of the need of coping with the problem of stress.

Flexibility is the keynote of today's National Guard. The brigade became part of the Selected Reserve Force in 1968, requiring the doubling of drills and increased administrative duties. The regiment also increased training and planning in the civil disturbance area. Individuals' training and qualifications have also been enhanced.

Thus, the national guardsman in this regiment is a man of dedication and principle, devoted to the service of ideals, State, and country. A man of this stature requires a leader who can earn the respect of his men. The men of the 2d Brigade have been fortunate consistently to have such leadership. Succeeding Colonel Pellicio were Col. Arthur Jackson, Col. Edward Brown, Col. Charles E. Hangley, and present-

ly, Col. Bernard G. Ehrlich is commanding.

Mr. Speaker, I know that you and my colleagues here today from throughout this great Nation will join with me in saluting the valiant men of such rich tradition in the great heritage of the 7th Regiment of New York. Our country is whole and prosperous, with liberty and justice for all, because they gave of themselves whenever the need arose. They continue to do so, and so we can comfort in their service. To all the members of the 7th today, go our highest respect and esteem, and above all else, our gratitude. May all your fine efforts continue, and bring you all due happiness and success.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 25, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 26

10:00 a.m.
Armed Services
Manpower and Personnel Subcommittee
To hold hearings on H.R. 7626, increasing certain special pay and allowances for members of the uniformed services.
212 Russell Building

Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

Foreign Relations
To hold hearings on pending nominations.
4221 Dirksen Building

Select on Indian Affairs
Business meeting, to mark up H.R. 7212, to ratify a settlement agreement in a land dispute between the Pamunkey Indian Tribe and the Southern Railway Co., and H.R. 7519, to provide that the United States may not claim, as offsets against awards to Indian tribes, funds gratuitously expended for the benefit of the particular tribe after June 30, 1951.
6226 Dirksen Building

SEPTEMBER 29

9:30 a.m.
Finance
Health Subcommittee
To hold hearings on S. 3029, to establish a National Professional Mental Health Services Commission.
2221 Dirksen Building

10:00 a.m.
Finance
Taxation and Debt Management Generally Subcommittee
To hold hearings on S. 3006, increasing the tax incentives for industrial energy conservation.
6226 Dirksen Building

Governmental Affairs
Permanent Subcommittee on Investigations
To resume hearings on the Department of Labor's investigation of alleged mismanagement and criminal activities of the Teamsters Union's Central States pension fund.
3302 Dirksen Building

2:00 p.m.
Select on Ethics
Business meeting, to resume closed consideration of certain provisions relating to legal defense funds of Senate Resolution 508, proposing a change in the Standing Rules of the Senate relative to certain contributions to defray investigative, civil, criminal, or other legal expenses of Members, officers, or employees of the Senate, or certain contributions to defray the legal expenses of the spouses or dependents of Members, officers, or employees of the Senate (agreed to by Senate).
S-206, Capitol

SEPTEMBER 30

9:00 a.m.
Energy and Natural Resources
To receive a closed briefing from administration officials on the current conflict between Iraq and Iran and its impact on U.S. energy policy.
S-406, Capitol

10:00 a.m.
Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume oversight hearings on the implementation of certain programs of the General Services Administration.
3302 Dirksen Building

Governmental Affairs
Permanent Subcommittee on Investigations
To continue hearings on the Department of Labor's investigation of alleged mismanagement and criminal activities of the Teamsters Union's Central States pension fund.
1202 Dirksen Building

Labor and Human Resources
Health and Scientific Research Subcommittee
To resume oversight hearings on the implementation of the National Health Service Corps program of the Health Services Administration under the Department of Health and Human Services.
4232 Dirksen Building

OCTOBER 1

10:00 a.m.
Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To continue oversight hearings on the implementation of certain programs of the General Services Administration.
3302 Dirksen Building

OCTOBER 8

10:00 a.m.
Select on Small Business
To hold hearings to review a proposal by the American Agricultural Investment Management Company on the investment of certain pension funds in farmland.
424 Russell Building

OCTOBER 20

10:00 a.m.
Governmental Affairs
Intergovernmental Relations Subcommittee
To hold hearings to review volunteer organization participation [illegible] Federal programs.
3302 Dirksen Building

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